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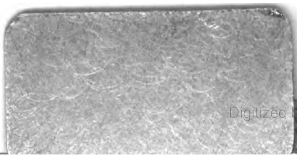
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HEAMAN

REPORT

OF

THE TRIAL

OF

PETER HEAMAN AND FRANCOIS
GAUTIEZ OR GAUTIER,

FOR THE CRIMES OF

Piracy and Murder,

BEFORE

THE HIGH COURT OF ADMIRALTY,

Held at Edinburgh on the 26th and 27th of November 1821.

BY ALEXANDER STUART,

CLERK TO THE TRIAL.

EDINBURGH :

PRINTED FOR CHARLES GUTHRIE, 8, WATERLOO PLACE.

1821.

FROM the rare occurrence of Trials for Piracy in Scotland, as well as from the peculiar circumstances attending it, this case has excited considerable interest ; and it has therefore been thought, that the following accurate account of it might not be unacceptable to the Public.

*EDINBURGH, 28, London Street,
14th December, 1821.*

TRIAL

OF

PETER HEAMAN AND FRANCOIS
GAUTIEZ OR GAUTIER,

BEFORE THE HIGH COURT OF ADMIRALTY, AT
EDINBURGH, 26th NOVEMBER 1821.

*Curia Justiciaria Supremæ Curiaë Admir-
litalis Scotiæ, tenta in Prætorio Burgi
de Edinburgo vigesimo sexto die mensis
Novembris Millesimo octingentesimo et vi-
gesimo primo, per Honorabilem virum
Dominum Joannem Connell, Militem, Ad-
vocatum, Judicem dictæ Supremæ Curiaë.*

Curia legitimè affirmata.

Intran.

PETER HEAMAN and FRANCOIS GAU-
TIEZ or GAUTIER, present prisoners in the
Tolbooth of Edinburgh,

INDICTED and ACCUSED at the instance of SIR ^{Indict-}
WILLIAM RAE, of St. Catharine's, Baronet, his ^{ment.}
Majesty's Advocate, for his Majesty's interest, and

A

ALEXANDER KIDD, Procurator Fiscal of the said High Court of Admiralty, for the crimes after specified, in manner mentioned in the criminal letters against them thereanent, bearing: **THAT ALBEIT**, by the laws of this and of every other well governed realm, Murder and Piracy are crimes of an heinous nature, and severely punishable: **YET TRUE IT IS AND OF VERITY**, that they the said Peter Heaman and François Gautiez or Gautier are guilty of the said crimes, or of one or other of them, actors or actor, or art and part: **IN SO FAR AS**, the schooner or schooner brig, Jane of Gibraltar, of which Moses Levy, merchant in Gibraltar, was owner, and Thomas Johnson was captain or master, having sailed from Gibraltar for the port of Bahia, or some other port in the Brazils, on the 19th day of May 1821, or on or other of the days of that month, having on board specie to the amount of 38,180, or thereby, Spanish silver hard dollars, and two reals, of which 31,195 dollars or thereby were shipped by Manoel or Manvel de Andrade Sylva, residing in Gibraltar, and consigned or addressed to Sr. Carlos, Mez. Ferreira, Sr. Joaq^m. A^{cr}. Vella Leone, Sr. Luiz de Souza Gomez, Sr. Joze Joaq^m. Mackado, Sr. Antonio Jacintho Pimenta, Sr. Joze Alvarez de Freitas, Sr. Antonio Luiz Ferreira, S^r. M^l. Gonzalvez, Vian-na; 6765 dollars, or thereby, and two reals, were shipped by Manoel or Manvel Nunes Chanto, merchant at Gibraltar, or by the company carrying on business in Gibraltar under the description or

firm of Barros & Chanto, of which company the said Manoel or Manvel Nunes Chanto is a partner, and consigned or addressed to S^r. Vital Prudencio Alves Monteiro, Snr. Luis Ant^o. de Passos, S^r. Joao Faugundes de Faria, and S^r. Thome Affonco de Moura; and 220 dollars, or thereby, were shipped by Joshua Levy, merchant in Gibraltar, and consigned or addressed to S^r. Luis Antonio de Passos; and having also on board 20 pipes or thereby of sweet oil; 34 bales of paper or thereby; 98 barrels or thereby of bees wax; 15 bags or thereby of aniseed; the said goods being consigned or addressed to Joao Miguel Dias de Faria; and having also on board a variety of other goods and merchandise of different sorts belonging to persons to the prosecutors unknown; the said specie and other cargo above mentioned being then in the lawful possession, or under the charge of the said Thomas Johnson, and being deliverable at the said port of Bahia; and they the said Peter Heaman and François Gautiez or Gautier, having, time aforesaid, sailed on board the said vessel Jane from Gibraltar, the said Peter Heaman as mate, and the said François Gautiez or Gautier as cook, the said Peter Heaman and François Gautiez or Gautier did, on board the said vessel Jane, while the said vessel was sailing in her course to the said port of Bahia, and in seven degrees, or thereby, north latitude, and five days sail, or thereby, to the west of the Canary Islands, or in some other part of the Atlantic

ocean, between the Straits of Gibraltar and the said port of Bahia, to the prosecutors unknown, on the 7th day of June 1821, or on one or other of the days of that month, or of May immediately preceding, or of July immediately following, wickedly and feloniously, and for the piratical purpose of seizing and taking possession of the said vessel, and of the said specie and other cargo above mentioned, on board the said vessel, both and each, or one or other of them, attack and assault the said Thomas Johnson, and did murder the said Thomas Johnson, by discharging a musket loaded with ball, or other hard substance, at the head, or some part of the body of the said Thomas Johnson, or by other means to the prosecutors unknown, and by savagely and cruelly beating the said Thomas Johnson with the butt end of a musket, or with some other instrument, in consequence whereof the said Thomas Johnson died immediately thereafter; and they the said Peter Heaman and François Gautiez or Gautier did, time and place aforesaid, further, both and each, or one or other of them, wickedly and feloniously attack and assault James Paterson, then a seaman on board the said vessel, and did murder the said James Paterson, by beating and wounding him with muskets, or other instruments to the prosecutors unknown, in consequence whereof the said James Paterson died immediately thereafter; and they the said Peter Heaman and François Gautiez or Gautier did thereafter throw, or cause to be thrown, the bodies

of the said Thomas Johnson and James Paterson overboard into the sea ; and they the said Peter Heaman and François Gautiez or Gautier, did then confine Peter Smith and David Robertson Strachan, *alias* Robert Strachan, then seamen on board the said vessel, in the forecastle of the said vessel, by fastening down the hatchways or otherwise, and did attempt to suffocate the said two persons by smoke, and did thereby succeed in terrifying the said Peter Smith and David Robertson Strachan, or Robert Strachan, and did compel them to assist the said Peter Heaman and François Gautiez or Gautier in their plan of seizing the said vessel, and the said specie and cargo on board thereof; and they the said Peter Heaman and François Gautiez or Gautier having thus murdered the said captain or master of the said vessel, did then and there, both and each, or one or other of them, feloniously and piratically seize and take possession of the said vessel, and of the whole specie and cargo above mentioned then on board the said vessel, and did thereafter alter the course or destination of the said vessel, and did steer, or cause to be steered, the said vessel for the coast of Ireland, or of Scotland, for the purpose of enabling them, the said Peter Heaman, and François Gautiez or Gautier to appropriate to themselves the said specie and cargo which they had thus piratically and feloniously seized ; and they the said Peter Heaman and François Gautiez or Gautier having arrived in the said vessel off the

coast of the island of Lewis, in the county of Ross, on the 21st day of July 1821, or on one or other of the days of that month, or of June immediately preceding, or of August immediately following, did then and there, nearly opposite to the point of Chickenhead, in the said island of Lewis, or opposite to some other part of the said island, feloniously sink, or cast away the said vessel Jane, by boring, or causing to be bored, holes in the bottom of the said vessel, or otherwise to the prosecutors unknown, by which means the said vessel was lost and driven ashore on the coast of the said island; and they the said Peter Heaman and François Gautiez or Gautier did, on the 22d, or on one or other of the days of the said month of July, land the said specie, or part thereof, and the said cargo, or part thereof, on the coast of the said island, near to Swordale, in the parish of Stornoway, in the county of Ross aforesaid, for the purpose of secreting and carrying off the same, when they the said Peter Heaman and François Gautiez or Gautier were apprehended: by all which, the crime of piracy was committed by the said Peter Heaman and François Gautiez or Gautier; and the said Peter Heaman having been taken before James Adam, Esq. James Robertson, Esq. William Morison, Esq. and Syme Tod, Esq. all his Majesty's justices of the peace for the county of Ross, did in their presence, at Stornoway, on the 25th day of July 1821, emit and subscribe a declaration; and hav-

ing been thereafter taken before George Tait, Esq. advocate, sheriff-substitute of the county of Edinburgh, did in his presence at Edinburgh, on the seventh day of August 1821, emit and subscribe another declaration; and the said François Gautiez or Gautier having been taken before the said justices of the peace for the county of Ross, did, in their presence at Stornoway, on the 26th day of July 1821, emit and subscribe a declaration; and having been thereafter taken before the said George Tait, Esq. did, in his presence, at Edinburgh, on the 7th day of August 1821, emit and subscribe another declaration: which declarations, being to be used in evidence against the said Peter Heaman, and François Gautiez or Gautier respectively; as also four bills of lading, signed Thomas Johnson, dated Gibraltar, 18th May 1821, with an instrument of procuration, dated Gibraltar, the 29th August 1821, and signed Barros and Chanto, and Henry Stokes, notary-public, an affidavit, dated 29th August 1821, and signed Moses Levy and Henry Stokes; and an affidavit dated 30th August 1821, and signed Moses Levy and Henry Stokes; as also seven bills of lading, signed Thomas Johnson, dated Gibraltar, 18th May 1821, with an instrument of procuration, dated Gibraltar, the 29th August 1821, and signed Manoel d'Andr^e Sylva, and Henry Stokes, notary public; affidavit dated 29th August 1821, and signed Moses Levy and Henry Stokes; and an affidavit

dated 30th August 1821, and signed Moses Levy and Henry Stokes; as also a bill of lading, signed Thomas Johnson, dated Gibraltar, 18th May 1821, for goods addressed to Joao Miguel Dias de Faria; as also a bill of lading for 220 dollars, signed Thomas Johnson, and dated Gibraltar, 18th May 1821; as also policy of insurance, Mello, Robertson, and Company, on specie on board the vessel Jane, dated 11th June 1821, to the amount of L. 3375; as also policy of insurance, M. L. Bensusan and Company, on goods on board the vessel Jane, dated London, 11th June 1821, and bearing to be delivered of the same date; as also invoice of sundries shipt on board the schooner brig Jane, dated Gibraltar, 18th May 1821, to the address of Joao Miguel Dias de Faria; as also an inventory, dated Stornoway, July 27th 1821, and subscribed Rod^k. M^c Iver, and Kenneth M^cKenzie; as also three white muslin neckcloths, marked T. J.; as also two muskets and a pistol; as also a silver watch, with the name 'W^m Simpson, London,' on the dial plate; as also two pair of cotton trowsers, a striped cotton waistcoat, and a silk and worsted waistcoat, a buff coloured cassimere waistcoat, a striped cotton jacket, a green coat, a red and white muslin half handkerchief, a blue watchcoat; as also a book, entitled Trial of Captain Delano for piracy; as also a trunk with canvas cover, and a trunk with calf skin cover; two plain white linen shirts, three pairs of short white cotton stockings,

a white flannel jacket, one and a half pair of white cotton sheets, a pair of white braces, and two coarse hand towels, being all to be used in evidence against the said Peter Heaman and François Gautiez or Gautier, at their trial, will be lodged in due time in the hands of the clerk of the High Court of Admiralty, before which they are to be tried, that they may have an opportunity of seeing the same. AT LEAST, time and place foresaid, the said Thomas Johnson and the said James Paterson were murdered; and, time and place foresaid, the crime of piracy was committed; and the said vessel, the Jane of Gibraltar, and the said cargo on board thereof, were feloniously and piratically seized and taken possession of by the mate and cook on board the said vessel, for the purpose of appropriating to themselves the said specie and cargo; and the said Peter Heaman, and François Gautiez or Gautier are guilty thereof, actors or actor, or art and part. ALL WHICH, or part thereof, being found proven by the verdict of an Assize, before the Judge of the said High Court of Admiralty, in a Court of Admiralty to be holden by him, within the Tolbooth or Criminal Court-House of Admiralty at Edinburgh, upon the 26th day of November 1821, they the said Peter Heaman, and François Gautiez or Gautier OUGHT to be punished with the pains of law, to deter others from committing the like crimes in all time coming.

Dated and Signeted, 31st Oct. 1821.

B

LIST OF WITNESSES.

- 1 James Adam, Esquire, one of his Majesty's justices of the peace for the county of Ross.
- 2 James Robertson, Esquire, collector of the customs at Stornoway, island of Lewis, and county of Ross, and one of his Majesty's justices of the peace for the county of Ross.
- 3 Syme Tod, Esquire, one of his Majesty's justices of the peace for the county of Ross.
- 4 William Morison, Esquire, one of his Majesty's justices of the peace for the county of Ross.
- 5 Hector Mackenzie, shipmaster at Stornoway aforesaid.
- 6 Roderick Mackenzie, substitute sheriff-clerk of Ross-shire, for the district of Lewis, residing at Stornoway aforesaid.
- 7 Kenneth M'Kenzie, clerk to the collector of customs at Stornoway aforesaid.
- 8 Kenneth MacIver, tacksman of the farm of Tolsta, in the parish of Stornoway, in the island of Lewis aforesaid.
- 9 Roderick MacIver, surveyor of the customs at Stornoway aforesaid.
- 10 Peter M'Kinlay, tidesman of customs, Stornoway aforesaid.

- 11 Alexander M'Kenzie, joiner in Stornoway aforesaid.
- 12 Colin M'Kenzie, constable in Stornoway aforesaid.
- 13 John Murray, sub-tenant in Melbost, in the parish of Stornoway aforesaid.
- 14 John MacAulay, sub-tenant in Knock, in the parish of Stornoway aforesaid.
- 15 James Reid, merchant and shipowner in Stornoway aforesaid.
- 16 Evander M'Iver, residing at Tolsta, in the parish of Stornoway aforesaid.
- 17 Torquil MacLeod, residing at Tolsta, in the parish of Stornoway aforesaid.
- 18 Peter Smith, late seaman on board the Jane of Gibraltar, and now or lately prisoner in the tolbooth of Edinburgh.
- 19 David Robertson Strachan, *alias* Robert Strachan, late seaman on board the Jane of Gibraltar, and now or lately prisoner in the tolbooth of Edinburgh.
- 20 Andrew Camelier, late seaman on board the Jane of Gibraltar, and now or lately prisoner in the tolbooth of Edinburgh.
- 21 John Hard, *alias* Johanna Dhura, late seaman on board the Jane of Gibraltar, and now or lately prisoner in the tolbooth of Edinburgh.
- 22 Mrs Katharine Downie or Morison, residing at the farm-house of Swordale, in the parish of Stornoway aforesaid.
- 23 Lieutenant Donald M'Neill, now or lately residing at Killis, in North Uist, in the county of Inverness.

- 24 Hugh M'Neil, son of Donald M'Neil of Watersay, residing in the parish of Barra, and county of Inverness.
- 25 Angus M'Donald, kelp overseer in the island of Barra.
- 26 Captain Benjamin Oliver, of the Prince of Wales revenue cutter, in Leith Roads, or cruising on the east coast of Scotland.
- 27 Gabriel Surene, teacher of French in Edinburgh, now or lately residing in George street there.
- 28 George Tait, Esquire, advocate, sheriff-substitute of the county of Edinburgh.
- 29 James Currie, clerk in the sheriff-clerk's office, Edinburgh.
- 30 John Duncan, sheriff-officer in Edinburgh.
- 31 Abraham Levy Bensusan, Great Prescot street, Goodman's Fields, London.
- 32 Adam Wilson, at Messrs Butler, Brothers, Old South Sea House, Broad street, London.
- 33 George Robertson, of the house of Mello, Robertson, and Company, Great Winchester street, London.
- 34 Jo. Martin Sardina, teacher of the Spanish and Portuguese languages, now or lately residing in M'Dougall's street, Paul's work, Edinburgh.
- 35 Gilbert M'Donald, teacher, Warriston's close, Edinburgh.

JOHN HOPE, A. D.

ALEX. KIDD, P. F.

Counsel for the Crown.

The Lord Advocate.

John Hope, Esq.

Duncan Macneill, Esq.

Adam Rolland, Esq. Crown Agent,

Counsel for the Pannels.

Thomas Maitland, Esq.

Archibald Hope Cullen, Esq.

William Smith, Esq. S. S. C. Agent.



THE 'criminal libel having been read over in open Court to the pannels, and they being severally interrogated thereupon, (the said Francois Gautiez or Gautier, by means of an interpreter), answered that they were *not guilty*.

Pannels
plead
not
guilty.

There was no objection offered to the relevancy.

The Judge Admiral having considered the criminal letters against the said Peter Heaman, and Francois Gautiez or Gautier, Finds the same relevant to infer the pains of law; but allows the pannels to prove all facts and circumstances tending to exculpate them, or either of them, or alleviate their guilt; and remits the pannels with the libel as found relevant to the knowledge of an assize.

Interlo-
cutor of
relevan-
cy.

(Signed) JOHN CONNELL.

THE FOLLOWING PERSONS COMPOSED
THE ASSIZE.

George Hay, merchant in Edinburgh.

William Paul, accountant there.

Patrick Borthwick, Esq. residing in Albany street
there

William Gordon, Esq. residing in Drummond
place there.

5. Peter Begbie, ironmonger there.

Robert Fraser, jeweller in Edinburgh.

John Scott, plumber there.

Thomas Richardson, merchant-tailor there.

Willam Marshall, jeweller there.

10. John Cameron, merchant-tailor there.

George Scougall, merchant in Leith.

Andrew Park, wood merchant there.

James Smith, merchant there.

William Murdoch, writer there.

15. William Sibbald, merchant there.

Who were accordingly all lawfully sworn, and no
objection offered on the part of the pannels.

Admission of
Pannels
declarations.

The procurators for the pannels judicially admit, that the declarations of the pannels Peter Heaman and François Gautiez or Gautier, libelled on, were emitted by them severally, freely, and voluntarily; and that they were respectively of

sound mind; and in their sober senses at the time of emitting the same; and that the said declarations of François Gautiez or Gautier, having been emitted in the French language, were correctly interpreted and taken down in English.

(Signed) THOMAS MAITLAND.

GABRIEL SURENNE, Teacher of French Inter-
preter
sworn. in Edinburgh, now or lately residing in George Street there, was appointed as interpreter to interpret to the pannel François Gautiez or Gautier, what should occur in the course of the proceedings in this Trial; and he being accordingly sworn, depones, That he will faithfully interpret to the pannel what passes in Court, as he shall answer to God.

(Signed) G. SURENNE.

Compeared ANDREW CAMELIER, late Exam-
ined
by Mr
Hope. Seaman on board the Jane of Gibraltar, aged 18, unmarried; who being solemnly sworn, purged of malice and partial counsel, and interrogated, depones, That he is a native of Malta, and has been at sea for four years: That he was last on board a schooner belonging to Gibraltar, and went on board that schooner at Malta: That he does not remember the name of the vessel: That he sailed in this vessel from Malta to Gibraltar: That the name of the captain was Thomas Johnson: That they stopt at Gibraltar, where they manned the schooner, and took on board six men

besides the captain and deponent: That the pannel at the bar, François, went on board as cook, and the other pannel, Peter Heaman, went on board as mate: That the names of the other sailors were Paterson, Peter Smith, Robert Strachan, and Joanna Dhura: That the schooner was bound for the Brazils, but deponent does not know to what port there: That the cargo, which was taken on board at Gibraltar, consisted of oil, olives, raisins, and bees wax, and a little silk: That there were also on board eight barrels of dollars, viz. two small and six large, which were last put on board: That the dollars were brought on board in the afternoon, and the vessel sailed next morning: That he believes they were brought from the shore: That when they sailed from Gibraltar, all the crew above mentioned were on board: That the deponent slept in the cabin, in a bed near the captain—on the same side of the vessel, but more aft: That when in bed their heads were near each other, their being only a plank between them: That the mate also slept in the cabin, but on the other side of it: That the mate and captain messel together: That the other sailors slept in the forecastle: That the deponent acted as cabin-boy: That they were sixteen or seventeen days at sea before any thing material happened: That Robert Strachan and Johanna Dhura formed the captain's watch, and that Smith and Paterson belonged to the mate's watch; but after Smith cut his leg, the Frenchman took his

place in that watch, and Smith remained below : That Peter Smith's leg was cut three days before the captain was killed ; and that they had sailed sixteen or seventeen days before the last event took place : That the deponent was in bed in the cabin, and heard a shot fired : That this was in the night-time, and the deponent was then asleep in the cabin, where the captain was also asleep : That the captain had been on the watch before, and Strachan and Dhura had been on the watch with him : That the captain left his watch at twelve o'clock, when he went to bed : That the mate and the cook, and Paterson, then took the watch : That the deponent was awakened by the shot, and instantly went on deck : That the cabin was dark at the time ; and that the shot seemed close to the deponent, he being near the captain's head, and it appeared to him that it was fired into the captain's bed : That when the deponent went upon deck, the first thing he saw was the mate striking Paterson : That they were then near the main-hatchway ; that the mate had a musket in his hand, with the butt end of which he was striking Paterson : That the deponent heard Paterson cry, but did not hear the mate say any thing to him, nor had Paterson any thing in his hand : That the deponent did not see Paterson strike the mate : That when the deponent first went upon deck, Paterson was standing, but he saw the mate knock him down and strike him often : That Paterson fell beside the main-hatchway, under the

boat which was then upon deck : That the deponent saw the captain upon deck after he came up himself : That it was after he saw the mate strike Paterson that he saw the captain upon deck : That the deponent's bed in the cabin was nearer the door than the captain's bed was : That when the deponent came first upon deck, and saw the mate striking Paterson, he did not see the cook : That he saw the captain before he saw the cook upon deck ; and when the captain came up, he said to the deponent, ' What is this ? ' ' What is this ? ' That at this time the captain was holding his hand upon the right side of his head : That when the captain was in bed, his feet lay forward and his head aft : That the beds of the captain and deponent were on the larboard side of the vessel : That he saw some blood on the captain's head when he came upon deck : That the deponent told the captain, when he came on deck, that he believed the mate was fighting with Paterson : That the cook was coming from forward, and caught the captain, and struck him with the butt end of a musket, which he had then in his hand : That the cook then threw the captain down, and the mate then came and struck the captain on his belly with his musket : That the cook knocked the captain down with the musket : That the captain cried, or groaned, after he had been struck by the mate and cook : That, after the captain had been knocked down, the mate went forward and called the people (the sailors) from the fore-

castle, to come upon deck : That Johanna Dhura came up first, and Robert Strachan wished to come up also ; but the mate had an axe in his hand, and desired him not to come upon deck : That the mate then shut down the hatches, to prevent Strachan and Smith from coming up : That the mate took Johanna Dura aft : That the deponent remained forward : That the bodies were hove overboard, and the body of Paterson was thrown overboard first, and Paterson appeared to be quite dead : That he was thrown over with his clothes on, and with a piece of iron tied to his foot, but by whom tied the deponent does not know : That the deponent was ordered by the mate to assist in throwing the bodies overboard : That the deponent was crying at this time, and was not able to give much assistance, but had a hand in it : That Johanna Dhura assisted, and appeared to be frightened : That Dhura was not able to give much assistance : That the deponent did not see the mate touch the bodies which were thrown overboard by the cook, Dhura, and the deponent : That some stones were tied to the captain's body : That when the captain came upon deck, as above deponed to, he had his trowsers on, but not his jacket or waistcoat, and no shoes, but had on his shirt and one brace : That the captain generally slept in bed so dressed : That he had not his night-cap on : That the cook was the most active in throwing the bodies overboard : That the captain did not appear to be quite dead when

he was thrown overboard : That the deponent assisted in throwing the bodies overboard from fear : That after the captain was killed, the deponent said to the mate, ' Don't kill me,' whereupon the mate answered, ' Very well.' ' Go forward ;' That after the deponent went on deck, on hearing the shot fired, the captain came up within five or six minutes after the deponent : That the mate made the hatches fast, on Smith and Strachan that night, and nailed them down in the morning : That after nailing down the hatchways, the mate lighted a fire in the cabin with a part of one of the water casks, and some tar that was on it : That he used some powder from a horn for doing so : That the mate then made two holes in the bulkhead of the cabin, to let the smoke go forward : That he ordered the deponent to get some flour and water to put upon the hatchways, to prevent the smoke from escaping : That the flour and water were made into paste for this purpose, and put upon the cabin door and other crevices, to prevent the smoke from getting through all but the bulkhead of the fore-castle : That Smith and Strachan were kept below two nights and one day, and the smoke was kept up from the morning of one day till next morning : That the deponent heard the mate asking the cook whether he supposed they were dead or not : That the cook said he did not know : That they opened the hatches on the morning of the second day, but he does not recollect who opened them : That when the hatches were open-

ed, Smith and Strachan were down-hearted : That they were not permitted to come up, but got some bread, and the hatches were again fastened down : That the hatches were opened again on the third morning, when Smith and Strachan were allowed to get out : That Dhura begged with the mate to allow Smith and Strachan to come up on deck : That after Smith and Strachan came up, the cook and mate made them swear upon a Bible, which they kissed, that they never would say any thing about what had happened : That after the captain had been killed, and early that morning, the mate sent the deponent down to wash the blood from the cabin : That the deponent saw blood on the floor, seat, and on the captain's bed on the side of the pillow : That the deponent saw some feathers flying about through the cabin, from the captain's pillow : That the pillow was all spoiled, and the feathers knocked out of it : That the deponent washed the cabin, and the bed-clothes of the captain were heaved overboard : That the deponent took the bed-clothes on deck, but does not recollect who threw them overboard : That the deck of the vessel was washed by order of the mate : That the deponent saw blood on the deck, where the captain and Paterson had been lying : That the deponent saw a musket ball in the hands of the cook, a little flattened, and with blood on it, on the morning on which the captain was killed : That the cook said that the ball had fallen from the captain's head : That the captain was a quiet,

good-tempered man, and kind; and had not, to the deponent's knowledge, quarrelled with any of the crew before this happened: That the deponent never saw the captain drunk: That when the cook first came on board the schooner at Gibraltar, his arm was tied up, and the captain gave him some camphor for it: That there were six muskets on board: That after the captain was killed, four of these were thrown overboard, and the other two were kept: That after the captain was killed, the casks of dollars were opened, and the dollars brought upon deck: That this was done by the mate, Dhura, and Strachan: That the cook was then at the helm: That they burnt the barrels which had contained the dollars: That the dollars were in bags, but they made some additional small bags, and put the dollars also into them: That the bags in which the dollars were, were put below the bulwarks of the ship: That after the captain had been murdered, they changed the ship's course and steered for Scotland: That the first land they made was the island of Barra: That after the captain was killed, the mate acted as captain, and the cook as mate: That the mate, Strachan and Peter Smith went on shore at Barra; That the mate wore the captain's coat, which was green, with his own great coat over it, when he went ashore: That the deponent was not on shore at Barra: That they went ashore in the ship's boat, and bought a large boat at Barra which they took on board: That the mate said they were to take the money on shore in the boat

which they bought: That after leaving Barra, they sailed towards Stornoway; and when they got near shore, they sunk the schooner by making holes in her bottom with a crow bar: That Dhura, Smith, and the deponent, did this by orders of the mate: That the crew went into the boat and took the money with them to carry ashore. That after they were in the boat, they counted the dollars, partly by the hand, and partly by measuring with a tin pot: That the dollars were divided among them; and he believes that each got about six thousand, three hundred: That they had belts, and put some of the dollars into them: That the boat was broken with driving ashore, and they put the money into the ground after they got on shore, amongst the small stones on the beach: That they pulled the broken boat on shore, and constructed a tent over it: That some poor persons came first to the tent, and afterwards two gentlemen: That the gentlemen said they had come to take the names of the party, and they accordingly took the deponent's name, and afterwards opened the chests of all the men, except the mate's, and found money i. e. dollars in some of the chests, and other dollars in the ground: That these gentlemen left two persons with the deponent and the others, and then went away; and Mr Roderick M'Iver surveyor of the customs at Stornoway having been called into Court, and shown to the witness, depones, That he is one of the two gentlemen mentioned: That, after the two gentlemen

had gone, the deponent ran after them, and told one of them, Mr M'Iver, the whole story, as above deponed to: That he had not told the mate or the cook that he meant to leave them, but that he had told Dhura that he meant to tell the story, and give the information: That he told Dhura this the day before; and said, that if any one came to them, he, the deponent, would inform of what had happened: That Dhura said, 'Very well:' That, after the mate took the command of the vessel, all the sailors assisted him to navigate it; and the deponent did so, being, as well as the others, compelled to do so by the mate and cook: That it was the intention of the deponent, from the time the captain was killed, to give information when he got ashore: That the deponent heard nothing of any intention to kill the captain, or of taking the money, before the time when the captain was killed: That the captain had a watch, which the cook got after the captain was killed; and being shewn the watch libelled on, depones, That it is that which belonged to the captain: That the captain wore the watch with a chain and seals, which the deponent believed to be gold: That the mate took the chain and seals, and put them to his own watch. Being shewn the pistol and two muskets libelled on, depones, That they had these on board the schooner. Being shewn the two trunks libelled on, depones, That they were both on board the schooner, and belonged to the captain. Being shewn the green

coat libelled on, depones, That it is the same which belonged to the captain: That the mate got one of the trunks mentioned, and the cook the other: That there were papers on board, some of which were burnt, and some thrown overboard: That of the papers which were burnt, the mate, the cook, and the deponent, burnt each a part: That the mate gave the deponent the papers which he burnt, and directed him to burn them: That the papers which were thrown overboard, were so by the mate and cook, and some stones and pieces of iron were tied to them to sink them: That the papers were burnt and thrown overboard five or six days after the captain was killed. Depones, That the fire which the deponent has mentioned to have been kindled by the mate, was made on the floor of the cabin, just inside the door, a large piece of wood from one of the casks, and the copper in which they cooked their victuals, being placed under the fire to prevent it from burning the floor: That there was no fireplace in the cabin, and they took the copper from the deck, and placed it in the cabin, as above deponed to. Depones, That he did not see the captain offer any violence to Paterson.

Being interrogated for the pannels, depones, ^{Cross-examined by Mr. Maitland.} That he cannot distinctly state the size of the schooner, but he supposes it might be about fifty tons: That the deponent went to bed on the night on which the captain was killed, at eight o'clock, when the captain took the watch from the mate:

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That there was very little wind : That when the deponent was wakened by the shot, he saw a flash ; but it was so dark that he could see no person : That the deponent had all his clothes on, except his jacket : That the deponent immediately ran upon deck, without looking at the captain's bed : That when he went on deck, he went forward by the starboard side of the vessel : That he did not then see any one at the helm, and is sure there was no person at the helm. Depones, That there was very little fire, but a great deal of smoke kept up in the cabin when it was kindled, as before deponed to : That the captain's bed had no mattress, but a bit of sail and blankets : That there was a piece of curtain hanging down in front of the captain's bed : That there was no window in the cabin, but two small holes from the deck to admit air : That there was a bulkhead and a small door betwixt the place where the seamen slept forward, and the mainhold : That the two holes mentioned by the deponent, in a previous part of his deposition, to permit the smoke to pass from the cabin, were made in the bulkhead, betwixt the cabin and the mainhold : That the deponent heard no conversation about sailing for Scotland, till after Smith and Strachan were allowed to come on deck : That the captain had two knives which were stolen from him, and that the deponent had no knife : That the provision casks were kept in the mainhold, and some in the cabin, and that night on which the captain was killed, they

brought some upon deck ; and that there were no casks of provisions in the forecastle, where the sailors slept.

Interrogated by the Judge, depones, That Smith and Strachan, while confined in the forecastle, might have got some salt beef which was there, but that they could not pass through the small door which led to the mainhold, where the provision casks were, on account of its size. Depones, That on one occasion, when Paterson was at the helm, he allowed the ship to go about, from neglect, and broke a rope connected with the mainboom, for which the captain found fault with him ; but there was no other quarrel between them, so far as the deponent knows.

Re-interrogated for the pannels, depones, That for about twenty days after the captain was killed, the mate and all the crew slept upon deck, and after that time, they all slept below in the cabin. All which is truth, as the deponent shall answer to God. And further depones, he cannot write.

(Signed) JOHN CONNELL.

Compeared DAVID ROBERTSON STRACHAN, *alias* ROBERT STRACHAN, late seaman on board the Jane of Gibraltar, aged about nineteen years, unmarried, who being solemnly sworn, purged of malice and partial counsel, and interrogated, depones, That he was baptized by the name of David Strachan, but that since he

Examined
by the
Court.

Examined
by Mr
Mac-
Neill.

could act for himself, he has taken the name of Robert Strachan ; That he has been at sea three years past last March : That he was last on board the Jane schooner : That he went on board that vessel at Gibraltar, on thirteenth of May last : That the vessel was to sail from that port to St. Salvador in the Brazils : That the cargo consisted of oil, bees wax, olives, raisins, and aniseed : That there was a quantity of dollars in casks on board, to the number of about forty thousand : That the crew consisted of Thomas Johnston, master, the pannel Heaman as mate, Johanna Dhura, Peter Smith, Andrew Camelier, and the deponent, and also James Robertson, with the pannel François, who was cook : That when the cook François came on board, his arm was tied up : That the schooner sailed from Gibraltar on 19th May last : That on the 6th or 7th of June thereafter, when the schooner was five or six degrees to the north of the line, and to the westward of the Canary islands, the captain was killed : That after the schooner sailed, and before the time last mentioned, the deponent had frequently heard conversation about killing the captain, and taking the money which was on board : That he first heard this conversation a few days after the schooner had left Gibraltar, and it was Heaman the mate whom he heard first talk of it : That this conversation took place in the fore-castle where the crew were : That Heaman said that he did not wish them, the crew, to take a hand in the murder, and that there was one

man on board who would do it, if they would take a share of the money : That the deponent, Paterson, and Smith, when it was mentioned to them, said they would have nothing to do with it : That Heaman frequently after, mentioned the subject to the deponent, at night, when the deponent was on the watch, which commenced at 8 o'Clock, and still proposed that the thing should be done : That the deponent mentioned to the captain that such things were spoken of, as he, the deponent, did not like, but did not mention names, and the captain said that the Frenchman was not so stout as to reign over them all : That Heaman desired the crew to give over all talking of the subject, and the deponent heard no more of the murder till the morning when the captain was killed : That the deponent and John Hard were on watch with the captain, from 8 o'Clock till 12 on the night before he was killed : That the captain went off watch at 12 o'Clock, and appeared to be then sober : That the two pannels and Paterson then took the watch : That Smith was below, having cut his foot, and not being able to take part of the watch : That the deponent after leaving the watch, went to bed and fell asleep, and was waked by Paterson, singing out, ' O Lord,' ' O Lord,' and Heaman came to the hatchway and called out, ' All hands on deck to shorten sail : ' That all who were below turned out except Smith, who could not : That John Dhura was the first person to go up, but was prevented from going on deck by Heaman, who had

in his hand what appeared to the deponent to be a hatchet : That Heaman told the deponent to stay down, and used some expressions, implying that the deponent had given information to the captain : That the hatches were then shut on the deponent and Smith : That the deponent heard a noise on deck as if the crew were breaking up the water casks : That previous to hearing this noise, he heard the decks washed, and there was very little walking forward in the ship : That in the course of the forenoon, smoke came through into the forecabin : That there was a great deal of smoke, and that the deponent and Smith were almost suffocated : That the smoke continued for two or three hours, and a second attempt was afterwards made, when the smoke continued longer : That the hatches were opened after two days and one night, when the deponent was called up by Heaman : That while the hatches were kept closed, the deponent and Smith got no bread nor water, although they called out for it ; and when the deponent called to Heaman for assistance, he was answered by François that Heaman was overboard : That when the hatches were opened, and the deponent called up by Heaman, François tied the deponent's hands behind his back, and fastened them to the studding sail boom, which was lying on deck : That John Dhura soon after untied the deponent, and told him that there was no reason to fear : That Dhura brought him a glass of brandy, and told him to keep up his heart : That

Smith had also come on deck, when Heaman proposed to give the deponent and Smith sufficient bread and water, and a share of the money, if they would take the boat, and leave the ship: That Heaman, when he called up all hands, in the manner above deponed to, said that 'it was done,' from which the deponent understood that the captain had been killed: That after the deponent came on deck, Heaman said that the captain and Paterson had been killed: That the deponent refused to go in the boat, saying that they would never reach land, and Heaman again ordered the deponent and Smith down below: That before being so put down, Heaman told the deponent that the captain and Paterson had been killed, and did not say that the captain had killed Paterson, but named a different person as having killed him: That after the deponent and Smith had been again down below for about half a day, Heaman desired him to come up to take the air: That before being put down the second time, François the cook gave them some provisions: That after the deponent had gone down below after taking the air, the hatches were again fastened down upon him and Smith, and they remained there all night: That next morning the hatches were opened, when the deponent went on deck, and François said to him, "You go in the sea:" That on this the deponent went to Heaman, who was at the helm, and told him that if he would spare his life, the deponent would be as Heaman himself was: That

Heaman asked the deponent, whether he would take an oath to that? and on the deponent saying that he would, Heaman desired him to go down below and bring up his Bible, which the deponent accordingly did; and Heaman then made him take an oath upon it: That he does not recollect the words of the oath; but they were in substance, that the Lord might never receive the deponent's soul, if he should tell what had passed: That the deponent took the oath from an apprehension that he would lose his life if he did not: That after taking the oath, the deponent was permitted to remain at liberty: That in the course of the same day, Heaman asked him to go down below, and to lend a hand in taking the money out: That the deponent accordingly went down below, and assisted to break up the casks, and bring the dollars on deck: That a bolt of duck or thin canvass was then brought up, and made into bags to hold the dollars, which were accordingly put into the bags, and these concealed in the sides of the ship: That a part of the papers on board was thrown overboard, and a part burnt: That Heaman assisted in throwing them overboard, and some muskets were made fast to the papers and thrown overboard: That this happened on the same day on which the deponent was allowed to go at liberty: That the schooner's course had been altered, and she was then standing towards the north; and Heaman told the deponent that he was going to some part of the Orkney islands; and Heaman was captain and

François was mate : That Heaman desired the deponent to say, if the ship should be boarded, that it had been robbed by a pirate, and the captain and the man at the helm killed : That Heaman farther desired them, if they met a vessel, to throw their best clothes overboard ; and, two days afterwards, the deponent accordingly threw his chest with his best clothes overboard : That Heaman hoisted American colours, on meeting a small schooner, and hailed the vessel, from which some questions were put ; in answer to which, Heaman said, that he was the Rover, thirty days from New York, bound for Archangel : That the first land which they made was the island of Barra, where Heaman and the deponent went on shore, and Smith afterwards went on shore, in the afternoon : That Heaman was dressed in a green coat, and he assumed a name different from his own, and which the deponent thinks was Roger. Depones, That three gentlemen came on board : That it consists with the deponent's knowledge, that a pretty large boat, with a sail, was purchased at Barra, and brought aboard the schooner : That Heaman said, that the purpose of buying the boat was to take them and the money ashore : That after leaving Barra, they sailed towards Stornoway ; and at a short distance from thence, the vessel was scuttled : That Heaman asked the deponent to go and see what he could do towards scuttling the ship ; but the deponent did not go down : That Smith, Dhura, and the Maltese boy

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went down: That every thing was got ready at that time to go into the small boat that had been purchased, and into which the dollars had been put: That the schooner had been scuttled about eight or nine o'clock, and it was then dark: That when at Barra, the mate told him they would best get away, as there was a revenue cutter in that quarter: That they at first meant to anchor during the night, but kept under sail till the morning, when they tried to make the mainland; but the wind and sea then rising, they put in near Stornoway: That this was betwixt twelve o'clock noon and one afternoon: That they made the boat fast ashore, and remained in it all night: That on the next day, or the day following, they took the dollars out of the boat, there having been some surf, and the boat having gone on shore: That a part of the money was buried, and a part stowed in the chests belonging to the crew, which had been put into the boats: That a division of the dollars had taken place after they landed near Stornoway; but the deponent does not think that the division was an equal one, and that Heaman got more than an equal proportion: That a good many of the country people came about them after they had landed, and then some customhouse officers: That the deponent heard Heaman say to the people who came about them, that his name was either Shadewell or Staywell, and that he had been cast away in coming from New York; and he desired the deponent to call him by that

name: That the customhouse officers, of whom one was M'Iver, opened the chests, and found the dollars which were in them: That when the customhouse officers went away, they missed the Maltese boy, and the mate sent the cook and the deponent to look for him: That he told them to go and see where Andrew had gone to: That they could not find him, and returned; and the mate soon after went to look for him himself: That the mate came back that night without his coat and waistcoat, and said he had got a fright, having been chased; and that he had thrown away his coat and waistcoat and his watch: That the coat and vest were returned to him next day; but the deponent did not see the watch again: That they remained that night in a tent which they had erected on the shore; and were taken into custody at two or three o'clock next morning: That the captain had two trunks on board the schooner, one of which the mate took, and the cook took the other: That he thinks the name of the captain was on one of these trunks, in brass nails, which were taken out, and the top of it covered with canvas; and being shewn the other trunk libelled on, depones, That he has no doubt it is the second trunk which belonged to the captain: That he knows the captain had a watch—that the cook took possession of that watch after the captain had been killed. And being shewn the watch libelled on, depones, That it is the same: That the captain had a chain and seals which he wore

with the watch and of which Heaman took possession, and attached to his own watch. Being shewn the pistol libelled on, depones, That it is the same which was on board the schooner. Being shewn the two muskets libelled on, depones, That they also were on board the schooner, and that one of them he knows was taken on board the boat after the schooner was scuttled: That Captain Johnson was a very good man: That he does not know of any quarrel he had with any of the crew, although he frequently blamed the cook for not having clean victuals: That Dhura had no particular quarrel with the mate, nor did he to the knowledge of the deponent, say he would kill the mate; but the crew said among themselves that he would make the mate fast, if they should attempt to take the upper hand of them: That the cook did not complain that the arm which was hurt before he came on board, had been injured in the morning on which the captain had been killed.

Cross-
ex-
amined
by Mr.
Cullen.

Interrogated for the Pannels, depones, That the small door leading from the forecastle into the main hold, was about the size of the door of the witnesses box—not larger: That after the captain had been killed, the whole crew slept on deck for some time—the deponent cannot say how long, but probably a week or two, if not more: That to the deponent's knowledge, the Maltese boy did not go on shore at Barra: That the deponent has been in prison about four months, and has been

confined with Dhura, Smith and the Maltese boy, except during the first week before their declarations were taken.

Re-interrogated for the public Prosecutors, depones, That the small door betwixt the forecastle and the hold, was blocked up by a spar lashed across it; and the door itself nailed, and the witness did not try to open it: That the boat went ashore at Barra several times: That it was not in the ship's boat that the deponent and the others mentioned went ashore on the first occasion, but in a boat from the shore, and the deponent carried a basket with him: That the deponent at no time heard it said by Heaman, the cook or any of the crew, that the captain had killed Paterson.

By Mr.
Hope.

Interrogated by the Judge, depones, That when he and Smith were confined below as already mentioned, they had no access to provisions, except salt beef and pork, which were stowed in barrels in the forecastle; and all this is truth as the deponent shall answer to God.

By the
Court.

(Signed) ROBERT STRACHAN.

JOHN CONNELL.

Compeared PETER SMITH, late seaman on board the Jane of Gibraltar, aged about nineteen years, unmarried, who being solemnly sworn, purged of malice and partial counsel, examined and interrogated, depones, That he is a native of Gibraltar, and has been at sea for four years: That he was last on board the Jane schooner, and went

Ex-
amined
by Mr.
Hope.

on board of her at Gibraltar on fourteenth of May last: That the schooner would be about one hundred tons burden: That she belonged to a Jew of the name of Levi at Gibraltar: That the cargo consisted of oil, olives, bees wax, raisins, and other articles; That the captain's name was Johnson, and there were eight of a crew, including the captain: That the names of the crew were Peter Heaman, the pannel, who was mate, François, the other pannel, who was cook, Andrew Camelier, a Maltese boy, Robert Strachan, Johanna Dhura, and James Paterson: That they sailed from Gibraltar the eighteenth or nineteenth of May: That on the evening preceeding, eight casks containing dollars were put on board: That the schooner was bound for St Salvador in the Brazils: That all the crew with the exception of the Maltese boy, joined the schooner at Gibraltar: That Heaman, the mate, informed the deponent that the casks contained dollars, but he cannot particularly say how long it was after they had sailed that he so informed him: That Heaman said, that he wished to put away with the Captain to get these dollars, and that he would carry the ship to a place where they might be landed in safety: That at the time Heaman said this, Paterson and Strachan were present: That Heaman wished the deponent to join in the plan: That the deponent and the other two, said that they wished to have no hand in it—but Heaman said there was no danger, that he would take the vessel to a

place of safety, where it would never be known : That Heaman understood navigation, but that none of the rest of the crew did, to the deponent's knowledge : That Heaman frequently afterwards, came down forwards where the crew slept, and advised them to join him ; but none of the crew consented to join him in the deponent's hearing : That the captain, Heaman and the Maltese boy slept in the cabin, and the rest of the crew slept forward : That the captain and the Maltese boy slept on the larboard side of the vessel, and the mate on the opposite side : That the captain and the Maltese boy slept with their heads towards each other, and the boy in the after part of the cabin : That there was no window or skylight in the cabin, but two air holes which were made by Paterson : That after the deponent and the other sailors had refused to join, Heaman gave over talking to them of the subject : That nothing particular happened till the sixth or seventh of June : That the captain, Strachan and Dhura, were on watch that night till twelve o'clock : That the deponent had cut his foot about a week before, and was not able to take the watch : That Strachan and Dhura came down at twelve and went to bed : That about two or three o'clock in the morning, at which Heaman, the cook, and Paterson were on the watch, the deponent was awakened by Paterson running forward, and calling out, ' Murder, murder, God almighty save ' my soul, for I am murdered now : ' That upon

this, those in the fore-castle got up : That the deponent was not able to go on deck, but Dhura went up, followed by Strachan, on the mate calling all hands up to shorten sail : That Strachan was not permitted to go on deck, and the deponent heard the mate say to him, ‘ Go down, Robert, you were the occasion of all this :’ That the deponent heard the mate say to Strachan, that it was he who informed the captain : That the deponent did not see Heaman, but heard him speak : That the hatches were battened down on Strachan and the deponent : That soon after this, the deponent heard a noise on the deck, as if they had been breaking up water casks, and heard them also scrubbing the deck : That whilst Strachan and the deponent were kept down below, they attempted to suffocate them by smoke from the cabin : That two holes were made in the cabin bulkhead, to allow the smoke to pass through, and the smoke passed through the crevices in the bulkhead betwixt the hold and the fore-castle, and there was a door in that bulkhead which was partly open : That there was tarpauling over the main hatchway, and over the other hatchway, and paper was pasted to prevent the smoke from escaping : That this the deponent saw when he came on deck : That they were two nights and a day below : That they might have gone from the fore-castle into the hold, but they did not attempt to do so : That the door betwixt the fore-castle and the hold was not fastened at any time, so far

as the deponent saw : That during the time they were below, Strachan and the deponent got no bread : That the bread was in the hold, and the deponent was afraid that if he went into it, he might be heard from the deck, and they might suppose he wished to get up or make resistance : That the deponent saw the door, from the fore-castle into the hold, open, about a night before the business happened, and does not recollect to have seen it shut at any time : That the hatches were first opened after the deponent and Strachan had been confined for two nights and a day, and the cook called them out : That the deponent was in bed during the greatest part of the time, and got out of his hammock only when the smoke was so strong that he could not lie, after which he lay on the fore-castle sole : That Strachan was not, to the deponent's knowledge, permitted on any occasion to go up and take the air, till they were called up in manner mentioned : That Robert Strachan went first up, and on his doing so, the Frenchman said to him, ' You go in the water.' Then Strachan said, ' What is become of Smith ? and the Frenchman answered, ' All the same.' That the deponent was allowed to go up, and he and Strachan went to the mate to beg their lives : That the mate said he would save their lives, if they would join him and say nothing of what they had heard or seen pass : That he made Strachan and the deponent take an oath upon the Bible, but the deponent does not recollect the words of the oath,

the import of which was, that God Almighty might not save their souls if they told any thing which they had seen or heard pass: That after they came on deck, they did not see the captain or Paterson, but afterwards the mate told them that they had killed the captain, and that Paterson had offered to join the captain, and they had killed him likewise: That the mate told the deponent that they had heaved the bodies overboard: That neither the mate nor the cook ever told the deponent that the captain had killed Paterson: That the dollars were taken out of the casks and carried on deck, and small bags were made, into which they were put, and stowed under the bulwarks: That the mate told the deponent that the dollars were to be divided and taken on shore: That the mate told the deponent, after he had been set at liberty, that the course of the ship had been altered, and that they were steering towards Europe again, and for Scotland: That the deponent believes, that at the time the captain was killed, the schooner was about five degrees to the north of the line, but he does not know how far west she was: That they spoke the Lark of Canterbury, when the mate gave himself out as captain, and that the vessel was from New York: That the mate directed them to say, if they should be boarded by any vessel, that they had been robbed by pirates, from their knowledge that they had dollars on board: That the deponent saw a parcel of papers and books hove overboard, with

iron hoops and muskets attached : That two muskets and a pistol were kept on board : That after the captain was killed, the mate acted as captain, and the cook as mate : That all the crew assisted in working the ship ; that they did so from fear ; and the deponent believes, that if he had not done so, he would not have been alive this day : That they did so from fear of the mate and of the Frenchman : That the first land they made was the island of Barra, where they got a boat, and part of them went ashore : That from thence they went to Lewis : That the mate said at Barra, that there was a revenue cutter which used to come into that place, and that they would start early in the morning to avoid her : That when they got near Lewis, the ship was run in betwixt two points, and the mate sent the deponent to drive a hole in her bottom with an iron bar : That he had sent the deponent down two or three hours before to prepare matters for that purpose : That the deponent made one hole, and then Hard and the Maltese boy were sent down to make more, and so the vessel was scuttled : That the crew then began to make ready the boat by directions of the mate, and put into it some provisions with the dollars, about thirty eight or forty thousand, as he believes : That the dollars were divided and each got about six thousand : That they beat about for a day and a night, without being able to get to the main-land as they intended, when the boat was driven ashore, and they landed the dollars, a part of which was

buried, and a part retained in their chests : That Mr M'Iver and some other custom-house officers came to them that night, and after they had gone, they missed the Maltese boy : That the mate sent Dhura and Strachan to endeavour to find him : That the mate called the deponent aside, and said that if the boy had gone to inform, he trusted that the deponent would stick to him : That the deponent and Strachan both intended to give information when they could make their escape : That the mate often told the deponent that he was afraid of no one informing except Robert Strachan and him : That the cook did not use any threats against them : That after the captain was killed, the whole crew slept on deck, for about a fortnight, under an awning, and they afterwards all slept in the cabin : That on the morning after the custom-house officers were with them, they were all made prisoners : That one of the cook's arms had been broke before he joined the schooner at Gibraltar : That at Barra, the mate gave himself out to be captain Rogers of the Rover, from New York, and at Lewis he called the vessel by a different name, and said that he was the owner's son. He also said that the captain and another seaman had gone to Liverpool, and that the ship had struck on some rock and gone to pieces ; That neither the mate nor the Frenchman told the deponent at any time, how or where the captain had been killed. Being shewn the pistol libelled on, depones, That it was on board the schooner. Being shewn the watch

libelled on, depones, That it was the captain's, and that the cook got it after he had been killed : That the captain had two trunks, one of which the mate got, and the cook got the other : That the captain's name had been marked with brass nails, on the top of one of these trunks : That the nails had been taken out by the deponent, by order of the mate, and the top covered with canvas, under which the marks of the nails might yet be seen, were the canvas removed.

Interrogated for the Pannels, depones, That after the death of the captain, the mate never went aloft to the deponent's knowledge : That he occasionally assisted in the ordinary work of the ship, and cleaning the decks : That Strachan went ashore at Barra with the mate, and after Strachan returned to the ship, the deponent went ashore : That the deponent thinks it was the cook's left arm which had been broke, but he cannot be certain : That besides the watch libelled, the captain had a timepiece, the works of which were about the same size, but which was put into a large wooden frame and kept in the binnacle : That the deponent does not know what became of the timepiece : That the muskets usually hung on the bulkhead of the cabin : That the deponent did not, during any part of the day before the captain was killed, or during that evening, see any of the muskets or pistol on deck : That the deponent had put the pistol in order for the captain : That this was about a week before the seventh of June :

Cross-
exa-
mined
by Mr.
Mait-
land.

That he never saw the pistol again upon deck, after he had repaired it, before the captain was killed.

By the
Court.

Interrogated by the Judge, depones, That he believes the mate to be an Englishman : That the mate did not tell him so, but that he spoke of being about Sunderland or Shields.

By the
Jury.

Interrogated by one of the Jury, depones, That the wound in his foot disabled him from doing duty either during the day or night, previous to the death of the captain, but that he was on deck during the day as often as he was inclined : That the mate called himself by a different name at Lewis from that which he had used at Barra, but the deponent does not recollect what that name was.

Interrogated by another of the Jury, depones, That he observed the door in the bulkhead of the fore-castle open the night before he was confined, but during the two days and the night he was confined, he did not try to open it, and cannot therefore positively say that it was open.

By Mr.
Hope.

Re-interrogated by the public Prosecutors, depones, That the cook did not complain of having his arm hurt by the captain that night on which the captain was killed, and that the arm was gradually getting better from the time he came on board, but that it was not quite well when they got to land.

By Mr.
Mait-
land.

Re-interrogated for the Pannels, depones, That he supposes that about ten minutes elapsed be-

twixt the time when Paterson cried out and Dhura went up the hatchway: That Dhura went up on being called by the mate, as soon as he could get on his clothes; all which is truth as the deponent shall answer to God.

(Signed) PETER SMITH.

JOHN CONNELL.

Compeared JOHN HARD, alias JOHANNA Examined by Mr. Hope. DHURA, late Seaman on board the Jane of Gibraltar, aged about 24 years; who being lawfully sworn, purged of malice and partial counsel, and interrogated, depones, That he joined the schooner Jane at Gibraltar, on the 13th or 14th of May last: That the captain's name was Johnson; and the pannel Heaman was on board as mate, and the other pannel Gautiez as cook: That Strachan, Smith, the Maltese boy and Paterson, were also on board: That the vessel belonged to a Jew at Gibraltar, whose name the deponent does not recollect: That the cargo consisted of oil, olives, raisins, and bees wax: That the schooner sailed from Gibraltar for the Brazils: That on the 7th day of June, as the deponent thinks, the captain was killed: That the deponent was below in the forecastle at the time: That he had been on the watch from eight to twelve with the captain and Strachan: That the captain left the deck at twelve, and was then quite sober: That Heaman, the cook, and Paterson then took the watch: That the cook was watching for Peter Smith who had hurt his foot: That after the de-

ponent and Strachan went below, Peter Smith was in the fore-castle with them, and they fell asleep: That in about two hours, or two hours and a half, the deponent was awoke by a hollowing; but he slept so far back that he could not hear it distinctly: That he thought it was Pater-son's voice, but could not make out what he said: That Heaman a little after called out, "All hands to take in sail:" That the deponent and Strachan got out of bed; and the deponent went on deck, and there saw Heaman, the cook, and the boy: That Heaman was at the hatch, and had some-what like an axe in his hand: That the mate did not permit Strachan to come on deck, but desired him to keep down: That the hatch was fastened down on Strachan and Smith: That the mate said to the deponent, as the deponent thinks, that he, the deponent, was done, or that something was done; but he could not tell what was meant by it: That the mate made the deponent swear never to say any thing of what had happened: That he saw nothing at that time lying on the deck, but heard moaning as he was going aft: That the mate desired the deponent, after he was sworn, to go to the Frenchman, and assist to throw a corpse overboard: That the deponent went accordingly, and saw the bodies of the cap-tain and Paterson: That the boy was forward when the deponent went to the Frenchman; and Heaman desired him, the boy, to help them to throw the bodies overboard: That the deponent

does not recollect which of the bodies was thrown overboard first ; and could scarcely say which was which, the deponent being much frightened : That the cook, the deponent, and the boy threw the bodies overboard : That the cook gave the best hand in doing so : That the boy was frightened, and crying : That an anchor-stock was tied to the feet of one of the bodies, and some stones to the feet of the other, to sink them : That it was the cook who so tied these : That the deponent heard some groans from one of the bodies, which he supposed to be the master's, while they were throwing them overboard : That there was at the time very little light : That the mate ordered the deck to be washed befor day-light, and helped the deponent and the boy to do so : That the deponent did not see blood on the deck ; but he saw some on his own foot next morning, as he had no shoes or stockings : That it was so dark when the deck was washed, that he could not see whether there was blood on it or not : That the cabin was cleaned by the boy : That the deponent saw the captain's bed-clothes that morning, and did not observe any blood on them : That they were thrown overboard, but he does not know by whom : That the mate kindled fire that day in the cabin, on the middle of the floor : That there was a bit of copper laid under the fire, and there was no fire-place in the cabin : That the fire was kindled with some staves of a barrel, and of a tar-bucket : That there was a good deal of smoke from the

fire, and the deponent believed the object was to smoke the lads below : That the smoke could get through to the hold, as there were two holes made in the bulkhead of the cabin : That the smoke could not get out at the cabin door, which was shut : That the hatches were tarpauced : That the smoke got from the hold into the forecattle, as there was a door in the bulkhead which was not closed : That flour and water were used by the boy to fill up the crevices, to prevent the smoke escaping : That the smoke was kept up till about twelve o'clock that forenoon : That it was put out, or rather went out of itself, and again kindled in about an hour afterwards, and kept up, he thinks, till the sun went down : That the deponent thinks Strachan and Smith were kept down two nights and a day : That the hatchway was first opened on the second morning, but by whom the deponent does not know : That he saw Strachan on deck that morning, but not Smith : That Smith's foot was very bad at this time, and he was confined to his hammock : That Strachan remained some time on deck, and went down again ; and the deponent believes that they gave him something to eat down in the forecattle : That the bread was kept in the cabin and hold, and no part of it in the forecattle : That the hatches were fastened down again at night, after Strachan had gone down : That Smith and Strachan might have gone into the hold to get bread, if they had tried it : That the mate

swore the deponent a second time before Smith and Strachan came up, that he the deponent would not join them if they were permitted to come up: that Smith and Strachan were afterwards permitted to come up, and sworn at the binnacle and kissed the bible: That they were sworn not to say any thing of what had happened: That they kissed the bible all round: That the barrels in which the dollars were, were broken up, and the dollars were stowed away in small bags under the bulwark of the ship: That the mate threw all the ship's papers and books overboard attached to some muskets: That when the schooner, after being at Barra, was near Lewis, it was scuttled: That the deponent was ordered by the mate to go down to make a hole in the bottom of the schooner, and while he was there, he desired the boy Andrew to look out and let him know if the mate came forward, as the deponent was afraid the mate might shut down the hatches on him while the vessel was sinking: That they then took to the boat, and the dollars were divided, partly in the boat and partly aboard: That after beating about they landed in a small creek near Stornoway: That some customhouse officers, among whom was Mr M'Iver, came to them that night, and after they had gone, the boy went away: That the boy had several times before this, and before they landed, told the deponent that he would give information of what had taken place: That the mate sent the deponent to look for the

boy, and he went to the house of Mr Morrison but did not find him : That the mate did not appear to be alarmed when he sent the deponent to look for the boy : That after the captain was killed, the deponent saw a musket ball in the hand of either the mate or cook, and somewhat was said about it, but he did not hear what that was : That the deponent did not, after the captain was killed, threaten the mate in any way : That when the cook came on board at Gibraltar, his arm was hurt : That the deponent did not hear the cook, at the time, or after the captain had been killed, complain that the captain had hurt his arm : That neither the mate nor the cook told the deponent how the captain had been killed, and it was too dark to admit of his perceiving a wound on the bodies : That the deponent never heard it said by any person on board the ship that the captain had killed Paterson : That neither the mate nor the cook appeared to have been hurt on the morning after the captain was killed.

Cross-
ex-
amined
by Mr.
Cullen.

Interrogated for the pannels, depones, That when the deponent saw the bodies on coming aft, as before deponed to, they were lying at some little distance from each other, and opposite ways : That the bodies were lying on the starboard side of the deck ; one of them under the boat, and the other close the side of the vessel.

By the
Jury.

Interrogated by one of the jury, depones, That Gautiez was hired as cook, but after Smith cut his foot, he kept the watch and assisted in working

the ship in his place ; and after the captain was killed, he acted as mate, and that he was able to do the duties of mate, notwithstanding the hurt in his arm, though he seldom went aloft. All which is truth, as the deponent shall answer to God.

(Signed) JOHN HARD.

JOHN CONNELL.

Compeared, HUGH M'NEIL, son of Donald M'Neil of Watersay, residing in the parish of Barra, and county of Inverness, aged about 28 years, unmarried, who being solemnly sworn, purged of malice and partial counsel, and interrogated, depones, That he recollects of a schooner coming to Barra in June last : That he does not recollect more than one schooner being at Barra about that time : That those on board purchased a boat from the island : That he first saw the schooner in Watersay harbour : That the master came on shore, and went to the deponent's father's house : That the master called himself Rogers : That he said he had come from New York, bound for Archangel, and stated that his cargo was oil and bees wax, a part of which he landed there : That he was dressed in a green coat : That the deponent was on board the schooner, but so far as he recollects, did not see any dollars on board : That he saw the mate but took no notice of him : That he was for a short time in the cabin with the captain, who dined at his father's house, but he can-

Examined
by Mr.
Mac-
Neill.
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not say whether the pannel Heaman is the man, but he is very like him. All which is truth, as the deponent shall answer to God.

(Signed) HUGH M'NEIL.
JOHN CONNELL.

Examined
by Mr.
Mac-
Neill.

Compeared RODERICK M'IVER, surveyor of the customs at Stornoway, aged about 46 years, who being solemnly sworn, purged of malice and partial counsel, and interrogated, depones, That he is surveyor of the customs at Stornoway: Recollects to have heard of a vessel, supposed to be a smuggler, being at anchor near Stornoway in the month of July last: That the deponent immediately dispatched four of his boatmen, to ascertain what the vessel was, and he himself soon after followed with his eldest son: That he did not find the vessel, but found a large boat, a fishing boat, on shore, and six men belonging to it, who had pitched a tent on shore: That the deponent spoke to one of these men, Peter Heaman, the pannel, who stated that he was mate of the brig Betsy, of New York, loaded with tobacco and cotton, which had been lost off Barra head: That he said the captain and he had quarrelled, and the captain had gone off in a boat with five men for Liverpool: That he, Heaman, and the rest of the crew had taken another boat, and had attempted to reach the main-land, but had been driven into the place where they then were; he added that the brig belonged to his father: That the deponent then

proceeded to search five or six chests, some of them large chests, which were in their possession : That the first chest which was opened, and which Peter Smith claimed, contained clothes on the top, and a very large bag of dollars in the bottom : That the deponent searched and found dollars in all the other chests : That the deponent took a list of the names of the people as they gave them : That it rained so fast that the names were obliterated as soon as written, but the mate gave his name George Sadwell : That the deponent returned to Stornoway, leaving two boatmen in charge of these persons : That after the deponent and his eldest son, who had accompanied him, had gone about one hundred yards, a foreign boy, one of the persons whom he has mentioned, and whom he saw here, under examination this day, followed him and told him that the mate and the cook had murdered the master and a seaman of the name of Paterson, and had taken possession of the ship : That the deponent deferred questioning the boy further, till they reached the top of the cliff, which overhung the beach where the boat was, when the boy told him more particularly that the vessel belonged to Gibraltar, and other circumstances connected with the murders above mentioned : That the deponent sent back two of his boatmen with directions to keep all the country people that might come to the spot, and that if the seamen attempted to escape, that they should stave the boat, and tie the men with cords : That the de-

ponent proceeded to Swordale, and sent three men more to reinforce the party, and went home accompanied with the boy: That about midnight he sent his son with a party to secure the whole of the persons who had come ashore in the boat: That the Maltese boy informed the deponent there was a further quantity of dollars concealed in the hammocks of these persons, and a still greater quantity hid on the beach: That in consequence of this information, the deponent returned to the beach very early in the morning and met near the place, the whole persons, prisoners as he had directed, and bound, with the exception of the mate, who had requested that his hands might not be tied: That the deponent proceeded to the shore, and met on his way Mr Kenneth MacKenzie, the collector's clerk, who returned and assisted the deponent to search, when he found the dollars concealed, precisely as had been described by the Maltese boy: That the total amount of the dollars found by the deponent, including those found in the chests, was thirty-one thousand, two hundred and eleven, as nearly as the deponent can recollect: That the mate said, on the night before, when the deponent was searching the chests, that three thousand belonged to him of those dollars that were in the chests, and that these in the chests might be about a fourth of the whole number; all which is truth as the deponent shall answer to God.

(Signed) RODRICK MACIVER.
JOHN CONNELL.

Compeared JOHN MURRAY, subtenant in Melbost, in the parish of Stornoway, aged 60 years and upwards, who being solemnly sworn, purged of malice and partial counsel, and interrogated through the medium of Gilbert MacDonald, teacher in Edinburgh, who was sworn interpreter of the Gaelic language, the witness not fully understanding English, depones, That he knows Mr MacIver surveyor of the customs at Stornoway: That he recollects Mr MacIver being on the shore, one day last Summer, near Stornoway, where there was a boat and six strange men: That Mr MacIver searched their chests, and afterwards went home to Stornoway: That the deponent was on the shore after Mr MacIver went home: That a sailor boy one of those who had been on the shore, followed Mr MacIver: That two of ten persons were sent to look for the boy, he believes by the mate, who is the pannel Heaman: That these persons did not find the boy: That the mate told the deponent that the boy was foolish, and did not care what he said or did at times—nor though he struck a man: That the mate appeared very anxious when the boy did not come back, and afterwards went himself in search of him, and returned without any of his clothes, except his trowsers and his drawers: That the mate told the deponent that he had met two men, and had thrown away the rest of his clothes and

Examined
by Mr.
Mac-
Neill.

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his watch; all which is truth as the deponent shall answer to God. And depones he cannot write.

(Signed) JOHN CONNELL.

Exam-
ined
by Mr.
Hope.

Compeared KENNETH MACIVER, tacksman of the farm of Tolsta, in the parish of Stornoway, aged about 62 years, who being solemnly sworn, purged of malice and partial counsel, and interrogated, depones, That he recollects that a schooner came on shore, and that he first saw her on Monday morning the 23d July, at 6 o'clock morning: That the schooner was lying on her broadside in the water, and part of her topmast had been carried away: That the vessel might be fifty or sixty yards from the shore when the deponent so saw her: That the coast is rocky, and that it blew hard, and blew still harder towards the afternoon, when the vessel was driven to pieces: That the vessel did not appear to have been long water-logged: That some pipes of oil, some bees wax, and some bales of paper, came on shore; and some jars of olives were afterwards picked up near where the vessel had gone to pieces, and which appeared to be quite fresh: That the schooner was schooner-rigged, and coppered, but the deponent cannot speak to her tonnage; the vessel was shallow, but of great length: That Tolsta, where the vessel went ashore, is ten or twelve miles from Swordale: That the deponent saw one of the vessel's main-beams after she had gone to pieces, which was about nineteen feet; but that she was narrow fore

and aft. All which is truth, as the deponent shall answer to God.

(Signed) KENNETH MACIVER.
JOHN CONNELL.

Compared ABRAHAM LEVY BENSU-^{Examined by Mr. Hope.}
SAN, Great Prescott-street, Goodman's Fields,
London, a Jew, aged 20 years and upwards, who was solemnly sworn on the Old Testament, according to the rites of the Jewish religion, purged of malice and partial counsel, and interrogated, depones, That Mr Moses Levy of Gibraltar, is a correspondent of the deponent's house in London: That it consists with the deponent's knowledge, that Mr Levy was owner of a schooner called the Jane, and the deponent received instructions from him to effect insurance on the cargo, and that the date of the letter of instructions was the 21st May last, and the date of the letter confirming the instructions, which witness reads from, was the 28th May: That in obedience to the instructions, the deponent effected a policy of insurance. And being shewn a policy of insurance, dated the 11th June 1821, for eighteen hundred pounds, depones, That it is the policy so effected: That the deponent is acquainted with the hand-writing of the underwriters whose signatures appear at the policy, and depones that they are genuine: That the voyage insured was from Gibraltar to Bahia, and all or any other port or places in the Brazils. Being now shewn an invoice libelled on, depones,

It was lately transmitted to him from Gibraltar, is dated 18th May, and specifies sundries shipped therein. Being shewn two bills of lading libelled on, dated 18th May last, one in Portuguese and another in English, and bearing to be signed by Thomas Johnson, as master of the Jane, depones, That they were lately transmitted to him by Mr Levy. Being shewn a policy of insurance effected by Messrs Mello, Robertson, and Company of London, for one thousand two hundred pounds, libelled on, dated the 11th of June 1821, depones, That he knows the signatures of several of the underwriters to that policy, and that they are genuine. Being shewn bill of lading for two hundred and twenty dollars, bearing to be signed by Thomas Johnson, and dated 18th May last, depones, That it was transmitted to the deponent by Mr Levy. All which is truth, as the deponent shall answer to God.

(Signed) A. L. BENSUSAN.
JOHN CONNELL.

Ex-
amined
by Mr.
Hope.

Compeared GEORGE ROBERTSON, of the house of Mello, Robertson, and Company, Great Winchester Street, London, aged about 36 years, who being solemnly sworn, purged *ut antea*, and interrogated, depones, That he is a partner in the house of Mello, Robertson and Company of London, and that Manoel de Andrade Sylva of Gibraltar is a correspondent of that house: That the

deponent received an order from that correspondent, dated the 21st of May last, to effect insurance on fifteen thousand Spanish hard silver dollars: That an insurance was effected accordingly. And being shewn the policy libelled on, by Mello, Robertson and Company, dated the 11th June last, depones, and concurs with the preceding witness, as to the subscriptions mentioned in the foregoing deposition: That the policy is on a voyage to Bahia, and the sum insured is three thousand, three hundred, and seventy-five pounds sterling. Being shown a set of bills of lading, seven in number, dated the 18th of May last, signed by Thomas Johnson, depones, That they were transmitted to the deponent's house in London by Manoel or Manuel de Andrade Sylva: That they are all bills of lading for Spanish hard dollars, and that the total amount of dollars contained in these bills is thirty-one thousand, one hundred, and ninety-five, all shipped by Mr Andrade Sylva; but the deponent's house was directed to effect insurance on fifteen thousand only. Being shewn the policy of insurance libelled on, effected by Messrs Bensusan and Company, dated the 11th day of June last, depones, That he knows the two first signatures to be genuine. All which is truth, as the deponent shall answer to God.

(Signed) GEO. ROBERTSON.
JOHN CONNELL.

The counsel for the crown after putting in evidence, such of the documents and articles libelled on, as had been proved by the foregoing depositions, then moved, that the declarations of the pannels libelled on, and judicially admitted, be read as evidence to the jury; which was accordingly done, as follows :

At Stornoway, the 25th day of July 1821 years, in presence of James Adam, James Robertson, Syme Tod, and William Morrison, Esqs., four of his Majesty's Justices of the Peace for the county of Ross.

1st. Declaration of Peter Heaman.

Compeared PETER HEAMAN, Mariner, late mate of the schooner Jane of Gibraltar, aged 35 years, or thereby, declares, That previous to entering in the Jane, he served as seaman in the Araquebassa, for about a month, and went from her on board the Jane, on the 14th day of May last, along with five others, viz. François Schyne, who was agreed for cook, Robert Strachan, Peter Smith, who said they were from Montrose, John Lawrence, a Portuguese, who calls himself an Italian from Leghorn, but who he once heard call himself John Hard, James Paterson, a Scotsman, and Andrew a boy from Malta, all of whom served as seamen, except Andrew the cabin-boy; That the Jane was brig-rigged fore, and schooner-rigged aft; would carry from ninety to one hundred and twenty tons; was commanded by Tho-

mas Johnson, with whom the declarant agreed for serving in her as mate, to St. Salvadore in the Brazils, and to return to Gibraltar: That the declarant, as well as all the rest, entered on board on the 14th; had the ship smoked on the 15th; on the 16th could do nothing on account of the smoke; on the afternoon of the 17th, commenced to take in the cargo, which consisted of ten pipes of sweet oil, thirty-five bales of stamped paper for printing. On the 18th, took on board ten more pipes of sweet oil, one hundred and twenty barrels of bees wax, fourteen round jars of fine oil, three hundred oblong jars of olives, fourteen boxes of raisins, six eighteen gallon casks, one of about nine and one of about seven gallons, all filled with Spanish dollars, and contained in bags, containing one thousand and some of them five hundred dollars each, stowed with saw-dust in casks, and the whole quantity amounted to thirty-eight thousand: That the whole articles, except the casks of dollars, came out of Gibraltar; but the casks were brought from another vessel about sunset of the 18th: That the whole shipment was made by one Lewis a Jew, but the declarant does not know his first name: That he was in his office, which was in a small street on the left hand after entering the gate about two hundred yards, and up one stair; but does not know the name of the street: That on the 19th the vessel sailed from Gibraltar; and prior to sailing, two of the crew, viz. the cook François, and John Lawrence the

Portuguese, took their clothes on the deck, and wished to go on shore again, when the master called them "damn'd fools," and said, "they did not know when to do themselves good;" and turning himself round, said, "I mean to do some good for myself this voyage;" upon which they agreed to go: That they continued their course until the 7th of June, when in six degrees and a half north latitude: That from the time the vessel left the port, till a few days before the above date, there were frequent conversations among the crew about the money, and how to come at it; and Paterson said, it would be the best plan to make the master walk on shore on a plank; to which the Frenchman answered, it would be too hard a death: That such conversations took place among the whole crew, every meal-time and every watch-time, when they had an opportunity: That the declarant has heard such conversations frequently himself, which were held partly in a jesting manner; and they were left off for three or four days before the 6th day of June, on which day John Lawrence having displeased the captain in some seamanship, the captain seized a large marling-spoke, and followed Lawrence, threatened to strike him, but did not do it; on which John Lawrence said to himself, in the hearing of the declarant, "You will not strike me with a marling-spoke bye and bye." Declares, That the cook, who did not understand English, very often displeased the master in making the victuals ready;

and frequently swore in French, and sometimes in Spanish, which displeased the master, who frequently upon such occasions threatened to blow the cook's brains out with a pistol: That about the 4th, 5th, or 6th of June, but the declarant rather thinks on the evening of the 6th, the declarant understood that Robert Strachan, who was at the helm that night, had told the master of some of the conversation which he has mentioned: That since the declarant came to this house, Strachan told him, that the master said on that occasion, that he would revenge either when he got to port, or the first opportunity. Declares, that about three or four of the morning of the 7th, the master came upon deck in his night-gown, with a loaded pistol, and mistaking Paterson, who was at the helm, for the Frenchman, blew his brains out; and the Frenchman, who was forward in the vessel looking out, came aft to the captain; and the captain finding that it was not the Frenchman he had shot, began to strike him with the pistol, saying, he wished it was loaded for his sake: That this began within three or four yards of the place where the declarant was standing; but the Frenchman having gone backwards, none of them fell down till they were near the middle of the ship. Declares, that when Paterson was shot at the helm, the declarant took the helm: That Paterson did not fall dead, but staggered forward, and fell and rose two or three times: That, in the meantime, the

whole crew came upon deck, and the master having continued to beat the Frenchman, had got him down on the deck, the master himself having been down different times, and on which occasion the Frenchman's arm was broken : That the declarant thinks the crew all struck the master, and he saw them all over each other together in a cluster, and so could not see distinctly who struck him, but saw them assist in throwing him overboard : That the declarant saw the Portuguese, the Maltese boy, and the Frenchman, throw the body of Paterson overboard : That during this time the declarant kept the helm : That immediately thereafter, the whole crew came aft to the declarant, to consult with him what was best to be done, and the declarant gave his advice, that it was best to proceed on the voyage and say nothing about what had happened : That he did this to keep peace amongst them. Declares, That John Lawrence advised to go to America with the vessel, as he knew something about the American coast, and to divide the money and destroy the vessel ; but this was not agreed to : That the Frenchman proposed to go to the coast of France, expecting to get some fishing boats, land out of sight, and so to sink the vessel and go in a fishing boat. Smith and Strachan proposed to go to the north of Scotland, where they could buy a boat and so get ashore, and scuttle the ship at sea, to which all agreed and so shaped their course towards England. Declares, That Strachan went down and brought

up his bible that all should make an oath that nothing should be discovered, which they all did, Declares, That thereafter the money was taken upon deck, in which all the crew without any exceptions assisted. The casks were first broached below, and the dollars carried up in the bags, and all hands assisted in making small bags to hold two or three hundred dollars each, and also in stowing the bags after they were filled, betwixt the double bulwarks of the vessel, to prevent them being found in case of any search. Declares, That there was no good agreement among the crew on the passage towards Scotland: That on one occasion, when John Lawrence, the Portuguese, was mending a sail, the declarant having found fault with his manner of doing it, he heard Lawrence say to the Maltese boy, 'A man of courage is always a man of courage:' That this was said in Italian, but the declarant understood it to mean a threat against the declarant's life, and on which account he was thereafter afraid of Lawrence, and the declarant constantly remained on deck ever after the captain's death. Declares, That on the 18th they made the coast of Ireland, near Sligo, and so shaped their course for the Lewis islands, with the intention of going in to buy a boat. On the 21st, they went into Watersay Bay, in Barra, where the declarant bought a boat, and where Mr M'Neil informed them that there was a cutter on the coast, from which circumstance

they were all alarmed, and Smith and Strachan said it would be the best plan to leave the ship as soon as possible, to which they all agreed. Declares, That it was their intention to go round by Johnny Groat's house, and to scuttle the ship and leave her there, and to proceed in the boat to the east coast of Scotland, but for fear of falling in with any cutter on the coast they scuttled the ship near the But of the Lewis on Saturday last. Declares, That on recollection, it was on the twentieth and not the twenty-first he went into Barra: That he exchanged with Mr MacNeil there a barrel of bread, four boxes of raisins, a jar of sweet oil, two jars olives, a piece of bees wax for which he received a sheep, six geese, five ducks, and some butter: That he paid to a fisherman for the boat twelve guineas, and to another man five pounds for a sail, which was paid in dollars from the common stock: That on the morning of Saturday last about four o'clock, they having taken a pilot on board, they sailed from the harbour at Barra: That previous to this, Mr MacNeil and and other two gentlemen were on board, one of whom had been a lieutenant in the army. Declares, That Mr MacNeil having asked him the ships name, and where they were bound for, the declarant told him they were from New York to Archangel: That the declarant passed as master, under the name of Rogers, and the mate who was John Laurance, was called Jenkins. Declares,

That during their stay in Barra, they were frequently boarded by fishing boats, with a number of people on board, and there might be sometimes twenty of them upon deck, but they had no dealings with any of them except for some butter and eggs. Declares, That the day the money was taken upon deck, or the day thereafter, the ships papers were collected upon the floor of the cabin and tied in a bundle, and four muskets being tied to them by Strachan they were thrown overboard: That all hands assisted at this except the Frenchman who was then at the helm: That the captain's clothes were used by the whole crew except the declarant who had plenty of clothes of his own. Declares, That on Saturday afternoon last, they began to make preparations to get things into the boat before dark, the declarant was at the helm the whole day, and the rest of the crew were employed in seeking out the tools for scuttling the ship, consisting of an axe, a mallet, and a crowbar: That the last after considerable search was found by Smith. All hands began at five o'clock with good will, and Smith broke down the bulwark to get at the money, which was all taken out and laid in heaps on the deck to be ready to put into the boat: That it was all in bags except that part which had previously been taken out and put into belts: That immediately thereafter, Smith went down with the adze to cut the inner skin to get at the outer skin

to sink her. Interrogated, Whether the declarant gave orders to do these things? declares, That they were done by consultation among the whole crew; and the declarant did not give orders, except in working the vessel, to which orders the crew frequently did not pay attention. Declares, That after every thing was ready for scuttling the vessel, which might be about nine o'clock at night, the crew went to supper, and about eleven o'clock, when it was about the darkest time of the night, they hove the ship too, with her head towards the shore, and so hoisted the boat out; and all hands were willingly employed in putting the money, and provisions, for about a week, on board the boat. After the boat was loaded, she was allowed to go astern of the ship; the wind was then about a S. S. west, and the weather moderate. After the boat was a-stern, the ship was wore, with her head off land: Smith, Lawrence, and the Maltese boy, were employed in scuttling the ship, without any orders or compulsion, and relieved one another, till they had five holes in her bottom. One of the crew having said that the boat would get stove, Strachan leaped into her to keep her from the ship; at this time the water was up in the ship at the cabin floor; and so they left her with her spanker, top, and jibb sails set. Declares, That having then taken into the boat, they made for the nearest land, intending to remain on shore till day light, and then proceed for

the main-land ; but the wind having come round, they passed the head-land to the east of this place, and came into a creek or bay, on the south side of the land where the crew wished the declarant to go on shore and buy another boat, but the swell being rather too high, they durst not go on shore for fear of not getting off again. Declares, That the reason of their proposing to buy another boat, was, that the one they had was too heavy loaded to venture across to the main-land. Declares, That having stood out again, and passing the place called Chickenhead, Smith and Strachan desired to be put on shore with their share of the money, but this could not be done on account of the swell. Declares, That they stood out again, and the wind having mended, they stood out towards the main-land for above twelve miles, and it being then about 12 o'Clock noon, it began to blow hard, and the sea to make, that the boat took in water on both sides, and they bore up to the first opening they could make, which happened to be the place in this neighbourhood, where the boat came on shore. Declares, That on Sunday last, about 2 o'Clock of the afternoon, they came to an anchor, about half a cable's length from the shore, at the place where the boat came afterwards ashore : That they remained in the boat on Sunday afternoon, and divided the money equally among them, except that the declarant got a bag from each of them, for having conducted them safe on

shore. Declares, That they remained in the boat all Sunday night; and about 9 o'Clock on Monday morning eased the boat towards the shore, and three of them, viz. the declarant, Smith, and Lawrence, went to a farm house in the neighbourhood, to seek lodgings, and a place to secure their effects: That the lady, who they understood was tenant of the farm, having met them on the road, agreed to give them an out-house, having a lock and key to secure their effects, provided they would bring their boat round to the bay, but this they could not at the time do, on account of the surf: That they told her they had been cast away, but she did not enquire of the name of the vessel, or any other particular: That they returned to the boat, and after consulting with the rest of the crew, they agreed, that as it was not possible to get the boat round, they would run her on shore in the place where she was, and take out the money and bury it in the sand, which was done accordingly. But as the boat touched the shore, she slewed across and filled before any thing was taken up. Declares, That upon this occasion every one took their own money out of the boat, and scratched holes and buried it in the sand, except only the declarant himself, whose share was in his chests, bags, and bed, and perhaps there might be a small trifle in the chests of the crew, belonging to themselves: That Smith and Strachan buried theirs in one place,

John and Andrew buried theirs together in another place, and the Frenchman buried his by himself. Declares, That between six and eight o'clock on Monday afternoon, the customhouse officers came to examine the effects taken from the boat, which were then placed in a tent erected on the shore: That having asked the declarant from whence they had come, he answered, that they had been cast away: That they thereupon examined the chests, and finding the money therein, took a sample of it, and said nothing should be touched, nor a farthing taken from them, and left a guard of four officers upon them; and about 11 o'clock of the same evening, three more men came down with orders from the customhouse, as the declarant understood: That the declarant about this time had gone in quest of the boy, and having met these three men, who were armed with large bludgeons, after passing him about forty yards, having looked about and observed them begin to follow him, was afraid they were going to knock him down, and having taken to his heels was followed by them, and in the course of running he threw off all his clothes except trowsers and stockings, and threw away his watch and any money he had about him, that they might not get it: That they at last overtook him, and that one of them lending him a jacket, said, they wished him to go to the farmhouse; but as he declined to go there, they went to the tent along with him. Declares, That previous to this the boy had gone

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away with the intention of giving information, as the declarant supposes, of what happened in the vessel during the passage. Being interrogated, Whether he messed with the captain, and whether he did not give him information of what was passing among the crew? declares, That he messed with the captain, but did not inform him of what was passing among the crew, because he was a very passionate man, and he was therefore afraid of the consequences. Which declaration, written on this and the twenty-five preceding pages, being read over to the declarant, he acknowledges the same to be correct. (Signed) PETER HEAMAN.

JAS. ANDERSON, *J.P.* JAS. ROBERTSON, *J.P.*
 WM. MORISON, *J.P.* SYME TOD, *J.P.*

At Edinburgh, the 7th August 1821, in presence of the Sheriff-Substitute of Edinburgh,—

2d Declaration of Peter Heaman.

Compeared PETER HEAMAN, present prisoner in the tolbooth of Edinburgh, who, being examined by the Sheriff, and his declaration emitted by him before James Adam, James Robertson, William Morison, and Syme Tod, all justices of the peace at Ross-shire, dated at Stornoway, the 25th day of July, being read over; he adheres thereto, with certain corrections to be immediately noticed; and the same is now marked by the declarant and Sheriff, as relative hereto. Declares, in correction of a passage in page 8th,

That he did not see whether the cook assisted in throwing the body of Paterson overboard, and he rather thinks the cook was lying upon the deck bemoaning his arm, which he afterwards said the captain had broken. Declares, in reference to page 10th, That when the Portuguese said a man of courage was a man of courage, he also said to the Maltese boy in Italian, which the declarant understood, that the contents of a pistol would not be too bad for him. Declares, in correction of page 12th, That they received two sheep from Mr M'Neill, instead of one as there stated. And being shewn the prisoner John Hard or Johanna Dhura, declares, That he is the person alluded to in his former declaration under the name of John Lawrence, or the Portuguese. Interrogated, in reference to page 6th, whether Strachan ever told him when on board the ship, that he had informed the captain of the conversations which had taken place among the crew, with regard to him? declares, That Strachan never told him any thing of the kind till after they were taken into custody; and he then told the declarant that he had told the captain of all those conversations, and he presumes, from what passed on the 7th of June, that Strachan had told the captain on the 6th. Declares, in reference to what is stated in his former declaration, with regard to the manner in which Paterson was killed, That no person struck Paterson, and he was killed solely by the pistol-shot which he received from the captain. Declares, That on the night on which the captain was killed, the captain,

Strachan, Hard, and the boy, came off watch at 12 o'clock ; and the declarant, the cook, and Paterson, went upon watch at that time. Declares, That he never observed the captain affected by liquor, but he was a very passionate man, and frequently found fault with the cook for the manner in which the food was dressed. And being interrogated, declares, That he never proposed to Smith, Strachan or Paterson, to kill the captain, and seize the treasure. Being interrogated, in reference to the manner in which the captain was thrown overboard, declares, That all the crew were about him at the time, and assisted in throwing him overboard except the declarant, who did not go either near Paterson or the captain ; and when the captain was thrown overboard, the Maltese boy said, " There you go to hell, you b——r, you will never plague me more," and the boy seemed to be the most blood-thirsty of the whole ; and after he was thrown overboard, they all told the declarant he was not dead at the time. Declares, That when the light came in the morning he observed that the boy was all over blood, and that John Hard also was very bloody ; but the rest of the crew had put their clothes on by that time. Declares, That from what passed upon the deck, and upon seeing that the men who came within light of the lamp at the binacle were bloody, he supposed that there must be a great deal of blood upon deck, and therefore entreated the crew, before day-light, to come and wash the deck, otherwise it would be a horrible sight ; and accordingly the boy drew water, and

John Hard threw it about the deck, but the declarant did not leave the helm till broad day-light, between 6 and 7 o'clock. Declares, That he did not see the cook, or any other person, have a musket or pistol ball, which was said to have fallen from the captain's head, nor did he hear of such a ball; and declares, that no shot was fired except the shot by which the captain killed Paterson. Declares, That whenever the pistol was discharged, the boy and Hard were upon deck, and immediately Smith and Strachan followed Hard from the fore-castle, the declarant having called all hands to bear a hand, and these two men were upon deck before the captain and the cook had ceased to struggle together, and neither the declarant nor any other person prevented them from coming up the fore-castle; and declares, that the hatchway of the fore-castle was not kept closed, and no attempt was made to suffocate any person there. Declares, That after the captain was killed, he had no more charge of the vessel than any of the rest of the crew; and he often found it necessary to clean the decks, and to take in the jib, because they refused to do so while they were amusing themselves with their dollars. Declares, That he knows nothing of the cook's arm being unwell when he left Gibraltar, and did not hear of it till after the captain was killed; and the cook told it was broken by the captain with the empty pistol upon that occasion. Declares, That there were six muskets and a pistol on board, and the two

muskets and pistol which were not thrown overboard with the ship's papers were brought on shore; and being shewn two muskets and a pistol to which labels are affixed, and signed by the declarant and sheriff as relative hereto, declares, that they are those referred to. Declares, That he did not use a musket or pistol, or strike either the captain or Paterson on the occasion of their being killed. Declares, That the captain had been about three hours in the cabin before he came upon deck that morning; and when he came up he was dressed in striped trowsers, yellow shoes, a waist-coat, a short coat, a night-gown, and a small brown cap which he used to wear, and these articles were thrown overboard upon him. Declares, That the declarant was not struck by any person upon the occasion of the captain and Paterson being killed. And declares, That when he desired them to clean the deck, he also desired them to clean the cabin, because the boy, who was frequently up and down the cabin-ladder, told him that the cabin-ladder was bloody; but the declarant heard nothing of the captain's pillow being bloody, and he was not in the cabin till 9 o'clock, at which time the pillow and sail and blankets, upon which the captain slept, had been gathered into a bundle and were thrown overboard. Declares, That he never saw Hard sharpening an axe or adze, and knows nothing about his calling to the captain about a sail being ahead. Declares, That various plans for concealing the dollars about the ship were proposed,

but he does not know who proposed concealing them about the ship's bulwarks, but they all assisted in putting the dollars there. Declares, That all the cargo, except the dollars and the articles which they disposed of at Barra, remained in the ship, and the dollars were divided when they went into the boat; and in dividing them, they first counted some of them, and then measured others in a small tin pot, and then divided the bags. Declares, That he agreed that the vessel should be scuttled, by saying do as you like, but gave no directions about it, and was not below at the time; and he does not know what became of the instruments by which the vessel was scuttled. Declares, That he took none of the clothes belonging to the captain, and never wore any of them: That he took the use of an empty trunk belonging to the captain, and he got from the cook the loan of a green coat which had belonged to the captain, and which he wore upon one occasion at Barra. And being shewn a green coat, three vests, striped jacket, two pairs of trowsers, half handkerchief, and blue watch-coat, to which a label is affixed, and signed as aforesaid, declares, That they are part of the captain's clothes, and the green coat is that referred to. And being shewn a trunk covered with calf's skin, and a chest covered with canvas, to which labels are affixed, signed as aforesaid, declares, That they belonged to the captain, and the last mentioned is that of which the declarant took the use, and Smith put a lock upon it, and covered it with canvas to keep the water out of it.

Declares, That on examining the captain's chest, the crew found a gold chain and two gold seals, and they gave them to the declarant, who attached them to his watch, and they were thrown away along with his watch, as mentioned in his former declaration. And declares, That a silver watch belonging to the captain was found in the trunk, and he believes the cook got charge of it. And being shewn a silver watch, on the dial-plate of which are the words, "Wm. Simpson, London," and to which a label is affixed, signed as aforesaid, declares, That it is the watch referred to. Declares, That he never mentioned to Smith, or any of the rest of the crew, that the cook had shot the captain. And all this he declares to be truth, &c.

(Signed)

PETER HEAMAN.

G. TAIT.

At Stornoway, the 26th July, 1821,—

SEDERUNT,

James Adam, James Robertson, Syme Tod and William Morrison, Esqs. four of his Majesty's Justices of the Peace for the county of Ross,—

1st De-
clara-
tion of
Gau-
tier.

Compeared FRANCOIS GAUTIER, a native of Havre-de-Grace, aged 23 years, declares, That he cannot speak English. And James Reid, Esq. of Stornoway, being called by the court as interpreter, declares, That he will do the same faithfully to the best of his knowledge. Declares, That he served on board the Jean from Gibraltar,

bound for the island of St Salvadore in the Brazils, as cook and passenger : That he did not serve in the Jean before that voyage : That previous to this, he served about a month, more or less, on board the Araquebassa, and that Peter Heaman, and all the crew now here except the boy, were at that time on board the Araquebassa. They sailed from Gibraltar on the 19th day of May. Being interrogated, whether, after they left Gibraltar, he heard any conversation about killing the captain and seizing the cargo, declares, That he did not understand the language of the crew, and did not hear such conversation. Declares, That Peter Heaman the mate can speak French : That he never heard any mention of killing the captain, but that it was jocosely mentioned, that if they could lay their hands on the money, they would all be made men of fortune. Declares, That he does not know the exact quantity of silver that was on board, but understood it to be from thirty-six to thirty-eight thousand dollars : That he knew it to be money from the captain's conversation with the mate, and from the captain desiring him to fry six eggs, as he had been throng counting the money : That the captain could speak a few words of French and of Italian. Interrogated, whether the captain and one of the crew were killed on the passage, declares, That they were so. Being asked in what manner this happened, declares, That Bob, one of the crew, having told the captain something of the conversation which had

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taken place about seizing the silver, the captain was very angry, and threatened to put them on board the gallies, or give them up to the consul when they arrived at port: That the captain was always displeased and finding fault with what the declarant did for him. Declares, That ten, twelve or fifteen days before the captain was killed, Jack the Italian told the declarant that Paterson had said they should lay a plank over the ship side, and tell the master to walk over it; to which the declarant answered, that it was wrong of them to entertain such ideas: That he thinks the captain was afraid of what happened; for that the Italian, some days before it did happen, having sharpened an axe, and called down to the captain that there was a vessel ahead, and intending, when he came up, to strike him with the axe from behind: That the captain did not come up, or pay any attention to what he said: That the Italian then said, the captain is aware that we have some bad intention, since he has not come upon deck. Declares, That some night in the month of June last when the mate and declarant were looking out forward, and Paterson at the helm, the captain came upon deck dressed, as he usually was when upon deck; but on recollection believes that his great coat was upon deck: That he had a loaded pistol in his hand, and shot Paterson, who was at the helm, through the head: That Paterson instantly fell, and never rose again: That on hearing the report of the pistol, the declarant and the mate immediately turned round,

and went aft the vessel, one on each side of the deck: That the declarant was foremost, and was attacked by the captain with the pistol, who spoke to him; but the declarant did not know what he said: That the declarant retreated till he came to the main-hatch, when he laid hold of the captain: That the mate said it was the intention of the captain to kill them all, and that the crew thereupon took hold of such weapons as they could lay hands on, and all rushed upon the captain, except the mate who was at the helm. Declares, That the mate, after he saw the bustle, came forward, and struck some of them; but does not know whether he struck the captain or not: That there were no muskets upon deck at this time: That there were five muskets and one pistol on board: That he never understood that there was any dispute between the captain and mate, and they always messed together: That the Italian and the Maltese boy threw the dead bodies overboard, and no other person touched them that he saw: That Paterson's body was lying close to near the helm when thrown overboard: That he does not know exactly what time the captain went to bed the night before he was killed: That his watch was over at 8 o'clock, but he sometimes remained on deck for about an hour thereafter. Upon being farther interrogated, declares, That the night before he was killed it was the captain's watch on deck from 8 till 12 o'clock at night, and that he remained on deck till 12 that night although the

night previous to that he had gone below before his regular time: That it was the declarant's watch along with the mate and Paterson from 12 till 4: That when the declarant came upon watch, he observed, from the manner the captain walked the deck, and from his face, that he was tipsy; and he took a further doze before he turned in: That when they changed the watch, there was no dispute between the captain or either of them. Declares, That he did not see any thing tied to the feet of the dead bodies, but that there were stones upon deck which did not appear afterwards, and he therefore supposes that they had been so fastened. Declares, That he is certain that both Strachan and Smith were upon deck when the captain was killed, and though Smith complained of a sore foot, it did not prevent him from joining the rest. Declares, That neither Smith nor Strachan were confined after the captain's death, but the whole crew were at perfect liberty: That they all made oath as brothers never to divulge any thing of what had passed: That the mate told them that all was now over, and that they should be all as brothers. Interrogated, whether he saw any oath administered by the mate, or any person kiss the Bible, or any book? declares, That he did not. Declares, That as soon as it was day-light they went below and gathered the ship's papers, and one of the Scotsmen tied a piece of iron to them and threw them overboard. Declares, That after this the mate proposed to continue

the voyage: That the Italian wished to go to Savannah in Georgia: That the Scotsmen proposed to go to Scotland: That the declarant was asked his opinion, but said it was a matter of indifference to him where they went, and it was agreed to steer for Scotland, and which was done accordingly. Interrogated, who scuttled the schooner, and by whose orders it was done? declares, That it was the Italian, the Maltese boy, and Smith, who scuttled the vessel, and that he did not hear any person order them to do it. Declares, That after the captain's death there never was any fire kindled in the cabin, nor smoke raised below, except on one occasion when a match was struck below to kindle a fire on deck, five or six days before they made the land, and it was not below above a minute: That the captain's name was Thomas Johnston: That it was his first voyage as master: That he does not know the name of the shipper of the goods, or the owner: That after the captain's death they threw part of his clothes overboard, and the rest remained in his trunk, which were afterwards partly divided among the crew: That his watch was in his trunk brought on shore near this place, and that the maker's name was Simpson, London: That the mate, as knowing navigation, was always entrusted with the command of the vessel: That in other respects they were all as brothers, and were anxious to obey the orders of the mate. Declares, That the mate received no part of the captain's clothes. Declares, That the mate had a watch of his own of silver, which he lost when he was pursued the night

before he came up to this town. Interrogated, how or when he came to know that the captain of the schooner had learned from Strachan, of the plan or conversations as to seizing the vessel and treasure, for which reason he had been incensed against the crew, declares, That it was since he came to this place that he learned from Bob that circumstance, and did not know of it before: That the declarant has the key of the captain's trunk. In witness whereof, &c.

(Signed) FRANÇOIS GAUTIER.

JAMES REID.

JAS. ADAM, *J.P.*

JAS. ROBERTSON, *J.P.*

WM. MORISON, *J.P.*

SYME TOD, *J.P.*

At Edinburgh, the 7th day of August 1821,
in presence of the Sheriff-Substitute of
Edinburgh,—

2d De-
clara-
tion of
Gautier

Compared FRANÇOIS GAUTIER, present prisoner in the tolbooth of Edinburgh, and Mr Gabriel Surene, teacher of French in Edinburgh, being called as an interpreter, and having declared that he will interpret faithfully to the best of his knowledge; and the declaration emitted by the said François Gautier, in presence of James Adam, James Robertson, Syme Tod, and William Morison, Esquires, four of his Majesty's justices of the peace for the county of Ross, dated at Stornoway the 26th July 1821, and which is marked by the declarant and sheriff as relative hereto, being read over to him in French by the interpreter, he adheres thereto; with this addition, that after

the captain shot Paterson the Scotchman, the captain struck the declarant with the butt end of the pistol upon the left arm, and broke one of the bones, and swore at him; and some person called out that it was the captain's intention to murder all the crew, and he thinks the mate did so, and immediately all the crew seized what they could get hold of, and attacked the captain. And further declares, That he only observed the Italian and Maltese boy throwing the dead bodies overboard, being prevented, by the pain which he suffered from his arm, and by the darkness, from observing others. And being shewn the prisoner John Hard or Johan Dhura, declares, That he is the person whom he calls the Italian, but that person told him that his name was John Macet. And declares, That when the captain was thrown into the sea, the Maltese boy said, "You swim well—I shall suffer no more from you." And being further examined and interrogated, whether the captain was alive when he was thrown into the sea? declares, That he was not so near as to be able to see whether he was or not. Declares, That he never had any dispute or quarrel with the captain: That the captain sometimes found fault with him for the manner in which the food was dressed, but he did not make any answer to the captain, as he did not speak English. And declares, That he never swore at the captain, either in French or English, but he often did so at the Maltese. Declares, That he never heard the captain threaten to blow his brains out, but he was told both by Hard and

by the Maltese, and the Italian, that the captain had threatened to do so. Declares, That he saw no person struck by the captain on the night on which the captain was killed except the declarant himself; and Paterson was killed by the shot from the captain's pistol, and neither the captain nor any other person struck Paterson. Declares, That no plan, so far as he heard, was laid for getting possession of the dollars. Declares, That when the captain desired the declarant to dress six eggs, as he had been busy counting the money, this happened the day before the vessel sailed from Gibraltar. Declares, That when the captain fired the pistol at Paterson, all who were on deck ran forward to see what was the matter, and when the captain struck the declarant with the pistol upon the arm, they ran away, and the captain pursued the declarant, who then turned round and seized the captain by the collar, who at the same time had collared him; and he so seized the captain, to prevent him from striking him. Declares, That the captain, when he came from the cabin on the morning when he was killed, wore trowsers, a linen shirt and a cotton shirt, but no coat or waistcoat: That the captain's night-gown was afterwards found on the deck, but he did not see the captain wearing it on that occasion. Declares, That he did not observe whether the captain had on shoes or stockings. Declares, That the captain always went to bed with his trowsers on. Declares, That the captain came on deck about two hours and a half after midnight, when his watch was over. Declares,

That the persons who slept in the cabin were the captain, the mate, and the Maltese boy; and no person except the Maltese boy was in the cabin with the captain, between the time when the captain left his watch, and the time when he came upon deck, on the morning on which he was killed. Declares, That neither he nor Paterson nor the mate were in the cabin during that time, and he did not hear any shot except the single shot which the captain discharged at Paterson. Declares, That no person was on deck when the captain came up, except the declarant, the mate and Paterson. Declares, That when the mate called out the captain was going to kill the whole crew, they all came upon deck; but as he was engaged in holding the captain, he does not know which came upon deck first or last. Declares, That there was no appearance of blood upon the captain when he came to the declarant. Declares, That there was not much day-light, but there was enough to enable him to see any upon the captain's face if there had been such. Declares, That between four and five o'clock in the morning, the whole crew, except the declarant, who was at the helm, washed the deck with water; but the declarant saw no blood, except on one of the ports of the ship. Declares, that they used to wash the deck daily, but they did not use to do it so early; and declares, that there may have been blood upon the deck although he did not observe it. Declares, That he himself did not go into the cabin until near one

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o'clock, and he saw no marks of blood then, and he does not know any thing of the cabin having been cleaned out, or of its having required to be so. Declares, That he had no blood upon any part of his dress, and he did not observe blood upon the dress of the rest of the crew, nor did any of them say that they had got blood upon their clothes. Declares, That the mate took the helm after Paterson fell, and therefore was not among those who attacked the captain. Declares, That the mate slept upon the deck after the captain was killed, with the exception of three or four times, when he slept in the cabin; and he told the declarant that his reason for sleeping on deck was, that he was more at hand in case of any accident happening. And declares, That threats had been used to the mate, which made him afraid for his life. Declares, That the Italian had desired the Maltese boy to blow out the mate's brains with a pistol, and this happened in consequence of a misunderstanding between the mate and them; and some time after, the captain was killed. Declares, That the ship's papers were thrown overboard by Smith, who, with the assistance of others, had previously attached some pieces of iron to them. Declares, That the mate was one of those who assisted in collecting the papers for that purpose; but the declarant did not, as he was occupied with the helm at the time, and only looked down sometimes into the room where they were so occupied. Declares, that about half past five or six o'clock

of the morning on which the captain was killed, they, by common consent, opened one of the casks to look for the dollars, and the mate was present at the time ; and a day or two afterwards the other barrels of dollars were opened, and the dollars which were in large bags were put into smaller ones, each containing two or three hundred dollars, which were concealed in the sides of the vessel, which had formerly been a smuggler. Declares, That a few days before reaching land, Smith made a belt, in which he put about a thousand dollars ; and the rest of the crew also made belts in which they put a thousand dollars ; and another division of dollars took place, in which each person got five hundred, and Smith got five hundred more. Declares, That all the small bags with dollars were put into the boat when the ship was sunk, and were divided equally among them, and the mate got a few bags from the rest as a present: Declares, That on dividing the dollars they first began with counting them, and then measured them in a small tin pot, and at last divided the bags. Declares, That after the boat came ashore, they buried the dollars in the beach. Declares, That some provisions, two muskets, pistol, and some clothes, were brought ashore in the boat. Declares, That he did not know any thing of the dollars having been taken out of the sand. Declares, That when the holes were made in the Jane, the declarant was upon deck, and the mate was at the helm. Declares, That the holes were made by common consent, and when they were made, all hands went

into the boat, declares, That he had no doubt that the ship must have sunk, but they did not wait long enough to see it do so. Declares, That the captain had two trunks, and the declarant took one of them, and the other contained money; and the one which the declarant took, contained a green coat, which belonged to the captain, and which the mate used on one occasion at Barra. Declares, That he believes the trunk which he took did not belong to the captain, but to a woman who had gone on board at Havannah, and had gone on shore at Gibraltar, and left it on board. Declares, That he saw a silver watch in the trunk, but not a chain or seals; but no person in particular took possession of the watch. And being shewn two trunks to which labels are affixed, and signed by the declarant and sheriff as relative hereto, declares, That the trunk covered with canvas is the trunk which belonged to the captain; and the green coat, and various other articles of clothes, were taken out of it and put into a bag, in order to be ready to be thrown into the sea in case of any alarm; and the crew afterwards took what they wished out of that bag, and the other trunk is that of which the declarant took possession. And being shewn a green coat, three vests, two pairs of pantaloons, a half handkerchief, a blue watch-coat, and striped jacket, to which a label is affixed as aforesaid, declares, That they are part of the captain's clothes which were brought on shore, and the green coat is the one before referred to; and declares that the trowsers and

woollen shirt, which he now wears, are the captain's. And being shewn two muskets and a pistol, to which labels are affixed, signed as aforesaid, declares, That they are the muskets and pistol which were on board the vessel, and which were brought on shore. And being shewn a silver watch, on the dial of which are the words, "Wm. Simpson, London," declares, that it is the watch referred to. Declares, That eighteen or nineteen of the dollars before referred to, were taken from his person in the prison of Edinburgh, but he would not know them again. Declares, That he did not, after the captain was killed, find a ball that was bloody, or hear of any person that had done so ; but declares, that there were balls of all sizes in the vessel. Declares, That it was arranged if they were pursued by a vessel of war, or any other vessel, that they should throw the goods overboard, but not the money, as it was sufficiently concealed, and that if they were overtaken the mate should answer any questions put to them, and should say that they had been attacked and pillaged. Declares, That no injury had been done to his left arm until the captain struck it with a pistol ; but he had his right arm bitten by a dog before he went on board the Jane ; and declares, that the fracture of his left arm is not yet healed, and that it is still inflamed. And all this he declares to be truth, &c.

(Signed) FRANÇOIS GAUTIEZ.

G. SURENNE.

G. TAIT.

After the foregoing declarations were read, the counsel for the Crown declared their evidence in support of the libel to be concluded.

The counsel for the pannels having stated, that they had no evidence to adduce in exculpation,—the Lord Advocate rose and addressed the Court and Jury as follows—

**MAY IT PLEASE YOUR LORDSHIP,
GENTLEMEN OF THE JURY,**

We are now approaching the conclusion of a very long, but, at the same time, an important, and certainly not an uninteresting trial; and I would gladly save you the additional fatigue of listening to my statement, after the attention you have been obliged to exert for nearly sixteen hours. But, you are aware, that the practice of this, and all our criminal courts, requires, that the counsel for the Crown should address the jury, before you are called upon to deliver your verdict. This duty I must perform; but I shall endeavour to be as concise as the circumstances of the case will permit. With that view, I shall certainly not detain you with many general observations on the atrocious nature of the crimes charged in those criminal letters. They are the crimes of murder and of piracy,—crimes which have not been declared offences merely by the enactments of a particular state, but which the laws of God and of man in every civilized country have pronounced to be of the blackest and most atrocious descrip-

tion, and to be atoned for only by the lives of the offenders.

It is impossible however to look at the case, and not to observe the somewhat singular situation in which we find ourselves. The attention of our criminal courts and juries in this country, is almost in every case confined to crimes affecting the security and peace of the inhabitants of this portion of the empire. It is to the punishment of offences committed in Scotland, that the attention of juries in Scotland is demanded. But here you see we are called upon to judge in a case which occurred many thousand miles distant from the nearest corner of this kingdom. You are called upon to judge of a crime committed in a vessel not belonging to this country, or any way connected with it. You are to judge as to persons not owing allegiance to this country, yet brought here to be tried. Such, however, is the jurisdiction of this Court. The crimes laid to those individuals at the bar are not peculiar to any state. They are crimes which affect every state, and as such are tried by every civilized country in the world. The jurisdiction of every maritime court of every country is similarly extensive. Were the jurisdiction confined to the place where the vessel belonged, or the individual domiciled, the offenders would take care to avoid such spots, and it would be impossible to punish their guilt.

A shipmaster and his crew, a class of men who hold no high rank in society, however respectable

they may be as individuals, are entrusted with immense property, and have the means of carrying it where they choose. They have, upon the one hand, the temptation of riches and an end of all their labour, and by an opposite course merely their hard-earned wages and their character. What then would be the consequence but for the law such as it is? In the punishment of such offences, this country is particularly interested—But it is not to this country alone that benefit will accrue. A salutary example in such a case is calculated to give security to the commerce of the world, and to afford protection to every vessel, and to every mariner who navigates the ocean.

It must however occur, that much attention must be paid in conducting such a trial against such persons; I trust the proceedings of this day will not discredit any of those concerned in the trial; I trust that in what I am to say I shall not go farther against the unhappy men at the bar than my duty demands me to do. The prisoners have the benefit of able counsel. You have witnessed the zeal and attention with which my learned friends opposite have watched our proceedings, and in the speech in defence you will have a farther opportunity of observing a display of ability and of zeal for the interest of the panels not to be surpassed.

One of these prisoners, a native of another country, has an additional safeguard for his interest in the presence of the chief officer of

that country of which he is a native. The French consul is present in Court, and watching our proceedings. I much rejoice at this—it does him honour—and I trust when the proceedings shall have been concluded, he will be able to report to his government that the case of these unfortunate men has been well attended to, and that his countryman has met with a degree of justice and fair dealing which could not be exceeded in the country to which he belongs, or in any other on the face of the globe.

After those preliminary observations, I proceed to state to you, that murder and piracy being the crimes charged against those individuals at the bar, I beg to commence with the latter charge first.

This libel charges those individuals with piracy, in having appropriated and run off with the *Jane* of Gibraltar with a cargo, as described in the criminal letters.

It has not been disputed, that this libel is relevant. Piracy may be committed either by the crew of one ship taking another ship, or by the crew of a particular ship appropriating the ship in which they sail. The last is, if possible, more heinous than the former, as it includes, in addition, the breach of trust. That such is the law, will not be disputed. Authorities at hand show that capital punishment has been inflicted on individuals for a charge of piracy committed on the vessel in which they sailed.

On considering the facts charged, and the evi-

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dence which has been adduced, I am at a loss to see upon what the defence can be rested—for, I submit, the evidence as to the piracy, from first to last, is entirely complete and unquestionable.

It was proved to you, that the vessel sailed from Gibraltar on the nineteenth of May last—that previous to this a cargo consisting of oil, olives, beeswax, and other articles, and specie to a very great amount, was put on board the *Jane* of Gibraltar belonging to a person of the name of Levi. This is stated in the declaration of the mate of the vessel now at your bar—he states the whole articles put on board, and to whom they belonged. In such a case, it is not necessary to prove to whom the articles belonged. It is enough to show that they belonged not to the prisoners. It might have been impossible for me to show who was the real proprietor. But the facts are completely made out. There is the statement of the mate himself specifying the whole articles, and to whom they belonged. And this is confirmed by all the other persons on board mentioning the articles. And you have also all the documentary evidence as to the property. The cargo is shewn to have been put on board, and it appears that the ship did sail from Gibraltar upon the nineteenth of May.

The part of the cargo which led to this crime was the specie, and it is unfortunate that the owner of it did not commit it to a vessel of another description, or ship it in such a manner that the crew should have been ignorant of its nature and value. From the first day they sailed, it is proved, this

specie was the subject of their conversation, and the object of their desire. The whole evidence shows, that this was the case, particularly with the mate and the other individual at the bar.

At the latitude of about six degrees north of the line, and while yet they had about sixteen degrees of the voyage to proceed on, it appears that the captain was murdered and one of the crew;—I shall afterwards inquire how. It is proved to you, and acknowledged by the men at the bar, that it was agreed upon, and a determination taken by all the individuals, not to proceed on the voyage, but to change their course, and appropriate to themselves the cargo. This resolution being adopted, the ship proceeded immediately to the northward, and a wonderfully rapid voyage she had—having changed her course on the seventh of June,—by the eighteenth, she was off Ireland, and a few days after she was in the Western Islands.

Following the determination of appropriating this vessel, they destroyed all the papers belonging to her. This is stated in the declarations of the pannels, and sworn to by the rest of the crew. The papers were fixed to muskets and sunk. They then agreed that they were to say they had been robbed by pirates. They were met by a vessel belonging to Wales from Quebec, and they stated they were from New York on their way to Archangel. They then proceeded towards Barra. For what purpose? According to the evidence, it was in order to procure a boat, to scuttle the vessel and make their

escape. It is sworn they did go there, purchase a vessel, and pay for her in dollars.

Upon that occasion, you see the mate giving a false account of the vessel to which he belonged—we find him personating the master and commander of the vessel—he appears dressed in the very coat of the unhappy master whom, according to his own account, he had *seen* murdered.

He goes ashore at Watersea, where this boat was purchased. They did not proceed much longer on their voyage. It was stated, there was a cutter on the coast, and they therefore determined to quit the schooner to which they belonged—and off Lewis, it appears, they resolved to scuttle the ship, and to quit her at that time. This was done,—some say by order of the captain. Whether this was the case or not, the fact is that it was done. Holes were bored, and the vessel was left;—those who had left her presuming she was sunk and gone to the bottom. They had not calculated on the nature of the cargo. They were not aware of the specific gravity of the oil, and of certain other articles which prevented her sinking;—and instead of the vessel sinking, she came ashore on the Island of Lewis, where she broke up, and in the course of this, demonstrated, to those who saw it, the very articles put in at Gibraltar, consisting of oil and paper, &c. So much with regard to the vessel.

The individuals on board betook themselves to the boat, not empty handed, but with all the dollars to the number nearly of forty thousand. Never

could be conceived a greater act not merely of wickedness but of folly. How could they suppose it was possible that, in their rank of life, they could get off with so much money and escape detection? They distributed it among them in the boat, and were to proceed on with it. Here again you see the interposition of Providence in this case. Thus it ever is in the commission of great crimes something always occurs to prevent their completion, or to lead to their detection. The rise of the wind prevented them from accomplishing their purpose of reaching the mainland. While the vessel was driven ashore, they were obliged to land, not on the mainland, but on the same island near Stornoway. The boat was injured, and they were compelled to land upon that beach. The first thing they did, was to bury in the sand this treasure which belonged to others, in order to conceal it. The vessel coming ashore first attracted attention, and then this boat was soon discovered. You have evidence before you, to-day, of people who repaired to the spot; and you heard the statement of Mr M'Iver, surveyor of customs, as to the mode of discovering the crime. He was followed by the Maltese boy, who disclosed the real situation of the crew, which led to their being apprehended.

The learned judge paid a deserved compliment to the surveyor; and I have to mention that our anxiety to abridge the trial prevented us from bringing forward other individuals who distinguished themselves upon that occasion. The admission of our friends opposite as to the declarations, prevented us

bringing forward other witnesses; but it is my duty, having observed and known their conduct, not only to concur with the judge in what he said as to the individual who was examined, but to state my conviction of the zeal, prudence, attention, and public spirit, that was manifested by one and all, and especially the magistrates who took the declarations of the prisoners. They are entitled to the thanks of their country, and as a humble servant of the country I hope that these thanks will now be accepted at my hands.

In consequence of these proceedings, this offence was completely discovered; and after the proof which has been adduced, I know not what defence can be offered on this part of the libel. I am sincere in saying so. I think it clear to demonstration, that not only the ship, but her cargo, was carried off by the prisoners at the bar, and that, in order to deprive the owners of the property, they sunk the vessel, and attempted to appropriate all the valuable part of the cargo. This being proved and acknowledged by themselves, I cannot see what defence can be set up for them. I must leave them the full advantage of the defence whatever it may be, as I cannot comprehend its nature. In this country alone, the prisoner's counsel are entitled to answer the Crown, and they are not bound previously to give any explanation. In England, the counsel for the prisoner are only allowed to plead points of law. Here they are entitled to reply, and bring forward matter which the public prosecutor may not be able to anticipate. I leave that advantage

to my learned friends opposite, and have only to say I cannot imagine what is to be the nature of the defence on this part of the charge.

If you are satisfied, that the crime is proved against both of the pannels at the bar, you will find so. The Frenchman admitted he joined and agreed to come to Scotland, and to take part of the share of the dollars, and did take part of them. The mate commanded and directed the steerage. The others were not acquainted with navigation. He was the only person who could conduct the ship from where the captain was murdered. The mate, whose business it was to prevent such an offence, thus acted after the captain's murder. Therefore against one and both, the crime of piracy is made out.

We now come then to the other charge, no less, in a moral point of view, foul and atrocious—that of the murder. Although it can make no difference, as to the fate of these men, whether this part of the charge be found proved or not; yet having made it, it is my duty to lay before you those considerations which compel me to think we have made out this part of the case, so as to leave no doubt that the crime of murder was committed, and that the crime was perpetrated by the unhappy men at the bar.

I already mentioned, that soon after leaving the port of Gibraltar, it had become matter of common conversation among the crew how they should appropriate the money to their own use. It

was declared by all the four individuals examined, that the suggestion came from the mate and the other person at the bar in particular; and all agreed that the mate was the person who repeatedly brought that subject under their notice. And in his declaration he acknowledges that matter was under frequent consideration. Hardly a meal was taken, or occasion when the crew assembled, at which the seizure of this specie, and the murder of the captain, were not in agitation. In his situation, what ought the mate to have done? Was it not to have communicated to the captain what he knew? Did he do so? On the contrary, he has stated in explicit terms in his declaration, that he never thought of mentioning this thing that was under discussion by the crew,—merely because he considered this individual as a passionate man. Witnesses have been examined upon this point, and they all concur that the master was a quiet, good-tempered person, who quarrelled with no one. And the Frenchman merely says he was found fault with on account of his cooking;—therefore all the evidence disproves the charge of his being prone to passion. And if the master had been a passionate man, was that enough to justify the mate? To suppose that for such a reason the mate was to be afraid to communicate to the captain that he was in danger of death, is utterly absurd and incredible. His concealment from the captain from first to last from the 19th of May to the 7th of June, of

the consultations of the crew as he says, shews he himself was determined to accomplish this crime.

It appears from all the evidence, and especially from the declaration of this person himself, that one of the crew did make this communication. In his first declaration he says, "That about the 4th, 5th, or 6th of June, but the declarant rather thinks the evening of the 6th, Robert Strachan, who was at the helm that night, had told the master of some of the conversation which he has mentioned."

Here you see acknowledged by this individual, that Strachan had made this communication, and you will easily see, as they were approaching the end of the voyage, why the execution of the plan could not be long delayed.

Four individuals swear, and we are forced to believe, that, on the night of the 6th, or morning of the 7th of June, after the captain had retired to rest, he was murdered. There were two watches. The one consisted of the captain, and Strachan, and Hard. In the other was the mate, Paterson the Scotsman, and, at that time, the cook, who was acting for Smith. The first watch came upon duty at eight, and retired at twelve at night; and it appears from the evidence of the Maltese boy, that some hours after (according to Heaman it would be about three hours after,) a pistol or musket was discharged in the cabin at the captain. The boy and the captain were the only persons who then slept in the cabin. The boy

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says his bed was situated nearer the door of the cabin than that of the captain's. He immediately came upon deck, and says he observed the mate and the cook then attacking the unhappy man Paterson. He saw them beating Paterson, who was driven under the boat. And the boy says he then observed the captain coming up bleeding holding his head, and then saw him attacked by the men at the bar. First he was knocked down by the cook with a musket, and then beaten by the mate with the butt end of a musket till he was dead.

Then the mate called all upon deck. Hard came up, and then the hatchway was shut; and he alone was allowed to come upon deck; and he and the boy and the cook proceeded to throw the bodies overboard, fixing to the one part of an anchor, and to the other some stones.

After this was completed, you have it proved by the boy and the man Dhura, that the mate gave his orders to have the deck washed, and the cabin cleared out. The boy swears he did go down to wash the cabin, found feathers flying about the room, and marks of blood on the pillow and bed. And he carried the bed upon deck, and it was thrown into the sea.

We next see the attempt made upon the individuals who remained in the hold. I confess I am not disposed to attribute to those at the bar an actual intention to murder those individuals. If a favourable construction can be given, it is right

not to withhold it. I think the intention was rather to overawe. A fire was put into the cabin by the mate. Having gone out, it was again lighted. Holes were made in different partitions, so as to allow the smoke to pass where the two men were confined; and they state, they were almost suffocated. There they were kept for two days, in this state of partial suffocation, and without meat or drink. It is plain, however, that more aid was necessary to assist in navigating the vessel from where she was, and to accomplish their farther purpose. The cook was no seaman. One of the persons below, namely Hard, was in the first instance called up. His help was necessary even to remove the bodies. He swears, the first thing done was to administer an oath to him. After some time, it was thought necessary to allow the other individuals to be taken from their situation; and as a combination might then take place against the mate, a second oath was administered against this; and when these were at last set at liberty, a third oath was administered to all on board.

As to the two who were confined, it was at one time proposed they should leave the ship in a boat. They declined doing so; and they were then put down again; and they were at last allowed to be liberated on condition of joining the mate in his operations.

Why all these oaths were taken, you will judge, whether it was not to cover those particular facts which the pannels were afraid should come to

light. You see how little confidence perpetrators of crimes have in each other. None of them could trust themselves to sleep below: each was afraid of the consequences that might happen to himself if he slept below. And when the ship came to be scuttled, we see Dhura was afraid the mate might shut the door on him and sink him with the vessel. He sent up the boy upon deck to see that this circumstance did not take place.

I submit to you, that this narrative is natural, and likely to occur in the circumstances. Those persons intending to commit this crime, the whole circumstances connected with it tend to support its probability. It was necessary if they were to commit it at all, that as soon as the captain got intimation of their design no delay should take place. He would have taken means to defeat their object. The crime was to be committed before completing their voyage, and they would have soon reached port.

What time was more natural for their purpose than the middle of the night, and when those in the watch were the most able and determined? They put to death the only other person upon deck who was disposed or likely to assist the captain.

Those circumstances are all natural, on a supposition of such purpose being entertained, and their probability is no way diminished by the administering of the subsequent oaths.

What is the defence? It is admitted, that on board of this vessel Johnson and Paterson were

murdered. But how? The declarations state, that the captain having heard of the wicked designs of Gautier, came upon deck and blew out Paterson's brains by mistake; and having done so, he went to another part of the ship, struck Gautier, and then the whole crew coming upon deck assisted with what weapons they had in putting the captain to death.

I need not say that this statement is unsupported by any evidence except the declarations of the panels. It is contradicted in most express terms by all the individuals examined. We shall be told they were *socii criminis*—accessory to the crime, that they all assisted in carrying off the specie, and therefore are not entitled to credit. That objection does not apply to the boy. He cannot be fairly viewed at all as an accessory to the offence. He knew nothing of those previous consultations—and *why* is obvious. He was a young person they were not anxious to trust. He slept in the cabin along with the master, and therefore we can see a reason why the crew were not anxious to communicate any thing to this boy. This boy did every thing subsequently by constraint. Threats were held out to him, but he all along determined to disclose what happened so soon as he could;—and he did so. He told his intention before. They were aware of it. Dhura swore this. The boy declared that when he should get to land, (and it was a bold matter for him to say so) he himself would disclose the murders—and this he did.

What he did by force then ought not to be held such an accession as to make him *socius criminis*.

With respect to the rest of the crew, much is to be said in their defence for joining with the mate in carrying off the ship. The authors of the crime were persons of superior strength. You saw the other weak men who were here. None of them had been accustomed to command. The mate, they had been accustomed to obey. And there was an additional controul. These men knew the atrocious deeds that had already been committed, and were under dread of what might happen to themselves. They were therefore driven to obey the mate. If they had put him in custody, what was to become of them and the vessel? He was the only person who understood navigation. The vessel and the whole of them might have been lost. Those circumstances place those individuals in a great measure free from the objection of being *socii criminis*. They had no choice. They were obliged to be accessory for the sake of their lives. Therefore I cannot admit that the application of this objection is strong in the present case. The question is one of credit—and in such questions you must judge from the manner in which the evidence was given, and I leave you to judge of it from all those circumstances. Nothing could be more fair or consistent, or candid than the depositions, and from the manner of the witnesses it was impossible to believe they were not speaking truth: No men could have looked the pri-

soners in the face in the manner these witnesses did, had they been endeavouring falsely to swear away the lives of the pannels. That is my impression. And compare their evidence—In every matter of importance they are uniform, and agree in every respect. And I say it is impossible they could agree if they were not speaking truth, for it is not in nature that four men could be brought and stand such an examination with such consistency and coherence if they were not speaking the truth.

There are only two circumstances in which they did not all agree. One is as to Strachan being on deck. Smith says he was not; but all the other three say he was. Be the case what it will, I admit there is a contrariety of statement,—but in a matter of no importance. Strachan's evidence as to the fact, which is best known to himself, is corroborated by the evidence of the boy and Dhura.

The other relates to the door leading from the fore-castle to the mainhold. The first boy talked of it as too small to admit a person to go through. I doubt whether he meant the door was too small, or that part of it which was open. I am not certain from his language what he meant as to this door. Another witness said that it was shut up, and the last of them thinks part of it was open.

What I say to that is, that this is a totally unimportant circumstance. It is a thing which does not touch the case; such a discrepancy is what does occur, and finds its way into the most impartial testimony, the same fact striking different persons in different points of view. Each thought he was

speaking the truth. I submit the point is immaterial, and cannot touch the credibility of the witnesses on matters that are important.

Mr Phillips on this subject says, " A difference
 " between witnesses on points of little importance
 " affords no reason to suspect their veracity.
 " These variations in testimony occur every day
 " in the transactions of common life, and may be
 " explained on the commonest principle of human
 " nature. Men relate facts as they observe and
 " remember them, and the powers of attention,
 " observation and memory are infinitely diversified.
 " A difference in the manner of relating unimport-
 " ant circumstances is perfectly natural, and what
 " might be expected in the ordinary course of
 " things; on the contrary, it is the exact coinci-
 " dence in minute particulars that shews contri-
 " vance and excites suspicion. An eminent wri-
 " ter, in adverting to differences in the narrative
 " of the sacred writers, has made some very judi-
 " cious observations on this subject, which are of
 " universal application. If several independent
 " witnesses of fair character, he says, should agree
 " in all the parts of a story, (in testifying for in-
 " stance, that a murder or a robbery was commit-
 " ted at a particular time, in a particular place,
 " and by a certain individual,) every court of jus-
 " tice in the world would admit the fact, notwith-
 " standing the abstract possibility of the whole being
 " false. Again, if several honest men should agree in
 " saying that they saw the king of France beheaded,
 " though they should disagree as to the figure of

“ the guillotine or the size of his executioner, as
 “ to the king’s hands being bound or loose, as to
 “ his being composed or agitated in ascending the
 “ scaffold, yet every court of justice in the world
 “ would think that such difference, respecting the
 “ circumstances of the fact, did not invalidate the
 “ evidence respecting the fact itself. It would be
 “ impossible to establish the truth of any fact, if
 “ a disagreement in the evidence of witnesses, in
 “ minute points, should be considered as annihilat-
 “ ing the weight of their evidence in points of im-
 “ portance. In a word, the relation of a fact dif-
 “ fers essentially from the demonstration of a the-
 “ orem. If one step is left out, if one link in the
 “ chain of ideas constituting a demonstration is
 “ omitted, the conclusion will be destroyed ; but a
 “ fact may be established notwithstanding a dis-
 “ agreement of the witnesses respecting it in cer-
 “ tain trifling particulars of their evidence.”

Those observations contain much sound sense. Discrepancies in matters of such trifling importance cannot invalidate the general testimony of witnesses upon other points. And surely no fact could be of less importance, or of a nature where the recollection of witnesses might more naturally be at variance, than whether upon a particular day, nearly six months ago, a door was open or shut.

Against this statement you are told the incredible and altogether improbable story already noticed,—that this captain having come upon deck did at once shoot this man Paterson on the spot, and that all the

crew came upon deck and murdered the captain. Suppose that story true, it would not answer the object of the defenders. Suppose it true, as to the unhappy Gautier, he was one of the crew who attacked the captain. He says the captain attacked him. The captain attacked him then with a pistol unloaded, as, according to the story, he had fired it off at Paterson. And the cook was assisted by all the other seamen on board. With the power of numbers to seize the captain and prevent murder, they were endeavouring, without any excusable reason, to put this master to death, and did so. Supposing therefore this statement true, Gautier was art and part with all the other crew, guilty of murder. If the murder was by the whole crew, they are answerable for it, and Gautier among them.

The mate says that he was at the helm at the time. But I submit that his presence, in the circumstances in which he stood, made him also an accessory. He was commanding the vessel, having authority and power over the others. The captain was murdered in a way which must have taken time. He was not shot dead upon the spot, or cut down with an axe. He was assailed with such weapons as the crew could find,—we are not told what they were. During all the time the mate was looking on affording assistance by his countenance and power and encouragement. *Esto* therefore the statement were true, both were art and part in the murder.

But the statement is incredible. That this per-

son, who is proved not to have been a man of strong passions, should, without provocation, and after having gone to bed and been asleep for several hours, have come up and shot this man through the head, is incredible upon the face of it.

And why kill him at all? If he suspected Gauthier, why not put him in confinement. Why shoot him? No motive can with me account for the circumstance. I do not believe it. During the whole voyage afterwards, this matter of the captain having shot Paterson was never once mentioned, and why was not that spoken of? The crew, according to this story, had no hand in *that* murder, and therefore might and would have talked of it had the thing occurred. This confirms me in the belief that the story is void of foundation. It is impossible to think otherwise, without believing, that all those examined are perjured, and without throwing out of view many things which corroborated their testimony.

The account of the murder as sworn to is confirmed by the important facts contained in the declarations of those prisoners. Declarations are of material importance in every case. No jury ever shut their eyes against such evidence, well knowing that persons when brought at the time before a magistrate will often disclose a simple truth. Here the pannels were brought before four magistrates, and when there they emitted freely and voluntary, and when in their sober senses, those different statements which have now been read. I say these

must come with weight such as they ever receive from an intelligent jury. These declarations then afford evidence as to the common conversation about killing their captain—and they state that the captain was aware of it.

It is next proved by these declarations, that the murder occurred at a time the mate was upon watch, and when those other persons, particularly Strachan, favourable to the captain, were below. There you will find it acknowledged that the cook was engaged against the captain, which is confirmed by the boy, who told you this was the person that did the deed. In like manner, Gautier, Dhura, and the boy, are the only persons said to have been employed in throwing the bodies overboard, as stated by the boy. From the same source we have the confirmation of the administering the oaths. If all were accessory to the murder, they had a stronger compulsiter than any oath for keeping the secret. If, however, the crime was committed by a few, it is quite obvious why these should endeavour to tie down the others with an oath.

It is admitted the mate ordered the cabin to be washed, and that the bed-clothes in which the unhappy captain slept were thrown overboard. I leave to you to judge why it was necessary to throw overboard the clothes in which he slept. It was because they were stained or marked with his blood. Such was the reason for such an order.

There are many other circumstances I might bring under your notice, but which at this late hour I am anxious to avoid. Indeed an apology is due

for the length of time you have been detained. I am convinced the more you consider and weigh the evidence, you will consider the statement given by that boy and by the other witnesses as containing the real and true state of the case. If a doubt does, however, exist in your minds, far be it from me to say it should not receive effect; but it does not appear to me there can be any doubt, and I strongly feel that I am entitled and called upon to demand at your hand a verdict of guilty against both of the unhappy men at the bar. Whatever your verdict may be, I am confident that it will be consistent with the evidence, that it will do credit to yourselves, and justice to the case under trial.

MR MAITLAND then addressed the jury nearly as follows :

GENTLEMEN OF THE JURY,

At the close of a long,—an anxious,—and in many respects an oppressive investigation, the time is come, when it is my duty to address you in behalf of the unhappy men at the bar; and, considering the great degree of silence maintained by my learned brother and myself throughout the trial, we are now entitled to ask, at your hands, a very deliberate and patient attention to the few observations which I have to offer. When I say they are to be *few*, I think I shall redeem my pledge, and I have therefore the less hesitation in requiring from you, not only an impartial, but a dispassionate consideration of the case.

It is always desirable in the outset of such a discussion as the present, to clear away every point upon which there is no room for dispute; and I may therefore at once admit the justice of all the preliminary observations made by the Lord Advocate. The atrocity of the charges in the indictment admits of no question,—the utility of the jurisdiction under which you are called upon to act is equally indisputable,—and there is as little room for denying the facility, and the danger to civilized society, of committing such crimes as those imputed to the pannels.

But, gentlemen, when I make these concessions, I think myself entitled to call upon you not to allow them to create impressions which were not intended, but which they are perhaps calculated to produce. When, as a *preparative* for the consideration of such a case as this, you are told, in strong language, by the Lord Advocate, of the peril consequent upon the crimes of piracy and murder to the interests of a commercial country, it is apt to excite in your minds, and indeed in those of all men who feel deeply and warmly, not the most suitable feelings with a view to a candid consideration of evidence. I state it as an axiom in the criminal practice of this country, that, in proportion to the atrocity of an imputed crime, ought to be the clearness of the evidence by which it is attempted to be proved; and therefore, instead of allowing the atrocity of the charges under this indictment to excite any sentiments of indignation

against the pannels, you will rather allow this circumstance to produce an opposite effect—and lead you to turn a most jealous and scrutinizing eye upon the evidence for the prosecution. It is with these feelings alone that you can safely proceed to the discharge of that great and important duty which is now committed to your hands.

The Lord Advocate, in stating to you that there are two charges in this case,—one of the murder of two persons,—and the other of piracy,—began (and I was not surprised at this) by separating these; and by requiring you to bestow upon them a separate consideration. Accordingly he has in the first instance argued the piratical branch of his case, and his lordship then proceeded to weigh the evidence as applicable to the charge of murder. I am to adopt an opposite course; and I trust I shall be able to satisfy you, that this is not a case in which it is possible to separate the charges. If there is no proof of murder, there can be none of piracy; for in every investigation of this kind, we must go back to the imputed source of the crimes charged. How are these said to have commenced here? It is stated—and without proving this the crown has no case—that the whole began by murder, the object of which was to commit piracy. Unless then the perpetration of the higher crime is established, it is out of the question to inquire whether the pannels are guilty or not, of what I may call the minor and subordinate charge of piracy. Murder is the leading charge, and if it be

not first made out, there can then be no ground for finding the prisoners guilty of the piracy.

Holding the charges then, gentlemen, to be inseparable, it will facilitate my task, if I tell you in the outset, what my defence is. You are aware, that, in considering evidence, two questions may arise—One, as to the import of the words in which testimony is conceived, (and with respect to this I admit there is no room for doubt on the present occasion,)—the other, what degree of credit is due to the witnesses from whom it comes? You will keep this distinction in view in all I am to state; for I give up to the public prosecutor at once, that, if you are to believe the first four witnesses, there cannot be the smallest question that the murder and piracy are both proved. My defence therefore turns entirely upon an impeachment of the *credibility* of these witnesses. But before going into a minute consideration of their evidence, I ask you to take a general view of the story you are required to believe.

What is it that the public prosecutor contends to be true in this case, and on the belief of which he asks you to find the individuals at the bar guilty of the crimes libelled,—than which none are to be found darker or blacker in the whole catalogue of human atrocity? He tells you that the Jane sailed from Gibraltar for the Brazils on a particular day;—this is not disputed;—that part of her cargo consisted of dollars;—this is also conceded;—that these belonged to a Jew of the name

Levi—this too I admit. In short, I do not dispute what has been averred either as to the vessel, her cargo, or owners. I attempt to throw no doubt on those points, but proceed at once to more important matters. The vessel was manned by eight persons,—a captain, a mate, and six seamen. Now, gentlemen, you are required to believe, that of these, the two individuals at the bar devised the plan of murder and piracy. This is sufficiently conceivable. A scheme of such a kind will generally originate with one or with a few. So far, therefore, the case on the part of the Crown is free from improbability. But the theory and statement of the public prosecutor does not stop there, for he requires you to believe that the plan was not merely devised, but carried into full and perfect execution; by the two individuals at the bar.

Gentlemen, it will not do, as the Lord Advocate has done, to implicate the whole crew in the crime of piracy; for all his witnesses claim to themselves a guiltless character. They come here, according to their own accounts, with hearts pure as the driven snow. It was put to Camelier, did not you intend, from the very first moment these crimes were committed, to disclose them the first favourable opportunity? He answered this appeal in the affirmative. Then how did Dhura talk upon the subject? He took a voluntary opportunity of saying he had nothing at all to do with the matter. And

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did not the others maintain that their whole conduct was the result of terror and of compulsion? I ask the public prosecutor to lay his finger upon any part of the record where his witnesses take to themselves the slightest degree of guilt. They claim throughout a character of purity and innocence. Observe the consequence.

A witness who mis-states one fact is unworthy of credit. *Falsum in uno, falsum in omnibus*, is a rule not confined to courts of law, but of universal application. If a man tells you a lie to-day, you will not believe him to-morrow. Now, I undertake to show you that there was a plain accession, on the part of the four first witnesses, to the commission of the crimes charged; and by contrasting this with their pretended innocence, I shall arrive at the conclusion, that their evidence is wholly incredible.

I have already stated the general outline of the story you are asked to believe—that two persons out of eight not only devised this atrocious scheme of murder and piracy, but that they carried it, without the assistance or accession of the rest of the crew, into complete execution; and that all the suspicious part of the conduct of the witnesses was the result of terror and compulsion. This is the theory upon which alone the public prosecutor must rest his case; for he is assuredly not entitled in the same breath to impeach the veracity of his own witnesses, and then ask you to believe them.

He must either take their evidence as they give it, or relinquish the benefit of their testimony altogether.

Let us now grapple a little with the story told by Camelier, some part of which is attempted to be supported by the evidence of Dhura and the others. My object is to press upon you more minutely than I have hitherto done, the gross improbabilities which attach to the case on the part of the Crown. The first of these certainly is, that such a scheme should have been *carried into execution* by two out of eight persons. That is not a probable circumstance. It is indeed nearly incredible, and I am therefore entitled to require that it shall be established by evidence *omni exceptione major*.

The improbability of the case, however, does not stop here; because, if we are to believe the statement of Strachan, he informed the captain that there was mischief brewing in the ship. He told him that he saw things going on which he did not much like, and the information seems to have been sufficiently intelligible, for the captain is represented as at once replying, "He hoped the Frenchman was not strong enough to reign over them all." You have thus this nefarious scheme mooted to the crew—talked of—discussed—argued about—originating solely with the two men at the bar—every man in the ship against it but themselves; and, finally, a communication made to the captain of what was going on. If this had been true, what

would have happened? Certainly in all ordinary cases the very reverse of what occurs here. There was the captain who knew the peril that impended over him; he had six out of eight of his crew with him, and only two to subdue. Yet, instead of taking any steps to secure his own safety, he allowed matters silently to proceed to a crisis. In the perfect knowledge that his own murder had been planned, he allows the intending assassins to remain at liberty, and refuses the means of securing his safety when they are offered.

Is this not then a tale of wild improbability? A suspected plan for assassination must ever be looked on with terror in a ship, and particularly when directed against the captain. It is seldom indeed that any man is more disposed to take prompt measures to disappoint such a purpose than the commander of a vessel. Here, however, the conduct imputed to the captain forms an exception to all the ordinary rules which guide the conduct of men. He had the means in his power of defeating the designs against him, and of securing his own life and the safety of his ship—yet he entirely and completely disregards them. I point this out then to you, gentlemen, as the second great improbability in this unparalleled story.

The third improbability appears to me to occur in the mode in which it is said that the captain was murdered. The circumstances of the murder have been repeatedly detailed. He had retired to his

cabin along with Camelier ; and you have it stated, that in the dead of the night some unknown individual, armed with a musket, came down the companion stair to the cabin, which was in a state of total darkness, and fired a random but fatal shot at the captain in his bed. It is impossible to conceive a more clumsy mode of perpetrating the crime, or one which afforded less chance of success. An immediate alarm in the ship was almost inevitable, yet you are asked to believe that Gautier, to whom the murder is more directly imputed, committed it when he had no friend in the crew, save the mate ; for you must never forget that all the witnesses assert their own innocence, and Strachan even takes credit for informing the captain of what was in contemplation. Yet you are told that Gautier, in the knowledge of these circumstances, instead of taking any of the more silent, but not less effectual modes of perpetrating the murder, did, within the precincts of this small vessel, arm himself with a musket, and discharge it at random into a dark cabin, where the captain was in bed. All I ask, gentlemen, in consequence of these improbabilities is—that you do not believe them without full, clear, and distinct proof.

To proceed a step farther. The next curious circumstance is the alleged murder of Paterson,—and I should like to have some more intelligible motive assigned for the commission of this crime than the hypothesis of the Lord Advocate, that it was necessary to destroy him, because he had inti-

mated an intention to support the captain. This would have applied to any other of the crew as well as to him, for all say they were innocent. Again, Paterson is *not said* to have been murdered as *preparatory* to the murder of the captain. The theory of the prosecutor is, that Gautier shot the latter before assailing Paterson ; but the natural course assuredly would have been to murder Paterson first. He was at the helm, nor was it possible for Gautier to get to the cabin without exciting his observation. If therefore the public prosecutor is right in saying that the motive for murdering Paterson was, that he was a friend of the captain, it becomes reasonable to infer, that his destruction would, in the circumstances of the case, have preceded that of the captain. It is said, however, by the witnesses, *with consistent improbability*, not to have been so.

We come now to the effect which seems to have been produced in the ship by the firing of the musket. The Maltese states, that he was awakened by the sound of fire-arms. He saw no musket, but he thinks he saw a flash. He left the cabin immediately without looking into the captain's bed, but he *presumes* the captain was there. This is a mere supposition ; the fact is not consistent with the witness's knowledge, and therefore not proved. He does not swear that when the shot was fired, the captain was in his bed. This is only inferred from what appeared afterwards. How his death happened, or whether he was injured by the shot, is not

established beyond dispute by the evidence of Camelier.

It is remarkable, that the firing of a musket in so small a vessel should have been heard by no one but this boy. You have Dhura, Smith, and Strachan in the fore-castle. Some of these witnesses admit they were awakened by the cries of Paterson ; but none of them heard the firing of the musket. This is a remarkable circumstance. If you had been asked to say whether the sound of a musket would have awakened them, you could not have hesitated to answer in the affirmative. Yet it has not this effect, while they are roused by a sound certainly not so loud as the explosion of fire-arms. This is nearly incredible ; and, when combined with the other improbabilities, throws a shade of suspicion over the whole story.

This brings me to the most incredible part of this incredible tale ; and the explanations of the Lord Advocate show that he feels it to be so. I allude to the story of the attempt to smother the two men to death. The public prosecutor cannot get off by his qualified admission, that he does not think it was intended to take away their lives. In this view he has no case ; for then his witnesses have stated what is false. You have just as strong, and clear, and positive evidence, that it was done for the purpose of putting these men to death, as that it was done at all. You have not only the evidence of the men themselves, that they were nearly suffocated,

but you have the evidence of others, that the mate was heard asking Gautier, before opening the hatchway, whether it was likely they would be found dead or alive. The case for the Crown, therefore, requires a belief that there was a deliberate intention to put them to death ; and you will now observe the improbabilities which this supposition involves.

There was no fire-place in the cabin. I listened with anxiety in order to get a clear and intelligible idea of this fire, which was kindled so as to produce *smoke* without *flame*—but I am still in a state of ignorance. The statement is something like this : The Maltese boy tells us, that first there was a piece of thick wood laid upon the floor, then a piece of copper, upon which fragments of a tar-barrel were ignited by the application of common gunpowder. You will judge how far this could produce a fire calculated to emit *smoke* and not *flame*. Of all fires in the world, I should think that one composed of tar-barrels and gunpowder was the least likely to answer the end in view.

Leaving, for the present, the details of this clumsy operation, observe, that although the bulk-head next the cabin was bored, you have no evidence that any holes were made in the other bulk-head, I mean of the fore-castle, unless, indeed, as some witnesses say, the door of communication with the main hold was open. Yet the whole body of the vessel had to be filled with smoke before Strachan and Smith could be at all injured. In short,

this pretended plan of destroying them is totally absurd, and not to be believed on the evidence adduced. Why smoke them at all? You are asked to believe that the pannels were not very nice in accomplishing their objects. They are represented as men familiar with bloody purposes and still bloodier actions, and if they had intended to put the witnesses to death, they would never have taken such a ridiculous and ineffacious mode of carrying their purpose into effect.

Another circumstance of improbability arises from the danger consequent upon kindling a fire on a small piece of copper in the cabin, and shutting it up, according to *Camelier*, for twenty-four hours. It is obvious, that those who did this ran the most eminent risk of setting fire to the vessel, and destroying themselves in the middle of their misdeeds. I cannot conceive how a vessel could be put in more peril than by such an operation. Whether, therefore, you consider the general improbability of the plan for smoking the crew, its impracticability, the risk and danger consequent upon it, or the more obvious and easy means in the power of the pannels for the attainment of their pretended ends—of all the details to which I have hitherto referred, this is the most absurd and improbable.

We advance a step farther, and come to the treatment of *Smith* and *Strachan*, not while they were in the hold, and in the power of the pannels,

but after they were released from their alleged confinement. It is admitted, that a period arrived when these individuals were completely set at liberty, and allowed to assist in managing the ship and cargo. This, indeed, is not only admitted, but pleaded on. You have been asked to contrast their personal appearance with that of the pannels at the bar. This is not a reasonable mode of arguing such a case; but, if we are to go to work in that way, some of them did appear as powerful and able-bodied as the pannels. Strachan and Smith are both stout, active young men. There was a considerable degree of vigour and firmness in every thing that the former said, and he has all the appearance of a man capable of acting with decision upon any occasion. Then you have this Italian and Camelier, both well disposed to assist in subduing the pannels. And can it then be supposed, if their purposes had been innocent, that the whole four would not have united against the two unhappy victims, whom they have now accused as having been alone guilty?

Heaman, it is said, was the only man who could manage the vessel. But this fact rests upon the statement of witnesses, as you will afterwards see, not entitled to credit. You have only the evidence of the crew upon this point. There may have been others among them who could navigate the ship. But, at all events, could they not have concussed the mate, just as the pannels are said to have con-

cussed the other four ? This would, at least, be a more probable theory than that of the public prosecutor. For, according to him—follow this ill-fated vessel and her crew through all their disastrous course. In the wild ocean—on the desert shores of Barra—among the habitations of men, these witnesses, with pure hands and innocent hearts, were spell-bound by the pannels at the bar, and compelled, reluctantly, to participate in the perpetration of the most atrocious crimes. Their whole conduct is accounted for by the exertion of an influence altogether supernatural on the part of the prisoners. Gentlemen, if you can for a single moment go into such a notion as this, I may shut my lips, for I can never hope to aggravate its improbability by any statement of mine.

Again, what is the security upon which the pannels are said to have relied for their safety after the release of Smith and Strachan ? Why, forsooth, upon that of an oath. Is this credible ? What value could have been put upon an oath in such circumstances, and by such parties ? You are asked to believe that the pannels were willing to exchange the absolute power they possessed over the crew for the security of a bond not worth the air wasted in uttering the words in which it was conceived. I hold this, then, to be not the least improbable of all the improbable statements you are called upon to credit ; the pretended reliance of the prisoners upon the efficacy of an oath taken by four individuals to

whom they had just set the example of murdering their captain and a fellow-seaman.

Such is a hasty view of the improbabilities of the *story told* of these four witnesses. I contend that you must have proof, above and beyond suspicion, before you can so far credit it as to find a verdict against the prisoners at the bar.

I come now to plant the defence of my clients upon a different ground. I allude to the contradictions in the evidence of the four leading witnesses—and, whether I am right or wrong in my views on this part of the case, I think you will agree with me, that the Lord Advocate, at least, has not given a satisfactory explanation of the matter. He has said that these discrepancies do not occur in the more important part of the story; and, in order to show you that, on this ground, they afford no reason for impeaching the credibility of the evidence, his Lordship has referred to a well-known passage in Mr PHILLIPS' work, where the discrepancies among witnesses, in narrating certain facts in the case there referred to, was not allowed to affect their credibility. I contend, however, that the discrepant statements occurring here are more than sufficient to rescue the present case from such a conclusion. If I was able to follow the illustration, it was this—That various individuals are supposed to have seen the King of France executed, but they differ as to certain circumstances connected with the execution—such as the size of the guillotine—its colour and general appearance.—

The learned author then goes on to say, that these are trivial matters which catch the attention of spectators with different degrees of force—one remembers some of them better than another—another pays no attention to them at all—and hence, it is inferred, that discrepancies, in such particulars, are quite consistent with general truthfulness. Let us get out of the case of kings, gentlemen, and take that of an ordinary trial for murder, which will be more intelligible to you, and come more readily home to your feelings as an illustration. Suppose that ten witnesses are adduced, who say they saw a murder committed, but who all differ substantially as to the mode of its commission. One says it was effected by the use of a hatchet, another with a knife, another with poison, another by stabbing. What could a jury do with evidence such as this but reject it as incredible? or can you believe that the Lord Advocate would ask a verdict of guilty upon such testimony?

Mr Phillips refers to human nature, and I go to the same source for an answer to his views. Assume, for a moment, the existence of a conspiracy among the witnesses. In their story they cannot fail to agree in general as to the guilt of the panels; for, on this point, they have little to tell, and their tale, therefore, is easily devised, and consistency easily preserved. Accordingly, it is only when they are stating what they consider as unim-

portant that they are to be caught in falsehoods. It is only when you follow them into the outskirts, as it were, of their story, that you will discover them tripping.

The witnesses, besides, in this case, have had an opportunity of arranging their story. They have not, for many months, been separately imprisoned. It has been stated, no doubt, that they were kept separate till their declarations were taken. But this is of no importance. These declarations are buried in the bosom of the public prosecutor, and no other person is entitled to know any thing about them. You, gentlemen, can never know, nor are you entitled to inquire, whether the story they have told to-day, tallies with that which was given in their declarations. The long period during which they have confessedly not been separated gave them ample opportunities for fabricating a story, which was obviously easily concocted as to its leading features. But in its minor details, where they have not anticipated the necessity of consistency, we find the witnesses falsifying, and upon this ground, then, I am entitled to ask you to discredit the whole of their statements, because, beyond all question, every witness who, from the box, utters one deliberate falsehood, becomes utterly unworthy of credit.

I begin my review of the evidence by contrasting the statements of Camelier and Strachan, and I need scarcely remark, that I am to be followed

by the learned Judge, who will correct me if I go wrong. To his authority I shall bow with the utmost deference. The first discrepancy relates to the manner in which the plan for smoking the witnesses is said to have been carried into effect. On this point, Camelier is not only contradicted by Strachan, but by Dhura. He says, that after shutting up the various crevices which were necessary, in order to prevent the escape of the smoke, the fire was kept up for *twenty-four hours*. This statement was made by the Maltese again and again, both in the examination in chief, and in the course of his cross-examination ; while, on the other hand, Strachan and Dhura concur in stating, that there were two attempts to smoke the witnesses, during each of which the fire was kept up two, or, it might be, three hours. Dhura says expressly, that it was completely extinguished when the sun went down the first day. You have, therefore, these witnesses distinctly contradicting the boy as to points upon which they had all equally good opportunities of obtaining accurate information. Falsehood must therefore exist in some part of their story, and this is sufficient to discredit the whole of it.

The next point in which the witnesses contradict each other, relates to the changing of the course of the vessel after the alleged murders. Dhura says, he heard nothing of the ship going towards Scotland till Smith and Strachan came upon deck ; while

they say, that on coming up from their confinement in the fore-castle, they found the vessel steering northwards, and her ultimate destination already fixed. Camelier, in short, states, that this arrangement was not made till Smith and Strachan were released—a circumstance sufficiently probable, as they were the only Scotchmen on board—while the others say, all was settled before they came upon deck.

It did occur to me also, as a singular circumstance, that the Maltese should pretend that he did not, before the fatal night of the 7th of June, hear a whisper of the plan in agitation. You have had an opportunity, to-day, of observing his knowledge of English, [and you have all the other witnesses stating expressly, that this scheme for making the captain *walk the plank* was the subject of daily conversation among the men. What is the answer made to this? It is said that the boy had no opportunity of getting into their confidence, because he slept in the cabin. But these discussions were not confined to the dead of the night. I ask, where did the boy mess? With the captain? No. Then it is admitted that the ordinary time for discussing the plans of murder and piracy was at meals. It is not pretended that the Maltese was absent from these. He was a mere cabin-boy, and, as a matter of course, messed with the crew. He must therefore have heard of the plans imputed to the prisoners, yet he states that not a whisper upon the

subject ever reached his ears,—and thus affords another reason for impeaching the credit of his evidence.

The next discrepancy I have to notice relates to the division of the dollars. When the boy Camelier is questioned on this matter, he expressly says, that after the money was put into bags, it was *equally divided*, and each of the crew received about 6300 dollars. But what is Dhura's account of the matter? He thinks it necessary to aggravate the pretended guilt of Heaman, by stating, that, in the division of the money, he received a much larger proportion than the rest! Gentlemen, this is a slight circumstance in itself; but why should witnesses, in these minor details, obviously go out of their way to attach unmerited guilt to either of the pannels, by stating what the public prosecutor has himself proved not to be true, because the stories of dividing the dollars came all out in the examination in chief.

Another discrepancy in the evidence relates to the door in the bulk-head of the forecastle; and upon this matter three different statements are made, all concurring in the single point of criminating the pannels. When the boy, Camelier, was asked, after giving an account of the attempt to smoke and *starve* Smith and Stachan in the forecastle, Whether there was not an accessible door leading from the forecastle into the main hold? he declared there was not. He said that there was a

small *hole*, but that it was not large enough to allow a man to pass through. The object, you perceive, gentlemen, of getting at the truth as to this communication between the fore-castle and the main hold, was to show the access which the two men had to the provisions of the ship—both biscuits and water—while they were confined. Camelier denies that there was any such communication. When Strachan, however, was examined on this point, he swore there was a door, and that it was as large as the door of the witnesses' box in which he then stood, but that it was so nailed up as to render it impossible to get at the prisoners in the hold. Smith, again, distinctly swears that the door was *open*! He also adds, that they could have gone into the main hold to the provisions if they had chosen; but that the reason they did not, was from an apprehension that those on deck might hear them, and proceed to carry their murderous plan into execution. These are strange contradictions! Dhura, the only other witness, also contradicts Camelier and Strachan; for he declares, that the door in the bulk-head of the fore-castle was open, and that it was always so. It may, no doubt, be said, that this is also an immaterial circumstance. But I say again, and it cannot be too often repeated, that it is not in the great leading facts of this case that you can expect to find the witnesses disagree in the tale which they have so artfully concocted. It is

only when they are followed into minor details, on which they were not prepared to be questioned, that their falsehood can be detected. In the instance just noticed, the contradictions are assuredly remarkable, and can never be explained away, upon the theory of the public prosecutor, that they are unimportant.

The next discrepancy is with regard to the expressions which the witnesses, Smith and Strachan, declare they heard Paterson utter on being attacked on deck. Strachan states, that the first thing he heard was the unfortunate man "*singing out—Oh, Lord! oh, Lord!*"—and that he is quite certain no other expressions were used. Smith, on the contrary, says that he heard Paterson cry out also, but that his words were, "*Murder! murder!—God Almighty save my soul, for I am murdered now!*" There is a material difference in these exclamations, and it is impossible that you can believe both the witnesses.

Another circumstance in the detail of this disgusting story, in which the witnesses differ, relates to Strachan being brought upon deck for a short time, to get the air, after he had been confined, along with Smith, for two days and a night, and of his then being remanded to his place of confinement, and there kept for an additional period, before he was *ultimately* liberated. Such is the account given by Strachan himself, who thus endeavoured to magnify his sufferings and heap guilt on

the mate. But this detail is quite different from that given by Smith, who says that Strachan was not taken up at any time previous to his *final liberation*, and that the hatchway was only opened once after their confinement, when they were both brought upon deck. He denies, positively, that there was any prolongation of their confinement.

This reminds me of another circumstance connected with the account Strachan gave. You remember his expressly declaring, that, when brought up the first time, his hands were tied behind his back, and he was fastened to the studding-sail boom; from that situation, he says, he was liberated by the interposition of Dhura. Now, I am entitled to argue to you, gentlemen, that this is a complete fabrication. Did the Crown attempt to corroborate the statement of the witness? Did the learned Lord do, what I maintain he was bound to do if there was any truth in the narrative of Strachan? did he ask Dhura whether the fact was so? No. His Lordship did not venture to do this, because he knew what would be the answer. It is impossible then, after this, that you can attach any credit to the evidence of Strachan.

Gentlemen, there was another discrepancy between the evidence of Camelier and Dhura which I omitted to mention; I mean with regard to the blood on the captain's bed-clothes. On this point, the boy swore that they were all covered with blood, and were, next morning, in that state, thrown over-

board. But Dhura, on the contrary, said that he assisted in pulling them on deck, that he saw them thrown overboard, and that, although he observed them particularly, he saw no blood whatever upon them. Now, gentlemen, how can you reconcile such a discrepancy upon a point of such vital importance in this case? For upon this circumstance the whole evidence of the captain's murder turns—Camelier left the cabin without ascertaining whether he was in bed when the shot was fired—and the existence of the blood upon his bed-clothes, therefore, was the only proof adduced by the prosecutor to prove that the shot took effect. If, then, the discordant statements of Dhura and the Maltese enable me to get rid of this circumstance, then the whole testimony of the latter, when founded on to prove a murder, becomes utterly useless. Confessedly, he did not see the captain murdered: and he gives no account of the commencement of that midnight fray, which terminated in the death of this unhappy individual. In fine, leaving these minute details, I call upon you, gentlemen, most solemnly and earnestly, after contrasting and combining all the discrepancies which I have pointed out, to ask your own hearts whether you can believe the evidence for the prosecution, and believe it to the extent of taking away the life of a fellow-creature? You have no light matter to decide upon—and I feel that I cannot leave the fate of my clients in better hands than in yours.

But, gentlemen, I proceed to the last, and, in my mind, by far the most important view of this case. Perhaps I ought rather to say I *recur* to it, because I have already unavoidably anticipated much of what remains to be stated. Such of the crew of this ill-fated vessel as have appeared before you in the character of witnesses, claim to themselves the most entire and perfect innocence; and under the solemn sanction of their oaths, they have denied any voluntary participation in the atrocious crimes imputed to the pannels. Now, gentlemen, I have already explained to you that you cannot separate the question as to the guilt or innocence of these witnesses from that as to the guilt or innocence of the prisoners. You must believe *all* or *none* of the statements which come from the witnesses for the prosecution; and if, therefore, you are not completely satisfied of their innocence, you must leave their testimony altogether out of view, and consequently acquit the pannels.

That the four first witnesses were truly aiders and abettors in the commission of those crimes, the guilt of which they endeavour to fasten down upon the pannels alone, can admit of very little dispute. Indeed, the Lord Advocate has almost given up this point, and conceded the accession of his witnesses to some of the offences charged in the indictment. Observe, in the first place, the conduct of these individuals *prior* to the murders. With the single exception of Camelier, they all *admit* a

previous knowledge of the plans which were in agitation ; and it is pretty clear that he too must have possessed a similar knowledge, although he has not the candour to admit it. For, gentlemen, the plans in question were not *secretly* discussed. They were spoken of—arranged, and matured at meals—and, indeed, were the subject of daily and hourly conversation among the crew. Then you are told that every mortal in the ship refused to join in them save the prisoners, with whom they are said to have originated, and by whose individual exertions, you are seriously asked to believe, they were also carried into execution. And under what circumstances are you required to credit this? The plan of murder and piracy is known to the whole ship's company, not even excepting the captain—yet no exertion is made to save this unhappy victim—and, with the great majority of his sailors on his side, he is left without a struggle or a conflict, to be massacred by the pannels. Gentlemen, is it possible that this could have happened if the witnesses had been innocent : or can you believe that, possessing, as they did, the *power*, they would have hesitated one single moment in securing *the only two guilty individuals in the ship*. This was necessary for their own safety as well as that of their captain ; and a line of conduct such as that I have alluded to, would inevitably have been adopted had they been as completely innocent as they have this day represented themselves. To say that they were concussed, or

terrified, is quite idle. They do not pretend that they were under any constraint; and assuredly, even admitting all the terrific qualifications of strength and of desperate wickedness which the public prosecutor has so liberally imputed to the pannels, they might easily have been subdued by the co-operating exertions of the captain and the five seamen who are said to have been so firmly attached to his interests. In short, it is altogether impossible to account for the murder of Paterson and the captain, even upon the theory of the public prosecutor, without holding that the whole crew, or at least a majority of them in point of strength, must have been accessaries to the commission of these crimes. Upon any other supposition it is plain that they never could have been perpetrated.

Again, gentlemen, attend to the circumstances which are said to have occurred *subsequent* to the murders. I give it up to the prosecutor, that during the short period while Smith and Strachan were confined in the fore-castle (admitting for a moment that they were confined there,) the prisoners had it in their power to concuss Dhura and the Maltese boy, and to compel them to assist in throwing the bodies over board;—but then what happens after the liberation of Smith and Strachan. It is admitted that a period arrived at which they were set completely at liberty; and then you have a ship's company consisting of *four innocent* and *two guilty* men. Yet no change takes place in the character of the

plans which were in the course of being carried into execution. The dollar-casks are broken up—the money is divided and concealed,—a plan is arranged for communicating with any ship they might encounter in their course—the vessel is destined for the Hebrides—she arrives there, and the crew immediately proceed to scuttle her. The participation of the witnesses in all these transactions is proved beyond the possibility of doubt; and, in order to explain their conduct, the Lord Advocate is again driven to the desperate theory of terror and compulsion. This requires no answer, because it does not apply to the circumstances of the case. It is improbable—nay, it is incredible, that *two* men should have been enabled to concuss *four*. Where *strength* was so obviously upon the side of innocence, you cannot fail to hold that it must have prevailed.

But, says the prosecutor, the witnesses were bound by the solemn obligation of an oath to concur with the pannels in carrying through their piratical schemes; and this is represented as influencing their conduct. I cannot conceive a more unsatisfactory explanation than this of the proceedings which have been already detailed. The oath is said to have been administered by men whose hands were red with the blood of their fellow-creatures, and under the threats of immediate death. How then, gentlemen, can you entertain the notion that such an oath could have been looked upon as binding for a single

moment after the witnesses acquired the means and the power of disregarding it? Their appearance indeed in the box this day demonstrates that they knew it could impose no moral obligation upon them; and, besides, they all state that from the night upon which the murders are said to have been perpetrated, they came to the resolution to seize the first favourable opportunity for making a full disclosure. It is quite idle therefore to contend that the oath can have had the slightest influence in leading them to participate in the piracy.

This leads me to inquire whether the witnesses did, in point of fact, avail themselves of the first opportunity for disclosing the crimes now imputed to the pannels. This is a very important matter, and I think you will concur with me, that the result of the evidence relative to it is altogether inconsistent with the pretended innocence of the witnesses. Camelier, you will recollect, swore, upon a question from the prosecutor, that he had resolved from the very outset of this bloody business to lose no opportunity for disclosing its horrible details. The other witnesses used similar language. Contrast this then with the admitted facts of the case. It is proved that at Barra various individuals came on board the ship, and these are represented as at one time amounting to thirty. Yet no disclosure is made by these innocent witnesses. Part of the crew go on shore to assist the mate in purchasing a boat; still no disclosure. After the scuttling of

the vessel the whole crew arrives at Lewis, where they are immediately surrounded by a crowd of country people ;—still no disclosure. At length they reach the neighbourhood of Stornoway, where they are visited and examined by the custom-house officers ;—still no disclosure. These immaculate witnesses, with pure hands and innocent hearts, as if all their faculties had been paralyzed, and all their energies deadened by the magic spells of an enchanter, maintain an inviolable silence, and reject various opportunities of making that disclosure upon which they would wish you to believe they had long before determined. At last, when the measure of their crimes is nearly full—when the hour of inevitable detection has arrived,—when their trunks have been examined by Mr M'Ivor, and ascertained to contain dollars, then, and not till then, a panic seems to have seized upon Camelier, and he makes that late disclosure for which so much unmerited praise has been bestowed upon him in the course of this trial. His information came when it was of little use, and when it would be an abuse of common sense to proceed upon it as any evidence of his innocence. In short, the suspicions of the custom-house officers were completely awakened, and the whole crew were upon the point of being apprehended before the disclosure of Camelier. You must therefore hold that it was extorted from him by the terror of immediate detection, and from a base hope of saving himself by sacrificing his companions. This destroys entirely the presumption

of innocence, which might have arisen from a disclosure under different circumstances; and, indeed, it is impossible ever to expect more complete proof of accession than that which I have now laid before you. If you receive it as satisfactory, you can attach no credit to the testimony of those to whom it has been brought home, because the claim to themselves characters of perfect innocence, and *falsum in uno, falsum in omnibus* has already been stated as a rule of universal application in weighing parole evidence.

It will not do, gentlemen, for the Lord Advocate, after having failed in his case, to turn round upon me, and contend that the guilt of the pannels is established by their declarations. These are of *themselves*, in no instance, sufficient to support the case of the public prosecutor; nor, indeed, is it competent to use them for the purpose of *eiking* out a lame, imperfect, improbable story. The prosecutor must make out an *a priori* case upon his own evidence before he is warranted in referring to them. Then, and then only, can a jury attach weight to them as evidence *against* those by whom they have been emitted. But no such case occurs here. The evidence on the part of the crown is full of contradictions and improbabilities; and it is in vain, therefore, for the prosecutor to attempt either to reconcile the former or explain the latter by a reference to the declarations of the pannels. Nor is it at all incumbent upon me to support the statements made in these declarations. The prose-

cutor comes here as a pursuer, and must make out his case; I, on the other hand, represent parties who are defenders, and it is enough for me that he fails. This supersedes the necessity of establishing any defence on the part of the pannels.

But, gentlemen, so far from shrinking from an examination of the declarations, I feel rather disposed, on the part of the prisoners, to solicit your attention to these documents; for, in truth, they give an account of these unhappy transactions in every respect more probable than that which comes from the witnesses for the Crown. It may be remarked, in the first place, that in so far as there has been an opportunity of corroborating the declarations by evidence above suspicion, their accuracy is completely established. All the transactions at Barra and Lewis are candidly and accurately detailed by the pannels. This appears from the testimony of the witnesses who have come from these distant islands, and it affords a ground for presuming in favour of the truth of the other details in the declarations. Again, it is well worthy of remark, that the statements of both the pannels coincide most minutely; and, gentlemen, you will bear in mind that they had not, like the witnesses for the Crown, any opportunity of concocting a story. From the first moment of their apprehension they were separately confined, and I need not tell you that they were separately examined. In these circumstances, it is impossible to account for the coinci-

dence of their stories, upon any other theory than that they are true.

Besides, they are by no means improbable. Let us recur for a moment to the situation of matters prior to the supposed murders. The ship's company were nearly in a state of open rebellion, and the captain was himself informed that his murder had been planned. It appears, too, from the evidence of Strachan, that his suspicions immediately fastened upon the Frenchman as the person by whom the deed was likely to be perpetrated. In such circumstances, I submit, it was the most natural thing in the world for him to do precisely what he has been represented to have done by the pannels. Mutiny, whether in the army or navy, is never so certainly checked as by a sudden and decisive *coup de main*. The captain seems to have been fully aware of this. You have it in evidence that a pistol was cleaned, repaired, and delivered to him a short time before, and he seems to have kept it constantly at the head of his bed. The pannels state, that, on the fatal 7th of June, he retired to his cabin at the commencement of the eight-o'clock watch. At two o'clock in the morning the Frenchman was relieved at the helm by Patterson. The captain almost immediately afterwards came upon deck, and shot the man at the helm dead upon the spot, in the full belief that he was sacrificing the individual by whom his own murder had been devised. The discovery of his mistake

was immediately followed by a general alarm in the ship. The mate instantly seized the helm, and called all hands upon deck. Then ensued a struggle, in the course of which the captain lost his life. How this happened, neither of the pannels are able very distinctly to explain, but it seems probable that the unfortunate man was stabbed, as two bloody knives, said to have been the property of Camelier and Dhura, were found upon deck the following morning.

Such is a general outline of the story told in the declarations. Its accuracy or truthfulness I am neither bound to maintain nor support. It is enough for me, that it is quite as probable, and really, in the circumstances of the case, as satisfactorily proved, as the statements of the four leading witnesses on the part of the Crown. They have been confined together for a period of four months, during which they have had ample opportunities for organizing a conspiracy against their unfortunate associates; and you have no means of ascertaining how far the story told by them this day tallies with their original declarations. The pannels, on the other hand, were separately examined, before it was possible for them to fabricate a story, and the coincidence of their statements, therefore, affords the strongest possible ground for attaching credit to them. You will arrive the more readily at this conclusion, by finding their narrative, to a considerable extent, confirmed by the witnesses from the Isles. Again, the evidence of the crew is

improbable, contradictory, false, and incredible. I hold their accession to the murder and piracy, even upon their own showing, to be established, and the Lord Advocate scarcely ventures to disguise the matter. Yet they most audaciously depone to their own entire and perfect innocence; and thus, by persisting throughout in one great and deliberate falsehood, they entitle me to maintain, that no part of their evidence is worthy of credit, and that, therefore, in deciding this case, it becomes your duty to leave it wholly out of view.

The public prosecutor does not seem to perceive, that the theory by which he attempts to explain the conduct of his witnesses, may, with perfect fairness, be turned against them. His plea is, that they were concussed and terrified by the pannels. In the same way, and with more probability, I may contend, that my unfortunate clients were concussed and terrified by the majority of the crew. In short, the one statement is just entitled to as much weight with a jury as the other, and, in all human probability, you will be equally disposed to disregard both of them. Indeed, I do not maintain that the pannels are altogether innocent, nor do I feel myself entitled to ask a verdict of *Not Guilty*. Their defence beyond all question is surrounded with danger and with difficulty. The circumstances disclosed in the evidence for the Crown may have satisfied you that a great crime has been committed; but that evidence is so involved in improbability and con-

tradition, that a fearful obscurity hangs over the events to which it refers. This may be a matter of deep regret, but it leaves you no alternative, save to return a verdict of *Not Proven*.

I cannot conclude, gentlemen, without thanking you for a very patient attention, and, although I have scarcely fulfilled the promise with which I set out, of making only a few observations, you will forgive the anxiety, which, in raising my voice for the last time between death and ruin, and these unhappy prisoners, has dictated a long and perhaps a tedious address.

We have not been able to give more than an outline of Mr Maitland's speech, the delivery of which occupied an hour and forty minutes.

The Honourable Judge then proceeded to charge the jury nearly as follows :—

Gentlemen of the jury,—The pannels at the bar are accused, as you have heard, of the crimes of murder and piracy, and none can doubt that these crimes are, separately, of a very atrocious nature, and much more so when committed together. But you must take care that no impression, with respect to the atrocity of the crimes, should prevent you from making that cool and deliberate examination of the evidence, which is necessary to enable you to return a just and conscientious verdict on the main question submitted to your considerations, viz. the innocence or guilt of the pannels. I must caution you, also, in regard to another thing (though this perhaps is un-

necessary), that the evidence with respect to Gautier, who is a foreigner, must be judged of precisely in the same way as that which is applicable to Heaman, who, I understand, is an Englishman. At the same time, you must also take care that no apprehension of your not giving him full justice should prevent you from viewing his case more favourably than you should do. In short, you must try Gautier by the same rules of evidence as if he were a native of this country; and this is a mode of trial with which no foreigner can be displeased.

The crimes of piracy and murder, gentlemen, of which the pannels are accused, are charged in this indictment as having been intimately connected together, in as much as they are alleged to have been committed, not only at the same time, and by the same persons, but the one crime is stated as having been committed for the purpose of accomplishing the other. This being the case, there must necessarily be a considerable connexion between the evidence that is applicable to both. At the same time, as there are some shades of difference in the evidence as applicable to the two charges, I shall consider those charges separately, and I shall follow the example of my Lord Advocate as to the order in which he considered them; both because the piracy is charged as being the main crime in contemplation, and because it appears to me that the evidence with regard to this crime throws much light on that applicable to the murder.

Before adverting to the evidence, however, I shall say a word or two as to the jurisdiction of this court, and to the relevancy of the indictment. It is true, that the counsel for the pannels, in the course of their very able and candid comments, made no objection to either ; but in this case, where the crimes libelled are said to have been committed by two of the crew of a vessel fitted out at Gibraltar, who are said to have planned and executed their schemes on the ocean, and not far from the Line, it is possible that some of you may startle at the jurisdiction exercised by this court—or, at least, may wish to hear something from the bench on the subject. I conceive it to be proper, therefore, to state, that I have given this question the most attentive consideration, both before I came here, and since, and that I am clearly of opinion, this court has a jurisdiction to try both the crimes libelled. Pirates are held by our lawyers to be enemies of the human race, and piracy is deemed to be a crime committed against the law of nations. Every nation, therefore, is deemed to be entitled to try and to punish pirates, even though their depredations have been committed on the subjects of other nations ; and it is upon a similar ground that the charge of murder becomes competent, because the murder is stated to have been committed to accomplish the piracy ; or, in other words, the murder is charged as a piratical one. The records both of this court, and of the Court of Admiralty in England, contain examples to the full extent of what I

have laid down as law. In like manner, I conceive, that there is no doubt the facts stated in this indictment amount to piracy. Some of you, perhaps, may suppose that, to constitute piracy, the attack must have been made by the crew of one vessel upon another; but it is justly held by our lawyers, that if a vessel and her cargo are forcibly carried off by her own crew, it is the same as if the outrage had been directed against another vessel. The same injury is done to persons and property; and it is even more difficult to guard against the attacks of secret enemies than those of open foes.

After these preliminary observations, I shall proceed to the evidence that has been adduced as to the piracy. And here, first of all, there can be no doubt as to the *corpus delicti*, that is to say, that there was a piracy committed on the Jane and her cargo by some of the crew. This is both proved and admitted on all hands. It is proved and admitted, that the Jane sailed from Gibraltar for the Brazils, and that the crew altered the course of the vessel, carrying her, with the cargo, to the north of Scotland,—scuttled the vessel there,—divided the treasure among them,—and were found with it in their possession. The only question, then, upon this part of the case is, Whether the pannels were actors, or art and part, in this piracy?

The first piece of evidence to which I call your attention is the declarations of the pannels themselves, and that piece of evidence, as far as it goes,

is decisive against them. They do not indeed call themselves pirates, or acknowledge that they were guilty of piracy, but they admit facts and circumstances which necessarily infer their guilt.—They admit that they were on board of this vessel,—the one as cook and the other as mate.—They admit that the captain and Paterson were killed.—They admit that then the course of the vessel was changed, and that they aided and assisted in carrying her to Scotland.—They admit that they took possession of the treasure on board.—They admit that the dollars were taken out of the casks and put into bags, for the purpose of being concealed, and were concealed accordingly.—They admit a false name was given to the Jane when they spoke another vessel, and that the crew were tutored as to what they should say, if hailed by other ships.—They admit they went to Scotland, and that they bought a boat at Barra, for the special purpose of scuttling the vessel and taking out the treasure.—They admit the vessel was scuttled.—They admit that they aided and assisted in all this, and that they did not attempt to resist those measures.—They admit that after the vessel was scuttled, the dollars were put on board this boat, that the money was divided, and that they were apprehended with it in their possession.

Now, if declarations were to be held as sufficient evidence in any case, I would say the crime of piracy was proved against the pannels by their declara-

tions alone. But in no case is a declaration sufficient evidence *per se*. It is only a circumstance of evidence; though, at the same time, it is always held to be a very material circumstance. For if you can believe that a declaration was fairly taken down, there must arise the strongest belief of the guilt of the prisoners, if they shall have admitted this through the medium of a declaration. Indeed, if in any case declarations should militate against pannels, they should do so here, where there was not one, but two declarations, both emitted before most respectable magistrates. The first was taken before four respectable justices of the peace, and the second before the Sheriff-substitute of this county, in which last declarations the former are admitted, with a few additions. A considerable interval, too, elapsed between the declarations, so that the pannels had full time to deliberate with regard to their admissions. Still, however, the evidence to which I allude is only the declarations of the pannels, and you must next inquire whether they are supported by other proof. Now, they are directly supported by evidence which cannot be called in question, viz. the testimonies of the gentlemen of the islands of Barra and Lewis. The gentlemen of the island of Barra, although they did not at first state very distinctly the circumstances, admitted that a schooner came there last summer; and they swear that a boat was purchased, which was not an ordinary thing. They prove another very material fact, that the pannel

Heaman gave false names both to himself and the vessel, viz. he called himself Rogers, and the vessel the Rover; and he said, besides, he was on a voyage from New York to Archangel.

Next, then, you have the evidence of the witnesses on the island of Lewis. They swear that the pannels were found there, and with the dollars in their possession. They state, likewise, that the pannels, on being questioned, gave a false account of the vessel and of themselves, pretended that their vessel had been wrecked, and made no disclosure as to the dollars which were hid in the sand. Next, you have the very material fact of the anxiety expressed by Heaman, when the Maltese boy escaped, and the search which he made for this boy. It is true that several of the circumstances I have now detailed apply only to Heaman, but others of them apply also to Gautier; and, indeed, if you believe that the one was guilty of piracy, you must believe this also of the other, for they seem to have acted all along in concert.

I take it upon me to say, therefore, that, were there no other evidence in this case, I should think the piracy completely proved against the pannels. There is not merely a proof of art and part, but active agency is established. Heaman acknowledges that he navigated the vessel after the captain was killed; and, indeed, none but he could have navigated her. He admits, too, that in the distribution of the money he got a larger share

than the rest—for he acknowledges he had got a bag from each. He admits he had on his back the clothes of the captain—that one of the captain's trunks was given to the mate and another to the cook. They both also acknowledge that the captain's watch and seals were divided among them, the one having got the watch and the other the seals.

Lastly, There is the flight of Heaman when the first attempt was made to apprehend him. He went in search of the Maltese boy, and he was extremely anxious about his escape. He came back soon afterwards with nothing but his trowsers on—even his watch was away. These facts are both proved and admitted, and are strong indications of guilt.

In short, gentlemen, the evidence to which I have alluded, proves not merely that the pannels were art and part concerned in the piracy, but that they were principal agents.

A great deal was said by the counsel for the pannels as to the delay of the other witnesses in disclosing the story; but this strikes with much more force against the pannels than the witnesses.

Were the evidence as to the piracy therefore to rest where I have put it, I conceive you have already sufficient proof to convict them of this crime, independent of the four witnesses altogether, whose evidence has been so much animadverted upon by Mr

Maitland. But if any credit is to be given to these witnesses, I should conceive there must be an end to the question respecting this charge.

Before considering what these witnesses say, I shall allude to the objections which have been stated to them. 1st, They are said to be *socii criminis*—now, granting that they deserved that name, you are aware, first of all, that *socii criminis* are competent witnesses. Next, they may or may not be credible witnesses; and it is also a question of circumstances, whether they shall be deemed credible or not. It must depend upon their manner of giving their evidence,—upon the consistency of the story told by each, and of its concurrence with that told by the rest,—upon the fact, whether they have any interest in the case,—and, lastly, upon the fact, whether they are contradicted or confirmed by other evidence. Let *socii criminis* be as guilty as the counsel for the pannels represent these four witnesses, still if they can stand the tests I have now stated, they must be deemed not merely competent, but credible witnesses. They are necessary and useful witnesses; for without them the most atrocious crimes, which are generally committed in secret, never could be detected or punished.

But next, you are to consider whether these four witnesses come properly under the denomination of *socii criminis* or not. It must be admitted on all hands, that if there was accession to this piracy on

their part, they were not active agents. They do not seem to have been principal contrivers either in the plan or in the execution of the piracy. If they were not principal agents, the next question is, What was the degree of their accession? That there was an accession to a certain extent is certain. They remained all on board of the vessel, and assisted more or less in taking the vessel where they carried her, and they all took a share of the plunder. To this extent they acceded to the crime of piracy. But then did they accede voluntarily and heartily, or did their accession proceed from force or fear? An observation is made by Mr Hume, that the defence of force is a very favourable plea when maintained by those tried for piracy,—persons on board of a ship are not like those placed on shore, who can escape from those who wish to engage in a criminal act. Now the observation of Mr Hume is applicable also to witnesses upon a trial for piracy. It appears to me that there is much room for holding that the accession of these witnesses was produced by force or fear. In the first place, none of them seem to be of that bold or determined character, which must be possessed by those who voluntarily engage in a crime of this kind. In the next place, there is no evidence that they did readily go into it; but, on the contrary, reason to believe that they did it only by force. There was nobody on board of the vessel but four witnesses and the pannels, so that

as to the force, we have only their own evidence; and the question is, Whether you are to give credit to it or no? I conceive, therefore, upon the whole, that those four witnesses stand in a sort of middle situation, between *socii criminis*. on the one hand, and witnesses beyond all exception on the other; and, in judging of their credibility, you must apply, to a certain extent, the different tests I have alluded to, in making up your minds whether you are to believe them or no.

With regard to the piracy, there seems to be the strongest reason to hold they are speaking true. I am not aware of any discrepancies at all material, so far as regards this charge; and their evidence upon this subject is corroborated by other evidence, viz. by the declarations of the pannels themselves, and by the evidence of the gentlemen of Barra and Lewis. In particular, there is a corroboration of the whole material circumstances which they state to have taken place in the vessel immediately after the death of the captain and Paterson, viz. as to the amount of the dollars, the putting them into bags—the concealing of them—scuttling the vessel—and what passed at the island of Barra and Lewis; and, in short, as to almost every material circumstance with regard to the piracy.

The Maltese boy appeared to me to be as candid a witness as ever appeared in a court of justice. He was modest in his manner, and his statements were distinct and consistent. He took the first opportu-

nity to escape, and to disclose the whole matter, and it is, in all probability, owing to the part taken by this very boy, that we are now trying this case here. With respect to the other witnesses, either from their manner, or as to what they said, I see no reason to disbelieve any one of them. Strachan seems to have the open manner of a sailor, but there was nothing to induce disbelief of what he said. As to Smith, I would almost repeat, as to him, what I said about the Maltese boy. He did not, indeed, run away to disclose what had happened, but his manner was proper, and his evidence apparently candid and true. And, as to the Italian witness, though he showed the briskness and forwardness of a sailor, he seemed also candid and distinct.

Next, consider whether, as to the piracy, these witnesses contradicted themselves or each other. It did not appear to me that they did. Upon the whole, therefore, these four witnesses appear to me entitled to credit. Their testimony would be very strong *per se*, but when they are corroborated in all material respects by other evidence, I must conclude with expressing my opinion that the charge of piracy is completely proved.

I now come to the charge of murder. Here first of all it is admitted on all hands, that Thomas Johnston, the captain, and James Paterson, one of the seamen, lost their lives by a violent death on the 7th of June. But the question remains, were

the pannels guilty actors, or art and part of murdering them ?

The first observation I have to make is, that if you believe that the pannels were art and part guilty of the piracy, and, still more, if you believe they were principal agents in the piracy, this, independent of direct evidence, forms a strong presumption against them with regard to the murder. Piracy and murder unhappily go frequently together. Certainly you are not to presume, that if the one crime was committed, so was the other also ; but here you have the fact both proved and admitted, that the two persons alleged to be murdered did not merely lose their lives immediately before the piracy was committed, but that the one event followed the other instantaneously, like cause and effect.

In the next place, you have the direct testimony of four of the crew, that the two deceased persons were murdered by the pannels. Were it not for the admission of Mr Maitland, I would investigate the testimony of these four witnesses, and show you that they all swear to facts which establish this charge against the pannels ; but this is unnecessary, because it was admitted by Mr Maitland, that if the testimony of those four witnesses is to be believed, there is no doubt of the guilt of the pannels. His argument, however, is, that they are not telling one word of truth, and that it is all a conspiracy on their part, to get the pannels hanged,

though innocent. This is a serious charge against those witnesses, and deserves cool consideration.

In the first place, if you believe that those four witnesses spoke true as to the piracy, which I think they did, a strong presumption arises that they are speaking true as to the murder. It is a maxim with regard to parole testimony, that *falsus in uno, falsus in omnibus*; and I conceive that the converse maxim must also hold good.—*Verus in uno, verus in omnibus*; that is to say, if you believe the four witnesses spoke true with regard to the piracy, where they would have been contradicted by other testimony if they spoke false, but, instead of being contradicted, were corroborated, you are in some measure bound to believe them, with respect to the murder, even though not corroborated.

The second observation which I make is, that there are just two theories as to the death of the master and Paterson. They must either have been put to death in the manner sworn to by the witnesses, or in the way stated by the pannels themselves in their declarations. There is no other alternative; for the only other supposition is, that the two were murdered by the four witnesses; but this has not been alleged by the pannels, and, if it had been true, it would have been said by both. If, therefore, the story told by the pannels is neither proved nor probable, you must believe that the story told by the witnesses is true. We heard a great deal from Mr Maitland as to the improbabilities of the depositions

of these witnesses. Let us consider whether the story of the pannels is probable or improbable. In some respects they agree with each other, and in some they do not. Both declare that the captain shot Paterson; but Heaman says the captain intended to shoot the Frenchman; and the Frenchman says that the captain intended to shoot Paterson. Now, first, if there had been a previous quarrel or fight, there would have been nothing improbable in the supposition that the quarrel, or fight, ended in the death of the persons killed. But the story the pannels tell is, that the captain, after going to bed at twelve, when his watch was over, between three and four o'clock of the morning started suddenly from bed, and, with a pistol in his hand, rushed to the helm, and shot Paterson. Can you believe this story? It is nowhere said that there was a previous quarrel between the captain and Paterson. At the time the latter was killed, he was at the helm faithfully, so far as appears, discharging the duty assigned to him by the captain. Then, as to the Frenchman, though it is said some few words passed between the captain and him about the cooking on board, there is no reason to believe that the captain, who is sworn to have been a man of good character, and was intrusted by a Jew with a valuable cargo, would have murdered him apparently on the thought of a moment. I never heard of a more improbable story told in a court of justice, and there is not a vestige of evidence to support it. If you

do not believe, therefore, this story, it appears to me, you must believe the story told by the witnesses.

Let us next see whether the story told by the four witnesses is corroborated by other circumstances; for there are no other witnesses as to the facts in question.

1. In the declarations of the pannels it is acknowledged that the watches on deck were precisely the same as those described by the witnesses, viz. that the captain, Strachan, and Dhura, formed one watch, and the mate, Smith, and Paterson, formed another; but that Smith having been ill, the cook took his place. It is also admitted that the captain's watch ceased at twelve, and that it was during the mate's watch the captain and Paterson were killed. These are material corroborations of the four witnesses; for if the pannels really meditated the deaths of those in question, the time to accomplish this was in the dead of night, and when *they* were on the watch.

The next circumstance is to be found in the second declaration of Heaman. He there acknowledges that there was not merely blood upon the deck, but also in the cabin and in the captain's bed, at least he admits the Maltese boy told him that there was, and that he desired the boy to wash the cabin as well as the deck, and to throw the captain's bed-clothes overboard. Now it is not likely that the mate would give such orders unless he believed the facts to be as stated by the boy; and this belief is a corroboration of the statement made by the

boy. But if the story told by the pannels had been true, there could only have been blood on the deck ; for, according to this story, the captain was not in the cabin after he was wounded ; while the facts of there being blood in the cabin and in the captain's bed are a confirmation of the murder as described by the Maltese boy. And when you find that the pannels divided the captain's watch and seals, body-clothes and trunks between them, it may be presumed they would have preserved his bed-clothes, probably the best in the vessel, unless there had been a good reason for putting them out of the way.

3. The depositions of the four witnesses, about their being obliged to take oaths of secrecy, receives some corroboration from the declarations of the pannels. It is there admitted that oaths were taken, although it is pretended that the whole crew joined in these oaths.

4. The depositions of the witnesses about the attempts of the mate to induce the crew to agree to the piracy before it took place are also corroborated by the admission in the declarations, that there were conversations among the crew about the practicability of such an event some time before it happened.

5. The admission by Gautier, in his declaration, that he assisted in putting the captain to death, was very forcibly dwelt upon by my Lord Advocate, and justly. This, in fact, imports an admission on the part of this pannel, that he was accessory to the captain's murder, and thereby strongly corroborates

the four witnesses. He also acknowledges that he assisted in throwing the dead bodies overboard; which is stated by all these witnesses; and he concurs with these witnesses too as to the persons who assisted him in this office.

Having thus shown you that the depositions of the four witnesses are corroborated in many essential particulars by the declarations of the pannels, I shall now proceed to take notice of a few of the observations that were made by Mr Maitland on the evidence of those four witnesses. His averment was, that the whole of their story as to the murders was a falsehood. Now, you are first to consider what possible interest those witnesses could have to accuse the pannels falsely of these murders. If it appeared necessary that they should accuse the pannels in order to save themselves, it might be supposed they did so. But it was not necessary in order to save themselves that they should accuse the pannels of murder. You heard me tell them, that whatever part they had in the crimes charged they ought to tell the truth, as, if they did so, they could not be harmed. Then what possible interest could they have to tell a false story? Truth is natural to man, where there is no inducement to tell a lie. Now, that four witnesses should combine together and tell a story totally false, without any cause, is exceedingly improbable; but it is still more so if you consider who these witnesses are. Two of them are Scotsmen, the third an Italian,

and the fourth a Maltese. That persons of different countries should lay their heads together, and concoct a false story merely for the purpose of getting these two persons hanged, appears to me to be as improbable a supposition as any which the ingenious gentleman has made in his very able defence.

Next, he stated that the public prosecutor assumed for these witnesses the character of perfect innocence, and that this character was assumed by the witnesses for themselves. There is here a mistake as to both suppositions. My Lord Advocate did not say they were excuseable in every thing they did, but that they had acted from force or fear. Again, as to the witnesses, they appeared to admit candidly every thing they did, which I doubt if they would have done if they had been more guilty. With regard to the appropriation and division of the booty, for instance, they explicitly acknowledge the facts. Some of them say they had dollars in their belts, and some in their trunks. This part of their conduct they neither defended nor palliated.

3. Mr. Maitland founded much upon the fact of the captain having disregarded the information Strachan gave him. But it may be both very true that Strachan told the captain of the conversation that was going on, and it may also be true that the captain did not give it credit. But perhaps the captain thought it best to affect discrediting the information ; or, at least, he only suspected Gautier,

for he said the Frenchman could not be a match for them all.

4. Mr Maitland alleged, that the mode of the murder, as described by the four witnesses, was improbable. It was unlikely, he said, an attempt should be made to put him to death in his bed with a musket. So far from this, I think that if such an intention was in contemplation, the mode chosen was the very best which could have been devised. The pannels chose the darkness of night for the purpose, and when they were themselves alone with Paterson on the watch. The instrument used, a musket or pistol, was surely the most effectual possible; and, indeed, the only thing to be wondered at is, that instant death did not ensue. It appears to me, that the story hangs very well together.

With regard to Paterson's death, it was said the account of it is improbable. It may be true, that there is some darkness as to the precise manner in which he was killed; but there is nothing improbable in the supposition, that there was an intention to kill him. The pannels had no reason to believe Paterson would join them. Nay, there is reason to believe that he refused to do so when solicited by the mate. If, therefore, the captain's death was premeditated, it was natural they should also resolve upon killing Paterson, as he might have assisted the captain. Indeed, whoever was on the watch would, in all probability, have gone

the way of Paterson. It is, however, possible, though not very probable, that it was not the original intention of the pannels to kill Paterson. Paterson, upon hearing the report of the musket, might have advanced towards the cabin to ascertain the cause, and then the pannels, supposing he was to assist the captain, might think it necessary to kill Paterson, to accomplish their object. But whether Paterson's death was premeditated or not, there is nothing improbable in the supposition that he was killed by the pannels.

As to the place where the captain was fired at, the Maltese boy says the captain was then in bed. I do not see any reason to doubt that he was in bed at the time that the musket was fired. The Maltese boy expressly swears it; and, in the declarations of the mate himself, you have the admission that the cabin was bloody, and that he ordered the bedding of the captain to be thrown overboard. So far from there being reason to suppose he was not then in the cabin, what I have mentioned corroborates the evidence of the Maltese boy, that he was in bed.

6. The pannels' counsel express surprise that the report of the gun or pistol did not awaken the crew. But, first, they were all probably fast asleep; and, next, they were in a different part of the ship. The Maltese boy, who heard it, was in the cabin—the crew were in the fore-castle—and it is not surprising that the report did not awaken them.

7. Mr Maitland considered the attempt at smoking Smith and Strachan to death as very improbable. As to the fact, you have it expressly sworn to by the whole four witnesses; and they all concur in the material circumstances respecting it. Is it probable that the whole could be a tale of their own invention? I think not. Mr Maitland said it was impossible to accomplish the object. But it is one thing whether it could be accomplished, and another whether it was attempted. As to the impossibility of doing it, it appears to me the story tells pretty well, of shutting, and, in a manner, sealing the doors and every crevice. The smoke must have found its way somewhere, and, though it had to pass the hold before it could get to the fore-castle, it appears a considerable quantity of smoke did get there. Whether it was really intended to kill, or merely to frighten Strachan and Smith, I cannot say, but it is clear the four witnesses believed that there was intention to kill.

Lastly, Mr Maitland founded a good deal upon the improbability of the pannels at the bar intimidating the rest of the crew; but the horrid scene of the murder of the captain and Paterson (to say nothing as to the attempt to smoke other two to death) would have struck a damp upon the hearts of bolder persons than those of the crew whom you saw in the witnesses'-box, none of whom, in point of corporeal or moral strength, could, perhaps, vie with the pannels, who apparently excel in both.

It is said the crew might have taken an opportunity to get the better of the pannels. As to this there is one fact which I observe, that they all slept together after the murder of the captain, first on deck, and then in the cabin. The reason probably was, that the pannels did not wish the four witnesses to have an opportunity of concerting any thing apart, and thus to prevent the very thing which Mr Maitland was surprised did not take place. Having no opportunity of meeting apart, they had not the means of concord, and were, in all probability, ignorant or distrustful of each other's intentions.

Having thus taken notice of the greater part of the objections which the ingenious counsel has urged to those four witnesses, as affecting the probability of their story, I do not conceive it will be necessary, at this hour, to detain you by entering into the discrepancies which, he says, are to be found in their testimonies. There may be a few, but they all relate to trivial circumstances; and, independent of the passage which was read from a book on the law of evidence, you must be all sensible, that discrepancies in small matters cannot materially affect the credibility of witnesses. Important circumstances always make a more distinct and permanent impression on the mind than trifling ones, and, if witnesses agree in the material facts, that is sufficient. Indeed, if you can believe, as is asserted by the counsel for the pannels, that these

four witnesses had laid their heads together to concert a false story, they would probably have been found to agree in the most minute matters.

I have now, gentlemen, taken a review of all the material circumstances of this case, and I am sorry that you have been detained so long. It is certainly my duty, as a Judge, to notice, not merely the unfavourable circumstances, but those also which operate in favour of the pannels; and if I could have found any of the latter description, I would have dwelt upon them with the utmost readiness; but, I am sorry to say, that the complexion of the case is bad, in whatever view it may be exhibited.

The piracy, I regret to say, is clearly proved; and, with regard to the murder, though the evidence is not so decidedly conclusive, yet I think that charge is also established. It is your province, however, to decide these questions; and it is not only your right, but my strong wish, that you should think and judge for yourselves. If I have expressed myself more strongly than I should have done, I pray you to excuse it, and to pay no regard to what I have said, except in so far as it accords with your own deliberate judgment. If you think that the crimes are not sufficiently proved, you will, of course, find so. If you think the guilt of the pannels is doubtful, you will give them the benefit of such doubt. But if you think the proof conclusive against them, in respect of both or either of the charges, by bringing in a verdict of guilty,

you will only discharge the part which every good juror should perform.

We can receive no *viva voce* verdict, and I would advise you to return a general verdict. If you find the pannels not guilty, find them so in general terms. If you think they are guilty, you should find them guilty of the crimes libelled. Remember also that this is Tuesday, and that you must date your verdict accordingly.

It being now half-past six o'clock in the morning of Tuesday the 27th, the Judge of the High Court of Admiralty

ORDAINS the assize instantly to enclose in a room adjoining, and to return their verdict in this place this day at half-past two o'clock afternoon.—Ordains the whole fifteen assizers then to attend each under the pains of law.—Continues the diet against the pannels till that time, and ordains them in the meantime to be carried back to prison.

JOHN CONNELL.

Curia Justiciaria Supremæ Curis Admiralitatis Scotiæ Tenta in Prætorio Burgi de Edinburgo vigesimo septimo diē mensis Novembris, Anno Millesimo octingentesimo et vigesimo primo per Honorabilem Virum Dominum Joannem Connell Militem, Advocatum, Judicem dictæ curiæ Sepremæ.

Curia legitimè affirmata.

Intra.—Peter Heaman, and François Gautiez, or Gautier, pannels,
Indicted and accused *ut in die precedenti.*
Present the counsel for the crown, and for the pannels as in last sederunt.

The persons who passed upon the assize of the pannels having been called over, all answered to their names, and gave in the following

VERDICT.

At Edinburgh, the twenty-seventh day of November, one thousand eight hundred and twenty-one years.

The above assize having enclosed, made choice of the said William Gordon to be their chancellor, and of the said William Murdoch to be their clerk; and having considered the criminal libel raised and

pursued at the instance of Sir William Rae of St Catherine's, Baronet, his Majesty's Advocate, for his Majesty's interest, and Alexander Kidd, Procurator-fiscal of the High Court of Admiralty, against Peter Heaman and François Gautiez, or Gautier, both present prisoners in the tolbooth of Edinburgh, pannels, the interlocutor on the relevancy of the libel pronounced by the Judge of the High Court of Admiralty, and the evidence adduced in proof of the libel, they all, in one voice, FIND the said Peter Heaman and François Gautiez, or Gautier, guilty of the crimes libelled; in witness whereof their said chancellor and clerk have subscribed these presents, consisting of this and the preceding page, in their name, and by their appointment, place and date foresaid.

WILLIAM GORDON, Chancellor.

WILL. MURDOCH, Clerk.

After the verdict had been recorded,

The Lord Advocate moved for the judgment of the court, when the Honourable Judge addressed the pannels as follows :

Peter Heaman and François Gautiez, after a long trial, and an able defence on the part of your counsel, you have been convicted, by the unanimous verdict of a jury, of the crimes of murder and piracy; and it is now my painful duty to announce to you the punishment which our law has prescrib-

ed for such offences. Each of these crimes is of a very atrocious nature, and severely punished by the laws of this and every other civilized country, not excepting those of which you are natives; but when committed together by the same persons, as in your cases, they mark as great depravity on the part of the perpetrators, and are as dangerous in their nature and consequences, as any offences which are to be found in our criminal code. Not only are the crimes very heinous, but they have been committed by you both under circumstances of peculiar aggravation. You were received on board of the vessel, which became afterwards your prey, on the faith of an engagement which imported a submission to the master, and a discharge of certain duties necessary for the carrying the vessel to her destined port; but, instead of discharging those duties, you basely entered into a plot for murdering two of the crew, one of them the very master whom you had engaged to serve, and afterwards for running away with the vessel. The master you put to death in cold blood, while asleep and in bed, or, at least, you there gave him that mortal wound which enabled you immediately afterwards to accomplish your purpose; and the other mariner you in a similar insidious and cowardly manner bereft of his life while faithfully discharging his duty as helmsman. You then carried off the vessel, with the intention of appropriating her valuable cargo to

your own uses ; but Providence arrested you in your bloody career, and prompted you to land upon these shores, where, although the innocent find an asylum, the guilty are sure to meet with detection and punishment.

If the law of this country permitted a punishment greater than death to be imposed in any case, that punishment would be inflicted upon you ; but although barbarians sometimes are to be found upon our shores, there is nothing barbarous in our laws. The principle of our criminal code is example, not recrimination.

While I announce to you, therefore, the sentence of death, I have to intimate to you, at the same time, that this sentence will, in all human probability, be forthwith put into execution. To the misguided and penitent offender the door of mercy is sometimes opened, but against the pirate and the murderer it will be for ever shut. While, therefore, your fate is finally and irretrievably fixed in this world, I would exhort you to devote the short time you have to live in preparation for another. What prospect of mercy there may be for you from the Almighty, it is not for me to say ; but sure I am there can be none, unless by a speedy, by a sincere, and by a steady repentance. Delay not for a moment, therefore, this work of repentance ; for, let me again repeat, it is only by such a line of conduct that you can escape the Di-

vine vengeance for the atrocious crimes of which you have been convicted, as well as for any other sins of which you have been guilty.

The following sentence, having been duly entered in the record, was then pronounced :

The Judge of the High Court of Admiralty having considered the foregoing verdict of assize, whereby the saids Peter Heaman and François Gautiez, or Gautier, are found guilty of the crimes libelled, he, in respect thereof, decerns and adjudges the saids Peter Heaman and François Gautiez, or Gautier, to be carried from the bar back to the tolbooth of Edinburgh, therein to be detained, and to be fed on bread and water only, in terms of an act passed in the twenty-fifth year of the reign of his Majesty King George the Second, entituled, " An act for preventing the horrid Crime " of Murder," until the second Wednesday of January next to come, being the ninth day of the said month of January ; and upon that day, betwixt the hours of nine o'clock in the morning and twelve o'clock noon, to be taken forth of the said tolbooth to the sands of Leith, within flood-mark, and then and there to be hanged by the neck, upon a gibbet, by the hands of the common executioner, until they be dead, and their bodies thereafter to be delivered to Dr Alexander Monro,

professor of anatomy in the university of Edinburgh, to be by him publicly dissected and anatomized, in terms of the said act. And ordains all their heritable goods and gear to be escheat and inbrought to his Majesty's use—WHICH IS PRONOUNCED FOR DOOM !

JOHN CONNELL.

THE END.

~~Private~~
Report of the trial of Peter H
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