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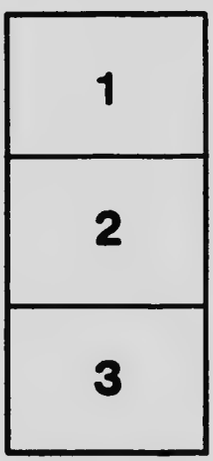

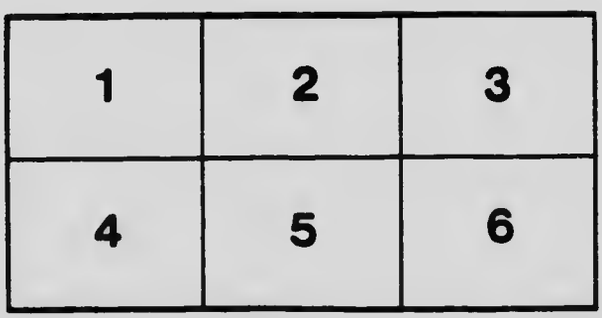

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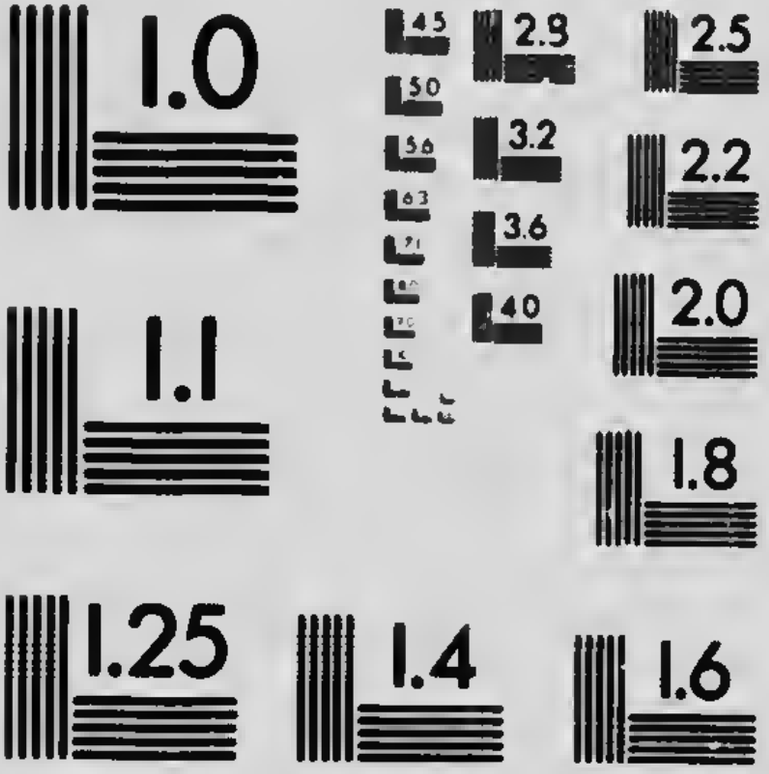

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The Douglas Cause

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Lord Douglas.

(Archibald Douglas of Douglas.)

From a Mezzotint in the British Museum.

Andrew Stuart.

From a Mezzotint after Reynolds.

The Douglas Cause

EDITED BY

A. Francis Steuart

Advocate

CANADA LAW BOOK COMPANY

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TO

THE HONOURABLE LORD GUTHRIE

THIS VOLUME

IS

BY KIND PERMISSION

RESPECTFULLY DEDICATED

BY

THE EDITOR

PREFATORY NOTE.

When Boswell was conversing with Dr. Johnson regarding "The Douglas Cause," he received this opinion.[1] "And, Sir, you will not say that the Douglas Cause was a cause of easy decision, when it divided your Court as much as it could do, to be determined at all. When your judges are seven and seven, the casting vote of the President must be given on one side or the other; no matter, for my argument, on which; one or the other *must* be taken; as when I am to move, there is no matter which leg I move first. And then, Sir, it was otherwise determined here. No, Sir, a more dubious determination of any question cannot be imagined."

It is the history of this "determination" which is now presented to the reader by the Editor, and when he presents it, he desires to thank many friends for their kind assistance during its compilation. He has gratefully to acknowledge the help that he received from Mr. David Douglas, whose great age does not prevent him from taking a keen interest in the history of his family. He has also been assisted by the Hon. Mr. Justice Fletcher of Calcutta, in the early stages of his work, and by Mr. George Douglas Veitch of Eliock, to whom he is indebted for two illustrations. Two more illustrations make him thank Mr. Charles E. Green. He wishes to express his gratitude, moreover, to Messrs. Kenneth Douglas and Frank C. Nicholson for their kindly patience in giving him assistance with his proofs; and lastly, he desires sincerely to thank Mr. Horace Bleackley, whose store of knowledge of the literature of the eighteenth century has been so courteously and fully[2] placed at his disposal.

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[1] Boswell's Life of Johnson, ii. 19.

[2] See Appendix I.

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1736. Death of her mother, with whom she lived at Merchiston Castle.

1746. 4 August—Lady Jane, now aged 48, marries Colonel John Steuart and goes abroad, concealing the marriage, taking with her Mrs. Hewit and two maids.

1747. 10 February—From the Low Countries she writes to Mrs. Carse denying the rumour of her marriage.

April—She and Colonel Steuart go to Aix-la-Chapelle.

1748. April—Lord Crawford announces to her brother, the Duke of Douglas, that she is married and going to have an heir.

21 May—The Steuarts leave Aix for Rheims.

2 July—Lady Jane, Colonel Steuart, and Mrs. Hewit (leaving the maids at Rheims) go to Paris.

4 July—They arrive in Paris and put up at the Hotel de Chalons.

10 July—Lady Jane is alleged to give birth to twin sons at the house of Madame Le Brune in the presence of Mrs. Hewit and M. Pier La Marre, a surgeon, who immediately takes care of the younger child (Sholto) on account of his delicacy.

22 July—Mrs. Hewit announces the birth to the maids at Rheims.

16 August—Lady Jane, her husband, and one child go to Rheims. The child is baptised Archibald in the Catholic Church of S. Jacques.

1749. November—Lady Jane and Colonel Steuart return to Paris and then go back to Rheims with the younger and delicate child.

29 November—The whole party go to England, and Colonel Steuart is soon imprisoned for debt in London.

1750. 15 May—Lady Jane, in great straits, appeals to Mr. Pelham, and obtains a pension of £300 a year from King George II.

1752. May—Hearing that her brother, the Duke of Douglas, disbelieves in the story of the birth of the children, Lady Jane decides to go to Scotland.

17 August—She arrives in Edinburgh with the children, and sees many old friends. The Duke of Douglas remains silent. She attempts to see him at Douglas Castle, but is repulsed.

1753. 17 April—She returns to London and hears of the death of the younger child (Sholto), whom she had left behind. She at once returns to Scotland in great grief.

12 November—Rapidly failing in health, she makes her will.

22 November—Lady Jane dies in poverty, acknowledging the child Archibald (Douglas Steuart) as her son. He is not recognised by her brother, the Duke, but is cared for by her friend, Lady Schaw.

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1762. 7 December—A new action, "The Douglas Cause," begins. The Duke of Hamilton and others attempt to reduce Archibald Douglas Steuart's service as heir to the Duke of Douglas on the ground that he was not Lady Jane's son, but a supposititious child.

17 December—The Hamilton side commence the Tournelle action in Paris.

1764. 14 June—Colonel Steuart (now Sir John Steuart of Grandtully) dies acknowledging Archibald Douglas as his son.

1767. 7 July—The Court of Session, advising on the Douglas Cause, begins.

15 July—It ends in the Court being divided, seven judges on either side, but by the vote of the Lord President the Cause is carried in favour of the Duke of Hamilton. Riots ensue in Edinburgh.

1769. 19 January—The Douglas Cause goes before the House of Lords.

27 February—Judgment is pronounced in favour of the claim by Archibald Douglas that he is the son of Lady Jane Douglas. Great rejoicings in Scotland.

27 February—Protest by five Peers against this judgment.

1790. 9 July—Archibald Douglas (Steuart) created Lord Douglas of Douglas.

THE DOUGLAS CAUSE.

INTRODUCTION.

THE Douglas Cause is, most likely, the greatest civil trial affecting *status* that Scotland has ever seen. The conflicting decisions of the Court of Session and the House of Lords alone made it momentous, and the rank of the parties and the extent of the estates which were dependent upon the final decision made it pre-eminently interesting to the public in its own time, and the complexity of the evidence and the conflicting statements of the witnesses, both Scottish and French, as well as the old and irregular methods by which the evidence was procured, make the whole trial a very delicate and intricate study even at this distance of time. The Cause endured, through its varying stages, eight years in all, and the mass of legal pleadings connected with it is enormous. As it is the first Civil Cause dealt with in this series, we feel that it may be differently treated from the Criminal Trials that went before it, and it is proposed, therefore, to give (1) a *résumé* of the history of the Cause, and (2) a narrative of the circumstances that led to it, told as impartially as may be—for upon impartiality depends the value of this book—and with as little prejudice as possible. The Judgments of the Court of Session are given in full,[1] and the two chief speeches (which alone exist) delivered in the judgment in the final Appeal to the

[1] There are two reports, differing very considerably from each other, and neither authoritative, of the speeches delivered in judgment. The first is "The speeches, arguments, and determinations of the Right Honourable the Lords of Council and Session in Scotland upon that important Cause whercin His Grace the Duke of Hamilton and Others were Plaintiffs, and Archibald Douglas of Douglas, Esq., Defendant, with an introductory Preface, giving an impartial and distinct account of this suit, by a Barrister at Law, printed in London for J. Almon, 1767," and the second, that of William Anderson, printed by Balfour, Auld & Smellie, Edinburgh, 1768. It is the former which is here printed, as the judgments, if less verbose, are more pithy and incisive. A "State of the Evidence" comparing the two reports, "with remarks" by Robert Richardson, D.D., Prebendary of Lincoln, was published also at London in 1769. See Appendix II.

House of Lords are also printed at length, from a *quasi*-official source. It is hoped that in this way the reader may be able to form his own conclusion on the history of the Cause and the difficulties connected with the evidence submitted, the complexity of which made the decision one of the most controverted in Scottish legal history.

I. Narrative of the Cause.

The Cause arose on the death, without issue, on 21st July, 1761, of Archibald, Duke of Douglas, on which event Archibald Steuart or Douglas was, on 9th September, 1761, on a brieve mortancestry, served nearest and lawful heir of tailzie and provision in general to the said deceased Archibald, Duke of Douglas, his uncle, in virtue of the disposition and tailzie of the dukedom of Douglas and others, dated 11th July, 1761. Evidence was led before the inquest that he was the only surviving son of the deceased Lady Jane Douglas, the late Duke's only sister, born of her marriage with Colonel John Steuart, afterwards Sir John Steuart of Grandtully, Bart. His birth was stated to have taken place at Paris, on the 10th July, 1748, in the presence of Mrs. Helen Hewit and M. La Marre, the surgeon, certain letters to Sir John Steuart from Pier La Marre, which were afterwards admitted to be copies of originals (or, it was alleged by the Hamilton side in the Trial, forgeries), being produced, but not read at the inquest. The tutors of Archibald Douglas soon after completed his title by a charter from the Crown, and he was put in full possession as heir of the Duke of Douglas, the Duke's widow, Margaret, Duchess of Douglas, and Charles, Duke of Queensberry, being two of his curators; but his position as heir was not long unchallenged. First of all, actions were raised against him by the tutors of the Duke of Hamilton[2] and the Earl of Selkirk, both of the Douglas family and next heirs male to the late Duke, for declaring their right to certain parts of the

[2] James George, seventh Duke of Hamilton, son of James, sixth Duke, and of Elizabeth Gunning, Duchess of Hamilton and Argyll, the celebrated beauty. He was born 18th February, 1755, and succeeded his father in 1758. He died, unmarried, not long after the decision of the "Douglas Cause" against him, at Hamilton Palace, 7th July, 1769.

family estate, which the Duke of Hamilton maintained were limited to heirs male by a deed executed in 1630, and the Earl of Selkirk affirmed were descendable to him in virtue of a deed executed in 1699. They demanded the sequestration of the estate from the possessor during the course of this competition, but this was refused, and the Court of Session decided against both the pursuers on 9th December, 1762. In the decision it was solemnly adjudged that the Duke of Hamilton's claim was barred both by certain powers retained by James, Marquis of Douglas, and also by the destination to heirs whatsoever in the contract of marriage of the late Duke of Douglas.

On 7th December, 1762, a new action, and one on an entirely new ground, was commenced against Archibald Douglas. It took the form of a summons at the instance of the Duke of Hamilton for reducing his service of 9th September, 1761, as heir to his uncle, the Duke of Douglas, as having proceeded on false evidence. A similar action was raised in the name of Lord Douglas Hamilton, the next heir,[3] on the failure of the defender under the Duke Douglas's last settlement; and a third at the instance of Sir Hew Dalrymple of North Berwick, Bart., one of the heirs of line failing issue of Lady Jane Douglas. It is to be noted that the other heirs of line, the Earl of Hyndford, Sir Robert Menzies, Bart., John Swinton of Swinton, and others, did not join in the process. The summons narrated that "The said Archibald Steuart and the other pretended male child of which the said Lady Jane Douglas was said to have been delivered at the time and place foresaid were spurious and were not the children of the said Lady Jane Douglas, as would be made appear by a variety of proofs to be more particularly condescended on in the course of process." The first step in the process was that a petition was presented to the Court on 9th December in the name of the pursuers, desiring an examination of witnesses to lie *in retentis*. Answers to this petition were ordered, but, in the meantime, another petition, unintimated, was read on 14th December, praying for an immediate examination of Sir John Steuart, the late Lady Jane Douglas's husband, on the ground that he was going

[3] He, who succeeded, on his brother the seventh Duke's death, as eighth Duke of Hamilton, was born 24th July, 1756, and d.s.p., 2nd August, 1799.

abroad. This was granted, and Sir John, though in bad health, complied with the orde of Court and was examined upon interrogatories framed by the pursuers, no condescendence of facts having been given in, for three successive days in the way of judicial declaration upon facts which had happened in 1748 and 1749. Although counsel for Archibald Douglas, his acknowledged son, were present, as they were ignorant of the facts upon which Sir John was to be examined, they could not cross-examine him in their client's interest, but they did state that the examination, if it was to be used as evidence, should be upon oath. The interlocutor pronounced was—"The Lords having heard what is above represented they allow Sir John Steuart's declaration to be taken in the meantime, reserving to the petitioners to insist for examining the said Sir John Steuart upon oath, if they shall afterwards insist upon the same, and all objections to such declaration as accords," and the declaration was sealed up to lie *in retentis*. The Court, however, refused to examine Mrs. Hewit without a particular condescendence of facts being given in. When this was done, Sir John was again, in August, 1763, re-examined upon oath, his former declaration being also admitted eventually as a "circumstance of evidence." Sir John Steuart died on 14th June, 1764, having on 7th June made a solemn declaration before five persons that Archibald Douglas was his only surviving son by his late wife, Lady Jane Douglas. A proof was allowed in 1763. Against this, however, an appeal was entered for the defender and a cross appeal was begun by the pursuers. It came to light, moreover, that during this time the Hamilton agents had been busy investigating evidence in France, and that a *plainte* had been raised as far back as 17th December, 1762, soon after the Court of Session action was begun, before the Tournelle Chamber of the Parlement of Paris, by Sir Hew Dalrymple and Mr. Andrew Stuart, one of the Duke of Hamilton's tutors[4] then in Paris, the chief mover in his interest, against Sir John

[4] It is difficult to apportion to Andrew Stuart praise or blame in relation to the "Douglas Cause." He was a son of Archibald Stuart, W.S., who is here mentioned as both "doer" to the Duke of Douglas and to the Duke of Hamilton. By the Hamilton interest he was made Keeper of the Signet, and he became convinced of the imposture of the Douglas's claim, and did all he could in France to further the rights of the Duke of Hamilton, his ward, and for this was extolled or blamed by the partisans

Introduction.

Steuart and Mrs. Helen Hewit, accusing them on the *criminal* count of *partus suppositio*. On the 9th July, 1763, the pursuers in the Tournelle action published a *monitoire* under the sanction of the Archbishop of Paris, giving an *ex parte* statement of their account of Sir John Steuart, Lady Jane Douglas, and Mrs. Helen Hewit, and their alleged imposture and acquisition of supposititious children. This was read in the churches, and enjoined all persons under pain of excommunication to reveal to their parish curés any facts known to them which might help to establish the crime. This was an unfortunate step, which undoubtedly was looked upon as an act of intimidation against any witnesses who might have been disposed to come forward to give evidence as to the birth of the twin sons of Lady Jane Douglas, which birth was treated in the *monitoire* as an assumed crime and certain imposture. The whole Tournelle Criminelle process was eventually ordered both by the Court of Session and, on appeal, by the House of Lords, after much litigation, to be withdrawn on 13th April, 1764, and the Court of Session ordered that a new proof be taken abroad before Commissioners, and that this proof be reported by February, 1765; but this was afterwards prorogued. It was during this time that the Duchess of Douglas, with Miss Fleming Primrose as interpreter, went on a visit to France to find out evidence in favour of her *protégé*, Archibald Steuart or Douglas, and their manner of doing so was not much more scrupulous than Mr. Stuart's had been. In the summer session of 1765, the proof taken abroad being expected soon in Edinburgh, a petition was presented by the pursuers, praying that certain parts of the proof which had

of the day. He was fiercely attacked in the House of Lords judgments by Lords Mansfield and Camden, and his duel with Mr. Thurlow, while the Cause was pending, created a great sensation. He was not without supporters, however. The morning after the case went against him, Horace Walpole says that he "found on his table a bond for four hundred pounds a year for his life, a present from Mr. Johnstone Pulteney, his friend, in consideration of the cruel treatment he had met with"; and later, he published a series of "Letters to Lord Mansfield" on the trial, which from their biting eloquence were thought rivals "Junius." He afterwards became M.P. for Lanarkshire, and then for Weymouth and Melcumbe Regis, and held this seat until his death. He was known in later life as a noted antiquarian and genealogist, and died 18th May, 1801. Most of his judicial opponents apologised to him for their attacks, and became friendly in later life. Mr. Horace Bleackley has done full justice to his abilities in his "Story of a Beautiful Duchess."

been taken to lie *in retentis*—*e.g.*, the declaration of Sir John Steuart in 1762—might be opened. This produced answers, replies, and duplies, and the Court deferred advising, first, until the proof should be reported and then printed, which was appointed to be done by a declarator of 19th December, 1765. The huge bulk of the proofs for the pursuers, 1034 quarto pages, and for the defender over 1066, forced the printing houses of Edinburgh to cause more delay, but the two very large volumes (on which the following narrative is founded) were ready at the end of February, 1766. On 6th March the petition relative to Sir John Steuart's deposition was advised, and the declaration was ordered to remain sealed till the 15th of April, allowing either party to have access to it after that day upon application to the Lord President.* Against this the defender appealed, but his appeal was withdrawn, and the pursuers, obtaining leave to open the declaration, printed it in sixteen additional pages to their proof. Short cases, instead of argument on the huge proof, were now ordered to be given in. Those for the pursuers were drawn up by Mr. Alexander Lockhart, Dean of Faculty, and for the defender by Mr. Alexander Murray.

On the 1st of July,[5] to the intense popular excitement of all Scotland, where, it is said, bets to the amount of £100,000 depended upon the coming decision, and where, as in France, the generality inclined to the legitimacy of the children, and "carried the current in favour of young Douglas,"[6] a few days after the cases were given in, the pleadings began. First, four lawyers spoke for the pursuers, viz., Mr. Andrew Crosbie, on Tuesday, 1st July; Sir Adam Ferguson, on Wednesday and part of Thursday; Mr. William Nairne[7] began on Thursday and ended on Friday; and

[5] On 9th June a book, "Dorando: a Spanish Tale," which dealt with the Douglas Cause under a disguise of thinly veiled names, and was really written by James Boswell—the future biographer of Johnson—was advertised for sale. Its contents were so obvious that they were commented on by many journals. The publishers of these were, for this contempt of Court, summoned before the Lords of Session, 30th June, 1767, and put under caution to appear again on 19th July. On 28th July they were "rebuked and admonished" by the Lord President for the publication complained of, and the matter ended.

[6] *Scots Magazine*, 1766 [406-15].

[7] Walpole's "Memoirs of the Reign of King George III.," p. 301.

Introduction.

Mr. John Dalrymple began on Friday and ended on Saturday. Then four lawyers spoke for the defender, viz., Mr. Alexander Murray, on Tuesday, 8th July; Mr. Henry Dundas, solicitor, on Wednesday and Thursday; Mr. Robert Sinclair, on Friday; and Mr. David Rae, on Tuesday, 15th July. Two lawyers replied for the pursuers, viz., Sir John Steuart of Allanbank, on Wednesday, 16th July, and Mr. Andrew Crosbie, on Thursday. Two lawyers duplied for the defender, viz., Mr. Robert MacQueen, on Friday, 18th July, and Mr. James Burnett,* on Tuesday, 22nd July. Mr. Alexander Lockhart, Dean of Faculty, the last for the pursuers, spoke on Wednesday, Thursday, Friday, and Tuesday, and ended on Wednesday, 30th July. Mr. James Montgomery, the Lord Advocate, the last for the defender, spoke on Friday, 1st August. The pleadings were then the longest ever heard in a Court of justice, lasting in all twenty-one days, and the speeches were each often two, and sometimes three, hours long. The Court then appointed Memorials on those pleadings to be given in by the 27th of September. This was prolonged, and not done until 24th January, 1767, the pursuers' being drawn up in over 800 pages by Sir Adam Ferguson, and the somewhat shorter one of the defender by Mr. Ilay Campbell. Other counsel in the case for the pursuers, many of whom during the progress of the cause were elevated to the bench and gave judgment on it, were Mr. Thomas Miller, then Lord Justice-Clerk; Sir David Dalrymple (Lord Hailes), Mr. Walter Steuart, Mr. Wm. Johnston;* and for the defender Mr. Francis Garden* (Lord Gardenstone), Mr. David Rae,* Mr. Robert Sinclair, Mr. Charles Brown, and Mr. James Boswell. The agents for the pursuers were Mr. Andrew Stuart,* W.S., one of the tutors to the Duke of Hamilton and of Lord Douglas Hamilton, and Mr. John Davidson, W.S.; and for the defender Mr. Charles Brown, W.S., and Mr. Alexander Maconochie,* writer in Edinburgh. Still the Cause dragged on. It was appointed to be heard upon the 23rd of June, but certain additions were sought for by both parties, which were allowed and given in before the summer session. The Court then *ex nobili officio* examined Isabel Walker, Lady Jane Douglas's maid, for two days, 23rd and 24th

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Those marked with an asterisk helped to get up the case in France.

June, allowing both parties to hand in interrogatories for their consideration. Her deposition was ordered to be printed and the advising appointed for the 7th July. On Tuesday, 7th July, the advising of this great Cause accordingly began [according to the newspapers of the time, the Court was held in one of the rooms of Holyrood House], and we give in full the decisions of the judges. The whole fifteen judges of the Court of Session gave their opinions and were divided, seven on either side, and the first stage of the Douglas Cause was carried in favour of the Duke of Hamilton and the other pursuers by the vote of Robert Dundas, Lord President, to the intense popular indignation in Scotland, the windows of the judges favourable to the Hamiltons being broken, and the President receiving letters threatening him with death. An appeal, however, was given in by Mr. Douglas to the House of Lords without delay,[8] and into the case had been taken a young barrister, Edward Thurlow, it is said from the agents for the Duchess of Douglas having heard him arguing the case in favour of Mr. Douglas in Nando's Coffee House, the favourite resort of young lawyers. The pleadings so displeased Mr. Andrew Stuart, the Duke of Hamilton's tutor, that he challenged Thurlow, and, though the Cause was depending, a duel was fought by them and pistols discharged. The public interest taken in the case was immense, and the papers of the day chronicled carefully the movements of Mr. Douglas, the popular favourite.

As the session of 1767-68 was a short one, being the last of the Parliament, the Cause was postponed until the session 1768-69 to allow the vast mass of evidence to be gone over. On 19th January the case began; for the appellant the Lord Advocate (Sir James Montgomery) and Sir Fletcher Norton, and for the respondents Messrs. Charles Yorke, Alexander Wedderburn (afterwards Lord Chancellor Lough-

[8] Mr. Douglas wrote to [his half-brother] Sir John Steuart of Grandtully, 28th July, 1767—"Our cause is indeed lost here, but there is another Court where justice and impartiality must prevail. The final decision here was not so great a stroke upon us as I believe upon most of our friends. Every person's character here is pretty well known, as well as their motives for their behaviour, but time and a little patience show everything and every man in their proper light. My affection for you and your family will not be the least diminished by the late decree." [Fraser's Red Book of Grandtully, ii. 369.]

Lord Loughborough.

From a Print.

borough), and Dunning. The Lord Advocate opened the Cause and spoke for four and a half hours that day, nearly five hours more on the 20th, and finished, "and with applause," on the 23rd. Sir Fletcher Norton spoke also on the 23rd and finished, having reserved his further arguments for the reply. Mr. Yorke, who "was the least admired,"[9] began for the respondents on the 24th, and spoke for three hours and a half, and ended next day. On the 25th Mr. Wedderburn began, spoke for four hours, and a half hour more next day, and on 6th February four hours more, ending, "with greater applause than was almost ever known," on the 7th. Mr. Dunning began on 10th February and spoke for five hours, but made "no great figure," nor did Sir Fletcher Norton, who began the reply on the 20th, when he spoke for three hours (Mr. Douglas being in the House, having gone in with the Duke of Queensberry), and ended on the 21st. Some points of form were discussed on the 22nd, and on the 27th judgment was pronounced, which reversed the judgment of the Court of Session and affirmed the service of Archibald Steuart or Douglas as lawful heir of tailzie and provision of the deceased Archibald, Duke of Douglas, his uncle. When this was known in Scotland, wild joy was shown at this popular judgment, and in Edinburgh the crowd smashed the windows of the houses of the Lord President, the Lord Justice-Clerk, and other judges who had taken the Hamilton side, plundered the Hamilton apartments in Holyrood House, and for two days made it dangerous for opponents of Mr. Douglas to reside in the town, until the military were called out to restore order. Horace Walpole[10] gives the following account of the Lords' speeches and the end of the trial:—"The Duke of Bedford, Lord Sandwich, and Lord Gower were the most zealous for the Hamiltons. Lord Mansfield, it had long been discovered, favoured the Douglas; but the Chancellor Camden, with dignity and decency, had concealed his opinion

[9] Walpole, from whom these comments are taken, says of Mr. Yorke in his "Memoirs of the Reign of King George III.," iii. p. 302:—"The Duchess of Douglas thought she had retained him; but, hearing he was gone over to the other side, sent for him, and questioned him home. He could not deny that he had engaged himself to the House of Hamilton. 'Then, sir,' said she, 'in the next world whose will you be, for we have all had you?'"

[10] "Memoirs of the Reign of King George III.," iii. p. 303 *et seq.*

to the very day of the decision. The debate was opened by the Duke of Newcastle, and very poorly. He was answered by Lord Sandwich, who spoke for three hours with much humour, and scandalised the bishops, having, with his usual industry, studied even the midwifery of the case, which he retailed with very little decency. The Chancellor then rose, and with becoming authority and infinite applause, told the Lords that he must now declare that he thought the whole plea of the Hamiltons a tissue of perjury woven by Mr. Andrew Stuart, and that, were he sitting as judge in any other Court, he would order a jury to find for Mr. Douglas, and what that jury ought to do on their oaths, their Lordships ought to do on their honours. He then went through the heads of the whole case, and without notes recapitulated even the dates of so involved a story, adding that he was sorry to bear hard on Mr. Stuart, but justice obliged him. This speech, in which it was allowed he outshone Lord Mansfield, had the most decisive effect. The latter, with still more personal severity to Stuart, spoke[11] till he fainted with the heat and fatigue; and at ten at night the decree was reversed without a division." He adds later, "The Duke of Bedford, the Earls of Sandwich, Bristol, and Dunmore, and Lord Milton protested against the decision in favour of Mr. Douglas, for that he was not proved to be the son of Lady Jane, and for that they thought it had been proved that he was not so."[12]

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[11] "To say that he was great, pathetic, and eloquent is saying nothing. There was such music in his speech, such eloquence in his diction, such irresistible force in his reasoning, that it was impossible to hear him without raptures." [*Edinburgh Advertiser*, 7th March, 1769.]

[12] Although this was the end of the "Douglas Cause," actions of reduction continued to harass Mr. Douglas until 1779, when these were finally settled in his favour by the House of Lords [Fraser's The Douglas Book, ii. 532]. Upon this Mr. Douglas wrote to his brother, Sir John Steuart of Grandtully, 30th March, 1779—"Knowing good news is not unwelcome to you, the House of Lords yesterday gave me a full and free liberation from all further disputes in law, and the Hamilton family have now not the smallest pretensions to the smallest part of my estate. It has been long depending, and is at last happily ended." [Fraser's The Red Book of Grandtully, ii. 372.]

Introduction.

II. Historical Narrative.

ALMOST every statement made in the Douglas Cause turned upon the real behaviour of Lady Jane Douglas, and, as she was dead before the Cause began, the evidence was naturally vague and contradictory. It is necessary, therefore, to examine shortly the history of her early life, and much more particularly of the years that followed her marriage. She was born on 17th March, 1698, and was the only daughter of James, Marquis of Douglas, a great Scottish noble, and of his second wife, Lady Mary Kerr, daughter of Robert, Marquis of Lothian. She had only one surviving brother, Archibald, Duke of Douglas, who was four years older than herself, and of whom she was the presumptive heiress, a position of great importance, as he remained unmarried during her lifetime. The Douglas family, one of the most ancient and important in the kingdom, was possessed of vast estates and had attached itself to the Hanoverian succession, as had the Duke of Hamilton (also a Douglas), who was the Duke of Douglas's heir male.

Lady Jane in early life seems to have been beautiful and very attractive, and her character is variously described. On the one hand it was stated that she was "brought up by her mother, the Marchioness, in principles of the strictest piety, which she always retained. . . . Her great beauty and accomplishments procured her universal attention."[13] And on the other hand, "These great advantages, joined to her high rank and quality, gave her a natural prospect of much happiness and prosperity, but a certain extravagance of conduct, for which she was from the beginning remarkable, and a singular turn of mind, increased by the contagion of improper connections, prevented the effects that might have been expected from the appearances so much in her favour."[14] She was, it is certain, much admired, and declined many noble matrimonial alliances, but in 1720, however, became betrothed to Francis (Scott), Earl of Dalkeith, afterwards second Duke of Buccleuch. The marriage was broken off suddenly later, and the Earl of Dalkeith, the jilted party, according to one and the jilting party, according to another story, fought a duel on Lady Jane's account with her

[13] Defender's Memorial, 2. [14] Pursuers' Memorial, I. 2.

brother, the Duke of Douglas, and then married, on 5th April, 1720, her kinswoman, another Lady Jane Douglas, of Queensberry. This disappointment or "cruel affront" affected Lady Jane so much that, intending, it was said, to enter a French convent, she secretly eloped to France, accompanied only by her maid, who was a Frenchwoman; but she was soon followed, however, by her mother and brother, who prevailed upon her to return to her native country. That this adventure was not forgotten is shown by a letter to her on 29th January, 1750, from her uncle, Lord Mark Kerr, in which (referring to her later marriage and second departure to France) he writes, "Now to say nothing but the truth, your two trips into France, I do think there is no apologising for it, which is the worst, I will leave the world to judge. . . . Your behaviour thirty years ago next month, and four years agone very soon, are both mighty fresh in my memory." Although Lord Mark thus reproached his niece (with whom he was on cool terms) he attempted to help her and her two sons whom he mentions in this letter also.

Lady Jane, though pressed by her brother to marry, declined to do so, notwithstanding that he offered on her marriage to increase her fortune considerably. In 1725 the Duke of Douglas underwent a great misfortune. He had the ill-luck to wound mortally Captain John Kerr, a natural son of his uncle, Lord Mark Kerr, and it was bruited abroad, rightly or wrongly, that Captain Kerr's courtship of Lady Jane had "spurred him"—the Duke—to this "rash action, which proved the source of his own unhappiness and of all her misfortunes." This misadventure, there is no doubt, saddened the life of the Duke of Douglas, altered his career, and alienated his sister from him. He was forced "upon the event to live extremely retired," and thenceforward was influenced only by his factor, James White of Stockbriggs, a man of humble origin, and Mr. Archibald Stuart, W.S., who was not only "doer" to the Duke of Douglas, but "doer" to his heir male, the Duke of Hamilton (whose interests he had much at heart) also. While the Duke resided in retirement at Douglas Castle, his sister, Lady Jane, lived with her mother at Merchiston Castle, near Edinburgh, until the death of the Marchioness of Douglas, on 21st January, 1736. She then removed to Drumsheugh House with her devoted friend and attendant. Helen Hewit, a woman of gentle birth, who is

alternately praised in the "Process" as the most faithful of friends, or blamed as an unscrupulous *intrigante*. The Duke, on his mother's death, granted his sister an income (small enough) of £300 a year, but the pair were not on good terms. Lady Jane's hint that his having beaten a footman might rouse again the fading story of his manslaughter displeased the Duke. He believed that she wished to have him confined as a lunatic, and an insult from the mob, which he suffered when he was in Edinburgh, was understood by him to be a plot which his sister had contrived with Colonel John Steuart, with whom at this time she was intimate and whom she afterwards married, to have him murdered or kidnapped and carried off to St. Kilda, so that they might get his estate into their own hands.[15] These estranged relations were more seriously embittered when in 1745 the Jacobite troops occupied Douglas Castle. The Duke was again persuaded that Colonel Steuart (a known Jacobite of 1715) and Lady Jane (who was, by repute,[16] *live* with the Jacobite party) had instigated this attack also; and his sister continued to fall in his estimation. In spite of this Lady Jane assisted the escape of the Jacobite refugee, the Chevalier Johnston (a cousin of her friend, Mrs. Hewit), and hid him for some time in her house at Drumsheugh.

Lady Jane, though young looking and still graceful, was now in her forty-ninth year, and at this juncture took a very serious if secret step. On 4th August, 1746, she was married at her house of Drumsheugh by the Rev. Robert Keith, a bishop of the Scottish Episcopal Church and a friend of her own, to Colonel John Steuart, a younger brother of Sir George Steuart of Grandtully. That the marriage was imprudent is obvious. Lady Jane was no longer at all young and had only a small income, and Colonel Steuart, though "well looked" as a handsome man of fifty-eight and heir to the estate of Grandtully and a baronetcy, was already a widower with one son, Jack Steuart. He was known to be thoughtless and inconsiderate to a high degree, in his circumstances poor, being "extremely profuse," and as a ruined Jacobite, as well as a supposed "Papist," besides the above suspicions, "though esteemed by

[15] "Case of Archibald Douglas, House of Lords," p. 8.

[16] If the Chevalier Johnston is correct Lady Jane visited Prince Charlie at Holyrood.

his acquaintances to be a man of honour," was an object of peculiar aversion to the Duke of Douglas, who was the only support his wife could rely on in case of distress. Yet when the Earl of Crawford later, as Lady Jane's intercessor, apprised the Duke of Douglas of the fact of the marriage[17] he thought himself able to write, "She certainly merits all the affectionate marks of an only brother to an only sister. Much, much, does she wish, as well as others of your Grace's devoted friends, there had been no so great necessity"—the Duke of Douglas at this time refused to marry—"for her changing her way of life; but since it has become so absolutely necessary, with the greatest submission, considering the variety of different circumstances, I would gladly hope your Grace will not disapprove of the person Lady Jane has chosen, as to be sure there is none so deserving."

So much did Lady Jane dread her brother's displeasure that her marriage was kept an absolute secret except from her maids, and the better to conceal it she determined to go abroad. For this purpose Colonel Steuart passed as one of her footmen under the name of "John Douglas," and she obtained passes to Holland from the Secretary of State's office on 29th August, 1746, for her suite. She met Colonel Steuart at Huntingdon, and her other attendants on the journey consisted of Mrs. Hewit, two maid servants, Isabel Walker and Effie Caw, and the Chevalier Johnston, Mrs. Hewit's cousin, for whom she also obtained a pass as a footman under the name of "James Kerr." The party proceeded to The Hague, and at the end of December removed to Utrecht, where they met Lord Blantyre, a young Scottish lord, who became a friend. On the 10th February, 1747, in a letter to Mrs. Carse, Lady Jane very strongly denied the report of her marriage, imprudently imputing the rumour of it to her cousin Mally Kerr, Mrs. Stewart of Stewartfield, and blaming her in no measured terms; and the inopportune strength of the denial in this letter of a real fact we shall find referred to frequently during the trial in connection with the credibility of Lady Jane's assertions.

About the middle of April, 1747, Lady Jane, Colonel Steuart, Mrs. Hewit, and the two maids removed to Aix-la-Chapelle, and

[17] April, 1748, Defender's Proof, 964.

resided with Madame Tewis, a lady of good birth, until 10th August, when they made a short excursion of a fortnight to Spa, and on returning went first to lodge with Madame Champignois, until 14th September, when they returned to Madame Tewis. At Spa they saw Sir William and Lady Steuart, who noticed that Lady Jane looked ill, and she, in writing to borrow money from Mr. Patrick Haldane, mentioned her design of spending the winter at Bayreuth, where she might have the free exercise of the Protestant religion, and of trying the waters of Carlsbad, in Bohemia. They resided with Madame Tewis until 5th January, 1748, then with Madame Scholl until March, and then with Madame Gillesen until they left Aix on the 21st May, 1748. During this residence at Aix-la-Chapelle we have to observe one notable circumstance, namely, the intention still to conceal the marriage. When Sir John and Lady Jane came to Aix-la-Chapelle their marriage was still undisclosed and secret from all, except the maids and a few confidants, but Lady Jane's visible pregnancy forced it to be disclosed, and it was accordingly confided to Madame Tewis, with whom they had become intimate, as well as to the Earl of Crawford, an old comrade and friend of Sir John Steuart, but at first to no more acquaintances than necessary. The cause was observed by Madame Scholl, Mr. and Mrs. Hepburn of Keith, Baron Macelligot, certain Benedictine nuns of St. Anne's, and Baroness d'Obin, afterwards Madame Negrette, Madame Gillesen, and perhaps by Mademoiselle Bleyenheufft, a seamstress. As time went on, however, the marriage being now well known, it became important for Lady Jane to reveal the fact of her marriage and her condition to her brother, the Duke of Douglas, and she did this by a letter which was enclosed in one from Lord Crawford, in whose mediation she trusted. Lady Jane's letter—like so many important papers in this cause—has perished, but Lord Crawford's letter was printed in the proof, and contained the following passage:—"I am hopeful my representations will not only meet with forgiveness, but also with their wishes for success in reconciling your Grace to an event all the well-wishers of your Grace's family may have the greatest reason to rejoice at, as there is such visible hopes of its being attended with the natural consequences so much longed for by all that are fond of seeing the family of Douglas

multiply." Lord Crawford, by the same letter, informed the Duke of Douglas of Lady Jane's marriage, of their straitened circumstances, and of his pleasure in her and her husband's society. This letter seems to have been written in April, 1748, the marriage having just been publicly declared in March Lady Katherine Wemyss, Lord Crawford's sister, deponed, however, that she had heard it said at Aix that the parties were married, "or, at least, had an intrigue together, as they lived in one house," though she paid little attention to the fact, owing to Lady Jane's ... rial; yet after the disclosure of the marriage she remained one of her best friends. In May some Scottish visitors arrived at Aix, who all believed in Lady Jane's hopes of being a mother. These were the Countess of Wigton, who became a great support of Lady Jane in her trials later; Mr. Fullerton of Dudwick; Miss Fleming Primrose, then a young girl; and Mrs. Greig, Lady Wigton's woman, whose testimony was strong upon the point.

The congress which was held at Aix-la-Chapelle after the war, and the consequent increase in the expense of living there, induced, or gave an excuse for, Lady Jane, her husband, and suite to move once more. They appear to have thought of going to the south of France or to Geneva, and Lady Jane alleged (though she afterwards had her acknowledged eldest son baptised a Roman Catholic) in a letter that she wished to go to a Protestant country. Lady Jane then applied, through M. Joseph Tewis, to the Count de Salm, to whom he was Grand Bailli, to be permitted to reside at the chateau de Bedbur for her delivery, but before permission arrived from Vienna she and her party had left for Rheims, in Champagne, setting out on the 21st of May. On their way they rested at Liège for a few days, and there dismissed their man servant, Quibel, who, as a deserter from the French service, could not enter France. At Liège they were visited by certain Jacobite refugees and Scottish exiles, such as Joseph Byres of Tonley, Mr. Graeme of Garvock, and most intimately by Mr. and Mrs. Hepburn of Keith, all of whom stated later that they observed Lady Jane's condition, and the Chevalier Douglas, who gave evidence that he advised Colonel Stenart to proceed to Paris "ou elle pouvoit avoir tous les secours nécessaires pour son accouchement." They proceeded by stage-coach, the maids, much to their dislike, "in the

basket of the coach," on 25th May, to Sedan, reaching it on the 27th, and remained there nine days, and then resting one night at Charleville (where M. Guenet did not know Lady Jane was Colonel Steuart's wife, "ni si elle étoit fille ou femme, qu'elle portoit une longue mante qui lui tomboit des épaules jusqu'aux pieds"), another at Rhetelle, where Lady Jane fell sick, though she was able to proceed next day to Rheims, arriving there on 7th June, and, after a night at an inn, lodged with M. Hibert. Here Lady Jane was seen only by Mr. William Mackenzie and Mr. MacLean (afterwards Governor of Almeyda), Scottish prisoners of war; Mr. MacNamara, and the family of M. Andricux, and all the persons she met noticed her situation, if we except the dubious evidence by a mantua maker, who did not observe it. This place in the narrative is perhaps the best for it to be directly stated that the other next heirs of the Duke of Douglas, who afterwards brought the Douglas Cause into Court, fiercely maintained that Lady Jane, at this date in her fifty-first year, had all this time only assumed an appearance of pregnancy, with the intention of ultimately procuring a supposititious child, that for this simulation she wore a particular dress, and that all the persons who observed her obvious condition were her dupes, except her husband and Mrs. Hewit, who were either instigators or accomplices of the scheme, and the maids, the extent of whose complicity was uncertain.

Lady Jane and Colonel Steuart now made a move, the reasons for which are still uncertain. Leaving, on the excuse of poverty, in which Colonel Steuart, both as a Jacobite and a penniless cadet, was always involved, the two maids, Isabel Walker and Effie Caw, behind at Rheims, they alone, on 2nd July, with Mrs. Hewit in attendance, set out in the stage-coach for Paris, arriving there on the 4th. It is said that Lady Jane had been told that the physicians in Rheims were unskilled, and so undertook the journey, though it was at so critical a period for one of her advanced age. On the other hand, it was afterwards alleged that the party had gone to Paris to feign a delivery and procure a child to introduce as their own to soften the heart of the Duke of Douglas and to induce him to open his purse strings, and for this reason had left the maids, part accomplices only, behind at Rheims. Upon the objects of this journey the whole case turns, and, in spite of the Court of Session's adverse judg-

ment, it must be remembered that the decision of the final Court of Appeal showed firm belief in Lady Jane's being mother of the children she afterwards brought to England as her own.

They arrived on the evening of 4th July in Paris, and went to the Hotel de Chalons, Rue St. Martin, kept by M. Godefroi, whose name was so often repeated in the Cause. Thence, according to Colonel Steuart and Mrs. Hewit, they went a few days later to the house of Madame Le Brune,[18] Fauxbourg St. Germain, a house which was never identified, where, in the presence of Mrs. Hewit and M. Pier La Marre, a surgeon, Madame Le Brune and her daughter, Lady Jane gave birth on the 10th of July to twin sons, afterwards called Archibald and Sholto Douglas. It was said that the younger, being very delicate, was, for fear of death in infancy, "ondoyé" by M. La Marre, who afterwards for fifteen months took care of him, putting him out to nurse with a woman who was identified, though not without discussion, with Nurse Garnier, of la Hauteborne, near Menilmontant; but leaving the stronger and elder twin with his parents. Lady Jane, Colonel Steuart, and Mrs. Hewit, it was said, left Madame Le Brune's on 20th July, and went to M. Michelle's Hotel d'Anjou, though this date also was challenged, and to this house one child—stated to be the elder twin—was brought later, his nurses having been frequently changed with varying success.

Mrs. Hewit wrote the following letter to the two maids at Rheims, dated from Paris, 22nd July, but most likely written the night before:—"Dear Tibby and Effie,—This will be the welcomest letter iver eny of you recved. The last day I writ to you, Tiby, I told you your Mrs. was very well, as I thoght, so far from that she had been ill the wholl neght, and sad not a word tell tuall a clok, which was 4 ours after your letuer wint af; then, I think, she was in soch a way as I could wisht not to a been witness to, tho. I do belive, many is been worc with on, and she produced two lovly boys. You may belive the confusion I have been in sinc, haven no thoght of more than wan, tho' Tiby Walker was so moch a conjuererour as to tell me, she

[18] The name, like most of the French names in the Douglas Cause, is uncertain, and is spelled either Le Brune or La Brune.

Old Menilmontant.

From an old Print.

thoght she was with two, still my thoghts joined Effe's; they are two lovely creters, but the youngst very small and weakly, so the doctor beght he might be sent to the country as soun as possible. Your Mr. and I had to go not a litell way before we got a right nurse that we ould pert with him to; at last we gone on of the clinest best woman iver you sa, a farmer's wife, so I hop he shall do very well he agreeing so well." The letter goes on to tell about the difficulties that occurred in getting "a right norc" to nurse the stronger child, Archibald, and tells of the rapidity of Lady Jane's recovery. "She is recovering most surprisingly well, not on back-going howr, so soun as the ninth day was over, ther was no confiningn her longer to her bed, the heat being so vilint. In short, Tiby and Effe, all is to a wish;" and in a postscript she continues—"I have thoght it two months since I left you all—the hurry I was in last writin, I blive I dated my letter the 11, instead of the 10, which was the happy day." On the 26th Mrs. Hewit again writes to Tibbie Walker in the same strain, telling of the weakness of the younger twin and the strength of the elder "stordy velen," and his bad luck with his nurses, and in a later letter 12th August, 1748, tells the same maid—"You may tell Mr. Mackenzie or any body ye pleis of your Lady's being broght to beed now, for her Lap's is writ it to her brother last week, which was the sounest she was eble; so sinc he is acquainted with it there is no need for keeping it a secret."

At the same time Colonel Steuart apprised Lord Crawford of the fact of the birth of the twins, and Mrs. Hewit wrote for Lady Jane to her old friend, Mr. Joseph Douglas of Edrington.

Lady Jane's situation at the Hotel d'Anjou was subject to different accounts, one version stating that she did not go out of doors, another alleging that she took part in a jaunt to Versailles. She, however, was able to leave the Hotel d'Anjou about the 4th of August and to go to Dammartin, and notified the birth of her sons to the Duke of Douglas in a letter dated the 7th of August from "Rheims," though she did not leave Dammartin until about the 15th August. Her husband returned to Paris, where he again stayed at M. Godefroi's, and Mrs. Hewit, writing to Isabel Walker on the 10th of August, says he went to see his youngest son, "and I got a letter this day tellen he hopes he will dow very well, and that the nurse is the most

carefoll womin h[illegible] r sa, and that he is now queet content to live him with her.'

About the 13th of August Colonel Steuart rejoined Lady Jane, and in a day or two the two, with Mrs. Hewit, the (elder) child, his new nurse, Mangin, and the latter's husband, left for Rheims, where they arrived on 16th August, and lodged with Madame Mayette.

In the case against Archibald Douglas it was maintained that during Lady Jane's visit to Paris most of these alleged circumstances were false. That the surviving and dead witnesses did not agree about the details of the delivery; that Lady Jane was not delivered upon the 10th July of twins; that she described her delivery differently in a conversation with the Countess of Stair reported by her daughter, Miss Primrose; that Madame Le Brune, in whose house the birth was placed, could nowhere be traced; that Colonel Steuart and Mrs. Hewit at first spoke of the delivery having taken place at Madame Michelle's: and, further, that both on the 10th of July and some days previous and subsequent Lady Jane and her husband were still residing at the hotel of M. Godefroi, and several members of his family testified that this was so, and his imperfectly kept house books were called into evidence to support the theory of this *alibi*, on which much of the case turned. It was furthermore alleged that during the visit to Paris Lady Jane and Colonel Steuart affected "concealment, disguise, and mystery" when Sir John, Lady Jane, and Mrs. Hewit brought with them from Paris one child; and that there was a repetition of "the same concealment and mystery when they returned to Paris in November, 1749, and brought with them from thence to Rheims a second child." It was furthermore alleged, and a long proof led, that in July, 1748, a recently born male child was purchased and carried off from his parents, named Mignon, of a very humble origin, and that in November, 1749, another child, the son of Sanry, a tumbler at a fair of St. Laurent, was also kidnapped, and it was alleged that these two "enlèvements" of infants, of which we shall hear much, were caused by Colonel Steuart, Lady Jane Douglas, and Mrs. Hewit to take the place of the twin sons to whom Lady Jane was stated to have given birth on 10th July, 1748. Another curious circumstance was the vague and erroneous description Colonel Steuart gave of M.

Paris from the Pont Neuf at the time of the Douglas Cause.

From an old Print.

Pier La Marr, or La Marre,[19] the surgeon, who assisted at the delivery. In his examination on the subject he styled him an old acquaintance, a Walloon; but it was eventually proved that a surgeon named Louis Pierre De la Marre[20] did practise in Paris at the time; and his fellow-surgeon, Doctor Michel Menager, swore that he had heard from him that he had assisted at the delivery of a stranger lady of advanced age, who gave birth to twin sons, a statement which, whether true or false, added considerable weight to the evidence of Lady Jane's child-birth.[21] Against this must be put the frequent and unfortunate change of nurses of the elder child, which might have been caused through fear of discovery, as well as the alleged relegation of the younger child to M. La Marre's care.

At Rheims Colonel Steuart and Lady Jane lived with some consideration, and saw much of their friend Lady Wigton, and on the 15th September their acknowledged elder son was publicly baptised by the Roman Catholic rites in the Parish Church of S. Jacques. The Countess of Wigton was one godmother, and her husband, Baron Cæsar de Macelligot, godfather, with Madame Andrieux as proxy for the Marchioness of Lothian as the other sponsor, along with Lord Blantyre and Mr. MacNamara, proxy for the Earl of Crawford. "Un fête splendide" followed, and it was perhaps from the severe fatigue

[19] The letters produced at the Service were signed Pier La Marr or la Marr, hut throughout the Cause the surgeon's name is given as La Marre, and we havo thought it a pity to alter this spelling.

[20] Born at Montrenil-sur-Mer, 31st January, 1711. He was first employed in Paris in 1730 by his uncle, a barber, and, it was alleged, placed in 1734 as chirurgien apprentice to M. Menjon, and was with him five years. He thence went to stndy chirurgie at the Hotel Dieu, where he remained until December, 1746, and hecame, it was alleged, "a man of skill and understanding in the practice of midwifery." He was admitted a Privileged Surgeon at St. Colme in 1750, and died 15th May, 1753, survived by his wife, whom he had married 14th November, 1747. One cannot help wondering if the family of this doctor was not related to the Mme. La Marre, Rne du Fanbourg St. Denis, the *sage femme* to whom, some years later, Casanova entrusted the unfortunate Mme. della Croce, and in whose house her son was born on 17th October, 1767. ["Mémoires de Casanova," vii. 358-361.]

[21] Horace Walpole's statement that "the principal evidence for the Douglas was convicted of perjury in another cause in France," has been thought to refer to this witness, M. Menager. In the Trial, before the Court de Chatclet in Paris, of Jean François de Molette, Comte de Morangiés, who was accused in 1772 of extorting money from a widow and her son, M. Menager was certainly imprisoned for perjnry; but, on the collapse of the case against M. de Morangiés and his acquittal, he was of course released. [*Vide* Horace Bleackley's "The Story of a Beautiful Duchess," pp. 243-340-1].

attendant on the baptism, as well as from an accident at Lady Wigton's, that a circumstance stated in evidence occurred, namely, that Lady Jane lost her hope of being again a mother.

In October, 1748, Colonel Steuart, it was stated, went to Paris accompanied by Baron Macelligot and Mr. John Hay, to see the younger child there, and returned to Rheims on 11th November, when he wrote to his eldest son by his first marriage, John Steuart, that Lady Jane wished him to join them in France to make the acquaintance of "your brothers." It was alleged that he repeated his visit to Paris in the spring of 1749, and then was placed in considerable money difficulties by the sudden withdrawal by the Duke of Douglas of his sister's (Lady Jane's) pension. Lady Jane at once begged for assistance from her uncle, Lord Mark Kerr, but without success, and then applied to Lord Morton, her old friend, and he at once—happily for her—sent her £350.

In November, 1749, on receipt of Lord Morton's loan, they again, accompanied by Mrs. Hewit, went to Paris to recover the younger twin, Sholto, and it was then asserted by Archibald Douglas's opponents that, passing under the name of "Duverné de Korgue in Ireland," Colonel Steuart, his wife, and Mrs. Hewit, who was, according to the story, styled his sister, obtained the child of Sanry, a tumbler at a fair, and carried him off to Rheims in November with them.

After they had returned to Rheims with the child Sholto, Colonel Steuart, Lady Jane, Mrs. Hewit, the two boys, and the maids set out for England on 29th November, arriving in London in Christmas week (o.s.). Lord Mark Kerr at once visited his niece, though on rather indifferent terms with her, and asked her to dine with him on Christmas Day.

Lady Jane and her family lodged at Mr. John Murray's, in St. James's Place, and then in Chelsea until August, 1752, but Colonel Steuart was from debt confined very soon to the Rules of the King's Bench prison, and affectionate letters, which always mention their children, and express anxiety for their welfare, constantly passed between husband and wife.[22] The

[22] It was the collected edition of these letters, all of them pathetic and sympathetic, which converted many people, including Thomas Carlyle, to the belief that "the Douglas Claimant" was really the son of Lady Jane Douglas. ["Frances Lady Douglas," *Blackwood's Magazine*, October, 1908.] They are given in Appendix III.

Duke of Douglas, however, did not feel that the news of their birth had brought him nearer to his sister. Lord Mark Kerr, his uncle, wrote that he called her children "in a jocular way Pretenders," and there is no doubt that later he and those about him discredited the story of their birth altogether.

Lady Jane received reports that her children's birth was disbelieved in 1750, and desiring to disperse "these rising calumnies," wrote, not to Madame Le Brune or M. Pier La Marre, but to Madame Tewis, their friend at Aix-la-Chapelle, desiring her to certify what she knew about her pregnancy there. Madame Tewis, along with two other persons, made a declaration, in answer to this request, on 5th August, 1750, but it did not reach England until after Lady Jane's death. On 15th May, 1750, Lady Jane, now in great straits for want of money, in a letter to Mr. Pelham, desired him to procure some mark of His Majesty's bounty on the ground of necessity—"I am destitute, presumptive heiress of a great estate," she wrote, "with two children. I want bread." This touching appeal was successful, and Mr. Pelham was able, on 3rd August, to inform her that King George II. had granted her a pension of £300 a year. She was presented at Court to the Prince and Princess of Wales, the Duke of Cumberland, and the Princess Amelia, and, being now out of want, went a little into society. The Countess of Home, Lady Tyrawley, and Lady Irvine paid her much attention, and at the house of Lady Tyrawley she met the beautiful Miss Gunnings, one of whom was soon to become Duchess of Hamilton and mother of the opponent of her acknowledged son, Archibald Douglas.

In 1751 her friend the Countess of Wigton returned to England, and, in deference to her representations, the younger child Sholto was re-baptised at her house at Hampstead by, this time, the Rev. Mr. Colvil, a Presbyterian minister, for Lady Jane stated now that she considered the difference between the Churches merely formal. On 14th May, 1752, Lady Jane was sent a letter from Mrs. Carse in Scotland informing her that Mr. Archibald Stuart, the Duke of Douglas's agent, had gone to Douglas Castle with five clerks, "he having a great deal of business there," and that Mrs. Stuart, his wife, when asked how the Douglas family and name could soon,

as was reported, become extinct, when Lady Jane had two fine sons, "Ha," says she, "they'll never be owned by his Grace; and all that's possible to be done against her and hers will soon be put in execution." Lady Jane, on hearing this intention of her brother, at once decided to go to Scotland, and was confirmed in this by a letter from her friend, Lady Katherine Wemyss, to whom, as we have seen, she had originally denied her mar .age, which said, "I certainly don't think, were you in our country, his Grace could stand out long; his dear little nephews would plead your excuse."

Lady Jane, accompanied by the two children, Mrs. Hewit, and Isabel Walker, set out for Scotland in the beginning of August. She arrived in Edinburgh on the 17th, and stayed with the Hon. Mrs. Maitland in Bishop's Land, "at a pretty easy rate, it being the vacance,"[23] until the middle of October, when she removed to Hope Park, "out of the smoke of the town." She saw Mr. William Loch, who had for long looked after her business affairs, and he had an account of the children's birth from her, and she also interviewed Lord Prestongrange, who is reported to have told her that if she and Mr. Steuart acknowledged the children there was no further proof necessary, and that, if any person challenged their birth, it behoved them to prove that they were not Lady Jane's children. On the 19th of October she again wrote a touching letter of appeal to the Duke of Douglas, but without any result.

On the 16th November Lady Jane attended, taking with her the two children, an assembly in honour of the King's birthday. She wrote, "I cannot really express the warm and kind reception we met with from the whole assembly, which was extremely crowded. Archy and Sholto behaved to a wonder, and were caressed beyond measure." On the other hand she had several unpleasant experiences. The Duchess of Hamilton refused to see her on account of the Duke of Douglas's enmity to his sister. Lady Stair visited Lady Jane, who had a conversation with her about the birth of her children, which she said should have been in "a royal manner," and she is said to have talked to Mrs. Menzies, who afterwards

[23] Fraser's Red Book of Grandtully, i. cxcii.

stated that Lady Jane knew that her brother had called the children "nunnery children," but that she had in her pocket "a letter from the physician who had laid her."

Lady Jane, taking Isabel Walker and two other servants with her, made a final attempt to see her brother and soften his heart by a personal appeal by presenting the children before him. They went to Douglas Castle and desired the Duke to be apprised that they were there. The butler took the message, and while the Duke was deliberating what to do, his favourite, White of Stockbriggs, gave orders that they were not to have access. The Duke afterwards regretfully asked the butler if he had seen the children, and he said he had carried them both in his arms, and that "the eldest was black, and the youngest, Sholto, was as like Lady Jane as ever child was like a mother," and this likeness was very generally noticed by many witnesses.[24] Leaving her children in Edinburgh, she, hearing that her pension might be stopped, presumably on the ground of fraud, set off to London on the 17th of April, and before she got there had a fresh grief by hearing of the illness and death of the younger child, Sholto, from whom she had just parted. Her grief at the loss was very great and real, and, in spite of everything, she notified the event to the Duke of Douglas. Lady Jane never seems to have got over this sorrow, which greatly affected her health, and as soon as she could she returned to Scotland, where she had left Archibald Douglas. Rapidly failing in health, she made her will on 12th November, made a final appeal to the Duke of Douglas, received the sacrament in the Presbyterian form in New Greyfriars' Church, though in great weakness, and, acknowledging Archibald as her child, died on 22nd November, 1753. She was buried quietly, at her brother's expense, at Holyrood beside her mother in the Belhaven tomb there, and the child was prevented by the Duke of Douglas from being present at the funeral of the lady whom he knew as his mother. Though remaining with Mrs. Hewit at first, he was adopted by Lady Jane's old friend, Lady Schaw,[25] and

[24] Journal of Lady Mary Coke, iii. 23 (privately printed 1892).

[25] Margaret, daughter of Sir Hew Dalrymple of North Berwick, born 6th March, 1683, died 8th October, 1757: married 1700 Sir John Schaw of Greenock, Bart.

carefully tended by her for Lady Jane's sake until she died in 1757, Colonel Steuart being still in distressed circumstances.

On Lady Schaw's death, her grandson, the Earl of Cathcart, took young Douglas under his care, and this was at a time when he had no hope of the Douglas succession, as, in 1754, the Duke of Douglas settled his vast estates upon his heir male, the Duke of Hamilton, and enlarged this settlement in 1757.

In the years 1758 and 1759 two events happened which made a great charge in the fortunes of Archibald Douglas. The Duke of Douglas, so long unmarried, unexpectedly married in the former year Miss Margaret Douglas of Mains, a *ci-devante* beauty and a woman of great force of character, who at once began to turn the Duke's attention to the desirability of inquiring into the truth of the birth of Lady Jane's son. In 1759, moreover, Colonel Steuart, by the death of his brother, became Sir John Steuart of Grandtully, Bart.[26] His first act of administration of this newly acquired estate was to grant a bond of provision for 50,000 merks to Archibald Douglas, *nominatim* as his son by Lady Jane Douglas, and he was with difficulty prevailed upon not to increase it whether his estate could support the burden or no; and it must be pointed out here that there was never any attempt on the part of the Grandtully family to plead or deny that Archibald Douglas was not Sir John's younger son, though as such he was one of the next heirs of entail to that estate, as well as one of the possible heirs to the baronetcy.

What followed is soon told. The Duchess of Douglas's ceaseless endeavours and constant friendship for Archibald Douglas wrought (though for a time it caused between the Duke and Duchess a temporary separation) a complete change in the Duke's attitude. In 1759 the Duke made a post-nuptial contract of marriage, where the remainder of his estate, failing the heirs of his body, was to his own nearest heirs. On 5th January, 1760, he revoked the settlement in favour of the Duke of Hamilton. On the 11th July, 1761, he executed a deed in favour of the heirs male of his body, whom failing to the heirs of the body of his father, whom failing to Lord

[26] He died in June, 1764, having married thirdly, in 1761, the Hon. Helen Murray, fifth daughter of Alexander, Lord Elibank, who survived him forty-five years.

Douglas Hamilton, and by a separate deed named as his heir "Archibald Douglas Stewart, a minor and son of the deceased Lady Jane Douglas," his sister, and appointed as his tutors the Duchess of Douglas, Charles Duke of Queensberry, and others. The Duke himself died on 21st July, 1761, ten days afterwards, and it was in the following September, 1761, that Archibald Douglas or Steuart[27] was served heir to him, as his nephew, with the legal results we have already narrated.

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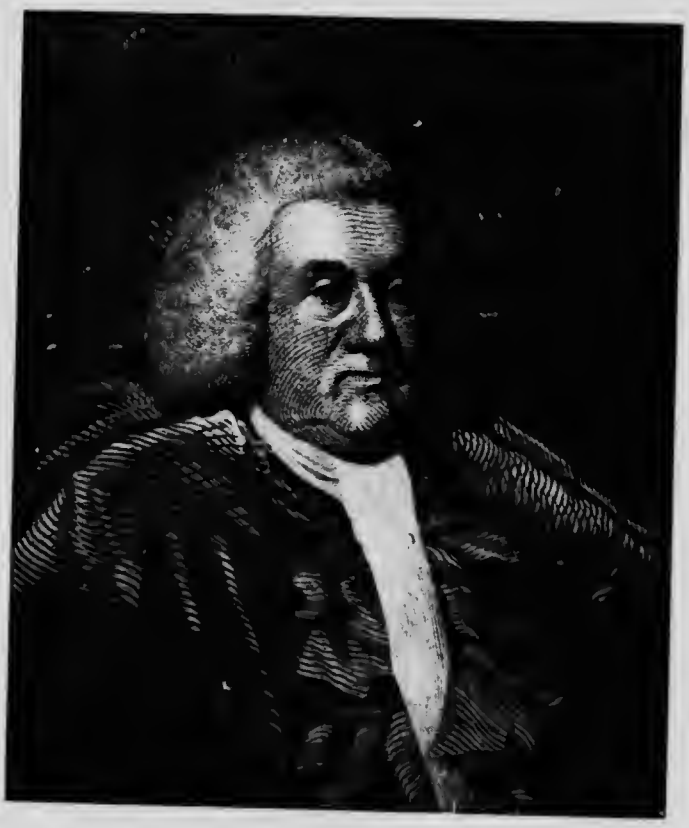
[27] Archibald Douglas, the successful litigant, bore his good fortune with the same equanimity with which he had borne his bad luck, and gained universal esteem. He married first, 13th June, 1771, Lady Lucy Graham, only daughter of William, second Duke of Montrose, who died 13th February, 1780. He married secondly, 13th May, 1783, Lady Frances Scott, sister of Henry, Duke of Buccleuch and Queensberry, who died in May, 1817. He was on 9th July, 1790, created a British peer, with the title of Lord Douglas of Douglas, and died 26th December, 1827. His eldest daughter, Jane Margaret Douglas, married in 1804 Henry James, Lord Montagu of Boughton, and it was to her daughter Lucy Elizabeth, Countess of Home, and her representative, the present Earl of Home, that the Douglas estates descended, their right having been established by the final decision of the House of Lords in "The Douglas Cause."



Lord-President Dundas.

Judgments in the Douglas Cause pronounced by the Court of Session of Scotland.[1]

Tuesday, 7th July, 1766.

The Lord President[2]—Since it may happen, my Lords, that this great cause may, by a division of your Lordships, come to my casting vote, I think it proper now to give you my opinion, and to lay before you fully the reasons of it. In order to bring the case distinctly before your Lordships, I shall first state the principles upon which the decision will proceed; and these are contained in the 38th page of the defendant's memorial, and which is there exprest in the following words:— "The memorialist does not pretend to set up the acknowledgment of parents as of itself a *probatio probata* of filiation, nor is there the least occasion to do so in the present case; but he contends that a proof of such acknowledgment, or even of habite and repute, is good presumptive evidence, and sufficient ground for a jury to serve him. Such service may indeed be challenged upon evidence offered, that the child is supposititious; but so long as clear and undeniable evidence is not brought of the challenge, the verdict and proof on which it proceeded will stand in full force." **Lord President**

In considering this great cause, I must notice that there are two kinds of evidence; 1st, direct or demonstrative, which excludes the *possibility* of the case being otherwise than it is represented by that evidence; 2nd, circumstantiate or moral evidence, which is all that we can expect in such cases as this before us; and therefore I lay it down as a rule to take the evidence without enquiring into the bare possibility of the thing being otherwise. The simple fact before us resolves into this question, Is the defendant the son of Lady Jane Douglas or not? And I am sorry to say it, that my opinion in this great cause, after the utmost pains and attention which I could bestow,

[1] These Speeches have been edited, unnecessary italics suppressed, and an attempt has been made to render the spelling of the names uniform.

[2] Robert Dundas of Arniston, born 1713; Lord President, 1760; died 1787.

Lord President

is clearly against the defendant; and that by the evidence brought, I am fully and clearly *convinced*, that he is not the son of Lady Jane Douglas. If the story shall be involved and attended with concealment and mystery, and the tale told by the parties neither consistent nor uniform, this should awaken the attention of judges, and lead us to weigh the whole of these circumstances in the balance of justice, which I'm afraid in the present case will weigh down this defendant. Let us only consider the conduct of Lady Jane and Sir John, and see whether *this* will quadrate with the notion of a *real* birth, or a design of *imposture*. It is clear to me that their conduct is, upon the supposition of a true birth, improbable to the last degree. We see Lady Jane when very far advanced in her pregnancy, undertaking a long, tedious, and fatiguing journey, and at the same time concealing from the generality of her acquaintances the object of that journey, though it appears that some of her friends, such as Mr. Hepburn of Keith, knew that Paris was the real place of destination; and yet notwithstanding this, we see her lingering away her time at a most critical period, for a delicate lady with child, at Liège, Sedan, and Rheims. There is a strange inconsistency in the story of the pregnancy from first to last. Why not discover it in a more solemn manner to her friends? Why ostentatiously tell it to one, when with art she concealed it from another? Why was the marriage and pregnancy so purposely kept concealed? and why was she ashamed to disclose it to all the world? Or if she was near the time of her delivery when at Rheims, why did she not lay in there, where she could have so able assistance? or why, if she had resolved to leave Rheims and to go to Paris, did they leave their two maidservants, Isabel Walker and Effie Caw, behind them at Rheims? By way of excuse for their leaving Rheims, where they might have had the best assistance, Mrs. Hewit has told us the wonderful story of a lady (whom she would have us believe was Mrs. Andrieux, though it is clear it was not she) giving Lady Jane the advice to leave Rheims on account of the unskilful practitioners there; and this story, according to Mrs. Hewit, was told Lady Jane about the 6th of June, and yet she does not leave Rheims till the 2nd July. And as an excuse for leaving the servant maids at Rheims, the same witness has told us that they had no money to carry them to Paris, though it is clear they might have been transported

thither for the paltry expense of twelve shillings. But if their money was run short at Rheims, and Paris was the place of their destination, why linger at Rheims, and be spending their last shilling in a place where, if the critical hour overtook her, she might have been in so great distress for want of able assistance? I beg leave to observe another thing here, which is, that Mrs. Hewit has told us that when they got to Paris they were run to their last guinea, whereas this is positively proved to be false by the letter of credit given them by Messrs. Khar and company, at Aix-la-Chapelle, upon Messrs. Paniers, bankers in Paris, for 1979 livres, and which letter of credit was payable either at Rheims or Paris, or any where else, when they should please to draw for it. Here it is worthy of remark that both Sir John and Mrs. Hewit have said that they got this money only upon the 10th July, the very day of the pretended birth. No mention at all of this at Godefroi's; but if we consider the reason of fixing upon this special day and saying that the money was paid, when in Le Brune's, we shall find the falsehood necessary to carry on the story. I have said there were concealments and mystery in this affair from first to last; and I must now recall your Lordships' attention to a train of this kind on the part of Sir John and of Lady Jane, both when at Rheims and at Paris. It was amazing, that when at Rheims, and when the pregnancy was by their account so much advanced, that a delivery next day would have been no surprise, that they should have concealed the whole affair from Mr. Mallifer and his family, persons of high rank and character, and who seem to have shown great respect towards them, and revealed it to so many others. When an Abbé Hibert is daily walking with her, and by accident let into the secret, why was the same degree of confidence not shown to Mr. Mallifer and his family, from whom they were to have letters recommendatory to Paris? Why not acquaint Mr. Mallifer of the *real* design in going to Paris? at least, why give him a false pretence for their going to Paris, which is clear from Mr. Mallifer's letter to Mons. Godefroi at the Hotel Chalons, wherein Mr. Mallifer recommends them to Mons. Godefroi as Scots people of quality "going to Paris *to buy things*"; and therein begs of him the favour to take care that they be not imposed upon.

Lord President

When they arrive at Paris, the same concealment and mystery runs through the whole of their conduct. Does Sir John call

Lord President for his countrymen there? Does he call for Sir William Stewart, or for the Chevalier Johnston, Mrs. Hewit's cousin german? No: He keeps himself entirely free of the haunts of his countrymen, though, if they were run to the last guinea, as Mrs. Hewit pretended, surely never man stood more in need of a friend. This is a strong circumstance indeed, and is not at all redargued by any thing the defendant has said upon the subject, more especially when we consider Sir John Steuart's remarkable fondness for his countrymen. Even after the 10th of July, when their second child was, according to their account, left at nurse with a woman whom they knew nothing about, and under the care of Pierre La Marre, whom they themselves acknowledge they did not know where to find; would they not at least have told the Chevalier Johnston of this? And before they entrusted their sickly tender child into the hands of absolute strangers, would they not have instructed him to go and see it, or at least to have an eye upon the management he was to be under? When to all this I join, that all the letters wrote at that time by them from Paris to Britain, and elsewhere, are falsely dated from Rheims, and have a direct tendency to make every mortal believe they were then at Rheims, what conclusion can I possibly draw but that a story so unfairly told cannot be connected with truth? Indeed the falsehood appears so glaring, that it at once lays the foundation for its own detection. I have, in what I have said formerly, chosen to dwell mostly upon the proofs arising from the *res gestæ*, or conduct of the parties themselves; because I must own, that I do not rest very much upon many parts of the *parole* evidence in this cause, either upon the one side or other. I go on therefore to observe Sir John Steuart's own accounts of the matter, and the falsehoods and forgeries practised by him in order to gain belief to his story. Leaving the story of Pierre La Marre to be talked of afterwards, the first account given by Sir John Steuart of this matter, was in a note written by his own hand to Lady Schaw in the year 1756, wherein he expressly avers the delivery to have happened in the house of Madame Michelle, and at the same time Mrs. Hewit writes the Duke of Douglas a letter, expressly fixing upon the same house as the scene of the birth. There was then no mention of a Le Brune's, and indeed this was never the house pitched on till after they both knew, that upon much enquiry by Sir James

Stewart and Principal Gordon, the house of Madame Michelle had been found out, and that no delivery had happened there. Then and no sooner was it, that Sir John Steuart alters his tone, writes a second note, transferring the scene to Le Brune's in the Fauxbourg, and rearing up there the same number of persons as were said to have been present when the delivery was averred to have been in Michelle's; and in this story does Mrs. Hewit afterwards join with Sir John. Here come in properly the famous four forged letters from Pierre La Marre, which appeared first to me upon Sir John Steuart's judicial declaration before your Lordships: it will be remembered, that it was upon cross-questioning him, that the improbable account which he there gives of these letters, led to the full discovery of the forgery. But why forge letters to support the truth? Could not La Marre himself be got? or might not certificates from him have been easily obtained? But, says the defendant, though I plead the acknowledgment of my parents as the legal presumption of my birth, yet I do not adhere to the circumstantiate account given of that birth by my parents. Strange indeed! that the acknowledgment of the parents should be pleaded by the son, and yet that that son should tell the Court that his father had averred falsehoods. It is indeed no wonder that the defendant should endeavour to shake himself loose of this declaration, because it is no doubt the foundation of the strongest parts of the evidence against him. In this, however, the hand of Providence remarkably appears, ever watchful over the interests of truth, and discovering the train of falsehoods by means of those very persons who at first invented them. Who but the parent could be examined in this cause upon the particulars concerning the birth itself? Who knew any thing of the matter but Sir John and Mrs. Hewit only? For the many falsehoods contained in Sir John's declaration, and more particularly for the story told by him of Pierre La Marre, which is proved to be utterly false in every single instance, the failure of memory upon the part of Sir John, as is alleged, is by no means a sufficient excuse; for Sir John is exact and pointed in the whole of that account: more pains could not be taken by judges than were taken with him upon that occasion: Not only were the questions put to him in writing, and he allowed plenty of time to give his answers also in writing, but even after the first day's examination, when he had signed the

Lord President

Lord President declaration so far as emitted, we then allowed him to retract any thing in which he had been mistaken, but he never once retracted either as to the cause of his acquaintance with La Marre, or his being a Walloon, or indeed as to any other of the particulars of that long story told concerning La Marre.

Leaving here Sir John's declaration, I proceed now to consider Lady Jane's account of the matter, which she gave to the late Countess of Stair. It is true, the Countess herself being dead, we can have no other proof of this account given by Lady Jane, but what is contained in the oath of the Hon. Mrs. Primrose, the Countess's own daughter, who has expressly told us the whole conversation as it was related to her by her mother the Countess of Stair herself. We have no reason therefore to doubt this evidence, when we consider the sensible and prudent behaviour of the Countess of Stair upon all occasions, which would naturally lead her to talk with Lady Jane of the extraordinary story of the birth. What then appears upon the oath of Miss Primrose? Lady Jane giving as a reason for her not coming to Britain to be delivered of these children, That she was sick at sea, and that that might have endangered both her life and that of the children she was pregnant with: Giving as a reason for the extraordinary step of leaving Rheims, where she could have had such able assistance, the very wonderful story about the unknown lady, who gave her advice to do so, on account of the danger of her being abused by the unskilfulness of the practitioners there. And when Lady Stair with great propriety noticed to Lady Jane the air of concealment, and of mystery attending the delivery at Paris; and that all things considered, her delivery should have rather been in a royal manner; what excuse does Lady Jane make to Lady Stair? Says she, that was not possible for me to do, because I was not in Paris above half an hour or an hour before the delivery happened. What can be a more false account of the matter than this? And to what can we attribute the answer given by Lady Jane, but that she was suddenly struck with the propriety of the observation made by the Countess of Stair as to her delivery, being so concealed and mysterious, and that it should rather have been after the royal manner. In which last observation, I suppose, the Countess of Stair alluded to the famed story of Constantia, wife to Henry the Second, who hearing that there were suspicions propagated, as if she intended to

procure a false birth, caused erect a royal tent in the midst of the army encamped in the plains of Palermo, and was there publicly delivered of her child. Lord President

I come now to another particular of the conduct of Sir John Steuart and Lady Jane, and that is their never doing any thing to prove the birth, after they were acquainted of the doubts and suspicions which were entertained concerning it.

It appears from the oath of Walter Colvile, cousin to Mrs. Hewit, That he heard these reports at a very early period, about three or four weeks after he received the letter acquainting him of the birth; and it appears also from clear and undoubted evidence, That Lady Jane and Sir John were very early acquainted of these disadvantageous reports. Upon being so acquainted of these reports, it was surely natural for innocent people to have produced a proof, in order to vindicate their own character and the interest of their children; but what proof did they ever produce? Four forged letters, and Mrs. Hewit's oath, which I believe to be false. Various pretences have been used for their not getting these necessary proofs. Lady Jane thought herself affronted, and her honour attacked. True, it may be so—But why not, then, do something to defend that honour and to ascertain without doubt the birth of her children for whom she had so great regard? Why was a Madame Tewis applied to, to prove the pregnancy, when they had at Paris a Pierre La Marre who was the man-midwife, and a Madame Le Brune, and her daughter who were both witnesses to this alleged delivery? Or if they wanted fully to ascertain the pregnancy by the best evidence that could be expected, why apply only to Madame Tewis, who was their first landlady at Aix-la-Chapelle, and whose house they left as early as the 5th January 1748, when they had Madame Scholle and Madame Gillesen, with the last of whom, particularly, they lodged until the 21st May, 1748, when they set out for Paris, and to whom, therefore, the symptoms of pregnancy, and more particularly the bulk of Lady Jane, must have been more apparent than they possibly could have been to Madame Tewis.

Put, then, all these circumstances in the conduct of the parties together, and what can we think, but that the story is not true? But yet, what I have hitherto said, by itself, is not sufficient to prove the reasons of reduction, for still the defendant may allege, That it is possible, that he might have

Lord President

been born in the house of a Madame Le Brune upon the 10th July 1748. No doubt it is still possible, but then the supposition of the defendant is unsupported by any evidence whatever, and is also fully contradicted and redargued by the plaintiffs. However, we shall proceed to examine this matter more accurately; and in the first place, consider the proof brought as to the *house*. And upon this point, I am clear, That the defendant has not only failed in proving the existence of the Madame Le Brune, in whose house the delivery is said to have happened, but that the plaintiffs have brought sufficient evidence of the absolute non-existence of such a person. There is indeed one of that name discovered, who was a *Garde Malade*, or sick nurse, but does this person in the least answer the precise and pointed description given of their Madame Le Brune, both by Sir John Steuart and Mrs. Hewit? not to say that it is highly incredible, That a Lady of Lady Jane's high rank should, after having come to Paris to be delivered, take up her residence in so wretched an apartment as those of the Garde Malade's, when it is in proof they had money enough to hire more respectable lodgings. But, besides all, there is another sufficient reason to prevent the application of this Le Brune, who was the Garde Malade, to the present question, and that is, that this woman herself was only a lodger, in the house of one Madame Travers. Sir John has said, That the Madame Le Brune, in whose house the delivery happened, was recommended to him by Mons. Godefroi, whereas Godefroi absolutely denies that he ever gave such a recommendation. Sir John has also said, That she was recommended to them by La Marre; but this is incredible, because it is acknowledged by Sir John himself, That he never saw Pierre La Marre at the house of Madame Le Brune till the *day* of the delivery.

I come now to another material particular in this cause, and that is, the very suspicious appearance of Sir John Steuart and Lady Jane at the time of their going to the Hotel D'Anjou kept by Madame Michelle. When they come there, which, according to Mrs. Hewit's first account, was upon the 9th day after the delivery in Le Brune's, they appear there without either nurse or child; and what follows? they are to go next day to the country to bring in their child; accordingly they do go to the country, and return again with a child and a nurse, the child almost starved to death for want of milk,

and the nurse a poor wretched thief, who appears to have been suddenly picked up upon the streets of Paris, upon some emergency when hurry and confusion would not allow them time to get a better one. In short, I would try to find one unsuspicious circumstance, but cannot. The time of the delivery is fixed for the 10th July. Here, the letters wrote by Sir John and Mrs. Hewit, and dated the 10th and 11th of July, without making any mention of the delivery at all, fall properly to be considered. And whatever may be the effect of the defendant's arguments as to the rest of them, yet it stands acknowledged, That there was one of those actually wrote upon the tenth. And if we can fix one to be of that date, how is it possible to imagine, That this should have taken no notice of the delivery, or at least of the approaching delivery, when by Mrs. Hewit's account, Lady Jane had been ill the whole night before the delivery? When to this circumstance of the letters, we add the different accounts given by Mrs. Hewit about the *time* between the delivery and their removal from Le Brune's; when we see her contradicting herself upon this particular; when we find her swearing solemnly repeated times, That it was upon the ninth day after the delivery, that they removed from Le Brune's; and afterwards in her letter to Mr. Harper, the minister, correcting this, and fixing the sixth day after the birth, as the time of removal from Le Brune's to Michelle's, can we think all this conduct consistent with the truth? But still, says the defendant, in spite of the evidence now produced, the delivery may be true as it is set forth to have happened; as there is no piece of evidence which directly excludes the possibility of its having so happened. But in my opinion there is such evidence produced by the plaintiffs; and what I mean is Godefroi's books, confirmed by the united testimony of him and his wife. The books themselves, in my opinion, remain liable to no solid objection, and deserving the greatest credit. But when to this we add their oaths, in which there appears no suspicion of perjury, and in which they set forth so strong a cause of remembrance as Mons. Mallifer's letter, recommending them to their house, can we possibly believe that all this is a mistake? If we do so, it is supposing every thing on one side, against clear and convincing evidence brought upon the other side. I told you before, that I reserved the evidence as to

Lord President

Lord President

the existence of the Pierre La Marre, to be talked of afterwards. I will notice that now, and I must say, That it was the evidence brought by the defendant, that has satisfied me to be of opinion, That the story of Pierre La Marre's being the accoucheur is a mere fiction. For what is the design of the defendant's evidence upon this head? is it not to redargue that of Sir John Steuart, which is just in so many words telling your Lordships, That you are not to believe his accounts of La Marre, but that the defendant has now found out another La Marre. As to the oath of Menager, wherein he relates a conversation with La Marre, of his (La Marre's) having delivered a foreign lady of twins, whatever truth be in it, it cannot suit with the account of Lady Jane Douglas's delivery. In point of time, it is clearly long prior to her delivery, and is fixed to have been in 1747. This circumstance appears so convincing upon this point, that there is no need to bring out any other circumstances, of which there are many. Having now run through most of the capital points in this great cause, I shall speak a little of the enlevement of Mignon and Sanry's children. The first of these certainly happened very oddly, at the very time when Sir John and Lady Jane are able to give no account of themselves, and when they appeared at the house of Michelle, under such suspicious circumstances as I have formerly noticed. The whole story told by Sir John Steuart and Mrs. Hewit, about the manner of their going out to bring their first child to Michelle's, is inconsistent, contradictory, and suspicious throughout. Will they only give a reason why they did not go to Mons. Godefroi's upon their return to Paris in 1749, in order to bring away their second child: or can they so much as tell us where they were in Paris during the time they were searching after their second child? No—They cannot tell where they lodged, it was somewhere or other in Paris, but of that place, or street, or house, they can give no sort of description. At this very critical period, was the child of Sanry stole from its parents, under a false pretence? And the foreigners, who so took the child, told its parents they would hear of them at the inn called Croix de Fer. I do not say, that the plaintiffs have brought the fact of the Enlevements directly home to Sir John and Lady Jane; I only say, that alongst with such a concatenation of other circumstances they have considerable weight upon my mind.

Lord President

These are the material things upon which I ground my opinion, and I shall conclude with a few general observations upon this cause, as I think the conduct of both parties in their management of the cause has been blameless. As to the cry about the plaintiffs changing their ground, and resorting to the evidence of Mons. Godefroi's books, after they had founded on Michelle's, I think it nothing to the purpose. 2dly, I have given all the weight to the tractatus parentum, pleaded for by the defendant, which I think it deserves. 3dly, Though I do not choose to enter upon the motives that might induce Lady Jane and Sir John to commit this crime, yet I cannot but observe, That their professed view seems to have been, by means of false children, to get possession of the estate of Douglas; a great part of which, it is clear, Lady Jane thought would at any rate descend to her and her children. 4thly, As to the death-bed declarations, upon which so much weight has been laid by this defendant, I am old enough to have seen, That where persons have once committed desperate crimes, they too often carry them on even to death: perhaps hoping for that mercy from their Maker, which the enormity of their crimes would not allow them to receive here. 5thly, As to the pregnancy, I do not think the proof brought in support of this by the defendant, sufficient to balance the whole of the other proofs brought by the plaintiffs.

Upon the whole, I am clear *for sustaining the reasons of reduction*.

Immediately after the Lord President had finished his speech, it was agreed by their Lordships, That they should deliver their opinions according to seniority, and therefore Lord Strichen, the senior judge, was called upon to give his opinion.

Lord Strichen

Lord Strichen[1]—The proof of the pregnancy strikes me so strongly in this cause, that I own I cannot get over it. And more particularly, I lay a great deal of weight upon the Earl of Crawford's letter to the Duke of Douglas upon this subject. I cannot but think that pregnancy may be proved, so as to infer an absolute certainty of the fact. We know the seasons

[1] Alexander Fraser of Strichen, appointed, with the title of Lord Strichen, 1730; died 1775.

Lord Strichen of the weather by general observation, and why may not the advancement of pregnancy be ascertained by similar observation? I see it proved beyond controversy, That Lady Jane gradually encreased in her size: Isabel Walker depones to this so explicitly, and I believe with so much honesty, that I own it is a thing I cannot get over. If then pregnant, it is clear, that she must have been delivered, or else have had either a miscarriage or an abortion, which, if so, it was undoubtedly incumbent on the plaintiffs to prove it, as the pregnancy once fully ascertained, lays the presumption for a full birth. This being the case, I cannot think that the defendant is bound to prove his own birth. This must rest upon the acknowledgment of his parents, and upon their uniform *tractatus* or treatment of him as their son. It is incumbent upon the plaintiffs to disprove the birth by clear and positive evidence: and none such, in my opinion, have they been able to bring. On the contrary, the defendant, besides the direct and positive testimony of one witness, has brought an incredible weight of circumstances corroborative of the truth of his birth. If to this we add, that the whole story of imposture as set forth by the plaintiffs is highly improbable, we shall soon find the balance incline to the defendant. Let us examine this story of the plaintiffs, and see if they have probability on the side of their hypothesis. Was it credible, that when Lady Jane and Sir John were so poor, that it is proved they could scarcely maintain themselves, they should burden themselves with the danger of so much guilt; and the more poverty, provide for the children of other people? Was it credible, that when *one* child might have served the purpose, they would have burdened themselves with two? or that they should have taken a weakly tender child to support a stronger one? Is it to be believed, that after they had got the imposture of the first child accomplished, they would have remained so long in and about Paris, appearing in public, and exposed to the view of every person that might be in search of them? or upon leaving Paris, is it credible, That they would have gone to Rheims, and remained there for the space of fifteen months? It was surely much more natural for them to have left France altogether, after having committed so great a crime. But, not only do they remain quietly and peaceably so long at Rheims, but they even go back to Paris a second time, to pick up a second

child; which second child, when they did find, corresponded exactly to the accounts which they had given of him fifteen months before they saw him, or knew any thing about him. Such is the story as set forth by the plaintiffs; improbable it is, surely, to the last degree. Lord Strichen

On the other hand, the conduct of Sir John Steuart and Lady Jane Douglas is very consistent with the notion of a true birth. Much has been said about the false accounts given by Sir John Steuart, concerning the particulars of this birth; and the inference drawn from Sir John Steuart's account of the matter, is, that the defendant is not his son. But I humbly apprehend, that had Sir John at the time of his declaration, even acknowledged that the defendant was not his son, this would not have been sufficient to have set him aside, after he had attained the possession of his estate, in consequence of his own acknowledgment of him as his son. Upon this point, I refer to the great Lord Stair, who expresses himself in the following words, "Filiation is presumed from marriage, whereby the children are presumed to be the lawful children of those who are proved to have been married; which is yet more pregnant and favourable on the part of the children, to give them the right of aliment and succession, and is the probation of the marriage betwixt those who are presumed parents, which is so strong a presumption,[2] That the mother acknowledging another father, than he that is married to her, will not prejudice the children, much less will the assertion of the father, that the children are not his, though he condescend upon another to be the true father: Yet if both the married persons do acknowledge, That the child is not procreate betwixt them, but by another as father, who should also acknowledge the same and own the child, it would elude the presumption; but if both married persons had owned and treated the child as theirs, the concurring testimonies of all the three would not prejudice the child in the rights of succession to his reputed father and mother."

The conclusion which we draw from any falsehoods and contradictions, which may appear in Sir John's account of the matter, is, that the defendant is not his son; but we see, upon the above great authority in law, That had Sir John and Lady

[2] Lord Stair's Institutions of the Laws of Scotland, Book 4, Tit. 45.

Lord Strichen Jane both owned that he was not their son, after having treated him uniformly as such for any length of time, he must, nevertheless, have been maintained in the possession of his state. This being the case, I shall make a few observations upon the other parts of the proof brought by the plaintiffs, no part of which, excepting that by Mons. Godefroi's books, and his oath, is totally inconsistent with the truth of the birth, or excludes the possibility of it. It is merely of the negative kind, which can seldom redargue direct positive testimony. I apply this observation, particularly, to the proof attempted to be brought of the non-existence of a La Marre and a Le Brune, against which negative proof, we have the direct and positive testimony of Sir John Steuart and Mrs. Hewit, That Le Brune's house was the *place* of the delivery, she herself one of the witnesses to it, and La Marre the *accoucheur*. The defendant has shown clearly there was a La Marre, an accoucheur in Paris at the time, and that he delivered a foreign lady of advanced age of twins, who (as La Marre said) would be people of great wealth and rank in their own country; and that the one of them was strong and healthy, the other weak and sickly. Taking, then, all these things together, it is not only possible, but highly probable, that the whole account given by Sir John Steuart and Lady Jane Douglas is true. The plaintiffs lay great stress upon Godefroi's books, together with the oath of him and his wife, and assert, That they have thereby proved the *alibi* from the fourth to the fourteenth July. I must here observe, that we ought to have had the books themselves produced by the plaintiffs, and that the producing a notarial copy of them is not enough. But, however, let us look into the entries made in these books, we shall see so many blanks, so much indistinctness and inaccuracy, that without believing implicitly in Mons. Godefroi's memory, we cannot pay regard to them. They have sworn indeed, positively, That the blank article of the 4th of July, does relate to Sir John Steuart and his company. But in this, it appears to me, they are very probably both mistaken. But, however that be, the proof by their oaths singly supplatory of their books, which I see are liable to so much error, will not be sufficient to set aside the whole evidence, direct and circumstantiate, which the defendant has brought in support of his birth.

Much stress has been laid upon an alledged detection of

falsehood on the part of Sir John Steuart and Mrs. Hewit, in saying, that they were in want of money at Paris. It is true, that it is in proof, That Sir John Steuart had letters of credit for a pretty considerable sum, but how do we know that Sir John had this money free in his pocket after he received it; very probably he had not, as he was a thoughtless dissipated man; and therefore, the inference drawn from this letter of credit upon Paris is too strong. That they were in want of money when in Paris, is positively swore to by both Sir John and Mrs. Hewit. That it may have been so, I can easily believe. It will account for very many things in their conduct, which may now appear surprising to us. Lord Strichen

As to the two Enlevements, neither of them applies to Sir John Steuart, it is conjecture merely. Upon the whole, I am clearly for assoilzing the defendant.

The Douglas Cause.

Wednesday, 8th July, 1766.

Lord Kames Lord KAMES[1]—I shall give your Lordships the reasons of my opinion in this cause as shortly as possible. The first light in which I view this matter is, Whether, if Mr. Douglas (whom in this argument I call by that name to distinguish the person) were now requiring to be served heir to the Duke of Douglas, we would serve him heir? If this was the state of the question now, I own I should be much difficulted; as I was exceedingly struck with the circumstances that were mentioned yesterday with so much weight from the chair. But the fact is, That Mr. Douglas is already served heir by a verdict of the jury; and therefore the question is, if the proofs brought by the plaintiffs be sufficient to void that verdict, and to turn him out of the possession of his state, in which he is now so firmly settled? In my opinion, the proof brought by the plaintiffs is not sufficient for this purpose, though perhaps it might have been sufficient to prevent his being served heir at first.

There is one thing which runs through all the proofs in this cause, and to notice which is very material; that is, a certain confusion naturally arising from enquiring into such a number of facts that have happened at such a distance of time. And therefore we shall be very apt to err if we draw strong consequences from facts, which, for the reason I have given, cannot be compleatly ascertained. I will give some instances of this. There is evidence brought, That Lady Jane and Sir John Steuart brought their French servant to the borders of France only, and that they there dropt him.[2] This, when it was first alledged, might be considered as a very strong circumstance to prove a fraud. Whereas now it comes out clearly, that that servant was a French deserter, and so dared not enter the kingdom of France. In this case therefore we should have been mistaken, if we had drawn the consequence which the fact, as at first set forth,

[1] Henry Home of Kaims or Kames, appointed, with the title of Lord Kames, 1752; died 1783.

[2] See Historical Narrative, p. 28.

Lord Kames.

From a Print.

seemed well to bear. I will mention another thing which strikes me in the same view. I mean that of Lady Jane's loitering so long upon the road when drawing so near to the time of her delivery. Upon the supposition of a true birth, she must have had her reasons for doing so, which perhaps now cannot appear to us, for the reason which I have mentioned before. On the other hand, if we suppose an imposture intended, it is clear, that the sooner they accomplished it the better. And her loitering so long upon the road, when she pretended to be so big with child, could have no other tendency than to blow up the whole scheme they had laid. It is proved, that they left their maid servants at Rheims, and yet it is said that these maid servants were accomplices. But taking it, That they were not accomplices, why not entrust the affair to them, particularly to Isabel Walker, when since it appears that (upon the supposition of an imposture I mean) she has actually perjured herself, and endangered her soul for the sake of the defendant? So standing the affair, I want something whereby I can explain the conduct of the parties consistently with a real birth, and avoid what appears to me a danger of drawing strong consequences from facts, which cannot be clearly settled. The proof which the defendant has brought of Lady Jane's pregnancy, is just what I wanted. For if one holds this proof to be true, all the difficulties must vanish. Of the pregnancy, I think, there is the most compleat evidence that can be produced. I have always thought, from the beginning of this cause, that the stress of it would lie here: and therefore, to do away the proof of the pregnancy, I expected that the plaintiffs would have brought a proof of a miscarriage by Lady Jane. But we are not now in so strait a case: the service has ascertained the state of the defendant, in which he must be continued; and that service held *pro veritate*, except the plaintiffs could have brought direct and positive evidence of the contrary. What always touched me the most in this cause, was the forged letters. Yet I own I cannot give this circumstance so much weight as to conclude from it, that the whole is absolutely false. I am far from thinking that the evidence of Sir John Steuart was not good against his son; but then I can explain the whole of that evidence so as to make it not absolutely subversive of the truth of the birth. The forgery of the letters was no doubt an unjustifiable circumstance in the conduct of Sir John, but then I see

Lord Kames

Lord Kames that these letters were meant as an interim proof to the Duke of Douglas only; for it is clear to me, that there was a La Marre, and that Sir John did, at some time or other, correspond with him. The forgery of the letters then was a circumstance of conduct highly blameable in Sir John Steuart, though I do not think it was much unlike the Tournelle process, which to me seems to have been intended by the plaintiffs to stab the defendant behind his back. To me nothing can appear in a more odious light than this Tournelle process does, though I do not say that the gentleman who conducted it had any fraudulent intention in so doing The plaintiffs' managers seem from the very beginning to have been convinced of the imposture, and therefore it would appear that they thought every thing lawful that would lead to a detection.

Lord Auchinleck Lord AUCHINLECK[1]—I have considered the cause with all the attention in my power, and am not at all surprised that your Lordships should differ in opinion about it, when I consider the immensity of the proofs, and the long laboured argument upon these proofs.

In considering this cause I endeavoured to take care not to be as it were drawn off at the tangent, and was always willing to listen to any further evidence that could be got. I was therefore very glad to have Isabel Walker examined again. To the questions which I thought material, this witness answered pointedly and distinctly; and though she underwent an examination of two days from the plaintiffs, with the special view, as appeared, of making her contradict her former evidence, yet, except in one trifling instance, she kept her temper throughout the whole, and had to me so strong an appearance of integrity, that I do believe that everything she has swore is agreeable to truth. Before I enter into the cause, I must premise a few general observations. In all questions about filiation, sceptical people may have opportunities of raising abundance of doubts; as it is possible that wives may be unfaithful, nurses false to their charge, and that they may both conspire to bring in false children. Yet, though such things may happen in almost every possible case, yet the law will determine such questions upon general principles, requiring a legal certainty in filiation, not

[1] Alexander Boswell of Auchinleck, appointed, with the title of Lord Auchinleck, 1754; died 1782.

certainty in the abstract. Of this daily instances occur in this Court. And in the case of alledged bastardy particularly, the law will take its course, and hold the child to be lawful, except there be absolute impossibility of its being the child of the husband. Indeed, if we had not these rules, every thing would run into absolute confusion. I would observe further, that if a person is acknowledged by a married couple to be their child, this is legal evidence of it; and such a train of acknowledgment must be held to be a *probatio probata* or *pro veritate*, till the contrary be proved by clear and undoubted evidence. The longer it is before the challenge of such a person's birth is brought, the harder it is to get the better of this legal presumption. If the case of Douglas had been like that of *Kinnaird*, the argument from the parents' acknowledgment would not have applied; but here there is a long course of acknowledgment for the space of many years together, with the warmest affection on the part of Lady Jane; and what was very remarkable, though in very great poverty, neither Sir John nor her were ever heard to grudge their giving these children a share of the very little they had. The defendant must be a stranger to the circumstances of his birth, and so cannot be answerable for the conduct of his managers. It is not in this case as upon a criminal indictment, where the guilt of the prisoner may often appear from his behaviour, from his looks, and from the shape of his defences. Lord Auchinleck

These are the general principles, which, applied to this case, will, in my opinion, direct the decision of it. However, I must observe farther, that I could have wished that we could have had a more full, clear, and satisfying evidence than we have: and farther, that this process had taken rise at a time when there were no bye motives to bring it, instead of its being brought immediately after[2] the defendant had defeated Duke Hamilton in point of law. I own that I cannot get out of my view the method in which this process was raised and conducted. This is material, because it will account for many singularities occurring in this cause. Instead of applying for an act and com-

[2] If his words are here correctly reported, it is difficult to think that Lord Auchinleck was right in this. The decision of the Court of Session against the action of the *Duke of Hamilton and Lord Selkirk* v. *Archibald Douglas*, was dated 9th December, 1762. The new action, out of which "The Douglas Cause" arose, was raised on 7th December, 1762. [Historical Introduction, "Narrative of the Cause," p. 15.]

Lord Auchinleck

mission from this Court to bring a proof of the imposture, the plaintiffs were pleased to bring their criminal action before the parliament of Paris, and procured a monitoire important, which treats Sir John Steuart and Mrs. Hewit as already convicted of the supposition of children. And under the word *Quidam*, makes the thing as plain as if they had put in the initials of their names. I did not condemn this process before the Tournelle because it was unfashionable, but because it was unjust and oppressive to the last degree; and I think I can give pointed evidence, that this my opinion was well founded. I shall give two or three instances which will sufficiently explain what I mean. In a conversation betwixt Miss Louisa Hibert at Rheims, and Mr. Andrew Stuart, it appears, that at first the lady told him that she observed the pregnancy; whereas, after the Tournelle process, and the publication of the monitoire, she retracted this notion, and swore the direct contrary. Another instance of this appears from the conduct of François La Marre, brother to the famous Pierre La Marre. Mr. d'Anjou, procureur for the plaintiffs in Paris, in his private memorial says, that François La Marre told him, that his brother Pierre La Marre was intimate with a Madame Le Brune, and that he had taught her midwifery. From a second note or jotting of Mr. d'Anjou's, it appears that the other party had been with François La Marre, and that he told them every thing but the information of his brother's acquaintance with Le Brune. But after all, when this Mr. François La Marre is swore upon our act and commission, he says he knew nothing at all about his brother's acquaintance with Le Brune. Madame Michelle is another instance of the miserable bad effects of this Tournelle process. Upon her being first discovered she said, That when Madame Steuart-Douglas came to her house, she had all the appearance of a woman recently delivered. In short, if I could believe the witnesses adduced after the Tournelle process, and the proceedings upon it, I would fairly acknowledge that the pregnancy is disproved by these witnesses. Madame Sautry, the mantua-maker at Rheims, makes strong endeavours to disprove the pregnancy; she even measures Lady Jane to make sure work of it. When we look into the plainte to the parliament of Paris they appear to be satisfied that Lady Jane had every appearance of pregnancy; but after the monitoire appeared, the memories of the witnesses underwent a great alteration, some

of them being very much weakened in this particular, when others were as much improved. Lord Auchinleck

Having thus taken a general view of the proof brought by the plaintiffs in this cause, I have only to add, that I pay no great credit either to the books of Police, or to those of the Hotels in Paris. The plaintiffs at first set forth, that these books were infallibly sure, and liable to no errors or mistakes; whereas to me it really appears to be a battle of books betwixt the respective hotels.

Such is the evidence upon which we are to determine this great cause, exception somewhat as to the conduct of parties. The proof against the defendant may be reduced to two general heads. 1st, Things exclusive of the truth of the birth, such as Lady Jane's age, letters of false dates, the enlevements, non-existence of La Marre and Le Brune, &c. And 2dly, The *alibi* in Mons. Godefroi's upon the 10th July. The plaintiffs have now given up the point of the age, though it was upon that alone that the suspicions first rose; but they say that she had only the appearance of pregnancy. Well, take it so; it is clearly proved that she had such an appearance; and from all the circumstances I am fully convinced it was a real pregnancy. If no appearance of pregnancy had appeared at all, then the cause must have gone clearly against the defendant. None of the other circumstances which are brought by the plaintiffs are, as I think, proved, except that of the forgery of the letters, which always stuck strongest with me. Here comes in a question, What shall be the consequence to this defendant, if his father did not act the proper part? The people upon the other side have at times not acted properly neither; for instance, the Tournelle process and all the consequences of it. In the conduct of which cause there is something that does not a little resemble La Marre's letters. Of this I shall give the following strong and pregnant instance. At first the plaintiffs thought proper to place the scene of the *alibi* in the house of Michelle upon the eighth day of July, and this they did upon the authority of Michelle's books, and alledged that the article of Monsieur Fluratl and his family wrote in that book upon that day, was of the handwriting of Sir John Steuart himself. This being the case, the plaintiffs thought proper immediately to get this book of Michelle's lockt up in the Tournelle, in order, it seems, that the defendant might never see it. Instead of producing

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the book itself, the plaintiffs have brought a long oath concerning this book, and more particularly concerning this article the date and hand-writing of the entry concerning Mons. Fluratl and his family. This gentleman, who depones in a most pointed manner upon his bare memory as to the dates and hand-writing of the articles of this book, is one Maitre Duresseau, a man who has a great many sounding titles, *Conseiller du Roi*, and I know not all what. He depones, That so far as he can remember, the article which goes before that of Mons. Fluratl is of a date anterior to that of the 8th July; and that he remembers to have asked of Michelle of whose hand-writing was the article of Mons. Fluratl: And that Michelle answered the deponent,[3] That this article was neither of his hand-writing nor that of his wife's; and that he presumed it was of the hand-writing of the person who called himself Fluratl. However, the plaintiffs having changed their ground as to the *alibi*, and transferred it to Mons. Godefroi's; then Michelle's book itself is produced, though it seems it could not be got before; when, instead of the dates and hand-writing being as represented by this officer of the police, it appears clearly that they are both essentially different. What then can be said to be the design of all this? No other surely than to impose upon your Lordships by representing the *alibi* to have been at Michelle's. This was at least a wrong step, as much so perhaps as the fabricating of the four letters, which may be compared to the *piæ fraudes* which were frequent of old, and which happened although the people that used them were in the main supporting a thing that was right. Yet I do not vindicate Sir John for this step, but I cannot carry the thing so far as to make it overbalance the weight of unsuspicious evidence which the defendant has produced.

I come now to touch shortly upon the proof of the *alibi* at Mons. Godefroi's. In instructing of which I think the plaintiffs have totally failed, and I must continue to think so, except I can believe that he and his wife have memories superior to Joseph Scaliger's. They have indeed most unaccountable memories, according to their own account of the matter; for they even remember what coat Sir John had on in the year 1748. I am however unwilling to believe them to be perjured,

[3] Vide Pursuers' Proof, page 887.

but I believe that they had their memories refreshed by the monitoire, as many others seemed to have had theirs quickened by it. They have been misled by their books, which they think all very accurate, tho' it is proved to demonstration they are liable to many errors and mistakes. And because they had marked Sir John Steuart's name in the *livre d'inspecteur*, therefore they take up an apprehension that the blank article of the 4th of July, in their *livre de dépense*, relates to him and Lady Jane and Mrs. Hewit. Lord Auchinleck

Upon the whole, my opinion is, that as the defendant is now in complete possession of his estate, and as the evidence against him is neither unanimous nor conclusive, that therefore he ought to be assoilzied.

Lord Coalston[1].—In delivering my opinion in this cause, I will not run over the whole of the arguments stated upon either side, but will endeavour to take one close connected view of the whole. The question now before us, falls to be determined upon principles of law, of importance not only to this country, but to all mankind. And of these principles the first is, that there is no direct proof necessary to establish filiation. Accidents innumerable and unavoidable may prevent a claimant from bringing direct evidence of his birth, more especially if the same has happened when his parents were travelling abroad in a foreign country. Yea, I will adventure to say, That of all the numerous audience now present, there is not, perhaps, one in a hundred able to bring compleat legal evidence of the precise time and place, and other circumstances attending it. For this good reason, therefore, it is, That the law has required no other proof of a person's birth, but the acknowledgment of the parents, and the habite and repute consequent upon that acknowledgment. I do not mean to say, that such may not be defeated by a contrary proof; I only say, That it is legal evidence, as much as if the direct birth had been proved by witnesses; and that, until it shall be redargued by clear and positive proof of the contrary. So standing the law, as I apprehend, the defendant is entitled to found upon the acknowledgment of his parents, and the habite and repute following thereon as *probatio probata*. The consequence of which is, That the *onus probandi* must Lord Coalston

[1] George Brown of Coalston or Coalstoun, appointed, with the title of Lord Coalston, 1756; died 1776.

Lord Coalston fall wholly upon the plaintiffs in this cause. I am also equally clear, that before the plaintiffs can prevail here, they must bring such evidence to your Lordships, as would have been sufficient to have convicted Sir John, Lady Jane, and Mrs. Hewit of the capital crime of *suppositio partus;* and if such strong proofs are necessary only to balance the legal presumption for the birth of the defendant, much stronger must these proofs be, where there is both a direct and a circumstantiate proof of the birth, as is the case here. I shall consider first the proof so brought by this defendant, and then the proofs brought by the plaintiffs, upon which they would have us to set his proof aside. The defendant's proof naturally divides itself into two principal parts, the proof of Lady Jane's pregnancy, and the proof of the delivery. And first, as to the pregnancy, in spite of all the plaintiffs have advanced as to the uncertainty and fallibility of such proof of pregnancy, I must, according to all the lawyers' opinions I have ever read upon this subject, hold pregnancy to be a thing capable of a certain proof: And whatever a sceptical physician may have given as his opinion in this cause, as to the uncertainty of the proof of pregnancy, yet I regard not his opinion either, for the reason which I have now given.

This being the case, I go on to enquire whether or not the pregnancy of Lady Jane Douglas is proved: And that it is proved, I am clear, from the oaths of Mrs. Hewit and Isabel Walker, and from the declarations of the other maid, Effie Caw, who died before she could be put upon oath in this cause. And all their evidence stands so strongly supported by the oath of Mrs. Hepburn of Keith, and so pointedly confirmed by a number of other respectable persons who had the most intimate acquaintance with, and most frequent opportunities of seeing Lady Jane at that time; that I can have no doubt of the matter. Against this the negative evidence brought by the plaintiffs can never be held sufficient. And indeed, it does appear, that the plaintiffs themselves were convinced of the pregnancy: not only from their first plainte to the parliament of Paris, but also from the testimony of Sir William Stewart in this cause; who deposes, That in a conversation which Mr. Andrew Stuart had with the honourable Mr. Murray at Paris, he (Mr. Andrew Stuart) owned to Mr. Murray, "That he had all the proofs in the world of Lady Jane's pregnancy, but none of her delivery."

I come now to consider the proof of the delivery itself.

This, indeed, rests upon the testimony of Sir John and Mrs. Hewit, who were the only witnesses that can be found to the act of delivery. But then it falls to be noticed, that their direct and positive harmony to the fact is confirmed by a train of such circumstances, and these circumstances fall in so exactly with the account given by Sir John and Mrs. Hewit, that they afford conviction to my mind, as strong as if so many more witnesses had swore directly to the fact. The circumstances which I mean, are contained in the oaths of Doctor Menager, and Madame Garnier, the nurse of the second child. It would have been, indeed, next to a miracle, if Sir John Steuart, in order to accomplish this alledged imposture, should have pitched upon Pierre La Marre, to be the fictitious accoucheur, who, as he himself told to Doctor Menager, had about that time delivered a foreign lady of high rank, and of an advanced age, of twins, the youngest of whom was intrusted to his (La Marre's) care to be nursed. But this is not all; you have Madame Garnier herself swearing expressly, That she nursed a child given to her by Mr. P. La Marre, and that he told her to take exceeding great care of the child, because it was belonging to foreigners, people of distinction; and might be a rich man in his own country. If, to all this, we add, the accidental manner in which both Doctor Menager and Madame Garnier the nurse were discovered, it must establish the credibility of their testimony beyond doubt. And I am really convinced, That if Giles and François La Marre had spoke out the truth, the evidence upon these articles which I have narrated would not have been liable even to the shadow of an objection. But even, supposing that there had been less proof of the act of delivery, either by witnesses or by circumstances, it falls to be noticed, That the two proofs of pregnancy and delivery mutually assist each other, and establish the one great point sought after, viz., that there was really a delivery. Yea, had there been no proof at all brought of the act of delivery, and which may have been the case often, as the act of delivery is often transient and even in a moment; yet, as she is clearly proved to have been pregnant when she went to Paris, the law would have presumed, That she was there delivered according to the account she herself gives us. As the proof of the circumstances before, so the proof of what happened after the delivery convinces me, that there is no falsehood in this case. We have Lady Jane displaying upon

Lord Coalston

Lord Coalston every occasion the strongest maternal affection for these children. You have the depositions of I believe a hundred of witnesses, that the second boy Sholto was the very picture of Lady Jane. A circumstance which has its weight with me, considering the sense and character of the people who affirm it, and as I see that every lawyer who has wrote upon such questions as this, treats of the similitude of features as being a presumption to establish a real birth.

The plaintiffs have, in order to support their plea, found it necessary to discredit the testimony of the witnesses who had deposed to the pregnancy; and more particularly they have attacked with all their force the credibility of Mrs. Hewit and Isabel Walker, two persons who it is in proof had always maintained characters free of the least exception. Both these witnesses were examined in your Lordships' presence, Mrs. Hewit several times, and Mrs. Walker once; and in my opinion delivered their testimonies with such constancy and firmness as nothing but truth could inspire, and which led me firmly to believe all that they respectively swore. There are indeed in their accounts of the matter a few trifling contradictions and variations in some of the most minute matters of their detail; which, instead of being either wonderful or suspicious, is a circumstance which may naturally be expected to happen after so long an elapse of time, and instead of lessening (in my view) increases the credit due to their story. I therefore hold the proof which the plaintiffs have brought to be by no means sufficient to discredit the testimony either of the one or the other of these capital witnesses. I have thus run through the bulk of the proof brought by the defendant, and which it is to be considered he was not obliged to bring, and shall therefore proceed to examine with as much accuracy as I can the proof brought by the plaintiffs. The plaintiffs' proof is not pretended to be direct or positive, it is circumstantiate wholly. I have ever considered it as an uncontravertable principle of law, that wherever there is a proof upon one side by credible witnessess (which is the case here) this cannot be shaken by a proof of circumstances, when these circumstances are not inconsistent with, nor exclusive of the principal alledgeance established by witnesses. I will give one instance in the proofs which the law admits in the case of theft. This crime is generally proved by a train of circumstances; that the person charged with the theft was found

with the stollen goods in his possession, that he was habite and repute a thief, or such like circumstances. In order to free himself from the charge attempted to be proved against him by such a train of circumstances, the prisoner at the bar generally alledges that he came by the goods in a lawful manner. And if he shall be able, by the testimony of two unsuspected witnesses, to prove this fact, the whole circumstantiate evidence reared up against him falls to the ground at once; and that for this good reason, that these circumstances, though they be fully proved, are not inconsistent with the alledgeance of the prisoner proved by direct testimony. If then we shall take a view of the various circumstances adduced by the plaintiffs, we shall be convinced that they might have all happened consistently with the defendant's hypothesis. For many of the most material of these suspicious circumstances the defendant has been able to account; and though they had not been accounted for, yet they did not apply. As to the declaration of the defendant's father, Sir John, I shall only barely mention, that through the whole of that examination, Sir John shewed not the least consciousness of guilt. As to the four letters from Pierre La Marre, which are alledged to be forged, I must observe in the first place, that I am not satisfied that these letters were really forgeries by Sir John. And 2dly, That though we suppose them to be forged, yet this cannot defeat the direct and circumstantiate evidence brought by the defendant, and which does not rest upon any after act or deed of his father Sir John. Lord Coalston

As to the *alibi* in Godefroi's, I pay no regard to his books; and these are supplied by his oath, in which it is highly probable to me he is mistaken, yet they are not sufficient to defeat the whole of the evidence on the side of the defendant.

I now draw towards a conclusion, and have only to add a few general observations. The system of the plaintiffs appears to me incredible in all its parts. Lady Jane is clearly proved to have been capable to have children. Why not then have children? Is it at all credible that upon their return from Rh··ns to Paris, when they had only picked up one child, that they should have given out to their friends there and elsewhere, that they had two. Yea, might not this circumstance, taken by itself, have afforded ground for an almost immediate detection? When come to Rheims, they give out that their second child, whom according to the plaintiffs they

Lord Coalston had not yet picked up, was a sickly, tender infant. But this is not all, for at the distance of sixteen months after this, the child they bring with them from Paris was found exactly to answer the description given of him. Upon the supposition of an imposture, this is all truly miraculous.

Lady Jane Douglas's private letters to Sir John and her other friends upon the subject of her children, are wrote in a stile so affectionate and tender, so unconstrained and natural, that they afford full conviction to me of two things: 1st, That they were never intended for public inspection; and 2dly, That they [come?] from an innocent mind oppressed with misfortunes, though free of guilt. Shall we then, my Lords, after so clear a proof on the part of the defendant, upon which he has been in possession of his state to the age of manhood, deprive him of his illustrious birth and princely estate; and, upon a moatly collection of inconclusive circumstances, send him back to be accounted the son of an infamous beggar, who has perjured herself in the face of your Lordships? One thing more, and I have done. The proceedings in France, in consequence of the Tournelle process and monitoire, struck me with horror and indignation; and more particularly I was shocked to see a British act and commission garbled by an *arrêt* of the French king.

Upon the whole, I am convinced that this defendant is the son of Lady Jane Douglas, and therefore that he falls to be assoilzied.

Judgments by the Court of Session.

Thursday, 9th July, 1766.

Lord Barjarg[1]—In giving my opinion upon this cause, I do not think it necessary to recapitulate much; it will be sufficient to trace some of the outlines of the proof, and to draw the consequence from these facts so established. The question before us is a point of fact merely; that is, Whether or not the defendant is the son of Lady Jane Douglas? Upon whom the *onus probandi* is to be laid, is a preliminary point, upon which I cannot agree to adopt the arguments on either side, both sides having carried them too far. We can get but few rules of law to apply to such circumstantiate cases; but the following rules seem to me to be well founded in reason and sense: 1st, It is not sufficient for the defendant to say, that as he stands in possession upon a verdict, therefore he is obliged to bring no further evidence; 2dly, Neither are the pursuers to be excused from their proof. It is incumbent upon them to point out what defects there may be in the evidence upon which the verdict proceeded, and to bring what farther evidence of its falsehood they can: and upon the whole of that evidence we must pronounce judgment accordingly, taking into our view every fact and circumstance more or less material, as they stand more or less connected with the material object in view; that is, the birth of the defendant. From the very nature of the evidence, the plaintiffs were led to contravert the pregnancy, because pregnancy is inseparably connected with the delivery, and yet I do not think that the plaintiffs have fully disproved the pregnancy. Indeed the appearances of pregnancy at least, are established without doubt when at Aix and Liège; but from the time that Lady Jane leaves Liège, that appearance becomes more uncertain, and grows more feeble, as they advance nearer to Paris, the place of their destination. Indeed Lady Jane past quickly through a strange country, which is a circumstance that may account for people's inattention to her; and as to those who have sworn so pointedly to the pregnancy,

Lord Barjarg

[1] James Erskine of Barjarg, and afterwards of Alva, appointed, with the title of Lord Barjarg, 1761; died, Senior Judge in Great Britain, 1796.

Lord Barjarg they might be deceived with the appearance, and think it real. Perhaps an actual and real pregnancy cannot be certainly proved; there are many diseases that imitate pregnancy; and when to this I add the risque that Lady Jane ran by long journies, rough and bad roads, and bad machines, I am led to conclude, that notwithstanding the appearance of pregnancy, which is proved, yet the defendant is not thereby relieved of bringing probable evidence of his birth.

It is remarkable in going over this proof, that Lady Jane staid no less than nine days at Sedan. We have the evidence of Mrs. Hewit and of Mrs. Glass as to what happened there, and which evidences contradict each other to the last degree, though both of them seem to agree in Lady Jane's being in danger of a miscarriage when there. From that time on till they arrived at Paris, it is agreed, that Lady Jane had no difficulty in performing her journey, nor any threatenings of her approaching delivery.

The evidence of the birth divides itself in two classes, 1st, That evidence arising from the testimony of Sir John and Mrs. Hewit, and from letters wrote by them and by La Marre. 2dly, The testimonies of Doctor Menager and Madame Garnier. This is the whole of the defendant's evidence of his birth, and with great regret, I must give it as my opinion, That it does not appear to me sufficient for the purpose. If we take one class of his evidence without the other, it is clearly not sufficient; if we join them together, they mutually contradict and destroy each other. The proof of the forgery of the four letters from Pierre La Marre, does, in my opinion, destroy any credit due to the testimony of Sir John Steuart and Mrs. Hewit as to him. The plaintiffs have endeavoured to prove, that Lady Jane knew of the forgery, and that she relied much upon these four letters to prove the birth. But I own, I do not think they have succeeded in this.

The second branch of the evidence for the birth consists of the evidence of Doctor Menager and Madame Garnier. I am unwilling to give way to the idea, that any witness is willingly perjured. I believe the accounts that Doctor Menager gives of his conversation with La Marre; I believe that La Marre was for some years in the Hotel Dieu; and that he afterwards practised as a surgeon in a very low sphere, and was a good deal employed in secret services. But then it is clear, that this La Marre cannot be the same one that Sir John Steuart

described so particularly. Doctor Menager's friend, La Marre, was not a Walloon, neither could he be a surgeon of a regiment in the year 1721, because he was then but a mere boy. It was very natural for so obscure a man as the La Marre swore to by Doctor Menager, to boast of his great practice, but it would be drawing too strong consequences from the story which he told about the foreign lady, whom he brought to bed of twins, to fix that foreign lady to be Lady Jane Douglas. This is not the only objection to the application of this evidence to the present question, for it appears clearly in proof, that if this La Marre did really deliver a foreign lady in the way set forth by Menager, it must have been in the year 1747. For we have it clearly ascertained by the evidence of Mons. Giles, That Doctor Menager was attending the army during the whole of the year 1748. I do indeed rest more upon the evidence of Giles, than upon that of Menager and Madame Garnier. The consequence of which, is, That Menager's oath applies to an earlier period. The defendant sets forth, that he was born upon the 10th July, 1748, in the house of a Madame Le Brune. Of this the defendant has produced no sufficient evidence; he must stand upon the evidence I mentioned before; and therefore, all these objections to the evidence of Sir John and Mrs. Hewit strike in properly here. The circumstances, situation and business of the Le Brune, in whose house, says the defendant, Lady Jane may have been delivered, are totally different from these condescended on by Sir John and Mrs. Hewit, repeated times, as well upon declaration as upon their oaths. From these things, therefore, I must draw the conclusion, That the defendant has brought no evidence to show, that Lady Jane was delivered in the house of a Le Brune, and by a Pierre La Marre.

Lord Barjarg

As to the *alibi* in Mons. Godefroi's, I think his books are good evidence of this; it is at least moral evidence of it, all that can be expected in such a case, and there lies no probability at all upon the other side.

If Sir John and Lady Jane had been now pleading for themselves against this evidence, they would have had nothing to say, except they could have produced as strong evidence to show, that they were actually at this time in the house of a Madame Le Brune. But when to this evidence by Mons. Godefroi's books, we add the obscurity and concealment, and want of truth in the accounts given of this whole matter by

Lord Barjarg Sir John, Lady Jane and Mrs. Hewit, the evidence is so situated, that upon the side of the defendant's birth, there remains but a bare possibility; whereas, upon the side of the plaintiffs, there is a great weight of probability, and even of moral certainty. Much has been said about the enlevements, though I am far from thinking, that there is any direct evidence against Sir John and Lady Jane upon this article. The only proposition established by that part of the proof is, That Mignon and Sanry had in the month of July 1748, and November 1749, a child carried off from each of them by foreigners; but then, upon this point, I must join the effect of the plaintiffs' proof to the defects of the defendant's proof, and then take the cumular amount of the whole. I have spoke so far, and have given my reasons for being against the defendant. But, I own, I have some doubts, as this is a circumstantiate evidence against him, whether as he is free of all blame from any irregularity or crimes committed by his parents, whether, therefore, he may not be entitled to lay hold of the mere possibility of the fact as set forth by him; and more especially as he is now in possession of his state by a verdict. However, to this, I see one objection, that as a child owes his birth to his father, so he must take his state alongst with the accounts given by his parents; and, in fact, the defendant's whole plea hangs upon the acknowledgment of his parents.

There were some other things which as present seemed to be specious upon the side of the defendant; particularly, it was asked, what could be Sir John and Lady Jane's motives for this imposition of children? What their motives might be is impossible to know exactly, without knowing the characters exactly: and whatever were their characters, it is certain, That the argument of the defendant, that upon the supposition of an imposture, it was bringing a needless burden and inconvenience upon them, will not apply. For if the consideration of inconveniences could have had any weight with Lady Jane, it would have prevented their marriage altogether. Lady Jane, in her letters, uses a certain mysterious way of writing alongst with the warmest affection towards these children. For this affection towards children not her own, it is indeed very difficult to account: But we must consider that Lady Jane was a lady of great humanity and charity, which might insensibly lead her to contract an affection for these children, whom she had deprived of their true parents. She was also

Lord Alemore.

From the Portrait in the Parliament House.

thought a woman of high spirit and honour, which might lead her to compleat, by every possible means, a scheme, bad as it was, which she had once taken in hand. Lord Barjarg

From all this, then I conclude, that we should sustain the reasons of reduction.

Lord Alemore[1]—I have formed an opinion conformable to that now given. I attended with all the care I could to the sentiments of those judges who gave their opinions yesterday upon the other side of the question from me. They made me examine again the grounds of that opinion which I am now to give; and after considering their arguments as much as I could, I found my sentiments rather confirmed than shaken. Though my opinion is clear in this cause, yet I must own it is a difficult cause. This, amongst other things, has been owing to the art and abilities of the defendant's council, who, in attemping to shake the circumstantiate evidence brought against him, took these circumstances one by one, and then drew their conclusion, that this was all that the plaintiffs had proved. Whereas in stating their own proof, what was but a presumption in one page, was in the next positive evidence, and then rose to a demonstration. All this perplexed me a good deal, and I was therefore obliged to return to the general view of the whole proof in this cause. Lord Alemore

There have been some little points of law attempted to be brought into this cause, though the question before us is a point of fact entirely, upon which any man may judge. It is a jury-cause: and it is a cause where every body will judge for themselves, and also judge those who judge it. Much has been said upon the defendant's service, and his possession consequent upon it: I think he was rightly served upon the proof as it then stood, and would then have had the same opinion myself. By the possession of the estate in consequence of that service, the defendant has been enabled to support his defence; but farther than this, what can that service entitle him to in this cause? It is of no weight as to the evidence, because we are to judge of the point of fact. It cannot have more force than the decreet of an inferior Court under your Lordships' review. It must stand or fall upon its own grounds, and can never be held as a *probatio probata*. We sit here,

[1] Andrew Pringle of Alemore, appointed, with the title of Lord Alemore, 1759; died 1776.

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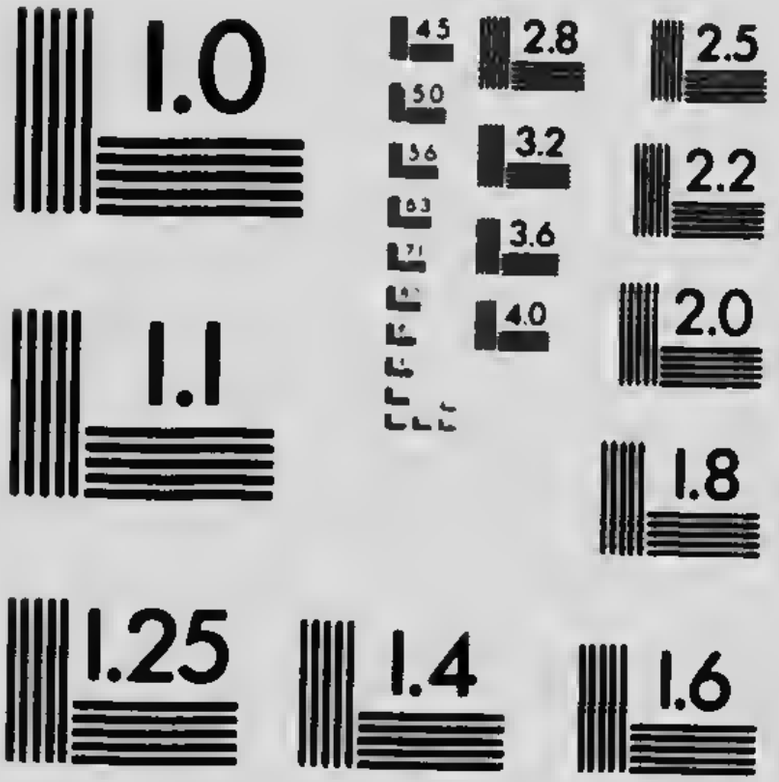

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Lord Alemore as come in place of the grand jury of error, to consider whether this verdict should be reduced or not. Surely then the thing under reduction must stand or fall according as it appears to us now. I give all the force possible to the arguments drawn from the acknowledgment of parents, but this is not what we all depend upon; we have all habite and repute, the uncontradicted voice of a whole neighbourhood or country, besides the acknowledgment of our parents. But this habite and repute the defendant has not in this cause; on the contrary it appears, that the doubts of his birth were cœval with the birth itself.

It may be asked, whether Lady Schaw, who took the defendant into her family upon the death of Lady Jane, had a firm confidence in the truth of the birth, when she desires Mrs. Napier to write to Sir James Steuart in France, and says, that she gives her a clew to unravel this dark story. Let us examine Mrs. Napier's letter to Lady Frances Steuart, and we shall there find her expressing her fears lest a failure in success makes things less clear than they now are. Lord Cathcart in his deposition says, that he had heard the birth often doubted, on account of the mystery and concealment. But even supposing that the defendant had been in possession of a general habit and repute, it is but a presumption, and therefore must yield to proof. And this proof must, in the nature of things, be a proof of all facts and circumstances. And as the one or the other preponderates, so are we bound to give the cause.

I will now proceed to state such parts of the proof as to me appear most material. I take up Lady Jane Douglas and Sir John Steuart at Rheims, where I think there appears enough upon the face of their own conduct to infer the conclusion, that it was a scheme of imposture they were going on. At Rheims, which is one of the most populous towns in France, Lady Jane had an opportunity of getting the ablest assistance; and besides the advantage of several British people there, to whom she daily appeared, and by whom she was much beloved. In this situation Lady Jane passes a whole month at Rheims, but at last, when the critical period must have been very near, sets out for Paris, attended only by Sir John and Mrs. Hewit. For so unseasonable a journey she can give no reason; she gives only a false pretence, that there was no proper assistance to be had in Rheims. And for the extraordinary step of leaving their maids at Rheims, they give a pretence which is also proved false, that they had not money to carry them to Paris. They arrive

at Paris upon the evening of the fourth of July, and put up at the Hotel Shaloons [Chalons], a respectable inn, to which they had been recommended by Mons. Mallifer at Rheims. Instead of remaining in this inn, or even giving Mons. Godefroi or his wife the least notice of the real intention of their coming to Paris, or enquiring of them for the ablest assistance, they suddenly leave his house and hire lodgings at a Madame Le Brune's, where Lady Jane is delivered of twins a few days afterwards, in presence of that Madame Le Brune, her daughter, and a Pierre La Marre, who was the accoucheur. Who was this Pierre La Marre? Says Sir John Steuart, he was a Walloon surgeon, whom he had seen at Liège in the year 1721, but who was then in Paris upon an affair "en épineuse." This whole account given by Sir John, the defendant now gives up. But can he give it up without giving up his cause? Sir John had brought Lady Jane to Paris to be there delivered by the very ablest hands, and yet he entrusts her to the care of a wandering surgeon, whom he had not seen since the year 1721, and who was obliged to be concealed in Paris upon account of a ticklish affair. Did Sir John know where La Marre lived in Paris? No. He is prevented from telling Sir John that, on account of the ticklish affair he came on; though at the same time he is to be met with on the most public walks in Paris, in the Luxemburg or Thuileries. Would, then, Sir John have known where to find this accoucheur, if he had wanted him suddenly? If Lady Jane, for instance, had been seized with her pains in the night? No. Sir John declares he would not have known where to find him: and that if this had happened, he must have called another. When to this we add Mrs. Hewit's account of the matter, that Lady Jane never saw La Marre till the critical time, I can appeal to the understanding and feelings of the heart of man, that this story has no truth in it. It far exceeds probability; it is even improbable to the last degree; so much so that it is impossible these things could have happened upon the supposition of a true birth. Lady Jane had staid a whole month at Rheims, though it is now in proof that Paris was the real place of destination. Would it not then have been much more proper to have gone straight to Paris? None of the witnesses at Rheims mention the least of any complaint made by her, that there was no good assistance likely to be got there; and there is not the least evidence of the story told, both by Lady Jane and Mrs. Hewit, concerning

Lord Alemore

Lord Alemore the advice given her by an unknown lady, to leave Rheims on account of the unskilfulness of the practitioners. Mrs. Andrieux never gave her any such advice; for it appears that she never took her even to be pregnant. However, if they left Rheims to go to Paris for the best assistance, it was natural and proper for them surely to have taken the very first advice there; at least, it is not to be expected that Sir John would have taken so inferior a man as La Marre was.

I still demand the reason of their leaving their maids at Rheims. They give me a reason which I prove to be false. After this, is their deserting Rheims to be accounted for to the mind of man?

The delivery is said to have happened in the house of Madame Le Brune, and we have a most pointed description given of her, of the house, and of her family, both by Sir John and Mrs. Hewit. Yet they could give no description of the house so as to find out in what place it lay. In short, this great event of the birth happened in a place where no body could ever either find out or hear of, and which never had any existence; though it is certain that the greatness of the event must have rivetted it eternally in their minds. I observe that wherever there was a real place, thither they have been effectually traced; but to Le Brune's house they have not been traced, because there was no such person. Upon the ninth day after the birth, according to the account given by them, they change their lodgings, on account of buggs; and when they appear at Michelle's upon that day they have no child with them at all. Where were their children? They were sent to nurse. What was the reason of this, of sending them both away they knew not where? According to their own account, the eldest was somewhere in the country towards St. Germaine, and they are to go next day from Michelle's in order to bring home this child. Accordingly they do go away, and return again, bringing with them a child in all appearance much older than their child could be, under the care of a nurse who had no milk to give the child, and who had the King's mark upon her as a common thief. Mrs. Hewit has said that during the whole time Lady Jane was at Michelle's she never went abroad; whereas it is clear that she went in a coach to see the most remarkable squares in Paris, and that she went also to see Versailles, though during all this time she never once went to see her second child, though it was so sickly and tender, and though, according to the account

given of it now by the defendant, it was within half a league of Paris. There is one thing very material to be observed in this cause, and that is, that they never wrote to any person of the birth till the 22nd July. Was it natural for them to have concealed so joyful an event for the space of twelve days? Would they not rather have taken the very earliest opportunity of communicating to their friends such joyful intelligence? Lord Alemore

I come now to examine the evidence brought by the plaintiffs, which to me clearly disproves every part of the accounts given by Lady Jane, Sir John, and Mrs. Hewit. It appears from Mons. Godefroi's books, and he and his wife have also sworn it directly, that Sir John and his company came to his house the 4th July, and continued there till the 13th or 14th. If this be good evidence, what becomes of the birth upon the 10th of that month? According to common rules it is sufficient evidence, and therefore the defendant has made his chief attack upon this evidence. But none of your Lordships have said that Mons. Godefroi is not a credible witness; you have only said that he may have been mistaken in trusting too much to the accuracy of his books. I have considered all the objections brought against these books, and I think they have, like fire to gold, brought them out more clear. When, then, we have such evidence, why should we not believe it? Does it not at least remain good till it is contradicted? Where is it contradicted? By whom is it contradicted? Only by Sir John Steuart and Mrs. Hewit, whom your Lordships see evidently convicted of telling the most manifold falsehoods. To those who shall tell me that, notwithstanding, they believe the evidence of these two persons, I can say nothing more; to them it must be a clear cause.

On the 18th July they go to Michelle's; but from the 14th to the 18th where were they? They have not been traced, nor seen nor heard of. In this period there was no birth, and yet when they come to Michelle's they say they had a child at nurse, whom they go for next day, and bring back with them. And having got this child into Michelle's, they immediately write the letters of the 22nd of July, wherein they fix upon the tenth day of the month as the time of the birth. Change of houses must have necessarily taken place to accomplish an imposture. It was not necessary upon the supposition of a true birth. Let nobody say there was not time enough to pick up a child, when you have it proved to you that in that time

Lord Alemore the child of Mignon was actually so picked up. Having thus got possession of a child, could they have returned to the same house where they were formerly? No. This would have directly blown up the scheme of imposture. They must necessarily, therefore, have pitched upon some other house to take this child to when they should find him; and the house they went to for that purpose was the house of Michelle. I have said that when they made their appearance with their child at Michelle's, it was a starved infant, upon the breast of a common thief. Was this like the nurse for the child of Lady Jane Douglas? Mrs. Hewit has herself confest that they bespoke no nurse beforehand, and the reason as she says was because Lady Jane was not sure if she would bring forth a living child. Strange, indeed, that Lady Jane, after having put herself to so much expense, and after having travelled so far, should at last grudge an expense which the wife of the meanest mechanic never grudges. How much more like a boy picked up, and a nurse hastily found on the streets, were the child and nurse brought to Michelle's, than to the description of the nurse and child of Lady Jane Douglas.

Madame Michelle in an hour's time found out a good nurse for them; so might they themselves if they had consulted any person of their acquaintance in Paris. These things are all inconsistent with a true birth, and probative of a false one. When to all this we add that the child of Mignon was carried off from its parents at the critical time, when they pretend to go and bring their child from St. Germaine; when we take a view of the strange indifference towards their younger child for the whole time they were in Paris particularly—what says humanity here? Your Lordships have heard much of the affection of Lady Jane for these children, but this seems to have been taken up at a proper time, after they came to Rheims. There was indeed a good reason why Lady Jane did not go to see him—that was because she had no second boy then existing. How then was this boy purchased? Upon this point the calculation of Sanry's enlevement is wonderfully exact. It is brought to have happened either upon Sunday the 16th or Sunday [Saturday?] the 29th of November, 1749. The description of the persons applying for a child upon that occasion is wonderfully like that of Sir John Steuart and his company. They ask for a child of fifteen months old. They refuse several of a lesser age, and at last pitch upon a boy of eighteen months

old. All these circumstances tend to one point, and meet like so many lines at the point of a circle. Lord Alemore

Much has been said of the strong affection shown by Lady Jane upon all occasions for these children. But this affection may be accounted for either naturally or artificially. Lady Jane was a woman of much humanity, and when she considered that the infants she had taken away from their real parents must now be dependant upon her, the tenderness she was possessed of might naturally yearn upon such a thought; but however that may have been, it was not to be expected that they would be aiding to their own detection of the crime of imposture by showing upon any occasion a want of affection for their children. But had these children really been their own, they neglected the proper occasion for showing a real fondness for them by removing the suspicions so universally propagated to their own dishonour, and to the evident danger of their children's interests. But what is their conduct here? Instead of applying to the Le Brune or Pierre La Marre to get proof of the birth from them, they make a faint attempt to prove the pregnancy by the declaration of Madame Tewis, and forge letters as coming from the Pierre La Marre. Where did ever a true story need such a continued scene of falsehood to support it? But it was said that Sir John forged these letters only with a view to cheat the Duke of Douglas. But why cheat the Duke of Douglas or any other man into the belief of a thing which, if true, might have been convincingly proved?

In short, one certificate from Pierre La Marre and Madame Le Brune would have been a mark of stronger affection to her children than any which Lady Jane has shown. I shall now say a very little as to the proof of the pregnancy: this, as described by Isabel Walker and Mrs. Hewit, must have been observed by every body; but their testimonies are so strongly contradicted by others of more credit that it has no weight with me. Lady Jane seems indeed to have had the appearance of pregnancy; but when we consider how many ways there are of simulating a pregnancy, and that this was as necessary as the other circumstances mentioned before to carry on the imposture, the appearance of pregnancy deposed to has no weight in this case. Upon the whole, I sincerely compassionate this unfortunate defendant: I hope the same generous lady who has hitherto so well supported him will continue her protection and kindness to him, but he must excuse me if I cannot, in

Lord Alemore opposition to my duty to mankind, my country, and myself, find him to be the son of Lady Jane Douglas. I think that he is not her son, and therefore that the service ought to be reduced.

Lord Eliock Lord ELIOCK[1]—This is not a question of law, but of fact, and therefore I think principles of law have been introduced here somewhat improperly. The defendant in this cause is not well founded in his legal arguments from habite and repute. Habite and repute is public notoriety; it is the uncontradicted, uncontroverted voice of a man's whole neighbours, relations, and acquaintances. It is not the bare acknowledgment of the parents that founds this habite and repute, because, when a child is born in any family there are a number of people in the family who must necessarily have many marks of observation. It has been said that the acknowledgment of parents bestows filiation: but it is nature that bestows filiation; and the acknowledgment of parents can neither bestow it where it is not real, nor their contrary averments take it away where it is real. Much has been said about the pregnancy in this cause, and if we could believe Mrs. Hewit and Isabel Walker, Lady Jane when at Aix-la-Chapelle was absolutely a monster. Yet it is very remarkable that at this time, as afterwards, she always wore a particular dress calculated as it seems to disguise her shape. Even supposing that Mrs. Hewit and Isabel Walker were credible witnesses, it is a proof of opinion only, and it by no means follows that she was really with child. It was an appearance suddenly assumed, and yet, what is very remarkable, during the whole time of Lady Jane's pretended pregnancy, she never consulted any physician, man-midwife, or surgeon. A thing inconceivable to me if she had really known herself to be with child. In other particulars, too, of her conduct there appear no marks of that care and fear for herself which naturally attends women, and especially one of her delicate constitution in such a condition. She makes the long and difficult journey betwixt Aix-la-Chapelle and Rheims without any apparent hazard or complaint, except once at Sedan, where, as Mrs. Hewit says, she was in danger of being delivered.

When they set out from Rheims to Paris, she still continues to travel (though within a few days of her delivery) in the

[1] James Veitch of Eliock, appointed, with the title of Lord Eliock, 1761; died 1793.

Lord Eliock.

From the original Painting by Rachaen, lent by G. D. Veitch, Esq. of Eliock.

Lord

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common voiture after sitting up most of the night before she sets out, and during the rest of the time of this journey undergoes much more fatigue than one in the situation she is described to have been in could be well expected to bear. Lord Elliock

This step of their leaving Rheims at so critical a period was of all others the strangest, and which cannot be accounted for upon any other supposition but an imposture, as the reason they gave for it, being that of want of able assistance there, is clearly disproved by numbers of credible witnesses. They left their maids at Rheims, too, under the false pretence of want of money to transport them to Paris. But why did they not send back to Rheims for the maids when they were in Paris so many days before the delivery happened, and when it is clear from their own account that they had got money. Sir John, Mrs. Hewit, and Isabel Walker seem all to have sworn falsely upon this point of the money. This is proved by written evidence upon the side of the plaintiffs, a *non memini* is no sufficient excuse, for all that they swear here upon being carefully examined, will appear to be artfully intended as a corroborative to that fact of the birth's happening upon the 10th July.

The defendant's filiation comes to a narrow point, which is this, whether he was born of the body of Lady Jane Douglas upon the 10th July, 1748? This, indeed, is the sole point at issue betwixt the parties. I observe that in the whole accounts given of the alledged birth by all the three persons concerned, they as long as they could keep in the general. They never specify even the town in which the birth was said to have happened; and even when Lady Jane came to be upon her death-bed, and was pressed by Mrs. Greig to get the proof of the birth established for the sake of her children, she gives her not the least satisfaction as to the particulars of the birth, but returns this general answer, "Let them that doubt it prove it."

Certainly the Duke of Douglas was very much interested to know the particulars of the birth; and yet, in the letter which Lady Jane wrote to him from Damartine, and which is dated from Rheims, they only acquaint him in general of the birth, and do not so much as mention the town in which it happened. On the contrary, from its being dated from Rheims and from the strain of the whole letter, any body would have thought that the delivery had really happened at Rheims.

When we examine Lady Jane's pocket book we find the

Lord Elcock following note of the birth, "Archibald and Sholto were born on the 10th July, 1748." But no mention either of the house or of the town. Mrs. Hewit in her letters from Paris to the maids at Rheims gives no particular place as being the place of the birth; though, afterwards in the letter to the Duke of Douglas in the year 1755, she pitches upon the house of Michelle; though afterwards she agrees with Sir John to transfer the scene to Le Brune's. When Sir John Steuart emitted his declaration, he was particular and pointed concerning the house of Le Brune, being the place of the birth; and indeed, in every other particular of his story: And he delivered the whole of that long declaration with firmness, and had no defect but only deafness, and upon the last day of his examination, when the four forged letters were put into his hand again to consider, he then made several corrections upon that part of his declaration relative to these letters. It is not possible to think, that Sir John could after the defendant's service (upon which occasion, he was, no doubt, consulted by the defendant's council) forget every one circumstance concerning so important an affair as the birth of his sons. And yet, when he was desired by the Hon. Mrs. Napier in the year 1756, to give her a note of the particulars concerning the birth, he then fixes it down to have happened in the house of Madame Michelle, and the very first time that he ever takes it into his head to name the house of Le Brune as the place, was some months after this period, when he found out by the return of Sir James Steuart's letters from Paris, that Madame Michelle and her family denied that any delivery had happened there: And it was after this time too that he was obliged to name Godefroi's as a place they had been in. Sir John in his letter to the Duchess of Douglas, wherein he narrates the particulars of the proof which he could bring of the birth, and more particularly concerning the pregnancy at Aix-la-Chapelle expressly mentions Lord Blantyre as being at Aix-la-Chapelle at that time, though it's confessedly clear he was not there. It is exceedingly remarkable, that though Sir John pretends, that his want of memory hindered him from particularly describing the street in which Madame Le Brune lived: Yet, he remembers particularly well the situation of the coffee-houses and taverns which he was in use to frequent.

What can be more wonderful added to all this, than the account given by Sir John of his accidental meeting with his

old friend La Marre, who had come up to Paris upon an affair *en épineuse*, this was a strange security indeed, for the successful delivery of Lady Jane Douglas. Sir John Steuart has said, That he went first to Paris by himself in the month of June, or in the end of May 1748. And that he stopt at the house of Mons. Godefroi, where he continued several days; but yet this journey of Sir John's is proved to be an absolute falsehood as well as the letters. It is by the defendant himself confessed, that Sir John did not then make a journey to Paris. It appears clearly from proof, that the suspicions of the truth of the birth were very early notified to Lady Jane and Sir John, and that they received these suspicions as being an attack upon their honour, yet there was no attempt made to bring any sort of proof. Why did they not bring such proof? When Madame Le Brune and La Marre were both alive, why did not they get certificates of the birth from them? Lord Elliock

It is remarkable that the fourth of the forged letters is said to have been brought from La Marre to Sir John by a Mons. Du Bois, a painter. Isabel Walker swears positively, that she saw this letter delivered to Sir John when in Mr. Murray's, St. James Place, London, but that she does not know by whom the said letter was brought. She further says, that Sir John, upon reading it, damned La Marre, and threw the letter into the fire; but that Lady Jane snatched it up, saying something to this purpose, that the letter should be kept more carefully, because it might be of consequence.

For my own part, I am clear that Lady Jane knew of the forgery of these letters as well as Sir John. This appears to me to be clear from the particulars of the conversation which Lady Jane had with Mrs. Menzies upon her intended journey to Douglas Castle; and she expressly mentions to Mrs. Menzies, as a proof of the birth, letters which she had from the doctor who delivered her, and which letters she said she had then in her pocket. These letters could be no other but the forged letters now in process.

I have said that the proposition maintained by the defendant is, that he was born of Lady Jane Douglas in the house of Madame Le Brune, on the 10th July, 1748. What then is the evidence he has brought of this? It cannot be the four forged letters, neither can he rest upon Sir John's accounts of it, because they are proved to be absolutely false.

As to the house of Madame Le Brune, there is no proof

Lord Elliock brought of there ever having been such a house; on the contrary, I think the written evidence produced by the plaintiffs, that the Madame Le Brune specially described by Sir John and Mrs. Hewit, never had any existence. I think she was a non-entity as much as La Marre was. I am not moved with the defendant's having found out a woman of the name of Le Brune, and who was a *Garde Malade;* as she does not answer, in any one particular, the description by Sir John, of the woman in whose house the birth is pretended to have happened.

This proof so far as it goes, is to me convincing and credible, that there was no delivery at all: but the evidence of the *alibi* in Godefroi's, puts the thing past all doubt. It is clear, positive, direct and credible, both upon the books and the oaths of him and his wife.

Whose child the defendant is, is a question not necessary to be here discussed, though it is most probable to me, that he is Mignon's; at least, all the circumstances of the first appearance of the child and its nurse at Michelle's, makes it rather more credible to me, than otherways, That Sir John stole Mignon's child, as also the child of Sanry in November 1749, which happened upon the fourth day after they arrived in Paris, when they went upon the false pretence of their bringing home to Rheims their second twin. Since I have mentioned the second child, I must observe, that Doctor Menager has in his oath raised a fabric that cannot stand; because he swears, that La Marre told him, he was bespoke to the foreign Lady some time before hand, and as to Madame Garnier, I no more believe that she was the nurse, than I do that La Marre was the accoucheur.

Thus I am clear, that the crime of imposition of children was really committed by Lady Jane and Sir John. I do not chuse to inquire into their motives for this crime; though I can easily see one that would influence them very much. And that is, to get money from her brother, the Duke, on account of her having children; and in fact, I see that this scheme was immediately attempted to be put into execution.

As to the pregnancy upon which the defendant has founded so much, I am clear, that it is disproved by the plaintiffs. And therefore, upon the whole, I am clear of opinion the service falls to be reduced.

Lord Stonefield.

After Kay.

Lord .

Judgments by the Court of Session.

Friday, 10th July, 1766.

Lord Stonefield[1]—The bulk of the proof and memorials in this cause renders it difficult to form an opinion upon it. I have considered it with all the attention in my power, and have formed my opinion against the defendant. Lord Stonefield

I did not expect to hear in this cause the proceedings in France and the Tournelle process compared to forgery and the blackest crimes. I have no such opinion of the proceedings in France. I think the conduct of the gentleman who managed these proceedings upon the part of the plaintiffs, does honour to himself and his profession.

I think that the point of law has been pleaded too high by both sides, I mean as to the question upon whom lies the *onus probandi*. Such services generally proceed in a very slovenly and loose manner. Hence, says Lord Stair, they are easily reduced. It is therefore sufficient to bring against a service what may preponderate on the part of the plaintiffs. And thus far they are obliged to prove, and no farther.

The first point of this cause is the appearance of Lady Jane's pregnancy, which appearance is very strongly proved; but then this proof is very inconsistent, and contradictory to the notion of a real pregnancy. Pregnancy requires a very particular investigation, and is very difficult to prove. At any rate, the whole of this evidence amounts to the appearance of pregnancy only, and if to this we add the way and manner in which Lady Jane performed her long and tedious journey from Aix-la-Chapelle to Paris, without taking those precautions which would have been necessary upon the supposition of her being so near the point of delivery. All these circumstances denote rather a feigned than a real pregnancy. They go to Paris accordingly, without making known to any of their most intimate acquaintance at Rheims, the real object of their journey. They even make use of a false pretence to Mons. Mallifier, and obtain a letter from him, recommending them to Mons. Godefroi, as people that were going to Paris to make purchases. When

[1] John Campbell of Stonefield, appointed, with the title of Lord Stonefield, 1763; died 1801.

Lord Stonefield

they arrive at Paris, they make no enquiries after their countrymen there, which is very natural to expect they would have done; more especially, it was natural for them enquire after Sir William Stewart, whom they had seen at Spaw, and the Chevalier Johnston, who was Mrs. Hewit's cousin-german. When they leave the Hotel Chalons, they repair to the house of a Madame Le Brune, as they say, and on the sixth day after the delivery they remove from this house, and take up their lodgings at Madame Michelle's; and when they first appear here they have no child with them, but having gone out next day to bring their child in from the country, as they pretended, they return the evening with a half starved child, and a nurse who had no milk, and was branded as a common thief. In the mean time, their second child, though weakly and tender, is deserted from its birth, never once seen by Lady Jane herself during the space of sixteen months.

If we examine the accounts of La Marre, they are so vague and absurd, that they merit no faith. There is a wonderful contrast between Sir John's account of him, and the defendant's account of him now in process. And I cannot think the defendant is at all aided by Doctor Menager's account of La Marre's conversations with him about the delivery of the foreign lady; and as to Madame Garnier, the pretended nurse, she seems to have borrowed the nursing of some other child, and applied it to this. And it is remarkable, upon her oath, that though she swears that she often saw La Marre, yet she cannot describe him in the least degree.

As to Godefroi's books, it is my opinion, that when these stand so clearly supported by his oath, they carry conviction that there was no delivery upon 10th July, 1748.

As to the enlevements, I shall only observe, that they are very remarkable in time, and suspicious in circumstances. When to all this we add, that they falsely dated all their letters from Rheims when they were truly in Paris, and that the strain of most of these letters tended to make their friends believe, that the delivery had actually happened at Rheims, what conclusion can we draw from all this, but that the story was false?

Lady Jane and Sir John were early apprized of the suspicions of a false birth, and yet they never took any steps to prove the truth of it, excepting only one feeble attempt to prove the pregnancy, at its most fallible stage, by the declaration of Madame Tewis.

Last of all come the forged letters, which finishes the evidence against the defendant, and compleats the story. Attempts have been made to excuse this forgery, but these attempts are vain, because the question will for ever recur: Why use falsehood to support truth? I must own the strongest proof on the part of the defendant is Lady Jane's private letters; but then when we consider, that very probably length of time might make her contract an affection for these children, the proof of that affection which appears in these letters cannot much be depended on. **Lord Stonefield**

I therefore think the reasons of reduction fall to be sustained.

Lord PITFOUR[1]—It seems to me, that the rules of law are likely to be altered, in determining this case, and where it will end nobody knows. The birth-right of the subject is of all other rights the most sacred, and indeed the foundation of all temporal blessings. It is from this that all the joys and the advantages of relation and of consanguinity do flow, and it is upon this that citizens are entitled to the participation of public honours, and the encrease of their own fortune and rank. On all these accounts, therefore, this right of birth, or state of a man is most cautiously guarded by the law. **Lord Pitfour**

The act of delivery is often transient, and over in a moment. Witnesses are therefore seldom called, and sometimes it is impossible there can be any witnesses at all; and for this reason the law does not require a proof by witnesses. Nay farther, the more a proof against the *possessio status* shall encrease, the stronger hold the law gives to the person who claims his filiation.

I am far from thinking that there is any kind of evidence brought by the plaintiffs sufficient to remove the defendant from the possession of his state. The acknowledgment of the defendant's parents, and the habite and repute following thereon, was sufficient for him to attain the possession of his state. I don't chuse to dispute points that will not be much controverted, but when I speak of the acknowledgment of parents, I mean an acknowledgment of parents supported by the fama consentiens, or the habite and repute of the place of the birth, whether it be at home or in a foreign country.

The empire of Great Britain is now extended over a large

[1] James Ferguson of Pitfour, appointed, with the title of Lord Pitfour, 1764; died 1777.

Lord Pitfour

share of the globe. Many thousands of British families have transmigrated to America, the East Indies and elsewhere. A man in America has his children acknowledged there to be his lawful issue, but upon his coming home with his family to Britain, he finds the birth denied here. The reason of this perhaps may be, that a great succession might probably devolve upon these children, and that some other people having hopes of the same succession may have designedly raised these suspicions about the birth. And then these same people tell us he must prove his birth and the whole circumstances attending it. Such notions of law would indeed be very extraordinary.

When my birth is challenged, and I am in possession by the acknowledgment of my parents, and have the habite and repute of the country wherein I was born, there must be demonstration before I can be turned out of possession. In the present case the defendant has not only the acknowledgment of his parents, but the universal voice of the country he was born in, insomuch, that of eighteen British witnesses then residing in France, and acquainted with Lady Jane, never one of them heard the least suspicion of the birth till they returned home to Great Britain. At home indeed false impressions had been carefully made, founded principally upon the age of Lady Jane, and the improbability, said from thence to arise, that she could have children. Whereas it is in proof, that she was capable to have children for two years after the defendant's birth. And in particular there is one miscarriage after the year 1748, proved by three or four witnesses. What shall we say to all these things? Were common reports to have any effect upon this cause?—they had no effect upon it. For fourteen years after the birth, even at the time of the service, the plaintiffs themselves were overpowered with conviction, and acknowledge they were satisfied with the force of the evidence.

Whatever false rumours may have been raised on purpose to detract from the character of Lady Jane Douglas, when she was unluckily thrown off by her brother; yet his Majesty, as the common father of his people, was graciously pleased to bestow upon her a pension towards the maintenance of her and her children, which circumstance is surely strong and corroborative of the general belief of the birth.

Lady Schaw's enquiry, by the means of Mrs. Napier, has been founded on against the defendant, in order to redargue the habite and repute which he pleads. But I apprehend that Lady

Schaw's enquiry cannot be viewed in this light. It rather appears, that the reason of her making the enquiries was, to get some proper evidence to oppose to any attempts of the plaintiffs in an after-time, and by no means to satisfy herself. Lord Pitfour

Nothing can interrupt the *possessio status* till the action is actually brought against the person claiming upon that possession; and if we do not adhere to this salutary rule, in the case now before us, we shall encroach on the birth-right of all mankind. And therefore it has been improperly enough said, that points of law are not to be treated of here. The whole doctrine of law concerning the *possessio status*, and habite and repute, comes properly in here; these doctrines of law being founded upon common sense and the necessary security of the subject.

I come now to speak of the proof which the defendant has brought of his birth. And first, as to the pregnancy, this must have great influence in this cause; the witnesses who depose to it are very many in number, people of respectable characters, not acquainted with one another, and who had no interest whatever to give a false account. Had this pregnancy been like that of Lady Kinnaird, which was shewn upon every occasion with the grossest affectation, we might have had reason to doubt of it: but so far was Lady Jane from publishing her pregnancy, that she seemed bashful and shy when the curiosity of her domestics and friends prompted them to satisfy themselves how the matter stood as to her pregnancy. Isabel Walker, whose testimony I do firmly believe, solemnly swears, that "she felt the children move in Lady Jane's belly." Madame Tewis's declaration, I think too, good evidence of the same fact; as I do likewise that of Effie Caw. Because these declarations on account of Mrs. Tewis and Effie Caw being dead before they could be put upon oath, are the best evidence possible. In short, there is no single testimony upon this point of the pregnancy, but what is corroborated by others. And when to all this we add Mr. Andrew Stuart's own confession, that there were all the proofs in the world of her pregnancy, why should we doubt so much evidence?

I cannot understand the argument, that the proof of pregnancy is not sufficient to infer the consequence of the birth. I think quite otherwise. If pregnant, she must have been delivered; and therefore there is a high probability at least that the whole account of the delivery, given by the parties, is true. It is a *talis qualis* proof, the best proof that the

Lord Pitfour nature of the thing will admit of, after so long a lapse of time. If the proof had been brought sooner it would have most likely been much stronger on the side of the defendant. By the common course of things, as well as by accident, he must have been at great loss in bringing a proof so late. Many of his witnesses have died, and others of them have changed the places of their abode, and cannot now be discovered. Why, then, was not this action brought sooner? What excuse for this? Why did they keep it in petto? Why did they keep the challenge so long in their pockets? Yet such are the facts, and therefore the law makes a less proof necessary now than it would have exacted before from the defendant. The whole story concludes, not with the idea of imposture, but remarkably well with that of a real birth. Much has been said about their going in a secret manner to Paris without letting their friends know; though it is clearly in proof that the Chevalier Douglas gave it as his advice to Lady Jane to go to Paris to be delivered.

As we have had so much evidence of the pregnancy, which is a gradual advancing thing, why should we insist for such pointed evidence as to the act of delivery; to which there cannot be so much evidence expected as to pregnancy; because this by the common course of nature may be gradually traced, and so liable to the observation of many witnesses every day, whereas that is a single act, and often over in a moment. Upon these principles, the law makes the presumption of a birth rise gradually, according to the advancement of the pregnancy.

Much has been said about Le Brune's house, and particularly about the extraordinary account of their having left it so soon after the birth. Whereas, we see in proof, that the real motive of leaving it so soon was, because they were pestered with bugs. And accordingly, when they come to Madame Michelle's, we find them anxiously enquiring of her if her house was free of that vermin. And afterwards we find them complaining of their being troubled with them there too.

But, say the plaintiffs, Sir John is charged with being the contriver, and Mrs. Hewit with being an accomplice in this fraud, and therefore you are not to believe any account they give. But if this charge brought against Mrs. Hewit (and Isabel Walker too) of being accomplices in this alledged fraud, should be sufficient to destroy their credibility, then the plaintiffs might have had a clear cause of it, and used the same freedom with the defendant's other witnesses, and so set them aside altogether.

Lord Pitfour

In corroboration of the truth of the testimony emitted by Sir John and Mrs. Hewit, and of the uniform account given by Lady Jane, That these children were truly hers, you have the solemn death-bed declarations of all the three. In the present age, infidelity and scepticism are accounted fashionable; but I will aver, that this is more owing to pride and affectation than to any conviction possible to the mind of man, That there is no future state of rewards and punishments; and I do believe that there are but a very few who are so execrably worthless, and insensibly hardened, as to make a joke of eternity. Some malefactors there may have been, who, after having been fully convicted of crimes, may have gone to death publicly denying them. But there was no conviction, nor the least danger of conviction to the parties in the case now before us; and when to this we add, that their characters are proved to have been not at all of the infidel cast; what conclusion can we possibly draw, but that they died asserting the truth? And when to this we still add the great distress and affliction which both Lady Jane and Sir John were almost always under, and at the same time see them upon every occasion expressing the most tender solicitude for the welfare of their children, whom they were then scarce able to maintain: all this behaviour speaks out strongly, that they were indeed their own children.

In opposition to this, it has been said, that Lady Jane deserted her youngest child from its birth, and that she never went once to see it during the long time she remained in Paris, and at Dammartine. But in answer to this, I observe, that the plaintiffs are not entitled to plead so high upon this point; I will presume that she did see her child, although it cannot be now proved *post tantum temporis*.

Another argument has been used by the plaintiffs, viz., That she had no nurse bespoke; to which I answer, That La Marre himself bespoke a nurse, as is clear from the testimony of Madame Garnier, who was herself the nurse of Sholto.

It has been said by the plaintiffs, That the La Marre now founded on by the defendant is a new La Marre, and that he cannot be the La Marre, whom Sir John gives an account of. It is curious to observe the conduct of the plaintiffs upon this great point of their cause. At first, in their condescendence. they denied point blank, that there was any person of that name who was a surgeon or accoucheur in Paris in the year 1748. And now that an accoucheur of that name has really been found out,

Lord Pitfour the plaintiffs take hold of the particular description given by Sir John Steuart of the La Marre, whom he condescended on as being the accoucheur; and because this La Marre does not in every particular agree to Sir John's description, the plaintiffs infer the strong conclusion, that it is impossible that the La Marre now found out could have been the accoucheur to Lady Jane Douglas. The plaintiffs have particularly laid hold of two circumstances in Sir John's account of La Marre; one of which is, that he was a Walloon; and the other, that La Marre had been introduced to Sir John at Liège in the year 1721, by one Colonel Fountain. As to the first of these circumstances in Sir John's description of La Marre, the plaintiffs are clearly under a mistake; for as the La Marre founded on by the defendant, was born at Montreuil sur le Mer, he might readily enough, in respect of his country, be termed a Walloon, or at least Sir John might very naturally take him for a Walloon. And as to the other circumstance about Sir John's having seen him at Liège in the year 1721; this is evidently an error in point of time only, which it is not at all surprising Sir John should have been guilty of, if we consider the great variety of questions put to him, and his age and infirmities at the time he gave his declaration.

It has been argued by the plaintiffs, That the story told by Madame Garnier of the manner of that child's being brought to her house, cannot apply to the child of Lady Jane Douglas: in so far as Madame Garnier deposes, That the child which Pierre La Marre delivered to her to be nursed, was brought to her house at night with flambeaux, or torch-light, from which, say the plaintiffs, it is clear, that this could not have happened in the middle of summer, as there would have been no occasion for flambeaux. But if we consider the length, narrowness, and dirtiness of many of the lanes and streets in Paris and its environs; and also that it is not so long light there as it is here at that season of the year, we shall find the circumstance of the child's being brought by flambeaux not to be inconsistent with the notion of the child's having been carried to the *haute borne*, late in a summer night: and when to all this we add the precise and pointed conversation which Pierre La Marre had with Dr. Menager upon the subject of his (La Marre's) having delivered a foreign lady, of an advanced age, of twins, and that these twins would be heirs to a great estate in their own

Lord Gardenstone.

After Kay.

country, and that it was a great affair for him; and when we consider also Madame Guinett's evidence, who positively swears, That she frequently saw Pierre La Marre visiting the child when it was under Madame Garnier's care, is it possible to figure a stronger circumstantiate evidence in any case whatever than this evidence brought by the defendant to support the truth of his birth? I am clear it is as strong an evidence as we can at so great a distance of time possibly expect, and therefore give my voice for assoilzing the defendant. Lord Pitfour

Lord Gardenstone[1]—This is a very extraordinary and a very singular cause; Duke Hamilton has nothing to gain, and the defendant has every thing to lose. Lord Gardenstone

My opinion is for the defendant; I will deliver it with brevity and precision: and as the grounds of it are few and simple, I will not take up a large field, but only state some points on both sides, which have led me to form this opinion. But first, I will beg leave to state some preliminary observations, which appear to me to be of great importance. And, first, I can by no means agree with those of your Lordships, who have given your opinion, That the law has nothing to do in the present case: it appears quite contrary to me; I look for light to the law, and more particularly to that great branch of it contained in the title *de Probationibus*, in which there are principles enough to determine us in our judgment of evidence in every possible case. Secondly, I do own it as a principle of law clear to me, That wherever a person is acknowledged and entertained by his reputed parents from infancy to manhood, he cannot be turned out of the possession of his state without a clear, distinct, and demonstrative evidence.

By these rules the present case falls to be determined, though I confess I will consider the question as if it had come first before ourselves, and without any regard to the verdict formerly pronounced for the defendant. In so far therefore I am a convert to an opinion delivered yesterday; but upon these first principles which I have laid down the proof against a defendant in such a question, must appear without any uncertainty, and there must be no room left for the calculation of chances.

This appears evidently to me to be well founded in humanity,

[1] Francis Garden of Gardenstone, appointed, with the title of Lord Gardenstone, 1764; died 1793.

Lord Gardenstone

expediency, and law. As to the first of these, the humanity, it is so obviously on the side of this defendant, that I need only but mention it: The expediency is also so manifest, that it would be needless to insist on it—The security of families and the peace of society speak it out abundantly plain. And as to the law: the law of this country, and of every other country in the world, does uniformly require in all proofs of the kind before us, the most clear and convincing evidence against the rights of filiation.

A second proposition I will lay down without arguing for it, which is, that where such a question as this is brought so late, the evidence of such witnesses as may be now dead, will, when reported upon oath by others, have the same strength as if these others had been alive now, and had been legally examined themselves. My third general observation is, That I see no improper thing, nor ill conduct on the part of the defendant in this cause: whereas on the part of the plaintiffs, I see most improper and most illegal conduct. I see the Tournelle process, the Monitoire, and all their miserable effects. I do not blame Mr. Stuart for his conduct in these matters: he is a man of honour and of character, and was instructed to carry on these French proceedings by the rest of the tutors of the noble plaintiffs: but however that be, I will define the Tournelle process to be what I really think it was, "an indirect practice to prejudice the evidence, and to deprive the defendant of a fair trial." I pretend not to be the spirit of prophecy; but it is long since I have said that the plaintiffs will find the Tournelle process to hang about their necks like a mill-stone, for in vain (as was said in another place) are judges wise and upright, if the channels of justice shall by such means as this be corrupted.

As to their Monitoire, it was such a one as was never seen but in the case of Calas, which proved fatal to an innocent family, and is a reproach to the annals of justice.

I come now to say a few things upon the evidence produced in this cause: and, 1st, I observe, that taking the whole of the defendant's evidence by itself, it seems to me impossible that there could be a stronger proof brought of the birth after so long a time, and upon so unexpected a challenge.

To me it is just as credible that a woman of fifty years of age, of ability (as is clearly proved here) should have children, as that a woman of twenty-five years should have them.

Lord Gardenstone

I cannot doubt that pregnancy is a thing capable of proof: it is held to be so in the law of Scotland, and in the civil law likewise. And if it is capable of proof, it is surely proved in the case before us. Pregnancy may be forgot, or it may be remembered as it happens; but what proof of it can you expect? is it by the testimony of friends, domesticks and acquaintances, or by that of strangers? It is by the first, surely; because the law expects the best causes of knowledge from those who in the character of domesticks, attendants and friends, are most frequently about the person, and have the best opportunities to know. Accordingly, in the cause before us, you have clear and pointed evidence, by such persons, that Lady Jane Douglas was really pregnant. Her pregnancy, then, so clearly ascertained, is truly a proof of the delivery; because if she was pregnant, she must have been delivered.

This therefore brings me to mention, that besides the proof I have noticed, there is a positive proof of the birth of the defendant, by two witnesses. I mean, Sir John Steuart and Mrs. Hewit, both of whom were called as witnesses, not by the defendant, but by the plaintiffs. When to this is added the strong circumstances in the behaviour and conduct of Sir John and Lady Jane towards the defendant, what doubt can remain that he is really their son? Amongst a number of other circumstances, I shall mention these following. Their private correspondence strikes me strongly, and it is not credible to me that all the scene therein exhibited could be dissimulation. It is the same thing in my view as if two alledged confederates in a crime had been overheard talking together in the very next room, and had we so overheard them, breathing such strains of truth, sincerity, and affection towards their sons, would we not believe it? But even supposing we should disbelieve this, could we carry the supposition so far as to believe that Lady Jane would absolutely break her heart, and die for love and affection to a child not really her own? And yet that grief for the death of her son Sholto was the more immediate cause of her death, is proved by the testimony of respectable witnesses. But still more, when I see her in the pangs of death, pouring out her blessings on her then helpless son, the defendant, can humanity allow me to believe that all this was falsehood and hypocrisy? Can we believe that when she was praying with her last breath for the defendant, as her son, that she was then,

Lord Gardenstone

when just going to appear before her Maker, taking Him witness to solemn falsehood? Thus much for the proof on the side of the defendant.—I now come shortly to touch upon that brought by the plaintiffs. Theirs is a circumstantiate evidence wholly, and many of the circumstances are of no weight at all: I am sensible, however, that when men have once formed an opinion of guilt, they are often apt to look at every thing as through a jaundiced eye, which makes every thing of the same colour with itself. I will however consider some of the most material parts of this large circumstantiate evidence upon the side of the plaintiffs. And 1st, I mention Godefroi's books, with the oaths of him and his wife. First, as to his books, I declare from the bottom of my heart, that they have no credit with me. When I consider the nature of a tavern reckoning or bill, extracted at the distance of fifteen years, I can have no notion of giving mighty credit to this sort of written evidence. We have all heard of a person in London, known by the name of Mother Douglas:[2] she, it seems, kept her books likewise, upon which her representatives are now prosecuting some respectable personages in this country. It is not to be credited that such personages ever frequented her house. But though they had so frequented her house, they would have surely paid off their bills, and will not now be condemned upon the written evidence of tavern books.

I must observe that Michelle's books were found to be erroneous, and therefore left off altogether by the plaintiffs, who then, for the first time, resorted to those of Godefroi; whereas to me both these grounds appear equally tenable, and you may lay hold either of the one or other, as you please.

There is one reason indeed why Michelle's books appear more credible than Godefroi's, which is, that where people go only to eat for a day or two, as at Godefroi's, there the date is of no sort of moment; but where they go to lodge for a time, as was the case in Michelle's, there the date is of moment.

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[2] Mother Jane Douglas, whose portrait appears in Hogarth's "March to Finchley," and some of his other pictures. She kept a bagnio at the Piazza, Covent Garden, which was very richly furnished, and where she died 10th June, 1761. She is mentioned once by Horace Walpole, and is called "the venerable matron" in Charles Johnson's "Chrysal," and is described in Sam Foote's "The Mirror," where her religious pretensions are ridiculed. [Information kindly supplied by Mr. Horace Bleackley.] Her representatives apparently tried to blackmail her former *clientèle*.

I observe, thirdly, that these witnesses are tainted by the Tournelle process: Madame Godefroi's oath is utterly incredible, because she persisted in saying, when she was first enquired out, That she could not recollect any one thing about Sir John Steuart and his company. When after this I see her come and join in telling very many material circumstances along with her husband, can I think her a credible witness? Lord Gardenstone

Farther, Madame Godefroi has sworn, That when she applies a blank article in her book of expence to her book for the Inspecteur of Police, it is conjecture merely, upon her part. This assertion of his wife's invalidates Mons. Godefroi's positive assertion, which he has expressly swore to in very different terms. Fourthly, It is in this single instance only that Mons. Godefroi can take upon him to fill up any blank articles in his books, though there are some of these entered only a year or two ago. For all these reasons, I think there is not the least proof of the *alibi* in the house of Godefroi.

I now come to mention some other circumstances, such as the concealment and mystery which was alledged to attend the whole of the conduct of Sir John and Lady Jane. It was here used as an argument to infer fraud, that during the time of her pregnancy, Lady Jane almost always wore a particular dress, and never went without a hoop. But it is inconceivable to me how this circumstance can ever be founded upon to prove an imposture. To me it appears directly contrary; for surely if her pregnancy had been entirely affected, instead of concealing, she would have taken every opportunity of showing it. Another circumstance pleaded by the plaintiffs, was, That Lady Jane never called for the advice of any physician, surgeon, or accoucheur during the whole time of her pregnancy. As to which, I beg leave to observe, that however odd the plaintiffs may think this, yet Scots ladies will not surely think so. They are generally pretty easy, and free of apprehensions upon this point, and can do without a physician at their bed-side every hour of the day.

Much stress has been laid upon the circumstance of their journey to Paris, which has been represented as the object of their secret destination from first to last; whereas it is in proof, that Lady Jane was really advised by the Chevalier Douglas to go to Paris to be there delivered.

The circumstance of their employing so obscure a man as

Lord Gardenstone

La Marre, after they had said that they went to Paris for the best assistance, has been also laid hold of by the plaintiffs; whereas Sir John expressly swears, That he desired La Marre to have other assistance ready at hand, which La Marre would have got, had he not easily accomplished the delivery himself.

Much has been said also of the circumstance of the younger child's being sent into the country, and about Lady Jane's never having seen him there. To which it is answered, That the child being sickly and tender, did upon that account want fresh air; and that it is not in proof that Lady Jane never went to see him.

I now come to mention some other circumstances; the first of which is, That of their leaving their maid-servants at Rheims, and to which I do own I see no reasonable or satisfactory answer.

As to the forgery of the letters, I see no evidence of a forgery, in so far as Sir John said they were copies of letters. But even supposing th. to be forged, I cannot carry it so far as to deprive the defendant of his state upon that account merely.

Had the parties been all now alive, they might have been able to account for many circumstances in their conduct, which are seemingly suspicious to us, in the same manner as the circumstance formerly mentioned of their having dropt their man-servant at Liège has been accounted for. And when to this we add the strange and singular character of Sir John Steuart, the principal actor, we need wonder the less at many of these circumstances. I shall now conclude with observing, that if the plaintiffs prevail in this suit, the defendant's case will indeed be singularly hard: For in the first place he has never had a fair trial for his birth-right. I do not mean here, but in France. And, secondly, of all the numerous cases of *partus suppositio*, there is none similar to this; none of those children were possest of their filiation; in none of those cases was there the same strong proof of pregnancy, nor such direct and circumstantiate evidence of the actual delivery.

Lord Kennet.

From the Portrait by Martin in the Parliament House.

Judgments by the Court of Session.

Saturday, 11th July, 1766.

Lord Kennet

Lord KENNET[1]—This cause being of so great importance and expectation, it is highly reasonable that each of your Lordships should give his opinion upon it. My plan is to deliver my opinion upon the principal points of the cause, most of which have been already stated with great propriety by those of your Lordships that have spoke before me.

I do not think myself capable to persuade any of your Lordships to be of my opinion. And though I thought I could do so, yet I would be very far from desiring it.

My opinion is then for sustaining the reasons of reduction.

The first question before us is, Upon whom lies the *onus probandi?* Upon which I observe, that when a person claims, he must prove his propinquity, or at least he must have the acknowledgment of parents, and a habite and repute general and uncontradicted. Such a proof as this, however, cannot be called a *probatio probata*. Neither is the acknowledgment of parents a presumption *juris et de jure:* for then no proof at all would have been allowed in this cause. The consequence of this is, That the *onus probandi* lies upon the plaintiffs, who must therefore bring a clear, convincing, and demonstrative evidence to support their challenge of the birth.

When I lay down these principles, I do not, as was hinted yesterday, shake the security of the subject's birth-right, since it is clear, That every person must remain in the possession of his state upon the legal presumptions for filiation, till it be clearly and convincingly proved, that such person is not entitled to that filiation.

An objection has been moved for the defendant, on account of the lateness of bringing the present action against him; but upon a little consideration, this objection flies off, as it is clear, that the plaintiffs had no right to bring such an action till after the death of the Duke of Douglas. And as to the distance of time so much complained of by the defendant, it

[1] Robert Bruce of Kennet, appointed, with the title of Lord Kennet, 1764; died 1785.

Lord Kennet is really as great a loss to the plaintiffs as to him; and indeed I rather think it had been happy for this defendant if the action had been still later; and that Sir John and Mrs. Hewit had both of them been dead before they could have been examined in the cause.

Of all evidence to prove a crime, such as that of the *suppositio partus*, the circumstantiate evidence is the most convincing; and what is more, the least suspicious.

In judging of such a proof, the whole circumstances must be taken together. Some by themselves may appear trivial, which, when joined to others, appear exceedingly material. I considered the plaintiffs' proof even with a prejudice for the defendant, and I examined his proof to find out circumstances to make me believe that he was the son of Lady Jane; which I sincerely declare I much wished to be the case. But motives of compassion cannot now have weight with me; for when I sit as a judge to determine a case of property like this, I must go on in the straight road of evidence, without turning either to the right hand or to the left.

The pregnancy of Lady Jane Douglas is in course the first object of proof in this cause, and I must acknowledge, that I think there is a clear proof of the appearances of pregnancy; but then I consider, that such appearances are often very deceitful, and that they cannot be well distinguished from an affected pregnancy. Of this we have many instances in that famous title of the Roman pandects, *de ventre inspiciendo*.

The proof of pregnancy brought for the defendant, is a proof of opinion by the witnesses merely; who, I dare say, have deposed according to their own belief; though I think their depositions not sufficient to establish the truth, that Lady Jane was really pregnant. It deserves attention upon what different grounds the different witnesses formed their opinion of the pregnancy; and more particularly Sir William Stewart and his lady say, they thought Lady Jane pregnant, because she was pale of complexion and had frequent vomitings. As to the paleness of her complexion, that appears to have been natural to her; and as to the vomitings, it is in proof, by the oath of Isabel Walker, that she had been often troubled with these even before she left Scotland. Mrs. Hewit and Isabel Walker are, no doubt, the capital witnesses for the defendant upon this point of the pregnancy. But then, their testimonies appear to me highly suspicious in many respects, and in none

more than in what they have said as to the prodigious bulk of Lady Jane even before she left Aix-la-Chapelle. For if the bulk had been as both these witnesses represent, it is incredible to suppose, that so many witnesses, to whom Lady Jane daily appeared throughout her journey, should never have observed it. Mrs. Hewit deposes, That when they were at Rheims, Lady Jane was so very unwieldy, that she never went abroad but once: Whereas the Abbé Hibert walked with her often in the most public places and walks about Rheims. Lord Kennet

At the same time, as it is certain, if Lady Jane had been pregnant, she must have been delivered; I thought if I could find out in her a real bulk when seen without her cloaths, it would go far to instruct the defendant's plea.

With this view, therefore, I carefully considered the evidence of Madame Tewis, Mrs. Hewit, Isabel Walker and Mrs. Hepburn of Keith. As to Madame Tewis, she appears to me to have declared things which could not possibly exist at that time, at so fallible a stage of her pregnancy. But it is my opinion, that having been drawn in to express herself too strongly upon this point to Sir George Colquhoun and Colonel Douglas, she was thereby obliged to repeat the same afterwards in her judicial declaration.

The amount of Mrs. Hepburn's oath, is, that upon coming one day into Lady Jane's bed-room when she was dressing, she observed her breasts to be of so large a size, that she had no doubt of her being with child. But these marks are still too fallacious, and therefore I was willing to take in here the declaration of Effie Caw; but then this declaration of hers amounts to an opinion only, and that opinion formed without any opportunity to know.

Isabel Walker and Mrs. Hewit have gone much farther upon the side of the defendant, but then they have swore to many things which are not true. Isabel Walker, particularly, is incredible when she swears as to the height of the beds, and that upon that account, Lady Jane was obliged to use a stool to get into them. This witness has sworn, that Lady Jane employed no mantuamaker at Rheims. And she has deposed very particularly, but very incredibly, as to her conversations with Mrs. Andrieux there. She is also no less incredible, as to what she relates of a conversation which she says, she over-heard betwixt Lady Jane Douglas and the late Lord Prestongrange upon the subject of the birth of the children.

Lord Kennet Perhaps, my lord might say to Lady Jane, that she was not bound to prove the birth, but surely his lordship would never advise her against providing herself with proofs to be used afterwards, if there should be occasion for them.

Lady Jane and Sir John gave many different pretences for their leaving Aix-la-Chapelle. There is one circumstance particularly that strikes me strongly. I see that Mrs. Tewis offered to procure for them the castle of the Count de Salm, where Lady Jane might have had every thing convenient for her approaching delivery; and that Mrs. Tewis did accordingly write to her friend the Great Bailiff [Grand Bailli] of the Count, desiring accommodation for Sir John and Lady Jane in the castle of Bedbur. It might have been expected, that Sir John and Lady Jane, as they had agreed to petition the Count de Salm for this favour, would have waited for his answer; but instead of that, they suddenly leave Aix-la-Chapelle under pretence of the imminent hazard of an approaching delivery, and set out for Rheims, where, nevertheless, they continue to remain for the space of a month. How ill then does this agree with their pretence for not staying but a few days at Aix-la-Chapelle, when they might have got their answer from the Count de Salm.

After having remained so long at Rheims, they suddenly set off for Paris, and leave their maids behind them at Rheims, at a time when of all others they had the most need for their attendance. For this strange conduct, in their not taking the maids alongst with them, the want of money was given as a pretence which is clearly proved to be false, for Sir John had at that time a credit for no less a sum than 2000 livres.

I now come to the proof of the delivery. The defendant was not bound to prove the delivery, and it lies upon the plaintiffs to prove the falsehood of it. But then, if the only three persons concerned shall be found to give inconsistent and false accounts of this matter, this must go a great length to disprove the birth. I have heard it said, that the defendant has proved his birth by the direct testimony of two witnesses, Sir John Steuart and Mrs. Hewit. I own, I cannot understand this argument. If it be a good one, there is a ready way laid to accomplish an imposture at once: but supposing, that not only two, but twenty witnesses had swore directly to the birth; yet still, the plaintiffs might have proved the falsehood of it by contrary evidence.

I have mentioned the accounts given by the parties themselves: with respect to Lady Jane, we see her always speaking in general; the only time she came to particulars, was in a conversation with the Countess of Stair, as it stands deposed to by her daughter the Hon. Mrs. Primrose. Lady Jane well know, that there was plenty of good assistance to be had at Rheims. And therefore, to excuse the strange step of her going to Paris, she tells the Countess of Stair that strange story about the advice given her by an unknown lady to leave Rheims directly. As the professed intention of their going to Paris, was to have Lady Jane delivered by the ablest accoucheur there; and as Lady Stair observed to her, that she ought to have had some of the British people then at Paris witnesses to the delivery, she has an excuse ready at hand, which is, that she was delivered within half an hour or within an hour after their arrival in Paris. Lord Kennet

Sir John Steuart in his account of the matter solemnly says, that he went previously to Paris in the month of May or June preceding the birth; and yet, this is clearly proved to be a falsehood. And as this is the case, can we presume any part of the accounts given by Sir John to be true? It is acknowledged by Mrs. Hewit, that there was no nurse bespoke, and she gives this strange and unaccountable reason for it, that Lady Jane did not know if she would be brought to bed of a living child.

Sir John Steuart says, that he would not have known where to have found out La Marre, if he had been wanted suddenly; and that if this had been the case, he must have called another. He afterwards attempts to make this somewhat better, but in reality makes it worse, because he deposes, that when they came back from Paris to Rheims, in the year 1748, he did not even then know how to find out La Marre.

Mrs. Hewit has said that Lady Jane had no sick nurse, and yet Isabel Walker says Mrs. Hewit wrote her they had a sick nurse. Again, it is said that the Pierre La Marre never came to see Lady Jane but once. This is extraordinary indeed; and the more particularly so, as, according to their own accounts, he had the care of the second boy, who was a weakly tender infant.

The defendant had fixed Madame Le Brune's, as the place of the delivery.

When Mrs. Napier pushed Sir John Steuart to give Lady

Lord Kennet Schaw an account of the particulars of the birth, he then fixes the delivery to have happened in the house of Madame Michelle; and at this time too, Mrs. Hewit writes her letter to the Duke of Douglas, fixing upon the same house of Michelle as being the place, though she has since sworn, repeated times, that she could never remember French names.

Mrs. Hewit has expressly deposed, that the whole time they were at Michelle's, Lady Jane never went abroad, either to Versailles or to any other place, whereas you have it in proof that she made two separate journeys while staying at Michelle's; and in particular, Madame Blainville swears expressly, that she went in the very coach with Lady Jane to see the palace and the gardens at Versailles. It must be held to be very extraordinary, that she was able to go to Versailles, and to walk about there, and yet that she never went to see the second boy, who was at nurse hard by her. It has been said, that there is no proof that Lady Jane never went to see this child. But this is a mistake; for Mrs. Hewit expressly deposes that Lady Jane never went to see Sholto at all, "because she was weak and sickly the whole time they were at Michelle's."

When they come first to Michelle's, let us observe their conduct here. They talk as if Lady Jane had been lately delivered in the country, and they set out for the country under the pretence of bringing their child from some place towards St. Germaine. And when they return with their child next day, the people at Michelle's are surprised with its appearance; and some of the witnesses, particularly Madame Blainville, give it as their opinion, that the child brought there must have been much older than ten days.

They have told us that this second boy was put to nurse under the care of La Marre: and yet, by their own account, they know not where to find either La Marre, the child, or its nurse. It is extremely odd that nobody ever saw this second child, till he suddenly made his appearance at Rheims. Why not desire the Chevalier Johnston, then at Paris, to enquire after the child who was so sickly and tender?

Sir John declares that he knows nothing of the place where they resided in Paris in 1749, and wherein they were three days before seeing their second child. For this a bad memory is no sufficient excuse. I had not the honour to sit alongst with your Lordships when Sir John gave his declaration, but I have heard that he was allowed to retract, but that he did not,

upon any part of the accounts given by him. However this be, there is a remarkable instance of Sir John's attention and distinctness in his letter to Mons. Mallifer, at Rheims. Lord Kennet

It appears clearly in proof, that both Sir John and Lady Jane were very early acquainted with the suspicions of the birth, yet they took no care to remove these. They said that their honour was called in question: but this was only a pretence; for why not send to Paris for proofs of the delivery, when it is clear they sent to Aix-la-Chapelle for proofs of the pregnancy? Or why attempt a proof of the pregnancy at its most fallible stage, when they might have actually produced proofs of the delivery itself? or at least they might have kept some of the many genuine letters which it is said they received from La Marre. Or, at least, why did Sir John forge letters as coming from La Marre? Surely, if he could have got real ones, he would have never fabricated false ones.

The Madame Le Brune, in whose house the delivery is now said to have happened, is not to be found in any of the books either of the police or the capitation; the only Madame Le Brune, who it is now said by the defendant may have been the person, is a *garde malade*, and so does not answer the description so pointedly given by Sir John: and indeed it is not credible that Sir John Stenart, whose character was never that of a miser, should, when he had money in his pocket, have allowed Lady Jane Douglas to have been delivered in so wretched a place.

I do not think it however conclusive against the defendant, that La Marre cannot now be found out; it was his strongest argument, that he was not now obliged to produce him; he should have therefore rested here, for he is not in the least assisted by this proof of a Louis Pier de La Marre. Sir John's description of his La Marre must make it clear beyond controversy, that this Louis La Marre cannot be the same man. When we consider the conversations which Dr. Menager had with Giles and Moureau, we shall be convinced that Giles's testimony is more credible than Menager's; the manner of this La Marre's signing his name is proved, by his contract of marriage, not at all to coincide with that of his subscription of the four pretended letters.

If La Marre did not deliver Lady Jane, then there is no weight due to the testimony of Madame Garnier; but, besides this, when we consider the difference in the accounts given by

Lord Kenne: Sir John, and those of Madame Garnier, we cannot possibly make them tally together in any one particular. Madame Garnier did not know whose child it was she was nursing; only she says she was informed it was to be a rich child in its own country. This then cannot apply to the second child of Lady Jane Douglas, and if we examine the whole of Madame Garnier's accounts as to the time of the child's coming and going away from her, we shall find, that in point of time, her accounts in noways suit those given by Sir John and Mrs. Hewit of the second boy.

I have hitherto rested my opinion upon the conduct of the parties concerned; but I own I cannot lay out of my view the proof of the *alibi* in the house of Godefroi. Godefroi and his wife do not depose altogether from memory, and their books are further supported by Sir John's own admission, that he and his company did actually come there upon the 4th July. The more these books have been canvassed, the more exact do they appear to me. And when Sir John has himself admitted, that he staid there three days, it is surely most probable, that there would be an account opened for them in these books.

Great cries have been raised against the Tournelle process, and indeed the House of Lords have in so far condemned it; yet I cannot see it was of such hurt to the defendant as set forth. The Parliament of Paris is a Court of honour and dignity. What then could induce them to do any thing bad of itself against the defendant? I am not moved with the argument drawn from the plaintiffs first founding their argument of the *alibi* upon the books of Michelle; for when those books were found to be erroneous, why not resort to Godefroi's, which are not so? And as to the Monitoire, it does not strike against this part of the evidence at all.

As to the enlevements, although the Mignons may have sworn falsely as to some particulars, yet it is clear they spoke truth as to their having a child taken away. The time of this enlevement is critical—it is surprisingly near.

As to Saury's child, this does not depend so much upon parole evidence, but upon the evidence of the church records. This enlevement is brought with most surprising exactness to the very period at which Sir John Steuart, Lady Jane, and Mrs. Hewit are in Paris, and when they can give no account of themselves whatever.

Lord Hailes.

After Kay.

Judgments by the Court of Session.

Lord Kennet

There is no proof in the memory of man of an enlevement having been accomplished in Paris.

As to the death-bed declarations, I see Lady Jane behaving with tenderness to the defendant on her death-bed, but what she said at that time cannot properly be called a declaration.

As to Sir John Steuart's declaration, it is indeed much more formal; but we often see that people who have committed great crimes will go to death averring falsehoods.

Upon the whole, I strongly feel for this defendant, but should feel more to deliver what were not the real sentiments of my heart.

Lord Hailes

Lord Hailes[1]—In judging of a cause of this nature, we must act according to strong probabilities and moral evidence. The character of parties concerned must, in such an evidence as this, have some weight. And if I could persuade myself of a good character on the part of Lady Jane Douglas, I should think it strong on the part of the defendant. But I cannot believe the opinion of some of the witnesses who have deposed so favourably for her upon this particular, because there is much evidence of her want of truth upon almost every occasion. Thus, when in her letters to one friend she is professing the strongest attachment to the Protestant religion, and telling them that she was going to a country where she might have the free exercise of that religion, she has in the meantime resolved upon going into the very heart of France, where she knew she could have no opportunity at all of hearing Protestant ministers.

Her conversation with the late Countess of Stair, as it stands deposed to by the honourable Mrs. Primrose, is another flagrant instance of the truth of this observation.

In her letters to Mrs. Carse, which are dated from Holland, she not only in the most solemn manner denies her marriage with Mr. Steuart, although she had been married to him several months, but likewise throws out a deal of scurrility upon her own cousine Mrs. Stewart,[2] for her having repeated the news which she had heard of that marriage. There are several other instances of this deceit in her conduct, in some of her letters to her brother the Duke of Douglas, and in several other

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[1] Sir David Dalrymple of Hailes, Bart., appointed, with the title of Lord Hailes, 1766; died 1792.

[2] See Historical Narrative, p. 26.

Lord Hailes

part of her epistolary correspondence. I admit that, nevertheless, the private correspondence between her and Sir John is amongst the strongest parts of the evidence on the side of the defendant; yet there is one thing exceedingly remarkable, that in none of these letters to one another do they ever complain of the suspicions propagated against the birth, nor unburden here what naturally would have been expected to have been uppermost in their minds.

I am at a loss to account for the part that Lady Jane acted throughout the whole of this scene, and must attribute it to the amazing ascendency which Sir John seems to have got over the mind of this unhappy lady.

Having made these observations, I now proceed to examine the evidence brought in this cause. And first as to the pregnancy. The appearance of this is proved indeed by strong testimony. I observe that several of the witnesses give as their reason for thinking Lady Jane pregnant that she was weak and pale, though it is very certain that she was so by her natural constitution. Several of the nuns at Aix-la-Chapelle have deposed strongly to the pregnancy, though they are surely not the best evidences to establish a fact of this sort.

Mrs. Greig I esteem a very honest evidence, but one who is overrun with prejudices; and I have the same opinion of Miss Primrose. Much has been said about the miscarriages by Lady Jane; and more particularly the defendant has founded strongly on the deposition of the nurse, Manger, and of Madame Rutlidge. That mentioned by Madame Manger is now given up, and the defendant supposes that she may have mistaken the *Catamenia* for a miscarriage.

It is very possible that honest witnesses may have been deceived in their notions of the pregnancy by entertaining a sort of belief that some great event or other was to follow—such as is mentioned in Sir William Stewart's and the Earl of Dumbarton's letters to Lady Jane. Lady Catharine Wemyss is an unsuspected evidence, and yet she observed nothing of the pregnancy; on the contrary, her whole deposition tends the other way. The Countess of Wigton does not say that she herself perceived anything; she only believed it because she heard it commonly reported so by others. Mrs. Andrieux at Rheims had no notion of the pregnancy; neither had General M'Lean, the Miss Hiberts, nor Madame Sautry, the mantua-maker. At the same time, if I could give full credit to Isabel

Walker, the cause would incline to the side of the defendant; but I cannot believe her evidence, because she swears to things which I think incredible. A strong instance of this is that she does not remember any one thing about the Chevalier Johnston, though he went over in Lady Jane's company in the pacquet-boat to Holland. Her conversations with Madame Gillessen in German, and with Madame Andricux in French, I cannot give credit to; and it is truly amazing that her curiosity should never have led her so much as to look into Sir John Steuart's declaration, nor Mrs. Hewit's oath, although she had sent her from Edinburgh the papers in this cause. Lord Halles

But these are not the most material particulars to diminish the credibility due to this witness. In the former oath she swore[3] expressly that she had her hands upon Lady Jane's naked belly, and found her with live child; whereas in her last oath, lately emitted in your Lordships' presence, she says that it was *not* her naked belly that she felt when she found the child move, but above her shirt, as she thinks. She further swears that she had never before felt the motion of a child in any other woman.

Is it not wonderful that this witness had not the same opportunity of making this trial afterwards, when the pregnancy was much more compleat? Had she fixed upon a more early period, the difficulty would have been changed, but not done away. Another particular in which I think this witness has gone too far is in what she has deposed as to the letter from Mrs. Hewit at Paris. I am persuaded there never could be any such letter, or at least it must have been a letter wrote betwixt the 22nd and 26th day of July. Another circumstance in which this witness appears to me to have gone too far is in what she has deposed as to the letter from La Marre, received by Sir John Steuart when in Mr. Murray's, St. James's Place. The account given of it by her is not credible; and I am persuaded the letter she alludes to is the famous fourth letter dated 9th June, 1752, whereas they had left Mr. Murray's in September, 1751.

Sir John's declaration and La Marre's letters are amongst the capital parts of the proof in this cause. First, as to his declaration, there can be no pretence of his vivacity to apply here to palliate his falsehood. On the contrary, there is the strongest

[3] Here his Lordship spoke Latin: it is supposed because there were a great many ladies in the Court. [Original note.]

Lord Hailes proof of a state of recollection of mind throughout the whole of that declaration. And, in fact, Sir John uses with the greatest propriety, sometimes positive assertion, sometimes a *non memini*, and sometimes expressions of doubt. Sir John had pretended to Mrs. Napier that he was very apt to forget names and dates, though he had a good enough memory as to facts. But the truth is that, upon considering the declaration itself, it does appear that he had a very good memory both as to names and dates, for in that declaration he does give us no less than twenty-five different names and dates. The only time that he seems to be at a loss for names and dates is when he comes to be examined about the Le Brune's house, about her lodgers, about the nurse of the child, and the banker from whom he got the money at Paris. Mr. Hepburn of Keith has in his oath deposed pretty strongly as to Sir John Steuart's want of memory, and particularly gives one instance of it which happened at Boulogne; but this is by no means sufficient evidence in opposition to so much to the contrary appearing on the face of his own declaration.

As to Sir John's description of La Marre, the accoucheur, it is the most wonderful that was ever heard. He concealed his lodgings even from Sir John, and yet he frequented coffee-houses and the most public walks in Paris. And yet, notwithstanding all this, Sir John gets his address, and so sends him letters directed to the care of the post office in Paris, which he receives and answers.

It has been said by Sir John and Mrs. Hewit that they were obliged to leave the Madame Le Brune's house on account of bugs; but it is also said that they left the house they were in because it was a smokey house. Which was this smokey house? It was not Le Brune's surely, it was on account of bugs they had left this house; and it could not be Michelle's, for they only here complain of the bugs.

According to Sir John Steuart's accounts, the second child was sent to nurse within two or three leagues of Paris, on the road to Amiens; and when he was examined afterwards upon oath he deposes that the child was a little way from Paris. In short, his whole account of La Marre, and every thing concerning him, is absurd from beginning to end.

If, as Sir John said, La Marre came from Liège, why not go to that place to enquire for him? The power of the parliament of Paris did not extend here, and Sir John was in absolute

safety to go. It has been alledged that Sir John was in no mistake when he called La Marre a Walloon, as he was from Montreuil sur Mer; but suppose Sir John had said La Marre was a Roman, it might have been equally well argued he was right. Lord Halles

I have formerly mentioned La Marre's letters; as to these four which are forged, Sir John's alledgeance was that they were copied from the originals by Mr. Clinton at London. And this again Mr. Clinton denies.

In the fourth of these letters, which I have mentioned before, there is a great deal of art displayed by Sir John. In the first place, it is evidently intended to serve as a certificate from Pierre La Marre, although in the form of a letter. It would have been more dangerous for Sir John to have forged a certificate with all the solemnities, than to forge a single letter. Secondly, it was necessary that the Pierre La Marre should be dead when he was called for to be produced, and therefore Sir John makes him to say in that letter that he was going again to Naples (on account of the air), as his health was not yet confirmed. And, thirdly, Sir John makes the letter to be delivered by a private hand, one Mons. Du Bois, a miniature painter, in order to save the danger from that question, how could you get a foreign letter delivered in England without its having the post-mark upon it? It is remarkable, too, that in this letter La Marre makes his enquiries after the youngest child by the name of Sholto Thomas, though if he had really ondoyed him, it is well known that, upon such occasions, the accoucheur never does give the child a name.

Sir John has said that he never could find out this Mons. Du Bois who brought the letter; but Sir John could not but know that if he went to a certain coffee-house in London, he would have immediately heard of any French artist whatever who had come over to follow his business in England.

These four letters now in process I at first believed genuine, and was thereby convinced that the defendant was the son of Lady Jane; but now that they are proved false and fabricated, they have great weight with me to believe that he is not her son.

I will not pretend to go through the mass of proof before us, and therefore will only state a few other observations upon the remaining part of the evidence. Mrs. Hewit's memory,

Lord Halles instead of being weak like Sir John's, as was alledged, is really amazing, for she forgets only five dates in twenty. What are these five? They are all contained in the compass of time taken up in the last part of their journey, and the time between their leaving Godefrois and their coming to Michelle's. But at any rate, at the time she wrote the letters to the maids at Rheims, her memory must be presumed to have been clear, and yet here she is detected in contradicting herself about the story of the nurses, more particularly as to Madame La Favre and Manger. In her letter of the 27th July she would insinuate to the maids that the eldest child had had only one nurse before they met with La Favre, and yet afterwards she says they had three nurses before Manger, who came immediately after La Favre. Though, as she says, "base jades, they would not come alongst with us." When Mrs. Hewit came to be examined herself, she gave a different account of the nurses, and her letter of the 12th of August is utterly irreconcilable with the whole of her account given upon oath. Mrs. Hewit has deposed that she had no conversation with Lady Jane about the person who was to deliver her; but is it possible to believe this? Were it true, it would be a most singular anecdote in the history of human nature.

I come now to a part of the evidence which I think unexceptionable and conclusive against the defendant—I mean Godefroi's books, from which the following particulars are clear:

1mo, That three people were entered into those books on the 4th of July, at four livres ten sous.

2do, That the account relates to a gentleman who was the head of a family. And

3tio, that this company had no servant alongst with them.

In all which particulars the account exactly agrees to Sir John Steuart and his company.

The defendant's hypothesis is, that this account may relate to a different company, who were in the house upon the seventh of July. But supposing that this company had escaped two *visa's* of the *inspecteur*, there is scarcely one single instance of an entry in the police books for two or more persons without a correspondent entry in the household book.

As to the parole testimony of Godefroi and his wife, they had a good cause of remembrance. Sir John Steuart and Lady Jane had been recommended to them by Mr. Mallifer, syndic of

Rheims; and besides this, it was a very remarkable thing to see British people coming to Paris before the proclamation of peace. And when to this we add the pointed description of Sir John's language and manner, we have no reason to think they have been in a mistake. Lord Hailes

If upon their leaving the Hotel Chalons they could have pointed out the Le Brune's, or if they could have brought any circumstances whatever to show that such a woman ever existed, it would have derogated much from the testimony of Godefroi. But no person whatever of the name of Le Brune has been found out or heard of, in the least corresponding with the accounts given of that house by Sir John and Mrs. Hewit. By their accounts one would think that the Le Brune, in whose house the delivery is pretended to have happened, was like that of Michelle, a respectable house; not that of a *garde malade*, which is the asylum of the loose and wretched, a fit enough place for Mignons to go to, but not for Douglas.

The non-existence of the Madame Le Brune is evident; in short, it was necessary in this case, as in all others of imposture, to substitute fictitious persons, and make them act their part in the same. This was particularly done in the famous case of George Salmanassar, and was one great means of his detection, as it was likewise in the case of Count Vincentio—Count De La Torre.

As to the two enlevements, whatever objections may lie against the testimony of Madame Mignon, yet the whole circumstance of her child's being carried off is proved by others; and as to Sanry's enlevement, the witnesses here are under no suspicion whatever.

Upon the whole, his Lordship gave his opinion for sustaining the reasons of reduction.

The Douglas Cause.

Tuesday, 14th July, 1766.

Lord Justice-Clerk The LORD JUSTICE-CLERK[1]—It is now my duty to give my opinion upon this very important cause, the most important, taken in all its circumstances and consequences, that ever came before this Court.

The rights of filiation should no doubt be strictly guarded and secured against challenge, and, on the other hand, that same right should be equally guarded against imposture and supposition of children. The plaintiffs in this cause have an essential interest, and have been found to have a good title to pursue.

The situation of the defendant, and the importance of this decision are too affecting not to be felt by every body. Sorry I am, therefore, that I must now give my opinion against him, an opinion which, I hope, will appear to all, and particularly to those who know my particular regard for the noble personage who patronises his defence, to flow only from the deepest conviction, and from my regard to the rights of sacred justice.

This being so late in the debate, and so much having been so well said by others of your Lordships, it would be improper for me now to take up the cause in the same extensive view which otherways I should have done.

I will therefore, in the first place, proceed to lay down a few of the principles of law and the rules of evidence upon which, in my opinion, this case falls to be determined. The first point which has occurred in this debate is *Cui incumbet probatio?* the arguments upon which, I think, have been strained too far by the council upon both sides. The plaintiffs and the defendant have now joined issue upon the fact; therefore, if the plaintiffs have not brought evidence sufficient to prove the position which they maintain, then the service must stand; but if upon the whole of the proof we shall be convinced that the defendant is not the son of Lady Jane Douglas, then the service must fall.

In all actions whether criminal or civil, we have two kinds of evidence to judge of, either direct or circumstantiate.

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[1] Sir Thomas Miller of Glenlee, appointed, with the title of Lord Barskimming, 1766; became Lord President, 1788; died 1789.

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In the case before us, the proof is circumstantiate, and therefore each circumstance must be proved by one or more witnesses, or by written evidence: And we must in the next place join the whole of the circumstances together, and then draw our conclusion as to the total amount.

It is admitted by all lawyers, that a circumstantiate evidence may give as full conviction to the minds of judges as any other proof whatever. And it is likeways admitted that no part of such a proof will go so far to convince judges, as the evidence drawn from the oaths, conduct and behaviour of the parties themselves; and this, because the facts being clearly ascertained, the only question remaining is, as to the conclusion from thence to be drawn.

We have heard it said, that your Lordships must have demonstration before the defendant can be turned out of the possession of his state: but demonstration implies the physical impossibility of the contrary, which can occur in no case of evidence. The term may indeed be often applied figuratively to proofs, but literally taken, it is an abuse of words. We have indeed seen cases where there was a moral impossibility of the prisoner's innocence, and yet, we have seen juries acquit such a one. Such a case was that of Reid, who was lately tried before the criminal Court, for the crime of sheep-stealing. This Reid was a poor man of a very suspicious character. He was found with the exact number of sheep in his possession upon the road leading from the very farm from off which they were stole, and he pretended not to bring any proof whatever, that he had attained the property of them in any lawful way. A council at that bar, who likes to distinguish himself upon such occasions, patronized the prisoner's defence, and notwithstanding the clearest and most positive evidence of all the facts which I have mentioned, "The jury acquitted the prisoner." Upon so strange a verdict your Lordships, members of that high Court (I mean all of you who were then present) declared your opinions *seriatim*, That this verdict was given in the face of most compleat evidence.

It was said by some of your Lordships, "That a direct proof by two or more crediblo witnesses, cannot be redargued by a proof of circumstances not inconsistent with or exclusive of the truth of the allegiance maintained by the persons accused." I readily admit the justice of this general pro-

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position, and to be sure such of your Lordships as admit the credibility of Sir John Steuart, and Mrs. Hewit, and who think, that the whole of the plaintiffs' proofs is not inconsistent with their allegiance, must apply the principle to the decision of this case: but such of us as think the plaintiffs' proof not compatible with their oaths, cannot give this proposition room here; it is impossible for us to do so.

It has been admitted, that the mere acknowledgment of parents was not sufficient for the defendant, but it was said that he had the habite and repute of the country of his birth. I understand well the weight of the argument from habite and repute, when a child is born of a marriage in the country where his parents, his friends and his connections reside; or if in a foreign country where it shall appear, that his parents have established such a connection. But what is the habite and repute contended for here? What is its strength? Is it the habite and repute of their friends and neighbours at Paris? They had none such there, for they kept themselves concealed. What then does it come out to be? Not even the habite and repute of the family where the birth happened (for no such family has been found out) but only that of the family of Madame Michelle. But who of that family was ever to question the truth of the account given by a strange lady of her having had a child: And, is it possible, that any judge can lay weight upon this as being habite and repute?

When, after returning to Rheims, the same argument holds good, they came there amongst strangers who had no interest whatever in the matter; why then should such people either enquire or doubt?

Much has been said of the danger of putting British people, who have transmigrated to the colonies abroad, to prove their birth; but this alarming consideration does not strike in here, because the habite and repute arises to them from their residence in such colonies, and from the knowledge of their relations, their friends and their neighbours founded upon that residence. But will this apply to the present case, where the parties concerned have, by their own deliberate act, shut out the possibility of any habite and repute whatever?

Much has also been said of the great delay of the plaintiffs in bringing this action. If this observation was true, it would strike me in the very contrary light. Suppose that the late Duke of Hamilton had taken up a suspicion of this

birth, I will not say whether action at his instance would have been sustained or not; but at any rate it was not reasonable to expect, that when the Duke of Douglas did not challenge the birth, the Duke of Hamilton should. On the other hand, to be sure, the defendant might have brought a declarator of his birth. Yet I do not impute it to him that he did not do so, but I impute it to Sir John and Lady Jane, that when they were repeatedly warned of the flagrant suspicions, they did not take the common and necessary methods of removing the suspicions, and securing evidence of the birth. If this defendant had been generally received as the son of Lady Jane Douglas, there would have been no room for such an imputation; but when, from the beginning, the birth was suspected, not only by the Duke of Douglas, but by many others, the delay of bringing an action to have the matter cleared up, must be imputed, not to the plaintiffs, but to Sir John Steuart and Lady Jane Douglas. Lord Justice-Clerk

Much has been said on the part of the defendant, on account of the Tournelle process, and the witnesses examined by the Tournelle, instead of being *omni exceptione majores*, were said to be *omni reputatione minores*; these were two strong expressions, and I cannot but disapprove of them. I am sure I never was attached to arbitrary proceedings, but I have too much liberality ever to reflect on the honour of so respectable a Court as the Parliament of Paris. These witnesses were subject to the jurisdiction of that high Court, were examined according to law and rule; how then can such testimonies be compared to those of a slave under his master's rod?

What were the grounds upon which all this prejudice was founded? They were these principally, that the witnesses were examined in private before the Tournelle; and that they were thereby tied down to tell the same story again. I can have no idea, that the strong opinion which I now notice could be founded upon the witnesses complying with the law of their country. How can this infer any suspicion of false swearing? Or why, because a witness is once sworn, shall his after evidence upon oath be thereby discredited? In England, witnesses who have sworn in one Court, are sworn again in another. This is the case in all jury-trials in that country, and it is the case in this country too, where we have witnesses examined in the Court of Session, though they had emitted their testimony formerly in that of the Justiciary. This is a

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thing that was never doubted of before; it has occurred in this very cause, for there are several of the witnesses who after having sworn to establish the defendant's propinquity upon his service, have been again and again examined upon your Lordships' commissions.

I recollect, that there was a period when this Tournelle process had well nigh obstructed the course of justice. Much outcry was raised against it, both here and in another great house; and therefore it is not to be wondered at if there was some strong speeches made upon the occasion: but without prophesying, as my brother has done, I can say this upon the judgment of the House of Peers itself, that that Court relaxed the severity of your Lordships' judgment, and that the idea of the defendant, as to this Tournelle process, was there treated with contempt. If these Tournelle witnesses had been picked off the streets of Paris, it would have been a strong thing indeed; but they all happened to be unsuspicious, because Lady Jane and Sir John have confessedly committed the inspection of their conduct to them. I must therefore, in order to have a compleat view of this matter, find out the sources of this alleged corruption, and bribery, and slavish fear. I cannot believe that the noble and honourable guardians of the Duke of Hamilton would have either corrupted or concussed the witnesses. To me it is more difficult to believe, that these persons would thus wickedly conspire against the young defendant, than that Lady Jane and Sir John should have conspired together to bring in an impostor. No jealousy can be entertained of Mr. Andrew Stuart. who carried on the whole affair in France. He has already got an honourable testimony from the bench. I back that testimony as to his whole conduct in this cause; and I do believe that the records of Court cannot furnish us with a more honourable instance of candour and openness than what he has shown in these proceedings. His character stood the scrutiny and examination of all his private memorials and papers concerning his enquiries in France; a trial, which, it is believed, no agent ever underwent before.

In what I have further to say, I will not however rely much upon the Tournelle witnesses, on account of the clamour which has been carried so extremely high against these proceedings. I would have inclined to have given my opinion upon one general view of the evidence; but because all your Lordships

have given the particular grounds of your opinions, I shall also give mine. The first thing which I take into my consideration is, the characters of Lady Jane and Sir John. I will not however go deep here, as I do own that this is a sort of evidence which seldom weighs far with me, as people who are honest themselves seldom suspect others. Several witnesses have sworn very favourably for Lady Jane upon this point of her character; but I do own, that I see so much real evidence of the falsehood and duplicity of her character, that I cannot lay any stress upon these witnesses' opinions. Lord Justice-Clerk

Her letters to Mrs. Carse, wherein she so much abuses Mrs. Stewart for telling a thing which she herself knew to be truth, and the whole of her conversation with Lady Catherine Wemyss at Aix-la-Chapelle, are extremely strong upon this point. In all her letters to her friends in Scotland she is full of the greatest zeal for the Protestant religion, and seems to be uneasy till she can get to Geneva, or some other place where she might have the free exercise of it; while in the mean time she goes into the very heart of France, where she could have no opportunity at all of the exercise of her own religion. But above all, this falsehood and duplicity of conduct appears in the forgery of the letters; in which, I think, Lady Jane was concerned alongst with Sir John.

But *cui bono?* and with what motives did they agree to impose children on the world? I am at no loss to see these: the use immediately made of the children to get money from the Duke of Douglas, speaks out the design; and it is most probable likewise, that Lady Jane believed that the dignity and estate of Angus would undoubtedly descend upon her and her issue. As to the motives for this terrible action, I do not believe they had the same views of the crime that your Lordships have. They might colour it over with public spirit, a desire to keep up the family of Douglas, and a resentment against the Duke of Hamilton.

Lady Jane was clearly past the period of having children, according to the common course of nature. This, therefore, shows that it was at least an extraordinary thing. I therefore differ from one of your Lordships, who, upon the account of the hability to have children, thought there was nothing at all surprising in Lady Jane's actually having children. And I do aver, that there is not one women in ten thousand, yea not one in twenty thousand, who produces children at the

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age Lady Jane was, whatever signs they may have of capability I only mention this, because it should have led us to be more attentive to the particular circumstances of the alleged pregnancy.

As to the proof of the pregnancy, I think it not satisfactory; it amounts to the appearance of pregnancy only: there is a bulk deposed to by the witnesses, but no evidence of her being actually and truly with child. The uncommon size of Lady Jane's belly and breast, rests on the evidence of Mrs. Hewit and Isabel Walker; neither of whom I believe. And as to what is swore by the other witnesses, and more particularly by Mrs. Hepburn of Keith, it goes no further than to prove certain external appearances. I therefore leave it here, and acknowledge, that there were the external appearances of pregnancy. Shall I hold these appearances then to be assumed? No. Shall I hold them to be real? No; but I will enquire afterwards if we can have room upon the other proof, and so join the proof which I have already treated of to that other proof which may occur on the side of the defendant; but if from all circumstances taken together, I can have no conviction at all of the birth, but quite the contrary, then I must hold the pregnancy to have been assumed and false. such as must precede every imposture of children.

Having said so much, I will consider slightly the other circumstances, the principal of which is their own conduct at Rheims. Sir John and Lady Jane had made a long and unseasonable journey from Aix-la-Chapelle to Rheims, under the pretence of her being to be there delivered; and yet they loiter away there for the space of a month, without making their purpose known to any person they were acquainted with at Rheims, or even without so much as once calling for the advice of any physician or accoucheur. When at last they set off by themselves for Paris, there is no mention made of getting any recommendations to the best assistance at Paris: although that has since been given as the pretence for their going there. Not one letter from any person whatever, but that from Mons. Mallifer. It is an amazing affair, never once to have mentioned to him their real design in going to Paris; and that they should have given Mons. Mallifer a false account of that design. I will not enlarge upon the suspicious circumstances of their having left the maid-servants at Rheims, because this was owned by one of your Lordships,

who spoke on the other side, to be a strange and an unaccountable circumstance. The fact, however, stands uncontroverted, and the only dispute is as to the conclusion which it will bear. In all the proofs of *partus suppositio*, this of the actors dropping their common attendants, has commonly occurred as a capital circumstance. Sir John and Mrs. Hewit acknowledge the fact, and they saw the necessity of accounting for it; and they did accordingly give an account of it which is false. Instead of their not having so much money as was sufficient to transport their maids to Paris (and it would have only required the trifling sum of twelve shillings to do so) it is proved that they had plenty of money to make them live easily, although perhaps not enough to support Sir John Steuart in his dissipated course of life. It was upon this point noticed, that the defendant is not obliged to account for the conduct of his parents. Lord Justice-Clerk

This may be true in all common cases, but not in those of the last importance to the world, in which most, if not all men, agree in their notions of propriety of conduct. As they travelled along in the stage-coach to Paris, there was not the least observation made of her pregnancy, nor did she ever discover the least of that anxiety natural to a delicate lady, making so far a journey at so critical a period. There was surely no motive to conceal her pregnancy, if it was true. Yea, upon that supposition it was most natural to expect, that she would have explained to the rest of the company her motives for the journey to Paris, as they might (and no doubt were able to) have given her some advice as to her conduct there. Nature dictated this, and anxiety and honour likewise. These circumstances are indeed amazing, and show to me clearly, that the necessity of the appearances of pregnancy, formerly assumed, being now over, Lady Jane designedly kept every thing as close as she could.

Upon the evening of the 4th July, they arrive at the house of Mons. Godefroi in Paris; a respectable house, and of all other lodgings the most adapted to the purpose of Lady Jane Douglas's delivery, as they had come there specially recommended by Mons. Mallifer at Rheims. Or if Lady Jane had thought proper to quit that house before her delivery, it was natural to have expected, that she would have acquainted Mr. or Madame Godefroi of this resolution, and desired their advice as to the proper place she might go to for that purpose.

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And it surely would have been natural too, to have spoke something to Mr. Godefroi about the Pierre La Marre, who was an absolute stranger to Lady Jane, and who it is now said had been spoke to before-hand to accomplish the delivery. But instead of all this, there is no talk at Mons. Godefroi's, either of a pregnancy or of a future delivery. There is not even the appearance of pregnancy here, about which we have heard so much when at Rheims.

As to the Madame Le Brune's, to which it is pretended they went, and where it is said she was delivered, upon the tenth of the month, was it not to have been expected that Sir John Steuart should have been able to give some satisfactory account of this matter? But indeed if ever there was such a house, it is inconceivable that it has not ever been discovered. A train of circumstances led to such a discovery; the appearance of strangers, and more particularly British people of rank, must have attracted the attention of almost the whole little street in which the Madame Le Brune is said to have lived.

When to this we add Sir John's note to Lady Schaw, and Mrs. Hewit's letter to the Duke of Douglas, in both of which not the house of Le Brune, but that of Michelle's, is fixed down for the place of delivery, it is clear that all this story about the Le Brune is a perfect fiction. But what I think the strongest part of the proof of the falsehood of the delivery is, the many letters wrote by Sir John and Mrs. Hewit, bearing date the 10th and the 11th of July, in which there is not the least mention made of any thing like a delivery. Suppose the defendant's hypothesis just, that these letters, bearing date of the 10th, were actually wrote upon the 9th. What then? the letter of the eleventh still remains, and strikes strongly by itself. Will an after-correction remove the difficulty? No, it makes it worse; because, if it was a real birth, what reason could there be of making any correction as to the day and hour in the letter of the 22nd of July? When to this we add, that all and each of their letters, wrote from Paris to their friends in Germany and Britain, were falsely dated from Rheims, is it possible to conceive that this circumstance should not have great weight in the cause? And indeed a long train of letters written by them from Rheims to Britain show clearly, that this of the false dates was done of design. Their not saying that the birth had happened at Rheims makes the

thing so much the worse; for the whole strain of these letters is to make their friends, especially those in Britain, believe that the delivery had actually happened at Rheims. This appears from Sir John Steuart's letter to the Earl of Crawford, written at Paris upon the 10th of July; and from another letter of the 26th of the same month, both which are falsely dated from Rheims. And when to this we add Lady Jane's letter to her brother the duke, not only falsely dated from Rheims, after the pretended delivery, but wherein she says, that "she had come to remain there on account of the cheapness of the place and the salubrity of the air": can we think that all these circumstances are of no importance in a proof of a most complicated fraud and imposture? Lord Justice-Clerk

There is still one other capital circumstance which affects me strongly in this cause, and for which there has been given no shadow of excuse; and that is, though the delivery is said to have happened upon the 10th of July, yet no notice is given of it by letters till the 22nd of that month. Try if you can find any excuse for so strange a proceeding! Can you take the hurry they were in as the least excuse for this neglect? No: they would have been naturally and powerfully prompted immediately to communicate to all their friends so joyful an event as the birth of twins.

As to the *alibi*, in Godefroi's, I am clearly of opinion, that the evidence thereof is conclusive against the defendant, notwithstanding all that I have heard thrown out against that evidence. It is clear that they all were there from the fourth of July to the thirteenth or fourteenth. There is no competition as to the place of their residence during this period, which indeed would have made a great odds upon this argument.

As to the evidence of Madame Michelle and others of her family, they are abundantly partial to the defendant; and yet this whole evidence gives such a picture of the situation of Lady Jane upon her coming to that house, as is utterly incredible upon the supposition of a recent delivery.

Instead of Lady Jane's being so weak and ill as not to be able to go even once abroad from Michelle's, (which Mrs. Hewit has expressly deposed) you have it established by the most credible testimonies, that she took two separate jaunts during that time, and that one of these was to see Versailles. What a picture does this give of the perjury committed by

Lord Justice-Clerk

Mrs. Hewit and Sir John Steuart, and how well does it account for Lady Jane's never going once to see her poor, sickly, second child! For is it credible that, while she was thus taking jaunts of pleasure round Paris, she should not have found time to have seen her own child?

As to the enlevements: I desiderated if there had been any such thing as this proved to have been accomplished in the memory of man, and I find there is no proof of any such; and though I am by no means clear, that these enlevements are directly brought home to Sir John Steuart; yet, when we take the whole of these circumstances alongst with the other evidence which I have formerly stated, it conveys a belief to me, that these children were disposed of to Sir John and Lady Jane.

As to the new man-midwife, Louis Pier de La Marre: I must acknowledge, That when I considered this part of the evidence, I did not think that the defendant had been drove to the desperate necessity of rearing up a different man-midwife. It is not possible to consolidate these two persons together: they are different persons clearly and totally, in age, in name, and country. The account which the defendant now gives of this matter is destroyed by the inherent circumstances of Madame Garnier's oath, who I do believe to have been no more the nurse to the second child, than this Pierre La Marre was the accoucheur.

I now come to speak a little of the conduct of the pretended parents themselves, after the supposed delivery.

It appears that they were very early informed of the suspicions of the birth, and yet that they never took any prudent step to remove them. All that they did was to procure from Madame Tewis a declaration of the appearance of pregnancy at its most fallible state.

As to the opinion said to have been given to Lady Jane by Lord Prestongrange, that she was not obliged to bring any proof of the birth, I do not believe the testimony of Isabel Walker upon this point; and this because Sir John and Lady Jane's joint letter to Madame Tewis shews to me, that they wanted to have had a proof of the whole, if they had dared to go to Paris to seek it.

As to the forgery of the letters, I think this part of the evidence should by no means be treated like a *lusus ingenii* in this High Court. What a strange view of this cause is it, to suppose that these parties, when conscious of a true birth,

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After Kay.

would have both (for Sir John and Lady Jane are clearly confederates) joined to support that birth by forged and fabricated evidence; first thereby to impose upon the Duke of Douglas, and thereafter upon all the world, by handing down this false evidence to latest generations? See what deep wounds such a thing may have given to the law! and it is no excuse for this, that Sir John may pretend he was only conveying to the judges by means of forgery what he knew to be true. For the whole evidence shows that there never were any original letters from which these could have been taken. Lord Justice-Clerk

It was said, that though the defendant founds upon the acknowledgment of his parents, yet that, as he does not rest the whole of his plea upon this, the accounts given by his parents cannot hurt him. But is it possible to maintain that there is any weight due to the evidence of a parent who has been guilty of such repeated falsehoods, and who has in this very cause forged and used false evidence for the perverting of justice?

Lord Monboddo[1]—I am not vain enough to think that any thing I can say in this debate can have the effect to alter the opinions given by any of your Lordships; but yet, as I have a full conviction that the defendant is really the son of Lady Jane Douglas, I think it incumbent on me upon this occasion to give the reasons of this my opinion at some length. Lord Monboddo

The plaintiffs have now taken up a very different ground from what they at first maintained. At first the whole of their proof was said to be founded, first, upon the books of Michelle; secondly, upon the age of the child brought to her house; thirdly, upon there being no accoucheur in Paris in the year 1748, of the name of La Marre; and, fourthly, upon the suspicions in France at the time. These were the capital circumstances laid down in the plaintiffs' original condescendence. But now we have got a new cause, and there is no vestige remaining of the old one. This new cause is founded, first, on the conduct of the parties themselves; secondly, on the alleged *alibi* in the house of Godefroi; and, thirdly, upon the enlevements. Upon this I would observe that the changing of ground gives at no time a very favourable opinion of a cause, and that particularly in the present case it shows that the plaintiffs

[1] James Burnett of Monboddo, appointed, with the title of Lord Monboddo, 1767; died 1799.

Lord Monboddo

themselves had no confidence in Mr. Godefroi's evidence, when they at first placed the *alibi* in the house of Michelle. Yet after all there is no such clear, plain, and convincing evidence brought as should take away a man's birthright from him.

There are several very material points of law which I will beg leave to notice before I proceed to state the evidence. And, first, as to the *onus probandi*. This the plaintiffs in their memorial lay wholly upon the defendant. This is indeed a most dangerous doctrine, and if this was law no man whatever can say that he has a state at all. The acknowledgment of the parents and the habite and repute is the charter of every man's birthright. Positive evidence is confined to a very few facts, and in proportion as by length of time such positive proof may be diminished, the legal presumption for filiation does encrease. But yet in the present case this defendant rests not upon that legal presumption, but has brought both direct and circumstantiate evidence of his birth; which being the case, he cannot be turned out of possession but by demonstrative evidence. I am here aware of the observation made by one of your Lordships, that, literally taken, there can be no such thing as a demonstrative proof; but what I call demonstration must exclude the possibility of the thing's being otherwise. Yet I do not deny that a circumstantiate proof may be here admitted, but it must be such a one as is sufficient to exclude the possibility of the real birth. Another point of law is as to the habite and repute. It was said that there was no habite and repute to a person born in a foreign country. This appears to me to be a very dangerous mistake. I cannot confine the habite and repute to the voice of the family, friends and relations at home, since it may arise from the voice of friends, neighbours, and acquaintances abroad. And in the case before us, it is clear there were no suspicions heard of in France. Even the plaintiffs' own witnesses, Madame Blainville and Madame Michelle, are strong evidences for the defendant as to his habite and repute there.

The next point of law which falls to be treated of is that of the acknowledgment of the parents. It has been said that this must go for nothing, because Sir John Steuart has prevaricated, or told falsehoods upon oath. But this is confounding the testimony of Sir John with the act of his acknowledgment. It would be hard indeed if a man brought to be examined in Court in the situation Sir John then was, should by mistakes, or even by telling falsehoods, deprive his real son of his birth-

right. Sir John's declaration was obtained by surprise from your Lordships, and he was under a fit of sickness when he was brought to be examined before you. But even supposing your Lordships should give all the weight to this plea of the plaintiffs which they desire, what does it amount to? Only to a few mistakes in his description of the Pierre La Marre. The mistake about his being a Walloon is trivial; it is just as if we should call a man on the other side of the water of Tay a Perth man. But surely the use made of this and of other such mistakes cannot destroy Doctor Menager's testimony, nor that of Madame Garnier. Lord Monboddo

But even suppose that Sir John had been willingly perjured, what then? Would his perjury have a stronger effect against the defendant than that of any other witness? And yet it is certain that though a third person, who was a witness, had perjured himself upon the side of the defendant, it would have had no effect at all upon his general plea.

The next question in point of law is, what are to be the effects of the delay on the part of the plaintiffs in bringing this action? Surely both the Duke of Hamilton and Sir Hew Dalrymple might have brought their action immediately upon the birth of this defendant. And as they did not do so then, the effect of this delay will at least be to receive good evidences for the defendants, such as that of Madame Tewis and Effie Caw, who are now dead themselves, but whose evidences stand reported upon oath by others. This is a cruel case indeed! When the defendant was a poor man the plaintiffs never attempted to controvert his birth; they have only attempted this when he succeeded to the estate of Douglas. The plaintiffs complain that by the latencss of this action they have lost proof, but whom then *sibi imputet*, and upon this account it is not now incumbent upon the defendant to bring any proof at all in this cause.

The plaintiffs have tried to disqualify some of the witnesses as being accomplices in this alledged imposture; but this they cannot be allowed to do: and indeed if this was law, who could stand against it? The plaintiffs might as easily have extended the same charge of accomplices against the Le Brune and La Marre, in order to have prevented them from being held credible witnesses, if they had been now alive and found out, as throw out the charge against Mrs. Hewit and Isabel Walker. What reason can there be for disqualifying Mrs. Hewit and Isabel Walker from being credible witnesses on account of this charge

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thrown out against them? None of them showed the smallest appearance of guilt upon any of their examinations. As to Isabel Walker, she was a perfect model for a witness. It has been alledged that this witness is not credible, because in her last examination in presence she has deposed, "That she never read either Sir John Steuart's declaration or Mrs. Hewit's oath," although she had the whole of the proofs in her custody. But it is to be remarked that people who have something to do will seldom dip into such large volumes as those now under our consideration.

Mrs. Hewit has indeed fallen into many mistakes in her evidence, but these, instead of proving the imposture, prove against it; for upon the supposition of an imposture she would have been much better prepared to have told her tale. In one of her letters to Isabel Walker Mrs. Hewit recites the whole circumstances of the affair. What could be the use or intention of this letter, upon the supposition of their both being accomplices together? Upon such a supposition this conduct betwixt the two is absolutely incredible. Much has been said of the presumption of fraud arising from Mrs. Hewit's correcting the dates of some of her letters to Isabel Walker; but it may be asked, what could be the use of this to Isabel Walker, her own accomplice? Indeed, the style and manner of the whole of Mrs. Hewit's letters is so unaffected and natural that it goes very far to persuade one of the truth of the birth. But whatever mistakes Mrs. Hewit may have fallen into, is it not absolutely certain that after so long a time most witnesses would have done the same? If the Le Brune had been found out and had been examined as a witness, and had fallen into mistakes, then the plaintiffs would have pleaded that she was perjured likewise. But in fact the witnesses concur in every material circumstance, which is enough; and therefore though they may have disagreed in the *minutiæ* of their evidence, they are not upon that account the less credible. It has been said that Mrs. Hewit is perjured because she swears that Lady Jane never went from Madame Michelle's house upon a jaunt to Versailles. But I must observe that we have only, in opposition to Mrs. Hewit on this point, the single testimony of Madame Blainville, who it is not at all improbable has been here in a mistake herself.

I come now to consider the defendant's evidence, which is partly direct and partly circumstantiate.

Judgments by the Court of Session.

To distinguish evidence from suspicions is our chief business in t[h]ent cause. And here indeed is the great difference betw[e]rned judge and a common man. The latter hastily takes up his suspicions, and from them as hastily draws his conclusions. And if judges shall leave the open road of evidence and hunt after suspicions, who can stand before them? Many arguments have been drawn from the conduct of the defendant's parents, but there is a great danger lest we should be mistaken in forming such arguments. The defendant cannot account for the whole of the conduct of his parents; although some of the most suspicious parts of their alleged conduct have been happily accounted for, such as that of the strong fact (seemingly fraudulent) of their having dropped their French man-servant at Liège. There is another instance wherein the plaintiffs themselves must confess they were mistaken in judging of the conduct of Sir John. It was by the plaintiffs averred that Sir John, who was then commonly called Colonel Steuart, had been several days in Paris, under a feigned name, whereas it now comes out that the person they thought was Sir John was really Colonel Stewart of Ardshiel. It has been said, why did they not enquire after the Pierre La Marre? but here it is to be observed that they did not get the return of their letter, containing Madame Tewis's declaration as to the pregnancy, until after the death of Lady Jane. And for their having not gone sooner in quest of La Marre many substantial reasons may be given. Sir John was for two or three years in prison in England; and Lady Jane remained under the greatest poverty, and oppressed with affronts and afflictions of every kind. But it has been said, why did they forge letters to supply the want of real ones?

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These letters can with no propriety be said to be forged evidence, because they were never used. Mrs. Menzies (upon whose testimony the plaintiffs affirm that Lady Jane knew of the forgery, and that it was these very letters which she was to carry and to show to her brother) is a very suspicious evidence, and although she was above all exception, it does not appear from what Lady Jane said to her that it was any of the four letters then said to be forged, which she had at that time in her pocket.

It is clear that Sir John had received several letters from La Marre. If it was a forgery, then it is a very bungled one indeed. It is clear that these letters, said to have been forged,

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were so many copies from originals. This appears by a variety of particulars, and especially from the misplacing of several words, which shows that the person who wrote them had copied them from others line for line.

I come now to make a few general observations upon the cause. Upon the supposition of an imposture, the day fixed for the birth was by much too early. Again, the leaving of the maids at Rheims is to me a proof that there was no fraud at all in the matter. These maids were both, according to the plaintiffs' plea, accomplices; why not then carry them alongst with them to Paris? Why, two witnesses more, swearing positively to the actual delivery, would have put it beyond doubt. This was not acting the part compleatly. In the same light I view all the imprudences on the part of Sir John. Upon the supposition of an imposture, he would have been exact and pointed as to the very hour where the birth was, and his not having been so exact and uniform can be accounted for upon no other supposition but that of innocence. Again, had there really been an imposture in the case, it was necessary for the accomplishment of it to have wrote their friend immediately after the birth.

Much weight has been laid upon Sir John Steuart's note to Mr. Napier, whereas the tendency of this is to show there was no imposture at all. If you hold it to have been an imposture, you must necessarily suppose a plan; and if there was a plan it was one essential part of it to fix upon a certain house as being the scene of the pretended delivery. That place and house, therefore, Sir John never can be supposed to have forgot, or if he could be supposed to have actually forgot it the immediate danger of a detection would have readily prevented him from ever fixing the scene of delivery to have been in a public-house like that of Michelle's.

But it has been said Sir John Steuart afterwards corrected this note when he found out that there had been inquiries made after Michelle's house, and the time of this correction is said to have been after Mrs. Napier received the answer from Lady Francis Steuart, and which was after her inlaying upon the 5th of August, 1756. But in fact Lady Francis Steuart's letter is only dated at Aix-la-Chapelle the 28th of August, and so could not reach Edinburgh by course of post till the middle of September, before which time Sir John Steuart had corrected

the mistake as to the house of Michelle's being the place of delivery. Lord Monboddo

Much has been said about the non-existence of the Madame Le Brune, whereas I confess it is most clearly proved to me by the oath of Doctor Menager that there was one of this name, who was very intimate with the Pierre La Marre. She, however, has not been found out: in the course of nature she may be dead, as well as her daughter, by her loose way of living. There has, however, been discovered a Madame Le Brune living in the Rue Dominic, Fauxburg St. Germaine: this woman was a Garde Malade, and may have been the person. What then is the amount of the evidence upon this head? It is only this, that nobody has been found to whom the Madame Le Brune ever told anything of the matter. Much has been said on the general conduct of the parties. But it was surely very proper for Lady Jane to go abroad, and it was very proper for her to go to Aix-la-Chapelle, because it appears she was in bad health. It was also very proper for her to quit Rheims on account of the unskilfulness of the accoucheurs there, which is indeed proved by Madame Mallifer's evidence upon this point.

Much has been said about their desiring their letters to be directed for them at Rheims, when they were truly at Paris, but then it is to be considered that Rheims was the place of their residence, and that they had a house taken there, in which they had left their maids. Much has been said about probability and improbability in this cause; but sure I am that the plaintiffs' account of the imposture is of all other things the most improbable. It was surely highly improbable that Lady Jane, who, it is proved, had the capability of having children, should bring in two beggar brats who might cut out her own eventual issue; it was surely highly improbable, too, that they should suppose two at one time, and thereby lay themselves open to so great a danger of detection. But it has truly happened that the proof found out as to the nurse of the youngest child has supported the birth of the eldest.

But to proceed upon the plaintiffs' account of the matter; they, when they had only one child procured, gave out that they had two, and of the one they had not got they give infallible marks sixteen months before they brought him to Rheims, and when he arrives there he is the very picture of Lady Jane.

Is this all possible, then, upon the supposition of an imposture? But still farther, what was the method they took to

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accomplish this supposition? They take a special recommendation to the house of Godefroi, and yet they have the day of delivery to be one of those days they were actually residing with him. This is indeed incredible, and therefore it would appear that Mons. d'Anjou, the plaintiffs' procureur, in his memorial, says that they went to a private house, and that they did not leave that house so very soon as within eight days after the pretended delivery.

Much has been said about Lady Jane's having concealed her pregnancy from some persons by wearing a particular dress, but this was unnatural and meaningless upon the supposition of a fraud; but upon the supposition of her being really with child, it may be accounted for by one of these two ways, either from her bashfulness or from her desire to conceal the marriage. The plaintiffs have said that Sir John and Lady Jane concealed their going to Paris, whereas on the contrary they told it to every body, to Mr. M'Lean and Mackenzie, and, still more, they went thither in the public voiture. Isabel Walker and Effie Caw, the two maids, have been said to be accomplices in the fraud; but it is proved that Lady Jane treated them very ill afterwards; and that she actually turned off Effie Caw from her service. Upon the supposition of an imposture, Sir John and Lady Jane must have been expert hypocrites indeed, and of this there is a remarkable example in the story of the beggar at Liège as it stands related by Mrs Hepburn of Keith on her oath.

Sir John Steuart upon no one occasion ever changed his name; he did not run for it after he had stole the children in Paris, but instead of doing so goes back to Rheims, where they reside sixteen months, and then return again to Paris without fear or dread.

I now come to speak of a material article in this cause, and that is Godefroi's books. In what I am going to say, I will distinguish his parole evidence from that of his books, and hope to convince your Lordships, that he is not worthy of credit. In the first place then, I say it appears, that Mr. Godefroi was instructed to give evidence. It was otherways impossible for him to apply the blank article in his book to Sir John Steuart without knowing these two things, First, that Sir John Steuart was the gentleman that arrived at his house upon the fourth of July, and secondly, He must have been told, that Sir John Steuart had actually a third person with him. This man

Godefroi actually forgets his own hand writing, and he says, that it was that of his wife. Upon his first examination, he actually forgets that he had two books, though it afterwards comes out, that he kept two. But then when he goes to his *livre logeur*, he finds no third person there; therefore it is clear, that he must have been informed by some person or other, that Sir John Steuart had two other persons alongst with himself. Secondly, I say that Mr. Godefroi has varied in his tale; and for the proof of this, I appeal to the *exposé de faits*, kept by Mons. D'Anjou. Thirdly, I say that Mr. Godefroi has sworn falsely, in so far as he swears that his books contained the names of all the persons who came to his house. Michelle's books were at first strongly founded on by the plaintiffs; and to make these books appear accurate and exact, Mons. Durisseau seems to have perjured himself. Lord Monboddo

I do suspect many bad practices with these witnesses in Paris, by whom these practices were carried on; I am not concerned to enquire, but I have so bad an opinion of the plaintiffs' proof, that although they had proved twice as much, I would have paid no sort of regard to it.

As to Mr. Godefroi's books themselves, they are far from being accurate or exact as he deposed they were, for the defendant has clearly proved, that there are many names entered in his *livre de dépense*, which are not to be found in his *livre logeur*, and that there are six at least, in his *livre logeur*, that are not inserted in his *livre de dépense;* particularly one Mons. De Sarassin is entered into the book of expence, eighteen days before he is entered into the *livre logeur*.

As to the enlevements, I remember, that the oldest council for the plaintiffs, in his pleadings only urged them as circumstances. As to Mignon's child, some of the witnesses say, that it was three months old at the time of its being taken away. And as to Sanry's child, neither the description of the persons, nor the time answers to Sir John Steuart.

I will now run over the capital circumstances of the defendant's proof of the pregnancy as well as the actual delivery. None of your Lordships have denied, that there were the appearances of pregnancy; and that they were natural I think is clearly proved. Mrs. Hepburn of Keith must be perjured with the rest. if the pregnancy was not real. In the condition Lady Jane was when Mrs. Hepburn came into her room, she must have observed every thing about her.

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This proof of the pregnancy is confirmed by a proof of her capacity to have children, and of miscarriages afterwards. And because there are a few contradictions attending these miscarriages, will we therefore say there were none? Upon this point of fact, the witnesses cannot be mistaken, although perjured they may be. When to all this, we add the appearance of her reconvalescence upon their going to Michelle's; and when we compare the depositions of Madame Michelle and Madame Blainville with those of the witnesses who saw Lady Jane at Aix, Liège and other places, it is clear, that somewhat must have happened, and what it could be but a real delivery cannot easily be imagined.

As to the evidence of Dr. Menager, the story told to him by Pierre La Marre, of his having delivered a foreign lady of twins, exactly corresponds to the delivery of Lady Jane Douglas. Menager's testimony stands uncontradicted by any one witness. Some of your Lordships hinted, that Menager was not to be believed, because he said, that La Marre gave lectures upon midwifery; but his own brother François La Marre says the same thing. If Menager is perjured, he must have been corrupted. Then, who was it that corrupted him, who of the British agents was likely to corrupt him? In what he has said, he was supported by Giles, as the conversation betwixt Giles and him stands confirmed by Mons. Moreau; although Mr. Giles was afterwards pleased to deny upon oath what he had formerly said.

Madame Garnier the nurse, by the whole of the accounts she gives, establishes beyond doubt, that the conversation which La Marre had with Doctor Menager about the youngest of the twins which he had under his care, does really relate to the youngest child of Lady Jane Douglas. In short, this is the most conclusive circumstantiate evidence that ever was.

It is of the essence of a circumstantiate evidence, that the different witnesses should swear to different facts, which though independent of each other, all tend to the same point. Such a chain of evidence as the one now before us could not have been formed by chance. And if Dr. Menager and Madame Garnier had been corrupted, each of them would have said much more.

This not only shows the high probability of the defendant's alledgeance, but also the high improbability of the plaintiffs' story. Sir John names La Marre as being the accoucheur from

the very beginning: The plaintiffs denied the existence of such a one; but now he is found to have actually been a practising accoucheur in Paris in the year 1748, and to have had conversations with his brethren of the profession about his having delivered a foreign lady, of an advanced age, of twins. Lord Monboddo.

Sir John and Lady Jane further told, that they had left their youngest son under his charge somewhere in the neighbourhood of Paris. Lady Jane named Menilmontaine as the place the child was left at. Madame Rutlidge says, that Lady Jane named the place, though she has forgot the name.

Are all these things then possible upon the supposition of an imposture? I wish that the plaintiffs had here given us a calculation of chances upon all these wonderful circumstances. For if all these particulars be true, as I have no doubt they are, then Sir John's contradictions and falsehoods are of no importance.

Upon the whole, his Lordship declared, that he had not even a suspicion remaining in his mind of the truth of the defendant's birth.

The whole fifteen judges having thus given their opinions, and the Court being equally divided upon this important question, the Lord President proceeded to state the vote, Sustain or repell the reasons of reduction? And it was carried by his Lordship's casting voice, Sustain. And then the judgment of the Court was wrote out in the following words. "The Lords having considered the state of the process, the writs produced, and testimonies of the witnesses adduced, and heard parties' procurators thereon; and having advised the same with the memorials, observations, and other papers given in by each party, they sustain the reasons of reduction, and reduce, decern and declare accordingly."

For the Plaintiffs—	For the Defendant—
The Lord President.	Lord Strichen.
Lord Barjarg.	Lord Kames.
Lord Alemore.	Lord Auchinleck.
Lord Eliock.	Lord Coalston.
Lord Stonefield.	Lord Pitfour.
Lord Kennet.	Lord Gardenstone.
Lord Hailes.	Lord Monboddo.
Lord Justice-Clerk.	

The Douglas Cause.

Speeches in the House of Lords.

Lord Chancellor Lord CAMDEN[1] (Lord Chancellor)[2]—My Lords, the cause before us is, perhaps, the most solemn and important ever heard at this bar. For my own share, I am unconnected with the parties, and having, with all possible attention, considered the matter, both in public and private, I shall give my opinion with that strictness of impartiality to which your lordships have so just and equitable claim. We have one short question before us—Is the appellant the son of the late Lady Jane Douglas or not?—I am of the mind that he is; and own that a more ample and positive proof[3] of the child's being the son of a mother never appeared in a Court of justice, or before any assize whatever.

The marriage of Lady Jane to Colonel Steuart, August the 4th, 1746, is admitted on all hands. Her pregnancy in January, 1748, and the progress of it, were observed by many people: at Aix-la-Chapelle it was notorious; her stays were widened; the nuns of the Convent of St. Anne discerned it, notwithstanding Lady Jane's modesty; the maid servants are positive of the fact. The Earl of Crawford wrote an account of it to the Duke of Douglas, not as an hearsay, but as a fact of which he himself was fully satisfied by ocular inspection; and if there be a pregnancy, there must be a delivery, which accordingly happened by the positive evidence of Mrs. Hewit, who has deposed that "she received them into her lap as they came from Lady Jane's body." She was delivered of twins on the 10th of July, 1748, at Paris, in the house of Madame le Brune, in the Fauxbourg St. Germaine. Lady Jane's ability to bear children is established by many witnesses, and

[1] Sir Charles Pratt, Lord Chancellor 1766-1770; created Lord Camden 1765; died 1794.

[2] From "The History, Debates and Proceedings of both Houses of Parliament of Great Britain, 1743-1777," vol. v. pp. 112-124, collated with the report in Francis Hargraves' "Collectanea Juridica." For Lord Camden's speech see also Campbell's "Lives of the Chancellors," v. pp. 289-90.

[3] "He did not use his carefully prepared notes, *pace* Sir George Hardinge." [Campbell's "Lives of the Chancellors," appendix.]

Archibald Douglas of Douglas, supported by Lords Camden and Mansfield.

From a Mezzotint in the British Museum.

a miscarriage after the birth of twins still more and more proves the delivery. **Lord Chancellor**

But, my Lords, there is another proof, no less convincing, that the appellant is really the son of Lady Jane, and this arises from the uniform tenderness shown towards him. 'Tis in proof that, on every occasion, she showed all the fondness of a mother; when he casually hit his head against a table she screamed out and fainted away; when her husband, the Colonel, was in prison she never wrote to him without making mention of her sons; she recommended them to clergymen for the benefit of their prayers, is disconsolate for the death of the youngest; takes the sacrament, owns her surviving son; does everything in her power to convince the world of his being hers; blesses and acknowledges him in her dying moments; and leaves him such things as she had. Sir John likewise shows the same tenderness in effect. He leaves him 50,000 merks by a bond in September, 1763, ten years after the death of Lady Jane; and on his death-bed solemnly declares, before God, that the appellant is the son of Lady Jane. "I make this declaration," said he, "as stepping into eternity." A man that is a thief may disguise himself in publick, but he has no occasion for any mask when in private by himself. These positive declarations convinced the Duke of Douglas, and he left his dukedom and other estates to his nephew, the appellant, who was regularly served heir thereto in September, 1761; when he was possessed of all the birthright of a son, so far as the oaths of witnesses, the acknowledgment of parents, and the established habit and repute could go. The cruel aspersions thrown out against Lady Jane and the Colonel had been refuted by the late Duke of Argyle and the Countess of Stair. No mortal doubted the appellant being the son of Lady Jane, except Andrew Stuart; his father, Archibald Stuart; Major Cochrane, who is married to Stuart's sister; with White of Stockbriggs, a principal actor in these scenes. These doubted the matter, and Andrew Stuart,[4] as by concert, went over to France, not to procure evidence of a real fact, but to suborne witnesses to establish an article that never existed except in their own imagination. The design was bad, and the means to accomplish it were no

[4] The name is left blank in the report in Francis Hargraves' "Collectanea Juridica" (vol. ii. p. 386-484).

Lord Chancellor

less criminal! It is needless to follow the searcher through all the scenes of his enquiry, the result of which was to return to Scotland, enter an actior against the appellant, and bring his own father to condemn him, at a time when the old gentleman was in a condition every way deplorable. And taking advantage of his inaccuracies, he makes a second tour to Paris, where he published a *Monitoire* entirely to seduce witnesses, and influence them to commit the blackest perjury. In this paper he describes the person of Sir John Steuart, Lady Jane Douglas, and Mrs. Hewit; asserts that they had purchased two children, whom they wanted to impose upon the world in order to defraud a real heir of an immense estate and fortune; and inviting all who could give light into the matter to come to his lodgings, which he particularly described.

Mr. Stuart certainly appeared like the guardian of the Duke of Hamilton, a pompous title, which drove several to their own destruction, and in hopes of a reward. Among the number of those was Madame Mignon, a glass manufacturer's spouse, who, after conversing with Andrew Stuart and his clerk, and receiving presents from them, comes in before the Tournelle Criminelle and deposes that she had sold her own child to foreigners whom she did not as much as know. Can a woman forsake her sucking child? is a rhetorical remonstrance handed to us from the highest authority. The thing is incredible, and yet the woman has sworn it! A circumstance sufficient to render her testimony of no force, when opposed to the dying declarations of Lady Jane Douglas and Colonel Steuart, and to the positive oath of Mrs. Hewit, whose character is established upon a very good foundation; but take the declaration of madam in all its extent, yet she has said nothing to affect the appellant; the time when the people to whom, with every other circumstance, prove her not to have been the mother of the young gentleman; his complexion, the colour of his eyes and hair, prove that he was not hers. The same thing might be said of the son of Sanry, the rope dancer, whom the counsel for the respondent would infer to be the child Sholto, the younger of the twins, and, as a strong proof of the same, urged that the two were but the same identical person under different names; and your Lordships were entreated to keep in your view the rupture under which each of them laboured in order to prove the

identity! But how comes all out? Sanry's child could speak in November, 1749, but Sholto could not utter a word for some months after he came to Mr. Murray's house in December, 1749. And now evidence is offered to be produced at your Lordships' bar, that the child Sholto had no rupture in 1749, that he was as sound as any person within these walls; certainly Mr. Murray, the most material witness in this affair, is more to be credited than madam. Lord Chancellor

Your Lordships have heard much ingenuity displayed in order to prove that Lady Jane's pregnancy was imaginary; the symptoms are allowed but the reality is now denied, though once Andrew Stuart himself was forced to acknowledge that Lady Jane was actually with child. If Lady Jane or any other woman had such symptoms, it is impossible she could have been eased of them so soon in any other manner than by a delivery; had she been ill of a dropsy, her bulk would not have been totally diminished in so short a time as from the 2nd of July to the first week of August, when all who saw her at Rheims concluded that she had but lately lain in. Great stress has been laid upon the letters said to have been forged in the name of Pierre La Marre, the man-midwife, the person who delivered Lady Jane. I admit them to be forged, and yet this forgery is with me a proof of Lady Jane's innocence; Sir John's hardships are admitted; and if he, after so long a confinement, should cause the letters that had passed between La Marre and him to be translated in order to amuse himself, or to satisfy Lady Jane that they were not lost, it was no way criminal. Lady Jane received them, but observing they were not originals she laid them by, so conscious was she of her own innocence that she did not use them, nor ever would they have made their appearance had it not been for the conduct of Andrew Stuart, who, upon getting an order to search Lady Jane's repositories, found out these letters, produced them in Court to Sir John, when under all the miserable circumstances of a man groaning under a load of years, infirmities, and the acutest pains.

The evidence of Godefroi, the landlord of the Hotel de Chalons, in the Rue St. Martin, is contradictory and inconsistent, his books being in every way defective and erroneous; nor does Andrew Stuart appear in a favourable light in this particular. When first he came to Godefroi's house both the man and his wife were ignorant of the matter; neither

Lord Chancellor

the one nor the other recollected Lady Jane Douglas or her husband till Andrew Stuart desiring a sight of the *livre d'inspecteur*, found two articles one of them *Mr. Flurat l'excossois et sa famille sont entré, 8me Juliet*, 1748, and this he positively affirms, with oaths and imprecations, to be the handwriting of Sir John Steuart, with which he pretended to be thoroughly acquainted; but he was obliged to retract when other postages were found to be of the same handwriting. This postage was found to be posterior to one written on the 12th, and the landlady of the house declared that she herself had marked it down. He had fifteen rooms and ten closets, which they pretended always to be full, and yet in their book it does not appear there were three persons in them during Colonel Steuart's pretended abode; and, what is pretty strange, they had many women lodgers during that year, and yet they depose they remember none but this lady, whom Andrew Stuart would have to be Lady Jane Douglas. They even differ with respect to the names of their servants; the counsel at the bar have acknowledged the inaccuracy of the books owing to the avocations of the man elsewhere, and to the inadvertency of his spouse, continually hurried by a multiplicity of business. Besides a postage in a book, such as the *livre d'inspecteur*, which, like a waste-book, contains things just as they occur, or the *livre de dépense*, to which the articles of the former are transferred, bears no manner of convincing proof that the persons mentioned in these staid at such and such places, it being a customary thing to mark down the name of the person the moment he takes the lodging; and it is notorious that many persons have paid a week, nay, a month's lodging, without sleeping a night in it; and this is no more than equity, since the same was reserved for their use.

But here, my Lords, the pursuers in this affair have destroyed their own cause: they have brought a sort of proof that Lady Jane Douglas was at Michelle's house, called *Le Petit Hotel d'Anjou*, in the Rue Serpente, Fauxbourg St. Germaine; and this at the very time when they would prove her to have been at the house of Godefroi, of whom so much has been said and heard. Michelle and Godefroi disagree in everything except in the irregularity of their books, and it, indeed, is hard to say which of the two excels most in that particular; but not to insist on the irregularities, it is proved to be the

practice in Paris, and of Michelle in particular, to write people's names in these police books as entered on the day the room was hired, though the [illegible] does not enter for some days after. To insist on these things, my Lords, is tedious, and yet the importance of the case requires it. One Madame Blainville swears that on one of the days betwixt the 8th and 13th of July she accompanied Lady Jane in a coach to take a view of Versailles, and at another time to see the Palace (Place?) de Vendome; but this witness is, in every respect, contradicted by a multiplicity of evidence, and in every view her testimony appears to be absurd and preposterous. First, she is contradicted by Mrs. Hewit, whose deposition bears great weight with me, as also by other witnesses for, first, she, Blainville, says that Sir John and his family were eight days in Michelle's before the child was brought to the house, whereas Michelle's family all swear that he was brought next day. Secondly, she says that the child was given to the nurse La Favre the very night of his arrival; that she saw her carry him home with her, and that the Lady Jane visited him in the nurse's house; whereas, on the contrary, it is proved that Favre remained four days at the hotel, during which period Lady Jane was nowhere abroad. Thirdly, she deposes that no person visited Sir John and Lady Jane during their stay at Michelle's; whereas by the oath of Madame Favre, a gentleman visited him there: but be that as it may, Lady Jane was delivered on the 10th of July, and Blainville does not say she went to Versailles till the 27th; and it is no new thing for a lady, however delicate, so long after delivery to go so far in a country where the weather and roads are so remarkably fine and the carriages every way easy and convenient. Lord Chancellor

All these objections to the reality of the appellant being the son of Lady Jane are imaginary, and hitherto have been reputed to the honour of the innocent, and the more firmly establishing him in the possession of his birthright. They only tend to render her virtues more brilliant and illustrious, for as the allegations never existed in fact, but in the imagination of Andrew Stuart; so, when put to the trial, they must necessarily fall to the ground. Thus, he asserted that Colonel Steuart received £550 from the Earl of Morton's banker some days before Lady Jane's lying-in, and from thence would infer that her delivery at Madame Brune's, an

Lord Chancellor obscure house, was only to carry on the imposture; but now it appears that this money was not received till sixteen days after. How unfortunate for the Duke of Hamilton to be under the direction of such a man! One who has involved him in such an immensity of expenses, and this by examining a multitude of witnesses upon articles really foreign to the cause, which, indeed, is not the Duke of Hamilton's; it is the cause of Andrew Stuart, who has acted so strange a part, as well deserved the observation made at the bar, with great propriety, "That if ever I was to be concerned in any business with him, I should look upon him with a jealous eye."[5]

I shall not follow the noble Lord who spoke last through the various descriptions he has given us of midwifery. His observations may be just, but they cannot affect the character of Lady Jane Douglas, or the cause of the appellant, her son. The question before us is short: Is the appellant the son of Lady Jane Douglas or not? If there be any Lords within these walls who do not believe in a future state, these may go to death with the declaration that they believe he is not. For my part I am for sustaining the positive proof, which I find weakened by nothing brought against it; and in this mind I lay my hand upon my breast, and declare that in my soul and conscience I believe the appellant to be her son.

The Duke of Bedford then spoke [for about forty minutes] in favour of Andrew Stuart's procedure and in condemnation of the *Tournelle*.[6]

Lord Mansfield Lord MANSFIELD[1]—My Lords, I must own that this cause before us is the greatest and most important that occurs to me. It is no less than an attack upon the virtue and honour of a lady of the first quality, in order to dispossess a young man of an eminent fortune, reduce him to beggary, strip him of his birthright, declare him an alien and a foundling. I have slept and waked upon this subject, considered it upon

[5] Walpole says he said—"He was sorry to bear hard on Mr. Stewart [Stuart], but justice compelled him." ["Memoirs of the Reign of George III.," iii. p. 204.]

[6] "Collectanea Juridica."

[1] William Murray, third son of Viscount Stormont, Chief-Justice King's Bench 1756-88, and created Lord Mansfield. He was created Earl of Mansfield 1776, and died 1793.

The Earl of Mansfield.

From a Print.

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my pillow, to the losing of my natural rest, and with all the judgment I was capable of, have considered the various articles that make up this long and voluminous cause, upon which I am now to give my opinion before your Lordships. Lord Mansfield

I apprehend that, in the matter before us, three things are to be considered. The situation of Lady Jane, before her delivery, at her delivery, and after it was over: to all which the Chancellor has spoken with great propriety. It is proved beyond a doubt that she became pregnant in October, 1747, at the age of forty-nine years, a thing far from being uncommon, as is attested by physicians of the first rank and confirmed by daily experience; and that in the month of July she was delivered of twins, one of whom died, the other is still alive; he has been presented to the world by Sir John Steuart and Lady Jane Douglas as their son; nor can he be wrested from the hands of his parents unless some other hand in their lifetime claimed him as their child in a legal and justifiable way.[2]

This action, my Lords, did not lie against the appellant as an imposter; for an imposter, in the sense of the law, is a person who wilfully and knowingly "pretends to be different from what he really is, in order to defraud another, and to impose under a fictitious name upon the publick." If any be an imposter, it must have been Lady Jane, whom they ought to have prosecuted in her lifetime, and not at the distance of nine years after her death. The method of discovering an imposter is to bring his accomplice to the Court before which the imposter was arraigned; and if, after a fair trial, the accused person be found guilty, let him take the consequences thereof; but this the respondents have neglected. The appellant has been for five years four months and twelve days the acknowledged son of Lady Jane Douglas; and for thirteen years and two months the son of Sir John Steuart, before any attempt was made to rob him of his parents, his birthright, and his all.

As the Lord Chancellor has anticipated much of what I intended to speak upon this subject, so I shall only touch

[2] Walpole says ("Memoirs of the Reign of King George III.," pp. 204-5), that Lord Mansfield spoke "with still more personal severity to Stuart" than the Chancellor, till he nearly fainted into fatigue. The report of the speech we print has no specific attack. Stuart in 1773 printed "Letters to the Rt. Hon. Lord Mansfield," to vindicate his point of view.

Lord Mansfield

at the situation and character of the deceased, whom I remember in the year 1750, to have been in the most deplorable circumstances. She came to me (I being Solicitor-General) in a very destitute condition, and yet her modesty would not suffer her to complain. The noble woman was every way visible, even under all the pressure of want and poverty. Her visage and appearance were more powerful advocates than her voice; and yet I was afraid to offer her relief, for fear of being constructed to proffer her an indignity. In this manner she came twice to my house, before I knew her real necessities; to relieve which now was my aim. I spoke to Mr. Pelham in her favour, told him of her situation with regard to her brother the Duke of Douglas, and of her present straits and difficulties. Mr. Pelham without delay laid the matter before the King; the Duke of Newcastle, being then at Hanover, was wrote to; he seconded the solicitations of his brother. His Majesty immediately granted her £300 *per annum* out of his privy purse; and Mr. Pelham was so generous as to offer £150 of the monoy to be instantly paid. I can assure your Lordships that I never did trouble His Majesty for any other. Lady Jane Douglas was the first and the last who ever had a pension by my means. At that time I looked upon her as a lady of the strictest honor and integrity, and to have the deepest sense of the grandeur of the family from which she was sprung; a family conspicuously great in Scotland for a thousand years past; a family whose numerous branches have spread over Europe; they have frequently intermarried with the blood royal; and she herself was descended from Henry VII.[3] I took care that his late Majesty should be made acquainted with her family and name to the intent that though she was married to Colonel Steuart, a dissipated and licentious man, and who had been in the rebellion of 1715, yet he would pass it over, as she was of a race who had always been eminently loyal, her brother having charged as a volunteer at the head of the cavalry in the year 1715, when his cousin the Earl of Forfar died like a hero in defence of the Government; and that his Grace had in the year 1745 treated the rebels and their leader with

[3] This was not so. Lady Jane Douglas was descended from the 5th Earl of Angus. It was Archibald, 6th Earl of Angus, who had married Queen Margaret Tudor, sister of Henry VIII., Dowager of King James V., without male issue, but through his daughter was great-grandfather to King James VI. and I.

contempt and ridicule; and indeed His Majesty, from his wonted magnanimity, spoke nothing of her husband; but treated her with all the respect due to a noble woman of the first rank and quality; one who carried all the appearance of a person habituated to devotion; and for a number of years trained up in the school of adversity and disappointment. Lord Mansfield

Is it possible, my Lords, to imagine that a woman of such a family, of such high honour, and who had a real sense of her own dignity, could be so base as to impose false children upon the world? Would she have owned them on every occasion? Was ever mother more affected for the death of a child than she was for that of Sholto, the younger of her sons? "Will you," said she, "indulge me to speak of my son?" and cried out with great vehemency, "Oh, Sholto! Sholto! My son Sholto!" and after speaking of his death she said, "She thanked God that her son Archie was alive. What," said she, "would the enemies of me and my children say if they saw me lying in the dust of death upon account of the death of my son Sholto? Would they have any stronger proof of their being my children than my dying for them?" She still insisted that the shock which she received by the death of Sholto and other griefs she had met with were so severe upon her that she was perfectly persuaded she would never recover, but considered herself as a dying woman, and one who was soon to appear in the presence of Almighty God, and to whom she must answer.

She declared that the children Archie and Sholto were born of her body, and that there was one blessing of which her enemies could not deprive her, which was her innocency, and that she could pray to Almighty God for the life of her other son, that she was not afraid for him, for that God Almighty would take care of him.

And what is remarkable, the witness Mary Macrabie observed, that the grief for the loss of the child grew upon her. Would she, my Lords, have blessed her surviving child on her death-bed? Would she have died with a lie in her mouth and perjury on her right hand? Charity, that thinketh no evil, will not suffer me for a moment to harbour an opinion so cruel and preposterous. Or can we suppose that two people who had not wherewith to support themselves would be solicitous and show all the tenderness of parents towards the children of creatures, who, forgetting the first principles of instinct and humanity, had sold their children to people

Lord Mansfield

whom they did not even as much as know by their names. The act of Joseph's brethren in selling him is represented as wicked and unnatural, but indeed the crime of Madam Mignon and Madam Sanry is still more black and atrocious! To carry this a little further, suppose Lady Jane Douglas had acted out of a principle of revenge towards the family of Hamilton, yet Sir John Steuart had no occasion to do so, much less continue the vindictive farce after her death, especially when married to another spouse.

And here we see Sir John as much a parent to the appellant as Lady Jane; he was every way fond of him! it is in evidence. I know it to be true. My sister and I have been frequently at Mrs. Murray's with them and were always delighted with the care we observed. No mortal harboured any thoughts of their being false children at that time, I mean in 1750 and 1751. Every person looked upon them as the children of Lady Jane Douglas and of Colonel Steuart. The Countess of Eglinton, Lord Lindores, and many others have upon oath declared the same thing.

No sooner does the Colonel hear of the aspersions raised at Douglas Castle, and of Mr. Archibald Stuart's swearing that Count Douglas, a French nobleman, had informed the Duke of Douglas that they had been brought out of an hospital, than he returned an answer to Mr. Loch, who gave the intelligence in a letter to Mrs. Hewit, and wrote him in all the terms of a man of spirit, cordially interested in the welfare and happiness of his son. Both he and Lady Jane begged the favour of Chevalier Douglas, a French gentleman and officer then at London, to acquaint his cousin, the Count, with what was said of him. This the Chevalier undertook, and fulfilled with the fidelity of a man of honor. And the Count, in consequence of the application, wrote a letter not only to Lady Jane but to her brother the Duke, in all the language of politeness and humanity, disowning what was said of him.

But, my Lords, the Duke of Douglas himself was fully satisfied of the appellant's being the real son of his sister Lady Jane, for on beginning to be known after his marriage and to relish the pleasures of social life he became very inquisitive "about the size, shape, and complexion of the appellant, and if he appeared to be a smart boy." He employed Sir William Douglas and others in whom he could confide to enquire of Mrs. Hewit, Lady Jane's companion, and of Euphemie Caw and Isabel Walker, the two maid-servants

Lord Thurlow.

From a Mezzotint after the Portrait by Romney.

who had lived with them abroad, and observed their conduct in the most unguarded moments, concerning the birth of the children. He even searched into the characters of these, and it appears from the depositions of clergymen and gentlemen of the first rank in that country that they were women worthy to be believed. He even went in person to visit Mrs. Hewit, conversed with her in the presence of his gentleman, Mr. Greenshaile, concerning his sister's delivery, and the accounts given by these, like the radii of a circle all pointing to one and the same centre, confirmed the reality of Lady Jane being the mother of the young gentleman. He was satisfied, acknowledged him for his nephew, and left him his heir. Lord Mansfield

If the Duke of Douglas, after so serious an enquiry, was convinced, why should not we? 'Tis true, his Grace has sometimes expressed himself warmly against the surname of Hamilton even in Lady Jane's time, but never so warmly as to prefer a supposititious child to the Duke of that name, for he only declares, "That if he thought the children were Lady Jane's," he would never settle his estate on the family of Hamilton. Nor did he till after detecting the frauds and conspiracies that had been so long and so industriously carried on against his sister and himself make any alteration in his first settlement.

After the Duke's death, the appellant was served heir to his uncle, according to the form prescribed by the law of Scotland upon an uncontroverted evidence of his being the son of Lady Jane Douglas, takes possession of the estate, and is virtually acknowledged heir by the Earl of Selkirk and by the Duke of Hamilton's guardians themselves, for these enter actions before the Court of Session declaring their right to certain parts of the estates, upon some ancient claims which the Judges there declared to be groundless. But in the whole action there was not the least intimation that Mr. Douglas was not the son of Lady Jane.

It is needless to trouble your Lordships with the conduct of the respondent's guardians at Paris and elsewhere upon the Continent. Nothing has been discovered that could throw the least blemish upon the honor of Lady Jane Douglas or Colonel Steuart. They have indeed proved her straits there and his imprisonment here; but both these circumstances carry a further confirmation that the appellant is their son, for in every letter that passed between them the children are named with a tenderness scarce to be believed. Whereas, had they

Lord Mansfield

been counterfeited, as is pretended, they would have been apt to upbraid one another for an act so manifestly tending to involve them in their sufferings.

Suppose, my Lords, that Mignon, the glass manufacturer's wife, the pretended mother of Mr. Douglas, had deposed the same things in Lady Jane's presence as she had so long after her death. From the evidence it appears that she had never seen Lady Jane; by her words both in private and publick, she seems to deserve no manner of credit. The oath of Mr. Murray, a principal witness, has destroyed everything she asserted. The same thing might be said of Sanry, the rope dancer's spouse, whose child's rupture we were earnestly desired to keep in view to prove him to have been the identical Sholto, the younger of the twins; and now evidence is offered that the child Sholto had no rupture, but was as sound as any within these walls. Your Lordships have been told, and I believe with great truth, that a gentleman, shocked at the assertion, had wrote to the counsel that the influence arising from so false a suggestion might be prevented. I always rejoice to hear truth, which is the ornament of criticism and the polished gem that decorates a bar. The scrutiny in France, followed by an action in Scotland, produced two things never intended by them; it brought forth a striking acknowledgment of the appellant by his father, Sir John Steuart, as is manifest from the bond of provision, read at your Lordships' bar. Sir John openly acknowledged him before the Court of Session in the midst of a crowded multitude and when labouring under a load of anguish and pain. Nay, when by himself, he solemnly declared before God, in the presence of a Justice of the Peace and two clergymen, that the young gentleman was his son. It likewise established the character of Lady Jane, for on examining the proof obtained through the vigilance of the Duchess of Douglas, Lady Jane's reputation is unsullied and great. All who had the honor of being known to her declared that her behaviour attracted universal esteem, and Madame Marie Sophie Gillesen, a maiden lady with whom she lodged several months, deposes that "Lady Jane was very amiable, and gentle as an angel." It further proved that the elder child, the appellant, was the exact picture of his father, and the child Sholto as like Lady Jane as ever a child was like a mother. I have always considered likeness as an argument of a child's being the son

of a parent, and the rather as this distinction between individuals in the human species is more discernible than in other animals. A man may survey ten thousand people before he sees two faces perfectly alike; and in an army of an hundred thousand men every one may be known from another. If there should be a likeness of features, there may be a discriminancy of voice, a difference in the gesture, the smile, and various other things, whereas a family likeness runs generally through all these, for in everything there is a resemblance, as of features, size, attitude, and action. And here it is a question whether the appellant most resembled his father, Sir John, or the younger, Sholto, resembled his mother, Lady Jane. Many witnesses have sworn to Mr. Douglas being of the same form and make of body as his father; he has been known to be the son of Colonel Steuart by persons who had never seen him before, and is so like his elder brother, the present Sir John Steuart, that except by their age it would be hard to distinguish the one from the other. Lord Mansfield

If Sir John Steuart, the most artless of mankind, was actor in the *enlèvement* of Mignon and Sanry's children, he did in a few days what the acutest genius could not accomplish for years. He found two children, the one the finished model of himself, and the other the exact picture in miniature of Lady Jane. It seems Nature had implanted in the children what is not in the parents; for it appears in proof that in size, complexion, stature, attitude, colour of the hair and eyes, nay, in every other thing, Mignon and his wife, Sanry and his spouse, were *toto cœlo* different from and unlike to Sir John Steuart and Lady Jane Douglas. Among eleven black rabbits there will scarce be found one to produce a white one.

The respondents' cause has been well supported by the ingenuity of its managers, and great stress has been laid upon the not finding out where Madame Le Brune lived and where the delivery was effected, but this is no way striking if we consider that houses are frequently pulled down to make way for streets, and houses are built upon the ground where streets ran before. Of this there are daily examples in this metropolis. However, we need enter into no arguments of this kind, as there is a positive evidence before us. How is it possible to credit the witnesses, some of them of a sacred

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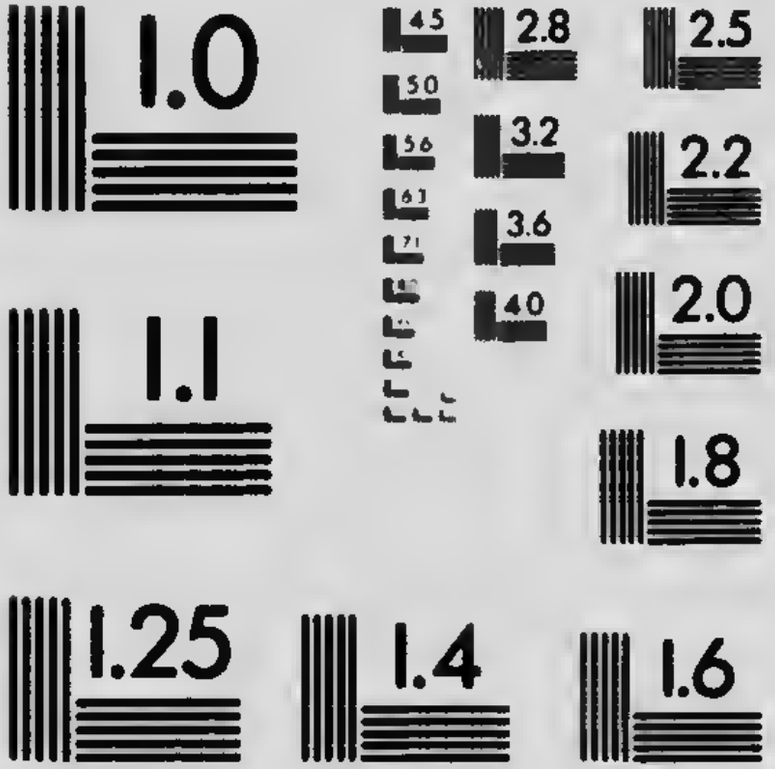

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Lord Mansfield character, when they speak of Lady Jane's virtues, provided we can believe her to have been a woman of such abandoned principles as to make a mock of religion, a jest of the sacrament, a scoff of the most solemn oaths, and rush with a lie in her mouth and perjury in her right hand into the presence of the Judge of All, who at once sees the whole heart of man, and from whose all discerning eye no secrecy can screen, before whom neither craft nor artifice can avail, nor yet the ingenuity and wit of lawyers can lessen or exculpate. On all which accounts I am for finding the appellant to be the son of Lady Jane Douglas.

Upon which judgment was given—"Die Lunæ, 27th February, 1769. Counsel being fully heard and debate had in this Cause it is ORDERED and adjudged that the Interlocutor complained of be REVERSED."

But the following Protest was entered:—"Die Lunæ, 27 Februarii, 1769. Dissentient—Because, upon the whole of the evidence, it appears to us that the appellant has not proved himself to be the son of Lady Jane Douglas, and consequently not entitled to the character of heir of tailzie and provision to Archibald Duke of Douglas. Because we are of opinion that it is proved that the appellant is not the son of Lady Jane Douglas.

"BEDFORD.
"BRISTOL, C.P.S.
"SANDWICH.
"DUNMORE.
"MILTON."

The two reports of the speech of Lord Camden, the Lord Chancellor, on the Douglas Cause in the House of Lords are so different that it makes it advisable to give the second report from the *Scots Magazine* of 1769, p. 699. It is most probably the unrevised but perhaps more correct report.

Lord Chancellor My lords, I shall now take the liberty to submit to your lordships what occurs to me upon the consideration of this cause, which hath been pled at great length at the bar, and hath been heard by your lordships with great patience and attention. The rank in which I have the honour to sit in this House will give such ground of expectation, as I am afraid

it will be impossible for me to acquit myself to your lordships' satisfaction on this occasion. I am, however, happy in this case, in the expectation of being heard by your lordships with seriousness and attention. The impropriety of many arguments entered into by the other lords that are not used to speak in questions of this kind has made it necessary for me in this case to say the more. I should have been glad to have been relieved from the trouble of entering minutely into every branch of this great cause. This I find is now unavoidable, and I am therefore under the necessity to beg your lordships' indulgence while I go through the evidence, which I will do as shortly as possible. I am satisfied that your lordships will pay more regard to one of this House delivering his opinion as a judge than to any of the counsel at the bar. In delivering the grave sentiments of judges none in this House dare wilfully to mistake the evidence, or to go beyond the fact. Lord Chancellor

I come, my lords, to consider this cause with the most perfect indifference. I am happy, my lords, in having no connection whatever with any party on either side. I have not now, nor had I ever, I protest, any reason or any wish, as I believe none of your lordships have any wish whatever, beyond that of justice being truly and impartially administered. I confess I never was so much perplexed in fixing my judgment in any question as in this cause. I was long in forming any opinion; but this opinion being now formed, your lordships will find it is, indeed, very positive, very clear. In order to obtain this clearness, I have waded through more intricacy and doubt than I ever before met with in my life. A variety of circumstances arising almost upon every deposition made each a separate cause; every variation, every opposition, in the evidence formed a several question. I have been enabled, by much thought and more than ordinary application, to form a solid judgment, more from a careful perusal of the whole evidence than from what passed at the bar. Though much perplexed, the mind is at last worked up to an opinion; and an opinion when once so formed, after much study and deliberation, is more likely to be lasting and permanent than an opinion taken up suddenly and without much study.

I will now, my lords, endeavour to state the evidence, and give you the grounds upon which my opinion is formed, with as much clearness and gravity as if I was sitting below in the

Lord Chancellor Court of Chancery pronouncing my opinion upon the most important cause.

If, my lords, I was possessed of the talent of eloquence (which, I am sure, I am not) I know well this is not the place. Your lordships are not the persons for eloquence to work upon. Your lordships will fix your eyes upon the evidence, see the cause throughout, abuse no person without cause, and spare none that deserves censure. It is the glory of a Court of justice to deal fairly and impartially, and not to discover the least prejudice, prepossession, or partiality to either of the parties.

I shall have no occasion, my lords, to give a detail of facts. Your lordships are so well apprised of the whole facts in this case that this has become totally unnecessary.

The first thing material in this cause is to state the question truly in order to determine what shall be the rule of evidence and the effect and application of such evidence. Much has been said by the counsel at the bar, and much has been written on the question concerning the *onus probandi*. Notwithstanding the many learned hints that have been thrown out on that head, it appears to me that in the examination of the evidence this question is totally immaterial.

This has been admitted, and never denied, to be a solid ground of decision: That every person who is fairly in possession of a state of filiation cannot be dispossessed of that state without clear, strong, and decisive evidence. If the defender in the present case is fairly in this state of possession, your lordships will then suppose everything in his favour, and presume nothing to his disfavour.

What is it then that establishes the possession of filiation? It is the acknowledgment of the parents, and habit and repute.

The acknowledgment of the parents is in this case clear beyond contradiction, from the very hour of the birth down to the time of the mother's death. And that this acknowledgment has been constant, uniform, and invariable is proved by all the witnesses.

The habit and repute is not so clear, so indisputable, so free from imputation as the acknowledgment of parents. I am desirous to have it always solemn and uniform; I wish it was sullied by no calumny, blasted by no injurious reports. In this case it has been said—and it must be admitted—that

rumours did arise prejudicial to the real birth soon after Lady Jane's delivery, and before her coming into Great Britain. But, my lords, the ground of these rumours is known. They have been traced to their source and origin. The same persons who set up private and secret suspicions of the delivery, and endeavoured to blast the reputation of the birth, thought it necessary to shut the ears, as well as the doors, of the Duke of Douglas against the mother and the children. I think I am entitled to say upon the evidence in this cause that those rumours were raised and propagated by the friends of the family of Hamilton. This, in fact, is proved. Those who saw Lady Jane in the first moments after her delivery, those who saw her at Rheims, conversed with her in England, and saw her in Scotland, both publicly and privately, did really and truly believe that the children were hers and her husband's. There is not a doubt but that the habit and repute would have been complete if it had not been sullied by those reports. Lord Chancellor

This makes it necessary to inquire how these rumours were received. Who adopted any opinions upon such reports? I shall be told that Mr. White of Stockbriggs, Mr. Stuart, and several of the respondents adopted and believed them all for truth. Admitting all the evidence that the cause is burthened with on this head (and I have looked into the whole evidence the respondents have adopted to show the reality of these rumours and suspicions), taking the whole of this evidence together, I believe there are not less than twenty-three or twenty-four persons who speak to this particular. But I can venture to affirm, from my own observation, that about one-half of those, though they admit that such reports prevailed, yet they did declare at the same time that they did not believe one word of them. The remainder were not examined as to their belief. The respondents durst not put the question to them. This appearing in evidence, shall it be said, my lords, that such a calumny, spread for evil purposes and bad designs, which no person sincerely believed, shall be admitted to destroy the reputation of the birth, and turn a man out of the possession of his state? When I said that none believed these reports, I should have excepted Mr. Hamilton, who did believe the first story to the discredit of the birth. But this same Mr. Hamilton, upon being better informed, was perfectly convinced, and did believe, that the

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children were hers. There is hardly one witness to be found so bold as to avow his belief of these reports. Such was the character of Lady Jane (and character, my lords, is an immense thing in cases of this kind), such was the goodwill bore her by all mankind, that the moment she appeared with her children in her hands all rumours disappeared; there was not a whisper to their prejudice. She carried them publicly to the Assembly at Edinburgh, where they were received as her children.

I do therefore fully conclude that the appellant's possession of state stands established by habit and repute. And your lordships will see it is a dangerous doctrine to say that the child who has been acknowledged from the day of his birth should lose the protection and advantage he is entitled to by such acknowledgment, by the false breath of calumny spread in the neighbourhood by interested persons for their own purpose. Upon this foundation it is, that I will submit to your lordships, that the habit and repute being sufficiently clear, the appellant is entitled to all the advantages this will afford him as to the *onus probandi*, and the whole, then, will amount to this: that if the appellant had put his cause altogether upon the acknowledgment of parents and upon habit and repute, in that case the law would have called for clear and positive evidence to have dispossessed him. But, as I said before, I question whether this argument will be very useful in managing the present proof, and that because the appellant has not relied entirely upon the protection arising from the acknowledgment of parents and from habit and repute. He has sallied out of this line. He has gone further; he has undertaken to prove his mother's pregnancy and delivery; and having proceeded upon that ground, I apprehend it is now too late for the appellant to resort to habit and repute, and to rest his defence upon this only. But still this may be laid down as a rule, that the appellant, fortified with the recognition of his parents, and with habit and repute, will be entitled, with these advantages, not only to call upon the other side for strong and direct proof to the contrary, but will be further entitled to every favourable presumption in support of his birthright. The respondents, on the other side, have no right to any favour whatever. The respondents say that in this case there is such a chain of evidence, such a train of circumstances, as are irresistible.

These they have worked together with such industry and skill that the legal presumptions in favour of the appellant appear weak, and his claim is made to totter. The respondents have gone to positive and direct proof; the appellant meets them with such: in God's name, as the armies are fairly drawn up, let us see on which side lies the strength of proof. Lord Chancellor

I shall now, my lords, come directly to the merits of the cause. The facts under your lordships' consideration on both sides are briefly these—

The appellant undertakes to prove Lady Jane's pregnancy, her delivery, her reconvalescence, and her subsequent miscarriage at Rheims, together with all the other parts of the case that fall in their proper course, until the last dying expressions of his father and mother. These are the branches of his proof, and of these he is to satisfy your lordships.

The respondent, on the other side, says he will prove an alibi: that Lady Jane could not be delivered at Le Brune's, because she was at Godefroi's at the time fixed for the delivery. This is a positive fact your lordships must be entirely satisfied about. Another positive fact is, that Sir John and Lady Jane stole two children, one in July, 1748, another in November, 1749. These two are positive facts that must necessarily be proved. Much has been said and insisted on of what passed at Michelle's, of Lady Jane being in perfect health there, and a thousand other circumstances that have occurred in raking together the whole facts; but I shall take no notice of many of them.

In the first place, my lords, as to the pregnancy, this part of the case has been managed, in my apprehension, in a very singular manner. I observed, when I first read the respondents' memorial and heard the counsel at the bar, that this fact of the pregnancy was treated as being in its nature incapable of proof. They have endeavoured to draw off your lordships' attention from this part of the proof, and have attempted throughout the whole to treat the pregnancy as separate and distinct from the birth, and no wise connected with it. The Solicitor-General went so far as to postpone the pregnancy to the last part of his argument. The noble lord who spoke before me endeavoured to produce authorities to show that pregnancy was extremely difficult, if not incapable, of proof. It appeared upon the whole evidence that the respondents most anxiously desired an acquittal upon the article of preg-

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nancy. It was this, my lords, that led me first to suspect the respondents' plea: it was the first part of the cause that made me believe it was not true, because so much pains were taken to throw the pregnancy out of the cause. Why disjoin the pregnancy from the birth? Suppose the birth itself is dark or doubtful, and the evidence of it not so clear as could be wished, will any person say that a clear proof of the pregnancy does not supply the defect in the proof of the birth? Does not the delivery presuppose the pregnancy? Are all marks of pregnancy to be slighted because once in ten thousand, or perhaps once in a million of times, appearances may be set up to counterfeit pregnancy, or because it is barely possible in nature that there may be a false conception? Is this any ground or foundation for your lordships to reject the whole evidence of the pregnancy? I was sure, when there were so much pains taken to satisfy your lordships that a proof of the pregnancy was a proof of nothing, that this article was of some weight, and ought to be attended to. I am myself convinced that the proof of pregnancy is in this case invincible. Give me leave to say that there is not one single witness produced to disprove it. What is it that the respondents call their proof on this head? If those who travelled with Lady Jane in a coach, who saw her or conversed with her in a public company, or who lodged in the same house, but never entered her chamber, if all these did not discover any signs of pregnancy, what is the inference? The respondents say that this shows there was not even the appearance of pregnancy. But the natural conclusion is, that it is not likely that persons who did not know her before, or who had but a slight knowledge of her shape and appearance, should immediately observe her pregnancy. How is it possible they should form any judgment?

I will but just mention the most material witnesses who speak to the pregnancy.

Madame Tewis's evidence stands unimpeached. It is confirmed by that of Sir George Colquhoun and others. What is the account she gives? She is an experienced lady, who had several children of her own; she was admitted to an intimacy with Lady Jane, and her acquaintance continued from the time she first lodged in her house until her departure from Aix in May, 1748; she was her confidante, her physician, her surgeon, her everything that could be required of a woman

in that condition. She says that she observed the progress and advancement of the pregnancy, and the size of the waist gradually increasing, besides the stoppages in such cases that naturally follow. She has further said that she had her hand on Lady Jane's belly and felt the child move; she says she saw Lady Jane rise out of bed, when she observed how prodigiously she was swelled; she said her increase was extraordinary indeed, and more than she could have believed. The evidence of Mrs. Hewit and Mrs. Walker is the same, so far as respects the bulk. I would desire to know, my lords, how pregnancy is to be proved but by these signs; by frequent sickness at the commencement, gradual swelling of the breasts, the movement of the child, the alteration of the clothes, and other appearances proved in this case? Isabel Walker (whose evidence stands far from being impeached, except as to some inaccuracies) is clear as to the movement of the child; and this poor woman, though tortured by three several examinations, stood the whole with a firmness which nothing but truth could inspire. She speaks of the pregnancy in all its circumstances, and confirms the whole other evidence. Lord Chancellor

But this is called an ostentatious pregnancy, shown forth and made public to the world with a design to bring witnesses to the fact. It was quite the reverse, my lords, for Lady Jane concealed her marriage, and was bound while that was the case, for her own credit, to conceal the pregnancy; and therefore those who speak to her pregnancy at that time were such only as by an intimacy with Lady Jane observed its real appearances.

At Rheims scarce any person was called to prove the pregnancy. Abbé Hibert, Lieutenant Mackenzie, and Querengal all speak to the pregnancy there. Mrs. Hepburn's evidence is clear and positive. She came into the room when Lady Jane was rising out of bed. She says her breasts were exposed to view; she swears that no person who had seen Lady Jane in that situation could have doubted one moment of her being with child. Does the deposition speak of a transient view, as was insinuated at the bar? No; quite the reverse. This witness, too, must be tortured with a second examination.

Upon the whole of this evidence, my lords, I can no more doubt of the pregnancy than I can of my own existence, unless it comes out in proof afterwards that there was no real delivery, and that they stole two supposititious children. When

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Lady Jane left Rheims, if she was not pregnant, what was the disorder she laboured under that occasioned such enormous swelling? At Michelle's she was slender, taper, and flat-breasted. Every argument the counsel used to prove a fictitious pregnancy are evidences of a real one; for the respondents admit the appearances of swelled breasts and a swelled waist, and I should be glad to know by what trick and contrivance Lady Jane got rid of these troublesome companions in less than a fortnight. I say, my lords, it was a million to one if she was not pregnant. And the unavoidable consequence of this pregnancy must be either a miscarriage or delivery, for the preconception must somehow or other be disposed of. Give me leave to say, my lords, that the *onus probandi* lies upon the respondents in this particular. The respondents' counsel saw this, and they knew that nothing less than evidence amounting almost to demonstration could overthrow so solid a proof of pregnancy.

But, my lords, Lady Jane's motions have occasioned the darkness and obscurity that appear in this case. She set out for Paris on the 2nd of July; she departed from Rheims with Sir John, and came to the house of Mons. Godefroi; from thence she goes to Le Brune's, where she is delivered by La Marre. There are some things, to be sure, not easily to be accounted for. That Lady Jane should leave Rheims so near the time of her delivery and hurry herself to Paris; that she should leave her servants behind: that she should afterwards go to an unknown place without any previous preparation; that she should entrust herself to the care of such a person as La Marre (who is now unfortunately dead); and that Madame Le Brune, at whose house she was delivered, cannot now be discovered, these are things, my lord, which I am ready to admit, made a strong impression upon me; they were circumstances that made me look with a jealous eye upon the event of the delivery; they made me wish I could trace Lady Jane to the very bed where she was delivered, to see the house, and to be able to produce the physician. But this I could not do. Yet, notwithstanding the difficulties that stand in the way, let us endeavour to bring light out of darkness the best way we are able. Let us consider what proof has been produced, and at the same time reflect that at this distance of time the appellant lies under great disadvantages to make good that which does not lie within his own know-

ledge; especially now that the parties themselves, and most part of the witnesses are dead, and no satisfaction can be had unless it was possible to summon their ghosts to attend. Lord Chancellor

In considering the evidence that has been produced with respect to the birth, your lordships will give me leave to see how Sir John, Lady Jane, and Mrs. Hewit have stated that fact. It was affirmed as a fact in England very soon after they returned from abroad that Lady Jane was delivered of twins, by one Pier La Marre, an accoucheur; and that after the delivery the youngest of these twins, who was weak and puny, was put to nurse, and intrusted to the care of this Pier La Marre. Now, that this is the very story given out at home is proved by every one of the witnesses—Sir John, Lady Jane, and Mrs. Hewit repeatedly told it. The very forged letters themselves tell this tale. The memorandums or notes given by Sir John to Mrs. Napier show the same. And here it is not worth while to dispute one way or other whether one of the notes in question was contained in the list of papers delivered by Mr. Orr to Mr. Brown (xxvi. 383), or whether the note indorsed on the draught of Lady Jane's will was copied from one of Sir John's handwriting, or taken from Lady Jane's own mouth (xxv. 23). This dispute has taken up a volume, and is totally immaterial. It is enough for me to say that in England, in Scotland, and abroad the same story is adopted, without any communication or intercourse, without sending a message, or without having any confirming testimony to support it. I will admit they are bound to prove it. They can now advance no other. But, my lords, if it should be found by evidence, by other evidence than the persons who told this story, that a foreigner, unacquainted or unconnected with the parties, had, at the distance of ten years, and in another country, told the same story more than once, I say, should this foreigner, upon examination, tell exactly the same story, with all its several circumstances, I would then ask your lordships this single question, Are both the tales invention? It is impossible, my lords, to say that this man could invent a story so punctually alike, and that no part of the same story thus invented in different parts of the world should prove true. Nothing less than omniscience could do this. The consideration of this has stilled my mind more than any other; that when I see a credible witness in France, without tampering in any sort, give the same his-

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torical account of the birth that Sir John and Lady Jane have done, then I throw aside a thousand particulars related by Sir John. I care not whether they be true or no in every particular circumstance; the solid foundation, the main substance is true; and I don't weigh slight circumstances when the most material are confirmed by such credible evidence.

I confess, my lords, that this part of the case struck me much. I read it more than once, and laboured much on both sides, until I came to consider the evidence of Mons. Menager, the single credit of whose testimony I dare venture to affirm, stands fairer than any other that has been examined in this cause; nor is there a witness in the whole list of them whose credit is so pure, so untainted, so free from reproach, so much *omni exceptione major*. I heard with attention all that the noble lord said about it, and I observed the indefatigable industry of the counsel at the bar to wrest his testimony and shake his credit. But Mr. Menager will for ever stand the test, because his deposition in this cause is punctually the same with the first information given by this witness, at a time when he was unknown by all the parties. It is seldom such evidence is to be found, and your lordships must deem it to be authentic, and clear from all brass and corruption. In most cases it is impossible to come at the sight of the first original information given by witnesses; most part of them are kept close, the witnesses are practised upon, they come to be heated with the cause, they gain prejudices and partialities, and though there is no corruption, yet a partiality will take place, and therefore it is very difficult to find a witness free from all objections. But in this case Mr. Menager gave the first information and the same account to the respondents' own agent, Mr. Andrew Stuart.

I now mention his name for the first time. I have not spoken of the monitoire and of his other proceedings in this cause, nor of the Tournelle process; for though I am of opinion that this was as foul a practice as ever was exercised in any civilised country, yet I did not care to rip up that sore afresh and hurt a gentleman here with the reflections I must make upon it, because it does not seem to go to the heart and merits of the question. I really do not know who this Mr. Andrew Stuart is. I observe a marvellous attachment to this gentleman, a most unaccountable anxiety for any things that may touch his character. I observed an anxiety of the counsel

at the bar to vindicate him, forgetting their clients' cause for two hours together. I don't know what sacredness there is about this gentleman. This I know very well, that whenever a cause requires it, Mr. Andrew Stuart must be content to hear such observations as the evidence in the cause makes it necessary for the judges or the counsel to throw out. I shall not, from any misguided lenity or indulgence, spare the least reflection that I find necessary upon him or any other person in this cause. Lord Chancellor

I see Mr. Andrew Stuart, in the early part of this business, in the year 1762, meeting with Mons. Gilles and Mons. Menager, when they had not seen any other person concerned in this cause. The noble lord who spoke last, if he had examined the evidence with attention, would have found that Mr. Menager never saw Mr. Murray till some months after this; nay, he had never seen Mr. Murray until he had seen him at the Duchess of Douglas's, who had sent for him on that occasion. My lords, until he had seen Mr. Andrew Stuart he had seen nobody. Mr. Menager had no desire to appear as an evidence. He told Mr. Andrew Stuart that he was well acquainted with Mons. La Marre, that Mons. La Marre acquainted him, in the year 1748, that he had brought a foreign lady to bed of twins; that the lady was advanced in years, and came last from Rheims. Mons. Gilles repeated exactly the same thing to Mr. Stuart. This was unlucky evidence for Mr. Andrew Stuart's cause, for it cut up his whole hypothesis by the root. It produces a La Marre; it produces a Le Brune; it brings two persons into existence to whom he had denied any existence whatever. I had understood from Mr. Andrew Stuart, and his counsel averred it, that when he went to France he went in search of truth, that truth was his object, and whenever he found her she was to be taken up; that he even wished to find truth in favour of Lady Jane. But if this was really the case, if character was to be preserved, why conceal the evidence of Mons. Menager and Gilles? Mons. Menager's evidence is left to shift for itself; the whole story is thrown upon Mr. Stuart, and I call upon him to disprove it. Menager, in 1764, swears he told it him two years before—this makes it months before any person applied to him on the part of the appellant. He swore it directly in Mr. Andrew Stuart's face. If this was true, it confirms and established the credibility of Mr. Menager's evidence beyond

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contradiction. If it was false, it was incumbent on Mr Stuart to come into Court to deny it. Yet he does not do so. Mr. Menager comes, and says to his face, "I related this to you two years ago." Mr. Stuart stood by him and says nothing, therefore he admits it.

I know it may be said—and it has been boldly said at the bar—that Menager was contradicted by Mons. Gilles. But Gilles, my lords, is made to unswear what he had formerly told Mr. Stuart. How is this proved? Why thus, my lords. In the year 1763, when Mons. Gilles was first heard of, the appellant's agent spoke to one Mons. Mornad, to inquire of Gilles all he knew of this matter. This gentleman, not being acquainted with Gilles, desired one Mons. Moreau to do it. This gentleman accordingly put down certain questions upon paper, and they were produced, and shown to Gilles. He answered, "I do remember Mons. La Marre. I know he was connected with a Madame Le Brune. I know he told me he delivered a foreign lady of twins in the year 1748. I know he also told me she was delivered in the house of Madame Le Brune; but I do not know this Madame Le Brune." These words are taken down in writing from Gilles's own mouth by Mons. Moreau. How comes it to pass, my lords, that Gilles is not called upon to give evidence by Mr. Andrew Stuart? How comes it he denies the answers he gave to the questions put by Mons. Moreau? Will it be saying too much, my lords, to say that this witness is flatly perjured? He must have a reward somewhere; for no man commits perjury gratis; where is the man that commits such iniquity for the pleasure of doing it only? I will venture to say he could not be bribed by any of the appellant's agents. So far I will go, and no further.

But this is not all. My lords, there is another witness, François, the brother of Pierre La Marre. He is examined originally by Mr. Andrew Stuart, too. He told him that his brother had connections with Madame Le Brune. He told nearly the same tale to two gentlemen that went over to France on the part of Mr. Douglas. This François La Marre, after having told this story to both parties, came to be sworn in Court, and he denies it all upon oath. How came it to pass that Le Brune should be entirely forgotten upon this second examination? Why does he run away without signing his deposition? I cannot account for it.

There is another part of the case similar to this. Madame

Le Brune, in St. Germain, knew a Madame Fountain, who told her of a delivery in the house of one Le Brune, in the Rue de la Comédie. She had a conversation concerning this in presence of several gentlemen, and four days after she denied every word she had said. My lords, I do not like this; I have a right to say, as a judge, I do not like it. It speaks strongly of some improper management on that side of the question; an endeavour, if possible, to suppress the truth. It is impossible otherwise to account for the hidden silence, the falsehood, and perjury of Gilles and La Marre. Lord Chancellor

Menager is uniform on every occasion. He is examined the first time, and is then strictly cross-examined by Andrew Stuart; he is tried in every shape; he is again called upon and examined for two days together. The examination was nothing to the purpose; it was merely calculated to bring out some little collateral circumstances to which other witnesses had been examined. It was all an engine made to entrap an honest witness. Besides, my lords, examine yourselves touching any material fact twelve years back; was it this month? in such a company? was it in that place? before Christmas? or after Christmas? Is there a man living, let his memory be ever so retentive, let the images of things be ever so strong, that can recollect every fact at that distance of time, with all its concomitant circumstances? This man, when he comes to be worked, twisted, and tortured, yet falls into no errors, except some little inaccuracies as to time and place in particulars of no consequence. They mostly regard his being recommended to Mons. d'Argenson. This is a capital objection. Another is, that it is impossible Mons. Menager could have had the information of a foreign lady's delivery from La Marre at a collation at the Hotel Dieu in 1748; for this does not correspond in point of time, because La Marre had been turned out of the hospital before the year 1748, and could not be admitted to a collation after supper, when the doors were shut. This is another critical objection which depends upon a fact not in proof as to the time of eating collations in the hospital. A third relates to the reading the books and papers that were published in France concerning the cause, which is frivolous to the last degree.

Now, my lords, you have everything in Menager's evidence but the name of Lady Jane. He says that La Marre told him he had delivered a foreign lady, last from Rheims, of twins.

Lord Chancellor The noble lord who spoke last said—Why apply the denomination of a foreign lady to Lady Jane in this case and not apply it to the enlevement of Mignon's child? for, as he was stolen by a foreigner, I should be at liberty, on the other side, to apply it to Sir John Steuart. But, my lords, the cases are by no means similar. In the case of the delivery, the evidence of Menager coincides with direct positive testimony. It is supported by Lady Jane, Sir John Steuart, and Mrs. Hewit. For that reason the application of the foreign lady is just, and you are bound to believe it. In the other case of the enlevement you have nothing but mere conjecture. The name of foreigner may apply to thousands; and you are not at liberty, upon that, to charge any one particular person with a foul and atrocious crime. In Menager's evidence, as I have already said, you have everything but the name of the foreign lady; you have her delivered of twins by La Marre; you have one of these twins entrusted to the care of La Marre: can this have happened to two women upon the face of God Almighty's earth? It is absolutely impossible; and therefore it is impossible *to pronounce a verdict to the contrary*. The evidence of Menager therefore proves the delivery materially and substantially, just as it is related by the witnesses in England. I never could or ever shall be able to get rid of the strong impressions these extraordinary circumstances made upon me; keeping this in view, I can easily get rid of all minute objections. I can make allowance for a thousand little circumstances. I see this at once, that God Almighty has so disposed of human affairs as to make it utterly impossible for two persons in different countries, at one and the same time, to make two stories both to coincide. God forbid it should. It would make a world of confusion. Nothing else than omniscience could do this.

I hope, therefore, my lords, I have now lodged Lady Jane at Le Brune's house; and now I shall be at liberty to ask some questions concerning this La Marre. It has been said that he is not Sir John Steuart's La Marre. He is not the La Marre that brought Lady Jane to bed. But, my lords, this does not at all destroy the identity of the person. Sir John does not destroy his existence, though he mistakes particulars. His information at the bottom may be true, though his declaration in some things may be false.

It has been said that La Marre was not a surgeon of any

considerable eminence. To be sure he was not. That Le Brune was not a person of any considerable rank. So far, to be sure, they say right. Nor could her name be found in any of the registers, or even in the capitation books. How, then, could Lady Jane condescend to be delivered by such a person as La Marre, and in such a house as Le Brune's? These things engaged me to look a little into the state of Sir John's finances at that time, and this gave me a satisfactory answer to these and other grand difficulties that are to be found in this cause. I find Sir John had stretched his credit to the utmost at Aix. When he went to Rheims he had only a credit for £75 or thereabout. It appears by a letter produced that Lady Wigton had made a pressing demand on Sir John for fifty louis-d'ors she had lent him. Several letters passed on this occasion. In her last letter she tells him she is on her journey to Rheims, and expects the money. So low at last is he reduced as to be forced to draw a bill for a quarter of Lady Jane's pension, though not due. So far from abounding in riches, it appears he had just enough to keep them from starving. Yet amidst this poverty Lady Jane's pride was not in any degree abated; even to the last it was not abated; for it is proved that, in the year before her death, her poverty made her ashamed of her rank, and she travelled under the feigned name of Brown from Edinburgh to London, and was alone, without any servant, during the whole of her journey. My lords, pride and poverty are very bad companions; and, whenever they meet together, there is nothing so much dreaded as public inspection. The persons in whom they are united will submit to anything in the world rather than discover their situation. It appears to have been Lady Jane's intention, and she thought it better, to conceal herself in some unknown corner in Paris, than expose herself to the world or be seen by anybody but those about her. If that was so, it will well account for the reason why she did not bring her maids with her from Rheims. She was averse even to their seeing the wretchedness to which she was reduced. There was, no doubt, a concealment and mystery. In such a case there are always false pretences and shifting of things. The real situation cannot otherwise be covered. But I think, my lords, the whole of this mystery and concealment may be fairly attributed to Lady Jane's pride and poverty.

Lord Chancellor

I come now, my lords, to consider the evidence of the alibi.

Lord Chancellor If the alibi is clear, the birth must be false; they are in direct opposition to one another. But I hope to satisfy your lordships that the residence at Godefroi's was a new hypothesis that never sprung up in the respondents' imagination until near the close of the examination of the witnesses in July, 1765. I will show your lordships that all the witnesses examined before Christmas, 1764, apply to the first plan of a residence at Michelle's at the time of the delivery; all after it to the new plan of a residence at Godefroi's. When the first plan was forced to be abandoned, this new plan is taken up from necessity. This is one of the most extraordinary parts of the respondents' conduct. My observations must here fall upon Mr. Andrew Stuart; and I cannot, nor will I, spare him or stifle my opinion of his proceedings in this affair. What was the first plan adopted by the respondents, and which continued to be their plan for two years together? It was this, that Sir John Steuart and Lady Jane came to Paris, and put up at Godefroi's on the 4th of July, where they remained to the 8th; that on the 8th they departed and took lodgings at Michelle's; and remained at Michelle's, with a double abode, as they call it, till a child was found to suit their purpose. The capital part of this plan was the departure from Godefroi's and the entry at Michelle's. Your lordships will observe, the plan being once taken and the dates fixed, all the sinews are strained, all the witnesses are led, to meet this hypothesis and to close in with it in their evidence. Mr. Andrew Stuart, when he saw Michelle's books, considered and inspected them with close attention, and believed verily that the entry on the 8th July was the handwriting of Sir John Steuart, for he had frequently seen him write. He does not swear to this, but his solemn asseveration is equivalent. For how does this affect the people at Michelle's house? They think, according to the best of their memories, *that it was the gentleman who wrote it, for they did not write it themselves.* The books were then carried to the Tournelle, and there locked up. And this is the evidence then given: if Lady Jane was at Michelle's on the 8th, it was impossible she could be brought to bed on the 10th at Le Brune's. This, therefore, if true, was a lucky hit. The time was only to be filled up till they all departed at the end of the month. Blainville says that she had no communication with them for the first eight days after they came to Michelle's; that at the end of eight days they

brought a child, and two or three days after they made a journey to Versailles; she says she went and asked leave of the lady to whom she was engaged to be absent eight days, and that she stayed till these were expired. Breval says it was eight days before the child was brought. The Michelles' account, when first examined in the Tournelle, coincides with Blainville and Breval, and fixes their habitation at their house before the child was born. This account takes up no less than three weeks, most evidently with a view to their first plan of their going to that house on the 8th of July. But when Mr. Andrew Stuart thought fit to change this plan, and to fix their evidence at Godefroi's until the 14th, when the Michelles are examined after Christmas, they swore that the very day after Sir John and Lady Jane's arrival they brought a child, and that two or three days after they made their journey to Versailles. Thus the Michelles, who had extended the stay at their house to three weeks in order to serve the first plan, now confine it to one. Everything is now crammed into one week which formerly took up three. I never, in the whole course of my life, saw such a knot of witnesses. Nurse Favre, in her first information, tells Mr. Andrew Stuart, if you believe him, that the child was three months old. She is examined after in the Tournelle, and there swears it was six weeks or two months old when brought to Michelle's. But after Mignon's child was discovered it became necessary to ascertain the exact age of the child with more precision. The account she then gives is that the child must be three weeks old. First it was three months old, then she swears to six weeks or two months, then, the plan being changed, another child is introduced upon the stage, and this alters it to three weeks; shifting and turning the evidence to every new hypothesis, so as to leave it not the least degree of credit whatever. **Lord Chancellor**

Now, my lords, we come to examine the second hypothesis, of the residence at Godefroi's at the time of the birth. Now, your lordships will attend closely. Convincing and satisfactory evidence must come home; for this second hypothesis is of itself enough to overturn the whole fabric of the cause, to set at naught all the evidence of the pregnancy, to destroy all the evidence of the habit and repute. This, my lords, is the substance of it.

At the end of two years a new plan, not dreamed of before,

Lord Chancellor is adopted, and a very singular one it was when your lordships consider it. Your lordships will very well remember that Sir John had taken another lodging at Michelle's on the 8th of July. Upon the first plan he could not remain a minute longer at Godefroi's; but Godefroi swore that they continued at his house from the 4th to the 14th of July. To reconcile this fact, perjury is introduced to support their new hypothesis. We are now upon evidence that depends upon memory. At first Godefroi and his wife do not remember Sir John Steuart, though he was recommended to them by Mons. Mallifer at Rheims. It does not appear that, from the moment of their coming there to their departure, Godefroi ever spoke to Sir John Steuart, nor to this hour does he know his person, nor the two ladies, neither the one nor the other. Sir John and two ladies came to their house in 1748; and, fifteen years after, when they are called upon to say if they know anything of them, they declare, in their first examination, that they do not pretend to have any knowledge of them. Here, then, some art must be used, some artifice must be contrived, to enlarge their memory. They are told, it will be too long for you to remember particular persons at such a distance of time; how can you remember them when you have such a multitude of guests perpetually at your house? It would have been marvellous, indeed, if any person would have been hardy enough to have charged his memory with a fact of this sort. Godefroi, therefore, has attempted to do it by the help of his books. Let us see, then, how this is to be done in such a manner as to be clear of all objection; for here there is no room for conjecture. Show me how your house was filled on the 4th of July; what was the company on the 8th; show me the account of their expenses. The book containing the names of the lodgers is produced, and the book of the expenses; but the book of expenses contains no account which they can expressly bring home to Sir John Steuart. Many articles are set down in an account blank in the name, but they cannot from memory apply it to Sir John and his company. What is, then, to be done? Instead of applying this blank account as they ought, they take another method. They examine the book of lodgers and the book of expenses together, and then say that this blank account must apply to Sir John Steuart, because it is applicable to no other company mentioned in the book of lodgers. But, my lords, it will be

found upon examination that the book of lodgers and the book containing the account of household expenses are equally incomplete and erroneous; for it is admitted that many of the persons entered in the book of lodgers are not to be found in the book of expenses; and, what is still stronger, it appears that, in May, 1765, when the Godefrois were first examined, they only produced one book, and they have spoken of it in their deposition so as to mislead every person to believe that this was the only book of expenses they have. This book, however, does not give any account of a thousand things. On the close of the examination of the witnesses, when they came to be examined finally, they say there is another book, and they produce it. Even this book does not mend the matter; both taken together do not contain a complete account of the household expenses. When one book is suppressed and another shown as a complete book of expenses, it may well be supposed a third still exists. The whole evidence arising from these books is a great deal too loose; it is not to be depended on or believed. The evidence of the Godefrois, who have actually perjured themselves to support their books, going upon the strength of memory alone after such a distance of time, and then coupled with their books, is totally inconclusive. There is that evidence arising from the books, if any credit was to be given them, that makes it more probable that Sir John must have left the house before the 11th; for, if Sir John, Lady Jane, and Mrs. Hewit had been in the house when visa of the 11th is marked by the inspecteur de police, it was impossible they should omit Mrs. Hewit. But, in fact, they were gone. The whole, in short, is too uncertain evidence to prove an alibi against the birth, where the pregnancy is proved beyond the possibility of contradiction, and where other matters equally important will appear to be equally well proved.

Lord Chancellor

The noble lord who spoke before me, and, indeed, the counsel at the bar, acknowledged that the evidence upon Mignon's child brought nothing home directly and positively to Sir John Steuart and Mrs. Hewit. There is, indeed, a chasm in the evidence of the enlevements which cannot be filled up by conjecture. It is impossible to do it. You must bring home the evidence to the person charged when the state of a man is to be decided. A probable coincidence of features and a thousand other circumstances are all wide and short of the mark if any chasm is left

Lord Chancellor

to be filled up by conjecture. Reflect for a moment what would be the consequence if this doctrine was to be shaken. Instead of going *secundum allegata et probata*, instead of considering the proof of facts as charged, every man must be told that he is to go according to his belief and opinion. But this, my lords, is a false, iniquitous, and dangerous position. When once you depart from that most sacred rule, one man will be satisfied with slight proof, another will want stronger, and the measure of evidence is left uncertain. But, my lords, the law says, let the fact itself be proved as it is charged; upon your oath you are to determine according to the evidence, and it only must decide. I have no doubt, my lords, but that there are many honest persons on the side of the respondents that will swear that they believe that Mignon's child was stolen by Sir John Steuart. But I will tell them, let their belief be what it may, that, if they should so decide upon oath upon the evidence before us, they will be perjured. Attend, my lords, for a moment to the condescendence or particulars of facts given into Court relative to the Mignon and Sanry's children. I will be bold to say that, in any Court of justice in England, the proof brought of this condescendence would have been rejected the moment it appeared. The respondents upon this proof state all the facts relative to Mignon and Sanry's children; and, when they have gone through the whole evidence, they stop short and say they are sure such children were carried off at the critical periods they have mentioned. They do not say that the appellant is the son of Mignon; but, in order to steal this enlevement into the cause, they state it in as strong a light as possible. In the condescendence of facts they charge directly Sir John Steuart as the person who stole Sanry's child; but the evidence is so far from coming up to the charge that the respondents' counsel were forced, in spite of themselves, to give up the application of this enlevement to Sir John Steuart. I do not like this, my lords. Why introduce either of those enlevements? Most certainly for no other purpose than to fill up a chasm. Why attempt to support evidence by a calculation of chances? a new and scandalous attempt never before heard of in any Court of justice! If there had been any shadow of real evidence they would have been ashamed to have called in this to their aid.

But I will mention two or three facts relative to Mignon's child. All the witnesses who were first examined as to this

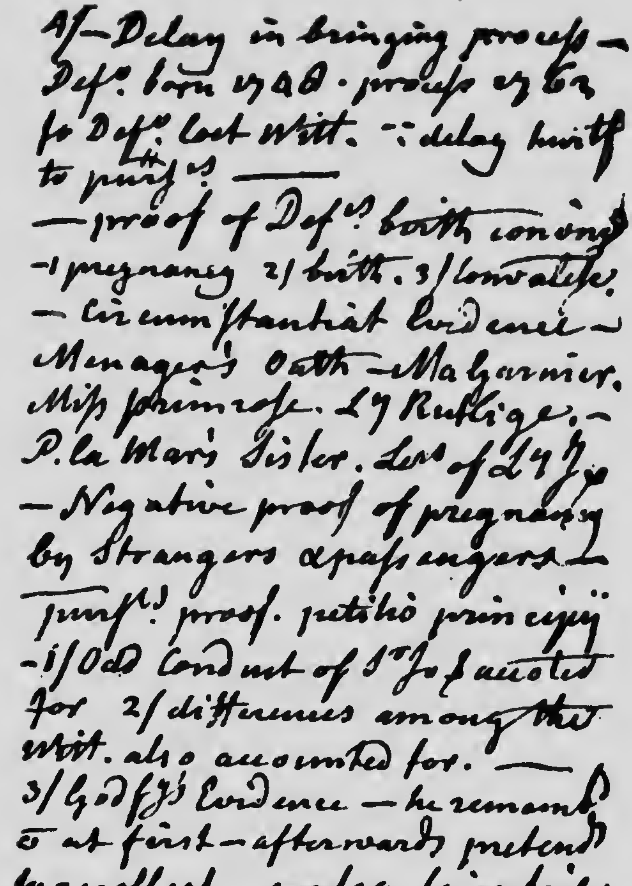
enlevement fix it to the 11th of July. This was done to correspond to the time of their residence at Michelle's, which was at the first fixed on the 8th. But, when it was resolved to continue their residence at Godefroi's till the 14th, your lordships see it was impossible to maintain that Mignon's child could have been stolen upon the 11th. In the year 1765 the plan, therefore, is totally changed, and the evidence of Mignon and his family must be accommodated to this new plan. They and other witnesses had spoken to the feast of St. Clair as a remarkable period which led them to remember the time of carrying away the child. This feast usually happens on the 18th of July, and so it was allowed to stand till it became necessary to accommodate the time of stealing the child to the second hypothesis. It was then discovered that the feast of St. Clair did not happen that year till the 22nd of July. Your lordships will consider how the evidence is then managed. The age of the child had been carried into the monitoire by Mr. Andrew Stuart. It had been sworn to by the witnesses. All that was left was to carry forward the date of the feast of St. Clair; and the witnesses, in fact, carry forward this day, without carrying forward the age of the child. I must again assert I never saw such foul practice in shifting and managing evidence—no, never since I was born. There is not one witness that does not stand perjured on his own evidence. They perpetually shift their plan, from Godefroi to Nurse Favre; I will not except one. Mignon and his family, and the other witnesses to the enlevement, all swear that the child had blue eyes. All the witnesses at Rheims that saw the appellant said he had black or grey eyes. To reconcile this there is an examination of a great many witnesses to prove that blue eyes may change to black. I admit they may change greatly in a course of years, but most certainly they could not change from blue to grey or to black in so short a time as six weeks. The Mignons first swear to a period that comprehends the transactions of three weeks. Blainville joins them. She is led and conducted throughout; there is not a word of truth in what she says of this matter. All of them swear to the journey to Versailles, and Mrs. Hewit's evidence has been more impeached on account of this journey than anything. But, my lords, I will set her credit against the Michelles, Blainvilles, and the whole troop of them, notwithstanding all that has been said by the gentlemen at the bar to the contrary.

Lord Chancellor

Lord Chancellor The Michelles are perjured, Blainville is doubly perjured, the perukemaker, too, is certainly perjured; the whole evidence as to this part of the cause is contaminated.

A noble lord who spoke before me said that when Mrs. Hewit, the principal witness, is detected in so gross a falsehood in her evidence, it taints the whole. I shall never agree, my lords, that Mrs. Hewit's evidence shall weigh one moment in competition with Blainville, and such a troop of witnesses. I will suppose anything rather than suppose Mrs. Hewit to be perjured. I shall suppose that Blainville invented the story of the journey to Versailles to excuse her not coming to her mistress's service on the day she had appointed. Your lordships will find that the other witnesses mostly speak of this journey from her report. If, my lords, the fact is proved (as in my apprehension it is) that Lady Jane was brought to bed on the 10th of July, I will give credit to no facts spoken to by suspected witnesses inconsistent with this most essential part of the proof; and, upon my word, my lords, the more I examine the proof the less credit I can give to the evidence of this journey to Versailles. There is another circumstance I have forgotten to mention: your lordships will remember that, in the year 1756, inquiries were made by Principal Gordon at Paris in consequence of the note delivered by Sir John Steuart to Mrs. Napier. At that time the Michelles, when totally unconnected with the parties, told Principal Gordon that the lady kept her bed and appeared like one lately delivered. This is the general, natural account given by the Michelles recently after the fact happened, and years before this suit was thought of. How can that possibly be reconciled with the account the same witnesses afterwards gave of this matter? How is it possible to give credit to the journey to Versailles? In this cause, whenever I meet with a witness irreproachable in character, who has spoken honestly in the cause, I have accounted it as a jewel in my mind. Mrs. Hewit is such a witness.

I shall now, my lords, say one word or two about the miscarriage at Rheims. I think it is clearly proved, and I will tell your lordships why it so appears to me. Before any person had appeared on the part of the appellant, Mr. Andrew Stuart had been all over the ground. Nurse Mangin was his own witness. She was examined in the Tournelle. I will give credit to her, notwithstanding the indigent and miserable condition he now describes her to have been in. She gives a



4/ — Delay in bringing process —
Def.r born 1748 · process 1762
so Def.rs lost Witt. ∴ delay hurtf.
to purs.rs —
— proof of Def.rs birth conceiv.g
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— circumstantial evidence —
Menager's Oath — Ma. Garnier.
Miss Primrose. L. Rutlige. —
P. la Marr's Sister. Lers of L. J.
— Negative proof of pregnancy
by Strangers & passengers —
purs.rs proof. petitio principii
-1/ Odd Conduct of S.r J. accounted
for 2/ differences among the
witt. also accounted for. —
3/ Godfry's evidence — he remembd
0 at first — afterwards pretend.d
to recollect, — causa scientiae
insufficient — D. 1029. —
second plainte — Conradscend(?) —
— Godf. Oath — all different:
— his Oath incredible —
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— Enlevements 0 proved —
Witt. perjured. —
Ma. Popsel's Oaths D. 659.
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Portion of Lord Elibank's Notes in the Douglas Cause.

In the possession of G. D. Veitch, Esq. of Eliock.

most pointed and distinct account of this miscarriage and of the size of the child. Isabel Walker has sworn to this very same miscarriage. Some objections have been taken to this miscarriage, as confounded in point of time with other miscarriages spoken to by some witnesses; but this stands separately proved by clear evidence, and I see no reason why this one should be rejected, because there are others spoken to by some witness from report or from a faint recollection of what passed at such a distant period. Lord Chancellor

When they were at Rheims, my lords, there are several witnesses who have sworn that Sir John Steuart received letters from La Marre, who had the care of the youngest child. Lady Rutlidge has sworn that Lady Jane anxiously expected such letters, and that Sir John went frequently to the post office to inquire for them, and on one occasion brought a letter, which she heard read. Miss Primrose has sworn, too, to Sir John's receiving such letters, and that when she went to Paris with Lady Wigton she believed there was an address given Lady Wigton so as she might inquire concerning Sholto, though she does not know whether she saw the child, as she was confined by illness during the most part of her stay at Paris.

My lords, in the situation wherein Sir John and Lady Jane were at Rheims, is it possible to believe that, being possessed of one promising child, they should return to Paris to steal another child? and, what is wonderful, that they should immediately find a child to their wish, answering the description they had given of the second child to all their friends and in all their letters? That he should be a weak and puny child, and exactly corresponding in age, and, above all, the very picture of Lady Jane, the very image, the most perfect resemblance? This circumstance of the likeness is sworn to in the most particular manner by above twenty witnesses, and deserves the greatest weight. This is a wonderful incident. It is an impression stamped by God Himself to prove the legitimacy of the child. This circumstance alone would overturn any evidence less strong than demonstration.

With respect to the time of the enlevement of Sanry's child, it certainly does not answer to the time when Sir John and Lady Jane were at Paris. The time when Sanry's child was stolen is not to this day proved. Most probably it was not till the beginning of January, when the letter was written by the curé de St. Laurent. I desire to know, was it between

Lord Chancellor

the 23rd and 29th of November, or what day was it? It is admitted that Sir John left Rheims the 29th of November, and must have returned from Paris some days before his departure. If he returned before the 14th the matter is put beyond dispute, for Duvernes did not enter to the Croix de Fer till the 14th at soonest, and the enlevement could not be till some days after. In fact, if Sir John left Rheims on 1st or 2nd of November, immediately after receiving the money from Lord Morton, he might have returned before the 14th, and I see no reason to believe the contrary. Benoit's books are a strong proof of this. The payment is stated to be made by Sir John Steuart himself upon the 14th of November, and the books must be supposed true until it be shown that the payment was made by some other person in his name, which is not presumable, nor even probable.

I cannot, upon the whole of the evidence brought by the respondents in this cause, hesitate one moment to conclude that the alibi at Godefroi's is clearly disproved; that the two enlevements stand unsupported by any colour of evidence to affect Sir John and Lady Jane Steuart; that, on the other hand, the pregnancy is proved by clear, positive, and invincible evidence; and that it is in no particular disproved by the negative evidence offered by the respondents, or shaken by anything said by their counsel at the bar, or insisted on in their long, elaborate memorial, which is the finest performance of sophistry I ever read. I am therefore of opinion that the delivery, thus supported by the proof of pregnancy, by the positive testimony of Sir John Steuart and Mrs. Hewit, and by a thousand collateral circumstances, is established beyond a doubt, and that the appellant must be deemed the genuine son of Lady Jane Douglas.

But, my lords, I have to add further some most convincing evidence. I feel myself, and am persuaded your lordships must feel the evidence I am now going to mention.

Let me reflect on the conduct of Lady Jane Steuart from the hour of the birth of the children to the very hour of death. Suffer me to mention the uniform appearance of her tender parental affection, encountering a thousand difficulties, struggling against poverty and want, and having many enemies to add to her distress, yet bearing all with the most unparalleled patience for the sake of her children. She was, indeed, the most loving, the most affectionate of parents. You

see her, even by Blainville's evidence, falling down in a faint the moment it was discovered th health of her child was affected by the nurse's wanting milk; you see her in a flood of tears immediately upon her recovery from this faint; you see her at other times rising from her bed in the dead of night when the least ailment affected either of them; you see her upon the least disaster flying straight from her chamber to their assistance; and, to crown all, you see her in dust and ashes upon the death of her youngest son. Do not all the witnesses declare she never recovered the shock of the death of this child? Do not all of them combine to speak of her affection? Does not all this prove in the strongest manner the tender and loving affection of a parent? And can all this be hypocrisy? Yet there are those who endeavour to insinuate such doctrine. Base and invidious imputation, which none but the most wicked would dare to avow, and which I will not now retaliate. I will not say she must have been in a state of continual torture to act such a part for so long a course of time. Amidst all her difficulties and straits, not to drop one repining word, not to discover a motion or gesture that could lead to show the deceit, one would think this was almost impossible. In public, in private, at home and abroad, at all hours, on all occasions, and in all shapes, she is always the same; she never forgets the mother; she maintains the same steady, constant, and uniform character.

Lord Chancellor

But supposing, my lords, it was possible to be deceived, supposing such a character did really exist, yet surely the mask must be at some time pulled off. The mind on some occasions must be affected, and appear miserable, and the heart must seek relief. Let us therefore view Lady Jane in her retirement. In the letters that are produced of the correspondence between her and Sir John Steuart there appears the most unaffected tenderness and affection. These, my lords, must be considered as a conversation between persons without any deceit. They are imparting their very souls to each other. It is not possible they were written with caution or design. They mention their distresses in the most simple and artless manner. So low were they reduced, they mention Lady Jane's sometimes sending to Sir John (who was then in jail) five shillings, a joint of meat, and sometimes a cold joint; yet even in this distress, not even when brought to the last pinch in a starving condition, and at the hour of death, does

Lord Chancellor

there appear the least repentance or consciousness of guilt, which most certainly would have discovered itself at some unguarded moment if there had been really any concealed fraud. On the contrary, the only topic of their conversation is to encourage one another to bear up under all these calamities—their only consolation. their children.

What, my lords, does a thief assume the character of an honest man, and does he never so much as discover his real sentiments to his brother-thief in their most private interviews? These letters are to be looked upon as the most private conversations between the persons supposed guilty, yet there is not a word of expression, not the most distant hint of any concealed fraud or deceit.

Let us now bring this home to the last stage. In their dying moments, with their latest breaths, the same tenderness and affection is manifested to their surviving child. At such a time to suppose they should carry on such dissimulation we must believe them the most abandoned, the most profligate of the human species. I cannot, then, from my conscience say, in giving my verdict, that this is not to be taken as evidence, or that it ought not to weigh with me, because that, even in this dreadful hour, when persons are in the near prospect of making up their accounts with God, it is said they may deceive, or because there have been instances of persons wickedly combined who have carried on their intrigues to the last moment of their lives. But who will say that Lady Jane or Sir John Steuart were capable to do this but those who have presumed everything to their disfavour, without any foundation, in fact, from the beginning to this present hour?

Do the characters of Lady Jane or Sir John Steuart deserve this? Do they ever discover any act or design? Never but in the invention for their children. Sir John was thoughtless, profuse, and in many things whimsical and absurd. The worst is his making up the letters, which he might have done with a very innocent intention; but otherwise he was not a bad or wicked man.

Lady Jane was religious, it is said, almost to a degree of enthusiasm, but I believe not to too great a degree. If religion is ever to be depended up, it is under misfortunes. Her trials were great, and she bore them with true resignation. After engaging in the most solemn act of devotion, in her last dying hours she poured blessings upon her son. I shall

never believe, my lords, this lady died with a lie in her mouth. In her life she was perfectly blameless in every respect **Lord Chancellor**

I do therefore, upon my honour and conscience, pronounce that I believe that the appellant is the genuine son of Lady Jane Douglas, and that the judgment of the Court of Session ought to be reversed.

APPENDICES.

APPENDIX I.

ILLUSTRATIONS OF THE POPULAR VERSIONS OF THE PROGRESS OF THE DOUGLAS CAUSE, FROM THE *St. James's Chronicle* AND THE *Gazetteer and New Daily Advertiser*.[1]

August 6, 1761.—Monday morning the corpse of the most noble Prince Archibald Duke of Douglas was carried with great funeral pomp from Queensbury House, in the Canongate, Edinburgh, to be interred at Douglas, the seat of the family. The procession, which was most magnificent and grand, passed through the city about ten o'clock, the bells tolling all the time of its passing.

His Grace dying without issue, the Peerage of the illustrious House of Douglas is now extinct, or sinks into that of the Family of Hamilton.

Thursday, August 13.—We hear from Scotland that several pretensions are already formed with regard to the estates of the late Duke of Douglas, among the principal claimants to which is the Rt. Hon. the Earl of Selkirk, as being not only a collateral branch of the family, but also considerably allied to the noble line of Hamilton.

September 15.—Edinburgh, September 12.—On Tuesday morning last came on here, before the Macers of the Court of Session, the Service of Archibald Stewart, now Douglas of Douglas, Esq., as Heir of Tailzie to his uncle Archibald, late Duke of Douglas, when the most full, clear, and convincing evidence was laid before the Inquest that the Claimant was the only son now in life of his Grace's sister, the deceased Lady Jane Douglas, by Sir John Stewart of Garntully, Bart., her husband; and the Inquest on Wednesday afternoon unanimously served the claimant heir of that noble family accordingly.

It had been reported that Mr. Douglas was not the son of Lady Jane Douglas, but a supposititious child.

Saturday, August 20, 1763.—Edinburgh, August 15.—The Court of Session having allowed a full and general proof to be taken in France, and in order to let every possible light into the present interesting dispute relating to the succession of the late Duke of Douglas, we hear that the examination of the witnesses will take place as soon as the forms of law in these countries will allow, in order, if possible, to have it finished by next Sessions. Her Grace the Duchess of Douglas sets out early to-morrow morning for London on her return to Paris, in order to attend that important affair.

Saturday, August 27, 1763.—Yesterday her Grace the Duchess of Douglas set out from her house in Pall Mall for Paris.

[1] Communicated through the kindness of Mr. Horace Bleackley.

The Douglas Cause.

February 9, 1764.—A part of the great cause about the estate of the late Duke of Douglas is now appealed from the Court of Session in Scotland to be determined by the House of Peers.

April 14, 1764.—The great cause which has been some time depending went yesterday in favour of her Grace the Duchess of Hamilton.

April 16, 1764.—Friday.—The cause, so long pending in the Courts of France, relating to the claim of young Mr. Archibald Douglas to the estate and honours of the late Duke Douglas of Scotland, and which for some days past has been under the consideration of an august assembly, is ordered to be referred to the decision of the Lords of Session in Scotland, so that it is not yet known how that important affair will be determined.

Thursday, August 7, 1766.—Edinburgh, August 2.—The Pleadings in the Douglas Cause, which has engrossed the attention of the Court of Session these four weeks past, ended yesterday. Their Lordships have ordered Memorials on the Proof to be given in betwixt this time and September 27, and any other observation either party may have to make on the other's Memorial, to be given in before the 15th October, and on the 25th November the Cause is to be advised.

January 6, 1767.—It is said some thousand pounds are laid in betts upon the issue of the Douglas great Cause, to be determined upon the 27th inst.

May 8.—They write from Edinburgh that bets to the amount of £100,000 are depending on the Douglas Cause.

May 18, 1767.—Saturday.—Arrived in from Edinburgh the Hon. Mr. Douglas. The great cause between him and the Hamilton family as to the succession to the late Duke of Douglas' estate is to be determined by the Court of Session in the month of June next.

May 20, 1767.—A letter from Edinburgh says—We hear that at the determination of the great Cause of Douglas, the Lord Judges of the Court of Session are to sit on that day in one of the large rooms of the royal palace of Holyrood, and that scaffoldings are to be erected as at Westminster Hall at the trial of Earl Ferrers. To defray the expense of which, as well as to raise a contribution for the Royal Infirmary, all who are admitted, except the members of the Court, are to give half a guinea each.

June 26, 1767.—By a gentleman just arrived from Scotland we are informed that at Edinburgh and other places they are at present greatly agitated by the near approach of the determination of the Douglas great Cause, and that bets are near on an equality; that several shorthand gentlemen are arrived from London to take down the debates, for which they are to be paid from 300 to 500 guineas each person; and that most of the nobility and persons of distinction in that Kingdom were come to Edinburgh to be present at the debates.

Appendix I.

July 14, 1767.—By advices from Edinburgh we are informed that the great Cause of Douglas, which has been so long depending, was determined on Tuesday, 7th inst., before the Lords of Session, and, as it is, ended in favour of the Hamilton family.

Wednesday, July 15, 1767.—Extract of a letter from Edinburgh, July 7.—The grand decision of the Douglas Cause began this day. The President, in a speech of near two hours, declared his opinion in favour of Hamilton, and was clear for a reduction. Lord Strichen spoke next, and was as clear in favour of Douglas. After which the President asked Lord Kames' opinion, who excused himself, as he was then too much heated by the throng in Court to speak. It was adjourned till to-morrow, when it is expected that he and Lord Auchinleck will deliver their opinions and the affair be determined on Thursday. The 30th ult. the publishers of all the newspapers in this city were called to the bar of the Court of Session for having inserted in their papers certain extracts from "Doranda, a Spanish Tale," which it seems is now become an object of very serious attention. Each of the publishers gave bail to appear before the Lords of the Council and Session.

Friday, July 17, 1767.—Extract from a letter from Edinburgh, July 11.—On Tuesday came on before the Court the decision of the Douglas Cause. The opinion of the Judges upon which stand as follows:—

	For Hamilton.	*For Douglas.*
Spoke on Tuesday,	Lord President	Lord Strichen
,, Wednesday,		Lord Kames
,, ,,		Lord Auchinleck
,, ,,		Lord Coalston
,, Thursday,	Lord Barjarg	
,, ,,	Lord Alemore	
,, ,,	Lord Eliock	
,, Friday,	Lord Stonefield	Lord Pitfour
,, this day,	Lord Kennet	Lord Gardenstone
,, ,,	Lord Hales	

There remains only Justice Clerk and Monboddo to speak on Tuesday next, one of whom it is certain will be for Hamilton and the other Douglas, thereby here is an equality, and reserving upon the President's casting vote the Hamilton family carries it here. It is needless to mention what a consternation this affair makes in Edinburgh.

If this decision be final, His Grace the Duke of Hamilton will be possessed of one of the greatest real estates in Britain.

It is remarkable in the determination of the above Cause, four of the Judges who gave their opinion in favour of Douglas are all of the county of Aberdeen, viz., Strichen, Pitfour, Gardenston, and Monboddo.

Saturday, July 18, 1767.—We hear a nobleman at the Court end of the town has lost a bet of two thousand guineas on the late decision of the Douglas Cause.

Tuesday, 21 July, 1767.—By a letter from Edinburgh we learn that in the determination of the Douglas Cause the Lords seemed to express

themselves in such a way that it is imagined they will not sequestrate the estate, and consequently deprive Douglas of possession until the final determination by the Peers of Great Britain.

Monday, July 27, 1767.—The following letters were sent to the Rt. Hon. Robert Dundas, Esq., Lord President of the Court of Session at Edinburgh:—

Dear Bumbo,—I am surprised at your Behaviour in Douglas Cause you the only person who injected him into the estate and caused the Plea to be carried on and then you to turn your back and give the whole Swe (?) to hamilton which I dar say you ar conciouss that you are in the Wrong but I hope first that you will Loses your seat in the Parlement House and then as ther is about 350 of in and about Edinburgh joined under an head and we shall Burn yur Lodgin in Town and then Arnston Lodgin's shall go into flames and then your self, we shall make a Captain Portus of You in the Gras Market as an exampel to all false Judges passing wrong sentences, but I shall think it proper to acquaint your Bumbo to alter your mind a time and not cause any Toumolous Noise or Mischief. Perhaps you will think me an imprompter Person for oping to send such a Epistel but you may excuse me and if you want to know the writher they call him Timoth Love Justice.

P.S.—You you Great Bubo to speak against the truth and the Clearest Light in false imaginations and false proof that was taken in france from Persons that would sewar thar Souls to hell for a peny, but I hope you will be sent [to] uter Darkness.

To,
Lord President of the Court of Sheshon,
Edinr.

May Lord,—

I am not a little surprised you should have Broht on yourself such a Damt Scundruly Law Suite and Sir give me Leav to inform you that in a day or two you Brains will be put at bolfine of a gun may Lord have a care and think on me.

I am Sir yours,
I mean well,
otherways you go for.

P.S.—iff you Dont Vout in Mr. Douglas's cass may be Well assured you will be put to Death on first miting.

A reward of five hundred pounds sterling is offered by the King, and a pardon, to any one of them (except the person or persons who actually wrote the said letters or either of them) who shall discover their accomplices in the said facts. The Guardians of His Grace the Duke of Hamilton promise a reward of three hundred pounds, and Archibald Douglas, Esq., also promises the like reward of three hundred pounds for the discovery of the writer (See *London Gazette.*)

August 20. 1767.—From Scotland we are assured that the pleadings

and excellent speeches of the lawyers in the famous cause of Hamilton and Douglas reflect great honour both on themselves and their country, being nothing inferior in point of eloquence or subtlety to any that have ever been made in Westminster Hall or either of our British senates. In short, Greece and Rome, in the most flourishing and distinguished period of those famous republics, never produced greater orators than North Britain does at present.

August 22, 1767.—We hear two gentlemen of distinction at the west end of the town have laid a wager of a thousand guineas and a thousand shillings that the great cause between the Hamilton and the Douglas family will be determined in favour of Mr. Douglas.

We hear the Douglas estate, about which the famous contest is now subsisting, amounts to £12,000 a year.

August 28, 1767.—The opinion of one of the greatest sages of the law in England is in favour of the defendant in the famous cause of Hamilton and Douglas, and that he will support the same if it should come before a most august assembly. It is said that it was on this account that among several wagers now depending on the first issue of this cause one of 1000 guineas has been laid to as many shillings that it will be given in favour of Mr. Douglas.

A letter from Scotland mentions that in the great cause between the Hamiltons and the Douglases a reclaiming petition is preparing on the part of Douglas to be presented to the Court of Session at their first meeting in November. By the consent of that Court, after judgment is given, either party may petition or reclaim against such judgment provided they advance new matters of law or fact. If such is advanced, the other party is allowed to answer and the Court then determines. It is well known in many instances that the Court, on such reclaiming bills, have altered their first opinion. From this circumstance it is probable this great cause will not come before the House of Peers next session of Parliament.

August 29, 1767.—The estate of the late Duke of Douglas, now in the possession of Mr. Douglas, is worth upwards of £20,000 a year, besides the honours of Earl of Angus to which he will be entitled as soon as this cause is over,[2] which it is expected will be determined in his favour, as all the relations of that noble family except his competitor are satisfied of the authenticity of his birth.

September 25, 1767.—From divers parts of Scotland we learn that ever since the decision in the famous cause of Hamilton and Douglas the generality of the Ladies of that country take care to be brought to bed in a more public manner than ever was known before, or than seems consistent with the delicacy of their sex, the rooms in which they are delivered being often filled with as many persons of both sexes as they can conveniently hold, and the intention of which is that there

[2] This was a popular error. The Earldom of Angus became extinct on the Duke of Douglas's death.

may always be witnesses enough alive to authenticate the birth of any child whose birth to any estate or legacy may be litigated on that account.

April 1, 1768.—It is reported that some of the ablest pens in Britain are to be employed in the great Douglas cause.

Saturday, February 25, 1769 (wrong date).—Last night the great cause between Hamilton and Douglas was finally determined after ten hours consideration, when it was given Nem. Diss. in Favour of Douglas. A noble lawyer in the Determination of a late great cause spoke for Two Hours, when being overcome by the heat of the room he [illegible]ed, but recovering again resumed his discussion and went on for [illegible] another hour, with the greatest eloquence and strength of argument.

Tuesday, February 28, 1769.—By the decision of the great cause on Monday last in favour of Mr. Douglas, that young gentleman succeeds to the Douglas estate and to the title of the Earl of Angus.

The same night her Grace the Duchess of Douglas dispatched a messenger from her house in Piccadilly to Scotland with an account of the above event.

Thursday, March 2, 1769.—The Douglas estate lately decreed to the Hon. Archibald Douglas, Esq., is said to amount to £17,000 per ann.

P.S. (same day).—Five noble personages, we are told, have entered their protests on the subject of a late great cause.

Thursday, March 2/4, 1769.—The great cause lately determined had been in hearing ever since the holidays: the Counsel on both sides displayed great eloquence: those for the Apellant were L[illegible] A . . e, whose speech lasted about fourteen hours, and Sir Fletcher Norton, who spoke for about seven hours. The Counsel for the Respondent were Mr. Yorke, who was about six hours in his speech, Mr. W . . . . n, about twelve, Mr. S . . . r G . . . . l, about nine. After Sir F. N.'s reply, which took up about six hours, the Lords proceeded to Judgement, where one Nobleman spoke about half an hour for the Apellant, another about three hours for the Respondent, a third spoke near three hours for the Apellant. When the Question being called for and put, they were almost unanimously in favour of the Apellant.

Tuesday, March 7, 1769.—Yesterday the Hon. Archibald Douglas was presented to His Majesty at St. James.

P.S.—They write from Berwick that on receiving an account of the late great cause being decided in Favour of Mr. Douglas, great Rejoicings and Illuminations were made there, and particularly by Mr. Leo Douglas of that place, who in the evening caused a large bonfire to be made on Hallidown Hill as a Signal to the neighbouring country, and entertained upwards of 50 of the principal gentlemen at the Red Lion, where the following Healths were Drunk:—Archibald Douglas, etc. etc. etc.

Appendix I.

Edinburgh, March 3.—Last night, about half an hour after seven o'clock arrived an Express from London with the news that the Decree of the Court of Session was reversed without a vote.

The Restitution of this noble and illustrious Family gave universal Joy to all Ranks of People here, the whole town was immediately illuminated, and Bonfires appeared in all Corners of this City.

The mob last night broke many windows and committed other irregularities which it is to be wished had not happened.

All the Ships in the Harbour of Leith have colours displayed this Day on account of Mr. Douglas's success, in particular the Success Capt. Howison has above Twenty Flags flying.

Thursday, March 9, 1769.—Yesterday Her Grace the Duchess of Douglas and her Nephew the Hon. Archibald Douglas, Esq., were presented to his Majesty at St. James's.

Tuesday, March 16, 1769.—By a letter from Edinburgh we are assured that on the arrival of the account of the Decision of the Douglas Cause, a numerous mob assembled, and after parading the streets some time, proceeded to commit several outrages on the houses of some of the principal gentlemen of the Court of Session. They broke the windows of and began to pull down the house of Lord . . . . ., on which the Town Guard were ordered to disperse the Rioters, which finding themselves unable to do, a body of Regular Troops were sent from the Castle, when the mob left the City and went a few miles from Edinburgh to the country house of an agent of Mr. D.'s opponent, where they committed a great many Acts of Violence. It is said that a reward has since been offered by the Magistrates at Edinburgh for apprehension of the Persons concerned in the above Disturbances.

Edinburgh, March 10.—In the *Glasgow Chronicle*, after the Account of the Rejoicings there on Mr. D.'s success, we have the following paragraph:—When the Chelsea Men had done firing the Company ordered each man 5s.—but when Mr. Graham was going to pay it them, they all with one voice refused it, and said that they would as cheerfully charge with Ball, as they did that Night with Powder, in Defence of Mr. D. and his Cause.

Thursday, March 16, 1769.—In a letter concerning the Rejoicings at Glasgow on Mr. D.'s Success, an Account is given of a Bon-fire made before the Saracen's Head Inn there, of 20 carts of coals, which blazed so that the owners of some thatched Houses at a small distance came to the Landlord expressing their Fears lest they should be set on Fire. He bade them be easy, for if it so should happen, of which he thought there was no Danger, the Price of the Houses should be put to the Bill.

Saturday, March 25/28.—On the Sunday after the Arrival in Scotland of the Account of Mr. D.'s success, a Clergyman preached in the Church of Douglas, from the following Text:—"I will overturn, overturn, overturn it, and it shall be no more, until he whose right it is, and I will give it him."—Ezek. xxi. 27.

The Douglas Cause.

Thursday, April 6. 1769.—A gentleman in Scotland, in a letter to his friend in London, dated 9th March, mentioning that the Ladies and Gentlemen in his neighbourhood met at an Inn on the 7th, where the Gentlemen entertained the Ladies with a Dinner and a Ball in the evening, to express their joy on the happy decision of the Douglas Cause, gives the following account of some of their proceedings:—As Tuesday was a Presbytery Day, and the Ministers assembled as usual, it was suggested that an act of Indemnity would be a most suitable circumstance to the occasion, and a Petition was accordingly prepared and addressed to the Reverend Presbytery praying that they would pardon all such Persons as at that Time were under Prosecution before them on Account of the *good-natured vices;* the Petition was signed by the Ladies and Gentlemen and presented in Form. The Answer of the Reverend Presbytery was as follows:—The Reverend Presbytery having read and considered the above Petition are of opinion that so uncommonly joyful an occasion should be distinguished by some very joyful circumstance, and whereas a simple Act of Indemnity was nothing by the ordinary Attendant of Common Felicity they, without division, remit it to the Consideration of the Petitioners, if it may not to them appear fit to add a Clause for an Indulgence also to all the Consequences of the Good Humour of the Night.

Thursday, April 18, 1769.—On the Sunday after the news of the noble Decision of the great Douglas Cause by the House of Peers arrived at Edinburgh, the Reverend Dr. Hugh Blair preached in the High Church of that City before the Lords of Council and Session from these words:—"What fruit had ye then in those things whereof *we* are now ashamed?"—Rom. vi. 21.

During the Rejoicings at Edinburgh on the late Decision of the Great Douglas Cause, while the Mob were casting stones at certain dark Windows, a gentleman humourously said—"Aye, aye, these honest fellows are giving their casting votes in their turn."

Appendix II.

APPENDIX II.

CRITICISM of the two versions of the speeches delivered in judgment in the Court of Session, from "A State of the Evidence in the Cause between His Grace the Duke of Hamilton and Others, *Pursuers*, and Archibald Douglas of Douglas, Esq., *Defender*, with remarks by Robert Richardson, D.D., Prebendary of Lincoln. London, 1769." [*v.* note to Introduction, page 1.]

"The book [Almon's 'Speeches', reprinted in this volume] had run into a second edition before he [the writer] heard of it; and it does not appear that any of their Lordships have been offended at the publication, though from the many great inaccuracies in that part of it which has been consulted for these papers, there is room to hope they were strangers to its contents. . . .

"Seven months after Almon's book had been circulated without offence, another copy of the speeches appeared, said to be accurately taken down and published by William Anderson, Writer, in Edinburgh. The account Mr. Anderson gives of his performance is in these words, 'He made himself fully acquainted with the Cause, and while the Judges were delivering their opinions he took down the greatest part of what each of them said. These notes he daily corrected and enlarged by memory: not satisfied with this he got the several opinions revised by those who were best qualified to correct any errors or to supply any omissions, so that the present publication may be depended upon as exact and genuine.' All that Mr. Anderson is here pleased to say leads us to think that his publication is neither exact nor genuine. How could his memory enable him to correct and enlarge his notes with facts he had never taken down and probably never heard? And who were these persons who were qualified, after the long vacation, to correct the errors and supply the omissions of a copy taken down in Court? Mr. Anderson's book is indeed a collection of speeches totally different, both in argument and stile, from that printed by Almon. The stile is more diffuse, the sentiments more ambiguous, and, in some of the speeches, the very state of the question is totally changed."

APPENDIX III.

LETTERS OF LADY JANE DOUGLAS.[1]

LETTER I.

FROM LADY JANE DOUGLAS TO MRS. CARSE.[2]

Hague, 18th October, N.S., 1746.

My Dear Madam,—I received the favour of your obliging letter two posts ago, which, I do assure you, was mighty acceptable; and the oftener you write, it will be so much the more so. You say my leaving Scotland has cast a gloom upon your spirits. Pray throw it off. Though so kind a demonstration of your concern and friendship, yet it gives me pain to imagine you should suffer any the smallest uneasiness on the account of any step of mine, which I would not have made had not my health, or rather lowness of spirits, required it, which I am hopeful I shall speedily get the better of, so that my stay abroad shall not be extremely long, and then I please myself with the thoughts of having a happy and an agreeable meeting with my friends, and particularly with you, my dear madam. And as to my situation at present, it is as follows:—On my arrival in this place I made application to Mr. Trever, the English resident here, for a pass to take me to the waters of Bourbon, being informed since I came here that there is no going to Aix-la-Chapelle (where I was determined to go), because of the constant robberies committed by the troopers in that quarter; and I was the more easily diverted from pursuing my first intention of going to Aix, since it is now in a manner the seat of war, from which sad scene I am but lately come from, and was too long too nigh a neighbour and spectator. Mr. Trever mighty obligingly took in hand to get me a pass, and wrote to Mr. Van Hoey, the Dutch Ambassador at Paris, for that purpose. But so goes the stream of

[1] Reprinted from a little book, "Letters of the Right Honourable Lady Jane Douglas, with several other important pieces of private correspondence from all which the characters of that celebrated Lady and of her husband, Sir John Stewart, will appear in a light hitherto not sufficiently known to the world. London: Printed for J. Wilkie in St. Paul's Churchyard, 1767." The preface explains that they are extracts only in some cases, and that the orthography has been corrected. It must be remembered that the letter of Lady Jane Douglas to Mrs. Carse in which she denied her marriage and imputed the rumour of it to Mrs. Stewart of Stewartfield, is not included in these letters, which have been considerably "edited," obviously by an adherent of Archibald Douglas. In this reprint the name Stewart is spelled Steuart as in the rest of the book, following the spelling in Sir William Fraser's monograph "The Red Book of Grandtully." Both Sir John and Lady Jane spelled it "Stewart."

[2] *née* Jane Douglas.

Lady Jane Douglas.

From the Portrait in Mr. Percy Fitzgerald's "Lady Jean."

politics at present that, instead of getting one, which he thought there could be no mighty difficulty in obtaining, he received a polite, courteous letter from Mr. Van Hoey, with an apology of regret, that the situation of affairs were such that no pass could be allowed to any of the English to go into France; which extremely surprised Mr. Trever, who imagined that ladies might pass freely at any juncture anywhere; and, for my own part, I confess frankly that though I am somewhat mortified to find unexpected accidents arise to prevent my little scheme for health's sake taking place, yet my vanity in considering that the trifling movement of ladies is believed by two great and wise Courts of so extraordinary import that I believe my health shall be better established by so flattering an idea than it could be by any other medicine, or by the use of the finest waters in the world, particularly my illness being mostly lowness of spirits. What heightened them must prove an effectual cure. But, to be more serious, I reckon I shall not, for all the mighty notice that is taken of the motions of the fair, stay a great many days longer here. Having met very luckily with Mr. Keith,[3] late secretary to Lord Stair, now to Lord Sandwich, at present at Breda, affairs sometimes calls Mr. Keith to the Hague, and last Wednesday I had the favour of his company at dinner, and by his means I imagine a pass may be obtained. Mr. Keith is really a mighty pretty gentleman, makes a good figure in the employment he is in, and promises very fair for further advancements, which I truly think he deserves. I am extremely concerned to hear Mr. Carse is afflicted with low spirits. I sympathise with him in that distress, and wishes that could relieve him. And Madam Hewit is in tribulation about him; she says she never thought she liked him so well as now she hears he is ill; she begs you both to accept of her compliments and best wishes. Keir my landlord's behaviour has shocked me a good deal; and the more that I could easily have prevented any impertinent demonstration had I not had a better opinion of him than it seems he deserved; but my greatest uneasiness for his late proceedings is that I had allotted Drumsh.[eugh] for an easy and agreeable dwelling for Peggy Ker, who I always had, and always shall have, a particular liking and friendship for. I need not bid you, dear madam, shew kindness and friendship to her, since I know you like her, and since you know it will be doing the kind, obliging thing to me. From time to time I shall have the pleasure to write to you, and even longer letters, though this is none of the shortest. I offer my best and most affectionate compliments to dear Mr. Carse, to Mr. and Mrs. Robison, and to Mrs. Burnet. I don't deserve the mighty compliments Mrs. Robison makes me. The one she makes the other lady, the fair, the young, the beautiful, delightful creature, is a very just one. I hear she is in pretty good health at present, which will please her, as it always does me, to have an opportunity of assuring you, my dear madam, that I truly am, with great esteem and affection, your most humble servant,

JANE DOUGLAS.

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[3] "Robert Keith, Esquire, a descendant of the illustrious family of Marischal, long his Britannick Majesty's Ambassador at the court of Russia, now living in an honourable retreat near Edinburgh." [Original note.]

The Douglas Cause.

LETTER II.

From Lady Jane Douglas to Mrs. Carse.

Utrecht, 10th February, 1747, N.S.

My Dear Madam,—I received your two large letters just before the great frost began here. They were extremely acceptable; and I count it a piece of my good fortune that they came at that time, for, immediately after, it froze so hard that no packet-boat could arrive for several weeks; which may assure you I could not answer your letter so soon as you might have reasonably expected, and which I certainly would have done had not that circumstance prevented it. It is what always happens in these parts about the New Year; but such an excessive cold I never felt before; the year '40 was warm in comparison; yet I catch no cold, I thank God, which was extraordinary enough, considering the rigorous season. This place stands high, and is very wholesome, which made me choose it till the season for Aix returns. I left the Hague only because it was damp; and not without a good deal of regret, having got several acquaintances, and some amongst the Dutch, I found mighty well-bred, agreeable people. I have been as lucky since I came here in meeting with a great many Scots and English gentlemen. They are indeed chiefly of the younger sort, who choose this place for their education; but they have so great a share of good sense, and so much wit, they render themselves acceptable to much older people. Amongst the rest young Lord Blantyre deserves justly the greatest praise. But I am not capable of drawing characters well, the want of which talent I mightily regret, since it deprives me of the pleasure of doing justice to the most promising young gentleman ever I saw in my life; yet in my plain, awkward way I shall tell you some of his qualifications: He has extreme good sense, the best scholar, the greatest application, a vast pleasure in reading, and best taste of books; is free of all manner of vice, and has the sweetest temper in the world; and in all appearance will be a very great honour to his country. I sometimes wish his mother, my old acquaintance Lady Blantyre, had the satisfaction to know how much her son has profited by being abroad, and what an accomplished young man he really is; but I immediately check myself for it, since it is certainly better that she hears nothing of it, for the half of what he deserves could not be told her, without her becoming too vain. I could also say a great many advantageous things to Mr. Hay and Mr. Dalrymple, who have a great deal of merit, excellent good sense, mighty good scholars, and are both equally free of all vice with the other. But if I go on at this rate you'll grow afraid that I intend to draw the pictures of all the gentlemen in Utrecht; so I shall have done with characteristics, only I must add that Mr. Dalrymple,[4] your neighbour Sir James's son, has employed his time well, and has acquired much learning of all kinds.

I am, dear madam,

Your most humble servant,

Jane Douglas.

[4] Sir David Dalrymple (Lord Hailes).

Appendix III.

LETTER III.

FROM LADY JANE TO HER BROTHER THE DUKE.

Rheims, 7th August, 1748.

Dear Brother,—Though not a little discouraged by your favouring me with no answer to that under cover of Lord Crawfurd's, acquainting your Grace with my change of state, and in whose favours, I think it my incumbent duty, as well as natural inclination, to acquaint you further with the happy consequences of it, which I am hopeful may be a means to replace me, in some measure, to the share of your favour I was once happy in, and never willingly forfeited; but to the contrary have regretted my ill fortune in that particular more than all the others of my more than ordinary cross fate. If want of title and estate in the gentleman I have chosen seems surprising, your Grace well knows no subject could add to me; and a gentleman as well born as any can take nothing off. Please know then, my Lord, that the tenth of last month I was blessed with[5] boys, one a promising child; the other, poor thing, so weak that I fear is little to be reckoned on; God's will be done; the other my hopes centre in, and want but the pleasure of your approving his having your name, with that of Sholto to the younger, to be happy, for, thank God, I have philosophy enough not to place happiness on superfluous riches or pomp, and faith enough to hope that they nor I shall never want a decent competency.

Though I have recovered health beyond expectation, I cannot make this letter so long as I incline, having many things to say, but am able to add no more but that Mr. Stuart begs allowance of your Grace to offer his humble duty in this, and that of being permitted to do himself that honour more amply by a letter, if favoured by your Grace with an opportunity; and that I am ever, with the sincerest and most respectful regard,

Dear Brother,

Your most obedient servant, and most affectionate sister,

JANE DOUGLAS.

Reims en Champagne, 7th August, N.S., 1748.

LETTER IV.

THE EARL OF CRAWFURD TO THE DUKE OF DOUGLAS.

My Dear Duke,—Having had the honour in my younger days to be favoured with your Grace's friendship, which I have ever since flattered myself you have continued me, as I am conscious no relation of your Grace's family wishes it better, or prides himself more in the connection they have with it; and as it has providentially been my fate to pass these six last months confined to a place where the irretrievable

[5] A blot on the paper which cannot be read. It means *two*. [Original note.]

misfortunes it has pleased the Almighty to afflict me with could only be rendered supportable to me by the most agreeable society of so deserving people as that of your sister Lady Jane and Mr. Steuart; and as, during the space of time we have been together, I have, from a regard I have for your Grace's family I cannot conceal, so far merited my Lady Jane's confidence, as to be entrusted with the alteration there has happened in her state of life, as also the notifying of it to your Grace, by the enclosed, a service that the same regard I have mentioned I ever shall have for your family, has even prompted me to offer on so important an occasion, recommending, with the greatest earnestness, all its consequences to your Grace's most mature deliberation; I say, as my undertaking proceeds from the most warm affection to your Grace's family, I am hopeful my representations will not only meet with forgiveness, but with also their wished-for success, in reconciling your Grace to an event all the well-wishers of your Grace's family may have the greatest reason to rejoice at, as there is such visible hopes of its being attended with the natural consequences so much longed for, by all who are fond of seeing the family of Douglas multiply; and since I have thus far ventured upon my dear Duke's goodness, he must forgive me if I proceed a little further and represent that a sister, tenderly fond of your Grace as she is, and in the situation my Lady Jane is in at present, a favourable answer from your Grace is more necessary than may be at first, perhaps, adverted to; wherefore, allow me once more to entreat you will neither by silence nor indifference hazard the bad consequences that may follow either the one or the other. I can assure your Grace she does great honour to her family wherever she appears, and is respected and beloved by all that have the honour of her acquaintance. She certainly merits all the affectionate marks of an only brother to an only sister: much, much does she wish, as well as others of your Grace's devoted friends, there had been no so great necessity for her changing her way of life, but since it has become so absolutely necessary, with the greatest submission, considering the variety of different circumstances, I would gladly hope your Grace will not disapprove of the person Lady Jane has chose, as to be sure there is none more deserving. But I'm afraid I shall encroach too long on your Grace's patience, so I shall only add that your Grace's rendering Lady Jane satisfied and happy, by a reconciliation, and such other marks of your brotherly affection as shall seem proper, shall ever render me unalterably,

Your Grace's

Most devoted relation, friend, and humble servant,

CRAWFURD.

P.S.—As your Grace may, perhaps, incline to know how things are likely to turn out here, I shall venture to add that I'm afraid the enemy will have made too great progress in the siege of Maestricht before we, by the junction of all our troops and recruits, become formidable enough to interrupt their progress in their attempt upon Maestricht; but, I hope, we shall be able to frustrate all their other designs, and, perhaps, to thrash them before the end of the campaign.

Appendix III.

LETTER V.

FROM LORD CRAWFURD TO COLONEL STEUART, AT RHEIMS.

London, 12th August, 1748, O.S.

Dear John,—I had the pleasure of yours, just as my wound broke out again. I have been so distressed ever since that it has not been in my power to answer you, notwithstanding I hope both you and my Lady Jane will do me the justice to believe it is impossible to congratulate you with more sincerity than I do, on my Lady Jane's safe delivery of my two young relations. It is more than probable the same Almighty Providence, who seems to have decreed their coming into the world, intends also to reserve them, or theirs, for his great ends. Almighty God preserve them, and their valuable parents to rear them up in this selfish world.

I was lucky enough to receive your letter soon enough before I fell ill, so as to recommend my Lady Jane's affairs to the Duke of Argyll's care. He promised me he would talk to my Lord Milton in relation to bringing the Duke of Douglas to a way of thinking of the affair as he ought to be. I also wrote to the Duke of Douglas a second letter, though I had no answer to my first, intimating to him my Lady Jane's safe delivery, thundering in his ears his family's cause, and trying to rouse up all that is Douglas in him; I wish it may have the desired effect. I have also engaged my Lord Home, who is gone down to Lord Mark Kerr's, to reconciliate him, and I intend to go myself as soon as I am well, in order to talk to him for some supplies for Lady Jane, which, I make no doubt, must soon become necessary. I have also spoke to the Master of Ross, son of the Lord Ross, who is lately come over from Prussia, and who is gone down to Scotland to see his father, to talk with his father and the Marquis of Lothian, to take the proper steps with the Duke of Douglas to induce him to act by Lady Jane as he ought to do. The young gentleman undertook the thing very willingly, and, I believe, will do all that lies in his power to do you service. You shall soon hear from me again, particularly after I have seen my Lord Mark Kerr. In the meantime pray make my compliments, in the most kind manner, to Lady Jane, my blessing to the two young gentlemen, my compliments to Mrs. Hewit, that we are all vastly obliged to her for her care of Lady Jane, and, believe me, with unalterable regard,

Dear John,

Your most devoted friend and bumble servant,

CRAWFURD.

P.S.—Having been so ill, I bope you will excuse this being wrote by anotber hand.

Addressed thus:—To Colonel Jno. Steuart, at Rhemes en Champagne.

LETTER VI.

LORD BLANTYRE TO LADY JANE DOUGLAS.

Madam,—I have often had the pen in my hand to write to your Ladyship, several of my letters were begun, but, before I had time to finish any one of them, an unlucky trifle still presented itself and enticed me away; if I have been in the wrong, and I am afraid I have certainly, I have been much punished for it by being so long deprived of the pleasure of hearing from you. What I have said I do not mean as a compliment, and I should be sorry if you looked upon it as such; it is truth itself, and if it were not so, I should not certainly give myself the trouble of sending it so far a journey as from here to London. To make amends for my past negligence, I wish I had anything to write that were capable of entertaining you, but I am so stupid, and besides, the gallant anecdotes of Paris do not deserve to occupy for a moment your Ladyship's attention.

I hope to hear by your first letter that your affairs have taken a turn, and that fortune persecutes you no more; you have suffered more from her caprice than any one I ever knew, and you have bore it all with a constancy and cheerfulness quite uncommon; many are unfortunate, but few, very few, are unfortunate with so much grace as your Ladyship; everything will be compensated soon, at least I hope so.

I beg leave to offer my compliments to Mrs. Hewit; I am persuaded she thinks me very indegrate. Adieu, my dear Lady Jane. I am, most sincerely,

Your very affectionate cousin, and humble servant,

BLANTYRE.

Paris, 21st January.

I hope the two young heroes are well.

LETTER VII.

LORD BLANTYRE TO LADY JANE DOUGLAS.

Paris, 24th April.

Madam,—So long a silence makes me afraid that the letter I wrote to your Ladyship in the beginning of January has never reached you; if it is so, I am sorry for it, because you will think me guilty of a neglect that I am innocent of. If, on the contrary, my letter has come to hand, I shall still be more uneasy to guess at the reason of my not hearing from you. The only way to draw me out of so cruel a perplexity is to let me hear from you soon, and I know you are too good to leave me long in pain. Write to me soon, dear Lady Jane, and make me happy, for nobody interests himself more than I do in everything that regards you. I send this letter by a private hand that it may run no sort of risk. Adieu, my dear madam; I send a

number of compliments to Mrs. Hewit, to Mr. Steuart, and to my two godsons. Farewell, dear Lady Jane. I am, with the greatest truth imaginable,

Your affectionate cousin and humble servant,

BLANTYRE.

LETTER VIII.

LETTRE DE MADAME LA COMTESSE DE BASSEVITZ,[6] A MY LADY JEANNE DOUGLAS STEUART.

Ma très chère Lady,—Votre lettre du 7me de Juillet ne m'a plus trouvé à Aix-la-Chapelle. J'en étois déja partie le 16 du même mois, pour aller à Paris, où après avoir séjourné près de trois mois, retournant par Bruxelles, j'ai eu le plaisir de recevoir vos chères lignes. Nous aurions bien aimé, le Comte de Bassevitz et moi, de rester l'hiver à Paris; mais comme nous avions fait tout le voyage avec notre Prince héréditaire, et les Princesses, son épouse, et sa sœur, et que par conséquent, tous nos arrangements étoient pris de forte que nous ne pouvions nous séparer d'eux sans leur incommodité et la nôtre, il fallut les suivre, lorsque la nouvelle qu'ils reçurent de la maladie du Duc régnant leur père, les obligea de précipiter leur retour. Vous pensez bien, aimable Lady, que nous nous sommes trouvés fort à notre aise, dans cette superbe ville, où les plaisirs naissent sous chaque pas. Cependant, en rendant justice à ses beautés, aux chef d'œuvres des différents arts qu'elle étale, et au génie vif et heureux de ses habitans, je n'ai pu m'accommoder de leurs mœurs. La frivolité de leurs entretiens, l'air éventé des hommes, les manières étourdies des femmes, jointes à ce rouge affreux, dont elles masquent leurs teint, et qui fait ressembler les belles à des Lais, les laides à des Mégères, tout cela m'a fait sentir que je suis née pour l'Allemagne, et non ponr la France, parce que mon goût ne sçauroit se former à toutes ces fadaises. Il est vrai, néan moins, que je conçois, que même avec l'humeur que j'ai, on peut vivre très agréablement à Paris, lorqu'on a le tems d'y déterrer le petit nombre de gens sensés et savans, qui y sont dispersés, et de lier commerce avec eux; mais, pour y parvenir il faut frouder les préjugés du public, lequel y permet très rarement aux femmes d'être raisonables, et qui ne nous y regarde que comme des poupées, destinées à faire l'amusement, pour ne pas dire, le jouet des hommes.

Qu' Aix-la-Chapelle m'a paru désert, mi Lady, parceque vous m'y avez manqué. Je m'en suis consolée comme j'ai pu, en m'entretenant de vous avec tous ceux qui vous connoissoient, ou qui avoient entendu parler de vos mérites, et de vos malheurs dans votre patrie. J'ai souvent fait la visite à Mad. Tewis, pour lui entendre répéter ce qu'elle sçavoit de votre sort. C'est une très bonne femme qui vous est d'autant plus sincèrement

[6] The Countess de Bassevitz is a lady of the court of Mecklenburgh Strelitz. She is in correspondence with M. de Voltaire and most of the celebrated geniuses in Europe, and is upon the whole one of the best and most accomplished women of her time. [Original note.]

attachée, qu'elle vous croit amie intime de sa fille la Colonelle Herbert. Les preuves qu'elle m'a dit être en état de vous livrer, pour la vérification de votre grossesse, sont plus que suffisantes, pour prévenir tout ce que la noire malice de vos ennemis pourroit inventir au préjudice de vos chers jumeaux; surtout, si comme je lui en ai donné le conseil, elle rend son témoignage par devant notaire, afin de lui procurer la validité d'une deposition authentique. J'ai vu votre cousin, milord Drumlanrik. On m'a dit qu'il aspiroit à la succession du Duc votre frère; j'ai peine à le croire, sa physionomie est trop noble pour qu'il soit capable de la bassesse, de travailler au dépouillement d'une héritière légitime. On l'a dit aussi mécontent de votre mariage: j'ignore si cela est vrai, puisqu'il ne s'est pas expliqué sur ce sujet en ma présence, mais au moins j'ai je entendu parler de votre personne avec tout le respect qu'on doit à vos vertus. Mad. Lewis vous aura mandé, sans doute, que le Chevalier Cunnghame, Officier du réglment de mi Lord, étoit venu s'informer chez elle de circonstances qui vous concernent. Peut-être, qu'abusé lui même par de faux-rapports, il a souhaité d'être éclairci, et cette envie ce savoir la vérité suppose, qu'il n'a pas le dessein de vois faire tort. Au surplus il ne gagneroit rien, en agissant, soit directement soit indirectement, contre vous, car des gens qui peuvent être au fait de la chose m'ont assuré, que le Duc de Douglas avoit aussi peu d'envie de favoriser son cousin que sa sœur, et qu'il destine après sa mort, tout ce dont il peut disposer, à une parente, qu'on nomme ainsi que vous Jeanne Douglas, et qui est mariée si je ne me trompe, à ce même Duc de Buccleugh, dont autrefois vous avez rejeté la main. Ce n'est pas d'aujourd'hui, chérissime Lady, que la caractère de mi Lord votre frère est transpiré jusque à ma connoissance, malgré la générosité avec laquelle vous tâchiez de tirer le rideau, sur la dureté des ses procédés envers vous. Il est bien triste, qu'il vous aye forcé à récourir à la justice contre lui. N'auriez vous pas avant d'en venir à cette extrémité, pu trouver quelque occasion de le joindre, et d'émouvoir en lui la nature par votre vue? La force du sang est grande en de telles rencontres, et souvent le frère qu'on avoit perdu se retrouve entre les bras de sa soeur. Peut-être réussiriez vous encore de cette façon à le rendre traitable, malgré ce qui s'est passé entre vous, votre magnanimité n'y perdroit rien, puisqu'une avance, faite à un frère, ne seroit qu'un hommage rendu à l'union de votre famille, à la gloire du nom que vous portez tous deux, au bien de vos enfans, et par conséquent à votre amour-propre dirigé par la raison. Mais peut-être jugé-je de votre situation, comme un aveugle des couleurs. Vous devez connoitre votre frère, et vous avez trop de sentiment et de prudence, pour rien négliger de ce qui pourroit le ramener, si vous n'étiez sûre, que c'est impossible, et qu'il a fermé son âme à tout ce qui peut émouvoir un bon naturel. S'il est ainsi mi Lady, permettez moi de vous dire, que lui ayant une fois rompu en visière, par votre recours au gouvernment pour votre pension, vous devez tâcher d'ajuster, maintenant tout ce que vous pourriez jamais avoir à débattre avec lui, et à vous munir des précautions contre toutes les supercheries, qui pourroient altérer les droits de votre héritage: et cela d'autant plus soigneusement, que si Dieu vous retiroit de ce monde, et Mr. Steward aussi, avant la mort du Duc votre frère, et pendant que vos enfans sont en bas-age ces pauvres innocens coureroient risque de tout perdre. Pardonnez mi Lady si l'ardeur de mon zèle me fait entrer

Appendix III.

indiscrètement dans trop de détail; la tendresse de mon amitié pour vous doit me servir d'excuse. Je vous proteste, que l'absence ne ralentit rien à la chaleur des mes sentimens, et que votre idée m'est encore aussi intéressante, et aussi chère, que me la fût jadis votre aimable présence, vos vertus, vos talens, votre caractère, vous ont attaché mon cœur par des liens indissolubles. Quel dommage que la mer nous sépare, et que l'éloignement mette un invincible obstacle à la jouissance d'une si belle amitié. Je rends grâces à Mr. Steward de son souvenir; si mes égards, si ma parfaite estime peuvent le flatter, il a toutes les raisons d'être content de moi. Tenez parole, chère Lady, informez moi de la retraite que vous choisirez, et croyez que je ferai jusqu'au tombeau, avec la considération la plus affectueuse, votre très humble, très obéissante, et très dévouée servante,

SABINE Comtesse de BASSEVITZ.

De Rostoc le 6me de Mars 1751.

TRANSLATION.

LETTER FROM THE COUNTESS OF BASSEVITZ, AT ROSTOC, TO LADY JANE DOUGLAS STEUART.

My dear Lady,—Your letter of the 7th of July did not find me at Aix-la-Chapelle. I had set out for Paris upon the 16th of that month, where having remained near three months, it was in my return by the way of Brussels that I had the pleasure of receiving your dear lines. The Count de Bassevitz and I would have been very well pleased to have passed the winter at Paris; but as we had made the whole journey in company with our Hereditary Prince, and the Princesses, his consort and sister, and of consequence all our matters were so disposed that we could not separate from them without incommoding both them and ourselves, we were under a necessity of attending them when the accounts which they received of the reigning Duke their father's being indisposed, obliged them to hasten their return. You are not mistaken, amiable Lady, in supposing that we passed our time very agreeably in that magnificent city, where pleasures spring up under every footstep. At the same time, while I do justice to its beauties, to the masterly performances which it exhibits in the different arts, and to the lively and happy genius of its inhabitants, I could not conform myself to their manners. The frivolousness of their conversation, the foppish air of the men, and the giddy behaviour of the women, joined to that frightful rouge with which they disguise their complexion, and which makes the handsome resemble courtesans, and the ugly look like hags. All this makes me feel that I was born for Germany, and not for France, as my taste would never be reconciled to such fooleries. I believe, however, that even a person of my turn of mind might live very agreeably at Paris, if one had time to search out the few people of sense and knowledge who are there dispersed, and to form a connection with them; but, in order to arrive

at that, one must combat the prejudices of the public, which in that place seldom allows women to be reasonable creatures, and which looks upon us as puppets destined for the amusement, not to say the sport, of men.

What a desert Aix-la-Chapelle appeared to me for want of your company! I comforted myself the best way I could, in conversing about you with all who knew you, or who had heard of your merit, and of your sufferings in your own country. I often visited Madam Tewis, to hear her repeat all that she knew concerning you. She is a very good woman, and is the more sincerely attached to you that she believes you to be an intimate friend of her daughter, the Lady of Colonel Herbert. The evidence which she says she is in condition to produce in support of your pregnancy is more than sufficient to frustrate whatever the blackest malice of your enemies might invent, to the prejudice of your dear twins, especially, if she takes my advice and delivers her testimony before a notary, in order to give it the force of an authentic deposition.—I have seen your cousin, my Lord Drumlanrig. I was told that he aspired to the succession of the Duke, your brother; but I can hardly believe it; the nobleness of his look bespeaks him incapable of so mean an office as that of supplanting a rightful heir. I have likewise heard that he was displeased at your marriage. I know nothing of the truth of this, as he never explained himself upon the subject in my presence; but this I can say, that I have heard him speak of you with all the respect that is due to your virtues. Madam Tewis would, no doubt, inform you that the Chevalier Cunningham, an officer of Lord Drumlanrig's regiment, applied to her to be informed of some circumstances concerning you. Perhaps he had been deceived himself by false reports, and wanted to have the matter cleared up; and his desire of knowing the truth seems to imply that he has no design of doing you hurt. At any rate he will gain nothing by acting, either directly or indirectly, against you; for people who have access to know have assured me that the Duke of Douglas had as little inclination to favour his cousin as his sister, and that he intends to leave all that he can dispose of at his death to a female cousin of the same name with yourself, and who is married, if I am not mistaken, to the same Duke of Buccleugh, whose hand you formerly rejected. It is not of yesterday, my dearest Lady, that I have been acquainted with the character of my Lord your brother, in spite of the generosity with which you endeavoured to draw a veil over the harshness of his proceedings towards you. It is very unhappy that you should be obliged to have recourse to justice against him. Could not you, before coming to that extremity, endeavour to bring about an interview with him, and to awaken the impulse of natural affection in him by your presence? The force of blood is great upon such occasions, and it often happens that a lost brother is found again in the arms of his sister.—Perhaps, in this way, you may, so far at least, succeed as to make him listen to terms notwithstanding what has passed between you; your magnanimity would suffer nothing by it, because an advance of this sort made to a brother would be no more than a due homage

paid to the union of your family, to the glory of the name which both of you bear, to the good of your children, and, of consequence, to your own self-love, directed by reason. But, perhaps I judge of your situation as a blind person does of colours; you are certainly not unacquainted with your brother, and you have too much sentiment, as well as prudence, to neglect any step which might regain his affections, if you were not positive that it is to no purpose, and that his breast is steeled to every suggestion of humanity. If that is the case, my Lady, permit me to tell you that, having once so far outfaced him as to apply to the Government for your pension, you ought now to endeavour, as far as in your power, to adjust your matters so as to have no after-questions with him, and to fortify yourself with precautions against all the tricks which may be made use of to cut off your right of inheritance; and this you ought to be the more solicitous about, that if God should withdraw both you and Mr. Steuart from this world before the death of the Duke, your brother, and while your children are under age, these poor innocents might run a risk of losing all. Pardon me, my Lady, if the ardour of my zeal makes me enter indiscreetly into too minute a discussion; the tenderness of my friendship for you will plead my excuse. I protest to you that absence abates nothing of the warmth of my sentiments, and that your idea is at present as interesting and as dear to me as was formerly your amiable presence. Your virtues, your talents, your character have bound my heart to you by indissoluble ties. What pity it is that the sea divides us, and that distance occasions an invincible bar to the enjoyment of so perfect a friendship. I return thanks to Mr. Steuart for his remembrance of me; if my regard, if my perfect esteem can flatter him, he has reason to be satisfied with me. Keep your word, dear Lady, inform me of the retreat which you make choice of, and believe that I shall be, to the grave, with the most affectionate respect, your most humble and most obedient servant,

SABINE COUNTESS OF BASSEVITZ.

Rostoc, 6th March, 1751.

LETTER IX.

LADY JANE DOUGLAS TO MR. STEUART.

Saturday Morning.

Dear Mr. Steuart,—Good morrow to you, according to Lord Blantyre's stile; I hope, by the letter I am expecting every moment from you, to bear that your cold is absolutely removed; in that case, I beg you to be thankful to the great Bestower of all good, who daily loads us with His favours.

The colds at present, which scarce any have escaped, are so much more severe than that you complained of, makes me write the little exhortation above, to put you in mind of gratitude to our great Bene-

factor; though you may justly say that remonstrance was needless to you, who are always so sensible of favours received from friends. Our Almighty Friend cannot then be forgotten by one who has such sentiments as yours.

I enclose here the card I received in return to mine from Captain Wilson and his lady; I am to make inquiry after her health, and a proper excuse for your not coming immediately to wait on him.

The town continues as dull as I am, affording not one thing worthy the pains to write, or you to read; yet I can tell you what will please you beyond every other thing, that our dear little ones are well. Poor Mrs. Hewit also begins to mend; she put on blisters last night behind her ears, and finds herself this morning much better. I stop here till I receive your letter, which will certainly enliven me; but this I ought not to have said, lest it produce another kind quarrel on your side.

This moment I have the satisfaction of yours, and though you write nothing of your cold, James brings the agreeable account that it is quite well, blessed be God that it is so. The glimpse of hope you mention, I hope shall come out soon in a full blaze of joy and satisfaction.

What you write concerning Lady Betty and her spouse is well imagined and expressed; we shall very soon see the extent of their friendship; I should have more properly said the constancy of it, since I have already received material proofs of it, which I shall never forget.

I send a fine fowl and a piece of beef; I hope as fine as the last you commend so much. I flatter myself Tuesday shall prove a good day, that I may have the pleasure to tell you how much I am affectionately yours, which words cannot so well express.

J. D. S.

LETTER X.

Lady Jane Douglas to Mr. Steuart.

Tuesday.

Dear Mr. Steuart,—I have felt so much pain since I left you, for the few rash words expressed at parting, that I take this way to discharge, if possible, some part of the burden of grief I have suffered upon that occasion; at the same time that I find myself unable to give you an idea of the one half of my sorrow, which will not diminish till you, with your usual goodness and indulgence to me, assure me of a pardon. Dear Mr. Steuart, write as soon as this comes to your hands, that you are not displeased, which will make me happy again. I won't enter upon the subject of our debate, which caused my wrong-headed expressions; only this far, that I confess you were in the right and I excessively in the wrong. I am from my heart and soul conscious and sensible of my fault; so, once more, dear Mr. Steuart, pardon it, and pass it over, and never in your life think more of my ill-judged, as well as ill-managed, arguings.

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On Friday, please God, I intend to dine with you; don't provide dinner, I bring one along with me.

Receive enclosed a moidore; I'll bring a little more of the same metal with me; wish I could bring as much as would deliver you out of your confinement.

Dear little Archie and Sholto are charmed with their hats, and have promised to be good boys; they're in perfect health, blessed be God, as I am; only till I hear from you, and that you are friends with me, I shall have no tranquility of mind. Adieu, dear Mr. Steuart. In spite of frequent idle sallies, I am, and ever shall be, with the tenderest and warmest affection, yours,

JANE DOUGLAS STEUART.

LETTER XI.

LADY JANE DOUGLAS TO MR. STEUART.

Friday, 1 o'clock.

Dear Mr. Steuart,—Yesterday, just after I made answer to yours, I received a letter from my guardian angel, in return to a card I sent her. The contents are as follows:—

Madam,—I should be extremely sorry to give your Ladyship the trouble of calling on me, but am very glad I can now with certainty assure you, your request has been laid before his Majesty by the Duke of Newcastle; and Saturday last Mr. Pelham had notice from his brother it was granted. Proper notice of this, I conclude, Mr. Pelham will give your Ladyship. And I am, madam, your most obedient, etc.,

3rd August.

I dare say you'll be pleased with the contents of this letter; I expect every hour to be informed of the matter by another hand; but the early notice of favourable things come always by her friendly hands.

Mrs. Hewit is better to-day; the little men are well. Adieu, entirely yours,

J. D. S.

LETTER XII.

LADY JANE DOUGLAS TO MR. STEUART.

Saturday.

Dear Mr. Steuart,—I see you are better versed in Elibank[7] and his brother's affairs than any information I can give can possibly make you; however, I'm always pleased to give you, in your present solitude, any little piece of news that comes my way, which, indeed, but very seldom presents itself to me. I think with you that Miss Murray, by her behaviour in this matter, appears to have both

[7] Colonel Steuart married Lord Elibank's sister after Lady Jane's death.

honour and good sentiments. I can't doubt but Elibank will soon come to see you; then you may, with decency, offer my request to him, and I think, as you do, you may expect success.

I was to wait on Lady Mary Douglas, Thursday; her father, Lord Morton, was present, and received me very kindly and obligingly the first visit, and people being by, I could come upon no particulars, but when he comes here, as probably he will, I shall then talk over several things with him. His daughter is a very beautiful girl, genteel and well bred, not yet fourteen, and is as tall as a woman.

I did not so much as think of the 17th of March when I read your intention of having claret and Burgundy some days hence; that profusion does not, I confess, please me much in our present situation, nor does the reason you give for it mend the matter at all; Lisbon or Cherry, if you will remember that day, is sufficient to solemnise the birthday of one so far advanced as I am; but if in remembrance and honour of St. Patrick, no liquor is good enough. I wou'd not, therefore, endeavour to keep the day at all, only by praying a little more than ordinary, not to him, but to Almighty God, who daily loads us with benefits and spares us to see the returns of New Years and birthdays. If your affairs took a happy turn, that happy period I would indeed solemnise myself, with all the rare fine delicates could be imagined; but, till that satisfactory moment arrives, it becomes us to shun every extravagance, and to walk softly and very humbly. In the meantime I send you a young pig, which, I hope, will be a little regale to the King, and you also a young fowl.

I'm glad you took the rhubarb, and that it did so well with you; take every fine moment of good weather to walk, as you have always been accustomed to do; and take great care of your health, which secures my happiness.

I can learn no news to divert you, but I send a book of poems, which I hope will; it was wrote by a gardener's daughter, a young girl, uneducated, and yet it is esteemed well wrote and the language fine; return it so soon as you have read it. It is not mine; I borrowed it from Mr. Clayton.

The little men are well, but Mrs. Nelly is mightily distressed, yet affectionately yours. I shall leave off here till James comes, then I shall add a few lines, and bid you adieu till next morning that you send. Just after dinner I received the pleasure of yours; you imagine me partial when I commend your manner of writing, but I declare it is quite otherways, and my sentiments are entirely unbiassed; and to show you how great my opinion of your good sense and judgment is. I must beg you write down, by way of hints, what the articles are, that you judge most proper for me to insist upon when I next see the E. of Morton; for any further than to thank him for his timely generous supply I cannot possibly stoop to demand more. This I am determined not to do; as for other topics, to speak on these, no doubt, are varions. I therefore wish to have your thoughts on the heads you think I should insist most on; that won't hinder me to mention, perhaps dwell on some subjects that I may find proper to talk to him about. I shall probably see him the beginning of next week; any sooner I can't expect, being just come to town, and a great deal to do.

Appendix III.

Use Elihank in your own way; you best know his good and bad properties.

Archie's asleep, and Sholto above stairs prattling by him, else they, perhaps, would send some kisses to their dear papa.

Adieu, dear Mr. Steuart, ever with the greatest tenderness and affection, yours,

J. D. S.

LETTER XIII.

Lady Jane Douglas to Mr. Steuart.

Thursday.

Dear Mr. Steuart,—That implies a short letter; yours I received and begin mine in the same manner you do yours, with wishing you every happiness and felicity this year, and a great number of them. As for your witty sallies, I won't answer them; but for the attack you make upon my love and friendship, that I can, and must assure you, is as sincere and warm as ever, though many invincible reasons make it possible to give the proofs of it I could wish to do; be satisfied of this, as I am of every thing that is good and kind on your part. As to the rest of your letter, I shall answer it next occasion, which, I believe, shall be on Saturday, when I shall send John pretty early in the morning; dispatch him, then, soon. I have wrote this in such a hurry, I'm afraid you can't read it.

The children are mighty well, blessed be God, as Mrs. Hewit and I am, and tenderly and affectionately yours, as I am in a particular manner.

J. D. S.

LETTER XIV.

Lady Jane Douglas to Mr. Steuart.

Sunday Morning.

Dear Mr. Steuart,—That implies a short letter; yours I received this moment with great pleasure. Your regard and kindness to me, which has prompted you to the expense you've made in sending finer wines than I think the day required (barring the honour due to St. Patrick) makes that I dare offer nothing against that obliging demonstration.

Your cold is not quite gone, which gives me pain; for heaven's sake, be careful to take everything proper to remove it.

The children are, I bless God, well. Poor Mrs. Nellie, far from being so, had a very bad night of it; you'll see I am in a great hurry just going to church. Dear Mr. Steuart, entirely yours, with great affection.

J. D. S.

LETTER XV.

LADY JANE DOUGLAS TO MR. STEUART.

Monday Evening.

Dear Mr. Steuart,—Your uot writing this morning, you having accustomed me to that satisfactiou, has given me a great deal of painful anxiety, the rheumatic pain in your arm, the uueasiness you complained of in your head, though uot a headache, all these thiugs together has made my mind very uneasy; I have, therefore, seut Mr. Smith to inquire how things are with you, aud would have gone myself, but the rain and wet uuder foot prevented me, and coaches are expensive.

Mr. Lockhart of Carnwath was with me this morning, and, to do him justice, behaved extremely well, with great kindness, frieudship, and politeness; spoke of you with the warmest friendship and esteem, called for the childreu, and appeared transported to see them; commeuded them more thau I think they deserve, for he said he never had seen two such fine boys, especially Archie took his eye; he was delighted with him, and repeated several times with pleasure that he was jnst your picture.

In regard to your son, Mr. Jacky, he protested he had all aloug acted the frieudly and houourahle part, and that a little before he left Scotland your son had got up all the bouds that were committed to his trust, which only, from friendship to you, he eugaged and coucerned himself in; his whole behaviour and manner of acting siuce you left Scotland he refers you to be informed hy your friend, George Siuclair, with whom he consulted, and took aloug with him, iu whatever related to your sou. I, therefore, heg, when you meet with Mr. Lockhart, which he anxiously wishes for, you may first hear him speak before you condemu him. He goes out of town to-uight, hut is to return to-morrow; he wants to have an iuterview with you; I said you were iu the couutry, hut that upou my giviug you uotice you would come to town. He is soou to set out for Scotland. Mrs. Hewit contiuues still hetter, the little men are well. I hope to have the same good accouuts of you. Adieu, dear Mr. Steuart, ever entirely yours,

J. D. S.

LETTER XVI.

LADY JANE DOUGLAS TO MR. STEUART.

Thursday.

Dear Mr. Steuart,—Pray don't pay me so many compliments in my doing what is just and right, and what shall ever afford me so much pleasure. I am glad you have hopes of everything comiug out to your wish; I uever cau allow myself to doubt of success at last. These delays are ouly permitted to acquaint us with the virtue of

patience and resignation. Things so useful and amiable, who would not be put at at any age to such a school? I'm glad you have got acquainted with so agreeable a gentleman; you do well to cultivate it. I send the history of Douglas, I send a bit of velvet and a snuff-box for a little rapee, which I am quite out of; send it back any time to-day or to-morrow, only quarter filled.

I'm invited to-morrow evening to Lady Tyrawly's; if you choose to be there it is well [but if affairs of great moment comes in the way, don't come].[8]

We're all mighty well, and the little men very much so, blessed be God; I take abundance of care of myself, and of the dear little ones, as you may well believe. Pray take my example of being careful of yourself.

I have nothing new to offer; only Mrs. Hewit was at the ball on Monday; she underwent many hardships and difficulties that night by the excessive cold and great crowd, but has luckily got the better of all; she says they are a very amiable family, and is fallen in love with King George. Adieu, Dear Mr. Steuart, always more yours than I can express.

J. D. S.

LETTER XVII.

Lady Jane Douglas to Mr. Steuart.

Chelsea, Thursday, March 5.

Dear Mr. Steuart,—I have this moment the pleasure of your letter by your messenger; this and all yours are ever welcome and agreeable to me; but the paragraph in some of your late letters, and in this last one in particular, upon religious matters, absolutely charm me; go on, dear Mr. Steuart, fix your eyes, your hope and trust above, and all worldly concerns will soon seem perfectly easy, nay will, in reality, become so; for God never disappoints those that entirely depend on Him, nor will He continue to afflict when we fly to Him for succour, and place our whole happiness in His favour alone. Allow me to send you by the hearer a favourite book of mine, Thomas à Kempis; read it, I beg you, in it you'll discover so much heavenly and even worldly wisdom, that it never fails to please both the spiritual and temporal mind, and to instruct both.

Your letters by Greenly I received yesterday; they were most acceptable to me; he would tell you the reason why I could not send sooner to you than Tuesday last, and that I was obliged to employ him to carry my letter to you, and likewise yesterday gave him a packet, I believe, from your son, to carry to you to-day, John being not yet able to go out; but against Saturday I design to send him, if better.

You imagine, because I happened to say in one of my letters that

[8] Def. proof, 832 B.

I took uncommon care of my health, that on that account I am become low-spirited. Nothing is farther from me, I bless God, than low spirits; many years ago they were not near so much so; yet I do think, and must think, that my life at present is, and ought to be, more my concern than formerly, because I have you and the children to care for. Is that a reason to think that I am become low-spirited, because I would like to live some time longer for your sakes? The end of the week, or beginning of next, I shall write more fully on everything. I am, &c., J. D. S.

The children are very well, I bless God.

LETTER XVIII.

LADY JANE DOUGLAS TO MR. STEUART.

Chelsea, Friday Evening.

Dear Mr. Steuart,—I'm resolved you should have no reason to complain any more of my remissness in writing to you, so have engaged Mr. Grinley to step over to you to-morrow morning, by whom I hope to have the agreeable account of your being perfectly well, as we are all here, I bless God.

I'm extremely sorry that you're quite out of pocket-money, and the more so that it is not in my power to supply you, nor I don't know when it shall, it being by no means to be expected that the money the King has been graciously pleased to allow me is immediately to be paid just a few days after the term it falls due, nor is it fit for me to show any impatience about the payment, so I must have patience.

I was obliged to borrow half a guinea last Monday from a friend, just for necessary things; judge then, dear Mr. Steuart, if out of that I can send you any supply. But I won't dwell upon this painful subject, nor indeed upon any, for I must end with assuring you that I ever am, with all possible affection and tenderness, dear Mr. Steuart, entirely yours, J. D. S.

The children often talk of their dear papa, and are impatient to see you. Judge, then, how much more I am so.

LETTER XIX.

LADY JANE DOUGLAS TO MR. STEUART.

Friday Evening.

Dear Mr. Steuart,—Your seeming to be so much on the melancholy turn in your last letter gave me a considerable uneasiness, of which I have not yet got the better. Why will you allow your spirits to sink, dear Mr. Steuart? It is that alone that gives me pain, and when I think that

your mind is easy, the little difficulties we are in at present gives no manner of disquiet, save your confinement and my seeing you so seldom; that is indeed shocking, but it is hardly to be bore when you sink under it. Pray then keep up your spirits, if not for your own sake, for mine; let this be an argument to persuade you to bear well up under all your distresses; if you don't, you will assuredly distress me more than all my calamities have hitherto done, for, to say the truth, when I look around, I see and hear of so many people much more unhappy than myself that I really think I am a great deal more fortunate in many things than others are, or than I deserve to be.

I enclose here five shillings. Employ it in giving me the satisfaction of a visit on Monday or Tuesday next.

The children and we are all mighty well, I bless God.

LETTER XX.

Lady Jane Douglas to Mr. Steuart.

Sunday Evening.

You may justly think it odd, dear Mr. Steuart, as well as unkind, that I did not answer your letter yesterday, which you wrote from so obliging and so affectionate a motive; but your messenger was in so mighty a hurry, and pretended letters to be delivered necessarily before five, some of which I believed might belong to you, that I would not let him wait a moment for a letter from me, it being three in the afternoon ere he came here. I write this now to make apology for that appearing neglect, and to know particularly how your cold is, as everybody complains they are very obstinate this season, and I'm afraid you are not so careful of yourself as you should be; and, alas! I am not near you to take that care which I would wish to do, and which I am sensible you want so much; therefore, dear Mr. Steuart, let me beg you, for my sake and for the children's, to neglect nothing that you think will contribute to remove your cold before it gets too fast a seat, which if it does, will with great difficulty be removed; and, pray, let me know if you choose to have any mum, and I will send you some by next occasion, from the place you used to get it. I return here Mr. Hamilton's letter; it is a very civil one. I wish your scheme which you're to offer him may suit him.

I have not seen Greenly since Tuesday, so I know nothing how matters go on that quarter; but however they go, I am perfectly resigned, and not only so, but satisfied and pleased, well knowing that bounteous Providence will work out a way for our deliverance in the best way, and at the best time, if we in the meantime will be but patient and submissive.

Adieu, dear Mr. Steuart, I ever am, with the greatest tenderness, yours.

Mrs. Hewit returns you many thanks for your kind offer of honey, but has got some, so you need not send any; she sends you her best

wishes and compliments; her cold continues still obstinate. The children are very well, I bless God. Once more adieu, dear Mr. Steuart. I had not room to sign my name on the other side; I put it in large on this.

JANE DOUGLAS STEUART.

LETTER XXI.

LADY JANE DOUGLAS TO MR. STEUART.

Thursday Evening.

Dear Mr. Stenart,—I received yonr letter yesterday, and by it I perceive your spirits are depressed, which a great deal mitigates the joy and satisfaction your letters usually give me. No wonder you are discouraged, and quite tired out of patience with your lonely, disagreeable quarters, and many other unlucky occurrences; but are all these, in common with other human creatures, sufficient maladies to sink the spirits, or to harbour the smallest murmuring, as if too rigorously dealt with? We have made migbty small progress in looking inward, and in judging aright of ourselves, when we frame such a conclusion; for certain it is we have many more blessings and benefits that call loudly for our acknowledgments to Almigbty God, than cause of complaint. For my own part, after many times considering the situation of all around me, even of those counted the most happy, and upon this reflection, looking home into myself, I find I am possessed of more happiness than any I have yet heard of, or can fix my eyes upon, anywhere abroad; so then, dear Mr. Steuart, learn to be contented and absolutely resigned to the Divine Disposer of all things, and then, I can assure you, your mind will obtain perfect quiet and happiness, and, at the same time, be in the more proper and probable way of having your wishes and heart's desire accomplished. This is a long sermon you'll say; I delight in preaching, when I can forbear it, even when you desire me to send you Père Chemeine, who can so much better exhort and teach. I send him to you with great joy; and your desiring him, though contained in a mighty small volume, gives me infinite satisfaction.

Duchess Wharton and Countess Wigton were with me yesterday; the Duchess inquired very obligingly after you; and for the Countess, you're prodigiously in her favour; she really speaks of you on all occasions with uncommon friendship and concern. I'm excessively glad that the good Baron[9] continues in better health; I sincerely wish him everything that is prosperous and happy. Offer him my best respects, as Mrs. Hewit does, and most affectionately to you. Adieu, dear Mr. Steuart; be you but happy and easy, and I am extremely so, and ever yours,

JANE DOUGLAS STEUART.

The children are very well, I bless God.

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[9] Baron Cæsar de Macelligot, husband of Lady Wigton.

Appendix III.

LETTER XXII.

Lady Jane Douglas to Mr. Steuart.

Friday Evening.

Dear Mr. Steuart,—I received your letter yesterday from Grinley, at his house in town, being come in to go with Lady Wigton to Lady Tyrawley's, where I met Lady Home and Mrs. Winter. All these ladies sent you a thousand compliments, particularly Lady Home, who is charmed with the bottle of salts you sent the other day, which showed so kind an attention about her; the other Countess is to be your guest on St. Patrick's day; to whom you're also much obliged in point of kindness. Mr. Mackercher proposes to conduct us to you on Tuesday. I am to send what is necessary for dinner the day before, so pray don't you provide anything save a bottle of wine, as the stocks are so low it would be out of all common sense to have any extraordinaries in such a situation and in such circumstances; and as we need use no mighty ceremony with our guests, they being both, I dare say, our sincere friends; therefore expense would make them justly doubt that we believed them so.

I'm charmed that my favourite book pleases you so much. By all I can see in most of your late letters, I verily believe yon're upon the way of becoming a saint yourself, as well as St. Thomas and the rest of the saints, that yon of late days have heen so conversant with. Judge how this thought delights me; how it raises my spirits, and sets me above all misfortunes. Had I a great many, as indeed I think I have none, save that you are in captivity and I at a distance from you, these are painful indeed; but all the rest of my fate is perfectly happy. I wish only I could be sufficiently thankful for it. The dear little children are mighty well, I hless God.

Mrs. Hewit is a good deal better, and is most affectionately yours.

Being to see you, please God, so soon, I shall not add any more now, but to assure you that I truly am, with the greatest affection and tenderness, entirely yours,

J. Douglas Steuart.

LETTER XXIII.

Lady Jane Douglas to Mr. Steuart.

Friday Night.

Dear Mr. Steuart,—Having wrote to you this evening already, and designing to see you the heginning next week, I refer everything I have to say to you till then; only I must here assure you that I am highly pleased with your wise and prudent letter; and certainly to be patient and calm nnder every calamity, even those of our own acquiring, is the religious and wisest part. But I must confess I am a little uneasy to find yon so mnch upon the supposition that I took any offence at the heat with which you spoke the other day. Lay all

these anxious thoughts aside, dear Mr. Steuart, and believe once for all that nothing gives me pain or disquiet, but the fears I sometimes have for your being disheartened for little cross accidents; assure me you never will be any more so, and then I'm perfectly happy.

Adieu, dear Mr. Steuart. The children and we are all well, blessed be God, and very happy, only somewhat poor, which I only regret, because I cannot send you even pocket-money; hut we'll grow richer, and in whatever situation I am in, I ever am most tenderly and affectionately yours, J. D. S.

LETTER XXIV.

LADY JANE DOUGLAS TO MR. STEUART.

Chelsea, Wednesday.

Dear Mr. Steuart,—It has not been in my power to send sooner, though impatient to know how you do. I have nothing now material to write, hut that dear little Archy and Sholto are well, as we all are, blessed be God.

I hope you profit of this fine weather, as the children and I do. I was in town yesterday, and find myself the better for it. I hope your cold is quite gone. Adieu, dear Mr. Steuart. You shall hear again from me this week, with a small supply for your pocket, which I have these days past sent in search about. I ever am, with the tenderest affection, yours, J. D. S.

LETTER XXV.

LADY JANE DOUGLAS TO MR. STEUART.

Tuesday Morning.

Dear Mr. Steuart,—You may judge how low money matters are with me at present hy this most scurvy poor half-crown I send you; I'm quite ashamed of it, and, to conceal it from my servants, I have enclosed it well wrapt up in the pretty little money-box, which ought to contain gold; wish to heaven I could send of that useful hut rare metal with us. This poor hit of silver I send just to procure you a little rappee. . . . . Ever yours, J. D. S.

LETTER XXVI.

LADY JANE DOUGLAS TO MR. STEUART.

Chelsea, Tuesday.

Dear Mr. Steuart,—How did your last letter, dear Mr. Steuart, affect my heart! where you tell me you subsisted for so many days upon the small remains of our little dinner, and not wherewith to send even for porter; and this all owing to your parting too freely with your few shillings to me, which I took from you with regret; no wonder, since I could so much easier get a supply where I am than you possibly can, in your confined quarter. But, dear Mr.

Appendix III.

Steuart, cheer up, for I hope very soon to bring you [illegible]h money as shall make you above these pressing, painful nec[illegible] and, in a little time, I hope kind indulgent Providence shall s[illegible] you and I above our present inconveniences, which, by the way, only give me pain because I know your spirit cannot easily bear up under them; but, believe me, the only way to get soon rid of any calamities is to be entirely resigned, patient, and submissive during the duration of them; such a disposition is certainly pleasing to Heaven, and provides for after happiness, even in this life.

The very well-timed supply Mr. Farquhar gave you, of which you sent me too large a share; I shall never forget that kind proof of his friendship, and I need not put you in mind to make it up to him a hundredfold when in your power, which, I hope, shall soon be the case.

I did not choose to write last Sunday, though we were all well. Dear little Archy has had a little cold, with a small degree of a fever; but, blessed be God, 'tis now in a manner quite over. Do not be angry with John for not mentioning it to you; he could not indeed do it, as I knew nothing myself of the child's being ill till after I had given him orders to go early in the morning to see how you were. I must own, when I perceived the child hot, and, as I thought, in danger of taking a fever or the smallpox, I felt a pain and distress of mind not to be expressed. I slept not a wink for a whole night, and was not without great anxiety the next day, though he was grown considerably better; and now all is, I think, over, blest be God; and so would not have mentioned it to you but to convince you that no outward bad circumstances can in the least disquiet or discompose me; only what concerns you, dear Mr. Steuart, and these two little babies, Archy and Sholto, robs me of rest and ease. Let this persuade you to take care of your health, and to bear up with fortitude under the present frowns of fortune, which will, more than any other thing, oblige your ever tenderly affectionate J. D. S.

I send you a little tea and a few stakes; a fine present indeed, but all in good time, better will come after, if we'll have but patience.

Four o'clock, afternoon.—Archy's now so well that he's playing in the garden.

Mrs. Hewit sends you her kind compliments, begs to know if you have got her spectacles set in silver, which she got from Mrs. Cockburn, thinking, perhaps, you might by chance have taken them in place of your own.

Archy's just come upstairs and desires me to send you his humble duty.

LETTER XXVII.

LADY JANE DOUGLAS TO MR. STEUART.

Friday Night.

Dear Mr. Steuart,—The weather does not yet seem to favour my intended visit to you; and, besides, I find [illegible]sday next will suit my

little affairs better to perform it; so that day you may expect me, please God, to dine with yon, unless a constant rain prevent it. For all this delay, I long much to see yon; and since I cannot have that satisfaction till next week, I send this purposely to have the pleasure of receiving a particular acconnt of you, which I hope ehall be, that you are in great good health and spirits, as we all here are, and the dear little men extremely so. I think that may be enough to keep yon from any great ahatement in yours. So, dear Mr. Steuart, adien till Tuesday Believe me ever, in the tenderest manner, affectionately yours, J. D. S.

LETTER XXVIII.

Lady Jane Douglas to Mr. Steuart.

Dear Mr. Steuart,—I hless God the children are in perfect good health, so yon may judge how surprised I was upon receiving yours. Your little messenger must delight in telling painful stories; however, don't chide the hoy, for it was only a mistake. J. D. S.

LETTER XXIX.

Lady Jane Douglas to Mr. Steuart.

Monday Evening.

Dear Mr. Steuart,—I intended this letter should have heen with you this morning, hut John was so ill of a cold and toothache that I could not send him out, so most unwillingly must defer eending it till to-morrow, and then I believe I shall be obliged to send it by one of the maide to Grinlay, to desire him to carry it to you till our servant be recovered.

I have heen the more uneasy that I could not possihly get your last letter sooner answered, as it kindly mentions a visit from me so ohligingly, and with so much tenderness desired. I do assure you, dear Mr. Steuart, you can't wish it more earnestly than I do; nor shall it suffer one day's delay when I can possibly perform it, and that shall he when I'm perfectly free of a little cold that has hung ahout me this while past, and though far from heing severe, yet it is somewhat obstinate in going entirely off, for which I continue to take almost every night bran water and raisins, which doee me great service. Yon may justly think I am at much pains and care about myself; I truly think so too. But that does not use to he my fault, only of late I hegin to he mighty dainty of myself, because I think my life, in the present nnhappy posture of our affairs, may be of some use and service to you and the children. This is all my anxiety for living, and the canse that forces me to take so much care of

myself; bnt if tbe weather prove as favourable as it has been tbese several days past, I bope to have tbe satisfaction to come to see you next week, and to stay with you two or three days.

Countess Home was here Saturday forenoon and took Mrs. Hewit, the children, and I out in her coach for an airing. She's a very obliging, friendly woman, and you are a migbty favourite of her's and Mrs. Winter's, wbich recommends them much to me. Pray let me eitber have the Italian novel, or what part you have transcribed; I fancy it will be agreeable to read. When I can light on any diverting book I shall certainly send it to you. Alas! you stand too much in need of amusements in the dismal solitude you're confined to; but, dear Mr. Steuart, keep up your heart, and, above all things, trust in God, and all things will go well with you, and, consequently, with me.

The cbildren are very well, I bless God.

I expect a long letter from you by tbe bearer of this; be assured that tbe longer your letters are they are always the more agreeable. Adieu, dear Mr. Steuart. I ever am, with the utmost tenderness and affection, entirely yours,

JANE DOUGLAS STEUART.

Your two shirts you sent shall be carefully mended.

LETTER XXX.

LADY JANE DOUGLAS TO MR. PELHAM.

Sir,—If I meant to importune you I should ill deserve the generous compassion which I was informed some montbs ago you expressed, upon being acquainted with my distress. I take this as the least troublesome way of thanking you, and desiring you to lay my application before the King in such a light as your own humanity will suggest. I cannot tell my story witbout seeming to complain of one of wbom I never will complain. I am persuaded my brother wishes me well, but from a mistaken resentment, upon a creditor of mine demanding from bim a trifling sum, he has stopped the annuity which be had always paid me, my father baving left me, bis only younger cbild, in a manner unprovided for.

Till tbe Duke of Douglas is set right, which I'm confident be will be, I am destitute. Presumptive heiress of a great estate and family, with two cbildren, I want bread. Your own nobleness of mind will make you feel how much it costs me to beg, though from tbe King. My birth and the attachment of my family, I flatter myself his Majesty is not unacquainted with; should he think me an object of his royal bounty, my heart won't suffer any bounds to be set to my gratitnde; and, give me leave to say, my spirit won't suffer me to be burdensome to his Majesty longer than my cruel necessity compels me.

I little thought of ever being reduced to petition in this way; your goodness will therefore excuse me if I have mistaken the manner or said anything improper.

Though personally unknown to you, I rely upon your intercessiou; the cousciousuess of your own mind, iu haviug doue so good and charitable a deed, will be a better return than the perpetual thanks of, sir, your most obliged, most faithful, and most obedient servant,

JANE DOUGLAS STEUART.

St. James's Place, May 15, 1750.

LETTER XXXI.

FROM MR. PELHAM TO LADY JANE DOUGLAS.

Arliugton Street, August 3rd, 1750.

Madam,—I have the pleasure uow to acquaiut you that his Majesty has been graciously pleased to approve of the humble request which I laid before him, and to order me to pay you three hundred pounds a year as long as your Ladyship's situatiou shall make such an assistauce from his Majesty's bounty necessary for your support. This method will, I flatter myself, be most agreeable to you, as the whole sum will come to you without fees or deductions; and no further trouble now remains to your Ladyship than to authorise your agent to receive it from my hands, the first half-year of which I shall be ready to pay to your order any time after next Michaelmas. Whatever share I may have had in procuring to your Ladyship this mark of the King's goodness cannot but be very pleasing to me, as it furnishes me with au opportuuity of testifying the great respect with which I have the houour to be, &c.

LETTER XXXII.

LADY JANE DOUGLAS TO THE EARL OF MORTON.

Loudou, December 22, 1750.

My Lord,—Some months ago I did myself the houour to write your Lordship acquaintiug you that I had good reasou to believe the King was graciously disposed to grant me some relief, having received the applicatiou made to him in the most favourable manner. I have now the pleasure to acquaint your Lordship that his Majesty has beeu graciously pleased to appoint me three hundred pouuds a year; and Mr. Pelham, without my taking the liberty to desire it, was so extremely humane and good as to pay up a hundred and fifty of it before it became due, knowing my distressful situation. I could uot have beeu so far wanting in duty and gratitude to you, my Lord, as not to have informed you of this loug ere uow, but that I still expected from post to post an answer to my former letter; beiug

deeply impressed, as I mentioned in my last, that whatever good fortune has befallen me is entirely owing to your Lordship's great and uncommon goodness to me, else I should have been out of the way of receiving any, still at Reims, and there, long before this time, without credit and in the most deplorable condition. Judge then, my Lord, what my sense of your goodness is, and what my gratitude ought to be; I'm snre my heart is full of it, bnt I have not words to express the half of what I feel on this occasion. My Lady Irwin, to whom I owe a thousand obligations, and to whom I often speak my sentiments with regard to your Lordship, can better than I am capable acquaint you with what I cannot find expressions fit to represent to you myself. Her Ladyship, according to her continued favour for me, did me the hononr to introduce me last Friday to the King, who was graciously pleased to receive me with peculiar marks of goodwill and kindness. Lady Irwin, who is acquainted with courts, assured me that the greatest favourite could not have had a more favourable reception, for which I shall ever retain a lasting gratitude. Next Sunday I am to be introduced by her Ladyship to the Prince and Princess of Wales, and the Friday following to the Duke,[10] and Princess Amelia.[11] Excuse the length of this letter, and do me the justice to believe that I am, with the highest esteem and the greatest regard, my Lord, your Lordship's most grateful and most obedient servant, and most affectionate cousin,

JANE DOUGLAS STEUART.

January 5th, 1751.

I began the enclosed to your Lordship some days ago, but was not able to finish it till this day, as you'll see by the different dates, being seized with a very severe cold.

Permit me to offer my best compliments to Lord Aberdour and to Lady Mary Douglas. I can't end this without wishing them and yonr Lordship a great number of happy years. It shall ever be my earnest prayer and wish that singular and distinguished blessings may be the lot of my Lord Morton and the lot of his children.

Mr. Steuart offers his respectful compliments to your Lordship, and to Lord Aberdour and Lady Mary.

When yon honour me with a letter, which I long much for, direct for me at Mr. Murray's at St. James's Place.

LETTER XXXIII.

LADY JANE DOUGLAS TO MR. STEUART.

Saturday.

Dear Mr. Steuart,—I have this moment the pleasure of yours, but I bave some disquiet that your cold is not yet quite removed. For Heaven's sake, take care of yonr health, so dear to me.

[10] The Duke of Cumberland, "The Butcher Duke."
[11] Daughter of King George II.

Your generous concern and grief for the death of the Prince of Wales, I join heartily with you in, and in your sympathy with the greatly distressed Princess.

I intended this should have heen a very long letter, but that is impossible at such a confused time. On Monday I expect to make it out; for I do assure you, it gives me great pleasure when I have matter sufficient to make out a long letter to you; it is next to the joy of talking to you, which I am deprived of now; hut this I don't repine at, it being my perfect and constant helief that whatever wise and hounteous Providence allots is surely most certainly for the hest.

I am ever yours, J. D. S.

LETTER XXXIV.

LADY JANE DOUGLAS TO MR. STEUART.

Monday.

Dear Mr. Steuart,—The account you gave me yesterday of your heing so well entertained the day before, afforded me much pleasure. I'm sure all your guests were greatly regaled and pleased with the agreeahle manner you received and entertained them; so young Leslie told me last night, and added that he never saw you in such high spirits as you were that day, which much supported mine, which, thanks be to God, are never very low; hut what he said of your heing the anchove of the company (as was formerly said of Dr. Garth), made them uncommonly high, as if I had taken castor drops; may yours always he so, and flow high without the help of any cordial.

What you say of Lord Glencairn's manner of receiving and answering your proposal I think very well of, and am of opinion it promises well for his intention to serve you.

Trust you in God, and there is no fear of you, some one way or other Providence will point out to give deliverance.

LETTER XXXV.

LADY JANE DOUGLAS TO MR. STEUART.

Wednesday Morning.

Dear Mr. Steuart,—I have just now read your letter over with great pleasure and with satisfaction, and am set down to answer it. The whole contents of it are wrote with good sense, sentiment, and judgment; and that part upon Providence, and the unerring and unsearchahle wisdom and goodness of Almighty God, charms me beyond measure; hy which I see plainly the goodness of your heart in religious matters. May these good inclinations ever grow, which are alone capahle to make one happy.

The little men are, I bless God, very happy.

Appendix III.

LETTER XXXVI.

LADY JANE DOUGLAS TO MR. STEUART.

Saturday.

Dear Mr. Steuart,—I saw the two Miss Gunnings, whom Lady Tyrauley had invited on purpose that I might see them. They are excessively charming; no wonder they gain the admiration of everybody who sees them, and that sprightly Mr. Walker was smote; and I do think they don't want a good share of sense, and I don't think they are much affected; I have seen many who have no title to half their charms much more so.

You were much inquired after by Lady Tyrauley and Countess of Buchan yesterday; I made the properest answer to their compliments I could.

The little ones and I are, I hless God, very well.

LETTER XXXVII.

LADY JANE DOUGLAS TO MR. STEUART.

Dear Mr. Steuart,—You'll see hy the newspapers that Duke Hamilton is married to the youngest Miss Gunning; she's a charming, pretty creature, and generally well spoke of. I am ever yours,

J. D. S.

LETTER XXXVIII.

LADY JANE DOUGLAS TO MR. STEUART.

Sunday Night.

Dear Mr. Steuart,—Since I had the pleasure of seeing you I have had the satisfaction of receiving your two kind, acceptahle letters, hut, being from home, could answer neither of them till just now; and, though late, I begin my letter to assure you that I give the utmost attention to what you write as to my manner of travelling, and shall with pleasure ohserve all your rules, only, in return, be so kind to me as not to have too much anxiety ahout me; douht not my care of myself and of our dear little ones.

A list of my dehts I shall send in my next, or rather leave it enclosed in a letter to you for Grinlay to deliver.

Dear Mr. Steuart, take care of yourself, and be cheerful and easy, as you would oblige and make happy your ever tenderly affectionate

JANE DOUGLAS STEUART.

The Douglas Cause.

LETTER XXXIX.

LADY JANE DOUGLAS TO MR. STEUART

Edinburgh, 18.

Dear Mr. Steuart,—I am now in my own conntry once more, and, hlessed be God, arrived there in perfect safety and in perfect good health; the children, too, are mighty well, and in great good spirits, delighted with everything they see; and the people, as we came along, and here, seem, in indulgence to me, to be highly delighted with them.

We came to town yesterday, the 17th, so that our journey was not a tedious one, and was a very agreeable one in all respects, only the want of you was a painful circumstance, and could not fail to give me abundance of uneasy thoughts. But I assure you, dear Mr. Steuart, I don't indulge them; on the contrary, I hanish them from me, and good reason I have to do so, since I am confident that everything will come out very happily for you and I if we hut trust and resign ourselves entirely to the will and pleasure of Almighty God.

I had the pleasure, on my arrival, to receive your welcome letter from Mr. Colville; I hope all your expectations shall he answered to the full of your utmost wish.

I have nothing yet to write, having seen nobody, hut shall neglect no occasion of writing to you, and I very well know how punctual you are. Madam Hewit held out bravely; she is excessively much your affectionate humhle servant, and I am more tenderly and affectionately yonrs than I am ahle to express. J. D. S.

Since I wrote this Lady Mary Hamilton is come in, and senda you her affectionate compliments.

LETTER XL.

LADY JANE DOUGLAS TO MR. STEUART.

Edinhurgh, September 3rd, 1752.

Dear Mr. Steuart,—I received your welcome letter last post, with Mr. Farquhar's postscript; the assurance he gives me of yonr being in perfect health and good spirits gives me inexpressihle joy and satisfaction; may that agreeable news he long continued to me, which will make me always happy.

Have no concern ahout what falls due the end of this month. I took proper care before I left London to recommend that matter to a special friend, and am to write soon to another about it.

Don't be uneasy and impatient hecause I cannot yet write of anything that is material, but rest content and assured that I have, and will neglect no occasion of doing everything that is expedient and fit to be done in the present posture of our affairs. Many of our friends are out of town, but I expect some of them soon, particularly Lord

Milton, who drank tea with me and sat a long time with me before he went to Kintire or Inverara, and showed me the most cordial affection and friendship that ever he had done in his life.

The children, I bless God, enjoy perfect good health, and are in good spirits; they are mightily caressed here; little Archie is thought very like you.

Lady Mary Hamilton enquires always very kindly after you; she's much your humble servant, as Mr. Hamilton is. I'm mighty well lodged, and commodiously, at Mrs. Maitland's house in Bishop's Land, and at a pretty easy rate, it being the vacance.

Countess of Stair and Mrs. Primrose inquired most obligingly for you. Mrs. Hewit sends you her blessing, and kind compliments. Adieu, dear Mr. Steuart, I hope my next shall be fuller of matter. In the meantime I am, and ever shall be, most tenderly and affectionately yours, J. D. S.

LETTER XLI.

Lady Jane Douglas to Mr. Steuart.

Edinburgh, September 20, 1752, N.S.

Dear Mr. Steuart,—This is the fourth letter I have wrote to you since I came here. I hope they're come safe to your hands. I would have wrote oftener, as it is the greatest pleasure I can have at so great a distance from you; but all my friends and acquaintances are in the country except a very few, so that my affairs go at present but slowly on, which makes me write the seldomer, having nothing as yet material to acquaint you of. I think your letters come slowly on too; these three posts I have been looking for that satisfaction, but it is not yet come; and I have answered each of your letters punctually that I received since I came to Scotland.

I have yet had no answer to the letter I wrote immediately on my arrival here, to a person who is near my brother's person, in order to be shown to him. I, therefore, design to write directly to my brother himself, to see what effect that may have. I have not yet got an answer to the letter I wrote to Mrs. Duncan of Lundie; I expect it every day. I much wish to know what influence yours has had on your brother. Last Sunday I went to see your cousin, Mrs. Betty Lesly. She received me with the utmost kindness, and spoke of you in the most obliging and affectionate manner; she would have prevented my waiting on her, but, just after my coming here, her sister, Lady Balgowan, died.

This day Archie and Sholto are to begin to learn to read by one Warden, recommended by the Countess of Stair as one that teaches well and brings children forward in a short time. I told them I was writing to you, and they both prayed me to give their duty to their papa.

I dined last Monday with Mr. Ker,[12] our Parliament man; he's married to my cousin, Betty Kerr; you was kindly remembered hy them, and your health and the children's drunk with great marks of affection. I intend to write again by Saturday's post; in meantime I must hid you, dear Mr. Steuart, adieu. I am, with the utmost affection, yours,

J. D. S.

LETTER XLII.

Lady Jane Douglas to Mr. Steuart.

Dear Mr. Steuart,—I'm not a little uneasy that you're quite out of money. I am at present making it my endeavour to purchase a small sum, which, if I succeed, which I hope I shall, you shall soon share of it. In the meantime my heart is full of the warmest gratitude to that good man, your faithful friend, Captain Cockhurn, for his uncommon friendship and civilities to you; and I flatter myself that you and I shall have it in our power, and that soon, to show him the sense we have of his great goodness. Though such kind offices as his has heen to you these many months past are hardly possihle ever to he repaid, offer him my grateful and regardful compliments.

I have wrote a most affectionate, and even a most suhmissive letter last Thursday to my hrother; what the result may be I cannot yet determine. When I can learn, you shall he informed. In the meantime keep up your spirits, and trust in God's great goodness, as I do; and, as I am, he entirely easy and happy. I really am strongly impressed that we shall soon get some deliverance out of our present calamitous state; hut whatever happens, I am wholly resigned and satisfied since you are in good health, as I and our little ones are. What cause have we then to grieve? Put that far from you, I beseech you, dear Mr. Steuart.

Pray don't he discouraged that you are so long of hearing from Lundie; he is not yet arrived, and I'm afraid his affairs in Ireland have heen more trouhlesome than he expected, and to have detained him long; hut I hope they'll come out well at last. I can't hut interest myself in that good man's concerns; and his wife, too, has been my long-tried, constant friend. Mrs. Hewit sends you her hest compliments and good wishes. She and I and the children are happy in being here, out of the smoke of the town. All my regret is that you are not here, which would make everything to a wish; hut we'll meet when Heaven pleases, and that's enough. Poor Mrs. Hewit has almost as much anxiety for that happy event as I have. Adieu, dear Mr. Steuart. I ever am, in the tenderest manner, yours,

J. D. Steuart.

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[12] Mr. James Ker, an eminent jeweller, formerly member of parliament for the city of Edinburgh, and much in the confidence of the late Mr. Pelham. [Original note.] He married in 1750, Elizabeth, daughter of Lord Charles Kerr of Cramond.

Appendix III.

Dr. Clerk[13] is as kind as ever, but is much in the country, having few patients in town. You may jndge the children's indisposition and my own were very slight when I neither called Clerk nor Eccles; bnt Mr. Eccles has, since my arrival, come every day to see me; never was there a kinder nor a better man. Also, Dr. Dundas is excessively kind and obliging, inquired in the kindest manner for you, and ordered a medicine for me when I was a little ill; comes constantly to see me, hut will take no money. Eccles, too, asks after yon in the most obliging way.

LETTER XLIII.

Lady Jane Douglas to Mr. Steuart.

Hope Park, 15th November, 1752.

Dear Mr. Steuart,—I received your letter last Tuesday, and would have answered it the very next post if I had had anything material or mighty satisfactory to say; but as that does not happen to be the present case (but in due time it will come), I delayed writing till this post, last week the holy sacrament being given in Edinburgh, in all the churches, which is just in my neighbourhood.

It grieves me beyond measure, dear Mr. Steuart, that you're so low in money, and that I have as yet got none to send yon; especially as the time of yonr getting some liberty is so near approaching. I'm truly disquieted about this, but to help it is at present entirely out of my power. However, I'm not idle in endeavouring to raise a small sum (a great one is impracticable), and when I'm happy enongh to accomplish it, yon shall immediately share in whatever it is. In the meantime, keep np your spirits, which yonr letter assures me you do, which charms me, as all of it does, save that part relating to money matters.

As to your anxiety about my living in the country, imputing it entirely to economy, which I do assure yon is the least consideration, my dear children's and my own health being the chief motive that made me leave Edinburgh, neither they nor I agreeing with the place. We were truly indisposed almost all the while we were in town, and Sholto had a little fever upon him when I brought him here; he is now, I bless God, very well and hearty; but it was full time to leave a place that impaired our health; hnt for all that I made no great haste to leave it, being eight weeks in town, lodging in the best house in it in Bishop's Land, where I saw all my friends and acquaintances that were then in town; nor will they grudge to step a quarter of a mile out of it to see me here, and when I choose to wait on them, a chair can carry me in five minutes.

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[13] A very eminent physician at Edinbnrgh, and the constant companion of all the men of rank in his time who were distinguished for their learning or their wit and hnmonr. He had a singularly good memory and an inexhaustible fund of entertaining stories, which he used to tell with a shrewd gravity which gave them a high relish. After a very long and successful practice he dropt off in a fresh old age, while he was reading his favourite Horace. [Original note.]

I hope, after reading these reasons, yon'll be persuaded that it is best for me to live in the conntry; so, pray be satisfied and easy as to that article.

Adien, dear Mr. Stenart, be happy and easy in your present circumstances, for Providence will, I trust, deliver us out of our distresses in due time. Depend on this, and on the most tender affection and love of your J. D. S.

Archy and Sholto send you their humble dnty. They speak freqnently of yon, and are perpetually writing letters to you, especially Archy; it is his chief employment.

Mrs. Nelly, in the most affectionate manner, sends you her best compliments; she longs much to see you, and if her prayers and mine are heard, you'll soon be here.

LETTER XLIV.

LADY JANE DOUGLAS TO MR. STEUART.

Hope Park, 18th November, 1752.

Dear Mr. Steuart,—I received the pleasnre of yonr letter of the 11th yesterday, in which yon complain of my being become mighty lazy. I confess I did not write for six days, hnt that was occasioned by the holy sacrament's being given in all the chnrches of Edinhurgh, which solemnity I had the honour to attend; so my not writing proceeded from no nnkindness nor carelessness about yon, dear Mr. Steuart; and pray observe my present pnnctuality in answering your last letter, this being the day after I received it.

I went to the assemhly this last Thursday, the King's birthday being solemnised here on that day, because the week before was set apart on account of the holy sacrament. I deal not much in public diversions; it would ill become me as you're in confinement; bnt our dear little ones and I as well as yon are under snch great obligations to his Majesty that I thought it my indispensable dnty to be present on the day that was appointed for solemnising his birthday, that I might by that demonstration express publicly to the world the sense I have of his Majesty's great goodness to me and mine; and for that reason I took the children along with me; and I cannot really express the warm and kind reception we met with from the whole assembly, which was extremely crowded and full of company. Archy and Sholto behaved to a wonder, and were caressed beyond measure. I thought the people would have eat them up; and very many that I did not know complimented me upon their account, and upon my being returned to my own country; so that I wanted nothing to make me perfectly happy on this occasion hnt yonr being there to share in my satisfaction, and so to make it complete.

I made Mr. Linn of Gorgie introduce me to my Lord Advocate's lady, who was directress that night. She received my compliments

better than I deserved. The Advocate is one of my best friends. I'm under great obligations to him, which I'm fond of, as I look upon him as a very valuable man, as well as a person of weight and greatly esteemed. Lord Home, Lord Napier, and Mr. Linn, and many others, asked kindly for you; so you see you're not forgot here.

Take no care about my managing material matters in a right manner; my submissions to my brother, and all the affectionate demonstrations I can possibly show him, are right to be done. These cannot, and shall not hurt my interest, but promote it.

I'm excessively sorry that our good friend, Captain Cockburn, has been so ill; I hope to hear by your next that his health is entirely restored; he has my best wishes for that, and for everything else that may be agreeable to him. Offer him my best compliments, and tell him from me he has the prayers of all the ministers in our churches every Sabbath day, which are that God may spare all useful, valuable lives; without any flattery, he is amongst that number.

I have not yet got the money borrowed, but am doing my endeavour for that purpose. It grieves me to think how you are put to it at present. May God in his great mercy send us relief.

Mrs. Nelly offers you her most affectionate compliments, Archy his humble duty, but Sholto is not at leisure to send you any, he did in my last. He is, blessed be God, quite well again, as we are all.

Pray take care of yourself, and keep up your spirits; all will be well if we submit and have patience.

This is a long letter, I'm sure, but very undistinctly wrote. Excuse it, dear Mr. Steuart, and accept of my best wishes, and of the tenderest and affectionate regard of your

J. Douglas Steuart.

LETTER XLV.

Lady Jane Douglas to Mr. Steuart.

Hope Park, November 28th, 1752.

Dear Mr. Steuart,—I find it a matter more difficult than I imagined the raising any money here; though but a very small sum I demanded, it has not yet been in my power to procure it, but I am still in hopes to succeed. In the meantime I am much perplexed and uneasy with this disappointment, chiefly on your account, too well knowing how much you want a supply. But pray don't be discouraged, dear Mr. Steuart, at these ruhs and little strokes of ill-fortune; all will, I hope, go well with us, if we behave with patience and resignation to the wise Disposer and Orderer of all things. It is our interest as well as duty in all circumstances and in all situations to have such a submissive disposition of mind to the Almighty power who governs all affairs, and who can do no wrong.

Dr. Clerk was here the other morning. He's just in his usual friendly way to me, and likeways in regard to you, speaking a great deal of you with the greatest friendship imaginable.

Give my best compliments to our valuable friend, Captain Cockburn, and to Mr. Mackercher. I hope the captain's health is perfectly restored, and that Mr. Mackercher's affairs are going on in a manner that all good people wishes.

We are well here, blessed be God, and our dear little ones in good health and spirits; they both send you their humble duty and Mrs. Nelly her most affectionate compliments. Adieu, dear Mr. Steuart. Keep up your spirits; that and your health is my greatest concern. While these are in good condition nothing can disquiet your ever tenderly affectionate

JANE DOUGLAS STEUART.

LETTER XLVI.

LADY JANE DOUGLAS TO MR. STEUART.

Hope Park, 5th December, 1752.

Dear Mr. Steuart,—I received the pleasure of your welcome letter of the 25th November last Thursday, some part of which was mighty agreeable; that of your assuring me that you are in perfect health and in good spirits is beyond all the happiness anything in this world can possibly bestow on me.

Upon the Duchess of Hamilton's coming to town, I went to pay her a visit, but was refused access, the Duke having wrote to my brother to demand of him, in case I offered a visit to the Duchess, whether it would be agreeable to the Duke of Douglas that it should be accepted or not, in answer to which my brother wrote that he by no means pretended to dictate or lay down rules to the Duke of Hamilton; but since he intended never to see his sister, he would take it well and kindly if Hamilton did not see her; upon which account my visit was not received. This Dr. Clerk came out here the other day and told me, having read my brother's letter to Hamilton, who has gained no honour nor credit by this low sycophanting procedure; on the contrary, all the good and disinterested wise part of mankind look upon him with abhorrence and detestation, reckoning him the meanest, as well as wickedest of mortals, who, by such unjust practices, endeavours to widen the breach between a brother and a sister; and by that means to see, if possible, to place himself in the sister's room, who is undoubtedly the lawful heir. Pray don't let this piece of news trouble you; the flattery is so gross, I hope it will rather be of service than any hurt to me; it only shows a very mean, bad heart, of which there are too many at present in the world. Adieu, ever yours,

J. D. S.

XLVII.

LADY JANE DOUGLAS TO MR. STEUART.

Edinburgh, August 27th, 1752.

Dear Mr. Steuart,—I had the pleasure to write to you the next day after my arrival here, and also to receive two letters from you,

which gave me great comfort. I now more than ever feel the joy it gives me to hear from a friend from a far country, and am sure you'll give me that satisfaction, dear Mr. Steuart, often, knowing your tenderness and your punctualness, even when I was at a less distance. I have nothing as yet considerable to write to you from this; only I was received, and our dear little ones, by all my relations and acquaintances now in town, with great marks of friendship and affection. Lord Milton was remarkably friendly and kind, came immediately to see me, though in a great hurry preparing to go to Inverara to the Duke of Argyle, who is at present there. He appeared mighty fond of the children, who behaved extremely well, and with great vivacity and spirit.

I shall once or twice a week write and let you know how matters go. In the meantime, dear Mr. Steuart, be perfectly easy and keep up your spirits, for all will be well, and my happiness depends upon your ease of mind.

Mr. Hamilton and Lady Mary supped with me the other night; they spoke with a great deal of esteem of you, and drank your health with much cordial affection.

The children are perfectly well, I bless God. I ever am yours,

J. D. S.

LETTER XXVII.

From Lady Jane Douglas to——.

Sir,—I received the favour of both your letters; that just on my arrival in Edinburgh and the other some weeks ago. It gives me inexpressible pain to find by them that my brother continues still inflexible; nay, seems to be more than ever incensed against me, notwithstanding that I have made him all the submissions, by writing in the most humble, as well as affectionate manner, and in giving up my papers, which were of great consequence and advantage to me to have kept; yet, to please him, I have resigned them, without being compelled by any other motive than my inclination to do everything that might contribute to his satisfaction, if happily by these concessions I might gain back his favour again, which is all my desire, and the utmost of my wishes. Let him give his riches to whom he pleases, even to those that meanly and dishonourably court him for it; amazing that he does not see through their selfish view so manifest to all the world besides, and which every wise and honest man has in the utmost abhorrence and detestation! I pray God to open his eyes, and to pardon those that are going on in such dishonest and wicked practices; they are as much my brother's enemies as mine who conduct themselves in this manner.

I must acquaint you with a pretty odd procedure in Mr. Archibald Stuart.[14] I gave him my papers to deliver to my brother. Mr.

[14] Mr. Archibald Stuart, father to Mr. Andrew Stuart, agent for Duke Hamilton in the Douglas Cause. [Original note.]

Stuart received them from my hands with remarkable transports of joy—a very strange demonstration to show before me, who must suffer so much in my interest by delivering them up. But this is the time of my suffering all kinds of distresses, even insults too.

Mr. Stuart promised, without my desiring it of him, to use his warmest endeavours to persuade my brother to restore to me the 30,000 merks which he had formerly made me a present of, which paper I gave up amongst the rest. He also assured me he would do all in his power to incline my brother to restore back the £300 withheld these few years past. I thanked Mr. Stuart for these fair promises, and desired him to press that matter no farther than he could do it safely for himself, and not to incur my brother's displeasure by any act of friendship done to me; begged him to make me a report how things went, at his return from Douglas Castle; but, so far from complying with that just and reasonable request, he has never once come near me, nor sent me one single line, though I reposed so much trust in him as to give him my papers to deliver to my brother, which I gave to Stuart on the 27th of October, and now it is the 8th of December. I am not ready to suspect, or to put bad constructions upon any person's way of acting; but this conduct of Stuart's must occasion various thoughts. When I inquire what this gentleman is about that occupies him so much that he does not find time to behave with common civility and decency where it is due, the answer I receive is he is constantly down in the Abbey, consulting and contriving matters with the Duke of Hamilton, whose behaviour to me I suppose you are not ignorant of; but in case you should, I shall here give you a description of it. Upon the Duchess of Hamilton's coming to town, I attempted to pay her a visit but was refused access, which surprised me a good deal, and yet more, when a gentleman, some time after, came and told me the reason of it was that the Duke of Hamilton had wrote to my brother, demanding of him in what manner he should behave in case the Duke of Douglas's sister were to offer a visit to the Duchess of Hamilton, to this letter my brother's answer was that he did not pretend to dictate to the Duke of Hamilton, but, as he resolved never to see his sister, he would take it well and kindly if the Duke of Hamilton did not see her. This letter of my brother's Duke Hamilton showed the gentleman who told me what passed, which, amongst other things, this noble Duke said it was very strange that Lady Jane should endeavour to force a visit where it could do no service to her and a great deal of hurt to him. Such sentiments! The reason why Lady Jane honoured the Duchess of Hamilton with a visit was because she could not imagine the Duke her spouse was half so mean and wicked as he showed himself to be, nor that the Duke of Douglas was so weak and easily imposed upon. My brother little imagines that he is the dupe in this matter, and the subject of Duke Hamilton's and all his little creatures' derision, while all the good and wise part of mankind grieve and lament to see the head of such an ancient and noble house fallen so low.

Let me know what you think of Stuart's conduct. If any has

represented me in a bad light to my brother, it is hard he won't permit me to clear myself, which I could easily do, would he bnt allow me to be so happy as to see him, or to read my letters. I would offer him here my most respectful and most affectionate compliments; hnt, perhaps yon dare not venture to own I have wrote to you; and yet he can't be angry that I have forced a letter npon you. Let him then know that I love and regard him, notwithstanding the manner he has chosen to act towards me.

I am, sir,

Your most humhle servant,

JANE DOUGLAS STEUART.

LETTER XLIX.

MRS. CARSE TO LADY JANE DOUGLAS.

Madam,—'Tis now a very long time since I gave your Ladyship the trouble of a line from me, and your silence may sufficiently reprove and forbid my presuming to trouhle you any more that way; hut, heing strongly attached to your interest, I can't forhear letting you know how active your enemies are against you, especially as I'm peersuaded yonr great genius and address may furnish you with ways and means to disappoint your enemies.

Some time ago I had it from a good hand that a certain elevated, foolish woman, viz., Archihald Stuart's wife, as she was holding ont her throng of husiness, and having nohody to assist her, as Mr. Stuart had five clerks away with him, it was asked her, where? She answered—To Douglas Castle, he having a very great deal of bnsiness there; and very soon, said she, that great and ancient house, the hrag of the world, will he quite extinct. How, says the person she talked to, has not Lady Jane two fine sons? Ha, says she, they'll never be owned hy his Grace, and all that's possihle to be done against her and her's, will soon he put in execution, and a great deal to this purpose. Now, madam, I don't in the least qnestion many people's being very active against your Ladyship, and against the interest of that illustrious house; hut I'm very hopeful his Grace won't he their dnpe. I assure your Ladyship I helieve White is no friend to your interest, nor for the perpetuating of the very ancient and illustrions honse. For I own to you, upon the hearing of that silly, lifted-up woman's idle clatter, I very rashly took upon me, and wrote to his Grace, and told him very freely the whole story and the anthor. I also told him that these boys was an evidence that a good Providence was taking care to keep a stem of it alive; that there was none upon earth that was come of my Lord Marquis his father, or the good Earl Angus, his grandfather, hut these two boys, after his Grace and sister; it wholly depended upon him to strengthen their right, and if he did not, or did anything against them, it would be the foulest blot in his character. A good deal more I said very plainly, hut in a

coaxing way. I thought it the best way to get it pnt in his hand, to give it to Thomas Trotter, who wonld put it in Stockbrig's hand; and so I desired Mr. Trotter afterwards to inquire at White if he knew how his Grace took it. But Mr. Trotter said that he was afraid to inquire, for my Lord Duke was so exceedingly nneasy at the hearing of your name that it put him in a sweat, or made him like to faint; bnt that is so far an untruth, that to Charles Donglas, who officiates for Mr. Carse, he spoke of your name several times, and of the colonel's, as I wrote Mrs. Hewit. And I beg pardon for troubling you with this long story, and did not rather write it to Mrs. Hewit; but indeed I durst not put it in any hands bnt yonr Ladyship's, who, I hope, will keep it entirely to yourself, for if it should take the least air, my speaking against Stuart's wife, it might make them act against me, as you know their connection with Major Cochrane;[15] but I've some apprehensions White has not delivered my letter; I shall soon search and find it out.—I am, &c.

LETTER L.

Lady Jane Douglas to Mr. Steuart.

Hope Park, 15th December, 1752.

Dear Mr. Steuart,—I received the pleasure of your letter last night; what you say of your being in great spirits gave me excessive joy and satisfaction. May you ever be so, and I shall ever be satisfied and happy.

Archy and Sholto are very well; they're often speaking of you. How happy would you make us all here were I not afraid that by the unfortunate situation of my affairs, I might be the cause of exposing you to danger.

I'm grieved beyond expression that at this time it is not in my power to raise any money; but if you can at present get a supply sufficient to bring you down, and to free my things lying out, I think I shall be able in a very few months to raise a little money, and by that means make you a return.

LETTER LI.

Lady Jane Douglas to Mr. Steuart.

Hope Park, 6th February, 1753.

Dear Mr. Steuart,—With the greatest pleasure I received your two letters, the one the 20th, the other the 30th January; particularly the last, which I got yesterday; you seem in it to abound in spirits, notwithstanding the many disappointments you have lately met with

[15] Major Cochrane, now Earl of Dundonald, married a daughter of Mr. Archibald Stuart, she being a great beauty. [Original note.]

in money matters, and even though you cannot yet be certain that the raising the sum necessary for you can he obtained, this fortitude and resolution of yours amidst all your own and my difficulties gives me utmost joy and satisfaction; and to transfer what will support and augment your good spirits I here assure you that it will be in my power, please God, against the beginning of the month of April, so far to make you easy as to free you of all your small debts in London; so that, though your own money scheme should fail, let this assurance I have given you serve to keep yon from being discouraged.

Why are you displeased that I regret and am grieved that I have brought you into encumbrances? I well know your good, generous heart, and that such things only give you pain on my account; and won't you then allow me so far to resemble you as to suffer, when I am in this matter the occasion of your suffering?

I'm concerned for your deafness; pray take care to keep very warm in this severe cold weather.

Nothing passes in these parts worthy your hearing. The best news I have to write is that dear little Archy and Sholto are in good health and perfect good spirits. They are often speaking of you.

LETTER LII.

LADY JANE DOUGLAS TO MR. STEUART.

Thursday, Hope Park, February 22, 1753.

Dear Mr. Steuart,—I received your welcome letter this last Tuesday, and I answer it the immediate post following, that I may occasion, dear Mr. Steuart, no more anxious fears hy not being sometimes quite so punctual as I ought to be. Never hlame me after this for my anxieties, since you find how impossible it is altogether to avoid them; but my uneasiness are only in regard to those I love and am interested in, in which number you are my chief and dearest concern. As to other incidents in human life which fall out to everybody, sometimes prosperously, sometimes adverse, these sit mighty easy upon me, as I am sure a wise hand, and a hand full of mercy, disposes of all our fates and orders everything for the best, so I am always satisfied and pleased.

At the same time I received your letter last Tuesday I got one from Lady Lundie, which I enclose here. You'll see by it that it is not want of friendship, kindness, nor even civility that occasions her and her husband's long silence, but a certain awkward, ill-judged fear that a great many people have upon their spirits when they have no good news to tell, little knowing that your spirits and mine are able, by the supporting goodness of Almighty God, to bear bad tidings.

Lady Lundie's advice to me is no doubt well meant, aud with good will to us. I don't know how you may relish it, hut I intend to put it in practice in a few days; I don't see any mighty act of con-

descension in one lady's writing to another; besides, I can stoop at any time to serve you.

I'm sorry you are still disappointed in raising the money so necessary for you; but I am still hopeful you shall obtain it at last. It grieves me that it is not in my power to assist you.

I shall be more punctual and frequent in my letters hereafter, and I beg you to write as often as you can.

Archie and Sholto are very well, which makes me happy, as I'm sure it will make you; and I am in good health and in good spirits, as, I hope in God, you continue to be, the thoughts of which is my best cordial, and a rich one too, though in other things not in mighty affluence; but I trust in God's goodness that you and I shall be provided in what is necessary to make us live easily, though not in great wealth.

Lady Mary Hamilton, Marquis Lothian's sister, begged me to send you her affectionate compliments. Good Mr. Gustard, the minister, who I see often, remembers you always in the kindest manner. I ever am most affectionately yours, J. D. S.

LETTER LIII.

Lady Jane Douglas to Lady Mary Menzies.[16]

Few things could have been more agreeable than my dear Lady Mary's letter, which I had the honour to receive last week. It belongs to me, madam, to make apology for the fault of not writing sooner, which you so obligingly charge yourself with; and I did indeed, immediately on my arrival in Scotland, intend to have wrote to your Ladyship; but various things came in the way (not mighty delightful) which prevented my having that agreeable employment; the warm expressions you honour me with of your continued friendship give me a satisfaction more easy to be imagined than expressed; only be assured I prize the favour much and value myself upon it.

It gives me great pleasure to think how happy my dear Lady Mary has been these few months past in the company of her brother, and such a brother as Mr. Mackenzie[17] is I loved when a child, I admire him now, and I pay him no compliment (worth can't be complimented) when I say he's the agreeablest and finest young gentleman our country can boast of at present. Amiable Lady Betty[18] I likeways esteem much; and, to show that I am not unacquainted with her merit, I think she deserves Mr. Mackenzie, which is to say a great deal. Your Ladyship has been so happy part of last, and beginning of this new-styled year in their society, that I can only wish you

[16] Lady Mary Menzies, sister to the Earl of Bute, and wife of Sir Robert Menzies, Baronet.

[17] The Hon. James Stuart Mackenzie, Lord Privy Seal for Scotland.

[18] Lady Betty Mackenzie, daughter of John Duke of Argyll and Greenwich, wife of the Hon. James Stuart Mackenzie.

many, very many such years of satisfaction, with every other joy your heart can further desire.

The town is mighty gay, I'm told. But I can give no account of its entertainments, going to none of them, save to one assembly several weeks ago, appointed to solemnise King George's birthday; I thought it my duty to appear on that occasion to testify my regard and gratitude to my royal benefactor, who is the only crowned head I ever was personally under any obligation to.

The account your Ladyship gives of my dear young Mr. Steuart[19] and his family gives me great pleasure. I have from all hands heard the best character of them, and of Bellachin his lady, and their whole family; and your Ladyship's good opinion of them convinces me that all I hear to their advantage is true. I saw Mr. Jacky several times six years ago, and I did think him a very fine and handsome youth; my little Archy is reckoned by several people to resemble him much, which I take as a compliment to my little man. Mr. Steuart, whose affairs did not permit him to come to Scotland along with me, has the honour to be, I do assure my dear Lady Mary, her devoted humble servant and her great admirer, as well as a sincere friend and servant to Sir Robert.

Lady Grace Campbell's[20] late lying in, and my perplexed affairs, has prevented my waiting upon her Ladyship as yet; but I intend to do myself that honour soon.

If I could expect to see my dearest Lady Mary in Edinburgh while I remain here, it would give me inexpressible satisfaction; but it is a happiness I dare not flatter myself with. My stay here is uncertain, having thoughts of going to the north of England; but before I leave these parts I shall certainly give your Ladyship notice. Adieu, my dear madam. Favour me always with your friendship, which I deserve, for this one reason, that I have the honour to be, with the most perfect esteem and regard, your Ladyship's most obedient, humble servant and most affectionate cousin,

JANE DOUGLAS STEUART.

Hope Park, near Edin., 23rd Jan., 1753.

I offer my best compliments to Sir Robert Menzies; I beg your Ladyship will likewise make them acceptable to Mr. Mackenzie and Lady Betty. Your old friend Mrs. Hewit is just as much your Ladyship's devoted servant as ever, and begs to be most kindly remembered to you, madam, and her good friend Sir Robert. Likewise, she begs leave to offer her compliments to her charming favourite, Mr. Mackenzie, whom she loves most tenderly.

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[19] Mr. Steuart, son to the late Sir John Steuart by his first marriage, afterwards Sir John Steuart, Bart., of Grandtully. He married Clementina, daughter of Charles Steuart of Ballechin.

[20] Lady Grace Campbell, sister to the Earl of Bute, and wife of John Campbell, Esq., Lord Stonefield.

LETTER LIV.

Lady Jane Douglas to the Duke of Douglas.

Dear Brother,—I came down from London on purpose to wait upon, and pay my dutiful respects to you, which I wrote, and acquainted your Grace of on my first arrival in Edinhurgh. I was not honoured with any answer; notwithstanding, I resolved to make offer of a visit to your Grace, but was detained by various people industriously hringing it to my ears that such an attempt would incur your displeasure, and give you a great deal of uneasiness. Upon which I, with much regret, laid aside what above all things I wished and was ambitious to have performed; hut now that I am under a necessity to go into England, to seek out a cheap place to live in, I could not think of leaving this country without making an effort to see you once before I die, to vindicate the cruel, false aspersion that my enemies, wicked and designing people, have as unjustly, as cruelly spoke against me, and which, I am informed, have reached your ears, and that your Grace gives credit to them, the thoughts of which pierces my heart and gives me inexpressihle anguish. What, then, must my sorrow he, and what an additional torment do I now feel, when in your house, with my children, come to throw ourselves at your feet, we are debarred access to your presence! Recall that cruel sentence, I heseech you, if you don't intend to render me all my life miserable, and to shorten it too, which must he the case; for it is impossihle to live any time with a load of such exquisite grief as mine is; all I beg to be permitted to speak hut a few moments to your Grace, and if I don't, to your own conviction, clear up my injured innocence, inflict what punishment you please upon me; I shall receive it willingly, and shall think I deserve your utmost rigour if I cannot justify myself fully of all that is hasely and falsely laid to my charge. In hopes that your Grace will, with great goodness and humanity, allow this my petition to take place in your heart, and you will call me hack again, I shall remain this day and the following night in Douglas town.

The children, poor hahies, have never yet done any fault; may I not then plead for their heing admitted and allowed to see you, and to kiss your hands. The youngest, Sholto, is thought to resemhle you much when you were a child; and Archie is thought hy a great many to have the honour too of resembling you much when you became a man.

I am, dear hrother,

Your ever affectionate sister,

Jane Douglas Steuart.

Appendix III.

LETTER LV.

From Dr. Eccles[21] to Mr. Steuart.

Edinburgh, Nov. 21, 1753.

Sir,—With very great grief and concern I take this opportunity to inform you that Lady Jane Douglas Steuart died this day at noon, very much emaciated and decayed. She bore her sickness with Christian patience and resignation, accompanied with that remarkable sweetness of temper and affable behaviour so natural to her.

Your son is a very fine child, is thriving and healthy. I pray God may preserve him. Poor Mrs. Hewit is very much distressed and grieved. God support you under this heavy affliction.

LETTER LVI.

From Mr. Colvill[22] to Mr. Steuart

Edinburgh, 24th Nov., 1753.

Sir,—I am obliged to write you this melancholy letter, with the deepest grief and concern imaginable, for the death of that dear angel, Lady Jane, who departed this life the 22nd instant, at twelve o'clock forenoon. Poor Mrs. Hewit is in the greatest affliction that can be; she is neither capable of writing nor speaking to anybody, only begs of you, for dear Archy's sake and her's, you'll take care of your own health and preservation. She feels your distress in the most tender way; but all the comfort she can give you is that, while dear Lady Jane was alive, nothing was wanting that either gave her ease or satisfaction; nobody durst venture to write you the situation she was in; she absolutely discharged it. There is an express gone away to the Duke to see what he will do; however, whether he will do or not, everything shall be done about her like herself. Mrs. Hewit has had credit all along to support her, and still will for what is necessary; therefore, she begs you'll let nothing of that trouble you; and when all is over, and she gets herself composed, she will give you a full account. Poor woman, she is left at present with a few shillings in her pocket, but her only lamentation and cry is for you.

The poor dear child is at present very well, and she has just given orders for his mournings. I am, &c.

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[21] Dr. Eccles, an ingenious physician at Edinburgh. {Original note.}

[22] Mr. Walter Celvill, baker in Edinburgh, and one of the macers of the Court of Session, a sensible, worthy man, and much attached to Lady Jane Douglas. {Original note.} He was cousin of Mrs. Hewit.

LETTER LVII.

FROM MR. GUSTARD TO MR. STEUART.

Edinburgh, Nov. 24, 1753.

Sir,—I would been sorry to have been the first to give you the melancholy news of your worthy lady's death. I know you have been prepared to hear it.

You were amongst the happiest of men to be matched with such a one, not only for her quality but qualifications; she excelled the most of her sex. But, as she's gone and shines no more in this world, good reason we have to hope she has made a happy change, where all sorrow and sighing fly away. She bore her affliction with great patience and resignation to the holy disposing will of God. She had her noble spirit till near her very last.

Mrs. Hewit, a friend indeed, will, no doubt, give you a particular account afterwards of her sickness and manner of dying. I pity you, sir, and your child, under such a loss and shocking trial. But this is the doing of the Lord; therefore we ought to be dumb, not opening our mouth, because He did it. God is righteous in all his doings, but we have sinned and deserved the worst we can meet with. May we be awakened to consider our ways, and to turn to Him that smiteth, and who alone can heal. Peace with God through Christ is the best cordial under trouble and at a dying hour. I am, &c.

LETTER LVIII.

SIR JOHN STEUART TO LADY JANE DOUGLAS.

Dearest Lady Jane,—As I have had such proofs of your disinterested and grand sentiments, I hope now that hard (and I must think) undeserved fate, has done its worst. I hope the same constancy of mind, with your Christian resignation and philosophy, will support your magnanimity in this trying stroke of all these virtues summed up; my dearest lady, please remember it is no fault to be poor; I would choose to be honourably so rather than purchase riches at the expense of it. This cloud will soon disperse, we have reason to hope, and will prove but a whet to make us relish the more better times when God pleases to send them. I am entirely resigned to His will, and can bear every cross with patience, but being kept from the pleasure and happiness of being with you; and even in that I am supported by hopes that our separation can be of no long continuance, which I have reason to expect from many different views, any one of which will put an end to the only misfortune I regret, providing that you are easy till that happy period.

Appendix III.

LETTER LIX.

Sir John Steuart to Lady Jane Douglas.

My dearest Lady Jane,—Your delicatess this morning were well and kindly meant, but, if I may say it, somewhat mistaken; for, dear madam, as I could not but perceive an uncommon concern and grief, with an effort to conceal it, your refusing to tell me the deplorable cause made me imagine it proceeded from something still more fatal (if anything can be more so) than even the death of our estimable and every way valuable Lord Blantyre, in whom our country suffers irreparably, in the most hopeful of our youth, endued with every good and shining quality, without the least tincture of vice. But, D.L.J., to what purpose your so excessive grief, that to your friends, and even to his, rather increases than diminishes the misfortune; should it impair the health of one who had so just a value for his uncommon merit? Besides, madam, you will give me leave to remind you that it is upon such extraordinary occasions you are to practise the Christian resignation due to Providence, which orders everything for the best. As far as my poor view can see, he must die, or the world reform, for he was really unfit to live in such an age as ours is; but I shall not pretend to moralise further (to one knows so much better what the loss is and how it should be bore) than by this small word of comfort, he has left no one such behind him that I know of; this reflection should comfort even his afflicted mother, how much more every other distant relation and friend; it does me, who never have felt near so much, but for poor dear Lord Crawfurd; these two nonpareils are taken away, our best friends and most valuable acquaintances (hard strokes!) But, please remember, good Providence raises new friends, and though the best are carried away, the dross and dregs which remain flourishes but for a while, to do as much hurt as the heaven-born geniuses of these departed friends was disposed to do good.

They shall likewise have a period, and heighten the merit and character of the worthy, by the contrast of their characters, to the immortal honour of the former. So, my dearest Lady Jane, do not give way to immoderate grief on this melancholy occasion, but muster up philosophy and religion to your quiet and comfort, which, I assure your Ladyship, is the endeavour of your adviser and affectionate, humble servant,

Jo. Steuart

Monday, 12 at night.

LETTER LX.

Sir John Steuart to Lady Jane Douglas.

My dearest Angel,—In the hurry I was put in writing my last, or rather the postscript to it, I had not time to make answer to any one thing contained in yours, which gave me much pleasure, and, at

the same time, much pain; for, my dearest Lady Jane, at the same time you tell me the dear little men are recovered of their cold, and are going every day to school, I learn the distress yon have been in.

My disappointments in not hearing from Lnndie, though much depends on it, is nothing in comparison with the anxious distress yonr precarions state of health puts me in; so, for beaven's sake, let me have the cordial of knowing you are well, for everything without that is nothing.

I shall direct yonr letters for the fnture as you desire; and, if I had not been a blockhead, might have nnderstood it sooner; but knowing that, yonr Ladyship should have been more explicite.

I know not what I should have done for many months past, but for my friend, Captain Cockburn, who has snpplied me every way, besides eating regularly with him; I hope I shall soon have it in my power to make some return, which is not an easy matter, to snch favonrs, considering everything. I am surprised that in speaking of your indisposition, and that of the dear boys, it did not lead yon naturally to say something of our friend Dr. Clark; sure he continues his allegiance to his Princess. I am glad to hear that Mr. and Mrs. Hepburn are so well in looks, and so forth. They will bring Balfour, who your Ladyship will find a very entertaining oddity, droll flights very uncommon, and sings very genteely, when in the humour of it, which is but sometimes.

I left off till last night's post arrived, in great hopes of letters by it: no. Well, Wednesday may bring me out of my anxious snspense. I never think it can be longer deferred than the first post from my last disappointment.

I ever am,

My dear Lady Jane,

Your affectionate, hnmble servant,

Jo. Steuart.

LETTER LXI.

Sir John Steuart to Lady Jane Douglas.

My dearest Lady Jane,—Your kind letter of tbe 13th instant came not to hand till yesterday, I know not by what accident; God be blessed, it confirms your health's being better and better. Riding is certainly very proper, and indeed all exercise, so tbat it is not over-fatiguing. I must beg leave to remind my dear Lady Jane, now that her appetite and tone of stomach are recovered, to be careful not to eat up to what the stomach may crave, after so long abstinence, and to make that up by eating two or three times a day; for I am convinced that your former method of taking no breakfast or supper, but letting subsistence entirely depend on dinner, was too fatiguing to your stomach, and probably bas been the occasion of your late terrible distress. Excuse this, D.L.J. You know I must play the

physician sometimes, even when less concerned than in this case, where all that is dear to me is at stake. When you let Doctor Clark and Doctor Dundas know how you used to fast and eat, I am more than convinced, they will join in opinion even with a quack; for they have too good sense not to know that one may reason justly in such a case, though not regularly bred to physic.

LETTER LXII.

SIR JOHN STEUART TO THE REVEREND MR. GUSTARD.[23]

London, May 15, 1753.

Reverend Sir,—Lady Jane had the favour of your kind and most obliging letter yesterday, and return thanks for your pious and wholesome advice under her present distress; she is as resigned to the unerring will of Providence as Christianity can make her, though nothing but time can bring us to think of our great loss of so lively and promising a child without a painful concern which is inseparable from the imperfection of nature.

She hopes and expects your prayers for the preservation of her only surviving comfort, and would have wrote you herself but for the painful distress of mind she is under, which cannot but in some measure affect the health of one so delicate. However, I hope the spiritual soulagement she finds from the Holy Scriptures, and proper care, she will very soon be well.

Lady Jane begs you'll make her compliments, with hearty thanks, to Lady Mary Hamilton for her kind concern and taking the trouble of acquainting her brother the Duke, by express, of the distress of his sister, by this unexpected severe stroke; God knows she had, poor lady, enough to bear before, which she did patiently.

Lady Jane joins me in offering our compliments and best wishes to you and your family. I am, sir, with esteem, your much obliged and most humble servant,

JO. STEUART.

Mrs. Hewit offers her regardful compliments.

LETTER LXIII.

SIR JOHN STEUART TO LADY SCHAW.

London, January 10th, 1754.

Madam,—By a letter I had last post I find that the letter I did myself the honour to write your Ladyship, 22nd of last month, has not come to hand; I think myself most unlucky by that accident,

[23] The Reverend Mr. Gustard, one of the ministers of Edinburgh, and father to the ingenious Dr. Gustard at Bath. [Original note.]

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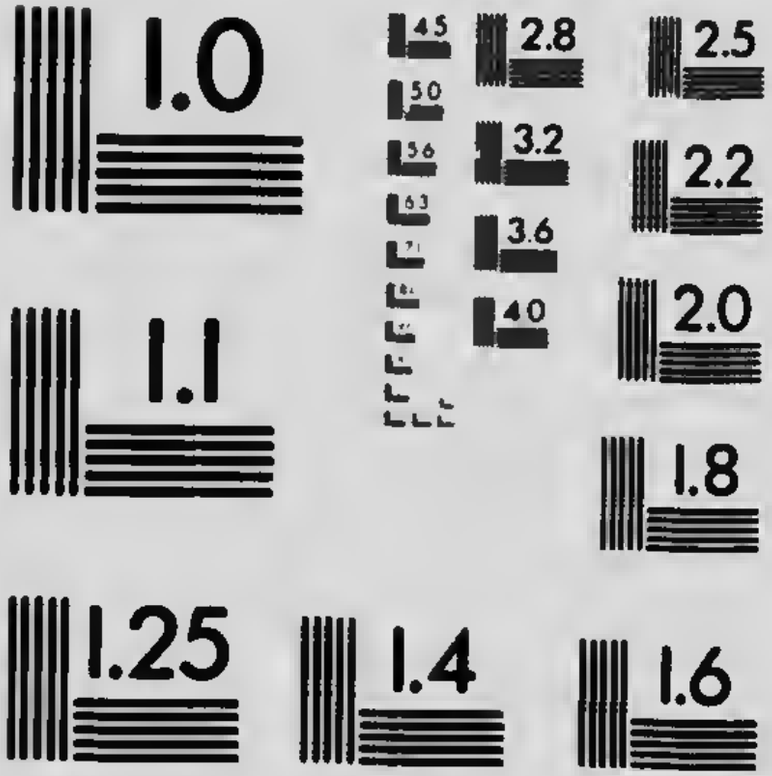

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which must make me appear ungrateful in your opinion, which I must have been very much had I neglected thankfully to acknowledge the great obligation your Ladyship has laid me under by the regardful manner you have choosed to prove your friendship to your dear deceased friend, Lady Jane Douglas Steuart.

Madam, your generous friendship I have the most grateful sense of, and shall fondly embrace all opportunities to show with what high esteem and consideration I have the honour of being your Ladyship's much obliged and most obedient humble servant,

Jo. Steuart.

P.S.—On the cover I have sent a copy of that of 22nd December, which it seems has miscarried.

Copy Mentioned in the above Postscript.

London, Dec. 22, 1753.

Madam,—The kind concern and interest you have been pleased to take in the welfare of the dear infant who is now all that remains of your dear deceased friend, Lady Jane Douglas Steuart, lays me under an obligation I want words to express, though I have the justest and most grateful sense of it. The unnatural indifference of dear Lady Jane's nearest relations, as well as the same in my brother on this melancholy occasion (when my affairs happened to be in some disorder) heightens the favour of your Ladyship's kind interposing very much. I hope my affairs will soon take a turn that will prevent the continuance of the expense your Ladyship is now at, and shall think it my greatest happiness to have an opportunity of proving with what gratitude, high esteem and regard, I am your Ladyship's much obliged and most obedient humble servant.

LETTER LXIV.

Lady Schaw to Mr. Steuart.

Sir,—I received your letter of 10th January last some time ago. with the cover, and copy of the one you formerly wrote me, which I would have answered before this time if I had not delayed it on purpose to see how your child agreed with his new quarters. I can now assure you that, not only I, but others who see him, think that he is improved both in growth and spirit; for, as he is a very sensible child, he was extremely cast down for the loss of his dear mother.

I cannot say but I was extremely surprised both with Lady Jane and your near relations neglecting a duty that I thought incumbent on them, in looking after the only remains of Lady Jane Douglas Steuart, who was entitled to a better fate in this world than it pleased God to give her; and that whatever disobligations they judged they had received from her Ladyship, still the child had no fault from them.

Appendix III.

It was mere Providence that sent me to this place of the country when my Lady left this world for a better one, which gave me the opportunity to hear of the destitute condition her poor infant was in, wbo I brought home, and is my intention to use him as my own child so long as I live; but, as I am old, that probably will not be many years. I wisb your affairs may he settled, so as to take care of your child at my death; till then, neitber I, nor none of mine, have any demands upon you, nor none of yours; and I think myself happy to have it in my power to say that it gives me the greatest satisfaction to show any part of the regard and honour had for the dear deceased.

Another reason for delaying the answer of your letter was that I keep the child close for fear of the infection of the smallpox, as many of tbe cbildren of fashion have heen inoculated this year, all with success, as I did not choose to have Archy inoculated in the winter season; but if the spring were some farther advanced, I purpose to have him inoculated as my own cbildren were, whicb I hope you have no ohjection against, as I am soon to remove to Edinhurgh, where it will be impossible to keep him from the natural infection, which may prove fatal, as it did to one of my grand-children who was not inoculated. I am, sir, your most humhle servant,

MARGARET SCHAW.

Edinburgh, Feh. 21.

LETTER LXV.

SIR JOHN STEUART TO LADY SCHAW.

Madam,—I received the most obliging letter you honoured me with of 21st inst. hy last post. The favours you have laid me under could not have been added to, so much as hy the handsome manner they are done in; the concern you are pleased to express for preventing my dear hoy being in danger of infection from the natural smallpox is most obliging and kind.

And, madam, as you have heen pleased to take the trouble of my dear little Archy, I leave the means of his preservation entirely to your Ladyship's kindness and experience; so please order as to inoculation or not, as your unerring judgment shall direct, which I am sure needs not to he put in mind to take care that the pock be favourable and the person it is taken from of a natural bealthy constitution.

I hope my affairs will soon take a more favourahle turn, that I may he somewhat less sensibly hurt hy the unnatural behaviour of dear Lady Jane's relations as well as mine; they have much to answer for, hreaking the heart of the most meritorious lady ever was born, and next neglecting to take proper care of all she has left; for, as your Ladyship very justly observes, whatever might be alleged Lady Jane had disobliged in, surely tbe infant had never disobliged. But,

I beg to be allowed to pay your Ladyship my respect in this way, whilst at a distance, as I shall fondly embrace all occasions to prove

with what regard and high esteem, I have the honour of being, madame, your much obliged and most obedient humble servant,

Jo. Steuart.

London, February 28, 1754.

If I may be allowed to trouble your Ladyship to give my blessing to my dear little man; I beg it may have addition and sanction of yours, to the many other favours your Ladyship does his dear mother's memory.

If I may take the liberty, after what I have said, to wish, it is that Dr. Dundas and Mr. Eccles may be at the consultation, when and how dear little Archie is to be inoculated; not to put your Ladyship to expense, they will leave that till I see them. But, madame, allow me to remind your Ladyship, they know more of the boy's constitution than physicians, however able, who have not had occasion to know so much of his constitution.

Please excuse this natural anxiety, madame, which, as a parent, you have felt.

LETTER LXVI.

Sir John Steuart to Lady Schaw.

Madame,—After being seemingly long out of my duty, please allow my offering your Ladyship the compliments of the season, with my best wishes and hearty thanks for the great and endless favours you continue to lay me under by the motherly care, trouble, and expense you're pleased to bestow on my dear child (your goodness has, as it were, adopted). My unwillingness to trouble your Ladyship with a repetition of bare and weak acknowledgments for favours so great and uncommon, no words can express, to some might have appeared like ingratitude or want of a just sense of so indulgent goodness; but, madam, your generous and noble way of thinking, that I have so much experience of, persuades me that your Ladyship puts a better and juster construction on my respectful silence; and I beg, madam, you will please be assured that as I have the most grateful sense of your great goodness and favours done me, I am, with great impatience (to have it in my power to offer something of a return) endeavouring to get some money that I may at least replace the expense, though the favour and manner of doing it never can be sufficiently acknowledged, much less repaid. I am, madam, with the highest esteem, your Ladyship's much obliged and most obedient, humble servant,

Jo. Steuart.

Perth, January 1st, O.S., 1756.

If I might hope for the honour of a few lines letting me know your Ladyship is well, should be glad to know where and with whom your tender care has boarded dear little Archy.

Appendix III.

LETTER LXVII.

SIR JOHN STEUART TO THE EARL OF MORTON.

My Lord,—Next to my son's happiness in having the hlood of Douglas in his veins, and the justice his uncle the Duke has been pleased to do him, I reckon it his greatest good fortune that his Grace has pointed out the Duchess of Douglas, his Grace of Queensherry, your Lordship, and some other gentlemen of worth and knowledge to countenance and direct him till he is of age to think and act for himself. I approve highly of this step, and shall never interfere or attempt obstructing a management so much ahler to conduct him than any weak efforts of mine. I never was acquainted with the modes of business. I am now far advanced in life, and have no further amhition than to end my days with decency and decorum, and to do justice to mankind, which, I thank God, the estate of Grandtully will enable me to do, if creditors will hearken to reason and not harass me in a way that cannot serve themselves. When I have the honour to see your Lordship, I will explain myself more fully; meanwhile I am, with the greatest respect, my Lord, your Lordship's most obedient and most humhle servant,

Jo. STEUART.

Edinhurgh, July 27th, 1761.

THE DYING DECLARATIONS OF LADY JANE DOUGLAS.

Mrs. Elizabeth Hewit, spouse to Dr. Lachlan Maclean, late of Philadelphia, deposes "That she was often with Lady Jane ahout the time of her death, and that Lady Jane's fondness for the defendant (Archihald Douglas, Esq.) continued to the last time the deponent saw Lady Jane, which was a day or two hefore her death."

Mrs. May M'Crabbie, milliner in Edinhurgh, deposes "That she (Lady Jane) still insisted that the shock which she had received hy the death of Sholto, and other griefs that she had met with, were so severe upon her that she was perfectly persuaded she would never recover, hut considered herself as a dying woman, and one who was soon to appear in the presence of Almighty God, and to whom she must answer; she declared that these children, Archihald and Sholto, were horn of her body."

Dr. Martin Eccles, physician in Edinhurgh, deposes "That the deponent was oft with Lady Jane during her last illness, until her death; that Lady Jane's fondness for the defendant continued to the last; that she expressed concern what should come of him after she was gone."

Mrs. Helen Hewit deposes "That Lady Jane was attended in her sickness at London hy Mr. James Pringle, surgeon to the Guards, and when he left that place, hy Mr. Fordyce; that these gentlemen told the deponent that Lady Jane's disease was a broken heart; that Lady

Jane retnrned to Scotland in Angust, 1753, and died the 22nd of November following; that abont four hours before she died she ordered her son Archihald, the claimant, to be brought to her, when she laid her hand upon his head and said 'God hless yon, my child; God make you a good and an honest man, for riches I despise. Take a sword in your hand, and you may one day he as great a hero as some of your predecessors.' '

THE DYING DECLARATION OF SIR JOHN STEUART.

Murthly, June 7th, 1764.

Having lately had some severe fits of the gont in my stomach, with my nealth in other respects much impaired, these, with my great age, going seventy-six, make it appear incumhent on me to make the following declaration, as aspersions have been thrown ont by interested and most malicious people as to the hirth of Lady Jane Douglas her children, in order to roh the surviving child, Archihald, of his hirthright, by making his parents, Lady Jane and me, appear infamous, to make him illegitimate.

I, Sir John Steuart of Grandtully, do solemnly declare before God that the forementioned Lady Jane Donglas, my lawful spouse, did, in the year 1748, hring to the world my two sons, Archihald and Sholto, and I firmly helieve the children were mine, as I am sure they were hers.—Of the two sons, Archihald is the only in life now.—I make this declaration as stepping into eternity, hefore the witnesses aftermentioned, James Bisset, minister of the Gospel, at Caputh; and James Hill, minister at Gurdie; John Stewart of Dalgoos, Esq., Justice of Peace; Joseph Anderson, tenant in Slogen-Hole.

(Signed thus) Jo. STEUART.

JAMES BISSET, Witness.
JAMES HILL, Witness.
JOS. ANDERSON, Witness.
Jo. STEWART, Witness.

N.B.—Sir John Steuart died a few days after signing the above declaration.

THE DYING DECLARATION OF MRS. HELEN HEWIT.

Mrs. Helen Hewit was first an attendant upon the late Lady Marchioness of Douglas, a lady of distinguished piety. She was afterwards the faithful attendant of Lady Jane Douglas. The late Rev. Mr. William Harper, a clergyman of the Episcopal communion at Edinburgh, and a man whose memory is much respected, was well acquainted with Mrs. Hewit, and deposes "That he does verily believe Mrs. Hewit to he a woman of truth and veracity, and a sincere, conscientious woman, so far as he could ohserve."

Mrs. Hewit solemnly swore, in presence of a jury, "That upon the

Appendix III.

10th of July Lady Jane was delivered at Paris of two sons, and that the deponent was present at their birth, and received them both into her lap when they came into the world; that the eldest, whose name is Archibald, and is the present claimant, was a strong, healthy child."

Being very old and infirm, Mrs. Hewit was long in a dying state. Finding she had made a trifling mistake in her deposition, so scrupulous was she that she wrote to the Rev. Mr. Harper upon the subject. Her letter concludes with these serious and striking words—"I hope you, sir, can ease my mind, as all I declared on my examination is true, but that mistake of the day of leaving La Brun's house, which I thought true when I said it. And this I declare to you, sir, was I to step into eternity this moment.—Helen Hewit."

Mrs. Hewit lingered a little longer upon the brink of eternity than was expected. She persisted to her last hour in affirming the truth of what she had sworn, as she was to appear before an Almighty Judge.

APPENDIX IV.

"Jupiter" Carlyle's Account of the Trial in the House of Lords.[1]

February, 1796.—On the 27th I attended the House of Peers in tbe Douglas Cause. Tbe Duke of B(uccleucb) had promised to carry me down to the House; but, as I was going into Grosvenor Square to meet him at ten o'clock, I met the Duke of Montague, who was coming from his house, and took me into his chariot, saying that tbe Duke of B. was not yet ready. He put me in by the side of the throne, where I found two or three of my friends, amongst them Thomas Bell.

The business d.d not begin till eleven, and from that time I stood, with now and then a lean on the edge of a deal board, till nine in the evening, without any refreshment but a small roll and two oranges. The heat of the house was chiefly oppressive, and Lord Sandwich's speech, wbich, though learned and able, yet being tbree hours long, was very intolerable. The Duke of Bedford spoke low, but not half an hour. The Chancellor and Lord Mansfield united on the side of Douglas; each of them spoke above an hour. Andrew Stuart, whom I saw in the House, sitting on the left side of the throne, seemed to be much affected at a part of Lord Camden's speech, in which he reflected on him; and immediately left the House; from whence I concluded that he was in despair of success. Lord Mansfield, overcome with heat, was about to faint in the middle of his speech, and was obliged to stop. The side-doors were immediately thrown open, and the Chancellor, moving out, returned soon witb a servant, who followed bim with a bottle and glasses. Lord Mansfield drank two glasses of the wine, and after some time revived, and proceeded in his speech. We, who had no wine, were nearly as much recruited by the 'resh air which rushed in at the open doors as his lordship by the wine. About nine the business ended in favour of Douglas, tbere being only five Peers on tbe other side. I was well pleased with that decision, as I had favoured that side; Professor Ferguson and I being the only two of our set of people who favoured Douglas, chiefly on the opinion that, if the proof of filiation on his part was not sustained, the whole system of evidence in such cases would be overturned, and a door be opened for endless disputes about succession. I had asked the Duke of B. some days before tbe decision, how it would go; he said that if the Law Lords disagreed, there was no saying how it would go; because the Peers, however imperfectly

[1] "Autobiography of the Rev. Dr. Alexander Carlyle, Minister of Inveresk," pp. 513-4.

prepared to judge, would follow the Judge they most respected. But if they united the case would he determined hy their opinion; it being [the practice] in their House to support the Law Lords in all judicial cases. . . .

The rejoicings in Scotland were very great on this occasion, and even outrageous: although the Douglas family had been long in obscurity, yet the Hamiltons had for a long period lost their popularity. The attachment which all their acquaintance had to Baron Muir, who was the original author of this suit, and Andrew Stuart, who carried it on, swayed their minds very much their way. They were men of uncommon good sense and prohity.

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