

their hability, farther than Load's and Guine's assertion, that they sought bribes from her, the Lords found no cause as yet shown to doubt of the verity of their oaths, and what they had deponed.

Complaint also being made against Boswal, the fourth witness, and one Sawyers, who feigned and personated himself to be John Dougal, the Lords granted a warrant to apprehend them, seeing they had absconded on the delation already made. I find, where, by alleviating circumstances, the punishment to be inflicted for falsehood falls to be *minor capitali*, such as banishment, fining, pillorying, whipping, branding, &c. the Lords had been in use, without remitting them to the justice-court, to apply the punishment themselves; as appears by the sederunt-books, 13th June 1651, and Durie, 14th July 1638, *Dunbar* against *Dunbar*.
Vol. II. Page 377.

December 26.—John Load being brought from prison, who was accessory to the forgery betwixt Dougal and Guine, mentioned 3d July 1707, he, rather than undergo trial, electing banishment, also enacted himself to depart out of the kingdom of Great Britain, never to return, in manner foresaid; [in manner mentioned in the case below, 26th December 1707, page 685.] And George Drummond, keeper of the tolbooth, desiring to be heard, before they were dismissed, for what was due to him, the Lords ordained them to pay for what meat or drink he had furnished to them; but, being very poor, liberated them from house-dues. And appointing him to give in his account, they recommended him to the Lords of the Treasury for his payment; though the town should truly be at that expense, they being obliged by law to keep a prison for debtors and malefactors. And upon their enacting themselves as foresaid, they were instantly liberated and dismissed from the bar: and this severity may be a wholesome caveat to beware of such practices for the future. Some moved they might be delivered to a captain of the recruits, to serve as soldiers in Flanders; but the other method was judged more legal.
Vol. II. Page 409.

1707. *November 7 and 8, and December 9 and 26.* Her MAJESTY'S ADVOCATE
against WILLIAM HUNTER and OTHERS.

November 7 and 8.—Much of thir two days were spent in trial and expiscation of a forgery. Her Majesty's advocate gave in a complaint and libel to the Lords, against one William Hunter, shoemaker in the Potterow, bearing, That one Robert Guine having been a mariner on board the Unicorn, a ship belonging to the African company, there was £10 or £11 sterling owing him of bygone wages for his service; and these debts being, by the late Act of Parliament about the Union, declared that they should be satisfied out of the equivalent, this Hunter having got a factory, which Guine had given to one John Hodge to uplift it, he went to the commissioners for distributing the equivalent, and got up the money; but they, being informed that Guine was dead, refused payment till it should be confirmed. Whereupon Hunter fell upon a contrivance to serve an edict before the Commissaries of Edinburgh, for confirming Hodge, and Margaret Guine his wife, alleged sister to Robert the creditor; and having got a certificate of the sum due, he caused a boy, called Gilbert Halliday, sub-

scribe an indorsation on the back of it, to pay it to him under the name of John Hodge, though he knew he was dead; and also procured a girl to sign Margaret Guine, though there was no such person, and she had another name; and, on thir two false subscriptions, thought to have uplifted the money. But being questioned by the clerks and other attendants in the Equivalent Office, and brought to my Lord Advocate, Hunter confessed the whole matter of fact: And being called before the whole Lords *in præsentia*, he renewed his confession, and adhered thereto; and farther added, that one Mungo Strachan, a notary, was his counsellor and adviser; and that about a month ago they went to Leith, and there Strachan signed for Hodge's wife, under the name of Guine, though truly her name was Crawford; and that Mr Strachan, forethinking his hazard, had cancelled that paper; yet he signed as notary *de mandato* to a factory of one Montaign and Villaign, two Frenchmen, and sailors in that same ship, though it was dated in 1698, now nine years ago; and though he neither saw them, nor had any mandate or command from them, nor knew any such men, but did it within these three months, though it bore date nine years back: all which Mungo Strachan, after long denial, did, upon confrontation, confess and acknowledge. Then one James Robinson, a schoolmaster, was discovered, that he had razed out a line in the factories, where it only empowered them to call for two months' bygone salaries; and had, by winding it about a stick, and with chalk and glue, deleted that, and inserted all bygone wages: which he denied as strongly as Hunter asserted it. And one William Gibson, a messenger, being named as a witness and present, he was sent for by a macer; and denying the first day, the Lords put them under caution to appear at all the diets they should be required to attend during the dependance of the trial, under the pain of 500 merks, and, failing thereof, to go to prison. But the second day, the affair growing more clear, or rather more black, the Lords committed all the four to prison, till further order; and gave a warrant for citing Agnes Crawford in Leith, the extractor's men, Edgerton, Snow, and any others, for giving further light in this work of darkness: for the Lords were convinced there was a tract of villany, and saw it necessary, for the lieges' security, that such impudent and barefaced falsehood should meet with a suitable check, to deter others from such dangerous flagitious practices in time coming.

Upon farther inquiry and examination, this mystery of iniquity came to be more discovered: for Gilbert Halliday, the boy, did at last freely confess, that he, at the instigation of Gibson, the messenger, put the word *Hodge* on the back of the testificate, and that *John*, the Christian name, was at it before, and said to have been wrote by one Muir, a waiter; but who, being suddenly called away, left it imperfect in the midst of the name; and that Gibson pressed him many times ere he did it, and told him he would go betwixt him and all hazard, and had sent his wife and sundry other messengers to him in prison, bidding him stand to his denial, and to pretend ignorance in the whole matter, and confess nothing, otherwise he would both undo himself and others. At length, Gibson was driven to confess that he was present when Haliday put Hodge's name on the back of the testificate; but faintly denied that he pressed him to it; but laid it on Hunter and on Mr Gilbert Ramsay: and not being fully ingenuous, he was remanded back to prison.

Then, William Muir, the waiter or gauger, being examined, acknowledged, That, having bought a pair of boots from Hunter, he persuaded him to put to

John Hog or Hodge, he knows not which of them, on the back of the certificate; and being disordered with too much drink, he took the pen, and wrote *John*; but, forethinking the danger, threw it away, and would write no more, and left the company.

The Lords thought he should have scored and cancelled the word he had falsely put to it; yet, having repented in the middle, they allowed him a dispensation from going to prison with the rest, upon his finding caution to appear at all the diets of the trial, under the pain of 300 merks.

Then Lewis Wiellon, sail-maker, a Frenchman, being called, he affirmed, That he got a factory from another Frenchman, a cousin of his own, called Montaign, to uplift his wages due by the African company to him, as one of the seamen in their ship, the Unicorn; but acknowledges, when he gave it to Hunter, it had neither Captain Pinkerton's subscription, nor Mungo Strachan's, the notary, nor was it vitiated in the month's pay, as now it is: And that he thinks the reason why they have added Pinkerton's name to it, was, because the African directors and commissioners of the Equivalent refused to pay any seaman's wages, except where the captain attested and signed the certificates.

Agnes Crawford, relict of John Hodge, in Leith, being also examined, declared, That Hunter brought down Strachan the notary to her, and desired she might sign the certificate under the name of Margaret Guine; and she told them she could never write any more but the initial letters of her name, and being old, she could no more do that; and, therefore, bade the notary sign for her, and told him what her true name was: but here he signed Margaret Guine, and that he afterwards cancelled it, &c.

By all which there has been a tract of villany, and false contrivances to get up the money owing to these seamen: and it is not to be supposed, that being so perquire in this contrivance, that it has been their first essay or apprenticeship,—the proverb oft holding true, *licet semel inventum, tamen decies factum.*

Vol. II. Page 390.

December 9.—William Hunter and Mungo Strachan, two of the forgers mentioned 7th and 8th November last, being brought by a guard out of prison to the bar, and their confessions read to them, and they adhering thereto, and allowed advocates to plead for them, if they desired it: Hunter only exculpated himself, as being an ignorant illiterate man, and not acquainted with the import and hazard of such tamperings; and Strachan acknowledged his rashness in that matter, and offered to take voluntary banishment upon him.

The Lords proceeded first to advise the relevancy of the complaint, with their confessions, and found Hunter was the contriver and procurer of the confirming Margaret Guine as sister to Robert, when there was no such woman; and that he caused affix both the said Margaret Guine's and John Hodge's names to the clerk of the Equivalent's certificate, and had used the two factories, and caused Strachan attest them, though the parties Montaign and Camby were dead; and so found the subscriptions false, and Hunter guilty of the contriving and procuring them, and so accessory art and part of the forgery and falsehood. And then proceeding to Strachan's part, they found him guilty in signing Margaret Guine to the certificate, though he knew the woman's name was Agnes Crawford, and, though he afterwards cancelled it, yet that did not extinguish nor abolish the guilt; *2do*, In attesting the two factories as *de mandato* when he

had no mandate from any of them, nor ever knew them, and antedated the same; which the Lords found all one upon the matter as if he had affixed their subscriptions: and so found him plainly guilty of falsehood and forgery.

The next question was, If the Lords would proceed to punish them, by their own sentence, or if they would remit them to the Justice Court?

It was argued, The Lords had no power to inflict any punishment but *infra mortem*, and that their guilt was so flagrant and palpable that there was a necessity for some example to discourage such impudent growing boldness; and such flagitious contrivances deserved death: Therefore, the Lords unanimously remitted them both to the Lords of Justiciary, to be tried and punished by them, according to law.

NOTA.—They were both hanged on the 18th of February 1708, as an example, to the terror of others.

The Lords began with thir two, as being more atrociously guilty, and resolved to try the rest of them concerned in this forgery at another time, whose crimes might only amount to fining, pillorying, deprivation from their offices, or banishment.

Vol. II. Page 401.

December 26.—The Lords having, 9th December 1707, remitted two of the forgers, as more deeply guilty than the rest, to the criminal court, they called the other three out of prison, viz. Gibson, the messenger, Haliday, the writer, and Robertson, the schoolmaster. And having interrogated them, whether they would abide the hazard of their trial, or consent to a voluntary banishment, in regard of the many presumptions of their accession to the guilt; they all choosed rather to undergo banishment: whereupon a bond was drawn up and subscribed by them; whereby Gibson and Haliday obliged themselves to remove out of the isle of Great Britain within the space of three months after the date hereof; never to return, without the Queen or her Privy Council's special licence and warrant: With certification, If either they staid after the limited time, or returned to Britain, they should be presently imprisoned, and transported to the Plantations in the West Indies. And, in regard Gibson was both a notary-public and a messenger, they deprived him of both offices, and declared him incapable in all time coming; and ordained this, for certiorating the lieges, to be intimated at the Lord Lyon's office, and to the clerk of the notaries respectively. And, because Robertson's accession is not so fully made out, they only banished him out of the Town of Edinburgh and the three Lothians, never to return, under the above mentioned certification: for they could not make it under the pain of death, because they were not convicted of a capital crime, but only consented to be banished. And the Lords allowed him three months for transporting himself and family, and seeking out a new habitation, but discharged him to teach a school within that bounds any more.

Vol. II. Page 408.

1707. *December 30.* ISOBEL ELLIES, Lady Invergelly, *against* ROBERT LUMISDEN of INVERGELLY, her Husband.

ISOBEL Ellies, Lady Invergelly, having several years not cohabited with her husband, Robert Lumisden, Laird of Invergelly, in respect of his alleged