

National Archives of Scotland GD14/55 (papers of Archibald Campbell of Stonefield, sheriff depute of Argyll). Legal opinion concerning the Macintyre Case of early April 1746, unsigned and undated:

[1r] Memoriall concerning McIntyre's / Case — / The commanding officer at Glenurchay, having had repeated information that McIntyre was guilty of treasonable practices & a notorious thief, orders out a party to apprehend him. The party goes out at night, surrounds his ffather's house where he staid, & centries are planted on the door – McIntyre was then called upon & required to come out & to go with them to the commanding officer in order to be examin'd upon some articles, which he refus'd to do. In place thereof he first sends out his sister to amuse the centries, properly appointed to serve his purpose, & immediatly presses after her himself, and throws his plaid upon the screw'd bayonets in order to make his escape with greater safety, having a drawn durk in his hand. The centries, how soon they disintangled themselves from the plaid & the sister, in order to stop his carree'r fired upon him, & he is wounded, and afterward dies. Three firelocks were found by the party in the house & those loaded, & some fresh beef was also found in the house.

Upon his death the head of the tribe & some others of the clan meet to consult what is to be done on this emergency, & then threats are dispers'd [1v] over the country that they intend to take revenge on the men that were on the party. In order to soften matters, it was propos'd that a precognition shou'd be taken, & that the person who fire'd upon the defunct shoud in the meantime be comitted [sic] to jaill, & the company to whom the party belong recall'd, in expectation that the wrath of the tribe might by gaining time subside.

From the case above stated it is concluded that the party had no intention to come to extremitys with McIntyre, & that it only can be deemd casual homicide, but that he, conscious of his own guilt, judg'd it safer to trust to his escape in the way he premediated than subject himself to any examination or tryall. It must be allow'd that the present case differs widely from that of the common officer of the law executing the warrant of a court against a person guilty of private crimes, & that the manner of execution in England is very different from the usage in Scotland. The laws are, & ought to be, made agreeable to the disposition & manners of the people that are to be govern'd by it. In Scotland the officers of the law are, by usage & the genius of our law, entitled to wear arms by the act for disarming the Highlands in 1725. In England they are not. In the Highlands commitments are allow'd without warrants in writing or sign'd informations. In the Low Country it is not so. This appears from the act to prevent wrongous imprisonment, by which the liberty of the subject is extended, but with this exception as to the Highlands. [2r] This in England woud appear very rediculous, tho' necessary in the Highlands, where crimes may be committed at a great distance from a proper magistrate, so that the criminal might escape before warrants are obtain'd with the solemnitys us'd elsewhere.

When the criminal makes resistance to the officers of the law, & is arm'd at the time with mortall weapons, the officers are by the Civill Law allow'd to proceed to greater extremitys against him than when he appears unarm'd; a messenger resisted in the execution of a caption may lawfully kill if violence be offer'd by drawing a weapon, nor is the messenger oblig'd to prove he was put in the hazard of his life. The circumstance of the criminal's being a loose mean person without any settled residence woud also alleviate any excess committed by officers of the law.

The case at present under consideration is of a publick nature & [*“is at least” del.*] attended with [*“as” del.*] many favourable circumstances – an intestine war rages in the country, the Habeas Corpus act suspended, the courts of law have not liberty to keep their sessions, the King is oblig'd, besides the ordinary troops, to raise the Militia (which must be consider'd as his troops in time of danger) in order to resto[re] peace & preserve the liberty & religion of his subjects. The officer who commands some of these troops orders out a party to apprehend a person who was guilty of treasonable pra[c]tices & wore the ba[d]ge of the rebell army. The officer seems justifyable in what he has done, & McIntyre has himself only to blame if he brought himself to an [2v] untimely end without a regular tryall. If Locheill or any of the chiefs in rebellion had been served in the same way, is it to be imagin'd that the executor woud be brought to tryall, or if the subtilty or solemnities of the law might admit of tryal, wou'd not the person be acquit by a jury, and if hee [*sic*] shoud not, woud not the Crown immediatly interpose the supream prerogative?

It is not in the least doubted that the soft measures propos'd of precognition &c. was with a very friendly intention, but in the first place it may be observ'd that the proper courts of justice do not now sit, the members being employ'd in the publick service, nor can the lieges commodiously attend, as they either are, or may suddenly be, call'd to the King's service, and the committing or bringing to tryall of those immediatly employ'd in the King's service might hurt the same when their attendance is necessary, & wou'd manifestly throw a damp upon them in the execution of any duty they might necessarily be employ'd in for the future.

As to the McIntyres' taking revenge in their own hands, or going over to the rebels, the first is not dreaded, nor is it probable that people of credit of that tribe will espouse the quarrell of an infamous fellow. Such of them as will join the rebels on so slight grounds will not add much force to their party, and it is more safe for the King's friends to be ridd of them than have them among them.

Upon the whole it is judg'd more expedient to let this matter ly over at present than to bring it to any tryall.

Memorial / concerning / McIntyre

National Library of Scotland, MS 3734, ff. 475–76 (papers of Lt.-Gen. John Campbell of Mamore, no. 249), Lord Glenorchy to Mamore, from Taymouth, 4 April 1746:

[475r] Taymouth 4th April 1746, / at night / Dear General / I received yesterday your letter of the 2d just after mine was gone to Finlarig to be forwarded to you.

I'm glad to see by the journal (which I return with the two copies of letters) that Fort William is in no great danger. Its not falling into the hands of the rebels is owing to your care and attention in sending a reinforcement of men, and providing it with necessaries for a siege. If the Hessians advanced towards it the besiegers would soon retire for fear of being cut off from their main army at Inverness. And if the duke's army advanced at the same time, they would be forced to retreat behind Loch Ness, where a chain might be easily made to shut them up. I believe it will appear at last that nothing else can put an end to the rebellion.

[475v] A party of dragoons from Tay Bridge, going last Teusday as far as the Bridge of Kainachin to reconnoitre, occasion'd the hasty retreat of the rebels from Blair, an account having been sent to L[ord] George Murray by some in that neighbourhood, whose fear had magnified the numbers, that a large body was marching to come behind him, upon which he went away very fast from the Pass of Killikrankie and from Blair.

Skipnish has sent me an account of an unlucky affair happen'd near Castle Kelchorn, for which I am very sorry, as it may be attended with bad consequences if not managed with care. The abominable Highland custom of taking vengeance in a body, and a whole clan's engaging in a private quarrel or a personal misfortune, subsists still so much that I fear the MacIntyres will think themselves all affected by this accident. I have writt to the [476r] chief man of that tribe and to my ground officer of Glenorchy to use their utmost endeavours in keeping them quiet, and I thought the best way was to assure them that I would procure justice to be done the friends of the deceased as far as is consistent with law. I hope they will trust it in my hands, and time may be gain'd for them to cool. What I fear is that their passion will engage them to fall upon those who were concern'd in killing their friend, and then save themselves with the rebels, wich should be prevented if possible, they being a body of too good men to send over to that side, which they were at the beginning of the rebellion strongly solicited to joyn. I think indeed firing at the man was rash, and I doubt if 'tis justifiable in law for persons employ'd in taking a man up to kill him for endeavouring to escape.

[476v] But whether they had a right to kill this man (whom I don't know nor never heard of) or not is not now the question. The consequences of it is the only point now to be consider'd, and therefore 'tis necessary to do something to make those people imagine what they call justice will be done. I really think 'twill be proper to commit to prison at Inveraray those who fired at the man, or the particular man who shot him if he is known, and I hope you'll think it prudent to remove that company from that countrey, were I apprehend they never will be safe. I dare say you'll joyn with me in all the softening measures that can be made use of to prevent further mischief.

I am with great sincerity / Dear General / Your faithfull and / obedient servant / GLENORCHY. [*in red pencil* "72"]

National Library of Scotland, MS 3735, ff. 608–09 (papers of Lt.-Gen. John Campbell of Mamore, no. 313), Lord Glenorchy to Mamore, from Taymouth, 10 April 1746:

[608r] Ld Glenorchy / about McIntyre [*in red pencil* "209"]

Taymouth 10th April 1746 – / Dear General / I am really concern'd at receiving your letter by my express, writt with more warmth than I think the subject deserves; and excuse me for saying, with much more than I had reason to expect, having, since my more particular acquaintance with you at Inveraray, had, and always shall, retain the regard I think due to your merit, and a friendship which matters of much greater consequence than this shall never infringe. And give me leave to complain of your even mentioning the word friendship upon this occasion, as if you could possibly think me capable of letting a difference of opinion, as to the manner of coming at the same end, break in upon it. This undeserved suspicion would give me little concern, if my friendship for you were not sincere.

I must now explain myself in order for my own justification, for if I had meant what I wrote to you in the sense you understand it, I should indeed deserve your mean opinion in a high degree.

It was ever my desire to make all places where I have any concern or interest as usefull to the Government as possible, and particularly where you are personally concern'd. I was really apprehensive that the old barbarous [608v] Highland custom might so far prevail, as at least to alienate the people where this accident happen'd, from what I think their duty, and make them backward in giving assistance or intelligence if the rebels approach'd, to those whom (according to that old base rule) they might possibly look upon (tho unjustly) to be their personal enemies as much as the others. This made me mention the removing that company, not in order to weaken the command, but to exchange it with another; and as to confining the persons who kill'd the man (rashly, as I thought till you inform'd me they did their duty), my intention was to gain time, and, by making the people of that country think no hardship would be suffer'd by you to be put upon them, to encourage them to persist in being as useful as they can.

As to the MacIntyres, Gleno is the chief man amongst them, but not their Chief according to the Highland acceptance of the word. They have always depended upon my family. I never heard they make a merit of not joyning the rebels, but I know that very considerable offers were made directly from the P—r's son to Gleno if he would engage those of his name to joyn him, which are about 300 good men. He refused the offers, and afterwards acquainted me with it. You may be sure I commended his behaviour, which I thought the more meritorious because his circumstances are very low, and I've put his only son to school to be educated at [609r] my expence. He came here to acquaint me with this accident, and I directed him to tell the people of his name, as I also order'd my ground officer to tell the others of that country, that if they offer to resent this matter in any way whatsoever they shall suffer for it. He own'd the man had not the fairest charact[er,] but assured me he was never suspected of any connection with the rebels.

After I have said this to explain my own meaning, I beg the subject may be never mention'd again between us. Do what you think proper in it. I'm sure your zeal, good sense, and good nature will engage you to do right.

Captain Donald Campbell at Finlarig has been lately in a negociation with one who has been several times with the rebels, to engage him to send intelligence from them, which he seem'd willing to undertake, but insisted upon my approbation. Upon which I had a private conference with him at night, where we agreed that he should return to the rebels and send what information he could get to Colonel Yorke if it regards that army, to you if it regards your side of the country, and to L[or]d Craufurd if it regards those parts. I cut three papers of which he keeps the halves, and I send the other parts to you, L[or]d Craufurd and Col. Yorke so that you may give credit to any person who [609v] produces a piece that tallies with yours, for he dares not venture to communicate any thing to writing. I hope the man (who is something above the common rank) may be usefull. If he is, I dare say you'll agree that he should be pardon'd and perhaps rewarded. His case is singular, which 'tis not necessary to trouble you with at present.

I hope I shall be able to procure 20 bolls of meal in Strathern for the garrison of Finlarig, but I'm told it will cost 16 shill[ing]s p[er] boll. My tenants shall carry it. My small girdel, consisting of 27 bolls for the use of the workmen, shall be always a little reserve at a pinch.

I have a letter from Aberdeen of the 6th which says the army was to march next morning by the way of Bamff and Cullen to Fochabers, to pass the Spey there, and to proceed to Inverness.

The Sheerness man of war has brought into Aberdeen the Hazard sloop with 21 land officers, 140 men, and 14000 £ in specie. The Hazard fought four hours, had 30 men kill'd and 30 wounded, and at last run on shore. The Sheerness brought in also another sloop laden with arms and other stores freighted by one Sinclair in the Orkneys.

I sent you my Lochaber news in my letter of last night. If you have got the sequel of Capt. Scot's journal I shall be obliged to you for it. I am with the utmost sincerity / Dear General / Your faithfull & ob[e]d[ien]t servant / GLENORCHY