

XLI.—*Papers relative to the Murder of Lord Francis Russell, at Hex-pethgatehead, on the Middle Marches, between England and Scotland, communicated by Captain SAMUEL E. COOK, R. N., and accompanied by an explanatory Letter from the Rev. JOHN HODGSON, Sec., to JOHN ADAMSON, Esq., Sec.*

Whelpington, October 15, 1829.

DEAR SIR,

CAPTAIN Cook some time ago communicated to me his wish to contribute to the Transactions of the Society any paper or document in the British Museum, or the public offices, which might be pointed out to him as illustrative of the history of this country; and, in May last, I showed him certain letters and proceedings respecting the murder of Lord Francis Russell in 1585, which he thought interesting, and of which I have received from him a copy, under the date of Brighton, 4th July, 1829, and now transmit it to you to lay before the next meeting of the Society.

The documents you will find arrange themselves into four divisions, upon each of which I will endeavour to make a few preliminary remarks, by way of illustrating the subject to which they relate.

I.—*The Manner of the Slaughter of the Lord Russell.*

The time and manner of the death of this young nobleman are facts well authenticated in history; but there wants a few notices of his family and himself, drawn up in the order of time, to show by what chain of circumstances he was drawn so far from home, and induced, in peaceful times, to be present at the border meeting in the bleak and lonely part of the Cheviot Hills where he met with his untimely end.

Francis Russell, the second Earl of Bedford, was a nobleman who made a conspicuous figure during the early part of Queen Elizabeth's reign. Collins calls him "*The Great Earl*"; and in allusion to his great hospitality, Queen Elizabeth used to say of him, that he "made all the beggars." She also employed him much in northern affairs, and about the latter end of the year 1569, appointed him to succeed the Lord Grey de Wilton, as governor of Berwick and warden of the East Marches. In the following year, he and Sir Thomas Randolph, the resident English minister at the Court of Scotland, were commissioners in the conference holden at Berwick for negotiating Queen Elizabeth's cruel and tantalizing proposition to marry Mary, queen of Scots, to her own favourite, Robert Dudley, afterwards earl of Leicester. To his offices of governor of Berwick and warden of the East Marches, he had added that of Lieutenant of the counties of Durham, Northumberland, Cumberland, and Westmorland, upon which he entered about July 20, 1565, when he came to Berwick, and, under secret instructions from his mistress, gave all the assistance in his power to the measures of the Scottish nobility, who were opposed to Mary's marriage with Darnley. In the following year, however, Queen Elizabeth was requested to become godmother to James, prince of Scotland, and Bedford was sent with a splendid retinue to Stirling, where, on December 15, as ambassador and proxy for the English queen, he made an offering of a font of pure gold, and stood as surety for the royal infant: after which, according to Melville, he became one of the surest and most affectionate friends the Scottish queen had in England. These notices seem sufficient for the purpose of pointing out the connection, which the Bedford family had with the north of England, in the early part of Elizabeth's reign. In 1568, the earl was succeeded in the government of Berwick and the East Marches by Lord Hounsdon, a near relation of the queen's and after that time noway appears, as far as I have seen, on the annals of the Borders.

Before he entered upon these offices, Sir John Förster, a gentleman of very considerable property in Northumberland, had begun to signalize himself for his bravery and military skill. He was one of the captains

in the great foray into Scotland in 1557, when the houses of Linton and sixteen other towns were sacked and burnt, and all their corn destroyed. "In this skirmish, Sir John Forster fought bravely, was sore wounded, and had his horse killed under him, and to his prowess was chiefly ascribed the victory gained by his countrymen." The Duke of Norfolk thought him the only man in Northumberland fit to serve in that species of warfare; and during the siege of Berwick, in 1560, intrusted him with the chief command of a considerable body of light horsemen, which he had levied for the purpose of acting offensively and defensively in the Middle Marches. In 1563, the Earl of Bedford made him his deputy warden in the East Marches, in which capacity he attended Mary, the beautiful queen of Scotland over Hallidon Hill, towards Berwick, for the purpose of showing her from some short distance what Camden calls "*munitissimum totius Britanniae oppidum.*" When the northern rebellion broke out in 1569, he was Lord Warden of the Middle Marches, and continued to hold that office till about the year 15 . . . , when he was succeeded by the Lord Eure, whose successor in it—Carey, earl of Monmouth—says of Sir John Forster, that "he had been an active and valiant man, and had done great good service in the Middle Marches, of which he had been a long time warden."

Such were Francis, second earl of Bedford, the father, and Sir John Foster, the father-in-law of Sir Francis Russell, knight, the principal subject of these notices, and commonly known in history under the name of Lord Francis Russell. His mother, Margaret, countess of Bedford, was daughter of Sir John St. John, knight, and sister of Oliver, first Lord St. John, of Bletso. Of the time of his birth I have found no account. His father, when he entered upon the office of Lord Warden of the Middle Marches, was only 36 years of age; lord Francis could, therefore, be only a boy at that time. His wife's name was Eleanor, and she had two sisters, Grace, the eldest of the three, married to Sir William Fenwick, of Wallington, and Mary, wife of Henry, son and heir of Sir Robert Stapleton. His acquaintance with Sir John Forster's family was probably commenced while his father was warden, and Sir John deputy warden of the East Marches; and, if such was the

case, he was initiated at an early period of life into the enterprising and perilous service of the borders. In 1575, he was at the warden's meeting on the Redeswire, which ended in the memorable affray in which himself, Sir John Forster, and other English gentlemen were made prisoners. History does not contain many notices concerning him; but the high consideration in which he was holden in the north may be judged of by his having represented Northumberland, in the parliaments from 1572 to 1585.* In 1775, he was chamberlain of Berwick and one of the governor's council there; and two years after filled the office of High Sheriff for Northumberland; but as will be seen by the following papers,† was slain at a border meeting at Hexpethgatehead, on July 27, 1585. The spot where he fell is on the ridge of the mountain called the Windy-gyle, on the confines between the lordship of Kidland and Scotland, near the eastern extremity of the Middle Marches; and is still pointed out by a cairn, called to this day "*Russell's Cairn.*" Collins says, that his body was buried in Alnwick church; and, though no monument, nor entry in the parish registers there, remains in evidence of his assertion, yet it seems probable that his account is right; for, Carey in his *Memoirs* notices, "that Alnwick Abbey was the house where Sir John Forster ever lived while he was warden," and custom justifies the supposition that he would be buried among the ashes of his nearest friends or relatives in the country where he had resided. It is remarkable that he was slain on the day after his father died.

II.—*The Names of those that are charged of being guilty of the Lord Russell's Death.*

The clan of Carr, or more properly Kerr, in Scotland, was very powerful in the south of that country. Sir Thomas Carr, of Ferny-

* Collins says that this Sir Francis Russell was summoned to parliament in 7 Edwd. 6: 1552: but, in this instance, mistakes him for his father, who was certainly summoned to that parliament in the 25th year of his age, and two years before he succeeded his father in the earldom of Bedford. See *Jour. of H. of Lords*, I. 431.

† These papers are very much in accordance with the account Camden, in his *Annals of the Reign of Queen Elizabeth*, gives of the events of this meeting, with the exception of his asserting that others were killed besides Lord Francis; unless the expression "men lawfully assembled in God's peace and their sovereign's slain," may be considered as including a greater number than one.

hurst, the leader of the armed force on this occasion, had previously signalized himself as a military captain; for, immediately after the murder of the regent Murray, he and "Walter Scott, of Buccleugh, two of the mightiest of the border chieftains," made an incursion into England, burning and ravaging the country through which they passed* It is his son who makes such a conspicuous figure in Carey's *Memoirs*.

III.—*Sir John Forster's Reasons to prove that the Murder of the Lord Russell was premeditated.*

This is a clever section; and, if it was really drawn up by Sir John Forster himself, shows that he was intimately acquainted with law in general, and particularly so with the customs, practice, and pleading of the March courts; the processes of which, and the laws and maxims by which they were regulated, are here practically explained. In the selection and marshalling of his arguments, one may incidentally see how much dexterous Machiavelism and chicanery were employed in managing the international transactions of the two countries; but, one could hardly have expected to have heard that so much learned reasoning had ever been employed in the Wardens' Courts at Kemmelspeth or Hexpethgatehead—in the open air, and on the high mountain ridge that separates England from Scotland, towards the head of the river Coquet.

IV.—*The Manner of holding a Day of Truce, or Day of March, for Restitution of Injuries and Insolencies done on the Borders.*

A collection of the laws of the borders, which contain directions about the manner of holding the border courts, was published above a century since by Bishop Nicholson, and might be very much improved by additions and corrections. This short section of the papers, under consideration, does not seem to be drawn up with the same spirit and care as the preceding articles; but rather to have been intended to suit the case in question, than for general purposes as its title would imply.

I am, dear Sir, your's, very truly,

JOHN HODGSON.

* Ridpath's Bord. Hist. 633.

[M.S. Cotton. Mus. Brit. Caligula C. VIII. fol. 236-243.]

I.—October 1585. *The manner of the slaughter of the l. Russell.*

IMPRIMIS—the Warden of the middle marches of England came to Oswyne Middle the xxvijth of July, 1585, wth the gentlemen of England to kepe a truce wth the opposite warden and staying there a certaine space, sent certaine gentlemen to the opposite warden to Hexpethgatehead to make assurance according to the ancient use & custome w^{ch} being graunted on both sides, and thereupon proclamacion made that none should breake the said assurance untill the next day in the morning, neyther in word nor dede, nor countenance, upon paine of death. The said Warden came forwarde thinkinge to finde the warden of Scotland accompanied after his accustomed manner, w^{ch} they found contrary to the greate mistakeinge of the said warden of England, and all the gentlemen his companye, the ground so servinge that they could not discover the other p^{tye} till they were at the joyneinge together, so that there was no remedie, the forces of Scotland being so greate, but stand to their former assurance, where the said opposite warden was standinge ranged in order of battell wth ensigne pensell fyfe & drumes otherwise then ordinary custome hath bene at any day of Marche in tyme of peace betwene those two realmes as in their proceedings did playnly appere.

This is not accident or sodaine as ordinarilye hath bene and yet hath bene stayed by warden or comrs. If it had bene an accident or sodaine breakeinge by rascalls as there was no such matter, The gentlemen of Scotland, wth their drumes, fyfe, shot, and such as carryed the ensigne & pensells would have tarryed with the warden, so that it appeareth plaine-ly that it was a pretended matter before hand, for the wardens sittinge quietly, calling their bills the warden of England, thinkinge no harme, the partye of Scotland seeing the tyme serve for their former devise sodainely brake strikinge up a larome wth sounds of drumes & fyfe wth ensigne displayed pensell and shot & gave their charge upon us in w^{ch} chardge the lord Russell was cruelly slaine wth a shot, and so divers gentlemen of Scotland, wth their footmen and horsemen and their whole force followed and maintayned the chardge fower miles wtⁿ the realme of England, and toke sondry prisoners and horses, and carryed them into Scotland, w^{ch} they deny to redeliver againe. The like breach of assurance was never sene, so that it is manifest that it is a plaine set downe matter before. When all this was done and the fields disordered, and the gentleman was slaine, and all past remedye the warden of Scotland made proclamacion for the defence of the former devise when there was but a small company of gentlemen eyther of England or Scotland left to heare it, w^{ch} was to a small purpose.

II.—October, 1585. *The names of those that are charged to be guilty of the lord Russell's death.*—Sr Thomas

Carre, of Farniherst, Knight, W^m. Carre, of Angerem, James Carre, of Lintolee, Robert Carre, brother to the said W^m. Carre, Andrew Carre, lor. of Grenhead, John Rudderford, of Hunthill, David Moscroppe, deputy Provost of Jedworth, Kirton, wardens sergeant, James Carre.

III.—*Sir John Forster's reasons to prove the murther of the lord Russell was pretended*—(Written by S. Jo. Forster and subscribed Ex^{at}.) IMPRIMIS the Warden of the Middle marches of England came to Oswold middle the xxvijth of July, 1585, wth the gentlemen of England to kepe a day of truce wth the opposite warden, but staying there a certaine space sent certaine gent to the opposite warden to Hexpethgatehead to take assurance, etc. as on the other side, and afterwards these names subscribed.

John Forster, Wm. Fewnike, Ri. Feynick, Jo. Horsley, Thomas Sloy, Edmund Creister, John Thornton, Robt. Lisle, Tho. Woodrington. Humfr. Forster, Robert Claveringe, Robt. Middleton, Perceval Clennell, Andriew Pringell, George Pryngle, John Heron, James Ogle, John Heron, Fra. Radcliff, Luke Ogle, Tho. Procter, John Carnaby, Ralph Collingwood, Henry Collingwood, Jo. Collingwood, the younger, Percewell Thomas Collingwood, Robert Leaylle, Edward Shaftowe, Jo. Hall,

October, 1585.—*Doubtes wherein her Maties Comissioners desire to be resolved.*—1. First if or English witnesses be not to be allowed w^{ch} is a principall cause to stand upon so farre as there is lawe to maintaine, then whether to pced to ex. Pharniherst himselfe who they deny not to be ex. and some other that were on the field. Scottshmen whome they cannot disallow supposing the matter so plaine in some principall points, as upon othe they cannot nor will deny, viz. That assembly in warlike & strange manner otherwise than at any tyme before. The charge against the English and the chase a greate way with displayed ensignes, pennans, or pensells into England, wth sound of drume & fyfe wth the chiefe offic's and servants of Pharnihurst, and the whole power of that side, savinge very few, &c. The murder & killinge of the lord Russell done in the first beginninge of that disorder but by whome unknown. The takinge of prisoners as well in the chase in Englands ground, as in the presence, and even at the back of the said Pharniherst Warden and the spoyle of a greate number her Maties subjects at that tyme &c. All w^{ch} it is supposed by St. Jo. Forster & others they cannot denye.

This offer they made by word after their answer in writing delivered. Irm whether to yeld to examyne any witas of their side as they have desired offering to allowe of English witnesses if we will allowe of their witnesses supposing more advantage to fall by or witnesses then can fall to them admitt they prove all they alledge, because that allegacon I think not sufficient. But this is advisedly to be considered & yet or English witnesses ex. alone if it can be.

3. Itm it may be considered whether to ex. onely Pharnherst and other Scottishmen that cannot denye the points before declared rather than by alloweing or English witnesses to allow also their witnesses, if otherwise we cannot have or English witnesses allowed or to ex. first the Scotts, and if we finde them not sufficient then to. allowe their witnesses rather then we lose the benefiet of or English.

The best of these 4. For the profe against Araine there to be taken. I se but little, savinge presumption that Pharnhersts dealinge might be thought not without his privity, his sonne being wth Arrane late before whereof there is no proufe but secret intelligence, yet he may be exd himself of that point and what advise he had upon his othe. And the want of profe is the said Arrane was left out of the said bill.

5. There is some suspicion they have found out, one as guiltie of the act of the murder of the lord Russell, thinking to be so discharged, and by their answer there is some semeing there should be such a matter, but whether true or not it is uncertaine, albeit Sr John Forster hath such secret knowledge and if it so be it is thought by the said Sr John Forster and myself, that it were no hinderance to the cause to give them cause to procede wth that purpose whereby happily some furder matter might fall out and yet hinder or excuse no other that of good cause or likelihood.

October, 1585.—*A project of the reply to the answers of the Scottish Comissioners.*

To reply to the answers made by the honorable Comissioners opposite, and authorised by the right mightie and excellent prince James by the grace of God, Kinge of Scotts to the bill or allegacon exhibited by the Comrs authorised by the most excellent princes Elizabeth, by the same grace Q. of England.

To the first parte of the allegation in the said answer contained, although wardens be at libty and no lawe contrary but they may assemble bringe order and array power and forces at their day marches as they like and at their discretion, yet not allowed or used in tyme of peace to assemble or bringe to any such metings tendinge to the preservinge of peace and good order, any ensignes pennans fifes and drumes wch be signes and tokens of warr. And therefore the said Sr Thomas Carre with his complises cominge to the said day march assembled and furnished with such signes and tokens of warr, wth greater number, power and forces, as well gathered out of the other wardenryes as his owne, and in other forcible order placed appointed and arrayed then was usual, or at any tyme before used eyther by the said Sr Thomas Carre, warden, or by the warden opposite as is alledged, and the same unaccustomed power and force by forsene advantage so polittiquely in order of battell there placed as before taking of assurance and before the said English warden his cominge so farre into the danger as without greater danger could not be avoyded, was not by the said English Warden known or discovered breedinge a

greate doubt and question betwene the said English, Warden and his company of some perill intended after the same power and forces was sene and viewed. After the said assurance being then destitute of any other help or reliefe but to stand to the trust & hope onely of their said assurance was a manifest and plaine presumption, that the consequente disorder and mischiefs that did after fall out was purposely before hand pretended to the breache of the treatye truce and assurance as in the said bill or allegacon exhibited is alleaged.

To their answer to the second and third heads of the said bill or allegation as they do term it, excused chiefly by the originall beginninge of the breake whereupon the whole disorder as they say did growe was begone by the English. Admit the same was true as it is not, God forbid that of so light an occasion so great disorder and mischiefe as did followe were to be allowed as lawfull or to allowe any subject being attempted wth greater hurte or injurie, then was offered or done by any English to any subject of Scotland that day, to redresse his owne injurie with a greater mischiefe being not denied of justice and a thinge usually in experience of greater offences and quarrels many tymes pacified, and upon complainte presently redressed by the wardens at like metings then of sufficient power to suppress greater matters and offence then for this excuse if it were true as alledged, but the whole power savinge a small number wth the warden of Scotland there assembled wth the wardens owne ensigne, and a good number of pennans beside displayed sound of fife & drume accompanied wth his owne chefe servaunts and officers, upon so small occasion if it were true, to invade the realme of England, cruelly to murder kill take & lead away as prisoners, her matys subjects as well in chase wth the ground of England as upon the field in the presence and even at the back of the said Warden wch wth the suspicious assembly before declared, and all the members depending of the same manifestly proveth and enforceth a pretended intent and plaine breach of the peace truce and assurance, and the disorders then & there committed to be by the counsel & pcurement of the said warden of the middle marche of Scotland and his accomplices, and the matrs for the excuse of the same in the said answer, objected to be but feigned or surmized, or at the least of purpose procured for the coloring onely of the pretended mischiefs. as any intending the greatest mischief might easely procure to be done at such assemblyes as this, that for excuse is alleaged. were to be allowed a perilous and dangerous example, not confessing that there was any pacifenge of the disorder by the said warden, till all the mischiefs were ended, or yet the prisoners generally set free, but for the most pte resting as yet in bondage, and no spoyles as yet redressed, not omittinge also the uncertaintye of the excuse alledged, is it more to be allowed (as it is not) in that it is not declared whether by English or Scotts the same first spears was cast downe, swords drawne and shot discharged, nor by what English persons. And not declaring what injurious words they were that were spoken,

nor whether by English or Scotts they were said, if the matter were as any weight as it is not to excuse so great inconvenience. So as the substance in the said bill or allegacion conteyned is not so sufficiently avoyded by the said answer as it is expounded, neyther the pcuring of the most horrible murder of the honourable Lord Russell her Matys subject, parcell of the said bill or allegacion so directly excused as it is taken, being the first act of injury done in the first assault, and chardge that was given at the beginninge of the said disord, not refusing to joyne wth you the Comissrs opposite in any convenient tryall, so farre as or condicion and authoritye will beare to the findeinge out of any such as are culpable of that so haynus a cryme, not excusing such as are not to be excused. And to the redresse of prisoners and goods according to the lawes to be tryed by the wardens. We think her Matys warden for his part will not refuse to deale in that course the greater and weightyer causes being first redressed and satisfi'd to her Matye as to the honour of her highnes appertaineth.

To the witnesses by the said answer desired to be examined for profe of the causes in the same answer contayned. We have some doubt whether or commission or authoritye so serveth wthout furder direction or instruction from her Matye or Sovereigne maintayneing to be lawful and agreing to the lawes of God and evill that or English witnesses ought to be examined and allowed the case standing not as a common cause betwene princes against whome it were hard for any subject to prove or to beare witness.

ix Octobr. 1585.—Albeit that it plainly appeareth *The l. Scrope* to as well by or allegacon as by the *Sec. Walsingham*. witnes for profe thereof that a manifest breach of the peace will be found in Farniherst, yet they will allowe or admitt no breach thereof at all, as by the viewe of their said answer you may very well perceave, Yet notwithstanding because we could not by that course so effectually pvaile wth them as were to be wished, for p'nt deliv' ye of Farniherst as a fowle man in the breach of the peace and murder of the Lord Russell. We made choise agreeable to an especiall article amongst others in our instruct'ons frō the Lls of his Matys privy Counsell to demand him to be delivered to us a fowle man in respect of the appearance of his facte wth oth' Scottshmen his accomplices. Whereunto they have answered that they could not do it untill they had further acquainted the Kinge therewth but would upon the understanding his pleasure therein, give us their further answer upon friday next.

October 1585.—*The causes objected against Sr. Tho. Carre of Farniherst and others his Complices consist as followe.*

All issues in tryall do consist in theis two heads in fact in lawe.—In every fact is considered the effect the demeanor in doinge and the intent.—In this act now in question whereupon Farniherst and his complices are chardged The effect is this, The realme was entred by force, thassurance broken men lawfully assembled in God's peace and their Sovereignes

slaine, and those of the best in presence, Twenty gentlemen making no resistance taken prisoners, goods of great value taken and carryed away.—The demeanor was thus, he complained by letters extant, to thearle of Arrane wherein he sheweth himself offended upon a former accident.—He prepared new ensignes with hast.—He arrayed his people, being armed in ord of battell wth Ensignes, penons, gwydons, drums, fyfes, &c. The ensigne carryed by his own servaunt, who entred after with the same, displayed two miles wth in England.—He toke a place of advantage where he nor his company could be discovered wth wings ordered in such sorte that the lord warden lighting was envyroned.—He stood in battell array with 3000 in number by estimacon.—His manner of coming was expostulate by the lord warden wth the gent. attending and misliked.—He denied satisfieinge of the K. Ire signed wth his owne hands, commaundinge redresse to one Henry Collingwood, Englishman, who being aftsones urged by the lord warden for full answer utterly refused wth these terms, I will answ. the Kinge.—Wm. Stable als Coulder one of the bands of Jedworth requyred two Englishmen servants to Mr. Thornstap of a special favor having once bene his servaunt that they would repayr to their mrs and kepe them on horseback for the day would prove evill.—The lord Russell was offred to be taken prisoner by Wm. Carre of Ankoram.—A vollie of shot discharged upon the lord Russell, when he was slaine.—The drum stroke up as it semed for a token immediately upon the first chardge.—The English gentlemen were taken prisoners that were next about both the wardens sundry wth in a man's lenght, and were not releved by Farniherst.—Farniherst drewe his owne sworde.—The Chace came by Far: wth in the distance of fortye yerds, and were not stayed by him.—The said chace was followed into England by his whole troupe, ensignes displayed, guidons, &c. wherein Kirton his water serjernt was taken as an arch Traytor by Mr. Feunick of Wallington, two miles within England.—Horses & men taken in England & carryed away by the Scotts 100 or more.—Farniherst chardged wth the premisses in Scotl: confessed that his banner was displayed in the p'nce of Peck her Matys Ambr divers nobles of Scotland & Mr. Fennick.

The intent appeareth by the demeanr and effect beforesaid:—All wch concurring in one act is rightly tearmed & taken for hostilitye carryeing wth it theis horrible crymes of fayth-breaking, Murther & Robbery, as accessaryes accompaneinge.

Upon the fact groweth the lawe which is considered in theis:—The lawe of God, The treatyes betwixt the princes the same expounded & confirmed by experience. The lawe Civile and the lawe of nations. And first in the lawe of God.—In the mouthe of two or thre witnesses all truthe shall stand, Murther is punished by death, God will requyre bloudshed at the hands of men yea of beasts. In the treatyes, hostilityes be expressly forbidden, Treaty 6. art. 2. H. 8. art. 2, 3. for the wch the penalty is not expressed as a cryme of higher nature or quality

than ought to come within the compass of ordinary tryall but is reserved tryable by Com^{rs} as appeareth by the treatye H. 6. art. 16. The manner no doubt is intended agreeable to the lawe of God and the lawe of nations. The repaire of justice not done and the punishment of thoffender is referred to the zeale of Gods justice in the heart of the prince to the w^{ch} end God hath put the sword into his hands. Thother accessory crymes of breach of assurance murther and robbery in cases where they be principall, are determinable by the wardens by delivery.

The third branch :—Experience hath expounded and confirmed the honourable and sincere meaninge of the princes within memery thus :—King Henry the seaventh made delivery by his Comissioners of Sr W^m Heron his Matys officer to satisfie the murther of Sr Robert Carre, lord of Cesfurth, the opposite warden slaine at a day of marche in a tumult by one Starrehead a private man.

Thearle of Moreton late Regent made deliv'y of of Mr Carmighell then keper of Liddesdale to satisfie her Matye for the breach of assurance & slaughter of Sr George Heron and others. By the Civill lawe the partye offended or his prince complaineinge by his Amb^r to the prince of the offend^r if he be denyed justice. In causes pecuniary, reprisalls are justly granted by his own prince to the person so agreaved. In causes criminall, not estimable as for life or limbes taken away, yf justice be denyed the lawe wil leth denouncing of warre. The reason of the lawe is that the subject oweth obedience and service to his prince and the prince protecon to his subjects. In both the cases his profes of his owne nation is sufficient neyther shall thadversary produce witnesses to sweare to the contrary, Iniquam enim est quæri de peregrino for punishment force publique and armed is death. By the lawe of nations the assertions abovesaid in the effect and demeano^r will be avowed & proved by the othes of twenty gentl of bloud & cotearmour who are ready to fortifie their othes so to be taken by combat with their appeachers upon equal condicon. The ground is auncient-Grassatio hostilis, nisi bellum prius denunciatum ett indictum fuerit, est latrocinium. By the premises it appeareth that Farniherst and his complices are justly charged. The profe is lawful The filing not avoydable and therefore our demaund already made to have him and his complices delivered is just.

xvjth Octob. 1585.—*The Scottish kinges answer to the Comissioners demaund sent by George Younge* :—Sone af was dispatched Mr. George Younge with a paper signed with the kinges hand as an Appendix or Complement of the former Commission where upon we were advertised from the opposite Comissioners that they had received further instrucons from the kinge and requyred our metinge upon satterday the xvjth of October. At w^{ch} tyme protestinge the kinges good disposition and sincerity they shewed us the same vizt. Albeit by generall words he had in his former commission given power to procede in tryall &c. Now in case upon true & lawful profes had, Farnih: can be found guiltye in the breach of the assurance or

the murther of the lord Russell by his precogitat intent then they shall deliver him &c. or any other person within his realm yea though it were the lord Chancello^r being so found guiltye etc.

Herein appeareth this, either defect or sleight as this pa semeth to enlarge their authoritye in delivering so doth it abridge the same in leaving out that which was authorised to enquire upon before, namely the breach of the peace which they find to be the chiefest pointe wherewthall he is charged and for which this said paper directed no deliverye. This may depend upon the conceipt pretended in their answer that the peace cannot be broken which I think they ground upon the treaty, concluding that the peace shall not end before warre denounced under the greate seale etc. admitting no difference betwene ending and violating. The cause and theeffect whereof the words are theis Treaty, H. 8. art. 4. Quod neuter dictorum principium eorumve aut eorum alterius subditi dictum perpetuum pacis foedus aut aliquem articulum in eodem comprehensum violabit diminuet dissolvat aut violabunt diminuent dissolvant &c. The same purpose appeareth in their comission which carryinge the same words wth ors mutatis mutandis in the clause, Whereas ors hath and the peace broken they have to the hazard of the breach of the peace and yet in the later part given authority to enquire of breach of the comon peace after assurance given, Intendinge peradventure at more nede to distinguish betwene the comon peace and the truce.

Octob. 16th, 1585.—M. to the l. Scrope & the rest of the Com^{rs} :—My verie good lord the Queenes Maty upon the viewe of the answer made by the Scottish comisioners to yo^r allegacons doth finde the same very weake and impertinent considering the circumstances & sequel of the matter, for where they pretend for excuse of the extraordinary number w^{ch} accompanied their warden that he being a publique person in thaffayres of his office might lawfully by the authoritye of his Sovereigne repaire to the day of march accompanied with what number he pleased, many or fewe, armed or unarmed, in order or unarrayed, and that there is no statute to the contrary, her Maty conceiveth it may well be replied unto them that if eyther the said warden had at any other tyme repayred to a day of metinge with the like numbers and in like sorte appointed for armor and all other circumstances or that there had followed no act of hostilitye not long after the tyme of th^t assembly eyther els that the same had fallen out immediatlye upon the cause by them alledged through the stelh comitted by an English boy then might they answer yelde some collor or shewe of satisfaction. But seing the said warden made not repaire before to any day of metinge accompanied in that sorte and that the matter of disorder comitted by the English boy was compounded, and offer made by the English warden to have the boy executed, there is no reason to alledge that as a ground of defence for the breach of peace, all things being appeased before the last disorder fell out. And that how unlikely it was that England being but 300 in number, and thother 2000

at the least, the Scotts armed, the English unarmed, would attempt any thinge, comon reason will easily discern. Wherein it is not also to be denied that there was nothinge done by the warden of Scotland for the stay of the disorder nor present restitution made of the prisoners then taken. And therefore it is manifest that the breach of the peace grewe from them, and so consequently the murther and so the delivery of the warden for the breach of the peace to be insisted on wch cannot justly be denied, the fact being so notoriously knowne as there is no cause why any witnesses should be produced for the profe thereof. Besides her Maty saith that as it was well alledged by you this case is extraordinary, the nobleman stayeing no border nor comon person but for birth & quality, a principall member of this state and therefore requyere extraordinary satisfaction wch being denyed, she conceaveth that there is not that care had of the continuance of thamyty that is pretended. And to make that the more apparent that this was a matter pretended her Maty thinketh mete, you should deduce this fact of the breach of peace from a cause precedent of the disorder comitted by certain other subjects of the west marches for which there was offer made by her Matyes warden that satisfaction should be yeldd accordinge to the treatye wherewth they resting not satisfied as it is greatly to be presumed, take a resolucon of revenge wch fell out in execution, and that to prove, you may saye that the same was not done w^out advise from the Courte of Scotland. Pharniersts lres unto Arrane gave great cause of presumption, for that as it appeareth by the said lres demanded advise how he should behave himself. Whereupon his manner of proceedinge in a warlike sorte for numbers arm^o array and other marshall shewes of drumes & fifes, &c. pennons displayed, argueth that he had some direction to take revenge as the sequele doth manifestly witness. And herein her Matye doth call to minde two speciall examples which she doubteth not but you have already alleaged of redresse and satisfaccon, made in the like cases of the breach of peace, the one by England in K. Henry the 7th tyme, when hereon the warden was delivered into Scotland, and thother of fresher memory by Scotland duringe the time of the late Regents government when Carmihell keper of Leddisdale, and sixe or eyght noblemen were delivered into England as hostages for yeelding satisfaccon for the disorder committed at the Reddiswyre, which examples she conceaveth would be followed if there were as greates care had nowe of the continewinge of good peace and amitye between the two crownes as the said Kinge and Regent semed to have, especially the present

case beinge of greater importance than the precedent for the wch in case the Com^{rs} of Scotland shall not receive direcon from their K. to yield her that satisfaccon that apperteyneth upon view of the proposition you write that they have made unto him then shall you know her further pleasure, touching the course that is to be held in the matter whereof I thought good in the meane tyme to notifie to you Lp.

IV.—19th October, 1585. *The manner of the holding of a day of trewe or day of Marche for the restitucon of injuries and insolences upon the Borders.*

First the two opposite wardens at a sett day & place indifferent do meete at the borders and there prepare themselves to geve & receive justice as at a generall Assize.

The forme of pceding is by exhibiting of billes by the pties interested and the pties found foule or giltie are to be delivered into the opposite Wardens handes to make satisfaccon according to the qualitie of the facte.

1. The manner of triall of any pson is two folde viz. The one, when the Warden shall upon his owne knowledge, confesse the facte & so deliver the ptie offendinge.

2. The other is by confrontinge of a man of the same nation to averre the facte, Then is he by the lawe guilte.

For except the Warden himself knowing shall acknowledge the facte or a man of the same nacon found that voluntarilie will avouch it (the ordinary & only waies of triall) be the fact never so patent the delinquent is guilte by the lawes of the borders.

The death of the L. Russell is apparent, & therefore the warden of Scotland ex. notorie tate facti is foule thereof w^out contradiccon in case he deny it. For triall this Order is to be taken.

Her Matie is to require the delivie of Farnierst into England. Bycause both wardens are pties, Newe Wardens are to be named by pvicom. The frendes of the L. Russell are to exhibit their bill accusing Farnierst. If either the newe warden ex. notorie tate facti shall acknowledge the bill, Or otherwise a scottes man be found to averre the facte upon him he must stand guilte and is to be delived ex. notorie tate juris.

Examples—Sir Robert Car: warden of Scotland being slayne at a trewe, a Heron then Englishe warden wth 7 others were delived for him & died in Fast Castle prisoners for that facte.

An Archbishop of St. Andrewes (Beton) did underlie the lawes of the borders in the like case.