

REPORT  
OF THE  
T R I A L  
OF  
PATRICK SELLAR, Esq.

FACTOR FOR THE MOST NOBLE THE MARQUIS AND  
MARCHIONESS OF STAFFORD.

FOR THE CRIMES OF  
CULPABLE HOMICIDE, REAL INJURY, AND  
OPPRESSION,

*Before the Circuit Court of Justiciary, held at Inverness, on  
Tuesday, 23d April, 1816,*

By THE HON. DAVID MONYPENNY OF PITMILLY,  
ONE OF THE LORDS COMMISSIONERS OF JUSTICIARY.

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*Counsel for the CROWN.*—Messrs H. HOME DRUMMOND,  
Advocate-Depute, and JOHN FRASER, Advocates.

*Counsel for the PANNEL.*—Messrs J. GORDON, H. COCKBURN,  
and P. ROBERTSON, Advocates.

*Agents.*—Messrs JAS. ROBERTSON, W. S. and A. SHEPPERD,  
Solicitor, Inverness.

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1816.



# REPORT

OF THE

## TRIAL

OF

### PATRICK SELLAR, Esq.

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MARCHIOSS OF STAFFORD

FOR THE CRIME OF

CULPABLE HOMICIDE, NEAR HURRY, AND  
OBSESSION.

Before the Circuit Court of Justice, held at London on  
Tuesday, 23d May, 1816.

By the Hon. DAVID MONYENNY, of London,  
Esq., one of the Judges of the Court of Justice.

Counsel for the Crown — Messrs H. HOME, DRUMMOND,  
Advocate-Du-Roi, and JOHN FRASER, Advocate.  
Counsel for the Prisoner — Messrs J. GORDON, H. COCKBURN,  
and R. NORTON, Advocates.  
Spectator — Messrs J. ROBERTSON, W. S. and J. R. HENDERSON.

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1816.



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## PREFACE.

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FROM the general interest which the trial of Mr Patrick Sellar has excited in the north of Scotland, it is thought that a correct detail of the proceedings may not be unworthy of public attention. Mr Sellar is the son of Thomas Sellar of Westfield, in Morayshire; and was, in the year 1810, appointed factor over the estates of the Marchioness of Stafford, in Sutherland. That extensive county has, from peculiar circumstances, been left more in a state of nature than any other part of Scotland. It consists chiefly of a vast range of very high mountains, calculated, both from their natural situation, and from the succession of Alpine herbage with which they abound, for sheep pasture. Along the coast, there is a fringe of arable land, well suited for improvements, and the ocean bountifully furnishes all sorts of fish. But these advantages had been long disregarded. Strangers were in the habit of fishing along the coast, while the inhabitants lived in the recesses of the mountains, rearing with difficulty small patches of corn, following habits of idleness, and chiefly



earning their subsistence from the profits of illicit distillation. In this state of the country, it was the object of Lady Sutherland to turn the mountainous districts into sheep pasturage, to bring down the inhabitants to the coast, and set out portions of land for their convenience. At the same time, it was the intention of the Noble Proprietrix, to introduce among the people regular habits of industry, to encourage the supply of their wants from the bounties of the ocean, to promote the cultivation of the arable land ; and, while she thus improved the general state of the country, to secure their happiness and comfort.

This object, however advantageous, was extremely unpopular, both among the common small tenants, and also among the upper tacksmen or middlemen, and the judicious attempts at improvements were thwarted in every possible way. Although it is an undoubted fact, that the population, over the whole estate, has actually encreased, yet great outcry was made against the new system, as if Lady Stafford meant to depopulate the country, and to force the Highlanders to emigration. This, too, it was insinuated, was done merely for the purpose of encreasing her Ladyship's rent roll, although more than the income from the estate was annually expended in improvements. So far, however, did these prejudices prevail, that in the years 1812 and 1813, open violence and riot ensued. But even after the riots were quelled, the disaffection of the people, or rather of the middlemen, and the unreasonable opposition to the improvements, were not at an end. A new mode of attack was reserved, and every attempt made to poison the public mind. Certain English journals, particularly a paper called the Military Register, teemed with the clamours of the disaffected. It contained attacks



on the whole system of management, and the most false and inflammatory statements of the mode in which this system was put in execution.

Mr Sellar, in particular, was selected as the victim of these disgraceful publications ; he was branded with the names of tyrant, oppressor and murderer ; exposed to public view as a man of the most atrocious character, and every sort of abandoned cruelty was laid to his charge. A subscription was entered into for the purpose of prosecuting Mr Sellar ; and through him, a stab was to be given to Lady Sutherland's new mode of management. It is also a fact, that certain designing and malicious persons stirred up farther the deluded people, joined them in the plot formed for ruining Mr Sellar, in order to gratify their own enmity, whilst they attempted to undermine the progress of improvement. At last this gentleman was imprisoned by the Sheriff-substitute, and, nearly two years after the crimes of which he was accused were said to have been committed, he was brought to trial at the instance of his Majesty's Advocate. To this measure, his Lordship seems to have been induced, chiefly for the purpose of satisfying the public mind, and putting an end to the clamours of the country.

Mr Sellar, after a full investigation into all his proceedings, has been honourably acquitted by the unanimous voice of a most respectable jury, and his reputation placed above the reach of clamour or prejudice. Although this acquittal is no doubt of itself sufficient to prove Mr Sellar's innocence of the crimes laid to his charge, yet as the publications alluded to have not been contradicted by any detailed account of the facts ; and as at any rate the public interest has been so much excited by this trial, it has been thought that an accurate statement of



the evidence may not be unacceptable. The accuracy of this report may be depended on. It is published by the junior counsel for Mr Sellar, from notes taken in Court, and omits nothing but the *arguments* of the Counsel, which are kept back, least it may be supposed that this publication was intended to convey any thing beyond the mere facts of the case. The honour of Mr Sellar, the purity of his intentions, his humanity of disposition, and the legality of his proceedings, must be clear to every person who candidly peruses this account of his trial; and if there still be any who are so prejudiced as to disregard truth and justice, when coupled with his name, or with the Sutherland improvements, their opinions can only be treated by that gentleman with the contempt which they deserve.



## REPORT, &c.

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### INDICTMENT.

**PATRICK SELLAR**, now or lately residing at Culmailly, in the parish of Golspie, and shire of Sutherland, and under factor for the Most Noble the Marquis and Marchioness of Stafford, You are indicted and accused, at the instance of Archibald Colquhoun of Killermont, his Majesty's Advocate for his Majesty's interest : **THAT ALBEIT**, by the laws of this and of every other well governed realm, **CULPABLE HOMICIDE**, as also, **OPPRESSION** and **REAL INJURY**, more particularly the wickedly and maliciously setting on fire and burning, or causing and procuring to be set on fire and burnt, a great extent of heath and pasture, on which a number of small tenants and other poor persons maintain their cattle, to the great injury and distress of the said persons ; the violently turning, or causing and procuring to be turned, out of their habitations, a number of the said tenants and other poor people, espe-



cially aged, infirm, and impotent persons, and pregnant women, and cruelly depriving them of all cover or shelter, to their great distress, and the imminent danger of their lives; the wickedly and maliciously setting on fire, burning, pulling down, and demolishing, or causing and procuring to be set on fire, burnt, pulled down, and demolishing, the dwelling-houses, barns, kilns, mills, and other buildings, lawfully occupied by the said persons, whereby they themselves are turned out, without cover or shelter, as aforesaid, and the greater part of their different crops is lost and destroyed, from the want of the usual and necessary accommodation for securing and manufacturing the same; and the wantonly setting on fire, burning, and otherways destroying, or causing and procuring to be set on fire, burnt, and otherways destroyed, growing corn, timber, furniture, money, and other effects, the property, or in the lawful possession of the said tenants and other poor persons, are crimes of a heinous nature, and severely punishable: **YET TRUE IT IS, AND OF VERITY**, that you the said Patrick Sellar are guilty of the said crimes, or of one or more of them, actor, or art and part: **IN SO FAR** as, you the said Patrick Sellar did, on the 15th day of March 1814, or on one or other of the days of that month, or of April and May immediately following, and on many occasions during the said months of March, April, and May, wickedly and maliciously set on fire and burn, or cause and procure John Dryden and John M'Kay, both at that time shepherds in your service, to set on fire and burn a great extent of heath and pasture, many miles in length and breadth, situate in the heights of the parishes of Farr and Kildonan, in the county of Sutherland, and in particular in the lands of Ravigill, Rhiphail, Rhiloisk, Rossal, Rhimsdale, Garvault, Truderskaig, and Dalcharrel, where-



by many of the tenants and others in the lands aforesaid were deprived of pasturage for their cattle, and in consequence thereof reduced to great distress and poverty; and many of them were obliged to feed their cattle with the potatoes intended for the use of their families, and with their seed corn; particularly, William Gordon, James M'Kay, Hugh Grant, and Donald M'Kay, all then tenants in Rhiloisk aforesaid; John Gordon and Hugh M'Beath, then tenants in Rhimsdale aforesaid; Donald M'Beath, then tenant in Rhiphail aforesaid; Murdo M'Kay and John M'Kay, then tenants in Truderskaig aforesaid. AND FURTHER, you the said Patrick Sellar did, upon the 13th day of June 1814, or on one or other of the days of that month, or of May immediately preceding, or of July immediately following, together with four or more persons, your assistants, proceed to the district of country above mentioned, and did, then and there, violently turn, or cause or procure to be turned out of their habitations, a number of the tenants and poor people dwelling there; and particularly Donald M'Kay, a feeble old man of the age of four-score years or thereby, then residing in Rhiloisk aforesaid; who, upon being so turned out, not being able to travel to the nearest inhabited place, lay for several days and nights thereafter in the woods in the vicinity, without cover or shelter, to his great distress, and to the danger of his life: As also, Barbara M'Kay, wife of John M'Kay, then tenant in Ravigill aforesaid, who was at the time pregnant, and was moreover confined to her bed in consequence of being severely hurt and bruised by a fall; and you the said Patrick Sellar did, then and there, notwithstanding the entreaties of the said John M'Kay, give orders that the said Barbara M'Kay should be instantly turned out,



whatever the consequence might be, saying, That you would have the house pulled about her ears; and the said John M'Kay was accordingly compelled, with the assistance of some women and neighbours, to lift his said wife from her bed, and carry her nearly a mile across the country, to the imminent danger of her life: As also, time last above mentioned, you the said Patrick Sellar did forcibly turn out, or cause and procure your assistants aforesaid, to turn out, of his bed and dwelling, in Garvault aforesaid, Donald Monro, a young lad, who lay sick in bed at the time. **AND FURTHER**, you the said Patrick Sellar did, time aforesaid, wickedly and maliciously set on fire, burn, pull down, and demolish, or cause and procure your assistants aforesaid to set on fire, burn, pull down, and demolish, a great number of the dwelling-houses, barns, kilns, mills, and other buildings, lawfully occupied by the tenants and other inhabitants in the said district of country; and in particular, the houses, barns, kilns, mills, lawfully occupied by the above mentioned William Gordon, James M'Kay, Hugh Grant, in Rhiloisk aforesaid, and John Gordon in Rhimsdale aforesaid: As also, the barns and kilns in Rhiphail aforesaid, lawfully occupied by Alexander Manson, John M'Kay, and others, then tenants or residents there; the barns and kilns in Ravigill aforesaid, lawfully occupied by John M'Kay, Murdo M'Kay and others, then tenants there; and the barns and kilns in Garvault aforesaid, lawfully occupied by William Nicol and John Monro, then tenants there: As also, the house and barn in Ravigill, aforesaid, lawfully occupied by Barbara M'Kay, an infirm old widow, nearly fourscore years of age, and who was obliged to sell three of her five cattle at an under value, in order to support herself, her crop being destroy-



ed from the want of her barn: As also, the greater part of the houses, barns, kilns, mills, and other buildings in the whole district of country above mentioned, was, time aforesaid, maliciously set on fire, burnt, pulled down, and demolished, by you the said Patrick Sellar, or by your assistance, or by your orders, whereby the inhabitants and lawful occupiers thereof were turned out, without cover or shelter; and the greater part of their different crops was lost and destroyed from want of the usual and necessary accommodation for securing and manufacturing the same; and especially the lawful occupiers of the barns, kilns, mills, and other buildings particularly above mentioned, to have been set on fire and destroyed as aforesaid, did sustain great loss in their crops, from being thus deprived of the means of securing and manufacturing the same. AND FURTHER, you the said Patrick Sellar did, time aforesaid, culpably kill Donald M'Beath, father to Hugh M'Beath, then tenant in Rhimsdale aforesaid, by unroofing and pulling down, or causing to be unroofed and pulled down, the whole house in Rhimsdale aforesaid, where the said Donald M'Beath was then lying on his sick-bed, saving only a small space of roof, to the extent of five or six yards, whereby the said Donald M'Beath was exposed, in a cold and comfortless situation, without cover or shelter, to the weather; and he the said Donald M'Beath, in consequence of being so exposed, never spoke a word more, but languished and died about eight days thereafter, and was thereby culpably killed by you the said Patrick Sellar: Or otherwise, you the said Patrick Sellar did, time and place foresaid, cruelly expose the said Donald M'Beath to the weather, without cover or shelter, by pulling down and unroofing, or caused to be pulled down and unroofed, the greater part of the house where he then lay



sick in bed, to his great distress, and the imminent danger of his life; and this you the said Patrick Sellar did, notwithstanding the entreaties of the said Hugh M'Beath and others, you saying, in a rage, when it was proposed that the said Donald M'Beath should remain, "The devil a man of them, sick or well, shall be permitted to remain," or words to that effect. AND FURTHER, you the said Patrick Sellar did, time aforesaid, wickedly and maliciously set on fire, burn and demolish, or cause and procure your assistants to set on fire, burn and demolish the dwelling-house, barn, kiln, sheep-cot, and other buildings, then lawfully occupied by William Chisholm in Badinloskin, in the parish of Farr aforesaid, although you knew that Margaret M'Kay, a very old woman of the age of 90 years, less or more, and who had been bed-ridden for years, was at the time within the said house; and this you did, notwithstanding you were told that the said old woman could not be removed without imminent danger to her life; and the flames having approached the bed whereon the said Margaret M'Kay lay, she shrieked aloud in Gaelic, "O'n Teine," that is to say, "O the fire," or words to that effect; and was forthwith carried out by her daughter, Janet M'Kay, and placed in a small bothy, and the blanket in which she was wrapped was burnt in several places; and the said Margaret M'Kay never spoke a word thereafter, but remained insensible from that hour, and died in about five days thereafter, in consequence of the fright and alarm; and, in particular, in consequence of her removal, as aforesaid, from her bed into a cold and uncomfortable place, unfit for the habitation of any human being; and the said Margaret M'Kay was thereby culpably killed by you the said Patrick Sellar; or otherwise, you the said Patrick Sellar did, time and place foresaid, cruelly turn, or cause to be turned, out of her bed



and dwelling-place, the said Margaret M'Kay, by setting on fire, burning, and demolishing, or causing and procuring to be set on fire, burnt, and demolished, the said house and other buildings, in manner above mentioned, to her great distress, and the imminent danger of her life. AND FARTHER, all the persons whose houses, barns, kilns, mills, and other buildings, were burnt and destroyed, or caused and procured to be burnt and destroyed, by you the said Patrick Sellar, all as above described, did sustain great loss in their moss wood, and other timber, which was broken and demolished, and destroyed by fire and otherwise, at the same time, and in the same manner, with the buildings as aforesaid; and also in their furniture and other effects, all their lawful property, or in their lawful possession at the time: And, in particular, the said Barbara M'Kay in Ravigill, aforesaid, lost her door and door-posts, and timber of her house and barn, her meal-chest, and several articles of furniture, all her property, or in her lawful possession, which were then and there destroyed, or caused to be destroyed, by you, the said Patrick Sellar, as aforesaid; and the greatest part of the furniture and timber belonging to the said William Chisholm, together with three pounds in bank-notes, and a ridge of growing corn, all the property, or in the lawful possession of the said William Chisholm, in Badinloskin aforesaid, were then and there destroyed by fire, and otherwise, by you, the said Patrick Sellar: And you, the said Patrick Sellar, having been apprehended and taken before Mr Robert Mackid, Sheriff-substitute of Sutherland, did, in his presence, at Dornock, on the 31st day of May 1815, emit and subscribe a declaration; which declaration, together with a paper, entitled "Notice given to the Strathnaver tenants, 15 Dec<sup>r</sup>. 1813," being



to be used in evidence against you, at your trial, will be lodged in due time in the hands of the Clerk of the Circuit Court of Justiciary, before which you are to be tried, that you may have an opportunity of seeing the same: AT LEAST, time and places above mentioned, the said heath and pasture was wickedly and maliciously set on fire and burnt, or caused and procured to be set on fire and burnt, to the great injury and distress of the said tenants and others; and the said persons were violently turned, or caused and procured to be turned, out of their habitations, and deprived of all cover and shelter, to their great distress, and the imminent danger of their lives; and the said Donald M'Beath and Margaret M'Kay were culpably killed in manner above mentioned, or were cruelly turned out of their habitations as aforesaid; and the said dwelling-houses, barns, kilns, mills, and other buildings, lawfully inhabited and occupied by the said persons, were maliciously set on fire, burnt, pulled down, and demolished, or were caused and procured to be set on fire, burnt, pulled down, and demolished, and the inhabitants and lawful occupiers thereof turned out as aforesaid; and the greater part of their different crops was lost or destroyed, from want of the usual and necessary accommodation for securing and manufacturing the same; and the growing corn, timber, furniture, money, and other effects, the property, or in the lawful possession, of the said persons, were wantonly set on fire, burnt, and otherways destroyed, or caused and procured to be set on fire, burnt, and otherways destroyed: And you, the said Patrick Sellar, are guilty of the said crimes, or of one or more of them, actor, or art and part. ALL WHICH, or part thereof, being found proven by the verdict of an assize, before the Lord Justice-General, the Lord Justice-Clerk, and Lords Com-



missioners of Justiciary, in a Circuit Court of Justiciary to be holden by them, or by any one or more of their number, within the burgh of Inverness, in the month of April, in this present year, 1816, you, the said Patrick Sellar, OUGHT to be punished with the pains of law, to deter others from committing the like crimes in all time coming.

H. HOME DRUMMOND, *A. D.*

---

MR SELLAR having pleaded NOT GUILTY, the following defences were read:—‘ 1<sup>st</sup>, The  
 ‘ pannel objects to the relevancy of various  
 ‘ parts of the libel.—2<sup>d</sup>, In so far as the libel  
 ‘ is relevant, the pannel denies its truth ; the  
 ‘ whole of the charges are utterly false, in so  
 ‘ much so, that the Prosecutor is not only un-  
 ‘ able to bring any sufficient evidence in sup-  
 ‘ port of his own accusations, but the pannel  
 ‘ will bring positive proof *against* them. The  
 ‘ pannel will prove, that the ejectments which  
 ‘ have given rise to this trial, were done in  
 ‘ due order of law, and, under the warrants of  
 ‘ the proper Judge, issued on regular process.  
 ‘ Farther, he will prove, that great indulgence  
 ‘ was shewn to the tenants, even after they had  
 ‘ resisted the regular decrees of the Judge ;  
 ‘ that nothing was done on his part, or with



‘ his knowledge or approval, either cruel, op-  
 ‘ pressive, or illegal: That he committed no  
 ‘ acts of homicide; and, on the whole, he will  
 ‘ prove, that throughout every part of this af-  
 ‘ fair, he (the pannel) has been the victim, not  
 ‘ only of the most unfounded local prejudices,  
 ‘ but of long continued and active defamation,  
 ‘ on the part of certain persons, who have  
 ‘ made it their business to traduce the whole  
 ‘ system of improvements introduced into the  
 ‘ Sutherland estate, and to vilify the pannel,  
 ‘ by whom, they have been pleased to sup-  
 ‘ pose, that these improvements have been  
 ‘ partly conducted. He rejoices, however, in  
 ‘ the first opportunity, which has now been af-  
 ‘ forded to him, of meeting these calumnies  
 ‘ and prepossessions in a Court of Justice, and  
 ‘ relying, as he does, with implicit confidence  
 ‘ on the candour and dispassionate attention  
 ‘ of a British Jury, he has no doubt whatever  
 ‘ of being able to establish his complete inno-  
 ‘ cence of all the charges now brought against  
 ‘ him.

‘ *Under protestation to add and eik,*

‘ J. GORDON.

‘ H. COCKBURN.

‘ PAT. ROBERTSON.’



---

Mr ROBERTSON opened the case on the part of the pannel. The object of addressing the Court at this time, was to state such observations as occurred on the relevancy of the indictment, and to give a general view of the line of defence. On the former, he remarked, that various objections did occur to the relevancy of the charges, particularly to the second and fourth branches of the indictment. With these, however, he did not mean to trouble the Court, as Mr Sellar was so conscious of his innocence, that he courted investigation, being unwilling that any part of his conduct should be left uninvestigated. No objection was, therefore, made to the relevancy of any part of the indictment, so far as it charged any specific crime against which the pannel might be prepared to defend himself. But, certainly, he did object to those parts of it which contained *general* charges, of destroying ‘a number of houses,’ injuring ‘a number of tenants,’ &c. unless these were understood merely as introductory to the specific crimes mentioned. He also objected to the last charge, if meant as any thing more than matter of mere *aggravation*.

On the merits, he gave a short sketch of the causes which gave rise to the present trial,—alluded to the clamour which had been raised in the country—the prejudices of the people,



—the disgraceful publications in a newspaper called the Military Register, and the pains which had been taken to circulate these false and mischievous papers through Sutherland and the adjacent counties. The general line of defence he stated to be, That, as to the 1<sup>st</sup> charge, of heath-burning, this was done with the express consent of the tenantry, and, as could be proved, to their positive advantage. As to the removings, the defence was quite clear. The lands mentioned in the indictment were advertised to be set on the 5th of December 1813, at the Inn of Golspie, and Mr Sellar was preferred as the highest offerer. Before Whitsunday 1814, he brought regular actions of removing, and it was not until after he had obtained decrees in these actions, charged the whole of the tenants to remove, and taken out precepts of ejection against them, that they were, in the month of June, actually removed from their lawless and violent possession. These facts were established by the decrees and precepts in the hands of the clerk of Court. As to the demolition of the houses, no houses were pulled down till after the ejections had been completed, and the property had become Mr Sellar's. No furniture was destroyed by him, or by his orders,—no unnecessary violence was used, nor any cruelty exercised, but every thing was done in due order of law, and without oppression of any kind. The charges of culpable homicide were quite out of the question, and Mr Sellar defied the



Public Prosecutor to prove them. Upon the whole, it was not doubted, that if truth and justice were to prevail over malice and conspiracy, Mr Sellar would obtain an honourable and triumphant acquittal.

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THE Advocate-Depute having here stated that he did not mean to insist on any charges, excepting those which were specially and articulately mentioned in the indictment, Lord Pitmilley said,—

“ It would be improper for me to enter at  
 “ present into the origin of the prosecution,  
 “ or the nature of the defences. Neither  
 “ shall I say any thing of the publications  
 “ which have been alluded to, except that  
 “ they appear to be of the most contempt-  
 “ tible nature, and the only prejudice which  
 “ I can entertain is the other way ; that is,  
 “ against the cause requiring such aid. I have  
 “ no doubt as to the relevancy of the libel.”

---

The usual interlocutor of relevancy was then pronounced, and the following gentlemen were named as a jury :—

James Fraser of Belladrum  
 William Fraser of Culbockie  
 William M'Intosh of Balnespeck



Duncan Fraser of Fingask  
 Alexander Smith, Merchant in Inverness  
 John Gillanders of Highfield  
 William Reid of Muirtown  
 William M'Kenzie of Strathgarve  
 George Falconer M'Kenzie of Allangrange  
 Robert Denham, tacksman of Dunglass  
 George Kay, residing at Tannachy  
 Bailie Robert Joss, merchant in Elgin  
 John Barclay, writer there  
 John Collie, farmer at Alvas  
 John Smith, tacksman of Greens.



# EVIDENCE

FOR THE

CROWN.

---

THE first witness proposed to be adduced, was,

1st, Mr ROBERT M'KID, Sheriff-Substitute of Sutherland, to whom it was OBJECTED; That the proposed witness has evinced malice or partial counsel, or both, against the pannel, in so far as he imprisoned him, without a complainer, upon an illegal warrant, which the Court of Justiciary quashed *ex facie* of itself,—refused bail,—struck him off from the roll of procurators without a complainer, a trial, or any previous notice,—and afterwards wrote an inflammatory and false statement of the pretended circumstances of this case to the Marquis of Stafford, and stated to various persons, that the pannel ought to be hanged—that Botany Bay was too good for him; and that they, though willing to find bail for him, ought to have nothing to do with him.

ANSWERED by the Advocate-Depute: That if it be true that the pannel was imprisoned without a



regular complaint, it was only an irregularity in the proceedings ; and that the Court of Justiciary stated, in their finding on the petition for liberation, irregularity as a ground for allowing bail : That the prisoner was committed for a capital offence ; and but for their regularity in point of form, he could not have been bailed : That the mere circumstance of the pannel being struck off the roll of procurators, if true, is no ground of malice, and may have been justified in the circumstances of the case : That the relevancy of the statement sent to the Marquis of Stafford, must depend on the expressions it contains, of which the prosecutor is totally ignorant : That the expressions condescended upon, do not infer such deadly malice as to render the witness inadmissible : That the only point on which the prosecutor proposes to examine Mr M'Kid, is as to the practice of Sutherland, with respect to the rights of out-going tenants, to retain possession of their barns until the term of removal from the arable ground, as to which he conceives him the fittest person to speak as Judge Ordinary of the bounds.

The Court having allowed a proof of the objections ;

Mr M'Kid himself was examined *in initialibus*. Witness has no malice, or ill-will against Mr Sellar ; remembers that he imprisoned that gentleman in the jail of Dornoch ; the warrant proceeded on a petition from the tenants of Strathnaver to Lord Gower, transmitted to witness by his Lordship : There was no other complaint to witness personally, before the warrant was granted. Witness refused to grant bail, as Mr Sellar was imprisoned for a capital crime. Witness remembers having taken a precognition in Mr Sellar's case ;



he had not the assistance of the Procurator Fiscal, as at the time that gentleman was from home. Witness removed Mr Sellar from his office of procurator before his own Court, without any complaint being made against him. Witness never said that Mr Sellar ought to go to Botany Bay, or be hanged, or that this would be the case; he never said to Mr Young, Lady Stafford's commissioner, that that gentleman should have nothing to do with Mr Sellar; Mr Young never offered to give bail. Witness wrote a letter to Lord Stafford, in regard to the crimes of which Mr Sellar was accused, after the precognition; and which letter being shewn to the witness, was identified. Witness never said, at least has no recollection of saying to Mr Ross, that if he could, he would ruin Mr Sellar; he has seen the Military Register, but has no connection with the paragraphs in that paper, relative to Mr Sellar; he has seen the Crown Agent's letter to the Minister of Farr; the publishers of the Register did not get a copy of it from the witness. Cross-examined—Witness wrote to Mr Cranstoun, the Sheriff-Depute, on the 8th of May 1815, when he committed Mr Sellar. The letter was then read, as follows:—

### TO LORD STAFFORD.

*Kirktown p. Golspie, 30th May 1815.*

MY LORD,—I conceive it a duty I owe to your Lordship, to address you upon the present occasion, and a more distressing task I have seldom had to perform.

Your Lordship knows, that in summer last, an



humble petition, subscribed by a number of tenants on Mr Sellar's sheep farm in Farr and Kildonan, was presented to Lady Stafford, complaining of various acts of injury, cruelty and oppression, alleged to have been committed upon their persons and property, by Mr Sellar, in the spring and summer of that year.

To this complaint, her Ladyship, upon the 22d of July last, was graciously pleased to return an answer in writing. In it, her Ladyship, with her usual candour and justice, with much propriety observes, "That if any person on the estate shall  
 " receive any illegal treatment, she will never  
 " consider it as hostile to her, if they have re-  
 " course to legal redress, as the most secure way  
 " to receive the justice which she always desires  
 " they should have on every occasion." Her Ladyship also intimates, "That she had com-  
 " municated the complaint to Mr Sellar, that he  
 " may make proper enquiry and answer to her."

It would appear, however, that Mr Sellar still refused, or delayed to afford that redress to the removed tenants, to which they conceived themselves entitled, which emboldened them to approach Earl Gower with a complaint, similar to the one they had presented to Lady Stafford.

To this complaint his Lordship graciously condescended, under date 8th February last, to return such an answer as might have been expected from his Lordship. His Lordship says, that he has communicated the contents to your Lordship and Lady Stafford, who, as his Lordship nobly expresses himself, "are desirous, that the tenants  
 " should know, that it is always their wish that  
 " justice should be impartially administered." His Lordship then adds, that he has sent the pe-



tion, with directions to Mr Young, that proper steps should be taken for laying the business before the Sheriff-Depute ; and that the petitioners would therefore be assisted by Mr Young, if they desired it, in having the precognition taken before the Sheriff-Depute, according to their petition.

Soon after receipt of Earl Gower's letter, it would appear that a copy of the petition, with his Lordship's answer, had been transmitted to the Sheriff-Depute by the tenants. Mr Cranstoun, in answer, upon 30th March last, says, " that if the  
 " tenants mean to take a precognition *immedi-*  
 " *ately*, it will proceed before the Sheriff-Substi-  
 " tute, as my engagements will not permit me  
 " to be in Sutherland until the month of July."

In consequence of these proceedings, of an express injunction from his Majesty's Advocate-Depute, and a similar one from the Sheriff-Depute, I was compelled to enter upon an investigation of the complaints.

With this view I was induced to go into Strathnaver, where, at considerable personal inconvenience and expence, and with much patient perseverance, I examined about *forty* evidences upon the allegations stated in the tenants' petition ; and it is with the deepest regret I have to inform your Lordship, that a more numerous catalogue of crimes, perpetrated by an individual, has seldom disgraced any country, or sullied the pages of a precognition in Scotland!!!

This being the case, the laws of the country imperiously call upon me to order Mr Sellar to be arrested and incarcerated, in order for trial, and before this reaches your Lordship, this preparatory legal step must be put in execution.

No person can more sincerely regret the cause,



nor more feelingly lament the effect, than I do ; but your Lordship knows well, and as Earl Gower very properly observed, “ Justice should be impartially administered.”

I have, in confidence, stated verbally to Mr Young *my fears* upon this distressing subject, and I now take the liberty of stating my sentiments also to your Lordship, *in confidence*.

The crimes of which Mr Sellar stands accused, are,—

1. Wilful fire-raising ; by having set on fire, and reduced to ashes a poor man's whole premisses, including dwelling-house, barn, kiln, and sheep cot, attended with most aggravated circumstances of cruelty, *if not murder !!!*

2. Throwing down and demolishing a *mill*, also a capital crime.

3. Setting fire to and burning the tenants' heath pasture, before the legal term of removal.

4. Throwing down and demolishing houses, whereby the lives of sundry *aged* and *bed-ridden* persons were endangered, if not *actually lost* !

5. Throwing down and demolishing barns, kilns, sheep cots, &c. to the great hurt and prejudice of the owners.

6. Innumerable other charges of lesser importance swell the list.

I subjoin a copy of Mr Cranstoun's last letter to me upon this subject, for your Lordship's information, and have the honour to be, &c.

(Signed) ROBT. M'KID.



## (LETTER SUBJOINED.)

“ *Edinburgh, 13th May, 1815.*

“ I AM extremely sorry that you have so disagreeable a duty to perform, and would willingly have relieved you of it, if the commencement of the Session had not rendered my presence in Edinburgh indispensable. I feel the embarrassing nature of your situation, but am confident that you will extricate yourself with your usual ability and good sense.

“ Proceed with the precognition, then take Sellar's declaration, and if there is ground for a criminal proceeding, commit afterwards,” &c. &c.

The following witnesses were then called in further evidence of the objections,

1st, Mr HUGH ROSS, was Procurator Fiscal for Sutherland in 1815; knows Mr M'Kid; conversed with him in July 1813 about Mr Sellar; M'Kid repeatedly said, or the witness inferred, that he should be happy to have it in his power to injure Mr Sellar if he could; witness warned Mr Sellar of this. Cross examined.—Cannot swear to the specific words; cannot mention the species of injury intended. Witness had never any dispute or difference with M'Kid,

2d, WILLIAM YOUNG, Esq. Witness remembers when Mr Sellar was imprisoned; went to Mr M'Kid to offer bail; M'Kid refused, and said the crime was notailable; was advised by him to have as little to do with Mr Sellar as possible. Witness asked him his opinion as to what would



happen to Mr Sellar, to which Mr M'Kid answered, I am sorry to say, if he is not hanged, he will certainly go to Botany Bay.

Mr Cockburn then addressed the Court very forcibly in support of the objection; Mr Drummond answered, and Mr Gordon replied. Lord Pitmilley went over the grounds of objection, and the Court pronounced the following interlocutor: " Lord Pitmilley having heard the evidence in support of the objection, and having likewise heard the counsel for the parties on the import thereof, repels the objection, and allows the evidence of Robert M'Kid to be taken *cum nota*, recommending it, however, to the Advocate-Depute to pass from the evidence of the witness in the circumstances of the case."

The Advocate-Depute, in respect of the recommendation of the Court, then declared that he passed from the evidence of Mr M'Kid.

Mr Ross, Sheriff-Substitute of Ross-shire, was then sworn as interpreter, many of the witnesses being unable to speak English, and the following persons were adduced.

3d, WILLIAM CHISHOLM, residing in Badinloskin, sworn and examined on the part of the pannel *in initialibus*. Witness promised, two years ago, to contribute part of the legal expences to be incurred in bringing Mr Sellar before the Circuit Court, or the Criminal Court in Edinburgh. Witness's wife, Henrietta M'Kay, also promised to contribute. Examined *in causa*, on the part of the Crown: Witness remembers, that in June 1814, Mr Sellar, in company with 20 men, besides four Sheriff-officers, came to Badinloskin, pulled down,



and set on fire the house and barns; some corn was also burnt, and three twenty-shillings notes were consumed. This happened a little after ten on a Monday morning. Witness's mother-in-law was in the midst of the fire, and no person would dare to take her out, till his sister-in-law, Janet M'Kay came. His mother-in-law was 100 years old, and confined to bed from her age, but was not sickly. Sellar did not come up till about an hour after the arrival of the officers, and when he arrived, witness heard him desire the tenants to carry the old woman out to a sheep cott. Witness speaks no English, but understands it a little. The house was not set on fire till Sellar came up, and he gave instructions to put fire to it immediately. Sellar himself was active in putting sticks on the fire. One of the men, George M'Leod, was ordered by Sellar to take out the old woman; but he said he would not attempt it, even though they should take off his coat, as he would not be accessory to murder. Sellar desired the woman to be taken out, although she should not live one hour after. It was in about two minutes after this that witness's sister-in-law came and took out the old woman. The blankets in which she was wrapt were burnt, and the bed was going on fire before she was taken out. She said, "God receive my soul: what fire is this about me?" and never spoke a word more. At the time she said this she was in bed; lived till the following Sunday, till which time she remained insensible. Before this period she was sensible enough, and could speak rationally. After she was taken out, the bed and clothes were burnt. She was carried to a small sheep cott, covered with turf. It had no



door or window, was 6 feet in length, and 5 in width; could only hold a small horse. The woman was not personally injured by the fire, but the alarm and removal caused her death. The three notes which were lost, and one shilling, were in a chest, of which witness's wife had the key; she was not at home at this time, but returned in the evening. Interrogated, Why they did not remove the furniture and woman in the hour that intervened before Mr Sellar came? Witness answered, because he was prevailed on not to do so, in expectation that Mr Sellar would not remove them when he came. The furniture was burned, and the growing corn, which was destroyed, was in extent equal to what would have been 12 sheaves in harvest, and the fire was communicated to it from the house. There was wind, and it burned with extreme vehemence. The timber of the house, being of moss fir, belonged to the witness. The wood was thrown down before it was set fire to, and Sellar said, "There's a bonfire for you." By the practice of the country, the outgoing tenant is entitled to carry away the timber belonging to the house, unless the incoming tenant pays for it. Immediately after the fire, Mr Sellar gave witness three shillings, but L.20 would not have been sufficient compensation. Sellar did not tell him that this money was given for the wood. Robert M'Donald also gave him other three shillings from Mr Sellar, as he said, for the timber, which witness took, saying it was no compensation—the wood and workmanship of the house, independent of the furniture, was worth L.20, The house was made of feal and stone. The kiln was not burnt, nor the sheep cott. The kiln was



100 yards from the house, but the house, barn, and byre, were close to each other; there were altogether sixteen couples in the house and byre, which were under the same roof. Witness has lived there nine years against next Whitsunday. He took the house from Mr Falconer, then Lady Sutherland's factor, and at first paid a rent of five shillings, but latterly he paid five guineas. He held of the sub-tenants, and the five guineas were paid to James Gordon, who collected for behoof of the rest. Cross examined—Witness was first a smith, then a tinker. The L.3 belonged to the old woman, and was intended to buy whisky to be used at her interment. The chest was usually locked, his wife had the key, and some money of her's was in the chest. Witness and some of his neighbours saw the money that day, before his wife went from home, which was about 7 o'clock in the morning, on the Sunday before Sellar intimated that witness would be ejected; and it was about 6 o'clock of the morning of the ejection that he went to see that the money was in the chest, in case it should be destroyed by the fire, which he expected.

4th, HENRIETTA M'KAY, wife of the preceding witness, left Badinloskin early in the morning of the ejection from that place, and returned a little after 12 o'clock noon; when she came within a mile's distance of the house, saw it going on fire, and she fell down, being afraid that her mother was burnt. She was very weak, and came slowly home, and said she would complain of nothing if no lives were lost. One of the children met her, and told her that her mother was alive.



She found her mother speechless in a small house, without a door; part of the roof of which was spoiled. The house was not a sheep cott, but kept for a small horse. Her mother never spoke to her, and died on Saturday thereafter, the fifth day, in the same small house. The blanket in which she had been wrapt was burnt in two or three places. She was weak and sickly, but spoke to those about her that morning before witness left her, and was 92 years of age. The chief part of the furniture had been removed; no chest whatever was burnt. There were three pounds in the house, but whether they were burnt or taken away, the witness knows not. These three notes were deposited by her six weeks before in a hole in the wall, and there was a shilling, which had been picked up by one of the hens. Witness never looked whether the three pounds remained, as she was under no apprehension about it, no person knowing it was there. She had no key that day, and there was no lock or key for any chest in the house.

5th, JOHN M'KAY, in Achufrish of Rossal, remembers going to Badinloskin, a little past 11 o'clock on the day of the ejection; Sellar came up a little past 12 o'clock; the officers having been there before him, but after the witness; he had no watch. Witness came there, being told by Mr Sellar, at Auchness meeting-house, to meet him there, for the purpose of removing William Chisholm, and that one out of every house of the tenants of Rossal must come. Witness said there was a woman lying sick in the house who could not be removed, Sellar said that she must be taken away. Witness saw the old wo-



man next day, and her daughter speaking to her, before the ejection, but the old woman could make no answer; witness did not know what her daughter said, but she asked her something or another; this was before Sellar came. He heard the sound of her voice, when they were taking her out; she said, "O tien," or, "O the fire!" Mr Sellar and John Burns came together, and the tenants of Rossal met them at a small house near Chisholm's, where they remained in conversation for a good while. The tenants were for keeping the house whole, but Sellar sent for the officer, and said, Put fire to the house immediately. Fire was put not long after, and then the woman's daughter brought her out; the house was burning before the woman was brought out. There was a heck lying near the house, and Sellar said, There is a nice thing for carrying out the woman; but they were not for meddling with her at all, as she was so low in body. This conversation about the heck took place before the fire was actually put to the house, but after it was ordered. The house to which the woman was removed was a small place, not fit for a person to live in. Cross examined.—The officers came after eleven o'clock, and were there about an hour before Sellar arrived; there was a byre adjoining to the house, and under the same roof, and Margaret M'Kay was in the byre when the witness came, and it was from the byre that the woman was removed. There was no calf in the byre; witness was there almost half an hour before the men had arrived; he was in the house, and saw the woman lying in bed in the byre. Witness is a tenant of Mr Sellar, but has been warned out. Sellar was about 50 yards distant when he ordered



the house to be set fire to ; Margaret M'Kay was quite sensible before the ejection ; she used to lie in the other end of the house, but had been removed to the byre. There was a fire in the byre, but no fire-place. By the Court.—On the Monday before, and before orders were given to put fire to the house, witness and most of the tenants remonstrated against the removal of the old woman ; but Sellar said she must go. Witness does not know whether any furniture was destroyed, but saw a ridge of growing corn, about two inches in height, blackened.

6th, HUGH M'BEATH, at Kenakyle. Witness remembers that some heather, belonging to him, was burnt by John M'Kay, Mr Sellar's shepherd, and another man ; but he was not present, being at his mother's funeral ; he saw no houses burnt. It is the practice in Sutherland for the outgoing tenant to retain his barns till he shall thresh out his crop. Witness had one barn, his farm was Rhimsdale. Witness's father died about ten days after the houses were pulled down ; his father was in a corner of the house, and was left there till he died ; the whole house was taken down, except a small space above his father's bed. Witness began to pull down the house himself, hearing that the party were pulling down the other houses, and destroying the wood. Witness took off the divots, and left the couples and the side-trees standing, as he was obliged to go away to his good-mother's burial, and did not return for four days. On his return, he found the couples cut with an axe, and his father in the house. There was a clay partition standing between his father and the



weather, but this was not entire, and the wind was coming in. Witness cannot say that this occasioned the state in which he found his father; witness went to Langdale on the Saturday, before the houses were pulled down, to request, that Mr Sellar would allow his father to remain as he was weak and lying ill in bed. Mr Sellar refused, and said they must remove by Tuesday or Wednesday well or ill. His words were, "De'il a ane of them shall remain." Witness's father-in-law said to Sellar, That is rather cruel; to which he rejoined, "It's no business of your's." Sellar then asked his name, and put it down in his pocket-book, to look after him. Cross examined.—Did not see Sellar when they were pulling down the house. Witness's father was in bed long before this, as he had a large sore on his eye, which had begun five years before.

7th, GEORGE ROSS, in Skelpick, saw Barbara M'Kay's house pulled down, but does not know whether she had a barn; knows nothing about her cattle; the house was pulled down by the Sheriff-officer and party.

8th, JAMES M'KAY, in Skale, knows Donald M'Kay in Rhiloisk, who was turned out of, or left his house, in June 1814; saw him sitting or lying in the woods sometime after this. There was no house in which he could find shelter, as they were all pulled down, except the one occupied by Mr Sellar's shepherd. Witness proposed to take Donald to his house, but he gave him no answer. Donald was infirm before this, by reason of old age. There were houses on the other side



of the river Naver, but witness does not know if Donald M'Kay was able to go over. The nearest house was about an English mile distant, but witness does not know whether the man could go or not. Witness's furniture had not been carried off that day, but lay in front of the house; he does not know whether Donald M'Kay was turned out or not. Witness had a barn which was broken down; he was told that it was done by Sellar's party, but he did not see this done; he lost part of his crop from the want of his barn, but he does not know how much; the greatest part was threshed in the open air, and part of it was destroyed by cattle. There was only one barn left for the three tenants in Skale, and they had not room in the barn. William Gordon and Hugh Grant also sustained loss for want of their barns. There was a kiln also pulled down, but witness did not see this done; the kiln was common to all the tenants; considerable inconvenience arose from the want of it; they were obliged to carry their grain over the river to a kiln on the other side. Gordon had two barns; one was pulled down—one was allowed to stand. The outgoing tenant, by the custom of the country, had the use of the kiln and barn till he manufactured his waygoing crop. Cross-examined.—The quantity of land in Skale, belonging to the witness, was adequate to the sowing of three bolls of black oats, half a boll of barley, and a portion of potatoes; the rent was 30s.; William Gordon had more crop; tenants were thirled to the miln of Langdale.

9th, WILLIAM GORDON, in Bettyhill; three of his barns were destroyed in June 1814; witness



thereby suffered damage. By the custom of the country, the outgoing tenant keeps the barns till he threshes out his crop, except the hay barn. The loss sustained by the witness was occasioned by the want of his barns, and by the neighbours using the one that was left; there was only one barn left to five tenants; witness was at a distance in Caithness; witness's crop was damaged by sheep breaking into his yard. Cross-examined.—The tenants in Bettyhill were thirled to the miln of Langdale, and had nearly as much meal in the year 1814 as in any other year. Witness paid about that time nearly L.5 of rent, and the other tenants about L.2, 10s.; the new allotments were ready for the people some days before the ejections took place, and the tenants were to be allowed to remain till the allotments were ready.

10th, JOHN GORDON, at Skelpick, examined *in initialibus* on the part of the pannel. Witness subscribed to bring Mr Sellar to trial; was collector at a meeting assembled to carry on the subscription, and every body there paid something. Money was paid into the hands of the witness, he spent it in going to Caithness to employ Mr Henderson, a man of business, for the purpose of prosecuting Mr Sellar. Examined *in causa* for the Crown: The barns in Rhimsdale were pulled down; only one barn was left: it is not the custom to remove the outgoing tenant from the barns; Mr Sellar and his party destroyed them. Sellar said he would give the people time to cut down the roofs, so that the wood might be of more use to them. Witness lost the whole of his crop. It is the custom to build the corn in small ricks and enclose it in a yard. The sheep destroyed the corn,



the fence being taken down by the shepherds for fire wood, and thus the sheep got in ; the straw belonged to Mr Sellar as incoming tenant.

11th, ALEXANDER MANSON, in Skale; witness knows that it is the custom for the tenants in Sutherland to keep their barns till their crop be manufactured. He knows that some of the barns in Rhiphail were destroyed by Mr Sellar's orders and by his party ; he had some conversation with him about the barns, and Sellar said that they were his own, and he might do with them what he pleased. According to the rule of the country, the tenants put their furniture into the barns, but this was ordered out by Mr Sellar. Witness had no barn in Rhiphail. There were nine tenants in Rhiphail and nine barns, three of these barns were left and six were taken down. There was land in this place equal to bear about 24 bolls sowing ; the tenants suffered loss in their crop, from the want of their barns ; the sheep injured it ; the crop would have been in the barns, if they had not been taken down.

12th, JOHN M'KAY, in Rhinovie, examined *in initialibus*. He never subscribed any money for the purpose of prosecuting Mr Sellar, but he collected some, and went into Caithness for the purpose of soliciting subscriptions. He does not remember hearing any part of the Military Register read to him, but knows that a letter was sent to Mr Cranstoun, requesting that he would bring Mr Sellar to justice. This witness having been objected to, on the ground of undue and busy interference and agency ; Lord Pitmilley said, No



agency has been proved, and no prosecution has taken place in consequence of the subscription which had been raised; I therefore cannot reject this witness as inadmissible; but the Jury have heard the objection, and will give what credit to the witness they think he deserves.

John M'Kay was then examined *in causa*: There were ten tenants in Ravigill, of whom he was one; by the custom in Sutherland, the outgoing tenant retains his barn till he gets his crop threshed. There were ten barns in Ravigill; 8 were taken down, 2 left; and there were three kilns, two of which were taken down and one left; the custom is the same as to the kilns. The tenants lost a good deal of their crop in consequence, because they were in the habit of putting most of it into the barns. Cross examined.—These barns were of feal and stone, and had some holes in them by way of windows and doors; he is certain there were not five barns left. Witness took down his barn himself, as he preferred doing this to allowing Mr Sellar take it down, which he said he would do, if not done by witness. On Saturday he heard of the allotments for the tenants being ready, and was to remove on the Tuesday, as Mr Sellar would allow him to remain no longer. Witness did not leave his house till it was taken down on Thursday, on which day his wife, who was unwell, fell through the roof of the house. At this time Mr Sellar was not present; when witness saw him with the party, he thought that the law of the country was changed.

13th, MURDO M'KAY, in Rhinovie: The barn, house and kiln in Ravigill, belonging to the wit-



ness were thrown down in June 1815; there were eight or nine barns, and as many houses demolished in Ravigill; one kiln and two barns were left at desire of Mr Sellar. John M'Kay, Hugh M'Kay, Charles Gordon, Adam M'Kay, Donald M'Kay, as well as the witness, sustained loss in their crops, in consequence of the want of their barns. By the custom of the country, these barns belong to the outgoing tenant till he thresh out his crop.

Some other witnesses were called, but rejected in respect that they were erroneously described in the list served on the pannel.

14th, The Reverend DAVID M'KENZIE, minister of Farr, identified the notice given to the tenants in Strathnaver, at the set in December 1813, founded on in the indictment. Witness explained it to the people in Gaelic. He was employed by William Gordon to write Mr Young about the allotments for the tenantry, but does not know whether this was before or after the term day. Mr Sellar was in company with the witness in the house of Robert Gordon of Langdale; they talked of the tenants, and Mr Sellar simply observed they were dilatory in removing, to which the witness rejoined that the allotments were not ready on the very day of Whitsunday, and this prevented them from removing.

15th, WILLIAM YOUNG, Esq. identified the notice to the tenants in Strathnaver, which was explained to the people, at the set in December 1813, in Gaelic, by the preceding witness. It was the intention of the witness to have had the allotments ready early in Spring, as mentioned in the



notice, but the plan of proceeding is this: The number of the tenants to be removed is first ascertained before the allotments are laid off, and then a land-surveyor is employed to examine the ground. Accordingly, a surveyor arrived about the 20th of April, and he intended immediately to set out for Strathnaver, but that gentleman received a letter, stating that his wife was unwell, and requesting that he would return home; to this the witness consented, and the surveyor was to come back to Sutherland as soon as he could. On the 20th of May he did return, and went to Strathnaver. He was employed till the 31st of May, in laying off the allotments. By the 4th of June every thing was ready for the reception of the people, and between the 31st of May and that day, they were all present, and every man informed of his allotment. The houses were to be built by the tenants themselves, but there were barns to which the people might have removed if they chose, and these barns were at least as good as the houses which they left. Cross-examined—Witness knows of no tenant who got notice to remove who was disappointed. There were twenty-seven removed at Whitsunday 1814, and there were allotments for every person, and 123 barns and byres into which the people might have gone. Some of them, particularly Hugh Grant, George M'Leod, and John M'Kay, refused allotments, and Chisholm the tinker got none, because, for two years back complaints had been made against him as a worthless character. By the Court—The new allotments were so near the places from which the tenants were removed, that they might easily have carried away their corn; but they had no



right to take away the straw, as it belonged to the incoming tenant.

Here the notice to the tenants in Strathnaver was read by the clerk, as follows :

“ NOTICE is hereby given to the tenants of  
“ Strathnaver, and others on the old estate of  
“ Sutherland, whose farms are to be set at Gol-  
“ spie this day,

“ That Lord and Lady Stafford have directed,  
“ that all the grounds from Curnachy on the  
“ north, and Dunvieddan on the south side of the  
“ river, down to its mouth, including Swordly and  
“ Kirkatomy, with a sufficient quantity of pasture,  
“ is to be lotted out among them, and in which  
“ every person of good character will be accom-  
“ modated.

“ And such of the tenants on both sides the wa-  
“ ter of Brora as may be dispossessed, will also  
“ get allotments on the south or north sides of  
“ the water of Brora, which includes Knockar-  
“ thur, Scotlary, and others down to Ledmore  
“ plantation on the south, and Askorlmore, Ask-  
“ orlbeag, and other low lands on the north side  
“ of the Brora water; *and these lands will be lot-*  
“ *ted off early in spring*, so that the tenants may  
“ enter to possession at Whitsunday first.

(Signed) WILLIAM YOUNG.”

GOLSPIE INN, }  
Dec. 5, 1813. }

*Golspie Inn, December 15, 1813.*

The within, after having been read by Mr Young, in presence of the people, was explained to them, in Gaelic, by me,

(Signed) DAVID M'KENZIE.



The Counsel for Mr Sellar having admitted that the declaration by that Gentleman, in presence of the Sheriff-Substitute, was freely and voluntarily emitted, it was read :

*At Dornoch, the 31st day of May 1815, and within the Ordinary Court-Room there,*

In presence of ROBERT M'KID, Esq. Sheriff-Substitute of the Shire of Sutherland.

Compeared Mr PATRICK SELLAR, present prisoner in the tolbooth of Dornoch, who being judicially examined and interrogated, declares, That, for about four years and a half past the declarant has acted as under factor for the Marquis and Marchioness of Stafford ;\* that is, the declarant has a factory for collection of the rents, and for carrying into effect the arrangements made by William Young, Esq. of Inverugie, upon the noble proprietors' estate in Sutherland, and particularly the department of outputting and inputting tenants, in fulfilment of such arrangements. That the declarant's place of residence is at Culmally, in the parish of Golspie, and shire aforesaid. Declares, That he knows a set of certain parts of his constituents' lands were made at Golspie, upon the 15th day of December 1813, in consequence of previous advertisements; that the declarant was present at the said set, at least during the greater part of the time, and he knows that a paper was read by Mr Young to those assembled upon the occasion, and also explained in the Gaelic language by Mr David M'Kenzie. That the import of the said paper was, that Mr Young was to

\* N. B. This must have crept in by mistake. Mr Sellar is *factor*, and never was "under factor over Lady Stafford's estates."



lay off allotments in the lower part of the country for the removed tenants. That about the beginning of harvest 1813, the declarant, who farms about 400 arable acres in the low country, in the parish of Golspie, mentioned to his constituents, that it would be of much importance to him to possess a pasturage farm to be wrought in connection with it. That Lord and Lady Stafford directed the declarant to offer at the set for any farm he chose, a few pounds beyond the highest offerer; and they directed Mr Young, on his so offering, to prefer him. That the declarant accordingly made offer for the farms of Rhiloisk and Rossal, near the sources of the rivers Naver and Helmsdale, in the parishes of Kildonan and Farr. That this farm was offered for by the declarant over the previous biddings of Mr John Paterson in Sandside, and was taken out by the declarant on the arrangement fixed by his constituents. That it comprehended the places of Rhiloisk, Rossal, Rhiphail, Ravigill, Rhimsdale, Garvault, and Truderskaig. That Mr Young asked the declarant, after the farm had been set to him, if he would allow any of the people to remain for a season upon the grounds. That the declarant readily answered he would, and he informed the people who were present at the inn, that he would allow as many of them remain on the farm for one year as he possibly could. That it was not in his power then to specify who were to remain, and who were to be removed into allotments, but he would meet them at the counting, and be able to explain fully to them upon that occasion. That the counting happened on the 15th of January 1814, at the house of John Turnbull, shepherd in Suisgill, in the parish of Kildon-



an ; and the declarant, in consequence of a previous notice to the inhabitants to meet him and pay the rents, met, among others, the people on his own farm, and he selected those who should remain, made a bargain with them, as he believes, rather under a fair proportion of his average rent on the duration of his lease ; and he explained, that to the remainder of the ground, he must have access at the Whitsunday following, as his flocks and shepherds would then be in preparation. That at the counting, the declarant expressed a wish that the tenantry would allow him to burn part of the heath in the ensuing spring ; he has always understood, that after the month of March comes in, the old heath is of very little use until burnt. That the Alpine herbage, mixed among the heath, comes up in a few days after burning ; and in the latter end of March, April and May, is, after burning, a most valuable pasturage. That the declarant, therefore, conceived, and he believes the people were of the same opinion, that the allowance of burning part of the heath was no great favour, and they readily consented to it. That the declarant believes that John Dryden, his principal shepherd, was present upon this occasion ; and he understands that Dryden, in the month of March ensuing, burnt several parts of the muir pasturage belonging to the farm. Declares, that the declarant was not personally on the farm from the said month of December until the term of Whitsunday ; that he perambulated a considerable part of the farm after the Whitsunday, along with Dryden, who pointed out spots that he had burnt, and it was then full of herbage, and the inhabitants' cattle and horses were pasturing upon it ; some hundreds of



cattle and horses being kept by the tenants on the declarant's ground from the said term of Whitsunday up to the time when possession was got by the strength of the Sheriff's warrant. Interrogated, Whether the declarant gave orders, either to the said John Dryden or to John M'Kay, another of his shepherds, to burn the spots of heather before declared to? Declares, in answer, that John M'Kay was a young lad under the direction of Dryden; and the declarant rather thinks that he had no conversation with him on the subject, that if Dryden asked the declarant any questions on the subject, he certainly must have told him to burn what was proper, as the inhabitants had already consented to the measure; and he knows it was no injury, but a benefit to them; and it was besides a small portion of the flows that was necessary to be burnt for the purpose of the shepherds: That although the declarant has every wish to answer explicitly to each interrogatory, he really cannot say that he recollects of any conversation he had with Dryden on the subject; but this he does frankly allow, that in so far as Dryden was the declarant's servant, the declarant is answerable for any damage he might thereby have done the people, if they are entitled to any damages. Declares, that he knows that regular processes of removing were brought at the instance of the proprietors against all the principal tenants; and the conclusions of the libels were, that the defenders should "compear before the  
 " Sheriff-depute, &c. on the 18th March and 4th  
 " April, to hear and see themselves decerned and  
 " ordained, by decret and sentence of the Sheriff-  
 " depute or his Substitute, to flit and remove them,



“ selves, wives, bairns, families, servants, sub-  
 “ tenants, cottars, dependents, and whole goods  
 “ and gear, forth and from the possession of the  
 “ said lands and others, at the term of removal  
 “ after mentioned, viz. from the houses, gardens,  
 “ grass and mills, at the term of Whitsunday next  
 “ 1814, and from the arable lands under crop at the  
 “ separation of crop 1814 from the ground :”

That the declarant, as agent for the pursuers, called the actions regularly in Court, and obtained decret of removing in terms of the libels : That in the beginning of the month of May the declarant extracted the decreets, and caused charge the defenders in terms of the decreets ; that he thereafter obtained precepts of ejection, and after waiting till about three weeks after the term, he was under the unpleasant necessity of putting the warrants into the hands of the officers of Court, and employing them to make the premisses void and redd. And being asked who were the officers and party employed upon this occasion ? Declares that he does not pointedly remember, but he believes they were Alexander Sutherland, in Backies, and Alexander M'Kenzie, Sheriff officer in Roggart, and also Kenneth Murray, in Ironhill, as he thinks : Declares, That he knows that the officers, under these warrants, made void and redd, Rhiloisk, Rhiphail, Ravigill, Rhimsdale, and part of Garvault ; the four former places were thereafter in the declarant's occupation, and the last in the occupation of Roderick M'Kay, whom the declarant left there, as he thought him the most decent man in it ; and it was necessary, as he had the rent of it to pay at Martinmas, that he should be put into possession as near the term of



Whitsunday as the declarant could. That there was a small part of Rhiloisk in the midst of a morass, occupied by a tinker, of the name of Chisholm, and he also was ejected, to make room for the people of Rossal and Truderskaig, in favour of whom the declarant had subset that part, and he was ejected on the 13th of June, to the best of the declarant's recollection : That all the people were removed, excepting some persons in Rhimsdale, who were represented to have sickness in their families, and some women in Ravigill. That it was the declarant's intention that the tinker in the upper part of Rhiloisk should be completely removed from his premisses, as he was represented by the people to the declarant, to be a vagrant, who had come there without any authority. That he had married, and lived in family with a second wife in the lifetime of the first, who had lately visited him, in company with some other tinkers, and that he was reputed a thief. Declares, That all the houses, with the exception of Rhiloisk House, now in the declarant's occupation, consisted of birch couples and roof, intermixed with a few posts of moss-fir filled up with turf. That at the removal of the tenants, the birch and other natural wood in the houses, is the property of the entering tenant, in respect they were cut in the natural woods on the property of the Marquis and Marchioness of Stafford ; but if he wish the moss-fir, he must pay a value for it by compromise, unless where the matter is regulated by a lease. That in all the other cases of the removings above noticed, excepting that of the tinker and a house in Rhimsdale, and another in Ravigill, that were necessary for the temporary accommodation of the declarant's shepherds, the de-



clarant, the entering tenant, made the removing tenantry a present of the natural wood in the houses they had lately occupied, and allowed them a fortnight, as he thinks, after the middle of June, for removing any part left behind them at the period of the ejections. That a few of the subtenants, who were to have entered to the place in the occupation of the tinker, went out there on purpose to bring in the woman he lived with into the Strath at the time of the ejection. That the declarant was not present at the first part of the ejection, but he arrived there on his way to the low country, in the afternoon; and on his reaching the place, he found that the officers had already ejected the man's furniture, such as it was, and that the house was nearly unroofed, but that there was another small house fronting the east end of the dwelling-house; that it was untouched, and that the tinker's wife was employed removing their things from the green into it. That the declarant mentioned to the entering subtenants that they had better take the woman and her family, and such furniture as was there, into the Strath with them, but they informed him, that there was an aged person there who could not then be removed such a distance; that she was the mother of the tinker's wife, and it was necessary that this woman should be left there to assist her. Declares, that the declarant is not positive, but he understands that the old woman had been removed by this time, by her daughter, into the small house above mentioned, to be opposite the east end of the dwelling-house; and his reason for thinking so is, that he did not see her at all, and the dwelling-house or hut was by this time unroofed: That the declarant asked the



tinker if he would make off with himself, but he indicated that he would not do so ; and as he was considered to be a lawless man, who would rebuild his house, and settle again there, in the face of the Sheriff's decreet of removing, the declarant thought it proper to purchase the moss-fir part ; and all the timber being thus the property of the entering tenant, that he would prevail on the subtenants above mentioned to remove it along with him : That for the purpose of appreciating the moss timber, the officer's party and people separated it from the other timber, and having valued it at a few shillings, the declarant paid the amount to the tinker before all present, and the sub-tenants took a part of it : That there was a very considerable part, however, which, they left, and the declarant considering it to be his property ; ordered the party to collect it in the place, and to burn it along with the parcel of turf which had been thrown off the house, in the demolishing of it : And thereafter, the declarant proceeded on his journey, leaving the tinker's family in the small house into which they had removed : That the entering subtenants promised to the declarant, that they would remove the woman and her family into Strathnaver, as soon as her mother might be better ; but the declarant has afterwards heard, that the tinker presently set to work to find more timber, erected a new hut equal to that which was demolished, and that he lives there at this day ; that the name of the place, the declarant has heard, is Badyloskin, and it is a pendicle of Rhiloisk. Interrogated, if the declarant knows there was a kiln and barn at Badyloskin, and that they were set fire to separately from the dwelling-house? De-



clares, that there was a turf hut opposite, nearly to the west end of the house; that the declarant supposes it may have been the man's barn; that the moss-fir was taken out of it, in like manner as out of the other house, and it was valued over to, and paid for by the declarant: And thereafter the wood of it was burnt; but the declarant does not recollect if it was mixed with the wood of the dwelling-house, or separately by itself. Interrogated, if he knows there was a small field of growing corn burnt at the back of Chisholm's house, upon the occasion before declared to? Declares, that he remembers perfectly there was a small field of corn near the house,—it might have been about a fourth-part of an acre—and at that season of the year, and in that climate, was at that time perhaps from an inch and a half to three inches high: That it was not burnt upon that occasion, nor was any corn burnt, to the declarant's knowledge. Declares, that along the one side of this field, there was a small broken fence of the moss turf: That the fire communicated for a yard or two from the wood, along this fence, and the declarant assisted at putting it out; and it was extinguished. Interrogated, If the declarant knows, or was informed by any person, that there were L.3 Sterling in bank notes, deposited in a hole in one of the gabels of Chisholm's house, and that they had been burnt along with the rest? Declares, That the declarant knows that the wood was fairly separated from the house, and the effects of the former occupants to all appearance fully removed from the premises, before the comprisement of the timber, and the burning of it, above declared to: That the declarant does not believe that there was ten shillings worth of pro-



perty of any sort, either in or out of the house at any time : That the furniture consisted of birch boughs, made rudely with an axe or knife, into the form of stools, &c. and he apprehends there was no money in it : That after the ignorant people had been stimulated by artful and designing men to complain of oppression, the declarant heard that it was reported by the tinker or his wife, that there had been money burnt in the fire ; but he put no dependence on their veracity. Interrogated, If he knows the name of William Chisholm was in any of the precepts of ejection, which the Sheriff-officer had in his possession upon the occasion before declared to ? Declares, That the officers were possessed of precepts of ejection against the tenants of every place in Strathnaver : That the declarant does not at present recollect if the name of William Chisholm was in the precept or not ; but if it was not, then the names of the principal tenants of the grounds were ; and to the best of the declarant's recollection, it is a pendicle of Rhiloisk, on the wadset of Langdale ; and all the tenants on the wadset were regularly warned out, and their names contained in the precepts before declared to. Interrogated, Whether the declarant had any conversation with Chisholm at the Mission-house of Farr, called Achness, in presence of Mr Gordon of Langdale, and Mr Gordon of Bracachy, upon the Sunday immediately preceding the day on which the declarant went to Chisholm's house ? Declares, That the declarant attended at Divine worship at the Mission-house of Achness, on a Sunday preceding the ejection of Chisholm : That he was in company with the Mr Gordons above alluded to ; and being informed among others, by them, that Chis-



holm was of bad repute, he asked them to point him out among the people: That on his being pointed out, the declarant intimated to him, that he was not to be allowed to remain on the declarant's farm; and that the officers would certainly throw him out if he did not peaceably remove of his own accord; but he does not recollect that the Mr Gordons were present when he made this intimation, although it is very possible they might have been so. Interrogated, If the declarant ordered the officers and party to demolish a mill at Rhimsdale, upon the occasion before declared to? Declares, That the declarant did not know that there had been any mill at Rhimsdale; there is little or no corn land near it, as it lies in the middle of a very wide hill; but his directions to the officers were, that they should lawfully eject the tenants; and that after ejecting, they should remove the roof of every house in Rhimsdale, excepting those occupied by the families wherein sickness was mentioned to have been, and the barns necessary for the harvesting of the little crop. Declares, That the declarant was not present at the ejections at Rhimsdale, as he understands they happened on the 14th or 15th day of June; and the declarant was under the necessity of leaving them on the 13th, as his duty called him to other parts of the estate. Interrogated, If the declarant was along with the officers and party at the towns of Garvault, Ravigill, Rhiphail, and Rhiloisk, when the precepts of ejection were put in execution? Declares, That after repeated promises by the tenants, that they would peaceably obey the Sheriff's decret, and after they repeatedly failed in implementing their promises, the declarant was



under the necessity, as already mentioned, of directing the officers to execute their warrants: That he was present at the first part of the ejections; but after they had ejected from a few houses, and had unroofed these, the tenants of the others in the neighbourhood yielded obedience to the warrant, and removed of themselves: That it was impossible for the declarant to remain always with the officers; but his directions were, that they should eject from the houses where the inhabitants were not yielding obedience to the decreets only, or were making an appearance of removing, in order to put off the time, and weary out the declarant and the party. Interrogated, If the declarant's orders to the officers and party, also, were not to throw down the couples and timber of the different dwelling-houses, barns, kilns, and sheep-cots, at the respective places before mentioned? Declares, That the declarant directed the officers (where the tenants did not obey the decreets by removing of themselves, as they ought to have done), to remove the tenant's property and effects from the premises; and thereafter unroof the huts, to prevent them from retaking possession after the declarant should leave that part of the country; but although by law and the force of the warrants, he considered himself entitled to remove from, and take possession, as entering tenant, of all the houses or huts at the term of Whitsunday, he left the removed tenants in possession of a barn each, as he believes, for every seven acres of arable land under crop; and as already mentioned, he made them a present of all the timber of the houses, excepting Rhiloisk house, one turf hut on Ravigill, one on Rhimsdale, and the tinker's on Badyloskin,



before mentioned. Interrogated, If the declarant remembers to have seen any of his party, or his shepherd, John Dryden, forcibly carry away from the house of a Barbara M'Kay, at Ravigill, the door of her dwelling-house, with lock, hinges, and door posts? Declares, That he has no recollection of any such circumstance, nor did he see any locks or hinges, unless some made of wood, among the huts. All which he declares to be truth.

The Advocate-Depute here declared the proof for the prosecution concluded.



# EVIDENCE

IN

## EXCULPATION.

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It was stated on the part of the pannel, that Mr Sellar meant to have adduced, as witnesses to his character, Sir George Abercromby of Birkenbog, baronet, Sheriff-Depute of the county of Elgin and Nairn ; George Fenton, Esq. Sheriff-Substitute of that county ; and James Brodie, Esq. of Brodie ; but that these gentlemen were unfortunately unable to attend from bad health ; and regular medical certificates of the inability of Messrs Brodie and Fenton had been transmitted. It was therefore proposed to read letters which these three gentlemen had written, containing their opinion of Mr Sellar's character for humanity, which, although not regular evidence, were usually received in the practice of the Criminal Court, in relation to points of character. To this proposal the Advocate-Depute made no objection ; and the following letters were then read :—



LETTER,—JAMES BRODIE, Esq. of Brodie, to  
Mr JAMES ROBERTSON, Writer to the Signet.

*Brodie House, 20th April 1816.*

SIR,—Having received a citation, at the instance of your client, Mr Patrick Sellar, as a witness on his trial, I am truly sorry that my state of health is such as puts it totally out of my power to obey it; and I have therefore been obliged to send a certificate for that purpose.

As, I presume, the only motive for calling on me, must have been to bear witness to his character, I sincerely regret that I am prevented from doing him that act of justice. I have known him intimately from his infancy; and he was for many years, while he resided in this country, my man-of-business. I always considered him a person of the strictest integrity and humanity, incapable of being even accessory to any cruel or oppressive action. I am, &c.

LETTER—SIR GEORGE ABERCROMBY of Birkenbrog, Bart. to JAMES GORDON, Esq.

*Forglen-House, April 21st, 1816.*

MY DEAR SIR,

I received your letter of the 19th yesterday. Indisposition prevents me from attending the Circuit Court at Inverness at present. This I very much regret, on account of the circumstance you mention, as I should have been glad to have given my testimony in person to the good



opinion I have always entertained of Mr Sellar. Mr Sellar I have known from a boy. He acted as an agent before the Sheriff-court of Elgin for several years, very much to my satisfaction, and was appointed procurator-fiscal. I have always thought him a young man of great humanity, and I think him incapable of being guilty of the charges brought against him, and trust, upon trial, they will turn out to be unfounded, and put a stop to that clamour which was so disagreeable. I am, with great regard,

My dear Sir,

Your most obedient Servant,  
 GEORGE ABERCROMBY.

LETTER,—GEORGE FENTON, Esq. to Mr  
 GORDON.

*Elgin, 20th April, 1816.*

SIR,—As I understand you are employed as counsel for Mr Patrick Sellar, indicted to stand trial at the ensuing Circuit Court of Justiciary at Inverness, and I having got a citation as an exculpatory witness, which, I presume, is for the purpose of bearing testimony to Mr Sellar's character. I have unfortunately been unwell for some time past, that prevents my attendance, as will appear from a certificate I have transmitted by the Sheriff-substitute of the county of Nairn, or otherways I would readily have obeyed the summons, and done that justice to his good character



I consider him entitled to. I have known Mr Sellar from a boy ; for many years an agent before the Sheriff-court, where I presided as Sheriff-Substitute, and I never, in the course of his practice, knew him to do an oppressive act, or one likely to do so, and I have always known him to be a man of sympathy, feeling, and humanity. While in this county, he was considered as a most respectable agent, employed by his Grace the Duke of Gordon, the family of Grant, now the Earl of Seafield, the Earl of Moray, and the greater part of the landed proprietors and most respectable inhabitants of this county.

I therefore consider it due to Mr Sellar's character to communicate to you my sentiments of him, as I cannot personally attend myself, and I have the honour to be,

Sir,

Your most obedient Servant,

GEO. FENTON.

Thereafter the following witnesses were called and sworn.

1st, THOMAS GILZEAN, Esq. Sheriff-Substitute for the county of Inverness. Witness has known the pannel from his boyhood. He has borne a most respectable character, and is known to witness to be of a humane disposition. Witness conceives him incapable of doing any thing cruel or oppressive.

2d, SIR ARCHIBALD DUNBAR of North-



field, Bart. Witness has known the pannel from his infancy. He is a young man of respectable character, and of a good heart; and witness believes him to be incapable of doing a cruel or oppressive action.

The several decrees of removing, and warrants of ejection against the different tenants were then produced in evidence.

It was next stated on the part of the pannel, that although it was understood from the Public Prosecutor that he had, among many other charges, deserted the second charge in the indictment, yet it was thought adviseable to lead evidence in regard to the injury, charged in the indictment to have been sustained by Donald Monro in Garvault, as what passed on that occasion would afford a specimen to the Jury of what had been the actual conduct of the tenantry in general during these proceedings.

Lord Pitmilly observed, that he gave leave to the pannel's counsel to bring forward evidence as to that charge in the libel, if they thought proper.

3d, ROBERT GUNN, fox-hunter in Tongue. Witness knows Donald Monro in Garvault; remembers the removings at that place. They were executed on the 8th of June, and on the 26th and 27th May. Monro was in company with the witness, apparently in perfect health. Witness saw him again on the 7th June at a fox-chace; left him that day about sun-set, and at that time witness saw nothing whatever the matter with him.

4th, JOHN DRYDEN, shepherd in Rhiloisk.



Witness saw Donald Monro in Garvault at a fox-chace on the 7th of June in good health, and on the 8th, witness saw him come out of the house in which he lived at Garvault, and Monro was apparently well and laughing.

5th, DUNCAN ROSS, ground-officer of Farr. Witness was at Garvault at the removings in June, knows Donald Monro. His mother said that he was sick, but when witness came up, he saw Monro leap out of bed with his clothes on, and in perfect health. Witness was present at the ejections. The warrant was first read, and then the furniture was removed from the house. Nothing was destroyed, and no damage of any kind was sustained by the tenants. Mr Sellar gave strict instructions to hurt nothing belonging to the people. He told the officer to do his duty, and after every thing was out of the houses, the party, in the gentlest manner, took out the pins and let the couples fall. The people were all out at this time. Witness was at Rhimsdale, and a man having made application to Mr Sellar for three persons who were sick, Mr Sellar ordered the best end of the house to be reserved for them, and permitted them to remain. There was one barn left at Rhiloisk, three left at Rhiphail, three at Ravigill, two at Garvault, and one at Rhimsdale, and these were permitted to remain for a whole year.

6th, ANDREW ROSS, carpenter. Witness has been many years appraiser for the family of Sutherland. Remembers the removings in 1814; was employed by Mr Sellar to comprise the value of the wood. The party went first to Garvault, and took out the furniture. Witness comprised



the moss-fir, and after every thing was out of the houses, they took out the pins, and let the couples down. The moss-fir was fairly comprised, and Mr Sellar paid the people the value of it. The party went to Rhimsdale; there only one house was taken down, and three houses, where there were said to be sick people, were allowed to remain. Mr Sellar bought the moss-fir here also, and paid for it, and no objection was made. They next went to Rhiloisk, and comprised the houses and offices. Here also only one house was taken down, in the same manner as the rest. No injury was done to the furniture. They then proceeded to Rhiphail. Some of the people there were employed in taking down their own houses, and others promised to take them down that day; and, upon this, they left them to do so. Next they went to Ravigill, where they met Charles Gordon, who said that he would pay ten pounds, if the houses were not down next day. They did nothing here but comprised one of the houses for Mr Sellar's shepherd. During all these removings, he knows of no injury done by Mr Sellar, or by his orders; saw no instance of cruelty, and no damage was done to the furniture. Value was allowed for the moss-fir, which, on an average, formed about the tenth part of the wood in the house, as, by the practice of the country, it belongs to the outgoing tenant; but nothing was given for the birch wood, as this belongs to the proprietor.

7th, ALEXANDER SUTHERLAND, in Backies of Golspie, was a witness to the removings. The party met first at Badinloch; they went to Garvault: the warrant was read, and the furni-



ture then turned out, no injury being done to it. They next went to Rhiloisk, and proceeded in the same manner there; they received orders not to do any injury; they then went to Rhimsdale. Mr Sellar said, that he had a letter from the minister of Farr, stating, that there were sick people in that place, and therefore that they must not proceed in the ejections: Then they went to Badinloskin, they arrived there on the Monday forenoon. Chisholm had taken part of the divots off his house; witness saw an old woman, she was the floor of the byre on a shake-down, and she had been removed from the house-end to the byre-end; there was a fire close to her on the floor of the byre. Mr Sellar had not arrived at this time, having stopped with his shepherd. On his arrival near the place, he asked witness if he had seen an old woman, and witness answered she was in the bothy. Neither Chisholm's house nor byre were set fire to till a considerable time after the old woman had been removed. The bothy was thirty yards or so distant from the house and byre. Witness heard no cruel expressions from Mr Sellar as to the old woman. The house, barn, &c. were worth about twenty shillings. Fire was not put to the house till after the comprisement had been made. Cross examined—Witness saw the old woman brought out by her friends, and heard her utter some cry. Part of the house was taken down before the woman was brought out, but this was done by Chisholm. The house end was taken down by the party before the woman removed from the byre end. Mr Sellar was at this time at a distance. Chisholm's furniture was all out before the fire began, and he said nothing of bank-notes. Before the wo-



man was brought out, there was a smoke, but this seemed to arise from the divots falling from the roof on the fire. Some growing corn, at the back of the house, was blackened accidentally by the fire. By the Court—Witness did not observe that the blanket which was round Margaret M'Kay was burnt, though he saw it when she was passing.

8th, JOHN BURNS, farmer in Auchuvarrisdale, in Caithness. Witness was at Badinloskin on the day of Chisholm's ejection, having accompanied Mr Sellar there; arrived in the forenoon. When they came in sight of Chisholm's house, part of it was already unroofed; they stopt at about 70 yards distance from the house. When Mr Sellar came here, the people met him, and asked him not to destroy the house; Mr Sellar answered, that he could not avoid doing so, for if he did, the tinker would not go away. He sent for the tinker and spoke to him, and Mr Sellar said he would turn him out, pile up the wood, and burn it. The officer then came up, and Mr Sellar desired him to go on with his business. The people said that they could not carry away an old woman who was there. Mr Sellar advised them to take her to Rossal; he said There was a truck, and they might easily make a bed of it for her, and take her out. The people, after this, observed, that there was fire coming from the house. Mr Sellar, upon this, started up; he desired the people immediately to take out the fir wood, for it belonged to the tinker. The men said that the woman had been previously removed to a small house. The woman was removed before Mr Sellar and witness came up, and before Sel-



lar ordered fire to be set to the house. There was no complaint of furniture, or bank-notes, being burnt that day.

9th, JAMES FRASER, residing in Golspie, was a witness to the removings ; came to Badinloskin about one o'clock ; the party came from Langdale, and met Mr Sellar at Badinloskin. Chisholm was unroofing his house when the witness came ; Mr Sellar came about an hour after ; when about 60 yards distance from the house, he called for the officer, and gave orders that the furniture should be removed with as little damage as possible ; he then paid for the moss-fir. Before they arrived, witness heard that there was an old woman there, and he himself saw her removed by her daughter-in-law to a small house at a little distance ; this was before Mr Sellar came up. Witness saw no burning then, the old woman was on a shake-down in the byre-end of the house ; she was removed, and all the furniture also, before the burning took place ; there was no unnecessary cruelty ; the tinker took the money for the moss-fir, and made no objection. The value of the house, &c. was nearer twenty shillings than twenty pounds. Witness saw Donald M'Beath at Rhimsdale, he was affected with a sore eye ; Mr Sellar said he would allow the dwelling end of his house to remain, but would destroy the byre to prevent the people from keeping cattle there. Cross examined—The tenants from Rossal were brought up by Mr Sellar to assist in removing the people. Part of the house was taken down before the woman was removed ; the witness afterwards assisted in setting fire to the house, as Mr Sellar gave orders to do so.



It was then represented for the pannel, that a vast number of additional witnesses in exculpation were in attendance; but that the Counsel conceived that it would be altogether superfluous to detain the Court and Jury longer.

Mr DRUMMOND now addressed the Jury on the part of the Crown, and stated, that he gave up all the charges except the one which regarded the ejections from the barns, and that of real injury in the case of the old woman at Badinloskin. He certainly did not think the evidence in this last case was sufficient to establish culpable homicide; but he argued, that the circumstances proved were sufficient to authorise the Jury in finding a verdict of guilty to the extent of an injury, as she had been removed at the risk of her life, which he maintained to be contrary to law. As to the barns, he contended, that the conduct of Mr Sellar was irregular and illegal, and consequently oppressive, the outgoing tenants being entitled, by the custom of Sutherland, to retain them as long as the arable land.

Mr GORDON addressed the Jury on the part of the pannel, and replied to the arguments used on behalf of the prosecution. He entered at great length into the history and objects of the prosecution; the preconcerted plan on which certain persons had instigated the people of Strathnaver to complain at first, and to persist afterwards; the views they entertained of successfully opposing the improvements of Sutherland, by affecting the noble persons to whom the property belonged, through the sides of Mr Sellar, as a convenient medium of succeeding; the disgraceful



measures to which these persons had resorted, with a view to affect the channels of justice, the impartiality of jurymen, and the purity of evidence. He attacked the measures and conduct of Mr M'Kid in the most pointed terms; exposed the character of the evidence of Chisholm and others, and dwelt on the clear evidence of the total innocence of Mr Sellar, and on the points of law which applied to the particular charges, as criminal charges, at considerable length, and with reference to various law authorities; and finally, concluded by maintaining to the Jury, that this was not merely the trial of Mr Sellar, but in truth, a conflict between the law of the land and a resistance to that law: That the question at issue involved the future fate and progress of agricultural, and even moral improvements, in the county of Sutherland; that (though certainly not so intended by the Public Prosecutor, whose conduct throughout had been candid, correct and liberal), it was nevertheless, in substance, and in fact, a trial of strength between the abettors of anarchy and misrule, and the magistracy, as well as the laws of this country.

Lord PITMILLY, after having stated the law as applicable to this case, summed up the evidence in a very clear and able manner. His Lordship stated, that it was unnecessary for the Jury to consider any of the charges, excepting the one in regard to the destruction of the barns, and the one in regard to the old woman at Badynloskin. As to the first, there could be no doubt of the practice in the country, of retaining these barns till the crop should be threshed out; neither could it be doubted, that Mr Sellar had not



left the whole of the barns for the use of the outgoing tenants, and in consequence of this, the tenants suffered damage. But in point of law, as the Court of Session had decided in a similar question, Mr Sellar was not bound by any such practice, but was entitled to proceed in the ejections. In regard to the injury charged to have been done to Margaret M'Kay, his Lordship directed the attention of the Jury to the evidence of Chisholm. This witness, although contradicted in some particulars by his wife, was confirmed by John M'Kay, whose testimony his Lordship also laid before them. On the other hand, he brought under their view, the evidence of Sutherland, Fraser and Burns, and stated, that it was the duty of the Jury to balance betwixt these two sets of witnesses. His Lordship also said, that if the Jury were at all at a loss on this part of the case, they ought to take into view the character of the accused; for this was always of importance in balancing contradictory testimony. Now here there was, in the *first* place, real evidence, from the conduct of Mr Sellar, in regard to the sick, for this, in several instances, had been proved to be most humane. And, *2dly*, There were the letters of Sir George Abercromby, Mr Brodie, and Mr Fenton, which, although not evidence, must have some weight with the Jury; and there were the testimonies of Mr Gilzean and Sir Archibald Dunbar—all establishing Mr Sellar's humanity of disposition.

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The Jury having retired for a quarter of an hour, returned a *viva voce* verdict, unanimously finding Mr Sellar NOT GUILTY.



Lord Pitmilly observed, that his opinion completely concurred with that of the Jury, and in dismissing them, after so long a trial, he was happy to say they had paid the most patient attention to the case, and had returned a verdict satisfactory to the Court.

The verdict was then recorded.

The Advocate-Depute declared that he thought it fair to the pannel, and that it would be satisfactory to the Jury, to state his conviction, that if those witnesses who were rejected on account of errors in their designations, had been examined, the result of the trial would have been the same.

Lord Pitmilly then addressed Mr Sellar. His Lordship said, "Mr Sellar, it is now my duty to dismiss you from the bar ; and you have the satisfaction of thinking, that you are discharged by the unanimous opinion of the Jury and the Court. I am sure that, although your feelings must have been agitated, you cannot regret that this trial took place ; and I am hopeful it will have due effect on the minds of the country, which have been so much, and so improperly agitated."

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The Court then pronounced an interlocutor, in respect of the verdict of the assize, assoilzieing the pannel *simpliciter*, and dismissing him from the bar.

The trial lasted from ten o'clock on Tuesday, till one o'clock on Wednesday morning, and the Court-Room was crowded to excess.

THE END.