



Old New York City Hall, Site of the Court Martial of Ens. David Sutherland, 42<sup>nd</sup> Regt. 1781  
(View up Wall Street with City Hall (Federal Hall) and Trinity Church, New York  
City from around 1798 by Archibald Robertson)

Picture Source: Wikimedia Commons

## **Enclosure G:**

### **Court Martial of Ens. David Sutherland**

#### **Introduction**

Ens. Sutherland was born around 1759 and was likely the son of Angus Sutherland from Dornoch, Sutherland. He was serving as a Volunteer in the 42<sup>nd</sup> Grenadier Company when commissioned Ensign. His commission was announced in General Orders for Apr. 18, 1780, but the commission was backdated to Feb. 1779. After his commissioning, Sutherland served in Capt. Smith's Company with one of the line battalions for the Siege of Charleston, South Carolina in 1780.

In July 1780 Sutherland intervened in a relative's estate in New York, obtaining a Letter of Administration for his cousin's deceased wife, Agnes (also Ann) Graham, of Brooklyn. Sutherland claimed he was trying to preserve the estate for a closer relative in Scotland. A Notary Public, however, claimed Sutherland had perjured himself and publicly insulted the Ensign. The charge of perjury was considered a stain on the honor of the regiment. The subalterns of the regiment, who were concerned with a prior instance with Sutherland, refused to do any duty with Sutherland until this issue was

resolved. The Subalterns also believed Sutherland should have challenged the civilian to a duel for insulting him in public.

Maj. Charles Graham decided to bring Sutherland to a court-martial to resolve the issue. Lt. Robert Franklin, the senior subaltern, acted as prosecutor on behalf of the subalterns.

After the Court Martial Sutherland continued his service with the regiment and took part in the relief attempt for Cornwallis' army at Yorktown in 1781. General Orders for Feb. 23, 1782 announced "*Ens*" Sutherland having desired leave to retire, *The Commander in Chief is pleased to order a Blank Commission for an Ensigny by purchase for his Benefit.*"

After retiring from the 42<sup>nd</sup> Regt. in 1782, Sutherland did not return immediately to Scotland. A "*Return of Officers of the Corps of Rangers, Commanded by Lieu<sup>t</sup>.-Colonel John Butler*" from Niagara, New York in about 1784, lists Sutherland at a 2<sup>nd</sup> Lieutenant. In a later pension document, Sutherland dates his commission in the Rangers as "*about the year 1783*" After the end of the war Butler's Rangers were reduced on June 24, 1784 and 2<sup>nd</sup> Lt. Sutherland went out on Half-pay.

Sutherland later served in the 5<sup>th</sup> West India Regiment from 1805 to 1812 when he transferred to the 4<sup>th</sup> Royal Veterans Battalion at Gibraltar. When this battalion was disbanded in 1814, he obtained a position in a garrison company at the Cape of Good Hope until 1816 before being put on the "*retired with Full Pay*" list.

Lt. Sutherland's death was recorded in the Dornoch records as "*May 14 1835 Lieut. David Sutherland, Dornoch, aged 76 cause of death Palsey.*" He is buried in the Dornoch Churchyard.

**Introduction References:** *A Fighting Clan: Sutherland Officers: 1250-1850*, Malcolm Sutherland, Avon Books, 1996, p. 156; *Peebles' Journal* entry dated Sep. 13, 1779 and June 24, 1781; General Orders, William's House, South Carolina, Apr. 18, 1780 and at New York, Oct. 13, 1781 and Feb. 23, 1782; *London Gazette*, July 15, 1780 p. 5, Mar. 19-23, 1805, p. 4, June 13, 1807, p. 4, Jan. 2-5, 1813, p. 2, Nov. 15, 1814, p. 6 and Dec. 4, 1819, p. 13; *Collections of New-York Historical Society for the year 1900*, printed for the Society, 1901, p. 323; TNA, *General Court Martial of Ens. Sutherland* at WO71/95 ff. 129-185; TNA, *Regimental Review* conducted by Maj. Gen. John Campbell at Halifax, Nova Scotia on June 9, 1784, *War Office: Inspection returns, Foreign, 1783-1784* at WO 27/52; TNA, *War Office: Officers' Birth Certificates, Wills and Personal Papers* at WO 42/44, S554.

## Documents

### **Record of the General Court Martial of Ens. David Sutherland, 42<sup>nd</sup> or Royal Highland Regt., for Having Acted in a Manner Unbecoming the Character of an Officer and a Gentleman, New York, Sept. 12- 19, 1781**

**At a General Court Martial** held at the City Hall in New York in the Province of New York on Wednesday the twelfth day of September and continued by Adjournment to Wednesday the Nineteenth day of September 1781 by Virtue of a Warrant from His Excellency Sir Henry Clinton, Knight of the Most Honorable Order of the Bath, General and Commander in Chief of all His Majesty's Forces laying on the Atlantic Ocean from Nova Scotia to West Florida inclusive &c, &c, &c bearing date the 11<sup>th</sup> September 1781.

<b>Major John Breese 54<sup>th</sup> Reg<sup>t</sup> President</b>			
Major John Colden, New York Vol <sup>s</sup>	}	Member	{Major Gabriel D'Weber 3 <sup>d</sup> Batt. DeLancy's
Capt. David Scott, Roy <sup>l</sup> Artillery	}		{Capt. Rob <sup>t</sup> Timpson, 22 <sup>d</sup> Reg <sup>t</sup>
Capt. John McDonald, 84 <sup>th</sup> Reg <sup>t</sup>	}		{Capt. George Dunbar 2 <sup>d</sup> Batt. DeLancy's
Capt. Joseph Lee, N. Jersey Vol <sup>s</sup>	}		{Capt. Tho <sup>s</sup> Golden Pensylv. Loyalists

Capt. Stephen Hoyt, P.W. Am. Reg <sup>t</sup>	}	{ Capt. Geo. Stainforth N. Jersey Loy <sup>ts</sup>
Capt. Walter DeLancy Maryl <sup>d</sup> Loy <sup>ts</sup>	}	{ Capt. Waldron Kelly Garr <sup>n</sup> Batt <sup>n</sup>
Capt. Barth <sup>w</sup> Doughty 3 <sup>d</sup> Batt. DeLancy's	}	{

Lieut. Richard Porter Assistant Deputy Judge Advocate

**The President** members and deputy Judge Advocate being duly Sworn.

**Ensign David Sutherland** of the Forty Second Regiment of Foot, was brought before the Court – Accus'd by the Subaltern Officers of the same Regiment, of having acted in a manner unbecoming the Character of an Officer and a Gentleman.

**The Prisoner** pleaded **Not Guilty** and the following Witnesses were Examined in support of the Accusation.

**Major Charles Graham**, Commanding the 42<sup>d</sup> Regiment, being duly Sworn, deposed, That his reason for Ordering the Prisoner Ensign Sutherland in Arrest, was on his receiving a Letter Sign'd by the whole of the Subaltern Officers of the Regiment, in which they refused to do duty with him; which Letter on being produced and read to the Court, contained the refusal of the Subalterns to do duty with Ensign Sutherland, untill some aspirations of a heinous nature reflecting on him Ensign Sutherland, were cleared up to their (the Subalterns) satisfaction; that he (the Deponent) did not immediately put Ensign Sutherland in Arrest, as he requested sometime to settle the matter to the satisfaction of the Subalterns; that instead of settling the matter, (he the Prisoner Ens<sup>n</sup> Sutherland) went and attack'd the Man who had made use of the Aspersion against him, and confined him in one of the Guards of the Regiment, in which, he (the Deponent) Ordered him (Ensign Sutherland) under an Arrest; and that in a day or two afterwards he (the Prisoner Ensign Sutherland) sent for his Crime, which was delivered to him; that he (the Deponent) knows nothing further of the matter.

Q. by the Court – What time did he (the Deponent) receive the Letter, Signed by the Subalterns, which was produced and read to the Court?

A. About the first of September, as near as he recollects, the date being omitted.

**Lieut. Robert Franklin**, of the 42<sup>d</sup> Regiment, being duly Sworn, deposed, that Ensign Sutherland's breach of a former promise of good behaviour, was one reason, that he among the other Subalterns refus'd doing duty with him Ensign Sutherland, and for not taking the proper methods of clearing his Character from the Aspersion brought against him, by M<sup>r</sup> David Campbell's calling him a Rascal or Villain, or some such opprobrious Names, and saying he (Ensign Sutherland) had Perjured himself, or bordered on Perjury, in the case of a Will made by a Widow Graham, Relict of the late Serjeant Graham of the 42<sup>d</sup> Regiment, by Swearing there was no Will made, which he (Ens<sup>n</sup> Sutherland) had been previously told on the 30<sup>th</sup> of July, was made the very day preceding that on which he (Ensign Sutherland) had made Oath there was no Will - This and the other reasons assigned by him (the Deponent) obliged himself and the other Subalterns of the Regiment to enter into the resolution of not doing Duty with him (Ensign Sutherland) 'till he cleared up the reflections cast on his Character.

Q. by the Court – How did he (the Deponent) know that it came to Ensign Sutherland's knowledge, that a Will was made by the deceased Widow Graham, on the 30<sup>th</sup> of July last.

A. By Reports made to him (the Deponent) by Evidence he shall produce to the Court in support of the Accusation.

**M<sup>r</sup> David Campbell**, Notary Publick, and Inhabitant of New York, being duly Sworn deposed, That upon the 31<sup>st</sup> day of July last, M<sup>r</sup> William Hannay, Inhabitant of Brooklyn Long Island, came to his (the Deponent's) Office, and told him that he (Hannay) wanted to prove a Will, which was produced to him and put in his hands; that on his (the Deponent's) reading over the Will, he told M<sup>r</sup> Hannay that the Will appeared to be good, if proved by the Witnesses to the execution of it, upon which M<sup>r</sup> Hannay said

that he was afraid he should meet with some trouble from Ensign Sutherland of the 42<sup>d</sup> Reg<sup>t</sup>; that he (the Deponent) asked what reason he had for suspecting trouble from Ensign Sutherland, he replied, Ensign Sutherland pretended to be a Relation of the deceased Widow Graham, by whom the Will was made; he (the Deponent) then asked, if Ensign Sutherland was made acquainted that the deceased had made a Will, on which he (M<sup>r</sup> Hannay) answered, he had acquainted Ensign Sutherland there was such a Will, and mentioned the reason why he had acquainted him with it, which was, “That Ensign Sutherland had come to Widow Graham’s House some few hours after the Will had been made and told him (M<sup>r</sup> Hannay) who was present at the House) that he was desirous of taking an Inventory of her Effects;” on which he (M<sup>r</sup> Hannay) told him, he thought it would be time enough when Widow Graham was Dead, but that at any rate he (Ensign Sutherland) had no concern with her Affairs, as she had that Morning made a Will in favor of him (M<sup>r</sup> Hannay) bequeathing him all her Estate; and that this Conversation passed between him and Ensign Sutherland in presence of several Persons who were then in the House; that in this, he (the Deponent) told M<sup>r</sup> Hannay, he need not be apprehensive of any thing Ensign Sutherland could do, because ‘twas necessary for Ensign Sutherland, before he could procure Letters of Administration, to make Oath before the Surrogate of the province “that Widow Graham had died without executing a Will, as far as he knew or believed” – which he (the Deponent) supposed Ensign Sutherland would not do; but that if he (M<sup>r</sup> Hannay) was anxious to have his Will proved, if he thought proper to return with his Witnesses at one o’clock that day, the Surrogate would at that time be at his (the Deponent’s) Office, when the business might be transacted; that he (M<sup>r</sup> Hannay) returned accordingly, and brought with him the Witnesses to the Execution of the said Will, and also one or two of the persons present when he had Conversation with Ensign respecting that Will; that on producing the Will to the Surrogate, he (the Surrogate) seemed surprised, and mentioned that he, that Morning early, had given a Fiat to Ensign Sutherland, who he supposed by that time had got out Letters of Administration, and also added; that from a suspicion a Will might appear, he (the Surrogate) had detained Ensign Sutherland as long as he decently could; that he questioned Ensign Sutherland, Whether Widow Graham had made a Will, who replied in the Negative – On which he (the Surrogate) previous to his administering the Oath read it over to Ensign Sutherland; and on Ensign Sutherland’s saying he could safely take the Oath, he (the Surrogate) Administered it accordingly – After that, he (the Deponent) desired the Surrogate to qualify the Witnesses to the execution of the Will, which was done, and both he (the Deponent) and the Surrogate, asked several questions of M<sup>r</sup> Hannay and the Persons who were present relative to the discourse that had passed the preceding day between M<sup>r</sup> Hannay and Ensign Sutherland respecting the Will, on which they gave the same Account of the discourse to him (the Deponent) and the Surrogate, as M<sup>r</sup> Hannay had previously told him, the Deponent; that after finishing the business, he (the Deponent) went to the Secretary’s Office, and found that Ensign Sutherland had been there early that Morning , and having found Security, had procured the Letters of Administration to be fill’d up, as Cousin and nearest of Kin to the deceased Widow Graham, and had rode out to the Country, to have the same Signed by the Secretary M<sup>r</sup> Bayard who was then on a Visit at M<sup>r</sup> Livingston’s near Hell Gate; that he (the Deponent) sent an immediate Express to M<sup>r</sup> Bayard to prevent his Signing those Letters, but was too late; that upon finding this, he (the Deponent) told M<sup>r</sup> Hannay, there was no remedy left, but to make an Application to the Governor of the Province, to recall those Letters of Administration, and desired him (M<sup>r</sup> Hannay) to attend the next Morning on him (the Deponent) to have a Petition drawn out for that purpose; M<sup>r</sup> Hannay accordingly attended, and brought with him several Witnesses, by whom he meant to prove the Justice of his Petition before the Governor; the petition was accordingly draw out and Signed by M<sup>r</sup> Hannay and the Witness; that the intended application to the Governor was prevented by a proposal of settling the matter by Arbitration to which both parties had agreed; that the business was unavailability put off from time to time; that on Friday the last day of August past, a deputation of the Subaltern Officers of the 42<sup>nd</sup> regiment, came to him (the Deponent) and enquired the particulars of Ensign Sutherland’s Conduct in the Affair of Widow Graham, and desired him (the Deponent) to put in Writing what he knew, which he promised to do, but recollecting afterwards, that he had M<sup>r</sup> Hannay’s Petition by him, he sent it to the Subaltern Officers of the 42<sup>d</sup> Regiment, that the Deputation of Subaltern Officers told him (the Deponent) that they understood Ensign Sutherland intended to Challenge him, (the Deponent) on supposition such

Challenge would clear up his (Ensign Sutherlands) Character to them; and further told him (the Deponent) that such an offer would by no means clear up his (Ensign Sutherland's) Character to their satisfaction; that he (the Deponent) heard nothing farther 'till Saturday the first of September in the Evening, when being at his own House at Greenwich, he was informed a Soldier belonging to the 42<sup>d</sup> Regiment, was desirous of speaking with him, upon which he (the Deponent) went to the Window, near where the Soldier stood, and asked him his business he (the Soldier) answered that a Gentleman wanted to speak him below the Bank; that he (the Deponent) asked who it was, upon which, after some hesitation, he (the Soldier) said 'twas Ensign Sutherland of the 42<sup>d</sup> Regiment, upon which he (the Deponent) desired the Soldier to inform Ensign Sutherland he had nothing to say to him, nor would he speak to him, upon which the Soldier went away, and he (the Deponent) went out to look for Ensign Sutherland, and not seeing him, returned to the house; after being in the House some few minutes, he (the Deponent) was informed Ensign Sutherland was coming towards the House; he came to the Window, and desired Ensign Sutherland to go to the Piazzas at the back of the House, where he (the Deponent) would speak to him; he accordingly went to the place mentioned, and Ensign Sutherland came up the Stairs, which fronted a Gate where the 42<sup>d</sup> Regiment had a Guard, and refusing to come further, he (the Deponent) went to him and asked his Commands, on which he answered in the following Words – "Sir I am informed you have given in a Libel of Perjury against me to the Reg<sup>ty</sup>" – that he (the Deponent) answered, he had not, but that the Subalterns having called upon him to know the particulars respecting Widow Graham's Will, he had put into their hands a Petition Signed by M<sup>r</sup> Hannay, who was principally concerned, and that if the particulars mentioned in that Petition were proved, 'twoud nearly amount to Perjury, on which he (Ensign Sutherland) several times said he (the Deponent) must instantly prove it, and put his hand to his Sword; that he (the Deponent) having nothing to defend himself, he shoved Ensign Sutherland down the Stairs, and immediately withdrew into the House in order to get something to defend himself and could find nothing but an Andiron, with which he returned, and saw Ensign Sutherland going down the Stairs and putting his Sword in the Scabbard; that he (the Deponent) ran after him, on which he Ensign Sutherland turned round, drew his Sword and made a push at him, on which he (the Deponent) threw the Iron at him, and ran and caught hold of him; that his (the Deponent's) Wife caught hold of the Sword, which was behind his (the Deponent's) back, Ensign Sutherland at the same time crying out Murder and calling the Guard – the Guard came accordingly, and one of them insisting on his (the Deponent's) Wife quitting the hold of the Sword; and she being unwilling to do it, Ensign Sutherland turning the Sword in her hand cut it very desperately, and ordered the Guard to take him into Custody, where he was confined 'till released by Captain [John] Rutherford of the same Regiment.

Q. by the Court – Did he (the Deponent) from his own knowledge, know that Ensign Sutherland was acquainted such a Will had been perfected, before he (Ensign Sutherland) took out Letters of Administration?

A. He did not.

Q. In taking out Letters of Administration, is the Administrator obliged to Swear there is no Will made, and did he (Ensign Sutherland) as Administrator, make such Oath before the Surrogate?

A. There is a particular form of an Oath prescribed by Law, which an Administrator is obliged to take; he supposes the business could not have been transacted without the Administrator's taking such Oath.

Q. by Lieut. Robert Franklin – At the time he (the Deponent) met M<sup>r</sup> [Hugh] Fraser the Adjutant, Doctor [William Robertson] Robinson, and other Officers of the 42<sup>d</sup> Regiment, what expressions did he the Deponent use, respecting Ensign Sutherland?

A. On meeting M<sup>r</sup> Fraser and other Officers belonging to the 42<sup>d</sup> Regiment, as he (the Deponent) was on his way to the Secretary's Office, he asked them if they had seen Ensign Sutherland, and told them the Circumstances that had come to his knowledge respecting Widow Graham's Will, and added, if those Circumstances were true, M<sup>r</sup> Sutherland had acted a very rascally part, and 'twas near bordering on Perjury, or words to that effect.

Q. Was it from the knowledge of those Circumstances and the usual Oath obliged to be taken, that he (the Deponent) was of opinion, he (En<sup>s</sup> Sutherland) had Perjured himself or bordered on Perjury;

and was that his (the Deponent's) reason for making use of the Expression he did concerning M<sup>r</sup> Sutherland?

A. Yes

**The Court Adjourned** 'till Tomorrow Morning 10 o'Clock.

**Thursday the 13<sup>th</sup> September 1781**

**The Court** being Assembled pursuant to Adjournment

**The Witness David Campbell**, being called before the Court, was again Examined.

Q. by Lieut. Franklin – What day of the Month did Ensign Sutherland go to his (the Deponent's) House and use him ill?

A. On Saturday the first of this Inst. September.

Q. Did he know at that time that the Subaltern Officers had taken a Resolution not to do Duty with Ensign Sutherland; in consequence of his not taking the proper Steps as a Gentleman, with him, to clear himself from the aspersion thrown out, by him, on his (Ensign Sutherland's) Character?

A. He thinks, that when M<sup>r</sup> Franklin and the other Gentlemen came to him on Friday the last of August, for the purposes mentioned in the former part of his deposition, they informed him, that they intended to do no more duty with him (Ensign Sutherland) 'till he had cleared up his Character, respecting what he had done relative to Widow Graham's Will – he farther adds, that he had then mentioned to those Gentlemen, that he (Ensign Sutherland) might have cleared up that point long before, because he had nothing more to do to bring Proof, that the Persons who had accused him of having had previous knowledge of the Will, had asserted what was not true.

Q. Did Ensign Sutherland from the time he (the Deponent) proclaimed those aspersions against him, ever wait on him in a proper manner, to attempt to clear up his Character, untill the day he went to his House and used him ill?

A. Ensign Sutherland never waited on him for any purpose whatever.

Q. What was the distance of time between the two periods, from the day he met Doctor Robinson and M<sup>r</sup> Fraser, 'till the day that Ens<sup>n</sup> Sutherland went to his House and used him ill?

A. On the 31<sup>st</sup> of July he met Doctor Robinson and M<sup>r</sup> Fraser, and on the 1<sup>st</sup> of September Ensign Sutherland came to his House.

Q. Did he, between those two periods, ever meet Ensign Sutherland in the Street, so near as he (Ensign Sutherland) might have spoke with him?

A. Very often, and particularly the Friday after the Gentlemen had mentioned that affair to him, Ensign Sutherland met him, and passed him quite close.

Q. by the Prisoner – Did he (the Deponent) ever declare, that he (the Prisoner) had been guilty of Perjury; and if he did make such declaration, how often, to whom and when did he make that declaration?

A. He never recollects that he said Ensign Sutherland was guilty of Perjury, but he has frequently said; if the facts were true, that had been represented to him (the Deponent) respecting his (Ensign Sutherland's) previous knowledge of Widow Graham's Will, it bordered on Perjury.

**William Hannay**, an Inhabitant of Brooklyn, Long Island, being Duly Sworn was Examined.

Q. by Lieut. Franklin - Did he (the Deponent) see Ensign Sutherland at the late Widow Graham's at Brooklyn on Monday the 30<sup>th</sup> of July last?

A. He is not positive as to the day of the Month, but is certain it was the day of that Widow Graham died, that he saw Ensign Sutherland at Brooklyn.

Q. by the Court – What Month or what day of the Month, does he recollect, Widow Graham died?

A. On the 30<sup>th</sup> of July to the best of his recollection, some time after Nine o'clock at Night.

Q. by Lieut. Franklin – Was it the day, before Ensign Sutherland took the Oath of Administration?

A. It was.

Q. by the Court – Who was present when Ensign Sutherland was informed, Widow Graham had made a Will?

A. A M<sup>r</sup> Ingle, a M<sup>rs</sup> Cavan and a Soldier's Wife belonging to the 54<sup>th</sup> Regiment, and a M<sup>rs</sup> French heard him tell Ensign Sutherland, that a Will being made in favour of him (the Deponent) he (Ensign Sutherland) had no right to take an Inventory or trouble himself with the Effects that were in the house.

Q. Did he offer to show Ensign Sutherland that Will?

A. He did not, nor did Ensign Sutherland ever see it to his knowledge.

Q. Did he know what day Ensign Sutherland took the oath of Administration, or how he came it to his knowledge, that he (Ensign Sutherland) did take such Oath of Administration?

A. He was informed by a friend of his that Ensign Sutherland was making Interest, and he got his Information at M<sup>r</sup> Bayard's Office.

Q. by Lieut. Franklin – Was not Ens<sup>n</sup> Sutherland at Widow Graham's House at 11 o'Clock in the Morning of the day she died?

A. Yes, to the best of his recollection 'twas between 11 and 12 o'Clock.

Q. Did he not inform Ensign Sutherland a Will was made, and what Conversation passed between him (the Deponent) and Ens<sup>n</sup> Sutherland on that information?

A. He did inform him that a Will was made, and in the Evening when M<sup>r</sup> Sutherland came to the House, he told him so again.

Q. by the Court – Were there any of the Witnesses to the Will present, when he (the Deponent) informed Ensign Sutherland a Will was made by Widow Graham?

A. Yes, M<sup>rs</sup> Ingle and M<sup>rs</sup> Cavan, who were Witnesses.

Q. Did either of these two Witnesses at that time tell Ensign Sutherland that they were Witnesses to that Will?

A. He cannot tell.

Q. by Lieut. Franklin – Was Ensign Sutherland present at the Funeral of Widow Graham, and did he not in common associate with the Soldiers, their Wives, and whoever might have been at that Funeral?

A. He was at the Funeral, but he cannot say any thing respecting his (Ensign Sutherland) associating with any Persons there.

Q. Did he (Ensign Sutherland) not return to the House, and did not in that house mix with the Soldiers and drink with them, or whoever might have been at the Funeral?

A. He did not see him after the return, as he (the Deponent) had some business on the road.

Q. Does he (the Deponent) know whether Ensign Sutherland was any Relation of the deceased Widow Graham?

A. He has heard her say many a time, he was related to her deceased Husband, but not to herself.

Q. by the Court – Does he know any other Person to whom Widow Graham made such a Declaration?

A. Yes, to a Joseph Thomas and a John M<sup>c</sup>Kinley who were Lodgers in the House with her.

Q. by Lieut Franklin – When he (the Deponent) told Ensign Sutherland there was a Will made, did he (Ensign Sutherland) ask to see it.

A. Not that he recollects.

**M<sup>rs</sup> Mary Vanwinkle**, an Inhabitant of Brooklyn, Long Island, being duly Sworn, was Examined.

Q. by Lieut. Franklin – was she (the Deponent) present when the Decreased Widow Graham executed a Will in favour of M<sup>r</sup> Hannay?

A. Yes.

Q. Did she (the Deponent) see Ensign Sutherland at Brooklyn the day Widow Graham executed the Will?

A. Yes.

Q. Had she (the Deponent) any Conversation with Ensign Sutherland that day respecting the Will?

A. Yes.

Q. What Conversation did pass between her (the Deponent) and Ensign Sutherland?

A. The Conversation was – Ensign Sutherland said to her (the Deponent) he understood Widow Graham had made a Will – She Answered Yes she had, and ES said he would see farther into it, as he was her nearest Relation; she further says Ensign Sutherland requested her to go with him to take an Inventory of Widow Graham's Effects, and she refused saying she could not go; she recollects nothing else that passed that day.

Q. Did Ensign Sutherland ask her (the Deponent) if she had seen the Will?

A. Not that she recollects.

Q. Does not she (the deponent) keep a Public House?

A. Yes.

Q. Did Ensign Sutherland at any day, come into her (the Deponent's) House and sit down to Dinner with her and Serjeant Areton of the 37<sup>th</sup> Reg<sup>t</sup>?

A. Yes, that day.

Q. Does she (the Deponent) know any thing of Ensign Sutherland's drawing his Sword on the Women that had charge of Widow Graham's house?

A. No.

Q. Did she (the Deponent) ever hear Widow Graham say, that Ensign Sutherland was any Relation to her, the Deceased?

A. No.

**Mary French**, an Inhabitant of Brooklyn, Long Island, being duly Sworn, was Examined.

Q. by Lieut. Franklin – Was she (the Deponent) present when the late Widow Graham executed a Will in favor of M<sup>r</sup> Hannay?

A. Part of the time.

Q. Did she (the Deponent) see Ensign Sutherland at Widow Graham's House, on that day the Will was executed?

A. In the Evening.

Q. Did she hear at that time any Conversation between Ensign Sutherland and M<sup>r</sup> Hannay respecting the Will?

A. When Widow Graham died, Ensign Sutherland asked M<sup>r</sup> Hannay for the key of a Chest for some Cloaths, M<sup>r</sup> Hannay denied him, as he said Widow Graham had made a Will in his (M<sup>r</sup> Hannay's) favour.

Q. Does she (the Deponent) know any thing of Ensign Sutherland's drawing his Sword on the Women that took care of Widow Graham's house?

A. Not further than by their saying so, she did not see it.

**Serjeant William Areton** of the 37<sup>th</sup> Regiment, being duly Sworn, was Examined.

Q. by Lieut. Franklin – Did he (the Deponent) see Ensign Sutherland at Brooklyn the 30<sup>th</sup> of July last, on which day Widow Graham died?

A. Yes.

Q. Did he (the Deponent) and M<sup>rs</sup> Vanwinkle, dine together that day with Ens<sup>n</sup> Sutherland?

A. Yes.

Q. Did he (the Deponent) hear Ensign Sutherland mention any thing concerning a Will that had been Executed by Widow Graham?



A. He did; the day that Widow Graham made her Will was between Eight and Nine o'Clock in the Morning; betwixt twelve and one the same day M<sup>rs</sup> Vanwinkle and he (the Deponent) were sitting down to Dinner, Ensign Sutherland of the 42<sup>d</sup> Regiment came in, and M<sup>rs</sup> Vanwinkle desired him to sit down and eat Dinner with them; during the time of dinner Ensign Sutherland asked M<sup>rs</sup> Vanwinkle if she knew of any Will or Power being made by Widow Graham, she answered, "Yes, she did" – Ensign Sutherland reply'd She (Widow Graham) had acted very improper in making a Will or Power without acquainting him of it, and said he would see further into it, and requested M<sup>rs</sup> Vanwinkle to go to Widow Graham's House 'till he (Ensign Sutherland) took an Inventory of her Goods.

Q. by the Court – Was he in his Uniform Regimentals the day he dined at M<sup>rs</sup> Vanwinkles?

A. He was not.

Q. Did he suppose Ensign Sutherland knew him to be a Serjeant belonging to the 37<sup>th</sup> Regiment?

A. He thinks he did not.

Q. Did he of his own knowledge, know that Widow Graham had executed a Will that day?

A. M<sup>rs</sup> Vanwinkle told him so, on returning from Widow Graham's House.

Q. from the Prisoner – Did any other Person but himself (the Deponent) hear him (Ensign Sutherland) make use of those expressions concerning Widow Graham?

A. M<sup>rs</sup> Vanwinkle, himself, and Ensign Sutherland were together at Dinner.

**Joseph Thomas**, Inhabitant of Brooklyn, being duly Sworn, was Examined.

Q. by the Court – Did he (the Deponent) hear Widow Graham, the deceased, say Ens<sup>n</sup> Sutherland was, or was not, her Relation?

A. He heard Widow Graham say Ensign Sutherland was no Relation by Blood only by Marriage.

**John M<sup>c</sup>Kinley**, Inhabitant of Brooklyn, Long Island, being duly Sworn, was Examined.

Q. by the Court – Did he (the Deponent) ever hear the deceased Widow Graham say, Ensign Sutherland was or was not her Relation?

A. He has heard Widow Graham say, Ensign Sutherland was no Relation of hers only by Marriage.

**M<sup>r</sup> Samuel Bayard Junior**, Secretary to the Province of New York, being duly Sworn, was Examined

Q. by the Court – What passed between him (the Deponent) and Ensign Sutherland of the 42<sup>d</sup> Reg<sup>t</sup> when he (Ensign Sutherland) came up to Hell Gate where he (the Deponent) was, to procure Letters of Administration Signed to Widow Graham's Estate?

A. Ensign Sutherland came to him (the Deponent) at Hell Gate, the day he does not exactly recollect, but thinks it must have been the 31<sup>st</sup> of July from the date of the Administration from his Office; that after expressing his regret that he (Ensign Sutherland) was troubled to come there, he explained to him the nature of an Administration but in consequence of his supposing a proper Fiat was brought to him, he Signed the Administration.

**William Kerbery**, Clerk of M<sup>r</sup> Samuel Bayard, being duly Sworn, was Examined, and a Fiat being produced in Court for his Inspection, the following Question was put by Lieut. Franklin.

Q. Does he (the Deponent) recollect that Fiat being brought to M<sup>r</sup> Bayard's Office?

A. He recollects it to be brought the 31<sup>st</sup> of July last.

Q. How came he to stile Ensign Sutherland Cousin to the deceased Agnes Graham, in the Letters of Administration?

A. In the Fiat nearest of Kin is mentioned; when he (the Deponent) came to fill up the Administration, he asked Ensign Sutherland, What Kin he was to the deceased Widow Graham, he (Ensign Sutherland) reply'd Cousin.

**M<sup>r</sup> Samuel Bayard** being called again before the Court, and the Question being asked, What form of an Oath is Usual and necessary to be taken by the Administrator to the Effects of a Person during Intestate?

A. The form of the Oath is – “You Swear that CD deceased, died without any Will as far as you know or believe, and that you will well and truly Administer all and singular the Goods, Chattels and Credits of the said Deceased, and pay his Debts as far as his Goods, Chattels and Credits will extend, and the law require you – and that you will make a true and perfect Inventory of all the said Goods, Chattels and Credits, and also a Just Account and exhibit the same when thereunto required – So help you God.

**Lieut. Henry David Fraser** of the 42<sup>d</sup> Regiment being duly Sworn, was Examined.

Q. Does he (the Deponent) recollect the day that he acquainted ES [Ens. Sutherland], what had been said of him by M<sup>r</sup> David Campbell?

A. He does not exactly recollect the day; sometime the beginning of August, some Gentlemen coming from Town mentioned to himself and others, that M<sup>r</sup> David Campbell had mentioned Ensign Sutherland’s name in very dishonourable Terms; that next Morning he was in Town and met with Ensign Sutherland and told him, as it was an affair, that concerned every Officer in the Regiment, he would take the liberty of informing him of it; he then related to him what M<sup>r</sup> Campbell had reported of him, which was that he had behaved in a manner unbecoming an Officer, and had (he M<sup>r</sup> Campbell was afraid) perjured himself, he (Ensign Sutherland) told the Deponent he would settle it soon.

Q. Does he (the Deponent) recollect he informed Ensign Sutherland M<sup>r</sup> Campbell had used the word Rascal?

A. He does not – he further says there were Officers of the 42<sup>d</sup> Regiment present in the Coffee House, when he took Ensign Sutherland aside.

**Surgeon William Robertson**, of the 42<sup>d</sup> Regiment, being duly Sworn, was Examined.

Q. by Lieut. Franklin – What disrespectful Words did M<sup>r</sup> Campbell, Notary Publick, use towards Ensign Sutherland?

A. The day after Widow Graham died at Brooklyn, the time he does not exactly recollect, he was standing in Wall Street in Company with Lieut. Hugh Fraser of the 42<sup>d</sup> Regim<sup>t</sup> – M<sup>r</sup> Campbell seemingly in a great hurry, with a small Paper in his hand, said, as near as he recollects – “that Rascal, Villain or Scoundrel Sutherland of Yours, has been taking an Oath at the Surrogates’ Office, he was the nearest Relation of Widow Grahams that was dead, and is gone in consequence to the Secretary’s to Administer – I am going there now to prevent him, and if I meet him there I shall make him look very blue, as he has Sworn to the best of his knowledge she died without a Will, tho’ he knew she had made this, shewing the Paper in his hand, which he (the Deponent) looked at, and asked M<sup>r</sup> Campbell whether the Will was good, to which he reply’d, as good as if wrote on half a dozen Sheets of Parchment; some time after in the same day M<sup>r</sup> Campbell passed again, and said he was going to send an Express after M<sup>r</sup> Sutherland to the Secretary’s; that M<sup>r</sup> Sutherland was in such a damned hurry he was gone to the Country where the Secretary dined, but he hoped his Express would be there time enough to prevent him; that this matter would go nearly to cost M<sup>r</sup> Sutherland his Commission.

**Lieut. Hugh Fraser** of the 42<sup>d</sup> Regiment, being duly Sworn, was Examined.

Q. by Lieut. Franklin – Did he (the Deponent) hear M<sup>r</sup> Campbell use disrespectful language concerning Ensign Sutherland, by saying he was a Rascal, Villain or Scoundrel, or Words to that effect, in the presence of Doctor Robertson?

A. He did.

Q. What did he understand M<sup>r</sup> Campbell said?

A. He heard Mr Campbell say, What a Villain M<sup>r</sup> Sutherland was for making Oath that he was the nearest of Kin to the deceased Widow Graham, and that she had died without a Will, when he (Ensign Sutherland) knew a Will was made in favor of M<sup>r</sup> Hannay, and that he had Perjured himself or bordered on Perjury.

**Lieut. Alexander Stewart**, of the 42<sup>d</sup> Regiment, being duly Sworn, was Examined.

Q. by Lieut. Franklin – Was not he (the deponent) sent Officially, in behalf of the Subalterns, to acquaint Ensign Sutherland, that Scandalous Reports had been spread against him by M<sup>r</sup> Campbell?

A. He was – he met Ensign Sutherland and informed him that M<sup>r</sup> Campbell said he had Perjured himself or bordered on Perjury, and that M<sup>r</sup> Campbell said he was a disgrace to his Corps or Country.

Q. When did he give Ensign Sutherland such Information?

A. On Friday the 6<sup>th</sup> or 7<sup>th</sup> of August, and Ensign Sutherland said he would clear up the matter on the Monday following as the Matter was referred to Arbitration.

Q. Did he ever take any steps to clear the matter up?

A. Not that he heard of, ‘till the Subalterns refused doing duty with him, and then he did not do it any ways satisfactory to the Subalterns.

Q. What does he know of M<sup>r</sup> Sutherland’s breach of Promise?

A. By a Letter, which Letter bearing date August 23<sup>d</sup> 1780 being produced for Court and read, contained Ensign Sutherland’s promise of future good behavior, on Account of some improprieties by him committed and resented by the Subalterns of the Regiment, which promise Ensign Sutherland by no means kept.

Q. Did he take any steps to clear up those Improprieties by him Committed, at the time the letter mentioned was dated?

A. He could not as he was at that time put in Arrest, to the best of his recollection.

**The Court Adjourned** ‘till Tomorrow Morning 10 o’Clock.

**Friday the 14<sup>th</sup> September 1781**

**The Court** being Met pursuant to Adjournment

**Captain Robert Simpson** of the 22<sup>d</sup> Regiment, being Ordered on Command, and there being a sufficient Number left, to Constitute a Court martial, without Swearing in another Member, the Court proceeded according without him – and,

**Lieut Alexander Stewart**, being called again before the Court, was Examined,

Q. by the Court – What reasons had he (the Deponent) for saying Ensign Sutherland by no means kept the promise he made in his Letter dated August 23<sup>d</sup>, 1780, and addressed to the Subalterns of the 42<sup>d</sup> Regiment?

A. On Account of his (Ensign Sutherland’s) bad behavior since the promise made in that Letter.

Q. Does that bad behavior, he (the Deponent) speaks of, allude to the matter Ensign Sutherland now stands accused of before the Court?

A. It does.

**Alice Cavan**, an Inhabitant of Long Island, being duly Sworn, was Examined.

Q. by Lieut. Franklin – Was she (the Deponent) present when Widow Graham, deceased, executed a Will in favor of M<sup>r</sup> Hannay?

A. Yes.

Q. Did she (the Deponent) see Ensign Sutherland at Widow Graham’s House, the day that Will was Executed?

A. Yes.

Q. Was not that day the 30<sup>th</sup> of July?

A. She does not recollect the day.

Q. by the Court – What was the deceased Widow Graham’s Christian Name?

A. Ann, was her Christian Name, as she (the Deponent) thinks.

Q. Had she (the Deponent) any Conversation with Ensign Sutherland on that day?

A. All the Conversation was - she said to Ensign Sutherland the day Widow Graham died, that every body looked after her at that time, now she was so low, but nobody came to see her before; she does not recollect any further Conversation.

**Serjeant Major Alexander M<sup>c</sup>Intosh**, of the 42<sup>d</sup> Regiment being duly Sworn, was Examined.

Q. by Lieut. Franklin – Did he (the Deponent) know the deceased Widow Graham, who died at Brooklyn?

A. Yes.

Q. Does he (the Deponent) know any Relation of the deceased?

A. Yes a Sister's Daughter, from whom the deceased Widow Graham had a Letter some time about March last past.

Q. by the Court – Does he (the Deponent) know of any Relations of the late Widow Graham's Husband, also deceased?

A. Yes, one Brother a Minister of the Gospel, and a Farmer.

Q. Did he (the Deponent) ever hear the deceased Widow Graham say, that Ensign Sutherland was a relation, either of her (the Widow Graham's) or her Husband deceased?

A. He did hear her say, he (Ensign Sutherland) was a Relation of her Husband's.

Q. Did he (the Deponent) ever hear the Widow Graham say, ES was not related to her except by Marriage?

A. He did.

Q. Can he (the Deponent) speak any thing of the Family or Relationship, from his own knowledge?

A. He cannot, only by Letter he has seen, and what he had been told by Widow Graham.

Q. by the Prisoner – Does he (the Deponent) know any nearer Relation in the Country to the deceased Widow Graham, than he (the Prisoner) excepting a Brother of his (the Prisoner's) who is at Charles Town South Carolina?

A. He does not.

Q. by the Court – Does he (the Deponent) know the Prisoner to be any relation at all to the deceased Widow Graham?

A. All that he knows is, he is a Relation by Marriage, as reported.

Q. by Lieut. Franklin – Does he (the Deponent) know the Prisoner (Ensign Sutherland) has an elder Brother to the Southward on this Continent?

A. Yes.

Q. by the Court – Does he (the Deponent) know the Christian Name of the deceased Widow Graham?

A. Yes, Ann.

**Alice Cavan**, being called before the Court again, and questioned.

Q. by Lieut. Franklin – Was the deceased Widow Graham perfectly sensible at the time she Executed the Will, in favor of M<sup>r</sup> Hannay?

A. To the best of his knowledge, she (Widow Graham) was sensible.

Q. from the Court – Was she (the Deponent) present when Widow Graham signed the Will?

A. She gave the deceased the Pen in her hand, but turned her back on her whilst she was Signing.

Q. Did she (the Deponent) hear Ensign Sutherland's Name mentioned to the deceased Widow Graham during the time she was Executing her Will?

A. Yes, she was asked several times to send for Ensign Sutherland, as he was her nearest Relation, and she (the deceased) Answered, he (Ensign Sutherland) was no ways related to her.

Q. by Lieut. Franklin – Did she (the Deponent) ever hear the deceased say, she had rather throw he Money into the River than leave it to Ensign Sutherland, or Words to that effect?

A. She never heard her say any thing of the matter.

**Lieutenant Franklin** in the Name of the Subalterns of the Forty Second Regiment, having Signified to the Court, that the Prosecution was Closed, the Prisoner Ensign Sutherland, requested of the Court to be allowed 'till Monday the 17<sup>th</sup> of this Instant September, to prepare his Defense; which request having been taken into Consideration and granted by the Court.

**The Court Adjourned**

Accordingly to Monday the 17<sup>th</sup> of September 10 o'Clock.

**Monday the 17<sup>th</sup> Sept<sup>r</sup> 1781**

**The Court** being Met pursuant to Adjournment.

**The Prisoner** Ensign Sutherland Opened his Defence in the following Address to the Court. M<sup>r</sup> President and Gentlemen of the Court Martial.

It is my misfortune to appear before this Court, charged by the Subalterns of the Regiment, to which I have the honor to belong, with having acted in a manner unbecoming the Character of an Officer and a Gentleman. Painful and distressing as my Situation has been, I have hitherto borne up under it, and doubt not of clearing myself to the satisfaction of the Court, from every part of the Charge, as the whole will appear to be owing to the unprovoked persecution of one Man, I mean M<sup>r</sup> David Campbell, who from Motives which I cannot account for, seems to have exerted every power to ruin my Character, and deprive me of my Commission.

The principal Charge brought against me being my Conduct relative to the Estate of the late Widow Graham, and my not clearing myself sooner from M<sup>r</sup> Campbell's aspersions, I shall begin with a simple Narrative of the Circumstances attending those matters, together with any motives of Action.

The latter end of the Month of July, having heard that Widow Graham, to whose late Husband I was related, was very dangerously ill, and knowing she had no nearest Relation in this Province than myself I thought proper to enquire after her, and from the Accounts I obtained, she had for some time been delirious and was not expected to live; I then thought it my duty to take care of her Effects for the use of her Sister's Daughter in Edinburgh, and for that purpose went to the house, designing to take an Inventory but was opposed by M<sup>r</sup> Hannay, who told me she had that Morning declared him her Heir, which I understood to be Verbally, as no mention was made of any written Will, nor indeed did he use the word Will; had he told me she had made a Will in Writing I should have naturally desired to see it, but he neither offered to shew it me, nor did I ask for it, not once supposing that there was any Writing, his expression being only that she had left him her Heir, at the same time I found him in possession of Widow Graham's Keys which he refused to deliver up. Previous to my seeing M<sup>r</sup> Hannay I had conversed with Doctor Allmain, the Gentleman informed me that she was delirious and had been so for two preceeding days and Nights; after parting with Hannay I again saw Doctor Allmain, and mentioning what I had heard of her declaring Hannay her Heir that Morning, he repeated to me the Circumstances of her long continued delirium, and assured me that she was not in a state of mind capable of making a Will at the time Hannay pretended she made the declaration in his favor – Satisfied with this declaration from a Gentleman of Skill and Character in his profession I came to New York and laid the Case before an Attorney who advised me to place some trusty Person in the House to prevent Embezzlement untill Widow Graham either died or recovered her Senses - That Evening Widow Graham died, and the next Morning I again called on my Attorney who observed to me, that Words spoken by a Person out of their Senses were of no effect in Law, and could not constitute a Will; he therefore advised me to apply for Administration immediately, to get the keys from Hannay and remove him from the possession of the deceased's Effects, on which he supposed his pretensions for Heirship would be no more heard of; I accordingly waited on M<sup>r</sup> Ludlow the Surrogate, whose Office it is to examine the pretensions of those who apply for Letters of Administration, and grant a Fiat to whomever he shall judge intitled; he then Administers the Oath which M<sup>r</sup> Bayard produced to the Court, and on his Fiat the Secretary to the province issues the Administration. To M<sup>r</sup> Ludlow then I went and so far was I from intending any thing

unfair or clandestine that I repeated to him what I had told my Attorney, that M<sup>r</sup> Hannay said she had left him her heir, but that she was delirious at the time; this he thought no objection to granting me the Administration, telling me at the same time that were it a good Will, yet as a Nuncupatory Will, M<sup>r</sup> Hannay would only be intitled to Fifty Pounds.

I now appeal with confidence to the Court, whether in this whole transaction there was the least appearance of any Act unlike that of a Gentleman. The Doctor assured me in the most positive manner that she was incapable of making a Will at the time M<sup>r</sup> Hannay mentioned. This information I laid before my Attorney, who on strength of it, advised me to take out Administration, and the Surrogate himself was of opinion that it ought under every circumstance to be granted to me: – I then took the Oath, which after all is not an absolute Oath; the Words are, “that I do not know or believe the deceased left any Will.” Could I say that I knew there was a Will when I had never seen any or believ’d that a Will could be made by her. If I believed the testimony of Doctor Allmain I could not believe there was a Will. A Will in that Oath means a Legal Will, had I known of or had I seen a Paper purporting to be a Will framed up in a fit of delirium, I might still have safely taken that Oath, as such a Paper would not have been a Will, or taken any kind of effect as such. The Case however was that at that time I was a stranger to any written Paper; to this I may add that there were many other reasons for doubting the Validity of the Request in favour of Hannay: Hannay and the deceased had left a difference which I believe never was Accommodated; this rendered it improbable that she would leave any thing to him; the People too around her had given reason to believe they would endeavor to obtain a Will; M<sup>rs</sup> Vanwinkle in particular had so worried and teased Widow Graham, by pinching her, pulling her and asking repeated questions to find out whether she was sensible or not, that a Lad sent by Doctor Allmain with medicines, was shocked at the barbarity of the treatment, and could not help telling it to the Doctor when he went home; for my own part I do not believe, nor does the Doctor that Widow Graham was in her Senses at the time of making the pretended Will in favour of Hannay; but, even were it possible to suppose she had a short Interval, there is still reason to believe it bad in Law. The Law says that if a Man is at the point of Death, and is hardly able to speak so as to be understood, and doth not of his own accord make or declare his Testament, but at the Interrogation of some other demanding of him whether he makes this or that Person his Executer? And whether he gives such a thing to such a Person? Answers Yes, or I do – In this case it is to be considered whether the Person that asks the Testator these questions be a suspected Person, or be importunate to have the Testator speak, or asks such questions for his own advantage: As, do you make me Executer? Or do you give me this or that? And thereupon the Testator Answers Yes: In this case it shall be presumed that the Testator answered Yes, rather to deliver himself from the importunity of the Party than of any intent to make his Will, for it is generally painful to a Man in that extremity either to speak or to be spoke to – If a man makes a Will in his Sickness at the over importunity of his Wife, to the end he may be quiet, this shall be said to be a Will made by restraint and shall not be a good Will – And this it is probable was the case with the deceased Widow Graham if she really had any remnant of Sense which I believe she had not – This Gentlemen, did the case appear to me, and these were my motives for taking the Oath I did, in doing which as my Conscience Acquits me I doubt not but I shall also be acquitted by you. One piece of Evidence however I must take notice of here, it is from M<sup>r</sup> Robertson the Surgeon who informed the Court, that M<sup>r</sup> Campbell said I had taken an Oath at the Surrogate’s Office that I was the nearest relation of Widow Graham, now this must have been a Wilful misrepresentation by M<sup>r</sup> Campbell, as he must know that I do not take any Oath as to my Relationship: The Oath M<sup>r</sup> Bayard has produced, which says nothing concerning kindred, the Surrogate takes that from my simple Information.

I have now finished as to the matter of Perjury, and shall now proceed with the Steps I afterward took: – Finding that there was a written Paper which Hannay insisted upon as a Will, I prepared to dispute it’s Validity, and different methods of deciding the point were proposed by my Attorney on one side, and M<sup>r</sup> Campbell as Attorney to Hannay on the other; at length after some days, it was agreed to leave it to Arbitration, but different Accidents prevented its being determined until after I was under Arrest. (M<sup>r</sup> Campbell in his Evidence says it was unavoidably put off from time to time) In the interim what M<sup>r</sup> Campbell had said to my prejudice, occasioned me to be spoke to on the subject by more than one of the Subaltern Officers of the Regiment, in consequence of which I wrote and sent the following

letter, including two Certificates, the one from the Surrogate, the other from my Attorney. Copies of which I beg leave to read to the Court.

Sir,

For the satisfaction of the Gentlemen of the Regiment, as well as vindicating my honor, I send you inclosed a Certificate from M<sup>r</sup> Ludlow, before whom I took the Oath, and also from M<sup>r</sup> Handy the Attorney who advised me in the matter. I shall say nothing at present of the person who raised the infamous aspersion against me.

I beg leave to take a view of his Character in North Britain as soon as the matter in dispute is determined which will be Monday or Tuesday next I shall give further proofs of vindicating my honour for the satisfaction as well as my own.

New York

August 1781

Yours &c.

David Sutherland

Ensign 42<sup>d</sup> Reg<sup>t</sup>

L<sup>t</sup> [Gavin] Drummond 42<sup>d</sup> Reg<sup>t</sup>

Ensign David Sutherland having taken out Letters of Administration on the Estate of Agnus Graham deceased, since which a Writing has been produced, Signed with the Mark of Annie Graham, and Witnessed by two Witnesses, which Writing it has been suggested was shewn to Ensign Sutherland previous to his taking the Administration Oath, and that he was guilty of Perjury &ca, and desiring my Certificate of what passed before me on the subject – I do certify that upon the usual questions being asked, Ensign Sutherland told me that he did not know or believe there was any Will, as he had not seen any, tho' he had enquired; That M<sup>r</sup> Hannay told him he had taken possession of Widow Graham's Effects at her request some short time before her decease, and that he was to be her Heir – but M<sup>r</sup> Sutherland insisting upon his right to the Administration as nearest of Kin, and alledging M<sup>r</sup> Hannay was greatly Indebted to the Deceased; Administration was granted in the usual form, and the Administrator in his Oath Swears, "that Agnus Graham died without making a Will, so far as he knew or believed" – the Oath not being positive, but only going to his belief – I am of opinion that he cannot be guilty of Perjury in the present instance, not even if he had seen the Writing purporting to be her Will, as he might not have thought it to be a Will, it being a matter of more opinion or belief, especially as the validity of this Writing must depend on a variety of circumstances, such as it's being duly Signed, Sealed and properly Witnessed under the Statute, and the Testatrix being of sound Mind and memory at the time of making it: All which must be ultimately determined upon a hearing of the cause, and if found to be a good Will, the letters of Administration will be revoked, otherwise they will stand confirmed.

(Signed) Cary Ludlow

August 3<sup>d</sup> 1781

Surrogate

**A Charge** of Willful Perjury having been industriously propogated against Ensign Sutherland, I think it incumbent on me to Certify, that Ensign Sutherland applied for the Administration to Widow Graham's Estate by my Advice, grounded on the declaration of the Doctor who attended her, who is of opinion she was Insane at the time of making a pretended Will which has since appeared. When Ensign Sutherland stated the Case to me, it was nearly in the Words mentioned by M<sup>r</sup> Ludlow, that Hannay had informed him, the Deceased had left him her Heir, and on my asking if the bequest was in Writing, he answered that he did not know, but believed not. I then delivered it as my Opinion, "that loose words from an Insane Person would not be considered as a Will," and advised him to be speedy in procuring the Administration to prevent litigation with Hannay, who, I then supposed, would give no further trouble.

Elias Hardy

August 6<sup>th</sup> 1781

Att<sup>y</sup> at Law in N York.

This, I hoped would have given me time sufficient to get the Arbitration decided, when I proposed to have laid the testimony of the several Witnesses which were to be taken on Oath before the





my Corps and my Country; had intimated from the first that I ought be deprived of my Commission; and lastly by charging his own delays on me had brought my brother Officers to refuse doing Duty with me, and when I demanded satisfaction threw an Andiron at my head – Should I thus provoked beyond bearing, have been guilty of any indiscretions, I trust the Court will feel for an injured Officer, and make every proper allowance.

Thus have I answered the principal matter alleged against me – As to the other Charges (one excepted) as no proof has been adduced, I shall content myself with a general denial – The Charge yet remaining to speak to relates to the Letter formerly wrote by me to the Subalterns; the Court has been informed that the breach of promise insisted on consists in my behaviour relative to Widow Graham's Affairs – I humbly hope the Court will be of opinion that I have justified myself in that whole transaction, which, if it should be the case, will give me the solid satisfaction of reflecting, that the most Minute and rigorous inquiring into my conduct, has produced nothing to affect my honour and Character as an Officer and a Gentleman; and I shall hope to be again received by my brother Officers as a person much injured, but not unworthy to Rank with them or to do duty in the Regiment.

I shall conclude with observing that this prosecution being carried on in the name of the whole Subalterns of the Regiment, precludes me from calling any Gentleman of the Corps to my Character, as I should otherwise naturally do, as whatever may be their private opinion no Gentleman would choose to put it in opposition to so respectable a Body.

I leave my defence to the Judgment of the Court, whose Sentence, I flatter myself, will clear me from the foul aspersions thrown out against me, and thereby restore me to a Service I honor, and to what is dearer to me than anything, the good opinion of my Brother Officers.

The following Witnesses were Examined in support of the Defence.

**Thomas Leech**, Private Soldier in the 42<sup>d</sup> Regiment, being duly Sworn, was Examined.

Q. by the Prisoner – What does he (the Deponent) know, relative to his (the Prisoner's) going to M<sup>r</sup> David Campbell's, on Saturday the first of this Instant September?

A. That on a Saturday in the Evening after Gun fire, the beginning of this Month September, he saw Ensign Sutherland at M<sup>r</sup> Campbell's door and talking with M<sup>r</sup> Campbell – He (Ensign Sutherland) was on the steps of the door; that he (the Deponent) saw Ensign Sutherland knocked down; upon getting up he drew his Sword; that he (the Deponent) then ran and called the Sergeant of the Guard; before he (the Deponent) came out of the Guard House, some one cry'd Murder, but who, he (the Deponent) cannot tell; when he (the Deponent) came out, Ensign Sutherland was calling for the Serjeant of the Guard to take M<sup>r</sup> Campbell Prisoner, which the Serjeant did; that he knows nothing further what happened.

Q. by the Court – Who was the Person that knock'd the prisoner down?

A. M<sup>r</sup> Campbell, to the best of his knowledge.

Q. On what occasion was he (the Deponent) at or near M<sup>r</sup> Campbell's House, when this dispute and struggle happened between him and Ensign Sutherland?

A. He was on Colonel Bayard's Guard, which Guard is kept close to the house, and was sitting in a Boat that was on the land near to the house.

Q. Did he (the Deponent) see the Stroke given, that knocked Ensign Sutherland down?

A. He saw them (M<sup>r</sup> Campbell and Ensign Sutherland) struggling with their hands together, and he saw Ensign Sutherland fall down.

Q. Was it before, or after the Struggle, that Ensign Sutherland drew his Sword?

A. 'Twas after Ensign Sutherland got up again he drew his Sword; he (the Deponent) did not see the beginning of the affray.

Q. Did he (the Deponent) see anything further that happened?

A. He saw M<sup>rs</sup> Campbell seize hold of the Blade of Ensign Sutherland's Sword, and endeavor to take the Sword from him, which M<sup>r</sup> Sutherland did not part with; how Ensign Sutherland got his Sword from M<sup>rs</sup> Campbell, he did not see, as he was called on to go with M<sup>r</sup> Campbell to the Guard house.

Q. by the Prisoner – Did he (the Deponent) hear M<sup>r</sup> Campbell call him any disrespectful Names, such as perjured Villain, Rascal, or words to that effect?

A. In Ensign Sutherland's absence, while M<sup>r</sup> Campbell was Prisoner, he heard M<sup>r</sup> Campbell say Ensign Sutherland was a perjured Rascal, and no Gentleman.

Q. by Lieut. Franklin – Did he (the Deponent) see Ensign Sutherland put his hand to his Sword, and must he have seen it, if it happened before Ensign Sutherland was knocked down or pushed off the steps?

A. He saw no such thing; if he (Ensign Sutherland) had put his hand to the Sword before he was pushed down the steps, he must have seen it.

Q. What distance was he (the Deponent) from Ensign Sutherland and M<sup>r</sup> Campbell?

A. To the best of his knowledge, about twenty Yards.

Q. Was there any Paling or Fence, between him (the Deponent) and them, namely Ensign Sutherland and M<sup>r</sup> Campbell?

A. There was a Paling.

Q. Was not M<sup>r</sup> Campbell's back to him (the Deponent) at different times during the struggle?

A. At different times he cannot answer to; when he (the Deponent) first saw them, M<sup>r</sup> Campbell was standing with his back to his own house, and facing Ensign Sutherland.

Q. Could he at all times, before Ensign Sutherland was knocked down, have seen his Ensign Sutherland's) Sword?

A. He could not see the Sword at all times, but is positive, if Ensign Sutherland had drawn his Sword, he (the Deponent) must have seen it.

Q. by the Prisoner – Did not he (the Deponent) hear him (Ensign Sutherland) repeatedly ask M<sup>rs</sup> Campbell to let go the Sword, before and after M<sup>r</sup> Campbell was taken to the Guard?

A. He heard him (Ensign Sutherland) ask and intreat her to let go the Sword, and she would not.

Q. by Lieut. Franklin – Did not M<sup>rs</sup> Campbell seize hold of the Sword, to prevent him (Ensign Sutherland) doing an Injury to her Husband?

A. He cannot tell.

Q. had M<sup>r</sup> Campbell any Weapon of defence, when Ensign Sutherland's Sword was drawn?

A. He did not see any thing; he was absent great part of the Affray; they were in the middle of the Yard when he (the Deponent) came a second time.

Q. Did he not see the Sword drawn; after M<sup>r</sup> Campbell was a Prisoner in the Guard?

A. Yes; Ensign Sutherland had hold of the hilt, and M<sup>rs</sup> Campbell held it by the blade, after M<sup>r</sup> Campbell was sent away Prisoner.

Q. by the Court – Did he see Ensign Sutherland put up his Sword immediately after M<sup>rs</sup> Campbell quitted the hold?

A. He did not see her quit hold of the Sword.

Q. by Lieut. Franklin – Could not Ensign Sutherland have reached M<sup>r</sup> Campbell with his drawn Sword, after M<sup>r</sup> Campbell was Prisoner?

A. Yes he might, but M<sup>rs</sup> Campbell had hold of the blade and would not quit it, he did not see Ensign Sutherland make any offer.

**Charles Stewart**, Private Soldier in the 42<sup>d</sup> Regiment, being duly Sworn, was examined.

Q. by the Prisoner – Was he (the Deponent) the Person who was sent by him (the prisoner) on a Message to M<sup>r</sup> Campbell, and what message was sent to M<sup>r</sup> Campbell?

A. He was the Person; sometime since, the time he cannot exactly recollect – Ensign Sutherland desired him (the Deponent) to go and tell M<sup>r</sup> Campbell at his house, that a Gentleman wanted to speak to him; that M<sup>rs</sup> Campbell said, he might tell the Gentleman to come in; and M<sup>r</sup> Campbell said he did not want any thing to say to him; that he delivered the Answer to Ensign Sutherland accordingly; that then ES went towards M<sup>r</sup> Campbell's house; M<sup>r</sup> Campbell was standing at the door, and he believes M<sup>r</sup> Campbell and Ensign Sutherland saluted each other; that some words then passed, which he (the Deponent) could not hear; M<sup>r</sup> Campbell then pushed Ensign Sutherland down the steps, then he knocked

him (Ensign Sutherland) a second time down the Steps, then the Women came out, and M<sup>r</sup> Campbell ran in for a Dog Iron; when he came out again, he (M<sup>r</sup> Campbell) struck Ensign Sutherland on the back of the Neck, and knock'd him down again; that then M<sup>r</sup> Sutherland call'd for the Guard, drew his Sword and ordered M<sup>r</sup> Campbell to the Guard; the Guard then took M<sup>r</sup> Campbell away, and the Woman catch'd hold of Ensign Sutherland's Sword and endeavored to get it from him; that he desired her in a laughing manner to let go the Sword, and the Sword being drawn away cut her hand.

Q. from the Court – did he (the Deponent) see Ensign Sutherland go into M<sup>r</sup> Campbell's house?

A. He went no further than the steps leading to the house.

Q. by the Prisoner – Did not he (the Deponent) hear him (Ensign Sutherland) request M<sup>rs</sup> Campbell to quit hold of the Sword at the same saying, he would not hurt M<sup>r</sup> Campbell with it, and also attempt to loosen her hand from it?

A. Yes; ES frequently requested her to let go her hold.

Q. Did he (the Deponent) hear M<sup>r</sup> Campbell call him (the Prisoner) perjured rascal or Villain, or Words to that effect?

A. He did.

Q. Did he (the Deponent) see him (the Prisoner) make any pass or push at M<sup>r</sup> Campbell with his Sword, before M<sup>r</sup> Campbell got the Andiron?

A. He did not.

Q. by Lieut. Franklin – as he (the Deponent) present from the beginning to the end of the Affray?

A. He was.

Q. Did he (the Deponent) see Ensign Sutherland attempt to draw his Sword before he was knock'd down by M<sup>r</sup> Campbell?

A. He did not see him offer to draw 'till after he (Ensign Sutherland) was knock'd down three times.

Q. from the Court – What distance was he from Ensign Sutherland and M<sup>r</sup> Campbell, during the time of the struggle?

A. As near as he can say, within twelve or fourteen Yards.

Q. by Lieut. Franklin – Before Ensign Sutherland was knock'd down, was he (the Deponent) hindered from seeing Ensign Sutherland's Sword at any time, by M<sup>r</sup> Campbell being with his back to him (the Deponent) or any other circumstance?

A. There was nothing to hinder his seeing what passed, but the Gate, which was in reality no hindrance, as he could see thro' the gate very well.

Q. by the Court – Was he (the Deponent) desired to deliver privately, that Message sent by him from Ensign Sutherland to M<sup>r</sup> Campbell?

A. He was not desired to deliver the Message privately.

Q. by Lieut. Franklin – When M<sup>r</sup> Campbell called Ensign Sutherland opprobrious names, was not he (M<sup>r</sup> Campbell) prisoner in the Guard Room?

A. He was not in the Guard Room; he was going toward the Guard House.

Q. Was not he (M<sup>r</sup> Campbell) Prisoner with the Guard at that time?

A. He was.

Q. from the Court – Did he (the Deponent) know what were Ensign Sutherland's intentions, when he sent him on a Message to M<sup>r</sup> Campbell?

A. He did not.

Q. When he (the Deponent) told M<sup>r</sup> Campbell in his Message, "a Gentleman wanted to speak with him" how did M<sup>r</sup> Campbell know who that gentleman was, as it seems M<sup>r</sup> Campbell sent back for answer, "he did not want to have any thing to say to him"?

A. He supposes M<sup>r</sup> Campbell saw Ensign Sutherland from the Window, as he came near the Guard house.

Q. Where was Ensign Sutherland, when he sent him (the Deponent) on a Message to M<sup>r</sup> Campbell?

A. He was just on the outside of M<sup>r</sup> Campbell's Yard gate, near a canoe that lay on the dry land.

Q. Did he at any time see Ensign Sutherland run away from Campbell during the struggle.

A. He did not; he (Ensign Sutherland) did not go off; 'till after M<sup>r</sup> Campbell was sent prisoner to the Guard.

Q. by Lieut. Franklin – Did he hear any one cry out Murder?

A. He heard Ensign Sutherland, when he called for the Guard.

A. Was he (Ensign Sutherland) at the time when he called out Murder, running away or retreating from M<sup>r</sup> Campbell?

Q. No, he was below, and three or four Women were fastened on his (Ensign Sutherland's) hair.

**The Evidence Thomas Leech**, being called again before the Court and Questioned, Whether he at any time during the struggle between Ensign Sutherland and M<sup>r</sup> Campbell, saw ES run away from M<sup>r</sup> Campbell, Answered, He did not.

**George Matthewson**, Private Soldier in the 42<sup>d</sup> Regiment, being duly Sworn, deposed, That about a Month since in the Evening, he (the Deponent) was one of the Guard of the 42<sup>d</sup> Regiment near M<sup>r</sup> Campbell's house, that Ensign Sutherland came and asked the Guard if they had seen M<sup>r</sup> Campbell, that he (the Deponent) asked if it was M<sup>r</sup> Campbell that lived at that house, and he told Ensign Sutherland that he saw M<sup>r</sup> Campbell walking towards the house nearest his own; that some one also made answer. M<sup>r</sup> Campbell was gone into his own house; that Ensign Sutherland then sent Charles Stewart to see if M<sup>r</sup> Campbell was at home or not; the Man went, but what Answer was brought to Ensign Sutherland, he (the Deponent) does not know; that Ensign Sutherland afterwards went to the door of the house, up some steps, and saluted M<sup>r</sup> Campbell at the door; Ensign Sutherland then turned to come away from the door, and M<sup>r</sup> Campbell came after him with a Dog Iron; that M<sup>r</sup> Campbell knock'd Ensign Sutherland down, but whether was with the Dog iron or not, he cannot tell; when Ensign Sutherland got up again he took hold of the Dog Iron and drew his sword, when the sword was drawn, two or three Women came out, and one of the Women, he cannot say who, took hold of the blade of the Sword, then he (the Deponent) on seeing the disturbance, called the Serjeant of the Guard; when the Serjeant came out, Ensign Sutherland ordered the Guard to take M<sup>r</sup> Campbell prisoner; during the time the Guard was conducting M<sup>r</sup> Campbell to the Guard House, the Women gathered about Ensign Sutherland; some one took hold of his Sword, the other fastened on his hair; he (Ensign Sutherland) desired the Woman who held the Sword let go, saying he did not want to hurt any of them; two or three of the Guard then went up and took the Women away from Ensign Sutherland; that the Woman cut her fingers in holding the Sword; when Ensign Sutherland was released from the Women he went away and said no more; As Ensign Sutherland was going by the Guard House door where M<sup>r</sup> Campbell was standing, M<sup>r</sup> Campbell doubled his Fist and called Ensign Sutherland a Rascal and Villain.

Q. from the Court – Was Ensign Sutherland standing with or in sight of the Guard, when he sent Charles Stewart on the Message to M<sup>r</sup> Campbell?

A. He was standing close by the Centry, and many of the Guard were present at the same time.

Q. Did Ensign Sutherland desire any of that Guard to follow him to M<sup>r</sup> Campbell's house, before the Affray happened?

A. He did not.

Q. Did he hear Ensign Sutherland cry out Murder?

A. If Ensign Sutherland cry'd Murder he did not hear him, as he ran to call the Guard.

Q. By Lieut. Franklin – What distance is the Guard Room from the place Ensign Sutherland stood, when he sent the Message to M<sup>r</sup> Campbell.

A. About twelve Yards.

Q. from the Court – Did he hear Ensign Sutherland say, what he wanted with M<sup>r</sup> Campbell?

A. He did not.

**The Evidence Charles Stewart**, being called before the Court again and questioned, Whether Ensign Sutherland was standing with or in sight of the Guard, when he sent him on a Message to M<sup>r</sup> Campbell.

Q. He was at the canoe, where several of the Guard were.

**Corporal Donald McLean**, of the 42<sup>d</sup> Regiment, being duly Sworn, was Examined.

Q. Did he see the Affray that happened between Ensign Sutherland and M<sup>r</sup> Campbell?

A. He did.

Q. Did he during the time of the Affray, hear Ensign Sutherland call out Murder?

A. He did not hear Ensign Sutherland, he heard the Women that were about him call out Murder.

Q. from the Court – How far might he (the Deponent) be distant from the place where the Affray happen'd?

A. About thirty yards.

Q. from Lieut. Franklin – Was not he and the Serjeant relieved from the Guard, about twelve o'Clock that Night?

A. Yes.

Q. Was not he and the Serjeant relieved on account of the part they took in the Affray?

A. He cannot tell, as no Crime was sent either against him or the Serjeant.

**The Court Adjourned** 'till tomorrow Morning 10 o'Clock.

**Tuesday September 18<sup>th</sup> 1781**

**The Court** met pursuant to Adjournment.

**M<sup>r</sup> Elias Hardy** Notary Publick and Inhabitant of New York, being duly Sworn deposed, That on the thirtieth of July last, as near as he recollects, he (the Deponent) met Ensign Sutherland in the street, who told him a Widow a Cousin of his, who lived at Brooklyn, lay at that time dangerously ill, that one Hannay a Man who owed her Money, had possessed himself of the keys belonging to this Woman, and pretended that he was to be her heir, he (the Deponent) enquired into the nature of his pretensions, and was told, that it arose from some Words which his Cousin had made use of that Morning – Ensign Sutherland at the same time inform'd him (the Deponent) that his Cousin had been delirious for some considerable time, and that the Doctor who attended her, had informed him that she was insane at the time those Words came from her, namely “at the time she declared M<sup>r</sup> Hannay her Heir” – He (Ensign Sutherland) then advised with him (the Deponent) what steps he should take; his advice was, that he should put some proper Person into the house to take care of his Cousin's property, untill she either recovered her Senses or should die – The next Morning early M<sup>r</sup> Sutherland called upon him (the Deponent) and inform'd him his Cousin was dead, and again repeated what he had said before concerning Hannay, ‘that he was considerably indebted to the deceased and in possession of her keys” – he (the Deponent) enquired again respecting those pretensions on which Hannay stiled himself heir to the Deceased, and was again told, “that the Doctor declared she was insane at the time” – All this time he (the Deponent) had understood that nothing but some loose Words had dropp'd from the deceased, nor did he (the Deponent) hear any thing of a Will in Writing untill afterwards – He (the Deponent) therefore advised him (Ensign Sutherland) to take out Letters of Administration immediately, which he accordingly did – Soon afterwards he (the Deponent) was informed that a M<sup>r</sup> Hannay had been at his office in his absence to take his advice, respecting a Will of a Widow graham; this was the first notice he (the Deponent) had there was a Will in Writing; he then advised Ens<sup>n</sup> Sutherland to enter a caveat against proving this Will, without Notice being first given to him (Ensign Sutherland) which was done in the usual form – He (the Deponent) then desired that the Witnesses of her Widow Graham's Insanity at the time the Will was made, might be sent for, and took such steps as he thought necessary to prove the Will invalid; for this purpose he (the Deponent) attended at the Surrogate's Office with Ensign Sutherland,

where they met M<sup>r</sup> Campbell, M<sup>r</sup> Hannay and many other persons, who they (Mess<sup>rs</sup> Campbell & Hannay) proposed to examine as Witnesses; but the Surrogate having some doubt, whether he could examine the Witnesses, so as that their testimony might be made use of to determine the dispute, unless he had first a special order for that purpose from the Governor, nothing was done at that Meeting – Some days after he (the Deponent) was informed by M<sup>r</sup> Campbell, that M<sup>r</sup> Hannay was willing to leave the matter to Arbitration, a proposal which he (the Deponent) had made in behalf of Ensign Sutherland when M<sup>r</sup> Hannay was first met at the Surrogate's Office, and which offer was then declined; - this proposal he (the Deponent) in behalf of Ensign Sutherland closed with, and the manner in which they could proceed was settled; M<sup>r</sup> Campbell and himself (the Deponent) were to have Sworn the Witnesses, and their Evidence was to have been taken down in Writing; Arbitrators were afterwards Nominated by each party and agreed to, and a day appointed for the Arbitration; on the appointed day the matter was deferr'd, as he recollects, at his (the Deponent's) request, as it likewise was at another appointed day; it was also once or twice deferr'd at M<sup>r</sup> Campbell's request, after a day had been appointed; but about a Week before the time, the Subalterns of the 42<sup>d</sup> Regiment, refused doing duty with Ensign Sutherland; he (the Deponent) informed M<sup>r</sup> Campbell that a Trial, which he (the Deponent) had been attending for some time at a General Court Martial, which had caused him to desire the Arbitration might be postponed, was then over, and that he (the Deponent) should be ready to attend at any day he should be pleased to appoint; some days after M<sup>r</sup> Campbell named Monday, (the Monday succeeding that day on which Ensign Sutherland was put in arrest) as the day for the Arbitrators to meet, and the validity of Widow Graham's Will to be determined by them; Ensign Sutherland being put under Arrest in the Interim, prevented the Arbitrators meeting on the appointed day; Soon after Ensign Sutherland's taking out Administration to Widow Graham's Effects, he informed him (the Deponent) that M<sup>r</sup> Campbell had charged him with Perjury, that M<sup>r</sup> Campbell had mentioned it to many of the Officers of the Regiment to which he (Ensign Sutherland) belong'd, and that it was likely to prove very detrimental to his (Ensign Sutherland's) Character, and that he wished him (the Deponent) to give something in the nature of a Certificate under his hand respecting what he knew of the matter, which he accordingly did; he also informed him that at the time of waiting on the Surrogate M<sup>r</sup> Ludlow for the purpose of taking out the Administration to Widow Graham's Effects, that he (Ensign Sutherland) had told M<sup>r</sup> Ludlow that M<sup>r</sup> Hannay pretended that Widow Graham had left him her heir, but that Widow Graham was insane at the time he pretended the declaration in his favor was made, and that M<sup>r</sup> Ludlow in return had informed him (Ensign Sutherland) that it was no implication to his taking out Administration; he (the Deponent) then proposed he (Ensign Sutherland) should wait on M<sup>r</sup> Ludlow, who liv'd on Long Island, and obtain a Certificate of the same nature from him, , which he did, and he (the Deponent) wrote the Certificate which he (Ensign Sutherland) as before mentioned, had requested of him, on the same sheet of Paper M<sup>r</sup> Ludlow had wrote his – From the first time Ensign Sutherland mentioned to him (the Deponent) he was charged with Perjury, to the time the Subalterns of the Regiment refused doing duty with him, he was exceedingly anxious to get the Arbitration finished, that he might communicate to the Officers of the Regiment to which he belong'd, Copies of the Depositions that should be taken on that occasion; he (Ensign Sutherland) also repeatedly expressed his desires of obliging M<sup>r</sup> Campbell to retract the aspersions he had thrown out against his Character immediately, and was many times withheld; and that with great difficulty from waiting instantly on M<sup>r</sup> Campbell for that purpose, by representations that the Arbitration must very shortly be determined, and that whatever steps he should Judge proper to be taken respecting M<sup>r</sup> Campbell, would when accompanied with the Depositions of the Witnesses, tend more fully to exculpate his Character, than any steps taken previous to the Arbitration would alone do.

Q. from the Court – Who were the Persons that withheld ES from making application to M<sup>r</sup> Campbell?

A. The Representations that withheld him were made by him (the Deponent).

Q. Did he not, at any time before the Letters of Administration were taken out by Ensign Sutherland, ask him (Ensign Sutherland) if a Will was made by the late Widow Graham?

A. He cannot exactly recollect; he thinks he did, but the circumstances of Insanity dwelt so strong upon him he ask'd few questions; he understood in general, there was no Will in Writing.

Q. What was the distance of time between Ensign Sutherland's waiting on him (the Deponent) concerning Letters of Administration, and M<sup>r</sup> Hannay's calling on him to shew him the Will?

A. Ensign Sutherland was with him between Six and Seven o'Clock in the Morning; he was gone out when M<sup>r</sup> Hannay call'd, who call'd twice, the same Morning to the best of his (the Deponent's) recollection.

Q. Was it after the time that M<sup>r</sup> Hannay called on him (the Deponent) that Ensign Sutherland took out Letters of Administration by his advice?

A. Before M<sup>r</sup> Hannay call'd, some hours.

Q. Does he think Ensign Sutherland would have called M<sup>r</sup> Campbell to account, had he not been withheld by his (the Deponent's) representing to him, "that it would be better to settle that matter after the Arbitration had taken place"?

A. He is fully convinced, that he frequently prevented Ensign Sutherland from calling M<sup>r</sup> Campbell to account, expecting the Arbitration would be shortly settled.

Q. In what light did he (the Deponent) consider the Arbitration, after understanding there was some sort of Will?

A. When he first heard of the Will, he could form no Judgement upon it; from what he has since collected, he believed the Will was improperly obtained.

Q. Did he (the Deponent) think it proper in Ensign Sutherland to persist in the Letters of Administration as formerly, or did he advise him to drop them?

A. He advised him (Ensign Sutherland) to persist.

Q. As an Attorney, does he (the Deponent) think Ensign Sutherland, in the proceedings, took any step that was unlawful or unjust?

A. He does not think he (Ensign Sutherland) took any step that was either unlawful or unjust, relative to the taking out Letters of Administration.

Q. Had Ensign Sutherland acquainted the Surrogate of there being a Will, is he (the Deponent) of opinion, he (the Surrogate) would have granted Letters of Administration, on a supposition that the Will was improperly obtained?

A. Not unless Ensign Sutherland had told him (the Surrogate) "the Will was improperly obtained" but he (Ensign Sutherland) told the Surrogate the Person was Insane the time the Will was made, he (the Deponent) apprehends the Surrogate would have replied, that she could not make a Will in the State of Insanity, and that there was no impediment to his (the Surrogate's) granting Letters of Administration.

Q. by Lieut. Franklin – Did he (the Deponent) in the course of conversation, ever express himself in the following manner – "I wish the affair of the Perjury had not been mentioned, as it may cost Ensign Sutherland his Commission?"

A. He does not recollect making use of those Words; he has often expressed his apprehensions of the event on this Court Martial.

Q. Did Ensign Sutherland tell him (the Deponent) he was Cousin to the deceased Widow graham?

A. He did; he also mentioned she (the deceased) had a Sister living in Edinburgh, to whom he meant to remit the Effects; he (the Deponent) has been since informed, that it was a Sister's daughter.

This Deponent further says, that he did not know the (opprobrious epithets M<sup>r</sup> Campbell had made use of in conversation with the Officers of the 42<sup>d</sup> Regiment respecting Ensign Sutherland, further than that he (M<sup>r</sup> Campbell) had accused him of Perjury.

**William Glussel**, an Inhabitant of New York, and Clerk to M<sup>r</sup> Elias Hardy being duly sworn deposed, that he recollects about the beginning of August, the day he cannot ascertain, Ensign Sutherland came one morning to M<sup>r</sup> Hardy's house; he does not know the business he came on, as he (the Deponent) was otherwise engaged; he deposes that he was frequently sent by M<sup>r</sup> Hardy to M<sup>r</sup> Campbell's to enquire what day M<sup>r</sup> Campbell would fix upon to settle the matter by Arbitration, between him and Ensign Sutherland and M<sup>r</sup> Hannay; there were two or three appointments made which were unavoidably

put off, on account of the inconvenience arising to one or the other of the party; that Ensign Sutherland frequently sent him on the same Message, as he (Ensign Sutherland) was very impatient to have the matter settled; when he went it was always inconvenient for M<sup>r</sup> Hannay; at last there was a day fixed on, and that day was put off on account of the dispute between M<sup>r</sup> Campbell and Ensign Sutherland; he knows nothing further than that Ensign Sutherland expressed great impatience to have the matter settled and clear up his Character.

Q. from the prisoner – Does he (the Deponent) recollect hearing him (Ensign Sutherland) declare he would call M<sup>r</sup> Campbell to an Account for aspersing his (Ensign Sutherland's) Character?

A. He does.

Q. Does he (the Deponent) recollect M<sup>r</sup> Hardy's asking him (Ensign Sutherland) to postpone the matter, relative to obtaining satisfaction from M<sup>r</sup> Campbell 'till the Arbitration was finished?

A. Yes M<sup>r</sup> Hardy frequently gave him that advice.

**The Court adjourned** 'till tomorrow Morning 10 o'Clock.

**Wednesday September 19<sup>th</sup> 1781**

**The Court** being Met pursuant to Adjournment.

**The Prisoner Ensign Sutherland** delivered to the Court a Certificate signed by Cary Ludlow, containing nearly to the same effect the Words of a copied Certificate produced by him (the Prisoner) in his Defence; which Certificate being Signed and duly attested in the presence of Elias Hardy Notary Publick in New York, he Cary Ludlow being sick and unable to give personal attendance, was read to the Court and stands as follows.

**Cary Ludlow Esquire**, Surrogate of the City and Province of New York, maketh Oath, that about the latter end of July last Ensign David Sutherland of the Forty second Regiment applied to this Deponent in order to take out Letters of Administration on the Estate of one Agnes Graham Widow That M<sup>r</sup> Sutherland informed this Deponent that he was next of kin to the deceased in this Province but that she had other nearer Relations at home for whom he meant to preserve the Estate and prevent it falling into the hands of a M<sup>r</sup> Hannah who he informed the Deponent had taken possession of M<sup>rs</sup> Graham's Estate he informed M<sup>r</sup> Sutherland that he Hannah was to be her Heir but said he never produced any Will or Paper to him And that M<sup>r</sup> Sutherland particularly told the deponent at the time he applied for Letters of Administration as aforesaid that the deceased for some time previous to her Death had been in a state of Insanity as he was informed by the Doctor who had attended her and further this Deponent sayeth not.

Cary Ludlow

Sworn at the House of the said }  
Cary Ludlow Esquire in the Township }  
of Jamaica on Long Island this 19<sup>th</sup> day }  
of September 1781, Before me }  
Elias Hardy Not<sup>y</sup> Public.

**Elias Hardy** Notary Publick and Inhabitant of New York called again before the Court, and a Certificate shewn him signed Cary Ludlow, and dated the 19<sup>th</sup> of this Instant September, deposed that the Certificate was Sworn to, as to the truth of what it contained, and signed by the Surrogate Cary Ludlow, in his (the Deponent's) presence.

**Jonas Henry Allemand**, Surgeon and Inhabitant of Brooklyn Long Island, being duly Sworn, was examined.

Q. by the Court – Did he (the Deponent) attend the Widow Graham deceased, during her illness?

A. He did.



Q. How long did he attend her?

A. From the 28<sup>th</sup> of July 'till the time she died, which was on the 30<sup>th</sup> day of July.

Q. Was she in her Senses, when he (the Deponent) was first sent for?

A. Quite senseless.

Q. Had she to his (the Deponent's) knowledge, any lucid intervals from the time he first attended her till the time she died?

A. She had neither remission nor intermission, she was in a constant paroxysm of delirium during the whole time.

Q. What time in the Morning did he attend on the late Widow Graham, the day she died?

A. About Nine o'Clock in the Morning, and at that time she was totally speechless and senseless, and her Eyes fixed.

Q. Did he (the Deponent) know any thing of the late Widow Graham making a Will?

A. No further than what he was told by M<sup>rs</sup> Cavan the Nurse after visiting the Patient at Nine o'Clock on Monday, "that she had made her Will about Seven o'Clock that Morning, and that all her matters were settled—" to which he (the Deponent) answered, that he did not think she was able to make a Will, and asked why, if she (the Widow Graham) was sensible he (the Deponent) was not sent for as he had directed; to this she (M<sup>rs</sup> Cavan) gave no satisfactory answer, and afterwards on being questioned, seemed doubtful whether the Widow Graham was really in her Senses when she made the Will.

Q. Did he (the Deponent) see the prisoner Ensign Sutherland, the day the Widow Graham died?

A. He saw him about half past Nine o'Clock that Morning.

Q. What conversation passed between him (the Deponent) and Ensign Sutherland at that time?

A. Ensign Sutherland asked him the situation of his Cousin, meaning the Widow Graham; he told him she was entirely out of her Senses, speechless and in fact dying.

Q. Was there any Conversation between him (the Deponent) and the Prisoner Ensign Sutherland, respecting a Will of the deceased Widow Graham's?

A. He (the Deponent) was the Person who inform'd Ensign Sutherland that M<sup>rs</sup> Cavan told him she (the Widow Graham) had made a Will that Morning, on which ES asked him (the Deponent) if he thought she (the Widow Graham) was capable of making a Will, he answered, she was not.

Q. from the Prisoner – Did he (the Deponent) know if there had been any difference between the deceased Widow Graham and M<sup>r</sup> Hannay, in whose favor the pretended Will was made?

A. He cannot be positive; his information is only from the report of different people.

Q. from the Court – How long was he (the Deponent) absent from the Widow Graham before he visited her in the Morning of the day before she died?

A. He visited her about four or five o'Clock on the Evening preceeding that Morning.

Q. Was there any Person present during the Conversation between him (Widow Graham) and M<sup>rs</sup> Cavan the Nurse, respecting the Widow Graham's being out of her Senses the Morning she made her Will?

A. There were only some Negroes; he recollects seeing another Woman, he does not know her Name, as he did not speak to her.

**James Degraw**, Apprentice to Doctor Allemand, being duly Sworn, was examined.

Q. from the Prisoner – Was he (the Deponent) present at the Widow Graham's, on the evening of the day before she died?

A. The Evening before she (Widow Graham) died, he was at her house about five o'Clock.

Q. Did he (the Deponent) hear any one persuade or intreat the deceased Widow Graham to speak?

A. Yes, M<sup>rs</sup> Vanwinkle was there, and pull'd and teized the deceased to make her speak but could not, her eyes were fixed and she could not turn them in her head.

Q. Did any one give her any drink to make her speak?

A. The Nurse (M<sup>rs</sup> Cavan) gave her drink, but she could not swallow; the drink nearly strangled her, and came up again.

Q. from the Court – Does he know what drink was, that was given her?

A. Yes, Wine and Water.

**The Evidence Jonas Henry Allemand** being called before the Court again, and the Question being asked, Whether at the time he mentioned the Will to Ensign Sutherland, he mentioned that Will to be in Writing, Answered, he did not know whether the Will was in Writing or not.

**The Court** having heard and Consider'd the Evidence in support of the Accusation, together with the Prisoner's Defence, and Evidence in support of it, **is of Opinion** that the Prisoner, Ensign David Sutherland, is **not Guilty** of the Charge brought against him, and therefore **Acquitt** him.

**The Court is further of Opinion**, that from the Information, the Subaltern Officers of the Forty second Regiment had receiv'd, respecting Ensign Sutherland, and the steps they took in consequence of such Information, that, they, the Subaltern Officers of the Forty second Regiment, acted, in a manner, highly justifiable and proper.

Richard Porter  
Ass. D<sup>y</sup> J. Advocate.

*Jn<sup>o</sup> Breesse*  
President

Confirmed  
*H Clinton*

Source and Notes: TNA, Judge Advocate General's Office: Courts Martial Proceedings, Marching regiments, April-Dec. 1780, Sept. 1781 - June 1782 at WO71/95 ff. 129 –185. Volunteer Sutherland was commissioned ensign in the 42<sup>nd</sup> Regt. Apr. 18, 1780 (effective Feb. 2, 1779). Seventeen months after this court martial, he retired from the regt. on Feb. 13, 1783. A "*Letter of Administration*" was issued for Agnes Graham, Brooklyn, widow to "*Cousin, David Sutherland, Ensign 42d Regiment*" on July 31, 1781.

### **General Court Martial Results Published in General Orders, New York, Oct. 13, 1781**

Head Qrs New York 13<sup>th</sup> Oct<sup>r</sup> 1781...

Ensign David Sutherland of the 42<sup>d</sup> Reg<sup>t</sup> tried by the General Court Martial of which Maj<sup>r</sup> [John] Breesse of the 54<sup>th</sup> Regiment is President accused by the Subalterns of the same Regiment of having acted in a manner unbecoming the character of an Officer and Gentleman.

The Court having considered the Evidence in Support of the accusation together with the Prisoners defence is of the opinion that the Prisoner, Ensign David Sutherland is not guilty of the Charges brought against him and therefore acquit him.

The Court is further of opinion that from the Information the Subalterns of the 42<sup>nd</sup> Regt had received suspecting Ens<sup>n</sup> Sutherland and the steps they took in consequence of such Information that, they the Subalterns of the 42<sup>d</sup> Regim<sup>t</sup> acted in a manner highly Justifiable & Proper. The Commander in Chief is pleased to approve of the above sentence and orders Ens<sup>n</sup> Sutherland to be released from his arrest....

Source: "Orders, 1778-1782," *Sir Henry Clinton Papers*, William L. Clements Library, Univ. of Michigan.