

TPF / 1859 / 22

DSC04821

Tobermory 20
January 1859

Inventory of Precognition
against
John McMillan
Houseb..g & Theft

1. Copy Petition
2. Declaration of McMillan 6 Jany 1859
3. Eleven one pound Clydesdale notes, - and one Five pound Royal Bank note
4. Precognition
5. Inventory of Productions
6. Schedule

DSC04822

Inventory of Precognition
against
John McMillan
Houseb..g & Theft
1859
Tobermory

DSC04823

*Unto the Honourable the SHERIFF of ARGYLLSHIRE, or his SUBSTITUTE, for
the Northern District thereof,
The Petition of HENRY NISBET, Writer in Tobermory, Procurator Fiscal of Court for the Public
Interest*

HUMBLY SHEWETH

That information is lodged with the petitioner that upon the seventh day of December Eighteen hundred and fifty Eight years John McMillan fisherman now or lately residing at Balevullin in the Island of Tyree in the parish of Tyree & Coll & County of Argyll did wickedly and feloniously break into and enter the dwelling house at Balevullin on the Island of Tyree aforesaid there and now or lately occupied by Niel Kennedy fisherman then and now or lately residing there by forcibly with drawing the chain and staple which secured the front door by means of a locked padlock and having thus or by some other means to the petitioner unknown obtained entrance to the said the said John McMillan did then and There wickedly and feloniously steal and theftuously away take from a lock fast chest which he then & there forced open, a five pound Bank note of the City of Glasgow Banking company or of some other Bank to the petitioner unknown, and five one pound Bank or Bankers notes of the Clydesdale Banking Company or of some other Bank or Banks to the petitioner unknown all the property or in the lawful possession of the said Neil Kennedy.

That John McMillan fisherman now or lately residing at or near Balevullin Tyree aforesaid and Donald McPhail fisherman both now or lately residing at or near Kilmoluag Tyree are suspected of being guilty actors or actor or art & part in the same crime

DSC04824

In order therefore that the said Offender may be dealt with according to Law
May it please your Lordship, to grant Warrant to search for, and apprehend the said

John McMillan & ~~Donald McPhail~~

complained upon and bring them before you or any other Magistrate, for
examination respecting the premises ; and thereafter to incarcerate them - in the Prison of Tobermory. or any other

legal Prison, therein to remain for further examination, or until liberated in due course of Law. Farther, to grant Warrant to search the Person, Repositories, and Domicile of the said Delinquent, and the House in which they may be found, and all other likely or suspicious places, and to secure for the purposes of precognition and trial, all Articles found therein, importing guilt or participation in the crime foresaid ; and also to apprehend and bring for examination the Person in whose possession or premises such Articles may be found, and to cite all persons likely to have knowledge of the foresaid crime . in order to be precognosced thereanent, and, in case of the accused escaping furth of Argyllshire, to recommend to Magistrates of other Counties, to give their concurrence in the premises, or to do farther and otherwise in the premises as to your Lordship shall seem proper, and,

ACCORDING TO JUSTICE, &c

TOBERMORY
28 December 1858

Henry Nisbet.
P.F.

DCS04825

TOBERMORY, 6 January 1859 Having considered the foregoing Petition grants Warrant to search for and apprehend John McMillan & ~~Donald McPhail~~ complained upon, and to bring them before me or any other Magistrate, for examination ; and also to search and secure, and to cite for precognition all as craved, and recommends to other Magistrates to give their concurrence in the premises.

Wm Robertson S. S.

MINUTE FOR THE PROCURATOR FISCAL

Tobermory, 18 the said

complaind upon
having been judicially examined on the charge set forth in the Petition, and precognition being only in progress, Warrant is craved in terms of the prayer of Petition, for committing to the Prison of for further examination.

TOBERMORY, 18 Having again considered the foregoing Petition, with the above minute for the Procurator Fiscal, and the declaration of the said

grants Warrant to commit to the Prison of for farther examination.

MINUTE FOR THE PROCURATOR FISCAL

Tobermory, 18 The Procurator Fiscal now produces the declaration of the said

complaind upon
and precognition taken in the premises, and craves Warrant in terms of the prayer of the Petition for committing to the Prison of - on the charge of assault~~~~ therein to remain until liberated in due course of Law.

TOBERMORY,- 18 HAVING again considered the foregoing Petition, with the above Minute for the Procurator Fiscal , and the Declaration of the said

complaind upon and relative precognition,
grants Warrant to commit them - to the Prison of - therein to remain until liberated in due course of Law, - all as craved.

DSC04826

HENRY NISBET. P.F.
AGAINST
John McMillan &
Donald McPhail
1858

Houseb..g & Theft

DSC04827

At Tobermory the Sixth day of January eighteen hundred and fifty nine years - In presence of William Robertson Esquire Sheriff Substitute of Argyllshire

Compeared a Prisoner who being judicially cautioned and admonished and thereafter examined and interrogated, - declares my name is John MacMillan I am married, and forty years of age - I am a fisherman and reside at Balevullin in the Island of Tyree in the united parish of Tyree & Coll - I was the first that discovered that Niel Kennedy's house at Balevullin, had been broken into and on doing so I went to the house of John Kennedy a neighbour thinking

Angus Cameron Witness
Allan Cameron Witness

Wm Robertson

DSC04828

thinking I might find Niel there - I did not find him there, so I returned in the direction of his house which is close to my own house, and saw him standing in his door - I asked who was there, - he answered it was him - I asked him if he observed how his door was broken - He said yes and that he had been robbed - I went to where he was, asking if he suspected who had done it - He said he suspected no one in particular - I went in with him and on getting a light we examined a chest which stood in the house, and found it had been forced open - Niel said that Ten pounds had been stolen out of it - I took

Angus Cameron Witness
Allan Cameron Witness

Wm Robertson

DSC04829

took my dinner by candle light that day, and probably between Six and Seven o'clock. When about to take my dinner Mrs MacKinnon & a neighbour came in and in about half an hour afterwards, Donald MacPhail Kelmoluag came in - When they heard of Niel Kennedy's house having been broken into from me. Mrs MacKinnon said it was done before she came to my house, as she observed the door open as she passed it - I wished to go to the house of Archibald Cameron Balevullin to sharpen a razor, but my wife objected because fever had been recently there, I then went to my brother Niel's house but the door being shut I did not go in and returned to my

Angus Cameron Witness
Allan Cameron Witness

Wm Robertson

DSC04830

my own house - Before going into the Kitchen I went to the other end of the house for a bit of tobacco, - and my wife met me at the door when leaving it to go into the kitchen - I was out on that occasion about half an hour or more - I went direct into the kitchen and Mrs. MacKinnon mentioned that Niel Kennedy was at home, as she saw the door open, and I then went out with the view of sitting a while with Kennedy - It was then I discovered that the house had been broken into - on going to the door found it was half open and I put my hand to it and opened it farther - at the same time calling out to Kennedy, but receiving no answer

Angus Cameron Witness
Allan Cameron Witness

Wm Robertson

DSC04831

answer, - I returned to my own house and said on going in that Kennedy's door was open and he not in, that he would never leave it open on going out and that I was afraid something was wrong - Mrs MacKinnon said it was open when she passed it on her way to my house - It was then I went to look for Niel Kennedy in John Kennedy's house - My brother Niel's house is not a quarter of a mile from my house - My house was searched at the time, that is a day or two after Kennedy's house was broken into, and I then shewed Seventeen pounds of my own money to the Police Constable - Kennedy examined the money then and said there was not a penny

Angus Cameron Witness
Allan Cameron Witness

Wm Robertson

DSC04832

of his among it - Being shewn Eleven one pound notes of the Clydesdale Bank, and a five pound note of the Royal Bank which are marked as relative hereto - declares I handed these notes to the Sergeant of Police about four days ago - They are the same notes I exhibited to the Police Constable and Kennedy when my house was searched, - less one Note which I have spent - I did not break into Kennedy's house myself and I did not take his money - All which I declare to be truth and I declare that I cannot write - one word delete on page third, two on page fourth and two on page fifth.

Angus Cameron Witness
Allan Cameron Witness

Wm Robertson

DSC04833

In Witness Whereof this Declaration written on the Six preceding pages by Angus Cameron Sheriff Clerk Depute of the Northern District of Argyllshire was freely and voluntarily emitted in the Gaelic language by the Declarant the said John McMillan and translated into English by the Judge Examiner before whom it was emitted of the date which it bears the said John McMillan being at the time in his sound and sober senses and on the same being read over to him in the Gaelic language in which it was emitted he approved thereof and adhered thereto in every particular, and in respect of his declaration that he could not write the same was signed on each page by the said

Angus Cameron Witness
Allan Cameron Witness

Wm Robertson

DSC04834

said Judge Examiner for him, and in his presence all before and in presence of the said Angus Cameron and Allan Cameron, Sheriff Officer residing in Tobermory

Angus Cameron Witness
Allan Cameron Witness

[cover]

No 2
Judicial Declaration
of
John McMillan
6th January 1859

DSC04835

Precognition of Witnesses

Henry Nisbet P.F.
agt
John McMillan
1859

Housebreaking & Theft

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DSC04837

Niel Kennedy

Gaelic

Tobermory 28th Decr 1858

Compeared Niel Kennedy fisherman and residing at Balevulin Tyree in the united parish of Tyree and Coll and County of Argyll aged 36 years, - who says

Three weeks ago (Tuesday 7 December 1858)

this day, - Donald Cameron Kilmoluag came into my house in the evening on a visit - We sat together in the house till nearly 7 P.M. - He and I then left and went to the house of Donald Lamont about 200 yards distant also on a visit - On leaving the house I secured the front door by locking the padlock which is attached to the door with chain and staple - The door was quite secure - I at present live alone in the house - I returned home alone at ½ past ~~

DSC04838

2

Niel Kennedy

past 8 P.M. - On reaching the door of the house I found it had been broken in during my short absence - The night was dark and on putting my hand to the lock to put the key in it, I found the staple had been drawn from the door and the chain hanging down with the padlock attached to it - The door opened to the touch - On going in I found on trying a chest which, sat near the kitchen fire, that it also had been forced open in my absence - This chest was locked and secured when I left the house, and the lid on trying it on my return lifted easily - I did not wait to examine the chest at this time, but as I was certain without ~~~

DSC04839

3

Niel Kennedy
without examination that

£10 in Notes

which I had in it were stolen I immediately ran to the door standing in the dark for the purpose of seeing whether any person was near - I then saw a man passing my door and at a short distance from it going in the direction of John McMillan's house which is distant from mine about 30 yards - It was dark where I was standing - I called out "who's there" - In return the person, whose voice I at once recognized as that of John McMillan answered "Is that you Neill" - I replied "Yes" and McMillan then added "Did you observe how your door had been broken open" "Yes" I answered "and my chest too ~~

DSC04840

4

Niel Kennedy

too - McMillan on this walked off towards his own house without saying another word -

[in margin] *McMillan did not go into my house when I saw him this time*

I at once suspected that McMillan was the thief - I then returned alone into the house and got a light

- I examined the chest and found it had been forced open by inserting an Iron or some similar instrument near the lock and between the lid and the side of the chest - I saw the marks of the iron distinct on it, on the side and on the lid near the lock - On looking into the chest I found

Ten pounds in Notes

had been abstracted therefrom Vizt:

1 Five pound note of the City of Glasgow Bank

and ~~~

DSC04841

5

Niel Kennedy
and

Five one pound notes of the Clydesdale Bank

Four of the one pound notes were red coloured - and nearly new the other one pound note was older and dark coloured - There was some writing on the back of two of the one pound notes but as I am not a scholar I don't know what that writing was - The notes were at the bottom of the chest under my clothes - the smaller ones enclosed in the large one - I saw them safe that forenoon having had occasion to take a note out of the chest to pay for some potatoes - I locked the chest after doing so and put the key into my pocket ~~

DSC04842

6

Niel Kennedy

pocket - There was nothing taken from the chest but the money - After making this examination I went to the house of John Kennedy and told him what had occurred - He came with me to the house and examined the chest - I then went for Niel Kennedy the Constable and informed him of the theft - and started leaving John Kennedy in the house along with Donald Kennedy and Hugh McDonald. I got the constable Niel Kennedy who resides at Balevullin, whom I informed of what had been done and of my suspicion of John McMillan - Kennedy the Constable came with me to my house - immediately after we got there, John McMillan and Donald ~~

DSC04843

7

Niel Kennedy

Donald McPhail came in - The Constable and the three parties I had left in the house and I were talking about the housebreaking and one of them said that that part of Tyree was as bad as Ireland -

Neither McMillan nor McPhail made any remark, - but I said my money was in the company referring to McMillan and McPhail - but neither of them spoke - I didn't observe anything in their appearance unusual but the others who were present told me they did - Nothing farther was done that night - the constable made no search - Next day I went to Scarnish before daylight to inform Mr Macquarie the Factor's Clerk - He sent me to Finlay Fraser the Police constable whom ~~

DSC04844

8

Niel Kennedy

whom I saw about 4 P.M. He went off with me to Balevulin at once - He searched Donald McPhail's house that night in my presence but found no money - McPhail who was also present declared he was innocent - On the following morning at daylight I was present when John McMillan's house was searched - He took out of a chest immediately on the object of our visit being announced

12 one pound notes

and

One Five pound note of the Royal Bank

I saw and examined all these notes but could not identify any of them as mine - One of the single notes had writing on its back similar to ~~

DSC04845

9

Niel Kennedy

to the writing on one of those stolen from me - The Clydesdale notes were red like those taken from me but older in appearance - McMillan said that was all his own money and that it had been paid to him for fish by Donald Maclean Scarnish - He told us that McPhail was the thief & that he had the money - The Constable Fraser went again to McPhails but after a renewed search got nothing - Before going to McPhails McMillan said that he had seen a line of footprints leading from Kennedy's house to his and that these footprints were McPhails and that he would swear to them, - McMillan went out and pointed these ~~

DSC04846

10

Niel Kennedy

these prints out to us - I did not measure them - The ground between the two houses is soft a mixture of sand and earth, and I traced a line of footprints from the end of my own to the end of McMillan's house where it was lost in grass - McMillan pointed to one impression which he had covered with a tub for preservation - The impression was of a shoe much worn and leaving the mark of the large toe distinct as if it had protruded through the sole - McMillan said that that impression was made by McPhail - that he wore a pair of shoes through which his toe penetrated at the sole - No farther search of Mc ~~

DSC04847

11

Niel Kennedy

Millans house was then made tho I continued and still continue in the belief that he is the guilty party - Which is truth - I cant write

DSC04848

12

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DSC04849

13

Donald Cameron

Kilmoluag 1 January 1859

Gaelic

Compeared Donald Cameron Boatman residing at Kilmoluag in the island of Tyree in the united parish of Tyree & Coll. who says I am 37 years of age

Tuesday last 3 weeks past at ½ past 4 P.M.

I went to the house of Niel Kennedy Balevullin - I remained in the house with Kennedy till ½ past 6 P.M. Kennedy and I then left and went to Donald Lamonts house at Balevullin about 200 yards from Kennedys house - I saw Kennedy locking the door of his house which was secured by a padlock with a staple. It was half past Eight P.M. when we left for home - Kennedy went in the direction of his own house and ~~

DSC04850

14

Donald Cameron

I did the same in a contrary direction.

Next day about breakfast time I heard by report that Niel Kennedys house had been broken into while Kennedy and I were in Lamonts the previous night - I went to Kennedys house and saw that the staple on the door was driven out and apparently by violence - Kennedy shewed me the chest and I saw that it had been forced open - Kennedy and I agreed that the door and chest must have been forced open by means of a Marlinspike or some other similar instrument - The marks on the door and chest were apparently done by an Instrument of that kind - Niel MacMillan and ~~

DSC04851

15

Donald Cameron

and John McMillan have the character of thieves in the Island . All which is truth

DSC04852

16

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DSC04853

17

Niel Kennedy

Gaelic

Compeared Niel Kennedy – who says I am one of the appointed constables for the Island of Tyree and reside at Balevullin aforesaid - I am 60 years of age - About

3 weeks ago at 8 o'clock P.M.

Niel Kennedy came to my house, and told me that his house had been broken into and robbed - I accompanied him to the house - He shewed me how the door of his house had been broken - and the state of the staple and also the chest - Donald Macphail and John MacMillan with his wife were in Kennedys house when I reached - Neil Kennedy was saying that his money did not leave this place - MacMillan ~~

DSC04854

18

Niel Kennedy

MacMillan or Macphail made no reply when Kennedy said this - I made no search and soon left for home - John MacMillan bears the character of a thief in the Island - Truth -

DSC04855

19

John Kennedy

GaelicTyree 3rd January 1859

Compeared John Kennedy residing at Balevullin in the Island of Tyree in the united parish of Tyree and Coll aforesaid - I am 33 years of age - on a night a month past next Tuesday

I was in my own house about Eight o'clock P.M.

John McMillan came to me there, saying he was afraid Niel Kennedys house had been robbed and wanted me to accompany him to Kennedys house to see it - I declined - McMillan said that he examined the door with a fire peat and that the staple was broken off the door - MacMillan left me - a few minutes afterwards Niel Kennedy came to me and told me that his house was robbed and his chest ~~

DSC04856

20

John Kennedy

chest broken, and £10 taken out of it - I accompanied Kennedy to the house and saw that the staple was broken off the door, and that the chest lid had also been broken. The catch of the lid was hanging loose to it - There was a round hole at the edge of the lid near the lock, shewing how the lid had been forced - It appeared to me that the instrument used was a Marlinspike - The marks on the door near the lock appeared to have been done with the same instrument - Kennedy wished me to remain in the house till he would get a Constable - I consented and remained with Donald Kennedy and Hugh MacDonald ~~

DSC04857

21

John Kennedy

Donald who came into the house - Kennedy left us there in the house and went for the Constable - John MacMillan and Donald Macphail came into Kennedys house a few minutes after Kennedy went for the Constable - Kennedy returned with Niel Kennedy Constable - MacMillan & Macphail were in the house when they came - The chest was shewn to the Constable - There was nothing else done Kennedy said several times my money did not leave this place, meaning as I understood it that it was some one of those present had committed the crime - MacMillan or Macphail said nothing - They did not appear to be so grieved for the ~~

DSC04858

22

John Kennedy

the man loosing his money as the rest of us. They remained in the house for about ¼ of an hour and then left.

It occurred to me when Kennedy told me that his house was broken into, that John McMillan was the Thief. I told Kennedy what McMillan said to me about being at his house and finding the door broken. John MacMillan is not thought to be an honest man by the neighbours.

All which is truth –

Re – exd. I fished with John McMillan in his boat for the last two years - In the beginning of last year I went with McMillan to Tobermory for Salt - MacMillan took ~~~

DSC04859

23

John Kennedy

took some sails with him to mend - MacMillan got the sails mended by Alexander Maclean Ledaig Tobermory - After the sails had been mended I was present when Maclean gave MacMillan a Marlinspike, which he took with him - MacMillan put the Marlinspike into his Bothy at Portvistaig where I saw it about the beginning of Summer last - I did not see the marlinspike since –

DSC04860

24

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25

Donald McPhail

Gaelic

Tobermory 7 January 1859

Compeared Donald McPhail a fisherman and residing at Kilmoluag in the Island of Tyree in the parish of Tyree & Coll who says I am 32 years of age On

[note in margin] This is a precognition report against this witness for Theft & House breaking.

a Tuesday evening

about 4 weeks ago I went on a visit to the house of John McMillan at Balevullin - I had no particular errand but went to spend the evening with him - I reached and went into his house a little after 5 o'clock P.M. - It was getting dark - I don't remember the date, but I remember the day particularly as that on which the Housebreaking and theft from Niel Kennedys house took place - I found McMillan and his wife and family in, - as also Mrs McKinnon a ~~

DSC04862

26

Donald McPhail

a witness - McMillan sat to dinner a few minutes after I went it - It would be half an hour after They began dinner before it was finished and the time would then be six o'clock - McMillan washed himself after dinner and after he had done so he proposed to go to the house of Archibald Cameron to spend the evening - He proposed to take a razor with him but I do not know what he intended to do with it - His wife objected to his going as there had been fever recently in Camerons house - Mrs McKinnon replied that there was no danger as McMillan had been there since the trouble had been in the house. He ~~

DSC04863

27

Donald McPhail

He (McMillan) asked me to go with him. I declined to go, as I was afraid of the fever - McMillan went out alone but I cant say whether or not he took the razor or anything else out with him - So far as I can judge the hour he went out was ½ past 6 P.M. or perhaps a few minutes later, judging from the time I had been in the house - I had a watch in my pocket but I did not look at it - I remained in the house - after McMillan had been out about an hour, his son Archibald McMillan went from the kitchen to an apartment in the other end of the house but I don't know for what purpose - The room to which he ~~

DSC04864

28

Donald McPhail

he went was dark and is separated from the kitchen by a wide passage - The boy McMillan came running back to the kitchen in a fright & saying that there was some thing wrong or some person in the other End - His mother told him to be quiet that there was nobody there - The boy lighted the lamp, on his return to the kitchen and after he had done so he went out, and as he entered the door of the apartment I saw his father John McMillan who was coming out from it, make a catch at his son with his hand with out speaking - The boy returned to the kitchen with the lamp followed by his father - who sat down on the edge of the bed -

DSC04865

29

Donald McPhail

bed - I was sitting beside the bed on a stool near the fire - I did not observe any thing particular about him - He sat on the bed for two or three minutes without speaking and he then asked me "when I had seen Donald Cameron Kilmoluag? - I said that I had seen him recently - He then asked me if Cameron were fishing this year along with Niel Kennedy Balevullin ? I said I didn't know - after talking about fishing matters McMillan said he would sell his Boat to Cameron, & asked me to carry this message to Cameron - I said I would & he told me the price would be £30 - I told him that price was nonsense that it was not worth £20 - while we ~~

DSC04866

30

Donald McPhail

we talked Mrs McKinnon said she thought Cameron was in Niel Kennedy's house - on this without saying a word McMillan got up and went out - He returned after an absence of about five minutes, - and said, "I have been at Niel Kennedys house and to all appearance no one is in, and the door is "broken" He asked me to go out with him to see but I refused - Mrs McKinnon said she would not go out, in case anything was wrong, as all that were in could swear they had not been out - This did not refer to McMillan who had been out - McMillan took alighted peat from the fire and went out accompanied by Catherine McLean a witness and ~~

DSC04867

31

Donald McPhail

and myself - We went to the door of Niel Kennedy's house - The door was half open, the staple was drawn out of the door - I did not observe the padlock or chain - None of us at this time went into Kennedys - The house was dark and the night also was very dark - We all three returned to McMillans - McMillan sent his son Archibald to look for Niel Kennedy, - & went out himself without saying where he was going that I heard - I remained in McMillans house - McMillan came back in about 15 minutes saying Kennedy had come home & that there was a light in the house, - but that he had not seen Kennedy - McMillan ~~

DSC04868

32

Donald McPhail

Millan went out accompanied by the women & myself to Kennedys house - Several other neighbours were in the house when I reached Kennedy said his house had been broken, & his chest opened & £10 in notes stolen - He said that it had been done by some one who was well acquainted with his house - I made no remark - Niel Kennedy a Constable was present in the house at the time - McMillan made no remark either - I left soon after this & went home calling for a minute on my way at McMillans - I don't remember where McMillan went -

Two or three days after this I heard that McMillan accused me of the crime - My house was ~~

DSC04869

33

Donald McPhail

was searched - I am perfectly innocent -

I suspected during the times McMillan was going out and in as narrated that he was doing something wrong, - & when I heard of the housebreaking and the theft, from Kennedy himself I suspected McMillan was the guilty party - I didn't say so at the time - McMillan sometime previous to this wanted me to act with him in breaking into John Lamonts dairy at Cornaigmore but this fact did not occur to me on the Evening in question- All which is truth - I cant write. -

The witness adds, - It is nine years since I went to live at Kilmoluag - No theft or other depredation which had taken place in that

DSC04870

34

Donald McPhail

that period in the neighbourhood but what McMillan has been suspected for it. - a great number of thefts have occurred in that time and McMillan was blamed tho the party never was found out

DSC04871

35

Mary McLean or McKinnon

GaelicTyree 3rd January 1859

Compeared Mary Maclean or McKinnon wife of & residing with Donald McKinnon residing at Balevulin in the Island of Tyree in the United parish of Tyree & Coll and County of Argyll - I am 37 years of age - on a

Tuesday evening

so far as I recollect about

Three weeks ago

I went to the house of John McMillan, my next door neighbour to pass the evening there - I think it would be about five o'clock P.M. when I went to McMillans house - On going in I found McMillan and his wife and children were in and also Donald MacPhail from Kilomoluag - The MacMillans commenced dinner shortly after my going into the house - after dining McMillan asked Macphail to accompany ~~~

DSC04872

36

Mary McLean or McKinnon

accompany him to the house of Archibald Cameron another of the neighbours - Macphail said he would not go - McMillans wife told her husband not to go on any account as there was fever there lately - After this conversation and about 7 P.M. MacMillan went out alone - About $\frac{3}{4}$ of an hour after MacMillan had gone out, his eldest son Archibald went to the room in the other end of the house and immediately called out in his return "I have rubbed myself to some person in the other end" - The boy was afraid and appeared stupid - Macphail, who was in the whole time, and I said to his mother that she should get the lamp lighted and see who

DSC04873

37

Mary McLean or McKinnon

who was in the other end, as there was "some person going about in there" - The lamp was lighted and the boy broke it in his hand and as he was going to the other end of the house with it his father made his appearance at the kitchen door - McMillans wife then asked her husband if he was at Archibald Cameron's house he said "I wasn't " - "I was only up at my brother Niel's house" "but did not go is" He and Macphail then began to talk about fishing, - and soon after I heard MacMillan talking of selling his boat to Donald Cameron, - MacMillans wife then said that he must not sell his boat as he had no other means to support himself and family - I said that I ~~

DSC04874

38

Mary McLean or McKinnon

"I saw Donald Cameron in Niel Kennedy's house a few minutes before coming here". as I called in Kennedy's house and saw Cameron in with Kennedy. John McMillan then went out alone for Cameron and in a minute or two afterwards returned and said either that Kennedy's door was broken, or opened. He asked Macphail, who was in the whole time and my sister Catherine Maclean to accompany him to Kennedy's house. MacMillan got a peat out of the fire and the three went out together - Sometime afterwards probably an hour I heard that the door of Kennedys house had been broken while he was out passing the evening with some of the neighbours along ~~

DSC04875

39

Mary McLean or McKinnon

along with Donald Cameron and that £10 had been stolen out of his chest-

I am quite sure MacPhail was in the whole time with me in MacMillans house, and that he did not go out till MacMillan came in and took the peat with fire with him and when my sister accompanied them to see Kennedys door - All which is truth - I cannot write -

DSC04876

40

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41

Marion Cameron or McMillan

Gaelic

Tobermory 5 January 1859

Compeared Marion Cameron or McMillan wife of and residing with John McMillan fisherman Balevullin Tyree aforesaid aged 35 years who says I remember the night that Niel Kennedys house was broken into - The two houses is about 20 yards distant - Kennedy was living alone in the house his sister who kept house being then absent in the south - Mrs McKinnon a witness & who is my husbands cousin came in about 6 P.M. my husband was then in the house - Donald McPhail came in shortly afterwards and just as we began our dinner - Neither of them partook with us - We were later that day than usual with dinner and we had it finished before ~~~

DSC04878

42

Marion Cameron or McMillan

before 7 o'clock - Shortly after the dinner was over my husband proposed to go to the house of Archibald Cameron to sharpen a razor - I could walk between our house & Camerons in three minutes - I told my husband not to go to that house, as there was fever in it, and if he went that he was not to come back to mine - My husband asked McPhail to go out with him but he declined - My husband repeated the request two or three times, McPhail refusing - My husband went out alone - After my husband had been out for about 20 minutes or so tho' I took no note of the time my son Archibald went into the apartment in the opposite end of the house & in which we keep ~~

DSC04879

43

Marion Cameron or McMillan

keep the cow, and came running back immediately to the kitchen in a fright, & saying "mother I have rubbed myself to a man in the other end where the cow was - Mrs McKinnon said that we had better go and see who it was - My son lighted the lamp - I went out of the kitchen for the purpose and just as I had got into the passage which separates the apartments I met my husband between the doors I turned & he followed me into the kitchen - I said nothing to him about the boys fright - McPhail was in the house during the whole of my husbands absence & had not left it from the time he first came in - My husband saw ~~

DSC04880

44

Marion Cameron or McMillan

sat down on the edge of the kitchen bed beside McPhail - I asked where he had been , - He said that he did not go to Archibald Cameron's at all, - that he went the length of his brother Neils house but that seeing it dark inside he didn't go in - Immediately after my husband came in he proposed to

McPhail to sell his boat to Donald Cameron Kilmoluag - My husband said he had sold one to Cameron before and that he would sell him this one too - McPhail said he was sure Cameron would buy the boat - I refused to consent to the sale & opposed it saying the Boat was the only thing he had to support his family & that he was not to sell it ~~

DSC04881

45

Marion Cameron or McMillan

it. Catherine McLean had come into this house at this time - McKinnon said that Cameron was in the house of Niel Kennedy and along with him - saying she had seen him there before she came to our house - My husband hearing this and after he had been in the house about 15 minutes at this time, went out again alone, saying he would go to Kennedys house to see whether Cameron was there - Before I thought he had time to be at the end of our own house I heard my husband cry – something but I did not make out what it was - In less than a minute he came back saying that Niel Kennedys house was broken that Kennedy ~~

DSC04882

46

Marion Cameron or McMillan

Kennedy would never leave it in the way it was - He said it was the door that was broken but he did not say which part of it - He said that he went to Kennedys door and called him by name “Are you in Niel” and that he got no answer. Mrs McKinnon said “Oh perhaps he didn’t wish you to go in.” My husband answered “No, he would never leave the door in the way it was, it was the chain that struck me” - My husband asked McPhail to go with him to Kennedys house to see what was wrong but McPhail refused - He then asked Catherine McLean to go with him and she my husband & McPhail went out taking a lighted peat with them - I didn’t ~~

DSC04883

47

Marion Cameron or McMillan

didn’t go outside at all - They three returned to my house in a few minutes - not more than two - My husband or McPhail told me that the staple which secured the lock had been drawn or forced out of the door - on my husbands return he sent my son Archibald for Niel Kennedy Constable and he himself also went out saying he was going to John Kennedys house - McPhail remained in our house - In a very short time my husband again returned to the house, - saying “it was yonder the loss was “ - and that he had seen Niel Kennedy and been in the house along with him with a light - He said that £10 in notes had been stolen

DSC04884

48

Marion Cameron or McMillan

stolen out of Kennedy’s chest - McPhail who had been dull all the evening made no remark “shivered” from head to foot - McPhail shortly after this went out of our house & I don’t know where he went, but I saw him a few minutes after he went out in Kennedys house along with my husband and a number of others - I didn’t remain more than a minute there when I went home & I did not see McPhail that night again - which is truth I can’t write -

DSC04885

49

Catherine McLean

Gaelic

Scarnish 1 January 1859

Compeared Catherine Maclean residing at Scarnish on the Island of Tyree in the united parish of Tyree & Coll Between

20 days & a month ago

I was in Balevullin visiting my sister Mary who is married to Donald McKinnon –
I arrived at my sisters house during the day on a Tuesday - I went to John McMillans house at Eight o'clock P.M. Donald McPhail, McMillan and his wife, and my sister Mrs McKinnon were all in McMillans. - When I went to it McMillan was speaking about selling a Boat to a Donald Cameron - He proposed to go to Niel Kennedys to see whether Cameron was there - He asked McPhail to ~~

DSC04886

50

Catherine McLean

to go with him but he refused - McMillan went out alone and in two or three Minutes afterwards returned saying that Niel Kennedys door was broken - Macphail on hearing this thanked his "maker" that he did not leave the house from the time he entered it - Macphail [sic] took a peat out of the fire and wanted Macphail and I to accompany him to Kennedys house to see what was broken on the door - MacPhail and I accompanied MacMillan to Kennedys house - On arriving there I saw that the staple which was on Kennedys door and by which it was secured with a padlock, was broken off or driven out of the door - MacMillan then ~~

DSC04887

51

Catherine McLean

then went of saying he was going to look for Kennedy - Macphail was in MacMillans hose all the time and was there until we went to Kennedys with the fire peat as aforesaid all which is truth I cant write.

DSC04888

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DSC04889

53

Archibald McMillan

Gaelic

Tobermory 6 January 1859

Compeared Archibald McMillan son of and residing with John McMillan Fisherman at Balevulin in the Island of Tyree aforesaid who says I am 14 years of age –

I remember the night that Neil Kennedy's house was robbed - My fathers house and his is about 40 steps apart - on the afternoon of that day Mrs McKinnon a Witness and Donald McPhail came into my fathers house - McKinnon came first - Both were in before we began our dinner - We dined by the light of the lamp - I do not know the hour - Shortly after dinner my father purposed to go to the house of Archibald Cameron to sharpen a razor - I could go between the two houses in three minutes - My mother

DSC04890

54

Archibald McMillan

mother said that he should not go to that house as there was fever in it, - and that if he went there he was not come back to his own house - Shortly after this my father went out taking a razor along with him - The witness says I didn't see the razor and I don't know whether he took it with him or not - My father had been out some time, I cant say how long & I went to the other end of the house (which is separated from the kitchen by a partition) with some staves which I was preparing for a cog - This room was dark and on getting into it I rubbed against something which I took to be a man or the cow - I took fright and ran into the kitchen ~~

DSC04891

55

Archibald McMillan

kitchen, and told my mother that I had rubbed myself against a man or a cow in the other end - Mrs McKinnon said to my mother that she should see what it was - I lighted the lamp - as I had the lamp lighted my father made his appearance in the kitchen, - and I saw him sitting on the edge of the bed beside Donald McPhail –

At this stage of the examination the Witness who had prevaricated, said he had 'no memory' of anything else, and after repeated attempts nothing farther could be made of him –

DSC04892

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DSC04893

57

Peter Macdonald

Tyree 11 January 1859

Compeared Peter Macdonald Teacher and residing at Balevullin in the Island of Tyree in the united parish of Tyree & Coll - who says I am 55 years of age - About

5 weeks ago

I recollect being one night in Donald Lamont's house which is close to mine - I was not long in with Lamont when Donald Cameron Kilmoluag and Niel Kennedy Balevullin came in, and I think it would be about ½ past six o'clock P.M. when they came - Cameron Kennedy & I remained in Lamont's for nearly an hour and when Cameron & Kennedy left Lamonts house they accompanied me to my own house – and the two remained with me for ~~

DSC04894

58

Peter Macdonald

for nearly another hour - In less than 10 minutes after Cameron & Kennedy left my house John McMillan's son Archibald came and knocked at my door, & enquired for Niel Kennedy, he said that he was sent by his father for Niel Kennedy, as his father wished to see Niel Kennedy - I told the boy that Kennedy left for home a little ago, and the boy immediately ran off - Between 9 & 10 P.M. that night I heard that Niel Kennedys house had been broken into and £10 stolen out of his chest - All which is truth -

DSC04895

59

Donald Lamont

Tyree 10 January 1859

Compeared Donald Lamont Cottar and residing at Balevullin in the Island of Tyree in the united parish of Tyree & Coll - I am 69 years of age - I recollect

5 weeks tomorrow night

of Peter Macdonald the School master being in my house, a short time after he came in Donald Cameron Kilmoluag and Niel Kennedy Balevullin entered about 7 o'clock P.M. and remained for nearly an hour - I went to bed immediately after they left, and I saw no more of them that night - The day following I heard that Kennedy's house had been broken into and £10 taken out of his chest All which is truth - I cant write –

DSC04896

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DSC04897

61

Flora McLean or McMillan

Gaelic

Tobermory 7 January 1859

Compeared Flora McLean or McMillan wife of and residing with Niel McMillan Fisherman at Balevullin Tyree aforesaid who says I am 36 years of age - I recollect the night on which Niel Kennedys house was broken into - My brother in law John McMillan accused was not in my house that night - I was at home the whole evening except about five minutes at 6 P.M. when I took a run into the house of my neighbour Flora McLean - I left my husband and family in when I went out & found them all in on my return - The lamp was lighted from dusk till we went to bed about 10 o'clock and the fire was burning also - we have no blind nor shutters for the windows, - and the door was ~~~

DSC04898

62

Flora McLean or McMillan

was wide open all the Evening and till we went to our beds. All which is truth - I cant write.

DSC04899

63

Archibald Cameron

Tyree 10 January 1859

Compeared Archibald Cameron fisherman residing at Balevullin in the Island of Tyree aforesaid – who says - I am 44 years of age - I recollect about

5 weeks ago

Hearing of Niel Kennedys house being broken into and £10 stolen therefrom - I did not see John McMillan the night the house was broken into and McMillan was not at my house that night. I saw McMillan next day after hearing of the housebreaking - and he then told me that he “was the first that found the door open”, and that he immediately went in search of Niel Kennedy - All which is truth - I cannot write -

DSC04900

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DSC04901

65

Donald McLean

Tyree 11 January 1859

Compeared Donald Maclean Tenant & residing at Scarnish in the Island of Tyree in the united parish of Tyree and Coll in the County of Argyll - who says I am 60 years of age. - On or about the
7 of June 1858

I bought some Ling fish from John McMillan Balevullin for which I then paid him forty seven pounds some odd shillings - To the best of my recollection all the Notes were those of the Clydesdale and one pound, Notes, All which is truth –

Donald MacLean

DSC04902

66

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DSC04903

67

Finlay Fraser

Tobermory 5 January 1859

Compared Finlay Fraser Police constable and residing at Scarnish in the Island of Tyree aforesaid aged 30 years who says - I received information from Niel Kennedy of the House breaking and theft of money from his house on

8 December 1858

between 4 & 5 P.M. - Kennedy said he had strong grounds to suspect John McMillan as being the guilty party - that he saw McMillan pass his door on his (Kennedys) return to the house immediately after he had discovered that the door was broken open - I went to Balevullin taking Dugald McCallum as my assistant - I searched the house of Donald McPhail that night and as it was 11 P.M. before ~~

DSC04904

68

Finlay Fraser

before I had this completed I did not go to McMillan's house till day dawn of the following morning - I found McMillan in bed - I told him the object of my visit - He said I was at liberty to search the whole house, that he was innocent but that he would tell me the man who stole the money and said it was Donald McPhail - He told me he had seen McPhails footmarks between Kennedys house and his (McMillans) own, and that he had put tubs over them to preserve them - Kennedy was present and McMillan said to him "had you searched McPhails pockets the night of the robbery and then McPhail & I were in your house you would have found the money with him" _ The ~~

DSC04905

69

Finlay Fraser

McMillan shewed me £17 in notes. 12 one pound notes of the Clydesdale , & one 5 pound note of the Royal Bank - Kennedy saw & Examined these notes and said that none of them were his - I made no farther search at this time - McMillan took us to the back of his own house and pointed out three footprints each about 12 feet apart and behind his own house which he said were made by McPhail - They were all of the right foot - I could not make out anything of the left foot - The marks were not continuous - The ground where the marks were was soft sand, the other parts were hard and grassy - I followed up but could find no marks resembling those behind McMillans ~

DSC04906

70

Finlay Fraser

-Millans house, between it & Kennedys house - I could make nothing of footprints near Kennedys house -

I went again to McPhail's house and made a renewed search but found nothing - I saw his shoes but on looking at them they did not in any way correspond with the prints behind McMillan's house -

McPhail told me that he had been in McMillans house in the evening of the House breaking from ½ past 5 till and till [sic] McMillan came in saying Kennedys house had been robbed - McPhail also told me that McMillan went out about 7 P.M. and remained out half an hour, without saying where he was, - farther than on going out he pretended to ~~

DSC04907

71

Finlay Fraser

he was going to Archibald Camerons, & that on his return he had not been there, but that he stated he had been in his brother Niel McMillans - The distance between John McMillans house and his brother Niels is about 60 yards - Camerons is distant from John's about 80 or 100 yards -

Kennedy's house is situated between John McMillan's and Niel McMillans, and about 30 yards distant from the former, - They are in one line -

I returned to McMillans house and asked where he was during the half hour he was absent on the night in question - He said he was in no house, - that he went to his brother Niels., that the house was dark ~~

DSC04908

72

Finlay Fraser

dark, that there was no light in the house, that he thought the inmates were either in bed or from home and that he did not go in but returned home - He was considerably alarmed when I put the question & hesitated for about a minute before giving me an answer - I did not make a search of McMillans house as he appeared to be on his guard & I considered it better to wait -

I returned to John McMillans house on the 15th October and made a thorough search but found nothing except the notes already referred to - McMillan himself was present & made no opposition - He accused McPhail still insisting that he was the guilty party - Truth

Finlay Fraser

DSC04909

73

Dugald McCallum

Tyree 3rd January 1859

Compeared Dugald MacCallum residing at Kilmoluag in the Island of Tyree in the united parish of Tyree & Coll - I am 48 years of age - Finlay Fraser the Policeman asked me to accompany him to search the house of John McMillan on the

9th December 1858

on going to his house we found MacMillan in - Fraser told MacMillan that he was going to search the house for the £10 of money stolen from Niel Kennedy - McMillan said that we might search his house, - and denied having the money - McMillan said that he would swear that Donald Macphail stole the money, and that MacPhail went towards his house so that the suspicion would rest on him - We made a minute ~~

DSC04910

74

Dugald McCallum

minute search but to no avail -

John McMillan has the character of a habit & repute Thief - and his brother Niel has also the character of a Thief -

DSC04911

75

Allan Cameron

Tobermory 11 Janry 1859

Compeared, Allan Cameron, Sergeant of Police and residing in Tobermory in the United parish of Kilninian & Kilmore Island of Mull & County of Argyll who says

I apprehended John McMillan on the present charge - I searched the house on the

31st December 1858

and found in a small Box or chest

11 one Pound Clydesdale Bank notes

one Five pound Royal Bank note

which I have produced and have marked - all which is truth -

Allan Cameron

I searched McMillans House for a Marlin spike but could find none -

DSC04912

No 4

Precognition of Witnesses

Henry Nisbet P.F.

agt

John McMillan

1859

Housebreaking & Theft