

in the trial of falshood, the Lords may inflict the particular punishment themselves, where they found, that it was within the pain of death, without remitting the party, in that and such like cases, to the Justices, where the crime was found not to be punishable by death; and where they found the same deserved death, they ought not to intermeddle therewith, but committed the party so found guilty to the Justices, to be proceeded against by them in law, conform to the laws of the kingdom; but because the LORDS did doubt, if they might do this before the sentence was pronounced (albeit truly they might do the same, and have done so of before, as said is), therefore they remitted also the notary to the Justices process, and signified to the Justice General, that they found that the notary's life ought to be spared, and recommended to him to have a care thereof.

Act. *Advocatus et Baird.*

Alt. *Nicolson et Gibson.*

Clerk, *Hay.*

Fol. Dic. v. 1. p. 498. Durie, p. 857.

1669. July 6.

The HEIRS of LINE of TOWIE *against* BARCLAY of Auchredy.

IN the improbation pursued against Barclay, the LORDS having examined *in præsentia*, one Thomas Ogilvy, who had served Barclay four years, and finding him prevaricate, and being confronted with Barclay's son-in-law, did confess that he had carried a letter and verbal order from Barclay, which immediately before he had denied upon oath; THE LORDS, after consideration of their own power to punish in such cases, and former practices of the Lords of Session, ordained him to be laid in the irons in the tolbooth all night, and next day to be taken to the pillory, and stand with a paper on his face, with an inscription bearing his fault.

Fol. Dic. v. 1. p. 498. Gosford, MS. No 158. p. 62.

* * * Stair reports this case :

BARCLAY of Towy having but one daughter, and his estate tailzied to heirs-male, his nearest heir-male being the old tutor of Towy, above 80 years of age, and having also but one daughter, and neither father nor daughter being persons of much discretion, Captain Barclay, his next heir-male, having also but daughters, he disposes his estate in favour of his own daughter; and it being rumoured that Captain Barclay pretended a bond of an hundred and three thousand pounds, granted by Towy to him, that thereby he might prefer him to the tutor, and that the tutor, as heir-male, had also granted several dispositions to Captain Barclay of that estate; Towie's daughter being an infant, her friends did also procure a disposition from the tutor to her, and she pursues a reduction and improbation against Captain Barclay of the aforesaid bond, and dispositions

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The Court of Session inflicted corporal punishment upon a witness who prevaricated.

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made to him. He compares and produces a late disposition made by the tutor, and alleges that he had the bond foresaid, and two dispositions from the tutor, anterior to this produced, but that a person to whom he had intrusted them, had carried them away ; but there being produced in the process attested doubles of the former dispositions, under the hands of notaries, the pursuer craved, that seeing the witnesses alleged inserted might die, and the Captain of purpose kept up the principals, that the witnesses might be examined upon what they knew of the truth, or forgery, of the said dispositions :

Which the LORDS granted, the fame and suspicion of the forgery being so great ; though ordinarily they do not examine witnesses upon the forgery of a writ, till the principal be produced, that the witnesses may see their subscriptions ; whereupon — — Steel, one of the witnesses, compeared, and deponed, acknowledging the forgery, and the way of contrivance of it, in which the Captain made use of him ; whereupon the LORDS proceeded to examine the tutor, who stiffly stood to the verity of the dispositions, as being truly subscribed by him, but differed in the date and in the persons who were witnesses to the subscription. The Captain's son-in-law being also examined, whether or not the Captain had employed him to corrupt the witnesses, and if he had written any letter to him to that purpose, produced a letter, mentioning some things by word which he should diligently go about ; and being asked who the bearer was, deponed that he was Robert Ogilvy, the tutor's servant ; who being in the house, and presently called to the bar, upon oath being interrogated whether he had brought north any letter from the Captain to his good-son, deponed, that he had brought no letter from him to his good-son, or any other ; and thereafter the letter being shown him, and confronted with the Captain's good-son, he deponed that he did bring that paper, and delivered it to the Captain's wife, but he thought it was an order, not being sealed ; and being interrogated whether he had any message in word from the Captain to his good-son, deponed he had none ; and upon reading of the letter, bearing the contrary, and confronting with the Captain's good-son, he acknowledged that he had order to cause his good-son bring over the witnesses to Edinburgh ; and the Captain's good son further acknowledged, that Ogilvy had desired him to deal with the witnesses, to stand to the truth of the writs, he stiffly denied that point.

THE LORDS having considered his gross prevarication, and contradictory oath, ordained him to be put in the irons, and the next day to stand in the pillory betwixt ten and twelve, and a paper on his brow to declare the cause ; and did declare him infamous, and appointed him to continue in prison till further orders.

Stair, v. 2. p. 631.