

ART. XVI.—*Richard Story and the murder of Francis Armstrong.* By W. A. J. PREVOST.

*Read at Kendal, April 2nd, 1966.*

IN 1609 the English Parliament passed "An Act for the better Execution of Justice . . ." in the north parts of England.<sup>1</sup> Persons committing offences in Scotland and escaping into Northumberland, Cumberland and Westmorland were to be brought before the justices of those counties who could then, by their warrant, return the fugitives to Scotland for trial. The act was not to take effect until a similar law had been passed in Scotland, and this was done in that same year when the Scottish Parliament passed their "Act against the reset of outlaws from the Borders".<sup>2</sup> Both parliaments had good reason to be disturbed at the lawless state of that part of Great Britain and, to take one example only, in 1605 Sir Wilfrid Lawson<sup>3</sup> reported from Carlisle that twenty-nine out of thirty-three condemned prisoners had escaped from the Castle. It is said that of these men five were Grahams and seven were Armstrongs, the Armstrongs of "Kinmonth" being the principal prisoners.<sup>4</sup>

Legislation and the efforts of the Border Commission seemed to have been ineffective in pacifying the Borders. At any rate, in 1662 and over forty years later, the Lords of the Scottish Privy Council wrote to King Charles II and informed him of daily complaints made to them of frequent robberies committed on the Borders.

<sup>1</sup> Statutes of the Realm, 7 Jac. I, c. i (1609-10).

<sup>2</sup> *The Acts of the Parliaments of Scotland* iv 436.

<sup>3</sup> He was one of the ten Commissioners — five English and five Scottish — appointed by the Crown 25 February 1605 for the government of the Borders. N. & B. i cxxv-cxxvii.

<sup>4</sup> Muncaster MSS. H.M.C. 10th Report, appendix iv (1885), 231, 236.

The object of this letter was to suggest the revival of that commission which had been devised in the reign of James VI. On 16 December 1662 the suggested commission was authorized by Charles when certain leading men were appointed commissioners for Scotland and authorized "to keip correspondence with these who were appointed in England for the suppressing of lyke insolencies".<sup>5</sup> At the same time "An Act for preventing of theft and rapine upon the Northern Borders of England" was passed by the English Parliament<sup>6</sup> when the justices of the peace of Northumberland and Cumberland were empowered to raise up to £500 and £200 a year respectively to safeguard the inhabitants of those counties from the injury and rapine of the moss-troopers, and to employ any person chosen by them to have the command of a certain number of men, not exceeding 30 in Northumberland and 12 in Cumberland, whereby the malefactors might be searched out, apprehended and brought to trial. The aforementioned statutes made in the reign of King James were to be revived. The act came into force at Michaelmas 1662 and was to remain in force for five years, but though moss-trooping as a business gradually died out, in 1681 a special commission for repressing disorder in the Scottish Borders was still necessary.<sup>7</sup>

It must be appreciated that the traditional way of life of the 16th-century English and Scottish borderer, which is so well illustrated by the ballad of "Kinmont Willie", continued long into the next century. Kinmont Willie's proper name was William Armstrong of Kinmont, and it appears that the younger generations of this family were as rebellious as their forbears. This is confirmed by the following extracts from the Register of the Privy Council wherein references to the use of the to-name *Parknow* are noteworthy.

<sup>5</sup> *The Register of the Privy Council of Scotland* (3rd Series) (RPC), i xxix and 513.

<sup>6</sup> A.D. 1662, 14 Car 2, c. 22.

<sup>7</sup> RPC vii, p. xvii.

In 1642 "John (Kynmount), called *Perknow*, a Border rebel, to be brought to trial."<sup>8</sup> In 1667 Francis Armstrong in *Parknow* and others were named in a bond of caution that they should not molest or injure certain people, six of whom were Johnstones.<sup>9</sup> In 1670 James Armstrong of *Parknow* was slaughtered by a Johnstone,<sup>10</sup> and in the following year, at a Court of Justiciary held in Dumfries, Francis and Gavin Armstrong, brothers of James, accused Robin and Gavin Johnstone of this murder.<sup>11</sup> Lastly, in 1677, Francis Armstrong in Allisonbank, also called "of *Parknow*", was charged by a Johnstone of Tundergarth for imprisoning him wrongfully.<sup>12</sup> Armstrong "protested", and there is a suspicion that Armstrong, who was then an official at the customs port at Allisonbank, had found Johnstone guilty of some hanky-panky in connection with the duties. Then, as now, attempts to evade the payment of customs dues were commonplace. There were also dishonest customs officials, and it is significant that the customs entry-book used at Allisonbank in 1677 and 1678 records entries made by Armstrong and by another customs official, Bernard Ross, waiter.<sup>13</sup> Ross was afterwards appointed to be a surveyor at Allisonbank, and in 1689, shortly after his promotion, he was charged in the Privy Council for collecting and not accounting for duties which had been paid. He had also collected without authority the English duties which were formerly collected at Carlisle, and all the drovers were protesting.<sup>14</sup>

Allisonbank<sup>15</sup> is a small holding of land by the Sark

<sup>8</sup> *RPC* (2nd Series) vii (1638-43) 352.

<sup>9</sup> *RPC* ii (1667) 650.

<sup>10</sup> *Justiciary Court Proceedings* (Scottish Hist. Soc.) ii 9.

<sup>11</sup> *RPC* iii 401.

<sup>12</sup> *RPC* v 199.

<sup>13</sup> Scottish Record Office: Customs Entry Book, Allisonbank (E.72/2/4).

<sup>14</sup> *RPC* xiii 419, 466, and xiv 458.

<sup>15</sup> For a description of Allisonbank, c. 1698, see *The Journeys of Celia Fiennes*, ed. Christopher Morris (1949). See also *Irregular Border Marriages* by "Claverhouse" (1934). This contains two pictures of the Allisonbank Toll-bar, where John Murray married runaway couples. In the Scottish Record Office there is a "Plan of Roads in the Neighbourhood of Gretna Green", 1822, which covers a very small area round Allisonbank (Exchequer Records, King's Remembrancer's Office).

Bridge in Gretna parish. The house at the old toll-bar has for long been known as "Allison's Bank Toll-House", the name which figures in the certificates given by the "priest" to contracting parties of Gretna Green marriages, and it was thereabouts that Armstrong carried out his duties until his untimely death in 1682. He was buried in Gretna old kirkyard and the memorial inscription on his stone reads as follows:<sup>16</sup>

HERE ANE HONNEST GENTLEMAN LYES  
CALLIT FRANCIS ARMSTRONG IN ALLISON-  
BANK WHO DEPARTED THIS LIFE 8 DAY OF  
JUNE 1682, OF AGE 41 . . .

He had been foully murdered by a Cumberland man who belonged to a landless branch of an English family, called Story.

The Story family had once held land "in the water of Esk", and the tale is told how Lord Dacre (1467-1525), when he was Warden of the West Marches of England, made a raid across the border and "was by Englishmen betrayed, and Scotland had intelligence of his cuminge before he came, and was ready for him, so as he and all the cuntrey was in great perill". A man named Story was proved to be the "deed doer", and the Storys, fearing Lord Dacre's fury, fled and left the country and went to Kilham in Northumberland,<sup>17</sup> and their lands were divided amongst the Grahams, of whom came Richard Graham of Netherby and many others, "a hughe companie of men".<sup>18</sup> In a list of "The severall surnames of the Englishe borderers and their dwellinges" which Edward Aglionby sent to Burghley in 1592, Aglionby

<sup>16</sup> I am indebted to Mr George Gilchrist for locating this stone, and for his help in transcribing the inscription. This was complicated by the fact that the figures 2 and 4 in the date and age are upside down.

<sup>17</sup> Kilham is in Kirknewton parish. In 1538 forty men of the name of Story attended the muster held on Fleetham Moor, all from Kilham and the neighbouring township of Hethpool (AA1 iv). The exodus of the family from Cumberland seems to have taken place *c.* 1510.

<sup>18</sup> Letter on the Border riders from Thomas Musgrave to Burghley in 1583. Bain, *Calendar Border Papers*, i 124-125.

reported that "upon both sides of the river [Esk] dwell the Grames which is the greatest surname att this daie upon the West Border . . . There dwelleth also a surname of Storyes, but they are sore decaied".<sup>19</sup> Local records of the 17th century contain evidence that the family still survived in Cumberland, and in particular a family of that name was established in the parish of Arthuret. Arthuret Bishop's transcripts contain an entry of 22 July 1681 recording the death of "Tho: Story sonne to Richard Story seneor in Howend,<sup>20</sup> unhappily pistoled at Longtowne by one Rynian Scott . . ." <sup>21</sup> At least one Story<sup>22</sup> was a tenant of Edmund Appleby who had purchased Kirklington in 1661.<sup>23</sup> This man was George, another son of Richard Story senior and of whom more hereafter, while there was a third son, Richard junior, whose marriage and subsequent career is the subject of this paper.

It seems that in about 1670 Richard junior became a servant of the Earl of Wigtown.<sup>24</sup> His duties may have been those of a kind of secretary and he thus became a member of the Earl's household. At any rate Richard met the Earl's eldest daughter, Lady Liliias Fleming,<sup>25</sup> and in due course they both fell very much in love with each other. The story goes that the couple eloped, though a ballad of eleven verses,<sup>26</sup> which has clearly been based

<sup>19</sup> *Ibid.*, 394.

<sup>20</sup> "By this church [Arthuret] is the Howe End where the thieves in old time met and harboured". *Our Journall into Scotland*, A.D. 1629, 5 November, by Christopher Lowther (Edinburgh, 1894).

<sup>21</sup> Was this affair, resulting in the death of Richard Story's brother, in any way responsible for the later tragedy ending in the death of Francis Armstrong? Unfortunately it has not been possible to find an answer to this question.

<sup>22</sup> B.M. Sloane MSS 2723, f. 125. Hereinafter referred to as Sloane.

<sup>23</sup> AA3 xvii 182; and W. Hutchinson, *The history of the county of Cumberland* (1794), ii 568.

<sup>24</sup> John (Fleming), 3rd Earl of Wigtown, who married in 1633 Jane Drummond, eldest daughter of John, 2nd Earl of Perth. *Scots Peerage* viii 551.

<sup>25</sup> Liliias was the *eldest* daughter of the Earl of Wigtown. See a pencilled amendment in the Scottish Record Office's copy of the *Scots Peerage*. Arthuret Bishop's Transcripts record that on 4 February 1686/7 "Lady Lillyas Fleming, wife of Rich. Story of Howe<sup>d</sup> buried."

<sup>26</sup> William Hunter, *Biggar and the House of Fleming* (1867), 555.

on fact, implies that they married in secret. Two of the verses are particularly informative for they date the year of Lady Lilius Fleming's courtship as being in 1673. It seems that the Earl of Home,<sup>27</sup> who had lost his first wife the year before, had planned to make Lilius his second but she would have nothing to do with him.

*Here's a letter for ye, Madame,  
Here's a letter for ye, Madame.  
The Erle o' Home wad fair presume  
To be a suitor to ye, Madame.*

*I'll hae nane o' your letter, Richie,  
I'll hae nane o' your letter, Richie;  
For I hae made a vow, and I'll keep it true,  
That I'll hae nane but you, Richie.*

The marriage was officially acknowledged before the end of the year when Lady Lilius, with the consent of her husband, resigned her portion of certain properties in Dunbartonshire to her brother, Lt-Col. John Fleming.<sup>28</sup> This may have been done for a consideration since, as Richard tells Lilius in the ballad, "I hae neither land nor rent for to maintain you wi'." On the other hand Story's sensational marriage turned to his advantage, for the Earl of Wigtown was not only well connected . . . he was closely related to the Earl of Perth . . . but his influence induced the Customs Commissioners "to employ Richard Story, junior, as waiter and searcher at Carlisle, loco John Hodgson, deceased . . ." in 1677.<sup>29</sup> In 1679 there were three waiters at Carlisle, Story and Thomas Musgrave being allotted the coast of Scotland and Thomas Carwyn the West Marches, each man being paid at the rate of £5 per annum. This skimpy salary was hardly enough to enable Story to maintain the standard of living to which his wife had formally been accustomed.

<sup>27</sup> Alexander, 4th Earl of Home, married Lady Anne Sackville, who was born 7 June 1650. She died 22 August 1672. He died without issue in 1674.

<sup>28</sup> *Scots Peerage* viii 552.

<sup>29</sup> *Calendar Treasury Books* v, pt. i, 587.

On the same establishment,<sup>30</sup> as waiter and searcher for County Cumberland, was Basil Fielding, with a salary of £7. 10s. od., which Fielding may have tried to augment by resorting to irregular practices in seizing Scotch cattle some four years previously.<sup>31</sup> However, it must have been satisfying to all concerned when a warrant from the English Treasury enabled the Customs Commissioners to make generous additions to these salaries as from Lady Day, 25 March 1682.<sup>32</sup> Ten weeks later Story was involved in an act of violence which may have originated from an old-time family feud or perhaps from a proposed illegal conspiracy which may have had some connection with the customs ports on the English and Scotch sides of the border. What happened is best described by the "information"<sup>33</sup> given by Robert Kerr, exciseman at Longtown, and taken down on the 10 June before the Earl of Carlisle, lord lieutenant of Cumberland.<sup>34</sup>

Robert Kerr "saith upon oath that on the 8 instant going along wth Richd Story to let his Lady onwards of her way to Scotland, as they returned, he, this deponent and Richd Story and Geo. Story, his brother, came to the house of Mr Will Graham of Mossknow<sup>35</sup> in the Kingdome of Scotland where they met wth one Mr John Agnew and Mr Francis Armstrong of Parkenow."

"Robert Kerr of Longtowne in the County of Cumberland gen deposeth . . . that upon the eight day of June Anno Dom 1682 he accidentally happened to come into the house of one Mr William Graham of Mowesknow

<sup>30</sup> "The Establishment for Lady Day . . . 1679." Board of Customs Library, London. MS. 39/12.

<sup>31</sup> *Calendar Treasury Books* iv 314, under date 21 June 1675. Officers of the Customs in Carlisle were empowered to seize Scotch cattle by law.

<sup>32</sup> *Ibid.* vii (1681-85), pt. i, 449.

<sup>33</sup> Sloane, f. 129.

<sup>34</sup> Charles Howard, 1st Earl of Carlisle (1628-1685). He was joint Lord Lieutenant, an appointment which he shared with his eldest son, Edward, Lord Morpeth, from 1668-1685. He was Governor of Carlisle as was his son.

<sup>35</sup> William Graham (1659-1733) was a Commissioner for Supply for Dumfriesshire in 1698, and acted as Collector of Customs at Allisonbank for a short time in 1702. See *D. & G. Trans.* (3rd Series) xxxviii (1961) 119-120.

in the Kingdome of Scotland where he mett with one Mr John Agnew, Mr Francis Armstrong and the said Mr William Graham . . . this deponent being in the company of one George Story and Richard Story his brother who came into the said house with him, this deponent and all the company being drinking together. This deponent did observe that the said Francis Armstrong and Richard Story did lissen together about one houre after they came in, but no ill words happen'd betwixt them as this deponent did observe, but immediately after they had lissened the said Francis Armstrong and the said William Graham did goe out of the house and did walke about the space of a quarter of one hour, but what discourse happened betwixt them he knowes not, and they coming into the house againe, the whole company drinking round for the space of one quarter of one hour, the said Francis Armstrong, Richard Story, George Story and this deponent, all of them took their horses with an intention to goe their severall dwellings as he this deponent beleeves, but before they had rid a myle or two from the said house without any ill words amongst them, all of a sudden at a place called Readhalburne<sup>36</sup> the said Francis Armstrong did light from of his horse and drawing his sword, said to the said Richard Story, 'This is as fit a place to end the matter as any other', upon which the said George Story and Richard Story did light from of their horses and drawing their swords, the said Francis Armstrong and the said George and Richard Story made divrs passes both of them at the said Francis and he at them, and this deponent indeavouring as much as possibly he could to part them by beating downe of their swords, upon which they closed and both the said George and Rich: fell above the said Francis, and then he this deponent with much adoe gott all their

<sup>36</sup> Miss Anne Graham, Mossknowe, writes that Readhalburne still exists about half a mile south of Mossknowe, though it is now called Ewes Burn and is so named on a map of 1899. The farm of Redhall is her property.

swords from them and did observe the said Francis wounded in the neck, but how he gott it he this deponent doth not know. He this deponent thinking to make his escape with all their swords, they all of them tooke their swords from him, he not being able to grapple with all of them, but as he this deponent was leading the said Francis Armstrong to his horse and the said Richard Story goeing to his horse, the said Georg came behind the said Francis Armstrong with his sword drawne and run him through his body."

The consequences of this dirty business were far-reaching, for not only was the matter taken up by both heads of the English and Scottish Customs but it also developed into an international incident. The culprit, George Story, escaped into England and made his way to "Bungye in Sufflick" (Bungay, Suffolk), whence he wrote to his wife telling her that he was crossing over into Holland and hoping that God would preserve his brother Richard's life, "for he is harmless of that unlucky and unhappy misfortune".<sup>37</sup> This hope was inspired by the fact that Richard had been apprehended by one of his majesty's constables in England upon suspicion of the killing of Armstrong, and had afterwards been abducted by a gang of Scots and carried to the tolbooth in Dumfries, surprisingly reaching that place alive. This was reported in an unsigned letter to the Border Commissioners dated 11 June from which the following account of this Kinmont Willie exploit has been extracted.<sup>38</sup>

The report relates how that "the said Story hath been taken out of the hands of the said Constable in a hostile way by forty or fifty Scotchmen armed in warlike manner, and by them carried into Scotland. Although we are sufficiently sensible that offences of this nature

<sup>37</sup> Sloane, f. 125. Letter of 23 June 1682.

<sup>38</sup> *Ibid.*, f. 123. "A letter to the Border Commissioners upon Story's Accot when Prison[er] in Scotland." 11 June 1682. Unsigned.

ought not to escape the utmost severity of law, yet we cannot but take notice of the violence done to the law of England in carrying the said Story into Scotland in the before mentioned illegall way. If you please to look into the Statute made in the seventh year of King James, Chapt the I: you will find that such persons as comitt murder or manslaughter in Scotland, and after escape into England shall be apprehended in this County of Cumberland, are to be sent into Scotland in order to their tryall by warrant of the magistrates here and not otherwise, and this not to be done neither till after due and mature examining the said offences in open sessions here and pregnant proofs of the same . . . And as we have given no occasion to distrust our equall distribution of justice here, so we desire the said Story may be sent back to us, to be remanded to you from hence (if reason so require) in a due and legall way . . . We hope you will not proceed to the tryall of the said Richard Story till this matter be settled by a conference of the Border Commissioners or otherwise . . . We cannot but take notice but that some of the chiefe of the Scotchmen that carried him away promised to bring him to Carlisle before some of us."

This prompt and effective action by the Scottish chiefs was doubtless inspired by the Armstrong clan. Nor was any time wasted by the Marquis of Queensberry,<sup>39</sup> the Lord High Treasurer of Scotland, when on 12 June he signed a letter in the Canongate<sup>40</sup> of Edinburgh containing instructions "anent securing of Francis Armstrang's goods and geir".<sup>41</sup> Queensberry had been informed that

<sup>39</sup> William (Douglas), 3rd Earl of Queensberry (1637-1695), was created Marquis of Queensbury in February 1682, and in May of that year was declared High Treasurer and Treasurer Principal of Scotland. In February 1684 he became the first Duke of Queensberry. He had been appointed a Border Commissioner in 1674, with power to follow and pursue, take and apprehend . . . but was no longer a commissioner in 1682.

<sup>40</sup> This would be from the house in the Canongate which the Duke bought in 1686 and called Queensberry House. He died there in 1695. Cassell's *Old and New Edinburgh*, division iii, 35.

<sup>41</sup> Scottish Record Office. Treasury Register (E.7) iii 7.

Armstrong had been "murthered, by Dick Story his two sones", and he ordered that Armstrong's goods were to be sequestrated immediately lest they should be seized upon by his creditors, in which event the customs duties collected at Allisonbank might be lost to the treasury. At the same time Sir George Downing, who was a Commissioner of Customs in London,<sup>42</sup> took up the cudgels on behalf of his Carlisle land-waiter when on 17 June he wrote to Lord Carlisle, his brother-in-law, with whom he was on very friendly terms, assuring him that "he will take care that nothing doe passe to the prejudice of Richd Story, but soe soon as his tryall is over doe not faile to give me notice of the issue thereof and what you will have me doe, for time is pretious in such cases. . .". It is likely that Downing had made a report to the King, for he notes that "My wife and I were last Sunday att Windsor where we left the King very well . . . he did eate mighty heartily . . ."<sup>43</sup>

Sir George wrote again a week later to the effect that Colonel Legge<sup>44</sup> and Sir Christopher Musgrave, Collector at Carlisle, had recommended that a man named Graham should take Story's place, and he ruled that this replacement could not be considered until the results of the trial were known.<sup>45</sup> This was to prove a long drawn out business, with unexpected difficulties, the first of which was the unwillingness of the Dumfries magistrates to continue guarding the prisoner in their tolbooth which, since their meetings were convened in the building,<sup>46</sup> they well

<sup>42</sup> G.E.C., *Baronetage*, iii 279. Born c. 1623, died 1684. He was M.P. for Edinburgh 1654-55, for Carlisle 1656-58 and for Morpeth 1660-81, and was a Commissioner of Customs from 1671 until his death. He married, in or before 1656, Frances, sister of Charles, 1st Earl of Carlisle.

<sup>43</sup> Sloane, f. 105. Letter dated 17 June 1682, "Custome house", London.

<sup>44</sup> Presumably Col. George Legge, who later in the year was raised to the peerage, becoming the first Baron Dartmouth. He was nephew of Susanna, wife of Ranald Graham, great-uncle of Richard Viscount Preston, of Netherby, who married Lord Carlisle's daughter, Lady Anne Howard.

<sup>45</sup> Sloane, f. 104. This letter is printed on page 283 in John Beresford's *The Godfather of Downing Street*. Mr Beresford draws attention to the ambiguity of the letter, for Downing refers to a George Story in the same context. This George could have been the cousin of Richard.

<sup>46</sup> Dumfries Town Council Minute Book, 1682.

knew to be very insecure.<sup>47</sup> They therefore petitioned the Privy Council for Story's removal, complaining "that they are put to great trouble and expense in keeping and gaurding of him; severall of his frinds from the borders dayllie threatning to force them and make his escaipe if he shall remaine any longer ther".<sup>48</sup> At a meeting on 5 July the Lords agreed that the prisoner should be transported to Edinburgh, and an entry made on 3 August in the tolbooth warding-book records that "Richard Storie wairdit by ane order from the lords of his Maties privie counsell . . .".<sup>49</sup> The situation in which the prisoner found himself placed was not a happy one. This is made clear by extracts from letters to Lord Carlisle, forwarded on to him at Hinderskelf in Yorkshire by his son Lord Morpeth<sup>50</sup> in Cumberland.

17 July 1682. Marquis of Queensberry, Edinburgh, to the Earl of Carlisle.<sup>51</sup>

My Lord,

Last night brought me the honour of yrs of 10 instant but I have not receaved the other ye mention els yr Lordship had gotte the trouble of the returne sooner. As to Armstrong's murther it was certainly a foule bussienesse and appears so even by Kerr's deposition to your Lordship, beareing that both the brothers wer upon him at the same tyme, and tho' he pretends they were seperat before George Storie struck him through, yet its fare otherwayes informed and that he was ingadged with his brother Richard at the tyme. I am told Kerr's parrt upon that occasion was not faire and that he has given accounts of the matter of fact much differing from the inclosed which I returne, being ane originall paper and wherof yr Lordship may possiblie have use their. As to the way of apprehending Richard Storie I know nothing. He is now by order of his Maties Privie

<sup>47</sup> In May 1683 they were accused of allowing a prisoner to escape, "either through their supine negligence, connivance or insecurity of their prison house". *RPC* viii 152. In the following April they converted some vaults in the castle of Dumfries into a prison.

<sup>48</sup> "Extracts from the Records of the Old Tolbooth", *Book of the Old Edinburgh Club* viii 134.

<sup>49</sup> *Ibid.* 133.

<sup>50</sup> Edward Howard (1646-1692) succeeded his father as 2nd Earl of Carlisle in 1685. He was joint Lord Lieutenant of Cumberland from 1668-1685 and Governor of Carlisle from 1679-1687.

<sup>51</sup> Sloane, f. 115.

Councill to be transported from sheriffe to sheriffe in order to his tryall heir, and your Lordship did well in obleidgeing Kerr to attende the prosecution of the affaire. What yr Lordship writte to the Comissioners of the Border heir I did not see, nor have I the honour to be of their number. I shall be glead to know in what I can serve yr Lordship, for I am

yr Lordship's most humble and faithfull servant,

Queensberry.

17 July 1682. The Earl of Perth,<sup>52</sup> Drummond, Perthshire, to the Earl of Carlisle.<sup>53</sup>

My Lord,

I have just receav'd a letter of your Lordship's which is occasion'd by a tryall which your Lordship supposes may come before that Court where I have the principall interest, but for any thing I could learn Mr Story wil be try'd at Dumfries. I cannot denye but that, (in as far as I have consider'd the Border Comission,) it were regular to repaire the injury done to those on your syde of the Border by once sending the prisoner to you and then asking him back again, and the insolence was great in forceing him out of the officer's hands: but Story has many ennimies and some people give a much less favourable account of the thing than this Mr Kerr does. I am sorry it is not in my power to obey this first command of your Lordship's in causing send back Richard Story to you, for except I could do it as a privie Councillor, (which cannot be done regularly, seing the mater is knowen sufficiently to My Lord Thresurer into whose goal he now is), I am not warranted as Justice Generall to do any such thing. I could cause apprehend any body who were under suspition of guilt, but my business is not in matters of civil right, which this question betwixt the Commissioners dips upon. However, my Lord, I shall send over an account of the matter to my Lords, the Chancellor and Threasurer, and I am very much persuaded they wil see that no mistake upon this account may go on betwixt the Commissioners for the Borders in Scotland and England.

If in any thing I could serve your Lordship I should be very glad of the occasion that I might evidence how sincerely I am, My Lord,

Your Lordship's most humble and faithfull servant,

Perth.

<sup>52</sup> James (Drummond), 4th Earl and titular 1st Duke of Perth, 1648-1716. He succeeded to the earldom in 1675, was made a member of the Privy Council in 1678, and justice-general in May 1682.

<sup>53</sup> Sloane, f. 118.

17 July 1682. Charles Fleming,<sup>54</sup> (Richard Story's brother-in-law), Stirling, to the Earl of Carlisle.<sup>55</sup>

My Lord,

Though I have not the honnor of your Lordship's acquaintance, yet I find myself very much in duety oblidged to give your Lordship the trouble of this line, rendering your Lordship many thanks for your so great kyndnes showne to my poor unfortunat sister, Lady Liliast Fleyming, in this time of her sad calamity, whereof I have had a particular account from herselfe; . . . My Lord, I heare that in that affair of her husband, Mr Storie's, the Council of Scotland intend to deall very severely with him and are to bring him from Dumfreis to be judged at Edinburgh. And though I shall use all possible endeavours to get his tryell deferred as long as may be; yet I fear there be no mean test to save his life but a remission, our Scottish law being very ticklish upon this point. I heare your Lordship hath both concerned yourself and some other freinds for a remission to him, and I must beg the continewance of your Lordship's care and favor to him in this, wherin I will not be wanting to my power to concurre with your Lordship, to which purpose I have written very earnestly to my cusigne Lundie, who is now at Court, to assist these gentlemen employed by your Lordship in that affair . . .

My Lord,

Your Lordship's ever oblidged and most humble servand,  
Charles Flemyng.

23 July 1682. Lord Morpeth, Carlisle, to the Earl of Carlisle at Hinderskelf in Yorkshire.<sup>56</sup>

My Lord,

I hope your Lordship and my Lady gott well be your journys and that you continue so upon the change of aire.

The other day I received these inclosed from Scotland, which according to your directions I opened, though directed to your Lordship. Since these letters came to me I have sent severall times to Mr Egliobny to desire to conferr with him aboute what was proper to be done for Story, but I could never gett him to cum to me, so that the whole afaire lyes upon your Lordship to moove by such means as you think moste proper for obtaining a remission for him, for nothing butt that will save him.

<sup>54</sup> Charles Fleming, died March 1684, a captain-lieutenant in the Earl of Mar's Regiment of Foot.

<sup>55</sup> Sloane, f. 112.

<sup>56</sup> Sloane, f. 101.

If your Lordship doe anything it must be by the first poste, for the time will require haste. That which I conceive will moste reasonably obtaine mercy for Storry will be to insist upon this that, according to the judgement wee can make of the evidence, itt would amount to manslaughter only if Storry were to be tryed by the law of England, and therefore, though itt is his misfortune to be remooved from the advantage of such a tryall, which by the way was very unjustly brought upon him by violently takeing him out of England contrary to law and the articles agreed upon by the Comitioners of boeth Kingdomes for the setteling a good corespondance in afaires relating to the borders, I say, beeing it is his mesfortune to be under these ill circumstances, if your Lordship think fitt for these reasons and what others shall occurr to your Lordship to moove my Lord Morron<sup>57</sup> for to gett a remission, this must save him if anything does . . .

I am your Lordship's moste dutifull sonn,

MORPETH.

Two weeks later Fleming wrote again to the Earl, informing him that he had prevailed upon the Earl of Perth, the Justice General, to delay Story's trial until the third Monday of November. Till then, any relations of the Fleming family, who had any influence at court, would continue to do their best to obtain a remission. The trial as arranged did not take place, the reason for this being contained in a representation made by Armstrong's widow on 7 December to the Privy Council that they should write to the sheriff and mayor of Carlisle, asking them to compel the seven English witnesses to appear before the Court of Justiciary for the trial whenever this should be held.<sup>58</sup> The Council agreed to do so but this proved ineffectual, for no witnesses appeared at the next trial which was to have been held in March. Apart from the reluctance of the Carlisle sheriff to comply

<sup>57</sup> Alexander Stewart, 5th Earl of Moray (bapt. 8 May 1634, died 1701), who had been appointed Secretary of State for Scotland in November 1680. See *DNB*.

<sup>58</sup> *RPC* vii 728. The witnesses, all living in England, were Doctor John Jamieson, Robert Ker, now in Carlisle or Cumberland. Lancelot Graham in Rosetrees, John Armstrong of West Linton, Thomas Litle in Breckinhill, Richard Monk in Carlisle, and Charles Carruthers in suburb of Carlisle.

with the Privy Council's request it is possible that the witnesses themselves were loath to venture into Scotland. At least one of the seven was in danger of being seized and carried off into Scotland to give evidence, for Lady Lillias wrote to Lord Carlisle on 20 December<sup>59</sup> begging him to continue his efforts to obtain a pardon for her husband, and "if there be no hopes of getting it done, my husband and I with all our frinds earnestly intreats your Lordship to caus remove Robot Ker to some place further in, in Inland or near your Lordship's self, till the time of his trayall be past, which will tend very much to his safety, for I assure your Lordship that the Counsell has writen to the King desyering that his tryall should not be till they brought in English witesnes. This the contray<sup>60</sup> party pettitioned the counsell to be don, for the apprehending of Rob Ker and bringing in of all others that they cane make to be his enimyees. Your Lordship may easly know who is the greatest men in doing of all this, Quinesbery and the King's advocat . . ."

George Story, a cousin, wrote from Kirkclinton a week later in similar vein,<sup>61</sup> informing the Earl that the trial was deferred till the second Monday in March. "At what time his advocates say if Mr Karr can be kept from appearing as a wittness he may escape with his life. Admitt my Lord Queensberry continue his enemy to the end. There were some of Rich: Story's adversarys, namely one Jo: Johnston of Baraglease,<sup>62</sup> that desired the deputy mayor to assist him in the apprehending of Karr, telling him that they had an order from the Councell of Scotland to doe it, but he refused and told him that the Councell had noe power in this country . . ."

This dour contest between the two parties led by the Earl of Carlisle and the Earl of Queensberry was to con-

<sup>59</sup> Sloane, f. 109.

<sup>60</sup> The party in opposition to the Court.

<sup>61</sup> Sloane, f. 6.

<sup>62</sup> Barngleish, near Cannonbie in Dumfriesshire.

tinue for at least another six months. Story had been allowed to go to his home at Howend for a short time in January, an unpleasant experience, for he wrote that "I am in daly hazzard by my enemys whoe threatens me sore".<sup>63</sup> He returned to his prison in Edinburgh for the trial in March but, as mentioned before, no witnesses were forthcoming and Armstrong's widow again appealed to the Privy Council that the English witnesses should be sent into Scotland.<sup>64</sup> At the same time Story took action in the Court of Justiciary against the nearest of kin of Francis Armstrong,<sup>65</sup> a legal process to which the defence resorted in the hope of obtaining a decision, though it seems to imply that this was the last thing that the widow of Armstrong wanted. Briefly, this was a reminder to the prosecution that the witnesses must be produced in order to proceed with what was to be the final trial. In the same court a petition submitted on behalf of the prisoner was granted by the Lords who "recomendit to the keeper of the tolbooth of Edinburgh to allowe the petitioner ane open, free but secure prison to the effect that friends and lawyer may have readie access to him, and he may have some freer air for his health".<sup>66</sup>

The prisoner was much to be pitied, unless one refutes his brother's confession that he alone was guilty of the crime of murder. The trial was again postponed, by "my Lord Queensberry's procurement", and preparations were made for it to be held on 4 July 1683.<sup>67</sup> On this occasion the Privy Council went over the heads of the sheriff and mayor of Carlisle and appealed to the Secretaries of State in London, asking that a warrant might be sent to the sheriff and mayor of Carlisle direct-

<sup>63</sup> Sloane, f. 114. Letter 3 January 1683 from Richard Story, Howend, to the Earl of Carlisle.

<sup>64</sup> *RPC* viii 113-114. See also R. Chambers, *Domestic Annals*, ii 442-443.

<sup>65</sup> Justiciary Records, High Court Minute Book, 1682-1685.

<sup>66</sup> *Ibid.*, 9 April 1683.

<sup>67</sup> Sloane, f. 126. Letter 16 April 1683 from George Story, Carlisle, to an unknown person.

ing that the seven "witnesses to the committing of the said cryme" should be sent to Scotland.<sup>68</sup> It is taken for granted that these men never reached Edinburgh and that Story never underwent his trial for murder. If there had been a trial it is doubtful whether the evidence of certain of the witnesses would have corroborated the evidence given by Kerr in his deposition which contains no reference to other persons being present when Armstrong was killed. Trial or no trial, Story could still have been pardoned, and an undated draft of a remission is contained in a royal warrant for a letter under the great seal of the Kingdom of Scotland, pardoning and forgiving to Richard Story "the cryme of casuall homicide", committed by him upon Francis Armstrong in Parknow.<sup>69</sup> The remission was never entered in the Secretary's warrant book in Edinburgh,<sup>70</sup> proof that it was never signed, but there was another way out of this wearisome business which the following warrant to the keepers of the tolbooth of Edinburgh, dated 30 July 1683, brought to an end.

"Yee shall immediatly upon sight sett Richard Storie prisoner at liberty in respect he has found cautione for his appeirence, conforme to the Lord's ordinance day and daite forsaide, by me Tho: Gordoune."<sup>71</sup>

Story owed his release to the Earl of Carlisle. Of this there is no doubt, for when Story wrote to the Earl from Howend in January he thanked him for saving his life, securing his liberty and for considerable financial help towards the payment of his lawyer's fees. It is certain that the non-attendance in Edinburgh of the witnesses on the three different occasions appointed for the trial was due to the Earl's connivance, and this, together with the fact that the prisoner had found a cautioner from

<sup>68</sup> *RPC* viii 124.

<sup>69</sup> Sloane, f. 120.

<sup>70</sup> Scottish Record Office. P.R.O., SP 57.

<sup>71</sup> Scottish Record Office, Edinburgh Tolbooth Records, HHii, vol. 6, 371.

among his friends, put an end to any further attempts of the prosecution to obtain a conviction.

The subsequent history of Richard Story is soon told. In 1689 Allan Nicholson was appointed Waiter and Searcher at Bowness for Cumberland and the coast of Scotland *loco.* Richard Story, lately dismissed (*Cal. Treasury Books*, IX, pt. ii, 312). Sloane MS. 2723/117 is endorsed "Dick Storyes Certificate". It is a copy of a certificate dated Port Carlisle, 19 September 1690, which certifies that "Mr Richd Storye jun. late Waiter and Searcher in this Port did during the time he was imployed behave himselfe diligently, faithfully and honestly in his sd imploy<sup>t</sup> & is a Person very fitly qualified for the same & stedfast to the present Governmt". Lady Lilius, his wife, was buried at Arthuret on 4 February 1686/7. It may be that Richard married again, for Mary, wife of Mr Story of Howend, was buried at Arthuret on 17 May 1696, and in the following year,<sup>72</sup> on 16 February 1696/7, Mr Rich. Story of How=end was buried there. This last entry could relate to Richard's father, who has last been traced in Arthuret B.T. as "senior" in 1681, though he was no doubt alive in 1682, when our Richard is called "younger". By 1686/7 he is not so called, so that the father may have died between 1682 and the beginning of 1687.

#### Acknowledgements.

I am indebted to Mr C. Roy Hudleston for the loan of his transcripts of the letters in the British Museum which are the backbone of this paper. The transcripts cover some thirty quarto sheets and it has not been possible to reproduce them in full. His help in other ways has been considerable.

<sup>72</sup> In a list of the parish of Arthuret for a sess. of 4s. per £ in 1696 Richard Story of How End is entered, the amount against his name being 12s. 6d. (Howard of Naworth MSS. 172/18 in Department of Palaeography and Diplomatic, Durham.)

I am also indebted to Dr Athol Murray for his invaluable help in locating vital references in the Scottish Record Office. And to Mr J. V. Harrison for many useful suggestions.

## APPENDIX I.

### The Storys of How End.

By C. ROY HUDLESTON and J. V. HARRISON.

The Story family had been at How End for many years before the events which Mr Prevost relates. In May 1528 the Scots burnt "at the Howende" four houses of Thom Storie's, three houses of Jak Story, two houses of George Wilson, a house of John White's, and a widow's house. (Letters and Papers, Henry VIII, no. 4420, quoted by R. B. Armstrong in *The History of Liddesdale*, appendix xx.

In 1583 it was reported of "Wat Story called Wat of the Hove End" that he had a daughter married to a Scottish Armstrong (Bain, *Border Papers*, i 122). In the following year Thomas Storye son of Walter Storye late of Howende, husbandman, was present at the murder of George Grame, *alias* Parcyvell's Geordie (*Ibid.*, i 139 f.). No doubt this Thomas is the Tom Storie of How End, a West March pledge in 1597 (*Ibid.*, ii 350), and with the Thomas Storie of Howend, for whom, and Florie Storie, William Grame of the Moat, and Richie Grame of Brackenhill, undertook to be responsible in 1602 (N. & B. i cxii). Flory Story was shipped to Ireland with the Grahams in 1607 (*Ibid.*, i cxxi). At Carlisle part of eight lines of the will of Agnes Storie exist, dated 30 January 1637/8. She was probably widow of Thomas Storie of Howend, and desired to be buried in Arthuret churchyard "as neare . . . pullcher as conveniently may be paying my". The rest has perished.

An extremely inaccurate version of the will of George Storye of Howend, dated 5 March 1640/1, is printed in that extraordinary family history, *Storeys of Old* by R. E. K. Rigbye (1920). A more accurate version is printed in Appendix II, from which it will be seen that George had a brother Arthur, doubtless the man of these names who petitioned the King on 16 April 1641, with Gilbert Taylor of the Luckneys and Francis Foster of Kersupfoot, yeomen like himself. They stated that in 1640, they,

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with 120 other persons, were employed in the King's service in Edinburgh Castle, seventeen losing their lives in its defence. With great difficulty Taylor, Story and Foster escaped, but being ignorant of what felonies or other misdemeanours might in their absence from their native country be suggested against them at their return to their abovesaid habitation, they ask for a pardon for all thefts, crimes, felonies, &c., which have been done by them or may be prosecuted against them. (Rymer, Foedera XX (1735 ed.) 435.)

## APPENDIX II.

### Will of George Storye 1641. Carlisle.

5 March 1640 In the name of God Amen I George Storye of Howend in the parish of Arthuret within the County of Cumberland doe make this my last will and testament in manner and forme following viz Imprimis I give and bequeath my soule into the hands of Allmighty god &c Item I bequeath my my [sic] Body to Christian buriall in the Churchyard of Arthuret aforesaid Item I give and bequeath my Estate Good and Chattles in manner and forme following

After my funerall expences and charges be discharged I give and bequeath to my Brother Thomas Story ij black browne young kine about ii yeare olde Item I give to my brother John Storie other ii kine blackish browne and of the like age Item I give to my Brothur Arthur Storie ij Kine same culler and age Item I give unto my brother William Storie other ij kine same culler and age Item I give to Janett Armestronge my naturall sister ij kine same culler and age Item I give to Richard Storie my basse sone ii of my best kine and my gray stone nagge Item I give to old Jone Storie my cosin one of my oxen Item I give to my Unkle Graham of Brackenell my little browne bay maire being now with fole Item I leave to S<sup>r</sup> Rich Graham K<sup>t</sup> and Barronit my faithfull and respected Lord and Master my best horse Item I give to my Lady Gram my Honble Lady and Mistris ii of my chiefe and choycest kine Item I give to my naturall daughter Anne Storie £72 being due to me out of his Matis exchequour The rest of my personall estate goods and chattls (my debttts being discharged) I give to my wife Jane Storie and to my foresaid daughter Anne Storie to be equally devided betweene them whom I make my joynte executrexes of this my will and

testament Wittnesse my hand this day and yeare above written  
George Storie

Witnesses Edward Musgrave Geo. Constable

27 March 1641 proved by Jane Story widow to her use and that  
of Anne Story and tuition of said Anne granted to the same  
Jane her mother

5 March 1640

A Cãtaloge of my debts being by me owing to several persons  
at the time of making my last will and testement viz

Imprimis to Mr Robt Oglethorpe	£3
Item to Tho Graham als Pedder	£10
Som a tottalis	£13