

ART. XVI.—*A Journie to Carlyle and Penrith in 1731.*
Transcribed and edited by W. A. J. PREVOST.

Read at Carlisle, April 15th, 1961.

I. INTRODUCTION.

IN August 1731 Sir John Clerk, a Scottish baronet, partly for his health and partly to see his son, who was at school at Lowther, made an excursion to Cumberland and Westmorland. His MS. account of the expedition is now among the Clerk of Penicuik papers in Edinburgh Record Office (Clerk of Penicuik MSS. Box 82/2109). It is a daily record of the tour, written by himself, and, in his own words, "as all the observations here are taken in a haste and written immediately after, so it happens that there are many escapes and interlineations." The baronet, however, belittles himself, for his seventy-one pages of manuscript are, on the whole, neatly written and legible.

Sir John Clerk, the second baronet, was born in 1676. His boyhood was spent in his father's house at Penicuik, which in due course he left to continue his education at the University of Glasgow and then, in 1794, to sail overseas to study civil law at Leyden. He remained on the continent for five years, travelling as far south as Rome and missing no opportunities of learning music, drawing, languages, and in particular the history of the Roman Empire. He became a scholar with many varied interests and a man with an expert knowledge of the law. He was admitted an advocate in 1700.

Through his first marriage, John Clerk obtained an introduction to the second Duke of Queensberry, with whom and with the third Duke Clerk remained until his death on terms of close friendship. The Duke became his patron, while his brother-in-law, the Earl of Galloway,

obtained for him a seat in the Scottish Parliament as representative of the Burgh of Whithorn. The young man's industry and ability were soon recognised and Clerk was nominated to be one of the Commissioners for the Treaty of Union between England and Scotland and was one of the forty-five members chosen to represent Scotland in the first parliament of Great Britain in 1707. As a reward for his work he was appointed one of the five Barons of the Exchequer in Scotland, a satisfactory arrangement for Clerk as the Court had only four sessions during the year and few of them exceeded three weeks. This allowed Baron Clerk, as he was then styled, to follow his own inclinations and to improve and look after his father's estates. To these he succeeded on his father's death in 1722 and thus became the second baronet. In due course Baron Sir John went to live at Penicuik.

Sir John lived the life of a country gentleman, whose chief interest was agriculture. His advice on building was much sought after; he wrote memoranda on the improvement of woods and forests and much else besides. He spent his leisure time studying the classics and was vastly interested in the Roman occupation of Great Britain. He wrote "dissertations" on various subjects and recorded for the benefit of his family his numerous trips and journeys to different parts of the country. Finally, before he died in 1755, the Baron completed his *Memoirs*, a most complete story of his life and work which was published by the Scottish History Society in 1892, special permission to do this having been granted by the then head of the family, for Sir John had made it quite clear that his writings were not intended for publication.

From these *Memoirs*, and other printed sources, an authenticated history of the Clerk family is available but the story is not complete without reference to the fact that the Clerk family's connection with Penicuik, which began in 1654, still continues and their muniments, journals and family papers of all descriptions dating from

their purchase of the property were, until a few years ago, in the keeping of Sir John Dutton Clerk, the tenth baronet. This collection has now been deposited in the Record Office in Edinburgh and an inventory of all the manuscripts completed. This inventory lists 6,181 items, of which many are bundles, and all of which, with very few exceptions, have never before been published. In the rare category is Sir John's "Journie to Whitehaven" in 1739, which was printed, in the form of a letter to Roger Gale, by J. Nichols in *Bibliotheca Topographica Britannica* and again by the Surtees Society in *Stukeley's Diaries and Letters*. The *Bibliotheca* and the Stukeley Correspondence both contain letters from Clerk to Gale, the originals of which are, of course, not among Sir John's papers, though there is a copy of at least one. This "copie of a letter to Roger Gale", written by Sir John on his return from his "Trip to Carlyle" in 1734, is limited to a description of the Roman station at Netherby and to matters Roman. It differs slightly from the printed version.

The 1731 trip began with Sir John's leaving Penicuik, his home, on Saturday, 14 August. He broke his journey at Dumcrieff near Moffat, leaving there for Carlisle on 16 August. The first fourteen pages of the journey describe this part of his tour, and are mainly concerned with his visit to the Roman camp at Middlebie, his purchase of three Roman altars there, and his observations on the inscriptions. Leaving Carlisle on 17 August, he reached Penrith that afternoon, and stayed there four nights.

Sir John wasted no time, for not only did he meet his son George and visit his school at Lowther,¹ but also went to see Lowther Hall and its policies, Eden Hall, Ullswater

¹ In his *Memoirs* for 1730 Sir John writes: "This year, upon hearing much said of the reputation of the school of Louder, three or four miles south of Penrith, in England, under the direction of one Mr Wilkinsone, I sent my son George there, and boarded him with the Master." Sir John advised George to be kind to his companions, as he could not tell what they might be able to do for him thereafter. He also urged him to learn the English language, in which he himself regretted his deficiency.

and Penrith, and, with the assistance of Lord Lonsdale's gamekeeper, managed to shoot three and a half brace of "grey game". His interest in everything he saw is evident and, though on this occasion his antiquarian interests predominate, he has much to say about forestry, architecture, agriculture, natural history, country lore and county families.

Sir John returned to Carlisle on Saturday, 21 August, "when about six in the evening we had a view of the entry of the judges who came there to hold the Assizes." Pages 41-67 of the MS. record his attendances at the Courts, his comments on procedure, the ceremonial, a ball at the Castle, and his meeting the two judges and some of the leading men of the county. His observations on evidence and the possible sentencing of the innocent to death are topical and used today by those who favour the abolition of capital punishment.

Sir John returned to Dumcrieff on Wednesday, 25 August, and the journal comes to an end at Penicuik on 2 September.

I have made no alterations in spelling except that I have modernised Sir John's use of "u" for "w", as in "tuo". I have also expanded the ampersand sign into "and", and filled out such contractions as "Sr" into "Sir". Sir John's spelling is inconsistent, but his variations are clear enough. Thus he used "fields" and "felds" indiscriminately, and likewise with some Latin words. I have modernised his use of capital letters, and introduced my own punctuation.

II. THE JOURNAL.

The occasion of this journie was partly for health and partly to see my second sone George at the school of Louder about three miles from Penrith with one Mr Wilkinsone,² a very fit man for his business in all respects.

² The Rev. William Wilkinson, a native of Crosby Ravensworth, graduated from the Queen's College, Oxford, in 1712, and was ordained in 1716. He was headmaster of Lord Lonsdale's school at Lowther, an academy

I left my owne house Pennycuik on Saturday the 14 of Agust about eight in companie of Mr Clerk, a friend of mine, with two servants. I travell'd in a chaise with two horses and had a spare horse led by one of my servants . . .

[*Here I have omitted Sir John's account of the first part of his tour, including his visit to Middlebie, down to his setting out from Ecclesfechan for Carlisle. W.A.J.P.*]

I proceeded from Echelfechen to Carlyle, where I arrived in four hours, it being about twelve or fourteen miles distant. The way is in many places stony by reasons of the Roman high way. However, it is tollerable for either coach or chaise.

The march line between Scotland and England is about eight miles from Echelfechen at a little brook under Ailison Bank and about a mile from a gentleman's seat of the name of Johnstone called Graitney.³ About a mile on the south side of Ailison Bank runs the River Esk into Solway Frith and here we pass very safely at low water. The tide flows about 8 ft. at this place and runs about four miles up the river. However, the passage is for the most part safe except when a great land flood meets with a stream tide, but there is a boat about four miles above the place where we pass'd so that one way or other passengers are never interrupted in their journie.

Both on the English and Scotch side the farm houses are of clay without any mixture of stone, and these stand the weather pretty well.

There are a great many large commons on the way on both sides and these vastly improvable. These commons are covered with small short ling or heather.

About a mile before we come to Carlyle, under a little

"for none but gentlemen's sons" (see G.E.C. viii 132), from 26 December 1715 until 29 March 1739, when he became vicar of Lazonby, holding that living until his death in 1751. He was also vicar of Bromfield, but, it is to be feared, neglected both parishes. See CW2 xlii 128.

³ For many years the Graitney estate belonged to the Johnstone family and *circa* 1700 the head of it was Col. Johnstone, who built Graitney Hall in 1710. In 1793 the Hall was turned into an inn, and here many Gretna marriages took place.

town by a brook, are the remains of Hadriani Vallum, and above where the little town stands are some imperfect remains of the great stone wall called Severi Vallum which runs from the sea on the east side of Newcastle to Bulness on the west side of Carlyle, about eighty miles in length.

The stone wall was, according to Beda, 12 ft. high and 8 ft. thick, but as to this and the other valla which made up the antient pretentura I must refer to another journal of mine written about seven years agoe when I visited this wall in companie of my sone James, then a boy of about fifteen years of age, my cousin Dausington⁴ and Alex. Gordon, an antiquary.

I stayed all night at Carlyle and next day about eleven sett out for Penrith where we arrived in four houres, the distance from Carlyle being sixteen miles along the Roman road.

By the way I observed but little good ground, yet at a small distance on the right hand there lay a fine country all inclosed after the English way. This is commonly by three, four or five acres. The fence is a little bank with a ditch on both sides. The bank is fitted up with all such kinds of trees [which,] as it seems, were readiest at hand, such as thorns, hasels, ashes, plains, bryers, whins. These inclosures, tho' they are not perfectly fencible, yet they beutify the country and keep the grounds warm and distinguished in their marches.

There are few or no gentlemen's seats between Carlyle and Penrith, and on the left hand for the most part there are only wild moors and commons, particularly what they call the felds of Penrith where in some places there is plenty of grey game, hares, rabbits and foxes.

The farm houses and others by the way are built of a red kind of hard free stone and their covers are of the same kind in place of sclaits. These are about 1 in. $\frac{1}{2}$ thick and about 1 ft. $\frac{1}{2}$ square or more. They make a heavy roof and yet the timber does not seem either thick or very

⁴ Andrew Brown of Dolphinton, Sir John's cousin german.

PLATE I



FIG. 1



FIG. 2

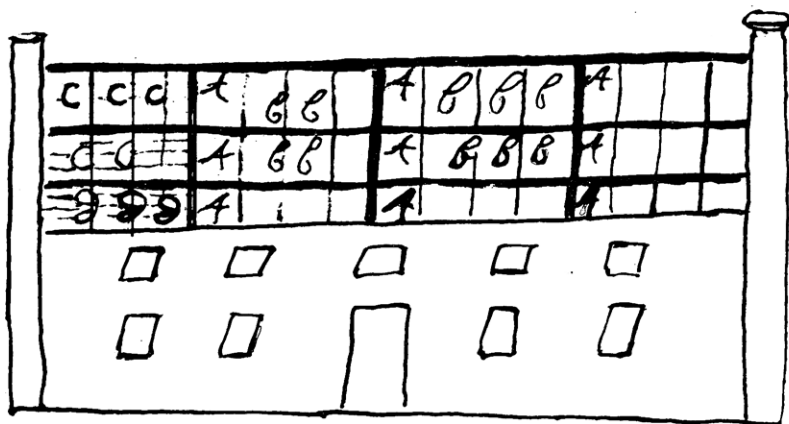


FIG. 3

strong. This way of timbering a house may be practised with us in a way much cheaper than what we use. This is the form of it.

See Plate I. Fig. 3.

A A etc are joysts, commonly of oak, about 8 in. square. b b etc are trees of the same bigness which go across the great joysts from one end of the house to the other. c c c are small pieces of timber upon which the covering stones are hung as we doe the sclaits by one hole or two upon iron or oak pins. d d d are upsets of about 3 in. broad and 2 in. thick upon which they fix the small sparrs on which the covering stones hang, and these upsets seldom reach from the head of the wall to the top of the roof, but from one of the great beams to another, I mean the beams which run from one end of the house to the other, and are seldom above two or three on a side, so that for instance a roof of 36 ft. in length may be made of eighteen trees, seven or eight for the great joysts and the rest for the cross beams with some small timber for lath, whereas by our way a roof of 36 ft. in length wou'd take near to fifty trees for the joysts and above a hundred dales.⁵

This evening about five I sent one of my servants for my sone George to Louder. He came and lookt very well, was growen something taller and stronger, but had his arm bound up upon a fall he had received some days before. A little after him came Mr Wilkinsone himself whom I had never seen before, my sone having been sent to his school on the recommendation of one Mr Peningtoun, an English gentleman, son of Sir Joseph Peningtoun,⁶ who had been well educated at the school of Louder. Mr Wilkinsone appeared to me to be a most polite, well bred man as ever I had seen. He spoke very well of George and seem'd to have a great likeing for him.

⁵ Deals.

⁶ Sir Joseph Pennington, second baronet (1677-1744), succeeded to the title in 1730. He married in 1706 Margaret, fourth daughter of John first Viscount Lonsdale. Their eldest son William died unmarried in 1734.

He sup'd with me and about ten wou'd needs return to Louder after he had in a most obligeing manner invited me to dine at his house next day. George continued with me all night and the next day I rode to Louder, being the 18 instant.

Here on the side of Emote River I saw a round piece of ground environ'd with a ditch which is called K. Arthur's table. In old times it has been a place for tournaments as some think. In my way to Louder I passed through very fine grounds well inclosed with hedges, particularly these near my Lord Lansdale's⁷ house which is but about 500 yds. from Mr Wilkinsone's. After I alighted I was caried to a little room where a table was covered for four or five only. Mrs Wilkinsone⁸ made me very welcome and seem'd to be a most discreet woman about thirty years of age but very corpulent. She spoke very well of George and seem'd to be no less pleased with him than his master. We had half a dussan of good dishes of meat, a botle of French wine and a botle of birtch wine exceeding fine. I saw here some of the schollars, particularly the second son of Sir Joseph Pennington⁹ and one Mr Ramenden,¹⁰ both nephews of my Ld Lansdale.

In the afternoon Mr Wilkinsone took horse with us and we went to visit my Lord Lansdale's house and parcks which, tho' destitut of artificial beuties, have a great many entertaining natural ones, most of which I shall here mention, but first to begine with the seat itself. It has been a very large building of about 150 ft. in front but

⁷ Henry Lowther, third Viscount Lonsdale (1694-1751), succeeded his elder brother in 1713. Took an active part against the Jacobites in 1715, was a Lord of the Bedchamber 1717/27, Constable of the Tower of London 1726/31, Lord Privy Seal 1733/35, Lord Lieutenant of Cumberland and Westmorland 1738/51. G.E.C. viii 133 quotes Lord Egmont as noting in 1735 that Lord Lonsdale "dislikes the management of public affairs".

⁸ Mrs Wilkinson was Mary, daughter of Ambrose Nicolson of Penrith, where she was baptised 3 October 1695 — so she was about 36 when Sir John met her. She married Mr Wilkinson at Barton in 1717 and died in 1755.

⁹ John Pennington, second son of Sir Joseph, whom he succeeded as third baronet in 1744. He was M.P. for Cumberland 1745/68, and Colonel of the Cumberland Militia during the 1745 rising.

¹⁰ One of the sons of Sir William Ramsden, second baronet, who married in 1695 Elizabeth, daughter of John, first Viscount Lonsdale, and sister of Lady Pennington (see footnote 6).

was accidentally burnt down about sixteen years ago.¹¹ The stuart, it seems, thought it was needless to sweep the chimnies but to let them take fire and clean themselves. By this practise a funnel¹² which was near to some joysts, or which burst with the violence of the heat, set the whole house in fire which in less than two houres was burn'd to the ground. There perished in this fire a great dale of pictures and very fine furniture, particularely the paintings in the great hall by Vario which had cost above £1,000.^{12a} I speak here only of the body of the house for the four wings were preserved. These stand two and two on each side of the house, two very near the house, and indeed so near that they never ought to have been there, and two at proper distances, in one of which my Lord lives and in another he keeps his horses which are very numerous of all kinds, particularly running horses.

Here I saw two very fine Arabian horses for breed. The mares are in his parcks and are all of the English kind or perhaps descended from Arabians. This building where the horses are kept may deserve the name of a very large and good house as is likeways that where my Lord lives, for each of them seem'd to me about a 100 ft. in front. His Lordship was from home but his stuart entertain'd us with a bottle of Burgundy which was excellent. There is kept in his Lordship's closet a small little brass statue of about 8 in. high, found at some Roman station. It is but clumsey in its form and has wings which make me belive it was a figure design'd for the god Mercury, tho' some antiquarians call it the god

¹¹ In his diary for 24 September 1694 Thoresby refers to Lowther Hall as then being built by Sir John Lowther (later first Viscount Lonsdale), "a palace like fabric, as bears the bell away from all" (*Diary* i 274). It was burnt down in 1718, and on 14 March of that year it was reported: "The beautiful residence of Lord Lonsdale in Westmoreland has been entirely destroyed by fire with all its contents. (*H.M.C.*, Polwarth MSS. i 463.)

¹² Funnel, the flue of a chimney, from the fireplace to the top of the room.

^{12a} Antonio Verrio (1639-1707), Italian painter, who was invited to England by Charles II, and was employed in decorating Windsor Castle, for which "performance" he was paid £7,000.

Terminus. It is of so indifferent a shape that it has nothing to recommend it but its antiquity. I perceived on his Lordship's table a good many books of husbandry and I understood from Mr Wilkinsone that My Lord follows these studies with great application both in their speculative and practical parts.

Form of Louder Hall,
the seat of my Ld Lansdale.

See Plate II. Fig. 4.

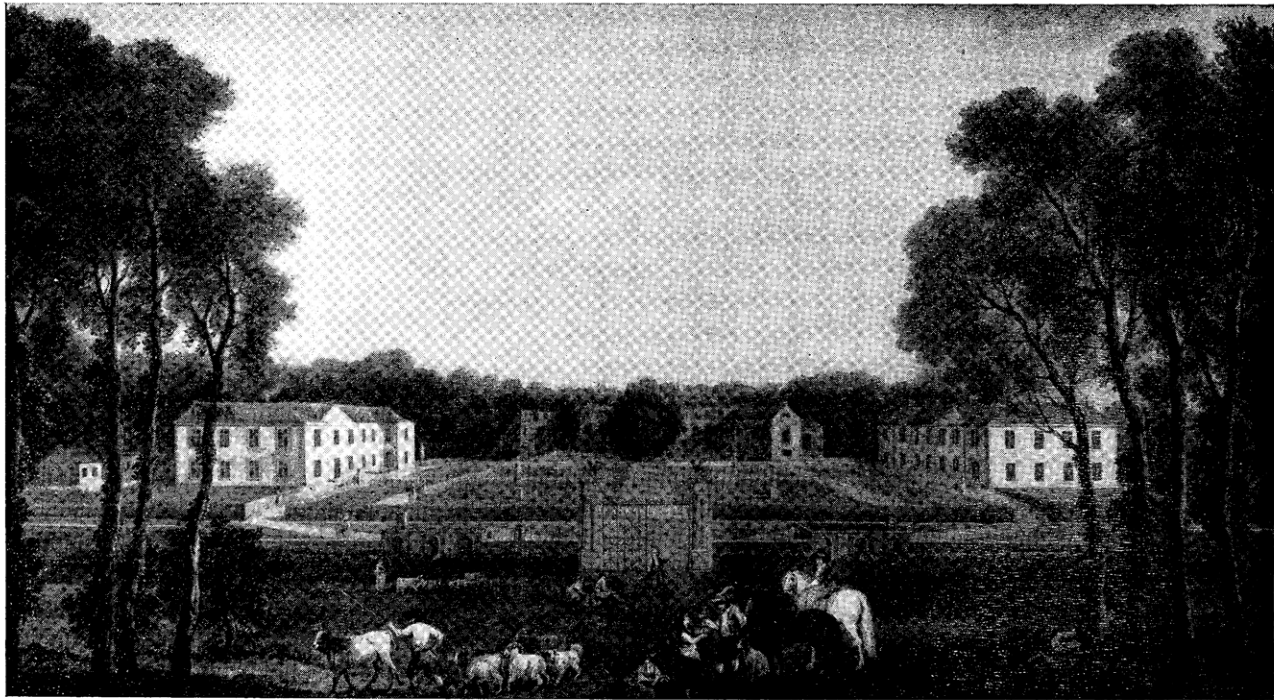
A is the body of the house burnt down. *B* and *C* are wings standing which ought never to have been there, because eclipsing a part of the front. *D* is the wing for stables. *E* the wing where my Lord lives. The courts are full of statues of all kinds. There has been a kind of a portico at the front of the body of the houses of the Corinthian order but the pillars of so bad proportions that 'tis probable, tho' the house had not been burnt down, these had been made of another fashion. I doubt if the height be much above six diameters and the capitals are monstrous.

The jetings¹³ on the wings or office houses, particularly those in the middle of each, finish in a timpany and are pretty handsome buildings. I speak of the outmost wings, for those which stand near to the house are every way ridiculouse, but whatever defects have been in the architecture of the house the whole has been very large and convenient.

On the east side of the house are large plantations of all kinds of timber, and on the west side are the gardens which have more of nature than art in them. The standard ewes and hedge ewes are very large and handsome, some being between 30 and 40 ft. high.

On the west side of the garden is a wilderness but what has lost much of its beuty by the height of the trees. Here

¹³ Jetting, jutting out part, projection.



LOWTHER HALL AS SIR JOHN CLERK SAW IT.
School of Zuccarelli.

facing p. 212.

From the picture at Askham Hall, reproduced by the kindness of the Earl of Lonsdale.
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PLATE II

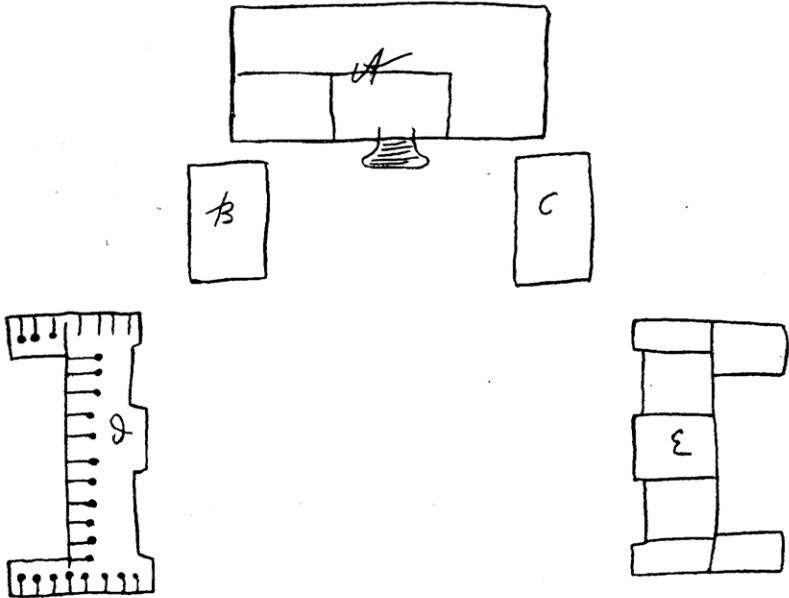


FIG. 4

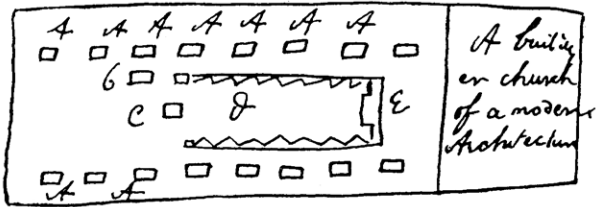


FIG. 5



FIG. 6

are abundance of squirrs which jump from tree to tree in a very merry way.

On the west side of this wilderness is a long walk which runs along the bank of a height and overlooks the windings of Louder Water and a very beutifull country diversified with hills and valies covered with wood.

At the back of the gardens on the south side are my Lord's parcks which are encompassed with a wall of dry stones about 10 ft. high and about seven or eight miles round. There are several divisions in this parck and above a thousand head of red and fellow deer. Here is likeways a fine breed of horses in several divisions and I think I counted above twenty mares and foals of this year and about sixty others. I observed little distinction made as to the keeping of these parcks, for horses, deer and sheep seem'd to be going together. As for black cattle they are kept in inclosures and not in the parcks.

These parcks are the finest grounds I ever saw in my life. They lye for the most part high and are intermixed with very fine pieces of wood. The whole grounds lye upon a lyme stone which is seldom above a foot under the surface and crops out in long ranges in many places. The trees here are very luxuriant, for even the hazel bushes which are in great plenty are frequently 20 or 30 ft. high.

We rode about these grounds for near three houres and amongst other things saw two large ponds on the higher grounds which, as I was told, were well stock'd with wild ducks, picke and pearch. Near to these ponds is a large summer house made for a musick or a dancing room, and here we have a fine prospect of a noble country seven miles round. After seeing all these natural and artificial beuties we were caried down to the chapel or parish church of Louder. The parson, one Mr Holms,¹⁴ is an old man about seventy and was lying lame of a hurt he

¹⁴ The Rev. Richard Holme, born *circa* 1656, died 1738. He was vicar of Aspatria 1686/95, Rector of Lowther 1695-1738, Rector of Aikton 1707-1738, and Prebendary of Carlisle.

had got by rising in his sleep but I was told that Mr Wilkinsone, who is in orders, used to preach for him every Sabbath day. This church is very handsome, being covered in the middle with a cupola, but of small dimensions. The family of Louder or Landsdale have within the church a handsome burial place where there are three marble monuments. By an inscription on the tomb of the last Earl it seems he was descended of thirty Esquires and Knights of the name of Louder, for he himself was nobilitated by K. William.

The present Earl is reckon'd a very fine gentleman. He was lately Governor of the Tower of London but being much inclin'd to a country life he has given up his office. When I was at his seat of Louder Halls he was gone to the Yorkshire races and had won the King's Plate at which there was great rejoycing in the family.

The house where Mr Wilkinsone stays and keeps school is a large building containing two great halls and twenty-two rooms for schollars. It was originally intended for a manufactory, but that failling, the late Ld Landsdale turn'd it to a manufactory for youth and endowed it with £100 sterling yearly, besides the profite of the school which is commonly £12 yearly for board and two guineas as a complement about Christmas to the master. There are seldom here above thirty boys, for the master is allowed no doctor or helper. Here boys are educated in Greek and Latine for the university and are commonly eighteen years of age before they leave the school.

At night Mr Wilkinsone wou'd have gone with me to Penrith after having invited me in a very oblidging manner to stay at his house, but I thought fit to refuse both his compliments and only obtain'd leave for George to stay with me two or three days, and got My Lord's game keeper, who is a German, to heyc¹⁵ with me next morning to go a shooting on the felds of Penrith.

I forgot here to mention that the first day I came to

¹⁵ To promise or engage. A tryst.

Penrith I visited the church which they had lately built and find it to be a very neat building, the middle part supported with pillars of about 20 ft. high of one stone. These pillars and all the stones of this fabrick are got in the felds of Penrith about half a mile from the town and on a hill where they have a light house to give warning to the country about of any distress. This light house may be seen almost ten miles round and is of this shape, all of stone. *See Plate I. Fig. 1.*

It may be about 30 or 40 ft. high but I contented myself to see it at 200 or 300 yds. distance.

The church of Penrith is very handsomely adorn'd with pews all of one shape, done of very fine old oake from the E. of Thanet's¹⁶ woods in Whinfield Parck. At the door of the church on the north west side there are two large stones standing with old figures upon them but of a very Gothick shape. The stones are about 12 ft. high and distant about 10 ft. between where, as they suppose, lys buried a giant of a very large body. The figure of the monument is this.

See Plate I. Fig. 2.

On the west side of Penrith, about 200 yds. from the town, there is a pretty large castle but ruinous which I was told belonged to King Richard the 3d and was not inhabited since his days.

I likewise took a little time to consider the town of Penrith it self which is a good mercat town about twice as big as Dalkeith in Scotland and much better built. There are here several publick inns, particularly three very large ones about three or four stories high and of hewen stone, especially towards the street. I lodged at the post house in one Mr Richardsons's¹⁷ which belongs in

¹⁶ Sackville Tufton, seventh earl of Thanet (1688-1753), M.P. for Appleby 1722/29, Hereditary Sheriff of Westmorland. Succeeded to the title in 1729.

¹⁷ George Wilkinson, innholder of Penrith, who died in 1723, married Dorothy Nelson. She was postmistress of Penrith and married, secondly, William Richardson, who was appointed postmaster in 1725. He was succeeded in 1744 by Thomas Richardson. I am grateful to the Records Department of the General Post Office for this information.

property to Mr Wilkinsone and lately built. I am in some doubt if this house can stand long, for the front stands on six pillars of one stone, with an architrave and frize of wood, so that when the wood decays the great weight of stone above will bring down the front.

Near to this house lives one Thomas Smith, a merchant,¹⁸ who had been always very cevil to George and was so to me.

On Thursday the 19 about ten I took horse and went a shooting with my Ld Landsdale's gamekeeper to the felds of Penrith. We rode directly north about a mile east from the high road to Carlyle. About 2 miles distant from Penrith we saw a covie of moor fowl which in this country and through all the north of England they call grouse. We had no opportunity to shoot at them but about a mile farther, on a little hill covered with thick and high ling or hather mixed with whins or fuze, we saw above twenty of the grey game and killed seven of them. I cou'd have kill'd a great many more of them but being a stranger I was unwilling to spoile the game. Here my Ld Landsdale goes a shooting sometimes and lately killed eleven as the keeper told me. No body is here allowed to hunt except gentlemen of estates and these are very few who care for sport. They are not allowed to keep fowlers as in Scotland, so that the game is generally speaking very well preserved.

We had hunted north by the high felds and returned by the low grounds about half a mile from the River Eden or Ifuna. This river rises about ten miles further up in the old Stanmore, famouse in King Malcolm Kenmore's time as the boundary between Scotland and England, where there was a cross erected. It is a large river. It enters Solway Frith at Carlyle and abounds very much with salmon of all dimensions. These are now caried to London in three or four days by laid horses and yeald a considerable revenue to the proprietors of the fishings.

¹⁸ Mr Thomas Smith, mercer, "an householder", was buried at Penrith 2 July 1755.

On the east side of Penrith, across the fields three miles and on the side of the aforsaid river, is Eden Hall, the seat of Sir Christopher Musgrave,¹⁹ a gentleman of an antient family and about £2,200 sterling of yearly rent. From this family is descended another antient family, to wit that of Sir Richard Musgrave²⁰ who is at present Lord High Sheriff of Cumberland, of whom more is to be spoken hereafter. The surname of Musgrave is as old as the Saxon times and comes from the office of Markgrave or Marquise, keeper of marches.²¹ The house of Eden Hall is very large but not regular and the family, I am told, is proportionable to the house for he has four sones and seven daughters. His grounds are divided by inclosures on the banks of the river where I saw plenty of rich pasturage and fine corns just a reaping.

We crossed over to the east side of the river and, riding about two miles up, we crossed again and came to Whinfield Parck or Forrest which belongs to the Earl of Thanet. This forrest is encompassed with a wall, about 4 ft. high only in most places, so that the deer which are numerous within it are for the most part every night in the neighbouring corns, but the Earl has a right of forrestry which keeps him from being lyable to repair damages. All that the neighbours about it [can] doe is to keep dogs to hound them off and watch their corns in the night time, but they dare not kill any of them under very severe penalties. Sir Christopher Musgrave's house lys within a mile of this forrest and is frequently trubled with visits from the deer, for tho' he has some pretty high walls, yet most of his grounds lye exposed.

The soyle of this forrest is hard and in some places inclinable to a marle, but be this ground what it will, it

¹⁹ Fifth baronet. Born 1688, succeeded to the title in 1704, M.P. for Carlisle 1713/15, and for Cumberland 1722/27. Died 1736.

²⁰ Of Hayton Castle, fourth baronet became Sheriff of Cumberland on 14 December 1730. He married in 1724 Anne, daughter of John Hylton of Hylton Castle, co. Durham, and sister of Baron Hylton (see footnote 31). He died on 5 October 1739 aged 38.

²¹ Sir John's derivation of the surname of Musgrave is incorrect. The family derived their name from Musgrave in Westmorland.

has nourished up some of the largest oakes I ever saw in any country, for there are hundreds to be seen here above 12 ft. about and 60 or 70 ft. high as streight as an arrow. In one place there is a famouse old oake which I measured to be about 38 ft. round. It is rotten in the midle and will contain seven or eight men. It is standing near to 40 ft. high but is white and dozed²² except at one side where it lives and caries leaves. I am a little diffculted to judge whether Wallace's Tree in the Torewood²³ between Stirling and Falkirk or it be the biggest.

In the midle of the forrest is a hall with a room or two and a hunter or game keeper's lodge where my Lord Thanet comes to hunt the stag or sometimes to shoot the grey game which are in plenty here. In the hall of the lodge I was shoven a pair of large stag horns which had been got in the hart of an oak tree, together with two clasps of iron by which they had been fixed. The tradition about these horns is that they belonged to a hart which had been chased from this forrest and had run into Scotland as fare as the Castle of Douglass which is about 70 miles off, that it was chased by a grey hound all the way called Hercules, that both hart and dog return'd again in a full chase to the forrest and that in jumping the wall both dyed with fatigue. Hence for many ages this verse was knowen and repeated always at telling the story.

*Hercules kill'd Hart of Grace
And Hart of Grace kill'd Hercules.*

The story adds that the horns of this hart were fixed with iron hooks between the branches of a growing oak which in time inclosed and covered them up. This is a tradition not ill founded for certainly the horns had been affixed to a growing oak and that they had belonged to a very remarkable hart in those days, and there is nothing

²² *i.e.* unsound.

²³ Torwood Forest, notable in history for having given shelter to Sir William Wallace after his defeat at Falkirk by the English.

more common than for a hart to leave the forrest for many miles on a chace and to return again.

Near to the lodge aforementioned there are about seven or eight aicres covered with very fine oaks, large and streight. Their number is about 4,000 as I was told and they are valeued at £11,000 sterling which is one with another between £2 and £3, but I saw severals valeued at £20 and they are actually numbered in order to be sold. That is, there is a square piece of bark cut off each tree and a number cut into the wood so that there can be no mistake in the computation. These oaks are intended for the fleet and I saw some of them cut into large planks in order to be caried to Whitehaven by land or to Carlyle river.

On these high oaks are several nests of the osprey or sea eagle which lives only on fish. They come here only to nestle and generally choise a tree which is dead and without leaves, standing alone in the forrest. I saw three of these nests and two of the eagles which the Earl was to send to the Duke of Argyle as a present. This fowl is of bigness between a gosehauck and an eagle and is finely feathered with brown and white coloures in the breast. The back is brown like that of a haucke. The head, eyes and talons are like those of an eagle.

All the higher grounds of this forrest are fill'd with birtch trees of a vast hight.

I was shoven two wonderfull effects of the thunder which hapned both in this country and in Scotland on Saturday the 7 of Agust. It came down upon two very large oaks of about 70 ft. in height and in one of them cut out a piece of about an inch square in a streight line without doing any more mischief. In another oak it began at the top and, in a spiral line by three turns about the tree, cut out such another piece, entering some yards into the ground as I my self made trial of. This tree was likeways no otherways damaged.

There is in this forrest very good grass, a prodigious

rich and deep soil in some places, especially where the large oaks grow, and in other places it is dry and rocky, especially where the birtch woods are. Most of it is covered with tall heather and ferns or brakens near 4 ft. high and here it is where the grey game frequents. It is hard to tell how many head of deer are kept here but I saw many, both of the red and fellow kind.

The Earl of Thanet lives himself at the distance of four miles in the Castle of Aplebey and has a great estate in this country. Aplebey was by Romans called Abalaba.

This forrest of Whinfield is distant from Penrith about three miles. I caused my Lord Landsdale's game keeper hunt a little in it with his dogs but we had no intention to shoot in it. We saw nothing, tho' my Ld Thanet's game keeper told us he saw many the day before. The truth is the ground is so strong and the heath so high that, if it had not been by accident, we cou'd have raised nothing in the little time we bestowed on it.

In my way to Penrith I visited an old castle which now belongs to my Ld Thanet and formely to the Pembroke family. It is called Brougham and it is thought by some Roman inscriptions found near by to be the old Broveniacum. The building is very large but now the roof is taken down and sold with all the lead, hewen stones and timber found in it. It is pleasantly seatuated on the side of the River Eimot after it has received the Water of Louder.

I observed a little way from this castle a cross and near it a square stone table where £4 sterling is, at a certain time of the year, distributed amongst poor widowes, being a legacy or gift of the Countess of Pembroke when she parted with her mother at this place. She had been just married to the Earl of Thanet.²⁴ There is an inscription on a plate of brass affixed to the cross, giving an account of this settlement.

On Fryday the 20 we took journie to visite a famous

²⁴ A slip of the pen. Sir John means the Earl of Dorset.

lake called Ulles Lake, and at the distance of between three and four miles to the westward we travell'd along inclosed grounds on each hand which belong for the most part to the Earl of Landsdale. The lake lys amongst mountains covered with wood and very much resembles an Highland loch. It is about seven miles long and half a mile broad. A large river runs out of it and it is plenish'd with fine trout, perch and a fish they call sckaley and other fishes except peicks.

We went into a boat and angled for some time but caught none that way. However we had three draughts of a nett from the fisherman to whom the boat belonged and caught two or three dussan of good perches, some trouts and a sckaley fish. After our fishing we went into a neighbouring house and had them dressed for dener very well.

The grounds about this lake are diversified with woods and meadows. We found trees of all kinds here, especially hasels and very good ripe nuts. The grounds on the side we were on belonged to two esquires of small estates. The whole apearance of the fields about was very like some parts of the Highlands of Scotland, but much warmer.

After denner, which was made up of fish, chease, butter, bread and some potts of excellent ale, we returned home by the way of Louder which is here distant about three miles. I waited on Mr Wilkinsone and cleared George's accompts with him. He refused part of the monie I offered him which was about £3 more than the board but I oblidged him to take it as a testimony of my thankfulness to him for his civilities to George. We drank here very good tea with Mrs Wilkinsone and a glass of birtch wine. I went afterwards into the chambers of Sir Joseph Peningtoun's sons and Mr Ramsden, nephews of my Lord Landsdale, and so took leave of the family. George return'd with me to Penrith and next morning about ten, being the 21, I parted with him and took journie for Carlyle. By the way, about four little miles from Penrith,

is the Verda of the antients called Old Penrith where I visited a stone lately found in an earthen wall. It is of this shape and has this inscription.

O
 LEG D.D
 NN PHI
 LIPPORV
 AVGC COH
 GALLO

Some read it *jovi optimo maximo* [for] *I O M, Et Genio dominorum philipporum augustorum cohors gallorum*, but I cannot agree to all the parts of this reading, for in the first place there is no *I . O . M* but only *O* in a perfect circle which may signify *Ofertritati*. Next in the second line the word seems to be *Legio* and not *ET. G, et genio*. *D.D* and *NN* may be right, tho' they may likeways have another meaning.

In four houres time we return'd to Carlyle where about six in the evening we had a view of the entry of the judges who came there to hold the Assizes. First rode about a hundred and twenty of the High Sheriff's men, cled in a light blew livery with littel picks in their hands. They were differently accouter'd, being sent there by the Sheriff's friends, each of them sending two, and their hats were all edged with gold tracing scolaped.²⁵

Next came the High Sheriff's coach and in it the two judges. The Sheriff was Sir Richard Musgrave, a very pretty young man and well esteem'd in the county. The judges were Mr Justice Denton²⁶ and Mr Justice Probine,²⁷ two men of great characters both for law and morality.

Next the High Sheriff's coach followed the judges' coaches, next the coaches of Sir Christopher Musgrave,

²⁵ Tracing, embroidering. A traced hat, one bound with gold lace.

²⁶ Sir Alexander Denton, appointed a Judge of the Common Pleas 1722.

²⁷ Sir Edmund Probyn, appointed to the King's Bench 1726.

Sir Winefred [*sic*] Lawsons²⁸ and Gilford Lawsons Esquire.²⁹ These two are likewise gentlemen of great estates and account in Cumberland. The first is Member of Parliament for Cokermouth and Mr Gilford is for the county, together with one Mr James Louder³⁰ of the Landsdale family who is reckon'd the richest commoner in England. Next to them the coach of Baron Hilton.³¹ This gentleman is Member of Parliament for Carlyle and he and his predecessors go by the titles of Barons tho' they do not take place of Knight Barons. This title of Barons his family had from the Bishops of Durham who had formerly a power to send some Barons to parliament as the representatives of the county palatine of Durham. He had supporters at his coat of arms, a thing not very usual amongst the gentry of England. He is reckon'd to be a man of a great estate which will in three years be got over when near to £1,000 yearly will fall to him upon the determination of some gifts which an old great-grandmother of his made to some churches as she was once travelling to London. These gifts were for ninety-nine years which are now expiring.

Next these gentlemen's coaches came most of the gentlemen's coaches of the county and some belonging to the councellers who came with the judges from London.

²⁸ Sir Wilfrid Lawson, third baronet (1697-1737), M.P. for Boroughbridge 1718/22, and for Cokermouth 1722/37. He was succeeded in turn by his sons, Sir Wilfrid, who died in 1739, and Sir Mordaunt, who died in 1743 aged about ten.

²⁹ Grandson of Sir Wilfrid Lawson, first baronet, M.P. for Cumberland 1702/5 and 1708/34. He succeeded his young kinsman as sixth baronet in 1743 and died in 1749.

³⁰ James Lowther was son of Sir John Lowther, second baronet. He was M.P. for Carlisle 1694-1702, for Appleby 1723/27, and for Cumberland 1708/22, and again 1727/55. He succeeded to the baronetcy in October 1731 and died unmarried 2 January 1755, leaving, it is said, a fortune of £2,000,000. (G.E.C., *Complete Baronetage* ii 182.)

³¹ John Hylton (1701/46) was son of John Hylton, who married Dorothy, daughter of Sir Richard Musgrave, Bart. He was M.P. for Carlisle from 1727 until his death. Two of his sisters married local men — Anne, who married her cousin Sir Richard Musgrave, Bart. (see footnote 20) and Catherine, who became the wife of the Rev. John Brisco (see footnote 35). Ferguson, *The M.P.s of Cumberland and Westmorland* 389, says that Henry Hylton, who made his will in 1641, bequeathed his estates for 99 years to the Corporation of London, reserving only £100 for his heirs.

Amongst these councellers was old Mr Serjeant Wyne³² and Mr Serjeant Comins,³³ Mr Fazackerley³⁴ and Mr Bawtel and his brother, all four very famous lawyers in Westminster Hall. Next them came about two hundred gentlemen and burgers of Carlyle on horseback.

The judges alighted at the Town House where they went into the hall and had their commissions read, being commissions of oyer and terminer, by which they were impowered to judge and determine all manner of causes which should come before them, for as judges simply of the Courts of Westminster Hall they had no powers at assises. By these commissions they had likewise a power to condemn or reprove criminals till His Majesty's pleasure should be knowen, for they cannot give pardons absolutely.

After their commissions were read they went to a house which was prepared for their lodgings.

On Sunday the 22 about ten they went to the Cathedral with trumpets before them and heard divine service perform'd with the organ and queristers. After this there was a sermon preached or rather read, as is the form in England, by a young divine, one Mr Briscoe.³⁵ This gentleman and an elder brother³⁶ of his are both divines and the sones of one Esquire Briscoe, a man of a very good family in this county of Cumberland. Both of them are gifted with good livings and are very pretty gentlemen in all respects. The elder was at first a chaplain in a regiment which was for some time in Scotland. They seem to be very aspiring young men. The sermon preached in the Cathedral was a low Whig sermon, recommending unity and charity amongst Christians.

³² Richard Wynne, Serjeant at Law 1705.

³³ Richard Comyns, Serjeant at Law 1724.

³⁴ Nicholas Fazackerley, for whom see *D.N.B.*

³⁵ The Rev. William Brisco, son of John Brisco of Crofton, and Katherine (Musgrave) his wife. Born *circa* 1704, he was ordained in 1727 and became vicar of Holy Trinity, Whitehaven, and Rector of Distington. He died in 1745.

³⁶ The elder brother was the Rev. John Brisco, baptised at Thursby 19 December 1700. He was Rector of Great Orton and vicar of Aspatria, dying in 1771. His wife was Catherine, daughter of John Hylton of Hylton Castle, co. Durham.

The Bishop is one Doctor Waugh³⁷ who was likewise present in his throne and gave the benediction after sermon was over. The judges return'd to denner about one and about four they came again to the church and heard the prayers with an antheme sung by one of the queristers, who had an excellent voice, together with the organ and now and then the chorus.

I was very well seated in the Cathedral next to the Vice Chancellor³⁸ in one of the prebend's seats. The judges were seated next to the Bishop and were in their robes of scarlet, faced with a light brown silk, with black scarfs and sashes. They had long full bottom'd periwigs, a fashion very tenaciously kept up amongst the judges in England and the serjeants. This, they suppose, adds a great dale to their gravity tho' if the thing be well considered it seems pretty odd that judges should think themselves ornamented by the long haire of a woman and who was perhaps likewise a whore to the bargain.

After denner I heard an honest dissenting minister in the meeting house who preached very well from his notes as doe most of the English clergy of all persuasions and the people like them the better for it, tho' it is certain that the reading a discourse marrs the beauty of action which is the life of oratory. This Presbyterian sermon being over before four I went again to hear the prayers and antheme in the Cathedral and so practised Christian charity in the most extensive manner by joyning in divine worship with both parties.

The Cathedral is a very neat Gothick church but not to large as are commonly the cathedrals in England. The seats in the choir are very handsome, ornamented with oaken pillars and other ornaments after the Gothick way. These seats are fifty in number and are the same which were made use of by the canons and monks of Carlyle before the Reformation.

³⁷ John Waugh, Bishop of Carlisle 1723/34.

³⁸ The Chancellor at this time was the Bishop's son, John Waugh the younger. Possibly Sir John is referring to him.

This is a rough draught of the Cathedral within.

See Plate II. Fig. 5.

AA etc are large pillars after the Gothick way which is that each pillar is made up of a bundle of small ones in this shape.

See Plate II. Fig. 6.

These support galleries above [and] round the church near the roof which is arched and covered with lead. *B* is the Bishop's throne. *C* the pulpit. *D* the choir with the seats being each a kind of concave, distinguished with small oaken pillars and high foliages above, rising in small pyramids. *E* is the organ loft.

The steeple is square above and does not seem to rise above 40 or 50 ft. above the roof of the Cathedral. It finishes above in a balcony or parapet wall like an old tower and is not pointed above in a pyramidal fashion as is common amongst the steeples in England.

I was told that this is but the half of the old Cathedral but am apt to believe it was never larger, tho' it is probable it was intended to have been made larger, and likewise that a spire was to have been added to the steeple. In this steeple are several large bells which are rung from belowe within the church at the empty space on the back of the organ at the letter *E*.

On Munday the 23 both judges went to the Great Hall or Town House where they sat together till the names of all the justices of peace of the county were called over. These justices of peace made a very long roll for they began with calling the Prince of Wales, next all the Privy Councillors and next them the gentlemen of the county who were justices, and the whole roll took up very near an houer.

The judges sat on benches which are commonly used by the justices at their Quarter Sessions. The two judges sat at first together but after calling over the aforesaid roll they devided and Mr Justice Probine, whose turn

it was, went into another hall where he went upon trials on writs of nisi prius.

A writt of nisi prius is a record from Westminster Hall which appoints certain facts or causes to be tried there by juries nisi prius venerunt iudices to the county where these facts were committed, in which case they are by the writt to be tried at the ordinary assises or circuits, and from thence they are called writts of nisi prius. There were about fifty of these writts and consequently as many trials by juries.

After Mr Justice Probine was gone into his hall, Mr Justice Denton caused call over the names of the gentlemen who were to compose the grand jury, and which grand jury is return'd by the High Sheriff and consists of twenty-four. This jury concluds by a plurality of voices above twelve and writes on the bill of indeterment *billa vera* or *ignoramus*. If *billa vera*, then follows the presentment and the criminal is then said to be indeited.

After the grand jury had all answered to their names and had taken their places standing together, the judge made them the following charge:

“Gentlemen of the Grand Jury,

When I see so many gentlemen of great endowments as well as great fortunes and interests in this county who constitut this Grand Jury, it might seem unnecessary for me to give any thing in charge to you but to comply with the custom at the opening of the Assises. I shall mention some parts of your duty in as few words as possibly I can.

It has been always accounted a very great happiness and security to the lives and fortunes of his Majesty's subjects that assises are appointed to be held in this manner in all the distant parts of the kingdom as well as in the center thereof, whereby justice is brought as it were to your doors, and that all crimes and offences as well as civil actions may be tried not only before juries of your owne county but even those of your neighbourhood and with whom ye are dayly conversant.

Besides this happiness, Gentlemen, there likeways arises a double security to your fellow subjects in all matters to be tried at these Assises. The first is what flows from the nature of the grand jury it self which you compose, for in all crimes and

misdemeanors no body can be arraign'd before the judges but such against whom there is more than a probable reasone to prosecute. Hence no body is to be presented by you in order to be tried but such against whom not only common fame but the evidence at least of one witness gives you reasone in your conferences to belive them guilty and unfitt persones to remain in your society without those punishments and marks of infamy which the law directes.

The second security is in the pikt juries who are more immediately concern'd in all points of the evidence and who either condemn or assoylez as they think proper. I might mention a 3d security which is the authority of the Crown and the well known clemency of his present Majesty who upon due reports made to him is always ready to temper the rigour of the law and pardon such offenders whom there seems to be any hope to reclaim, or who by misfortune have fallen under those sentences which judges are oblidged to pronounce.

Now, Gentlemen, as the peace and welfare of this kingdom depends on the care and circumspection of grand juries, so in particular the peace and well fare of this county depends on you. You are therefore to enquire into all offences whatsoever committed against the peace of our Sovereign Lord the King, and especially such of the grosser kind which I shall briefly enumerat.

In the first place then you are to enquire into all notorious offences committed against the living and eternal God, such as all blasphemies and malitions, all scandalous wicked books and pamphlets to the dishonour of any of the three persones of the Holy Trinity. Ye cannot be ignorant, Gentlemen, what liberties have been taken of late to vilify the doctrines of our holy religion and to ridicule the scriptures of truth and the miracles of Our Lord Jesus Christ. Ye can not be ignorant what pains has been taken to set up Atheism, Deiism or Judasism in the room of this Reform'd Protestant Religion which we now profess and which our forefathers established and handed down to us with the hazard of their lives and fortunes and frequently with their blood. You are to doe all that in you lys, Gentlemen, to discourage and bring to punishment such notorious offenders and to have this allways in your view that our religion and liberty must go hand in hand, for that the one cannot stand without the assistance and support of the other. If we destroy our religion all manner of wickedness must take place, particularly the unhappy consequences, either of anarchy or arbitrary power.

Next to our religious concerns which you are to guard with

a zeal befitting Christians, you are to endeavour by all means possible to support and defend his sacred Majesty's persone and government, and for that end you are to enquire into all treasons and treasonable conspiracies against his persone, crown and dignity, and present all those to be punish'd with the outmost rigour of law who by any ouvert act, that is open and notorious attempts, shall endeavour to weaken his authority or injure his persone, or who by malicious and secret contrivances shall, by speaking or writing, endeavour to detract from the dignity and sovereignty of the Crown, or to lessen the power and authority of the Estates of Parliament.

Treasure, Gentlemen, is divided into high and petit treasure. What we have mentioned is of the first kind and the branches thereof are at large contain'd in that excellent statute the 25 Edward III, and now by a late statute in the reign of K. William the 3d confirmed and cleared up in many doubtfull points. Petit treasure is when a servant kills his master, a wife her husband or when a secular slayeth his prelate to whom he oweth faith and obedience.

In the 3 place you are to enquire into all murders, robries, thefts, burglaries and into all kinds of felonies whatsoever, as felonies relating to the Crown, felonies against the King and his councellers and judges of either bench, those relating to popish priests, those relating to riots and rioters, and many others of a more privat nature."

(Here the judge expatiated a little on the nature of these crimes and added . . .)

"Now, Gentlemen, in the last place I think it my duty to take notice to you of a crime which is of the blackest nature and yet endeavours to shelter it self under the protection of liberty and property. This is the custom which prevails so much at present with some discontented men to censure by publick papers every part of the administration. Such persones by malicious insinuations endeavour to bring all his Majesty's actions under the contempt of his people and to lessen that esteem which not only his Majesty but all the branches of his royal family doe so justly deserve from a Protestant people. Some of you cannot be ignorant what steps have been made to wound his Majesty's charecter by detracting from those whom he has intrusted with the care of publick affaires, and at the same time you cannot be ignorant what privat views those censurers have, whatever masks they have hitherto worn in order to cover their malicious designs. As these things cannot but be chocking to

every man of honour, so I hope you will take care to discourage all such practises in your county and to bring to punishment all such persones and their wicked accomplices or abettors who shall be found amongst you. We are at present in the full and free possession of our liberties and under his Majesty's wise administration. We may have confidence to hope that nothing on his part will be wanting that can render us a happy and flourishing people."

This ended the speech and was received with much applause. The judge went home for that day and the grand jury met in order to consider the presentments of criminals next day. I sat this forenoon amongst the justices of peace and observed what is above. When these things were a doing in the Crown side of the hall, or Crown Causes as they are called, Mr Justice Probine was employed in the Civil Causes on trials upon writs of nisi prius and, as he told me afterwards, he had discussd four or five trials in about two houres.

At two a clock he left the Court as the custome is and went to denner. I was invited to dine that day with the judges but choised to delay going till next day.

About four Mr Justice Probine return'd to the Court for the civil causes and I hapned to be placed on the bench with him. He seem'd to be a very clear headed man and dispatch'd business with great dexterity. At the same time he was a very pleasant, facetious man as I found by the conversation we had together in the intervall of causes. It's very diverting, by the bye, to observe how these writts of nisi prius are called by the English commonality, such as "naisi praises", "naisi prizes" etc.

The methode of trial was this. The judge called for the Record or writt of nisi prius on which a counceller for the prosecutor opened shortly the nature of the cause and the evidence he was to use. Then the witnesses were sworn and examined, but in the first place I should have taken notice that the jury is sworn and they stand, but not sitt together as the juries in Scotland, till the determination of the cause. When the witnesses are exam-

ined the lawers for the defendant make what observations they please as the evidence goes on, but when that is done there is an end of speaking on both sides, nor does any councillor make a speech to the jury or resume the evidence, for this is considered as the business of the judge. All the time the evidence goes on the judge sett's down the facts distinctly in a little paper book he keeps for that purpose, and when he resumes he reads the evidence from the notes he has taken, and if he pleases he makes a short observation on the evidence of each witness. This being done he concludes by giving the jury his owne opinion how the facts stand and how they ought to bring in a verdict. The jury never almost differ from the opinion of the judge and seldom go out or dispute two moments on any cause but joyn their heads together and choise who shall say for them, that is give their verdict in the court which is immediatly recorded. I saw in the space of six houres, that is between four in the afternoon and ten that the court sat, fourteen trials discuss'd which is more than we in the Exchequer of Scotland cou'd discuss in twenty days according to the prolixety and loquacious janglings of our lawers and juries. The councillers were men of great abilities and never bestowed one word more on a cause than was sufficient to support it.

The observations that occur'd to me in their forms were these.

That there is too much trust given to juries, for they not only give their verdict on facts but on law, whereas the English lawers lay down other principles, to wit that *ad leges respondent iudices ad facta juratores*. This observation was evident to me in the case of one Lutwedge who was prosecuted by the excutors of one Smith to whom he had given bond for £100. Lutwedge alledged he had payed the monie altho' the bond was standing out, and as a proof said that neither any part of the principal nor interest had been demanded for seventeen or eighteen years. The council for Smith aduced witnesses and proved

that payments of the interest had been made by Lutwedge, for that these payments had been indented on the bond by Smith's attorney who received the monie and that there were only sixteen years standing out in which time no payments had been made. Some of the council argued that sixteen years disuse of payment was sufficient to suppose the bond satisfied and that my Ld Chancellor had given his sentence on a like case on a dispute of twelve years, for that no time was appointed for such a presumption of payment by the laws of England. The judge on resuming the evidence told the jury that a disuse of sixteen years was not sufficient to take away a bond but that he thought eighteen or nineteen years might doe. Upon this the jury return'd a verdict against Lutwedge and sustain'd the bond. Here was plainly a judgement or verdict on the law as well as the facts. All, in my opinion, that a jury cou'd have done was to find it proven that there was a disuse of payment for sixteen years and ferr'd the point of law to the judge.

A 2d observation, is that England is pester'd terribly with turbulent attornies and villanous petty fogers who put people by the ears and hurry them away to Westminster Hall in processes not exceeding forty or fifty shillings, about which there were three different trials, for no trials are caried on at the circuits in civil cases but where the parties have been in Westminster Hall and writts of nisi prius's made out for trials in these circuits or assises. In all these little cases the expenses of processes will be from £15 to £20 and sometimes £40 or £50 which he who loses the cause pays according to certain know'n regulations.

A 3d observation no less obvious to me is that the people of the north of England are more letigious than in the south parts which was likeways told me by the judge. This humure is the same in the north of Scotland. It seems the distance and difficulty to obtain justice promotes the desire of it.

The court rose about ten of the night, about which time there was a ball in the Castle where I was invited and was very kindly entertain'd by the High Sheriff, Sir Richard Musgrave, who gave the ball. Here were most of the gentlemen and ladies in the county, being in number about three hundred as I supposed. The musick was but bad and I observed nothing was play'd but Scotch country dances. Some minuets were danced by some who knew nothing of the matter. There were, besides the great hall, two other rooms in which were all kinds of meats and drinks for the entertainment of the company. I went home about two in the morning but most of the company stayed till six.

On Tuesday the 24 I went to Mr Justice Denton's court for the Crown Causes and sat with the Mayor of the City in the magistrat's seat where I had a very good opportunity to hear and observe all that pass'd. The first thing done was to swear the fresch jury, for one jury served all the criminals. No seat was appointed for the jury. They stood all the time and never retired to consult about their verdicts.

The libels or bills of inditement came from the Grand Jury and were read one by one by the Clerk of the Peace as the trials came on. The criminals this day were two for horse-stealing and one for assisting in the murder of a new born child. There were likeways two or three more for small thefts.

The horse-stealers were one Patrickstone and one True-man. The sum of the evidence was that they had stollen horses, and the first both a cove and a horse tho' he had been indeited for the like crime a year before and had been burnt in the hand. This Patrickstone, it seems, was an old sinner about seventy years. The other a young fellowe but a notorious rogue. No lawers spoke for them for it seems they are not admitted or will not be employed this way. All the account they gave of themselves and their stollen horses was that they had bought them from others.

The judge sum'd up the evidence in a few words and gave his opinion that the prisoners were guilty, so the jury return'd them accordingly. The fellows were damped on this verdict but I believe they expected no better quarters. They were caried from the bar into a little room near by and kept there till some others were tried when they were brought into the court again and received sentence of death. The judge on this occasion put on his square bonnet and made this speech:

“W. Patrickson and J. Trueman. You have been arraign'd and tryed here on the notorious and villanous practise of horse-stealing, a practise which has been no less scandalous to the well govern'd society amongst whom you have lived, as it is injurious to a great many innocent families, for hereby the labouring man is rendered unable to cultivat his grounds and pay his rents and his poor family is reduced to the outmost distress and misery.

Many exemples have been made in order to deterr persones of your stamp from such execrable practises, but hitherto they have had no effect. There is therefore a necessity to make more examples in order to bring about and establish that reformation of manners that is so necessary for the peace and safety of his Majesty's subjects.

Doe not flatter yourselves that any pardons or reprieves will be given you. There is no lenity to be shoven to such notorious offenders as ye are. Ye must therefore by your blood make satisfaction to your injur'd country and be made publick examples in order to deterr others from like crimes.

I must therefore advise and beseech you to make good use of the time which remains for you to live. Flee to the mercies of God by the interception of Our Lord and Saviour Jesus Christ. There is still remission of sins to be obtain'd at the throne of Grace, if you will humble your selves before God and endeavour by prayer and supplication to obtain it.

Nothing remains for me to doe but to pronounce a dreadfull sentence against you which is that you be taken to the place from whence you came, and thence to be caried to the place of execution where ye are both to be hanged by the necks till ye dye, and the Lord have mercy on your souls.”

After this sentence these criminals were caried back to prisone.

The next trial was against one for assisting in the murder of a child. He had two councellers who examined witnesses upon his good character and who cross-examined the witnesses against him but did not plead. The evidence was only one woman who said she heard a child cry and saw some symptoms of the woman's having been brought to bed and heard her say to this man that the witness knew what they had been doing but did not see any child nor saw the man committ any act of violence. The judge in suming up the evidence said that this amounted all to hearsay only, so the jury brought him in not guilty. He immediatly, as uses is in the like cases, was ordered to fall on his knees and to thank God and the honourable court, and so he was dismissed from the barr.

Other two were tried for thifts and were brought in guilty to the valoue of sixpence . . . that is to say they were brought in for a less sum than 12d for which persones are made guilty of death but on these little sums there frequently followe whipings and pillories.

About three a clock both courts broke up a denner. I denn'd with the judges and found a plentifull table which is kept at their owne expenses since the inccress of their salaries, but there's no great expence necessary at their tables since the county gentlemen send them always presents of venisone, moor foulds, mutton etc in great plenty.

At half an houer after four the judges return'd to their courts and I was told by some of themselves that frequently in their circuits they will sitt sixteen houres in twenty-four. Even in their criminal courts methinks there is too much power in juries, for they never fail to condemn a criminal if there be one positive witness against him, and a man never fails of being hanged for a horse-stealer who cannot instruct from whom he bought the stolen horse. However I belive there are few instances that men suffer innocently on these accounts, for they

always admitt evidence as to the characters of men which, if they be good, never fail of procuring compassion from a jury.

I was not back to any of the courts this afternoon, but prepared for my journey homewards.

I cannot forget to mention here that both on this occasion and on a former in 1724 when I was in this place the magistrats used me with great civility and respect, for they waited on me at my lodgings in their gowns of black with a sword and mace caried before them, the Mayor of the City and the Recorder at their head and a baskett of wine to welcome me into their city. This is a complement they pay to no body but the King's judges or men of the greatest offices in the government. I owed the complement in 1724 to the old Recorder, Mr Gilpen,³⁹ and this gentleman, his sone,³⁹ was no less civell to me. He is a lawer as well as Recorder here, and has a good estate in the county about four miles off where his father had collected abundance of Roman antiquities.

³⁹ William Gilpin, lawyer and antiquary, died in August 1724, when he was succeeded as Recorder of Carlisle by his son and heir Richard Gilpin