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## Within Three Suns

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Allan Meek

The term “within three suns” has its origin in medieval times and was primarily used in crime which involved capital punishment. It first became a legal expression in Scotland when it was introduced by an Act of the Scottish Parliament in 1432.<sup>i</sup> A “sun” was usually defined as being three days and when a criminal was caught red-handed they were dealt with summarily “within that sun”.<sup>ii</sup> Although this justice was administered in the name of the King, who was regarded as the fountainhead of all justice in Scotland, the King’s court did not deal with all capital crimes. In many instances leading peers of the realm and landowners were enfranchised with barony or regality courts and, depending on the charter granted by the king, these franchise courts could administer capital punishment. Such power was granted to the court of the Regality and Barony of Falkirk and Callendar. It was not until the abolition of heritable jurisdictions in 1748 that franchise courts lost their right to administer capital punishment.

The five volumes of the proceedings of the Court of the Regality and Barony of Falkirk and Callendar extend over a period of approximately eighty years during which time only two executions are recorded. One relates to the murder of a new born child, while the other concerned a man who had been banished from the Regality under pain of death to return, and sheep stealing.

Both extracts lay out the indictment, the “*nomina inquisitionis*” or jury, and the sentence. Prior to the mid-seventeenth century their layout became more formalised and were presented in the form of a syllogism.<sup>iii</sup> They comprised of three propositions, a major premise, a minor premise and a conclusion. In this respect they are derived from deductive logic by the philosopher Aristotle as a method of reasoning. A simple example of a syllogism is:

ALL MEN ARE MORTAL  
I AM A MAN  
THEREFORE, I AM MORTAL.

In this example the major premise is **all men are mortal**. The minor premise being **I am a man**, and **therefore, I am mortal** is the conclusion.

The first extract from the court book to be examined is dated 14 June 1698, concerning the trial and execution of Margaret Mitchell who had been indicted for the murder of her new born child. The indictment was drawn up by Robert Murehead, the Procurator Fiscal of the Regality, and in the major premise of the indictment Margaret Mitchell is accused of committing the “abominable and detestable sin of murder”. The premise continues by stating that the crime of murder has been condemned by the King and his predecessors through various Acts of Parliament and that it is punishable by death. The minor premise is the actual charge itself whereby the allegation is that Margaret Mitchell:

*"brought forth a child in the month of appryle last most shamefully and unchristianly... Did murder the child she born by her by cutting the throat thereof and thereafter casting it into the water of Carron".*

The conclusion of the indictment is that, as an example to other persons and the indictment *"being sufficiently proven by ane inquest of ane assize"* Margaret Mitchell should be punished by death.

After reading the indictment over to Mitchell she had no objection to make and the bailie of the court remitted its content to the inquest. The indictment had been read to Mitchell outwith the hearing of the jury. When the jury was sworn in it was required, when it came time to consider the verdict, to declare the charge against Margaret Mitchell *"sufficiently proven"* before sentence was passed. This is indicative of the criminal law in Scotland at this time whereby the verdicts open to the jury were that the Crown had *"proven"* or *"not proven"* the charge against the accused person.

In the late seventeenth century the jury was empanelled from the suitors of the court. They were the various land owners who owed allegiance to the major landowner whose jurisdiction the court came under. It was the function of the jury to hear testimony from witnesses speaking to the facts pertinent to the charge. Unlike today, however, the seventeenth century jury could ask questions of the witnesses in the presence of the accused. Until 1579 there was no limit as to the number of persons who were jury members, but after this date the established number was fifteen persons chosen from forty-five the suitors of the suitors.<sup>iv</sup> The fifteen suitors who were jury members in the case against Margaret Mitchell were:

Alexander Andersone of Madistone  
Johne Boyd of Balmitchell  
Robert Fforest of Bankhead  
George Waddell of Balwhatstone  
John Yong in Shilhill  
John Wyse in Shilhill  
Alexander Gilmor in Auchengain  
John Gilmor in Rigend  
Thomas Russel of Midlerig  
John Johnston in Larbart  
William Callander merchant in Ffalkirk  
John Gaff merchant in Ffalkirk  
John Grinton portioner in Madiston  
William Young in Summerhouse  
George Waddell elder in Balwhatstone.

The jury or *"persones of inquest"* were sworn in and the indictment was read over to Margaret Mitchell in their presence. She was then examined [questioned] by the bailie and confessed to murdering the child. At the conclusion of the examination the jury then retired to consider their verdict, basing their result on whether there was sufficient proof as to the guilt of Margaret Mitchell. On their return the jury *"fyled and pronounced the said Margaret Mitchell guilty of ane crime of murder"*. The word *"fyled"* is another term for guilty and juries could pronounce the accused *"fylet"* or *"convicket"* or if they considered the accused not guilty the verdict was recorded *"clengit"*, *"free"* or *"innocent"*.<sup>v</sup>

The bailie thereafter adjudged that Margaret Mitchell

*"Be taken upon Thursday the twenty third day of June instant to the ordinar place of executione and their betwixt the hours of two and four in the afternoon to be hanged till she die".*

He further ordered that all her *"moveable goods and gear be escheat [forfeit] to the use of the Lord of the Regality"*. The sentence was read out by the demster, or doomster, Duncan Buchanan, and *"given for doom"*. The time span between the day of the trial and the execution was nine days, which in the legal terminology of the period was "within three suns".

The other execution took place the following year and again the indictment was raised by the Procurator Fiscal Robert Murehead, this time against Alexander Rodger, who at some time resided in Gilstoun. As in the case against Margaret Mitchell the indictment was presented in syllogism and it charged Alexander Rodger with the *"detestable cryme of thift"* [theft]. Alexander Rodger was accused of stealing a sheep in March 1699 and thereafter taking it to the house of Margaret Johnstone in Muirdyke where it was consumed. Rodger was further charged that on the night of 19 March 1699, he along with *"Alisone Philp, daughter of James Philp, Coalhewer, in Falkirk and Marie Garden, wife of John Miller a corporal in Colonel Colzier's Regiment"* did *"steal three sheep from the bught of John Richardson in Lyonthom"*. The indictment further states that the three sheep were taken to Callendar Wood where they were killed and their skins and heads were thrown into the Glenburn. The carcasses were taken to Margaret Johnstone's house where they were consumed.

In the margin of the Court Book there is an entry informing the reader that Alexander Rodger had been found guilty of breaking into the house of Robert Livingstone in Grahamsmuir and *"stealing"* several items from there during the night of 2 June 1698. His punishment in this instance was that he was burnt, probably on the cheek, and scourged *"by ye hand of the hangman"* through the town of Falkirk and banished from the Regality never to return under pain of death. It is obvious, by the raising of the indictment against him, that Alexander Rodger did return to the Regality. The members of the jury chosen to hear the case on 14 April 1699 were:

John Bryce in Carmuir  
John Young in Bogtoun  
John Gilchrist in Loanhead  
Alexander Gilmor in Auchengain  
John Gilmour in Rigend  
Robert Rankine in Hallglen  
John Young in Shielhill  
Robert Russell in Threaprig  
James Boyd in Glenrig  
John Boyd in Westerjaw  
George Hill in Easterjaw  
Robert Fforest in Bankhead  
George Waddell in Balqtstoun  
William Callendar younger merchant in Falkirk  
George Clelland in Ffalkirk

After examination by the bailie the jury retired and returned a short time later unanimously pronounced Alexander Rodger guilty of the crime of theft. The bailie then sentenced that Alexander Rodger to be taken to the place of execution on Friday 10 April 1699 where he was to be hanged. In this instance the period between the trial date and the execution was six days or two suns. All of Rodger's goods and gear were to be escheat and the bailie further ordained that the body of Alexander Rodger was to be taken to William Stirling, Chyrurgeon in Stirling for the purpose of dissection to further the knowledge of medicine for the "*weill and good of the Leidges*".

These two executions took place in public but the "*ordinary place of execution*" has not been identified. It has been suggested<sup>vi</sup> that an area known as the Claydings was the place of execution. This is believed to have been on the opposite side of the East Burn from the town where the main road to Linlithgow ascended the Cleddans Brae and a cutting was made to ease the gradient (the cutting can still to be seen to the north of Belmont Tower). Half way up the brae, on the south side, were two large boulders that traditionally marked the execution place by hanging of criminals. The Baron had the power of pit and gallows and this was a suitable place to display the justice handed out, being particularly prominent from the town. Later maps also show the flat plateau to the north as the market green, with Marion's Well nearby. This then was the public interface between the town and the park around [Callendar House](#).

The last public execution in Falkirk took place on 8 May 1828 when Francis Cockburn an 18 year old youth, was hanged. The event which led to his execution took place on the evening of Saturday 1 September 1827 at a house on the Main Street of [Camelon](#). The victim was William Burt, a nailer in Camelon, and the circumstances describing the murder can be found in the precognition of witnesses by the Procurator Fiscal at Falkirk.<sup>vii</sup> A precognition is conducted by the prosecution to establish the extent of the evidence against a person accused of committing a crime.

Francis Cockburn was a nailer in Camelon and in the employment of Messrs. Stark, Gunn and Company, Nail Manufacturers in Cameleon. The length of time Cockburn worked for this company prior to the unfortunate event of September 1827 is not known, but in his judicial declaration Francis Cockburn stated that he had first become acquainted with William Burt about three or four months previously. They worked together, but on or after 18 June 1827, their friendship went sour after Burt had accused Cockburn of spreading rumours about Burt having been seen at three o'clock that morning in a field with a woman who was not his wife. Thus the seeds of bitterness between two men, once friends and fellow employees, were sown and soon grew into violence and reaped a harvest of death.

On that tragic night of Saturday 1 September 1827, Francis Cockburn called at the house of William Masson, also a nailer in Camelon. Cockburn had a bottle with him which probably contained whisky. This was about eight o'clock and ten minutes later William Burt and his wife called at the house. Burt is described as being drunk and arguing with his wife. On being asked to leave by Masson, William Burt became argumentative and struck Masson on the forehead. Francis Cockburn gave assistance to remove Burt from the house and he too was punched and knocked to the floor by Burt. At this point Alexander Davidson, also a nailer, entered Masson's house in time to see Masson pick up a set of tongs, or a poker, with which he was about to strike Burt. Anderson took this

object from Masson and assisted him in removing Burt from the house. As William Burt was being ejected from the house he cursed and swore at Francis Cockburn and challenged him to fight. Alexander Davidson stated in precognition that he had seen a "*stick or poker*" in possession of Francis Cockburn at the time of Burt being ejected from the house.

Another witness to this incident was Charles Masson, the 18 year old son of William Masson. He informed the Procurator Fiscal that he had seen Cockburn pick up a knife from the table and when asked to put it back Cockburn replied "*I'll defend myself if any person meddles with me*". About fifteen minutes later another witness, Alexander Stewart, called at Masson's house and informed the occupants that Burt had left the vicinity. Francis Cockburn then left the house in the company of Peter Black who had called there with Alexander Stewart.

In his precognition Alexander Stewart indicated that around nine o'clock that evening he had seen William Burt in the company George McNair and Isabel 'Tibby' Burt or Smith, sister of William Burt, passing the house of Peter Black. Black was standing within the entrance to the house and Francis Cockburn was standing directly behind him. William Burt suddenly turned round and attempted to grab hold of Cockburn over the shoulders of Black. Black raised his arms and prevented Burt from seizing Cockburn, who was seen by Stewart to give a "*stab or thrust with something*" in the direction of Burt, striking him on the face. William Burt fell to the ground and he was assisted to his feet by Alexander Stewart and 'Tibby' Burt. As he was being led away William Burt was heard to call out "*you'll pay for this on Monday morning*". Francis Cockburn then left Peter Black's house and went to his own lodgings, which was the garret of the house occupied by William Black the father of Peter Black.

George McNair also described how Burt had tried to get into Black's doorway and that he saw a hand from behind Black "*give a stroke*" in the direction of Burt who fell to the ground. Isabel Burt explained that she saw blood on her brother's face, and a nephew of William Burt, James Burt, who had arrived at the scene immediately after William Burt had been assaulted, described that "*the whole of the left eye*" of William Burt had been knocked out.

Francis Cockburn was arrested later that evening and the circumstances of his arrest are dramatically described in his own judicial declaration. The procedure for taking such a declaration from an accused person remained in force until the end of the nineteenth century. It was obtained from the accused at the earliest possible time after their arrest and made before a sheriff to examine as to the facts of the case. The accused was not put under oath and the procedure served several purposes. It provided the accused with an opportunity to put forward their side of the case; the Crown could confront the accused with the evidence, and ascertain the extent of the defence. Prior to 1898 an accused person could not give evidence in court on their own behalf and, therefore, a declaration of the accused made under judicial examination was the only means whereby their evidence could be introduced at the trial.<sup>viii</sup>

In his declaration Francis Cockburn related much of the events that had occurred on that fateful Saturday night. He did not, however, indicate that he had stabbed William Burt. He declared that while at the door of Peter Black's house "*the whole of the Burt's came running after them*",<sup>ix</sup> and that James Burt had thrown a stone at Cockburn which



struck him on the forehead. Just as Cockburn was putting up his arms to protect himself another stone struck him on the temple. William Burt then ran forward and struck Cockburn and Peter Black. Black pushed William Burt away causing to fall onto the road. Cockburn continued his declaration by describing a fight which then took place between the Burt family and Peter Black. Another witness, Janet Mirk or Blair, suggested to Cockburn that he should intervene and assist Peter Black to escape, but Black told Cockburn *"go you into the house for it's you they are looking for"*.<sup>x</sup> Francis Cockburn then entered the house of Peter Black. He was followed there by John Smith, another nephew of William Burt, who managed to throw a punch at Cockburn. Smith was ejected from the house by James Black and his wife. Cockburn then went to his bed.

Shortly after Cockburn had entered the garret the Burt family broke open the door of James Black's house and began to seek out Cockburn. James Burt climbed the ladder leading to the garret and seeing Cockburn there he called out *"there's the bugger, we'll bring him out and make bird meat out of him"*.<sup>xi</sup> Cockburn threw a water pot at Burt preventing him from entering the garret. James Burt then entered onto the roof of an adjacent shop, removed tiles from the roof and began to throw them through the window of the garret at Cockburn. John Smith had also climbed onto the roof and armed with a stick he dared Cockburn to leave the garret. The mob eventually succeeded in entering the garret having first put a dog in through the window to worry and harass Cockburn. They entered the garret by way of the hatchway and bound Cockburn up with a rope. He was then taken to the home of one of the Burt family where he was detained until the following morning when he was handed over to the authorities in Falkirk.

Between eleven o'clock and midnight on Saturday 1 September 1827 Thomas Main, surgeon in Falkirk, was summoned to the house of William Burt. He found that Burt had sustained an injury to his left eye, but due to Burt's drunken condition Doctor Main was unable to obtain a full examination of the wound. The following morning he returned to Burt's home where he re-examined Burt and diagnosed that there was inflammatory action within the cranium. The *"humours of the left eye had escaped and nearly half of the upper eyelid was completely carried away"*. Doctor Main was of the opinion that the injury was caused by a round sharp edged instrument which penetrated deep into the eye socket.

Burt's condition began to deteriorate and at five o'clock on the morning of Monday 3 September 1827 Doctor Main called once more at the home of Burt. On examination he considered that William Burt was in danger of dying. Doctor Main called again later that day to attend Burt, who by now had severe convulsions and symptoms of severe blood effusion in the brain causing violent delirium to such an extent that Burt had to be restrained in a straight-jacket. After a night of acute suffering William Burt died at five o'clock on the morning of Tuesday 4 September 1827.

On Wednesday 5 September 1827 a post mortem examination was carried out on the body of William Burt by Thomas Main and fellow surgeon John Drummond. The orbiter plate at the internal angle of the eye had been fractured and a large piece of bone had perforated the membranes. This caused a considerable effusion of blood into the cranium, and the cortical and membranes of the brain were inflamed. The cause of Burt's death was inflammation of the brain and meninges initiated by the injury sustained on Saturday 1 September 1827. They concluded that the weapon used was a round sharp pointed instrument which had entered the left eye completely destroying it. An instrument similar to this was the blade of a breakfast table knife which was owned by William Masson, and it

was the one that Charles Masson saw being taken from the table in the house by Francis Cockburn. The knife had been there on the table at six o'clock on the evening of Saturday 1 September 1827 but by the following morning it was not in the house. The knife was never found.

The trial of Francis Cockburn took place at the High Court in Stirling on 6 April 1828 and was presided over by the Lord Justice-Clerk.<sup>xii</sup> The indictment for murder was read over to Cockburn and he entered a plea of not guilty. The jury was sworn in and Mr A. Alison, Advocate-Depute presented the evidence for the Crown. Of the thirteen witnesses who were precognosced only six gave testimony at the trial. They were:

Isabel Burt or Smith	Alexander Stewart
Charles Masson	Peter Black
Janet Mirk or Blair	Thomas Main, surgeon

Their testimony is not recorded but no doubt it would be similar to that given at their precognitions. Francis Cockburn's judicial declaration was read out and he admitted that it was a true account. Thereafter Mr J. M. Bell presented the defence evidence and testimony for the defence was given by:

George Cox, nailer in Camelon  
Margaret Gardiner, wife of John Liddell, nailer in Camelon  
George Blair, nailer in Camelon  
(husband of Janet Mirk or Blair above mentioned)  
William Black

Unfortunately their testimony is unknown and they do not appear on the original precognitions either. After the presentation of the evidence the jury was addressed by the Crown and defence representatives. The evidence was summed up by the Lord Justice-Clerk, and the jury, thereafter, retired to consider its verdict. The jury found *"by a great majority of voices"* Francis Cockburn guilty of the crime of murder. The Lord Justice-Clerk discerned and adjudged.

*"Francis Cockburn to be carried from the Bar back to the Tolbooth at Stirling thereon to be detained and fed upon bread and water only in the terms of the Act of Parliament passed in the 25<sup>th</sup> year of the reign of his late Majesty King George II entitled an act for the preventing the horrid crime of murder until the 8<sup>th</sup> day of May yet to come and upon that Grants warrant to ordain the magistrates of Stirling and the keepers of the Tolbooth to deliver over the person of the said Francis Cockburn to the Sheriff-Depute of Stirlingshire or Substitute to be by them transmitted under a sure guard to such a place within the town of Falkirk as the said Sheriff-Depute or his Substitute shall fix upon as a place of execution and then and there between the hours of 2 and 4 o'clock in the afternoon to be hanged by the neck by the hands of the common hangman upon a gibbet until he be dead and his body thereafter to be delivered to Doctor Alexander Monro, professor of Anatomy in the University of Edinburgh to be by him publicly dissected and anatomized in terms of the said Act and ordains all his moveable*

*goods and gear to be escheat and brought to his Majesty's use and which is pronounced for Doom".*

A petition for clemency was sent to the Home Office in London by Cockburn and his legal representatives. An

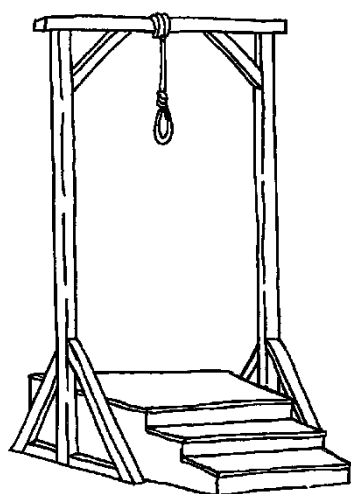


**Illus: Falkirk High Street and the Steeple in 1820.**

additional petition was also sent and signed by one hundred and ninety-two residents from Camelon, six ministers and sixty-seven inhabitants of Falkirk. The grounds for clemency were extenuating circumstances in that Burt was drunk, had previously threatened Cockburn, and there was conspiracy to give perjured evidence against Cockburn. The petitions for clemency were rejected.<sup>xiii</sup>

On the morning of Thursday 8 May 1828 the population of Falkirk awoke to find the gloomy shadow of the scaffold being cast across the town's High Street. It had been brought into the town during the night and erected in the vicinity of the Steeple. By midday the shops were closed and adjacent streets were cordoned off.

At one o'clock Francis Cockburn arrived with his escort accompanied by the Sheriff, the Reverend Doctor Belfrage and the Reverend Thomas Gordon. They entered a nearby tavern and for the next hour they were engaged in devotional service and prayer. Cockburn offered up a simple prayer described "*coming from the heart and being the pious outpouring of a penitent soul*".<sup>xiv</sup> Cockburn's voice was clearly audible when the 25<sup>th</sup> Psalm - 'Let not the errors of my youth, nor sins remembered be' - was being sung. Francis Cockburn requested that the Sheriff write to his mother and tell her how he behaved, and in particular that he died in peace with all men.



As the hour of two o'clock approached Francis Cockburn indicated to the Sheriff that he was :

*"wearying and felt that he could go to the scaffold as if to a days work; drunkenness leads to many crimes - it was bad company that brought me to this".*

**Illus: An example of the form of scaffold used in hangings.**

Cockburn and his escort emerged from the tavern and he mounted the scaffold with a steady and firm step. Doctor Belfrage offered up another prayer and then Cockburn shook the hands of his escort. The executioner placed the rope around Cockburn's neck, and as it was being adjusted he showed signs of emotions but remained firm. A signal



was placed in his hand and Cockburn was heard to say “*Lord Jesus receive my spirit*”. At twenty-five minutes past two o’clock Francis Cockburn dropped the signal and he was launched into eternity. For another thirty-five minutes the body of Francis Cockburn remained upon the gibbet. It was then removed to be taken to Doctor Monro in Edinburgh. By four o’clock the scaffold had been removed and no sign remained of the activity that took place two hours earlier.

The object of these public executions was to act as a deterrent to other persons intent on committing capital crimes. The extracts from the Falkirk and Callendar Regality Court Book inform the reader that capital crimes are a “*violation of the King’s Ma.ties (Majesty’s) Laws and Evil example of oysr to run in the lyke crime if the same be suffered to remain unpunished*”.<sup>xv</sup> The preventing of crime is also alluded to in the preamble to the Act of Parliament entitled “*an act for preventing the horrid crime of murder*”.<sup>xvi</sup> The fact that capital crimes like that committed by Francis Cockburn continued to be committed obviously questions the deferent effect of public executions and at this distance in time it is unlikely that a conclusive answer will be found either way.

Today as you walk along the High Street or in Callendar Park nothing remains that would indicate public judicial executions took place in these parts of the town of Falkirk.

## NOTES

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<sup>i</sup> Acts of the Parliaments of Scotland, Vol. II, 20 c1.

<sup>ii</sup> Stair Memorial Encyclopaedia of Scots Law, p.176.

<sup>iii</sup> Ibid. p.188.

<sup>iv</sup> Ibid. p.176.

<sup>v</sup> Court Book of the Barony and Regality of Falkirk and Callendar, Vol III, folio125, 125v.

<sup>vi</sup> LAWSON, L., *A History Of Falkirk* (Falkirk District Council Libraries:1975) p.105

<sup>vii</sup> Scottish Records Office, Register House Ref. No. AD/14/28/128.

<sup>viii</sup> Stair Memorial Encyclopaedia of Scots Law, Vol p.179.

<sup>ix</sup> Scottish Records Office, Register House Ref. No. AD/14/28/128.

<sup>x</sup> Ibid.

<sup>xi</sup> Ibid.

<sup>xii</sup> Scottish Records Office, Register House Ref. No. JC13/63.

<sup>xiii</sup> The National Archives, Kew, Ref HO 17/12/15.

<sup>xiv</sup> Stirling Journal and Advertiser 15 May 1828.

<sup>xv</sup> Court Book of the Barony and Regality of Falkirk and Callendar, Vol III, folio125, 125v; Vol IV, folio 12v, 13.

<sup>xvi</sup> Scottish Records Office, Register House Ref. No. JC13/63.

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