

I.

NOTICE OF ANCIENT LEGAL DOCUMENTS (LAY AND ECCLESIASTICAL)
PRESERVED AMONG THE PUBLIC RECORDS OF SHETLAND. By
GILBERT GOUDIE, F.S.A. Scot.

The deeds which I have the honour to submit are a selection from the collection of native papers which have accumulated in the course of centuries in the hands of the public functionaries in Shetland, and which, so far as they have escaped destruction, are now preserved in the new Sheriff Court Buildings in Lerwick. It is surprising that so many papers of interest have come down to the present time, considering the vicissitudes through which the local government of the islands has passed since their annexation to Scotland. The long lineage of Scandinavian Jarls, from Rögnvald of Moeri in the ninth century, was superseded by a race of rulers of Scottish blood, under whose sway the local laws and institutions of the country, guaranteed by the Treaty with the Dano-Norwegian crown, were gradually subverted and assimilated to those of Scotland. In the course of these changes the Great Foud and Lawman, the Under Fouds and Lawrightmen, and all other officials in charge of the local courts and local records, disappeared. Justice, instead of being regulated by the Norwegian Book of the Law, and later, by the native municipal code known as the "Country Acts," came to be administered in conformity with the Statute law of Scotland. The Courts of the Stewart-Depute and Sheriff Substitute came in place of the open air assembly of the Lawting and the parochial Courts of the Under Fouds. The court of appeal, formerly, and for some time after the annexation, at Bergen in Norway, came to be the Court of Session at Edinburgh. And lastly, the seat of the local chief Court, from the earliest ages at Tingwall and Scalloway, was transferred to Lerwick, the modern capital.

During all these sweeping changes many papers have been preserved, and many more have been lost; for no suitable provision for their safety

was ever made until quite recently. In the year 1873 I made an examination of these papers, then undeciphered and their character unknown, and the list then prepared, though hurried and imperfect, shows a mass of miscellaneous matter of great interest, including a number of volumes of local records of more recent date than the greater portion of the detached papers. Two documents in the old Norse language, found on that occasion, I afterwards submitted, with translations, to the Society;¹ and those now under notice are selected further, as being for most part the oldest, and perhaps the most interesting, in the collection.²

These documents are fourteen in number, all on sheets of parchment. The earliest is dated in 1491, and the latest in 1588; except one deed, an ecclesiastical presentation by Earl Patrick Stewart, imperfectly decipherable, but evidently of the date of one of the early years of the seventeenth century. Some are granted by ecclesiastics, but most by laymen; two are presentations to benefices; and the rest almost exclusively represent sales of, or other transactions affecting, land. They all exemplify peculiarities of the local laws and usages, now seeming strange and unknown. And the time which their dates cover was a specially interesting one, when the transitional conflict between the old Scandinavian and the Scottish, in language, institutions, and race, was at its stage of greatest intensity in the islands.

When the deeds were first examined they were all in a crumpled, torn, and decayed state. They have now been laid out on cloth, pressed, and otherwise so renovated that their original appearance is to a great extent restored. Their deciphering and transcription has been a somewhat laborious, but not very difficult task, accomplished, in spare hours, with the valued assistance of my friend Mr. Alfred W. Johnstone, with the exception of two, in Latin, which were done in the Register House.

Much of the deeds is of course formal and technical. I do not there-

¹ *Proceedings of the Society*, vol. xii. p. 472 *et seq.*

² It is proper to mention here that an important collection of Northern papers, including the earliest preserved Registers of the local Land Writs, is in Her Majesty's General Register House.

fore propose to print more than a very few of them in full, with an abstract of the contents of each of the remainder. In the first place, some of the more peculiar features which they exhibit and illustrate deserve to be specially noticed.

1. THE UDAL SYSTEM.

What is most observable in the deeds is the entire absence of the usual feudal clauses of Scotch conveyancing. The sale is direct and absolute from the granter to the grantee. There is no feudal *consent*; only in some cases that of the next of kin. And this is in conformity with the principle in Udal law that a heritage must first be offered to the Udal-born before it could be alienated to a stranger. There is no suggestion of *confirmation* by a superior; no clauses of *Tenendas* and *Reddendo* in the feudal sense; no recognition of vassalage in any form. The Udaller held his land without condition or limitation in any feudal sense. This, as is well known, was the cardinal principle of the old form of land tenure in Orkney and Shetland, as in the fatherland of Norway; and the forcing upon the islanders of feudal charters, with their attendant burdens, is one of the principal grievances of which they have had so frequently to complain.

There is among the deeds one exception to their otherwise universally Udal character. This is a feudal charter by Lord Robert Stewart, to his natural son William Stewart, of a small parcel of land in Shetland (No. XII., 1587) "to be holden of us and our airis in few," with a *Reddendo* of butter and wadmell yearly, and "dew service as use is." It was Lord Robert who first and most effectually *stressed* the Udallers by forcing feudal charters and other burdens upon them; and while it was his policy to grant charters in this form, the probability is that the ground "giffin, grantit and disponit" by him in this instance was part of the Lordship of Zetland which, along with the Earldom of Orkney, he himself held under a redeemable feudal grant from the Crown.

It has long been a question whether, under the Udal system, actual

writ was necessary as the title to land. In a case before the Court of Session (about the year 1640), one of the litigants contended that "Udail ryght is by succession and schownd-billis and other evidents," while his opponent alleged that the Udal right was "only be successive possession without schownd-bill or anie other evident."¹ Erskine affirms that originally "the right was held by natural possession, and might be proved by witnesses."² Bell, founding upon Stair and other authorities, says that "the title to land was judicial; by an entry of the heir in presence of the Foude or Governor's court, a decree of that court being the title."³ This latter view would seem rather to be borne out by the present deeds. They show, at any rate, that if not absolutely necessary, formal writ was not unusual in the sixteenth century. It is observable, however, that the seller never refers to any preceding writ or title. The sale invariably proceeds upon his reputed and acknowledged ownership merely.

2. THE SHUYND BILL.

This, as indicated under the last head, is the decree of the Court of the Great Foud regulating the rights of heirs in cases of succession to landed or moveable property, as described by Gifford⁴ and by Hibbert,⁵ and of which a specimen (Olave Sinclair of Havera, head Foud) is given as No. 14 of the small collection of northern deeds printed by Sheriff Maconochie and Lord Neaves. The deed No. VI. (1546) of those now submitted bears to have been executed in the presence of the same high functionary, Sinclair of Havera; and though perhaps not, strictly speaking, a Shuynd Bill, it is of that character, and deserves to be referred to as a further illustration of a judicial right established in this form peculiar to the Scandinavian north.

¹ MS. Information for James Sinclair of Scalloway, in the action betwixt him and Andrew Bruce of Muness.

² *Institutes of the Law of Scotland*, book ii. title iii. p. 309.

³ *Principles of the Law of Scotland*, § 932.

⁴ *Historical Description of the Zetland Islands in the Year 1733* (Stevenson's Reprint, 1879), p. 48.

⁵ *A Description of the Shetland Islands*, 1822, p. 309.

3. THE CUSTOM OF OPGESTRY.

The law or custom of opgestry is defined by Hibbert as "empowering the possessors of udal lands, with the consent of their heirs, to dispose of their patrimony to any person who would undertake their support for life. Such disposers were then received into the house of their maintainer under the name of his *opgesters*; whence the law by which estates could be alienated from the udal-born for such a purpose was named the *custom of opgestery*." ¹ Hibbert annexes a deed of opgestry of date 1602; and a *Charter of Upgestrie*, dated 1581, is given in Lord Neaves's Collection, No. xiii. p. 22. The deed in the present collection (No. VII., A.D. 1547) is earlier than either of these; and though not exactly a deed of opgestry, it bears to be with consent of the mother of the granter, who is declared to be "upgaster" to the said granter, and it apparently is a conveyance of the land acquired from the upgaster. It thus distinctly, though only incidentally, exemplifies this peculiar feature of ancient northern law.

4. ECCLESIASTICAL DEEDS.

Two of these are presentations to a benefice in Shetland. The first (No. IX., A.D. 1567) is by Bishop Adam Bothwell, the last Roman Catholic prelate of the northern see; the second (No. XIV., A.D. 16—) is by Earl Patrick Stewart. The living is the same—the parish of Nesting. Reference is made to the documents in their proper order in the Appendix.

But perhaps the most interesting deed of this class is No. V. (anno 1539), *Tack by the Canons of the Cathedral Church of St. Magnus, Kirkwall*, of certain lands, in the parish of Dunrossness and elsewhere in Shetland, held by them for their "service and uphalding of the morning mass said at Our Lady's altar within the Cathedral Kirk of Orkney." The canons, parochial clergymen in Orkney, are severally enumerated, and there is perhaps no other record of their official existence. The tack is for nineteen years, in favor of Sir David Fallusdell, prebender of St. Dutho's Kirk in Orkney.

¹ *A Description of the Shetland Islands*, p. 311.

The deed No. I. (anno 1491) executed by John Heroun, "Clerk of the diocese of St. Andrews, notary public by imperial and royal authority," and dated on "the eleventh day of the month of September, the ninth Indiction, and in the eighth year of the pontificate of Pope Innocent the Eighth," illustrates the universality of the clerical notary in the middle ages even in these remote districts. Heroun, the notary, does not claim in his designation to act by *apostolical* authority, as did the Pope's notaries of the time. His designation "by imperial and royal authority" (*auctoritatibus imperiali et regali*) seems to imply that his appointment had been by the Roman Emperor, confirmed by the King of Scots. By a Scottish statute a few years earlier than this (27th November 1469), it had been provided that no notary made by the Emperor's authority should have faith in civil contracts unless examined by the official of the Bishop and approved by the King.¹ The notary on this occasion declares his royal authority, and also his relation to a diocese—that of St. Andrews. If this should seem strange, in the case of an ecclesiastical notary acting at so great a distance as Orkney and Shetland from that see, the explanation may be found in the circumstance that the see of Orkney was placed under the metropolitan Bishop of St. Andrews by a bull of Pope Sixtus IV., dated at the Vatican, 17th August 1472; and the deed in question is dated at Kirkwall, 11th September 1491.

5. PECULIARITIES IN THE PHRASEOLOGY OF THE DEEDS.

As a rule, the deeds are of praiseworthy simplicity and brevity; also clear and definite, except perhaps in the description of the subjects, which is, as customary in early times, a little vague. But, apart from the radical distinction between udal and feudal instruments, there are

¹ Among the early acts on this subject are the following:—(1) That Notars in time coming be made by the King, and not by the Emperor; and that Notars so made be examined by their ordinaries the Bishops, and have their certificate (James III. Par. 5, cap. 31). (2) That the Bishops and Ordinaries examine all Notars and punish the insufficient, and send the sufficient to the King, to be made regal (James III. Par. 6, cap. 64).

peculiarities in the diction which mark a broad divergence in style between them and the Scottish deeds of the period. They are essentially Northern, expanded from the original models of the old Norse law and language previously prevailing in the islands. In some parts they transfer the identical Norse terms; elsewhere the Norse phraseology is translated, word for word, into the transitional Scots then coming into use. It must be kept in view that these deeds are of the sixteenth century. Those framed in Orkney and Shetland, a century later, show a further marked expansion towards contemporary Scottish forms in length and in phraseology, with notarial instruments, infettments, and the like, which are so conspicuously absent in these simple native conveyances.

The following points may be specially referred to:—

(a) *The Dispositive Clause*.—The act of sale is usually expressed in the words “sellis analies and afhentis.” *Analies* is, I suppose, equivalent to *alienates* (common also in Scottish deeds); *afhentis* is pure Norse (Icelandic *afhenda*, to hand over; modern Danish, *afhænda*), as generally used in conveyances of the time written in the old language.

(b) *Consents*.—Reference has already been made to this, in speaking of the udal character of the documents. Frequently there is no consent; in other cases, it is either the udal-born (next of kin) specified by name, or simply, “wyth consent and assent of my lauchfull ayres” (No. IV.).

(c) *The Consideration*.—An onerous consideration is usually implied, though never expressed in money. As a rule it is—“the full lands’ price, the first penny and the last, and all there between,” or in words almost precisely similar. This is an old Norse formula—“*hin fyrsta peningh ok hin sedhista ok alla thær imillom*,” translated into the current Scots (Deed of Sale, land in Unst, Shetland, 1465).

(d) *Term of Entry*.—When this is expressed it is usually the modern terms of Whitsunday and Martinmas. In the deed by the canons of St. Magnus (No. V.) it is “the feist of Alhallowmes.”

(e) *The Pertinents*.—These are generally described as in the deed No. VII. (1547)—“Howssis toftis tomellis eng ryt and royt, fre eische and entreis, with inpastor and owtpastor within dykis and without, under ord

and aboune, fer and neyr, fra the heast staine in the hyll to the lawest in the eb," &c. In the deed No. 5 (1539)—it is "Houssis biggingis boundis and feyldis pasture and lesuris with locheis stankis woddis cunyngis and cunyngaris fischings halkings and huntings," &c.

This is also a mixture of Scottish and Norwegian legal phraseology. "From the highest stone," &c., is, so far as I have seen, foreign to Scottish conveyancing. It is a translation from the common Norse phrase—*Fraa effste stenne ij felle tyll oste stenne ij fioren* (Deed of 1551, lands in the island of Unst);¹ and similarly, in a deed relating to land in Shetland, dated at Bergen in Norway, in 1544.²

Tumellis is grass ground or arable land, near a steading or village (*tun*); *Eng* is meadow; *Cunyngis* and *cunyngaris*, rabbits and rabbit warrens (*cuniculi et cunicularii*); *Woods*, borrowed apparently from Scottish law, seems singularly inappropriate in a country where woods there are none, nor can have been for ages, though they certainly at one time did exist; *Hawkings* were famous in the islands until comparatively recently, the king's falconer having had a tax in the shape of *hawkchens*. The words "Under erd and aboune," are suggestive of Scottish coal-workings, "as well under ground as above," as in the charter of the land of Pencaitland, in Mid-Lothian, by Sir John Maxwell, *circa* 1530, or of other mineral wealth, of which Shetland knows little.

Along with the specification of pertinents, there usually follows a supplementary clause—"With all royt eyne owthil and semynge" (No. III. A.D. 1536); in No. XI. (1581)—"all aing owthill ryt roith sam-aing and reversion," &c. These terms, peculiar to old titles in Orkney and Shetland, seem inexplicable to Scottish lawyers, but are easily explained by a reference to the old language. *Roith* is RÆDI, rule, control; *eyne* or *aing* is EIGN, possession; *owthil* is ODAL, absolute property; *semynge* is SÆMD, honour. As Mr. Balfour expresses it, this

¹ *Proceedings S. A. Scot.*, vol. xiv. p. 25. The deed is in the possession of John Bruce, Esquire of Sumburgh.

² *Idem.*, vol. xii. p. 483.

<i>Bishops of Orkney and Zetland—</i>	
Robert (Maxwell),	1539
Adam (Bothwell),	1567
<i>Great Fouds of Zetland—</i>	
Edward Sinclair of Stroyrn	1536
Olave Sinclair of Haveray,	1546
<i>Lawmen of Zetland—</i>	
Nicol Thomasone,	1538
Nicol Rayd (Reid)	1546
<i>Parish Priests and Reformed Clergy—</i>	
Henry Phantoutht, Archdeacon of Zetland,	1525
Malcolm Halcro, Archdeacon of Zetland,	1536
Henry Strang, Vicar of Dunrossness,	1525
Robert Hector, Vicar of Northmavine,	1525
Sir George Duff, Curate of Nesting,	1538
Sir Nicol Wyschart, Vicar of [Dunrossness?]	1546
Sir John Murray, Curate of Bressay,	1547
Sir Andro Hill, Vicar of Unst,	1567
Sir George Strang, Vicar of Nesting,	1567
Alexander Spittell, Vicar of Nesting,	1567
James Hay, Vicar of Unst,	1579
Peter Symson, Vicar of Nesting,	16—
Sir John Mason ; Sir David Farquhar ; Sir Alexander Strang,	1536
<i>Canons of St. Magnus Cathedral—</i>	
Sir Nicol Halcrow, Parson of Orphir,	1539
Master Adam Stewart, Parson of Stronsay,	1539
Master Alexander Craik, Parson of Hoy,	1539
Master Alexander Scott, Parson of Westray,	1539
Master Peter Houstoun, Parson of Our Lady's Kirk of Sanday,	1539
Master Andrew Hall, Parson of Cross Kirk of Sanday,	1539
Sir David Fallusdail, Prebendary of St. Dutho's Kirk in Orkney,	1539
<i>Ecclesiastical Notaries—</i>	
John Heroun, Kirkwall,	1491
Sir James Sinclair,	1567
<i>Miscellaneous—</i>	
David Sinclair, Kirkwall, and Sonnetta his wife,	1491
Thomas Olosone of Urasettyr, proprietor of lands in Dunrossness,	
Sandwick, Tingwall, Whiteness, &c.,	1525
Nicol Halcro of Tingwall,	1525

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Henry Sinclair of Haveray,	1525
Peter Magnusson, Stove, Skerries,	1538
Gilbert Kant of Brocht [Burgh],	1538-1546-1547
Magnus Bolt, Thomas Kettlyl,	1538
Thorrald Sudyrland,	1546
Ingabrocht [Ingaborg] Kathrins-daughter of Houll,	1547
Magnus Sinclair of Houss,	1547
Magnus Moaut of Balquholy,	1547
Olay Neyllson of Quharf,	1547
William Sinclair of Underhoull,	1579
Margaret Stewart, his wife,	1579
William Bruce (afterwards of Symbister),	1579
Alexander Virk [Work ?] of Isbuster),	1579
Colbein Ormesone of Symbuster,	1581
John Colbeinson, his son,	1581
William Sinclair of Ustanes,	1581
Henrie Forrester of Linay [Lunna],	1581
Mawns Hanson of Gillisbrek,	1581
Hew Sinclair of Burgh,	1581
John Amphray of Astay,	1581
William Stewart, natural son of Earl Robert Stewart,	1587
David Skollow [Skollay] of Toftis,	1587
Walter Bruce, Sheriff Clerk,	1587
William Fermor, Notary Public,	1588

The deeds in which the above persons severally appear are indicated by the dates opposite their names, the deeds being arranged in the Appendix in chronological order.

APPENDIX OF DEEDS.

No. I. A.D. 1491.

(Translation : the Original is in Latin).

In the name of God, amen : By this present public instrument be it clearly known to all, that in the year of the Lord a thousand four hundred ninety-one, the eleventh day of the month of September, the ninth Indiction, and in the eighth year of the pontificate of pope Innocent the Eighth, in presence of me, notary public and witnesses under written, personally compeared a prudent

and discreet man, David Sinclair, on account of the cordial affection which he bears towards Sonnetta his wife, and on account of the good and faithful service by her performed and to be performed to the said David her husband, the foresaid David, not fallen in error, nor circumvented by fraud, but by his mere and free will, of free gift, gave and granted to the said Sonnetta, all and whole that his tenement or land, with the pertinents, lying in the burgh of Kirkwall, in which tenement the said David and his wife with their family dwell, on the day of the making of these presents: Which David, forsooth, appointed and ordained the said Sonnetta, to enjoy and possess the said land or tenement, fully and peacefully, without vexation or disturbance, of any of their heirs or of any other persons whatsoever, for all the time of the life of the said Sonnetta; the said David, however, enjoying and possessing the said land or tenement with the pertinents, during the whole time of his life: And after the decease of the said David and his foresaid spouse, that the said land or tenement revert to the true, lawful, and nearest heirs of the said David and Sonnetta, as the order of law requires: Upon which all and sundry the premises, the foresaid Sonnetta requested from me, notary public underwritten, a public instrument to be made to her: These things were done in the dwelling-house of the said David and Sonnetta, about the fourth hour, or thereby, after noon; there being present prudent and discreet men, namely, Gavin Gray, Andrew Gray, and Alexander Lestir, with many others, witnesses to the premises, called and asked. And I, John Heroun, clerk of the diocese of St. Andrews, notary public by imperial and regal authority; whereas, I was present together with the beforenamed witnesses, whilst all and sundry the premises were so acted, said and done, as is premised, in form as above, and saw, knew, and heard these things to be so said and done, and took note, and therefrom have made this present public instrument, faithfully written with my own hand, and have signed it with my sign and name used and wont, having been asked and required, in faith and testimony of the truth of all and sundry the premises. I approve and ratify those four words above written on the margin, namely, the eleventh day of the month of September.

JOHN HEROUN.

Note.—Some of the special features of this deed are referred to on page 186 *ante*.

No. II. A.D. 1525.

Be it kend till all men be thir present writ Me Thomas Olosone of Wrasettyr now dwelland in Culliasetter grantis me sellit analeit and ofhentit and be this present writ sellis analeis and ofhents fra me my airis executors and assignais till ane worschipfull man maister Henry Phantoutht ersdene off Schetland his

airis executoris or assignais with all clauses and warrandis that ony land in Orknay or Schetland may be sauld the quhilk landis followis heirefter In primis thre mark land and ane half mark land lyand in Stainess callit Brendsowss twa mark land lyand [in] Ryeastay wthir half merk in Schonarwyk fowr mark ane half in Hoyswyk thre mark ane half mark in Culzasetter ane half mark in Brendastay ane mark in Litollogartht within the Harray three mark in Hamyrisland within the Harray fowr mark in Catfurd Item in Qubitness in Wadbusta sax marks in Hagusta twa mark and ane half mark land in Ologartht fowr mark and ane half mark land in How vii mark with rotht and othewell and ix mark land in Esthous for the quhilk landis I the said Thomas grantis [me] content and payit of the full landis price the first penny and the last gefyne to me in my wrgent necessite and be this present writ quitclaimyss and dischargis the said ersdene his airis executoris and assignais and sall warrand the said land to the said ersdene his airis executoris or assignais how lang I haiff ane penny in the wardll lous or fast present or for to cum for ane and all my airis executoris and assignais for now and ever more In witness of the quhilk thyng becauss I had no propir saill present I haiff procurit one and haiff gyfne my full powir to Nicoll Hawero of Tygwall to procure the signet of ane worschipfull man Henry Sincleir of Hawere ye sailis of worschipfull men maister Henry Strang wicar of Dunrosness Maister Robert Hector vicar of Northmewene Syr Thomas Sandsond At Tygwall in Schetland the xxviii day of October the yeir of God ane m^o v^o xxv yeris befor thir witnesses Mawnyss Sinclar Johne Harcis Thomas Sandsond David Fresell Mawnyss Hew Nicoll Fydlair with oder witnesses.

Note.—There appear to have been five tags, of which only one remains, the signature on it being illegible. The deed is printed entire, because it is the earliest of the series written in Scots. The localities mentioned are almost in every case clearly distinguishable. The name "the Harray" is obviously the old word *Herað*, a district, at the time applied to some special district not now easy to identify, but probably Tingwall. A district in the island of Yell is still known as "the Herra."

No. III. A.D. 1536.

Be it kend till all men be this present wryt me Eduerd Synclar of Stroyrn Fold of Zetland to hef sawld analeit and ofhentit and be this present wryt sellis analeis and ofhentis fra me and all my ayrs executors and assignais fyve merkis land viz. the merk lyand in Russater in Fetlair to ane discreit man Adam of Still and all his airs executors and assignais for ful landis price of the quhilk I grant me content and peit of the first d and the last and all thare betwix therfor the said

v merk landis with howsis towmells tofts owt pestor in pestor fra the heast stane in the hil to the lawest in the eb with all royt eyne owthill and semyng and rytowss pertinentis at pertenis or lawchfulli may pertene to the said land to be haldin and hed fra me the said Fold and all my aris executors and assignais to be had joycit and browkyt be the said Adam and all his airs executors and assignais for now and ever In witness heiroff I ye said Fold hes hwng my propir seil to this present chartor at Weisgart in Wnst the xxiiii day of Junii the year of God a m^e v^o xxxvi yers befoir thir witness Malcum Hawcro ersdene of Zetland Shir Tho Meson Schir Dave Forquhar Shir Alex^r Strang with wthiris diverss.

Note.—The granter of this deed is Edward Sinclair of Stroyrn [Strohholm in Whiteness?] Fold (*i.e.* Fowde) of Shetland, apparently the same Edward Sinclair who was one of the leaders of the combined Orcadians and Shetlanders at the battle of Summerdale in Orkney, A.D. 1527. See the Respite granted to him and others by King James V. (Appendix to Barry's *History of Orkney*, p. 496).

No. IV. A.D. 1538.

Granter.—Peter Magnusson (no designation).

Grantee.—Gilbert Cant (no designation, but elsewhere termed of Brucht).

Consent.—“With consent and assent of my lauchfull ayres.”

Subjects.—Four merks land, ten pennies the merk, “lyand in Stove in Skarrs [Skerries], in the parason of Lunestyng,”—“sauld in my gret myst urgent necessitie.”

Consideration.—“The fyrst penny and the last and all ther betwyx,” for which he grants himself “thankfullye content and payt;” with “awin and owthale, wyth all profets commodities and dewities pertinend thereto.”

Pertinents.—“Howses toftis asweyll as under the eyrd as abeyne, fra the heast in the hyll to the lawest in the eb.”

Warrantice.—Merely the declaration that the said lands are to be “bruyt josyt and possessyt with all clauses that ryt is all fraud and gyle secludyt, and away put fra me the said Petyr my ayrs executors and assignais to the said Gylbert, &c. for now and ever mair.” A cognate phrase to the last is in the old Norse deeds—“*til everdelig eignar*,” *i.e.* for an everlasting possession.

(The deed contains a further simultaneous sale to the said Gilbert Cant, by Olof, the fifth sone of Peter Magnusson the granter, of one half merk land in the same place, expressed in similar terms).

Scaled.—With the seals of worthy and discreet men, Nycholl Thomasone, Lawman of Zetland, Magnus Bolt, and Thomas Ketyll.

Date.—16th July 1538.

Witnesses.—Sir George Duff, curat of Nestyng, Olof Mawgultsone, Bernd

Thomassone, Magnus Olasone, Olay [in or of] Hamirsland, Mychell of Gletnis and Nycholl of Skellitstay, with uthris diverss.

NO. V. A.D. 1539.

Granters.—Schir Nycholl Halkraye, person of Orfer ; Maister Adam Stewart person of Stronessaye ; Maister Alexander Craik, person of Hoye ; Maister Alexander Scot, person of Westraye ; Maister Petyr Houstoun, person of our Ladye Kirk of Sandaye ; Maister Andro Hall person of the Crose Kyrk of Sandaye ; described as “channonis of the Cathedrall Kyrk of Orknaye, under ane reverend fader in God Robert be the mereye of God bischop of Orknaye and Zetland.”

Consent.—“With consent and assent of the said Reverend fader.”

Nature of Deed.—Tack for 19 years.

In favour of.—“Our weil belovit brothir and freynd Schyr David Fallusdell, prebender of Sanct Duthockis Kyrk in Orknaye, his factoris, assignais and subtenentis.”

Subjects.—“All and hail our lands lyand in Zetland within the paroschenn of Dunrossnes or ony place of Zetland, quhilks pertenis to us the said Chanonis for our service and uphalding of the morne mess said at Our Ladye alter within the Cathedrall Kyrk of Orknaye wyth thair pertinens.”

Entry.—“At the feist of Alhallowmes in the yeir of God 1539.”

Pertinents.—“Houssis biggingis boundis and feyldis pasture and lesuris with locheis stankis woddis cunyngis and cunyngaris fishings halkings and huntyns with all uthir and syndrye fredomes comoditeis profeits and rychtis pertenyng quhatsomevir alsweill not namit as namit.”

Consideration.—Payment of “fyve paks of waldmail [wadmell] and twa barrellis of butter yerele on Alhallowevin to be deliverit to us our successoris or chaplanis upon the ayr (sea beach) of Kyrkwall.”

Power to Sublet.—“To ony tenentis or sub-tenentis of na hear degre nor himself”

Warrantice.—“To warrand acquiet and defend this present assedation ; . . . aganis all dedele lelelye and trowly as law will but (without) fraude or gyle and obliesses us hereto and all our gudis moveabill and unmoveabill present and to cum in the sikurist forme of oblegacioun that can be devisit to fulfil or keip this present assedacioun as is above written.”

Signed—At Dumbarton, 6th August 1539, by the Bishop and the other granters.

Witnesses (named in the testing clause, but do not sign).—Alexander Craik parson of Hoy (who signs as one of the granters), John Maxwell, James Dalrympill and others not legible.

Note.—The Bishop “Robert” who is a party to this deed, was Robert Maxwell, who died in 1541, and was succeeded by the well known Bishop Robert Reid.

No. VI. A.D 1546.

The tent day of December in the yeyr of God ane thowsand fyve hundyr fourty and sax yers ane scuin haldin that daye at Howeff be ane honorabill man Olave Sinclayr of Havoray heyd Fold of Zetland and thare syttand with hyme in jugment ane wurschepfull man Nycoll Rayd Lauman of Zetland in that time with mony uthyris gentyll men and comonis that wes gadyrrit thar quhilkis comperytt har befor thame ane honorabill woman Margret Rayd the spowis of ane honorabill man Gilbert Cant and the said Margret Radis brother Thorrald Sudyrland and thar befor the sadis fold and lawman in presence of all at wes thar the sayd Margrat and hyr brother Thorral of thar aune fre motyve [and] will ar apunctit concordyt agreyt of all land landmelis gudis geyr gold money [and] all maner of heryrstagye and ayrschipe that [she] and the sayd Thorrald had call or clayme to after his said moder Katrin Thorraldis docthoter of Broycht in maner forme and effec as efter folowis that is to say that the said Margret and hyr hysband Gilbert Cant hes gevine to the sayd Thorrald twenty pundis euswall mony of Scotland in gud redy gold for full compleyt payment and contentatione of all the sed Thorraldis rytis and als the sayd Margret sall suple the sayd Thorrald and help and fordyr hym to service and takkis quhen he desyris hyr within the romys of Zetland and without qhat sche may do off supplicatioun to freyndis or ony uthir plesor that schow may gudly do quhen sche is requiryt be the sayd Thorall tyll wryet and honor and als the sayd Margrettis hysband Gylbert Cant grantis hyme to stand fast and confermis all thir premissis maid be his sayd wyif to hyr sayd brother and als the said Gylbert of his awin will hes obligat hyme to gyf help and suple to the sayd Thorrald largely with his geyr and to be his gud frend in all plasis and in his just defence apone thir forsayd premisses I the sayd Thorrald haldis me content with your cister and with your hysband forsayd and grantis me weyll content and payt of the foresaid sowme of xx punddis the fyrst penny and the last and all thar betwixt be my forsayd cister and [be the] handis of hyr hysband forsayd bindand and obligand me in the stratest forme of obligatioun and undyr all payne of all gudis or geyr quahatsumever God me or my aris fra this day forvart amen to cum in of thir premissis and now heyr in the meyne tyme purelie and simpilly dischargeis of all landis and rychtis that ever I aryt or had tytill to efter my sayd modyr from me my saids airs executoris and assigneis into the hands of my sayd syster and hyr hysband ther executoris and assigneis for now and ever mayre

In wytnes of the quhilk I the sayd Thorralld be causs I had na seyll of my awin I haf procuryt with greyt instance the seyllis of honorabill men forsayd Olave Sinclair of Haveray Nicoll Rayd lawman Syr Nicoll Wyschert vicar of Dunrosnes and Thomas Kettillis seyll for to be hang in this present letter befor thir wytnes Veyllm Logane Master Alexander Was Veillam Jhone and Thome with utheris dyvers daye yeir tyme and playis abwine wrytin.

Note.—The above, as an arrangement formally ratified in presence of the Head Fold (otherwise Great Fowde) and Lawman of Zetland, in court assembled, is printed in full, documents of this kind being much more rare than those relating to sales of land. It is analogous to the Shuynd Bill (the form of settling the succession of heirs) see *ante*, p. 184. The term used to designate the court on this occasion is not very distinct, but seems to be *Scuin*, perhaps the earlier form of *Shynd* or *Shuynd*, the etymology of which is not very clear. Of the persons named in the deed, Olave Sinclair of Haveray was a person of some note in his day as Great Fowde of Shetland. It was he who entertained the Earl of Bothwell in Shetland when fleeing before his enemies, after the fall of Queen Mary, in 1567. Nycoll Rayd, the lawman (otherwise Nicol Reid of Aith), was elected "Lawman Generale of all Zetland at the Lawting Court held on the Tingholm of Tingwall, on 27th July 1532."¹

NO. VII. A.D. 1547.

Grantor.—Iggabrocht Kotrinsdochter (Ingaborg Katherine's daughter) of Houll, daughter and lawful heir to her mother Katrine Androisdochter of Houyll.

Grantee.—Gylbert Kant of Brocht.

Consenters.—The grantor's husband Maunis Kettill and her mother above-named, who is stated to be *Uppgaster* to them (see *ante*, p. 185).

Subjects.—Two merk land in Howill, parish of Tingwall, in the Archdeanery (ersdennry) of Zetland.

Dispositive Clause.—Sellis annalyis and ofhintts.

Pertinents.—"Howssis, toftis, tomellis, eng, ryt and royt, fre eische and entreis with inpastor and outpastor within dykis and without, under erd and aboune, fer and neyr fra the heast staine in the hyll to the lawest in the eb."

Consideration.—Price not specified; only the "first penny and the last in our greyt urgent necessite."

Warrantice.—Undertaking they, their heirs, executors or assignees, never to

¹ Complaints against Laurence Bruce of Cultemalinche, Article 2.—*Oppressions in Orkney and Zetland*, p. 36.

molest or trouble in gaincalling of the said lands before any judge, spiritual or temporal, but to warrant and defend the said Gilbert in the peaceable possession of the same.

Sealed.—In place of seals of their own, which they have not, by those of Mawnis Sinclair of Howss and Sir Nicol Wychartt.

Dated.—At St. Lorence Kyrk of Burray, 11 March 1547.

Witnesses.—Sir Thome Muray, curat of Bressy, Lorence Sinclar of Norbuster, Maunis Moaut of Baquholy, Olay Neyllson of Quharf, Olay Stephenson and Huchon Stephenson, with many such others dyvers that day gathered to the presens.

No. VIII. A.D. 1567.

Granter.—Alexander Virk (Work) of Isbuster.

Grantee.—Sir George Strang, Vicar of Nesting.

Consents.—None.

Subjects.—One merk land in Bystay (Busta?)—parish of Nesting, in “the cuntray of Zetland,” with “ayng owdell and samyne” (see *ante*, p. 188).

Pertinents.—“Mowrs pettis millis mowtris owtpastor and inpastor alsvill onder the erd as abwin fra ye heast stane in the hill to the lowest in the eb.”

To be haldin and had.—“Fra me the said Alexander Virk, &c. to be brukit possessed and joisit be the said Sir George &c. fra now and ever without our gaincalling.”

Consideration.—Price not stated—“the first pene and the last.”

Warrantice.—Binds himself, &c. to warrant and defend for now and ever, and “never to gaincall the sam befoir no judge spretuall nor temporall.” If so done “it is to be hald of na effek.”

Sealed.—With the granter’s own proper seal; also that of “ane venerible clark Sir Andro Hill vicar of Unst,” and of Sir James Sinclair, Notary Public at Scalloway, the 27th July 1567.

Witnesses.—Sir Andro Hill, Lawranss Sanclar, Burges of Kirkwall, Walter Hill, Patrick Wilson, Sir George . . . with others divers.

Notarial Attestation.—Illegible.

No. IX. A.D. 1567.

[Translation.]

Adam, by the Divine mercy, bishop of Orkney and Zetland, to the archdean of our church of Zetland, or any other vicar of the same, wheresoever constituted within our diocese of Zetland, with Divine benediction: Whereas the

vicarage of Nesting and Quhilsay in Zetland, situated within our church of Zetland, now vacant by the death or decease of sometime Sir George Strang, last vicar and possessor of the same, belonging to our presentation in full right, we have provided and conferred, as by the tenor of these presents we do confer, to a discreet man, Alexander Kyncaid, conjunctly and severally, procurator, and in name of Alexander Spittell, son of Alexander Spittell of Blairlogy, absent as present, by placing our ring on the finger of the said Alexander Kyncaid, fully committing the cure, government, and administration of the same to the said Alexander: To you, therefore, and each of you, we give in charge, straitly enjoining you in virtue of holy obedience, and under the penalties prescribed by the laws, that ye forthwith induct and invest the said Alexander Spittell, or for him, his lawful procurator, into the real, actual, and corporal possession of the said vicarage of Nesting and Quhilsay respectively now vacant, according to the custom; firmly restraining gainsayers or rebels if, haply, there be any such, by the ordinary authority. In faith and testimony of which, all and sundry the premises, we have commanded and caused these our present letters of collation, or this present public instrument, written by a notary public, to be confirmed by the hanging to of our seal: Given under our subscription manual, at Edinburgh, the 20th day of May, in the year of the Lord a thousand five hundred sixty-seven, and of our inauguration the ninth year.

ADAM,
Bishop of Orkney and Zetland.

Note.—This, so far as I am aware, is the second specimen extant of an episcopal presentation in Orkney or Shetland. The original is in Latin.

No. X. A.D. 1579.

This is a deed of some length, which may be briefly summarised. The granter is James Hay, Vicar of Unst, who, having lent to William Sinclair of Underhwill (Underhoull) 500 "silver dolouris also callit zowpeindalis havand cours and passage within this realme for the tyme," receives in security from the said William Sinclair, with consent of Margaret Stewart his spouse, an annual rent of 120 dollars payable from his lands of Uyea Rangingo (Ramnagoe in Unst ?) Wedderstay, Bwistay (Wethersta and Busta) and Dirdilstay (?), at the terms of Whitsunday and Martinmas yearly. It is agreed that he shall discharge 100 dollars of the said annual rent on repayment by Stewart of 400 dollars of the loan "togidder in ane sowm upon ane day betwix the son rising and to (down) ganging of the same in the Communion Isle within the parochie Kirk of the citie of Sanct Androis, I my aires or assignais being thairto truthfullie

warnet upon the premonitoun of fourtie days warning preceding the resseit of the said sowm be publike reding of thir presentis opinlie in our paroch upon ane Sunday befor none in presens of the pepill convenit to precheing or prayers or apprehendit befor ane notar and witnes." On payment of the further sum of 100 dollars, the remaining 20 dollars of the annual rent is to be discharged. It is provided that if Hay or his heirs or assignees should (which God forbid) absent themselves from the receiving of the said sums in repayment, Stewart shall consign the same "in the handis and swir keeping of the dene of gild of the said Court." The deed, termed "Letters of Reversion," is "subscrivit with my hand, my proper seale of armis is appendit," at St. Andrews the (blank) day of (blank) 1579. The names of the witnesses have never been added. The signature is "James Hay with my hand." On the back of the deed there is added, under date the 29th day of July 1579, a notarial attestation of there repayment to Hay by Sinclair of the first portion of the loan, viz. 400 dollars, with the requisite discharge. Malcolm Sinclair is the notary, and William Lauder and John Dunbar the witnesses. This again is followed by an acknowledgment by Hay, seemingly in his own handwriting, in the usual legal phraseology, of the receipt of the balance of the loan, viz. 100 dollars (or zopindalis); for which he grants full discharge and renunciation for ever. This dated at Uyea the 18th day of July 1580. Witnesses, William Bruce, Andrew Smyth, Walter Hay and others divers.

In this deed, or succession of deeds, we seem to pass from the scant records of the pre-Reformation period, and come face to face with persons who can be identified as mixed up with the more active current of events in later times. James Hay, the granter, designed as Vicar of Unst, is recognised as the first Protestant minister of the island and parish of Unst. According to the *Fasti*,¹ he was the son of George Hay of Frenchness. At first reader, he was presented to the vicarage of Unst by James VI., 31st October 1574. William Sinclair, the borrower, was third son of Ollawe Sinclair of Brew in Dunrossness; and in terms of his father's will, dated 19th February 1570, inherited a third portion of the estates of the family, including Underhoull in Unst, and others. He was infeft in these properties under the Great Seal, 5th March 1578. His wife, Margaret Stewart, named in the deed, was daughter of John Stewart, Prior of Coldingham, a natural son of King James V., and consequently half-brother of Queen Mary. This lady, after Sinclair's death, was married to William Bruce, first of Symbister and Sumburgh, a witness to the present deed, who obtained through her the greater part of the properties in question.

William Lauder (Gulielmus Lauder), witness to the notarial certificate, though not designed, is presumably the minister of that name, who, according

¹ *Fasti Ecclesie Scoticanæ*, part v. p. 441.

to the *Fasti*, was presented to the parishes of Fetlar and North Yell in 1567, having a stipend of 80 merks. He had also in charge Sandwick in Unst, Baliasta, Hamnavoe, and Raffurdness in Yell; and was removed to Hamnavoe prior to 1585.¹

No. XI. A.D. 1581.

Grantor.—Colbein Ormesone of Symbuster.

Consenters.—John Colbeinsone, his eldest son, and Christen and Marion Colbeinsdotters, his daughters, his heirs apparent, and Agnes Mawnisdotter, his spouse, for her interest.

Grantee.—Ane honorabill man and my guid freind Hew Sinclair of Burt (Burgh).

Dispositive Clause.—Sellis analeis ofhentis and cleirle away putts fra me my airs, executoris, &c.

Subjects.—Four ures land in Litolholm in Quhalsay Sound, two ures land in Claitholm afore Sandwick, all 6 pennies the mark, within the isle of Quhalsay, within the Lordship and Shirefdome of Zetland, with all aing owithill ryt roith samaing and reversion; togidder with all other commoditeis utiliteis proffeitit easmentis, and pertinenceis thairto pertenant or be law may be funden till apperteine.

Consideration.—The landis pryce payit to me in my greit need and urgent necessitie the first pennie and the last and all thair betwixt.

Warrantice.—Very full; with obligation by Colbein, in the event of himself or his foresaids desiring to wadset or sell any portion of his lands in Symbuster, to offer the same to Hew Sinclair the grantee, and if he or they should do so in ignorance, the same to be null and of none effect, because “the said land is linallie descendit of the house and stock of Burt” (Burgh).

Sealed.—No seal nor signet proper of his own: therefore “procures with greit instance the signetts of honorabill men to wit William Sinclair of Ustanes, Henrie Forrester of Linay, and Mawniss Hanson of Gilliebrek to be appended hereto.”

Date.—At Burt (Burgh), 20 November 1581.

Witnesses.—Peter Symson, Redare (Reader) at Nesting, Jhone Amphray of Astay, James Dickson, Robert Achessone, with others divers.

Signed, but apparently not written, by “P. Symson redare at Nesting.”

Note.—Three tags are appended (seals gone), with the names and designations of the “honorabill men” named above, to whom the seals belonged.

Colbein Ormesone, the grantor of this deed, appears to have been the

¹ *Fasti Ecclesie Scoticanæ*, part v. p. 436.

last udal proprietor of Symbuster. Notwithstanding the undertaking to offer it to Sinclair of Burgh, it passed shortly after into the hands of William Bruce, whose descendants have possessed it for three centuries. Colbein is described in 1576 as "sumtyme Lawrychtman" of Whalsay.¹ The statement in the deed that Symbuster was lineally descended of the house and stock of Burgh is curious. The Scottish family of Sinclair could not have been a very old one in the islands at this date; but the lands in question may very likely have formed at one time a portion of the great estate of Borg (or Burgh), which in the year 1299 belonged to Thorvald Thoresson, whose representative Thorvald of Brucht was nominated as one of his executors by Sir David Sinclair of Sumburgh in 1506.² Henrie Forrester of Linay, the modern estate of Lunna, is written on the tag bearing his seal as "Henrie Foster of Lunay."

No. XII. A.D. 1587.

This deed is clearly and distinctly written, but imperfect. A small strip, apparently about an inch in breadth, has been cut off at some time along the whole right hand side. The meaning is, however, sufficiently clear throughout.

Granter.—Robert, erle of Orknay.

Grantee.—Our some naturall William Stewart.

Consideration.—(gratuitous) and affection quhilk we bere.

Dispositive Clause.—Giffin grantit and dispoit.

Subjects.—Twa last of land of Ayt lyand within [lost].

Clause of Tenendas.—To be haldin of us and our airs in few.

Pertinents.—Imperfect, but contains the following:—Housis bigings toftis croftis tumailis outbreakis mossis ischie and entrie fra the heast of the hill to the lawest of the ebb.

Reddendo.—Payand yeirle ane barrel sufficient measour foure auld dolouris for everie pak of the said wedmell at the optioun to be payit at ternis usit and wount with dew service as use is

Warrantice.—Aganis all deidlie, &c.

Infestment.—To be by "erthe and stane of the grund thereof."

Signed.—At Faitlare (Fetlar), (signature on the lost strip).

Date.—18 July, j^m v^c four scoir.

Witnesses.—David Skollow (Skollay) of Toftis, Walter Bruce, sheriff clerk, Edward Skollow and

¹ *Oppressions in Orkney and Zeland*, p. 22.

² See paper by Professor P. A. Munch, "Geographiske Oplysninger om Hjaltland," in the *Annaler* of the Society of Northern Antiquaries, Copenhagen, 1857.

Indorsed.—Erle Orknay his chartor to William Stewart his natural sone of the twa last land of Ayt. . . . 1587.

Note.—This is an unmistakably feudal charter, distinct in every way from those which have preceded. It is not unnatural that Earl Robert should make such a grant, trifling as it is, to his natural son; but it does not appear that that worthy found a congenial home in his adopted country, for the following deed shows that in the succeeding year he disposed of the property, and he is not again heard of in Shetland, so far as I am aware.

No. XIII. A.D. 1588.

This deed is so faint as to be almost illegible. The granter, as already mentioned, is “William Stewart, sone naturall to ane nobil and potent lord Robert erle of Orknay lord of Zetland,” who “sellis analies and”. . . . to Hew Sinclair of Burgh his “twa last of land of Ayt” [Ayth]. Date 1588. Signed by “William Stewart.” William Fermor, notarius publicus. G. Strang notarius et testis in premissis.

No. XIV. A.D. 16—.

This document is very faint, and almost illegible. Enough, however, can be made out to show the nature of it. It is a presentation by Earl Patrick Stewart of Mr. Peter Symson, reader of Nesting, to the vicarage of that parish. The parish is stated to be vacant “in our hands” by the death of Mr. Alexander Spittell, last possessor thereof. The date cannot be deciphered. Spittell is the vicar presented to this same parish by Bishop Bothwell—see Deed No. IX., 1567. Lord Robert Stewart had obtained from Bishop Bothwell in 1568, the property and revenues of the Bishopric of Orkney in exchange for the temporalities of the Abbey of Holyrood, and his son and successor, Earl Patrick, was thus in full possession of the bishopric, and exercised his power of patronage accordingly. This patronage remained vested in the successive possessors of the Earldom of Orkney until its abolition by the recent Act.

Peter Symson has hitherto been regarded as the first known Protestant minister of the parish of Nesting, but the Deed No. IX. of the present series proves the existence of a predecessor, Alexander Spittell, presented in 1567. Symson, according to the *Fasti Ecclesie Scoticanæ* (part v. p. 437), was reader at North Whalsay and Skerries from 1579 to 1589, to which Lunnasting was added from 1590 to 1595, and Nesting and Lunnasting only from 1596 to 1608. Admitted prior to 1609. Dr. Scott, the author, adds—“Nothing more of him has been discovered.”