

DAUNTING A WILD, UNRULY COLT¹: JAMES VI AND ENFORCING THE LAW AS PART OF GOVERNING THE COUNTRY

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The Outside View

Wikileaks would have a field day with the letters that passed from the English resident in Scotland to the governors of England. George Nicholson wrote to Robert Cecil of ‘the mutableness of this inconstant people changing or plotting for changes with every changeable blast of wind’. One may, however, reflect that they were not immediately subservient to the monarch. When the king ‘discharged’ Robert Bruce – the principal minister of the Presbyterian church in Edinburgh and the man who called James ‘God’s silly fool’ of his stipend – Bruce sued and recovered it before the lords of the session, in the king’s presence. The president Alexander Seton, with great dignity and firmness, informed the King that he was their king and they his subjects bound to obey him in all humility which they all would do in all things for their lives, lands and gear but in that matter of law and conscience being sworn to do justice they would do as their consciences led them unless he commanded them to the contrary in which case he said he would not vote at all.” Lord Newbottle said to the king that it was said in the town to his slander and theirs that they durst not do justice but as the king commanded them. The judges, with only two dissentient voices, pronounced their decision in favour of Mr. Robert Bruce.²

Scottish ideas of justice, however, varied from the English and often from French to the frustration of monarchs who sought justice for attacks on their subjects. When Sir Robert Kerr was accused for an attack in 1597 those involved were allowed to go free when they had ‘satisfied’ the wife and children for the death and also ‘satisfied’ the king.³

Introduction

The two key roles of a king were to defend his people and to give them

¹ G.P.V.Akrigg (ed), *Letters of King James VI and I* (Berkeley, Los Angeles, and London: University of Californian Press, 1984), letter 89, p. 201.

² *Calendar of State Papers Scotland 1597-1603* (Edinburgh: HMSO, 1969), p. 427 no. 343.

³ *Calendar of State Papers Scotland 1597-1603*, vol. 13, p. 4.

justice. It is commonly asserted in texts about the government of Scotland in medieval times that the monarch's prestige depended on his control of law. Recent research suggests that in the Middle Ages his control was far more dependent on military force, the razing of castles and countryside and colonisation.⁴ The king, that is, was primarily a warlord.⁵ Law, however, did play a part. In 1291 and 1292 when the records of the Scottish kings were listed prior to Edward I taking them to London, foremost were manuscript rolls containing the laws and assizes of the kingdom and the statutes of King Malcolm and King David.⁶ The position of Justiciar was therefore critical. This represented ultimate royal authority even though the complex system of Regalities, Baronies, Sherrifdoms and Burgh courts⁷ meant most decisions were taken locally and direct royal authority was only exercised rarely and in particular cases, mostly those that could be construed as treason. In most other cases the monarch had to rely on the great lords in whose courts lesser nobles, lairds, burgesses and the wealthier peasants acted as accusers, witnesses and juries.⁸

The Nature of Criminal Law in Early Scotland

While the courts might be local the law was for the most part common. Even though in some areas the courts may have been held in Gaelic the underlying ideas were based on accepted texts available in other languages as well.⁹ The Scots considered private and public justice were merely

⁴ R. Andrew McDonald, *Outlaws of Medieval Scotland: Challenges to the Canmore Kings, 1058-1266* (East Linton: Tuckwell Press, 2003), chapter 3.

⁵ Bruce Webster, *Medieval Scotland: The Making of an Identity* (Basingstoke: Macmillan Press, 1997), pp. 25, 30-33.

⁶ H. L. MacQueen, 'Scots Law under Alexander III', pp. 74-102, in N. Reid (ed) *Scotland in the Reign of Alexander III, 1249-1286* (Edinburgh: John Donald Publishers, 1990).

⁷ A lord like the earl of Atholl had a regality that covered most of central Highland Scotland. There were over forty such regalities with the privilege of hearing pleas of the crown and excluding royal officers. Cases from such an area would come directly to the king for justice only if treason could be alleged as there was no hierarchical supreme criminal court to adjudicate between conflicting jurisdictions or unjust sentences. The court of sessions erected in 1532 dealt only with civil matters. Jane E Dawson, *Scotland Re-Formed, 1488-1587* (Edinburgh: Edinburgh University Press, 2007), pp. 20-21.

⁸ Michael Brown, *The Wars of Scotland 1214-1371* (Edinburgh: Edinburgh University Press, 2004), p. 112.

⁹ Hector L. MacQueen, 'Linguistic Communities in Medieval Scots Law', in Christopher W Brooks and Michael Lobban (eds), *Communities and*

alternative ways of dealing with problems and that arbitration was probably the best way of ensuring that all parties adhered to a decision.

In the middle of the 18th century the third duke of Argyll, pushing through the abolition of the Heritable Jurisdictions Act in the British parliament, argued that ‘the laws of Scotland were very imperfect, that before the union there were perpetual feuds and civil wars amongst the nobility... [and] ...that there was no treason law till after the union everything being deemed treason that the administration and privy Council were pleased to construe so.’¹⁰ Despite its biased purpose, this was at least in part true and this paper will argue that James VI used his ability to manipulate the outcome of legal cases to further his hold on his disrespectful and disobedient subjects even though in some cases it meant dispensing with impartial justice.

Royal Legal Powers

Scottish kings had long participated more directly than English monarchs in the process of law-giving. James’s great-grandfather James IV had provided the royal *imprimatur* by travelling with his Justiciars and sitting on the Bench to ensure that the judgements were deemed fair.¹¹ James V followed his father’s practice.¹² If some-one ‘put themselves under the king’ they might hope for a more merciful sentence (at a price) although James V was ruthless whenever any association with the Douglases was involved. Those deemed traitors might well be executed, however flimsy the evidence.¹³

When a case was before the court the defendant was under some disadvantage as once the Assise was summoned he could not directly deny the premises advanced by the prosecutor. As the lawyer David Hume wrote: ‘In short, the notion of a conjunct probation of the libel and defences before the assizes, was thought too dangerous to be admitted: the prerogative of proving, and the choice of witnesses, were to be given to one of the parties only; and on the evidence taken by that party, the issue was entirely to

Courts in Britain, 1150-1900 (Cambridge: Cambridge University Press, 1997).

¹⁰ Alexander J Murdoch, ‘Legacy of the Revolution in Scotland’, in Alexander J Murdoch (ed.), *The Scottish Nation: Identity and History. Essays in Honour of William Ferguson* (Edinburgh: John Donald Publishers, 2007), p. 53.

¹¹ Dawson, *Scotland Re-Formed*, pp. 40-41, 50, 74.

¹² Dawson, *Scotland Re-Formed*, p.125-127.

¹³ Dawson, *Scotland Re-Formed*, p. 141-143.

depend.’¹⁴

The monarch’s control required co-operation with his people. In the twelfth and thirteenth centuries there were apparently relatively few problems in maintaining the public peace through the system.¹⁵ But by the late fifteenth century feud was threatening to change this. Although Keith Brown and Jenny Wormald developed a new angle on bloodfeud by arguing that it provided the basis for peace – that by limiting the vengeance that could be exacted and by offering means of reparation, peace could be restored so that there was a negotiation language for regional politics¹⁶ it undermined the authority of the crown. Although Mary of Guise had followed her husband’s practice of travelling with the justice ayre a regent did not have the same leverage and other regents had even more problems than she.

James VI Reign

Political ideologies were shifting by James VI’s reign, however.¹⁷ *Nullum crimen sine lege* was accepted but the courts of criminal jurisdiction took it upon themselves to punish evil doing as crime without any positive enactment. The judges were openly declaring that behaviour of an obviously ‘wrong’ ‘wicked’ ‘grossly immoral and mischievous’ or ‘criminal nature’ that does not fall under the existing heads of the law should be charged and that ‘flexibility’ and ‘creativity’ are in some way consistent with the principle of legality.¹⁸ If they judged something intrinsically wrong and wicked, they could, in effect, create a crime where none had existed before.¹⁹ In George Buchanan’s *Dialogue on the Law of Kingship* he and Maitland agree that the law should not be fixed and invariable as such

¹⁴ David Hume, *Commentaries on the Law of Scotland, Respecting Trial for Crimes*, Vol. 2 (Edinburgh: Bell and Bradfute, 1800), p. 80

¹⁵ Keith Stringer, ‘Emergence of a Nation-state’, in Jenny Wormald (ed.), *Scotland A History* (Oxford: Oxford University Press, 2005), p. 72.

¹⁶ Dawson, *Scotland Re-formed*, p. 196.

¹⁷ See chapter 5 in Keith M. Brown, *Bloodfeud in Scotland, 1573-1625: Violence and Politics in an Early Modern Society* (Edinburgh: John Donald Publishers, 1986).

¹⁸ Lindsay Farmer, *Criminal Law Tradition and Legal Order Crime and the Genius of Scottish Law, 1747 to the Present* (Cambridge: Cambridge University Press, 1997), pp. 23, 26.

¹⁹ Farmer, *Criminal Law, Tradition and Legal Order*, pp. 23-25

rules cannot cover all cases and the law ‘thinks nothing right except what it commands itself.’²⁰

James VI himself, not uninfluenced by Buchanan, later made explicit his ideas about the monarch’s role in the system of justice. He wrote: ‘For although a just prince will not take the life of any of his subjects without a clear law, yet the same laws whereby he taketh them are made by himself or his predecessors, and so the power flows always from himself; as by daily experience we see good and just princes will from time to time make new laws and statutes, adjoining the penalties to the breakers thereof, which before the law was made had been no crime to the Subject to have committed.’²¹

James’s bitter experience of nobles kidnapping him, led him to seek ways to improve his position. It was widely recognised in his minority that many obeyed the king only at their pleasure.²² As he matured, he saw restoring royal authority in legal matters as a priority.²³ He was aiming for an absolutist state even though he had little control in many areas of Scotland.²⁴ Roger Mason thinks James’s ultimate aim was to eliminate jurisdictional rivals inside the kingdom and achieve uniformity but this could not be immediately achieved.²⁵ In principle, both king and people desired properly conducted legal procedures. According to Melville the nobles who involved themselves in opposition to Arran and the duke of Lennox in 1582 made a point of complaining about Arran and Lennox’s abuse of legal proceedings. ‘they use maist extremitie aud rygour of laues and prattickis, and oft tymes maist sinisterly perverting the samyn for the greter vendication. Sa that ane part of theise your best subiectis ar exylit; ane vther part tormented and put to questions, and with parcialite execut’. In practice as long as they were not on the receiving end the nobles were

²⁰ George Buchanan, *A Dialogue on the Law of Kingship Among the Scots*, trans. and ed. by Roger A. Mason and Martin Smith (Edinburgh: The Saltire Society, 2006), pp. 65-68.

²¹ James VI, *The True Law of Free Monarchies; or, The Reciprocal and Mutual Duty Betwixt a Free King and His Natural Subjects*, ed. with an introduction by Daniel Fischlin and Mark Fortier Centre for Reformation and Renaissance studies (Toronto, 1996), p. 82

²² Brown, *Bloodfeud in Scotland*, p. 15.

²³ Brown, *Bloodfeud in Scotland*, p. 23.

²⁴ J. Goodare, *State and Society in Early Modern Scotland* (Oxford: Oxford University Press, 1999), esp. chapter 8.

²⁵ Roger Mason, ‘Civil Society and the Celts’, in E.J. Cowan and Richard Finlay (eds), *Scottish History: The Power of the Past* (Edinburgh: Edinburgh University Press, 2002), pp. 96-97.

happy to avoid strict judicial practice. The Privy Council in the 1580s and 1590s continued to complain of deadly feuds and unnatural slaughters all over the country.

James needed to make public law processes the ordinary way of conflict resolution and to reduce or abolish private kin based practice. To do this he used warrants and letters directed to the justices and extended royal power to bring offenders to court. Some steps had been taken before James was properly in the saddle. In 1579 the Lord Advocate was given the power to prosecute on the crown's behalf without a private accuser, and he was to represent the common good. An Act of Parliament – 1584, c. 129 – confirmed the authority of the King and Privy Council, in all cases, and over all persons, and annexed the pain of treason to the denial of the same. By an Act of the Scottish Parliament of 1587, the Lord Advocate gained further power to prosecute 'although the parties be silent or would privily agree.'

When James interfered he frequently emphasised he was exercising undoubted royal judgement and the impartiality of law. 'We being of deliberat mynde, that justice salbe ministrat indifferentlie to our hail liegis, to the effect that malefactoris may be punishit, and sik as ar innocent may be defendit' or where ill doing was admitted but mercy sought, 'the said Williame become in his Maiesteis will, for the said cryme, (being verry haynous and capital), meriting seuir punishment: git his Maiestie, of his special grace and mercy, forbering that rigour and extremetie, quihlk worthielie may be vsit aganis the said Williame, and mitigating justice with mercy, hes declairit, and be the presentis declairis, his Maiesteis *will* as followis.'²⁶

His public prosecutors, with increasing confidence, rejected legal arguments put forward by the defendant's lawyers that royal interference was to be equated with that of a private person saying 'the Kingis Maiesteis directioun in this caise aucht nawyis to be repute the deid of ane priuat partie, bot the command of the maist souerane Judge.'²⁷

A riot when the king was with his council in the tollbooth at

²⁶ About William Hammiltoun servitour David Dundas of Preislinch in Robert Pitcairn, *Criminal Trials in Scotland* (Edinburgh: William Tate, 1833), vol. 2, 1596-1609, p. 23; Hugo Arnot, *A Collection and abridgement of celebrated Criminal Trials in Scotland from 1536-1784 with historical and critical remarks* (Edinburgh, 1784), p. 87.

²⁷ Robert Pitcairn, *Criminal Trials in Scotland: From 1596-1625*, p. 65.

Edinburgh was deemed particularly serious because he was ‘in his gown’ in maist peceabill maner, for administratioun of justice, and discharge of that poynt of his princlie dewtie to his peopill.’²⁸ James wrote that a king ‘in his sitting in iudgment he is to vse grautie, great patience in hearing all parties, & mature deliberation before he pronounce his sentence.’²⁹

It was important for the king’s authority that direct orders should be obeyed and Summons to appear in Court to answer were routinely directed by the Privy Council in particular against people who failed to obey a summons to appear in arms to support the king when required. Such cases provided James with excellent material for showing his ability to discern between the deserving and the undeserving, as long and formal letters attested by the most important members of the Council acknowledged that some had been exempted and accepted pleas of infirmity and disease from others.

There were innumerable ways in which the king could interfere and manipulate a case. A case was normally brought not primarily by the king’s advocate but by a private individual – son, daughter, widow, father, mother, lord – related to the victim who had to give caution to undertake to proceed in the case. If an important man undertook the pursuit the chances of a far trial might be diminished.

Another way was to prevent a case being heard on the day assigned. This could be claimed as a measure to prevent disorder as when he claimed in a case involving the earl of Orkney that ‘We ar crediblie informit, bayth the parteis intendis to mak grit convocatioun of thair freindis, and vtheris our liegis; quhairvpoun grit inconvenient may ensew, to the disquyeting of our peciabill subiectis and present estait’ This was done in 1595 when a feud involving the earl of Mar and Maitland threatened further violence.³⁰ In others the justification might be the necessary absence elsewhere of one of the parties on the king’s business.

In the preliminary hearing by the judges before the Assise was called, the judges might be persuaded to look kindly or harshly at the arguments, and a warrant from the king might require a particular approach. In the case of Archibald Douglas a known supporter of Bothwell who had

²⁸ Robert Pitcairn, *Criminal Trials In Scotland: From 1488-1624*, vol. 1, 1488-1596, pp. 29-32. 299; Robert Pitcairn *Criminal Trials in Scotland*, vol. 2, 1596-1609, pp.335-336.

²⁹ *True Law*, p. 34.

³⁰ Brown, *Bloodfeud in Scotland*, p. 130-132.

unwisely returned to Scotland in 1586 they were required ‘to admit his lawful defences.’ When too few jurors appeared a further precept from the king was obtained by the prisoner that required the judges and King’s counsel to supply the number of the absentees by ‘such gentlemen as happened to be at the bar, or in the court.’

The Assise could be a problem as the members were required to be of the same standing as the accused or pannel, and many were already related to the accused by kinship, by involvement in other separate cases, and so on. They might even be thought responsible for the same. Who was admitted could be influenced by the king. The expectation – usually justified – was that many Assises would acquit contrary to the evidence.

Another method was the power to grant a remission to one accused of a crime – that is to favour him or her by giving them a respite of time in which to satisfy the kinsmen of the victim by other means.³¹ James routinely sent letters delaying the hearing of cases as he did when Patrick Lord Glamis was accused of the slaughter of Patrick Johnston of Moston. The effect of the delays was that Johnston’s widow Margaret Arbutnett and his lawful children did not appear to pursue the case and were amerced. In another murder case when the defendant wanted to proceed the king delayed it for no apparent reason – but significantly the objections to such delays although based on the clear statement of acts of parliament were less and less heeded.³²

He could take the sentencing of an accused away from the judges. In a case of attempted parricide he sent a letter dated 12 June 1597 from Falkland to the justice and Advocates, ordering them to proceed with the case but ‘gif he {Andrew Mow) becum in our will for the fame, that ye accept and put him immediatelie to libertie, vpoun sufficient caution fund

³¹ Brown, *Bloodfeud in Scotland*, p. 56-57.

³² ‘George Dowglas offeris him reddie, to vnderly the law for the flaughter of James Stewart of Newtoun.—Comperit the Kingis Aduocat and produceit ane Warrant, subscriuit be the King, ordaining the mater to continew. The pannell objected but the Justice admitted the Warrant and ordered the partie ‘to fynd caution thairfoir, to the ordour’ In another case, It is allegeit be the persewaris, that nochtwithstanding of the Warrant produceit, that the Justice aucht to proceid and minister justice to the parties, according to the lawis and Actis of Parliament, becaus the Warrant produceit Is ane privat Warrant, to the hinderance of justice, quhilk my Lord Justice, be Act of Parliament, is ordenit nocht to respect, but to proceid nochtwithstanding of the samin; Pitcairn, *Criminal Trials*, Vol. 2, p. 1.

be him, to vnderly quhat ewir we fall declair heireaftir to be our will, for his said cryme; vnder the pane of ane thowsand poundis.’ In other cases he decreed the punishment. Ralff Wallace accused of helping an English forger of coins for which his wife had already been convicted was to be burned at the stake as an example.

The king made frequent use of his right to pardon. The king (or his regent) could pass an Act of rehabilitation under the Great Seal to pardon all crimes and treasons.³³ Powerful friends and general pardons were widely looked to by those who had gone into temporary exile like Archibald Douglas in 1586. Nevertheless, while parts of the crime could be forgiven by the king the accused was still liable for the private satisfaction and could be hanged for it.³⁴

Sometimes the purpose of royal interference involved foreign relations. In 1602 Captain John Rig, archer of the French Guard had rashly returned to Scotland where he found himself brought before the justices by George Strathauchin for the killing of Thomas Strathauchin. Legally this was a fascinating proposition for the single combat that had resulted in the death had taken place on French soil and had already been tried in France as both were French subjects. James sent the judges a letter prohibiting them to proceed as ‘We nor our Justices can nawyis be Jugeis compitent to the said Capitan Johne Rig, he being ane Archeour of our said derrest broferis Gaird, and swa his subiect; befoir quhome and his Jugeis he hes bene alreddie tryit’.

This was exceptional, but much of his use of intervention was political in its aim. Unfair as his intervention often seems this power to intervene was critical to James’s ability to establish his final authority over the civil struggles between the nobility and others in his kingdom.

James of course could and did use patronage and preferment to maintain control³⁵ but the carrot had to be accompanied by the stick. Like his ancestors James VI received a steady flow of petitions asking for particular assistance. As these produced money James listened to many of them. He also, however, routinely used every legal string to his bow to

³³ Great Seal Records, National Archives of Scotland, Great Seal Registers, C1, May 1, 1586. *Ibid.* May 21, 1586.

³⁴ ‘for the quhilkis thai have takin thame till oure foverane lordis Remiflioun, and has refufit to fynde fufficient fouerteis for fatisfactione of parteis, as law will, efter the forme of law’

³⁵ Dawson, *Scotland Re-Formed*, pp. 306-314.

reduce the role of feud in Scottish society. Most of the cases in which he intervened were not straightforward criminal matters. They were the outcome of complex conflict, which often involved not simply kinship matters but also had religious implications.

In some instances maintaining a balance between factions required James to withhold legal action. In 1592 there had been serious open warfare in the field between Argyll and Huntly. James in 1597 agreed to an Act of Parliament to consign all ordinary legal cases that might arise from the killings to oblivion so that the country was not disturbed thereafter. The unfortunate widow of Unicorn pursuivant, Robert Fraser, therefore, could not get personal justice and restitution.³⁶ Probably for similar reasons, in a case involving Cameron of Lochiel, accused of fire-raising in George Dunbar of Cluny's house and raping his wife, James simply suspended the case 'for certain causes moving us.'

Relying on oblivion promised by Acts of Parliament or the so-called Pacification of Linlithgow in 1585 could be unwise. In one case where this was attempted the king's advocate blandly said that this referred one to 'ane abolitioun of crymes committit be his Maiesteis profeffit rebellis, in the commounne troubles; and is nawyis merit of sic as abaid att all tyme att his Maiesteis obedience, and wer newir ather foirfalt, baneist, or denunceit rebellis, for the said commounne caus' – an unlikely advantage to being a rebel.

On other occasions James might align himself with his nobles getting the best of both worlds – a public determination back by private support. In the case of Matthew Stewart of Dunduff he decided that as the enterprise was against John Earl of Cassilis and Thomas Kennedy who sought his banishment he would confirm this to run until the Kennedys declared the contrary.

James was not necessarily consistent in his opposition to private resolution of cases. In a case in July 1597 involving one of the ushers of his chamber accused of slaughter he suspended the proceedings on the grounds that he was 'crediblie informit that the mater is submittit to freindis, to be takin away in amicable maner.' He therefore sent a warrant ordering the judges to cease and desist.

Where his own position was involved, like his grandfather he could be vindictive in his pressure on the law. Such included satisfaction for the

³⁶ Brown, *Bloodfeud in Scotland*, p. 67.

murder of his father, Darnley. Here George Buchanan had underlined the original failure to bring Hepburn Earl of Bothwell to trial. ‘And yet, to put a gloss on the matter, a proclamation was published, and a reward offered to those who should discover the author of the king's murder. But who dared be so bold as to impeach Bothwell, since he was to be the accused, the judge, the examiner, and the exactor of the punishment?’ Those involved might be brought before the courts decades later. When the ex-regent Morton was condemned to death in 1581 for having had ‘airt and pairt’ in the murder, Melville saw it as a punishment for his own misuse of legal matters.³⁷

In some cases where he had been ridiculed James gave special instructions to the judges about punishments. When Francis Tennent a merchant burgher of Edinburgh was charged in 1596 with writing a pasquinade, after the case had been managed so that a conviction was not to be doubted a royal warrant was produced, ordaining that the Court should pronounce the following sentence: That the prisoner be taken to the cross of Edinburgh, and his tongue cut out at the root; that a paper be fixed on his brow, denoting him to be the author of wild and seditious pasquils, and that he then be taken to a gallows, and hanged till he be dead. A second royal warrant to show James's clemency was then produced, in which James was graciously pleased to declare, he was content that the prisoner should only be hanged.

In some cases he pulled out all stops to defeat his enemy. He was determined to overcome Francis Stewart fifth earl of Bothwell who between 1591 and 1594 had made several attempts to take control of the kingdom. James's dealings with him however were complicated by the measure of support Bothwell received from the church and Bothwell slipped through the net. Balked, James turned on his followers. A vituperative letter was sent to the Advocate ordering a special dittay against Patrick Sleit captured

³⁷ *The memoirs of Sir James Melville of Halhill: containing an impartial account of the most remarkable affairs of state during the sixteenth century not mentioned by other historians, more particularly relating to the Kingdoms of England and Scotland under the reigns of Queen Elizabeth, Mary, Queen of Scots & King James, in most of which transactions the author was personally and publicly concerned*, ed. with an introduction by Gordon Donaldson, Folio Society, p. 161: ‘he had endit mair parfytly, gif he had declaired and confeffit his warldly practyses, and fetches to enterteney the ciuill troubles, partly at the deuotion of England, and partly for his awen particulier proffit, during the gouernement of the first thre Regentis ; quhilk was cause of gret bludschedding, that cryes vp commounly vnto the heauen.’

and warded in Edinburgh who was with Bothwell in 1593 and to pursue it with 'all instance.' Sleit was duly convicted and hanged.

In the Edinburgh anti-papal riots of December 1596 James had to act cautiously as he had only recently proclaimed that by the advice of the secret council that 'his mynd and intentis was nevir to discharge ony lauffull Assembles of the Kirk estableschit be the lawis.'³⁸ Here James was facing the distinct possibility that the kirk might obtain great authority in such matters than the king himself as the ministers went constantly about criticizing his actions in 'neglecting justice, careless appointing of the magistrates of justice, placing unfit men in offices, granting remissions.'³⁹ Nevertheless, the cases went to an Assize. The attack⁴⁰ proved a useful source of funding as for instance graciously 'movit with clemencie, mixing mercy with iustice, albeit the said Eduarde [Johnston] meritit rigorous pvnischment' he ordered that Johson and his cautioner should pay Sir George Home of Spott 3,500 marks.

James used commissions of fire and sword when all else failed, but these were two-edged as the exempted the holder from accounting for their actions, might be used against people other than those named and strengthened the position of the commissioners. Nevertheless such commissions could be bought as when Robert Galbraith of Culreuch in 1593 bought one against the MacGregors evidently intending to use it against the MacAuleys.⁴¹

His pursuit of the Gowrie conspirators in 1600 was a massive demonstration of the potential the law provided to a monarch and the dangers of offering him a weapon to use against over powerful nobles. Pitcairn in the 19th century, compiling his volumes on legal cases, was critical of 'the constant importunities... in solliciting Warrants from the King; and the strange vacillation displayed by him in granting these Precepts,' observing 'It is altogether a ludicrous, as well as a melancholy instance, of the absurdity of the King's perpetual interference with the judicial proceedings of the country.'⁴² My thesis is that Pitcairn has missed the point of what James was attempting. While James was not obviously consistent in his use of his powers, and in some cases issued warrants

³⁸ Pitcairn, *Criminal Trials in Scotland*, Vol. 2, pp. 4-6.

³⁹ Quoted in Brown, *Bloodfeud in Scotland*, pp. 194-195.

⁴⁰ Jenny Wormald, *Court, Kirk and Community: Scotland 1470-1625* (Edinburgh: Edward Arnold, 1981), pp. 128-129.

⁴¹ Pitcairn, *Criminal Trials in Scotland*, Vo. 2, p. 290.

⁴² Pitcairn, *Criminal Trials in Scotland*, Vol. 2, p. 88.

Daunting a Wild, Unruly Colt

countermanding earlier warrants – his vacillations may have had reason and even purpose behind them. James needed to be seen as the ultimate determiner of law. Despite his rhetoric in which a high role is given to *ius* – the idea of fairness and right – James had learned to be a pragmatist. For peace and stability in the realm justice in that sense was less important than closure. The most important requirement was that the quarrel was ended in a way that meant it could never be re-opened even if one side had been unfairly treated.

In a feud between the Ogilvies and the Campbells in 1590 James was able to give apparent judgment, conveniently blaming the misjudged Ogilvies when he provided a settlement. The ideal of impartial justice given without fear or favour was still a long way off. Custom continued to run alongside law in the resolution of conflicts. James's need for money undermined his determination to see justice maintained but preference for judicial trial as the proper way to proceed was at least one step forward.