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TRIAL
OF
WILLIAM BURKE
AND
HELEN M'DOUGAL,
BEFORE THE
HIGH COURT OF JUSTICIARY,
AT EDINBURGH,
ON WEDNESDAY, DECEMBER 24. 1828,
FOR
THE MURDER OF
MARGERY CAMPBELL, OR DOCHERTY.

TAKEN IN SHORT HAND BY MR JOHN MACNEE, WRITER.

WITH AN ILLUSTRATIVE PREFACE. ALSO, PORTRAITS OF BURKE,
M'DOUGAL, AND HARE,—VIEW OF THE INTERIOR OF
BURKE'S HOUSE, PLAN OF THE PREMISES, &c.

“ — *Specus et Caci detecta apparuit ingens
Regia, et umbrosæ penitus paluere cavernæ.* ”
ÆNEID, LIB. VIII.

“ The Court of Cacus stands reveal'd to sight;
The cavern glares with new admitted light. ”
DRYDEN'S VIRGIL, BOOK 8.

EDINBURGH:

ROBERT BUCHANAN, 26, GEORGE STREET; WILLIAM HUNTER, 23,
HANOVER STREET; JOHN STEVENSON, 87, PRINCES' STREET;
AND BALDWIN & CRADOCK, LONDON.

MDCCCXXIX.

ADVERTISEMENT.

THIS Report of a Trial for Murder, which, from the peculiarity of the motives for, and the extraordinary circumstances connected with, and under which, the crime was perpetrated;—has excited the greatest sensation in the minds of the Public, and, for atrocity and singularity, stands unparalleled in the annals of any country; has been prepared in a way which enables the Publishers to affirm, that the utmost reliance may be placed on its Completeness and Accuracy. The Opinions of the learned Judges who presided, and the Speeches delivered by the eminent Counsel for the Crown and the pannels, have been BY THEM MOST OBLIGINGLY AND CAREFULLY REVISED; and the whole of the Evidence is given *verbatim*, both Question and Answer. To this edition, Portraits of the criminals Burke and M'Dougal, and of Hare their guilty associate, are prefixed,—taken in Court during the Trial by an EMINENT ARTIST. and acknowledged to be *correct and striking Likenesses*. The View of the Interior of Burke's House, as it appeared on the day after the trial, is given from a sketch made with the greatest care, and the Plan of the Houses in Wester Portsburgh, and places adjacent, including the premises occupied by Burke and Hare, has been reduced from that drawn by Mr James Braidwood, builder, and produced in Court. The fac-simile of Burke's handwriting, is correctly traced, from his signature to his first declaration, dated 3d November 1828.

EDINBURGH,
16th January 1829.

ERRATA IN THE FIRST EDITION.

- Page xiv. line 3 of preface, for her, read she.
 — 10, line 12, after hesitate, add about.
 — 43, — 33, for Lord Advocate, read Lord Pitmilley.
 — 43, — 11, for the month of November last, read last harvest.
 — 48, — 28, after came, add a point of interrogation.
 — 51, — 30, after name, add; and she said it was Docherty.
 — 61, — 1, for voice, read noise.
 — 64, — 7, the answer to the question, 'Was the outer door shut? should be, I was not so far forward as to see that; it appeared to me that it was on that door the woman struck. It was on the door of the passage, not the door of the room.
 — 64, — 28, after voice, add, of the woman.
 — 64, — 33, for were, read was.
 — 67, — 20, for me, read him.
 — 68, — 15, for men, read women.
 — 75, — 22, for a nod, read an oath.
 — 79, — 41, after death, add the answer, No, she said nothing.
 — 82, — 36, delete morning.
 — 85, — 18, for man, read men.
 — 87, — 12, add the following question and answer—Was the body shown to the prisoners? Yes.
 — 87, — 18, for petticoat, read bag or pillow case.
 — 93, — 50, for and his aunt lying behind them, read who was lying behind them, next his aunt.
 — 94, — 30, for it, read the body.

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*References to View of the Interior of Burke's Room, as it appeared upon
the Day after the Trial.*

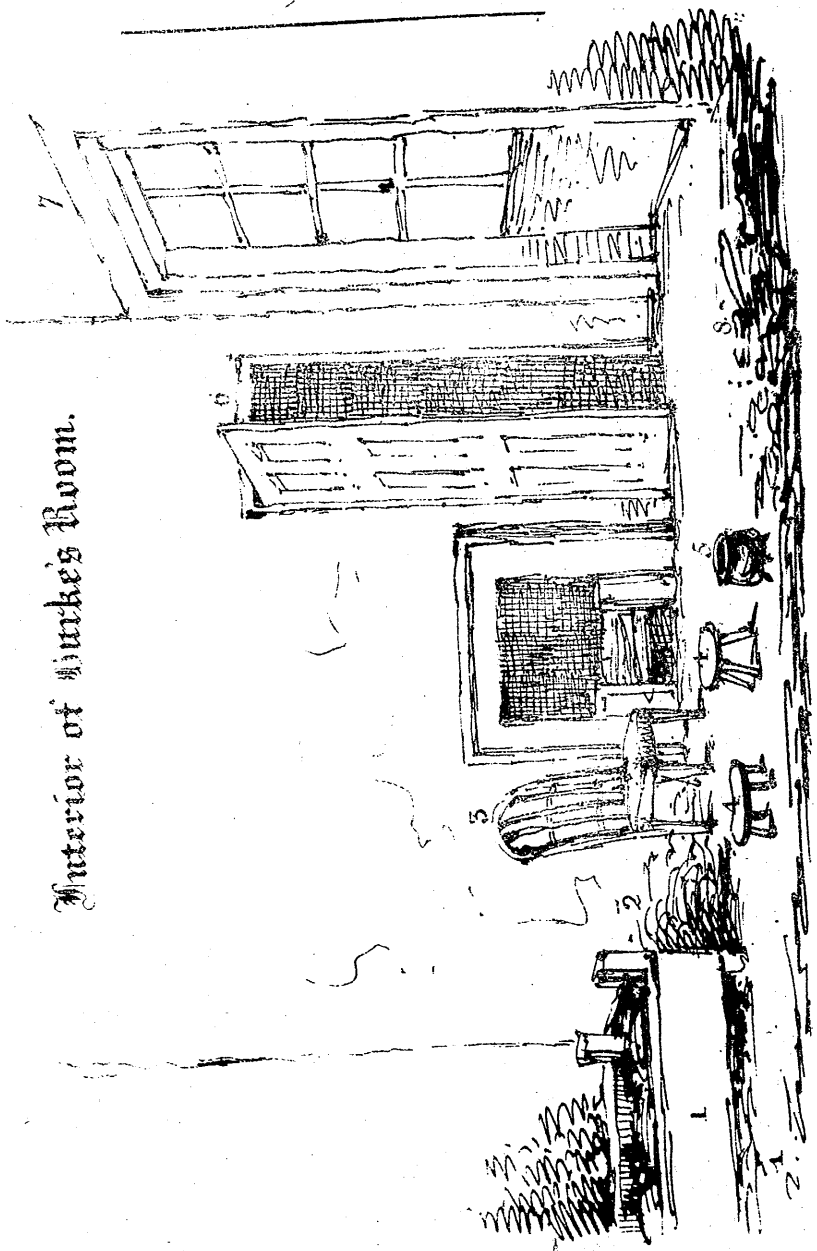
1. The Bed, or wooden Frame, full of Rags and Filth.
2. Straw under it.
3. The Straw, under which the body of the old Woman was hid.
3. A Chair, on which Hare pretended that he sat, during the Murder.
4. Two Wooden Stools.
5. An Iron Pot, full of Potatoes.
6. A Cupboard, or Wall-press.
7. A Window; large for such a den, looking towards the Castle Hill.
8. Implements for Shoe-making, old Shoes, and Rubbish.

A Fac-Simile of Burke's Signature, carefully traced, from his first declaration of 3d November 1828.

References to Plan of Houses in Wester Portsburgh, and Places adjacent, reduced from the Plan drawn by Mr James Braidwood, 22, Society, 20th November, 1828.

- A. House possessed by William Burke.
- B. Bed in Burke's House, filled with case straw, covered with a blanket.
- C. The dark mark near C represents the appearance of blood on the floor of Burke's House.
- D. House possessed by Mrs Connaway.
- E. House possessed by Mrs Law.
- F. F. F. F. The dotted line on which the four letters F are placed, shews the passage from the Street, and Flat above, and corresponds with the passage in the Sunk Floor.
- G. Steps and door to Back Court.
- H. Passage and stair leading from Back Court to Weaver's Close.
- I. House possessed by William Hare.
- K. Stable possessed by William Hare.
- L. Shop possessed by Mr Rymer.
- M. The loose straw at foot of the Bed.
- N. The dotted lines S. S. S. S. represent the direction of Paterson's House, distant 208 feet from the point N.
- O. O. O. Private passage to Burke's House.
- P. P. P. P. Common passage to all the Houses and Cellars on the sunk flat.
- R. R. R. R. The strong line marked with the letter R shews the different entries to Burke's House.

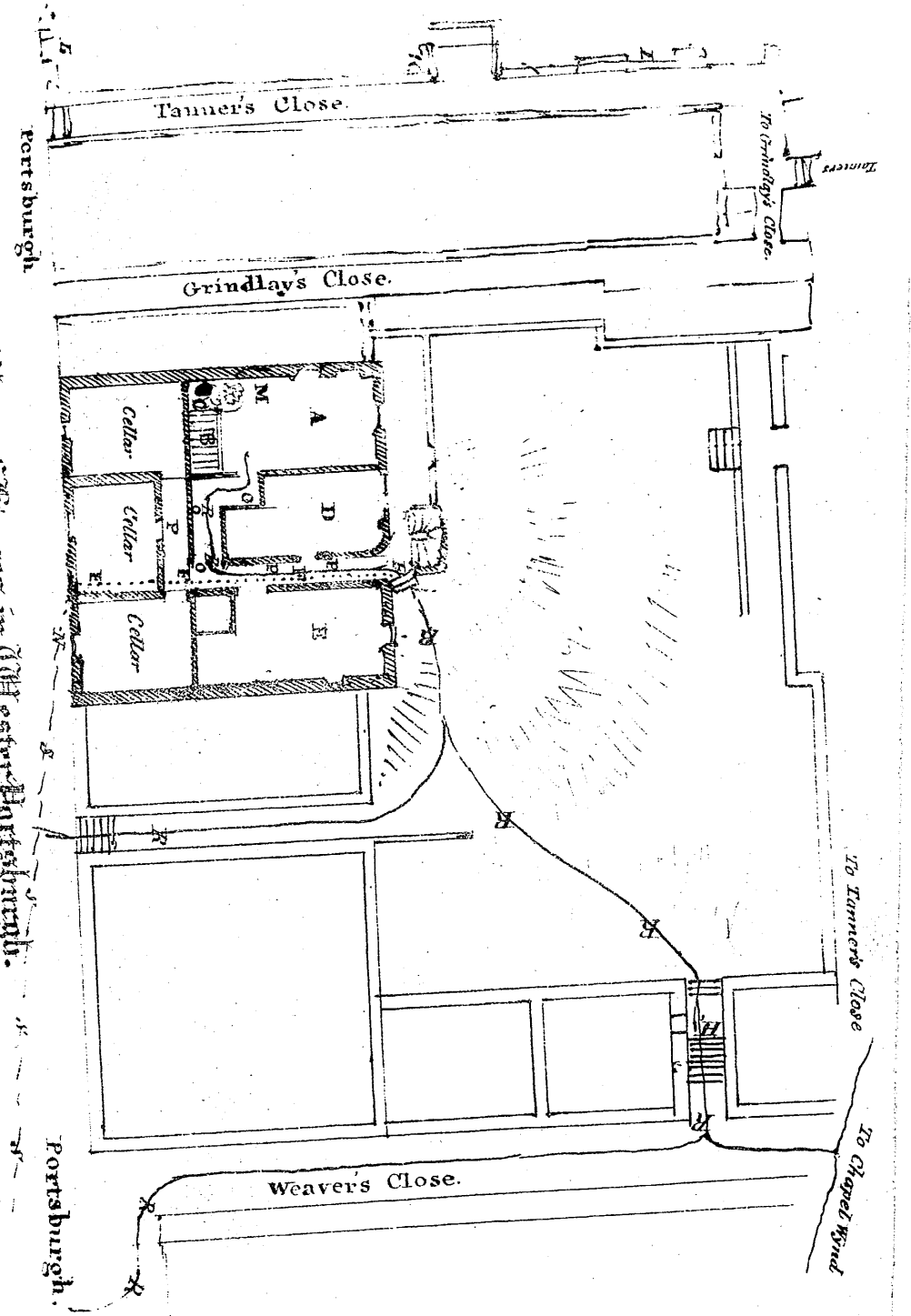
Interior of Burke's Room.



Signature.

Wm Burke

Plan of Houses, in Chester-Parish, Portsburgh.





William Howe.
King's Evidence.

William Burke.
Famnel.

Helen M. Douglas.
Famnel.

R. H. Nimmo, Edinburgh, engraver.

PREFACE.

THE following trial is a dreadful proof of the deep depravity of human nature, and no criminal case, as far as we know, can make any parallel to it—it stands alone in the annals of murder—even the legends of Sawny Beane, and of Maugraby, the eastern magician, fade before its complicated atrocity.

To the poorer classes in Edinburgh, and elsewhere, it may afford a very useful lesson; for it is reported that the victims who fell a sacrifice to Burke and his accomplices, were enticed to their tragical end by the present of spirituous liquors, which rendered them passive in the clutches of their butchers. It is too certain, that the use of whisky, in this town at least, is prevalent beyond example—and that the older parts of the city, even in mid-day, exhibit scenes which rival Hogarth's Gin Lane, or the beastly orgies of the ancient Scandinavian savages. If opiates also were administered, as is generally believed, still people are to consider, that a proper quantity of pure whisky will do quite as well; and that this *aqua toffana*, however it be strengthened or diluted, will eventually work to the very worst of all hellish purposes.

In this affair there has been a clamour raised against medical men, on no just foundation (we hope), as subjects must be had to lecture upon, or the most useful of sciences must die; and, unfortunately, human prejudices as to sepulture are so strong, that great difficulties occur in procuring bodies for dissection. For this there would be an easy remedy, did not human pride and self-conceit interpose an almost insuperable barrier. If people would cancel the silly codicils in their wills, as to rings, and locks of hair, and ten thousand baubles, frequently left to those who thought the testator a bauble, or cordially hated him; if they could forget gorgeous

monuments, to be reared over very worthless dust,* and laudatory epitaphs, that are frequently, if rightly taken, the most bitter of all satires—and bequeath their bodies to the public for dissection, they might have the merit of being for once useful to their fellow creatures, and of turning to advantage a miserable carcase, their own eternal study, and frequently their torment; for the ease of which their families perhaps have been made wretched, and their servants slaves—for which the elements have been ransacked, to pamper a gorged and queasy stomach, and numberless other vices fostered, the darlings of idleness and of wealth. To the more refined of the female sex, however, this should be unpalatable doctrine—for a woman must have little modesty, who can bear the idea of such an exposure, even after her decease—

“ Say, would thy heart no deathlike torture feel,
To see my limbs the felon's gripe obey;
To see them gash'd beneath the daring steel,
To crowds a spectre, and to dogs a prey?”—*Shenstone.*

But the poor-house, and the gallows, from whence all who suffer should be dissected, may make up for this deficiency.

Of the criminal who is shortly to suffer the last doom of the law, little, save his late atrocities, is known with certainty. Burke is a native of Ireland; and the woman (Helen M'Dougal) who goes under the name of his wife, was born, unfortunately for the credit of this country, in Scotland. It is said that no marriage ever took place between them, and that she eloped from her last husband to follow the fortunes of Burke, who had relations in this town—

“ To Pharos with her wandering love she fled,
To show one monster more than Afric bred.”—*Juvenal.*

They both subsisted for some time partly by trafficking in pedlary ware, partly by carrying on a petty trade of various

* “ Such are those thick and gloomy shadows damp,
Oft seen in charnel vaults and sepulchres,
Ling'ring and sitting by a new-made grave,
As loath to leave the body that it lov'd,
And link'd itself by carnal sensuality
To a degenerate and degraded state.”—*Milton.*

descriptions—when, all of a sudden, Mrs. Burke appeared better clothed than ordinary, and her husband to have money at command. This was about a twelvemonth ago, when the system of murder, or at least, of rifling the churchyards, had commenced. In a short time, the couple hired an obscure house in the West Port of Edinburgh, well calculated, from its situation, for their bloody traffick. In this place, he ostensibly continued a trade of shoemaking or cobbling; and here, occasionally, took place meetings of the most vicious of both sexes: dancing, and midnight brawls,—and screams were so frequently heard, during the silence of night, issuing from the apartments of Burke, that the neighbours at last paid little attention to the nuisance, and were with reluctance roused from their beds by the cries of the old woman, whose death has brought the murderer to justice.

The first victim mentioned in the indictment, Mary Paterson or Mitchell, was a person of disorderly life, and is said to have been well known to Burke before he murdered her. She was of low stature, and not calculated to make much resistance, even had the opiates been withheld. She was cut short in her sinful career, and hurried (O, dreadful thought—how much unprepared!) before the judgment-seat of her offended Maker, at the early age of twenty-one.

The next victim was happier, as he could have no sins to answer for. He was a well-known figure in Edinburgh, particularly in the old town,—we mean James Wilson, commonly called *Daft Jamie*. This innocent creature had been insane from his infancy, but was perfectly harmless, as his malady partook more of idiotism than of madness. He possessed features not unpleasing, and a tuneful voice in singing; which made him many friends—thus nature sometimes seems inclined to compensate for her utmost cruelties—and though he never would wear shoes, stockings, or a hat, he was very particular as to his linen, which he changed thrice a week. The Burkes, and their infamous accomplices, it is said, decoyed him into their accursed shambles by the offer of snuff, to which, like the generality of these unfortunate beings, he was greatly attached;* but when there, they

* The snuff-box mentioned in the indictment was his property.

could not prevail upon him, either by entreaty or menaces, to taste their drugged liquor,* and his struggles had nearly overpowered them, as he was a stout lad, only eighteen. His face, so familiar to every eye, was studiously disfigured before he was offered to the surgeons.

The scene of his murder seems much unadapted to concealment. After descending a few steps into a very narrow close, the rooms which Hare occupied on the ground floor, are so near the abode of many, that it was next to impossible that his cries and struggles should not have been heard. But amid such eternal drunkenness and riot, every noise is unheeded. The day after the trial, these dens appeared totally deserted of furniture,—a truss of old straw alone remained in one corner; and the broken windows testified either the disorders of the late inhabitants, or a more recent popular feeling.

Burke's House, which is in a *land* hard by, appears to have been purposely chosen for the safe perpetration of crime. After descending a common stair, and turning to the right, a passage conducts to the door, from which a dark *trance* leads to the room where the old woman was murdered. This room is so small, that the women who pretended to feel some alarm while Burke was stifling his prey, must have stepped over them to escape. The day after the trial, every thing seemed in the same position as when the culprits were first arrested. A crazy chair stood by the fire place, near two broken wooden stools—old shoes, and implements for shoe-making lay scattered on the floor—a pot full of boiled potatoes, and broken glass, with old rags and straw, were near a cupboard, on which were some plates and spoons—the bed, if such it may be called, exhibited a disgusting spectacle; it is a

* It has been stated in one of the newspapers, that they at *last* induced him to take a little whisky, and soon after found no difficulty in prevailing on him to take a sufficient quantity to become intoxicated. In this condition, he laid himself on the floor, and soon fell asleep; when Burke, who had anxiously been watching for this opportunity, pounced upon him, like a tiger on his prey, and attempted to suffocate him. Jamie, roused by this sudden attack, seemed endowed with superhuman strength, and succeeded in getting to his feet, when a desperate struggle ensued. Fighting with the united frenzy of madness and despair, he had nearly overpowered Burke, who then called on Hare to assist him. Hare immediately rushed to his assistance, and by tripping up his heels, they, with the utmost difficulty, succeeded in depriving him of existence by strangling him. Hare, it is said, bears the marks of his desperate resistance, he having bit out part of his under lip.—PUBLISHERS' NOTE.

coarse wooden frame, without posts or curtains, and was filled with old straw and rags, among which a man's shirt, stained with blood in front, and something like a child's shift, also bloody, were plainly discernible. At the foot of the bed, between it and the wall, was the heap of straw under which the woman's body was concealed. The bed stood so near the wall, that the corpse must have been doubled up, to be hidden after the murder.

At the foot of the common stair is a door opening into a large yard, or piece of waste ground, across which the bodies from the slaughter-house are said to have been conveyed to a cellar adjacent. *Let those who possess such cellars, be cautious in future to what use they are appropriated.*

Constantine Burke's Room in the Canongate, where Mary Paterson or Mitchell was stifled, is also of a most miserable description. Ascending a narrow wooden trap-stair, and going along a passage, you find a door, only fastened by a latch, opening into an apartment, in which were a truckle bed, and another with tattered patch-work curtains; the walls adorned with many tawdry prints, carefully nailed on. Here, according to information, the first murder was perpetrated; but from the long residence of the brothers in Edinburgh, and from common report, this point for the present remains exceedingly doubtful.

When the criminals were brought to trial, every precaution was adopted to preserve the public peace, and facility of access to those whose duty required their attendance; the high constables of the City and its dependencies were ordered to muster at six o'clock in the evening; and the police received a temporary reinforcement of upwards of 300 men. The prisoners were brought, early in the morning, from the Caltonhill jail, and when produced at the bar, made a very squalid appearance. Burke is a stout, middle-sized man, with a determined visage, that seemed unawed by all around him. The accomplice of his black crimes has never possessed any beauty,* and only at times shewed some sense of her perilous situation. Strange to say, she escaped the just doom of the law, by the verdict of a respectable jury; and stranger, that the audience, whose natural prejudices were supposed

* She appears to be considerably older than her paramour, probably ten or twelve years.

to be strong in dislike of the prisoners, charmed by an overpowering eloquence, were scarcely restrained from proving, by their loud applause, the ingenious vindication of this most wicked and most inexcusable of alleged murderesses!

The tragedy is now drawing to a close; but it is very likely, from strong presumptions, that many more of the same horrid kind may ensue. Let the lower classes then, in Edinburgh "be sober, be vigilant." Let the higher set them an example in both—and as for the medical men, nothing in this case can possibly affect them; though after such an affair, vulgar prejudice may for a time class them with cannibals, and banditti, who use choke pears, opiates, poisons, the wet cloth, and a certain acid, to procure what is indispensable to their profession, they may despise the unfounded clamour—yet let them not remit in their caution as to their dangerous purchases, nor trust at all to their unprincipled purveyors—"lest a worse thing befall them."

As public curiosity must naturally be excited concerning any circumstance in our Scottish records, having connexion, however remote, with this shocking affair, the following extract is subjoined, taken from Lord Fountainhall's MS. in the Library of the Faculty of Advocates:—

"6 Februarii 1678.—Four Egyptians of the name of Shaw were this day hanged, the father and three sons, for a slaughter committed by them of one of the Faws (another tribe of these vagabonds, worse than the mendicantes validi mentioned in the code), in a drunken squabble, made by them in a rendezvous they had at Romanno, with a designe to unite their forces against the clans of Browns and Bailzies, that were come over from Ireland to chase them back again, that they might not share in their labors; but in their ramble they discorded, and committed the foresaid murder, and sundry of them of both sydes ware apprehended.

"Thir four being thrown all unto one hole digged for them in the Grayfriar Church Yeard, with their clothes on; the next morning the youngest of the three sons (who was scarce sixteen) his body was missed, and found to be away. Some thought he being last thrown over the ladder, and first cut downe, and in full vigor, and no great heap of earth, and lying uppermost, and so not so ready to smother, the fermentation of the blood, and heat of the bodies under him, might cause him rebound and throw off the earth, and recover ere the morning, and steall away; which, if true, he deserves his life, tho' the magistrats, or their bourreau, deserved a reprimande; but others, more probably, thought his body was stolen away by some chirurgion, or his servant, to make an anatomical dissection on; which was criminal to take at their owne hand, since the magistrats would not have refused it; and I hear the chirurgions affirme, the towne of Edinburgh is obliged to give them a malefactor's body once a year for that effect, and its usual in Paris, Leyden, and other places to give them; also some of them that dyes in hospitals."—Fountainhall MS.

The following broadside is reprinted for the reason mentioned above. To such doggerel, and to all their other accusations of a like nature, the doctors might give a conclusive answer in the hackneyed adage—"necessitas non habet legem."

"An Account of the most horrid and unchristian actions of the Grave-makers in Edinburgh, their raising and selling of the Dead, abhorred by Turks and Heathens, found out in this present year 1711, in the Month of May.

"Dear Friends and Christians, what shall I say,
Behold, the dawning of the latter day.
Into this place most bright casts forth its rays—
The like was never seen by mortal eyes.
Methink I hear the latter trumpet sound,
When emptie graves into this place is found,
Of young and old, which is most strange to me,
What kind of resurrection this may be.
I thought God had reserved this power alone
Unto himself, till he erect'd his throne
Into the clouds, with his attendance by,
That he might judge the world in equity.
But now I see the contrar in our land,
Since men do raise the dead at their own hand;
And for to please their curiosities
They them dissect and make anatomies.
Such monsters of mankind was never known,
As in this place is daily to be shown;
Who, for to gain some wordly vanities,
Are guilty of such immoralities.
The Turks and Pagans would amazed stand,
To see such crimes committed in a land,
As among Christians is to be found,
Especially in Edinburgh doth abound.
There is a rank of persons in this place
That strive to run with speed a wicked race:
They trample rudely on God's holy law,
And of his judgment they stand not in aw;
For those that are laid in their graves at rest,
This wicked crew they do their dust molest.
Dead corps out of their graves they steal at night,
Because such actions do abhorre the light.
The heathen nations, for ought I read,
Was never found for to molest the dead,
That were their kindred, and among them born;
But we, to nations all may be a scorn:
In that such crimes is perpetrated here,
As both the living and the dead do deer.
These monsters of mankind, who made the graves,
To the chirurgions became hyred slaves;

They rais'd the dead again out of the dust,
 And sold to them, to satisfy their lust.
 As I'm informed, the chirurgions did give
 Fourty shillings for each one they receive :
 And they their flesh and bones assunder part,
 Which wounds their living friends unto the heart ;
 To think that any of their kindred born
 Unto the nations, should become a scorn ;
 For they their bones to other nations send—
 As I'm informed, this is their very end.
 How may now all the nations us deride,
 And call us poor, since that we sell our dead,
 Some coyn to get, the living to maintain ;
 The like in any nation ne're was seen.
 The godly sowe their dust on such cold ground
 As do our kirks and chappels compass round,
 That they may get their dust in such a field,
 So well refin'd, that it to them may yield
 A crop most plentiful at the last day,
 When they from dust must haste and come away.
 But now their dust they take out of the ground;
 So that nothing but empty graves is found.
 I'm very sorry that such things should be
 Practis'd by folk professing piety ;
 And the religion should be wounded so
 By any who under a name do go.
 But still I see profession is no grace,
 As does appear into the present case ;
 But more especially at the last day,
 When all the world shall be put in a fray,
 When stars shall fall out of the firmament,
 And sun and moon out of their orbs be rent,
 And all this earth into a flame shall burn,
 And eliments like liquid mettals run,
 And all mankind before God's throne shall come,
 That he may justice do unto each one—
 Then shall the separation be made
 Between them that are good and that are bad :
 The good receiv'd to everlasting glore,
 The bad cast down to hell for evermore.
 All who to wrong the saints do still desire,
 Dead or alive, shall have hell for their hyre,
 Unless with speed they do repent of sin,
 And do another course of life begin.
 But I shall say no more upon this head,
 Hoping henceforth they will not raise the dead,
 But suffer them to rest into their beds,
 And won their bread by following other trades.

FINIS.

THE following particulars have been gathered from a conversation with an old man, James Maclean, a hawker, also a native of Ireland, residing in the Hammermen's Land, West Port; who appears to have been most intimately acquainted with all the parties, and yet no participator in their crimes. The narrator having left Edinburgh for Glasgow on the 12th of October, for the purpose of hawking an account of the woman M'Menemy, who was to be executed there for murder on the 14th, and from the privacy with which he left the town, (to which he did not return till after the murder of Campbell),—it was rumoured amongst his neighbours in the West Port that he also had fallen a victim to their diabolical arts.

WILLIAM BURKE is a native of Ireland, the son of Niel Burke, a labourer, residing in the parish of Urney, within two miles of the town of Strabane, in the county of Tyrone, and is about thirty-six years old. He served in the Donnegal militia either as a fifer or drummer, and plays well on the flute. He was discharged from the regiment after the battle of Waterloo, and he came to this country in 1817 or 1818, and was employed as a labourer at the formation of the Union Canal. His original trade was that of a shoemaker and cobbler; and for about two years previous to Whitsunday last, he lodged in Hare's house in Tanner's Close, and followed his occupation in a cellar attached to the house, in which was kept a *cuddy* belonging to Hare. Like most of his countrymen, he seems to have turned his hand to anything—sometimes trafficking in pedlary ware, old clothes, &c.—and occasionally *wielding a reaping-hook*, as he assisted in getting in the last harvest at Mr. Edington's, a farmer near Carnwath, along with his wife and Hare; Maclean having engaged them and several others of his countrymen for that purpose. He describes Burke, when free from liquor, as a peaceable man, and steady at his work; and even when intoxicated, rather jocose and quizzical, and by no means given to quarrel, without considerable provocation.

HELEN M'DOUGAL is a native of Redding, near Falkirk, where she married, and had two children by her husband, a boy and girl; while residing there,* she became acquainted with Burke, during the

* It is reported that she had two husbands; and that the last is still alive.

time he was a labourer at the canal. She has cohabited with him for about ten years, and is of a dull morose disposition, either when sober or intoxicated. Burke and her lived a most unhappy life, everlastingly quarrelling, and she was often severely beaten by him on those occasions.

WILLIAM HARE, who turned king's evidence against Burke, is a native of Newry in Ireland, and has been for some time employed as a boatman and labourer on the Union Canal, and is much about the same age as Burke. Shortly after he came to Edinburgh, about ten years ago, he resided with a labouring man named James Logue, who, with his wife Mary Laird, lived at the back of the well in the West Port; from thence they removed to the house in Tanner's Close, lately occupied by Hare (the scene of the murder of Daft Jamie), where Logue died. By this man she had one child, and after his death Hare made advances to the widow, and they were regularly married about two years ago. He is of a ferocious and tyrannical disposition, much inclined to quarrel, and very obstreperous when in liquor. As an instance of this—in the end of last summer when M'Lean (the narrator), Hare, Burke, his wife, and others, were returning from the *shearing* at Carnwath, as formerly mentioned, the whole party went into a public house west of Balerno, near Currie, to get some refreshment. The reckoning being clubbed, Hare took up the money from the table, and put it in his pocket; and for fear of any disturbance taking place in the house, Burke paid the amount out of his own pocket. On leaving the house, M'Lean observed to Hare it was a *scaly* trick to lift the money with an intention to affront them. On this Hare knocked the feet from under M'Lean, and when prostrate on the ground, gave him a tremendous kick in the face with his foot. His shoes being pointed with iron, commonly called *caulkers*, wounded M'Lean severely, laying open his upper lip.

MARY LAIRD, the wife of Hare, is also said to be a native of Ireland, and is represented as being a desperate character, and of a most boisterous disposition, tyrannizing over those under her sway or control—completely given to drink—often brutally so, and seldom without a pair of black eyes. Her treatment of her precious yoke-fellow has always been notoriously infamous. On one occasion, on his coming home from his work at the canal, he found her much intoxicated; and on remonstrating with her on the subject, after he

had laid himself down on the bed, she seized a bucket of water, and dashed the contents over him. Hare started up, knocked her down, and a desperate struggle ensued between them, in which, as usual with her, she had the last word and the last blow. It is stated that Burke, Hare, and his wife, are all of the Roman Catholic persuasion.

In addition to the preceding particulars, the publishers beg leave to subjoin the following very judicious remarks, copied from the CALEDONIAN MERCURY of Thursday the 25th December.

"No trial in the memory of any man now living has excited so deep, universal, and (we may almost add) appalling an interest as that of William Burke and his female associate. By the statements which have from time to time appeared in the newspapers, public feeling has been worked up to the highest pitch of excitement, and the case, in so far as the miserable pannels were concerned, prejudiced by the natural abhorrence which the account of a new and unparalleled crime is calculated to excite. This is an evil inseparable from the freedom, activity, and enterprise of the press, which is necessarily compelled to lay hold of the events of the passing hour, more especially when these are of an extraordinary or unprecedented kind; but it is more than atoned for by many countervailing advantages of the greatest moment to the interests of the community; and we are moreover satisfied that any prejudice or prepossession thus created, was anxiously and effectually excluded from the minds of those by whom this singular case was tried, and that they were swayed by no consideration except a stern regard to the sanction of their oaths, the purity of justice, and the import of the evidence laid before them. At the same time, it is not so much to the accounts published in the newspapers, which merely embodied and gave greater currency to the statements circulating in society, as to the extraordinary, nay, unparalleled circumstances of the case, that the strong excitement of the public mind is to be ascribed. These are without any precedent in the records of our criminal practice, and, in fact, amount to the realization of a nursery tale. The recent deplorable increase of crime has made us familiar with several new atrocities: poisoning is now, it seems, rendered subsidiary to the commission of theft: stabbings, and attempts at assassination, are matters of almost every-day occurrence; and murder has grown so familiar to us, that it has almost ceased to be viewed with that instinctive and inexpressible dread which the commission of the greatest crime against the laws of God and society used to excite. But the present is the first instance of murder alleged to have been perpetrated with the aforethought purpose and intent of selling the murdered body as a subject for dissection to Anatomists; it is a new species of assassination, or murder for hire: and as such, no less than from the general horror felt by the people of this country at the process, from ministering to which the reward was expected, it was certainly calculated to make a deep impression on the public mind, and to awaken feelings of strong and appalling interest in the issue of the trial.

"Of the extent to which this had taken place, it was easy to judge from what was every where observable on Monday and Tuesday. The approaching trial formed the universal topic of conversation, and all sorts of speculations and conjectures were afloat as to the circumstances likely to be disclosed in the course of it, and the various results to which it would eventually lead. As the day drew near, the interest deepened; and it was easy to see that the common people shared strongly in the general excitement. The coming trial they expected to disclose something which they had often dreamed of, or imagined, or heard recounted around an evening's fire, like a raw-head-and-bloody-bones story, but which they never, in their sober judgment, either feared or believed to be possible; and they looked forward to it with corresponding but indescribable emotions. In short, all classes participated more or less in a common feeling respecting the case of this unhappy man and his associate; all expected fearful disclosures; none, we are convinced, wished for any thing but justice.

"About twenty minutes before ten o'clock, the prisoners, William Burke and Helen M'Dougal, were placed at the bar. The male prisoner, as his name indicates, is a native of Ireland. He is a man rather below the middle size, but stoutly made, and of a determined, though not peculiarly sinister expression of countenance. The contour of his face, as well as the features, are decidedly Milesian. It is round, with high cheek bones, grey eyes, a good deal sunk in the head, a short stubbish nose, and a round chin, but altogether of a small cast. His hair and whiskers, which are of a light sandy colour, comported well with the make of the head and the complexion, which is nearly of the same hue. He was dressed in a shabby blue surcoat, buttoned close to the throat, and had, upon the whole, what is called in this country a *warf* rather than a ferocious appearance, though there is a hardness about the features, mixed with an expression in the grey twinkling eyes, far from inviting. The female prisoner is fully of the middle size, but thin and spare made, though evidently of large bone. Her features are long, and the upper half of her face is out of proportion to the lower. She was miserably dressed in a small grey-coloured velvet bonnet, very much the worse for the wear, a printed cotton shawl and cotton gown. She stoops considerably in her gait, and has nothing peculiar in her appearance, except the ordinary look of extreme poverty and misery common to unfortunate females of the same degraded class. Both prisoners, especially Burke, entered the Court without any visible signs of trepidation, and both seemed to attend very closely to the proceedings which soon after commenced.

The Publishers further add as follows from the same ably conducted Journal of 27th December.

"We shall endeavour to exhibit a faint sketch of the more prominent circumstances attending the murder of the woman Campbell or Docherty, as proved in evidence at the trial.

"In the morning of a certain day in October last (the 31st), Burke chanced to enter the shop of a grocer, that of Rymér, where he sees a poor beggar woman asking charity. He accosts her, and the brogue instantly reveals their common country. The poor old woman's heart warms to her countryman, and she tells him that

her name is Docherty, and that she has come from Ireland in search of her son. Burke, on the other hand, improves his advantage by pretending that his mother's name was also Docherty, and that he has a wonderful affection for all who bear the same euphonous and revered name. The old woman is perfectly charmed with her good fortune in meeting such a friend in such a countryman, and her heart perfectly overflows with delight. Burke, again, seeing that he had so far gained his object, follows up his professions of regard by inviting Mrs. Docherty to go with him to his house, at the same time offering her an asylum there. The poor beggar woman accepts the fatal invitation, and accompanies Burke to that dreadful den, the scene of many previous murders, whence she is destined never to return. Here the ineffable ruffian treats her to her breakfast; and as her gratitude rises, his apparent attention and kindness increase. This done, however, he goes in search of his associate and accomplice Hare, whom he informs that he has "got a *shot* in the house," and invites to come over at a time and hour agreed upon "to see it done." Betwixt eleven and twelve o'clock at night is fixed upon by these execrable miscreants, for destroying the unhappy victim whom Burke had previously seduced into the den of murders and death; and then Burke proceeds to make the necessary arrangements for the commission of the crime. Gray and his wife, lodgers in Burke's house, and whom the murderers did not think it proper or safe to entrust with the secret, are removed for that night alone; another bed is procured for them, and paid for, or offered to be paid for, by Burke. By and by the murderers congregate, and females cognisant of their past deeds, as well as of the crime which was to be perpetrated, mingle with them in this horrid meeting. Spirituous liquor is procured, and administered to the intended victim. They all drink more or less deeply. Sounds of mirth and revelry are heard echoing from this miniature pandemonium; and a dance in which they all, including the beggar woman, join, complete these infernal orgies. This is kept up for a considerable while, and is the immediate precursor of a deed which blurs the eye of day, and throws a deeper and darker shade around the dusky brow of night.

"At length the time for "doing it" arrives. Burke and Hare get up a sham fight, to produce a noise as of brawling and quarrelling, common enough in their horrid abode; and when this has been continued long enough as they think, Burke suddenly springs like a hungry tiger on his victim, whom one of his accomplices had, as if by accident, thrown down—flings the whole weight of his body upon her breast—grapples her by the throat—and strangles her outright. Ten minutes or a quarter of an hour elapse while this operation is going on, and ere it is completed; during the whole of which time, Hare, by his own confession in the witness-box, sat upon the front of the bed, a cool spectator of the murder, without raising a cry, or stretching out a hand to help the unhappy wretch thus hurried into eternity by his associate fiend Burke. As to the women (Helen M'Dougal, Burke's helpmate, and the wife of the miscreant Hare), they seem to have retreated into a passage closed in by an outer door, "when they saw him (Burke) on the top of her" (Docherty), and to have remained there while he was perpetrating the murder, without, however, uttering a single sound, or doing a single act, calculated to interrupt the murderer in his work of blood, or to procure assistance to the dying victim. These she-devils were familiar with the work of death; and one of them, the wife of Hare, confessed it in the witness-box. She had seen, she said, such "tricks" before.

"No language can add to the impression which these facts are calculated to produce. The succeeding events, however, are not less picturesquely horrifying. The murder was committed at eleven o'clock, and in an hour after, or at twelve, Burke

fetches Paterson, the assistant or servant of a teacher of anatomy here, to whom he was in the habit of selling the bodies of his victims, to the spot—the murdered body being by this time stuffed under the bed and covered with straw; and, pointing to that truly dreadful place, tells him that he has got a subject for him there, which will be ready for him in the morning. The demons then appear to have recreated themselves with fresh dozes of liquor; and about four or five in the morning, the two women already mentioned, with a fellow of the name of Brogan, who had joined the party after the deed was done, laid down in the bed, beneath which the murdered body of Docherty, not yet cold in death, had been crammed, and went to sleep, some of them at least, as coolly as if nothing of the kind had occurred. When daylight returned, the tea-box, so often mentioned in the course of the trial, was procured, and the slaughtered body crammed into it, and sent off by the porter M'Culloch, to Surgeon-Square. After which Burke and his accomplice Hare set off for Newington to obtain the whole or part of the price of the subject they had procured by murder, and actually got *five pounds*, being one half of the price agreed upon.

“Such is an imperfect and feeble outline of the facts of this case, in the course of which was disclosed the horrid and appalling fact, that, in certain holes and dens, both in the heart and in the outskirts of this city, murder had been reduced into a system, with the view of obtaining money for the bodies murdered; and that it was perpetrated in the manner least likely to leave impressed upon it any evident or decisive marks of violence, being invariably committed by means of suffocation or strangling, during partial or total intoxication. The public is therefore to consider the present as only one out of many instances of a similar nature which have occurred. Hare's wife admitted that she had witnessed many “tricks” of the same kind; and Hare himself, when undergoing the searching cross-examination of Mr. Cockburn—a cross-examination such as was never before exemplified in any Court of Justice—durst not deny that he had been concerned in other murders besides that of Docherty,—that a murder had been committed in his own house in the month of October last,—that he himself was a murderer, and his hands steeped in blood and slaughter; we say he durst not deny it, and only took refuge in “declining to answer” the questions put to him; which the Court of course apprised him he was entitled to do in regard to questions that went to criminate himself so deeply, and but for which caution we have little doubt that he would have confessed not merely accession, but a principal share in several murders. In fact, this “squalid wretch,” as Mr. Cockburn so picturesquely called him, from the hue and look of the carrion-crow in the witness-box, was disposed to be extremely communicative, and apparently had no idea that any thing he had stated was at all remarkable or extraordinary.

“The conviction of Burke alone will not satisfy either the law or the country. The unanimous voice of society in regard to Hare is, *Delendus est*; that is to say, if there be evidence to convict him, as we should hope there is. He has been an accessory before or after the fact in nearly all of these murders; in the case of poor Jamie he was unquestionably a principal; and his evidence on Wednesday only protects him from being called to account for the murder of Docherty. WE TRUST, THEREFORE, THAT THE LORD ADVOCATE, WHO HAS SO ABLY AND ZEALOUSLY PERFORMED HIS DUTY TO THE COUNTRY UPON THIS OCCASION, WILL BRING THE “SQUALID WRETCH” TO TRIAL, AND TAKE EVERY OTHER MEANS IN HIS POWER TO HAVE THESE ATROCITIES PROBED AND SIFTED TO THE BOTTOM.”

TRIAL

OF

WM. BURKE AND HELEN M'DOUGAL.

PRELIMINARY PROCEEDINGS.

ON the — day of November 1828, a citation was served upon the pannels, charging them to appear before the High Court of Justiciary, to be held at Edinburgh on Wednesday the 24th of December, at ten o'clock, forenoon, to underlie the law for the crime of Murder, on the following indictments:

WILLIAM BURKE and HELEN M'DOUGAL, both present prisoners in the tolbooth of Edinburgh, you are both and each of you indicted and accused at the instance of Sir William Rae of St. Catherine's, Baronet, his Majesty's Advocate for his Majesty's interest: That *albeit* by the laws of this and of every other well-governed realm, MURDER is a crime of an heinous nature, and severely punishable, *yet true it is and of verity* that you the said William Burke and Helen M'Dougal are both and each, or one or other of you, guilty of the said crime, actors or actor, or art and part: *In so far as*, on one or other of the days between the 7th and the 16th days of April 1828, or on one or other of the days of that month, or of March immediately preceding, or of May immediately following, within the house in Gibb's Close, Canongate, Edinburgh, then and now or lately in the occupation of Constantine Burke, then and now or lately scavenger in the employment of the Edinburgh Police Establishment, you the said William Burke did wickedly and feloniously place or lay your body or person, or part thereof, over or upon the breast, or person, and face of Mary Paterson or Mitchell, then or recently before that time, or formerly, residing with Isabella Burnet or Worthington, then and now or lately residing in Leith Street, in or near Edinburgh, when she the said Mary Paterson or Mitchell was lying in the said house in a state of intoxi-

cation, and did, by the pressure thereof, and by covering her mouth and nose with your body or person, and forcibly compressing her throat with your hands, and forcibly keeping her down, notwithstanding her resistance, or in some other way to the prosecutor unknown, preventing her from breathing, suffocate or strangle her; and the said Mary Paterson or Mitchell was thus by the said means, or part thereof, or by some other means or violence, the particulars of which are to the prosecutor unknown, wickedly bereaved of life, and murdered by you the said William Burke; and this you did with the wicked aforethought intent of disposing of, or selling the body of the said Mary Paterson or Mitchell, when so murdered, to a physician or surgeon, or some person in the employment of a physician or surgeon, as a subject for dissection, or with some other wicked and felonious intent or purpose to the prosecutor unknown. (2.) FURTHER, on one or other of the days between the 5th and 26th days of October 1828, or on one or other of the days of that month, or of September immediately preceding, or of November immediately following, within the house situated in Tanner's Close, Portsburgh, or Wester Portsburgh, in or near Edinburgh, then or now or lately in the occupation of William Haire or Hare, then and now or lately labourer, you the said William Burke did wickedly and feloniously attack and assault James Wilson, commonly called or known by the name of Daft Janie, then or lately residing in the house of James Downie, then and now or lately porter, and then and now or lately residing in Stevenlaw's Close, High Street, Edinburgh, and did leap or throw yourself upon him, when the said James Wilson was lying in the said house, and he having sprung up you did struggle with him, and did bring him to the ground, and you did place or lay your body or person, or part thereof, over or upon the person or body and face of the said James Wilson, and did, by the pressure thereof, and by covering his mouth and nose with your person or body, and forcibly keeping him down, and compressing his mouth, nose, and throat, notwithstanding every resistance on his part, and thereby, or in some other manner to the prosecutor unknown, preventing him from breathing, suffocate or strangle him; and the said James Wilson was thus, by the said means, or part thereof, or by some other means or violence, the particulars of which are to the prosecutor unknown, wickedly bereaved of life and murdered by you the said William Burke: and this you did with the wicked aforethought intent of disposing of, or selling the body of the said James Wilson, when so murdered, to a physician or surgeon, or to some person in the employment of a physician or surgeon, as a subject for dissection, or with some other wicked and felonious intent or purpose to the prosecutor unknown. (3.) FURTHER, on Friday the 31st day of October 1828, or on one or other of the days of that month, or of September immediately preceding, or of November immediately following, within the house then or lately occupied by you the said William Burke, situated in that street of Portsburgh or Wester Portsburgh, in or near Edinburgh, which runs from the Grassmarket of Edinburgh to Main Point, in or near Edinburgh, and on the north side of the said street, and having an access thereto by a trance or passage entering from the street last above libelled, and having also an entrance from a court or

back court on the north thereof, the name of which is to the prosecutor unknown, you the said William Burke and Helen M'Dougal did, both and each, or one or other of you, wickedly and feloniously place or lay your bodies or persons, or part thereof, or the body or person, or part thereof, of one or other of you, over or upon the person or body and face of Madgy or Margery, or Mary M'Gonegal or Duffie, or Campbell, or Docherty, then or lately residing in the house of Roderick Stewart or Steuart, then and now or lately labourer, and then and now or lately residing in the Pleasance, in or near Edinburgh, when she the said Madgy or Margery, or Mary M'Gonegal or Duffie, or Campbell, or Docherty, was lying on the ground, and did, by the pressure thereof, and by covering her mouth and the rest of her face with your bodies or persons, or the body or person of one or other of you, and by grasping her by the throat, and keeping her mouth and nostrils shut with your hands, and thereby, or in some other way to the prosecutor unknown, preventing her from breathing, suffocate or strangle her; and the said Madgy or Margery, or Mary M'Gonegal or Duffie, or Campbell, or Docherty, was thus by the said means, or part thereof, or by some other means or violence, the particulars of which are to the prosecutor unknown, wickedly bereaved of life, and murdered by you the said William Burke and you the said Helen M'Dougal, or one or other of you, and this you both and each, or one or other of you, did with the wicked aforethought intent of disposing of or selling the body of the said Madgy or Margery, or Mary M'Gonegal or Duffie, or Campbell, or Docherty, when so murdered, to a physician or surgeon, or to some person in the employment of a physician or surgeon, as a subject for dissection, or with some other wicked and felonious intent or purpose to the prosecutor unknown. And you the said William Burke, having been taken before George Tait, Esq. sheriff-substitute of the shire of Edinburgh, you did, in his presence, at Edinburgh, emit and subscribe five several declarations, of the dates respectively following, viz. the 3d, 10th, 19th, and 29th days of November, and 4th day of December 1828; and you the said Helen M'Dougal having been taken before the said sheriff-substitute, you did, in his presence, at Edinburgh, emit two several declarations, one upon the 3d, and another upon the 10th days of November 1828; which declarations were each of them respectively subscribed in your presence by the said sheriff-substitute, you having declared that you could not write: which declarations being to be used in evidence against each of you by whom the same were respectively emitted; as also the skirt of a gown, as also a petticoat, as also a brass snuff-box, and a snuff-spoon; a black coat, a black waistcoat, a pair of moleskin trowsers, and a cotton handkerchief or neckcloth, to all of which sealed labels are now attached, being to be used in evidence against you the said William Burke; as also a coarse linen sheet, a coarse pillow-case, a dark printed cotton gown; a red striped cotton bed-gown, to which a sealed label is now attached; as also a wooden box; as also a plan entitled 'Plan of Houses in Wester Portsburgh and places adjacent,' and bearing to be dated 'Edinburgh, 20th November 1828,' and to be signed by James Braidwood, 22, Society; being all to be used in evidence against both and each of you the said William Burke and Helen M'Dougal, at

your trial, will, for that purpose, be in due time lodged in the hands of the clerk of the High Court of Justiciary, before which you are to be tried, that you may have an opportunity of seeing the same; *all which*, or part thereof, being found proven by the verdict of an assize, or admitted by the respective judicial confessions of you the said William Burke and Helen M'Dougal, before the Lord Justice-General, Lord Justice-Clerk, and Lords Commissioners of Justiciary,—you, the said William Burke and Helen M'Dougal *ought* to be punished with the pains of law, to deter others from committing the like crimes in all time coming. (Signed) A. WOOD, A. D.

LIST OF WITNESSES.

- 1 George Tait, Esq. sheriff-substitute of the shire of Edinburgh.
- 2 Archibald Scott, procurator-fiscal of said shire.
- 3 Richard John Moxey, now or lately clerk in the sheriff-clerk's office, Edinburgh.
- 4 Archibald M'Lucas, now or lately clerk in the sheriff-clerk's office, Edinburgh.
- 5 Janet Brown, now or lately servant to, and residing with, Isabella Burnet or Worthington, now or lately residing in Leith Street, in or near Edinburgh.
- 6 The foresaid Isabella Burnet or Worthington.
- 7 Elizabeth Graham or Burke, wife of Constantine Burke, now or lately scavenger in the employment of the Edinburgh Police, and now or lately residing in Gibb's Close, Canongate, Edinburgh.
- 8 The foresaid Constantine Burke.
- 9 Jean Anderson or Sutherland, wife of George Sutherland, now or lately silversmith, and now or lately residing in Middleton's Entry, Potterrow, Edinburgh.
- 10 William Haire or Hare, present prisoner in the tolbooth of Edinburgh.
- 11 Margaret Laird or Haire or Hare, wife of the foresaid William Haire or Hare, and present prisoner in the tolbooth of Edinburgh.
- 12 Jean Macdonald or Coghill, wife of Daniel Coghill, now or lately shoemaker, and now or lately residing in South St. James' Street, in or near Edinburgh.
- 13 Margaret M'Gregor, now or lately servant to, and residing with, John Clark, now or lately baker, and now or lately residing in Rose Street, in or near Edinburgh.
- 14 Richard Burke, son of, and now or lately residing with, the foresaid Constantine Burke.
- 15 William Burke, son of, and now or lately residing with, the foresaid Constantine Burke.
- 16 Janet Wilson or Downie, wife of James Downie, now or lately porter, and now or lately residing in Stevenlaw's Close, High Street, Edinburgh.

- 17 Mary Downie, daughter of, and now or lately residing with, the foresaid James Downie.
- 18 William Cunningham, now or lately scavenger in the employment of the Edinburgh Police, and now or lately residing in Fairley's Entry, Cowgate, Edinburgh.
- 19 George Barclay, now or lately tobacconist in North College Street, in or near Edinburgh.
- 20 David Dalziell, now or lately copperplate printer, and now or lately residing with his father George Dalziell, now or lately painter, and now or lately residing in North Foulis' Close, High Street, Edinburgh.
- 21 Margaret Newbigging or Dalziell, wife of the foresaid David Dalziell.
- 22 Joseph M'Lean, now or lately tinsmith, and now or lately residing in Coul's Close, Canongate, Edinburgh.
- 23 Andrew Farquharson, now or lately sheriff-officer in Edinburgh.
- 24 George M'Farlane, now or lately porter, and now or lately residing in Paterson's Court, Lawnmarket, Edinburgh.
- 25 John Brogan, now or lately in the employment of John Vallance, now or lately carter, and now or lately residing in Semple Street, near Edinburgh.
- 26 Janet Lawrie or Law, wife of Robert Law, now or lately currier, and now or lately residing in Portsburgh or Wester Portsburgh, in or near Edinburgh.
- 27 Ann Black or Connaway or Conway, wife of John Connaway or Conway, now or lately labourer, and now or lately residing in Portsburgh or Wester Portsburgh aforesaid.
- 28 The foresaid John Connaway or Conway.
- 29 William Noble, now or lately apprentice to David Rymer, now or lately grocer and spirit-dealer in Portsburgh or Wester Portsburgh aforesaid.
- 30 James Gray, now or lately labourer, and now or lately residing with Henry M'Donald, now or lately dealer in coals, and now or lately residing in the Grassmarket, Edinburgh.
- 31 Ann M'Dougall or Gray, wife of the foresaid James Gray.
- 32 Hugh Alston, now or lately grocer, and now or lately residing in Portsburgh or Wester Portsburgh aforesaid.
- 33 Elizabeth Paterson, daughter of, and now or lately residing with Isabella Smith or Paterson, now or lately residing in Portsburgh or Wester Portsburgh aforesaid.
- 34 The foresaid Isabella Smith or Paterson.
- 35 John M'Culloch, now or lately porter, and now or lately residing in Alison's Close, Cowgate, Edinburgh.
- 36 John Fisher, now or lately one of the criminal officers of the Edinburgh police establishment.
- 37 John Findlay, now or lately one of the patrol of the Edinburgh police establishment.
- 38 James Paterson, now or lately lieutenant of the Edinburgh police establishment.
- 39 James M'Nicol, now or lately one of the serjeants of the Edinburgh police establishment.

- 40 Mary Stewart or Stuart, wife of Roderick Stewart or Stuart, now or lately labourer, and now or lately residing in the Pleasance, near Edinburgh.
- 41 The foresaid Roderick Stewart or Stuart.
- 42 Charles M'Lauchlan, now or lately shoemaker, and now or lately residing with the foresaid Roderick Stewart or Stuart.
- 43 Elizabeth Main, now or lately servant to the foresaid William Haire or Hare.
- 44 Robert Knox, M. D. lecturer on Anatomy, now or lately residing in Newington Place, near Edinburgh.
- 45 David Paterson, now or lately keeper of the Museum belonging to the foresaid Dr. Robert Knox, and now or lately residing in Portsburgh or Wester Portsburgh aforesaid, with his mother the foresaid Isabella Smith or Paterson.
- 46 Thomas Wharton Jones, now or lately surgeon, and now or lately residing in West Circus Place, in or near Edinburgh, with his mother Margaret Cockburn or Jones.
- 47 William Ferguson, now or lately surgeon, and now or lately residing in Charles Street, in or near Edinburgh, with his brother John Ferguson, now or lately writer.
- 48 Alexander Miller, now or lately surgeon, and now or lately residing in the lodgings of Elizabeth Anderson or Montgomery, now or lately residing in Clerk Street, in or near Edinburgh.
- 49 Robert Christison, M. D. now or lately professor of Medical Jurisprudence in the University of Edinburgh.
- 50 William Pulteny Alison, M. D., now or lately Professor of the Theory of Physic in the University of Edinburgh.
- 51 William Newbigging, now or lately surgeon, and now or lately residing in St. Andrew Square, Edinburgh.
- 52 Alexander Black, now or lately surgeon to the Edinburgh police establishment.
- 53 James Braidwood, now or lately builder, and master of fire engines on the Edinburgh police establishment.
- 54 Alexander Maclean, now or lately sheriff-officer in Edinburgh.
- 55 James Evans, student of medicine, now or lately residing with Mr. James Moir, surgeon, residing in Tiviot Row, in or near Edinburgh.

A. WOOD, A. D.

LIST OF ASSIZE.—24th December 1823.

CITY OF EDINBURGH.

Special Jurors.

- James Trench, builder, London Street
 John Paton, builder, Great King Street
 Nicol Allan, manager of the Hercules Insurance Company,
 Heriot Bridge
 Charles Ferrier, accountant, Northumberland Street
 5 John Ramsay, merchant, residing in Princes Street

William Bonar, banker, Abercromby Place
 Peter M'Gregor, merchant, Castle Street
 Thomas Storrar, baker, Mansfield Place.

Common Jurors.

- Robert Jeffrey, engraver, Milne's Square
 10 John Letham, baker, Pitt Street
 Alexander Thomson, grocer, West Bow
 David Hunter, ironmonger, Jamaica Street
 James Meliss, merchant, Blair Street
 Robert Walker, tailor, Broughton street
 15 William Robertson, cooper, Bank street
 George Hogarth, jeweller, Milne's square
 Richard Jones, tailor, Waterloo place
 Thomas Nelson, bookseller, West Bow
 George Drummond, builder, Scotland street
 20 John Davidson, tailor, Greenside Street
 Robert Steele, confectioner, Hanover Street
 William Simpson, poulterer, Hunter Square
 William M'Kay, cabinet-maker, South Charlotte Street
 George Andrew Lutenor, portrait painter, Dundas Street

TOWN OF LEITH.

Special Jurors.

- 25 Charles White, merchant, Charlotte Street
 Abram Newton, merchant, James Place

Common Jurors.

- John M'Fie, merchant, James Place
 David Brash, grocer, Coalhill
 Thomas Barker, brewer, Yardheads
 30 Thomas Heriot Weir, baker, Kirkgate.

COUNTY OF EDINBURGH.

Special Jurors.

- Sir John Hamilton Dalrymple of Cousland and Fala, Baronet, Oxenford Castle
 William Hunter, farmer, Poltonhall.

Common Jurors.

- James Banks, agent, Cassels Place, Leith Walk
 Charles Marshall, meal-dealer, Marshall's Place, Stockbridge
 35 George Ritchie, merchant, Cassels Place, Leith Walk
 James Allan, wine-merchant, Hope Street, Leith Walk

COUNTY OF LINLITHGOW.

Special Juror.

- Andrew Vannan, distiller, Borrowstounness.

Common Jurors.

38 Robert Arkley, baker, Borrowstounness
James Ainslie, grocer there
40 Thomas Boag, shipbuilder there

COUNTY OF HADDINGTON.

Special Jurors.

John Hutton, residing at Gifford Vale
Robert Ainslie of Redcoal.

Common Jurors.

William Bell, grocer, Dunbar
Henry Fenwick, grocer, there
45 Alexander Sanderson, grocer, there.

T R I A L.

WEDNESDAY, 24th December, 1828.

The Court met at precisely a Quarter past Ten o'Clock.

PRESENT,

The Right Hon. DAVID BOYLE,	LORD MEADOWBANK.
LORD JUSTICE CLERK.	LORD MACKENZIE.
LORD PITMILLY.	

Counsel for the Crown.

Sir WILLIAM RAE, Bart.—*Lord Advocate.*
ARCHIBALD ALISON, Esq. }
ROBERT DUNDAS, Esq. } *Advocates-Depute.*
ALEXANDER WOOD, Esq. }

JAMES TYTLER, Esq. *W. S. Agent.*

Counsel for the Pannels.

<i>For Burke.</i>	<i>For M'Dougal.</i>
The DEAN of FACULTY.	HENRY COCKBURN.
PATRICK ROBERTSON.	MARK NAPIER.
DUNCAN M'NIELL.	HUGH BRUCE.
DAVID MILNE.	GEORGE PATTON.

JAMES BEVERIDGE, W. S. one of the Agents for the Poor,—
Agent.

The Pannels took their place at the Bar.

The instance being called by the Macer, the Lord Justice Clerk said—William Burke, and Helen M'Dougal, pay attention to the indictment that is now to be read against you.

Mr ROBERTSON.—It is unnecessary to read this libel at present. We have an objection to this style of proceeding—an objection against that libel being proceeded in in this shape; and it is proper to state the objection to it at present.

LORD JUSTICE CLERK.—I am quite unaccustomed to this mode of primary objection to an indictment being read. The

objection to the relevancy of the indictment is the proper time to state it, and not at this time.

Mr ROBERTSON.—It is not necessary that it should be previously read by the recent statute.

LORD JUSTICE CLERK.—We have found very little advantage from not reading indictments. The proper way is to read them, unless they are uncommonly laid.

Mr COCKBURN.—It is not necessary to be read. We object to the reading it, as it prejudices the prisoners. We think that the prisoners would be prejudiced by reading that which the Court will ultimately find no legal part of the libel.

LORD MEADOWBANK.—What I hesitate at all, is against interfering with the discretion of the Court.

Mr ROBERTSON.—If the Court wish the indictment read, we do not mean to press the matter farther.

LORD JUSTICE CLERK.—I think that every thing should be read.

William Burke, and Helen M'Dougal, stand up and hear the indictment now to be read.

The preceding indictment, (*on pages 1 to 4,*) was then read by the Clerk of Court.

The following Defences against the indictment were lodged for the prisoner Burke:—

' The pannel submits that he is not bound to plead to, or to be tried upon, a libel, which not only charges him with three unconnected murders, committed each at a different time, and at a different place, but also combines his trial with that of another pannel, who is not even alleged to have had any concern with two of the offences of which he is accused. Such an accumulation of offences and pannels is contrary to the general and the better practice of the Court; it is inconsistent with the right principle; and, indeed, so far as the pannel can discover, is altogether unprecedented; it is totally unnecessary for the ends of public justice, and greatly distracts and prejudices the accused in their defence. It is therefore submitted, that the libel is completely vitiated by this accumulation, and cannot be maintained as containing a proper criminal charge. On the merits of the case, the pannel has only to state, that he is not guilty, and that he rests his defence on a denial of the facts set forth in the libel.'

The Defences for Helen M'Dougal were lodged and read as follows:—

' If it shall be decided that the prisoner is obliged to answer to this indictment at all, her answer to it is, that she is not guilty, and that the Prosecutor cannot prove the facts on which his charge rests. But she humbly submits that she is not bound to plead to it. She is accused of one murder committed in October 1828, in a house in Portsburgh, and of no other offence. Yet she is placed in an indictment along with a different person, who is accused of other two murders, each of them committed at a different time, and at a different place,—it not being alleged that she had any connection with either of these crimes. This accumulation of pannels and of offences is not necessary for public justice, and exposes the accused to intolerable prejudice, and is not warranted, so far as can be ascertained, even by a single precedent.'

Mr ROBERTSON.—My Lords, in support of the defences which have now been read to your Lordships, I must direct the attention of the Court, as shortly as I can, to the grounds upon which we conceive that the trial upon this indictment should not be allowed to proceed. In the indictment there are named two prisoners, William Burke and Helen M'Dougal, which two prisoners are not stated on the face of the indictment to have had any connection with one another. It is simply stated, that there are two separate and distinct prisoners to be tried for murder, under one indictment. My Lords, the major proposition of the indictment contains a charge of murder, laid simply without any specific aggravation whatever,—then the minor proposition contains three charges for murder, totally unconnected with one another. The first charge is against William Burke alone, of a murder said to have been committed in the month of April, or the month of March preceding, or May immediately following, in a certain place of the Canongate of Edinburgh. It is not stated that Burke had any accomplices in this murder. He is the sole person charged with that specific offence. Then, my Lords, after describing the manner in which the murder is alleged to have been committed, it is stated, in the end of the charge, that this was done by the prisoner, 'with the wicked aforethought intent of disposing of, or selling the body of the said Mary Pater-son, or Mitchell, when so murdered, to a physician, or surgeon, or some person in the employment of a physician, or surgeon, as a subject for dissection; or with some

other wicked and felonious intent, to the prosecutor unknown.' Thus, while, on the one hand, as your Lordships will recollect there is no specific aggravation stated in the major proposition,—so, on the other, when the prosecutor comes to describe the intent with which the murder was committed, he does not confine himself to one species of intent, but states, that the murder was committed either for the purpose of giving the body over to a physician, or with some other felonious intention. Then, my Lords, the second charge contained in the minor proposition, is of another murder, alleged to have been committed in the month of October, at the distance of several months from the former charge. It is stated to have taken place in Tanner's Close, which is situated either in Edinburgh, or Wester Portsburgh. He alone is charged with that offence; and then the intent is laid precisely as in the former charge,—viz. selling the body to a physician, or surgeon, for the purposes of dissection, or some other purpose, to the prosecutor unknown. Now, my Lords, the third charge in the minor proposition is, murder committed in a different place in Portsburgh, on another day, in the month of October; or, in the usual style, on some other day in the month of September immediately preceding, or November following. In this last charge of the indictment William Burke and Helen MacDougal are both included; and after describing the way in which the murder was committed, the intent is laid precisely as in the former charge. Thus, your Lordships see, that there are three murders charged against the prisoners,—one against M'Dougal, and two against Burke, at different times, and different places, without any connection betwixt these offences. Then there are libelled on five declarations alleged to have been emitted by Burke,—two declarations alleged to have been emitted by the prisoner M'Dougal; and there are farther libelled on eight different articles, against Burke, and six additional articles against Burke and M'Dougal. There is, finally, a list of witnesses to the amount of fifty-five in number.

Now, my Lords, the question is, whether these charges are consistent with the practice of this Court, or the principles of law in regard to the cumulation of actions, and with that sound and proper discretion which cannot be denied on the other side of the Bar, the Court are bound to exercise in all cases of this description? In considering that question, the first and most material point the Court have to attend to, is, whether the prisoner suffers any prejudice from this mode of proceeding? Whether that prejudice is to such an extent as to justify your Lordships in quashing the whole of the indictment, or merely in selecting a part of the indictment for trial at one

time, or in separating the case of one prisoner from the other, must depend in a great measure on the degree of prejudice which the prisoners may be presumed to suffer? But the first point which your Lordships have to consider, is, whether the prisoners suffer *any prejudice* by this mode of procedure? Your Lordships will be pleased to attend to the fact, that it is not charged in the indictment that there is any natural connection betwixt the three offences;—there is no connection in law,—no connection charged,—and there is truly no connection in any way whatever. With the exception, that the mode of murder, in the three cases, is described in the indictment as somewhat similar; and with the further exception of the intent I have described, there is no pretence for saying that there was any connection between these crimes. But, although the intent is thus laid in this case, it is not laid *absolutely*. It is either with the intent of giving the bodies for dissection, or, with some other intent, to the prosecutor unknown. Now, my Lords, it is not necessary for the prosecutor to prove, in the case of any one murder, the intent to hand over the bodies for dissection. He may, however, prove this intent as to one, and as to the other two, he may prove that they were done for different ends, for gratifying private revenge, for the purpose of robbery, or in any other way. Nay, my Lords, there is nothing in common charged as applicable to the three cases,—there is no connection between them, either in time or place, and no specific charge, by which the prosecutor is tied down to prove any natural connection whatever among them. It is not said that they were committed in the course of any conspiracy between the prisoners, or were the parts of only consecutive or following offence. They are laid simply and exclusively as three different offences, without connection, and without any species of aggravation whatever. Now, my Lords, the whole train of this proceeding is quite unnecessary for the ends of justice. The crime of murder is different from all other crimes. When followed by a conviction, it *inevitably* leads to the highest punishment of the law. We shall see immediately that there is a cumulation of charges allowed in cases of different kinds;—but I pray your Lordships to keep in mind, that murder is a crime of a peculiar description, and not to be looked to as a mere ordinary offence, of the same general character as those usually charged in the indictments of this Court. Therefore, this being the general state of the matter, let us first look to the case as applicable to the prisoner, William Burke.

The mere fact of charging, on the face of this indictment, three unconnected murders, is of itself sufficient to create a prejudice against the prisoner. If this case were to go on to trial, your Lordships would, no doubt, direct

the Jury that specific and sufficient evidence must be brought forward as to each specific charge. But although the Court were thus to address the Jury, it would be in vain to say that any Jury sitting in that box could act upon that distinction. They would necessarily borrow some of the evidence in one transaction, and carry it to another. Although the law might separate the charges, it would be impossible for the minds of the Jury to separate them; and although one murder was proved, and the other not, as the facts could not be separated, the Jury would naturally convict the prisoner of the whole. Any light thrown on the murder proved, would be carried to the one not proved. Nay, although neither the one nor the other were proved, yet it might be held, that, on the whole of the transaction, there was evidence against one or other of the prisoners. This is a prejudice arising from the fact of the murders being connected in one indictment; and it is a prejudice against which it is necessary effectually to guard, in looking specially to the case of murder. I must further observe, that in the indictment against Burke himself,—suppose it was possible for the Jury to banish the consideration to which I have referred,—there are three murders charged against him, with *fifty-five* witnesses. We have then seven declarations, five by him, and two by the woman. Although it is quite clear in law, that one set of declarations by one prisoner cannot be used in evidence against another prisoner; yet here arises another important consideration. It is necessary, in point of law, to have them separated; but it is impossible, in fact, that the Jury, under such circumstances, and in so protracted a trial, could separate them. They would unavoidably mix up the whole of these declarations, and mass them together, although the Judge might direct the Jury not to do so. Substantially it is impossible for them to come to such a separation as is essential to the course of Justice.

Look next at the case of the other prisoner. The prejudice is still stronger against her. This woman is charged with having committed a murder in October, in company with William Burke, with whom she had no connection at all. She is actually brought to trial on that charge in an indictment, combining two other charges against the other prisoner, with whom she has no connection whatever. Where is this to stop? If the public prosecutor may do this, look to the danger of such a proceeding. I am now talking of a grievous case; but if this mode of proceeding were sanctioned, he might go still further. He might combine

ten murders in one indictment, in the case of different prisoners,—he might combine ten different offences against ten different prisoners, in ten different counties. Therefore, I submit it is plain there must be some limitation; and I wish to know where this is to end, if the Court may not interfere? I say, here are two murders with which she has no concern. The Jury may mix up the whole together against her, and convict, from circumstances connected with the other murders, with which she is not charged, and as to which she is not put on her defence. Your Lordships see, that in the end of the indictment, there are eight different articles libelled on against Burke, and six against M'Dougal. Just take the first of these articles,—the skirt of a gown. The prosecutor libels upon this against William Burke alone, and it cannot be produced against Helen M'Dougal. But in order to establish the guilt of Burke, the prosecutor, in the *first* place, connects Helen M'Dougal with William Burke; and then he traces the gown into the possession of Helen M'Dougal. It is most evident that the first and second murder can be no evidence of the third: But he calls witnesses to prove that this was the gown of Mary Paterson, the first person murdered, which is thus traced into the hands of Helen M'Dougal. The witness adduced then swears that it is the *gown of Mrs Campbell*, and *not* of Mary Paterson, which is thus adduced against M'Dougal, as conclusive evidence, without being libelled on against her at all. I know your Lordships would say that this must be struck out of *the notes*, as not being evidence against Helen M'Dougal; but it could not be struck out of *the minds* of the Jury. The prisoner, in this way, would also be put off her guard. She saw on the face of the indictment nothing about a gown libelled on against her; and she would not be under the necessity of preparing evidence to shew, that though it was the gown of Campbell, yet she came by it fairly and honestly. So you have an article of evidence adduced against the prisoner not libelled upon, and the prisoner put off her guard with regard to the evidence to be produced against her: Therefore, I submit to your Lordships, that a still stronger prejudice exists against her than even against the other prisoner.

Now, my Lords, if such be the case, the question is, Whether this be a legal proceeding? If I have satisfied your Lordships that there is a prejudice against one or other of the prisoners at the bar, I submit that this is of itself sufficient. It is the undoubted law of this country, that every prisoner is entitled to the various defences which his own particular case may offer; and the more atrocious the charge

against him is, the greater ought the care of the Court to be, that he shall not suffer prejudice from the way in which the charges are brought forward. Let us look then to the authorities which have regulated the practice of the Court on this subject. So far as we can discover from the records of this Court, this is the *first case* in which it was ever attempted, on the part of the prosecutor, to charge, in one libel, three murders, committed at different times. There may be cases where three persons were slain at the same time, as in the case of the Aberdeen Riots, from one discharge of musketry; or there may be the case of a person poisoning a whole family, where, as Mr Hume says, the whole may be charged in one libel, as being part of one foul and nefarious story. If a prisoner suffer a prejudice there, it is only from the number of crimes committed by himself at one time; and he cannot complain. But I say there is no accumulation of crimes charged as committed at *one time* here, but three unconnected murders, committed at different times and places, charged against one prisoner, who is combined with the case of another prisoner, charged with one only of these murders. If there be any authority for this, it is incumbent on the prosecutor to show it. Let us see the cases that come nearest to this. It is not a little remarkable, that in the work of Sir George Mackenzie,—one who is little suspected of being too favourable to the prisoner,—although he states it was the practice of his day, to have an accumulation of offences in one indictment, and that this was not considered illegal; yet he strongly reprobates this as inconsistent with the true principles of the Law of Scotland. I read from Part II., title 19, sect. 7. He refers to the *quoniam attachiamenta*. He states, that 'a person accused, was not obliged to answer, of old, but for one crime in one day, except there were several pursuers—*quoniam attachiamenta*, cap. 65, by which accumulation of crimes was expressly unlawful, *sed hodie aliter obtinet*; for now there is nothing more ordinary, than to see five or six crimes in one summons or indictment, and to see one accuser pursue several summonses: And yet, seeing crimes are of so great consequence to the defender, and are of so great intricacy, it appears most unreasonable that a defender should be burdened with more than one defence at once; and it appears that accumulation of crimes is intended either to lese the fame of the defender, or to distract him from his defence.' I say, my Lords, here is brought out in the clearest terms, the just and impartial principle, that the accumulation of offences is burdensome and offensive to the pannel, and that he is not called upon to defend

himself against more than one crime at one time. The accumulation of charges was thus considered an injury even in Sir George Mackenzie's time, as tending to distract the pannel in his defence. Such being the oldest authority, let us look to the principles laid down by Mr Hume. Mr Hume treats of the accumulation of crimes, under three different heads. In the first place, he mentions the accumulation of various crimes of the same sort. In the *second* place, he mentions the combination of different crimes, where they are part of the same transaction. Then, *thirdly*, the combination of several unconnected crimes against several prisoners. In the *first* place, your Lordships bearing always in mind, that we have here three unconnected crimes in the same indictment, and two unconnected prisoners. Let us see what is said by the learned author: I read from page 166 of the 2d. vol.—'In the *first* place,' he says, 'the competency never has been disputed, of charging in one libel any number of criminal acts, if they are all of one name and species, or even of one class and general description; so as to cohere in this point of view, and stamp a character on the pannel, as one who is an habitual and an irreclaimable offender in this sort,' &c. It is quite plain, that the author does not here refer to murder at all; for he lays down the general doctrine, and recognizes it as affording a sort of '*habit and repute*.' In murder, I do think that one act is quite sufficient of itself; and it never could be meant that it is competent to accumulate charges of this kind, in order to ascertain whether the murderer was, in the language of our author, an '*irreclaimable offender*' in that crime. Therefore, when he treats of this sort of accumulation, the cases which he puts are acts of stealing, housebreaking, or the like. Thus, James Inglis was tried on one libel, for three acts of horse-stealing, and one act of pulling and stealing wool; William Pickwith, for three acts of highway robbery; Thomas Thomson, for three acts of housebreaking; and Walter Ross, for two acts of pocket-picking.—p. 166. All cases of housebreaking and theft are crimes of a totally different description from the present. It may be right and proper, in order to have the law administered in a salutary manner, to have small offences brought out at once, but not in crimes of this description. No doubt housebreaking is a capital offence, but it is not of the same kind as of murder, and does not lead so certainly to a capital punishment. It is quite plain that this is the principle by which he illustrates his view of the matter; for he refers to two or more acts of pocket-picking. They bear no resemblance to a case like the present. He quotes, under

this passage, no cases of murder; and he confines the illustration to those I have mentioned.

Now see, in the *next* place, what Mr Hume states as to the combination of connected crimes. Here he quotes several cases—some very old. He treats of one of robbery and murder—robbing a post-boy, and murdering him. There was no harm in putting those two charges into one indictment. They were part of the same foul and nefarious transaction; he states, that though the charges may be of different crimes, they are still part of one foul and nefarious transaction, and so may be tried together. But, my Lords, in the present case, there is no connection in the crimes; and it is not stated that they were part of the same foul and nefarious story,—or that the prisoners were connected with one another,—or that the crimes were planned and accomplished with one and the same purpose;—Therefore, that class of cases are not connected with the present. The learned author goes on to a more complicated kind,—as, for instance, a case of theft, murder, and robbery, committed against various persons, in different years. Then he proceeds to quote cases in 1696 and 1712, some of which I am sure my learned friends, instead of following, in the present day, would hold up as a beacon to avoid. In one case, there were ten different species of crime, —namely, fire-raising,—attempts and threats to raise fire,—attempts to poison,—theft and depredation,—reset of theft,—the harbouring, outhounding, and maintaining of thieves and robbers,—sorning,—and levying of black-mail,—and the killing and eating of other people's sheep.—Under which different heads he was charged with a variety of separate acts, to the number of twenty, committed against sundry persons, from 1720 to 1726, and many of them but loosely laid in the libel. The Lords thought it proper to restrict the trial to the more special charges, and those of the higher order, viz: the fire-raising, the attempts and threats to raise fire, and the attempt to poison.—*p.* 168. I am sure such a charge as this would not be followed in the present day. Therefore, I quote that case, in order to shew your Lordships that it does not come within the principle Mr Hume lays down as to the case of crimes limited to one person, and it is for your Lordships to say, whether or not, in other respects, this is a case to be followed in the present instance. Even here some of the charges were passed from. In like manner, in other cases, when they find such accumulations to be oppressive, they proceed to the trial of as many of the articles as they can overtake, and dispatch them. I may mention to your

Lordships that, there is a case in 1784, where the Lord Advocate did depart from several of the charges.

I may next call your Lordships attention to what Mr Hume says under the third head of accumulation against several persons. I have already stated to your Lordships, that where any prejudice exists in the minds of the Jury in the case of one prisoner, he is entitled to the remedy of separation. But it is plain Mr Hume considers the union of several prisoners charged with different crimes, to be illegal. Observe what he says in regard to several prisoners charged in the same libel with several unconnected crimes. It is quite true that the learned author puts a case, John for murder, James for theft, and George for forgery, which he says is incompetent. But I ask your Lordships, would it not make any difference in principle, that John should be accused of one murder, and James of another, in the same indictment, in place of John being accused of murder, and James of theft? The last would not appear to me to be such a strong proceeding as the former, though Mr Hume says it is illegal.—*p.* 171.

Mr Hume next quotes the case, in 1784, where there were four prisoners, to which I already alluded. Two of them were charged with a riot on the 4th of June, and the other two for another on the 7th of the same month. The charges in the libel were here so far distinct, as no one of the pannels was accused of being accessory to both tumults, but to one of them only. In consequence, at calling the libel, and though no objection had been moved, the Lord Advocate represented to the Court, that the form of the charge appeared to him to be, in this respect, improper; and he therefore craved permission to desert the diet, as to the riot of the 7th of June, and the two persons charged therewith; which was allowed accordingly.—*p.* 171. There the Lord Advocate thought it his duty to pass from one of the charges, and, in the *first* place, proceeded with the others. I know Mr Hume says, that as our law stood formerly, the public prosecutor was warranted by the practice to have proceeded. But I pray your Lordships to observe, that this was done in 1784. And then, in what way does the learned author describe the cases? He quotes a set of cases in 1696, 1717, 1718, and one in 1783. What sort of cases are these? The oldest one is in 1696, viz.—Patrick and James Faa, father and son, where the libel charged both pannels with a murder and a forgery, and the father only with several other crimes. And then one in 1717, where certain ministers were prosecuted on the same statute, for entering into their respective kirks, viz.—Alexander Robertson, and seven persons more, all of them

' Episcopal ministers, who were prosecuted on the same statute, and for the same *sort* of crime, of which they had severally been guilty, by intruding into their respective kirks, and exercising the pastoral functions there, after lawful sentence of deposition. The case of George Fairly, and two persons more, indicted on the toleration-act, and the other laws in that behalf, for officiating as Episcopal ministers, without recording their letters of orders, or praying for the King. The like in the case of Alexander Robertson, and five others, indicted for officiating as Episcopal pastors, without having duly qualified and complied in terms of the statutes; and for leasing-making, in praying for the Pretender, either directly or in equivocal terms, at different times and places. Further, the libel, in this case, bears a separate charge against Robertson alone, for drinking the Pretender's health; a charge against William Duguid alone, for clandestine marriage; and a charge against four of the six pannels, for violently and riotously taking possession of a church: All which articles were remitted to an assize along with the others, probably because those several offences agreed in this circumstance, that they *all savoured of Jacobitism and non-conformity*, or were injurious to the discipline of the church, and were imputed to persons of one class or calling. The case of David Strang and William Wyllie, is another instance of the like character: The libel here went to trial against Wyllie, for three acts of clandestine marriage, and against Strang, for one irregularity of the same sort, which was quite unconnected with the others: A strenuous opposition had been made to it, on the part of the pannels.—*p.* 172.

I do not think any of these last were crimes of a very atrocious nature. A charge of three acts of murder is very different from a charge of three acts of *non-conformity*. It savours of something worse than Jacobitism. But there are none of these cases subsequent to 1784,—nothing to shew why the prosecutor ought to have proceeded with one set of prisoners, without going on with the other. The only thing mentioned by Mr Hume, which could have justified a contrary course, was these old cases. There are some others, but it is unnecessary to refer to them, as they are all of the same description. He says, that in later times, instances are still to be met with, though not so strong or so numerous. Then, he quotes the case of Clark, Calder, and Donaldson, 'where the indictment was for one act of shopbreaking, in which all three were concerned,—and for another done by Calder and Donaldson only. But, both shops were situated in the same town; and were broken about the sametime; and the three pannels were

' all of them soldiers;—Clark and Donaldson in the same regiment and company: It appeared too in evidence, though not mentioned in the libel, that they were in a course of shopbreaking, and sharing their profits. For these reasons, the Court repelled an objection which was stated to the libel.—*p.* 173. Next, he quotes a case where there are two persons engaged in one act of house-breaking,—and another in another act of the same kind;—but he quotes no cases of murder. Even in the case of the house-breaking referred to, there was a clear connection. It is thus stated:—'The like plea was urged, but with as little success, in the trial of Archibald Stewart and Charles Gordon. Stewart was charged with three acts of housebreaking alone in Edinburgh, and Gordon with resetting the stolen goods on these several occasions: And Stewart was further charged with one act of housebreaking alone at Nidpath-Castle, in the county of Peebles; in which instance, the spoil had not come into Gordon's hands. But it was related in the libel, that Gordon was married to Stewart's sister, and that both were habite and repute to be thieves; and it appeared from this train of resetting the booty made by Stewart, that Gordon was under a compact to assist him in his thefts.—*p.* 173. So here they were charged in the libel, as having a connection with one another; and although they were not connected in the last act of housebreaking, they were connected in being habit and repute thieves, and concerned in a general system of depredation. But here we have a case totally different from any which can be brought forward on the other side. Here there are charges without any connection, and prisoners without any connection; and yet they are charged conjunctly in one indictment. Therefore, to obviate all prejudices in the minds of the Jury, the Court are entitled to give such remedy as they think fit, under all the circumstances. I may mention another class of cases, where it is common for two prisoners, although charged together, to be separated the one from the other. Such a course is always followed, where the one may give evidence on behalf of the other. This has been frequently done. Your Lordships will remember the case of Surridge and Demsie. Therefore, we go back to the great principles which are laid down in the emphatic words of Sir George Mackenzie, viz.—'It is unreasonable that a defender shall be burdened with more than one defence at once, or distracted in his defence.' That is the principle which runs through all our decisions;—and I must take the liberty of saying, that if there was ever a case where a sound discretion would be exercised in separating the charges, it is the present. The very circumstance of there being mur-

der charged here, is of itself sufficient to justify the course. But there are three murders charged with one intent, which is stated, although not stated absolutely; and, although the public prosecutor was not bound to state any intent at all, he has introduced that species of *intent*. Yet, he has been pleased to do so, when it is matter of public notoriety, that the minds of men are excited in an unusual degree upon this very subject. God forbid that I should suppose that this would prejudice your Lordships, or the respectable Jury that is to try this case. But it is a circumstance which your Lordships cannot overlook; and I say that no Jury should be impanelled under an indictment calculated to awaken such prejudices. It is but fair to the prisoners, and necessary for the administration of public justice at large, that they should be tried in a cool and deliberate manner, not upon the three charges in one indictment, but upon one charge alone. This is not a case where your Lordships are now to make a precedent diametrically opposite to the humane principles of the law of Scotland, contrary to the more ancient practice of our law, and contrary to the better practice of the present times.

Finally, I am aware that it is not usual to refer your Lordships to English authorities in this Court,—I am aware that your Lordships are to look to the law of Scotland; but I hope I am not detracting from the authority of your Lordships when I refer you to that law. It surely cannot be wrong to ascertain how those persons would be dealt with in the other end of the island,—and there I understand the practice is uniform,—not to combine two felonies against one prisoner in the same indictment. I see it is laid down by Lord Ellenborough, in a case which was tried in 1809, a case of various acts of fraud. There the counsel for the prisoner took an objection to the charge.—Lord Ellenborough says:—‘It is usual in felonies, for the Judge, in his discretion, to call upon the Counsel for the prosecution to select one felony, and to confine themselves to that.’ And, accordingly, Mr Chitty says distinctly at page 252, Vol. 1st, ‘In cases of Felony, no more than one distinct offence or criminal transaction at one time should regularly be charged upon the prisoner in one indictment.’ And, if more are charged, the Court will quash the indictment.—Observe the reason, ‘lest it should confound the prisoner in his defence, or prejudice him in his challenge to the Jury.’ These are cases where one prisoner will not be charged with many crimes; and the principle is the same which guides our practice,—namely, the prisoner would be prejudiced in his defence, by an accumulation of offences; although, in point of law, they may be combined in one indictment, the Court will quash the

indictment, lest the prisoner should suffer in his defence. My Lords, in addition to this, Mr Chitty points out, that it may prejudice the pannel in the choice of the Jury. The same applies here. If the charges had been separated, we would have had twenty challenges: If they are not separated, we are limited in our number of challenges. I do not say there are objections to the respectable Jury, with whose names we are furnished; but there might be;—and we say we are deprived of our rights and privileges. When your Lordships look, then, at this case, in all the aspects I have set before you—when you see that there are accumulated and combined charges against different prisoners—when you see the atrocious nature of these charges, the number of the witnesses, the declarations, and the number of the articles libelled,—and when you see the humane and salutary principles of our law, and the practice of this Court,—your Lordships will not be inclined to form a precedent, which, in the *first* place, would be injurious to the law of the country; and, in the *next* place, would be injurious to the unhappy persons now brought to this bar.

LORD ADVOCATE.—My Lord Justice Clerk, your Lordship has heard these objections stated, with that talent and zeal which is ever exhibited by my honourable and learned friend, when he appears, as on the present occasion, gratuitously to defend persons accused: But when the objections which have been stated are looked at in a legal point of view, and the authorities on which they rest are considered, I am persuaded that you will concur with me in thinking that they are entirely unfounded. It appears to me that my learned friend has mixed two objections together, which should be considered separately. The first objection relates to the bringing two prisoners to trial at the Bar of this Court, upon one indictment,—the other, with charging one individual, in the same indictment, with three distinct and separate acts of murder. Now, my Lord, I mean to deal with these separately; and I shall deal very shortly, indeed, with the first. This woman is charged in this indictment, as having been guilty of the crime of murder, along with the man, in one of the three instances charged; and the libel accordingly, after narrating the two preceding acts, charges her as joint actor in the third. I think I could completely defend that proceeding, and shew that it is sanctioned by the law of the country, and by numerous precedents. But I state to your Lordships, my object in putting her in that indictment was, that she might derive advantages from being so placed. I will not detain your Lord-

ships, by detailing those advantages, which must be obvious to all, further than to notice, that if I had charged her in a separate indictment, and had tried the man *first*, and afterwards the woman; adducing against her the same, or nearly the same evidence, which had been previously adduced against Burke; she could not have come here to this Bar, in the same unprejudiced state, after the public had thus heard the evidence against her, which she would now appear in, if the case, as against her, was to go to proof. I think that that prisoner would have had good reason to complain of the public prosecutor, if he had acted in the way which my learned friend recommends, by first leading evidence in the trial of Burke, as against her, and then bringing her to that bar, and repeating the same evidence a second time.—In that situation, I thought it my duty, in justice to her, that she should appear included in this indictment. But she, my Lord, makes the objection; she says that she will be prejudiced. God forbid, that any person holding the situation I do, should do any thing to prejudice a prisoner on trial. The very contrary motives guided my conduct in framing this indictment in the way I have done. The question is now reduced to one of time and of trouble; for, if I do not proceed against her to-day, she will be proceeded against ten days hence. In such circumstances, I shall certainly not insist now on that woman's being tried on this indictment. I shall proceed against her alone, since she now says, that being tried on this indictment, will prejudice her cause. But if she shall suffer prejudice from the evidence in Burke's trial going abroad, let it then be remembered it is not my fault. She and her Counsel must look to that—it is their proceeding; not mine.

As to the second objection, whether or not I am entitled now to go to proof on the three charges here exhibited, or shall proceed *seriatim*, I am aware that this is matter of discretion with the Court. In so far, however, as depends upon me, I declare that I will not consent to this being dealt with in the last of these modes. No motive will induce me, for one moment, to listen to any attempt to smother this case; to tie me down to try one single charge, instead of all the three. If I had confined myself to one of those charges,—if I had served the prisoner with three indictments, and put the pannel to the hardship of appearing three times at that bar, I would have done one of the severest acts that the annals of this Court could shew. I am told that the mind of the public is excited; if so, are they not entitled to know, from the first to the last of this case; and is it not my duty to go through the whole

of these charges. I would be condemned by the country if I did not, and what to me is worse, I should deserve it; and such being the result of my determination, I shall now submit to your Lordships the grounds upon which I conceive the objection must be repelled.

This indictment charges William Burke with three separate acts of murder. It charges him, in the major proposition, with murder. I humbly conceive that the libel contains no aggravation. These murders, my Lord, are detailed, as your Lordship sees, as having occurred within the last six months—the one in April, the other in October, and the third in November. Your Lordship sees that they were all committed in this city—one in the Canongate, one in Tanner's Close, and another in the house of this prisoner,—both these last in Portsburgh—both within fifty yards of one another; and they are charged with having been done with the same intent. I say that intent is no aggravation of the crime. The crime charged is murder, which it is impossible to aggravate by any statement you can make. The intent is stated with the view of its appearing on the record of the Court, what the real motive of this crime was. My friend says, that I have not only stated the intent, but also with some other intent. The Court knows that when we libel intent, the intent is that which we know, and which the Court expects from us; but there may be some collateral circumstances which those other general terms are meant to cover. Thus, my Lords, these cases are all of the same degree—the same description of crime—all committed within a very limited time—within a very limited space, and with the same intent;—and the question is, whether there is any thing in sound sense—in the law of this country, or the authority of this Court, which excludes me from thus laying the libel? I am told by my learned friend, that this is the first case that has occurred where three murders have appeared in one libel, and it is with pain that I acknowledge the truth of the statement. It is with sorrow I admit that there is not only no precedent of such a thing in the annals of this Court, but in the annals of any civilized country whatever. That an individual should have been found capable of committing three distinct acts of murder, is a thing unexampled, and almost incredible. The occurrence has been left for our day; and for our country, and must thus for the first time be dealt with. But repeated instances of other crimes, of a capital nature, have been committed by the same individual, and the same rules must apply to both. These rules are, that where ever the crimes are of the same description and character, they may be tried on the same indictment. My friend has referred to a variety of authorities on the subject; I humbly conceive that they will all be found to bear against him. The first is that of Sir George Mackenzie, which applies to the case of individuals

having three different summonses, at the instance of three different complainers. He says, "a person accused was not obliged to answer, of old, but for one crime in one day," &c. (*Vide* Mr. Robertson's speech, page 166). That more than one summons should not be exhibited the same day,—that is the true import of this passage. Now, my Lords, I would like to direct your Lordships' attention to the authority of Mr. Baron Hume (page 166, vol. ii). This author says, "the competency has never been disputed, of charging in one libel, any number of criminal acts, if they are all of one name and species, or even of one class and general description, so as to cohere in this point of view, and stamp a character upon the pannel, as one who is a habitual and irreclaimable offender of this sort." Now, your Lordships see that my indictment falls directly under the law laid down here by Mr. Hume; the crimes are all one name and species, all of one class and description, and stamp a character upon the pannel, which a jury and the Court are bound and entitled to look to; the prisoner is entitled to all fair means of defence, but we must look to the interest of the country, if we were to be excluded from bringing before a jury the whole extent of the guilt of the individual, such guilt being always confined to one name and one description, the consequences to the administration of justice would be most prejudicial. Mr. Baron Hume goes on to say, "thus James Inglis, who was tried on one libel for three acts of housebreaking, and one act of pulling and stealing wool; William Pickwith for three acts of highway robbery; Thomas Thomson for three acts of housebreaking; and Walter Ross for two acts of pocket-picking." Indeed, there is no instance, so far as I have observed, of the distribution of the several charges into separate libels in situations of this kind." These authorities all appear to be so decisive against my learned friend, I am surprised how he could have referred to them. My learned friend says that he sees no authority for accumulating such charges. I see no authority for separating them. According to Mr. Baron Hume's authority, the separation of such charges is exemplified in the annals of the criminal court. Your Lordship will see the hardship to individuals, if they were to be tried day after day for crimes of the same description, instead of being put at once to their trial for the whole. The same rule applies on all these occasions, where the criminal acts, though of different kinds, have a natural relation and dependence on each other; and accordingly, notice is taken by Mr. Baron Hume of a case of great importance, that made a great noise at the time;—the case of Nairne and Ogilvie, accused of incest, adultery, and poisoning the female's husband. In this case the objection was taken, and was expressly repelled. Mr. Baron Hume also mentions that the same objection was repelled in the case of John Irvine, where he was charged with five acts of robbery, each of

them capital crimes. Thus, this objection has been repeatedly stated, and repeatedly repelled by the decision of this Court. If such decisions are not to regulate your Lordships, I do not know in what way the actions of men can be regulated. In criminal matters, beyond all others, precedents ought to be strictly adhered to. There are a variety of other passages to the same effect; and I would just refer your Lordships to the daily practice of this Court in this matter. I would refer your Lordships to the case of James Martin, where a man was tried and convicted for four housebreakings. I would refer your Lordships to the case of Donaldson, tried for theft, reset, housebreaking and theft,—all separate acts. I would refer you to the case of Beaumont, at Aberdeen, in 1826, where six different acts of housebreaking were charged, and the man sentenced and executed. I would refer you to the case of Gillespie, at Aberdeen, in 1827, where he was tried for nine acts of forgery, and executed; and I would refer you to the well-known case of Surridge, 7th November 1820, which occurred at Greenock, where a man was indicted for two different acts of murder, and where the acts were committed at the distance of an hour from each other. These authorities, and decisions of your Lordships, and the practice following upon them, must guide this matter now.

With respect to the reference made to the law of England to cases of this sort, the passage which my friend referred to, instead of being for him, is against him, and can only lead to the conclusion for which I have thus contended. Lord Ellenborough says, "In point of law, there is no objection to the insertion of several distinct felonies of the same degree, though committed at different times, in the same indictment, against the same offender; and it is no ground either of demurrer or arrest of judgment."—(*Chitty*, page 253). This is precisely our law on the subject, but English practice certainly cannot rule the decisions of this Court in criminal matters, which have been fixed and decided so wisely, so long, and are so perfectly understood. On the whole, this objection ought to be repelled and I ought to be allowed to proceed to trial against Burke on the three different charges for murder contained in this indictment.

DEAN OF FACULTY.—My honourable and learned friend opposite, may rely on this, that none of us on this side of the bar entertain the smallest doubt that he has brought this case to trial in the manner that he thought best calculated for justice. On the other side, I know he will give us credit for this, that we state this objection from a firm conviction that it is essential for the ends of justice that it should be sustained. I was surprised at one observation of my learned friend, in concluding his speech, when he mentioned to your Lordships that it was of infinite im-

portance that the decisions and practice of this Court should be adhered to; and yet candidly admitted to us, that this is the very first example on the whole record of the Justiciary Court of an indictment in the case of murder being so framed. Accordingly, this is the very first example of three or two separate or unconnected murders, alleged to have been committed at different times, places, and circumstances, being put into one indictment. No such instances can be produced; and are we not justified in representing to the Court that which is scarcely denied to be a relevant ground of objection—that the prisoner might sustain infinite prejudice in his defence, if he were to be put to his trial on this indictment with all the concomitants with which it is connected? If I understand my friend rightly, he means to desert the diet *pro loco et tempore* as to the woman, the hardship as to her being self-evident; and therefore her interest is not now before your Lordships. But the question remains, and I trust it will appear to your Lordships that it is a question of importance, whether the interest of the male prisoner is not infinitely prejudiced by the form in which this indictment is framed. If I understand my learned friend, this indictment was framed for the purpose of producing an effect which, as shall submit to your Lordships, is clearly calculated to lead to the greatest injustice to this prisoner. Therefore let us see what this is that the prosecutor insists on passing to the jury. He makes an averment in this indictment that three murders have been committed. We shall submit that there are sufficient grounds for not putting the prisoner on his trial upon any of these charges under this indictment. Your Lordships will assume, in the first instance, not only that the prisoner may be innocent of each and all of these offences, but that he is innocent of them. We are entitled to the benefit of the ordinary presumption, that a man is not guilty of the crimes that are charged against him till these crimes are substantiated by clear, undoubted, and positive evidence. If he only get the benefit of that principle, granting that the prosecutor is only doing his duty in bringing him to trial for any offence which he is supposed to have committed, let us see whether this form of the indictment is calculated to do the plainest justice to the accused. There are three charges of murder—one said to have taken place in the Canongate of Edinburgh, in the month of April 1828; another in October, said to have taken place in the house of a person of the name of Hare, in Portsburgh; and another on the last day of October, in a different place in Portsburgh, in a house said to be inhabited by the pannel. Now, my Lords, these are separate charges of the murder of course of different persons, totally unconnected with one another, living in different places, found in different places, and in different circumstances; and the last of these acts is said to have been committed in conjunction

with a third person, who is not stated to have any connexion with the other acts. Supposing that the prosecutor is in a situation to prove one of these murders, I need not tell your Lordships that that will infer the death of the pannel. If he is in a situation to prove any one of them, it will lead to that result. And I need hardly say that in such a case it will lead to it infallibly. Now, my Lords, I ask for what purpose are we to have three murders crammed into one indictment? If the object is to see, whether the man has committed the crime of murder or no, this must be done by proving a specific act of murder by facts which must and can relate to it alone. If the prosecutor is in a situation to prove one such case, where is the necessity for putting another separate charge of a different murder. There is plainly no such necessity. If we go to trial in this case, and if evidence is brought for the purpose of proving him guilty of one of these murders, and the prosecutor totally fails to prove it, or leaves that case in such doubt of the guilt of the pannel as to entitle a jury to give a verdict of not guilty, or not proven, most assuredly, my Lords, if that should turn out to be the state of the case, it could never for a moment be pretended, that that attempt to prove the pannel guilty of one murder of which he must be acquitted, could be used as a circumstance of evidence to prove him guilty of the other. Will anybody say that a false charge, or a charge that turns out false on the evidence, a charge upon which the jury might say he is not guilty, is to be taken to prove a separate and distinct murder. Surely it is impossible to maintain that. And if no such argument could be used, what, then, is the purpose to be served, by putting three several murders into one indictment? My learned friend says he considers it for the advantage of the prisoner, because he might otherwise be exposed to one trial after another. But we must be allowed to judge of that, and we have fully considered the matter. Each case of murder must be proved by its own facts, and a *talis qualis* proof as to one cannot legally be allowed to operate as a make-weight in proving the other. The injury, therefore, which the pannel sustains by this form of indictment is manifest. You cannot lay that indictment before a jury, without necessarily producing prejudices in their minds from the very fact that he is there gravely charged with three separate murders. Accordingly, my learned friend at last comes to a point. He begs pardon if I am wrong, but as I understood him he candidly spoke out that he thought it his duty to put all the three murders, and to include both the man and the woman in one indictment, because an attempt to separate them would be an attempt to shift the charges that were brought against these prisoners:—that is to say, that though the several murders are charged specifically as separate crimes, the prisoner is not to be tried on

each on its own merits, but he is to answer to them all at once as making up, by a supposed connexion between them, not charged in the indictment, some general charge of the crime of murder. It is said that by this objection we are endeavouring to smother the disclosure of the whole story. What is meant by this smothering? The Lord Advocate is undoubtedly entitled to bring the prisoner to trial on all and each of these charges. We are doing nothing to prevent this. But if the meaning be that we are desirous, while under trial for one murder, to keep back from the jury all facts relating to some other murder totally unconnected with it, I say that in this sense we are entitled to do so, and justice requires that such a smothering of the assumed story should take place. For what does it amount to but an attempt to prejudice the minds of the jury by facts confessed to be irrelevant? The nature of the charges themselves is sufficiently calculated to excite unfair prejudices, originating as they are said to do in circumstances which unavoidably affect the best feelings of the public. But it is the duty of the Court to take care that nothing in the mode of trial shall be permitted to aggravate or give force to such illegitimate impressions. And it is precisely because it leads to an assumed connexion between the charges, which is not libelled, and could not be libelled, and that we say it is not a legitimate mode of putting the prisoners on their trial. It is said that all the acts were committed in one place in Edinburgh. But this will never do. There are here three separate places—three distinct *venues* laid, just as certainly as if one act were in Edinburgh and another in Orkney. They may be said loosely out of doors, to have all happened in one place. But here we speak of the *locus* technically, and it must be looked to in each case with legal precision. In the same manner, the crimes are totally separated and unconnected, in regard to the time of their commission. My learned friend says, they are only at the distance of six months from one another. Is a distance of six months a slight separation of time in such a matter? One murder is said to be committed in April—another in the beginning of October—and a third on the last day of October or the first of November. And all these are put into one indictment. Is there no prejudice to the prisoner here? Suppose I wished to prove an *alibi* as to one or more of them, is the prisoner not put to an unreasonable difficulty in having to meet three such charges in one trial? The difficulty of ascertaining the facts, and the danger of their correct application, is infinitely increased. I may have an *alibi* as to one, in another there may have been no murder committed, in a third it may have been committed by a different person. But the prisoner is to be perplexed in this preparation, and the jury are to be perplexed in their consider-

ation of the case, by the mixture of the whole together, till at last they may be unable to see the bearings of the evidence in each case, and he may be convicted upon the mere impression of guilt from the multiplication of charges, without any sufficient evidence in any one of them. The acts charged, then, being perfectly separate in place, and time, and circumstances, what remains to connect them? My learned friend admits, that he has not libelled it as an aggravation, or in any way as to the nature of the offence in the major proposition, that the several acts were done in connexion with one another. But he says, and it is true, that he has libelled as to each in the minor proposition, that it was done with the intent to sell the body for dissection. The charge is, that the act was done with the intent of disposing of the dead bodies for dissection, or some other felonious intent to the prosecutor unknown. It is said that these last words must go for nothing. Does my learned friend mean to say that he would fail in his indictment if he did not prove the specific intent that is laid there? This intention is laid, I think rather irregularly, in the minor proposition, as the motive for which the thing was done. That motive, by the law of Scotland, is a separate crime, and in a later case, it was held, that it was not competent to charge or prove one crime (embezzlement) as the inducement to the commission of another (fire-raising), where there was no substantive charge of it in the major proposition. But waving that, I suppose it cannot be maintained that the prosecutor would fail in his indictment by failing to prove that specific intent under their indictment for murder. If he proves the murder itself, he is entitled to prove any intention, any motive that led to it. And what could the pannels counsel say, if it should appear that one of the murders was committed for a different purpose—for the purpose of robbery, or concealment of some other crime. It would evidently be no defence, that that motive was not specially libelled. If they prove the particular case of murder, what signifies the particular intent? The motive will not palliate it in the slightest degree, unless it comes up to that sort of impulse which will produce a justification or reduce the offence to culpable homicide. But suppose that the basis of my friend's argument were granted to him, and that this libelling of the intent had the effect of connecting the charges of this indictment, the thing of which I complain is avoided. I complain of it precisely because the indictment is so framed as evidently to produce the impression on the minds of the jury, that there is such a connexion between the separate acts, though there is no such direct charge in it. If my learned friend had so libelled it, we should have been upon a different question, Whether it was a competent charge at all or not: therefore, upon this indictment

he is not entitled to make that case, because he has put his libel in such a form as to admit of the discussion of that question. These are the views, in point of principle, on which I submit that this indictment should not go to trial. The plea on principle has been clearly supported by authorities; but before going into them, let me say a word more of the prejudice that the pannel must suffer, to which I have heard no answer. There are three charges of murders, at the distance of six months, in different places—the prisoner is put to his defence fifteen days after receiving his indictment—he is examined and re-examined—five declarations libelled—perplexed and confused by these various charges, and now called on to speak to a list of fifty-five witnesses: I ask your Lordships is he not prejudiced in his defence by such a form of procedure? It evidently exposes him to great and unusual difficulty. I think that there is great room for objecting to the competency of it. But I do not at present say, that it will or will not be a sufficient reason for quashing that indictment, and directing a different course. I am, at all events, entitled to speak to the discretion of your Lordships, and I humbly submit that, taking it in that light, there is the most serious ground for the exercise of that discretion in this case. It is further evident, as mentioned in the authority quoted from the law of England, that the prisoner may be prejudiced in his challenges of the jury; and, my Lords, as the legislature has thought that of so much importance, as to make it the subject of an act of parliament, it is to be presumed that the pannel has an interest to preserve it unimpaired. We do not at present know who the jurymen may be that may sit on this trial. We mean no offence to any individual; but, speaking of the abstract principle and right, it must be of importance to the pannel to have the use of all the challenges that he may have upon this trial: If he used them all, he would in separate trials have a right to make fifteen challenges, that is to say, five gentlemen on each of the lists of the jurymen that were to be drawn out of the box. Can it be denied, then, that he is prejudiced in this point, if the prosecutor combine all the three charges in one indictment? In the law of England, I believe the prisoner has twenty challenges in such a trial; and yet we see that the effect in lessening them is taken by the English Judges as a serious reason for not putting a prisoner to trial on two crimes in one indictment. Still farther, there may be jurymen liable to be challenged for cause in one case and not in another. Again, there may be bad witnesses in one case, who are good witnesses in another; they may be liable to challenge in one case, and not liable to challenge in another: They might thus be examined to a certain extent upon one case, and though possessed of material information affecting another charge, could be examined no farther. On the whole, therefore,

in every view that can be taken of the principle, and the justice of the case, the argument is clearly in favour of the objection. Then let us see whether there is authority for it. The first, my Lords, is the express authority of Sir George Mackenzie, which was fully explained by my learned friend. Sir George Mackenzie says:—(Here the learned counsel referred to the passage formerly quoted by Mr. Robertson, see p. 16.) Is not that the very case of forcing a man to go on his defence for more than one crime at a time, whereby he may be distracted, and injured in his defence? That is the doctrine Sir George Mackenzie laid down a century and a half ago. My learned friend says, that this relates to the case of several prosecutors. But it is clear that it does not. The passage in the *Quoniam Attachamenta*, referred to, is in these words:—‘ Si quis per aliquem calumniatus fuerit, non tenetur respondere uno die, nisi de una appellatione; aut de uno delicto; nisi sponte voluerit. Sed si plures personæ eum appellent, de diversis calumniis; pluribus respondere tenetur.’ The first case here stated, is clearly that of one prosecutor; and it is of that case that Sir George Mackenzie speaks. What authority is opposed to this? My learned friend has referred to the passage in Mr. Hume; but Mr. Hume’s authority, rightly understood, is very much in favour of our argument. He says:—(See Mr. Robertson’s speech, p. 17.) So, my Lords, the case is a case of housebreaking and theft; and he says,—‘ The same method shall be good with respect to those criminal acts, which, though distinct in themselves, are, however, charged as evidences and instances only, to make out one genuine crime, such as sorning, harbouring of thieves, fore-stalling, oppression, or the like,’ p. 166. That doctrine we have no occasion to interfere with, though there may have been examples of it not of the very best kind. But your Lordships will observe that these offences, though some of them are capital, are still very different from the charge of murder; for, even in the case of housebreaking, the libel may be restricted to an arbitrary punishment. But I think my learned friend would scarcely restrict a charge of murder to an arbitrary punishment. The charge itself may, indeed, be restricted to *culpable homicide*; but, that is a change in the nature of the crime itself. Would any prosecutor go to trial before a Jury, on a charge of murder, and restrict the indictment to an arbitrary punishment? I apprehend not; and, in this respect, the crime of murder stands by itself, and cannot be compared with any other case. But Mr. Hume goes on to say,—‘ The like practice is naturally observed on all those occasions, unhappily too frequent, where the cri-

‘ minal acts, though of different kinds and appellations, have a natural relation and dependence, as parts of one foul and nefarious story,—as successive steps of the pannel’s progress in a course of increasing guilt, into which the indulgence of one criminal passion has betrayed him.’ This refers to the case of a prisoner accused of connected and progressive crimes,—charges, for example, of robbery and murder, where these crimes take place at the same instant, or are part of the same transaction,—where they have a connection with one another. I do not dispute the correctness of putting them in one indictment in such a case. But such examples bear no analogy to the present case. Yet, even in those cases, your Lordships will observe what Mr Hume expressly says,—‘ In like manner, the Court, whensoever they find that the immediate trial of such manifold charges is *likely to prove oppressive*, either to the witnesses, the Jury, or themselves; and *still more, if they see cause to believe that it may embarrass the pannel, or beget prejudice against him, in the minds of the Jury*; and more especially still, if it appear that it was truly the prosecutor’s object to lay him under such a hardship:—In any of these cases, they have it certainly in their power to divide or parcel out the libel, and proceed in the first instance to the trial of as many of the articles, as may fitly be dispatched in a single diet, reserving the others for trial afterwards.’ p. 168. And then he quotes cases on that point. After this, the learned author states *his opinion* distinctly against the practice of charging, in one indictment, one person with one offence, and another with a separate offence, unconnected with it, though in conjunction with the person accused of the first: And as he refers to the express authority of a case in 1784, shewing the approbation of the Court of the conduct of the prosecutor, in declining to proceed with an indictment, which was framed on that principle, I think his clear opinion is entitled to some weight with your Lordships. To be sure, there are instances the other way. My friend says, in 1696, 1717, and 1733, it was the practice. Several charges in one indictment, and directed against different parties, were sent to trial, and that this was the practice in those times. I just answer that by saying, that if your Lordships’ predecessors thought proper to do those things in such cases,—to send, for instance, a charge of ten separate crimes to trial at once,—surely it will not be seriously maintained that that practice is to rule your Lordships in cases of this description, now. If they would not rule your practice generally, why are they to rule your Lordships in a case like the present, as to which it is *admitted that not one precedent in any*

period can be produced? This accumulation of these erroneous charges, in cases of this kind, are like no other, because they must produce prejudice to the prisoner. There is indeed but one case adverse to the cases in 1784, Fraser, Macgregor, Anderson, and Paul, which is of a later date, (*vide Mr Robertson’s speech, p. 19*), and that of Stewart and Gordon, in 1785, (*cited p. 21*).

LORD MEADOWBANK.—That was the case of several individuals.

DEAN OF FACULTY.—I am aware of that. But I wish to observe, that in that case the charge was that of *theft and reset*—crimes having a natural connection; and the whole matter was, that one of the prisoners was charged with reset in two of the cases, and not in the third. But they were both charged with being *habit and repute* thieves; and it was also distinctly libelled, that there was a compact amongst them, for the purpose of committing their crimes. My Lords, my learned friend wished to rest something on a single case of two murders: It is in vain to refer to that as a case. The case of Surrage was the case of a soldier, who had been engaged in a contest with the town’s people, in which more than one person was killed. One charge was, that of wilfully discharging fire-arms in the street; and the other was a charge of murder, committed in the fray on that occasion. It is quite clear the acts there were not unconnected homicides, but all parts of the same transaction. They were all charged as done at the same time—in the same riot; and there was no difference between that case and the case at Aberdeen.

LORD MEADOWBANK.—Discharging fire-arms, and murder.

DEAN OF FACULTY.—The charge of firing was found not relevant: It was struck out by the Court.

LORD MEADOWBANK.—It was just one act: They were both caused at the same time—though one died at one time, and another at another.

DEAN OF FACULTY.—So it is quite plain, my Lords, that these cases cannot apply to the present case. Now, my Lords, before I sit down, I may, with the utmost deference, request your Lordships’ attention to the principles that are entertained by the English Judges. My friend says there is nothing in

the law of this country that renders it *incompetent* to put the indictment in these terms. I am not desirous of pressing the point to the question of mere competency in the abstract; but I submit to the Court, whether they will, in the exercise of a sound discretion, allow the indictment to go to trial in this form, where no precedent of such a thing having been allowed, is produced. In the observations of my Lord Advocate on the law of England, he had surely not attended to the passage cited by Mr Robertson from Chitty, which says, expressly, that there is no strict law against laying various crimes in one indictment; and, therefore, if not taken notice of before trial, it will not be a ground for setting aside the verdict, or for arrest of judgment. Notwithstanding this state of the law, the rule of practice is fixed, in all cases of *felony*: It is not extended to the case of misdemeanours; but, in the case of felonies, the rule is, that no more than one offence should be regularly charged in one indictment.

Lord Ellenborough's doctrine is quite clear to this effect,—it is all the stronger for us that he lays down the strict law of mere competency, as my learned friend states it; but still, he says it is usual in felonies to call on the counsel for the prosecutor to select one felony; but the practice has never extended it to misdemeanours. Now, my Lords, this is not only a felony, but the highest species of felony. I ask, then, whether your Lordships will, with an indictment prepared in this form, so manifestly calculated to injure the prisoner, without any ultimate benefit to the justice of the case, proceed to trial? I need not say to your Lordships, that this is a very serious case;—of that there can be no doubt in the mind of any person that has read the indictment. My friend says, that it has never occurred in his time, that there were three murders charged in one indictment. Whether it has happened recently in this country, I will not say; but I am pretty sure that distinct murders have been committed by individuals to that number, and yet there is no example any where of their being tried conjunctly. But the more anomalous and the more serious this case is, it is of the greater importance to public justice, and the interests of the parties, that the utmost caution should be exercised. In doing justice to the public in this matter, it is of the utmost importance to all the lieges of the country,—that this case, which is crimes of the most extraordinary nature, should be proceeded in with the utmost caution which it is in the power of the Court to direct.

LORD JUSTICE CLERK.—Your Lordships have now heard the objection stated by the pannel at the Bar to this indict-

ment, and your Lordships will now give your opinions in consequence of this objection.

LORD PITMILLY.—My Lord Justice Clerk, the Court is peculiarly circumstanced in giving an opinion upon an incidental point in a case which, in some shape or other, is to go to trial. The counsel for the prisoner have spoken of this incidental point, and they were not called on to avoid saying any thing in favour of the prisoners,—but quite the reverse; and, accordingly, we have heard two very eloquent speeches on the matter in bar of trial,—and, on the other side of the bar, an opposite course has been taken; but the Court, in giving their opinions, must be extremely calm and guarded, so as to avoid doing prejudice to the prisoner, on the one hand, or to the ends of public justice, on the other. I agree with the counsel that there are two very different questions indeed here. The first is, whether the prisoner, Helen McDougal, ought to be tried on an indictment which charges three different acts of murder, only one of which she is accused of being concerned in, while the other acts relate to the other prisoner. On that point, I do not think it necessary to say much, from the turn that the case has taken. I have not the smallest doubt that the intentions of the public prosecutor were fair,—that he intended not to prejudice this woman, but to benefit her, by bringing the case fairly to trial; but I entirely approve of his proposal to separate her case from the two acts with which she is not charged. The other question is one of a very different nature,—whether it is competent, in the *first* place; and in the *2d* place, if competent, whether it is proper and fit that this pannel, Burke, should go to trial upon an indictment charging him with *three* different acts of murder; or whether they should be separated, and tried separately, at different times. As to the *competency* of the proceeding, it is impossible for me to doubt. When I read this indictment over, I was struck with it; and I proceeded to examine the authorities on the subject; because, although I did not know whether an objection would be taken, it is right the Court should be well informed on such matters. Now, when I look to the very express authorities which have been quoted, I can come to no other conclusion. In the case of Beaumont, there were six acts of house-breaking. In the case of Gillespie, nine acts of forgery were charged. I sat on the Bench, and I entertained not the smallest doubt of the competency of these proceedings. It may not be recollected by counsel; but there is a case which has not escaped my recol-

lection, where two murders (not indeed unconnected) were charged in one indictment. There were two men killed on the same evening, and the murderer went to trial on that indictment, before me, at Jedburgh. The unhappy man was convicted, and he was executed. I have not the smallest doubt, and I think it would be dangerous if there was a doubt, in any quarter whatever, upon the subject. There may be rules adverse to ours in England on this subject; but our practice has been too well fixed to doubt, for a moment, that one individual may be charged with separate acts of the same sort of crime, committed at different times, and different places, and may go to trial upon such an indictment.

But, my Lords, there remains a question of discretion,—of sound, judicial discretion. If there were a want of competency, it would be *pars judicis* to interfere; but when it is a question of discretion, the Court do not interfere, unless when called upon; for, while they intended to confer a benefit, they might be doing an injury to a person accused. There may be cases where it would be advantageous for the prosecutor to have three trials instead of one,—that is the more common case; because, if the prosecutor fail in the one case, he sees where the evidence fails, and then he comes forward to the next case better prepared. I recollect the case referred to by counsel, where two officers and two sergeants were brought to trial for the murder of different individuals, who were shot on the plainstones of Aberdeen. It was a very long trial, and, at length, the pannels were acquitted. The trial was in the hands of private parties, and they were not satisfied. They immediately notified their intention to bring another indictment against the same persons, accusing them of the murder of a different person. I will never forget the excitement of the feelings of the Bar and the public on that occasion. The whole country was crying out in the strongest manner against such an act of oppression. The prosecutor was obliged to give it up. And such was the sympathy in favour of these people, who were tried under a first, and to be tried under a second and third indictment; that several individuals set on foot a subscription for them; and instead of being punished, they went off enriched. That is the natural consequence of the public prosecutor bringing first one indictment, and then another, and then a third, each for different acts of the same sort of crime. It must lie, therefore, with the Court to judge, in each particular case, after hearing the views of the pannel, on the one hand, and the prosecutor on the other, whether the different charges should be separated. In this case, it is impossible that any such result should happen,

as took place in the Aberdeen case; because, here the prisoner insists that the different charges should be tried separately; and, therefore, there can be no complaint against the public prosecutor, if he prosecutes on the second and third charges. And, my Lords, since the prisoner himself states by the mouth of the very respectable counsel, on whose responsibility we take it, that he will suffer a prejudice by going to trial on an indictment which charges three acts of murder, unconnected with each other, I think they should be tried separately, and that the public prosecutor should proceed first with the one, and then with the others, if necessary.

LORD MEADOWBANK.—My Lord Justice Clerk, I entirely concur in the views which have been taken of this question by my brother Lord Pitmilley, and I am equally satisfied with his Lordship; that it is particularly incumbent on the Court, in a case of this kind, where we are told such excitement has taken place in the public mind, to be particularly cautious to prevent what may fall from us from doing prejudice, either to the one side or to the other, and that even by weighing the expressions we may employ in delivering our judgments. I shall say nothing, therefore, of the circumstances divulged in this indictment, or for the causes of public anxiety, which may be supposed to exist; but I will venture to say this, that there neither is, nor has been, any excitement or prejudice in the minds of any of your Lordships; and the greater, the higher, and the more atrocious the charge to which those individuals are brought to answer, so much the greater, if possible, will be your anxiety to banish the feelings naturally arising from such charges in your own minds, and to see that the individuals accused should suffer no prejudice from the course of procedure that shall be sanctioned by you.

My Lords, the Dean of Faculty said; and I concur with him, that this is a question of general interest, and of great importance. Indeed, if the counsel for the prisoners had persevered in urging that the indictment was incompetently laid, from two parties, and three charges being included in the same libel, I could hardly imagine a question of greater importance to the course of proceedings in this Court being brought before your Lordships. Such a doctrine, if entertained, would have gone far to shake the whole practice of the Court. The good sense of my friends, the Dean of Faculty, and Mr Robertson, have, however, induced them to abandon the views to this extent; which are stated in the defences for the pannels; and

I understand that it is not now contended that the prisoners are not bound to plead to the indictment as it has been laid.

The Dean of Faculty has admitted, that for upwards of 130 years, it has been the practice of this Court proceeding in one steady and uniform course, without interruption;—to admit of indictments containing different charges of the same description of crime, and against different individuals, some of them connected with all the charges, and others of them only with some of the charges; and it is also admitted, that at a remote period, this has taken place in the '*graviora delicta*.'

But we were told that we ought not to look back to precedents occurring in the year 1696, as of authority in this Court. I for one, however, am aware of no reason why we should not recur to that period, any more than to the present. For one, I cannot regard the precedents of that period with the views of the Dean of Faculty; nor consider that they are not just as fit for guiding the judgments of your Lordships, as precedents taken from less remote periods, or in the times in which we are now living. Gentlemen forget that the year 1696 was posterior to the Revolution, when great and eminent lawyers sat upon the Bench,—men as much devoted to the cause of freedom, and who did as much for it as any of their successors; and whose authority, therefore, ought to stand as high in such matters, as that of any of the Judges who have come after them.

In the present case, however, there is no occasion for recurring to those periods for precedents. We have only to look to those cases with which we are every day familiar; and I will venture to say, that none of us have ever sat at Glasgow, without seeing cases in which similar accumulation of prisoners, and offences of a capital description, have not been included in the same indictment.

It is impossible too, to turn up our books, without meeting with cases of this description; and I need only refer your Lordship to the case of Murdieston and Miller, one of the best known cases that ever occurred in this Court, for an example of what I am now stating.

These individuals, your Lordship will recollect, were accused of a great variety of acts of sheep-stealing; and also of reset of theft. The acts of theft libelled, were charged as having occurred at different periods, and during a long track of time. In some of them, both individuals were concerned; others of them not. The places, too, were remote, and in different counties.

The parties were defended by the most eminent counsel,

and many objections were urged to the relevancy of the indictment; but no such objection as that now stated, was then even brought forward. And by as able men as ever sat upon the Bench, the indictment was sustained,—the case went to trial,—the prisoners were convicted, had sentence of death; and notwithstanding the most urgent representations to the Crown, and an attempt even at appeal to the House of Lords, (I believe), in which nothing of this kind was urged, the sentence was carried into execution.

In our own times, again, it is admitted, (and after the statement read from Mr Baron Hume, it was impossible to controvert the fact), that in cases of forgery, (a crime inferring a capital punishment as much as the crime of murder), this multiplication of charges has been repeatedly admitted. In fact, I remember in one case at Glasgow, of uttering forged notes, in which both a father and daughter were accused, which was tried before myself, assisted by Lord Gillies, where there were three or four charges, I forget which, of uttering forged notes, to different individuals, and at different times;—the father being accessory to the whole, the daughter only to one of the charges, the Court had no doubt of the relevancy of the indictment. The father was convicted and executed; and with respect to the daughter, the libel being restricted, she had sentence of transportation.

In cases of theft, the instances are innumerable; but as this is not disputed, I shall say nothing of those cases, further than to advert to the reason which has been alleged for this accumulation, being admissible in that class of capital offences, while it is not in others,—viz. that habit and repute, or the reiteration of the offence, is in itself a ground for conviction, or rather for exciting a legal ground of suspicion against the person accused.

But, in the *first* place, in theft, no more than in any other crime, can habit and repute, or a reiteration of the offence, be used as an ingredient in the evidence adduced for convicting an individual of any one particular act. Each act must stand by itself; and the habit and repute, or reiteration of the crime, can only go as matter of consideration to the Court in apportioning the sentence.

But, I observed, that in the passage quoted from Baron Hume, there was a case mentioned by him which had nothing to do with habit and repute—I mean the crime of robbery, in which he maintains, and we know from every day's practice, that it is competent to charge repeated acts. But in the crime of robbery, habit and repute has no more to do than in the crime of murder. Considering robbery as an aggravated theft,

I was once inclined to be of opinion, that being habit and repute a thief, might be laid as an aggravation; and I directed an indictment to be so laid, when holding the high office so honourably discharged by my Right Honourable Friend at the Bar, in order to have the point settled. But your Lordships held that such a charge was incompetent; and it is now therefore fixed law, that a charge cannot be so laid. In this respect, therefore, the crimes of robbery and murder are in the same situation,—both are of the same class, and among the *graviora delicta*; and it is no more competent to charge one with being habit and repute a robber, than with being habit and repute a murderer: Both, in this respect, are alike. I can see no principle, therefore, on which it should be held competent to accumulate charges of the one description in the same indictment, and not in the other. If we have done right in entertaining such libels in the case of robbery, I can see no ground for rejecting charges similarly made in the case of murder.

But the case is now offered to our consideration, not as one of incompetency, but as one of discretion, in which the Court is to determine whether it is fitting that the trial should proceed at one and the same time, of the three charges, as laid in the indictment,—your Lordships having a due regard to the ends of justice, and the interest of the prisoners.

This is a very different question, and one requiring a different consideration.

In the *first* place, however, I must remark, that I think the Lord Advocate acted with sound discretion, in laying the indictment as he has done, both for the sake of the public, and because, by so doing, he has given the prisoners every advantage in his power to confer on them,—which, if he had raised separate libels, they would have lost. By adopting this form, his Lordship has left it to the prisoners and their advisers, to consider if it was for their benefit to go to trial together;—or, if they thought otherwise, to apply to your Lordship to separate their cases. In like manner, with respect to the other prisoner, Burke, if he deemed it proper to go on with the three charges, he might do so; and if not, he might apply to your Lordship to separate them. In so doing, the public prosecutor was entitled to think, nay, was bound to think, that he left the prisoners with the best protection which he could afford them. He left them in the hands of your Lordship, to whom, and to whose discretion, no appeal could be made in vain. I can have no doubt, therefore, of the propriety of the mode in which these prisoners have been charged.

But we have now nothing to do with the case of the prisoner M'Dougal, as the Lord Advocate consents that her trial should be tried separately. As to Burke, the most eminent counsel at the Bar have stated their reasons for thinking, that it is for the benefit of the prisoner, that the trial of the three charges should be separated, and their reasons for so judging. In this case, I am for yielding to this application. Perhaps I do not enter entirely into the views which they have stated, as affording the grounds of their advice. But with the counsel, and not with us, rests the responsibility of having so advised their clients; and as I consider that the ends of public justice will be equally attained by trying the offences separately, I am of opinion, that while your Lordships sustain the indictment, you shall direct the Lord Advocate to proceed separately in the trial of the different charges.

LORD MACKENZIE.—I have nothing to add to what has been stated. This indictment, in the major proposition, contains one charge of murder; and, in the minor, three separate instances of that crime. In these circumstances, I think that there is nothing in the form of this indictment objectionable. If this case had gone on to the full extent, without objection, I do not see that there would have been any thing illegal. But I also think, that in indictments of this form, the Court has a discretionary power, on its being stated by the pannel and his counsel that he will suffer prejudice in the trial, if a plurality of charges are proceeded in at once. I say the Court has a discretionary power of separating these charges, provided the Court are satisfied that the request made is fair, and not unreasonable. Now, in this case, I am of opinion that we cannot say the request, stated in the way it was stated, and supported with the reasoning with which it was supported, is either unfair or unreasonable. I therefore think the proposal that has been made by the Lord Advocate ought to be adopted.

LORD JUSTICE CLERK.—In reference to the argument that we have heard so ably stated on both sides of the Bar, I shall, as your Lordships have done, confine myself to the competency of the indictment against Burke. The other point which has been objected to, has been shifted by the Lord Advocate; in which course I most entirely concur. As to the other objection, that is, the competency and legality of this indictment; after listening to every thing that has been urged and considered by these authorities; and recollecting something of the practice of your Lordships since I sat here, I certainly thought with all your Lordships, that this indictment was framed in a legal and

competent form. The pannel is not charged with crimes of a different nature, in the same indictment. He is charged with one single crime of murder; but he is accused of having committed three different acts of that crime; no doubt, one of them in April, the other in October, the other on the last day of October; or beginning of November. Certainly, I admit distinctly, in different places, but all within the city of Edinburgh, or its liberties. He therefore does not, in the least degree, stand in the situation of a party that has been pressed on your attention, loaded with a variety of charges. I have known cases, where an individual had a great variety of different crimes charged against him, and where the Court had been called on to interfere in such cases. In the case referred to by Mr Hume, (page 168,) where there were many crimes charged in an indictment, whereby the pannel might be embarrassed in his defences, or suffer hardship;—in these cases, the Court have the power to divide, or parcel out the libel, and proceed to the trial of as many of the articles as they can dispatch at a single diet; reserving the others to another diet. Then what does he say? This trial was proceeded in in the case of D. Young, whose indictment was for fire-raising, cursing of parents, attempt to murder, assault, and deforcement of the officers of justice; and these crimes charged as committed against different persons, in the years 1733 and 1738, and the intervening years. In the information on his part, he insisted on the troublesome and oppressive length of such a trial, and the difficulty he must find of conducting his defence against charges so numerous, and so remote from each other, both as to their kind, and the pains of law. The Court proceeded, therefore, in the first diet, to the trial of the two capital charges, the fire-raising, and cursing of parents; and delayed to give judgment on the other less important articles of the dittay.—(Vol. II. p. 168.)

Here is an illustration of what the practice was in these days; and the course that the Court took there, was to separate the different articles charged as the crime, and tried them at different times: But this authority cannot apply to the present case, which is a charge of murder, and murder alone; by committing three different acts of that crime. It has been the practice of this Court—otherwise we have been ignorant in the discharge of our duty—to give effect to such indictments, charging a great variety of acts of housebreaking, and highway robbery, &c.—sending such indictments to the Jury,—receiving the verdicts from the Jury,—and carrying the law into execution. I recollect a case in this Court, where a person was charged with a great variety of acts of robbery on the highway. I have sent for the book; and I find that the verdict returned

by the Jury in that case is,—‘ Find the pannel Worthington guilty of the three first charges for robbery contained in the indictment.’ Robbery is one of the four pleas of the Crown; and on what principle of law we can make the distinction between it and that which is one of the four pleas of the Crown, it is impossible to conceive. Therefore, I think that the charge here stated is a competent and legal charge; and it is not in the power of the Court, without departing from all the authorities and decisions of this Court, to find that this is an incompetent and illegal charge. The case, my Lord, has been put to us in a legal way,—by way of objection; but the way in which the Dean of Faculty has put it to us, is in a totally different way. He puts that against the discretion of the Court; stating, that the pannel, upon the most due consideration of the nature of these charges, and the circumstances in which he stands, ought, or ought not to go to trial upon the indictment, as it is framed. He asks your Lordships to separate those charges before trial. I am necessarily called upon to look to the principles that have influenced the Court, in all cases where there was an appeal to the Court, to make away with the objection taken to the indictment as relevant; and taking them fully into consideration, I come to be of opinion, that the indictment is relevant, and they are not entitled to cast it over the Bar. It is said that he may be embarrassed in his defences. There are many cases where a Court have said that the indictment is relevant, and found it expedient that the pannel should go to trial upon that indictment. That is just the principle that must influence me on the present occasion, and which must also influence your Lordships. When the prisoner stands upon the responsibility of respectable counsel, and says that he will be prejudiced in going to trial, I would be fully inclined to go into the proposition, that we should grant the request. But we do it on the principle that William Burke has three specific charges exhibited against him in this indictment; and the public prosecutor will have his choice to take the one he means to proceed on. He may proceed *seriatim* on the other acts, that are not this day to be tried, or to give, as formerly, the deliverance of the Court on this indictment; in respect that the pannel, William Burke, is properly and legally called into Court. Call on the public prosecutor to select which of the three he wishes to proceed in. And I may say this, that though I entirely coincide with the observations of the Learned Counsel as to the quality of the case; if the case had gone to trial upon the three charges of murder; it would have been the sacred duty of the Judge to tell the Jury that they were trying three several acts of one

species of crime, and that they must try the evidence upon each of these three acts; and I am sure a Jury would have been equally guarded against any such different impressions. But, as the prisoner has stated that he will suffer prejudice, I have come to that conclusion.

LORD ADVOCATE.—According to the judgment of the Court upon these objections, I am tied down to proceed with the trial of one of those crimes, leaving me the choice, as to which shall be first taken, and reserving my right, in case I shall fail in one, to proceed to the trial of the others. I propose, therefore, to proceed with the third case libelled, and, on this footing, there seems nothing to prevent my proceeding against the woman as well as against the man. She can suffer no prejudice in now being brought to trial for this single act, on which she is charged as art and part guilty along with Burke.

DEAN OF FACULTY.—I thought the Lord Advocate had deserted the diet *pro loco et tempore* against the woman.

LORD ADVOCATE.—If this libel had gone to trial against Burke on these three charges, I was inclined to desert the diet against the female prisoner; but now that I am to be restricted to the trial of one of these charges, I am entitled to try her and him together on the last of the charges exhibited.

DEAN OF FACULTY.—But still the two other charges stand upon the indictment.

LORD JUSTICE CLERK.—There is nothing in that. Have you any thing more to state on the part of the prisoners?

MR ROBERTSON.—Oh no, my Lord.

The following interlocutor repelling the objections was then pronounced:

INTERLOCUTOR OF RELEVANCY.

The Lord Justice Clerk and Lords Commissioners of Justiciary having considered the indictment against William Burke and Helen M'Dougal, pannels, and having heard parties' procurators at great length upon the relevancy thereof—Find the indictment relevant to infer the pains of law; but are of opinion, that in the circumstances of this case, and in consequence of the motion of the pannels' counsel,

the charges ought to be separately proceeded in; and that the Lord Advocate is entitled to select which charge shall be first brought to trial; and His Majesty's Advocate having thereupon stated that he means to proceed at present with the third charge in the indictment against both pannels—therefore remit the pannels with that charge, as found relevant, to the knowledge of an assize, and allow the pannels, and each of them, a proof in exculpation and alleviation, reserving to the public prosecutor afterwards to proceed under this indictment against the said William Burke upon the other two charges contained therein. (Signed) D. BOYLE, I. P. D.

LORD JUSTICE-CLERK.—William Burke and Helen M'Dougal, the indictment having been read in presence of you both, I again ask you, William Burke, are you guilty or not guilty of the third charge contained in this indictment?

WILLIAM BURKE.—Not guilty.

LORD JUSTICE-CLERK.—Helen M'Dougal, are you guilty or not guilty of that charge?

HELEN M'DOUGAL.—Not guilty.

The following Jurymen were then selected by ballot by the Clerk of Court, and sworn to pass on the assize of the pannels:

Nicol Allan, Manager of Hercules Insurance Company,
Edinburgh.
John Paton, builder there.
James Trench, builder there.
Peter M'Gregor, merchant there.
William Bonar, banker there.
James Banks, agent, Cassillis Place, Leith Walk.
James Melliss, merchant, Edinburgh.
John M'Fie, merchant, Leith.
Thomas Barker, brewer there.
Henry Fenwick, grocer, Dunbar.
David Brash, grocer, Leith.
David Hunter, ironmonger, Edinburgh.
Robert Jeffrey, engraver there.
William Bell, grocer, Dunbar.
William Robertson, cooper, Edinburgh.

EVIDENCE FOR THE CROWN.

The following witnesses were then adduced on the part of the prosecutor:

JAMES BRAIDWOOD, sworn by the LORD JUSTICE-CLERK.

Interrogated by Mr. ALISON—(A plan of Wester Portsburgh was handed to the witness.) Was that plan made by you? Yes, sir.

What is it the plan of? The houses of Wester Portsburgh and the places adjacent.

Who was with you? There was an officer. I was there on the Saturday night; I went with Mr. Stewart.

Did you know it to be Burke's house? Yes, I knew it to be Burke's house.

Is the plan in your hands a correct delineation of the houses under ground there? It is.

MARY STEWART, sworn by LORD PITMILLY.

Interrogated by Mr. WOOD.—Do you remember a person of the name of Campbell coming to your house in the month of November last? Yes, sir, Michael Campbell.

Do you remember what month it was in? No, sir, I do not recollect.

Sometime before Martinmas last? Yes, before Martinmas.

LORD JUSTICE-CLERK.—You are sure it was before Martinmas? Yes.

Mr. WOOD.—Did he remain in your house some time? I think about two months.

You cannot speak precisely? No.

And then he left the house? Yes; he left it on the Monday before the fast day, 30th day of October.

Did any woman come after that to your house inquiring for him? Yes, sir, I was told so; I was lying in the infirmary at the time.

On your return from the infirmary did you find any person in your house at that time? Yes, sir, I did, a woman, that he said was his mother. Did she state for what purpose she came in search of her son? Yes, sir.

What name did she give herself? She gave herself Mrs. Campbell, Madgy, or Duffie. I have forgot, her husband's name was Duffie.

Did she say where she came from? From Glasgow.

How long did she stay in your house? Just till the next morning.

What day was it you came from the infirmary? I came out on the fast night, and she left me on the Friday morning.

She left witness' house on the 31st October, on the Friday morning? Yes.

LORD JUSTICE-CLERK.—You recollect of her leaving it? Yes, sir.

Do you recollect where she said she was going?—Was she going to search for her son,—see after her son? Yes, sir.

Mr. WOOD.—Her son was not in your house at that time? No, sir.

He had gone? Yes, sir.

You know a person of the name of Charles M'Lauchlan? Yes. You have seen him to-day? He is along with me at present. He stopped with you? Yes; he slept with my son and Campbell.

Did the woman go away in company with Charles M'Lauchlan? She went out of the room in company with him, so far as I saw.

Have you ever seen that woman since? No, not till I saw her in the police-office.

I would ask you what hour of the day on Friday was it that she left your house? I never rose that day; as I thought, it was 7 or 8, but I have been informed it was farther in the day.

Do you remember what day you saw this woman in the police-office? On the Sunday.

Was she alive or dead? She was dead.

LORD JUSTICE-CLERK.—That was two days after? Yes, sir.

Mr. WOOD.—Had you no difficulty in recognising the body to be the body of the woman Campbell that lodged in your house? No, sir, I had no difficulty.

Have you any recollection what dress that woman wore when she left your house? A petticoat, a red short-gown, striped, a long printed gown, short-sleeved and open before, and sewed with white cotton thread behind.

I suppose you would know these articles again? (*The articles were handed to the witness, which she identified.*)

LORD JUSTICE-CLERK.—These are the articles which she had on when she left your house? Yes, she had these articles, but I know nothing else.

What age did this woman appear to be? Between forty and fifty, I suspect.

That is to say, you suppose? Yes.

Mr. WOOD.—About what size was she? A little low-set woman about my height (about five feet).

LORD JUSTICE-CLERK.—When she left your house, did she appear to be in good health, so far as you know? Yes, sir, in as good health as any woman could be, to all appearance.

LORD MEADOWBANK.—Pray, during the time she was in your house, did you see her drunk at all? No, sir, never the worse of liquor.

CHARLES M'LAUHLAN, sworn by LORD PITMILLY.

Examined by Mr. WOOD.—In the month of October last, did you reside in the house of Mrs. Stewart in the Pleasance? Yes, sir. You saw her here to-day? Yes, sir.

Did you see Michael Campbell there? Yes, sir.

He left it, when? About the end of October, the 30th.

Do you recollect a woman coming to him about the end of October? Yes.

When she came, was Michael Campbell living in the house or not? Yes, sir, he was.

Was Mrs. Stewart in the house at that time? She was in the infirmary.

What name did she go by, this woman? Marjory M'Gonegal.

What other name had she? Mrs. Campbell or Duffie. She was married a second time; Duffie was her second husband.

She was called Campbell, Duffie, or M'Gonegal? Yes.

Had you ever seen her before she came to that house? Yes, sir.

Where did she come from? From Inishowen in the county of Donnegal, in Ireland.

Did she remain some days at Stewart's? Yes, sir.

What day was it she went away from Stewart's the last time? On a Friday, 31st October.

At what hour? Betwixt the hours of nine and ten in the morning.

Did you accompany her? No, sir, she came to me at my own shop door.

Where is that? At the foot of St. Mary's Wynd.

Did she tell you where she was going, or what she was to be about? I asked her where she was going, and she said she did not know where her son was, and she was leaving town.

Was she in perfect good health at the time you saw her? Yes, in perfect good health, and had been so all the time she was in Stewart's.

Did she appear to be of sober habits all the time you knew her, or otherwise? She was.

Then do you know whether she had any money? No, I do not think she had any money.

Did she complain of not having any? I did not hear her, say so.

LORD JUSTICE-CLERK.—Had you access to know whether she begged or not? I cannot say whether or not.

Do you know whether she paid any thing for her lodgings at Stewart's? Her son paid for her.

Had she breakfasted in Stewart's that morning before leaving it? No, sir, she had not.

Did you ever see her again? Not in life, sir.

Pray, did you see her body after? I did, sir.

Where? In the police-office.

When? On the 2d of November.

Next Sunday? Yes.

Two days after? Yes.

LORD ADVOCATE.—Did you know the body? Yes.

Mr. WOOD.—you saw the body, and knew it to be the body of the woman Campbell? I did, sir.

Did she ever call herself Docherty? Not that I know of.

WILLIAM NOBLE, sworn by LORD MEADOWBANK.

Interrogated by Mr. ALISON.—Mr. Noble, you are a shop-boy in the employment of Mr. Rymer? Yes, sir.

Where? 107, Portsburgh.

Do you know the prisoner Burke by sight? Yes, sir.

You have seen him come about your shop? Yes, sir.

Do you know a man of the name of Hare? Yes.

There is a man of the name of Hare also comes about the shop? Yes.

What do you sell in your shop? Groceries.

Do you recollect an occurrence happening in the West Port of a body being found that made a great deal of noise some time ago? Yes.

One morning before that, do you recollect Burke being in your shop? Yes; and I recollect a woman came in asking charity; it was on the 31st October.

LORD ADVOCATE.—Friday of the preaching week? Yes.

About what o'clock? About nine o'clock.

Was Burke in the shop at the time? He was.

Well, sir, tell us what passed between Burke and the woman—

What like a woman was she? A little woman.

What age might she be? I cannot say.

Was she a girl of 15 or 19? She was a middle-aged woman.

Do you remember how she was dressed? No.

Was she dressed like a beggar? I could not say.

Did she ask charity from Burke? No.

What passed between Burke and her? He asked her name, and he said she was some relation of his mother's.

LORD JUSTICE-CLERK.—Was it that she was a relation, or might be some relation? That she was some relation of his mother's.

Did Burke say what his mother's name was? No.

Did Burke and the woman seem to be acquainted when they first met, and do you recollect who spoke first? I don't recollect.

LORD ADVOCATE.—Do you recollect if they seemed to have been acquainted? I don't recollect.

Well, sir, what happened? He took her away with him.

Did he say any thing; and what did he say? He said he would give her her breakfast.

LORD JUSTICE-CLERK.—And they went away together? Yes, sir.

Mr. ALISON.—This was on the Friday morning? Yes, sir.

When did you next see Burke? I saw him that forenoon.

What did he do then? He got some things.

Bought some groceries? Yes.

Did he come back on the following day and get any thing away? Yes; he came back on the Saturday, and bought a box.

Lord ADVOCATE.—At what time of day? Between 5 and 6.

In the evening? Yes.

What kind of a box was this? An old tea-box.

Look at that box there; (*witness was shown an old tea-box*) see if it was a box like that. I could not say.

Lord MEADOWBANK.—Was it the same size? Yes.

Lord ADVOCATE.—The same kind of box? Yes.

Lord JUSTICE-CLERK.—Have your tea-boxes any particular mark of Mr. Rymer's upon them? No, sir.

Did Burke pay for the box at the time or afterwards? No, sir; it is not paid yet.

Did he take it away? No; Mrs. Laird or Hare took it away.

Did he say he would take it away? No; he said he would send Mrs. Hare.

Lord JUSTICE-CLERK.—He said that at the time he bought it? Yes.

Mr. ALISON.—Well, sir, did Mrs. Hare come for it? Yes.

Mrs. ANN BLACK or CONWAY; *sworn by* Lord MEADOWBANK.

Interrogated by Mr. WOOD.—Do you live in Wester Portsburgh? Yes, sir.

What does your house consist of, one room or more? One room.

Not far from William Burke's, you go down a stair, don't you? Yes, sir.

In getting in at the foot of the stair there is a passage, is there not? Yes, sir.

As you go in that passage, is your house on the right or the left? On the right.

Is the door of your house the first door that meets you going in? Yes, sir.

On going on, is there another door on the same side of the passage? Yes, sir.

Another door a little farther in? Yes, sir.

Does that door lead directly into a room, or into a passage first? It leads into a passage first.

Into another passage? Yes.

The house next yours is farther into the end of that passage? There is a room, and a door for the room.

So there is a door for the inner passage, and there is a door at the end of that passage into a room? Yes, sir.

The room is inclosed by two doors—Now, who lived in that

room in the month of October last, about the end of it? The last person that lived in it was Burke.

Look at the prisoner at the bar; is that the person? Yes, that is the man that occupied it the last week of October.

Look at the other person at the bar; did you ever see her before? Yes.

Did she live with Burke? Yes.

M'Dougal is her name? Yes.

On the other side of the first passage, is there any house? Yes, there is one.

On your left as you go in? Yes; and there are cellars, but no person inhabits them.

Who lives there? Mrs. Law.

Lord JUSTICE-CLERK.—That is nearly opposite to your house? Yes, sir.

Did you ever see a person of the name of Hare coming about Burke's house? Yes, sir.

You know him and his wife? Yes, sir.

Do you know whether there was any lodger lived with Burke in the last week of October? Yes, there was a man of the name of Gray and his wife.

Did you on the 31st October, see Burke at all? Yes.

That was hallow'en night? Yes.

What time of the day? I don't recollect the time of the day.

Did you see him in the early part of the day? Yes.

Any body with him? There was a woman along with him.

Try and recollect the time of the day? I fancy it might be between one and two o'clock. I just saw him passing by me as I was sitting by the fire. The door of the room being open, I saw him passing by, with a woman immediately behind him.

Were they going in or out? They were going into Burke's.

Was she a stranger to you, the woman? Yes, I never saw her till that time.

Was there any body in your house along with you at that time? Yes, sir. Mrs. Law.

The person living on the opposite side of the passage? Yes, sir.

Did you go into Burke's house that day? Yes, sir, about this time of night, about three o'clock.

Was there any body with him? Nobody.

Was there nobody? This woman was sitting at the fire.

Anybody else? I do not recollect, sir; I did not sit down.

Was she occupied in any thing? Supping porridge and milk.

How was she dressed? She had a short-gown, and a napkin tied round her head. They said they were washing at the time for her.

And you cannot say she had more then on her? No.

Did you see her shift when drying at the fire? No, I do not remember seeing it.

And you say there was nobody in the house at that time? No, I do not recollect; at that time I never expected it to be called in question.

Burke was there, and M'Dougal? Yes.

Did you say any thing to her? I said, you have got a stranger; and she said it was a highland woman, a friend of her husband's.

You said, you have got a stranger; and she said, they had got a friend of her husband's, a highland woman? Yes.

Had you any more conversation? Not at that time.

Then you left her, and went back to your own house? Yes, sir.

Did the stranger woman appear to be sober at that time? As she did not say any thing, I could not say.

You saw nothing to lead you to think she was not so? Nothing; at that time.

Tell us what happened after you went into your own house? After I went into my own house, and sometime after the darkening, Burke's wife came into me, and asked me to pay particular attention to her door, lest anybody should go in, until she came back. My husband was sitting at the fire, and he said he thought there was some person going into Burke's house.

This was some time after Mrs. Burke went out? Yes.

Now, did you do any thing in consequence of what your husband said? Yes, sir; I took a light, and went in, and there was nobody there but the stranger.

And you found nobody there but the stranger? None, that I could see.

Now, what did you do? I said to her that I thought there was some person going into the house, and I came to see who it was. She rose and came out after me. She was something the worse of drink.

Did she say any thing to you when you was going along the passage? She said she was going to St. Mary's Wynd to see a person that had promised to fetch her word about her son, that she had promised to meet there.

Any thing more? She wanted the name of the land of houses to return back, as she had no money to pay for her bed.

That was the name of the land of your houses? Yes.

Did she go away then? I told her she must not go, as there were three lands, all belonging to one landlord, and she would not find her way back.

LORD ADVOCATE.—What did she say then? She said that that man had promised her a bed and her supper.

What did she call him? Docherty.

That was Burke? Yes.

Did you say any thing more to her? I said the police would take her up, as she was the worse of drink, if she went along the streets, and she then went into our house.

Was there any conversation that passed betwixt you and her? My husband having been in the army, asked her what part of Ireland she was from, and she told him; and he recollected a good many of the people about the place,—my husband having been there when in the army.

LORD JUSTICE-CLERK.—They spoke about Ireland? Yes.

Did she say any thing about going to Burke's? She said that she was going there, as he had promised to give her a bed and supper; and she said that she intended to stop with them for a fortnight.

LORD ADVOCATE.—Did she say so? Yes.

Tell us how she explained his name? Docherty. I told her that his name was Burke, and she would not allow me to say so; she said it was Docherty.

Did she say why she thought so? She said that that was the name he had given himself to her.

Mr WOOD.—How long did she remain in your house? An hour and a half.

What name did she give herself? Docherty. And that her own name was Campbell, by her husband.

Did any body come into your house before she left it? Yes Sir; Hare and his wife, and Mrs M'Dougal.

Now, what was done after they came in? Hare's wife had a bottle under her apron, and insisted that we should have a dram. Burke's wife came in after.

Then there was nobody but Hare and his wife, and Burke's wife came in after? Yes.

Did you drink? Yes; and they gave some to my husband.

Did M'Dougal come in before the spirits were touched? Yes.

Did she drink? I fancy she took a share too; but I cannot say how much.

LORD JUSTICE-CLERK.—Did the stranger woman and Mac-Dougal partake of it? Yes.

You do not know whether she took any? I dare say she did drink, but I cannot say.

LORD ADVOCATE.—Were they merry? Yes. Hare was dancing, and Mrs M'Dougal, and this woman.

Was she quite well? Only her feet. She hurt them in dancing.

Except her feet she was quite well, and they were quite well

too, except in the dancing that she got them hurt? O yes, quite well otherwise.

Did they all leave your house together? No Sir, they did not.

Who went away first? I do not know; but I know Mrs Campbell was a long time in with me.

And she would not go out of your house till Docherty came in? Yes.

Did you see him then? I had not seen him that night.

LORD JUSTICE-CLERK.—He had been out for sometime? Yes. It was getting late, and I wanted her to go into her own house. She bade me not be cruel to strangers.

And you allowed her to remain? My husband had to go out at half past four in the morning, and I had to rise to make his porridge. I was anxious to get her away, but she would not go till she saw Burke go into his own house. Burke came in then, and I said there is Docherty now.

LORD ADVOCATE.—He was passing towards his own house? Yes.

Mr WOOD.—At what time? I dare say between 10 and 11.

Did you go to the door to see where she went? She went that way, (as into Burke's house), and I locked the door and went to bed.

Now, did you sleep sound in the morning? No, I did not.

What prevented you? A disturbance in Burke's house.

When did it begin,—shortly after they had all gathered together? Yes.

At no long distance? I could not exactly say, but it was not long.

What kind of a disturbance was it? They were fighting like.

Did you go out? No. The moment the woman went out, I locked the door and went to my bed.

When did you get up again? I fancy between three and four. I set the fire on, and went to bed.

When did you get up in the morning again? About eight.

Had your husband gone to work at the first time? Yes; about half past four.

Who did you hear first? I heard Hare's voice in the passage, calling to Mrs Law in my house at that time.

She had come in then? Yes.

Did she go to him? No. She did not answer.

Did any other person come to your door? None at that time.

Was there any other person came at that time? Yes; a girl came inquiring after Burke at that time.

What was her name? Paterson.

Is she among the witnesses to-day? I believe so. She came asking for John.

What time might that be? Between eight and nine. She asked for John, and she asked for Burke.

Did you direct her to Burke's? Yes Sir.

Now, did you see M'Dougal shortly after that? Yes. She told me that William was wanting me a little past nine.

Who did you understand was asking you? William Burke.

Did you go *ben* to Burke's? Yes.

Now, who did you find in Burke's then? Mrs Law, Mrs M'Dougal, and young Brogan.

What were they doing? Burke had a bottle of spirits in his hand.

Was he drinking the spirits? Yes; and he filled a glass to me, and I drank it.

Well, tell us what more he did? He took the bottle with the spirits, and threw it up from where he was sitting, towards the roof of the house.

There was a bed in the house? Yes.

Did he throw any spirits about the bed? His back was to the bed, and then he threw the spirits upwards.

Did he say any thing on doing this? He said he wanted it done, to get more spirits.

Did you make any inquiry about Campbell? Yes. I asked M'Dougal what had become of the old woman, and she said Burke and her had been *ower* friendly together, and she had turned her out of doors: That she had kicked her out of the house.

Did she say to you what time that happened? No Sir; she made no remark, and I did not like to say any thing about it. She asked me if I had heard it, and I said no.

LORD ADVOCATE. Was Burke present? Yes Sir.

Well, did you say any thing on that to him? No Sir.

Do you recollect him saying any thing about the woman at that time? Yes Sir. He asked if I had heard about the dispute.

Did he give you to know what it was? He said it was just a fit of drink like, but she was quiet enough now.

How long might that dispute last? I could not say.

Now, at the time that you got up at three o'clock to make your husband's breakfast, were they quiet then? Yes, they were all like sleeping.

And some time before that? Yes.

Did you hear any noise at that time? No.

Did Burke's wife sing a song when you was in the house? Yes.

Did you see any straw lying near the bed? Yes Sir.

Was there a quantity of straw lying at the one end of the bed? Yes Sir.

Did you see any spirits thrown under the bed, or amongst the straw? Yes Sir. I saw him throw none but the time that I spoke of.

What time of day did you leave the house? It might be after 10 o'clock.

When did you return to Burke's again? In the afternoon.

When was that? Saturday.

Did Burke's wife ask you? Burke's lodger's wife. I met her in Burke's—Burke and M'Dougal's.

Then you went out again? Yes.

Did Gray's wife come to you again on the Saturday night? Gray's wife came in near about eight o'clock, to take her in to see what she had told her about the body; but when witness went in to Burke's house, she was so frightened that she turned and came out. All that she can say is, that she went in, but was so frightened that she went out again.

LORD JUSTICE CLERK, (*to the Jury.*) At a later hour, about eight, Gray's wife had been telling her about the body, and she went to Burke's house to see what she had told her of. She saw nothing but the straw, and was so frightened, that she went away without seeing any thing.

Is that it? Yes.

Now, after that, did you see the prisoner M'Dougal? Before I heard any thing of that, and before she took me into the house, M'Dougal came to me, and said that that woman had been stealing things out of her house.

What woman? Mrs Gray. And insisted that I should pay attention to the door till she would come in again, as it did not lock.

This was on the Saturday evening. About what time on Saturday was that? I fancy it might be about six o'clock.

What happened after that? When I was making my husband's supper, Hare came to our door.

Was this on the Saturday night? Yes, on the Saturday night.

Now, what did he do? He was going to go to Burke's; and I cried to him, there is no one there; and he came into our house.

Did he afterwards go to Burke's? No; he went out.

Then M'Dougal came? Yes; and I cried after her, had she got the woman Gray.

Did you afterwards go to Burke's door? Yes.

Did you find it open? No, it was fastened.

That was the inner door? Yes.

Did you see any body, after that, come out of Burke's house? I just turned in to my own house.

After you had gone to Burke's door, and found it fastened, did you see any body after that come out? Yes, Hare came in to our house.

Did you see M'Dougal? Not at that moment.

When did you see her? After that again.

Did you see M'Dougal before Gray? Yes. I went into the street; and when I returned, I found M'Dougal standing in my house.

Nothing passed? Nothing.

Then Gray came in, and you went into Burke's house; came out again, and went into your own house; and saw nothing? No Sir.

Did you see Burke after that? I did not see him till a good bit on in the night.

Now, had you any conversation with him then? Yes; after 8 o'clock, I spoke to him about the noise they were making;—my husband told Burke that there was a noise abroad, that it was reported he had murdered a woman; he laughed, and said he did not regard all Scotland to say any thing about him.

LORD MEADOWBANK.—Do you say he laughed very loud? Yes, Mrs Burke laughed very loud; and he said that he defied all Scotland to say any thing against him.

Did M'Dougal say any thing? She said that all the world could not say any thing against him.

At that time, did you see any policemen? Burke said he was going to see the man that said it; and the policeman gripped him on the stair when he was going out.

Interrogated by the DEAN of FACULTY.—Before he went into the passage, where he met the policemen, he went out there to meet the man Gray; he was going to seek the man that said it, and that was Gray; and he met him along with the policemen;—did you hear what passed between him and policemen? No.

Did the policemen take him into his own house? Yes.

LORD JUSTICE CLERK.—When he said that he was going to see the man who said it, did he refer to Gray? Yes; my husband said that Gray said he had seen a corpse in Burke's house; that he was going to get the policemen for him; and Burke said he would go and see if he could find him.

Interrogated by a Juryman.—When you went into the house, what was the cause of alarm there? Hearing tell of a murder frightened me.

I suppose we are to understand that that referred to the

conversation that Gray had with you, and nothing else? Yes; and nothing else.

JANET LAWRIE, or LAW.—*Sworn by* LORD MACKENZIE.

Interrogated by MR DUNDAS.—Now, Mrs Lawrie, you live in a house in the same passage with the prisoners; did you, in the month of October last? In the same passage with John Connoway, his wife, and me and Burke.

Do you recollect on the 31st October last being in Connoway's house? Yes, Sir; I recollect on the 31st October last being in Connoway's house.

At what time of the day was it? About 1 o'clock in the afternoon.

Do you recollect at that time of seeing the prisoner, Burke, in the passage? Yes Sir.

Was he alone, or was there any person with him? There was a little woman following him.

Now, where did they go to, Burke and the woman? They went into Burke's house.

Did you observe a man called Hare, and his wife, in that passage, or that land, that evening? Yes Sir.

Did they go into Burke's house? Yes Sir. I saw them in Burke's house.

About what time in the afternoon might it be that you saw them there? About 6 or 7.

Was the little woman there likewise? Yes Sir.

At that time were they merry dancing and drinking? Yes Sir.

Did you get any spirits? Yes Sir.

You were not long in Burke's house at that time? No Sir, about twenty minutes.

What time did you go to bed, do you recollect, that night? About half past nine.

At the time that you went to bed, did you hear any noise of dancing or singing? No Sir.

In the night did you hear any noise or merriment? Yes Sir, after that.

Was it long after you went to bed? Some time.

Did you hear singing and dancing, or with that shuffling or fighting? Yes, shuffling or fighting.

Did you hear any distinct voices previous to the fighting? No. In the course of the night you say you heard shuffling? Yes.

Was there a great noise that followed? Yes, there was.

Could you distinguish any persons' voices in the shuffling? I was not sensible of any person's voice but Burke's.

Did this voice last long? It lasted for some time.

And you fell asleep at last? Yes Sir.

Now, the next morning, did any person come into your house? Yes, Mrs Burke.

For what purpose? The loan of my bellows.

Did she say any thing? She asked me if I had heard Burke and Hare fighting through the night time.

Now, do you recollect any thing more about the fighting? I asked her what she had done with the little woman.

Now, give us the words that she used? That she kicked the d—d b—h's backside out of the door.

Did she say why she had turned her to the door? Yes. That she had been using too much freedom with William.

Meaning Burke? Yes.

Now, she went away after this? Yes.

Did you see her again when she came back to your house in the morning? Yes. About nine o'clock.

At what time was this first conversation? About eight o'clock.

And when she came back at nine, she borrowed a dram glass from you, I believe? Yes Sir.

Well, did she ask you at that time to come into her house? Yes Sir.

Did you go in? Yes.

Who did you find there? Hare was there, and Burke was there.

Was Mrs Hare there? I am not sure. I do not recollect.

Was there a man called Brogan there? Yes.

Was Gray and his wife there? No, at the time I went in; but they came before I left it.

Was M'Dougal there? Yes Sir.

Did Gray and his wife come in before you left the house? Yes Sir.

Are you sure that both Gray and his wife came in? Yes Sir.

Now, did you remark any thing particular that Burke did when you were there? Yes, he took a bottle and some spirits, and sprinkled it on the top of the house.

Do you mean the roof of the house? Yes.

The ceiling of the room? Yes Sir.

There was a bed in the room? Yes; about the bed too.

Did he say why he did so? Because none of us would drink.

You said there was a bed,—did you remark any straw about the bed? Yes, there was a good deal of straw about the foot of the bed.

Do you recollect seeing Mrs Connoway in Burke's house? Yes, Burke sent for her and she came.

Was that at the time the whisky was sprinkled? Yes Sir.

You say Burke was apprehended that night? Yes.

Were you shewn the dead body in the Police-Office on the Sunday? Yes Sir.

Did you recognize that body? Yes Sir.

Whose was it? It was the same woman that I saw in Burke's house on the Friday night.

Interrogated by the DEAN of FACULTY.—Do you know, Mrs Lawrie, that that straw that you speak of was used as a bed? Yes Sir.

Did the Gray's lie *there*? Yes.

It had been used for some time as a bed? Yes Sir.

HUGH ALSTON.—Sworn by LORD MACKENZIE, and Interrogated by Mr ALISON.

Do you live in the same land in which William Burke's house is situated? Yes Sir, I live in the first flat up stairs, and Burke lives in the sunk flat below the shop.

The shop is between your house and his? Yes Sir, exactly.

Now, Sir, do you recollect on the night of the 31st October, when you was going home, hearing any noise there? Yes Sir, I did.

What hour was it? I could not speak to the exact minute, but it was about half past eleven.

Were you going along the passage at that time, which leads up to your house? Yes Sir, I was.

You were going along the passage that leads to your house, on the line of the street? Yes Sir.

What did you hear Sir? I heard as it were two men quarrelling and fighting, making a great noise; there was a woman's voice that attracted my particular attention; the cry of a woman, of murder.

What did you do upon that, Sir? My wife she was with me,—she went up to my house, and I went down and stopped a little upon the stair to see that there was no person upon the stair till I ventured down to the botton.

You know Connoway's door? Yes, I believe that was the door next to the passage.

Did you go as far as it? Near to it, within a yard or so of it.

Now, tell us as distinctly as you can, the different sounds you heard when in that situation.

LORD JUSTICE CLERK.—You listened there? Yes.

Mr ALISON.—Well, what did you hear? I heard these two men making a great noise, as if wrangling or quarrelling. I heard no strokes or blows,—and a woman crying murder, but not in that way as I could consider her in imminent danger herself.

Well Sir, What more did you hear? That continued probably for half a minute, or a minute,—she still continued to cry murder,—it was a very strong voice for a female voice;—standing there a minute or two, there was something gave a cry, as if proceeding from a person or animal that had been strangled.

That of a person or animal that had been strangled? Yes, I could hardly distinguish it from that of a human being.

Well Sir, at this time did you hear any noise on the floor? I heard these two mens' voices, but I could not say that I heard anything else.

No blows? No, just a great deal of noise they were making by speaking.

Very loud? Yes.

Now, after this remarkable sound had ceased, did you hear the female voice still cry murder? Yes, she struck upon something, I do not know what she struck with, but slapped the door as if crying for the police, and cried murder here.

Well Sir, did you remain any length of time there? After this I went for the police;—I was after afraid of fire,—and I went for the police, but I could not find one.

Did you return to the stair then? Yes, I did not go far down,—I went down a little way.

Did you hear any thing when you returned the second time? I heard the men speaking, and the woman ceased to cry murder;—I thought every thing was over;—they seemed to have removed to a greater distance, and the noise had ceased.

Now, in the course of the time you were listening, did you hear any wrangling or strangling at that time? I might hear feet moving on the floor, but I can't say more.

A Juryman.—I wish to ask the witness a question.

LORD JUSTICE CLERK.—Take a note of it, the counsel for the Crown and the prisoner, must be done.

Mr ALISON.—How far might you be from Burke's door when you heard the sound? It could not exceed *three* yards, or so;—it might be about three yards, but I do not think it exceeded that.

Do you mean the door of the house, or the passage that

leads to the house? The door of the passage that leads to the house.

Will you be so good as tell us how far Burke's door is from that passage? I never measured it, I think it would be about fifteen feet.—I was three yards from the outer door.

There is a turn in the passage? Yes Sir, there is.

Was the outer door shut? I was not, so far forward as to see that; it appeared to me that it was on that door the woman struck.

Was it on the door of the passage? No, the door of the room.

You heard that the body was found? Yes, in the evening of Saturday, about 7 or 8 o'clock.

Did that circumstance of the body being found fix your recollection of what you have mentioned? Yes, I recollected immediately.

Interrogated by the DEAN of FACULTY.—When you went for the police, where did you go to? The mouth of the passage above Burke's passage. I saw one at the top of the street, but he was without my cry, and when I returned, I did not consider it necessary to get one, as the sound had ceased a good deal.

Did you go down to the Grassmarket? No.

The woman that made the noise on the door, struck on the door, and called murder; did you believe the voice you heard came from her? It was the same identical voice that called murder, that took me down the stairs.

That was not the voice that struck on the door, if she cried at the same time, and said there was murder? Yes, I think she said, 'for God sake get the police, there is murder here.'

LORD JUSTICE CLERK.—Are we to understand you to say Sir, that that voice that was uttering these cries, of a person or animal strangling, were different from that of the woman calling murder? Yes, it was quite different.

DEAN of FACULTY.—I think I have it down quite distinct, it was on the door, not the outside door that the woman was striking; how do you know that when you was three or four yards from that door? I tried the experiment on the door of the room; a person was shut in, and he struck the side of the room door, and I said that was not the sound, but the outer door.

A JURYMEN.—You mentioned having heard cries of murder proceeding from the passage, do you think they proceeded from Burke's house? I have no doubt of that Sir.

ELIZABETH PATERSON.—Sworn by LORD PITMILLY.—
Interrogated by MR WOOD.

How old are you? Going in sixteen.

Will you look at the prisoner here, (*Burke standing up*), Burke you have known in one instance? Yes.

You live in Wester Portsburgh? Yes.

Do you remember seeing him on Friday the 31st day of October last? Yes.

He came into your mother's house? Yes.

Your brother lives with you? Yes.

What is his name? David Paterson.

What time did he come? He came at 10 o'clock.

Who did he seek then? My brother David. I told him he was not in, and he went away.

Did you, next morning, go to inquire for Burke? Yes, my brother sent me down for him.

You got a direction to his house? Yes.

Who did you ask for it? Mrs Law.

DAVID PATERSON.—Sworn by LORD PITMILLY.—
Interrogated by MR WOOD.

Where do you live Paterson? No. 26, West Port.

What is your occupation? I am keeper of the museum belonging to Dr Knox.

Would you look at the prisoner here, Burke, (*Burke standing up*); do you know him by sight? Yes I do, Sir.

Do you recollect at what hour you went home on the night of Friday, the 31st October last? It might strike twelve, Sir, or a little before it.

Now, did you find any body at your door? Yes.

Who? The prisoner at the Bar.

Was he rapping at the door? Yes Sir.

Had you any conversation with him? He told me that he wanted to see me at his house.

Did you go with him to his house? Yes.

Did you find any person in it? Yes, both men and women.

How many men? Two; there might be more.

Two besides Burke? No, Burke and another.

Did you see any women? I remember two, Sir.

Now, Sir, after you went in there, what passed betwixt you and Burke? He told me he had procured something for the doctor, pointing to a corner at the head or the foot of the bed, I do not know which.

Was there any straw there? Yes.

LORD ADVOCATE.—Was it to that place where the straw was, that he pointed? Yes, my Lord.

Mr WOOD.—Did he make that observation loud enough that the other persons in the room might hear him? They might; but I am not sure of that.

Was it in a whispering voice? It was in a low voice.

How near were you? I might be touching his clothes.

Were there any observations made by any of these persons? No, none.

Was any thing shewn to you at that time? No.

What did you understand to be the meaning of what Burke had said to you, when he said that he had procured something for the Doctor? I understood that he alluded to a dead body, a subject; but I had no proof of it.

He said that, pointing to the head or foot of the bed where there was some straw? Yes.

What were his words? I think he said that he had procured, or there was something for the Doctor.

Did he say to-day or to-morrow? To-morrow.

What quantity of straw was lying at the bed; was it such as a body might be concealed under it? I think there might.

Now, will you look at this woman at the Bar, M'Dougal, (*M'Dougal standing up*).

Was she one of the women? Yes.

Would you know who the other woman was if you saw her now?

(*Mrs Hare was brought into Court in custody of a Macer, and produced to witness.*)

Is that her? Yes.

Would you know the other man? Yes, I think I would know him also.

(*Hare was also brought into Court, and produced to witness.*)

Is that him? Yes.

Then you went home? Yes.

And you had no farther conversation with him? No farther than saying good night, or so.

But nothing farther about the thing he said he had got? No more.

You sent your sister for Burke? Yes.

Did he come to your house? Yes.

About what o'clock? About nine.

Mrs Hare was the other woman that was in Burke's house? Yes.

And Hare was the other man that was in Burke's house? Yes.

Did you know the name of these two persons? Yes, by the name of Hare.

Now, Burke came to your house next morning about nine o'clock:—Did he accompany any body, or bring any body with him? No.

Well, what passed? I told him if he had anything to say or do with Dr Knox, to go to himself and settle with him.

LORD ADVOCATE.—You mean by that, that if he had any subject to take it to him? Yes.

Mr WOOD.—What did Burke say? He promised to do so, and went away.

Well, when did you see him again? I again saw him standing in Dr Knox's room with Dr Knox, and one of his assistants, Jones; they were merely standing together.

Is Dr Knox's room in Surgeon Square? Yes.

About what hour? It might be between 12 and 2.

Well, did anything pass in your hearing at that time? He told me he had brought something for Dr Knox.

Was it Burke or Hare? I am not positive;—but one or other of them told me they had a subject,—and I got orders from Dr Knox if they brought any package, I was to take it from them.

Did you remain there? I called in the proper place in the evening about 7 o'clock, and they brought a package,—Burke, Hare, and a porter.

Do you know the porter by sight? I have since heard that his name is M'Culloch,—I have seen him here to-day.

Had they any thing with them? A box, apparently the remains of an old tea box; or tea chest.

Such a box as that, (*pointing to the old tea box*)? Yes, such a tea chest as that.

Then, what was done? They carried it and put it into a cellar belonging to Dr Knox;—Mr Jones was present. We locked the door,—and Mr Jones and I walked out to Newington, and told him what the men had brought.

Dr Knox resides at Newington? Yes.

Did Burke and Hare go along with you? They had followed us,—we saw them at the end of the road leading to Newington.

Before or behind you? I am not certain whether before or after.

But when you came out of the Doctor's house you found them there? Yes.

Did you observe any women there? I did not observe any; but they might have been there.

LORD MEADOWBANK.—Not the porter, but just them two? The porter also, my Lord.

MR WOOD.—When done, and when you met them there, what passed? Dr Knox had given me £5 to give to the men. I had previous orders to divide the money and give each a share. I went to a change-house and obtained change; I gave each £2, 10s. and on that, Hare and Burke lifted up their share, and the porter got his share.

Was this the whole price? No, they were to call on Monday, when Dr Knox would have seen what they had brought.

When they were to get more? I do not know if any bargain was made, but I understood, generally, the price to be £8.

And you parted with them there? I parted with them there.

LORD ADVOCATE.—Did you see any men there? None.

Neither before you went in, nor afterwards? None, my Lord.

Did you see any women waiting about the square? None.

Did you see any women loitering about the public-house? None, my Lord.

You did not see them join any women? No, my Lord, I went another road.

Next morning, did any body call upon you? On the Sabbath morning, about 7 o'clock, the police Sergeant-Major called upon me, along with Lieutenant Paterson. It was Sergeant-Major Fisher.

And you went to Dr Knox's premises along with them? Yes.

And you opened the cellar and gave them the package that these people had left there the night before? Yes.

It was then in the same state as it was in when you got it? The same, my Lord, as I received it.

Was it roped? Yes.

And the ropes were still about it? The ropes were still about it.

Did you then open the box? Yes.

What did it contain? The body of an elderly female.

Was it fresh? Apparently fresh.

Had it ever been interred? No, my Lord.

Did you open the top of the box first? I could not positively say whether it was the side or the top of it.

Describe the situation in which it was? When we opened the box it was doubled up,—all the extremities doubled upon the chest and thorax.

How was the head pressed down? The head was pressed down on the breast.

Did it seem to be pressed down for want of room? Yes, it did.

Was it taken out of the box? Yes, my Lord.

Will you describe the state of the body, and appearance of the countenance? Yes, my Lord. I examined all the body, and stretched it on the table.

Describe it about the face? I found the face a very livid colour.

Was there any blood upon it? There was blood flowed from the mouth.

You are a medical person. Did that appearance of the countenance indicate strangulation? It did, my Lord; or suffocation, in my opinion.

And what other appearances had it? I found no other external marks, or bruises upon the body, that might have led me to suppose it to have caused death.

Did you find any internal derangement? I was not present at the examination.

LORD MEADOWBANK.—Did the eyes project? No, my Lord.

The tongue hang out? No, my Lord.

LORD ADVOCATE.—You say the head was a good deal pressed down by the want of room? Yes, my Lord.

You can't say more upon it than that, of course? No, my Lord.

LORD MEADOWBANK.—Did you observe any marks about the mouth? No, my Lord.

Was there plenty of light when you examined it in the morning? Yes, my Lord.

LORD ADVOCATE.—About the lips or nose were there any signs of pressure? They were dark-coloured, my Lord, and some spots of blood.

Any marks about the throat at all? None, my Lord.

Interrogated by the DEAN OF FACULTY.—You said that the face indicated strangulation or suffocation? Yes, my Lord; by the blood, my Lord.

Does the blood of a strangled person, or a suffocated person, tend to give the face a livid and dark appearance? Yes.

Is that the reason? Yes.

Paterson, you have seen the man Hare before, that came into Court, and you looked at? Yes, my Lord.

You know that Dr Knox had dealings with him for dead bodies? Yes, my Lord.

Before that time? Yes, my Lord.

You know whether he had dealings before with Burke about subjects? Yes, my Lord.

Did they seem to act conjunctly? Yes, my Lord.

Who appeared to be the principal parties? I have seen both in their turn.

You have seen both assume the principal part? Yes, my Lord.

Did they frequently bring subjects that had not been interred? Frequently, my Lord, I suppose they had not been interred.

LORD MEADOWBANK.—The same persons? Yes, my Lord.

Is it frequent that such subjects are brought to the lecture-room of some anatomist? Yes, my Lord, it is frequent, both by them and by other persons.

Both by them and other people? Yes, my Lord.

DEAN OF FACULTY.—Does it consist with your knowledge, from acting for Dr Knox in this way, that there are people in town that sell dead bodies that have not been interred? I have heard it, my Lord. I have known gentlemen that have attended poor patients that have died, and then they afterwards gave in a note of their place of abode to Dr Knox, which he has handed to these men to get their bodies.

LORD MEADOWBANK.—It is no evidence of the fact.

DEAN OF FACULTY.—Have you seen young men that have attended these places deliver these addresses to Dr Knox? I have got one from Dr Knox to give to these men.

A label to the house of the deceased,—to the house of the late patient; and you have given it to them. And in that instance, do you know that the subject was brought to you? Not in that instance.

LORD ADVOCATE.—I would be the last person in the world that would interfere with the examination of the prisoner, but surely it is not *cross*. He can summon the witness, and call him again.

DEAN OF FACULTY.—I am entitled to re-examine him.

LORD ADVOCATE.—Independent of that, it has no bearing in this case.

LORD JUSTICE-CLERK.—You have told us that a minute examination was made of that body, What did you do with that body? I gave the Lieutenant of Police the key of the room where it was, and left it in his charge, and I never saw it afterwards.

Where is that room, Sir? A room and cellar in Surgeon Square.

DEAN OF FACULTY.—You say you laid down the money in shares, to prevent quarrelling? To prevent disputes.

You saw the £5 equally divided? Yes.

Have you known quarrels between Burke and Hare, re-

specting such booty? I have seen them drunk on the streets, and have heard disputes and quarrels between them.

More than once? Yes, my Lord.

Often? Yes, my Lord.

Had the one complained to you against the other, or to Dr Knox, with your knowledge? Not to my knowledge, my Lord.

A JURYMEN.—When he said he had got something for the Doctor, might his wife have heard it? She might have heard it.

Did she make any remark? No.

LORD ADVOCATE.—How far was she from him? She was not far from her husband; the room was but small, and she could not but hear.

LORD MEADOWBANK.—You mean by his wife, that woman at the Bar? Yes, my Lord.

LORD JUSTICE-CLERK.—When you came home that night, and went to them, near 12 o'clock, were they in a state of intoxication? Yes, my Lord, they appeared to be, both of them.

Both men and women? Yes.

LORD MEADOWBANK.—Did they know what they were about? They were able to stand up; but I do not know if they knew what they were about.

LORD ADVOCATE.—You accompanied Burke from your house to his house? Yes.

Did he walk tolerably straight in that way? Rather a little *drunkish-ways*.

JOHN BROGAN.—*Sworn by LORD MEADOWBANK.*

Interrogated by Mr ALISON.—You know Burke the prisoner, and Mrs M'Dougal, his wife? Yes.

Do you remember last Halloween evening? Yes.

Were you in Burke's house in the course of the evening of that day, betwixt six or seven o'clock? About four o'clock.

Who was then in the house at that time? That man and his wife, (*pointing to the prisoners,*) Hare and his wife, and there was another man, Gray, and his wife.

How long did you remain at that time? Till seven.

During that time, was there any other person came in? There were two strange women in when I went in first.

Did you see an old woman there? Yes.

Did this old woman remain as long as you remained there? Yes Sir.

When did you next return to Burke's house? Two o'clock in the morning.

You had not been in the house in the interval, betwixt seven and two? No.

Who did you then find there? The two men, Burke and M'Dougal, and Hare and his wife.

Did they lie in the bed? Yes; Hare and his wife were lying in the bed.

Where was Burke and M'Dougal? They were standing out ov'r next the window.

Were they talking together? Yes they were.

Did you fall asleep in the house? Yes, I fell asleep.

Did all the rest fall asleep too? Yes.

Where did you lie? Burke's wife and the other woman and me lay near the fireside; the two women were at the fireside, and the two men were in the bed.

When did you leave the house? About 7 in the morning.

What time did you come back? About 9 o'clock.

In the morning of Saturday? Yes.

Who did you find there? Gray and his wife, Burke and his wife, and Hare and his wife.

Did any person ask about the old woman? Yes.

Who was it? The person that came in for a light.

A man or a woman? A woman.

Well, what did the woman say? She asked what had become of the *spawwife*.

Now, what did M'Dougal say? She said that she had been very *fashous* during the night, and that in the course of the night, Hare and Burke began fighting, and the old woman called out murder.

Say what was the answer? She seemed to be very *fashous*; she gave her warm water, and then cold water, and then she asked for a flannel clout and soap to wash herself with, to make her white; and then the two men began a fighting, and she roared out murder, and she gave her a kick in the —, and set her to the door.

Who called out murder? The old woman,—and she thrust her out of the house, for an old Irish *lummer*.

Were you there again in the course of the forenoon, that is, in Burke's, on Saturday? Yes, about nine o'clock in the morning.

Did you see any spirits sprinkled? Yes.

When? Before nine.

When you came back? Yes.

Who sprinkled? William Burke.

Where did he sprinkle it? First on the roof of the house, then on his own bosom, and then he flung it under the bed.

Had he any thing in his hand, when he flung it under the bed? A cup with whisky in it.

What time was this? Before nine.

Did he go under the bed? Yes.

Had he the cup? Yes.

Was there whisky in it? No.

Burke went out leaving you sitting on the chair? Yes.

Was that near the bed? Yes.

You did not sit long there when he went out? No.

When you came in, did he tell you to sit down there, and not leave that chair? Yes, as he was going out for drink.

Was M'Dougal in the house at that time? Yes.

Were the Grays there? Yes.

Must M'Dougal have heard the direction to you to sit upon the chair till Burke came back? Yes.

But you went away? Yes.

And who did you leave in the house when you went out? M'Dougal, Gray and his wife.

MRS GRAY.—*Sworn by LORD MEADOWBANK.—Interrogated by Mr WOOD.*

Do you know the prisoners, Burke and M'Dougal? Yes, Sir.

You and your husband lodged in the house? Yes.

Five nights in October last? Yes, Sir.

Do you remember on the 31st of October last seeing a stranger there? Yes.

A poorish-looking woman? Yes.

How was she dressed? She had a dark gown, and a red stripped bed-gown on below it.

The black printed gown above it? Yes, Sir.

(*The Witness was shown the gown and bed-gown, which she identified.*)

Did she say her name? Docherty.

You saw her there once or twice in the course of Friday? Yes. I was in the house till very near dark at night.

You were going in and coming out of Burke's house? Yes; sometimes going messages.

LORD ADVOCATE.—Did Burke say any thing about her,—how he had met that woman? He said he had met her in a shop about *nine* that morning.

You and your husband were lodging in this house, were you? Yes; and we went home to another.

You did not lodge there that night? No; Burke put me out, saying, that you and your husband have had a difference,

and been boxing, and he would not have his house made a boxing-house. I told him I was not boxing, I was checking the child, and that was all the noise that I heard; and he told us that we must go out of the house that night directly.

Were you to go for good and all, or for a time? He did not say so directly.

Did he say that you should leave the house then? Yes.

What time? I could not say the time exactly; I think between five and six.

Did he leave you to find your lodgings for yourself? No; he said he would pay my lodgings for me that night.

Did he point out to you where you were to lodge? Yes; William Hare's.

You were to get your lodgings there? Yes; that night, Sir.

Did you go to Hare's then? Yes; I went with Hare's own wife.

She had been in Burke's at the time? Yes, Sir.

Did you remain at Hares, or return to Burke's house? I returned to Burke's house about nine o'clock; I returned for some of my child's clothes.

Did you find the woman Docherty there? Yes; she was singing, and Mrs Burke and Mrs Hare were dancing.

Did you leave her there? Yes; I left her there.

Did she seem to wish to go out of the house? Yes; in the course of the day.

Who kept her? Mrs Burke wished her to lie and take a sleep in the house.

Did Burke go out when you was there? No; I did not stop any length of time.

Hare and Burke were drinking, and the two women dancing? Yes.

What time did you return to Hare's? Shortly after.

And then, on going to Hares, you went to bed? No; I did not go till eleven o'clock.

Did Hare and his wife come home that night? Yes; they came home and took their supper; and Mrs Burke then came in and took some supper, and then Hare and his wife went out a little after them.

Hare did not return that night? No, Sir.

Now, when did you meet them next morning? I do not recollect what hour it was; but the first thing that I heard, was William Burke seeking for my husband.

What was he wanting with him? To give him a dram of spirits.

Well, did you go after that to Burke's house? Yes; me and my husband.

What o'clock might that be? Past nine o'clock on the Saturday morning.

Who did you find there? One Mrs Law, and Mrs Conno-way, and one of the name of Brogan, and Mrs Burke, and Burke also.

Was the old woman there? No; and I asked where she was.

Who did you ask at? I asked at Mrs Burke.

What did she say? She said she was too impudent, and she turned her out.

Did you say any thing in answer to that? Perhaps she had got too much liquor, and she had not known what she said.

Was the old woman in liquor the night before? Yes, she was.

After you got into the house in the morning, was you looking for any part of your child's clothes? Yes; for the child's stockings.

Where did you go? To the corner where the straw was lying.

Well? Burke asked what I wanted there; I told him I wanted the child's stockings; and he said keep out there, with a nod.

Was there any whisky going at that time? Yes, Sir.

What was he doing with it? William Burke was drinking some of it, and throwing it up to the roof of the house, upon the bed, and below the bed.

Did he give any reason for doing so? That he wanted the bottle *toom* to get more.

Did you see him pour any whisky into a cup? He went with it three times under the bed;—he put it into a cup, and went three times under the bed, and put some on his breast.

Was there anything said about potatoes? It was William Burke,—the potatoes were under the bed.—I went in below the bed, and he asked me what I was doing there with a lighted pipe; to come out and he would go in himself,—and I said there was nothing in it, and I collected them myself.

Where was the straw lying? At the foot of the bed, in a little corner betwixt the end of the bed and the wall.

How long did you remain in the house? I was out two or three times in the middle of the day.

When you came back at any time, did you find Brogan there? Yes, Burke told Brogan to sit upon the chair till he came back again.

The chair was near the straw? Yes.

Was your husband there at the same time? Yes, Sir.

Burke you say went out at that time? Yes, Sir.

Did Brogan stop in? No.

Had you been desired to clean the house at all? I cleaned the house, but I was not desired to do it.

Did he say anything to that? He said never to mind, it would do; and I said it would be better to be washed and sanded.

Did he say anything about the corner? He ordered Brogan to sit at the corner, and not to let any person near it.

He did not say to let any person there? He just told him to sit there. After Burke went out, Brogan went out after him.

Was you and your husband then left alone? Mrs M'Dougal was along with us, she was stretched on the bed.

Now, what did you do after Burke had gone out? I went to look for Burke, but I could not find him.—I went out again and met Burke coming up the West-Port; he went into one M'Kenzie's to get a dram, and told me to go home, and he would be immediately after me?

Who did you find there? Brogan and Mrs Burke.

Did you discover a dead body in that house at the time? Yes, in the darkening.

Who was in the house at the time? Mrs Law's servant girl.

Was that long after Burke went out? About darkening.

Where did you find it? Under the straw at the foot of the bed.

Had you been looking on purpose? Yes, I was looking on purpose. I thought there was something that was not right; because he was throwing about the whisky. I thought something was not right; and the first thing I got, on lifting up the straw, was the woman's right arm.

What woman? Mary Docherty.

That was the woman you had seen the day before? Yes.

Were there any clothes upon her? Not a stitch.

Was there any blood visible? Yes; my husband lifted the head by the hair, and saw the face a little over with blood.

Where? About the mouth and on the one side of her head.

Was there much straw upon it, or how was it lying? On the right side, Sir, with her face to the wall.

Did you leave it there? Yes, just threw the straw upon it,—my husband went away before me,—he met Mrs Burke on the stair,—I went out immediately after.

Did you see him meet her? Yes.

What passed at that time? He asked about the body, and she told him to hold his tongue, and she would give him a few shillings; and if he would be quiet, it might be worth ten pounds a-week to him.

Did you say anything about the body? I turned back and went into the house.

What passed then? I spoke to her about the body, and she bade me hold my tongue.

Did you say what body it was? I told her it was the woman's that was well last night, singing and dancing on the floor.

Did anything more pass? She bade me hold my tongue.—She did not know that I heard her speak to my husband,—and she said she would give me 5s. or 6s. if I would hold my tongue.

What more? She repeated the words over again; and if I and my husband would be quiet, it would be worth £10 a-week to us; and I said, God forbid that I would be worth money with dead people.

Did you give information after that to the police? It was my husband.

Did you see Burke after that? No, Sir.

LORD ADVOCATE.—Did you see the body in the police-office? Yes.

The same body? Yes.

Was it old Mrs Docherty? Yes.

Did you see Mrs Connoway at all, that day? Yes.

Did you see her after the body was found? Yes.

Was the body there then? Yes; I sent her forward to the corner to see it, but I did not see it; I cannot say whether it was there or not, Sir.

Interrogated by the DEAN of FACULTY.—Mrs Gray, let us go back to the beginning of the story. Where did you sleep on Thursday night? On the bed at the side of the press.

You say you was in Burke's all the Friday forenoon? Yes, Sir; I was not out in the forenoon, I saw the deceased woman's bed-gown drying. She washed them herself, that was Docherty, and dried them.

Did you not go out all the forenoon till about darkening, when you left it? Only for a stoup of water, Sir.

There is a well in the court-yard, is there? No, in the West Port.

Now, you went away to Hare's about dark;—you said you came back about night? Yes; for my child's clothes.

Nobody came and asked you to come down? No.

Nor your husband? Not that I know of.

Did you hear any thing of a merry making in Burke's house? Nothing; but as I thought it was Halloween night, they did not wish me amongst them.

Did your husband go back with you when you went for the clothes? Yes.

Now, then, it was about 9 o'clock when you went back the second time? Not passing a few minutes.

Was it not in Burke's that the dancing and singing was? Yes.

You know Mrs Connaway? Only by sight.

Was she there? Not that I saw, Sir.

Endeavour to recollect; was she there or not at that time? I do not recollect; she might, but I do not remember of seeing her.

Now, you went away in a few minutes. You said that Mrs Burke, or M'Dougal, came afterwards to Hare's house? Yes.

And Hare came home? Yes.

Did Mrs Hare come home? Yes.

Did M'Dougal come? She came in a few minutes after.

Recollect about what time that was? I could not tell you, Sir, the hour; it was not very long after I left Burke's house the first time; I left it at the darkening.

Was it before you went down at 9 o'clock? O yes, Sir.

It was before you went back for the clothes? Yes; before I went back for the clothes.

Now, be so good as recollect, when they came to supper there, did not they ask you to come down and get some sport with them? No.

Next morning, you said that Burke came up to your house, and asked you and your husband to come down? He did not ask us to come down, when he gave us a dram that morning; but my husband had seen Burke afterwards on the street, and he told him to come down with me to breakfast.

Now, when you went down to breakfast, did you see Hare and his wife there? No.

Are you sure Mrs Hare was not there? No, not in the morning.

Was she not in the bed? No.

She had come up to her own house, and she came up before you came away to your breakfast? Yes; long before I came away.

What time did she come up? I do not know.

When did you get up in the morning? About 8 o'clock.

Now, you told us a good deal of what M'Dougal said when your husband spoke to her on the stair, and you went back into the house? Yes.

Did M'Dougal say anything else? Yes; she said, '*my God, I cannot help it.*'

Was that after you went back into the room again? Yes; when I went back and left my husband going away with the bundle.

Was he present at that time? Not at that time.

Did she say the same words on the stair? Yes.

LORD JUSTICE-CLERK.—She told you and your husband, that she would give you two or three shillings if you would be quiet; and if you would be quiet, it would be worth £10 a-week to you; did these words, *my God*, follow or precede that? It followed that.

What was your reply? I said you surely can help it, or you would not stay in the house.

Did she make any reply to that? No, Sir.

LORD MEADOWBANK.—Am I to understand that she said these words to you, now mentioned, *my God*, I cannot help it; did she say these words after her offering the shillings, and promise of money, and you saying, God forbid that you would do so? It was after that, that she said that she could not help it.

It was to your reply, for the like of that? that she said that she could not help it? Yes.

Mr ROBERTSON.—Request the witness' particular attention to that, my Lord.

LORD MEADOWBANK.—When you met the woman coming up the stair, what did she say? When my husband went up the stair, he met her, and mentioned to her that he had found a corpse in the house; and she said hold your tongue, and she would give him five or six shillings, or it might be only two or three; and she said that he might be worth £10 a-week if he would be quiet; and he said, God forbid that he would be worth that, for he could not keep it on his conscience. She came down the stair, and she went into the house, and I asked her what she had been about, I had found such a thing in the house; and she made the same reply as to my husband; and I said, God forbid that my husband should be worth that for dead bodies; and I asked her what did she mean by bringing her family into disgrace by it; and she said, *my God*, I cannot help it.

I think you said in giving that conversation before, that you mentioned to M'Dougal that it was the body of the woman you had seen in good health before, did she say any thing to that? No; she made no reply.

She said nothing as to how she came by her death?

JAMES GRAY.—Sworn by LORD MACKENZIE.

Interrogated by Mr DUNDAS.—You and your wife lived

with the prisoner Burke, in the end of October last, five nights? Yes.

On the 31st of October, did you and your wife sleep there? No; not on the night of the 31st October.

Why? They desired us to go out.

What time of night was that? It was in the afternoon. He told us we must go out that night; that he had provided lodgings for us in another house; and desired us to come back next morning to breakfast.

He gave no reason for that? Not to me.

Did he take you to any house where to get lodgings? Yes; he took us up to Hare's house, and fixed the bed where we were to sleep in, himself.

In the course of that day, in the course of that Friday, did you observe a strange woman he brought into the house? He did in the morning. He said that he had met with her in a shop in the West Port. My wife was making breakfast at the time, and he desired that some breakfast should be made for her likewise.

Did he say why he did this? He did not at that time; but he said something afterwards. He said he suspected that she was a relation of his mother's, as she was of the same name, and from the same part of the country.

That was on the forenoon of Friday? Yes, Sir.

You told us that he took you to Hare's house? Yes.

Had you occasion to return in the evening again to Burke's house? Yes; I think about nine o'clock.

For some of your childrens' clothes? Yes, Sir.

Whom did you find in Burke's house? Burke and his wife, Hare and his wife, and a stranger woman.

Did you return back to Hare's to sleep, and left all those individuals in Burke's house? Yes; we did Sir, and went to sleep.

Next morning did you see Burke? Yes; and he asked how we rested, and I told him very well.

He asked you to come to breakfast? Yes; and I went back and got my wife, and we went down to breakfast.

In the course of that forenoon, (Saturday morning,) were you present in the afternoon when your wife found the dead body in the room? I was, Sir.

What time was this? About darkening.

Was it about five or six? I dare say it might be between five and six. I could not exactly detail the hour.

Where was the body found; in what part of the room? It was found in one corner at the foot of the bed, with the head to the wall, and the feet below the bed.

LORD JUSTICE CLERK—Amongst the straw? Yes Sir.

Did you recognize the body? I did Sir. I knew it to be that of the woman that we saw there the night before.

On this discovery, did you remain in the house, or did you quit it? I packed up the things that I had in the house, and went out, when I met Mrs Burke.

That is M'Dougal, the prisoner at the bar? Yes.

What passed? I asked what was that she had got in the house; and she said, what was it? and I said, I suppose you know very well what it is: She fell on her knees, and said—

Did she drop in a supplicating attitude? In a supplicating attitude, imploring that I would not inform of what I had seen.

Did she offer you any reward for that? She offered me some money, five or six shillings, to put me over till Monday; and there never would be a week after that, but that I might be worth £10 a-week.

What did you do upon this? I said my conscience would not allow me to do it. After I came back, I heard her in the room, narrating the same words to my wife.

What were these words she said to your wife? They were words very nearly to the same purpose as those to myself, though they were not exactly the same.

Did she say she could not help it? Yes, she said so.

Was there any reply made to that? No Sir.

Not upon the stair? No, indeed. I did not stop long with her.

Now, after this conversation in the house, did your wife and you leave it? We did Sir.

And did Mrs Burke, or M'Dougal, follow you? She followed us, Sir; and when we got out to the street, we met Mrs Hare.

Now, what happened there? We met Mrs Hare there, and she inquired what we were making a noise about; and said, can't we go into the house, and decide our matters there, and not make a noise about them here.

And you went into a public house, and stopped there some time? Yes; and I went and gave information at the police-office.

LORD MACKENZIE.—Were you in the house when the body was found? I was.

Did you observe the face of it? Yes; I turned up the face, to see what like it was: There was a little blood on the face.

Were there any marks upon it? It did not appear to be marked; and so soon as I saw it was the person that was there the night before, I did not take time to look at it.

Was it quite naked? Quite naked.

LORD JUSTICE-CLERK.—You were quite clear of the body? O yes, my Lord.

Interrogated by the DEAN OF FACULTY.—What time was it that you and your wife left Burke's on the Friday night first? I suppose it might be about five o'clock; but probably it might be a little after it.

Did you see him that night again before nine o'clock? Yes, he came up to Hare's house.

About what time? It might be about seven, if I recollect; but I am not sure of the hour.

Was Hare there at that time? No, neither Hare nor his wife were there; they were in his house, and came in afterwards.

Was Burke there at the supper? No; but Mrs. Burke was.

What time was it that Burke came there? I think about seven.

Had the Hare's left it at that time? I cannot be certain as to the hour that he came there; but I know he came there that night, after the Hare's, but went out again.

When Burke came up there about seven, did he ask you to go to his house? No; he fetched a copper measure, with some liquor in it, that night at seven.

Did he sit with you any time? Only a very short time.

What brought him there? I do not know, except to give us this liquor that he brought to us, for he left it with us.

I think you said he came on the Saturday morning. Did he then ask you to come down to breakfast? I rose directly out of bed, and he desired Hare to give us a dram; and twice he did so. I went out a little afterwards, with the child in my arms, and I saw Burke standing in the shop; and it was then that he asked us to come down and get breakfast.

JOHN McCULLOCH.—Sworn by LORD PITMILLY.—Interrogated by MR. ALISON.

You know the prisoner Burke? Yes.

You know of his coming to your house on Saturday morning, the 1st of November, requesting you to come to his house and carry something? Yes.

About what time? Six o'clock.

On Saturday evening? Yes.

Did Burke say what it was to carry? No, my Lord.

Did he tell you where to go first? He told me to follow him.

And you followed him accordingly? Yes, my Lord.

Where did you go to? To the West-Port.

Did you go to Burke's own house, or any other house first? To his own house first.

What did you get there? A box.

What size of a box was it? Like a tea-box.

LORD ADVOCATE.—Tell us more particularly what happened before that—before you moved the box? When coming to the end of the bed, he took some straw off it; and he took the sheet and he put it into the box.

And what did he take off next—what did he take out of the straw? I cannot say.

Did you see him put nothing in the box? The sheet.

Did he take any thing like the person of a human body? Yes; I think it was something like the person of a body.

LORD MEADOWBANK.—You have no doubt that it was a body, in short? No, my Lord.

Did you see any thing of it at all? No, my Lord; but when I was going to lift the box, there was something like hair that I felt.

And did you put that into the box? Yes; and there was a little straw put over it, and he ordered me to take it away.

Did you put the hair in the box? Yes.

LORD JUSTICE-CLERK.—Recollect you are on oath; and you should understand distinctly, Sir, that whatever concern you might have had in it, you are bound to speak the truth, and the whole truth; for if you do not, the Court will be obliged to deal with you as with other persons in that situation, and one no further gone than yesterday. Was there a good deal of pressure required to put the body down? Yes; for putting the lid down.

Was there any other person present? Yes; one of the name of Hare.

LORD ADVOCATE.—Was the head uppermost? I could not say, my Lord.

What became of the sheet? It was left where the box went to.

Is that the box? (*Witness was shewn an old tea-box.*) Yes, my Lord.

What kind of hair was it, was it a man or a woman's? My Lord, I do not know.

How long was it? About the length of that—(*showing one half of his hand.*)

Well, then, was this box roped? Yes.

And you carried it? Yes; he (Burke) ordered me to carry it, and I am a porter.

Did he tell you where to go to? I was to go down the Cowgate, up the High School Wynd, and he was to be immediately after me.

Did he meet you there? He told me to go to the head of the wynd, and he would meet me there.

Did he meet you there? Yes.

Was there any body with him? Yes; his wife.

Where did they join you,—they did not join you in the High School Wynd, it was farther on, was it? Yes.

Was there any body else there? Hare was there.

His wife, was she there? Yes; she is a big woman, she was there.

Then there were two women and two men there? Yes Sir.

Now, you went up the Wynd,—were they before you, or did they overtake you? They overtook me.

Before you got into Surgeon Square? Yes; all the *four*.

MR ALISON.—Then you went into a house there? Yes; and we went to the gate, and having put the burden off my back, I left it there.

About what hour was this? About half-past six my Lord.

This box and the body was taken into the house, and you left it there? Yes.

Where did you go to? To Newington,—Burke ordered me to go along with him.

Who went to Newington with you? Hare, Burke, and the two wives.

Now, when you went to Newington, did the wives keep along with you, or did they separate from you? They separated, and I stood alone.

Did the men go into any house, or did any body come to them? A young gentleman.

David Paterson; you saw him here to-day? Yes Sir.

You went into a house; did you get a dram? Yes.

Did Burke and Hare come in? I do not think that Hare went in.

What took place in the public house? This young lad gave them money.

Did you see money? I saw him give them money.

And they divided it? He gave them what was theirs, and nothing more.

You got paid for your trouble? Yes.

How much did they give you? Five shillings.

When you came in there, where were the women? were they left by the men there? No.

They had gone away before? Yes.

LORD JUSTICE-CLERK.—Are you quite positive, Macculloch, that you saw this woman M'Dougal at Newington? Yes, my Lord.

And also Mrs Hare? Yes, my Lord.

JOHN FISHER.—*Sworn by LORD PITMILLY.—Interrogated by MR ALISON.*

You remember a person coming to you in November, of the name of Gray? Yes; about seven. He was in before I came into the office.

Where did you go with him? To the West-Port.

What house did you go to there? I went to the house of William Burke, the prisoner.

What did you go there for,—what was your object? From the statement of the person that came there, to inquire for any thing to establish what had been said.

Was it to search for the body? No; I understood that the body was removed before I went there. It was to see if I saw any thing suspicious.

What did you find? I found Burke and his wife coming out from the sunk flat, and they were coming up stairs.

Was there any body with you? Finlay and Gray. I desired the man to go back and speak with me down stairs; and they went down.

After you went into the house, what took place? I asked Burke what had become of his lodgers, and he said, that there was one of them, pointing to Gray; and that he had turned out him and his wife for their bad conduct.

What took place then? I then asked them what had become of the little woman that had been there on the Friday, the day before; and he said, that she was away: And I asked, when did she leave the house, and he said, about seven o'clock in the morning.

Did he say any thing about any other person being present when she went away? He said William Hare saw her go away. Then I asked, was there any other person saw her go away; and he said, in an insolent tone of voice, there were a number more. I then looked round the house to see if I could see any marks on the bed, and I saw the marks of blood on a number of things there; and I asked Mrs Burke, the pannel at the bar, how they came there; and she said, that a woman had lain in there, about a fortnight before that time, and the bed had not been washed since.

Well, what more? She said, as to the woman, she could find her; she knew her perfectly well, and that she lived in the Pleasance. She alluded to the little woman, that I had asked where she was; and she said, the woman can be found; she lives in the Pleasance; and she said she had seen her that night in the Vennel, and that she had apologised to her for her bad conduct the night previous. I asked her then, what

time the woman had left the house; and she said, seven o'clock at night. When I found them to vary, I thought the best way was, to take them to the Police office; and I told them that it was all personal spite, but that I must take them to the office, as I was sent down.

But, before going to the office, did you put any questions to Burke, or this other woman, (the pannel), how this woman came to the house? No; I put no questions to them on that subject.

Then, you went to the Police Office, and took them with you? Yes.

Had you any further conversation with them there? I heard them examined by the Superintendent. He examined them.

Did you hear any conversation between the Superintendent and Burke?

LORD JUSTICE-CLERK.—Keep to *that*.

Witness. I told the Superintendent that I had seen some marks of blood there.

Well, did you return to Burke's house that night? Yes; the Superintendent, Dr Black, and I, went to Burke's house.

Did you examine the house then? Yes.

Did you find any article of wearing apparel there? Yes; at that time Mrs Law came into the house, and we found a striped bed-gown on the bed; and we took this striped bed-gown away.

Did you find any thing else? No.

And you took it away? Yes.

Look at it, (*a striped bed-gown was handed to the witness*), Is that it? Yes.

Did you find any blood? There was a quantity of blood amongst the straw under the bed.

Did it appear to have recently come there? Yes; it appeared quite fresh.

Now, next morning, did you go to Dr Knox's premises in Surgeon Square? Yes.

Was there a person of the name of Paterson with you? Yes.

Did you get any thing? Yes; we went down to the cellar, and he said that here is the box, I do not know what is in it; and we opened it, and found the body of a woman in it.

LORD JUSTICE-CLERK.—Quite naked? Quite naked.

MR ALISON.—Was there any person sent for to come and see the body? Mr Paterson and I remained, and we sent for Gray to come and see if that was the body.

Did he recognize it in your presence immediately? Yes. We directed it to be put in, and I took the precaution to put a man on the door before I went away.

Did you return again? Yes.

And removed the body to the Police Office? Yes; the same day.

LORD JUSTICE-CLERK.—I suppose when you went there, Paterson looked at it, laid it out on the table, and examined it? Yes, in the cellar, in the lower flat of the house.

MR WOOD.—Was the body shewn to Mrs Connaway? Yes.

LORD ADVOCATE.—Was there no other body but one in the Police Office? No other.

What took place then? They all denied it.

Denied what? Denied all knowledge of the body.

LORD JUSTICE-CLERK.—Of ever having seen it at all? Of ever having seen it, dead or alive.

MR WOOD.—Did you, after that, return to Burke's house? Yes.

What did you find there? Part of a gown, and this petticoat—(*pointing to Campbell's clothes.*)

What else took place? The body was examined by Dr Black, Dr Christison, and Dr Newbigging.

Interrogated by the DEAN OF FACULTY.—Did Hare deny all knowledge of it? Yes; He said he never saw it, dead or alive.

Interrogated by Mr COCKBURN.—His wife the same, I suppose? Yes.

WILLIAM HARE.—*Sworn in the usual manner by* LORD MEADOWBANK.

LORD MEADOWBANK.—Now, we observe that you are at present a prisoner in the tolbooth of Edinburgh; and from what we know, the Court understands that you must have had some concern in the transaction now under investigation. It is, therefore, my duty to inform you, that whatever share you might have had in that transaction, if you now speak the truth, you can never afterwards be questioned in a court of justice; but you are required, by the solemn oath you have now taken, to speak the truth, the whole truth, and nothing but the truth; and if you deviate from the truth, or prevaricate in the slightest degree, you may be quite assured that it will not pass without detection; and that the inevitable result will be, the most condign punishment that can be inflicted. You will now answer the questions that are to be put to you.

LORD JUSTICE-CLERK.—You will understand that you are

called here as a witness regarding the death of an elderly woman, of the name of Campbell, or M'Gonegal.

You understand that it is only with regard to her that you are now to speak?—*To this question the witness replied, by asking, 'T'ould woman, Sir?'* LORD JUSTICE-CLERK, Yes.

LORD ADVOCATE.—You are a native of Ireland, Hare? Yes. How long have you been in this country? Ten years.

LORD JUSTICE-CLERK.—Are you a Roman Catholic? Yes.

Do you wish to be sworn in any other way, than that now administered by my brother? I never was sworn before, Sir, and I am no judge of that.

(The New Testament was handed to the witness, with a representation of the Cross upon it.)

LORD MEADOWBANK.—Now, you will observe that there is a representation of the Cross on the book of the New Testament; lay your right hand upon the Cross, and repeat the words of the oath again, after me.

(The witness was sworn in this manner.)

Interrogated by the LORD ADVOCATE.—How long have you been acquainted with William Burke? About a twelvemonth.

You have been ten years in Scotland, and you have been a resident in Edinburgh? Yes.

You are a married man, and your wife is here? Yes.

When did you become acquainted with the prisoner Burke? About a twelvemonth ago.

And you became acquainted with the other prisoner Macdougall about the same period? Yes.

She lodged with him then, and since? Yes.

Your house is near his? On the same side of the street.

Were you in a public house on the 31st of October last, kept by a person of the name of Rymer? Yes.

Were you and Burke drinking together on that day? Yes.

How much did you drink? A gill.

Was any body with you? No.

Did he tell you about any person being in his house? Yes.

About what o'clock was it? I could not say; it was in the fore part of the day. He took me to this house, and he told me to go down to his house, and said that there was an *ould* woman in the house that he was going to murder, and for me to see what they were doing; that he had left some whisky in the house; that he got the woman off the street; and that he thought she would be a good *shot* to take to the Doctors.

LORD JUSTICE-CLERK.—Did not you, Sir, in the early part of this statement say, that he had got a *shot*, and that he was going to murder her for the Doctors? He said to me to go

down to the house, and to see the *shot* that he had; and see what they were doing in the house.

LORD ADVOCATE.—Did he use the word murder; or did you understand it from the *shot* for the Doctors? To see what they were doing.

Did he use the word murder? No.

What did you understand by the word *shot* for the Doctors; did you understand the meaning of it? Yes.

What was it? That he was going to murder her.

Well, did you go down? Yes, Sir, I went down.

Alone? Yes.

You went to Burke's house? Yes, I went to his house.

Who did you find there? A strange man and woman in the house; Nelly M'Dougall, and the old woman,—and she was washing her gown.

Do you know what the name of that strange man and woman is now? I could not say the name.

Is Gray the name, do you think? Yes, Gray.

And the woman was washing some linen things? She was washing her short gown.

Was it the old woman that was washing? Yes, she was washing her short gown.

What colour was it? White and reddish colour,—striped.

Was it like that there? *(the gown was handed to the witness,)* Yes, that is it.

Did you remain long there? About five minutes.

And then went away home? Went home.

Were you in Mrs Connoway's after that? No, I was not in there till after night.

You know that woman? Yes.

Were you in her house that night at all? Yes; between eight and nine o'clock.

Then you came back from that to your own house? Yes.

Now, who was in Connoway's when you was there? John Connoway and his wife; and there was William Burke, John Brogan, and another *chap*—I don't know his name.

Did William Burke remain with you? He went away with the two chaps, Brogan, and the one I don't know.

Who else were there? That old wife, and Nelly M'Dougall, and my wife.

Had you some drink when you was there? Yes.

Did you remain there till pretty late? We remained there till between 11 and 12 o'clock. I could not say just directly.

Where did you go to? Nelly M'Dougall asked me and my wife to take a dram in her house.

And you left the old woman there? Yes, we left the old woman sitting at the fire, and John Connoway.

Well, when you were in Mrs. Burke's house, did Burke come in? Yes, and the old wife with him.

Had you any more drinking? Yes; there was a *soup* of whisky in the bottle, and we all drank it out. We were all pretty hearty.

Was the old woman that way too? Yes.

When you were in Connoway's, were you dancing and singing? Yes.

Did not she hurt her feet in Connoway's? I did not see.

At this time, did you expect that any mischief was to happen to this old woman? Not that night.

Now, after this, had you any quarrelling or fighting with Burke? He asked me what I was doing there, in his house: I told him that Nelly M'Dougal asked me in to get a dram; and he struck me then.

Did you strike again? Yes, I did.

Had you a fight? Yes.

And her there? Yes, we had.

Now, where were the women during this? They were *redding* us.

They came in betwixt you to separate you? Yes; he pushed me down twice on the bed, and the last time I lay on the bed.

How long did you lie there? I could not say.

LORD JUSTICE-CLERK.—You were twice down on the bed? Yes.

LORD ADVOCATE.—Now, when you were fighting, where was this old person? She was sitting at the fire,—and she got up and desired Burke to sit down, and she said that she did not want to see Burke abused.

Did she run out? Yes, she ran out twice to the entry, and cried out for the police.

She went out twice to the passage? Yes.

What did she call out? It was either murder or police, I could not say which, but it was some of them.

Well, how was she brought back again? It was Nelly M'Dougal that fetched her back.

Both times? Yes.

Did she then get any push, or fall over on the ground? Yes she did;—when we were struggling, I pushed her over a little stool.

And you continued to struggle while she lay there? Yes; she raised herself on her elbow,—she was not able to rise, being drunk,—and called on Burke to be quiet.

LORD JUSTICE-CLERK.—You mean quiet from fighting with you, or you with him? Yes.

LORD ADVOCATE.—Did he quit you at last? After he threw me the second time on the bed, he then quit, and I lay still in the bed.

What did he do? He stood on the floor;—he then got stride-legs on the top of the woman on the floor, and she cried out a little, and he kept in her breath.

Did he lay himself down upon her? Yes, he pressed down her head with his breast.

She gave a kind of a cry, did she? Yes.

Did she give that more than once? She moaned a little after the first cry.

How did he apply his hand towards her? He put one hand under the nose, and the other under her chin, under her mouth.

He stopped her breath, do you mean? Yes.

Did he continue this for any length of time? I could not exactly say the time; ten or fifteen minutes.

Did he say anything to you when this was going on? No, he said nothing.

Did he then come off her? Yes; he got up off her.

Did she appear dead then? Yes; she appeared dead *a wee*.

Did she appear to be quite dead? She was not moving; I could not say whether she was dead or not.

What did he do then? He put his hand across her mouth.

Did he keep it there for any length of time? He kept it two or three minutes.

Did she appear to be quite dead at that time? She was not moving.

What was you doing all this time? I was sitting on the chair.

What did he do with the body? He stripped it of the clothes.

Where did he put them? Under the bed.

What did he do with the body? He took it and threw it at the foot of the bed, doubled her up, and threw a sheet over her; he tied her head to her feet. He tied her head and feet together, and covered her up with straw.

Now, during the time this man was lying on her, where was M'Dougal and your wife? When they heard the first screech, they left the foot of the bed and went into the passage.

Did they both run to the passage? Yes.

Did they come in again when this was going on? They did not come in till this was all over, and her covered over with straw.

You said they were lying in bed before this time too? They were lying in bed with the rug over them.

Did they cover their faces with the rug? I did not see.

Where were you sitting at this time? At the head of the bed.

Did you see the blood? I did not observe any at that time.

No blood on the floor? Not any at that time.

Any blood on the woman's face? I did not see any at that time.

Did you hear these women cry any thing after they went into the passage? I did not take heed.

Nobody came in at that time? None.

Before the women sprang up, had you seen Burke turn the woman round, or do any thing at all to her? He was on the top of her when they sprung out of the bed.

Was he long in that position before they went away? A minute or two; whenever he caught her, she gave a screech, and they ran away.

None of them laid hold of Burke, and tried to screen the woman? None at all.

Which of them went out first, do you remember? It was my wife.

Did the other follow immediately? It was not long till she went out after.

Neither of them made any attempt to save this woman, or to take Burke off her? Not that I saw.

Could it have been without your seeing them? No, it could not.

Well, how long before this was it, that these women, as you describe lying in the bed, had been separating you and Burke? About ten minutes before this.

Then, you saw them come in again? Yes; they came in again.

Well, did Burke go out then? Yes; Burke went out.

Immediately after this old woman was laid in the straw? Yes; he immediately went out.

Was he long absent? About ten minutes.

When the women came back, did they say anything? did they ask no questions? No.

Did you say anything? No.

What did you do then? They went to their beds again.

Did neither of them ask for the woman Docherty when they came back? They did not.

Then you say Burke went out, and returned in about ten minutes; did any body come back with him? Mr Jones.

Was it not Mr Paterson? It was the Doctor's man. (*The Macer called Mr Paterson in Court, but he failed to appear.*)

Do you know where this man lived? He lives down on the other side of the street, in the West Port.

Well, when he came back with Burke, what did Burke say to him? He asked him to look at the body he had got; he said it would do well enough; to get a box and put it into.

Did he point to the straw where it was? Yes; and he wanted him to look at it; but he would not look at it.

Were the women present then? They were in the bed.

Were they awake? I could not say.

How long before that did you speak to them? None of them (the meu) spoke to them; he, (Paterson), went out to the passage.

When they were in their bed they did not speak at all? No.

None of them said anything when Mr Paterson was present? No; I do not know.

Did you fall asleep before he went away? Yes.

You were tipsy, were you; were you quite drunk at that time, or did you know what you was about? O yes; I knew well enough what I was about, though I was *drunkish-ways*.

And you fell asleep, did you? Yes.

Did you know what time you awoke? Between six and seven in the morning.

Where did you fall asleep; where were you lying when you fell asleep? In the chair.

Were you in the chair when you awoke? I was, with my head on the side of the bed, in the chair.

Who was in the bed when you awoke? There were two women, and John Brogan, and his aunt lying behind them.

Who is his aunt? Nelly M'Dougal; he calls her his aunt.

Where was you lying? At the fireside.

Well, after this, when you got up, did you and your wife go home? Yes.

Who did you find at home? John Gray and his wife.

Had they slept in your house? They had fallen out with Burke that evening, and they applied to my wife for a bed.

You cannot say which of them applied? I cannot say which.

Did Burke ask no bed for them, or speak to you about a bed for them, the day before? I could not say.

Did he speak to your wife in your presence? I could not say, I did not hear him.

Did M'Dougal speak of a bed? I could not say.

There they were;—well, did Burke come back to you next morning? He came to Rymer's shop. I was going to feed the swine, and he called me into Rymer's shop, and he asked

me if I had got my morning; he called me to get a gill, and he asked me would I go with him to Surgeon Square to see about a box, and I told him I did not heed after I fed the swine.

Well, did you go to Surgeon Square? Yes, he inquired about a box there.

Where did you wait? I was in the room with him.

And you did not get a box there? No.

What did you do then? He said that he had one bespoke or bought, I do not know which, from Mr Rymer's shop-boy.

Well, tell us what happened afterwards,—was a box got? Yes, he bought a box from him.

Did you see it? Yes, but not at that time.

Did you see it brought into the house? Yes.

Who was it that brought it? It was the porter who brought it into the passage; and both him and I went into Burke's house with it.

Was Burke there at that time? No.

Did he come in? He did not come in till about a quarter of an hour.

Who was with him? A man, I do not recollect his name; he stands at the head of the Cowgate. There was no person in the house when we went in, and we left the box there and came out again; we went out at the back door, and waited till Burke came.

Well then, when he came, did you all go into the house again? He asked of me what was I doing, and said, you are little worth that did not put it into the box; and with that he went into the house, and when in the house, he went and pulled it (the body) out on the floor, and I helped it into the box.

Was there an old sheet there? Yes.

Did it require pressure to put it into the box? I could not say; it was the porter that stuffed it down, in the latter end. It took some strong presses down; he said that it was a bad thing to keep the hair on the outside; and he took it and pressed it down in the inside.

Well, was it roped this box? Yes it was.

Look and see if this is the box here? (*The old tea-box was shown to the witness*). I cannot say whether that is the box or not.

Was it of that kind? It was of the same shape.

Was it roped? Yes.

What was done with it? The porter took it away with him.

Did he get any directions where to carry it to? To Surgeon Square.

Did he and you go to Surgeon Square at the same time? Yes.

Did you overtake, or meet the porter there? I went with the porter, and Burke went for the Doctor's man.

And you all met in Surgeon Square? Yes.

Were the women there? They were not in the Square, but were following us.

The women were, M'Dougal and your wife;—you saw them in Surgeon Square? No, they were not in Surgeon Square, they were in the street.

That is, in the street in the High School Yards there? Yes.

Did you hear them say what brought them there? I did not.

Did you both go together into Surgeon Square, or did Burke come in first? Burke was last in coming in; we went in with the box; I could not say whether it was the porter or not that went in with the box first.

And you assisted them; did you? Yes.

And you all three went in, and the box was put down into the cellar? Yes.

Where did you go to? To the Doctor's house.

Where is that? At Newington.

Well, did you go into the house, or did you wait till the doctor's man came out again? No; we waited till he came out.

Had the Doctor's man, Mr Paterson, and you been talking of any allowance? Yes,—he went in, and came out and told us to go down to a public house at the foot of the Cowgate, and he would give us some money.

What became of the women, did you see them at Newington at all? We saw them on the road.

To Newington, you mean? Yes.

Going or coming? Both in going and coming.

They did not join you,—they did not come into the house? No.

Did you get money there? Yes; the man had five pounds.

And that was divided betwixt you? Yes; he gave the porter five shillings, and then he gave William Burke two pound seven shillings and sixpence, and me two pound seven shillings and sixpence.

Was this the whole price;—did you understand you was to get more? We were to get other five pounds by Monday.

Was that to be demanded on the Doctor's seeing the body? He did not say.

Well, then you went home;—did you hear any more of the matter till you was apprehended? Yes, I saw him, (Burke), apprehended that night.

When was you apprehended? Next morning, Sabbath morning.

Interrogated by Mr. COCKBURN.—*Mr. Hare*, how long do you say you have been in Edinburgh? About ten years.

What have you been employed at during all that time? Boatman and labourer.

You have not been boatman all that time? Yes.

Where? On the Canal.

Have you been employed in any other way? I had a horse and cart selling fish.

Any other way? No.

Have you been connected in supplying the doctors with subjects upon other occasions than those you have not spoken to yet? No,—than what I have mentioned.

LORD ADVOCATE.—I object to this course of examination.

MR. COCKBURN.—I request the witness to be withdrawn. (*Witness was withdrawn.*) My Lords, I asked the witness, whether part of his occupation, during the time he has been here, was in supplying Medical Lecturers with subjects; and he said that he had been so employed. Now, the question that I wish to ask him is, Whether that was his trade and living, on other occasions? And this, as I understand, is objected to. But I would not be doing justice to the pannels or the Court, if I did not insist on putting that question. And I may avow, that it is only introductory; and as it may facilitate the consideration of the point, I may as well explain at once, that I hold myself entitled to ask this man to reveal his whole life and conversation. In particular, I mean to ask him this specific question,—Have you ever been concerned in murders beside this one? I am ready to admit that he is not bound to answer; but I am entitled to put that question, let him answer it or not as he pleases. It will be for the Jury to judge of the credit due to him, after seeing how he treats it.

LORD ADVOCATE.—The caution that was put to this witness was, that he was not to speak to any of those cases, except the one under investigation; and how he can be asked with regard to them now, in this state of the proceedings, to me is inconceivable.

LORD JUSTICE-CLERK.—I do not think that the general question, if he ever supplied the doctors with subjects, ought to be put; at least, I am bound to tell the witness that he need not answer it unless he pleases.

LORD MEADOWBANK.—When we are gravely and impera-

tively called upon to tell the witness so, for what purpose is it that that question can be put, when the witness is told that he is not bound to answer it, I cannot discover; but further, I have to state this, that the witness is brought here to be examined on the matter before the Court, and he cannot, in any circumstance that may be disclosed in that evidence, be examined on a cross-examination; he cannot be called on to answer other matters. And is he to be exposed to suppositions because he does not choose to answer that question? It would be subversive of every principle of justice, because the Court cannot protect him. Upon that ground, I submit therefore, that it is not a fit and proper thing to allow such a question to be put, when he is not called upon to answer it, and when your Lordship's power would not protect him if he did answer it. I hold it to be the duty of the Court not to allow that question to be put.

MR. COCKBURN.—Your Lordship will observe that I have only stated what the proposed question is, but that I have not been heard in support of it. Indeed, I could not have been heard upon it, because it has not yet been objected to by the prosecutor. Nevertheless one of your Lordships has not only formed, but expressed an opinion, and a very clear opinion, against it. The best way of considering this point is to view it in relation to the *general scope and avowed object* of the proposed examination, rather than as limited merely to this detached question. Our object is to test the credit due to this witness; and therefore, I propose to make him disclose himself, by asking him about his accession to all sorts of crimes of which we may believe that he is conscious of being guilty. Now, I maintain my right to do so on as firm grounds as ever man maintained any proposition. Testimony is never admitted except on the ground that credit is probably due to it. Every objection to competency is merely a guard set to watch the avenues of credibility. And even where the testimony is admitted, the objection to its admissibility is often relaxed, merely because, after it is let in, it is still the right and the duty of the jury to judge of the weight it is to receive. But this check is altogether defeated, where a witness is allowed to give his testimony, and is at the same time permitted to conceal circumstances *within his own knowledge*, which may enable it to be appreciated. It is true that he may be privileged not to answer; but this is no objection to the competency of putting the question; because, in the *first* place, he may *choose* to answer,—and, in the *second* place, which is the common way with an unworthy witness, he may answer, and answer *falsely*, and thus afford the means of getting himself contradicted. This is so plain, that the idea of protecting a villanous witness, by not letting any question about his own iniquities be even put to him,

humbly appears to us to be absolutely monstrous; and I know no authority for it in the law of Scotland. We have no authority indeed, except that of common sense and general principle, either one way or other. But I understand that in England, where they are richer than we are in cases on this subject, and more experienced in the application of the rules of evidence, there could be no discussion on this matter. Indeed, I see a trial reported the other day, where certain persons were accused of a conspiracy, and where the prosecution rested chiefly on the evidence of a person supposed to be of bad character; and I see him expressly asked, "Are you a common prize-fighter? Are you the keeper of a gambling-table?" &c. And not confining themselves to these general questions, they ask him specially the very question that I now propose to put: "Did you ever kill a man?" He answered that he had; and so they go on making him confess, or deny, or evade, the commission of all sorts of iniquities; and the result was, that the judge—either Justice Bailey or Justice Vaughan—tells the jury to acquit, because the principal witness had proved himself to be undeserving of much credit. The propriety of this, if it be true that parole testimony is received, because it is justly entitled to belief,—seems to me to be so perfectly evident, that I really cannot argue the question. I cannot fancy any thing more dreadful, than that a witness is to be allowed to give his evidence, and yet is to be protected to this extent, that he is not to be permitted, even if he chooses, to disclose iniquities, in which he may be absolutely steeped; which, were they proved, would deprive his testimony of every claim to credit. We are so confident in our opinion of the legality of the question, that we wish it to be put on the record, in order, that if it be rejected, we may find our remedy where we can.

Mr. ALISON.—Whether he is to dispute inquiring into the examination of a witness in this way or not, I apprehend there is no point upon which the law of Scotland and England is more at variance than in the cross-examination, or adducing of the evidence against the witnesses, by which they are to be discredited. We all know, in the law of England, where a pannel has not a list of witnesses served upon him, they are entitled to examine them as to their whole life and conduct; but that is not the case here; not merely on the ground that a witness is entitled to protection from the Court, but that a person is not liable to answer on cross-examination for his whole life and conversation. Hume says, vol. ii, page 341.—"Moreover, the pannel shall not much mend his objection, though he drop these general imputations of evil fame, and offer an immediate proof, by testimony, of infamous crimes committed by the witness. The prosecutor must not lose his evidence, but on sure and satis-

factory grounds; and the witness is not to be made infamous in this trial, on a summary, unexpected, and *ex parte* inquiry; he must be shown to be already infamous, by his conviction in due course of law, of some crime inferring infamy, after a fair and an open trial. This has been the settled rule of our practice, if not from the earliest times, at least ever since the introduction of a new and more improved order, with the new establishment in 1671." See also Burnett, 462, who says—"A witness is exempted from giving evidence as to facts which may infer his own infamy,—the rule being, that no one is to be rendered infamous or disgraced by his own testimony, though it may collaterally aid the pannel by affecting the competency of the witness. What the law will not allow to be proved by others, it will not permit to be proved by the witness himself, especially when, with regard to circumstances that can alone incapacitate or discredit him, the law has pointed out the mode, and has at the same time afforded the opportunity, by the previous notice it requires to be given of the witnesses, to be adduced of substantiating these in a better way; viz. by producing a record of the conviction of the witness."

A witness in England may be interrogated upon any facts tending to discredit or infer suspicion; but with us it only is in the due course of law, after a fair and open trial, with the production of a conviction of some offence by a jury, that will disqualify; but without any conviction being put upon record, it is quite contrary to the law of Scotland; therefore the investigation that is proposed, finds no analogy in the law of England to the analogy contrary to the law of Scotland. DEAN OF FACULTY.—My Lord Justice-Clerk, I entirely concur with my friend in the earnestness with which we urge the right to put this question to the witness, and propose to enter it upon the record. It will be observed, that the question is put to the witness himself, not with any view of *disqualifying* him as a witness, but solely for the purpose of affecting or trying his *credit*: we are not proposing to bring any other witnesses or proof on the subject of the question, which is the case supposed by Mr. Hume; or bring forward any thing in order to disqualify him as a witness; but we wish to put a question which is plainly calculated to try the credit of the witness. Your Lordship indeed warned him that he was not to be examined upon any other but the present case; that he was not to be examined upon any other charge *against the pannel*; but that regarding the death of Margery Campbell or Docherty; and assuredly the prisoner cannot be affected by anything he may say as to any other offence. But this will never lead to the consequence, that the prisoner is not entitled to examine the witness as to his own conduct, so as to shew the jury what reliance may be placed on his veracity and

regard for his oath. Your Lordships also solemnly warned him of the obligation to speak the truth, and the danger to him especially of any departure from it. You did this from the knowledge that he is not in the ordinary circumstances of a witness, but liable to the greatest suspicion. And surely when such a witness is brought against a prisoner, it is but reasonable and plainly necessary to the ends of justice, that he should have full liberty to show the character and credit of the witness, if he can do so by that person's own testimony. We are quite aware that the question is one which the witness may decline to answer; we never meant to say anything to the contrary: but it happens often, with such witnesses, that even though warned of their privilege to decline answering, they choose to answer questions of this kind, and answer them *falsely*; and in the present case, we think it very probable, that this witness will answer the question, and that he will answer it *falsely*. But, in whatever way he may answer it, it involves matter of the highest moment to enable the jury to estimate his credit. If he answers it affirmatively (which we believe he must if he speaks *truly*), the fact will speak for itself. If he answers in the *negative*, it will be *false* evidence upon his oath, and the law affords remedies independent of the effect in this trial. If he declines to answer the question, we are aware that we can only leave it to the jury to draw their own inference.

LORD JUSTICE-CLERK.—You have heard the objection to the competency of this question, we all know the course the Court follows in such a case, which is, to tell the witness not to answer the question unless he thinks proper.

LORD MEADOWBANK.—I regret having stated the impression made upon my mind by the bare announcement of the question proposed to be put to the witness, because I should most assuredly have rather, in a matter of this vast importance, desired to obtain every light that could have been thrown upon it before I ventured to deliver my judgment regarding it. But perhaps my having done so, was only the effect of my attention being more anxiously called to every word that dropt from my brethren at the bar; and if I had been satisfied that any thing that was suggested by them ought to have had the effect of shaking the opinion which occurred to me at first, nothing that I stated before could (I trust it is unnecessary for me to assure your Lordships) have prevented my honestly and frankly avowing it. I have, however, been confirmed in that opinion, by finding, that notwithstanding all the ingenuity of my learned brethren, they have said so little on the subject, and that they have been unable to shew one single precedent in favour of their argument, except that which has been obtained from the law of

England. Now, I for one must throw the law of England altogether out of the question. It is, I believe, in matters of this kind, diametrically opposite to ours. That law, for instance, holds, I believe, that a witness has no protection from having been examined on a criminal trial. We hold that he has. It is quite absurd, therefore, to dream of drawing a precedent, which is to guide your Lordships, from the law of England. But even our law goes no farther than to protect witnesses from being subject to prosecution on account of matter immediately and inevitably connected with the subject of the trial in the course of which they are examined. I understand it, therefore, to be admitted that, if the question proposed were entertained by your Lordships, the witness must be told that he is not bound to answer it, because it is beyond the competency of this Court to afford him protection against being afterwards questioned for the perpetration of crimes which do not form the proper subject of inquiry in the present investigation.

But I have always understood that the law of Scotland has always gone a great deal farther—that it allows no question to be put which a witness may not competently answer; and which, if answered, must not be sent to the jury as a matter of evidence.

Now, in the first place, I admit that it is quite competent for the prisoner to put any questions, provided they be directly relative to the matters at issue, by which he apprehends that the credibility of the witnesses for the crown may, if answered, by possibility be shaken. There, however, I apprehend the right to stop. The oath taken by the witness binds him to speak the truth, and the whole truth; but that obligation goes no farther than it refers to the matter before the Court. It neither does, nor has it ever been held, to bind him to speak to matters relative to which he has not been called legally to give evidence. I apprehend, therefore, that even the oath which has been imposed upon the witness, is not obligatory upon him to speak to matters *not immediately* connected with the subject of this trial—and, in fact, such was the opinion of the counsel for the prisoners; for, upon their application, the witness was particularly warned that he was only required to speak the truth, and the whole truth, relative to the third charge in this indictment. I have always understood, however, that no question could be put, upon cross-examination, to a witness in this country, which would, if answered, have the effect of rendering him in truth, inadmissible; or what is in effect the same thing, a witness whose evidence could not even be sent to the jury for their consideration. All questions having that effect, must be put as preliminary, and at that period when the questions asked of all witnesses by your Lordships before the examination commences. In that respect, very likely, we differ

from the law of England; but for the reasons assigned by Mr. Hume in the passage read by Mr. Alison, I am not inclined to think that the rules of our law are here inferior, or less effectual for the administration of justice. The object of our law has always been to get at the truth, and I suspect that it is best to be obtained by preventing witnesses being harassed in the way that would result from such questions as the present being held to be admissible.

But further still, suppose, in the second place, that the witness answers the question that has been put, and in the affirmative, and deposes that he has been present at more murders than the one in question, what is to be the result? Is the Lord Advocate, upon the re-examination, to ask him at what murders he has been present, and who was concerned in those murders, or to go into an examination of all the matters connected with those cases? If he is, we may be involved in an inquiry into the circumstances connected with the other murders in this indictment, which are not now the subject of this trial, and which your Lordships, by your interdictor, have precluded from being the subject of trial at present, and before this jury. I cannot think that such can be your Lordships' intention, yet the Court must be prepared either to go this length or not, before allowing a question to be put which must open up such a field of inquiry; for if the prisoner is entitled to put the one question, it must follow that the prosecutor is entitled to put the other; and if you do permit such an inquiry, you must be prepared to send the answers so given, and the evidence so arising, to the jury for their consideration. And what would be the consequence? By the evidence thence arising, and the suspicions thence created, the prisoner might be convicted upon matters not at issue in this indictment. Nor is it enough to say that this has been occasioned by the prisoner himself; for the law of this country interposes to protect a prisoner from his own mistakes, it lays down rules by which, in all cases, protection shall be afforded against either accident or error; and such a rule, I apprehend, we have, by which such a question as the present is rendered inadmissible. In short, I conceive it would be highly erroneous to send such answers to a jury; and as I am clear we are not entitled to permit any questions to be put, the answers to which must not be sent to the jury, I think this question cannot be admitted. But I set out with saying that I do not think any question can be sustained by your Lordships, which, if answered in the affirmative, would disqualify a witness. Now, such questions as this, it appears to me, are of this nature. For thus, suppose that the question put were, Have you committed ten acts of perjury—and the answer were in the affirmative, what is to be

the result? Your Lordship must tell the jury either that the witness's answer is true, or that it is false. If true, must it not also be added, that he cannot be believed upon his oath; and that, if it appears not to be true, then he is equally incredible. By admitting such questions, therefore, the necessary result is, that you put it in the power of the witness to disqualify himself, and that, I have invariably understood, I can solemnly assure your Lordships, to have been a principle reprobated by the law of this country.

Lord MACKENZIE.—I incline to a different opinion, nor am I surprised that in a case which appears of so unusual a nature, differences of opinion on some points should occur. I agree in the first place, that the witness has no protection beyond the case in which he has been called as a witness. I have no idea, that by confessing, either ultroneously or on his examination or cross-examination, other crimes than those in reference to which he has been brought forward to give evidence by the public prosecutor, he could acquire any right to impunity for those crimes, or even security that his own words might not be used in evidence for his conviction of those crimes. But then, in the second place, it does not appear to me, that the want of protection is a sufficient legal ground for refusing to allow a question of this kind to be put to a witness, though I think it is a good reason for his being carefully warned by the Court that he is not bound to answer the question so as to criminate himself, and that if he shall answer it, he has no protection. I understand that to be the general course of our law when questions are put to a witness that may tend to criminate him. The protection acquired by witnesses called by the public prosecutor puts them in a different situation. But this course applies to witnesses for pannels, and it rather appears applicable even to witnesses for private prosecutors in criminal cases. I do not think therefore that the danger of the witness criminating himself requires the exclusion of the question, provided he is properly warned. But it is said, on the authority of Mr. Hume, that a witness ought not summarily to be put upon his trial for his character. I do not dispute that authority, but I think it not applicable to an examination by questions which are put only to the witness himself, and which he may decline to answer. That is quite a different thing from bringing forward other witnesses without notice, to prove guilt against any one witness, and destroy his character, which seems to be what Mr. Hume considers objectionable. What is attempted here, seems to be to examine a witness himself respecting his own character, which I have never considered to be generally incompetent. It is argued, that he may in this way disqualify himself, by falsely imputing infamous crimes to himself. He could not however make himself an incompetent witness by such imputation, for it requires

conviction to create legal infamy to that effect. Nor is it likely that witnesses will run the risk of accusing themselves of crimes without protection, which at any rate they can do falsely, only by perjury, and that of a nature by no means incapable of detection and punishment. I am therefore of opinion that the question may be put when your Lordship has fully warned the witness in regard to his danger, and right to decline answering.

LORD JUSTICE-CLERK.—I have given my opinion. I do not mean to rest my opinion however upon the law of England, till it is fixed upon us by the legislature. We cannot adopt opinions and principles which are totally foreign to the law of Scotland. This question is to try the credit of this witness, who is brought forward as a *socius criminis* in regard to the highest crime known in the law of Scotland. Though I think with my brother on my right hand, that it affects this witness, yet this is an extraordinary case, and in very extraordinary cases we must make allowances for extraordinary questions being put. Now, the point in controversy is, whether or not, under the assurance that this man will receive, that the proposed question is one in which he is in no respect bound to answer, and that he is entitled to give no answer whatever to it, this question may be put to the witness. The principle is clear, that he is not bound to criminate himself; and if he should answer it, he is in no respect under the protection of the Court. With that positive warning, which I shall feel it my duty to give, I really must own, notwithstanding all the attention I have paid to the argument, I do not deem myself warranted to take such a view of this question as my brother on my right hand. I am as confident of this as I can be of any thing, that in cases under my own observation in this Court, and on the circuit, similar questions have been put to witnesses, and I have struck in immediately by saying—*you are not bound to answer them.* I think in those cases the witnesses have uniformly availed themselves of the warning given, and declined to answer the question; and if this witness does so avail himself, it cannot affect his credibility when we told him in the outset to-day, that it was only in this case he was to speak, and to no other; and that nothing he said in this particular case could have any effect against him. He must be warned to the fullest extent. He must be cautioned that he *may* not answer the question; but if he does answer it, to the effect of injuring himself, the consequences will be for consideration in addressing the jury.

LORD ADVOCATE.—I do not wish to give a second reply. This witness shall be well warned that he is not bound to speak. You shall speak to the murder of the old woman. Now, this question is put to him only in order to do away with this man's credibility. If the question is put, Did you commit that murder? I must

shew the jury that that objection to credibility does not apply to him, if that excludes from this question in the other matter.

MR. COCKBURN.—What he says as to his connexion with this prisoner, or any other that he chooses to select; if he chooses to select these persons as his accomplices, he can do so:—we have no objections.

LORD JUSTICE-CLERK.—In the first place, my view of this matter is, that he is not bound to answer any question, except as to the murder of this woman; and then, after you have sealed his mouth, ask—What were the other murders? The pannel must deal fairly with the witness, and not mislead by any embarrassment; because, with regard to what has passed in the early part of this proceeding, we must say, you are not bound to answer this question.

MR. COCKBURN.—We are entitled to put this question, and the Lord Advocate may put any other question that he pleases.

LORD MEADOWBANK.—Is it to be understood, in consequence of the interrogatories put to the witness, that it is competent to enter into the investigation of every other specified murder?

MR. COCKBURN.—I mean to say that he can object to the questions. The Lord Advocate may object to those questions on which the pannels are not upon their trial, and any other that I may think proper to put to them.

LORD JUSTICE-CLERK.—You do not wish to go into another investigation, do you?

MR. COCKBURN.—As to going into the other matter, the Lord Advocate may put any question he may think proper, with regard to the murder of the other individuals, which rests upon the testimony of this man. I will put the questions that I think proper; but I will warn him not to answer them, in consequence of what your Lordship has done.

The following interlocutor was then pronounced:

“After the examination in chief of this witness had been concluded, upon the cross-examination, the counsel for the pannels proposed to ask the witness, “Whether he had ever been guilty of, or concerned in, any other murder?”

Objected. That by the law of Scotland it is incompetent to attempt to discredit a witness by investigating his previous life or actions, or in any other mode but by an extracted conviction for an offence.

“The Lords find that the question may be put, but that the witness must be warned by the Court that he is not bound to answer any such question to criminate himself in such matter.”

(Hare was then recalled.)

Cross-examined by Mr. COCKBURN.—Hare; you mentioned

when last here, that you were concerned in supplying the medical lecturers with subjects. Did you assist in taking the body of the old woman to Surgeon Square? Yes.

Were you ever concerned in carrying any other body to any surgeon? I never was concerned about any but the one that I mentioned.

Now, were you concerned in furnishing that one? No, but I saw them doing it.

Lord Justice-Clerk.—It is now my duty to state to you, in reference to a question in writing, to be put to you, that you are not bound to make any answer to it so as to criminate yourself in regard to the answer of it. If you do answer it, and if you criminate yourself, you are not under the protection of the court. If you have been concerned in raising dead bodies, it is illegal; and you are not bound to answer that question.

Mr. Cockburn.—Hare, I am going to put a very few questions to you, and you need not answer them unless you please—you are entitled to refuse to answer them.

Now, Hare, you told me a little ago that you had been concerned in furnishing one subject to the doctors, and you had seen them doing it—How often have you seen them doing it? *(here the witness paused a little)* Do you decline answering that question? Yes.

Now, sir, I am going to ask this question, which you need not answer unless you please—Was this of the old woman, the first murder that you have been concerned in? *(another pause)* Do you choose to answer or not to answer? Not to answer.

I am going to ask another question, which you need not answer unless you like—Was there murder committed in your house in the last October? *(another pause)* Do you choose to answer that or not? Not answer that.

You mentioned, sir, that Burke came and told you that he had got a shot for the doctors, and that you understood that that meant that he intended to murder that woman or somebody? That was his meaning.

That was understood his meaning? Yes.

How did you understand that,—was that a common phrase amongst you? Amongst him.

Not amongst him, but you—Had you ever heard that phrase used by Burke before? Yes.

Frequently? Not often.

You understood by that, that he was going to murder somebody? He said this many a time when he had no thought of murdering.

Then how did you understand that he was going to murder? He told me.

Did he tell you who he meant to murder? Yes.

He told you so? Yes.

Now, sir, tell us when it was that he told you that he meant to murder that old woman? In the fore-part of the day.

On Friday? Yes; eleven or twelve o'clock I think.

Now, you were dancing after this in Conway's house? Yes, and so were all the rest.

You were dancing in Conway's that night? Yes.

Was that old woman there at the time? Yes.

You told us when you were examined last, that you did not expect any mischief that night? I had no notion of it.

And yet you told us that he told you: Had you no notion of it at that time when you was in Conway's? Yes.

When you was in Conway's, you had no notion that there was to be any mischief in Conway's? No.

Had you any notion there was to be any mischief that night? From his words.

Had you any notion that there would be mischief that would happen that night? I had no notion but only from his words.

Pray, sir, when you was in Conway's, had you any notion that mischief would happen that night? Only from his speech.

He told you that he was to murder this woman. You were dancing in Conway's that night; did you suspect that mischief would be done that night? Only from his words.

When was it that you anticipated mischief that night? When he was on the top of her.

Was that the first time that you formed a suspicion that he was to do mischief that night? Yes.

Were you perfectly easy in your mind that he was not going to murder her? At the time that him and I fell out, I had no notion till he fell on her.

Do you remember of your seeing this body in the police-office along with Lieutenants Paterson and Fisher? Yes.

Were you asked if you had seen that body before? *(This question was hinted at as objectionable by Lord Meadowbank.)*

Mr. Cockburn.—Every discussion of evidence on legal principle ought to be avoided, if possible. I was going to propose to put a question, and we shall hear whether it is objected to. Let the witness withdraw. *(The witness was removed.)* If it is objected to, the right way is to get quit of it. I propose to put this question—I dare say I need not tell your Lordship we refer to Fisher of the police-office, who said that Hare and his wife denied that they ever saw it. The question is, Had he admitted that he ever denied having seen that body?

Lord Justice-Clerk.—It is a fair question. *(The witness was again brought into Court.)*

Mr. Cockburn.—Hare, you saw this old woman's dead body

in the police-office? I saw a body in it: I could not say whether it was it or not.

Was it the old woman's body or not? I could not say.

Do you recollect of saying about five minutes ago it was the old woman's body? The voice of the folk said that it was.

Now, did you admit that you knew that body or not? I denied it.

Did you admit having seen that body alive or dead; or did you deny it? I could not say whether or not.

How soon was it after her death that you saw her in the police-office; was it on the Saturday, Sunday, or Monday, or when? On the Sabbath-day that I saw the body in the police-office.

Do you recollect whether you was asked if you had seen that body or not, or if you knew who it was? I am sure I could not say.

Do you recollect of denying you knew any thing about that body? Yes, I recollect that.

You have been acquainted with Burke for some time I understand? Yes.

You are not bound to answer this question I am going to put, unless you like. Had you had several transactions with Dr. Knox or his assistants and Burke? Do you choose to answer that? No.

Had you received money at various times from Dr. Knox? I never did.

Had you received any money from gentlemen representing themselves as Dr. Knox's assistants? They never gave it to me.

Did you ever receive any money from Dr. Knox's assistants? Burke might have had it paid to him by Dr. Knox, and he could have given it to me.

I ask you, Did you never receive money from Dr. Knox's assistants? No.

Who was it that received the money for this old woman's body at Newington? Burke.

How much? Five pounds.

And you were to get other £5 on Monday? Did you not say that there was to be £5 paid to Burke at some other time? Was it £5? Yes.

Are you positive that it was to be paid—Was it £3 or £8—Or do you know any thing about it? Yes.

Who said that? Dr. Knox's man.

What was it that he paid to him, do you know? It was £5 he gave to William Burke, £4 in notes, and £1 in silver.

That was all that he gave, was it? Yes.

Which of them paid the porter M'Culloch, was it Dr. Knox's assistant? It was Burke.

Are you positive? They were all three sitting on the other side of the table, the doctor's man, Burke, and the porter.

Who paid him? I could not say.

You told us some time ago that you were positive. Was there £4 paid in notes and £1 in silver? Yes, and it was Burke that paid me; he threw two notes across the table, and the rest of it was change.

Now, sir, attend to this. You say Burke was paid all the £5; that Burke afterwards gave you part of it—Are you certain that Paterson did not divide it between you? He laid it down on the table; Burke lifted up his half, and he shoved the other over to me.

Are you positive that Paterson did not pay you? Yes.

Did Paterson, when he gave him the money, divide it into two parcels? He put the two pounds together, and Burke counted the silver. Paterson put four notes separate, two and two; and he halved the silver; and some of the two, I do not know which of the two, paid the porter; and Burke shoved my share over the table.

Pray, sir, had you had many quarrels or disputes with Burke about these payments? No, I never had any.

What payments? No, I never had any.

Mr. COCKBURN.—Payments received from Dr. Knox or his assistants.

HARE.—No, not about that matter.

Mr. COCKBURN.—Had you ever any quarrels with Burke about money matters at all? None.

Well, I think you told us, Hare, that the old woman went out to the passage and called out murder or police? She was crying one or other of these. I can't say which.

You pushed her over a stool you say? After that, she was leaning on her elbow and sitting on her backside.

Was it before or after this that she went into the passage? It was before this.

Was it a minute or two? It was just a little before it; I could not say.

And was brought back by M'Dougal you say? Yes.

Well, you say that when Burke destroyed her she cried a little and moaned—Was that like the moan of a person suffocating, the time he got on her? Yes; I thought she gave a great shout like a person choking. It was like a person strangling.

You could have heard it a good way off? No, sir.

About the time that that sound was, was there any person calling out for the police, or murder? I did not hear any at that time.

Had you and Burke been fighting before this screech? Yes.

Were you fighting after that screech? No, not after.

Were you fighting during the time of the screech? No.

Were you fighting at the time that that screech was going on? No.

And were you not fighting after that? No.

Then all your fighting was before that screech? Yes.

I think you have told us that this man Brogan and the two women had been in bed in the morning, and that you and the other man, Burke, was not? Yes.

Where was Brogan lying in the morning? Brogan was lying next the wall in the morning.

Where was you lying? I was sitting in the chair with my head upon the bed.

Where was the other man? He was sitting at the fire.

Did you see Brogan come in? I did not.

Now, sir, when Burke was on the top of this person destroying her, where were you? I was sitting on the chair in the same room.

How long was he dealing with her? I could not say how long.

How long? About ten minutes.

And did you sit in the chair? Yes.

And did you sit ten minutes on that chair without stirring one hand to help her? Yes.

The women went out to the passage? Yes.

Did you go out? No.

Were the women during part of that time in the bed with the rug over them, before they went out into the passage? I could not say whether their heads were covered with the rug or not.

You did not cover your head? No.

You stood and saw it with your own eyes? Yes.

You did not call murder or police? No.

Not a word? No.

Did you go to the police next day and give information? No.

You did not do that, but you took the body to Surgeon Square? The porter did.

You followed him? Yes.

And you took money for it? Part.

And next day, in the police-office, you denied that you knew anything about it? Yes.

Were you examined in the police-office on oath? No.

Lord MEADOWBANK.—You were examined in the police-office as a prisoner? Yes.

That was the position you were examined in? Yes.

And it was under that charge you were called on to say whether you knew the body or not? Yes.

(Witness was removed from Court in custody of a Macer.)

Mrs. HARE, sworn by Lord MEADOWBANK.

Lord MEADOWBANK.—Margaret Laird or Hare, we see from the list of witnesses, that you are a prisoner in the tolbooth of Edinburgh, and we understand that you are implicated in a charge of the crime of murder, for the murdering of an old woman of the name of Docherty, Campbell, or M'Gonegal. It is my duty to tell you, that for any thing connected with that murder, you can never be brought to trial if you speak the truth. You are brought here as a witness, and that is your protection; but your being brought here as a witness, and bound to speak the truth, and the whole truth; and nothing but the truth, the Court requires that you shall do so; and that you are bound to speak nothing but that to which you are sworn to speak; not to the other murders; and you may rest assured, that if you deviate in any particular from the truth, most unquestionably you will be detected, and the most severe and exemplary punishment will follow, and from where you now stand, you will undergo that punishment which the Court, for the administration of justice, finds it necessary to employ.

Interrogated by the Lord ADVOCATE.—You are the wife of William Hare, the man that was here just now? Yes.

And you live at Portsburgh? Yes, sir.

You remember last Hallowe'en night? Yes, sir.

Did any strangers sleep in your house that night? Yes.

Is Gray the name of the man? Yes.

Did he and his wife sleep in your house that night? Yes.

How did that happen; did they lodge in your house? No, they were stopping in Burke's house. Burke asked me to give them a bed that night.

For one night, or more? Just for one night.

What time of day was this, do you remember? I could not say; it was in the course of the day.

Was it in the early part of the day, Mrs. Hare, was it before dinner? I do not remember, sir.

Was it day-light? Yes, sir, I am quite sure it was day-light, so far as I remember.

Well, then, say what you remember; neither more nor less than what you recollect. Did you go out that night in search of your husband? Yes, sir, I did.

About what time of night was it? Between 8 and 9 o'clock.

Where did you find him? I found him in John Connoway's.

And who was in Connoway's at the same time? Connoway and his wife, William Hare and me, and Burke and his wife.

Was Burke there? I do not recollect whether Burke came in or not.

Was M'Dougal there? Yes, she was.
 Had you drink there? Yes, spirits.
 Had you a great deal of spirits? I could not say.
 Were they all affected with liquor? Not much.
 The old woman was in Burke's? Yes.
 Did you not see her in Mrs. Connoway's? Not that I recollect.
 Did you stay long with them? I stopped there till my husband rose and I asked him to come home, and he said he would come home after a little.
 Did you go into Burke's house? Yes.
 Hare and M'Dougal and you? Yes.
 Did Burke come in there? Yes.
 Did you see an old woman there? Yes.
 Was she there when you came in and went out? Yes.
 Was there a quarrel betwixt Burke and your husband that night? Yes.
 Was there a fight? Yes.
 Did you try to separate them? Yes, I went in between them; I separated them.
 Did they fall a-fighting again? Yes; and the old woman cried out murder. She went out to the passage, and came back again, and fell backwards: she got a push, and fell down upon the ground; but I do not know who gave her the push.
 Now, what more did you see? I saw Burke lying on the top of her, whether on her mouth or on her breast I could not say.
 Did she make a noise? I could not say; for Mrs. M'Dougal and me flew out of the house, and did not stop in it.
 You went into the passage, in short? Yes.
 And you remained there some time? Yes.
 Did you cry out? No, sir, I was quite powerless; and neither her nor me cried out.
 How long did you stay in this passage? I could not exactly say, sir.
 A quarter of an hour? I dare say it would be that, sir.
 Now, when you came back again, did you see the old woman? No, sir.
 Seeing nothing of her, what did you suppose? I had a supposition that she had been murdered. *I have seen such tricks before.*
 Was that your supposition? Yes.
 And you asked no questions? No.
 Did M'Dougal ask any questions? No, she did not.
 Did you lie down on the bed? I do not recollect.
 Where were you at the time that Burke laid himself down upon the woman? I was standing betwixt the door and the bed.

I thought formerly I was lying down, but I think now that I was not.
 Were you close to the door? Yes.
 Was that close to the bed? Yes.
 There was very little room betwixt the door and the bed? Yes; very little, Sir.
 LORD JUSTICE-CLERK.—The woman had fallen down, and Burke had laid himself upon her. How long might he have remained upon her before you left the room? Not many minutes; whenever I noticed her I ran out of the door.
 Where was M'Dougal? you say you was close to the bed, where was she? I cannot say exactly whether she was standing near me. I flew out of the house at the time.
 Were you the worse of drink at that time? No, Sir; I was not; I had a glass, but I was not the worse of it.
 Who went out first? It was I, Sir.
 Were you alarmed at this sight? Yes Sir; we were both alarmed, and we both flew out of the house.
 What did you see Burke do? I did not see him do any thing; but saw him lay down himself upon her breast.
 Where was your husband at the time? Near the dresser.
 You say you suspected: had you any particular reasons to suspect that mischief? Did M'Dougal speak to you about that? Yes; in the afternoon.
 On Hallowe'en day? Yes; in the course of the afternoon.
 Did M'Dougal come to your own house? Yes.
 What did she say? She said there was a *shot* in the house; that was the very word that she used.
 Did she say any more about the shot? No, Sir; she did not.
 Did she mention about a woman? No.
 Did she say any thing about her husband? Yes, Sir; she mentioned he had fetched her in out of some shop.
 How did you know that she was a woman? She told me that it was a woman.
 At the same time that she mentioned about the shot? Yes.
 Now, did she say expressly that they meant to make away with this woman? No.
 Did you understand it in the house, that that was the person meant to be made away with? Yes Sir, I did.
 Did she say any thing about what was to be done with the woman that night? No Sir; she did not.
 You said your reason was in understanding the word *shot*, you had heard that word expressed on former occasions with that meaning;—the meaning of murdering a person, or making away with them? Yes.

Was there any thing passed about giving the woman drink that night? No.

They gave her drink when you was there? Yes; they gave her some drink.

Were they pressing drink upon her that you saw? No; they were not, that I saw.

Was the woman affected with drink at the time you saw her? Yes; she was rather the worse of drink.

Well, you remained there all night? Yes. We stopt there till between four and five o'clock (*next morning.*)

Did Mr Paterson come in? Yes.

Did Burke and he come in together? Yes; the one shortly after the other.

And you staid in that house all night? Yes; I had been lying asleep.

At the time that Mr Paterson came in? Yes.

You did not hear what he said, or any body else said? No.

Was any body else in bed with you at that time? No.

Do you know where the body had been put on that night? No; but from what I heard next day, it was lying under the bed.

Do you know that it was removed away? Yes.

Was there a box got for it? Yes.

Did you carry the box? Burke asked me to get a box to him for holding old shoes. We went to Rymer's shop; Burke got a box, and M'Culloch the porter took it away.

You know the body was put into that box? Yes.

Did you follow your husband and Burke at the time that it went away? Not at that time; we found them after in the Cowgate.

What did you follow them for? To prevent them from fighting, in case they might be drunk.

Where did you go? We went to Newington, and then came home again.

What answer did you make to her when she spoke about the shot? Nothing that I recollect of. I gave her no answer that I recollect.

Did you not dissuade her from these things? I neither said one thing or another, that I mind.

Did you and M'Dougal ever talk of this matter afterwards? Not that I recollect.

In your way to Newington? No; I do not recollect of saying any thing about it. I have a very bad memory.

And did M'Dougal ever express any regret that this woman had been killed in this way? None Sir, that I heard.

What passed betwixt you and her when you were in this

passage, about a quarter of an hour? We had a few words; but I do not recollect what passed.

Was it just staying there till the thing would be over? We were just speaking something concerning the woman; but I do not recollect what it was.

Though you do not recollect the words, you may remember the import of it? Yes, Sir.

And what do you think you was saying about her? We were just talking about her, saying, perhaps it would be the same case with her and I.

LORD MEADOWBANK.—Is that to say that you might be murdered; is that what you mean? Yes, Sir.

You know that Mrs Connoway lived next door there, and you know that there was a Mrs Law lived on the opposite side of the passage, did you not think of going there? I dreaded to go there, as I had left my husband three times. The thing had happened two or three times before, and it was not likely I should tell a thing to affect my husband.

I thought you said you left your house three times altogether? I left it for to go away altogether; for I was not contented to stay,—not leading a contented life.

LORD JUSTICE-CLERK.—You mentioned that the old woman did go to the door to the passage before she fell down; she went forward to the door,—like as out of the door into the passage? No; She did not go out of the door at all,—there are two doors, and she went to the first door, just entering it.

That is the door of the room? Yes, Sir.

Did she come back of herself, or did any body bring her? She came back of herself.

And it was after she so came back that she fell down? Yes; I rather think she got a push.

After falling down, did she remain long in that position where she fell? I could not say, Sir; I left the house.

Did Burke fall on her immediately on her falling down? Yes, immediately on my leaving the house.

You say she got a push and fell down; was it very soon after that, that Burke fell upon her? Yes, very soon after that.

Would you be so good as tell us,—I should like to know from you what was he doing to her at the time you ran out? I could not say what he was doing to her, he was just lying upon her breast and on her mouth.

Did she give any scream to alarm you? She cried murder.

What time did she cry murder? At the time that Hare and him were quarrelling.

But at the time that Burke lay upon her breast or mouth,

did she give any groan? The woman was not saying any thing or calling out. I was afraid to see any thing would come upon the woman.

LORD ADVOCATE.—Afraid to see her murdered, is that what you mean? Yes, Sir.

LORD MEADOWBANK.—Now, when you saw this, was your fear occasioned or created by what had passed between you and the woman in the fore part of the day, when you talked of a 'shot;' was your fear created by what this woman Macdougall told you of a 'shot,' by which you understood this woman was to be murdered? No, I passed no thought of it at the time.

You went there that night, and found the old woman in the house; now, upon the oath that you have taken, did you or did you not expect that night, that that old woman was to be murdered? No, I did not, Sir.

Will you tell me this,—why did you think the old woman was kept in the house by Burke, then,—she was a beggar woman? Why, I cannot swear what he was keeping her in the house for; I had no idea, Sir; I just came round to spend the night of Hallowe'en, and I made a remark, that I did not wish to leave my own house that night.

Cross-examined by the DEAN of FACULTY.—You say that the woman got a push; who gave her that push? I could not say which of them, I could not say whether it was Hare or Burke, that pushed her; I could not say, they were fighting through the floor.

Was she ever from the ground after she was pushed down? I did not stop to see.

Now, was it instantly when she was pushed down that he got above her? Yes, Sir.

There is a door at the outer end of the passage, is there not? Yes.

How is it fastened? With a latch, or a natchet.

In the inside? I do not recollect, I never paid any attention to it.

When you was in the passage, did any person knock upon that door? None that I heard, Sir.

When you were in the passage, did you hear the old woman cry? No, Sir, I did not.

Did you hear her make any noise? No, Sir.

You heard her make no noise? No, Sir.

You say you was very much alarmed when you went into the passage—why did you not go out? I had no power to go out.

You did not say any thing when you came into the room? No, Sir.

Not a word? No.

Did Hare say any thing? No, Sir.

Where was he when you came into the room? They were both standing in the house—either standing or sitting—I could not say which.

Well, after you came in again, you went to bed? I just came in and went to bed—I was not sleeping.

Did you fall asleep? Yes; afterwards I fell into a doze.

Was there a man Brogan that came in? Yes.

Did he go to bed at all? We had a dram after Brogan came in,—they had not a bed in their house but one.

Who had the dram? Burke and M'Dougall, and Hare and him. I do not know whether they drank it all or not, but we had a dram.

Well, there was but one bed; did you come out of the bed when you was getting the dram? Yes.

What did you do? I rose out of bed when Paterson went out.

Well, did you go into bed again? No, Sir.

Was M'Dougall in bed? No, Sir.

Was Brogan in bed? No, Sir; Brogan, M'Dougall, and me, lay down on the floor.

Was Hare in bed? Burke and he fell to fighting again.

Did they fall a-fighting again? Yes.

Well, what happened on that second fight? Burke lifted up a stick to strike Hare, and M'Dougall took it out of his hand.

You did not see the old woman get off the ground after she fell? No Sir.

Did you see her try to get up? No, Sir, I did not.

You told us that you found your husband in Connaway's, and you staid some little time there; how long might you be in Connaway's? I could not say, Sir.

And then you went into Burke's, and there were yourself, and Hare, and the old woman; was the old woman in Connaway's? No; not that I recollect.

Well, you and your husband, and the old woman, was there in Burke's? Yes.

Was Burke not in when you went in there? I am not sure.

Did he go in a little after? I do not recollect whether he was in, or whether he came in or not; I have a very bad memory.

LORD MEADOWBANK.—You had a bed in your house; how did it happen, after all this transaction, you did not go home to

your own house? I was trying to take my husband along with me. I did all I could Sir, but I could not get him.

Mr BLACK, Surgeon.—Sworn by LORD MACKENZIE.

Interrogated by Mr WOOD.—Were you shewn the body of a woman in the Police Office on the 2d November last? Yes.

You examined the body particularly? Yes I did, externally.

Will you state to the Jury what you observed about it,—what appearance it had, externally? I did not observe any marks or blemishes about her body whatever, of any consequence.

Any wounds? None of any consequence.

Was there any blood about any part of her person or face? There was some blood about her nose.

Any thing else? There was some blood about her nose, and there was saliva.

Where did the blood appear to come from? The blood that I saw in the Police Office was of no consequence, it had not proceeded from any wound or cut.

What appearance had the face? Much swollen.

Any thing remarkable about the eyes? They were much swollen too, and the face of a blackish hue.

Did you form any opinion on it, from what you saw, whether the death was occasioned by violence? My own private opinion was, that she had died by violence; but, medically, I could give no opinion, quite certain, of the cause of death.

And the appearances you observed, and which you have already stated to the Jury, were such as might have arisen from the death being caused by suffocation? That is my opinion. I beg to observe, that in many cases, it is very difficult to form any opinion with regard to suffocation; and that I really and truly believe, still, in a medical point of view, that it is dangerous to hazard that opinion.

What was your opinion, at the time that you examined the body in the Police Office? That was my opinion at that time. My opinion was, that the woman died a violent death, by suffocation.

LORD JUSTICE-CLERK.—I suppose you mean to add, that you cannot be quite positive, but that is your conclusion? Yes.

Cross-examined by the DEAN OF FACULTY.—Have you any degree? No, merely a surgeon for the Police.

LORD JUSTICE-CLERK.—For any considerable length of time? between 19 and 20 years.

DEAN OF FACULTY.—When you say that your private opinion was, that this woman must have died of violence,

did that partly arise from the circumstances that came before you in the Police Office? I beg to observe to you, that on the night of Saturday, when a person gave information to the Police, of a person having been murdered at the West Port, I went there with the officers of Police, and we found a quantity of blood, mixed with about 15 or 16 ounces of saliva; and having been told that the woman had lain in that place, I concluded that that saliva must have come from her mouth and nose.

I want to know, apart from these circumstances, whether you formed any medical opinion apart from this? From all the circumstances of the case combined, I am of opinion that she came by a violent death.

But from the appearances of the body? I did at the time.

Had you given any medical opinion? From what I saw of the body, I declined to hazard an opinion.

LORD JUSTICE-CLERK.—I was going to ask you, have you had any opportunities of seeing the fact, of persons strangled or suffocated? I have seen them several times.

Many? I could say many.

Now, the question is, were those appearances you describe on this dead body, the same as these? Exactly the same.

And the appearances you saw upon the body, corresponded with those you have seen on those other dead bodies? Yes.

Cross-examined by the DEAN OF FACULTY.—Were these instances, strangling or suffocation? Suffocation—probably both.

In what manner? Probably putting soft substances on the mouth,—pressing the lungs,—and pressing the chest.

Where did you see many instances of that? I have seen cases in the Police Office, of persons brought in in that way.

Cross-examined by Mr COCKBURN.—Have you ever seen a case of suffocation separate from strangling? I have known many cases of drink, of people lying on the street, brought in in that way.

Were the appearances the same? Very similar, as in this old woman.

Have you had much experience in cases of persons that you knew were suffocated? I cannot say that, except from drink.

What do you mean, when you talk of cases coming to the Police Office, as cases of suffocation,—were they all from drink? Yes, I have known six cases in one night. It was in November last, and we did not know which to apply to first.

From drinking? From drinking.

Have you known no case of mere suffocation apart from drinking? None.

Were the symptoms here like those you have seen in suffocation from drinking? Yes.

Were the appearances of this woman's body like those you have seen in many cases that night? Yes.

Were the appearances on these persons like these you saw on the body of this old woman? They had a resemblance.

Now, if you had seen this corpse, this old woman's body, and had known nothing whatever of the other circumstances in the case, and just put before you without any other. Take this view of the case, suppose you had never seen the house, and never heard a word spoke about it, but that woman's body laid down in the like enumerated circumstances, could you say that it was or was not suffocation from drinking? I must say, that in a number of those cases, they had all the appearance; very much swollen and black.

Were the eyes swollen? Yes, and in a measure started from the sockets.

That is what we commonly call a good deal started from their sockets? They were.

LORD ADVOCATE.—In cases of suffocation from drink, did you ever observe blood and saliva as you observed here? No, unless they sustained some injury, from a person falling, or some

Suppose you had found this body lying contiguous to the house,—what opinion would you have formed? I would have thought the person had died from suffocation.

You would have had no doubt of it then, would you? No.

You would not have considered that proceeding from intoxication, but from other violent death? Yes.

LORD MACKENZIE.—In cases of suffocation from drink, do you mean to say that the person should be drunk, and fall upon the face, and be suffocated? Yes.

DR CHRISTISON.—Sworn by LORD MACKENZIE.

Interrogated by the LORD ADVOCATE.—You examined a body shewn to you by Fisher in the Police Office? I did, along with Mr Newbigging.

Where was it you examined it? In the Police Office, minutely, on Sunday the 2d November, and on Monday the 3d.

Do you recollect the appearance? The external appearances in the first place, were several contusions on the external parts of the body; and, in the second place, a fluidity of the blood internally. The external appearances first noticed were contusions on both legs; and on subsequent examination, we found one on the left loin, another larger on the left

shoulder blade, another small one upon the inside of the upper lip, and two upon the head.

What part? One upon the back part of the left side of the head, and the other on the fore part of the right side.

What were the other appearances? Pale lividity of the features generally, and dark lividity of the lips;—great redness and vascularity of the whites of the eyes;—an unusual want of lividity, I may say a total want of lividity, upon every other part of the body but the face;—ruffling of the scarf-skin under the chin.

Where is that? Over the upper part of the throat, immediately under the chin.

Well? Internally, we found general fluidity of the blood, and an accumulation of it in the right cavities of the heart;—in the middle of the neck we found the ligaments connecting the posterior part of two of the vertebræ torn, blood effused among the spinal muscles near the laceration, and likewise among the other spinal muscles, as low down as the middle of the back, also a small extravasation of blood into the cavity of the spine. We could find no appearance of natural disease, no appearance, at least, that could have led to death.—the only sign of natural disease we could perceive, was a very slight incipient disorder of the liver; all the other organs in the head, the chest, and the belly, were unusually sound. I forgot to mention a very small trace of blood on the left cheek, fluid blood, issuing from the nose or the mouth,—likewise a very slight contusion over the left eye. These were all the appearances that I recollect.

MR WOOD.—What part of these injuries you have described, either externally or internally, seen by you in this body, might have been occasioned, in your opinion, during life? This question is rather a new one, in some particulars at least, and, in consequence, I have been led to pay particular attention to it. My opinion on the points which I have to mention, is not founded on mere physiological reasoning; but on actual observation. I consider that the contusions could not have been produced after death; but the injury of the spine, and the collateral appearances I have described, namely, the effusion into the spinal canal, and the effusion of blood among the spinal muscles, may have been caused quite as well after death as before it;—I mean, that an injury properly applied, eighteen hours after death, would produce precisely the same appearances that Mr Newbigging and I found in this woman,—tearing of the ligaments, and effusion of blood into the spinal canal.

LORD ADVOCATE.—Would the pressure of a body into that box, (the old tea-box was pointed out to witness), have been calculated to produce that effect? From all that I have understood, I think it would. The mode in which the body was packed might have that effect,—the pressing down the head would lead to that effect.

From the appearance of the body alone have you formed an opinion, which you considered the most likely mode in which this woman came by her death? There are certain appearances I have described that would justify a suspicion of death by suffocation,—such as strangling, smothering, or throttling. These are all of them forms of suffocation. The form I suspected most was throttling, in consequence of the appearance of the cuticle under the chin.

LORD MEADOWBANK.—What do you mean by throttling? The hand is applied under the chin, on the throat, and pressure is made upwards and laterally at the same time.

I wish to explain. I mean those appearances that I have described, would only justify suspicion; but I have other circumstances,—

LORD ADVOCATE.—How applied? By applying the hand and pressing upwards; the root of the tongue is pressed against the back of the throat, and the access of air to the lungs is prevented. I said that we found marks of violence from contusions throughout the body. When I add to this the appearances of suffocation,—the want of any appearance to account for natural death, and likewise the fact,—which I presume I may add, from the evidence I heard to day,—that this woman was dead a very short time indeed after she was seen alive and in health,—and farther, the blood that was found where the body lay,—from all these circumstances put together, my opinion is, that death by violence is very probable. I do not think that the medical circumstances could justify a more certain opinion.

LORD ADVOCATE.—Suppose this woman had met her death as described by Hare and his wife, were the appearances conformable? I think so.

Suppose this woman had died from suffocation produced solely by drinking, would the appearances correspond, taking into account the blood? Of course I understand, that in suffocation from drinking, the woman would have her mouth obstructed in some way or another. I presume the appearances would correspond, if the suffocation was produced by

the woman, for example, falling on her face in a puddle, or by her face being squeezed against a pillow. All species of suffocation may cause a discharge of blood after death. The appearance of blood discharged from the mouth and nose after death, might be produced by any species of suffocation.

LORD MEADOWBANK.—Under that case, do I understand that you mean to include this,—if the woman fell upon her mouth and nose from intoxication, and the blood in that way came to her head, do you count that suffocation? Suppose all this done from intoxication, does it suffocate and prevent the air from entering the lungs? There must be some mechanical obstruction, to cause suffocation in the ordinary sense of the word; without such obstruction, death from simple intoxication would be accounted a variety of poisoning.

You do not speak to a death occasioned under such circumstances? No.

Mr. COCKBURN.—I think you mean to say this, that death from simple intoxication arises ultimately from the exclusion of air into the lungs? Yes, speaking physiologically, death takes place in that way.

Are you aware that persons who do not die in that way, by getting themselves intoxicated, may die, because they fall into uneasy situations? Yes.

Separate altogether the externals that were taken,—of the blood being found in the room;—separate from your mind the fact of the woman having good health before,—look upon this as a body of which you knew nothing,—was there any thing in that body that indicated death by violence? I thought the appearances would justify the suspicion, but more so, when coupled with other circumstances;—I never would give my opinion ultimately and decisively upon a case of this kind, without inquiring into the collateral circumstances I have mentioned.

We can judge of other circumstances as well as medical men,—you think these views justify a suspicion,—and also, you think these appearances in the body merely suspicious?

Yes. With them join the other circumstances,—would they justify more than a probability? Nothing more. I have stated that distinctly.

I wish to mention distinctly to the Court, that, in such a case, a knowledge of the previous circumstances I have alluded to, is necessary for medical men forming an opinion, whe-

ther it is possible the person could have died of any of those diseases which do not leave morbid appearances in the dead body.

LORD JUSTICE CLERK.—Did you open the stomach of this person? Yes.

Did you observe any thing particular in it? Half digested porridge.

Had it any smell of whisky? No. If it had the smell of whisky, or any narcotic, I would have perceived it.

Had the woman been in a very dangerous state of intoxication, would there have been the smell of spirits in the stomach?

Not necessarily, my Lord.

LORD MEADOWBANK.—Is there generally a smell of spirits there, if the person has been intoxicated? Not always. I remember a reported case where the person died of long continued intoxication, and where it was not perceived in the stomach, although it was found in the brain.

Is there any other case that has fallen under your own observation where it was not perceived? None, but where it was perceived.

If the fluid had remained in the stomach, is it your opinion that it could not have been evaporated? If there was any portion remaining which I could have discovered by chemical analysis, I would have perceived it by the smell.

(The two declarations of each of the pannels were admitted by their respective Counsel.)

They were then put in and read as follow.

FIRST DECLARATION OF WILLIAM BURKE.

At Edinburgh, the 3d day of November 1828.

In presence of GEORGE TAIT, Esq. sheriff-substitute of Edinburgh-shire, compared WILLIAM BURKE, at present in custody, who being examined, declares, That he is thirty-six years of age, and he was born in Ireland, and he came to Scotland about ten years ago; That he is a shoemaker, and he has lived for rather more than a year, in the West Port, and about two months ago, he went to the house in the West Port in which he at present lives, but he does not know the name of the entry, and the prisoner Helen McDougal, has lived with him for about ten years, but she is not married to him. Declares, That he at first lodged in his present house with a man named John Brogan; but Brogan went away about ten days ago, and the declarant now lodges in the house by

himself. Declares, That James Gray, and his wife and child, came to lodge with the declarant about a week ago. Declares, That on the night of Thursday last, the 30th of October, no person was in the declarant's house, except Helen McDougal, Gray, and his wife. Declares, That on the morning of Friday last, he rose about seven o'clock, and immediately began his work by mending a pair of shoes. That McDougal rose about nine o'clock. Declares, That Gray rose about six o'clock, and went out. That Gray's wife rose soon afterwards, and lighted the fire; and the declarant then rose, as before mentioned. Declares, That he went out about nine o'clock to get some tobacco, and he returned in a few minutes, and they all four breakfasted together about ten o'clock, and the women were occupied through the day in washing and dressing, and sorting about the house; and Gray was going out and in, and the declarant was working; and declares, That on Friday evening he told Gray that he and his wife must go to other lodgings, because he could not afford to support them any longer, as they did not pay for the provisions which they used; and they went away, and the declarant accompanied them to Hare's house, to which he recommended them. Declares, That he thinks Gray and his wife went away at five o'clock. Declares, That about an hour afterwards, when he was standing at the mouth of the entry, a man came forward to him dressed in a great coat, the cape of which was much up about his face. That he never saw the man before, and does not know his name. That the man asked if the declarant knew where he could get a pair of shoes mended; and the declarant, being a shoemaker, took him home with him, and got off the man's shoes, and gave him an old pair in the meantime. That while the declarant was mending the shoes, the man walked about the room, and made some remarks about the house being a quiet place, and said that he had a box which he wished to leave there for a short time; and the declarant consented. That the man went out, and in a few minutes returned with a box, which he laid down upon the floor near the bed, which was behind the declarant, who was sitting near the window with his face to it. That the declarant heard the man unroping the box, and then making a sound as if he were covering something with straw; and the declarant looked round, and saw him pushing the box towards the bottom of the bed, where there was some straw on the floor, but he did not observe any thing else than the box. That the man then got on his shoes, paid the declarant a sixpence, and went away. That the declarant immediately rose to see what was in the box, and he looked under the bed, and saw a dead body among the straw; but he could not observe whether it was a man or a woman. That soon afterwards the man came back, and declarant said it was wrong for him to have brought that there, and told him to put it back into the box, and take it away. That the man said that he would come back in a little and do it, and then went away, but he did not return till Saturday evening about six o'clock; and when he did not return on Friday night, the declarant took the box into the entry, but allowed the body to remain under the bed. Declares, That on Saturday morning about ten o'clock, he went out to the shop of a Mr. Rymer, in the West Port, and when he was there, a woman came to the door begging, whom he had never seen before. That the people in

the shop refused to give her any thing; and the declarant discovering from her dialect that she came from Ireland, asked her from what part of it she came; she said it was from Inesomen, which is a small town in the north of Ireland, and he then asked her name, and she said it was Mary Docherty, and the declarant remarked that his mother's name was Docherty, and that she came from the same part of Ireland, and that therefore they might perhaps be distant relations; and as she said that she had not broken her fast for twenty-four hours, if she would come home with him he would give her breakfast, and she accompanied him home, and got breakfast, at which time the only other persons in the house were Helen M'Dougal, Gray, and his wife; that she sat by the fire till about three o'clock in the afternoon, smoking a pipe, the declarant going out and getting a dram, because it was Hallowe'en, and they all five partook of the dram, sitting by the fireside. Declares, That at three o'clock Mary Docherty said she would go to the New Town to beg some provisions for herself, and she went away accordingly. Declares, That he thinks Helen M'Dougal was in the house when Mary Docherty went away, but he does not remember whether Gray or his wife were in the house, and does not remember of any other person being in the house. Declares, That a few minutes before Mary Docherty went away, William Hare's wife came into the house, but went away into the house of a neighbour, John Connaway, immediately before Docherty went away; and he thinks that Hare's wife or Connaway's wife may have seen Docherty go away; and Mary Docherty never returned. Declares, That Helen M'Dougal and Gray's wife then washed the floor and cleaned out the house; that there was no particular reason for doing so further than to have it clean upon the Saturday night, according to their practice, and the declarant continued at his work: That soon afterwards Gray and his wife went away, and Helen M'Dougal went to Connaway's house, leaving the declarant by himself, and the declarant had not mentioned to any person about the dead body, and had no suspicion that it had been discovered. Declares, That about six o'clock of the evening, while he was still alone, the man who had brought the body came, accompanied by a porter, whom the declarant knows by sight, and whose stance is somewhere about the Head of the Cowgate, or the Foot of the Candlemaker Row, and whose christian name he thinks is John: That the man said he had come to take away the body, and the declarant told him the box was in the entry, and the porter took it in, and the man and the porter took the body and put it into the box and roped it, and the porter carried it away. Declares, That when the man came with the porter, he said he would give the declarant two guineas for the trouble he had in keeping the body, and proposed to take the body to Surgeons' Square to dispose of it to any person who would take it; and the declarant mentioned David Paterson, as a person who had some connexion with the surgeons, and went to Paterson's, and took him to Surgeons' Square, where he found the man and the porter waiting with the box containing the body: That the body was delivered, and Paterson paid a certain number of pounds to the man, and two pounds ten shillings to the declarant: That he then went straight home, and was informed by some of the neighbours

that a report had been raised of a dead body having been found in the house, and in particular by Connaway's wife, who told him that a policeman had been searching his house; and he then went out in search of a policeman, and he met Finlay and other policemen in the passage, and he told them who he was, and they went with him to the house, and found nothing there, and they took him to the police-office. Declares, That he yesterday saw in the police-office the dead body of a woman, and he thinks it is the dead body which was below the bed, but it has no likeness to Mary Docherty, who is not nearly so tall. And being interrogated, Whether the man who brought the body, and afterwards came with the porter, is William Hare? Declares that he is. And being interrogated, declares, That he does not know of any person who saw that Hare had any concern in bringing the body, or in taking it away. And being interrogated, declares, That the porter's name is John M'ulloch, and declares that the box in which the body was contained was a tea-chest. And being specially interrogated, declares, That the woman above referred to, of the name of Mary Docherty, was not in his house on Friday; and he never, to his knowledge, saw her till Saturday morning, at ten o'clock: That she promised him to return on the same evening; but she did not, and he does not know what may have become of her. And being interrogated, declares, That he sprinkled some whisky about the house on Saturday, to prevent any smell from the dead body. Declares, That Hare did not tell him, nor did he ask, where he got the body. Declares, That he did not observe whether there was any blood upon the body. And being specially interrogated, declares, That he had no concern in doing any harm to the woman before referred to, of the name of Mary Docherty, or to the woman whose body was brought to the house; and he does not know of any other person being concerned in doing so. Declares, That Docherty was dressed in a dark gown. And being shewn a coarse linen sheet, a pillow-case, a dark printed cotton gown, and a red striped bed-gown, to which a label is affixed, and signed by the declarant and sheriff-substitute as relative hereto, declares, That the sheet and pillow-slip are his, and he knows nothing about the dark gown and bed-gown: That the blood upon the pillow-slip was occasioned by his having struck Helen M'Dougal upon the nose, as is known to Gray and his wife; and the blood upon the sheet is occasioned by the state in which Helen M'Dougal was at the time, as is known by Gray's wife.—All which he declares to be truth. (Signed) Wm. BURKE.

ARCHD. SCOTT. G. TAIT.
A. M'LUCKAS.
A. MACLEAN.

SECOND DECLARATION OF WILLIAM BURKE.
At Edinburgh, the 10th day of November 1828.
In presence of George Tait, Esq. Sheriff substitute of Edinburgh, shire, appeared WILLIAM BURKE, present prisoner in the tolbooth of Edinburgh, who being examined, and the declaration emitted by him

before the said sheriff-substitute at Edinburgh, upon the 3d. day of November current, having been read over to him, he declares that it is incorrect in several particulars. Declares, That it was upon the Friday morning, and not upon the Saturday morning, that the woman named Mary Docherty came to the house, and that all that is said with reference to that woman up to her going out to beg at three o'clock happened upon the Friday, and not upon the Saturday; and declares, That the floor being wet in consequence of Helen Mac-Dougal and Gray's wife washing in the house, these two women washed the floor then, rather than defer it till next day; and the floor was usually washed twice a-week, and it was usually washed on Saturday as one of the days: That those two women continued doing things about the house, and the declarant continued working till it was duskish: That the declarant then stopped work, and went out and brought in a dram, because it was Hallowe'en, and he and the two women sat by the fire and drank the dram; and while they were doing so William Hare came in, and the declarant went for more drink, and they all four sat drinking till they got pretty hearty. Declares, That when he was out for drink the second time, he found, when he came back, that Mary Docherty had returned, and was sitting by the fire, and she drank along with them: That when it was pretty late in the night, but he cannot mention the hour, he and William Hare differed, and rose to fight, and the three women were still in the house drinking; and Mary Docherty had become much intoxicated. Declares, That while he and Hare were struggling together, Helen M'Dougal and Hare's wife did what they could to separate them; but declares, that there was no noise, and in particular there were no cries of murder. Declares, That after they were separated, they sat down by the fire together to have another dram, and they then missed Mary Docherty, and asked the other two women, what had become of her; and they answered that they did not know; and the declarant and Hare searched for her through the house—and they both went straight to the straw of the shake-down bed upon the floor at the bottom of the standing bed, to see whether she had crept in there, and they found her among the straw, lying against the wall, partly on her back and partly on her side: That her face was turned up, and there was something of the nature of vomiting coming from her mouth, but it was not bloody: That her body was warm, but she appeared to be insensible, and was not breathing: That after waiting for a few minutes, they were all satisfied that she was dead, and the declarant and Hare proposed to strip the body and lay it among the straw; but they did not at that time say what farther they proposed to do; and Helen M'Dougal and Hare's wife immediately left the house, without saying any thing; and the declarant supposed it was because they did not wish to see the dead body: That the declarant and Hare waited till the neighbours should be quiet, there being a considerable stir among the neighbours on account of its being Hallowe'en, and in particular in the house of Connoway, who lives in the same passage, in case any of the neighbours should come in upon them; and they then stripped the body, and laid it among the straw; and it was then proposed by both of them, but he cannot say by which of them first,

to sell the body to the surgeons, and they both arranged that they would sell the body to David Paterson, whom they knew to be a porter to Dr. Knox, in Surgeon Square, and who they knew received subjects; and that they would put the body into a tea-chest and get it conveyed to Surgeon Square the following evening; and they then sat down by the fire again, and Helen M'Dougal and Hare's wife then returned, but nothing was said by any person about the dead body: That Hare and his wife then went home, at which time it would be near twelve o'clock on the Friday night; and the declarant and M'Dougal went to bed and fell asleep, and rose next morning soon after six o'clock: Declares, That Gray and his wife came in about eight o'clock in the morning, and lighted the fire, and prepared breakfast, and they all got breakfast together; and the declarant then went out and brought in a dram, and sprinkled it under the bed and upon the walls, to prevent any smell: Declares, That he went out about twelve o'clock noon, and was out for about two hours walking about; and when he returned he found Gray and his wife and Helen M'Dougal still in the house; and after that he was occasionally out. Declares, That after it became dark he went to call for Paterson, but found that he was out, at which time it was past five o'clock: That he then got John M'Culloch, a porter, and took him to the passage of the declarant's house, and then left him there, and went into the house and found William Hare there, but no other person; and he also saw an empty tea-chest upon the floor; and they both immediately put the body of the woman into the tea-chest; and they roped it up with a line which hung across the house for drying clothes; and they called in M'Culloch, and put the tea-chest upon his back, and told him to follow Hare, but they did not tell him what was in the tea-chest, nor did he ask them; and the declarant then went straight to Paterson's house, and found him at home, and told him that he had sent forward a subject to Surgeon Square; and he has no recollection of having seen Paterson on the Friday, or on the Saturday before that time. Declares, That Paterson and the declarant then went to Surgeon Square together, and they found Hare and M'Culloch waiting there with the tea-chest, and Paterson opened the door of a cellar, and the tea-chest was put into it: That Paterson then went and got five pounds, and gave it to the declarant and Hare, and they paid the porter, and then went to their respective homes; and the declarant, on his way home, met Helen M'Dougal; and when they got home, they heard from Connoway's wife the report of policemen having searched his house for a dead body; and he then met with Finlay, the criminal officer, and he was apprehended, and taken to the police-office, as formerly mentioned. And being interrogated, declares, That he cannot say whether the dead body he saw in the police-office on Sunday the 2d current be the body referred to: And being interrogated, declares, That he had no concern in killing the woman, or in doing any harm to her; and he has no knowledge or suspicion of Hare; or any other person, having done so; and it is his opinion that the woman was suffocated by laying herself down among the straw in a state of intoxication. And being interrogated, declares, That no violence was done to the woman when she was in

life, but a good deal of force was necessary to get the body into the chest, as it was stiff; and in particular, they had to bend the head forward, and to one side, which may have hurt the neck a little; but he thinks that no force was used, such as could have hurt any part of the back at all. And being interrogated, declares, That no other person had any concern in the matter; and in particular, declares that a young man named John Brogan had no concern in it: That Brogan came into the house on Saturday forenoon, as he thinks, while the body was in the house, but did not know of its being there.—All which he declares to be truth.

(Signed) Wm. BURKE.

ARCHD. SCOTT.

A. M'LUKAS.

A. MACLEAN.

G. TAIT.

FIRST DECLARATION OF HELEN M'DOUGAL.

At Edinburgh, the 3d day of November 1828.

In presence of GEORGE TAIT, Esq. Sheriff-substitute of Edinburghshire, compeared HELEN M'DOUGAL, at present in custody, who being examined, declares, That she is thirty-three years of age, and she was born in Stirlingshire: That she never was married, although she has lived with the prisoner, William Burke, for ten years: That about a year ago, they came to reside in Tanner's Close, West Port, and about three months ago, they went to another close in the West Port, but she does not know the name of the close: That a person named John Brogan occupied the house in which they at present reside, but Brogan left the house on Friday eight days, and the declarant and Burke, who were living with Brogan previously to his leaving the house, took possession of it by themselves. Declares, That James Gray and his wife came to live with Burke on Sunday the 26th of October. Declares, That the only persons who were in the house on the night of Thursday the 30th of October, were Gray and his wife, and Burke and the declarant: That Burke and the declarant rose from bed on Friday morning about ten o'clock, and Ann Gray made breakfast for them; and when she was making breakfast for them, Burke went out, and said he was going to the shop, which she understood to mean that he was going to get a dram; and he came in when breakfast was ready, and in about five minutes afterwards, when they were taking breakfast, a woman came in whom the declarant had never seen before, and who afterwards said that her christian name was Mary: That Mary appeared to be the worse of liquor: That she asked leave to light her pipe at the fire, and she then asked a little bit of soap to wash her cap and short-gown, and her apron, and the declarant gave her a bit of soap, and she washed her clothes, and Gray's wife dried them and ironed them; and while that was doing, she talked about having come from Ireland in quest of her son; and soon after she came into the house, she said she had got no meat for three days, and the declarant gave her a share of their breakfast: That Burke and Mary entered into conversation; and Burke, upon hearing that

she came from Ireland, said that he came from Ireland too, and he did not know but she might be a relation of his mother's. Declares, That about one o'clock in the afternoon, Burke brought in some whisky and gave them a glass all round, it being the custom of Irish people to observe Hallowe'en in that manner: That Mary became very impatient to go away, in order to go to Saint Mary's Wynd to inquire for her son, and she went away about two o'clock. Declares, That Burke had gone out, about half an hour before that, and returned about three o'clock, and when he came in, he mentioned that Nancy Connoway, a neighbour, had said to him that she wondered how he could keep Gray and his wife in the house, because the noise of their quarrelling was so unpleasant to the neighbours; and therefore he told them to go away, and never to come back again, because he had not up-putting for them; and Gray and his wife accordingly went away immediately. Declares that Hare's wife happened to be in the house at the time, and said that she would give them a night's lodging, as she had spare beds, and the declarant supposed that they went to Hare's, and it would be about six o'clock when they went away: That Burke went to Hare's house about seven o'clock, and the declarant went about half an hour afterwards: That when she went to Hare's house, Burke was not there, but she went to an adjoining shop and brought him there, and they had some supper and drink there: That the declarant then went home, and Burke followed soon afterwards, bringing some whisky with him, which he had got in a shop; and soon afterwards Hare and his wife came in, and they four had some spirits together, and Nancy Connoway, before mentioned, came in and had a share of the spirits: That the declarant then went to Connoway's house and had a dram, and then returned to her own house, and found Hare and his wife still there: That they almost immediately went away, but very soon returned, and Hare was very much intoxicated, and Hare lay down in the bed, and slept along with Burke all night; and the declarant and Hare's wife slept on the floor: That about six o'clock in the morning Hare and his wife went away: That about seven o'clock, Gray and his wife came in to get some clothes which they left, and the declarant and Burke lay down in bed, and about eight o'clock Burke rose and told Gray's wife, who still remained in the house along with her husband, to sort the house and get the kettle boiled, and he himself went to a neighbouring shop for tea and sugar, and bread and butter: That when Burke came, Gray's wife made the tea, and Gray and his wife and Burke took breakfast together, and a young man named John Brogan, came in and got a share of it: That the declarant did not take any of it: That after breakfast Gray's wife washed the floor, and cleaned the house, the declarant being in bed unwell, in consequence of drink which she had had, and Brogan was in the house most of the day: That Gray remained in the house all day: That Burke was sometimes out and sometimes in, and he lay down for a short time: Declares, That about five o'clock that afternoon, the declarant sent Mrs. Gray to Mrs. Law's with some clothes to get mangled; and Gray and his wife left the declarant's house about seven o'clock to go

to their lodgings; and shortly after they so left the house, Mrs. Law came and asked the declarant if she gave Mrs. Gray orders to get her gown: That the declarant said she had not, and Mrs. Law then said that she was off with it; and in a little after, a girl came in and told the declarant that a man was on the street with the declarant's gown, and she went out and found Gray standing at the head of Tanner's Close with the gown under his arm: That she got her gown from Gray, and the declarant and Gray and his wife, and Mrs. Hare had a dram together, and the declarant left the gown in Mrs. Law's to get mangled: That the declarant then went home and kindled her fire, and she went out for her husband as it was late; and after she found him they went into Connoway's house, where they remained for a few minutes, and Connoway told them that Mrs. Gray had been raising a disturbance, and the declarant and her husband were going out of Connoway's house when they were apprehended by two policemen, who said that they had taken a corpse out of the house. And being interrogated, declares, That she did not see Mary after two o'clock on the Friday; and in particular, she did not see her in the house on the Friday night. Declares, That she yesterday saw the dead body of a woman in the police-office, but declares, that it is not the body of the woman named Mary, because Mary had dark hair, and the body of the woman in the police-office had grey hair. And being interrogated, declares, That she had no knowledge or suspicion of there being any dead body in the house, and in particular, of its being under the bed, till after she was apprehended; and declares, that there is only one bed in the house; and declares, that so far as she knows, nothing was under the bed except a few potatoes, and a little straw which had fallen from the bed. And being interrogated, declares, That she had no conversation with Gray regarding a dead body, and in particular, never promised him any money not to say any thing about a dead body. And being shewn a coarse linen sheet, a coarse pillow-case, a dark printed cotton gown, and a red striped cotton bed-gown, to which a label is affixed, and signed by the sheriff as relative hereto, declares, That the sheet belongs to a William M'Kim, from whom the declarant got a loan of it: That the pillow-case was used for containing dirty clothes, and lay at the head of the bed as a pillow: That she never saw the dark gown before to her knowledge; and declares, that the bed-gown is like the one which Mary wore on the Friday, but she cannot say that it is the same, as it is torn. Declares, That Burke had no money on Friday, and he had to borrow money for their breakfast on Saturday morning; but the declarant got three shillings from him on Saturday night about nine o'clock, but she does not know where he got that money. And being specially interrogated, declares, That she had no concern in killing the woman Mary, or in hurting her, and does not know of Burke or Hare, or any other person, being concerned in doing so, or in concealing the dead body about the house, or in afterwards disposing of it. And being interrogated with regard to some marks of blood on the sheet and pillow-slip, declares, That the marks upon the pillow-slip were from her nose bleeding in consequence of Burke having struck her on last Thursday, as she thinks; and both Gray and his wife know of Burke having struck her; and the blood

upon the sheet proceeded from the declarant, in consequence of her state at the time, as was known by Mrs. Gray.—All which she declares to be truth.—Declares she cannot write.

ARCHD. SCOTT. (Signed) G. TAIT.
A. M' LUCAS.
A. MACLEAN.

SECOND DECLARATION OF HELEN M'DOUGAL.

At Edinburgh, the 10th day of November 1828.

In presence of GEORGE TAIT, Esq. Sheriff-substitute of Edinburghshire, compeared HELEN M'DOUGAL, present prisoner in the jail of Edinburgh, who being examined, and the declaration emitted by her before the said Sheriff-substitute at Edinburgh, upon the third day of November current, having been read over to her, she adheres thereto. And being interrogated, declares thereto, That between the hours of three and four o'clock on Friday afternoon, the woman named Mary insisted on having salt to wash herself with, and became otherwise very troublesome, and called for tea different times, and the declarant told her she could not be troubled with her any longer, and thrust her out at the door by the shoulders, and never saw her afterwards. And being interrogated, declares, That Brogan did not bring any woman to the house. And being interrogated, declares, That William Burke and William Hare had a slight difference and a struggle together on Friday night, as she thinks, but there was no great noise made, and no cries of murder, so far as she heard.—All which she declares to be truth.—Declares she cannot write.

ARCHD. SCOTT. (Signed) G. TAIT.
A. M' LUCAS.
A. MACLEAN.

Here the Proof on the part of the prosecution closed; and the pannels having brought forward no Exculpatory Evidence:—

The LORD ADVOCATE addressed the Jury in nearly the following terms:—

May it please your Lordships.—Gentlemen of the Jury—It is now my duty to make a few remarks on the tenor of the evidence which has been laid before you in support of the indictment against the pannels at the bar; and, at this late hour, when you must be exhausted with the long trial in which you have been engaged, I shall endeavour not to detain you long. Indeed, had this been an ordinary case, I should have had great pleasure in leaving the evidence to your own judgment, without one word of comment from me; satisfied that, in the charge which you will receive from the Court, before you retire, a luminous and impartial detail of its substance and

hearings will be given. But this is a case of no ordinary complexion, and I am, therefore, called on for some observations, more especially as you will be addressed on behalf of the prisoners by my honourable and learned friends on the other side of the bar; and it might be thought remissness on my part, if I were to allow the evidence to go to you for a verdict, without some remarks on its tendency.

Gentlemen, it affords me peculiar satisfaction to see, in a cause of this kind, so full and formidable an array of counsel for the defence. In all cases, the bar of Scotland does itself honour by undertaking the defence of the unhappy persons who are brought before this Court accused of offences; but, in this case, I am happy to see the most distinguished among my brethren engaged in the defence of the prisoners. It is for the ends of public justice that this should be; and it is a great consolation to me, in the discharge of my painful duty, that the pannels will derive all the benefit which may be looked for, from the knowledge and the eloquence of such distinguished advocates. If an acquittal should follow the proceedings in which we have this day been engaged, I hope it will be acknowledged that I have only done my duty to the public in putting these prisoners on their trial; and, should they be convicted, the country must be satisfied that the conviction will be just, when the defence is in the hands of counsel so eminent, and so universally and deservedly respected.

Gentlemen, this is one of the most extraordinary and novel subjects of trial that has ever been brought before this or any other Court, and has created in the public mind the greatest anxiety and alarm. I am not surprised at this excitement, because the offences charged are of so atrocious a description, that human nature shudders and revolts at it; and the belief that such crimes as are here charged have been committed among us, even in a single instance, is calculated to produce terror and dismay. This excitement naturally arises from detestation of the assassins' deeds, and from veneration for the ashes of the dead. But I am bound to say, that whatever may have occasioned this general excitement, or raised it to that degree which exists, it has not originated in any improper disclosures, on the part of those official persons, who have been entrusted with the investigations connected with these crimes; for there never was a case in which the public officers to whom such inquiries are confided, displayed greater secrecy, circumspection, and ability. It is my duty, Gentlemen, to endeavour to remove that alarm which prevails out of doors, and to afford all the protection which the law can give to the community against the perpetration of such crimes, by bringing the parties

implicated to trial; and I trust it will tend to tranquillize the public mind, when I declare I am determined to do so. I cannot allow any collateral considerations, connected with the promotion of science, to influence me in this course; and I am fully determined that every thing in my power shall be done to bring to light and punishment those deeds of darkness which have so deeply affected the public mind.

Gentlemen, before I proceed to detail the evidence now laid before you in support of the indictment against the prisoners, I must impress upon you what will be more eloquently and emphatically told by their counsel and the Court, that in judging upon the only charge now under trial, you are to banish from your minds all impressions which you may have received from any other source than from the evidence itself. To that evidence alone you must confine your attention,—in particular, you are not to allow yourselves to be moved, by the fact, that there were other charges in the indictment, of a similar description; because these charges have now been entirely withdrawn, for the present, from your consideration. Those charges have been separated from that now to be tried, at the special desire of the prisoners themselves, and to remove any ground of objection that an impression might be created to the prejudice of the prisoners. The pannels are accused of murder,—and the three instances that were libelled, were only three separate facts, in support of that general charge. But since the prisoners and their counsel have made their option to be tried for each separately, and the Court have sanctioned this course, I willingly acquiesce in it. I must say, however, that in framing the indictment, including all the three charges, I was warranted by the practice of this Court; and that my chief object in doing so, was for the purpose of probing to the bottom the whole system of atrocity, a part of which I have this day brought before you.

In going over that proof, Gentlemen, it is not necessary that I should read over to you fully the notes of the evidence,—because that will be more ably and authoritatively done by the Court, than it can be by any one in the situation of Public Prosecutor. I shall, therefore, content myself with a condensed and connected reference to its import,—from which, I have no doubt, you will find a verdict of guilty against the pannels.

The evidence has been led in the order of time, and I shall observe that order, in what I am now to say. The first witness is Mrs. Stewart. She tells you that Docherty had come to her house in the Pleasance, on Thursday, the 30th of October, being the fast day, in search of her son, who had re-

sided there for two months; but had quitted the house on the preceding Monday. That not having found him, she left Stewart's house next morning, in order to go in search of him. She describes her appearance, and the clothes she had on, and says that she was in perfect health when she left her. She did not again see her in life; but she saw her body in the Police-Office two days afterwards, and had no difficulty in identifying it. The next witness is Charles M'Lauchlan, to whose house, in St Mary's Wynd, Docherty came, on quitting Mrs Stewart's; and he tells you that she was then, and had been all the time that she was at Stewart's, in perfect health; that she had no money, and that she said she was leaving town. He also saw the body on the Sunday, and identified it. Instead, however, of proceeding on her way, she called at the shop of a person of the name of Rymer, about nine o'clock of the same morning; and you see from the evidence of William Noble, that when she entered that shop, the prisoner at the bar, Burke, was there. This poor woman was without a farthing,—she was begging her way,—he enters into conversation with her, and inquires concerning her family, and says that she was some relation of his mother's. He offers her her breakfast, and thus induces this poor woman to go to his house. This man, in all probability, thought that no human being would ever make any search or inquiry after this woman. Then, gentlemen, the next witness, in point of time, is Mrs Connoway. She describes her house as adjoining to that of Burke, and says, that early in the forenoon of the same day, she saw Burke enter his house, followed by a woman, immediately behind him. Mrs Connoway had occasion to go into Burke's house in the course of the day, when she saw this woman in company with Burke and M'Dougal; she returned again in the same evening, where she saw the same woman washing her clothes, and had a conversation with her;—she describes her, in point of appearance, dress, and every other respect, in such a way, as to leave no doubt that she was the same individual who came from Mrs Stewart's in the morning. She was then the worse of drink; and Connoway advised her not to go out, lest she should be taken up by the police, on that account. She followed Connoway into her house, where she insists that Burke's name is Docherty; and gives us the reason, that that was the name he had given himself to her. They are then joined by M'Dougal, Hare, and his wife. Spirits are produced, and drank. They became all merry, and were dancing and singing. All the party then quit Connoway's house, excepting Docherty, who remained there till between ten and eleven o'clock; when seeing Burke

going into his house, she follows him. Connoway then gives an account of a disturbance in Burke's house, which prevented her sleeping. The next witness, Mrs Law, confirms Mrs Connoway's statement, and says, that in the disturbance which took place in Burke's house, she heard Burke's voice,—thus proving that he was at that moment in his house. The next evidence in point of time, is a person of the name of Alston:—He lives, it appears, in the first flat of the house from the street, or the second storey above Burke's house; and he states, that he was alarmed by the noise which he heard issuing from Burke's house, about half-past 11 o'clock of the same night,—that he went down to the entry where Burke lived, and there he heard two men fighting, and a woman calling murder, but not as if she was in imminent danger. He says, that after standing for a minute or two within three yards of Burke's door, he heard something give a cry, as if it was strangled. He could hardly distinguish if it was that of a human being, or of an animal. This description of the noise heard, leaves little doubt, but that, at that moment, Docherty was suffering by strangulation. It is most singular that Alston should have come home on this evening at *half past eleven* at night, at which time, no doubt, this dreadful act of murder was committed. Alston then goes for the police, but not seeing a watchman, he returns to the entry; by which time, the tumult had subsided, and he went home. The next evidence to which I shall allude, is a very short testimony, but one which goes to establish a matter of great importance; I mean that of the sister of David Paterson:—She tells you that Burke came to her mother's house that night at 10 o'clock, asking for her brother. At this time, M'Dougal, Hare, and his wife, were all in Connoway's, Burke alone was absent. Now, it is our business to inquire where he was during this interval; and why he went to Mr Paterson's. You will observe, that David Paterson is an assistant to Dr Knox, and it is in evidence that he and Burke had had frequent dealings respecting dead bodies; it cannot, therefore, be difficult to conceive why Burke wished to see Paterson that night, when he foresaw that he should so soon have a body to dispose of. If this was his object, you will readily see, that by going in search of this person at 10 o'clock, when Docherty was still alive, he demonstrated his predetermined purpose to put her to death. This is rendered more apparent by what follows:—Alston hears the sound of strangulation at half-past 11 o'clock; and the next witness, namely, the said David Paterson, swears that he came home at 12 o'clock at night. He tells you expressly the hour when he reached his own house;—and when he was entering it, he found Burke knocking at the door, wishing

to see him; so that there can be no doubt but that the moment after the frightful deed was committed, he left his own house and went to that of the witness. He then asked Pater-son to go with him to his house. He accompanied him accordingly, and the distance being short, he reached the house nearly at 12 o'clock at night,—when this woman, who was well and dancing in Mrs Connoway's an hour before, was not visible. He told you, that he saw there two men and two women; and further, he told you, what was confirmed by other evidence, that Burke pointed to the corner where the straw was, and said, 'there lies a subject for the doctor to-morrow.' These emphatic words will not escape you, nor the moment when they were spoken, nor the person to whom they were addressed. They prove not merely the time of the murder, but the base purpose for which it was perpetrated; namely, to obtain the sum of £8 or £10, as the price of the body. It is quite horrifying to think that human beings could be found willing to commit deliberate assassination for such a bribe. The next witness examined was the lad Brogan, whose testimony is of little importance, unless to shew the total indifference felt by the prisoners, in consequence of what had been so transacted. He tells you that he came into Burke's house about two in the morning, and that he and the prisoners, and Hare and his wife, slept quietly, as if nothing had happened; and this, while Docherty's dead body, though unknown to Brogan, was lying within a few feet of the spot where the party was reposing. Next follow two very important witnesses, Mr and Mrs Gray, who were lodgers in Burke's house:—They had lodged there for some time, and would have remained there that night; but Burke contrived to get them out of the way, by procuring a bed for them elsewhere. It is proved that no cause existed, or could be assigned, for this removal; and, accordingly, instead of allowing them to find accommodation for themselves, Burke went himself and procured a room for them, and met them next morning, and with much civility agreed to pay for their night's lodgings. This is a point of material consequence in this case. But can it be necessary to ask why it was requisite that these persons were not to sleep in Burke's house during that one night? Is it not apparent that the object was to prevent their seeing, and doubtless preventing, the horrid deed. But, can any thing more clearly demonstrate predetermination on the part of this prisoner to commit the crime of which he is here charged. These witnesses mentioned, farther, that Burke called up in the evening, obviously to see that they were safely housed; and he invited them, next morning, to come down and breakfast with him.

They described also what took place on this occasion; that Mrs Docherty was not to be seen; that spirits were thrown over the room, evidently with a view to absorb the smell that might naturally be expected to arise from the dead body; that the spirits were thrown particularly under the bed, and on the place where the body lay. These persons very naturally asked what had become of the old woman. You, gentlemen, will recollect the answer they received from M'Dougal, viz. that she had been too familiar with William, and that she had kicked her out of doors the preceding night; using, at the same time, epithets, which it is unnecessary for me to repeat. You next see Burke's attempts to prevent Mrs Gray approaching the spot where the body lay; and that woman afterwards discovering it, to her utter horror, stript naked, and lying among the straw. She calls on her husband, and the neighbours, Mrs Law and Connoway, who are no less horrified than herself; and all these persons identify the body as being that of Docherty. By the witnesses who follow, it is proved, that in the course of the afternoon this body was put into the box now standing before you, which had that day been bought by Burke from Mr Rymer, brought part of the way by Mrs Hare, and then by M'Culloch, who assisted Burke and Hare in forcing the body into the box. The box is then carried to Surgeon Square, and is deposited in the cellar;—and these individuals proceeded to Newington, obtained the price they expected, viz. £5 paid down, with the promise of the like sum to be paid the following Monday. Gray, in the meantime, gives information to the police,—means are taken to recover the body, which is carried to the police-office, where it was recognized by Mrs Law, and a number of other witnesses, as the body of Docherty. Now, gentlemen, besides this evidence, we have two *socii criminis*, who witnessed this act. Hare and his wife detail all the shocking particulars of this sad tragedy. From them it appears, that early in the day, Burke told Hare that he had got a shot for the doctors in his house, and sent him down to administer spirits to the woman. Hare then recites the events of the evening,—the individuals present,—the actual, or rather pretended quarrel,—the overturn of Docherty in the course of it,—and this almost at the moment when she attempted to interfere in behalf of Burke, saying he had been kind to her. Next follows the hideous act of this man Burke throwing himself on the body of Docherty, and, like a tiger, catching at her throat, mouth, and nose, and then holding her, while in the agonies of death, for nearly fifteen minutes. After all, it is supposed that life was not extinct: The same diabolical means are therefore renewed; and the purpose being

at last accomplished, she is doubled up, and thrown into the straw, in a corner of the room. Such details are enough to freeze one's blood, and excite our wonder that such monsters in human form should be found in existence.

Such is a summary of the evidence which has been led,—but it is necessary to look at it more closely, so as to see whether it establishes the two essential points requisite in all such cases, namely,—1. That a murder has been perpetrated;—2. That the prisoners were the individuals who committed that crime.

On the former of these points, the state of the body is first to be attended to. In general, that alone decides whether a murder has or has not been committed. If a man is killed by a blow, this, in general, is demonstrated by a fractured skull, or by some other violent contusion. If he is poisoned, the contents, and state of the stomach, establish the fact. If stabbed, the wound shews the cause of death. But here, the perpetrators were men of science, who seem to have known how to commit murder, without its being visible on the body. By shutting up the mouth and nostrils, and by pressure on the chest, it appears that an individual, when in a state of intoxication, may be easily deprived of life, without any certain mark remaining to explain the cause. The medical gentlemen have told you, that they could go no farther than to say, that, in their opinion, it was most probable that this woman died of suffocation. The fact of the murder, thus comes to be a question, which you must decide from the whole evidence before you. It will be kept in mind, that this woman is proved to have been in perfect health before, and on the day on which she died. She was well when she left Mrs Stewart's in the morning, and she was dancing and singing in Connoy's house down nearly to 11 o'clock in the evening, when she followed Burke into the house; and she was dead before 12 o'clock of the same night. Added to the sudden nature of this death, you have the fact, that the body, on examination, exhibited internally every proof of health. That no apparent cause of death could be *there* discovered; while the countenance was livid,—the eyes suffused,—the throat ruffled,—a quantity of blood mixed with saliva issuing from the mouth, and, in short, every appearance that could denote strangulation. You find Dr Christison swearing, that if she was smothered by Burke, in the manner described by the witnesses, the appearance of the body entirely corresponded with what such an act would have produced; and although Mr Black says, that from the appearance of the body at the Police-Office, he could not have ventured to say positively that the deceased had been

strangled, he swears, that if he had found the body lying with the blood and saliva issuing from the mouth, as when it lay on the straw, he would have had no doubt on the subject. Such facts, and such opinions, I confidently submit, ought to leave no reasonable doubt in your mind as to the cause of death. But if your minds can be supposed to hesitate on that point, look only to the evidence of the two witnesses, Hare and his wife, who saw the deed committed. I will fairly confess, that I had much reluctance in admitting either of these persons to give evidence for the Crown, and I will openly state my reasons for doing so. In the *first* place, whatever might be my own opinion, I could not be certain that a Jury would hold the circumstances which I have just stated, as amounting to complete proof of the *corpus delicti*, or act of murder. I could not shut my eyes to the doubts expressed by the medical men as to the cause of death,—doubts which were more strongly expressed in the first stages of those inquiries, than they have been stated this day. I could not forget that it was *possible* that this woman might, as in the instances mentioned by Mr Black, have died from the effects of intoxication, or might have been killed in the course of the affray that then took place; in which case, the crime would not have amounted to murder, but only to culpable homicide. These things being possible, I knew how strongly the eloquence of counsel would press upon a Jury their bounden duty, to take the most favourable presumption for the prisoners, and either to acquit or to find the lesser crime proved. Be it remembered, that at that time, nothing was known of any other murders, and that we were dealing alone with that of Docherty; and that of the four prisoners concerned in the deed, not one of them, after being kept for weeks in prison, and being repeatedly under examination, would admit any participation in the crime. Let me ask, if in such circumstances, I was entitled to hold, with certainty, that a Jury would doom four persons to a capital punishment? In the course of the trial, and still more if an acquittal had followed, would I not, in such circumstances, have been taunted with a failure of duty, in not admitting some of these prisoners to give evidence, so as the certainty of the murder might be established, and the Jury and the country made to know how, and by what individual, it was committed. In a case where I deemed it of the last importance that an example should be afforded, I did not conceive myself warranted to risk a trial without such evidence; and I am persuaded, that those who will place themselves in my situation, will not say that they would have acted otherwise. It is thought the women ought to have been selected; I answer, that they both positively refused to say a

word on the subject; and at any rate, from their respective connections with the men as then understood, and still believed, they could not have given testimony against them. But I will own that I had another, and a no less forcible reason. I must remind you, that though there were rumours and suspicions abroad, there was then no certainty of any other crime excepting that connected with Docherty. Had a trial taken place under such circumstances, and the parties been acquitted, it was obvious that they would have returned to their former practices, whatever they were, with increased encouragement and confidence, from such a result;—or suppose that they had even been convicted in Docherty's case, that would doubtless have led to the punishment of these offenders. But in what state would it have left the magisterial functionaries? They would have remained entirely ignorant at this moment, of the extent to which such crimes had been carried by these persons; whether these four individuals comprehend the whole gang, or if there were others connected with them, or whether similar gangs did not exist in other places. Such a state of ignorance appeared to me altogether inconsistent with the security of the public. I considered a knowledge of these matters indispensable, and as being of infinitely more public importance, than any punishment which could be inflicted on those offenders. I did not think then, nor do I now, that such information was too dearly purchased, by admitting some of these individuals to give evidence; and I am persuaded that the country, when this matter comes to be calmly considered, will support me in the propriety of the choice I so made. Such being one main object, need I say that a mere disclosure of the circumstances connected with Docherty's case, could not suffice. It was indispensable that these individuals should tell all they knew in regard to every other crime in which they had been concerned, along with the prisoners, as also, in regard to any person who might be accessory to deeds of the kind. Such disclosures, Hare accordingly made; and from the information so furnished, the two other crimes stated in the libel, which otherwise would have never been rendered certain, or have made their appearance in a Court of Law, have been brought to light, in such a way as to warrant my preferring them as substantive charges against the prisoners. Of the other information given, the Magistrates now have the advantage, and the public will reap the full benefit. I need hardly say, that by availing myself of such information, I necessarily excluded the possibility of bringing these witnesses to trial, for any offence in which they so acknowledged a participation. In the present state

of excited feeling, the justice of this may not be felt; but its moments of excitement, firmness, and the exercise of sound discretion, are peculiarly called for. And sure I am, that if I was to take advantage of disclosures so made, and to bring Hare to trial for any of the crimes he so confessed, such conduct would not only be openly exposed by the Bar, but would deservedly call down the censure of the Bench, and of the jury, aye, and of the public at large, when they came to think coolly on the subject, and should look to the consequences to which such a proceeding might in future lead. It is naturally revolting to see such criminals escape even the punishment of human laws; but this must be borne, in order to avoid greater evils; and it may form some consolation to reflect, that such an example of treachery, by a *socius criminis*, must tend to excite universal distrust among men concerned in similar crimes, if any such should hereafter exist. Fortunately for the safety of life, a crime of this nature cannot, in all its details, be accomplished without assistance; and nothing can be more calculated to deter men from its commission, than the probability of the perpetrators readily betraying each other.

I have gone into this detail, not only in my own justification, but to shew you that these witnesses were in perfect freedom to give their evidence, and had no inducement to say any thing but the truth. I should indeed have blushed to have put men into that box to bear evidence against those prisoners, under *any* feeling that their own trial and punishment might depend on the nature of the testimony which they were to give.

At the same time, I do not present these persons to you as unexceptionable witnesses. Assuredly they are great criminals; but the law has said that their testimony is admissible, and thus pronounced it not undeserving of all credit. It is for you to judge of the degree of credit to which they are entitled. You saw them examined, and will draw your own conclusions. I may be prejudiced; but to me it did appear, that while the evidence of the wife was on many points exceptionable, Hare himself spoke the truth. Notwithstanding all the ability shewn in the cross-examination, I do not recollect one particular on which he was led to contradict himself, or state what must be false. Doubtless, there exist inconsistencies betwixt his evidence, and that of his wife; but these are not of a nature that ought to induce you to withhold all credit from their testimony. The points of difference regard immaterial particulars of small moment, as to whether the same individual was sitting or standing at the time, or lying on the bed, or going out.

into the passage; a difference on this point, ought not to vitiate evidence. Your own experience will tell you how difficult it is to find two individuals, who, however disposed to speak the truth, will concur in such particulars, in regard to an interview which occurred at the distance of two months. But look to the situation in which these persons were placed. Look to the size of the apartment in which all this occurred. Recollect that all present are proved to have been nearly intoxicated at the time, and remember, that an act of foul murder was then committing. Is it possible that they should not have been in a state of unusual excitement and alarm at the time, and is it wonderful that their memories should have served them differently, in regard to such trifling particulars as those to which I have alluded. If they had been at one on all these points, the only just inference would have been, that the story had been entirely made up between them, and their evidence, in consequence, not entitled to any credit. But look to the main part of the case, the murder, and the mode in which it was done. That was a fact sufficient to rivet attention, and to render sober any one, however inebriated. On this material point, you find these witnesses entirely concurring, both describing the same mode of death, and both describing a mode which corresponds completely with the appearance of the body, and which, in the opinion of the medical men, satisfactorily accounts for the death. That both Burke and Hare were participant in this foul act, no one can doubt. And I need not state to you, that it matters not which was the principal aggressor in its execution. They are both, art and part, guilty of murder.

If, then, you believe that the act was so perpetrated, there is an end of the case. The murder itself is proved, and it is rendered unquestionable, that it was committed by the prisoner's hands. But do I ask you to believe the testimony of these witnesses unsupported,—far from it. Look again to the facts proved by other testimony, to which I have already alluded, all tending to confirm the statements of these persons, and shewing that Burke, from first to last, was the leading instrument in this horrid deed. Call to mind Burke's first meeting Docherty in the morning, and seducing her to his house, under pretence of relationship, or that he bore the name of Docherty, which the poor woman insisted with Mrs Connaway was his real name;—his accompanying her home, and being seen by Connaway entering his own house along with her;—his insisting on Gray and his wife sleeping in another house for *that night*, and his paying for their bed; thus fixing the time of the premeditated act, and chusing his own house as the spot where

it was to be committed;—his going in search of Paterson, before the murder was perpetrated, obviously with the view of transacting for the body;—his again going for Paterson immediately after the deed, and bringing him to the spot, and pointing to the straw, saying, there is something for the doctors to-morrow;—all these, as proved by unexceptionable evidence, were the acts of Burke alone, unaided by Hare:—his treaties next day as to selling the body at Surgeon Square;—his providing the box, into which it was to be carried;—procuring and paying the porter who carried it;—and then proceeding to Dr Knox's premises with it, and getting payment of part of the price. These facts all tend to confirm the testimony of the Hares, and they remove every degree of doubt as to the prisoner's guilt; and present this man as the premeditated author, and leading instrument, in the perpetration of this most hideous act. Then we have the evidence of Mr Alston, who, by the interference of Providence, appears to have come to the spot at the very moment. Doubtless, a discrepancy exists between his evidence and that of the Hares, as to the calls of murder; and a doubt arises by whom these were made. My own impression is, that these cries came from the women when in the passage, incapable to resist the feelings which such a scene produced. But in whatever way that is viewed, most obvious it is, that Mr Alston's evidence confirms that of the Hares, as to the act of strangulation being committed at that very moment, within half an hour after Docherty had been seen in good health leaving Connaway's house, and accompanying Burke into his; and within the like time before the body was pointed out by Burke to Paterson as a corpse. That Burke was present when that deed was thus performing, is proved altogether independently of the Hares. He was seen by Mrs Connaway going into his house within half an hour before. Mr Alston expressly says, that he heard Burke's voice in the house at the time to which he speaks; and Mrs Law, on being asked if she could distinguish any persons voices in the course of the affray, says, she was not sensible of any person's voice but Burke's. In addition to this, you see that immediately after the deed, he calls in Paterson, and expressed himself in a way that shewed his knowledge of what had been transacted; and, in his second declaration, Burke unqualifiedly admits his presence during the whole scene. In the first declaration, he, indeed, tells a story entirely false from beginning to end,—a proceeding not very indicative of innocence; but, in the second declaration, he confirms Hare, not only as to his own presence, but in all the important particulars which

occurred; excepting always as to the cause of death, which he describes as proceeding from suffocation, by Docherty having fallen amongst the straw. But even here, he renders his assertion unavailing; for instead of her face being pressed down, so as to lead to suffocation, he says,—‘ they found her among the straw, lying against the wall, partly *on her back*, and partly on her side: That her *face was turned up*,—and there was something of the nature of vomiting coming from her mouth, but it was not bloody.’

I shall not detain you longer with the case of Burke, and shall only say, that if this mass of direct and circumstantial evidence, applicable to an occult crime of this description, shall not convince you of the guilt of this prisoner, the situation of the prosecutor, or rather of the country, will be most deplorable. Is it to be supposed, that such offenders can be so insane as to commit murder in the presence of unexceptionable witnesses; or can we suppose that such witnesses would stand by and see the deed done, in order, afterwards, to give evidence against the perpetrators? Unless this is to be declared indispensable, I do not in my conscience see how more proof could be afforded than what here occurs; and should this be held insufficient, I see no other result, but that this frightful crime must, in future, go unpunished.

It remains for me to say a few words as to the case of M'Dougal. She is here charged, in our law language, as guilty, art and part, of this murder; in other words, that she was accessory to it. It was my intention to have read some passages from our law-books, to shew what is there held to amount to such accession; but at this late hour, I avoid doing so, the more especially, as any intelligent mind can, without such light, be at no loss on this subject. By accession, is meant a person being cognizant of, and a party to a murder, although the act of slaughter is not the immediate act of his own hand. Such accession may arise from acts done previous to the deed, during its commission, or even after its completion. In the present instance, the prisoner, M'Dougal, was an accessory to Docherty's murder, in each and all of these respects.—1. She was aware of Burke's intention to commit the crime, and she not only took no means to prevent it, but aided the enterprise, by alluring and detaining the woman in the fatal den, until the deed was done. You will observe that she saw Burke bring to his house, as a lodger, a woman in the situation of a beggar,—a woman who had not a farthing in the world,—and to whom he was pretending to be related, and to bear the same name, and whom he proposed to furnish with board and entertainment

for a week;—she saw him turn out of his house, in order to make way for this woman, two persons who had been previously lodging in his house. This she saw arranged not for a whole week, during which Docherty calculated upon remaining there, but for *one night* only; and for this night's lodging Burke was to pay the charge. Is it possible that M'Dougal could see all these things, supposing her to have seen and known nothing more, and not to have drawn the conclusion that something serious was intended. But the matter is not left to inference,—she not only drew the conclusion, but she ascertained the fact; for in the course of the forenoon, she told Mrs Hare that there was a *shot* in Burke's house. The meaning of that ominous term has been explained to you. It imported a person intended to be murdered, and the body to be sold for dissection. There cannot be a doubt, but that M'Dougal so understood the term at the time, and that she intended to convey that meaning to Mrs Hare. Thus, is she proved to have previously known of the intended murderous act; and what did she do? Did she fly from the murderous scene, as she might at once have done, being united to Burke by no tie which she could consider binding; or having resolved to remain, did she do any thing to prevent the murder? Did she avail herself of the many opportunities of Burke's absence, to advise this poor woman to depart during the course of the day? No, she treated her kindly, set her to work in washing her clothes, and did not fail to administer to her the modicum of whisky; as Mrs Connaway says, that she found her the worse of drink when she went into Burke's house in the evening, and when Docherty accompanied Connaway into her house. In this last house, a scene takes place, which illustrates the feelings of these persons; knowing, as they then did, what was about to be acted. You see a bottle of spirits produced, of which they all joyously partake; and M'Dougal and the two Hares together, with this poor woman, set a-dancing and singing, and enjoying every kind of merriment. Can such proceedings be considered in any other light, but as means for decoying the victim into the snare, and making her fall the easier, by the state of inebriety into which she was thus led. And if you believe these facts, am I not entitled to ask, if they were not all of a nature calculated to give effectual aid to the preconcerted deed, and whether they do not of themselves constitute an accession to this crime? At length, Burke arrives, accompanied by Docherty; the pretended affray then ensues, in the course of which, if you believe Hare, Docherty twice attempted to make her escape, and was twice brought back by M'Dougal. If

this fact be true, it is of itself decisive, not merely of this woman's accession to the deed, but almost in the participation of the foul act just then to be accomplished. So much for what took place *before* the murder: next, for the moment of its commission. Beyond all doubt, M'Dougal was present and witnessed the deed; and it is no less certain, that she did nothing to prevent it. True, she did not lend a hand in aid of the act; but her presence on such an occasion, when nothing is done to help the sufferer, is substantially an assistance. It encourages the murderer. It adds to the terror, confusion, and danger of the deceased. You see it proved, that when Burke and Hare were engaged in combat, M'Dougal and Mrs Hare scrupled not to expose themselves to injury, by interposing to separate those drunk men when so employed. But when, in a few minutes after, this frail creature, one of their own sex, who had been seduced into that house under a shew of hospitality, was meeting her death under the hands of the murderer, Burke,—for whose safety a moment before, who, poor thing, had expressed an anxious wish for Burke's safety,—not a finger was moved, or an attempt made by either of these females to prevent this inhuman sacrifice, or to rescue the victim from the hands of the assassin. It is said, that unable to bear the sight, they ran into the inner passage, the outer door of which was shut, and there they stood quietly till the deed was completed. But why did they so stand? Why did they not call upon the neighbours? Mr Connoway's house was within two yards of them; Mrs Law's, little farther; and yet no help was asked from them. Had they but opened the door, they would have found Mr Alston at that moment in the passage, and all might have been well. In such circumstances, it is difficult to give such women credit for their pretended feeling, and not doubt whether the true purpose of their taking up their position in the passage, was not of a very different nature; and that the real object of what they so did, was to prevent intrusion, and to give notice if any such should be threatened. But if we are to talk of the feelings of these women, let us look to their subsequent conduct. They return quietly into the house, lay themselves down within a few feet of the murdered body, and there go soundly to sleep for the night. Had these women not been prepared for the act,—had the murder come upon them unknown and unexpected,—is it in nature, that such could have been their conduct? Could sleep, for an instant, have closed the eyes of an innocent woman, or could she have enjoyed one moment's rest, after witnessing such a tragedy, and when she knew that the mortal remains of the murdered woman was, at the

moment, within reach of her hand? Such circumstances afford *real* evidence of knowledge and accession to the crime; and no evidence ought to be so satisfactory to a Jury as proof of that description. Then, in what state is the prisoner M'Dougal next morning? She commences with entertaining her company by singing them a song, as sworn to by Mrs Connoway, at a time when she must have been sitting within a few feet of the dead body; and when asked what had become of the old woman, she, in terms the most unfeeling, and language so coarse as forbids my repeating, tells a most gross falsehood as to Docherty's behaviour, and as to her having turned her from the house the preceding night. Thus, she endeavours to conceal the murder, and protect the murderer,—facts which of themselves have even been held to constitute an accession to the deed. But she does not stop here,—she endeavours to bribe Gray and his wife to secrecy; and recollect, I pray you, the nature of the bribe,—£10 per week—a truly enormous sum, recollecting the price immediately paid for the bodies destined for dissection. These witnesses ought, while they live, to thank God for giving them strength to resist the temptation. Had it been otherwise, not only would this crime have gone unpunished, but, who can say but that the hands of these persons might not, ere now, have been imbrued in human blood. Strange as it must appear, that refusal seems to have made little impression on M'Dougal; as you find her and Mrs Hare proceeding, first to Surgeon Square, and then to Newington, on pretence of preventing their husbands quarrelling,—a thing not unlikely at that moment, but, in reality, to look after the price to be got for this body, and to take care that they had a share of the booty. I know that the address of my learned friend will lead them to separate these facts, and, by taking them one by one, to shew that each, when viewed alone, is not sufficient to constitute accession. But this is not the legitimate mode of dealing with circumstantial proof. The whole facts ought to be taken together; and, viewing them in that combined aspect, I humbly conceive that no reasonable doubt can exist as to the accession of this woman to the crime in question.

I now hasten to a conclusion, and fear that, at this late hour, I have detained you too long, for which the anxiety I feel, in regard to this important case, must be my excuse. I now leave it in your hands, under the perfect confidence of a satisfactory result. I know that you are incapable of giving way to any prejudice injurious to the accused; but I am also persuaded that you possess firmness sufficient to do your duty,—that you will not shrink from it from the apprehension that your motives

may be questioned. You have doubtless an important duty to perform to these prisoners; but you owe one no less sacred to the security of the lives of the inhabitants of this city. And without saying more; I now conclude the long, anxious, and painful duty which I have had to perform, from the day when this crime was committed, down to the present hour, by demanding at your hands, in the name of the country, a verdict of guilty against both these prisoners at the bar.

THE DEAN OF FACULTY.—*My Lord Justice-Clerk, may it please your Lordship—Gentlemen of the Jury*—I cannot but very much lament that you should be called upon to listen to me in addressing you on the part of the prisoner, after so many hours of fatigue as you have already undergone, in attending to the great extent of matter into which this trial has run. We have been sitting here, gentlemen, about seventeen hours, in the course of which, with the exception of the discussion of the question of form, you have been listening to the case of the prosecutor. But when you consider that the lives of these prisoners are in your hands, I am sure I need say nothing more to entitle me to your utmost indulgence, while I submit to you the observations which appear to me to be material in behalf of the prisoner Burke, oppressive as I fear it may be to you to hear me, and oppressive to myself to speak to you, on the many details which the evidence embraces. In one observation which was made by my right honourable and learned friend I entirely concur: that if this case is proved, it is a case of the greatest atrocity. Of that there can be no manner of doubt. But, gentlemen, the inference I apprehend is not to be readily drawn, that because it is a case of atrocity, we are, in trying the guilt alleged against the prisoner, to be satisfied with any thing short of clear legal evidence, or are to proceed on mere suppositions, or on that which may amount to no more than mere probability. All the principles of law and justice lead to an opposite inference. Gentlemen, this case may be represented as anomalous and unprecedented in some views of it; but I must beg your attention in the very outset, to this plain view of the matter, that the thing of which this prisoner is accused, is simply and singly *murder*. There is no aggravation, and no other crime or offence charged; and, when therefore it is supposed that this case is of an extraordinary or unprecedented nature, this can only refer to the motive by which it is said the prisoners were actuated in committing the murder. But what does that amount to, but that the motive was a miserable *gain*? There is surely nothing anomalous or unprecedented in this. A vast proportion of the murders of which we hear are committed

from the same motive of *gain*—to conceal robbery, or escape in housebreaking. And what difference does it make on the crime of *wilful murder*, whether the motive be to rob a man of his watch or a few shillings, or to sell his body for a few pounds? The crime is still the same, and it is neither less nor more than wilful murder in either case. Other motives may also exist, such as violation or the concealment of it, and the like causes by which the evil passions of human nature may be directed. But, whatever is the motive, if there be no other crime charged, it is still with the case of wilful murder alone which a jury have to deal; and the single question for their consideration is, whether there is legal evidence or not that the prisoner has been guilty of *the murder* charged against him. The case, notwithstanding, which you gentlemen have to try, is somewhat unprecedented in its nature and character, in a manner which I apprehend requires your most careful attention. The motive for committing the offence which is here ascribed to the prisoner involves in it a peculiar practice or employment which may be in itself a crime, though it is not necessarily criminal; but whether it implies public criminality or not, it involves in it a purpose which is revolting to the feelings of the generality of mankind, and calculated, almost above every other thing, to produce a prejudice in the minds of those that come to consider of the case itself. For, gentlemen, need I say that, when it is imputed to the prisoner that his object was to procure what they are pleased to call subjects for dissection, the very statement of such an object, or such an occupation, stamps a degree of infamy on the individual engaged in it; and you are apt to set it down in the very commencement of the inquiry, that he is a person capable of any turpitude, and to imagine that to prove *him* guilty of any crime, however enormous, requires less evidence than that which you would consider indispensable to the conviction of any other person. The subject of this trial is, besides, one which is universally felt, and has been universally talked of as a matter of horror and detestation; and we come into Court this day upon a charge of wilful murder, with this dreadful source of prejudice stamped on the face of the indictment, in the intent or motive so anxiously set forth in it. I do not know for what reason or purpose it is thus exhibited; but it evidently has the effect of exciting this feeling of prejudice far beyond its legitimate effect, as necessarily involved in a part of the evidence by which the charge is supported. Gentlemen, I point out this to you, in order to press on you the more than ordinary importance in this case of divesting yourselves of all extraneous impressions, and fixing your understandings and your consciences singly on the proper matter of such a trial. I do not doubt the sincerity of my friends in telling you, that they have put the case in the form which ap-

peared to them the best calculated for bringing out the fair merits of the case. I only say, that it demands of the jury more care and caution to distinguish the just impression of the evidence from the impressions inevitably produced by the mere exhibition of the charge itself. I must still farther observe, that the indictment still before you charges the prisoner with no less than three such acts of murder, at different times and different places, and of course on the persons of different individuals. Now, gentlemen, that also tends to increase the feelings of prejudice, because it is calculated to produce an impression, not only that this man had been engaged in that trade of furnishing anatomists with subjects, but that he has been in the habitual practice of committing murder for that end. I do not enlarge on this, because enough was said on it in an early part of the day. But, though you are now bound to confine your attention to the single charge of the murder of Margery Campbell or Docherty, the indictment is still before you which charges the prisoner with two other murders with a similar intent; and it is impossible to prevent the impressions which this must inevitably produce. The great difficulty, therefore, which you have to encounter in this case, is to separate in your minds that which truly is matter of evidence before you from grounds of belief or suspicion received from other sources—from common talk—from newspapers—from handbills industriously circulated, though no doubt reprobated by my learned friends, and all the persons connected with these proceedings. It is a delicate and a difficult task. But it is indispensable to the fair course of justice; and I trust, therefore, that you will meet it with firmness, and throw aside all such impressions, while you come with me calmly to the consideration of the proper case upon evidence alone.

Gentlemen, I need not tell you, that to prove wilful murder against any man requires clear proof. The more atrocious any crime charged appears to be in its circumstances, the jury will require the clearer proof before they find an individual guilty of it. You all know that this is a principle of law; it is a principle of reason and common sense. It is the acknowledged principle of the law of this country, which runs through all its branches. The highest crime which a man can commit is the crime of high treason; the compassing or imagining the death of the king; the *murder of the king*. That is the highest crime known to the law; and what does the law of this country provide in that case? It covers the person accused all over with the protection of the law. It gives him privileges which are not enjoyed, or not universally enjoyed, in any other case. It requires more proof to warrant a conviction than would suffice in any lower offence. When, therefore, my learned friend says that this is a most atrocious case if proved, he gives you a rule and principle of

judgment, universally recognised by the law, that the facts proved must establish the crime and guilt of the prisoner in the very clearest manner. Now, gentlemen, the first matter of fact to which I direct your attention is completely fixed in this case. Though I am aware that it is calculated deeply to injure the prisoner, if he were to be tried by prejudice, it is still a fact, which, in the case, as it truly depends on evidence, is of the greatest importance in his favour. That fact is, that this man has been employed in the business or trade, as it may be called, of procuring or furnishing subjects for dissection. Gentlemen, though that circumstance may excite feelings of prejudice and disgust, divest yourselves of such feelings, and you will then see in an instant, that it is a most important fact in favour of the prisoner, in considering the whole evidence in this case. For, in the *first* place, on that fact I am entitled to say to you that there is nothing wonderful, nothing extraordinary, and nothing to afford the least shadow of a presumption of murder in the circumstance of a dead body being found in this man's house or possession. If you had found a dead body in the house of another person who had never been so engaged, who could give no explanation why it was there, or for what purpose he so had it in his possession, the natural inference would be, if the person was seen alive recently before, and found dead in his house afterwards, that a murder had been committed, and that he was the murderer. But when you attend to the condition of this man, the finding of a dead body in his house proves nothing at all against him, in the proper charge of murder. According to the account that is given you by Paterson, and it could be supported by other evidence, it was this man's trade, in which he was constantly employed by Dr. Knox and others, to procure and sell dead bodies: perhaps we may say that it was his daily occupation, and every week you might have found such a thing in his custody in one form or another. It may indeed be a fact of importance if you have other evidence tending to prove the fact of murder. But by itself, and viewed only in its first aspect, it affords no evidence, and no presumption of murder:—The fact of the prisoner's trade, be it lawful or not, entitles me to say that the mere fact of the body of this woman being found in the house of William Burke, is no evidence, even to *presume*, that he had murdered her; because it admits of a clear explanation, consistent with innocence, from the daily traffic in which he was engaged. Then, gentlemen, in the *second* place, you will be pleased to observe how that matter bears in another way. When you find it proved, that this man was engaged in an employment, which is considered infamous, and which may and generally does involve a crime of a different nature, you see manifest danger to him from the discovery that he is so engaged. There is danger to his person

from popular feeling independent of the law—danger of his being beset in his dwelling—danger of his being attacked in the streets; and thus you have a reasonable and true account at once of all the anxiety he may have shewn to conceal the fact of such a thing being in his possession or within his house. Whether he had procured this subject legally or illegally, he was equally in danger, if it came to be known; consequently it is clear that he had motives for concealment, and motives for false attempts at explanations, altogether distinct and separate from the supposition that he was conscious of having committed murder. If you will permit yourselves for a moment to separate this matter from any other evidence in the case, which may seem to bear on the charge of murder, you will see at once how totally insufficient it is to afford any proof of that charge. If there were no evidence as to the manner in which this woman came into the prisoner's house, or of the circumstances which took place there, the mere fact of his having concealed the body or having given false statements to prevent its being discovered—the wavering and inconsistent accounts which he might give after discovery—nay, even inducements held out to prevent disclosure—all such things would admit of the easiest explanation from the fact that he was engaged in such trade; and that there was a plain motive for all of them, independent of any supposition of his having committed murder. Now, gentlemen, there is a third observation I have to make arising from this matter of fact. Gentlemen, I am not standing here to defend the character of William Burke. I will not do so. I have too much respect for your understanding, and my own profession to do so. But after you see what sort of a man he is, and how he is situated, I say, gentlemen, the mere fact of his taking and keeping the body of the person, and using it in a particular manner, after the person had come to death, either by an accidental fall or by violence, not inferring murder, or even by the wilful act of some person, would by no means afford any thing like conclusive evidence, that he was either the murderer or a wilful partaker in the murder. The supposition is perfectly reconcileable with the contrary idea. You have evidence that Burke and Hare acted together in this trade of procuring subjects for dissection, though William Hare, with his usual adherence to truth, chooses to deny this unquestionable fact. You have it proved by Paterson. Now, I put the case to you, that this woman died by intoxication or by accident, or that she was killed in a fray or killed on a sudden impulse, by this William Hare, without premeditation, or at any rate, without preconcert with Burke; and that afterwards, Burke having no previous participation, was willing, or was prevailed on to join in making booty of the subject. You may condemn him if you

please—you may say he is destitute of common feeling, if you like; but the question would be, could it be necessarily inferred that he had committed the murder charged? He is not under trial for procuring subjects for anatomists; you see, then, on the whole, the situation in which this man was placed, and that he was in a situation which will account for a variety of circumstances, which, in another case, might be of the most conclusive nature. Gentlemen, I wish to make one more observation of a general nature. You have it proved that all those persons who were in any way connected with this affair, are of the most irregular and dissipated habits; I do not mean Mr. Alston, or the other respectable persons that were examined; but the Burkes and the Hares, the Grays, and the Connows, &c. appear to be persons of very irregular habits. You find them drinking ardent spirits morning, noon, and night of the same day, to a great extent; and, gentlemen, when you find evidence of such habits as are here proved, in all the persons who are found in contact with the scene of action; and when you then discover, by good evidence, that there was a violent fighting, a complete riot, within the walls of that place where the woman is said to have met her death—Gentlemen, when you find this state of the matter to be by far the clearest thing proved in the case, and then find even more than the possibility of death by accident, or death by violence not premeditated, and which might not have been at all in the act or the intention of this prisoner, I am entitled to call upon you to consider well the evidence by which it is said that the guilt of murder is fixed upon him. He is not indicted on any thing but a charge of cool, deliberate, and premeditated murder. The prosecutor is bound to shew that it was premeditated—that it took place by his act—and was perpetrated in the prepared and deliberate manner described by my learned friend.

Now, gentlemen, I say, and I hope I may be able to prove it to you immediately, that the whole of the prosecutor's case depends on the *socii criminis*—the alleged accomplices in the deed charged. If not from the two Hares, you have no evidence on which you can with the least safety tax your conscience to convict the prisoner. I say, that without them, you have no evidence, either of the *crime* or of the *criminal*. We shall examine the circumstances relied on, a little carefully, immediately. But, gentlemen, before I do so, let me make this one remark, in which I think you will certainly concur. Most certainly if the learned prosecutor had thought that there was evidence sufficient for a jury to convict of wilful murder in this case, without any person being admitted as king's evidence or approver, most assuredly his Lordship would never have thought of permitting any such person to stand before you as a witness this day:—it is impossible that he should have done so:—for observe what sort of a

crime it is that is in question: it is a wilful and deliberate murder. The parties brought before you to be examined, are persons, (according to their account of that matter), who were participators of the whole guilt; and have admitted themselves to be so. Would they be permitted to stand there as witnesses, instead of being placed at the bar of justice, if it had been known that the case could have been made out to the satisfaction of a jury without them? I apprehend not. It is inevitably to be inferred that the whole evidence being known to the prosecutor, and well weighed by him before this course of proceeding was adopted, it was found to be indispensably necessary that no less than two persons who have confessed themselves to be stained with the most enormous guilt (if there is any truth in their statements), are withdrawn from the bar, and presented as credible witnesses before you. I think I am not stating too much, when I say that we have here the best authority for holding, that without the evidence of these persons, it is impossible that there can be a sufficient case against the prisoner. Now, gentlemen, I would request of you here again to fix your understandings to an accurate consideration of the evidence, by making the necessary separation: Be so good as lay aside for the present the testimony of those alleged accomplices altogether. Take the case that they did not exist; that they never spoke a word to you to-day; that they were not here present; or if present, were standing at the bar. In this way only can we see correctly whether there is evidence on which you could be called upon to convict the pannels at the bar. I know it is proved that there was an elderly woman that went into the house of Burke at a certain time—that she probably lost her life in that house—that she was there after she went from the Connoways' into the Burkes' house; and neither shall I trouble you with any discussion of the question, as to the identity of that person, or whether the person that so went into Burke's house was the person murdered, or the person that lost her life. I shall suppose that the person is identified—that the clothes are identified—and that she was the person that lived in the Pleasance, and was afterwards found dead in the surgeon's hall. But then the question is, *first*, on the fact of murder; and *secondly*, on the person who committed the murder. You must be satisfied of *both* these facts; that the death was by murder, and that Burke was the person who committed it. Now with regard to the fact that a murder was committed, the first thing for us to see is, whether it is sufficiently proved that this woman died by violence at all. And I shall take the liberty of saying that it is not proved in a manner which ought to satisfy any jury that she lost her life by violence; on the contrary, the evidence that the prosecutor has brought to prove it, proves, I submit to you, the very reverse. For what does it amount to? Gentlemen you have the evidence

of the medical gentlemen, Mr. Black and Dr. Christison. The first tells you that he will not venture to say that he had a medical opinion at all from inspection of the body, as to the cause of death, or whether it was by violence or not; he tells you, that having obtained information as to other circumstances, which I shall speak to, his private opinion was that it might be from suffocation that the woman died; but as a medical man he had no opinion whatever upon the subject. Then, gentlemen, what does Dr. Christison say? He swears that he found some marks on the person of this woman, and that none of these marks, and not all of them together, were sufficient to account for death in the ordinary way; but, taking all the medical circumstances together, he thinks they might be sufficient to justify a suspicion that she died by violence,—that she died by suffocation. The first view of it, then, gentlemen, is, that, speaking from medical knowledge, and on all the medical facts to be found on the most strict examination recently after death, the utmost he can say is, that they will justify a suspicion of death by violence. I need not say that it is not on suspicion merely that a jury can proceed. But passing from his medical opinion, Dr. Christison goes to refer to other circumstances. Having heard the whole evidence this day, he goes on to tell you that upon that view of the facts, and combining them with the medical circumstances which he had specified, he thinks it very probable upon the whole that she died by violence; and being afterwards asked again, he tells you plainly and clearly, that the utmost point of opinion to which he can go, is to say, that upon all the facts it is a probable case that she died by violence. Why gentlemen he goes a little further, and says that all the same symptoms might appear from death occasioned by intoxication; for if the woman came into a particular position, which for any thing you know she well might, if she came in contact with soft substances on her mouth and nose, and various other ways which he specified, her body might exhibit all the same symptoms which he found on the body in this case; and yet the death be occasioned by intoxication without any violence whatever. In the trial of crimes, and more especially in capital cases, you know, gentlemen, that it is not strong suspicion, and not probability in any degree, that affords ground for a verdict of guilty. There must be clear legal evidence, producing a decided conviction in the minds of the jury of the actual fact, such evidence as leaves no reasonable ground for doubts. And yet here, in the very ground-work of the case—in the first element of the *corpus delicti*,—the fact of death by violence, means, we have the prosecutor's case, upon his very best evidence, left upon mere suspicion in the first instance, and a simple probability at last. Now gentlemen, I appeal to you and to your experience, have you ever heard of a case of life and

death of a trial for wilful murder—in which a jury has been called on to receive conjectures or suspicions in one view, and a merely probable inference in another, as amounting to the evidence which the law requires. I apprehend that you cannot be warranted, upon your oaths, in so serious a case, to proceed on any such grounds. You will always remember, that at present, I am considering the case, putting the evidence of the two Hares entirely aside. Putting them out of the case, you know very little of what passed after the woman left Connaway's about nine o'clock, or half past it. You know nothing but what you get from them, except the facts stated by Mr. Alston, to which I shall speak immediately. In other respects you have no evidence except upon presumption. Then, gentlemen, I am now entitled to say for the prisoner, upon the evidence, that the woman might (consistently with all that is proved) have lost her life there through intoxication. There are indeed facts proved in the present case sufficient to render it very possible, and even probable that that must have taken place. The direct evidence only proves ground for *suspicion*, or at the utmost a *probability* of death by violence, while it also shews that intoxication might account for all the symptoms. And when we are considering this as a mere supposition, from appearances after death, is it not highly important, that there is clear evidence in this case that that woman had actually participated largely of strong liquors, during the whole day, and truly was in the condition which might without violence have produced the effect? It would be in vain to tell us that Dr. Christison did not smell spirits in dissecting the body; for the fact of her having drunk spirits to a great extent in the course of the day is unquestionably proved. It is part of the prosecutor's case. And therefore Dr. Christison must just add this to the list of cases in which he says there was no perception of spirits by smell, though it was certain that they had been largely received into the stomach. Here also it is certain that this woman did take a large quantity of spirits on that day. Indeed if you believe one word of Hare's testimony, he tells you that she was so drunk that she could not stand—so drunk that she could not rise when down. Then, gentlemen, we have the case established which by the evidence is sufficient to give a probable account of the death of this woman without any violence whatever; and if suspicion or probability will not in any case avail against a prisoner, still more clearly must any probable account of the matter, consistent with innocence, be sufficient to meet any such case of mere suspicion and probability against him. But now, in the second place, suppose, gentlemen, you got over this first difficulty, and were of opinion that there was evidence that the woman died by some violence; the next question is, Whether there is evidence of *murder*? and of murder by

Burke? There may have been death by violence, and no murder; and there may have been murder, and not murder by Burke. Laying the Hares aside, the case of murder is attempted to be made out by a train of circumstances. There are a variety of circumstances insisted on. The first is, that Burke met with the woman in the shop; that he pretended he was a near relation to her; that he sent the Grays out of the house that night; that the woman was seen in health late in the evening, and that she was found dead next morning; that great pains are taken to conceal the body; that it was instantly afterwards sold; that Burke had gone to Paterson's at 10, and afterwards at 12; that Mrs. Burke offered to bribe Gray and his wife, if they would be quiet. Then follows the evidence of Mr. Alston and Gray. In order to judge fairly of the weight of each of these circumstances, and of the whole together, I must beg of you to suppose to yourself that really and truly Burke did not destroy this woman, and never had such an intention. Assume this for a moment, which is only the common presumption to which all persons accused are entitled; and then one and all of these circumstances admit of the most easy and simple explanation. The fact is, that Burke met this person in Rymer's shop, and as she complained of having had no breakfast, he offered to give her her breakfast. She said her name was Docherty, and it is assumed by my learned friend that Burke asserted that she was a relation of his, and pretended that his own name was Docherty. With deference to him, this is not according to the evidence. The evidence is, that, when she said her name was Docherty, he said that his *mother's* name was Docherty, and she *might* be a relation of his.—Instead of telling her that his own name was Docherty, he told her that it was *not*, as it must have been inferred that *his* name was his *father's* and not his *mother's*; and it does appear, that the woman persisted in calling him Docherty, even after Mrs. Connaway had told her his name was Burke. The fact is, that his mother's name was Docherty, and nothing to the contrary appears. It comes, therefore, to this, that finding her in a miserable state, he proposed what, if fair intentions be assumed, was a mere act of kindness. He offered to give her breakfast; and afterwards offered her a night's lodgings in his own house. Is this a circumstance which, without pre-supposing guilt, leads to anything? If you do not presume an intention to murder, there is evidently nothing at all in it which tends to establish guilt against the prisoner. It is next said that the Grays were sent out of the house. That is explained in various ways; one explanation is, that there was a difference between them and the Burkes, and Mrs. Gray said she supposed, that because it was Halloween, and there was to be a merry-making, they wished them to be out of the house. But what difficulty is there in sup-

posing that he asked them to go out of the house for the very purpose of accommodating this old woman for the night? If you assume good intentions, is there any mystery in this? This was a house which the lower Irish frequented; the Grays had been only three or four days there. It does not appear that they paid Burke any rent for their lodging, and it does appear that he was under the necessity of hiring lodgings for them. It is plain that this very simple circumstance could be explained in a hundred ways without implying a design to murder this woman; unless you can find the facts proved otherwise, by good legal evidence, which lead to that conclusion. It is, in truth, by first assuming that the case of murder is proved by the accomplices, that the prosecutor is at all enabled to draw back to raise up every trifling circumstance as tending to the same result. Without that assumption, they are in themselves of the most innocent nature. But it is next said, the woman was seen in health, and is found dead in Burke's house. This indeed may infer that she died suddenly, or by some violence; but it is not a fact which will prove murder; especially considering the habits of Burke and Hare, unless it be combined with circumstances of a very different nature. In itself it gives you nothing more than ground to suspect that she may have lost her life by violence. Then, gentlemen, the concealment, and the false account given, were all after this woman's death. I shall not dispute, I admit it is quite clear, that Burke then contemplated to dispose of the body to the surgeon. But assuming this, the concealment of the body, in the first instance, was natural from the nature of the trade in which this man was engaged, and from the very purpose imputed to him in this case. In like manner, the false and contradictory accounts given, are all what might be expected under such circumstances. Then the fact of his selling the body next day, proves nothing surely except that, having got into his possession the body of this woman, he followed his trade in selling it; and whatever disrepute may attach to it, such an act does not prove an act of murder. We are next told that he went for Mr. Paterson. My learned friend attached great importance to the circumstance of his having called at Paterson's at 10 o'clock at night. This kind of argument would be very well, if you could assume the fact that he was to murder the woman; but how does this prove any thing as to the fact of the murder, if you do not first assume the intention? This person was in constant communication with Paterson on matters of a different kind; and all that appears is, that he merely called at the door, did not find him, and there was no more of it. Lay aside the assumption, which my learned friend had no right to make in this part of his argument;—and the circumstance is altogether trivial in this view of the question; though it is of importance in another view of it. But, no doubt, he went again

to Paterson's, at 12 o'clock at night, and brought him to the house, when some reference to a dead body was made. I cannot help thinking, that that circumstance bears strongly the other way,—as it is a very improbable thing, that a man, conscious of murder so recently committed, should have brought a surgeon to the spot, and asked him to look at the body, so as to expose himself to instant detection. But, Gentlemen, let me say a word on the testimony of Mr Alston, which, I grant, is of considerable importance in the case. As I understand it, however, it utterly extinguishes the whole evidence of Hare and his wife; and shews, that in whatever way the old woman may have lost her life, they were giving to you a tissue of mere inventions, on which it is impossible you can place the slightest reliance. Mr Alston says, that he heard a violent riot in this house,—that he went down and listened,—that he heard men fighting, and making a dreadful noise, and blows,—that he heard a woman's voice in the passage, calling murder, and that she was knocking on the outer door;—that he then heard certain extraordinary sounds, resembling an animal suffocating, though he cannot describe precisely what they were. Now, Gentlemen, I do think you will agree with me, that it would be the most hazardous thing in the world, to find a man guilty of wilful murder, upon such slippery accounts as this. According to Mr Alston's account of the matter, he was three or four yards distant from entering the outer door of the passage. The passage is about fifteen feet long, with a turn in it, and there is an inner door; so that there were thus two doors between Mr Alston and the house, and a distance of nearly thirty feet. There were men's voices in the house, and a woman's voice in the passage, exclaiming murder all at the time, and beating on the door; and it is in the midst of this noise and riot, that Mr Alston says that he heard those faint screams, or movements, like suffocation. I apprehend it would be most unsafe, indeed, for a Jury to rely upon this. It might have arisen from a variety of circumstances, which cannot be explained in the case of a person's having been, even though innocently, connected with the death of this woman. I do not mean to say that the circumstance is not of importance for your consideration; but it is very far short, indeed, of the evidence by which a Jury ought to be induced to convict any man of wilful murder.

Gentlemen, I have now gone through all the circumstances on which I understand the prosecutor to rely, and all, I believe, that are to be found in the evidence as affecting Burke. My learned friend did, I believe, mention the representations made by M'Dougal to the two Grays. In the first place, I

think, Gentlemen, if you examine your notes, you will find that the testimony of these Grays is extremely confused and contradictory. But taking it as it is, the circumstance alluded to is accounted for, by the situation in which the man and the woman were placed, from being in possession of the dead body, independent altogether of the supposition of murder. I might observe, that what the woman said, is not evidence against Burke; but, at any rate, her anxiety for concealment, and fear from disclosure, are as little conclusive of the case of murder, as the other circumstances, on which the prosecutor has founded. And now, having gone through them all, do you put them all together. I know it will be said, that in a proof by circumstances, the proper way is not to consider each fact by itself, but put them all together, having a due regard to the admitted situation of the man—and, recollecting that, in the present view, you have no direct evidence of what took place in the room. And then I ask, whether, upon such slippery and doubtful circumstances, you could think it safe to pronounce a verdict of guilty? I apprehend that you could not. I have not alluded to the declarations. Upon these I shall say a word. In the *first* place, I apprehend that these declarations are of no manner of importance in a case like this, where, from obvious reasons, it is proved that the persons examined must have been desirous to conceal the state of the circumstances in which they were found. There were evident causes to induce them to do so, without supposing consciousness of murder; they have not admitted, but *denied* all accession to the murder. If they had admitted it, it would have been a different thing;—all that my friend gets from the declarations, is, that they had made a false representation of the circumstances; and, in a case like this, I submit that such contradictions are of very little importance.

It is at the sametime deserving of remark, that the pannel, Burke, has been brought to make no less than five declarations, relative to a variety of crimes, enough to perplex the wisest head, however innocent he might be; and if you find inconsistencies and contradictions in them, it is no more than might be expected, and really gives no aid at all to the evidence for proving the charge of murder. But leaving this also to the Jury, and allowing the prosecutor to take the facts altogether, the public prosecutor must be satisfied, that without the testimony of the accomplices to the direct fact, he has no case whatever for obtaining a conviction in such a case. There are even one or two circumstances which lead the other way: The supposition that Burke murdered the woman, and did every thing in his power to conceal it. But did he really pro-

ceed as a man would have done, who was conscious of such an act, and afraid of the least approach of any person by whom it might be detected? The first thing is, that at twelve o'clock at night, he, immediately after the woman was dead, went for a medical man,—a surgeon, to come to his house, and asked him to come to look at the body: so says Mr Paterson. He said that he had got a subject there, pointing to the place. Paterson did not see it, having immediately left the house. But, gentlemen, can any thing on the face of the earth be figured more unlikely, than that a man who was conscious of his having committed murder, was to go for a medical man,—a surgeon, to come to the house immediately, where the murder was committed, and ask him to look at the body? Whatever might be practicable at a latter period, the surgeon could then have discovered, with certainty, that the death was produced by violence, and seen the precise cause of it. Therefore, that fact, so far from being against the prisoner, is very much against the inference of guilt. We have another fact of the same kind: We are told that Gray was sent out of the house, in order that this murder might be accomplished. But it is distinctly proved by Gray, that Burke went for him next morning, and brought him to his house to breakfast, deliberately and intentionally, knowing that the body was lying in the house at the time. He voluntarily invites and calls upon these people to come into a situation where it was next to certain, that if a murder had been committed, it must be detected. This fact takes away all weight from the circumstance, that the Grays were sent out of the house the day before. They say there was some endeavour to conceal the body, throwing whisky about to prevent the smell, &c. I do not doubt it in the least. However, he does not seem to have been very anxious about that matter, for he desires the woman to put on potatoes, and she goes under the bed to search for them; and at last Burke goes out of the house, the Grays are left in the room by themselves, and then they immediately discover the body. The whole of that series of facts may be accounted for, on the supposition that he was merely taking advantage of circumstances to turn the death of the woman to a means of profit; and that the Grays being probably aware of his occupation, he was under no very great anxiety as to them. But you must suppose that the man was utterly bereft of reason, if, having committed a murder, and being desirous of concealing it, he acted in this manner. He just rushed wilfully into certain detection. It was by his own deliberate act, that these persons were called into his house, in order, as must be assumed, to see the state of it, and

examine every thing that had been done in it. This, at least, has little air of probability.

Gentlemen, before I come to the evidence upon which the prosecutor must at last rely, I must beg of you to observe, that there is still another fact, on which you must make up your minds,—besides death by violence; and that violence murder, before you find Burke guilty. You must be satisfied that *he* is the murderer. You have no evidence how the thing was done at all, if you lay aside Hare and his wife;—it was done within the walls of the house,—no one was present but the Hares, and the two prisoners, if they were both there at the time. But it may have been committed by Hare, without Burke having been concerned in it. Hare says that Burke committed it; but, for any thing that appears in the other evidence, it may have been committed by Hare himself, or any other person; and Burke may not even have been present. According to the evidence, it was half-past nine o'clock, or thereabout, when Hare and his wife, and M'Dougal, I believe, left Connoway's room, and went into Burke's. According to all the evidence, independent of Hare or his wife, the old woman went into Connoway's after. Burke was not there at the time. It is then found that he was away at Paterson's at ten o'clock. Now, gentlemen, you have not a grain of evidence of what took place with this woman from half-past nine o'clock, until you come to the period of twelve o'clock, when Mr Paterson came there. You have evidence of noise in the room;—but where is the evidence that Burke was there at all at that time, or, at any rate, before Alston heard the noise after eleven? It is not in evidence at all, except by Hare; for my friend is in a mistake, in saying that it was at eleven o'clock that the woman was last seen alive. We have no such evidence of that, except the Hares'. But suppose it to be true, that Burke came down thereafter he had been at Paterson's—still, even this is not conclusive. He was at Paterson's at ten o'clock; and though there is a supposition that he had passed in when the old woman left Connoway's, I cannot hold that to be proved. Then there is a considerable interval between the time that the parties went from Connoway's into Burke's house. Now, where is the evidence that this woman was not killed when he was out of the way at Paterson's? There is no evidence to prove that he was there at that time; it is left under that possibility, that she might have been murdered by Hare in the interval, and the subsequent quarrelling may have arisen from that very cause. It is very true, I do not know that this is the fact. I am not bound to prove the prisoner's innocence;—it is the duty of the prosecutor to fix guilt upon

him, so as to exclude every other supposition. Suppose I make another concession,—suppose Burke was in the room; the murder might have been committed by Hare, in various ways, not implicating Burke. It may have been done in the very riot and fighting which took place. She may have lost her life by sudden and unconcerted violence by Hare, for which Burke was not responsible. It might have been done in another plain way. They were all in a state of intoxication at the time; and it is possible that the thing might have been done at a time when he was not aware. He may even have been asleep, after all the riot was over. Thus, Gentlemen, on the whole matter, if you lay aside the testimony of the Hares, though there may be circumstances of strong suspicion, I submit to you, 1st, That there is no good legal evidence, even that the woman died by violence;—2dly, That there is no safe evidence of the murder, even if it were held to be proved that she died by violence;—3dly, That there is no satisfactory evidence that the murder, if assumed to have been committed, was the act of Burke, or was so committed, as to render him an accessory in the commission of it.

Gentlemen, I am now brought to the consideration of the important question, regarding the testimony of the accomplices. And the question is, whether you can give the smallest credit to these two witnesses? Gentlemen, upon principle, I shall submit to you, that though such witnesses are, in point of law, *admissible*, yet it belongs to the Jury to weigh their credit; and that, in such a case as this, they are entitled to no credit at all. What is it that this man Hare confesses? What is it that he states before you that he has been doing?—That which, if he speaks a word of truth, would infer that he has committed the most infamous crimes that you can suppose a man capable of. The law of the country, Gentlemen, as it now stands, is, that if that man uttered the same words at the bar, which he uttered in the witness' box, he would have stood convicted of the crime of murder, without even the intervention of a Jury. The mere uttering of the fact, would have been all that would have been required; and, on that confession being recorded, infamy would have attached to him, though he had been permitted to live; and no Jury could have been allowed to give him credit. In point of principle, then, I ask you where is the difference? Is he more credible, because he comes before you under the name of a witness, and confesses that he has committed this heinous crime? Upon the same confession at the bar, he would have stood convicted, with or without a Jury. Disability to give evidence must depend on principles of moral reasoning, on

which the individual is held not to be possessed of that sense of truth on which the credit of human testimony entirely rests. But how are these principles changed by the accidental circumstance of the crime, which stamps the infamy, and produces the disability, being *confessed before you* by the witness, instead of its being confessed or proved against him as a culprit at the bar. In every question as to the verity of such evidence, or the moral grounds of belief connected with it, the cases are the very same; and a Jury are entitled to say,—

‘ We will not convict any man upon such testimony;’ because this is not a person who has the ordinary principles of veracity; because even the law holds him, by the fact admitted, to be a person who is not to be bound by the common laws of truth, or the sanctions of an oath.

If, again, Gentlemen, you look to the specialties of the case, can you put the smallest faith in the testimony of this man Hare, and his wife? What is there to restrain them from telling the most deliberate series of falsehoods, for the purpose of fixing the guilt on the prisoners, and extricating themselves from the condition in which they stand? Here is a person who tells you, that for the paltry object of a few pounds, he was leagued with another to destroy his fellow creature; and when he is asked if he had ever committed other murders, *declines to answer the question*. This is the person that comes before you this day, and he comes, not with the motive of a few shillings or pounds, but the tremendous motive of saving himself from an ignominious death, which the law would inflict upon him if he did commit these horrible crimes. But he comes also with the hazard hanging over him, that, if he fails to support the statement which he had previously given,—the prosecutor has, at least, two other charges which may be brought against him, and perhaps more, for any thing that I know. But it is enough that he has this constraining motive, to throw this charge of murder upon these prisoners, to save himself from the death which he says he deserves. Where, then, is there any restraint upon him from passing on you the most false inventions? He comes here without one grain of principle, or moral feeling; he is not in a free state, but tied down to make out the case against the pannels, as the condition on which to save himself. Just change the position of the parties, and suppose that Mr Hare was at the bar, and Burke in the witness’ box. I do not know what case you might get from Burke or M’Dougal; but nothing could hinder them from making as clear a case against Hare and his wife, totally transposing the facts, and exhibiting the transaction as altogether the reverse of what Hare says it is. I, therefore, submit to you.

that from the confessed infamy, and total destitution of principle attaching to these witnesses, you can never consent to put a grain’s weight on their testimony. But, gentlemen, even if these witnesses were otherwise entitled to the smallest credit, surely it can only be under the condition, that the testimony which they have given, is free from contradiction, clear, straight forward, and consistent; and not testimony which is contradicted by itself, contradicted by the other accomplice, or contradicted by other and far better evidence in the case. Now, gentlemen, I will say, that I have seldom, if ever, heard two persons, in the situation of these witnesses, present to a Jury a greater mass of contradictions, inconsistencies, and plain falsehoods, as are to be found in their depositions. Gentlemen, I have made a list of some of those contradictions, and I will go over them. I do not know that I have taken them in the best order, but you will easily follow and recollect them with the aid of your notes:—You will remember that Brogan swears, that when he came into the house, at two or three in the morning, he lay down *by the fire* with *the two women*, and that Burke and Hare were in the bed. What says Hare to this? This veracious and correct witness is pressed upon it, and adheres to it, that *the two women were in bed*, and that Brogan was sleeping in the *back part of the bed*, behind his aunt, as he is pleased to call her; and the circumstance of Brogan’s being at the back of the bed, behind the women, is too remarkable, to admit of a supposition that there was any mistake in it. Now, when we ask Mrs Hare, she partly reverts to Brogan’s account, but differs from both. She says, that the women were on the floor, and one of the men was in bed, and the other in the chair. By the one party, both the women were in bed, and Brogan there;—by the other, the two men were in the bed, and the two women, with Brogan, on the floor;—and the third places the women on the floor, with Brogan and one of the men in the bed, and the other in the chair. There is contradiction for you! If they were capable of judgment, and in a situation to give evidence, it is impossible that mistake or misconception, to this extent could take place. Next, Hare says that the moment Burke got above the old woman on the floor, Mrs Hare and M’Dougal *escaped out of the bed*, where they had been. That is flatly contradicted by Mrs Hare. She says she was *not* in the bed,—she was standing by the door,—and that she did not get out of the bed at all. Then Hare says, that at the time this scene was transacted, he was sitting quietly on the chair. What says Mrs Hare? That he is standing by the dresser, at the time she went out of the room with M’Dougal. Now,

this is a very important part of the matter, as you will presently see. Hare swears, that Docherty was so drunk that she could scarcely stand; and that, when she was on the ground, she attempted to rise, and was unable to accomplish it. Mrs. Hare will scarcely acknowledge that she was the worse of liquor at all. Here I beg to put to you this alternative:—I will take either of these suppositions for a moment;—either that she was so extremely drunk, as Hare says, or not. If she was in the state of intoxication described by Hare, then the consequence described by the medical gentlemen might naturally follow;—but if she was not in a state of intoxication, and yet fell to the ground, and was unable to rise, though she attempted it, and nobody prevented her; why, then, is not the consequence inevitable, that she must have suffered from a fall of a very serious nature, which may have produced death as the consequence. Indeed, according to all the evidence they have produced, whether she fell, or was pushed or knocked down, she never arose from the spot where she fell. She was drunk, or she was not drunk; and, in either case, it leaves room for a natural explanation. Then we come to another most important contradiction between them. Hare tells you,—and it is a statement by far too cunning and too clearly betraying the object, to allow of the supposition that he said so carelessly,—that the old woman ran into the passage, and called out murder; while the fighting was going on. What says Mrs. Hare to that? She says that the old woman was never out of the room at all. She says that the door was never opened. Here there is a direct contradiction in a most important fact of the case. But, gentlemen, this carries forward to another still more important; for Hare said that the prisoner *M. Dougal* went twice into the passage, and brought back the old woman, when she was crying murder. If you believe Mrs. Hare, this is a downright falsehood; for the question was put plainly to her; and she swears, in the first place, that the old woman never was in the passage; and, in the next place, most pointedly, that *M. Dougal* never brought her back. What are you to make of such evidence? You must be asked to believe either the one or the other. But I think your answer must be, that you will believe neither. Then we went on, during the whole day, gentlemen, in the proof of the fight between Burke and Hare, which is supposed to have begun the riot, which terminated between eleven and twelve, according to the account given by Mr. Alston; and they were all quiet in this room afterwards, with the exception of the coming in of Paterson quietly. So, at least, Mr. Hare tells us. But when we come to Mrs. Hare, we

find that there is a second fight, later in the night; that the two men fought a second time, and were stopped with great difficulty. But, gentlemen, how does this tally with the evidence of Hare otherwise? He tells you that after Paterson had been there, he lay down in the bed, and he lay there constantly; and at last fell asleep, and *did not awake till seven or eight in the morning*. Not a word of this second fight; he was in a quiet sound sleep during the whole time. Therefore, gentlemen, you see you can place no reliance either on the one or the other of these witnesses. You will next find, that there is a most important statement made by Hare, that the old woman was brought into Burke's house so early as nine o'clock on Friday morning. It is in evidence, if any thing can be relied on, that that is not true; for it appears by Connaway and Lawrie, both of whom concur precisely in stating it, that the first appearance of the old woman in the house, or in any place near it, was about two o'clock of the day; at which time Mrs. Connaway says that she was sitting by her fireside, and saw Burke followed by an elderly woman whom she never saw before, go past into his house. Mrs. Lawrie was sitting with her, and precisely concurs in that statement. Gentlemen, it is not without importance, because you will recollect, that by Hare's testimony, he pretends that he was sent in the *fore part of the day* to see how things were going on; and when they call three o'clock the *afternoon*, we must understand the early part of the day to be before twelve. But he tells you that he was there about eleven o'clock; that Burke sent him down to see if the old woman was there; that is quite clear. But all this is contradicted by good testimony, which there is no resisting. Gentlemen, I come now to a state of facts which I hold to be of the very utmost importance in this case; and that is what is given in the testimony of Mr. Alston, compared with the statement of Hare and his wife. Look to Mr. Alston, and see whether he confirms their testimony in material points, or whether he does not contradict it most essentially. It will be admitted that such testimony is of no value, if it be not confirmed. Now Alston says that he heard the cries of murder, by a very strong female voice. Hare expressly swears that the old woman went into the passage and called murder, and that no one else ever called murder:—that is the first point. Mrs. Hare says, that there was no call of murder, except within the room. Now, in the first place, Mr. Alston is positive that that cry of murder, and the knocking on the door, came from the passage, and that the knocking was on the outer door of the passage; that he tried afterwards, and found that it could not have come from the inner

room, but must have come from the passage. Is not this a most material point? Mr Alston expressly swears that the cry of murder was made by a voice *totally different* from that from which the *moaning or choking* noise proceeded; and the voice was *extremely strong* for the voice of a woman. This being the case, the cry of murder must have been made by some one else, if Alston is to be believed; and of that, I suppose, you entertain no doubt; it must have been by some other person than the individual suffering. If you are to put the least faith in Alston's statement, he first heard the noise of fighting, and cries of murder, and the knocking on the door; and it was in the midst of this, that he heard the choking sound. Look at Mr Alston's testimony, and you will find that it is so; and as he heard the cries of murder before this sound, so also he swears particularly, that he heard the cry of murder *after this sound*; which, if it has any weight or bearing, must be supposed to have been the sound of the dying woman. It is therefore impossible that the cries of murder to which Alston speaks, could have come from her, for the sound of the voice was peculiarly strong for a woman. The thing is absolutely and morally impossible. But gentlemen, even this is not all; Mrs Hare says she went into the passage with McDougal; that she is quite positive that there was *no knocking on the door by any person whatever*. Now, if there is a grain of truth in Mr Alston's statement that touches the present case, it is, that he heard rioting, and the choking sound; and, at that very time, there was a person calling murder in the passage, and beating violently on the outer door. Is Mrs Hare then a credible witness? If you believe Mr Alston, there is complete contradiction, both of her and her husband, in the most important points; and not only so, but it is such contradiction as to be absolutely fatal to the whole testimony, and destroy the whole connection of the story. The account that Hare gives, is, that there was a fight between the men,—that the women tried to separate them,—that the old woman called out murder, and then attempted to separate them,—and was pushed over,—and then all was quiet;—for Hare says expressly, that after he was thrown on the bed the second time, and before Burke had got above the old woman, the fray ceased; he was perfectly quiet, he was sitting quietly in the chair, and he tells you, at last, he did not utter a word,—all was quietness in that moment, and there was no call of murder, no moaning, no going into the passage, and no knocking upon the door. Mrs Hare again gives a different account of it; only clenching the matter with this, that she places herself in the passage during the time the murder was going on, and then asserts there is no call of

murder, and no knocking. But Mr Alston's account is perfectly at variance with all this,—he went down,—the woman came into the passage, called murder repeatedly, and police, and beat violently upon the door; and, while that is going on, he heard the choking sound, which, he thinks, might have proceeded from the old woman dying; but the noise does not terminate for a very considerable time afterwards; for you remember, that after Mr Alston heard that, which he thought enough for rendering it necessary for him to do something, he left the door, and went up the street in search of the police; and thinking, after he was in the street, that the quarrelling and noise had abated, he went down again, and then found all quiet. Now, gentlemen, this statement, taken altogether, so far from coinciding with the account which the Hares give, is utterly destructive of it; and shews, that whatever may be the truth of the case, their story is a tissue of inventions; and whatever account is to be given of the manner of the old woman's death, you have not got it from these witnesses. When you have witnesses so situated, bringing infamy with them wherever they come, and find them involved in such numerous and palpable contradictions, I ask, can you put the smallest faith in one word that they have said? I humbly conceive that you will not; for you can scarcely find one single material fact asserted by the one, which is not contradicted by the other. And yet this is the evidence on which the case rests. It is very true, that these infamous witnesses agree in one single point. They have invented a story, and a method of the murder, which they impute to the pannels in this case,—in that they agree, but in nothing else. This is exactly where a combination of false witnesses will in all cases concur; and the falsehood of their testimony is to be detected, by the flat contradiction in the material connecting circumstances. In the present case, it is to be discovered, not in one instance, but in many essential points throughout their testimony: Their concurrence in the general assertion, and their subsequent contradiction in all material particulars, shews the way in which they are connected in a false story, and the impossibility of holding to it. Gentlemen, there is still another positive contradiction:—Hare says he got no money from the assistant of Knox. Is it not proved by Paterson that he did? But not only so. Does not Paterson swear that Hare as frequently acted as principal as Burke did? and he (Paterson) divided the money, to prevent disputes. Surely you will believe the testimony of Paterson, in opposition to that of this man Hare.

Gentlemen, I have very nearly done, and will relieve you in a few minutes. I come to the result. Perhaps it may be ima-

gined, that because this woman has lost her life, and there is no clear account of the manner of her death, it may, therefore, be unavoidable, to hold Burke guilty of the murder; as being the most probable account of it. But, gentlemen, I apprehend, that this would be no safe rule of judgment. The case may not be explained. It may be left in mystery; and yet there may not be ground for legal conviction. You must have credible legal evidence, such as to leave no reasonable or fair doubts of the pannel's guilt. I don't say, gentlemen, that it is to be pushed so far, as to exclude every mere possibility; but you must have such evidence, as to leave no reasonable doubt of the guilt of this man. But there is no difficulty, in any view, of accounting for all that appears. What, if that ruffian, who comes before you, according to his own account, with his hands steeped in the blood of his fellow creatures, breathing nothing but death and slaughter;—What if that cold-blooded, acknowledged villain, should have determined to consummate his villainy, by making the prisoners at the bar the last victims to his selfishness and cruelty? What is there to restrain him? Do you think that he is incapable of it? It is impossible for any man that heard the trial to think so; and if so, what difficulty is there in accounting for the whole matter? The murder might have been committed by him; and all the means prepared by him, for exhibiting the appearance of circumstances to prove it against Burke. It will not do to say that this is a case of proof by circumstances; and, therefore, any probability, or any suspicion, is enough. True it is, you must determine on the weight and conclusiveness of a proof by circumstances. But it is still by evidence, and not by mere conjectures, suspicions, or probabilities; that your judgment can be guided. You must have legal evidence in this, as well as in all other cases, that the crime was committed, and that the prisoner was the person who committed it. Gentlemen, if it were otherwise, what would the condition of any man in this country be? If a man's life, or liberty, or character, were to hang on the breath of such witnesses as Hare and his wife, what security could any man have for his existence in society for a single hour? It is the easiest thing possible for such a base villain to destroy the life, or the condition, or the happiness of any man.

The principles and rules of evidence, are among the most sacred rights of the people of this country: They have been much insisted on by all the best lawyers and judges, who have had to deal with such trials;—and any violation of them, under the influence of feeling, would break down the securities under which we all live in safety. I trust, therefore, that in

this case you will do your duty to your country, and to the prisoner; and that, without clear legal evidence of his guilt, you will not convict him of the dreadful crime with which he is charged.

Mr HENRY COCKBURN.—My Lord Justice-Clerk.—Gentlemen of the Jury.—I have the honour to address you solely as counsel for the female prisoner; and considering the hour, I will not hasten, but hurry over, the facts and the views upon which I feel the firmest conviction that you can pronounce no verdict, so far as she is concerned, but one that will declare that the charge against her has not been proven. In stating these facts and views, I shall assume, (though in the face of the admirable address which you have just heard, I cannot admit),—1st, That there was a murder committed; and, 2dly, That it was committed by the prisoner, Burke. Still I maintain, that there is not sufficient credible evidence to convict this woman. And if you knew how to interpret the pleadings of counsel as well as we do, you would have seen perfectly well, that the Lord Advocate himself feels that there is a most material difference between the cases of the two pannels.

It is not alleged that this woman was a direct actor in the murder. The case is only attempted to be made out against her, by saying that she was what our law terms *art and part* of it; which, in this case means, that she had such accession to it, before and after the fact, that the legal guilt of it was truly hers as well as his. This makes it absolutely necessary that we should have some idea of the nature of that accession which will involve one, who is not a direct actor, in the guilt of the primary offence; and, on this subject, I am glad that I can instruct you in much clearer and more authoritative language than any that I could employ of my own. First, as to the case of accession before the fact, Mr Baron Hume says, page 271 of his first volume,—That if the assistance is indirect only, and remote; this, though accompanied with the knowledge in general, of the actor's malice and evil design, is not a warrantable ground of conviction. Put the case, that John reveals to James his purpose of revenge against a certain person, their common enemy, who resides at a distance; and that James lends him a horse for the journey, or furnishes him with money at his request, to carry him to that quarter of the country. Some weeks after, James is informed that the person in question has fallen; but as for the manner and circumstances of his death, these he only learns through common fame, after the thing is done. Though

highly blameable in the part he has taken, he is not however punishable capitally, as art and part of the murder. Then, with respect to accession *after* the fact, he says, (page 277), *to assist in concealing the dead body; to harbour the actors, and help them to escape; to rescue them from the Officers of Justice; to bear false witness for them on their trial; or to persuade others to do so, or to suppress their testimony against them.* All these are, doubtless, immoral, and criminal acts, and may naturally give rise to a suspicion against those who so far forget their duty, of a deeper concern in the deed, but they are no part of the history of this murder. Nay, they do not even necessarily infer an approbation of it, since they may be done out of affection only, or compassion for the actors, to relieve them of the consequences of that which cannot now be remedied or undone.

These principles are illustrated by a case reported by Burnett, (p. 270), which, in some particulars, bears a remarkable resemblance to this one. — A woman became the mother of an illegitimate child. A man of the name of Smith offered this child to Taylor, a medical student, for dissection. Taylor agreed to take it, and went to a garden to get it. On coming there, it was found that the child was not dead. On this, Smith, in Taylor's presence, killed the child, which Taylor then took away, and concealed, and refused to give any account of. He and Smith were tried for the murder. Smith was convicted; but Taylor was acquitted, on the ground that *presence, taking away the body — and concealing it, were not sufficient acts of accession to justify a conviction for murder, — even though these acts were apparently committed by the person from whom the reward of the murder was to proceed.* This was in 1804, and the learned author seems to approve of what the Jury did.

Now, what is the history of this woman's connection with this crime? The general features of it are not disputed. Both of the prisoners state, in their declarations, that they were *never married*; — by which they plainly mean, that no regular marriage ceremony was ever performed between them. But the relation of husband and wife may be contracted by the law of Scotland, without this, — by merely living together as married persons; and, it is clearly proved, that these two have been living in this manner for nearly ten years; nor has there been any attempt to prove the existence of any legal impediment to their being thus married, by conjugal cohabitation. In all probability, therefore, they are married; though none of them may know it. But, at any rate, in a moral sense, she was as completely under his influence, as any wife could be to any husband: Great allowance, therefore, must be made in judging

of her conduct, from the controul which he may have exercised over her; and for the interest which she may naturally, and most properly, have had, in concealing her husband's crimes. For it is impossible to shut one's eyes to the fact, that this husband was a professional resurrectionist. His trade consisted in supplying anatomical teachers with subjects; a trade which, when conducted properly, is not only lawful, but absolutely necessary. The remains of mortality form the materials of that science, by which the sufferings of mortality are to be alleviated, or its date prolonged. But however necessary this employment may be, there can be no doubt that it is one which necessarily corrupts those who are engaged in it. It is shocking in itself; — it is generally conducted in violation of law; and it must always be conducted by a disregard of the most sacred and reverential feelings of our nature. So that, in judging of her delinquency, she is fairly entitled to have her proceedings weighed in reference to the situation in which she acted. She was the wife of a person who had a professional connection with dead bodies, and with whom no woman could live, without seeing many things, which are better imagined than told. A thousand circumstances may concur in the life of such a woman, even where she is perfectly innocent, any one of which would be fatal to the idea of innocence in an ordinary case.

Under this man's roof a murder is committed. But, in the first place, it is not even alleged, that the woman was directly guilty of any part of the violence used. It is not asserted that she ever touched the old woman, or instigated anybody else to touch her. In the next place, it is proved that she fled from the place where the murder was perpetrated. She and Mrs Hare both left the room, — both alarmed; and Mrs Hare described herself as *powerless*. They never returned till the body was disposed of. I should hold, gentlemen, that in the case of a wife, this refusal to be present at the commission of the crime, was nearly enough of itself, — not to make her innocent, — but to save her from the consequences of murder. But Mr Dougal did more. It was proved by Mr Alston, a most respectable and accurate witness, that he heard a person striking on the outer door, and calling out, with a female voice, *Police — Murder*. He was quite positive that this was done by a female. Now, who could this possibly be, except the prisoner? It certainly was not the old woman, because Alston swore that when these cries were uttering, he, at the same moment, heard her dying sounds; which he described as the stifled moans of an animal suffocating. He was positive that these two sounds were heard at the same time.

This excludes the possibility of the cries of alarm having proceeded from the woman who was killed;—and they certainly did not proceed from Mrs Hare, because that witness did not pretend that they did. There was nobody, therefore, from whom they could have possibly proceeded, except from M'Dougal, who was the only other woman there.

Now, if you believe these facts,—and unless you believe them, the prosecutor has no case, for they are proved by his own best witnesses,—I apprehend that the accession of this woman is infinitely too slight to warrant her being treated as guilty of the principal offence. She was in the house,—because it was her husband's. She was silent after the crime was done,—because even Mrs Hare told you, that she did not think it was natural to expect that a wife would betray her husband. But as soon as she saw what was going to be done, she fled in horror, and gave all the alarm that she could.

In this situation, let us see what it is that the prosecutor relies upon. And let us, in the first place, consider what sort of a case is made out against her, independently of the testimony of the two accomplices. This will enable us to see distinctly how much of the prosecutor's case depends principally, or entirely, upon that most suspicious evidence. It will be found, if I am not much mistaken, that there is no case whatever against the prisoner, except what resolves, ultimately, into the testimony of these accomplices; and, if this be true, her conviction is impossible.

Instead of going through the proof in detail, it will be equally fair, and much shorter, to select the principal circumstances, on which the prosecutor seems to rely, and to consider what they amount to. So far as I have been able to discover, they seem to consist merely of the following particulars:—

After the old woman was in the house, M'Dougal told Mrs Connaway to look after her, as there was nobody else in the house, and she might go out. The prosecutor seems to consider this as a proof, that she was aware of what was intended to be done in the evening, and wished to prevent the victim from escaping. It rather seems to me, that her speaking to Mrs Connaway at all upon the subject, is a proof that she was then ignorant of her husband's designs;—and seeing that he had brought a stranger and a beggar to the house, I cannot perceive any thing of the slightest consequence, in her telling a neighbour when she herself was gone out, to look after the house.

It was next urged, that after the crime had been committed, the prisoner gave a false account of the transaction. Two examples of this have been specially founded upon. The import

of one of them is, that she accounted for the old woman next morning, by saying that she had got troublesome during the night, and had been kicked out of the house. The import of the other is, that she accounted for certain appearances, to Mr Fisher, the Lieutenant of Police, by saying, that a woman had lain in in the room; that the old woman was still to be seen,—and had apologized in the Vennel, for her misconduct during the night. I have no doubt whatever, that the whole of these statements are false. I admit that they were mere inventions,—fallen upon to conceal the crime. But this is not only their explanation, but their defence. She was aware of the suspected, or the guilty, trade which her husband was engaged in; and I have not a doubt that she was obliged to resort to similar deceptions every week. It was her misfortune to live in a situation in which, even when there was no idea of any thing like murder, she was habitually obliged to make false statements, to account for the possession of dead bodies, or to avoid the suspicion of having them. And, allowing that these falsehoods were invented in consequence of her knowing that the murder in question had been committed, they amount to nothing more, than that the deed being done, she concealed it;—a proceeding which might afford strong evidence against any body else, but which affords nothing conclusive against a near relation. It may be wrong;—but where is the son who would not conceal the guilt of his father? And, of all relations, how can it be expected that the wife, whose interest, as well as her affections, are involved in his, is, merely for the sake of justice, to become the betrayer of her husband?

Then, it has been held out as decisive against her, that when Mrs Gray mentioned the discovery of the body to her, she offered her money to be silent, and that her concealment would be worth £10 a-week to them; adding passionately, 'My God, how could I help it?' Her scene with Mr Gray, though founded upon separately by the prosecutor, was exactly of the same kind. She fell upon her knees to him, and implored him not to interfere. Now, in the first place, though the body had been found by this time, it had not been ascertained to have been murdered; and there is not one thing that she did, or one word that she spoke, which might not have happened exactly as it did, if a body, though innocently come by, had been found in the house. She would have been equally injured in her circumstances, and equally urgent against publicity, although nothing could have been said against her, except that there was a subject under her roof. But, in the next place, assuming that these were the expressions of a person conscious that a murder had been committed, and in horror

for its disclosure, they are accounted for by the observation which I have already so often been obliged to make, about the natural tendency which she had to hide the delinquency of her husband. Does it go far to implicate a wife in a crime committed by her husband, that she offers money for its concealment, or, on her knees, implores a probable discoverer to be silent?

The prosecutor was farther at the pains to call your attention to the fact, that next night she followed the men to Newington. I cannot think it worth while to detain you for a moment on a thing so utterly frivolous. Mrs. Hare, who went there also, says that they went there lest the men should fall a fighting again. But whether this reason was the true one or not, it is utterly absurd to set up this circumstance as of the slightest importance either way. If the prisoner had no accession to what was done on the first night, it is not worth while inquiring what she did towards the disposal of the body the night after.

I believe, gentlemen, that if you will ransack both your notes and your memories, you will find no material circumstances, independently of those mentioned by the accomplices, against the female prisoner. Before coming to the testimony of the accomplices, I should wish you to ask yourselves, whether these circumstances form sufficient evidence against her? I apprehend that they not only don't form sufficient evidence, but that they form absolutely no evidence at all. I don't see one circumstance which might not have been expected to occur, although it were certain that this woman was quite innocent of all accession to the murder, in consequence of the two facts, that she was in the situation of wife to a person whose trade she could not disclose, and whose crimes she was tempted, and perhaps bound, to conceal. Accordingly, the prosecutor concurs with us in thinking, that without the accomplices, he has no case. His Lordship has pretended, indeed, to argue otherwise. But his own conduct establishes what his real conviction is. It is always the duty of the public prosecutor to bring the guilty to trial when he can. He has no right to take culprits from the bar, and place them in the box unnecessarily; and, therefore, the very fact that an accomplice has been made a witness, is a proof that, in the opinion of the public accuser, he could not do without them. If the prosecutor's statement be true, these two accomplices were the property of the gibbet. Why, then, has justice been robbed of their lives? Because the Lord Advocate tells you, that their being made witnesses, was a necessary sacrifice.

Both of the parties, then, are agreed, that you cannot convict here, except upon the testimony of these associates. Now, in so far as M'Dougal is concerned, this brings the matter to a very simple and intelligible issue. I hold these witnesses, who are thus represented to you, by the public prosecutor, as absolutely indispensable, to be not only unworthy of credit, but I hold them to be so abominable, that the necessity of claiming credit for them, pollutes all the other evidence in the case. I shall explain immediately what I mean by this. But, in the meantime, let every word that they say be assumed to be true. This assumption may be fatal to the other prisoner, because they say that he committed the murder with his own hands. But what is the import of their evidence, holding it all to be correct, against M'Dougal? The prosecutor himself has only been able to select two circumstances in their testimony, as decisive against her.

The first of these is, that in the forenoon she talked of her husband having got a shot in the house for the doctors. The Hares explain that they understood by this phrase, that a person was secured to be murdered for dissection. Now, although nothing can be more atrocious than this, I don't hesitate going up to it fearlessly, and without flinching; and, I maintain, that it proves nothing, except that she was aware of the intention to commit murder, and that she did not disclose it; and that this, however guilty it may make her, does not render her to be convicted as accessory of that murder. To know of an intended murder and to conceal it, is not, in law, equivalent to being the murderer by accession. I have read you authoritative statements to this effect, from our most learned and practical criminal lawyers, and although there had been no authority on the subject, I should submit with confidence to any Jury,—who are always the judges of the degree of accession that is necessary,—that the failure, by a very near relation, to disclose an intended crime, is not much worse than its concealment by that relation after it is committed. Although, therefore, there be something inconceivably horrid in the very existence of such a phrase,—you are not to be misled by that circumstance; which, unquestionably, does not place this woman in a worse condition than she would have been in, if she had admitted in her declaration, that she knew what was to be done that night. Such an admission, whatever effect it might have had as a part of a circumstantial case, certainly would not, of itself, have involved her, legally, in all the consequences of that which she was aware of, and did not reveal.

The other circumstance is,—that when the crime was about to be actually perpetrated, she did not interfere to prevent it.

What I have just been saying, disposes of this circumstance also. If she could conceal her knowledge of the crime, without being thereby guilty of it; of course, she is equally free of this guilt, although she did not interfere to obstruct it. But the true answer to this circumstance is, that, in point of fact, she did interfere. She not only fled, but gave that alarm which was mentioned by Alston; and which I defy you to account for, except on the supposition that it proceeded from her.

This is all that is sworn to against her, even by the Hares. So that, assuming the whole of the prosecutor's evidence to be credible, the sum and substance of her guilt is, that she first knew of the crime and did not disclose it; and that then, after it was perpetrated, in spite of all that she could do, she not only denied it, but invented false stories to hide it. The knowledge of it before-hand, and the concealment of it afterwards, constitutes the whole of her guilt in this matter. That that guilt is great, cannot be denied. Morally, perhaps, it is equal to murder;—in law, it is certainly not much beneath it. But still it is beneath it.

But really, gentlemen, we give the prosecutor a most unnecessary and unjust advantage, when we talk of the credibility of these his necessary witnesses; and allow them to work up every circumstance according to their own pleasure. I cannot form the idea of any Jury's being satisfied with less evidence than what the accuser thinks indispensable. Our learned friend who prosecutes here, has demonstrated by his conduct, that he is satisfied that you ought not to convict without the evidence of the associates; and thus we are absolutely driven to consider what credit is due to those witnesses; if you shall agree with me in thinking that it is an absolute sporting with men's lives; and converting evidences into a mockery, to give the slightest faith to anything that these persons may say, then we have the authority of *the public accuser himself*, for holding that you must acquit. Now, how what does these witnesses claim to credit rest? One of them is a professional body-snatcher; the other is his wife. So that, independently altogether of the present transaction, they come before you confessedly vitiated by the habits of the most disgusting and corrupting employment which it is possible to be engaged in; and one, of which the chief corruption arises from its implying, that he who practises it, has long been accustomed to set law, feeling, and character at defiance. Then they both confess their direct accession to this particular murder; a confession, which, if it had been made at the bar, would have forever disqualified them from giving evidence in any Court of

Justice. Not having been made at the bar, they are admissible. But since they have made the very same confession in the witness' box, their credit is as completely destroyed in the one case, as it would have been in the other. Hare, not only acknowledged his participation in this offence, but he admitted circumstances which aggravated even the guilt of murder. He confessed that he had sat coolly within a few feet of the body of this wretched woman, while she was expiring under the slow and brutal suffering to which his associate was subjecting her. He sat there, according to his own account, for about ten minutes, during which her dying agonies lasted, without raising a hand or a cry to save her. We who only hear this told, shudder; and yet we are asked to believe the man who could sit by and see it. Nor was this the only scene of the kind in which they had been engaged. The woman acknowledged that she had seen other tricks of this kind before this. The man was asked about his accession to similar crimes on other occasions; but, at every question, he availed himself of his privilege, and virtually confessed, by declining to answer.

I know very well, that in spite of all this, they are admissible witnesses. But *why* does the law admit them? Why, just because, after they are admitted, it is the province of you, Gentlemen, to determine how far they are to be believed. You are the absolute monarchs of their credibility. But, in judging of this, do not be misled by what Juries are always told of those who turn king's evidence,—that they have no interest in it, but to speak the truth. In one sense, no man has any interest but to speak the truth. But it is notorious, that there is nobody by whom this is so universally forgotten, as by those who make a bargain for saving themselves, by betraying their associates. These persons, almost invariably hurt the interests of their new master, by the excess of their zeal in his service. They exaggerate every thing;—partly from the desire of vindicating themselves, and partly to merit the reward for which they have bargained. And you will observe, that in this case, these persons stand in this peculiar situation, that so far as we know, they are still liable to be tried for similar offences. There are other two murders set forth in this very indictment; one of them committed in Hare's house; and if we may judge from what these persons say, they have been engaged in other transactions of the same kind. They came from the jail to this place to-day, and they are in jail again. Do you think it is very improbable, that when coming here, they should feel, that if this prosecution failed, public indignation would require another victim; and that nothing was so likely

to stifle further inquiry as the conviction of these prisoners? The worst feature, perhaps, of their evidence is, that it is necessarily given under the feeling of this *subsisting* interest. The prosecutor seemed to think that they gave their evidence in a credible manner, and that there was nothing in their appearance beyond what may be expected in that of any great criminal, to impair the probability of their story. I entirely differ from this; and I am perfectly satisfied that so do you. A couple of such witnesses, in point of mere external manner and appearance, never did my eyes behold. Hare was a squalid wretch,—on whom the habits of his disgusting trade, want, and profligacy, seem to have been long operating, in order to produce a monster, whose will, as well as his poverty, will consent to the perpetration of the direst crimes. The Lord Advocate's back was to the woman, else he would not have professed to have seen nothing revolting in her appearance. I never saw a face in which the lines of profligacy were more distinctly marked. Even the miserable child in her arms,—instead of casting one ray of maternal softness into her countenance,—seemed, at every attack, to fire her with intenser anger and impatience; till at last the infant was plainly used merely as an instrument for delaying or evading whatever question it was inconvenient for her to answer.

It is said that they are corroborated. Corroborated! These witnesses corroborated!—In the *first* place, I do not understand how such witnesses admit of being corroborated. If the prosecutor has a case without them, let him say so. But if he has not,—if something material must depend upon these witnesses, it is in vain to talk of corroboration; because, in truth, the thing to be corroborated does not exist. You may corroborate a *doubtful* testimony; but the idea of confirming the lies of these miscreants, is absurd. The only way to deal with them, is to deduct their testimony altogether. It is like corroborating a dream. The fiction and the reality may possibly be both alike; but this accidental concurrence does not make the one stronger than the other. But, in the *next* place, instead of being corroborated, there probably never was a case where suspicious evidence had the death-blow given to it by so many palpable contradictions. I won't attempt to go over these; because I will not impair the force of that most admirable analysis of the evidence which was given by my learned friend, the Dean. He collected—and contrasted—the various particulars in which Hare and his wife contradicted each other, and in which both were contradicted by all the credible evidence in the case. If

* The child was very ill of hooping-cough.

you, Gentlemen, can get the better of that fair and powerful contrast, you will do more than I can, and may convict;—if not you cannot. My impression is, that these witnesses—who confessedly need corroboration—have not only not obtained it, but have been met by inconsistencies, sufficient to have cast doubts on testimony otherwise pure. But the simple and rational view for a Jury to take, is, that these indispensable witnesses are deserving of *no* faith in any case; and that the idea is shocking of believing them, to the effect of convicting in a case that is capital. The prosecutor talks of their being sworn! What is perjury to a murderer!—The breaking of an oath to him who has broken into the bloody house of life!

His Lordship's last appeal is to the prisoners' declarations. As usual with our public prosecutor, he has studiously gone through these parts of the proceedings, and has culled every statement, and every word, which could be made to bear against the accused; and concludes, that so much falsehood could not have been reared by any innocent man against himself. I have not the slightest doubt that all this was most fairly done, and I only differ from his Lordship as to the result. These miserable declarations are always the last refuge of the prosecutor in a doubtful case; insomuch, that whenever Juries see that they are much relied upon, they may, from that one fact, be perfectly certain that the accuser is uneasy about his other evidence. You are aware what a declaration is. A person accused is taken, generally under all the agitation created by the first suspicion, into a room, where he finds a Magistrate, and a prosecutor, and two Sheriff's-officers, for witnesses; and there, deprived of all assistance or advice, he is asked to account for every circumstance, whether real or supposed, which seems to render his conduct suspicious. Happy is he if this operation be repeated only once,—twice,—or even thrice. He is liable to have it renewed day after day,—*even after his committal for trial* till his declarations, as here, may amount to five or six; and all this matter is accumulated against him, for the day of trial, when it is critically examined, and brought elaborately forward to fill up all the chinks of all the rest of the evidence. I assume every thing to be quite fair on the part of the Magistrates and of the accuser. I know that the man is always warned not to criminate himself; and I know that he need not answer unless he likes; but I also know, that if he does not answer, his very silence is invariably construed against him; and that, although truth is always the safest course, it is one of which the safety is not always seen, even by innocent men. There is an irresistible temptation to account for present ap-

pearances, which makes either silence or truth extremely rare. A man of great firmness, or of great experience in such scenes, may have sense to hold his tongue, or courage to speak the truth, the whole truth, and nothing but the truth;—but a man of any weakness, or who sees that he has been caught in ugly circumstances, and who, from his very consciousness of innocence, is naturally burning for immediate liberation, has recourse, almost to a certainty, to any statement, whether true or false, which seems to be convenient at the moment. He thinks of nothing but the present instant, and never dreams of the curious web that is to be weaved round him, out of his own declarations, at his trial. Whether this accounts for the fact or not, I cannot say; but I hold it to be an unquestionable fact, that the declarations of the innocent are very nearly as false as those of the guilty. I have no doubt, therefore, although I must confess, that I have not been at the pains to study them,—that the declarations in this case are crammed with inaccuracies, and probably with lies. You, of course, will give what effect to this you think proper; but I submit to you, that there never was a case in which the circumstance was of less weight. Declarations are great favourites with accusers; but I have long observed a growing disregard of them on the part of Juries; and they are particularly useless in any question like this, where the maker of them, though he may be innocent of the crime for which he is tried, was unquestionably guilty of other crimes which made truth equally inconvenient.

I have only, in conclusion, one other word to say to you on a subject which has been often alluded to from all quarters, in the course of this long and singular investigation. Every body admits that there never was a case tried, in which the prisoners are more likely to suffer from prejudice. Their traffic was revolting, even when conducted lawfully. When conducted under the suspicion of its being accompanied by theft or murder, it is scarcely possible to get the mind, even of a Jury, subdued to the cool consideration of the legal evidence. In addition to all this, this question has formed the subject of universal conversation; and the whole story, and even the pretended evidence, have been fully discussed in the public prints. The result of this is, that there is probably not one of you, Gentlemen, who came into Court to-day, without a strong impression against the prisoners. You have been so powerfully warned against mistaking this impression for that conviction arising from the evidence, on which alone you ought to decide, that I shall only make one other observation on the subject: It is, that the law supplies you with a clear rule for your guidance, in all such cases. The prosecutor is bound to

prove his case; and if he fails, no matter from what the failure may proceed,—the prisoner is entitled to an acquittal. Nay, more, if there be a doubt,—I mean a rational doubt,—the prisoner is entitled to the benefit even of this.

Can it possibly be said, that there is no rational doubt in this case? So far from it, that I am perfectly satisfied, that if McDougal had been under trial for an ordinary murder, of which the public had taken no particular charge, no prosecutor would have seriously asked for a verdict against her upon this proof. But what she is endangered by, is, the cry of the public for a victim. I need scarcely remind you, that this is a cry to which you, who are set apart from the prejudices of the public, and are sworn to look to the legal evidence alone, must be completely deaf. Let the public rage as it pleases. It is the duty, and the glory, of Juries, always to hold the balance the more steadily, the more that the storm of prejudice is up. The time will come when these prejudices will die away. In that hour, you will have to recollect whether you this day yielded to them or not;—a question which you cannot answer to the satisfaction of your own minds, unless you can then recall, or at least, are certain that you now feel, legal grounds for convicting this woman, after deducting all the evidence of the Hares; and all your extrajudicial impressions. If you have such evidence,—convict her. If you have not,—your safest course is to find that the libel is not proven.

The Lord Justice-Clerk charged the Jury.—His Lordship began his address, by stating, that it afforded him, as well as his brethren on the Bench, the greatest satisfaction, to think, that in a case of so peculiar a nature, and involving, as it did, the life or death of the prisoners, their defence had been conducted by the most eminent counsel at the Bar, and with a zeal and consummate ability which, in all his Lordship's experience, he had never seen surpassed.

His Lordship next expressed himself perfectly confident, that in determining on the evidence laid before them, the Jury would divest their minds of every thing they might have read or heard, having the slightest tendency to excite a prejudice against the prisoners at the Bar. The fate of these persons fell to be determined by the evidence which had been led since the Jury were placed in the box, without regarding, and laying aside altogether, the statements or discussions that might have previously met their eye. The case, too, was to be viewed entirely apart from any of the popular prejudices or notions that were afloat; and the evidence examined and weighed, as scrupulous-

ly and strictly, as if the crime charged were one unattended with the extraordinary circumstances which had excited so intense an interest in all classes of people.

In reference to the evidence adduced, His Lordship characterized it as partly *circumstantial*, and partly *direct*; and observed, that it was upon a careful and deliberate examination of the whole, that the Jury must give their verdict on the guilt or innocence of the pannels. The *circumstantial* evidence adduced of the pannels' guilt, consisted of a long train of facts and circumstances, tending to establish that they were concerned as actors, or art and part, in the murder libelled; while the *direct* evidence, again, consisted entirely of the evidence of Hare and his wife, the associates in the crime. It would, therefore, be proper to look at the case *first*, in reference to the circumstantial proof adduced; and, *secondly*, as it appears to stand on the evidence of these two persons. It was only upon a fair and impartial consideration, first of each separately, and then of both combined, that a just verdict could be pronounced.

After these preliminary observations, and stating to the Jury, that in regard to the *circumstantial* evidence, it was to be taken as a whole, and not to be broken down or separated into distinct or isolated parts; and after laying it down that the Jury must, first of all, be satisfied that the woman Docherty, mentioned in the indictment, lost her life by violence, — without evidence of which, there was no case before them, — the Lord Justice-Clerk entered into a careful and minute examination of the whole proof, so far as it consisted of the circumstantial evidence adduced; and commenting, as he went along, on the various facts established, as they appeared to bear on the *corpus delicti*, the guilt of the prisoners, or the arguments urged in explanation of their conduct by their counsel on their behalf. His Lordship then stated, that it was the province of the Jury to draw their own conclusion from the evidence which he had thus brought under their view.

His Lordship next proceeded to notice the account of the matter under investigation, as given by the pannels in their declarations before the Sheriff, dissenting from the views thrown out by the counsel for the prisoners on this subject, and giving it as his opinion, that the admissions recorded in

We are obliged to content ourselves with the above general statement of the Lord Justice-Clerk's speech in this part of the case, as, without quoting nearly the whole evidence led, and already given, in the previous part of this trial, we should do injustice to his Lordship's observations, nor would their bearing be properly understood.

these declarations must, as far as they went, be held as important ingredients in the proof. He observed, that the weight due to the declarations of Burke, could not be weakened by the fact, that *five* different declarations had been taken from him; — as the *two* that had been read, of the 3d and 10th of November, related solely to the alleged murder of the woman Docherty, and had no connection with any other charge. Before being asked a single question, both prisoners would be told by the Sheriff, that they were charged with the crime now under investigation, and were not bound to answer any questions that might be put to them on the subject. It was certified in the usual manner, and must be held proved, that the declarations of the prisoners were emitted freely and voluntarily, and that they were in their sound mind and sober senses at the time. Such declarations, it was, and had long been firmly established in the law of Scotland, were legitimate evidence. The Jury were, therefore, not only warranted, but bound to take them into view, as an important and unexceptionable part of the case. His Lordship then proceeded to comment on the various, improbable, and contradictory statements given by the prisoners in their declarations; and particularly in those of Burke: the account given by them of their proceedings, appearing to his Lordship, as utterly incredible, and beyond all human belief; while the statements themselves were established by witnesses, against whose testimony no objection had been attempted, to be absolutely false, in every particular of importance.

His Lordship then proceeded to the consideration of the *direct* evidence of the case, as brought out in the testimony of Hare and his wife, and addressed the Jury, in substance, as follows: — The remarks of the prisoners' counsel on this part of the case, render it necessary for me shortly to explain to you the law with regard to the admissibility of *socii* in guilt, and the position in which persons in that predicament stand, in relation to their credibility. As to the admissibility of such persons, it must be perfectly obvious, that, were their evidence to be entirely rejected, the purposes of justice would often be completely defeated in occult crimes, which are generally the most heinous. It is true, that the persons in question have admitted a concern in the perpetration of the crime charged in the indictment; it may be conceded, morally speaking, that they are equally guilty with the prisoners at the Bar; or, if that be possible, even more so. Still it is entirely out of the question, to go into the idea maintained for the prisoners, that they are, on that account, to be con-

sidered as *inadmissible* or incompetent witnesses. If this objection was good, it would be a compendious way of getting rid of the evidence of every *socius criminis* who admits his concern in a crime. In point of form, indeed, this argument cannot be maintained, since the witnesses have been actually received and examined, under an implied reservation, of course, as to their credibility. When it is argued, however, that these persons, by acknowledging themselves to be murderers, and consequently, the vilest of human beings, are on this ground alone, totally unworthy of credit, and that their testimony is to be entirely laid aside, however consistent in itself, and how much soever it may be corroborated and confirmed by the evidence of other witnesses, to whom no exception either is or can be taken, the counsel for the prisoners, it is obvious, are just endeavouring to gain, by indirect means, that which the law denies them directly. The persons whose evidence is in question, though, in the ordinary and popular sense, they may be considered as *de facto* infamous, cannot, on that account, be altogether rejected. There must be a conviction, by a competent legal tribunal, and the verdict of a Jury, before even the worst of mankind can be placed in this predicament. They must be infamous *de jure*, and inadmissible previous to their appearing in Court, and cannot become so by any examination, or investigation, into their private conduct, before you. Most undoubtedly, such persons are not to be received on the same footing as witnesses standing in a different situation; still, however, though their evidence may be liable to the greatest suspicion, and may be subjected to a more severe and strict examination than in the ordinary case, you must hear what they have to say. It has been further argued, that Hare and his wife were placed in the situation of being themselves exposed to be tried for other charges of murder, and, indeed, for the other two charges contained in the present indictment; hence, that they have a clear interest to throw the blame of the actual perpetration of the crime on the prisoners, and represent themselves as comparatively or completely innocent. But here, Gentlemen, I feel it necessary to state it to you, as the decided opinion both of myself and my brethren now present, that whatever may be the case with regard to other murders, or other crimes, the witnesses in question are as fully protected by the law, in relation to all those contained in the present indictment, — that is to say, against either trial or punishment for them, — as if they had been entirely free from any concern in their perpetration. These persons were

called on to give evidence on the whole of the charges contained in the indictment. Eventually, and at a subsequent diet, they may still be examined in relation to the other two; and therefore, so far as the plea of interest is rested on the alleged danger to which they are exposed, it is entirely and thoroughly without foundation. The public faith has been pledged to these persons, wicked and criminal as they may be, and certainly are, and it must, at all hazards, be kept sacred. As to their *credibility*, however, that, as I have already stated, is a totally different matter. If their evidence be inconsistent, and at variance with itself, contradicted by other, and entirely unexceptionable, testimony, or standing alone, and unsupported by collateral corroborating circumstances, — it is for you to judge of all this, and give such weight to the story told by them, as, under the whole circumstances, appears to be rational and just. In estimating the degree of credibility due to persons of this description, you will keep in remembrance the manner in which they gave their evidence, and their whole demeanour and behaviour, while under examination. You will attend, likewise, in particular, to the story told by these two persons, and observe whether they differ from, or contradict each other, with regard to circumstances of importance, which they had the same or equal opportunities of observing. I do not see, however, that any other or different rules can, or ought to be applied, in comparing the evidence of the two witnesses in question, than is done in the ordinary case. I need scarcely observe, that slight variations or discrepancies in the account given, even of ordinary occurrences, afford no proof that the main circumstances are not true. No two individuals, however disinterested and impartial, will give precisely the same account of such occurrences. The difference, perhaps imperceptible, in the opportunities for accurate observation, accidental absence of mind, inattention at the moment, or want of recollection afterwards, are quite sufficient to account for this, without supposing any wilful departure from the truth. Indeed, you must be quite aware, that if a false account of a transaction is intended to be given, there will be little difficulty in concerting a story that will be perfectly consistent on the face of it, and in which there will be no discrepancy whatever. Slight differences, therefore, in unimportant particulars, are a proof rather of the absence of previous concert or collusion, than otherwise. And if this be true with regard to ordinary occurrences, much more must it hold in regard to those agitating and horrid circumstances which

‘ have been the subject of our investigation at this time.’— After some other general remarks, his Lordship proceeded to the consideration of the testimony of the two witnesses, a part of which he read to the jury, commenting on its import, and the effect due to it, *first*, in reference to the story told by the witnesses themselves, and *afterwards* to the facts established by the other, and unexceptionable witnesses that had been examined; and in the course of his observations, he stated, that there was some difficulty in reconciling the account of the actual perpetration of this murder, as given by these witnesses, to that detailed by Alston, as to what he heard passing in Burke’s house,—though it would be for the Jury to consider, whether allowance should not be made for the state in which Mrs Hare and M’Dougal were, when in the passage. In concluding his charge on this part of the case, his Lordship remarked that if the woman Docherty had, according to the prisoner’s account of the matter, died a natural death, or lost her life by accident, it surpassed all human belief that the two witnesses, in question should not, only attempt to swear away the life of the prisoners; but voluntarily, and without any adequate or conceivable cause, lay upon themselves a load of guilt, by admitting their participation in the crime charged, which they must bear during the whole course of their future lives. The weight due to the testimony of these associates, however, lay entirely with the Jury, who, no doubt, would decide on a just view of all the circumstances as brought out in the evidence adduced.

‘ Before finally leaving this painful case, I must, said his Lordship, address to you a few words, with regard to the situation in which the prisoner, M’Dougal, stands. It is not in evidence that she took any part in the *actual* perpetration of the crime; but the question remains, and if answered in the affirmative, will be equally fatal to her as if she had done so,—namely, whether she was an accessory; and therefore, to be held in law, as art and part guilty along with the other prisoner. Accession to a crime may take place before the fact, as well as at the moment the crime is committing. It may likewise be *inferred*, from the conduct of the party after the fact. And if you are to believe the evidence which you have heard, I am much afraid there are, but too strong grounds, for concluding, that the female pannel, at the bar has been guilty of accession to the crime under investigation, whether you consider her conduct before or after the fact, or while it was perpetrating. It is impossible to conceive for one moment, that under all the circumstances of the

case, the pannel, M’Dougal, could be ignorant of the purpose for which this wretched woman, Docherty, was brought to the house. The state in which Burke and she appear to have lived,—their brutal and dissipated habits,—make it impossible to believe that either of them kept this woman in their house, from the humane or charitable motives which they professed to feel, and affected to shew towards that unfortunate creature. On one occasion, it would appear indeed, from the evidence of Gray’s wife, that M’Dougal actually opposed the woman’s proposal of going out of the house. The manner, too, in which she communicated the fact to Mrs Hare, of this poor woman being in their clutches, viz. that they had got a *shot* in the house, shews distinctly her complete knowledge of what was in view, and implicates her morally, as well as legally, in the guilt that afterwards ensued. Again, as to her accession during the perpetration of the crime, this much appears, according to the evidence of Hare and his wife, that both M’Dougal and Mrs Hare were in the room, at least, (whether on the bed, as Hare states, or standing between the bed and the door, as his wife swears, seems immaterial), when Burke placed himself on the body of the woman; and that upon hearing the first screech of the woman, they both *flew*, as Mrs Hare expresses it, to the passage, where they remained till the door was opened. By this time, the crime had been accomplished, and the body thrust below the bed. These two women return to the room, but ask no questions, although they must have missed the old woman, whom indeed they had seen a few minutes before. Their flying into the passage, and remaining there, can in no respect be considered as substantially different from actual presence; or rather perhaps it ought to be viewed as making more strongly against this prisoner. In this way, at least, she must have been completely at liberty to call for assistance, and prevent the final perpetration of the crime; while it takes away the possibility of pretending, as might have been done, if she had remained in the room, that she was compelled to witness the deed; and dared not take measures to prevent it; as it is sworn that she and Mrs Hare had previously interfered to prevent Burke and Hare from fighting. Then, as to her subsequent conduct, in relation to the crime, it is equally, and if possible, still more unequivocally established, because it does not depend on the evidence of Hare and his wife alone. I need not detail all the circumstances here referred to; but you will not fail to recollect, among others, her share in the concealment of the dead body;—the

part she took in its transportation and sale, by accompanying the other prisoner and Hare to Surgeon Square and Newington;—the falsehoods she uttered in endeavouring to account for the disappearance of Docherty;—her attempt to bribe to silence the wife of Gray, by an offer of money, and the prospect of putting her husband in the way, if they would be quiet, of his being worth £10 a-week through the prisoners' means.

You have heard certain legal authorities appealed to by the prisoners' counsel; but I confess, these appear to me to be in no respect applicable to the circumstances of the prisoner, M'Dougal's, case. With regard, in particular, to the case of Taylor and Smith, which has been chiefly relied on, it may be proper to read the distinct account of it, given by Mr Burnett in his work, (p. 270). After observing that it was a case of *nicety*, the circumstances are thus stated:—
 “A girl of the name of *Kelly*, with whom Smith had been connected, having met him one evening, put into his hands a child, (of which he was probably the father); then between two or three months old. *Smith* carried away the child, and laid it down in a garden, having previously used such violence against it, as he thought had deprived it of life. After this, he calls on the other prisoner *Taylor*, a young man of about seventeen years of age, an apprentice to a surgeon; informs him of having got a child, (whether he added *dead* or *alive*, did not appear), and that he would give him the body for dissection. There was no proof of any previous concert between them in this business. *Taylor* made no objection to the proposal, and accompanied *Smith* to the place where the child had been left, in order to receive the body. On coming to the place, the child, to the surprise, as it appeared, of *both*, was heard to cry; on which, according to the account given by *Smith* in his declaration, having asked *Taylor* the best way of destroying it, he, in consequence of his directions, deprived it of life, by squeezing its throat, and holding its head under water; while, according to the account given by *Taylor*, *Smith* of himself, and without any directions from him, killed the child. So it was, however, the child was killed, *in the presence of Taylor*, who, it appeared, made no objections, or took any means to prevent it, by giving the alarm, or otherwise; on the contrary, he immediately after carried away the body to his master, the surgeon's house. On informing his master how he came by it, he refused to have any thing to do with the body, or to allow it to remain in his house; on which *Taylor*

carried it away, and concealed it in a cellar possessed by *Smith's* brother. The body was not found till about two weeks thereafter, while, in the meantime, *Smith* absconded. Both were afterwards brought to trial as *guilty actors, or art and part in the murder*. The libel having of course been found relevant, the proof, so far as applied to *Taylor*, amounted to his being present at the murder, using no means to prevent it, and afterwards being found in possession of the body; for, as to *Smith's* account of his having directed him how to kill the child, that could be no evidence against *Taylor*.

The Counsel for the Crown maintained, that the circumstances above mentioned were sufficient to infer *art and part* in the murder.—“Here (it was argued), is a murder committed; the dead body is found in the possession of the prisoner *Taylor*. This throws the *onus* upon him of proving how he came by it.” His account is,—“I came to the place, saw the child murdered, gave no alarm, did not even disapprove of it; and afterwards carried away the dead body for the purpose of dissection. Do not these circumstances amount to a full and complete *accession* to the murder?” It was, on the other hand maintained, that as the proof against *Taylor* amounted only to *mere presence* at the time, without any advice, aid, or assistance in the act; without any previous concert with the murderer, or even knowledge that such a thing was intended by him; on the contrary, as he, (*Taylor*), came there, conceiving the child to be dead, and with a view merely to carry away the body for the purpose of dissection, his *accidental and unexpected presence* at the murder, ought not, in these circumstances, to infer *art and part* in the deed; while his having the body afterwards in his possession, and concealing the murder, were neither circumstances, *per se*, nor, when coupled with the *presence*, that could in this case infer *art and part*.

The Court seemed to be of opinion, that in the general case, *presence* at a murder, joined to *after concealment*, and being in possession of the dead body, were circumstances sufficient to infer *art and part*; but it was left to the Jury to consider, whether the *mere presence* here, at the murder of a child, an act so *instantaneous* in its nature, as to leave little time to the bystander, either for reflection, or the giving an alarm, while no previous concert or knowledge of the deed was proved, or even alleged, and the possession of the body afterwards being by a surgeon's apprentice, who might innocently be brought into that situation, ought, in such a case, to infer

“*art and part.* The Jury convicted *Smith*, but acquitted “*Taylor.*”

‘As to this case, I shall content myself with stating, that while I concur in the law, as laid down by the Court, I must presume to dissent from the verdict of the Jury. But, at any rate, it is obvious, that this case of Taylor, is a totally different one from the present. According to Mr Burnett’s statement, the proof, so far as applicable to Taylor, amounted to his being present at the murder,—using no means to prevent it,—and afterwards being found in possession of the body. There neither, however, was, nor could be, in that case, any previous assistance or co-operation in relation to the deed; it is certain Taylor had no previous knowledge of any intention on the part of Smith to commit the murder; and even that person appears to have believed that it had been already accomplished. It is impossible, therefore, to hold the two cases as analagous; and if you believe the evidence laid before you, of the prisoner’s whole conduct, you must, in my opinion, hold her to be guilty, art and part, along with Burke. In determining this question, you will not fail to keep in view the statements made in the declarations of this prisoner. She there not only denies that she knew of any dead body being in the house, but positively declares that she did not see the woman Docherty at all, after two o’clock on the Friday; and, in particular, she did not see her in the house on the Friday night,—that is, on the night of the murder. In short, her case is totally different from that of Taylor.’

His Lordship concluded his charge to the Jury, with observing, that he now left the case in their hands, satisfied they would return such a verdict as justice required. If they had doubts,—reasonable and rational doubts on the subject of the prisoners’ guilt, or either of them,—they were bound to give them the benefit of these doubts, without allowing their own minds to be influenced or carried away by any prejudices or popular clamour that might exist against the pannels. On the other hand, if the Jury were, in their consciences, satisfied of the guilt of the prisoners, they must return a verdict accordingly.

The Jury retired at half-past eight o’clock in the morning, and, after an absence of about fifty minutes, returned the following Verdict, *viva voce*, by their chancellor, JOHN M’FIE, Esq.—

‘The Jury find the Pannel, William Burke, GUILTY of the *third charge in the Indictment*; and find the Indictment NOT PROVEN against the Pannel, Helen M’Dougal.’

LORD JUSTICE-CLERK.—*Gentlemen of the Jury*,—While I return you the thanks of the Court for the unwearied pains and attention you have bestowed on this case, it must be satisfactory for you to know, that it is the opinion of the Court, that your verdict appears to be perfectly well founded. Entertaining, as you did, doubts of the guilt of the female prisoner, you gave her the benefit of those doubts.

LORD ADVOCATE.—*My Lord Justice-Clerk*,—I beg leave to move your Lordship for the judgment of the Court.

LORD JUSTICE-CLERK.—*My Lord Meadowbank*,—It is your Lordship’s duty now to propose the sentence to follow upon this verdict.

LORD MEADOWBANK.—*My Lord Justice-Clerk*,—After a trial of an unprecedented nature,—of nearly unexampled duration, having been protracted in length to almost twenty-four hours,—and during the whole of which time the minds of your Lordships have been kept upon the utmost stretch of exertion, it would be unpardonable for me, in discharging the painful duty that has devolved upon me, to think of resuming, at length, the appalling circumstances which, during the course of the proceedings, have been laid in evidence before the Court and the public.

At the same time, however, it is impossible for me, in discharging this part of our duty, not to advert, in a single sentence, to that most extraordinary,—that most sanguinary and atrocious system, which your Lordships feel has been developed and established, beyond all question, by the clearest evidence that has ever been divulged in a Court of Justice.

My Lords, I am confident, that although speaking in the presence of your Lordships, so much better instructed than myself, and so able to correct me were I in error, there is no chance of my being contradicted, when I say, that in the history of this country,—nay, in the whole history of civilized society,—there never has been exhibited such a system of barbarous and savage iniquity, or any thing at all corresponding in atrocity, to what this trial has brought to light.

Individual murders have been committed,—crimes of all descriptions have been perpetrated, more arising from the spirit of revenge, or the lure of plunder, or the other vindictive and sordid passions to which human nature is exposed; but that there should, at this time of day,—in this country, (which we had all of us hoped was in some measure free from the reproach of most of the more odious and more heinous species

of crimes,) have been found to be regularly organized and established a system of cold and premeditated murder, such as we have now heard of, was, I am sure, beyond the imaginations of your Lordships to have conceived. Had one individual been found so utterly divested of all human feeling, as to have been guilty of the offences here brought to light, your Lordships might well have been amazed and horrified. But it is almost beyond conception, to imagine that there should have existed, in this great and populous city, not one individual only, but apparently a number of individuals, both male and female, leagued and combined together, for the purpose of sacrificing their unoffending fellow citizens, for the sordid purpose of selling their bodies, after they had been murdered, for a price, is inexpressibly horrible; and, to one, feeling for the character of his country, in the last degree, humiliating. It would be in vain that I should search for words to express the ideas which the general announcement of such a system of horrible atrocity, must necessarily create.

But, my Lords, this is not a case for dealing in general reflections. When we look at its other and more distinguishing features, it would have required, upon my own part at least, a very strong stretch of the imagination, to have believed that it could possibly have been found to exist among the most abandoned of the human race, had it not been exhibited before us, in a chain of evidence, so absolutely incontrovertible, as to have carried conviction to every one who heard it.

The prisoner at the Bar, my Lords, it has been proved, in the course of some apparently usual daily avocations, left his house early in the morning, on the day stated in this indictment. In a shop into which he went, it happened that he met with the poor and unprotected stranger, whose untimely fate has been the subject of this trial, with whom, it is quite clear, from all that we have heard, that he never was before acquainted. But his sanguinary trade was ever uppermost in his mind, and he did not let the opportunity of seizing upon a victim, escape him; and the manner in which he brought her within his toils, is no less extraordinary than appalling. Having induced her to inform him of her name, —and finding she came from Ireland, his native country, —he immediately pretended to lay claim to her as one of his kindred, and exhibited a sympathy with the unfortunate situation in which at the time she seemed to be placed. He then entices her to his own house, and by the appearance of kindness, and by friendly offices, he contrives to acquire her confidence and affections, to an extent that would, in so short a time, almost seem unaccountable. But, from the evidence of

the woman Connaway, it is proved he was, in this respect, so successful, that the unfortunate old victim of his cold and deliberate, and murderous designs, had been prevailed upon, unhesitatingly, to look up to him for support and protection. To that woman she declared, only a few minutes before her life was finally extinguished by the hands of the wretched man at the Bar,—that by her he had dealt kindly, and that to him she looked up for safety and protection. So strongly had this feeling impressed itself upon her mind, that she informed Connaway that she would not enter his house without him; and accordingly, when she saw him pass the door, she followed him into the house of slaughter, from which she was never to return.

Then observe, my Lords, what takes place.

A struggle takes place betwixt the pannel and Hare, that most extraordinary being who was produced at your Lordships' bar as an associate in this crime, or rather system of crimes; but I should rather say a *pretended* struggle takes place betwixt them,—for your Lordships will recollect, that in the course of it, the woman was thrown down by Hare, and that the moment she was upon the ground, that struggle instantly ceased. Hare placed himself at the foot of the bed, and the prisoner instantaneously, and with the ferocity of a demon, threw himself upon his unfortunate victim, and by means with which he seems to have been long familiar, extinguished her life in a few minutes.

Your Lordships will, I believe, in vain search through both the real and fabulous histories of crime, for anything at all approaching to this cold, hypocritical, calculating, and bloody murder.

Be assured, however, my Lords, that I do not state this either for exciting prejudices against the individual at the bar, or for harrowing up the feelings with which I trust he is now impressed.

But really, when a system of such a nature is thus developed, and when the actors in this system are thus exhibited, it appears to me that your Lordships are bound, for the sake of public justice, to express the feelings which you entertain of one of the most terrific, and one of the most monstrous delineations of human depravity, that has ever been brought under your consideration. Nor can your Lordships forget the glowing observations which were made from the Bar, in one of the addresses on behalf of the prisoners, upon the causes which it was said have, in some measure, led to the establishment of this atrocious system. These alone, in my humble opinion, seem to require that your Lordships should state

roundly, that with such matters, and with matters of science, we, sitting in this place, and deciding on such questions as that before us, have nothing to do. It is our duty to administer the law as handed down to us by our ancestors, and enacted by the legislature. But God forbid that it should ever be conceived, that the claims of speculation, or the claims of science, or the claims of philosophy, should ever give countenance to such awful atrocities as the present, or should lead your Lordships, or the people of this country, to contemplate such crimes with apathy or indifference.

With respect to the case before us, your Lordships are aware, that the only sentence which we can pronounce, is the sentence of death. The highest law has said,—‘Thou shalt not kill,—thou shalt do no murder;’ and in like manner, the law of Scotland has declared, That the man guilty of deliberate and premeditated murder, shall suffer death. The conscience of the prisoner must have told him, when he perpetrated this foul and deliberate murder, and alike violating the law of God, and the law of man, he thereby forfeited his life to the laws of his country. Now that detection has followed, therefore, the result cannot be by him unexpected; and I have therefore only farther to suggest to your Lordship, that the prisoner be detained in the tolbooth of Edinburgh, till the 28th day of January next, when he shall suffer death on a gibbet by the hands of the common executioner, and his body thereafter be given for dissection.

LORD MACKENZIE.—*My Lord Justice-Clerk*,—I have nothing to say further, than that I concur in thinking, that the punishment proposed to the Court by his Lordship, is the only punishment that can be pronounced.

LORD JUSTICE-CLERK.—*William Burke*, You now stand convicted, by the verdict of a most respectable Jury of your country, of the atrocious murder charged against you in this indictment, upon evidence which carried conviction to the mind of every man that heard it, in establishing your guilt of that offence. I agree so completely with my brother on my right hand, who has so fully and eloquently described the nature of your offence, that I will not occupy the time of the Court in commenting on it, farther than by saying, that one of a blacker description,—more atrocious in point of cool-blooded deliberation, and systematic arrangement, and where the motives were so comparatively base,—never was exhibited in the annals of this, or of any other Court of Justice. I have no intention, Sir, to detain this audience, by repeating what has

been so well expressed by my brother. My duty is of a different nature; for if ever it was clear, beyond all possibility of a doubt, that the sentence of a Criminal Court will be carried into execution, in any case, your's is that one,—and you may rest assured, that you have now no other duty to perform on earth, but to prepare, in the most suitable manner, for appearing before the Throne of Almighty God, to answer for this crime, and for every other that you have been guilty of during your life. The necessity of repressing offences of this most extraordinary and alarming description, precludes the possibility of your entertaining the slightest hope that there will be any alteration upon your sentence. In regard to your case, the only doubt that has come across my mind, is, whether, in order to mark the sense that the Court entertains of your offence, and which the violated laws of the country entertain respecting it, your body should not be exhibited in chains, in order to deter others from the like crimes in time coming. But, taking into consideration that the public eye would be offended with so dismal an exhibition, I am disposed to agree that your sentence shall be put in execution in the usual way, but accompanied with the statutory attendant of the punishment of the crime of murder, viz.—that your body should be publicly dissected and anatomized. And I trust, that if it is ever customary to preserve skeletons, your's will be preserved, in order that posterity may keep in remembrance your atrocious crimes. I would entreat you to betake yourself immediately to a thorough repentance, and to humble yourself in the sight of Almighty God.—Call instantly to your aid the ministers of religion, of whatever persuasion you are,—avail yourself, from this hour forward, of their instructions; so that you may be brought, in a suitable manner, urgently to implore pardon from an offended God. I need not allude to any other case than what has occupied our attention these many hours; you are conscious in your own mind, whether the other charges that were exhibited against you yesterday morning, were such as might be established against you or not;—I refer to them, merely for the purpose of again recommending that you may devote the few days that you are on earth, to imploring forgiveness from Almighty God.

SENTENCE.

THE LORD JUSTICE CLERK, and LORDS COMMISSIONERS OF JUSTICIARY, in respect of the verdict before recorded, decern and adjudge the said William Burke, pannel, to be carried from the bar, back to the tolbooth of Edinburgh, therein to be detained, and to be fed upon bread and water only, in terms of an act of parliament passed

in the twenty-fifth year of the reign of his Majesty King George the Second, entitled "An act for preventing the horrid crime of murder," until Wednesday the 28th day of January next to come, and upon that day to be taken forth of the said tolbooth to the common place of execution, in the Lawnmarket of Edinburgh, and then and there, between the hours of eight and ten o'clock before noon, of the said day, to be hanged by the neck, by the hands of the common executioner, upon a gibbet, until he be dead; and his body thereafter to be delivered to Dr. Alexander Monro, Professor of Anatomy in the University of Edinburgh, to be by him publicly dissected and anatomized, in terms of the said act; and ordain all his moveable goods and gear to be escheat and inbrought to his Majesty's use, which is pronounced for doom. And may Almighty God have mercy on your soul.

LORD JUSTICE-CLERK.—*Helen M'Dougal*, The jury have found the libel against you *not proven*;—they have not pronounced you *not guilty* of the crime of murder charged against you in this indictment. You know whether you have been in the commission of this atrocious crime. I leave it to your own conscience to draw the proper conclusion. I hope and trust that you will betake yourself to a new line of life, diametrically opposite from that which you have led for a number of years.

The following interlocutor was then pronounced :—

"The Lords assoilzie the pannel *Helen M'Dougal*, *simpliciter*, and dismiss her from the bar."

FINIS.