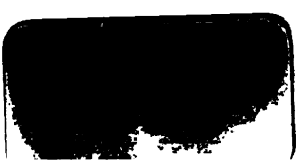

www.libtool.com.cn

www.libtool.com.cn





www.libtool.com.cn

www.libtool.com.cn

AP
ASH
A

www.libtool.com.cn

www.libtool.com.cn

www.libtool.com.cn

www.libtool.com.cn

Scotland. Court of ... and Terminer.

TRIALS

www.libtool.com.cn

FOR

HIGH TREASON,

IN

SCOTLAND,

UNDER A SPECIAL COMMISSION,

HELD AT

STIRLING, GLASGOW, DUMBARTON,

PAISLEY, AND AYR,

IN THE YEAR 1820.

IN THREE VOLUMES.

TAKEN IN SHORT-HAND BY

C. J. GREEN.

VOL. III.

EDINBURGH:

PRINTED BY JAMES BALLANTYNE AND CO.

PUBLISHED BY MANNERS AND MILLER,

92, PRINCE'S STREET.

M.DCCC.XXV.

www.libtool.com.cn

LIBRARY OF THE
LELAND STANFORD, JR., UNIVERSITY

a.55565

JUL 10 1901

www.libtool.com.cn

RENFREWSHIRE—PAISLEY.

Saturday, 1*st July*, 1820.

SEDERUNT.
LORD PRESIDENT,
LORD JUSTICK CLERK,
LORD CHIEF COMMISSIONER.

GRAND JURY.

1. Sir WM. MILLIKEN NAPIER, Bart.
2. WILLIAM MURE, Esq.
3. JAMES STUART, Esq.
4. WILLIAM WILSON, younger, Esq.
5. MATTHEW BROWN, Esq.
6. ROBERT WALLACE, Esq.
7. CHARLES CUNNINGHAME, Esq.
8. ANDREW MOODY, Esq.
9. JOHN HAMILTON, Esq.
10. ADAM KEIR, Esq.

11. John Craig, Esq.
12. William Maxwell, Esq.
13. Henry Dunlop, Esq.
14. William Stewart, Esq.
14. William Carlile, Esq.
15. Quinton Leitch, Esq.
16. Robert Stewart, Esq.
17. James Watt, Esq.
18. Archibald Falconer, Esq.
19. Robert Barclay, jun. Esq.
20. William King, Esq.
21. John Lowndes, Esq.
22. Robert Cochrane, Esq.

The Grand Jury being sworn, the Officers of Court appointed, and the same forms observed as in Stirling, the Lord President delivered his charge to the Grand Jury.

The witnesses whose names were indorsed on the back of the respective Bills of Indictment, were then sworn in Court to give evidence before the Grand Jury.

The Court then adjourned for an hour and a half.

The Grand Jury returned into Court with a true Bill against

James Speirs,
John Lang,
James Walker,
Robert Parker,
John Young,
John Smellie,
James Nixon,
} for High Treason.

The two first indicted. The five last not in custody.

At the request of the two indicted, Messrs Jeffrey and Grant were assigned to them as Counsel, and Peter and James Jacks of Paisley, as Agents.

The prisoners being served with copies of their indictment, and of lists of witnesses and Jury, the Court adjourned till the 22d day of July.

Saturday, 22d July, 1820.

SEDERUNT.
LORD JUSTICE CLERK,
LORD PITMILLY,
And all the Grand Jury except two.

www.libtool.com.cn

At the request of James Speirs and John Lang, the accused, the Court assigned Mr Erskine Douglas Sandford as their Counsel, in the room of Mr Jeffrey; and in the event of Mr Grant not being able to attend the trial, Mr John Archibald Murray was assigned in his room.

The two defendants were then severally arraigned, by reading the indictment, which was precisely the same with that in Lanarkshire, except that the names of the accused were James Spiers and John Lang, and the five other persons above named not in custody, and the *locus delicti*, the Abbey parish of Paisley, in the county of Renfrew.

The prisoners pleaded *Not Guilty;* and the Court informed them, that they must be prepared to take their trial on Tuesday, the 1st of August, to which day the Court adjourned, after issuing a Precept to the Sheriff for summoning the Petit Jury.

PAISLEY.

Tuesday, 1st August, 1820.

SEDERUNT.
LORD JUSTICE CLERK,
LORD CHIEF BARON,
LORD PITMILLY.

PRESENT.
James Speirs—John Lang.

The Counsel for the Crown stated, that it was intended to proceed first with the trial of James Speirs.

Mr Grant.—My Lord, it has been agreed on our part, that the witnesses to the declarations and official persons need not be inclosed; it being understood, that when they come to prove the declarations, on putting the first witness into the box, the other witnesses to the declarations shall withdraw.

Lord Justice Clerk.—Very well.

Lord Advocate.—We will take the case of James Speirs.

Mr Grant.—The other prisoner, who is not now on his trial, has been summoned as a witness for the person now on his trial, and therefore it will be proper he should retire.

Lord Justice Clerk.—We have no use for him here.

Mr Hope.—It may be important we should have his attendance in Court; and if the Crown dispense with the necessity of putting him out of Court, the other prisoner cannot desire it.

Mr Grant.—The withdrawing of witnesses is a matter of arrangement between the parties.

Mr Hope.—We do not insist on it.

Mr Grant.—Then we have a right to have all our witnesses in Court; I know of no right the Crown has different from the prisoner.

Lord Chief Baron Shepherd.—If the Crown desire to have him in Court, that does not preclude your calling him as a witness; but probably the presence of that other defendant may be wanted, for the purpose of identifying him—then might not this be done? might not that defendant withdraw in company with an officer, and be brought into Court when the Crown Counsel wish him to be present? If that will not answer the purpose—

Mr Grant.—It does not appear to be a matter of importance to the prisoner that he should withdraw; but I mention it, that it may not be the subject of observation afterwards.

Lord Justice Clerk.—The course which the Lord Chief Baron suggests is the proper course.

Lord Advocate.—I am perfectly satisfied.

Lord Justice Clerk.—Let that prisoner be removed.

Mr Grant.—My Lord, I must bear testimony to the propriety of witnesses being generally excluded.

Lord Justice Clerk.—He will be taken out in custody, and be kept near at hand, so as to be ready when called for.

John Lang was removed from the bar.

TRIAL

OF

JAMES SPEIRS.

The Jurors returned by the Sheriff were called over, when it was ascertained that the following were not freeholders of the county of Lanark, to the amount of forty shillings a-year.

George Robertson, merchant.
William Montgomery, farmer.
James Orr, farmer.

The following Jurors were excused.

John Wilson, Esq., on account of illness.
John Aviston, Esq., on account of illness.
Alexander Macalister, manufacturer, on account of illness.
John Connel, candlemaker, being improperly described in the panel.
Joseph Twigg, cotton-spinner, being in England.
Robert Thompson, Esq., on account of illness.
William Warden, farmer, being improperly described in the panel.

John Dunlop, writer, being improperly described in the panel.

Thomas Calderwood, baker, on account of illness.

Adam Hamilton, bleacher, on account of illness.

The Jurors who had answered to their names were again called over.

Sir Michael Shaw Stewart, Bart.—sworn.

Boyd Alexander, Esq.—challenged by the prisoner.

Robert Fulton, Esq.—challenged by the prisoner.

James Buchanan, Esq.—challenged by the prisoner.

William Lowndes, Esq.—challenged by the prisoner.

William Napier, Esq.—challenged by the prisoner.

Allan Ker, merchant—sworn.

Robert Smith, Esq.—challenged by the prisoner.

Robert M'Lean, manufacturer—challenged by the prisoner.

William Burr, manufacturer—challenged by the Crown.

William M'Lean, merchant—challenged by the prisoner.

James Kibble, Esq.—challenged by the prisoner.

William Langmuir, grain merchant—challenged by the prisoner.

Joseph Whitehead, tanner—challenged by the prisoner.

Fulton MacKerril, Esq.—challenged by the prisoner.

John MacNaught, merchant—sworn.

Alexander Lang, Esq.—challenged by the Crown.

Robert Hunter, merchant—sworn.

Hugh Cameron, upholsterer—challenged by the Crown.

John Roger, cloth-merchant—challenged by the Crown.

James Stewart, merchant—challenged by the prisoner.

John Holmes, commercial agent—challenged by the Crown.

Thomas Turner, commercial agent—challenged by the Crown.

John Adam, upholsterer—challenged by the prisoner.

George Dempster, wood-merchant—challenged by the prisoner.

William Scott, gentleman—challenged by the prisoner

Duncan Service, cooper—challenged by the prisoner.
James Coats, manufacturer—sworn.
Matthew Rodger, the elder, farmer—sworn.
William Caldwell, farmer—challenged by the Crown.
William Stirling, cloth-merchant—challenged by the prisoner.
William Lyal, grocer—challenged by the prisoner.
John Neilson, grocer—challenged by the Crown.
Alexander Leiper, merchant—sworn.
Robert Stevenson, distiller and farmer—challenged by the prisoner.
James King, farmer—challenged by the prisoner.
Andrew Clark, farmer—challenged by the prisoner.
James Kerr, brickmaker—challenged by the Crown.
Peter Kerr, thread-manufacturer—challenged by the Crown.
Robert Muir, baker—challenged by the prisoner.
Archibald Livingston, merchant—challenged by the prisoner.
John Adam, bleacher—challenged by the prisoner.
Andrew Brown, cotton-spinner—challenged by the prisoner.
William Glen, farmer—challenged by the prisoner.
Gavin Browning, druggist—sworn.
William Waterson, painter—challenged by the Crown.
John Bell, soap-boiler—challenged by the Crown.
Malcolm Lang, dyer—challenged by the prisoner.
David Trail, dyer—sworn.
James Miller, manufacturer—challenged by the Crown.
Henry Wilson, writer—challenged by the prisoner.
Francis Martin, writer—challenged by the Crown.
Robert Dunlop, cotton-spinner—challenged by the prisoner.
Thomas Carlisle, bleacher—challenged by the prisoner.
John Montreth, cotton-spinner—challenged by the prisoner.
John Houte, Esq.—challenged by the prisoner.
William Mather, farmer—challenged by the prisoner.

Patrick Reid, bleacher—challenged by the Crown.
John Gibson, cotton-yarn-merchant—sworn.
John Macdermid, manufacturer—challenged by the Crown.
www.libtool.com.cn
James Barr, manufacturer—challenged by the Crown.
Archibald Barr, druggist—challenged by the Crown.
William Hardie, tobacconist—challenged by the prisoner.
Duncan Dougall, manufacturer—challenged by the Crown.
John Henderson, haberdasher—challenged by the Crown.
William Paton, cloth-merchant—challenged by the Crown.
Robert Patison, thread-manufacturer—challenged by the Crown.
Alexander Pinkerton, merchant—challenged by the Crown.
Robert Ralston, tea-dealer—challenged by the Crown.
John Richardson, coal-agent—challenged by the Crown.
Thomas Wright, perfumer—sworn.
James Wilson, merchant—sworn.

THE JURY.

Sir MICHAEL SHAW STEWART, Bart.
ALLAN KER,
JOHN M'NAUGHT,
ROBERT HUNTER,
JAMES COATS,
MATTHEW RODGER,
ALEXANDER LEIPER,
GAVIN BROWNING,
DAVID TRAIL,
JOHN GIBSON,
THOMAS WRIGHT,
JAMES WILSON.

Lord Justice Clerk.—It is now proper for me to intimate, that this Court expects and requires that no part of the pleading of Counsel, or of the evidence, shall, upon any account, be made public, not only until the end of the proceedings at this place, but till the end of the whole proceedings under this commission; and any person that violates this order, in any respect, will certainly incur the highest punishment that this Court can inflict.

The Jury were charged with the prisoner in the usual form.

The Indictment was opened by Mr Maconochie.

www.libtool.com.cn

Mr Solicitor-General.—May it please your Lordship—Gentlemen of the Jury—The Grand Jury of this county having returned a true bill against the prisoner at the bar, he is now put upon his trial, upon the indictment before you, on a charge of High Treason; and it is the duty, which you are now assembled upon your oaths to perform, to determine with respect to that unfortunate man,—(for unfortunate, whatever may be the issue of this trial, he certainly must be deemed,)—it is your duty, assembled upon your oath, to determine the momentous question of his guilt or innocence of that charge—a question of infinite moment to him, but of no less moment to the best interests of the country, between him and which you are now called upon to do justice.

Gentlemen, in compliance with the forms of judicial proceeding applicable to questions of this nature, it is my duty to explain to you, generally and briefly, the principles of law upon which this indictment is founded, to explain to you further the charges which the indictment contains, and to bring under your notice those facts which it is expected will be disclosed in the evidence before you, and to which it will be your duty to apply the law.

It is known, Gentlemen, to all of you, that the law of High Treason, which now forms a part of the law of the united empire, was introduced into Scotland by a statute which immediately followed the Scottish Union. That statute introduced, as the treason law of Scotland, that law which had been introduced by ancient statutes in England, and which had been matured and explained by a long series of judicial determinations. It becomes, therefore, necessary that I should call your attention to an early statute upon which really the whole law of treason is founded, and also to a more recent statute, which was passed in reference to that early statute, and in further explanation or extension of the principles that were therein enacted.

The first statute upon the subject is that of Edward III., and its terms are quite remarkable for distinctness and precision. "Whereas divers opinions have been before this time in what case Treason shall be said, and in what not, the King, at the request of the Lords and of the Commons, hath made the declaration following; that is to say, when a man doth compass or imagine the death of our Lord the King, and if a man do levy war against our Lord the King within his realm, and thereof be provably attainted of open deed by the people of his condition," such man shall be deemed a traitor.

www.libool.com.cn

Now, Gentlemen, it will be obvious to you, from the terms of the statute, that there are two distinct propositions laid down, constituting and defining Treason. The first is, "If a man do compass or imagine the death of the King, and be thereof attainted of open deed by people of his condition." From these terms, Gentlemen, you will observe that the law contemplates compassing and imagining—that is, the purpose and intention of the party—as being the crime. In all other cases, in which the object of the individual is to take away the life of another, the crime is not reckoned in law to be completed unless the life is actually destroyed; but, for reasons which must be obvious to all, it is here laid down, that if there be a purpose and intention to take the life of the King, it is not necessary, for the full accomplishment of the legal crime, that the life of the King should be touched or taken; it is sufficient, in the first place, that you shall be satisfied that there was a purpose in the heart of the criminal to do so, or to do that which the law reckons to be the same thing, and that that purpose is evidenced by an open overt act and deed.

The next Treason laid down in the statute is levying war against the King within his realm. Gentlemen, it is a question what is meant by levying war against the King in his realm. Now, upon this matter, I have to state to you, that it is not necessary for the definition of the crime of levying war, that war should be levied by means of a regular military array—that it should be levied by means of an army fully

and regularly equipped. It is quite sufficient to constitute a levying of war, in the first place, that an assembly of people do congregate together with purposes of violence, and that they furnish themselves with such means as may be within their reach—such means as clearly indicate a purpose of violence; and such means as may enable them to proceed even the shortest length in the accomplishment of that violence. So much as to the manner of levying war. But, in order to render it a levying of war under the statute, and a treasonable levying of war, another requisite is demanded by the law. It is required that the object of that violence be one either directed against the person of the King, or against the office of the King, or that it be directed for the purpose of accomplishing some general object; a forcible alteration in the constitution, or a forcible alteration of any of those general public institutions in the country which concern the general welfare, and do not concern the peculiar and private interests of the individuals, by whom that violence is attempted or concerted.

www.tibtool.com.cn

I cannot better explain what the law understands in this matter, than by reading a passage from one of the best authorities in the English books; I mean from the work of Mr Justice Foster, who says, "Every insurrection which, in judgment of law, is intended against the person of the King, be it to dethrone or imprison him, or to oblige him to alter his measures of government, or to remove evil counsellors from about him—these risings all amount to levying war within the statute, whether attended by the pomp and circumstances of open war or not; and every conspiracy"—Gentlemen, you will please to attend to that—"and every conspiracy to levy war for these purposes, though not Treason within the clause of levying war, is yet an overt act within the other clause of compassing the King's death;—for these purposes cannot be effected by numbers and open force without manifest danger to his person." Then he goes on in these terms: "Insurrections in order to throw down all inclosures, to alter the established law or change religion, to enhance the price of all labour, or to open all prisons;

all risings in order to effect these innovations of a public and general concern, by an armed force, are in construction of law High Treason, within the clause of levying war; for though they are not levied at the person of the King, they are against his royal majesty; and besides, they have a direct tendency to dissolve all the bonds of society, and to destroy all property, and all government, too, by numbers and an armed force. Insurrection, likewise, for redressing national grievances, or for the expulsion of foreigners in general, or, indeed, of any single nation living here under the protection of the King, or for the reformation of real or imaginary evils of a public nature, and in which the insurgents have no special interest; risings to effect these ends by force and numbers are, by construction of law, within the clause of levying war, for they are levelled at the King's crown and royal dignity.

Gentlemen, the principle upon which levying of war for any of these public general purposes is held to be an overt act, evidencing an intention to compass or bring about the death of the King, is this: The King forms one of the three estates of the kingdom; he forms that estate of the kingdom which gives life, energy, and activity to the whole constitution; the whole executive power is intrusted to that branch of the constitution; the duty of protecting all the other general establishments of the country is imposed upon the Crown; and it is held, and justly held, that no man can contemplate, or intend, or conspire to accomplish a change in the constitution of Parliament,—for instance, in the constitution of the law, in the establishment of religion, or in any other branch of the constitution,—without contemplating the absolute necessity of overcoming the executive branch of the constitution, and in accomplishing that, contemplating all that may be necessary for that object; and it is perfectly clear, that it is impossible that the Crown, or the executive, can be constrained or put down by an armed force, without almost the inevitable result either of the destruction of the kingly office, or of the destruction of the natural life of the King. Such, Gentlemen, is the construction of the law—I state it to you as a principle upon which

there can be no doubt—such is the construction of the law laid down in all the books, and established by a course of unquestionable decisions. And accordingly, in a recent trial —I mean the trial of Watson for High Treason—the law is laid down in these terms by one of the most eminent judges of England. I quote from the charge of Mr Justice Bayley to the Grand Jury upon that occasion. "If there is an insurrection—that is, a large rising of people, in order, by force and violence, to accomplish or avenge, not any private objects of their own, not any private quarrels of their own, but to effectuate any general public purpose—that is considered by the law as a levying of war. There must be an insurrection, force must accompany that insurrection, and it must be for an object of a general nature; but if all these circumstances concur, that is quite sufficient to constitute the offence of levying war." And after stating a variety of adjudged cases in older times, that learned Judge comes down to a case, which certainly comes within the reach of the memory of those to whom I now address myself, and may possibly have come within the actual observation of some of you. "In our own times," says that learned Judge, "in Lord George Gordon's case, there was an insurrection for the purpose of putting down Popery—there was a very large insurrection, with a view to that object, to support, or at least apparently to support, our own religious establishment, and to put down all those persons who were of the Roman Catholic profession; and the Judges there had no doubt or difficulty, that a rising for that general purpose, was an act of levying war against the Crown."

Now, Gentlemen, I state to you generally, although I do not think that your attention will ultimately be very much directed to that point, that, in considering what is, or is not, an overt-act of compassing the King's death, which is the first of the Treasons that is stated for your consideration, levying of war against the King, provided it be a war or insurrection of the description to which I have referred, and a conspiracy to levy war, provided that war contemplates a general object, such as that which I have explained, both the one and the other of these acts, are considered in law to be

overt acts of compassing the King's death; and if these were sufficiently established in proof before you, it would be your duty to return a verdict upon that count of the indictment before you.

www.libtool.com.cn

But, Gentlemen, in order to remove certain difficulties, which it is by no means necessary for our present purpose that I should explain; and for the purpose of somewhat extending and rendering more clear and more effectual for the public protection, the law of Treason, another act of Parliament was passed during the late King's reign, to which I am now to call your attention. The act of Parliament that I now quote, and upon which two of the counts of this indictment are founded, is the 36th of the late King: "If any person, after the passing of this act, during the natural life of the King,"—I may state to you by the way, before reading it, that, although from the preamble of the statute it appears to be a temporary statute, it was rendered perpetual by a subsequent act of Parliament,—"If any person, after the passing of this act, during the natural life of the King," and so on, "shall, within the realm, or without, compass, imagine, invent, devise, or intend death or destruction, or any bodily harm tending to death or destruction, maim or wounding, imprisonment or restraint, of the person of the King, his heirs and successors, or to deprive or depose him or them from the style, honour, or kingly name of the Imperial Crown of this realm, or of any other of his Majesty's dominions or countries, or to levy war against his Majesty, in order, by force or constraint, to compel him to change his measures or counsels, or in order to put any force or constraint upon, or to intimidate or overawe both Houses, or either House of Parliament; and such compassings, imaginations, inventions, devices, or intentions, or any of them shall express, utter, or declare, by publishing any printing or writing, or by any overt act or deed, being legally convicted thereof, upon the oaths of two lawful and credible witnesses, every such offender shall be deemed, declared, and adjudged to be a traitor." Therefore, Gentlemen, observe, that if any one shall invent, imagine, devise, compass, or intend to levy war against his Majesty, to compel him to

change his measures or councils, and to overawe either House of Parliament; and such compassings or imaginations shall be proved by any overt act or deed, such person shall be deemed a traitor.

www.libtool.com.cn

Now, Gentlemen, you will observe that this statute places the levying of war, and the compassing or imagining to levy war, exactly in the same situation that the statute of Edward III. placed the compassing and imagining the death of the King; and therefore, if you shall be satisfied that the prisoner, along with others, did compass, or imagine, or conspire, or invent, or devise, to levy war, for the purpose of compelling the King to change his measures or councils, or to accomplish any change in the constitution of the kingdom, then I state distinctly and clearly to you, that, if the overt acts and facts, constituting such compassing and imagining, shall be proved to your satisfaction, it will be your duty to find a verdict against him, upon those counts of the indictment which are founded upon this act of Parliament.

Gentlemen, as to what is, and what is not an overt-act of compassing and imagining, I shall submit to you two legal authorities; and I must beg of you to observe, and to keep in mind, in the first place, that although the essence of the crime of Treason, just in the same way as the essence of all crimes, be they what they may, consists in the intention of the criminal; yet here we do by no means call upon you for a verdict upon mere intention alone—we call upon you for your verdict, upon not merely a proof of the intention, which we ascribe to the prisoner, but because that intention has been proved, has been developed, has been evidenced by certain distinct or overt acts and deeds, done in the partial accomplishment of that intention; and when I state to you that such is the principle upon which this prosecution is founded, I beg to state further to you, that that principle is in entire and clear conformity with the best authorities of the law. "Overt acts," says that authority, to which I formerly referred you, Mr Justice Foster, "are not to be considered merely as evidence, but as the means made use of to effectuate the purposes of the heart." And exactly agreeable to this, the law is stated in one of the most recent cases that

have occurred, by the Chief Justice of England, in the trial of Thistlewood and others; I quote now from the charge of that person to the Grand Jury upon that trial. After stating the act of Edward III., as well as the import of the statute of the late King, which I have cited, he says, "The law has wisely provided, because the public safety requires, that in cases of this kind, which manifestly tend to the most extensive public evil, the intention shall constitute the crime; but it has at the same time, with equal wisdom, provided, because the safety of individuals requires that the intention shall be manifested by some act of the party, tending toward the accomplishment of the criminal object proposed." And the same learned Judge goes on further to explain this principle: "I have already intimated," his lordship says, "that any act manifesting the criminal intention, and tending toward the accomplishment of the criminal object, is, in the language of the law, an overt act. It will be obvious that overt acts may be almost infinitely various; but in cases where the criminal object has not been accomplished, the overt acts have frequently consisted of meetings, consultations, and conferences about the object proposed, and the means of its accomplishment. Agreements and promises of mutual support and assistance, incitement to others to become parties to engage in the scheme, assent to proposed measures, or the preparation of weapons, or other things deemed necessary to their fulfilment; all these, and other matters of the like nature, are competent overt acts of the particular kind of Treason, of the particular compassing and imagination to which they may happen to apply."

Now, Gentlemen, such is a general outline of the law of Treason—such is the general outline of that law upon which the present indictment is founded; and it has been explained to you that the indictment consists of four counts; the first count charges the prisoner with compassing and imagining the death of the King; the second count charges him with levying war against the King: these two counts are founded upon the 25th Edward III. the first statute that I quoted. The third count charges compassing, imagining, inventing, devising, and intending to depose the King; and

the fourth count charges compassing to levy war against the King, for the purposes that I have already described to the prisoner; and these two last counts are founded upon the 36th of the late King, that I have quoted at length.

Now, the facts which are to be disclosed to you in evidence—(and my statement of them is to be no farther regarded now, and is to have no farther place in your mind at any time, than as they shall be fully disclosed and supported by the evidence to be adduced in your presence)—the facts to which you are to apply the evidence are shortly these: About the beginning of last April, there appeared in the village of Johnstone, to which the prisoner at the bar belongs, or at least in that neighbourhood, a certain treasonable Address and Proclamation, upon which I shall have occasion to offer some observations to you. That most unexampled and extraordinary production appeared in that district; it appeared within the town where you are now sitting; it appeared throughout every large town, and most of the small manufacturing towns, in the western district of Scotland; it appeared to be possessed by various individuals, and it was posted up in all public places. It is necessary that I should read that Proclamation or Address to you, before I state to you the connexion which the prisoner at the bar had with it, and the proceedings in which he was engaged, which proceedings had for their object to act in obedience to it; because, Gentlemen, if you should be of opinion—a result which I cannot anticipate—that this Address contains no Treason at all, then your inquiries may stop there, and you will have nothing further to do; but if you shall be of opinion that it contains as gross and undisguised Treason as ever made its appearance in this country, then the next step in your investigation will be, to ascertain what was the connexion which the prisoner at the bar, along with his associates, had with that Address.

This production bears to be an "Address to the Inhabitants of Great Britain and Ireland," and it commences in these terms: "Roused from that torpid state in which we have been sunk for so many years, we are at length compelled, from the extremity of our sufferings and the contempt

heaped upon our petitions for redress, to assert our rights at the hazard of our lives, and proclaim to the world the real motives which (if not misrepresented by designing men, would have united all ranks) have reduced us to take up arms for the redress of our common grievances." Then, after a sentence which I need not read, it proceeds: "Our principles are few, and founded on the basis of our Constitution, which were purchased with the dearest blood of our ancestors, and which we swear to transmit to posterity unsullied, or perish in the attempt." Then, after an address to the soldiers——

Foreman of the Jury, (*Sir Michael Shaw Stuart.*)—It seems to be sentiment of the Jury, that the whole of it should be read.

Mr Solicitor-General.—Gentlemen, what I omitted was such complete nonsense——

Mr Grant.—The Jury will be aware it is only the statement of my learned Friend.

Mr Solicitor-General.—I will read the whole, and, Gentlemen, it will be laid before you, together with the indictment, when you are enclosed to deliberate on the charge. I have read the first passage; then it goes on—"The numerous public meetings held throughout the country has demonstrated to you, that the interests of all classes are the same; that the protection of the life and property of the rich man is the interest of the poor man, and, in return, it is the interest of the rich to protect the poor from the iron grasp of despotism; for when its victims are exhausted in the lower circles, there is no assurance but that its ravages will be continued in the upper; for, once set in motion, it will continue to move till a succession of victims fall. Our principles are few, and founded on the basis of our constitution, which were purchased with the dearest blood of our ancestors, and which we swear to transmit to posterity unsullied, or perish in the attempt. Equality of rights (not of property) is the object for which we contend, and which we consider as the only security for our liberties and lives. Let us shew to the world that we are not that lawless sanguinary rabble which our oppressors would persuade the higher

circles we are, but a brave and generous people, determined to be free. Liberty or Death is our motto, and we have sworn to return home in triumph, or return no more. Soldiers! shall you, countrymen, bound by the sacred obligation of an oath to defend your country and your king from enemies, whether foreign or domestic, plunge your bayonets into the bosoms of fathers and brothers, and at once sacrifice at the shrine of military despotism, to the unrelenting orders of a cruel faction, those feelings which you hold in common with the rest of mankind?—Soldiers! turn your eyes towards Spain, and there behold the happy effects resulting from the union of soldiers and citizens. Look to that quarter, and there behold the yoke of hated despotism broke by the unanimous wish of the people and the soldiery, happily accomplished without bloodshed; and shall you, who taught these soldiers to fight the battles of liberty, refuse to fight those of your own country? Forbid it, Heaven!—Come forward then at once, and free your country and your king from the power of those that have held them too long in thraldom. Friends and countrymen! the eventful period has now arrived when the services of all will be required for the forwarding of an object so universally wished and so absolutely necessary. Come forward then, and assist those who have begun in the completion of so arduous a task, and support the laudable efforts we are about to make to replace to Britons those rights consecrated to them by Magna Charta and the Bill of Rights, and sweep from our shores that corruption which has degraded us below the dignity of man. Owing to the misrepresentations which have gone abroad with regard to our intentions, we think it indispensably necessary to declare inviolable all public and private property; and we hereby call upon all Justices of the Peace, and all others, to suppress pillage and plunder of every description, and to endeavour to secure those guilty of such offences, that they may receive that punishment which such violation of justice demands. In the present state of affairs, and during the continuance of so momentous a struggle,"—namely, that struggle which they contemplated themselves, as undertaking for the redress of their common grievances, and during the conti-

nuation of so momentous a struggle,—" we earnestly request of all to desist from their labour from and after this day, the 1st of April, and attend wholly to the recovery of their rights, and to consider it as the duty of every man not to re-commence until he is in possession of those rights which distinguish the freeman from the slave, viz. that of giving consent to the laws by which he is to be governed." Now, Gentlemen, I may stop here for one instant, because it is in this passage that the authors of this proclamation somewhat distinctly intimate what was the nature of the rights—what was the nature of that redress—what was the character of those common grievances, against which they were to redress themselves by taking up arms. Those rights seem to be that of giving consent to the laws by which we are at present governed—in other words, it is scarcely possible more distinctly to proclaim, that one of the rights at least which these parties had in view to obtain, was that of an alteration in the representative system of the constitution; and, I presume, no man of common understanding—no lawyer, who attends to the law as it is written and explained in our books, will for one moment dispute, that an attempt to accomplish an alteration of that kind or description, by force of arms, is as gross and undisguised treason as it is possible for any subject to commit.

It goes on: " We therefore recommend to the proprietors of public works, and all others, to stop the one and shut up the other until order is restored, as we will be accountable for no damages which may be sustained, and which, after this public intimation, they can have no claim to: And we hereby give notice to all those who shall be found carrying arms against those who intend to regenerate their country and restore its inhabitants to their native dignity, we shall consider them as traitors to their country, and enemies to their King, and treat them as such." Now, this remarkable proclamation is signed " By order of the Committee of Organization for forming a Provisional Government."

Gentlemen, if you will take the trouble of comparing in your minds the terms of this Address with the different legal authorities which I took leave to read to you, I think it must

force itself upon your conviction, that if war had actually been levied for the accomplishment of the purposes here proclaimed, that war would, beyond all doubt, have been war against and Treason against the King and the Constitution; and I say further to you, that it is no less clear and no less indisputable, that if it shall be made out that there was an intention on the part of the prisoner, in co-operation with others, his associates—I say, if there was an intention, a compassing, an invention, a conspiracy, and co-operation, on the part of the prisoner with others for the purpose of levying war, or accomplishing those objects by force, that also is clearly and indisputably Treason under the 36th of the King, which I have already read.

Now, Gentlemen, after this Proclamation had appeared in the district, it will be established to you in evidence, that the prisoner at the bar, along with others assembled in the village of Johnstone, or the immediate neighbourhood, in considerable numbers, that this Proclamation was read and commented upon at that meeting; that this assembled mob proceeded to the large cotton-mills of Mr Houston of Johnstone, and of various other respectable individuals, whose names will be mentioned, and compelled, or attempted to compel, at least did attempt to compel in some instances, and did absolutely compel in others, those different manufactories to put a stop to their work; and, besides that, it will be established in evidence, that, subsequently to this, a person with whom the prisoner will appear to be intimately associated, was also employed in the preparation and acquisition of pikes. Now, Gentlemen, I state to you, that if these facts shall be established clearly in evidence before you, they do constitute, and so you will be instructed by their Lordships—that such acts do constitute overt acts of conspiring to levy war; nay, if it were necessary, I think it would require no great stretch of ingenuity to shew, that the assembling of that multitude, with the arms and force which they possessed, might, without any violent construction of the law, be held to amount to a levying of war under the 25th Edward III.; but we do not mean to insist upon that part of the case; but, at all events, it still more clearly falls under that conspiracy to

levy war—that purpose to levy war, matured by overt acts, which amount to a compassing of the King's death. In construction of law, and beyond all doubt, beyond all reach or possibility of doubt, those acts do constitute sufficient overt acts in the way of evidence of a conspiracy and intention to levy war for the purpose of compelling the King to change his measures and counsels.

It signifies not, in any question as to a conspiracy to levy war, to what a small degree the parties may have proceeded in the accomplishment of their purpose; it is quite sufficient if their proceedings are such, and so distinct, as to intimate and manifest, in the words of the authorities I have quoted, an intention to levy war for the general purposes that the statute has pointed out and defined.

Now, Gentlemen, the two points to which your attention will be directed are just these, whether or not there existed a general purpose or conspiracy anywhere to disturb the public tranquillity—to levy war for the purpose of accomplishing those objects, namely, the object of subverting the constitution—of altering any part of the constitution, however minute; and then, if you are satisfied, from the terms of this Address, that there did exist such an intention somewhere, then the next point of inquiry with you, and the only point of inquiry, is, whether there is evidence that the prisoner at the bar did act in obedience to that Address, and did co-operate with others in commencing proceedings for accomplishing the purposes therein named? If that should be your opinion upon the evidence legally brought out and submitted to your consideration, then you can have no other alternative but to return a verdict of Guilty against the prisoner.

www.libtool.com.cn

EVIDENCE FOR THE CROWN.

Mr William Houstoun—*sworn.*

Examined by Mr Hope.

Q. I understand you are the proprietor of some cotton-mills in the neighbourhood of Johnstone?

A. Yes.

Q. Will you mention the names of those mills, which you are either proprietor of, or concerned in?

A. There is one mill, commonly called the Old Mill, Hagg Mill, and another, the Cartside Mill.

Q. Whereabouts are those mills situated? are they close to the village of Johnstone?

A. One is in the village, and the other very near it.

Q. Which is in the village?

A. The Old Mill.

Q. And at what distance are the other two from the village of Johnstone?

A. The village of Johnstone extends very nearly to the Hagg Mill, perhaps four hundred yards; Cartside Mill is a little farther on, a quarter of a mile perhaps.

Q. In what parish are those mills situated?

A. In the Abbey parish of Paisley.

Q. In this county of Renfrew?

A. Yes.

Q. Are you able to state, from your own knowledge, how many cotton-mills there are in Johnstone and the immediate vicinity?

A. I could easily recollect.

Q. May there be eight, ten, or twenty; or what number?

A. I recollect thirteen just now, fourteen in all.

Q. Including your own three?

A. Yes.

Q. Were you in Johnstone, or in the neighbourhood, about your mills, in the beginning of April last?

A. Yes; I was at my brother's house.

Q. Is that in the immediate vicinity of Johnstone?

A. Yes.

Q. At the commencement of last April?

A. Yes.

Q. Did any thing particular take place at any of your mills on any day in the commencement of April, and what?

A. Upon Monday the 3d of April, upon going to my brother's house after breakfast— .

Q. About what hour?

A. About ten o'clock; I was informed that several of the mills were stoppcd, and I went down to the village immediately, to see what was going on; I went straight to the Old Mill.

Q. The one situated in the village?

A. The one situated in the village; and I saw a crowd there, a considerable crowd, towards the door of the mill; I went to the back part of the mill, and came in front of the crowd, and asked what they wanted.

Q. Was that crowd at the time all in one body, or were they otherwise arranged and disposed of?

A. They were not exactly in one body; there were a great many of my own workers in the crowd.

Q. Were the crowd you went up to close together, or were some separated from the rest?

A. There were some separated from the rest.

Q. Describe how they were?

A. The great body of the crowd came close up to me, but up the rising ground from that, there were a number of people besides those that were with me.

Q. At what distance might that part of the crowd, which you describe as being a little way back, be from those immediately in your front?

A. The whole of the hill was covered with children and people; there were a great many people standing at the dis-

tance of fifty or sixty feet, I think, upon the hill, looking to what was going on.

Q. Besides those immediately before you?

A. Yes; and there were a number of children and people between the hill and the people who were by me.

Q. State what took place when you went up to that crowd which was immediately before you?

A. I went up to the crowd, and asked them what they wanted, and desired them to go away, they had no business there.

Q. State, as nearly as you can recollect, every thing that took place, if you please.

A. They shouted out from several quarters, "Stop the work, stop the work;" I said, "I will not stop the work."

Q. Did you observe any persons in particular making use of those expressions, "Stop the work," at that time?

A. Yes; after I had stated that I would not stop the work, the crowd rose very near to me, and one man stood about six feet from me, and the crowd came close to his shoulder, so that the space was quite open between me and the man that stood there.

Q. What took place then?

A. They continued occasionally shouting out.

Q. My question was, whether you observed at that time, any person in particular, using those expressions?

A. I observed a man that stood close before me, using the expression, "Stop the work, the other works are stopped."

Q. Who was that person?

A. I was afterwards told, that that person——

Mr Grant.—That will not do.

Lord Justice Clerk.—Did you know him before?

A. No; I never saw him before.

Mr Hope.—Look at the prisoner at the bar?

A. I am not certain that is the man; his countenance is very much altered. At that time he was very much enraged, and there was a strong flush in his countenance; if I had met him in the street, I could not have recognised him as the man that stood before me in that crowd.

Q. You stated that the person appeared very much enraged?

A. Very much enraged; there was an angry expression in his countenance—suppressed rage—it appeared to me that he was intimidated from putting in execution some plan he had in view.

Q. Do you believe this person whom you see now to be the man?

Mr Grant.—That cannot be a fair question; the question is, "Do you believe."

Lord Justice Clerk.—Do you mean now to say that that is the man, after you have seen him?

A. I perfectly believe that that is the man; if I had met the man in the street, I would not have said, there is the man that stood before me; I could not swear that that was the man, but I was immediately informed afterwards——

Mr Grant.—We cannot hear that.

Lord Justice Clerk.—I understand you to say, you could not swear that was the man that stood before you, but you believe it to be that man?

A. I believe it was the man, because I was informed so immediately after.

Q. I want to know whether it is merely that you do not know the name of the man that stood before you, or have you doubts of his person?

A. I doubt of his person.

Mr Hope.—Then I still understand you to say, that although you have some doubts in your own mind as to this man, you believe him to be the person from your recollection of the man?

A. Not from my recollection of the man.

Q. Is he of the size and appearance of the prisoner at the bar?

Mr Grant.—Really——

Lord Justice Clerk.—There is no harm in that.

Mr Hope.—Is he of the same size and appearance?

A. It was a man of the same size.

Lord Justice Clerk.—That is to say, the prisoner is about the size of the man you have been alluding to?

A. Yes.

Mr Hope.—Was this person whom you mentioned having stood in this position, and using those expressions, taking an active part in the proceedings of this mob at the time?

A. He did nothing; he never moved or spoke, except saying, "Stop the works, the other works are stopped;" and I refused to stop my work; and I understood him to give it as a reason for my works to stop, that the other works had stopped.

Q. Did you make any reply, and what, to that?

A. I stated that I would not stop the works, and said, "If any body has anything to say to me, let them come down and state it distinctly."

Q. How do you mean come down?

A. Come near me; most of the shouts to stop the work came from the crowd round me.

Q. And you meant, that if any of them had any thing to say, he should come near to you?

A. Yes; upon which a man of the name of James Walker said, "We had better appoint two men to speak to Mr Houston."

Q. Was that addressed to the crowd?

A. That was addressed to the crowd.

Q. What followed that observation?

A. The crowd immediately cried out, "A ring, a ring!" and they immediately formed a ring, and there was a show of hands for James Speirs, and afterwards James Walker; I think James Speirs was first appointed.

Q Did you hear his name at the time?

A. Yes.

Q. There was first a show of hands, or a vote, for James Speirs?

A. They held up their hands.

Q. His name being mentioned?

A. Yes; and then a show of hands for James Walker.

Q. The same person who proposed that two persons should be elected?

A. Yes.

Lord Justice Clerk.—The crowd mentioned James Walker?

A. Yes.

www.libtool.com.cn

Mr Hope.—You saw those persons who were chosen by the mob?

A. After they were chosen, the circle closed, and they seemed to consult together for a very short time; I did not see the men at this time; I did not see the men in the circle.

Q. Did you see that there was some apparent deliberation going on between them, after they had chosen those two men?

A. Yes, they seemed to be talking together.

Q. What followed that?

A. Then Walker came up to me.

Q. Did the circle open?

A. It was not regularly closed, they got altogether in a mass.

Q. Did he come from that mass?

A. Yes.

Q. Did any person come along with him?

A. I did not observe any person; there was a great crowd, the whole people upon the hill—there was a great crowd of people got round me, and I said, "I cannot speak to you here; you must come away to the back part of the mill with me, where I can speak to you quietly," and we walked together up the hill. He walked alongside of me.

Q. What conversation took place then between you?

A Walker asked me if I had seen the Address; I said I had not seen it, but I had seen some extracts from it.

Mr Grant.—Perhaps it may be right to mention this to your Lordship. I have no right to object to this hearsay as it is evidence against Walker, because it is to be presumed they mean to connect the prisoner with Walker; but the Jury will recollect, that at this time this is not evidence against Speirs.

Lord Advocate.—It is not evidence till they are connected.

Mr Hope.—What reply was made at that time by Walker?

A. Walker asked me if I would like to see it; I said I would like very much to see it.

Q. Did he show it you; or what was done?

A. He stooped just across me, and addressed himself to some person upon my left hand, and ascertained it could not be got.

Q. Walker must have been upon your right hand?

A. Yes.

Q. By this time there was another person upon your left hand?

A. Another person upon my left hand.

Q. Had he joined you and Walker from that crowd?

A. I could not say when he joined me, for I never looked at him, even when Walker stooped across me and spoke to him. I could not say who the man was at this moment, of my own knowledge.

Lord Justice Clerk.—Of your own knowledge you could not say who it was, you mean to say?

A. Of my own knowledge, I could not say who it was on my left hand.

Mr Hope.—You were then apart from the crowd, along with these two persons?

A. No; the crowd followed up behind us.

Q. At what distance?

A. I did not look behind me; but I considered that the whole crowd moved up with us.

Q. What reply was made by this other person upon your left hand?

A. That it could not be got at present; or, that it could not be got.

Q. What conversation followed? as they could not show you the Address, did Walker state what was the object of it?

Lord Justice Clerk.—What passed afterwards?

A. Walker then said, "You would observe by the Address that the public works were to be all stopped,"—I said "Yes."

Mr Hope.—Did he describe it as the Address, or recollect whether he described the paper by any particular appellation?—did he talk of it as any particular order?

A. He called it the Address that was on the church-gate.

Q. Was that the only title that he gave to it?

A. The only title he gave it at that time, as far as I recollect.

Q. When did he give it any other title?

A. He asked me if I had observed by the Address, that the public works were to be stopped; I said that I had: he then said, "Do you mean to stop your works?" or something to that effect; I said, No, I did not. He said, "Then of course you will make no claim against the Provisional Government for any damage that may be done."

Q. Did he explain to you what connection this Address had with the Provisional Government?

A. None, he did not say a word more. I immediately, upon his saying, "You will make no claim upon the Provisional Government,"—said, if that was all he had got to say, it was unnecessary for me to proceed further, as I would make no claim against the Provisional Government or against him; those were my words exactly.

Q. Then did you turn round after this reply?

A. Yes, I immediately left him.

Q. Turned round to get back?

A. Yes, to go down towards the mill again, I stopped and spoke to some of the people.

Q. At the time that you turned back; I ask you whether the crowd were close upon you?

A. I think they must be close upon me. I do not recollect that very distinctly; but I conceived that the crowd followed us up; that I was just in the middle of the crowd walking up the hill; the whole crowd followed us up the hill. I am perfectly certain that a great part of the crowd was round me at the time.

Q. Was the person to whom Walker made that observation respecting the Address, the same man whom you had previously seen in front of the crowd?

A. I am not conscious of having recognized him as the same man—the man that walked up with me, I am not conscious of having recognized as that same man who had stood before me.

Lord Justice Clerk.—That is, the man on your left?

A. The man on my left.

Mr Hope.—During this conversation with Walker, who was chosen, as you have told us, by the mob, after this show of hands—was there any other person who came forward and seemed to take a part in this conversation, and joined him and you?

A. There was no person, except the person who was walking on my left; and I do not recollect who that was. I am not conscious of having seen that man; Walker speaking to him, and asking him for the Address, is the thing that makes me know it was a man.

Q. And you never turned round to look at that man?

A. No, I did not, to the best of my recollection. Immediately after I parted from the men, I got information that Speirs——

Mr Grant.—We cannot hear that,—only state what you know of your own knowledge.

Mr Hope.—After you turned and left Walker, what became of this crowd?

A. They went up the street.

Q. In what direction?

A. From the mill.

Q. Do you know the house of Mr William Campbell, writer in Johnstone?

A. Yes, perfectly.

Q. Was it in that direction?

A. In that direction.

Q. On returning to the mill, in what state did you find the spinners and work-people?

A. They were very much agitated. I desired the spinning-master to get them in to their work, and they did return to their work.

Q. The whole of them?

A. The greater part of the spinners; the mill was going at the time, but a number of the spinners were out; but the greater part of them returned to the mill. It was from the information of the spinning-master, that I say so. I did not go in myself to see how many were there.

Q. Did that mill continue going, or did the workmen ultimately stop work in the course of that day?

A. The mill continued going till they went out to dinner.

www.libtool.com.cn

Q. Did they return again?

A. They did not return after dinner.

Q. Did they return to their work the next day? or did they remain off work for some days?

A. They returned about two days after.

Q. On what day, do you know, the Friday or the Thursday?

A. I think it was on Thursday.

Q. Are you able to state from your own knowledge, that in the course of that Monday, or of the Tuesday, the cotton mills generally of Johnstone were off work, that the workmen had struck work?

A. Not of my own knowledge.

Lord Justice Clerk.—Do you know that other mills did stop?

A. Yes, I do.

Q. Upon what day?

A. They all stopped that day.

Mr Hope.—Does the population of Johnstone consist exclusively of the people employed in the mills, or are there other inhabitants?

A. There are other inhabitants; but they are chiefly spinners.

Q. Are there any weavers?

A. There are some weavers; but they are mostly spinners.

Q. Does it consist with your knowledge, that the population of Johnstone appeared to be off work during that time?

A. Wholly for that day, and two days afterwards; I think it was the Thursday that they began work,—the Thursday or Friday.

Q. Are you able to form any estimate of the population of Johnstone?

A. From four to five thousand people, I should think.

Q. I suppose, in stating that the mills stopped work, you included your other two mills?

A. The Cartside Mill went on Tuesday.

Q. Did it stop on the Monday?

A. Yes.

Q. And the Hagg Mill?

www.libtool.com.cn

A. That was stopped till the Thursday.

Q. What might be the amount of the persons employed in these three mills of yours; first stating the men?

A. About thirty-four men and lads in the three mills.

Q. Are there a number of women and children?

A. A great number of children, and some women.

Q. How many women and children might there be,—two hundred or three hundred?

A. I think there might be about three hundred altogether.

Q. What at that time was the average wages of the cotton-spinners,—the men in your mills?

A. I should think that their wages, upon the average, did not exceed from 18s. to 20s. a-week.

Q. The men?

A. The men. The mills are very small; it is old machinery; and they make smaller wages at our mill than at any other almost in the country,—much smaller—from 18s. to 20s., I should think, was rather above the average.

Q. In your particular mills, you mean?

A. Yes.

Lord Pitmilly.—Did you observe what was the dress of that man who called out, "Stop the work?"

A. Yes; he had on a fustian jacket, I think.

Q. What more?

A. I do not recollect any other part of his dress, except a fustian jacket.

Mr Hope.—You have been looking very particularly for some time to the prisoner?

A. I am surprised at not recognizing him; but he had a strong expression on his countenance, which made a strong impression on my mind, which I thought I never could have forgotten; it was a very marked expression; I thought I had never seen the man before; but when I see this man, I

think I have seen him before. If I had met the man, I am sure I should not have known him to be the same.

www.libtool.com.cn

MR ANDREW LOGAN—*sworn.*

Examined by Mr Solicitor-General.

Q. What are you?

A. A cotton-spinner.

Q. Have you the superintendance or management of any mill?

A. Yes.

Q. Are you a partner in any mill?

A. Yes.

Q. Whose mills?

A. The mills of Watt, Logan, and Company.

Q. Where are their mills situate?

A. At Johnstone.

Q. You held that situation in April last, at that mill?

A. Yes.

Q. Do you recollect any thing happening at that mill in the beginning of April last?

A. I recollect perfectly well it being stopped on the 3d of April, by people who came to the place.

Q. At what time did they come to you?

A. The first party that came to us was at ten o'clock, but they did not manage their point, and they went away.

Q. They did not remain?

A. No; they went away.

Q. Of how many might that party consist?

A. About forty, I think.

Q. What did that party do or say, when they came upon that occasion?

A. There was one or more of them told the workers that they should not go in to their work.

Q. Did you hear that said?

A No.

Q. When I asked you what they said or did, I meant you to tell what you saw or heard them say or do?

A. I did not hear or see what they did.

Q. Did they return again?

A. I did not recognize any of them returning, there was such a crowd came afterwards.

Q. Did another party come to you?

A. Another party returned.

Q. At what hour?

A. About half past eleven.

Q. What might be the number of that second party?

A. I suppose, three or four hundred.

Q. I understood you to say, that you saw that party?

A. Yes.

Q. What did they say or do?

A. I did not hear any of them speak at all, just making a noise about the place.

Q. You did not hear them say any thing?

A. No.

Q. But they made a noise?

A. They made a noise.

Q. Did you recognize any of that party?

A. Not at the time.

Q. When did you recognize any of them?

A. One of them was taken from Paisley to Dumbarton, and I knew him again.

Q. You knew him again?

A. Yes.

Q. Who was that man?

A. His name was Lang.

Q. Did you recognize any body else?

A. No; not at our mill.

Q. How long did that crowd remain at your mill?

A. Twenty minutes.

Q. Did your people continue at work, after the visit of that crowd?

A. They went out before the crowd went away.

Q. Did they return that day, any of your people?

A. No.

Q. When did they return?

A. They did not return for eight days.

Q. Your mill stopped for eight days?

A. Yes.

www.libtool.com.cn

Q. The crowd remained twenty minutes or so with you?

A. Yes.

Q. Where did they go next?

A. To Mr Houstoun's mill.

Q. Did you see them go in that direction?

A. Yes.

Q. What was the name of Mr Houstoun's mill that they went to?

A. They call it the Old Mill.

Q. Did you follow them?

A. Yes.

Q. Did they actually go to the Old Mill?

A. Yes.

Q. And you saw them there?

A. Yes.

Q. What did they do?

A. They made a noise about the mills, to get the workers to come out there.

Q. Did you hear them cry any thing, or say any thing?

A. I heard one of them speak to Mr Houstoun.

Q. What did he say to Mr Houstoun?

A. He said, that the Provisional Government would not be accountable for the damage done to the mill.

Q. Who said that to Mr Houstoun?

A. A man of the name of Walker.

Lord Justice Clerk.—Do you remember his first name?

A. James Walker.

Mr Solicitor-General.—Did you recognize any body else in the crowd at that time?

A. Yes.

Q. Be so good as to name the person.

A. James Speirs; that is him, (*pointing to the prisoner.*)

Lord Justice Clerk.—At the Old Mill?

A. At the Old Mill.

Mr Solicitor-General.—Were he and Walker together?

A. Yes.

Mr Grant.—I know you do not mean any thing wrong, but the question is leading.

www.tbook.com.cn

Mr Solicitor-General.—I will correct it presently. How did Spiers stand in relation to Mr Houstoun and Walker?

Lord Justice Clerk.—You have said that you heard Walker address words to Mr Houstoun,—was any other person near Walker at the time he was addressing Mr Houstoun?

A. Yes, James Speirs.

Mr Solicitor-General.—I think I was quite regular. I first proved he was there, and then I asked how he stood. Were those three persons apart from the crowd?

A. Yes.

Q. Did Speirs take any share in the conversation?

A. I did not hear him speak.

Q. How far might you be from the party at that time?

A. I joined them; I was just beside James Speirs.

Q. Then we are to understand that Speirs could equally well hear; he was in a situation, that is, in which he might equally well hear, as you heard, what was said by Walker?

A. Yes, he was nearer; I did not hear it so distinctly, I dare say, as he might.

Q. Had you an opportunity of seeing that crowd before you saw those three persons apart?

A. Yes.

Q. Have the goodness to state what you saw.

A. I saw James Walker and James Speirs come out of the crowd, and speak to Mr Houstoun by themselves.

Q. Did you observe any thing before they came out of the crowd in that way, in the manner you have described?

A. No, I had just arrived then.

Q. You have spoken about the crowd that came to your mill; did you recognize, or did you not, Speirs in that crowd at your mill?

A. Not at our mill.

Q. Was Walker at your mill?

A. I did not see him.

Q. On which side of Mr Houstoun did Speirs stand, do you recollect?

A. On the left.

Q. Are you able to speak, of your own knowledge, of the state of the mills in the neighbourhood?

A. They were all in the same situation, obliged to stop.

Q. They all stopped?

A. They all stopped, I think; one or two small ones might go.

Q. Is yours a large mill?

A. Yes.

Q. How many men may you have in it?

A. There are about 240 men and boys.

Q. How many men?

A. Not more than thirty men.

Q. And the rest, 210, are women and boys?

A. Nearly that.

Q. Can you state what was the average rate of your wages to the men at that time?

A. I suppose 30s. a-week.

Q. How was Speirs dressed? Have you any recollection upon that subject?

A. He had a dark jacket, I think, either velveteen or corduroy; I think it was velveteen.

Lord Justice Clerk.—Is that a different thing from fustian?

A. Yes, it is different.

Mr Solicitor-General.—Is it of the same colour?

A. The fustian is lighter.

Q. How long did Mr Houstoun and those two persons remain together?

A. I dare say ten minutes; they followed him.

Q. Did you see them separate?

A. Yes.

Lord Justice Clerk.—Did they follow him up any hill?

A. Yes.

Mr Solicitor-General.—Had you occasion to see an Address any where?

A. Yes.

Q. Where?

A. In my own house.

Q. Where did you get it?

A. I got it from James Speirs; I sent a person for it.

Q. Would you know that Address again?

A. Yes; I would not know the same Address again, probably.

Q. Did you read it?

A. Yes.

Q. Look at that, (*handing a paper to the witness.*)

A. Yes, that is just the same Address.

Q. On what day did you send for it?

A. It was on Sunday.

Q. The 2d of April?

A. Yes.

Q. Did you see an Address of that description posted up any where?

A. Yes.

Q. Where?

A. At the corner of one of the streets.

Q. Of Johnstone?

A. Yes.

Q. Can you mention the particular place where you saw it?

A. They call it Rankin Street.

Q. On what day?

A. On Sunday.

Q. Will you explain where that is? Is it near the Chapel gate; or where is it?

A. It is just in the middle of the town.

Q. In the course of your observation of the mob, that you have spoken about, did you hear any conversation about an Address?

A. No.

Q. All that you heard was about the Provisional Government, that you have mentioned?

A. Yes.

Q. You observed Walker and Speirs, did not you?

A. Yes.

Q. Did they conduct themselves in the same way generally?

A. I only saw them at that time.

Q. Did they appear to be equally active?

A. Certainly they did, only that James Speirs did not speak, that I heard.

www.libtool.com.cn

Q. Did you hear any conversation take place between Walker and Speirs at that time?

A. No.

Q. What did you do after this? did you do any thing after this?

A. The mills were all stopped, and we did nothing.

Q. Did you shut up your mill?

A. We shut it up in the course of the afternoon; there were a few girls remained, but the men went out.

Lord Advocate.—Where did you go immediately after this? did you return to your own work?

A. Yes.

Q. Had you any particular reason for returning?

A. There were still a few girls working, as I mentioned before, and I went back to attend to them.

Q. Did you take any particular steps upon going back to your mill?

A. We shut the gate to keep them in for a time, those that remained.

Q. Did the crowd come to your gates then?

A. No, not then.

Lord Justice Clerk.—You mention that you saw those two men, Walker and Speirs, come out and remain apart from the crowd, with Mr Houstoun; how far were they from the crowd?

A. Not more than two yards.

(John Lang was brought into Court in the custody of an officer.)

Mr Solicitor-General.—Look at that man before you, (*John Lang*).

A. That is the man Lang.

Lord Justice Clerk.—Did the crowd follow them up this hill?

A. Yes.

Q. Did they remain pretty near them?

A. Yes.

Q. You have told us what you did with regard to the few girls that remained in the mill, and they remained till the afternoon; did you after this make any communications to the managers of the other mills?

A. Not after they were actually stopped.

Q. Did you before they were stopped?

A. Yes, I did, of what was to be done.

Q. Did you take any steps after so consulting with them?

A. They did not enter into any agreement with the managers.

Mr Solicitor-General.—Will you mention to whom you made any communication in particular?

A. I called upon Mr Malloch, Mr King's manager, and asked him what he intended to do, and he said he did not know.

Q. Did you call upon any other manager at any other mill?

A. I spoke to several of the managers; I met them on the streets, and spoke to them, but I do not exactly remember which.

Lord Advocate.—You say there was about two yards distance between these two men and the crowd?

A. Yes.

Q. Was there a complete separation between them and the crowd?

A. Yes.

Q. And you are sure that Mr Houstoun was walking along with Walker and Speirs?

A. Yes.

Foreman of the Jury.—You stated that you sent to James Speirs for a copy of the Address; what was your reason for sending to James Speirs for a copy of the Address?

A. My reason for it was, that I understood that the purport of it was to stop the mills, and I wanted a copy of it, to call upon some of the other managers to see what we should do.

Q. Why did you send to James Speirs in particular?

A. The person I happened to meet with, and sent for it, lived in the same house with James Speirs; and I knew James Speirs was likely to have something to do with it, at least I thought so.

www.libtool.com.cn

Lord Justice Clerk.—I cannot take that down.

Foreman of the Jury.—Can you condescend upon the colour of the jacket?

A. It was dark.

Q. What colour was it, blue—or green?

A. Neither; it was dark corduroy or velveteen.

Mr Solicitor-General.—Do you recollect any thing of Lang's dress?

A. I do not recollect every part of it, except a cap that he wore.

Q. What was it?

A. It was a rough hairy cap.

Lord Justice Clerk.—You saw Lang the first time at your mill, did you recognize him in the crowd at the Old Mill afterwards?

A. No.

Lord Chief Baron Shepherd.—Was he with the party who came first to your mill?

A. Yes.

Mr Thomas Watt—*sworn.*

Examined by Mr Maconochie.

Q. You are a merchant in Johnstone?

A. Yes.

Q. Are you a partner in the company of Watt, Logan, and Company?

A. I am.

Q. They have a cotton mill at Johnstone?

A. They have.

Q. Do you recollect that mill being stopped at any time in April last?

A. I do.

Q. What day was it?

A. Monday the 3d of April.

Q. Had you occasion to be at the mill that morning?

A. Immediately after the crowd presented themselves to the front of the work, I was sent for.

Q. Did you go to the mill?

A. I did.

Q. At what hour was this?

A. Between nine and ten in the forenoon.

Q. Did you get to the mill?

A. I did.

Q. Was there a crowd there?

A. There was.

Q. Did the crowd continue there any time after you were there?

A. It was just beginning to move away when I reached the front of the work.

Q. In what way did it move?

A. It moved directly towards Mr Houstoun's work.

Q. Which of Mr Houstoun's works?

A. What is called the Old Mill.

Q. How far off is that mill from yours?

A. A very little distance; about a gun-shot.

Q. Did you follow the crowd?

A. I did.

Q. Did they go to Mr Houstoun's mill?

A. They went directly.

Q. When you got to Mr Houstoun's mill, what did you see?

A. The crowd had presented themselves in front of Mr Houstoun's mill in the same manner.

Q. Did you see Mr Houstoun there?

A. He was just entering the crowd when I came up to him; he was rather before me; he entered before I came up.

Q. Was there any person along with Mr Houstoun?

A. None, that I observed.

Q. Did you see any person join him from the crowd?

A. As soon as ever I got up to him, two came out of the crowd and spoke to him.

Q. Did you know the name of either of those two men?

A. I knew one of them personally.

Q. Who was he?

A. Walker.

www.libtool.com.cn

Q. What is his first name?

A. James.

Q. Was that the other man that was with him? (*pointing to the prisoner.*)

A. I should think it is, but I am not positive.

Q. Have you any doubt about it?

A. One of the two that came up to Mr Houstoun was a person I had never seen before, that I know of; this may be him, but I cannot swear to it.

Q. How was he dressed?

A. Like a weaver or a cotton-spinner.

Q. Did you observe his jacket?

A. I should think it was a fustian jacket.

Q. What colour was it?

A I am not certain.

Q. Dark or light?

A Rather dark.

Q. Did either of the men speak to Mr Houstoun.

A. They did.

Q. Which of them?

A. It was Walker that I heard speak to Mr Houstoun.

Q. What did he say?

A. Before I got up to Mr Houstoun, Mr Houstoun had asked, "What do you want here?"

Q. Did you hear him ask that?

A. I did not; he told me that he had asked that.

Q. What did Walker say to Mr Houstoun?

A. When I got up to Mr Houstoun, Walker was in the act of saying, "We wish all public works to stop, because, if they do not stop, and any damage be sustained by their not stopping, we wish to inform the proprietors that they t expect no recourse on the Provisional Government."

Did Mr Houstoun make any reply to that?

e did.

What did he say?

A. He said, " Is that all you want ?"

Q. Any thing more ?

A. Walker replied, " It is." Mr Houstoun then said, " Very well, I shall not expect any recourse from the Provisional Government, therefore you had better go away."

Q. Did any further conversation take place ?

A. Nothing further, they moved away directly.

Q. Did you see, either that day, or the day before, an Address ?

A. I saw an Address the day before.

Q. On the Sunday that was ?

A. That was stuck up upon the church porch upon Sunday.

Q. Did you read it ?

A. I did read a part of it; but it was very wet on going into the church, and it was stuck very high, and I could hardly make it out.

Q. Do you remember the beginning of it ?

A. Yes.

Q. To whom was it addressed ?

A. Addressed to the people of Great Britain and Ireland.

Q. Did you afterwards see another copy of that Address ?

A. Yes.

Mr Grant.—He afterwards saw another Address, but how he can say it was a copy, I do not see.

Mr Maconochie.—Did you afterwards see another Address?

A. Yes.

Q. Was it the same ?

A. I imagine it to be the same; it began in the same manner.

Q. Did you afterwards see another ?

A. I did.

Q. Where did you see that ?

A. In Mr Logan's house, between the church time on Sunday.

Q. What was that one you saw on the porch about ?

A. I took it to be exactly the same.

Q. Tell us what it was, as far as you recollect it ?

A. I did not read any considerable part of it; it was ad-

dressed to the Inhabitants of Great Britain and Ireland; I did not read many lines of it, for I did not think it was of a very serious consequence, going into church.

Q. Did you observe how it was signed?

A. No; it was dated Glasgow, the 1st of April.

Q. Did you observe any thing more at the bottom of it?

A. No I did not.

Q. Did it bear by whose order it was stuck up?

A. By order of the Committee of the Provisional Government, I believe; I am not positive, though I think that was it.

Q. You saw an Address at Mr Logan's house; look at that, (*handing a paper to the witness*), is that similar to the one you saw at Mr Logan's house?

Mr Grant.—The question is, is that similar to the one you saw in Mr Logan's house?

Lord Justice Clerk.—He is asked that question; he has not given the answer yet.

Mr Grant.—If your Lordship thinks the question can be asked, I do not press my objection.

Lord Chief Baron Shepherd.—No doubt, if you see an Address on the wall, which a man has read, you may ask whether another paper is similar to it.

Mr Grant.—He says he read but a few lines of it.

Mr Maconochie.—Is that similar to the one you saw on the wall?

A. Yes, it is.

Mr Grant.—He does not remember the one he read on the wall, and then he sees another in Mr Logan's house, of which he read but a few lines.

Lord Justice Clerk.—He is asked whether it is similar to the one he saw on the wall, and he says yes.

Lord Chief Baron Shepherd.—Though he cannot recollect what was in that on the wall, yet he may be asked whether that was similar to it.

Lord Justice Clerk.—I have it in this way—"I saw an Address stuck upon the church-porch, on Sunday, on going to the church; it was dated Glasgow, the first of April, by

order of the Provisional Government, I believe, but I am not certain."

Mr Grant.—Then, if your Lordship is of opinion that that is enough to let in evidence of another paper, which is put into his hands, as to which he is asked, whether it is similar, they may prove any thing in the world.

Lord Chief Baron Shepherd.—No, not unless it is similar to that on the wall; he sees a paper on the wall, and recollects the purport of it, then surely you may say, is this like that, or is it like it in any part?

Mr Grant.—Any objection of mine on this point is to the use they are to make of the paper.

Mr Maconochie.—You read the paper at Mr Logan's entirely?

A. Entirely, and part of it twice over.

Q. Is that paper you have now in your hand, similar to the one you saw at Mr Logan's?

A. I think it is exactly the same.

Q. Was your mill stopped upon that day?

A. Yes.

Q. How long did it continue so?

A. For the whole week, I believe.

Q. Why was it stopped?

A. The spinners did not seem willing to work.

Q. Was that after the crowd had been there?

A. While the crowd was there; part of the spinners had come in after breakfast, and part did not come back at all.

Q. Did it appear to you that they did not come back owing to intimidation?

A. A good many of them seemed to be intimidated by the appearance of the crowd.

Q. Do you know, from your own knowledge, whether the other mills, in the neighbourhood of Johnstone, stopped that day?

A. I believe they were all stopped after this; this was the first, I believe.

Q. Did you observe the crowd leave Mr Houstoun's mill?

A. At the moment that Mr Houstoun made the reply, "I

shall not expect any recourse on the Provisional Government, therefore you may go away," they moved away.

Q. Did you observe in what direction they went?

A. They went towards Mr King's mill.

Q. Is Mr William Campbell's house in that direction?

A. Mr William Campbell's house is close by Mr Houstoun's mill.

Q. Did they go past Mr Campbell's house?

A. They went past the front of it of course; there is no other way of going.

Cross-examined by Mr Grant.

Q. I think you say this was about nine o'clock in the morning?

A Rather after that.

Q. When they came to your mill?

A. Yes.

Q. How long did they stay there?

A. They were moving away from it when I reached the spot.

Q. Was that after breakfast?

A. It was just when the work people were coming back to their work after breakfast.

Q. And they went, I think I understood you to say, directly from your mill to Mr Houstoun's mill, the old mill?

A. They did.

Lord Justice Clerk.—If I understood you right, you had only come to your mill after breakfast; you were not there when the people came to your mill at first?

A. No, I was not; the people were just coming up after breakfast.

Mr Grant.—And the crowd were then moving away towards Mr Houstoun's mill?

A. Yes.

Lord Justice Clerk.—What is your breakfast hour?

A. They go out at nine, and come back at three quarters past nine; but then our hours are sometimes a little before the day.

Q. And you mean to say that it was at the time that the people were returning after breakfast, not later than three quarters of an hour after nine, that the crowd was moving away from your mill, in order to go to Mr Houstoun's mill?

A. They had set themselves there at the time the people were coming from their breakfast; but just as I reached it, they were moving away.

Q. And you reached it some time after nine o'clock?

A. Between nine and ten.

Re-examined by Mr Maconochie.

Q. Was Mr Logan there at the time that you went to the mill?

A. He was there at the time they presented themselves at the mill, and he came to me and wished me to go down to the mill; he was afraid of some mischief; and when we reached the mill, the crowd were going away, and we followed it, and went to Mr Houstoun's mill.

ROBERT STEVENSON—*sworn.*

Examined by Mr Hope.

Q. You live in Johnstone, I understand?

A. Yes.

Q. What is your employment?

A. I superintend Mr Houstoun's works.

Q. The Old Mill, the Hagg Mill, and those mills that belong to him?

A. Yes.

Q. Were you in Johnstone in the beginning of April?

A. Yes.

Q. Did you observe any particular paper posted up any where in Johnstone, about that time?

A. Yes, I saw it on Sunday, when I was going to church.

Q. On what Sunday?

A. The 2d of April.

Q. You saw a paper where?

A. On the pillar of the chapel gate of Johnstone.

Q. You mean the church in Johnstone?

A. Yes.

Q. There is no parish church, I believe?

A. No.

Q. This was going to church?

A. Yes.

Q. Did you read this paper?

A. Yes, I read part of it.

Q. Was that the only time that you saw it there?

A. It was the only time I saw it there; it remained there two or three days; I think it was two or three days before it was taken down.

Q. Did you see it two or three days afterwards?

A. I think so.

Lord Justice Clerk.—At the same place?

A. Yes.

Mr Hope.—Did you read it upon any other occasion but upon that Sunday morning, or parts of it?

A. I looked at it a little, but did not read much of it afterwards.

Q. Had that paper any title; and what was it?

A. It was an Address to the Inhabitants of Great Britain and Ireland.

Q. Had it any date?

A. It was dated Glasgow, the first of April.

Q. Was the year mentioned?

A. I do not recollect.

Q. Had it any name at the bottom; or did it bear to be issued by the order of any person or body?

A. The Provisional Government.

Q. At the bottom of it?

A. I do not recollect where it was.

Q. Can you repeat the parts of it that you read?

A. It wished the people to stop work; and if they did not do it, they would be considered as traitors to the cause, and treated as such; or something of that.

Q. Look at this paper, and see whether it contains what you saw in the other Address, and tell me whether you believe it to be the same, or similar, (*handing a paper to the witness.*)

www.libtool.com.cn

A. I think it is the same.

Q. Are you certain that the substance and import is the same?

A. Yes, I think so.

Q. This, you have stated, was upon Sunday the second of April; now, upon the following day, did any thing take place within your observation, at Mr Houstoun's Old Mill?

A. Yes; there was a number of people came down there.

Q. *At what time?*

A. About ten o'clock, I think.

Q. State what you saw; a number of people came down to the Old Mill?

A. Yes.

Q. About what number might there be?

A. Two or three hundred; I could not say exactly.

Q. Did you see Mr William Houstoun at the time?

A. Yes, he came down shortly after the crowd came down.

Q. Did Mr Houstoun go in between the end of the mill and the crowd?

A. He came round by the end of the mill at first.

Q. Did he advance in front of them?

A. The crowd made a cry, "Stop the mill," when he came forward.

Q. Tell us all that you heard?

A. He said, "Any person that he knew was to come forward to tell him to stop his mill."

Q. Did he ask what their object was?

A. Nobody came forward; and there was a committee among themselves—and some of them were trying to form a ring,—and at that time I went into the mill, as Mr Houstoun desired, to see what was going on.

Q. Was a ring formed?

A. Yes, I looked out of the window of the mill, and saw what I thought was a show of hands—a ring as if they were choosing some person; I did not see them come from the

ring; I went out in a little after, and I saw Mr Houston, and two men, walking up the bridge.

Q. Were these two persons apart from the crowd along with Mr Houstoun?

A. They were walking like among the crowd—the crowd was all about them.

Q. Did they appear, at the time that they were in conversation with Mr Houstoun, to be apart from the crowd, by any distance, however small?

A. Yes, there was a little space between them—the crowd was a little clear round them.

Q. Did you know any of the men at that time—those two men?

A. No.

Q. Look at the man at the bar—was he one of them?

A. I do not know; I could not say he was.

Q. Do you believe that man to be one of them? I ask you, upon your oath, in the presence of Almighty God, whether you do, or do not, believe him to be one of them?

A. I never knew the man before.

Q. I ask you, do you now believe that man to be one of the persons?

A. By what I heard other people say.

Q. Do you now believe that man to be one of the persons?

A. I could not say that he was one.

Q. What is your belief?

A. I could not say that he was the man.

Q. You are bound to answer my questions. Upon your oath do you believe that that is the man?

A. No, I could not say that he is the man.

Q. Did you ask, or did anybody at the moment tell you, the name of either of the persons then with Mr Houstoun?

A. Yes; Mr Houstoun told me.

Q. Did you inquire the name of either of the persons then with Mr Houstoun, and from whom, at the moment?

Mr Grant.—I submit my Lord, we are not entitled to hear whether this man inquired the person's name of any body, and whether somebody told him his name.

Lord Chief Baron Shepherd.—Perhaps not; but you may ask, whether he has taken steps to satisfy himself, and then what is the result in his mind.

Mr Grant.—He does not recollect the man.

Mr Hope.—If he says any person told him his name, I shall call that person now; I submit if any person seeing the conduct of a man, asks his name of a person beside him.—

Lord Chief Baron Shepherd.—I doubt whether you can ask that; if any body called him by name at the time, that you might give in evidence.

Mr Hope.—Did you hear any body naming those two persons with Mr Houstoun?

A. No; I did not, I was in the mill.

Q. Do you know a person of the name of James Walker?

Lord Chief Baron Shepherd.—You may ask him whether he asked any of the crowd there the man's name.

Mr Hope.—That was my question.

Mr Grant.—You may ask, did any body in the man's presence name him?

Lord Chief Baron Shepherd.—It is not competent to ask who he asked what the man's name was; nor perhaps whether he asked any of the crowd; but if he asked any body what was such a person's name, that is evidence.

Mr Grant.—In the presence and hearing of the man himself, which would amount to an acknowledgment by himself.

Lord Chief Baron Shepherd.—No, I think that is admissible evidence; a man might give a false answer, and if so—it would not be evidence that it was the man; because somebody said that was his name; but only it is an admissible question to ask whether the witness, at the time of that transaction, learnt from any one of the crowd what the man's name was.

Mr Grant.—I take your Lordship to mean this—if any of the crowd called out this man's name.

Lord Chief Baron Shepherd.—No; I mean this—suppose, during that transaction, that witness, from curiosity, if you please, had said to any of that crowd there collected, and apparently acting together with the prisoner, "Pray, what is

that man's name?" and they had given him an answer, James Speirs, or any thing else, that would be admissible evidence, because it is a part of what passes when the transaction is going on. If he asked a person at a subsequent time, I do not think it would be evidence.

Lord Justice Clerk.—No; and therefore the question ought to be coupled in this way—You saw those two men walking with Mr Houstoun; did you at that time ask what the name of this man was?

Mr Grant.—It would not become me to reply upon your Lordship on any thing, but I know your Lordship's candour and kindness. I do not believe that it is of much importance in this case; but I understand perfectly well, that any thing that is said by the crowd at the time, is part of the *res gesta*, and we may have it as part of the *res gesta*; the account which any body gives of any thing at the time, I understand to be part of the *res gesta*, but my doubt is, whether you can take from any body that was there their account as evidence against this prisoner at the bar coming from that crowd, which you would not take from any other person who gave you the account at any other time, because it does not appear to me to be part of the *res gesta*.

Lord Chief Baron Shepherd.—You say, that there must be a distinction taken: supposing there had been an indifferent by-stander, who had nothing to do with it, then asking him the man's name would not be evidence; but if voices from those who at present appear to be together, forming the same party, name him, whether it comes as a voluntary effusion from one of them, or a voluntary answer to a question, it is still part of the transaction going on there—whether it is an answer to a question or a voluntary effusion of the person's there; but when I stated I doubted what Mr Hope asked being evidence, I thought he asked what somebody said at a different time.

Mr Grant.—If your Lordship takes that distinction, I am answered.

Lord Chief Baron Shepherd.—It is only admissible evidence; I do not say it proves the identity.

Lord Justice Clerk.—No; the effect of it remains.

Mr Hope.—Did you at that time, ask any of the persons there, the name of either of the men with Mr Houstoun, or did you hear any of the persons of the crowd mention the name of either of those two men at the time?

A. No; I asked none of them that time; but I heard Mr Houstoun ask, who was the little man with a corduroy jacket.

Q. Was that at the time?

A. No.

Q. What dress had the person on?

A. A corduroy jacket.

Q. Did you see any person with a corduroy jacket with Mr Houstoun?

A. I do not recollect it.

Lord Justice Clerk.—You had not observed that either of the two men with Mr Houstoun, had such a jacket as that?

A. No.

Mr Hope.—Had you taken any notice at all of their dress?

A. No.

Q. Do you know a person of the name of James Walker?

A. No; I do not know that I ever saw him but once or twice.

Q. Then you do know a person of the name of James Walker?

A. Yes.

Q. Was he present upon that occasion?

A. I do not know—they say so.

Q. You say you have seen James Walker once or twice, —did you see him there?

A. I did not see him there; but I saw him at the Hagg Mill.

Q. Did you see that crowd leave Mr Houstoun's mill?

A. No; I was in the mill at the time.

Q. You know that they left it soon afterwards?

A. Yes.

Q. When did you next see any thing of the crowd?

A. I went up to the Hagg Mill, between twelve and one o'clock.

Q. Did you find any crowd about the Hagg Mill?

A. Yes; the crowd was there when I went up.

Q. Did that appear to be a larger crowd than had been at the Old Mill?

A. Yes.

www.libtool.com.cn

Q. Considerably larger?

A. Yes.

Q. You say you saw James Walker at the Hagg Mill?

A. Yes.

Q. Did you speak to him?

A. Yes.

Q. Did he appear to be a leader in that mob, at the Hagg Mill?

A. I considered so.

Q. Was there any person along with him, who seemed to be assisting him?

A. One Parker, that was along with him?

Q. Robert Parker?

A. Yes.

Q. Was the man at the bar along with Walker?

A. I could not say he was.

Q. Do you believe that he was?

A. I was told he was there.

Mr Grant.—Do not tell us what you were told.

Mr Hope.—It is very odd; you will not answer my question.

A. I could not say that he was there.

Q. Was there any third person that was along with Walker and Parker, and assisting them?

A. Yes; there was a third.

Q. Did you speak to those persons when you got to the Hagg Mill?

A. Yes; I spoke to them—I asked for the committee, when I went there.

Q. And did those three persons answer?

A. I went forward to Parker and spoke to him first. I understood he was chosen.

Q. Was Walker along with Parker at that time?

A. Yes.

Q. Was there a third man along with them at the time that you spoke to Parker?

A. Yes.

Q. State what you said to Parker?

A. I wished him to clear away the crowd for fear they should do any damage to the mill; and one of them said, if I would stop the mill, they would soon try and get them away; and I said I could not take that upon me, but I would go down to Johnstone and see Mr Houstoun.

Q. Was that addressed to those three persons?

A. Yes.

Q. Did they or either of them, and which of them, say any thing in reply to that?

A. Walker said that he knew Mr Houstoun's mind about that already.

Q. Did he say any thing further?

A. No; I do not recollect his saying any thing else.

Q. Did you observe at that time, an old man at a part of the Hagg Mill?

A. Yes.

Q. Was any thing said about him, by either of those three persons?

A. Yes; a man said, "See and get that old fellow down, and we will get away the crowd."

Q. Which of the men said that?

A. I was told afterwards, it was Speirs.

Mr Grant.—Do not tell us that.

Mr Hope.—I ask which of those three,—you have named two of them?

A. It was the third man.

Q. Tell us what was said?

A. Says he, "See and get that old fellow down, and we will see and get the crowd away from the mill,"—the crowd would not go away as long as they saw that man there.

Q. Was that third person either of the men who was along with Mr Houstoun at the Old Mill?

A. I could not say.

Q. Did you believe him at the time to be one of the men who was along with Houstoun?

A. Yes.

Q. What other conversation took place at the Hagg Mill after this, with those three persons?

A. There was no other conversation that I had with them; I went and I told them, I would stop the mill, and they went away directly—they cried, For Cartside Mill.

Q. How long did this conversation with those three persons at the Hagg Mill last?

A. Not very long—about ten minutes, I think, altogether. I do not think they were there more than ten minutes before they all went away together.

Q. Did your conversation last all that time?

A. No; I spoke but very few words with them.

Q. Had you those persons in your view during the greater part of the time that they were at the Hagg Mill?

A. Yes.

Q. You have stated, that, at the time, you believed that third person to be one of the men whom you saw along with Mr Houstoun at the Old Mill. I now desire you to look at the prisoner, and say, upon your oath, whether you do or do not believe him to be the man?

A. I do not know whether he was the man.

Q. I wish to have your belief?

A. That is my belief, that I do not know whether he was there or not.

Lord Justice Clerk.—Did you ask his name at the time of any body there?

A. No; I did not till, I think, a day or two after.

Mr Hope.—Did you ask it at the Old Mill, before you went to the Hagg Mill?

A. Yes; his name was asked at the Old Mill.

Q. Was that before the crowd had left the Old Mill?

A. No; the crowd was away before Mr Houstoun came into the Old Mill.

Lord Justice Clerk.—Who did you ask that?

A. I think it was Walter Wilson that I asked it of.

Q. Was he one of the crowd?

A. No; he was one of the attenders of the mill.

Q. You say you had this man in your eye for ten minutes; did you observe his dress?

A. No; I do not recollect it.

Q. Did you go to the Cartside Mill with the crowd?

A. No.

Q. Was the Hagg Mill stopped?

A. Yes.

Q. Do you know that the Cartside Mill was stopped that day likewise?

A. Yes.

Q. You stopped the Hagg Mill at the time you said you would?

A. Yes.

Mr Sandford.—At what time was the Hagg Mill stopped?

A. I think it might be about one o'clock.

JAMES MACDOUGAL—*sworn.*

Examined by Mr Solicitor-General.

Q. Are you a cotton-spinner?

A. Yes.

Q. Where do you live?

A. At Mr Houstoun's Mill.

Q. At what mill?

A. The Laigh Mill.

Q. Is that what is called the Old Mill?

A. Yes.

Q. Did you work there in April last?

A. Yes.

Q. You live in Johnstone, do you?

A. Yes.

Q. Do you recollect having seen an Address of any kind posted up in Johnstone?

A. Yes.

Q. On what day was it?

A. On a Sunday morning.

Q. You saw an Address posted up in Johnstone upon Sunday morning?

A. Yes.

Q. Whereabouts?

www.libtool.com.cn

A. Upon the corner of the east end of the square.

Q. Did you read it?

A. Yes.

Q. What did it begin with, do you recollect; was it addressed to any body?

A. Yes.

Q. To whom?

A. I cannot say particularly the words; but it was an Address to the Inhabitants of Great Britain and Ireland.

Q. Do you recollect what was at the bottom of it?

A. No.

Q. Did it bear to be given out by order of any body?

A. Yes.

Q. By whose order?

A. The Provisional Government.

Q. By order of the Provisional Government?

A. Yes.

Q. What was the date of it?

A. I could not recollect.

Q. Would you know it again if you saw it?

A. Yes.

Q. Look at that paper (*handing a paper to the witness.*)

A. It appears to be something the same as that.

Q. Read it to yourself?

A. Yes; I think it is the same.

Q. It is the same in substance?

A. Yes; I think it is.

Q You saw that upon the Sunday, I think you say?

A. Yes.

Q. Do you recollect the day of the month?

A. No.

Q. Was it early in April?

A. Yes.

Q. Was it about the beginning of April?

A. Yes; the first or second of April.

Q. Did you go to the mill as usual, the next morning?

A. Yes.

Q. Did any thing remarkable happen at the mill, in the course of that day?

www.libtool.com.cn

A. Yes; there were a crowd coming about the mill.

Q. At what hour was that?

A. It was after breakfast.

Q. Was it soon after breakfast?

A. Probably about half an hour, or three quarters.

Q. What did they do?

A. Somebody went to the manager of the mill and told him.

Q. Who is the manager of the mill?

A Robert Stevenson.

Q. You saw the crowd, did you?

A. Yes.

Q. Did you hear them say any thing?

A. Yes.

Q. What did any of the crowd say?

A. They cried out, "Stop the mill."

Q. Did the mill stop?

A. No; it did not stop at that time.

Q. Were the people within the mill alarmed with this?

A. Yes.

Q. What happened after this at the mill?

A. Shortly after the crowd came down; and after all our workers were out, Mr Houstoun's came down.

Lord Justice Clerk.—Shortly after this the people went out of the mill, did they?

A. Yes.

Mr Solicitor-General.—And then Mr Houstoun came?

A. Yes; and asked them what they wanted.

Q. What was the number of the crowd; a hundred or a hundred and fifty, or two hundred?

A. I did not take particular notice.

Q. But there was a considerable crowd?

A. Yes.

Q. Mr Houstoun came and asked what?

A. He asked them what they were doing there.

Q. Did any body answer him?

A. Yes; the crowd cried then to stop the mill.

Q. What did Mr Houstoun say after this?

A. I do not recollect that.

Q. Did you see the crowd do any thing after this?

A. After that Mr Houstoun was standing beside them, and shortly after he came, I left the crowd and him standing speaking.

Q. Did you see the crowd do any thing while you were there?

A. Nothing more then.

Q. You can tell what happened before you went away?

A. I saw Mr Houstoun and them speaking together.

Q. Did he speak to the whole crowd; or to some people out of the crowd, or to whom did he speak?

A. He was speaking to the whole crowd at the time I was there.

Q. What did the crowd do—Did they send any of their number out?

A. Not that I saw.

Q. How long were you there?

Q. I was only there a few minutes after Mr Houstoun came down.

Q. Did you see a ring formed in the crowd?

A. Yes; there was a small ring, when Mr Houstoun was there.

Q. Did you see any body come out from that ring?

A. No.

Q. Did you see Mr Houstoun speaking to any particular persons?

A. I saw him speaking to James Speirs.

Q. You know Speirs?

A. Yes.

Q. You saw him speaking to Speirs?

A. Yes.

Q. Was that after the ring was formed?

A. No; it was just as he came forward.

Lord Justice Clerk.—Just as Mr Houstoun came forward?

A. Yes.

Mr Solicitor-General.—Was that before the ring was formed, or after?

A. Just as Mr Houstoun came forward, they stood round him, that was all the ring that I saw.

www.nls.ac.uk

Q. Was there any body else in conversation with Mr Houstoun but Speirs?

A. No.

Q. Do you know a man that they call James Walker?

A. Yes.

Q. Was he there?

A. I do not recollect seeing him there.

Q. Did you see any body else there that you knew?

A. No; I did not notice—no person particularly.

Q. At that particular time?

A. No; because I was standing at the back of Mr Houstoun, and in a short time I left them.

Q. Did you hear what Mr Houstoun said to Speirs, or what Speirs said to Mr Houstoun?

A. No; I could not give my oath to what they were saying.

Q. Did any conversation take place between them?

A. They were speaking together.

Q. And you were close to them?

A. Not far off.

Q. You were within ear-shot of them, I dare say?

A. Yes.

Q. Did any conversation take place between them?

A. They were speaking together.

Q. What did they say?

A. I do not recollect.

Q. You must have heard what was said—what was the substance of what passed between them?

A. They were saying something about stopping the mill.

Q. Who said about stopping the mill?

A. I could not say; that was all that I heard. I left them at that time, for Mr Houstoun was there to speak to them.

Q. Where did you go?

A. I went round the other side of the mill.

Q. And where did you go to?

A. I stood up at the other end of the mill.

Q. Did you see what became of the crowd?

A. Yes; they all went up the street.

Q. In what direction?

www.libtool.com.cn

A. Straight up Collier Street, from the mill.

Q. What was Mr Speirs's demeanour; how was he looking, or what was his conduct, when you saw him?

A. I did not pay particular attention to that.

Q. Was he particularly calm?

A. Yes; very calm.

Q. Is that Mr Houstoun, or Mr Speirs you are speaking of?

A. Mr Speirs.

A. The man at the bar?

A. Yes.

Q. Did your mill stop that day?

A. It did not stop at that time.

Q. Did it stop that day?

A. Yes; it might be stopped at dinner-time.

Q. What became of you?

A. I went up the street.

Q. Did you return again to your work?

A. Not till the mill began again, on Thursday.

Q. You went away and did not return till Thursday?

A. Yes; the mill did not go during that time.

Q. Did you observe what became of Mr Houstoun after that?

A. I saw him coming up from the mill, before the crowd.

Q. Who was with him?

A. I saw James Speirs along with him, and some other men.

Q. At what time was this, that you saw them walking up?

A. It was just a short time after the crowd first came down; just about half an hour after, the crowd came down.

Q. This was before the crowd went away?

A. They were just scaling then, from the mill.

Q. Do you know a man of the name of Parker?

A. Yes.

Q. Besides Speirs, who more was there with Mr Houstoun?

A. I do not recollect that.

Q. Was there any other man with him but Speirs, at that time?

A. Yes.

Q. You know James Walker?

www.libtool.com.cn

A. Yes.

Q. Was he along with him then?

A. I do not recollect—I could not be upon my oath of that.

Q. How many people were with him?

A. I could not say whether there were two or three.

Q. You cannot say whether that man was Walker or not?

A. No.

Q. Were they far off at the time?

A. Perhaps twenty yards.

Q. Did you see any more of that crowd that day?

A. I saw them going away up the street.

Q. Did you observe what became of Speirs and those other men that you saw in company with Mr Houstoun?

A. No.

Q. Did they go away with the crowd?

A. Yes; I saw them going up the street together; but I did not see them after that.

Q. What became of Mr Houstoun after that?

A. I saw him turning the corner, up at the head of the street, by Mr Mills's.

Q. That was away from the crowd?

A. Yes.

Q. Do you recollect how Speirs was dressed?

A. I think it was a corduroy jacket.

Q. Dark or light?

A. It was a greenish colour.

Q. Was it dark?

A. No; it was not very dark; but it was not a white corduroy.

Q. Did you see, in the course of that day, any crowd of people assembled any where?

A. Yes.

Q. Where was it?

A. On the school green.

Q. About what time was that?

A. Shortly after twelve o'clock, I believe.

Q. Was that after this visit, that your mill had had from from the crowd?

A. Yes.

Q. Was it soon after?

A. No; it was some time after.

Q. Were you along with that crowd—were you in it?

A. Yes; I was up at the time.

Q. Had you occasion to know how that crowd was called together?

A. No; I heard a report that there was to be a meeting

Q. You were in the crowd, you say?

A. Yes; I was close to it.

Q. Was James Speirs there?

A. Yes.

Q. Who more was there that you knew?

A. I saw Parker.

Q. What is he?

A. A shoemaker.

Q. What is his first name?

A. Robert.

Q. Did you see Walker there?

A. I do not recollect seeing him. I was on the back side of the ring.

Q. Did you see any body else there—a man of the name of Smillie, did you see there?

A. I do not know that man.

Q. What did you see take place there?

A. I was at the back side of the ring.

Q. Was there a ring formed?

A. Yes.

Q. Did you see who was on the inside of that ring?

A. I saw Jem Speirs.

Q. Who else did you see?

A. I saw Parker.

Q. Any one else?

A. Yes; there was another man that I did not know.

Q. How was that other man dressed?

A. He had on a glazed hat, a leather hat.

Q. What did you see take place in that ring?

A. I heard one of those Addresses read.

Q. Such a one as you read now yourself?

A. Yes.

Q. Who read it?

A. I could not see the man; I was on the back side, I only heard it.

Q. Was it read by somebody in the centre within the ring?

A. Yes.

Q. By some one of the persons within the ring?

A. Yes.

Q. Did you hear any remarks made upon it?

A. Yes; I heard some remarks.

Q. Can you tell us what those were?

A. No; I could not make no sense of the words.

Q. What was it?

A. I could not give my oath to it—I did not hear it particularly.

Q. Let us hear the substance of it?

A. I cannot give it, for I was on the back side of the ring, and could not hear correctly.

Q. But you are confident it was all read?

A. I do not recollect whether it was all read or not. I heard the Address read.

Q. You were quite near enough to hear that?

A. Yes; I was on the back side.

Q. Then there were remarks made upon it?

A. Yes.

Q. Upon the substance and meaning of that Address?

A. Yes, there was something of that.

Q. What was Speirs doing?

A. I did not see him at that time.

Q. Who presided over this meeting?

A. I could not say who presided over it.

Q. Was there nobody chosen?

A. Yes; I heard Parker chosen.

Q. You heard Parker chosen preses of that meeting?

A. Yes.

Q. Who proposed him?

A. I did not hear that.

Q. Did nobody propose him?

A. I could not say.

Q. Did you hear nobody propose him?

A. No.

Q. He acted as preses of the meeting, however, you have told us?

A. Yes; I heard him chosen preses.

Q. How did this business of choosing go on?

A. He was chosen by a vote.

Q. Did any body propose him for this vote?

A. I did not hear that.

Q. Did any body else speak within that ring?

A. I heard James Speirs speaking something.

Q. Does your recollection serve you to tell us what passed?

A. No.

Q. What did it refer to?

A. I do not recollect.—I could not give my oath to any thing of that.

Q. To whom was this speaking addressed?

A. I did not hear him address no particular person; it was just to every body round.

Q. It was a speech to the meeting?

A. He was speaking some few words.

Q. To the meeting?

A. Yes.

Lord Justice Clerk.—Did it appear to you to be addressed to the whole meeting?

A. Yes.

Mr Solicitor General.—Was there any thing said about cotton-mills there?

A. Yes; I heard it proposed to stop the mills.

Q. To stop the cotton-mills?

A. Yes.

Q. From whom did that proposal come?

A. I could not say.

Q. Did it come from somebody within the circle?

A. Yes; or about the ring. I could not say whether it came from the ring, or the circle in the middle of the ring.

Lord Justice Clerk.—Did you know who said it?

A. No.

Mr Solicitor-General.—Did you hear any thing said by any body in the crowd, about where they were going to?

A. I heard them say that there were some mills not stopped, and that they would stop them.

Q. Was this agreed to?

A. Yes; I believe it was.

Q. It appeared to be the common sentiment?

A. Yes.

Q. How was it agreed to?

A. By a show of hands.

Q. Was there any question put about showing hands?

Lord Justice Clerk.—Were they desired to show hands and agree to it?

A. Yes.

Mr Solicitor-General.—Who desired them to show hands in that manner?

A. I cannot exactly say; I was a little behind at that time.

Q. Did that desire come from the ring likewise?

A. Some part about the ring.

Q. This was agreed to, I think you say, by a show of hands?

A. Yes

Q. Did the crowd remain together?

A. No.

Q. Did any body intimate any opposition to this stoppage?

A. I did not hear any.

Q. How long did the crowd remain together after this?

A. They went away after that.

Q. Immediately?

A. Yes; shortly afterwards.

Q. Where did they go to?

A. They went away up to the head of Macdougall Street, and up by the Hagg Mill.

Q. Did you go with them?

A. No; I stopped upon the green.

Q. Did you see any more of the proceedings of that mob?

A. No.

www.libtool.com.cn

Q. Who read the Address?

A. I did not see any man; I only heard the Address read.

Q. You know a man's voice occasionally?

A. Yes; but I could not give my oath of it.

Q. You heard the voice that read it?

A. Yes.

Q. Whose voice do you believe it to be?

A. I believe it to be Walker's.

Q. I think you said you heard some one of the crowd say, they were going to the Hagg Mill?

A. No.

Cross-examined by Mr Grant.

Q. Who was this man with the glazed hat that you have spoken of, that was at the green?

A. I did not know that man.

Q. Did he seem to take an active part in this business?

A. I saw him in the ring, along with the rest.

Q. Did he mak a speech?

A. I did not hear him make any speech.

Q. Can you see the Hagg Mill from the green?

A. Only the top of it.

Q. And you remained on the green, you say?

A. Yes.

Q. So that you could not see the crowd go to the Hagg Mill?

A. No.

Q. But you saw them go up Macdougall Street?

A. Yes, by the head of Macdougall Street.

Q. And that is all you know about that?

A. Yes.

Re-examined by Mr Solicitor-General.

Q. How far is the Hagg Mill from the end of Macdougall Street?

A. Not very far—I cannot say how far.

Q. How far is it—is it many hundred yards, or what?

A. It is more than that—I cannot say the distance.

Q. Is it just about the top of Macdougall Street?

A. No; it is eastward from it.

www.libtool.com.cn

Q. Not a very great distance from it?

A. No.

Q. Does Macdougall Street lead to the Hagg Mill?

A. Yes; but not from the green.

Lord Justice Clerk.—Did you see the crowd actually at the head of Macdougall Street?

A. Yes.

Q. There is a mill called the Cartside Mill; is that near the Hagg Mill?

A. Yes; it is just a little higher than the Hagg Mill.

Mr Solicitor-General.—What induced you to remain off work?

Lord Justice Clerk.—What induced you to remain off work?

A. There were none of the men at work then, the mills were all stopping.

Q. Had you any other reason for stopping, except that the rest did not go on?

A. No.

Q. You returned on the Thursday, you say?

A. Yes.

Lord Pitmilly.—Was silence observed, while the Address was reading?

A. Yes; they were very attentive, but silence was not ordered.

Q. Did they appear to agree about the Address, or dissent from it?

A. Yes; some of them did agree to it.

ALEXANDER MACNEIL—*sworn.*

Examined by Mr Maconochie.

Q. You are a cotton-spinner at Mr Houstoun's mill?

A. Yes.

Q. At which mill?

A. At the Old Mill.

www.libtool.com.cn

Q. Were you so in the month of April last?

A. Yes.

Q. Do you remember that mill stopping work in April.

A. Yes.

Q. What day in April was it?

A. I think it was the third, the first Monday of April.

Q. Was there a crowd came to the mill that day?

A. Yes.

Q. At what time of the day?

A. About eleven o'clock, I think.

Q. That was after breakfast?

A. Yes.

Q. What did the crowd do when they came to the mill?

A. They just came to the mill.

Q. Did they say any thing?

A. I heard them speaking.

Q. Did you hear any thing that was said?

A. No.

Q. Did they say what they came for?

A. I did not hear any words said.

Q. Did you see any body in the crowd that you knew?

A. Yes, I saw several.

Q. Be so good as mention their names.

A. I saw one of the name of James Walker, I think, and one of the name of James Speirs.

Q. Is that him, (*pointing to the prisoner.*)

A. Yes.

Q. What were they doing when you saw them?

A. Just in the crowd the same as the rest.

Q. Did you see Mr Houstoun there?

A. Yes.

Q. Mr William Houstoun?

A. Yes.

Q. What was he doing?

A. He was standing anent them.

Q. Before them?

A. Yes.

Q. Did you see him speaking to any body?

A. Yes; I saw him speaking to the crowd.

Q. Did you see any of the crowd, whom you knew, speaking to Mr Houstoun?

A. No; I did not.

Q. Did you see the prisoner, Speirs, speaking to Mr Houstoun that day?

A No, I did not, at the mill.

Q. Did you see him near him?

A. No, I did not.

Q. Did you see Walker near Mr Houstoun?

A. No, I did not.

Q. Did the crowd leave the Old Mill soon?

A. I left the crowd there.

Lord Justice Clerk.—Did you hear Speirs speak to Mr Houstoun any where?

A. I saw him, after they scaled the mill, going up the hill with him, but I could not say that he spoke to him.

Q. You saw him going up the hill?

A. By Mr Campbell's.

Q. With James Walker?

A. Yes.

Q. After they were going from the mill?

A. Yes.

Q. How far were you from Mr Houstoun, and Walker, and Speirs at this time?

A. I was at a little distance.

Q. How far twenty yards?

A. Yes, I dare say I was about that.

Q. How was Speirs dressed?

A. I cannot tell you.

Q. What sort of a jacket had he on?

A. I do not know.

Mr Maconochie.—Were you at the School Green that day?

A. Yes, I was.

Q. Was there a crowd there?

A. Yes.

Q. Did you see any body in that crowd, that you knew?

A. Yes.

Q. Who was it?

A. I saw a man of the name of Smillie, I think, and Walker, and James Speirs, and one of the name of Parker.

Q. Where were they?

A. They were in the midst of the crowd.

Q. Was there a circle formed?

A. Yes.

Q. Were they in the middle of the circle?

A. Yes.

Q. Was there any other body in the middle of it?

A. No, I do not think there was.

Q. What was done?

A. They were speaking; I could not tell what was said.

Q. Were you on the outside?

A. Yes.

Q. Was there any thing read?

A. Yes, there was a Proclamation read.

Q. Who read it?

A. James Walker.

Q. What sort of a Proclamation was it?

A. I saw it up in the corners on the Sunday morning before that.

Q. In the corners of the streets?

A. Yes.

Q. How many of them did you see upon the Sunday?

A. I saw one upon the chapel gate, as I was going to church.

Q. Did you see any more?

A. Why, I cannot say I did, at that time; I saw one down at the end of the town, in another corner.

Q. To whom was that Proclamation addressed? do you remember the beginning of it?

A. I could not tell you.

Q. Did you read it?

A. No, but I heard it read.

Q. Would you know it again if you were to see it?

A. I am not certain of that. (*A paper was handed to the witness.*) Yes, that is the paper.

Q. That is the same paper?

A. It is the same paper; it is the same reading.

Q. Walker read that?

A. He did.

Q. Was there any observation made by any of the crowd? did any body speak?

A. No; I cannot recollect any thing being said.

Q. Was there a presss chosen?

A. I could not tell that.

Q. Did you see any hands held up?

A. Yes, I saw that.

Q. For what purpose was that?

A. I could not tell you, for I was at a little distance.

Q. Was that after or before the Address was read by Walker?

A. I think it was before.

Q. Did you see what Speirs did at that time?

A. No, I did not.

Q. You saw him inside the circle, but you did not see him speak?

A. I heard the man speak two or three words, but what they were to, I did not know.

Q. And this was after the Address was read, was it?

A. I think it was before.

Q. Did you see the crowd go away?

A. Yes.

Q. Which way did they go?

A. They all went away in a crowd.

Q. In what direction did they go?

A. I could not tell you that, they all went away in a body.

Q. You know what street they went to?

A. No, I do not, for I remained on the green.

Q. Did they go in regular order?

A. I cannot really say they did go in regular order.

Q. You have seen soldiers marching?

A. Yes.

Q. Did they go in that order any of them?

A. No, I cannot say that any of them went in any order.

Q. Were many of them in a breast?

A. I could not say, they were going just all in a body.

Q. Did you hear any thing said about mills at that meeting?

A. No, I did not; I heard nothing but the Proclamation read, and any other words that passed, I could not tell.

Cross-examined by Mr Grant.

Q. Did you hear any thing said about mills?

A. No, I did not.

Q. My learned Friend has asked you about the order that they marched in, had they any weapons of any kind?

A. No, I did not see any.

Q. Clubs or sticks?

A. No.

Q. Sticks or staves?

A. No, I did not see any thing of the sort.

Q. Any flags?

A. No.

Q. Did you see any body appointed a captain or a leader to march them?

A. No, I did not.

Q. Any body falling them in in regular order?

A. No, I did not see any thing of the kind.

Q. Did you see any body there with a glazed hat?

A. I could not say I did.

Re-examined by Mr Maconochie.

Q. You saw a man of the name of Smillie there,—what dress had he?

A. I cannot say.

Q. Had he a glazed hat?

A. Yes, I rather think he had.

JOHN HOUSTOUN—*sworn.*

Examined by Mr Hope.

www.hbtool.com.cn

Q. Are you a cotton-spinner with Mr William Houstoun?

A. Yes.

Q. At the Old Mill?

A. Yes.

Q. Do you know that that mill was stopped in the beginning of April last?

A. Yes.

Q. What day was it, do you know?

A. It was upon Monday, between ten and eleven o'clock.

Q. Which day of April?

A. The third.

Q. How did that happen? did any persons come to the Old Mill?

A. Yes, there was a great crowd came.

Q. You saw Mr William Houstoun there?

A. Yes.

Q. Did you see the crowd before Mr Houstoun came up?

A. Yes.

Q. What had they said when they came up in front of the mill?

A. They said nothing to us.

Q. Did they say for what purpose they came?

A. No, they did not; we came out of the mill.

Q. After Mr Houstoun came up, what did they say?

A. We turned back down to the mill.

Q. Did you hearwhat the crowd said?

A. Mr Houstoun stopped them, and asked what they wanted, and a good many said they wished the mill stopped.

Q. What followed that?

A. He asked by what authority they came to stop his mill; and James Speirs said, by the public at large.

Q. Is that the man at the bar?

A. Yes.

Q. Do you mean by the authority of the public at large?

A. Yes.

Q. Do you know a person of the name of James Walker?

A. Yes.

Q. Did you see him in the crowd?

A. Yes.

Q. Was he along with Speirs at that time?

A. I could not just see whether they were standing together at the time or not, but they were both in the crowd.

Q. Were they standing near each other?

A. They were not far separate?

Q. Did Speirs appear to you to be active in that crowd?

A. Him and Walker were the two activest that I saw in that crowd.

Q. After that was said, did Mr Houstoun say any thing else to the crowd?

A. Yes, he asked James Speirs if he would answer for the whole.

Q. Did Speirs make any, and what reply, to that?

A. He said, he would, if they gave him authority.

Q. Was any thing done after Speirs made this reply?

A. There was a ring, and there was men to be chosen to speak to Mr Houstoun, but I left them at that time.

Q. Did you hear the people say that they were to choose somebody for that purpose?

A. Yes.

Q. Do you recollect what they said?

A. No, I do not.

Q. Did you see any thing further of the proceedings of the crowd at the Old Mill?

A. Yes, I went by the back side of the mill, and I saw James Speirs and Mr Houstoun, coming up in front of the mill.

Q. Was that man Walker along with them at that time?

A. I really cannot say.

Q. Did Speirs appear to be apart from the crowd at that time?

A. Yes, the crowd was behind them at the time.

Q. Was there a clear space between them, however small that space might be?

A. I could not justly say.

Q. As you came round to the back of the mill, did you meet them?

A. Yes.

Q. Did you get near them?

A. No, I did not.

Q. Did you hear what was said by Speirs or Mr Houstoun?

A. No, I did not.

Q. Did you see that crowd leave the Old Mill?

A. Yes.

Q. Did you follow them?

A. Yes, in about half an hour.

Q. Were you along with the crowd at Mr Campbell's house?

A. Yes.

Q. Was there any sort of halt made there by the crowd?

A. Yes, there was.

Q. Is Mr William Campbell's in the way between the Old Mill and the School Green?

A. Yes.

Q. Was any thing said or done at the time the crowd halted?

A. They made a ring.

Q. Was there any person within the ring?

A. Yes, James Speirs was in the ring.

Q. Did he say any thing to the meeting?

A. He spoke, but what he said, I did not hear.

Q. Did you hear the substance of it?

A. No, I did not.

Q. About what numbers do you suppose the crowd consisted of at that time?

A. I could not say the numbers.

Q. Was it a great crowd?

A. Yes, a very great crowd.

Q. At the time that Speirs was speaking, were you behind the crowd?

A. Yes.

Q. In the back circle, or some distance from them?

A. In the back circle.

Q. Then the crowd was so great, that although you were standing in the back circle, you did not hear what was said?

www.nbtool.com.cn

A. No, I did not.

Q. Did any other person speak at that time but Speirs?

A. I do not remember.

Q. Did they break up after this?

A. Yes.

Q. And where did the crowd go to then?

A. I saw them after that on the School Green.

Q. Did you go along with them to the School Green?

A. No, I did not.

Q. You saw them afterwards?

A. Yes.

Q. Did you observe in what sort of way they proceeded or walked, either from the Old Mill, or from this meeting at Mr Campbell's; were any part of them in a kind of marching order?

A. They were standing three and four in a breast.

Lord Justice Clerk.—In going away from Campbell's?

A. Yes, on leaving Campbell's.

Mr Hope.—Did you see who was in the first line?

A. No, I did not.

Q. Did the crowd appear to be the same crowd?

A. Yes it did.

Q. What was the first thing you saw done at the School Green?

A. The crowd was gathered when I got down there, and the first thing I saw was James Speirs, and Walker, and another man, in the centre of the ring.

Q. Do you know who that other man was?

A. No, I do not.

Q. Did you see a person of the name of Parker there?

A. He was chosen preses.

Q. Did you see that?

A. Yes.

Q. Did any person propose Parker to be preses?

A. I did not hear who it was.

Q. Did you observe how he was chosen?

A. No, I did not; I went a pace back from the ring at the time.

Q. But you saw him act as preses?

A. Yes, I saw him in the centre after that.

Q. You knew he was preses?

A. Yes.

Q. Then this other person was in addition to Speirs, Walker, and Parker, the preses?

A. Yes.

Q. There were four in all in the ring?

A. Yes.

Q. Did you observe the hat of that fourth man?

A. No, I did not.

Q. Did James Walker do any thing?

A. Yes.

Q What did he do?

A. He read a Proclamation.

Q. To the people?

A. Yes.

Q. What was this Proclamation about?

A. About stopping all public works.

Q. Did Walker make any remarks upon this Proclamation?

A. He did, but I could not repeat the words he used.

Q. Was it approving of the Proclamation?

A. Yes, it was.

Q. Enforcing the Proclamation?

Mr Grant.—What was the purport of them?

Mr Hope.—Was he enforcing the Proclamation on the people?

A. Yes, he was.

Q. Read that paper, and see whether that is the Proclamation, which you heard read, and have the goodness, in reading it, if you recollect any of the remarks made upon particu-

lar passages, to state them, or the substance of them, (*handing a paper to the witness.*)

Lord Justice Clerk.—You heard the Proclamation read?

A. Yes.

www.libtool.com.cn

Q And you say it was about stopping work? do you remember any more of it?

A. No, I do not.

Q. Do you remember to whom it was addressed?

A. It was addressed to the audience who were there.

Q. Was it addressed to any particular class of people?

A. No, it was not.

Q. What did this Proclamation appear to be? a Proclamation to what people?

A. It said to Scotland, Great Britain, and Ireland.

Mr Hope.—Read it over to yourself, and then, if you remember any passages upon which Walker made remarks, tell us what those passages were, and what the remarks were.

Mr Grant.—I submit to your Lordship, that the state of this question is this; the witness is asked, whether he heard a paper read; he says, he did hear a paper, (*non constat* what paper,) read; then he is asked, whether there was any thing in it about public works; and he says, there was stopping public works; and then he says, I remember no more of it; it is said, it was addressed to Scotland, Great Britain, and Ireland; and then, it is proposed to put into his hands another paper, and then to ask him, Now, sir, look at that; refresh your memory with what is put into your hands, and tell me if that is the thing you heard, of which you have before said you do not recollect the purport of it, except that it was about stopping public works.

Mr Hope.—I am informed the witness did see it elsewhere; but, at the same time, that will not assist as to this particular Proclamation that was read.

Lord Justice Clerk.—You must show the contents; you have gone shorter to work with this than any other witness.

Mr Hope.—Walker is indicted with this prisoner at the bar; we have served notice on the defendant to produce all the copies of the Address of that title, or of such and such

import, or any similar ones, which may have been in his possession since the 31st of March last. Walker, who is indicted with this man, has absconded: we cannot serve him with notice as to this Proclamation; and if this witness states that that Proclamation had the Address your Lordship has mentioned, it is regular to say to this witness, was that Address the one you heard read? One of the strongest instances of this line of examination, was in the case of Gerald, in 1794, (and the principle is the same, in both Scotch and English law,) where the counsel for the prisoner insisted on the clerk of Court reading a paper, in order that the witness might be desired to say whether or not the speech that he heard spoken was the same that he heard read, or whether it was not the whole in substance. But we can ask some other questions, in order to arrive at the contents of the Proclamation which Walker read.

Mr Grant.—Now, my Lord, I think it may save time if we state——

Mr Hope.—We have some other questions to ask first. Did you see any paper posted up any where in Johnstone, or the neighbourhood?

A. Yes, I saw two.

Q. When was that?

A. I saw them up; they were posted up.

Q. When was that?

A. I saw one upon the Sunday morning.

Q. Where was it?

A. It was on the porch of the church.

Q. Do you recollect the title of that Address? what was it called?

A. It was an Address to the Inhabitants of Great Britain and Ireland.

Q. How did it begin? what was the substance of the first sentence, do you remember?

A. I do not remember what it was.

Q. Do you recollect any part of the substance of it?

A. No, I do not.

Q. Tell us what it was about.

A. I did not mind what it was about; I only read it once.

Q. Did it contain any thing about stopping works?

Mr Grant.—I submit, when it is with regard to the terms and contents of a paper, and the witness says he does not know, that he only read it once, it is not proper to put to the witness the words.

Lord Justice Clerk.—He does not suggest the words, and it is a posted up paper for all the world to see.

Mr Hope.—Was there any thing in it about stopping work?

A. I cannot say.

Q. At the time you heard this Proclamation read by Walker, the next day, did you believe it to be the same which you had seen upon the Sunday?

A. Yes, I did; he said it was the same, that he had taken it down from the chapel gate, and that he would put it up again.

Lord Chief Baron Shepherd.—Did he say so at that time?

A. Yes.

Mr Hope.—He said so to the meeting?

A. Yes.

(*The witness read the paper.*)

Q. Do you think that is the same that you heard read on the School Green?

A. Yes.

Q. I see there is the passage here, beginning "Soldiers," and telling them to turn their eyes to Spain; did Walker make any remarks upon that passage?

A. Not that I remember; I do not remember the parts he made remarks upon.

Q. Nor the remarks?

A. No.

Q. He was enforcing it?

A. The crowd gave three cheers at the end of its being read.

Q. And Walker was approving of it?

A. Yes.

Mr Grant.—He did not say that.

Mr Hope.—Was he condemning it?

A. No, he did not condemn it; they hurraed at the end of every paragraph.

Lord Justice Clerk.—Before the cheers were given, do you mean to say Walker made some observations, which you do not recollect?

A. Yes, he did.

Mr Hope.—Did Speirs say any thing after this?

A. Not that I seed.

Q. Did you hear what the object of the meeting was, from what was said and done?

A. No, I did not.

Q. Did you hear any thing proposed or agreed to?

A. No, I did not, for I went away at the time it was agreed to.

Q. Did you see them march away from it?

A. Yes.

Q. Were they in the same sort of order that you told us they were before?

A. Yes

Q. Did you observe who was in the front?

A. No.

Q. Did you know where they went to?

A. Yes, they went to the Hagg Mill.

Q. Did you go there?

A. Yes, but the mill was stopped before I got up.

Q. Did you see any, and which of those four persons who were within the circle at the Hagg Mill?

A. Yes, I seed James Speirs at the Hagg Mill.

Q. Was Walker there?

A. I could not really say to Walker.

Q. What was Speirs doing at the Hagg Mill?

A. He was standing like the rest of them.

Q. Did you observe him saying any thing at the time?

A. No.

Q. Did you see Robert Parker there?

A. Yes.

Q. Did you see that crowd go away?

A. Yes.

Q. Do you know where they went to?

A. To the Cartside Mill.

Q. What did they do there?

A. They stopped that mill too.

Q. Were you present?

A. Yes.

Q. Did you see it?

A. Yes.

Q. Did you see any of the persons whom you have named at Cartside Mill?

A. No, I did not see Walker or James Speirs there.

Q. Did you see Parker?

A. No, I do not remember Parker either.

Q. Do you know a person of the name of John Lang?

A. No, I do not, I seed a person they called John Lang, but I do not know him.

Q. How was that person dressed?

A. He had on a black hairy cap.

Q. Where did you see him?

A I saw him at the Laigh Mill.

Q. At the same time that Speirs was there?

A. Yes.

Q. Did you see him at the School Green meeting?

A. No.

Q. Or at any of the other places?

A. No, I did not.

Q. Did that man with the hairy cap appear to be active at the Laigh Mill?

A. I did not see him take any active part.

Q. Was it such a cap as that? (*pointing to a cap.*)

A. I could not say whether that is the cap or not, but it is like it.

Q. The Old Mill was stopped upon the Monday, you told us?

A. Yes.

Q. Did you stop work along with the others?

A. Yes.

Q. What was your motive in stopping work?

A. I was afraid of myself.

Q. In consequence of the proceedings of this mob?

A. Yes.

Q. *Look* at that man, (*Lang,*) is that the man who had the hairy cap on?

www.libtool.com.cn

A. I will not swear to the man.

Q. Do you think that is him?

A. I think it is the man, but I will not swear to it.

Cross-examined by Mr Grant.

Q. You have said that the Old Mill was stopped between ten and eleven that morning?

A. Yes.

Q. That you are sure about?

A. Yes, we stopped work; the mill went to dinner time, and then stopped, but the spinners stopped before.

Q. You have been asked about the Address or Proclamation that Walker read at the meeting at the School Green, and a paper has been shewn you, and you have been asked whether you think that is the same paper, and I think I understood you to say that you did not recollect what the paper was that Walker read on the School Green.

A. It began with the words, "An Address to Great Britain and Ireland."

Q. But you told us that you did not remember any of the rest of the contents of it?

A. No, I do not.

Q. And you said that you remembered no more of it than that it was about stopping public works?

A. Yes.

Q. Now, if you remember no more of it than that, how can you take upon you to say that that paper is the same with what Walker read?

A. Because when I read over that, there were some words came into my memory that I heard Walker say.

Q. So that your recollection of what Walker said is derived from the paper that you have read here?

A. Yes.

Mr Hope.—You say that when you were reading that paper, some of the words which you read came into your mind as some of those which you heard Walker use?

Lord Justice Clerk.—I have it, that on reading that, some words came into my memory that Walker said.

Mr Grant.—And then I asked him, whether his recollection of what Walker said was derived from the paper, and he said it was.

Lord Chief Baron Shepherd.—Endeavour now, if you can, to recollect what was the nature of the words that you heard Walker read.

Mr Grant.—My Lord——

Lord Chief Baron Shepherd.—I assure you, that if, on such an occasion as this, it might occur to me to put a question which is objectionable, I should be very willing to admit I was wrong. The man has said this, When I read over that paper, there were some words came into my memory, that I heard Walker say or read; now, suppose for a moment, that having had his mind a blank from the time he heard Walker read, which is sometimes the case with human memory, on coming into the box, he had found a recollection of any words that would be evidence, when a paper is put in his hand, and he says, This paper brings back to my recollection what I heard Walker say; I cannot see what the objection can be to that.

Mr Grant.—The witness answered another question after that which your Lordship has referred to. I asked him, "Do you mean to swear that your recollection of what Walker said is derived from reading the paper which has now been put in your hands."—He said, "Yes, it was."

Lord Chief Baron Shepherd.—I could understand how you meant to put the question, if you were to ask me whether my memory was refreshed by the paper? I should say, No, it is not derived from reading the paper; the paper has renewed my memory of what I had forgotten. That is the reason I have put the question. There were other things, he said he did not recollect at all, I mean about stopping the works, and yet even that was brought to his recollection, by a question from you, for he said, he did recollect something about stopping the works.

Mr Grant.—He had said that before; that was a misapprehension of mine.

Lord Chief Baron Shepherd.—Now after saying he had forgotten all the rest, and seeing his memory was struck, from looking at that paper,—with what he heard Walker read, I wished to ask him, What do you now recollect of that paper; exercise your recollection as far as you can, and state what Walker said.

Mr Grant.—Does your Lordship see any distinction between the case of this paper, and a paper that the witness might have written himself at a subsequent period of time as a note, because your Lordship knows very well that a witness is allowed to look, in order to refresh his memory, at a note which he has made at the time, but a witness is not allowed to refresh his memory by a note which he has himself made at a subsequent time; now, I cannot, I confess, see any distinction between his looking at a note which he himself has made at a subsequent time, and looking at a paper which is put into his hands, containing either a note that somebody else has made, or a record of some other sort upon the question, but something or other which the witness thinks it necessary to see, before he can speak from memory to what passed.

Lord Chief Baron Shepherd.—I quite agree with you, but you do not understand the question I put. If I had said, "Look at the paper and refresh your memory by it, and tell us what you recollect Walker to have said;" that would be putting into his hands that which he would not have a right to refresh his memory by; but leaving the paper out of the question, I want him, after he has been examined, and cross-examined, and re-examined, to close his examination by this question: Now, after all the questions you have been asked, endeavour to recollect yourself, and tell us whether you do remember any part of what Walker stated, and what that is that you do remember.

Mr Grant.—Certainly pointing out to the witness, as I am sure your Lordship will, that he is not to speak from this paper, but from the recollection of his own mind.

Lord Chief Baron Shepherd.—Just so, from his recollection, called up how you please; you know what an extraordinary operation the human mind is—that things are called

to our recollection by some very extraordinary circumstance, on which the mind flashes back; now, after this man's examination and re-examination, I wish to ask, after all that has been passing, tell us what you recollect Walker to have said?

Mr Grant.—From your own memory.

Lord Chief Baron Shepherd.—Now endeavour, as well as you can, to recollect yourself, and tell us if you do recollect any part of what Walker said he read from the paper, and what that is that you do recollect.

A. He appeared to say, that he would advise all them that had works, to give them over, for to stop their works.

Q. Do you recollect any other part?

A. There was another part, where it says, "Soldiers, to plunge your bayonets into the hearts of your brothers and fathers."

Q. Do you recollect any more?

A. No, I do not.

Q. Do you at all remember how he began?

A. No, I do not.

Q. Nor how the paper ended?

A. No, I do not remember.

Q. I think you said Walker stated that he had taken the paper from the church gate or door?

A. Yes.

Q Did you ever see any paper on the church-door or gate?

A. Yes.

Q. Did you read it when it was stuck up there?

A. Yes, I did.

Q. Can you recollect what you read upon the church gate, or any part of it?

A. No, I do not.

Q. How did it begin?

A. I cannot tell; I do not remember how it began.

Q. Did you see the paper in Walker's hand?

A. Yes.

Q. Then, though you cannot remember the contents of the paper on the church gate, do you remember what sort of appearance it had?

A. It was just about the size of that you let me see.

Q. You saw a paper on the church gate?

A. Yes.

Q. You saw another in Walker's hand?

A. Walker said it was the same one.

Q. You saw a paper in Walker's hand?

A. Yes.

Q. Did that appear to be the same sort of paper that you saw on the church gate?

A. I could not say whether it was the same paper or not.

Q. Did it look like the same?

A. Yes, it did.

Q. Was it like that paper, in appearance, which you have produced here?

A. Yes.

Lord Justice Clerk.—When Walker read what you call the Proclamation, in the circle, or the ring, did it appear to you at that time to be what you had read upon the chapel gate?

A. Yes, it did.

WILLIAM CAMPBELL—*sworn.*

Examined by Mr Solicitor-General.

Q. Where do you live?

A. In the town of Johnstone.

Q. You lived there in April last?

A. Yes.

Q. Do you recollect, in the beginning of that month, a crowd being about your door?

A. I do, upon Monday the 3d of April.

Q. Your profession is that of a writer in Johnstone?

A. Yes.

Q. Do you recollect about what time in the forenoon this was?

A. I think it was about ten o'clock.

Q. Did the crowd stop in the street any time?

A. I first saw the crowd about ten o'clock, assembled be-

fore Mr Houstoun of Johnstone's Mill, which is very near our house.

Q. What did you see after that?

A. They remained there for some time, and there was a good deal of noise among them. I had gone from my office at that time, and I returned to my own office, and in a little I heard some noise upon the street, and I went out, and the crowd stopped nearly opposite my house.

Q. What was said or done?

A. There was a circle formed, and there was a man, dressed in a corduroy jacket, addressing them.

Q. What did he say?

A. I did not at all hear distinctly, I was at some little distance, except that he invited them to attend a meeting at the School Green that day, at twelve o'clock.

Q. And that man was dressed in a corduroy jacket?

A. Yes.

Q. Dark or light?

A. Brownish.

Q. Did you hear any thing else said?

A. I heard nothing else, except the same man said something about "deluded men," and that was immediately followed by these words, I think in a different voice, "such as Mr Houstoun."

Q. Does your recollection enable you to say what was the substance of what the man with the corduroy jacket said?

A. No, I was at some little distance from the crowd, and did not hear him.

Q. Would you know him again?

A. I think so; I think that is the man; I have no doubt it is (*pointing to the prisoner.*)

Q. Did the crowd then go away?

A. Yes.

Lord Justice Clerk.—He is the man so dressed, and who so spoke?

A. I think he is.

Mr Solicitor-General.—What took place next? what became of them?

A. I heard no more; they went away, and I came to Paisley.

Q. Did any body else speak?

A. I heard no voice but those I have mentioned.

Q. And you cannot recall to your recollection any thing further of the words or the substance?

A. I cannot.

ANDREW ARCHIBALD—*sworn.*

Examined by Mr Maconochie.

Q. You are clerk to Mr Campbell the writer in Johnstone?

A. I am.

Q. The last witness that was examined here?

A. Yes.

Q. You were so in April last?

A. Yes.

Q. Did you happen to be in his house upon a Monday, in the beginning of April?

A. Yes.

Q. Do you remember a crowd collecting before his house?

A. Yes.

Q. At what time of the day was it?

A. About ten.

Q. Do you remember the day of the month?

A. I think it was the third of April.

Q. Had you seen that crowd before that morning?

A. I saw them a little before they came up to Mr Campbell's house.

Q. Where were they?

A. They were down about Mr Houstoun's Mill?

Q. The Old Mill?

A. It is not called the Old Mill.

Q. What then?

A. Mr Houstoun's Mill; he has another mill called the Old Mill.

Q. What o'clock was it then?

A. It was immediately before they stood opposite Mr Campbell's door.

Q. What happened, when they came opposite, at Mr Campbell's house?

A. A man addressed the crowd opposite Mr Campbell's door.

Q. Was there a circle formed?

A. Yes.

Q. Did you hear what the man said?

Lord Justice Clerk.—Did he address them from the circle?

A. He addressed them, when they formed a circle round him.

Mr Maconochie.—Did you hear what he said?

A. I heard part of it; I do not recollect the precise words: he invited all those who wished their country's freedom, to meet in the Green, or the Square of Johnstone, at twelve o'clock that day.

Q. Would you know that man again?

A. I would have a notion of his general appearance.

Q. Had you seen that same man any time previous to that morning?

A. Never, to my knowledge.

Q. You had not seen him that day before?

A. No.

Q. Would you know that man again?

A. I am not sure that I would.

Q. Look at the prisoner?

A. I could not say positively that was the same man; he was a man much of that appearance, making an allowance for the difference of his dress.

Q. How was he dressed?

A. I cannot be certain; but I think he had on a jacket of some kind of fustian.

Q. He was a man of the same size?

A. Of the same size.

Q. Had you seen Mr William Houstoun that morning before?

A. I do not remember that I had.

Lord Justice Clerk.—Did any other body speak to the people formed in the ring?

A. There was some other man eked his words, and mentioned Mr Houstoun's name; but I do not know who it was —the person who spoke first, said, that he was sure of it, —that all would attend, except deluded men; another person said, "Such as Mr Houstoun."

Q. "Such as Mr Houstoun," were words uttered by another voice?

A. Yes.

JAMES SMITH—*sworn.*

Examined by Mr Hope.

Q. You live in Johnstone, I understand?

A. I live in Johnstone.

Q. And are a wood-merchant there?

A. Yes.

Q. Have you a wood-yard there?

A. Yes.

Q. Whereabouts is your wood-yard situated in Johnstone?

A. It is attached to the School-Green.

Q. Were you in Johnstone about the beginning of last April?

A. The first day of April.

Q. And the subsequent days, were you there?

A. Yes.

Q. Did you notice any thing particular going on in the green, about the commencement of April?

A. I being in the timber-yard, saw a great number of people assembled on the School Green, and I asked the meaning of it, and they told me there was to be a meeting there, and I went to see who was there, and the crowd was coming in from all quarters. It was the first Monday in April.

Q. After you saw this crowd of people in the green, did you see any other party join them?

A. I seed from the church-gate, three people coming down

with a paper in their hand, that they told me was taken off the church stile.

Q. Was it one of the three persons that told you that?

A. Not any of them, but it was the body of the people; some of them told me, that they had taken it off the stile or pillar of the church gate.

Q. You say you saw three persons coming down with a paper in their hand, was there a crowd or body following them?

A. They were all around them.

Q. And accompanying them?

A. Yes.

Q. Where did those people go to, those three and this crowd?

A. Those three came down and formed a ring; they said they would make a ring, that people might better hear what they were going to say.

Q. Where was this? In the School Green?

A. In the School Green.

Q. Was there a ring formed?

A. There was a ring formed.

Q. About what number of persons do you suppose might there be there, so far as you can estimate or compute, after the ring was formed?

A. I really could not say the number.

Q. About half as many people as you see here, in the body of the church?

A. Yes; much about half as many as there are in the under part of the church.*

Q. Did you observe what became of those three persons after this ring was formed?

A. They stepped in about the centre of the ring.

Q. Did you, at the time, go near to see what was going on?

A. I sat a little while on the dike, and I did not hear well from the noise of the crowd, and I stepped down to the ring amongst the crowd.

Q. Were there any other persons besides those three within the ring that was formed?

* Court held in the Church.

A. There was another person that they chose as a preses; but he came after the ring was formed a little while.

Q. Do you know who that person was?

A. Yes; they called him Robert Parker.

Q. Do you know any of the three persons whom you mentioned?

A. I did not know them personally; I never had seen the others before that day, to my knowledge.

Q. Will you look at that man; was he one of them? (*the prisoner.*)

A. I could not say.

Q. Do you think he was one of them?

A. I could not say; I could not swear to his being there.

Q. Did you, at the time that you were standing amongst the crowd, ask any of the crowd the names of any of those three persons?

A. Yes; I asked their names, and they told me.

Lord Justice Clerk.—The names of those in the ring?

A. Yes.

Mr Hope.—What name did you receive in answer?

A. They called one of them Speirs, and one of them Walker.

Q. Did you know the other man, or did you ask his name?

A. They called the other Smillie, I think.

Q. Will you have the goodness to tell us, as distinctly as you can recollect, what you heard and saw done, and what those different persons did whose names you received upon that occasion?

A. There was one of them read a paper; that one that they called Walker; the paper that was taken off the church post.

Q. Did that appear to you to be the paper which one of those three persons had in his hand when they came to the School Green.

A. It was the very same paper that was upon the church and gate, and posted up in the corners of the streets.

Q. Did any of those persons in the ring, or Walker, mention where that paper was got at the time?

A. No, they did not mention it in my hearing.

Q. This man whom they called Walker read a paper?

A. Yes.

www.libtool.com.cn

Q. Was this after or before they chose Parker as preses?

A. It was before they chose Parker as preses.

Q. Did you hear that paper read?

A. Yes.

Q. Can you tell us the substance and meaning of any parts of that paper?

A. I cannot bring my mind exactly to the meaning, but it was a public paper that they were reading amongst themselves.

Q. What did you hear?

A. The paper was up in all the corners of the streets; I cannot recollect exactly the words of it.

Q. Tell us what the paper was about; was there any title to it that was read?

A. I really cannot mind what was in the paper.

Q. I am not asking you to repeat passages: I am asking you what was the substance of the paper, what was it about, what topics did it touch upon?

A. It seemed to me to be a paper exactly to raise people into rebellion, and to rise and stop all public works.

Q. When you say a paper to raise people into rebellion, did it say any thing about that directly?

A. It even encouraged the soldiers to rise up and assist them.

Q. Had any thing been said, before the encouragement to the soldiers, about persons rising up in rebellion? did it say who was to be assisted, or did it say any persons had or would rise in rebellion?

A. It shewed to me that this body of men——

Q. What do you recollect of the paper that you heard read?

A. I cannot recollect it.

Q. About stopping public works—do you know what was said about that?

A. After they had chosen a presea, they then proposed going down in a body, and stopping public works.

Q. This was proposed amongst themselves, you say; was it proposed by any of the persons within the ring?

A. Yes, by some of those that were in the ring.

Q. Did they state for what purpose the public works were to be stopped?

A. They said that the object they had in view, in stopping the public works, was, that they might have a greater body to assist them in what they intended.

Q. Was this said by a person who was in the ring? who proposed the public works to be stopped?

A. Some of those four.

Q. Did they say what they intended to do?

A. They said that there might be less bloodshed in the conflict if they got a great body to support them.

Q. Repeat it again.

A. The object of their stopping the mills was, that they might get a larger body to assist them, that there might be less bloodshed in the conflict.

Q. Did they say any thing further about this object that they had in view?

A. They proposed then to march off in regular order towards the mills; and one of them said, that they would march away in a regular body, as they had been all trained to fall into ranks.

Q. You said, that by getting a greater body there would be less bloodshed in the conflict; did they state what that conflict was to be?

A. They did not say.

Q. Was it discussed or arranged among them who was to be leader in going to stop the mills?

A. They had rather a few words amongst themselves;—one said one, and another said another.

Q. Were any names mentioned at that time, when one said it was to be one, and another another?

A. None that I recollect.

Q. Did any thing further take place at this time?

A. I saw no more; they marched then off towards the mills, and I saw no more of them.

www.libtool.com.cn

Q. When you used the expression, they marched off, do you mean to apply that to any particular mode in which they went off?

A. They went off in a regular row, two or three men deep.

Q. Two or three men deep, do you mean?

A. Yes.

Q. Were there a certain number abreast, in different rows?

A. They were one behind another; but how many rows there were, I cannot say.

Q. Did there appear to you to be regular distances between those rows?

A. I could not say; I was at a considerable distance, and paid no attention to them when they marched off.

Q. Did they march off, then, in any thing like order?

A. Yes, in a straight line.

Q. Did you observe how they fell into this sort of order? was there any word given to them?

A. There was no word, to my knowledge.

Q. Can you form any conception about the number that there might be there on the green?

A. I really could not say.

Q. At the time that this paper was read by the person whom you called Walker, were any remarks made upon it by the meeting, either by him or any of the others?

A. They made some observations with respect to Spain; they said Spain had been very successful in making a revolution there, and it was a shame that Britain should be behind Spain.

Q. Did that observation, made by one of the persons within the ring, in regard to Spain, apply to any part of that paper, or how was it introduced—what led to it?

A. It was some part of the paper that led to it; what part, I cannot recollect.

Q. How was this paper that was read, and this remark, received by the crowd?

A. It was received by shouts of huzzas.

Lord Justice Clerk.—Do you mean at the end of the paper, or at the end of the remark?

A. At the end of sentences they were hurraing.

Mr Hope.—Did any other symptoms of feeling follow that observation in regard to Spain?

A. There was a huzza like the rest.

Q. Had you seen any papers affixed to any part of the walls, or in any part of the village of Johnstone, before this?

A. I had seen a paper at the corner of one of the houses in Johnstone, exactly the same words as those that were read.

Q. Do you mean the words read on the Monday?

A. Yes, on the School Green.

Q. Do you know in what part of Johnstone that was?

A. It was upon the corner of Mrs Johnstone's house, at the corner of the square.

Q. Had you seen that paper before the meeting at the School Green?

A. I saw it upon the Sabbath before.

Q. Was that the day before?

A. The day before.

Mr Hope.—I now propose to show the paper to the witness.

Lord Justice Clerk.—After giving his account of this paper, the substance and outline of it, he says it was exactly the same as that which he saw at the corner of Mrs Johnstone's house; and therefore they may shew it him.

Mr Hope.—He stated, my Lord, that the one that he saw was the same words with the one at the green.

Mr Grant.—And you propose to shew him it, to ask whether that is the same paper?

Mr Hope.—I am going to shew it to him, and to ask him whether it is a similar paper.

(*The witness looked at a paper.*)

Mr Hope.—Do you believe this to be the same which you saw posted up in Johnstone?

A. I do believe they are the same words with the one posted up in Johnstone.

Q. And then as to the one which you had at the School Green, is it similar to that?

A. It is.

Q. Had you seen any paper posted up at the chapel-gate?

A. I did not see it there.

Q. At the time that you saw the three persons coming down along with the crowd, with a paper in their hand, which the crowd said had been taken from the chapel-gate, was that between the chapel-gate and the School Green that you saw them?

A. Yes, the School Green adjoins the chapel-gate, a great large square, and they were coming across it.

Q. Did they say for what purpose this paper was to be read, before they began to read it?

A. They said, very probably a great number of the inhabitants, or of the persons assembled, had not heard it, and they wished them to hear it.

Lord Justice Clerk.—And then Walker read it?

A. Walker read it.

Mr Hope.—Was there any other observation made upon it besides, upon the passage relative to Spain?

A. I really do not recollect; but Spain was the principal point.

Q. Were the crowd attentive while it was reading?—did they appear to be attending to the paper?

A. Yes.

Q. Was there any opposition made at the meeting, to the proposal of stopping the public works?

A. There was no opposition that I heard of.

Q. Had you got much in among the crowd, so as to hear well what took place?

A. I got a little bit in the crowd—I heard quite well.

Q. Did you observe whether those four persons went along with the crowd, when they marched off the green?

A. I could not say.

Q. Can you state whether all the four within the circle spoke?

A. I could not answer the question.

Cross-examined by Mr Grant.

www.rbtoor.com.cn

Q. You gave to us a great many observations that were made at this meeting—were they made in the form of a speech?

A. The Address was regularly read.

Q. Were the observations in the form of a speech?

A. There were some observations made with respect to Spain.

Q. There was no speech then?

A. There was no speech further, than they proposed to go and stop the cotton-mills.

Q. How long was this meeting assembled?

A. I did not take particular notice—I could not exactly say the time.

Q. You cannot say how long it lasted?

A. No, I could not say; they were a long while a-gathering—there were people on the School Green, I dare say, an hour before the ring was formed.

Q. That might have been between ten and eleven o'clock in the day, then?

A. I could not exactly say the hour—it was the forenoon.

Q. Do you mean before twelve o'clock?

A. Before twelve o'clock, I dare say.

Q. Then there were some people assembled on the green an hour before that?

A. Yes.

Q. That might have been before eleven o'clock, if the meeting was before twelve?

Lord Justice Clerk.—Was the ring formed at twelve, or before it?

A. I could not say—I could not fix any time, for I paid no attention to time of day—it was in the forenoon.

Mr Grant.—You paid a good deal of attention to what was going on?

A. To the paper that was read.

Q. And to the observations?

A. Yes.

Q. How came you not to attend to the time? Can you give us no account of the time it lasted?

www.libtool.com.cn

A. No, I cannot.

Q. From your account of it, it appears to have been a long time?

A. It was a considerable time from the beginning of the meeting.

Q. How long was it from the beginning of the meeting?

A. I cannot say.

Q. Try, as well as you can recollect, how long this meeting lasted; it is of some importance that we should know it?

A. I paid no attention.

Q. Upon that subject your memory is not very good?

A. It is very bad, indeed.

Q. You have said a great deal about "they said," and of the people in the middle said—did you see who made those speeches which you have referred to?

A. I mentioned one Walker, and one Speirs; they said so—I was not acquainted with him, and never saw him before, that I know of, before that day.

Q. Do you know who it was that said any of those things that you have spoken to?

A. Walker spoke the most—Walker was the principal speaker, indeed.

Q. Did you see him speak?

A. Yes, the man they call Walker.

Q. When you were giving your account here, why did not you say that Walker said this, instead of they said this, and they said that?

Mr Hope.—No, he has not.

Lord Justice Clerk.—He said before he was the man who made the remarks concerning Spain.

Mr Grant.—I am here to discharge a very painful duty, and under your Lordship's correction, which I know to be always candid and kind—we are not here in an ordinary case.—Walker was the principal speaker?

A. Yes.

Q. You said, that after they had chosen a preses, they

proposed to go in a body themselves, and stop the public works—that was one of the occasions in which you made use of the word "they"—who said that?

www.libtool.com.cn

A. I could not say.

Q. How do you know it was any of the people that were in the circle?

A. I know it was one of the four.

Q. How do you know that?

A. There were none of the rest spoke that I heard.

Q. How do you know it?

A. Because I was in the ring—I was not within the ring, but in the body of it.

Q. Was it Walker said that?

A. I could not say whether it was Walker or not; but it was some of those within the ring that said that

Q. You say there were four within the ring?

A. Three when they came in, and they chose a preses, and that made the fourth.

Q. Was it the preses who said it?

A. I could not say.

Q. Did he say any thing?

A. He spoke very little.

Q. But he did speak?

A He spoke a little, but I do not mind what it was.

Q. Who was the preses?

A. Robert Parker.

Q. What is he?

A. He is a shoemaker.

Q. When you say preses, was he placed in a chair, or upon a height in any way?

A. No, there was no chair, and no height; he stood upon the lower side of the green.

Q. What did he do in his character of preses?

A. He did nothing more, that I saw, than the rest—but they called him preses, and they elected him by a show of hands.

Q. Did you see a man there with a glazed hat?

A. Yes; and a red vest.

Q. Do you know his name?

A. They called him Smillie.

Q. You say there were two other people in the crowd,—a man that they called Speirs, and the preses?

A. Yes, and the preses and Parker.

Q. Parker was the preses, I understand?

A. Yes.

Q. And Walker, those were the four?

A. Yes.

Q. Was there anybody else in the inside of that ring?

A. None, that I observed; they might fall into the body of the ring when they were about to march off, but not at the time they were reading the paper.

Q. I mean at the time that they were speaking?

A. At the time Walker was reading the paper, there were only those four persons in the ring—they kept the ring pretty circular during the time that Walker read the paper.

Q. And during that time you say you saw nobody but those four persons within the ring?

A. Yes.

Q. Try if you can tell me how long this meeting lasted?

A. I cannot tell, because we were put in such a state of confusion in the town that day, that I really cannot mention the time.

Q. Why should not you recollect the time, as well as you recollect the proceedings of the meeting?

A. I cannot give you any time.

Q. I ask you why you should not recollect the time as well as you do the proceedings?

A. I do not see how I can answer that question.

Mr Hope.—That is matter of observation.

Lord Justice Clerk.—Certainly.

Mr Grant.—I am entitled to put the question to the witness, who recollects one circumstance, and not another. I ask him, why he recollects the one rather than the other; what circumstance impresses the one on his mind, and not the other?

Lord Justice Clerk.—That is a different question.

Mr Grant.—I understood that to be fair; certainly it is

not my object to put questions that are unfair. Can you answer the question?

A. Put it again, if you please.

www.libook.com.cn

Q. What is the reason why you cannot recollect the time that this meeting lasted, when you recollect the circumstances that took place there?

A. I paid no attention to the time the meeting lasted; I only paid attention to the words that were said at the meeting.

Q. How long was the meeting assembled before the preses was elected?

A. I could not say.

Q. The Proclamation, and all those comments upon it, were made before the Preses was elected, I understand?

A. Yes.

Q. You have said you were some distance from the people when they went off in the sort of order you have described?

A. Yes, they went away towards the mills, and I did not go after them; I went away home.

Q. Were you near enough to observe whether they had any staves or bludgeons in their hands?

A. I did not observe any of those things.

Q. Do you think they had any?

A. I could not say.

Q. You are not sure that they had not?

A. I am not sure whether they had, or had not.

Q. Yet you were in the heart of them, I think?

A. I was in the midst of them, but I saw no weapons of war.

Q. You saw no bludgeons?

A. No; there might be a common walking-stick among them; some of them were strangers.

Q. Did any body take the command of them, and march them off?

A. None, to my knowledge.

Q. Was the meeting dissolved before the workmen's dinner hour?

A. Yes.

Re-examined by Mr Hope.

www.libtool.com.cn

Q. You have stated that the town was in great confusion that day?

A. Yes.

Q. Was this in consequence of the proceedings of this crowd?

A. Yes.

Q. Did it appear to you that there were strangers in the town?

A. Yes, people I did not know.

Q. Were the shops shut in the afternoon, partly?

A. I cannot say.

Q. Did your work people strike work?

A. The sawyers did.

Q. Did the ordinary mechanics and artizans work in the town?

A. So far as I know, they did, in small shops.

Q. You said that Walker was the principal speaker?

A. Yes; if any of the others spoke, it was but little, for I did not hear them say any thing.

Q. Who proposed the stopping of the mills?

A. I cannot say.

Lord Justice Clerk.—Were any of your work people standing with you at this time?

A. Yes, two of my sawyers were, Arthur M'Nichol and Robert Burnett.

JAMES PATRICK—*sworn.*

Examined by Mr Solicitor-General.

Q. What are you by trade?

A. A collier.

Q. Where do you live?

A. At Quarreltown.

Q. Is that near Johnstone?

A. About a mile from it.

Q. Do you recollect any thing of a meeting in the School Green of Johnstone?

A. Yes.

www.libtool.com.cn

Q. When did that take place?

A. On the 3d of April.

Q. Was that upon a Monday?

A. Yes, it was.

Q. Last April?

A. Yes.

Q. Do you know a man of the name of Parker?

A. Yes, I know him.

Q. At what time was that meeting?

A. I could not say what time of day it was.

Q. Was it in the forenoon?

A. Perhaps in the middle of the day some time.

Q. Was Parker there?

A. Ay.

Q. What was done there, do you recollect?

A. I do not recollect all that was done.

Q. Was there a circle formed?

A. Yes.

Q. Was there any body in the middle of that circle?

A. Yes.

Q. Who?

A. I do not know their names.

Q. Was Parker there?

A. Yes.

Q. He was in the middle of it?

A. Yes.

Q. Was any body else there that you recollect? Can you name them?

A. There were different people there?

Q. Was there a man of the name of James Walker there?

A. Yes.

Q. You know him?

A. I know him, but I was not acquainted with him.

Q. Do you know Speirs?

A. Yes, I know him by sight.

Q. Was he there?

A. Yes, I believe he was.

Q. You would know him again, would you?

A. Yes, I would; that is him, (*pointing to the prisoner.*)

Q. There were in the middle of the circle, then, Parker, Walker, Speirs?

A. Yes.

Q. Was there any body else there?

A. There was another man there.

Q. What like was he?

A. He is a tall man, taller than any of the others a good deal.

Q. Did you hear his name?

A. I do not recollect his name.

Q. Were you told his name at the time?

A. Smillie, I think, is his name.

Q. Were you told that was his name, at the time?

A. Yes.

Q. Do you recollect any thing of his dress?

A. No, I could not say.

Q. His coat or waistcoat?

A. He had on a light waistcoat, I think.

Q. Did any body appear to take charge of that meeting?

A. None before another, as I saw.

Q. Did you hear any thing read at that meeting?

A. There was a paper read, but I cannot repeat it.

Q. There was a paper read?

A. Yes.

Q. Who read it?

A. Walker.

Q. Did you happen to see an Address any where posted up in Johnstone?

A. I saw one upon the church-gate.

Q. The chapel-gate, was it?

A. Yes.

Q. On what day was that?

A. Upon Monday.

Q. Do you know what became of that paper?

A. No, I do not know what became of it; Walker took it off the church.

Q. Did you see Walker take it down?

A. Yes.

Q. Did you read that paper when it was posted up?

A. No, I did not.

Q. When did Walker take it down?

A. Before he read it on the green.

Q. You saw him take it down?

A. Yes.

Q. Did you see him carry it to the green?

A. No, I could not say I did see him carry it to the green, but I saw him with it, and heard him read it afterwards.

Q. Was that soon after?

A. A short time after, ten minutes, I dare say.

Q. How long might it be after he took it down, that you heard the paper read?

A. About ten minutes or a quarter of an hour.

Q. Were there many people with him when he took it down?

A. There were a good deal of people standing about the gate, at the time he took it down.

Q. How is the chapel-gate by the green; is it near it?

A. Close upon it.

Q. Did Walker, when he took down that paper, just go on to the green with it?

A. Yes.

Q. You heard the paper read, I think you said?

A. Yes, I heard him reading it.

Q. Do you recollect the beginning of it?

A. No, I could not say.

Q. Was it an Address?

A. Ay, I suppose it was.

Q. Do you recollect to whom it was addressed; what was at the top of it?

A. I could not say.

Q. Can you tell any thing that was in it? you heard it read, you know.

A. I could not say that I recollect it.

Q. I do not ask the words, but can you tell the substance of any thing that was in it?

A. No.

Q. Did it say any thing about public works?

A. I cannot say, I am sure.

Mr Grant.—He says he knows nothing about it.

Lord Chief Baron Shepherd.—That is a correct question.

Mr Solicitor-General.—There is no doubt my question is correct, which is the only question before the Court. Did any body speak to that meeting?

A. Not that I know of.

Q. I asked you whether there was any thing about public works in it?

A. I cannot say.

Q. Did you hear any thing about stopping works?

A. No, I did not.

Q. Did any body say any thing to the meeting at that School Green?

A. No, I did not hear any body.

Q. Did Speirs do or say any thing at that meeting?

A. I could not say that he said any thing, or any body else.

Q. Did any body speak to the meeting at all?

A. The whole of those within the ring spoke to the meeting, but I cannot tell what they said.

Q. Did any body speak to the meeting?

A. The whole of the men in the ring spoke to the meeting.

Q. Did they speak all at once?

A. No, I think not; I could not say.

Lord Justice Clerk.—Do you mean, that the men in the ring spoke, or that all the people who formed the ring spoke?

A. I suppose those within the ring.

Q. Did they speak, or did they not?

A. The men in the ring spoke to the men who were standing round the ring.

Mr Solicitor-General.—Do you recollect what any body said?

A. No, I do not; I do not remember the words any of them said?

Q. I do not ask for the words.

A. I do not remember any of the words.

Q. You say that all those three or four people, whom you mentioned as being within the ring, spoke to those about them?

www.libtool.com.cn

A. Yes, they were speaking to the folk about them, but I do not recollect the words that were spoken.

Q. You may recollect the sense of what was spoken; look at the Jury, and tell them.

A. I do not know what it was they were saying.

Lord Justice Clerk.—Attend to the question. Though you do not recollect the words, do you recollect the substance of what was spoken at that meeting by any of them?

A. I heard them taking the votes whether they would stop their works or no.

Mr Solicitor-General.—Be so good as just to tax your memory a little more, and let us know what more they said.

Lord Justice Clerk.—Was the vote taken?

A. Yes.

Q. Was it carried?

A. Yes.

Q. Did they stop the works?

A. Yes.

Mr Solicitor-General.—It was carried to stop the works?

A. Yes.

Q. Was any thing else said?

A. They held up their hands, and then they went away.

Q. The four persons in the ring spoke?

A. Yes.

Q. Did Speirs speak?

A. I cannot tell; I heard some of them speaking, but I cannot say what they were saying.

Q. Did you hear them say why they were to stop the works?

A. I could not say what they were going to stop the works for.

Q. Did you hear any body there say why they were to stop the works? did they tell their purpose for stopping the works?

A. Some of them were saying they were to turn out and stop the mills, till they got their rights.

Q. That they would stop the mills till they got their rights, was that it?

www.libtool.com.cn

A. I suppose so.

Q. Did they say that they expected any thing else from stopping the mills?

A. Not that I recollect.

JOHN GEMMELL—*sworn.*

Examined by Mr Maconochie.

Q. You are employed at the Hagg Cotton-Mill?

A. Yes.

Q. Were you so in April last?

A. Yes.

Q. Do you remember any thing particular happening at that cotton-mill in the beginning of April?

A. Yes, upon the 3d of April.

Q. What was it that happened?

A. There were a great many people came forward.

Q. A crowd came to the mill?

A. Yes.

Q. At what hour of that day?

A. About one o'clock.

Q. How many people might the crowd consist of?

A. I really could not fully answer to that how many there might be.

Q. In what sort of order did they come; did they come in a crowd, or in regular order?

Lord Justice Clerk.—Were there a great many, or a few?

A. A great many.

Mr Maconochie.—In what manner did they come?

A. I do not recollect whether they came in array of four or six a-breast.

Q. But they came a-breast of each other?

A. Yes.

Q. What happened when they came to the mill?

A. When they came forward to the mill, they made a halt.

Q. Did any body order them to halt?

A. I went out and met them on their way, and some person called out halt; some person from the rear; and I asked what they wanted.

Q. Was there any answer given?

A. No; they said men from the rear would come forward and speak, and Robert Parker came forward.

Q. Is that the shoemaker?

A. Yes.

Q. Was there any other body came?

A. There was another man came along with him, but he did not speak at the time.

Q. Would you know that person again?

A. I am sure I really could not say whether I would.

Q. Is that him, (*pointing to the prisoner.*)

A. I could not say that was the man, because he was ruddier than that man is.

Q. Was he like that man?

A. He was ruddier; I could not say positively; the man who came with him was more curly haired.

Q. Did you learn his name?

A. Afterwards there was some——

Q. When those men came forward, what did they say? did either of them speak to you?

A. Robert Parker spoke.

Q. What did he say?

A. He said, they were chosen as a committee, so as they might come forward to stop the public works.

Q. Was there any cry set up from the crowd at this time?

A. No, there was none.

Q. Did you make any answer to this remark, that they were chosen as a committee to stop the works?

A. I said, our master was not upon the ground, and for that reason we could not take it upon us to stop the public works.

Q. Did any thing else happen?

A. No, there was nothing further than the work had stopped, but then I believe through fear mostly.

Q. Through fear of what?

A. Of the crowd.

www.libtool.com.cn

Q. The work had stopped for fear of this crowd?

A. Ay, within the walls.

Q. How do you know it was through fear of the crowd?

A. I asked of the men after I went in.

Q. Did they appear alarmed?

A. Yes.

Q. Did Mr Stevenson come up to you at that time?

A. He came up at that time, and I returned back to the building.

Q. He is the superintendant of Mr Houstoun's mills?

A. Yes.

Q. Did you go out again to the door?

A. I went back to the building.

Q. You went back to the front of the building?

A. Yes.

Q. Did either Parker, or the man that was along with him, speak to you after this?

A. They did not speak to me, but they spoke to Robert Stevenson, the man that was along with Parker.

Q. Were you present?

A. Yes.

Q. Do you recollect how that man was dressed?

A. I think, to the best of my recollection, he had on a short corduroy or velveteen jacket.

Q. What did this man say to Mr Stevenson?

A. He came forward, and wished that the door might be locked, so as the rabble might return back from the building.

Q. Did you lock the door?

A. Yes, I called for the key, and locked it.

Q. Was this man satisfied with that, or did he say any thing more to you?

A. The man was back at the time when I locked the door, upon which he came forward again to Robert Stevenson, a second time; there was an old man up at the second floor

staircase window, and he wished for that man to be taken down, and the crowd would retire.

Q. Did you order the man down?

A. Yes, I went in and ordered the man down.

Q. Did the crowd go away?

A. Yes.

Q. And Parker and this man along with them?

A. Yes, Parker went away; the whole of them went away.

Q. In what direction did they go?

A. They went straight up the avenue.

Q. Is Cartside Mill near your mill?

A. I really cannot say what the distance is between them.

Q. Did they go in the direction of that mill?

A. Yes.

Q. Did you follow the mob?

A. No.

Q. Do you know a man they call James Walker?

A. Yes, I know him.

Q. Was he among the crowd?

A. Yes.

Cross-examined by Mr Grant.

Q. You say you saw the crowd going up an avenue there, where does it lead to?

A. It leads straight to the mill.

Q. Which mill?

A. The Hagg Mill.

Q. You saw them going up the avenue from the Hagg Mill?

A. Yes.

Q. Where does the other end of it lead?

A. It leads to the road that goes between Johnstone and Cartside Mill.

Q. Do you remember any boys at the Hagg Mill attempting to do any mischief?

A. No; there was no mischief done.

Q. Had those people any arms of any kind who came in this crowd to the Hagg Mill?

A. None that I seed.

Q. And they did no mischief either to the mill or to any of the people about it?

www.ndtool.com.cn

A. None.

Q. And you saw them have no arms?

A. No.

Q. Clubs, or sticks, or staves?

A. Nothing at all.

Q. No offensive weapon of any kind?

A. No.

WILLIAM WHITEHILL—sworn.

Examined by Mr Hope.

Q. You belong to one of Mr Houstoun's Mills, I believe?

A. Yes.

Q. To which of them?

A. To Cartside.

Q. Were you there about the beginning of April?

A. Yes.

Q. Do you recollect any thing particular occurring about the mill?

A. About the stopping the mill.

Q. When did this take place? When was the mill stopped?

A. It was between one and two.

Q. Between one and two? Upon what day?

A. Upon Monday.

Q. When was that Monday?

A. I do not remember the day of the month.

Q. What month was it?

A. It was the month of April.

Q. Did people come to your mill; or what took place?

A. There were a quantity of people came into the mill.

Q. What was the first that you saw of them?

A. It was Jem Nixon; and the next was Smillie.

Q. Any other person?

A. No more there that I knew particularly; there were a great deal more there.

Q. Those people came into the mill, Smillie and Nixon?

A. Yes.

www.libtool.com.cn

Q. Was there at that time a crowd before the mill, or round the mill?

A. Yes.

Q. About what number, do you suppose?

A. I dare say, there would be five hundred.

Lord Justice Clerk.—Round the mill?

A. Yes.

Mr Hope.—Was any thing said by the crowd?

A. James Nixon.

Q. Was any thing said by the crowd, before James Nixon and Smillie came into the mill?

A. Not that I heard.

Q. Did those two men, when they came into the mill, say any thing?

A. Yes.

Q. What was said?

A. Nixon said, "Come away, my boys, tear all down."

Q. To whom was that addressed? to you within the mill, or to those without?

A. Just to the whole who were upon the stairs, and to the rest who were ready to go in.

Q. Following him?

A. Yes.

Q. Was Smillie along with him at that time?

A. Yes; he was behind him.

Q. Had they told you what they wanted or came for, before Nixon made this remark?

A. No.

Q. What was said after that?

A. Smillie said, "Hurra, my boys, come away."

Q. Did the people continue to advance up the stairs, and to approach the mill?

A. No.

Q. After they came up the stairs and made use of those

expressions; did they tell you, or any person in your hearing, what they wanted or what they came about?

A. No.

www.libtool.com.cn

Q. What else did they say?

A. I heard them say no more.

Q. What made them leave the mill?

A. They went out of the mill, after it was stopped.

Q. The mill was stopped?

A. Yes.

Q. Was it in consequence of what they said, that the mill was stopped?

A. Yes.

Q. Did they then leave the mill after the mill was stopped?

A. Yes.

Q. Did they desire any thing else to be done, besides stopping the mill?

A. No.

Q. Do you know a person of the name of Robert Parker?

A. Yes.

Q. Did you see him in the crowd?

A. Yes.

Q. Whereabouts was he at the time that you saw him?

A. He was advancing up towards the road alone; there was no person near him.

Q. Was that before Nixon and Smillie came into the mill?

A. Yes.

Q. Did you see him after you saw him advancing up the road?

A. No.

Q. Do you know a person of the name of James Speirs?

A. Yes.

Q. The man at the bar?

A. Yes.

Q. Did you see him there?

A. No.

Lord Justice Clerk.—Did you hear any body, whether it was Nixon or Smillie, I do not care who said it, desire the mill to be stopped?

A. No.

Q. Then, am I to understand that the mill was stopped merely from those expressions being used, "Come away, boys, tear all down," and so on?

A. Yes.

Q. You considered it was stopped entirely by the expressions used by Nixon and Smillie?

A. Yes.

Mr Grant.—Will your Lordship ask him, who stopped the mill?

Lord Justice Clerk.—Can you tell, by whom the mill was actually stopped?

A. The master of the room stopped it.

Q. Do you know who that master was?

A. James Colville.

Mr Grant.—How long have you known the prisoner at the bar?

A. About four years.

Q. If he had been there, do you think you must have known him?

A. Yes; if I had seen him, I would have known him.

Q. And you did not see him?

A. I did not.

JAMES COLVILLE—*sworn.*

Examined by Mr Solicitor-General.

Q. Are you a spinning-master?

A. Yes.

Q. In what mill?

A. Cartside Mill.

Q. Do you recollect, in the month of April last, any number of persons coming to that mill?

A. Yes.

Q. When was it?

A. I think it was upon the third of April.

Q. Upon a Monday?

A. Yes.

Q. Was it a large crowd?

A. Yes, a very large crowd.

www.libtool.com.cn

Q. How many?

A. I could not say the number of them.

Q. Some hundreds?

A. Yes.

Q. What did they do when they came to the mill?

A. They came and wished the mill stopped.

Q. Did any body come into the mill?

A. Yes.

Q. How many?

A. There were four came at the first.

Q. Did any come after?

A. Yes.

Q. How many?

A. A goodly number; I could not say the number.

Q. Did any of the people that came into the mill, say any thing?

A. Yes; they wished the mill stopped, and I wished to know why I was to stop the mill, and they said, they were to stop it by order of the Provisional Government, or the Provisional Government would not be answerable for any damage that might be done.

Q. What did you say first?

A. I asked them by whose order I was to stop the mill, and they said it was by order of the Provisional Government, or that the Provisional Government would not be answerable for what damage was done to the mill.

Q. Did you know any of those persons?

A. No.

Q. Was there any body along with you when this took place?

A. Yes, William Whitehill.

Q. The last witness here?

A. Yes.

Q. Was the mill stopped in consequence of that visit?

A. Yes.

Cross-examined by Mr Sandford.

www.libtool.com.cn

Q. Do you know Speirs, the prisoner?

A. I have no acquaintance with him.

Q. Did you know him by sight before this?

A. I had seen the man, but I had no personal knowledge of him.

Q. Did you see him at Cartside Mill?

A. No.

Q. Was Whitehill along with you all the time you were speaking to the men?

A. No, he was a part of the time, but not the whole.

Mr Grant.—We asked no questions at the last witness as to the array at Cartside Mill.

Mr Solicitor-General.—No, we give up that—you will hear no more of that.

JOHN BRODIE—*sworn.*

Examined by Mr Maconochie.

Q. You are a spinner at the cotton-mill of Mr King?

A. Yes.

Q. Were you so in April last?

A. Yes, I was.

Q. Where is Mr King's mill?

A. In Johnstone.

Q. Is it near Mr Houstoun's mill?

A. It is between the two.

Q. Do you remember the work being stopped in Mr King's mill, in April last?

A. I cannot say what month it was in, nor what day of the month it was in, but it did not stop till the meal hour—it stops every day in the meal hour.

Q. What day of the week was it?

A. I think, to the best of my knowledge, it was——

Q. Do you remember a crowd coming to the mill?

A. I remember seeing a crowd come to the gate of the mill.

Q. At what time of the day was it?

A. I think it was in the forenoon.

Q. Was it about mid-day?

A. I think it was thereabouts.

Q. Did you see the foreman, Mr Malloch, do any thing at that time?

A. I seed Mr Malloch locking the gate.

Q. This was before the mob came, was it?

A. Yes, before the mob approached that night.

Q. But you saw them coming down before that?

A. I saw a crowd of boys.

Q. Were there no men among the crowd?

A. Yes, there was the appearance of men amongst them.

Q. Did you hear any thing said by any body in the crowd?

A. Yes, I seed one man come to the front of the crowd, and desire the boys to go back, that they could do no good there.

Q. Did you know that man?

A. I had no personal acquaintance with the man—I heard them say his name was Walker, but I had no personal acquaintance with the man—I should know the man if I was to see him again.

Q. You knew that his name was Walker?

A. Yes, I had heard it said so.

Q. When did you hear it?

A. I had heard it at different times before that.

Q. Was the work at the mill stopped that day?

A. No, it did not stop till the dinner hour.

Q. Did it stop?

A. Yes; it did not go after dinner, because the workers did not come back.

Q. Did you come back again yourself?

A. No, I had no work for two or three days before that.

Q. Was there any thing more said by any of the mob?

A. I was getting cotton out of the cotton-lofts, and I heard no more said.

Cross-examined by Mr Grant.

Q. Do you know the prisoner at the bar, James Speirs?

A. No; I do not think I ever saw him, till I saw him here the last day at the indictment.

Q. You did not see him there?

A. No.

WILLIAM MALLOCH—*sworn.*

Examined by Mr Maconochie.

Q. You are manager of King's Mill?

A. Yes.

Q. Do you remember the work being stopped in that mill in the beginning of April?

A. Upon the first Monday of April.

Q. Do you remember a crowd coming to the mill upon that day?

A. I do.

Q. At what time of the day was it—was it about mid-day?

A. It was about mid-day, I think.

Q. Was there any body from amongst the crowd spoke to you?

A. Yes, a man spoke to me.

Q. What did he say?

A. He asked whether I would stop the mill—I told him that I would not—then I asked his reason for wishing me to stop the mill—he said others had done it—I told him that was no sufficient cause for me to stop the work.

Q. Did he say any thing else to you?

A. There was one from behind him said, "That I might abide the consequences."

Q. Did you make any reply?

A. I made no further reply, than told him I would not stop the work.

Q. Did you know either of those men?

A. I knew none of them.

Q. Did you know their names?

A. No.

Q. Did you inquire their names at the time?

A. Not at the time.

Q. Did you see a man of the name of Walker there?

A. I did not know him to be Walker at the time, but from the account that I got of him afterwards——

Q. Did the work stop that day?

A. Yes.

Q. Why did it stop?

A. The workers would not work.

Q. Did they give any reason for not working?

A. They said they were intimidated; they were afraid.

Q. Afraid of what?

A. They were afraid of the consequences; they said the work might be burnt, and soon.

Q. Did the mob return again to the mill?

A. They returned about two o'clock, or between two and three.

Q. But by that time the mill was stopped, was it?

A. Yes.

Q. What did they do when they observed the mill stopped?

A. They gave two or three huzzas, and then went away.

Cross-examined by Mr Grant.

Q. What time of day was the mill stopped that day?

A. The mill stopped at one o'clock.

Q. Was that dinner time?

A. No.

Q. Before dinner time?

A. Before dinner time.

Q. Do you know the prisoner at the bar, James Speirs?

A. No; I have seen him.

Q. Had you seen him before that time?

A. I did not see him there.

Q. If you had seen him there, you would have known him?

A. I do not think I would have known him.

Q. But from seeing him now, can you say that you did not see him there?

A. I do not think I saw him there.

www.libtool.com.cn

Mr Robert Montgomery—*sworn.*

Examined by Mr Hope.

Q. I believe you are a master cotton-spinner at Johnstone?

A. Yes.

Q. Have you one mill, or more than one mill?

A. One mill.

Q. What is the name of it?

A. It is called Robert Montgomery's mill?

Q. Were you in Johnstone in the beginning of April last?

A. I was.

Q. Did any thing particular occur at your mill about that time?

A. There was.

Q. Was it stopped?

A. It was.

Q. Upon what day of the month, do you know?

A. It was upon the Monday, I suppose, the 2d of April.

Q. How was it stopped? did a number of people come to it?

A. Yes, there was a crowd of people came, and wished us to stop.

Q. Did you see any person in particular in that crowd, whom you can name?

A. The only person I saw in particular in that crowd, was one of the name of Robert Parker.

Q. Had you any conversation with any of them? did they tell you their object in stopping the mill?

A. Yes, I had a little conversation with one or two of them.

Q. About what hour might this be?

A. It was about half after two o'clock.

Q. Did they tell you their object in stopping the mill?

A. They told us it would be as well to stop.

Q. Did they say why?

A. Till their business would be settled; I suppose some kind of Provisional Government.

www.lidtool.com.cn

Q. Did they explain what that business was?

A. No.

Q. Did they say any thing about a Provisional Government?

A. No, they did not.

Q. Was Parker one of those with whom you had this conversation?

A. No, Parker was not; I had no conversation with Parker.

Q. Did you see Parker do anything?

A. I did not see him do any thing; he rather advised them to pass the work.

Q. Did he appear to you to be active as a leader of the mob?

A. He did not appear to be active; he was upon the extremity of the mob, and did not appear to be active.

Q. Was your mill stopped in consequence of the crowd coming in this way?

A. They came just while the workers were at dinner.

Q. Did the workers return again?

A. The workers came, but they did not go into the mill.

Q. Then the work was stopped?

A. Yes, in consequence of the people coming to the place.

Q. And continued to stop some days?

A. It went on on Thursday afternoon.

Q. Can you state, from your own knowledge, that, besides Mr Houstoun's mills and your own, there were other cotton-mills in Johnstone and the neighbourhood stopped that day?

A. I cannot state from my own knowledge, for I was not from my own place that day.

Mr Hope.—We do not propose to carry this farther, by going through the different mills.

JOHN FRAZER—*called.*

Frazer.—I have been confined in gaol for four months upon a charge of Treason, and under various grievous circumstances, and I wish to know whether I appear here as a principal, or as a witness. I do not know that I may not yet be brought to trial.

Lord Chief Baron Shepherd.—You will be examined certainly as a witness; but you will not be bound to say any thing that will criminate yourself. Therefore, if any questions are put to you, the answer to which is likely to criminate yourself, you certainly would not be bound to answer them, unless you please to answer them.

Lord Advocate.—We certainly have no intention to try this prisoner. I understand the law to be, that if a man is examined as a witness, he is not afterwards liable to be tried.

Mr Grant.—My learned Friend is perfectly aware, it is in no person's power, by the law of England, unless he gets a pardon from the Crown, to prevent his being brought to trial, because he may be indicted before a Grand Jury by any body.

Lord Chief Baron Shepherd.—If a witness who is under a similar charge chooses to become evidence, and does give evidence, it is always understood and supposed, that he will not be prosecuted; but if he has not agreed to come forward as a witness, he certainly would not be bound to say any thing that tends to criminate himself; what the consequences of that may be, the Court has nothing to do with; all the Court has to do, is to see that if any question is put that tends to criminate him, he may be cautioned.

Lord Justice Clerk.—I had thought throughout, that when any persons have been brought as witnesses, the Crown does enough in stating they have no intention to call them as principals; that is the course they are following now, and I am of opinion the witness ought to be sworn, and dealt with as a witnes ought to be dealt with.

Mr Hope.—This prisoner is not, and never was imprisoned on the same charges as this prisoner is tried for.

Mr Grant.—He is imprisoned for High Treason.

Mr Hope.—Yes; but not this Treason.

Mr Grant.—It is perfectly clear that the man cannot be discharged; and what he says here, if proved by two witnesses, would convict him.

Lord Chief Baron Shepherd.—The witness is called into the box; he has asked a question, not understanding the law, which the Court are very willing to explain in the situation in which he stands; he is brought there as a witness, and not for the purpose of being charged; then he is like every other witness in the box, and he will be bound to answer, and tell the whole truth, except any questions are put which tend to criminate him, and then it is for him to take an objection, and he may refer to the Court to know whether he ought to answer it.

Lord Justice Clerk.—At Dumbarton, it was said by the Lord President, that on no account could the public prosecutor prosecute any individual he brought into the box as a witness.

Mr Grant.—Perhaps this conversation on my part is irregular, but I stated to the Lord President, that in High Treason the case was different; for though that was laid down in the Court of Justiciary, the case is here different; every body is entitled to give information to a Grand Jury, who must find their bill.

Lord Chief Baron Shepherd.—Then there is no objection to that witness being sworn, and when the questions are put to him, the Court will decide whether they are proper questions.

Mr Grant.—He must be sworn, there can be no doubt of it.

Lord Chief Baron Shepherd.—You understand you are brought here as a witness, and that you are to speak the truth, the whole truth, and nothing but the truth.

Frazer.—And that I am not to be considered as a principal any longer?

Mr Hope.—Certainly not.

Lord Chief Baron Shepherd.—Certainly not.

The witness was then sworn.

www.libtool.com.cn

Examined by Mr Hope.

Q. Where did you live before your apprehension?

A. In a house that I had taken from Mr Campbell.

Q. Where was that house?

A. At the back of the new street, Johnstone.

Q. What was your trade or occupation there?

A. A teacher.

Q. You have been for some time in Johnstone?

A. I have.

Q. Were you in Johnstone in the beginning of April last?

A. I was.

Q. Do you know a person of the name of James Speirs, who lately lived in Johnstone?

A. Yes, I do.

Q. Is this the man? (*the prisoner.*)

A. Yes.

Q. Upon what day were you apprehended?

A. On the 10th of April, if I recollect right.

Q. Had you seen this person, Speirs, upon the first of April?

A. Yes; I saw him in the evening of the first of April.

Q. Do you know what day of the week the first of April was?

A. Saturday.

Q. Where was it you saw him first upon that evening?

A. I saw him on the main street in Johnstone.

Q. About what hour might that be?

A. If I recollect well, it was between the hours of ten and eleven o'clock.

Q. Tell us what took place between you—what did Speirs say or do when you met him?

A. I was standing speaking along with an accountant, and he came to us and said he had an Address or bill.

Q. Was there any thing else said?

A. After reading the bill, I remarked——

Q. Did he shew you the bill?

A. Yes.

Q. Did you read it?

A. Oh yes, we read it together.

Q. Could you see to read it in the street, or how did you read it?

A. We were in at a shop counter.

Q. Did you read the whole of that paper?

A. Yes, I think so.

Q. What became of that paper at that time? Did it remain with you, or did you return it at that time to Speirs?

A. He kept it at that time.

Q. Then did you leave the shop?

A. Yes.

Q. Did you part with him there?

A. Yes.

Q. And where did you go to?

A. I went away home.

Q. Are you a married person?

A. I am.

Q. Did any thing pass between you and your wife about that conversation, which led to your doing any thing else?

A. Yes; I went home and told my wife what I had seen, and she said that she would like to see it.

Lord Chief Baron Shepherd.—That is hardly evidence; if he did any thing in consequence of what she said, he will tell us what he did.

Mr Hope.—In consequence of what your wife said, did you do any thing?

A. Yes; I went over to James Speirs's house; he lives only a little way from my own; he was not at home, and I left a message with his wife, that when he came home, I wished to see it, and desired him to bring it over.

Q. After your message, did Speirs come to your house that night?

A. He did.

Q. Did he bring any thing with him?

A. He brought the Address with him.

Q. Was it read in your house before Speirs left you?

A. Not to my recollection.

Q. After he brought it to your house that night, in consequence of the message that you left, did the Address remain with you that night?

A It did.

Q. Was the paper which he brought t you this second time the same which he had shewn to you formerly that evening?

A. That never occurred to me; I thought it was the same, I cannot say positively.

Q. Was the paper which he shewed to you the first time in the street, and which you read at the shop-counter, a printed paper?

A. Yes.

Q. Was it a copy of the former one, or the same in substance?

A. They were both printed papers.

Q. Had they the same contents?

A. Yes.

Q. Did that paper remain in your possession that night?

A. Yes.

Q. Had you occasion to look at it several times in the course of that night, or in the morning?

A. I read it to my wife, of course, and I went down to a neighbour.

Q. Had you occasion to see it, and to read it several times?

A. I could not give my word to it, except that I read it to my wife, and to a neighbour.

Q. I do not wish you to say about your going to different people; but I only ask, whether you had occasion, more than the time you read it to your wife, to read that paper while it was in your possession?

A. I think I had.

Q. Did you read it to any other person but your wife?

A. I went into our neighbour's, in the same land, and read it there.

Q. It remained in your possession all that night?

A. Yes.

Q. What became of it after that?

A. He got it away next morning.

Q. Who is he?

A. The panel at the bar, at least I understood so.

Q. Did you give it to him yourself?

A. No, I did not.

Q. Did you leave it in the charge of any person?

A. Yes, in the charge of my wife.

Q. With directions to give it to him, if asked for?

A. Yes, if he asked for it.

Q. Did you ever get it from your wife again?

A. No.

Q. You called that paper an Address—to whom was it addressed?

A. So far as I recollect, it was addressed to the Inhabitants of Great Britain, and Ireland.

Q. Was there any date of place or time upon it?

A. I think it was dated 1st of April.

Q. Of this year?

A. Yes, I think so.

Q. Was there any place upon it?

A. Glasgow.

Q. Had it any signature at the bottom, or did it bear to come from any person, or body, or set of persons?

A. It bore to come from the Committee of organization for forming a Provisional Government.

Q. Can you repeat any part of that paper?

A. No; I cannot recollect it.

Q. Can you tell us the substance of any part of it; what it was about; what did it say to the Inhabitants of Great Britain and Ireland?

A. It requested them to take up arms.

Q. For what purpose did it state they were to take up arms?

A. For redress of their grievances, and to procure a voice in choosing representatives.

Q. Do you recollect any other topic in the Address? Did it request them to do any thing else?

A. There was a warm appeal to the soldiery.

Q. What, to oppose the people, or to join the people?

A. To join the people.

Q. Was there any other topic touched upon? Did it say how the people were to do this?

A. By taking up arms.

Q. Was there any thing else in it, do you recollect?

A. I forget.

Q. Read that paper, and say whether it is a copy, or in substance the same with the one that you had in your possession, (*handing a paper to the witness.*)

A. I think it is the same, as far as I can recollect.

Q. Have you any doubt that it is a copy of the same Address?

A. Most certainly, the ideas seem to be the same, to the best of my judgment.

Q. And are the ideas expressed in pretty nearly the same words?

A. Yes, I think so.

Q. Did you see any papers posted up in Johnstone, or any of the places about after this?

A. No; I did not see any posted up.

Q. Did you see any affixed to the wall?

A. I saw one at a distance; but I was not near to it. I was told it was one of them, and I saw people reading it.

Q. After Speirs shewed you this Address in the shop upon the Saturday night, had you any conversation with him about it?

A. No, very little. I remarked that it seemed to announce a state of rebellion, and disapproved of it, and Speirs appeared to agree with me.

Q. Did you express any surprise at seeing such a paper?

A. I do not recollect whether I did or not.

Q. Did Speirs tell you where he got this extraordinary paper?

A. No.

Q. Did he say that he had more of them, besides that one?

A. No.

Q. Did Speirs say that he had seen any other copies of that; or that there were other copies of it?

A. No; there was scarcely any thing passed between us, except what I have told you, for I was going away home.

Mr Hope.—I have no further questions to ask of the witness. I understand he is at liberty.

Cross-examined by Mr Grant.

Q. You say, when Speirs shewed you this paper, you disapproved of it, and he appeared to agree in that disapprobation?

A. Yes.

Q. Then was it out of curiosity that you understood him to shew it to you?

A. I think so, I cannot say positively, but it seemed so to me. I am very little acquainted with Speirs.

Q. Did you tell Speirs what you thought he ought to do with it?

A. That night?

Q. Ay?

A. No; I do not recollect.

Q. You were not at home when he brought the paper to your house?

A. When he brought it to my house on Saturday evening I was in.

Mr Hope.—Do you know a person of the name of Robert Lang, in Dumbarton?

A. Yes, I do.

Q. Just have the goodness to look at that letter and see whether it was written by you to Robert Lang?

Mr Grant.—Before you come to that, will you allow me to ask a question?

Lord Justice Clerk.—Certainly.

Mr Grant.—At the time he gave you this paper, did he seem alarmed at the contents of it?

A. Yes, he seemed alarmed.

Mr Hope.—You say that there was some person with you at the time that Speirs shewed that paper to you?

A. Ya.

Q. Who was that?

A. William Read.

www.libtool.com.cn

Lord Justice Clerk.—Ask him if he can recollect what Speirs first said to him when he first came up with the paper. You say you suppose it was curiosity that induced him to shew it you, and that he appeared to be alarmed. I am sure you mean to tell the truth according to the best of your recollection—What did he say when he first came to you?

A. I think, to the best of my recollection, he said, here is a hand-bill, or an Address.

Q. Did he say where he had got this hand-bill, or Address?

A. No.

Q. Had you any access to know where he got it?

A. No, I had no access to know.

Q. Did he take it out of his pocket at the time?

A. I cannot recollect; I do not know indeed, whether he did or not.

Q. You mean to say you did not see him?

A. It was darkish you know, being night, and I do not recollect that circumstance.

Q. Who proposed to go into the shop to read it at the counter?

A. I cannot say that I recollect that circumstance either; it is long since now.

Q. It is not a very common incident, for you have told us yourself, you thought it was exciting the people to rebellion?

A. I do not recollect who proposed it.

Q. Is there any particular circumstance that you can state upon your oath, which led you to think Speirs shewed you this out of curiosity?

A. No; I cannot say, only not being acquainted, and his stopping and shewing it me, that it was out of curiosity; it was a paper that any person might be curious to shew to another, I think.

Mr Grant.—Will your Lordship ask, whether the prisoner asked the witness his opinion of the paper?

Lord Justice Clerk.—Did the prisoner ask you your opinion of this paper at the time?

A. I do not recollect that.

Mr Grant.—Whether the witness recollects whether the other man asked the prisoner before him, whether he had any more copies in his pocket?

Lord Justice Clerk.—Did Read ask Speirs, in your hearing, whether he had any more copies of this paper?

A. Not that I recollect.

Q. Have you no recollection of any thing else being said upon this subject, but what you have stated?

A. No; I cannot say that I have.—May I consider myself no longer a prisoner.

Lord Justice Clerk.—Certainly.

Mr Hope.—You must come back to-morrow as a witness.

MARJORY FRAZER—*sworn.*

Examined by Mr Hope.

Q. Are you the wife of Mr Joh Frazer, school-master in Johnstone?

A. Yes.

Q. Are you acquainted with this person at the bar, James Speirs?

A. No.

Q. Did you ever see him before?

A. Yes, I have seen him before.

Q. Do you recollect your husband shewing you a paper in the beginning of April, in your own house?

A. Yes.

Q. Was it a printed paper?

A. Yes.

Q. Did he read that paper to you?

A. I read it myself.

Q. Do you know how that paper came to your house?

A. Yes.

Q. Will you state to the Jury, if you please, who brought it to your house?

A. James Speirs; I did not know James Speirs at that time, but I was informed that it was he that brought it.

Q. Was it the man you now see here that brought it to your house?

A. Yes, I suppose so; I never saw him till I saw him in gaol.

Q. Did you know him then to be the same person, who brought it to your house?

A. Yes.

Q. What time of day was it that it was brought to your house?

A. It was about eleven o'clock at night.

Q. Do you know upon what day of the month—what day of the week was it?

A. It was upon the Saturday night.

Q. Was it in the month of April?

A. Yes; it was that Saturday before the business took place.

Q. Do you mean the strike of work?

A. Yes.

Q. Did it remain in your house that night?

A. Yes.

Q. What became of it next day?

A. James Speirs took it next day, the same man, but I did not know it was the same man.

Q. This person got it from you?

A. Yes.

Lord Justice Clerk.—He got it from you the next day?

A. Yes.

Mr Hope.—Are you sure that the paper which you gave to that man was the same which you read?

A. Yes, I am quite sure.

Q. Was it the same which he brought into your house?

A. Yes, quite sure.

Lord Justice Clerk.—You had been told by your husband to give it him, if he called for it, had you not?

A. Yes.

Cross-examined by Mr Grant.

Q. What passed when Speirs took the paper away?

A. He said that he was going to destroy the paper.

Q. Did any thing else pass either then, or when he brought the paper on the Saturday night?

A. Nothing passed; my husband thanked him for bringing it.

Mr Hope.—We have served notice upon the prisoner to produce that paper.

Mr Grant.—Had you expressed a wish to see that paper?

A. Yes; and it was on my account the paper was got.

Q. Had you desired your husband to go to Speirs's house to get that paper for you?

A. I did not know Speirs's house; but I wished to see the paper; and I said, "Can you get it?" and my husband said, he would go and see.

Mr Hope.—We have served notice on Speirs to produce that paper, which we shall prove, if it is not admitted.

Lord Chief Baron Shepherd.—Do they admit the notice?

Mr Hope.—We are ready to prove it, if they do not admit it—Do you admit it?

Mr Grant.—You had better prove it; it is not like an ordinary case.

Mr Solicitor-General.—No, you are quite right.

ARCHIBALD M'INNIS—*sworn.*

Examined by Mr Macconochie.

Q. Do you remember a number of people meeting at the School Green in Johnstone, in April last?

A. Yes.

Q. Were you there?

A. Yes.

Q. Did you see a man called Walker there?

A. Yes.

Q. James Walker?
A. Yes.
Q. Did you see James Speirs there?
A. Yes.
www.libtool.com.cn
Q. Is this him, (*pointing to the prisoner.*)
A. Yes.
Q. Did anybody speak to the meeting?
A. Yes.
Q. Who was it?
A. Two or three.
Q. Did Walker speak?
A. He read an Address.
Q. Did Speirs speak?
A. A few words.
Q. What were they?
A. I cannot tell.
Q. Was there a man they called Lang that spoke?
A. Yes; there was a man the crowd called Lang.
Q. What did he say?
A. I cannot tell.
Q. Was Parker the shoemaker there?
A. Yes.
Q. How was Lang dressed?
A. I cannot exactly say.
Q. You saw Parker there?
A. Yes.
Q. Was he preses of the meeting?
A. I heard some of the people say in the crowd that he was.
Q. You know Parker very well?
A. Yes.
Q. Had you any meeting with Parker after that yourself?
A. No.
Q. Did you never take a walk with him?
A. No.
Q. Did you see Parker at any time, at the Canal Bridge?
A. It was dark; I think he was there; I heard him saying he was there, but it was dark.
Q. When was it?

A. I do not recollect very well.

Q. Was it before, or after the meeting at the School Green?

A. It was after, I believe.

www.libtool.com.cn

Q. How long after?

A. I cannot exactly say.

Q. Was it a day, or two days?

A. I think it was about that.

Q. What took you to the canal bridge?

A. We went there to get staves.

Q. Who went with you?

A. There was two or three.

Q. Do you know their names?

A. Yes.

Q. Be so good as tell their names?

A. David Kennoway, Archibald Ballantyne, and James Currie.

Q. Parker was there?

A. It was dark at the time; but I heard him say he was there.

Q. Did you hear that at the time?

A. Yes.

Q. Have you any doubt he was there at the time?

A. I thought he was there, from what I heard them saying.

Q. You heard them saying at the time, that he was there?

A. Yes.

Lord Justice Clerk.—I understand you to say that it was dark, so that you could not see that Parker was there; but that you heard people at that canal bridge say that he was there; and that you thought, from what they said, that he was there.

A. Yes.

Mr Maconochie.—Was there any person there spoken to, as Parker?

A. Yes, I think there was.

Q. Was there a man they called Kirby there?

A. Yes; I heard them say he was there.

Q. You say you went there to get staves, did you get staves there?

A. Yes.

Q. What kind of staves were they?

A. Middling long.

Q. How many feet long might they be?

A. Seven or eight, I think.

Q. Who gave them to you?

A. I could not tell who it was.

Q. Did the whole of the people there get them?

A. I do not know; it was dark; I did not see who got them.

Q. Do you know that other people got them besides yourself?

A. Yes, I think there was.

Q. In what way were they given to you? Did you buy them, or how were they given to you?

A. Yes, we bought them.

Q. What did you pay for them?

Lord Justice-Clerk.—I do not say that I think that you are not speaking out: But you are brought here as a witness, and no harm can come to you for speaking out upon this business; there is not the smallest doubt, that the Lord Advocate, in the discharge of his duty, would be bound to enter a Noli Prosequi against any indictment found against you.

Mr Grant.—My lord, I submit—

Mr Hope.—This is not the case of the prisoner: the counsel has no right to be heard.

Mr Grant.—I appeal to your lordship, whether it is not consistent for the counsel for the prisoner to call the attention of the Court to the circumstances of the witness.

Mr Maconochie.—This man is not a prisoner.

Lord Justice-Clerk.—No.

Mr Grant.—This could be given in evidence against the witness.

Mr Maconochie.—You say you bought that stick—was there any thing upon the end of it when you bought it?

A. Yes, there was.

Q. What was it?

A. I cannot say particularly what it was; there was a thing at the end of it.

Q. What kind of a thing was it?

A. I could not tell what it was made of.

Q. Was it iron?

A. I could not particularly tell.

Q. Was it metal?

A. It was some kind of metal.

Q. How long was the piece of metal?

A. Not quite a foot long.

Q. Was it sharp?

A. Middling.

Q. What did you pay for it?

A. A shilling.

Q. Were there many more of this kind at that time?

A. I could not tell you about that.

Q. You saw some others?

A. It was dark; I could not see very well.

Q. Were there a good many people there?

A. Yes, there were half-a-dozen.

Q. You have described this, that the shaft of it was a good long shaft, about five or six feet, and there was this iron at the end of it about a foot long, which was sharp; now I ask you at once, was that a pike?

A. It was what they called one.

Cross-examined by Mr Grant.

Q. Were you at Hagg Mill.

A. Yes.

Q. And were you at Cartside Mill that day too?

A. Yes, two or three minutes.

Q. Did you see the prisoner there?

A. At Cartside Mill?

Q. Ay?

A. No, I did not.

Q. Were you near the prisoner at the meeting upon the School-Green that day?

A. I was a piece from him.

Q. I think you say you heard him say a few words?

A. Yes.

Q. Did he, or did he not, take an active part in that meeting?

www.libtool.com.cn

A. I did not observe him taking an active part more than the rest.

Re-examined by Mr Maconochie.

Q. At the time you saw Speirs at this meeting, where was he? at what part of the meeting?

A. He was in the ring.

Q. Then there was a ring formed by the crowd?

A. I was not there when the ring was formed.

Q. But you saw people in the ring?

A. Yes.

Q. How many were in that ring besides himself?

A. There was others, three or four.

Q. Was that man Parker, whom you mentioned, one of them?

A. Yes, he was.

Q. You told us before that Speirs spoke to the meeting?

A. Yes, a few words.

Q. And you say he was in the ring where there were three or four others?

A. Yes.

Q. And then you said to my learned Friend, that he did not take a more active part than the rest?

A. No.

Q. Did all the persons at that meeting speak?

A. They were speaking in the meeting.

Q. Were they all speaking?

A. He took no more active part than speaking those few words.

Q. Did you observe Speirs at the Hagg Mill?

A. I was at the head of the brae, and did not observe who went forward.

Q. Did you see Speirs at the Hagg Mill?

A. No, I did not observe him.

Lord Justice Clerk.—You were at the School Green, and you heard what passed there—as far as you recollect, did you go along with them from the green to the Hagg Mill?

A. Yes.

Q. Did you go by the head of Macdougall-street?

A. Yes.

ARCHIBALD BALLANTYNE—*sworn.*

Examined by Mr Hope.

Q. Do you know a person of the name of Robert Parker?

A. Yes.

Q. What was he?

A. A shoemaker by trade.

Q. In Johnstone?

A. Yes.

Q. Did you ever see that man at a meeting on the School Green in Johnstone?

A. Yes, I saw him once.

Q. When was that?

A. On Monday the 3d of April.

Q. Do you know a person of the name of James Speirs?

A. Yes.

Q. Did you see him there?

A. Yes, I saw him there.

Q. Is this the person? (*the prisoner.*)

A. Yes.

Q. Did you see Parker any where shortly after that?

A. No.

Q. I do not mean that day; but the next day, or the day after that, I mean?

A. No.

Q. Do you know the canal bridge near Johnstone?

A. Yes.

Q. Were you there any evening after that meeting?

A. Not after that meeting, I was there before that.

Q. Who was there along with you?

A. Archibald M'Innis and David Kennoway.

Q. Was that man Parker there?

A. Yes.

Q. Tell us what you went there for?

A. We went there to meet with a man who was to bring us some shafts.

Q. Did you get a shaft when you went there?

A. Yes.

Q. Did you get it from Parker?

A. No.

Q. Who was it from?

A. Alexander Kirby.

Q. You said Parker was there at the time?

A. Yes.

Q. Did you pay any thing for this?

A. Yes, I paid a shilling.

Q. What sort of a stick was this?

A. It was a stick about seven feet long.

Q. Was it rough, or was it worked up at all?

A. It was rather smooth?

Q. Was there any thing at the end of this stick?

A. No.

Q. Did you see any of the other people there get any of those shafts?

A. Yes.

Q. Did you see any pieces of iron at the end of the other shafts that they got?

A. No, I did not.

Q. For what purpose did you get this shaft?

A. I cannot rightly tell what it was.

Mr Hope.—My Lord, this is a young man; I think he might be rightly told that he is in safety.

Lord Justice Clerk.—Tell us what a shaft is; some people will be very anxious to know what it is, and the Jury in particular; and remember you are upon your oath.

A. It is a long stick.

Q. With any thing upon it?

A. No.

Q. A shaft is just a long stick, with nothing upon it?

A. Yes.

Q. Did ever you pay a shilling for a long stick with nothing upon it before?

A No, I never did.

Mr Hope.—Who was carrying those shafts that you and others got when you went there?

A. Alexander Kirby and Robert Parker.

Q. Did you, besides this shaft, get any piece of iron to put upon it, or another, which they called a pike-head?

A. Yes.

Q. Did you get that from one of those two men?

A. No.

Q. Did you get it upon that occasion?

A. Yes.

Q. From whom did you get that pike-head?

A. From Charles Cameron.

Q. Was he along with Parker?

A. No.

Q. It was at the same time?

A. It was the day after that.

Q. What led you to go to the canal bridge at that time?

A. I went to get that staff.

Q. Did any body desire you to go there?

A. Yes, I was told by Alexander Kirby to go there and get one.

DAVID KENNOWAY—*sworn.*

Examined by Mr Solicitor-General.

Q. Where do you live?

A. In Johnstone.

Q. Do you recollect a strike of work having taken place?

A. Yes.

Q. When was that?

A. I could not tell you the day.

Q. Was it in the beginning of April?

A. Yes.

Q. About that time, do you recollect having gone out to the canal bridge, near Johnstone?

A. Yes.

www.libtool.com.cn

Q. Was that in the evening?

A. Yes.

Q. Do you recollect what day of the week it was?

A. No.

Q. Was it at the time the strike of work took place?

A. Yes.

Q. In the beginning of April?

A. Yes.

Q. Was it the first, or second, or third?

A. I cannot recollect.

Q. It was about that time?

A. Yes.

Q. Who did you see at the canal bridge, when you went out there?

A. I do not recollect that.

Q. Was there a young man of the name of M'Innis there?

A. Yes, I think so.

Q. Was there a young man of the name of Ballantyne there—Archibald Ballantyne?

A. Yes.

Q. Did you see a man of the name of Kirby there?

A. Yes.

Q. He was there?

A. Yes.

Q. You cannot come to any injury from what you say here—you understand that? Was there a man of the name of Parker there?

A. Yes.

Q. Did you get any thing when you went there?

A. Yes.

Q. What was it you got?

A. I suppose it was a pike.

Q. Had it a shaft to it?

A. Yes.

Q. Was Robert Parker, a shoemaker, there, do you know?

A. Yes.

Q. Did you see who brought them there, or who had them when you went there?

A. No, I could not tell the man; I do not know which of them had it.

Q. Was Parker about it?

A. No, I do not believe he was.

www.lhpool.com.cn

JAMES BROWN—*sworn.*

Examined by Mr Hope.

Q. You are superintendant of the police at Paisley, I believe?

A. Yes,

Q. Were you in that employment, and in Paisley, the beginning of last April?

A. I was.

Q. Had you occasion, in the course of your duty, to observe the state of Paisley about the commencement of April?

A. I had.

Q. In what situation was the town upon the 1st of April—upon the Saturday?

A. There was nothing very particular upon the Saturday; there was a general expectation——

Q. Were the people working generally?

A. Generally at work on Saturday.

Q. Were the cotton-mills in the neighbourhood working?

A. All the cotton-works in the neighbourhood, so far as I heard, were working on the Saturday.

Q. Did any change take place upon the Monday?

A. Yes.

Q. Can you state, from your own knowledge, whether the operatives generally struck work?

A. I know the operatives generally struck in Paisley.

Q. Can you speak to the cotton-mills?

A. Yes.

Q. Can you speak to the weavers in Paisley?

A. The weavers in Paisley were a great many of them in the streets, and appeared to be totally idle.

Q. I believe there are some public works going on in Paisley—do you know whether the persons employed in those works struck?

A. I know that some of the masons wrought upon the Monday, but upon the Tuesday they did not.

Q. What was the consequence of this apparent suspension of labour—was there a great confusion in the town?

A. There was considerable alarm in the town—the shops were closed; and in the public streets, upon the Monday, about the Cross, they had their window-shutters on at every part of the buildings.

Q. Did you receive any information upon the Saturday night, that led you to desire your watchmen and police to be particularly on the watch?

A. Yes, I received it on Saturday morning.

Q. Did any of those watchmen bring anything to you in the morning?

A. Not in the morning; on Friday evening a gentleman wrote to me at the police office.

Q. On Saturday night, after the watchmen were on watch, did they bring you anything?

A. They did upon the Sunday morning.

Q. What was it they brought?

A. A bill—an Address to the Inhabitants of Great Britain and Ireland, dated Glasgow, the 1st of April.

Q. Did they bring various copies?

A. They did.

Q. Is there a person of the name of Dighton in your police?

A. He belongs to the suburbs police.

Q. Did he bring anything to your office in the morning?

A. No.

Q. What distance is Johnstone from Paisley?

A. It is about three miles.

Q. In what parish is it?

A. In the Abbey parish of Paisley.

Q. How long did this state of things continue—this suspension of labour?

A. It continued till Thursday; on Thursday a great many people returned to their work.

www.libool.com.cn

Q. Can you state, from your knowledge, whether unusual precautions were taken at that time, by the civil and military authorities in the town, to preserve the public peace?

A. Yes.

Q. Were any troops marched into the town?

A. There were a great many.

Q. Was the civil power increased?

A. The civil power was augmented.

Q. Did you serve any notice on the prisoner Speirs lately?

A. Yes, I think on Saturday.

Q. Have you a copy?

A. I have not; Mr Motherwell was with me, and he has a copy. It was Mr Motherwell who served the notice.

Q. Did you sign the notice served on the prisoner?

A. Yes; I signed two—the one served on the prisoner, and the other Mr Motherwell took with him.

Q. Was the copy he had with him an exact copy of the one served on the prisoner?

A. I believe it was.

Cross-examined by Mr Grant.

Q. Did you compare the copy that Mr Motherwell had with the copy served on the prisoner?

A. I think I did not; I only read one of the copies;—I do not think I compared the two.

Q. Which did you read?

A. It is more than I can say. I read one copy, but I cannot positively swear that I read both; but it was the same hand-writing; and the occasional words that I saw, I had no reason to doubt they were both the same.

Q. You did not compare it?

A. No.

Re-examined by Mr Hope.

www.libtool.com.cn

Q. Was there any other person along with you besides Mr Motherwell?

A. No other person.

Q. Do you know what was the import of the notice served upon the prisoner?

A. I do.

Mr Grant.—I submit, we cannot have the import of the notice.

Mr Hope.—Most undoubtedly; your Lordship will observe here, that we have another witness to speak to the service of the notice; we are not bound to keep a copy of the notice; and having served a notice upon the prisoner, we may ask what that notice was.

Lord Chief Baron Shepherd.—Not unless he knows what the contents of it were.

Mr Hope.—He says he knows the contents of it; that is the question we put to him, What was that notice?

Mr Grant.—I do not think this is understood; perhaps I misunderstand it; here is a written notice, and the witness says there was a copy of it taken; and that he signed the copy; and that he read the one; but whether the original or the copy, he does not know, he did not compare them.

Lord Justice Clerk.—Did he read the one served on the prisoner.

Mr Grant.—He does not know.

Mr Hope.—Did you read the paper which was given to the prisoner?

A. After the paper was given to him by Mr Motherwell, I took it from him, and said, I will read it to you, and I read half it, and then the prisoner took it from me, and read the remainder of it.

Mr Grant.—Then it stands thus; that he saw the notice delivered to the prisoner, and then he took it out of the prisoner's hand, and read about half of it to the prisoner, when the prisoner got it back again; now, that is not reading the original.

Mr Grant.—If there was but one, the evidence would be perfect; but he saw two.

Lord Justice Clerk.—He does not mark it.

Lord Chief Baron Shepherd.—If he had actually proved that there was a copy, and that he had read that copy, then, unless that copy had been put in the fire, or lost, that copy must have been produced as the best evidence.

Mr Grant.—Will your Lordship allow me to ask whether he knows that there were two copies?

Lord Chief Baron Shepherd.—He cannot prove that, without he read them both; the very objection is, that he does not know that it was a copy; then, if he does not know it is a copy, as far as relates to his evidence, there is no such thing as a copy.

Mr Hope.—We prove the fact, that a notice was given to the prisoner.

Lord Chief Baron Shepherd.—He has proved a notice was delivered to the prisoner; now, the question is, what that contained?

A. I cannot say how it was worded precisely; but it was to produce what is now known by the name of the Radical Address, or Proclamation, addressed to the Inhabitants of Great Britain and Ireland, dated Glasgow, 1st of April.

Mr William Motherwell—*sworn.*

Examined by Mr Hope.

Q. Did you go to serve any thing upon the prisoner, James Speirs, lately?

A. I served a notice upon him.

Q. When was that?

A. It was yesterday; I beg pardon, it was on Saturday last.

Q. Who was along with you?

A. Mr James Brown.

Q. Did you preserve a copy of that notice?

A. I did.

Q. Did you compare that which you describe as a copy, with that which you served on the prisoner?

A. I did, most carefully.

www.nlsoft.com.cn

Q. Have you got that copy?

A. Yes, (*producing it.*)

Lord Chief Baron Shepherd.—It shews we need not have argued the point.

Mr Hope.—I could not tell, my Lord, that this witness had compared it.

(*The Notice was read, signed* JOHN WYLLIE, *Procurator-Fiscal, Paisley; dated the 29th July,* 1820.)

Q. Were you present when the prisoner was brought up for examination?

A. I was.

Q. Before what magistrate was the examination taken?

A. Before the Sheriff-substitute of this county.

Q. Upon his examination, did he make any declaration?

A. This is the declaration which he emitted, when brought up for examination, (*producing it.*)

Q. Was that emitted in your presence?

A. Yes.

Q. And written by you?

A. It was.

Q. Was the prisoner sober at the time?

A. I thought so.

Q. Was he in his sound senses?

A. Apparently.

Q. Was it freely and voluntarily given?

A. Quite so.

Mr Grant.—I beg that question may be otherwise put.

Mr Hope.—The point to be ascertained is, whether it was emitted freely and voluntarily; and how otherwise can I ascertain whether it was done so?

Lord Justice Clerk.—There is no other way of putting the question.

Mr Hope.—Was it freely and voluntarily emitted?

A. It was so.

Q. Was there any threat or promise held out to him at the time?

A. None whatever.

www.lihtol.com.cn

Cross-examined by Mr Grant.

Q. When this person was examined, were there any questions put to him by any person?

A. In all examinations, the Procurator generally asks the person examined some questions, and that person answers them or not as he chooses; and if he does answer, his answer is taken down.

Q. Was the examination taken, in this instance, in the ordinary way in which it is taken in criminal cases in this country?

A. To the best of my recollection, it was.

Q. Then I understand that the prisoner being brought before a magistrate, underwent a long course of interrogatories, at the instance of the Procurator-Fiscal?

A. I scarcely say so.

Q. Did he undergo a course of interrogatories?

A. He certainly underwent some interrogatories, and very often he runs on with facts, to which there are no special questions applying; and I believe it was so in this case.

Q. Did you write the declaration?

A. I did.

Q. I observe at the beginning, "Compeared James Speirs," and so on—"who being examined, declares"—does that infer that a question was asked him upon that occasion, to which he made an answer?

A. It generally happens that the person does make the declaration himself.

Q. You wrote this declaration; and I ask you, in point of fact, when, at the commencement of a declaration, you have written, "being examined, declares," whether that is meant to convey, that a question was asked the prisoner, to which his declaration was an answer?

A. He is examined to that, and his answer to that is, that he is twenty-six years of age.

Q. Being examined, means being interrogated, or asked?

A. Yes.

www.libtool.com.cn

Q. I observe here, it is written, "Interrogated, if the declarant was concerned in taking a musket from a soldier, in one of the Veteran Battalions," and so on; that, I presume, also refers to the question that was put to the prisoner.

A. Yes.

Q. And the same observation applies where the word interrogated occurs afterwards?

A. Yes.

Q. How long was he under examination?

A. I could not say; you will be able to form some idea of the length of time, from the length of the declaration.

Q. Can you recollect how long he was under examination?

A. I cannot.

Q. Was it an hour?

A. It might be an hour; very near, I dare say; but I only judge from taking the length of the writing, the number of pages.

Q. Are you sure that it did not exceed an hour?

A. As to the time, I cannot be positive, one way or the other.

Q. I observe that that is nineteen pages in length of your writing—do you suppose that you could have written those nineteen pages in the space of an hour?

A. I have no doubt but that I could do that.

Q. In taking down the examination of any person, whose examination you were employed to take down?

A. If the dictator is speedy enough, I could take down much more.

Re-examined by Mr Hope.

Q. Do you remember any thing particular in regard to this declaration? is your memory very strong about what took place at this particular examination? can you tell us whether there were many questions put to this prisoner, or whether the greater part was a voluntary statement?

A. I really think, upon recollection, it was a voluntary declaration generally; the prisoner seemed very willing to disclose what he knew; that was the opinion I formed on his examination.

www.libtool.com.cn

Q. Did the Sheriff address any caution to this prisoner?

A. He did indeed give him some admonition before he proceeded in the examination.

Q. Do you recollect to what import that was?

A. He informed him, I think, that he was not bound to tell any thing but what he chose; and, at the same time, told him, whatever discoveries he made, would not be evidence in his favour, in the event of any prosecution.

Q. Have you been present frequently at examinations taken by that gentleman, Mr Sheriff Campbell?

A. At almost every one since I have been Sheriff-Clerk-Depute.

Q. Did it appear to you that a more than usually anxious caution was given to this prisoner?

A. It did appear so to me; Mr Campbell was extremely anxious to tell the prisoner those particulars that I have mentioned.

ALEXANDER CAMPBELL, Esq.—*sworn.*

Examined by Mr Hope.

Q. Are you the Sheriff-Substitute of this county?

A. I am.

Q. Was the prisoner, James Speirs, brought before you for examination?

A. He was.

Q. Did he emit a declaration in your presence?

A. He did.

Q. Have the goodness to look at that paper, (*handing a paper to the witness.*)

A. This is the declaration.

Q. Was that declaration freely and voluntarily emitted?

A. Perfectly so.

Q. Was the prisoner perfectly sober?

A. Perfectly sober.

Q. And in his sound senses?

A. Yes.

Q. Do you remember much of the manner in which this declaration was given? was the prisoner willing to make the declaration contained in it?

A. I remember that; very willing; so much so, that I thought it necessary to caution him, that he was likely to be tried, and that he must consider what he was to answer, or whether he was to answer at all; I cautioned him so several times; in general, I do not think it necessary to do so, but in his particular case, I did particularly do so.

Cross-examined by Mr Grant.

Q. You have stated that you said it was your duty to interrogate?

A. Yes.

Q. Did you interrogate him accordingly?

A. I did inquire certainly.

Q. Did you examine him by means of interrogatories? did you put questions to him as you would put questions to a witness.

A. I certainly did, in some cases; but when I began his examination, he appeared to me very much disposed to tell the whole, much more so than I expected, and therefore I had not to inquire in the manner necessary with other prisoners, and I thought it more necessary to caution him; at least it was so in the commencement of his examination. I have not read it since.

Q. I do not impute to you that it was not properly taken, but the question is for the consideration of the Court on a new sort of trial, and it is my duty to ascertain the facts; then, in point of fact, the examination was conducted by questions being asked him, which he was desired, under the explanation you have given, to answer?

A. I have no doubt it was—it must have been so in part.

Q. Were these questions put by you, or by any body else?

A. Altogether by me—there was no professional person present—the Procurator Fiscal was not present, I think.

Q. Do you recollect particularly that the Procurator Fiscal was not present?

www.libtool.com.cn

A. My strong impression is, that he was not present; but I cannot state so very positively.

Q. How long was the prisoner under examination at that time?

A. Upon my word, I should not be able to answer that question, unless it was from seeing the length of the examination now; but, from the length of it, it must have been a good while.

Q. That is the declaration:—perhaps looking at it will refresh your memory.

A. He emitted his declaration so freely, there was no occasion to go back at all; I should think he could not undergo such an examination in less than three hours at the very least. I see there are nineteen pages of the declaration; I dare say, there was no time lost in taking it down; but a moderate calculation would state it at three hours; I dare say it would be nearer the truth to state it at four hours.

Q. And all this time the prisoner was examined in the way that you have stated, by questions put to him?

A. If I remember right, his declaration consists of different parts, not very much connected with each other. I suppose he gave an account of his going to Slates first, and another part of it is about the conversation with Mr Houstoun, about the cotton-mills, I think. I remember putting some questions to him, and that was the only point on which he was particularly questioned. I asked him some questions as to the interview between him and another person and Mr Houstoun, after they had separated from the crowd.

Mr Grant.—I do not think that I require any more to lay the foundation of my objection.

Lord Justice Clerk.—Was the declaration regularly read over to the prisoner before he signed it?

A. Certainly.

Q. Was he asked whether he had any alteration to make in it?

A. I cannot particularly say; but from the particular circumstances, and the nature of the accusation against the man, I have no doubt it was.

Q. Look at the close of it, and see whether there is not that clause?

A. I see nothing in the end of this memorandum, except a reference to certain marginal alterations.

Q. It is your practice to read it over before it is signed?

A. Certainly.

Mr Hope.—It is freely emitted by the declarant, and on being read over is adhered to by him, and signed by him, along with the Sheriff-substitute.

Re-examined by Mr Hope.

Q. You mentioned this declaration occupied a certain portion of time; did that arise from the number of questions which you put, or from the length of the statement which the prisoner thought proper to make?

A. I gave that answer merely from looking at the length of the declaration.

Q. Was that length in consequence of any particular number of questions which you put at that time, or in consequence of the prisoner giving a long statement, freely and voluntarily?

A. It was entirely, or almost entirely, from the necessary length of the narrative.

Q. Which the prisoner gave spontaneously?

A. Yes.

Q. Would you have considered you had performed your duty as a magistrate if you had omitted any part——

Mr Grant.—We cannot bear that.

Mr Hope.—Hear the question out: Would you have considered you had been performing your duty, if you had omitted any part of the narrative which the prisoner chose to give in answer to any one of your questions, however long that narrative might have been?

A. I think it would not have been doing my duty if I had done any thing else than I did.

Mr Solicitor General.—My Lord, we have omitted to call a witness, if your Lordship will allow us to call him now.

Lord Justice Clerk.—Certainly.

www.libtool.com.cn

ANDREW CALDWELL—*sworn.*

Examined by Mr Solicitor-General.

Q. Do you recollect a meeting that took place at the School Green of Johnstone?

A. Yes.

Q. When was that?

A. It was the second day of April.

Q. What day of the week was it, do you recollect?

A. Monday.

Q. It was the first Monday of April?

A. Yes.

Q. Were you at it?

A. I saw it.

Q. Do you know a man they call John Lang?

A. Yes, I do.

Q. Was he there?

A. I did not see him there.

Q. Did you see him that day?

A. Yes.

Q. Where did you see him?

A. I saw him pass the toll-road, going along to Cartside Mill.

Q. Was he along with the crowd?

A. Yes.

Q. Was that the same crowd that was at the School Green?

A. Yes.

Q. You saw that crowd go from the School Green along there?

A. Yes, I did.

Q. Did they go to the Cartside Mill?

A. Yes.

Q. How was Lang dressed?

A. He had on a jacket and a bear-skin cap.

Mr Solicitor General.—Now we move that the declaration of the prisoner be read.

Mr Grant.—My Lord, I mean to object to that.

Lord Justice Clerk.—A declaration has been proved by two witnesses, and it is proposed to be read, which is objected to.

Mr Grant.—Now, my Lord, I am to state to your Lordship objections that appear to me to be unanswerable, in point of law, against the reading this declaration. I shall do so in as few words as I possibly can; and I think, my Lords, that if I am right in my objection, which, so far as I have been able to inform myself, I think I am, I shall be able to satisfy your Lordships, without consuming a great deal of your time. We are all aware, at least those of us that are at all used to practice in the criminal courts in Scotland, and who have any knowledge of the practice in the criminal courts in England, that the confession of a prisoner in England, is on a very different footing from the declaration of a prisoner in Scotland. In Scotland, when a person is apprehended for a crime, he is uniformly carried before a magistrate, and there he is uniformly subjected to interrogation; not that I mean to say he either is generally, or ought ever to be at all entrapped into the statement of any thing which he does not willingly state; but the mode of examination is by interrogatories, and the object of the magistrate is, by all fair means, to attain a knowledge of the facts of the case; and accordingly, when the prisoner comes to be tried, the declaration is given in evidence against him; but your Lordships know that it is never held to be conclusive evidence against the prisoner, but it is received by our practice as a circumstance of evidence.

Now, I apprehend that the principle and the practice of the law of England are pretty nearly the reverse of this. I believe, that by the uniform practice in England, when a person is taken up and carried before a magistrate, accused of any crime, in the first place, he is not examined in secret. He is allowed the benefit of legal advice to protect him. He is not examined upon interrogatories. Whatever he says voluntarily, and of his own accord, may be taken down; but he is not examined upon interrogatories, with a view, (to make

use of a Scots law phrase, which is extremely expressive of what is done,) with a view to *expiscate* the truth of the matter; and accordingly the confession of a prisoner is given in evidence against him upon his trial in England, as one of the highest species of proof, instead of being, as it is with us, as I apprehend, reckoned one of the lowest species of proof, taken merely as a circumstance of evidence, upon which alone, certainly, a prisoner cannot be convicted. In England, it is received as the highest species of proof, and it has been so laid down in the very case which we are now unfortunately trying. In a case of High Treason, as your Lordships know, it has been laid down, and held by the Judges in England, that evidence of a man's confession before a magistrate, proved by two witnesses, is of itself sufficient evidence for his conviction. That is the interpretation which the statute of King William the Third has received. This is mentioned in Foster's Criminal Law, where there is a case that I am sure is familiar to your Lordships. Foster's Criminal Law, p. 241, cap. iii. discourse 1. The words of the statute of William III., as your Lordships know, are, that there shall be two witnesses to any one Treason, with this exception, "unless the party shall willingly, without violence, in open Court confess the same;" and upon the construction of that statute, a question has arisen, what shall be said to be within this exception? I had better read to your Lordships the passage from Justice Foster's book.

Lord Justice Clerk.—What edition have you got?

Mr Grant.—I am reading from an old edition; it is not my own; it is dated 1776. It is Sec. 8., but it is a very long section. "In the year 1716, at a conference among the Judges, preparatory to the trial of Francis French, at which the Attorney and Solicitor-General, who were to conduct the prosecution the next day," not a course of proceeding that I presume we should adopt now, "lent their assistance, no regard seemeth to have been paid to the authorities I have cited; for it was then agreed, that upon the foot of those acts of Edward IV. by confession is meant, only a confession upon the arraignment of the party, which, it is said, amounteth to a conviction. Evidence of a confession was holden sufficient

by the learned Judges who sat upon the Commission in the North, in the same summer, upon the authority of this opinion." Then, my Lord, what he refers to is this:—The case of a confession made willingly, and without violence, is excepted in this act, and in both the statutes of Edward IV.; but there is a difference in the wording of these statutes, which I have thought did merit consideration, so far as to warrant a different construction of them. The words of this act are, unless the party shall willingly, without violence, in open court, confess the same. The words, "in open Court," the statutes of Edward IV. have omitted. These words seem to have been inserted in order to carry the necessity of two witnesses to the overt acts, further than the statutes of Edward IV. were formerly thought to carry it; for the construction of these statutes hath been, that a confession upon an examination of the party taken out of Court, and before a magistrate, or person having authority to take such examination, proved upon the trial by two witnesses, is evidence of itself sufficient to convict, without further proof of the overt acts, for, say the books, such confession putteth the case out of the statute, and so on. Then he mentions the case of Francis Willis, in which they held, that such evidence was admissible, though it might still be a disputable point, whether a confession out of Court, proved by two witnesses, is of itself sufficient to convict.

Now, then, if your Lordships will be pleased to turn back to John Berwick's case, in the first part of Mr Justice Foster's book, p. 10, your Lordships will find this:—In the case of John Berwick, there was only one witness that proved him to have been in arms with the rebels. This witness proved that he was enrolled and reviewed as a Lieutenant in the regiment, called the Manchester Regiment, and did duty as such at Penrith and Carlisle. Two other witnesses swore, that after the surrender of Carlisle, they were ordered by the Duke to take an account of the names of the officers, and of their respective ranks in the rebel garrison; that accordingly they went to the prison where the officers were confined, apart from the common men, and took such account of them; that the prisoner, Berwick, appeared among the officers, and gave in his name to them, as a Lieutenant in the

Manchester Regiment; and then Lord Chief-Justice Willes and Mr Justice Abney were of opinion, that this declaration of the prisoner is not to be considered as a bare confession after the fact, but as an evidence of the fact itself, viz. that the prisoner did appear, and take the rank of a Lieutenant in the rebel garrison. They thought too, that a confession after the fact, proved by two witnesses, was sufficient to convict, within the 7th William III. Mr Justice Foster doubted whether this declaration, being made after the surrender, can be considered in any other light than as a confession after the fact. And with regard to a confession after the fact, he said, he never doubted whether it might be given in evidence as a corroborating proof; his doubt was, whether it being proved by two witnesses, is a conclusive evidence, or an evidence sufficient of itself to convict, without other proof; since the 7th William III. seems to require two witnesses to overt acts, or a confession in open court. Berwick, however, was convicted upon the evidence of the officers, and of the other witnesses, and was executed; and upon that, in a subsequent part, Mr Justice Foster says, "He doubts the law," which I shall humbly take the liberty of doubting also, whether the two witnesses to an extra-judicial confession would be sufficient to convict *per se* in a case of High Treason, and he says, "At any rate, it ought not to be carried further than a confession before a magistrate."

Lord Chief Baron Shepherd.—The question in the case of Berwick was this: The statute of King William says, a man must be convicted by two witnesses, or his own confession; the question was, whether a conversation, which amounted to a confession, should be taken as a confession within that statute, so as to convict him, without two witnesses; but it never was doubted but that an examination, amounting to a confession, was admissible in evidence, as corroborative evidence of other evidence in the case.

Mr Grant.—Your Lordship has not exactly taken the view with which I state this. I state this to your Lordship, in order to shew the extreme difference between the interpretation that, in Scotland, we put on a confession before a magistrate, as an examination, and the authority which

they give it in England; and although I should doubt, very humbly, because it has been so ruled, whether the confession of a prisoner before two witnesses was sufficient, yet it has been so found, and Mr Justice Foster himself is of opinion that it ought to be carried no further; but he seems to admit, that evidence by two witnesses of a confession before a magistrate, is sufficient to convict a prisoner of High Treason. Now, it is undoubted, there never was a dispute that a confession before a magistrate might be given in evidence. I beg humbly to submit to your Lordships, that the Courts in England go further, and hold it to be the best evidence, and it has been held, that two witnesses to a confession before a magistrate, shall be sufficient to convict a prisoner of High Treason, within the statute of King William, to dispense with the evidence of two witnesses to the overt act of the same Treason, and, without any other witnesses at all, to convict him *per se*; which is so totally different from the principles we apply to declarations of prisoners, that, for the safety of the subject, it is absolutely necessary that the mode of examination, when the result is to be attended with such different effects, should be very different.

Now, my Lord, I think I can satisfy your Lordships that the whole view of the law of Scotland is totally opposite to that of the law of England upon this subject. I imagine, and I believe I have the authority of Mr Hume for saying, that our mode of examination is neither more nor less than a relick of a more ancient mode of examination; that is, of question by torture, which was common in Scotland, as it was common in all the other countries of Europe; I believe all, with the exception of England; and, therefore, torture never having been a part of the law of England, the whole principle of the examinations is different; and the Court of Justiciary pays a different regard to the confession of a prisoner, from that which a Court of Law in England pays.

Without detaining your Lordships further on the subject, as I shall be followed by my learned Friend, and shall be heard in reply, I will state a case from Holt's Nisi Prius Reports, which occurred at the Durham Assizes in 1817, before my Lord Chief Baron Richards. It is also quoted in

the last edition of Phillips's Law of Evidence, which I obtained from Mr Serjeant Hullock; but I have not the last edition here myself, and cannot refer to it. This is the case, the King *v.* Wilson.—The prisoner was indicted for uttering forged notes, knowing them to be forged. There was nothing particular in the immediate act of uttering, and the question was as to the prisoner's knowledge. An accomplice was the principal witness; and to confirm his evidence, the counsel for the prosecution produced the prisoner's examination before the magistrate who committed him. It was not tendered as a confession, but as containing facts which appeared upon the prisoner's examination, confirmatory of the testimony of the accomplice. The Magistrate being examined, stated, that he held out no hopes or inducement to the prisoner; employed no threats; but that he had examined him at a considerable extent, in the same manner as he was accustomed to examine a witness. The prisoner, however, was not sworn; Richards, Lord Chief Baron, said, "I think I am not at liberty to suffer this examination to be read. No matter whether a prisoner be sworn or not; an examination of itself imposes an obligation to speak the truth. If a prisoner will confess, let him do so voluntarily; ask him what he has to say; but it is irregular in a magistrate to examine a prisoner in the same manner as a witness is examined; I must reject this examination;" and the prisoner was acquitted.

Now, my Lord, I am informed (certainly from nobody here); but I am informed, that upon the assizes for the Home-Circuit last year, a similar point was ruled in the same manner by Mr Baron Garrow; and there, if I am not misinformed, the paper was headed, The Examination of the Prisoner; and Mr Baron Garrow upon that, and upon examining into how the examination was taken, ruled that that examination, or confession, or whatever you please to call it, could not be received, ruling that point in conformity with the point which had been ruled by my Lord Chief Baron Richards.

Now, my Lord, if that be the law of England, that is the law by which this Court is to decide; and I know very well

that I am speaking now in the presence of as high authority as any that that profession in England, to which I have the honour to belong, has ever produced; and therefore I state my objection with perfect confidence, that it will receive, not only as every objection on the part of a prisoner so standing as this unfortunate man does, every attention from your Lordships, but that it will be determined with every degree of knowledge and information, which a very long practice, and other circumstances, to which I will not now allude, will give this prisoner the benefit of having bestowed on the consideration of this question. It does appear to be founded, not merely on the precedent I have stated, but in common sense, and the soundest principles of law, and the most obvious rules of humanity, because, if in Scotland you receive the declaration of a prisoner, as the lowest species of evidence; and if in England they receive it as the highest species of evidence, the principles are not only different, but opposite. You may examine in the one case, because, in that case, you do no harm; the prisoner knows the result of his examination can only be used against him as a corroborating circumstance, and a circumstance not given effect to as a very high species of evidence; and if under that false impression he is induced to give answers to questions which he would not so answer, if not under that impression, I apprehend, then, it is the bounden duty of the Court to reject any such examination, when it is tendered in evidence.

My Lord, there are some observations upon this subject, inserted in the last edition of Mr Phillips's book, published after this case in Holt, which would have been very material; but, as I have not the book, I leave the point with your Lordships, with my observations upon it, founded, not more on the nature of the thing, than in practice. I know that, not very long ago, an examination upon oath before the Privy Council, was, I believe upon one occasion, given in evidence. I am very certain, that an examination of a prisoner on oath would not now be permitted to be given in evidence.

Lord Chief Baron Shepherd.—Certainly not; therefore

Lord Chief Baron Richards is mistaken where he says that; and there is no case, that I am aware of, in which an examination before the Privy Council, on oath, (which is something like a Scotch examination,) has been received in evidence, where it would not be received in other cases; and of late years, an examination before the Privy Council has not been offered in evidence.

Mr Sandford.—My Lord, we have thought it right to offer this objection, because we consider it one of importance to the prisoner at the bar, and also to the law. We do not urge it on the ground of any fault in the magistrate, or that he has not done what is always the duty of a magistrate; but we state, that though an examination of this kind may be taken, yet that, in a case of this nature, it cannot be received as evidence against the prisoner.

In support of this objection, we submit to your Lordship, that as the forms of the procedure in this Court are the forms of the law of England, therefore the law of England must regulate every question that occurs here; and consequently, upon the authority of the case which has been stated to your Lordship, that the present declaration, being in the nature of an examination before a magistrate, cannot be received.

My Lord, my learned Friend has stated an original distinction, which he considers to exist between a declaration taken by the law of Scotland, and a confession by the law of England; there is also an exceeding difference in favour of the pannel, in Scotland, as to the form in which these declarations are received and given in evidence. Your Lordships are aware that before a declaration can be received as evidence against a prisoner, it must be previously lodged with the Clerk of the Court; and he is entitled to see it previous to his appearance in Court; that is an advantage not allowed by the law of England, or the form of proceeding here, because here we are not allowed to see the examination until it is actually produced upon trial. Now, we are not to have all the disadvantages of one mode of trial, without having the corresponding advantages attached to that mode of trial. Therefore, if by the law of England a paper of this nature could not be received in evidence, it is no answer to say, that it may

be founded upon by the law of Scotland; because then the argument to its admissibility would apply, that it had not been produced in time. My Lord, I do not wish to detain your Lordships longer by any further observation on this point, which has been so ably argued by my learned Friend; but if the cases to which we have alluded are of any authority, they rule, that a declaration of this nature cannot be received as evidence against the prisoner, having been taken by questions put to him as a witness against himself.

Mr Solicitor-General.—Is it your Lordships' pleasure to hear any thing from this side of the bar?

Lord Chief Baron Shepherd.—Go on, if you please.

Mr Solicitor-General.—My Lords, I shall detain your Lordships——

Lord Chief Baron Shepherd.—Mr Grant, I believe, in this case, the Court have no doubt that this declaration may be received in evidence, and, I confess, I myself have no doubt but it may, and I will shortly state my reasons. The difference between the law of Scotland and the law of England, with respect to that document, which, by the law of Scotland, is called a declaration, and by the law of England, is called an examination, I think is merely nominal. By the law of England, an examination is receivable against him; and, I apprehend, that if the statement of the prisoner, in either, has been voluntary, and not produced under the influence of fear, arising from threat, or the inducement of promise, or expectation of mercy holden out to him, such statement is admissible evidence against him; and I cannot help saying, that I doubt very much, and I speak with great diffidence, when I say I doubt, but I doubt very much that decision of the King *v.* Wilson, certainly by a very great and a very learned Judge, Lord Chief Baron Richards, unless there was something peculiar in the mode of putting the questions to that prisoner. If the Justice said, he examined him as he would a witness, or there was something peculiar in the mode of doing that, so as to make that examination appear to have been taken under something like an impression of fear, or of obligation to answer, or some other of those motives, which would destroy a confession, though it was from beginning to end nothing but a narrative, then I

agree in the decision; but if there were no peculiarity of that sort, I confess I cannot agree in that decision; because, if it be correct, all that has been stated in the books upon the subject of examinations, seems to me to have been mis-stated. An examination does not mean a prisoner setting out voluntarily, and saying, I desire to state a narrative of my case before a Justice of the Peace; for, in truth, that would not be an examination;—it would be something that passed at the time, perhaps, when the witnesses and the prisoner are there for the purpose of examination; but the examination of the prisoner I take to be that which he is asked by the Justice to state, either through the medium of a string of questions properly put—I do not mean questions put in such a way as to force the prisoner to give an answer, because, if it were so, it is perfectly clear that examination could not be read; and it would be equally clear that a confession, or examination, call it which you will, could not be read, though it did not consist of questions and answers, obtained by extortion from the man, by that which was to operate on his fears, or by promises; but, I take it, it is the duty of the magistrate, under the statute of Philip and Mary, and by the common law, to have a prisoner brought before him, and he may put questions to him, which the prisoner is at liberty to answer or not, as he pleases. Now, here I differ in one of the reasons reported to have been given by Lord Chief Baron Richards, for he says this, the examination of itself imposes an obligation to speak the truth, for he is sworn to do it, and he is sworn to speak the whole truth, and nothing but the truth; but I deny that the examination of a prisoner imports an obligation for him to speak the truth: It imports an obligation to speak the truth if he speaks: but I deny that it places an obligation on him to speak at all; and that is the distinction between the situation of a prisoner and a witness; for a prisoner may say, I do not choose to answer this or that question, or any other, or I do not say any thing, but I shall reserve myself to a future occasion; and that is the reason why, on examinations, the prisoner is asked whether he is willing to say any thing; if he is, the Justice has a right to put the questions to him; and he is bound to put the questions to him, though he

tells him he is not bound to answer to them. The mistake in the case, as reported, is this, namely, that the learned Chief Baron supposes that the moment the prisoner is examined, there is an obligation on him to speak; there is none by law, for he has a right to refuse:—a witness has not; because, if a witness will not answer, (if he answers falsely, that is another thing,) but if he refuses to answer, the Justice of the Peace would say, I will commit you; the Court would say the same, for he is bound to answer; the prisoner is not bound to answer at all, unless he chooses. In the case stated by Mr Justice Foster, the dispute was, whether an examination, amounting to a confession, could be taken as a substantive proof of a Treason, under the statute of King William; but there, you observe, he says, he never doubted but that the examination, (I believe that is the phrase,—I am not sure whether he says confession or examination, but if it is confession, he must mean confession, through the medium of examination,) is corroborative evidence. Hawkins says, these examinations before Justices of the Peace, in Murder and Felony, under the statute of Philip and Mary, and also examinations before a Justice of the Peace, in Murder and Treason, at the common law, or before the Secretary of State, are admissible evidence. Now, recollect how it is in Murder and Felony; the statute of Philip and Mary imposed a duty on the Justices, to take the examination of prisoners; now, it is that document, the examination, which is admitted in evidence. If the thing admitted in evidence was only a voluntary narrative, it would not be an examination under the statute of Philip and Mary; it would be like that which might be stated as a confession at any other time or place, if the prisoner chose to set off, and tell his whole story to the end, only with this addition, that being taken before a magistrate, there would be less chance of inadvertence, or carelessness, or folly, in the prisoner, than if taken by any other person.

Now, another observation of the Chief Baron—He says, it makes no difference whether the prisoner is examined on oath or not. To that I agree, if the mode of examining the prisoner not on oath, be the same as the mode of examining a witness who is on oath, for that would be compulsory exa-

mination. If the prisoner were sworn on his examination, such examination could not be produced against him; because, if he is put on his oath, he is bound to answer; and that very circumstance of the prisoner being bound to answer, and not having a right to refuse to answer the question, would immediately destroy the examination and the effect of it. Why? Because then what he said would not be a voluntary act, but it would be under the obligation of an oath, which binds him to speak the whole truth; and therefore it seems to me, that the question is not, whether the document produced be put in the shape of interrogation or of narrative, but whether the document produced contains that account which the prisoner, without being impressed by motives of fear,—I mean fear reasonably created, or by promise, has given; and whether he has given his answers voluntarily to the questions put to him. I have often seen examinations taken before magistrates, by questions and answers, and very often the answers only taken down, so as to form, through the medium of the answer, that which from beginning to end looked like narrative, without the intervention of a question; the prisoner has had it put before him, and asked if he chose to sign it, and he has done it; and I know such documents have been read in evidence; therefore the question I take to be really this, whether the document produced as the examination, has been extorted from the prisoner; because, if it has, it ought not to be received any how; but if it has not, and is not liable to any objection, either as having been given under the influence of menace or promise, then, I apprehend, in whatever shape it has been taken, if it has been read over to him, and he has voluntarily signed it as his act, it becomes admissible evidence; and you know that, in some cases, a part even of what the prisoner has stated, has been admitted to be received in evidence; as, for instance, where there has been a long examination, and only the material part taken down, it being well proved they were all the material parts, and that there was nothing omitted which could make in favour of the prisoner; where the material parts of what he has said are taken down, and afterwards read over to him, and he has signed them, without desiring

any thing else to be added, those have been read against the prisoner.

It seems to me, a little confusion arises; I do not say it has to-night, but a little confusion arises from calling it a confession; now, the document is an examination, and before it is read, nobody can tell whether it will amount to a confession or not; peradventure, and in some cases it does so happen, that that which is produced, is not a confession when taken altogether; one part has neutralized the other, and it has turned out to have no effect at all, except that some parts of it have given the prisoner an advantage, which, without that, he might not have had; therefore, in discussions of such questions, sometimes a confusion arises in not considering that the question is, whether the examination of the prisoner is to be read, to see whether it will amount to a confession or not. Now, the declaration in question appears to have been taken by questions put to the prisoner, a great part, consisting not merely of answers to the specific questions, but a great part having been a continuance, Mr Hope said, of a voluntary declaration, I will not use that term, but call it a continued narrative; but if the whole has been taken, not under the operation of fear, nor under the inducement of promise, and has been read over to the prisoner, and the prisoner has voluntarily signed it, the Court are of opinion that it is receivable in evidence.

We are not discussing whether it is evidence of a confession, but whether receivable in evidence, it may more or less corroborate the evidence that has been already given. I believe that is the opinion of the whole Court, and I wished to state my opinion, because I cannot but think that the decision referred to is such as would not be decided again, unless there was a different state of facts from those reported; we know notes are taken without considering specifically all the nice and minute parts of the case; and I doubt myself, very much, whether there must not have been something, which, from the mode of putting the questions to the then prisoner, was such as to make his answer amount to extorted answers; however, without saying whether that is so, the Court are of opinion,

that this declaration, under the circumstances, is to be received in evidence.

Lord Justice Clerk.—That is the opinion of the Court.

www.libtool.com.cn

(*The declaration was read as follows.*)

At Paisley, the twenty-ninth day of April, eighteen hundred and twenty years,—In presence of Alexander Campbell, Esq. Sheriff-Substitute of Renfrewshire:

Compeared, James Speirs, weaver in Johnstone, in the Abbey parish of Paisley, who, being examined, declares, That he is twenty-six years of age, and married: That he left Johnstone upon Thursday the sixth current, because he had heard that some dragoons had been looking for him, and he thought it as well to go out of the way, and he travelled to Ecclefechan in company with John Smillie, weaver in Slates, and the declarant has remained at Ecclefechan ever since, till he was apprehended there by a person calling himself William Crichton; that Smillie went to Carlisle last Sunday. Declares, That about noon of the said Monday the 3d current, the declarant, along with many others, attended a meeting held on the School Green in the village of Johnstone, and there was a ring formed, and the only persons within the ring were James Walker, weaver in Johnstone, Robert Parker, also weaver there, the said John Smillie, and the declarant: That Parker was chosen preses, and addressed the meeting; and Walker read to the meeting the printed bill or Address to the Inhabitants of Great Britain and Ireland, which he believes bore date at Glasgow the 1st of April current, and which contained an exhortation to the people to desist from working until a change of government should be effected, and which bill or Address the declarant saw Walker take down from the gate of the Chapel of Ease in Johnstone, where it had been posted up: That a little man, whom the declarant did not know, also addressed a few observations to the meeting; but the declarant himself did not, as he thinks, address the meeting, or at least he does

not remember of having done so: That the only subject which the declarant heard spoken of at this meeting, except the said printed bill or Address, was a proposal about stopping such of the cotton-mills in the neighbourhood as had not already stopped: That it was carried by the voice of the meeting, that they should go and stop the cotton mills; and he thinks the proposal was so carried by the people at the meeting crying they would all go: That they did accordingly go first to the cotton mill called the Hagg Mill, of which Mr William Houstoun is understood to be the owner; and having come to the mill, they drew up in a body, and the declarant, with some others, went to the door of the mill, and the people who were drawn up called out to cease working, and the declarant, as he thinks, told Mr Stevenson, the manager of the said mill, that as the people (meaning the people assembled to stop the mill,) seemed to be enraged, it would be prudent for Mr Stevenson to cause the mill to be stopped: That Mr Stevenson, as the declarant believes, did thereupon go into the mill, and order those workers who remained at work to leave the mill, and the declarant saw these workers come out accordingly: That when the declarant spoke to Mr Stevenson as aforesaid, part of the workers had previously quitted their work, and come out in consequence of the people coming to the mill as aforesaid; and it was because the people seemed to be more irritated at those that still remained working in the mill, that the declarant advised Mr Stevenson as above-mentioned: That the Hagg Mill is about a quarter of a mile from Johnstone: That the people with whom the declarant had gone there, joined, as he thinks, by a number of others from different quarters, next proceeded to Cartside Cotton-mill, which is also understood to belong to Mr William Houstoun, and which is another quarter of a mile distant from the Hagg Mill: That the declarant was somewhat behind the body of the crowd when they arrived at Cartside Mill; and when he joined them, he only remained a very few minutes with them, and while he so remained, he saw some of the masters, or subordinate managers, speak to some persons among the crowd, but the declarant did not wait to see what was the result,

but went to a public-house near Cartside to take some spirits with a man with whom he forgathered among the crowd, and whose face the declarant knew, but whose name, or trade, or residence, he did not know: That the declarant was invited by this person to take some spirits with him as aforesaid, and he paid for the whole of the spirits, for the declarant had no money: That when the declarant saw the crowd leaving Cartside Mill and going back to Johnstone, he joined them, and after keeping by them till they came a certain length into the village of Johnstone, he left them and went to his father's. Declares, That previous to the meeting at the School Green, the declarant happened to see the said James Walker, accompanied by another person, whom the declarant did not know, go up and speak with Mr William Houstoun before-mentioned, in Collier's-street of Johnstone; the part of said street where this interview took place being about a stone-cast from another mill, belonging, as is understood, also to Mr Houstoun, and which is commonly called the Old Mill: That the declarant made up to Walker and Mr Houstoun: That the declarant did not hear all that passed, but he heard, even before coming close to them, that Walker and Mr Houstoun were talking about stopping cotton mills; and also the declarant did not hear distinctly what Walker said—he understood, from what he did hear, that Walker wanted Mr Houstoun to stop his mills; and the declarant overheard Walker say something to Mr Houstoun about the Provisional Government; and on his mentioning this, Mr Houstoun laughed, and turned about and went away, and it was only then that the declarant got close up to the place where he heard Walker had been speaking: That the declarant left Walker without asking him any questions concerning this interview with Mr Houstoun, and without learning who the person was that accompanied Walker: That he thinks this interview between Walker and Mr Houstoun took place between ten and eleven o'clock of the forenoon of the said Monday. Declares, that about ten o'clock of the night of Saturday the first day of April current, the declarant, having gone home to his own house after having been out of it for half-an-hour or thereby, found that a copy

of the printed Address to the Inhabitants of Great Britain and Ireland, before-mentioned, had been left during said absence with the declarant's wife; and she told the declarant that it had been left with her by one Alexander Cairdie, weaver in Johnstone, a neighbour of the declarant's: That the declarant was not informed by his wife or by Cairdie, of any purpose for which the said printed paper had been so left, nor did the declarant expect that any such paper was to come to him, although he had previously heard a common rumour that there was to be a strike of work on Monday the 3d of April. Being now shewn a printed paper, entitled "Address to the Inhabitants of Great Britain and Ireland, dated Glasgow, April 1st, 1820," and bearing to be "by order of the Committee of Organisation for forming a Provisional Government," declares, That the said paper is similar to that which the declarant received as aforesaid, and the declarant now subscribes the said document as relative hereto: That the declarant read the said Address in his house that night when he received it, but he does not recollect of having carried it out of his house that night, nor of any person having called upon him that night to see it: That somebody sent for the Address to the declarant's house on Sunday morning the 2d instant, and got it; but whoever it was that so sent for it and got it, it was never returned to the declarant: That the declarant does not recollect of having had any conversation whatever with Cairdie concerning that Address: That the declarant had been in Paisley on the forenoon of that Saturday, delivering some cloth at the warehouse of Mr Strathearn, his employer, and he called upon John Neil, weaver in Maxwelton-street of Paisley, at his house, and probably at his shop also, and afterwards met with Neil on the street, although he had not seen him when he called: That the declarant had no conversation with Neil on this occasion upon political matters, but called upon him purely for civility: That upon Sunday, the 2d of April current, the declarant employed himself in walking with John Smillie before-mentioned, to Horwood, and then back again to the village of Slates, where they met with Alexander Robertson, weaver there, who, some time before

that, had been taken up and imprisoned in Glasgow, in consequence, as was reported, of his being at a meeting of delegates there: That the declarant saw one of the said printed Addresses in a shop window in Slates on that occasion: That he saw and spoke with some other Slates people, and returned to his own house in the evening. Declares, that upon the three following days, viz. Monday, Tuesday, and Wednesday, the declarant abstained from working, and merely employed himself in daundering about Johnstone and its neighbourhood; and he remained idle till he set out for Ecclefechan on the Thursday. Interrogated where the declarant was on Monday night the 3d of April current, when his house was searched by a party of officers, declares, That he went and slept with one Macdougall a cotton-spinner, at the cotton-mill at or near Johnstone, commonly called Campbell's Mill. Declares, That the declarant was a soldier in the 26th regiment of foot, and was discharged from that regiment about years ago. Denies having had any conversation with John Fraser, school-master in Johnstone, or with any person in his presence respecting the said Address, or its supposed consequences; but on recollection, he thinks it was Fraser who sent to the declarant's house for said Address, and which was never returned to the declarant after Fraser had got it; and the declarant does not know how Fraser came to understand that the said Address was in the declarant's possession: That the declarant saw, and along with others read, a copy of said Address, which was posted up at what is called Widow Johnstone's corner, in the village of Johnstone, but he does not recollect of having made any observations thereon to the by-standers. Declares, That the declarant belonged to the First Union Society, in Johnstone, but was not an office-bearer therein, neither did he give any attention to who might be the office-bearers; and their meetings were sometimes held in one place and sometimes in another; and he thinks the last time he attended a meeting it was in the open street. Declares, That he attended the public county meeting held at Johnstone, on the subject of parliamentary reform, in the beginning of winter last, but was not one of

the speakers, although he got upon the hustings; and he also attended various public meetings connected with some business, at Meikle Rigg's Muir, near Paisley—all which he declares to be the truth.

This declaration, consisting of this and the eighteen preceding pages, with the marginal additions on page fifth, ninth, and thirteenth, written by William Motherwell, Sheriff-clerk Depute of Renfrewshire, is freely and voluntarily emitted by the declarant, and on being read over, is adhered to by him, and signed by him, along with the Sheriff-substitute, examinator at place and date first above written, before the witnesses—James Brown, Superintendant of Police in Paisley; William Crichton, Corporal of Police for the New Town of Paisley; and the said William Motherwell, eight words delete before signing.

(Signed) JAMES SPEIRS.
ALEXANDER CAMPBELL.

JAMES BROWN, Witness.
W. MOTHERWELL, Witness.
WILL. CRICHTON, Witness.

Mr Hope.—Now, we will read the Address.

Mr Grant.—Which of them? do you read the same as the prisoner refers to in his examination?

Mr Hope.—Yes, the same paper.

Mr Grant.—I think they are at liberty to read the Address, it being referred to in his own declaration. I do not wish to make objections where I think I have no cause.

(*The Address was read as follows.*)

ADDRESS TO THE INHABITANTS OF GREAT BRITAIN AND IRELAND.

"*Friends and Countrymen*,—Roused from that torpid state in which we have been sunk for so many years, we are

at length compelled, from the extremity of our sufferings, and the contempt heaped upon our petitions for redress, to assert our rights at the hazard of our lives, and proclaim to the world the real motives which (if not misrepresented by designing men, would have united all ranks) have reduced us to take up arms for the redress of our common grievances. The numerous public meetings held throughout the country has demonstrated to you that the interests of all classes are the same. That the protection of the life and property of the rich man is the interest of the poor man; and in return, it is the interest of the rich to protect the poor from the iron grasp of despotism; for when its victims are exhausted in the lower circles, there is no assurance but that its ravages will be continued in the upper; for once set in motion, it will continue to move till a succession of victims fall. Our principles are few, and founded on the basis of our constitution, which were purchased with the dearest blood of our ancestors, and which we swear to transmit to posterity unsullied, or perish in the attempt. Equality of rights (not of property) is the object for which we contend, and which we consider as the only security for our liberties and lives. Let us shew to the world that we are not that lawless sanguinary rabble which our oppressors would persuade the higher circles we are, but a brave and generous people, determined to be free. Liberty or Death is our motto, and we have sworn to return home in triumph, or return no more!—Soldiers! shall you, countrymen, bound by the sacred obligations of an oath to defend your country and your king from enemies, whether foreign or domestic, plunge your bayonets into the bosoms of fathers and brothers, and at once sacrifice at the shrine of military despotism to the unrelenting orders of a cruel faction those feelings which you hold in common with the rest of mankind? Soldiers, turn your eyes towards Spain, and there behold the happy effects resulting from the union of soldiers and citizens! Look to that quarter, and there behold the yoke of hated despotism broke by the unanimous wish of the people and soldiery, happily accomplished without bloodshed; and shall you, who taught those soldiers to fight the

battles of liberty, refuse to fight those of your own country? Forbid it, heaven! Come forward, then, at once, and free your country and your king from the power of those that have held them too too long in thraldom.—Friends and countrymen, the eventful period has now arrived when the services of all will be required for the forwarding of an object so universally wished, and so absolutely necessary. Come forward then, and assist those who have begun in the completion of so arduous a task, and support the laudable efforts which we are about to make, to replace to Britons those rights consecrated to them by Magna Charta and the Bill of Rights, and sweep from our shores that corruption which has degraded us below the dignity of man. Owing to the misrepresentations which have gone abroad with regard to our intentions, we think it indispensably necessary to declare inviolable all public and private property; and we hereby call upon all Justices of the Peace, and all others, to suppress pillage and plunder of every description, and to endeavour to secure those guilty of such offences, that they may receive that punishment which such violation of justice demands. In the present state of affairs, and during the continuation of so momentous a struggle, we earnestly request of all to desist from their labour from and after this day, the 1st of April, and attend wholly to the recovery of their rights, and consider it as the duty of every man not to re-commence until he is in possession of those rights which distinguish the freeman from the slave, viz. that of giving consent to the laws by which he is to be governed. We therefore recommend to the proprietors of public works and all others, to stop the one and shut up the other, until order is restored, as we will be accountable for no damages which may be sustained, and which, after this public intimation, they can have no claim to. And we hereby give notice to all those who shall be found carrying arms against those who intend to regenerate this country, and restore its inhabitants to their native dignity, we shall consider them as traitors to their country and enemies to their king, and treat them as such.

"By order of the Committee of Organization for forming a Provisional Government, Glasgow, 1st April, 1820.

"Britons! God, Justice, the wishes of all good men, are with us; join together and make it one cause, and the nations of the earth shall hail the day when the standard of Liberty shall be raised on its native soil!"

www.tibtool.com.cn

ALEXANDER CAIRDIE—*called, but did not appear.*

ANGUS CAMERON—*sworn.*

Examined by Mr Hope.

Q. Did you serve any notice upon this person, Alexander Cairdie?

A. Yes.

Q. You subpœna'd him?

A. Yes.

Q. Did you find him at his house?

A. No.

Q. Where did you receive information that he lived?

A. At his father's at Johnstone.

Q. Were you oftener there than once?

A. Only once.

Q. What information did you receive about him?

A. They said he was away from home, and they could not tell where he was; I left the summons in the hands of his father.

Mr Hope.—There is another officer, my lord, but it is not necessary—did you make inquiries about him?

A. Yes.

Q. And could not learn any thing about him?

A. No.

Lord Chief Baron Shepherd.—You will call him upon his subpœna; what is proper to be done upon it will be to be considered hereafter.

Lord Advocate.—We have closed the proof on the part of the Crown.

Lord Justice Clerk.—Then I think this is the proper time to adjourn. Before we can proceed with the trial, we must have some little refreshment by sleep and otherwise; therefore I apprehend this is the proper time for the jury to adjourn. Proper care will be taken of them where they are going, and we will proceed to-morrow morning with the investigation; we will make the hour ten o'clock.

At twelve adjourned to to-morrow morning, ten o'clock.

www.libtool.com.cn

PAISLEY CHURCH.

Wednesday, August 2, 1820.

(SECOND DAY.)

Mr Sandford.

May it please your Lordships—Gentlemen of the Jury, There are no cases that involve the question of life and death, which the counsel upon whom the duty has devolved of conducting the defence, must not view with anxiety and fear. In the present case, that anxiety is greatly increased by the novel nature of the present proceedings, and by the nature of the crime of which the prisoner at the bar here stands accused. He is, Gentlemen, indicted as having been guilty of the highest crime which is known in the State—of a crime which is truly said to include almost every other; for it is evident, that where treason is committed, and where rebellion is even partially successful, vent must be given to human passions and to human iniquity which cannot easily be restrained. Gentlemen, my duty is, therefore, an arduous one, and yours is not less so—you are bound on the one hand by your oaths, to protect the country from the consequences of treason and rebellion, if that treason is proved; and on the other hand, you are bound to protect the liberties of the country, and every individual in it, against the law of treason being strained, and the prisoner at the bar found guilty by inference and construction.

Gentlemen, the present are cases which a jury is bound to view with peculiar jealousy—in them the State is the prosecutor—against the prisoners all the legal talents at

the bar are generally employed; and at the same time, if the law is strained beyond its proper limits, every danger to the *liberties* of the subject may be feared.

Gentlemen, this has been the view of every legal philosopher—Judge Blackstone states, "As this is the highest civil crime which, (considered as a member of the community,) any man can possibly commit; it ought therefore to be the most precisely ascertained. For, if the crime of High Treason be indeterminate, this alone, says the President Montesquieu, is sufficient to make any government degenerate into arbitrary power." Here the opinion of President Montesquieu is founded upon, one of the greatest philosophers of the day, and the learned Judge goes on to observe, "And yet, by the ancient common law, there was a great latitude left in the breast of the Judges to determine what was Treason or not, so whereby the creatures of tyrannical princes had opportunity to create abundance of constructive treasons, that is, to raise, by forced and arbitrary constructions, offences into the crime and punishment of treason which never were suspected to be such." These observations, Gentlemen, I request you to carry along with you in the course of the present investigation.

In order to define what Treason is, the statute of Edward III. which has already been quoted to you, was enacted. Lord Coke observes, upon that statute, that "except it be *Magna Charta*, no other Act of Parliament hath had more honour given unto it by the King, Lords, spiritual and temporal, and the Commons of the realm for the time being in full Parliament, than this Act concerning Treason hath had." Lord Coke states, that in after times, all lawyers, and every individual in the land, had concurred in calling that Parliament Benedictum Parliament, the Blessed Parliament; and so it was, for, along with Magna Charta, that act was the foundation on which the British liberties have been raised. Gentlemen, that statute enacts, that there are two modes of Treason, the one is compassing and imagining the death of the King, and the other is the levying war against the King; of either of those Treasons, a prisoner who is accused, must be *provably* attainted,

that word *provably* being of very great consequence for you to attend to.

Lord Coke states, that "in this branch four things are to be observed; first, this word *provably*, that is, upon direct and manifest proof, not upon conjectural presumptions or inferences or strains of wit, but upon good and sufficient proof; and herein the adverb *provably* hath a great force, and signifieth a direct and plain proof; which word the King, the Lords, and Commons in Parliament, did use, for that the offence was so heinous, and was so heavily and severely punished as none other the like; and therefore the offender must provably be attainted, which words are as forcible as upon direct and manifest proof. Note, the word is not *provably*, for then *commune argumentum* might have served, but the word is *provably* be attainted."

Lord Hale also states, that "compassing or imagining singly of itself, is an internal act, and without something to manifest it, could not possibly fall under any judicial cognizance, but of God alone; and therefore this statute requires such an overt act as may render the compassing or imagining capable of a trial and sentence by human judicature." Gentlemen, these words show to you that the overt act must be such as to afford conclusive evidence of the guilty intention of the mind; without such guilty intention no act in itself can be culpable, *actus non facit reum nisi mens sit rea;* the act does not make the person guilty, if the mind itself is not culpable. Therefore you must be satisfied that the act founded upon in proof of the Treason arises from intention and desire to raise rebellion in the state, either to compass the King's death, or to levy war against him.

Gentlemen, as instances what those overt acts are, which, under the charge of compassing and imagining the death of the King, are considered sufficient proof of the Treason, I have to state to you, that conspiring for the death of the King may be proved, either by evidence of an actual conspiracy to that effect, or by proof of certain acts which are held in law to evince the same intention: thus the charge may be proved by imprisoning the King, or taking steps for

that purpose, because, as Foster observes, "the distance between the prisons of princes and their graves is short." In the same manner, where there is a conspiracy to depose the King, this is held to be an overt act of compassing his death; to levy war is compassing the King's death, because no one can levy war without putting his life in danger. Compassing to levy war against the King's person is likewise an overt act of compassing his death; but it must be made out, that it is not a compassing for the purpose of bringing about any general measure, such as removing all inclosures, or changing the religion of the country, but a compassing to levy war in order to compel the King to change his measures, or to do some act generally.

www.hbook.com.cn

Mr Justice Foster states here, that "levying war is an overt act of compassing; and *under the limitations* stated in the next chapter, conspiring to levy war likewise is an overt act within this branch." The author here alludes to certain limitations to be stated in the next chapter; and therefore, that you may have before you what is such a conspiring as may be founded on to prove the compassing, I shall state to you the limitations alluded to in the next chapter.

Gentlemen, Judge Foster goes on to state the two modes of levying war;—the first, where there is a direct levying of war, by raising troops and marching in battle array against the forces of the King; he then proceeds to state what is a constructive levying of war, where the parties do not appear with all the pomp and circumstance of war, but where they are marching with weapons to bring about some general purpose by force; for instance, he states, that "Insurrections in order to throw down all inclosures, to alter the established law or change the religion, to enhance the price of all labour, or to open all prisons; all risings in order to effect these innovations, of a public and general concern, by an armed force, are, in construction of law, High Treason, within the clause of levying war; for though they are not levelled at the person of the King, they are against his Royal Majesty; and, besides, they have a direct tendency to dissolve all the bonds of society, and to destroy

all property and all government too, by numbers and an armed force." Here there is no dispute that such a rising as this, is a levying of war, which would render the person liable to the pains of High Treason, who is proved to have been guilty of it; but he immediately states in the very next section, "But a *bare conspiracy* for effecting a rising for the purposes mentioned in the two preceding sections, and in the next, is *not an overt act of compassing the King's death*; nor will it come under any species of Treason within the 25th Edward III., unless the rising be effected, and in that case the conspirators, as well as actors, will all be equally guilty; for in High Treason of all kinds, all the *participes criminis* are principals."

Now, Gentlemen, Judge Foster, though the highest authority on the subject of the laws of Treason, is not the only authority who states the law thus. The same doctrine is laid down by every legal authority on the subject of Treason; and I would challenge the learned Counsel for the Crown to produce one authority in which that doctrine is not supported. It is laid down by Lord Hale, in a passage which I will read presently. East, in his Pleas of the Crown, states, "Lord Hale, indeed, in his summary, speaking of this head of Treason, says, conspiring to levy war is no overt act, unless levied, because it relates to a distinct treason." Then he goes on, "This doctrine is true if confined to a constructive levying of war, such as to pull down inclosures, to lower the markets or the like; but the reason assigned is a bad one, for the levying war against the King is not in all cases a distinct Treason. If a war be levied against his person, it will equally fall within this branch of Treason as an overt act of compassing his death;" therefore, you see that Mr East states it as law, that conspiring to levy a constructive war is not Treason. Gentlemen, I may read you an authority which is certainly the highest we have in this country, upon all points of criminal law, namely, that of Hume, in which he says, "It may be observed respecting those constructive ways of levying war which have no immediate relation to the person or government of the King, that the bare conspiracy to engage in them is *not an overt act of compassing the King's death*, as it is where

the intended war is to dethrone, imprison, or constrain the King, or to have any power over him."

Gentlemen, the passage in Lord Hale, which I could not before find, is this: "An assembly to levy war against the King, either to depose, or restrain, or enforce him to any act, or to come to his presence, to remove his counsellors or ministers, or to fight against the King's lieutenant or military commissionate officers, is an overt act proving the compassing of the death of the King, for such a war is directed against *the very person of the King*, and he that designs to fight against the King cannot but know, at least, it must hazard his life; such was the case of the Earl of Essex and some others." This shews the distinction that exists between the levying war against the person of the King, and the constructive levying of war where the insurrection is purposed to accomplish some general object.

But examples are to be found in the history of the last century which will distinctly shew the nature of the difference that exists between the actual and constructive levying of war against the King. You all know that when Prince Charles landed in this country, he collected an army around him, and levied war. Now, every one who joined his standard was guilty of an overt act of compassing the death of the King. Again, during the reign of George I., a body of people assembled in London, and proceeded, with great tumult and violence, to pull down all the meeting-houses of the dissenters. They thus interfered with a general law of the state, and were, under the *construction of law*, considered guilty of levying war. But while, in the first case, the mere conspiracy was an overt act of Treason, it would not have been so in the latter; for the law in such a case requires the design to be actually carried into execution. So that the conspiracy alone is not an overt act of compassing the death of the King.

Now, having made these explanations, I must request you, Gentlemen, to look at the indictment. We there find four counts or charges of High Treason; the first two are under the statute of Edward the Third, which was read to

you, and the next two are stated to be under the statute of the 36th of George the Third, a statute made in the reign of the late King, after an attempt had been made upon his person. Now, Gentlemen, I have already explained to you what has been held, under the statute of Edward the Third, to be an overt act of compassing the King's death, and what I have now to submit is this, that there is nothing in the statute of the 36th George III., on which the two last counts in this indictment are framed, which at all alters what was the previous law of the land. Gentlemen, I cannot lay down this on higher authority than that of the late Chief Justice of England, Lord Ellenborough. In his charge in the case of Watson, he states, "There has been another statute lately passed, namely, in the 36th of the present King, not so much enacting any new Treasons, as declaring those things to be substantive Treasons which had been by various constructions, from time to time, made upon the statute of the 25th Edward III., deemed the strongest and most pregnant overt acts of several Treasons specified in that statute." In this passage, therefore, Lord Ellenborough fixes, that the counts in this indictment framed upon the last statute are not new Treasons, but are only substantive Treasons, of what were formerly overt acts under the statute of Edward the Third.

He afterwards goes on to say, "These four charges,"—the indictment was exactly framed in the same words as the present,—"are competently framed upon the language of the statute of 25th Edward III., and 36th George III., which latter statute is not *directly introductory of any new law on the subject of Treason*, except inasmuch as it makes, in certain instances, that which was before evidence, in the way of overt acts, of the crime of Treason, under the 25th Edward III., in future substantive Treasons of themselves, under the statute of the 36th George the Third."

Gentlemen, this law was likewise laid down in the speech of the learned Counsel for the Crown on that occasion. Gentlemen, in that speech it is stated: "The second and the fourth counts are founded upon a later statute, the 36th of the present King, chapter 7, which, though it has enact-

ments peculiar to itself, and different in terms from the statute of Edward III., yet does not, in my mind, very materially alter the law of Treason, except in one respect, because there is nothing, as it appears to me, stated in that statute of the 36th of the King, as far as relates to this case, which, though stated as Treason, as substantive Treason, would not, if committed, have been an overt act, manifesting such Treasons as are stated in the statute of Edward the Third."

Now, Gentlemen, if I have succeeded in shewing you that a conspiracy to levy a constructive war against the King was not an overt act of compassing the King's death, under the statute of the 25th Edward III., neither is it now a substantive Treason under the statute of the 36th George III.; and, Gentlemen, I think that the very words of the statute are sufficient to shew that the distinction which I have now drawn was taken by the framers of the statute at the very time it was enacted. The statute enacts, (after the preamble stating that an attempt had been made upon the person of the King,) "That if any person, after the passing of this act, shall compass, imagine, invent, devise, or intend death or destruction, or any bodily harm tending to death or destruction, maim or wounding, imprisonment or restraint of the person of the King, his heirs and successors, or to deprive or depose him or them from the style, honour, or kingly name of the Imperial Crown of this realm, or of any other of his Majesty's dominions or countries, or to levy war against his Majesty, his heirs, and successors, in order, by force or constraint, to compel him or them to change his or their measures or counsels." Now, these are the words of the statute on which the count of this indictment is framed; it is framed upon the words: "To levy war against his Majesty, his heirs and successors, within this realm, in order, by force or constraint, to compel him or them to change his or their measures or counsels." After this, the statute proceeds to devise what is a new Treason, but upon which this indictment is not framed, and therefore it does not at present come under your consideration. The new Treason is in these words, separating it from the

first Treason; "Or in order to put any force or constraint upon, or to intimidate or overawe both Houses, or either House of Parliament." Now, Gentlemen, if to conspire to levy a force in order to overawe both Houses of Parliament had been an overt act of compassing the King's death, there would have been no use in putting it in as a substantive and distinct Treason in this act, because it would have fallen under the first part of the statute, making it a Treason to levy war against the King, in order to compel him to change his measures; therefore, it is evident that a conspiracy to levy war in order to overawe both Houses of Parliament, and of course to make them pass any Act of Parliament that the conspirators may think necessary, is not an overt act of compassing to levy war against the King in order to compel him to change his measures. The Treasons are completely distinct; they are separated by the very act on which this indictment is founded, and if all that is proved to you is, that there was a conspiracy to levy a force to overawe both Houses of Parliament, or to force them to pass an act, you cannot find that was a conspiracy to compass the King's death, or to compel him to change his measures; it is evident that the intention of the legislature was to make it a substantive Treason, to enter into a conspiracy to levy war against the King as an individual, to force him, in his own person, to go into certain measures, or to change his counsellors, but that it was not the intention of the legislature, under these words, to comprehend a conspiracy to raise a force to alter any of the established laws of the country. I have shewn you that to raise a force to alter those established laws, is a constructive levying of war, which is not a levying of war directed against the King's person, therefore it must be made out to you clearly and distinctly, that there was a conspiracy on the part of the prisoner, and others, to levy war to attack the King in his person, to compel him to alter his measures or change his counsellors, or to compel him to consent to an improper law, before you can find him guilty under the fourth count of this indictment. Gentlemen, it was stated by the learned Solicitor-General, in opening this case, that it was the intention

of the conspirators, among whom the prisoner at the bar was one, to levy war for the purpose of obtaining a reform in Parliament. Now, that is a conspiracy to levy war to alter one of the laws of the country, but it is not a conspiracy to levy war to compel the King to change his measures or counsels, because the obtaining Universal Suffrage or Annual Parliaments does not depend on the King, but on the Legislature alone.

Gentlemen, the arguments which I have now stated to you shortly, will be much better and more strongly stated to you by my learned Friend who is to follow on the same side. It is now necessary that I should call your attention shortly to the facts of this case. I shall not detain you by going over the evidence at length, because it is not my duty at present to do so; my duty is shortly to open to you the case of the prisoner at the bar, and it will be for my learned Friend to sum up and make his observations at length on the evidence.

Gentlemen, when I heard this case last night, I certainly considered, from the immense mass of evidence which was floating in my mind, that a much stronger case had been made out against the prisoner at the bar, than from sifting that evidence, and laying aside all those parts which appear useless and unnecessary, I can find. Gentlemen, the whole case, as far as I can make it out on the part of the Crown, is this: that upon the Saturday, the first of April, the prisoner was in possession of a copy of the treasonable Address which has been read in evidence before you;—that on the Monday morning, he was found with a crowd at Mr Houstoun's mill, and then he and another had some conversation with Mr Houstoun with regard to stopping the mills;—that from that he attended a meeting, at twelve o'clock in the forenoon, at the School Green, where he is proved to have been. Some of the witnesses depone that he spoke a few words, but none of them depone to what these words were; and it is evident that, in any other respect, he was not an active party at the meeting; but a treasonable Address was there read and commented upon by some person present. The prisoner is then

stated to have gone to the Hagg Mill, which was stopped; and from that period you know nothing more about him, except the admission in his declaration, that he went into a spirit-shop whilst the mob were at Cartside Mill, and afterwards proceeded on his road without again joining the mob; there is no further evidence laid before you. Now, Gentlemen, it is on this case, slight as it appears to be, that the Counsel for the Crown call upon you to return a verdict, finding that the prisoner at the bar is guilty of High Treason. They do not prove that he was any otherwise engaged in the mob, than having been among them, as many unconcerned spectators might have been; they merely prove his presence at the stoppage of the Hagg Mill, and his presence upon the field where the meeting was, and that is the whole that has been—I believe I am stating it correctly when I say, that is the whole that has been laid in evidence before you.

Now, Gentlemen, let us go to the beginning of this day, and observe what acts the prisoner has been guilty of, which are to be found by you to be overt acts of High Treason. The Counsel of the Crown have not proved that there was any particular conspiracy, but they wish to connect the prisoner with a general conspiracy, which is said to have arisen in the publication of the treasonable Address. But, Gentlemen, the mere presence of a person, when a conspiracy is entered into to depose the King, is not of itself an overt act, which could justify any Jury in finding him guilty of High Treason. It is admitted by every law authority, that unless this presence is followed out by some other act, the individual may be guilty of misprision of Treason, from his not stating what that consultation was; but his mere presence will not make him guilty of High Treason, much less will it do so in the case of a tumultuous assemblage, where there might be many parties not aware of any single object that the mob may have, who might have been there merely as spectators, or urged by curiosity to know what was going on.

Now, we will lay it in evidence before you, that curiosity was the motive which first induced the prisoner to join the mob on the Monday morning. We shall prove, that the only

active share he took in the morning was, upon seeing the crowd jostling and pushing Mr Houstoun, when he said, that it was a shame to insult Mr Houstoun; and that if they wanted any thing, they ought to send persons to speak to him. It will be established, that after this, although a person of the name of Walker was chosen to speak to Mr Houstoun, he, Speirs, never said a single word to Mr Houstoun, nor took any active part in the consultation; he was undoubtedly a witness to what was said; he heard the caution, intended to be friendly, which that man, Walker, was giving to Mr Houstoun, when he advised him, that if he did not shut up his mill, the Provisional Government would not pay any damages his property might receive; but he never said a word that induced Mr Houstoun to think he took an active part in the proceedings of the meeting. To this effect that gentleman has declared; and do any of the parties force him to shut up his mill? No. Upon his not taking the proffered advice, and saying that he had no wish to make any claim for damages on the Provisional Government, they all retire, and leave him in peace; you know nothing more of them, except from the statement of Mr Campbell, that as they were going away, the prisoner at the bar said, "Let the friends of freedom meet at twelve o'clock." Then you find him at this meeting, among hundreds of people also assembled; there is no proof that he was connected with Walker, in tearing down the Proclamation, and in the reading it at the meeting; there is no proof that he made any treasonable declaration or speech at that meeting; the whole that is stated by any one of the witnesses, and even by Smith, who seemed to go as far as any man could do, to convict him; he thought the whole of the four spoke, but he did not know whether Speirs spoke or not. Now, Gentlemen, we shall prove that Mr Campbell was mistaken when he thought the prisoner used the words he attributed to him, for they were spoken by another individual; and those around did not hear Speirs say a single word, but will testify that the expressions were used by Walker; we shall also prove, by the evidence of numbers present, that instead of being one of the original formers of this meeting, Speirs was accidentally in the front of the crowd,

and was forced in by the crowd, along with the three men who took the lead; and not a single person who was there present heard him speak. I do not call these witnesses to disprove what other witnesses may have said, as to his addressing a few words to those around him, but to shew that he took no active part in the meeting, and can never be viewed as a ringleader in the attempt to stop the works.

Gentlemen, on going to the Hagg Mill, it will be shewn, that Speirs was not with the mob, but remained at some distance behind, following, evidently without any further intention than that of seeing what was going to take place; and, Gentlemen, it is rather an extraordinary thing, that the only interference which Speirs seems to have taken at the Hagg Mill, was that of preventing the mob from committing any outrage. It is stated by some of the witnesses, that a person said, "Send away that old man, and the crowd will retire quietly." I believe the proof will shew that it was Speirs who said so; and you therefore have it in evidence, that he intended to prevent any outrage from being committed on these mills, and accordingly desired Stevenson, the overseer of the work, to send away that old man, lest the mob should do any damage to them.

Then, Gentlemen, we shall shew that the prisoner at the bar, instead of proceeding to the Cartside Mill with the mob, went along with a friend to a house in the neighbourhood. Now, I ask, was this the action of an active leader in a treasonable conspiracy against the state? Is it credible that, if anxiously employed in furthering the work of treason, the prisoner would so carelessly have left it uncompleted? Does not the fact prove, on the contrary, that his presence was the result of idleness and curiosity, and that he had no idea or intention of engaging in the plans ascribed to him?

You have heard it said, that other mills in the neighbourhood were stopped; but I need scarcely observe to you, that, whether that statement is true or false, it can have no effect upon your verdict in the present case, as the prisoner was no party to such proceedings.

Now, Gentlemen, there is only one other point to be al-

luded to. It is the last with which I shall think it necessary to detain you, and regards the proof to be brought as to the prisoner's previous character. Persons who have known him for many years will bear testimony to his sober, peaceable, and industrious conduct; they will declare that he was not a man likely to engage in those treasonable designs that are imputed to him; and, where a doubtful case exists, such evidence is entitled to weight.

Gentlemen, it is a merciful provision in our law, and will be so stated to you from the Bench, that, in every case attended with difficulty and doubt, the Jury are bound to lean towards the accused. Therefore, if you have any doubt on the law; namely, whether, in point of law, a conspiracy of the nature of that charged is an overt act to compass the death of the King; or, if you have any doubt on the fact, namely, whether, in point of fact, the prisoner at the bar was an active leader in such a conspiracy, it is your bounden duty to return a verdict of Not Guilty.

EVIDENCE FOR THE PRISONER.

NEIL M'VICAR—*sworn.*

Examined by Mr Grant.

Q. What is your business?

A. A cotton-spinner.

Q. Where?

A. At Eldersley.

Q. Where is Eldersley?

A. It is about two miles and a half from Paisley.

Q. Whose mill is it?

A. Mr King's.

Q. Do you remember a crowd coming to King's Mill some time in the beginning of April?

A. No, at Eldersley there was none came till the afternoon.

Q. Was there a crowd came in the afternoon?

A. They did not come there with an intention to stop the work, they were only passing there in the afternoon.

Q. Has Mr King more mills than one?

A. Two.

www.libtool.com.cn

Q. How far is that from Mr Houstoun's Laigh Mill?

A. About a mill, I think.

Q. Were you at Mr Houstoun's Laigh Mill that day?

A. Yes.

Q. Did you see a crowd there?

A. Yes.

Q. Is that the mill otherwise called the Old Mill?

A. Yes.

Q. At what time was this?

A. It was after ten o'clock.

Q. Are you acquainted with the prisoner at the bar?

A. Yes.

Q. Did you see him with the crowd at the Laigh Mill?

A. Yes.

Q. Did he appear to you to be taking any active part in that crowd?

A. None.

Q. Did you see that crowd go away from the Laigh Mill, and where did it proceed to?

A. It proceeded to the green in Johnstone.

Q. Is there a Mr Campbell has a house near there?

A. Yes.

Q. Did you see the crowd opposite to Mr Campbell's house?

A. Yes.

Q. Did you see the prisoner there?

A. No, I could not say that I could particularize him among the rest before Mr Campbell's house.

Q. Did he appear to be taking any active part there?

A. I could not say that I could particularize him among the rest; I did not hear him say any thing there.

Lord Justice Clerk.—Can you take upon you to say you saw him at all?

A. Before Mr Campbell's house, I could not particularize him.

Q. Did you see him before Mr Campbell's house?

A. I saw him at the Laigh Mill, but I did not see him before Mr Campbell's house.

Mr Grant.—It is close by Mr Houston's Mill?

A. Yes, it is not many yards from it.

Q. You mentioned that you saw the crowd go to the green—were you upon the School-Green that day?

A. Yes.

Q. At what time of day was that?

A. It was between ten and eleven o'clock, I think; I could not say the exact time, but it was between ten and twelve.

Q. Did you see the prisoner at the bar there?

A. Yes.

Q. Did he appear to you, in that meeting, to be taking an active part?

A. No, I do not think that he did any more than the rest.

Mr Solicitor-General.—That is rather irregular—ask what he did.

Mr Grant.—I did not mean it as a leading question, but I will put it otherwise if it is.

Lord Justice Clerk.—I took down his answer: I do not think he did more than the rest.

Mr Grant.—I think he has said he did not see him taking any active part.

Lord Justice Clerk.—He did not appear to be doing more than the rest, was his answer.

Mr Grant.—Did you hear him make any address to the meeting.

A. None.

Q. Was there a considerable number of people there?

A. Yes, there was a good number.

Q. Did you hear any body else address the meeting?

A. Yes.

Q. Who did you hear address the meeting?

A. I have no personal acquaintance with the man, but I understood it to be Laing; I heard a number of them call out to Laing to give them a speech from England.

Q. Did you hear his christian name mentioned?

A. No, I did not.

Q. Do you know a man of the name of John Laing?

A. No.

Q. Was he a little man, or a tall man?

A. It is the English Laing; he is not a very tall man—a small slender man.

Mr Grant.—Your Lordship is aware there is a prisoner indicted here of the name of Laing; this witness does not know the name of this Laing of whom I am giving evidence, and the indicted man is John Laing, and he does not know him either.—Had he a cap on or a hat?

A. He had a hat.

Mr Grant.—If your Lordship thinks it right, we can call in the prisoner Laing to shew it is not the man.

Mr Hope.—How can you do that, after telling the witness so?

Mr Grant.—Well, we have got, (and it is quite enough,) that he is a little slender man.—Did you hear any body else make a speech, or an address of any kind?

A. I heard the Address read at the meeting.

Q. Who read it?

A. I understood it to be Walker, but I had no personal acquaintance with him.

Q. Then, I understand you to say that you heard a man called English Laing make a speech, and you heard Walker read the Address, and you did not hear the prisoner at the bar make any address to the meeting?

A. No, except declining to have any thing to do with President; I think, I heard him declining to have any thing to do with it; some of them were shouting out to him to be preses, and he declined, and said he would have nothing to do with it.

Q. Was there anybody, then, made preses?

A. Yes.

Q. Who was that?

A. It was one Parker, I believe; but I do not know.

Q. Did you hear his name called out upon that occasion?

A. Yes, I did.

Q. Did you hear any body, in any speech there, make reference to bloodshed?

A. None.

Q. Did you hear any person, in any speech, talk of the example of Spain?

A. None, except I heard Walker commenting a little upon the Spanish soldiery, that was the Address that referred to that.

Q. I think you said that part of the Address that Walker read referred to that?

A. I heard him comment a little upon the part of the Address that referred to the Spanish soldiers; he commented a little on the conduct of the Spanish soldiery when he was reading the Address.

Q. But you swear positively that you heard nobody refer to bloodshed?

A. None.

Cross-examined by Mr Solicitor-General.

Q. I think you said that your mill was at no great distance from the Old Mill belonging to Mr Houstoun?

A. No.

Q. A mile, is it?

A. Yes, I think it is something near a mile.

Q. Is there any other mill between Mr King's Mill and the Old Mill?

A. Yes, there are a number of small mills.

Q. Has Mr King another mill nearer than that to the Old Mill?

A. None.

Q. You say you saw a crowd at the Old Mill?

A. Yes.

Q. And Speirs, the prisoner, was with them?

A. Yes.

Q. Were you in the middle of the crowd?

A. Sometimes I was in the midst of a considerable part of the crowd, and sometimes on the outside, just as I could get along.

Q. Tell us what they did.

A. They walked up and down just before the mill.

A. No; it was from the outside of the circle. It went round very generally.

Q. Did you hear anything proposed to be done by that crowd?

www.libtool.com.cn

A. I heard nothing except the Address read, and that speech that English Laing gave there; he commented at considerable length upon the propriety of stopping the public works. I could not swear to this; but I think he said he had come from Glasgow, and that they had all stopped there; and he said, it was very proper they should all be stopped, whether they were men, women, or children: he had only come from Kilbarton, I understood, though he said he came from Glasgow.

Q. This proposal of English Laing's that you spoke about met with general approbation?

A. Yes, and I dare say the crowd would have dispersed, but for that they gave him three cheers.

Q. What became of the crowd after that?

A. I could not say; they went away from the green, towards the Hagg Mill; but whether they went there or not, I cannot say, for I did not follow them.

Q. You saw the man that read the Address?

A. Yes.

Q. And you heard him called Walker?

A. Yes.

Q. Was that the same man that you saw walking with Mr Houstoun?

A. Yes.

Q. You were near enough to see that?

A. Oh, I was.

Q. How was Walker dressed?

A. I think he had on a short blue coat; but I cannot say for what kind of trowsers he had on.

Q. How was the other man dressed that was along with Mr Houstoun?

A. I could not say what he had on; I had seen Walker some time before with the same dress, but I could not say what the other man had on.

Q. Were you acquainted with Walker?

A. I knew him perfectly well to look to. I saw him very often?

Lord Advocate.—I think you said before, that you did not know Walker before at the meeting?

A. I knew him to look to.

Q. You said you only heard him named the first time?

A. I only knew him to look to.

Lord Justice Clerk.—You said you understood it was Walker; but you had no personal acquaintance with him?

A. I had no personal acquaintance with him, but I knew him to look to.

Mr Grant.—You have been asked about a corduroy jacket, or you spoke about a corduroy jacket—is that a common dress for the weavers when they are about their business?

A. Yes; there is a number of them has that.

WILLIAM CLARK—*sworn.*

Examined by Mr Grant.

Q. What is your business, and where do you reside?

A. I am a cotton-spinner.

Q. Where?

A. In Eldersley.

Q At whose work?

A. Mr King's.

Q. Is there a mill in that neighbourhood belonging to Mr Houstoun, called the Laigh Mill, or the Old Mill?

A. It is about a mile, or a mile and a half off.

Q. Do you remember being there any day early in April?

A. Yes, I was there early in April?

Q. Do you know the day of the week, or of the month?

A. It was upon the first day of the week, I believe.

Q. You mean Monday, the first day of the week?

A. Yes.

Q. Do you recollect the day of the month?

A. I believe it was the second.

Q. Was it the first Monday in it?

A. Yes.

Q. What did you see there? Did you see a great crowd there?

A. Yes, I saw a number of people walking to and fro.

Q. Did you see the prisoner at the bar, that man there?

A. Yes, I believe I did.

Q. Do you know him?

A. I do.

Q. Did you see him taking an active, or leading part in that disturbance?

A. None.

Mr Solicitor-General.—Ask him what he did.

Mr Grant.—I submit, I am entitled to ask that question.

Lord Justice Clerk.—In the first place, you call it a disturbance, which the witness has not described it.

Mr Grant.—I apprehend, I am entitled to put this question:—Did you see the prisoner take a leading, or active part upon that occasion?

Lord Chief Baron Shepherd.—The more regular way is to ask him what he saw him do, and I will tell you why:—Because one man understands an active and leading part to be very different from another. Ask him what he did and said, and then the Jury will judge of it.

Mr Grant.—Upon that question, I am certainly entitled to ask the witness's opinion, as to taking an active and leading part.

Lord Chief Baron Shepherd.—I think not; the fact is this, one does not like to put quite those restraints on Counsel for prisoners that the strict law requires; but the best way is, to ask what he saw the prisoner doing, and that is not so leading a question as the other, the answer to which is not satisfactory, because we do not know what the man means by an active part.

Lord Justice Clerk.—After the facts are disclosed, it may be competent to ask—Was he more active than others?

Lord Chief Baron Shepherd.—No doubt about it.

Mr Grant.—What were the crowd doing?

A. They were walking to and fro. I could not say they were doing any particular business.

Q. Did you hear anything said by the crowd?

A. No, I cannot say that I heard anything particular.

Q. Did you see a crowd opposite to Mr Campbell's office?

A. I did.

Q. Did you see the prisoner at that time?

A. I could not positively say, but I might see him going past among the crowd.

Q. Did you?

A. I do not doubt but I might; I cannot positively say. I seed him down at that place; but I could not say particularly, that it was opposite Mr Campbell's office.

Q. Were you close to the crowd, opposite Mr Campbell's office?

A. I do not suppose the crowd halted at all; I was an eye-witness to their going past.

Q. Did you hear the prisoner say any thing, or see him do any thing at that time?

A. No; I did not hear him mention one syllable.

Lord Justice Clerk.—I did not understand you to say upon your oath, that he was there at all?

A. I seed him going past.

Mr Grant.—Was this at the time that the crowd were leaving Mr Houstoun's Mill, or at the time that they were coming to Mr Houstoun's Mill?

A. It was at the time they were coming from Mr Houstoun's Mill.

Q. Do you know a person of the name of James Walker?

A. Yes, I do.

Q. Did you see him in that crowd, opposite to Mr Campbell's office?

A. I seed him coming along amongst the crowd, too.

Lord Justice Clerk.—Do you mean from Mr Houstoun's Mill?

A. Yes; from Mr Houstoun's Mill.

Mr Grant.—Were you upon the School-Green of Johnstone that day?

A. I was.

Q. Do you remember any assembly or crowd of people there?

A. Yes; I saw a number of people.

Q. Did you see the prisoner there?

A. I did.

Q. Did you hear him address any thing to that assembly?

A. I did not.

Q. Did you hear anybody address that assembly?

A. I did.

Q. Who?

A. I heard a man of the name of Robert Parker, I believe, say a few words to them?

Q. Did you hear anybody else?

A. No, not to my knowledge.

Q. Who else did you see there in the middle of the crowd?

A. I was acquainted with no others but those that have been specified to me, Speirs, and Parker, and Walker.

Lord Justice Clerk.—Were they in the ring?

A. Yes.

Mr Grant.—Did you hear anything about the election of a preses?

A. I cannot say really as to that; there was such a noise going on, that I really could not say.

Q. How did Speirs, the prisoner, conduct himself at that meeting? What did he do, or what part did he take?

A. I never heard the man say one single syllable the whole day.

Q. Did you see him do anything that attracted your attention?

A. Not the smallest; walking among the crowd the same as other idle spectators.

Q. To what time do you mean to refer this?

A. To any part of the day, except at the time of his being in the circle.

By Lord Chief Baron Shepherd.

Q. You say he was walking amongst the crowd, like one of the spectators?

A. Yes.

Q. How many spectators were there?

A. I could not say.

Q. A spectator is very different from one who forms a part of the crowd.

A. I was alluding to the whole crowd.

Q. Then they were all spectators?

A. Yes.

Q. Do you mean to say, that all the persons who were there were merely spectators of what was going on, as I or any other person casually there might have been, or that they were not forming an assembly for some purpose or other?

A. I was alluding to the crowd going back, the whole multitude, when I said the spectators.

Q. You say he was there like any other of the spectators—Do you mean that he was there as any person that might from accident have been there standing by looking on, or that he was there like one of the body? I do not ask you whether he did more or less.

A. That is what I intend to say.

Lord Justice Clerk.—Repeat what you intend?

A. He was the same as the rest of the crowd, that was going to and fro.

Mr Grant.—Perhaps your Lordship will ask him this, or permit me to ask him——

Lord Chief Baron Shepherd.—By all means.

Mr Grant.—Was there a great number of persons assembled on the School-Green?

A. There was a good many.

Q. How long did that meeting last?

A. I could not positively say how long it lasted. I was not there upon the first assemblage; I only happened to be there by chance.

Q. What were they doing when you arrived there?

A. I believe there was a man reading the Address, that paper.

Q. Did you hear that Address read?

A. I really could not say I did, on account of the noise that was at the time.

Q. But when you got there, there was a man reading the Address?

www.libtool.com.cn

A. Yes.

Q. From the time that you arrived there, where you found the man reading the Address—how long was it before the meeting broke up?

A. I could not positively say.

Q. Was it an hour?

A. I could not determine. I really could not say?

Lord Justice Clerk.—Did you see any show of hands, on the School Green?

A. I do not recollect seeing any show of hands on the School-Green.

Cross-examined by Mr Hope.

Q. You are a cotton-spinner, you say?

A. Yes.

Q. You belong to Mr King's Mill?

A. Yes.

Q. Where is that?

A. At Eldersley.

Q. When did you leave your work that day?

A. At breakfast-time.

Q. What made you leave your work?

A. I had no particular reason for leaving my work.

Q. Had you your master's leave?

A. It was at the meal hour.

Q. Had you your master's leave?

A. No.

Q. Had you struck work?

A. The reason we went to Johnstone was, that we were informed the works in Johnstone were all stopped, and we went down purposely for that reason, to see whether they were, or were not.

Q. At the time that you left your work at the meal hour,

had you then heard that the works at Johnstone had all stopped?

A. Yes.

www.libtool.com.cn

Q. At nine o'clock?

A. Before nine we had heard it.

Q. Did the other workmen at your mill strike work?

A. Yes.

Q. Did you all go to Johnstone together?

A. I could not say whether we all went or not.

Q. Did you go with others?

A. Yes.

Q. Then you can speak to your own conduct?

A. Yes.

Q. How many went with you?

A. I could not say the number.

Q. Were there as many as there are in this Court?

A. No.

Q. How many were there?

A. Probably a dozen.

Q. How many men are there in the work—Are there fifty.

A. Not so many; but I could not say the number; there might be about twelve or fourteen men went.

Q. And you went with about a dozen to Johnstone?

A. Yes, I think so.

Q. Where did you go to, when you got to Johnstone?

A. What we call the New Mill.

Q. Who does that belong to?

A. It belongs to Walter Logan.

Q. About what hour was that?

A. Just immediately after breakfast.

Q. You got there by ten o'clock then?

A. No; we could not be there by ten.

Q. Shortly after ten?

A. Yes.

Q. Did you meet any other people in your way to Logan's Mill?

A. None there; there were a number of people on the street.

Q. Did you go with those people to Logan's Mill?

A. We went straight down to Logan's Mill?

Q. Did many of the people upon the streets go along with you to Logan's Mill?

www.libtool.com.cn

A. There were a few.

Q. What do you mean by a few?

A. I could not determine the number.

Q. Were there as many more as your men from King's Mill who had gone to Johnstone?

A. Yes, I think there might.

Q. How did you go?

A. We went down the New Street of Johnstone.

Q. Did you just saunter along, or march?

A. We walked along in the same way as if we were taking a walk.

Q. What did you see at Logan's Mill, when you got there?

A. I *seed* the workers all standing out at the door.

Q. Did you see any body else?

A. I could not say; I do not know.

Q. I ask you, upon your oath, whether you saw a great crowd in front of Logan's Mill, or not?

A. None, to my knowledge, but the workers.

Q. Except the people that went with you?

A. None; I do not think there were any more.

Q. About what number might there be, who went along with you in front of Logan's Mill?

A. I really could not give an idea of that.

Q. You have told us of four-and-twenty; were there as many more?

A. Possibly there might be as many more as there were of us, about twenty; there were many people on the street that might possibly go along, although I do not know.

Q. How can you say that?

A. There were a number of people in the street we were passing through.

Q. You can tell whether they went with your small party of twenty or thirty, or not?

A. There were a number went with us; I could not say.

Q. Was Walker along with that party when you first went to Logan's Mill?

A. I did not see Walker.

Q. Was this man at the bar there?

A. I did not see him.

Q. What did you do after you left Logan's Mill?

A. I went to my mother's in Johnstone.

Q. How long did you remain there?

A. I could not positively say; I never entered the house at all, I only stood at the door.

Q. How long did you stand at the door?

A. I could not say.

Q. Did you stand till dinner-time?

A. Not so long.

Q. Did you stand there five minutes, or a quarter of an hour.

A. Yes, I might stand there a quarter of an hour.

Q. Where did you go to then?

A. Up the town, straight up to the cross.

Q. Did you meet people there?

A. There were people standing there.

Q. A multitude of people?

A. Not a great multitude.

Q. A considerable number, compared with the streets?

A. There were more than what is in general.

Q. Where did you go to next?

A. I went away from that round by Mr Houstoun's estate, and took a walk.

Q. Did other people go with you upon this walk?

A. No, none but myself.

Q. Where did you go to next?

A. I went round and came down upon the School-Green

Q. When were you at the Old Mill?

A. It was coming from the New Mill away to my mother's.

Q. Before you went to your mother?

A. Yes; I was not at the mill at all, I was only past it.

Q. Did you go with the crowd from Logan's Mill to Houstoun's?

A. Yes, I went along with them.

Q. What carried you to Houstoun's Mill?

A. I was not going to Houstoun's Mill; it was the way to my mother's house.

www.tiptool.com.cn

Q. Was it necessary to go with the crowd, in order to go to your mother's house? I ask you, what took you to Houstoun's Mill with this crowd?

Mr Grant.—He was not there.

Mr Hope.—He said he was.

A. That is the road to my mother's.

Q. Was it necessary to go with the crowd to Houstoun's Mill, in order to go to your mother's?

A. I could have stopped till the crowd went away, no doubt.

Q. You stopped at Houstoun's Mill—how long did you remain there?

A. I was not down at the work at all; I was between Mr Campbell's office and Mr Houstoun's Mill; at the end of Mr Campbell's office and the end of Mr Houstoun's Mill.

Q. At what distance might that be from Houstoun's Mill?

A. Between the two, like the common distance of a street, I believe.

Q. What distance might you be standing from Houstoun's Mill?

A. I might possibly be twelve yards, or thereby; I could not rightly say the distance.

Q. What number of people might there be at Houstoun's Mill?

A. I could not say that there was a great number.

Q. Were there as many people as there are here?

A. I really could not say; I am not acquainted with looking at crowds; I really could not give an estimate of it.

Q. Were there as many people as you think you see here?

A. I could not say.

Q. I ask you, were there as many people, to your belief, as you now see around you?

A. There might; I could not positively answer to that.

Q. If you were standing twelve yards from Houstoun's Mill, do you mean to swear that you were alone?

A. No, I was not standing alone.

www.libtool.com.cn

Q. You were then standing in the middle of the crowd?

A. I was standing in the middle of a few men; the body of the people were away down at the work like.

Q. You said you were only twelve yards from the work?

A. Well, but they were down at the other end of the work; I was at one end, and they were down at the other; they were at the entry of the mill.

Q. What were the crowd doing?

A. I heard nothing, nor seed nothing, but a multitude of people.

Q. How long did you remain there?

A. I might remain fifteen minutes.

Q. Were this crowd making a noise?

A. Not a great noise.

Q. Did Mr Houstoun speak to them?

A. Mr Houstoun went down, but I could not say whether he spoke to them or not.

Q. You did not see what took place then?

A. Not I, not down at the work.

Q. You said that you believed you saw Speirs at Houstoun's Mill?

A. Yes.

Q. At what time did you see him? was it when you first went there?

A. Yes, it was when they were coming up from the work.

Q. Coming up from where?

A. From Mr Houstoun's work.

Q. When they were leaving it?

A. Yes.

Q. Had you seen him before that?

A. Not that day.

Q. How was Speirs dressed?

A. He had on a corduroy jacket; I could not say particularly what breeches he had on.

Q. Then, I understand, from your saying you saw him

when the crowd came from Mr Houstoun's Mill, that you staid there till the crowd left it?

A. Yes.

www.libtool.com.cn

Q. Where did you go to after leaving Houstoun's Mill?

A. I went straight for my father's house.

Q. In what street is that?

A. It is in the west end of the town; the High Street, as they call it.

Q. You passed Mr Campbell's in going to your father's house?

A. Yes, I did.

Q. Had the crowd passed Mr Campbell's before you did, or did you pass before the crowd did?

A. I passed along with the crowd, I believe.

Q. You were then in the crowd?

A. I might be so.

Q. Were you so?

A. I think I might; yes, I was amongst the crowd.

Q. Were you among the first of the crowd?

A. I could not say as to that.

Q. You say you were standing a little bit apart from the crowd and Houstoun's Mill; and they went towards Mr Campbell's office—where did you join them?

A. When they were coming up from the work.

Q. Going to Campbell's?

A. They were not going to Campbell's, they were going by Campbell's.

Q. Did you join the first part of the crowd, or the latter part of the crowd?

A. I could not say what part of the crowd I joined.

Q. When you were standing twelve yards from the end of Houstoun's, what distance might you be from this crowd of people?

A. It might be three times twelve yards.

Q. You said you thought you saw Speirs passing Campbell's along with the crowd?

A. Yes.

Q. Can you swear that you saw him on that particular occasion?

A. I could.

Q. What part of the street did you see him?

A. In the centre of the street.

Q. Was it immediately opposite Mr Campbell's office?

A. I went from the end of the work up the street.

Q. Did you see Speirs immediately opposite to Campbell's office? was he in the centre of the part of the street opposite to Campbell's office?

A. It was thereabouts.

Q. What was he doing?

A. He was going up the street along with the crowd.

Q. And do you swear that Speirs did not stop opposite Campbell's house?

A. I could not give my oath to that; I do not recollect.

Q. Can you give your oath to the crowd not stopping before Mr Campbell's house?

A. No, I could not; I do not recollect whether they did or not.

Q. You said before, that you supposed, and was an eye-witness to their passing, and not stopping before Campbell's house; explain yourself.

A. I do not think they stopped.

Q. What did you mean by previously saying you were an eye-witness to the crowd passing without stopping.

A. I might err; I do not recollect their stopping.

Q. But you said, just now, you could not say whether they stopped or not.

A. I do not recollect whether they did or did not; I stopped a good while myself between Mr Houstoun's work and Mr Campbell's office, along with those men that I mentioned to you.

Q. Did you stop after leaving Houstoun's work?

A. It was at the time they were down at Houstoun's work, that I was there.

Q. After they left the work, did you stop before you left Campbell's office?

A. No, I think I went on.

Q. You say you went to your father's after that?

A. Yes.

Q. Did you leave the crowd?

A. Yes.

Q. And then you went to the School-Green?

A. I went and took a walk before I went to the School-Green.

www.tdtool.com.cn

Q. Where did you walk to?

A. Upon Mr Houstoun's estate.

Q. How long were you upon that walk?

A. I could not say positively; I had not a watch with me.

Q. Might you be an hour, or half an hour?

A. Yes, I might be that.

Q. What induced you to go to the School-Green?

A. It was in my way coming back from my walk.

Q. From Mr Houstoun's estate?

A. Yes.

Q. By which side of the School-Green did you enter?

A. The side next to the church.

Q. Then you passed round the chapel gate?

A. No, we did not pass round it.

Q. You passed it?

A. No, I came through the fields, the backside of the church, what they call a quarry.

Q. What was the first thing you saw when you went to that crowd in the School-Green?

A. James Walker was reading the Address.

Q. You said you did not hear what he was reading?

A. The paper.

Q. Did you hear what he was reading?

A. I could not make it out what he was reading, on account of the noise.

Q. How do you know it was an Address?

A. The people round me were saying what the paper was.

Q. Had you seen that paper before?

A. I saw it upon the church gate.

Q. That is to say, you saw upon the church gate a paper, which they told you was the paper Walker was reading?

A. No, they did not tell me that was the paper.

Lord Justice Clerk.—What paper did you see on the church gate?

A. They called it the Address.

Mr Hope.—Did you read that Address?

A. I read part of it.

Q. What was that part about?

A. I really could not say a single sentence.

Q. When was this?

A. Upon that Monday, the second of April.

Q. At what time of the day was it?

A. In the forenoon.

Q. When you first went in to Johnstone?

A. No, when I was coming back from my walk. No, when I was going away past to my walk.

Q. Did you go direct from your father's house to the School Green?

A. I did not.

Q. You went direct from your father's house to the chapel gate, where you saw this paper?

A. Yes.

Q. Where did you go to after that?

A. Through Mr Houstoun's estate.

Q. Did you go through the School-Green?

A. I did not.

Q. Which way did you go?

A. I went out past the back of the church.

Q. How did you get to the back of it?

A. There is a slap at the east end of it; and I went through that slap.

Q. Does that carry you through to the School-Green?

A. The road goes down along the side of the School-Green.

Q. Were there any persons with you at the time you read this Address?

A. There might be some person; I really do not recollect; there were a great of comers and goers; I could not say whether there were persons standing or not.

Q. Did you, or did you not, see that paper taken down from the chapel gate?

A. I did not.

Q. Did you hear the people on the School-Green say it was taken down from the chapel gate?

A. I did not.

Q. You say there was a great noise, when Walker was reading this Address at the School-Green?

A. Yes.

Q. For what purpose was he reading it?

A. I could not answer that.

Q. Was he reading it to the meeting?

A. I suppose so; he was reading it in the centre.

Q. There was a ring formed?

A. Yes.

Q. And he was standing in the ring?

A. Yes.

Q. Do you mean to swear that the crowd to whom Walker was reading this Address, made such a noise that it could not be heard?

A. At the part where I was, I could not hear it.

Q. You said before, you could not hear it in consequence of the great noise.

A. Well, on account of the noise I could not hear it.

Q. What followed the reading of the Address?

A. I left the green after the Address was read.

Q. Immediately?

A. I went away; I do not know whether it was finished or not when I went away.

Q. But you went away after the Address was read?

A. I cannot say whether I went away before that; I was paying no attention to it.

Q. At the time that you saw Speirs at this School-Green meeting, was he within the ring the whole time?

A. Yes, he was in the ring while I saw him.

Q. How many were within that ring?

A. I could not say; there were a number going and coming.

Q. How many were in the ring?

A. I cannot say how many.

Q. Where did you go to after leaving the School-Green?

A. I went down to a house in the town to get some refreshment.

Q. How long did you stay there?

A. I could not say; I was there till I returned home; possibly an hour.

Q. When did you return home?

A. In the afternoon; I cannot say the time.

Q. Were you at the Hagg Mill again?

A. No.

Q. Were you on the School-Green again?

A. No.

Q. Were there five with him in that ring, or four?

A. I could not say.

Q. How large might the ring be?

A. I could not give a positive answer to that.

Q. Was it as wide as this table?

A. Yes, it was wider.

Q. Were there any others within the ring, besides those people whom you have named?

A. I think there was.

Q. How many more?

A. I could not say; they were coming and going; there was nothing like regularity in it.

Q. Was the ring well kept?

A. Pretty well.

Q. What size might that crowd be at the School-Green meeting; was it as large as the one at Houstoun's Mill?

A. It might be larger.

Q. Then there were probably more people than you see now?

A. It might be so.

Q. Do you believe that there were more?

A. Could not say that.

Q. You saw Speirs at Campbell's office—Did you see him after that, before you got to the School-Green?

A. I did not; I went up a piece of back street with him; I do not know where I went with him; when I got up the street, I went my own way.

Q. What was the first you saw of him at the School-Green? was he within the circle?

A. Yes.

Q. Did you see him leave that circle?

A. No, I was away before the circle was broken up.

Q. You have told us, that Speirs, during the whole time you saw him at the School-Green, was within this circle?

A. Yes.

Q. What did you mean by saying he was going about the crowd like any other idle spectator?

A. That was at the time he was going up.

Q. You said expressly, that at the School-Green——

Lord Justice Clerk.—He said, except when he was in the circle.

Mr Hope.—The Lord Chief Baron asked him exclusively to the School Green.

Lord Justice Clerk.—I have it down.

Lord Advocate.—You heard that there was to be a meeting at the School-Green, when you went to take this walk?

A. Yes, there was some talk of it.

Re-examined by Mr Grant.

Q. You have been asked whether the prisoner had a corduroy jacket on; is that a common and ordinary dress among the weavers?

A. No; I cannot say, one has one garb, and another another.

Q. There are many corduroy jackets in this part of the country?

A. Yes, a great many.

Q. Many persons wear them?

A. Yes.

Q. Did you see any other corduroy jackets at that meeting, except the one that Speirs wore?

A. Yes, there were a number of corduroy jackets there.

Q. Now, about the situation of Mr Campbell's house and Mr Houstoun's Mill, what is the distance between them?

A. It is the common distance of a street.

Q. The distance of the breadth of a street?

A. Yes.

Q. Is Mr Campbell's office in the main street?

A. No, it is in what they call Collier Street.

Q. And is that the street adjoining to Mr Houstoun's Mill?

A. Yes.

Q. Is Mr Houstoun's Mill in the same street?

A. Yes.

Q. And then I understand you to say, that there is a passage, or street, between Mr Campbell's house and Mr Houstoun's Mill?

A. Yes; that is the way that I went when I was going to my father's.

Q. Are they on the same side of the street with the mill?

A. Yes.

Lord Justice Clerk.—Is the house and office the same?

A. Yes.

Q. And that is on the same side of the street with the mill?

A. Yes.

Mr Grant.—And a passage between them?

A. A passage between the two gables.

Q. And this is the passage which leads down to the entrance of the work?

A. Yes, it leads to the works, or up the town.

Q. So that when you were standing at Mr Campbell's office, you were standing in the street which led up the town?

A. Yes.

WILLIAM BLACKBURN—*sworn.*

Examined by Mr Sandford.

Q. What are you? are you a cotton-spinner?

A. No, I work in the ware-room at Mr King's, at Elderslie, as a bundler.

Q. Are Mr Houstoun's Mills near that?

A. Yes.

Q. Do you know the Laigh Mill?
A. Yes.
Q. Do you remember being there the beginning of April?
A. Yes.
www.libtool.com.cn
Q. What day of April was it?
A. I cannot say.
Q. Was it a Monday?
A. Yes, it was on a Monday.
Q. Did you see any thing particular there that day?
A. No.
Q. Did you see a crowd there?
A. Yes.
Q. Do you know James Speirs?
A. Yes.
Q. How long have you known him?
A. Two years.
Q. Was he there?
A. Yes.
Q. What was he doing?
A. Going through the crowd like the lave of the men.
Q. Did you hear him say any thing?
A. No.
Q. Do you know the School-Green at Johnstone?
A. Yes.
Q. Were you there that day?
A. Yes.
Q. Did you see any thing there?
A. No.
Q. Did you see a crowd there?
A. Yes, there was a crowd there.
Q. Did you see Speirs there?
A. Yes.
Q. What was he doing?
A. He was going through the crowd like the lave of the men.
Q. Did you hear him say any thing?
A. No.

Cross-examined by Mr Hope.

www.libtool.com.cn

Q. Have you had any conversation with any body about the subject of this trial?

A. No.

Q. At no time?

A. No.

Q. Were you in Johnstone last week at a meeting?

A. No.

Q. Will you swear that?

A. Yes.

Q. Or at Eldersly?

A. No.

Q. Had you conversation with any of the relations or friends of the prisoner, about the subject of this trial?

A. No.

Q. At no time?

A. No.

THOMAS LOGAN—*sworn.*

Examined by Mr Grant.

Q. What are you?

A. A cotton-spinner.

Q. Where?

A. At Eldersly.

Q. In whose employ?

A. Mr King's.

Q. Do you know the prisoner at the bar, James Speirs?

A. Yes, I have seen him.

Q. Do you know him by sight?

A. Yes, I have seen him, but I am not particularly acquainted with him.

Q. Do you remember a crowd at Mr Houstoun's Laigh Mill in Johnstone, some time the beginning of last April?

A. Yes.

Q. At what time was that?

A. The third of April.

Q. Did you see a crowd leave the mill at that time?

A. Yes.

www.libtool.com.cn

Q. Do you know the house of a Mr Campbell, in that neighbourhood?

A. Yes.

Q. Is that near to Mr Houstoun's Mill—the Laigh Mill?

A. It is not far from it.

Q. Were you at Mr Campbell's door that day, or at the side of his house?

A. I was in the middle of the crowd opposite it.

Q. Was that at the time the crowd was leaving Mr Houstoun's Mill.

A. Yes.

Q. Do you know a person of the name of James Walker?

A. I seed him that day; but I never seed him before.

Q. Do you know him by sight?

A. No.

Q. Did you hear any persons say any thing opposite to Mr Campbell's house, from the crowd?

A. All that I heard was, that man as they called Walker say, that the people were deluded, such as Mr Houstoun.

Q. Did you hear any body else speak from the crowd upon that occasion?

A. No.

Q. Did you see the prisoner at the bar, upon this occasion, opposite to Mr Campbell's house?

A. I saw him as another man.

Q. Did you see him, and whereabouts? was he near you?

A. Yes.

Q. At that time did you know him by sight?

A. Yes.

Q. When you say as another man, do you mean——

A. Going through the crowd like another spectator.

Q. Did you hear him say any thing upon that occasion?

A. No.

Lord Justice Clerk.—You have not explained to us what the crowd were doing; you were in the middle of the street,

opposite Campbell's; did the crowd stop, or what did they do, when this speech was made?

A. There were a great many men standing together, and those were the words that I heard there.

Q. Was there a ring formed there?

A. I do not recollect that there was a ring.

Q. You were there standing in the middle of the street; and I think you would be able to answer the question, was there a ring formed, or not, in your presence?

A. Not in my presence.

Q. How long did they remain opposite to Campbell's house?

A. I could not say, perhaps about ten minutes or so.

Q. Did you, or did you not, hear anything said there about a meeting being held at the School-Green?

A. Yes, there was some speaking at that meeting.

Q. When you were there, and when you have sworn to certain words that you say you heard uttered by a person called Walker, did you hear then anything said about a meeting to be held upon the School-Green in Johnstone on that day.

A. No, I heard nothing of that opposite Mr Campbell's office.

Q Did you go along with that crowd after they moved from Campbell's office.

A. I went up near to the Cross, and I remained there for the greater part of the day.

Q. You moved with the crowd, did you?

A. Yes.

Q. Now I ask you this—you have expressly sworn that you did not know Walker even by sight, and I ask you how you know that the expressions that the people were deluded such as Mr Houstoun, were uttered by that man named James Walker?

A. People said that the man was Walker.

Q. At the time, do you mean to say?

A. Yes.

Q. Attend to the question—did the people at the time

when the words were uttered in your hearing, state that they were uttered by this Walker?

A. Yes.

www.libtool.com.cn

Q. You say that upon your oath?

A. Yes.

Q. Then you asked by whom they were uttered?

A. No, I did not ask, but I heard folks in the crowd saying that man was Walker.

Q. Did the crowd say, or any of the crowd, that Walker was the speaker of those words at that time?

A. Yes.

Q. Was anything more said by any body but Walker at the time he used those words?

A. No, not that I heard.

Q. Be so good as to explain to us a little more fully what you mean when you say that you saw the prisoner opposite Mr Campbell's house as another man?

A. He was there as another spectator.

Q. What do you call another spectator?

A. There were a great many men there.

Q. And do you mean to say that he was just there as any other of the persons assembled?

A. Yes.

Q. And you call them all spectators?

A. If there was any person there who made a speech, they were all spectators there but him.

Lord Chief Baron Shepherd.—You were there as a spectator?

A. Yes.

Q. What were you a spectator of?

A. I heard that man say those words, that was all.

Q. Before you heard those words, you were there?

A. Yes.

Q. You were there as a spectator?

A. Yes, I was there as a spectator.

Q. What were you a spectator of—what were you to see?

A. I went to see what the rest went to see.

Q. What did they go to see, when they got there? there

was either something to see, or there was nothing to see,—what did they go to see?

A. I could not tell you that.

Q. Do you mean to represent to my Lord and the Jury, that all the persons who were there, were merely there as spectators, upon your solemn oath, and as you shall answer to God at the great day of judgment?

A. Yes.

Q. As spectators, as the audience here may be spectators of what is going on?

A. Yes.

ARCHIBALD M'NICHOL—*sworn*

Examined by Mr Grant.

Q. What business are you?

A. I am a sawyer

Q. In whose employment are you?

A. I am in Mr James Smith's.

Q. Where is Mr Smith's yard?

A. It is situated upon the east end of Johnstone where I saw, in William-street.

Q. Is it near the School-Green?

A. Yes, the corner of our wood-yard adjoins the corner of the School-Green.

Q. Do you remember a great meeting of people upon the School-Green about the beginning of April?

A. Yes, I remember a meeting about that time.

Q. Do you remember what day it was?

A. I could not say exactly the day of the month when it was; I paid no particular attention in regard to that.

Q. Was it early in April?

A. Yes, I think it was.

Q. Do you know what took place at that meeting?

A. I could not say what was the purport of the meeting, but I saw a person come forward there with a paper and read the paper to the meeting, to the crowd.

Q. Do you know who the man was that read this paper?

A. It was James Walker.

Q. Do you know the prisoner at the bar, James Spiers?

A. Yes.

Q. Was he at that meeting?

A. He was.

Q. What part did he take, and what did you see him do or hear him say?

A. I could not say that I heard or saw any particular part that he did or said, so far as I seed of the meeting.

Q. Did you hear him make any speech to the meeting?

A. None that I remember.

Q. Did you hear any speech made?

A. I could not say.

Q. Did you hear any speech made that day with regard to the shedding of blood?

A. I could not say that I heard anything particularly mentioned at that meeting, excepting what was in the paper that was in Walker's hand, which he read, for the meeting was in a sort of a bustle after that on account of men huzzaing so, and I being outside of the meeting, I could not hear exactly what was said.

Q. Did you hear the Address read?

A. I heard the Address read that was in that paper.

Q. By Walker?

A. Yes.

Q. Did you see your master Mr Smith there?

A. Yes.

Q. Were you near him?

A. I was just beside him.

Q. Was anybody else from your work present there?

A. There were me and my partner who wrought along with me; there were us three just aside of one another.

Q. What is his name?

A. Robert Burnett.

Lord Justice Clerk.—Your partner Robert Burnett was beside you, and you were altogether, I think you say?

A. Yes.

Q. How long did this meeting last?

A. I could not tell exactly.

Q. Could you tell near about how long it lasted?

A. I cannot give any satisfactory answer to that; I did not see any hours at the side of me, and I could not say how long it lasted.

www.libtool.com.cn

Q. Did you see the meeting begin?

A. I was into the wood-yard and seed it over the dyke.

Q. And did you see it separate?

A. We seed them going up off the hill, and I staid at my own house, which adjoins the wood-yard, and saw no more after that.

Q. Was it over before dinner-time?

A. Yes.

Q. What is your dinner-time?

A. Two o'clock.

Q. Do you recollect what time of the day it began?

A. I could not pointedly mention the hour that it commenced.

Q. Would it be about mid-day?

A. I could not pointedly say.

Cross-examined by Mr Solicitor-General.

Q. You say you are a sawyer with Mr Smith?

A. Yes.

Q. This meeting that you speak of occurred when the strike of work took place?

A. I could not mention the day of the month exactly.

Q. Was it about the time of a general strike of work.

A. Yes, it was.

Q. Did you continue working at that time?

A. Occasionally I was working at that time.

Q. And occasionally you were not working at that time?

A. No; our business was not very throng at that time.

Q. Were you among those who struck work?

A. We went up to work, at the usual hour in the morning, and we came back to our breakfast at nine, and we did not go back any more.

Q. Why did not you return to work?

A. Business was not very pressing.

Q. And you were not very anxious to go to it?

A. No.

Q. There was work enough to do, if you had gone?

A. We might have had work that day; but there was nothing to be done, except with our own pleasure.

Q. Did your master desire you?

A. No; he neither desired, or forbid us.

Q. Had you work the next day?

A. No.

Q. On the Wednesday?

A. No.

Q. The Thursday, perhaps?

A. The Thursday, we did work.

Q. Were you in the church here, yesterday?

A. No.

Q. Where were you yesterday?

A. I was in the School House, at the side here.

Q. The whole day?

A. The whole day, till past twelve o'clock last night.

Q You heard the Address read?

A. Yes, I did, what was in that paper.

Q. You heard a paper read?

A. Just the paper read.

Q. You heard it distinctly enough read, I presume?

A. Parts of it I heard, and other parts of it I did not.

Q. Can you tell any thing of what you heard?

A. No; because I pinned no dependence upon it, neither did I fix any of it in my mind at the time. I did not think I was to be called upon to it again, and therefore I paid no attention to it.

Q. What was the beginning of it?

A. I could not say pointedly, any part of it.

Q. Was it an Address?

A. I could not tell at that time. I paid no particular attention to it.

Q. Did you pay any attention to it at any other time?

A. From hearing others speaking of it; but I saw a paper similar to it on the church gate the day before, on the Sunday, they told me it was the same paper.

Q. Where was it?

A. It was on the pillars of the church stile.

Q. Did you read it?

A. I could not get to it so as to distinguish the letters, there was such a crowd about it at the time.

Q. But you heard the whole of it read at the meeting?

A. Yes; the man allowed he had read the whole contents of that paper.

Q. I do not ask what the man allowed. You heard it?

A. Yes; but there were times when the crowd got into such a bustle, that some could not hear the whole of it.

Q. What kind of a bustle?

A. Pressing forward, and shouting, and crying into it.

Q. Were there any huzzas?

A. There were.

Q. At the end of sentences?

A. Yes; after the sentences, there were huzzas.

Q. Were there any remarks made upon any part of it?

A. I could not say to my recollection, after the speaker stopped and they got into the huzzas, it was some time before they got quiet again, and there was a piece of the next read, and that was heard by very few that were there, in my opinion.

Q. How long did you remain there?

A. I could not specify the time; but I remained there such times as they were leaving the green.

GEORGE THOMSON—*sworn.*

Examined by Mr Grant.

Q. You are a cotton-spinner, I believe?

A. Yes.

Q. Do you remember a meeting in the School-Green of Johnstone, early in April last?

A. Yes.

Q. Where do you work?

A. In Mr Logan, and Watt's work, in Johnstone.

Q. Did you hear the panel, as you call him, make any speech at that meeting?

A. No.

Q. Did you stay till the meeting broke up?

A. Yes.

Q. Where did the crowd go to?

A. A great deal of them marched away along by the School-Green, and along by the school, and along by the church, and the road leading to Kilbarton.

Q. Did you go with them?

A. I did not go with them at the time; but I go'd along the road a good while, following after them.

Q. Did you see where they went to?

A. When we went forward, I do not know what is the name of the street; but I seed them a long way on along the loan—a long way down, and I tried to force my way through the crowd, to see if there was any body that I knew, and I could not see any of them that I knew; but while I was looking about, I saw James Speirs the panel.

Q. What was the crowd doing when you saw the panel?

A I saw a mill, a good pace from where I stood.

Q. What mill?

A. I heard a person say it was the Hagg Mill. I have heard it called Hagg Mill since, I did not know the name of it then.

Q. How do you know that it was the Hagg Mill?

A. I speered at a man as I was coming from Johnstone, and asked him what the place was, and he said it was the Hagg Mill.

Mr Hope.—Who told him?

Mr Grant.—I cannot ask that.

Lord Justice Clerk.—He knows it is the Hagg Mill, in short, now.

Mr Grant.—I have been examining this witness, as if I had been examining him for the prosecution, I am sure. What was he doing at the time that you saw him?

A. He was standing alone. No one appearing to speak to him.

Q. What position was he standing in?

A. He was standing with his hands in his pockets.

Q. Were you at the head of the crowd, at this time?

A. No; I was at the backside of the greatest part of the mob.

Q. Do you mean to refer to the time when you were standing behind the prisoner, who had his hands in his pocket?

Lord Justice Clerk.—He did not say he was standing by the prisoner.

Mr Grant.—How far were you from the prisoner at that time?

A. Not above six yards.

Q. Was it at this time, that you were within six yards of the prisoner, that you mean to say you were behind the greatest part of the crowd?

A. I was between the crowd and him.

Q. Was the greatest part of the crowd before you?

A. They were between me and the mill.

Cross-examined by Mr Solicitor-General.

Q. You were at the School-Green meeting, you say?

A. Yes.

Q. What did you first see when you went there?

A. I seed when I got there, and were going down the west side of the green, a great deal of people was lying, some on the grass, and some on the dike, and I passed by the front and I saw no person there that I knew, going along the front of them, and I ga'd through the East street, and there staid a considerable time, and came back and I seed them all gathering in a crowd, and then they made a ring.

Q. Where were you then?

A. I was up upon the top of the hill, going on to the green, towards the east side.

Q. Then what did you do next?

A. There was a ring made then.

Q. What did you do next?

A. I was of the outside at the first, and I got forward to them, and then they cried to move the ring bigger, there was

so many there, to give them room; and just then I was forced in the midst of the front, and I was standing straight forenent the panel at that time.

Q. You came to the outside of this crowd first?

A. I was of the outside of the crowd first.

Q. What did you first hear when you went there?

A. There was about a preses.

Q. What did you hear about a preses?

A. They were trying to get a preses, and there were two men nominated.

Q. What names were mentioned?

A. The one was Park, or Parker.

Q. Who was the other?

A. I do not know his name.

Q. Look at the Jury, and recollect that you are upon your oath—You heard two names mentioned?

A. I heard two men's names nominated; but I do not know the one.

Q. Where were you standing then?

A. I had gotten in then, within a very little of the front.

Q. Will you take upon yourself to swear, that the other name was not Speirs's name?

A. Yes.

Q. Will you indeed?

A. Yes.

Q. Do you wish to recollect yourself, upon that?

A. I mind perfectly well. It was not the prisoner.

Q. What name was it?

A. The two men came into the ring together, Parker and the other man; and when one was rejected, he returned again back to the crowd.

Q. Did that man refuse to be preses?

A. No, he was never called on.

Q. What did he say when his name was mentioned?

A. He just burst through the crowd into the ring, and stood along with the front.

Q. Did he say anything?

A. No, he never spoke, he was just by me.

Q. Where was the panel standing at that time?

A. He was standing exactly opposite to me.

Q. Was he within the ring then?

A. He was just standing in the front, the same as myself.

Q. Was he within the ring?

A. He was in the front of the ring.

Q. Was he within the ring?

A. He was not nearer. As the ring was moved about, he was in the front of the crowd.

Q. Was he within the ring?

A. He was standing straight in front of the crowd.

Q. Who more were there?

A. That Parker was in the middle of the ring.

Q. Who more were there?

A. One or two were round him.

Q. Pray, how were the other two dressed—Can you tell?

A. I cannot say much how they were dressed.

Q. Did you see Speirs within the ring at all?

A. No, I never saw him; but when he was jostled backwards and forwards by the crowd.

Q. Where do you live?

A. At Millerstone.

Q. Is it close to Paisley here?

A. It is about a mile or so from the Cross.

Q. Does it join on with Paisley?

A. No, it does not join, there are several pieces with no buildings on at all.

Q. What took you to the School-Green meeting

A. I had no intention of going there at all; I knew nothing about it.

Q. What took you there?

A. Several of our door neighbours were wanting for a walk, and went through Johnstone, and they stopped to hear what was said, and they stood talking to a man on the Johnstone brae, and I got forward, and then they called me back to see what was going on.

Q. When did you leave home?

A. I think, to the best of my remembrance, it would be past ten o'clock in the morning.

Q. You had struck work at this time, I suppose?

A. Yes.

Q. You asked a man, I think you said, what was the name of the Hagg Mill?

A. No.

www.libtool.com.cn

Q. What did you ask him?

A. I was coming out of the town, and this man and I were cracking together on the road, and I peared him to describe the loan I described; I passed first, and he said, that leads to the Hagg Mill, and then I saw them on the road.

Lord Justice Clerk.—This man says he saw a man moving to a place which I did not know; but having described where the crowd were going, and towards a certain mill, the man told me it was the Hagg Mill.

Mr Solicitor-General.—Why did you ask him that?

A. I was coming from Johnstone that day by the loan, and I asked him if he knew what that mill was, whether it was a mill.

Q. Why did you ask him that?

A. I cannot say why.

ALEXANDER THOMSON—*sworn.*

Examined by Mr Grant.

Q. What are you?

A. A weaver.

Q. Where and in whose employment?

A. I work in Johnstone.

Q. Do you work in your house, or at any other person's work?

A. I work in the employment of Mr Saunders of Renfrew.

Q. Do you know a person of the name of John Laing?

A. No.

Q. Do you remember a meeting at Johnstone, upon the School-Green, about the beginning of April?

A. Yes.

Q. What day of April,—and what day of the week?

A. Monday the third of April, about twelve o'clock.

Q. Did you see any person of the name of Laing address that meeting?

www.libtool.com.cn

A. Yes.

Q. How did you know that his name was Laing?

A. I did not know that his name was Laing at the time—I made inquiry what they called him, as he was a stranger to me.

Q. Did you make that inquiry at the time?

A. At the time when he was done with his speech.

Q. And what answer did you receive?

A. They told me that his name was Robert Laing, from Kilbarton.

Q. What sort of looking man was he?

A. He was a little man.

Q. How was he dressed? What had he on his head?

A. To the best of my knowledge, he took his hat off when he came out of the crowd, to address the crowd.

Q. Did you hear his address to the crowd?

A. Yes.

Q. What was the nature of it?

A. When he came out of the crowd he spoke—to the best of my knowledge—after a person's reading the bill—to the best of my knowledge—which the people said was a bill—"Perhaps," says he, "there are a good many here that do not know the contents of this bill."

Q. What more did he say?

A. He said that he was just new come from Glasgow, and he could assure them that the whole factories in Glasgow, and in Anderston, was stopped, owing to the contents of that bill.

Q. What more did he say?

A. He said some more; but I do not recollect the words.

Q. Did he recommend to the meeting, to do any thing?

A. Yes; he said that seeing that the factories were stopped here as well there, no doubts, but the masters of the factories would come in compliance with the wishes of the workers, and that the end, what he meant I do not know, would be accomplished.

Q. Did they call him anything besides Robert Laing in your hearing?

A. Yes.

Q. What did they call him?

A. 'At the time that I asked what that man's name was, being a stranger to me, some made a reply to never mind, it was daft Laing of Kilbarton.

Q. Did they mention any country he had come from?

A. Some was calling him an Englishman, and some of them that were there from Kilbarton said, that he was a Kilbarton born man.

Q. Have you seen that man since?

A. I have never seen him since, nor before, to my knowledge.

Q. Do you know the prisoner at the bar, James Speirs?

A. Yes; I know him to look to him and to speak to, when passing upon the street.

Q. Did you observe him take any part at that meeting?

A. No.

Q. Or hear him make any speech?

A. No.

Q. Were you that morning at Mr Houstoun's mill called the Old Mill, or the Laigh Mill?

A. Yes.

Q. About what time?

A. Ten o'clock in the morning.

Q. Did you see the prisoner there?

A. Yes, I seed him there.

Q. Was there a crowd of people there at that time?

A. Yes, at Mr Houstoun's Laigh Mill.

Q. Is that also called the Old Mill?

A. Yes.

Q. What was this crowd about, at Mr Houstoun's Mill?

A. When I went down I heard that there was a meeting there, or a crowd, at ten o'clock in the morning.—I went to see out of curiosity what they were about. When I went down, Mr Houstoun was there, and a crowd of people gathered round about him there; the crowd was wishing for Mr Hous-

toun to stop the mill. Voices from different places in the crowd spoke to that purpose.

Q. What did Mr Houstoun say or do? Or what did anybody else say or do?

www.libtool.com.cn

A. He wished that the crowd would nominate a man or two, to come out and explain to him what the mob wanted.

Q. Did he make this request more than once?

A. Yes.

Q. Did you see the prisoner at the bar at that time?

A. Yes, I seed him at the outside of the crowd, at the time Mr Houstoun made this request.

Q. What did he do or say?

A. The crowd at that time was very clamorous, and pressed so close upon Mr Houstoun, that the gentleman could not obtain a hearing. I seed the prisoner speak out, and say, within my hearing, it was a shame to annoy Mr Houstoun in the manner they were doing; they ought to nominate a man or two according to his desire; the crowd withdrew back, maybe thirty or forty paces, to the best of my knowledge, and nominated two men.

Q. Did you know these two men?

A. I knew one to look to, and call him by his sirname; but I was a mere stranger to him.

Q. What was the sirname of the one you knew?

A. Walker.

Q. Did you hear or see the prisoner at the bar say or do any thing else, while the crowd was at that mill?

A. Yes, I heard him say some more.

Q. What more?

A. At the time that these two men that were nominated went out and were speaking to Mr Houstoun, there was part of the crowd broke off from the main body, and said, Let us draw the sluice, and take the water from it.

Q. This was at the time the men were speaking to Mr Houstoun?

A. Yes; and saying at the time, that he was not willing to stop the mill; there were three or four I seed and heard cry out, Shame, shame! Let the gentleman do as he pleases. Do not stop the mill, let him do whatever he thinks proper.

Q. Did the prisoner do or say any thing at that time?

A. He was then within a pace, or a pace and a half, from me at the time, and I speared him to repeat the words at the time along with some more.

www.libtool.com.cn

Q. What words?

A. Shame, shame! And, let the gentleman do what he thinks proper.

Q. Did they stop off the water and stop the mill?

A. No; they were shamed out of it.

Q. Did you hear the prisoner say any thing else upon that occasion?

A. No.

Q. Did you observe him take any other part upon that occasion?

A. No.

Cross-examined by Mr Hope.

Q. You have said that you were at the School-Green meeting, upon the third of April?

A. Yes.

Q. When did you first go there—at what period of the meeting—did you go there before the meeting began?

A. No, some time after the meeting at the Laigh Mill, in the same forenoon, I heard that there was a meeting on the green, and I went out of curiosity to see what they were about.

Q. What was doing when you went there?

A. They were beginning to gather themselves into a body.

Q. What did they do?

A. They formed themselves into a circle.

Q. For what purpose?

A. There was a man read after the circle was formed, a paper that they called the Address.

Q. Was that the first thing done?

A. No.

Q. Then tell me what was the first thing done?

A. To the best of my knoweldge, they wanted a presses.

Q. Tell us what took place at that time?

A. Some cried out for Bob Parker, some cried out for Lovely Bob, and it went round amongst the crowd in that manner.

www.libtool.com.cn

Q. Was Lovely Bob a name for Parker?

A. A bye-name he gets.

Q. Was there any other name mentioned besides Parker's?

A. Not that I recollect.

Q. In what part of the crowd were you standing at that time?

A. I was standing in a part of the crowd, upon a piece of rising ground next the road, between the crowd and the road.

Q. Was there any person along with you at that time?

A. Yes; there was a good many standing, about where I was standing at that time.

Q. Was Andrew Smith along with you?

A. I do not know the man, he might be there for me.

Q. How far might this be from the ring that you were standing?

A. A matter of five or four paces.

Q. Do you mean from the inner circle of the ring?

A. No; the outer circle.

Q. What breadth might this circle be? How many people broad do you suppose?

A. I could not say.

Q. Was there a great crowd?

A. There were more than what appeared in the circle.

Q. Was the ring five paces deep?

A. No; it would not be above a pace, or a pace and a half.

Q. You were not above seven paces in that way, from the inner circle of the ring?

A. There was a pace and a half from the front of the circle to the rear of it.

Q. And you were four or five paces from the rear of the circle?

A. Yes.

Q. You were on a piece of rising ground?

A. Yes.

Q. You were rather above the circle?

A. Yes.

www.libtool.com.cn

Q. You saw what was going on in the ring?

A. I seed a part of it.

Q. Did you see it?

A. Sometimes they burst out, so as we could not see things just as we wanted.

Q. At the time that the preses was chosen, did you hear distinctly, the cry for Bob, and Lovely Bob?

A. Yes, and that from different parts of the circle.

Q. You say that no other name was mentioned?

A. Some called, Beautiful Bob.

Q. And you heard no other name mentioned?

A. I can swear, to the best of my knowledge, I heard no other name mentioned.

Q. Did any person propose himself as preses, besides Parker?

A. Not that I seed.

Q. Did you see any person, immediately before Parker was chosen, bustle through the ring into the centre, and see him rejected as preses?

A. No.

Q. Was Parker chosen at once, without any delay?

A. Yes; he was chosen at once, by the name of Lovely Bob, and Beautiful Bob together.

Lord Justice Clerk.—How was he elected—by show of hands?

A. I do not recollect that. I do not think it was; to the best of my knowledge, I think it was just a cry.

Q. Was Parker within the ring at this time, before he was chosen?

A. No, he was in the body of the ring when they cried out, Lovely Bob.

Q. Did he then go into the middle of the ring?

A. Yes.

Q. Was there any person there, before he was chosen?

A. Yes; one Walker, and the other stranger that I did not know.

Q. Did you hear his name?

A. No; I might have heard, but I do not recollect it.

Q. Did you inquire his name?

A. Yes, I did inquire his name; but I did not get him.

Q. Did the people not know him?

A. The people where I was standing, did not know him.

Q. What sort of a dress had he on?

A. To the best of my knowledge, he had on a short green coat.

Q. Do you know what sort of cap he had on his head?

A. No, I do not recollect.

Q. What sort of a waistcoat?

A. I did not pay attention to his waistcoat, his back was mostly to me, where I was standing.

Q. Do you swear that there was no other person within the ring but these two, before Parker was chosen?

A. No, I could not swear that; for sometimes there was very much pressure took place in the ring.

Q. Was anybody standing apart in the ring, besides those two?

A. Not that I saw.

Q. When did Speirs go in?

A. I do not know when Speirs went in.

Q. You saw him within the ring?

A. The preses being chosen.

Q. You saw Speirs within the ring, at one part of the proceedings?

A. Yes, I seed him in the inside of the ring.

Q. Was there any other person within the ring but these four?

A. I could not say that; there was sometimes more and sometimes less.

Q. You have already told us, people were sometimes hustled in for a moment, and then hustled back. Were there any other persons standing farther in the ring, apart from the others, for any length of time, besides these four?

A. I did not see four standing together.

Q. There were four within the ring,—Walker, Parker, this stranger, and Speirs?

A. Yes; Parker, Walker, and that stranger were standing three together. I seed Speirs standing between them, and the front of the circle.

Q. Did you see any other person?

Lord Justice Clerk.—Is that what you said—you saw Parker, Walker, and the stranger standing together, and Speirs was between them and the circle?

A. Yes.

Mr Hope.—Were there any persons besides these four standing apart in the ring, and the persons who formed that circle?

A. Not that I seed.

Q. Can you tell us, at what time Speirs went into the ring?

A. I could not tell that.

Q. After the preses was chosen in this way—what was done next?

A. This Walker read the Address.

Q. Where were you standing at that time?

A. I was standing between four and five paces in the rear of the circle.

Q. In the same place?

A. In the same place.

Q. Did the circle continue then, of the same size as before?

A. Not much larger, much about it.

Q. Was there any order given to the people to be silent? Was silence proclaimed?

A. Walker did, and he read the Address.

Q. Was silence observed?

A. Yes; they were as quiet as they could, till they heard him read the Address that he had in his hand; he said, it was the Address.

Q. You were able to hear it at that distance?

A. I did not. I heard the sound; but I could not make

the words just out of the man that was reading the Address, and his back was to me.

Q. Do you mean to swear, that you heard no part of that paper that was so read?

www.libtool.com.cn

A. I heard it all read; but I did not know the words that were in it; I could not take it up.

Q. No part of it?

A. No part of it.

Q. And that you say was owing to the man's voice being weak, and to his back being towards you?

A. Yes, from that and the pressure together.

Q. You said, you were only with two or three people, apart from the crowd?

A. I was three or four paces from the crowd, and there were two people standing in the place where I was; but the pressure took place several times within the circle.

Q. How do you mean that the pressure in the circle which was not very large, prevented you, who were standing four or five paces off with two or three people, from hearing?

A. The reason of that was owing to the character that the preses was in; he was in a manner covered with rags, he had a *long* beard, and dirty flesh.

Q. You said the people were quiet when the Address was read?

A. Yes.

Q. The preses went forward before the Address was read?

A. Yes.

Q. How long was the preses forward in the ring, before the Address was read?

A. I could not say.

Q. Might he be five minutes, or any short space?

A. I could not take upon me to say what time.

Q. Was there any interval at all?

A. Yes, there was a little.

Lord Justice Clerk.—You said Walker proclaimed silence before he read the Address, and they remained as quiet as they could, till he had read the Address which he had in his hands,—that is what you have sworn?

Mr Hope.—You say some little interval elapsed after the preses went forward into the ring, and before the Address was read—Was there any laughter when the preses first went forward ?

www.libtool.com.cn

A. Yes, there was a laugh took place.

Q. At the preses ?

A. I do not know whether it was at the preses or not ; but it appeared to me to be so.

Q. Had their laughter subsided before the Address began, and after silence was proclaimed ?

A. Yes.

Q. Had they recovered from their amusement at the appearance of this preses ?

A. At the beginning of it they did.

Q. What number of people might there be there altogether, including those immediately about this ring ?

A. I could not say.

Q. Look round here—were there as many people as you now see underneath the gallery ?

A. In the circle, there were not near so many.

Q. I suppose not, but round it ?

A. Spectators and altogether, I think there would be much about it.

Q. Did the people ask the object of the meeting ?

A. Not that I heard.

Q. Was it put to the meeting by any person, or inquired generally among them, what was the object of the meeting, or the purpose of their coming there ?

A. I do not know. I did not see it.

Q. And heard nothing to that purpose ?

A. No.

Q. Did you hear the persons ask Walker the object of the meeting at first ?

A. No.

Q. Did you see Walker, Parker, and Speirs, or any of them, come upon the green ?

A. No, I did not see them come upon the green ; I seed them when I was there.

Q. Did you see any body of people come together to the green?

A. No.

Q. Did Walker say where he had got this paper from?

A. I did not hear Walker say so; but I heard some of the crowd say, that he had taken it off the chapel-gate.

Q. This paper was read to the meeting, as you have described—How was it received by the meeting?

A. Some said it alluded to rebellion.

Q. Were there any huzzas or cheers as he went along, at the end of the sentences?

A. Yes, there were huzzas as he went along; the preses often attempted to comment upon the Address.

Q. Parker?

A. Parker—and they were laughing at it many times, then.

Q. When Parker began to speak?

A. Yes.

Q. Was the Address received as it went along, at the end of the sentences, by cheers from the people?

A. Not that I saw. I did not know what the huzzas or cheers were for; but I took it, for my part, to be at the character of the preses.

Q. How often did this preses attempt to comment upon the Address?

A. Two or three times.

Q. Did he make any observations?

A. He could not get the observations made, because they always laughed.

Q. Upon your oath, were there no laughs, nor cheers, nor huzzas, on the reading of that Address, till Parker began to speak?

A. To my knowledge, there were none?

Q. Did Walker make any remarks upon this Address?

A. Yes, to the best of my knowledge, he attempted once to make a little.

Q. What was that about?

A. I could not obtain rightly.

Q. What words caught your ear?

A. His back was towards me.

Q. What did you hear?

A. Merely his voice.

Q. How did you know that he was reading the Address, or commenting on it?

A. He had it in his hand, reading it in this way, (*describing it*).

Q. At the time you say he made a sort of remark upon the Address, how did you know whether he was reading or making a remark upon it?

A. He let drop his hand, and from that I considered he was speaking upon it.

Q. His back was towards you at that time?

A. He was standing in such a manner as this, (*describing it*).

Q. His back was towards you, you have told us several times. I ask you again, if you heard no part of that Address; and if you heard no part of the remark which you say Walker made upon a part, how do you know that he was making any remark upon it at all? Remember the situation in which you stand.

A. His hand being dropped, he could not read it at the time that he was speaking.

Q. At that time Walker was not further from you than I am, six or seven paces off?

A. He was further than that.

Q. Did you hear any thing that the chairman, Parker, said?

A. No.

Q. Was his voice so weak also?

A. No; always when he began, the laugh began.

Q. He must have said something before they began to laugh?

A. He only attempted to speak, for I never could make any thing of what he said.

Q. How was that remark which Walker made received?

A. I do not recollect it.

Q. Was there any huzzaing after that?

A. Not that I recollect.

Q. You say Walker attempted to make a remark—what do you mean by that?

A. I took it to be.

Q. He attempted to make a remark, what did you mean by that expression—was he interrupted by laughter?

A. No.

Q. What did you mean by that expression?

A. He attempted to make a remark.

Q. Did he speak?

A. I did not hear him make the words out; there was a noise; they huzzaed and laughed.

Q. There was huzzaing when Walker was speaking?

A. No, not huzzaing.

Lord Justice Clerk.—You have already said, I do not recollect any huzzaing after Walker's remark. "I did not hear him make the words out; there was a noise; they huzzaed and laughed."

Mr Hope.—Will you now say there was, or was not, huzzaing? which statement do you now take?

A. The huzzaing was not to Walker, to the best of my knowledge.

Q. Was the huzzaing at the time that Walker was speaking?

A. At the time that Walker was reading the bill.

Q. You knew him?

A. Yes.

Q. At the time that Walker made this observation, was there huzzaing? You say the huzzaing was not to Walker; but was there huzzaing at the time?

A. Yes, at the time he was making a comment.

Q. What do you mean by the huzzaing not being to Walker?

A. I do not know.

Q. You do not mean to represent to us that the chairman was making a speech at the same time that Walker was doing so?

A. Not at the same time, but at the time that he was reading he interrupted Walker.

you, whether Walker was not as much a stranger as the other, and how came you to hear the other better?

A. Walker passed the door several times, and I knew him to look to, but Laing I never saw before that.

Q. But you heard his name?

A. The people were inquiring what man that was; and some said that he was from England, and others from Kilbarton.

Lord Justice Clerk.—You say you only heard Laing named, Walker you knew by sight, and you could name him; but knowing only his name, and never having spoken to him, how do you mean to say, in the face of the Jury, and the face of the Court, that you heard Laing better, because he was a stranger to you, than Walker?

A. I paid more attention to him.

Q. When people speak at these meetings, do you mean to swear you pay more attention to strangers than to persons whose names you know?

A. I paid more attention to him at the time than Walker's.

Mr Hope.—Had you seen any paper posted up in Johnstone before that meeting?

A. Yes, I seed one.

Q. Had you read it?

A. No, it was posted high.

Q. Will you take upon you to say, that going to that meeting, where you heard this Address read, you did not hear the con tent of that Address? Speak out, in the face of the Jury.

A. I did not hear it.

Q. Did you pay no attention to the contents of that Address read?

A. I heard of it; but I paid very little attention to it, when Walker was reading it, on the account of hearing folks speaking about it the day before.

Q. Having heard people speaking of that Address before which you had never read, you paid little attention to it when it was read?

A. I did not read the bill.

Q. You had heard people talking about it—what did they say about it?

A. They said it was of a rebellious nature.

Q. You say some of the people about you remarked upon the Address, that it was about rebellion—how came they to hear it?

A. I do not know.

Q. Cannot you give us a better reason why you did not attend to this Address? You had heard people before saying it was about rebellion; and you heard people about you at the time, saying it was about rebellion; how came you not to attend to it?

A. I cannot answer that.

Q. What made you attend to Laing?

Lord Justice Clerk.—Let him go on. What were you going to say?

A. I do not recollect at present.

Mr Hope.—Had you more curiosity to hear a strange man from Kilbarton, than to hear so strange a paper which you had heard people talking about?

A. Yes, being a stranger, I was looking for something wonderful from him; he was in very decent apparel; I took him to be some Englishman that was come down; but I did not know what he was.

Q. You might have expected something wonderful from the paper; the people around you said it was alluding to rebellion?

A. I paid little attention to it, upon account of its alluding to rebellion.

Q. After this Address was read, what was done next?

A. After the bill was read, this man, that the people told me his name was Laing, stepped forward.

Q. Repeat what he said?

A. To the best of my knowledge, he said, "that perhaps there were some of the people there that did not understand the contents of the bill; but he could assure them, that he was just now come from Glasgow, and that the factories in Glasgow and Anderston was stopped in consequence of the

bill." He spoke more, but I could not understand what he said.

Q. He told them, you said before, that by stopping the works, the master manufacturers would join them, and that they would sooner accomplish their end?

Lord Justice Clerk.—That the masters would sooner comply with their demands, and they would get their end.

Mr Hope.—Do you mean to say that you heard nothing more than that?

A. I do not recollect any more; there was a good deal of it that I did not take up.

Q. What prevented you from hearing him?

A. I could not say what prevented me.

Q. I shall be obliged to you to tell me.

A. Whether it was some pressure that took place where I was standing, I cannot tell you.

Q. Was there any huzzaing when he was speaking?

A. There was a huzza after he was done.

Q. Did you hear any proposal made to that meeting, for going to stop the public works?

A. No, I did not.

Q. Did you see any shew of hands after the Address was made?

A. There was a shew of hands after this Laing was done, and a huzza.

Q. For what purpose was that shew of hands?

A. I do not know.

Q. You must tell me. You were standing within this short distance of this ring, which you describe as only consisting of a few people, a yard and a half deep; you heard those words distinctly from Laing; and you saw this shew of hands; and do you mean to take on yourself to swear, in the hope that any body is to believe it, that you did not know what that shew of hands was for?

A. There were four or five paces between me and the ring.

Q. I know there were; you heard what Laing said, and you say there was a shew of hands? and do you mean to swear you did not know what that shew of hands was for?

A. I do not know what it was for.

Q. Did you hear any person desire them to hold up their hands?

A. I heard several voices desire the people to hold up their hands; but I do not know who they were.

Q. You heard them desire the people to shew their hands?

A. Yes, a shew of hands.

Q. Do you mean to say you did not hear what went before that? what they were to shew hands for?

A. No, I do not know what it was for.

Q. At what time was it that you heard some people calling this man Daft Laing?

A. After he was done with his speech, when people were coming about to know what stranger it was; it was Daft Laing, they said.

Q. Was there any thing daft-like in his appearance?

A. I could not say that he had very decent apparel.

Q. Was it Laing's proposition to stop the works, which was agreed to?

A. I did not know what it was; I did not hear any agreement.

Q. You have told us that Laing said he had come from Glasgow, and could assure them that the whole factories were stopped in consequence of that bill; that you did not recollect any thing further; but that he said, that if they stopped the works, the masters would sooner come into their demands—Did Laing propose that?

A. He did not directly propose to go to the works.

Q. You say he said they would sooner accomplish their end by stopping the works?

A. He assured them they were stopped at Anderston and Glasgow.

Q. You stated that you had previously been at Mr Houstoun's Mill, where different people wished them to stop the mill?

A. Yes.

Q. Then you have told us what took place at this meeting?

A. Yes.

Q. What followed this huzzaing after Laing's speech?

A. To the best of my knowledge, they broke up after the shew of hands.

Q. Immediately?

A. Yes.

Q. For what purpose did they break up?

A. I do not know; some went down one street, and some another; and some went one way, and some went to the Hagg Mills, as I understood.

Q. Did you see a person of the name of M'Nicol there, a sawyer in Johnstone?

A. He might be there, but I did not see him, that I recollect.

Q. You knew him?

A. Yes, I knew him well, for he lives within two doors of me.

Q. Did you see him there?

A. Not that I recollect.

Q. A person of the name of Thomas Logan, did you see him there?

A. I did not know him if I saw him.

Q. In what order did this party, that went in the direction towards Hagg Mill, go off the ground?

A. I paid very little attention to that.

Q. You saw them go?

A. I seed them go.

Q. In what order did they go?

A. They went just like a mob, or a crowd, the part of the crowd that went that road.

Q. You struck work that day, upon the Monday?

A. Yes.

Q. When did you return to your work?

A. I did not return till the next week.

Q. What day were you apprehended?

A. The 14th of April, Friday.

Q. Have the goodness to state what you did with yourself about the middle of Wednesday, the Wednesday after the Monday you went out to Quarrellstone?

(*The witness withdrew.*)

Mr Grant.—I am going to put the witness upon his guard, and I shall not say one word till the witness come back again.

www.libtool.com.cn

Lord Justice Clerk.—You have no right to put the witness on his guard.

Mr Grant.—I am new in this sort of proceeding, that whenever a counsel gets up to make an observation, he is to be stopped by the authority of my learned Friends—to the authority of the Court I bow with the greatest respect—to my learned Friends opposite, I bow with all sort of courtesy; but with nothing further. I was going to observe to the witness——.

Mr Hope.—Let us see whether the witness is removed.

Mr Grant.—I shall not submit to the orders of my learned Friends,—to the order of the Court I bow. This witness is brought by me, and therefore I have an additional duty to put him on his guard. The witness has been in prison, on the charge of some offence; and, therefore, I think it my duty, not to put the witness on his guard, but to suggest to the Court to put him on his guard, that he is not bound to say what may criminate himself.

Lord Chief Baron Shepherd.—That appears to be the true way; but to put him on his guard, till some question is put to him, the answer to which may criminate himself, is completely putting the Court in the situation of telling every witness, he need not criminate himself; unless it appears that the question is such, the answers to which is likely to criminate the witness; then to put the witness upon his guard, would be a work the Court would be bound to perform to every witness who comes into the box. Now, the question is —What did you do on Wednesday?

Mr Grant.—And another question—Were you at Quarrellstone?—Now, it was suggested to me, for I know nothing about Quarrellstone, or what was done at Quarrellstone, that it would be right to put the witness upon his guard, that he was not bound to criminate himself.

Lord Chief Baron Shepherd.—And so it would, if there is danger of it; but if you take it too largely, see the consequence, suppose he had not done anything likely to crimi-

nate himself, if he were a man desiring to conceal the truth, unless somehow or other it appears it will criminate him. See what a cloak the witness would have—he would say, I am not bound to criminate myself—that question put to me will criminate me—and I will not answer it. Now, that rule laid down too largely, immediately stops any unwilling witness's mouth, who wishes to conceal the truth.

Mr Grant.—Your Lordship will not suspect that was my motive, but I will say at once that my motive was—that to witnesses of their own, last night, my learned Friends chose to put questions, which I, for every consideration under Heaven, would not allow to be put, if I could help it, to witnesses that I placed in such peril; and, therefore, it was that I wished to call the attention of the Court to it, it being suggested to me what course this was going to; and when the other questions are put, your Lordship will judge of it: perhaps I have been a little too hasty in stating my objection.

Mr Hope.—After the high tone the learned Gentleman has chosen to assume, it now appears that he has descended a little, and all he pretends to have a right to do, is to suggest to the Court, whether or not it would be proper for the Court to put the witness on his guard.

Mr Grant.—I am entitled to do that in the presence of the witness.

Mr Hope.—But there is no pretence for his putting him on his guard, without the leave of the Court; and, therefore if the counsel for the prisoner has any intention to suggest that to the Court, he must not make that suggestion in the presence of the witness, because, by that very suggestion, he in fact puts the witness on his guard.

Now, with regard to the other observation which the learned Gentleman has thrown out on those who have the conduct of the prosecution under this commission, I suppose the Lord Advocate, and the learned Gentlemen acting with him, know fully as well as that gentleman, whether they put the witnesses in peril by the questions they ask——

Mr Grant.—Not better.

Mr Hope.—And the Court having ruled the point in our

favour, I presume we may assume we do know better than the counsel for the prisoner; and I should like to know what right he has to convert this inquiry into the means of censure upon any quarter whatever. I apprehend there is no dispute that I am entitled to proceed in this inquiry; and if any question is put, on which the learned Gentleman has a right to interfere, your Lordships will see that the witness must be withdrawn.

Lord Justice Clerk.—It appears to me, that it is not a wholesome proceeding which was first contended for by Mr Grant, that a Counsel is entitled to caution or warn a witness; he can go no farther than suggest it to the Court; but I apprehend the correct and wholesome course is, to ask the witness to be removed, and to state to the Court his objection to the course of examination; and then the Court will judge of it, because I can see great evils which may result from the mode of proceeding proposed here, and I am sure your Lordships will not countenance it. Till the question is put, we cannot judge whether there is a necessity to give a caution or not; therefore, at present, there is no impropriety in the question, where he was on Wednesday.

Mr Hope.—We intended to ask this person, whether he was not drilling with a party at Quarrelstone—When a person accused of High Treason brings forward a witness, to state his presence at the scene laid, it is usual to ascertain the character and acts of the witness, by whom such evidence is given, and I mean to put it to this witness, whether he was or was not drilling, upon that Wednesday.

Mr Grant.—I object to that question, as standing here for the witness; for as to my client, it is a matter of indifference to me; but I am extremely surprised at its being proposed, to ask a witness who already has been taken up——

Lord Chief Baron Shepherd.—But brought here by you.

Mr Grant.—Brought here by me—to ask a witness to give evidence of that which, connected with the rest of these proceedings, is most likely to involve him in the guilt of High Treason———

Lord Chief Baron Shepherd.—Only see what the consequence of that argument is.

Mr Grant.—I beg to be understood as not objecting to it, on the part of my client.

Lord Chief Baron Shepherd.—You bring a witness here who is present at the transaction which is charged upon the prisoner at the bar, as being a transaction involving him in High Treason; and you bring properly, if you can make out the case, a witness here, who appears to have been present at the transaction of the Monday; now, if you are at liberty to examine him just as far as you please to that transaction, with respect to himself, but he is to be stopped from being examined into the whole that passed, though it may implicate him, the consequence is from that, that the Court and the Jury get only half the truth, instead of, by a full examination, getting the whole. Now, that would be the consequence; it may turn out from the course of examination, that the proceedings of the next day are separate and distinct from the whole transactions altogether on the Monday; and if the witness were asked specific questions, the answers to which might criminate himself in other transactions, that is another question;—but you recollect the nature of the charge.

Mr Grant.—With submission to your Lordship, I do not think I have made myself understood. I am not objecting to the question. I have no right to object to the question: I only wish to state to the Court, what I think it is my bounden duty to state to the Court, that the Court should inform him that he is not bound to answer. He may, if he likes, and I cannot object to it—and I have no interest in it; it is a transaction with which my client is not coupled; it is a subsequent transaction which my learned Friend wishes to examine into, to impeach the credit of the witness. Your Lordships will deal with it as you please; it is to me a matter of the most perfect and absolute indifference as Counsel for my client.

Lord Chief Baron Shepherd.—As *amicus curiæ*, have the goodness to point out, in your point of view, the witness standing as you are instructed he does stand, how does the question put, tend to criminate him.

Lord Justice Clerk.—Mr Hope stated the ulterior ob-

ject; first, was he at this place, on the Wednesday, and then were you drilling there on that day. Now, it is the act of drilling which Mr Hope wishes to put to the witness; then he is not bound to answer that.

Mr Grant.—But I beg again to state it is really not in the shape of an objection, but to save the poor man.

(*Witness was brought into Court.*)

Mr Hope.—Did you go to Quarrellstone on the Wednesday, two days after this meeting?

A. Yes, I was taking a walk up that way.

Q. Was it towards Shiff-Wood, that you went?

A. I went up by the How-Wood.

Q. Did you see some people there?

A. Yes, I seed different people.

Q. Where did they come from? Were they Johnstone people?

A. I do not know they were Johnstone people; some of them was people about the country, I suppose. I do not know where the people came from that were there.

Q. Were there any of Mr Houstoun's men, who are employed about Mr Houstoun's mill? I do not ask the names of any of those.

A. I do not know.

Q. To what mills did the Johnstone people belong?

A. I do not know.

Q. About what number of people might be there?

A. I do not recollect what number there might be.

Q. One hundred, or two hundred—or how many?

A. No; I do not think there would be any of this number.

Q. Were there fifty?

A. I do not think there was—I cannot say.

Q. Did you see a person of the name of James Young there?

A. He might be there—I do not recollect him.

Q. Did you see him that day when you went out upon this walk?

A. I do not know—I do not recollect.

Q. What were this party of people doing when you saw them?

Lord Justice Clerk.—Alexander Thomson, it is my duty to state to you, that with reference to the question now put in this course of examination, you are not bound to answer questions tending to criminate yourself. You may refuse positively to answer the question, and state that that is your reason, if you think proper to do so; but, if you choose to answer the question, and tell the truth, you are at full liberty so to do.

Mr Hope.—What were those people doing when you saw them?

A. They were playing themselves.

Q. In what way?

A. In different shapes.

Q. At what time of the day was this?

A. In the forenoon.

Q. What games were they playing at?

A. I do not know, I did not pay any attention to them.

Q. But you saw them playing themselves; what were they doing? you must have seen?

A. I paid very little attention to them.

Q. Did you go down to these people, and join them?

A. No.

Q. What became of you?

A. I took my walk out.

Q. And saw these people—and what became of you?

A. I came home.

Q. Was the game, at which those people were playing themselves, drilling? were they playing at soldiers?

A. No, I do not think they were drilling; if it was drilling, I do not understand what it was; it was unco-like drilling; if it was, it was strange drilling.

Q. Were there people, or were they not, marching and going through movements as soldiers?

A. Not that I seed.

Q. You say that this was strange sort of drilling, if it was drilling; what was it?

A. I did not understand that it was drilling.

Q. What was it?

A. The men playing themselves, I understood.

Q. In what way were they playing themselves?

A. Playing and conversing with one another.

Q. In what way? playing at leap frog? or hide and seek? or what?

A. I could not say.

Lord Justice Clerk.—Now, upon your oath, you are not taking the shelter I proposed you might take, but you profess to answer the questions, and must be dealt with as a person who is bound to answer fairly. Were they playing at any Scotch game whatever? And I desire you to answer that question; because you are in a totally different situation from what you would have been, if you had taken advantage of the objection that I stated to you. Upon your oath say, what was the game that they were playing at that time?

A. I really could not say the game.

Lord Chief Baron Shepherd.—How many of them were there?

A. I could not say to the number.

Q. I do not ask you the exact number; but can you tell whether there were five, or ten, or fifty, or more?

A. I think they would run about fifty or so.

Mr Hope.—In how many squads were those people?

A. If they were in squads, I did not know.

Q. Were they in squads, or in divisions, or not? Were they all in a body, or separated?

A. Yes, they were separate; I did not know.

Q. Were they in one body, or were they not?

A. There were two or three different parties.

Q. I asked you before about a John Young—did you see a James Young there?

A. Not that I recollect.

Q. A man who was formerly in the 103d regiment?

A. I have not mind of his being there.

Q. You know the man?

A. I know the man if I see him.

Q. What were those two or three different parties doing?

A. Running up and down the field, as if they appeared to be in diversion to me, or playing.

Lord Chief Baron.—About how many were there in a party?

www.libtool.com.cn

A. There would be about from eight to twelve.

Mr Hope.—Now I ask you upon your oath, whether you did or did not, upon that occasion, put one or more of those parties through their facings, or their drillings? whether you drilled one or more of those squads?

A. I did not drill them.

Q. What did you do with either of the squads? Did you put them through their movements, or their facings? they might be drilled before that?

Lord Justice Clerk.—You can either answer the question according to the truth, and as you shall answer to Almighty God at the Great Day of Judgment, or you may cover yourself, by saying you will not answer the question; but one or the other you must do.

A. My being in the volunteers, they listed my name down for one; and some of them noted me to be that; I took some of them to be volunteers too. I seed some setting their name at the tent that I did, and they asked me if I would put them through a facing or two, and I rejected it once or twice; I rejected several times, and looking round to them that was there, I thought that I recollected their faces being in the room setting down their names for volunteers at the same time that I did; and knowing that they were going upon duty in a little time after that, I thought there was no harm in putting them through a facing or two—I granted it—and I did it.

Q. At what time had you been a volunteer?

A. Twelve years ago.

Q. Do you mean to say you had put down your name a few days before that, for the present company of Johnstone volunteers?

A. A quarter of a year before.

Q. What sort of a day was that—was it raining or fair?

A. It was a fair day when we were there.

Q. Did it come on rain?

A. It came on rain at night.

Q. But while you were there?

A. No.

Lord Chief Baron.—You have now said that they asked you to put them through a facing or two?

A. Yes.

Q. What do you mean by a facing? facing about as a soldier does? You say you have been a volunteer?

A. Yes.

Q. And they asked you to put them through a facing or two—What do you mean by a facing?

A. In a military way, seeing that we were going to be upon duty after that.

Q. What could you mean just now, upon your solemn oath, when you were asked if this was drilling, in not saying at once that it was drilling?—You, who have been a volunteer, who know what the drilling of soldiers is, and who were desired by those people to put them about a facing or two; and yet, in the face of a Jury of the country, and, I am sorry to say, in the face of your God—you, who have sworn to tell the truth as you shall answer at the day of judgment, hesitate to say that it was drilling. I hope to God you will never make such a figure again in a Court.

ELLAN M'QUIN, otherwise GILMORE—*sworn.*

Examined by Mr Sandford.

Q. Do you keep a public house?

A. Yes.

Q. Where is it?

A. At Cartside Bridge.

Q. Do you remember a crowd coming to Cartside Mill, in the beginning of April?

A. Yes.

Q. Do you remember what day it was?

A. It was the beginning of April; I think it was the third; I am not quite sure; but I remember it well.

Q. Did you see James Speirs that day?

A. I did.

www.libtool.com.cn

Q. How long have you known him?

A. I think it is three years; and he lived a twelvemonth along with a gentleman in the land near me; and a soberer man never was in the land with any person.

Q. Tell us what time it was when you saw him on that day, and what he did?

A. He came into my house with another gentleman, and bought a gill of whisky, when the mob was in the mill.

Q. Did you see the mob at that time?

A. Yes; it was before the mob was that night at the mill he was in my house.

Q. How long did they remain in that house?

A. The moment I cannot ascertain.

Q. What time do you think it was?

A. It was about the morning; I do not know what time it was, my knock was not going.

Lord Justice Clerk.—It was the Cartside Mill?

A. Yes, the Cartside Mill?

Q. Do you know who the other gentleman was that was with him?

A. I did not know.

Mr Hope.—How far is the Cartside Mill from your house?

A. A few paces only.

Mr Grant.—Was the prisoner, when he lived near you, a good, peaceable man?

A. Yes, a good, peaceable, honest man.

MALCOLM FRASER—*sworn.*

Examined by Mr Grant.

Q. Were you a serjeant in the 26th regiment?

A. I was a serjeant and a serjeant-major.

Q. Have you known James Speirs, the prisoner, long?

A. I knowed him upwards of six years in the regiment.

Q. What was the character he bore in the regiment?

A. A very fair character, and very promising to be an ornament in the regiment, if he had continued.

Q. What was his rank?

A. He joined as a boy.

Q. What rank did he fill?

A. He was lance corporal, full corporal, and an ordinary serjeant, and a drill serjeant.

Q. Do you know why he left the regiment?

A. For a complaint in his breast.

Q. Do you know that signature there, (*handing a paper to the witness.*)

A. I do not recollect it at present; I knew the officer who commanded at the time.

Q. Who was his commanding-officer?

A. Captain Hall.

Q. Do you know that signature?

A. Yes.

Q. Whose is it?

A. Hall.

Q. What was he?

A. A Captain in the Depot.

Q. Look at that name again, and see if it is not the same one that is signed before.

A. It is not so plain, but I verily believe it is.

Mr Grant.—We may put it in.

Lord Chief Baron Shepherd.—It is not evidence, but it is his discharge, and states the cause.

Mr Grant.—Yes, and states his discharge, and the cause; I presume the Lord Advocate will not object to it?

Lord Advocate.—Certainly not.

Mr Grant.—We beg it to be read, with the consent of the Crown; we cannot do it without, certainly.

Lord Advocate.—Most certainly we will consent to it.

Mr Sandford.—Do you know if he was employed in the recruiting service?

A. He was for some time; how long, I do not know.

Q. Was he active in getting troops?

A. He was active, as far as came within my knowledge; but he was absent, and then I could not say.

www.nbtoor.com.cn

The certificate, stating he had always merited the approbation of his Commanding Officer, was read.

JAMES CAMERON—*sworn.*

Examined by Mr Sandford.

Q. Are you a tanner in Johnstone?

A. Yes.

Q. Have you known James Speirs long?

A. I have known him these five years.

Q. Is that ever since he was discharged?

A. Yes.

Q. What character has he borne?

A. As far as I know, he was an industrious, sober man.

Q. Do you consider him a peaceable man?

A. Yes.

DAVID BOYLE—*sworn.*

Examined by Mr Sandford.

Q. What are you?

A. A weaver.

Q. Have you known James Speirs long?

A. I have known him for about three years, and been personally acquainted with him for two.

Q. What did you consider his character to be?

A. I took him to be a quiet, peaceable kind of a man.

Q. Did you consider him an industrious man?

A. As far as I knew, as he did not work in the shop with me.

Mr Grant.—My Lord, I really do not think it necessary

to encumber your Lordship's notes, by examining more of these witnesses. Your Lordship sees there are only two years since the man left the service; therefore it is only to that time.

www.libtool.com.cn

JOHN M'MILLAN—*sworn.*

Examined by Mr Sandford.

Q. What are you?

A. A wright.

Q. Have you known Speirs long?

A. About two years.

Q. What character has he had during that time?

A. As far as I know, it was fair—a quiet, peaceable kind of man.

Q. Did you consider him honest?

A. Yes, as far as I know.

MR GRANT.

May it please your Lordships—Gentlemen of the Jury,—I rise to perform one of the most anxious duties that can be cast upon any man, and I shall therefore have much reason to entreat your indulgence. It is an anxious duty at any time to be charged with the defence of the life of a man. It is a yet more anxious duty to be charged with the defence of a person accused of the crime of which the prisoner at your bar is accused; because, as we who have practised in criminal courts of law, have often had the melancholy opportunity of observing, in the greater part of the ordinary crimes that come under the cognizance of those Courts, there is much in the unhappy character, and conduct, and situation of the persons, to detract from that degree of interest which even under any circumstances those must excite, whose

life is in hazard. But, in the crime to which your attention is now to be called, and in the case of the unfortunate man at your bar, you will see nothing that can in any degree detract from the interest which his situation must excite. You see from his appearance that he is not an old man, and you have heard from persons who have known him from the time of his entering the service of his King and country, to the time when the feebleness of his health compelled him to relinquish it, and down to the present hour—you have heard of him an unimpeachable character. If, therefore, his life is to be sacrificed, it is not to be sacrificed in consequence of any of those flagitious habits which commonly bring men before criminal Courts. But more than this, Gentlemen, I take leave to say, in this particular case, if he is to be sacrificed, he is to be offered up as the victim to a very nice and difficult construction of law. It is not to the majesty of offended justice—it is not to the particular rights of property, and the safety of private interests;—I take it upon me to say, it is not to the construction which our glorious ancestors have ever given to the laws—it is not to the public safety, that this unhappy man's life is to be offered as a sacrifice, if I am not totally mistaken in that, which has been handed down to us from a remote antiquity, as the established and constitutional law of this country. I state it to you as matter which is certain, as matter which you, as you shall answer to your consciences, to your country, and to your God, are bound to determine for yourselves,—I state it to you as matter of certainty, that the construction which is attempted to be put upon the law of Treason in this case, is a construction which to this hour it has never received.

Gentlemen, to me, unaccustomed as I am to this sort of trial, having never in my life, till the other day, been engaged, or even been a witness of the proceedings in any trial for High Treason before—to me, who, whatever opportunities I may have had of informing myself from books upon this subject, whatever opportunities I may have had of humbly offering myself to the observation of other assemblies, have never had, not only any practice in cases of Treason,

but have had very little practice in my own person, though I have seen some practice, in those courts, the law of which we are here assembled to administer—to me, thus situated, Gentlemen, is confided upon this occasion the safety of that unfortunate man, so far as any man's safety can depend upon his advocate. And it is confided to me, by an appeal to you, to rescue, as I think in my conscience I may distinctly call it,—to rescue the dearest interests of the country from an attempt, by construction, to extend the law the most hazardous to the safety of the publick that exists in the whole system of our jurisprudence.

I need not state to you, Gentlemen, how weak and inadequate I feel myself to the discharge of this duty. I will detain you with no further observations on what concerns myself. I will beg of you to make up for my deficiencies. I will beg of you, if I should raise a fair doubt in your minds, either on a point of law, or in point of fact, as established by the evidence,—I will beseech of you, considering my inability, and the disadvantages under which I labour, to take the case of the prisoner fairly into your own merciful hands;—if I can establish a doubt in your minds, such as I have mentioned, to give him the benefit of it, and to consider, for a moment, what would have been made of it, if he had been blessed by having a more experienced and a more able advocate.

Gentlemen, in no situation is it pleasant, on the contrary, it is always extremely irksome, to ask the attention of persons in your situation of life to a dry, not a very difficult, but a somewhat involved point of law. When I state it to you as a point of law, let me make myself distinctly understood. It is a point of law, because lawyers have written much upon it, because Judges have decided much upon it. But it is and always must be a question of fact, whenever a case of this nature comes to be tried, on which you for yourselves must decide, exercising the best reflection which you can, attending with the utmost deference,—as far as you can defer to any man in determining between you and your own consciences,—attending with the utmost deference to

what you shall hear from the bench—listening to me with the attention which I am sure you will honour me with—listening also to my learned Friend, who is to reply to me, with attention—and, above all, listening to the authorities which I shall state to you—listening to the dictates of your own understandings, applied with the anxiety to this question, which the immense magnitude of it must command.

Gentlemen, you have heard from Mr Solicitor-General a general exposition, as he has been pleased to call it, or outline of the law of Treason. If there were no other reason, it would be necessary for me, from what he has stated to you, to enter upon this subject more at large than perhaps I should otherwise be inclined to do. I will endeavour for your sakes—as for my own, nothing can enter my contemplation but the discharge of the duty that is imposed upon me—but I will endeavour for your sakes, to compress what I have to say, within as narrow a compass as possible, to rest not at all upon any doctrines of my own, but to draw my positions fairly and freely from those authorities, which, upon this point, have ever been considered as of the utmost credit.

You have heard the indictment read first by the Clerk, afterwards by my learned Friend, who opened the pleadings for the Crown. With a great deal which is stated in this long printed paper, it is unnecessary for you certainly to trouble yourselves; not only as great part of it is swoln out by the technicalities and the forms of the law, but as a great part of it is wholly distinct, not from the evidence merely that has been brought, but from the case that has been stated, on the part of the Crown. It is sufficient for me to call your attention to that, with which the immense mass of this paper has compelled the Crown to indulge us, an abstract of the indictment; and that abstract, which I hold in my hand, and which occupies this small sheet of paper, contains at least twenty times more than is in this case.

You will observe, that there are here four counts, as they are called, charged against the prisoner at the bar. Now,

each count is, as it were, a separate offence. Each count is an offence of High Treason; but each count is a separate charge of a distinct sort of Treason. The first count is for compassing and imagining the death of the King; the second count is for levying war against the King, in his realm; the third count is for compassing, imagining, inventing, devising, and intending to depose the King from the style, honour, and kingly name of the imperial crown of this realm; and the fourth count is, the compassing, imagining, inventing, and devising to levy war against the King, in order to compel him to change his measures and counsels.

Now, each of these, as you will see from the very reading of the words, is a distinct offence. Of the one or other of these offences, you must be satisfied in your own mind, that the publick prosecutor has convicted the prisoner by good evidence, in order to your returning a verdict of Guilty.

The first charge is, that he compassed and imagined the death of the King. Upon that there is really no observation necessary, except that these words, "compass and *imagine*," are used in the old sense of these English words. We say now, a man compasses his end when he attains it; that he imagines a thing, when it is something that arises in his imagination or fancy. The legal interpretation of these words is, to intend and design, as we should say; or, if you choose, contemplate. Now, when I have said that a man is accused of having intended and designed the death of the King, I have used words which require no gloss. No interpretation can make those words, or the meaning of them, clearer than they are; and no interpretation can be permitted to vary them, or make them at all different from what they are. You must be satisfied upon this first count, that the prisoner did design and intend to put his Sacred Majesty to death; and nothing that any body can tell you, nothing that you can read or hear upon the subject, nothing that the wit and invention of man can suggest, can alter or qualify the precise meaning of these words. And without a breach of those oaths which you have taken, and without a breach of what you value equally with the sanctity of an

oath, that duty which you would discharge here with equal care, though it were unsanctioned by an oath, you cannot find this man guilty of compassing and imagining the death of the King, without it has been made out by the evidence to your satisfaction, that in his compassing, and his imagining, he did desire and intend this thing.

www.laotool.com.cn

Now, Gentlemen, the Solicitor-General has himself past a just eulogium upon this ancient statute, when he commended the clearness and explicitness of its words. The very object of the statute was to prevent all interpretations, all constructions, all *dicta* of lawyers and judges, all determinations of Courts, proceeding upon this or the other ground, as to what should, or what might, in this or the other case, be Treason;—to fix, as the legislature of that time thought, on an everlasting foundation, what should be said to be that crime of which a man could be convicted, under the denomination of Treason. This is the first of the main branches of the statute. Then, as you have been told, and it will occur at once to yourselves—as it is impossible for you to judge of what is passing in a man's mind, whether he did harbour this diabolical intention or not, but by judging from what he has said, or something that he has done,—it is necessary that there should be an overt act, as it is called, an open act, an open deed, something that the person accused has done, which may be proved in evidence before you; and being proved before you by evidence, will itself become evidence of this intention. Then the decisions of the Courts have interposed, and have declared, that words alone shall not be considered sufficient evidence of any such treasonable intention. They have never determined *what shall amount to sufficient evidence*, what shall compel the Jury to find a person guilty of this crime, because no Court has ever taken, or can, in the nature of things, ever take, upon itself to determine, what shall be sufficient to satisfy the consciences of twelve men upon their oaths. But the Courts have done in this as in every other criminal proceeding; they have determined what shall be insufficient evidence to be submitted to a Jury; they have determined that certain acts must be done; that as to words spoken, for instance, to take

the most obvious illustration of it, no proof of words spoken alone shall be laid before the Jury, as evidence of a compassing and imagining the King's death. They have said, that this is in its nature not sufficient even to go to a Jury. They have determined that evidence of things that may be done, acts that may be done, are sufficient evidence to go to a Jury; that, if the Jury does think those acts have been sufficiently proved, and if the Jury does think that the proof of those acts is sufficient to satisfy their consciences, that the person accused intended this crime, did harbour this compassing and imagination, then the Jury shall be entitled to find such a person guilty of High Treason.

Now, Gentlemen, this is a doctrine altogether, which at *first* sight strikes one as peculiar to the crime of High Treason, that the intention alone, if not carried into effect, should constitute the crime. In the next place, it strikes one as peculiar to the crime of Treason, that the books should be full of instances of acts performed, which shall be held to be overt acts to prove this intention of the mind. But every person, who has studied the law, knows, that, in neither of these respects, is the doctrine of Treason an entirely singular doctrine. In all crimes, as you have already heard, the intention is the main thing to be proved; and, though in most crimes, in almost all crimes, the law requires that that intention shall be carried into effect, yet it is not the fact of a person, for instance, being killed by another, that can convict that man of murder; he must be killed with a murderous intention. And we have an act, commonly called my Lord Ellenborough's act, by which an intention merely to kill a man, the intention being a murderous intention, is sufficient for his conviction, although he shall have missed of his aim, that being under particular circumstances, with which I need not trouble you now. In Treason, by the ancient law of England, the rule was not different from what it was in other crimes, particularly in murder—for there, by the more ancient law of England, the *murder* I cannot distinctly say was held to have been committed, but the *crime* was held to have been committed on proof of the

murderous intention, although the death of the person intended to be murdered had not ensued. So that, in point of fact, the law has not introduced any new rule, as to the crime of Treason; but it has retained in the crime of Treason, on account of its great importance to the community, that rule which was anciently the rule in other cases. And, Gentlemen, it is of some importance shortly to refer you to what that ancient law was, and what the admitted doctrine upon it was, in order that you may see what the doctrine of the law is, with regard to the crime that you are now trying, and what was the intention of the legislature when this act was passed, pursuing as it is understood, and admitted by all lawyers to be pursuing, the rule of the common law.

www.libtool.com.cn

My Lord Coke, who is one of the most valuable commentators upon the laws of England; a person whose great mind was full of knowledge upon the law of England, states to you upon this statute, on which he writes a most valuable treatise, upon the words, "Fait compasser," the old French words to compass, "Let us see first,"—(this is in order to explain what is to be understood by compassing and imagining in the Treason law; the terms of the statute you have already heard; I will again call your attention to them more particularly; they are stated in the indictment; and in order to do this, he carries his readers back to the rule of the common law in other crimes, before the passing of this act)—"Let us see first what the compassing or imagining the death of a subject was, before and at the time of the making of this statute, when *voluntas reputabitur pro facto*, when the will was taken for the deed; and Bracton saith, the will is looked to, and not the event; and it is of no importance, whether any one has slain another, or has attributed the natural cause of death; so as when the law was so holden, he must *causam mortis præbere*, that is, declare the same by some open deed, tending to the execution of his intent, or which might be cause of death." And then he mentions a case, "that a man's wife went away with her avowterer, and they compassed the death of the husband,

and as he was riding towards the Sessions of Oyer and Terminer, and gaol delivery, they assaulted him and stroke him with weapons that he fell down as dead, whereupon they fled; the husband recovered, and made hue and cry, and came to the Sessions, and shewed all this matter to the Justices; and upon the warrant of the Justices they were taken, indicted and arraigned; and all this special matter, was found by the verdict,—and it was adjudged, that the man should be hanged and the woman burnt;" that being the punishment by the law of England for killing her husband, which was Petit-Treason. And then he says, "And Sir William Beresford, Chief Justice of the Common Pleas, said, that before him and his companions, Justices of Oyer and Terminer, and gaol delivery, a youth was arraigned for that he would have stolen the goods of his master; and came to his master's bed, where he lay asleep, and with a knife attempted with all his force to have cut his throat; and thinking that he had indeed cut it, he fled; whereupon the master cried out, and his neighbours apprehended the youth; and all this matter being found by special verdict, in the end he was adjudged to be hanged *Quia voluntas reputabitur pro facto*, "because will is to be taken for the deed;" so as it was not a bare compassing or plotting of the death of a man, either by word or writing, but such an overt deed, as is aforesaid, to manifest the same; so as if a man had compassed the death of another, and had uttered the same by words, or writing, yet he should not have died for it, for there wanted an overt deed, tending to the execution of his compassing. But, if a man had imagined to murder or rob another, and to that intent had become *insidiator viarum*, and assaulted him, though he killed him not, nor took any thing from him, yet was it felony, for there was an overt deed." And then he adds, "But in those days, in the case of the King, if a man has compassed or imagined the death of the King, (who is the head of the commonwealth,) and had declared his compassing or imagination by words or writing, this had been High Treason, and sufficient overture by the ancient law: and herewith agree all our ancient books." Now, as to this last position of Lord Coke's, that

is disputed, and it is said that the authorities to which he refers do not warrant the same; that by the most ancient law of England, it would *not* have been High Treason, any more than it was sufficient to evince murder in the case of a subject. As to that, we have nothing to do with it; because you see from this, that the law, which has been the law of England from time immemorial in Treason, has been retained in that crime from the law in other crimes, affecting the lives of men; so that it is not an introduction of new law, this Act of Edward III., which you have heard of, or of a new principle of law applicable to Treason, on account of the magnitude of the crime; but it is a principle of the common law, retained in that crime on account of its magnitude, excluded from other crimes of the common law, altered by subsequent statutes in modern times, for reasons which could not be dispensed with. My Lord Coke states this, for the very purpose of shewing what is the nature of a compassing and imagining of the King's death under the Law of Treason, and what is the nature and use of the overt act, which, it is said, is necessary in order to prove that compassing and imagining; and you will see at once, that from this it follows, that the use of the overt act is to prove and evidence the intention and imagination of the mind; and consequently, if once you get so far, that it is to be taken as a proof of that which is a crime, you place the conclusion to be drawn from that proof in the hands of the twelve men, whose duty it is to try the case of any prisoner that shall be indicted before them.

Now, Gentlemen, this other circumstance which I have mentioned to you, is known also perfectly in other branches of the criminal law. If a man is accused of murder, what shall be murder, is described by the Court to the Jury; that is to say, it shall be the killing of a man of malice *prepense*; there must be a fore-thought malice in the man's mind, against the life of the individual, before he puts him to death. If he has that malice, and that design, and executes that design, and the death ensues, then the law and the Courts will tell you that that is murder. In this the

Court really performs little but the office of a Grammar or Lexicon; it explains the meaning of words. It does no more. This is expressed in law—this complex idea, by the word murder. The Court explains to the Jury what are the parts which make up this complex idea of murder; and the Court having so done, whether the case amount to the description so given of this crime, is always a question for the Jury to determine. Now, it no doubt happens, that, in that and in other cases, if the Jury choose to find specially facts proved, without drawing a conclusion, and finding in general terms, for instance, that murder is committed, it then must devolve upon the Court to say whether those facts so proved, do amount to this complex idea, which makes up the crime of murder. But the converse of that is by no means true, that the Court can at any time absolve a Jury from discharging that duty, which, by their oaths, they owe to their consciences, and to their country, and state *a priori*, what facts and circumstances being proved, shall convince the Jury that the murderous intention was felt by the prisoner at the bar. That is a question which the Jury must determine for themselves. The Court will determine whether the facts and circumstances stated, can be such as even to go to the Jury; but if they go to the Jury, the Jury is to deal with them; always taking from the Court, with deference, what information the Court conveys to them—always taking, as they are bound to take, every light from the Court—taking all they can get from decisions of learned men upon the subject. But having drawn to themselves every light they can attain, they are to employ their own honest minds, and come to a verdict according to the dictates of their own judgment and conscience.

Then, Gentlemen, you will observe, when you are told, here is a compassing and imagining the King's death, charged against the prisoner at the bar, and are told, that there are certain acts done, which are to be given in evidence of this compassing and imagination, for instance, that he conspired to devise plans to subvert the Constitution —that he conspired to levy war to subvert the Constitution —you are not to try, did he conspire to devise a plan to

subvert the Constitution?—did he conspire to levy war to subvert the Constitution? But you are to try, did he compass and imagine the King's death? The means by which you are to arrive at this conclusion, are through the overt acts, which are stated in the indictment; and which properly, by law, must be stated in the indictment; otherwise the prisoner would be entirely at sea, as to the nature of the offence, or the nature of the charge; for, if it were barely stated, that he compassed and imagined the death of the King, it would afford him nothing to which to apply his mind in the defence he was to make.

Gentlemen, with regard to the charge of levying war, though of that also there must be an overt act stated, yet it is, in point of fact, only changing the terms. The levying of war is an act of itself. They state, that the man is guilty of levying war; and they state, that he appeared in arms, in such a situation, in such a place. That is an act, which of itself constitutes the levying of war.

The third count, of imagining to depose the King, is in the same situation with the first count. The crime is in the mind. You are not to try, whether he did do a particular overt act charged here; but you are to try, arriving at the conclusion from those overt acts, whether he compassed and imagined to depose the King. And the last count is of the same kind, whether he compassed and imagined to levy war against the King, in order to compel him to change his measures and counsels.

Gentlemen, I have stated to you thus much in general; and I will now more particularly address myself to each of these counts separately. I will then endeavour to state to you the nature of the overt acts which are charged under the counts, so far as they can have any application to the matter in hand; and I will afterwards beg your attention to the evidence that has been laid before you, and request of you to apply that evidence to the rules which I shall take the liberty of suggesting to you, for guiding your opinion in deciding the case.

Gentlemen, the two first counts of this indictment, the compassing and imagining the death of the King, and the

levying war against the King, are founded, as you have been already told, upon the ancient statute passed in the 25th year of King Edward III.; and you have been told, and I need not repeat to you, that, by the act of Queen Anne, since the Union, we are now entirely in an English Court of Justice. The statute is the same; the law of Treason, in Scotland, is in every respect assimilated to the law of England; and, therefore, it is to the English authors alone we can look for information on the subject, there having been hardly any trials for Treason, in this country, thank God, since the Union.

The words of the statute of Edward III. are as follow: And, in the first place, you will observe the preamble of the act. Unlike our modern statutes, the whole of this act is extremely short; but there is not within the compass, either of the preamble or of the body of the act, one word which does not appear to have been most maturely weighed, and which of itself will not afford room for an ample comment upon it. The preamble sets forth the object of the act, and the reason of the act. The reason of the act is one, which, in every age, in every period of the history of England, has occurred frequently. I am not given to speak disrespectfully of Courts of Justice; and I am sure no English lawyer can speak disrespectfully of English Courts of Justice, because, upon the whole, though with some considerable exceptions, arising from the unfortunate temper of particular times, English Judges have conducted themselves in a manner that may well serve for an example to every other country upon earth. But, notwithstanding this just eulogium upon them, there is, through the whole course of English history,—you will see it every now and then, at periods here and there,—a disposition, on the part of Courts of Law, to extend by construction the law of Treason; and to this the Parliament has applied itself, every now and then, in order to remedy it; and it has always, upon those occasions, most wisely brought back the law to the old statute of Edward III.

Gentlemen, this statute sets out with this preamble, "Whereas divers opinions have been before this time, in

what case Treason shall be said, and in what not, the King, at the request of the Lords and of the Commons, hath made the declaration following." This is the style of this old Act of Parliament. So that this preamble sets forth the looseness of the previous law; and it sets forth, that, at the request of both Houses of Parliament, the King had consented to this arrangement, which was to settle those questions in all time to come. And it says, "That is to say, when a man doth compass or imagine the death of our Lord the King, or of our Lady his Queen, or of their eldest son and heir; or if a man do violate the King's companion, or the King's eldest daughter, unmarried, or the wife of the King's eldest son and heir; and if a man do levy war against our Lord the King in his realm, or be adherent to the enemies of our Lord the King in his realm, giving to them aid or comfort in the realm, or elsewhere, and thereof be proveably attainted of open deed by the people of their condition." Then it goes on, "If a man compass the death of the King's Chancellor or Treasurer, and slay the same, or others," and so on, with which I have no occasion to trouble you. These are the words of the statute applicable to the case of the prisoner at the bar; "That is to say, when a man doth compass or imagine the death of our Lord the King"—that is one; or, "If a man do levy war against our Lord the King in his realm"—that is another Treason, of which this man is accused; and then it is said, "And thereof be proveably attainted of open deed by the people of their condition."—Then you have the whole Law of Treason, applicable to this case, in these words: A person who compasses and imagines the death of the King, is guilty of Treason: A person who levies war against the King in his realm, is guilty of Treason: And both one and the other he must be proveably attainted of by open deed, by persons of his condition,—by a Jury of his country.

Now, Gentlemen, I cannot do better (because any eulogium of mine would be much worse expressed, as well as with much less authority) than read to you what my Lord Coke says in commendation of this statute. "And, albeit,"

he says, " nothing can concern the King, his crown, and dignity, more than *Crimen læsæ majestatis*, High Treason; yet, at the request of his Lords and Commons, the blessed King, by the authority of Parliament, made the declaration above said; and therefore, and for other excellent laws made at this Parliament, this was called *Benedictum Parliamentum*, as it well deserveth; for, except it be Magna Charta, no other Parliament of England hath had more honour given unto it by the King, Lords Spiritual and Temporal, and the Commons of the Realm, for the time being, in full Parliament, than this act concerning Treason hath had; for by the statute of 1st Henry IV. cap. 10., reciting, that where, at a Parliament holden 21st Richard II. divers pains of Treasons were ordained by statute; inasmuch as there was no man did know how to behave himself, to do, speak, or say, for doubt of such pains,"—(this was the first great encroachment on the Law of Treason, as it existed in the 25th Edward III.; the extension and construction first introduced by the Judges, and afterwards, most unfortunately, adopted by the Parliament,)—" it is enacted by the King, the Lords, and Commons, that, in no time to come, any Treason be judged otherwise than it was ordained by this statute of 25th Edward III.; the like honour is given to it," he says, " by the statute of Edward VI. cap. 12.; and by the statute of 1st Mary, cap. 1. sect. 1, different times, but all agreeing in the magnifying, and extolling of this blessed act of 25th Edward III."

Now, Gentlemen, it may not be quite foreign to the subject, if I should state to you, always preferring reading to you from books, to stating anything on my own authority —if I should state to you, by referring to Lord Hale, one of the first lawyers, and best men of his time, what he says as to the history of the law previous to this statute, that you may see what it was that it was intended to remedy. He says, " That at common law, the crime of High Treason had *some kinds of limits and bounds* set to it." But he says, " by those various expressions of Briton, it appears that the crime of High Treason was very uncertain; sometimes styled under the name of felony—sometimes had the

punishment of Petit-Treason applied to the crime of High Treason—and so on;" and, indeed, in the further pursuit of this argument, we shall find, that at common law there was a great latitude used in raising offences into the crime and punishment of Treason, by way of interpretation and arbitrary construction, which brought in great inconvenience and uncertainty.

Now, Gentlemen, I think it is right, that I should so far explain what I took the liberty of saying before with regard to the tendency—I will say the natural tendency—which there is in Courts of Justice, and out of Courts of Justice, gradually to extend, by construction, the law of Treason. There is no person can think for a moment upon the state of society in this country—upon the excellence of our government—upon the many blessings that we enjoy under it—but must be aware of the excessive importance of preserving our constitution from all hostile attacks. It is therefore not from cruelty—not from caprice, that an inclination is now and then felt to extend the crime of Treason, by a construction, which perhaps the person using the construction does not feel at the moment to be an extension of it, to some offence which approaches it most closely,—to an offence which does aim at the subversion of the Constitution of the country—which does aim at the disturbance of the society of the country—which does aim at rendering the government of the country insecure. No man living, be his opinions what they may, but must desire to repress such designs; and I am sure, that the more he is attached to liberty, the more ardently he loves that, which is the greatest blessing of mankind, the more ardently he must venerate the Constitution of this country, and the more horror and detestation he must feel at anything that can disturb it. And we shall see, that it is not one party, or another party, that has been sometimes betrayed into an extension of the Law of Treason; but both parties, since there have been two parties in the state, one more attached to the prerogatives of the Crown, and the other to the liberties of the subject. And the greatest stretch was that in the unfortunate case of Lord Strafford, brought about by the most ardent friends of civil

liberty. Therefore it is no accusation to say, that there is a natural tendency in Courts of Justice—a natural tendency in lawyers—a natural tendency out of Courts of Justice, to extend, by construction, the Law of Treason, because it is always felt in every particular case, that, whether it be precisely within the letter of the statute or no, that case, which is the case in hand, is one which endangers the State more or less—which aims at the Constitution of the State more or less—and does, in so far, come within that, which is the common-sense notion of High Treason.

Now, Gentlemen, Lord Hale, who lived in very troublesome times—Lord Hale, who was an ardent friend of monarchy—who had witnessed its subversion—and had witnessed the death of Charles the First—who, under Oliver Cromwell, refused to accept the judicial office, which his great learning, and great capacity, and great character, rendered that usurper particularly desirous that he should fill—Lord Hale, who had the courage, in the time of Oliver Cromwell, to refuse to execute criminal justice, because, he said, he would do nothing which would infer his approbation of that government, and who, from a religious scruple, thought that government, not being, as he conceived, a lawful government, could not authorize him to execute criminal justice—who was placed upon the bench after the Restoration of monarchy—Lord Hale is the author, of any writer who writes of the Law of Treason, next to my Lord Coke—that treats the Law of Treason with the greatest scruples—that sets forth, with the greatest care, the inconvenience and danger of stretching the construction of this statute in the least degree beyond the mere and obvious letter of it.

Now, Gentlemen, he tells you what those interpretations and arbitrary constructions were, which had brought in the great inconveniency and uncertainty of which he speaks. He says, "Before that statute, *accroaching of royal power*, was a usual charge of High Treason." *Accroaching* is taken from the old French word *accroache*, which is to *hook in*; and it describes a hooking towards, and acquiring to ourselves that, which belongs to another. "Accroaching of

royal power, was a usual charge of High Treason anciently, though a very uncertain charge, that no man could well tell what it was, nor what defence to make to it." So that the charging as High Treason, that a man had drawn to himself, or usurped the royal authority, was, in my Lord Hale's opinion, one of the causes why the statute of Edward III. was passed, in order to remedy such lax interpretation of the law.

Then he mentions several instances, in which this law, so interpreted, had been put in force; and he says, "By these and the like instances, that might be given, it appears how uncertain and arbitrary the crime of Treason was before the statute of 25th Edward III., whereby it came to pass that almost every offence"—Now, I beg your attention to these words—"that almost every offence *that was, or seemed to be, a breach of the faith and allegiance due to the King*, was by construction, and consequence, and interpretation, raised into the offence of High Treason." So that, according to Lord Hale, the greatest possible inconvenience arises from "construing an offence, which is, or seems to be, a breach of the faith and allegiance due to the King, into the offence of High Treason." "And we need no greater instance," he proceeds, "of this multiplication of constructive Treaons, than the troublesome reign of Kign Richard II., which, though it were after the limitation of Treasons by the statute of 25th Edward III., yet things were so carried by factions and parties in this King's reign, that this statute was little observed; but, as this or the other party prevailed, so the crimes of High Treason were, in a manner, arbitrarily imposed and adjudged, to the disadvantage of that party that was intended to be suppressed; so that, *de facto*, that King's reign gives us as various instances of these arbitrary determinations of Treasons, and the great inconveniences that arose, as if indeed the statute of 25th Edward III. had not been made or in force." Then he says, "That in the Parliament of the 10th of Richard the Second, there was a large Commission granted by the King, upon the importunity of certain great Lords, and of the Commons in Parliament, to the Archbishop of Canterbury and others,

for the reformation of many things, supposed to be amiss in the government, which Commission was thought to be prejudicial to the King's prerogative. After this, namely, on the 25th of August, 2d Richard II., the King called together the two Chief-Justices, and divers other of the Judges, and propounded divers questions, touching the proceedings in that Parliament, and the obtaining of that Commission; to which questions the Judges gave many liberal answers; and, among the rest, "Qualem pœnam merentur, qui compulerunt, sive arctârunt regem, ad consentiendum confectioni dictorum statuti, ordinationis, et commissionis? Ad quam questionem unanimiter responderunt, quod sicut ut proditores merito puniendi. Item, qualiter sunt illi puniendi, qui impediverunt regem, quo minus poterat exercere quæ ad regalia, et prærogativam suam pertinuerunt; unanimiter etiam responderunt, quod sicut ut proditores etiam puniendi. (What punishment they deserved who compelled or forced the King to consent to the making the said statute, ordination, and commission? To which question they unanimously answered, that they were deservedly to be punished as traitors. Again, how are they to be punished, who prevented the King from exercising the powers appertaining to the royal authority, and to his prerogative? To which also they unanimously answered, that they also were to be punished as traitors.) With divers other questions and answers to the like purpose." Upon this Lord Hale says, "This extravagant, as well as extrajudicial declaration of Treason, by these Judges, gave presently an universal offence to the kingdom, for presently it bred a great insecurity to all persons; and the next Parliament, Crastino Purificationis, 2d Richard II. there were divers appeals of Treasons, by certain Lords Appellors, wherein many were convicted of High Treason, under general words of *accroaching royal power, subverting the realm*, &c.; and among the rest, those very Judges, that had thus liberally and arbitrarily expounded Treason, in answer to the King's questions, were, for that very cause, adjudged guilty of High Treason; and had judgment to be hanged, drawn, and quartered, though the execution was spared, except that of the Chief-Justice, who was

executed according to his sentence; and they having led the way by an arbitrary construction of Treason not within the statute, they fell under the same fate, by the like arbitrary construction of the crime of Treason. Those were the unhappy effects," says this great man, " of the breaking of this great boundary of Treason, and letting in of *constructive Treasons*, which, by various vicissitudes and revolutions, mischieved all parties, first or last, and left a great unquietness and unsettledness in the minds of people, and was one of the occasions of the unhappiness of that King."

Now, it does happen by a singular coincidence—a coincidence that I am sure will not take place in that matter to which I have been now referring—it does happen, by a singular coincidence, that the state of the country, in Richard the Second's time, was not very far from the state in which this county is described as having lately been. The insurrections of the common people, which at that time prevailed not only in England, but pretty generally in Europe, were of a nature at least as formidable as this *most formidable* combination, of which we have been doomed to hear so much this day. If you refer to one of our most philosophical historians, whom I would rather quote as a philosopher than an historian, Mr Hume, you will find a singular account given, which, *mutatis mutandis*, would be very well applied, in a great many respects, to the commotions we have felt at present. It is a satisfaction to find that author agreeing with all other persons of great capacity, who have written upon subjects of this kind, and have contemplated similar situations in any country, that, whatever may be the object of the persons concerned—whatever may be the extent of the immediate mischief,—of all the evils attending human society, an insurrection of the populace, when not raised and supported by persons of higher quality, is the least to be dreaded. This was exemplified in the reign to which he alludes. Those unfortunate insurrections were put down, and there was an end of them. He says, " Soon after, the nobility and gentry hearing of the King's danger, in which they were all involved,"—he alludes to the rising of Tyler, Vaughan, and Strange, and the rest, who were assembled

in great numbers; for they amounted to 100,000 on Blackheath, close by the King's palace; he says, "Soon after, the nobility and gentry hearing of the King's danger, in which they were all involved, flocked to London with their adherents and retainers, and Richard took the field at the head of an army 40,000 strong. It then behoved all the rebels to submit. The charters of enfranchisement and pardon were revoked by Parliament; the low people were reduced to the same slavish condition as before; and several of the ringleaders were severely punished for the late disorders;—some were even executed without process or form of law. It was pretended that the intentions of the mutineers had been to seize the King's person—to carry him through England at their head—to murder all the nobility, gentry, and lawyers, and even all the bishops and priests, except the mendicant friars—to dispatch afterwards the King himself;—and having thus reduced all to a level, to order the kingdom at their pleasure. It is not impossible but many of them, in the delirium of their first success, might have formed such projects; but of all the evils incident to human society, the insurrections of the people, when not raised and supported by persons of higher quality, are the least to be dreaded."

Gentlemen, there is, I believe, nothing more true—there is nothing more fortunate. Whatever may be the local mischief, which such insurrections create,—and no man, whether he resides in the midst of the scene, or at a distance, can look upon these local mischiefs without feelings of great apprehension, of great terror and alarm,—whatever these may be, it is vain to suppose that attempts of this kind can shake the government of a great country. They never do succeed to any other purpose—and those unfortunate people, who are betrayed into lending themselves to plans and plots of this kind, ought to know they never do succeed to any other purpose, but in bad times to strengthen the hands of a government that may intend to oppress them, and to bring ruin and misery on themselves, utterly to destroy all their hopes, and, instead of adding to their comforts, to deprive them of those little comforts they may possess even under extreme pressure. As

to their accomplishing their schemes, it is as impossible as if one man by himself were to attempt it. They may induce many an honest and well-meaning man to desert the defence of those liberties, and of that constitution, which otherwise he would be disposed to protect—they may induce such men to lend themselves, as matter of necessity perhaps, (mistaken necessity at the moment,) to more active and stronger measures, than they could be brought to consent to under other circumstances; but they never can, till the state of human society is entirely altered, effect the slightest and the most trivial of the reformations which they contemplate. Those reformations must be effected otherwise; for, above all, it is necessary to the producing any beneficial result, that every member of this great society should feel, that there is no other part of the society of which he has reason to be afraid. The higher orders are no more exempt from terror than the lower; and when, by any of these outrages of the lower orders, the higher are put in terror, every other consideration gives way, in men of the purest principles, and in other instances not destitute of courage, to the apprehension of present danger; and, if there should be a government desirous to take advantage of these circumstances, they have ample opportunity to adopt any checks or controls they please, arising out of the means used by those whose object is very different.

I have been betrayed into this. It is impossible to discuss this subject without one's attention being called to the extreme folly, as well as the extreme wickedness, of the attempts to persuade the lower orders of the people, to effect, by means wholly inadequate to the end, reformations, which, even if they were the best in the world, could not be effected by those means, while the success of such means would be attended with almost every evil incident to human society.

Gentlemen, on the other hand, let us turn our attention the other way. If this is what we must say—not what we must hold out—but what, in our consciences, we must say to those of the lower ranks of society, whom the pressure of particular circumstances, to which, in a state like that of

this country, every rank of society, more or less, is at particular times exposed—if we say this to those who, under the pressure of those circumstances, may at particular times be induced to forget the duties, which they owe to the society which protects them; on the other hand, let not us be betrayed into the belief, that for the repression of this, or any other danger which may threaten the country, there is anything to which we can have recourse, but the purity of the administration of justice, the sacredness of our laws, the acting consistently upon the principle of those liberal, and wise, and free institutions, which we have derived from our ancestors—the preserving of our liberty, as we would preserve the good order of our society, and the never being betrayed even out of a Court of Justice, but still more in a Court of Justice, for one moment to take a single step beyond the law; knowing that for many centuries the Constitution of this country, and the government of it, have been supported by those liberal and free institutions, by that sacred attachment to the strict administration of justice, which have distinguished our ancestors, which I hope we shall always give an example of, and which, I trust in God, will distinguish our posterity.

Gentlemen, pursuing this subject, you will see from the book which I have already mentioned, how, in a few words, Lord Hale, upon this great doctrine of Treason, sums up what he has stated before. "Now," says he, "although the crime of High Treason is the greatest crime against faith, duty, and human society, and brings with it the greatest and most fatal dangers to the government, peace, and happiness of a kingdom, or state, and, therefore, is deservedly branded with the highest ignominy, and subjected to the greatest penalties the law can inflict; yet, by these instances, and more of this kind that might be given, it appears how necessary it was, that there should be some fixed and settled boundary for this great crime of Treason, and of what great importance the statute of 25th Edward III. was in order to that; and how dangerous it is to depart from the letter of that statute, and to multiply and enhance crimes into Treason, by ambiguous and general words; as, accroaching of

royal power, *subverting of fundamental laws*; and the like; and how dangerous it is, by construction and analogy, to make Treasons, where the letter of the law has not done it; for such a method admits of no limits or bounds, but runs as far as the wit and invention of accusers, and the odiousness and detestation of persons accused, will carry men."

www.libtool.com.cn

Gentlemen, as to the opinion given by those Judges, Tresilian and the rest, whom I have mentioned—you will observe, the question asked of them was, how was a man *to* be punished, who compelled or constrained the King to do an act in the exercise of his prerogative? Now, according to a great deal that we have heard, this must be an act of Treason; to compel and constrain the King to do an act, appears, upon the construction that has been attempted to be put upon the very word "compelled," in the last count of the indictment which you are to try, to be an overt act of Treason. To prevent the King in the exercise of *his* royal prerogative, on the other hand, in its general terms, would strike an ordinary man as also an overt act of Treason. It is certainly rebellion against the royal authority; it is imposing a force and restraint upon the King. And yet those Judges, for holding that those words were sufficient to describe an act of Treason, suffered in their own day; under an equally lax interpretation, by the way. But they have suffered ever since, in the judgment and estimation of all posterity. And my Lord Coke, in his strong language, says, "By this which hath been said, it manifestly appeareth what damnable and damned opinions those were concerning High Treason, of Tresilian, Chief Justice of the King's Bench;" and so on. My Lord Hale speaks to the same purpose—and why? On this ground—not that there is no compulsion—not that there is no constraint imposed on the King, which amounts to High Treason, but that there are many species of compulsion and restraint on the King, which do *not* amount to High Treason. And upon this subject we have the authority of Parliament itself; for by the 11th Richard II. and the 1st of Henry IV. all this was done away; and there it is expressly declared, that the

law shall be brought back to the statute of Edward III., upon which statute it remains to this day.

Now, Gentlemen, if there were an overt act set forth as an indictment, which should state, under the count of imagining and compassing the King's death, that a person had compelled the King to alter his measures or counsels, if the opinion of Tresilian and the rest were true, it must be a good overt act to prove such a case; and if it be true that to compel the King to alter his measures or counsels, is an overt act of any Treason, under the statute of Edward the Third—why then Tresilian and the rest of them were right; because it is a mere distinction, without a difference, to say, that, though of itself it would not be *a good count*, yet, *if you state the count* as compassing and imagining the death of the King, and state this as the *overt act* under it, this overt act is sufficient to infer the guilt of compassing and imagining. Then it would be a mere joke to say the opinion given by Tresilian and the rest, was not good law.

Now, Gentlemen, in like manner, if an overt act, stating that a person had *conspired to subvert the Constitution*, were a good overt act to prove the Treason of compassing and *imagining* the death of the King, as a conclusion of law; then all that my Lord Hale says, with regard to the impropriety of charging such acts, as subverting fundamental laws, and the rest, as High Treason—all that he says of that impropriety, would be absurd. The conspiring to *subvert fundamental laws*, is the same thing with conspiring to *subvert the Constitution;* for no man can make a difference between the fundamental laws and the Constitution. If it be held that this is a good overt act, inferring, as a conclusion of law, the guilt of compassing and imagining the King's death under the statute of Edward the Third, then Lord Hale has all this while been doing nothing more than writing nonsense. It does not appear to me, that this is capable of illustration or enforcement by argument; for Lord Hale says distinctly, and every lawyer has said, down to the present hour, that to indict a person of *subverting fundamental laws*, is not a good accusation of Treason, under the statute of Edward the Third. But then we have

an indictment, which charges compassing and imagining the death of the King, and it charges as an overt act, the *conspiring to subvert the Constitution*; hoping by the word *Constitution* to supply the defect of the words *fundamental laws*, and it is said this will make a good count. These two propositions cannot exist together. Lord Hale is wrong; Lord Strafford was properly impeached; Lord Strafford was properly attainted; for it is exactly the crime for which he was impeached and attainted; and yet we have the act of Parliament stating that this was an unlawful proceeding; so that we have the judgment of Parliament upon the question, stating the articles of impeachment against Lord Strafford, which were these: "That he hath traitorously endeavoured *to subvert the fundamental laws and government of the realms of England and Ireland*; and instead thereof, to introduce an arbitrary and tyrannical government against law, which he hath declared by traitorous words, counsels, and actions, and by giving his Majesty advice, by force of arms, to compel his loyal subjects to submit thereunto."—Now, upon that he was impeached before the House of Lords; and even in those turbulent times, though the House of Lords were ultimately compelled to assent to the Bill of Attainder, the Commons could not prevail on the House of Lords, upon their impeachment, to convict Lord Strafford. The House of Lords, upon an argument in point of law, which, if I were now to argue on this branch of the statute, I should use for an argument of my own—the House of Lords declined proceeding in that impeachment; and that Parliament, hurried away by the violence of the times, passed a Bill of Attainder against Lord Strafford, to which the House of Lords was compelled, and the unfortunate King was compelled, afterwards, to give their assent. Upon the Restoration, there was an Act of Parliament for reversing it; and it states, that "Whereas Thomas, late Earl of Strafford, was impeached of High Treason, upon pretence of *endeavouring to subvert the fundamental laws*, and called to a publick trial," and so on; "insomuch, that the turbulent party then seeing no hopes to effect their unjust designs by any ordinary way and method

of proceedings, did at last resolve to attempt the destruction and attainder of the said Earl by an Act of Parliament," and so on; and then this act of attainder is reversed in Parliament, the act setting forth in terms that the attempt to convict him of Treason, on an accusation that he intended to subvert the fundamental laws, had been an illegal attempt on the part of those who proceeded against him.

Now then, Gentlemen, having stated so much, perhaps at greater length than I might have stated it, if I had had more time to compress my argument, I will now beg your attention to the case, as it regards the overt acts, which may be given in evidence in support of this compassing and imagining of the death of the King. In the Act of Parliament itself, which you have heard read, it is stated, that a person must be proveably attainted of open deed, by persons of his condition; so that the overt act, as I have already stated to you, is a *proof* of the treasonable intention which constitutes the crime; and this overt act itself again, must be proved, not by construction and inference, but must be proved to you in a manner that shall command the conviction of your minds.

That an overt act is nothing more nor less than *a proof* of the *Treason* which you are to find, I think is sufficiently established by all the authorities. It appears to me to be established from the very words of the statute; but it has been laid down so to be by almost all the authorities with which I am acquainted. Lord Hale, to whom I have had occasion before so largely to refer, uniformly states it as an overt act *to prove* the compassing the King's death, and so on—He says, that "the compassing the King's death is High Treason, though it be not effected; but because the compassing is only an act of the mind, and cannot of itself be tried without some overt act to evidence it, such an overt act is requisite to make such compassing or imagination High Treason;" and all the way through he states, that the overt act is to be considered as the *evidence of the Treason;* the evidence, therefore, *of which you, Gentlemen, are to judge.*

And I find this is most distinctly laid down, in a case, in

his life in danger. Now, Gentlemen, I am extremely glad, and I am much obliged to my Lord, and shall always feel very much obliged to him, for turning my attention, which he most kindly does, to what he conceives to be an over statement of my argument. I am very certain, that I have not pressed my argument one *iota* further than the whole authorities bear me out; and, if I am not very much mistaken, than his Lordship will concur in; because I state this to you as the distinct law here laid down—I state it to you, and can state it from every book upon the subject, as distinct law,—and common sense says so,—that *the overt act of any Treason is given in evidence of the Treason;* that the overt act itself is nothing, unless it proves the Treason, which it is said to prove; and the moment I say that it is to *prove* anything, I have said that *the province is with the Jury to say whether it does so prove it.*

Now, this Chief Justice here says, that, if my Lord Russel did conspire to levy this war and insurrection against the person of the King, that conspiring to surprise the guards, that was a strong *evidence* of his intention to compass his death. If I can give evidence that a man has consulted and contrived to depose the King, I say again, it is a strong evidence of an intention to compass his death; because we all know that it is impossible—that we cannot contemplate a case—that a man can suppose that he is to depose the King, and not to put his person and life into hazard.

Now, in the case which I read to you in the early part of my address from my Lord Coke, with regard to murder, whether the intention was sufficient, and only an overt act was necessary to prove the intention, a man might have said, when he cut a man's throat, and failed in doing it effectually, he had no intention to put that man to death. It would be a question for the Jury, whether he intended to put the man to death; but it would be a question, which would not require two minutes' consideration, because no man could state this, and expect to be believed. If there was an attempt to depose the King, a man could not be heard to say—he must be insane if he could suppose any person would believe, he could depose him, and not put his

life in danger; and, if he puts the natural life of the King in danger, he is not to be heard to say, that he has not *rendered it certain that the King cannot escape that danger.* So that, Gentlemen, really the question whether certain overt acts are to constitute the Treason, and from them is to follow the conclusion of law, that the Treason has been committed in the mind; or, whether it is a case from which the Jury are to infer that, as they must in most of the cases, I believe I may say in all the cases, that are put in the books, is a question, and little more than a question, *of principle.* But it is a question of principle, and, as a question of principle, it is of importance; because, if it should ever be laid down, as matter of law, by any judicial authority, that an act, which, to this hour, had never been considered as compassing the King's death, was a compassing the King's death, and if it was not true, that an overt act is mere *evidence* of a compassing, in that case the Jury would be bound to convict. If you could imagine a case of that sort, and such were the law, I say, without danger, I think, of being contradicted by any authority, that, if such a case were to happen, the Jury would be *bound to convict.* But, I say, that the Jury are bound to exercise their own judgment, and probe their own minds, to determine *whether the overt act charged is proof of the Treason charged;* and, upon that subject, no human being can do more than enlighten them, and enable them to form their own opinion.

My Lord Coke, in speaking of the overt acts of Treason, has these words: "This doth also strengthen the former exposition of the word *proveablement*, that it must be proveably by an open act, which must be manifestly proved; as if divers do conspire the death of the King, and the manner how, and thereupon provide weapons, powder, poison, assay harness, send letters, &c. or the like, for the execution of the conspiracy. Also preparation, by some overt act, to depose the King, or take the King by force and strong hand, and to imprison him, until he hath yielded to certain demands, this is a *sufficient overt act to prove* the compassing and imagination of the death of the King; for this, upon the matter, is to make the King a subject, and

to despoil him of his kingly office of royal government; and so it was resolved by all the Judges of England, in Hilary Term, 1st James I., in the case of the Lord Cobham, Lord Gray, and Watson and Clark, seminary priests; and so had it been resolved by the Justices," and so on, referring to the case of certain conspirators, in the reign of Elizabeth, "who intended to go to the Court where the Queen was, and to have taken her into their power, and to have removed divers of her council; and for that end, did assemble a multitude of people. This being raised to the end aforesaid, was a *sufficient overt act for compassing the death of the Queen.* And so, by woful experience in former times, it hath fallen out in the cases of King Edward the Second, Richard the Second, Henry the Sixth, and Edward the Fifth, that were taken and imprisoned by their subjects." Now, you see, all the way through, Lord Coke states that; which is manifest, or else the statute itself is nonsense, that the overt acts he instances, are acts *sufficient to prove* the compassing the death of the King. Now, it is impossible, by any subtlety of law—I state it to you as an absurdity—to ask any man to convict a person of imagining the death of the King, if he does not believe he wanted to put the King to death, or to put him in that state of danger, that no man can say he could have put him into it, without compassing his death.

Then Lord Coke says, "This is made plain, by the legal form of an Indictment of Treason; for," he says, "it is at first alleged, according to this act, 'quod proditione compassavit, et imaginatus fuit mortem et destructionem domini regis, et ipsum dominum regem interficere,' (that he traitorously compassed and imagined the death and destruction of our Lord the King, and him our Lord the King to put to death.) In the second part of the indictment is alleged the overt act, 'et ut illam nephandam et proditoriam compassationem, imaginationem, et propositum suum perficient, et perimplent;' and you certainly do set down the overt act for preparation to take and imprison the King, or any other overt-act, which of necessity must be set down in the Indictment."

Now, my Lord Coke means, that there may be acts stated, that are not sufficient to bear this consequence, and not sufficient to go to the jury. He says, "Hereby it appeareth how insufficient many indictments were of High Treason, wherein it was generally alleged, that by overt acts he compassed and imagined the death of the King; that did not put the prisoner on his guard, for that allegation did not inform him against what it was he was to prepare;" and in the case of the Duke of Somerset he was indicted, "for that he falsely, maliciously, and traitorously, by overt acts, compassed and imagined, with many other persons, our said Lord the King from his royal state to depose and deprive; which indictment, and all others of like form, were against law, as hath been said; and of the matter of this indictment that noble Duke was by his Peers found not guilty." So that an indictment, which should charge directly as the crime, that a person intended, and compassed, and imagined to depose the King, is an indictment which could not go to trial. Why then, Gentlemen, do you believe, in the fair construction of this most important law, that it was the intention of the legislature to do this, to tell people how they should draw indictments? That it was their intention to tell them, you must not state it directly and distinctly, so as to tell a man that you charge, that he intended, or compassed, and imagined the deposing of the King; but you must state that he imagined *his death*; and then you may state, as the only thing you want to prove, that he compassed to depose him; it being an inference of law, that to depose him, and to imagine his death, are the same thing? That is nothing but pleading. It is impossible that that act, meant for the safety of the subject —meant no less for the safety of the King—could intend anything so utterly frivolous as this. It did this. It said, that in all cases, no matter whether to depose the King—no matter whether to imprison him—no matter whether to levy war against him—nothing shall be charged but the compassing and imagining the death of the King, and then it shall be left to a Jury of his country to say, whether those facts given in evidence do, or do not, convince them of that compassing and imagination.

Now, Gentlemen, really with regard to those acts, which have been mentioned in the books as overt acts, sufficient to prove the compassing the death of the King, what I am stating is very little but matter of principle; because it is utterly absurd to suppose, that the effect can be different in those cases from what it would have been, if the law had allowed the stating the deposing of the King to be the substantive charge; for you cannot imagine, and no Jury ever will imagine, that a person conspired to depose the King, without compassing and imagining his death. And it is upon this ground, because that is the natural inference—because that is almost the necessary inference—it is upon this ground, that all the authorities have stated, that the compassing to depose the King is sufficient to prove the compassing of his death; for, as Foster says, "it is known that the distance between the prisons and the graves of Kings is very small." And that is the reason which Judge Foster gives for the intention of imprisoning or deposing the King having been always held to be a sufficient act of compassing his death; because our experience shews, and our feelings tell us, that it cannot be accomplished, without putting into danger the natural life of that sacred person.

Now, Gentlemen, there are certain things stated in the books,—rather as instances, than as intending to comprise the whole of those acts, which may amount to overt acts of compassing the King's death—there are certain things stated in the books, as held to be sufficient for this purpose of proving the compassing and imagining the King's death, and they are reducible to a very few classes. The first instance or example that is given is, "as if a man should provide weapons." This is stated by Lord Hale and by Lord Coke—that is the first head. The second, "if he should imprison, or attempt to imprison, the King, by force and a strong hand." The third, "if he should attempt to depose the King." Fourth, "if he should print and publish words tending to the deposition of the King, or the subversion of his throne."—Fifth, "if people should assemble to consider how they may kill the King."—And, sixth, "the

compassing a direct war against the person of the King." Now, so far as I know, these are the only overt acts which have been stated by my Lord Coke, Lord Hale, and Mr Justice Foster, upon this subject; and I again repeat, that, upon a due consideration of these authorities, and, what is of more importance than any authorities, a due reflection upon the words of the statute itself—upon a due consideration of all the authorities, without an exception, I state to you, that these are given merely as classifications of acts, which have been held by the judges, and are laid down by by those writers as, in their opinion, *sufficient to go to a jury*, in order to prove the compassing and imagining the death of the King, and which, in their opinion, do in point of fact infer such compassing and imagining; and I do not believe that there is any man, lawyer or not lawyer—for I again repeat, that this is not a question on which lawyers will differ from these opinions—who will doubt this for a moment. As for the providing weapons, that is clear; as to the imprisoning the King with force and a strong hand, it is impossible any person can imagine he can take the King prisoner, without placing his life in danger; that he can depose the King, without placing his life in imminent danger; that he can consult with others how they may kill the King, that he may compass a war against the person of the King, or against his title, which is against his person—that he can do any of these acts, and not be held to compass and imagine the death of the King.

Now, Gentlemen, it is therefore a question for you, whether, on the evidence before you, you can come to this conclusion, from any of the acts with which the man at the bar is charged, and which have been proved, that he has compassed and imagined the death of the King.

I state to you distinctly, upon the authorities with which I have already troubled you, that the first overt act in this indictment, *conspiring to devise plans to subvert the constitution*, is not a sufficient overt act to prove the compassing the King's death. It is much too loose. Not only in point of technical statement, this is not sufficient; but, supposing it were possible to charge a man directly with a treason in conspiring

to devise plans to subvert the constitution, I submit, that it is too loose a charge; that there is no man can tell what to make of it, because it is the peculiar excellency of our constitution that our laws are perpetually changing. We cannot tell how judges and juries may conclude that plans tend to the subversion of the constitution. A man is not to be put on his trial on such a charge as this. I know what is deposing the King, and what is the consequence of it—that is a charge I understand perfectly, and against which I can defend myself. But I do not know what might not be laid down from the bench, or what might not occur to a jury, perhaps in opposition to the directions of the judge, perhaps otherwise, as a plan that had for its object the subverting the Constitution. Then the conspiring to levy war, and by means of that to subvert the Constitution; it is no matter whether the thing is to be accomplished by levying war, or by doing anything else. The object of that war, to subvert the Constitution, is in itself uncertain, and therefore that I take not to be a good charge. Then the publishing and posting a treasonable Address to the Inhabitants of Great Britain and Ireland, to incite the soldiers of the King, and other subjects, to rebellion; as to that we have nothing surely here to do with it;—there is no posting up or publishing a treasonable Address in this case, except that this man is said to have been present when it was read.

The first overt act charged, as I have said, is, conspiring to devise plans to subvert the Constitution; the second is, conspiring to levy war, and to subvert the Constitution; the third is, publishing and posting up a treasonable Address to the Inhabitants of Great Britain and Ireland, to incite the soldiers of the King, and other subjects, to rebellion; the fourth is the same offence, differently worded; the fifth is also the same offence, differently worded; the sixth is assembling together, and, whilst so assembled, making speeches to incite the subjects to rebellion—now that is a tangible charge. Then purchasing and providing arms, in order to attack the soldiers of the King; you have nothing of that here. Then assembling and parading with arms, and attacking the houses of divers subjects, and taking therefrom arms and ammuni-

tion, in order therewith to attack the troops of the King, and levy war; there is nothing of that. Then endeavouring to seduce the troops of the King from their duty and allegiance to the King. Then compelling people to discharge and turn out of employment their workmen; that is charged here *as an overt act of compassing and imagining the King's death*;—there is certainly some evidence with regard to the discharging and turning off work people. Then striking work, and compelling others to do the same; that is much the same thing. Then sending persons to England, to incite the liege subjects of the King there to acts of Treason; there is nothing of that. Then subscribing money for the purpose of procuring arms; there is nothing of that Then exhorting and persuading certain of the liege subjects of the King to procure arms, to be employed in rebellion. Then giving notice of meetings to be held for the purpose of consulting as to the means of raising war; why, there does not appear to me much of that in this case. Then, Gentlemen, you see, that the overt acts, to which you are to direct your attention here, which overt acts you must find to be proved, and which overt acts, when proved, with all the circumstances under which they took place, you must find to amount to an intention and imagination in the heart and mind of that man to put his Majesty to death—are those of assembling and meeting together, and, whilst so assembled, making speeches to incite the subjects to rebellion—of levying war—of forcing divers subjects to discharge their workmen—and of striking work;—and I think these are the only overt acts, which can come within the evidence that has been laid before you.

Now, Gentleman, there is, as you will observe, under the first count of the indictment, a charge of levying war. Now you must be satisfied that war was actually levied, in the first place; and, in the next place, that that war was levied against the person of the King, as I shall afterwards shew you, when I come to the after part of my argument. At present, it is enough for me to say, that the charge here is of actually levying war; not of designing to levy war, but of actually levying war;—so that, if you are of opinion

there is nothing to justify the charge of actually levying war, you cannot find from this overt act on the first count of the indictment.

www.libtool.com.cn

Gentlemen, I come next to the second count of the indictment, and that I think I may dispose of at once; for I am convinced it will not be insisted on by the other side, that there is evidence here of any war levied. There was no force used of any kind or sort. There was an assembly—it had none of the character of a warlike assembly—none of the character of a riot;—it was a mob, if you please, but it had none of the character which is laid down to be necessary to make a levying of war—which is, carrying, whether better or worse, arms for the purpose of accomplishing some publick purpose.

The third count is the compassing, imagining, inventing, devising, and intending to deprive and depose our Lord the King of and from the style, honour, and kingly name of the imperial crown of the realm. And the fourth count is, compassing to levy war against the King, in order to compel him to change his measures and counsels.

Now, upon that I think I need say very little; but I must state to you, that these two counts are introduced under an act of Parliament of the 36th of his late Majesty; and it is necessary to state to you, in the first place, under the authority of all the judges, who have had occasion to have this act under their consideration since it has been passed, that this act makes, in point of fact, no other alteration in the law of Treason from the situation in which it stood under the act of Edward the Third, except that it has rendered certain acts, which might have been overt acts of compassing the death of the King, substantive Treasons of themselves.

Now, Gentlemen, I wish you for a few minutes to attend to this part of the case; because, under the fourth count of the indictment, where *compassing to levy war against the King* is charged, if you shall be of opinion, upon the few authorities which I shall cite to you—they are only two or three, because the question has arisen only in a very few cases—but if I shall satisfy you, that the act of the 36th of

the late King, refers only to that compassing to levy war, which was, under all the authorities, an overt act of compassing the King's death under the act of Edward III., then, if I can shew you that the war levied, or proposed to be levied—if there was such a thing proposed to be levied—was not a war, or compassing to levy war, which would have been an overt act of compassing the King's death, under the 25th Edward III., I shall have satisfied you, that it is not an overt act of compassing to levy war, such as is within that part of the 36th of the late King.

www.libtool.com.cn

I will state to you again what I mean—I am afraid I do not make myself intelligible—It is held by all the judges who have had occasion to consider the 36th of the late King, that that statute does no more than render those actings substantive Treasons, which would have been overt acts of compassing the death of the King, under the statute of Edward III. Then, in order to interpret the 36th of the late King, when we come to try a case, and to see whether the war, which it was intended to levy, is a war, the compassing to levy which is Treason under that statute, we have only to examine, on the older authorities, whether it would have been a compassing the King's death under the act of Edward III.

There was an unfortunate person of the name of Watson, tried in the Court of King's Bench in the year 1817, as you are all aware; and my Lord Ellenborough, in summing up to the Jury in that case, and laying down to them the law upon it—he having been tried on the 36th of the late King, had occasion to state what, in point of law, was the effect and intention of that statute. It is a statute which was first made in the 36th year of his late Majesty's reign; and in the 57th of his late Majesty's reign it was made perpetual.

The words of the preamble of this act are these, which shew what the object and intention of the act was, and are the means of interpreting the clause afterwards: "We your Majesty's dutiful and loyal subjects, the Lords Spiritual and Temporal, and Commons of Great Britain, in this present Parliament assembled, *duly considering the*

daring outrages offered to your Majesty's most sacred person in your passage to and from your Parliament, at the opening of this present Session, and also the continued attempts of wicked and evil-disposed persons *to disturb the tranquillity of this your Majesty's Kingdom*, particularly by the multitude of *seditious* pamphlets and speeches daily printed, published, and dispersed, with unremitted industry, and with a transcendent boldness, in contempt of your Majesty's royal person and dignity, and tending to the overthrow of the laws,"—and so on—" have judged that it is become necessary to provide a further remedy against all such *treasonable and seditious* practices and attempts." The *treasonable* attempts, Gentlemen, you observe, are those attempts of *outrage on the King's person.* " We, therefore, calling to mind the good and wholesome provisions which have at different times been made by the wisdom of Parliament for the averting such dangers, and more especially *for the security and preservation of the persons of the Sovereigns of these realms*, do most humbly beseech your Majesty, that it may be enacted, and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that if any person, or persons, whatsoever shall, within the the realm or without, compass, imagine, invent, devise, or intend, death, or destruction,"—that was Treason before, —" or any bodily harm, tending to death or destruction" —that, though not Treason before, was an overt act of compassing the King's death before—" maim or wounding, imprisonment or restraint, of the person of the same our Sovereign Lord the King, his heirs and successors"— an overt act under the statute of Edward III.—" or to deprive or depose him or them from the style, honour, or kingly name of the imperial crown of this realm, or of any other of his Majesty's dominions, or countries, or to levy war against his Majesty, his heirs and successors, within this realm, in order, by force or constraint, to compel him or them to change his or their measures or counsels"—

And then it goes on, "Or in order to put any force or constraint upon, or to intimidate, or overawe both Houses, or either House of Parliament,"—and so on as to other things, with which I need not trouble you.

www.libtool.com.cn

Gentlemen, this man Watson was indicted as the person now at your bar is, upon "four charges; two founded upon the old statute of the 25th Edward III., which statute was made"—I am now reading from Lord Ellenborough's charge to the Jury in Watson's case—"which statute was made to correct and remedy the defects in the law of Treason as it stood before, and to declare all that thereafter should be considered as Treasons by the law of the land, which statute remains in full force at the present day. There have been several other temporary statutes in addition to that statute, declaring other Treasons, but which statutes are expired, or have been repealed." Then he says, "There has been another statute lately passed, namely, in the 36th of the present King, not so much enacting any new Treasons, as declaring those things to be substantive Treasons, which had been, by various constructions, from time to time, made upon the statute of the 25th Edward III., deemed the strongest and most pregnant overt acts of several Treasons specified in that statute." I will read this to you once more, because it shews the opinion of the whole Court upon that important trial. "That this statute, passed in the 36th of the present King, was a statute, *not so much enacting any new Treasons, as declaring those things to be substantive Treasons, which had been, by various constructions, from time to time, made upon the statute of the 25th Edward III., deemed the strongest and most pregnant overt acts of several Treasons specified in that statute.*"

Now, Gentlemen, if this be the interpretation of this law, which I think, without any doubt, it is, why then, when you are to try, or when the Court is to try, what offences come within this statute, you will try what offences would have been overt acts of compassing the King's death, under the former statute; because this I agree to, that, if the

legislature intended to render what had been overt acts of the Treason of compassing the King's death before substantive Treasons, the legislature must be supposed to have done so, knowing what had been held to be overt acts of compassing the King's death.

www.hfhool.com.cn

Lord Chief Baron Shepherd.—They have said, in the 36th of the King, what shall be substantive Treasons. Lord Ellenborough says, this statute does not alter the law, because those things that are declared substantive Treasons, by that statute, were overt acts of compassing the King's death before; therefore either they were overt acts before, or the law is new.

Mr Grant.—The exposition given by your Lordship is most perfectly correct.

Lord Chief Baron Shepherd.—I beg pardon for interrupting you; but this is a point of law.

Mr Grant.—Your Lordship did not interrupt me. I shall always be much flattered by your Lordship's paying that attention to me. My argument is this, if, in the construction of the 36th of the late King, any doubt shall occur as to the meaning of the terms, describing the offence which it creates; if my Lord Ellenborough is right, that the object and effect of the statute is simply to render those acts substantive Treasons, which before were overt acts of High Treason, under the statute of Edward III., then, in order to clear up such doubt, we must have recourse to the interpretation of the statute of Edward III.—That is my conclusion from what he says.

Lord Chief Baron Shepherd.—Lord Ellenborough says, this Act of Parliament has not made any alteration in the law, it has made those acts specified in that Act of Parliament substantive acts of Treason, which acts specified in that Act of Parliament, were overt acts of compassing the King's death before.

Mr Grant.—I take it so, my Lord. My Lord Ellenborough says, here is a new statute. This new statute does not, in point of fact, alter the law; for it does no more than render those things substantive Treasons, which before

might have been punished as overt acts of compassing the King's death, under the act of Edward III.

Lord Chief Baron Shepherd.—Those things mentioned in that act, because those things mentioned in that statute were overt acts before.

Mr Grant.—Yes, my Lord, that is the statement of Lord Ellenborough, that the things mentioned in that act were overt acts of compassing the death of the King before. Then, from the converse, nothing is here declared to be a substantive Treason, that was not an overt act under the statute of Edward III. If it be true, as Lord Ellenborough says, that the acts here mentioned, were overt acts of compassing the King's death antecedently; if it be true, that the act has done nothing but render some of these things substantive Treasons, which were overt acts of Treason before; why then, if there shall be any doubt upon the construction of any words in that act, as to what it has created a substantive Treason, in the absence of decisions upon that subject, and of the dicta of any lawyer, or judge, upon that subject, the right rule of interpretation, and the only rule of interpretation under that opinion of Lord Ellenborough, is to see, whether the act charged was, or was not an overt act of compassing the King's death, under the statute of Edward III. —There is one branch of this statute of the late King, where a doubt has been raised for the first time in the course of these proceedings, and that is the clause with regard to the compassing and imagining to levy war against the King, in order to compel him to change his measures or counsels; and I cannot explain myself better upon this subject, than by going back a little, and stating to you, Gentlemen, the history of the law.

The statute of Edward III., in regard to the offence of levying war, confined itself to the prohibiting an *actual* levying of war; and under this statute it has been found over and over again—there is no doubt about that—that the *compassing* to levy war is not of itself a Treason; that the war must be *actually levied.* The 36th George III. left the *actual levying* of war to the provisions of that act. It

had been held, and most justly held, that a compassing to levy a war, which was directed *against the person of the King*, was evidence of a compassing of his death; and as my Lord Chief Justice Holt says, most sensibly, in the case of Sir John Freind,—the compassing the King's death cannot be less a compassing, because the means taken to compass it were those of levying war. Therefore the levying a war directed against the person of the King—directed to accomplish any of those objects, the accomplishing of which by other means would have been an overt act of compassing the King's death—was always formerly held to be evidence of a compassing the King's death. Another description of levying war, called in the books a *constructive levying of war*, a levying of war by construction, and not against the King's person, has always been held *not* to constitute Treason, *unless the war was levied.*

Now, Gentlemen, so the law of England has generally stood from the time of Edward III. But in several reigns—in the reign of Queen Elizabeth, in the reign of Charles II.—in the peculiar dangers and difficulties in which the Monarch of the time was supposed to stand, Parliament has thought proper, by acts very similar, and almost the same with this act of the 36th of the late King, to place the Treason of levying war upon a different footing; and those old acts of Parliament, I mean of Queen Elizabeth and Charles II., took occasion, as this act of George III. does, to render some other overt acts substantive Treasons. There was an act of the 13th of Queen Elizabeth, which declared, that the *compassing to levy war* against the Queen during her life, should be Treason, as much as the compassing or imagining her death. But that compassing to levy war was by that statute a little restricted, because it was a compassing to levy war, *and declaring the same by open writing and speaking;* and some overt acts are stated. Therefore they could not convict any person of a compassing to levy war against the Queen, in the reign of Queen Elizabeth, or against the King, in Charles the Second's time, unless they could prove some of those overt acts; but then, whether the war was directly against the King's person, or for

a publick purpose, not directly against the King's person, was all one; they were both equally levying war, and equally Treason. In the statute of the 36th of the late King, the limitation is different; and it is said, the Treason shall consist in the compassing to levy war against the King, *in order to compel the King to change his measures or counsels*; so that no war is of that nature, that a compassing to levy it is Treason, within the 36th of the late King, unless it be to be levied for the purpose of compelling the King to alter his measures or counsels.

Now, there are two distinctions which it appears to me material to keep in view in this question:—the first is under the declaration of my Lord Ellenborough; and, I think, the declaration of Lord Chief Justice Abbot, in Thistlewood's case, who concurs in that opinion. He says,—"It may be proper for me to mention to you, Gentlemen"—this is the Chief Justice's charge to the Grand Jury on the trial of Thistlewood—"that before the passing of the late statute, it had been settled by several cases actually in judgment, and by the opinion of the text-writers on this branch of the law, that all attempts to depose the King from his royal state and titles, to restrain his person, or to levy war against him, and all conspiracies, consultations, and agreements, for the accomplishment of these objects, were overt acts of compassing and imagining the death of the King. By the late statute, that is, the 36th of the King, under which you are trying this man, the compassing, or intending to commit these acts, that is, to depose his Majesty, to restrain his person, or to levy war against him, for the purposes that I have mentioned, is made a substantive Treason; and thereby the law is rendered more clear and plain, both to those who are bound to obey it, and to those who may be engaged in the administration of it." There is another authority upon the subject which I might read, and which, I think, would be an authority of considerable weight; it is the authority of the then Attorney-General, stating the law on the part of the Crown. For obvious reasons, whatever weight I may think due to that authority, at present I shall not trouble you with

it. I think it goes very nearly in the same words with those which I have already read. Now, Gentlemen, if this be so, *the sort of war*, the conspiring to levy which it was the object of the legislature to render Treason by the 36th of the late King, was the sort of war which had been held an overt act of compassing the King's death under the previous law.

Again, the *sort of compulsion* which the law had in view, when it mentions a war for the purpose of compelling the King to change his measures and counsels, must have been that sort of compulsion, the conspiring to impose which upon the King would have been an overt act of compassing his death, under the old law.

There are two questions; the first, what is the *sort of war*, the levying of which it is intended by the late statute to render Treason; the other, what is the *sort of compulsion* upon the King to change his measures and counsels, which it had in contemplation as being the object of such war.

Gentlemen, I think I shall satisfy you, in a very few words, that the doctrine, which I heard with very great surprise laid down to you since this trial began, is entirely unfounded in law, and that it is advanced now for the very first time; and I conclude it was advanced rather from looseness and inaccuracy of statement, than, as I imagine, from any direct intention to lay it down as law. It is most material, and in this case most necessary, that no such construction of the law should go uncontradicted. I heard it laid down with great surprise, that the conspiring to levy any sort of war against the King was High Treason, as an overt act of compassing the King's death. The whole books, from my Lord Coke down to the very last case that was tried, point out, one and all of them, a distinction, and a broad distinction, between the two species of levying war,—a levying of war, which is *directed against the person of the King*, and a levying of war, which is *directed in some sort against his royal authority*, and which is, *by construction of law*, a levying of war against the King. An attempt, by force, to accomplish some publick purpose, such as the altering of the law, the altering of the established religion, the pulling down all enclosures, the pulling down all meeting-houses, the doing

any of those acts, the generality of whose objects and natures, accompanied by such force, by which they are to be effected, renders them, *in contemplation of law*, a levying of war against the King—these sorts of levying war have always, from Lord Coke downwards, without one exception, been stated to be distinguished from the other levying of war, which is *against the person of the King directly*. And the conspiring to levy this sort of war, which I have mentioned, the *constructive levying of war*, is laid down in all the books as never to have been held an overt act of compassing the King's death.

Gentlemen, I know I fatigue you by these legal arguments; but, when the prisoner at the bar is standing here on his trial, *on a construction of law*, it is extremely necessary the Jury should know what that construction is, and what the foundation of it.

Gentlemen, I before stated to you—I stated to you, I will not say under any degree of reproof, because the kindness of that quarter of the Court from which it came will never allow me to apply that name to it—but it was stated to you by me, under correction, that the compassing and imagining the King's death was the crime, and an overt act merely evidence of the crime, for the Jury to judge of, whatever might be the *dictum* of any lawyer. But I state, under no fear of any observation from the bench—for, supposing it to be as unfounded, as I believe it is well founded, still it is agreeable to the *dicta* of all the lawyers who have written on the subject,—that there is this distinction between the two crimes, both going under the denomination of levying war against the King, that the conspiring of one of them has been held an overt act of conspiring the King's death, the conspiring of the other being held to be no treason at all.

Now, Gentlemen, where you are to interpret this clause in the act of the late King, as to the conspiring to levy war, and have no decision in point, if I am right in saying, that that act only mentions those things to be made substantive treasons, all of which were overt acts of treason before, if I can shew that that sort of levying war, which is here in question, was never an overt act of Treason under the statute of

Edward III., I think I make out my case, that that cannot be Treason under the statute of King George the Third. I am not sure whether I have made myself perfectly intelligible. [Some of the Jury signified their assent.] If I have, I will leave it there; and now go on to shew you, that this sort of levying of war, which the prisoner is accused of intending, is a sort of levying of war, which no court of law could, or would find sufficient to make this man guilty of that Treason of compassing the King's death, charged under the statute of Edward III.

www.ipproof.com.cn

Gentlemen, I was about to read a passage to you from Lord Coke, in which he states this. He says, "This related to the several and distinct treasons before expressed, (and especially to the compassing and imagination of the death of the King, for that it is secret in the heart,) and therefore one of them," he says, "cannot be an overt act for another." I will observe afterwards, that this observation is not to be taken to the full extent. It is more generally worded than he usually expresses himself. "As, for example, a conspiracy is had to levy war, this (as hath been said, and so resolved,) is no Treason by this act"—of Edward III.—"until it be levied." Of that there is no doubt. "Therefore it is no overt act, or manifest proof of the compassing of the death of the King, within this act; for the words be"—and so on. Now, if it were taken, that a levying of war could be no overt act of compassing the death of the King, that is wider than he lays down himself; for in the case of Lord Essex, he mentions his levying war against the Queen as an act of compassing her death. But Lord Hale is more explicit upon this subject. Lord Hale says, and I beg your attention, Gentlemen, to this passage—Lord Hale refers to the passage I have quoted from Lord Coke, and there he rectifies the mistake, which, I apprehend, is rather more apparent than real, in my Lord Coke, and reconciles the two passages—he then says, "An assembly to levy war against the King, either to depose, or restrain, or enforce him to any act, or to come to his presence to remove his counsellors or ministers, or to fight against the King's lieutenant or military commissionate officers"—that is, a war against his person directly, —"is an overt act, proving the compassing the death of the

King"—he says, "an overt act *proving* the compassing the death of the King; for such a war," he says, "is directed against the very person of the King; and he that designs to fight against the King cannot but know at least it must hazard his life. Such was the case of the Earl of Essex and some others. But," he concludes, "if it be a levying of a war against the King *merely by interpretation and construction of law*, as that of Burton and others, to pull down all enclosures, and that of the apprentices in London lately, to pull down all bawdy-houses, *de quibus infra*, this seems *not to be an evidence of an overt act to prove compassing the King's death*, when it is so disclosed upon the proof, or if it be so particularly laid in the indictment." He says, that, if it be particularly laid in the indictment, that the war was one of those wars to accomplish a general object, by force, which is, by construction of law merely, a levying of war against the King, it would be a bad indictment of compassing the King's death. If, on the contrary, the indictment is well laid, and it comes out upon the evidence, that it was a war for this purpose, and not a direct war against the person of the King, then it is not an evidence of an overt act to prove compassing the King's death; "though, *prima facie*, if it be barely laid as a levying war against the King in the indictment, it is a good overt act to serve an indictment of compassing the King's death, till, upon the evidence, it shall be disclosed to be only to the purpose aforesaid, and so only an *interpretative or constructive* levying of war. And Burton's case, 39th Elizabeth, seems to intimate as much, because they took him to be indictable only upon the statute of 13th Elizabeth, cap. 1, for conspiring to levy war against the Queen; whereas, if this had been an overt act to prove the compassing of the death of the King, the fact had been Treason within 25th Edward III., as surely it would have been if he had conspired to have raised a war directly against the King or his forces, and assembled people for that purpose, though no actual war had been raised by him."

I have already stated, that, by the 13th of Elizabeth, the levying any war against the Queen was rendered Treason; therefore those people, who had undertaken to pull down all enclosures, or some general object, were indicted for conspi-

ring to levy war under the act of Queen Elizabeth, and not under the 25th of Edward III., as they would have been, if it had been an overt act of compassing the Queen's death. "But," continues Lord Hale, "such a levying of war may in process of time rise into a direct war against the King, as, if the King send his forces to suppress them, and they fight the King's forces, and then it may be an overt act to prove the compassing of the King's death."

So that you see here it is distinctly laid down, and indeed it is quite obvious that it must be so, that a war for pulling down all enclosures, that a war for pulling down all meeting-houses, that a war for pulling down all houses of any other description, or for any general object, and this object to be accomplished by force and arms, which is, by construction of law, a levying of war against the King, because it is more than a riot—it is conspiring and opposing the King's authority,—this sort of war is not a war against the person of the King, and consequently not a war, the levying of which can be held to be an overt act of compassing his death. But, if the war goes on, and the people come to be engaged with the King's forces, then it will be an overt act of compassing his death.

Now, Gentlemen, I might state a great deal more to you upon this subject; but I think what I have stated is sufficient, after I have confirmed it by some more modern authorities. Mr Justice Foster, in the book which has been quoted to you, and whose authority certainly is very great, lays down the law in these words: "But every insurrection, which in judgment of law is intended *against the person of the King*, be it to dethrone or imprison him, or to oblige him to alter his measures of government, or to remove evil counsellors from about him,—these risings all amount to levying war within the statute, whether attended with the pomp and circumstances of open war, or not; and every conspiracy to levy war for these purposes, though not Treason within the clause of levying war, is yet an overt act within the other clause of compassing the King's death; *for these purposes cannot be effected by numbers and open force, without manifest danger to his person.*"

Now, I will not detain you by stating what are the circumstances, the numbers, and open force, that constitute a levying of war; because upon that there will be no occasion for any discussion here. It is agreed on all hands—it perhaps never was laid down so broadly before as it was by Mr Justice Foster, but I think it is the fair construction of common sense,—that it is of no importance what the species of array is, in which persons are assembled. If they attempt a publick object with open force and violence, with clubs and sticks, or staves, or anything such as they can command, there can be no doubt that is a levying of war. The question here is, as to the *object* of the war.

Then he goes on to say, and I beg particularly your attention to the words of this passage: "Insurrections, in order to throw down all enclosures, *to alter the established law, or change religion*, to enhance the price of all labour, or to open all prisons." Now, you will observe, that these are attempts, in their nature, of the utmost importance; they amount almost, in their nature, as nearly to rebellion as anything can be, that is not levelled at the person of the King—an insurrection to alter any law, no matter what law it is,—whether it is a law appointing persons to be elected to the Commons House of Parliament in a certain mode, or a law to regulate wages—whatever it is, they are all equally laws of the land, and not one more than the other—an insurrection to change religion, a levying of war by force of arms to change the religion established by law—nothing can come closer to a direct war against the King's person, and to an actual rebellion, than that, when you consider that the King is bound, by his coronation oath, to defend the religion established by law—when you consider that the title of the King, at the time Mr Justice Foster wrote more especially, and the safety of his Crown and his family, were held to depend upon the preservation of the religion established by law. And yet Mr Justice Foster, in conformity with Lord Hale, and all the other authorities, states, what has been the law from before the time of Lord Hale downwards, that "insurrections, in order to throw down all enclosures, *to alter the established law or change religion*, to enhance the price of all labour, or to

open all prisons—all risings, in order to effect these innovations, of a publick and general concern, by an armed force, are *in construction of law* High Treason, within the clause of levying war"—that, if an insurrection of this kind takes place, and war is so levied for those purposes, that insurrection and war are levying of war within the statute, and, if the war be levied, they are High Treason; but, if the war be not levied, by the statute of Edward III. it is not Treason.

Then we have only to inquire further, whether these would be overt acts of compassing the King's death; "for, though they are not levelled," says Mr Justice Foster, "at the person of the King, they are against his royal Majesty; and, besides, they have a direct tendency to dissolve all the bonds of society, and to destroy all property, and all government too, by numbers and an armed force. Insurrections likewise for redressing national grievances, or for the expulsion of foreigners in general, or, indeed, of any single nation living here under the protection of the King, or for the reformation of real or imaginary evils of a publick nature, and in which the insurgents have no special interest—risings to effect these ends by force and numbers, are, by construction of law, within the clause of levying war, for they are levelled at the King's crown and dignity." Then he says, "That it was adjudged, that a person going to Lambeth House in a warlike manner to surprise the Archbishop, who was a Privy Counsellor, it being with drums, and a multitude, to the number of three hundred, was Treason." He disapproves of that case, I think, most justly; but with that we have nothing to do.

Then, in section 6th, he says that which my learned Friend read, and I again call your attention to it. "But a bare conspiracy for effecting a rising for the purposes mentioned"—I have read to you the purposes mentioned—"but a bare conspiracy for effecting a rising for the purposes mentioned in the two preceding sections, and in the next, *is not an overt act of compassing the King's death*; nor will it come under any species of treason within the 25th of Edward III, unless the rising be effected."

Now you see, Gentlemen, a distinct and tangible differ-

ence between the two sorts of levying of war; a levying of war against the person of the King, mentioned by my Lord Chief-Justice Hale, mentioned also by Mr Justice Foster, and a levying of war for general purposes, which is, by construction of law only, a levying of war against the King. And among these general purposes it is laid down, that the purpose of *altering the established law, and the established religion, by force*, are *not* such purposes as will render the conspiracy to levy a war for them an overt act of the Treason of compassing the King's death, or any Treason at all, under the 25th Edward III.; and I cannot state it to you more strongly than this.

In the case of Hardy, tried in 1792, before Lord Chief-Justice Eyre and a Special Commission, I think Mr Erskine, now Lord Erskine, laid down broadly this doctrine——

Lord Justice Clerk.—As counsel.

Mr Grant.—I consider that, in its utmost extent, my Lord.

He stated it in the case of Lord George Gordon. "If I were to surround the House of Commons with an armed force, this would not be an overt act of compassing the King's death." He stated it broadly. Lord Chief-Justice Eyre, in his charge to the Jury, congratulates them, that there is no question of law which he thinks likely to give them much trouble. Gentlemen, you will not understand me to state this that Mr Erskine stated as any authority. The statement of a counsel at the bar, however eminent that counsel may have been, is no authority; but that was said, and it was left uncontradicted by the bench in that case; a bench certainly not indisposed to contradict such an assertion upon that occasoin.

Gentlemen, I cannot state this better to you than in the words of one of the most eminent Judges that ever sat upon any bench in any country, my Lord Chief-Justice Holt, in the case of Sir John Freind. His charge to the Jury is in these words: "Look ye, Gentlemen of the Jury, Sir John Freind, the prisoner at the bar, is indicted for High Treason. The Treason that is mentioned in the indictment, is conspiring, compassing, and imagining the death and destruction of the

King. To prove the conspiracy and design of the King's death, there are two principal overt acts that are certainly insisted upon; the one is the consulting and agreeing with divers others, to send Mr Charnock into France to King James, to desire him to persuade the French King to send over forces here to assist them, who were to furnish other forces for the raising of a war within this Kingdom, in order to depose the King; and accordingly Mr Charnock was sent upon that design. The other overt act," this is what I wish to draw your attention to, " is the prisoner's having a commission from the late King, and preparing and directing men to be levied, and to be ready to be in a regiment, of which Sir John Freind was by that commission to be colonel; and this was always to assist in the restitution of King James, and in order thereunto, in the deposing and expulsion of King William." Now there could be no doubt that that was a war directed against the King's person. One Treason was the compassing and imagining the death of the King—another was the levying of war. Lord Hale goes on, " Now, says he," (meaning Sir John Freind, the prisoner,) " here is no war actually levied, and a bare conspiracy, or design to levy war, does not come within this law against Treason. Now, for that I must tell you, if there be only a conspiracy to levy war, it is not Treason; but if the design and conspiracy be either to kill the King, or to depose him, or imprison him, or put any force or restraint upon him, and the way and method of effecting these is by levying a war, there the consultation and the conspiracy to levy a war for that purpose is High Treason, though no war be levied. For, such consultation and conspiracy is an overt act, proving the compassing the death of the King, which is the first Treason mentioned in the statute of the 25th Edward III. For the words of that statute are, that if any man shall compass or imagine the death of the King." And then with that peculiar good sense and clearness which distinguishes this learned Judge, " Now, because a man designs the death, deposition, or destruction of the King, and to that design agrees and consults to levy war, that this should not be High Treason if a war be not actually levied, is a very strange doctrine; and the contrary has always been held to be law. *There may be a war levied without any design upon the*

King's person, or endangering of it, which, if actually levied, is High Treason; but a bare design to levy war, without more, will not be Treason; as, for example, if persons do assemble themselves, and *act with force in opposition to some law which they think inconvenient, and hope thereby to get repealed, this is levying a war and Treason, though purposing and designing it is not so.* So when they *endeavour, in great numbers, with force, to make some reformation of their own heads, without pursuing the methods of the law, that is a levying of war and Treason; but the purposing and designing it is not so.* But if there be, as I told you, *a purpose and design to destroy the King, and to depose him from his throne, or to restrain him, or have any power over him,* which is proposed or designed to be effected by war that is to be levied, such a conspiracy and consultation to levy war *for the bringing this to pass,* is an overt act of High Treason. So that, Gentlemen, as to that objection that he makes in point of law, it is of no force, if there be evidence sufficient to convince you, that he did conspire to levy war *for such an end.*"

Now I take this to be just as clear an exposition of the subject as it is possible for language to convey to us. The levying of war is Treason—a conspiracy to levy war is not Treason under the statute of Edward III.; but, if the conspiracy and intention be to impose any restraint upon the King—to attack the person of the King in any degree or manner whatever—and the mode by which this is to be effected, is the levying of a war, then the conspiring to levy that war is just as much Treason, as the conspiring any other means for accomplishing the same object. But it is the object which renders it Treason—the object being the constraint, or injury, and consequent endangering of the person of the King.

My learned Friend near me quoted a passage from an authority of this country, whom I cannot regularly quote as an authority, because we cannot quote regularly living authors as authority. The words will be in your recollection. They are taken from what the author has read in the books, and he gives you the result, which he drew in his closet, of what they have stated, and which result you have heard.

Gentlemen, I am sure, that, if I had not heard the doctrine stated in an opposite manner from the opposite side of the bar, in the loose way it was, I should not have troubled you with this length of argument; but I am anxious to shew you that this doctrine is unfounded. You cannot open a page in the State Trials, or in any author on the Law of Treason, where you do not find the doctrine stated as I have stated it to you.

There is a case decided by Judge Jeffrey to the same purpose, which could only be cited for a point of law not connected with any private object he might have in view. But I will come to a lawyer of our own times, whom I can quote with more pleasure to myself, and with more authority to you—I mean our countryman Lord Mansfield.

The case of Lord George Gordon has been stated to you, and that is sufficient evidence of what was understood to be the law at that time. You, perhaps, know the circumstances of Lord George Gordon's mob. You know that it was a mob construed to amount to a levying war against the King, which had for its object the pulling down of the Popish meeting-houses, and the preventing a very wise law being passed, brought in by Sir George Saville, I think, for removing some of the disabilities, under which that class of his Majesty's subjects had laboured.

This unfortunate gentleman, Lord George Gordon, did in some way or other, for some objects which it was not very easy to discover, connect himself with persons, as it was said, who were engaged in this very improper and unaccountable project of preventing, if possible, by force of arms, the House of Commons from passing this bill. That was one object, and an object which, if it had not been for the firmness of the House, they must have accomplished. Another object was the pulling down of all Popish meeting-houses in London, connected with a similar object here, which was certainly Treason. It never occurred to any man to charge him with compassing the King's death, and to give this levying of war in evidence as a proof of the overt act of it; and Lord Mansfield addresses the Jury in these terms:—"Gentlemen of the Jury, the prisoner at the bar is indicted for that species of High

Treason which is called levying war against the King, and therefore it is necessary you should first be informed what is in law levying war against the King, so as to constitute the crime of High Treason within the statute of Edward III., and perhaps according to the legal signification of the term before that statute. There are two kinds of levying war; one *against the person of the King*—to imprison, to dethrone, or to kill him, or to make him change measures or remove counsellors;" *against the King's person*, you observe;—" the other, which is said to be levied *against the Majesty of the King*, or, in other words, against him in his regal capacity, when a multitude rise and assemble to attain, by force and violence, any object of a general publick nature; that is levying war against the majesty of the King—and most reasonably so held, because it tends to dissolve all the bonds of society, to destroy property, and to overturn government, and by force of arms to restrain the King from reigning according to law. Insurrections by force and violence to raise the price of wages—to open all prisons—to destroy meeting-houses—nay, to destroy all brothels—to resist the execution of militia laws—to throw down all enclosures—to alter the established law, or change religion—to redress grievances, real or pretended—have all been held levying war. Many other instances might be put." He goes on, " Lord Chief Justice Holt, in Sir John Freind's case, says, if persons do assemble themselves, and act with force in opposition to some law which they think inconvenient, and hope thereby to get it repealed, this is a levying war and Treason. In the present case, it does not rest upon an implication that they hoped by opposition to a law to get it repealed; but the prosecution proceeds upon the direct ground, that the object was, by force and violence, to compel the legislature to repeal a law; and therefore, without any doubt, I tell you the joint opinion of us all, that, if this multitude assembled with intent, by acts of force and violence, to compel the legislature to repeal a law, it is High Treason." And so it was; if they assembled for that purpose, it was High Treason. Lord Mansfield says, that there are two sorts of levying war; one against the person of the King;—and

then he says, "insurrections by force and violence to raise the price of wages, to open all prisons, to destroy meeting-houses, nay, to destroy all brothels, and so on, is the other sort of levying war." So that this distinction runs through all the books, and is brought down to our own times.

Gentlemen, I can bring this down through every trial that has been had since, where this statute has been mentioned. My Lord Ellenborough states it in Watson's case. The statement of the counsel is seldom to be taken as law; yet the statement of the Attorney-General, when it is in favour of a prisoner, may be taken as an authority; and when I mention to you the Attorney-General, in the case of Hardy, I believe it is one of the greatest authorities ever known—I mean Lord Eldon. He states exactly the doctrine that I have stated to you. He says, "If I levy war, that is an overt act of compassing the King's death; if I conspire to levy direct war"———

Lord Chief Baron Shepherd.—Can the Court receive as authority the position of the Attorney-General?

Mr Grant.—No, my Lord; I only state it just as I would state (what is not authority either) the indictment against Lord George Gordon; I would only state it as the opinion of the law officers of the crown.

Lord Chief Baron Shepherd.—You are stating it as what was holden by the Court, because you say it was not contradicted by the Court. Is it the duty of the Court to attend to every position on either side? and then is it to be assumed or argued that that is incontrovertible, because the Judge has not gone through the argument, but has contented himself with doing that which, generally speaking, is all he ought to do, stating, by his official oath, what his opinion of the law is?

Mr Grant.—I should have been misunderstood, if I were supposed to wish to carry it farther than it goes; it is an observation which I think it fair to make.

Lord Chief Baron Shepherd.—Lord Eldon spoke four or five days, Lord Erskine two days, and the late Lord Chief Justice two more; now, if what he stated is to be taken as law, because the Court did not take another fortnight to

contradict the assertions of counsel, what would be the authority of the law of England or of Scotland.

Mr Grant.—I cannot carry it so far as that; but if any violent proposition had been laid down, it is most likely Lord Chief Justice Eyre would have interposed. But what I have read to you, Gentlemen, is the authority of the greatest sages of the law—some sitting on the bench, and delivering those opinions which they would have embodied in their closets, and others delivering them in books, which would not be authority now, but that they have been adopted as authority by the Courts ever since—I mean such persons as Lord Coke, Lord Hale, and Mr Justice Foster; and I have stated to you also the opinion of Lord Holt, and various other Judges, delivered in judgment, admitted on all hands to be correct.

Gentlemen, my position therefore is this, that this being the law of Treason under the statute of Edward III., and the statute of George III. having done no more, than, in the particular cases which it mentions, rendered those acts which it mentions substantive acts of Treason, which acts would before have been overt acts of the Treason of compassing the King's death; the conclusion is, that when that statute declared that the compassing to levy war should be a substantive Treason, provided that war had for its object the compelling his Majesty to change his measures or counsels, it must be understood to have enacted the compassing to levy war into a substantive Treason in those cases only, in which the war was of that nature, and the compulsion of that nature, that the conspiracy to levy such war would antecedently have been evidence of a treason under the statute of Edward III.; and if I have succeeded in shewing you, that a conspiracy to levy a war, not directed against the person of the King, but of that sort which the law-books, and the Judges, and all the authorities, declare to be only a constructive levying of war, is not evidence of any Treason by the statute of Edward III.; I have proved that a conspiracy to levy such a war as this, is not a conspiracy to levy that sort of war which is in the contemplation of the 36th of the late King. We are here in no other situation than we should

have been if the Act of the 36th of the late King had not passed, except thus far, that now the conspiracy to levy such a sort of war as is mentioned there is rendered a substantive Treason, whereas before it would have been an overt act of compassing the King's death.

www.liuool.com.cn

And therefore that position, which I found myself bound to state to you in the outset in reference to the first count, with regard to the overt act, as being evidence of a compassing the King's death, and being to be judged of as evidence of the crime, the crime being the compassing the King's death—so that under the first count of the indictment, you could not find the prisoner guilty unless he had conspired against the life of the King, or to do some of those acts, which justly, and by the common inferences every man must draw from them, would infer, that he compassed and imagined the death of the King—that position is most material for your consideration.

If you consider this case under the 36th of the late King, then you are free of that question; and then you have only to try, whether he did compass and conspire to levy that sort of war, the compassing and imagining which has been determined to be an overt act of compassing the King's death; it being understood,—and, if I am not extremely wrong in my interpretation of the law, if my Lord Ellenborough and the authorities I have quoted are not wrong in *their* construction of the law, I will venture to say this—that you are not to interpret this law differently from every other statute, contrary to the declaration in the preamble. If I am not wrong, therefore, in that position, I then submit to you with confidence, that the case, as it appears on the evidence here, supposing that we are to take the view of it the most favourable to the publick prosecutor, and the most strongly against the prisoner, is not a case within the 36th of the late King.

That the riot here proved is not that sort of war, that is within the 25th Edward III., as evidence of a compassing and imagining the King's death, I think no man for a moment can hesitate to determine. I think it is impossible for any man for a moment to believe, that the acts imputed to this unfortunate man at the bar, or, in which he is proved to have had any concern, that the object which the people had in view,

as far as we can get at the object, was such, as that the conspiring to accomplish it by force of arms could be treated as a conspiracy to levy war *directly against the person of the King*; but, at the most, only a conspiring to levy a war, that, being levied, might turn out to be *constructively* against the King, viz. for the purpose, by force or violence, of altering some established law.

Gentlemen, the Solicitor General stated to you, with great candour, when he opened the case to you, that the object that he inferred these persons to have, was that of accomplishing a reform in Parliament. He said to you, alluding to the paper, it shews the nature of the wrongs which were to be redressed—it states the object to be reform in the House of Commons; and then he said, if a war be devised for that purpose, it would be Treason, under the 36th George III. The object he inferred of these misguided persons was, to produce a reform in Parliament. Now, I state to you, with very great deference certainly, but with perfect confidence, that a levying of war to obtain reform in Parliament, or for the alteration of any law, is not, and never was, an overt act of compassing the King's death under the 25th of Edward III.; and I state to you, that, if I am correct in that, the conspiring to levy such a war cannot be within the 36th of Geo. III.

But, Gentlemen, the object, which these persons had in view, has never been laid before you with that degree of precision, which I apprehend it is absolutely necessary that everything should be proved with, in a case of this nature. I shall take it, that the prisoner at the bar is connected with this absurd—with this (give it any appellation you like)—this Proclamation, which has been read. Who framed it—where the conspirators were who composed it—what their object was—how they manifested it—all this you are utter strangers to. All this, so far as I understand, the law officers of the Crown, my learned Friends, are utter strangers to. Those persons, if such existed in Scotland, which I very much doubt, have totally escaped observation. You have, therefore, no light whatever, as in all cases which I have heard or read of—you

have no consultations with any persons—no correspondence with any persons—from anything which any persons have said you have no light whatever, to open up to you either the existence of a conspiracy, or the object of a conspiracy. For all that appears to you, there may have been *no conspiracy in the case*—for all that appears to you, *some one individual*, with a mischievous intention of any given nature, may have framed this Proclamation, and may have taken measures for giving it the publicity it has unhappily received.

Now, Gentlemen, when you take the Proclamation itself, there is no person that can read it, that will not at once say, that, whoever he was that composed it, his object could not but be mischievous. But that is not enough. There are abundance of mischiefs far short of Treason—there are abundance of mischiefs which are close on Treason, and yet not Treason—there are abundance even of treasonable objects, which yet are not the objects set forth in this statute, the compassing to levy war to accomplish which, would be Treason. You must be satisfied, not from what you believe—when I say from what you believe, not without perfect evidence—you must be satisfied, not by the conclusions drawn in your own breast—you must dismiss from your recollection everything you heard before you entered that box—everything you thought, felt, or imagined—I know you too well to render it necessary to say this—but you are not to judge here, even upon inferences that you draw—suppositions—strong inferences from what you know—though perhaps stronger than that which you draw from the evidence, —you must have it *proved before you*, that the object first of all of this Proclamation was what it is said to be, a Treasonable one, and you must have proved before you this also, that the Treason which some person or other had in view, who wrote this Proclamation, was such a Treason as comes within the statute of the 36th George III., if it were meant to be accomplished by force of arms.

But, Gentlemen, you must go much further than that. You must be able to state what was the object. *You* must not say to yourself loosely, why, I think the object here was

to overturn the Constitution—and *you*, that you think the object here was to obtain a reform. One may think it was to obtain a reform; another, that it was the royal government that was to be overturned; a third may think another object; and a fourth another. But you must all come to the conclusion, that that Address had an object, which was a specifick Treason within the law which I have stated to you.

Now, I confess, for my own part, no man can view with more—I do not say suspicion, because it is too light a word for it—no man can view with more reprehension than I do this Address—the *immediate* object of which was to sow dissension, and produce disturbance, of a local nature, wherever it might be promulgated. No doubt the object was the most malignant that can be conceived. It was the object of persons, who kept concealed with great skill, to send this Address around a part of the country, where the people were in a state, most of them, of starvation, in order that it might have the effect of egging them on to do they knew not what, by means they did not know, but which could have no other result than to excite great local disturbance, to do great local damage and mischief, and to the inevitable destruction of all the unfortunate and infatuated people who lent themselves to it. But, what the object was *of the persons who assembled upon this Address*, (I will speak presently as to how far the prisoner is connected with it,) I defy any man to gather distinctly from the words of the Address. You may believe every mischief you like of it, but you cannot say, upon your consciences, that you are clear upon the proof, that this, or this, was the particular object they had in view; and that this object was a treasonable object; and that this treasonable object was within the statute of the 36th of George III.

Now, Gentlemen, above everything in the world, it is necessary, in a case of this nature—a case of Treason—where a poor individual, in the situation of this unfortunate man, though, thanks to the humanity of our laws, he sees, and others see, that his case meets with as much attention as if he was in a higher situation of life;—yet, where an individual in his situation, an unprotected individual, is here put on his

defence, with all the talents the Crown can command arrayed against him—the whole force of the greatest Government of the world arrayed against him,—it is of the utmost importance that all people should know and feel, that, be the force of that Government what it may, the talents what they may, the case one of what irritation and suspicion it may, the situation of the prisoner never so humble, a British Jury will always stand between him and injustice; a British Jury will always shew that the law is the same in the case of the rich man and the poor, in a case where the Government is concerned, as where it is not. They will shew more—in shewing this, they shew nothing but what the Government would desire to be shewn—they will shew, that no person shall be convicted of this great offence, but on evidence, which every man will lay his hand on his heart and say, is most entirely and perfectly satisfactory.

Gentlemen, let us come a little nearer to the case of this individual. How is he connected with this conspiracy? You have his declaration in evidence before you; and I am entitled to argue on it as a part of the proof. It so happens there is one circumstance mentioned in that declaration, of which I could not lay before you any evidence, and that is, the way the Proclamation first came into his possession. He states, in his declaration, that a man of the name of Cardie left it with his wife. I could not bring his wife here; she is not a competent witness. By the law of England, she could not be heard. In his humble situation of life, they kept no servant. They lived alone, he and his wife. No human being could prove the way in which this abominable paper came into his custody but his wife; and she was not a good witness. The man, to whom I will not give the epithets that belong to him—your own feelings will bestow on him the name that belongs to villains who can promulgate such a paper, and take care to leave it only to be found in the custody of others, and to keep out of the way themselves—the Crown chose—(I do not know why they did not make him a prisoner)—the Crown chose to make him a witness, and he has not appeared to answer to his name. I could not get him to prove it; and if I had had him to prove it, I would not have trusted him

upon his oath. Not that I would not trust many men upon their oaths, who had been guilty of crimes for which they might be arraigned; but I would not trust a man upon his oath, who tried to cheat another into the commission of an offence like this, or to leave with him, by stealth, evidence by which his life might be brought into danger. What does the prisoner do? He meets Fraser, and though he does not know him intimately, he knows he is a teacher, and therefore he is likely to be a better informed person than most of those with whom he associated—he meets him, and shews him this Proclamation; and, under evident agitation, Fraser says, I think this announces a state of rebellion. What does the prisoner then do? He takes the Proclamati home. Does he go and hawk it about? No. When Fraser goes home, and tells his wife, who gave her testimony in the clearest manner, she says, I have the greatest curiosity to see it; will you fetch it? He goes to this man, and begs he will lend his wife this Proclamation. Accordingly he does so. This is on the Saturday night, late. He goes and leaves the Proclamation. He goes the next day, and she gives him back the Proclamation, and then he says what he means to do with it. He says, he means instantly to destroy it. That he destroyed it, it is impossible for him to prove, unless he could call witnesses, who had seen him do so. He never imagined that he would be brought here to trial. But it never has been seen upon him since; they could not produce it here; and, in point of fact, he did destroy it.

Gentlemen, trace him a little further. Upon the Sunday, the Proclamation is stuck up. It was unnecessary for me to prove, for you have it sufficiently in evidence, that this Proclamation was thrust into people's houses all round about. Abundance of them were seen on Monday. And you find him, the first time he is connected with any of these things, in the crowd at Mr Houstoun's mill. What do you find him doing? In the first place, what were the crowd doing? And you observe this all the way through; there is no act of force attributed to this crowd anywhere. Wherever he is, they conduct themselves in a peaceable orderly manner; in as orderly a manner as any assembly of people of the same number would have conducted themselves. Walker

tells Mr Houstoun, Sir, I hope you mean to stop the mills; if you do not, the Provisional Government will not sustain any of the damages that you may incur. Why, says Mr Houstoun, like a very sensible man, (and the prisoner says he laughed when he said it,) I do not give myself any trouble about that; I shall not call upon them to pay any of those losses. What do these people do? these traitors? these persons who are accused of conspiring to levy war against the King? Do they try to pull down his mill; or to stop it by violence, or offer any insult to him?—And then they try to connect my unfortunate client with this. What is it *he* did? He, seeing the crowd pressing Mr Houstoun, calls to them, Do not trouble the gentleman. Mr Houstoun had before said, Do not all come this way; name two to speak to me. That was done; and then says this man, Do not trouble Mr Houstoun; it is a shame to crowd upon him in that way. He is not proved to have said anything else.

Now, Gentlemen, if my case were, that I was to deny that he was ever in any of these crowds at all, why then I should have abstained from giving a good deal of the evidence which I laid before you. My object has been all the way through,—and I think you observed that, in the manner in which I examined some of the witnesses in the box today—my object has been, all the way through, to let you see this case as it stands,—to conceal no part of it. Certainly it would not have been my duty, if the counsel for the Crown had failed in the proof, to assist them. It would have been contrary to my duty, because, if they failed in making out any case at all, it would have been enough for me. But my object has been, to lay before you all the evidence I could; and when you put it all together, and see what it is, if you can lay your hands upon your hearts, and say, that that man is a foul traitor, and has conspired to levy war against the King; and that he is a traitor, against whom this powerful Government ought to set itself in arms—that his conspiracy is of that importance and that magnitude, and his Treason of that description, that nothing but his life can answer for it—that the safety of the country depends upon your finding him guilty—if you can say, on the whole case, as it has come

out before you, his situation and connexion with these things are such as to call on you for a verdict of guilty of High Treason, I never shall hope, in any other case, to obtain a verdict of acquittal.

www.libtool.com.cn

Gentlemen, this is the whole that this man is proved to have done at that first mill; and this was the whole which was done previous to the meeting on the Green. One man said, he and Walker appeared equally active. It is in evidence before you, you will recollect, that the only thing that was done, was *speaking*; for, as to *acting*, there was none, unless you call walking acting, and his activity walking backwards and forwards. The only thing done was the addressing Mr Houstoun, and asking him to stop the work, and telling him the consequences if he did not. Then this man says, that Speirs was equally active with Walker, except—what? *Except that he did not speak.* Why, speaking was all the acting. That was all.—I do not think you will give much for that gentleman's testimony.

Now, Gentlemen, there is nothing else proved against him at all at this meeting. I do not mean to state all the evidence to you; and it would be absurd in me to do so, because you have taken notes, and your memory will be refreshed by my Lord. One person said, he came out of the crowd; another person said, that he said something else to Mr Houstoun. But the best evidence on this subject contradicts that. There cannot be more unimpeachable testimony than that of Mr Houstoun himself, both from his character, his appearance, his situation in life, and the manner of giving his evidence. There cannot be better evidence, for he was the person addressed. He was the person whose attention was called to what these men, or the mob, did; and he says Walker came to him, with another man; and he distinctly says, that *the prisoner is not the man.* Now, Mr Houstoun's testimony, if you look at it, is, "I do not remember that it struck me very much; the man who stood before me said, stop the work, the other works are stopped. I cannot swear that the prisoner is the man; if I had seen this man in the street, I would not have said, there is the man that stood before me in that crowd—that is not, I did not re-

mark him—but I positively say *that is not the man.*" He says, "If I had seen this man in the street, I would not have said there is the man that stood before me in the crowd; that person appeared very much enraged." Another witness says, this person appeared particularly cool. "I could not swear that this is the man, because I was informed"—and then he was going on to say what he was informed; but there he was stopped—"He was about the same size as that man." And then he says, "That man, whoever he was, never moved or spoke, except saying, stop the works, the other works are stopped." Then, at the end of his examination, it was observed by one of my learned Friends, who was examining him at the time, that he looked very hard at the prisoner at the bar. He looked at him very much, scrutinizing him at the time his examination was going on. It was said to him, "You look very hard at the prisoner;" and he says, "I am surprised I cannot recollect the prisoner; I thought I never should have forgot the man; he had a marked countenance; I would not give my oath that this was the man, if I had seen him fifty times." That is as distinct as anything can be, that that was not the man; for he puzzled himself, having heard (and upon that there is a mistake, which goes through this question very much) the man's name mentioned, and having connected that name with the individual who stepped forward, this witness concluded that it was Speirs; and, if anybody had asked him yesterday in the box if he had seen Speirs, he would have said, yes. But first, he says doubtingly, "I do not think he was the man;" and then, "No, that is not the man; and I am surprised I cannot recollect the prisoner; I thought I should never forget the man; he had a marked countenance; I would not give my oath that this was the man, if I had seen him fifty times over." Now, that is a distinct swearing, that that was not the man. I will not fatigue you with going over the evidence——

Lord Justice Clerk.—I am sorry to say I have no such words in my notes, as those of seeing him fifty times.

Mr Grant.—I took it at the moment. Your Lordship has the words, "I am surprised at not knowing the man."

Lord Justice Clerk.—Yes—I will read the words—"I am surprised at not knowing the man; I think I could not have recognized him to be the man."

Mr Grant.—These are the words as I took them. Of course my Lord's are to guide you, Gentlemen; but, however, it is quite clear. Then it was said, this man had a fustian jacket on. Now, the other witnesses prove he had a corduroy jacket on. We have nothing of the colour of the fustian jacket; we have of the corduroy jacket; one man says it was velveteen. I build nothing on that. But you have it in evidence, that there were a number of people there in corduroy or fustian jackets; and it is sworn to be a most common dress for weavers when about their work. So that to think of identifying a weaver in this country by his having a corduroy or a fustian jacket, is as wild a proposition as can well be maintained.

Now, Gentlemen, a man has said before you, and that is the only man who says any other words than Mr Houstoun states, that it was said, that it was by desire of the publick that the works should be stopped. That is in flat contradiction to Mr Houstoun, who tells you, that there was nothing else said. Mr Houstoun says, "A man of the name of James Walker came up to me; the circle was not regularly closed; they got all together in a mass, and he came from that mass; I did not observe any person along with him." Now, it is impossible, that if any person was deputed to come up with Walker, he should not have observed him; and therefore Mr Houstoun's testimony is worth all the other testimony on the subject. If no other person did come up, it is evidence he was not part of a deputation, or Mr Houstoun must have noticed it. Then the rest of the conversation Mr Houstoun had was with Walker, and nobody else spoke on the subject. Then Mr Houstoun says afterwards, some other person was on the other side of him; that Walker spoke to him about the Proclamation; that he did not see the person; that the crowd was close behind him; then, as to the fact of his having been afterwards with Mr Houstoun, it is very likely to be so, when he was leaving them. This crowd leave the mill, and leave Mr Houstoun to carry it on; and then

you have a piece of evidence, which, if I had any paltry ground of wishing to conceal any facts of the case, I need not have given. I gave you evidence that this prisoner was there; and that he interposed to prevent a party of the crowd from doing violence to a part of Mr Houstoun's works, and stopping them by force. The man was there, that there is no denying. I cannot say I had any other interest in denying it, than, if they had failed in proving it, they would have given up that part of their case. But the man was there, and I am more anxious to shew you the nature of his accession to the mob, and his conduct, than I am to conceal any circumstance whatever. If I could have thrown more light on the transaction, I would have done it; but, as it is, I think you have it entire.

Then, Gentlemen, in what situation is he found? He is trying to prevent part of the crowd that are breaking away, from doing any injury to Mr Houstoun; and to shew the peaceable nature of his conduct—his conduct perhaps was imprudent and wrong—but to shew he was not a man inclined to do mischief—inclined to falsify the testimony of the witnesses who have known him during his life—I have shewn you, in the only situation in which there was a question, whether violence should be done, he goes forward and shames the people out of doing that violence which they proposed to do. I repeat again, if I had not had more confidence in stating to you the case, and laying the whole of it before you—Let them fix as much as they can. I want to shew his whole conduct, and to shew whether he was influenced, by treasonable did I say?—by violent motives, to attack persons and their property. I gave evidence, to prove the man was there, because I wished you not to have it concealed from you that he was there. I wished not to deny that he was there; but I wished you to see what he did when he was there; to infer from that what was the character of the conduct he was pursuing. Gentlemen, I am mistaken if you look at this as evidence of his guilt—I am mistaken, if I have judged wrong in laying this part of the case candidly before you.

Gentlemen, from this, after a considerable interval, in which we can say nothing about the prisoner, but that he

was *not* with the mob—that we can say—after a considerable interval, he is found at the Green at this assembly. It is proved, that the transaction at Mr Houstoun's mill was at ten o'clock in the morning. Mr Houston proves this, and there is one man who proves a great deal too much. One man says it was not till half past eleven, and he proves the mills were stopped in the morning, and the others prove they were not stopped till dinner. He is one of the people who spoke to something the witness said, a man who swore without well recollecting what he was about. But Mr Houstoun, and all the rest of the witnesses, prove it was before ten o'clock, after breakfast, just before, or at ten in the morning; and it is agreed they did not stop here above twenty minutes. The distance you know from Johnston. From that time you have no evidence of where the prisoner was; but you have evidence that the crowd, at least as much of the crowd as kept together, for they seem to have separated, and some of the people to have gone home, went in a body to King's mill. There the prisoner is not, that we know of. Nobody sees him there; nay, we have evidence that he was not of the party that went to King's mill, as good evidence as we could well have of it,—for we have the evidence of all the people who saw him in the crowd opposite to Mr Campbell's house, when he was on his way to the town of Johnston. Then at twelve o'clock, or about twelve, or a little past, some two hours or more after that, you have him on the Green. And what is he doing there?

Now, Gentlemen, I am very far from standing up here to argue before you, for one moment, that this meeting at the Green was not a most improper meeting. I do not think it was a meeting of the character attempted to be fixed upon it, and I will tell you why I do not think so. There is not the least shadow of proof, there is not a ground for believing, that there was any concert about this meeting before the meeting that day. There is every ground for believing the contrary; for that, which gave cause to the meeting, did not take place till some time on the Sunday. This meeting, however, assembled. You have heard a description of what sort of meeting it was. It was a meeting of as

many people as can be conceived to form a party, that might stand in a circle, with a small opening in the middle, where three or four people appear to have been. That circle, I think, was three deep, or a yard and a half deep, and then round that there was a loose assembly of people, that they all call spectators; so that there might altogether be as many people as there are in the body of this church. All the witnesses tell you there was a difficulty in hearing—that there was a bustle and noise among them, so that they could not hear distinctly. A cobbler is, with acclamation, made preses, and instead of being made preses with all the honours that belong to that dignified situation, he is just set on a hillock, and then is called a preses. Now, there being no resolutions to be proposed, and nothing to be done, why they should have called this man preses, it is impossible to conceive. However, he is called preses; and some of the witnesses say—indeed they all say (with the exception of one person, who says that he was not elected preses till after the Address was read) that there was an acclamation, before reading the Address, for electing him preses. You hear then "the paper was read." Some of them say they heard the prisoner say a few words; but they did not hear what. The crown witnesses, the witnesses who were the most forward in giving testimony on the part of the crown, not Mr Smith, the master of the saw-yard, not one of them can tell you one word that this man said; so that it is perfect demonstration, that what he said was not in the way of an address to the crowd at all, or a speech at all, but it was something that he said to the people about him, whether good, bad, or indifferent, we do not know; but that it was not a speech or address to the assembly, is demonstration. We had to-day a man who went through an ordeal which very few persons could stand, a cross-examination of considerable ability, with the object of detecting the man, if he was in error. He stood the examination as well, I think you will believe, as most people could undergo an ordeal of the same sort. There was a good deal of observation on his not having heard distinctly the words of the Proclamation. The other witnesses did hear part of the words. He and

all the rest of them, who said they heard Laing make a speech, every one of them, without exception, say they did not hear the prisoner at all. Some say they heard the prisoner say a few words; none of them knew what they were about. So that, where they heard everything that was said by way of address to the people, some more perfectly, some less perfectly, not one of them heard what this prisoner said. Then, I submit, what he said was not in the nature of any address to the assembly.

I ought to mention one circumstance to you.—One man has said there were persons crossed the Green, of whom one was Walker, and that he had the Address in his hand. We have it in evidence, that Walker was the person, who took down this Address from the gate of the church. We have it in evidence, that there was a number of people about him at that part of the Green, and a crowd at the other part of the Green. Is it possible that the prisoner was one of that party? I do not know; but I do not care, whether he was or not. Nobody says he took down the Address, or was there at the time; but Smith says, that the prisoner was with Walker, and others, when they crossed the Green. This does not alter the case at all. Walker took down and read the Address. The prisoner and other persons were there, and you have no evidence that the prisoner did any one thing more than the others did, except that he appeared in the front of the ring, and they could not be all in front. One man says, "he was shoved in the middle, or side." Another, "he was in the middle, or side." Another, "he was in the middle, along with the rest of the crowd." He does nothing—he takes no lead—proposes no resolutions—does not go with them to one mill. He is said to have been in the rear by one witness, who went out of curiosity, to the Hagg Mill. You have no evidence that he took any part, except his own evidence, and Stevenson's. Stevenson says, that, when the crowd had desired the works should be stopped, and they were going away, they saw a man at the window; and a man said, "Take him from the window, and the crowd will go away," a recommendation to a man to do that, which would have the effect of making the crowd retire,

and leave him in peace. That is the whole he does at the Hagg Mill. Then they make an attempt to prove he was at Cartside Mill, where the crowd go from Hagg Mill; and at Cartside Mill, if it were not for his own candid declaration, there is no evidence that he was at all. Till his examination was read, I thought, and I told my learned Friends, they have not proved us at Cartside Mill at all; but then I found he said in his declaration he was there. I opposed the reading the declaration, on principles I thought it my duty to submit to the Court. I had not seen the declaration, and I know how often prisoners commit themselves by unguarded expressions in their declarations—expressions which may appear to them trivial,—and how often those collateral facts, being proved, cut you out of a defence which would otherwise have been entire. Therefore I thought it my duty to resist, by all means I thought the law afforded me, the reading this examination. I failed in it, and the examination was read; and what was *that* examination? I put it to you as men of honour and conscience —I put it to you, if any one of you had been asked about your conduct on any occasion, whether you could have given a fairer, or more candid statement? I have no objection to the cause being tried on his declaration. I admit he was at those two places where they shew he was. I admit he was at this place, where he himself has given evidence that he was. How long was he there, and what did he do? He was there, and he left the crowd, and went into a publick house till the crowd left the mill.

This is not a case in which I should wish to make observations on the conduct of the prosecution; but we have a mass of evidence of what people have been doing, who were arming themselves with pikes. We have evidence of this man Cardie, who was said to have assembled people by night to provide them with pikes, and of persons assembling to purchase them. Has this any connexion with us? I had almost said, could it be introduced here for any purpose but to create prejudice? Do you believe, or does any man believe, this man was connected with anything of the sort? There is not the least surmise of it. The whole that this

man is connected with, I have detailed to you; and, however extraordinary it may appear to you, now that we have been for nearly twenty-four hours engaged in this trial, the whole evidence—the whole that is proved—against this man, is at three particular places, the whole of which they might have proved in half an hour. Here have we been wading through this mass of evidence, and for what purpose? To prove that this unfortunate man was in the morning, at ten o'clock, at Mr Houstoun's mill, where he made use of one expression, and took no lead; that he was at the meeting at twelve o'clock in the School-green, whence he says that he followed the crowd, but in the leading of which he took no part, to a mill, where he said nothing, and did nothing; that he went from that, in the rear of them, to another mill; and then went into a whisky-shop, and drank a glass of whisky.

That is the case. Is there any more in it? Will you, Gentlemen, convict a man of High Treason upon that case? Will you lay your hands upon your hearts, and convict this unfortunate man of High Treason on that case, and then go home to sleep?

Gentlemen, I said, in the outset of this, that, if this unhappy man was to be sacrificed, it was to a construction of law. It cannot be imagined that the participation, which this man had in this transaction, is of such a nature as that, of all the people connected with it, he should be selected as the victim.

Gentlemen, if I am not so totally deprived of the use of my understanding as not to see an absurdity, I do think that I have stated to you the whole of this case, and that I have given you the view which you yourselves must take of it. We have been subjected in this case, as all persons tried for conspiracy by the law may be subjected, to be carried through a multiplicity of evidence, relating to one man and another, with whom we have not been proved to be connected. We are bound to suppose that the prosecutor, who drags us through this proof, does intend to connect us with all and every one of those persons in the end; and, if he could have proved this man was engaged in a conspiracy

with Cardie—if he could have proved this man was engaged in a conspiracy with the persons who were about this manufacture of pikes—if he could have shewn that we were in a conspiracy for this purpose, then the evidence of what they did, would have been evidence that must have affected us. It was impossible, therefore, for me to resist it. It was impossible for the Court, if I had intimated any intention or desire to resist it, to exclude any evidence they might choose to give regarding any man in the county, in which you are trying this cause, or out of the county; because it was to be supposed that some sort of conspiracy, in which these persons were engaged as common actors with us, would be proved. I put it to you, whether, except by the connexion with the Proclamation, there being a particular meeting where they were all together, where this man was the least active of the whole, and his being at these mills that I have stated to you, whether these are not the only connexions established between us and any of those persons?

Now, Gentlemen, it may be in point of strict law—I do not think it is, and I will shew you the authority on which I say it is not presently—but it may be in point of strict law, that, for what was done by the crowd, of which this man was one, he may be answerable. I can understand that. I do not think it is true, and I will shew it is not generally true; but I can understand it. But that, because he was with the crowd upon Monday, who went to stop a mill, and that another man was with the same crowd, and that other man afterwards, several days, it might have been months, afterwards, was engaged in an overt act of High Treason, that therefore this man should be answerable for that act, to which he was not at all privy, which he did not conspire, and knew nothing about, is what I do not understand; and, therefore, I am convinced that my learned and right honourable Friend will not ask of you to take into your consideration any evidence that has been given with regard to transactions that did not happen at those three mills, about which I have spoken to you. This poor man was in Dumfries-shire at the time these people were manufacturing these pikes.

Mr Hope.—Tuesday and Wednesday.

Mr Grant.—I think so. I do not know whether it is in evidence or not—it is of no consequence.

www.libtool.com.cn

Now, Gentlemen, I am very much afraid that I have gone through this evidence in a very lame and imperfect manner; and that I have omitted many parts of it, which I ought to have stated to you, and many observations, with which it should have been accompanied. If I have done so, I think I may refer myself to you, not for my personal apology, which is of very little importance, even to myself, in a case of this magnitude, but I may refer to you for the protection of this unfortunate individual; and that you yourselves will make up, and more than make up, any deficiencies I may have been guilty of.

But, before I leave the subject altogether, I will take the liberty of reading to you a case, since we have been talking of cases of law, and of judgments, and questions on matters of evidence—I will read to you a case, to shew how far the being present in an assembly engaged in the levying and carrying on of war, infers a participation in that Treason.

Gentlemen, it has been stated to you by my learned Friend near me, in his excellent address to you in the opening of the case to-day, that misprision of Treason is one thing, and Treason is another. It has been stated to you, and most truly, that a person being present at a treasonable meeting, held to consult on any sort of Treason, the most frightful that you like, his being present there, hearing that consultation, waiting to hear it to an end, is no Treason—is no overt act, to speak correctly, of Treason. It was so held in my Lord Russell's case. It was so held, if I mistake not, in Mr Sydney's case. I know there are several cases in which it has been so held. I will not trouble you with these cases. They infer that the party was privy to the Treason; and, if he concealed it, that he was guilty of a much lower species of offence, called misprision of Treason. So that the mere being present at any consultation, be it to levy war—be it to depose the King—be it to murder the King, (which, I think, was the thing charged against Lord Russell and Mr Sydney,) infers nothing but a

misprision of Treason. If he can be shewn antecedently to have known what the consultation was to be about, and to have gone there, knowing what it was about, then he lent his assistance to the consultation, and he is guilty of Treason. This may be inferred from many circumstances, by his going to frequent meetings, and otherwise; but his merely being there is nothing but misprision of Treason. In like manner, being present at a large treasonable meeting, where you do not shew the person connected with the Treason, and knowing their objects before. And, in a case of Treason, which lasted so many weeks, as you have heard, there must have been a long train of evidence, to shew the purposes of those meetings. But the being present at a larger meeting, is less evidence of being privy to the Treason, than the being with four or five gentlemen, who, it is natural to suppose, coming there, knew what was the purpose for which they met. But it is not reasonable to suppose that every man did so in a large meeting.

www.libtool.com.cn

But then the next question is, against what persons, and under what circumstances, does the being present with a party engaged in waging war against the King, infer a concurrence in the act. I hold in my hand a report by Chief Justice Kelyng, of a case that was tried in the 20th year of Charles II., at the Old Bailey, that of certain unfortunate young men, who were charged with pulling down brothels generally. There was a question there, whether it was levying war or not; and the Jury found a special verdict, applicable to the case of each of the prisoners; and it became the duty of the Court to pronounce sentence accordingly; which sentence, in that case, came to be just the opinion of the Court, as to the circumstances which were sufficient evidence to infer a concurrence in acts of treasonable riot, which, I think, is the best name for it.

The Jury found several special verdicts. The first was against four persons of the names of Messenger, Appletree, Beazley, and Greene. Beasley and Messenger were found by the Judges to be guilty, upon the special verdict. The case of Greene was this. They found first, "that a great number of persons, to the number mentioned in the indict-

ment, were assembled in East Smithfield and Moorfields, in the county of Middlesex, with the arms mentioned in the indictment;" a general finding, that made it Treason in all the persons there assembled, that were actively engaged. And then they found, "that the said William Greene was among them, casting up his cap and hallooing, with a staff in his hand; and that, whilst he was amongst them, he was knocked down by a party of the King's soldiers that came to suppress them, and was then taken." They had found before, upon the case of the other, "that Beazley led them, and was called their Captain; and had in his hand a naked sword, which he brandished over his head; and that Messenger had a piece of green apron on a staff, which he flourished as colours in the head of the company. The Court found Beazley and Messenger guilty upon that verdict, of levying war. Then the jury found, "that William Greene was among them, casting up his cap and hallooing, with a staff in his hand; and that whilst he was amongst them, he was knocked down by a party of the King's soldiers that came to suppress them, and was then taken." All the Judges of England determined that *that did not constitute him a party to that Treason.*

Then the jury found, with regard to another man, Bedle, "That Bedle was there; and being pursued by one of the King's soldiers, called out to the rest of the company to face about and not to leave him." That man was found *not to be guilty of anything that rendered him a party to that Treason*, by all the Judges of England.

Then, Gentlemen, there was a man of the name of Appletree, whose case was stronger. The jury found, "That the said Appletree was amongst them both days,"—for the riot continued for two days—"and was the first that struck at Peverell, the constable—and was amongst them at Barlingham's house on Saffron Hill, in the county of Middlesex, and pulled part of the house down, and the next house to it; and struck at one that admonished him to be quiet." There were eleven Judges that tried the case; and five Judges thought that man not guilty; the other six thought he was guilty. My Lord Hale was in the minority,

and Lord Chief Justice Kelyng, who was in the majority, stated the difference of opinion, and the man was pardoned. The like was with Latimer—they found that Latimer was amongst them, and active, with a view to break open prisons, besides the description of houses which I have mentioned to you. It was one of the charges against them, that it was a war to break open all prisons; five of the Judges thought the circumstances against him were not sufficient, as they appeared on the verdict, to convict him of an accession to that Treason, and he also was pardoned by the King. "As to Appletree, in the first special verdict, and as to Latimer, in the third special verdict, there was difference in opinion amongst us, whether the verdict was sufficiently found against them, to judge it High Treason or not. For, besides the Chief Baron, who was against all, my brothers Atkyns, Tyrell, Windham, and Wylde, held that the verdict was not sufficient against these two, for to give judgment that they were guilty of Treason; because they said it was not expressly found that they were aiding and assisting; and then, as I have mentioned, as to Bedle and Greene, we all agreed that the verdict was not full enough against them." One of the Judges was at that time Keeper of the Seals, and could not attend; there were only eleven.

Now, Gentlemen, if that was—I will not say only law—but if that was justice in that case, I desire to ask you, whether any case of accession to this riot, give it what name you will, is made out against the prisoner at the bar, half so strong as the cases of these two persons, who, all the Judges of England declared, ought not to be convicted upon evidence such as was disclosed by that special verdict?—if it was one-twentieth part as strong as the case of those persons, about whose conviction the Judges were as nearly equally divided as they could be, and in whose case, on that division, it was thought necessary by the Crown to pardon?

Gentlemen, I will detain you no longer upon this question. If you could receive from me any apology for trespassing on your time, in a case so interesting as the present, I should make to you an apology for having so done. One apology I do owe to you, and to the unfortunate man at the

bar, that perhaps the very circumstance of my anxiety not to omit anything that I thought might be useful to his defence, has obliged me to detain you too long for your convenience and comfort—that you will not mind—but perhaps too long to be clear and distinct in my statement of his case. If I have shewn you that, be the case what it might, if connected with an antecedent conspiracy, directed to some particular publick object—directed to the purpose of deposing the King—directed to the purpose of compelling the King to change his measures and counsels—directed to some objects of the nature of those described in the overt acts—if he could be connected with any conspiracy for those purposes—if he could have been shewn at any consultation for those purposes—some of those acts, however slight, might be held sufficient evidence of such intention, if they had been connected with former conspiracies, and declarations of intention—if, whatever might have been your opinion then, and, I think, then it would have been hard to find a verdict against him, I have shewn you that there is no such connexion with such conspiracy proved here—under these circumstances, I submit, with great confidence, you will not return a verdict of guilty against him.

I will allude to his character only in this way. He was a soldier in the army. He was a faithful soldier. His companion who served with him, a serjeant, who was put into the box, and whom I would rather put into the box than one of his officers, because he knew him better, says, in his language, a little enthusiastically perhaps, he would have been an ornament to the service. He says he left the army from being threatened with a disorder of a consumptive nature in his chest; that he was discharged on that account; and the commanding officer testified he had all along his approbation. I have brought evidence, for two years, of his being a peaceable person; and then, if you find him, by some fatality or accident—if you find him of a sudden, for a short time, in an assembly with persons, with whom he had better not have associated—if you find him in an assembly there, for the first time, with persons of that description—if you find him in a peaceable meeting, and taking no active part

in the concern—if you find him no ringleader—if you find him no organizer of them—if you find him no person exercising his voice or arms in forwarding their object, whatever it might be,—I then ask of you to give him the benefit, as matter of evidence, of the character I have laid before you; and I ask you, whether you will infer, from his casual presence at these meetings, the detestable designs imputed to him.

Gentlemen, I leave his case, with these observations, in your hands. I hope and trust that you will give him the benefit of every fair doubt you entertain, if you should entertain a doubt; and I feel certain, that in the result your verdict will be Not Guilty.

REPLY.

LORD ADVOCATE.

May it please your Lordship—Gentlemen of the Jury,—I should, with much sincerity, rejoice if the form established by the practice of England, of the Crown replying to the statement of the prisoner, could with any propriety be dispensed with; and that I could relieve you from the necessary trouble and fatigue of listening to the statement which my duty now compels me to make. So much, however, has been so ably stated by my honourable and learned Friend who has just now sat down, that I should feel I neglected the public duty I owe if I did not submit to you a few observations on the present case. These observations certainly shall be curtailed as much as it is in my power, because I am quite aware how greatly exhausted you must be, and that however much you may feel it your duty to listen to an argument on the part of a prisoner, in a capital offence, I cannot expect the same attention to a reply on the part of the Crown. Of all the points in this case, I regret most to be under the necessity of once more adverting to

the law upon the subject, because you have heard so much upon that head this evening, that it must be extremely irksome and unpleasant to you to have it again brought to your consideration. At the same time, it is impossible that I can entirely pass over this part of the case without notice.

Gentlemen, you are already aware, from the statement of my honourable Friend the Solicitor General, that by the treaty of Union between the kingdoms, the law of Treason was made the same in both ends of the island; and that law is necessarily a statute law. The law of Treason, in every country, must be so, because the governments of countries vary, and Treason must be made to suit the particular government to which it is applicable. You have heard sufficiently often, that this statute law is to be found in an ancient Act of Parliament, in the reign of Edward III., and in a more recent Act passed in the 36th year of his late Majesty. Gentlemen, both these Acts proceed upon the principle that intention constitutes the crime. In all offences intention forms a most material ingredient; but something more than proof of intention is required in common crimes. Thus in murder, however decided the intention to kill may appear, yet, if the individual injured survives, this is not murder. However clear it may be that a man intends to steal, yet, if nothing should be taken, this is not theft. In the law of Treason, the case is different, and necessarily so, because it will readily occur to you, that if Treason was not held complete until the crime had succeeded, there hardly could be a case of Treason, because, in general, when Treason succeeds, you are aware that it ceases to be Treason upon the part of those engaged in the rebellion, seeing they become the rulers of the country. It is therefore the intention that constitutes the crime of Treason.

The law, however, could not be fraught with such injustice, as to hold a man guilty of a crime from mere intention, unless that such intention discovered itself in a way that could be completely cognizable: and accordingly the Act requires, that this intention shall be made manifest by open deed, to the satisfaction of people of the prisoner's condition; and these deeds are termed the overt acts, by the proof of

which the real intention of the man's mind is proved, and his guilt decided.

The indictment now before you contains four different counts; the two first founded upon the statute of Edward III., charging this individual, in the first count, with compassing and imagining the death of the King; and, in the second, with levying war. The other two counts are founded on the statute of the 36th of the late King, which declares, that the intention to depose the King, and force him to change his measures, or to levy war, shall be likewise acts of Treason.

I am satisfied it will be enough for me to lay before you the Act of the 36th of the King, and to ask you for a verdict against this individual, upon the count which says, that this person was one of a number who conspired to levy war against the King; but so much has been stated by my honourable Friend who has just sat down, as to its being requisite, before convicting an individual of compassing the death of the King, to prove a direct intention against the King's person—that I must very shortly endeavour to show you that that is contrary to every legal authority, without exception, in the whole law of England.

But let me inquire what the real charge is that is exhibited against this individual, because this point, as it appears to me, has not been sufficiently brought under your notice.

The foundation of the charge exhibited against the prisoner at the bar, is the Address which is contained in this indictment. We assert that this person did make this Address his own, and did, by certain indisputable, clear, and positive acts, do all in his power in order to promote and aid its real purpose. This Proclamation sets out with stating the principles of the conspirators who framed it; and it matters not to me of what number this conspiracy consisted, or whether the person was, or was not, its author; it is enough that there was a conspiracy, and that the prisoner at the bar became a party to this conspiracy, whereby he made himself answerable for everything connected with it.

To prove that I do not state this matter loosely, I shall beg leave to read to you a part of the charge of a very emi-

nent Judge, Mr Justice Bayley, to the Grand Jury, in the case of the King *v.* Watson. "He who plans the thing, or who devises the means by which it is to be effected, or draws in others to co-operate, or does any other act preparatory to the execution of the thing proposed, is as much a principal as he who executes that thing; and provided a man once comes into the common purpose and design, every previous act, with a view to that purpose and design, and every subsequent act, is as much his act as if he had done it himself. If, therefore, Gentlemen, you are satisfied that any of these persons concurred in planning the thing—concurred in inciting others to engage in it, or engaged in it at a subsequent period, after it had been planned and devised by others, but came into it for the purpose of carrying it into effect, provided you shall find that they all had the same common purpose and design—no matter when any one person entered into that common purpose—every one who did enter into it, is, in law, a party to every act which had been before done by the others, and a party to every act which might be afterwards done by any of the others; and, therefore, what you will have to consider with reference to each person, will be this, Did such person, at any period of time, join in this common purpose? if he did, whether he were present at the time when the rising took place or not; if he were party to the common purpose, that will make him equally guilty as if he had been actually present at every one of the acts and deliberations which will be brought under your consideration."

Now, such being the law, and such, indeed, being the common sense of the matter, let us look to the terms of this document, to which I shall prove to your satisfaction the prisoner at the bar made himself accessory. "Roused from that torpid state in which we have been sunk for so many years, we are at length compelled, from the extremity of our sufferings, and the contempt heaped upon our petitions for redress, to assert our rights at the hazard of our lives, and proclaim to the world the real motives which (if not misrepresented by designing men, would have united all ranks) have reduced us to take up arms for the redress of our common grievances." Here is a declaration of their determination to take up arms. "Our

principles are few, and founded on the basis of our Constitution, which was purchased with the dearest blood of our ancestors, and which we swear to transmit to posterity unsullied, or perish in the attempt." Then it goes on to recommend to the soldiers, to turn their eyes towards Spain, and then states: "Owing to the misrepresentations which have gone abroad with regard to our intentions, we think it indispensably necessary to declare inviolable all public and private property; and we hereby call upon all Justices of the Peace, and all others, to suppress pillage and plunder of every description, and to endeavour to secure those guilty of such offences, that they may receive that punishment which such a violation of justice demands." Here, you see, is a Government calling upon the Justices of the Peace, and other persons, to aid and assist in their project. Then follows what it enjoins and orders parties to do: "In the present state of affairs, and during the continuation of so momentous a struggle, we earnestly request of all to desist from their labour from and after this day the first of April, and attend wholly to the recovery of their rights, and consider it as the duty of every man not to recommence, until he is in possession of those rights, which distinguish the freeman from the slave—that of giving consent to the laws by which he is to be governed: we therefore recommend to the proprietors of public works, and all others, to stop the one, and shut up the other, until order be restored, as we will be accountable for no damages which may be sustained, and which, after this public intimation, they can have no claim to: And we hereby give notice to all those who shall be found carrying arms against those who intend to regenerate their country, and restore its inhabitants to their native dignity, we shall consider them as traitors to their country, and enemies to their King, and treat them as such accordingly;" and it bears to be signed, "By order of the Committee of Organisation for forming a Provisional Government."

Now, Gentlemen, I submit to you, upon the face of that document, that this is a treasonable Proclamation, if ever Treason was found contained in the bounds of any document whatever—its purpose is avowed Treason—it recom-

menda the adoption of measures contrary to what the law or Constitution of this country can authorise; it holds out terror to the subjects of this country, treating every good subject as a traitor, and threatening him with the pains of Treason if he does his duty.

www.libtool.com.cn

Now, if, in support of these measures, I shall satisfy you that a rising took place—that such things were done, as clearly shewed an intention to follow it out, and to make war in the sense of the law, though no war was levied, I shall humbly contend, I have made out a sufficient claim to entitle me to your verdict. Such a conspiracy as I have now described is very different from the conspiracy which my honourable and learned Friend alluded to, with respect to the destruction of all enclosures, or the accomplishment of any other general purpose. Such is not the nature of the Treason on which my case rests; it is not connected with those constructive matters of all churches, or all enclosures; it applies directly to a war against the King's person—to a war against the Government of this country—against the Majesty of the King—against everything in the Constitution that we value and revere—that is the species of levying war, and not the constructive one my learned Friend stated to you; and though I think his argument was wrong, I am not about to enter into it; but I say that that argument does not touch this case, which, *ex concessis* of himself, amounts to a compassing of the death of the King.

Gentlemen, that such compassing is not confined to the person of the King, is proved, in the first place, by the statute itself. Secondly, my Lord Coke, to whom my learned Friend paid so much compliment, and on whom he relied, states all the different Treasons, and then says,—"It is to be understood, that in the cases above rehearsed, that ought to be adjudged Treason which extends to our Lord the King, and his royal Majesty;" here shewing that there are two different characters in which the King is to be considered—that he is the King personally, against whose life any act is Treason; but he is the third estate of Parliament—he is the executive, on which all the other branches depend; and any attack upon him in that capacity—any attempt on

the legislative, of which he composes a part, is an attack on the King's Majesty, and, as such, is Treason by the law; and Lord Coke, in a passage immediately afterwards, says, "If any levy war—to expulse strangers—to deliver men out of prisons—to remove counsellors, or against any statute, or to any other end, pretending reformation of their own heads, without warrant, this is levying of war against the King, because they take upon them royal authority, which is against the King." Thus does my Lork Coke lay down the law on the subject, in as express terms as can be.

www.libtool.com.cn

The same is stated by Lord Hale, whom my learned Friend also relied on, who says, "Though the conspiracy be not immediately, and directly, and expressly, the death of the King; but the conspiracy is of something, that in all probability must induce it, and the overt act is of such a thing as must induce it, this is an overt act to prove the compassing of the King's death, which will be better explained by the instances themselves;" and the same author, in a subsequent passage, says, "An assembly to levy war against the King, either to depose, or restrain, or enforce him to any act, or to come to his presence, to remove his counsellors or ministers, or to fight against the King's lieutenant, or military commissionate officers, is an overt act, proving the compassing of the death of the King;" any attack upon his officers, is compassing his individual death.

The last authority upon this subject which I shall mention, is the charge of Mr Justice Dallas, in the late case of Thistlewood; he says, "With respect to the remaining count, that of conspiring to put the King to death, I would state to you, if it were necessary, that it is not requisite, in order to support a charge of such a description, that any blow should be actually aimed, or intended to be aimed, at the royal person, or that the natural life of the King should be the direct object of those who enter into a conspiracy of such description. It is enough that measures are meditated likely to bring about a change in the government; the effect and tendency of which would be, as a natural and probable consequence, the death of the King."

There is still a more recent authority, and one which I

quote with the greater freedom, that the learned Judge is not here present, but to which the Jury will give great attention, —the charge of the Lord President to the Grand Jury under this commission. His Lordship stated, that "A mere conspiracy to levy war when no war has been actually raised, cannot be charged as a levying of war; but it may be charged, and has always been sustained, as an overt act, to prove the compassing and imagining the King's death; for no man can conspire to levy war against the King, without distinctly having the death of the King in his imagination, as the probable, I may almost say, as the necessary, result of that conspiracy, if successful; for when subjects conspire to make war on their King, and prove successful, they may be said to be driven to the necessity of putting him to death for self-preservation; for they never could believe that the King would forgive them. Such, accordingly, has been the result in every instance of successful rebellion in this country, as in the cases of Edward II., Richard II., Henry VI., and Charles I."

Now, Gentlemen, on these authorities I submit to you that that general and broad proposition that was laid down unqualifiedly by my honourable and learned Friend, that it is necessary to prove there was an intention to aim the blow at the royal person, is not well founded; and so revolting to every person acquainted with the subject was that proposition, that even the Bench thought it necessary to interfere.

Mr Grant.—I beg your pardon; I did not put it as a proposition.

Lord Advocate.—It appeared to me that what led to the interference of one of the judges, was my learned friend's stating in the most unqualified terms the proposition which I have thus expounded, and your recollection will enable you to decide which of us is correct.

Gentlemen, without detaining you upon this subject further, I submit to you, that if it shall appear upon evidence that the individual at the bar was guilty of aiding and assisting in such a conspiracy to levy war as that I have stated, this is compassing the death of the King under the first count; and upon that I should be entitled to a verdict.

But the counts on which we more particularly look for a verdict at your hands, are founded on the 36th George III. My learned Friend read to you part of the preamble of that statute, but he stopped at the part which I think material; I shall, therefore, with your permission, read the whole of the preamble of that statute.—"We, your Majesty's most dutiful and loyal subjects, the Lords Spiritual and Temporal, and Commons of Great Britain, in this present Parliament assembled, duly considering the daring outrages offered to your Majesty's most sacred person"—(this act passed at a time when there was an attack upon the King's person in going to Parliament)—"in your passage to and from your Parliament at the opening of this present session, and also the continued attempts of wicked and evil-disposed persons to disturb the tranquillity of this your Majesty's kingdom, particularly by the multitude of seditious pamphlets and speeches, daily printed, published, and dispersed with unremitted industry, and with a transcendant boldness, in contempt of your Majesty's royal person and dignity, and tending to the overthrow of the laws, government, and happy constitution of these realms—have judged that it is become necessary to provide a further remedy against all such treasonable and seditious practices and attempts. We, therefore, calling to mind the good and wholesome provisions which have at different times been made by the wisdom of Parliament for the averting such dangers, and more especially for the security and preservation of the persons of the Sovereigns of these realms, do most humbly beseech your Majesty that it may be enacted, and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, that if any person or persons whatsoever, after the day of the passing of this Act, during the natural life of the King"—and this provision was afterwards made permanent—"shall, in the realm or without, compass, imagine, invent, devise, or intend death or destruction, or any bodily harm tending to death or destruction, maim or wounding, imprisonment or restraint, of the person of the same, our Sovereign Lord the King, his heirs

and successors, or to deprive or depose him or them from the style, honour, or kingly name of the imperial crown of this realm, or of any others of his Majesty's dominions or countries, or to levy war against his Majesty, his heirs and successors, within this realm, in order by force or constraint to compel him or them to change his or their measures or counsels, or in order to put any force or constraint upon, or to intimidate or overawe, both Houses, or either House of Parliament, or to move or stir any foreigner or stranger with force to invade this realm, or any other his Majesty's dominions, or countries under the obeisance of his Majesty, his heirs and successors; and such compassings, imaginations, inventions, devices, or intentions, or any of them, shall express, utter, or declare, by publishing any printing or writing, or by any overt act or deed; being legally convicted thereof upon the oaths of two lawful and credible witnesses, upon trial, or otherwise convicted or attainted by due course of law, then every such person and persons, so as aforesaid offending, shall be deemed, declared, and adjudged, to be a traitor and traitors, and shall suffer pains of death, and also lose and forfeit, as in cases of High Treason." Now, Gentlemen, that is the Act of Parliament on which these remaining counts are founded. It makes a conspiracy to levy war a substantive treason, instead of, as formerly, merely an overt act of compassing the death of the King.

Now, my learned Friends are not much at variance with us about what is a levying of war. It is not necessary there should be a regular army; a rising of persons in number enough to intimidate, and with such arms as they can obtain, is sufficient levying of war. I shall read the explanation of this statute from the highest authority I can offer you, namely, that of the Lord Chief Justice Abbott, in the late case of Thistlewood, which was founded expressly upon this Act of Parliament, and verdicts were returned against the accused in every case. "It may be proper for me to mention to you, Gentlemen, that before the passing of the late statute, it had been settled by several cases actually in judgment, and by the opinions of the text-writers on this branch of the law, that all attempts to depose the King from his royal state and

title, to restrain his person, or to levy war against him; and all conspiracies, consultations, and agreements, for the accomplishment of these objects, were overt acts of compassing and imagining the death of the King." That was the proposition which I endeavoured to make out to your satisfaction a little time ago. He then says, "By the late statute, the compassing or intending to commit these acts, that is, to depose his Majesty, to restrain his person, or to levy war against him, for the purposes that I have mentioned, is made a substantive Treason, and thereby the law is rendered more clear and plain both to those who are bound to obey it, and to those who may be engaged in the administration of it." I believe my learned Friend read that length; but the passage I am now about to read is more important. "It may be proper for me also to mention, that it has been established in the like manner, that the pomp and circumstances of military array, such as usually attend regular warfare, are by no means necessary to constitute an actual levying of war within the true meaning of the ancient statute. Insurrections and risings, for the purpose of effecting by force and numbers, however ill-arranged, provided, or organized, any innovation of a public nature, or redress of supposed public grievances, in which the parties had no special or peculiar interest or concern, have been deemed instances of the actual levying of war; and consequently to compass or imagine such an insurrection, in order by force and numbers to compel his Majesty to alter his measures or counsels, will be to compass or imagine the levying of war against his Majesty for that purpose, within the just meaning of the late statute. Rebellion, at its first commencement, is rarely found in military discipline or array, although a little success may soon enable it to assume them." The same Judge, in the concluding part of his statement which I quoted formerly, said, "If there is any conspiracy to depose the King, or to compel his Majesty to alter his measures and counsels, and the same is manifested by some overt act, that is an overt act to prove the compassing of the death of the King, within the statute of 25th Edward III."

Now, Gentlemen, I do not know that I could give you higher authority, or, at this late period of the night, do well

by attempting to trace the matter further. I submit that all attempts of the nature I have described, and in particular that manifested by this Proclamation, of a set of people intending to take up arms, acting under the authority of a Provisional Government, superseding the whole authorities of the state, and issuing orders to all descriptions of inhabitants of this country, threatening to treat all good subjects as traitors, was a treasonable proceeding; and if I can make out that these prisoners intended to forward this project by force, I am entitled to a verdict in my favour by the law of the land. With respect to the construction of the law, I am sure you will feel disposed to be guided by the views which will be submitted to you by the Bench; and that you will not be misled by what was thrown out, I think incautiously, of there being any wish on the part of the Court to extend the law of Treason. I do not know what might have been the course formerly; but latterly, there is not the least reason to suppose that such a feeling is entertained. On the contrary, the utmost delicacy has been exhibited, and no man who hears me can doubt that the most perfect reliance may be placed on the distinguished Judges here present, from whom, and not from the Counsel on either side, you will be disposed to receive the law. My learned Friend may state the law in one way—I may state it in another. We have particular causes to support—to neither of us trust. Listen to the Bench, and you will receive from their Lordships that direction by which alone you can safely walk. The province of the Judge is to tell you what, by the law of the land, is Treason; whether such an act, if committed, does amount to that crime; and your minds being thus enlightened and satisfied, you will proceed with confidence to your special province of inquiring whether there is, or is not, proof of the alleged acts. Not only is there proof of these acts, but there is distinct evidence of that prisoner having in his heart intended to commit Treason, knowing that the crime he was committing was Treason, and none other.

The points, therefore, to which I shall direct your attention, will be to inquire whether there was a conspiracy; and if there was a conspiracy, whether that individual was

accessary to that conspiracy; and if he was accessary to that conspiracy, the intent by which he was actuated. It will be difficult for me to keep these distinct, because the facts run into each other so; but still, these are the objects to which your attention must be directed, and to which in the end I shall endeavour to draw your minds.

www.libtool.com.cn

You see from the evidence the particular time and the state of the country at which this Address, to which I have alluded, appeared; and if I have not done it already, I shall make it more distinctly appear, that this party is an accessary to, and responsible for it. That Proclamation came forth at a time when this great town in which we are now placed, and all around it, was in a state of great alarm and trepidation; the feelings of men were so affected by the sedition produced by the vile licentiousness of certain parts of the press of the country, that they were prepared to be affected by this document in no common way, and accordingly nothing can be more striking than to observe the very wonderful effects produced by this paper being posted up. Though ignorant from whom it came, without knowing what shape, or what the nature of this new government was to be, a great part of the population of this country gave an obedience so wonderful and complete, that to any individual who knew this country some years ago, it is quite astonishing. It is proved to you that the works in Paisley were all stopped on the appearance of this Proclamation, and the same took place at various places around. The recommendation contained in this Address was certainly conceived with consummate art, and was calculated in a material degree to accomplish the object in view, because nothing could tend to insurrection so much as throwing the manufacturing population idle, ready to adopt any mischief proposed.

But to proceed with the facts, showing the accession of this prisoner to the conspiracy: It is a material fact, that we find this Address upon the Saturday, when it was yet unknown in general over the country, in the hands of this unfortunate man—he is furnished with a copy of it, it seems, upon Saturday the first of April—that is a circumstance of which no sufficient explanation has been offered upon his part, and

which certainly, in my estimation, weighs deeply on the present question. I might maintain he was the author of it, because it was on that day it first appeared, but I do not wish to stretch anything against him; but on the very day of its date, the first of April, that Address is found and admitted to be in his hands. This is proved by the evidence of Fraser, the schoolmaster, and his wife; they prove farther, that this individual having got it, did not conceal it, as my learned Friend seemed to say, but immediately went and produced it to people, with whom he is very little acquainted; Mr Fraser says, he hardly knew the prisoner at the bar; but he shows it to him, and to some other person who is in the shop.

Then it is stated, by my honourable Friend, that it was destroyed by the prisoner at the bar. Now we see it was not immediately destroyed, because in the course of that same night, on the wife of Mr Fraser expressing a desire to see the document, her husband went and called, and left word for it, and this person brought it and put it into her hands, and there it remained for some time, when it was given back to Fraser, and even then he did not destroy it. This is farther proved by the prisoner's declaration, where he says it was lent to some individual, and not afterwards returned to him; what became of it we do not see. This, then, is the first feature in the case,—we find the Address in the hands of the prisoner on the first of April.

Now, Fraser tells us that he was struck with it at once; he said it was rebellion. "I said, it seemed to announce a state of rebellion, and disapproved of it;" and he likewise says, "The prisoner at the bar seemed to disapprove of it also." I do not mean to deny this; but we have very good proof to show he felt no actual dissatisfaction with it by his acts and deeds, because, on the Monday morning, we find him employed—how? why, doing all in his power to give effect to this Proclamation, by following out its recommendation, and stopping all the public works in the country. He himself says, he stopped working himself; he declares, that upon the three following days, viz. Monday, Tuesday, and Wednesday, "The declarant abstained from working, and

merely employed himself in *daundering* about Johnstone and its neighbourhood, and he remained idle till he set out for Ecclefechan." He himself literally follows the recommendation and injunction, or rather order; it came in the shape of a recommendation, but it was in fact an order, and he obeyed it; not only so, but we find him, on the Monday, giving effect to the second part of the recommendation, namely, the stopping of the other public works; and here my learned Friend gave a view of what occurred at the Old Mill, which somewhat surprised me, because he rested his statement solely on the account given by one witness, a person of the name of Thompson, and my learned Friend took considerable merit in bringing forward this individual, who was to prove those circumstances in the prisoner's conduct upon that occasion. Now, you will recollect, he brought a variety of other witnesses first, to prove the panel's conduct at the bar, before Mr Thompson was called, and they merely went to prove that nothing was done by this person; that they saw him there, but that he did nothing; that was the import of the first witnesses. It was left to Mr Thompson to give you a detail, which he exhibited, to my surprise and astonishment, stating, that he was there—that he saw the panel at the bar there—that he neither spoke nor did anything, except that he interfered on one occasion to prevent actual damage being done to the mill by stopping the sluice. Such was his statement, and his statement alone; it is unsupported by all the other witnesses, who say, that while they saw Speirs, they did not see any such thing done by him, and it is contradicted by other evidence of a most important nature. If that person's evidence stood uncontradicted, it would not avail; as I am sure, from what you saw upon the cross-examination of that individual, that no credit can for one moment be given to him.

My learned Friend, Mr Grant, paid a well-merited compliment to my learned Friend, Mr Hope, for the extraordinary talent displayed by him in that cross-examination, which must have been conspicuous to you all. I hope I may be permitted, on this public occasion, to return him my thanks for the unwearied exertions he has used in behalf of

the public, since the first of April last. It is known to me, and me alone, the extraordinary sacrifice he has made in assisting my humble endeavours to restore peace to this part of the country. I know my learned Friend dislikes this, but it is a duty I owe to him. From that cross-examination it appeared, that, in six or eight points, this individual positively contradicted himself, or was contradicted by other evidence; nay, he directly perjured himself, swearing he did not see drilling, in the first place, and afterwards confessing he was the driller there;—this called forth the censure of the Court; and I have some doubts whether it was not my duty to have moved that he should be committed, as guilty of perjury.

Now, I say, on such evidence as that, the statement of my learned Friend cannot be allowed to rest; but it is contradicted by witnesses beyond all exception, who prove that upon that occasion this prisoner, Speirs, was at the mill, and an active leader at that mill; that he was the person who spoke to Mr Houstoun; that he was chosen a committee-man to treat with Mr Houstoun; and that he and Walker took a conspicuous part in everything that was done there. I will refer to the evidence on the point, because it is a material fact in this case. The first witness to it is Mr Houstoun himself. He, I admit, does not recognize Speirs;—I do not wish to comment on that evidence; I only wish that it had been given in a tone of less timidity than that gentleman exhibited. He states, however, what is an important matter in the case, that he refused to stop the works, and desired any person that had anything to state to the witness to come down and state it distinctly; upon which a man of the name of James Walker said, "We had better appoint two men to speak to Mr Houstoun;" and the crowd called, "A ring! a ring!" and immediately formed a ring; and there was a show of hands; and he heard a vote first for James Speirs, and next for the abovementioned person of the name of Walker.—Now, that is a material fact proved by Mr Houstoun;—though he cannot recollect his person, he swears that it was Speirs on whom the choice of the committee first fell; and although Mr

Walker afterwards makes a show, and takes the lead, and converses with Mr Houstoun, yet it is plain that this mob considered Speirs their leader, because he is the person on whom the choice first falls.

The next witness to the same purpose is Andrew Logan, who says he heard one speak to Mr Houstoun, and say that the Provisional Government would not be accountable for the damage done to the mill; that Walker was the person who said this. Then he says he recognized James Speirs at the time; he and Walker were together; Speirs was near to Walker; and Mr Houstoun, Speirs, and Walker, were apart from the crowd. He did not hear Speirs speak, but he says he himself was just beside Speirs when he said this. Speirs was nearer to Walker than he was, and he thinks Speirs must have heard more distinctly what was said than he did. He saw the crowd, and he saw Walker and Speirs come out of the crowd and speak to Mr Houstoun by themselves. Speirs and Walker he did not see in the crowd at his mill. Speirs stood on the left side of Mr Houstoun. Here is a witness speaking to his acquaintance with Speirs, and to his walking with Mr Houstoun; but it does not rest with him, because there are other witnesses to the same point. James M'Dougal says, he saw a small ring formed; he saw Mr Houstoun speak with Speirs. Just as Mr Houstoun came forward, the witness left him. The conversation between Mr Houstoun and Speirs related to stopping the mill; and he left them at that time, and went round the other side of the mill. The crowd all went up Collier Street from the mill. He did not pay much attention to Speirs's demeanour, but he was particularly calm. The mill stopped that day at dinner time—he went up the street, and did not return to work till Thursday, the mill not going during that time. After that he saw Mr Houstoun coming up from the mill, before the crowd; Speirs was along with him, and some other men;—the crowd were then just scaling or dispersing; Speirs and another person then went away with the crowd. Then he says he saw Mr Houstoun go to the mill away from the crowd; and that Speirs had a corduroy jacket. In addition to this, there is

Alexander Macneil, who says the crowd came to the mill about eleven o'clock. Saw Houstoun and Speirs among the crowd; Mr Houstoun spoke to the crowd after the crowd scaled the mill. He saw Speirs going up the hill by Mr Campbell's, with Mr Houstoun and Walker. He is the third witness that identifies Speirs there. And, last of all, Mr John Houstoun says he saw Mr Houstoun with the crowd. They said they wished the mill to be stopped, and he asked by what authority they came to his mill; and the witness says James Speirs said, by the public at large; he saw Walker in the crowd, and Speirs and Walker were the two most active in the crowd. Mr Houstoun asked Speirs if he would answer for the whole; he said he would, if they gave him authority. A ring was formed, and men were to be chosen to speak to Mr Houstoun; but he went away to the back of the mill; and then he saw Speirs come up to the front of the mill along with Mr Houstoun. You have thus four witnesses to the prisoner's accession to the acts of conspiracy practised at this time—Houstoun speaks to the person of Speirs—Logan, M'Dougal, and Macneil, all say they knew Speirs, that he was the individual who came out of that meeting, and who held this colloquy with Walker, in which there was this allusion to a Provisional Government; that this individual spoke of the Address, which he was not able to give, having parted with it; that Speirs was elected to act as representative to treat with Mr Houstoun relative to this illegal act, thereby giving every possible effect to the recommendation by the Committee of Organisation. Houstoun says, in consequence of this proceeding his work was stopped. Weigh deliberately these facts, I entreat of you—consider the acts of violence used—the motive from which they proceeded—the share which the prisoner had in them—and say, if I am unreasonable in maintaining, that if this stood alone, it would be a sufficient act of Treason to entitle me to a verdict.

But the matter rests not here. The next circumstance is one to which my learned Friend did not at all allude, namely, what took place at Mr Campbell's house, immediately after leaving the mill. From Mr Houstoun's they

Walker afterwards makes a show, and takes the l
converses with Mr Houstoun, yet it is plain th
considered Speirs their leader, because he i
on whom the choice first falls.

www.lintool.com.cn

The next witness to the same purpose
who says he heard one speak to Mr
that the Provisional Government wo
far the damage done to the mill; t
son who said this. Then he says h
at the time; he and Walker
near to Walker; and Mr H
were apart from the crowd
but he says he himself w
this. Speirs was near
thinks Speirs must h
said than he did.

Masnch, who saw the crowd coming to the hill
o'clock. Saw Houstoun and Speirs among the
Houstoun spoke to the crowd after the crowd
he saw Speirs going up the hill by Mr
Houstoun and Walker. He is the
Speirs there. And, last of all,
Mr Houstoun with the
the mill is stopped. He

art of the
witnesses, whom
themselves in points
of no value. One of them
crowd passed on by Campbell's
all; that was his first statement; he
tied it.—Another stated they stopped there
minutes; and that he heard what was stated by
stant speaker, though he did not hear what was
and Speirs come
toun by themsel
the crowd at h
Houstoun.
with Speir
it does r
nesses t
small
Just
by Speirs. That they did stop, and that Speirs was
There, being the leader of this crowd, is certain; and it is no
less so, that he told them that there was to be a meeting on
the School Green that day, and that all good subjects should
attend. Whether the object of the meeting was stated, I
do not know; but the object is shown by what afterwards
took place.

To proceed to the important meeting at the School Green. I think there is evidence really to lead you to suppose this meeting had been previously arranged and known, because there are strangers there from afar, and the thing seems to have been more generally known than it could have been merely from Speirs's giving a notice on coming up the street. But the meeting assembled, and the first thing is, that Mr Walker, who is a leader in this mat-

...s possessed of a copy of the treasonable address,
...roved, he had pulled down from the Chapel-

...nen, at the hour appointed these people
... a circle; and observe who are the in-
... of that circle. My learned Friend
... that Speirs was merely one of the
... that he was not in any other
... upon that occasion. But I
..., that, without exception,
... his witness Thompson,
... of the four or five per-
...; being the leaders
... with that assembly. It
...sses for the panel, that there
... Speirs the chairman. One of the
... says so. He was a committee man; and
... stopped at Mr Campbell's, and then he was
... as chairman; that he declined, and Parker was
...sen as the preses; and then this Treasonable Address
is read by Walker to the poor people there assembled. It
is said that only a part of the crowd heard it, though it
seems to have been circulated very generally through the
village; but lest there should be any individual not ac-
quainted with its contents, Walker reads it from beginning
to end, and he comments upon it as he goes along; and
each sentence of that Treason which I have stated to you,
and which is so disgraceful to this country, is cheered by
the huzzas of the mob. All the witnesses have said, that
not one dissentient voice was heard—no one stood forth to
defend the rights of his country—all huzzaed and agreed in
this horrid Treason, and in furtherance of it they resolved
to follow out the recommendation, by proceeding to stop
all the public works in the neighbourhood. This was a
matter which appears to have been gone about with great
deliberation; it is in evidence that those assembled did not
rest satisfied with hurraing or cheering, but a resolution
was put, and there was a holding up of hands by the peo-
ple, agreeing unanimously to adopt this Address,—thus

www.libtool.com.cn

went up the street, and passed the house of Mr Campbell, a writer there; and you have it in evidence from Mr Campbell himself, and from Mr Houstoun, and likewise from Archibald, that the crowd left the Old Mill, and halted at Mr Campbell's door, and a man addressed the crowd opposite Mr Campbell's house; the crowd formed a circle round him. William Campbell expressly says, that he heard Speirs mention that there was to be a meeting in the green that day at twelve o'clock, and he invited them all to be present. I am quite sure of the fact, that this person did intimate to these people that a meeting was to be held at the Green, and that all persons would come there, or be assisting the friends of liberty. In this transaction the prisoner was identified, if I mistake not, by these three persons.

Now, Gentlemen, there was an attempt on the part of the defender to disprove these facts by various witnesses, whom you heard, all of whom contradicted themselves in points that rendered their testimony of no value. One of them expressly says, that the crowd passed on by Campbell's without stopping at all; that was his first statement; he afterwards modified it.—Another stated they stopped there at least ten minutes; and that he heard what was stated by the assistant speaker, though he did not hear what was stated by Speirs. That they did stop, and that Speirs was there, being the leader of this crowd, is certain; and it is no less so, that he told them that there was to be a meeting on the School Green that day, and that all good subjects should attend. Whether the object of the meeting was stated, I do not know; but the object is shown by what afterwards took place.

To proceed to the important meeting at the School Green. I think there is evidence really to lead you to suppose this meeting had been previously arranged and known, because there are strangers there from afar, and the thing seems to have been more generally known than it could have been merely from Speirs's giving a notice on coming up the street. But the meeting assembled, and the first thing is, that Mr Walker, who is a leader in this mat-

ter, appears possessed of a copy of the treasonable address, which, it is proved, he had pulled down from the Chapel-gate.

Then, Gentlemen, at the hour appointed these people form themselves into a circle; and observe who are the individuals in the centre of that circle. My learned Friend wishes to have it supposed that Speirs was merely one of the front men of the circle, and that he was not in any other respect shown to be a leader upon that occasion. But I refer you to your notes, and I say, that, without exception, every witness examined, down to this witness Thompson, concur in saying that Speirs was one of the four or five persons who were in the centre of this ring, being the leaders and conspicuous persons connected with that assembly. It is proved by one of the witnesses for the panel, that there was a proposal to make Speirs the chairman. One of the witnesses expressly says so. He was a committee man; and he swears they stopped at Mr Campbell's, and then he was proposed as chairman; that he declined, and Parker was chosen as the preses; and then this Treasonable Address is read by Walker to the poor people there assembled. It is said that only a part of the crowd heard it, though it seems to have been circulated very generally through the village; but lest there should be any individual not acquainted with its contents, Walker reads it from beginning to end, and he comments upon it as he goes along; and each sentence of that Treason which I have stated to you, and which is so disgraceful to this country, is cheered by the huzzas of the mob. All the witnesses have said, that not one dissentient voice was heard—no one stood forth to defend the rights of his country—all huzzaed and agreed in this horrid Treason, and in furtherance of it they resolved to follow out the recommendation, by proceeding to stop all the public works in the neighbourhood. This was a matter which appears to have been gone about with great deliberation; it is in evidence that those assembled did not rest satisfied with hurraing or cheering, but a resolution was put, and there was a holding up of hands by the people, agreeing unanimously to adopt this Address,—thus

one and all of those present made this Address their own. They connected themselves in the most direct and positive manner with this treasonable act and conspiracy, and made each of themselves answerable for all the consequences of it.

I think there is likewise evidence from a very respectable individual examined here, Mr Smith, of something that was said by the prisoner Speirs upon the occasion. He says they proposed to go in a body and stop the public works. This was proposed by one of the four within the circle; and it was mentioned that the object in view was to get a great body to assist, that there might be less bloodshed in the contest,—thus was the real intention of these parties plainly exhibited; the stopping these mills upon this occasion was not an insulated act, as connected with any private object, but it was in order to induce or compel all the different manufacturers to join in this conspiracy, and, by overwhelming numbers, to accomplish its object without loss of time.

From this spot they immediately went towards the Hagg Mill, belonging to Mr Houstoun. On a question by the Court to one of the witnesses for the prisoner, he told you he was one of the mob, and that they went directly from this meeting at the School Green to the mill belonging to Mr Houstoun, and there stopped that mill from working further. Here again you have the prisoner at the bar once more taking a conspicuous part; you have it upon the best of all evidence, namely, the confession of the individual himself, that this man came forward and took an active part, and talked about a man whom he saw at the window, whom he insisted on being removed, and that individual was removed accordingly. There then again you have this individual, not a mere spectator, as the other individuals were, but taking an active part. The same thing is observable on all the other three occasions, on one of which he is even found acting as the leader. The mob then go to Cartside, a mill at a little distance from that, and there it appears the prisoner was—it appears so from his declaration, and from a person, examined to-day by the honourable Gentleman, who keeps a

public-house a few yards from the mill, and that mill as well as the others was stopped.

There is, besides this, evidence of various subsequent proceedings at other mills, which were also stopped, and there was a proceeding with respect to pikes, furnished to persons who were witnesses on this trial. A great deal of comment was made on this subject by my learned Friend, as to how far this was evidence that could be admitted or listened to as against the prisoner. Now, I state to you, partly upon an authority which I shall read, and upon a multitude of authorities, which I am ready to lay before you, that, in the case of conspiracy, an accessary is not merely liable for acts occurring in his presence, but for the acts of all the parties engaged in such conspiracy, and done in furtherance thereof. In the case of Brandreth, which is lying here, a case of conspiracy which occurred at a considerable number of miles from Nottingham, acts in furtherance of the conspiracy done at Nottingham were admitted as evidence against the accused. Therefore, on strict legal principle, by the law of England, I should be entitled to hold that this individual is guilty of those other stoppings of the other mills; and those other acts, as to the pikes, at which, though the prisoner was not present, one or other of the leaders of this conspiracy were, and this is all that was necessary to connect that individual with them. Smiley is present at one of them. And with respect to the pikes, Parker is the person who attends there, and in whose custody the shafts are found, and it is he who distributes them to these miserable boys. But though these acts of Parker are, in strict law, sufficient to implicate the prisoner, I do not desire to carry the matter that length, but only to rest that they were not disposed to stop with stopping the mills, but were inclined to go one other step, and find arms, in order to accomplish the object they had in view, namely, to overturn the Government of the country.

Now, Gentlemen, I am ashamed of taking up the time I have done; but without going more minutely into the case, I submit it to your deliberate judgment, whether, from the facts I have stated, there was not here a most deep and dan-

one and all of those present made this Address ... They connected themselves in the most direct ... manner with this treasonable act and conspi... each of themselves answerable for all the ... its

I think there is likewise evidence fro... ama- individual examined here, Mr Smith ... tisfied said by the prisoner Speirs upon th... proposed to go in a body and st... vidence was proposed by one of the f... His pos- was mentioned that the obj... at acts, fol- body to assist, that there ...—being a leader contest,—thus was the r... ing everything in or- exhibited; the stoppi... sonable and nefarious and not an insulated ac... proved, I say, the intention but it was in ord... on has been attempted to be attri- manufacturers t... o private reason has been set forth or whelming nur... nere cannot remain any doubts in your time. ... intention was to commit manifest and deci-

From t... on.

Mill, be... not know that I have anything further to state. I to one ... in the evidence, that this individual, and many of one ... connected with him, have not for this part of their con- ... even the apology of distress. It was proved in evidence that the spinners at the smallest mills have from eighteen shillings to twenty shillings a-week, and the average rate at the highest was thirty shillings. Parties employed in these things were deriving these large wages, and therefore they had not the pretence of distress to palliate or excuse their conduct.

Mr Sandford.—The prisoner is a weaver.

Lord Advocate.—Then I cheerfully retract what I have said. I understand the weavers are paid at a low rate; and God forbid that I should withhold from the prisoner that or any other argument in his favour.

Now, Gentlemen, I submit to you, that on the evidence which I have led, I am entitled to ask a verdict against this individual; and if, on a fair and just view of that evidence, it appears to you, as I have endeavoured to state it, that this Treason was committed by conspiracy, and these

cts are proved, I say, you cannot discharge your
s in any way so satisfactorily to yourselves, or so
th your duty, as by giving that verdict which
the peace and safety, not only of this coun-
for the preservation of those individuals
life; it is matter of the utmost im-
cious acts as these should be stop-
ave instances of attempts going
dividuals in still greater guilt.
wild—so foolish or absurd,
ations of these deluded people,
untry, blessed with a constitution
the world, and which lives in the hearts
of the inhabitants,—supported by all the
the country, and all the authority of the state,
be overturned by such attempts as these, on the part of a set of ignorant weavers from Glasgow and Paisley, is ridiculous in the extreme. But that matters not to the case. Much bloodshed and many lives might notwithstanding have been lost; and if you think that those persons did consider such a scheme practicable, and that they did all in their power to accomplish that object, it is necessary that such example shall be made as may teach men the danger of such proceedings—may point out the hazard by which they expose themselves and families and the lower orders in general—may demonstrate that the peace and quiet of the other inhabitants of the country is not to be invaded with impunity. Upon these grounds it is that I ask your verdict. I can safely assure you, that I never feel so happy as when I can, consistently with my duty, consent to the acquittal of a prisoner; but here I am unavoidably compelled to ask at your hands a verdict of guilty.

SUMMING UP.

www.libtool.com.cn

Lord Justice Clerk.—Gentlemen of the Jury—I should have been extremely happy, if, in the discharge of the duty that has devolved upon me, I could, in consequence of the uncommon degree of attention you have bestowed upon this case, and after the long and fatiguing duty which you have already undergone, have been enabled to compress, within a very narrow space, what it will be incumbent on me to address to you upon this occasion. But, Gentlemen, when I consider the importance of this case, not only to the unhappy man now standing at that bar, but to the country at large—when I consider the nature of the evidence which has been adduced to you, both in support of the charge, and in support of the defence of the prisoner; and, above all, when I consider the line of argument which has been taken, with great ability, with uncommon energy, and with no common eloquence in the maintenance of his defence, I should be wanting in my duty to you—I should not be performing my duty to the country, nor to the Sovereign whose servant I am, if I did not, though I may fatigue you still more, proceed to submit to your consideration such observations upon the law of this case, and upon the evidence which has been adduced upon both sides, as appear to me to be necessary for the formation of that opinion, which it will be your duty, and which it is your undoubted province, upon the oaths that you have taken, to form upon the case now under your consideration.

Gentlemen, it is necessary, in the first place, that you should attend particularly to the nature of the charge which is exhibited against the prisoner at the bar. It is a charge of High Treason, brought under an indictment, which contains four distinct counts; and those four counts, upon the face of the indictment, are endeavoured to be supported by a certain number of overt acts, which the law requires shall be specially set forth upon the face of the indictment, beyond which facts, as overt acts, the prosecutor is not entitled

to travel; but which facts, or overt acts, must be proved to your satisfaction, or some of them at least, before you can convict the prisoner under any one of the counts contained in the indictment.

www.libtool.com.cn

The first of these counts is one laid upon an ancient statute, passed in the reign of Edward the Third, upon that branch of it which relates to the compassing and imagining the death of the King, and in support of that count nineteen different overt acts are enumerated in this indictment. The second count of the indictment contains a charge of an actual levying of war against the King. But you have heard it distinctly stated, upon the part of his Majesty's Advocate, that he does not, upon this occasion, ask any verdict upon that count. And therefore, Gentlemen, you will have to keep this steadily in your view, that it is not upon any count charging the prisoner at the bar with the actually levying war against the King in his realm, that any verdict is expected at your hands, or which, under the circumstances of the case, you can find at all against the prisoner.

The third and the fourth counts in this indictment are counts which are rested, as I shall have occasion immediately to show to you, upon a recent statute passed in the reign of his late Majesty King George the Third; and the first of those two counts is the compassing and intending to deprive and depose the King of and from the style, honour, and kingly name of the imperial crown of this realm. But the fourth count is the charge of compassing to levy war against the King, in order, by force and constraint, to compel him to change his measures and counsels. And it is to this last count, with such observations as have been made, and I am still to make to you, in reference to the first count in the indictment, that it is your duty to attend in considering the amount and import of the evidence which has been adduced against the prisoner at the bar. You may lay, therefore, entirely out of your consideration, the charge of actually levying war, and the charge of conspiring to depose the King, and confine your attention to the two others, the first and the fourth counts in the indictment, upon which it will be my duty particularly to observe.

Now, Gentlemen, in reference to the first count, namely, that of compassing and imagining the death of the King, and with regard to which a conspiracy to levy war against the King, is founded upon as the overt act establishing that Treason, from the way and manner in which the public prosecutor has stated the case to you, as well as from the general aspect and appearance of it, I certainly did not consider that it would have been necessary for me to detain you with many observations; but in consequence of a position which was stated to you with no common degree of confidence, which was stated by the learned Gentleman with all the force, and all the energy, and all the ability that he could command —I say, if it had not been for that position, which I feel it incumbent on me here to advert to, I should have felt it necessary, in the view I have taken of the case, to have said very little to you upon the subject, further than this, that if you should be satisfied upon the evidence, that there was an actual conspiracy to levy war against the King, of the description of war which comes under the statute of the 36th of the late King, then undoubtedly, according to all authorities, the opinions of all Judges, the decisions of all Courts who have been called upon to decide the point, since the Revolution to the present hour, that has unquestionably ever been ruled to be an overt act, of compassing and imagining the death of the King. But, Gentlemen, although I certainly am the last person who would wish to cramp the energies of counsel in any case, and far less in a case such as the present, although I am certainly most willing, that in considering the case of this unfortunate prisoner, you should listen with all the attention, which I am sure you have already bestowed upon everything that has been urged, or that could be urged, by his counsel in his behalf, yet it is in consequence of the position to which I am now to advert, that I am obliged to proceed to state to you, in the discharge of my duty, what I hold to be the clear law upon this part of the case. And in proceeding to do so, Gentlemen, I must, in the first place, state distinctly, that there does not appear to me, from anything that I have ever read—from anything that I have ever heard—from anything that I have ever

seen or known, any just foundation for the position that was just now laid down to you, namely, that there has been at all times, for I saw no qualification in the statement, a disposition in Courts and in Judges, to extend and stretch that department of the law upon which your attention is now to be fixed. Upon the contrary, I do state it without hesitation, and without fear of contradiction from any man who looks fairly to the circumstances, that, since the Revolution in 1688, at the least, there is not to be discovered any such disposition upon the part of the Judges of this realm. You will not suppose, Gentlemen, that I am here endeavouring, or about to endeavour, to vindicate my own individual conduct in this or any other case in which I have had the misfortune to preside under this commission; nor am I stating anything in reference to its proceedings at all. But I speak of the conduct of other Judges, those that are living and those that are dead, when I state to you that there does not appear to me to be any foundation for this imputation. Upon the contrary, I apprehend, when these cases referred to are thoroughly examined, they will be found to have been adjudged upon a special and an attentive consideration of those principles that are fixed in the best authorities of the law of England, and in the opinions of the highest and the most eminent of its judicial characters.

Gentlemen, the position which I understand the learned gentleman to have laid down to you, was, that under the charge of compassing and imagining the death of the King, it was indispensably necessary to prove, and that the Jury, before it could convict, must be fully satisfied, that the party accused of that species of Treason, had, in his contemplation and view, in the conspiracy in which he was engaged, the actual natural death of the King; and that unless that intention, which the law commonly requires to be the foundation of that species of Treason, was completely made out, no person could be convicted of that species of Treason.

Gentlemen, I do apprehend, that when the authorities, which are considered as decisive upon questions of this nature, are attended to, it will appear that this is a position

which has been rashly hazarded, and which is not founded in law—that the law does not require that any such purpose shall be actually established, but that it holds the person as brought within the operation of the statute upon that subject, if an intention is manifested by overt acts, which tend to bring the person of the King into risk or peril of any kind.

In the first place, Gentlemen, do you recollect the words of the statute upon which you have already heard so many observations? This statute, passed in the reign of Edward the Third, which you have heard stated, and truly stated, is not a statute for the purpose of extending the law of Treason. Upon the contrary, it was a statute passed for the express purpose of defining and limiting what should be held to be Treason in future. I need not again trouble you with reading the preamble, but which proceeds upon this, that divers opinions have been before this time, in what case Treason should be said, and what not. And then it goes on to state, "that the King and the Legislature have ruled, that when a man does compass or imagine the death of our lord the King, or if a man do levy war against the King in his realm, or be adherent to the enemies of the King in his realm, giving to them aid or comfort in the realm, or elsewhere, and thereof be provably attainted of open deed by the people of their condition," that shall be Treason. But this very statute, Gentlemen, in its concluding part, contains words which are of material importance; because you must have in your recollection various authorities which have this day been read to you, and particularly that of my Lord Coke, which has been read upon both sides of the bar—words, I say, which are borrowed from the express declaration of the statute itself; for the words to which I allude are these: "And it is to be understood, that in the cases above rehearsed, that ought to be judged Treason which extends to our lord the King and his royal Majesty." Now, Gentlemen, while the law has declared it to be Treason to compass and imagine the death of our lord the King, and when it has declared that the criminal intention shall alone be punishable, it has at the same time carefully provided, that

that intention shall be manifested by certain overt or open acts, or, in other words, that the person accused of that Treason shall thereof be provably attainted of open deed by persons of his own condition—but that intention may be manifested in a variety of ways. That a variety of overt acts may be adduced in support of the charge, must be obvious to every person who considers the subject for a single moment; and accordingly it is fixed and settled law, that a great variety of cases, if sufficient overt acts are proved, will infer guilt of that species of Treason. But when I refer you, Gentlemen, to the authorities which I am now to read, you will be perfectly satisfied, that, as evidence of this criminal intention, which is thus raised into the highest offence of the law, the law has not required that the natural death of the King, shall be that which must in every case be proved to have been in the contemplation of the accused, before he be convicted of that Treason.

My Lord Hale, who has been referred to, expresses himself in these words, in reference to this species of Treason: "Though the conspiracy be not immediately and directly, and expressly the death of the King, but the conspiracy is of something that, in all probability, must induce it, and the overt act is of such a thing as must induce it—this is an overt act to prove the compassing of the King's death, which will be better explained by the instances themselves; and therefore, if men conspire to imprison the King by force and a strong hand till he hath yielded to certain demands, and for that purpose gather company or write letters, this is an overt act to prove the compassing of the King's death; for it is in effect to despoil him of his kingly government, and so adjudged by all the Judges in the Lord Cobham's case, 1 James, and in the case of the Earl of Essex, 43 Elizabeth, Co. P.C. page 12. But then there must be an overt act to prove that conspiracy to restrain the King; and then that overt act to prove such a design, is an overt act to prove the compassing the death of the King." Then he goes on to say, "This must be intended of a conspiracy forcibly to detain or imprison the King;" and he goes on to mention an instance. But he proceeds further in these words: "A con-

spiring to depose the King, and manifesting the same by some overt act, is an overt act to prove the compassing of the death of the King, within this act of 25 Edward III."—So that here you see most clearly and explicitly laid down, that that which I have alluded to as the position of the learned Counsel, that the natural and actual death of the King, must be the object which you are to be satisfied the party charged under this branch of Treason uniformly had in view, is not supported by the authority of my Lord Hale.

Mr Justice Foster, who, I may say, is really considered as the highest authority on this subject, because he not only was a Judge himself of great learning and experience, but has actually treated upon this subject, and has given the result, not only of his own thoughts, but the collected wisdom of Judges and Lawyers, by a review of the works of other eminent men who have treated on the subject, expresses himself in these words. After stating that in the case of the King, the statute of Treasons hath with great propriety retained the rule *voluntas pro facto*, to explain the principle, he goes on and expresses himself in the following terms:—"The care the law hath taken for the personal safety of the King, is not confined to actions or attempts of the more flagitious kind—to assassinations or poison, or other attempts, directly and immediately aiming at his life. It is extended to everything wilfully or deliberately done or attempted, whereby his life may be endangered; and therefore the entering into measures for deposing or imprisoning him, or to get his person into the hand of the conspirators,—these offences are overt acts of Treason within this branch of the statute, for experience hath shewn, that between the prisons and the graves of princes the distance is very small. Offences which are not so personal as those already mentioned, have been with great propriety brought within the same rule, as having a tendency, though not so immediate, to the same fatal end; and therefore the entering into measures, in concert with foreigners and others, in order to an invasion of the kingdom, or going into a foreign country, or even purposing to go thither to that end, and taking any steps in order thereto,—these offences are overt acts of compassing the King's

death." And then he goes on to quote the case of my Lord Preston, who was tried under this charge, of compassing and imagining the death of the King; and where the preparation of a certain paper, for the purpose of giving information to, and exciting a foreign invasion of the kingdom, was held to be an overt act, although the paper never had been delivered, but was taken in the same vessel in which my Lord Preston had embarked, for the purpose of going to France. The paper never had arrived at its destination. But the preparation of that paper, and its being in the same vessel with the accused, was held to be an overt act of compassing the death of the King. "And so in the case of Patrick Harding, the raising men, with intent to dethrone the King, and sending them abroad to join, for that purpose, with the forces of France, then at open war with us, which, had the overt act been properly laid within the clause of adhering, was ruled to be an overt act of compassing the King's death." But then, Gentlemen, he proceeds thus: "But every insurrection, which, in judgment of law, is intended against the person of the King, be it to dethrone or imprison him, or to oblige him to alter his measures of government, or to remove evil counsellors from about him—these risings all amount to levying war within the statute, whether attended with the pomp and circumstances of open war, or not; and every conspiracy to levy war for these purposes, though not Treason within the clause of levying war, is yet an overt act within the other clause of compassing the King's death; for these purposes cannot be effected by numbers and open force, without manifest danger to his person."

Now, Gentlemen, such being the undoubted authorities upon this part of the law, I have no difficulty in stating to you, that a conspiracy to levy war against the King, by the description that is stated in this section of Foster that I have now read to you, be it to dethrone or imprison him, or to oblige him to alter his measures of government, or to remove evil councillors from him,—these risings all amount to a levying of war, and are overt acts of compassing and imagining the death of the King.

But, Gentlemen, you have heard, in reference to the sta-

tute to which I am now about to refer, a distinction endeavoured to be maintained between these different levyings of war, which are settled by innumerable decisions to constitute the essence of the charge of actual levying war against the King; and it has been stated that Foster lays down,—and undoubtedly he does in the passage which has been so often referred to,—that a bare conspiracy to levy war for the purpose of dethroning the King, or obliging him to remove evil councillors from about him, though not Treason within the clause of levying war, is yet an overt act within the other clause of compassing the King's death; but, Gentlemen, it is to be observed that the two sections, the fourth and the fifth, which are here referred to, in this sixth section, are quite clear and distinct from the section that I have last called your attention to, namely, that third section, which is, "But every insurrection which, in the judgment of law, is intended against the person of the King, be it to dethrone or imprison him, or to oblige him to alter his measures of government, or to remove evil councillors from about him,—these risings all amount to levying war within the statute, whether attended with the pomp and circumstance of open war or not." I say there is a clear exception in this very passage in Foster, and this distinct definition of levying war; and that the limitation is confined to those constructive levyings of war which have been referred to, the pulling down all enclosures, or opening all prisons, and so on, in the sections which have been read to you; and, therefore, it is quite obvious, that if a war is said to have been levied which comes under the words of that section I have referred to, that a conspiracy to levy that war, if proved by sufficient acts, will amount to an overt act of compassing and imagining the death of the King. You will, Gentlemen, recollect these words when I come to read the other statute, that a war which is intended against the King, to oblige him to alter his measures of government, because you will find that the phraseology of this statute of the 36th of the King does nearly amount in words to that which is there declared to be the definition of an overt act—the compassing and imagining

the death of the King, if a conspiracy to that effect have been fully manifested by an overt act.

Now, Gentlemen, the statute which I allude to is that passed in the 36th of the late King; I shall not trouble you with reading the preamble, but confine your attention to the words on which this fourth count of the indictment has rested, before I read to you any authority or explanation on the subject. The words that I refer to are these:—"That if, during the natural life of the King, any person shall, within the realm or without, compass, imagine, invent, devise, or intend death, or destruction, or any bodily harm tending to death or destruction, maim or wounding, imprisonment or restraint of the person of our lord the King, his heirs and successors, or to deprive or depose him, or them, from the style, honour, or kingly name of the imperial crown of this realm, or of any other of his Majesty's dominions or countries, or to levy war against his Majesty, his heirs and successors, within this realm, in order by force or constraint to compel him, or them, to change his, or their, measures or councils, or in order to put any force or constraint upon, or to intimidate or overawe both Houses or either House of Parliament, or to move or stir any foreigner or stranger with force to invade this realm, or any other his Majesty's dominions or countries, under the obeisance of his Majesty, his heirs and successors; and such compassings, imaginations, inventions, devices, or intentions, or any of them, shall express, utter, or declare by publishing any printing or writing, or by any overt act or deed, being legally convicted thereof, upon the oaths of two lawful and credible witnesses upon trial, or otherwise convicted or attainted by due course of law,—then every such person and persons, so as aforesaid offending, shall be deemed, declared, and adjudged to be a traitor."—So that the offence here, which is created and declared to be a substantive act of Treason, is where any person shall compass, imagine, invent, devise, or intend to levy war against his Majesty, his heirs and successors, within this his realm, in order by force or constraint to compel him, or them, to change his, or their, measures or councils. These are the clear and distinct enacting words of this statute,

which makes it a distinct and substantive act of Treason to compass and imagine any war for the purpose that is there stated,—by force or constraint to compel the King to alter his measures or councils.

www.libtool.com.cn

Now, Gentlemen, you have already heard the observations which have been made upon this statute from the highest living authority, the Chief-Justice of England; and although it may fatigue you, I shall make no apology for again directing your attention to those words, because they appear to me to place this matter in so clear and distinct a point of view, that no doubt can remain with regard to it when you attend to what I shall immediately shew to be an authority of the highest nature with regard to what is a levying of war against the King. "It may be proper for me to mention to you, Gentlemen, that before the passing of the late statute, it had been settled by several cases actually in judgment, and by the opinions of the text-writers upon this branch of the law, that all attempts to depose the King from his royal state and title, to restrain his person, or to levy war against him, and all conspiracies, consultations, and agreements, for the accomplishment of these objects, were overt acts of compassing and imagining the death of the King. By the late statute, the compassing or intending to commit these acts, that is, to depose his Majesty, to restrain his person, or to levy war against him, for the purposes that I have mentioned, is made a substantive Treason; and thereby the law is rendered more clear and plain both to those who are bound to obey it and to those who may be engaged in the administration of it. It may be proper for me also to mention, that it has been established in the like manner that the pomp and circumstances of military array, such as usually attend regular warfare, are by no means necessary to constitute an actual levying of war within the true meaning of the ancient statute. Insurrections and risings, for the purpose of effecting, by force and numbers, however ill arranged, provided, or organized, any innovation of a public nature, or redress of supposed public grievances, in which the parties had no special or particular interest or concern, have been deemed instances of the actual

levying of war, and, consequently, to compass or imagine such an insurrection, in order by force and numbers to compel his Majesty to alter his measures or councils, will be to compass or imagine the levying of war against his Majesty for that purpose, within the just meaning of the late statute. *Rebellion* at its first commencement is rarely found in military discipline or array, though a little success may soon enable it to assume them." So that here, Gentlemen, you have both a clear exposition of the meaning of this new statute and also a most distinct and accurate exposition of what is a levying of war against the King.

www.libool.com.cn

But, Gentlemen, I shall now refer you to the words of the present Lord Chief-Justice of the Common Pleas, in explaining the law in one of the late cases at Derby. "And now, Gentlemen, I shall beg leave to call once more your attention to what the law is; and having briefly stated it in the outset, I will only again say, that there is no legal doubt or difficulty belonging to this part of the case. The learned Judges with whom I act upon this occasion being of opinion with all their predecessors, whose doctrine and decisions have been referred to, that if there be an insurrection, by which is meant a large rising of the people, in order, by force and violence, to accomplish and avenge, not any private objects of their own, not any private quarrels of their own, but to effectuate any general purpose, that is considered by the law as a levying of war; and this you may take to be clearly the law of the land. Nor is it the law of the land as depending upon the authority of any single Judge, it pervades every page of the criminal law of England, as applicable to the case of High Treason; it may be traced back to antiquity more or less remote, has been delivered down, and is acted upon at the present day; but, drawn as much into controversy as it has been on this occasion, I think it necessary, not in my own words, for I will not trust myself to any looseness of expression when a rule of law is to be given affecting the life of man, but once more I will state, and more at length, the law, as delivered by the greatest authorities." Then he goes on, Gentlemen, to state the opinion of a great and eminent Judge upon this subject.

"Looking, therefore, at what has been said by every one of the great authorities referred to, Mr Justice Foster says, Every insurrection which in judgment of law, not every insurrection which, in point of fact, but every insurrection which, in judgment of law, is intended against the person of the King, be it to dethrone or imprison him, or to oblige him to alter his measures of government, or to remove counsellors from about him, these risings all amount to levying war within the statute, whether attended with the pomp and circumstances of open war or not. That great and venerable Judge, as eminent in his public, as he was estimable in his private character, Sir Matthew Hale, as on this day the subject, and so justly, of brilliant panegyric by the Counsel for the prisoner, who has laboured so much to draw this doctrine into detestation, lays down the law in different terms, but to the same effect. He says, if divers persons levy a force or multitude of men to pull down a particular enclosure, this is not a levying of war within the statute, but a great riot; but if they levy war to pull down all enclosures, speaking of a general intention, or to expulse strangers, or to remove counsellors, or against any statute, as, namely, the statute of labourers, or for enhancing salaries and wages, this is a levying war against the King; and why? because it is generally against the King's laws, and the offenders take upon them the reformation which subjects, by gathering power, ought not to do." These are the words of my Lord Hale; "and, therefore," Lord Chief Justice Dallas says, "Gentlemen, the question for you will be, whether this be, or be not, an attempt to make a change in the Government, by the gathering of power, either with or without arms, which Lord Hale says, which Mr Justice Foster repeats, and which all Judges agree with them in stating, is a levying of war against the King in his realm."

Gentlemen, I shall not fatigue you with reading any further authorities upon this point, with this one exception; I shall conclude with referring you to the words of the eminent Judge who presides in this commission, and who is now absent; and therefore I can quote his words without any offence to his delicacy, in addition to those which were read

to you by my Lord Advocate. " In the same manner, holding consultations, or taking measures, for raising an insurrection, if the object be directed against the King's authority, as to compel him to alter his measures, to dismiss his counsellors, to submit to demands for reformation; or, in general, to compel him to adopt, or to restrain him from adopting, any measure, which it is part of his prerogative to do or not, as he judges proper, all such purposes, if attempted by force, are Treason, under the statute; for it is justly observed by Hale, one of the ablest Judges, and most constitutional lawyers we ever had, ' That it is a kind of natural and necessary consequence, that he who attempts to conquer or subdue the King, cannot intend less than to take away his life.' "

Now, Gentlemen, having detained you so long upon explaining what is the law, and what is the statute upon which this fourth count of the indictment is entirely rested, namely, the charge of conspiracy to levy war against the King, to compel him, by force and constraint, to change his measures and councils, it is now necessary for me to advert more particularly to the nature of this case, before calling your attention, which it will be incumbent upon me to do, to the evidence which has been led in support of it.

Gentlemen, you must be quite satisfied that my Lord Advocate is perfectly well founded, when he states to you, that the whole gist of this cause rests upon the point of the connexion of the conspiracy which he charges against the prisoner at the bar, with the proclamation or address upon which you have heard so much. In directing your attention to the evidence, I shall have occasion to bring under your notice those testimonies which have led to the Court admitting this document, which is now upon the table as a part of the evidence against the prisoner at the bar—a copy of the Address to the Inhabitants of Great Britain and Ireland; and there cannot be the slightest doubt that that Address is the basis and foundation of the charge against the prisoner at the bar. And it will be for you to determine, upon a careful and an attentive consideration of the evidence, whether, in the first place, the prisoner has

been brought in connexion with that Address or Proclamation,—whether he has been proved to have been acting in obedience to it, and in furthering its declared object and purpose; and whether he has been guilty of any of the overt acts which are stated in this indictment, as applying to the first count—the compassing and imagining the death of the King; or to the fourth, the compassing and imagining to levy war against him, for the purposes therein specified. And, Gentlemen, you must have observed, as I said before, that the overt acts that are charged are of a considerable variety, no less than nineteen, applying both to the first and fourth counts of the indictment. I have, however, already noticed to you, that it is by no means necessary that, because so many overt acts are charged, all of them must be proved; it will be quite sufficient if one or more of them is established by satisfactory evidence, for you to rest a verdict upon those overt acts, though they may be much short of the number that are here charged and exhibited against the prisoner. And, Gentlemen, it must be obvious to all of you, as it must be to every person who hears me, that in framing indictments of this nature, where the law requires that every overt act, of which evidence is to be adduced, must be laid in the indictment, a great variety of overt acts not only are usually, but are necessarily charged; because, if the prosecutor is to be tied down to a proof only of the overt acts that are specified in his indictment, it is necessary and natural that he should take a considerable latitude, although he may not have an opportunity, or an immediate prospect, of proving all that he includes in the indictment.

But, Gentlemen, I will just observe here, that a very considerable portion of time was bestowed by the learned Counsel, with great ability, no doubt, on the part of the prisoner, in commenting upon the extraordinary nature of some of the overt acts; and it was put to you, with considerable confidence, that some of them were unprecedented in point of fact, and that they, in reality, did not amount to overt acts, either under the first or the last count of the indictment. Now, Gentlemen, it does so happen, that the first of these

overt acts, conspiring to devise plans to subvert the Constitution, and the second of these overt acts, conspiring to levy war, and to subvert the Constitution, which were so much observed on and excepted against by the learned Gentleman, are identically the two first overt acts in the indictment, which was so very recently preferred against Arthur Thistlewood and others, who were charged there, amongst other things, with that of conspiring to levy war against the King, to compel him to change his measures and councils; and also conspiring, compassing, and imagining, the death of our Lord the King. There, Gentlemen, the two first overt acts are identical with those upon which so many remarks were made to you; and, therefore, you must, in the first place, be satisfied that there is no foundation for saying they are unprecedented; and, in the second place, I presume you will agree with me in thinking, that it is not very likely that the eminent Judges who sat on that bench, whose proceedings I had the honour to witness, would have permitted these overt acts, not only to have stood on the indictment, but to have gone to evidence, or to the Jury, if they had been doubtful in law, far less if contrary to law, and not o ertacts of this species of Treason.

But, Gentlemen, in addition to these overt acts, you will observe I am now looking to the abstract of this indictment, which will be delivered to you, that there is a distinct charge in the indictment for publishing and posting up a treasonable Address to the Inhabitants of Great Britain and Ireland, to incite the soldiers of the King, and other subjects, to rebellion; that is the third overt act. The fourteenth overt act is for forcing divers subjects of our Lord the King, to discharge and turn off their workmen; and the fifteenth overt act is for striking work, and compelling and persuading others to do the same. Now, Gentlemen, although it must appear to you at first sight—at least, it would appear to you at the beginning of this proceeding,—to be a little extraordinary, that these should have been stated as distinct overt acts of a count of this indictment of compassing and imagining the death of the King, or of the last count, of compassing, imagining, inventing, devising, and intending to levy war

against the King within his realm, in order, by force and constraint, to compel him to change his measures and councils; yet, when you pay attention to that which I am now to direct your attention to, you must be quite satisfied that these three particulars, to which I refer as three of this class of overt acts now lying before me, have been most properly and most accurately stated as overt acts of these two counts of this indictment, which charge the prisoner with compassing and imagining the death of the King, and compassing, imagining, inventing, devising, and intending to levy war against the King within his realm, in order, by force and constraint, to compel him to change his measures and councils; for, Gentlemen, as I before stated to you, the very basis of the charge now under your consideration is, that there was circulated and published in this district of the country in which we are now sitting, particularly in the village of Johnstone and adjoining to it, a certain Address to the Inhabitants of Great Britain and Ireland, which Address has been stated to you by the learned Counsel for the Crown, and I certainly have not heard it denied upon the part of the learned Counsel for the prisoner, is an Address which does contain Treason upon the very face of it—that it amounts to a direct and strong incitement to rebellion—to an actual levying of war; and to a levying of war, if I am not most egregiously mistaken, as well as my learned brethren now sitting by me, a direct levying of war against our lord the King in his person—that it is not a constructive levying of war, one which comes under any of those clauses upon which you have heard so much, or which can be embraced by any of those ancient authorities which have been referred to, and that class of text-writers, as well as those opinions of Judges which were so much pressed upon you. I say it steers entirely clear of all question of constructive levying of war; but it is a direct incitement to an actual levying of war, which is an overt act under the first count of the indictment, and which is a direct overt act and manifestation of Treason under the statute of the 36th of the late King. For, Gentlemen, you are aware that this Address to the Inhabitants of Great Britain and Ireland sets out

with stating, that, "roused from that torpid state in which we have been sunk for so many years, we are at length compelled, from the extremity of our sufferings, and the contempt heaped upon our petitions for redress, to assert our rights at the hazard of our lives, and proclaim to the world the real motives which (if not misrepresented by designing men, would have united all ranks) have reduced us to take up arms for the redress of our common grievances." Here, then, is a declaration that, if not for misrepresentations, all men would have been united, and would have concurred in this general measure for the redress of our common grievances; and which, I say, does not leave, and, I am sure, will not leave, in the mind of any one of you Gentlemen that I have now the honour to address, the slightest doubt that they are grievances of a public, not of a private or individual nature, that are here spoken of, when there is an expression in the words that I have read, that, if it had not been for misrepresentations, all would have been united in accomplishing this common object, which the framers of this Address state, that they are prepared to accomplish by the taking up of arms, at the hazard of their lives. Then it goes on to say, "the numerous public meetings held throughout the country have demonstrated to you, that the interests of all classes are the same—that the protection of the life and property of the rich man is the interest of the poor man; and, in return, it is the interest of the rich to protect the poor from the iron grasp of despotism; for, when its victims are exhausted in the lower circles, there is no assurance but that its ravages will be continued in the upper —for, once set in motion, it will continue to move till a succession of victims fall;"—clearly pointing out, that it is all classes of the community that are supposed to have this object in view, or that, at least, will be affected and benefited by it. "Our principles are few, and founded on the basis of our Constitution, which were purchased with the dearest blood of our ancestors, and which we swear to transmit to our posterity unsullied, or perish in the attempt!—Equality of rights, not of property, is the object for which we contend, and which we consider as the only

security for our liberties and lives. Let us shew to the world that we are not that lawless, sanguinary rabble which our oppressors would persuade the higher circles we are, but a brave and generous people, determined to be free. Liberty, or Death, is our motto; and we have sworn to return home in triumph or return no more!" Now, Gentlemen, the words that I have read, I will venture to say, leave not a shadow of ground for supposing that anything but a great purpose —I may say an universal object, was that which is here stated; and that, of course, this common avowal of that purpose takes the nature of an insurrection, which you will see immediately is incorporated in the Address, and recommended entirely out of every case of High Treason which has been treated upon since the beginning of treating upon the subject; for, Gentlemen, to manifest that it was against the King himself—not to say his Royal Majesty—that the proceedings of the persons who framed this Address, and of all who might join in the accomplishment of it, were directed. The Address goes on to a direct incitement of the soldiers to abandon their duty, to forfeit their allegiance, to violate their solemn oaths, to desert their standards, and to join the ranks of those who were about to enter into open rebellion; for it states, "Soldiers! shall you, countrymen, bound by the sacred obligation of an oath to defend your country and your King from enemies, whether foreign or domestic, plunge your bayonets into the bosoms of fathers and brothers, and at once sacrifice at the shrine of *military* despotism, to the unrelenting orders of a cruel faction, those feelings which you hold in common with the rest of mankind? Soldiers! turn your eyes towards Spain, and there behold the happy effects resulting from the union of soldiers and citizens;—look to that quarter, and there behold the yoke of hated despotism broke by the unanimous wish of the people and the soldiery happily accomplished without bloodshed. And shall you, who taught those soldiers to fight the battles of liberty, refuse to fight those of your own country? —forbid it Heaven! Come forward then at once, and free your country and your King from the power of those that have held them too long in thraldom." They are first of

all called to break their allegiance, to join those who are arraying themselves in the way that the Address points out, and then there is used this language, that they are to come forward, and free their country and their King from the power of those, who are here stated, and most falsely stated, to hold him in thraldom. "Friends and countrymen, the eventful period has now arrived, when the services of all will be required for the forwarding an object so universally wished, and so absolutely necessary"—the services of all, and for the accomplishment of an object universally wished, again confirming the view that I have already taken of this Address—"come forward, then, and assist those who have begun in the completion of so arduous a task"—here is a direct avowal, Gentlemen, that there is an actual commencement—that there has an actual beginning already taken place, of course, of measures and proceedings which I stated to you, in the judgment of law, would be an actual levying of war against the King; for the encouragement and excitation of those to whom this is addressed that averment is made, that an actual commencement has taken place—"and support the laudable efforts which we are about to make, to replace to Britons those rights consecrated to them by *Magna Charta* and the Bill of Rights, and sweep from our shores that corruption which has degraded us below the dignity of man. Owing to the misrepresentations which have gone abroad with regard to our intentions, we think it indispensably necessary to declare inviolable all public and private property"—that is to say, those by whose order and by whose authority this was issued, and whom you will immediately see to be persons actually assuming to themselves the character of the government of the country, say, that they will protect and keep inviolable all public and private property—"And we hereby call upon all Justices of the Peace, and all others, to suppress pillage and plunder of every description, and to endeavour to secure those guilty of such offences, that they may receive that punishment which such violation of justice demands. In the present state of affairs, and during the continuation of so momentous a struggle"—still clearly embracing and contemplating the

fact of an actual war within the realm during this momentous struggle—" we earnestly request of all to desist from their labour, from and after this day, the 1st day of April, and attend wholly to the recovery of their rights, and consider it as the duty of every man not to recommence until he is in possession of those rights which distinguish the freeman from the slave, viz. that of giving consent to the laws by which he is to be governed. We, therefore, recommend to the proprietors of public works, and all others, to stop the one and shut up the other, until order is restored, as we will be accountable for no damages which may be sustained, and which, after this public intimation, they can have no claim to." Can any reasonable man who reads this Address, couched in the language which I have already detailed to you, and coupled with that threat which follows, and which I am immediately to read, misunderstand the true meaning of what is here called a recommendation? I state to you, Gentlemen, that it must obviously appear to every one who gives fair meaning to these words, that the only interpretation that can be put upon it is, that it is an order, a command—for you will immediately see, that not only is there that threat, that they will not be accountable for any damages which may be sustained, and which, after that public intimation, they can have no claim to, but " we hereby give notice to all those who shall be found carrying arms against those who intend to regenerate their country, and restore its inhabitants to their native dignity, we shall consider them as traitors to their country, and enemies to their King, and treat them as such.—By order of the Committee of Organization for forming a Provisional Government."—Dated, " *Glasgow, 1st April,* 1820."

Now, Gentlemen, is it possible to entertain a doubt that, bearing, as this purports to bear, "by order of the Committee of Organization for forming a Provisional Government," and which declares that the persons who so assume to themselves that character, will consider as traitors, and treat as such, all who shall oppose those who thus rise to regenerate their country, there is upon the face of this instrument an actual assumption—a positive declaration, that they have assumed the

authority of the state, that they have completely superseded, as far as they could possibly venture to assert, the authority of the King, and the Lords and the Commons, and the whole legislature—that they have set themselves up as the sole government of the country? They state their warning to those who should disdain this recommendation, and that they will not be answerable for any damages which may be sustained; and they couple that with a declaration, that they will treat as traitors all who oppose their plans. Gentlemen, I do not hesitate to say I should consider myself guilty of a gross insult to your understanding, if I did not declare that it is impossible for language to describe in more marked and emphatic terms, that the rising and insurrection which are here contemplated, which they are here inculcating upon the whole body of the people, and particularly upon the military and soldiery of the realm, is a war of a public nature—that it is in no degree a private insurrection for private purposes, or that it can, by any sophistry of argument, or ingenuity whatever, be brought under the terms of a constructive levying of war; for here is a positive declaration, that all who oppose the persons thus usurping and assuming to themselves the character of a Committee of Organization for forming a Provisional Government will be treated as traitors—a positive declaration, that, if the Sovereign of these realms himself had come forward, as it was his duty to do, (and as those who know the firmness and energy of his character, and the truly British spirit which burns in his bosom, know he would not have hesitated to do, if the standard of rebellion had been spread abroad in the land,) if he had so applied himself, in the maintenance of the laws and the constitution, which, by his solemn oath, he had sworn to maintain, he himself would be treated as a traitor by those who were thus assuming the whole functions and authority of the state. I do not hesitate to say, if there ever was a manifest declaration of Treason, if there ever was an incitement to Treason, if there ever was a treasonable declaration, it is to be found within the four corners of that Address; and therefore, Gentlemen, it will be for you, upon an attentive consideration of the evidence, which it will be now my painful duty, late as the

hour is, to call your attention to, to say whether or not the prisoner has been brought in connection with that Address, whether he has been proved to you to have acted in obedience to it, in furtherance of it, in complete execution of it, as far as the facts detailed in the evidence in this case do go; and, if you shall be of that opinion, it will be then for you to consider what verdict you ought to return in the present case. In the meantime, as it is a case of the greatest importance—as it is a case where life is at stake, and you are to decide on the prisoner's life or death, and as the interests of the country are deeply involved in the decision you are to come to, I shall not hesitate to read to you from beginning to end, with a few comments as I go on, the evidence I have taken in this case, on which it will be for you to form your verdict.

William Houstoun, is proprietor of some cotton-mills in the neighbourhood of Johnstone, called the Old Mill, Hagg Mill, and Cartside Mill; the Old Mill is in the village of Johnstone, and the other two near it. The village of Johnstone extends very nearly to the Hagg Mill; and Cartside Mill is about a quarter of a mile farther on. These mills are in the Abbey parish of Paisley, in this county (county Renfrew;) and therefore you will observe, Gentlemen, that as the indictment must establish an overt act of the Treason charged in all cases within the county in which the trial proceeds, you have this fact established by Mr Houstoun, that these mills are in, or near Johnstone, where these acts are said to have taken place, and within the county in which we are sitting.—"There are about thirteen mills in Johnstone and the immediate vicinity, including my own—I was at my brother's house, in the immediate vicinity of Johnstone, at the commencement of last April. On Monday, the 3d of April, about ten o'clock, I was informed that several of the mills were stopped; I went straight to the Old Mill, and saw a considerable crowd towards the door of the mill; I went to the back part of the mill, and came in front of the crowd, and asked what they wanted; the crowd was not exactly in one body—there were a great many of my own workers in it; the great body of the crowd came close up to me, and other people there be-

sides were a little back—the whole of the hill was covered with women and children, and people at the top of the hill, looking to what was going on; and there were a number of children and people between the hill and the people who were by me. I went up to the crowd, and asked them what they wanted, and desired them to go away, they had no business there. They shouted out from several quarters, 'Stop the work, stop the work!' I said, 'I will not stop the work.' After that the crowd rose very near to me, and one man stood about six feet from me, and the crowd came close to his shoulder, so as to leave a small space open between the two; they continued shouting out occasionally. I observed a man that stood just before me saying, 'Stop the works—the other works are stopped;' I never saw him before." Then he is told to look at the prisoner at the bar, and he says, "I am not certain that is the man—his countenance is altered;—at that time he was very much enraged, and had a strong flush in his countenance; if I had met him in the street I should not have recognized him again. He had apparently a countenance of suppressed rage, as if he was intimidated from putting in execution some plan he had in view. I perfectly believe that is the man. I could not swear that was the man that stood before me. At the time I did not see his person; and it is not from my recollection of the man that I believe him to be the man." These words lead us clearly to understand that some sort of communication was conveyed to him which led to this belief. But afterwards he proceeds with great caution, and he rather goes to say he could not recognize the prisoner as the man. Then he says, "The prisoner is about the size of the man I have been alluding to. The person I have mentioned did nothing; he did not move nor speak, except saying, 'Stop the works—the other works are stopped.' I said I would not stop the works; and that, if any body had anything to state to me, he should come forward and state it distinctly—most of the shouts to stop the work came from the crowd round me—upon which a man of the name of James Walker said, 'We had better appoint two men to speak to Mr Houstoun,' and the crowd cried out, 'A ring, a ring!' and immediately formed a ring, and a show of

hands was given." Attend to this, Gentlemen.—" And James Speirs was first elected, his name being mentioned, and then a show of hands for the above-mentioned James Walker." So that here is Mr Houstoun distinctly swearing, that, in reference to the proposition made by himself, if anybody had anything to state to him he should come forward, a ring was formed, and the people elected, by a show of hands, two persons to communicate with Mr Houstoun, though he is not able to speak hitherto from what I have read, and what I am to read, from his evidence, to the prisoner as the person that came opposite to him in the crowd, he positively swears, and in a manner of which you will judge, that he heard distinctly two men elected, and the names announced James Speirs and James Walker. " After they were chosen, the circle closed, and they appeared to consult together for a short time. I did not see the men in the circle at this time. They seemed to be talking together; and then Walker came up to me from where the circle had been. I did not observe any person come along with him. A great crowd of people got round me, and I said, 'I cannot speak to you here; you must come to the back part of the mill, where I can speak to you quietly.' We walked together up the hill —Walker walked alongside of me; and he asked me if I had seen the Address? I said I had not, but had seen some extracts from it. Walker asked me if I would like to see it? I said I would like very much to see it. He stooped just across me to some person on my left hand, to ascertain if it could be gotten, but it could not be got. Walker was on my right hand, and there was then another person on my left hand. I could not say when he joined me, for I never looked at him, even when Walker stooped across me and spoke to him. Of my own knowledge, I could not say who was on my left hand. The crowd followed us up the hill. I did not look behind me; but I considered that the whole crowd moved up with us. The person on my left hand replied, that it could not be got. Walker then replied, 'You would observe by the Address that the public works were all to be stopped?' I said, 'Yes.' He called it the Address that was on the church-gate—as far as I recollect, that was the only title

that he gave to it at that time. He then said, 'Do you mean to stop your works?' or something to that effect. I said, no, I did not. He said, 'Then, of course, you will make no claim against the Provisional Government for any damage that may be done.'" Now, Gentlemen, I would observe here, that, if you believe the evidence of this respectable gentleman, Mr Houstoun, and, from the wise caution and circumspection in the manner in which he gave his evidence, I presume you can entertain no reasonable doubt, you must believe this fact, that there was a cry of "Stop the works—the other works are stopped!" which came from a person that was in front, and that a person was afterwards chosen by the name of James Speirs, and a person of the name of James Walker, to communicate with Mr Houstoun; and that that person, Walker, did then and there announce to him the nature of the requisition in the Address, as he called it, that all the public works were to stop; and, upon his saying that he would not stop, Walker followed that up by saying, "then you will make no claim against the Provisional Government for any damage that may be done." And it is for you, Gentlemen, to say whether this is not direct and decisive proof that Walker at the time—and you will immediately see what connection Speirs, the prisoner at the bar, had with this man, Walker—was acting in direct furtherance, in implicit obedience to the Address, which I have already submitted to your consideration; and that here was the first proceeding in carrying the object of that Address into execution, putting a stop to that, and, as you will presently see, other works in the neighbourhood of Johnstone. "He explained no connection that this Address had with the Provisional Government. Upon his saying, 'You will make no claim upon the Provisional Government,' I immediately said, if that was all he had to say, it was unnecessary for me to proceed farther, as I would make no claim against the Provisional Government, or against him." Now, Gentlemen, I take it that you will be of opinion that these words, "or against him," are evidence of a clear impression of the mode in which Walker addressed himself to Mr Houstoun at the time—namely, that he considered him as a person either

coming directly from the Provisional Government to which he had so specially alluded, or that he was a person acting in the accomplishment of the object of the Address, which he had before explained to him by stating that the stopping the work was part of the requisition of the Address. "I immediately left him, and turned round to go down towards the mill again, I stopped and spoke to some of the people at the time. I turned back—I think the crowd must be close upon me—I conceived that I was just in the middle of the crowd walking up the hill—I am certain that a great part of the crowd was round me at the time. I am not conscious of having recognized the man on my left as the man who had stood before me. After I turned and left Walker, the crowd went up the street from the mill, in the direction of Mr Campbell's house. On returning to the mill, I found the spinners and work people very much agitated. I desired the spinning-masters to get them in to their work, and the greater part of them returned to their work. The mill continued going till they went out to dinner, they did not return after dinner, therefore the work was so far stopped. They returned two days afterwards—I think on the Thursday. I know that other mills stopped. They all stopped that day. The inhabitants of Johnstone are chiefly spinners. There are some weavers, but they are mostly spinners. The population of Johnstone appeared to be off work wholly for that day and the two following days. I think there are from four to five thousand people in Johnstone. The Cartside Mill was stopped till the Tuesday, and the Hagg Mill till the Thursday. There were employed in the three mills about thirty-four men and lads, a great number of children, and some women—about three hundred altogether. I think the average wages of the men was from eighteen shillings to twenty shillings a-week. The mills are very small, and they make smaller wages at our mill than any other almost in the county. From eighteen shillings to twenty shillings, I should think, was rather above the average. The man who called 'Stop the work,' had on a fustian jacket. I do not recollect any other part of his dress. I am surprised at not recognizing the prisoner; but the man had a very marked expres-

sion, and a very angry countenance, and I thought I had never seen him before. Now I think I have seen the prisoner before, and I think I could not have recognized him to be the man." Now I think it is obvious to you, that, though Speirs was delegated to communicate with him along with Walker, he has not recognized him as being the person who stood on his left.

Then comes the evidence of Andrew Logan. He says, "I am a cotton-spinner, and a partner in the mills of Watt, Logan, and Company, at Johnstone. I have the superintendance of one of the mills there. I recollect its being stopped by some people who came to the place. The first party that came to us was at ten o'clock; but they did not manage that point, and they went away. That party might consist of forty. I did not hear them say anything. Another party returned about half past eleven. The number of the second party was about three or four hundred. I saw that party, but I did not hear any of them speak at all—they were just making a noise about the place. I recognized Lang as one of the party. I did not recognize any one else at our mill. The crowd remained at our mill twenty minutes. Our people went out before the crowd went away, and did not return that day; and not for eight days, during which the mill stopped." Here is another stopping, which continued actually for eight days. After leaving his mill, he says, the crowd went to Mr Houstoun's mill, called the Old Mill.—"I followed them, and saw them at the Old Mill. They made a noise about the mill, to get the workers to come out. I heard one of them speak to Mr Houstoun, saying, 'that the Provisional Government would not be accountable for the damage done to the mill.' James Walker said this." So that here are these witnesses, Mr Houstoun and this man, concurring in these expressions used by Walker, whose name is in the indictment you are now considering.—"I recognized James Speirs in the crowd with him at the Old Mill. I heard Walker address words to Mr Houstoun. Speirs and Walker were together when Walker was so addressing himself. Mr Houstoun, Speirs, and Walker, were apart from the crowd. I did not hear Speirs speak. I joined the party at that time.

partner in the firm of Watt, Logan, and Company;—they have a cotton-mill at Johnstone. I recollect that mill being stopped on Monday, the third of April last. Immediately after the crowd presented themselves to the front of the work, I was sent for, and I went to the mill, between nine and ten in the morning. There was a crowd there, and it was just beginning to go away when I reached the front of the work. It moved directly towards Mr Houstoun's Old Mill, which is about a gun-shot from mine. I followed the crowd to Mr Houstoun's mill. When I got to Mr Houstoun's mill, the crowd had presented themselves in front in the same manner as at mine. Mr Houstoun was just entering the crowd when I came up to him. There were no persons along with him that I observed. As soon as I got up, two persons came out of the crowd and spoke to him. I knew one of them personally, James Walker. I should think the prisoner is the other man; but I am not positive. He may be the man, but I cannot swear to it. He was dressed, like a weaver or a cotton-spinner, in a rather dark fustian jacket. I heard Walker speak to Mr Houstoun when I got up. Walker was in the act of saying, 'We wish all public works to stop, because, if they do not stop, and any damage be sustained by their not stopping, we wish to inform the proprietors that they must expect no recourse on the Provisional Government.'". Now, Gentlemen, if you believe that this person is accurate in detailing the expressions used by Walker, which are certainly a little different, a little more enlarged, than those used by the other witness, there is considerable stress to be laid on the words, you will think, "we wish all public works to stop, because, if they do not stop, and any damage be sustained by their not stopping, we wish to inform the proprietors, that they must expect no recourse on the Provisional Government." This is an express declaration that he was acting in the direct furtherance of the object of that Address.—"Mr Houstoun said, 'Is that all you want?' Walker replied, 'It is.' Mr Houstoun then said, 'Very well, I shall not expect any recourse on the Provisional Government; therefore, you had better go away.' No farther conversation took place. They moved away directly. I saw an

Address the day before—the Sunday—that was stuck up upon the church-porch. It was addressed to the People of Great Britain and Ireland. I afterwards saw another Address, which began in the same manner—that was in Mr Logan's house. It appeared to be exactly the same. I did not read many lines of it. It was dated Glasgow, the first of April; and, I think, purported to be by order of the Committee of the Provisional Government." He is shown the one produced, and says, "That is similar to the one I saw on the wall. I read the paper at Mr Logan's entirely, and part of it twice over. The one I have now in my hand, I think, is exactly the same." Here is this man, on that being shown to him, swearing that it is exactly the same as the one he saw posted up; and therefore you can have no doubt, I imagine, that it was the same as that posted up about Johnstone.—"Our mill stopped upon that day, and continued so for the whole week. I believe the spinners did not seem willing to work while the crowd was there. Part of the spinners had come in after breakfast, and part did not come back at all. A good many of them seemed to be intimidated by the appearance of the crowd. I believe the other mills in the neighbourhood of Johnstone were all stopped after this." So that here is a stopping occasioned by intimidation, which intimidation was produced by the Address." At the moment Mr Houstoun made the reply, "that he should not expect any recourse on the Provisional Government, therefore they might go away," they all moved away towards Mr King's mill. They went past Mr Campbell's house in going there.

On his cross-examination, he says, "This was rather after nine o'clock in the morning. When I reached the spot, the people were moving away from it. It was just when the work-people were coming back to their work after breakfast. They went from our mill to Mr Houstoun's directly. The people go out at nine to breakfast, and come back at three quarters past nine; but then our hours are sometimes a little before. The crowd had presented themselves there, at the time the people were coming from their breakfast, and when I reached the place the crowd was moving off—that was between nine and ten."

On his re-examination, he says, "Mr Logan was there at the time that they presented themselves at the mill. He came to me, and wished me to go down to the mill. He was afraid of some mischief; and when we reached the mill, the crowd were going away, and we followed it, and went to Mr Houstoun's mill."

Robert Stephenson says, "I live at Johnstone, and superintend Mr Houstoun's works—the Old Mill, the Hagg Mill, and those mills that belong to him. I was in Johnstone in the beginning of April last; on Sunday the second of April, when I was going to church, I saw a paper posted up on the pillar of the chapel-gate at Johnstone. I read part of it. It remained there two or three days, I think, before it was taken down. I saw it two or three days afterwards at the same place. It was an Address to the Inhabitants of Great Britain and Ireland, dated the first of April, at Glasgow. It purported to be issued by the order of the Provisional Government, and wished the people to stop work. If they did not do it, they would be considered as traitors to the cause, and treated as such." He is shown a copy of the Address.—"I think it is the same—I think that the substance and import are the same. Upon the following day a number of people came down to Mr Houstoun's Old Mill, about ten o'clock. There were about two or three hundred. Mr William Houstoun came down shortly after the crowd came down. He came round by the end of the mill at first. The crowd made a cry, 'Stop the mill!' When he came forward he said, any person that he knew was to come forward, to tell him to stop his mill—nobody came forward. And there was a Committee among themselves. Some people were trying to form a ring; and I at that time went into the mill, by Mr Houstoun's desire, to see what was going on. I looked out of the window, and saw a show of hands, as if they were choosing some person. I did not see them come from the ring. I went out a little after. I saw Mr Houstoun and two men walking up the brae. The crowd was a little clear round them. I do not know whether the prisoner at the bar was one of those two men. I never knew the man before. I would not say that he was the man. I did not hear anybody there name

either of those men. I heard Mr Houstoun ask who was the little man with the corduroy jacket; but I had not observed that either of the two men had such a jacket as that; I had taken no notice at all of their dress. I know James Walker. I did not see him there. I did not see the crowd leave Mr Houstoun's mill. I was in the mill at the time; but I know that they left it soon afterwards. I went up to the Hagg Mill between twelve and one o'clock. The crowd was there when I went up. It was larger considerably than the one at the Old Mill. I spoke to James Walker at the Hagg Mill. I considered him to be a leader in that mob; and Robert Parker was along with him. I would not say the prisoner was along with Walker. I would not say that he was there. There was a third person along with them, and assisting them. I asked for the Committee when I went there. I went forward to Parker, and spoke to him first. I understood he was chosen. Walker and a third person was with him at that time. I wished him to clear away the crowd, for fear they should do any damage to the mill; and Parker said, 'if I would stop the mill, they would soon try and get them away.' I said I could not take that upon me, but would go and see Mr Houstoun. Walker said, that 'he knew Mr Houstoun's mind upon that subject about that already.' I do not recollect his saying anything else. I observed at that time an old man at a part of the Hagg Mill; and one of the men said, 'See and get that old fellow down, and we will get away the crowd.' I could not say that the third man was one of the men who were with Mr Houstoun; but I believed at the time he was. I had no other conversation with those three men. I went and told them I would stop the mill, and they went away directly. They cried, 'For Cartside Mill!' This conversation did not last very long. They were not there more than ten minutes before they went away. I spoke but very few words to them. I had those persons in my view during the greater part of the time that they were at the Hagg Mill." Now, Gentlemen, you will observe, he says he believed at the time that the prisoner was one of the men who was with Mr Houstoun. Now the other witnesses say two men walked with Mr Hous-

toun, and that Speirs was one of those two; and this man says he believed at the time the person he saw there was one of those that he saw with Mr Houstoun; and it is for you to say whether that makes up for the deficiency, if there is any deficiency, in the fact of Speirs being there. Then he says, "I do not know whether the prisoner is the man or not." They were moving from mill to mill. After stopping the Old Mill, they go to the Hagg Mill, and then to the Cartside. And then you have the evidence of Mr Houstoun, that the mills were stopped on the third of April, the Proclamation being dated the first of April, and calling on all proprietors of works to shut them, or the Provisional Government would not be answerable for any damage that might be done to them.—"I did not ask his name at the time. I asked his name a day or two after. His name was asked at the Old Mill. The crowd were away before Mr Houstoun came into the Old Mill. I think it was Walter Wilson that I asked for the name. He was one of the attenders of the mill. The Hagg Mill and the Cartside Mill were stopped in the course of that day."

On cross-examination, "The Hagg Mill stopped about one o'clock."

James M'Dougal is a cotton-spinner at the Old Mill. He says, "I worked there in April last. I live in Johnstone. I recollect having seen an Address posted up in Johnstone, on a Sunday morning. It was upon the corner of the east end of the square. It was addressed to the inhabitants of Great Britain and Ireland. I do not recollect what was at the bottom of it. It bore to be given out by order of the Provisional Government. I do not recollect the date. I should know it again if I saw it." Then a paper is handed to him, and he says, 'It appears to be something of the same kind as that—I think it is the same in substance. It was about the first or second of April. I went to the mill as usual the next morning. There was a crowd coming about the mill. About half an hour, or three quarters of an hour, after breakfast, somebody went to Robert Stevenson, the manager of the mill, and told him. I saw the crowd, and heard them cry, 'Stop the mill!' The mill did not stop at that time. The

people within the mill were alarmed at this. The crowd came down, and the people went out of the mill; and shortly after this Mr Houstoun came down, and asked them what they wanted. There was a considerable crowd. They cried then to stop the mill. After that Mr Houstoun was standing beside them; and shortly after he came, I left the crowd and him standing speaking together. He was speaking to the whole crowd. They did not send any of their number out, that I saw. I saw a small ring formed. I did not see anybody come out from that ring. I saw Mr Houstoun speaking to Speirs just as he came forward. The people were standing around—that was all the ring I saw." So that here is a witness confirming Mr Logan, as to the fact of Speirs being the person who was speaking to Mr Houstoun. "I do not recollect seeing James Walker there, or any person else that I knew. I did not notice particularly, because I was standing at the back of Mr Houstoun, and in a short time I left them. I could not give my oath to what Mr Houstoun and Speirs were saying. They were speaking together, and they were saying something about stopping the mill, and I left them when they began to speak, and went round to the other side of the mill, and stood up at the other end of the mill. The crowd all went up the street from the mill." Now, Gentlemen, you will recollect Mr Houstoun expressly states, that the man who came in front of him did actually demand the stopping of the mill, and said the other mills were stopped; and this man says, though he cannot tell all they were saying, they were speaking about stopping the mill.—"Our mill did not stop at that time—it might be stopped at dinner-time. I went up the street, and did not return till the mill began again on Thursday. The mill did not go during that time. I saw Mr Houstoun coming up from the mill before the crowd. I saw Speirs along with him, and some other men. This was just a short time after the crowd first came down. They were just going then from the mill. I know a man of the name of Parker. I do not recollect who was with Mr Houstoun besides Speirs. I know James Walker, and do not recollect that he was along with him then. I do not know whether there were

two or three with him—they were about twenty yards off at the time. I saw the crowd going away up the street. I did not observe what became of Speirs and the other men that I saw in company with Mr Houstoun. I saw them going up the street together; but I did not see them after that. I saw Mr Houstoun turning the corner, up at the head of the street, by Mr Mills's. I think Speirs had a corduroy jacket, of a greenish colour. I saw a crowd assembled that day on the School-green shortly after twelve o'clock, after the visit to our mill. I did not know how it was called together. James Speirs was there, and Parker, a shoemaker. I do not recollect seeing Walker there. I was on the outside of the ring. I saw Speirs on the inside of that ring, and Parker, and another man, that I did not know, with a glazed leather hat on. I heard one of those Addresses read, such as the one I have now read. I could not see the man who read it. I only heard it. It was read by some one in the centre of the ring. I heard some remarks made upon it; but I cannot give either the words or the substance, for I was on the back side of the ring, and could not hear correctly. I do not recollect whether it was all read or not. I did not see Speirs at that time. I heard Parker chosen preses at that meeting. I do not know who proposed him. He was chosen by a vote. I did not hear anybody propose him for this vote. I heard Speirs speaking something, but I do not recollect what it was. I did not hear him address any particular body, but it appeared to be addressed to the whole meeting." Here this person is giving an account of the meeting at the School-green, and he swears to Speirs being there, and in the middle, and to his speaking something, but what it was he cannot take upon him to say; but, whatever it was, it appeared to be addressed to the crowd or the meeting.—" I heard it proposed stopping the cotton-mills, but I do not know from whom the proposal came, or whether it came from the ring, or the circle in the middle of the ring. I heard them say some mills were not stopped, and that they would stop them. I believe this was agreed to. It appeared to be the common sentiment. After this they went away. It was agreed to by a show of hands. I do not know who desired them to show

hands and agree to it, but that desire came from some part about the ring." Now here, Gentlemen, you see this man expressly swears to hearing a proposal made to stop some mills—that this was a general sentiment—that this was agreed to, and settled by a show of hands—that they were desired to show their hands—that they agreed to it—that this came from persons in the ring, or about the ring; and I think that must satisfy you, with the evidence of others, who speak to the same sort of facts—that there was here a deliberation—that there was here a resolution taken, of which it is for you to judge.—"I did not hear anybody intimate any opposition to this stoppage. The crowd went away shortly after that up to the head of Macdowall Street, and up by the Hagg Mill. I stopped upon the green. I did not go with the mob, and saw no more of their proceedings. I did not see the man who read the Address—I only heard it read. I believe it to be Walker's voice." He did not see him, but he knew Walker's voice, and he believed it to be his voice.

Upon being cross-examined, he says, "I did not know the man with the glazed hat. I saw him in the ring along with the rest. I did not hear him make any speech. I can only see the top of the Hagg Mill from the green. I remained on the green. I could not see the crowd go to it; but they went by the head of Macdowall Street,—and that is all I know about it."

Upon being re-examined, he says, "The Hagg Mill is not very far from Macdowall Street; but I cannot say how far. It is to the eastward of it, at no great distance. I saw the crowd at the head of Macdowall Street. The Cartside Mill is on the same water, a little higher up. I remained off work, because there were none of the men at work then. The mills were all stopping. I had no other reason for stopping than that the rest did not go on. I returned on the Thursday. They were very attentive when the Address was reading, and some of the crowd seemed to assent to it."

Alexander Macneil says, "I am a cotton-spinner at Mr Houstoun's mill, the Old Mill. I remember that mill stopping work the first Monday in April. A crowd came to the mill after breakfast, about eleven o'clock. I heard them

speaking, but did not hear what was said. I saw several in the crowd that I knew. One James Walker, and James Speirs, the prisoner. They were just in the crowd the same as the rest. I saw Mr William Houstoun there. He was standing anent them, (that is, before them.) I saw him speaking to the crowd. I did not see any of the crowd whom I knew speaking to Mr Houstoun. I did not hear Speirs speak to him at the mill. I did not see Speirs nor Walker near Mr Houstoun. I left the crowd there. I saw Speirs, after the crowd left the mill, going up the hill with Mr Houstoun; but I could not say that he spoke to him. I saw him go by Mr Campbell's with Walker, after they went from the mill. I was distant from Mr Houstoun, Walker, and Speirs, at this time, about twenty yards." Now, Gentlemen, you will, upon attending to the rest of the evidence, see that this is a complete confirmation of Mr Logan and the other witness, as to Speirs, the prisoner at the bar, and Walker, being the two men who had an interview with Mr Houstoun apart from the crowd, and who were delegated by the crowd to have that communication; for here this witness sees him with them near Mr Campbell's house.—" I was at the School-green that day. There was a crowd there. I saw Smellie, Speirs, Walker, and Parker, in the midst of the crowd. A circle was formed, and they were in the middle. I do not think there was any other body whatever in it but those four persons. They were speaking, but I could not tell what they said. A Proclamation was read by James Walker. I saw the Proclamation up in the corner of the streets. On the Sunday morning before, I saw one upon the chapel-gate, as I was going to church; and I saw one down at the end of the town in another corner. I heard it read." A paper was then handed to the witness, and he said, " Yes, that is the paper—it is the same reading. Walker read it. I cannot recollect anything being said. I do not know whether a preses was chosen. I saw hands held up, but I could not tell for what purpose, for I was at a little distance. I think it was before the Address was read." So that here is another witness confirming the former one as to Speirs speaking something, but what it was none of them can take upon them to say.—" I think

it was before the Address was read. I did not see what Speirs did at that time. I heard the man speak two or three words, but what they were I did not know. I think this was also before the Address was read. I saw the crowd go away, but I did not see in what direction they went off. They all went away in a body. I heard nothing but the Proclamation read."

He says, on cross-examination, "I heard nothing said about mills. I did not see in their hands any clubs, sticks, staves, or flags. I did not see anybody appointed a captain or leader to march them, or anybody falling them in in regular order. I saw Smellie there, but cannot mention his dress." Now, Gentlemen, with regard to this point, that he saw no arms or weapons, it must be quite obvious to you, that upon both, or upon either, of the counts that you are now considering, the compassing or imagining the death of the King, and that to be made out by a conspiracy to levy war, in order by force or constraint to compel him to change his measures, the having weapons is no part of the case,—it is entirely foreign to the inquiry. The charge is, of compassing and intending to levy war *de futuro*; it is not a charge of levying war at the time; and therefore, the having no weapons is really nothing to the present question which you are considering—only it is proved by this witness that he saw nothing of that kind in their hands.

The next witness is John Houstoun.—"I am a cotton-spinner with Mr William Houstoun at the Old Mill. The mill was stopped between ten and eleven o'clock on the third of April last. A great crowd came to the mill; and afterwards I saw Mr William Houstoun there. The crowd said nothing to the people who came out of the mill. After Mr Houstoun came up, we turned back to the mill. Mr Houstoun stopped the crowd, and asked what they wanted. A good many said, they wished the mill stopped. He asked by what authority they came to stop his mill."—A very proper question.—"By whose authority is this unlawful demand upon me to stop this public work, of which I am the proprietor and manager?"—That is a natural question, which it is proper for any man to put to any body of men who come

there and desire to stop the work; and those who were there were bound to give a satisfactory answer by whom it was done.—And James Speirs said, "By the public at large." Then the witness says, "I took this to be the authority of the public. I saw James Walker in the crowd; and he and Speirs were not far separate at the time. Speirs and Walker were the two activest I saw in that crowd."—I took his own words—I took the superlative he gave me; and therefore, you have this witness confirming Mr Logan, as to the opinion that he formed of their being equally active, and this man swearing, that they were the two *activest* that he saw in that crowd.—"Mr Houstoun asked James Speirs if he would answer for the whole? He said, he would, if they gave him authority. After Speirs made this reply, there was a ring formed, and there were men to be chosen to speak to Mr Houstoun; but I left them at that time. Heard the people say, they were to choose somebody. I went by the back side of the mill, and I saw Speirs and Mr Houstoun coming up to the front of the mill." So that here is either a third or fourth witness remedying the defect in Mr Houstoun's evidence—repeating and fixing that Speirs was one of the men who came out of the ring, and had an interview with Mr Houstoun on the part of the people.—"I cannot say whether Walker was along with them at that time. The crowd was behind them at the time. I could not say if there was a clear space between them. I did not get near them, or hear what they said. I saw the crowd leave the Old Mill, and followed them. I was along with the crowd at Mr Campbell's house. The crowd made a halt there. Mr Campbell's house was in the way between the mill and the School-green. At the time the crowd halted, they made a ring, and James Speirs was within it, and spoke. What he said I did not hear, nor its substance." The witness did not hear the words spoken, nor the substance of them, but swears to the fact, that in front of Mr Campbell's house they halted; and though witnesses have been here, at least one, who swears he saw no stop at that house, this witness swears the crowd stopped there—that a ring was formed—that Speirs was in it, and that he spoke in that ring.—

"It was a very great crowd, but I could not say the numbers. At the time that Speirs was speaking, I was behind the crowd in the back circle, and did not hear what was said. I do not remember any other person speaking at that time but Speirs. They broke up after this. I saw them after that on the School-green; but I did not go there with them. In going away from Mr Campbell's they were three or four abreast; but I did not see who were in the first line. It appeared to me to be the same crowd at the School-green. The crowd was gathered when I got down there; and the first thing I saw was Speirs and Walker, and another man whom I do not know, in the centre of the ring. I saw Parker there. He was chosen preses; but I did not hear who proposed him, nor how he was chosen. I saw him in the centre, appearing to be acting as preses. There were four in all in the ring. I did not observe the hat of the fourth man. Walker read a Proclamation to the people about stopping all public works. Walker made some remarks, approving of it, and enforcing the Proclamation on the people. The Proclamation was addressed to the audience who were there—not to any particular class of people. The Address appeared to be to Scotland, Great Britain, and Ireland. I saw two papers posted up in Johnstone, or the neighbourhood. I saw one upon the Sunday morning, on the porch of the church, that was an Address to the Inhabitants of Great Britain and Ireland. I do not recollect any part of the substance of it. I believe that the one read by Walker was the same. Walker said, that he had taken it down from the chapel-gate, and he would put it up again. He said this to the meeting." Then a paper was handed to the witness, which he read. Then he said, "I think this is the same I heard read on the School-green. The crowd gave three cheers at the end of each passage Walker read. Before the cheers were given, Walker made some observations which I do not recollect." So that this witness is perfectly precise as to the point, that, at the end of each sentence, Mr Walker made some comment as he read it, and that was followed by cheers from the assembly; and so far they must be held to have assented and agreed to what they heard.—"I did not hear anything Speirs said after this. I

did not hear what the object of the meeting was from what was said and done; nor did I hear anything proposed or agreed to, for I went away at the time it was agreed to. I saw them march away in the same sort of order as before. I did not observe who was in front. They went to the Hagg Mill. I went there too; but the mill was stopped before I got there. I saw Speirs at the Hagg Mill. Speirs was standing like the rest of them. I did not hear him say anything. I saw Parker there, but not Walker. I saw the crowd go away." Here is a witness who distinctly swears, that he saw Speirs at the Hagg Mill, which is the mill to which all the witnesses concur in stating the people went, from the School-green, after the resolution that the mills should be stopped.—"They went to the New Cartside Mill, and stopped that mill too. I was present, and saw it. I did not see Walker, Speirs, or Parker, there. I saw a person that they called John Lang, but I did not know him. He had on a black hairy cap. I saw him at the Old Mill at the time that Speirs was there." And you remember the other witness swore Lang had such a cap.—"I did not see Lang at the School-green meeting, or at any of the other places. I did not see him take any active part at the Old Mill. The cap shewn is like the cap that Lang had on; but I cannot say whether that is the cap or not. The Old Mill was stopped, and I stopped work along with the others. I was afraid of myself, and stopped work in consequence of the proceeding of this mob. I could not swear to Lang being the man who had the hairy cap on. I think it is the man, but I will not swear to it."

On cross-examination, he says, "The mill went till dinner-time, and then stopped; but the spinners stopped before. The paper Walker read on the School-green began with the words, 'An Address to Great Britain and Ireland.' I do not remember any of the rest, except that it was about stopping works; but, on reading over that, some words came into my memory that I heard Walker say. My recollection of what Walker said is derived from the paper that I have read here." He was asked by the Court, "What do you now recollect of that which Walker said he read from the paper?" and he

says, "He appeared to say, that he would advise all them that had works to give them over—to stop their works; and another part about the soldiers plunging their bayonets into the hearts of their brothers and fathers. I do not recollect any more. I do not remember how he began or ended. I saw a paper stuck on the chapel-gate, and read it; but I cannot recollect any part of it. I saw the paper in Walker's hand. I cannot say whether that was the same paper or not, but it was like it in appearance." Then a question was put to him by the Court, "When Walker read the paper in the ring, did it appear to be that which you had read on the chapel-gate?"—"It did."

William Campbell is then called.—"I lived in Johnstone in April last. I recollect a crowd being about my door upon Monday the third of April. It was about ten o'clock. I first saw it assembled before Mr Houstoun of Johnstone's mill, which is very near my house. They remained there for some time; and there was a good deal of noise at Mr Houstoun's mill. I had gone from my office at that time. I returned again, and shortly heard some noise in the street. I went out, and the crowd then stopped nearly opposite my house. There was a circle formed, and a man, in a corduroy jacket, addressing them. I was at some little distance, and did not hear distinctly what he said, except that he invited them to attend a meeting that day at twelve o'clock at the School-green, and something about deluded men; and that was immediately followed by these words, I think, in a different voice, 'such as Mr Houstoun.' My recollection does not lead me to say more. The prisoner, I have no doubt, is the man so dressed, and who so spoke." Here, therefore, you have this gentleman, Mr Campbell, distinctly swearing to the fact of the crowd having come from Mr Houstoun's Old Mill to the front of his house; having there halted—that a ring or circle was formed—that Speirs spoke from that circle; and he, Mr Campbell, heard him invite the people to attend a meeting that day in the School-green at twelve o'clock; and that he does not recollect any more. Now, Gentlemen, I do apprehend, that, when you come to consider the nature of the proceedings at that meeting, such as have been described by

some of those witnesses to whose depositions I have already referred, such as are more particularly and minutely described by others who follow, that at that meeting they proceeded deliberately to the election of a preses—that that preses and three other persons remained in the interior of the circle, which was formed by a great number assembled—that after the preses was appointed, and some speeches made, Walker, one of those persons who is seen at the Old Mill taking an active part, upon the evidence disclosed, reads to that meeting a copy of that treasonable paper—that he comments upon it as he goes along; and at the end of each sentence, and each comment, cheers followed from those assembled—that a proposition is deliberately made to stop those mills that had then continued to go, and had not stopped. That crowd is proved to have moved off in a direction to, and actually proceeded to stop, the Hagg Mill, and from thence to the Cartside Mill, which was stopped; and it confirms that fact, of all the mills being stopped on that occasion. I say, when you take into consideration the general features and nature of the proceedings, the nature of the acts adopted at that meeting, and followed up, after the crowd had moved from the place where it was held, the invitation of the crowd to come and attend that meeting, the purposes of which had been such as I have alluded to, must appear to you to be a most material feature in the evidence of this case. It will be for you to consider the nature of the invitation as it is disclosed by Mr Campbell, and as you will find it more fully explained by his clerk, Mr Archibald, and to say what is the fair import of the disclosure there made for the purpose of the intended meeting.—"They went away, and I came to Paisley. I heard no voice but those I have mentioned; and I cannot recall to my recollection anything farther of the words or the substance." So that nobody else spoke but Speirs. He tells you what Speirs says, as far as he recollects; and you will find what Mr Archibald says.

Mr Archibald says, "I am clerk to Mr Campbell, writer in Johnstone. I was so in April last. I remember a crowd collecting before the house about ten o'clock on the third of April. I saw them a little before that down about Mr Hous-

toun's mill. A man addressed the crowd opposite Mr Campbell's house. A circle was formed round him. He invited all those who wished their country's freedom to meet in the green or the square of Johnstone that day at twelve o'clock." Here is a little more particularization of this invitation, that it was extended to the friends of freedom to meet in the square or green of Johnstone that day at twelve o'clock.—"I had never seen that man before that morning, to my knowledge. I am not sure that I should know him again. He was a man much of the appearance of the prisoner, making an allowance for the difference of the dress. He had a jacket on of some kind of fustian, to the best of my recollection." Now, Gentlemen, you will take this man's evidence in connexion with Mr Campbell's, who swears positively and unequivocally to the prisoner's being the only person who spoke from the circle; and you will take it with this further detail of the nature of the invitation, and say whether you have any doubt that they are speaking of the same man, though they differ in the explanation—one saying he invited the friends of freedom, the other that he invited those who were there, to attend a meeting at the School-green that day at twelve o'clock—that all would attend but some deluded men; and the words eking out by another voice were, "such as Mr Houstoun." So that here you have this person (whether it is the prisoner or not it is for you to say, or whether you entertain any doubt of that fact) saying, that he was sure all would attend but some deluded men. And who are those deluded men?—The proprietor of these public works, who said that he would not stop the works willingly—who refused to stop them—who did everything he could to make them go on, till the people abandoned them; and who had declared he would make no demand on this Provisional Government; and who had declined any subserviency to men making the demand upon him. These are the persons described as deluded men, and whom he did not expect to attend.

James Smith says, "I live in Johnstone, and am a wood-merchant there, and have a wood-yard there attached to the School-green. I was in Johnstone on the first of April and subsequent days. On the first of April I was in the timber-yard, and saw a great number of people assembled on the

School-green. I was told there was to be a meeting there, and I went to see who was there. The crowd was coming from all quarters. I saw three people coming down from the church-yard with a paper in their hands, which the people said had been taken off the pillar of the church-gate. The crowd was all around them, and accompanying them. Those three came down, and formed a ring in the School-green. They said they would make a ring, that the people might better hear what they were going to say. There were about half as many people there as are now in the body of this church. The three persons stopped in about the centre of the ring. I sat a little while on the dyke, and could not hear very well from the noise; and then I stepped down amongst the crowd. There was another person besides the three in the ring—one that they chose as a preses; but he came a little after the ring was formed. He was called Robert Parker. I did not know any of the three personally. I had never, to my knowledge, seen the others before that day. I cannot say that the prisoner was one of them. While I was amongst the crowd, I asked some of the crowd the names of those three in the ring, and one was said to be called Speirs, one Walker, and the other Smellie."—Asking at the time was perfectly competent evidence; and the question was allowed to be put, and that is the account he gave.—"Walker read the paper that was taken off the church-post; it was the paper that was on the corner of streets in other parts of the town. I did not hear it mentioned where that paper was got at the time. Walker read the paper before they chose Parker preses. I heard it read." Certainly, Gentlemen, this witness seems to differ from some of the others who say that the preses was chosen before the Address was read.—"I cannot bring my mind exactly to the meaning of the paper, but it was a paper that was up in all the corners of the streets. I cannot mind what was in it, but it seemed to me to be a paper exactly to raise people into rebellion, and to rise and stop all public works; and even encouraged the soldiers to rise and assist them. After they had chosen a preses, they then proposed going about in a body, and stopping public works. This was proposed by some of those four

that were within the ring. They said the object they had in view by stopping the public works, was to get a greater body of people to assist them, that there might be less blood shed in the conflict. "This was said by some of those four within the ring." Now, here, Gentlemen, you have evidence as to who were the four within the ring, as disclosed by other witnesses. Smellie, Walker, Parker, (the presses,) and the prisoner at the bar; and you have this witness swearing that he heard one of the four make this proposal to the people, to go and stop the public works, and get a greater body to assist them in what they intended, and then, that their object was, that there might be less blood shed in the contest; you will therefore consider, whether this is not a manifest declaration in the hearing of all those assembled, and of those who came to the resolution which I before said was acted upon, even in stopping the works, that the object was to get a greater number to join them, and by that means there would be less blood shed in the conflict;—what conflict was here meant it is for you to consider, with reference to the terms of that Address, which had just before been read, of which you have an opportunity of judging for yourselves, and on which it is unnecessary for me to make any other observation; "they proposed then to march off in regular order towards the mills; and one of the four said, that they would march away in a regular body, as they had been all trained to fall into the ranks." Now, Gentlemen, you will recollect, that, previous to this part of the evidence of Smith, you have two witnesses who say, one that he saw them when moving from Mr Campbell's, three and four abreast; and the other, that they were four abreast in Macdowall Street, going towards the Hagg Mill; and this Mr Smith swears he heard them propose to march off in regular order towards the mill, one saying that they would march away in a regular body, as they had been all trained to fall into ranks. That, I state to you, is a material circumstance, as indicative of the order and the deliberation with which this purpose of stopping, and effectually stopping, these public works, was to be carried into execution; that it was to be done by going up in this species of array; and that they were to move on

in ranks, they having been all trained ;—" they had a few words amongst themselves, one said one thing, and another said another thing, as to who was to be the leader in going to stop the mills.—I saw nothing farther ; they then marched off towards the mills in a regular row, two or three abreast." What he meant by a row, was a row of those people who were abreast.—" How many rows there were, I cannot say ; they were one behind another ; they marched off in a straight line ; there was no word given to them to my knowledge ; at the time that the paper was read by Walker, they made some observations with respect to Spain ; they said that Spain had been successful in making a revolution, and it was a shame that Britain should be behind Spain. This observation was made by one of the persons within the ring ; it was some part of the paper that led to it, but what part I cannot recollect." Here is a reference made to a business in Spain, in which the troops had taken a share in bringing about a revolution there. " The paper and this remark were received by the crowd by shouts of huzzas—at the end of sentences they were huzzaing—I had before this seen a paper at the corner of one of the houses in Johnstone, with exactly the same words as in the one read on the School-green ; it was upon the corner of Mrs Johnstone's house, at the corner of the square, I saw it upon the Sunday, the day before." He is shewn the Address produced, and he says, " I do believe they are the same with the one posted up in Johnstone ; it is similar to the one I heard at the School-green ; I did not see one posted on the Chapel-gate ; the School-green adjoins the Chapel-gate ; it is a great square, and they were coming across it ; before the paper was read, they said, very probably a great number of the persons assembled had not heard it ; and they wished them to hear it, and Walker read it. While it was reading, the crowd were very attentive to it. There was no opposition to stopping the works that I heard of ; I got a little bit in the crowd ; I heard quite well. Whether those four persons went along with the crowd when they marched off the Green, I could not say."

Upon his cross-examination, he says, " the Address was regularly read ; there were some observations made with re-

spect to Spain; but there was no speech, further than they proposed to go and stop the cotton-mills; I did not take particular notice how long the meeting was assembled; they were a long while before they were gathered; there were people on the School-green, about an hour before the ring was formed; that was in the forenoon, but I could not fix the time, for I paid no attention to it. I paid a good deal of attention to the paper that was read, and to the observations. I can give no account of the time the meeting lasted, it was a considerable time from the beginning of the meeting. My memory is very bad on that subject. One Walker and one Speirs were said to be there."

Now, Gentlemen, I recollect perfectly that the cross-examination seemed to be directed to his not remembering some things, and remembering others; but when I come to call your attention to M'Nicoll, his sawyer, a witness for the prisoner, he almost used the same language, as to his inability to fix the time; and therefore that does not appear to be a circumstance in the slightest degree to affect his testimony, that he could not speak to the time of this meeting. "Walker spoke the most; I heard him speak; I know it was one of the four in the circle, that proposed to go in a body themselves and stop the works; I did not hear any of the rest speak; I do not know whether it was Walker that said that; the preses spoke a little; but I do not recollect what it was; Robert Parker, a shoemaker, was the preses; there was no chair or eminence, and he stood upon the lower side of the Green; he did nothing more than the rest, that I saw; but they called him preses, and elected him by a show of hands. I saw a man there, with a glazed hat, and a red vest, that they called Smellie; there were no others in the ring, but the four I have mentioned; they kept the ring pretty circular when the paper was read; and during that time, I saw only those four persons in the ring. I cannot tell how long the meeting lasted; we were put into such a state of confusion in the town that day, that I cannot mention the time; I paid no attention to the time, only to the words that were said. The Proclamation, and all the comments upon it, were made before the preses was elected;

when the people went away, I went home. I observed no staves or bludgeons in their hands; I am not sure whether they had or not; I was in the midst of them, but saw no weapons of war; there might be a common walking-stick among them. Some of them were strangers; no person took the command of them, and marched them off, to my knowledge. The meeting was dissolved before the workmen's dinner-hour."

www.nbtoo.com.cn

Upon being re-examined, he says, "The town was in great confusion that day, in consequence of the proceedings of this crowd; it appeared to me that there were strangers in the town; people that I did not know; I cannot say whether the shops were shut; our sawyers stopt work; Walker was the principal speaker; I did not hear much said by any of the four besides; I cannot say who proposed the stopping of the mills; two of my sawyers were standing with me at this time, Archibald M'Nicol and Robert Burnett."

James Patrick says, "I am a collier, and live at Quarrel-town, about a mile from Johnstone; I recollect the meeting in the School-green of Johnstone, upon Monday the third of last April; I cannot say what time of day it was, perhaps sometime in the middle of the day. I know Parker; he was there; I do not recollect all that was done; there was a circle formed; Parker was in the middle of it; Walker was there also; I knew Walker, but I was not acquainted with him; I knew Speirs by sight; I believe he was there." Then he points to the prisoner, and says, "That *is him*; besides Walker, Parker, and Speirs, there was another man there, lighter than any of the others a good deal; Smellie, I was told, was his name; I do not recollect much of his dress; I think he had on a red waistcoat; I heard a paper read by Walker, but I cannot repeat it; I saw an Address posted upon the Chapel-gate; on Monday, I saw Walker take it off the church; I did not read the paper before it was taken down; Walker took it down before he read it on the Green."

Now, Gentlemen, you will recollect that Walker is proved by this witness to have taken down this Address from the gate; you have Smith swearing, that he saw three persons

come from the gate, surrounded by the crowd; that a circle was formed around them, and accompanying them; that they said they would make a ring, that people might better hear what they were going to say; and that their names were said to be, Speirs, Walker, and Smellie; and you have this man swearing he saw Walker taking down the paper; and you have the prisoner at the bar with him, and going to this place, to which they invited the people to come; and, in order to prepare for that meeting, Walker goes and takes down that Address, which he afterwards reads to the meeting, and to which your attention has been so much directed. "I did not read it before it was taken down; I saw Walker take it down before he read it on the Green; I did not see him carry it to the Green, but I saw him with it, and heard him read it, in about ten minutes afterwards; I saw a good many people about the gate, at the time he took it down; the Chapel-gate is close to that Green; I heard Walker read the paper, but what the beginning of it was, I could not say; I could not mind it, nor say what was in it; I do not know that any person spoke to that meeting; I did not hear anything about stopping works in it; I could not say that Speirs said anything at that meeting, or anybody else; the whole of the men in the ring spoke to those standing round the ring; I do not recollect what anybody said; the people in the ring spoke to those about them, but I do not recollect the words;" confirming again the statement, that Speirs spoke something, but what it was he cannot say; that he spoke no more than the rest; but all those in the ring did speak. "I heard them taking the votes, whether they would stop the works or no; the vote was taken, and carried, to stop the works; they held up their hands, and they went away afterwards; I could not say Speirs spoke in particular; I heard some of them speaking, but I cannot tell what they were saying; I could not say what they were going to stop the works for; some of them were saying they would stop the mills, till they got their rights." Look at the language of that Address, which is, not to recommence till they are in possession of those rights which distinguish the freeman from the slave.

John Gemmel says—"I am employed at the Hagg cotton-mill; and was so in April last. Upon the third of April a crowd came to the mill, about one o'clock; I do not know the number; but there were a great many; they came in array; but I do not know whether four or six abreast. When they came to the mill, they made a halt; I went out and met them on their way, and some person called, Halt. I asked what they wanted. They said that men from the rear would come forward and speak, and Robert Parker came forward. There was another man came along with him at the time."—Then he is asked to look at the prisoner, and he says—"I could not say that was the man; the man that came with him was ruddier, and more curly-haired. When those men came forward, Parker said they were chosen as a committee, to come forward and stop the public works. I said our master was not upon the ground, and therefore we could not take it upon ourselves to do it; nothing further passed; the works had stopped through fear of the crowd. I asked of the men when I went in, and they told me so; the men appeared alarmed. Mr Stevenson came up at that time, and I returned back to the building. Mr Stevenson is the superintendant of Mr Houstoun's mills; neither Parker nor the man with him spoke to me; but they spoke to Stevenson in my presence; that man came forward, and wished that the door might be locked, so as that the rabble might return back from the building. I called for the key, and locked it. There was an old man up at the second floor staircase window; he wished for that man to be removed, and the crowd would retire. I went in and ordered the man down, and the crowd went away, and Parker and this man along with them; they went straight up the avenue, in the direction of Cartside Mill. I did not follow them. I know James Walker, he was among the crowd."

Being cross-examined, he says—"I saw them going up an avenue which leads straight from the Hagg Mill, to the road that goes between Johnstone and Cartside Mill; I do not remember boys doing mischief at the Hagg Mill; the crowd had no arms that I saw; and they did no mischief either to the mill, or to any of the people about it. I saw neither clubs, sticks, staves, nor offensive weapons of any kind."

William Whitehill.—"I belong to Cartside Mill; I was there inthe beginning of April, and recollect the mill stopping between one and two on Monday in that month; a quantity of people came into the mill; the first was James Nixon, and the next was Smellie; at that time there was a crowd round the mill; I should think about five hundred; they said nothing before Nixon and Smellie came into the mill; when Nixon came in, he said, 'Come away, my boys, tear all down.' That was addressed to those following him on the stairs. Smellie was behind him at that time, and said, 'Huzza, my boys, come away!' The mill was stopped, and they went out; and when they left the mill, they desired nothing else to be done. I know Robert Parker; I saw him in the crowd; I saw him advancing up towards the road alone, and no person near him; that was before Nixon and Smellie came into the mill. I did not see him after I saw him advancing up the road. I know the prisoner Speirs; I did not see him there; I did not hear anybody desire the mill to be stopped; I considered it was stopped entirely by the expressions used by Nixon and Smellie; the master of the room, James Colville, stopped the mill. I have known the prisoner about four years; and if I had seen him there, I should have known him; but I did not see him."

James Colville.—"I am a spinning-master at Cartside Mill; I recollect, upon Monday the third of April last, a large crowd coming to that mill; there was some hundreds; they came and wished the mill to be stopped; at first, four came into the mill; and afterwards, a good number came in; I cannot say how many; they wished the mill stopped; and I said, in what way, or by whose order am I to stop? and they said, it was by the orders of the Provisional Government; or the Provisional Government would not be answerable for any damage that might be done to the mill. I did not know any of these persons; William Whitehill was along with me when this took place; and in consequence of that visit, the mill stopped." This is language nearly similar to that used by Walker at the Old Mill; but it is language in direct conformity with the injunction of the Address, which had been read to this meeting before it moved on to

the Hagg Mill, or from the Hagg Mill to the Cartside Mill; and it is for you to say, whether it is not a direct and a palpable furtherance of, and obedience to, the injunction contained in that treasonable Address.

www.nbtoof.com.cn

The Provisional Government would not be answerable for what damage was done to the mill; if it was not stopped—and he says, it was stopped in consequence of that visit.

On his cross-examination, he says,—"I have seen Speirs; but had no acquaintance with him. I did not see him at the Cartside Mill. Whitehill was with me part of the time while I was speaking to the men, but not the whole." Now, Gentlemen, I will just observe to you here, what I apprehend must be obvious to you, that if you shall be of opinion, upon a review of the evidence, that one common purpose in the meeting upon the School-green is made out, that that common purpose is to be discovered from the acts, the proceedings, and the declarations of that meeting; first, in their reading the Proclamation, or Address; secondly, in their coming to a resolution to stop all public works; and, thirdly, in their moving on to carry it into effect; that the whole persons there assembled, except mere spectators, such as Smith, M'Nicol, and another, moved on, after they came to that resolution, to the Hagg Mill, and afterwards to the Cartside Mill—If you are of opinion in this, that a common purpose, and a common object, was in their contemplation to execute the mandates of the Address, it is not necessary to make a person responsible as concerned in that conspiracy, that he should be at all the mills, and all the places where the resolution was carried into effect; it will be sufficient in law, if you are satisfied he is so connected with those persons who were there assembled, and had that common purpose, and acted upon it; and of the nature of which it is for you to judge upon the evidence. It would be quite sufficient to affect him, although it should not be proved he was at the Hagg Mill, as he has been proved to have been, although he should not have been near the Cartside Mill, as he has been proved by the woman, into whose house he comes, and takes a dram, while they are at the mill. If you are of opinion, that the purpose they had in view was that of executing the man-

dates of that paper, after moving from the Green, after being excited by the Address read, and by the observations made by the persons in the ring, of whom the prisoner is proved to have been one; and therefore, though he is not proved to have been the most forward at the Hagg Mill, or the Cart-side Mill, if you are of opinion, that the resolution to stop those mills emanated from the reading that Address on the Green, and the cheers and comments thereon, that is sufficient to affect him.

John Brodie says,—"I am a spinner at Mr King's cotton-mill, and was so in April last. It is near Mr Houstoun's. I remember the mill being stopped, and seeing a crowd come to the gate of the mill; I think it was in the afternoon; I saw Mr Malloch locking the gate before the mob approached that mill; before that, I saw a crowd of boys, and I saw one man come to the front of the crowd, and desire the boys to go back, as they could do no good there." This man did say what was the fact, that, considering the purpose in view, it was no place for boys; they would do no good there. "I have heard his name called Walker, and would know him if I saw him again. I had heard it at different times before that; the mill did not go after dinner, because the workers did not come back. I had no work for two or three days before that; I was getting cotton out of the cotton-loft, and I heard no more said by the mob."

On cross-examination he says,—"I did not think I ever saw the prisoner till I saw him in this church here, the last day of the indictment."

Then, Gentlemen, William Malloch is called; he says,—"I am the manager of King's Mill. I remember the work being stopped there upon the first Monday in April; I remember a crowd coming there on that day about mid-day; a man from the crowd asked me whether I would stop the mill; I told him that I would not, and then I asked his reason for wishing me to stop; and he said, others had done it. I told him that was no sufficient cause for me to stop the work; there was one from behind him said, that I might abide the consequences."—Here is a threat, that this man might abide the consequences of refusing this mandate to stop the mill,

"I made no further reply, than told him I would not stop the work. I knew none of the men, nor their names. I did not inquire their names at the time; the work stopped that day; the workers would not work; they said they were intimidated, and afraid of the consequences; that the works might be burnt down, and so on. The mob returned again to the mill, between two and three, but by that time the mill was stopped; the mob gave two or three huzzas, and then went away."

Upon cross-examination he says,—"The mill stopped at one o'clock; that was before dinner-time. I do not know the prisoner at the bar, but have seen him; I did not see him there, and do not think I would have known him."

Robert Montgomery.—"I am a master cotton-spinner at Johnstone, and have a mill there; I was in Johnstone in the beginning of April last; my mill was stopped on a Monday, about the 2d of April; a crowd of people came and wished me to stop; the only person I saw in particular, in that crowd, was one of the name of Robert Parker." Here is Parker, the person elected Preses at this meeting, on the Green; he presides at Mr Montgomery's mill. "I had a little conversation with one or two of them; this was about half past two o'clock; they told us it would be as well to stop the mill, till their business would be settled. I had no conversation with Parker; I did not see him do anything; he rather advised to pass the work; he was upon the extremity of the mob, and did not appear active: they came when the workers were at dinner; but the workers did not come in again; the work was stopped in consequence of the people coming to the place; it went on on Thursday afternoon; I cannot state from my own knowledge, that other mills were stopped, for I was not from my own place that day."

John Frazer says, "I live at a house at the foot of New Street, Johnstone; and am a teacher by occupation; I was in Johnstone in the beginning of April last; I know James Speirs; that is the man," pointing to the prisoner. "I was apprehended on the 10th of April; I saw Speirs in the evening of Saturday the first of April, in the main street of Johnstone; I think it was between ten and eleven o'clock;

he came up to me, and shewed me an Address, and we read it together at a shop-counter; I read the whole of that paper; Speirs kept it at that time, and I left the shop, and parted with him; I then went away home. I am a married person; I went home and told my wife what I had seen, and she said she should like to see it; I then went over to Speirs's house; he was not at home, and I left word with his wife, that I wished to see that Address; he came to my house that night, and brought the Address with him; it was not read in my house before Speirs left me, to the best of my recollection; the Address remained with me that night; I think it was the same that he had shewn me in the evening; they were both printed papers, and had the same contents; I read it to my wife, and to a neighbour; it was taken away the next morning by the panel at the bar, as I understood, but I had not delivered it myself; I left it with my wife, with directions to give it to him if he asked for it; I never got it from my wife again; it was addressed to the Inhabitants of Great Britain and Ireland; I think it was dated 1st of April of this year; Glasgow was upon it; and it bore to come from the Committee of Organization, for forming a Provisional Government; I cannot repeat any part of the paper, but it requested the inhabitants of Great Britain and Ireland to take up arms for redress of their grievances, and to procure a voice in choosing their representatives; there was a very warm appeal to the soldiery to join the people; it said, the people were to do this by taking up arms; I forget whether there was anything else in it;" he is shewn the Address produced; "I think it to be the same, as far as I can recollect; most certainly the ideas are the same, to the best of my judgment, and expressed pretty nearly in the same words; I did not see any paper affixed to the walls; I saw one at a distance, but I was not near to it; after Speirs shewed me the Address in the shop, I had very little conversation with him about it; I remarked that it seemed to announce a state of rebellion, and disapproved of it; and Speirs appeared to agree with me." Most unquestionably this witness says, that, in the little conversation he had about this Address, which is no doubt an exact copy of the Address shewn him, Speirs

produced it to him, and he said it appeared of a rebellious nature; that he disapproved of it, and Speirs agreed with him—that is upon the Saturday night; and it is certainly a remarkable feature in this case, that, although it has not appeared in evidence, I see no vestige in this proof; you will look to your notes if you can see any vestige of its having been seen by any one person, at any place, prior to the morning of Sunday the 2d of April; and you have it in evidence, that the prisoner at the Bar was possessed of a copy of it upon the Saturday, the very day that it bears date; when it was posted up I do not know, it is not disclosed in evidence; but the proof in this case, as far as it goes, only shews that persons passing to the chapel discovered a copy posted upon the gate of the chapel upon the morning of the Sunday; the fact here disclosed is, that the prisoner at the bar is in possession of a copy of that treasonable paper; I can term it nothing else than treasonable, and never will term it anything else but treasonable; he is possessed of it on the Saturday; he shews it to this teacher, and, no doubt, this man does say he disapproved of it as of a rebellious nature, as it must have appeared to every loyal man who could read; and Speirs, the prisoner, appeared to agree with him. Now, Gentlemen, we have been told, and reference has been made to the prisoner's declaration that he got this paper in a particular way, that it was brought him by a man of the name of Cairdy, but that he had no farther concern with it; and we are also told, that he did follow the advice that was given him, and destroyed it. I beg leave to say to you, that it is not my intention to trouble you with reading that declaration; you may look at it if you think proper, and you will see whether it does or does not corroborate the rest of the evidence in this case; you heard the competency of the proof discussed; but I will say this of it, that a statement of this description, which it does contain, is not evidence; it is proved to you that Cairdy was the person who gave this man the Address; you have no evidence with regard to it, but the evidence of this witness and his wife, that he, the prisoner at the bar, was in possession of it upon the Saturday night; that he afterwards is one of those who goes to a place where a copy is

posted up on the Sunday; Walker takes it down; he accompanies Walker into that ring; there it is read as a part of the proceedings of that meeting. "Speirs appeared to agree with me; he did not say where he got this paper, nor that he had more of them; he did not tell me that he had seen any other copies, or that there were other copies of it; there was scarcely anything passed between us, but what I have told you, for I was going away home."

Upon cross-examination, he says, "I disapproved of that paper when Speirs shewed it to me, and he appeared to agree with me; I think he shewed it to me out of curiosity; I am very little acquainted with Speirs; I did not tell Speirs what he ought to do with it; I was at home when he brought the paper to my house; when Speirs gave me the paper, he seemed alarmed at the contents of it."

Upon being re-examined, he says, "William Reid was with me at the time Speirs shewed me the paper; when Speirs first came down to me he said, Here is a hand-bill or an address; I had no access to know where he got it; I cannot recollect whether he took it out of his pockets or not, it was darkish; I do not recollect who proposed to go into the shop to read it at the counter; just from their being little acquainted, and Speirs coming up to him and shewing it, he thought he did so from curiosity; it was such a paper, that one who had it would shew another out of curiosity." I really do not understand that, and I presume you will have as much difficulty as I have; I can easily see how a person might have a curiosity to see it, but unless he meant to see how he was to act upon it, it is incomprehensible what this witness says—"it was such a paper that any person might be curious to shew to another; I do not recollect that the prisoner asked me my opinion of the paper at the time, or that Reid asked Speirs if he had any more copies of this paper; and I do not recollect anything else being said."

Marjory Frazer says, "I am wife to Mr John Frazer, schoolmaster in Johnstone; I have seen Speirs before this time, but am not acquainted with him; my husband shewed me a printed paper at my house in the beginning of April; I read it myself; Speirs brought it there; I did not know

him at that time; the man at the bar I know to be the same person who brought it; it was brought about eleven o'clock on a Saturday night in April, before they struck the work; it remained in my house that night; Speirs next day got it from me; I am sure the paper that I gave to him was the same that I read, and the same that he brought to our house; I had been told by my husband to give it to him if he called for it."

Upon her cross-examination, she says, "When Speirs took the paper away, he was going to destroy it; nothing else passed then, or when he brought it on the Saturday night; my husband thanked him for bringing it; I had expressed a wish to see it, and it was on my account the paper was got; I said to my husband, Can you get it? and he said he would go and see if he could get it."

Archibald M'Innes says, "I recollect a meeting at the School-green in Johnstone in April last; I was there; I saw Walker there, and also James Speirs." The prisoner is pointed out to him, and he says, "that is him; two or three spoke to the meeting; Walker read an Address; Speirs said a few words, but I cannot tell what; Lang was there, and Parker the shoemaker; I cannot say how Lang was dressed; I heard some people in the crowd say, that Parker was preses of the meeting; I know Parker very well; I never had a meeting with Parker, nor took a walk with him after that time; I was at the Canal Bridge, and I heard Parker say he was there, but it was dark; this was after the meeting at the School-green, but I cannot exactly say how long, I think it was about two days; I went to the Canal Bridge to get staves; two or three went with me; David Kennoway, Archibald Ballantyne, and James Currie, and I heard them saying at the time, that Parker was there, but it was dark, so that I could not see him; from what the people said, I thought he was there; we got staves there; they were middling long, about seven or eight feet, I think; I cannot tell who gave them to us; I do not know whether they all got them; it was dark, and I did not see who got them, but I think others got them besides myself; bought them; there was a piece of metal at the end of mine, not quite a foot long,

and middling sharp; I paid a shilling for it; I cannot tell how many more were sold, it was dark, and I could not see very well; there were half a dozen people there; it was what they call a pike."

www.libtool.com.cn

On cross-examination, he says, "I was at Hagg Mill and Cartside Mill that day; I did not see the prisoner at Cartside Mill; I was a piece from him on the School-green that day; I heard him say a few words; I did not observe him take an active part more than the rest."

On re-examination, he says, "At the time I saw Speirs at this meeting, he was in the ring; there were three or four others in the ring besides him; Parker was one of them; I did not observe Speirs at the Hagg Mill; I went with the crowd from the Green to the Hagg Mill; we went by the head of Macdowall Street."

Archibald Ballantyne says, "I know Robert Parker; he is a shoemaker in Johnstone; I saw him at a meeting on the School-green in Johnstone on Monday the 3d of April. I know Speirs, I saw him there." The prisoner is then pointed out to him, and he says, "That is the man. I know the Canal Bridge near Johnstone; I was there before the 3d of April." This man says he was there before the 3d, the other man says it was after the meeting. "M'Innes and Kennoway were along with me; Parker was there; we went to meet a man who was to bring us some shafts; I got one from Alexander Cairdy; I paid a shilling for it; it was a stick about seven feet long, a little smoothed; it had nothing at the end of it; I saw other people get shafts, but I saw no iron at the end of them; a shaft is a long stick, with nothing upon it; I never paid a shilling for a long stick with nothing upon it before; Cairdy and Parker were carrying those sticks; I got a pike-head to put upon my stick from Charles Cameron, that was the day after I went to the Canal Bridge to get that shaft; I was told by Alexander Cairdy to go there and get one."

David Kennoway.—"I live at Johnstone; I recollect a strike of work having taken place in the beginning of April; I recollect going one evening about that time to the Canal Bridge, near Johnstone; I do not recollect what day of the

week, it was the 1st, 2d, or 3d of April, and it was about the time of striking work; I do not recollect who I saw there; I think M'Innes and Ballantyne were there; I saw Cairdy there and Parker; when I went there I got what I suppose to be a pike, with a shaft to it; I do not know who brought it there, or who had it; I do not believe Parker had it."

Now, Gentlemen, with regard to this instrument, which is of this nature, if you believe these witnesses, either a day or two after, or a day or two before or about the time of the strike of work, there was a meeting of persons at a place called the Canal Bridge,—I presume the bridge over the Johnstone and Glasgow Canal,—where a person of the name of Cairdy, and two or three witnesses whose depositions I have read, and this Robert Parker, the Preses at the meeting at the School-green, this extraordinary character, as a witness called him one meeting, are,—I presume you can have no doubt whatever,—for the purpose of getting shafts, as these witnesses very modestly describe them; but being pressed a little, one of them states it was a pike, the other states it to be a shaft without a pike, but he got a pike for it at a future time from another person. Now, Gentlemen, although the Lord Advocate has stated to you, and I can have no wish to put matters to you in a stronger point of view, that he only founded upon this instrument in reference to the conduct of Parker, who was at the Green and the Cartside meeting, who took an active part in the meeting, although he founds on this as to Parker only as indicating the purposes these persons had in view, and particularly that which Parker had in view, if you believe the evidence, it is a circumstance of some importance in this case; it does not appear to me to be a subject at all to be held as light or ridiculous, because connected with this striking of work, connected with the resolution taken in furtherance of that paper; if you are satisfied that fact is made out, it is a circumstance worthy of attention, that at least one of the persons who took an active part in that meeting is at a place where instruments like these are got for a shilling a-piece, and are got by some persons there assembled—what is the

effect of it, is for you to consider, but I state it as a circumstance not of an unimportant nature.

Now, I will not detain you with reading the notes of Brown or Motherwell, as to that notice, to produce the Address, because that was settled; neither do I think it necessary to detain you with reading the depositions of Mr Campbell, the Sheriff-Substitute, or Mr Motherwell, as to the mode in which the examination was made; it passed in your hearing, and the Court admitted the declaration was evidence; and you will have an opportunity to read it. I do not mean to trouble you with it; but there is a part of the deposition of Mr Brown, which may be considered as of a general nature, in respect to the state of Paisley at the time, when this striking of work took place. "I am Superintendant of the Police in Paisley, and I was so in the beginning of last April; I had occasion, in the course of my duty, about that time, to observe the state of Paisley; there was nothing very particular on Saturday; the people were generally at work on that day; and all the cotton works in the neighbourhood, so far as I heard; on the Monday, the operatives generally struck in Paisley; a great many weavers were in the streets, and appeared to be totally idle; some of the masons wrought upon the Monday, but upon the Tuesday they did not; there was considerable alarm in the town; the shops were closed on the Monday; and, in the public streets, they had their window-shutters on, the greatest part of the day. I received information on Saturday morning, which led me particularly to desire the watchmen to be on the alert. On the Sunday morning they brought in an Address to the Inhabitants of Great Britain and Ireland, dated Glasgow, the first of April; they brought various copies; Johnstone is about three miles from Paisley; it is in the Abbey parish of Paisley; the suspension of labour continued till Thursday; on Thursday a great many people returned to work; unusual precautions were taken by the civil and military authorities in the town, to preserve the public peace, and a great many military were brought to town."

Now, Gentlemen, this is evidence that there was this

general striking of work—that there was this general giving up of public and private works, and that the working population, the weavers of this town, were in this state of idleness—were in the exact state recommended by this Address—of ceasing from all labour, from and after the first day of April; that it was not so much so on the Saturday, but on the Monday there was a great change. He states the nature of that alarm—he states the necessity that occurred for uncommon exertions to be made on the part of the civil and military—that Johnstone is two miles and a half, or three miles, from Paisley; and you have in evidence the measures taken to bring about a total cessation of work in Johnstone and its neighbourhood; therefore you will consider this general recommendation of the Address was carried into effect in this neighbourhood, to the considerable effect described.

Andrew Caldwell says, "I recollect a meeting at the School-green at Johnstone, on the first Monday of April; I saw it; I know John Lang; I did not see him there; I saw him that day pass the toll-road, going along to Cartside Mill; he was along with the crowd; that was the same crowd that was at the School-green; I saw that crowd go from the School-green along there; they went to the Cartside Mill; Lang had on a jacket and a bear-skin cap."

You have then a verification of a summons, given to this man, Alexander Cairdy, to appear as a witness, but who did not appear as a witness.

Now, Gentlemen, such is the evidence on the part of the prosecution; and I am now to call your attention, with equal anxiety, that you should see the whole of it, to the evidence on behalf of the prisoner. Neil M'Vicar says, "I am a cotton spinner at Mr King's Mill, at Eldersley, about two miles and a half from Paisley; there was a crowd passed the mill one afternoon, in the beginning of April; Mr King has two mills; Eldersley is about a mile from Mr Houstoun's Laigh Mill; I was at that mill that day, and saw a crowd there after ten o'clock; I know the prisoner at the bar; I saw him with the crowd at that mill; did he appear to you to be taking any active part with that crowd?

None, sir; I saw the crowd go away from the Laigh or Old Mill, and proceed to the Green, in Johnstone; Mr Campbell has a house near there; I saw the crowd opposite to it; I did not particularize the prisoner from among the rest there; I did not hear him say anything; I saw him at the Laigh Mill; but I did not see him before Mr Campbell's house; I was upon the School-green between ten and twelve; I cannot say the exact time; I saw the prisoner at the bar there; I do not think that he did any more than the rest; there was a number of people there; I heard the people call out to a man, whom I understood to be Lang, to give them an Address from England; they called out "English Lang," a small slender man with a hat on; I heard the Address read by a man whom I understood to be Walker; I heard the prisoner at the bar say nothing, except declining to have anything to do with President; some were shouting out for him to be Preses, and he declined, and said he would have nothing to do with it." You will therefore see from this part of the deposition, that it was asserted that some person had proposed him to be the Preses of the meeting, and the prisoner declined it. "One Parker, I believe, was made Preses, but I do not know; I heard his name called out upon that occasion; I heard Walker commenting a little upon the Spanish soldiery; the Address referred to that; he commented a little on the conduct of the Spanish soldiery, when he was reading the Address, but I swear positively that I heard nobody refer to bloodshed." So that you see, this witness, called for the prisoner, does confirm the other witnesses, who speak at least to one comment by Walker, upon that part of the Address which relates to the Spanish soldiery.

On cross-examination, he says, "Our mill is about a mile from the Old Mill belonging to Mr Houstoun; there are a number of small mills between Mr King's mill and the Old Mill; Mr King has no other mill near to the Old Mill; I saw the crowd at the Old Mill, and Speirs was with them; sometimes I was in the midst of a considerable part of the crowd, and sometimes on the outside, just as I could get along; they walked up and down before the mill; some-

times a great number were speaking at once, sometimes they were inaudible; there was a cry about stopping the mill; Mr Houstoun came down the street at the time the mob was there; I did not see Speirs doing anything, or speak to any one; I saw a circle formed in the crowd; there was some person within that circle, but I could not say who it was; I saw two men, whom I did not know; they went and spoke to Mr Houstoun, but I did not know what they said to him; I was at a considerable distance at that time; I could see the men, but I had no acquaintance with them; I saw them at a distance, and did not know them at all; I could not say how they were dressed; I did not pay particular attention to it; I do not recollect how Speirs was dressed; I thought he had on a corduroy jacket." Now, Gentlemen, just compare this part of the cross-examination of this witness, who is brought to negative the proceedings of Speirs at the Old Mill, and say whether you can listen to this negative statement of Speirs not taking any part, and of his not being one of those two men who went with Mr Houstoun and Walker; whether your faith is to be given to one set of men, or to this man? "I do not recollect how Speirs was dressed; I thought he had on a corduroy jacket; I was at the School-green, and saw the meeting there; there was a circle formed there; there were three or four men within that circle; Speirs was within it, and Walker, and Parker, and one Smellie; Parker was appointed Preses by a shew of hands; some person proposed him from the outside of the circle; it went round very generally; I heard nothing, except the Address read, and English Lang's comments upon the propriety of stopping public works; I think he said he had come from Glasgow; and that they had all stopped there; he had only come from Kilbarchan, I understood, though he said he had come from Glasgow; the crowd gave three cheers; after that, they went away from the Green toward Hagg Mill; but whether they went there or not, I cannot say, for I did not follow them; I saw the man that read the Address, and heard him called Walker; he was the same that was walking with Mr Houstoun." So that is at least one of the persons walking with Mr Houstoun now

fixed by this man. "He had on, I think, a short blue coat, but I cannot say what kind of trowsers he had on; I cannot say what the other man, who was with Mr Houstoun, had on; I knew Walker perfectly well to look to, and saw him very often; I had no personal acquaintance with him; a corduroy jacket is a common dress for the weavers; numbers have them."

William Clark.—"I am a cotton-spinner at Mr King's work at Eldersley; the Old Mill, belonging to Mr Houstoun, is about a mile or a mile and a half off; I was there early in April; I believe on the second day of the month; it was the first Monday in it; I saw a number of people walking to and fro there; I know the prisoner at the bar; I saw him there, but I did not see him taking any leading part; I saw a crowd opposite Mr Campbell's house; I cannot say that I saw the prisoner there; I do not doubt but I might; I do not suppose the crowd halted there at all; I was an eye-witness to their going past; I did not hear the prisoner mention one syllable at that time; I know James Walker; I saw him coming along amongst the crowd from Mr Houstoun's mill; I was on the School-green at Johnstone on that day; I saw a number of people there; I saw the prisoner there; I did not hear him address anything to that assembly; I heard a man of the name of Robert Parker say a few words to them; I did not hear anybody else, to my knowledge; I saw Speirs, Parker, and Walker in the ring; I did not hear Speirs say one single syllable the whole day; I did not see the smallest thing that attracted my attention; Speirs was walking among the crowd, the same as the other spectators; this refers to any part of the day, except at the time of his being in the circle; I was alluding to the crowd going back—the whole multitude, when I said the spectators; he was there like any other of the spectators, and he did the same as the rest of the crowd that was going to and fro; there were a good many persons assembled on the School-green; I could not positively say how long it lasted; I was not there upon the first assemblage; I only happened to be there by chance; when I arrived, there was a man reading the Address; I cannot say how long it was

before the meeting broke up; I really could not say whether it was an hour." Here is a person just with the same difficulty Mr Smith had, in fixing the time of the meeting. "I do not recollect any show of hands on the School-green."

Being cross-examined, he says, "I left my work that day at breakfast-time; I had no particular reason for leaving it; It was at the meal-hour; we had not our master's leave; we were informed the works in Johnstone were all stopped, and we went down to see whether they were or not; we had heard of it in the morning, before nine o'clock; the other workmen at our mill struck work; I went to Johnstone with others; I could not say the number that went with me; there might be twelve or fourteen, and I went with them; when we got to Johnstone, we went to what we call the New Mill, belonging to Watt and Logan; that was just immediately after breakfast, and shortly after ten; we met no other people in our way to Logan's mill; there were a number in the street; we went straight down to Logan's mill; about the same number of men from the street as from King's mill went with us; we walked along as if taking a walk; we saw the workers at Logan's mill all standing out at the door; there were none, to my knowledge, but the workers and the people that went with me; I cannot say how many went with us along the front of Logan's mill; there were a number on the street went with us; I did not see Walker or the man at the bar there; after we left Logan's mill, I went to my mother's, in Johnstone; I did not enter the house, I only stood at the door about a quarter of an hour, and then I went up the town, straight up to the cross; there were people standing there; more than are in the streets in general; I went away from that, round Mr Houstoun's estate, and came down upon the School-green; coming from the New Mill to my mother's, I passed the Old Mill; I was not at it at all; I went with the crowd from Logan's mill to Houstoun's; that was in the way to my mother's house; I was not down at the work where the crowd was; I was between the end of Mr Campbell's office and the end of Mr Houston's mill, about twelve yards from Mr

Houstoun's mill; I could not say the number of people that were at Mr Houstoun's mill, but there might be as many as now are round here," looking to the audience; "I was not standing alone, I was standing in the middle of a few men; the body of the people were down at the work at the entry of the *mill*; I neither heard nor saw anything but a multitude of people; I might remain there about fifteen minutes; the crowd were not making a great noise; I did not see what took place down at the work; I saw Speirs when they were coming up from the work, leaving it; I had not seen him that day before that; he had on a corduroy jacket; I staid there till the crowd left Johnstone's mill, and then went straight to my father's house in the High Street, at the west end of the town; I passed Mr Campbell's house in going to my father's house, along with the crowd; I joined them when they were coming up from the work, going by Campbell's; I saw Speirs passing Campbell's along with the crowd; he was then in the centre of the street; I do not recollect the crowd stopping there; after they left Houstoun's Mill, I think they went on; I left the crowd and went to my father's, and then I went to the School-green; I heard Walker reading the Address to the meeting; there was a ring formed, and he was standing in the ring and reading it; from the circle at the part where I was, I could not hear it on account of the noise; went immediately after the Address was read; I do not know whether it was finished or not when I went away; when I saw Speirs he was in the ring; after leaving the School-green, I went down to a house in the town, to get some refreshment; I was there possibly an hour; I was not at the Hagg Mill again, and was not again at the School-green that day; I could not say whether there were four or five with Speirs in the ring; I cannot say how large the ring was; the ring was pretty well kept; there might be more people at the School-green than at Houstoun's mill; when I first saw Speirs at the School-green, he was within the circle, and was there during the whole time that I saw him at the School-green; I heard that there was to be a meeting at the School-green when I went to take a walk."

Upon being re-examined, "I cannot say that a corduroy jacket is an ordinary dress among the weavers; one has one garb, and another another; many persons wear corduroy jackets in this part of the country; there were a number of them at the meeting; Mr Campbell's office is in Collier's Street, that is the street adjoining Mr Houstoun's mill, which is in the same street; Mr Campbell's house and office are on the same side of the street with the mill, with a passage between the two gables; this passage leads to the works, or up the town; when I was standing at Mr Campbell's office, I was standing in the street which led up the town."

William Blackburn says, "I worked in the wareroom at Mr King's at Eldersley, as a bundler; Mr Houstoun's mills are near that; I know the Laigh Mill; I remember being there the beginning of April; I cannot say the day, but it was on a Monday; I saw nothing there; I saw a crowd there; I know Speirs, and have known him two years; I saw him there; he was going through the crowd like the rest of the men; I know the School-green at Johnstone; I was there that day; there was a crowd there; I saw Speirs there; he was going through the crowd, but I heard him say nothing."

On cross-examination, he says, "I have had no conversation with any person about the subject of this trial; I was not in Johnstone last week at a meeting, or at Eldersley; I have had no conversation with any of the relations or friends of the prisoner about the subject of this trial at any time."

Thomas Logan, a cotton-spinner at Mr King's mill at Eldersley, says, "I know the prisoner at the bar, James Speirs, by sight, but I am not particularly acquainted with him; I remember a crowd at Mr Houstoun's Laigh Mill on the 3d of April last; I saw a crowd leave the mill at that time; I know Mr Campbell's house in that neighbourhood; it is not far from the Laigh Mill; I was in the middle of the road opposite his door at the time they were leaving Mr Houstoun's mill; I saw Walker that day, but I did not know him by sight; all that I heard was, that a man called Walker was saying from the crowd that the people were de-

luded, such as Mr Houstoun; I did not hear anybody else speak from the crowd; I saw the prisoner at the bar opposite Mr Campbell's house; he was near me; I knew him at that time by sight; he was going through the crowd, like other spectators. Did you hear him say anything on that occasion? No.—(By the Court.) A great many men were standing together when I was opposite Campbell's, and heard the speech made; I do not recollect that there was a ring there; there was no ring formed there in my presence; they remained there about ten minutes; I heard nothing there about a meeting to be held upon the School-green in Johnstone on that day; I went up to near the Cross with the crowd, and remained there for a good part of the day; I moved with the crowd; when the words about Mr Houstoun being deluded were uttered, the people said they were uttered by Walker; I did not hear anything said by any person but Walker at that time; the prisoner was opposite Mr Campbell's house, as another spectator; if any person made a speech, the rest were all spectators of him; I was there as a spectator." He was asked to explain what he meant by being a spectator; he says, "If any person was to speak, all the rest would be spectators there but him; I was a spectator, and heard that man say these words; I went to see what the rest went to see, but I cannot tell what it was; I mean to say upon my oath," after being most emphatically adjured by my brother on my right hand, "I mean to say upon my oath, that the persons who were there were merely there as spectators, as the audience here may be said to be;" that is the account which this person gives in explaining what he meant, that all he meant was, that they were speakers, as those in this Court appeared to him to be. Gentlemen, it is upon the faith of this witness that a doubt is to be raised in your minds of the expressions used by the prisoner in the hearing of Mr Campbell or Mr Archibald; and this man says he heard those words, deluded men, uttered opposite Mr Campbell's house by Walker; he states, that he heard no other body speak on that occasion; nothing about the meeting on the School-green; whereas, in the evidence of Mr Campbell and Mr Archibald, there was an invitation by Speirs to come to this meeting in the

words I have spoken to; and he said that he was sure all would come but deluded men, and another said, such as Mr Houstoun; it is for you, taking into consideration his demeanour, and the manner of his giving that answer, to judge whether you are entitled to give credit to him, and to disbelieve the statement given by Mr Campbell and Mr Archibald as to the deliberate cause of this crowd, and Speirs addressing them—the ring, and as to which ring, and the stopping before which door, you have other witnesses—it is your province, throughout the whole of the evidence to judge of the effect due to it; and I state now, once and for all, what I beg you to consider with reference to every remark on my part, that you are not to pay any regard to my remarks, unless they coincide with the view you take in your own minds in an impartial review of the whole evidence; but if you concur with me in the observations I make on the evidence, then, upon the testimony of this man as to this fact, I have no difficulty in thinking that the truth lies in the statement given by Mr Archibald and Mr Campbell; and that there is nothing that this man has said, or in the way and manner in which he gave his evidence, which can lead you to believe those gentlemen have stated anything on their oaths, but the truth, according to the best of their recollection; but it is for you to form an opinion upon it. I have brought his evidence before you—you are to judge of it, and give it what effect you think it deserves.

Archibald M'Nicoll says, "I am a sawyer in Mr Smith's employ; his yard is situated upon the east end of Johnstone, in William Street; the corner of our wood-yard adjoins the corner of the School-green; I remember a meeting upon the School-green in April last; I cannot say what was the purport of the meeting, but a man came forward and read a paper to the meeting, that was James Walker; I know the prisoner at the bar, James Speirs; he was at that meeting; I could not say that I heard or saw any particular part that he did or said; I do not remember his making any speech; I could not hear particularly what was said, I being at the outside of the meeting, and the men huzzaing; I heard the Address read by Walker; I was just beside my master, Mr

Smith; my partner in working, Robert Burnett, was with me; I could not tell exactly how long the meeting lasted; I was in the wood-yard when the meeting began, and saw it over the dike; I saw them go off the Green, it was immediately before dinner-time; our dinner-time is two o'clock; I could not positively mention the hour it commenced."

On cross-examination, he says, "I am a sawyer with Mr Smith; this meeting was at the time of a general strike of work; I was working occasionally at that time, and occasionally not; we went up to work at the usual hour in the morning, and came back to our breakfast at nine, and did not return any more; our business was not very pressing; we might have had work that day, but there was nothing to be done, except with our own pleasure; our master neither desired nor forbid us; we worked again on the Thursday; I heard the Address read in part, and part I did not; I cannot tell what I heard, because I did not fix it in my mind; not thinking I was to be called on again, I paid no attention to it; I could not tell if it was an Address at that time; I heard it talked of, and saw a paper similar," as he was told, "on the church-stile on the day before; I could not get to it so as to distinguish the letters, there was such a crowd about it at the time; I heard the whole paper read, but there were times when the crowd got into such a bustle, that some could not hear the whole of it; they were pressing forward and shouting; there were huzzas; I could not say there were any remarks made upon any part of it; I cannot specify the time I remained there, but I remained there till such time as they were leaving the Green." Now, Gentlemen, looking to this man's evidence, and taking the fact to be, that he was standing near his master, Mr Smith, and taking his master's account, you will consider all this negative evidence, not taking upon him to swear that other facts disclosed by Smith and other persons did not take place, but only that he did not hear—that he did not recollect—that he did not pay any particular attention from where he was to what those persons were doing. Take that into consideration, and give it what effect you please; but I apprehend you will think that the positive evidence of other witnesses as to what pass-

ed in their hearing cannot be thrown out of your view, supposing there were ten other persons like M'Nicoll saying they did not hear what passed.

George Thomson is a cotton-spinner; he says, "I remember a meeting in the School-green of Johnstone early in April last; I work in Logan and Watt's works in Johnstone; I believe the meeting was on the 3d day of April; I was at it; I know the prisoner Speirs; I saw him there; I saw him make no speeches."

Andrew Smith says, "I am a weaver in Millerstone, on the road to Johnstone; I remember the meeting on the School-green at Johnstone on the 3d of April; I was there at the first part; I was on the outside of the ring, but I was jostled by the crowd within a very little of the front; I know Speirs by passing backward and forwards on the road; I had no personal acquaintance with him; on my going to the meeting I got down into the front; and, coming back in a little time, I saw the mob getting together; a ring was formed, and a cry for a Preses to be chosen; this was the first thing I observed; Parker was elected Preses; two men were mentioned, and he was the one who was chosen; it was put to them whether any person knew the occasion of the meeting; none of them appeared to know; one person said, he could give nothing but the paper which was posted up on the Sunday. There were heaps of that paper circulated through the places. He said, he thought most of them there had heard of it, or seen it before; and some of the crowd said, 'Read it—it was none the worse to be heard again'—he read it, but who it was I do not know; it was not the panel; I did not hear the panel make any speech at the meeting; I staid till the meeting broke up; the crowd then marched away along the road leading to Kilbarchan; I followed the crowd at some distance; and whilst I was looking about I saw the panel; I saw a mill a good way from where I stood, which I was told was the Hagg Mill; at the time I saw Speirs he was standing alone with his hands in his pocket; at that time I was at the back side of the greatest mob not above six yards from the prisoner, between him and the crowd; the crowd were between me and the mill."

On the cross-examination, he says, "I was at the School-

green meeting; when I got there I saw a great deal of people lying, some on the grass and some on the dyke," waiting for the meeting, I presume; "I went up, and found I knew none of them; I staid a considerable time; they made a ring; I was then on the top of the hill going on to the Green; when the ring was made I was on the outside, and they cried to make the ring bigger, there was so many there, to give them room; I had got then within a little of the front, and was standing straight forenent the panel; when I first went there, I heard something about a Preses; and there were two men nominated—one was Parker; I do not know the name of the other, but it was not Speirs; I mind perfectly well it was not Speirs." You remember M'Vicar's evidence, that he heard Speirs positively decline being Preses. "When the man came forward with Parker, and was rejected, he returned back again to the crowd; when his name was mentioned, he burst through the crowd into the ring, and stood along with the front; he never spoke; he was just by me; the panel at that time was standing exactly opposite to me; he was in front of the ring, just in front of the crowd; Parker was in the middle of the ring, and one or two were round him; I never saw Speirs within the ring, but when he was jostled by the crowd; I had no intention of going to the School-green; I knew nothing about it; I was going for a walk, and was called back by several of our neighbours to see what was going on; I left home at past ten, or about ten o'clock in the morning; I had struck work at this time; I was coming from Johnstone that day, and I asked a man if he knew what that mill was, whether it was a mill, and he said it was the Hagg Mill; I do not know why I asked him that."

Alexander Thomson says, "I am a weaver, and work in Johnstone, in the employment of Alexander Renfrew." Now, Gentlemen, unless you ask it of me to read this deposition, which I am perfectly ready to do from beginning to end, the examination of this man in chief, and his cross-examination, and the re-examination, and that remarkable part of what took place, I do not intend to do so; if you wish it read, I have fully taken it down, and shall certainly with

great satisfaction comply with your request; but I do most entirely concur in the energetic and emphatic observation made by the Judge who is not now present—"I hope to God you will never make such a figure again on your oath." That is the opinion that I have of this man's whole deposition, the first as well as the last of it, and unless you ask it of me, I do not wish to read it.

Foreman of the Jury.—The Jury had rather decline hearing it; they are satisfied.

Lord Justice-Clerk.—Then I have a very short task remaining, which is just to read what is stated by the other witnesses.

Ellen M'Queen says, "I keep a public-house at Cartside Bridge; I remember a crowd coming to Cartside Mill in the beginning of April, I think the 3d, but I am not quite sure; I saw Speirs that day; I have known him about three years; and a soberer man I never met; he and another gentleman came into my house and bought a gill of whisky; it was before the mob was at the mill; I do not know how long they remained; it was till the mob was beginning to remove; I do not know who the other gentleman was that was with him."

Malcolm Frazer says, "I was a serjeant and serjeant-major in the 26th regiment; I have known Speirs upwards of six years in the regiment; he bore a fair character, and promised to be an ornament to the service, if he had continued; he joined when a boy; he was a lance corporal, full corporal, lance serjeant, and drill serjeant; he left the regiment on account of a complaint in his breast." A paper was shewn to him, and he said, "I do not recollect the signature at present; Major Condly commanded at the time; I know the signature now—it is that of the captain in the depot"—so that he corrected himself—"he was employed in the recruiting service for some time, how long I do not know; he was active in getting troops, as far as came within my knowledge, but he was absent some time, and then I could not say." And the recommendation was read to you by consent, and gave him a good character.

James Campbell says, "I am a teacher in Johnstone, and

have known Speirs five years, that is, ever since he was discharged; as far as I know, he was an industrious, sober, peaceable man."

David Boyle says, "I am a weaver by trade; I have known Speirs about three years, and been personally acquainted with him for two; I took him to be a quiet, peaceable kind of man, and, as far as I know, he was industrious."

John M'Millan says, "I am a wright, and have known Speirs about two years; and, during that time, he was a fair, decent, honest kind of man, as far as I know."

Gentlemen, such is the whole evidence which has been adduced in this case, in support of the charge exhibited against the prisoner, and in opposition to it. Upon this evidence, after having detained you so long, I have no intention of fatiguing you with any length of observation. It appears to me, Gentlemen, that, in reference to the two counts, and particularly upon the last count, that of a charge of compassing, and intending to levy war against the King, to compel him, by force, or constraint, to change his measures or counsels, two questions do arise for your consideration; first, whether there was actual conspiracy to levy war; and, secondly, what was the true nature and object of it; and that, if you are satisfied, on a careful and attentive consideration of the evidence, that a connexion with a treasonable Address, dated, Glasgow, 1st of April, 1820, and bearing to be issued by the Committee of Organisation for forming a Provisional Government, has been fixed upon the prisoner—if you are of opinion, that those overt acts, which are stated in this indictment, and to which I before called your attention, namely, the publishing and posting up a Treasonable Address to the Inhabitants of Great Britain, and forcing divers subjects to discharge and turn off their workmen, and for striking work, and compelling others to do the same, have been established by satisfactory evidence—that there was, in fact, a treasonable conspiracy to levy war entered into and acted upon; and that, in that conspiracy, the prisoner at the bar was engaged, it will then be for you to consider the other question, what was the true object of that war, which was so conspired to be levied. You

will consider the evidence that I have brought to your notice, in reference to this document—you will consider the evidence you have of its being in the possession of the prisoner on the first of April, the day of its date, and its being taken down by a person in whose company he was, and its being carried by that person, whom the prisoner accompanied to the ring at Johnstone; that it was there read to a considerable number of persons assembled; that it was commented upon, and received with cheers; that it was subsequently followed by a resolution put to the meeting, and adopted as the general sentiment of those who composed the ring, to go and stop all the works, as other works had been stopped elsewhere; you will consider it also, with reference to that resolution being carried into effect by the proceedings at the Hagg Mill and Cartside Mill, which followed; and you will take into your consideration the proceedings that took place at Logan's Mill and Houstoun's Old Mill, which were prior to the meeting, but in which it is clearly proved the prisoner at the bar had a concern, of the extent of which it is for you to judge upon the evidence I have called your attention to—you will take all this into your consideration, and not overlook that part of the evidence upon which you are to say whether it does establish or does not establish that the prisoner at the bar had an active concern in calling the meeting, or, at least, in inviting persons to that meeting, held upon the School-green, by the proceedings which took place opposite to the house of Mr Campbell. If you are satisfied that there was this conspiracy, you are then to consider whether it was to levy war for the purpose of compelling the King, by force or constraint, to alter his counsels or measures, or whether it was a public war, of a public nature, which, according to the authorities to which I referred, has been settled and adjudged to amount to an overt act of compassing and imagining the death of the King.

Now, Gentlemen, upon the subject of such a conspiracy, the nature and object of a war so conspired, I apprehend it is to be discovered in the proceedings of those who are supposed to be engaged in it; and, above all, you are to consider the public written and printed declarations which

are made the foundation of the proceedings of the persons who are stated to have been engaged in the conspiracy. You will naturally have recourse to the document which I have so often alluded to; you will consider it coolly and dispassionately; and will, in the discharge of the sacred duty committed to you, say whether you can entertain any reasonable ground of doubt that it manifests that the insurrection or rising which is there not only contemplated, but expressly recommended, enjoined, excited, and endeavoured to be brought about, is a rising and insurrection of a public nature, directed against the whole frame and fabric of the constitution of these realms—against the royal authority of the King—against his Royal Majesty, if not directly levelled against his person, inasmuch as it appears to be the act of a committee of organization for forming a Provisional Government, which never could and never can be formed but by putting down the King—by deposing the King from his royal state and dignity—utterly superseding him in the realm—and assuming all the powers, authorities, and functions of the government of the state—that I state to you appears to me to be the clear purpose indicated by the language, and upon the face of that document. It is for you to say, in the discharge of your sacred duty, if you can have a different view of the matter; but if you have not, and feel that it is part of the public object I have alluded to, and calls to that general public rising and insurrection, then, Gentlemen, it remains for you to consider whether or not sufficient evidence has been produced on the part of the prosecution, to shew that the prisoner at the bar was a person concerned in that conspiracy, taking a part in the furtherance and execution of it; and as such, answerable under the charges contained in this indictment.

You know, Gentlemen, that in Treason there are no accessaries. All those who take part in treasonable proceedings, whether they come in later or earlier into the conspiracy—whether they take one part or another in that conspiracy, if they are proved to take part in the furtherance of it, they are answerable for the conduct and proceedings of the conspirators at large; you are, therefore, carefully to consi-

der the evidence I have brought under your notice, and say whether you think that the proceedings that were adopted for the stopping of these public works, and the way and manner in which they were carried on by an express declaration that the demand was made in the name of the Provisional Government, and that the persons who were called on to stop divers works were warned what would be the consequence—that no damage would be paid if they continued working—you will consider how the stoppages took place, and whether they do not clearly bear out what is called a recommendation, but what is little short of an order, in that publication; you will then consider the evidence that persons were intimidated and obliged to strike work in consequence. Upon that you have a body of evidence I shall not comment upon. Lastly, I state it as deserving of your deliberate consideration, that if you are of opinion the evidence is sufficient to shew that the prisoner at the bar was with Walker at the time when he took down this Address from the gate of the porch of the chapel of Johnstone, and carried it to the meeting upon the School-green and there read it,—if you believe that evidence, I state to you, in point of law, that that is a publication of the document now upon the table; and, therefore, it will be for you to consider whether it does not come directly under that third overt act in this indictment of publishing a treasonable Address to the Inhabitants of Great Britain and Ireland. I state it to you without hesitation, and have repeated it perhaps too often already, that it is, in my opinion, a treasonable Address; if you are of opinion that the prisoner was so connected with Walker, (and you recollect how he is proved to have been linked with Walker during that morning,) and that Walker admitted he had taken it down and read it to a crowd, greater than the meeting at the Old Mill, for the witness said the meeting at the Green was larger than the one at the Old Mill; then I say to you that is a publication of that Address.

Having brought the case thus fully under your consideration, I have now only to say, that if the facts were of a doubtful nature—nay, if they were involved in difficulty or in ob-

acurity—if they were such as you could not see your way through them—if they were such as created reasonable doubts in your mind, as to their sufficiency, you certainly would be bound to take into your consideration, the fair character which the witnesses have given of this man, in the depositions that I have distinctly read to you; but, upon the other hand, if the evidence does not appear to you to be doubtful or ambiguous—if you think it amounts to a clear proof of what you consider, on the face of this indictment, to be sufficient overt acts of the intention and purpose of compassing and imagining to levy war against the King—an insurrection, by force and constraint, to compel him to alter his measures and counsels, then I apprehend you will think, that, however you may regret that a person has been involved in these proceedings who had a fair character, the duty, on your oath, which you owe to yourselves, and to your God, will leave you no alternative on the matter. If the case is attended with doubt or difficulty, you are to give the prisoner the benefit of the doubt; but if it is not involved in doubt, I am perfectly convinced the Jury I have now the honour to address know their duty too well to require anything more to be said, than that it is upon the evidence, and upon the evidence alone, without listening to the observations on either side, or the comments or opinions of the Court, further than they deserve, and are entitled to, their verdict is now to be returned.

The Jury withdrew, at twenty minutes before four on Thursday morning, and returned in one hour and twenty minutes.

Foreman of the Jury.—The Jury have found the prisoner guilty of the fifteenth overt act in the first count of the indictment, and unanimously recommend him to mercy, on account of his former good conduct.

Lord Justice Clerk.—Then you find him guilty on the first count.

Foreman of the Jury.—That is rather implied, I believe.

I was desired to ask the question, but I stated it was implied. There are some scruples in finding the first count generally.

Lord Justice Clerk.—I thought I explained the law to you. If you found any overt act on which you were satisfied the prisoner was guilty, you might find guilty upon that count; if one overt act is found proved, you must find him guilty upon the count.

A Juryman.—We cannot find him guilty upon that whole count.

Mr Grant.—The Jury may find a special verdict, if they think it right.

Lord Justice Clerk.—You had better consider of it again, Gentlemen. If you wish any explanation, we will give it.

A Juryman.—We understood the law permitted us to find him guilty of one overt act, without finding him guilty of the whole.

Lord Justice Clerk.—Most certainly; but if you think him guilty of that overt act, there are four counts in the indictment.

A Juryman.—It is only on that overt act that we can find him guilty; we cannot find him guilty on any other overt act.

Mr Grant.—Then there is a special verdict, which the Jury may return.

Lord Justice Clerk.—It should be a verdict on the first count; but they may go back and consider it.

A Juryman.—We have made up our minds upon that act.

Lord Justice Clerk.—I thought I had explained that there were certain acts applying to the counts; and that if one overt act is proved to shew the treasonable intent, that is sufficient to find the Treason; if you are satisfied of that, you are so to find it.

Mr Grant.—That is not sufficient to found it; the Jury find a special verdict; and upon that special verdict, a point of law arises.

Lord Justice Clerk.—There is no finding of a special verdict. Gentlemen, you had better see whether you can, or

cannot, find him guilty on one or other of the counts. Finding him guilty on a particular count, by no means implies finding him guilty on the whole of the overt acts.

A Juryman.—Will your Lordship allow a written verdict? We find him guilty of the fifteenth overt act; and we recommend him to mercy; but we cannot find him guilty of the whole count.

Lord Justice Clerk.—There are four counts in the indictment; one is the compassing and imagining the death of the King; another is the levying war against the King; another is a compassing, imagining, devising, and intending to put the King to death; and the fourth is compassing, imagining, devising, and intending to levy war against the King, to compel him to change his measures and counsels. Now, there are nineteen overt acts that apply to the first, to the third, and to the fourth counts; and the levying war stands by itself; the actual levying war is an act corresponding to that second count; but there are nineteen overt acts which are stated to shew the Treason charged; whether you arrive to the conclusion, by finding one overt act, or five, I cannot help it.

A Juryman.—It remains for us to determine that.

Lord Justice Clerk.—Certainly.

Foreman of the Jury.—There were some scruples; we thought by finding a particular overt act, that might make an impression upon the Court.

Mr Grant.—The Jury, as I take it, mean to find a special verdict.

Lord Justice Clerk.—Do you mean to find a special verdict?

A Juryman.—It is a special verdict we wish to find.

Lord Justice Clerk.—You may find certain facts, so that we may take them down on the record; but there is no written verdict in this Court.

A Juryman.—We consider this a special verdict.

Mr Grant.—Of course the Court will suggest to the Jury, that they will acquit the prisoner on the other counts.

Lord Justice Clerk.—The clerk regulates that.

The Jury again withdrew for a few minutes, and then returned into Court.

Foreman of the Jury.—With the permission of the Court, the Jury have found a special verdict; finding him guilty upon the fifteenth overt act of the first count, to wit, *for striking work, and compelling and persuading others to do the same.*

Lord Justice Clerk.—That is the abstract; would not it be right to attend to the words of the indictment?

The fifteenth overt act of the first count was read to the Jury.

Foreman of the Jury.—It is the wish of the Jury that he should be recommended to mercy, in consequence of his former good character.

Mr Knapp.—Then you find the whole count?

Foreman of the Jury.—We find the fifteenth overt act, as read by the clerk.

Lord Justice Clerk.—I am sorry to tell you, I fairly confess, that not being conversant with entering verdicts in such cases, I wish to have the assistance of a person who knows a great deal more about it; and I am under the painful necessity of requesting you to take your seats again, before the record is made up of your verdict.

After some time, the Lord Chief Baron came into Court.

Mr Grant.—I apprehend the Jury are not exactly aware of the means of effecting what I apprehend is their purpose.

Lord Justice Clerk.—Let the question be again put.

Mr Grant.—If the Jury return a verdict not on the count, there is an end.

Lord Justice Clerk.—Be so good, Gentlemen, as to attend.

Mr Knapp.—Are you agreed, Gentlemen? How say you, is the prisoner at the bar guilty, or not guilty?

Foreman of the Jury.—The Jury find a special verdict, finding him guilty upon the fifteenth overt act of the first count in the indictment.

Mr Grant.—Your Lordship observes, the Jury are looking at the abstract.

Foreman of the Jury.—We refer to what the clerk read.

Mr Grant.—It is right for me to endeavour, that the attention of the Jury should be called to the proper mode of effecting what they mean to do.

Lord Chief Baron Shepherd.—The attention of the Jury should be called to this.—What is the crime charged in the count under consideration, and what are the overt acts stated in that count to make out such charge? The verdict of the Jury must be upon the count; but they have a power to negative such overt acts as they think are not proved, and affirm such overt acts as they find to be proved; but the verdict must be upon the count, unless they find a special verdict, stating specific facts, and refer to the consideration of the Court, whether, in point of law, such facts make out the crime as charged.

Mr Grant.—Your Lordship was not in Court when the Jury first came in, when one of the Jury said, they wished to leave the question of law to the Court.

Lord Advocate.—No, they did not.

Lord Chief Baron Shepherd.—Gentlemen, I apprehend it is necessary you should find a verdict of guilty on all or some one of the counts, or a verdict of not guilty on all; or if you choose to find a special verdict, you should find specially such a detail of facts as you think are well proved by the evidence, and leave the question of law to the Court; but merely stating the summary of the overt act in the way you have done, is not a special verdict; it is, in truth, no verdict. To explain myself thus: the charge in the first count is, that the prisoner compassed and imagined the death of the King. There are several overt acts charged, as being open acts and deeds done by him, to manifest that he had that intention. The overt acts in question are, that James Speirs and others did maliciously and traitorously strike, abandon, and give up their work and labour, in which they respectively worked and laboured for the maintenance and support of themselves and their families, and did desert, cease, and abstain from doing any work or labour for the maintenance or support of themselves or their families, and maliciously and traitorously did force, compel, oblige, induce, and persuade, and cause and procure to be

forced, compelled, obliged, induced, and persuaded, divers other liege subjects of our said Lord the King, being persons who worked and laboured for the maintenance and support of themselves and their families, to strike, abandon, and give up their work and labour, and to desist, cease, and abstain from doing any work or labour for the maintenance and support of themselves and their families; and did then and there, as such false traitors as aforesaid, maliciously and traitorously hinder, obstruct, and prevent divers works and manufactories of divers liege subjects of our said Lord the King from being proceeded in and carried on.—You have said you find him guilty of this act in the first count, viz. for striking work, and compelling and persuading others to do the same. Now, Gentlemen, your verdict must be pronounced upon the charge in this count. You will not understand me as directing you to find a verdict of guilty; I am only explaining to you the form; either you should find he is guilty of compassing the King's death, and find that to be made out by finding the overt act proved, which is charged as manifesting it; or if you do not find that he compassed the King's death, you should find him not guilty upon this count—because a man's striking work, and compelling others to do so, may not prove a compassing of the King's death. Journeymen may strike, and compel others to do so, in combination to raise wages; that is highly illegal, but it is not High Treason. They may also strike work, and compel others to do so, under circumstances that may manifest a compassing of the King's death. Now, your verdict in this case, as to this count, must be delivered upon the charge of compassing the King's death. Cases may happen in which the writing and publishing a letter may be an overt act manifesting a compassing the King's death; but it may also be, that the writing such a letter amounts to nothing more than a publication of a libel upon the King or other persons.—Do I make myself understood?

Foreman of the Jury.—Yes, my Lord.

Lord Chief Baron Shepherd.—If a man be charged with compassing the King's death, and the only overt act proved be the writing and publishing, or sending such a letter, the

mere finding that he wrote such a letter, without finding the traitorous object imputed to him, is no verdict upon the charge, because it does not pronounce whether he manifested the traitorous purpose or intention imputed to him, or whether he is guilty of compassing the King's death or not.

Foreman of the Jury.—But, my Lord, permit me to say, that this verdict that we have now given in, was a matter of necessity; we shall never be unanimous on the general count.

Lord Chief Baron Shepherd.—I am afraid we cannot help that. You must return a verdict such as the Court can receive.

Foreman of the Jury.—If it is to be guilty, or not guilty, on the count, I do not see how we can find; we cannot be of one mind on the count. We claim the advice of the Court.

Lord Justice Clerk.—That is a case where the Court cannot assist you, after all the assistance that has been given, and none could be more satisfactory.

Foreman of the Jury.—It was not without consideration; we were above an hour out, and this was all we could arrive at.

Lord Chief Baron Shepherd.—The misfortune is, by that means you pronounce no opinion at all upon that which is the charge against this party, because the charge, in point of law, is compassing the King's death, in the first count; levying war, in the second count; conspiring to put the King to death, in the third count; and conspiring to levy war against the King, in order thereby to make him change his measures, in the fourth count. These are the charges in point of law; with respect to all these, (except the levying of war, which we will, for the present, say is out of the case,) the acts to manifest the intention are such as are charged upon this indictment; amongst which is that one of striking work, and compelling others to strike work: Your merely finding that he struck work, and compelled and persuaded others to do so, and saying you only find that act, and no more, is no verdict.

Foreman of the Jury.—If we state that we have found it under the first count of the indictment, will not that do?

Lord Chief Baron Shepherd.—No, certainly not; by finding an overt act under the first count, I should suppose you mean, that you only find the overt act charged in that count.

www.libtool.com.cn

A Juryman.—We thought we were to find what we found evidence for, and no more.

Lord Chief Baron Shepherd.—You have heard positive evidence, you see, Gentlemen, of the acts that were done by this man; but what was his intention, is still a matter of fact for you to find, one way or the other, I do not say which; for instance, a man might embark in a boat; and that might be charged as an overt act, that the man adhered to the King's enemies; that is, that he was going to join them; or, that he was compassing the death of the King; or, as an overt act, that he was going to levy war against the King, coupled with other circumstances; but the merely saying that a man went in a boat, is finding nothing.

A Juryman.—We do not know what the man's intention was; but we thought that he might be led into an act from levity of conduct, which he ought to be punished for.

Lord Chief Baron Shepherd.—You must retire, Gentlemen, and draw your inference one way or the other; what is a man's mind cannot be proved positively and specifically. Do not suppose I am inducing you to find a verdict one way or another; but what passes in his mind, can only be manifested by that which he does, or that which he says. When the crime consists in a man's intention, a Jury must first ask themselves this question, do we believe the facts that are proved, as to any part of the transaction? Well, we do. Then, if those facts may indicate one intention of the mind, or another intention of the mind, then the Jury must infer one way or the other, that he had an intention of such a sort, or that he had an intention of the other sort, or that it does not appear that he had any such intention as that imputed. I do not know whether I have made myself understood. In all acts that are charged, not only of High Treason, but of any other conspiracy, (as suppose it were a conspiracy to raise wages,) one man might strike work, or do this, that, or the other act, and so might another man; with respect to

the acts done by the two men, they might be the same, and yet the Jury might infer, that the one did them with the criminal intention imputed by the charge, and that the other did not. Then the Jury would find a verdict as to one, that he was guilty of the conspiracy charged; and with respect to the other, would say, we find he is not guilty. Now, it is the same question here. The Court cannot receive an insufficient and incomplete verdict. Your merely finding that fact, without more, is finding nothing; that is to say, nothing which, either one way or the other, disposes of either of the charges in that indictment; the charges being not merely the overt acts, but the charges being those operations of the man's mind, which, in the indictment, are charged to be manifested by the acts.

A Juryman.—Are we to understand that a special verdict is not to be reserved to us?

Lord Chief Baron Shepherd.—You certainly may find a special verdict; but a special verdict must find facts, from which some question of law upon the fact will arise; but on your finding in this case, no question of law arises.

A Juryman.—It has no connexion with the count he is charged on.

Lord Chief Baron Shepherd.—As stated in the indictment, it has a connexion with the charge on which the count is founded. The act of stopping work, or forcing others to stop work, and so on, may be overt acts of compassing the King's death; and if the Jury find from those acts that the prisoner did compass the King's death, then they do apply to the count, and the charge contained in it; but it is equally true, that such acts and circumstances may not amount to evidence of compassing the King's death; and then standing by themselves, they would have no connexion with the charge.

Foreman of the Jury.—It is the compassing the King's death that startles the Jury.

Lord Chief Baron Shepherd.—That is the charge.

Foreman of the Jury.—In the overt act, as expressed at large there, are the facts not specified and defined?

Lord Chief Baron Shepherd.—Finding that overt act, or

any other overt act, standing by itself, unless you, by your verdict, connect it with the charge, is finding nothing.

Lord Justice Clerk.—I do not know, Gentlemen, if you are aware of this, that the nineteen overt acts, which you have upon your abstract, are made agreeable to three different counts in the indictment.

Foreman of the Jury.—Perfectly, my Lord.

Lord Justice Clerk.—To the compassing and imagining the death of the King, the compassing and intending to depose the King, and the compassing and imagining to levy war against the King, to compel him to change his measures and counsels, those overt acts, (I allude to the whole,) those nineteen are as much included in one count as the others.

Foreman of the Jury.—Some of us do not wish to include it in any of those counts.

Lord Justice Clerk.—Then you must retire.

Foreman of the Jury.—As this cause is new, can we have any one person to assist us, appointed by the Court?

Lord Justice Clerk.—The special facts must be put on paper.

Lord Chief Baron Shepherd.—You must find certain facts that he did so and so; and unless you draw some inference, affirming or negativing the allegation of the indictment, what you propose is no verdict at all.

The Jury again withdrew, at a quarter past six o'clock, and returned into Court in one hour and a quarter.

Foreman of the Jury.—The Jury pronounce James Speirs guilty, on Monday the third of April last, of striking and giving up his work, in a malicious and an illegal manner; and that he did not only abstain from work himself, but did compel and oblige others of his fellow-subjects to do the same; and maliciously and illegally did hinder, and obstruct, and prevent divers manufactories, of divers liege subjects, from being proceeded in, and carried on on that day.

Lord Chief Baron Shepherd.—Gentlemen, this is no verdict at all, as it neither affirms nor negatives the charge of Treason. You are to find whether certain acts were done;

and then, whether they were treasonably done, as charged in the indictment. Gentlemen, you had better again retire and consider this point.

www.lmlool.com.cn

The Jury again withdrew, and at eight o'clock returned into Court, finding the prisoner Not Guilty.

This verdict was received by the audience with loud and general cheering; and a young man, who was particularly active, being pointed out by the Lord Chief Baron, he was taken into custody by an officer of the Court, and order was restored.

Lord Chief Baron Shepherd.—If I had happened to fix my eye upon any other person who was applauding, I should have felt it my duty to order that person to be committed for contempt of Court. We are assembled on a most momentous and solemn occasion; and no greater violation of decency could have been committed than that which has taken place. A verdict, whatever it may be, ought to be received in serious silence. The Court have full power to preserve their own dignity, and they are resolved to do so.

The young man was then committed to gaol.

An officer then brought into Court a person, who he stated had been cheering and making a great noise outside the Court.

Lord Chief Baron Shepherd.—As the man has been merely applauding and cheering on the outside, and not disturbing our proceedings, we have nothing to say to him.

The man was accordingly dismissed.

John Laing was then put to the bar, and a Jury having been sworn,

Lord Justice Clerk.—James Speirs, you have reason to be thankful for the issue of this trial, as you, and every one must be convinced, from the proceedings that have taken place in your presence, with regard to the verdict now recorded. You have made a narrow escape indeed; and I recommend to you to be exceedingly cautious in regard to your future conduct, and to take no part in any similar proceedings to those which have brought you to the bar of this Court.

Lord Advocate.—From the proceedings which have taken place in the last trial, it appears, that while the whole facts charged are admitted to have been proved, yet a Jury of this county have, by their verdict, been pleased to find, that these do not constitute the crime of treason. I should not feel myself justified in occupying the time of the Court by again laying the same evidence in detail before another Jury. I do not, therefore, intend to offer any evidence against the prisoner Laing, but to consent to a verdict of acquittal; and I only hope that the result of the last trial may not prove prejudicial to the peace and tranquillity of the district.

The Jury immediately pronounced John Laing Not Guilty.

Lord Justice Clerk.—John Laing, I congratulate you on the favourable result of this proceeding against you, and I hope that your future conduct will be such as to prevent you from ever being brought hereafter to the bar of any Court of Justice, accused of an offence of a similar description. I have only to say, further, that while I have no reason to presume that you are in any way guilty, I trust that neither you, nor any other person, will so far deceive yourselves, as to suppose that the facts charged against you, if equally substantiated by evidence, as in the last case, would not amount to the crime of High Treason, for it is impossible that any person acquainted with the law, can entertain a doubt upon that subject.

www.libtool.com.cn

PROCEEDINGS

OF

THE COMMISSION

IN THE COUNTY OF AYR.

www.libtool.com.cn

www.libtool.com.cn

AYR.

Tuesday, 4th July, 1820.

PRESENT.

The LORD PRESIDENT, The LORD JUSTICE-CLERK, &c. &c.

GRAND JURY.

1. Sir JAMES MONTGOMERY CUNNINGHAM, Baronet.
2. JOHN BOYLE, Esq.
3. ROBERT CRAWFORD, Esq.
4. JOHN FERRIER HAMILTON, Esq.
5. JOHN CUNNINGHAM, of Thornton, Esq.
6. JOHN SMITH, Esq.
7. JOHN CUNNINGHAM, of Carmelbank, Esq.
8. HUGH BROWN, Esq.
9. WILLIAM NEILL, Esq.
10. JAMES MILLER, Esq.
11. WILLIAM HERON, Esq.
12. WILLIAM HAY BOYD, Esq.
13. Captain JAMES SHAW, Esq.
14. HUGH BROWN YOUNGER, Esq.
15. JOHN M'KINDLAY, Esq.
16. JAMES CUTHBERT, Esq.
17. JOHN ANDREW, Esq.
18. JAMES PORTEOUS, Esq.
19. WILLIAM WALLACE, Esq.
20. WILLIAM RANKINE, Esq.
21. JOHN M'CUBBIN, Esq.
22. ROBERT MONTGOMERIE, Esq.
23. ROBERT BEAUMONT, Esq.

The Grand Jury being sworn, the officers of Court appointed, and the same forms observed as at Stirling, the Lord President delivered his charge to the Grand Jury.

The witnesses, whose names were indorsed on the back of the bill of indictment presented, were then sworn in Court to give evidence before the Grand Jury.

The Court adjourned for three hours; and having met again at three o'clock, the Grand Jury presented true bills for High Treason against

Thomas M'Kay,
Andrew Wyllie,
William Orr,
John Dunlop,
James Wyllie,
Robert Kerr, and
James Rayburn,

All of Stewarton.

The two first indicted. The five last not in custody.

Also against,

John Goldie,
Joseph Abbot,
Andrew Adamson,
Alexander Roxburgh,
James Roxburgh,
George Roxburgh,
James Nisbet, and
Alexander Wilson,

All of Galston; but none of them in custody

Also against

John Dickie, and
Hugh Wallace,

Both of Mauchline, and both indicted.

Bill not found against Thomas Gray, of Galston.

Mackay, Wyllie, Dickie, and Wallace, were served with indictments, and Counsel appointed to them.

Adjourned to 29th July, 1820.

AYR CHURCH.

www.libtool.com.cn

Saturday, 29*th July*, 1820.

PRESENT.

The Lord Justice-Clerk.
The Lord Chief Baron.
The Grand Jury.

Thomas Mackay, Andrew Wyllie, John Dickie, and Hugh Wallace, were severally arraigned, by reading the indictments, which were precisely the same with those in Lanarkshire, except that the *locus delicti*, in the indictment against Mackay and Wyllie, was the parish of Stewarton, and county of Ayr; and in the indictment against Dickie and Wallace, the parish of Mauchline, and county of Ayr.

Messrs Grant and Sandford were assigned to them as Counsel.

The prisoners pleaded *Not guilty*; and the Court informed them that they must be prepared to take their trial on the 9th day of August next, to which day the diet was adjourned.

AYR CHURCH.

Monday, 9*th August*, 1820.

PRESENT.

The Lord Justice-Clerk.
The Lord Chief Baron.

Mr Grant.—My Lords, I am now about to submit a motion; but I believe, in the first place, it is necessary that the prisoner should be set at the bar.

Thomas M'Kay was then put to the bar.

Mr Grant.—On the part of the first prisoner mentioned, I am to submit to your Lordships a request that he may alter the plea which he has formerly pleaded, and I do that under circumstances which, I am sure, will lead your Lordships to allow of the course which my client, the prisoner at the bar, has taken, I can hardly say so properly, under the advice of my learned Friends and myself, as by our persuasion; so that it is upon us (I am sure they will partake with me in the responsibility)—it is upon us that the responsibility rests, and a considerable one it is, of the step which he is about to take; and I state this, my Lords, in justice to him, because the objection which he felt to taking the course which we have thought it our duty to recommend, was one which I think extremely creditable to him. He is acquainted with the charges, in the technical language, as laid against him in this indictment. He cannot be thoroughly acquainted with all that the law, in point of construction, infers under these charges. He, therefore, has yielded rather to our representation of what the law may be, as applied to the circumstances of his case, than to any impression upon his own mind, as far as his own conscience is enlightened upon the subject, that he is guilty of the whole of that great offence which is charged against him.

My Lord, the four first counts of the indictment your Lordships already know; compassing the death of the King is the first; levying war against the King is the second; conspiring to dethrone the King is the third; and conspiring to levy war against the King, to compel him to change his measures and counsels, is the fourth. Under the circumstances which he has candidly explained, it is our opinion that there may be grounds in law for supposing him, whatever may be the extent of his guilt and participation, of which I believe my learned and right honourable Friend is aware—there may be grounds in law for holding him to come within that description of offence. Therefore, under our advice, he has made up his mind, and has authorized me to state to your Lordships, that he is ready to throw himself upon the mercy

of the Crown, and to plead guilty to these four counts of the indictment; and I am perfectly certain that he cannot do better, under the circumstances of his case, which are not of so aggravated a nature, as far as have come at least to my knowledge, as those of some other persons, who, though included in this indictment, have, by some circumstances or other, been removed from the jurisdiction of the Court; and, perhaps, if those persons had been here, my learned Friend, in the due exercise of his discretion, might have thought that enough would have been done, if those other persons had been proceeded against.

My Lord, I do not think he can do better than throw himself upon the mercy of the Crown. The Crown, acting under the advice of my right honourable Friend, I am sure will meet with no impediment in the exercise of its mercy; and we know in the exercise of this the best attribute of royalty, the disposition of his Majesty himself. This is one of the cases in which we may speak of his Majesty's personal disposition. We must know and believe that the personal disposition of his Majesty himself, will always be to extend his mercy where he can, particularly in those crimes which have the appearance of being more directly levied against his own person. My Lord, in the present case, I am sure that that disposition of his Majesty will not be counteracted by the advice which those whose duty it is to advise him, may think themselves called upon on the present occasion to offer.

Lord Advocate.—The difficulty is, whether we must not have a jury to acquit him on the other counts.

Mr Knapp.—Certainly.

Mr Grant.—My Lord, I have stated what is quite sufficient for the character of this individual; and your Lordship knows, we all know the nature of the offence; but what I have stated is sufficient for him, in point of fact. I am informed by the Clerk that we must either have a verdict of acquittal or of guilty upon the other three counts of the indictment; therefore it is better that the plea should be taken generally upon the indictment; and I think that the

explanation that I have offered to your Lordship is sufficient upon the part of the prisoner.

Mr Knapp.—Thomas M'Kay, do you wish to withdraw the plea of not guilty, which you have already pleaded?

Prisoner.—Yes.

Lord Justice Clerk.—Thomas M'Kay, after a very full and distinct statement by your counsel with regard to the advice which he has given you according to the best of his judgment, and looking to the whole circumstances of your case, it only remains for me to state to you, that it is you, and you alone, after having received that advice, that are now to take the step which is about to be entered upon record, and that is now to answer distinctly and openly whether, in consequence of your having retracted your former plea of not guilty, you mean, or do not mean, to plead guilty to the charge which is exhibited against you in this indictment. I have stated that it rests with you, and you alone, aware, as I presume you are, of the situation in which you stand, and of the duty which it remains for the Court to perform, in consequence of any plea that you may enter upon the record.

Mr Knapp.—Do you withdraw the plea already pleaded?

Prisoner.—Yes.

Mr Knapp.—Are you guilty of the treason with which you stand charged, or not guilty?

Prisoner.—Guilty.

The plea was recorded.

Andrew Wyllie was put to the bar.

Notice that the prisoner might challenge was given by Mr Knapp.

Lord Advocate.—My Lord, I mean to save the Court and the Jury all further trouble upon the present occasion, by consenting that a verdict of acquittal should go in favour of the remaining prisoners who here stand indicted to take their trial. My Lord, it must be generally known, that the

treasonable practices which assumed so formidable an aspect in many of the neighbouring counties, did not come to that bearing or extent in this, which it did in others; and that those who were principally concerned in these treasonable practices, availed themselves of the first opportunity to withdraw from the spot, where, if they had remained, apprehension and punishment would probably have been the consequence.

www.stornoway.com.au

True bills were found in this county to the number of no fewer than eighteen; and yet it seems surprising only four individuals of that eighteen were taken into custody. My Lord, I have reason to concur with my learned Friend, in thinking that the guilt of those against whom bills have been found, though undoubtedly heinous, was not to the extent of many others in that list; and therefore, my Lord, I have particular satisfaction in intimating to your Lordships, that I do not mean to proceed farther against those persons. I am still farther induced to that course of proceeding, from a conviction in my own mind, that enough has been done to restore this country to tranquillity, and to open the minds of its inhabitants to their real and true situation. We have now, my Lord, no less, I am grieved to state, than twenty-four persons who have been convicted, and against whom the capital sentence of the law has been, or must be pronounced. And, viewing the proceedings of this Commission, as calculated to influence not a particular county, but the whole of Scotland, I think enough has been done to answer the great end in view; under this feeling, I gladly adopt the course I now take, and so strongly do I feel what my learned Friend has said on behalf of his client, that I am confident the expectations he has this day announced, will not be disappointed.

Mr Grant.—The prisoner waves his challenge.

THE PETIT JURY.

www.audiokniha.cz

SIR DAVID HUNTER BLAIR, Bart.
ALEXANDER HAMILTON, Esq.
JOHN LOGAN, Esq.
PATRICK CAMPBELL, Esq.
WILLIAM MONTGOMERY, Esq.
PATRICK WARNER, Esq.
JOHN CRAWFORD, thread-manufacturer.
HUGH CRAWFORD, ditto.
ROBERT FAULDS, banker.
JAMES FAULDS, manufacturer.
JOHN SHEDDEN, grocer.
ROBERT HOUSTON.

Lord Advocate.—Gentlemen of the Jury, you will be prepared to expect, from what I have stated, that I shall not give any evidence against the prisoner.

Lord Justice Clerk.—Gentlemen of the Jury, in consequence of my Lord Advocate having declined to lead any evidence against the prisoner at the bar, it is your clear and imperative duty to find a verdict of Not guilty, in this case.

The Jury immediately pronounced the defendant Not guilty.

The Jury were charged with the prisoner John Dickie.

Lord Justice Clerk.—There is no evidence, Gentlemen, you will therefore return the same verdict.

The Jury immediately pronounced the defendant Not guilty.

The Jury were charged with the prisoner Hugh Wallace.

The Jury immediately pronounced the defendant Not guilty.

Lord Justice Clerk.—Andrew Wyllie, John Dickie, and

Hugh Wallace, you have just now heard the reason assigned by his Majesty's Advocate for not proceeding upon the bills which have been found by a Grand Jury of this county against all and each of you, for the crime of High Treason. Considering the concern which you may have had in those proceedings which in the month of April last disgraced this county, and other adjoining counties of Scotland, I trust that you entertain a just sense of the lenity and forbearance which has marked the conduct of the Public Prosecutor, not only in regard to your respective cases, but upon several other occasions during the course of the proceedings under this Commission. The reasons and motives which have influenced his conduct in regard to you, I trust will neither be misunderstood nor misrepresented, because I am sorry to say, that in reference both to those bills which were found against you, and the proceedings which have taken place in other counties, no earthly doubt can be entertained that there did exist in this quarter of the kingdom a dangerous conspiracy against the State, and against the Constitution and frame of Government, as by law established. But the due interpretation that ought to be put, and which I trust will be put, upon the course of proceeding now adopted, is to satisfy you, and every other person, that those who are intrusted with the administration of criminal justice in this country, though determined at all times to uphold the authority of the laws, and to bring to punishment all who may conspire against the safety of the State, nevertheless, are disposed to proceed no farther in criminal process than is absolutely necessary for the interests of the public; and, above all, that you will attend to the reasons which have been superadded by his Majesty's Advocate, namely, that those in whose name he acts on this occasion, are completely content with the awful examples about to be made in other counties, in the punishment of those who have arrayed themselves in arms against the Sovereign and the country to which they belong. I trust and hope that this course of proceeding will have its due effect upon your minds—that it will not lead you, or any others,

to suppose that such proceedings as you may have been engaged in, can be suffered to pass in this country with impunity, or with safety to those who may engage in them in future.

www.libtool.com.cn

Of all the melancholy features of the proceedings in which this Court has for so great a length of time been engaged, there is none of a more lamentable and extraordinary nature than the evidence which has been clearly adduced of the blind and implicit obedience which appears to have been paid amongst extensive classes of the community of this part of the kingdom, to the treasonable mandates and orders of a set of dastardly, cowardly, and malignant traitors, who, shrouded in obscurity and in darkness, issued their instructions to their deluded proselytes to rise in arms against their Sovereign and the laws of their country, but who, when the hour of action and of peril arrived, shrunk from showing their guilty heads; they did not dare to come forward to head that insurrection to which they had goaded on these deluded men whom they had seduced. That this feature in the times is a proof not only of the want of understanding, but of the wickedness of the hearts of those who were engaged in these proceedings, is a most lamentable, but it is a strong proof, of infatuation—of wickedness, which, as it has appeared for the first time, will, I trust, not soon again be exhibited in Scotland. Let me therefore warn you to take a lesson by the past. I trust you are now fully aware of the danger of listening to the advice of such men as I have now alluded to—that you see the inevitable effects which must follow from listening to such a voice, namely, it must involve you, your families, and your friends, in utter ruin and destruction. Let me recommend to you, therefore, while you feel deeply thankful for the lenity which has been shown to you upon this occasion, to return to the bosoms of your families, determined, by lives of future loyalty, attachment, and veneration to the laws of your country, to endeavour to wipe out the remembrance of those proceedings which have led to your being placed at the bar of this Court; and God grant that it may be a

long period to come before it shall be necessary that his Majesty shall issue another Commission similar to that under which we are now acting. Let me recommend to you, by the rectitude, sobriety, and religious deportment of your future lives, to make some amends for any share in these transactions of which you may have been guilty. In consequence of no evidence being led against you, and the verdict of your country in your favour, I am not entitled to presume you were guilty; but that you had such a share in the proceedings as warranted the finding a true bill against you, is a fact which cannot be forgotten, but which I trust will, ere long, be wiped off by the rectitude of your conduct. You are now to be discharged from any further confinement.

Mr Knapp.—Thomas M'Kay, you have been indicted of High Treason, of which you have confessed yourself guilty. What have you now to say why the Court should not give you judgment to die, according to law?

The prisoner bowed.

SENTENCE.

Lord Justice Clerk.—Thomas M'Kay, it now remains for me, in the discharge of the necessary, but painful duty assigned to me, to announce to you, in consequence of the recorded confession of your guilt, what is the judgment of the law, in reference to the crime of High Treason charged against you in the bill of indictment found by a Grand Jury of your country; and I need not, I trust, explain at any length the nature of the charge which was exhibited against you, because it is well known to be the highest crime known in the catalogue of crimes in the law of this country, because the crime of High Treason, when successful, necessarily embraces in it the perpetration of every other crime in the catalogue of human depravity. Under that charge you were accused, and you judicially confessed that you were guilty of that high offence, it is therefore necessary that the dreadful sentence of the law should be pronounced against you, which I am now about to perform; but before

I do perform it, I wish to address to you a few words in the way of advice.

You have heard what was stated with so much propriety both upon the part of your own Counsel and upon the part of the Public Prosecutor, as to the degree of guilt which you may have incurred in this case, and also as to the fair hopes that you may yet entertain that to you the mercy of Royalty may be extended; but, nevertheless, as it does not rest with this Court, however ready it will be to second the efforts of those who apply in your behalf, what shall be the issue of that application, it behoves you to prepare yourself with fortitude and with resignation for whatever may be the alternative. You certainly will not live the worse man that you look narrowly into your situation—that you prepare yourself as if you were, within a short period of time, to appear before the judgment-seat of God. And let me caution you to remember, that if you are so soon to appear, you will have to answer not only for the guilt that you may have incurred in reference to this charge, but for every other offence which you may have been guilty of during your sojourning on earth. Let me, therefore, earnestly recommend to you to reflect on the dreadful situation into which your crimes have brought you—to look into the inmost recesses of your heart, and to endeavour to eradicate from it every evil propensity, and, above all, to humble yourself in sorrow and sincere repentance, at the footstool of Almighty God. If you pray earnestly for his forgiveness, and repent of every crime of which you have been guilty, you have assurance, in his recorded Word, that his pardon may be extended to you, even if you were the chief of sinners, through the merits and intercession of your Blessed Saviour. Let me therefore exhort you to be earnest in that important work; and even if there shall be extended to you pardon at the hands of man, you will, when you return again into society, profit by the time which you have so spent in preparing yourself with submission to the will of Almighty God. I trust, whatever may be the issue of your fate, if it shall amount either to a full and free pardon, or to a miti-

gation of the dreadful sentence which I am about to pronounce on you, it will have its effect in producing a thorough reformation in your life and future conduct—that you do return a loyal, virtuous, and peaceable subject, determined from henceforth to avoid all those circumstances that have brought this dreadful calamity upon you, and that you will, by your example, shew to others, that although the laws of this country are powerful to punish the guilty, they are, nevertheless, administered with mercy, and with due regard to the magnitude of the guilt of those who are brought under its operation.

The sentence of the law which I am now to pronounce on you is, that you be taken from hence to the gaol from whence you came, and that you be drawn on a hurdle to the place of execution, and there be hanged by the neck until you be dead; and that afterwards your head be severed from your body, and your body divided into four quarters, to be disposed of as his Majesty shall direct. And may the God of all mercy have mercy upon your soul! I have to inform you that the precept for your execution will be issued to the Sheriff of this county, to take effect on Friday the 15th of September next.

The prisoner was removed from the bar.

Lord Advocate.—My Lord Justice Clerk, I have now the satisfaction to state, that the labours of this Commission are ended, and that there is no more business to come before it, excepting such proceedings as I shall allude to presently, as touching the individuals who have failed to appear to answer to the indictments found against them.

My Lord, I can safely say, that to no party engaged in the proceedings can this announcement be more gratifying than to those who have had the conduct of the prosecutions. In the ordinary case of crimes, the path is obvious before us, and our motives cannot possibly be misunderstood; but in the case of state crimes, our situation is different, and it becomes a difficult and a delicate matter, so to square our conduct as on the one hand to act with the firmness

necessary for the safety of the country, and, on the other, with that degree of moderation which is becoming the prosecutor of a great country, when proceeding against persons accused of state crimes.

www.libtool.com.cn

My Lord, it may not be improper to state to you the extent and nature of the business in which this Commission has been engaged. True bills were found in this, and the four adjoining counties, against individuals guilty of High Treason, to the number of no less than ninety-eight. Of this number, fifty-two persons have failed to appear. From what I have had occasion to see in the course of our investigation, those who absconded were the chief leaders and instigators, in many instances, of the other deluded subjects of this country. These persons, foreseeing the storm that was about to come upon them, were the first to withdraw themselves from the chance of punishment. Many of them, I believe, have sought refuge in a distant land; and others have withdrawn from the kingdom, so as not to be subject to the jurisdiction of this High Court. My Lord, I trust that the conduct of those very individuals, so well characterized by your Lordship as equally criminal and cowardly, will have its effect on the inhabitants of this district in particular, and will show them how little reliance they ought, or can place, on such persons. If such of these individuals as may still be remaining in this country expect that they are to be allowed, after the labours of this Commission are ended, again to return in safety to the places where they formerly resided, they will eventually find themselves grievously mistaken. It will be our duty to adopt the necessary measures to carry the proceedings into the Court of Justiciary, as authorized by law, and to see that those who have failed to appear be declared outlaws, a sentence comprehending very different consequences from the common outlawry in Scotland, because it is the same as a sentence of guilt; and, if those persons think that by this Commission ceasing, there are no powers remaining for bringing them to trial, they will in that also find themselves grievously disappointed; for no person standing

in the situation which they do, will be allowed to remain in this country without suffering the due punishment of the law.

www.libtool.com.cn

Besides the fifty-two who have thus withdrawn, two, and two only, have been acquitted upon a faithful trial. Of those acquittals, it becomes me to speak with all due respect. But of one of them, I may say, that on the part of some at least, considerable doubts were entertained how far that verdict rested on sound principles, in point of law; and it was satisfactory to some of us to observe, that there were at least some of the Jury, and, among others, a Baronet, standing high in character, and in public station, who, though he and others properly and rightly at last yielded to an acquittal, entertained considerable doubts on the justice of the verdict. Whatever may be the opinion of that verdict, in neither of those instances could the Public Prosecutor have been justified if he had not brought the persons accused to trial; and that is the only justification which he requires.

The next number is the melancholy list to which I have alluded, namely, twenty-four capital convictions, on which sentences have followed in the course of these proceedings; grieved should I be, my Lord, if I could suppose that the sentence of the law was to be followed out in all, or in many of those cases. In some, I fear, for the safety of the country, it must; I trust, however, that those expectations which my learned Friend has expressed, will not be disappointed; and as, on the one hand, all must know the feelings of the Sovereign are in favour of mercy, so I trust that his servants will evince the real feelings by which they are influenced, by recommending a pardon, or a commutation of sentence, so far as they can be warranted, consistently with that duty which they owe to the safety of the public.

The remainder of the list is made up of twenty-one persons who have obtained verdicts of acquittal, by consent of the Crown. I have stated the reasons for giving that consent. I hope they are satisfactory; and that the result of these proceedings, tremendous as they appeared, and as I felt them, when commenced, the disposal of no less than fifty cases of High Treason, which stood on our calendar—a list unex-

ampled,—may not be considered unsatisfactory, or reflect on those who have been engaged in conducting them. I further hope, that the issue of these proceedings, and the trials themselves, will be attended with beneficial results to the country at large; that, through the medium of the large audience who have witnessed these trials, the discussions which have there been had; the light in which the schemes of the deluded persons have been put by your Lordship; the wickedness and folly of these schemes will be made apparent; on the other hand, the picture that they have had of the impartial administration of justice; the anxious and careful manner in which the lowest and humblest of the subjects have had their case investigated and tried—I trust that all these circumstances will be calculated to produce the beneficial effect desired, in bringing men's minds in this country to feel as becomes them, as good and loyal subjects of his Majesty the King. My Lord, with these observations I shall conclude what I have taken the liberty now to state. This country will still require to be watched with care and attention. The Government, I trust, will be vigilant, and will look, and I hope not in vain, to the local magistracy, not only in the execution of their legal functions, but in directing the minds of the people to the right path of their duty.

Lord Justice-Clerk.—In concluding the proceedings of this day, while I, in the name of the Court, return thanks to the gentlemen who have served upon this Jury, as well as to the whole of the list that were summoned to attend here today, for their attendance upon this solemn and important occasion, I certainly would be wanting in my duty, if I did not, upon this occasion, address to such of them as have the honour to belong to the office of the magistracy of the county, as well as to the sheriffs and the magistrates, of all descriptions, now assembled, a few words in the way of advice, in reference to the proceedings in which we have been engaged; but before I do so, I feel it to be my duty, and I am sure I am performing a duty which is agreeable to the sentiments, not only of my brethren upon my left hand, but of every one of the Judges who have sat on this Commission, from the be-

ginning to the end of its proceedings, to state the satisfaction that we have felt at the manner, in which the duties of the public prosecutor have been performed, not only upon this, but upon every other occasion of our being assembled together. The temper and moderation—the lenity and forbearance—the good sense and judgment, which have pervaded the whole of his Lordship's conduct upon this occasion, (I feel it my duty to say,) entitle him to the lasting gratitude of his country; and sure I am, that those who have employed him upon this important business, must have the highest satisfaction in knowing, that the important duties with which he was intrusted, have been performed in a manner so completely answerable to the ends of public justice, as well as satisfactory to the interests of the public at large. I could say much more with regard to his Lordship's proceedings, but I shall abstain from saying further in his presence; but I should have been wanting in my duty, if I had said one word less than I have now done.

Gentlemen, there is another duty which I have to perform, and which I perform with equal satisfaction, and there, I am sure, I am also expressing the unanimous opinion of the Court, as to the great propriety with which the honourable Gentlemen now in my eye, who have been intrusted with the fate, not only of the prisoners now brought to the bar, but with others in other parts of the country, have conducted themselves throughout these proceedings. I need say nothing of the great ability with which the defences of various individuals were maintained, when on trial—the impression then made will not be soon effaced from the recollections of those who witnessed those exertions; for sure I am, that, though it was observed at the beginning of the proceedings under this Commission that the gentlemen of the Scottish Bar felt some inconvenience in being opposed to an honourable gentleman not now here, it was shown there was no occasion for such apology, and that the cases of those individuals could not have been committed to more able hands, or to men who would make more exertion in maintaining every defence which it was possible to maintain on either of those occasions; and I certainly must add, that, upon this occasion, the honour-

able and learned Gentleman now in my eye has conducted himself with a degree of propriety and discretion which must do him infinite honour in the opinion of every person who is at all cognizant with the circumstances of the case. The advice which he has given to that unfortunate man, on whom the judgment of the law has just been pronounced, was upon due consideration of the whole circumstances of his case; and although he had to encounter the difficulty that he has stated of the repugnance of that individual to adopt all his advice, yet he did persevere in giving that advice, which as a counsel, and as a man of honour, and an honest man, it was his duty to give; and that advice, I have not a doubt, has been most usefully directed towards the interests of his unfortunate clients; and I have the same hope with the Lord Advocate, that the recommendation which his Lordship has stated he is ready to give in favour of that individual, will have its due effect in the proper place; and in all events, the conduct of the honourable Gentleman will meet with the attention it deserves, and he will have the satisfaction of knowing he has performed a most important and delicate duty according to the best of his judgment.

Gentlemen, from the proceedings, which we have now the satisfaction of hearing are happily terminated, with the exception of those necessary measures that will be taken by the Public Prosecutor, in order to accomplish an effectual outlawry of those who have failed to appear at that bar, and at the bar of other counties, to answer the charges exhibited against them, so that the country may be effectually and for ever rid of those who have dared to array themselves against their Sovereign and the laws of their country,—with those exceptions, your labours are now happily terminated; but from them, I say, it must be apparent to all of you, that there did exist, in the month of April last, a dangerous conspiracy, extending over no less than five counties of his Majesty's kingdom of Scotland; an extent of Treason which, I believe, is unparalleled in the history of this country—I mean a conspiracy breaking out at one and the same time in no less than five different counties; at least, sure I am that there is no in-

stance upon record of his Majesty's Commission of Oyer and Terminer being issued into five counties at the same time.

This, Gentlemen, may afford some idea of the magnitude of the evil which it has been the object of these proceedings to repress and to punish; that these proceedings had their object—that this conspiracy did arise out of a set of secret unions and associations, formed in the manufacturing districts of these counties, is beyond the possibility of doubt. Unions and associations were formed, under the pretence of a reformation, a redress of grievances, but which were founded on a determination to subvert the established frame and constitution of Government, as by law established; although, by the flight of the most guilty, by the punishment that will, in all human probability, follow with regard to the others who have had an active concern in this Treason, we may flatter ourselves that the evil has, in some measure, been checked, and my hope is, that the good sense of the people of Scotland will render it a very distant event before any such evil shall recur again; yet it is indispensably necessary for me to caution every man who is invested with the character of magistracy—to caution every man, in whatever sphere of life he may move, to keep a vigilant and attentive eye upon such proceedings as those that I have alluded to. Let the utmost attention be bestowed to the police of the towns and villages in which any of those associations may be supposed to exist. Let the laws, which are powerful and energetic, without shrinking, be applied in the repression of them if they continue; and, above all, Gentlemen, let me exhort all and each of you to use your utmost exertions to prevent the circulation of those seditious and irreligious publications with which the district, nay, I may say the kingdom at large, has been for so long a time polluted—those publications sapping the principles, and, I believe, inculcating disrespect for the laws both of God and man, necessarily and inevitably lead to the formation of rebellion, and to every other crime that is known in the law.

Let me therefore, above all, implore and beseech magistracy and citizens, of every rank and description, to unite their efforts with the ministers of religion in endeavouring to

bring back the people to that attachment to the Word of God, and to the religion of their forefathers, which at one time so eminently distinguished this part of the United Kingdom. It is painful, indeed, to think that, in this district in particular, where the people were so distinguished for their attachment to their religious establishments, and to their individual pastors—that in this quarter of the kingdom blasphemous and irreligious doctrines should have prevailed to the extent I am afraid they have done. It can, therefore, only be by united and persevering exertions, by setting the example of attachment, veneration, and respect for the ordinances of religion—by the individual conduct of every man, be his rank in society what it may, that we can expect people to be brought back to that condition in which they formerly were, because, sure I am, if they are not brought back to that, and if that veneration for religion does not again characterise the country, there is too much reason to fear that conspiracies of the nature of those that have been the subject of this day's deliberations will not be unknown in the country.

But, upon the other hand, if the lower orders are brought back to those religious and sober habits which were formerly the characteristics of the people, (I say the Ayrshire people in particular,) there is no reason to apprehend that any of those traitors who have hitherto endeavoured to mislead them will be able to do so again with success. And, Gentlemen, above all I recommend to you, the magistracy, to relax no effort in endeavouring to repel any symptoms of that spirit which brought us, in the month of April last, into so much alarm. I exhort you to evince to the people, in the most decided manner, by the promptitude, vigour, and energy of your conduct, that you are determined that no such proceedings shall go on in any quarter, or be carried on by any persons whatsoever, without the most immediate and vigorous steps being taken to have them apprehended, and brought to justice.

With these observations, I have to wish you all manner of prosperity; and I pray most fervently to Almighty God, as this has been the first time for a long period that it has been

necessary to issue such a commission, many years may elapse before we are called on to perform the necessary but painful duties we have had to discharge since this Commission came into operation on the 22d of June last.

Adjourned to Saturday, 2d December.

www.libtool.com.cn

FINIS.

EDINBURGH:
Printed by James Ballantyne and Company.

www.libtool.com.cn

AN

APPEAL TO THE BRITISH PUBLIC,

BY

www.libtool.com.cn

JOHN HAY,

LATE MERCHANT IN LEITH;

AGAINST

ACTS OF INJUSTICE, OPPRESSION, CRUELTY, AND WRONGOUS IMPRISONMENT,

WHICH HE HAS SUFFERED AT THE INSTANCE OF

LORD PRESIDENT HOPE, AND OTHERS,

OF THE

Court of Session of Scotland.

It is a position which is maintained in every free state, "that all power flows from the people," and that they have a right to be informed of the public acts of those individuals to whom that power is delegated, for the good of the whole community. When a British subject is injured, it is his duty, in the first place, to complain to a court of law; but when those who are intrusted with the execution of the law, do pervert it, deny justice, and oppress the injured for complaining of such abuse, I do humbly think, that it then is the bounden duty of the party aggrieved to lay his case before his country, and respectfully solicit his fellow-subjects to unite with him, and in a constitutional manner aid and assist him in bringing before the proper tribunal a matter of vital importance, on which depends the life, the liberty, and the property of every subject, namely, the pure administration of justice according to law.

In an action of thirteen years duration, before the Court of Session, at my instance, praying for restitution of property belonging to me, which had, *by a law made by the Judges of that Court*, been carried off from a family of minors, I have had the misfortune to offend Lord President Hope. I clearly established, that those Judges had no right to make laws, and carry off property, in direct opposition to positive and existing Acts of Parliament. I showed, that the law under which my property was carried off, was not only unconstitutional, but by the Judges so framed, *under existing procedure* in that Court, as to aid and assist Court factors, or trustees, in robbing the fatherless, and effectually screening those Court factors from punishment, however guilty. I further established, beyond the possibility of dispute, that the Court factor I complained of, had been guilty of numerous and distinct acts of falsehood, fraud, and wilful imposition, practised on the minor family. This fact I have repeatedly offered to prove in open Court, before Lord President Hope, yet no relief can be obtained, while the expense of thirteen years litigation in the Court of Session has been ruinous. As a Scotchman, I blush to add, that I am actually in possession of a written opinion of two counsel practising at the bar of that Court, one of them the Solicitor-General for Scotland, advising the cause to be given up, after it had been eight years in Court, for in their opinion, "however improper" the factor had acted, the complainers would obtain no redress in the Court of Session, because "*it was not the practice*" of the Judges to compel their factors to account according to law, nor was it their "practice" to give minors the benefit of the act *under which the Judges caused their property to be intromitted with and carried off from them*, and these counsel refused to state the case or plead before the Court, to the charges against the Court factor.

For complaining of them, and for petitioning for leave to state my own cause, I was twice ordered to the bar, and treated in such a manner by Lord President Hope, as

induced my friends to believe that his resentment was implacable,—that he was my decided enemy,—and, in their opinion, would not hesitate to prostitute his judicial power and influence, in order to injure my character, and destroy my cause before the Court; and I am sorry to add, that his Lordship's subsequent conduct is not much calculated to induce a discerning public to believe that such an opinion was incorrect. A narrative or statement of judicial proceedings have been printed, regularly advertised, and extensively sold, in which I condescend upon, and offer to prove, if permitted, before the House of Commons, the following complaints or charges against Lord President Hope.

First Complaint.—I complain, that for humbly petitioning for *leave to petition for restitution of my own property*, I was twice ordered to the bar, and, in the most intemperate manner, reproved, insulted, and threatened, by Lord President Hope. *Without inquiry*, my complaints against counsel were declared *false*,—I was told that laws made by the Judges were "the law of the land," and that if ever I again dared to trouble the Court with such complaints, I would be treated as a criminal!

Second Complaint.—Disregarding the insinuations hinted to me respecting the Lord President influencing my counsel and agent to destroy my cause, and betray trust, and *at the time*, believing his Lordship incapable of committing an act of such judicial depravity, I *confidently* continued to intrust my cause to the same agent, who engaged another counsel. In a short time, however, I made the painful discovery, by *written evidence*, under the hand of both counsel and agent, which evidence is in my possession, that they had made secret communications to Lord President Hope, *injurious to the cause* they were bound in honour, sworn and fee'd to manage faithfully and honestly; and some time after such communications had without my knowledge, been made, the counsel stated in writing to his employers, certain conditions which he demanded them to sign, granting him and the agent the absolute control and management

of the cause, subject to no check or responsibility; and on his employers declining to subscribe to such unreasonable and suspicious conditions, and making a powerful appeal to his honour and to his feelings, on the impropriety of such a demand, the learned gentleman, in his second letter, was at pains to inform them, that such conditions did not originate with him, but were the same in substance with those which had *been laid down to him* by the Lord President, at some meeting he had with that Judge. These letters I also have in my possession. On this point I have repeatedly complained to the Court, and entreated Lord President Hope to clear himself of such a foul charge, by ordering the counsel and agent into Court in my presence, but he will not do so.

Third Complaint.—Suspecting the existence of a conspiracy to ruin me, in which Lord President Hope's conduct appeared as if he was the principal actor, I complained to his Majesty's Ministers, to Members of Parliament, and others, which, however, did not make his Lordship more circumspect, for *under his own hand-writing*, and that of the Lord Advocate, accompanied with other evidence, I offer to prove, that Lord President Hope was secretly examined as a witness against me by the Lord Advocate,—that he furnished the Lord Advocate with materials to constitute an action against me, "*in the name of his Majesty, and for the* "*public interest*," founded on complaints against himself; and that action, so constituted, Lord President Hope, *tried before himself, without a Jury*, combining in his own person the conflicting functions of Complainer, Informer, Witness, Jury, and Judge, in his own cause!!!

Fourth Complaint.—That during that unconstitutional and mock trial, at the instance of the Crown, one of the Crown witnesses swore to three distinct and deliberate falsehoods against me, he foundered and broke down in the hands of the Lord Advocate while under examination; and actually, in public Court, turned round and applied to the Crown Lawyers for information or explanations respecting

what he had falsely sworn to. I complained of such infamous procedure, and for doing so was reproved—a minute was written out in Court, and signed by Lord President Hope, approving of the conduct of that witness.

www.ftpool.com.cn

Fifth Complaint.—That in open Court, Lord President Hope condescended upon distinct charges against me, injurious to my character, and as false as they were injurious, which he said he stated "*for the information of the public.*" But contrary to every principle of honour, law, or justice, he expresly prohibited the public from hearing the other side, or at the time allowing me to say one word in my own defence.

Sixth Complaint.—That in order to correct the corrupt practises of the Judges of the Court of Session during the tyrannical and bloody reign of Charles II., an express Act of Parliament was made since the Revolution, by King William, declaring that the Judges were to deliver their opinions and votes in open Court, before the public, on every cause which came before them; and that in open Court, the clerk appointed by the Crown, *and not the Judge*, was to write out the judgment. Declaring that all questions *decided otherwise*, and all interlocutors written out in any other *manner or place*, are "null and void," *and the writer and signer thereof shall be deprived of office.* In the very teeth of this existing and express Act of Parliament, Lord President Hope resorted to the corrupt practice, before the Revolution,—he convened the Judges, not in open Court, but in a *private room, with shut doors*,—there they delivered their opinions and votes,—and there decided my cause *in my absence.* In that private room the Public Prosecutor was seen, and from it he accompanied the Judges into Court. The judgment of the Court was not written out in public Court by the clerk appointed by the Crown,—it was written out in the private room, by one of the Judges. Lord President Hope, who signed that interlocutor, and the Judge who wrote it in the private room, *have both, in law distinctly forfeited their right to*

remain on the Bench, if there is any meaning in an Act of Parliament; and if there is no meaning in it, *in so far as regards Judges*, that fact ought to be made publicly known to the people.

www.libtool.com.cn

Seventh Complaint.—For an alleged offence, which the Judges have not defined in their private room judgment, and which not one of them can define or explain, and by procedure an outrage on every principle of law or justice, Divine or human, I was condemned, torn from my young and unprotected family, and for twenty-two weeks closely confined in a jail or dungeon, by which my health was impaired, my business destroyed, and myself and family ruined.

Eighth Complaint.—Even in the dungeon President Hope's power was cruelly felt by me. I forwarded a humble and respectful petition, *addressed to the Court*, stating the want of accommodation in jail, and praying for relief. Lord President Hope *kept back and concealed that petition from the Court.* This fact I did not know at the time, and therefore a few days afterwards, I addressed a second petition to the Court, describing the miserable apartment I had to sleep in,—that old matts were placed on the wall to keep out the cold,—that the rain from the roof had destroyed my bed; at that time I was sleeping on chairs, in the cold month of February, tortured with rheumatisms, and threatened with an inflammation. I am ashamed to add, that this second petition was also concealed from the Court, and by order of Lord President Hope sent back to me in the most contemptuous manner, under a blank cover, by the penny-post.

I respectfully entreat, that these Noblemen and Gentlemen into whose hand this communication may be put, will do me the justice to believe, that it is not sent to them with an intention to prejudice or inflame their minds, or that such averments as it contains dare not be publicly avowed by me. The publication I have already alluded to, was printed in Edinburgh, under the very nose of the Lord

Advocate—a large edition has been publicly sold—I sent copies to the Lord Advocate, to the Secretary of State, and to other public characters; that publication contains every averment and charge which is stated in the preceding pages, and many others of a serious description, and to it I humbly refer. I am well aware, that no man can be a proper judge in his own cause, and that no cause can be correctly judged upon without hearing both sides. But I am also aware, that before the public can support inquiry into abuse, that abuse, must be condescended upon, and offered to be proved before a competent court. Now I have condescended upon the abuse; I offer to prove my averments, and I respectfully solicit the expression of public opinion in support of parliamentary inquiry. I do this for two reasons, *First*, because the public have a deep interest in the subject, and a constitutional right to petition for inquiry; and, *Secondly*, because those I complain of are powerful, and without the expression of public opinion, *it is to be feared* parliamentary inquiry cannot be obtained, as I understand that not only the Lord Advocate, but *certain Scotch lawyers*, are employing all their ingenuity and influence with Members of Parliament, to prevent the matter from being fairly taken up in the House of Commons.

With great submission, I do humbly think, that the whole of this abuse proceeds from the Commons of Great Britain sleeping at their post, or with their eyes open allowing the Statutes of Parliament to be treated with contempt by the Judges of the Court of Session. How correctly Judge Blackstone described the present situation of the people of Scotland, when he said, "when the functions of the "Judge are joined with the legislative, the life, the liberty, "and the property of the subject are then in the hands of "arbitrary judges, who regulate their procedure only by their "opinions, and not by any fixed principle of law." Lord President Hope proclaimed in open court, that laws made by the Judges, "are the laws of the land, and that he would treat

" me as a criminal if I complained of them." Lord Succoth, before whom my case has pended for twelve years, has gone a step beyond Lord President Hope, for only a few days ago, he proclaimed from the Bench, in open Court, that I would " obtain no redress in the Court of Session, " or elsewhere."

I freely confess, I entertain no hope of any redress or justice in the Court of Session, but as to " else- " where," the matter has not yet been tried; and however confident Lord Succoth may be, that it is not within the bounds of possibility to obtain parliamentary inquiry into his conduct, or redress for the injuries I have sustained, I rather think that I will succeed in laying before the public such facts as will induce every honourable man to admit, that I have been wronged, and that the character of the Court, and the honour of the country, demands inquiry into Lord Succoth's conduct as complained of by me in the following pages.

In the outset, I aver, that if there is one fixed principle universally admitted in the law of Scotland, it is this, that if a man, possessed of heritable and moveable property, dies without making a settlement, his heritable property descends to his eldest son, termed " the heir," and the moveable property is divided among his other children, who are termed " the executors." In the case in point, the father of the minor family possessed heritable property, and also held valuable leases of extensive farms; and having made no settlement, his landed property, and the leases of his farms, by law descended to his eldest son, a minor, and his moveable property, which was also considerable, fell to be divided among his other children, who were also minors. The manner in which the Court appointed a factor, or trustee, to act for both heir and executors, has been explained. One of the complaints the executors made against the Court factor in the pending action was, that he had charged them with a sum of money, as an alleged loss upon a share of a grazing farm subsequent to the death of their father. They

contended, that as executors, they had no concern with either profit or loss on any of their father's farms subsequent to his death. The factor made certain averments, in order to show, that there was a speciality in the case, and on these averments Lord Succoth decided in favour of the Court factor. The executors in turn proved, under the factor's own hand-writing, that his averments were *deliberate falsehoods* from beginning to end; but still Lord Succoth and the Court decided in the factor's favour. The sum claimed by the factor, and otherwise deducted by him from the funds of the minors, as alleged loss on the farm during eleven years, was equal to the whole rent during these eleven years, of course the farm sunk regularly each year the amount of rent. There was no lease, or obligation of any description, to bind the factor to such a ruinous concern, beyond one year. It was said to be retained *in order to improve the funds of the minor family*, and decerned by Lord Succoth and the Court to be a prudent act of management on the part of the factor. The factor discovering Lord Succoth's notion of "prudent management," petitioned his Lordship to appoint a minor boy to be made factor on that farm,—a minor for whom the Court factor did himself act, which was virtually obtaining his own reappointment, and that, too, after his share of the farm had been by him abandoned for two years. Lord Succoth granted the prayer of his request; and as his Lordship had on a former occasion given the factor all the money he asked, he resolved not to want money for the asking, for he actually came before Lord Succoth a second time, and in the name of the minor factor, he claimed and obtained a sum for alleged loss on that farm, to the extent of *six times* the share of rent due by him. Against such unprecedented procedure on the part of Lord Succoth, the executors petitioned, but it availed them nothing, Lord Succoth adhered to his former interlocutor, and stated three reasons for doing so, and every one of these reasons were contrary to the fact. His Lordship declared, that an ac-

tion at the instance of the landlord for improper ploughing, was for improper ploughing before the minor factor was appointed,—*that is not true.* *Second*, his Lordship declared, that the said action was finally compromised by the landlord and the executors,—*that is not true*; the executors neither, directly nor indirectly, ever interested themselves in the settlement of such an action in any shape whatever. *Third*, his Lordship declared, that the executors had greatly exaggerated the amount of the loss. That declaration I cannot understand, as the sum claimed by the factor is the same as stated by the executors, and decerned against them by Lord Succoth.

The law of Scotland, therefore, *as laid down by Lord Succoth's decisions* in this remarkable case, stands thus;—*First*, that when a Court factor makes certain averments, *minor executors* may be subjected in alleged loss on a farm subsequent to the death of their predecessor. *Second*, that however false these averments are proved to be, still the factor must be protected, and the minors subjected to the loss. *Third*, that for a Court factor to retain a farm for eleven years for behoof of *minor executors*, without any lease to bind him to it, and sink each year the amount of the rent, is wise and skilful agricultural management, and a prudent method of improving the property of minors. *Fourth*, that a Court factor may relinquish all management of such a ruinous farm for two years, and then in the name of a minor, resume possession and charge executors with a second loss, to the extent of six times the amount of rent. And, *lastly*, if the factor is hard run by powerful arguments and stubborn facts, the Judge may in his interlocutor make three "Findings," or declarations, every one of them incorrect; and on these three *false findings*, decide the point in the factor's favour.

In order that the operation of such principles of law may be fully understood, I shall suppose a case, that the reader may clearly perceive how a Court factor can ruin a family of minors, under the sanction of such a Judge as Lord Succoth.

To amount of executory funds supposed to be placed in the hands of a Court factor, - -		£10,000 0 0
By rent of a farm £500 ₱ annum, retained eleven year, loss each year £500, is - - -	£5500 0 0	
The said farm abandoned for two years, and then taken up and retained for one year and a half.		
Loss during one year, six times the rent, is - - -	3000 0 0	
Loss during half year, six times the rent, - - -	1500 0 0	
		£10,000 0 0

I do not say that the rent of the share of the grazing farm in my case was £500, but I have made the statement to show the principle on which Lord Succoth has proceeded; and I publicly call on Lord Succoth to disprove my averments if he can. In the face of such statements, the reader will very naturally perceive the correctness of our Solicitor-General's opinion, when he said, that "however improper" the Court factor had acted, the law would not be put in force against him, nor would the injured minors obtain relief in the Court of Session.

I shall only mention another branch of Lord Succoth's conduct in this ill fated action. In the course of judicial procedure, the executors proved that the Court factor at his appointment did not lodge correct tutorial inventories, *as directed by law*,—that he lodged no annual accounts with the clerk of Court according to law, or any accounts whatever for a period of eleven years; and that the statements obtained at last by compulsion were quite incorrect, *and not made up* as directed by the Court in their own Act of Sederunt. All this was clearly established, but still Lord Succoth would not apply the law. Instead of disposing of the pursuers objections to the factor's accounts, he remitted the whole cause to his friend Mr Russell, a Court Accountant, and a

It is not my intention at present to condescend upon the tenth part of the objectionable and suspicious procedure in the action against the Court factor during thirteen years litigation. The cause has been murdered in every stage, and the minor family injured to the extent of about £10,000. But this is not all, I have suffered severely in my mercantile transactions out of Court, from a conviction on the public mind, that the Judges I complain of, are corrupt and vindictive, and determined on my destruction. According to my humble abilities, I have stated some of the most flagrant acts under which I have severely suffered, and have made a stand against what I conceive to be unbearable injustice, tyranny, and oppression.

I am not a lawyer, but I cannot help thinking, that not a vestige of the British Constitution remains, if Judges can, with impunity, make laws in direct opposition to Acts of Parliament,—proclaim these "The law of the "land,"—cause our property to be carried off from us by such laws, and treat us as criminals if we complain,—prohibit us from petitioning a Court of Justice for restitution of our own property,—protract our causes, or dispose of them in the manner described,—force the employment of counsel, and secretly lay down conditions to those men how they are to injure and destroy causes with which they are intrusted,—charge us with crimes and offences in public Court, which, however false, we must not contradict. And, lastly, treat us as criminals in prosecutions before themselves, for complaining of such wrongs to Members of Parliament and others, and without the verdict of a jury, sentence us to be confined in jails and dungeons during their pleasure. If all this can be quietly submitted to by British subjects without a public murmur, and tolerated by the Commons of Great Britain, where is the boasted perfection of our Constitution, or the security of our persons and property?

There was once a time when we were told, even by Lord President Hope, that we had "a glorious Constitution," and that it was worth defending. Under the conviction of

its existence, and in the hour of danger, when those in power solicited my personal services, I cheerfully complied,—I inrolled in the ranks as directed by Government,—I provided my own uniform,—I paid for my own arms,—I served without pay, and were my coutage against the invaders of my country to have been measured by the manner in which I have three times sustained the whole shock of President Hope's rage, I would not perhaps have fallen with my back to the enemy. I contributed my share, both in money and personal services, in protecting what is termed "our glorious Constitution," but I have received a most ungrateful return. In a Court of Law, I have been unjustly ridiculed, insulted, robbed of my property, condemned without a Jury, torn from my family, immured in a dungeon, and my family ruined, and all this done to me contrary to the principles of our Constitution, and by the very men who were sworn to protect my person and property, conformable to law, as distinctly laid down to them in the Statutes of Parliament.

Those Honourable Members of the House of Commons who oppose Parliamentary Reform, on the ground that the object is undefined, have regularly pledged themselves in that House, to support inquiry into any positive and flagrant abuse, distinctly condescended upon. Now a more flagrant abuse cannot be laid before Parliament, than the one I have distinctly condescended upon. I offer to prove, that the House of Commons have been superseded in their legislative functions by a few individuals in the nomination and pay of the Crown. This simple fact, and the consequences resulting from it, embraces the whole of my complaint, which I wish to lay before that Honourable House. I do not pray for Reform, I pray that the House of Commons will exercise its own functions,—enforce it own laws,—and support its own dignity, by effectually preventing Judges from assuming its legislative powers. Until this is done, that House will be viewed as inferior to a

Scotch Bench of Legislative Judges, whose will *is at present* "the law of the land," and the rule of their procedure.

To conclude, I ask no man to believe my statements without proof, and under the conviction that I can prove them, I earnestly pray for Parliamentry inquiry. If those I complain of, are innocent, I am the individual who has cause to fear; and if I shake out my case, I submit, if I am not entitled to redress to the extent of the injury I have suffered. With feelings of veneration to my Sovereign, attachment to the Constitution, and respect to my fellow-subjects, I subscribe myself,

JOHN HAY.

York Place, York Lane,
Edinburgh, 10*th February* 1823.

Webster, Printer, House Wynd, Edinburgh.

www.libtool.com.cn

A

NARRATIVE OF PROCEDURE

BEFORE

The Court of Session,

www.ibtool.com.cn

AND

CIRCUMSTANCES CONNECTED THEREWITH,

IN

THE TRIAL

OF

JOHN HAY,

WHO WAS PROSECUTED

AT THE INSTANCE OF THE

LORD ADVOCATE OF SCOTLAND,

AND WITHOUT THE VERDICT OF A JURY, SENTENCED TO

FOUR MONTHS IMPRISONMENT,

BY THE

Judges of the Court of Session.

"I take this opportunity to inform you, Sir, that Acts of Sederunt
"ARE THE LAW OF THE LAND."

Lord President Hope's Address to Mr Hay, 13th February, 1818.

EDINBURGH:

PRINTED BY D. WEBSTER AND SON, NO. 6, HORSE WYND,
FOR JOHN HAY.

1822.

www.libtool.com.cn

www.libtool.com.cn

TO

THE RIGHT HONOURABLE

ROBERT PEEL,

SECRETARY OF STATE FOR THE

Home Department, &c. &c.

SIR,

THE exalted situation which you occupy in his Majesty's councils, and the access you have to the ear of your Sovereign, point you out as the individual whom I ought to address in laying before the public my present complaint. As Secretary of State for the Home Department, the Lord Advocate of Scotland is subject to your control; and if it has so happened that his Lordship, in the *name and authority of his Prince*, has oppressed a subject, deprived him of his property, and afterwards harrassed the same injured individual with vexatious prosecutions contrary to law, in order to accomplish sinister objects, or to gratify the private malice of others—if that can be established, I submit, if his Lordship has not prostituted the duties of his office, degraded the authority of his Royal Master, and brought into contempt the judicial proceedings of the country.

Whatever difference of opinion may exist regarding the

best method of carrying on the Government, consistent with the dignity of the Crown and the interest of the People, no difference of opinion does exist respecting the necessity of *preserving* our Constitution as established by law. You are well aware that there are four prominent features in that Constitution which distinguishes it from all other Monarchical Governments. *First*, Our persons and our property are to be in the keeping of Laws made by our own Representatives in Parliament. *Secondly*, When charged with crime, the accused is to be tried by a disinterested Jury; and in that prosecution no man can be admitted as a Judge, a Juryman, or a Witness, who has an interest in the conviction. *Thirdly*, The doors of our Courts of Justice are to be open; and in open Court, in the presence of the parties and the public, the Judges are to deliver their opinions and votes on the cause before the Court. And, *fourthly*, No Judge, Crown Lawyer, or any other person, can prevent the publishing of Judicial Decisions after a final judgment is pronounced.

It is, however, my painful duty to inform you, as a Minister of the Crown, that in direct violation of these fixed and incontrovertible positions, property belonging to me was carried off by authority of a law made by Judges, and never restored; that I was prosecuted by the Lord Advocate, in the *name of his Majesty*, *not before a disinterested Jury*, but before the very men who had wronged me, and who were the Party and the Judges in their own cause. In that prosecution, these Judges did not deliver their opinions in public Court, they decided the cause in *a private room with shut doors*, and from that private room the Public Prosecutor accompanied them into Court; and further, the said individual, Sir William Rae, caused the Manuscript Report of a question settled by final interlocutor, and the printed pleadings on both sides, belonging to me, to be carried off from a Newspaper Office in Edinburgh, to prevent a final decision of the Court of Session from being made known to the Public.

This statement, Sir, must either be false or true. If false, I have fearfully and irrecoverably committed myself; and if true, it is a truth entitled to the serious consideration of the public at large. The man who can, on cool reflection, view this subject as an affair which *only concerns* the humble and obscure individual who is now addressing you, is not an object of censure, but of sympathy.

In whatever light the present House of Commons may view such complaints and such encroachments upon their Legislative functions, those Representatives of the People who placed the House of Brunswick upon the Throne, and who perfected that Constitution so much admired, did not view with indifference acts so monstrous, and proceedings so unconstitutional, as I now complain of; nor were they backward in correcting them. Permit me, Sir, to draw your attention to the speeches made, and proceedings adopted, in the House of Commons in 1681, when inquiring into the conduct of Chief Justice Scroggs.

I do this in order to show with what indignation the Representatives of the People then viewed the conduct of Judges, who attempted to supersede them in their functions, and with what stedfastness and fidelity they supported the rights of their constituents, and, with these rights, the vital principles of the constitution itself. Mr Booth, afterwards Earl of Warrington, in addressing Parliament on this subject, spoke to the following effect:—"Of what "use is it for this House to make laws, if they are not to "be executed, and if Judges are to make laws of their own. "Your laws then, Sir, are no better than waste paper. "It is the indispensible duty of this House to see that "those who are intrusted with the execution of your laws, "do their duty; *that neither the innocent may be condemned "nor the guilty acquitted.* The execution of the law is "so clear, so undoubted, and so public a right, that no "power whatever can dispense with it; and those whose "duty it is to see the law executed, if they either pervert

" the law, or hinder it from taking its course, are highly " criminal, and ought to be brought to a strict account. " Therefore, in my opinion, this matter ought to be " searched into; and if they prove such faults as are com- " plained of, we cannot do less than punish the offenders. " The cry of their unjust dealings is great; and their pu- " nishment ought to be such as their crimes deserve."

Mr Sacheverel followed Mr Booth, and expressed himself in the same indignant manner against the conduct of the Judges of that period:—" If Judges (said he) can " prevent the penalties of the laws, if they can make " laws by their rules of court, I think this government " will soon be subverted; therefore it is high time for this " House to speak with these gentlemen. In former times " Judges have been impeached, and hanged too, for crimes " less than these; and the reason was, because they broke " the King's oath as well as their own. If what has been " said of some of these Judges can be proved, they shall not " want my vote to inflict on them the same chastisement."

Sir Francis Warrington also gave his opinion, and said, " laws made in this House are but dead letters, " unless you can secure the execution of them. We are " come I think to the old times again. In the front of " *Magna Charta* it is said, 'We will defer or deny jus- " tice to no man.' I wonder what these Judges will say " for themselves: If they have not read that law they " ought not to sit upon a bench; and if they have read it, " they deserve to lose their heads. They knew that it " was lawful for the subject to petition for justice, and " to complain when protracted, and their knowledge ag- " gravates their crime."

The result of the enquiry by the Commons, was, that on the 5th January 1681, Chief Justice Scroggs was impeached for high treason, on the following articles: *First*, for making laws, and calling them the laws of the land. *Secondly*, for using unbecoming, violent, and threatening expressions from the chair, to litigants supplicating him

for justice. *Thirdly*, for delaying justice, and inflicting arbitrary imprisonment, and other punishments, on those who exposed such abuses. And, *fourthly*, for employing one "Robert Stevens" to go to printing-houses, and carry off papers and other property, in order that the unjust decisions of the Court might not be made known to the public.

www.libtool.com.cn

Direful have been the effects resulting to me and to the public at large, from the Commons sleeping at their post, and allowing the Judges of the Court of Session, either to treat Acts of Parliament with ridicule and contempt, or to legislate for themselves. My complaint confirms the correctness of Blackstone's position, that "when the functions "of the Judge are joined with the legislative, the liberty, "and the property of the subject is then in the hands of "arbitrary Judges, whose will is their law, and the rule "of their procedure." The Judges of the Court of Session have not only assumed the right of legislating and of rescinding the statutes of Parliament—but also of prohibiting the subject from humbly petitioning themselves to reconsider their own laws: And this publication will put it to the test, if they also claim the right to punish the injured subject for complaining to his Majesty's Ministers, to the House of Commons, and to the public in general, of the sufferings they have brought upon him by these oppressive and unconstitutional acts.

The following fact I conceive, cannot be too strongly impressed upon his Majesty's Ministers, and the House of Commons, namely, that while every person, be his political opinions what they may, admits that I have been deeply wronged; no man out of Court ever yet said to me, that he believed the Judges would be inclined to retrace their steps, and do me justice. On the contrary, the general opinion is, that if these men can discover any pretext to bear them out, they will dart upon me again with redoubled fury. This, in my opinion, is the worst feature in the whole cause; it clearly establishes, that our

Judges, by their legislative and tyrannical proceedings, have lost the approbation and the confidence of a prudent, enlightened, and discerning people.

I entreat that you will not oppose parliamentary inquiry into the wrongs I complain of. If I fail in the proof, I know the punishment that *justly* awaits me; and if I make out my case, I submit if I am not entitled to redress to the extent of the injury I have suffered.

www.libtool.com.cn

I have the honour to be,

SIR,

Your most obedient and

Very humble Servant,

JOHN HAY.

YORK PLACE, YORK LANE,
Edinburgh, 2d November 1822.

www.libtool.com.cn

NARRATIVE OF PROCEDURE

BEFORE THE

Court of Session,

AND

CIRCUMSTANCES CONNECTED THEREWITH.

INFLUENCED by a natural, and I trust not improper regard to my own character—guided in some degree by the urgent and repeated advice, tendered to me by my friends—desirous of putting the public in possession of a case, which has not a local, or individual, but a most general and comprehensive interest—and, above all, compelled to enter upon a public defence, from the treatment I have received, and the injurious expressions *addressed to the public* from the Bench, by Lord President Hope, concerning my conduct in the whole of my procedure—I feel that I have no alternative left but to come forward with a plain, unvarnished, and authentic narrative of facts and circumstances, upon which my justification must finally rest.

In the year 1800, being then a mere boy, by consent of my friends, I engaged with a merchant in Leith, a man strictly honourable in his dealings, and who, in due time, thought proper to recommend me as clerk and out-door manager to the directors of any extensive shipping establishment in that town. In this situation, my

employers were pleased to confide in, and promote me; and, in the course of four years, my salary was three times advanced. Some time afterwards, having received a few hundred pounds from my father, I commenced business in Leith on my own account, and parted with the Shipping Company on such friendly terms, that, in cases of difficulty, I was generally consulted, for some years after I had left their employment. By incessant toil, unwearied attention, and honest industry, I was, in a few years, successful in realizing a pretty considerable sum, which was, however, unfortunately swept off in 1814, (a year never to be forgotten in Leith), no less than *one hundred and thirty-seven* respectable houses, many of them of old standing, having, in a few months, become insolvent! For my own part, I only escaped from the disaster with the clothes on my back, and a character without stain or reproach; and, soon after, I entered into an engagement with the Perth Baking Company, to act in capacity of manager and cashier for them in Edinburgh. In this situation I remained about three years; and, on parting with that company, I began the baking business on my own account, which I pursued industriously, peaceably, and honestly, till, for an alleged offence, or crime, said to have been committed by me, the Judges of the Court of Session thought proper to tear me from my family, and immure me in a filthy and detestable prison for four months, where I was deprived of the benefit of free air and exercise, and where my health suffered considerably.

Opposed to such an almost overwhelming weight of power as that with which I have the misfortune to contend, it is still no small consolation to reflect, that my averments can be corroborated and authenticated by the evidence of thousands; and that the following certificates of character were not, like too many documents of a similar description, got up to serve a particular present purpose, but were applied for, and obtained some years ago,

at the request of Joseph Hume, Esq. Member of Parliament, in whose hands the originals are at present deposited.

www.libtool.com.cn

COPY of CERTIFICATES of CHARACTER for Mr JOHN HAY, obtained and forwarded to London in October 1818.

Leith, 19th October 1818.

We, the undersigned, merchants in Leith, do hereby certify, that we are personally acquainted with Mr John Hay, who resided many years in this town, and who removed to Edinburgh in consequence of an engagement with the Perth Baking Company. We further certify that he was considered an active man in business, strictly honourable in his principles, a respectable member in society, and a good moral private character.

(Signed) JAMES WYLD.
JAMES FORBES.
CHARLES PHILIP.
JOHN ECCO.
ADAM WHITE.
ROBERT BRUNTON.
ROBERT NEILSON.
JAMES WILSON.
JOHN MENZIES.
GEORGE GIBSON, jun.
GEORGE ARNOTT.
GEORGE CARSTAIRS.

Leith, 20th October 1818.

MR JOHN HAY,

DEAR SIR,

Enclosed you have the required certificate, which I hope will answer your purpose. It will always

give me pleasure to hear of the prosperity of yourself, Mrs Hay and family, in which Mrs Robertson sincerely joins.—I remain, dear Sir,

Your's truly,

(Signed) JAMES ROBERTSON.

www.libtool.com.cn

Leith, 20th October 1818.

That Mr John Hay, lately a residenter in this parish, has been intimately known to me for many years. That from the high respectability of his public and private character, I was induced to recommend him as a proper person to become a member of the kirk-session; and, accordingly, he was admitted to the office, and fulfilled its duties with fidelity and diligence, till an engagement with the Perth Baking Company required him to remove with his family to Edinburgh; and that in the whole of his deportment he was uniformly pious, honest, and industrious, is certified, place and date as above, by

(Signed) JAMES ROBERTSON, Minister.

Leith, 20th October 1818.

We, the undersigned, Elders in South Leith, do corroborate and approve of what the Reverend Dr Robertson has stated, and do certify the same.

(Signed) JAMES WEIR, Elder.
THOMAS BARKER, Elder.
W. GRIEVE, Elder.
ALEX. BURNET, Elder.
ROBERT WEIR, Elder.

Edinburgh, 20th October 1818.

This certifies that Mr John Hay has been a member of Lady Glenorchy's chapel these two years, and has supported in every respect a most excellent character, which is attested by

(Signed) T. S. JONES, Minister.
WILLIAM PATISON, Elder.
JAMES LEA, Elder.

Edinburgh, 20th October 1818.

We, the undersigned, hereby certify, that Mr Hay, formerly merchant in Leith, and now manager of the Perth Baking Company, Edinburgh, is well known to us as a man of strict integrity; as a merchant, he is honourable in his dealings; his moral character is unimpeachable; and we esteem him as a very active and useful member of society.

www.tiptool.com.cn

(Signed) THOMAS DICK, Merchant.
A. J. M. WALKER, Merchant.
SAMUEL HALKET, Brewer.
RICHARD ALEXANDER, Merchant.
JOHN STEWART, Merchant.
THOMAS BLACKIE, Merchant.
JOHN LEWIS, Merchant.
JOHN RUTHERFORD, Merchant.
ROBERT MITCHELL, Merchant.
THOMAS CADDELL and Co. Brewers.
MUNGO SOMERVIL, Merchant.
JOHN RITCHIE, Merchant.
WILLIAM PATON, Manufacturer.
JAMES ROBERTSON, Ironmonger.
WILLIAM BURTON, Merchant.
JAMES HILL, Merchant.
WILLIAM RENTON, Merchant.
WILLIAM NIVISON, Bookseller.

Respectable as these certificates of character no doubt are, it is still more cheering to witness the general interest the inhabitants of Edinburgh and Leith are just now taking in my case, after I have been prosecuted and treated like a criminal.

But before proceeding further in my Narrative, it may occur to the intelligent reader, who is unacquainted with the facts, to enquire, What crime has this man, whose general character is so strongly vouched, and whose honesty, integrity, and moral correctness, have never once been attempted to be impugned or assailed, even by his

persecutors, what crime has he been guilty of to draw down on his head the formidable vengeance of that all-powerful personage, "His Majesty's Advocate for his Majesty's interest," and a sentence of four months imprisonment in a common jail? Why, the head and front of my offending appears to consist in the manner I have complained to judges and others, that property, to which I had acquired a right, had been taken from a family of minors by order of the Court of Session, in virtue of a *private law* of the Judges' own enactment, and in direct violation of a specific and very remarkable Act of Parliament; that also, by a law passed by the Judges themselves, I was prohibited from petitioning that my property might be restored; that the factor *loco tutoris* appointed by the Court, though publicly charged by counsel at the Bar with "GROSS MORAL FRAUD;" and though the words had been taken down at the time, and the fact offered to be proved on the spot, yet he never was called to account by those who had appointed him, or compelled to restore the property which he had got possession of, and intromitted with; that counsel had betrayed their trust; that Lord President Hope had threatened to treat me as a criminal for complaining of counsel, and petitioning for the repeal of the Act of Sederunt 1760, which deprives a subject, in this part of the united empire, of his natural right of stating his own case; that my cause had been hung up in the wind before Lord Succoth, Ordinary, for the brief period of *twelve years*; that my papers, consisting of the printed pleadings on both sides, had been forcibly carried away from a newspaper office in Edinburgh, to prevent a *final* decision of the Court from being made known to the public; that my agent (Gifford) and my counsel (Mr Thomas Hamilton Miller) had, by their own written admissions in my possession, been carrying on a clandestine correspondence with the Lord President, and had forwarded to him communications injurious to the cause which they had been retained and fee'd to manage faithfully

and honourably; that Mr. Miller wrote his clients, as if he had, unknown to them, received instructions from his Lordship, as to the mode in which the cause was to be in future conducted; and, lastly, for exposing the errors and misrepresentations in a Report made up by a Court accountant of the name of Russell. Such is a rapid and general outline of the numerous and flagrant offences with which I stand charged. The reader will find the papers on which I was prosecuted at full length in the Appendix, also the Lord Advocate's Petition and Complaint to the Court in December last, on which complaint the Court pronounced the following interlocutor:—

"*Edinburgh*, 12*th December* 1821.

"The Lords of both Divisions of the Court having "convened, and having considered this petition and com- "plaint, they grant warrant for service of the same on the "therein designed John Hay, by serving him personally "with, or leaving for him at his dwelling-place, in terms "of law, a full copy of the said petition and complaint, "and of the appendix thereto, and of this deliverance "thereon: And ordain the said John Hay to compear "personally in Court upon Friday first, the 14th curt. "at ten o'clock forenoon, for examination on the several "matters charged in the said petition and complaint; "and dispense with the reading hereof in the minute- "book.

"C. Hope, *I. P. D.*"

FIRST DAY.

Conformable to a summons served upon me, I appeared at the Bar on the 14th of December, but the Lords in their wisdom had changed their minds, for instead of being examined, I was ordered to lodge answers, as appears from the following interlocutor:—

"*Edinburgh*, 14*th December* 1821.

"The Lords of both Divisions of the Court, having

"convened, and having resumed consideration of this "petition and complaint, they ordain Mr John Hay to "lodge answers to the said petition and complaint on or "before the first sederunt day of January next: And "ordain the said John Hay to subscribe the said answers "with his own hand, with certification.

"D. Boyle, *I. P. D.*"

SECOND DAY.

The business of this day commenced by the Clerk reading the following "Note for John Hay, to the Right Honourable the Lord President of the Court of Session."

Edinburgh, 7th January 1822

My Lord President,

Upon perusing the very copious Appendix annexed to the Lord Advocate's complaint, served upon me by order of the Court, it is evident that all the complication and oppression complained of by me, in this much involved and anomalous case, have arisen from the Act of Sederunt, 1730, an act which rescinds the statute of Parliament 1672, made expressly for the protection of the property of minors; and under which Act of Sederunt, my property has not only been abstracted, but my claims for restitution have been hung up by a protracted, and destructive litigation of twelve years before Lord Succoth, without any reasonable prospect of the cause being ever brought to a termination, or the property being ever restored; and it certainly does not mend the matter greatly to say, that I am now, by the King's Advocate, prosecuted as a criminal before your Lordship, for demonstrating that I have been greatly injured by judicial legislation.

On the 24th November, I addressed and boxed a note for your Lordship, as head of the Court, complaining of this grievous abuse, a copy of which note, I now perceive, is in the appendix to the Lord Advocate's complaint, page eighty-one. The Court has already had that paper

under consideration. The following interlocutor was pronounced upon it:—"The Lords having heard this note, "appoint John Hay, the subscriber thereof, to attend "personally at the bar to-morrow, at 10 o'clock, (Nov. "27th) and grant warrant to macers and messengers at "arms to serve the above order on the said John Hay, "without delay. (Signed) "C. HOPE, *I. P. D.*"

In obedience to the above interlocutor, of which a copy was served upon me, I attended in Court; and, on the Note being read by the Clerk, I acknowledged the signature, and stated that it was boxed by me, for the consideration of the Court. Your Lordship then made a speech in disapprobation of my conduct, in which you was followed by Lord Succoth, who made some very strong, and very incorrect averments, injurious to my character. I complained to your Lordship, and entreated that you would allow me to reply to Lord Succoth; but your Lordship would not permit me to speak; you said the Court would give me till the day after to-morrow to prepare my defence, when the Court would hear me; but when that day arrived, I was not heard, as your Lordship had promised. I then complained that I was not getting justice, and that the Court ought to hear my defence. Your Lordship, in answer, said, that all the papers had been delivered over to the Lord Advocate, and that I would be prosecuted by that individual.

On the 10th of December, a petition and complaint was, by the Lord Advocate, presented to the Court, charging me with acts of criminality, and praying that the complaint might be served upon "the said John Hay, and ordain "him to appear personally in Court, to be examined on the "facts above set forth; and the same being admitted or "proved, to inflict on him a punishment adequate to his "crime."

On this complaint the Court was pleased to pronounce

an interlocutor, granting warrant of service, "and ordaining the said John Hay to compear personally in "Court, upon Friday first, the 14th current, at ten "o'clock forenoon, *for examination on the several matters "charged in the said petition and complaint*, and dispensing with reading thereof in the minute-book.

(Signed) "C. Hope, *I. P. D.*"

Conformably to a summons served upon me, containing a copy of the above order of Court, I did attend, when, instead of being examined, I was told to answer the complaint, and affix to the said answer my own signature; and I was further told, that the Court had nothing more to say.

Not being acquainted with judicial procedure, I will not take it upon me to say, that there is any thing irregular, or illegal, in calling a man to the bar of a Court of justice—condescending upon distinct charges against him—refusing to allow him to say one word in his defence—fixing a day when he is to state his defence, then prohibiting him from opening his mouth—and summoning him into Court to be examined at the bar, and then telling him to lodge printed answers *to a criminal complaint*. My Lord, for the following reasons I decline answering that complaint.

First, I am charged by the King's Advocate with having committed a public crime, and before I can be compelled to answer such a charge, the learned Lord must make out his case, and that, too, before a competent Court.

Secondly, The constitution has wisely provided, that no British subject accused of crime, shall be tried by those who have an interest in pronouncing him guilty, or who may be implicated in his defence.

Thirdly, Every British subject charged with a crime, has a right to defend himself, by repelling the charge,

pleading his constitutional privileges, and justifying his conduct under the circumstances in which he was placed, without the fear of implicating his judges, or the dread of being sent to jail, for stating facts in his defence, unpleasant to their ears.

www.libtool.com.cn

Fourthly, The prosecution is illegal, oppressive, and unjust, if the accused is tried by those who have an interest in the cause, who have expressed opinions hostile to him, who have been informers against him, or who have given evidence to the prosecutor.

Fifthly, There is evidence on the face of the Lord Advocate's complaint, that the Judges of the Court of Session are interested in this cause; that they have expressed opinions unfavourable to the accused; that they are the informers; and that one of them, by his own admission, has been examined as a witness by the prosecutor.

Sixthly, In this country, no judge or judges can compel the accused to criminate himself by his own acts, and were I to answer the Lord Advocate's complaint, I would by that act join issue with him, in an action to be tried before the party, who have the only interest in the conviction. This would be admitting the right, and the competency, of the judges of the Court of Session, to combine in their own persons, the conflicting functions of Complainers, Informers, Witnesses, Jury, and Judges in their own cause.

With regard to what I have written, printed, and addressed to Members of the House of Commons, concerning the wrongs and oppressions I have suffered, the competency of that House to decide upon the propriety of communicating such information to the Representatives of the Nation, is not disputed by me; and the Lord Advocate being a Member of that House, he can there bring forward his complaint, and take the sense of the Commons of Great Britain on the criminality of my conduct, if, indeed, it be criminal to complain, that I have been injured by your Lordship. But I am advised to deny in

toto the right of the Judges of the Court of Session, to sit in judgment upon what I have communicated to the Members of Parliament, respecting the treatment I have received from these judges themselves.

www.libtool.com.cn

In respect, &c.

JOHN HAY.

Edinburgh, 17th January 1822.

The above Note being read publicly by the clerk of Court, and Mr John Hay being interrogated whether he desired to have counsel assigned to him as proposed to him by the Court, he declared, that on mature deliberation, he declined the assistance of counsel. And being interrogated whether he acknowledged the above Note, he declared that he acknowledged and adhered to the same, and meant to state no other answer to the petition and complaint than is therein contained: But declares that he declines to sign the present minute. And the Lord Advocate having delivered to the clerk of Court a list of the witnesses to be adduced in support of the petition and complaint, the same was marked by the clerk as relative hereto, and delivered to a macer of Court, that the same may be duly served by him on Mr John Hay.

C. HOPE, *I. P. D.*

Edinburgh, 17th January 1822.

The Lords having considered this petition and complaint, with the note of Mr John Hay relative thereto, declining the jurisdiction of the Court, with the minute of proceedings thereon, they repel the objections to the jurisdiction of the Court, and sustain the said jurisdiction as competent: Allow the Lord Advocate a proof of the facts and circumstances set forth in his petition and complaint, and Mr John Hay a conjunct probation, as accords: Appoint the said proof to be led in their own pre-

seace upon Thursday the 24th current, at ten o'clock: Grant letters of first and second diligence at the instance of both parties, for citing such witnesses as they may adduce; and ordain Mr John Hay to appear personally at the Bar, at the aforesaid day and hour.

C. Hope, *I. P. D.*

THIRD DAY.

Mr Hay stated, that as the complaint against him was at the instance of his Majesty's Advocate, and not at the instance of the Court, he craved to be tried by a Jury,—that he protested against the procedure of the Court, and wished to read his protest, which he held in his hand. The Court refused to allow him to read the protest. The Lord President said, the Court would hear a minute, but not a protest, and Sir Walter Scott, the clerk of Court, politely offered to frame the minute, which offer Mr Hay declined, assuring Sir Walter, that he thought he could frame one himself.

PROOF.

In the petition and complaint, his Majesty's Advocate, for his Majesty's interest, against John Hay, baker, or late baker in Edinburgh, at Edinburgh, the 24th day of January 1822, in presence of the Lords of both Divisions of the Court, compeared his Majesty's Advocate, for his Majesty's interest, who resumed the procedure in this complaint, and stated that a list of the witnesses by whom the several matters contained in the complaint would be proved, had been lodged in process, and duly served on the said John Hay, conform to execution of intimation in process, and produced letters of first and second diligence, at the complainer's instance, against witnesses, with executions of citation, and represented that the last interlocutor of Court had been served upon the said John Hay, ordaining him to appear in Court this day, and craved

containing expressions hurtful to his cause, and injurious to his character; a pledge was given from the Chair that he would be heard in his defence "the day after to-morrow," *but the pledge was never redeemed.*

Secondly, That it is a fundamental principle of the British Constitution, that the legislative and judicial functions shall never be combined in the same individuals: That judges are bound to give effect to laws, not to make them.

Thirdly, That in violation of this incontrovertible principle, the property of the said John Hay has been carried off under authority of laws made by Judges: That by the same laws, he has been prohibited from petitioning that it may be restored: That his endeavours to vindicate his natural and constitutional rights have exposed him to numerous threats and insults; while his papers, together with the printed pleadings on both sides, were forcibly abstracted from a newspaper office in Edinburgh by order of the learned prosecutor; and that, too, for the avowed purpose of *preventing a final judgment* of the Court against him from being made known to the public.

Fourthly, That under such complicated acts of oppression, no law is violated by stating the facts to Members of Parliament, who are legally vested with power to institute inquiry, that justice may be done, both to the accuser and to the accused.

Fifthly, That the same law which has vested in the Lord Advocate a discretionary power to prosecute *for the public interest*, has wisely and humanely secured to the accused *the benefit of a trial by Jury*, who can have no improper object in returning a verdict, and before whom the said John Hay would plead to advantage many facts in his defence, which, if stated to Judges of the Court of Session, would be termed *disrespectful, construed into contempt of Court, and a high aggravation of the alleged crime.*

Sixthly, That while the right and the competency of the Judges to punish for contempts of Court, in the exercise

of their judicial functions, is freely admitted, their right to supersede trial by jury in a criminal prosecution at the instance of the Lord Advocate, *for the public interest, is most unqualifiedly denied.*

www.libtool.com.cn

Seventhly, That however conscious of innocence, and however confident of an honourable acquittal if tried by a jury of his countrymen, the said John Hay cannot entertain a shadow of hope if judged by those *who are the party who have an interest in pronouncing him guilty, and who have already declared their determination to do so.* And, therefore, the said John Hay desired it to be distinctly understood by the Court, that his personal attendance before their Lordships in this trial is in obedience to their own orders, and that the proceedings shall by him be deemed the same as if he had been absent, because he will cite no witnesses, he will neither ask nor answer any questions, take no interest in the complaint or proof, nor make any defence whatever. JOHN HAY.

Edinburgh, 25th January 1822.

This minute was read in Court by John Hay, baker in Edinburgh, and by him delivered to the clerk of Court.

W. S.,

Lord Glenlee.—That minute is a high contempt of this Court. I move that the person at the bar who has read that paper, be sent instantly to jail.

Lord Justice-Clerk.—Although I agree with my brother that the minute now read is a high contempt of the dignity and honour of this Court, and an aggravation of the crime with which that individual is charged, yet to send him to jail from the bar at present, would stop the proceedings of the Court.

Lord Hermand.—That man should be sent from the bar to jail, if he does not instantly withdraw that note, and make an apology.

Mr Hay.—My Lord, I will not withdraw the minute.

Lord Meadowbank.—If the Court conceives the minute a high contempt of its honour and dignity, as it certainly is, the proper method of procedure would be, to send that person to jail every day from the bar, and bring him from jail every morning at ten o'clock.

Lord President.—The note is certainly an insult to the dignity of the Court, and *a high aggravation of the crime with which that unhappy man at the bar stands charged;* yet I question the propriety of sending him to jail during the trial; it might impede him in his defence, *although, I confess, his defence is giving him little trouble.* The minute is still in his own possession lying on the bar, he can avoid the punishment by withdrawing it.

Mr Hay immediately rose, and taking the minute in his hand, passed it to the clerk, and looking to the Lord President, said, "My Lord, I move that the clerk re-"ceive that minute."

Sir Walter Scott.—Mr Hay, I do think you should withdraw that minute, the Court does not wish to receive it.

Mr Hay.—I have, Sir Walter, made up my mind upon the subject, and I will stand the consequences. I insist on the Court receiving what I conceive will be useful to me. The minute was received.

The following interlocutor was framed in Court by the Lord Justice-Clerk, and read by him, to which Mr Hay was requested to attend. His Lordship appeared to be much out of temper, his countenance, and the manner in which he acted on almost every occasion, was by no means pleasant to the accused at the bar; all the other Judges behaved with composure and with dignity.

"*Edinburgh, 25th January* 1822.

"The Lords having taken into consideration the terms "in which the declinature of this Court has this day "been stated in a minute by Mr John Hay, and openly, "and at his desire, read by him in Court, find that they

" amount to a high contempt of the dignity, honour, and " authority of this Court, and justly merit instant punish- " ment by imprisonment. But considering that the said " John Hay is now attending this Court by its order, to " answer to the complaint exhibited against him, at the in- " stance of his Majesty's Advocate, and that his immediate " imprisonment for the offence committed this day in pre- " sence of the Court might possibly impede him in his de- " fence against the above mentioned complaint, they su- " persede the consideration of this matter until the issue of " said complaint. C. HOPE, *I. P. D.*"

Signed 26th January 1822.

www.libtool.com.cn

PROOF CONTINUED.

Edinburgh, 25th January 1822.

Compeared Mr Claud Russell, accountant in Edinburgh, who being solemnly sworn, purged of partial counsel, examined and interrogated, depones, that a remit was made to him in a process before Lord Succoth, depending betwixt William Scott and Alison and John Hay, and this remit was received by the deponent in the end of last summer-session. Depones, that having made a draft of his report, he transmitted the same to the agent for Mr Hay, desiring him to make his remarks on it, and then to transmit it to the agent for the other party. Depones, that on the 19th of November 1821, the deponent received a letter from Mr Hay, dated 17th November, which he now produces, and the same is marked as relative hereto. Depones, that he has received letters from Mr Hay formerly, but never saw him write, and thinks that the body of the letter produced is not of Mr Hay's hand-writing, but that the signature is similar to that of the former letters which he received from him. And Mr Hay being asked if he desired to put any questions to the witness, replied, that he declines to do so, on account of the reasons set forth in the note, and in the

minute which he has given into process. All which is truth, as he shall answer to God.

CLAUD RUSSELL.
C. HOPE, *I. P. D.*

www.libtool.com.cn

For reasons which it is not proper to state here, both parties united in an application to Lord Succoth, that the cause might be sent, *not* to Mr Russell, but to some other accountant. This application, however, Lord Succoth thought proper to refuse. Nay, his Lordship was even pleased to wait on that individual, relative to the cause depending between the factor and myself; a circumstance which, when it became known to my friends and advisers, alarmed them exceedingly. At first sight, this might appear an ungenerous and ill-founded dread. Mr Claud Russell's report at length appeared, in which that gentleman, happily for the factor, contrived to demonstrate, that he was indebted to the minors' estate *less by some hundreds* than he, the factor, *also an accountant*, had admitted to be the fact! and about £3000 less than the pursuer's accountant from the *same statement of intromissions* clearly established. Mr Russell depones, "that having made a "draft of his report, he transmitted the same to the agent "for Mr Hay, desiring him (Mr Hay) to make his re-"marks upon it." I was not slow in complying with this suggestion, and made my remarks on this precious document, with what truth and justice the reader will discover by referring to my letter to Mr Claud Russell, dated 17th November 1821, which he will find in the appendix to the Lord Advocate's petition and complaint.

FIFTH DAY.

Compeared Alexander Gifford, writer in Edinburgh, who being solemnly sworn, purged of partial counsel, and Mr Hay being asked if he had any objections, declined either to object or not, for the reasons formerly assigned by him; and the said Alexander Gifford being examined

and interrogated, depones, that he knows the said Mr John Hay, and was at one time his agent: That he is acquainted with his hand-writing, and thinks he has seen him write. And being shown the letter marked in the appendix, No. I. dated 1st August 1820, addressed James Weddel, Esq. and signed John Hay, depones, that he believes the same to be the hand-writing of the said John Hay. And being shown the various manuscripts and letters which follow, namely,

Appendix, No. 8. p. 59. letter to Lord Succoth, 18th November 1820;

No. 9. p. 60. Note for Alison Cranstoun and John Hay, 23d November 1820;

No. 10. p. 61. letter to Lord Advocate, 21st November 1820;

No. 11. p. 62. letter to the Reverend Andrew Thomson, 30th November 1820;

No. 12. p. 62. letter to Mr Rolland, 4th August 1821;

No. 14. p. 64. letter to Lord President, 13th September 1821;

No. 16. p. 68. letter to Lord President, 18th September 1821;

No. 18. p. 71. letter to Lord President, 24th September 1821;

No. 20. p. 74. letter to Lord President, 29th September 1821;

No. 21. p. 81. card to Lord President, 17th November 1821;

Depones, that he believes all and each of those papers which have been successively shown to him, to be of the hand-writing of Mr John Hay, and to bear his signature, when such signature is annexed. And being shown No. 22. page 81 of the appendix, being a note from Alison Cranstoun Hay and John Hay, dated 17th November 1821, depones, that the body of the note is not of John Hay's hand-writing, and that he is not sure if the signature be of his hand-writing, as it seems to the deponent

rather larger than his common signature. And being shown the letter produced by Claud Russell, and mentioned in his deposition, depones, that the body of the letter is not of Mr Hay's hand-writing, and that he cannot say whether the signature is his or not. And depones further in explanation, that the deponent has repeatedly seen papers of considerable length in Mr Hay's hand-writing, while acting as his agent; but that he has but seldom seen his subscription, and is therefore better acquainted with his general hand-writing than with his mode of signature. Interrogated whether he received any printed communications from Mr Hay while he acted as his agent not of the nature of instructions in the cause? Depones, that before his communication with Mr Hay entirely ceased, there were intervals during which the deponent did not conceive himself as acting as Mr Hay's agent; and that, during these intervals, he received printed papers and other communications from the said Mr Hay, and at other times printed papers were sent to him while acting as agent for Mr Hay; which papers had been boxed by Mr Hay without any communication with his agent or counsel, in consequence of which the deponent gave up Mr Hay's employment. And being shown printed paper, No. III. of the appendix, page 7, depones, it is one of the printed papers which the deponent received from Mr John Hay upon one of the occasions above referred to. And being shown the four numbers of the appendix II. No. 4. of the appendix, depones, these were also received by him in the same manner. And being shown No. VII. of the appendix, page 56, depones, that the same was also received by the deponent upon one or other of these occasions. Depones, that some of these printed papers were sent him under cover, some of them left at the deponent's house, and some of them were, he thinks, delivered to him by Mr Hay himself. Depones, that these papers were communicated to him in the course of the years 1819 and 1820, but previous to the month of November in the

year last mentioned. And the deponent marked all the various printed papers and manuscripts exhibited to him as relative hereto. Interrogated, depones, that the Mr John Hay, to whom his deposition refers, is the same person now at the bar. All which is truth, as he shall answer to God.

ALEX. GIFFORD.
C. HOPE, *I. P. D.*

This individual was my confidential agent. I have been advised to bring his conduct under the review of the Court, it would therefore be improper to state any charge against him here.

The appearance of the next witness in this case excited a strong sensation in Court.

Compeared the Reverend Mr Andrew Thomson, one of the ministers of the gospel for the city of Edinburgh, who being solemnly sworn, examined, purged of partial counsel, and Mr Hay having declined either to admit the witness or state any objections, interrogated, depones, that about a twelve-month ago, he received several printed communications in a note addressed to the deponent from Mr John Hay. And being shown the letter No. XI. page 26, addressed to the Reverend Mr Andrew Thomson, and signed John Hay, dated 30th November 1820, depones, that the same is the note sent to him with the printed communications, as above deponed to. And being shown the printed paper, appendix No. V. page 21, addressed to the Right Honourable Charles Hope, dated Edinburgh, 3d November 1820, and signed John Hay. And being shown the printed paper marked as relative hereto, entitled, a letter Charles William Wynne, Esq. dated 6th November 1820, and note for Alison Cranstoun Hay and John Hay, dated 8th November 1820, appendix No. VII. depones, these several printed papers successively shown to the deponent, and marked as relative hereto, were inclosed with the letter addressed to the de-

ponent by John Hay, as above deponed to. Depones, that he does not remember in what manner this packet was forwarded to him; and that the deponent did not, at the time, know that there was such an individual existing as Mr John Hay. And Mr Hay being asked by the Court if he had any questions to put, declined to do so for the reasons already assigned by him. All which is truth, as he shall answer to God.

ANDREW THOMSON.

C. HOPE, *I. P. D.*

The Reverend Divine being a public writer, the papers were sent to him confidentially, in hopes that he would, with prudence, draw the attention of the public to the frauds practised upon the property of the orphan and the fatherless. (See my letter to him in the Appendix.)

When I addressed the note inclosing the printed papers named in the above deposition to the reverend gentleman, a particular friend, who seemed to know his character well, predicted what use he would make of them. I confess I regarded his prediction as the result of personal dislike, or some other cause unknown to me, and treated it as involving a libel on the Christianity of the Reverend Divine. But mark the error of *my* reckoning. The Reverend Divine did *not* see it to be his duty, if he disliked the tenor of my written and printed communications, to consign them to the flames, or return them to their original author; but, on the contrary, he saw it to be *his duty* to hand them over to a third party.

SIXTH DAY.

Compeared Matthew Ross, Esquire, Dean of the Faculty of Advocates, who being solemnly sworn, purged of partial counsel, and Mr Hay having declined to object to the witness, or otherwise, Mr Dean of Faculty interrogated, depones, that some time about the beginning of the last winter, the deponent received a letter signed John Hay, and addressed to the deponent as Dean of Faculty,

accompanying or containing certain inclosures. Depones, that the purport of the letter, according to the deponent's recollection, was to request the deponent to lay the same, with the inclosures, before the Faculty of Advocates. Depones, that determining not to comply with this request, the deponent returned the inclosures to Mr John Hay, by his clerk, Peter Deas, desiring Mr Deas to inform John Hay, that the deponent declined to lay the papers before the Faculty. Depones, that he had for a time the impression that he had returned Mr Hay's letter with the inclosures which accompanied it; but he now believes he had retained the letter; but depones, that the letter has not been in the deponent's possession for *a twelvemonth, or nearly so.* Depones, that either the deponent, or his clerk, by his directions, made a note of the inclosure so returned to Mr John Hay. And a note being exhibited to him, and marked as relative hereto, depones, that the same is in the hand-writing of his clerk, and is marked with the deponent's initials; and the deponent believes it to be the same which was made by his direction before the papers were returned to Mr Hay, as above deponed to. Depones, that he has no acquaintance with Mr Hay, nor does he remember having seen him. And Mr Hay being asked if he had any questions to put to this witness, made the same answer as formerly. All which is truth, as the deponent shall answer to God.

MAT. ROSS,
C. HOPE, *I. P. D.*

NOTE REFERRED TO.

The papers referred to in the letter from Mr Hay, 30th November 1820, were, *1st*, Note for Alison Cranstoun Hay and John Hay, dated 8th November 1820; *2d*, Letter addressed to Joseph Hume, Esq. M. P. unsigned, dated Perth Baking Company's Office, Edinburgh; *3d*, Letter to Charles William Watkins Wynne,

Esq. M. P. dated York Place, Edinburgh, 6th November 1820, signed John Hay, with an appendix, also signed by Mr Hay, dated 3d November 1820, addressed to the Lord President.

www.hbook.com.cn

The letter and papers received 30th November, and the papers returned to Mr Hay 1st December, with a note declining to lay them before the Faculty.

M. R.

Edinburgh, 26th January 1822.

Compeared Peter Deas, writer in Edinburgh, who being solemnly sworn, purged of partial counsel, and Mr Hay declining to state whether he had any objections, the witness examined, depones, that he is clerk to the Dean of Faculty, and that about December 1820, he received from the Dean a letter addressed to the Dean, and signed by John Hay, accompanying two inclosures. And being shown an envelope, addressed Matthew Ross, Esq. on which is the marking John Hay, received 30th November 1820, depones, the said marking is in the handwriting of the deponent, and was made by the Dean's order, and the same was made the day after the letter was received; and that the said envelope is the cover in which the letter and inclosures were sent to the Dean of Faculty. Depones, that by the Dean's direction, he made a note of the said inclosures, and thereafter delivered the inclosures to the said John Hay. And being shown a note of papers marked on the said envelope, depones, that it is the note made out by the deponent as above mentioned, and marks it as relative hereto. Depones, that the deponent carried these papers to Mr Hay's shop, and delivered them into Mr Hay's own hands, saying, that he was directed by the Dean of Faculty to do so. Depones, that John Hay answered "very well," which was all that passed between them on the occasion. Depones, that Mr John Hay expressed no surprise, but seemed to be aware of the nature of the transaction; and depones,

that the said John Hay is the person now at the bar. And Mr Hay being asked if he had any questions to put to the witness, declines answering, for reasons formerly alleged. All which is truth, as the deponent shall answer to God.

PETER DEAS.

C. HOPE, *I. P. D.*

The Dean of Faculty was applied to by me professionally, because none of the faculty would sign a complaint against the counsel whose conduct I conceived ought to have been brought under review of the Court. It will be particularly observed, that he gives evidence on papers *not in his possession*, nor in the possession of the prosecutor; while the letter written by me explanatory of my reason for transmitting to the Dean certain printed papers, was not produced in Court, although it was in the hands of the public prosecutor. The Lord Advocate must not allege, that this statement is inaccurate. I refer him to Mr Sheriff Duff, to the Crown Agent Mr Rolland, and to the following extract from my deposition before the Sheriff, page 14:—"And being shown a letter dated "York Lane, Edinburgh, 30th November 1820, signed "John Hay, and addressed to Matthew Ross, Esq. "Dean of Faculty of Advocates, and interrogated if he "sent said letter to the Dean, declines answering the "question; and the said letter is now marked by the "Sheriff and clerk with their initials." I submit, that it is on this letter, which is in the hands of the public prosecutor, that the Dean ought to have been examined. He was, however, examined on papers the Court never saw, and which the prosecutor could not produce. But any thing will pass for legal evidence in a Court where the Judges have an interest in the action.

The next witness examined was the Lord President's clerk.

Compeared James Weddel, writer in Edinburgh, who being solemnly sworn, purged of partial counsel, and Mr

Hay having declined to state whether he had objections to this witness, examined, depones, that he is clerk to the Lord President, and that, in harvest 1820, he received a written letter, signed John Hay, addressed to the deponent. Depones, that he never had any other letter from Mr Hay, so far as he recollects, except that deponed to. And being shown the letter, No. I. of the appendix, dated 1st August 1820, depones, that the same is the letter he so received. Depones, that some time thereafter, Mr Hay, the person now at the Bar, accosted him in York Place, and asked the deponent if he had any communication to make to him, John Hay, from the Lord President, in consequence of the letter which he, John Hay, had sent to the deponent. From which the deponent inferred, that it was the same John Hay, now at the Bar, who had sent the letter deponed to. Interrogated, depones, that the letter accompanied printed papers, containing reflections on the Court; but he does not remember the particular import or titles of them. Depones, that in his capacity of clerk to the Lord President, and, as he thinks, on the 24th November, he found a note in the Lord President's box, along with the copy of a letter, addressed to Mr Claud Russell. And being shown the written note, No. XXII. of the appendix, page 81, and also the copy of the letter to Mr Russell, dated 17th November 1821, and printed No. XXIII. of the appendix, page 87, depones, that these are the papers found in the Lord President's box as above deponed to. Depones, that he put them to the roll on the 27th and 28th November, and on 30th November they were again in the roll when they were remitted to the Lord Advocate. And being now shown No. 1, 2, 3, and 4, of appendix to No. IV. of the general appendix, depones, that he cannot say whether these are the identical printed papers which were inclosed in the letter addressed to the deponent as above mentioned, but that they are of similar import. And being shown a printed letter to Joseph Hume, Esq. No. III. of the general

appendix, depones, that he is more certain that the same was one of the printed papers so inclosed, and that he has no doubt on the subject. And being shown a written copy of a letter addressed to Charles William Wynne, Esq. M. P. depones, that a letter of the same tenor with that now shown to him made a part of the inclosure sent to the deponent by Mr Hay, and is referred to in the letter to the deponent by which the same was accompanied. Depones, that he sent all these papers to the Lord President in the same state in which he received them. All which is truth, as the deponent shall answer to God; and the said John Hay declined asking any questions at the witness on account of the reasons already alleged. All which is truth, as the deponent shall answer to God.

JAS. WEDDEL.

C. HOPE, *I. P. D.*

Lord President.—Mr Hay, have you any questions to put to this witness?

Mr Hay.—I have no questions to put on my own account, for the reasons already assigned in my note and minute, but out of humanity to Mr Weddel, I wish him to consider well what he has sworn to. He declares, on his oath, without reservation, that he never received any letter from me but the one he has been examined to. Now the evidence to the contrary, in my possession, is so complete, that I wish he could get off on the score of defect of memory, or some thing of that sort.

Lord President.—That will be for Mr Weddel to consider.

Mr Weddel.—I meant as far as I recollected.

Mr Hay.—But you have sworn unqualifiedly that you never did receive any other letter from me. Now, that is not the fact. However, you can *now* say, as far as you recollect. These words were accordingly interlined by the clerk.

This witness made a most miserable figure on his examination. He incessantly referred for corroboration to

the Judges on the Bench, and repeatedly reminded them and his master, the Lord President, that he had sent the papers about which he was examined to his Lordship, and that they, the Judges, knew the matter better than him, although they were vexing him with questions.

Compeared Archibald Scott, Procurator-Fiscal of the county of Edinburgh, who being solemnly sworn, purged of partial counsel, and Mr Hay having declined to state whether he had any objections to the witness, examined, depones, that he knows the said John Hay, and has seen him write and sign his name repeatedly. And being shown the signature John Hay, exhibited to No. XXII. of the general appendix, depones, he has no doubt it is the genuine signature of the said John Hay, now at the bar. And being shown the letter produced by Mr Claud Russell, a preceding witness, and referred to in his deposition, depones, that the subscription to the same appears in like manner to be the genuine signature of the said John Hay. And being shown the letter to Adam Rolland, Esq. marked No. XII. of the appendix, page 62, depones, that the body of the letter appears to the deponent to be holograph of Mr John Hay, and that the name attached to it seems to be his genuine signature. And being farther shown the letter addressed to the Lord President, No. XX. of appendix, depones, that the body of the same is also holograph of John Hay, and that it is subscribed by him to the best of the deponent's judgment. Depones, that the said John Hay referred to is the person now at the bar. Interrogated, depones, that he has no doubt in his own mind that the writings and signatures above deponed to are those of Mr John Hay; but that the deponent cannot express himself more positively, not having seen Mr Hay actually write or sign the said papers. All which is truth, as he shall answer to God. Mr John Hay declined interrogating the said witness.

ARCHD. SCOTT.

C. HOPE, *I. P. D.*

This is the same worthy and honourable individual whom Lord Advocate Rae, then Sheriff of Edinburgh, employed to carry off from the Star Newspaper-Office, my papers, and the printed pleadings on both sides, for the purpose, as it should seem, of preventing a *final* judgment of the Court in my cause from being made known to the public, because, forsooth, the Judges it was thought were ashamed of it. I forbear to comment on this unjust and oppressive act, but I may be permitted to advert to a notorious fact, that Scrogg's, Chief Justice of the Court of King's Bench, was impeached by the Commons of England in 1681, for having employed a person called Stevens, to commit a similar outrage.

Compeared Thomas Hamilton Miller, Esq. advocate, who being solemnly sworn and purged of partial counsel and Mr John Hay having declined to state whether he had any objections to this witness, examined, depones, that he was at one time counsel for John Hay now at the bar. Interrogated if he received at any time any communication, not of a confidential nature, as relating to the management of the cause before the Court? depones, that he did, and such communications were not only not made to him confidentially, or as instructions in the cause, but on the contrary, were made to him by Mr Hay, directly in breach of a special stipulation which the deponent had made, that he would only undertake the case on condition that all communication betwixt him and his client should take place through the medium of Mr Gifford, the agent for Mr Hay: That notwithstanding this stipulation, Mr Hay did transmit to the deponent a variety of printed papers, which he announced with a letter accompanying them, and which he announced it was his intention to publish. Depones, that amongst these papers was a letter to the Lord President, and *he also thinks*, a letter to Mr Wynne, M. P. and an extract or copy of the Act of Sederunt 1730, relating to judicial factors. Depones, that in consequence of this proceeding on the part of Mr Hay,

the deponent, on the 26th August 1818, as he observes from a note in his consultation book, returned the papers and fee, and declined taking further concern in the cause. Depones, that he believes the said printed papers sent him by Mr Hay are still in his possession, and, if so, he will transmit them to the clerk, but begs they may be returned to him. And being shown a letter addressed to Mr Joseph Hume, No. III. appendix, depones, that the same is marked with his initials, and that, to the best of his recollection, the same is one of the letters sent to him by Mr Hay. And being shown the four numbers of the special appendix attached to No. IV. of the general appendix, depones, that the same appears to be copies of the letters sent to him; and that upon looking at them, the deponent is enabled to say, that he was mistaken in supposing that an extract or copy of the Act of Sederunt 1730 made any part of the papers so sent, for that *he now* remembers, that what was inaccurately described by him as copy of the said act, was, in fact, a petition for the recal of the Act of Sederunt 1789, and that the mistake arose from the frequent mention of the Act of Sederunt 1730 in the course of the cause. * And being shown No. V. of the appendix, being the letter to Lord President, 3d November 1820, depones, that he received papers from Mr John Hay at different times, and that he has no doubt the document so shown to him was received by him at one time or other, though the deponent cannot remember the exact time; and this doubt applies also to the papers formerly shown to him. Depones, that the deponent delivered up to the Sheriff, as he thinks, copies of all or more of the documents above mentioned, and that an inventory thereof was made out by the deponent's clerk, to which the deponent's impression is, that a receipt was annexed

---

* It was at this stage of the examination Mr Hay complained of that witness, on examining these papers, he turned round to the Crown Lawyers and consulted with them.

for the said documents by one of the clerks in the Sheriff's office, and that the deponent will search for the receipt, and transmit the same to the clerk of the process. And being shown the letter to Mr Wynne, M. P., No. VI. of the general appendix, depones, that the deponent at one time or other received either the document now exhibited, or a copy of it, from Mr John Hay. And being shown No. VII. of appendix, being note for Alison Cranstoun Hay and John Hay, dated 8th November 1820, depones, that he distinctly recollects having at one time or other received from Mr Hay, either that document or a copy of it. Depones, that never having seen Mr Hay but once before, and never having seen him write, he has no other reason for supposing that these papers were actually sent to him by Mr Hay, excepting that the letter transmitting them bore the signature John Hay; and the address, when they were under blank covers, corresponded with the hand-writing of the letters which bore that signature; and further, that they referred to his affairs, and that the signature corresponded with the subscription of John Hay, to a letter addressed to the deponent, signed by the said John Hay and the other pursuers in the cause, which the deponent believes to be genuine, and which the deponent will search for, and transmit to the clerk of process. All which is truth, as he shall answer to God. Mr Hay declined to interrogate this witness, for the reasons formerly assigned by him. And the deponent declares, that the above deposition is truth, as he shall answer to God.

THOMAS H. MILLER.
C. HOPE, *I. P. D.*

During the time Mr Miller was under examination, Mr Hay rose and said, my Lord, common decency is not observed in this procedure. I cannot shut my eyes and ears. I must take notice of what I see and hear, that in another place it may not be denied. Here is a witness

turning his back on the Court, and examining papers with the prosecutors (this was the fact at the moment I noticed it,) in order that he may concoct evidence with them. The truth is, he has sworn to what is not true. He has got into a scrape, and cannot go on.

The Lord President reproved Mr Hay for the manner in which he had expressed himself. Mr Hay maintained, that he was accurate in point of fact. The truth is, Mr Miller had sworn, that he gave up Mr Hay's employment in consequence of receiving certain printed papers, which, however, were not in being at the time when Mr Miller resigned, nor for *more than two years afterwards*. The moment he looked at the dates of the printed documents, he saw that he had grievously committed himself, and immediately applied to some of the Advocate Deputes, for the purpose of refreshing his memory relative to *facts* and *dates*. Such an application, on the part of a witness undergoing an examination upon oath, appeared to be as novel as it was disgraceful; and surely a counsel practising at the Scottish bar, *ought* to have known, that such conduct was not more repugnant to propriety and good sense, than to every rule of judicial evidence. The Court, however, decided that all was perfectly correct, and the *Lord Justice-Clerk* dictated the following minute.

Minute of Court.

"After the deposition was closed, Lord Justice-Clerk stated, that, in consequence of Mr Hay having complained in the course of the examination of this witness, that the witness had turned round to the counsel assisting in the prosecution, and had asked for some information relative to the date of one of the documents about which he was deponing, for the purpose of assisting him in giving his evidence; the witness had immediately stated to the Court, that he only had been led to say to the counsel for the prosecution, that there was some mistake, from observing that the document exhibited bore date in 1820, as his

note, to which he referred, bore date in 1818. The Court, upon hearing what is stated by the Lord Justice-Clerk, and from what they themselves observed and heard, are perfectly satisfied that Mr Miller was not guilty of the smallest impropriety or irregularity.

C. Hope, *I. P. D.*"

Mr Hay was then requested to pay attention to the deliverance of the Court.

Mr Hay.—I have no doubt heard what *the Lord Justice-Clerk* has ordered to be taken down, but *the fact is as I have stated.* The witness has sworn that he renounced my employment in August 1818, because I had sent him a variety of printed papers. Now, *that is not true.* He has also sworn, that among these printed papers there was a printed letter to Mr Wynne,* sent to him on the 26th of August 1818; whereas the letter to Mr Wynne was not printed till *two years* afterwards. He has sworn, that in August 1818, he received a letter along with papers, intimating my intention to publish them; *that is not true.* Mr Miller *has, upon oath, assigned reasons for renouncing my employment which are not true,* and he now finds he has done wrong; *that* was the reason for turning his back on the Court, and applying to the prosecutor.

On the 16th of September 1820, I received Gifford's account, containing charges for Mr Miller's trouble, and his own, in making certain private communications to the Lord President; and as neither Gifford nor Mr Miller would give me any explanation, I resolved to make the matter public, and gave intimation to that effect in a letter I sent to Mr Miller. In October 1820, I also at that time sent, for his perusal, various printed papers, *which, like Gifford, he very kindly handed over to the Sheriff, appearing also as a witness against his own client!* Now, when examined in support of the prosecution against me,

* The words, "*he also thinks,*" were interlined, and put down afterwards by the clerk.

at the instance of the Lord Advocate, he attempted to establish upon oath, that these printed papers were put in his possession in August 1818, whereas, in point of fact, they were not transmitted him till October 1820. I would recommend to Mr Miller to make himself speedily acquainted with the facts of the case, in all their bearings, lest in the course of things, the whole matter should come before a higher tribunal; for, if *he broke down* in his evidence when only examined *on one side*, how will he endure the searching explication of a keen and able cross-examination? I beg that I may be distinctly understood, that on one occasion Mr Miller pled the cause most ably; and, at another time, he wrote an excellent paper; but, unfortunately for himself, he appeared to be advised to disregard his duty to his clients, to betray his trust, and to endeavour, when upon oath, to assign reasons for relinquishing their employment, contrary to the fact.

Advocatus stated, that whilst the letters in appendix No. X. and No. XII., the former being one addressed to the Lord Advocate of Scotland, the latter to Adam Rolland, Esq. agent for the Crown, have been proved to be of the hand-writing of John Hay complained upon, no evidence had been offered of the receipt of these letters: That he was advised, that if the evidence of the public prosecutor, and that of the Crown agent, had been offered *in limine* of the proof, and previous to these officers having heard the depositions of other witnesses, it would have formed no objection to their testimony as touching the receipt of these letters: That they had been here called upon to perform their public official duty, in bringing the circumstances connected with this complaint fairly before the Court. As, however, he was very desirous to avoid the adducing of any testimony to which exception could at all be taken, he had resolved to decline offering the above evidence to the Court, and that Mr Hay would consequently now derive all the advantage that could arise

from there being no evidence given of the receipt of the two letters in question. He now desired to conclude the proof in this case, but in the understanding that the note respecting the dates and expense of printing, referred to in the evidence of Andrew Jack, and promised to be furnished by that witness, as also the productions now promised to be made by Mr Thomas Hamilton Miller, together with certain parts of the record of this Court, as connected with these proceedings, should be held as part of the evidence offered by him in support of this complaint. WM. RAE.

www.libtool.com.cn

The reader will now perceive, that the Lord Advocate *was successful in proving what never was denied, concealed, or disputed*, namely, that I had repeatedly written to the Lord President, to Lord Succoth, and to the Court, complaining of the treatment I was receiving,—that I had printed letters addressed to Members of Parliament, and that my confidential agent, Mr Gifford, my counsel Mr Miller, and the Reverend Andrew Thomson, had got copies.

Lord President.—Mr Hay, you have now heard that the Lord Advocate has closed his proof, and although you have declined the jurisdiction of the Court, you can retract at any stage of the proceedings, employ counsel, examine witnesses, and prepare your defence; and I sincerely advise you to employ counsel, *the Court will readily assign you any two counsel you chuse.*

Lord Hermand.—I have pressed upon that man the same advice, but he thinks very little of my poor opinion; *he will follow no advice but his own.*

Mr Hay.—I saw enough in the Court yesterday to confirm me in the propriety of adhering to the line of procedure I have adopted. If my minute is a *high contempt of Court*, any defence I could make would be considered by your Lordship *ten times more so.* With the interlocutor pronounced by the Court on my minute

hanging over my head, I consider I am debarred from making any defence whatever,—and I will make note!

Lord President.—There are (looking round to counsel,) many in this Court who know that a Judge is bound to hear a hundred things which may be unpleasant to him. The Court will judge of your defence.

Mr Hay.—Keeping in view the judgment on the minute, I decline making any defence, and adhere to my former resolution, as expressed in that paper.

30th January 1822.

A Note, of which the following is a copy, was boxed by Mr Hay, for the consideration of the Court,

"NOTE for Mr JOHN HAY, to the RIGHT HONOURABLE the LORD PRESIDENT of the COURT of SESSION.

"*Edinburgh, 30th January* 1822.

"MY LORD PRESIDENT,

"On the 15th of September, I addressed a letter to your Lordship, complaining that the Act of Sederunt 1789, was so framed as to screen from punishment or censure members of Court, however much they may injure, defraud, or betray their employers. The day following, I had the honour to receive an answer from your Lordship, contradicting my averments, and intimating that my letter would be laid before the Court.

"In my next communication, I condescended on proof in support of what I had averred; and respecting the Court, I said, 'I am glad your Lordship is to submit this matter to the Court. I have complaints to make against three members of Court, of a most serious nature, and I feel confident the Court will afford me justice, when the obstacles are removed which prevent the facts from being brought under the consideration of the Court,—facts which have been not more ruinous to

"me, than they are injurious to the character of the "Court, and the honour of the country.'

"The right and the competency of the Court to en- "quire into the conduct of its own members is disputed "by no man; and as I still entertain the same opinion "as expressed in my letter to your Lordship, above re- "ferred to, I respectfully entreat your Lordship to move "this Note in Court; and I humbly pray the Court to "ordain the following gentlemen to appear personally "before the Court on Friday (February 1st) first, viz. "Mr John Shanck Mose, Mr John Hope, Mr Thomas "Hamilton Miller, advocates; Mr James Greig, writer "to the signet, and Mr Alexander Gifford, agent.

In respect, &c.

(Signed) JOHN HAY.

SEVENTH DAY.

Lord President.—Your Lordships have here a Note from the individual at the bar, requesting the Court to produce at this bar certain members of Court. Now I wish you, Mr Hay, to inform the Court, if you are now inclined to plead a defence, and if you wish the individuals named to be produced as of service to your defence.

Mr Hay.—I have several charges to make against these individuals connected with the case before the Court; and before your Lordship can come to a correct judgment, you ought to know the causes which have produced the effects about which you are to judge.

Lord President.—Am I to understand, that on these men being produced, you are to retract and plead a defence?

Mr Hay.—I have certain charges to make against these men, which I will establish if the Court will produce them. Their present appearance is necessary to me in the line of procedure I have adopted.

Lord Justice-Clerk.—That is denying the jurisdiction of this Court, "*Sir*," expressed very indignantly.

Mr Hay.—My Lord President, before I can say one word about a defence, I must inform you, that there are at present certain obstacles which prevent me from making up my mind upon that point. It appears to me, that the Lord Advocate has begun *at the wrong end of his action.* In the correspondence I had with your Lordship in September last, I stated, that I had certain serious charges to make against individual members of the Court, and I prayed that I might be enabled to bring their conduct before the Court. Had the Lord Advocate brought a complaint against me on that point, and compelled me to show cause why I had complained, I would have produced such evidence as would have convinced the Court, that the present action could not be maintained. You are proceeding upon the effects, but you have not enquired into the causes which produced them.

Lord President.—Is the Court to understand that you are now to go on and state a defence?

Mr Hay.—My Lord, I am stating the obstacles which prevent me from forming a line of defence, which I conceive to be useful to me. Will the Court remove these obstacles?

Lord Justice-Clerk.—That is not answering the question which has been put to you, Sir.

Lord Meadowbank.—I understand Mr Hay to say, that there are certain obstacles which prevent him from making a defence. It is the duty of the Court to remove these obstacles.

Lord Justice-Clerk, with great warmth, said, Mr Hay has been asked *twenty times* if he will plead a defence on the Court bringing to the bar the individuals named in the Note, and he will not answer. He has already declined the jurisdiction of the Court, (reading passages from the Note and Minute.) I say the Court cannot hear him

after such distinct declarations that he will make no defence.

Mr Hay.—My Lord President, all that the Lord Justice-Clerk has said and read, *goes for nothing*, the learned Lord *ought to know*, that I can retract, and plead at any stage of the procedure.

Lord President.—Well, then, do you now retract?

Mr Hay.—I cannot plead to advantage unless the Court first allow an enquiry into the causes which have produced the present complaint; and as the Court will not do so, I will not plead a defence. Your Lordship knows, that you did, a short time ago, on that Bench, solemnly declare "on your honour as a gentleman, and your oath of office "as a judge," that you *never did* lay down conditions to Mr Miller, unknown to me, as to how he should manage my cause.

Lord President.—I never did, Sir, I never did.

Mr Hay.—My Lord, I ask your pardon, I did not say you *did*, but I hold a letter from Mr Miller, written by his own hand, (holding up the letter in Court,) declaring that you *did lay down conditions to him.*

Lord President.—I never did any thing of the kind to Mr Miller; I never did, and, what is more, I believe Mr Miller never said so.

Mr Hay.—I did not say Mr Miller said so, but *I say he wrote me so*, and here is his letter. Now, will you call him to the bar, and I will put this letter in his hand, and demand in public Court his reasons for writing me a letter, the contents of which your Lordship so unqualifiedly denies.

Lord Justice-Clerk.—My Lords, this is quite unbearable. Is the Court to be insulted in this manner by such a person? *hold your peace, Sir; sit down, Sir!*

Mr Hay.—(Addressing the Lord President,) your Lordship wrote me, that no counsel at the bar would refuse to sign a complaint against another, if I wished

the conduct of a counsel enquired into. Now, my Lord, I will name two counsel who both refused to sign my complaint against Mr Miller.

Lord Justice-Clerk.—Hold your peace, Sir, if you say one word more, I will order you to be taken from the bar.

www.libtool.com.cn

His Lordship at that time was quite in a rage, he was beating the bench with his fist, and his face was as red as a Turkey cock. The Court would not produce Mr Miller, or any of the other members mentioned in the note.

COPY MINUTE and INTERLOCUTOR in PETITION and COMPLAINT, the LORD ADVOCATE against JOHN HAY.

"*Edinburgh, 1st February* 1822.

"The said John Hay read publicly, and offered to "lodge in process, a Note, requiring that certain indivi- "duals, members of the College of Justice, should be "ordered to attend at the Bar, to answer to complaints "the said John Hay had to state against their conduct "in that capacity; whereupon the said John Hay was "required by the Court to state whether it was his desire "that the Lords should hold the said Note as a retrac- "tion of his declinature of the Court's jurisdiction, and "a desire to be now heard upon his defence, or whether "the matter of the said note was foreign to the subject "of the present petition and complaint; to which ques- "tion the said John Hay did not return any distinct or "explicit answer, but finally declared, that he adhered to "his declinature of the Court's jurisdiction."

Eodem Die.

"The Lords considering that the said John Hay has "not explicitly stated, that the Note lodged by him re- "lates to the present case, and that he still declines to "enter upon his defence; and considering that the con- "tents of the said Note do not appear to the Court to "bear reference to the present complaint, at the instance

" of his Majesty's Advocate, against the said John Hay, " but to contain grounds of complaint which Mr Hay " states himself to have against individuals mentioned in " the Note, they prohibit the clerk from receiving or " writing upon the same in this process. Continue the " proceedings. (Signed) C. HOPE, *I. P. D.*"

www.libook.com.cn

EIGHT DAY.

Saturday, 2d February 1822

Mr Hay.—As this matter is now drawing to a close, I consider it but fair to state, that since both divisions of the Court convened, I have, except in some trifling instances, been treated with civility by all your Lordships, with one solitary exception, and that is the Lord Justice-Clerk. During the whole procedure, and, in particular, yesterday, he has shown an inclination to brow-beat; and his interruptions, and the manner in which he has acted, tended to drive both ideas and words out of my head, and prevented me from treating this Court with that respect, and acting with that composure I would otherwise have done.

Lord President.—I am not aware of any improper interruption by the Lord Justice-Clerk.

Mr Hay.—That is your opinion, my Lord, I have already stated mine. My Lord, in looking over the minute and interlocutor of yesterday, a copy of which has been served upon me, it does not appear to state the fact. I mentioned, as plainly as I could speak it, that the Note was not foreign to the subject before the Court; that in my correspondence referred to in the Note, I say, " I am " glad the Court is to take up the matter, and allow " an enquiry; and that correspondence forms part of " the present action." I also stated, that by granting the prayer of the Note, you would then have before you the causes which produced the consequences upon which you are now judging. How, then, can it be said, that the

Note is unconnected with, or foreign to the proceedings before the Court?

Lord President.—Have you any thing to state in your defence, or do you yet wish to enter upon a defence?

This was a strange question from his Lordship, he spoke as if the cause had still been open, while in fact it was already decided. The Judges having delivered their opinions and votes before coming into Court, and the interlocutor written out, sentencing me to four months imprisonment. Contrary to the established practice of administering British justice, and in direct opposition to a positive Act of Parliament, made since the Revolution, this cause was decided in a private room, with shut doors. Lord President Hope came into Court that morning with an interlocutor in his pocket, of which the following is a copy:—

"*Edinburgh, 2d February* 1822.

"The Lords having resumed consideration of, and "advised the petition and complaint, at the instance of "his Majesty's Advocate, against John Hay, with the "proof and whole procedure, they find the said com-"plaint relevant and proven, with the exception of num-"bers ten and twelve of the appendix, the former being "a letter addressed to the Lord Advocate, and the latter "a letter addressed to Adam Rolland, Esq. Crown Agent; "and having also resumed consideration of the minute "dated 24th January 1822, given in, and read in open "Court by the said John Hay, and the interlocutor "thereon, they farther find the same to be in contempt "of the dignity and authority of the Court, and an ag-"gravation of the offence charged in the said petition and "complaint; and, UPON THE WHOLE MATTER, decern "and ordain, the said John Hay to be imprisoned in "the tolbooth of Canongate of Edinburgh, for the space "of four kalendar months from this date, and thereafter, "until he find security, under a penalty of £300 ster-"ling, acted in the books of this Court, for his good be-

" haviour towards this Court, and the Judges thereof,
" for the period of five years from the date of the secu-
" rity; and grant warrant to the magistrates of Canon-
" gate, and keepers of their tolbooth, to receive and de-
" tain him accordingly; and appoint this interlocutor to
" be entered in the general Sederunt-book.

(Signed) " C. HOPE, *I. P. D.*"

The judgment of the Court was no sooner read, than Lord President Hope ordered me to be taken instantly from the bar to the jail. He had previously delivered a speech, a copy of which he was pleased to transmit to me in jail, which the reader will find in subsequent pages, along with certain correspondence with which I was honoured from the same individual.

After passing many tedious days and lonely nights in a miserable apartment in the Canongate jail, the period of confinement drew to a close, and on the 20th of May, I transmitted the following petition to the Court.

Unto the Right Honourable the Lords of Council and Session, the PETITION of JOHN HAY, presently a Prisoner in the Jail of Canongate;

Humbly sheweth,

That after the petitioner had, by your Lordships orders, attended eight days in Court, your Lordships were pleased to pronounce sentence against the petitioner. (See page 44-45.)

The petitioner has had the misfortune to be pursuer in an action against a Court factor, who has plundered a minor family of their property by FALSEHOOD, FRAUD, and WILFUL IMPOSITION, which the petitioner has repeatedly offered to prove at your Bar. The action has been before your Lordships for TWELVE years. It is still pending before Lord Succoth; and, out of the procedure in that action,

ed to appoint agent and counsel to attend his interest *during his* CONFINEMENT—and, at no distant period, the close confinement in this jail will most assuredly terminate his existence.

www.libtool.com.cn

May it therefore please your Lordships to grant warrant to liberate the petitioner from this jail, and your petitioner will ever pray.

JOHN HAY.

Canongate Jail, 20th May 1822.

On this petition being presented, the following interlocutor was pronounced :—

Edinburgh, 23d May 1822.

" The Lords having considered this petition, appoint " the same to be intimated to his Majesty's Advocate, " and allow his Lordship to give in answers to this peti- " tion, within eight days from this date, if he shall see " cause. (Signed) C. HOPE, *I. P. D.*"

ANSWERS for SIR WILLIAM RAE, of St Catharines, Baronet, his Majesty's Advocate, to the Petition of JOHN HAY, presently a Prisoner in the Jail of Canongate.—1*st June* 1822.

On the 2d of February last, the petitioner was convicted before your Lordships of certain offences, consisting in his having wickedly defamed, calumniated, and libelled several of the Judges of this Supreme Court, and the administration of justice, in relation to the proceedings of the Court in certain depending actions, to which the petitioner was a party, and of contempt of Court. Your Lordships had the power to take cognizance of these offences, and to inflict punishment on the committers of them.

You pronounced a sentence awarding against the petitioner a punishment not more than adequate to the offences he had committed.

The respondent is not aware that the sentence so pronounced can be brought under *review*, or that any consent on his part can have the effect of causing your Lordships to *remit* any part of that sentence, or of the punishment awarded by it.

The sentence, which bore date the 2d February last, "ordained the said John Hay to be imprisoned in the "tolbooth of Canongate of Edinburgh for the space of "four kalendar months from this date, and thereafter "until he find security under the penalty of £300 sterling "acted in the books of this Court, for his good behaviour "towards this Court and the Judges thereof, for the period "of five years." The period of four kalendar months specified in the sentence is now nearly expired. The petitioner has preferred the present application for the purpose of obtaining his liberation without being obliged to find the security required in the sentence, *i. e.* he prays your Lordships to *remit* that part of the sentence obliging him to find security for his good behaviour towards the Court and the Judges thereof for a limited period.

Supposing it to be in the power, and to be the inclination of your Lordships to grant this indulgence, provided sufficient reason is assigned for it, still the petitioner has assigned no sufficient reason.

He says, indeed, that no person will become security for his good behaviour; but if this be considered a sufficient reason for remitting that part of the sentence, no delinquent will in future find security for his good behaviour. The petitioner has stated many reasons which he alleges his friends have assigned for not becoming security for his good behaviour; but the respondent must be permitted to doubt whether the true reason is to be found among them. And if the petitioner's friends are really actuated by the absurd and extravagant considerations set forth in the petition, the respondent can only regret that the petitioner should be so unfortunate as to have such friends. Having

said this much, the respondent declines entering into any discussion as to the merits of the objections alleged to have been stated by the petitioner's friends to becoming security for his good behaviour—it is in their option to become security or not; and if they have any scruples, it is the business of the petitioner, and not of the respondent, to remove those scruples.

The obligation to find security for future good behaviour, is neither novel nor of rare occurrence in sentences pronounced against persons guilty of offences. It forms a very proper part of the sentence in the present case, as a punishment for the past, and more especially as a guarantee against future transgressions. The general tenor of the petition is very far from indicating that such a guarantee was superfluous, or is now unnecessary.

The petitioner states, that his health is impaired by the imprisonment he has already undergone, and that a continuance of imprisonment would terminate his existence. If this statement shall be substantiated by the testimony of medical men, your Lordships will no doubt give relief, probably by liberating the petitioner in the mean time, on his finding security that he will return to prison when his health is restored, unless he has before then found security for his good behaviour in terms of the sentence of 2d February last; but any measure of this kind must proceed, not upon the statement of the petitioner, but on the authenticated report and evidence of medical men.

In respect whereof, &c.

DUN. M'NEILL.

"*Edinburgh, 4th June* 1822.

"The Lords allow the petitioner John Hay to give in "replies to the answers for his Majesty's Advocate, *quam* "*primum*; and appoint this deliverance to be intimated "to Mr Hay by a macer of Court, in common form.

"C. Hope, *I. P. D.*"

REPLIES for JOHN HAY, presently a Prisoner in the Canongate Tolbooth, to the Answers for his Majesty's Advocate.

www.libtool.com.cn

In obedience to the above interlocutor, and in order to answer his Majesty's Advocate, and to satisfy your Lordships that the petitioner ought to obtain liberation, he is now under the necessity of stating facts and circumstances no less unpleasant to your Lordships, than painful to the parties implicated, but which, with the petitioner, is not now a matter of choice, but of absolute necessity, and a positive duty he owes to his own character, now so deeply implicated.

The petitioner has had the misfortune to be plundered, cheated, and defrauded, out of considerable property by one of your Lordships' Court factors, a person of the name of William Scott, who petitioned the Court in 1798, to appoint and confirm him in the possession of an estate belonging to a family of minors. Your Lordships were pleased to appoint and confirm the said William Scott in possession of the said property, under the authority of a law made by the Lords of Council and Session, in direct opposition to the conditions contained in the statute of Parliament 1672; which statute was made expressly for the security and protection of the property of the fatherless, and more particularly to prevent them from being injured by their own factors, when entering upon their trust, and during the infancy of the minors. The result of the Court's legislating and appointing this factor to carry off that property under the authority of your law, is, that the minor family have lost their estate to the extent of £10,000 sterling, every shilling of which they would most assuredly have been in possession of, if the Court had not made a law containing regulations directly opposite to those in the statute of Parliament.

But this is not all, nor perhaps the worst part of the petitioner's complaint. He has petitioned your Lordships

for TWELVE long years, praying that you will compel this factor to restore to the proper owners the property he has illegally detained. It is now fourteen years since the youngest of the family became of age; but such has been the procedure in this case, that the petitioner can obtain no relief. He has proved against this said William Scott falsehood upon falsehood, gross moral fraud upon fraud, and wilful imposition practised upon the minor family, of the most disgraceful description. All this has been proved; and all this the petitioner again publicly pledges himself to prove at your Lordships bar, any day your Lordships please to appoint. Yet in the face of all this, Mr John More, and Mr John Hope, both counsel practising at your bar, and both of them then in the employment of the petitioner, did, in a written opinion advise him to give up the cause as hopeless, for, in their opinion, "*however improper the conduct of this factor has been,*" *he would not on that account be even deprived of commission*, for your Lordships were not in the "*practice*" of giving minors the benefit of the conditions contained *even in your own law*, or Act of Sederunt 1730, under which law you confirmed the said William Scott in possession of the said estate. And further, the petitioner has been *ridiculed, insulted, and degraded; torn from his young and unprotected family, and for four months immured in a filthy and detestable jail or dungeon*, for the manner in which he has complained to Members of Parliament and others of the wrongs he has suffered.

Before proceeding further, it is but fair to keep in view the reasons which the Lord President stated to the petitioner, or rather to the public, which, he said, induced the Court to frame the Act of Sederunt 1730, now so much complained of by the petitioner. His Lordship's pleadings or accusations against the petitioner were delivered in Court, the day on which you consigned the petitioner to this jail. That speech commences with the following expressions: "I am afraid, Sir, that your mind

" is so *prejudiced and infatuated* on this subject, that what " I am going to say *will be of little use to you*, but *for* " *the audience here, and through them, for the public at* " *large*, it is proper to explain the nature of the *offence* " *of which you have been found guilty.*" That the Lord President did, in open Court, use the expressions as the petitioner has and shall quote them, cannot be disputed, because his Lordship was pleased to transmit to the petitioner, in this jail, *his own speech, written out by his own hand*, and from that speech so written out, the petitioner shall now quote. " Now, Sir, (No. 1.) in regard to your " wife's family, how stands the fact? Your wife's father " died, leaving a family of infant children. He named " no tutors in his will. Is this Court to be blamed for " that?

" In this situation, I say, (No. 2.) of total helpless- " ness, your wife's mother, with the express consent of " some of her children's nearest relations, applied to this " Court to appoint a factor *loco tutoris* to them. Accord- " ingly the Court did appoint such a factor. And whom " did they appoint? A person of their own choosing? " No; they named, as they always do, if no objection is " stated against him,—they named, I say, the very per- " son recommended by your mother-in-law and the other " relations, and who is thus described in the petition, (I " read the very words of it,) as one " in whom we have " *peculiar* confidence."

" And this man, Sir, (No. 3.) you have been so absurd " as constantly to describe as a creature and favourite of " the Court, and to charge the Court with having seized " on your wife's fortune, by means of a creature of their " own, contrary to law.

" This factor was, of course, (No. 4.) to govern himself, " not by the Act of Parliament 1672, which applies only " to tutors, properly so called, but by the Act of Sede- " runt 1730. And so your wife's relations, and their ad- " visers, must have known, when they applied for his

" appointment, and therefore can have no reason to com-
" plain of that act, with a view to which their application
" to the Court was made.

" The Act of Parliament 1672, is, (No. 5.) in many
" respects, an excellent act, and was passed by our Parlia-
" ment with the most benevolent views. But, unfor-
" tunately, the regulations of it are so strict, and the
" penalties so severe, that the act tended to defeat itself,
" by deterring people (especially those who could not af-
" ford the advice of counsel and agents, to direct them
" through the different forms required by it), from ac-
" cepting of the office of tutor. The consequence was,
" that many children were left without any guardians at
" all, and their relations were under the necessity of ap-
" plying to this Court to appoint factors *loco tutoris*.
" The Court soon found it necessary to lay down certain
" rules for their guidance, and with that view framed the
" Act of Sederunt 1730, *which contains very wise and*
" *salutary regulations.*

" *But, Sir,* (No. 6.) *it must be obvious to every one,*
" *that had the Court made their regulations the same, or*
" *as strict and severe as those of the Act of Parliament*
" 1672, *the consequence would have been also similar,*
" that few persons would have consented to act as factors
" under it, and *thousands of orphans would have been left*
" *totally unprotected.*"—Further on—

" And, Sir, (No. 7.) I may here mention, (what
" ought not a little to stagger you in your opinion of this
" Act of Sederunt 1730,) that while thousands of child-
" ren and their relations have had factors appointed un-
" der it, and derived incalculable benefit from it, *you are*
" *the first person who has called in question either the le-*
" *gality or the wisdom of it.*"

In calling the attention of your Lordships to these paragraphs, let it be remembered, that the charges against the petitioner were stated for the " information of the " audience," and through them to the " public at large."

Now, if the "public at large," have a right to witness the petitioner brought to the bar, and hear him accused of crimes and offences for THEIR INFORMATION, it follows of course, that the same public have also a right to hear the petitioner make a defence—or explain what may appear unreasonable in his conduct; and as your Lordships expressly refused to allow the public to hear a reply, the petitioner humbly submits, that he has a legal and constitutional right to place on record the present pleading, that the same publicity may be given to his defence, which your Lordships deemed necessary to give to the charges you condescended upon against him.

The petitioner has numbered the paragraphs quoted, in order that he may the more distinctly make a reply to each; and in so doing he finds it absolutely necessary to begin at the last paragraph, and take them backwards.

No. 7. If the petitioner is conscious in his own breast that he is correct in his positions, and if his friends are of the same opinion, there is nothing to "stagger" him in being the first who has boldly complained of an abuse under which he has so severely suffered. No abuse could ever be complained of, inquired into, or corrected, if no man took the lead.

Nos. 6 and 5, require to be taken in conjunction; they are both founded upon the hypothesis, that the statute of Parliament 1672 is defective, by being too severe on factors—that minors suffered from this—that Judges have a right to legislate and make laws when they disapprove of Acts of Parliament—that in this instance they mended the constitution, and made an excellent law, under which the property of minors was in future to be intromitted with—a law which contains "very wise and salutary re-"gulations"—and without this law "thousands of or-"phans would have been left totally unprotected."

The petitioner respectfully entreats your Lordships to keep in view the construction of the British constitution, the object of a Parliament, and the duty of Judges. It

is the pride and the boast of Britons, that they live under a happy constitution, where they are governed by laws NOT MADE BY JUDGES, but by their own representatives in Parliament. It is the British Parliament which has a constitutional right to make laws, or mend those which are made; and your Lordships' duty is, *to give effect to laws, not to make them.* But it seems, that had the Court not legislated in 1730, and mended the Act of Parliament 1672, "thousands of orphans would have been left totally "unprotected." The petitioner submits, if it is not a libel on the British Parliament to aver, that had the Judges of the Court of Session not done an illegal act in 1730, the minors of Scotland would have to this day been "unprotected." Surely it will not be contended, that a British Parliament did not exist in 1730, or that that Parliament refused to exercise its functions. But laying the illegality of your law out of view, the petitioner will be glad to know what protection minors can derive under that act, *if it is true* that you never enforce the conditions, nor inflict the penalties, "*however improper* your factors "conduct themselves." If this is the fact, your law is no check whatever upon factors. Minors would, in so far as regards Court factors, derive the same protection, were your Lordships to appoint and confirm your factors in the possession of their estates, *conformable to the rules, regulations, and conditions, of a circulating library.*

In the paragraph No. 4, "the public at large," are informed, that the factor was not to govern himself "by "the Act of Parliament 1672, but by the Act of Sede-"runt 1730." If this is not cutting down the statute by a law made by the Judges, the petitioner does not know the meaning of such a term.

Nos. 3, 2, and 1, require to be taken together. The father of the infants died without making a settlement. The Lords of Council aud Session are most assuredly not "to blame for that," nor have they ever been, by the petitioner, blamed on that point; but the petitioner has, and

he still blames them for imagining that they had a right to legislate and supply such a defect by a law of their making. This the petitioner unqualifiedly denies, and maintains, that the Act of Sederunt 1730, being in itself unconstitutional, every appointment under it is illegal. The fact, that the relations and mother of the infants did petition, may establish that two country gentlemen and the mother of a minor family did, from ignorance, and under advice of a member of the Court of Session, petition the Court to do that which was improper. But such an innocent mistake on their part, never can, to advantage, be brought forward in justification of the Court to do to the minors an illegal action. The property belonged to the minors and not to their relations, and your Lordships were placed on the Bench to give effect to laws, not to make them, nor cut down laws already made. The professed good intention on the part of the Court does not remove the legal objection to the Act of Sederunt 1730.

But let it be supposed, that the professed good intention on the part of the Court, and the application of the relations does remove the legal objection, how does it happen that the minor family cannot recover their property, or bring their cause to a termination? Surely their relations are not to be blamed for that. If it is true that this factor has, to his face, in public Court, at your bar, been charged by learned counsel with acts of "gross moral "fraud," and the facts offered to be proved on the spot, surely the relations of the minors will not to be blamed for that? If it is the opinion of the bar in general, and of Mr More and Mr Hope, in particular, that the petitioner will obtain no redress, however improper the conduct of the said Willam Scott has been, because your Lordships are not in the "practice" of giving minors the benefit and protection even of your own Act of Sederunt 1730; surely neither the relations of the minors, nor the petitioner himself, can justly be blamed for that. Now, if all this is

true, the petitioner submits, if he is not justifiable in describing this factor a favourite of the Court, and one who is above the reach of the law, in the same proportion as the petitioner has *unfortunately* found himself placed below its protection.

www.libtool.com.cn

The petitioner has, according to his humble abilities, repelled some of the charges Lord President Hope stated in Court, "for the information of the public at large;" and considering what has been said of the *prejudiced* and *infatuated* state of the petitioner's mind, it will not perhaps surprise your Lordships if the petitioner should now presume to attack your Act of Sederunt on its own alleged merits, and defend the Statute of Parliament against the alleged imperfections in it.

The preamble of the Act of Parliament made in 1672, which the petitioner shall just now quote, describes, with an accuracy almost prophetic, the whole evils the minors in Scotland are just now suffering by *judicial legislation*; and every section of the statute demonstrates the collective wisdom, the sound judgment, and parental care of the Prince and of his Parliament, in fencing and protecting the property of these young and tender members of the state, whose welfare and protection is always near and dear to every person who is blessed with manly feeling and an honest heart "Our Sovereign Lord, considering the "great prejudice and inconvenience befalling to pupils "and others who cannot preside for or defend themselves, "that their tutors or curators having immediate access to "their charter-chests, writs, evidents, and securities of "their lands, sums of money and others belonging to them, "which they may *embezzle, suppress*, or by *collusion give* "*up to their debtors*, or other persons interested, *without* "*justification, or otherwise having got satisfaction*, there "is no means by which a charge can be made up against "the said tutors or curators, but themselves, who, when "they are brought to account, make up both their own "charge and discharge. For remede whereof, his Ma-

"jesty, with advice of his estates of Parliament, statutes, "ordains and declares," &c.

1st. A correct inventory of the minor's property is directed to be made up by the factor and two of the nearest relations of the children, on the father and mother's side, three duplicates of the same are to be made out and subscribed by them, each relation to retain a copy, and the third copy to be lodged with the clerk of Court, and all countersigned by him, for the purpose, as the act declares, "that they may not be altered thereafter."

2d, When any alteration takes place respecting the estate, by further discovery of debts or funds realized, eiks are to be made to the inventories, and the same subscribed as aforesaid.

3d, No debtor to the estate can be compelled to make payment to the factor, till he produces an inventory so subscribed, and shows that the claim is contained in the inventory, and that the debt, when recovered, shall stand as a debt against him for behoof of the minors.

4th, If any factor fail to make snch inventories and eiks as directed in the act, he shall be liable both for "intro-"missions and omissions," and shall have no allowance or defalcation of the charges and expenses laid out by him in the affairs of the said pupils, in respect, that as he has failed to state to the credit of the minors sums actually received, he shall not be permitted to state to their debit, sums he may have actually disbursed, and shall be removeable from his office as a suspected intromitter.

Now, unfortunately for the minors in Scotland, they are by the Act of Sederunt 1730, totally deprived of the whole protection wisely provided for them by this valuable Act of Parliament, and which their defenceless condition so imperiously requires. The Lords of Council and Session have been pleased to make a law, and under the authority of that rule of Court, the whole property of the minor is intromitted with and carried off by the factor, under the sanction of the Court of Session.

This destructive Act of Sederunt declares, that the factor *himself* shall make up an inventory of the effects belonging to minors, and lodge the same in Court, after being six months in possession of the estate; of course, the factor makes up his own charge and discharge, which the Act of Parliament 1672 expressly prohibits. But the Act of Sederunt authorizes this method, without enacting that such inventory shall be taken in the presence of persons properly qualified on behalf of the minors, or that it shall be attested by their relations, the clergyman, elders, or any other respectable person, that it was made up in their presence, and that it contains a full and correct statement of the whole property of the deceased.

How easy it is for a factor to draw up, in his own hand-writing, a full and correct inventory in the presence of the relatives of the orphan children; and after carrying off the same, with the whole property and papers, to lodge in Court a very different one, and not containing perhaps the one-half of the property. It is quite impossible for the minors, after an interval of ten or twelve years, to say if the paper lodged in Court is the one originally made up or not. They know not to what extent their property may have been plundered, because, as the Act of Parliament expresses it, the factor is permitted and empowered "to make up his own charge and discharge, "without any attestation whatever."

But this is not the only objection which occurs to the Act of Sederunt 1730. It is brought forward at the appointment of the factor, and it has the melancholy effect of deceiving the relatives of the fatherless children, because that act declares, that the factor is a servant of the Court,—that the single inventory shall be lodged there,—and that he shall account annually to the clerk of Court for his charge and discharge.

Now, as the clause enjoining the factor annually to lodge his accounts, is in many instances totally disregarded, and never enforced by the Court, it is quite evident

that the effects to minors must be ruinous in the extreme, and much worse than if no Act of Sederunt had existed on the subject; for had that been the case, the relations would have made regulations among themselves, so as to have been a check upon one another, or the minor would have been protected under the statute. Your Lordships will admit, that the property of minors, at the death of predecessors, is really and truly their own,—that it can only be intromitted with in a legal or in an illegal manner. If in a legal manner, then it must be conformable to some distinct and positive law, and if carried off under that law, the conditions in it are binding on those intromitting. If the conditions in that law are not binding on the factor who intromits, nor on the Judges who appoint that factor, then the property has been carried off under a false pretence, and both the intromitter, and those who empowered him to intromit, are highly culpable, and in justice are bound to make good the loss to the minors. But it is quite evident, that such a loss can never be recovered in the Court of Session, if it is not the "practice" of the Court to give minors the benefit of either statute or sederunt law.

Considering, therefore, the defective construction of the Act of Sederunt 1730—the bringing it forward at the factor's appointment—the effects produced by it upon the relations of the minors—the contempt with which the factor treats it when once appointed—the total inability of minors, when they become of age, to detect frauds or recover property, the existence of which they cannot prove—taking every circumstance into consideration, the ingenuity of man could not have devised a more complete method by which factors *loco tutoris* of the Court of Session become enabled securely to rob, embezzle, and conceal the property of minors unsuspected, undetected, and unpunished, than by this Act of Sederunt.

The petitioner has already said, that he has been plundered out of his property, by the falsehoods, the frauds, and

the wilful imposition of a person who was confirmed by your Lordships in possession of an estate belonging to minors, under the Act of Sederunt 1730, the destructive tendency of which he has already described. It would fill a volume to bring under your Lordships' review what has been stated in the numerous pleadings, &c. drawn by counsel and accountants, during twelve years litigation. It is sufficient to say, that these have had no other effect than that of ruining the petitioner, and convincing him that there is some radical defect in the procedure of the Court, which prevents that cause from ever coming to a termination.

Several years ago, the petitioner was a merchant in Leith, and in 1809, was married to one of the young ladies who had been a minor, and whose property had been intromitted with by the said William Scott. In a few months subsequent, the mother of that minor family died, and when on her death-bed, she called the petitioner to her, and he being the only male relative in whom she could confide, she stated to him the manner in which she had been treated by the said William Scott. That for eleven years he had rendered no account of his intromissions, and refused to do so; that she had received nothing but insult from him; that she had reason to suspect that he was in bankrupt circumstances, and that her unmarried and unprovided daughters would be ruined. She implored the petitioner to take her young family under his protection, and use every means in his power to recover their property for them. The petitioner admits that he did promise to the dying mother that he never would desert or betray the interest of the family; that he would use every means in his power to call the factor to account; and as one of the young ladies was his own wife, he did not doubt either his power or his right to do so. Mr John More, and Mr John Hope, had not at that time assured him, that "however improper Mr Scott had acted," your Lordships would protect him. Indeed, had the

whole bar at that time delivered such an opinion, so dishonourable to your Lordships, and confirmed it upon oath, the petitioner would not have believed it. Accordingly the petitioner wrote the said William Scott on the 20th June 1809, as follows:—"Sir, as it has pleased God in his "providence to take Mrs Cranstoun to her rest, and as "all her daughters are now of age, it becomes necessary "that a state of their affairs under your charge, be laid "before them. I beg you will be so obliging as drop me "a line by post, saying when it will be convenient for "you to call at the Misses Cranstoun's house, that the "subject may be talked over, and the necessary arrange-"ments made for adjusting matters in an *amicable manner*."

To this very civil and reasonable request, your Lordships factor thought proper to return a saucy and impertinent answer, charging the petitioner with duplicity, ignorance, and presumption; and refused to attend a meeting, or produce any statement of his intromissions as factor *loco tutoris*, although the family had become all of age, and although he had been eleven years in the uncontrouled possession of their property. His reply needs no comment, it speaks intelligibly enough for itself, and is as follows:—"*Edinburgh*, 1*st July* 1809. To Mr John "Hay, Sir, You might I think have *honestly* enough "adduced a stronger reason for making to me the pro-"posal contained in your letter of yesterday's date, which "I have just now received. The death of Mrs Cranstoun "though an event to be deplored, is an event which, "from her *dependant situation*, can make little or no dif-"ference in the pecuniary arrangements of the family. "*You do not seem to be aware, that for my intromissions as* "*factor* loco tutoris *for Mr Cranstoun's children, it is in* "*my* OPTION to account to them, or to the Court by whose "authority I have acted; but certainly you cannot be "ignorant, that some time ago, I *of my own accord advis-*"*ed the family, in order to save the expense* of an appli-"cation to the Court of Session, to choose a person qua-

" lified to examine and pass my accounts, preparatory to " a division of the funds."

Now the petitioner, with humility, asks your Lordships if you can perceive any want of courtesy, or any inclination to produce a law-suit, in his letter to this factor; while, on the contrary, the said factor, in the very commencement of his letter, insinuates a want of *honesty* in the petitioner. You will also perceive that Mrs Cranstoun is said to be *dependant* on her family; of course she had no concern with the property. And the petitioner freely confesses that he did not know, until your Lordships factor thought proper to inform him, that it was in his *option* to account to the family or not, just as he pleased. He had never made up tutorial inventories when he entered upon his office, nor lodged annual accounts, conformably to your Lordships' act; and in this situation you are informed, that of his own accord, he advised a few young ladies, unacquainted with business, and certainly not well informed in law, to choose a person properly qualified to audit, examine, and pass his accounts for *eleven years*, which had never been seen. He says he advised them to this, to save the expense of an application to your Lordships. What he means by this application, the petitioner does not know, unless it be the expense of this twelve years litigation; for this Court factor ought to have known, that he had given bond to your Lordships, along with two securities, that he would faithfully account for the property, and that each year he would produce a full statement of his intromissions, " that all concerned might, *without ex-* " *pense*, see, examine, and provide themselves with the " means of checking the same."

It will be also necessary for your Lordships to keep in view, that when Mr Scott advised that family of young ladies to that irregular procedure, he was on the verge of bankruptcy; and the man he recommended to pass these accounts which could not be seen, was a Mr John Black, his own cousin, and cautioner in the Court for his

intromissions. Now, although the petitioner did not doubt the ability of Mr Black to make good any deficiency of funds, nor his liability to do so; yet surely the petitioner may be permitted to doubt how far Mr Black was of *all men most qualified* to examine these secret accounts, and report to the family how much he would have to pay them, in consequence of the *factor's insolvency.*

At that period, the petitioner knew little about the Act of Parliament 1672, or your Lordships' Act of Sederunt 1730. But he argued the matter on the principles of common sense and mercantile practice, for, in a second letter, to your Lordships' factor, the petitioner said, "Your not "having furnished the family with an account of disburse- "ments for ten or eleven years, nor a state of their funds, "or how these are applied, and your advising the family, "'*of your own accord,*' as you express it, to pass your ac- "counts, *without having seen them,* is, I confess, a novel- "ty, and leaves much room for conjecture. You are a "man of business, and no doubt sensible, that when pro- "perty is put under the management of an agent or fac- "tor, it is necessary that they hand their constituents a "state of their affairs from time to time, and I am at a "loss to find a reason for your declining to give a few "fatherless ladies what a man of business would *demand* "*as his indispensable right.*"

But such arguments as these, not to mention the positive conditions in your Act of Sederunt, were lost upon the factor. He refused to produce his accounts, or lodge them with the clerk of Court, until a complaint against him was presented to your Lordships in 1809. Certain statements, said to be his intromissions, were then produced, and strange as it may appear, *it is no less true,* that they are docqueted by the cautioner, who certifies, that "he had carefully compared the accounts and state- "ments with the vouchers, and that he found the said "accounts, &c. correct, and sufficiently vouched." In

these accounts the factor had taken credit for £300, said to have been lent out per bill and bond on Dr Erskine, David Morison, and Joseph Gillan, but on investigation, the complainers found that neither bill or bond existed, *or ever had been in the factor's hands.* Notwithstanding of this, he produced his cautioner's certificate at the bar of your Lordships, certifying that the accounts "had "been carefully compared with the vouchers, and even "found sufficiently vouched." And here it may be observed, that although he advised the family to such a procedure, under pretence of saving expense, he actually charged 100 guineas for his trouble in explaining his own statements to his own cautioner, independent of several hundred pounds charged in the name of commission.

The falsehoods which the complainer detected in the factor's pleading are marked and conspicuous, regarding a farm in which the interest of the minor family depended on the nature of the possession. The factor has repeatedly informed your Lordships, that he and the other co-tenants did not occupy that farm *in equal shares* as a grazing farm for their young cattle, but that they held it in unequal shares, not in their own right, but in the right of a preceding bankrupt tenant. *A more wilful and deliberate falsehood than this never was uttered!* By mere accident the complainers discovered a statement exhibiting the operations on the farm for several years, in which all the tenants pay equally and receive equally; and this statement is written by the factor himself, and is signed in presence of witnesses. The factor assured your Lordships, that the new tenants were not occupying the farm in their own right as co-tenants, but as trustees or creditors of the preceding tenant, and that the lease of the bankrupt had never been rendered void. This is a falsehood almost as glaring as the other, for the petitioner was at last successful in discovering a regular extracted decree of removing executed against the bankrupt tenant, by which his right and title to the farm ceased for ever. It certainly will be

extremely difficult for this factor to convince your Lordships that he was ignorant that such a document existed, or that it had not produced such a legal effect; for although the factor informed your Lordships that no such document existed, the petitioner *found it in the heart of an old process*, which this factor had with one of the co-tenants before the Sheriff of Roxburghshire; and in that process he maintained that the lease had been rendered void, and produced the extracted decree in support of his averment.

At the time the father of the minors died, a Mr George Bell, a neighbouring farmer, was due to the minor family about £500, £300 of which was constituted by a bond, and the remainder by bills for farm stock which Mr Bell had purchased at the displenishing of one of Mr Cranstoun's farms. The factor, instead of recovering this sum from Mr Bell for behoof of the minor family, allowed a great part of it to be extinguished by contra claims which Bell exhibited against the factor himself in some of his farming speculations. When the petitioner charged him with this, he, as usual, stated a deliberate falsehood, and informed your Lordships, that "the defender never did "allow Bell to compensate one shilling of the debt due "to the minors by any other claim." And by way of a silencer, he adds, "it will be judged with what face they "came before your Lordships with an assertion which "they know to be contrary to the fact." But the fact is, and your Lordships' factor knew it well, that notwithstanding this unqualified denial, he did allow a large sum due by Bell to be extinguished by contra claims, charged by Bell against the factor himself—that an account-current was made up betwixt them, and signed by each, in the presence of witnesses—that one copy is in the hands of Mr Wood, and another in the hands of Mr Rutherford, writers in Jedburgh. "It will, therefore, be judged with "what face" the factor made such a statement to your Lordships, "knowing it to be false." On this point, and that relating to the farm, the minor family lost about

menced an action against the parties who had signed the bills. From Scott he received all his instructions, and to him he made all his communications. The name Isobel Gray was only used as a stalking-horse to *deceive your Lordships*. In her name Greig was successful in obtaining decreet; in her name he signed the discharge to John Tweedie, Esq. writer to the signet, for the money. He put it in his own pocket. He advised Scott that he had recovered it; but he never advised his pretended client Isobel Gray; and that money so recovered was in the pocket of Mr Scott, or in the pocket of his agent Mr Greig, when your Lordships consigned the petitioner to this jail. If such transactions does not establish against your Lordships' factor the charge of "*falsehood, fraud, and wilful imposition*," the petitioner does not know the meaning of the term.

The petitioner will only trouble your Lordships at present, with mentioning another circumstance in this factor's pleadings. He has on some occasions found it necessary *to state the truth*, namely, that the father of the minors was a prudent, active, enterprizing farmer, "occupied extensive "farms, held valuable leases, and was, at his death, in "opulent circumstances." *This is true.* He occupied at his death the farms of Crailinghall, Upper Crailing, Haugh-head, Cappoch, and share of a grazing farm for his young cattle called Muirfield. His leases were valuable. The farm of Crailinghall was let, two years after his death, at an advance of *six hundred guineas*, and his successor made a fortune in it. The same may be said of the other farms. He was in easy circumstances; and the factor might have added that he had lent to himself £200 sterling. A few months before the minors' father died, he succeeded, as can be instructed, to a considerable sum upon the death of an uncle. To what extent the uncle's property has been plundered, cannot be instructed, but unfortunately for the minors, the whole of their father's property has disappeared, for in the factor's accounts, obtained only by compulsion,

eleven years after his appointment, it does not appear that he has at any time placed to the credit of the minors a sum *exceeding* that which was then left by their father's uncle. This is incomprehensible. Their father was not in arrears with his landlords: he had no bank credit: he had no borrowed money, on the contrary, he had money lent out at interest; the hills on his farms were covered with sheep and black cattle; and his stack-yards were full of corn. But as the factor has thought proper to lodge *no tutorial inventory*, conformable to the Act of Sederunt and *no annual accounts whatever for a period of eleven years*, it is totally impossible for the petitioner to state precisely to what amount the minor family has been plundered. The preamble to the Act of Parliament already quoted will satisfy your Lordships on that point. Taking the property of the father of the minors as left by him at only £3000, that sum, with the wreck of the grand-uncle's property, as admitted, forms a present claim exceeding £10,000. But the petitioner, on this head, shall only add, that if four months' imprisonment is, by your Lordships, considered an inadequate punishment for the manner in which the petitioner has represented such wrongs, what punishment awaits your Lordships' Court factor, who has by falsehood and by fraud so deeply wronged him?

It has been hinted to the petitioner, that there is cause to suspect the honour of one of the counsel named in this paper; and that he, having reason to believe, that if the action was not got out of Court, his conduct might at some period of the procedure be highly censured by your Lordships, and under that impression it is supposed that he advised his clients to abandon their cause; and in order to induce them to do so, he represented the conduct of your Lordships in an unfavourable light. Be that as it may, the petitioner has much to say in favour of the other counsel, and he trusts that your Lordships will not be offended by the petitioner saying, that he did not believe what his senior counsel stated, when he said, that "how-

" ever improper" the conduct of that factor had been, the petitioner would not obtain redress, even to the extent of commission. The petitioner laments that your Lordships did not consider it to be your duty to enquire into the conduct of Mr More; and he laments that you censured the petitioner for complaining of being wronged by his counsel.

After Mr More and Mr Hope had refused to act, and after the petitioner had, in open Court, been threatened for complaining against them, many of his friends advised him to abandon his cause, however well founded his claims were, for in their opinion, he never would get justice; that your Lordships appeared hostile to him, and determined on his destruction; and that, as the Court would not allow him to write his own papers, there was reason to suspect, that agents and counsel whom he might in future employ, would also betray trust, or perhaps carry on correspondence with some of your Lordships, in order that the petitioner's case might be murdered. Such insinuations as these, the petitioner treated with the contempt which he at the time conceived they merited.

He felt under that unqualified reproof he had received from Lord President Hope, in public Court, for complaining of Mr More and Mr Hope, but this he imputed to an error of judgment, and not to criminal intention on the part of his Lordship.

Accordingly the petitioner employed Mr Alexander Gifford to be his agent, and through him, Mr Thomas Hamilton Miller, was engaged as counsel. After various promises, delays, and proceedings, unconnected with the merits of the case, and which are not unknown to your Lordships, the petitioner made the painful discovery, that this Mr Gifford, his confidential agent, and Mr Miller, his confidential counsel, had acted in such a manner as to induce the petitioner to suspect that both of them had betrayed trust, and had been carrying on a secret and illegal correspondence with Lord President Hope,

injurious to the petitioner. Gifford made distinct articles of charge against the petitioner for his trouble in attending a meeting and consulting with Mr Miller, what to communicate secretly to the Lord President; he made a charge for copying papers to be sent to his Lordship; and further, he made a charge for writing a private letter to that Judge, injurious to the interest of his own clients, and of such a description, that he dare not furnish the petitioner with a copy of it, or of the document drawn up by him and Mr Miller, although he charges his clients with the trouble he has had in degrading his profession, slandering a Judge, and injuring his own employers.

The petitioner is sorry to say that Mr Miller has gone a step beyond Mr Gifford, and were the petitioner warranted to believe what he has written to his clients, of or against Lord President Hope, the petitioner would be justifiable in framing a conclusion he will not so much as hint at. This gentleman was positively and distinctly engaged to be counsel in the cause during the action; but after writing a single paper he declined to support it at the bar, and insinuated that, at some private meeting, your Lordships had acted in such a manner, as to induce him to "conceive" that you had relieved him from the positive engagements he had entered into with the petitioner. Mr Miller's words are:—"Having written the memorial "for the pursuers, I conceive I have done all I *was en-* "*joined to do in this case by the Court;* and I must now "beg to decline acting any farther in it as counsel;" and he refused to support the paper he had written. Your Lordships will here perceive a distinct allusion to a private meeting Mr Miller had with the Court, where the conversation, according to his view of the subject, was such as to induce him to "conceive" that, by writing that paper, he had completed all that "the Court enjoined him "to do." To insinuate that he ever did hold a private meeting with your Lordships, is slandering the Judges; laying out of view the malicious sporting with the private

interests and feelings in making such a communication to his clients, allowing that it had been true. Some time afterwards, this same individual intimated that he would again appear counsel in the case, "but on this express "condition, and no other, that Mr Hay is henceforth to "consider himself, and to be considered merely as a client, "and as such, to leave the management of the cause en- "tirely to his agent and counsel; and that he is in no "instance to attempt to dictate or prescribe to them in "which way they are to conduct it." By these conditions, it must be obvious that the agent and counsel would have secured to themselves the absolute and uncontroulable direction of the petitioner's cause, without incurring the smallest share of responsibility, however criminally they might have acted in destroying the petitioner's interests. Disgraceful as these conditions are when viewed as dictated by a counsel, they appear infinitely more detestable when viewed as the production of a Judge. It is therefore impossible to convey to your Lordships any correct idea of the petitioner's feelings when Mr Miller, in his next letter, made the following *startling* communications:—"I take this opportunity of adding, that the "conditions expressed in my above mentioned letter, are "precisely the same in substance, though not in words, "with those laid down by the Lord President!!!"

The petitioner is, in the Lord Advocate's printed answers, termed a "delinquent," "a committer of offences," one who stands convicted of having "wickedly defamed, "calumniated, and libelled several of the Judges of this "Supreme Court." His Lordship might have added, one who was denied a trial by jury, and declined to plead a defence before those whom the petitioner viewed as the complainers, the judges, and the jury. Now, if four months confinement in a jail, without the benefit of fresh air, is not a sufficient punishment to a British subject, prosecuted by the King's Advocate, and tried and condemned in the manner the petitioner has described, what

punishment will your Lordships inflict on these five members of Court who have deeply injured the petitioner, betrayed trust, refused to do their duty, slandered your Lordships, degraded that profession of which they are members, and produced suspicion, distrust, and dissatisfaction on the public mind. For your Lordships ought to know, that the appearance of aversion shown by the Lord Advocate to enquire into the conduct of those the petitioner has complained of, and the manner in which he has been treated, has produced an impression on the minds of many, that in consequence of the misconduct of counsel and agents, the petitioner is not getting justice at the Bar of your Lordships, *and that there is reason to suspect the existence of some detestable plot or conspiracy against him* for having presumed to remark with freedom on abuses that were naturally enough forced upon his attention. In so far as your Lordships are concerned, the petitioner is bound to believe that the most unfavourable view of the subject is only an error of judgment, and that you are as ready to inflict punishment on those who have wronged the petitioner and slandered the Court, as you are ready to punish the petitioner for improper expressions in his writings when complaining of being wronged.

Your Lordships say, that the Court is most anxious to enquire into the petitioner's wrongs, but then his petitions against counsel must be signed by counsel; and as no counsel will sign a complaint against a learned brother, nor state the facts against him, your Lordships will perceive that you have coupled the petitioner's obtaining justice with a condition which depends on the will of others, over whom the petitioner has no controul. Your Lordships' Act of Sederunt 1789, which prevents the conduct of counsel from being enquired into, except with the consent of his brother counsel, is not only unconstitutional, but contrary to reason, as it places the Bar above the Bench, and confers on counsel a privilege which Judges do not themselves enjoy.

A complaint from the petitioner, with his humble signature annexed, is in Parliament receivable against even *the head of the Supreme Court of Scotland.* The petitioner is under no necessity of applying to any of your Lordships for their signature to a complaint against a brother Judge. But however much the petitioner may be injured by a Scotch counsel at your Bar, the petitioner can obtain no relief; the guilty individual is quite secure, unless some of his companions are so uncivil as to sign a complaint against him, and this they will not do for the petitioner.

www.libtool.com.cn

The petitioner has already said, that he has in his possession the speech of Lord President Hope, written out by his Lordship's own hand, and from that speech he will again quote:—"But, Sir, in reference to the due administration of justice, the worst part of your conduct remains behind; for, not satisfied with doing every thing you could to intimidate the Judges of this Court, you presumed, while your cause was in dependence before the Lord Ordinary—you presumed to write to the accountant appointed by his Lordship to examine and report upon the factor's accounts, an abusive and threatening letter, in the hopes of extorting from him a report favourable to your claims. From which, Sir, it appears that you, who stand forward as the apostle of liberty and justice, have no just notion of either; for you seem to act as if you thought that liberty consists in the indulgence of your own ungovernable passions, and justice in every thing being made subservient to your own interest."

The petitioner being accused in public Court of dishonourable behaviour, and proceeding from such a sordid and selfish motive, he trusts that your Lordships will permit him to show that Lord President Hope, in charging him with such criminal conduct, has committed a mistake. The petitioner never did write a threatening letter to the accountant, nor did he make any communication

whatever to him, until the accountant had finished his report, and transmitted the same to the petitioner, for the express purpose of having his approbation or objections to it. This fact is established by the oath of the accountant, when sworn before your Lordships. "Depones, "that having made a draft of his report, *he transmitted* "*the same* to the agent for Mr Hay, *desiring him to* "*make his remarks upon it.*" In reading Lord President Hope's charge, this fact is entirely kept out of view, and the matter is represented as if the petitioner had of his own accord, and at an improper period, made a communication to the accountant, illegal in the act, and criminal in the object. The fact being established, that the accountant ordered the petitioner to transmit his observations on the report, which was put into the petitioner's hands for that distinct purpose, the illegality of writing the said accountant totally disappears; and this brings your Lordships to the matter contained in the said communication, which has been termed abusive and threatening in the language, and dishonourable and criminal in the intention.

The petitioner denies the criminal intention; and he also denies that the language is either threatening or abusive under the circumstances of the case. On the contrary, he maintains, that he only asked the accountant to frame his report consistent with truth, and to make up a state of accounts betwixt the parties conformable to law. In demanding this, he only asked that justice which your Lordships, before God and your country, administer to others. And he rather thinks that, in support of this averment, the following quotation from that letter to the accountant establishes the fact. There is no threat, but argument in what follows:—

"You are very sensible, that when this factor was ap-
"pointed by the Court in 1798, he subscribed a bond,
"and entered into a positive obligation to lodge tutorial
"inventories as directed and laid down in that Act under

"which he *petitioned to be appointed*, and that he also "bound himself under heavy penalties not only to lodge "tutorial inventories, but also to make up and lodge with "the Clerk of Court each year distinct statements of his "intromissions, charge and discharge. In order that he "might securely plunder the minors, he totally failed "to perform the obligations in the Act; but surely this "does not alter the law, or annihilate the contract which "still remains in all its original force. And in now "making up a state of accounts betwixt the parties, it is "clear that they must either be made up in a legal or an "illegal manner. If in a legal manner, they will be made "up conformably to the conditions contained in the Act "under which the Court appointed the factor, that is, in "yearly statements, charge and discharge, the annual in-"terest being applied to extinguish the annual family ex-"penditure, and the balance each year carried forward to "the next year's statements. If in an illegal manner, "then they will be made up in complete opposition to the "directions contained in the Act under which the factor "contracted with the Court. And this is just what you "have now done. You have branched out the accounts "for a period of twenty-three years,—you have rendered "the interest unproductive,—and, by a combination of "errors, you have in your statements deprived the family "of minors of about £4000 of the wreck of their fortune, "which, both by the principles of law and justice, is ab-"solutely their own.

"You know much better than I can inform you, that "I am here stating the truth. You know well that the "factor cannot object to the accounts being made up by "you, on the same principle, and in the same manner, "in which he was by law bound to have produced them "himself. You know well that the family of minors have "an absolute right to get their accounts made up in that "manner, any other method being illegal, and contrary to "the positive and existing law under which the property

" was intromitted with, and carried off, by order of the " Court.

" It surely will not be contended, that the Court can, " in justice, cause the property of minors to be carried off " from them under the authority of a given law, and then " deny them the protection which that law affords. This " would be clearly establishing that a conspiracy had been " entered into to rob Mr Cranstoun's family of their pro- " perty. *The Lord President, Lord Succoth, and yourself,* " *have no more right to deny me the benefit of the laws* " *made for my protection, and under which my property* " *was carried off, than you have a right to rob me on the* " *highway.* I do not now, therefore, beg of you as a " favour to make up the accounts as directed in the Act " of Sederunt. *It was your bounden duty to have done* " *so.*

" It is not my intention to attempt to convince you that " either your first or second report can be corrected. I " object to your statements *in toto.* The *facts* speaks vo- " lumes, and require little or no comment. Instead of ap- " plying the annual interest to meet the annual expenditure " as directed by the Act, you have opened heads for the " interest, without rendering it productive; and you have " drawn the yearly expenditure from the principal, thus " depriving the minors of their property, and illegally en- " riching the factor."

The petitioner has annexed a state of claim against the said factor made up from his own admissions, as appears in his accounts obtained only by compulsion twelve years after he had been in possession of the estate. The factor, in his accounts, contrived to make the minor family £50, 2s. in his debt; and, from the same accounts, the petitioner has made the factor above £3000 indebted to the minor family; not to mention the expense of twelve years' litiga- tion,—the general bad conduct of the factor,—and the suspicious circumstance of his never having debited him- self with a sum exceeding that which he recovered from

the estate of the grand-uncle of the minors, as has been already stated.

Your Lordships are sensible that the petitioner has had the misfortune to offend your Lordships, and to be tried by those he offended. For reasons already explained, and standing on record, the petitioner declined the jurisdiction of the Court, and refused to examine any witnesses, or make any defence. This ought to have made the prosecutor's witnesses more guarded in stating the truth when upon oath, as they were not to be cross-examined. In so far as regards the witnesses *who were not members of the Court*, they all swore correctly; but some of those who were members of Court, gave their evidence in such a manner as would convey to the public an incorrect opinion of the petitioner's conduct; and one of them, in particular, swore, 1*st*, That he relinquished the petitioner's employment, because the petitioner did transmit to him on the 26th of August 1818, a variety of printed papers. This is not true. The petitioner sent him no variety of printed papers on the 26th of August 1818, when he relinquished the petitioner's employment: 2*dly*, He swore, that among these papers (the words, "he also thinks," were interlined afterwards,) there was a printed letter addressed to Mr Wynne, Member of Parliament. This is not the fact; and further, it is impossible it can be true, because the letter was not printed for two years after August 1818, and because the letter produced takes notice of the actions of that very individual, which happened long subsequent to August 1818: 3*dly*, He swore, that among the variety of printed papers, there was a copy, or extract from a copy, of an Act of Sederunt, or petition for recal of an Act of Sederunt. This is not true; and besides, the printer has sworn in direct opposition to it: 4*thly*, He swore, that along with these papers transmitted him in August 1818, there was a letter from the petitioner, in which the petitioner announced it was his intention to publish. This is not true. The petitioner sent no such

paper, nor did he send any letter containing a single hint or expression about publication on the 26th August 1818. It is a fact, however, that this witness did most improperly relinquish the petitioner's employment in August 1818; and it is also a fact, that he did, upon oath at your bar, state four reasons for doing so, and all of them are incorrect. That witness was one of the petitioner's counsel for a considerable time; he was bound by his honour as a gentleman, and by his professional oath as an advocate, to support the petitioner's interest; but it was a disgrace to relinquish the petitioner's employment in an improper manner, and afterwards appear at the bar against his own employer. The truth is, he broke down with his own weight in open Court, not under cross-examinations, but in the hands of the prosecutor, while giving evidence against the accused. Your Lordships do not require to be told, that after a witness is put upon oath, he must stand with his face to the Judge, and not a whisper, not a word must be said to him, or by him, but in the hearing of both parties and of the Court. This witness finding that he could not go on, after he had sworn to that which was not true, turned his back on the Court, and had entered into a private and whispering conversation with the Crown counsel, and it was then, and not till then, that the petitioner complained of such a proceeding. The words "he also thinks," were interlined after the petitioner had complained that the witness had sworn that he had received a letter addressed to Mr Wynne, *which was not printed* in August 1818. The petitioner trusts, that your Lordships will consider it your duty to enquire into the conduct of this individual, and allow the petitioner to prove what he has stated. It is hard, indeed, that members of Court should first injure the petitioner by a breach of professional duty, and afterwards give evidence against him in the manner he has described.

The petitioner shall only add, that he feels confident

that the honour and dignity of the Court, and the justice of the country, will point out to your Lordships the propriety of an inquiry into the wrongs complained of. These wrongs the petitioner has stated and animadverted upon with that freedom which he conceives an injured subject has a constitutional right to do in a free country. But if in any instance he has exceeded the bounds of fair discussion, he will not only expunge such expressions from the record, but he will publicly express his sorrow for such a mistake; for it is not the petitioner's object to offend your Lordships, but to convince you, that under a combination of circumstances he has been deeply injured.

The petitioner when formerly complaining of his wrongs, did, under irritated feelings, use expressions which cannot be justified, and for that he sincerely expresses his sorrow; but he is conscious, in his own mind, that he never did maliciously use any expression with the intention of calumniating your Lordships. He trusts he has in the present application, satisfied one and all of your Lordships, that he is not the party who is most guilty, nor the individual who ought to be confined in a jail. And therefore, he confidently expects you will liberate him, and afford him such other relief and redress, as to your Lordships shall seem just.

In respect whereof, &c.

JOHN HAY.

CANONGATE JAIL,
15th *June* 1822.

"*Edinburgh, June* 20*th* 1822.

"The Lords appoint duplies to these replies to be "given in, printed, and put into the boxes, on behalf of "his Majesty's Advocate, within eight days from this "date, with certification.

GEO. FERGUSON, *I. P. D.*"

DUPLIES for Sir William Rae of St Catharines, Baronet, his Majesty's Advocate, to the Replies for John Hay, presently a Prisoner in the Jail of Canongate.

www.libtool.com.cn

The only question which can competently come before your Lordships in the present discussion is, whether the petitioner, John Hay, is entitled to be liberated from the jail of Canongate, without finding surety, in terms of the sentence under which he is imprisoned.

In the answers to the petition for liberation, the respondent stated that it was not competent for your Lordships to review, or alter, or remit any part of the sentence you had pronounced; and that even if such a power had been vested in you, there was no sufficient reason stated why you should exercise it on the present occasion.

The respondent purposely avoided entering into any discussion regarding the irrelevant and groundless statements with which that petition was loaded; but he concluded his answer, by stating that, if it appeared, from the authenticated report and evidence of medical men, that the petitioner's health was impaired by imprisonment, and that a continuance of imprisonment would endanger his life, your Lordships might afford him relief.

He has not with these replies produced any certificates by medical men, or mentioned the subject of his health at all, but has devoted about twenty-seven printed pages to statements totally irrelevant to the question of his liberation.

These statements seem to consist of accusations against members of Court, and even reflections upon the Court itself; and they contain much discussion relative to the merits of actions depending in Court, and to which the petitioner is a party. But here all these things, even were there any foundation for them, are out of place; and it cannot be expected of the respondent, nay, he conceives it would be improper for him to enter at all into these ir-

relevant matters. If the petitioner really thinks he has any grounds of accusation against members of the Court or others, he may advance them in proper time, place, and shape. If he has any complaint to make against the judicial factor, Mr Scott, he may make that complaint in proper form; if he has any pleas to urge on the merits of his cases, he can urge these in the cases to which they relate; but the only question at present before your Lordships, and to which you can at all listen, or to which the respondent is called upon, or, with any regard to regularity, can be permitted officially to address himself in this discussion, is, whether the petitioner is entitled to be liberated without finding surety for his good behaviour in terms of the sentence pronounced against him; and upon that question the respondent does not conceive it necessary to add any thing to the statement in his answers, because nothing is said upon it in the replies.

It is almost the invariable practice, when persons are punished for offences similar to that of which the petitioner has been convicted, to ordain them to find surety for their good behaviour for a certain space of time; and, if that part of the sentence against the petitioner is now remitted, merely because he says that his friends do not chuse to become sureties for him, it is plain that such a sentence cannot be enforced against any delinquent whatever, as every delinquent can state that plea.

In respect whereof, &c.

DUN. M'NEILL.

"*Edinburgh, 2d July* 1822.

"The Lords of both Divisions of the Court having re-
"sumed the consideration of the petition for John Hay,
"and having advised the same, with the answers, replies,
"and duplies, and the note given in for the said John
"Hay, find, that in so far as Mr Hay refers in his peti-

"tion and replies to the cause depending between him and "Mr Scott, it is not competent for this whole Court to "make any order in that process depending before an "Ordinary of the First Division, and therefore that all "such matter is irrelevant in the present application; and "further, find that the petition and replies for Mr Hay "contain many false averments as to the proceedings of "the Court, particularly as to the Lord Advocate having "been present at the private deliberations of the Court; "and also many injurious and calumnious reflections on "the Court and Members of the Bar: therefore, as well "as on the merits, refuse the desire of the petition and "note; but in respect that the petitioner sets forth that "he cannot find persons to be security for him, reserve to "the said John Hay to apply to the Court to be liberated "on his own bond, in terms of the original sentence.

(Signed) "C. Hope, *I. P. D.*"

When I received the above interlocutor, I declined signing any obligation whatever; but my friends advised me to press the matter no further, as the signing such an obligation did not prevent me from doing any thing that was *in itself legal and constitutional*, under the particular circumstances in which I was placed. After some further procedure, I became *bail for myself*, and obtained liberation from jail.

I was confined in jail from the morning of the second day of February, to the evening of the eighth day of July last, being upwards of twenty-two weeks. On obtaining liberty, I instantly set off for London, in order to complain to the House of Commons. My petition was presented by Mr Hume, and the subject received great justice from that Honourable Member, who spoke for about half an hour. He commenced by saying, that the petition he held in his hand contained such complaints, and such unqualified charges against the Lord President of the Court of Session, that he had for some time

hesitated to present it. But having received letters from respectable individuals in Edinburgh, corroborating the averments in the petition regarding the procedure in Court, and having compared the petition with the documents in support of it, he considered it his duty to lay the petition before the House. The Honourable Member took notice of *laws made by the Court*,—of President Hope's assertion, that these were "the law of the land." Mr Hume said, "It has been twice denied in this House "that his Lordship used such expressions; the petitioner "now offers to prove the fact at the bar, but what renders "this of less importance, I hold in my hand a speech "written out and corrected by Lord President *Hope*, "and transmitted to the petitioner in jail, in which his "Lordship states, that the Act of Parliament 1672, "made for the protection of minors, being defective, the "Court made an Act of Sederunt much better, and con-"taining excellent regulations. So, Sir, (looking to the "Speaker) we have it here in *writing*, *under Lord Pre-"sident Hope's own hand*, that when your laws are by "the Judges considered defective, they do then legislate, "and Acts of Sederunt *then become the law of the land*. "The petitioner states that he has been deeply injured "by such proceedings; that he has been prosecuted like "a criminal, and, without the verdict of a jury, sentenced "to four months imprisonment. I admit, Sir, that every "Court has a right to support its own dignity, and pu-"nish for contempt. But here is a prosecution, *not at the "instance of the Court*, but at the instance of his Majesty's "Advocate for the public interest, the accused was charged "with crime, but he was denied a trial by jury; he was "tried by those who, as the petitioner expresses it, were "Party, Jury, and Judges; he was pronounced guilty "by those who had an interest in doing so. Now, what "did the petitioner do in such a case? he just did, what "I for one would have done, and what I believe every "member in this House would have done in the same si-

" tuation,—he declined the jurisdiction of the Court,—he " placed on record his reasons for doing so—he refused to " join issue with his Majesty's Advocate, or plead a de- " fence. The petitioner states, that this prosecution against " him has arisen out of an action he has in the Court of " Session against a Court factor, in consequence of com- " plaining that his property had been intromitted with by " a law made by Judges, and that the action for recovery " of that property has been thirteen years in Court, with- " out any prospect of a termination. It will be stated " from the other side, that the petitioner has used strong " language to the Judges, and addressed them in a man- " ner they are little accustomed with. I admit he has " done so, and I will be glad to know that precise style of " language in which these Judges expect to be addressed, " after causing a man's property to be intromitted with " *by a law of their making,—detaining his case before* " *them for thirteen years, and ruining him and his fa-* " *mily with unbearable expenses!*" The Honourable Member was extremely severe on Lord President Hope laying down conditions to Mr Miller,—convening the Judges *with shut doors, and there obtaining their opinions and votes.* But what appeared to make the deepest impression on the House, was, that of charging his Lordship with concealing and keeping back my petitions from the Court, praying for such accommodation in the jail as might not deprive me of life. Every Member in the House seemed astonished at what Mr Hume was then stating; some of them rose up from their seats. The Lord Advocate made signs of displeasure, by shaking his head. " The Learned Lord (said the Honourable " Member,) may shake his head, but I state the fact from " a document his Lordship cannot dispute. I hold in " my hand a letter from Lord President Hope to the " petitioner in jail, *telling him, that he had kept back his* " *petitions from the Court!* These petitions, Sir, describe " the miserable apartment in which Mr Hay was con-

"fined, that *old mattle were placed on the wall to keep out* "*the cold,—that the rain from the roof had destroyed* "*his bed,—that he was in bad health,—and from the* "*want of a bed was sleeping on chairs in the cold month* "*of February.* I put it to the candour of this House, "what opinion can be entertained of that Judge *who could* "*conceal such petitions from the Court.*" The Honourable Member concluded by moving, that the petition be received, and pledged himself to make a motion next Session for production of the papers in the prosecution. The petition was accordingly received and laid on the table, of which the following is a copy:—

www.liverpool.com.cn

To the Honourable the COMMONS of the UNITED KINGDOM of GREAT BRITAIN and IRELAND, in Parliament assembled; the Petition of JOHN HAY, late Merchant in Leith.

Sheweth,

That your petitioner was lately a merchant in Leith, and in 1809, became related to a family who had been minors, and whose property had, by order of the Court of Session, been carried off and intromitted with under a law made by that Court, in direct opposition to the Act of Parliament 1672, made expressly for the protection of minors. The result of such procedure is, that property to the extent of £10,000, including interest, cannot be recovered. The injured family have for thirteen years petitioned for justice and restitution of their property, but in vain. They have proved against the intromitter appointed by the Court, acts of gross moral fraud, falsehood, and wilful imposition; yet, in the face of all this, they have, by Mr John More, and Mr John Hope, (the Lord President's son,) been advised to "*abandon the cause, for* "*however improper the factor may have acted,* he would "not on that account be deprived even of his commission," *the Court not being in the practice of giving minors the*

benefit of the act under which the Court caused their property to be carried off from them. The petitioner suspecting the truth of such a statement, petitioned the Court for the recal of the Act of Sederunt 1789, which prevents the injured party from stating his own cause; and, about the same time, he complained that Mr More and Mr Hope had refused to state his case to the Court. For so doing, the petitioner was called to the Bar, and by Lord President Hope, reproved in the most intemperate manner. His Lordship, without enquiry, declared the petitioner's *complaint against counsel false*, he said, that "Acts of "Sederunt were the law of the land," and threatened to treat the petitioner as a criminal, if ever he again troubled the Court. The petitioner afterwards employed Mr A. Gifford to be his agent, who engaged Mr Miller to be counsel in the cause. In so far as their written evidence is entitled to credit, they secretly corresponded with Lord President Hope; and it appears that his Lordship at some private meeting, laid down conditions to Mr Miller how the petitioner's cause was to be managed, or rather how it could be murdered by the counsel without being responsible. *His Lordship has repeatedly denied having laid down* conditions to that counsel, but he has always declined ordering him into Court, face to face, before the petitioner. The petitioner conceiving that he had been deeply injured, and suspecting the existence of a conspiracy to ruin him for exposing such abuse, complained through the press to Members of Parliament and others. *This gave offence to the Court of Session, and the Lord Advocate of Scotland*, thought proper to prosecute the petitioner as a criminal, *not before a jury, but before the Judges who had wronged him, and who had an interest in convicting him.* For reasons standing on record in the process, the petitioner refused to plead a defence before those who were Party, Judge, and Jury, in their own cause. He prayed for a trial by jury, but this

was refused him; and under such procedure, after eight days' attendance in Court, he was torn from his young and unprotected family, and closely confined in the jail of Canongate, from the second day of February till the eighth day of July instant, being upwards of twenty-two weeks. In this procedure, not only the forms of justice, but the very appearance of it were totally disregarded. *First, Under Lord President Hope's own hand-writing, it appears that he was summoned before the Lord Advocate, the prosecutor, and secretly gave evidence against the petitioner, and afterwards sat Judge in the cause, and presided over the Court. Secondly,* One of the witnesses having sworn to that which was not true, found he could not go on, he turned his back on the Court, and entered into a private or whispering conversation with the Crown Lawyers. The petitioner complained of such shameful procedure, and for doing so was reproved. *Thirdly,* For several days during the trial, the Judges had consultations in a private room before they entered the Court; and in that private room the Lord Advocate was seen with them, and from it he accompanied them into Court. *Fourthly,* There is an Act of Parliament which was made since the Revolution, expressly declaring, that the *Judges in the Court of Session shall not give their opinions and votes on questions before the Court in a private room,* but in public Court, and that there the interlocutor shall be written out, *not by the Judge,* but by the clerk appointed by the Crown, declaring that all cases decided in any other manner, or interlocutors written out in any other place, shall be "*null and void,*" and the writer and signer thereof shall be deprived of office. In the petitioner's case, the Judges acted in the teeth of this statute. The Lord President convened them in a private room, then and there their opinions were delivered, and the interlocutor written out, which interlocutor Lord President Hope brought into Court. The treatment received in jail, in so far as his Lordship is concerned, corresponds with his general

conduct towards the petitioner. When delivered over to the keeper, he found that no apartment had been provided for him, and had he not obtained one by favour, he would have been under the necessity of associating and sleeping with the very refuse of society.—A petition was *transmitted to the Court in usual form*, stating the fact, and praying for accommodation. The Lord President thought proper to *keep back that petition from the Court*. A second petition was transmitted, which was also concealed from the Court, and in the most contemptuous manner, returned by the penny-post, under a blank cover, by his Lordship's clerk. At that time the petitioner occupied a small and miserable apartment, where the dampness of the bed compelled him for some time to sleep on chairs, in the cold month of February, and no other apartment was ever provided.

www.libtool.com.cn

These are the wrongs the petitioner with humility submits to the consideration of this Honourable House. He has by judicial legislation and corrupt procedure, lost considerable property belonging to his wife, independent of the expense, the loss and damage he has sustained in attempting to recover it, the petitioner respectfully entreats this Honourable House to enquire into the wrongs he has suffered, by ordering the production of the records of the procedure in the prosecution against him.

May it therefore please this Honourable House to order the records of procedure against the petitioner to be laid on the table, to take his case into consideration, and to afford him such relief under the circumstances of the case, as to this Honourable House shall appear just.

And the petitioner will ever pray.

(Signed) JOHN HAY.

LONDON, 18*th July* 1822.

COPY of an APPEAL to the Public, by JOHN HAY, circulated in September and October last.

It is a position which is maintained in every free state, "that all power is derived from the people," and that they have a right to be informed of the public acts of those individuals to whom that power is delegated. Our laws are made by Parliament for the protection and security of our persons and property, and if those who are intrusted with the execution of them do either pervert the law, delay justice, or oppress the subject, they are highly culpable, and ought to be called to a strict account before that tribunal to which they are amenable. The public have a *right* to witness judicial proceedings, to censure or approve of them. If that right is denied by Judges,—if they dare to proceed against the subject in one single step *with shut doors, or out of Court*, or in public Court *prevent the meanest individual in the United Empire from repelling charges* stated to injure his character or cause, they take upon themselves a fearful responsibily. Their Sovereign was sworn "*to*, "*deny or delay* justice to no man," and with that oath they are entrusted.

In order that my complaint, as stated in the following note, a copy of which has been transmitted to Lord President Hope, may be intelligible to those who are not acquainted with the whole proceedings, it is necessary to state the outlines. A gentleman, possessed of considerable agricultural property, and who occupied extensive farms in the south of Scotland, died in 1798, without having made a settlement of his affairs, leaving a minor family of young ladies. A merchant in Edinburgh petitioned the Court to be made factor on the estate. The Court appointed him, *not* conformable to the statute of Parliament 1672, made for the protection of minors, *but under the authority of a law made by the Court*, termed an "Act "of Sederunt," and so formed, under existing procedure, as to *aid and assist their factors in plundering the estates*

of the fatherless. This factor availed himself of such an opportunity,—he entered possession without making up inventories of the property, conformable to law, and for twelve years he made up no annual accounts or statements of any description; he refused to do so, and when the minor family became of age, he disputed *in toto* their right to call him to account, or to obtain from him any settlement whatever. In 1809, I became related to the family, and, under such circumstances, I was advised to complain of this factor to the Court. Thirteen years litigation has convinced me, that however *fraudulently*, and however *criminally*, Court factors act in plundering the fatherless, relief in the Court of Session, under existing procedure, before Lord Succoth, is extremely doubtful, if not hopeless.

After my cause had been *eight* years before his Lordship, and about as many hundred pounds spent to no purpose within the walls of the Court, Mr John More, and Mr John Hope, advocates, both then in my employment, delivered an opinion, *in writing*, advising the cause to be given up, and one of the reasons they assigned was, "that "*however* improper the factor had acted, *he would not, on* "*that account*, be deprived *even* of commission," because the Court was not in "the practice" of giving effect to the act under which the Court caused the property of minors to be carried off from them, and they refused to remain counsel in the cause; one of them returned his Fees, the other kept them! This written and *unasked* opinion, not only astonished, but almost petrified some of the pursuers; it was so disgraceful to the honour of our Judges, and to the character of our Supreme Court, that I freely confess I did not at the time give credit to it. I complained to the Court of these counsel, that instead of stating my cause to the Court, as directed by me, they had favoured me with their own opinion on *the corruption of the Court*, which was not asked of them. I complained of laws made by the Court, and petitioned for leave to state my own cause.

For doing this, I was ordered to the Bar, and by Lord President Hope, reproved, insulted and threatened. My friends became alarmed for my personal safety, and as for my cause, the impression on their minds appeared to be, that *directly, or indirectly*, his Lordship would secretly correspond with any agent or counsel I might in future appoint, and that it would most assuredly be murdered by them. I felt indignant against those who could insinuate or hint at such an act of judicial depravity; but I am sorry to say, that in so far as the written evidence of the agent, Mr Gifford, and that of my counsel, Mr Hamilton Miller, is entitled to credit, it does appear, that certain communications *were secretly made* to his Lordship; and that he *did, unknown to me, lay down conditions to Mr Miller of a disgraceful description, and calculated to destroy my cause before the Court.* Gifford, in his account of the matter, appears to establish his own depravity and treachery to his clients, and that too in a manner by no means honourable to Lord President Hope, while his Lordship has twice, in public Court, *unqualifiedly denied* what Mr Miller has written. I have four times endeavoured to get this matter probed to the bottom, but I have always been prevented, either by the forms of Court, or by Lord President Hope. If his Lordship, after this public notice, still declines to order Gifford and Mr Miller to the Bar in my presence, in open Court, and will not allow their conduct to be fully investigated, the natural conclusion on the public mind will be, that his Lordship is guilty.

For complaining to Members of Parliament, and others, of the delay of justice, and for exposing such shameful procedure; in particular, for complaining to the Court of the errors, and misrepresentations, in a Report made up by Mr Russell, the Lord Advocate thought proper to prosecute me as a criminal before those who were parties in his complaint, and had an interest in pronouncing me guilty. The procedure and sentence of the Court is taken notice of in the annexed note to

Lord President Hope. Several of my friends have advised me to institute an action of damages against his Lordship, founded upon *deliberate malice*, injustice, oppression, and wrongous imprisonment. But the fact is, no action, however well founded, can be sustained against a Judge until his conduct on the Bench is disapproved of by a Superior Court; and as every British subject has an interest in the pure administration of justice, it follows, that they have a right, and that it is their duty to *aid and assist* in bringing before the proper tribunal public characters who abuse the powers intrusted to them for the general interest and good of the community at large. If, therefore, the public approve of the exposure of abuse, and the stand I have made against injustice and oppression, they ought to come forward, either individually, or collectively, and aid me in this unequal contest. Without the expression of public opinion, it is to be feared, that the proceedings against me will become "the law of the land," and will be quoted as a precedent for future prosecutions, or rather persecutions. But if vigorous and constitutional measures were adopted by individuals in different places of the country, in petitioning Parliament to inquire into the wrongs complained of, and funds provided to defray the necessary expense, we would soon discover whether Acts of Parliament, signed by the Sovereign, or Acts of Sederunt, signed by Charles Hope, are "the law of the "land;" and although his Lordship may never be able to discover "where his powers began," the Representatives of the People would fully explain to him "where "they end." With feelings of veneration to my Sovereign, attachment to the constitution, and respect towards my fellow-subjects, I subscribe myself,

JOHN HAY.

York Place, York Lane,
Edinburgh, 14*th Sept.* 1822.

COPY of a NOTE transmitted to the LORD PRESIDENT of the COURT of SESSION, by JOHN HAY.

Edinburgh, 29th August 1822.

www.libtool.com.cn

MY LORD PRESIDENT,

Your Lordship does not require to be informed,
A that an action in which I am a pursuer, against a Court factor, who had plundered a minor family of their property, was, by order of the Court, remitted to Lord Succoth, about *thirteen years ago*. The process is still before that Judge, without any reasonable prospect of coming to a termination. His Lordship orders pleading after pleading, and paper after paper,—the expense has been ruinous. Judging from his interlocutors, it appears to me, that he does not read the papers he orders, or that he does not understand the cause, although simple in the extreme. There is lamentable evidence of this fact to be found in his Lordships interlocutor, containing a remit to Mr Claud Russell accountant, before ever the points in dispute were determined by his Lordship. Both parties objected to the process being sent to him before he received it; but his Lordship forced it into his hands, and had some private meetings with him. The result is just what I anticipated, and what I was assured would happen,—a statement of intromissions, and a report made out on principles contrary to law,—contrary to reason,—and completely at variance with truth.

This factor appointed by the Judges under *one of their laws*, and in opposition to the statute, has been guilty of *gross moral fraud, falsehood, and wilful imposition*, practised to a great amount on the minor family, yet, at the end of thirteen years litigation, no relief can be obtained; and, what is worse, Mr Russell has attempted to *whitewash* the factor, and deprive the minor family of several thousand pounds, which by law and justice is absolutely their own. If any of these averments are denied or disputed, I earnestly entreat your Lordship will order Mr

Russell and the factor into Court, that in open Court, and in Lord Succoth's presence, I may prove the truth of what I have here stated, respecting each of them. You know, my Lord, that it is the opinion of counsel, that "however "improper" Court factors act, they will be screened in some shape or other; counsel and others, say, it is not the "practice" of the Judges of our Supreme Court to give the orphan and the fatherless the benefit and protection of either statute or sederunt law. I sincerely wish I had less reason to believe the correctness of such an averment. From the treatment I have received, the public in general appear to think, that it is foolish in me to expect to obtain justice in the Court of Session,—they view me as a person to whom justice is denied, or will ever be protracted,—a victim whose rights in the Court of Session are to be sacrificed for having exposed the abuses practised on the estates of minors, and for having disputed the right of Judges to make laws in opposition to the statutes of Parliament. Such opinions as these ought to be checked,—they are injurious to your character,—disgraceful to the Court,—and ruinous to me. A conviction of that description on the mind of the public, alarms my friends, blasts my pursuits in life, and deters members of Court from acting for me, for fear of offending your Lordship;—and, as you will not allow me to write my own papers, I am by this method deprived of justice. My right to obtain justice is an inherent, it is an absolute right,—but for Lord Succoth to protract my cause by improper procedure, and for you to punish me for complaining of that abuse, is a total subversion of both law and justice.

However pure the motives of a Judge may be, whenever his actions on the Bench are such as to produce suspicion, distrust, and dissatisfaction, on the public mind, that part of his conduct which has created suspicion, ought to be fairly, fully, and publicly exhibited. An upright Judge will, under such circumstances, court investigation

and will be most anxious to afford redress to the party he may have *unintentionally* wronged; and every corrupt, tyrannical, or malignant Judge, will endeavour to intimidate, injure, and destroy those they have wronged. I am bound to say, and I would fain try to believe, that your Lordship never did intentionally wrong me. You ought therefore to have no objection to explain your reason for repeatedly threatening to treat me as a criminal, because I remonstrated against your Acts of Sederunt, and complained of counsel for having betrayed trust. One of these counsel has, in writing, condescended upon *conditions* which he said you did, unknown to me, lay down to him—*conditions* calculated to destroy my cause in the Court. Your declining to order that counsel to the Bar in my presence, has produced on the public mind what I will not describe. You will also be able to explain how you could, constitutionally, and in justice, sustain an action before yourself in which you had a personal interest. In that action you was complainer to the public prosecutor,—you was by him examined as a witness, and furnished evidence to constitute the action against me; and afterwards you sat Judge in the cause, and directed the whole prosecution,—a prosecution, not at the instance of the Court, but at the instance of the Lord Advocate, for the public interest, and in that prosecution you assumed the conflicting functions of Party, Complainer, Witness, Judge, and Jury. My Lord, this appears to me a disgraceful perversion of the judicial character, and a fearful stretch of unconstitutional power. Are you quite certain that the public will calmly submit to see their fellow subjects treated in this manner?—Or that the Commons of Great Britain will applaud and approve of your treating their functions with contempt,—proclaiming Acts of Sederunt "the law of the land,"—subverting the constitution, by denying to British subjects a trial by Jury, when you have an interest in pronouncing the accused guilty?

C

D But this is not all, nor perhaps the worst feature in my complaint,—your Lordship presided over the Court,—you directed the proceedings—and, with submission, I do humbly think, that not only the forms, but the very appearance of justice was totally disregarded. One of the witnesses, a member of Court, swore to three distinct and deliberate falsehoods against me, and broke down, in public Court, in the hands of the prosecutor. Finding he could not go on, nor extricate himself, he turned round to the counsel for the prosecution, and entered into a private conversation with them. I complained of such disgraceful conduct, and for doing so was reproved; a minute was written out and signed by you, my Lord, approving of the conduct of that witness. Contrary to the legal method of publicly deciding questions in open Court, on which a final interlocutor is pronounced, you convened the Judges, *not in public Court*, but *in a private room*, with shut doors. There they delivered their opinions and votes, and there the interlocutor was written out, which you brought into Court in your pocket. You know, my Lord, that this was opposed to law, and in the teeth of a positive and existing Act of Parliament, made since the Revolution, which declares, that all questions on which a final interlocutor is pronounced by the Court, shall be decided in public Court,—that there the Judges shall deliver their opinions and votes, before the parties and the public,—and there the interlocutor shall be written out, not by the Judge, but by the clerk appointed by the Crown. And it further declares, that all questions decided otherwise, and all interlocutors written out in any other manner or place, "are null and void," and the writer and signer thereof shall be deprived of office. Although the Judges did, contrary to law, deliver their opinions and votes in private, and in my absence, yet the public prosecutor was seen with them at their private meeting, and from that private room accompanied them into Court. In open Court you condescended upon dis-

E tinct charges against me, which you said you stated for the information of the public; but contrary to every principle of law and justice, you expressly prohibited me from repelling those charges, or at the time saying one word in my own defence. Without any defence from me, and without the verdict of a jury, in an action, not at the instance of the Court, you thought proper to sentence me to be torn from my young and unprotected family, and immured in a detestable jail for four months. And this oppressive procedure was greatly aggravated by your keeping back and concealing from the Court two humble petitions from me in jail, stating the want of accommodation, and praying for such treatment as might not deprive me of life. These petitions you thought proper to conceal and keep back from the Court. It is acts of this description which require to be explained, and which have produced on the public mind an impression unfavourable to your honour as a man, your humanity as a Christian, and your integrity as a Judge.

I do humbly think, that when a British subject has been *unjustly* ridiculed, insulted, torn from his family, immured in a filthy jail or dungeon, deprived of his property, his honour, and his liberty, it is his bounden duty to use every constitutional means in his power to obtain redress, or to expose such unbearable acts of injustice, tyranny, oppression, and cruelty. That constitution we boast so much of, would long ago have ceased to exist, had every man acted the sycophant, and implicitly admitted the will and pleasure of those in power to be the law of the land. I am not a lawyer, but I cannot help thinking, that not a vestige of the British constitution remains, if Judges can with impunity make laws in direct opposition to Acts of Parliament,—proclaim these "the "law of the land,"—cause our property to be carried off from us by those laws, and treat us as criminals if we complain,—prohibit us from petitioning a Court of Justice for restitution of our own property,—force the employ-

ment of counsel, *and secretly lay down conditions* to those men how they are to injure and destroy causes with which they are intrusted,—charge us with crimes and offences in public Court, which, however false, we must not contradict. And, lastly, treat us as criminals in prosecutions before themselves, for complaining of such wrongs to Members of Parliament, and others; and, without the verdict of a jury, sentence us to be confined in jails and dungeons, during their pleasure. If all this can be quietly submitted to by British subjects without a public murmur, and tolerated by the Commons of Great Britain, where is the boasted perfection of our constitution, or the security of our persons and property?

www.libtool.com.cn

However contemptuously your Lordship may now be inclined to treat public opinion, be pleased to keep in view, that, *in this case*, it was you who first made an appeal to that tribunal; and common sense, as well as judicial duty, should have pointed out to you, that the public ought either to have heard nothing, or both sides of the cause. Now, as you condescended upon *distinct charges* against me, which you said you stated for *the information of the public*, and refused to allow me a reply; and, as your charges were injurious to my character, *and as false as they were injurious*, I maintain, without the fear of contradiction, that I have a constitutional right to make an appeal to that public, through the press,—to state the treatment I have received, and solicit their assistance, so as to enable me to bring to a proper conclusion, an investigation which deeply concerns the interest and liberty of every member in the community. In doing this, however, I disclaim every feeling of malice towards your Lordship. Unfortunately, I have been deeply injured by you,—and I must either endeavour to obtain redress, or make up my mind to loss of property and degradation of character and rank in society. This I find I cannot do;—and, on public ground, it is what I ought *not to do, if my fellow-subjects are inclined*

to support me. I shall wait six days for your Lordship's answer; and, if I do not hear from you in that time, it is my intention to print, and circulate copies of this Note, with an Address, soliciting the assistance of my fellow-subjects.

www.libtool.com.cn

In respect whereof, &c.

(Signed) JOHN HAY.

REFERENCES to the matter contained in the preceding Note to the LORD PRESIDENT.

When the Note and Appeal referred to was laid before the public, the Court Party were active in circulating, that the one half of the statement was *not true*,—my friends believed the whole of it, but were afraid that I had made averments which would be denied, and which, although true, could not be clearly proved.—The present explanation brings this matter to the test.

A Regarding the factor, the reader is referred to Replies to the Lord Advocate, page 62 to page 71. Respecting Lord Succoth,—the date of the commencement of the action,—the numerous orders given by his Lordship,—the size and dimensions of the process,—the agents' accounts, with what is stated in my letter to Mr Russell, in appendix, page 110, clearly establishes that his Lordship ought not to find fault with what I have said. As to Mr Russell, my letter to him in the same appendix, page 105, makes his conduct intelligible enough withou comment.

B What is said of Mr More, Mr Hope, Mr Miller, and Gifford, all members of *the College of Justice*, is sufficiently plain, particularly by perusing my Note to Lord President Hope in the Lord Advocate's appendix, page 71, and in various passages it will appear that Lord President Hope has always declined ordering Mr Miller to the Bar.

C In pages five and six of the Lord Advocate's complaint, it is evident that Lord President Hope was the complainer,

and that he furnished the prosecutor with materials to constitute his action. In page 86 of appendix, his Lordship, under his own hand, admits having been examined as a witness by the prosecutor, and in that action so constituted, there is conclusive evidence that he presided over the Court, and combined in his own person the conflicting functions of Party, Complainer, Witness, Jury, and Judge in his own cause.

D Regarding the witness turning round to the Crown Lawyers, that act was challenged at the time, in a crowded Court; it was of course witnessed by hundreds, the particulars have already been explained. The fact that the Judges did not deliver their opinions in public Court, and that President Hope brought into Court, an interlocutor ready written out, can also be proved by the same host of witnesses. The Act of Parliament designed to correct such an illegal procedure, was passed by William and Mary, parl. 1st, cap. 18, and is titled "act anent interlocutors." That the public prosecutor did accompany the Judges into Court from their private consulting room, cannot be denied.

E At the commencement of Lord President Hope's speech, page 114, it will be perceived that his Lordship said, he condescended upon distinct charges against me, for the information of the public, and when he had finished, I was expressly prohibited from making a reply. In two communications received from his Lordship, page 107, the fact is admitted, that he kept back and concealed from the Court my petitions when in jail, praying for

F better accommodation. On one occasion his Lordship said, that my complaint against Mr More and Mr Hope, was false, and he would not permit me to show that it was true. When I stated that I could not find a counsel who would sign a complaint against Mr Miller, he said I was stating a falsehood, for no counsel at the bar would refuse to do so,—I am ready to name four who have all refused. On various occasions, in public Court, he has

stated that I am labouring under a delusion, that my mind is impaired, that I am not a man of a sober judgment; and in his speech, pages 119 and 120, he charged me with having done an illegal act, in order to accomplish a criminal object, see my answer, pages 77, 78, and 79, in the Narrative.

After the reader has examined the passages referred to, I presume it will be admitted that I have made out my case, as stated in the preceding Note, addressed to Lord President Hope. In the Appendix to the Narrative, will be found copies of my petitions to the Court, praying for accommodation in jail,—correspondence with Lord President Hope, regarding his Lordship's speech, as delivered in Court, and concerning the said petitions,—also his Lordship's speech, as transmitted to me, with my remarks upon it.

The remainder of the publication may be termed the property of the Lord Advocate. It contains his petition to the Court, and copies of all the papers his Lordship proved I had written and printed, and on which I was condemned. I make no comment, my cause is now before my country, and with humility I subscribe myself,

JOHN HAY.

Edinburgh, 30th October 1822.

APPENDIX

www.libtool.com.cn

TO

Narrative.

LETTER from JOHN HAY to LORD PRESIDENT HOPE.

Canongate Jail, 13th February 1822.

MY LORD,

I beg respectfully to submit to your perusal and correction the inclosed paper, which I conceive contains the substance of what you addressed to me, on several occasions, in open Court; and, as matters now stand, I presume your Lordship will admit that I am acting fairly, when I say, that if you believe what I have written does not sufficiently express the impropriety of my conduct, *as stated by your Lordship from the Bench*, I will take it kind if you will supply any omission I have made.

On the other hand, if I have stated any thing which may bear against your Lordship, and which you conceive incorrect, I pray that you will write what you think you did say, and I will either accept of what your Lordship sends me as the fact, or take upon myself the responsibility of what I state. If I have omitted any thing which your Lordship said, and what gives me an advantage, I will insert it in your own words. If no communication is made to me, the public will be able to judge betwixt us in this matter.—I have the honour to be, &c.

(Signed) JOHN HAY.

To the Right Honourable Charles Hope,
Lord President of the Court of Session.

ANSWER from Lord President Hope.

www.libtool.com.cn

Granton, Thursday Evening.

Sir,

I received your letter with the enclosed, which I return. In some respects it is accurate; but, in others, not so, either in sense or language. This, I am persuaded, is not from design in you, but from your being unaccustomed to report speeches, and from your not being sufficiently acquainted with the subjects on which I touched in my address to you.

But I really have not time, as this is the very busiest period of the Session, to sit down to recollect accurately, and still less time to write out, what I said to you. I have been told, however, that a young gentleman at the Bar, who writes short-hand very accurately, took down my speech *verbatim*, and that he intends to send me a copy of it. If he does so, I shall have another copy of it made for you, to which you are perfectly welcome.

I also received your petition, in regard to your want of proper accommodation in the tolbooth. It is not a matter on which the Court could make any order, not knowing the state of the prison, nor what accommodation it is possible to afford you, consistently with that necessary for other prisoners. But I put your petition into the hands of the Solicitor-General, with a request that he would communicate with the Magistrates on the subject, in order that they might make the necessary enquiry, and afford you every accommodation which the state of the prison could afford.

The Court selected the Canongate tolbooth for the place of your confinement, *first*, Because it is generally preferred by debtors, and others in the rank of life you hold; and, *secondly*, Because they understand that the tolbooth of Edinburgh, on the Calton Hill, is very crowded at present. But if, on enquiry, you find you can be better ac-

accommodated there, I have no doubt, that, on your petitioning the Court for that purpose, they will order you to be transferred thither.

(Signed) C. HOPE.

www.libtool.com

I need hardly add, that your paper does not contain a tenth part of what I said to you. C. H.

EXTRACT of another LETTER from Lord President Hope to John Hay, dated Edinburgh, 19th February 1822.

Sir,

I have received your letter of this day's date. It is true that I did not lay your former petition, in regard to your complaint of want of proper accommodation in the tolbooth of Canongate, before the Court. The reason was, because the Court, as a court, could have given no other deliverance than a simple refusal, as relating to a matter not within their province. But I took the trouble (and I do not at all grudge it) to explain to you, by letter, that the accommodation of prisoners in gaol is under the regulation of the Magistrates, and that I had put your petition into the hands of the Solicitor-General, requesting him to speak to the Magistrates, and inform them, that it was the wish of the Court, that you should have every accommodation which the prison could afford, consistently with the comfort of others; and that, if you preferred it, I had no doubt that the Court would grant warrant for transferring you to the tolbooth on the Calton Hill.

Canongate Jail, 23d February 1822.

My Lord President,

Your Lordship's letter, dated Edinburgh, 19th February, did not reach me till yesterday. You are pleased to say, "It is true that I did not lay "your former petition, in regard to your complaint of

"want of proper accommodation in the tolbooth of Can-
"ongate, before the Court. The reason was, because the
"Court, as a Court, could have given no other deliver-
"ance on it than a simple refusal, as relating to a matter
"not within their province."

However much I may differ from your Lordship on certain points, I am sorry, truly sorry, to observe the fearful responsibility your Lordship has, before your country, taken upon yourself, as stated in the above paragraph. The petition was addressed, *not to you*, but to the Court,—it was boxed, and came regularly and legally before you,—it was humble and respectful,—it was from one whom the Court had deprived of liberty. The petitioner did not complain of the sentence, or ask for liberty, but he prayed for such treatment as might not deprive him of life; and by your own admission, you kept back that petition from the Court, because, forsooth, your private opinion was, that the Court would refuse it. Has your Lordship a power and a right to keep back from the Court any petition which you may conceive will be refused by the Court? Allowing that the Court had refused the prayer of the petition, and that it had been sent back to me as refused, I would instantly have forwarded it to the House of Commons, with your signature of refusal annexed to it, and on that refused petition, my friends there would have founded a motion of enquiry. But, by keeping back that petition, and writing me that you did so, a motion of enquiry cannot be founded on a refused petition, but must be founded on your own letter, and against you as an individual, for withholding my petition from the Court. Could I regulate my duty to my inclination, believe me, my Lord, this matter would never go farther. But the Lord Advocate, and the Court having drawn the sword, and thrown away the scabbard, I have no alternative left me, but to resist constitutionally, and avail myself of every advantage which Providence is

pleased to place within my reach, in this unequal contest.

The petition which was kept back from the Court, is as follows:—

www.libtool.com.cn

Unto the Right Honourable the Lords of Council and Session; the Petition of JOHN HAY, presently prisoner in Canongate Jail;

Humbly Sheweth,

That the petitioner was by warrant signed by the Lord President, bearing date the 2d current, sentenced to four months confinement in this jail, on a complaint brought against him before your Lordships, by his Majesty's Advocate.

The petitioner is sorry to trouble your Lordships, but he has been advised to inform you, that he is suffering from want of fresh air,—that the prison is much crowded,—that he has no apartment or room he can call his own,—that he is allowed neither coal, candle, nor victuals of any description; and had he not been permitted to take shelter in the keeper's apartment in the mean time, he would have been under the necessity of sleeping and associating with the very refuse of society.

May it therefore please your Lordships to take the petitioner's case under consideration, to order him a proper apartment, or room, and such a sum for his support, as to your Lordships shall be considered consistent with the petitioner's rank in society.

According to justice, &c.

(Signed) JOHN HAY.

CANONGATE JAIL, 9*th Feb.* 1822.

This is the petition your Lordship now admits you kept back from the Court, but this fact I did not know

until your Lordship informed me; accordingly, on the 14th current, I transmitted to Mr Weddel, the clerk of the Inner House roll, a second petition, of which the following is a copy:—

www.hdtool.com.cn

Unto the Right Honourable the Lords of Council and Session; the Petition of JOHN HAY, presently prisoner in Canongate Jail;

Humbly Sheweth,

That the petitioner, who is at present your Lordships prisoner, did, on the 9th current, present a petition to your Lordships, stating that you had sent him to this jail, without making any arrangement for his accommodation, and that unless he had been permitted to shelter himself in the keeper's apartment, he would have been under the necessity of sleeping and associating with very unpleasant society.

—It gives the petitioner much pain to say, that no deliverance has been made by the Court on that petition, or any communication whatever made to him from the Court.

The petitioner considers it his duty to inform your Lordships, that he has obtained possession of an apartment, which, *on first inspection*, he thought he could exist in, but yesterday's rains convinced him of the contrary. It is a place ten feet by ten feet two inches, from which space is to be deducted the room of a bed; the window is just two feet by eighteen inches; old mats are nailed on the wall to keep out the cold, and yesterday the rain came down from the roof, destroyed the bed, and overflowed the place.

The petitioner humbly entreats that your Lordships will be pleased to send down from the Court some respectable person to inspect the place, that from his report your Lordships may be fully satisfied respecting the correctness of what the petitioner has stated.

May it therefore please your Lordships to order a person direct from the Court, to inspect and report, and provide the petitioner with an apartment he can sleep in, without the rain pouring down upon him; and further, to give a deliverance upon his former petition.

According to justice, &c.

(Signed) JOHN HAY.

CANONGATE JAIL,
14th February 1822.

This second petition was also kept back from the Court, and returned to me in the most contemptuous manner, under a blank cover, by the penny-post, the address on the cover is in the hand-writing of your Lordship's clerk.

The result is what you cannot be surprised to hear. I have been seized with violent rheumatisms in my shoulders and sides,—and, at one time I was seriously threatened with an inflammation, and was advised to call in a surgeon. I am now ordered to discontinue sleeping on the bed, and since that time I sleep on chairs before a fire.

The manner in which your Lordship has been pleased to dispose of my petitions from this jail, and the complaints under which I am now labouring, have given serious and painful alarm to my relations, and produced on the mind of some of my friends an opinion of your Lordship and of your motives towards me which I abstain to mention. I have had the honour to receive from you two letters, in which you endeavoured to impress upon me, that the Court cannot give me relief, and that you did me a personal favour in sending my petition to the Solicitor-General. That individual appears to have transferred the business to Mr Rolland, the Crown Agent, and he in turn has referred me back to the Court. *There must be some mistake here, or some pitiful juggling,*—your Lordship kept back my petitions to the Court, praying for aliment and for accommodation,—you admit corresponding with

my prosecutors on the subject without the sanction of the Court; and this day I have received a letter from the Crown Agent in answer to mine of yesterday, of which the following is a copy:—"SIR, I have received your "letter of this day's date, and I have in answer to men- "tion, that if you wish to be removed from Canongate to "the Calton jail, or if you consider yourself in such cir- "cumstances as to be entitled to aliment, it will be neces- "sary for you to apply to the Court of Session for these "purposes.—I am, SIR, your most obedient Servant.

(Signed) "ADAM ROLLAND."

To Mr JOHN HAY, Jail of Canongate.

I respectfully entreat your Lordship will be pleased to adopt such measures as will embrace the prayer of my petitions to the Court, that such apartments may be provided for me as will not injure my health during my confinement, and such a sum allowed me per day as to your Lordship and the Crown Lawyers shall seem reasonable, under the circumstances of the case.

I have the honour to be,

My LORD, your Lordship's

Most obedient and very humble servant,

JOHN HAY.

P. S.—I am much in want of the speech your Lordship so politely offered to send me. May I ask the favour of your clerk soliciting the gentleman for your copy, from which I am to obtain another.

Note.—I never obtained better accommodation during twenty two weeks close confinement. The roof of the prison, it is true, was repaired as soon as possible, and the most marked civility, kindness, and attention, was observed to me during the whole period of my confinement by the Magistrates of the Canongate, and by Mr

Aitken, the keeper of the jail, which kindness I publicly and gratefully acknowledge.

Lord President Hope has said much regarding his anxiety to serve me in keeping back my petitions from the Court. But the conviction on the mind of my friends appears to be, that my petitions were kept back in order to force me by bad accommodation and bad health, to make an apology, and to pray for liberation. This would have injured my character, destroyed my cause in the Court, and ruined my family; but it would have served his Lordship, by effectually preventing Parliamentary enquiry into the wrongs I had suffered. When Mr Rolland, the Crown Agent, called upon me in jail, he also mentioned the President's *friendship*, and advised me to make an apology, and I would be liberated. The reader will perceive the expressions of politeness and candour in the following Cards, and how anxious his Lordship was to convince me of "*the error of my ways*;" but perhaps the "prejudiced and infatuated state of my mind" prevented me from profiting by the subsequent communications from his Lordship.

CARD from Lord President Hope to John Hay.

Granton, 22th February 1822.

The Lord President's compliments to Mr Hay. He has now received a copy of the short-hand notes of his address to Mr Hay, of which, as soon as he has had time to revise and correct it, and to have a fair copy of it made, he will send a copy also to Mr Hay. But at this, the most hurried period of the whole year in the Court of Session, it will be some days before he can overtake it. He thinks, however, that he will be able to let Mr Hay have his copy by Monday or Tuesday.

Granton, 4th March 1822.

The Lord President's compliments to Mr Hay. He now sends him his speech, as taken in short-hand, and

with some trifling corrections which it was necessary to make on it. He believes it to be almost *verbatim*, as he delivered it. He is certain that it does not vary on any essential particular.

www.libtool.com.cn

As his Lordship could not have the benefit of his clerk down here, he was obliged to copy it with his own hand. This, however, he does not regret, as he hopes that an attentive consideration of it will give Mr Hay a very different view of some points than he had before.

NOTES of the Lord President's Speech to Mr John Hay.

Sir,

I beg to inform you, that the Court having maturely considered the petition and complaint, with the proof, together with the note or minute, which you publicly read, are unanimously of opinion, that the complaint is relevant and proven, and have directed me to announce to you the judgment, which I shall hereafter read.

In the mean time, it is proper, but I am afraid that your mind is so prejudiced and infatuated on this subject, that what I am going to say will be of little use to you; *but for the audience here, and through them to the public at large*, it is proper to explain the nature of the offence of which you have been guilty.

You have, in a variety of letters, and other publications, in Court, and out of Court, libelled and insulted this Court, and several of the Judges of it, in a variety of particulars.

But, *First*, let me examine the grounds of your complaint against us.

Your first ground of complaint is, that by the Act of Sederunt 1789, enacting, that all papers given into Court shall be signed by counsel; this Court has invaded the liberty of the subject, and deprived you of a privilege, to which by law you are entitled.

Now, Sir, I have to inform you, (and it is strange that you, and your advisers, who have written so much on this subject, should be ignorant), that the Act of Sederunt 1789, is not the only nor the first Act on that subject.

As far back as the year 1710, an Act of Sederunt was passed to the very same effect, which is founded on, and explanatory of an Act of the Parliament of Scotland, on the same subject. This is the Act 1695, and I shall now read to you the Act of Sederunt 1710.

Therefore, Sir, the Act of Sederunt 1789, was no usurpation of authority, by our immediate predecessors in this Court. It was founded on the Act 1710, and that act again was founded on an Act of the Parliament of Scotland.

But further, Sir, I have good reason to believe, that, on enquiry, you will find, that the very same regulations takes place in all Courts of Record at Westminster, from the House of Lords downwards.

That Honourable House does not receive any petition of appeal, or appeal case, unless it be signed by counsel; nay, if I recollect, it must be signed, I mean a petition of appeal, by one of the counsel in the cause, in the Court below, and in my time (I do not know whether it is the rule now), but in my time, that House went a step further, and insisted that one of the counsel formerly in the cause, should plead the appeal. And I remember one instance of this rule being enforced, in the case of the present Lord Chief Commissioner Adam.

So that, even in the Courts in Westminster Hall, although a party, if he chooses, may plead his own cause *viva voce*, every paper which forms a part of the record, must be drawn and signed by a practitioner before the Court.

Therefore, Sir, you see that the regulation of this Court, in their Act of Sederunt 1789, is in unison with that of the courts of law in London.

Your next ground of complaint is, that this Court has taken upon it, by the Act of Sederunt 1730, to repeal the Act of Parliament 1672, regarding tutors. But that, Sir, is not the case. The Act of Parliament 1672 remains in full force, and is the rule by which tutors are obliged to act and account with their pupils at this day. But the Act of Sederunt 1730 was passed for the regulation of the conduct of factors to infants, who have no tutors.

It too frequently happens, that parents die without naming tutors to their children, and when they do name them, the persons named often refuse to act.

Now, Sir, in regard to your wife's family, how stands the fact? Your wife's father died, leaving a family of infant children. He named no tutors in his will. Is this Court to be blamed for that?

What next? The nearest male relation by the father's side might have served himself tutor-at-law. But he did not choose to do so. Is this Court to be blamed for that?

What next? The mother and other relations of the infants, might have made application to the Court of Exchequer for the appointment of a tutor dative. But this was not done; and so those infants were left without tutors of any kind. Is this Court to be blamed for that?

None of these things having been done, and these children being left totally helpless, with large farms to manage, which they could not do themselves, and which no unauthorised person could do for them; for, although such person might assist the agricultural operations, he could not dispose of the produce, as no person could, with safety, pay the price of it. In this situation, I say, of total helplessness, your wife's mother, with the express consent of some of her childrens nearest relations, applied to this Court to appoint a *factor loco tutoris* to them.

Accordingly the Court did appoint such a factor. And whom did they appoint?—A person of their own choos-

ing?—No. They named, as they always do, if no objection is stated against him,—they named, I say, the very person recommended by your mother-in-law and the other relations, and who is thus described in the petition (I read the very words of it) as one "in whom we have *peculiar* "confidence."

And this man, Sir, you have been so absurd as constantly to describe as a creature and favourite of the Court; and to charge the Court with having seized on your wife's fortune, by means of a creature of their own, contrary to law.

This factor was, of course, to govern himself, not by the act of Parliament 1672, which applies only to tutors, properly so called, but by the Act of Sederunt 1730; and so your wife's relations, and their advisers, must have known, when they applied for his appointment; and therefore can have no reason to complain of that act, with a view to which their application to the Court was made.

The Act of Parliament 1672 is, in many respects, an excellent act, and was passed by our Parliament with the most benevolent views. But, unfortunately, the regulations of it are so strict, and the penalties so severe, that the act tended to defeat itself, by deterring people (especially those who could not afford the advice of counsel and agents to direct them through the different forms required by it) from accepting of the office of tutor. The consequence was, that many children were left without any guardians at all, and their relations were under the necessity of applying to this Court to appoint *factors loco tutoris*. This Court soon found it necessary to lay down certain rules for their guidance; and, with that view, framed the Act of Sederunt 1730, which contains very wise and salutary regulations.

But, Sir, it must be obvious to every one, that, had the Court made their regulations the same, or as strict and severe, as those of the Act of Parliament 1672, the consequence would have also been similar, that few persons

would have consented to act as factors under it, and thousands of orphans would have been left totally unprotected.

It is the duty of such factors to adhere to those regulations, and it is the duty of the relations of the children who recommend them, and at whose desire they are appointed, to take care that they do adhere to them. It is impossible that the Court can do so, both from the immense number of such factories, and their total ignorance of the affairs and estates of the pupils; and, above all, from their other official avocation. It was recommended by the late commissioners for enquiring into certain proceedings of the courts of this country, that an officer should be appointed in this Court to superintend the conduct of such factors, as well as of all trustees appointed by Parliament, to carry into effect all private Acts of Parliament. But this has not yet been done, probably because Parliament and the government think, with the majority of this Court, that the best check on such factors and trustees, is to leave it to the relations and persons interested to call them to account; and, Sir, I may here mention, what ought not a little to stagger you in your opinion of this Act of Sederunt 1730, that while thousands of children and their relations have had factors appointed under it, and derived incalculable benefit from it, you are the first person who has called in question either the legality or the wisdom of it.

Such are the grounds of your complaints against this Court; and your offence, Sir, consists in having printed, and circulated widely, a variety of defamatory letters, accusing this Court of gross injustice in the above particulars.

Some of these letters are addressed to Members of the House of Commons; but, at the same time, printed and circulated among the public. Now, Sir, I wish you to understand what is the law on this subject.

Every subject of this realm is entitled to petition Parliament, and to complain of any thing which he conceives

to be a grievance; and this petition he may send to any Member of either House, to be by him presented to that House; and, in my opinion, he is also entitled to send a private letter to that Member, explaining his views more fully, in order to enable him to support the petition; and for any thing contained in such petition and private letter he cannot be prosecuted or punished.

But, Sir, the law of Parliament itself is this, that if the petition, and such private letter be published out of doors, by the party himself, and it contains libellous matter, then the party may be punished.

In the same way, though a Member of either House of Parliament may say what he pleases in his place in Parliament, and for that cannot be called in question out of Parliament, yet, if such Member print, and publish his speech, and it contain libellous matter, either of a private or public nature, then he may be prosecuted for it, and both Peers and Commons have been prosecuted for this, before the Courts of law in England.

Therefore, Sir, you have been grossly deceived, if you have been advised, that you could escape punishment, because that which you printed, and circulated against this Court, were nominally addressed to Members of the House of Commons; while, at the same time, they are proved to have been published to the world at large, by being sent to a variety of other persons, even to one of the Reverend Ministers of this city, who could have no possible concern with you and your law-suit, and had no means in his power to give you redress, even if you were entitled to it.

These, Sir, are the offences of which you have been guilty towards this Court. But, in reference to the pure administration of justice, the worst part of your conduct remains behind,—for not satisfied with doing every thing you could to intimidate the Judges of this Court, you presumed, while your cause was in dependence before the Lord Ordinary,—you presumed to write to the account-

ant, appointed by his Lordship to examine and report upon the factor's accounts, an abusive and threatening letter, in the hopes of extorting from him a report favourable to your claims.

www.libtool.com.cn

From which, Sir, it appears that you, who stand forward as the apostle of liberty and justice, have no just notions of either, for you seem to act, as if you thought that liberty consists in the indulgence of your own ungovernable passions, and justice in every thing being made subservient to your own interest.

What, Sir, would you have said, if you had discovered that your opponent in the cause had written similar letters, in order to influence and intimidate the Judges and the accountant? And yet it must be obvious, even to your prejudiced mind, that if *you* might do so with impunity, *he* might do it also;—and not you two only, but every party in every cause must have the same *right to insult* the Court and intimidate the Judges; and what an intolerable state of things this would be, and how utterly inconsistent with the pure administraiion of justice, every one who hears me can be at no loss to determine.

On the whole matter, therefore, the sentence of the Court is.—The reader will find the Sentence of the Court in page 44.

www.libtool.com.cn

In every country, and in every age, it has been pronounced, an unjust, a mean, and a cowardly action, to condescend upon distinct charges against a man in public Court, injurious to his character, and then prohibit him from repelling such charges, *however false*.

It is said that the Act of Sederunt 1789, is founded upon one made in 1710, which was founded upon a Scotch Act of Parliament passed in 1695. This is denied, and Lord President Hope is publicly called upon to make good his averment, by quoting the words of that act, or any act of the Scotish Parliament, which empowered the Judges to legislate to the extent of invading the privileges and ancient rights of the people in Scotland. It was the practice and the law of Scotland, long before the Court of Session was instituted, for the injured party to draw and sign his own petitions, and to plead his own cause. The Statute of Parliament passed at Edinburgh, 17th May 1532, instituting the Court of Session, and the statute 1540, regulating and ratifying the procedure of that Court, distinctly secured and preserved to the injured subject the same right. These statutes, it is true, empower the Judges of the Court of Session, "to mak sic "actes, statutes, and ordinances, as thai salle think expe- "dient, for ordouring of process, and hastie expeditioun "of justice." This is what has been termed "a delegat- "ed power from Parliament to make laws." Stair and Mackenzie were Members of the Court of Session, and creatures of Lauderdale, during the corrupt ministry of Charles II. They have not only laid down as law, that which is not true, but they have maintained that Parliament *gave* to the Court of Session that which Parliament

never possessed. Parliament did not "delegate" to the Court of Session a power to legislate without control, for in the statute 1532, it is distinctly stated, that the rules and regulations framed by the Court, shall become law, *only when approved of, and ratified by* Parliament. But allowing that this saving clause had not been inserted, the effect constitutionally would have been the same. Parliament enjoyed the right of legislating, but *it did not* enjoy the right of delegating that power to Judges, consequently it follows, that laws made by Judges are not binding on the nation, unless ratified by Parliament.

But let it be supposed, that by these statutes, the Judges of the Court of Session do constitutionally enjoy to a certain extent, the right to make laws, there still remains two fatal objections to the Acts of Sederunt 1710 and 1789. *First*, It is self-evident, that the statutes 1532 and 1540, cannot confer on the Court a power to prohibit the litigants from drawing and signing their own papers, and pleading their cause; because in those statutes that right is most distinctly preserved to the litigant: and, *Secondly*, the Acts of Sederunt 1710 and 1789, have not been ratified by Parliament.

His Lordship is extremely unfortunate in his allusion to the practice in English courts. It is Scotch law, and the rights of Scotchmen, which is the subject before his Lordship. In England, the affidavit of the party is the principal record and the ground-work of all the procedure; had the Court factor sworn to all the falsehoods his counsel has written in the papers he has signed, that factor would oftener than once made an appearance on the pillory!! The Lord Chancellor, it seems, compels the counsel who draws the paper to support it at the bar; if what Mr Miller wrote his clients be correct, the reverse appears to be the practice in the Court of Session. The other parts of his Lordship's speech which require notice from me, have been already answered, see pages 53, 54, and page 76, "AND UPON THE WHOLE MATTER," if it has

so happened, that the Judges of the Court of Session caused the property of a family of minors to be intromitted with and carried off from them contrary to law; that contrary to law the said Judges prohibited those individuals from humbly petitioning for restitution of their own property; that contrary to law, the said Judges proceeded against one of those individuals, and consigned him to a jail or dungeon for complaining of such acts. If all this can be established, perhaps Parliament will pronounce these proceedings to be what I will not name.

J. H.

www.libtool.com.cn

www.libtool.com.cn

THE

Petition and Complaint

OF

SIR WILLIAM RAE OF ST CATHARINE'S, BART.
HIS MAJESTY'S ADVOCATE, FOR HIS
MAJESTY'S INTEREST,

AGAINST

JOHN HAY.

Humbly sheweth,

THAT the petitioner considers it to be his duty, as Public Prosecutor, to present to your Lordships this petition and complaint against John Hay, now or lately baker in Edinburgh. The offence of which the petitioner accuses the said John Hay, consists in his having wickedly defamed, calumniated, and libelled several of the Judges of this Supreme Court, and the administration of justice in relation to the proceedings of the Court in certain conjoined actions still depending, in which the said John Hay is a pursuer, and William Scott, now or lately accountant in Edinburgh, *factor loco tutoris* for the children of the late Robert Cranstoun, tenant in Crailing Hall, is the defender.

Of the merits of these actions it would be improper for the petitioner to say any thing, and even of their particular nature it is unnecessary for him to give any detail. He

may, however, state in a few words, that, in the month of February 1798, Robert Cranstoun tenant in Crailing Hall, died, leaving six daughters and a son. Two of the daughters only had attained the age of majority, and of the remaining part of the family one daughter and the son were in pupillarity.

Mr Cranstoun had not made any nomination of tutors or curators for his children, consequently the charge of the affairs of the pupils devolved on the tutor at law, if he chose to enter upon the office. The aforesaid William Scott was the nearest agnate, or nearest male relation on the father's side, and consequently, would by law have been entitled to have entered upon the office of tutor if he had attained the age of twenty-five, prescribed by the act 1474, cap. 51. But Mr Scott, though major, had not attained the age of twenty-five. No other relation of the deceased, to whom the office of tutory was competent, assumed that duty, and no one can be compelled to undertake it. The law of Scotland recognizes tutors nominate or testamentary, tutors of law, and tutors dative; and it appears that in the present instance, the first class, viz. tutors nominate or testamentary, did not exist from the fault of the deceased; that the second class, viz. tutor of law, would not assume the office, and that no one applied to the proper jurisdiction for an appointment under the last class, viz. tutors dative.

In this situation, the provision of the law of Scotland is well known to the Court. (Erskine, B. i. tit. 7. sect. 10.) "That pupils may not be left entirely defenceless when "they are without a tutor or guardian of any kind, which "frequently happens if their affairs are involved, a factor "or steward is in such case named by the Court of Ses-"sion at the suit of any kinsman of the pupil for the ma-"nagement of his affairs, which factor must conduct him-"self by the rules set forth by the Act of Sederunt, Fe-"bruary 13th 1730."

Of this beneficent provision—which does not interfere

with the rights, duties, and obligations of any of the classes of legal tutors—which merely remedies the inconvenience arising from the total want of them, and which may be superseded immediately, and at any time by any of those persons, who, under the legal title of tutor nominate or testamentary, of law, or dative, may assume the office,—the family and relations of the late Mr Cranstoun appear to have availed themselves. An application for the appointment of a factor *loco tutoris*, was made in name of the four daughters of Mr Cranstoun who were above pupillarity, but under majority, and who were by law entitled to chuse their own curators; also in name of the daughter and son who were in pupillarity, and likewise of their mother, and two of the nearest male relations of the deceased, viz. the Reverend Andrew Bell, minister of the gospel at Roxburgh, and Robert Bell, farmer at Little-Dean-Lees.

All these persons concurred in petitioning your Lordships to appoint the said William Scott, (petition for the appointment of the factor *loco tutoris* 1798), "on whom "the office of tutor to those under puberty would fall, "and in whom the family have peculiar confidence," and whom they further represented as "a person of integrity "and ability for executing that office," to be factor *loco tutoris* for the children; and the application was supported by a letter signed by Mr Cranstoun's widow and the two relatives of the family already mentioned, strongly recommendatory of Mr Scott. Your Lordships, according to the practice always followed on such occasions, appointed the application to be intimated by publication on the walls of the Court; and thereafter, having resumed consideration of the application, and no objection having been stated from any quarter, you granted the prayer of the application, by appointing Mr Scott to be factor *loco tutoris* (March 7th 1798,) to the children in minority and pupillarity, on his finding sufficient security in common form.

One of Mr Cranstoun's daughters afterwards married John Hay, now complained upon, who, in consequence of

his marriage, came to have an interest in the estate of the deceased Mr Cranstoun, and a right to enquire into Mr Scott's management as factor.

It would appear that Mr Hay was dissatisfied with the conduct of Mr Scott, for of this date (Dec. 12. 1809,) there was presented to the First Division of the Court, a petition and complaint in name of Mr Hay and his wife, against Mr Scott, complaining of his management; and particularly of his having disregarded the injunctions of the Act of Sederunt 1730, relative to the lodging of factory accounts at regular periods. To that petition and complaint, Mr Scott gave in an answer,—he also lodged accounts; and, after some further procedure, your Lordships remitted to Lord Succoth to hear parties, and to do as he should see cause. Actions of count and reckoning were also raised against Mr Scott, at the instance of the said John Hay and his wife, and others of the daughters of Mr Cranstoun and their husbands. These actions were likewise remitted to Lord Succoth, and the whole were conjoined. A good deal of procedure in these conjoined actions took place before Lord Succoth, and several interlocutors were pronounced by his Lordship. The cause was likewise brought repeatedly before the First Division of the Inner-House, in consequence of petitions having been presented against the interlocutors of the Lord Ordinary on particular points, and also in consequence of notes and petitions irregularly presented for John Hay and others of the pursuers. Some of these were not even signed by counsel, although it is a rule of Court, and, indeed, is expressly enjoined by Acts of Sederunt passed upon the narrative of the evils which had resulted from an opposite practice, that all written or printed pleadings, that is to say, all pleadings forming part of the record of Court (for every party is entitled to plead his own cause *orally* at the proper stage for doing so), shall be signed by counsel, who are held responsible to the Court for their contents. This principle is believed to be acted upon in all courts of record throughout the kingdom.

It would appear that John Hay complained upon, was dissatisfied with the conduct of his counsel and agent in the cause, and also with the proceedings of the Lord Ordinary and the Court. He wrote and transmitted several letters and notes to the Lord President, to some of the Judges, and to other persons, reflecting in the most improper manner, not only on the conduct of his counsel, but on the conduct of the Lord Ordinary and of the Court, and on the administration of justice. He even wickedly caused to be printed and circulated, a variety of letters and other papers, containing the most false and injurious charges against the Court, and the Judges thereof, in relation to the proceedings in the said conjoined actions.

This criminal conduct on the part of the said John Hay was carried on for a considerable course of time, particularly in the year 1820. At length, in November of that year, in presence of the whole Judges of both Divisions assembled, there was produced by the Lord Justice-Clerk, and handed to the petitioner some of those calumnious and libellous productions which had been transmitted to his Lordship. The petitioner consequently directed an investigation to be made into the circumstances connected with the offence; and being hopeful that the friends of John Hay, complained upon, would, in consequence of that investigation, have prevailed upon him to desist from further offence, the petitioner delayed presenting any complaint against him. In this expectation the petitioner was disappointed. The sederunt book of the Court of Session contains the following entry, under date 14th November 1821:—"The Lords of both Divisions of the Court "being convened, the Lord President laid before their "Lordships, four letters addressed to, and received by "him, from John Hay, baker in Edinburgh, bearing re-"spectively the following dates, viz. 13th, 18th, 24th, and "29th September 1821; and also copies of three letters "from his Lordship to the said John Hay, dated re-"spectively the 14th, 21st, and 25th September 1821;

" which letters, and copies of letters, their Lordships di-
" rected should be put into the hands of his Majesty's
" Advocate, and recommended the same to his considera-
" tion; and the said letters, and copies of letters, were
" accordingly delivered to the Lord Advocate personally
" present in Court."

(Signed) C. Hope, *I. P. D.*

Even subsequent to that proceeding, the said John Hay has persisted in the same course of conduct; and has put or caused to be put, into the box of the Lord President, a note containing most improper reflections against the Court and the Judges, and a paper, purporting to be a copy of a letter to Mr Claud Russell, accountant in Edinburgh, *to* whom the said actions, or certain branches thereof, had been remitted by Lord Succoth, containing reflections of a similar nature. It appears from the record of Court that, of this date, the following procedure took *place*:—

Edinburgh, 30*th. November* 1821.

" The Lords of both Divisions being convened, and
" John Hay having appeared personally at the Bar, the
" Lords, considering that the said John Hay has not, in
" his declaration above written, acknowledged the au-
" thenticity of the copy of the letter to Mr Claud Russell,
" remits the said letter, or copy of a letter, together with
" Mr Hay's note to the Lord President, his declaration,
" and all other papers connected with this matter, to the
" Lord Advocate, that his Lordship may consider the
" same, and take such steps as to him shall seem proper."

(Signed) C. Hope, *I. P. D.*

The petitioner having considered the papers remitted to him by the Court, and having investigated the matter to which they relate, considers it his duty to present this petition and complaint against the said John Hay, to the end that he may be punished for the crime or offence which he has committed. That offence, as already stated,

consists in the having wickedly defamed, calumniated, and libelled the administration of justice, and the Judges of this Supreme Court, in regard to their conduct and proceedings in a depending action or actions in which the said John Hay was a party. The petitioner has printed, in the form of an appendix, copies of the different letters and documents, by the writing, printing, and publishing of which, this offence was committed. From these it will be seen, that the accusations of the said John Hay are of the most gross and injurious nature, calculated to bring the Court and the administration of justice into hatred and contempt, and are more particularly directed against the Lord President, Lord Succoth, Lord Balgray, and Lord Hermand.

The said John Hay is charged with having written and transmitted, or caused to be written and transmitted, to James Weddell, clerk to the Lord President, the letter No. I. of Appendix, containing the most calumnious and injurious accusations against Lord Succoth, on account of a judgment pronounced by him in the said conjoined actions; and particularly the following passage:—"I entreat you will be pleased to make my humble respects "to his Lordship, (the Lord President), and say, that I "am ready to explain to him, that, in consequence of a "late judgment pronounced by Lord Succoth in my case, "all hopes of bringing it to a termination have now disappeared, *as the judgment his Lordship has pronounced "is capable of no other construction than to aid and assist "the factor* in keeping my case in the same unfinished "state before Lord Succoth, so long as his Lordship remains on the Bench; or, as his friend Mr Boswell expresses it, 'during his lifetime.'"

The said John Hay is charged with having written and transmitted, or caused to be written and transmitted to the Lord President, the writing No. II. of Appendix, purporting to be the copy of a letter, or part of a letter, to C. W. Wynne, Esq. M. P. containing the most calum-

nious and injurious accusations against the Lord President, in his official capacity, and against the Court, and the administration of justice. The following is one of the many passages of that description, contained in this writting:—" But this, Sir, is not a case of feeling merely; it " is one of right, and of public justice, in which Parliament, and the country at *large*, are deeply concerned. " *And if President Hope will take it upon him thus to de-* " *prive the subject of his rights*,—to hold up the statutes " of Parliament to public contempt,—and declare Acts of " Sederunt to be the laws of the land,—let it be at his " peril that he does so. Every loyal and patriotic indi- " vidual throughout the land must, indeed, feel alarmed, " when it is known that such Radical notions are enter- " tained by our *Judges*, and openly promulgated from " the Bench whereon they sit."

The said John Hay is charged with having *written*, printed, and published, or caused to be written, printed, and published, the letter No. III. of Appendix, addressed to Joseph Hume, Esq. containing many most injurious and calumnious reflections against the Lord President and the Court, and the administration of justice in Scotland.

The said John Hay is charged with having written, printed, and published, or caused to be written, printed, and published, under the title " Appendix," the four writings forming No. IV. of the Appendix to this petition, and consisting of, 1*st*, A letter addressed to the Lord President; 2*d*, A letter addressed to Lord Balgray; 3*d*, A letter addressed to the Lord Advocate; and, 4*th*, An extract from a petition for Alison Hay, and John Hay, for recal of the Act of Sederunt 1789, and containing throughout the most injurious and calumnious charges and accusations against the Lord President, Lord Balgray, Lord Hermand, and Lord Succoth, and the most unjust reflections on the whole Court, on account of judgments pronounced in the said actions. The letter addressed to Lord Balgray contains the following pas-

sage:—" In the reclaiming petition, the act of Parlia-
" ment 1672 was unfortunately taken notice of. This
" put Lord Hermand and the whole Court into a rage.
" His Lordship railed against the petitioners,—the evi-
" dence was disregarded,—the case was given again
" against the executors, with heavy expenses,—and you,
" my Lord, forgot to redeem your pledge.

" This decision has hitherto appeared incomprehensible
" to every lawyer and gentleman who has studied the case.
" They say, that the interlocutor of the Lord Ordinary is
" not conformable to either law or justice, in respect that
" it gives the factor credit for money said by him to have
" been disbursed, and vouched by no other evidence than
" his own assertion.

" I have been told that the confirmation of the Lord
" Ordinary's decision by the Court, has established two
" points of law, and that to maintain those positions before
" the House of Peers, would disgrace the lips of an idiot."

The said John Hay is charged with having written, print-
ed, and published, or caused to be written, printed, and
published the letter addressed to the Lord President, which
forms No. V. of the Appendix hereto annexed, and contain-
ing the most injurious reflections on the said Lord Presi-
dent in his judicial character, and on the court and the ad-
ministration of justice.

The said John Hay is charged with having written,
printed, and published, or having caused to be written,
printed, and published, the letter to C. W. W. Wynne,
Esq. M. P., No. VI. of Appendix, containing through-
out the most calumnious and injurious charges against the
Lord President and Lord Succoth, and the whole Court,
and administration of justice in Scotland. The attention
of your Lordships is particularly directed to the following
passage, near the end of that letter:—" I have had my
" property carried off from me contrary to law,—*contrary*
" *to law I have been prohibited from humbly petitioning that*

" *it might be restored*,—I have been grossly insulted at " the bar of justice,—I have been told before a public " audience, that my mind is impaired,—that I am not a " man of a sober judgment,—and that, if ever I again pre- " sume to trouble those *who caused my property to be car-* " *ried off*, I will be *considered a criminal, and will by them* " *be treated as such.* Should the day ever arrive, when " the Commons of Great Britain judge it their duty to en- " quire into the conduct of President Hope and Lord Suc- " coth, perhaps the House, in its wisdom, may consider *that* " *the one has degraded the dignity of justice, and excited a* " *spirit of discontent and dissatisfaction in the minds of* " *the public; while the other, perhaps, may appear to that* " *House to want that capacity of intellect and firmness of* " *mind which is requisite in a Judge.* Strong measures " may be considered just and due to the public, but this, " you will perceive, is no relief to me."

The said John Hay is charged with having written, printed, and published, or having caused to be written, printed, and published, the note for Alison Cranstoun Hay and John Hay, No. VII. of Appendix, containing injurious reflections on the Court and the administration of justice, in relation to said actions; and particularly therein asserting, that " the whole procedure appears to be *tainted*."

The said John Hay is charged with having written and transmitted, or caused to be written and transmitted to Lord Succoth, the letter No. VIII. of Appendix, and the note No. IX. of Appendix, and containing injurious and calumnious accusations and charges against his Lordship and the other Judges of the Court, and the administration of justice in relation to the said actions.

The said John Hay is charged with having written and transmitted, or caused to be written and transmitted to the Lord Advocate of Scotland, the letter No. X. of Appendix, containing injurious and calumnious reflections against the Lord President and the administration of justice.

The said John Hay is charged with having written and

transmitted, or caused to be written and transmitted to the Reverend Andrew Thomson, one of the ministers of Edinburgh, the letter No. XI. of Appendix, containing in the following passage the most injurious reflections and accusations against the Lord President, on account of his judicial conduct. "When a British subject has been *abused, insulted, and oppressed, as I have been, by the Lord President of the Court of Session*, I do humbly think, that "it is his duty to make his wrongs known to the public. "Every act of *oppression and injustice in a court of law* "against an individual, is an encroachment on the rights "of the community; and if the public allow that individual who maintains his rights to be ruined and made a "victim of judicial resentment, they may soon, perhaps, "have few rights to boast of."

[The letter to Adam Rolland was neither proved, nor attempted to be proved, of course the paragraph regarding it is not inserted.]

The said John Hay is charged with having written and transmitted, or caused to be written and transmitted to the Lord President, the letters Nos. XIV. XVI. XVIII. and XX. and the card No. XXI. of the Appendix, each, and all of them, containing language highly disrespectful to the Court, and the most unjust and injurious reflections on the judicial conduct of the Lord President, and on the administration of justice.

The said John Hay is charged with having written, or caused to be written, and having put, or caused to be put, into the box of the Lord President, the note No. XXII. of Appendix, and a copy of the letter to Mr Russell, No. XXIII. of Appendix, both of them highly disrespectful to the Court, and injurious to the administration of justice.

These things were done in Edinburgh at different times, in the course of the years 1820 and 1821, and of and con-

cerning, and in relation to, the said actions to which the said John Hay was a party, and while the same were in dependence in this Court. If the facts above set forth are denied, the prosecutor is ready to establish them by proof.

May it therefore please your Lordships to consider this petition and complaint, and to order it to be served on the said John Hay, and ordain him to appear personally in Court, to be examined on the facts above set forth; and the same being admitted, or proved, to inflict on him a punishment adequate to his crime or offence; or to do otherwise as to your Lordships shall seem proper, under the circumstances of the case.

According to justice, &c.

WM. RAE.

www.PDFlibrary

APPENDIX

TO THE

PETITION AND COMPLAINT

OF

THE LORD ADVOCATE,

AGAINST

JOHN HAY.

I.

York Lane, Edinburgh, 1st August 1820.

JAMES WEDDEL, Esq.

SIR,

I have just now been advised to finish my letter to Mr Wynne in the press, and forward copies of all the inclosed letters to the Members of Parliament, to the clergy of all denominations in Edinburgh, physicians, surgeons, and public characters, that the abuses practised on minors, and the treatment I have received, may be generally known.

I am not insensible that such a step, when once taken, cannot be recalled; and as I have no feelings of personal resentment against the Lord President, I do think I am in common candour bound to acquaint you before I proceed further. I entreat you will be pleased to make my humble respects to his Lordship, and say, that I am ready to explain to him, that, in consequence of a late judgment

pronounced by Lord Succoth in my case, all hopes of bringing it to a termination have now disappeared, as the judgment his Lordship has pronounced, is capable of no other construction than to aid and assist the factor in keeping my case in the same unfinished state before Lord Succoth, so long as his Lordship remains upon the Bench, or, as his friend Mr Boswell expresses it, "during his life-"time."

Should the Lord President be of opinion that some method may yet be adopted, which would render an appeal to the country, and a complaint to Parliament unnecessary, I beg that it may be explained to me; and should I not hear from you, it is to be understood that this communication is by President Hope judged unworthy of consideration.

I am,

Sir,

Your most obedient Servant,

JOHN HAY.

II.

C. W. W. WYNNE, Esq. M. P.

Sir,

In addressing this letter to you through the press, I am not insensible that I address a distinguished supporter of the British constitution, one who knows well the duty of a Member of Parliament, and by whom the rights and privileges, and dignity of the House of Commons, have often been so ably and so independently maintained. It is from a deep conviction of this on my mind, viewing myself in the light of an abused and injured subject, and reflecting on the integrity and generosity of character, which attach themselves to the Legislators of our land, that I have ventured thus to obtrude myself on your attention; and, in humbly submitting the inclosed papers to your serious consideration, permit me, with all due sub-

mission and respect, earnestly to solicit the influence arising from your character and abilities, in procuring me that redress from the House of Commons, to which by law I am entitled, and which has been so long and so unjustly withheld from me by the Court of Session in Scotland.

www.libpolcom.ca

My letter to Mr Hume will explain the treatment which on various occasions I have received from the Court, while humbly suing for justice; and my letter to the Lord President will, I humbly hope, convince you of the necessity of directing the attention of the Legislature to the statute of Parliament, made in the year 1672, for the protection of the property of minors in Scotland, and the dangerous consequences resulting to the public at large, from permitting the Judges of the Court of Session to act in a legislative capacity. By the gratuitous assumption of this power, they arrogate to themselves the privileges of holding the statutes of the land in contempt. They throw such obstacles in the way of justice, as tend to preclude the possibility of minors recovering their property when they become of age. They screen the factors which they appoint over these minors, from all shadow of responsibility, and they shut the very doors of a court of law in their face, threatening them with the most condign punishment for humbly petitioning that their property may be restored to them. "I take this opportunity to tell you, Sir," said President Hope, "that Acts of Sederunt are the laws of "the land; and if ever you presume to trouble this Court "again with such trash, (Acts of Parliament, viz.) you "will be considered a madman or a criminal, and by this "Court will be treated as such."

Blackstone has as correctly described the direful effects that would necessarily follow from Parliament allowing Judges to legislate, as if he had heard the Lord President deliver his speech. "Were the functions of the Judge," he says, "to be joined with those of the Legislative, the "life, the liberty, and the property of the subject, would

"then be in the hands of arbitrary judges." Now, those Acts of Sederunt which the President eulogises, and which are so often passed by the Court of Session, are the genuine offspring of this unnatural union of the legislative and judicial functions. And they do indeed place the lives and properties of men at the mercy of a despotic power. They are wholly subversive of all liberty and all justice, for they strike at the foundations of both. They undermine those bulwarks which our ancestors reared with so much wisdom and jealousy for the benefit of the people; and they particularly render null and void the statute of the year 1672, applicable to my particular case, and so well contrived in all its parts for checking the depredations to which the property of minors is so fatally exposed.

With great submission I do think, that nine-tenths of the abuses existing in the Court of Session, are occasioned by that unconstitutional Act of Sederunt made in 1789, by which the subject is deprived of the right of complaining, and the lawyer made sole judge in his own cause. These gentlemen of the Bar are in certain respects not much indebted to public opinion; and perhaps the Lord President himself would pause before pronouncing them more respectable than the Peers of Britain, the county gentlemen, or the clergy, yet none of these classes of men enjoy such a privilege. They can be brought into Court without their own consent, or the consent of any one member of the respective classes to which they may belong, and punished too when found guilty; but however guilty, or however criminal the conduct of a Scotch lawyer may be, he cannot be brought to justice unless he *wills* it himself, or with permission of his companions, which is nearly the same thing.

Besides all this, the Court, by that Act of Sederunt, have not only conferred on counsel an unconstitutional privilege, they have even placed the Bar above the Bench, so that the Bench have now no power of judging upon any case, or hearing any complaint, unless the gentlemen of

the Bar should be graciously pleased to permit them to see and to hear it; and no one will be so credulous as to believe, that they will ever permit the Bench to see or hear a complaint against themselves, or against those legislative proceedings which operate so powerfully to their advantage and emolument. It will be admitted on all hands, I presume, that not a single petition from the burgesses of Scotland would have reached Parliament, had they required to have been signed by the Town-Council of Edinburgh, yet, in point of honour, principle, or respectability, the characters of these gentlemen are not inferior to any lawyer of the Scotch Bar.

The circumstances of the case are materially different in a Jury Court. There the interest of the litigant and his counsel are almost conjoined. But in the Court of Session, where the same case can be brought before the judge fifty different times, and detained before him nearly as many years, their interests then become directly opposed to each other. The interest of the injured litigant consists in getting speedily out of Court, and the property claimed restored to himself and his family as the rightful owners, whereas it is the interest of agent and counsel on both sides to protract the case to an indefinite period—to bring it before the Judge in fifty different shapes—and, if possible, to thrust the whole concern into their own pockets. And should the unfortunate litigant, for whom the Court was originally instituted, but who possesses no earthly controul over these gentlemen during the process, should he ultimately discover that his cause has been lost from stupidity or deliberate corruption on their part, still he can obtain no redress—he is cut off from all hope, for no counsel will sign his paper unless he himself thinks proper; and the Judges kick his petition over the Bar, unless it be so signed. Under such circumstances, one would reasonably imagine, that no man would have the effrontery to maintain that no abuse exists.

The Lord President, however, affirms, that no abuse can exist, because the whole *body corporate*, forsooth, are so honest, so honourable, so wise, and so just, that it is not within the range of possibility for any one of their number to do wrong; and so convinced was his Lordship of their absolute infallibility, that in my case he pronounced them innocent before he had examined the evidence in support of the charges which I made against two of them. "Your charges against counsel are false," said his Lordship, "for "with such an independent bar, and with such respectable "agents, you can have no cause to complain."

I should, indeed, be the last man in the world to impute a want of candour or respectability to the learned gentlemen in general; on the contrary, I admit that there are many respectable characters at the Scotch Bar. But I ask, is it consistent with justice, that the respectability of a few should place the whole body of them beyond the reach of the law? or that all other subjects should be deprived of their rights for the avowed purpose of enriching and rendering these men absolute?

The case in which I have the misfortune to be engaged is simple in the extreme. I pledge my existence on it, that in two short hours I could state it, in all its bearings, to twelve honest jurymen, so as to enable them to pronounce a correct judgment on every point. But, in the Court of Session, the procedure is such, that, even with the aid of learned counsel, Lord Succoth will not give a final judgment in twenty years. The defender's counsel, indeed, had the impudence, a few months ago, when addressing his Lordship from the Bar, to tell him, that the case would not be finished during his lifetime. Now, if this be a fact,—if a defenceless, fatherless family, having their property taken from them when minosr, shall be refused restitution of that property for a lifetime of litigation,—if such abuses are tolerated in the Supreme Court of Scotland, I submit to you if they are not of that kind which ought to make

every Scotchman blush, and be ashamed of the country which gave him birth.

But this, Sir, is not a case of feeling merely; it is one of right, and of public justice, in which Parliament and the country at large are deeply concerned. And if President Hope will take it upon him thus to deprive the subject of his rights,—to hold up the statutes of Parliament to public contempt,—and declare Acts of Sederunt to be the laws of the land,—let it be at his peril that he does so. Every loyal and patriotic individual throughout the land must, indeed, feel alarmed, when it is known that such Radical notions are entertained by our Judges, and openly promulgated from the Bench whereon they sit. And most fervently do I hope that those guardians of our Constitution and our rights who have sent a Ferguson and a Manners to Newgate,—who have impeached a Scotch nobleman,—and grappled with a Royal Duke,—most fervently do I hope that they will not shrink from enquiring into the conduct of a Scotch Judge, who considers the laws made in his own little room as the laws of the land, and who dares, - &c. &c. &c.

III.

LETTER

TO

JOSEPH HUME, Esq. M. P.

RESPECTING THE

ABUSES IN THE ADMINISTRATION OF JUSTICE

IN THE

COURT OF SESSION,

IN CONSEQUENCE OF THE STATUTES OF PARLIAMENT BEING RESCINDED BY ACTS OF SEDERUNT OR RULES OF COURT.*

To which are added,

LETTERS TO THE LORD PRESIDENT OF THAT COURT, LORD BALGRAY, AND THE LORD ADVOCATE.

ALSO, AN

EXTRACT FROM A PETITION PRESENTED BY THE AUTHOR

TO THE

LORDS OF COUNCIL AND SESSION, Feb. 5, 1818,

HUMBLY PRAYING

For justice under the Statutes of Parliament, and for restitution of his own property, wrested from him by these Acts of Sederunt.

---

* "I take this opportunity to tell you, Sir, that Acts of Sederunt are the law of the land; and if ever you again dare to trouble the Court as you have done, you will be considered a madman or a criminal, and you will, Sir, by this Court be treated as such."—PRESIDENT HOPE'S *Address to the Author*.

"Were the functions of the Judge to be joined with the Legislative, the life, the liberty, and the property of the subject, would then be in the hands of arbitrary judges.—BLACKSTONE.

"If Judges can make laws by rules of Court, the Constitution will soon be subverted; therefore it is high time for this House to speak with those gentlemen. In former times, Judges have been impeached, and hanged too, for crimes less than these; and the reason was, *because they broke the King's oath as well as their own.*"—*Mr SACHEVERELL'S Speech in the Commons, on the impeachment of Chief Justice Scroggs* (1680.)

"In the front of *Magna Charta*, it is said, 'We will deny or defer justice to no man.' To this the King is sworn; and with the oath his Judges are entrusted. I wonder what these men will say for themselves. If they have not read that law, they are not fit to sit on a Bench; and if they have read it, they deserve to lose their heads. They knew it was lawful for the subject to petition for justice, and their knowledge aggravates their crimes.'—SIR FRANCIS WINNINGTON'S *Speech in the Commons, on the impeachment of Chief Justice Scroggs*.

TO JOSEPH HUME, ESQ.

www.libtool.com.cn

MEMBER OF PARLIAMENT FOR MONTROSE, &c.

SIR,

In the last session of Parliament, when you were arguing on the abuses which existed in the Court of Session, you were pleased to state the treatment I had received from Lord President Hope. If my information is correct, the House felt extremely indignant at some of the expressions you charged the President with having used; and Lord Binning said, that if such a charge could be made out, Lord President Hope ought not to sit another hour on the Bench.

By referring to my letter of the 31st March last, in your possession, you will find I there state, that although I could fully prove that the expressions complained of were used by Lord President Hope, I had now no wish to adopt such a procedure: for I had no other object in view than to obtain justice in the Court of Session; and I was happy to inform you that appearances had become favourable for me in that Court, and that the Lord President did not now appear inclined either to deny me justice, or to insult me in humbly soliciting for it.

With such evidence in your possession, I humbly trust you will do me the justice to believe, that I would not again have troubled you with my complaints, had not my prospects darkened, and had I not received some new insult from his Lordship.

This I believe you will admit, when I inform you, that I am prohibited from stating my case to the Court, that the counsel with whom I contracted, and who received his fees, has just written one paper, and declines supporting it at the Bar, or continuing counsel in the case. The reason he assigns is, that having written that paper, he has done all that the Court *enjoined him to do*. What

am I to understand from this? Has the Lord President and the Court been tampering with my counsel, by telling him to produce a paper of such a description as the *Court wishes*, and then he will be relieved from the positive engagements he entered into with me?

www.hbook.com.cn

I will be glad to know if either promises or threatenings have been held out to my counsel by the Lord President. I will be glad to know on what legal ground my counsel and the Judges could hold private meetings together on the subject, without my knowledge and consent.

In addition to this, I have to complain, that within these few months, I have again been grossly insulted by the Lord President, at the Bar of the Court of Session. I presented a Note, complaining that a certain counsel had not done his duty. I condescended on the charges against him; and prayed that the Court would allow me to prove at the bar what I had stated in the Note. For writing this note I was ordered to the Bar, and before a crowded audience, was by the Lord Chief Justice Hope told that *I was deranged in my mind*; that I was not a man of a *sober judgment*; and that if I ever again troubled the Court with such a complaint, and in such a manner, that he would visit on my head the *heaviest punishment that it was possible for the Court to inflict.**

After a speech of considerable length, delivered by his Lordship in the most violent and *overbearing manner*, containing many expressions of wanton ridicule, contempt, and insult, I said, "My Lord, it appears to be extremely "hard to be brought twice to this bar, and distinct charges "condescended on against me, and not to be allowed to "say one word in my own defence." The Lord President saw the force of the observation; and, with a candour that did him credit, he replied, "You are at liberty "to say what you please."

* Torture is the heaviest punishment the Court ever inflicted. That punishment was common under the Stuarts, when Acts of Sederunt were the law of the land.

I then said, "Your Lordship knows that this case has "been ten years in Court, and while the blame lies with "others, the whole odium has fallen exclusively upon "me." His Lordship interrupted me by saying, "I know "nothing about your case, Sir, and if you have any com- "plaint against counsel, apply to other counsel to sign your "papers." I said, "No counsel at the bar will sign "for me a complaint against a learned brother." His "Lordship again interrupted me, by giving me the *lie* "*direct*;" he said that I was stating that "*which was* "*false*." I replied, "I was ready to prove what I had "stated," and was proceeding to do so when *Lord Her- mand*, aware that his Lordship would have the worst of it, declared that if I said one word more, he would move that *I should instantly be taken into custody*.

Now, Sir, you will perceive, that by the authority of the Court, I was ordered to the bar: that distinct charges were preferred against me, charges calculated to injure my character as a member of society, to disturb the peace of my family, and to wound the feelings of my friends.

You will also perceive, that when I offered to avert the severity of these charges, and shew that they were not well founded, I was not allowed to speak in my own defence. I was *deprived* of that justice *which slaves enjoy*, the pri- vilege of proving that I was not guilty of the charges ex- hibited against me in open Court.

I therefore do humbly entreat, and earnestly solicit, that you, and other Honourable Members of the Commons, into whose hands this communication may find its way, will be pleased to bring forward the subject in Parliament, in order that an enquiry may take place, and that the facts may be ascertained, not from my assertion, but from evidence satisfactory to that Honourable House.

First, I complain that property belonging to me, and to our family, to the extent of £10,000, has been intro- mitted with, and carried off by authority of the Court of Session, contrary to the statutes of Parliament made

for the protection of minors; and that, after ten years litigation, not one shilling of that property can be recovered.

Second, I complain, that in direct opposition to another statute of Parliament, I am, by Lord President Hope, prohibited from humbly petitioning a court of law, *for restitution of property so abstracted.*

Third, I complain, that I am compelled to pay and employ counsel *over whom I have no control*; who, instead of stating my case, pronounce their own judgment upon it, advising me to take it out of Court, for in their opinion, however improper the conduct of the intromitter has been, the Court will protect him. That, at other times they relinquish my employment in the face of a positive agreement, and assign some private arrangement they had entered into with the Court.

Fourth, I complain, that in consequence of such proceedings, and the total want of control over these gentlemen, my case has been ten years in Court, about £1500 has been spent by the parties within the walls of that Court, and that there is now less prospect of the suit coming to a termination than there was nine years ago. The process commenced with a petition of three pages, praying that a factor of Court would give in his accounts; and, at the close of ten years, instead of obtaining a settlement, a paper of no less than 490 pages, drawn by counsel, is necessary to render the ten years' procedure in the Court intelligible.

Fifth, I complain, that although positive evidence of the impropriety of the conduct of counsel has been tendered at the Bar, and a humble petition* has been presented to the Court praying that the Court, would be pleased to compel counsel to state the facts and plead to them, or allow the petitioners to state their own case, that no relief has been obtained.

---

* See Appendix No. IV.

Sixth, I complain, that instead of the Court deeming such petition worthy of consideration, I was ordered to the Bar, and by the Lord President charged with having pestered the Court with folly, nonsense, and trash; that my complaints against counsel were false; and I was threatened, that if ever I dared again to trouble the Court with such complaints, I would be considered a madman or a criminal, and treated as such.

Seventh, I complain, that I am labouring under the marked displeasure of Lord President Hope, and that more conclusive evidence of this cannot be produced, than the speech of his Lordship, in which he pronounces my complaints against counsel *false*, before he had heard or seen the evidence I had to produce in support of the charge, and I do humbly think that his Lordship is the first Judge under the House of Brunswick, that has ever told *an injured subject* * that he would be considered a criminal, and treated as such, for humbly *petitioning* the Lords of Council and Session, *to be permitted to petition* a court of law *for restitution of his own property.*

Eighth, I complain, that although my case was in Court twelve months before the Duke of Queensberry died, and the law-suits resulting from that event have been all disposed of in the Court here, and a judgment pronounced in the House of Peers, yet my suit remains before the Lord Ordinary, in the same unfinished state it was in when that nobleman died: and if I complain of delay, or offer to prove that counsel have not done their duty, I am thrust back from the bar of justice, loaded with insult, and threatened with punishment.

---

* "God forbid that the day should ever come, when I or any "Judge in England, or the united empire, (for now they are all one) "*should dare to take into their own hands* the right of circumscribing *a* "*single right which British subjects had; and when I speak of British Subjects,* "*I mean the whole united empire with all its privileges.*" Lord Chancellor ELDON, 20th July 1818.

Ninth, I complain, that out of £10,000 abstracted and carried off from a family of minors, only about £1200 has yet been made tangible, being the proceeds of certain bills and bonds, payment of which John Tweedie, Esquire, has, by order of the Court, recovered. That gentleman has twice intimated to me that he wishes to get free of his charge. Repeated application has been made to the Court for a division of these funds, and an equalizing scheme has been tendered at the Bar, yet the Court will not allow one shilling to be paid or divided, although it is now *twelve years* since the youngest of the family became of age.

Tenth, I complain, that although I intimated to the Lord President and the other Judges, a considerable time ago, the serious consequences that were to be dreaded from such an unprecedented delay, the factor having become bankrupt, one of the cautioners being *dead*, and the other an old infirm man; yet this notice was judged unworthy of consideration—and I have reason now to regret the death of the other cautioner. In all probability the suit will be abandoned, after ten years' fruitless litigation; for it would be absurd to carry on an expensive process, in order to obtain judgment against a bankrupt factor and two dead cautioners.

Eleventh, I complain, that in petitioning for justice, and restitution of property to which I have *an absolute right*, I have been grossly insulted from the seat of justice, that I have three times had to sustain the whole shock of the Lord President's resentment, that proceedings have been adopted, and expressions used, calculated for no other purpose, and capable of no other construction, than to injure my character as a member of society, wound the feelings of my friends, and compel me to relinquish my rights.

Had I either embrued my hands in the blood of my fellow subjects, or carried arms against my prince, I would not at the bar of a court of justice been treated

with a tenth part of that virulence which the Lord President has so unqualifiedly loaded me with.—But conscious that I never merited such treatment, I consider myself fortunate in *being the object rather than the author.*

www.libtool.com.cn

In justice to his Lordship, I beg to inform you, that in charging me with insanity, he was so very condescending as to assign the cause. "You have," said he, "brooded "so much over your lawsuit, that it has evidently impaired "your mind. You are not a man of a sober judgment." Can no person discover this but the Lord President? And why should he judge upon a point not before the Court? It is a question of law and right that has always been under discussion; insanity on *either side* has nothing to do with the injustice and oppression I complain of.

I admit that a deep impression has been made on my mind by the abuses practised on minors, which I have seen and felt; such an impression as has induced me to state, according to my humble abilities, the causes of those abuses in the annexed letter to Lord President Hope. I shall now relate a few particulars of my own case, that you may be enabled to judge how far I have had reason to "brood "over my lawsuit," without taking further notice of the effect which his Lordship says it has produced.

About twenty years ago, an extensive and opulent farmer died, having made no settlement, leaving behind him a family of young female children. A certain individual petitioned the Court to be made factor, and was appointed and confirmed in possession of the estate. For reasons known to himself, and not difficult to be understood, he rendered no accounts whatever for a period of twelve years, and even then he would not account to the children, and had the audacity to dispute *in toto* their right to recover from him their property.

In his letter to me 30th June 1809, he says, "You do "not seem to be aware that, as factor for Mr ——'s "children, it is in *my option* to account to them or to the "*Court who appointed me, and under whose authority I*

"*have acted.*" And as he would not produce any statements whatever, a petition of three pages was made to the Court, humbly praying that the Court would direct their factor to lodge his accounts, and restore the property intromitted with. After ten years' litigation, and an overwhelming expense, the paltry sum of £200 was refused by the Court, on the allegation that no such sum was due by the factor.

www.tibtool.com.cn

Notwithstanding this, I have no hesitation in saying, that the estate has been plundered to a very considerable extent; and in support of this assertion I tender the following evidence: The farmer died in the spring; and, although a very considerable portion of his crop must have been disposed of during the winter, still there remained at his death no less than 98 stacks of corn in his different barn-yards; he had 34 horses, a number of cattle, and an extensive stock of sheep.

He was in easy circumstances; this is not surprising, when it is taken into view that he was an active farmer; that he had a property of his own; that the large farm on which he resided was let two years after his death at an advance of £800 per annum, and the succeeding tenant has made a fortune in it. The same may be said of other farms which he occupied. He was in the habit of lending out money at interest: The factor himself had borrowed from him £200.

Only about a twelvemonth before he died, his fortune was improved to the extent of about £3500, by the death of an uncle. This property has been realised by the factor. It consisted of the stock and crop on the uncle's farm, and money lent out at interest, as can be instructed by statements ultimately obtained from the factor.

It will no doubt be said that these are important facts, and that I ought to have stated them to the Court, and complained that counsel had not done their duty in keeping them back. I attempted to do so; and for this I was ordered to the bar, and told by the Lord President that

my complaints against counsel were *false, for with such an Independent Bar I could have no cause to complain.*

After two counsel (from fear of offending the Court, or some other reason) had refused to state the facts, although both had taken charge of the case, a third counsel was found, who undertook to state every fact that could be supported by evidence. In a debate before the Judge Ordinary, he did credit to himself and justice to his employers—he showed the property which had been intromitted with by the factor—he exposed the numerous falsehoods in his pleadings—he detected him in all his "doub-"lings and windings." The factor was present, and shewed himself displeased; this did not make matters more agreeable

The counsel, with his hand directed the eye of the Judge to the factor, and said, "My Lord, this gentleman, "this individual—I ask your pardon for calling him a "gentleman—did trump up a large account, in his own "hand-writing, in favour of a pretended claimant, and pre-"vailed on my clients, young ladies, (himself their guardi-"an) to sign bills for this pretended debt; but instead of de-"livering these bills, so obtained, to the pretended claimant, "he put them in his own pocket, and he and his cautioner "now claim payment of them as their property. My Lord, "this man shall not escape; I shall drag him into view; "out of his own mouth, and from his own writings, I will "convict him. He has not only been guilty of legal con-"structive fraud, but, judging from the papers before me, "he has also been guilty of gross moral fraud, nay, abomi-"nable fraud."

You have now heard the factor charged with "gross "moral fraud, nay, abominable fraud;" and you have had a counsel introduced who pledged himself to prove it, a gentleman of no ordinary abilities; but, alas! he appears to have had some correspondence or communing with the Court since he made that speech, and he also declines continuing counsel in the case.

But what is a breach of trust, fraud, or even highway robbery, when compared with that of altering the laws of the land—subverting the constitution—prohibiting the subject from petitioning for justice—torturing the litigant with ruinous expence and endless litigation—protecting the guilty—and punishing the innocent for complaining of being injured?

The general opinion is, that the *Court will not punish factors*. It is said that many of the relations and political friends of the Judges hold these situations; and I have an opinion signed by two counsel at the bar, in which they in as many words advise me to take my case out of Court as hopeless; telling me, that, *however improper* the conduct of the factor had been, he *would not on that account* be punished by the Court.

I might also add, that it appears to be a general opinion, that my suit will never come to a termination. It is said that I have lost the ear of the Court, and offended President Hope and Lord Hermand, by quoting the act of Parliament 1672, complaining that counsel would not state my case, and disputing the right of the Court to rescind the statutes of Parliament.

May I beg the favour of your taking a view of the subject, as unconnected with the misunderstanding which exists betwixt the Court and the humble individual who is addressing you. Let his name and his private wrongs be banished from your thought, and confine your attention entirely to what is contained in the annexed letter to Lord President Hope. In that view, it may be considered the complaint of the widowed mother, the orphan, and the fatherless.

They are not begging charity, but respectfully soliciting protection. They are not petitioning for new laws in their favour, but complaining that although they bear their proportions of the burdens of the state, their property is not protected by the statutes, or by any law whatever. It certainly falls on those who oppose enquiry into the

abuses complained of, to show cause why the factors of the Court of Session are above the law, and why those fatherless children are below its protection. They are fellow-subjects, their tender years and defenceless situation certainly render them objects of Parliamentary protection.

www.libtool.com.cn

I gratefully acknowledge the kindness and attention I have received from you and other honourable members of the Commons. If the subject on which I write does not in some degree plead my apology for troubling you, I am afraid I have nothing satisfactory to offer. I am however inclined to think that you have your reward in the conscious discharge of your duty to your country, and in the approbation of your own heart.

I have the honour to be,

Perth Baking Co.'s Office, Edinburgh.

IV.

(APPENDIX.)

No. I.

TO THE RIGHT HONOURABLE CHARLES HOPE, LORD PRESIDENT OF THE COURT OF SESSION.

My Lord,

Four years ago, I took the liberty of addressing a letter to your Lordship, complaining of the abuses practised on the estates of minors in Scotland, by the factors appointed on their estates by the Lords of Council and Session. I humbly endeavoured to point out the total inability of minors, when they became of age, to detect frauds, or prove the existence of their own property, as they could not produce any other charge against the factor, than what he thought proper to state against himself.

To that communication, your Lordship was pleased to make the following reply: "The Court has often had

" had reason to suspect that considerable abuses were prac-
" tised by factors to minors, and for some time had under
" consideration the possibility of some plan for prevent-
" ing them, which is not so easy a matter as perhaps you
" suppose."

" Sir Ilay Campbell also, as head of a royal commission,
" now employed in making some investigations relative to
" the fees and duties of the officers of the law in Scotland,
" is now again turning his attention to the subject, and, I
" believe, means to make a report to Parliament on the
" subject, and to him I shall forward your letter." *

Your Lordship candidly admits that one and all of the Judges had reason to suspect the existence of abuse. Indeed, there can be no difference of opinion on that point. The misconduct of factors on the estates of minors, is a secret to no man; they are become proverbial. When a factor is living freely on the estate of an absentee and spending the proceeds, it is said " that *he is* acting as " if the estate belonged to minors who cannot call him " to account."

Your Lordship says, the preventing of these abuses is not so easy a matter as perhaps I suppose. With great submission, it does appear to me that your Lordship would have expressed the fact more correctly, had you said, " The preventing of these abuses is *totally impossi-* " *ble* under the existing Acts of Sederunt of the Court of " Session;"—acts well calculated to aid, assist, and protect the factor in plundering the estate, and equally well calculated to prevent the minors from ever obtaining relief. But, my Lord, there is nothing more simple than preventing these frauds; and, all that is necessary, is to rescind your Act of Sederunt 1730, enforce the act of Parliament 1672, and, instead of protecting the guilty, punish them according to that statute.

The preamble of the act of Parliament 1672, with a

* 21st December 1815.

penetration and discernment the result of deliberation and enquiry, describes, with an accuracy almost prophetic, the whole evils the minors of Scotland are feeling; and every section of that statute demonstrates the collective wisdom, the sound judgment, and the parental care of the Prince and of his Parliament in correcting them.

"Our Sovereign Lord, considering the great prejudice "and inconvenience befalling to pupils and others, who "cannot provide for or defend themselves—that their "tutors or curators have *immediate access to their charter-* "*chests*, writs, evidents, and securities of their lands, sums "of money, and others belonging to them, which they "may *embezzle, suppress, or, by collusion, give up to their* "*debtors*, or other persons interested, without justification, "or otherwise having got satisfaction, there is no means "by which a charge can be made up against the said "tutors or curators, but themselves; who, when they are "brought to account, *make up both their own charge and* "*discharge*: For remede whereof, his Majesty, with ad- "vice of his estates of Parliament, statutes, ordains and "declares, &c. *

First, A correct inventory of the minor's property is directed to be made up by the factor and two of the nearest relations of the children on the father and mother's side. Three duplicates of the same are to be made out and subscribed by them—each relation to retain a copy, and the third copy to be lodged with the clerk of Court, and all countersigned by him, for the purpose, as the act declares, "*that they may not be altered thereafter.*"

Second, When any alteration takes place respecting the estate, by further discovery of debts or funds realized, eiks are to be added to the inventories, and the same subscribed as aforesaid.

Third, No debtor to the estate can be compelled to

* Act of Parliament, 1672.

make payment to the factor, till he produces an inventory so subscribed, and shows that the claim is contained in the inventory, and that the debt, when recovered, shall stand as a debt against him for behoof of the minors.

Fourth, If any factor fail to make such inventories and eiks as directed in the act, he shall be liable both for intromissions and omissions, and shall have no allowance or defalcation of the charges and expenses laid out by him in the affairs of the said pupils; in respect that, as he has failed to state to the credit of the minors, sums actually received, he shall not be permitted to state to their debit, sums he may have actually disbursed, and shall be removeable from his office as a suspected intromitter.

Now, unfortunately for the minors of Scotland, they are, by the Act of Sederunt 1730, totally deprived of the whole protection wisely provided for them by this valuable statute, and which their defenceless condition so imperiously requires. The Lords of Council and Session have been pleased to make a law, called the Act of Sederunt 1730; and under the authority of that rule of Court, the whole property of the minor is intromitted with and carried off by the factor, under the sanction of the Court of Session.

This destructive Act of Sederunt declares, that the factor *himself* shall make up an inventory of the effects belonging to minors, and lodge the same in Court; of course the factor *makes up his charge and discharge*, which the act 1672 expressly prohibits. But the Act of Sederunt authorizes this method without enacting that such inventory shall be taken in the presence of persons properly qualified on behalf of the minors, or that it shall be attested by their relations, the clergymen, elders, or any other respectable persons, that it was made up in their presence, and that it contains a full and correct statement of the whole property of the deceased.

How easy is it for a factor to draw up, in his own hand-writing, a full and correct inventory in the presence of the relatives of the orphan children; and after carrying off the same with the whole property and papers, to lodge in Court a very different one, and not containing perhaps the one-half of the property? It is quite impossible for the minors, after an interval of ten or twelve years, to say if the paper lodged in Court, is the one originally made up or not. They know not to what extent their property may have been plundered, because, as the Act of Parliament expresses it, the factor is permitted and empowered to *make up his charge and discharge, without any attestation whatever.*

But this is not the only objection which occurs to the Act of Sederunt 1730. It is brought forward at the appointment of the factor, and it has the melancholy effect of lulling into a fatal security the relatives of the fatherless children; because that act declares that the factor is a servant of the Court—that the single inventory shall be lodged there—and that he shall *account annually* to the clerk of Court for his charge and discharge.

Now, as the clause enjoining the factor *annually* to lodge his accounts, is in many instances totally disregarded, it is quite evident that the effects to minors must be ruinous in the extreme, and much worse than if no Act of Sederunt had existed on the subject; for had that been the case, the relations would have made regulations among themselves, so as to have been a check upon one another, or the minor would have been protected under the statute.

Merchants, and gentlemen acquainted with business are aware how difficult it is to detect frauds in the books of bankrupts, of only three or four years standing, and make good these frauds in a court of law; and they will readily admit that it is *totally impossible* for minors to detect frauds in the statements of a fraudulent factor, who for ten or twelve years has rendered no account by which a claim can be exhibited against him.

The deficiency of funds is a strong evidence against a fraudulent bankrupt. He must give satisfaction to the Court on that point; and the real claim can be made up, *not from the bankrupt's book*, but from the books of the creditors. But there is no such *evidence* in favour of minors, who for ten or twelve years have been deprived of every voucher they were by law entitled to have had, and by which only they could make up their just claim against the factor; consequently, their situation is deplorable indeed, being reduced to the painful necessity of accepting such a statement of their property as the factor *is pleased to make up against himself.*

www.libtool.com.cn

Considering, therefore, the defective construction of the Act of Sederunt 1730—the bringing it forward at the factor's appointment—the effects produced upon the relations of the minors—the contempt with which the factor treats it, when once appointed—and the total inability of minors, when they become of age to detect frauds, or recover property, the existence of which they cannot prove—I am fully satisfied, taking every circumstance into consideration, that the ingenuity of man could not have devised a more complete method, by which factors *loco tutoris* of the Court of Session become enabled securely to rob, embezzle, and conceal the property of minors unsuspected, undetected, and unpunished, than this Act of Sederunt, for when once the factor has been permitted to entrench himself in such a manner, and for such a time, it is not in the power of minors to dislodge him.

Had the President of the Court of Session in 1730 stated to his legislative brethren, that they had met to make a law, the object of which was to annihilate the statute of Parliament 1672, and thereby to produce patronage to the Court, by empowering the Lords of Council and Session to appoint and confirm their relations and political friends in the possession of the estates of minors, in such a manner as to enable them, without the *fear of*

detection, to plunder the fatherless, no better plan could have been adopted than the Act of Sederunt 1730.

I do not pretend to understand figures better than other men who have got a mercantile education, and who have had considerable practice in accounts; but I have no hesitation in saying, that if the Court of Session were to confirm me in possession of a moveable estate to the extent of £20,000, under the act 1730, and allow me the same liberties and privileges which other factors enjoy, that I could, in the course of a very little time, if so disposed, plunder the estate to the amount of £10,000, including interest; and that I could defy all the agents in Edinburgh, and all the counsel at the Scotch bar, to charge home upon me one single shilling; nay, what is more, I could claim my commission, and obtain it too, for having faithfully discharged my duty to the minors, and expend in litigation and expense the reversion. But under the statute 1672, I could not rob the estate without being detected.

The minors in Scotland have not only just cause to complain of being deprived of the protection provided for them by the act of Parliament 1672, but, in addition to this, they have to complain that their property is carried off from them *contrary to all law whatever:* I aver that Act of Sederunt 1730 is only a blind; I aver that the conditions in that contract are not observed by the factor, nor enforced by the Court, and that they are the contracting parties.

Your Lordship, I presume, will admit, that the property of minors, at the death of their predecessors, is really and truly their own; that it neither belongs to the factor who petitions the Court, nor to the Court which confirms such factor in the possession of the estate. It can only be intromitted with in a legal or in an illegal manner: If in a legal manner, then it must be under some positive law; and if intromitted with under a positive law, the conditions of that law must be binding on the intromitters.

If the conditions are, by the Court and factor, considered not binding, and if the factor is not punished for having violated these conditions, then the property has been carried off under a false and fraudulent pretence; or, in other words, the minor has been swindled out of his estate.

The late Lord Melville was at great pains to impress on the minds of Scotchmen, "that they lived under a constitution the envy of surrounding nations, and the wonder of the world; that they were subject *only to laws made by their own representatives in Parliament*; that the same laws protected the prince and the peasant, the poor and the rich, the weak and the strong."

These expressions have an agreeable sound in the ear, when gracefully delivered, and they make a good appearance on paper; but the theory of the British constitution is one thing, and the practice in the Court of Session is another; and I am myself convinced, from woeful experience, that neither your Lordship, nor any other Judge in the Court, can lay his hand on his heart, and take God to witness, that the property of minors in Scotland is protected according to either statute or sederunt law, or indeed by any law whatever.

My Lord, I have still further to complain, that the minors in Scotland not only have their property intromitted with, and carried off from them by authority of the Court, contrary to the statute made for their protection; that the conditions of the Act of Sederunt are not enforced, nor the penalties inflicted; but, what appears to me to be *unbearable*, they are, under another arbitrary Act of Sederunt subversive of statute law, actually prohibited from complaining to a Court of law when they become of age, and from humbly petitioning in their *own names* for restitution of their *own property*, conformable to the conditions of the contract under which it had been carried off from them, when they were children, and could not defend themselves.

Petitions so presented by plundered minors, when they become of age, have been declared unworthy of notice by

the Court; and in one instance lately, one of the parties petitioning was ordered to the bar by the Lords of Council and Session, and told, that if ever he *dared again to complain in such a manner, he would be considered a criminal, and treated by the Court as such.*

Is it, my Lord, to be endured by Parliament, that the will of Judges is the law of the land? Is the country to understand that it is now an act of criminality for minors, when they become of age, to petition the Court of Session in their *own names*, humbly praying for restitution of their *own property.*

Is this, my Lord, the glorious constitution under which we live, where the Sovereign is *sworn to deny or defer justice to no man?* where men are governed by laws made by their own representatives in Parliament? where justice is faithfully administered, to the poor as well as to the rich, to the weak as well as to the strong, to the defenceless minor as well as to the minister of state?

If application is made by the minors to agents and counsel, I affirm that they are averse or afraid to state the facts to the Court,—in some instances they have refused to do so, after accepting of their fees; and others, instead of stating the case as directed, have, contrary to their instructions, pronounced their own judgment on the merits of the suit, advising the injured party not to proceed, but take the case out of Court,—telling them, that however improper the conduct of the factor had been, *he would not on that account* be punished by the Court; and that the Court was not in the practice of regarding the conditions of the act 1730,—the very act under which the Court had confirmed the factor in possession of the estate.

In a case which came lately before your Lordship, when a family who had been minors were lamenting that their property had been intromitted with in direct opposition to a positive statute of Parliament; and that, by an Act of Sederunt, they were prohibited from humbly petitioning a court of law, praying for restitution of their own pro-

perty, your Lordship was pleased to say, "I take this "opportunity to tell you, Sir, that Acts of Sederunt are "the law of the land." In another case, when an injured subject had been wrongously imprisoned, and was pleading under the statute 1701, Lord Hermand said, "I do "not care what the act of Parliament said on the sub-"ject; because I hold that there is a power paramount "to acts of Parliament, and that *is the power of right* "*reason;*" and he further stated, *that his duty concurred with his feelings in wishing to throw a certain degree of ridicule on that statute.*

www.liptool.com.cn

It is said of Montesquieu, that, on being asked what he thought of the British Constitution, he replied, "It is "one of the grandest and most perfect fabrics that ever "human wisdom devised and executed. It will, how-"ever (said he) *cease to exist*, when the representative "ceases to be a check on the executive government." My Lord, if it is now become an act of criminality to quote the laws made by the British Parliament,—and if a few individuals in the nomination of the Crown can make laws and reject the statutes of Parliament—if the members of the executive can, in the House of Commons, protect these men—and, if Parliament cannot now maintain its power, its rank, and its dignity in the state,—then, according to Montesquieu's view of the subject, the British Constitution has *ceased to exist.*

I have the honour to be, MY LORD,

Your Lordship's most obedient

and very humble servant,

JOHN HAY.

Edinburgh, 3d Nov. 1819.

No. II.

TO THE HONOURABLE LORD BALGRAY.

My Lord,

www.libtool.com.cn

I respectfully beg to call the attention of your Lordship to an opinion given by you, while a counsel at the Bar. The memorial to which that opinion refers, was laid before you by a factor of the Court; and in it, you were told that a certain farmer had become bankrupt, and gone out of the country—that five farmers, all creditors of the bankrupt, had, by permission of the landlord, taken possession of the farm—that matters stood in this situation when he, the factor, was appointed by the Court—that he had, during his management, retained the share held by the father of those for whom he acted—and the question of law for your Lordship to determine was, Whether the interest in the farm belonged to the heir or to the executors?

Your Lordship, with great perspicuity, and in a most satisfactory manner, solved the question, by taking two views of the subject. *First*, If the lease of the bankrupt had been rendered void,—if he could at no time, and under no circumstances, resume possession,—if the new tenants held equal shares in the farm—then they were farming in their own right, and that being an heritable right, the interest in the farm belonged to the heir. *Second*, If the lease had *not* been rendered void,—if the tenants were *not* dividing in equal shares,—if they were bound to cede possession to the bankrupt on obtaining payment of their respective debt from the profits of the farm, then they were farming for the bankrupt, in order to recover a debt, and that being moveable, the interest on the farm belonged to the executors.

The factor placed the farm to account of the executors, and contended, that the lease had neither been rescinded, nor did the tenants divide in equal shares. The executors objected, 1*st*, Because the factor had rendered no account

for twelve years; 2*d*, Because the sum he claimed in name of loss on the farm, was unprecedented; 3*d*, That there was no obligation binding him to such a ruinous concern; 4*th*, That he had misrepresented the facts regarding the lease and division of the farm.

The point was tried before the Lord Ordinary. The interest in the farm was decerned to belong to the executors, and they were subjected to the claim made by the factor in name of loss on it. His Lordship's judgment was brought under review of the Court. The Judges divided on the question, Lords Succoth and Hermand were in favour of the factor, Lords President and Balmuto were on the opposite side. Your Lordship had the preponderating vote.

Your Lordship said, "if the executors could produce "evidence in support of their averments, that the lease "was rendered void, and that the new tenants did divide "in equal shares, then I would give my *opinion in* their "favour; but not having done so, I do think, the tenants "are farming in the right of the bankrupt, and that the "interest in the farm belongs to them."

I beg your Lordship's particular attention to this *fact*. It establishes three points. *First*, That your opinion when at the Bar, and your judgment on the Bench, exactly coincide. *Second*, That you pledged yourself to vote in favour of the executors, on certain evidence being produced. And, *Third*, that you forgot to redeem your pledge when that evidence came before you. The executors, after much exertion, were at last successful in obtaining possession of the evidence they had long been in search of. A reclaiming petition was lodged in Court, and, along with that petition, a copy of a decree of removal, executed by the landlord against the bankrupt tenant, *by which his right and interest in the farm ceased for ever*. Also two statements, exhibiting the operations on the farm for several years, in which all the tenants pay *equally, and receive equally*. These statements are signed by the *factor himself*.

Your Lordship will perceive that these documents completely overturned the factor's assertions; and, according to your Lordship's opinion, clearly established, and that in law, the executors could not be subjected to the loss on the farm. In the reclaiming petition, the Act of Parliament 1672 was unfortunately taken notice of. This put Lord Hermand and the whole Court into a rage. His Lordship railed against the petitioners,—the evidence was disregarded,—the case was given again against the executors, with heavy expenses,—and you, my Lord, forgot to redeem your pledge.

www.libtool.com.cn

This decision has hitherto appeared incomprehensible to every lawyer and gentleman who has studied the case. They say, that the interlocutor of the Lord Ordinary is not conformable to either law or justice, in respect that it gives the factor credit for money said by him to have been disbursed, and vouched by no other evidence than his own assertion.

I have been told that the confirmation of the Lord Ordinary's decision by the Court, has established two points of law, and that to maintain those positions before the House of Peers, "would disgrace the lips of an idiot:" *First*, That in count and reckoning with agents, factors, or tutors, their bare and disputed assertions are to be held legal evidence of money disbursed by them. *Second*, That these assertions, *however false*, do not alter the shape of the case.

My Lord, I am hopeful that you can give a satisfactory explanation of this mysterious procedure. May I therefore beg the favour of hearing from your Lordship, which will tend to prevent the subject from being enquired into, in that assembly where freedom of speech is fully permitted.

I have the honour to be, My Lord,
Your Lordship's obedient
and very humble servant,

Perth Baking Company's Office,
Edinburgh, 3d November 1819.

John Hay.

No. III.

TO THE RIGHT HONOURABLE THE LORD ADVOCATE OF SCOTLAND.

www.libtool.com.cn

My Lord,

About eleven years ago, I was under the necessity of applying to the Court of Session for restitution of property belonging to my wife, which the Court had placed under the management of a factor during her minority. In these pleadings I had the misfortune to quote the Act of Parliament 1672, which was made expressly for the protection of the property of minors.

This gave offence to the Court, and brought down on my head the marked displeasure of certain Judges; I have reason to believe it has been the cause of protracting my suit, and such judgments have been pronounced against me in the Court, as your Lordship said ought to be concealed, for if published, they would degrade the Judges.

About four years ago, these judgments became final by two Inner-house interlocutors upon them; and as all the parties concerned in them, as well as myself, considered them oppressive, and contrary to every principle of sound law, it was resolved to report the case in the usual way in the newspapers.

The editor of the Edinburgh Star agreed to report the case, on condition that I submitted a scroll to him, or to his law-agent, along with the printed pleadings on both sides, in order that he might satisfy himself that the scroll was candidly made up.

Your Lordship was at that time the Sheriff for the county of Edinburgh; and the Lord President having reason to believe that the decision pronounced by the Court would appear in the newspapers, instructed a certain individual to call at the newspaper offices, and also to make certain communications to your Lordship; and

on your discovering that these papers were in the Star Office, you ordered the whole to be carried off.

Your Lordship will be pleased to recollect that these papers were my property, and I will be glad to know, if your Lordship considers the power of the Sheriff to be so unlimited, as to entitle him to carry them away whenever it is his pleasure to do so in order to answer a political purpose.

My Lord, is the press of this country now, or was it then, under a censorship? and are you quite certain that you enjoy the power of preventing decisions of a public court from being reported to the public, whenever the Judges pronounce judgments they wish to be concealed, or are ashamed of? and is the instruction of the Lord President a sufficient warrant for you to carry away the property of another, under the circumstances I have described?

These are questions, my Lord, to which I am anxious to obtain satisfactory answers. The subject of itself is trifling, unconnected with these oppressive proceedings of the Court; and should satisfactory explanations be declined, I shall deem it my duty to bring the subject before the public, and complain to Parliament, so soon as I discover that your Lordship has taken your seat in that House.

I have the honour to be, My Lord,

Your Lordship's most obedient

and very humble servant,

JOHN HAY.

Perth Baking Company's Office,
Edinburgh, 5th Nov. 1819.

No. IV.

PETITION FOR RECAL OF ACT OF SEDERUNT 1789.

www.libtool.com.cn

Which prohibits the infured subject from stating his own case.

The preceding part relates to the Act of Parliament 1672, Act of Sederunt 1730, the factor's proceedings, and the extent of the property carried off by him.

Page 17.—But of what avail is it to the petitioners to state these facts, and to plead their cause, if their petition is to be by your Lordships considered as waste paper, and judged unworthy of consideration?

The horrors of slavery can only be felt by those who know that nature designed them to be free. Had the petitioners never discovered the existence of their constitutional rights nor been taught to participate in the parental care and wisdom of their ancestors, in securing their property during their infant years, they would not have deemed their right to recover that property absolute, nor would they have pursued their object with a perseverance so unremitting, and with a determination so unwearied and inflexible. Their father died possessed of a fortune which his family was entitled to receive; and the petitioners, without any fault in them amply protected by the statutes of Parliament, have been wholly deprived of it. They have petitioned your Lordships as the guardians and dispensers of justice, under these existing and adequate statutes, for relief, and they have been humbly soliciting under your allegiances to government, that your Lordships will give the existing statutes their effect.

Your Lordships, by Act of Sederunt 1789, have conferred on counsel the monopoly of all petitions which can be presented. To allow a monopoly to be so constituted without restriction and without regulation, is an insult to

reason; it is beyond the power of any authority to confer, and it is an act contrary to law. The petitioners will be glad to know if counsel are bound to serve the subject when called upon, or if they may comply or refuse, just as it suits their convenience, their political or pecuniary views.

www.libtool.com.cn

The petitioners most readily admit, that counsel, in refusing to forward their views, are actuated by honourable motives. They think they can with certainty anticipate the judgment which your Lordships would pronounce; and as that judgment would be *hostile to the petitioners*, their duty binds them to refuse to sign or support a petition which would *not only offend the Court, but be unsuccessful to the petitioners.*

But while their motives are honourable, their conduct may be yet illegal. If the petitioners have a constitutional right to state their grievances in a court of justice, and counsel enjoy the monopoly of stating these facts, they, by refusing to do so, deprive the subject of his best and most valuable rights,—redress when injured.

Your Lordships will keep in view, that the present question is not what your Lordships may be pleased to grant, but what the petitioners have, by the constitution, a legal right to plead for.

Your Lordships may not be inclined to grant them relief agreeable to the statute; but, as minors, is there any statute law prohibiting them from pleading relief under it, and bring that statute under review?

Neither may your Lordships be inclined to give effect to the Act of Sederunt 1730; but can the petitioners be legally prevented from complaining of this, and contrasting it with the Act of Parliament? The same may be said of the Act of Sederunt 1789,—the Muirfield farm loss,—the commission allowed the factor,—the accountant scheme of interest, and many other points not yet disposed of.

Now, were the whole counsel at the Bar, with the Dean at their head, from the purest motives, to declare that they

could anticipate your Lordships' judgment, that every point would be refused; still it is the bounden duty of counsel to bring every point the petitioners wish before your Lordships; for, although your Lordships do not grant relief, the House of Peers may do it; but the House of Peers cannot do so unless the facts are laid before your Lordships.

www.hbook.com.cn

The petitioners humbly hope that they have made out their case, in so far as to satisfy your Lordships that they have been injured; and, if that is admitted, it follows that they have a right to plead redress. Redress cannot be obtained unless the facts are known; and the facts cannot be known, if counsel, on the one hand, refuse to sign their petition containing these facts, and your Lordships, on the other hand, refuse their petitions because they are not signed by counsel.

As to your Lordships not granting relief on the points they may plead, that is not the present question; but what the petitioners maintain is, that as minors, they have a right to bring under review the statute 1672, the effects of the Act of Sederunt 1730, and every other point on which they think they have a right to plead, *reserving always to your Lordships, their guardians*, but not to counsel, to determine what is improper, and to what extent they are entitled to legal redress.

By this means, the petitioners would in reality obtain *relief at common law*, and enjoy the blessing wisely provided for them in the constitution, by being enabled, if so inclined, to appeal their case, by a record satisfactory to themselves, and intelligible to the House of Peers.

But the petitioners shall trouble your Lordships no farther. They have discharged their duties according to their humble abilities; and they feel confident that your Lordships will not appear indifferent to the wrongs they complain of; "for when such abuses are allowed and "sanctioned by authority, they are calculated to endanger "the public tranquillity,—to alienate the affections of his

" Majesty's subjects from his Majesty's person and go-
" vernment, and to bring into hatred and contempt the
" whole system of our laws and constitution."

www.libtool.com.cn

May it therefore please your Lordships to take the premises under consideration; to repeal the Act of Sederunt 1789, as injurious to the petitioners, and hostile to their constitutional rights; or to instruct counsel to sign and support their petitions, but not to judge of their merits, reserving that power to your Lordships, the only legitimate Judges they are disposed to acknowledge, or to do otherwise as your Lordships may think just.

According to justice, &c.

ALISON —— HAY.
JOHN HAY.

V.

[Copy of the Letter to Lord President Hope is already quoted, see pages 31—40.]

VI.

TO CHARLES WILLIAM WATKINS WYNNE, ESQ. M. P.

SIR,

In addressing this letter to you through the medium of the press, I am not insensible that I address a distinguished supporter of the British constitution,—one who knows the duty of a Member of Parliament, and by whom the rights, privileges, and dignity of the House of Commons have often been independently maintained. Viewing myself as an abused and injured subject, whose wrongs can only be enquired into and redressed by that

House of which you are a distinguished member, I have ventured to submit my complaint to your consideration, in the humble hope, that you, and other honourable members of the Commons will be pleased to adopt the necessary measures, in order that the truth of the charges which I prefer may be ascertained, not by my individual assertion, but by evidence competent to substantiate them.

My complaint is directed against the Judges of the Court of Session. I complain of them for having virtually *repealed* an important *Act of Parliament*, passed in the year 1672, for the protection of the estates of minors in Scotland, and for having substituted in the place of it, an *Act of Sederunt*, or rule of Court, destructive of the force and effect of the wise enactments of that statute, and calculated to deprive minors of the protection afforded them by law. I complain, that in consequence of this *repeal* of the statute, and this *unconstitutional enactment* of the Judges, no less a sum than £10,000 has been transferred from the family of which I am a member; and that during the course of eleven years' litigation, £800 more has been divided amongst the practitioners at the Scotch Bar, without the smallest prospect of obtaining relief. To whom can I complain of this violent and unconstitutional conduct, but to the Commons of England? I fearlessly and distinctly aver, that the House of Commons have been superseded in their legislative functions, by the Scotch Judges; and that these Judges *by a cruel, unjust, and wicked law of their own making*, have bereft an orphan family of minors, of their property and their happiness.

I am not agitating a question of Scotch law when I thus speak,—for I can have nothing to say to Judges who theoretically as well as practically show the unbounded and illegal power they possess, and the use they can make of it;—but it is the power and authority of Parliament which I speak of,—and it does seem clear,

whatever differences of opinion may arise in the Commons in lesser matters, that all other subjects are subordinate to such a charge as this, and must give place to it, as one which embraces the *legality* and the *effect* of their legislative proceedings. I complain, that what Parliament has done for the good of the subject, has been over-ruled and decided otherwise by a *law* made by the Scotch Judges, which they think better, and by which law I have lost nearly all my property. This is the simple subject which I wish to lay before the Commons: and till that is disposed of, they, together with the House of Lords, must rest satisfied with being held subordinate to a convention of Scotch Judges. It is needless to speak of appeal; for that is only competent upon a final judgment, and of a process which is portable. Mine has depended in court for eleven years, and is now stuck fast where it was—before the Judge Ordinary. If these misfortunes could be attributed to *chance*, I should perhaps rest satisfied with the reflection, that I had done my best to avert them, and I should suffer with resignation, any disappointment which I deemed irremediable: but that satisfaction I cannot enjoy, because it is perfectly in the power of the Commons House of Parliament to give me the fullest relief when the wrongs which I have suffered are made known and substantiated. I want no new law. There is nothing, in my case, to state against the existing statutes—they are here perfectly adequate to have protected me; but my whole misfortune has arisen from the Judges *rescinding the statute of Parliament* made in the year 1672, and substituting in its place *their own Act of Sederunt*; although the wisdom of Parliament cannot be traced in a single section of it.

You are not to be told that the most prominent and distinguishing feature of the British constitution, is, that the people are governed by their own laws, in other words, by laws made by their own representatives, freely chosen; that laws made by a few individuals in the nomination and

dent that the errors would be all on one side. Accordingly, the pursuers discovered, that in those accounts the cautioner had given the factor credit for £300 unvouched, and that this factor had abstracted certain retired vouchers from the repositories of the deceased, which he delivered up to a pretended claimant, and in his own hand writing made out an account to a large amount, against the children for whom he acted, in favour of the said claimant. When the young ladies became of age, he prevailed upon several of them to sign bills drawn out also in his own hand-writing, for their proportion of this pretended debt; but instead of delivering those bills to the pretended claimant, he put them into his own pocket, and he and his cautioner have since claimed payment of *them* as a debt transferred to them. The sum claimed, including interest, exceeds £400. There is also a sum taken credit for as paid to a relation of the factor's which has been applied to the purchase of a house of which *the factor is* to reap the ultimate advantage; for the property is to be his own at the death of his relation.

The falsehoods which the pursuers have detected in the factor's pleadings are no less conspicuous. Regarding a farm in which the pursuers' interest depended on the nature of the possession, the factor repeatedly asserted to the Court, that he and other tenants did not occupy that farm in equal shares as a grazing farm, but that they held it in *unequal shares*, not in their own right, but in the right of a preceding bankrupt tenant. *A more deliberate falsehood than this never dropped from the lips of a villain.* By mere accident, the pursuers at last discovered a statement, exhibiting the operations on the farm for several years, in which all the tenants pay equally and receive equally; and this statement is written by the factor himself, and signed in the presence of witnesses. At the time when the pursuer's father died, a Mr George Bell was due them about L.500, constituted by a bond for L.300, and bills for stock purchased at farm roup. The pursuers

discovered that the factor had allowed a considerable part of this debt to be extinguished by contra claims, which Bell exhibited in favour of himself in some farming speculation. The factor, as usual denied the charge in the following words: "Now the fact is, and the pursuers know "it well, that the defender never did allow Bell to compensate one shilling of the debt due to them by any "other claim; and it will be judged with what face they "come before your Lordships with an assertion which "they know to be so contrary to the fact." But the fact is, and the factor knows it well, that, notwithstanding of this unqualified denial, he did allow a large sum due by Bell to be extinguished by contra claims,—that an account current was opened betwixt them, and signed by each in the presence of witnesses,—and that one copy is in the hands of Mr Wood, and another in the hands of Mr Rutherford, writers in Jedburgh. It will, therefore, be judged with what face the factor made such a statement, knowing it to be so false. This point, and that relating to the farm, involves a sum to the extent of about £1000.

In the pleadings conducted by the factor, in which his relation and the pretended claimant were concerned, he found it necessary to show that the minors' father occupied extensive farms—held valuable leases—was in opulent circumstances—and that the minors, at their father's death, obtained a lucrative succession. The minors' father no doubt was an extensive farmer. He occupied, at his death the farms of Crailinghall, Upper Crailing, Cappoch, Haughhead, and a share of a grazing farm called Muirfield. His leases *were* valuable. The farm of Crailinghall was let two years after his death at an advance of 600 guineas. He *was* in opulent circumstances, as the factor has clearly made out in those pleadings; and it may farther be observed, that the factor had himself borrowed from him £200. A twelvemonth before the minors' father died, he succeeded, as can be instructed, to about £3500, upon the death of an uncle. Unfortunately, however, for the minors, the

whole of their father's property has disappeared; for in the factor's accounts, obtained only by compulsion ten years after his appointment, it does not appear that he has at any time placed to the credit of the minors a sum exceeding that which was left them by their father's uncle. This is incomprehensible. Their father was not in arrears with his landlords, he had no bank credit, he had no borrowed money; on the contrary, he had money lent out at interest. And were a jury of farmers to decide upon the extent of property left to the minors by their father, the calculation might considerably exceed, but it would not be below £3000, with twenty years' interest; and that with the sum admitted by the factor in his statements, as recovered from the uncle's estate, exceeds £10,000.

It is only adding insult to injustice, to say to minors, when they become of age, that they shall have no redress unless they can distinctly condescend upon the extent of the loss which they have sustained. It was their inability to prove those facts, when their property was seized upon and carried off, which induced the legislature to make for their protection the act 1672, which declares, that when tutors or curators carry off their property without any check or controul, "there is no means by which a charge can be "made up against the said tutors or curators, but them-"selves, who, when they are brought to an account, *make* "*up both their own charge and discharge.*" The Act of Parliament forcibly anticipated these fraudulent transactions *, and effectually guarded against them. According to it, the statements of the factor, produced ten years after his appointment, would be rejected *in toto*: Yet such has

* Their tutors having immediate access to their charter-chests, writs, evidents, and securities of their lands, sums of money, or others belonging to them, which they may embezzle, suppress, or by collusion give up to their debtors, or other parties interested, *without justification, or otherwise having got satisfaction.*—Preamble to the Act of Parliament 1672.

been the procedure in the Court of Session, and such has been the effect of their unconstitutional proceedings, that not one shilling, even of admitted funds, can be obtained after eleven years' litigation, nor will the Judge give effect to the contract made with the factor.

www.lmtool.com.cn

I have now SISTED THE PROCESS, not because the parties have failed to establish their right to their own property, but because Lord Succoth *either will not, or cannot,* bring it to a termination before him. The public tell me, that I have lost the ear of the Court, that many of the friends of the Judge are factors, and that I will suffer for having exposed the abuses on the estates of minors. My own counsel advise me to abandon the cause. They in effect tell me, that it is of no consequence however improperly the factor may have acted, for the Court is not in the practice of giving effect to their own law, when the offending party is factor of their own appointment; and that, contrary to the conditions of their own contract, they will protect him at all hazards. And thus it is, that what the President is pleased to call "the regular judicial procedure of the Court, and "the substantial justice of the country," appears to be "nothing else than justice shamefully delayed. My case was before Lord Succoth ten years ago, and it is before him still; and, in all probability, will remain before him so long as he remains on the Bench. Yet it is so simple, that twelve honest jurymen would pronounce a correct and final judgment on every point in dispute, on a hearing of two hours, although Lord Succoth, even with the aid of *learned counsel*, will not, I believe, finish it in twenty years. His Lordship orders pleading after pleading, and paper after paper, till the process has to be carried by a porter; and he has always taken care to prevent the factor from restoring the property carried off from the family when minors, although it is now thirteen years since the youngest became of age. At one time we find him pronouncing a judgment, and at another time recalling it; and shortly after we find

him leaving the country and going abroad for about two years, and the Court refusing to allow the case to be remitted to another Judge. At one time we find two years taken up in writing one paper by each counsel, which ought to have been written in six weeks; then we find a counsel promising to write a paper, accepting his fee, but afterwards at the end of six months refusing to perform his duty, and the Judge declining to compel him. At one time we find the factor ordered to produce certain vouchers, the property of the pursuers; at another time we find an order that the factor shall make objections to the producing of these vouchers. At one time we find the Judge on the Bench pledging himself to divide instantly a part of the funds; and immediately on the back of this declaration, we perceive a written judgment directly the reverse. At one time we find him lamenting that the case has been so long before him; and immediately after, we perceive an interlocutor so arranged as to destroy every hope hitherto entertained of ever getting the case out of Court, or recovering one shilling of the property carried off, by order of the Court, from the family, when minors.

My letter to Lord President Hope will enable you, Sir, to judge of the abuses practised upon the minors' estates in Scotland, and will point out, I trust, the necessity of directing the attention of Parliament to the wisdom of that statute made for their protection in 1672. Direful have been the effects resulting to minors and to the public at large, from the Commons dispensing with their privileges, and allowing the Judges of the Court of Session either to treat Acts of Parliament with ridicule and contempt, or to legislate for themselves. My other letter to Mr Hume may perhaps confirm the correctness of the position, that "when the functions of the Judge are joined with the "Legislative, the life, the liberty, and the property of the "subject, are then in the hands of arbitrary judges, whose "will is their law, and the rule of their procedure." The conduct of the Judges of the Court of Session is indeed a

confirmation of it, for they have not only assumed the right of legislating and of rescinding the statutes of Parliament —but also of prohibiting the subject from *even* humbly petitioning *themselves* to reconsider their own laws: And this letter will put it to the test, if they also claim the right to punish the subject for complaining to that public to whom Judges were wont to be accountable, of the sufferings they have brought upon him by these destructive laws.

www.liberal.com.cn

In Scotland, our ancestors perceived how difficult it was to convict Judges who wished to gratify their resentment against those who had offended them; because they always secured themselves from punishment and disgrace, under the invariable excuse of error in judgment. To correct this anomaly, various statutes were made by the Scotch Parliament, enacting, that if the decision of a Judge was three times reversed by a superior court, he could not remain any longer on the Bench; nor was he ever to be afterwards permitted to be a forespeaker or advocate. And when these statutes were enforced, the Judge had an interest in the equal administration of justice, as at no distant period a punishment might be inflicted on him if he failed to do so; but now, the Scotch Judges *can laugh* at their decisions being overturned, for they know that no punishment awaits them, although every judgment they have pronounced for 20 years should be reversed in the House of Lords.

This abuse, however, is not so severely felt in Scotland, as that *order of procedure introduced by Acts of Sederunt*, by which the injured litigant is ruined *before his case can be appealed*. If the party petitioning for justice happens to offend the Court, the Judge can protract his case for a lifetime before him; he can order pleading after pleading, and paper after paper, he can bring the case forward in fifty different forms, and swell the process to a porter's burden; although the original petition may only be three pages, yet, at the end of eleven years, a paper, as in my

case, of 490 pages, may be considered necessary by counsel to render *the procedure* intelligible. Evils such as these generate and foster almost all the abuses in Scotland. The price paid for justice, too, is so enormous, and the uncertainty of ever bringing a suit to a termination is so great, that it emboldens every unprincipled character to invade the rights of his neighbour, in the hopes of carrying off his property with impunity. Happy is the man who can calmly submit to such injustice and insult, without seeking redress in the Court of Session as I have done!

Every Scotchman who is in any degree acquainted with the history of his country, will have a pretty tolerable recollection of the character of those perjured villains who sat upon the Bench in 1674. These creatures of the Crown, acting without the salutary controul of a jury, and under the direction of Lauderdale, whose memory is still detested in Scotland, made an Act of Sederunt, by which they at once rendered themselves absolute, and which operated in the same manner as if the present Parliament were to pass an act silencing the press, and prohibiting his Majesty's subjects from approaching the House of Commons with their petitions and complaints. They were all to a man turned off at the Revolution; and the act they had made in 1674 was pronounced *treasonable*, and ceased to be in force. Acts made by Judges, which were declared *treasonable* in 1688, are *treasonable* still. "Disguise thyself as thou wilt, still, slavery, thou art a "bitter draught; and although thousands in all ages "have been made to drink of thee, thou art no less bit-"ter on that account." Perhaps the celebrated legislator Sir Ilay Campbell, if called upon, will *honestly* state the legitimate motive which the Court had in view in 1789, when it revived this same act, so much detested in a former age, and which, according to report, although enforced by the Court, was never signed by the President (Millar), so conscious was that upright Judge that they were betraying trust; and, instead of protecting the sub-

ject in his rights and privileges, that they were, by that act, destroying the very object for which the Court of Session was instituted. These men were sworn to administer justice; and instead of doing that, they have made a law to prevent justice from being administered. Instead of allowing the party, *as by law entitled*, to state the facts in which he has a deep interest, they compel him to employ agents and counsel who have an interest in concealing the facts, and keeping them out of view. The party's interest is in getting his case soon out of Court; but this act compels him to employ those whose interest lies in protracting his cause, and confining his suit in Court for many years. The party injured has an interest in confining the pleading to the points in dispute, in order to prevent the cause from getting into confusion: the agent and counsel have an interest in introducing extraneous pleadings, to lengthen out their papers; and it is the making of their fortune to get their clients' causes involved. In my own case, my former agent and my former counsel were so successful, that, although the original paper only contained three pages, yet, at the end of ten years, my present counsel required to write a paper of 490 pages to make the *procedure intelligible* to the Judge. The production of that paper has cost £164, although a paper of twenty pages would, but for an inadequate order of process, and the Act of Sederunt 1789, prohibiting me from complaining of it, have been quite sufficient to state the merits of the whole points in dispute, and would not have cost above ten guineas.

Indeed, the present practice of the Court of Session has already gone far to corrupt the morals of the young counsel, and in totally destroying the laudable ambition of being serviceable to their clients. It is the agent and, not the client who employs them; and as the interest of the agent lies in protracting a suit, it is quite evident that many agents will be inclined to employ that counsel, whom they deem best qualified to effect that purpose.

Young counsel, who at first resolve to act honourably, and do justice to their clients, find that unless they will act otherwise the agents will cease to employ them. They soon perceive that another counsel has business pressed upon him, not because he has done his duty, but because he makes no scruple in betraying trust, and protracting a cause instead of finishing it; and, by forcing, as in my case, the whole procedure into a mass of confusion. It is counsel of this description whom most of the agents are anxious to employ. The interest of the party and his agent are the same in the Jury Court, because there is only one hearing; and the agent cannot derive any advantage from injuring his client. But in the Court of Session, the reverse is the fact; the agent derives an advantage by protracting the cause, in the same proportion as his client sustains a loss. The party injured has, under the existing Acts of Sederunt, no more control over his agent and counsel than he has a control over the Court in making those acts which deprive him of his rights. *This is the close burgh system in perfection! He must pay for all, and be responsible for all!* If he should afterwards discover that his cause has been protracted or lost by the deliberate corruption of his own counsel, he can obtain no relief; for the same law which prevents him from having any control in his own affairs, protects those guilty counsel who have acted for him, who cannot be brought to justice but with their own consent.

In justice to many gentlemen of the Bar, however, I am bound to say, that in my humble opinion no blame can be attached to them for refusing to sign such petitions. "From time immemorial, (say they) we have enjoyed the "privilege of accepting or declining employment as we "thought proper; because you the litigant enjoyed the pri-"vilege of stating your own cause, or applying to us as "you thought fit.—The Court has now deprived you of "the privilege of stating your own cause; but it has for-"gotten to compel us to do so for you. When you come

" then with a petition to sign against one of our number, " we decline signing it, *not* because we approve of that " counsel's conduct, but because we decline such unplea- " sant employment." You will therefore perceive, that by this act a guilty counsel is most effectually screened from punishment; other counsel decline signing a petition against him, and the Court throw all petitions over the Bar, unless signed by counsel. *There is a charm in the signature of counsel, which renders the petition worthy of their notice, and when that is wanting, the doors of a court of justice are shut in the face of an injured subject.* Twice has the President threatened me with punishment, for complaining of having been wronged by one of these counsel, and for offering to prove the fact at his Lordship's Bar. He told me to go and get other counsel to sign my complaint against the one complained of!! He might as well have told me to go and kiss the Emperour of China's great toe. President Hope does not consider this as unjust, or as pressing hard upon the subject; for in his opinion one and all of the lawyer profession are like himself, so honest, so honourable, so wise, and so just, that not one of them can do wrong. " Your charges," said he " are false; for " with such an independent Bar, and such respectable " agents, you can have no cause to complain." Thus his Lordship does not require to examine evidence when lawyers are complained of: he pronounces them innocent, not because he finds the evidence defective, but because they, *like the King of England, can do no wrong.* The *dimensions* and *size of my process*, showed, in all conscience, the industry, and labour which agents and counsel had, for eleven years, fruitlessly given to the cause before them; not to mention the expence which I have been subjected to, for no purpose whatever, unless to advantage lawyers, and to enrich the Court's fee-fund.

His Lordship appears to have forgot, that a very short time before he made this declaration to me, he said from the Bench to a counsel in a cause between other parties,

"I have never seen such low wit, vulgar abuse, scurrility, "and buffoonery, as in these answers. *It is painful to "think the Bar of Scotland has furnished a man capable of "writing such a paper.*" On that counsel demanding that his Lordship's words should be taken down, he added, "I "will repeat them three times over;" which he did. "I "shall (said he) attest them for your satisfaction." When animadverting on a paper said to have been drawn by Mr Greenshields, revised by the Dean of Faculty, and transcribed by Mr Haggart, three counsel at the Bar, his Lordship said, "Mr Haggart has here, as is his usual practice, "stated facts and circumstances of which there is no evi- "dence on the record, and which live in the memory of "that gentleman alone." He added, "he *has conducted* "*this cause as he does all other causes in which he is con-* "*cerned.*" When the counsel rose to explain, he was interrupted, and ordered to sit down by the President. Expressions such as these from the mouth of *his Lordship*, furnish a pretty flat denial of his assertions to me; but as the declarations were made at different times, to answer different purposes, perhaps it may be considered by his Lordship of no consequence, although the one averment flatly contradicts the other. His Lordship, if he will, may say that the Bar is independent of the Bench. The slave, too, with the log suspended from his leg, may say he is a freeman; but we can exercise our own judgment, and are not bound to believe either the one or the other. No man can act independently of another, so long as his daily bread depends on the other's approbation. The daily bread of counsel depends on the will of the Judges; the moment they fall under the lash of displeasure, agents avoid them, and clients imagine that they will lose their cause if they employ a counsel who has given offence to the Court. Expressions such as I have quoted, will destroy the practice of the most independent and daring counsel that ever spoke at the Bar. When President Hope can name a counsel who dares complain of Acts of Sederunt, which invade the

rights of the subjects, and who dares tell the Judges that they have no right to make these laws, I will then frankly admit the independence of the Bar, and say, that such a counsel has fearlessly asserted the rights of his fellow subjects. So long as the Bar finds that it is *not their interest* to assert the rights of their fellow subjects, it can not be expected that they will do it from choice; particularly as such fearful punishment awaits them, if they fall under the lash of President Hope's resentment, who can use with impunity such unqualified expressions of abuse as may deprive them of nine-tenths of their income.

In the face of such evidence as is contained in this, and the annexed letter to President Hope, it is truly pitiful and disgusting, to receive a letter from him, averring that the Court wishes to put a stop to abuses practised on the estates of minors, while the very individual to whom his letter is addressed, has been threatened to be treated as a criminal, for humbly praying that the Court would put the law in force against a fraudulent factor who had plundered him. You will likewise perceive, from my letter to Mr Hume, that, although the President has repeatedly refused to inquire into my complaint as laid before the Court, he has never been backward in judging on the state of my intellect,—*a subject not yet before the Court.* In the presence of a crowded Bar, he pronounced "that my mind was im-"paired, that I was not a man of a sober judgment," and that it was out of pure compassion to me, that he had hitherto declined to treat me as a criminal. How far such expressions are free from malice and malignity, is not for me to determine. If I am a fool, a madman, a criminal, a man whose mind is impaired, and not a man of a sober judgment,—it is singular, indeed, that a discerning public has never yet been able to discover it. If, on the other hand, I am *not* what President Hope has pronounced me to be, I submit to you on what principle of justice President Hope can be allowed to remain on the Bench, after

having so completely degraded the dignity of the Supreme Court of Justice in Scotland.* Such conduct plainly proves, that when men get gowns round their shoulders, and the King's presentation in their pockets, they can do, with impunity, many *unconstitutional* acts. In their "star chamber" they can make laws, and, on the Bench, proclaim these "the laws of the land." They can cause our property to be carried off under the authority of *their* laws, and afterwards refuse to give effect to them. Their will is the law; consequently, they can, at their pleasure, deprive us of our liberty, ruin our propects in life, injure our characters, disturb the peace of our families, destroy our domestic happiness, and wound the feelings of our friends.

www.libtool.com.cn

But although the President maintains, that laws made by Judges are "the laws of the land," it is no small consolation to find him admitting that Judges are responsible to that public for whom they act, and by whom *they* are paid. A counsel at their Bar, who had been insulted by his Lordship in the discharge of his duty, demanded an explanation, which the President declined, but added, "Do not suppose, Sir, from this, that I wish to arrogate "to myself an *exemption from all responsibility* for what "I may say on the Bench; on the contrary, *I know that* "*I am responsible*, but it is a legal and public responsibility "*only* to which I will submit." In his defences against that gentleman's prosecution for his abuse of him from the chair, presently pending in Court, he maintains, that he is not accountable to a Court of law, but says, "all Judges "are liable to controul by Parliament; and that the "power of Parliament is not denied."†

* When Mr Hume stated in the House of Commons, the treatment which I had received, Lord Binning said, that if it could be made out that President Hope had used such expressions, he ought not to sit another hour on the Bench.

† See the action of scandal and damages, at the suit of the late Mr. Haggart, advocate, against the Right Hon. Charles Hope, 7th September 1820, p. 22.

Our forefathers, who placed the family of Brunswick upon the throne of Great Britain, and who perfected that constitution which President Hope and Lord Hermand never cease boasting of, did *not* view with indifference acts so monstrous, and proceedings so unconstitutional, as I now complain of; nor were they backward in correcting them. Permit me to remind you of the speeches made in Parliament, when inquiring into the conduct of *Chief Justice Scroggs*. As a copy of these proceedings is just now before me, I shall make a few extracts from some of the speeches then delivered by the leading members of a majority of the House. I do this, in order to show with what indignation the representatives of the nation then viewed the conduct of Judges, who attempted to supersede them in their functions, and with what steadfastness and fidelity they supported the rights of their constituents, and, with these rights, the vital principles of the constitution itself. *Mr Booth, afterwards Earl of Warrington*, in addressing Parliament on this subject, spoke to the following effect:—"Of what use is it for this House to "make laws, if they are not to be executed, and if Judges "are to make laws of their own? Your laws then, Sir, "are no better than waste paper. It is the *indispensible* "*duty of this House* to see that those who are entrusted "with the execution of your laws, do their duty; that "neither the innocent may be condemned, nor the guilty "acquitted. The execution of the law is so clear, so un-"doubted, and so public a right, that no power whatever "can dispense with it; and those whose duty it is to see "the law executed, if they either pervert the law, or hin-"der it from taking its course, are highly criminal, and "ought to be brought to a strict account. Therefore, in "my opinion, this matter ought to be searched into, and, "if they prove such faults as are complained of, we can-"not do less than punish the offenders. *The cry of their* "*unjust dealings is great*, and I hope their punishment

" will be such as their crimes deserve." *Mr Sacheverel* rose immediately after Mr Booth, and expressed himself in the same indignant manner against the conduct of the Judges of that period:—" If Judges can prevent the " penalties of the laws, if they can make laws by their " rules of Court, I think this government will soon be " subverted; therefore it is high time for this House to " speak with these gentlemen. In former times, Judges " have been impeached, and hanged too, for crimes less " than these; and the reason was, because they broke the " King's oath as well as their own. If what has been " said of some of these Judges can be proved, they shall " not want my vote to inflict on them the same chastise- " ment." *Sir Francis Warrington* also gave his opinion as follows:—" Laws made in this House are but dead " letters, unless you can secure the execution of them. " We are come, I think, to the old times again. In the " front of *Magna Charta*, it is said, 'We *will* defer or " deny justice to no man.' I wonder what these Judges " will say for themselves. If they have not read that law, " they ought not to sit upon a Bench; and, if they have " read it, they deserve to lose their heads. They know " that it was lawful for the subject to petition, and their " knowledge aggravates their crime."

Had this taken place under the tyrannical reign of Henry the VIII. it would not have been a precedent worth quoting; but it must be kept in view, that the speeches were made, and the proceedings adopted, by the men who placed the present family upon the throne, and who perfected what our Judges themselves call a glorious constitution. The result of the enquiry by the Commons was, that, on the 5th of January 1681, Chief Justice Scroggs was impeached for high treason, on the following articles: *First*, For making laws, and calling them the laws of the land. *Secondly*, For using unbecoming, violent, and threatening expressions from the chair, to litigants suppli-

cating him for justice. *Thirdly*, For delaying justice, and threatening with arbitrary imprisonment, and other punishments, those who exposed such abuses. And, *fourthly*, for employing one "Robert Stevens" to go to printing-houses, and carry off papers and other property, in order that the unjust decisions of the Court might not be made known to the public.

www.libtool.com.cn

I presume I need not suggest, how closely and forcibly the observations of the honourable members of the House of Commons, in the case just quoted, apply to the Scotch *Acts of Sederunt*, by which I have been so deeply aggrieved. When I complained that my property was intromitted with, contrary to the statutes, I was told by President Hope, that "*Acts* of Sederunt are the law of the land." When I supplicated for justice, I was grossly insulted at the Bar of the Court by President Hope, and threatened with imprisonment. When I again complained that counsel had wronged me, and that my case had been improperly delayed, I was told by the same Judge, that he knew nothing about my case, although it had been ten years before that Division of the Court of which his Lordship is the head. My papers, too, were carried off from the Star Newspaper office, by a person employed by President Hope and the Sheriff, for the purpose of preventing a decision of the Court of Session being made known to the public.

I have always, Sir, contributed my share to the burdens of the state, and, in the hour of danger, when those in power requested my personal services, I cheerfully complied—I paid for my own uniform—I furnished my own arms—I served without pay, and perhaps I would not have been the first man who would have turned his back upon the invaders of my country. But what return have I received for these services? I have had my property carried off from me contrary to law,—contrary to law I have been prohibited from humbly petitioning that it might be restored,—I

have been grossly insulted at the bar of justice,—I have been told before a public audience, *that my mind is impaired, that I am not a man of a sober judgment*,—and that, if ever I again presume to trouble those who caused my property to be carried off, I will be *considered a criminal, and will be by them treated as such*. Should the day ever arrive when the Commons of Great Britain judge it their duty to enquire into the conduct of President Hope and Lord Succoth, perhaps the House in its wisdom, may consider that the one has degraded the dignity of justice, and excited a spirit of discontent and dissatisfaction in the minds of the public; while the other perhaps, may appear to that House to want that capacity of intellect and firmness of mind which is requisite in a Judge. Strong measures may be considered just and due to the public, but this, you will perceive, is no relief to me.

It is a fact which will not be disputed, that, when a British subject has sustained a loss from the servants of the public, the public are in justice bound to make good that loss to the party. I have lost my property in consequence of Judges, who are the servants of the public, having made certain laws, and allowed it to be carried off under their authority. I can obtain no relief; they are party, judge, and jury, in their own cause; and, in such a situation, I submit to you, if I have not a claim on my country to the extent of the injury which I have sustained, I THEREFORE humbly and earnestly entreat, that you, and other honourable members, will be pleased to take the necessary measures, to probe this subject to the bottom. The friends of President Hope, who are Members of Parliament, I do think, will not oppose a fair and candid inquiry; for, after such charges are exhibited against him, it would be ruinous to his Lordship's honour as a Judge, and to his character as a gentleman, were they to protest against inquiry. If I fail to make good my charge, I know the punishment that awaits me; and, if I establish it, I

submit if I am not entitled to redress to the extent of the injury I have suffered.

I have the honour to be,

www.libtool.com.cn

SIR,

Your most obedient and very humble servant,

JOHN HAY.

York Place, Edinburgh, 6th Nov. 1820.

VII.

NOTE FOR ALISON CRANSTOUN HAY, AND JOHN HAY HER HUSBAND, FOR HIS INTEREST.

Edinburgh, 8th Nov. 1820.

MY LORD PRESIDENT,

I shall make no apology for again troubling your Lordship and the Court with this note. You need not be informed of the objects for which courts of justice are instituted; nor ought I to be placed in such a situation as ever to doubt of the inclination of the Judge to listen to complaints of existing abuses, or of your Lordship's zeal to remove every obstacle to the fair and impartial administration of justice to every human being.

Your Lordship will recollect that, some time ago, I presented a printed petition to the Court, stating that I had been seriously injured by the mal-practices of one of your factors, appointed under your Act of Sederunt 1730. I there complained that I could not prevail upon counsel to state the facts; and I humbly prayed the Court to recall the Act of Sederunt 1789, which prevented me from stating my own cause. About the same time I complained by a note to your Lordship and the Court, that two counsel at your Bar, Mr Hope and Mr More, had injured and deceived me, for, instead of stating my cause to the Court, as I instructed them, they pronounced their

own judgment on the merits of it, and refused to do their duty of counsel, as directed by my agent.

I am sorry to say, that my presenting the printed petition, and the note complaining of counsel, was, by your Lordship and the Court, viewed as an eggregious offence; I was therefore ordered to the front bar of the public Court, and reproved by your Lordship in language which, I am sure, your Lordship will not blame me though I do not repeat.

www.library.com.ch

Finding that the Court would not allow me to state my own case, nor compel Mr More and Mr Hope to do so for me, I contracted, through the medium of my agent, with Mr Miller. This gentleman agreed to conduct my cause conformable to the rules of Court, and state every fact I could establish by evidence. The Court ordered a memorial on all the points I complained of; and Mr Miller received and accepted of his fee, and agreed to write the paper; but he failed to perform his duty. At the end of six months, I made the disagreeable discovery that not a line of this paper had been written, although all that time I had been amused with letters from my agent, fixing, at short dates, when the paper would be completed. I then wrote Mr Miller, reminding him of his engagements, and explained to him the great loss I was sustaining from the delay. This gentleman was pleased to consider that I had committed an offence in reminding him of his duty; he returned the process, and refused to write in it. I wrote him a second time, that I would not take back the process; that he must write the paper he had been paid for, according to agreement; and if he still failed to perform his duty, that I would complain to your Lordship. I received for answer, that such intimation had confirmed him in his resolution not to write the memorial; so convinced was that gentleman that your Lordship would approve of his conduct.

In a letter which I wrote to my agent at that time, I thus expressed myself: "I beg to say, that since the pro-

" cess was put into your hands, every exertion which an " honest active agent could make for the interest of his em- " ployers, has been performed by you, Should Mr Miller " and you continue to refuse to act for me, you will per- " ceive that I have no alternative but again to apply to " the Court."

Your Lordship will please keep in view, that Mr Miller felt quite at his ease. The reproof I had received from your Lordship for complaining of Mr More, would, he thought, be a lesson to me, never again to make my wrongs known to your Lordship; and he certainly considered that he had nothing to fear from the complaint of one whom the public viewed as an injured subject, and who was labouring under your Lordship's *highest displeasure*. But the case of my agent was very different: He had received, and, as *I thought at the time*, most justly, the expressions of my entire satisfaction; and the consternation he was thrown into, from the apprehension of your Lordship discovering that he had done his duty to me, rendered him completely unhappy; and he implored me to suppress that part of my letter where I had expressed *my satisfaction of his conduct*. " Unless (said he) you " write me, agreeing to suppress that paragraph of your " letter which relates to me, excepting so far as it *com-* " *plains of my declining to act*, I must be under the ne- " cessity of transmitting to the Lord President a copy of " some letters, which will show his Lordship *the true state* " *of the case*."

This agent, a few weeks ago, rendered his account; and the parties interested perceived, with surprise, certain charges, which clearly established that their agent and counsel had made private communications to your Lordship; and although each of the parties may have his own opinion, *one and all of us exclaimed that we were betrayed*, and we instantly instructed the agent to stop all proceed-

ings.—Combining this with what I have to state against Lord Succoth, *the whole procedure appears to be tainted.*

I am desirous to see those private communications which my agent and counsel made to your Lordship. I wish to be informed how often my counsel has had private meetings with your Lordship, or with Lord Succoth, and the instructions or directions he then received, in respect to my cause.

www.libtool.com.cn

Your Lordship does not require to be told, that I am, by the Act 1789, prohibited from stating my own case; and, under such procedure, you will admit, that the breath of suspicion ought not for a moment to be permitted to rest in any quarter within the walls of that Court. I have other complaints, still more serious to state, regarding Lord Succoth; but it is not necessary to lengthen out this communication. I pray that your Lordship will take the sense of the whole Court upon this note, and intimate the same to me.

In respect, &c.

JOHN HAY.

VIII.

York Place, York Lane, Edinburgh, 18th Nov. 1820.

To the Honourable Lord Succoth.

My Lord,—In making inquiry as to my right to complain of your Lordship, I am informed that I have not only a right to complain when wronged, but also a right to obtain redress to the extent of the injury received; but that before a Judge can be subjected in damages to any subject, the party injured must first establish in a competent court that an injury has been sustained by the Judge not doing his duty.

It is my intention to endeavour to establish this point, by bringing your Lordship's conduct under the consider-

tion of the Commons, and show that I have been deeply injured by your detaining my cause before you for ten years, and then pronouncing a judgment in such a manner as to destroy all hopes of bringing my suit to a termination.

www.libtool.com.cn

By referring to your last interlocutor, you will find that ten years exertions of learned counsel has not enabled you to understand the cause; that you have made a remit to an accountant for more information; that you have not pronounced judgment on the points in dispute; that you have declined to allow the £1200 in Mr Tweedie's hands to be divided, although, on the Bench, you did in the most unqualified manner pledge yourself to do so.

You instruct the accountant to report to you if the paper No. 8. in the process will supply the defects of the tutorial or original inventories which ought to have been lodged in 1798. The paper No. 8. is a statement of accounts made up, as the factor tells you, in 1808, and how it could have entered into your head that such a statement of accounts could answer the purpose, or supply the defects of tutorial inventories, which required to be lodged in Court in 1798, is quite beyond my comprehension. The process has been before you ten years, and you remit to the accountant for more information; and the question you ask regarding inventories shows, that, if you have read the papers, you do not yet understand the cause.

The public appear to entertain an opinion, that the Judges in the Court of Session will not apply the law to factors, however guilty; nor will they give effect to the Act of Sederunt 1730, although every condition of it has been violated. I am sorry to say, that your Lordship's interlocutor is not calculated to prove that such an opinion is incorrect.

It was not my intention to have troubled you with this communication, had I not been told that I was in can-

dour bound to apply to you for an explanation, before I complained to Parliament. In compliance with this view, I shall wait four days for your Lordship's reply.

I have the honour to be,

My Lord, your Lordship's

Most obedient and very humble Servant,

JOHN HAY.

IX.

NOTE for Alison Cranstoun Hay, and John Hay, her Husband, for his interest

Edinburgh, 23d Nov. 1820.

My Lord Succoth,—Some months ago, the other parties concerned in the cause against Scott, instructed me to write the agent to stop all proceedings. *First*, Because they saw no prospect of your Lordship ever finishing the cause; and, *secondly*, Because they had discovered that their agent and counsel were betraying trust by making private communications to the Judges, and holding private meetings with them, injurious to the interests of their own clients. Your Lordship will herefore perceive, that the procedure is *tainted*; *and the Court having refused to inquire into such disgraceful conduct*, the pursuers do not think they are receiving justice, and they decline doing any thing more in that process, till the sense of the House of Commons is taken upon the subject, and upon the treatment they have received from your Lordship and from President Hope.

I understand you have this day ordered the pursuers to lodge with you another paper in addition to all that has been wrote for these ten years. Your Lordship will please be informed, that, for the reasons above stated, they decline employng either agent or counsel, until the Court is pleased to inquire into the conduct of Mr Gifford and Mr Miller.

In respect, &c.

JOHN HAY.

X.

York Place, Edinburgh, 21st Nov. 1820.

My Lord,—I beg to hand your Lordship the inclosed papers, and I request your particular attention to the note addressed to President Hope, copies of which were sent to him and to the other parties named in it. The public appear to entertain an opinion that his Lordship is my personal enemy, and that I need not expect to obtain justice; I wish I had less reason to believe this. I am surprised at his Lordship's silence under such a charge; this certainly strengthens suspicion that a plot has been detected.

I forwarded copies of these papers yesterday to Lord Harrowby. Should your Lordship judge that my complaints are worthy of your consideration, I shall expect to hear from you, as I have not yet forwarded any of these letters to the Members of the House of Commons.

I have the honour to be,

My Lord, your Lordship's

Most obedient Servant,

JOHN HAY.

To the Right Honourable
the Lord Advocate of Scotland.

XI.

York Place, York Lane, Edinburgh,
30th November 1820.

Reverend Sir,—When a British subject has been abused, insulted, and oppressed, as I have been, by the Lord President of the Court of Session, I do humbly think it is his duty to make his wrongs known to the public. Every act of oppression and injustice in a court of law against an individual, is an encroachment on the rights of the community; and if the public allow that individual, who maintains his rights, to be ruined, and made

a victim of judicial resentment, they may soon, perhaps, have few rights to boast of. I entreat you will peruse the enclosed papers; and I do humbly think that the attention of the public should be directed to the abuses on the estates of minors.

I shall be glad to hear from you at your conveniency.

I have the honour to be, Reverend Sir,

Your most obedient very humble servant,

JOHN HAY.

To the Reverend Mr Thomson.

[The Correspondence with Mr Rolland was neither proved, nor attempted to be proved; of course it is not inserted.]

XIV.

York Place, Edinburgh,
13th September 1821.

My Lord,—It will be consistent with your Lordship's recollection, that some years ago, two Counsel at your Bar were employed to state my cause to the Court conformable to its rules. These gentlemen, instead of doing so, advised that the cause should be given up, declaring, that, however improper the conduct of your factor had been, the Court would protect him; and they were at pains to impress on the mind of their clients, that the Court never gave the orphan and the fatherless the benefit of the laws which were made for the protection of their property. These averments presented to my mind such a horrible picture of corruption, perjury, and unnatural feeling on the part of the Judges, that I felt quite indignant, not against the accused, but against the accusers. I instructed my agent to intimate to them, that they were appointed to state, and not decide my cause,—that it was the judgment of the Court I wanted upon it, and not their judgment on the corruption of the Court,—that it was soon

enough to give an opinion on that subject when desired, —that my opinion of the Court was precisely different,— that I would not take my cause out of Court,—that they must do their duty as counsel, by stating the facts, and pleading to them. These gentlemen refused to do so. I then complained by a note to your Lordship, as head of the Court. Your Lordship has not forgot what was the result.

From certain circumstances, not unknown to your Lordship, certain agents of the Court, and counsel at the Bar, and the public in general, appear to view me as a victim to be sacrificed to your resentment; and some of those individuals, I am sorry to say, have acted, as if doing me an injury was conferring a favour on your Lordship; for they have not only injured me, but they appear anxious that your Lordship may discover it. Such conduct on the part of the agents and counsel cannot be more ruinous to my family, and painful to my mind, than it is injurious to your character as a man, your honour as a gentleman, and your usefulness as a Judge.

If it is possible for us to agree upon one single point, it will be on that of putting a stop to proceedings which are equally injurious to us both; and this can only be done by my bringing the conduct of some of the offenders before your Lordship in Court, which will enable you to act in such a manner as will convince a discerning public, that you know no man in Court, but only his cause; and that neither agent nor counsel will be protected contrary to justice, nor will that justice be deferred, or the cause protracted.

But, my Lord, how am I to bring those offenders before the Court to obtain justice? Your Lordship will please keep in view, that justice is always denied, when the obtaining it is coupled with a condition which depends on the will of another over whom the injured party has no control. My complaint is against agents and counsel; your Lordship says you will not receive it unless signed by

counsel; and, as no counsel will sign a complaint against a brother, you will perceive you have coupled the receiving my complaint with a condition I cannot fulfil,—consequently justice is denied me.

www.lltool.com.cn

It would be improper to lengthen out this letter, by entering fully upon the treatment I have received from agents and counsel; but, in case your Lordship should conceive, that what I have already stated is the only ground of complaint, I beg leave to inclose a pretty long extract from a letter sent to a counsel, which he has not thought advisable to answer.

I have told your Lordship that counsel will not sign my complaint. I entreat that your Lordship will inform me if you still adhere to your former resolution, *namely*, that you will not receive a complaint against a counsel unless signed by another,—and that you will treat me as a criminal, if I present a petition in my own name to the Court stating the facts, and praying for justice.

Waiting your Lordship's answer, I have the honour to be, my Lord, your Lordship's

Most obedient and very humble Servant,

JOHN HAY.

To the Right Honouable Charles Hope,
Lord President of the Court of Session.

I hope you will not consider it unreasonble on my part to request an explanation as to your not obtaining a reservation in the interlocutor of the Court regarding the farm of Muirfield. The Judges, and particularly Lord Balgray, said, that the matter as to the factor's management was still open; yet you allowed the interlocutor to be so framed by which your clients are foreclosed.

I wish to know your reason for allowing a factor to be appointed to that farm in 1811, without lodging a minute or protest against that proceeding on behalf of your clients. The Lord Ordinary now holds them liable for the future loss, and as assenting to the appointment, in

respect that no objection was made at the time by their counsel.

But the most singular breach of duty was that of your not instantly giving up the process commenced against the factor's mother for repetition of about £400, including interest, when the Lord Ordinary found the factor himself liable to your clients in that sum; your delaying to intimate, that the cause against the mother was abandoned, enabled the factor to get the judgment against himself recalled, in respect that two separate actions could not be maintained in one court for the same sum. The claim against the mother was extremely doubtful,—against the factor you obtained judgment; yet you allowed the factor to escape, and continue to carry on a doubtful action against the mother,—an action your clients are now advised to abandon as hopeless.

Some time afterwards, when acting along with Mr ——, you was at great pains to press upon the minds of your clients, that the Court would, contrary to law, protect the factor, however improper his conduct had been; and you advised that the cause might be taken out of Court. Your clients refused to do so, and insisted on your stating the cause to the Court. You then refused to do your duty, and relinquished their employment. At the very time the other counsel was seen exerting himself in making a new counsel master of the cause, so as to state it, you was seen in deep consultation with the factor and with his agent, under the most suspicious circumstances.

The above is an extract from a second letter sent to that counsel, requesting an explanation of his conduct. That individual having returned no answer, or made any communication whatever, the present was, along with a letter, forwarded to the Lord President on the 13th September 1821.

JOHN HAY.

York Lane, 13*th September* 1821.

XV.

Copy Answer.

www.libtool.com.cn

Granton, 14*th September* 1821.

Sir,—I have received your letter. You know well that it is not by my own authority that I refuse to move to the Court petitions not signed by counsel. I am bound to do so by an Act of Sederunt made before I was on the Bench, of which, however, I entirely approve.

You are perfectly wrong in supposing that no counsel will sign a complaint against a brother advocate. I have seen several such. I once signed a very serious complaint myself against a respectable advocate; and there is not an advocate at the bar who will refuse to do so for you, if your complaint has the shadow of relevancy in it.

Considering the reasonable and gentleman-like manner in which you behaved when you was last before the Court, I did not expect to receive from you any letter couched in the terms of your last, which I shall be under the necessity of laying before the Court. I suspect that you are acting under very mischievous advice, which will have very serious consequences to you if you continue to be guided by it. And I am, &c.

XVI.

York Place, Edinburgh,
18*th September* 1821.

To the Right Hon. the Lord President.

My Lord,—I have the honour to acknowledge receipt of your Lordship's letter of the 14th current, in which you state your approval of the Act of Sederunt 1789, which prevents all complaints against counsel from reaching the Court unless signed by a brother counsel. I am

not inclined to call in question your Lordship's approbation of that act, or your power to enforce it. But power is one thing, and legal right is another; and, with submission, I do think your Lordship does not enjoy the legal right to make laws, and place the bar above the Bench. By that act, the client who is wronged by counsel can obtain no redress, unless counsel think proper to permit your Lordship to judge upon it. I am sorry to say, that your averment, in so far as I am concerned, is not correct, as to no counsel refusing to sign a complaint against another. I am ready to prove the contrary; and, in a case too so well founded, that your Lordship and the Court on my own note afforded me relief. This shows the danger of the Court constituting counsel sole judges of their own conduct. Your Lordship enjoys no such privilege, for a complaint to the Commons against you does not require to be signed by a brother Judge.

I am glad your Lordship is to submit this matter to the consideration of the Court. I have complaints to make against three members of Court of a most serious description; and I feel confident the Court will afford me justice when the obstacles are removed which prevent the facts from being brought under the consideration of the Court,—facts which have not been more ruinous to me, than they are injurious to the character of the Court, and the honour of the country.

Your Lordship has been pleased to say, that my gentleman-like conduct when last at the Bar, did not induce you to expect to receive any letter couched in the terms of my last. On that day your Lordship acted with civility towards me, and by your own admission that civility was returned. But I am sorry to say, that only a few days ago, I obtained from the Sheriff a copy of a petition and complaint against me, in which your Lordship appears to be a chief complainer; and the prayer of the petition is, that I may be apprehended and confined in a

jail. Such an unexpected discovery was not much calculated to induce me to address your Lordship in language of adulation; and it gives me much pain to say, that at the very time you was on the Bench, declaring to me that you had no feelings of resentment against me, that you had no wish to injure my character and family, that all your proceedings had been open, candid, and honourable, at that very time proceedings were secretly, and unknown to me, going on to try to make out a case to bring me to a criminal trial. My law agent was secretly examined, compelled to deliver up confidential papers belonging to me, and to disclose confidential information; but all would not do, a case could not be made out.

Now, my Lord, by your honour as a gentleman, and by your oath of office which you pledged to me when I was last in your presence, I respectfully entreat that you will inform me, if you advised that complaint against me—if you knew of its existence when I was at the Bar—if you furnished Mr Scott with any information or papers—or if you have had any communications with him, or with the Sheriff respecting it. I ask if you did instruct the same individual some time before to enter a complaint in the same secret manner against me, stating that I was deranged in my mind, and praying that I might be apprehended and confined in a mad-house. I ask if you did not instruct the same individual to go to the Star newspaper office and carry off papers belonging to me, to prevent a judgment of the Court in my cause from being made known to the public. I ask if your Lordship did not, in open Court, charge me with stating a falsehood against counsel. If you did not say that my mind was impaired. That I was not a man of a sober judgment. And, after having stated many such other charges, I ask if you did not order me from the Bar, and refuse to allow me to say any thing in my defence, or to repel your charges distinctly condescended upon.

With all these irritating circumstances crowding on my mind, and the deep loss my family have sustained from a public impression, *unfavourable to your Lordship's honour*, which an agent has taken advantage of, it may have happened that my last letter may not be couched in terms of civility, which it would have been had no such causes existed. If my other letter is to be laid before the Court, I trust you will also submit this letter in explanation of it; and as your Lordship maintains that your conduct to me has been open, fair, and honourable, I submit, if what is contained in this letter does not require from your Lordship a fair and candid explanation as to the complaint praying that I might be confined in a mad-house, —the complaint praying that I might be confined in a jail,—the carrying away my property,—the expressions used to me from the Bench,—and your refusal to allow me the privileges which criminals enjoy, the right to repel charges which are distinctly condescended upon.

I will not, my Lord, be either brow-beat or intimidated, neither am I inclined to give the Court unnecessary trouble, what I have communicated in this letter, has long been burning in my mind. I only returned from Tweed-side last night, otherwise I would have wrote in course. I am ready to come to a final understanding with your Lordship. I am ready to meet your Lordship and the Court in the Robing Room, if that is preferred; or if your Lordship considers it more advisable to condescend upon distinct charges against me in open Court for the benefit of the public, all I ask is, that the public may be permitted to hear both sides of the cause.

I have the honour to be,

My Lord, your Lordship's

Most obedient and very humble servant,

JOHN HAY.

XVII.

COPY ANSWER.

www.libtool.com.cn

Granton, 21st September 1821.

SIR,—I have received your letter of the 18th, which also I shall lay before the Court. In the complaint before the Sheriff, I believe that the proceedings were directed by the Lord Advocate, who directed a precognition to be taken relating to the slanders which you had printed and circulated against the Judges, in which precognition I was examined as a witness. And I am, &c.

Having explained your mistake in this respect, I shall not answer any further letters from you.

XVIII.

Edinburgh, 24th September 1821.

MY LORD,—I am honoured with your favour of the 21st, and it would be unfair in me to terminate our correspondence with your last, and take advantage of your Lordship without affording you an opportunity of explaining.

I was unfortunately involved, as your Lordship knows, in a personal altercation with you, in consequence of having conceived and expressed that my agent and counsel had betrayed me in a cause, by furnishing your Lordship privately with confidential letters and papers, and with having received from you private instructions respecting the conducting of that cause, which had pended before your Lordship for twelve years, in which I have expended large sums to no effect. The evidence I produced in support of my charge was my agent's business account, in which is contained distinct entries of charge for writing letters and copying papers privately sent to your Lordship, *injurious to my interest*. I also produced letters from my counsel, positively stating that your Lordship

had, unknown to me, laid down, at some private meeting with him, certain conditions, which conditions the counsel distinctly mentioned as to the manner in which he was to conduct my cause.

www.libtool.com.cn

But from that charge I did in public Court freely acquit your Lordship, because, upon your word of honour as a gentleman, and upon your oath of office as a Judge, you assured me from the Bench, that no such correspondence or communications betwixt your Lordship and counsel had ever taken place. I did no more than my duty to your Lordship, and justice to my own feelings, when I offered an apology, as ample as I could make it, *for having unfortunately believed what my agent and counsel had written of your Lordship.* Till that time I was not aware that any counsel at the bar could have acted in such a manner; and the only thing that I am now surprised at *is*, that of your Lordship, or the Lord Advocate, not calling that counsel to account *for slandering your Lordship and defaming the Court.*

This to me is the more astonishing, as I was myself apprehended, carried before the Sheriff, and there I was examined upon the same subject; the whole papers in my possession were asked for, those in my agent's possession were forced from him. The Sheriff again and again asked me if I had been corresponding with, or complaining to, Members of Parliament of the treatment I had received, and he also very pointedly asked me what I had wrote to Lord Harrowby. I understood from his questions, that your Lordship had been honoured with a letter from the Lord President of Privy Council respecting what I had written to him.

If your Lordship out of Court acted on every occasion to me in the same honourable and upright manner as in the Court you assured me you had done, you will have no hesitation in answering to my satisfaction my former letter; in particular, that you did not personally suggest, advise, or prompt that complaint before the Sheriff, upon

which "the precognition," as you term it, was taken. I never asked who directed, or conducted the precognition; but I asked if you advised the proceeding, or if you knew of its existence when I was last in your presence. Your answer is, "In the complaint before the Sheriff, I believe "that the proceedings were directed by the Lord Advo- "cate, who directed a precognition to be taken relative to "the slanders which you had printed and circulated "against the Judges, in which precognition I was ex- "amined as a witness."

www.libtool.com.cn

With submission, this is neither a congruous nor a business-like answer to my letter. There is a confusion in the subject, as well as in the diction, which I am unwilling to take advantage of, without affording your Lordship an opportunity of explaining. What concern has the Sheriff with contempts offered to the Judges of the Court of Session? How is that offence connected with my writing Lord Harrowby and Members of Parliament? Upon what principle of law, or for what purpose, could the Sheriff examine you as a witness?

If your Lordship will refer to my former letter, you will find that you have made no answer to it. I never asked for the information you have given me; and you have not given me the information I asked for. If complaining to Members of the House of Commons, of being wronged by your Lordship, is now to be considered a crime, or viewed as slandering the Judges, these Judges, and not the Sheriff, ought to punish such contempts as relate to their own Court.

On reconsidering my former letter along with this, I I trust you will see that I am acting fairly, in affording you an opportunity of getting out of the business before the Sheriff with clean hands; and this your Lordship can do, by distinctly stating, that you never did suggest, advise, or prompt such proceedings;—that you never did advise the Sheriff to examine me regarding what I wrote to Lord Harrowby, and to Members of the House of Com-

mons, or give any directions whatever respecting the measures adopted. I wait your Lordship's answer, and have the honour to be,

My Lord, your Lordship's
Most obedient and very humble servant,
JOHN HAY.

To the Right Honourable Charles Hope,
Lord President of the Court of Session.

www.rbtool.com.cn

XIX.

COPY ANSWER.

Granton, 25th September 1821.

SIR,—Compassion for the delusion under which you appear to labour, and the conviction that you are also under the influence of very bad advice, have induced me to pay more attention to your letters than I ought. But as I became quite satisfied that my writing to you can do you no good, I intimated in my last that I should not take any farther notice of your letters,—a resolution, of the propriety of which I am still more convinced, by the impertinent, not to say insolent, tone of your letter which I received yesterday,—to which, and all others, I will return no other answer than this, that I will lay them before the Court.—And I am, &c.

XX.

Edinburgh, 29th September 1821.

MY LORD,—I have to acknowledge receipt of your Lordship's communication of the 25th instant. Please accept of this as the last letter I will ever trouble you with. Enough has appeared in our correspondence to prove that we are, of all men, most incapable of determining correctly, whether I am, or am not, "labouring under a delu-

"sion," by complaining that I have been injured, and praying that some method may be adopted by the Court to afford me relief.

On reading your last letter, I at once resolved to guard against writing a hasty reply; and that I might not act under "the influence of bad advice," I also resolved that no human being should suggest or advise an answer, or know the existence of this letter; so that, if the contents reflect disgrace on the head or on the heart, that disgrace must be placed exclusively to my own account.

www.tibtool.com.cn

In coolly looking over the copies of my former letters, I do not justify some of the expressions used; but this only applies to the manner, and not to the matter contained in them; and although your Lordship's letters are not patterns of civility, I am not inclined to found any excuse upon that head. It would be unfair, however, to judge upon what has been sent to your Lordship abstractly,—the subject must be viewed in all its bearings; and however innocently your Lordship may have acted as a man, and correctly as a Judge, I have no hesitation in saying, that the treatment I have received from you has injured my character as a member of society,—disturbed the peace of my family,—blasted my prospects in life,—and wounded the feelings of my friends.

Few young men ever entered the mercantile profession with a fairer character, or were more anxious to retain it. The merchant with whom I was instructed was strictly honourable in every transaction; and, with confidence, he recommended me to an extensive Shipping-Establishment in Leith. In a short time my employers were pleased to promote and confide in me; and during four years my salary was three times advanced. On leaving them, to embark in business, we parted upon such terms, that, in cases of difficulty, I was sent for to consult, or to instruct my successors. The following certificates, obtained after twelve years residence, preclude further explanation:—

Leith, 19th October 1818.

"We, the undersigned, merchants in Leith, do hereby certify, that we are personally acquainted with Mr John Hay, who resided many years in this town, and who removed to Edinburgh in consequence of an engagement with the Perth Baking Company. We further certify, that he was considered an active man in business,—strictly honourable in his principles,—a respectable member in society,—and a good moral private character.

"James Wyld.
"James Forrest.
"Chas. Phillip.
"John Eggo.
"Adam White.
"Robert Brunton.
"Robert Neilson.
"John Wilson.
"John Menzies.
"Geo. Gibson, jun.
"Geo. Arnot.
"Geo. Carstairs."

"*Leith*, 20th *October* 1818.

"That Mr John Hay, lately residenter in this parish, has been intimately known to me for many years: That from the high respectability of his public and private character, I was induced to recommend him as a proper person to become a member of the kirk session; and, accordingly, he was admitted to the office, and fulfilled its duties with fidelity and diligence, till an engagement with the Perth Baking Company required him to remove with his family to Edinburgh; and that, in the whole of his deportment, he was uniformly pious, honest, and industrious, is certified, place and date as above, by

"James Robertson, Minister.

"We, the undersigned, elders in South Leith, do corroborate and approve of what the Reverend Dr Robertson has stated, and do certify the same.

www.libtool.com.cn

"James Weir, Elder.
"Thos. Barker, Elder.
"W. Grieve, Elder.
"Alexr. Burnet, Elder.
"Robert Weir, Elder."

During the time I was in Leith, I had the misfortune to listen to the complaint of a dying mother. She informed me that she had lost her husband when her young daughters were minors; that a factor had been appointed by the Court of Session to take charge of their property; and that for eleven years he had rendered no account of his intromissions, and refused to do so. She earnestly implored that I would, after her death, take her unprovided daughters under my protection; that I would use every means in my power to recover their property from the hands of the factor; and on no consideration whatever abandon their interest. I promised I would implement the sacred injunction she laid upon me; and as one of the young ladies was my own wife, I never for a moment doubted my right, and my power to call the intromitter to a strict account. The mother dead, and the factor positively refusing to produce a state of his accounts, a complaint was made to the Court, praying that he might be compelled to do so, and restore the property illegally intromitted with, and forcibly detained. For twelve years I have petitioned for restitution of that property, but without effect. I have proved upon the factor fraud upon fraud, and falsehood upon falsehood; paper after paper, and pleading after pleading, has been ordered; the expense has been unbearable, but the property has not been furthcoming.

After ten years litigation, counsel advised me to take my cause out of Court, assuring me that it was not the practice of the Court to give minors the benefits of the laws which were made for the protection of their property; and that, however improper the conduct of the factor had been, he would not even be deprived of commission, although they admitted that in law it was forfeited; and they refused to state the facts and plead to them. I will not mention the expressions used to me from the Bench by your Lordship, for complaining of counsel refusing to state my cause; I shall only say, that your addresses and your threats appear to have made a strong impression on the public mind that your resentment was implacable; and to this point I now beg your attention, as I have deeply suffered from that cause.

Your Lordship has heard of the manner in which I entered upon business; you have seen the opinion which the merchants, bankers, ship-owners, clergy, and elders, entertain of my public and private character; and you do not require to be told, that five years ago, a company of merchants in Perth resolved to commence a Baking Company in Edinburgh, upon an extensive scale, which gave alarm to the bakers, and afforded table-talk to the ladies. The former united in a body, and subscribing a large sum, resolved to oppose the company, directly and indirectly, to the utmost of their power. These gentlemen disregarding the threats, did, on the other hand, instruct their agent to endeavour to find out a person capable of taking charge of, and managing their business, but uncapable of betraying trust, accepting of a bribe, or neglecting their interest. At that time I was in London upon some business; and, when there, I received a letter from a relation in Edinburgh, intimating that he had received a call from the company's agent, wishing to know if I would be soon down from London; that from the information he had received concerning me in Leith, he conceived I was the very person the Perth Company were in want of. On my

return, Mr Meek, the acting partner, and the law agent, waited upon me in my own house, and engaged me to be manager and cashier of the new establishment. The business commenced, and succeeded beyond the company's most sanguine expectation. The bakers tried various plans to reduce the sale, and at length they succeeded. I apprised the company, and advised that the plan of conducting their business might be altered, in order to counteract that adopted by their opponents. I was successful in convincing Mr Meek, the acting partner, of the necessity of doing so, but he was not successful in getting the company to resolve upon it. The business declining, I intimated that either a new plan must be adopted, or they might look out for another manager, for I saw what would happen, and I would not witness a concern perish, which had, under my management, been established, and which I knew I could preserve, with all its advantages, if properly supported. This produced from my employers a reply equally candid; they said they were now fully satisfied that the plan must be altered before their business could be again brought to its former extent; and they requested that I would state the lowest figure at which I would engage to conduct their business under the new arrangement.

It now became necessary for me to render a *full* state of my accounts, and obtain a settlement, before I entered upon my new agreement. My intromissions amounted to £48,000, which was all accounted for to the satisfaction of the company, less about £400; this I claimed for petty incidents, bad debts, losses, and waste, at so much per sack of flour manufactured into bread. The company's law agent objected to that claim. I offered to refer it to two respectable bakers,—that was refused. I then offered to refer the matter to merchants,—that was refused. I lastly offered to submit my claim to two lawyers,—that was also refused. The agent did not conceal that he had no chance of success by a reference, *but that in the Court*

of Scotsh, he was sure he would get every thing against me which he asked; and that I must either comply with his terms, or go into Court. My friends became alarmed at the confident manner in which the agent acted; and under the most painful feelings *of injustice and oppression*, I resigned my situation, and signed such a settlement as the law agent directed.

I had not left the company's employment eight days (although the agent pressed me to resign in the presence of Mr Meek) till Mr Meek again sent for me; he lamented the difference which had taken place; he said the company were unwilling to part with me, and anxious to complete the new arrangement; and, from what had happened, the terms would be more favourable. He farther said, that Mr Miller, another of the partners, was to be in Edinburgh that evening, and requested me to meet them, which I did. The agent had a relation in the company, who headed a party; by this means the agent was formidable, even to the acting partner. I said to Mr Meek, "I only blame the company for putting so much power "in the agent's hands; had I permitted him to create a "business account of £40 or £50 a year against the "company, I would then by him been pronounced an "an excellent manager, and this would not have hap-"pened."—"Well, well," said Mr Meek, "let us now "make a bargain without him; I admit he will do any "thing for money." Accordingly a new agreement was entered into, and fully settled, in so far that, by desire of Mr Meek and Mr Miller, I procured and forwarded to Perth letters of security for my intromissions from my friends, and only waited the official confirmation from the company in return. This, however, was never obtained. The agent was before-hand with Mr Meek, for in various communications he made to the company and to his relations, who was a partner, he represented that I had a law process which I had been before the Court for ten years;

and in whatever language he expressed himself, he succeeded in his object, namely, in producing a conviction on the mind of the majority of the company, that your Lordship was a *corrupt and vindictive Judge*, and that as I had offended you, all the Judges, as well as yourself, had shown themselves *hostile to me, and determined to ruin me*; therefore the new agreement ought not to be confirmed with a person placed in such circumstances.

www.tiptool.com.cn

Your Lordship, in your letter of the 21st current, speaks of the Lord Advocate instituting a precognition against me for slandering the Judges. Here is slandering the Judges with a vengeance; and if your Lordship and the Lord Advocate are as ready to punish that offence in the person of others as you have showed yourselves ready to punish it in my person, you will not be long in applying to me for information.

Permit me now, my Lord, most respectfully to ask your Lordship to pause, and coolly view my situation and the treatment I have received in all its bearings. You have been made acquainted with my entry upon business; you have seen the opinion the gentlemen in Leith entertain of me; you have heard the nature and the necessity of commencing an action against one of the court factors; and you know that, at the end of twelve years litigation before your Lordship, the property has not been furthcoming. On the contrary, another fortune acquired by hard toil and honest industry, has been lost in attempting to recover it. I have been assured by counsel, that the Court will not give effect to the laws. My character has been injured for complaining of being wronged; advantage has been taken of your supposed resentment in a mercantile settlement of accounts. And, as if all this had not been enough, the cup was dashed from my lips, and my family were deprived of those natural advantages resulting from my enterprise, character, and talents, *under the conviction that you are my enemy*. With truth I may use the words of the poet,

" You take my house when you do take the prop
" That doth sustain my house; you take my life
" When you take the means whereby I live."

Think seriously of these facts my Lord, and I am sure you never will again insult me, by telling me, that I am " labouring under a delusion, that my mind is impaired, " that my complaints are folly, nonsense, and trash, un- " worthy of the consideration of the Court."

In the last letter, you are at pains to impress on my mind, that, from *the weak state of my intellect*, you have, out of " compassion" to me, taken more trouble than you ought to have done in explaining. If your Lordship now enjoys possession of the Christian virtues, you will, in addition to " compassion," find enough in this letter to call forth your sympathy and regret; sympathy for an insulted, injured, and oppressed fellow subject, and regret for the share you have had in thickening the obstacles which impede his path; feelings which, with submission, I do think, might in justice have superseded the dreadful threat contained in your letter of the 14th instant.

To conclude, I do most earnestly beg to assure your Lordship, that I have no object in view but that of obtaining justice. I solemnly declare before Almighty God, that I entertain no malice towards your Lordship; and if in self-defence you force me to make an appeal to my country, and to lay my wrongs before Parliament, along with our present correspondence, I fear your Lordship will, when too late, discover that, although my grievances are by you judged unworthy of redress, your conduct to me will not be judged unworthy of consideration.

I have the honour to be,
My Lord, your Lordship's
Most obedient and very humble servant,
JOHN HAY.

The Right Hon. the Lord President
of the Court of Session.

XXI.

Mr Hay respectfully reminds the Lord President of the Court of Session of his Lordship's pledge to him, to submit Mr Hay's letter to the consideration of the Court. Mr Hay humbly entreats that the Lord President will be pleased to intimate to him the resolution formed by their Lordships on the whole correspondence betwixt the Lord President and Mr Hay. He again begs to assure his Lordship, that it is a sense of duty which induces him to persevere; and that no act of oppression, insult, or contempt, will deter him from fearlessly discharging what he considers to be the duty he owes to his character as a man, to his family as its protector, and to his country as a member of the community.

York Lane, 17*th November* 1821.

XXII.

NOTE from ALISON CRANSTOUN HAY, and JOHN HAY, her husband, for his interest, &c. &c. to the Right Honourable the LORD PRESIDENT of the Court of Session.

MY LORD,—On account of complaining to the Court that I had suffered by its Acts of Sederunt (particularly the Act 1789), which have altered the laws of the land, and virtually rescinded the Statutes of Parliament, I was ordered to the Bar, not to be informed that I could obtain relief, but to be told "that the Acts of Sederunt "were the laws of the land," and that I would be treated as a criminal by the Court, if ever I again complained in a similar manner. Now, my Lord, if Acts of Sederunt made by Judges are the laws of the land, it follows that those who make these laws are legislators for the nation, at least for that part of it on the north side of the Tweed.

In submitting this Note to your Lordship's consideration, I entreat you to dismiss all prejudice from your mind against me as an individual, and to keep in view that I am endeavouring to draw a distinct line between your judicial and legislative functions. I therefore humbly crave that freedom of argument in animadverting upon the laws made by the Court of Session, and in exposing their defects, which my fellow subjects in England claim and enjoy, whenever they conceive they are wronged or oppressed by laws enacted by Parliament, which, in that country, are termed the laws of the land. Indeed, in every well regulated government, the legislature courts, but never checks, the complaints of the injured,—the very object of legislating being to protect the subject in all his just rights, to secure his property, and to maintain the fair administration of justice to every member of the community. The safety of the state depends on the attainment of this paramount object; consequently, it follows that that man is considered an enemy to his Prince, and a traitor to his country, who exercises his power in the state, not for the purpose of promoting, but for the purpose of preventing justice from being administered; not for the purpose of punishing the guilty, but in order to protect them, and to punish the innocent for demonstrating that they have been wronged, and for humbly praying for justice.

If I am successful in establishing that one branch of the community, (I mean orphans possessed of property), is denied the protection provided for them by Acts of Parliament,—if I am successful in showing that, when minors' property is seized upon, and carried off from them contrary to the statutes, but under the pretence of an *Act of Sederunt* made by the Court of Session,—if I am successful in showing that this Act of Sederunt is complete mockery, and that those who made it, and caused the minors' property to be carried off, afterwards deny those minors the benefit of that very Act when they plead

restitution of their property,—if I prove all this, I submit to you, my Lord, that I do at the same time establish, by the most undoubted reasoning, that minors in Scotland are robbed of their property, unless, indeed, your Lordship can show that Judges have a constitutional right, 1*st*, to deprive minors of the protection provided by Parliament; 2*dly*, to cause their property to be carried off under the authority of a law made by the Judges themselves; and, *lastly, to deny them the protection which even that law, described by your Lordship as the law of the land, affords them.*

www.liptool.com.cn

What crimes these defenceless objects may have committed, which warrants Judges to deprive them of both statute and sederunt-law, I know not; but there was once a time when they, in common with their fellow-subjects, enjoyed the benefit of the laws made by Parliament. The preamble of the Act of Parliament 1672, which I will just now quote, describes, with penetration and discernment, and with an accuracy almost prophetic, *the* result of enquiry and experience, and the whole evils which minors in Scotland are now suffering; and every section of that statute demonstrates the collective wisdom, the sound judgment, and the parental care of the Prince and of his Parliament in correcting them. "Our sovereign Lord," says the statute, "considering the great prejudice and in-"conveniency befalling to pupils and others, who cannot "provide for, or defend themselves, that their tutors or "curators have immediate access to their charter-chests, "writs, evidents, securities of their lands, sums of money, "and others belonging to them, which they may *embezzle*, "*suppress, or by collusion give up to their debtors*, or "other persons interested, without justification, or other-"wise have got satisfaction, there is no means by which "a charge can be made up against the said tutors or cu-"rators but themselves, who, when they are brought to "account, *make up both their own charge and discharge:*

"For remede whereof, his Majesty, with advice of his "Estates of Parliament, statutes, ordains, and declares."

First, That a correct inventory of the minors' property be directed to be made up by the factor and two of the nearest relations of the children on the father and mother's side. Three duplicates of the same are to be made out and subscribed by them,—each relation to retain a copy, and the third copy to be lodged with the clerk of Court, and all countersigned by him, for the purpose, as the act declares, "that they may not be altered thereafter."

Second, That when any alteration takes place respecting the estate, by further discovery of debts or funds realized, eiks are to be added to the inventories, and the same subscribed as aforesaid.

Third, That no debtor on the estate can be compelled to make payment to the factor, till he produce an inventory so subscribed, and show that the claim is contained in the inventory, and that the debt, when recovered, shall stand as a debt against him, for behoof of the minors.

Fourth, That if any factor shall fail to make such inventories and eiks as directed in the Act, he shall be liable both for intromissions and omissions, and shall have no allowance or defalcation of the charges and expenses laid out by him in the affairs of the said pupils, in respect that, as he has failed to state to the credit of the minors sums actually received, he shall not be permitted to state to their debit sums he may have actually disbursed, and shall be removable from his office as a suspected intromitter.

Now, unfortunately for the minors in Scotland, they are, by the Act of Sederunt 1730, totally deprived of the whole protection wisely provided for them by this valuable statute, and which their defenceless condition so imperiously requires. The Lords of Council and Session have been pleased to make a law; and under the authority of that law, or rule of Court, the whole property of the minor is

intromitted with, and carried off by the factor, under the sanction of the Court of Session.

This Act of Sederunt declares, that the factor *himself* shall make up an inventory of the effects belonging to minors, and lodge the same in Court; of course the factor *makes up his charge and discharge*, which the statute 1672 expressly prohibits. But the Act of Sederunt authorizes this method, without enacting that such inventory shall be taken in the presence of persons properly qualified on behalf of the minors, or that it shall be attested by their relations, the clergyman, elders, or any other respectable persons, that it was made up in their presence, and that it contains a full and correct statement of the whole property of the deceased.

www.libtool.com.cn

But this is not the only circumstance in the Act of Sederunt which aids the factor in securely plundering the minors' estate. That act is so framed, as virtually to prevent the relations of the minors from having any check whatever on the factor. He is declared to be a servant of the Court; and the single inventory of his own making up, after he has been *six months in possession of the estate*, is ordered to be lodged in Court with the clerk; and further, the factor is ordered to lodge with him yearly statements of his intromissions. Now, as the Court factors, in many cases, neither make up inventories, as directed by the Act, when appointed, nor lodge annual accounts, and as the court does not enforce the conditions of their Act, nor inflict the penalties in cases of disobedience, it is quite evident, that to the minors the effects are ruinous, and their property is seized upon, and intromitted with, contrary to every principle of law and justice.

Your Lordship does not require to be informed, that I have for twelve years persevered in petitioning the Court of Session for restitution of property carried off from a family of minors by a factor, under the authority of the Court itself. The property, however, has not been forthcoming. That factor, at the commencement of the action,

disputed *in toto* the right of the minor family to call him to account, telling them, in the most insulting and peremptory manner, that he held his appointment from the Court, and that it was in his option to account to them or not, just as he pleased. After the most unprecedented struggle, and the strongest opposition ever yet known in the Court of Session, or in any other court in this country, I succeeded in beating this factor out of his very entrenchments,—dragging him out of his strong-holds, and binding him with chains of his own forging; and I now leave him with those who appointed him to act,—satisfied with having exposed the obliquities of his conduct, no less than the marked injustice of the system by which he has acted.

If your Lordship doubts these averments, I refer you to that able paper drawn by Mr Miller, counsel for the pursuers; I also refer you to the accompanying letter to Mr Claud Russell, accountant.

Lord Succoth appears to have turned away his head from such a disgusting scene, for at the end of twelve years litigation, he has declined to pronounce judgment on matters of law and matters of fact, contained in the pursuers pleadings, and he has delegated to Mr Claud Russell a power to report on these points, without pronouncing judgment on the points of law in dispute. What object his Lordship had in view is doubtless known to himself, though I may not have been able to comprehend it. It is sufficient for my purpose to show that the interlocutors pronounced under Lord Succoth's directions, establish that, in pleading restitution of my property, I am denied the protection, *even* of that law under which it was carried off by order of the Court.

In your Lordship's letter to me the other day, you were pleased to say, that you consider yourself by no means to blame for refusing to move in Court petitions signed by parties, being expressly prohibited from so doing, by the Act of Sederunt 1789. But I beg to in-

form your Lordship, that the Statute of Parliament, which constitutes the Court of Session, expressly commands that Judges, upon reading the papers of parties, and hearing their pleadings, shall dispose of the cause, without either the signature or assistance of counsel, and which privilege was enjoyed and acted upon till the legislative enactment of 1789. Is your Lordship quite sure that the Court can, in justice to the subject, take from him that right by a law of its own making? I maintain the Court enjoys no such right, neither does the Court enjoy the right of virtually rescinding the statute of Parliament 1672, made expressly for the protection of minors. The Court may assume the power of doing so,—but power is one thing and legal right is another.

But suppose the Court had a right to rescind the statutes of Parliament, and to alter the laws of the land, and that no enactments are binding on the Judges but those of their own making, I should still be *glad to* know by what method of interpretation the Act of Sederunt 1789, which prevents me from petitioning for justice, is more imperative on your Lordship than the Act of Sederunt 1730, under which my property was carried off. How does it happen that you relax the law made to prevent fraud, and enforce the law made to prevent the injured party from complaining of that fraud, and praying for justice?

In the present shape of the case, I enter my humble protest against any measure being adopted by Lord Succoth in this cause, until the matter shall, in one way or other, be disposed of by the Court. But should no relief be obtained from the present communication, your Lordship must perceive that I have no alternative left me, but that of applying to the Commons of England.

I disclaim, however, every thing like malicious or criminal intention; and declare that I am, and always have been, solely actuated by a desire to obtain the restitution of property illegally intromitted with, and illegally detain-

ed. If your Lordship has any thing to communicate to me which may render such procedure unnecessary, I shall be happy to learn it at your earliest convenience.

www.libtool.com.cn

In respect, &c.

JOHN HAY.

Edinburgh, 17th November 1821.

XXIII.

CLAUD RUSSELL, Esq.

Edinburgh, 17th November 1821.

SIR,—The second report made by you in the cause of Mr Cranstoun's children (minors), *v.* a factor of the Court, has just now been put into my hands; and it furnishes a confirmation of the correctness of the opinions which have been given me by my friends and legal advisers, "that however improperly the Court factors may act," the minors whom they plunder of their property can obtain no relief for wrongs, and that these Court functionaries will be protected, however guilty. This appeared to me utterly incomprehensible, until your report was put into my hands. I now see the whole system as clear as a sunbeam.

I had the misfortune to be defrauded of my property by a Court factor, and I conceived he could not escape, as the proof was so conclusive, that he had been guilty of fraud upon fraud, and falsehood upon falsehood. He has also been guilty of violating every condition of the law under which he was appointed by the Court; he never lodged tutorial inventories as directed by law; he never lodged annual accounts, or any accounts whatever for a period of twelve years, and even then, he disputed the right *in toto* of the family of minors to obtain a statement of accounts, or restitution of their own property. All

these charges have been clearly made out against him before Lord Succoth; and in such a manner, I imagined, that no Judge that ever sat on a Bench of Justice, could have prevented Mr Cranstoun's family from recovering a considerable portion of the wreck of their fortune, had the parties been able to get him to pronounce a judgment in the cause. For reasons, however, best known to himself at the time, and by me now fully understood, he declined to do so; and instead of judging upon the facts and points of law contained in the pleadings of the pursuers at the end of twelve years litigation, he delegated a power to you to report, and to make up a state of accounts betwixt the parties. Now, Sir, had you made your report in the least degree consistent with truth, or had you made up a state of accounts betwixt the parties in a legal manner, I should not have been under the necessity of addressing you upon such a painful subject at present.

You are very sensible, that when this factor was appointed by the Court in 1798, he subscribed a bond, and entered into a positive obligation, to lodge tutorial inventories, as directed and laid down in that act under which *he petitioned to be appointed;* and that he also bound himself, under heavy penalties, not only to lodge tutorial inventories, but also to make up, and lodge with the clerk of Court each year, distinct statements of his intromissions, charge and discharge. In order that he might securely plunder the minors, he totally failed to perform the obligations in the act; but surely this does not alter the law, or annihilate the contract, which still remains in all its original force. And in now making up a state of accounts betwixt the parties, it is clear that they must either be made up in a legal or an illegal manner. If in a legal manner, they will be made up conformably to the conditions contained in the act under which the Court appointed the factor, that is, in yearly statements, charge and discharge, the annual interest being applied to extinguish the annual family expenditure, and the balance each year car-

ried forward to the next year's statements. If in an illegal manner, then they will be made up in complete opposition to the directions contained in the act under which the factor contracted with the Court. And this is just what you have now done. You have branched out the accounts for a period of twenty-three years,—you have rendered the interest unproductive,—and, by a combination of errors, you have, in your statements, deprived the family of minors of about £1000 of the wreck of their fortune, which, both by the principles of law and justice, is absolutely their own.

www.fibiool.com.cn

You know much better than I can inform you, that I am here stating the truth. You know well that the factor cannot object to the accounts being made up by you, on the same principle, and in the same manner, in which he was by law bound to have produced them himself. You know well that the family of minors have an absolute right to get their accounts made up in that manner, any other method being illegal, and contrary to the positive and existing law under which the property was intromitted with, and carried off, by order of the Court.

It surely will not be contended, that the Court can, in justice, cause the property of minors to be carried from them under the authority of a given law, and then deny them the protection which that law affords. This would be clearly establishing that a conspiracy had been entered into to rob Mr Cranstoun's family of their property. The Lord President, Lord Succoth, and yourself, have no more right to deny me the benefit of the laws made for my protection, and under which my property was carried off, than you have a right to rob me on the highway. I do not now, therefore, beg of you, as a favour, to make up the accounts as directed in the Act of Sederunt. It was your bounden duty to have done so.

It is not my intention to attempt to convince you that either your first or second report can be corrected. I object to your statements *in toto*. The facts speak volumes,

and require little or no comment. Instead of applying the annual interest to meet the annual expenditure, as directed by the act, you have opened heads for the interest, without rendering it productive; and you have drawn the yearly expenditure from the principal, thus depriving the minors of their property, and illegally enriching the factor.

The following statement so clearly establishes the fact, that a very scanty portion of intellect is requisite for perceiving the gross injustice of your present scheme. Suppose a minor family has, under charge of a court factor, £6000 lent out at £5 per cent. they have a right to draw from the factor £300 per annum, including his commission, and the principal remains *unreduced*. But, by your system, in twenty years you would deprive them of £3150; and all they would have then remaining would be £2850, instead of £6000, although they never drew more than the interest of the £6000.

Say lent out at 5 per cent.		L.6000		
1st year, deduct family expenditure,		300		
		5700	Int. 1st year at 5 per cent.	L.285
2d ditto,	ditto,	300		
		5400	Ditto 2d ditto	270
3d ditto,	ditto,	300		
		5100	Ditto 3d ditto	255
4th ditto,	ditto,	300		
		4800	Ditto 4th ditto	240
5th ditto,	ditto,	300		
		4500	Ditto 5th ditto	225
6th ditto,	ditto,	300		
		4200	Ditto 6th ditto	210
7th ditto,	ditto,	300		
		3900	Ditto 7th ditto	195

8th year, deduct family expenditure, ...		L.300		
			3600 Int. 8th year at 5 per cent.	L.180
9th ditto,	ditto,	300		
			3300 Ditto 9th ditto	165
10th ditto,	ditto,	300		
			3000 Ditto 10th ditto	150
11th ditto,	ditto,	300		
			2700 Ditto 11th ditto	135
12th ditto,	ditto,	300		
			2400 Ditto 12th ditto	120
13th ditto,	ditto,	300		
			2100 Ditto 13th ditto	105
14th ditto,	ditto,	300		
			1800 Ditto 14th ditto	90
15th ditto,	ditto,	300		
			1500 Ditto 15th ditto	75
16th ditto,	ditto,	300		
			1200 Ditto 16th ditto	60
17th ditto,	ditto,	300		
			900 Ditto 17th ditto	45
18th ditto,	ditto,	300		
			600 Ditto 18th ditto	30
19th ditto,	ditto,	300		
			300 Ditto 19th ditto	15
20th ditto,	ditto,	300		
				L.2850

You must be satisfied that I have established my case; and that, by this method, at the end of twenty years a minor family is defrauded of property to the extent of £3150, and the sum remaining at their credit with the factor is only £2850, instead of £6000, which would have remain-

ed at their credit had the statement been made up as directed by law.

I have already said, that the pursuers were successful in clearly establishing in their pleadings, that the factor had subjected himself to the penalties of the Act, by not lodging correct tutorial inventories conformably to law. Indeed, the evidence was so conclusive, that there was not a loop-hole by which he could escape.

Lord Succoth asks, however, in his interlocutor, one of the strangest questions that ever entered the mind of a Judge, namely, if a statement of accounts, No. 8. in process, could answer the purpose, or supply the defect of tutorial inventories complained of by the pursuers.

In your report, you insinuate that such a statement supplies the defect, and that, therefore, the pursuers charge is not well founded. Take care Mr Russell that you do not bring Lord Succoth into trouble by such an insinuation, and compel me to represent him to the Commons of England, in a light which would be very painful to my feelings. His Lordship ought to have known, that the statement, No. 8. in process, is the factor's account of his intromissions, obtained only by compulsion in February 1810; and how either Lord Succoth or you can imagine that it can now be substituted for a tutorial inventory, which the law expressly required to be lodged in 1798, is quite beyond my comprehension. Had you examined the *water-mark*, you would have seen that the paper was only manufactured in 1808, and surely, both of you will have some difficulty in satisfying your consciences that the same paper could have been prepared in 1798, just ten years before it made its compulsory appearance. The truth is, the factor never lodged tutorial inventories conformably to law. Lord Succoth and you know that full well; and you ought both to have known that the statement of accounts, No. 8. in the process, cannot supply the defect. How then can you say that the

pursuers charge against the factor is not well founded, and ought to be repelled?

In the case of Middlemas, you have only stated one side of the cause, which, as usual, is quite in favour of the factor. But you are totally silent as to one of the most disgraceful frauds that was ever committed on a fatherless family,—the facts are as follow:

The factor prevailed on several of the young ladies to sign bills in favour of a person of the name of Middlemas, pretending that the family was due a large sum to him; but instead of delivering the bills so obtained to the pretended claimant, the factor put them into his own pocket; and after Middlemas was dead, he claimed payment of the bills, pretending that they had been transferred to him. This being disputed, he then got an old woman of the name of Gray, to represent Middlemas, although she was not his heir, and in her name, he conducted an action against those whom he had prevailed upon to sign these fraudulent bills. His agent, Mr James Greig, was successful, and a few months ago, under direction of the factor, he received the money;—he signed a discharge for it;—he put it in his pocket;—and he has it still in his possession. Neither the old woman Gray, nor any of her relations, have ever got a shilling, or were advised that the money had been recovered.

How you can justify the factor respecting the payment taken credit for by him, as paid to George Bell, is, if possible, still more astonishing. The factor denied to the Court, in the most unqualified manner, that he never did, in his accounts, take credit for one shilling as paid to Bell. The pursuers, however, were successful in recovering the statement of accounts betwixt Bell and the factor, *signed by the factor himself*, and *in these statements* it is clearly established that the factor allowed Bell to extinguish a debt due by him to the minors, to the extent of £300, by a counter account which Bell brought forward against the factor himself in some farming speculation. You cannot

be ignorant of this moral fraud, and of the abominable falsehood uttered by the factor to the Court. Mr Miller, the pursuers counsel, did them great justice in stating the fact; he not only produced in process the state of accounts betwixt Bell and the factor, but he marked it at the bottom of every second page with his own name; he intimated this in his pleading; and he called upon the Judge to decide if a more abominable fraud upon a family of minors had ever been practised, or so distinctly and fully detected. In the face of such evidence as this, how could you, as a gentleman and an honest man, refuse to allow the pursuers credit for the debt due to them by Bell, with the interest thereon?

In the case of the farm called Muirfield, you have presumed to determine a point of law against the pursuers, which produces a loss to them of about £1000. You could not have more effectually or satisfactorily exposed your utter ignorance, both of law and of justice, had you reported that all the pursuers ought to be hanged.

The Bench, however, as well as the Bar, will be inclined to give Lord Balgray credit for understanding the law somewhat better than an accountant like yourself.

I have just now lying on my table a *legal opinion* pronounced by his Lordship in this cause, before he was promoted to the Bench, in which he has most distinctly and most correctly given his opinion in favour of the pursuers. I have also on my table a letter written by his Lordship's own hand, sent me only a few months ago, confirming the correctness of his former opinion, and declaring that the judgment pronounced by him and the Court, on this very point, decides nothing in favour of the factor. You seem, however, to imagine, that you understand the meaning of the judgment pronounced by the Court much better than Lord Balgray or the Court itself, for you say, that the Court has decided (against the minors) that very point which Lord Balgray, under his own hand, declares to be not yet decided.

A competing question betwixt the heir and those with whom I act, has been decided by the Court; and if you can establish that the heir and the factor are one and the same person, the judgment pronounced in your report will then be correct. You are well aware, however, that a judgment pronounced in favour of the heir is not a judgment pronounced in favour of the factor. At least, Lord Balgray says it is not. His Lordship's words, in the letter before me, are, "The merits of any question with "the judicial factor never has, so far as I know, or ever "could be legally before the whole Court; therefore, any "observations made could only be incidental, and no way "determining any point whatever."

Your asserting, likewise, that the minor family have sustained no loss by the factor having violated every section of the acts under which he was appointed, and your recommending to Lord Succoth to allow him his commission, which is by law forfeited, is quite of a piece with your whole conduct.

But I beg leave further to remark, that your report appears to me to exhibit a monstrous, and almost incredible feature in the judicial annals of the day,—a feature no less novel than dangerous and appalling.

It has always appeared to me as an axiom which admitted of no qualification, that Judges were bound to *declare* and *administer* the law in every case that came before them;—that this power they could, by no possibility whatever, delegate or transfer to another. Yet you, Sir, an accountant, whose sole business was with sums of money, figures, and balances, have presumed to judge upon and decide every point of law, as if you had been upon the Bench. However much you may think yourself qualified to *enlighten* Lord Succoth, rest assured your decisions are both illegal and superfluous; illegal, if Lord Succoth builds his judgment on your report, and wholly superfluous if he does not. But this is not all, nor per-

haps the worst. For by no magic of interpretation can it ever be made out that Lord Succoth's remit implied that you were to step into his Lordship's shoes,—state points of law,—repel and sustain objections,—and dispose of the whole case. Lord Succoth could not transfer to you the powers which you have so arrogantly and unwarrantably assumed; and which he himself had sworn to exercise in his own person only. What, then, was the rule of your conduct in making up a state of accounts? I answer, the Act of Sederunt under which the factor was appointed by the Court, subject to the conditions therein specified. Have you adhered to this rule? It will not be pretended that you have. On the contrary, you have entered into pleadings,—repelled objections well founded,—sustained illegal charges,—and closed your report, by finding the defender due the pursuers about £800 less than he himself, also an accountant, admits; and about £3000 less than the accountant employed by the pursuers, who framed the statement conformably to the conditions laid down in the Act of Sederunt.

What your motives are, I know not; and I care as little. But be assured of one thing, that this is not a country where a man can be *ultimately* deprived of justice, with impunity, to those who have conspired to shelter from punishment a defaulter and plunderer. The equity and reasonableness of the case will inevitably make themselves felt in spite of the small arts of pettifoggers, the mysticism of accountants, and the cunning involutions of the law. By the Act of Sederunt 1730, minors are deprived of all control over their property; and will it ever be tolerated that they should also be deprived of the securities against malversation and defalcation in judicial factors, for which the very same act was specially and particularly framed? Is an Act of Sederunt nothing but the capricious and extrajudicial appointments of Judges for their own purposes, and never to be enforced except to screen a delinquent? I hope not. I would fain try to believe not. I ask for

nothing but what the Act of Sederunt not only *allows* and *commands*, and renders obligatory equally on the Court and the factor. Let that be refused, and we shall then know what an Act of Sederunt means. I cannot imagine, however, that the Judges will so sport with their duty and their oath. You ought indeed, Mr Russell, to have confined your labours to the duties of your profession as an accountant, and to have taken good heed what you were about. You ought to have assumed, as the rule of your conduct, the simple rule of law, and not have thought of covering the head of a fradulent factor, but of doing simple and substantial justice.

I am,

SIR,

Your most obedient Servant,

JOHN HAY.

THE END.

Webster, Printer, Horse Wynd.

www.libtool.com.cn

www.libtool.com.cn

www.libtool.com.cn

www.libtool.com.cn

www.libtool.com.cn

www.libtool.com.cn

www.libtool.com.cn

www.libtool.com.cn

3 6105 062 192 492

www.libtool.com.cn