

union, expressly created in a charter, does not apply, and falls to the ground.

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*Pleaded for the Respondents.*—The proposition is indisputable, and the appellant must admit it, that every parcel of land lying discontinuous, requires a separate infeftment, unless, either by a charter of union, or by a clause of dispensation, this is rendered unnecessary. It is equally clear, that taking infeftment upon each separate tenement, can only be dispensed with, by the express grant of the sovereign, either by erecting separate tenements into a barony, by an express clause of union; or by a clause of dispensation. Here there seems to have been at one time a barony, but it is equally obvious, that subsequently the lands, of which this barony consisted, were broken up; and it is clear law, that the moment these were disjoined the union was dissolved, with respect to the part alienated. The respondents, therefore, contend, that the lands in question having been sold and disjoined, have lost the benefit of the union, or dispensation clause, contained in Lord Panmure's charter. And it makes no difference that the appellant, in this instance, holds only a right for his life, the estate, after his death, reverting to Earl Panmure, because the result is quite the same, where his right is absolute and irrevocable during his life.

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After hearing counsel, it was

Ordered and adjudged that the interlocutor complained of be reversed.

For Appellant, *J. Montgomery, Al. Forrester.*

For Respondents, *C. Yorke, Al. Wedderburn.*

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ARCHIBALD DOUGLAS	-	-	-	<i>Appellant;</i>
DUKE OF HAMILTON, &c.	-	-	-	<i>Respondents.</i>

House of Lords, 27th February 1769.

**FILIATION—PROOF—ONUS PROBANDI.**—Circumstances in which held, that children born in France, of a certain marriage, were the lawful children begotten of that marriage—and that the appellant, having acquired his *status* as such—and having been served and retoured the lawful son and heir of the parties, that he was entitled to be protected in that *status* until the contrary was proved; Ques. Whether the *onus probandi* of proving the reverse, lay on those who impugned his birth.

The late Duke of Douglas, and Lady Jane Douglas, his

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sister, were the only children of the late Marquis of Douglas, who died during their infancy.

Lady Jane Douglas was a lady of considerable beauty—of graceful manners, and of high accomplishments. Her figure was tall and handsome. Her complexion was pale, yet not wearing the darker features of her race. Besides possessing all those qualities which inspire admiration, or elicit veneration and respect, she was a great presumptive heiress; and belonged to a house and family the most ancient and noble in Europe.

In early life she had been betrothed to the then Duke of Buccleugh; but, on some offence taken by the Lady, which ended in a duel between her brother and the Duke, the affair was finally broken off. She was consequently late of entering into marriage life; which she did, by marrying Colonel Sir John Stewart, Bart. in August 1746.

Lady Jane, on her marriage with Colonel Stewart, was then 48 years of age, and the Colonel 57. The marriage was private, the parties retiring immediately to France, accompanied by Mrs. Hewit, a lady's companion, and two female servants. The reason of keeping the marriage private at the time, was the fear of displeasing her brother, who had been in the meantime created Duke of Douglas; and the question in this great cause was,—Whether the appellant, Archibald Douglas, was the lawful issue of that marriage; or a mere fictitious child, bought from a glass-blower?

After the death of the Duke of Douglas, without issue, the large estates of Douglas devolved on Lady Jane Douglas' son; and the question as to his birth and status arose in a competition for the estates, wherein he claimed to succeed as heir, duly served and retoured to the deceased; while the Duke of Hamilton brought a reduction of the service, on the ground that the appellant was not the son of Lady Jane Douglas; and, consequently, that he, as next heir-male, had best right to succeed. While Lord Douglas Hamilton and Sir Hew Dalrymple, claimed as heirs of line of the Duke of Douglas.

The averments of the appellant in regard to his parentage were:—That Lady Jane Douglas, after leaving England, became pregnant in France,—that she was obliged to declare her marriage there; but as her English friends in France—people of great rank and fashion,—were numerous, to whom the marriage had not been communicated, a little privacy was necessary, and adopted on their part. After moving about from place to place, and lodging to lodging, she gave

birth to twin sons in Paris, of whom the appellant is the eldest. That Sholto, the youngest, being delicate, was left to nurse under the care of "the man-midwife," (accoucheur). That Lady Jane, having removed to Rheims, became again pregnant, and miscarried. That they remained here until November 1749, when they returned to Paris, brought their youngest child. Sholto from the nurse, prepared to return to England, and arrived in London in Dec. 1749. Here the youngest child was publicly baptized by a clergyman, in presence of the Countess of Wigton and others; and both parents acknowledged their two sons as their children, and these children were presented universally to their friends, and invariably treated by them as such. Lady Jane and her husband were all along living in great poverty and distress, the Duke of Douglas having cast her off, on the supposition that she was attempting to impose upon his family false children. Her youngest son died of fever in 1753. She soon thereafter died herself, in an obscure and wretched lodging in Edinburgh; and thereafter her son, the present appellant, was taken under the protection of Lady Shaw, an intimate friend.

She is never separated from her children until death. While living, the parents acknowledge them to the world, and to their friends, as their lawful offspring, and with their last breath they die asserting the integrity of their surviving child.

The Duke of Douglas executed a settlement of his whole real estate upon the Duke of Hamilton, failing heirs of his own body. Though very old, he afterwards married, and the Duchess, his wife, leaning to the side of humanity, exerted her influence with the Duke, in favour of the appellant, so as to produce a favourable opinion as to his birth, and hence arose the quarrel, separation, and reconciliation, between her and the Duke—the many conflicting deeds which followed, &c., one of which was, a postnuptial contract of marriage, whereby, failing issue male of his own body, he disposes the dukedom of Douglas to *his own nearest heirs and assignees whatsoever*, which was followed by a settlement by entail, executed shortly before his death, in favour of the appellant, conceived in terms to "heirs whatsoever of his father." Thus every thing in the way of succession depended on proof that the appellant was the son of Lady Jane Douglas.

But as he had already proved himself by service before a jury, that he was the lawful son of Lady Jane Douglas, a question of law necessarily mixed itself up with this fact,—

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namely, that being in possession of his lawful *status* of filiation, the *onus probandi* to prove the contrary lay with the pursuer (respondent). He therefore contended, that as he had been served heir of the Marquis of Douglas, as son to Lady Jane, by the verdict of a jury, he was thereby in full possession of his status of filiation, and entitled to hold that character, until the respondent proved the absolute impossibility of his being the son of Lady Jane. On the other hand, it was maintained by the respondent, that the question in this reduction stood exactly in the same situation as it did before the verdict of the jury in the service. *That* verdict and service were now impugned; and the *onus* lay on the appellant, to adduce evidence of his being the lawful son of Lady Jane, and so heir entitled to succeed to the Dukedom of Douglas, precisely as if he were proceeding to serve himself heir of new; and that, at all events, the Court were not tied down in this case, to any precise rules of evidence. The Court, acting on this idea, allowed a proof of all facts and circumstances, which either party might hold material. Accordingly, this proof was gone into.

*Appellant's Proof.\**—The appellant had, first, a strong presumptive proof. 1st, He was already in possession of his *status* of filiation, which was proved by various articles of evidence, as, first, by the service itself, which was sufficient evidence of status. But, second, Independently of this, the appellant in fact possessed the status of Lady Jane's son. This possession of status was indicated by the parents calling the children born their sons,—treating and rearing them with all the usual marks of regard and tenderness—holding them forth to the world as such, and also, by the holy and religious ceremony of baptism, which proceeds on the most solemn faith that the child is their own. All these were not only done by Lady Jane and her husband; but proved in the present case. The children are baptized—are tenderly reared, and watched over with all the uncommon affection and solicitude of the mother. 3d, Habit and repute was quite general, that the appellant was Lady Jane's son—this habit and repute being further strengthened by family likeness, proved to be strong. Such was the legal presumptive proof.

But there was other proof equally conclusive and convincing.—Lady Jane's capacity to bear children, although

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\* An abstract of the proof taken from two large vols. of 1065 pages each.

married at 48, and, although, as medical men believe, both capacity and successful safe deliveries after this age are rare, was proved beyond all doubt. It is proved that they were married in Edinburgh, in presence of Mrs. Hewitt, on 4th August 1746. A few days thereafter they departed for the continent, attended by Mrs. Hewitt, a lady companion; and by Isabel Walker and Effy Caw, two maid-servants. They arrive in Harwich in the end of August same year,—proceed thence to Holland, and arrive at the Hagué in the beginning of September, where they reside until the end of December, and remove to Utrecht, where they reside until April 1747. They then departed from Utrecht to Aix-la-Chapelle, and took up their residence there with Madam Tewis, who let lodgings, with whom they resided until 10th August 1747, when they went to Spa. They returned to Aix-la-Chapelle in the same month, reside with Mrs. Champinois till the 14th September 1747, but afterwards went back again to Madame Tewis. She is proved, while here, to appear pregnant in the month of October,—and remains in her lodgings until the 5th January 1748; and with Mrs. Scholl, until the end of March 1748. Her pregnancy is sworn to here, about the months of October and November, by Madame Tewis and her husband, and several of the domestics, who observed its progress from month to month, gradually and successively. She endeavoured to conceal it, because, at this time, Colonel Stewart wished her marriage kept a secret; but, notwithstanding this, the nuns of the Capuchin convent, where she frequently visited, had detected it, and, on deposition, swore that it was quite observable to them. This appearance of pregnancy was also deponed to by Sir George Colquhoun, Madame Negrette, Miss Primrose, Mrs. Greig, Lady Wigton, (with whom she for a short time lived at Aix), Madame Tewis and her husband, and others. It was also proved that Lady Jane, before leaving Aix-la-Chapelle in May, caused her clothes and stays to be widened. And Mrs. Hewitt deponed, that when she left this place, her belly and breasts, and particularly her breasts, were so remarkably big, that she was thought to be with twins,—that Lady Jane was naturally slender, and before had scarce any breasts: That she was delivered of two twin boys, at the house of Le Brun in Paris, on 10th July 1748, by La Marre, a man-midwife.—She is corroborated by Isabel Walker, Lady Jane's chambermaid, as to the pregnancy, who deponed that she observed the suppression of the menses: That she had occasion fre-

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In this letter, inclosed, was one from Lady Jane herself to her brother. And the receipt of both was sworn to by the Duchess of Douglas, who deponed, that " she remembers " that the Duke of Douglas told her frequently that he had " received a letter from Aix-la-Chapelle, acquainting him " with her marriage to Colonel Stewart; and of her being " with child; and that, to the best of her remembrance, the " Duke of Douglas added, that Lady Jane's letter was en- " closed in the said letter from Lord Crawford." Other persons are likewise by letter informed of the pregnancy. She leaves Aix-la-Chapelle in this state on 20th May,—the reasons assigned being, that the expense of living was then high there.—Other reasons were alleged, such as the want of good medical skill. It was proved by several of her letters, that at this particular juncture she had formed a resolve to go into Switzerland,—then to lie-in at Bedbour; but she, instead of following up these plans, sets out for France, and arrived at Liege, where her pregnancy is observed by several Scotch residents there,—Mrs. Hepburn and others, who de- pone to it. She left Liege on the 26th May,—staid some days at Sedan, and arrived about the 6th or 7th of June at Rheims. Mrs. Hewit depones that she was threatened with delivery or miscarriage at Sedan. Isabel Walker speaks to the same fact; but places its occurrence at Rhetel, further on in her journey. While Sir John, in a written note, places it at Rheims. On her arrival at Rheims, she is introduced to Mons. and Madame Andrieux, to whose house they go direct, and thence to the Inn, and sometime afterwards to Hi-

bert's lodgings. Florentine Andrieux deponed, "that he was  
 " then only 19 years of age. Madame Stewart, sometime  
 " after her arrival in the city, begged Madame Andrieux,  
 " the deponent's mother, to cause make for her some child's  
 " clothes, telling the same Madame Andrieux that she was  
 " to go forthwith to Paris to lie-in. At this his mother dis-  
 " covered her surprise, as she seemed not to observe it. When  
 " they came back from Paris, recollects his mother stood as  
 " godmother to the baptism of Archibald, Lady Jane's eldest  
 " son. Lady Jane always wore a hoop. On cross,—de-  
 " pones that he did not perceive that she was with child,  
 " Depones, that he never heard that his mother advised Ma-  
 " dame Stewart to go and lie-in at Paris. That he never  
 " heard that Madame Stewart, before her departure for Paris,  
 " called any physician, surgeon, or "man-midwife," &c. There  
 " was in the town of Rheims sundry physicians and surgeons  
 " very skilful. Depones, that his mother died of apoplexy.  
 " That he never heard that his mother had been ill, brought  
 " to bed, or hurt in any of her inlyings. Depones, his fa-  
 " ther died in 1763." The Abbe Hybert, the Priest at  
 whose father's house Lady Jane went to lodge at Rheims,  
 deponed, that on arrival in that place, they lodged with his  
 father, including Mrs. Hewit and the two maid-servants,  
 Isabel Walker and Effy Caw. They came in the month of  
 June, and lodged about five or six weeks. He walked much  
 about with Lady Jane. On observing her with child, he ob-  
 served to his sisters,—“ Do you know what persons  
 “ you have here? They do not say they are married; and  
 “ there is a mystery in this, for the lady appears to me to  
 “ be with child, *notablement grosse*.” He recollects, that  
 while sitting with Lady Jane one day, during Colonel Stewart's  
 absence, he observed to Lady Jane, “ Your husband is very  
 “ long in returning to-day;” to which she answered, smiling,  
 “ Eh! Who told you then that he was my husband?” and  
 the deponent replied, also smiling, “ Your situation, ma-  
 “ dame;” to which she added nothing but a smile. This  
 pregnancy was not so observable, or observed at all, in her  
 walks in the garden and streets, because she wore a hoop,  
 but his conviction was formed by seeing her when in undress.  
 When asked, on cross, “ Who told you that it was not rags  
 “ which she had about her?” the deponent replied, “ What  
 “ reasons could she have had to affect to appear with child  
 “ before me, when she made a secret of it to my sisters and

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to the public?" Lieutenant Maclean and M'Kenzie called on her, and saw her pregnancy, and Mrs. Hewit, Isobel Walker, and Effy Caw, speak distinctly to it. When seven months gone, Isabel Walker depones "that she always undressed her and put her to bed. She and Effy Caw did not go with them to Paris, but before Lady Jane went, she and Effy were ordered to make child's clothes, and on one occasion Madame Hybert caught her engaged in the work. She hid it." Mrs. Hewit deponed, on cross, "that Lady Jane, when at Rheims, had no new clothes made, nor old ones altered, before she went to Paris."

Mrs. Hewit deponed, in the proof led in the service, that the reason why Lady Jane went to Paris, was because no proper help was to be had at Rheims, as they were told by every body; and that the two servant maids were left at Rheims for want of money to carry them along. She afterwards deponed, "That Lady Jane did at this time enquire at Mrs. Andrieux what assistance could be procured at Rheims for her delivery; and was answered, that they were as ignorant as brutes in that respect; and that she, Mrs. Andrieux, had had one child, in the birth whereof, by their unskilfulness, she had contracted a disease which rendered her incapable of having more children, and had ruined her constitution, and, therefore, she advised Lady Jane to have nothing to do with the people at Rheims on that occasion."

They accordingly departed from Rheims to Paris, and arrived in the latter city on the 4th July 1748, and put up at the hotel de Chalons, St. Martins, kept by Godefroi, and in a few days thereafter Walker received a letter from Mrs. Hewit, informing her of the birth of two sons. She exhibits and produces that letter; and Mrs. Hewit, on her part, depones, "that after remaining at the hotel de Chalons a few days, they removed to the house of Madame le Brun, in the Fauxburgh St. Germain, where Lady Jane was delivered, on the 10th July 1748, in her presence, of two male children, by La Marre, the man-midwife." Besides Mrs. Hewit's evidence as to the delivery, there was the evidence and judicial declaration of Colonel Stewart himself. La Marre was dead; but his existence as a person who practised midwifery, was established by Mr. Menager, surgeon in Paris, and Mons. Gilles, surgeon there. The former was intimately acquainted with La Marre. Had practised surgery with him for 12 years, at the Hotel Dieu. He remem-

bered of La Marre speaking to him of the case of a foreign Lady whom he was to deliver; and as, from her age, it was likely to be a difficult case, he was to assist. This was about 16 or 17 years ago. He did not assist the delivery, as he got otherwise engaged; but was told by La Marre afterwards, that he delivered her of two boys, one of whom was weakly, and at nurse, under his care. And Mr. Moreau, first surgeon of the Hotel Dieu, corroborated their testimony, in stating that La Marre and Menager were both in the Hotel Dieu together, that La Marre was a man-midwife, and that he had put to him certain questions on paper regarding a delivery, which he answered in writing. In La Marre's book mention was made of Madame le Brun. And by the evidence of M. de Beauville, advocate, keeper of the capitation roll in Paris, it appeared there were several persons of the name of Le Brun in different parts of Paris in the year 1748, but none in the Fauxburgh St. Germain. By the examination of La Marre's brother, he deponed that his brother practised midwifery. It appeared that Le Brun was known to La Marre.

The youngest of the two children which he delivered was born weakly, and was baptised by him, and sent out to nurse under his care, in the neighbourhood of Paris, while the eldest boy was retained and taken with them. It was next proved, that Le Brun's house being infested with bugs, she was obliged, soon after her delivery, to be removed to the house of Michelle, a l'Hotel D'Anjou, Street Serpente, where the people observed her anxiety and affection for the appellant. Michelle depones to a gentleman coming to look at her rooms. He asked "if there were any bugs in the house, to which the deponent answered, that nobody had complained of them. He returned in the evening, and took the rooms, bringing two ladies with him."—"Depones, That when that gentleman and these ladies entered to the deponent's hotel, they had no child with them;" "but next day, in the evening, they brought a child and a nurse." Blainville and Breval, two witnesses, say, that "on her arrival she was pale, and looked like one newly brought to bed." And Madame Michelle says, "she was weakly at first, but gathered strength daily." Lady Jane left her house on 3d or 4th August, was able to go to Damartine, about six leagues from Paris, and thence back to Rheims on 6th August, where her whole appearance was observed to be changed. She puts up with Madame Mayette, who depones, "that after coming to her, at this

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“ time, they remained with her for 16 or 18 months, leaving her in November or December 1749.” “ Before she came to her house, she perfectly well recollects of their former visit to Rheims.” They then staid in Hybert’s lodgings. Recollects of seeing them often. Lady Jane then walked with difficulty, and seemed to have great bulk, and the posture of a woman with child.” It was a Mr. Macnamara who engaged the lodgings for Mr. and Madame Stewart, stating “ that Lady Stewart was gone to Paris to lie in, and intended to occupy them on her return.” “ She brought Mrs. Hewit along with her, two chamber-máids, and a nurse, and a male child about six weeks old. Madame Fabre accompanied them from Paris as wet nurse to the child the length of Damartine, and was with them there for 15 days, until they got another nurse, who came on with them to Rheims. Sholto was left behind at nurse in charge of La Marre, and it was otherwise proved, that a child belonging to foreign parents, was nursed by a woman called Garnier, in the neighbourhood of Paris, who was delivered to nurse, by La Marre, who informed her that it was a twin child, and gave her money. While Madame Michael depones to “ hearing of the twin child left at nurse, whose name was Sholto. She observed, that she loved this child very much, and shewed it all manner of tenderness and affection.” “ She never doubted, nor had reason to doubt, that Madame Stewart was the mother of these children, because she shewed a great deal of tenderness for them. She went very seldom abroad, and was almost constant in her attendance on her children.” “ Recollects the journey Sir John made to bring the second child from Paris. After its arrival, they remained in Rheims with her but a short time.” Miss Primrose also deponed to hearing of the letters Sir John received from Paris, in regard to the health and progress of his son Sholto. These letters Sir John told her were from La Marre. And she and the other witnesses speak to the baptism of Archibald at Rheims—the Countess of Wigton standing godmother, and Lord Blantyre as godfather. These witnesses also de-  
pone to the fact, that while staying at Rheims at this time, after coming back from Paris, that she again became pregnant. Lady Wigton, Mrs. Greigg, Mrs. Hewit, and the two servants, Isabel Walker, and Effy Caw, are quite clear on this point: and that a miscarriage was brought on by an accident in coming home from Lady Wigton’s house; and Effy Caw brought to Chevalier Stewart, or Mangen the

nurse, the dead child or foetus. The nurse deponed to lifting the foetus out of the vessel, and saw it was a male child of seven or eight inches in length. Mrs. Hewitt also speaks distinctly to this miscarriage, and so does the nurse. Mrs. Hewit deponed (on cross) "that no surgeon was called in on this occasion; and that the only time when a surgeon was called in at Rheims was, when Archibald was threatened with a rupture."

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Upon receiving a remittance from England, from the Earl of Morton of £350, they paid off their debts at Rheims, and after procuring Sholto from Paris, proceeded on their journey to England with both their children. In the course of their journey they met with several friends. With Chevalier Douglas at Dunkirk, who deponed he saw their children; and declared that Sholto was weakly, but very like Lady Jane; and that Archibald was strong, and very like his father, Sir John Stewart. They arrive in England; and their likeness to their parents was proved by several witnesses. It was also proved by a host of evidence that Lady Jane and Sir John cherished the utmost fondness for the children; that they acknowledged them to the world as their children; and did on most solemn occasions, namely, on the approach of death, as persons stepping into eternity, emit declarations, confessing that they were their real and lawful children.—Lady Jane and her husband were universally believed to be above any such crime as falsifying children, and Mrs. Hewit and Effy Caw were persons of the most unblemished character and veracity.

Against this evidence, there was arrayed other evidence, which cast a veil of mystery and doubt over the whole case. It was alleged, in the first place, that the whole proof, as above set forth, amounted to nothing more than a fictitious appearance of pregnancy, assumed merely for the purpose of perpetrating the fraud, of bringing forward false children. It was proved, that when he went to the continent, Colonel Stewart passed under the name of John Douglas, and as one of Lady Jane's domestics. Lady Jane writes from Utrecht to her friend Mrs. Carse, in Edinburgh, in February 1747, in which she expressly denies her marriage. When at Aix la Chappelle she writes home to several friends in Scotland,—to Mr. Haldane, to the Right Honourable Stewart Mackenzie, and to Mr. Robertson,—for advances of money, in all of which she conceals her marriage. She writes Mrs. Carse again on 8th February 1748, and still conceals

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her marriage. She denies it in a conversation with Lady Katherine Wemyss. No appearance of pregnancy is observed at this time by Lady Wemyss or her husband, the governor, from which, it was deduced, that the appearances of pregnancy were assumed, though not assumed until the end of February 1746. It appeared too, from part of the evidence, that this was sudden and not gradual, That Lady Jane never appeared to her more intimate friends without a hoop, and her breast covered : that she concealed her marriage at Aix la Chapelle to all but the abbess and nuns of the convent. The first account given by Lady Jane to her brother, the Duke, of her marriage, was on 10th April 1748. It was proved also, that the Countess of Wigton, with her maid Mrs. Greig, and Miss Primrose, and Mr. Fullerton of Dudwick, did not come to Aix until 5th May, from which date till the 21st May, when they left for Paris, they, it was said, could have little opportunity of seeing Lady Jane's appearance. Besides, the accounts of this appearance were differently given by the Countess and Mr. Fullerton, and by Mrs. O'Callachan, and that given by Miss Primrose and Mrs. Greig. The different pretexts assigned for leaving Aix la Chapelle are disproved. It was proved that good assistance for delivery could be had there. It was also proved, that while there no physician midwife, or man-midwife, was consulted on Lady Jane's pregnancy. In their letters to Scotland, they disguise their intention of going to Paris, by stating their resolve to pass into Switzerland, &c. : and no apparent motive is assigned for moving about, especially in Lady Jane's supposed condition and state of health. Accordingly they set out for Paris; they arrive at Liege. Her stay here for two or three days, was marked, with this difference, that there was an effort to show off Lady Jane, instead of concealing, as previously, her bulk and size, at those places where she made a longer stay. The evidence of Chevalier Douglas, and Lambignon, and his wife, who saw her here, was founded solely on her apparent size, which belongs as much to simulate as to real pregnancy. It was also proved, that there was at Liege at that time very good assistance for delivering women, and particularly, that in this populous town there were 25 physicians and 25 surgeons, ten of whom were men-midwives; and that there were twelve midwives in the town. She leaves Liege on the 25th May,—travels along the mountains of Ardennes, during the course of three days, and arrived at Sedan on 27th May, where they stay till 5th June, resume

their route, and travel on thence to Rheims. Arrive at Charleville. Mons. Guenet, notary at Vauremont, enters the stage coach at Charleville, and travels two days with them to Rheims. The road was rough, being cut up with ruts—the diligence was heavy, and jolted the passengers much. In Mrs. Hewit and Isobel Walker's account of this journey, in their evidence given in the service, they state that Lady Jane took so bad that they were afraid she would have been brought to bed there, or had a miscarriage. Mons. Guenet's evidence did not bear out this fact. He stated, "at first he did not know whom he had as fellow travellers; by degrees they got into conversation; they came to dine at Launoy stage; he then dined with the gentleman. Had much conversation with him then. The gentleman paid for the whole dinner, in spite of having insisted to pay his share; they set out again on their route from Launoy, and arrived at Rhetel, at Simpson's inn, in the evening." On this stage he asked the gentleman "whom he had the honour to travel with; the answer was, that his name was Stewart, and that he was a Scotsman." "He asked the deponent if he knew Mr. Andrieux, wine merchant in Rheims, to whom a friend of his had written, requesting him to procure lodgings for them at Rheims; to which the reply was in the affirmative;" adding, "that he would have the honour, on their arrival at Rheims, to conduct them to Sieur Andrieux. "They arrived at Rheims on 7th June, and accordingly "he conducted them on foot from the coach office to Mr. Andrieux, who stated that he had received the letters to procure lodgings, but had not yet succeeded, and that Colonel Stewart would require to go to an inn for a few days, until they were procured." After resting, and having a collation served of wine and biscuit, Mr. Guenet then conducted them through the streets to an inn. "Depones, that during this journey he did not "perceive that Madame Stewart was with child, because he "paid no attention to it." "That she wore a long cloak " (Fr. mante), which fell from the shoulders to the feet: "that the two chambermaids had cloaks of the same kind, "and that the lady who accompanied her had not." He visited Rheims two months after that, "learned from the two chambermaids that their master and mistress had gone to Paris, as the latter was to lie in there, at which he testified his surprise, as he had seen no signs, and heard nothing

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1769. of that when they last met." It was next proved that the lodging they procured at Rheims was at Mrs Hiberts. That lady's daughter deponed, " That she has no remembrance of perceiving that Madame Stewart was with child : that she cannot say if she was or was not ;" and that she " never learned by Mr. and Madame Stewart, nor by the lady who accompanied them, nor by the chambermaids, that Madame Stewart was with child ; but she may have been with child, although she did not observe it." She remembered of seeing the chambermaids working at childbed linen. " She asked them what it was?" whereupon Effy wrapt up her work, and said, " It is nothing ; it is nothing." When she went out she always wore a hoop ; her walks being chiefly the Great Garden, or the ramparts. She was always accompanied by her lady companion. That when they left her, she did not know that they were going to Paris. She heard after they left her father's house, that the maid servants were left behind. And sometime after, she heard that Madame Stewart had been brought to bed at Paris. This was the first time she heard that they had gone to Paris ; her brother, the Abbe Hibert, saw Madame Stewart more frequently than she did, and often accompanied her on her walks. Miss Louisa Hibert, sister to the above, also depones to the same effect :—" she did not perceive that the lady was with child ;" but recollects her brother, the Abbe, who saw her more frequently, asked her " if she did not perceive something about Lady Jane?" Depones, with her sister, that no company visited them while at their house, except Madame Andrieux. They left her lodgings without mentioning that they were going to Paris. About fourteen days after they left, she met Effy Caw, who told her that her mistress was " brought to bed at Paris of two boys. Upon which she testified her surprise ; and said to her, " since Madame was with child, and so near her inlying, why did she not remain at Rheims to lie in there ? and to that Effy replied.—That there were two English gentlemen who were to go to Paris to be witnesses of the delivery, because *that* was necessary, in order that the infant might be acknowledged legitimate." Also Madame Santre, dress-maker, who was called in to alter some dresses at this time at Rheims, stated that she altered several gowns into the French fashion for Lady Jane, and did not perceive her pregnancy, although she may have been in that state. Mr.

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Andrieux also deponed that he did not notice that Lady Jane was with child. And Governor Maclean deponed that he frequently saw them, but neither Sir John nor any one ever told him that she was with child. He did not perceive it; he did not take any sort of notice; she always wore a very large hoop; if she was with child, it must have hid it. Saw her off in the coach for Paris along with Lieutenant Mackenzie; but they took no notice that she was with child. This was on 2d July 1748. There were plenty of good physicians, surgeons, man-midwives, and midwives in Rheims; it was proved that none such were consulted or brought into the lodging. They then leave Rheims on 2d July 1748 for Paris,—that is eight days before the birth, and travel during three days to Paris, in a machine, or coach, having no springs.—Madame Vantre and her maid were in the coach with them. They depone, that though they were packed up much together in the coach, and complaining of places, she did not see or hear, during all the journey, that Lady Jane was with child. Thinks they wore great cloaks; and another lady traveller, Madame Andry, depones, of seeing a fine, tall, pale foreign lady in the coach. She appeared to be about 38, but “did not appear to her to be with child.—“She was of a fine shape, neither fat nor lean,” and wore “a scarlet travelling cloak.” It is also proved that she concealed from the passengers that she was the wife of Sir John Stewart, and no mention during the route of her being with child, or complaints of fatigue or heat. It is next proved that they arrive at Godefroi’s Hotel, De Chalons, in Paris, on 4th July,—the landlord having been forewarned of their coming, by a letter from Maillefers, which letter makes no allusion to Lady Jane’s situation. It is proved by the entries in Godefroi’s books, that they came there on the 4th July, and continued to have charges set down to them to the 13th July, for wine, suppers, &c. Godefroi deponed, “that he kept in his hotel the books for the police, to write “down in them those who come to lodge in his house, one “of which books is called the ‘Livre de l’Inspecteur,’ and “the other, the ‘Livre du Commissaire;’” and a book being presented to him,—“deponent knows it to be the ‘Livre “de l’Inspecteur,’” which he made use of in the year 1748. Depones, “that the article which is in these terms, 7 July 1748, “Mr. Stewart, a Scotch gentleman, and Madame his spouse, is of the handwriting of Madame Godefroi, the de-

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ponent's wife. That the deponent also kept, at same time, a book or register of expense, in which was wrote the expense of those who lodged in his house." That book is now deposited at the Tournelle. "Deponent remembers, that there came to his house in summer 1748, a gentleman who was a stranger, who told the deponent that his name was Mr. Stewart, and two stranger ladies with him,—that the gentleman told the deponent that he was from Scotland. Depones, that he did not see any accoucheur, or midwife, nor any other person, come to visit Mr. Stewart, and these two ladies, during all the time they staid in the deponent's house. Depones, that he never knew of any accoucheur or surgeon of the name of La Marre. Depones, that he was not informed by these persons, or any other, that the lady had come to Paris to be delivered, nor that she was with child. "He did not recommend them to any midwife, or to any other hotel or lodgings. He did not learn to what other house these strangers went to lodge when they left his house. That they only told him that they were going to the Fauxbourgh St. Germain. Depones, that he never knew any person of the name of Le Brun, who kept a hotel or furnished lodgings, or who was mid-wife or sick-nurse." Madame Godefroi depones as to the 7th July being the date on which Mr. and Madame Stewart entered, "Depones, that she cannot affirm that this date is exactly the date of the entry of Mr. and Madame Stewart, and observes that she is equally uncertain of the exactness of the other dates, because her house, being known and unsuspected, the inspector did not come every day, but was sometimes eight days without coming." It was proved that it is only at the instant of the inspector's visit that they write down the entry. Hence the entry dated 7th July. Corroborates her husband in other respects. By a pocket book produced, kept by Lady Jane, Lady Jane had written in her own handwriting, that Archibald and Sholto were born on 10th July 1748. So that the dates of charges in Godefroi's Hotel, running up to the 13th July, gave ground to believe that the children were either born there, or that the date (10th July) of the birth was erroneous. But the appellant explained that this was accounted for by a separation being made.—The account being divided into two parts by a line,—the first part ending on the 7th July or 8th July,—and the other part commencing with 9th July, closing at the bottom with cinq jours and demi, (five

days and a half.) Although he had removed his lady, Sir John may have gone there to dine, or sup, during the latter part of it. Then again, various accounts were given of the house where she was said to be delivered. At first, Sir John, in his account to Mrs. Napier, when the children were born, wrote that Lady Jane was delivered in the house of Madame Michel, in Paris. Afterwards, when enquiries are made, he declares that the delivery took place in Madame Le Brun's, in the Fauxbourgh St. Germain, before La Marre, a man-midwife, residing in Paris. It is proved that Madame Le Brun is searched for, but is not to be found.—If she had existed, the procedure adopted by Mr. Stewart in Paris, the Tournelle Criminelle, would have traced her out. This process having been prefaced by the publication of a Monitoire in 1763, dispersed throughout all France, conceived in terms to attract attention, and supposed the crime of “stealing or procuring false children, already proved against Sir John Stewart and Mrs. Hewit.” It was published by the Archbishop of Paris, described Lady Jane and Sir John Stewart's person, dress, and appearance; and all persons were enjoined, under pain of excommunication, to reveal to the parish Curées whatever they knew concerning the facts therein contained. Neither from this source,—nor from the Police books,—nor from the capitation roll, where all persons who kept lodgings were registered, could a Madame Le Brun be found living in July 1748, in the Fauxbourgh St. Germain. There were other Le Bruns; but none corresponded with the place. It was therefore contended she was an ideal person. La Marre too was dead. Then there were the four forged letters of La Marre to Sir John Stewart, produced in the service, the last of which contains a certificate that Lady Jane was delivered by him of two boys on 10th July 1748. It was stated that Lady Jane knew nothing of this forgery, if it was a forgery. Yet, on the one hand, it is proved, that in a conversation with Lord Prestongrange, she stated, that she thought she could procure a certificate from La Marre, as, for ought she knew, he was still alive. She had, before this, mentioned to Mrs. Menzies that she had in her possession sufficient evidence of the birth of her children, in a letter from the physician who delivered her. So that if she believed these letters as genuine, she would never have declared that to Lord Prestongrange. These four letters were found, after Lady Jane's death, in a trunk belonging to

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her. Mrs. Hewit, on cross-examination, describes the inmates of both Le Brun, and Michell's houses almost alike, viz.—a landlady and a landlady's daughter, who was married, a servant-maid, and a woman lodger. She does not know how Sir John got La Marre, the man-mide-wife, or what place in Paris he resided. That she never saw La Marre except once, after the delivery, when he came to enquire after her, and the eldest boy. Sir John too, while at Paris, wrote two letters, one on 10th July 1748, and one on the 22d July, both dated as from *Rheims*, addressed to Lord Crawford. The former does not allude to the delivery. But the second does. Madame Michell depones, that when they came to her lodgings in July, she heard nothing mentioned of Madame Le Brun, or La Marre,—or even a hint given that Lady Jane was delivered in Paris. She, however, heard them speak of having been at Godefroi's; and that their heads were almost turned with the din and noise in it. They came to her house on 8th July, as appeared from the book, *Livre du Commissaire*, kept in the house. Under that head there is an entry, *Sieur Furat* Scotchman, which, according to Mr. Stuart, the Duke of Hamilton's agent, was in the handwriting of Sir John Stewart. The Michells said it was not theirs; and thereafter deposed it was their servant-maid's handwriting, but proof was adduced to shake the integrity of this entry. And when La Marre's widow was examined, she deponed that she never heard her husband mention any thing of the delivery of the foreign lady, or the letters.

It was alleged by the Duke of Hamilton that the eldest boy was bought from a woman of the name of Madame Mignon, the wife of a glassblower, and that the youngest son Sholto was stolen from, and the son of one Sanry, a rope-dancer. To establish these facts, it was proved that a foreign gentleman went about Paris in 1748 seeking poor parents, who were ready to give their children to be brought up comfortably. That he came to the Cure de St. Laurent, and told him that a lady of condition was desirous of doing good to poor families, overburdened with children, and requested him to give him a list of children lately born. The Cure refused, until he was informed of the lady's name. Then he asked the abode of the Sisters of Charity. He goes to other houses on the same day. Saw Madame Mignon, whom he met at the church of Notre Dame. Proposed

to take her child, and bargained with her to come back to the same place next day with the child. Next day she came to the same place with her child, where the gentleman again met her, with a lady in his arm. He asked where the child could change its clothes. She took it into a neighbouring house, Widow Hedward's, where its clothes were changed. Her husband was then with her. The gentleman said that his lady was delivered of two male infants, who were dead, and that he did not know how to acquaint her with it. They went off in a coach; but Mignon's husband followed, to see where they would go to. He followed as far as the Rue Mazarine, where, in a long alley, he lost sight of them. Mignon's child was born 28th June 1748, and certificates of baptism dated 8th July.

Sanry, the rope-dancer's child, (supposed to be Sholto), it was proved was stolen or carried off in November 1749, (a time corresponding with Sir John Stewart's second visit to Paris from Rheims to take Sholto from the nurse), by Duvernay (supposed to be the name assumed by Sir John Stewart on that occasion), on pretence of placing it under a lady of condition, in the following manner: A gentleman called on Madame Sanry. He saw her whole children, and proposed to take her youngest child. She said she must first consult her husband. Next day the gentleman came with a lady for the child, stating that her child would one day get very rich, and do her good. Carried it off in a coach to an inn, which he named to her. Afterwards relenting, they went to the inn, saw their child, and seeing it so well taken care of, they left it; but, on going back again, they could get no farther trace of their child, or of the parties. The gentleman did not tell his name, but said he was an Irishman. It was remarked on this part of the evidence, that Sanry's child did not correspond in age or description to Sholto; and that the public accounts of it, when stolen, gave it out as a child of twenty months. While Mignon's child, supposed to be the appellant, was described by Madame Mignon to be totally different in size, strength, and complexion, and both their evidence was tainted, by the fact that they had consented to sell their children. And no evidence was sworn to, to identify Sir John Stewart and Lady Jane as the parties. They return from Paris to Rheims on 16th August, and took up their abode in the house of Madame Mayette, bringing the eldest boy Archi-

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bald with them. It is proved he is baptized with great ostentation, by an entertainment given by distribution of money to the populace, and by ringing of bells, &c. And Sholto is given out to nurse, and left behind under the care of La Marre. It is next proved she has a miscarriage three months after the baptism of Archibald. Isabel Walker states the fœtus to have been seven or eight inches long, while medical witnesses are adduced, who depone that conceptions of two or three months could not produce so large a fœtus. Besides, there were other miscarriages spoken to—a second by Jeanie Mayette, and a third by Mrs. Rutledge—all of these occurring so close in point of time upon each other, as to throw an air of improbability over the whole. Proof was also led to shew, that before they left France, as well as after their arrival in England, they are made aware that the Duke of Douglas entertained suspicions of the status of these children, and that this report was current, but they, notwithstanding, did not take any means to preserve or bring from France evidence of the birth, so as to silence these suspicions at once. In particular, Major Cochran, afterwards Lord Dundonald, wrote the Duke of Douglas an account of a meeting with Lady Jane at the Countess of Stair's lodgings in France. The letter says:—"Your sister  
" went there with the two impostors. So soon as they en-  
" tered the room, the Countess called out to Lady Jane,  
" You cannot pass those boys upon the world as twins, for  
" one of them must be considerably older than the other?  
" Your sister changed colour; but the Countess of Stair  
" went up briskly to the children, opened their mouths, and  
" discovered by their teeth that one of them was six months  
" older than the other. Your sister proposes to go to Lon-  
" don soon, and take the boys with her. It is thought they  
" will die one of these days, as Lady Kinnaird's did. I  
" must entertain your Grace with this curious process, which  
" has lately been before the Commissaries. Lady Kinnaird,  
" having a pique at her husband's heir, gave it out that she  
" was with child, and was afraid that she and her child  
" would be in danger from the heir, so absconded for some  
" time. Ather return, she told that she had been delivered of  
" two boys. The heir raised a process against her to pro-  
" duce the boys; but her ladyship, finding that the plot  
" would be discovered, was glad to give it under her hand  
" that the boys were dead. My dearest Lord, I think it

“ my duty to inform your Grace of every thing that may  
 “ turn out to your advantage, *and if ever you find me vary*  
 “ *from the truth, believe me to be a damned villain.*” (Signed)  
 “ THOMAS COCHRAN.” The Countess of Stair herself was  
 dead ; but, as throwing great improbability on the truth of  
 the contents of this letter, it was proved (on cross) that Lady  
 Stair, for long after its date, continued Lady Jane’s friend.  
 That she rendered her assistance, and even wrote to her bro-  
 ther many letters, beseeching aid on her behalf. It is further  
 proved by Mrs. Hepburn, relict of Major Hepburn of the  
 British Dragoons, that she recollects, “ soon after the Duke  
 “ of Douglas’ marriage, the deponent saw a letter to the  
 “ Duke from Major Cochran, now Lord Dundonald,”—(de-  
 scribes the contents of it as above.)—“ Depones, that in the  
 “ end of the year 1758, or beginning of the year 1759, when  
 “ the Duke of Douglas lived at the Abbey, Lady Stair  
 “ came there one day to make a visit, and after being with  
 “ the Duke more than an hour in a separate room, she came  
 “ into the drawing-room, where the deponent was, in com-  
 “ pany with the now Sir John Stewart of Castlemilk, and,  
 “ as the deponent thinks, Mr. Dundas of Castlecary ; that  
 “ the Duchess of Douglas came into the room immediately  
 “ after Lady Stair, and in a few minutes the Duke like-  
 “ wise entered ; that Lady Stair, upon coming into the  
 “ drawing-room, appeared to be in a violent passion, and  
 “ said, she had now lived to a great age, and had never be-  
 “ fore been brought into any clatters or lies of that kind ;  
 “ and upon the Duke’s coming in, she went up to him and  
 “ said, that she had never doubted of the children being  
 “ Lady Jane’s ; that, on the contrary, she had begged Lord  
 “ Dundonald to carry a letter from her to Duke of Dou-  
 “ glas, begging his Grace to do something for Lady Jane  
 “ and the children ; when Lord Dundonald (Major Cochran)  
 “ told her that it was needless.”—“ That Lady Stair said,  
 “ she never had such conversation with Lady Jane, as is  
 “ mentioned in Lord Dundonald’s letter to the Duke, nor  
 “ ever doubted of the children being Lady Jane’s or twins,  
 “ until she heard of a letter from Count Douglas.” Mrs.  
 Hewit deponed to a great many letters received by Sir John  
 Stewart from La Marre while at Rheims, yet the only let-  
 ters found, purporting to be signed by him, addressed to  
 Sir John, were the four forged letters before noticed, one  
 of which professed to contain a certificate by him of the

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1769. birth. The detection of these forged letters\* was not rested so much on a *comparatio litterarum* as from a critical examination of them by French scholastic witnesses, who deponed that they could not be written by a Frenchman. That they were written by an Englishman. And that this was obvious from the Anglicisms, orthography, idiom, and particular phrases used in these letters.

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July 15, 1767. Upon the evidence the Lords of Session pronounced this interlocutor, by a majority of 8 to 7:—"The Lords having considered the state of the process, writs produced, and testimonies of the witnesses adduced, and heard parties' procurators thereon, and having advised the same with the memorials, observations, and other papers given in by both parties, they sustain the reasons of reduction, and reduce, decern, and declare accordingly."

The majority of the Court stated their reasons as follows;—That though the acknowledgment of the parents, and the habit and repute were good presumptive evidence, sufficient to warrant the verdict of a jury in serving him heir, yet where, in this case, *that* service was sought to be reduced, such proof by itself is not *probatio probata* of filiation. And accordingly such service and presumptive evidence upon which it proceeded, might be redargued by proof that the appellant was not the son of Lady Jane Douglas:—That, looking to the concealment of the marriage, and mystery attending the birth, which in the case of a real birth were unnecessary—looking also to the contradiction and falsehood as to the house in which the child was born—the persons present—La Brune—La Marre, the accoucheur, there could be no doubt that the appellant was not the real child of Lady Jane. By a letter from Sir John, it appears that the child is born, first in the house of Madame Michelle—then this is corrected, and it is said to be born in the house of La Brune. Mrs. Hewit and Sir John's accounts are also inconsistent; so also are Lady Jane's, for she had given accounts of the birth equally conflicting, had assigned places and names that could not be found, and dates that did not agree, and Sir John's declaration had brought out the fact of La Marre's forged letters. If truth was at bottom, why forge letters in the name of La Marre, the man-midwife? What necessity was there

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\* *Vide* Appendix.

for any such? Could La Marre not be got himself? How was he not adduced? But further, the parents are, soon after the birth, made acquainted with reports in regard to the children,—namely, that they were believed to be fictitious. Yet notwithstanding this, they do not take steps, like innocent people, to vindicate their character, and support the integrity of their issue. They live for years, and submit without a murmur to reproach.

The minority of the Court laid great stress on the acknowledgment of the parents themselves, and the habit and repute,—holding that these constituted evidence of the highest kind. And when coupled with the name in the baptismal records, was evidence against which no contrary evidence could be allowed. Besides this, there was added positive proof of pregnancy and birth, coming from witnesses who were constantly and permanently about and living with Lady Jane—witnesses too of the highest rank and most unimpeachable character. They also held, that being already served heir, and enjoying the full status as such, the appellant could not be deprived of this status except upon the strongest possible proof that he was an impostor, and not Lady Jane's child. That the proof of imposture, as attempted to be led, was made to rest on a great variety of detached circumstances, which prove nothing positive, but only create suspicions and doubts, and by witnesses too, having only a cursory or accidental opportunity of meeting in a stage coach, on a journey, or at an inn, with all the usual hurry attendant on such situations, and with little or no opportunity of taking any particular observation of Lady Jane's condition. They held, that there were undoubtedly concealment and mystery, but not such as was not sufficiently explained by the circumstances in which they were then placed. Their circumstances were poor, and their prospects dim and doubtful. This privacy might have been assumed for economy, while it was very unlikely that they, in this situation, would have burdened themselves with two supposititious children, and that to this scheme they would have got Mrs. Hewit, a gentlewoman, and their two servant women, to agree and concur, far less the parents, who are said to have sold their children. But, be the falsehoods and contradictions in proof what they may, this was clear, that the most positive evidence was adduced of Lady Jane Douglas having been pregnant, and that she was again pregnant, and had a miscarriage. This lays a foundation for the reality of his birth, which, when

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taken together with his parents' acknowledgment, were decisive of the present question. He ought not to suffer from his parents' falsehoods or concealment—and the rule, "false in one thing, false in all things," ought not to apply.

Against this judgment of the Court of Session, the present appeal was brought to the House of Lords.

*Pleaded for the Appellant by the late Lord Thurlow as Counsel.*—After a learned comment on the proof as adduced, deducing and insisting therefrom, that by and under it, the status of the appellant was clearly established, it was then pleaded in point of law,—That the appellant having, in his service to his uncle, the late Duke of Douglas, brought a proof of his possession of the state of filiation to Sir John Stewart and Lady Jane Douglas, in every article wherein such possession can be thought to consist, and by every species of evidence. 1st, The *treatment* of him as their son, proved by many witnesses who had seen him often under those circumstances. 2d, The *nomination* of him by his parents, proved by many witnesses who had heard it—by many original letters, and by more solemn acts of baptism, deeds, and wills. 3d, His *reception* as the son of Lady Jane Douglas every where, by the world as well as in private circles, proved by all the witnesses. 4th, His being *habit and repute* Lady Jane's son. 5th, *Possession* of his state of filiation, inferring his title by presumption of law,—he was entitled to be protected in this possession, until the contrary be proved, such possession placing necessarily the onus of proving the contrary on the adversary who impeaches it. But, abstracted from the possession of his status, there was the most positive evidence of witnesses, to his actual birth of the body of Lady Jane Douglas, independently altogether of the host of concurring testimony, of itself sufficient.

*Pleaded for the Respondents.*—The appellant has earnestly endeavoured to convert the subject of this contest into a *question of law*, wishing to avoid the decision upon the *question of fact*. When it is pretended that consequences hurtful to society may arise from a party who is in full possession of his *status* of filiation and birth, having that status and birth challenged and impugned after long years possession, it is meant, either, that in no case whatever, a challenge of this nature, against a person acknowledged by his reputed parents, ought to be allowed; or, that it ought not to be allowed in cases similar to the appellant's. The first of these propositions cannot be maintained is self-evident. If in no

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case a challenge of this nature were admitted, then if a woman of eighty should pretend to be delivered of two or three children at a birth, whom she and her husband acknowledged as theirs, the state of such children would be secure from challenge. Hence, therefore, in this case, the question of law, as to the proof and *onus probandi*, stands exactly in the same situation with regard to the weight of presumption to be allowed, or the decree of evidence to be required, as it did before the jury: And whatever evidence was necessary to the proof of the appellant's title at the service, is equally necessary to support his case in the present reduction of his service. This practice is quite the rule of the law of Scotland; which is based upon very obvious reasons, because, to obtain a verdict of service, the very slightest degree of evidence is sufficient. But that this facility of service, calculated for the ease of general succession, might not be without redress, in particular cases, where there is reason to doubt the truth of the verdict, the law allows, to any person having interest in the matter, to bring this service before a court of review. Accordingly, in reductions of service, the Court of Session judge and stand in room of the jury in deciding on such questions. The very name of the Inquest of Error proves this, and therefore the proof must be gone into without respect to such service, which ought not to be of any avail whatever in the decision of the question.

Looking, therefore, to the whole proof, the respondents contended that the appellant was not the son of Lady Jane Douglas, and consequently, not the heir of tailzie and of provision to Archibald, Duke of Douglas.

After hearing counsel for several days in the House of Lords,

Lord Chancellor (Camden) spoke as follows:—"The cause before us is, perhaps, the most solemn and important ever heard at this bar. For my own share, I am unconnected with the parties; and having with all possible attention considered the matter, both in public and private, I shall give my opinion with that strictness of impartiality, to which your Lordships have so just and equitable a claim. The question before us is, "Is the appellant the son of the late Lady Jane Douglas or not?" I am of the mind that he is; and own that a more ample and positive proof of a child's being the son of a mother never appeared in a court of justice, or before any assize whatever.

"The marriage of Lady Jane to Colonel Stewart, August 10th

1769. 1746, is admitted at all hands. Her pregnancy in January 1748, and the progress of it, were observed by many people: at Aix-la-Chapelle it was notorious: her stays were widened; the nuns of the convent of St. Anne's discerned it, notwithstanding Lady Jane's modesty; the maid servants are positive as to the fact; the Earl of Crawford wrote an account of it to the Duke of Douglas, not as an hearsay, but as a fact, of which he himself was fully satisfied by ocular inspection; and if there be a pregnancy, there must be a delivery; which accordingly happened, by the positive evidence of Mrs. Hewit, who has deposed that "she received them into her lap as they came from Lady Jane's body". She was delivered of twins on the 10th of July 1748, at Paris, in the house of Madame la Brun, in the Fauxbourgh de St. Germain. Lady Jane's ability to bear children is established by many witnesses; and a miscarriage after the birth of twins, still more and more proves the delivery.

"But, my Lords, there is another proof no less convincing, that the appellant is really the son of Lady Jane, and this arises from the uniform tenderness shewn towards him. 'Tis in proof, that on every occasion she showed all the fondness of a mother; when he casually hit his head against a table, she screamed out and fainted away; when her husband, the Colonel, was in prison, she never wrote to him without making mention of her sons: she recommends them to clergymen for the benefit of their prayers; is disconsolate for the death of the youngest: takes the sacrament: owns her surviving son: does every thing in her power to convince the world of his being hers: blesses and acknowledges him in her dying moments, and leaves him such things as she had. Sir John likewise shows the same tenderness in effect; he leaves him 50,000 merks, by a bond in September 1763, ten years after the death of Lady Jane, and on his deathbed solemnly declares, before God, that the appellant is the son of Lady Jane. "I make this declaration," said he "as stepping into eternity." A man that is a thief may disguise himself in public, but he has no occasion for any mask when in private by himself.

"These positive declarations convinced the Duke of Douglas, and he left his dukedom and other estates to his nephew, the appellant, who was regularly served heir thereto in September 1761, when he was possessed of all the birth right of a son, so far as the oaths of witnesses, the acknowledgment of parents, and an established habit and repute could go. The cruel aspersions thrown out against Lady Jane and the Colonel, had been refuted by the late Duke of Argyle and the Countess of Stair. No mortal doubted the appellant's being the son of Lady Jane except Andrew Stuart, his father, Archibald Stuart; Major Cockran, who is married to Stuart's sister; White of Stockbriggs, a principal actor in these scenes. These doubted the matter; and Andrew Stuart, &c., as by concert, went over to France, not to procure evidence of a real fact, but to suborn wit-

See Letter I.  
p. 17 of proof.

See p 20 & 21.

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nesses to establish an article that never existed except in their own imagination: the design was bad, and the means to accomplish it were no less criminal. 'Tis needless to follow the searcher through all the scenes of his inquiry; the result of which was, to return to Scotland, enter an action against the appellant, and bring his own father to condemn him, at a time when the old gentleman was in a condition every way deplorable. And, taking advantage of his inaccuracies, he makes a second tour to Paris, where he published a *monitoire* entirely to seduce witnesses, and influence them to commit the blackest perjury. In this paper he describes the person of Sir John Stewart, Lady Jane Douglas, and of Mrs. Hewit; asserts that they had purchased two children, whom they wanted to impose upon the world, in order to defraud a real heir of an immense estate and fortune; and inviting all who could give light into the matter, to come to his lodgings, which he particularly described.

“Mr. Stuart certainly appeared like the guardian of the Duke of Hamilton; a pompous title, which drove several to their own destruction, and in hopes of a reward. Among the number of those was Madame Mignon, a glass manufacturer's spouse; who, after conversing with Andrew Stuart and his clerk, and receiving presents from them, comes in before the Tournelle Criminelle, and deposes, that she had sold her own child to foreigners whom she did not so much as know. “Can a woman forsake her sucking child?” is a rhetorical remonstrance handed to us from the highest authority. The thing is incredible, and yet the woman has sworn to it!—a circumstance sufficient to render her testimony of no force, when opposed to the dying declarations of Lady Jane Douglas and Colonel Stewart, and to the positive oath of Mrs. Hewit, whose character is established on a good foundation; but, take the declaration of Madame Mignon in all its extent, yet she has said nothing to affect the appellant; the time when, the people to whom, with every other circumstance, prove her not to have been the mother of the young gentleman; his complexion, the colour of his eyes and hair, prove that he was not her's. The same thing might be said of the son of Sanry the rope-dancer, whom the counsel for the respondent would infer to be the child Sholto, the younger of the twins; and, as a strong proof of the same, urged, the two were but the same identical person under different names; and your Lordships were entreated to keep in your view, the rupture under which each of them laboured, in order to prove the identity; but how comes all out? Sanry's child could speak in November 1749, but Sholto could not utter a word for some months after he came to Mrs. Murray's house in December 1749. And now evidence is offered to be produced at your Lordships' bar that the child Sholto had no rupture in 1749; nay, that he was as sound as any person within these walls; certainly Mr. Murray, the most material witness in this affair, is more to be credited than Madame.

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See p. 33.

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

See p. 45.

“ The evidence of Godefroi, the landlord of the Hotel de Chalons, in the Rue St. Martin, is contradictory and inconsistent, his books being every way defective and erroneous. Nor does Andrew Stuart appear in a favourable light in this particular ; when first he came to Godefroi’s house, both the man and his wife were ignorant of the matter ; neither the one nor the other recollected Lady Jane Douglas or her husband, till Andrew Stuart, desiring a sight of the Livre d’Inspecteur, he found two articles, one of them Mr. Flurall, Escoissois, et sa famille sont entre 8me Juillet 1748 ; and this he positively affirms, with oaths and imprecations, to be the handwriting of Sir John Stewart, with which he pretended to be thoroughly acquainted ; but he was obliged to retract when other postages were found to be of the same handwriting ; this postage was found to be posterior to one written on the 12th, and the landlady of the house declared that she herself had marked it down. He had fifteen rooms and ten closets, which they pretended always to be full, and yet in their book it does not appear there was above three persons in them during Colonel Stewart’s abode ; and what is pretty strange, they had many women lodgers during that year, and yet they depose, they remember none but this lady, whom Andrew Stuart would have to be Lady Jane Douglas. They even differ with respect to the names of their servants. The counsel at the bar have acknowledged the inaccuracy

// Wrong then,  
in M. Michelle's  
books.

of the books, owing to the avocations of the man elsewhere, and to the inadvertency of his spouse, continually hurried by a multiplicity of business. Besides, a postage in a book, such as the *Livre d'Inspecteur*, which, like a waste book, contains things just as they occur; or the *Livre d'Epense*, to which the articles of the former are transferred; bear no manner of convincing proof that the persons mentioned in these, staid at such and such places, it being a customary thing to mark down the name of the person the moment he takes the lodging; and it is notorious that many persons have paid a week, nay a month's lodging, without sleeping a night in it; and this is no more than equity, since the same was reserved for their use.

“ But here, my Lords, the pursuers in this affair have destroyed their own cause; they have brought a sort of proof that Lady Jane Douglas was at Michelle's house, called *Le Petit Hotel d'Anjou*, in the *Rue Serpente*, *Fauxburgh St. Germain*; and this at the very time when they would prove her to have been at the house of *Godefroi*, of whom so much has been said and heard. Michelle and *Godefroi* disagree in every thing except in the irregularity of their books; and indeed it is hard to say which of the two excels most in that particular. But, not to insist on the irregularities, it is proved to be the practice in Paris, and of Michelle in particular, to write people's names in these police books, as entered on the day the room was hired, though the person does not enter for some days after.

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

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“ All these objections to the reality of the appellant being the son of Lady Jane are imaginary, and hitherto have been refuted, to the honour of the innocent, and the more firmly establishing him in the possession of his birthright. They only tend to render her virtues more brilliant and illustrious ; for, as the allegations never existed in fact, but in the imagination of Andrew Stuart, so when put to the trial, they must necessarily fall to the ground. Thus he has asserted, that Colonel Stewart received £350 from the Earl of Morton’s banker some days before Lady Jane’s lying in, and from thence would infer that her delivery in Madame La Brun’s, an obscure house, was only to carry on the imposture ; but now it appears that this money was not paid till sixteen days after. How unfortunate for the Duke of Hamilton to be under the directions of such a man ! one who has involved him in such an immensity of expense ; and thus, by examining a multitude of witnesses upon articles really foreign to the cause ; which, indeed, is not the Duke of Hamilton’s, it is the case of Andrew Stuart, who has acted so strange a part as well to deserve the observation made at the bar with great propriety, ‘ that if ever I was to be concerned in any business with him, I should look upon him with a jealous eye.’ I shall not follow the noble lord who spoke last through the various descriptions he has given us of midwifery.\* His observations may be just, but they cannot affect the character of Lady Jane Douglas, or the cause of the appellant, her son. The question before us is short ; Is the appellant the son of Lady Jane Douglas or not ? If there be any lords within these walls who do not believe in a future state, these may go to death with the declaration that they believe he is not. For my part, I am for sustaining the positive proof, which I find weakened by nothing brought against it ; and in this mind I lay my hand upon my breast and declare, that in my soul and conscience I believe the appellant to be her son.”

Duke of Bedford then spoke in favour of Andrew Stuart’s procedure, and in commendation of the Tournelle.

Duke of Newcastle spoke before Lord Sandwich and the Lord Chancellor.

Lord Mansfield next spoke :—

“ My Lords,

“ I must own that this cause before us, is the greatest and most important that occurs to me ; it is no less than an attack upon the virtue and honour of a lady of the first quality, in order to dispossess a young man of an eminent fortune, reduce him to beggary, strip

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\* Lord Sandwich, a lay lord, who took three hours to deliver his opinion against the appellant.

him of his birthright, declare him an alien and a foundling. I have slept and waked upon the subject, considered it upon my pillow to the losing of my natural rest ; and with all the judgment I was capable, have considered the various articles that make up this long and voluminous cause, upon which I am now to give my opinion before your Lordships.

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“ I apprehend that, in the matter before us, three things are to be considered,—the situation of Lady Jane before her delivery,—at her delivery,—and after it was over,—to all which the Chancellor has spoke with great propriety. It is proved, beyond a possibility of doubt, that she became pregnant in October 1747, at the age of 49 years, a thing far from being uncommon, as is attested by physicians of the first rank, and confirmed by daily experience ; and that, in the month of July, she was delivered of twins, one of whom died, the other is still alive. He has been presented to the world by Sir John Stewart and Lady Jane Douglas as their son ; nor can he be wrested from the hands of his parents, unless some other had, in their lifetime, claimed him as their child, in a legal and justifiable way.

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

“ As the Lord Chancellor has anticipated much of what I intended to speak upon this subject, so I shall only touch at the situation and character of the deceased, whom I remember in the year 1750 to have been in the most deplorable circumstances. She came to me (I being Solicitor-General) in a very destitute condition, and yet her modesty would not suffer her to complain. The noblewoman was every way visible, even under all the pressure of want and poverty. Her visage and appearance were more powerful advocates than her voice ; and yet I was afraid to offer her relief, for fear of being construed to profer her an indignity. In this manner, she came twice to my house, before I knew her real necessities, to relieve which now was my aim. I spoke to Mr. Pelham in her favour ; told him of her situation with regard to her brother the Duke of Douglas, and of her present straits and difficulties. Mr. Pelham, without delay,

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laid the matter before the king. The Duke of Newcastle, then being at Hanover, was wrote to, he seconded the solicitation of his brother. His Majesty immediately granted her £300 per annum out of the privy purse; and Mr. Pelham was so generous as order £150 of the money to be instantly paid. I can assure your Lordships that I never did trouble his Majesty for any other. Lady Jane Douglas was the first and last who ever had a pension by my means. At that time, I looked upon her to be a lady of the strictest honour and integrity, and to have the deepest sense of the grandeur of the family from whence she was sprung; a family conspicuously great in Scotland for a thousand years past; a family whose numerous branches have spread over Europe,—they have frequently intermarried with the blood royal,—and she herself was descended from Henry VII. I took care that his late Majesty should be made acquainted with her family and name, to the intent that, though she was married to Colonel Stewart, a dissipated and licentious man, who had been in the rebellion of 1715, yet he would pass it over, as she was of a race who had always been eminently loyal, her brother having charged as a volunteer at the head of the cavalry in the year 1715, when his cousin, the Earl of Forfar, died like a hero in defence of the government; and that his Grace had, in the year 1745, treated the rebels and their leader with contempt and ridicule. And indeed his Majesty, from his wonted magnanimity, spoke nothing of her husband, but treated her with all the respect due to a noblewoman of the first rank and quality; one who carried all the appearance of a person habituated to devotion, and for a number of years trained up in the school of adversity and disappointment.

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

blessing, of which her enemies could not deprive her, which was her  
 innocency. and that she could pray to Almighty God for the life of  
 her other son ; that she was not afraid for him, for that God Al-  
 mighty would take care of him ; and what is remarkable, the wit-  
 ness, Mary Macrabie observed, that the grief for the loss of her child  
 grew upon her. Would she, my Lords, have blessed her surviving  
 child on her deathbed ? Would she have died with a lie in her  
 mouth, and perjury in her right hand ? Charity, that thinketh no  
 evil, will not suffer me for a moment to harbour an opinion so cruel  
 and preposterous. Or, can we suppose that two people, who had  
 not wherewith to support themselves, would be solicitous for, and  
 shew all the tenderness of parents towards the children of creatures  
 who, forgetting the first principles of instinct and humanity, had sold  
 their children to people whom they did not so much as know by  
 their names ? The act of Joseph's brethren in selling him, is repre-  
 sented as wicked and unnatural ; but, indeed, the crime of Madame  
 Mignon, and of Madame Sanry, is still more black and atrocious.  
 To carry this a little further, suppose Lady Jane Douglas had acted  
 thus, out of a principle of revenge towards the family of Hamilton,  
 yet Sir John Stewart had no occasion to do so, much less continue  
 the vindictive farce after her death ; especially when married to  
 another spouse. And here we may see Sir John as much a parent  
 to the appellant as Lady Jane ; he was every way fond of him ; it is  
 in evidence ; I know it to be true ; my sister and I have been fre-  
 quently at Mr. Murray's with them, and were always delighted with  
 the care we observed. No mortal harboured any thoughts of their  
 being false children at that time ; I mean in 1750 and 1751. Every  
 person looked upon them as the children of Lady Jane Douglas and  
 of Colonel Stewart. The Countess of Eglinton, Lord Lindores, and  
 many others, have, upon oath, declared the same thing.

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

“ But, my Lords, the Duke of Douglas himself was fully satis-  
 fied of the appellant's being the real son of his sister Lady Jane ;  
 for, on beginning to be known, after his marriage, and to relish the

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See p. 22, Let-  
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See p. 25,  
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pleasures of social life, he became very inquisitive "about the size, shape, and complexion of the appellant, and if he appeared to be a smart boy." He employed Sir William Douglas and others, in whom he could confide, to enquire of Mrs. Hewit, Lady Jane's companion, and of Euphemia Caw, and Isabel Walker, the two maid-servants who had lived with them when abroad, and observed their conduct in the most unguarded moments, concerning the birth of the children: he even searched into the character of these; and it appears from the depositions of clergymen and gentlemen of the first rank in that country, that they were women worthy to be believed. He even went in person to visit Mrs. Hewit, conversed with her in presence of his gentleman, Mr. Greenshiels, concerning his sister's delivery; and the accounts given by these, like the radii of a circle, all pointing toward one and the same centre, confirming the reality of Lady Jane being the mother of the young gentleman, he was satisfied, acknowledged him for his nephew, and left him his heir.

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

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

"'Tis needless to trouble your Lordships with the conduct of the respondent's guardians at Paris and elsewhere upon the Continent. Nothing has been discovered that could throw the least blemish upon the honour of Lady Jane Douglas or Colonel Stewart; they have indeed proved her straits there, and his imprisonment here; but both these circumstances carry a farther confirmation that the appellant is their son; for in every letter that passed between them the children are named with a tenderness scarce to be believed: whereas, had they been counterfeits, as pretended, they would have been apt to upbraid one another for an act so manifestly tending to involve them in their sufferings.

“ Suppose, my Lords, that Mignon, the glass manufacturer’s wife, the pretended mother of Mr. Douglas, had deposed the same things in Lady Jane’s presence, as she has so long after her death, from her evidence it appears she had never seen Lady Jane, and by her words, both in private and public, she seems to deserve no manner of credit; while the oath of Mr. Murray, a principal witness, has destroyed every thing she has asserted. The same thing might be said of Sanry, the rope-dancer’s spouse, whose child’s rupture we were earnestly desired to keep in view, to prove him to have been the identical Sholto, the younger of the twins; and now evidence is offered that the child Sholto had no rupture, but was as sound as any within these walls. Your Lordships have been told, and I believe with great truth, that a gentleman, shocked at the assertion, had wrote to the counsel, that the influence arising from so false a suggestion might be prevented. I always rejoice to hear truth, which is the ornament of criticism, and the polished gem that decorates a bar.

“ The scrutiny in France, followed by an action in Scotland, produced two things never intended by them. It brought forth a striking acknowledgment of the appellant by his father Sir John Stewart, as is manifest from the bond of provision read at your Lordships’ bar. Sir John openly acknowledged him before the Court of Session, in the midst of a crowded multitude, and when labouring under a load of anguish and pain; nay, when by himself he solemnly declared before God, in the presence of a justice of the peace and two clergymen, that the young gentleman was his son. It likewise established the character of Lady Jane; for, on examining the proof obtained through the vigilance of the Duchess of Douglas, Lady Jane’s reputation is unsullied and great. All who had the honour of being known to her, declared that her behaviour attracted universal esteem; and Madame Marie Sophi Gillien, a maiden lady with whom she lodged several months, depones that ‘ Lady Jane was very amiable, and gentle as an angel.’ It further proved that the elder child, the appellant, was the exact picture of his father, and the child Sholto as like Lady Jane as ever child was like a mother.

“ I have always considered likeness as an argument of a child being the son of a parent; and the rather as the distinction between individuals of the human species is more discernible than in other animals. A man may survey ten thousand people before he sees two faces perfectly alike; and in an army of an hundred thousand men, every one may be known from another. If there should be a likeness of features, there may be a discreminancy of voice, a difference in the gesture, the smile, and various other things, whereas a family likeness runs generally through all these, for in every thing there is a resemblance, as of features, size, attitude, and action. And here it is a question, Whether the appellant most resembled his father Sir John, or the younger Sholto resembled his mother Lady

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1769. Jane? Many witnesses have been sworn to Mr. Douglas being of the same form and make of body as his father. He has been known to be the son of Colonel Stewart by persons who had never seen him before; and is so like his elder brother, the present Sir John Stewart, that, except by their age, it would be hard to distinguish the one from the other.

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

“The respondent’s cause has been well supported by the ingenuity of its managers; and great stress has been laid upon the not finding out the house where Madam la Brun lived, and where the delivery was effected; but this is no way striking, if we consider that houses are frequently pulled down to make way for streets, and houses are built upon the ground where streets ran before. Of this there are daily examples in this metropolis. However, we need enter into no arguments of this kind, as there is a positive evidence before us; nor is it possible to credit the witnesses, some of them of a sacred character, when they speak of Lady Jane’s virtues, provided we can believe her to have been a woman of such abandoned principles as to make a mock of religion, a jest of the sacrament, a scoff of the most solemn oaths, and rush with a lie in her mouth and perjury in her right hand, into the presence of the Judge of all, who at once sees the whole heart of man, and from whose all discerning eye no secrecy can screen—before whom neither craft nor artifice can avail, nor yet the ingenuity and wit of lawyers can lessen or exculpate; on all which accounts, I am for finding the appellant to be the son of Lady Jane Douglas.”

It was therefore ordered and adjudged that the interlocutor complained of be reversed.

For the Appellant,	{ C. Thurlow, Ja. Montgomery, Fl. Norton.
For Lord Douglas Hamilton and Sir Hew Dalrymple,	{ J. Dunning, Ad. Ferguson, Tho. Lockhart.
For the Duke of Hamilton,	C. Yorke, Al. Wedderburn.

APPENDIX.

*Copy Letter written by Sir John Stewart in French to Count Douglas, to shew that the modes of expression &c. used are the same with those used in the four following Letters.*

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DUKE OF  
HAMILTON, &c.

Sensible de votre merite, et des temoynages que vous avez bien voulu de doner a toute ocasions de votre attentions, pour tout ce que me regardoid mon inetreit joint a l'egard que vous avez pour la justice, me fait experer que vous voudriez bien prendre la peine, aupres du Comte Douglas notre cousin. de lui fair scavoir que en Ecos, on a fait voir unne *letter* au Duk de Douglas mon frere, plein de sausete les plus grossiers que vous aurez la *bounté* d'expliquer a mons le Comte.

Qui est doner au Duke Come l'auteur de cette letter. Je suis tres *persuadé* de l'imposture, et que Mr le Comte est incapable d'un *tell* attent contre mon honeur, ou la justice et la verite sont, sacrafie en meme temps : mais come mes ennemies (voulent profiter de refroidissement qui est depuis quelque temps entre mon *frer* et moy, ont forgé cette *letter* avec bien d'autre mensonges, pour Ealgir la breche) afin qu' en *allient* les affections de mon *frer* la famille D'Hamilton soit agrandi, j'esper qu'a vos instances, et me requesition monsieur le Comte voudra bien prendre la prendre la peine de m'ecrir, et au mesme temps, sous mone Envelop d'adresse unne *letter* pour mon frere pour lui *fair* voir l'imposture, ce que peuvent vray semblablement lui *fair* voir coment il est environé de ses Ennemies, qui pour agrandir une famille, d'ont l'intres est tout oposé, a celle du sien, ils ont l'hardiness et efronterie, d'oser attaquer, *l'honneur* et la veracité de sa seur dont il doiv naturellement entre le protecteur. J'attend des vos nouvelles avec les *letters* desire, au plut tot, et suis en *attendent* avec haut. Es time Monsieur votre affectioné Cousine et tres humble Servt.

Quoaque j'ay n'ay pas l'honneur de connoiter Monsieur le Cont Douglas vous aurez la *bounte* de lui *fair* mes compliments.

1769.

*Four Letters from La Marre, Man-midwife, to Sir John Stewart, supposed to be forged.*

DOUGLAS  
v.  
DUKE OF  
HAMILTON, &c.

No. I.

Paris, Aoust 26, 1749.

MONSIEUR,

Vous serez peutetre surpriz et *mesme fache* que j'ay tant *difere* de vous donner nouvelles de votre chere Enfant qui Dieu *mercy* se port bien a present mais pour quelque *temps passe* il a beaucoup souffert en poussant ses dents *a* qui lui *empeche* de dormir et lui a *rendue* de fort. mauvoif heumeur Come j'etois *perswade* qu'il ny avoit pas de danger la chose *etent* tout naturell j'ay volue vous epargner le deplaisir que vous auroit naturellement Coute d'etre *instruet* des maux que le petit *souffroit scachant* bien combien ... es parents sont plus facilement *allarme* de *loign* plus que *moy* qui les voit tores les jours et *accoutume* a *leures* peines. *Scache* donc *monsieur* que depuis deux jours il *dorm* et mange bien et a repris son *bonne heumeur* naturell je ne puis pas me trop *lover* de la *nourice* elle est soigneuse et a toutes les *tendres* qu'elle pouvoit avoir possiblement. Sy (sy) L'enfant etoit *a* elle j'ay lui fait scavoir, que vous *est* informez de son *merit* et L'assure qu'elle sera bien recompence come j'ay trouvois par votre derniere que ma silence plus longue qu'a *l'ordinair* vous a *donne* de la peine je ne *manqueroi* pas a l'avenir d'ecrir plus souvent etant *monsieur*

Votres tres humble et tres obeysent *Serviture*,

PIER LA MARR.

Folded and addressed thus :  
A Monsieur Monsieur Stewart,  
*Gentilhomme* Ecossois a Rheims  
en Champagne.

No. II.

Paris, Septemb. 18ieme 1749.

MONSIEUR,

J'ay reçue l'honneur de la votre du dixieme *courent* et selon votre desir *ayent examine* et bien *considere* l'etat de la sante du votre cher Enfant aussi bien que celle de la *nourice*. J'ay trouvois a *propost* de *severer* l'enfant il ne *fant* pas vous etonner s'il a *ete* un peu *incomode*. Sur le changement du diete c'est *a quoy* je m'attendois, il a eu une petite espece de fiever, *que* n'a *dure* que trois jours a present il mange et dort bien. J'ay lui *ay* fait prendre de la Ruebarb ce qui a eu le *melliever* effect imaginable, et selon toute aparence, il est *a present* hors du danger des tout suit de l'asseverment, J'ay toujours *trouve* la *nourice* si soigneuse que J'ay *juge* a *propost* de continuer enfant entre ses mains scachant que *personne*

ne peut avoir une plus tendre soin. Je suis tres PERSWADE que vous serez tres satisfait en le voyent. Ce que vous nous fait esperer sera bientot, en attendent cette *honeur monsieur* J'ay celle d'etre avec respect, votre tres humble et tres obeysent Serviture,

1767.

DOUGLAS  
v.  
DUKE OF  
HAMILTON, &c.

PEIR LA MARR.

A Monsieur Monsieur Stewart,  
Gentilhome Ecossois a Rheims  
en Champagne.

No. III.

*Paris, Octb<sup>r</sup>. 4iem 1749.*

MONSIEUR,

J'ay bien de plaisir de vous aprendre que monsieur votre *fil* depuis le dernier dents q'u il a *pousse* qui lui avoit *cause* tant de douleurs a repri de la force tellement que l'on ni le reconnoitrait pas Enfin pour tout dire il est a present autant *avance* qu' ill est possible de voir un Enfant de son age vous serez bien *agreeable-ment* surpris en le voyent il marche *it* rien ne lui mang... la langue le soins de la *nourice* ne... J'ammays etre trop recompensé J'ay l'honneur monsieur d'etre respectueusement

Votre tres humble et tres obeisent Serviture,

PEIR LA MARR.

A Monsieur Monsieur Stewart,  
Gentilhome Ecossois a Rheims  
en Champagne.

No. IV.

*Paris, Jain le 9ieme 1752.*

MONSIEUR,

J'ay reęut la coke *ili a quelque temps* par la *quille* Je suis bien aise *d'aprendre* que les freres Jumaux dont J'avois le *bon heur d'heureusement* accoucher *Madam* votre chere epouse 10ieme Juliet 1748. Se *portent* bien, sar tout le Cadet Sholto Thomas pour qui il y avoit tant *a craindre etout venne* an monde se foible, que j'etois obligę—de suir aussi la fonction du pretre decraint qu il aurõit parti pour l'autre monde sans citte ceremonie si essentiel je vous prie de vouloir fair mes tres *humble* compliments a Madame Stewart votre tres chere epouse et a Mademoyselle Huitte mon assistente, et d'etre *perswade* Monsieur que j'ay l'honneur d'entre.

Votre tres humble et tres obeysent Serviteur,

PEIR LA MARR.

*P.S.*—Depuis votre d'epart, J'ay fait le tour d'italy et une Sejour du dix mois a Naples, qui m'a fait beacoup de bien au poetrin et J'ay trovvois l'air *sulphereux* de Naples si balsamique en me soulagent le *poitren* qui Je suis *determine* d'y retourner bientot Je n'attend que l'ocasion favorable d'e trouver un *amy* pour m'accompagner dans le voyage.

1759. *Cette lettre vous sera livre par Monsieur du Bois, mon amy intime qui vas s'establir a Londre, pour peindre en mignature si vous pouvex lui aider a trouver d'emplois. Vous me ferez Monsieur une plaisir sensible.*

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DOUGLAS  
v.  
DUKE OF  
HAMILTON, &c.

A Mousieur Monsieur  
le Coll<sup>nl</sup>. Stewart, a  
L'ondre.

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*Translation.*

No. I.

*Paris, Augt. 26, 1749.*

SIR,

You will be perhaps surprised, and even angry, that I have so long deferred to give you news of your dear child, who, thank God, is very well at present ; but for some time past he has suffered much in cutting his teeth, which hindered him to sleep, and put him in a very bad humour. As I was persuaded that there was no danger, the thing being quite natural, I was willing to spare you the uneasiness which it would have naturally cost you to be informed of the pains which the little one suffered, knowing well how much parents are more easily alarmed at a distance, more than I who see them every day, and am accustomed to their distresses. Know then, Sir, that for these two days past he sleeps and eats well, and has recovered his natural good humour. I cannot too much commend the nurse ; she is careful, and has all the tenderness which she could possibly have if the child was her own. I have let her know that you are informed of her merit, and assured her that she shall be well recompensed. As I have found by your last that my silence, which was longer than ordinary, had given you uneasiness, I shall not fail for the future to write more frequently, being, Sir, your most humble and most obedient Servant,

PIER LA MARR.

To Mr. Stewart, a Scotch Gentleman,  
at Rheims, in Champagne.

No. II.

*Paris, Sept. 18, 1749.*

SIR,

I received the honour of yours of the 10th current, and, according to your desire, having examined and well considered the state of the health of your dear child, as well as that of the nurse, I found it proper to wean the child. You must not be surprised if he was put a little out of order by the change of diet ; it is what I expected. He has had a little sort of fever, which lasted only three days ; at present he eats and sleeps well. I caused him take a little

rhubarb, which has had the best effect imaginable; and, according to all appearance, he is at present out of danger of all the consequences of the weaning. I have always found the nurse so careful, that I judged it proper to continue the child in her hands, knowing that nobody could have a more tender care. I am much persuaded that you will be quite satisfied on seeing him, which you make me hope will be soon. Expecting which honour, Sir, I have that of being, with respect, your most humble and most obedient Servant,

1769.

DOUGLAS  
v.  
DUKE OF  
HAMILTON, &c.

PIER LA MARR.

To Mr. Stewart, a Scotch Gentleman,  
at Rheims in Champagne.

No. III.

*Paris, October 4, 1749.*

SIR,

It gives me a great deal of pleasure to acquaint you that your son, since the last teeth he got out, which occasioned him so much pain, has recovered strength, so that one would not know him. In a word, to say all, he is at present as much advanced as it is possible to see a child of his age. You will be agreeably surprised on seeing him; he walks, and wants nothing but the tongue. The cares of the nurse can never be too much recompensed. I have the honour to be, Sir, respectfully, your most humble and most obedient Servant,

PIER LA MARR.

To Mr. Stewart, a Scotch Gentleman,  
at Rheims in Champagne.

No. IV.

*Paris, June 9, 1752.*

SIR,

I received yours some time ago, by which I am glad to learn that the twin-brothers, of whom I had the good fortune happily to deliver madam, your dear spouse, on the 10th July 1748, are well, especially the youngest Sholto-Thomas, for whom there was so much to fear, having come into the world so weak, that I was obliged to perform also the office of the priest, lest he should have departed for the other world without that ceremony so essential. I beg you would be pleased to make my most humble compliments to Madam Stewart, your most dear spouse, and to Mademoiselle Hewit, my assistant, and to be persuaded, Sir, that I have the honour to be, your most humble and most obedient Servant,

PIER LA MARR.

*P.S.*—Since your departure, I have made the tour of Italy, and a stay of ten months at Naples, which have done a great deal of good to my breast; and I found the sulphureous air of Naples so

1769.

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 ARTHUR  
 v.  
 GOURLAY.

balsamic in relieving my breast, that I am determined to return thither soon. I only wait the favourable occasion.

This letter will be delivered to you by Monsieur du Bois, my intimate friend, who goes to settle at London to paint in miniature. If you can assist him to find employment, you will do me, Sir, a sensible pleasure.

To Colonel Stewart at London.

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JAMES ARTHUR,	-	-	-	<i>Appellant;</i>
JANET GOURLAY,	-	-	-	<i>Respondent.</i>

House of Lords, 9th March, 1769.

**SEPARATE ALIMENT.**—Where the husband offers to aliment the wife in his own house, but takes lodgings only for her, and does not eat, sleep, or stay in the same house with her. Held, that this is not adherence sufficient to exempt him from liability in a separate alimony.

Action of aliment raised by the wife in the following circumstances:—She had been originally the servant of the appellant, a surgeon, residing at the time in Glasgow; and on their connection coming to the knowledge of the public by her pregnancy, they were privately married by mutual acknowledgment and marriage lines. He left the country immediately thereafter, joined the navy, and having acquired a fortune in India, he returned to Scotland, after ten years absence. On his return, he did not wish to renew the connection; whereupon a declarator of marriage, legitimacy, and adherence, was raised by the respondent, and defended by the appellant, he denying the marriage, but the respondent finally obtained decree in that action, declaring her marriage. The present action was raised for aliment, since the 1st day of July 1757, when he left the country, amounting to £360, and £40 per annum for future aliment. She averred in the summons, that the defender (appellant) refused to adhere to the pursuer's (respondent's) fellowship and society, and discharge the duties incumbent on him as her husband, and that the future yearly aliment was to be payable to her aye and until he adhere to the respondent, and discharge all the duties incumbent upon him as her husband, and likewise the sum of £20, for the yearly maintenance,