MINUTES OF EVIDENCE

TAKEN BEFORE

THE COMMITTEE FOR PRIVILEGES,

TO WHOM

THE PETITION

OF

ALEXANDER HOME, ESQUIRE,
CAPTAIN IN THE ROYAL NAVY,

TO HIS MAJESTY,

CLAIMING THE TITLES, DIGNITY, AND HONOURS OF

THE EARL OF MARCHMONT,
VISCOUNT OF BLAZONBERRY,
LORD POLWART OF POLWART, REDBRAES, AND GREENLAW,

WAS REFERRED.

Ordered to be printed 2d May 1822.
Die Jovis, 2o Maii 1822.

The EARL of SHAFTESBURY in the Chair.

The Order of Reference was read.

The Petition of Alexander Home, Esquire, Captain in the Royal Navy, to His Majesty, claiming the Titles, Dignity, and Honours of Earl of Marchmont, Viscount of Blazonberry, Lord Polwart of Polwart, Redbraes, and Greenlaw, together with His Majesty's Reference thereof to this House, was read;

The Counsel were called in;

And Mr. Wetherell, Mr. Brougham, and Mr. Borthwick, appearing as Counsel for the Petitioner; and Mr. Attorney General, The Lord Advocate of Scotland, and Mr. Solicitor General, for the Crown;

The Counsel for the Petitioner were directed to proceed.

Mr. Wetherell was heard to open the Case of the Petitioner.

The Counsel for the Petitioner stated, that he proposed first to call a Witness to give Evidence of the Patents.

Then GEORGE HOME, Esquire, was called in, and examined as follows:

(By Counsel.) Do you produce a Copy of a Patent? Yes.

Did you make that Copy yourself? I made it myself.

Is it an accurate Copy of one of the original Patents in the Custody of the proper Officer in Scotland? It is an accurate Copy.


(By a Lord.) Under what Seal is it? Under the Great Seal of Scotland.

(By)
George Home, Esq.  

(By Counsel.) You say you found the Original, of which this is an accurate Copy made by yourself, in a certain Office in Scotland? Yes.
Was that Office at Edinburgh?
It was.
In what Office in Edinburgh?
In the General Register House.
Is that the General Register House for Scotland?
For Scotland.
Who is the Keeper of the Records in Scotland at present?
Mr. Alexander Robertson.
At the Time you made the Copies, was Mr. Alexander Robertson the Keeper of the Records in Scotland?
He was.
Is there an Office in the Register Office or Record House, in which are registered the various Patents which have passed under the Great Seal of Scotland?
Yes.
The original Patents are, of course, in the Hands of the Patentees and their Representatives?
Yes.
But in that Office is there a Record kept of each Patent so granted?
Yes.
What is the Name of the Office; what Name do you give that particular Branch of the Register Office?
It is the Place where they register Deeds.
The Question refers to the Part of the Office where you made this Copy?
That is where the Great Seal is kept.
In that is there a Register of all the Patents which have passed under the Great Seal of Scotland?
Yes, there is.
Did you in the Office find the Original from which you made this Copy?
I found Copies from the Record.
You found the Record of the Patents under the Great Seal of Scotland?
Yes.
Did you from that Record make the Copy which you have now proved and given in?
I certainly did.

Cross-examined by Mr. Attorney General.

Is this, which you call a Record, in a Book?
It is; there are above a Hundred Volumes; large Books, on Vellum.

You
(5)

You copied this from one of those Books?
From one of those Books.

You said, under the Great Seal; there is no Great Seal appended to
any of those Records in the Book?
No, it is merely a Record.

It is merely a Book containing a Register of supposed Grants?
Of all Grants from the Crown, Charters, and Patents.

Charters and Patents?
Yes, all Grants from the Crown; it commences in the Year 1306.

Re-examined by Mr. Brougham.

Is this Record, from which you made this Copy, public, and open
to the Inspection of any Person who may have Occasion to examine
it?
Yes, open to all the Lieges.
Open to all the liege Subjects?
Yes.

Is the Register Office a Public Office in Scotland?
A Public Office in Scotland.

The Witness was directed to withdraw.

The Counsel were informed, that the Committee would receive this
Evidence *de bene esse*; but that their Lordships were very strict in
their Rules as to the Evidence necessary in Cases of English Peerage;
that the Copy, for Instance, of a Register of Marriage or of Burial
is not received, but the Production of the Book itself is required;
but that it might be fitting to enquire, whether any greater
Latitute had been allowed in respect of the Production of Instru-
ments from the Depositories in Scotland, in Cases of Scotch Peerages;
and whether previous Evidence was not necessary of the Loss of the
Patent.

Mr. Attorney General stated to the Committee, that he should feel
it his Duty to submit, at the proper Time, either that the original
Patent must be produced, or that Evidence must be given of its
having been lost; and, in that Case, the Record itself must be
produced.

Mr. Brougham, of Counsel for the Petitioners, stated, that he
should humbly rely upon the Difference between the Case where a
Patent has not been registered, and where there exists a Register by
public Authority of that Patent; submitting, that the Record of the
Patent remaining in the Office amounts in itself to such Document as
would be Evidence, without shewing that the Patent itself had been
destroyed.

The Counsel for the Petitioner having intimated a Wish, that their
Lordships would be pleased to permit the Examination of a Member
(40.)

B of
of the House of Commons, who was advanced in Years, and in a State of Indisposition, on the present Day, they were informed, that the Point relative to the Admissibility of the Copy which had been tendered of the Patent might be reserved for another Day, in order to afford Time for such Examination and Enquiry.

Then GEORGE HOME, Esquire, was again called in, and further examined by Mr. Brougham, as follows:

You have there the Second Patent?
Yes, I have.

The Witness produced a Paper, and was asked,

Did you make a Copy of this other also?
Yes, this is in my Hand-writing.

(Mr. Attorney General.) Did you examine it with the Original?
Yes.

The Witness delivered in the same.

The Copies of the said Patents were read, de bene esse.*

The Witness was directed to withdraw.

The Counsel having been asked, Whether it appeared under what Seal this was? Mr. Brougham submitted, that it must be taken to have been sealed with the Great Seal of Scotland, the Witness having found it recorded in the Office for registering Patents which had passed under the Great Seal of Scotland.

The Counsel were informed, that in the Copy of the Patent it was stated, that His Majesty had caused His Great Seal to be put, that that Command probably went to some Officer of the Government, and in that way it might probably be traced.

Then GUSTAVUS ROCHFORT, Esquire, was called in, and examined as follows:

G. Rochfort, Esq.

Your Name is Gustavus Hume Rochfort?
I have dropped the Name of Hume.

Although you have now dropped the Name of Hume, and taken that only of Gustavus Rochfort, were you christened Gustavus Hume Rochfort?
No, Gustavus Rochfort.

Did you at any Time take the Name of Hume in Addition to that of Rochfort?
I did, in consequence of the Limitation of the Hume Estate.

You are the Son of George Rochfort, Esquire?
I am.

* Vide infra page
Who was your Mother?
Alice Hume.

Whose Daughter was Alice Hume, your Mother?
Sir Gustavus Hume's.

About what Time did your Grandfather, Sir Gustavus Hume, die?
I have always heard about 1731.

Have you understood this from your Father and Mother?
Yes.

That your maternal Grandfather, Sir Gustavus, died about 1731?
Yes.

Had he any Children besides your Mother, Alice Hume?
Yes, he had Mary, who was married to Nicholas Loftus.

Was Nicholas Loftus Earl of Ely?
He was afterwards Earl of Ely.

Had your Grandfather, Sir Gustavus Hume, any other Child besides those Two, Mary and Alice?
Sir Gustavus Hume had Sons, but they died young.

Did you ever hear from your Father or Mother, or your Aunt, how many Sons he had who died young?
I never did; I only heard that his Sons died young.

Do you mean by young that they died Infants?
No, I do not; I could not say what Age.

About how old?
As I suppose, about 15 or 16.

Did you ever hear, either from your Father or Mother, or Aunt, that the young Sons of your Grandfather, Sir Gustavus, died unmarried?
Yes, I did.

Whose Son was your Grandfather Sir Gustavus?
I forget whether it was Sir George's or Sir John's, but it was one or the other, not having looked at my own Appeal Case in the same Cause, in this House, lately.

Did you yourself succeed to any Property as Heir at Law to your Grandfather?
I did.

What Property was it?
Upon Fines and Recoveries.

Was it Landed Property in Ireland?
Yes, in Fermanagh.

The Question about to be proposed to you, respects your Great-grandfather, whatever his Name was, the Father of Sir Gustavus; you are requested to speak to what you have heard from your Mother, or your Aunt, or any other of your Family?
I never saw my Aunt.
How long is it since your Mother died?
Fifty Years, I suppose.

Have you ever heard from your Mother whether the Father of Sir Gustavus left any other Son besides Sir Gustavus?
No, I never have.

You never heard of his having left any other Son?
I never have.

Did you ever hear that Sir Gustavus was the only Son of his Father?
I heard that he was the only Son of his Father.

Did you ever hear, in the same Manner, whether Sir John, the Father of Sir Gustavus (or whatever his Name was), your Great-grandfather, had a Brother of the Name of George, who was a Clergyman?
I think I did.

That your Great-grandfather had a Brother of the Name of George Hume?
Yes.

Had that George Hume a Son of the Name of Charles?
I did not hear that. I was very young at the Time when my Mother died.

Did you ever hear your Mother say, that your Great-grandfather’s Brother, George Hume the Clergyman, had more Sons than one?
I cannot say that I did; I was very young at that Time.

Did you ever hear her say, that he had only one Son, Charles Hume?
I cannot pretend to say that I heard any thing on that Matter.

Did you ever hear from your Mother of any other Son but one, of George Hume the Clergyman?
I never did hear of any other Son but Sir Gustavus.

Sir Gustavus was the only Son of your Great-grandfather, Sir John or Sir George, whatever his Name was?
Yes.

Did you ever hear your Mother mention any other Brother that Sir John or Sir George had, except that one who was the Clergyman?
I cannot say that I ever did.

Did you ever hear your Mother say any thing respecting any Nephew of that Sir John or Sir George, your Great-grandfather?
I never did.

You never heard your Mother mention any Nephew of your Great-grandfather?
No.

Who
Who was Sir John's Father, or Sir George's, whichever he was? I do not know.

Did you ever hear your Mother say at what Time the first Hume that was settled in Ireland came over from Scotland? I cannot say that I ever did hear; I was very young when she died.

Did you ever hear your Mother speak of a Sir John Hume, who came over from Scotland about 170 Years ago? No, I cannot say that I ever did.

Did you ever hear your Mother speak of the first Hume, her Ancestor, who came over to settle in Ireland? I never heard her speak of any one but her Father, Sir Gustavus.

And you are understood to have said, of your Great-grandfather? No; I heard that in another Cause in which I was concerned.

Did you ever hear your Mother speak of her Grandfather? No, I never did.

You say you never heard of any Person—any Nephew of your Great-grandfather, Sir John or Sir George, whichever he was; you never heard your Mother mention any such Nephew? No, I cannot say that I ever did.

Was your Grandfather, Sir Gustavus Hume, a Baronet? He was.

Was his Father also a Baronet; your Great-grandfather? I believe so.

Have you heard so in your Mother's Family? I have heard so in my Father and Mother's Family.

Have you ever heard also, that your Great-great-grandfather was a Baronet? Yes.

Has any Person, since the Death of your Grandfather, Sir Gustavus Hume, taken the Title, or claimed the Title of that Baronetcy? Not any that ever I heard of.

You say that it is Fifty Years since your Mother died? Thereabouts.

Have you ever heard your Mother say, or heard in your Mother's Family, that all the Male Descendants of the first Hume who came over to Ireland, were dead without Issue? Yes.

The Counsel were informed, that it was necessary, when the Witness spoke of what he had heard in his Family, to ascertain which Family it was; whether that, the Pedigree of which was under Consideration.

(C40.) C (Mr.)
G. Rockfort, Esq.

(Mr. Brougham.) Did you ever hear your Mother say, that all the Male Descendants of the first Hume who came to Ireland were dead?
I did hear her and my Father, and the People connected with the Family, say so.

Have you heard the Title of Sir Somebody Hume, whether Sir George or Sir John, of Tully Castle, as the Name they went by? Castle Hume, in Fermanagh, was the Place, I believe; it was the Manor of Tully.

There was a Castle as well as a Manor in Tully?
I do not know.

That is generally the Case, is it not?
I do not know; I only went to take Possession.

Cross-examined by Mr. Attorney General.

You stated that your Mother had been dead Fifty Years?
I do not recollect or know the Time exactly.

How old are you yourself?
I think I am Sixty-five.

So that your Mother died when you were about Fifteen?
Before that, I think.

When you were about 14 or 15?
Yes.

Did you ever hear your Mother speak of any Person, except her Father or her Grandfather?
None but her Father, Sir Gustavus, and her Mother, Lady Alice.

You never heard her say anything more about her Family, than about her Father and her Mother?
I have heard her talk of all her Connections.

But you do not know the Name of your Great-grandfather?
No.

You were a Boy at that Time?
Yes, I was a Boy, and did not attend to it.

You have had some Dispute since?
I have had some Dispute since about the Manor Property.

It was in the Course of those Disputes you have picked up some of the Knowledge you possess?
In the Course of those Disputes, I dare say, it cost me Three or Four thousand Pounds.

What
What you heard from your Mother was about her Father and her Grandfather; and that in the Course of Conversation about her Family when you were a Boy?

Yes.

The Witness was directed to withdraw.

The Counsel were directed to withdraw.

Proposed to adjourn this Committee to Tuesday next:

Accordingly,

Adjourned to Tuesday next.
Die Martis, 14° Maii 1822.

The EARL of SHAFTESBURY in the Chair.

The Order of Adjournment was read.

The Minutes of the last Committee were read.

The Council were called in.

The Council were informed, that the Papers delivered in on the 2d Instant de bene esse, might be considered as received in Evidence.

The same were severally read as follows:

" REGISTRUM MAGNI SIGILLI. LIB. LXXII. No. 97.

" DIPLOMA Domini Patricii Home de Polwart de titulo et dignitate Domini Polwart, &c.

" GULIELMUS et Maria Dei gratia Magnae Brittaniae Franciae et Hiberniae Rex et Regina fideique defensores Omnibus probis hóibus suis ad quos presentes literæ nostræ pervenerint salutem Quandoquidem nos grato admodum animo recolentes merita egregia et singularia fidelis admodum et predilecti nostri consiliarii Domini Patricii Home de Polwart Militis Baronetti propter firmam suam reformate religioni adhesionem fidelitatem ipsis insignem ac fidem in temeratam tum in justia diadematis et monarchiae juribus tum in legibus et libertatis hujus antiqui Regni nostri Scotiae conservandis clarum et conspicuum idque temporibus difficilimis et asperrimis Nosque ibidem perpendentes quod in nupera generosa et celeberrima nostra expeditione pro hec ceterisque nostris regnis a papisime et tyrannide liberandis alacriter Nos a Belgis coconmitatus Quodque Nobis summa fide et studio in illustri illo preposito premovendo et perflcendo inservit utque idem Dominus Patricius ulterior excitatur ad firmum et immobilem persistendum in fidelitate sua erga nos et cura assidua ad ministeria nostra prestanda Noveritis igitur nos nomenasse secisse constituisse et creasse, sicuti per has nostras patentes literas nominamus facimus constituimus et creamus eundem Dominum Patricium Home liberum Parliamenti Dominum dicti hujus nostri Regni, Dominum Polwart nominandum et designandum, Damus pariter concedimus et consecraramus in dictum Dominum Patricium Home et (40.) haeredes
haeredes masculos de corpore suo legitime procreatose seu procreandos et heredes dictus suorum heredum, Titulum dignitatem gradum et honorem liberi Parliamenti Domini, cum plenarie potestate jure et authoritate ipsi ejusque antedictis eodem fruendi et gaudendi, cum omnibus et singulis prærogativis prece elicentis preeminentis privilégii libertatibus et immunitatibus quibuscunque eo attinentibus et spectantis, Quibus cum dictum Dominum Patricium Home nobilitatis et investitus speciatim vero cum libero in parliamento suffragio. Tenendum et Habendum antedictum titulum dignitatem gradum et honorem liberi parliamenti domini, cum universis et singulis prærogativis prece elicentis preeminentis privilégii immunitatibus alisque quibuscunque eo spectantis, per dictum Dominum Patricium Home ejusque antedictis de nobis nostrisque serenissimis successoribus in omnibus Parliamentis ordinum conventibus concilii generalibus omnibusque alis publicis et privatis ejusdem regni congressibus tam plenarie adeoque libere in omnibus respectibus et conditionibus quamquisvis alius liber parliamenti domini tali titulo honore dignitate et gradu cum omnibus privilégii alisque quibuscunque eo spectantibus quovis tempore preterito presenti aut futuro potius et gavisus est seu frui et gaudere poterit. Ac preterea volumus ut conjuges et libri dicti Domini Patricii Home eandem dignitatem locum et prece dentiam teneant præ omnibus conjugibus et libris eorum quos dignitat precedere debent liberi parliamenti domini cum generalitate antedictis. Porro dispensamus utque dictus dominus Patricius Home ulteriori honoris ac regni nostri favoris erga ipsum nota et tessera insigniatur. Volumus et ordinamus ut sitrum proprio colore conspicuum ac diademate imperialis reeditum tanquam prioribus suis insignis armoris additamentum in campo cereulo super omnia gerat, Leoni porro armorum regii ejusque fratibus facialisibus mandamus in insignia ejus armoriae modo antedicto conseribent cum omnibus exc utissimis additamentis visitatia et necessarissiis, Ordinamus denique et declaramus hasce nostras patentes litteras sub magnio nostro sigillo adeo validas et sufficientes fore dicto Domino Patricio Home ejusque predicto pro possidendo dicto titulo dignitate gradu et honore liberi parliamenti domini ut prefertur, cum omnibus et singulis prærogativis prece elicentis preeminentis privilégii libertatibus immunitatibus alisque quibuscunque eo spectantibus ad omnes fines et propinicia ac si ipse ejusque predictum cum omnibus ritibus et ceremoniis similibus occasionibus perprorsus usitatis investiti et inaugurati fuisser Quocircum nos pro nobis Regius nostri successoribus dispensamus imperi tium. In quibus rei Testimonium presentibus magnum Sigillum nostrum appendi mandavimus apud sulam nostram de Kensingtoune vigesimo sexto die mensis Decembris anno Domini millesimo sexcentesimo nonagesimo, et anno regni nostri secondo.

Per Signaturam manu S. D. N. Regis suprascripti."
"REGISTRUM MAGNI SIGILLI. LIB. LXXIV. NO. 99.

"DIPLOMA Patricii Domini Polworth de titulo et dignitate Comitis de Marchmont, &c.

"GILIELMUS Dei Gratia Magnae Britanniae Franciae et Hiberniae Rex, Fideique Defensor, Omnibus probis hominibus ad quos praesentes Literae nostre pervenerint salutem Quandoquidem nos Regno nostro animo perpendentes officia insignia et fidelia nobis et Corone ac Regno nostro Scotiae praestita, per fidelissimum et dilectissimum nostrum conciliarium Patricium Domini Polworth sumnum nostrum dicti Regni Cancellarium perique ipsius antecessores et progenitores in summis illis provinciis et munerebus civilibus et militariibus, per serenissimos nostros decessores Scotiae Reges iis concretitis (nimium in Officio Thesaurarii dicti Regni Summi, atque custodis liminum Orientalium Scotiae versus Angliam) Ipsumque Patricium Polworth Dominum plurima egregia et insignia dedisse specimina firmae sue adhaesionis religioni reformatae exemplaris etiam ipsius fidelitatis et intimatione fidei et asserendis et propugnandis juribus et prærogativis Corone et Monarchiae ac legibus et libertatibus dicti nostri antiqui Regni temporibus etiam perculciosissimis et maximarum difficultatam. Nos etiam in memoriam revocantes quod in celeberrima et gloriosissima nostra expeditione pro liberandis et preservandis hoc aliisque nostris Regnis a papismo et tyrannidae dictus Patricius Dominus Polworth nos concomitatus est a Hollandia et continuo ab eo tempore fideliter et diligenter nobis officium prebeat in promovendo et perficiendo auspiciatissimo illo proposito atque etiam officis munerebusque ab nobis ipsi concretitis fidelissime functus est, utque dictus Patricius Domini Polworth ulterius animetur in fidelitate et sedulitate in præstans ministeriis Summi illis munerebus a nobis ipsi concretis donatis conscientiis persiteret. Noveritis igitur Nos fecisse conseluisse et creasse sicuti per hanc nostras patentes litteras facimus constatissimas et creamus eundem Patricium Dominum Polworth, Comitem de Marchmont Vicecomitem de Blasonberrie Dominum Polworth de Polworth Reidebras et Greinlaw. Damus pariter et concedimus dicto Patricio Domino Polworth ejusque hereditibus masculis quibuscunque omni tempore futuro, titulum dignitatem ordinem gradum et honorem Comitis et Vicecomitis cum universis et singulis prærogativis praeminentiis præcedentiis privilegiis libertatibus et immunitatibus quibuscunque eo spectantibus, cum quo titulo honore gradu et dignitate per presentes univimus et inauguramus dictum Patricium Dominum Polworth ejusque heredes masculos Comites de Marchmont Vicecomites de Blasonberry et Dominos Polworth Reidebras et Greenlaw, omni tempore futuro designandos et appellantidos. Tenendum et Habendum eundem titulum honorem gradum et dignitatem Comitis et Vicecomitis cum omnibus et singulis prærogativis honoribus et libertatibus eo spectantibus, prædicto Patricio Domino Polworth ejusque antedictis, De Nobis nostrisque successoribus in perpetuum, in omnibus et singulis parliamentis generalibus consulis, ordinum conventibus aliisque publicis conventibus quibuscunque, cum omnibus et singulis privilegiis..."
privilegiis et immunitatibus eo spectantibus quæve nunc aut in posterum spectasse seu spectare dignoscet ad quemvis Comitem seu Vicecomitem in dicto Regno quovis tempore praeterito seu futuro. Volumus pariter et ordinamus, quod uxor et liber dicti Patricii Domini Polwarth habebunt et possidebunt dignitatem locum et precedentiam uxoribus et liberis Comitum et Vicecomitum debita, Dispensando cum generalitate presentium. Imperamus etiam Leoni regi armorem ejusque fratribus fecialisibus dare et prescribere dicto Domino Polwarth nunc Comiti de Marchmont ejusmodi additamenta paludamento et insigniis suis gentiliciis que talibus casibus sunt usitata. Ordinamus denique hoc nostrum diploma adeo validum et sufficiens esse dicto Domino Polwarth ejusque predicti possidendo et gaudendo dicto titulo honore et dignitate Comitis et Vicecomitis cum privilegiis eo spectantibus ac si cum omnibus solemnitatibus antiquitatis usitatis investitus et insigniatur fuisse. In cujus rei testimonium presentibus magnum sigillum nostrum et etiam secretum appendi prescipimus Apud solum nostrum de Kensingtoune vigesimo tertio die mensis Aprilis Anno Domini millesimo sexcentesimo nonagesimo septimo et anno regni nostri hono.

"That what is contained on this and the Three preceding Pages, is fairly copied from the Records in His Majesty's General Register House at Edinburgh, is attested by me, Keeper of these Records.

(Signed) ALEX' ROBERTSON."

Then Mr. Wetherell, of Counsel for the Claimant, stated, that he proposed first to deduce the Descent of the first Patentee of the Peerage from Sir Patrick Home, the Head of the Polwart Family, he being one of the Grandsons of Sir David Home, whose Name appeared in the Pedigree as the common Head of the Family. That the Document he proposed first to offer in Evidence was with a View of proving the Existence of Sir Patrick Home, from whom the original Patentee was descended; that he had a Brother, George Home, the Head of the Wedderburn Branch of the Family; that they were the Grandsons of Sir David Home; and that their Father died during the Life of Sir David Home; and that there was no other Son; and that Sir Patrick Home, the Head of the Polwart Family, and George Home, the Head of the Wedderburn Family, were at the Time of the Grant the only Male Descendants of David the oldest Son of Sir David Home, the original Stirps of both Families.

The Counsel were asked, Whether they were to be considered as having closed their Evidence in respect of Sir John Home and his Descendants?

Mr. Wetherell, of Counsel for the Petitioner, stated, that they had not, but had referred to that Branch of the Case solely for the Purpose of securing the Examination of Mr. Home Rochfort, a Member of the other House, in infirm Health.

Then
Then GEORGE HOME, Esquire, was again called in, and further examined as follows:

(By Counsel.) What have you there?
A Charter from James the Second; the original Charter.

Where is it dated?
At Striveline, the 16th of May 1450.

From whence did you bring that?
From the Charter Chest of the late George Home of Wedderburn.

Which George Home do you speak of; when did he die?
He died within these Three Years.

Was he Brother of the Patrick Home of Wedderburn?
He was his Cousin.

Whose Son was he?
He was the Son of Alexander Home, who married Isabel the Second Daughter of George Home of Wedderburn, the Tenth in the Wedderburn Line.

There is a Margaret in the Pedigree, whose Name is in a Lozenge, who married Nin. Home, Esquire; was it the Sister of that Margaret who married the George Home in question?
Yes.

Cross-examined by Mr. Attorney General.

Who was the George Home of Wedderburn from whose Chest you obtained this Instrument?
He was the Grandson of George Home, the Tenth in the Wedderburn Line, by his Second Daughter Isabel.

Isabel is not in the Pedigree?
No.

Margaret is?
Yes.

This comes from the Custody of George Home, the Son of Isabel, the Sister of Margaret?
Yes; I remember her very well.

When did you get this Instrument?
About Three Years ago it was transmitted to Edinburgh.

How was it transmitted?
It came in the Chest to Edinburgh from Wedderburn House, with many other Papers; there were about 120 of them altogether.

You searched this Chest at Edinburgh?
Yes, I did.

And in this Chest, which was brought to Edinburgh, you found this Deed?
Yes, among a great mass of other Deeds, and a regular Inventory of the Whole.
George Home, Esq.

What Family did Mr. George Home leave?
He never was married; the Estate went to a younger Daughter, Jane, whose Grandson has now the Estate of Wedderburn.

Re-examined by Mr. Brougham.

In whose Custody was the Chest when you got this Charter out of it?
It was sent to Mr. William Bell, Writer to the Signet, delivered to him by Mr. Renton, the Agent for Mr. Home.

Mr. Home of Wedderburn, the Owner of the Estate and of the Papers?
Yes.

The Attorney General requested the Attention of their Lordships to the Circumstance, that the Charter now produced had no Seal.

Mr. Brougham submitted, that on Inspection it would appear that a Seal had once been appended.

The Charter was delivered in, and read as follows:

JACOBUS Dei gracia Rex Scotorum omnibus probis hominibus tocius terre sue clericis et laicis salutem. Scias nos dedisse concessisse et hac sancti carta nostra confirmasse dilectis nostris Dauid Hwme de Wethirburne militi et Alicie sponse sue omnes et singulas terras de Wethirburne cum ptinencis jacentes infra vicecomitatu de Berwic. Quequid terrae cum ptinencis fuerunt predicti Dauid hereditarie et quas idem Dauid non vi aut metu duci nec errore lapsus sit mera et spontanea voluntate sua in manus nias per fistem et baculum apud Striueline coram subscriptis testibus personaliter sursum reddidit pureq, simpliciter resignavit ac totum jus et clamei que in dictis terris cum ptinencis habuit seu habere potuit pro se et heredibus suis omnino quitclamauit ippetuum Tenendas et habendas omen et singulas prenominitas terras de Wethirburne cum ptinencis pretatis Dauid et Alicie sponse sue ac eorum alteri diuicii viuenti et post eorum decessum Georjgo Hwme filio quond Dauid Hwme filii dicti Dauid Resignantis et heredibus suis masculis de corpore suo legittime procreatis seu procreandis quibus deficientibus Patricio Hwme fratris germano dicti Geoii et heredibus suis masculis de corpore suo legittime procreatis seu procreandis quibus deficientibus Alexandro Hwme fratris germano dicti quond Dauid Hwme et heredibus suis masculis de corpore suo legittime procreatis seu procreandis quibus omibus deficientibus veris legittimeis et propinquioribus heredibus dicti Dauid militis resignatis quibusquercum tenandis et tenandris ac libere tenenciis scruiciis de nobis heredibus et successoribus nostris in feodo et hereditate impetu qui per omnes rectas metas suas antiquas et diuissas prout jacent in longitudine et latitudine cum omibus et singulis libertatibus comodatibus et asiamentis ac iustis ptinencis suis quibusquercum tam non nominat q nolais ad prefas terras cum ptinencis spectantibus seu quousmodo iuste spectare valentibus in-futurum. Et adeo liber et quiete plenarie integre honorifice bene et

in
in pace in omnibus & p omnia sicut dictus David aut sui predicessores prenominaf terras cum pteni de nobis aut predicessoribus nris antedictam resignationem nobis inde factam liberius tenuerunt seu possedit tenuerunt. Reddendo inde annuatim dictus David et Alicia sponsa sua et eorum alter diuicius viuens et post eorum decessum heredes sui masculi supranotiati nobis et hereditibus nostris vnui denariu argentii usus ad monete Regni nostri in festo pentecosf super solum dictarum terrarum nomine albe firme si petatur tantu. In cuius rei testimoniiante carto nostre magni sigillum nostrum apponi precipimus Testibus Reuendo in Xpoto patre Wilemio Epo Glasgueni Wilemio Dio Creichtounen nro cancellario et consanguineo predicto carissimo consanguineo nostro Wilmom Comite de Douglas et de Anandale Dii Galwedie venerabili in Xpoto patre Andrea Abbate de Melros nostro confessore et thesaurario diiectis consanguineis nostrii Patricio Dio Glauiys et Andrea Dio le Gray Magris Johanne Arons Archidiano Glasgueni et Georgeo de Schoreswode Rectore de Cultre Apud Striueline decimo sexto die mensis Maii Anno dini millesimo quadringentesimo quiqagesimo Et regni nostri decimo quarto.

JAMES S.S.R.

Dorso.—"Charter of Resignation of the Lands of Wedderburn, Be the King In favours of David Home and his Spouse. Daited 16 Maii 1450."

Then GEORGE HOME, Esquire, was further examined as follows:

You produce another Charter, dated Edinburgh, the 15th of May 1470?
I do.
From whence did you get that?
From Archibald Swinton, Writer to the Signet.

Whose Agent was he?
He was Agent to his Uncle, the late Mr. Swinton of Kimmergham.

You say he was Agent at the Time you got this; for whom was he Agent?
For his Uncle, Mr. Swinton of Kimmergham.

Cross-examined by Mr. Attorney General.

You got this from Mr. Swinton?
From Mr. Archibald Swinton, a Writer to the Signet.

You got it from him at Edinburgh?
Yes, from his own Hands.

How do you know that he was Agent to this Gentleman, his Uncle?
Perfectly well; Mr. Swinton had acquired Right to the Lands at Kimmergham by Progress. Sir Andrew Home died insolvent in the Year 1731.

How do you know all that?
I know it from the Records.

All
George Home, Esq.  All you know is, that from certain Records you have looked at, this Gentleman, Mr. Swinton of Kimmergham, had Lands at Kimmergham; you do not know the Fact yourself?
   I know the Fact.

From the Documents?
From the Documents at Edinburgh; I know the whole History of it.

All you know is, that this Charter was given to you by Mr. Swinton at Edinburgh?
   Yes, with other Instruments.
And he stated to you, that he was Agent to his Uncle?
   Yes.

You know that only from what he stated to you?
   Certainly, no otherwise.

Mr. Attorney General objected to the Evidence.

Re-examined by Mr. Brougham.

Mr. Swinton represented himself as Agent for his Uncle at Kimmergham?
   Yes.

Did he act as such Agent?
   He did; and he drew the Conveyance to Lord Rosebery on the Sale of the Estate; but he retained those old Writings, thinking them of no Consequence.

And this was in his Custody?
   Yes, along with several other old Writings.

Is there any other Kimmergham than that to which you refer, in Berwickshire?
   No; I know of no other.

You are a Berwickshire Man?
   Yes.

Was the Person you speak of, the Uncle, Captain Swinton?
   Yes.

He was a Brother of Lord Swinton, who was a Judge?
   Yes.

Have you seen him yourself?
   Yes, and I have had Letters from him.

As you are a Berwickshire Man, have you ever seen him at Kimmergham?
   Yes, many Times.

You have seen Captain Swinton living there?
   Yes, many Years ago.

As the Owner of the House?
   Yes.
And upon the Property?
And upon the Property.

And you know him to be the Uncle of this Gentleman, the Agent from whom you received these Papers?
Yes, perfectly so.

Mr. Brougham submitted, that he had now laid a sufficient Ground to entitle this Deed to be received in Evidence.

The Attorney General contended, that the Proof of Custody was not sufficient; that there was no Proof that Captain Swinton was the Owner of the Property, nor that Mr. Archibald Swinton was the Agent of his Uncle, these Facts resting on the Hearsay and Belief of the Witness.

The Counsel were asked, Whether Mr. Archibald Swinton was alive?
Mr. Brougham stated, that he was.

The Counsel were informed, that in the Opinion of their Lordships, Mr. Archibald Swinton must be produced, to prove those Facts which were within his Knowledge; and that they could not be taken from the Information he had communicated to the Witness.

Then the Witness was asked,

(By Mr. Brougham.) Do you know whether it is the Practice in Scotland, of landed Proprietors, to allow their Men of Business to keep their Deeds?

The Attorney General objected to the Question.

The Counsel were informed, that it appeared to their Lordships not worth while to press these Questions, as there was a Witness living who could give better Evidence.

Mr. Brougham submitted, whether their Lordships would receive this as Evidence de bene esse.

The Counsel were informed, that their Lordships could not.

Then Mr. Brougham, of Counsel for the Petitioner, stated, that in order to prove that Margaret, the Wife of Patrick Home, was served Heir in Special to her Father, John Sinclair, in the Moiety of Polwart, and that on the Tenth of the same Month she was infeoffed in her Portion, as Co-heir of her Father, her Husband, Patrick Home, being Attorney for her upon the Occasion; he proposed to put in the original Retour of the 6th of November 1475, and the original Instrument of Seisin of the 10th of November 1475.

(40.)

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Then
Then GEORGE HOME, Esquire, was further examined as follows:

George Home, Esq. (By Mr. Brougham.) You produce a Retour of the Service of Margaret Sinclair, of the 6th of November 1475?

Yes.

From whence did you get it?
From the Charter Chest of the late George Home of Wedderburn.

Have you the Instrument of the 10th of November 1475?
I have.

Did you get that in the same Way?
In the same Way.

Cross-examined by Mr. Attorney General.

You say the Charter Chest was sent to Edinburgh?
Yes, by the late Mr. Home.

You saw it at Edinburgh?
Yes.

In whose Custody was it at Edinburgh when you saw it?
It was handed to Mr. William Bell, Writer to the Signet.

In whose Possession was it when you saw this Paper?
In the Possession of Mr. William Bell, Writer to the Signet.

The Attorney General submitted, that Mr. Bell must be called, in order to prove from whom he received the Charter Chest.

The Counsel were informed, that in the Opinion of their Lordships it would be necessary to call Mr. Bell.

Mr. Brougham requested, that this might be postponed till the next Meeting of the Committee, Mr. Bell not having been sworn.

The same was agreed to.

Then Mr. Brougham stated, that he proposed next to produce the Original Precept by Archibald Earl of Angus, for enfeoffing Patrick Home, Brother of George Home of Wedderburn, and Margaret his Wife, in a Moiety of the Lands of Kimergham.

Then GEORGE HOME, Esquire, was further examined as follows:

(By Counsel.) What have you in your Hand?
A Precept by Archibald Earl of Angus, for enfeoffing Patrick Home, dated the 15th of May 1470.

From whence did you get it?
From the Charter Chest of the late George Home of Wedderburn.

Out of the same Chest as the former?
Yes.

At
At the Request of the Counsel, this also was postponed.

Then Mr. Brougham stated, that Patrick Home having acquired a Share of Polwart, he proposed next to give in Evidence an Office Copy of a Charter by King James IV, dated 28th June 1488, confirming a Grant to him from The Duke of Albany of Binghamshiel, styling him Patricio Home de Polwart, of the Date of the 2d of May 1488.

Then GEORGE HOME, Esquire, was further examined as follows:

(By Mr. Brougham.) From whence do you produce that? From the Record of the Great Seal.

Is it an Office Copy?
It is.

From what Register does it come?
*From the Register of the Great Seal?

Did you examine that Copy with the Original? I did.

Is it an accurate Copy?
It is.

(By the Attorney General.) This you took at the Record Office at Edinburgh?

Yes.

This is not your own Hand-writing?
Yes, it is my own Hand-writing.

And you examined it yourself with the Original?
I did.

The same was delivered in, and read as follows:

"REGISTRUM MAGNI SIGILLI. LIB.XII. No.139.

"CARTA glärütiosi Patricii Hume de Polwurt super carta Ducis Albaniæ sibi fact sup Tris de Brigemschelis, &c."

"JACOBUS Dei grâ Rex Scotorum omibus probis homibus tocius terræ sue clericis & laicis salutem Sciat nos quœd cartam quœd cartam patriæ nüs Alexti Ducis Albaniæ Comiti M'chie ëe factam et ëcessam dilecto familiari Armigero nos Patricio Hume de Polwurt de totæ et integritatœ de Brigemschelis cum ptinei jacei infra comitatû nũm M'chie & vië Berwici de mandato nœ visam lectâ inspectâ et diligetâ examinavit Sæ integra nœ rasam nœ cancellatâ nec in aliqua sui parte suspettâ ad plenu intellexisse sub hac forma Alexander Dux Albanie Comes M'chie, Mar & Garioch Ëis Vallis Annandie & Mānie magnus Admirallus, Scotie ac Gardianus occidentali & orientali michis versus Angliae Salutem noutit nos dedisse ëcessisse & hac ënti carta nũs glärütisse dilecto Armigero nos Patricio Hume de Polwurt & hereditibus suis & suo fideii suiıcı Impenso & Impendendo nobis & here nüs oûnes et singias terras de Brigemschelis cum ptinei jacei in comitatu in"
comitatu nō M'chlie et inifa vicecomit' Berwici Tenend & habend ādict ēras cum ptīneī ādicto Pat'cio & herediīs suis de nobis et hereditās nēs In wardā & Relevuiū In fedeo & here Impetuī ṣōnēs rectas metas suas antiquas et diuissas put ācūlī in longitudinē & latitudine In aquis silius genestī pomerrīs ancupācābiē venaē mollērīnīs multūrē & et exā sequēlis ac ċū lapide & calce ac ċū ċōi pastūra et libero introtuē & exitu necnon ċū oūmiū aliūs & singēs libertātībis cōmoditātībis asiamētē ac justīs suis ptīc quibuscūqī liberī quiete honorificē bene & in pace sine aliqua Reīnemetō aut grādicēōe quaquā.Et nos vero Alēx antedictūs & heredes nīi & successores totās & integras ūnīētās terras ĉū ptīneī ādicto Pat'cio & herediīs suis oūmiū et p oūinia vt supī dēm vt contra oūnē mortales wāratīzābim9 acquetābim9 et impertuī defendem9 In cuiū Rei testimoniū Sigillū nūm ptīnbī est appensum apud Castrum de Dunbār Secundo die mēs Maii anno dūi millīō quadringentesio octuagesimo êcio coram his testibus Johanne Liddale de Halkston Māgro Georgio Liddale Rītore de Forest Dauud Rantoun de Billie & Willmo Fedes dūiē aliūs. Quāquīd carta ac donācem & cessione lead gēntēs In oūjībus suas puncūsis et articīlis ēlīcībīs et modē ac ēcīstācīs suas quibuscūqī, formā ptī et effectū oūmiū et p oūinia apphābamus ratūcāmne & p nobis et successorībis nīis vt priṃissē est p pĕtuō gīrarum Saluis nobis et successorīibīn nīis jurībus & suiciis de dēs trīs cū ptīntīis aīn ānte nīsā gīrarumēs nobis debītē et gūetuīs. In cuiūs Rei testiūbīn ūntī Carte nūe ēgīmarīs magnū Sigillū nūm apponi ūcepin9 Testībū Retende īn xēo prībī Roberto Eīpo Glasguēn Georgio eīpo Dunkeldeīnl dīlecēt' gāmēneis nīis Colīmo ĉōte de Ėrgile dīo Campbell & Lorne Cancellario nīo Archibaldō Comite Anguisie dīo Dowgīas Gardīano nīo Pat'cio Dīo Halīs Māgro hospiciī nīi Ro'Dīo Līle Johe Dīo Glamyā justī nīis Johe Dīo Drūnmond Laurencio Dīo Oliphant Andrea Dīo Grāv venerabilī in xēo āre Johanne Por mōstēriī nīi Sanctiād nīi Sēctū Sigillī custōde Wīthmo Knolīs P'ceptēre de Forchristīn Milīte Thesaurario nīo Et ditīcis cleriīcē nīis Māgris Alexrīn Inglīs Archidīacano Scīand nūo cōpōtō Rūltolōs Wīthmo Hepburvīcē de Linīthīg Rūtoloā nīoē & Regist' ac ēsīli ēcio & Archibaldo Quītelaw subdecano Glasguēn Sectario nīo apud Edinburgh vicesimo octauo die mēs Junīi anno dūiē octuagesimo octauo. Et regni nīi primo."

"That what is contained on this and the Four preceding Pages of stamped Paper, is faithfully copied from the Records in His Majesty's General Register House at Edinburgh, is attested by me, One of the Keepers of these Records.

(Signed) WILL'" ROBERTSON."

Then Mr. Brougham, of Counsel for the Petitioner, stated, that in order further to identify the Two Brothers, George Home of Wedderburn, and Patrick Home of Polwart, he proposed to give in Evidence an Office Copy from the Acta Dominorum Concilii, dated the 14th January 1484, on occasion of an Action brought before the Lords of the Council by John Sinclair, in which the Parties are respectively designated George Hume of Witherburne, and Patric Hume his Brother.
Then GEORGE HOME, Esquire, was further examined as follows:

(By Mr. Brougham.) What is that in your Hand, is it a Copy of any Record in the Court of Session? 
Yes, it is a Copy of the Record of Acta Dominorum Concilii, a very old Record.
Have you examined that with the Original Record? I have.

The same was delivered in.

Read from the same the following Extract:

"ACTA DOMINORUM CONCILII.
"xiiiij Ja" Anno r̄ lxxxiiij°.
"Post M'ediè."

"SEDÉRUNT Archiefs Sii et Ejsi Glasjs Aberdoniē Electus Dūkeld Cancellarius Comites de Mortoī & Atholie Dii Avandale Lile Gray Carlile Abbates de Arbroth & Cabushy Prēptor de Torfichi Dīs P'poitus Scandiē Jacobus Ogilby Johns Ross' Maγr R. Lausoun."

"In ye, accoun & cauf psewit be Johnn Sinclair of Herdmans'toun on the ta pt aganis George Hume of Weŷburne & Patric Hume his broy' on the toy' p' apoun ye arangurs takin & w' halding of ye houes of Hirdmanstoun &".

Then Mr. Brougham, of Counsel for the Petitioner, stated, that in tracing the Male Descendants of Patrick Home of Polwart, he should, for the Purpose of proving a Second Marriage with Helen Shaw, the Widow of Archibald Haliburton, put in a Royal Letter from King James the Fourth, date the 28th of April 1490.

Then GEORGE HOME, Esquire, produced another Paper, and was further examined as follows:

(By Mr. Brougham.) Is that Copy in your Hand-writing? It is.
Where did you take this Copy from? From the Register of the Great Seal.
Did you examine this with the Original, and find it to tally? I carefully examined it, and found it to tally.

(By the Attorney General.) Is this a Copy of the Whole of this Record? All respecting that.

(By Mr. Brougham.) Is it the Whole of that Piece?
Yes, the Whole of that One Piece.

(By the Attorney General.) Do you mean that this, &c. is in the Original? Yes, it is.

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(26)

George Home, Esq.  
(By Mr. Brougham.) How do you know the Date to be what you have here copied?

The Entry preceding is of that Date; and the Entry immediately following is about the same Date.

They are of the Dates of April 1490?

Yes.

Are the different Records kept in that Book in a regular Series of Date?

Not always.

Are they, generally speaking, following one another in regular Order?

Yes, generally, but sometimes there is an Exception.

When you say the Date immediately preceding and the Date immediately following are the same, namely, the 28th of April 1490, are there also any Dates immediately succeeding apud Striveling?

The one preceding it, and, I believe, the one after it, are both apud Striveling.

Mr. Brougham submitted, that there was presumptive Evidence that the Document in question was of the same Date, or nearly the same Date, as the one preceding and the one following it.

The Attorney General submitted, that the Determination of the Committee to receive Copies was not to be taken as going beyond the original Patent; and that a Document of this Nature could not be proved without the Production of the Instrument itself, or of the Book in which it is recorded.

Mr. Brougham submitted, that the Cases of a Patent of Peerage, and a Register of Burial or Baptism, were Exceptions from the general Rule; and that in every other Case a certified Copy was sufficient Evidence of a Document, and would be in any other Court: That in the Caithness Case, in 1791, and in the Polewart Case, in 1818, Evidence of certified Copies of public Books had been received; and in the Caithness Case, an Attestation with respect to the Custody of Records was received under the Hand-writing of the Person having the Custody of them.

The Counsel were informed, that this Document might be received de bene esse.

Mr. Brougham stated, that he should next produce an Instrument of Seisin in 1499, in favour of Patrick Home of Polwart, Knight, and Helen Shaw his Wife.

Then GEORGE HOME, Esquire, was further examined as follows:

(By Mr. Brougham.) What have you there?

An Instrument of Seisin, dated the 17th of May 1499.
From whence did you get it?
From the Charter Chest of Mrs. Home of Argaty.

In whose Custody was it?
In Mrs. Home's Possession.

(By the Attorney General.) Did you take it yourself?
I took it out of the Chest, with her Permission.

At her House?
She brought the Chest to Edinburgh, and allowed me to go and take it out of it.

Was she present?
Yes, she was.

The same was delivered in, and read.

"In dei nomine Amen per hoc įns pu restitutione, pontificatus scismi in xii prisa & dìi nìi Alexandri divina quidem Pape sexti anno septimo in mei notarii pu und et testi subsectotur nìia personaliter gestit prouidus vir Andreas Matheson qui tanq. auctoratus honorabilis viri Patricii Hume de Polworth militi ac composito Rotulorum suprmi dìi nìi Regi & Elene Schaw Dise de Dirloyn sue sponsio quam tram suprmi dìi nìi Regi pagamo script sub testimonio sui magni sigilli sigilla ac direct honorabilvo vino Thome Craginelt de eod tanq. vni balliuins in hac parte spealiter deputa pro saisina hereditaria tradenda dictis Patricio & Elene eius sponsio de omis & singulis terris de Ridnach als Inchanach nucat exentendi ad quic, m'caterrarùi quic, librar terrarù de Rednach quib Patricius Meteth in assedationone habet triginta tres solidati & quattuor denarie dictarum terras de Reduch per Gilëstun Makkisoûi occupat & toti & integris terris de Argathes & Lundeis extenendi ad sexdecim libros tresdecim solidos & quattuor denarios jaceb in dominio de Menteth & infra vicecomitatum de Perth manu sua éntauit & deliberavit dicto Thome ibi instantar requiring pro execucio debita fienda Quam quidam idem Thomas manu sua recépt et eand michi notario publico subsipto exhibuit plegen & publicand tenore qui sequitur gënei. " Jacobus dei gratia Rex Sectorsen senescaulo nìo de Menteth & deputati suis necno dilecto nìis Roberto Coluile de Hiltoyn Jacobo Redheuch Ricardo Schaw & Thome Craginelt ac eorum cuiibet quic & diusim senescallii nìi de Meteth in hac parte saltem quic nos ad nìam éfectam etatem viginti quic, äno complef existen post nìam generalem renocação de omibus donaciëba per nos in nìa mioretate gësi faci dedim & gëssimus hereditariano dilecto nìo familiaritii Patricio Hume de Polworth Militi Compotorum nìiìo Rotulatori & Elene Schaw Dise de Dirloyn sue sponsio & eorum alteri diuicius viuenti in quicca infesodałe tosas & integras quic, deca.te terrarù de Rednach quas Patricius Menteth in asedałe habet triginta tres solidatas & quattuor debras dictarum terras de Rednach per Gilëstun Makkisoûi occupat & totas & integras".

17 Maii 1499.
integras terras de Argateis & Lundeis extendeit ad sexdecim "libras tresdecim solidos & quatuor denarios cum ptineæ jacein in "dominio nīo de Menteth infra vicecittatum de Perth. Quequid "terre cum ptineæ fuerunt dicti Patricii hereditarie per nām dona- "cōes tam in nām mōretate qū ad nām plectam etatem post nām "generalem reuocacoesā dictam sibi desuper factī. Et quas dictus "Patricius nūc ad dictam nām plectam etatem in manibus nūs apud "Striueling psonaliter per fustem & baculum sursum reddidit pureq, "simpliciter resignavit put in Carta nās dictāe Patricio & Elene de- "super gfecta plenius qtinetur Vobisā ἐκπαίμ & mandamus quānās "dictē Patricio & Elene vel sui ētē actornat latoribis ἐντιου sasi- "nam ἐντιου terræ cum ptineæ secund tenorē dicte carte nēe quam "de nobis inde habent juste haberi faciatē & sine dilacē. Et hoc "nullo modo ommittatē ad quod faciend vobis et vrīm cuilibet giūctim "& duisim in hac pte ommittimus ētam Datum sub testimonio "magni sigilli nīr apud Striueling quito die mēē Aprilis anno regni "nīr vnedeceimo." Post cūius quid fre lecturam et publicās prefatus Thomas Cragingel baliuss in hac pte aindictus psonaliter accessit ad ēnicipalia messuagia de Rednach Argateis & Lundeis et ibiā super solum dictarum ēraq dicto Andree Mathesoun tānq adactornato dition Patrici et Elene per terrē & lapidiā tradīcitē statum sasinam et possessionem realem actualēm & corporalem secund tenore dicte carte supηi diī nīr Regiā eis desup gfecte gtulit exhibuit & donavit hereditarie cum effectū. De & super quībô ommibī & singulis dictus Andreas Mathesoun nōnē quo supra a me notario putā subscripto sībi fēri pecit vnū seu plura putā seu putā Instrumētum seu istrumēta vnacī appensione sigilli dicta Theome Cragingel........... "Acta erant hic sup solum dictarum terræ horis vndecima anū dūmē apā Rednach & apā Argateis & Lundeis tertia post mediēm vel eoca Sub Anno die mense Indictione & pontificatu quibus supra Pūtibī ibid Johanne Lok Donaldo Patounsoun Donaldo M'Uellach Archibaldo Menteth Micheale M'allane Johane M'ellane Wthmo Drūmond Thoma Lam Andrea Row Finlayo Patounsoun Thoma Row Johanne Dauson & Gilberto Muschete cum diūs aliis testiby ad ἐmissa vocate spealitē Rogatē pτē & Requisite."

"Thomas & Etego Thomas Kirkcaldy pbr Sancti et dicē Sacra Kirkcaldy" autoritate apica notarius quia ἐmissis ommibus et singulis dūm sic vt ommittitur agerentur dicentur et fierent vnacum ἐnolatē testiby ἐn Intuīrī Eaq. ommē et singula sic fēri vidi sciui & audui ac in notam Recepi Indeq, ἐn publicum Instrumētum aliis manu scriptum gfecte me aliis prepedito pagend. Et hic me manu mea subscribendo in hanc putā formā redegī signoq ac noē et subscriptione meis solitē & quētē signaui Rogatus et Requisite in fidem ac testioū omin & singuloq ἐmissorum."
by King James the 4th, dated the 3d of May 1508, of the Lands of Birgham Shiels, in which he was styled Son and Heir Apparent of Patrick Home of Polewart.

Then GEORGE HOME, Esquire, was further examined as follows:

(By Mr. Brougham.) What is that in your Hand?
A Charter by King James the Fourth to Alexander Home, Son and Heir Apparent of Patrick Home, dated the 3d of May 1508.

From whence did you get that?
It is an Office Copy from the Great Seal.

Did you examine it yourself?
I did.

The same was delivered in and read.

"REGISTRUM MAGNI SIGILLI. LIB. XIII. NO. 609.

"CARTA Conjuncte Infeodacionis Alexandri Hume et Margarete Creichtoun ejus Spouse Super terris de Byrgeamshelis.

"JACOBUS Dei gracia Rex Scotorum, Omnibus probis hominibus totius terre sue clericis et laicis Salutem. Sciatis Nos dedisse concessisse et hac presenti carta nostra confirmasse dilectis nostris Alexander Hume filio et heredi apparenti, dilecti nostri familiaris Militia Patricii Hume de Polworth, et Margarete Creichtown ejus sponse, ac eorum alteri diutius viventi in conjuncta infeodacione Totas et integras viginti libras terrarum de Birgeamshelis cum pretieñi jaciñ infra vicecomitatum nostrum de Berwik Quequid terre cum pertineñ fuerunt dicti Patricii Hume hereditarie Et quas idem non vi aùt metu ductus nec errore lapus sed sua mera et spontanea voluntate in manibus nostris apud Edinburgh per fistem et baculum et procuratores suos ad hoc legitime constituotos sursum reddidit pureque simpliciter resignavit, ac totum jus et clameunquie in dictis terris cum pertineñ habuit seu habere potuit, pro se et heredibus suis omnino quieteclamavit in perpetuum, Tenendas et Habendas Totas et integras predictas viginti libras terrarum de Birgeamshelis cum pertineñ dictis Alexander Hume et Margarete Creichtoun ejus Sponse eorumque alteri diutius viventi in conjuncta infeodacione et heredibus inter ipsos legitime procriatis seu procreandis Quibus deficiñ legitimis et propinquoribus heredibus dicti Patricii Hume de Polworth quibuscunque De nobis et successoribus nostris in fæodo et hereditate imperpetuum per omnes rectas metas suas antiquas et divisas prout jacet in longitudine et latitudine in bostis, planis, moris, maresis, viis semitis aquis, stagnis, rivolis, pratis, pascuis, et pasturia molendinis multuris et eorum seepielea auxcapacienibus venacionibus piscationibus petraris turbaris carbonariis lapicidis, lapide et calce fabrilibus, brasinis, breueris et genestis cum curiis et eorum exilibus, herezeldis, bludewittis et marchetis mulierum, ac cum omnibus aliis et singulis libertatibus, commoditatis et asiamantis, ac justis pertineñi suis quibuscunque, tam non nominatis quam nominatis, tam subtus terram quam supra (40.)
Terrarum, procul et prope ad predictas terras cum pertinebant spectaculi seu juste spectare valens quomodo libet in futurum, adeo libere in omnibus et per omniam, sicut dictus Patricius et Predecessores suorum dictas terras cum pertinebant De nobis aut predecessores nostros ante dictam resignationem nobis inde factam tenuit seu possidet tenuerunt seu possiderunt Redendo inde annuam diem Alexander Hume et Margareta ejus Sponsa sorsum, alter diutius vivens, et heredes suis dictis, nobis et successoribus nostris jura et servitutia, de dictis terris cum pertinebant, ante dictam nostram resignationem nobis debita et consueta. In cujus rei Testimonium presenti carte nostre, magnum sigillum nostrum apponimus Testibus ut in quinta carta precedei apud Edinburgh tertio die Mensis Maii Anno Domini Millisimos quingentesim0 tertio et Regni Nostri decimo quinto."

"That what is contained on this and the Two preceding Pages is fairly copied from the Records in His Majesty's General Register House at Edinburgh; is attested by me, Keeper of these Records.

(Signed) ALEX* ROBERTSON."

Then GEORGE HOME, Esquire, was further examined as follows:

(By Mr. Wetherell.) What have you got there?
It is a Charter of King James the Fourth, mentioning Alexander Home, Son, Heir, and Successor of the deceased Patrick Home of Polwart, Knight, dated the 12th of February 1503.

From whence did you get that?
From Mrs. Home of Argaty.

Who is Mrs. Home of Argaty?
She is the Wife of the Son of the last Mary Home of Argaty, who was the Daughter of Henry Home mentioned in the Deed of 1689.

Have you had occasion frequently to see the Title Deeds in Scotch Charter Chests?
Yes.

Are there many of those old Charters in those Charter Chests without Seals?
Many of them are without Seals, sometimes the Tags remain.
Sometimes not even the Tags remain?
Sometimes not even the Tags.

The same was delivered in and read:

"Jacobus Gratia Rex Scotorum Omnibus probis hominibus tocius terre sue clericis et laicos salutem. Sciatis Quia als per decretum et deliberationem Dominorum Coësilii nissi in pescina nissi latum tras nissi dilecto nissi Johann Schevez Clauigero vicecomiti nissi in hac parte ostituto cü nissi nullis alius nissi vicecöiti bis direxinus ad drenzand Elëna Schaw relicta quond Patricii Hume de Polworth Militis diحماس coiuncte infedacois & Intromissatrice diuersarë terrarë tenemëtö et bonorë mobilii dicti quond Pat'cii et Georgë Hume filiüm et here-dem inter dicti quond Patricii et Elëna ei sponsa generi Necnö Alexëin
Alexīm Hume filiū heredē et successorē dictī qnd Patricii de terris de Brighemshelifis et Margareti Creichtoñī eius sponsam pro suo interesse Bt ad appūiarī faciēnd terras et bona ipōrum in ētumintro miserunt quod dictō quond Patricium ptinebāt ad valorem summe octāngēta et quinquāgīta nīcarum vsualis monēt Regnī nī annuāt per spaciī octo annōrī cum dimedio elapsō pro firmis virtuālis et probācis totalīū et integrāri terrārīē et dōum de Dirltounī cum ptineh diēcto gaanguineo nīo Patricio Comiti de Bothuile per Plātā quond Patricii & Elēnae ipō eō sponsam et ipōrum alterīū diuecius viuenti durān tempē warde earund terrarī debīt Et per Plātāi conscanguineīī nīm super quond Georgiō Ker de Samelstounī Philippo Nesbitt de coō Daudi Hume de Weddīburnī Milite tanq herede quond Georgiī Hume de Weddīburnī Wīthmo Balize de Lammytounī tanq herede quond Wīthmo Balize de Lammyntounī Militis ēsui et Henrico Haitie de Mellostanys opten & recupā Ad relevand & obsequand ipōs tanq, plēgios dīci quond Patricii et Elēnae ipō sponsō indepīndam ad manus dictī Pat̄cii Comiti de Bothuile de solūcē dictūrī sum̄marū prōut in hāīoi nīsī trīs desup emanatis pleniūs quītinet. Cum quībī trīs dictī Joēs Schevez vicecomes nī in hac pte accessit et bona mobilia dictūrī Elēnae et Georgiī eō filii Inuestigauat & quia in bonis mobilībus prō dēcis sūmis distingebēs nō erat ḳās bonis pcrutatē & nō Inueē. Ideh nī vicecomes accessit et terras subscriptas vīē quīn, nīcātās ńrārū de Argaty Corntoṇī quīn, nīcātās terrārū de Eister Argaty quīn, nīcātās ńrārū de Lundy Mēthane et Lundyliquī quīn, nīcātās terrārū de Lundskeoche & quindecī terrārū de Red- uoch & Vnchquhanī cum suis ptineh extendēnī in integro ad quadrāgītā nīcātās ńrārū jaceē infrā vicecomitatū nīm de Perthin dictīs Elēnae et Georgiō ipō filio hereditarie ptineī et per ipōs de nobis tentō in capite prō sūma octingentarū mercarū vsualis monetē Regnī nī acecīō terras de Brighemshelifis cum ptineh jaceē infrā vicecomitaṭum nīm de Berwik extendēnī nunc ānūati ad sūman viginti librāri dictō Alexīro Hume et Margaretī eō spōse ptineē Et per ipōs de nobis tentō in capite prō sūma sexingentarū nīcārus vsualis monetē aūndicē cum nūnunnilī alīs terrīs et tenemētis dictō qnd Patricio et Elēnae ipō sponsō ptineh de alīs supōriīs tentō per tresdecim conǐnignā psōnas ad hoc magnō sacrāmentō interuēnēt juratā, secund tenērē actī nī pliamēī sup ap̄cipiacō terrarrū prō debito ṣīfēt & ētrum nărūm antēdict debīte ap̄cipiārī fecit legīmī șūmunicīōbī dictē Elēnae Georgiō Argelo et Margaretī eō sponsē ceteriquī, oūbiīnē in plātis terrīs inter esse habēi per publicas proclamācēes apūd crūces forales burgūri fīorum de Perthin et Lawder dīvērē diebīs priūs factī ad vidēiendo et aūendiē plātās terras in quātum valorunt prō hāīoi sūmis ap̄cipiāri Quibusquīd ap̄cipiacoībī sic vt șūmītī factī dictūs ēr vicecomes in hac parte plātās terras sic vt șūmītī apprēcatūs prō dictīs summīs ad quas app̄cipiaē fierunt publicē vendendas obtultī Et quia nullā psōnam ipās emere valēi Inuenī easd dictī creditorībī virtūte sui officiī et secund tenorem actī nī pliamēī antēdicti prō dictīs summīs ad quas app̄cipiae fierunt in ētem soluciones totalīūm sūmarū suprascriptūrā tradītī et assignātī. Ad relevand īpōs de eisd sūmis ad manus dictī Comitis prōt in processibus appiatioōnīē per dēm nīm vicecomitē in hac pte sub sigillo suo vnacū sigillēs nūnulīurī sup hāīoi ap̄cipiacōibī existēnī coram Dīnis consiliī nī ostenē et producē pleniūs quītinetur
ptinetur. Et diviunio facta inter dictos creditores de $ptatis apudciatis terris quattuor quisquis illorum habebit pro pte sua concordatum est quod dictus Daudium Hume filius et heres prefati quando regem Hume habebit pro pte sua terciam ptem dictarum terrarum de Brigehamschelis cur suis ptine
Acceiam prefatas quinque, dictatas terrarum de Over Ar- gaty et quinque, mercatas dictarum terrarum de Redeuoch cum suis ptine in nobis tenet in capite prout in appunctuameto inter doss creditores de diviunione dictarum terrarum fact plenus ptinetur. Nos igitur acta nris pliameti perimipleri ac debite executioni demandari cupiemo Dedimus et ossessimus et hac pti carta nris damus et ossedimus totam et integram dictam tertiam partem terrarum de Brigehamschelis et $ptat quinque, nris factorum de Overargaty et quinque, dictatas dictarum terrarum de Redeuoch cum suis ptine dicto Daudum Hume hereditario ipsum nobis in tenebris earund recipien. Et doss Alexander Hume Margaretae eis sponsam Elenae Schaw et Georgium Hume ei filium de eisdem virtute dni nris acti pliameti destituein. Tenendum et habendam totam et integram predictum terciam ptem terrarum de Brigehamschelis $ptatas quinque, dictatas terrarum de Over Argyat et quinque, dictatas dictarum terrarum de Redeuoch cum suis ptine dicto Daudum Hume et heredibus suis de nobis et successoribus nris in feodo et hereditate impetui. Per omnes rectas metas suas antiquas et duisass prout jacent in longitudine et latitudine in boscis planis moris ferevisis vis semitis aquis stagnis riuolis pratis pasu uncis et pasturis molendis multuris et coroi sequelis Aucupationibus venationibus piscationibus petrariis turbaris carbonariis lapicidis lapide et calce fabrilibus brasiniis bruieris et genetisiis Cum curis et earis extibus herezedibus et dictis mulieris Ac cui omibus aliis et singulis libertatis coidesitibus et asiatico ac ptine in quibus eis tam non nomia adum quae nris habemus quam subter terrae supra terrae procul et prope ad predictas terras cum ptine spectant seu just spectarum valebant quomodoliz in futurum Adeo librare quiet plenarie integre honorificie bene et in pace in omnia et per omia sicut dicti Alexander et Margaretae ei sponsa aut predecessores sui $ptatas terras de Brigehamschelis cursor ptine Et sicut dicta Elene Schaw Georgius Hume ei filius aut successoribus sui $ptatas quinque, dictatas terrarum de Over Argyt et quinque, dictatas dictarum terrarum de Redeuoch cum ptine de nobis aut successoribus nris ante dictas appcallationis librius tenuerunt suo possedentur Faciendo inde annuati dictus Daudum Hume et heredes sui nobis & successoribus nris jura et servicia de omnibus predictis terris cum ptine ante $ptatas appcallacio nobis debita et $gueda. Et non obstante hiiour nris in fodeaion Volumus et ordinamus pro nobis et successoribus nris qui dic Alexander Margaretae eius sponsa Elene et Georgius eius filius et quilir eorum proptea sua et iporum heredes habeant et habeant plenus regressum in et ad $ptatas terras cum ptine quandocumque, persoluerit vel soluuet dicto Daudum Hume et heredibus suis sumps pro quibus dicto terre appcalli fuerunt vnae omniylalis expesein desuper factus dummodo $ptata solucein infra septemini proximo post dictas appcallationes integre facta fuerit secon tenore dicti acti nris pliamenti Firmis tam et proficus dictarum terrarum terrarum cum ptine per dicti Daudum et heredes suos interim peipien in solucein dictarum summarnam et expensarum minime computandis prout dicti actum pliameti in se preportat. In cuius Rei testimonii pti carte magnum sigillum nostrum appo precepimus Testibus Reuering in Cristo patre Wiismo Eipo Abirdone nris secreti sigilli Custode dilecis
dilectis consanguineis nris Archibaldo comite de Erse de domino Camp-
bell et Lorri Maño hospicio nri Patricio Comite de Bothrie domino 
Halis Matheo Comite de Levenax domino Derulie Alexandro Domino 
Hume magno Camerario nri Andrea Domino Gray Justiciario nri 
venerabilis in Cristo patre Jacobe Abbate de Dunfermling Thesaurario 
nri Et dilecto Clerico nri Maño Gawino Dunbar Archidiacono 
Sanctiand, nrorum Rotulorum et regri ac Concilii clericio. Apud Edin-
burgh duodecimo die mens Februaire Anno dixi milliuo quingastesimo 
quinto. "Et Regni nri decimo octauo."

Mr. Brougham stated, that the next several Deeds in Order of Date 
to prove the Succession of Patrick to Alexander who died in 1532, 
were Originals from the Custody of Mr. Swinton of Kinnergham, 
that he begged to submit whether their Lordships would permit them 
to be given in de bene esse.

The Counsel were informed, that that could not be permitted.

Then Mr. Brougham stated, that to prove that Patrick the Son of 
Alexander was succeeded by a Son named Patrick, he proposed to 
give in Evidence, an Office Copy of a Charter granted to him by 
James the Fifth, proceeding on a Resignation of the Half of the 
Lands of Kinnergham.

Then GEORGE HOME, Esquire, was further examined as follows:

(By Mr. Brougham.) What have you in your Hand?
An examined Copy of a Charter by King James the Fifth to 
Patrick Home, Son and Heir Apparent of Patrick Home of Polwart, 
dated the 1st of September 1596.

Did you examine that with the Entry in the Register?
I did.

The Attorney General submitted, that this was not the best 
Evidence, and that the Book itself must be produced.

The Counsel were informed, this standing on the same ground as 
those which were already reserved for Consideration, might also be 
received de bene esse.

Mr. Wetherell stated, that to prove that Patrick Home of Polwart, 
the Third of that Name, was succeeded by his Son Patrick, afterwards 
Sir Patrick Home, he proposed to put in the Retour by which he was 
served Heir in special to his Father.

Then GEORGE HOME, Esquire, was further examined as follows:

(By Mr. Wetherell.) What have you there?
A Retour of the Special Service of Patrick afterwards Sir Patrick 
Home of Polwart, as Heir of the deceased Patrick Home of Polwart, 
his Father, dated the 24th of October 1599.

I Did
George Home, Esq.

Did you examine it yourself?
I examined it carefully with the Record of Retours in Chancery.

(By Mr. Attorney General.) With whom did you examine it?
I examined it with the Record.

Yourself alone, or was any Person with you?
With the Clerk.

Did you look at the Original, and he at the Copy, or you at the Copy and he at the Original?
Sometimes I read the Original, and he the Copy, and sometimes the other Way.

(By Mr. Brougham.) Did you make the Copy yourself?
No, not of this; it was made by a Clerk in Chancery.

In which of those Two Ways was this Examination made, did you read the Copy and he the Original, or you the Original and he the Copy?
I think he desired me to read the Record and he looked at the Copy.

Who has signed it?
Thomas Miller, Substitute.

Whose Substitute is he?
He is under Lord Rosslyn, in whose Custody the Records are.

The Attorney General submitted, that this Proof was not sufficient, the Witness not having looked himself at the Original.

(By Mr. Brougham.) Do you mean to say that you did not look at all at the Original?
Mr. Miller told me I might either read the Record or the Copy.

With respect to this Inquisition, did you look at the Original or the Copy?
According to the best of my Recollection, I read the Record.

This is signed by Thomas Miller, the Substitute of the Director of the Chancery?
Yes.

Do you know his Hand-writing?
Perfectly.

This is his Hand-writing?
It is.

Mr. Brougham submitted, that this was receivable in Evidence, as an Office Copy of a Document certified by the proper Officer, his Signature being proved by the Witness at the Bar; that in the Caithness Case, the Committee of Privileges had gone further, for they had received from the Officer a Certificate that there were no Records in His Majesty's General Register House at Edinburgh, between Two Dates there mentioned; the Person who had signed that Certificate
Certificate being alive and being capable of being called as a Witness; that here was a precise Certificate vera Copia, &c. signed by Thomas Miller in his Character of Substitute.

The Attorney General submitted, that this could not be received on the Ground proposed, there being merely a Certificate without Oath of that Fact, which ought to be proved upon Oath by the Person who had examined it.

The Counsel were informed, that they should receive the Determination of the Committee, whether this was receivable in Evidence on the Ground proposed, at the next Meeting of the Committee.

The Witness was directed to withdraw.

The Counsel were directed to withdraw.

Proposed to adjourn this Committee to Tuesday next, at Three o’Clock;

Accordingly,

Adjourned to Tuesday next, at Three o’Clock.
Die Martis, 21\textsuperscript{o} Maii 1822.

The EARL of SHAFTESBURY in the Chair.

The Order of Adjournment was read.

The Minutes of the last Committee were read.

The Counsel were called in.

Then Mr. Brougham, of Counsel for the Petitioner, requested Permission, in reference to the Points which had been raised on this Day Se'mnignt, to refer their Lordships to the Caithness Case in 1791, which, he stated, appeared to be a Case arising on the Election of a Scotch Peer, and a Claim of the Earldom of Caithness, and which he considered to furnish a Precedent for the Reception of Instruments where the Custody was not proved to the Extent to which it was in the present Case required; and also, for the Reception of Copies of Instruments certified by the proper Officer.

Mr. Attorney General submitted, that it did not appear from the Minutes in the Caithness Case, what was the Degree of Proof given on the Production of the Instruments referred to by the Counsel for the Petitioner.

Mr. Brougham, in answer, referred to the Minutes of Evidence in the Case of the Earldom of Caithness.

The Counsel were informed, that the Committee were desirous of giving to these Points a further Consideration, before they determined them; and that the Counsel for the Petitioner should, in the meantime, proceed on the other Parts of their Case.

Mr. Wetherell then stated, that he was about to produce a Document to prove that Patrick Home of Polwart, the Third of that Name, was succeeded by his Son Patrick, afterwards Sir Patrick, who on the 24th of October 1599 was served and retoured Earl in Special to his Father, and upon the last day of July 1606 was also served Heir in General to Sir Patrick Home the First, of Polwart, his Great-great-grandfather.
Then WILLIAM BELL, Esquire, was called in, and having been sworn, a Paper was shewn to him, and he was examined as follows:

(Mr. Brougham.) You are a Writer to the Signet?
I am.
Do you know the Office of Chancery in Edinburgh?
I do.
Is Thomas Miller the Substitute of the Deputy Director of Chancery?
He is.
Has he, as such, the Direction of that Office?
He is the Clerk who acts in the Office, and does the Duty of the Office.
Does he give what you call Extracts of the Papers belonging to that Office?
He does.
Are those Extracts Copies made by him, or under his Direction, and certified by his Signature?
They are.
Are such Extracts as those received in Practice by the Scotch Courts, without further Evidence?
Extracts of Retours are received in the Scotch Courts, without further Evidence.

With this Attestation, which appears to the Paper before you, "haec est vera copia."
Yes, universally.

Cross-examined by Mr. Attorney General.
This Gentleman, Mr. Miller, is a Clerk in the Office?
He is.
You say, that such an Extract would be received in Evidence in the Scotch Courts?
Beyond all question.
You receive the Letters of Persons in Evidence there, without proving their Signatures, do not you?
That depends upon Circumstances, which must regulate every particular Case.
Is it usual to require Proof of the Signatures to Letters produced in the Course of a Cause?
Whenever they are objected to it is.
But if they are not objected to, they are received?
De bene esse.
Are they not received unless they are objected to?
Unless they are objected to, they are received.
Re-examined by Mr. Brougham.

When you say, that Mr. Miller is a Clerk in the Office, is he the Substitute and Deputy of the Director? He is the Substitute of the Deputy of the Director of Chancery, who usually signs those Extracts.

He is that Substitute who usually signs those Extracts?

Yes.

Mr. Brougham submitted, that he had now laid sufficient Ground to entitle him to have the Document he was about to produce received in Evidence.

Mr. Attorney General submitted, that it was not proved to be a true Copy; that Mr. Miller did not appear to be an Officer of that Description who had Authority to certify Copies of Instruments, so as to render them Evidence.

The Counsel were informed, that the Committee would defer the Determination of this Point for further Consideration.

Mr. Brougham having requested to know, whether the Document might not be given in de bene esse, was informed, that that might be done, it being understood, that it would of course be struck out of the Minutes in case it was not, on Consideration, found to be sufficiently proved.

Then an Instrument, purporting to be a Retour of a Special Service of Patrick Home of Polwart, as Heir of his Father, dated 24th October 1599, was delivered in de bene esse.

Mr. Brougham stated, that he was about to offer other Documents in Evidence, to prove that Sir Patrick Home died in 1609, and was succeeded by his Son Sir Patrick, who upon the First of February 1611 was served and retoured Heir in Special to Sir Patrick Home of Polwart, his Father, and upon the 12th of June 1630 was served also Heir to John Sinclair of Herdmanston, Grandfather of the Mother of his Great-great-grandfather.

Then GEORGE HOME, Esquire, was again called in, and further examined as follows:

(Mr. Wetherell.) What have you in your Hand?

An Office Copy of the Retour of the General Service of Sir Patrick Home of Polwart, as Heir of Sir Patrick Home of Polwart his Great-great-grandfather, in July 1606; also an Office Copy of a Retour of the Special Service of Patrick Home of Polwart, as Heir of his Father, dated the 1st of February 1611; and a like Copy of a Retour of the General Service of Sir Patrick Home of Polwart, as Heir of John Sinclair, dated the 12th of June 1630.

Have you seen Mr. Miller write?

Yes.
George Home, Esq. Is that which appears at the Bottom of these Papers, Mr. Miller's Hand-writing?
It is his Subscription.

The said several Instruments were delivered in _de bene esse._

Mr. Wetherell, of Counsel for the Petitioner, then stated, that he was about to offer another Document in Evidence, to prove that Sir Patrick Home having died in 1648, was succeeded by his Son Sir Patrick, who on the 17th of May 1650 was served and retoured Heir to his Father, and afterwards became Lord Chancellor of Scotland, Lord Polwart, and First Earl of Marchmont.

Then GEORGE HOME, Esquire, was further examined as follows:

What is that in your Hand?
A Retour of the Special Service of Sir Patrick Home of Polwart, as Heir Male of his Father, dated the 17th of May 1650.

From whence did you receive it?
From the Charter Chest of Sir Hugh Dalrymple of North Berwick.

Do you mean, that you got it from the Charter Chest?
I took it out of the Charter Chest myself.

Where?
In the House of John and Francis Anderson, Writers to the Signet.

Was Mr. Anderson at the Time Agent to Sir Hugh Dalrymple?
He was.

Cross-examined by Mr. Attorney General.

How do you know that he was the Agent of Sir Hugh Dalrymple, did he tell you so?
He told me so.

_(Mr. Brougham.)_ Is Mr. Anderson dead?
John is dead, but not Francis.

Mr. Attorney General stated, that this Instrument appeared upon the Face of it, to be a Copy, and not to be the original Retour.

Mr. Brougham stated, that the Original being deposited in Chancery, the Copy delivered out to the Party at the Time was considered as the Original, and was afterwards treated as such by the Courts in Scotland, and that this appeared to be certified by the Deputy in Chancery of that Date.

The Counsel were informed, that there was no Evidence at present that the Person certifying it was the Deputy of that Day.

Whereupon the said Retour was withdrawn for the present.

Then
Then Mr. Brougham stated, that, in order to prove that Patrick Lord Polwart died before his Father without Issue, having on the 27th of October 1692 been served Heir of Conquest to Captain Robert Home his immediate younger Brother, he should produce an Office Copy of a Retour.

Then GEORGE HOME, Esquire, was further examined as follows:

(Mr. Brougham.) What is that in your Hand?

Master of Polwart, as Heir of Conquest of the deceased Captain Robert Home, his immediate younger Brother, dated the 27th of October 1692.

Is that in your Hand-writing?
It is.

Did you make this Copy from the Original in the Records of Chancery?
From the original Record.

Cross-examined by Mr. Attorney General.

How did you make this?
I copied it myself; and then I compared it with the original Record.

You can undertake to say that it is a true Copy?
I can undertake to say that it is.

The same was delivered in, and read as follows:

"CHANCERY RECORD, BOOK XLIII. FOL. 141.

"HAC Inquisitio facta fuit in pretorio de Dunse burgi capitalis vicecomitatus de Berwick vigesimo septimo die mensis Octobris Anno 27ae Octob 1692. Domini millesimo sexcentesimo nonagesimo secundo coram honorabilii viro Joanne Home de Kello vicecomite deputato dicit vicecomitatus de Berwick per hos probos et fideles homines patriae subscripti vis Alexander Trotter de Eistend de Fogo Joanem Wilson portonarium de Litholm Magistrum Dauidem Rule de Pilwals, Georgium Whillas notarium publicum in Dunse Gulielmum Edgar scribam ibid Jacobum Law incolam in Dunse Alexandrum Lorain feoditarum ibid Joanem Dods incolam ibid, Thomam Kellie mercatorum in Eymouth Thomam Fairly feoditarum in Dunse Georgium Rentoun filium quondam Jacobi Rentoun de Billie Joanem Crystie procuratorem fisci dicte curiae, Jacobum Liddell chirothecarium in Dunse Joanem Gibsone feoditarum in Dunse et Alexandrum Whillas incolam ibidem. Qui jurati dicunt magno sacramento interveniente, Quod quondam Capitanus Robertus Home frater immediate junior Patricii Magistri de Polwart latoris presentium obiit ad fidem et pacem S. D. N. Gulielmi et Marie Magnae Britanniae Franciae et Hiberniae Regis et Reginae nunc regnae. Et quod dictus Patricius Magister de Polwart est legitimus et propinquior heres conquestus (40a.) L. dicti
dicti quond\' capitani Roberti Home sui fratri immediato juniori.
Et quod est legitime etatis. In cujus rei testimonium sigilla quorum\' eorum qui dicit inquisitionem intereant faciendo cum brevi super
premissis direct\' presuntibus sunt appensa.

Extractum de libris actorum dicit curiae vicecomitatus de Berwick
per me Jacobum Winrame * dicit curiae ac etiam deservitionis clericum
prescript. Sic sub-

* Sic.

JA. WINRAM * Chs.*

"Hec est vera copia principalis Retornatus super premissis in
Cancellaria S. D. N. Regis remani\' Extract\' Copias et Colla\' per me Thomam Miller Subj Jacobi Dundas Depu\' prehon\" Jeacobi S' Clair Erskine Comitis de Rosslyn ejusd\' Cancellari\'e
directoris sub hac mea subscriptione.

(Signed) THOMAS MILLER, Subj."

Mr. Brougham stated, that he next proposed to prove, that Patrick
the First Earl died in 1724; and that, on the 4th of February 1725,
Alexander his Third Son was served and retouredit as Heir, and suc-
cceeded to the Title of Marchmont.

Then GEORGE HOME, Esquire, was further examined as follows:

(Mr. Brougham.) What have you in your Hand?

An Office Copy of a Retour of the General Service of Alexander
Earl of Marchmont, as Heir Male of Line and Taille of the
decesed Patrick Earl of Marchmont his Father, dated the 4th of
February 1725.

Is the Attestation to that signed by Mr. Miller?

It is.

The same was received de bene esse.

Then Mr. Brougham stated, that he proposed next to prove that
Alexander the Second Earl had Four Sons, George, Patrick, Hugh,
and Alexander Hume Campbell; that Earl Alexander died in 1740,
and his Sons George and Patrick having pre-deceased him, and with-
out Issue, he was succeeded by his Son Hugh, who, on the 26th of
November 1740, was served and retouredit as Heir, and became Third
Earl of Marchmont.

Then GEORGE HOME, Esquire, was further examined as follows:

(Mr. Brougham.) What is that in your Hand?

An Office Copy of a Retour of the General Service of Hugh Earl
of Marchmont, as Heir of Alexander Earl of Marchmont his Father,
dated the 26th of November 1740.

Is that at the Bottom Mr. Miller's Hand-writing?

It is.

The same was received de bene esse. Then
Then Mr. Wetherell stated, that to prove that Earl Hugh and his Son Lord Polwatt died without Issue, he proposed to put in a Deed of Settlement, Nomination, and Taillie, executed by Earl Hugh on the 5th of November 1790, in which he called to the Succession of his Estates, failing Heirs Male of his own Body, First, the Heirs Male or Female of Lady Diana Hume his Daughter, except those of her then Marriage; whom failing, any other Daughters of his own Body and the Heirs Male of their Bodies: Secondly, the Heirs Male of the Body of Sir Alexander Purvis, Baronet, the Son of Lady Ann Hume, Earl Hugh's Sister: Thirdly, Charles Lord Sinclair and his Brother Matthew, Grandsons of Elizabeth Home, Daughter of Sir Alexander Home of Kimmergham; and the Heirs Male of their Bodies: Fourthly, Andrew, William, and John Wauchope, children of Helen Home, also Daughter of Sir Andrew Home of Kimmergham; and the Heirs Male of their Bodies: Fifthly, Thomas late Earl of Haddington and his Brothers, the Grand-children of Lady Grizel Home, Daughter of Sir Patrick First Earl of Marchmont, and the Heirs Male of their Bodies; whom failing, a Series of Heirs descended from other Daughters of Patrick the First Earl of Marchmont.

Then GEORGE HOME, Esquire, was further examined as follows:

What is that in your Hand?
An Office Copy of a Deed of Settlement, Nomination, and Taillie, by Hugh Earl of Marchmont, dated the 5th of November 1790.

Do you know Mr. Pringle the Deputy Keeper of the Register of Entails?
I do.

Is that Mr. Pringle's Hand-writing to the Certificate at the End, and also at the Bottom of each Page?
Yes.

Cross-examined by Mr. Attorney General.

Are you sufficiently acquainted with this Office, to know whether the original Deeds of Taillzie are left in this Office?
They are first recorded in the Record of Entails, of which Mr. Pringle is the Deputy Keeper, and then for further Preservation they are sent into the Record Office to be recorded in the Books of Council and Session; the Originals lie there.

The Original is in the Office of Council and Session?
Yes, under the Care of Mr. Robertson the Keeper of the Record; it is doubly recorded.

This is a Copy, not of the original Deed, but a Copy of a Record of the Deed, is it not?
It is a Copy of the original Deed; it is first recorded in the Record of Entails, and then sent into the Record Office of the Court of Session to be recorded there, and the Original is deposited there.
Is this a Copy of the original Deed, or a Copy of the Record of the original Deed?
It is a Copy from the original Deed.

Mr. Pringle certifies that it is a just Copy of the Deed as recorded in the Register of Taillies?
Yes, it was first of all recorded in the Register of Taillies.

Where does the original Deed remain?
The original Deed remains under Charge of Mr. Robertson the Keeper of the Records of the Court of Session.

Mr. Brougham submitted, that this was sufficiently proved, the Act respecting the Registration of Seisins requiring that Deeds shall be recorded within a certain Time, and when so recorded, rendering the Record equal to all Intents and Purposes with the original Deed; that this therefore was not to be considered in the light of a Copy of a Copy.

The Counsel were informed, that it did not appear to be open to that Objection.

Mr. Attorney General submitted, that it was open to the same Objection with several of the Documents proposed to be given in Evidence, as not being proved by the Attestation of Mr. Pringle.

The same was received de bene esse.

Then Mr. Brougham stated, that, further to prove that Alexander Hume Campbell, who died in 1760, left no Issue, which he said was in some measure proved by the Instrument last produced, in which more remote Heirs are called than Descendants from him; he proposed to put in a Retour dated the 9th of September 1779, proving that Earl Hugh his Brother was served as nearest Heir Male.

Then GEORGE HOME, Esquire, was further examined as follows:

What have you there?
An Office Copy of a Retour, of the Special Service of Hugh Earl of Marchmont, as Heir Male of Alexander Hume Campbell late Lord Clerk Register for Scotland, his Brother, dated the 9th of September 1779.

Is that Signature to the Attestation Mr. Miller’s?
It is.

The same was received de bene esse.

The Witness was directed to withdraw.

Mr. Brougham stated, that he proposed now to give further Evidence in support of the Retour in November 1475, offered in Evidence this Day Se’nnight (14th of May.)
Then WILLIAM BELL, Esquire, was again called in, and further examined as follows:

_(Mr. Brougham._) Do you know Mr. Renton, the Writer to the Signet?

I do.

Is he Agent of Mr. Home of Wedderburn?

He is, or rather was, for Mr. Home is dead.

Did you make Application to Mr. Home for Permission to inspect his Charter Chest?

I did.

Were you referred by him to Mr. Renton?

Mr. Home stated, that Mr. Renton would be authorized by him to receive the Papers.

Were you referred by him to Mr. Renton?

I was.

Did you accordingly go to Mr. Renton, and inspect the Papers in his Custody?

Mr. Renton brought them to me, and I inspected them in his Custody.

Did you get this from among those in his Custody?

Yes, among others.

To whom did you give it?

To Mr. George Home.

Then GEORGE HOME, Esquire, was again called in, and producing a Paper was further examined as follows:

Have you ever since had this in your Custody?

Yes, I have.

Then WILLIAM BELL, Esquire, was cross-examined as follows:

_(Mr. Attorney General._) What is Mr. Renton?

A Writer to the Signet.

Is he Agent to many Gentlemen?

Yes.

He produced to you this Paper?

Yes.

Mr. Attorney General submitted, that this Instrument could not be received, there being no Proof that it came from among the Papers of Mr. Home of Wedderburn, it appearing, on Inspection, to be a Copy, though an ancient Copy, without any Seal; and there being no Evidence of a Search in the proper Office, where the Original should be deposited.

The Counsel were informed, that this might stand over for further Consideration.

The said Retour was delivered in _de bene esse._

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Then WILLIAM BELL, Esquire, was further examined as follows:

William Bell, Esq.

(Mr. Brougham.) This Instrument of Seisin, dated the 10th of November 1475, you received also from Mr. Renton?
I did, under the same Circumstances.

The same was delivered in de bene esse.

Mr. Brougham stated, that he proposed next to put in the original Charter of the 15th of May 1470.

Then WILLIAM BELL, Esquire, was asked,

(Mr. Brougham.) Did you receive that from Mr. Renton at Edinburgh?
I did.

The same was delivered in de bene esse.

Mr. Brougham stated, that he proposed next to put in the original Precept of Archibald Earl of Angus, for enfeoffing Patrick Home in the Half of the Lands of Kimmergham, of the same Date with the Charter which had been just produced; viz. 15th May 1470.

Then WILLIAM BELL, Esquire, was further examined as follows:

Did you receive that also from Mr. Renton, as Agent for Mr. Home of Wedderburn?
I did.

The same was delivered in de bene esse.

Then Mr. Wetherell stated, that, in order to prove that Sir Andrew of Kimmergham, a Lord of Session in Scotland, had Two Sons, John and Patrick, and Two Daughters, Elizabeth and Helen; that John was born in Edinburgh in 1711, and that Sir Andrew, the Father, died in 1730, or the beginning of 1731, he should produce an Office Copy of an Entry in the Register of Baptisms of the City of Edinburgh in 1711.

Then GEORGE HOME, Esquire, was further examined as follows:

George Home, Esq.

(Mr. Wetherell.) What is that you have in your Hand?
It is an Entry of the Birth of John, the Son of Sir Andrew Home.

Did you compare that with anything?
Yes, with the original Register of Baptisms.

Cross-examined by Mr. Attorney General.

Is that your Writing?
It is not my Writing; it is the Writing of Mr. Robert Bow, the Keeper of the Register.

Did you compare it with the Original?
I did, carefully; I read it both ways, along with Mr. Bow.

You
You can swear that it is a true Copy?
I can.

The Counsel were informed, that Copies of the Registers of Baptisms or Burials were not receivable in Cases of Peerage.

Mr. Brougham, of Counsel for the Petitioner, submitted, whether there was not a Distinction in the Case of Scotch Peerages.

The Counsel were informed, that the Committee were not aware that such a Distinction had ever been taken.

Mr. Wetherell requested to put it in de bene esse, as coming under the Description of a Deed.

Whereupon the same was allowed to be delivered in de bene esse.

Mr. Brougham stated, that he proposed now to give in Evidence an Extract of a Decree of Confirmation.

Then GEORGE HOME, Esquire, was further examined as follows:

Whose Hand-writing is that to the Extract in your Hand?
It is the Hand-writing of George Corphin, Substitute Commissary Clerk.

Mr. Brougham submitted, that this being attested in due Form by the proper Officer, and sealed with his Seal of Office, was entitled to be received in Evidence; the Practice in the Courts of Scotland, to use the Expression of those Courts, proceeding upon a perfect Faith in these Extracts.

Mr. Attorney General submitted, that whatever might have been the Practice of the Scotch Courts, Copies similar to this now produced had never been received in a Claim of Peerage.

The same was allowed to be delivered in de bene esse.

Mr. Brougham stated, that he proposed next to prove that John Home was married, in 1734, to Margaret, Daughter of William Drummond of Grange, by putting in a Decree of Separation and Aliment, obtained by her before the Commissaries of Edinburgh, in November 1736.

Then GEORGE HOME, Esquire, was further examined as follows:

(Mr. Brougham.) What is that you produce?
A Decree of Separation and Aliment, in a Suit, Margaret Drummond, Wife of John Home of Kimmergham, against the said John Home, dated the 9th of November 1736.

Do you speak to the Signature and Seal of this the same as of the last?
Yes.

Then the same was delivered in de bene esse.
Mr. Brougham stated, that the Document be next proposed to adduce in Evidence, was the original Contract of Marriage between Margaret Drummond, Widow of John Home of Kimmergham, and Alexander Hepburn, dated the 12th March 1741; that that was proved before their Lordships on the Claim of Dame Anne Paterson Anstruther to the Peerage of Polwart in 1818, and remained in the Custody of the House.

The Counsel were informed, that if it remained in the Custody of the House it might be referred to.

The Witness was directed to withdraw.

The Counsel were directed to withdraw.

Proposed to adjourn this Committee to Thursday next:

Accordingly,

Adjourned to Thursday next.