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The Court Books of  
Orkney and Shetland









*The Earl's Palace, Kirkwall, Orkney*  
*Scalloway Castle, Shetland*



THE COURT BOOKS OF  
Orkney and Shetland

1614-1615

*transcribed and edited by*

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## PREFACE

My warmest thanks are due to Mr John Imrie, Curator of Historical Records, H.M. General Register House, and to Professor Gordon Donaldson of the Department of Scottish History, Edinburgh University, for their scholarly advice so freely given, and for their unfailing courtesy.

R.S.B.

Edinburgh

*June, 1967*

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ILLUSTRATIONS

The Earl's Palace, Kirkwall, Orkney

Scalloway Castle, Shetland

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*frontispiece*

Facsimile from

Court Book of Orkney, folio 49v.

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## INTRODUCTION

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### THE NORTHERN COURT BOOKS

This is the third volume printed in recent years of proceedings in the sheriff courts of Orkney and Shetland in the early decades of the seventeenth century. The first was *The Court Book of Shetland 1602-1604*, edited by Professor Gordon Donaldson and issued by the Scottish Record Society in 1954; next came *The Court Book of Orkney and Shetland 1612-1613*, edited and published by the present writer through the medium of the Kirkwall Press in 1962; and the volume now produced, for the years 1614 and 1615, completes the trilogy.

The sheriff court in Scotland dates back to the twelfth century; and the older sheriff court records are of considerable interest and importance, particularly in the field of local history. Of those which have survived, the earliest in a reasonably continuous form are the court records of Aberdeen beginning in 1503. For Orkney and Shetland, the earliest extant sheriff court records of length appear 100 years later. They are in the custody of the Keeper of the Records of Scotland in H.M. General Register House at Edinburgh, and include the following manuscripts:

- The Court Book of Shetland 1602-1604
- The Court Book of Orkney and Shetland 1612-1613<sup>1</sup>
- The Court Book of Shetland 1615-1628
- The Court Book of Orkney 1615-1630<sup>1</sup>

<sup>1</sup> These two manuscripts are bound together and labelled 'Sheriff Court Book Orkney and Zetland 1612-1630'.

The Court Book of Orkney 1630-1643<sup>1</sup>

## The Court Book of the Bishopric of Orkney 1614-1638

Although the Court Book of Shetland for 1602 to 1604 is grouped for convenience with the sheriff court records – the chief magistrate styled himself sheriff principal – the book is, in the main, an account of proceedings as conducted by the ancient law officials of Shetland. It is the oldest volume of Shetland record that has survived. The second manuscript, the Court Book of Orkney and Shetland for 1612 and 1613, is in some respects a sequel to the preceding record for Shetland. It is the earliest Orkney court book known to exist.

The account of proceedings in the island courts is continued in the Court Book of Shetland 1615-1628 and in the three Orkney court books for the period 1614 to 1643. (The Court Book of the Bishopric relates to those parishes which, from 1614 onwards, constituted the bishopric territory.)

The present work comprises the material for 1614 and 1615 contained in those manuscripts. The book is in three parts, and consists of: (1) a small section of the Court Book of the Bishopric of Orkney (folios 1-4r), dating from 15 November 1614 to 21 December 1615; (2) a section of the Court Book of Orkney 1615-1630 (folios 1-3r and 43-55), dated 5 May to 20 December 1615; and (3) a section of the Court Book of Shetland 1615-1628 (folios 1-20), dated 22 June to 9 October 1615.

The great bulk of the records, from 1616 to 1643, remain to be explored. Their publication (in calendar form, it is suggested) would be a valuable contribution to northern history.

Extracts from the Orkney and Shetland court books were published in the nineteenth century – in *The Diary of the Reverend John Mill* (printed by the Scottish History Society,

<sup>1</sup> This volume is labelled 'Sheriff Court Book Orkney and Zetland 1630-1643, 1648'; but it relates almost solely to Orkney.

1889), in George Barry's *History of the Orkney Islands* (1805, 1808, 1867), in Alexander Peterkin's *Notes on Orkney and Zetland* (1822), and in the *Miscellany of the Maitland Club*, vol. ii (1840). The last-named work includes (with various flaws in transcription) the trial for witchcraft and the 'country acts' of Orkney and Shetland printed in the present volume.<sup>1</sup> Barry's *History*, 1805 and 1808, contains the country acts of Orkney rendered, from an imperfect copy, into English – as distinct from the vernacular of the text.<sup>2</sup> The edition of 1867 reproduces the Maitland Club transcripts relating to Orkney.

Sheriff court records are now kept either in the Scottish Record Office, in Register House, or with the local sheriff clerks; and it is not known when or under what circumstances the Orkney and Shetland court books were removed from the islands and came to be lodged in Edinburgh. With the possible exception of the Court Book of the Bishopric, they were certainly in the General Register House in 1840 when extracts from them were printed by the Maitland Club; and the first volume in the series, the Court Book of Shetland 1602-1604, is mentioned by Peterkin as being kept at the Register House in 1822.

## THE COURT BOOKS DESCRIBED

The six court books now in the Scottish Record Office, extending among them through eighteen hundred pages, have been arranged and bound into five volumes. This has been effected by assembling the Court Book of 1612-1613 and the Court Book of Orkney for 1615 to 1630 within the same cover. In the combined volume, the first five folios pertain to 1615 and

<sup>1</sup> See below, pp. 18-20, 25-34, 62-72.

<sup>2</sup> As examples: *kirk* becomes *church*, and *fra qm they coft the samen* is rendered *from whom he bought the same*.

later years; next in order are the 37 folios of the Court Book of Orkney and Shetland 1612-1613; and these are followed by about 200 folios for the period 1615 to 1630. The composite volume bears the title 'Sheriff Court Book Orkney and Zetland 1612-1630'. The folios of the Court Book for 1612 and 1613 are numbered 1 to 37, at the top-right corners – and also 6 to 41, at the top-left corners. The second sequence (in which one folio has been overlooked) is relevant to the book as part of the combined volume.

The five volumes measure about twelve inches in height by eight in width, and vary in thickness. Each is contained in stiff covers, with a half-binding in brown morocco and with brown cloth on the sides. There are five raised bands and gold lettering on the spine, and double head-bands. The spine panels are plain. The style of the bindings indicates that all have been executed in the Register House at various times within the last 100 years.

The manuscripts are on paper and are reasonably well preserved, though the folios exhibit a wide range in their general condition and appearance. They are for the most part intact, but not a few are frayed at the edges and corners; and while some are near-white after three and a half centuries, many are discoloured or stained. There are signs of exposure in the past to damp.

There is a margin at the left-hand side and at the bottom of each page; at the right-hand side there is usually none, with the result that the end of a word is at times obscured in the binding or lost through fraying and trimming. The titles to the numerous acts and proceedings are all written in the margins.

Several distinctive watermarks can be discerned. One of these, in the form of a thistle surmounted with a crown, having the characters *R* and *AR* beneath, is said to have been a device of the

first paper-mill in Scotland, that of Peter Heare.<sup>1</sup> The letters refer to the sovereign and his queen, James VI and Anne of Denmark.

The script of 1614-15 is in the legal style typical of the period in Scotland, and similar to that found in central court records such as the Acts and Decrets of the Court of Session. It is akin to the Elizabethan secretary hand in contemporary English records.

The quality of the writing varies noticeably. Portions of the script now printed are extremely legible, but here and there the hand deteriorates. In places, too, the ink has faded, and in some folios (in the Court Book of Orkney) it has soaked through, so that the words on both sides are visible at once in a confused pattern. The diversity in penmanship and legibility is considerable.

The text is in the Scottish vernacular with legal idiom and local terms interspersed. It is not punctuated. The rubrics and dates of court sittings are mainly in Latin. The manuscripts for 1614 and 1615 extend to 40,000 words approximately.

## EDITING THE TRANSCRIPT

In the printed transcript the sittings of each court appear in chronological order. This has meant the rearrangement of some entries in the manuscript court books of Orkney.

The text of the three court books is printed virtually in full; but various legal terms and clauses, often recurring and of little significance, have been freely excised or shortened, first being shown unabridged in typical processes. Minor variants in the omitted phrases occur, too trivial to record. The deleted passages are indicated thus . . . and so contrived that the sections remaining convey a sufficient and connected account of the pro-

<sup>1</sup> *The Library*, x (1929-30), 441, 443.

ceedings. Two types of process in particular have been considerably shortened: those dealing with bonds of caution in lawborrows or precepts of warning to flit and remove, both of which are unduly protracted. The words *The quhillk day* or (rarely) *The said day*, which introduce most proceedings, are silently suppressed save at the first sitting of each court. Altogether, perhaps 4,000 words have been excised, roughly a tenth of the total.

The original spelling has been carefully preserved, except that the arbitrary usage of certain letters is modified; and medieval characters are modernised. Details of the changes effected are given below.

The letters *i* and *j*, and *u*, *v* and *w*, frequently interchanged, are (in general) rendered to conform with their sound. As examples (taking these letters in pairs): with *i* and *j* – *preiudice* is transcribed *prejudice* and *jn* as *in*; with *u* and *v* – *siluer* is transcribed *silver* and *vp* as *up*; and with *v* and *w* – *vall* is transcribed *wall* and *Irwing* as *Irving*. In words like *mwtone* and *perswte*, and in place-names such as *Hwip* and *Mwnes*, the *w* is rendered *u*; but when the clerk prefers *u* to *w*, as in *tuentie*, the *u* is retained. In words like *cawsing*, the *w* is retained. The scribe's *ȝ* for *þ* (*thorn*) and his *z* for *ȝ* (*yogh*) are rendered *th* and *y* respectively. His *z* for the fraction  $\frac{1}{2}$  is so transcribed.

The occasional double initial *ff*, as in *ffor* and *ffrancis*, is rendered *f* or *F*. Clerical errors which are obvious have been rectified.

The numerous abbreviated words, with few exceptions, have been fully extended, adopting the scribe's way of spelling if he reveals it at other points, as generally happens. With regard to words that are always abbreviated, the missing element assumed is printed in square brackets; but *resso*<sup>u</sup> is transcribed *ressonabill*, *lre* as *letter*, and the recurrent *sref* as *schiref* – without brackets.

In the words *houss*' and *refuiss*', where the printed apostrophe

represents a written flourish, we have examples of the distinctive termination in long *ss* which often marks the plural of nouns ending in *s* and the present tense of verbs ending in *s*. This form is rendered *ssis* in the printed transcript, so that *houss'* and *refuiss'* become *houssis* and *refuissis* respectively. An exception is made with *horss'*, which (on account of its sound) is not extended.

In words ending with a single *s* and flourish, like *els'* and *fals'*, the flourish is disregarded.

The abbreviations which follow, nearly all in use at the present time, have been retained: *St*, *Mr*, *viz*, *li* or *lib* (the modern £ or *lb.*), *s*, *d* and *c* (for *centum*). The corrupt form *jaj* observed in dates is printed as *i<sup>m</sup>*. The *z*-like symbol in *viz* is an old contraction mark.

Though capital letters are not uncommon in the manuscript, small letters are often used as initials in place and family names. In the transcript, capitals are used for all proper names and also for the first word in a sentence. A simple system of punctuation has been introduced.

The titles of acts and proceedings, and added notes, written in the margin of the folios, have been moved to suitable places in the text and printed between pointed brackets < in this fashion >.

Words and letters within square brackets in roman type have been supplied in place of entries in the manuscript which are illegible or doubtful, obscured in the binding or lost through fraying and trimming, in place of words and letters missed out by the scribe, and (as stated above) in the extension of various contractions. The substitute entries have been inferred from the context, derived from similar processes found elsewhere, or deduced from blurred outlines in the text – and are not infallible. Illegible and missing material which cannot be made good is represented by asterisks, the number of these denoting roughly the amount of material wanting.



The entries between square brackets in italics are editorial notes and headings – additional to the manuscript. Folio numbers are shown in the same manner. The word *blank* in square brackets indicates a gap in the manuscript. Round brackets are by the court scribe.

## THE HISTORICAL SETTING

The brief summary which follows of events and conditions in the Northern Islands, in the half-century between 1565 and 1615, will serve as a background to the scenes portrayed in the court books.

In 1565 Lord Robert Stewart, a natural son of King James v, received from Mary, queen of Scots, his half-sister, a feu charter in respect of the old earldom and crown lands in Orkney and Shetland, together with the office of the sheriffship. In return for an annual duty of 3,000 merks payable to the crown, Lord Robert was free to acquire what he could in rents and dues, and from the fines gathered by his court. His charter, dated at Stirling, was a document which, for many years, had profound consequences in the Northern Isles.<sup>1</sup>

Separate from those lands were the extensive bishopric estates scattered throughout the islands. These came under the jurisdiction of the bishop, who at that time was Adam Bothwell. Lord Robert determined to extend his domain in the north. As a scion of the royal house, he had been endowed in childhood with the rich abbacy of Holyrood at Edinburgh. By 1568 he succeeded in compelling Bothwell to part with the bishopric lands in exchange for the abbacy. In this manner the crown, the earldom and the bishopric properties in Orkney and Shetland passed into the keeping of Robert Stewart.

He was now entitled to revenue from every corner of the

<sup>1</sup> *Register of the Privy Seal of Scotland*, v, 2078.

islands; his court had supreme judicial authority with certain legislative rights; and, his territories being remote from the seat of government, his powers had no restraint. He was arrogant and dissolute, and for a quarter of a century he applied himself, either personally or through his underlings, to the business of extorting money, land and substance from the people of Orkney and Shetland.

There was scant regard for justice. Weights were altered and acts were passed to Stewart's advantage; false decrees were uttered, numerous fines were imposed, and substantial bribes were accepted; rents were increased, duties were raised, and lands were seized on various prettexts.

In 1581 Lord Robert was created earl of Orkney by his nephew, King James VI, and in 1593 he died. His successor as earl and sheriff was Patrick Stewart, his son, who continued his father's ruthless policy with equal diligence. Labour was conscripted and services were demanded, without so much as food or drink in recompense. People were banished and their lands and goods were forfeited. Poverty, distress and ruin were widespread.

It was in 1605 that an event took place which in time brought an end to the Stewart tyranny and led to the destruction of the earl himself. The minister at Kirkliston in the Lothians, James Law, a man of resolute character and marked ability, was appointed bishop of Orkney. The new prelate stood high in the king's esteem, and as a result of his supplications Earl Patrick was arrested in 1609 and committed to ward in the castle of Edinburgh. For his manifold oppressions and tyranny he was first brought to trial in 1610.

In the years that followed came changes of considerable importance. In 1611 the old Norse laws, which had been in force in Orkney and Shetland for centuries, were abolished by an act of the Scottish privy council and superseded by the laws of

Scotland.<sup>1</sup> At the same time, while Patrick Stewart was still in prison, his deputies in both groups of islands were discharged of their judicial offices;<sup>1</sup> and orders were issued that the castles of Kirkwall and Scalloway be surrendered.<sup>2</sup>

In 1612, by an act of parliament, Orkney and Shetland (with the exception, evidently, of the church estates) were permanently annexed to the crown, and 'ane stewartrie' was erected.<sup>3</sup> Jurisdiction and authority had by this time been vested in Bishop Law.

An event of some consequence occurred in 1614 when, through an excambion, the widely scattered church estates were acquired by the king; and, as compensation, the bishop was granted by crown charter a more compact and united territory.<sup>4</sup> This consisted by and large of certain parishes in southern Orkney, and the new bishopric became a separate sheriffdom. The rest of Orkney, with the whole of Shetland, constituted the principal sheriffdom. There were now two different sheriffs and two separate courts in the islands – an arrangement that was maintained for many years.

Finally, also in 1614, an attempt was made by Robert Stewart, a natural son of the deposed Earl Patrick, to win back the islands; but after initial successes in Orkney he was besieged in Kirkwall Castle and obliged to surrender. For the part he took in the rebellion the young man was condemned to death, and early in the following year he and his father were executed in Edinburgh.

## THE SCOPE OF THE COURT BOOKS

### *The Court Book of Shetland 1602 – 1604*

In 1602 and 1603 the court in Shetland was presided over by

<sup>1</sup> *Register of the Privy Council of Scotland*, ix, 181.

<sup>2</sup> *Op. cit.*, ix, 182.

<sup>3</sup> *Acts of the Parliaments of Scotland*, iv, 481, c. 15.

<sup>4</sup> *Register of the Great Seal of Scotland, 1609–20*, 1119.

John Dishington, Earl Patrick Stewart's deputy, and in 1604 mainly by the earl in person. In June or July each year the court went on circuit, and sessions were held in different districts throughout the islands. Later, in July or August, a central court, the Lawting, was held in Scalloway, in the castle built for Stewart by his enslaved subjects.

The Court Book of Shetland for 1602 to 1604 came just in time to record a way of life and a code of law and administration that was soon to disappear. From the wide variety of cases dealt with by the court (under the old Norse system mainly), touching every aspect of life and people of all kinds and every class, a unique picture emerges of conditions in Shetland during the 'reign' of Patrick Stewart; and an impression is gained of the entire economy of the islands at that time. This court book is a work of first importance in the study of Shetland history.<sup>1</sup>

The glossary in Professor Donaldson's edition contains a vocabulary of the Norse legal terms and numerous words of the Norse dialect which occur in the text.<sup>2</sup> The volume is of special interest to the linguist.

### *The Court Book of Orkney and Shetland 1612 – 1613*

The manuscript begins with the proceedings of a court held in the cathedral church of Saint Magnus in Kirkwall, in July 1612. The presiding official was James Law, bishop of Orkney, the king's commissioner, sheriff and justice in Orkney and Shetland. Bailies and counsellors were elected and acts were passed.

The bishop next appeared with his court in Shetland, and on several occasions in August he sat at Sumburgh House and the castle of Scalloway. Disputes of different types were heard, a

<sup>1</sup> In *Shetland Life under Earl Patrick* (Oliver and Boyd, 1958) Gordon Donaldson discusses the court book at considerable length.

<sup>2</sup> A few amendments to this glossary are given in *Scottish Historical Review*, xxxv (1956), 162.

trial for murder took place, and a series of 'country acts' was put into force.

The court then returned to Orkney; and the remainder of the record, covering the period from September 1612 to May 1613, is concerned with proceedings in Kirkwall under the jurisdiction of Mr Henry Aitkin, sheriff depute – in the great hall, evidently, of the Bishop's Palace. Numerous actions were raised, both civil and criminal in character.

The Court Book of 1612 and 1613 was written during a period of transition in Orkney and Shetland. The oppressive rule of the Stewart earls was ended and authority was vested in the bishop. The ancient code of laws had been revoked, and court procedure and terminology approximated to that of a Scottish sheriff court. Whereas the earl's court had manipulated the law, the bishop's court now administered justice.

Characteristic of the new regime was the bond of caution in lawborrows, frequently sought. If A stood in fear of B, then A could petition the court to place B under legal pledge that A should be free from intrusion and injury at the hands of B, under pain of a substantial fine; and a cautioner for B was required. This instrument, seldom referred to in the records of 1602-04, apparently had a marked effect in preventing the assaults for which, under Earl Patrick, convictions had been common.

The importance of this court book lies in showing clearly that the old order in the north had given place to a new, and how emphatic the changes had been. It is valuable, too, for the light it throws on the social history of the islands, especially the Orkneys.

#### *The Court Books of Orkney and Shetland 1614 – 1615*

After the excambion of 1614 the bishopric territory comprised, in the main, the Orkney parishes (in whole or part) of Sandwick, Stromness, Orphir, St Ola, Holm, Shapinsay, Hoy and Walls;

and in these areas Bishop Law assumed the function of sheriff, by virtue of his charter.<sup>1</sup> The Court Book of the Bishopric relates to proceedings within his territory.

In the rest of Orkney along with Shetland (which areas may be styled the stewartry of Orkney and Shetland) the sheriff acting for the king was Sir James Stewart of Killeith. The Court Book of Orkney and the Court Book of Shetland record, respectively, proceedings in the Orkney and Shetland regions of the stewartry.

It seems, however, from the following entry in the bishop's court book, that the king's sheriff had certain rights within the bishopric. On 29 November 1614, at the first sitting of the bishop's court in Kirkwall, a protest was made in the name of Sir James Stewart, 'that . . . this court sould not preiudge the generall gift of the schireffship and justiciarie grantit to the said James, quhilk he alledgit to be anteriour to ony gift to my lord bischop'.

The list of sederunts of the different courts, given below, shows the date and location of each court sitting, and indicates the various movements of the courts on circuit.

LIST OF SEDERUNTS<sup>2</sup>

## The Court Book of the Bishopric of Orkney, 1614 – 1615

1614	November 15	Sandwick
	November 29	Kirkwall
1615	March 7	Kirkwall
	November 23	Kirkwall
	December 14, 21	Kirkwall

<sup>1</sup> *Register of the Great Seal of Scotland, 1609–20*, 1119.

<sup>2</sup> The places where the courts were held are not always mentioned by name; but the omitted locations can be presumed with reasonable certainty from the text.

## The Court Book of Orkney, 1615

1615	May 5	Kirkwall
	May 15	Rousay
	May 27	Stronsay
	June 1	South Ronaldsay
	June 6-8, 10	Kirkwall
	(The court then sits in Shetland – see below)	
	October 27	Kirkwall
	November 6-11, 17, 21, 23, 24	Kirkwall
	December 15, 16, 19, 20	Kirkwall

## The Court Book of Shetland, 1615

1615	June 22	Unst
	June 24	Yell
	August 1, 3, 4, 8, 17, 19	Scalloway
	August 26	Unst
	September 6	Walls
	September 8	Hillswick, Northmavine
	September 9	Urafirth, Northmavine
	September 19, 20, 28	Scalloway
	October 3, 4, 9	Scalloway
	(The court then sits in Orkney – see above)	

It will be observed that in 1614-15 the sittings of the bishop's court were few in number and erratic. His first appearance was at the church of Sandwick on 15 November 1614, when he gave judgment in a claim for tocherguid (a wedding dowry). The bishop next held court a fortnight later in the hall of his palace in Kirkwall, when the protest by the king's sheriff, referred to above, was entered. In 1615 there were four sittings of the bishopric court, all in Kirkwall and presided over by Mr Henry Aitkin, sheriff depute, who had served James Law in that

capacity in previous years.<sup>1</sup> The proceedings were concerned with tenure of land and processes of warning to 'flit and remove', in one of which the bishop himself was the (successful) plaintiff.

The first sitting of the court of the stewartry took place on 5 May 1615 in the hall of Kirkwall Castle, when William Sinclair of Warsetter was tried by jury for committing an assault with 'suordis and pistollis'. The presiding officials were Henry Stewart and William Livingston, the sheriff deputes; the procurator fiscal was Robert Coltart, who also held that office in the bishopric; and the clerk to the court was Henry Aitkin, the sheriff depute in the bishopric.

Ten days later the court was on circuit in Orkney, and the islands of Rousay, Stronsay and South Ronaldsay were visited. The court then sat in Kirkwall on several occasions in early June.

Late in June the court was on circuit in Shetland, going first to Unst and Yell and then to Scalloway, where sittings were held in the castle. Thereafter the court returned to Unst, went on to Walls and Northmavine, and completed the circuit at Scalloway in late September and early October. In Shetland the sheriff depute was William Livingston, mentioned above; and the procurator fiscal was Robert Kaa, clerk to the bishopric court. The dual appointments of Robert Coltart, Henry Aitkin and Robert Kaa are worthy of note.

On 27 October the court was back in Kirkwall, in the Earl's Palace; and sittings were continued till 20 December. Both sheriff deputes were usually present.

For convenience, the two court books of the stewartry are reviewed together: they are similar in character. Of the many actions that were raised in 1615, some dealt with the tenure or ownership of land, the payment of rents or duties, the recovery of debts and claims for compensation; others, with acts of theft

<sup>1</sup> *The Court Book of Orkney and Shetland 1612-1613.*



and (a few) with deeds of violence. Bonds of caution in law-borrows were numerous. These are all subjects that were dealt with in the records of 1612-13, and the new material adds to our knowledge of such affairs. There is more, too, about the penalties for crime – from fines and standing in the kirk door to fixing in the joughs, scourging, branding, banishment, and death. There were, also, proceedings of a miscellaneous nature.

Among subjects that are new in the present volume is a trial for witchcraft. On 7 June 1615 Janet Drever and Katherine Bigland were charged in Kirkwall with 'the abohminable and divelishe cryme of witchcraft'. The unfortunate women were both found guilty by the assize; and while Janet Drever was sentenced to be 'scrudgit fra the end of the said toun to the uthir', Katherine Bigland was condemned to death.

New also in this volume (since 1602-04) are actions against persons accused of stealing sheep, both in Orkney and Shetland – some charges going back from six to eight years. The penalty varied; but, at Scalloway, Ivor Manson, Buttie Erasmuson and Christopher Esplein were hanged on the gallow hill. In Kirkwall, the curious punishment of Ola Smith was 'to be hangmane of this schirefdome in all tyme cumming during his lyftyme'. Others convicted of sheep-stealing were scourged and banished.

Of considerable interest are the country acts of 1615 contained in the court books.<sup>1</sup> The acts of Shetland, twenty-four in number, were dated at Scalloway on 3 August; and the eighteen acts of Orkney, at Kirkwall on 7 November. The two series have many items in common, but differences exist, and all the acts have been printed in full. The purpose of the country acts, which embraced a wide range of subjects, was to meet local needs, and to temper Scottish law to former usages. A similar, shorter series had been passed at Scalloway in 1612.<sup>2</sup>

<sup>1</sup> See below, pp. 25-34, 62-72.

<sup>2</sup> *The Court Book of Orkney and Shetland 1612-1613*, 19-24.

The present volume, for the years 1614-15, is plainly of some importance. It shows the constitution of the courts after the establishment of separate sheriffdoms, the system of court procedure under new officials, and how the law continued to be upheld. The country acts give an added value to the work.

The printed Court Books of Orkney and Shetland now available, for 1602-04, 1612-13 and 1614-15, present a unique panorama of events and circumstances in the Northern Islands in the early-seventeenth century: first under the Stewart earl and the Norse law; and then under the law of Scotland, administered in turn by the bishop and the king's sheriff. The transition from an era of tyranny to an age of justice is clearly demonstrated, and a sudden light appears on social conditions. The three volumes will be used mainly for the purposes of study; but they are also profoundly interesting as narratives of human activity, and for their mention of individual men and women – many hundreds in number – who lived in a time that now seems remote. Their names are famous in the islands, and their descendants are there to this day.



# THE COURT BOOK OF THE BISHOPRIC OF ORKNEY

15 November 1614 – 21 December 1615

CURIA tenta apud templum de Sandwick per reverendum in Christo patrem Jacobum episcopum Orcadensem vicecomitem principalem terrarum episcopalium de Orknay decimo quinto die mensis Novembris 1614. Curia legitime affirmata. [*Folio 1r*]

< Warth contra Breken and Kirkness >

The quhilk day anent the clame intentit and persewit befor the said reverend father in God at the instance of William Warth in Scor[w]\*\*[k] aganes Magnus Brekin, William and Alexander Kirknessis, acclamand fra the said Magnus ane ox or the soume of x li. for the price thairof and fra the said[is] William and Alexander Kirknessis the soume of iiij li. money fra ilk ane of thame, for tocherguid promittit be thame to him with [*blank*] Brekin, thair sister, four yeir syne or thairby, as the said clame at mair lenth beiris; the said persewar being personallie present and the saidis defendaris being lykwayis personallie present, thair richtis, reasones and allegationes, togither with the depositiones of divers famous witnessis, being hard, sein and considerit be the said reverend father, schiref principall forsaied, [and] he thairwith being ryplie advyseit, decernis the said Mag[nus to] content and pay to the said persewar ane young ox o[r the soume of] viij li. as for the price thairof and the said William the [soume of] \*\*\*\*\* [and] the said Alexander the soume of iii li., promittit be thame

[to him for] tocherguid forsaid, and assyolies the saidis defendaris fra the \*\*\*\*\* poyntis of the said clame and decernis thame quyt and [frie thairfra in tyme] cumming; attour decernis the said Magnus to content and pay to the said persewar the soume of xx s. and the saidis William and Alexander the soume of x s. as for expenssis of pley mad, sustenit and deburseit be him in persute of this present decreit; becaus the poyntis of the said clame being fund relevant and admittit to the said persewaris probatioun of consent of the saidis defendaris, he instant[lie] verifiyt the samen be production of divers famous witnessis; as wes cleirlye understand to the said reverend father and thairfor he decernit as said is and ordanes preceptis and executorialis to be direct heirupoun gif neid beis in forme as effeiris.

< Hackland contra Richie >

The said reverend father in God sittand in judgement decernes Johne Richie in Hour[stan]e, as cautioner and souertie for James Gar[i]och in [blank], to content and pay to Andro Hakland in Lynda the soume of iiij li. money promittit be him to the said Andro, *ex confessione partis rei*.

[1v] Curia capitalis vicecomitatus episcopi de Orknay tenta apud palatium de Yeardis in aula eiusdem per reverendum in Christo patrem Jacobum episcopum de Orknay vicecomitem principalem eiusdem episcopatus vigesimo nono die mensis Novembris 1614. Sectis vocatis et curia legitime affirmata.

Ar choisin for memberis of court Robert Kaa clerk, Robert Coltart procuratour fiscall, Archibald Dundas officer and Johne Thomsone adjudicator.

[Protest in name of Sir James Stewart of Killeith]

Compeirit David Heart, schiref clerk of Orknay, and in name of S[i]r James Stewart of Killeith, kny[gh]t, and Mr Johne Finla-

sone, his deput, protestit that quhatsumever sould be done this court sould not prejudge the generall gift of the schireffship and justiciarie grantit to the said James, quhilk he alledgit to be anteriour to ony gift to my lord bischop, and thairupoun askit instrumentis.

The forsaidis memberis of court [chosin] and electit as said is wer admittit and sworne, the court fensit and sutes callit wes continwit to the morrow.

Curia vicecomitatus episcopatus Orcadensis tenta apud urbem de Kirkwall infra palatium de Yeardis ibidem in aula eiusdem per Magistrum Henricum Aitkin vicecomitem deputatum dicti vicecomitatus die septimo mensis Martii anno Domini millesimo sexcentesimo decimo quinto.

The said Mr Harie Aitkin, schiref deput of the bischoprik of Orknay, produceit his commissioun and efter reiding thair of mad faith and craved Robert Kaa clerk, Robert Coltart, notar, procuratour fiscall, Thomas Young and Archibald Dundas officeris and Jone Thomsone dempster.

< Fermour contra Copland >

Anent the lybellit sumondis of removeing intentit and persewit befor the said schiref deput sittand in judgement, at the instance of William Fermour, lyfrentar of the landis underwrittin, aganes Walter Copland, pretendit tenent, possessour and occupyer of the saidis landis, makand mentioun that quhair the said persewar had the tyme of the warneing efterspecifeit of befor, continwalie sensyne and as yit hes all and heall thrie farding land in Hurt[e]so within the parochin of Holme, Mainland of Orknay and schirefdome forsaid, with houssis, biggingis, \*\*\*\* pendiclis and pertinentis thair of pertening to him in lyfrent; be ve[r]tue

quhairof he, be his precept and officer in that pairt fourtie dayis preceeding the feast and terme of Witsonday last bypast, causit lawfullie warne, conforme to the act of parliament maid anent warneing of tennentis to remove fra landis, the said defendar, pretendit tennent, possessour and occupyar of all and hail the said persewaris thrie farding land, houssis, biggingis and pertinentis thairrof forsaidis, to have flittit and removed him selff, his wyf, bairnes, servandis, familie, subtennentis, cottaris, guidis and geir furth and fra the samen landis, houssis, biggingis and pertinentis thairrof forsaidis, and to decist and ceis thairfra and to leave the samen void and red at the said feast and terme of Witsonday, to the effect the persewar, his wyf, bairnes, men, tenentis, servandis [2r] and utheris in his name micht have enterit thairto peaciablie, bruiokit, joisit, occupyit, labourit and manureit the samen, sett, useit and dispoineit thairupoun dureing all the dayis of his lyf tyme, conforme to his lyfrent richt of the samen, warneing forsaid and act of parliament abonewrittin in all poyntis, as the said precept of warneing, executiones and indorsationes thairrof at mair lent beiris; nochwithstanding quhairof the said defender continwallie sen the said feast and terme of Witsonday last bypast be him selff, his servandis, complices and utheris in his name violentlie and maisterfullie hes occupyit, labourit and manurit the said thrie farding land, houssis, biggingis and pertinentis thairrof forsaidis, and will on nawayis as yit remove, desist and ceis thairfra to the effect abonespecifeit without he be compellit; and anent the chairge given to the said defendar to have compeirit to have hard and seine decreit given and pronunceit in maner underwrittin, or els to alledge ane ressonabill caus quhy the samen sould not have bein done, as the saidis sumondis at lenth beiris. The said persewar compeirand personallie with Robert Coltart, his procuratour, quha for proveing the pointis of the saidis sumondis produceit ane tak and assedatioun maid and grantit be Robert, erle of Orknay, lord of Yetland, to the

said William durence all the dayis of his lyf tyme, of all and hail the saidis landis with houssis, biggingis and pertinentis thair of forsaidis, of the date the fyft day of November the yeir of God i<sup>m</sup> v<sup>e</sup> lxxxvii yeiris, and the said defendar being lyk wayis personallie present, thair richtis, reasones and allegationes being hard, seine and considerit be the said schiref deput, and he thairwith being ryplie advyseit, decernes the said defendar to flitt and remove him selff, his wyf, bairnes, familie, subtennentis, cottaris, guidis and geir furth and fra the said thrie farding land, houssis, biggingis and pertinentis thair of forsaidis, and to leave the samen void and red, decist and ceis thairfra, to the effect the said compliner, his wyf, bairnes, servandis, men, tenentis and utheris in his name may enter thairto peaciablie, bruik, jois, occupy, labour and manur the samen, set, use and dispoise thairupoun at his pleasour in tyme cumming, conforme to his said richt of the same, warneing forsaid and act of parliament abonewritten in all poyntis; becaus it wes alledgit be the said defendar that he aucht not to be decernit to flitt and remove fra the landis lybellit, becaus he had takis sett to him be the said persewar for termes to rin, and offrit him to prove the samen sufficientlie, and ane terme being assignit to him for proveing thair of he failyeit in doing of diligence to that effect; as wes cleirlye understand to the said schiref deput and thairfor he decernit as said is and ordanes preceptis and executorialis to be direct heirupoun gif neid beis in forme as effeiris.

Vigesimo tertio Novembris 1615

< Ridland contra Beatoun >

In the actioun and caus intentit and persewit at the instance of Johne Ridland of that ilk aganes Thomas Beatoun in Inner Stromnes, to heir and sie him decernit to have done wrang in the wrangous, violent and maisterfull occupatioun, labouring, man-



ureing and withhalding fra the said persewar, without tak or licence of him or o[ny] uther title of [ric]ht, of the said complineres nyne rigges of land [with] [2v] the pertinentisthairof lyand in the parochin of Stromnes and schirefdome of the bischoprik of Orknay, be the space of tua yearis croppes nixt and immediatle following the feast of Witsonday i<sup>m</sup> vi<sup>c</sup> and fourtein yearis; and to decist and ceis thairfra in tyme cumming, to be peaciablie bruikit be the said persewar as his proper landis in all tyme thair- efter; and to refund and pay to him the proffetis that he mycht have had of the saidis nyne rigges of land with the pertinentis yeirlie be the said space, gif the said Thomas had sufferit him peaciablie occupy and labour the samen with his awin guidis; as at mair lenth is contenit in the said matter, actis, preceptis and heall proces led and deduceit thairupoun; the said persewar being personallie present and the said defendar being lawfullie sumond to this actioun lawfull tyme of day biddin oft tymes callit and not compeirit, the said schiref deput hes admittit and admittis the poyntis of the saidis sumondis to the said persewaris probatioun, and for proveing thair of hes assignit and assignis letteris to prove. *[Continued on 14 December.]*

[3r]

Decimo quarto Decembris [1615]

&lt; Bishop contra Setter and Quoyis &gt;

Anent the lybellit sumondis of removeing intentit and persewit befor Mr Harie Aitkin, schiref deput of the bischoprik of Orknay sittand in judgement, at the instance of ane reverend father in God, James, bischop of Orknay, haveing guid and undoubtit richt to the landis underwritin, that quhair he hes . . . all and haill the landis of South Setter and quoyis, houssis, biggingis and pertinentis thair of lyand within the ile of Wais and schirefdome forsaidd, pertening to him as a pairt and portioun of the patron [age] and rent of the said bischoprik; be [3v] virtue quhair of he . . . xl

dayis preceeding . . . Witsunday last bypast, cawsit lawfullie warne . . . Elizabeth Setter, relict of umquhill Magnus Chalmer, and Alexander Quoyis, pretendit tennentis and occupyeris of all and haill the saidis landis . . . lyand within the ile and parochin of Wais and schirefdome forsaid, to have flittit and removed thame selves, thair wyfes, bairnes, servandis, familie, subtennentis, cot-taris, guidis and geir furt and fra the saidis landis . . . to the effect the said reverend father, his men, tenentis and servandis . . . may enter thairto peaciablie . . . as the said precept . . . at mair lenth beiris; nochtheloes the saidis persones . . . have continwallie sen . . . Witsunday last bypast . . . occupyit . . . the saidis landis . . . and will on nawayis as yit remove . . . thairfra . . . without they be compellit; and anent the chairge givin to the said defendar to have compeirit . . . as the saidis sumondis at mair [lenth] beiris. The said persewar compeirand be Robert Coltart, his procura-tour, quha produceit for proveing of the poyntis of the said lybellit sumondis ane instrument of saisine under the subscrip-tioun of Mr Harie Aitkin, notar publict, of the date the fourtein day of November i<sup>m</sup> vi<sup>c</sup> and fourtein, bearand the said persewar to be infest and seasit in all and haill the saidis landis, and the saidis defendaris being lawfullie sumond to this actioun lawfull tyme of day biddin oftymes callit and not compeirit, the said schiref deput decernis and ordanes the saidis defendaris to flitt and remove . . . furth and fra the saidis landis . . . to the effect the said reverend father . . . may enter thairto peaciablie . . . conforme to his richt thairof . . . becaus the saidis defendaris wes lawfullie sumondit to have compeirit befor the said schiref deput to have hard and seine sentence and decreit given and pronunceit in maner abonewrittin, or els to have alledgit ane ressonabill caus quhy the samen sould not have bein done, with certificatioun to thame and they failyeit the said schiref deput will decerne in maner forsaid, and they being lawfullie sumond to that effect compeirit not to alledge ony ressonabill caus in the contrair; as

wes cleirlie understand [be] him and thairfoir he decernit as said is and ordanes preceptis . . . as effeiris.

< Ridland contra Beatoun >

Anent the terme letteris assignit [*on 23 November*] be Mr Harie Aitkin, schiref deput of the schirefdome of the bischoprik of Orknay, to Johne Ridland of that ilk aganes Thomas Beatoun in Stromnes, for proveing of the sumondis of violent proffitis persewit at the instance of the [said] Jone aganes the said Thomas, as the said sumondis at mair lenth beiris; the said [persewar] being [4r] personallie present produceit diligence upoun William Beatoun of Cluk, Magnus Cromertie and Jone Cursetter, quha compeirit not, and protestit for farder diligence aganes the saidis persones and ma witnessis, and the said defendar being lawfullie sumond etc., the said schiref deput assignis letteris to prove *pro secunda et tertia*.<sup>1</sup>

[2v]

Vigesimo primo Decembris 1615

< [Ommon]d contra [Omm]ond etc. >

Anent the lybellit sumondis of removeing intentit and persewit befor Mr Harie Aitkin, schiref deput of the bischoprik of Orknay sittand in judgement, at the instance of Richard Ommond in Onstoun, heretabill udaller of the landisunderwritin, that quhair the said persewar hes . . . all and haill ane markland in Kirbuster within the parochin of Orpher and schirefdome forsaid, pertening to him heretablie as his richt and title thairof proportis; be vertue quhair of he . . . fourtie dayis preceeding the feast and terme of Witsonday in anno i<sup>m</sup> vi<sup>e</sup> and fourtein yeiris, causit lawfullie warne . . . James Guni, James Wischart, pretendit

<sup>1</sup> The above action was continued on the last day of February 1616, on 7 March 1616, and on 14 March 1616, when judgment was given largely in favour of the pursuer.

tenentis, possessouris and occupyaris of the saidis landis, and Robert Ommond in Kirkwall for his entres, to have flittit and removit thame selffis, thair wyffis, bairnes, servandis, familie, subtennentis, cottaris, guidis and geir furt and fra the saidis ane markland and pertinentis thair of at the said feast and terme . . . to the effect the said persewar, his wyf, bairnes, servandis, tenentis . . . micht have enterit thairto peaciablie . . . as the said precept . . . at mair lent beiris; nochtwithstanding quhair of the saidis persones . . . continwallie sen . . . Witsonday hes . . . occupyit . . . and withhaldin fra the said persewar the said ane markland . . . and will on nawayis as yit remove . . . thairfra without they be compellit; and anent the chairge givin to the said defendar to have compeirit . . . as the saidis sumondis at lenth beiris. The said persewar compeirand personallie [3r] with Robert Coltart, his procuratour, and the said defendar compeirand lykewayis personallie with Jherome Chalmeris, his procuratour, thair richtis . . . with the depositiones of divers famous witnessis receaveit, sworne and admittit for the pairt of the said defendar, being hard . . . the said schiref deput . . . decernis the saidis defendaris to flitt and remove . . . furth and fra the said ane markland . . . to the effect the said persewar . . . may peaciablie enter thairto . . . conforme to his richtis as uddaller thair of . . . becaus it wes alledgit be the said Jerome Chalmeris, procuratour forsaid for the pairt of the said Robert Ommond and remanent defendaris forsaidis, that they can not be decernit to flitt and remove fra the said ane markland lybellit, becaus Johne Ommond, grandschyr to the said Richa[rd] and ane guidschyr to the said Robert, hade four mark uddall land quhilkis he devydit betuix the bairnes begottin upoun his first and secound wyffis, and that the said ane markland lybellit fell to David Ommond, father to the said defendar, quha wes sone lawfull begottin of the secound maryage, quha continwed in the peaciablie possessioun thair of dureing all the dayis of his lyf tyme, lyke as the said defendar haid continwed in peaci-

able possessioun of the samen ever sen syne be the space of tuentie four yeiris; to the quhilk it wes answerit aucht to be repellit, becaus he offerit him to prove that the said ane markland lybellit fell in partage to umquhill Thomas Ommond, brother to umquhill Eduard Ommond father to the said persewar, quha wedsett the said ane markland to umquhill Peter Rusland in Haray, fra quhom and his aires the said umquhill Eduard redemit the samen; to the quhilk it wes duplyt be the said Jerom[e] Chalmeris, procuratour forsaid for the pairt of the saidis defendaris, that the said replie aucht to be repellit, becaus gif ony wedsett ane markland wes it wes maid be the said umquhill Thomas to the said umquhill Peter Rusland, giveand and nocht grantand the samen, that nather the said Peter nor the said umquhill Thomas, his authour, attenit to the possessioun thairof, and that his umquhill gudame, his father and him selff for thrie ages almost be the space of ane hundre[th] yeiris had continwed in peaciable possessioun thairof *hinc inde* efter utheris sen the deceis of the said umquhill Johne, baith thair auctores, and offerit him to prove the samen sufficientlie; quhilk exceptioun and duply being fund relevant for eliding the said lybell and reply, the said schiref deput admittit the samen to the saidis defendaris probatioun, and tyme being assignit to thame for proveing thairof they faily[eit] in proveing of the samen; as wes cleirlye understand be the said schiref deput and thairfor he decernit as said is and ordanes preceptis . . . as effeiris.

[*The next entry in this court book is dated 4 January 1616.*]



## THE COURT BOOK OF ORKNEY

5 May 1615 – 20 December 1615

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**C**URIA justiciarie vicecomitatus de Orknay et Yetland  
tenta apud castrum de Kirkwall in aula eiusdem per  
honorabiles viros Henricum Stewart de Carlongyie et  
Magistrum Willelmum Levingstoun vicecomites deputatos dicti  
vicecomitatus die quinto mensis Maii anno Domini 1615. Curia  
tenta et legitime affirmata. [*Folio 43r*]

The quhilk day ar chosen Mr Harie Aitkin clerk, Jon Moffet  
officer, Jon Thomesone dempster and Robert Coltart procura-  
tour fiscall.

< Ryot: Sinclair >

William Sinclair of Warsetter being lauffullie sumondit to have  
comeperit befor the saidis schirefis this day in judgement to  
underly ane assyse for the cruell and unmercifull unbesetting of  
Jon Broun, merchand in Bia in Sanday, be way of foirthot fellonie  
with suordis, pistollis and utheris waponis invasive of purpois to  
have bereft him of his lyfe, upone the thrid day of Apryle last,  
thairby committing manifest oppressioun and ryot upone the  
said Jon in contempt of his majesteis auctoritie and lawis; the  
said William Sinclair being personallie present denyet the same.  
Thairfoir the judges referrit the same to the knowledge of ane  
assyse of the persones following, viz –

## Assisa

Hew Halcro of that ilk	Nicoll Garioche thair,
Jon McKenze in Kirkwall	chancelar
Capitane Thomas Kny[gh]t-	Michaell Chalmeris thair
sone thair	Jon Prince, merchand thair
David Moncreif thair	William Hannay thair
James Deldell, merchand thair	Mathow Robesone in
	Brassay

Adame Cromertie of Kirkhous  
 Alister Tailyeour in Kirkhous  
 Jon McCleud in Burray  
 Harie Spence in Skapa  
 Magnus Chalmeris in Burray

The said Robert Coltart, procuratour fiscall, and the said Jon Broun, pairtie greved, desyrit the said William Sinclair to give his aith *de calunnia* upone the cryme abonewrittin, quha refuissed to give the same. The foirsaidis persones being chosen, suorne and admittit, past altogidder furt of court, rypelie advysit enterit agane, fand and delyverit the said William Sincla[ir] to have committit ane ryot upone the said Jon, and that be the delyverance of Nicoll Garioche, chancelar electit be the saidis assyssoris. The judges condemnis him [in ane] unlaw of court for the ryot.

At [blank] kirk in Rowsay the xv day of Maii the yeir of God 1615.

## &lt; De Chalmer contra Alexander &gt;

Anent the supplicatioun geven in befor the saidis schiref deputtis at the instance of Jerome Chalmer, burges in Kirkwall, aganes Henrie Alshunder in Langskaill in Rowsay, beirand that in the

moneth of March 1609 the said Henrie conditioned with him to labour the landis of Stannaquoy<sup>1</sup> within the ile of Rowsay, per-  
 tening to the said Jerome, and to begin thairto to the crope and  
 yeir of God 1609 yeiris forsaid; lyke as the said Henrie promesed  
 to content and pay to the said Jerome yeirlie and ilk yeir during  
 his occupatioun thairof forsaid the males and dewteis of the  
 samen, viii settingis malt; and trew it is that the said Henrie  
 enterit to the possessioun of the saidis landis for the said crope  
 and yeir of God 1609, and hes possest and laborit the samen  
 yeirlie and ilk yeir sensyne be the space of seven yeiris and croppis,  
 and that the said Jero[me] hes oft and diveris tymes requyrit and  
 desyrit him to have maid payment to him of the said yeirlie  
 dewtie for the males of the saidis landis yeirlie and ilk yeir the  
 croppis and yeiris of God abonewrittin. Nottheleshe wrangouslie  
 refuissis sua to do, nather will he content and pay to him the  
 soume of iiii li. for the price of ilk meill of the said malt without  
 he be compellit, as [43<sup>v</sup>] the said suplicatioun at mair lenth  
 beiris; the persewar being personallie present and the said de-  
 fender being lykwayis personallie present, thair richtis . . . being  
 hard . . . the saidis schiref deputis . . . decernis the said Henrie  
 to content and pay to the said Jerome viii settingis malt yeirlie  
 and ilk [yeir] be the space of the saidis seven yeiris for the dewteis  
 of the saidis landis, or ellis to content and pay the said soume of  
 iiii li. for the price of ilk meill thairof; becaus the pointis of the  
 said supplicatioun being be the said persewar referrit to the said  
 defenderis aith of verritie simpliciter, and he being personallie  
 present as said is refuissed to give the same; as wes cleirly under-  
 stand to the saidis schiref deputtis and thairfoir they decernit as  
 said is and ordanes preceptis etc.

At the hous of Strynie within the ile of Stronsay the xxvii  
 day of Maii 1615.

<sup>1</sup> Possibly *Scannaquoy*.



## &lt; Mowat contra Skae &gt;

The saidis schiref deputtis sittand in judgement, compeirit Oliver Skae and becam actit to content and pay to James Mowat, merchand, the soume of v li. money betuix and the feast of Lambes nixt.

## &lt; Eygo &gt;

Compeirit Andro Eygo, smyth, and becam actit to content and pay to the said James fyve meillis beir on the beir pundler, or ellis the soume of xxxiii s. iiii d. for the price of ilk meill thairof, and that betuix and the feast of Pashe nixtocum.

## &lt; Voy &gt;

Compeirit David Voy in Hoip and becam actit to content and pay to the said James Mowat the soume of fyve pund betuix and the feast of Lambes nixt.

At the kirk of Burwick within the ile of South Ronnoldsay the first of Junii 1615.

## &lt; Cromertie contra Birstane &gt;

In presens of the saidis schiref deputtis sittand in judgement decernis and ordanes William Birstane younger as cautioner and full debtour for Jon Williamsone in Paplay, to content and pay to Adame Cromertie of Kirkhous the soume of xxx li. money adebit be the said Jon to the said Adame for thrie yeiris bygane dewteis of ane farding land in Paplay occupyet be the said Jon, pertening to him, *ex confessione dicti Willelmi*.

## &lt; Carmichaell contra Drysdail &gt;

Anent the clame persewit befor the saidis schiref deputtis at the instance of William Carmichell, merchand in Kirkwall, aganes Archibald Drysdail in South Ronnoldsay, acclameand fra him xxxv li. xix s. iiii d. money adebtit be him to the said William

conforme to ane futtit and subscrivit compt, and sicklyke acclameand the soume of xxxviii lib. money debursit be him to William Fullertoun, merchand, at his letter of requeist wreattin to him from Dunrosnes the xxiiii of August 1603, quhilk he promesed to have repayit immediatlie efter his cumming to Orkney, quhilk wes shortlie thairefter, as the saidis clames at mair lent beiris; the said persewar being personallie present and the said defender being lykewayis personallie present, thair rich-tis . . . being hard . . . the saidis schiref deputis . . . decernis the said defender to content and pay to the said persewar the soume of xxxv li. xix s. iii d. and xxxviii lib. money foirsaid, adebtit be the said defender to him in maner and for the caussis abone-writtin; becaus the said defender alledgit that he had maid pay-ment to the said persewar of the saidis soumes of money sen the dait of the said subscrivit compt and letter of requeist, quhilk being fund relevant and admittit to his probatioun, he than in steid of all uther probatioun thair of admittit the same to the said persewaris aith of verritie simpliciter, quha being suorne deponit he had maid payment to him of no pairt of the saidis soumes; as wes cleirlye understand to the saidis schiref deputtis and thairfoir they decernit as said is.

[44r] At Kirkwall the sext day of Junii 1615.

< Fulsetter contra Wilkie >

In presens of the saidis schiref deputtis sittand in judgement decer-nis and ordanes Jon Wilkie in Birsay to content, pay and delyver to Gawen Fulsetter in [blank] tua meillis malt and tua meillis maill, or ellis to content and pay to him the soume of v li. for ilk meill malt and vi li. for ilk meill maill abonewrittin receavit be him fra the said Gawen of the crope and yeir of God 16\*3, quhilk the said Jon promesed to have gottin allowit to him in his debtis and landmaillis, quhilk he did not, *ex confessione partis rei*.

## &lt; De Stewart contra Sinclair &gt;

Anent the lybellit precept of removeing intentit and persewit befor the saidis schiref deputtis at the instance of the rycht honorabill S[i]r James Stewart of Killeith, kny[gh]t, takisman of the landis underwritin, aganes Thomas Sinclair in Lopnes in Sanday, makand mentioun that quhair the said persewar . . . hes all and haill the aughtene penny land of Lopnes and xviii d. land of Wais lyand within the ile of Sanday and schirefdome foirsaid, pertening to him as takisman thairof, as his tak and rycht grantit to him at lenth beiris; be virtew quhairof he . . . fourtie dayis preceding . . . Witsonday last bypast, cawsit lauffullie wairne . . . the said defender, pretendit tennent, possessour and occupyer of all and haill the saidis landis with the pertinentis, to have flittit and removed him selfe, his wyf, bairnis, men, tennents, servandis, cottaris, guidis and geir furt and fra the samen landis . . . to the effect the said persewar, his men, tennentis, servandis . . . micht have enterit thairto peciablíe . . . as the said precept . . . at mair lent beiris; notwithstanding quhairof the said defender . . . hes continowallie sen . . . Witsonday last bypast . . . occupyet . . . and withhaldin fra the said persewar the saidis landis . . . and will on nawayis as yit remove . . . thairfra . . . without he be compellit; and anent the chairge geven to the said defender to have compeirit . . . as the said precept at mair lenth beiris. The said persewar compeirand be Robert Coltart, his procuratour, and the said defender being lauffullie sumondit . . . and not compeirand, the saidis schiref deputtis decernis and ordanes the said Thomas to flitt and remove . . . furt and fra the saidis landis . . . to the effect the said persewar . . . may enter thairto peciablíe . . . becaus the said defender wes lauffullie sumondit to have compeirit to have hard and sene decreit geven in maner abone[writin], with certificatioun and he failyeit the saidis judges wald decerne in maner foirsaid, compeirit not, and sicklyke becaus the said [44v] [Robert] Coltart, procuratour foirsaid for the pairt of the said

S[i]r James, persewar, producit ane tak and assedatioun of the haill landis and rent of the erledome of Orknay, grantit to the said persewar be his majestie, of the dait the [blank] day of [blank] i<sup>m</sup> vi<sup>o</sup> and [blank] yeiris; as wes cleirlye understand to the saidis schiref deputtis and thairfoir they decernit as said is and ordanes preceptis . . . as effeiris.

Curia capitalis vicecomitatus de Orknay et Yetland tenta in loco praedicto per praedictos vicecomites die vii Junii 1615. Sectis vocatis et curia legitime affirmata.

< Lawborrowis: Setter contra Sclaitter >

Robert Mowat in Skeldell becam actit cautioner, souertie and lawborrowis for Robert Sclaitter in Suonnay that Thomas Setter, smyth, his wyfe, bairnis, men, tennentis and servandis sall be harmeles and skaithles in thair bodeis, landis, heritadges, takis, stedingis, rowmes, possessiounis, cornis, cattell, guidis and geir, and on nawayis to be trublit nor molestit thairin be the said Robert Sclaitter, his wyf, bairnis, men, tennentis nor servandis, nor be na utheris of his cawsing, command, reecat, asisstance nor ratihabitoun, nor nane quhom he may stop or lat directlie or indirectlie in tyme cumming utherwayis nor be ordour of law and justice, under the pane of xl li., and the said Robert Sclaitter becam actit for releif of his said cautioner etc.

< Lawborrowis: Sclaitter contra Setter >

Hew Halcro of that ilk becam actit cautioner, souertie and lawborrowis for Thomas Setter, smyth, that Robert Sclaitter in Suonnay, his wyfe, bairnis . . . sall be harmeles and skaithles . . . be the said Thomas, his wyf, bairnis<sup>1</sup> . . .

<sup>1</sup> The amount of the surety is not stated.

< Act contra Lening<sup>1</sup> for alledgit witchcraft >

Compeirit Alexander Stewart of Clet and becam actit as cautioner for Marioun Lening, spous to James Howiesone in Papa Westray, that the said Marioun sall compeir befor the schiref principall of Orknay or his deputtis and underly the law for the alledgit cryme of witchcraft and consultatioun, at quhat tyme or how sone shoe sall be lafullie chairgit to that effect, under the pane of i c. lib., and the said James Howiesone becam actit for releif of the said Alexander, cautioner foirsaid.

< Witches Drever [and] Bigland >

Jonet Drever and Katherene Bigland alias G[ie]dock being pannald, indytit and accusit for airt pairt using, committing and practizeing of the abo[hmi]nable and divelishe cryme of witchcraft contened in the particular and severall pointis of dittayes geven in aganes thame, compeirit Robert Coltart, procuratour fiscall, and desyrit the foirsaidis persones to be put to the knowledge of ane assyse of the persones following, viz –

Alexander Stewart of Clet  
Robert Menteith of Egilsay  
Mitchell Balfour of Garth  
Jon Beinstoun of Noup  
James Cragie in Bruch

Thomas Randell elder in  
Rakwick  
Oliver Howiesone thair  
Thomas Randell younger  
thair  
Oliver Donoldsone in Wa  
William Randell thair

Jon Setter in Wa  
Thomas Howiesone elder thair  
William Howiesone thair  
Boneface Leask thair  
Robert Low thair

<sup>1</sup> This name contains five minims. *Lening* is the most likely form.

The saidis persones being receavit, suorne and admittit, past altogidder furt of court and rypelie advysit inenterit agane, [45r] fand and delyverit all in ane voice for the most pairt the said Jonet Drever (be the mouth of Robert Menteith, chancelar) to be convict and giltie of the fostering of ane bairne in the hill of Westray to the fary folk, callit of hir our guid nichtbouris, and in haveing carnall deall with hir and haveing conversatioun with the fary xxvi yeiris bygane, in respect of hir awin confessioun; and sicklyke fand and delyverit for the maist pairt, be the mouth of the said chancelar, the said Katherene Bigland to be convict and giltie of witchcraft for standing in the style of the kirk yaird of the Cros Kirk of Westray with drawin knyffis in hir hand quhill Marioun Tailycour, hir mother, and utheris that wes in hir companie, cam furt of the said kirk the most pairt of ane nicht; item convictis and fyllis the said Katherene for laying of ane duyning and quotidian seiknes upone William Bigland in Swartmiln, hir maister; item fyllit the said Katherene for practicing of the said divelishe cryme of witchcraft in going furt under clud of nicht about Candelmes last and bringing in to the said William his hous of watter as ap[er]\*it, and weshing of the said William his back thairwith, and laying him down saying he wald get guid rest, and lying down betuix him and the dor, haveing refused to ly in any uther place, and the said William haveing walknit with fear and crying and feilling a thing lyke a ruche sheip abone him, in saying to him Be not affrayit for it is the evill spreit that trublit yow that is going away; and in taking of the said William upone the morne at nicht efter sun setting under the bankis and weshing of him with salt watter at that tyme and fyve or sex uther nichtis thairefter quhill he receavit healthe be hir unlauffull and divelishe airt of witchcraft; item fyllit the said Katherene in laying of the seiknes the said William had upone Robert Broun, his servand, quha continowit thairin almost mad tua dayes quhill shoe cam and graippit his pulses and

brow and straikit his hair backward and saying he wald be weill, and casting of the same seiknes immediatlie upone the said William Bigland; and the said Katherene being challengit within the said ile thairefter for taking of the said seiknes af the said Robert and casting the same agane upone the said William, in saying if William Bigland lived shoe wald die, and thairfoir God forbid he leive. Efter quhais delyverance the judges decernis and ordanes the said Jonet Drever to be tane upone the morne betuix 3 and 4 houris efter nune and scrudgit fra the end of the said toun to the uthir, and thairefter to be banished the cuntrey and never to returne, under the pane of death; and sicklyke decernis and ordanes the said Katherene Bigland to be tane to the heid of the lone the morne at tua efter nune, and thair to be bund to a staik and hangit to the death and brunt to asches; and dome geven thairupone.

Octavo Junii 1615

< Bluid: Walter and fleck [sic] >

Jon Walter, servitour to Edward Scolay, being indyttit and accusit for the unbesetting of Thomas Auchinleck yesternicht and for hurting, wounding and bluiding of the said Thomas with a suord on the heid to the effusioun of his bluid in great quantitie, and the said Thomas being indyttit and accusit for unbesetting of the said Jon, hurting, wounding and bluiding of him on the left arme with a whinger, quha denyet the same; comperit Robert Coltart, procuratour fiscall, and desyrit the saidis persones to be put to the knowledge of anc assyse of the persones following, viz - [45v]

Assisa

Robert Sinclair of Campstane	James Maxwell of Marie-
Edward Sinclair of Esinquoy	kirk
James Scolay of Toftis	Adame Sclaitter of Burnes

Hew Halcro of that ilk  
Bernard Stewart in Birsay

Hew Halcro of Akeris  
Jon Grot of Tresnes  
Robert Elphingstoun of  
Hammg[ar]

James Fia younger of Claistren  
George Traill of Westnes  
Jon Beinstoun of Noup  
Walter Sinclair in Bruch  
James Sinclair of Akernes

Quhilkis persones being receavit, suorne and admittit, removed furt of court and electit and choised the said Robert Sinclair of Campstane in chancelar, quha being ryplie advysit inenterit agane, fand and delyverit the saidis Thomas and Jon to have bled utheris *hinc inde* conforme to the dittay abonewrittin, and fyllit the said Thomas in the wyt. The judges decerns and ordanes baith the saidis persones to pay ane unlaw and bluidwyt, and ordanes thame to remane in waird quhill they find cawtioun to pay the said unlaw and find cawtioun for keiping of his majesteis peace in all tyme thairefter. Compeirit Edward Scolay of Strynie and declarit that he had bene cautioner for the said Thomas for keiping of his majesteis peace conforme to ane band geven for him thairu[pone], and desyrit that the said Thomas sould remane in waird quhill he fand cawtioun of new, and for his releif of his said band protestit that he wes present at the bar, quhilk the saidis judges admittit.

Edward Scolay becam actit to satisfie the schireffis for the foir-said bluid committit be the said Jon Walter, and sicklyke becam cautioner for the said Jon for keiping of his majesteis peace within the said schirefdome, with all his majesteis leiges in all tyme cumming, under the pane of v c. markis, and the said Jon becam actit for his releif.



Hew Halcro of that ilk becam actit as cautioner for the said Thomas that he sall observe and keip his majesteis peace in all tyme cumming, with all and sindrie his majesteis subdittis within the saidis boundis, under the pane of v c. markis, and sicklyke that the said Thomas sall satisfie the saidis schireffis for the said bluid committit be him, and the said Thomas and Jon McKenzie, his father in law, becam actit for releif of the said Hew Halcro, cautioner foirsaid.

< De Scolay contra Grott >

In presens of the saidis schiref deputtis anent the clames persewit at the instance of James Scolay, takman of Stronsay, aganes Malcolme Grot of Aikernes, fewar of the landis of Huip and takisman of the miln of Stronsay, acclameand fra him xxiii meillis i setting beir for the dewteis of the landis of Huip the crope and yeir of God 1612, or the soume of lii[i] s. iiiii d. for ilk meill thairof; item xii meillis maill for the miln mult[u]ris of the miln of Stronsay of the said crope and yeir of God, or the soume of vii li. for ilk meill thairof; item liiii s. for the taxatiouns of the saidis landis of [46r] Huip the said crope and yeir of God 1612; as the said clame at mair lent beiris; the said persewar being personallie present and the said defender being lykewayis personallie present, quha confest him selfe to be heritour and takisman of the saidis landis and miln, thair richtis . . . being hard . . . the saidis schiref deputtis . . . decernis and ordanes the said Malcolme to content and pay to the said persewar the haill victuall or prices thairof abonewrittin and remanent soumes of money abonespecifeit; becaus the pointis of the saidis clames being [led] the said defender referrit simpliciter to the said persewaris aith of veritie. The said persewar maid faith that the same \*\*\*\* [debt]-full conforme to the clame; as wes cleirlye understand to the saidis schiref deputtis and thairfor they decernit as said is and ordanes preceptis etc.

Decimo Junii 1615

&lt; Lauborrowis: Chalmer contra Scolay &gt;

Compeirit personallie James Maxwell of Mariekirk and becam actit as cautioner, souertie and lawborrowis for Duncane Scolay in Strynie that Robert Chalmeris in Kirkwall, his wyfe, bairnis . . . sall be harmeles and skaithles . . . be the said Duncane, his wyfe, bairnis . . . under the pane of i m. markis, and the said Duncane becam actit for releif of his said cautioner etc.

Curia vicecomitatus de Orkney et Yetland tenta apud urbem de Kirkwall in nova domo prope palatium de Yeardis per honorabiles viros viz Henricum Stewart de Carlongie et Magistrum Willelmum Levingstoun vicecomites deputatos dicti vicecomitatus die vigesimo septimo mensis Octobris anno Domini 1615. Curia tenta et legitime affirmata.

&lt; Ryott: Irving contra Deldall &gt;

Anent the dittay criminall persewit at the instance of Robert Coltart, procuratour fiscall of the said schirefdome, and Jone in Deldall in Deirnes, pairtie greived, for his entres (in presence of the saidis schiref deputtis sittand in judgement) aganes James Irving in Deirnes for stryking of the said Jone Deldall on the heid within the kirk yeard of Deirnes on ane Sunday, being the [blank] day of September last bypast; compeirit the said James Irving quha confest his falt and come in the saidis schiref deputtis willis, and fand Adame Cromertie of Kirkh[ous] cautioner for his unlaw and for assythment of the said Jone Deldall, pairtie greived, and the said James becam actit for his releiff etc.

[46v] &lt; Lawborrowis: Deldall contra Irving &gt;

Compeirit the said Adame Cromertie of Kirkhous and becam actit cautioner, souertie and lawborrowis for the said James

Irving that the said Jone Deldall, his wyf, bairnes . . . salbe harmeles and skaithles . . . be the said James Irving, his wyf, bairnes . . . under the paine of ane hundreth pundis money, and the said James becam actit for the said Adame Cromertie his releiff etc.

< Lawborrowis: Irving contra Deldall >

Compeirit lykwayis personallie Johne Robertstone in [blank] and becam actit as cautioner, souertie and lawborrowis for the said Jone Deldall that the said James Irving, his wyf, bairnes . . . salbe harmeles and skaithles . . . be the said Jone Deldall, his wyff, bairnes . . . under the pane of xl li., and the said Jone Deldall becam actit for his releiff etc.

Sexto Novembris 1615

[*Sinclair contra Hardie et Gudaill*]

Magnus Hardie and William Gudaill in [Kirkwall] being tane and incarcerat be the saidis schiref deputtis be vertue of letteris of captioun raisit at the instance of Johne Sinclair, merchand in Kirkwall, aganes thame for not payment to him of the soumes of money and utheris contenit in aither of thair bandis, and for thair releiffis furth of the said waird; compeirit personallie Patrik Cromertie, indueller in Kirkwall, and becam actit cautioner and souertie for the said Mans Hardie, and sicklyk compeirit personallie Mitchaell Chalmeres thair and becam actit cautioner and souertie for the said William Gudaill, that the saidis persones and aither of thame for thair awin pairtis conforme to aither of thair saidis bandis, letteris of horneing and captioun raisit thairupoun, sall mak payment to the said Johne the sowmes of money contenit thairintill within tuentie dayis nixt[heir]effer, utherwayis to present and enter the saidis persones and aither of thame for thair awin pairtis as said is in ward agane, thairin to [47r] remane

upone thair awin expenssis ay and quhill they haid maid payment thairof, ilk ane of thame for thair awin pairtis as said is; and the saidis Magnus Hardie and William Gudaill became actit for aither of thair saidis cautioneris thair releiffis etc.

[1r] Curia capitalis vicecomitatus de [Orkney] et Yetland tenta apud Kirkwall in [nova] domo prope palatium de Ycardis ibid[em per] honorabiles viros viz Henricum Stewa[rt de] Carlongie et Magistrum Willelmum Levingstoun vicecomites deputatos dicti vicecomitat[us] septimo die mensis Novembris anno Domini millesimo sexcentesimo decimo quinto. Curia tenta et legitime affirmata.

< Anent the preamble and caus of the actis following >

Forsa[meik]le as sinne and inquitie is and hes bein the caus of Godis heavie plaigues and judgmentis, and the caus of grea[t] desolatioun in kirk and politie within this cuntrey for [laik] of discipline and putting of the actis of the kirk, [quhilk] hes bein meikle compleinit in tymes past, to dew e[xecutioun]; and siclyk that thair hes bein great ignorance [of] his sacred majesties royall and supreme auctoritie in practis[eing] of forren and uncouth lawis contrair to the actis [of] parliament and secreit counsall maid thairanent; a[nd] lykwayes that thair hes bein great desolatioun in the commoun weill, truble, dissordour, injuries and wrang[is] amongst the inhabitantis of the land for laik of gove[rn]ment, administratioun of justice and putting of the samen to dew executioun; thairfoir it is statu[it and] ordanit be the saidis schiref deputis, with advys and co[nsent] of the gentilmen suitteris of court and commounes, all with ane advys consent and assent, as efter follow[is].

< [1] Anent the putting of the actis of the kirk to executioun >

In the first: it is statu[it and] ordanit for pun[ishment] of sinne and

vyce that the actis of the kirk, maid and to be [maid] be the minsterie and thair sessioun of kirk aganes tr[ansgress]ouris and sinneris, be put to dew executioun with all [rigour in] example of utheris to do the lyk; and to this effect [that] the baillie of ilk parochin and his officer concur and assist [thair] ministeris, elderis and thair officeris in putting of all si[k actis] and statutes maid or to be maid in thair sessioun of kir[k to] dew executioun as said is, for mantenance of Godis [worship], keiping of the Sondagis, suppressing of all idolatrie specialle of walkis and pilgramages and all utheris [vyces], and punishing of persones refractarie and dissobedie[nt to] thair discipline, under the pain of deprivation and pay[ment] of fourtie pundis to be employed *ad pios usus*.

< [2] Anent the obedience to his majestie and [law]is  
and provisioun for armour >

Item: it is statuit and ordanit that all maner of perso[n]es, of quhatsumever rank, qualitie and degrie, sall honour [thair] dreid soverane the kingis majestie and submit tha[me]selfis with all reverence to his auctoritie in obeying his law, disclameing and renunceing all forren lawis, actis, statu[tes and] constitutiounes quhatsumever observit heirtofoir, [under the paines] conteinit in the actis of parliament and [most honorabill privie coun]sall [maid thairanent]; and [that all men according] [1v] to thair rank and degrie provyd thameselfis of sufficient armour according to thair estait, and be in redines to serve his majestie and deputtis present or that salbe for the tyme, for suppressing and withstanding the incursiounes of pirrotis and utheris tumultuous persones, as they wilbe answerable upon thair hiest perrell.

< [3. Anent] the \*\*\*\* direct[ing of the] corss >

Item: it is statute and ordanit to the effect foirsaid that ilk hous and familie sall cairfullie and diligentlie direct the corss according

to the ordour and custome to his nixt nichtbour with ane sufficient bearer, for admonishing the people ather to conveyn to kirk to preiching and prayeris or for his majesties service and sik uther necessar caussis as salbe thocht expedient be the minister, schireffis and justiciaris or thair baillies, and sall not stay nor lay down the samen bot direct it with all diligence upon the recept thairoff, under the pain of sax pundis money *toties quoties*.

< [4. Ane]nt the [mar]king of [pund]leris and [bismar]is >

Item: it is statute and ordanit that all pundleris and bismaris be markit with his majesties mark betuix and the [blank] day of [blank] nixtocum, under the pain of ten pundis for the first fault and doubling of the said pain sa oft as they sall happin to transgres thairefter, and that by and attour the act of parliament maid thairanent and paines conteinit thairintill, and punishment to be inflictit upon the contraveineris thairof conforme thairto.

< [5. Anent] the [weicht] of [caschie]s >

Item: it is statute and ordanit that na caschies be hevier than ane half setting weicht, conforme to the old statutes maid thairanent, under the pain of fourtie shillingis for the first fault and doubling thairof for the second fault and confiscatioun of the victuall conteinit thairintill for the thrid fault, and that by and attour the punishment of thair persones at the will of the judge.

< [6. Anent guid nichtbour]head >

Item: it is statute and ordanit that guid nichtbourhead be keipit amangst nichtbouris in ilk parochin in all tyme cumming, in bigging of thair dykis yeirlye and putting of thair swyne to the hill befor the fyftein day of Apryle, keeping and hirling of thair sheip befor the said day, and keeping of thair horss, nolt and uther bestiall befor the first day of Maii, under the pain of fourtie shillingis money to be payit to the schireff or his deputtis; and in

cais of contraveining and breking heiroy so that nyctbouris be dampnyfied and hurt be utheris in not tymous dyking and hirding as is abonewretin, in that cais the contraveineris to pay to the pairtie interest and skaithit as followis, to wit – befoir Lambes sall pay for ilk sheip tua shillingis, for ilk swyne ten shillingis, for ilk horss, meir and nolt four shillingis *totis quoties*, and efter Lambes sall pay the double of ilk pain *toties quoties* as they or ony of thame sal happin to be fundin within dykis and lau[fullie tryit] befoir the baillie of the parochin to have bein in th[air] [2r] nyctbouris skaith, the dykis alwayes being maid lafull and sufficient. Lyk as immediatlie efter the tryell of the said baillie it sall be lesum to him to poynd and uplift the saidis paines, and that by and attour the comprysing of the skaith and pay[ment] of the samen conforme to the daylie practique observit in sik caissis.

< [7] Anent commoune grindis and cloising thair of >

Item: it is statute and ordanit that all grindis and yettis on all hi[e] wayes salbe cloisit be all passingeris that enteris thairby in sik soirt as they opin the saidis grindis and yettis they salbe haldin incontinentlie to cloise the samen agane, under the pa[in] of fourtie shillingis *toties quoties*; and no commoune grindis nor yettis to be stopped nor cloisit up that hes bein of auld and yit necessar and neidfull to be, under the pain of ten pundis.

< [8] Anent ficing of uther manis servandis >

Item: it is statute and ordanit that it sall not be lesum to ony persone or persones to fie, hyir nor conduce ane uther manis servand except that they be dischairgit be thair maister or that they dischairge thair maisteris lafullie fourtie dayis befoir ane la[ufull] terme, and that nather gentilmen, boundmen nor na uther resave ony sik persones nor give them hospitalitie nor

intertenem[ent], nor yit set to thame houssis nor resave, suppoirt nor supplie any vagaboundis, idle men or unlauffull weomen, under the pain of ten pundis *toties quoties*.

< [9] Anent rancelling for thift >

Item: it is statute and ordanit for eshewing and tryell of thift in tyme cumming that it salbe lesum to the pairtie inter[est], with the baillie or officer of thair parochin or tua or thrie hon[est] men to be chosin be him, to rancell, search and seik all houssis and suspect places within the samen, and if neid be[is] in cais of suspi[t]ioun to pas to the nixt parochin [or] beyond the samen; and to this effect ordanes the baill[ie] of ilk parochin or officer to concur with the pairtie interest in [ma]ner foirsaid for apprehending thairof, as they will eschew to be [reput] and haldin as partakeris of the said cryme.

< [10] Anent the ryderis of uther menis horss and cutting of the taillis thairof >

Item: it is statute and ordanit that quhatsumever persone sa[l]be apprehendit or tryit to have riddin ane uther manis ho[rs] without licence of the awner, inwith the parochin quhair the aw[ner] of the hors duellis, sall pay to the schireff or his dep[uttis] the sowme of sax pundis and to the pairtie interest the [sowme] of uther sex pundis; and if he be fund outwith the par[ochin] quhair the awner duellis sall pay the double of the said p[ain]; and forder according to the distance from the parochin [out] of the quhilk the said hors salbe takin, sall triple, [quadru]ple and augment the said pain effeirand to the seve[rall] parochines quhairthrow they sall happin to ryd the said hors; [and] lykways it sall not be lesum to ony persone to cut or s[teill] ane uther manis hors taill, under the pain of ten pu[n]dis; and if the rydaris, stellaris and cuttaris foirsaidis s[all] have na moyen to satisfie the said penalties proportiona[l]lie as is abonewrittin, they to be punishit



in thair persone effeirand [to] the deid and offence at the discretioun of the judge.

< [11. Anent \*\*\*\*\* servandis]<sup>1</sup> >

Item: it is statuit and ordanit that \*\*\*\*\* by, bargane nor sell with ane uther \*\*\*\*\* [knowledge] of his maister, as [they] \*\*\*\*\* [2v] as resetteris of theft, and it beand tryit the geir to [be] restoirit to the richt awner but repayment of the pryce thairof or thingis resaveit for the samen.

< [12. Ane]nt slaying [and sell]ing of [fles]he >

Item: it is statuit and ordanit that na flesheouris nor utheris buyeris and slayeris of flesh sall sell to na inhabitant within the toun nor outwith the samen the said[is] fleshis untill the tyme they cum to the baillie of the quarter and shew him the beast, the mark and the manis name fra quhom they coft the samen, quha salbe haldin to give the buyaris name in wreit, together with the beast and m[ark] thairof and fra quhom and at quhat tyme the samen wes [coft], as the slayeris and selleris of the said bestiall will eshew to be reput, haldin and punishit as steilleris thairof.

< [13] Anent sluggish and [idle] persones quha under cullour of merchandice committis theft >

Item: forsameikle as thair is many inconstant, sluggish and idle persones quha, leaveing service, gives them selfis to traffique and play the merchand and attendis the repairing of sh[ippis] and straingeris to reidis and usuall places and resoirtis, and gois on ship buird under cloud of nicht or privatlie under cullour of buying and selling of merchandice or guidis, under the pretext quhairof they p[yk] and steallis, baith fra the cuntrey people to

<sup>1</sup> The legible parts of this act are almost identical with the corresponding parts of act No. 20 for Shetland. See below, p. 69.

sell to thame and fra th[ame] to sell to the cuntrey people; for remeid quhairof it is statuit and ordanit that na sik persone nor persones sall hant, traff[ique] or repair on ship buird of ony strainger or dogger for buying or selling of merchandice or guidis, under quhatsumever cullour [or] pretext, bot sik as salbe allowit and approvin of the ba[illie] of the parochin quhairin they duell, and for quhom the said baillie or ane or tua speciall honest men of the parochin salbe answerable, under the pain of fourtie shillingis [and] warding of thair persones for the first fault, and doubling of the said pain for the second fault, and sa furth tripling and quadrupling the said pain and punishment sa oft as they sal happin to cum in the contrair heirof.

< [14] Anent the resoirt [of beggar]is and \*\*\*\*\*  
to [Yetl]and etc. >

Item: forsameikle as it is hevilie compleinit be the inhabita[ntis] of Yetland of the great resoirt and repair pairtlie of sturdie begg[eris] and pairtlie of pur vagaboundis from Orkney, Caithnes and uth[eris] forren places, quha sornes, beggis and overlayis the cuntrey begging, pyking, steilling and oppressing the inhabitantis thairof; thairfoir it is statute and ordanit that na maister of ship, bark, bo[a]tt nor crear transport ony sik persones nor na utheris q[ui]ha, under cullour and pretext to pley the merchand, intendis to resoirt to [the] said cuntrey to buy the commodities thairof, in prejudice of the p[ayment] of his majesties rentis, but ane sufficient testimoniall or warrand of the schireff or his deputtis, [gr]antit and haid to that eff[ect], under the pain of tuentie p[undis] money.

< [15] Anent the \*\*\* [onin]g of [the] commodities  
of the [cun]trey >

Item: forsameikle as his majesties chalmerlanes ar m[eikle] interest and prejudgit yeirlie be the tennentis, takis[men] and utheris

addebtit in the yeirlie payment of the fruittis, rentis and dewties dew to be payit be thame, be selling of thair best[iall], butter, ulie and victuall befor the saidis chalmerlanes be satis[fy]it and payit; thairfoir it is statute and ordanit that na sik persone nor persones sall sell, annalie, dispoun [nor put] awa[y] [3r] [ony bestiall, butter or ulie befor St Androis day]<sup>1</sup> yeirlie, nor ony victuall, b[ea]r, [malt] or me[a]ll quhill [the] feast of Lambes yeirlie, that his majesties rentis be [satis]fyit and payit, under the pain of xl lib., and that by and attour the deirest prices and hiest fier that can be ex[actit] of thame be law (except the toun of Kirkwall), or that ane licence be grantit upon ressonabill caussis.

< [16] Anent the resoirt of uncouth beggaris >

Item: forsameikle as thair is great repair of puir stra[ing]eris, idle and vagabound persones that overlayis the cuntrey, quha hes not bein borne nor brocht up within the cuntrey, contrair to the tennour of the lovable lawis maid thairanent; thairfoir it is statute and ordanit that na man suppoirt, suppl[ie] nor interteine the saidis persones nor grant hospitalitie [unto] thame, under the pain of fourtie shillingis; and siclyk that na man transpoirt nor bring in the cuntrey ony sik persones in tyme cumming, under the lyk pain of fourtie shilling[is]; and that conforme to the saidis actis the saidis persones and everie ane of thame may repair to thair awin cuntrey and parochines, and that everie parochin interteine, supplie and sustein thair awin puir according to the will and meaning thairof in all poyntis; and in cais ony sik persone salbe fundin going heirefter outwith thair saidis parochines, that it salbe lesum to the finder and apprehender to present thame to the baillie of the parochin to be punishit as idle vagaboundis in the jogg[is] or stoikis; and gif the baillie sall absent him self or

<sup>1</sup> This entry represents a line at the top of the page, evidently cut off in trimming. The missing words have been supplied from the Maitland Club transcript of 1840, in which they appear within square brackets.

ref[uis] to caus punish thame conforme to the premissis, or to p[resent] him to the schireff or his deputtis present or that sal happin [to] be for the tyme, he salbe haldin to pay to the s[chireff] or his deputtis the soun of tuentie pundis.

< [17] Anent the conceilling of sinne >

Item: it is statute and ordaneit that na persone or persones of na rank, qualitie nor degrie sall hyd nor conceill ony kynd of thift, sorcerie nor witchcraft, bluid, wrang, injurie, roberie nor oppressioun, wraik nor wai[t]h, bot sall impairt, shaw and delait the samen to thair baillies or to the schiref deput, as they will eshew to be haldin and reput as partakeris thairof and punishit thairfoir conforme to the lawis and practique of this realme.

< [18] Anent the putting of the fairsaidis actis to executioun >

And finallie: it is statute and ordaneit be the saidis s[chiref] deputtis that the baillie of ilk parochin sall mak publicatioun heirof at thair paroch kirkis, quhairby nane pretend ignorance of the premissis; and that they sall put the s[aidis] actis and everie ane of thame to dew executioun in the haill [heidis], articles and claussis thairof, for manteinance of Goddis w[orship], the reverend obedience of his majesties most royall and sup[reme] auctoritie and lawis, and for the peace and guid of the inhabitantis [of the] land; and in cais it sal happin the saidis baillies or ony of th[ame] to be tryit or found to have oppressit or wrangit ony perso[ne] or persones within thair baillierie, be exacting of unlawfull ser[vices] or be taking of buddis or brybes for perverting of justice, [or] in ony soirt in oppressing the puir or doing of ony uther deid of the lyk nature and qualitie contrair to equitie and resoun, in that cais they salbe haldin to repair the wrangis at the [sicht] of the schiref deput, and salbe estemat to be unworthie to beir [office] or credit in tyme cumming, and that by and attour

the dew [punish]ment to be inflictit to thame according to the demerit [of the fact].

[47r] Curia capitalis vicecomitatus [de] Orknay et Yetland tenta apud Kirkwall in nova domo prope palatium de Yairdis ibidem per honorabiles viros viz Henricum Stewart de Carlongie et Magistrum Willelmum Levingstoun vicecomites deputatos dicti vicecomitatus septimo die mensis Novembris anno Domini millesimo sexcentesimo decimo quinto. Curia tenta et legitime affirmata.

< De Paplay contra Smyth et Irving >

Anent the lybellit sumondis of removeing intentit and persewit befor the saidis schiref deputtis at the instance of Magnus Paplay, eldest sone and air of umquhill Jone Paplay, his father, uddaller of the landis underwritin, aganes Thomas Smyth in Vedda, William Irving in Brekis and Jone Copland in Sandis, makand mentioun that quhair the said persewar hes . . . all and haill the four markis landis in Sandis within the parochin of Deirnes and schirefdome foirsaid, pertening to him as his proper uddall landis airit be him be way of successioun efter the deceis of the said umquhill Jon, his father; be vertue quhair of he . . . fourtie dayis preceiding . . . Witsonday last bypast, cawsit lawfullie warne . . . the saidis Thomas Smyth, William Irving and Jon Copland, pretendit tennentis and occupyaris of the saidis landis, to have flittit and removeit thame selves, thair families, servandis, subtennentis, cottaris, guidis and geir furth and fra all and haill the said four mark land with houssis, biggingis, pairtis, pendiccles and pertinentis thair of . . . to the effect the said compliner, his bairnes, servandis, tennentis . . . micht have enterit thairto peacible . . . as the said precept . . . at mair lent beiris; notwithstanding quhair of the saidis persones . . . have continwallie sen . . . Witsonday last bypast . . . occupyit . . . and withhaldin fra the said

compliner the saidis landis . . . and will on nawayis as yit decist . . . without they be [47v] compellit; and anent the chairge given to the saidis defendaris to have compeirit . . . as the said lybellit precept at mair lenth beiris. The said persewar being personallie present with Jerome Chalmer, his procuratour, quha past fra the said Jone Copland *pro loco et tempore* and declairit he onlie insisit aganes the said Thomas Smyth and William Irving, and the saidis Thomas and William being personallie present lykwayis, thair richtis . . . being hard . . . the saidis schiref deputtis . . . decernes and ordanes the saidis Thomas Smyth and William Irving to flitt and remove . . . furt and fra all and haill the said four mark land . . . ilk ane of thame for thair awin pairtis sa far as they occupy thairof . . . to the effect the said persewar . . . may enter thairto peaciablie . . . conforme to his said richt thairof . . . becaus the saidis defendaris nocht past fra as said is being lawfullie sumondit to have compeirit befor the saidis schiref deputtis to have hard and sein decreit given in maner abonewrittin, or els to have alledgit ane ressonabill caus quhy etc. the samen sould nocht have bein done, with certificatioun to thame and they failyeit the saidis schiref deputtis wald decerne in maner foirsaid, and they being lawfullie sumondit to that effect and compeirand personallie as said is shew no ressonabill caus in the contrair; as wes cleirlye understand to the saidis schiref deputtis and thairfor they decernit as said is and ordanes preceptis . . . as effeiris etc.

Octavo Novembris 1615

< Absolvitour: Sinclair contra Mowat >

Anent the lybellit precept of ejectioun intentit and persewit befor the saidis schiref deputtis at the instance of Ingram Mowat in Marsetter, possessour and occupyar of the landis underwrittin, aganes Mathow Sinclair of Bruch and Eufanie Robertstone, his spous, makand mentioun that quhair the said persewar wes in the

pe[cc]able possessioun of all and haill ane penny land kingisland callit Uplay penny land, with houssis, biggingis, toftis, croftis, tumailis and pertinentis thairof pertening thairto, lyand in the ile of South Ronaldsay, Lady parochin thairof and [48r] schirefdome fairsaid, and that be vertue of ane dispositioun of the takis and kyndnes of the saidis landis maid be the said Mathow Sinclair with consent of the said Eufane Robertstone, his said spous, to the said persewar, of the samen divers and sindrie yeiris preceiding the year of God 1610 yeiris; at quhilk tyme in the moneth of Aprile the yeir of God forsaid the said Mathow and his said spous, without ony wairneing, decreit of removeing, uther proces or ordour of law quhatsumever, at thair awin handis violentlie and maisterfullie ejectit and outpatt the said persewar, his wyf, bairnes, servandis, guidis and geir furth and fra all and haill the said ane penny land . . . and wrangouslie intrudit thame selves and thair tennentis in thair names thairintill and hes possest and occupyit the samen sensyne, and will not recenter and reposses the said persewar thairwith, to his havie damage and skaith without remeid be provydit, as in the said lybellit precept at mair lenth is contenit; the said persewar being personallie present quha for verifying of the poyntis of the said lybell produceit the fairsaid dispositioun, and the saidis defendaris being lykwayis personallie present, thair richtis . . . being hard . . . the saidis schiref deputtis . . . assoilyeis simpliciter the saidis defendaris fra the said lybellit precept, actioun of ejectioun thairin contenit, haill tenour and contentis thairof, and decernes thame quyt and frie thairfra in all tyme cumming; becaus it wes alledgit be the saidis defendaris that they cannot be decernit to have done wrang in the wrangous and violent ejecting and outputting of the said persewar and his forsaidis furt and fra the said ane penny land . . . nather yit to enter nor reposses the said persewar, his wyf and utheris abonespecifeit to the possessioun and occupatioun thairof, becaus thay offirrit thame to prove that sen thair entrie

to the saidis landis he hes dischairgeit his rycht of the forsaid band produceit <and th[ey] decernit be decreit arbitrall to enter to the possessioun thairof>, quhilk exceptioun being fund relevant be the saidis schiref deputtis for eliding of the poyntis of the said precept, they thane admittit the same exceptioun to the saidis defendaris probatioun, quha being personallie present as said is produceit ane decreit arbitrall of the dait at Kirkwall the aughtein day of Januar 1609 yeiris, beirand the saidis <defendaris to be decernit to enter to the possessioun of the saidis landis>, as wes cleirlye understand to the said schiref deputtis and thairfor they gave decreit absolvitour in maner foirsaid and ordanes preceptis etc.

< Lawborrowis: Langskell contra Sinclair >

Compeirit personallie Robert Sinclair of Campstane and becam actit as cautioner, souertie and lawborrowis for Hew Sinclair, merchand, his brother, that Robert Langskell in Birsay, his wyf, bairnes . . . salbe harmeles of the said Hew . . . his wyf, bairnes, . . . [48v] . . . under the paine of i c. li., and the said Hew becam actit for his releiff etc.

< Lawborrowis: Sinclair contra Langskaill >

Compeirit James Giffen, servitour to the said Harie Stewart, schiref deput foirsaid, and becam actit as cautioner, souertie and lawborrowis for the said Robert Langskaill that the said Hew Sinclair, his wyff, bairnes . . . salbe harmeles and skaithles of the said Robert Langskell . . . his wyff, bairnes . . . under the pane of i c. li., and the said Robert Langskaill becam actit for his releiff.

< Lawborrowis: Ommond contra Cromerties >

Compeirit personallie Magnus Cromertie of Sandwick and David Cromertie of Wydwall and becam actit cautioneris,



souerties and lawborrowis *hinc inde* for utheris that Robert Ommound in Wydwall, his wyf, bairnes . . . salbe harmeles and skaithles of thame . . . thair wyffis, bairnes . . . ilk ane of thame under the paine of i c. li., and aither of thame becam actit *hinc inde* for utheris releiffis etc.

< Lawborrowis: Cromertie contra Ommond >

Compeirit Thomas Smyth in Vydda and becam actit as cautioner, souertie and lawborrowis for the said Robert Ommond that the said David Cromertie etc. salbe harmeles and skaythles of him . . . his wyf, bairnes etc. . . . under the paine of i c. [li.], and the said Robert Ommound becam actit for the said Thomas Smyth his releiff etc.

[49r] < Dittayis of thift contra Smyth et Watsone >

Anent the dittayis criminall produceit and persewit at the instance of Robert Coltart, procuratour fiscall of the schirefdome of Orknay and Yetland, aganes Olaw Smyth in Housbie in Stronsay and Alister Watsone in Grimnes in South Ronaldsay; that is to say, the said Olaw Smyth for the thifteous steilling of four sheip pertening to Magnus Fia and Mr Robert Hend[ir]sone of Holland, quhair of he stall tua of thame in the moneth of August last and uther tua seven yeiris syne; and the said Alister for the thifteous steilling of ane burdein of corne in the moneth of October last pertening to Alexander Flett, and for the thifteous steilling of xviii sheaves of corne of uther menis bind pertening to his nychtbouris, quhilk wes fund in his skrow, as the saidis dittayis at mair lenth beiris; the said procuratour fiscall being personallie present and the saidis defendaris being lykwayis personallie present, quha enterit on pannall and haveing no lawfull caus quhy they sould not pas to the knowledge of ane assys wer content to byd tryell, quhairupoun the said procuratour fiscall desyrit the saidis dittayis to be put to the knowledge of ane assys

and the pannallis to be accusit thairupoun; efter accusatioun the said Olaw Smyth confest the steilling of the sheip abonewrittin and the said Alister Watstone denyit the haill poyntis of his dittayis; thairfor the judgeis remittit the dittayis to the knowlege of ane assys quhom they ordanit to be callit.

## Assysa

Magnus Cromertie of Cavay	Jaspert Flett of Houbister
Adame Cromertie of Kirkhous	David Moncreiff in Kirkwall
David Kincaid of Yinstay	Patrik Murray of Wydwick
James Tulloc of Nes	Harie Spence in Scapa
Adame Sclatter of Burnes	Thomas Louttit of Hatstane

David Cromertie in Wydwall  
 Johne Myller in Evie  
 Nicoll Garioch in Kirkwall  
 Jone Cromertie in Braheid  
 James Corrigill in Rendail

Quhilkis persones of assys being receaveir, suorne and admittit but lawfull objectioun of the pannallis and removeit out of judgement, nominat and electit Jespert Flitt of Houbister chancler of the said assys, and efter dew deliberatioun haid anent the dittayis produceit aganes the saidis Olaw Smyth and Alister Watstone and poyntis thair of, and they enterand in judgement agane, the haill assys be the mouth of the said chancellor fyllit the said Olaw Smyth of his particular dittay abonewrittin led aganes him; and sicklyk fyllit the said Alister Watstone in the auchtein sheaves of corne contenit in that poynt of dittay led aganes him, and remittit sentence to the judge and dome to the dempster; quhilk determinatioun the judges thane present acceptit and continwit in giving of sentence to the tent day of this instant moneth of November.

[49<sup>v</sup>]<sup>1</sup>

Nono Novembris 1615

## &lt; Act for Mowat &gt;

Compeirit personallie James Tulloc of Rothisholme and James Maxwell of Marikirk and becam actit as cautioneris and souerties for James Mowat, merchand, that he sall enter the morne to answer as law will for sick crymes as the judges sould lay to his chairge the said day, under the paine of l li., and he becam actit for thair releiffis.

## &lt; Hunter contra Halcro &gt;

Anent the lybellit precept intentit and persewit befor Harie Stewart of Carlongie and Mr William Levingstoun, schiref deputtis of Orkney and Yetland, at the instance of Helen Hunter, relict of umquhill Captane Allane Lentrone, executour testa-[menta]r nominat be the said Captane Allane and haveing licence to persew the actiounes underwritin, aganes Hew Halcro of that ilk, eldest sone and air to umquhill Henrie Halcro, his father, at the lest behaveand him self as air, at the lest executour, at the lest universall intromettour with his guidis and geir, to heir and sie him be decernit to content and pay to the said persewar the sounes of money lybellit addebtit be the said umquhill Henrie to the said persewar, conforme to the severall obligatiounes mentionat in the said lybell, as at mair lent is contenit in the lybellit precept raisit thairanent; the said persewar being personallie present and the said defendar being lykwayis personallie present, quha denyit the lybell, and thairfor the saidis schiref deputtis hes admittit and admittis the said lybellit precept to the said persewar hir probatioun, and for proveing thair of hes assignit and assignis the [blank] day of [blank] nixtocum to prove, *partibus apud acta citatis* etc.

<sup>1</sup> For facsimile of folio 49v, see below, p. 121.

Decimo Novembris 1615

&lt; Act: Tulloc et Maxwell &gt;

In presence of the saidis schiref deputtis sittand in judgement compeirit personallie James Maxwell of Marikirk and James Tulloc of Rothisholme and presentit the [said] James Mowat, merchand, conforme to the act abonewrittin, to underly the law and to answer for sick crymes as sould be laid to his chairge, and thairupoun askit actis of court.

&lt; Act: Mowat &gt;

Compeirit personallie the said James Mowat and protestit that he sould be fred of the band maid be him to Robert Elphingstoun for his compeirance befor the saidis judges in respect of his compeirance, and thairupoun askit instrumentis and actis of court.

[50r]

&lt; Act: Halcro et Mowat &gt;

Compeirit personallie Robert Halcro of Cavay and James Mowat, merchand, and the said Robert in name of [blank] Bruce, his mother, on the ane and uther pairtis, and became actit judiciallie of thair awin consentis to stand, abyd at and fulfill quhatsumever sould be decydit be Robert Menteith of Eglishaw quhat the said James sould pay of ane certane soume of money contentit in ane decreit obtenit be the said Robert his mother befor the commissioner of Orkney aganes the said James; and fand James Tulloc of Rothisholme cautioner for him that quhatsumever soumes of money the said Robert sould decerne to the said James to pay to the said Robert in name of his said mother, he sould mak guid and thankfull payment thairof; and the said James becam actit for his cautioneris releiff.

&lt; Lincletter contra Halcro &gt;

Compeirit personallie Hew Halcro of that ilk and became actit not to remove Jone Lincletter in Sanday fra the half penny land

in Wesbuster in Rousay occupyit be him and his subtennentis, and not to crave nor trouble the said Jone for the maillis and dewties of the same, bot to dischaige him thair of yeirlie during the non payment of the soume of lx li. money contenit in ane band and obligatioun maid be the said Hew to him thairupoun, of the dait the [blank] day of [blank] the yeir of God i<sup>m</sup> vi<sup>e</sup> and [blank] yeiris; quhairupoun the said Jone Lincletter askit actis of court etc.

< Act of bluid contra Mowatt >

Compeirit personallie Malcolme Mowat in Sangar in Stronsay and becam actit cautioner and full debtour for James Mowat, merchand, his brother, to content and pay to Harie Stewart of Carlongie and Mr William Levingstoun, schiref deputtis and justices of Orkney and Yetland, the sowme of xl li. money in contentatioun of all bluidis and ryottis committit be him and quhair of he is convict be ane assyse befor the bailie of Stronsay, and of the sowme of x li. money addebtit be him as cautioner for William Grot of Odnes, and that betuix and the seventein day of this instant, under the paine of ten pundis money; and the said James becam actit for his cautioneris releiff etc.

< Rany contra Mowat >

The said Malcolme Mowat becam actit as cautioner and souertie for the said James Mowat, his brother, to content and pay to David Rany the soume of xxv li. money in full and compleit payment of ane decreit obtenit be him aganes the said James befor the commiss[ioner] of Orkney and Yetland, and of all utheris decreitis, comptis and reck[on]ingis that the said David can ask or clame of him, and that betuix and the xxv day of December nixtocum, under the paine of vi li.; and the said James becam actit for his cautioneris releiff.

[50v] < Menteith contra Colvile >

William Colvile of Midhous being personallie present in presence of the saidis schiref deputtis sittand in judgement, compeirit personallie Robert Menteith of Eglishaw and desyrit the saidis schireff deputtis to caus the said William to find caution and lawborrowis to him that he, his wyff, bairnes . . . salbe harmeles and skaythles of him . . . and renunceit all anteriour actis of lawborrowis gif ony wes fund be him; and the said William being personallie present as said is declairit that [he] could not find caution and lawborrowis to him actit in thair buikis, in respect he haid fund lawborrowis to him actit in the buikis of counsell to the effect abonewrittin, and thairfor could not be astrictit *de novo* to find caution befor ony inferiour judge, and thairupoun askit act of court etc.

< Carmichell contra Mowatt >

Compeirit personallie the said Macolme Mowat and becam actit cautioner for the said James Mowat that he sall compeir befor the saidis schiref deputtis in judgement for the soume of x li. money addebtit be him to William Carmichell, merchand, or els to pay to the same, to the said William, quhenever he salbe lawfullie wairneit to that effect, quhairupoun the said William askit act of court etc.

< Sentence contra Smyth et Watstone >

Anent the sentence continwit [*from 8 November*] to this day aganes Olaw Smyth and Alister Watstone, the judges decernes and ordanes the said Olaw Smyth of his awin consent to be hangmane of this schirefdome in all tyme cumming during his lyf tyme; and ordanes the said Alister Watstone to be put in the jogis, thair to stand during thair will, and to stand at his awin paroche kirk dure the first preicheing day fra aucht houres in the morneing quhill the preicheing end, with ane

superscript with *for thift* about his foir head; and thairupon dome given etc.

Undecimo Novembris 1615

< Miller contra Murray >

Anent the lybellit sumondis persewit at the instance of Johne Miller in Evie aganes Clara Murray in Kirkwall, dochter and air to umquhill James Murray of Garth, at the lest behaveand hir selff as air and executrix confirmd to him, at the least intro-mettour with his guidis and geir, to heir and sie hir as air and executrix confirmd to him, at the lest intromettour with his guidis and geir, decernit be decreit of court to content and pay the said persewar the soumes of money lybellit, as the said sumondis at mair lent beiris; the said persewar being personallie present with Robert Coltart, his procuratour, and the said defendar being lykwayis [51r] personallie present, quha alledgit she could not be decernit to mak payment to the said persewar of the soumes of money lybellit for the caussis thairin contenit, becaus that umquhill S[i]r Magnus Murray, thair predicessour, set a nyne yeir tak of the landis lybellit to the said persewar gersum frie, upoun conditioun that he sould big neccessar houssis thairupoun and ane chalmer for him selff to his cumming, quhilk chalmer he biggit not, and offirrit hir to prove the same suffycientlie; quhilk exceptioun being fund relevant be the saidis schierf deputtis, they than admittit the samen to the said defendar hir probatioun, and for proveing thairof hes assignit and assignis the fourt day of Aprile nixtocum, *partibus apud acta citatis* etc.<sup>1</sup>

Decimo septimo Novembris 1615

< Elphingstoun contra Stoif, Thomsone et Midhous >

Anent the lybellit sumondis of removeing intentit and persewit befor Harie Stewart of Carlongie and Mr William Levingstoun,

<sup>1</sup> There is no mention of this case in the record for April 1616.

schiref deputtis of Orknay, at the instance of Robert Elphingstoun of Hammagar, heritour of the landis underwirttin, aganes Oliver Stoif in Grotsetter, Elyzabeth Thomsone, relict of umquhill William Irving of Sabay, and James Midhous now in Grotsetter, for his entres, makand mentioun that quhair the said persewar hes . . . all and haill thrie penny land and ane half callit Grotsetter, houssis, biggingis and pertinentis thairrof, lyand within the parochin of St Andro and schirefdome forsaid, pertening to him heretablie as his rychtis and titles thairrof proportis; be vertue quhairrof he . . . fourtie dayis preceeding . . . Witsonday last bypast, cawsit lawfullie wairne . . . the said Oliver Stoiff and Elyzabeth Thomsone and all utheris pretendit tennentis, possessouris and occupyaris of all and haill the said persewaris thrie penny half penny land callit Grotsetter . . . to have flittit and removeit thame selves, thair wyffis, bairnes, servandis, familie, subtennentis, cotteris, guidis and geir furt and fra all and haill the saidis landis . . . to the effect the said persewar, his men, tennentis, servandis . . . mycht have peaciablie enterit thairto . . . as the said precept . . . at mair lenth proportis; notwithstanding [*sic*] quhairrof the saidis persones and James Midhous, thair subtenant . . . have [51v] continwallie sen . . . Witsonday last bypast . . . occupyit . . . the saidis landis . . . and will on nawayis as yit remove . . . without they be compellit; and anent the chairge given to the saidis defendaris to have compeirit . . . as the said lybellit precept at mair lent beiris. The said persewar being personallie present with Robert Kaa, his procuratour, and the saidis defendaris being lawfullie sumond . . . and n[one] compeirand except the said Elyzabeth Thomsone, the rychtis . . . being hard . . . the saidis schiref deputtis . . . decernes and ordanes the saidis defendaris to flitt and remove . . . furth and fra the saidis landis . . . to the effect the said persewar . . . may peaciablie enter thairto . . . conforme to his saidis rychtis and title thairintill . . . becaus the saidis defendaris wer lawfullie sumondit to have com-



peirit befor the saidis schiref deputtis to have hard and sene decreit given aganes thame in maner abonewrittin, or els to have alledgit ane ressonabill caus quhy the samen sould not have bein done, with certificatioun to thame and they failyeit the saidis schiref deputtis wald decerne in maner fairsaid, and they being lawfullie sumond . . . and nane compeirand except the said Elyzabeth, quha alledgit no ressonabill caus in the contrair; and sicklyk becaus the said Robert Ka, procuratour for the pairt of the said defendar [*sic*], produceit the fairsaid precept of wairneing dewlie execut and indorsat, togither with the said persewaris instrument of saisine of the saidis landis under the signe and subscriptioun of Robert Coltart, nottar publict, of the dait the sextein day of Juni 1614 yeiris; as wes cleirlic understand to the saidis schiref deputtis and thairfor they decernit as said is and ordanes preceptis . . . as effeiris.

[52r]

Vigesimo primo Novembris 1615

## &lt; Hunto contra Sinclair &gt;

Anent the precept of wrangous intromissioun intentit and persewit befor the said schiref deputtis at the instance of Robert Hunto in Birsay aganes William Sinclair of Tolhop, to heir and sie him decernit to have done wrang in the wrangous intromissioun, away taking and detening fra the said persewar of the guidis and geir following contenit in the said precept, [at] the tyme and in maner lybellit, viz – ane ox worth x li. and tua meillis malt, pryce of the meill v li., ane pot price iii li., as the said precept at mair lenth beiris; the said persewar being personallie present and the said defendar being lykwayis personallie present, quha alledgit that he can not be decernit to restoir and delyver agane to the said persewar the ox nor malt lybellit as wrangouslie intromettit with be him, becaus that the said ox wes lawfullie poyndit be vertue of ane decreit given be the bailie of

the parochin, and that the persewar delyverit him the twa meillis malt conforme to his promeis maid to him thairupoun, and denyit the rest of the said lybell; to the quhilk it wes answerit be the said persewar anent the malt that the said exceptioun aucht to be repellit becaus he wes forceit and compellit for fear of his lyff to give the same; quhilk exceptioun anent the ox being fund relevant be the saidis schiref deputtis they than admittit the samen to the said defendaris probatioun, and sicklyk the said reply for eliding of the said exceptioun anent the malt being lykwayis fund relevant be thame, they thane admittit the same together with the remanent poyntis of the said precept to the said persewaris probatioun; and for proveing thair of hes assignit and assignis the [blank] day of [blank] nixtocum *hinc inde* to prove, *partibus apud acta citatis* etc.

< Lawborrowis: Kincaid contra Bannatyne >

In presence of the saidis schiref deputtis sittand in judgement, compeirit personallie Mr Robert Hendersone of Holland and becam actit cautioner, souertie and lawborrowis for William Bannatyne of Garsay that David Kincaid of Yinsta and Walter Kincaid, his brother sone, salbe harmeles and skaythles of the said William . . . under the paine of v c. markis, and the said William becam actit for his cautioneris releiff etc.

< Lawborrowis: Bannatyne contra Kincaid >

Compeirit personallie Jone Colvile in Tankernes and becam actit cautioner, souertie and lawborrowis for the said David Kincaid that the said William Bannatyne, his wyf, bairnes . . . salbe harmeles and skaythles of the said David . . . under the paine of v c. markis, and he becam actit for his cautioneris releif etc.

[52v]

< Bannatyne contra Kincaid >

Compeirit Robert Menteith of Eglshay and became actit cautioner and souertie for David Kincaid of Yinstay that the said

David sall satisfie the saidis schiref deputtis for troubling and molesting of William Bannatyne of Garsay, and that he sould mak satisfioun to the said William, and the said David becam actit for his releiff.

Vigesimo tertio Novembris 1615

< Colvile contra Home >

In presence of the saidis schiref deputtis sittand in judgement, compeirit personallie Robert Menteith of Eglisay and became actit of his awin consent as cautioner for Nicoll Home, greive to William Colvile of Midhous, that the said Nicoll sould compeir and answer befor the saidis schiref deputtis at the instance of the said William, his maister, for his intromissioun with the said William his cornes and sick uther thingis he haid to lay to his chairge as greive to him, at quhat tyme and how sone he sould be lawfullie sumond; and as he sould be fund debtfull, efter sentence sould mak guid and thankfull payment according to his intromissioun and decret; quhairupoun the said William askit instrument and act of court etc.

< Home contra Colvile >

In presence of the saidis schiref deputtis etc. compeirit personallie Mr Robert Hendersone of Holand and becam actit of his awin consent as cautioner for William Colvile of Midhous that the said William sall answer and compeir at the instance of the saidis schiref deputtis and answer at the instance of the said Nicoll, sum tyme his greive, for the alledgit ejectioun of the said Nicoll furt of certane landis possess be him and spoliatioun of certane guidis and geir furt thair of pertening to him, as he sould be lawfullie sumond to that effect; and as he sould be fund debtfull, efter sentence sould mak guid and thankfull payment conforme to the said [eject]ioun, spoliatioun and decret thair of; quhair-

upoun the said Nicoll Home askit instrumentis and actis of court etc.

< Lawborrowis: Bannatynes contra Kincaid >

Compeirit personallie David Kincaid of Yinstay and becam actit cautioner and laborrowis for Walter Kincaid, his brother sone, that William Bannatyne of Garsay and Robert Bannatyne, his sone, etc. salbe harmeles and skaythles of the said Walter . . . under the paine of i c. lib., and the said Walter became actit for his cautioneris releiff etc.

[53r] < Lawborrowis: Kincaids contra Bannatyne >

Compeirit personallie Mr Robert Hendersone of Holand and became actit catioun, souertie and lawborrowis for Robert Bannatyne, sone to William Bannatyne of Garsay, that David Kincaid of Yinstay and Walter Kincaid, his brother sone, etc. salbe harmeles and skaythles of the said Robert . . . under the paine of i c. li., and the said Robert became actit for his cautioneris releiff etc.

Vigesimo quarto Novembris 1615

[*Traill contra Colvile*]

Anent the lybellit precept intentit and persewit befor the saidis schiref deputtis at the instance of George Traill of Westnes aganes William Colvile, sone to Katherine Douglas, relict of umquhill William Stewart of Lykeing, lyfrentrix of the landis lybellit, to heir and sie him decernit to releive the said persewar at the handis of the said Katherine Douglas anent the payment of the yeirlie dewtie lybellit, contenit in the letter of tak mentionat thairintill, yeirlie and ilk yeir the cropp[is] and yeiris of God contenit in the said lybellit precept, as at mair lenth is contenit thairintill; the said persewar being personallie present with Robert Kaa, his

procuratour, and the said defendar being lykwayis personallie present with Robert Coltart, his procuratour, quha denyit the lybell; and thairfor the saidis schiref deputtis hes admittit and admittis the poyntis of the said lybell to the said persewaris probatioun, and for proveing thairfor hes assignit and assignis letteris to prove, quha in the meantyme protestit for incident diligence etc.

< Dowglas contra Traill >

Anent the lybellit precept intentit and persewit at the instance of Katherine Douglas, relict of umquhill William Stewart of Lyk-[ing], aganes George Traill of Westnes, to heir and sic him decernit to content and pay to the said persewar the yeirlic dewtie and teyndis of the landis contenit in the tak lybellit, extending to the particular quantitie mentionat thairintill, and that yeirlic and ilk yeir the croppis and yeiris of God lybellit, or els to content and pay to hir the particular prices of the same lybellit, as the said precept at mair lenth beires; the said persewar compeirand be Mr Robert Hendersone of Holland, hir procuratour, and the said defendar compeirand personallie with Robert Kaa, his procuratour, quha alledgit na payment of the dewties lybellit unto the tyme the testament of the said umquhill William Stewart wer confirmed, q[uha] decist sen the yeir of God i<sup>m</sup> vi<sup>o</sup> xiiii yeiris; to the quhilk it wes answerit be the said Mr Robert Hendersone, procuratour forsaid for the pairt of the said persewar, that the said exceptioun aucht to be repellit becaus bethe said tak he is speciallic bund and oblist to the said William and the said Catherine or [53v] ather of thame, quhilk reply the judges thought relevant for repelling of the said exceptioun; *secundo* it wes alledgit be the said defendar that na proces can go aganes him in this actioun unto the tyme his actioun of releiff alreddie intentit be discussit, at the lest to go *pari passu* with this actioun; to the quhilk it is replyit the said alledgeance aucht to be repellit becaus no privat transactioun can prejudge the persewar;

to the quhilk it is duplyit be the said Robert Kaa, procuratour forsaid for the pairt of the said defendar, that the said persewar and his assignay ar conjunct persones and that he wes factour and commissioner for hir, and the haill benefice redoundis in his persone and favouris, quhilk secound alledgeance in respect of the said duply the judges thought relevant; and thairfor hes ordanit the saidis actiones to go *pari passu*.

Decimo quinto Decembris 1615

< Act contra Stoive, Paplay, Tailyeouris et utheris >

Compeirit personallie David Moncreif in Kirkwall and became actit cation and souertie for Oliver Stove, James Paplay, Magnus and Andro Tailyeouris, Jone Okilsetter and James Irving, all induelleris in St Androis parochin, that they salbe answerable to the schireff for the dreven tymber [cumit] in in St Androis parochin, intromettit with be thame, under the paine of [blank] and they became actit for his releiff.

Decimo sexto Decembris 1615

< Sinclair contra Copland >

Compeirit personallie Jerome Chalmeris in Kirkwall and became actit cautioner and souertie for James Copland in Henbister in Holme that in cais Robert Sinclair, merchand, sall qualifie him to have promiseissd ane kow to the said Robert Sinclair, in that cais he sall restoir and delyver the same to him, and the said James becam actit for his releiff etc.

Curia justiciarii vicecomitatus de Orknay et Yetland tenta apud Kirkwall in nova domo prope palatium de Yeardis ibidem per Henricum Stewart de Carlongie vicecomitem ac justiciarium deputatum eiusdem die decimo nono Decembris 1615.

## &lt; Theifis Manssone et utheris &gt;

Anent the dittayis criminall produceit and persewit at the instance of Robert Coltart, procuratour fiscall of the said schirefdome, aganes James Mansone, sone to Jone Manssone in Burray, David Rendall alias Graven in Yinstay, Nicoll Lauchtane alias Bounde, fisher in Kirkwall, William Forrester alias Leask in [blank], Margaret Tailyeour in Deirnes and William Sclatter, sone naturall to Hew Sclatter in Burnes, for certane poyntis of dittayis underwritin, that is [54r] to say – the said Jone [sic] Manssone for the thifteous steilling of ane belt and ane knyf furt of Nicoll Sclatteris hous in Holme and of ane peice of auld plaid in March last; item for the steilling of ane mark woll fra ane wyf in Harray in somer last; item for airt pairt of the breking of Thomas Gariochis hous and thifteous cutting and steilling of ane wob out of his warklome of four elves of lenth upoun the last day of March last bypast; item for the cumming to Jonet Flettis hous in Muddisquoy upoun the thrid day of December instant, and efter he haid receaveit almoise he violentlie and maisterfullie dang the said Jonet and brak hir face, and thairefter violentlie and per force tuik away fra hir ane pair of shone and tua elves of gray clayth; the said David Rendall alias Graven for the thifteous steilling of ane burdein of corne out of ane skeow in the moneth of December 1611 yeiris, the same pertening to Barnard Yinstay; item for the thifteous steilling of ane wedder fra Marie Scollay at Lambas last or thairby; item for the thifteous steilling of ane gr[a]y sheip pertening to David Kincaid of Yinsta[y] within thir xv dayis bygane; item for airt and pairt of [the] thifteous reecat and stelling of certane bear pertening to Magnus Quhyt in harvest last and of ane half meill aittis out of the said Mans his barne upoun the fourtein day of this instant at tua severall tymes, at least in induceing and seduceing of William Sclatter, sone to Hew Sclatter in Burnes, to stell the said bear and aittis and bring thame to his barne; the said Nicoll Lauchtane

alias Bounde for cumming to James Linayis barne in Papdaill, persewing and shutting up his barne doure and entering of the said barne, to have stollen his cornes with ane sewit sark to have put thame in quhair he wes tane; the said Margaret Tailycour for steilling of ane pokfull of beir out of ane cassie in Henric Paplayis windo in Deirnes upoun the xvi of this instant, and of certane aittis fra divers and sindrie persones in the parochin; the said William Sclatter for the thifteous steilling of ane sark pertening to Nicoll Ewinsone aff his yeard dy[k] a fourtein dayis syne or thairby; item for the thifteous steilling of ane half meill beir in harvest last and delyvering of the same to David Rendall, and ane half meill aittis out of Magnus Quhyttis younger maister his barne at tua severall tymes and putting of thame in the said Davidis barne [at] his desyre; item they all ar indyttit and accusit as comone theives and pykeris; and the said William Forrester alias Leask for airt pairt and thifteous breking of Thomas Gariochis hous, induceing, pers[wa]ding and putting in of James Manssone in at the hoill that he brak in the hous, and causing the said James cutt and steill ane pairt of ane wob out of ane warklome pertening to the said Thomas [54<sup>v</sup>] upoun the last day of November last bypast; as at mair lenth is contenit in the saidis dittayis; the said procuratour fiscall being personallie present and the saidis defendaris being lykwayis personallie present, quha enterit on pannall and haveing na lawfull caus quhy they sould not pas to the knowledge of ane assyse wer content to abyd tryell; quhairupoun the said procuratour fiscall askit actis ot court desyring the dittayis to be put to the knowledge of ane assyse and the pannallis to be accuseit thairupoun; efter accusatioun the said James Mansone confest the haill poyntis of dittay led aganes him, the said David Rendall confest the first and last poyntis of dittay led aganes him anent the burdein of corne, beir and aittis, the said Nicoll Lauchtane alias Bounde confest his poynt of dittay, the said Margaret Talycour confest hir poynt of



dittay, the said William Sclatter confest the tua poyntis of dittay led aganes him, and the said William Forrester denyit that poynt of dittay led aganes him; and thairfor the said judge remittit the dittayis to the knowlege of ane assys quhom he ordaneit to be callit.

## Assisa

Harie Spence in Scapa	Alexander Mansone in
Jerome Chalmeris, skiper in	Over Skapa
Kirkwall	James Fraser in Wytfrith
Thomas Collace, skiper thair	Stevin Ewinsone in Birstane
Hutche[o]ne Cursetter in	Thomas Garay in Instiple
Newbiging	Thomas Lentrone, baillie
Jone Tait in Knarstoune	

Bernard Yinsta in Yinsta  
 Niniane Smyth in Fia  
 Alexander Yinstay in Yinstay  
 Thomas Sinclair of Clett  
 David Bichen in Orquyll

Quhilkis persones of assyse being admittit, sworne and re-  
 ceaveit but lawfull objectioun of the pannallis and removeit out  
 of judgement, nominat and electit Thomas Lentrone, bailie, in  
 chancellar of the said assyse; and efter dew deliberatioun haid  
 anent the dittayis produceit aganes the saidis persones pannallis  
 and haill poyntis thair of, and they enterand in judgement agane,  
 the haill assys be the mouth of the chancellar fyllit the said James  
 Mansone of the haill poyntis of dittayis led aganes him; item  
 fyllit David Rendall of the stelling of the corne contenit in the  
 first poynt of dittay led aganes him [55r] and of seduceing of the  
 said William Sclatter and recept of the bear and aittis contenit in  
 the last poynt of dittay; item fand Nicoll Lauchtane guiltie of the

poynt of dittay led aganes him and fyllis him thairintill; item fyllis Margaret Tailyeour lykwayis of the poynt of dittay led aganes hir; and si[c]klyk fyllis William Sclatter of the tua poyntis of pykerie and dittay thairof led aganes him; and clenges William Forrester alias Leask of that poynt of dittay led aganes him, and remittit sentence to the judge and dome to the dempster; quhilk determinatioun the judge thane present acceptit and continweit in pronouncing of sentence to the morne etc.

Vigesimo Decembris 1615

[*Sentence contra Manssone et utheris*]

Anent the dome and sentence continwit to this day [*see above*] aganes the persones following, the said schiref deput decernit and ordanit the said James Manssone to be scourgeit fra this stair fute to the schoir and back agane to the jogis be the lockmane, quhair he sould stand be the space of tua houris and brunt in the shoulder and thairefter to be banished the schirefdomes of Orkney and Yetland and never to be sein thairintill, under the paine of hanging in cais he be fund within ane moneth efter the dait heirof forsaid; item ordanit David Rendall to stand in the jogis with ane myter of paper about his head bearing the caus thairof fra the first bell in the morning to thrie houris efter none, and the first preiching day at his awin parochin\* kirk so to stand fra aucht houris in the morneing till the people be sk[e]lt, and to be banishit the parochin betuix and Fastingis Evin, and that he sould find cautioun to that effect and for his guid behaviour and lyf in tyme cumming; and lykwayes ordanit Nicoll Lauchtane alias Boundie to stand in the jogis upon Sondag fra the first bell in the morning to the ending of the preiching with ane myter and superscriptioun of his dittay about his head, and that he find cautioun to that effect and for his guid behaviour in tyme cumming; and in lyk maner ordanit Margaret Tailyeour to stand at

the kirk dore of Deirnes the first preiching day with ane myter about hir head fra the beginning of the preiching to the end thairof; item decernit and ordanit William Sclatter to be tane be the lockman and scourgit fra the fute of the stair to the end of the Laverok; and assoilyeit simpliciter the said William Forrester alias Leask fra that poynt of dittay led aganes him, haill tennour and contentis thairof, and decernit him quyt and frie thairfra in all tyme cumming; quhilkis sentences the dempster gave for dome.

[55<sup>v</sup>]                      < Catioun: Rendall et Lauchtane >

Compeirit personallie Jerome Chalmeris, skiper in Kirkwall, and become actit catioun and souertie for David Rendall alias Graven and Nicoll Lauchtane alias Boundie that they sall fulfill the sentence and dome given thairupoun aganes thame immediatlie preceiding, ilk ane of thame under the paine of xl li., and they became actit for his releiffis etc.

[*The next entry in this court book is dated 5 January 1616.*]

THE COURT BOOK OF  
SHETLAND

22 June 1615 – 9 October 1615

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**C**URIA balivatus de Yetland tenta apud Uyeasound in  
Unst per honorabilem virum Magistrum Willelmum  
Levingstoun vicecomitem ac balivum deputatum de  
Orknay et Yetland vigesimo secundo die mensis Junii anno  
Domini 1615. Curia tenta et legitime affirmata. [*Folio 1r*]

< Act: caution Bruce >

The quhilk day compeirit personallie Andro Mortoun in [*blank*]  
and became actit as cautioner and souertie for William Bruce in  
Lun that he sould sattisfie the schiref for the ryott committit be  
him upoun Alexander Forbes in Viga, and for sattisfactioun of  
the pairtie, and the said William Bruce became actit for his releiff.

< Lawborrowis: Symone in Clipragarth contra Sinclair >

Compeirit personallie Olaw Manssone in Snaburch and became  
actit as cautioner, souertie and lawborrowis for Francis Sinclair  
of Uye[a] that Symone in Clipragarth, his wyfe, bairnes . . .  
salbe harmeles and skaithles of the said Francis etc. . . . his wyfe,  
bairnes . . . under the paine of i c. lib., and the said Francis became  
actit for his cautioneris releiff etc.

< Duncane contra Sinclair >

Decernes and ordanes Francis Sinclair of Uyea to content and  
pay to Andro Duncane in Vigga the sowme of threttie s. money

for the price of ane sow intromettit be him and his servandis at Yule last or thairby and slaine, the sowme of thrie pundis xii s. money for the pryce of ane young kow lykwayis wrangouslie reft and takin away be the said Francis fra him thrie yeiris syne or thairby, and the sowme of xxiiii s. money in fie for halding of his pleuch ane yeir syne or thairby; becaus the said persewar being personallie present and the said defendar being lykwayis personallie present, quha confest the sleying of the sow and the xxiiii s. for halding of the pleuch, and refferit the kow and price thair of to the persewaris aith of verritie simpliciter, quha being personallie present as said is maid faith that he reft the kow fra him and that she wes worth iii li. xii s. money; as wes cleirlic understand to the said schiref deput and thairfor he decernit as said is and ordanes preceptis etc.

At Reafirth [Yell] the xxiiii day of Junii 1615

< Erassmusones contra Bruce >

Anent the suplicatioun given in befor the said schiref deput at the instance of Peter, Mans and Jacob Erassmusones, sones of umquhill Erasmus in Guids[hyr], aganes Andro Bruce, fe[a]r of Moenes, makand mentioun that quhair in the moneth of Aprile last bypast the said Andro did direct and send certane of his servandis with pleuchis and oxen, intending violentlie, without ony kynd of ordour, at his awin hand to labour and manure the thrie mark half mark land in Guids[hy]re in Yell, per[tening] heritable to the saidis persewaris be deceis of thair umquhill father, quha dieit \*\*\*\*\* peaciablie [in] possessioun thair of; quhais force they not being \*\*\*\*\* to withstand, wer forcit and compellit to go to Moenes [quhair the said] \*\*\*\*\* wes for the present, and thair to receave ane tak and assedatioun \*\*\*\*\* thame in possessioun thair of, as the said suplicatioun [at mair lenth] [1v] beiris; the saidis persewaris being personallie present and the said

defendar [being] lykwayis personallie present, thair rychtis . . . being hard . . . the said schiref deput . . . decernes the saidis persewaris of consent of the said defendar to bruik, jos and posses the said thrie mark land and a halfe ay and quhill they be lawfullie warneit, ordourlie callit and put thairfra be law, notwithstanding of the acceptatioun of the said tak, and that becaus of his violent intrusioun by all kynd of ordour of law and justice etc.

< Absolvitour: Scot contra Scot >

Anent the suplicatioun givin in at the instance of Osea Scot in Reafirth aganes Gilbert Scot in Kirkabister, makand mentioun that quhair tuentie yeir syne or thairby the said Ossea set in tak and assedatioun to the said Gilbert seven mark of land and ane halfe, with the houssis, chalmeris, barnes, byres and remanent houssis being standing than upoun the ground of the saidis landis, for payment of ane certane yeirlye dewtie, at the quhilk tyme the said Gilbert promeisit faythfullie not only to pay the dewties bot lykwayis to uphald, beit and repair the saidis haill houssis, chalmeris, barnes and byris windticht and watterticht induring his occupatioun of the saidis landis, and to redelyver the same to him at his removeing frome the samen in als guid estait as they wer at his entrie thairto tyme foirsaid; and trew it is that the said Gilbert hes removeit him selff fra the saidis landis ane yeir syne or thairby and hes not fulfillit his said promeis anent the restoiring of the saidis haill houssis, bot it is of veritie that the said Gilbert hes dimolisheit and cassen down ane haill chalmer, boith ruiffes, wallis, loftis and gistis thairof, together with ane barne both ruiff, wallis and tymber wark, quhairby he is dampnifyit in the soume of xx li. in the said Gilbertis default, quhilk he aucht and sould refund, content and pay to him in recompence of his saidis lossis; together with i leispund butter or xl s. for the price thairof for the gersumes of the saidis landis the crop and

yeir of God 1614 yeiris; and four markis butter or xx d. money for ilk mark thair of yeir lie thir sex yeiris last bypast for his pairt of the proffit of ane kow, quhilk he promeisit to pay to him; as the said suplication and clame at mair lent beiris; the said persewar being personallie present and the said defendar compeirand personallie with Ninian Neven, his procuratour, thair rychtis, reassounes etc., assoilyeis simpliciter the said defendar fra the said sowme of xx li. money acclamed in recompensatioun of the dimolishing of the saidis chalmer and barne, and fra the haill butter and prices thair of acclamed, haill tenour and contentis of the said suplication and clames, and decernes him quyt and frie thairfra in all tyme cumming; becaus it wes alledgit be the said Niniane Neven, procuratour forsaid for the pairt of the said defendar, that he can not be decernit to mak payment of the said sowme of xx li. money for dimolishing of the saidis houssis, nather of the butter nor prices thair of acclamed, becaus that be contract past betuix the brether in Marche 1614 the persewar dischairgeit the said defendar of all bygane comptis and reckningis, quhilk the said persewar confest to be of veritie; as wes cleirlye understand to the said schiref deput and thairfor he gave decreit absolvitour in maner forsaid etc.

< [Nev]en [contr]a [Scot] >

Decernes Osea Scot to content, pay and delyver to Niniane Neven in Kirkabuster ane barrell oylie or the sowme of [blank] for the price thair of, payit be the said Ninian as cautioner for him to Gilbert Scot of Gardie, *ex confessione rei*.

[2r]

< Edmestoun contra Scottis >

Decernes Hossea and Gilbert Scottis to content, pay and delyver to Andro Edmestoun, minister at Yell, the quanitie of aucht threaves bear intromettit with be thame furth of the said Andro his nes callit Ludesetter this last harvest, or the soume of [blank]

for the price of ilk thr[ei]ff thairof, *partibus presentibus et confidentibus* etc.

< Mans in Hul[t]asgarth contra Edmestoun >

The said schiref deput decernes and ordanes Jone Edmestoun to restoir and redelyver to Mans in Hul[t]asgarth ane servand of his violentlie takin away be the said Jone fra the said Mans, and that within tuentie four houres under the pane of x li.; *partibus presentibus* the persewar maid faith that he nether gave his servand his leiff nor his servand him etc.

[*Smyth contra Laurencesone et Scottis*]

Decernes Johne Laurencesone of Awick, Hossea Scot of Reafirth and Gilbert Scot, his brother, to content, pay and delyver to Jone Bruce, sone naturall to Laurence Bruce of Cultimalyndies, as factour and procuratour for Andro Smyth, ane ox or the soume of ten pundis money for the price thairof, wrangouslie intromettit with and away takin be thame fra the said Andro threttein yeiris syne or thairby, *partibus presentibus et confidentibus*.

[*Page 2v is blank.*]

[3r] Curia vicecomitatus de Yetland tenta apud castrum de Scalloway bankis in aula eiusdem per honorabilem virum Magistrum Willelmum Levingstoun vicecomitem deputatum dicti vicecomitatus die primo mensis Augusti anno Domini millesimo sexcentesimo decimo quinto. Sectis vocatis et curia legitime affirmata.

< Memberis of court >

Ar chosen Robert Kaa in procuratour fiscall, Robert and George Blakis and Gilbert Cantlie officeris, suorne and admittit, and



Magnus Cromertie in dempster, and all actiounes continwit to the thrid day of this instant.

Tertio Augusti anno 1615

[*Preamble to the country acts*]

Forsameikle as sin and iniquitie is and hes bein the caus of Goddis havie plagues and judgementis and that partitioun wall quhilk devydit the people frome the presence of God, and the caus of gryt dissollatioun in kirk and politie within this countrey for laik of disciplein and putting of the actis of the kirk (quhilk hes bein grytumlie contempnit in tymes past) to dew executioun; and sicklyk that thair hes bein gryt ignorance of his most sacred majesties royall and supreme auctoritie in practiseing of forren and uncouth lawis contrair to the tenour of the actis of parliament and secreit counsell maid thairanent; and lykwayis that thair hes bein gryt dissolatioun in the comone weill, trouble and disorder, injuries and wrangis amongis the inhabitantis of the land for laik of government, administratioun of justice and putting of the samen to dew executioun; thairfoir it is statute and ordaneit be the said schiref deput, with advyse and consent of the gentlemen sutteris of court and comounes, all with ane advyse consent and assent, as efter followis.

< 1 > [*Acts of the kirk session to be enforced*]

In the first: it is statut and ordanit for punischement of sin and vice that the actis of the kirk, maid and to be made be the ministrie and thair sessioun of kirk aganes transgressouris and sinneris, be put to dew executioun with all vigour in example of utheris to do the lyk, be stocking, jोगing and gowing of the saidis malefactouris and be putting of thame in brankiss, douking in the sey and in using of all uther publict punischement answerable to the qualitie of the falt; and to this effect that the bailie of ilk

parochin and his officer concurr and asist thair ministeris, elderis and thair officeris in putting all sick statutis maid or to be maid in thair said sessioun of kirk to dew executioun as said is, for maintenance of Goddis worsh[ip], keiping of the Sondagis, suppressing of all idolatrie speciallic of walkis and pilgrimages and all utheris vyces, and punisheing persones refractarie and dissobedient to thair discipline, under the paine of deprivation and payment of fourtie pundis to be employed *ad p[ios] usus*.

[3v] < 2 > [*Foreign laws to be renounced: all men to arm themselves*]

Item: it is statut and ordanit that all maner of\*\*\*\* and persones, of quhatsumever rank, qualitie and degrie, sall honour thair dread soverang the kingis majestie and submitt thameselves with all reverence to his auctoritie and obey his law, disclame and renunce all forren lawis, actis, statutis and constitutiones quhatsumever observeit heirtofair, under the paines contenit in the actis of parliament and most honorabill privie counsell maid thairanent; and that all men according to thair rank and degrie provyd thameselves of sufficient armour according to thair estait, and be in reddines at all occasiounes to serve his majestie and deputtis present or that sall be for the tyme, for suppressing and withstanding the incursitiounes of pirottis and utheris tumultuos persones, as they wilbe answerable upoun thair hyest perrell.

< 3. Anent directing of the cors >

Item: it is statut and ordanit to the effect foirsaid that ilk hous and familie sall cairfullie and diligentlie direct the cors to hisnixt nychtbouris withane sufficient berar, for admonishing the people to conveyn, aither to kirk to preicheing or prayeris or for his majesties service and sick uther necessar caussis as salbe thought expedient be the minister, schireffis and justiciaris or thair bailies, and sall not stay nor lay down the same bot direct it with all

diligence upoun the recept thairof, under the paine of vi li. money *toties quoties*.

< 4. Anent fals wechtis >

Item: it is statut and ordanit for eshewing of fals wechtis and meassouris that all busmeris be markit with his majesties mark and all cannes be answerable conforme to the Scottis pynt and quart, and that the Dutche merchandis barrellis and all utheris traffec[c]aris be of sufficient bind, and that thair ry maill barrellis be weill packit, contening aucht leispundis and ane half leispund maill; and the contraveneris heirop to pay ten pundis for the first falt and double the said paine sa oft as they sall happin to contravein thairefter, and that by and attour the paines contenit in the actis of parliament maid thairanent and punishment to be inflictit upoun thame conforme thairto.

< 5. Anent vagabou[ndis] and beggaris of woll >

Item: it is statut and ordanit that na outland nor inland beggeris of woll, fishe and cornes of honest rank sall repair throw the contrey nor overlay the samen, begging, steilling, rowing and pulling of sheip under pretext thairof; and in cais ony sick persones that ar not auld, decripit and misterfull salbe fund heirefter begging in maner foirsaid, that it salbe lesum to the finder and apprehendar to delyver thame to the bailie of the parochin, to be punisheit as idile, vagabound persones in the jogis or stockis; and gif the bailie sall refus to punishe thame conforme to the premissis or utherways to present thame to the schirefe or his deputtis, he sall pay to the schireff or his deputtis the sowme of tuentie pundis.

< [6. Ane]nt the payment [of the la]ting oxin [and sh]eip >

Item: it is statut and ordanit that all sick landis as hes bein in use and custome of payment yeirlie of the lating oxin and [4r] scheip

at ony tyme sen the first impositioun sall *pro rata* pay the samen for releiff of the comones and pure anis, notwithstanding of ony immunitie or o[ve]rsicht they have haid in tyme bygane.

< 7. Anent quhitred, craw, corbie and earne >

Item: it is statut and ordanit be the advyse foirsaid with consent of the ministrie that everie bound, bailye, minister and gentilmane sall present this nixt yeir allanerlie to the heid court the first Tysday of August aither the heid of ane quhytred, craw, corbie or earne or ony of the fowlis egis in maner efterdevydit, viz – ilk bound ane heid or ege or the soume of xii s. money, ilk minister thrie heidis or thrie egis or the soume of xxxvi s. money, ilk gentlemene four heidis or for eges or the soume of xlviii s. money, and ilk bailie sax heidis or sax egis or the soume of iii li. xii s. money; and that the names of the parochineris be inrollit be the bailies and the heidis or egis to be inbrocht be thame conforme to this present act.

< 8. Contra repaireris to Brassay >

Item: it is statut and ordanit that in all tyme cumming no persone nor persones sall repair to the sound nor ile of Brassay for furnishing of beir, vivoris and uther necessaris to the Hollandaris and utheris foirrenn[eris] comitting thairby villanie, fornicatioun and adultrie, under the paine of tuentie pundis *toties quoties* as they sall happin to be challengeit; and that the awneris of the ground sall dimolishe all houssis bigit nor sall suffer nane to be big nor mak recidence thair to the effect foirsaid, under the lyk paine of xx lib.

< 9. Anent the holmes >

Item: it is statut and ordanit that gif it sall happin ony man to be tryit or fund in ane uther manes holme be day or nycht upoun quhatsumever pretext without licence of the owner, and speci-

allie in the holmes now pertening to the kingis majestie, without licence of the keipar thairof, he salbe haldin for the first falt to pay the soume of x li. and for the secund the sowme of xx li. and for the thrid he salbe haldin, reput and punishit as a comoune theiff etc.

< 10. Anent gude nychtbourheid >

Item: it is statut and ordanit that gud nychtbourheid be keipit amongis nychtbouris in ilk parochin in all tyme cumming, in bigging of thair dykis yeirlye and putting of thair swyne to the hill befor the fyftein day of Aprile, keiping and hirding of thair sheip befor the said day, and in keiping of thair nolt, hors and uther bestiall afor the first day of Maii, under the paine of xl s. money to be payit to the schiref or his deputtis; and in cais of contravening and breking heiroyf sa that nychtbouris be dampnyfyit and hurt be utheris in not tymous dyking, keiping and hirding as is abonewrittin, in that cais the contraveinaris to pay to the pairtie interest and skaythit as followis, to wit – befor Lambas sall pay for ilk sheip tua s., for ilk suyne x s., and for ilk hors, meir or nolt four s. *toties quoties*, and efter Lambas sall pay the double of ilk paine *toties quoties* as they or ony of thame sall happin to be within dykis and lawfullie tryit befor the bailie of the parochin to have bein in thair nychtbouris skayth, the dykis alwayis being maid lawfull and sufficient. Lyk as immediatlie efter the tryell of the said bailie it salbe lesum to him to poynd and uplift the saidis paines, and that by and attour the comprysing of the said skaith and payment of the samen conforme to the daylie practique observit in s[ic]k cais[is].

< 11. Anent sheip doggis >

Item: it is statut and ordanit that it sall not be lesum to ony man to keip she[ip] doggis bot sick persones as salbe aproven and allowit be the bailie, and parochiner[is] quhais names ar tain up

in ilk parochin alreddie, and for the quhilkis doggis they sal[be] haldin to answer, under the paine of x li. by the payment of the loissis, [and] to be done be thame conforme to the law and practique.

[4v]

< 12. Anent grindis and yettis >

Item: it is statut and ordanit that all grindis and yettis in all h[ie] wayis salbe cloisit be all passingeris that enteris thairby in sick sort a[s] they opin the saidis grindis and yettis they salbe haldin incontinentlie to clois the same agane, under the paine of xl s. *toties quoties*; and that no comone grindis nor yettis be stopit or cloisit up that hes bein of auld and yit necessar and nedfull to be, under the paine of x lib.

< 13. Anent going through thair nychtbouris scattell >

Item: it is statut and ordanit that it sall not be lesum to ony persone or persones at ony tyme of day, bot especiallie afoir the sune rysing and efter the soone setting, to go through his nychtbouris scattell or comontie with ane sheip dog except he be accompanied with ane or tua nychtbouris, famous, honest men; and gif he be fund contrair to the tenour heiroy he salbe haldin to pay for the first falt the sowme of vi lib. money and the dog to be hangit and it not to be lesum to him to have ane sheip dog thairefter, under the paine of four angellis; and gif he be fund the secund tyme not accompanyit as said is he sall pay sax angellis; and gif the thrid tyme, or gif he salbe fund under cloud of nycht beand ony way is suspect, the samen beand proven, he salbe reput and haldin ane and punishit as ane comone theiff.

< 14. Anent ranselling >

Item: it is statut and ordaneit for eshewing and tryell of thift in tyme cumming that it salbe lisum to the pairtie interest, with the bailie or officiar of the parochin or tua or thrie honest men to be

chosen be thame, to ransell, seik and searche all houssis and suspect places within the samen, and in cais of not finding or suspi[c]ioun to pas to the nixt parochin or beyound the samen; and ordanes the bailie of ilk parochin or officiar to concur with the pairtie interest in maner foirsaid for apprehending thairof, as they will eshew to be reput and haldin partakeris of the said cryme.

< 15. Anent rouing of sheip >

Item: it is statut and ordanit that it sall not be lesum to no maner of persone nor persones to rouing ony sheip unto the tyme they be lawfullie wairnit be the bailie of the parochin to ane competent day, as they will eshew to be reput and haldin as theiffis and punishit conforme thairto.

< 16. Anent pedderis >

Item: it is statut and ordanit that all pedderis, chapmen or utheris byaris of hyddis, skinnis or woll, fra quhatsumever persone or persones, sall cum to the bailie of the parochin or to tua famous and honest nychtbouris within the boundis quhair they sall happin to buy the same, and shaw to him or thame the hydis, skines or woll and fra quhom they coft the samen, lyk as the seller salbe haldin to do the same; or in cais aither the buyer or seller refuis to give thair aithis of veritie to the bailyie of the parochin, being requyrit be him to that effect, it salbe lisum to the said bailyie to confiscat the saidis guidis to the schireffis use.

< 17. Anent flescheouris >

Item: it sall not be lisum to no fleshouris nor na utheris byaris nor slayeris of flesh to sell to na inhabitant within the contrie nor outwith the samen the saidis fleshis unto the tyme they cum to the bailie or tua honest nychtbouris and shaw thame the beast, the mark and the manes name fra quhom they coft the samen, quha

salbe haldin to comitt the byaris name in wryt, togither with the beast and mark thairof and fra quhom and at quhat tyme the samen wes bocht, as the slayeris and selleris of the bestiall will eshew to be reput and haldin as stellaris thairof and punished thairfor as accordis.

[5r] < 18. Aganes transporting of servandis >

Item : it is statut and ordanit in respect of the scarcitie of servandis to labour the ground and for punishment of theiffis and utheris malefactouris that no maister, skiper nor ony of the acquippadge of ony bark, boat, crear or ship sall transport ony boundis manes servant or boy furth of the contrey without licence of the schireff, or in his absens without ane suffycient testimoniell of the minister and bailie and thrie or four honest, famous men of the parochin within the quhilk he or they sall happin to duell for the tyme, under the paine of i c. lib.

< 19. Anent hyring of servandis >

Item : it is statut and ordanit that [na] mane fie, hyre nor conduce ane utheris manes servand except they be dischairgit be thair maister or that they have dischairgeit thair maisteris lawfullie fourtie dayis befor ane lawfull terme, nor that nather gentleman, boundis mane nor na uther receave ony sick persones nor give thame hospitalitie nor intertenement, nor yit set to thame houssis nor receave, support nor suplie ony vagaboundis, idle men nor unlawfull wemen, under the paine of x li. *toties quoties*.

< 20. Anent servandis >

Item : it is statut and ordanit that na man seduce, by, bargane nor se[ll] with ane uther manes servand by the knowlege of his maister, as they will eshew to be punishit as receptaris of thift, and it being tryit the geir to be restorit to the rycht awner but repayment of the prices thairof.



## &lt; 21. Anent ryding of uther manis hors &gt;

Item: it is statut and ordanit that quhatsumever persone salbe apprehendit or tryit to have ridden ane uther manes hors without licence, inwith the parochin quhair the awner of the hors duellis, sall pay to the schiref four markis Scottis money and to the pairtie interest the soume of uther four markis; and if he be fund and apprehendit ryding ane uther manes hors outwith the parochin quhair the awner of the hors duellis, salbe haldin to pay the double of the said paine; and forder according to the distance of place from the parochin out of the quhilk the said hors salbe takin, sall triple, quadruple and augment the said paine effeirand to the severall parochines quhairthrow they sall happin to ryd the said hors; and lykwayis it sall not be lisum to ony man to cut or steill ane uther manes hors taill, under the paine of x li.; and gif the ryddaris, cuttaris or steillaris forsaid[is] sall have no moyane to sattisfie the saidis penalties proportionallie as abonewrittin, they to be punishit in thair persone effeirand to the deid and offence at the discretioun of the judge.

## &lt; 22. Anent boitis hyris &gt;

Item: it is statut and ordanit with advyse and consent foirsaid that all men be sufficientlie provydit in boitis for serveing of his majesties leigis in thair lawfull and necessar adois, upoun thair ressonabill chairgis for payment of sick competent fraucht as efter followis, under the paine of x li., to wit – at Bluma Sound ii s., frome Unst to Gudshyre in Yell or Fetlar or ather of thame 4 s., frome Unst to Reafirth in Yell sex s., frome Reafirth to Fetlar four s., fra Luna Firth aucht s., for Yell Sound be Biga four s., Yell Sound to Northmav[in] aucht s., fra Glus to Caldback fyve s., fra Br[ae] to Aith aucht s., Pap[a] Sound ii s., fra Bigsetter to Skalloway xii s., the ferrie at the kirk of Wiesdaill tuelf pennyes, fra Skalloway bankis to Mawick tuelf s., [fra] Mawick or fra Skalloway to Hous sex s., Brassa Sound tua s.,

Quh[ail]say Sound sex s., and fra Vassie to Glatnes to Laxfurde thrie s. [Lyk] [5v] as it salbe lesum to all sick persones as hes boitis and not servandis to serve the leigis to chairge sick nyctbouris as may convenientlie to serve upoun ressonabill daill of fraucht, under the paine of xl s.; and in cais of wilfull refusall of the boitsman itsalbe lesum to the passinger or passingeris to tak the boitis for thair transporting but danger of spulyie, the passingeris allwayis at thair landing placing the boit saifflic, and this but prejudice of that service dew to schireff, commissioner or thair servandis and utheris his majesties commissioneris, and but prejudice of dew and thankfull service in transporting of the ministrie over the foirsaidis ferries and utheris necessar soundis or vois for serveing of thair cures, conforme to the lovable custome observeit in tymes bygane.

< 23. Aganes conceilling >

Item: it is statut and ordaneit that na persone nor persones of no rank, qualitie nor degrie sall hyde nor conceill ony kynd of thift, sorcerie nor witchcraft, bluid, wrang, injurie, roberrie nor oppressioun, wrak or ony kynd of waith; bot sall impart, shaw and delait the samen to thar bailies or to the schireff deput, as they will eshew to be reput and haldin as partakeris thairof and punishit thairfor conforme to the lawis and practique of this realme.

< 24. Contra bailies oppressouris >

And finallie: it is statut and ordanit be the said schireff that the bailyeis of ilk parochin sall mak publicatioun heiroyf at thair paroche kirkis, quhairby nane pretend ignorance of the premisis; and that they sall put the saidis actis and everie ane of thame to dew executioun in the haill heidis, articlis and claussis thairof, for maintenance of Goddis worship, the reverend obedience of his majesties most royall and supreme auctoritie and lawis, and for the peax and guid of the inhabitantis of the land; and in cais it sall happin the saidis bailies or ony of thame to be tryit and fund

to have oppressit or wrangit ony persone or persones within thair bailyeari[es], by exacting or unlawfull services, feastis or bankquettis or be taking of buddis or brybis for perverting of justice, or in ony sort in oppressing the pure or doing of ony uther deid of the lyk nature and qualitie contrair to equitie and reassoun, in that cais they salbe haldin to repair the wrangis at the sicht and discretioun of the schireff deput, and salbe estimat unworthie to bear office or credite in tyme cumming, and that by and attour the dew punishment to be inflictit upoun thame according to the demerite of the fact.

[6r] < Decreit: Murchesone contra Bruce >

Decernes Robert Bruce of Troll, as cautioner for William For-dyce, to pay to Jone Murchesone the sowme of sevintein pundis money addebtit be the said William to the said Johne Murchesone conforme to ane decreit arbitrall, *actore presente et Roberto Bruce qui confessus est*, and ordanes preceptis.

Decernes Lusk [St]ro[s]burgh to content and pay to Walter Richie the soume of nyne dollouris as partiner with Henrie Luce,<sup>1</sup> Dutche merchand at Buravo, and for the price of ane gun.

< Sinclair contra Mansone and Hawick for his entres >

Anent the clame intentit and persewit at the instance of Ola Sinclair in Sandnes and Marioun Forrester, his spous, portioneris of Norbie, aganes Magnus Manssone in Clevogarth, acclamand fra him tua leispundis butter, price of the leispund xl s., tua shilling<sup>2</sup> wedmell, price of the shilling xxiii s. money, and xxxii s. of gersum, for the dewties of four mark land in Clevogarth in U[lun]afirth pertening to thame heretablie, occupyit be him the crop and yeir of God 1614 yeiris, quhairof he hes bein in use in tymes bygane to mak thame payment and now wrangouslie delayis swa to do without he be compellit, as the said clame at

<sup>1</sup> Or *Lute*.

<sup>2</sup> See Glossary.

mair lenth beiris; the saidis persewaris being personallie present and the said defendar being personallie present and Andro Hawick of Scatstay being lykwayis personallie present, quha wes admittit for his entres, thair rychtis . . . being hard . . . the said schiref deput . . . decernes and ordanes the said Mans to content, pay and delyver to the saidis persewaris the butter, wedmell or prices thairof abonewrittin and the said soume of xxxii s. of gersum as for the dewties of the said four mark land, crop for-said; becaus the said Mans being personallie present confest he wes debtfull in the dewties acclamed, and sicklyk becaus the said Andro Hawick, admittit for his entres, alledgit the said Mans could not be decernit to mak payment to the persewaris of the dewties acclamed, becaus he offirrit him to prove that he haveing obtenit ane decreit of removeing aganes the said Mans and haid continwit him in possessioun upoun promeis of payment of the dewties acclamed; to the quhilk it wes answerit be the saidis persewaris that the same aucht to be repellit becaus the said Mans being [thair] tenent and they not lawfullie wairnit nor callit to the said decreit, no decreit obtenit aganes him can be prejudiciall to thair rycht and possessioun; lyk as they offirrit thame to prove that the said Magnus haid maid payment to thame of the saidis maillis and dewties be the space divers yeiris immediatlie preceeding, quhilk they referrit to the said Mans his aith of veritie simpliciter, quha being personallie present as said is maid faith that he haid maid payment to thame of the dewties of the saidis [landis] be the space of ten yeiris preceeding; as wes cleirlie understand to the said schiref deput and thairfor he decernit as said is and ordanes [pre]ceptis etc.

[6v]

[Contra Edmestoun]

Anent the clames intentit and persewit befor the said schiref deput at the instance of Busse Storchborg<sup>1</sup> aganes the persones

<sup>1</sup> The second and fifth letters are *c* or *t*; the fourth letter could be *o*.

efternameit, acclameand fra thame the soumes of money efterspecificfeit, viz – acclameand as factour for Henric Luce<sup>1</sup> fra Andro Edmestoun, minister at Yell, fourtie tua gulyeounes and ten shillingis wairis addebit be him to the said Hendrick and the rest of the moscop of Burrovo, quhairof he is on and factour for the rest, conforme to his band maid of the samen of the dait the second day of September 1613 yeiris, quhairof he faithfullie promiseit payment; item<sup>2</sup> acclameand fra James Sutherland tuentie gulyeounes conforme to his band given and maid be him to the said Busse thairupoun; item acclameand fra Andro Hawick of Scatstay the soume of tuentie fyve gulyeounes addebit be him to the said Busse in ane compt of merchandice coft and receaveit be him fra the said Busse, Henric Luce<sup>1</sup> and the rest of thair moscop of Burravo thir fyve yeiris syne or thairby<sup>2</sup> as the said clame at mair lent beiris; the said persewer compeirand personallie with Alexander Bruce, his procuratour, and the said defender being likwayis personallie present, thair rychtis . . . being hard . . . the said schiref deput . . . decernes and ordanes the said defender to content and pay to the said persewer the said soume of fourtie tua gudlingis and ten shillingis of wairis addebit be him to the said Busken and Henrie and rest of the moscop of Burrovo, superceiding in the meantym the executioun of his present decreit and payment of the soumes of money contenit heirintill quhill the first day of August nixtocum in anno i<sup>m</sup> vi<sup>c</sup> and sextene yeiris, and ordanes the said Buskene of his awin consent to produce ane sufficient testimoniall agane the said day that the decreit efterspecificfeit, obtenit be the said Andro aganes the said Henrick, wes satisfeit be him to the said Andro; becaus it wes alledgit be the said Andro Edmestoun, defender [for] said,

<sup>1</sup> Or *Lute*.

<sup>2-2</sup> This passage is divided from the rest of the entry by means of lines drawn by the clerk: there is no further mention of James Sutherland or Andro Hawick.

that he can not be decernit to mak payment to the said persewer of the soume acclamit, becaus he offerit him to prove that the said Henrick being addebtit to him in the soume of tuentie ane angellis and haveing obtenit decreit befor the schireff of Orkney thairupoun, he aucht to detene the said soume of fourtie tua gudlingis and ten shillingis of wairis acclamit, be way of compensatioun in pairt of payment of the said tuentie ane angellis, and for pro[ve]ling thair of producit the forsaid decreit of the dait the xxvii day of Julii i<sup>m</sup> vi<sup>o</sup> and ten yeiris; to the quhilk it was replyt be the said Alexander Bruce, procuratour forsaid for the said Busken and remanent perseweris forsaid[is], that the said exceptioun aucht to be repellit becaus he offerit him to prove that in the yeir of God i<sup>m</sup> vi<sup>o</sup> and threttene yeiris, lang sene the gevin of the said decreit obtenit be the said Andro aganes the said Henrick, the said Andro efter compt and reckning maid betuix the said Henrick and him, grantit him be his band subscrivit with his hand to be addebtit in the said soume acclamit; to the quhilk it was duplyt be the said Andro, defender forsaid, that the same aucht to be repellit becaus he offerit him to prove that the said Henrick at the gevin of the said band earnestly requeistit the said Andro to grant the samin being than enterit in ane new moscope with new partineris for satisfeing of his said partiner[is], quha wer nawayis addebtit in payment of the said tuentie ane angellis addebtit be him to the said Andro at quhilk tym he promessit faithfullie to pay his awin debt notwithstanding thair of; quhilk duply being repellit be the said schireff deput in respe[c]t of the said reply proponit be the said persewer for elyding of the pointis of the exceptioun proponit be the said defender for elyding the pointis of the said clame persewit at the instance of the said persewer aganis him, he than admittit the said reply to the said perseweris probatioun, quha than provit the same sufficientlie be productioun of the forsaid band of the dait and contentis abone-writin; as wes clerlie understand to the said schireff deput

and thairfor he decernit as said is and ordanes preceptis . . . as efferis.

[7r]

< Decreit: Kintoir contra Sinclair >

Decernes Laurence Sinclair of Ustanes to content and pay to James Kintoir in Skallowaybankis the soume of fourtieschillingis money for certane wyne quhilk he send to his hous this last yeir in hervest, quhairof he promiseit payment, the soume of fourtie schillingis restand be him to the said James his wyfe for his ordineris at certane tymes, the sowme of fourtie schillingis quhilk he send his man Andro Turnet to Skowisburch out of Quendall to [bring] to him in the yeir of God 1607 yeiris, and the sowme of sevin pundis as for the maillis and dewties of ane hous quhairin he duelt this winter last bypast, quhairof he promiseit to mak him payment at the taking of the same; *actore presente et reo*, quha referrit the matter to the persewaris aith of veritie simpliciter, quha being personallie present as said is maid faith conforme to the said decreit in all poyntis etc.; and ordaneis preceptis etc.

< Mortoun contra tenentis >

Anent the actioun and caus intentit and persewit at the instance of Marjorie Fermor, relict of umquhill James Sinclair of Crosbuster, lyfrentrix of the landis lybellit, and Andro Mortoun, now hir spous, for his entres, aganes Symone and Erasmus in Daill, Mans in Newhous, William Gray of Gairdie, Andro in Seatter, Erasmus in Colvasetter, Mathow Loutit in Sletoun, Henrie Tayleour, Gotherum in Funyie, Jone Eduarstone, Mans of Urasetter, Erasmus Petersone, Thomas Lauder, Katherine Edmistoune, Ola Vassie, Laurence in Grimsetter, Jone of Awick, Nicoll Olasone in Papa [Liti]ll, Ninian Neven, Jone Edmestoun, Andro Shewartstone, Helen Jonesdochter, James Burger, for payment of the maillis and dewties of the landis acclaimed of the crop and yeir

of God 1614 pertening to the said Marjorie in lyfrent, as in the clames raisit thairintill at mair lent is contenit; the saidis persewaris being personallie present and the saidis defenderis being lawfullie sumond . . . to have compeirit befor the said schiref deput . . . and not compeirand, and Francis Sinclair of Uyea, admittit for his entres, compeirand be Niniane Niven, his procuratour, quha produceit ane procuratorie of the dait the second day of August instant subscrivit be the said Francis, and alledgit that the saidis defendaris cannot be decernit to mak payment to the saidis persewaris of the maillis and dewties acclaimed, becaus the landis pertenit to the said Francis as air to umquhill William Sinclair of Uyea, his father, quha wes uddaller of the samen, and quhairof he haid bein in possessioun be uplifting of the maillis and dewties thair of divers yeiris sen the deceis of his said umquhill father; to the quhilk it is answerit be the saidis persewaris that the said exceptioun aucht to be repellit becaus they offerit thame to prove that the said umquhill James, spous to Marjorie persewar foirsaid, wes enterit to the possessioun of the saidis landis, at the least ane great pairt thair of, be the said umquhill William, his father, in his awin tyme, and that the said umquhill James continwit in the peaciabie possessioun thair of be uplifting of the maillis and dewties of the same to the tyme of his deceis, quhilk wes in the yeir of God 1613 yeiris, lyk as she wes ane conjunct persone with hir husband, to quhom be contract of mariage the saidis landis wer provydit during hir lyf tyme; quhilk replie being fund relevant be the said schiref deput, he than hes adm[ittit] [7v] the same to the saidis persewaris probatioun and hes with consent of the saidis persewaris referrit the poyntis of the particular clames the persones defendaris acclaimed thairfor to thair aithis of veritie simpliciter, and for proveing of the said reply hes assignit and assignis the fourt day of August instant to prove, and to wairne the saidis defendaris to give thair aithes of veritie upoun the poyntis of the saidis clames.



Quarto Augusti 1615

< Mair contra Umphray et Craigtoun >

Decernes Jone Craigtoun, merchand, burges of Dundie, as principall, and Andro Umphray of Berrie, his cautioner, to content and pay to Margaret Mair in Skalloway the sowme of nyne pundis of the pryce of ane punsheoun wyne coft be the said \*\*\*\*\* fra the said James [sic], *partibus presentibus et reo confitenti*, etc.

< Cautioner Robertstone >

Compeirit personallie Mathow Robertstone in Aith and became actit of his awin consent for Jone Craigtoun, merchand, to releive the said Andro Umphray of Berry, cautioner for the said Johne for payment of the sowme of ix li. money abonewrittin, restand be the said Jone to the said Margaret Mair, etc.

< Fermour contra Sinclair >

Anent the terme assignit [*on the previous day*] to Marjorie Fermour, relict of umquhill James Sinclair of Crosbuster, and Andro Mortoun, hir spous, for his entres, for proveing of the poyntis of the reply proponit be thame for eliding the poyntis of the exceptioun proponit be Francis Sinclair of Uyea, admittit for his entres, aganes the clames persewit at the instance of the said Marjorie and hir said spous aganes the tenentis of thair landis of Unst, Yell and Fetlar, contenit in the act of litiscontestatioun, as in the samen at mair lenth is contenit; the saidis persewaris being personallie present, quha for proveing of the poyntis of the said reply produceit the witnessis underwrittin, viz – James Sutherland, Jone of Awick, Johne Nevein and Scipio Bruce, quha wer receaveit, admittit and suorne to depone; *reiiis presentibus* etc., the persewaris protestit for ma witnessis. [*Continued on 17 August.*]

## &lt; Sinclair of Bruch contra Fermor et Mortoun &gt;

Compeirit personallie Thomas Blak of Strome in name of Laurence Sinclair of Bruch and protestit that nothing sould be done in the actioun and caus abonewrittin, persewit at the instance of Marjorie Fermor, relict of umquhill James Sinclair of Crosbuster, and Andro Mortoun, now hir spous, for his entres, aganes thair alledgit tennentis of Unst, Fetlar and Yell, prejudiciall to the said Laurence his rycht of the samen landis, and thair-upoun askit actis and instrumentis etc.

## [8r] &lt; Lawborrowis: Thomasone contra Sinclair &gt;

Compeirit personallie Andro Gifhart of Weddersta and becam act as cautioner, souertie and lawborrowis for Henrie Sinclair of Suenning that Christopher Th[oma]sone, his wyf, bairnes etc. salbe harmeles and skaithles of the said Henrie, his wyfe, bairnes etc. . . . under the paine of tua c. markis, and the said Henrie became actit for his cautioneris releiff etc.

## &lt; Lawborrowis: Sinclair contra Thomasone &gt;

David Strang in Orgill in Lunasting became actit as cautioner and lawborrowis for Christopher Thomasone in Suenning that Henrie Sinclair of Suening, his wyf etc. [sal]be harmeles and skaithles of the said Christofer, his wyf, bairnes etc. . . . under the paine of xl lib., and the principall became actit for his cautioneris releiff.

## &lt; Lawborrowis: Strang contra Sinclair &gt;

Compeirit personallie Laurence Sinclair of Aith and became actit as cautioner, souertie and lawborrowis for the said Henrie Sinclair of Suening that David Strang in Orgill, his wyf, bairnes . . . salbe harmeles and skaythles of the said Henrie etc. . . . under the paine of ii c. markis, and the principall became act for his cautioneris releiff.

## &lt; Lawborrowis: Sinclair contra Strang &gt;

Compeirit personallie Andro Bruce, fear of Munes, and became actit as cautioner, souertie and lawborrowis for David Strang in Orgill that Henrie Sinclair of Suening, his wyfe, bairnes etc. salbe harmeles etc. of the said David, his etc. . . . under the paine of ii c. markis, and the said David became actit for his releiff etc.

## &lt; Lawborrowis: Michall contra Chawser &gt;

Compeirit personallie Jone Mansone in Garmontuat and becam actit as cautioner, souertie and lawborrowis for Jone Chawser in Stansland in Wais that George Michael in Brabuster thair, his wyfe, bairnes etc. salbe harmeles and skaithles of the said Jone Chauser, his wyfe, bairnes . . . u[nder] the paine [of] xl li., and the said Jone Chauser becam actit for his releiff [etc.].

## &lt; Lawborrowis: Chawcer contra Mitchall &gt;

Compeirit personallie Johne Wishart in Burrafirth and became actitas [cautioner] souertie and lawborrowis for George Michael in Brabuster that Jone Chaw[ser] in Stansland, his wyf, bairnes etc. salbe harmeles and skaithles of [the] [8v] said George, his wyfe, bairnes . . . under the paine of xl li., and the said George became [actit] for his cautioneris releiff etc.

## &lt; Lawborrowis: Sinclair contra Strang &gt;

Compeirit personallie Laurence Sinclair of Ustanes and Johne Laurencesone of Awick and became actit cautioneris, souerties and lawborrowis conjunctlie and severallie for David Strang in Orgill that Laurence Sinclair of Bruch . . . salbe harmeles and skaithles of the said David, his wyfe, bairnes etc. . . . under the paine of tua hundreth markis, and the said David became actit for his saidis cautioneris thair releiff.

## &lt; Sinclair contra Sinclairis &gt;

Laurence Sinclair of Ustanes became actit as cautioner and souertie for Christiane Sinclair and Thomas Sinclair, now hir spous, that they sould content and pay to Martha Sinclair sick sounes of money as shoe sould qualifie thame to be justlie debtfull to hir being persewit befor the schireff thairfor as law will, and they became actit for the said Laurence his releiff.

## &lt; Lowsing of arrestment: Sinclair et Ratter &gt;

Compeirit personallie Malcolme Halcro of Hoswick and became actit cautioner and souertie for lowsing of the arrestment maid at the instance of Malcolme Sinclair of Quendall upoun the dewties of the landis pertening to Robert Ratter in Tolhop in Dunrosnes, and that the samen salbe maid furthecumand to the said Malcolme as law will, and the said Robert Ratter became actit for his cautioneris releiff.

< Act: Sinclair et Gifhart *hinc inde* >

Compeirit personallie Adame Sinclair of Brow and becam actit and oblist of his awin consent, under the paine of fyve hundreth markis, to caus thrie of the maist responsabill tenentis of the landis of Brow becum actit for payment to Andro Gifhart of Wedderstay of the sowme of nyne scoir pundis money addebtit be him to the said Andro, the ane half at Martimes nixt and the uther at Lambas i<sup>m</sup> vi<sup>c</sup> and sextein yeiris nixtocum, and that quhenever the said Andro or ony utheris in his name haveand his power sall requyre the said Adame to that effect, the said Andro Gifhart alwayis giveand him ane suffycient lyfrent tak of the sex mark land in Brow and ten mark land in Utisgarth pertening to the said Andro heretablie, quhairupoun aither of the saidis pairties *hinc inde* askit actis and instrumentis of court.

[9r]

&lt; Ros contra Sinclairis &gt;

Decernes Christiane Sinclair and Thomas Sinclair, induelleris in Scalloway bankis, of consent to content and pay to Patrik Ros, merchand, the sowme of four pundis money for the lois and skayth sustenit be him in the saidis Christiane and hir said spous thair detening fra him of the quantitie of thrie elves blak Frensche clayth delyverit be him to the said Christiane in borrowing, to be ane mort clayth to the buriell of umquhill George Sandesone, at hir earnest desyre fyve yeiris syne, quhilkis thrie elves blak Frensche clayth they delyverit instanter at the bar.

Octavo Augusti 1615

&lt; Decreit: Sinclair contra Tait &gt;

Decernes Gilbert Tait in Laxfurde to content and pay to Robert Sinclair, sone lawfull to umquhill William Sinclair of Ustanes, the sowme of threttie pundis money for the price of thrie barrellis beir as the just and equall halfe of sex barrellis beir equallie coft be thame baith, run be the said Gilbert and sauld at Brassound this last somer, quhair of he promeisit him compt, reknning and payment, *juramento actore asente reo*; attour decernes xxx s. of expensis etc. and ordanes preceptis etc.

&lt; Absolvitour: Sinclairis contra Sinclair et Kintoir &gt;

Anent the suplicatioun given in befor the said schiref deput be Martha Sinclair and James Kintoir aganes Christiane Sinclair and Thomas Sinclair, hir spous, for his entres, makand mentioun that quhair the said Christiane became actit, at the least faithfullie promeisit, for releif of Duncane Easone in name of umquhill George Sandesone to content and pay to the saidis persewaris the soume of xi li. money addebtit be the said umquhill George to thame, for the quhilk the said Duncane wes cautioner, and albeit she faythfullie promittit for releif of the said Duncane and as cautioner for the said George to have payit the said sowme,

nottheles she and hir said spous wrangouslie refuissis to do the samen without they be compellit, as the said suplicatioun at mair lenth beiris; the saidis persewaris being personallie present and the saidis defendaris being lykwayis personallie present, thair rychtis, ressounes etc. being hard etc., assoilyeis simpliciter the saidis defendaris fra the said suplicatioun, haill tenour and contentis thair of and decernit thame quyt and frie thairfra in all tyme cumming, becaus the poyntis of the samen being referrit be the saidis persewaris to the said Christiane hir ayth of veritie simpliciter, and she being personallie present as said is maid faith that she never knew nor hard of the said cautionerie; as wes cleirlye understand etc. and thairfor he gave decreit absolvitour in maner forsaid etc.

< Lawborrowis: Niven contra Bruce >

Compeirit personallie Andro Gifhart of Wedderstay and became actit as cautioner, souertie and lawborrowis for Andro Bruce of Sandwick that Ninian Neven of Kirkbuster, his wyfe, bairnes . . . salbe harmeles and skaithles of the said Andro, his wyfe, bairnes . . . under the paine of ane thousand markis money, and the said Andro Bruce became actit for his cautioneris releiff etc.

[9v] < Lawborrowis: Bruce contra Niven >

Compeirit personallie Jone Niven of Skowisburch and became actit as cautioner, souertie and lawborrowis for Ninian Niven in Kirkbuster that Andro Bruce of Sandwick, his wyf, bairnes etc. salbe harmeles and skaythles of the said Ninian, his wyf, bairnes etc. . . . under the paine of fyve c. markis money, and the said Ninian became actit for the said Jone his releiff.

< Lawborrowis: Umphray contra Jamesone >

Compeirit personallie Arthour Sinclair of Aith and became actit cautioner and lawborrowis for James Jamesone in Howland that

Andro Umfra of Berrie, his wyfe etc. salbe harmeles etc. of the said James [his w]yfe, bairnes etc. . . . under the paine of iiii c. markis, and the principall for his cautioneris releiff.

< Lawborrowis: Jamesone contra Umphray >

James Kintoir in Scalloway bankis became actit as cautioner and lawborrowis for Andro Umfra of [B]errie that James Jamesone in Houland etc. salbe harmeles etc. of the said Andro, his wyf etc. . . . under the paine of iiii c. markis, and the principall became actit for his cautioneris releiff.

< Lawborrowis: Umphray contra Cantlie et Cant >

Gilbert Cantlie and Jone Can[t] in Scalloway bankis became actit *hinc inde* for utheris that Andro Umfra of Berr[i]e, his wyf, bairnes etc. salbe harmeles etc. of thame, thair wyfes, bairnes etc. . . . under the paine of iiii c. markis. Ilk ane of thame and ather of thame became actit for utheris releiff.

< Lawborrowis: Umphray contra Dudingstoun et Weymes >

William Garioch in Scalloway bankis became actit cautioner and lawborrowis for Martein Dedingstoun thair, and the said Martein became actit cautioner and lawborrowis for Geillis Weymes thair, that Andro Umfra of Berrie, his etc. salbe harmeles and skaithles of thame, thair etc. . . . ilk ane of thame under the paine of iiii c. markis, and the said Martein became actit for the said William Gari[o]chis releiff as cautioner for him, and the said Geillis became actit for the said Marteinis releiff as cautioner for hir.

[*Lawborrowis: Umphray contra Mair*]

Gilbert Cantlie, officiar in Scalloway bankis, became actit as cautioner, souertie and lawborrowis for Margaret Mair thair that Andro Umphray of Berrie, his wyfe, bairnes etc. salbe

harmeles of hir etc. . . . under the paine of iiii c. markis, and she became actit for his releiff etc.

[10r]

Decimo septimo Augusti 1615

< De Gyre contra Taittis et Brassay >

Decernes Gilbert and Thomas Taittis and Marioun Brassay in Brassay to redelyver to Robert Gyir in Railsburch ane meir with foile or viii li. money for the pryce thairof, wrangouslie intro-mettit with and away takin be thame a[nd] at thair command furth of the comontie of his landis of Railsburch pertening to him in November 1614 yeiris, and the sowme of iiii li. money for the loss sustenit be him in wanting of the said meir sensyne, togither with the sowme of xl s. money of expenssis of pley etc.; becaus the said matter being admittit to the said persewaris probatioun and ane terme assignit to him for proveing thairof, he insteid of all uther probatioun thairof referrit the samen to the saidis defendaris thair aythis of veritie simpliciter, and they being lawfullie sumond to that effect lawfull tyme of day bidden, with certificatioun to thame and they failyeit the samen sould be haldin *pro confesso* and decreit given aganes thame, and they being oftymes callit thay failyeit to compeir to alledge ony ressonabill caus in the contrair; as wes cleirlye understand to the said schiref deput and thairfor he decernit as said is and ordanes preceptis etc.

< Fermour contra Sinclair et tenentis >

Anent the terme assignit *pro secunda* [on 4 August] to Marjorie Sinclair, relict of umquhill James Sinclair of Crosbuster, and Andro Mortoun, now hir spous, for proveing of the poyntis of the reply proponit be thame for eliding the poyntis of the exceptionoun proponit be Francis Sinclair of Uyea in the actioun persewit at thair instance aganes thair tennentis of thair landis in Unst, Yell and Fetlair; the said Andro Mortoun being personallie pre-



sent produceit the witnessis underwrittin, viz – Guthrum in Funyie in Fetlar, Erasmus Eriksone thair, Laurence in Gramsetter in Yell, Mans Erasmussone in Gudshyr thair, Symone in Daill in Unst and Donald Fraser in North Sandwik in Yell, quha wer receaveit, suorne and admittit to depone; *reiis absentibus*, the persewaris renunceit farder probatioun and protestit for ane *sententiaudum* and conclusioun of the caus. [Continued on 26 August.]

Curia justiciarie tenta die supradicto per dictum vicecomitem.

< Dit[tayis] of thift contra Scarpagarthe >

Anent the dittayis criminall produceit and persewit at the instance of Robert Kaa, procuratour fiscall, aganes Thomas Mansone in Scarpogarth for certane poyntis of thift underwrittin, viz – in the first for airt and pairt of the thifteous steilling of aucht cannes ulie and sum hand lingis out of Mans Olasones skeo aucht yeiris syne or thairby, item for airt and pairt of the thifteous steilling of tua sheip fern yeir and tua sheip this yeir fra Mans in Utterquoy, item for thifteous steilling of ane ox and for breking of ane skeo pertening to Thomas in B[rin]er and in steilling of muttoun and uther thingis out thair of in harvest 1613, item for airt and pairt of the thifteous steilling of aucht sheip from Symon Thomassone in December last, item for airt and pairt of steilling of four sheip fra Olaw Williamsone in Hallomes last, item for airt and pairt of the thifteous steilling of ane lamb with threttie tua clewis of yairne and tua fleishes woll and putting thame in a bogie and hyding thame in a carne of stanes besyd the loch of Coginsburch for fear of ranselling in November 161[3] yeiris or thairby, item for airt and pairt of the steilling of ane sheip in November 1612 quhairof he gave ane halfe to Thomas Rendallis wyfe, wobst[e]r, and last of all as ane comone theiff sua brutit, reput and haldin etc., as the saidis dittayis at mair lenth beiris;

the said procuratour [10v] fischall being personallie present and the said defendar being lyk wayis personallie present, quha enterit on pannall haveing no ressonabill caus quhy he sould pas to the knowledge of ane assyse wes content to byde tryell, quhairupoun the said procuratour fiscall askit instrumentis desyring the saidis dittayis to be put to the knowledge of ane assyse and the pannall to be accusit thairupoun; efter accusatioun the said pannall denyit the haill poyntis of dittay abonewrittin and thairfor the judge remittit the saidis dittayis to the knowledge of ane asyse quhom he ordanit to be callit.

## Assisa

William Sinclair of Rawick	James Kintoir in Scalloway
Laurence Sinclair of Ustanes	bankis
Andro Gifhart of Wedderstay	Thomas in Sound
Hew Halcro of Aithsetter	James in Flatabuster
Malcolme Halcro of Hoswik	Alexander Bruce in Skelberie
	William Dempster

James Nevein of Caldclift  
 Adam Boyne in Tyngwall  
 David Kead in Scalloway bankis  
 Malcolme Mowat thair  
 Jone Buchannane thair

Quhilkis persones of assyse being receaveit, suorne and admittit and pasing out of judgement, nominat and ellectit all in ane voice the said Alexander Bruce in chancellor, and entering in judgement agane efter dew deliberatioun hard anent the dittayis produceit, the greatestt pairt of the said assyse be the mouth of the said chancellor fand and declairit the said pannall to be guiltie in steilling of ane lamb, xxii [sic] clewis of yearne and tua fleishes woll and in hyding of the same in the carne of stanes in

November 1612, and in steilling of ane sheip quhairof he gave the ain pairt to Thomas Rendaillis wyfe, wobst[e]r, the said moneth of November 1612, conforme to these tua poyntis of dittay, and for the rest rais *clauso ore* and remittit sentence to the judge and dome to the dempster; quhilk determinatioun the judge thane present acceptit and conteinwit sentence to the nyntein day of this instant.

Decimo nono Augusti 1615

< Kintoir contra Sinclair >

Decernes Francis Sinclair of Uyea to content and pay James Kintoir in Scalloway bankis the sowme of sevinteen pundis money addebtit be him to the said James, *partibus presentibus et reo confitenti*.

< Act cautionerie: Kneland and Jonesone >

Compeirit personallie Laurence Sinclair of Ustanes and became actit cautioner for Henrie Kneland in Bruagarth and Erasmus Jonesone in Cheddernes that they sall compeir befor the schireff and underly the law for the alledgit thifteous steilling of ane o[i]r, quhenso[e]ver they salbe lawfullie chairgeit upoun xv dayis wairneing, under the paine of xl li., and they became actit for his releiff.

< Sentence contra Scarpogarth >

Anent the sentence criminall continwit [*from 17 August*] be the said schiref deput to this day aganes Thomas Mansone in Scarparth, the said schiref deput decernes and adjudges him to be banished [*11r*] the contrey of Yitland, and to that effect to remove thairout betuix and Martimes nixt and never to returne thairto, and gif heirefter during his abyde he be tryit to comitt ony kynd of thift to be hangit, and this the dempster gave for dome.

At [blank] xxvi<sup>o</sup> Augusti 1615

< De Fermour et Mortoun contra tennentis >

Anent the clames intentit and persewit [on 17 August] befor the said schiref deputt at the instance of Marjorie Fermour, relict of umquhill James Sinclair of Crosbuster, lyfrentar of the landis underwritin, and Andro Mortoun, now hir spous, for his entres, aganes the persones efterspecifeit, acclameand fra thame the dewties of the landis undermentionat of the crop and yeir of God i<sup>m</sup> vi<sup>o</sup> and fourtein yeiris last bypast, to wit – fra Symone and Erasmus in Daill in Unst, xx markis butter and fyve cuttell wedmell for the dewties of tua mark half mark land in Daill, vi d. the mark, of the crop and yeir of God forsaid; item Magnus in Newhous, xvi markis butter and four cuttell wedmell for tua mark land in Unst occupyit be him; William Gray of Gairdie, xvi markis butter iiiii cuttell wedmell for the dewties of tua mark land in Clibberisweik in Gairdie; Andro in Seatter, iiiii markis butter and ane cuttell wedmell for  $\frac{1}{2}$  mark land in Seatter; Erasmus in Colvasetter, iiiii markis butter i cuttell wedmell for half mark land in Colvasetter in Unst; Mathow Loutit in Sletoun, viii markis butter ii cuttell wedmell for ane mark land thair; Henrie Tailyeour for ane mark in Midgarthe be north the vo, viii markis buttir tua cuttell wedmell; Gotherum in Funyie in Fetlar for ane mark  $\frac{1}{2}$  mark land in Funyie in Fetlar, xii markis buttir thre cuttell wedmell; Jone Eduartsone for ane mark  $\frac{1}{2}$  mark land in Strand, xii markis buttir iii cuttell wedmell; Erasmus and Mans of Urasetter for i mark land in Aith, viii markis butter ii cuttell wedmell; Erasmus Petersone for ane mark in Urasetter, viii markis butter ii cuttell wedmell; Thomas Lauder for ane mark land in Rosetter, viii markis buttir ii cuttell weddemell; Katherine Edmestoun for ane mark  $\frac{1}{2}$  mark land in Howbie, xii markis butter iii cuttell wedmell; Ola Vassie for thrie mark land in Vassie in Yell, 7 d. the mark, xxvii markis buttir vii cuttell

wedmell; Laurence in Grimsetter for four mark land thair, ix d. the mark, ii leispundis buttir ii shilling wedmell; Jone of Awick for four mark half mark land in North Awick, ii leispundis vi markis buttir ii shilling iii cuttell wedmell; Nicoll Olasone in Pap[e]ll for half mark land thair, iiii markis butter i cuttell wedmell; Ninian Niven for ane mark and half in Kirkbuster, ix d. the mark, xviii markis butter i shilling iii cuttell wedmell; Johne Edmestoun for thrie mark in Basta, ix d. the mark, xxxvi markis butter [blank] shilling [blank] cuttell wedmell; Andro Shewartsone for ii mark thair, i leispund butter i shilling wedmell; Helen Johnesdochter for 4 mark in Castagarthe, ix d. the mark, ii leispundis butter ii shilling wedmell; and James Burger in Colvasetter for ane mark land, xii markis butter iii cuttell wedmell: quhilkis dewties or prices thair of underwritin properlie belangis to the said Marjorie in lyfrent, quhair of they have oft and divers tymes requyrit the saidis defendaris to have maid thame payment for the said crop and yeir of God 1614 yeiris, or the soume of ii s. money for the price of ilk mark butter and iiii s. money for ilk cuttell wedmell, quhilk they wrangouslie refuis to do without they be compellit; as the saidis clames, haill proces led and deducit thairintill at mair lenth beiris. The saidis persewaris being personallie present, quha producit ane contract of mariage maid [be-tuix] William Fermor, taking the burding upoun him for the said Marjorie, his dochter, on the ane pairt, and the said James Sinclair of Crosbuster on the uther pairt, subscriyvit with thair handis of the dait the tent of August 1613 yeiris, berand the said umquhill James to have bund and oblist him to infest and seas [11v] the said Marjorie during hir lyf tyme in the saidis landis of Crosbuster, and in all and quhatsumever uther landis than possesst be him or that he sould happin to get thairefter; and the saidis defendaris being lawfullie sumond . . . and not compeirand and Francis Sinclair of Uyea, quha wes admittit for his entres, compeirand personallie with Ninian Neven, his procuratour, the

saidis pairties compeirand, thair rychtis . . . together with the depositions of divers famous witnessis producit for the pairt of the saidis persewaris, receaveit, suorne and admittit, being hard . . . the said schiref deput . . . decernes and ordanes the saidis defendaris, and ilk ane of thame for thair awin pairtis as is abone-devydit, to mak guid and thankfull payment to the saidis persewaris of the haill butter [and] wedmell as for the dewties of the saidis landis of the fairsaid crop and yeir of God 1614 yeiris < or els the prices thair of abonewrittin >; attour ordanes thame to content and pay to the saidis persewaris the soume of [blank] as for expenssis etc., to be equallie payit amongis the saidis defendaris; becaus it wes alledgit be the said Ninian Niven, procuratour fairsaid for the pairt of the said Francis, quha wes admittit for his entres as said is, that the saidis defendaris cannot be decernit to mak payment to the saidis persewaris of the maillis and dewties acclamit of the landis abonewrittin, becaus the saidis landis pertenit to the said Francis as air to umquhill William Sinclair of Uyea, his father, quha wes uddaller of the same, and quhair of he haid bein in possessioun be uplifting of the maillis and dewties thair of divers yeiris syn the deceis of his said umquhill father; to the quhilk it wes answerit be the saidis persewaris that the said exceptioun aucht to be repellit becaus thay offirit thame to prove that the said umquhill James, spous to the said Marjorie, persewar fairsaid, wes enterit to the possessioun of the saidis landis, at the least ane great pairt thair of, be the said umquhill William, his father, in his awin tyme, and that the said umquhill James continwit in the peaciable possessioun thair of be uplifting of the dewties of the same to the tyme of his deceis, quhilk wes in the yeir of God 16[1]3 yeiris, lykas she wes ane conjunct persone with her said umquhill husband, to quhom be contract of mariage the saidis landis wer provydit during hir lyf tyme; quhilk being fund relevant be the said schiref deput for eliding the poyntis of the said exceptioun, he than admittit the same together with the

poyntis of the saidis clames to the saidis persewaris probatioun, and divers termes being assignit to thame for proveing thair of they proved the same sufficientlie, and sicklyk becaus the saidis defendaris, being divers tymes lawfullie sumond and last of all to have hard and sein sentence and decreit given and pronunceit in the said matter, compeirit not to alledge ony ressonabill caus in the contrair; as wes cleirlye understand to the said schiref deput and thairfor he decernit as said is and ordanes preceptis etc.

Apud Uyeasound in Unst 26<sup>o</sup> Augusti 1615

< Gray contra Manssone >

Decernes William Manssone of Gardie of consent to content and pay to Mr Gilbert Gray, merchand, the soume of sevintein pundis [12r] money addebtit be the said William Manssone to him be ane obligatioun maid be him to the said Mr Gilbert upoun the soume of xx gudlingis, and assoilyeis simpliciter the said William Mansone fra the rest of the said soume of consent of the said Mr Gilbert and decernes him quyt and frie thairfra in all tyme cumming, and ordanes preceptis etc.

< Scfatter contra Forbes >

Decernes Alexander Forbes to content and pay to Nicoll Scfatter in Scalloway bankis the sowme of iiij li. iii s. iiij d. addebtit be him to the said Nicoll of the sowme of vi li. money for vi leispundis malt and sex s. lent silver, and assoilyeis simpliciter the said Alexander fra the rest of the said sowme of sex pundis and vi s. acclamed, becaus the said persewar compeirand be Robert Scollay, his procuratour, referrit the matter to the said defendar his ayth of veritie simpliciter, quha being personallie present and suorne be his said ayth maid fayth that he wes onlie debtfull to the said Nicoll in the said sowme of iiij li. iii s. iiij d., as wes cleirlye understand etc. and ordanes preceptis etc.

## &lt; Decreit: Aikley contra Gray &gt;

Decernes Mr Gilbert Gray, merchand, to content and pay to Barthelmew Aikley the sowme of fourtein gulyeounes or the sowme of xxiiii s. for ilk gulyeoun, lent be him to the said Mr Gilbert in the toun of Enovissin sex yeiris synce, *partibus presentibus et reo confitenti*.

## &lt; Manssone contra Pitcarne &gt;

Decernes David Pitcarne of Scarpo to content and pay to William Mansone of Gardie the sowme of xii s. money for the price ofiiii markis butter and i cuttell wedmell and the sowme of iiiii s. money in gersum, and that yeirlic and ilk [yeir] be the space of thir thrie yeiris last bypast, for the dewties of the anc half markland in Clowgun pertening to the said William here-table, and that but prejudice alwayis of ony rycht the said David hes to the saidis landis gif he ony hes, and ordanes preceptis etc., *partibus presentibus et consentientibus*.

## &lt; Lawborrowis: Gairdiner contra Craigie &gt;

Compeirit personallie Henrie Williamsone in Buanes and becam actit cautioner, souertie and lawborrowis for Mans Cragie in [blank] that Nicoll Gardner, sumtyme his prentes etc. salbe harmeles and skaythles of the said Mans, his wyfe etc. . . . under the paine of xl li., and the principall became actit for his cautioneris releiff etc.

## &lt; Lawborrowis: Craigie contra Gairdiner &gt;

Symone in Clipragarth became actit cautioner, souertie and lawborrowis for the said Nicoll Gardiner that the said Mans Craigie, his wyfe, bairnes etc. salbe harmeles etc. of the said Nicoll etc. . . . under the paine of xl li., and the said Nicoll for his cautioneris releiff became actit etc.



## &lt; Decreit: Bruce contra Craigie &gt;

Decernes Johne Craigie in [blank] to content and pay to William Bruce of Ungerstay the sowme of liiii s. viii d. of the sowme of xii li. vi s. viii d. addebtit be him to the said William, and assoil-yeis the said defendar fra the sowme of iiii li. xvi s. money for the price of ilk barrell of tua barrellis fisch receaveit be the said William fra him in pairt of payment of the said haill soume, *juramento reo actore presente*, quha referrit the samen thairto etc., and ordanes preceptis.

[12v] At Burrostow in Wais the sex day of September the yeir of God 1615

## &lt; Lawborrowis: Nicolsons contra Bruce &gt;

In presence of Mr William Levingstoun, schiref deput of Orknay and Yetland, compeirit personallie Arthour Sinclair in Bardista in Wais and became actit as cautioner, souertie and lawborrowis for Scipio Bruce, sone naturall to Laurence Bruce of Culti-malyndies, that Eduard Nicolsons in Brek in Wais, his wyfe, bairnes etc. salbe harmeles and skaithles . . . be the said Scipio Bruce, his wyfe, bairnes etc. . . . under the paine of xl lib., and the said Scipio became [actit] for his cautioneris releiff.

## &lt; Lawborrowis: Bruce contra Nicolsons &gt;

Compeirit personallie Walter Scot in Quhytsnes and became actit as cautioner, souertie and lawborrowis for Eduard Nicolsons of Brek that Scipio Bruce, his wyfe, bairnes etc. salbe harmeles and skaythles . . . be the said Eduard, his wyfe, bairnes etc. . . . under the paine of xl lib., and the said Eduard became actit for his cautioneris releiff etc.

Curia balivatus de Yetland tenta apud templum de Hildiswick in Northmaven per Magistrum Willelmum Lev-

ingstoun vicecomitem deputatum ac balivum eiusdem  
octavo die Septembris anno Domini 1615.

< Bruce contra Sinclair >

Anent the suplication given in befor the said schiref deput and persewit at the instance of Laurence Bruce of Cultimalyndies, heretabill proprietar of the landis of Hildiswik with the pertinentis lyand within the parochin of Northmaving, lordship and schirefdome of Yitland, aganes Ursilla Sinclair, relict of umquhill Mr James Pitcarne, makand mentioun that quhair the said umquhill Mr James Pitca[i]rne and the said Ursilla, his relict spous, proprietaris and occupyaris of the landis of Urafirth lyand contigue to the saidis landis of Hildiswick, mynding to appropriat the comontie thair of to thair saidis landis of Urafirth, maist wrangouslie dykit in the out fredome and comontie pertening to the saidis persewaris landis of Hildisweik, appropriating the same to the comontie of thair saidis landis of Urafirth, and quhairby they be thame selves, thair servandis and utheris in thair names maist wrangouslie debarrit the said persewar, his tenentis and servandis from using and injoying the benefite of the said comontie, and frome pasturing of thair guidis and stryking of thak as they have bein in use and custome to do thairupoun past memorie of man; lykas the said Ursilla as yit wrangouslie detenis and withhaldis fra thame the priviledge of the said comontie and will not dimolishe and cast down the saidis dykis maist wrangouslie biggit and [13r] extendit thairupoun, to the effect the saidis persewaris may enjoy the benefite thair of in pasturing and stryking of thak thairupoun the samen in maner foirsaid, bot debarris thame thairfra contrair to all equitie and reassone and to thair great hurt and prejudice gif remeid be not provydit thairto, as the said suplication at mair lenth beiris; the said persewar compeirand personallie with Thomas Black, his procuratour, and the said Ursilla Sinclair compeirand lykwayis

personallie with Mr Gilbert Mowat as procuratour for hir and for his entres, thair rychtis . . . together with the declaratioun of ane condigne assyse, being hard . . . the said schiref deput . . . decernes the said dyk to stand and not to be dimolishit nor cassin down, and ordanes ane comoun lone and passage to be maid of threttie fute of breid direct from the present auld grind in the said new dyk, quhilk is on the south west, to the present grind in the said dyke on the north eist, be the cist syde of the mylne of Urafirthe, for serveing the said persewar and his tenentis to go to the said hill of Urafirth for stryking and leiding of thak and calling of thair sheip to pasture upone the said comontie and hill, conforme to use and wont; becaus it wes alledgit be the said Mr Gilbert Mowat for him selff and as procuratour for the said Ursilla that the said dyke aucht not to be dimolishit nor the said persewar nor his tennentis to have rycht of comontie within nor beyound the samen, becaus thay offirit thame to prove that the scattellis and comounties of Hildiswick and Urafirth ar severall scattellis and devydit be meithis and merche stanes, and that the said dyk is far within the saidis merches; to the quhilk it wes answerit be the said Thomas Black, procuratour foirsaid for the pairt of the said persewar, that the said exceptioun aucht to be repellit becaus he offirit him to prove that the said persewar, at the least his auctour, wer in peaciable possessioun past memorie of man be pasturing and croveing of thair sheip beyond the said dyk, and haid passage throuch the said comontie and hill of Urafirthe; to the quhilk it wes duplyt be the said Mr Gilbert that the said reply aucht to be repellit becaus, gif ony passage throuch the saidis landis possessioun upoun the said comontie the said persewar or his autour haid, it wes be tollerance of the said umquhill Mr James his auctouris, and offirit him to prove the same sufficientlie; quhilk suplicatioun, with the said exceptioun, reply and duply abonewrittin, the said schiref deput of consent of baith the saidis pairties and procuratouris, refferit the

same and hail poyntis thairof to the knowlege of ane inqueist, quha being electit, nominat and sworne of consent as said is, past to the ground of the said landis and dyk forsaid, and efter mature deliberatioun and cognitioun hard and taken thairanent, fand and declairit all in ane voice that umquhill David Tulloc in Hildiswick, autour to the persewar, pastorit his sheip upoun the comontie benorth Urafirth and haid passage betuix the loch and auld dyk of Urafirth, to call thair sheip and led thair tha[c]k from the said comontie to Hildiswick, and that he c[ro]ed his sheip quhen he tuik thame in the croe of [13<sup>v</sup>] Urafirthe and haid not ane of his awin, and as the said umquhill David Tulloc pastorit on the comontie benorth Urafirthe, so the tennentis of Urafirth and Aithsetter pastorit als frielie to Rooneip bewest Hildiswick; as wes cleirlye understand to the said schiref deput and thairfor he decernit as said is etc.

At Urafirthe [*Northmavine*] the ix<sup>o</sup> of September 1615

< Lawborrowis: Symone in Clipragarth contra Sinclair >

Compeirit personallie Jone Mowat of Olaberrie and becam actit as cautioner, souertie and lawborrowis for Robert Sinclair, brother german to Francis Sinclair of Uyea, that Symone in Clipragarthe, his wyfe, bairnes etc. salbe harmeles and skaithles . . . be the said Robert, his wyfe, bairnes etc. . . . under the paine of i c. lib., and the said Robert became actit for his cautioneris releiff etc.

Curia vicecomitatus de Yetland tenta apud castrum de Scalloway bankis in aula eiusdem per Magistrum Willelmum Levingstoun vicecomitem deputatum dicti vicecomitatus die decimo nono Septembris anno Domini 1615. Curia tenta et legitime affirmata.

## &lt; Removeing: Sinclair contra Andersone et Cheyne &gt;

Anent the lybellit sumondis of removeing intentit and persewit befoir the said schiref deput at the instance of Malcolme Sinclair of Quendaill, heretor of the landis underwritin, aganes Johne Andersone and Patrik Cheyne, makand mentioun that quhair the said persewar hes . . . all and haill the fyftein mark land callit South Seatter lyand within the parochin of Tinguall and lordship of Yetland, pertening to him heretablie in wedset as his infestment and saisine thairof proportis; be vertue quhair of the said persewar . . . fourtie dayis preceeding . . . Witsonday last bypast, causit lawfullie wairne . . . the saidis Johne Andersone and Patrik Cheyne, pretendit tennentis and occupyaris of all and haill the saidis landis, to have flittit and removeit thame selffis, thair wyfes, bairnes, familie, subtennentis, cornes, cattell and guidis and geir furth and fra the saidis landis, houssis, biggingis and pertinentis thairof . . . to the effect the said persewar, his men, tennentis, servandis . . . mycht have enterit thairto peaciablie . . . as the said precept . . . at mair lenth beiris; nevirtheles the saidis persones . . . have continwallie sen . . . Witsonday last bypast . . . occupyit . . . and withhaldin [14r] the samen fra the said persewar, and will on nawayis as yit remove . . . thairfra without they be compellit; and anent the charge given to the saidis defendaris to have compeirit . . . as the said precept at mair lenth beiris. The said persewar compeirand be Thomas Sinclair, his procuratour, quha for verifying the poyntis of the said lybellit precept produceit the said precept of wairneing dewlie execut and indorsat, together with ane instrument of saisine berand the said persewar to be infest and seasit in all and haill the saidis landis with the pertinentis, of the dait the x[v] day of September 1607 yeiris under the signe and subscriptioun of Alexander Bruce, nottar publict, and the saidis defendaris being lawfullie sumond . . . and not compeirand, the rychtis . . . of the said persewar being hard etc., decernes the saidis defendaris to flitt and remove . . . furth

and fra the saidis fyftein mark land callit South Setter . . . to the effect the said persewar . . . may enter thairto peaciablie . . . conforme to infestment and seasine thairof . . . because the saidis defendaris wes lawfullie sumond to have compeirit befor the said schiref deput to have [hard] and sen decreit given in maner abonewrittin or els to have alledgit ane ressonabill caus quhy the samen sould not have bein done, with certificatioun to thame and they failyeit the said judge wa[l]d decerne in maner foirsaid, and they being lawfullie sumond to that effect compeirit not to alledge ony ressonabill caus in the contrair, as wes cleirlye understand to the said schiref deput and thairfor he decernit as said is and ordanes etc.

< Neven contra Broun >

Decernes William Broun, servitor to Thomas Black of Stroholme, to content, pay and delyver to Martha Pitcarne [ ]<sup>1</sup> James Neven of Caldclift the number and quantitie of threttein elves stuff receaveit be him to lit, or the sowme of xxiii s. iiiii d. for the price of ilk elve thairof, *partibus presentibus juramento reo*, and ordanes preceptis etc.

< Broun contra Niven >

Decernes James Niven of Caldclift to content and pay to William Broun the sowme of fyve pundis money addebtit be him to the said William for the graithing of tua suordis tua yeiris syne or thairby, and the sowme of iiiii li. vi s. viii d. money as for the litting of threttein elves Yetland stuff at vi s. viii d. the \*\*\*e litting, *juramento actore presente reo*, quha referrit the samen thairto etc.

[Vi]gesimo Septembris 1615

[Contra Isbister]

Decernes Alexander Isbister in Harduell to content and pay to Lancelot [? Mowat], merchand, the soume of xx li. xiii s. iiiii d.

<sup>1</sup> There is evidently an omission at this point.

borrowit and receaveit be the said Alexander fra him ane yeir syne bygane at Witsonday, quhilk he promeisit to pay to him agane, *partibus presentibus et reo confitenti* etc.

[14v] Curia vicecomitatus ac justiciarie de Yetland tenta apud Scalloway bankis in castro eiusdem per Magistrum Wilhelmum Levingstoun vicecomitem deputatum eiusdem die vigesimo Septembris 1615.

< Mowat contra Sinclair >

In the actioun and caus persewit befor the said schiref deput at the insta[nce] of Johne Mowat of Hugoland aganes Laurence Sinclair of Burch, eldest lawfull sone and air of umquhill Hew Sinclair of Bruch, his father, at the least executor confirmed to him, at the lest intromettor with his guidis and geir, for payment to him of fyftie auld rex dollouris lybellit conforme to the said umquhill Hew Sinclair his band and obligatioun subscriyvit with his hand of the dait the xxviii day of Aprile 1599 yeiris, as in the lybellit sumondis raisit thairanent at mair lent is contenit; the said persewar compeirand be David Hairt, his procuratour, quha produceit the obligatioun lybellit, and the said defendar being personallie present alledgit na payment of the said sowme lybellit contenit in the said obligatioun, becaus his father in his awin tyme haid maid satisfioun to the said persewar of the samen, and offerit him to prove the samen sufficientlie; quhilk being fund relevant be the said schiref deput he thane hes admittit and admittis the same to the said defendaris probatioun, and for proving thairof hes assignit and assignis the first Tysday of August nixt to prove the samen, *partibus apud acta citatis*.

< Lawborrowis: Sinclair et Neven contra Sinclair >

Compeirit personallie Thomas Sinclair in Scalloway bankis and became actit as cautioner, souertie and lawborrowis for

Laurence Sinclair of Ustanes that Laurence Sinclair of Bruch and Jone Neven of Scowisburch, thair wyfes, bairnes . . . salbe harmeles and skaythles . . . be the said Laurence Sinclair of Ustanes, his wyfe, bairnes etc. . . . under the paine of ii c. markis, and the said Laurence becam actit for his cautioneris releiff etc.

< Lawborrowis: Sinclair contra Sinclair et Neven >

Thomas Blak of Stroholme became actit as cautioner, souertie and lawborrowis for Laurence Sinclair of Burch and Jone Neven of Skowisburch that Laurence Sinclair of Ustanes, his wyfe, bairnes etc. salbe harmeles and skaithles of the saidis Laurence of Burch and Jone Neven, thair wyfes, bairnes etc. . . . under the paine ilk ane of thame of ii c. markis, and they became actit for thair cautioneris releiff etc.

Vigesimo octavo Septembris 1615

< Buchannan contra Esplein >

Decernes James Esplein, officiar in Aithsting, to content and pay to Jone Buchannan in Scalloway bankis and Lillias Boyne, his spous, the soume of tuelf pundis money pairtlie borrowit be him fra thame and pairtlie for certane furnishing furnishit to his sones, being in waird [15r] within the castell of Scalloway thrie yeiris syne or thairby, and quhairof he hes oft and divers tymes promeisit thame payment, *partibus presentibus et reo confitenti* etc.

< Sutherland contra Sinclair >

Decernes Henrie Sinclair of Sueining to content and pay to James Sutherland, skiper, indueller in Kirkwall in Orkney, the soume of four auld silver dollouris or lv s. money of Scotland for the





price thairof,<sup>1</sup> and that in full contentatioun of ane obligatioun and sowme of sex auld rex dollouris thairin contenit as failyie of delyverie to the said James of ane suffycient hors of fyve yeir auld with ane meir of thrie yeir auld, quhilkis sould have bein delyverit be him to the said James in the yeir of God 1613 yeiris, as in his said obligatioun maid and subscrivrit be him to the said James thairupoun at mair lenth is contenit etc., *actore presente* quha producit the said obligatioun *in modum probationis reo absente*.

< Dittayis of thift contra Espleines >

Anent the dittayis criminall intentit, given in and persewit at the instance [of] Robert Kaa, procuratour fiscall of the said schirefdome, aganes Nicoll and Cristopher Esplenis for certane poyntis of dittay for thift underwritin, viz – the saidis Nicoll and C[h]ristopher for airt and pairt and for the thifteous steilling sex yeiris syne or thairby of ane sheip pertening to Johne in Houlland upoun the hill at xii houris [at] nune or thairby, and efter the taking thairof in putting it under ane bray for hyding thairof quhill they sent Margaret Porteous with ane cassie for it, quha pat it in ane cassie and fog abone it and brocht it to the hous pertening to thair father; item < bayth the said Nicoll and Christopher > for the steilling of sex sheip at divers tymes, sumtymes on the nycht and sumtymes on the daylight, fra the said Jone in Houlland, quhairof sum the saidis Nicoll and Christopher brocht home and eat in thair motheris hous and eat with thair mother and sum they did eat in Mans of Cumblingis<sup>2</sup> byir; item the said Nicoll for the steilling of ane blak sheip fra Peter in Tuat quhen he wes the said Peteris servand, quhilk wes markit be his going fra him that nycht and upon the morne he wantit the sheip quhilk wes missit be his sone, and quhen his sone tauld

<sup>1</sup> Presumably for the price of each dollar: see Glossary.

<sup>2</sup> Spelt *Tumbling* below (twice).

him he bad him hald his tong[ue] for it wald be gottin agane; item the said Nicoll for airt and pairt of the thifteous steilling and recept of ane sheip fra Mans Nicolsone quhen the said Mans wes ane young boy, and of ane uther sheip fyve yeiris syne; item the said Christopher for the thifteous steilling of ane sheip under a bray pertening to Arthour Quhyt taking thairof, and quhen Walter Scot wes cumming by the said Christopher causit Jone Manssone, sone to Mans in Tumbling,<sup>1</sup> lat it goe; item the said Cristopher for the thifteous steilling of [ane] quhyt yow pertening to Arthour Quhyt thrie yeiris syne quhilk Christian, his dochter, b[ru]\*\* home in hir gairdcuill, and for steilling ane uther sheip fra him within tua nychtis thairefter, item for the thifteous steilling of a lamb fra Peter in Tuat vi yeiris syne or thairby quhairof he fand the skin in his fatheris hous, the said Christopher and his brother [15v] being at home; item the saidis Nicoll and Christopher for the thifteous steilling of xxx sheip fra Johne in Houland this last winter, and of tuasheip fra Christop Olasone in Grunevo quhen he wes hurt in Papa, and of ane wedder immediatlie efter the lawting last, and of xv sheip fra Peter in Tuat ferne yeir; and thairfor and that they ar reput and haldin as comone theiffis aucht and sould be adjudgeit and hangit to the death, as the saidis dittayis at mair lenth beiris; the said procuratour fiscall being personallie present and the said defendaris being lykwayis personallie present, quha enterit on pannall haveing no ressonabill caus quhy they sould not pas to the knowlege of ane assyse wer content to byd tryell thairof, quhairupoun the procuratour fiscall askit instrumentis desyring the saidis dittayis to be put to the knowlege of ane assys and the pannallis to be acusit thairupoun; efter accusatioun the saidis pannallis denyit the haill poyntis of dittay abonewrittin, and thairfor the judge remittit the dittayis to the knowlege of ane assyse quhom he ordancit to be callit.

<sup>1</sup> Spelt *Cumbling* above.

## Assisa

Robert Murray of Stanidaill	Arthour Irving in Ure
Walter Scot in Quhytsnes	William McReth in Brua-
Johne Wishart of Burrafirth	land
Mans Olasone in Aythsnes	Robert McReth in Futa-
Andro Stewart in Futaburch	burch
	William Sinclair of Rawick
	Nicoll Mansone in News-
	burch

Mans Jonesone in Cut[ils]wick  
 Ola Jones[t]oun thair  
 Christopher Mathesone in Setter  
 Jerome Mathesone thair  
 Thomas Mansone in Bigsetter  
 Thomas Androsone in Howland

Quhilkis persones of assyse being receaveit, suorne and admittit and passing out of judgement, nominat and ellectit Robert Murray of Stanidaill in chancellor of the said assyse, and reentering in judgement agane efter dew deliberatioun and examinatioun of divers famous witnessis quha with consent of pannallis wer suorne and admittit to depone anent the dittayis producit, the haill assyse all in ane voice but discrepence or variencie fand and declairit the saidis Nicoll and Christopher Esplenes, pannallis, giltie anent the steilling of ane sheip fra Jone Howland sex yeiris syne at nunc or thairby, and of steilling fra him of sex sheip and eating thame in thair fatheris hous with thair mother and sister and pairt of thame in Mans of Tumblingis byir, conforme to the first tua poyntis of dittay laid aganes baith conjunctlie; and fyllit the said Nicoll of stouth and ressait of tua sheip fra Mans Nicolsone; and fand and declairit the said Christopher to be giltie of thift and in airt and pairt of steilling of Arthour

Quhyttis sheip and Peter in Tuatis lamb, conforme to the uther poyntis of dittay; and of comone brute and slander of thift, and for the rest poyntis of dittay aganes thame severallie rais *clauso ore*; quhilk determinatioun the [16r] judge thane present acceptit, and continwit in givinge and pronunceing of sentence to the fourt day of October nixt, and the pannallis in the meantyme to be incarcerat to that tyme.

Tertio Octobris 1615

< Alshunder contra Donaldsone >

Decernes Johne Donaldsone, skinner in Scalloway bankis, to content and pay to Jonet Alshunder, spous to William Cruikshank in Dunrosnes, and to the said William, hir said spous, for his entres, the soume of threttie tua pundis money addebtit be him to thame for merchand wairis coft and receaveit be him fra the said Jonet at sundrie tymes, comptit and reckonit to the said soume, *partibus presentibus et reo contenti* etc.

< Heart contra Tait >

Decernes Jerome Tait in Howasetter to delyver and pay to David Heart, writter, ane barrell of croussis<sup>1</sup> for the quhilk the said Jerome became cautioner and souertie for Jone Boundsone in Lie in the yeir of God 1612 yeiris, or els to content and pay to him the sowme of thrie pundis tuelf shillingis for the price thairof.

< Heart contra Halcro >

Decernes Nicoll Halcro of Culbenschurch to content and pay to David Heart, writter, the sowme of sex pundis money for forming and writting of ane submissioun betuix the said Nicoll for him self and takand the burdein upoun for Mareon Malcolmes-dochter on the ane pairt, and Hew Halcro younger of Aithsetter

<sup>1</sup> Possibly *troussis*.

for him selff and takand the burdein upoun for Brigida Mansdochter on the uther pairt, and for formeing and writting of ane contract and appoyntment betuix the saidis pairties contening tua throwch of paper, and for registreing and extracting of the same contract sa far as concernes the said Nicollis pairt thair of, *partibus presentibus et consentientibus.*

< Absolvitour: Boyne contra Andersone >

The said schiref deput assoilyeis simpliciter Adame Boyne in Tinguall fra the actioun and caus underwrittin persewit at the instance of Nicoll Andersone aganes him, that is to say, for the pryce of ane meir pertening to the said Nicoll alledgit stickit be the said Adame Boyne with his fork, and decernes him quyt and frie thairfra in all tyme cumming; becaus the said Adame alledgit he could not be decernit to mak payment of the price of the said meir alledgit stickit be him, becaus he offirit him to prove that the fork quhairwith she wes stickit, pertening to him, wes stollen fra him fourtie dayis befor the sticking thair of and that he maid ransell for the said fork, and gave his aith *de calumnia* thairupoun and proved the samen sufficientlie be the depositiounes of divers famous witnessis, the samen being admittit to his probatioun, as wes cleirlye understand etc.

[16v] Curia justiciarie vicecomitatus de Yetland tenta apud Scalloway bankis in castro eiusdem per Magistrum Wilhelmum Levingstoun vicecomitem ac justiciarie deputatum eiusdem die tertio Octobris 1615.

< Thift contra Erassmusone, Stephansone et utheris >

Anent the dittayis criminall produceit and persewit at the instance of Robert Ka, procuratour fiscall, aganes Bothwell Erassmusone, Andro Stephansone, Joahnes Andersone, Robert Mansone, Iver Mansone, Laurence Castisone, Petter in Grobisnes and

Mans and Olaw Jeillissones underwritin, for certane poyntis of dittay for thift underwritin, viz – the said Bothwell alias Buttie Erasmusone for airt and pairt of the thifteous steilling ferne yeir in harvest of ane yow out of the nes of Ramnageo pertening to Robert Clerk, and of the thifteous steilling tyme foirsaid of sex sheip out of the said nes fra Francis Nicolsonsone and Walter Rippe[t]h, item for airt and pairt of the thifteous steilling of tua sheip quhilk he brocht into his maisteris hous quhen he wes absent at Candlmes last, and of steilling of certane sheip quhen he wes servant to Jone of Awick thrie yeiris syne quhen he sent him to link his sheip in the nes, and returnit verie hote and callit for drink, and within a day or tua thairefter Garth of Burch and Jone of Awickis sone being going athort the feildis with ane dog fand ane deid sheip wanting baith skin and hyd hidd in the airth, and quhen the said Jone challengeit him for doing thairof he fled and ran to Robert Sinclair, so taking the cryme upoun him, item for airt and pairt of the breking of Symone of Clipragarthis skeo and of the thifteous steilling of ane half Hambruch barrell of beiff furth thairof in winter last, and of the steilling of sum woll quhilk he hide in his maisteris middein, and of breking of William of Gardies skeo and in steilling of certane lining clothis furth thairof, and of breking of Jone of Awikis skeo thrie yeiris syne and of the thifteous steilling of ane mutone and a half furth thairof, and in breking of Mans in Hamnavois skeo and steilling furth thairof ane mutoune, thrie geis and certane utheris vivouris, and of breking of Francis Nicolsonsone skeo and thifteous steilling furth thairof of ane half barrell salt and ane bolt of towis, and for airt pairt and thifteous breking of Andro Mortounes hous and steilling out thairof buttir, beiff, geis and utheris vivouris in winter last; the saidis Andro Stephansone and Johanes Andersone as airt and pairt of the thifteous steilling of tua sheip out of the nes of Kebusta, and ane uther of the nes of Gr[im]bista in Juni last on ane Sondag in the morneing, quhilk they pat in a boit and

sauld to the Hollenderis at Brassay; item the said Andro for the thifteous [steilling] of a blak unmarkit lamb that same day at nycht quhilk he slew in his awin hous, and of a blak yow out of the nes of Brawick pertening to Jerome Leslie quhilk he sauld to the Hollenderis, and of steilling of a young lamb in the ley of Caldclift in voir last, item for the thifteous rouing of xi heid of sheip pertening to William Tait and selling of the woll thairof in Scalloway at Pashe last or thairby, and of the thifteous steilling of ane yow [17r] and tua lambis pertening to Jerome Nicolsone the said tyme; item the said Joahnes Andersone for the thifteous steilling of ane sheip in September 1614 and roosting thairof in the hous of Wasland be eist Elibista; the said Robert Manssone in Quarfe for airt and pairt of the steilling of ane sheip upoun the hill of Quarfe tua yeiris syne at the Hallowmes, pertening to Andro Mansone in Eister Quarfe, and of the steilling of a yow fra Nicoll in Sand about Yule 1613 quhilk he tuik home and eat in his sisteris hous, and for steilling of a lamb pertening to Laurence of Flatabuster at La[mbe]s last; the said Iver Mansone in Vassarthe in Cunn[insb]urch for airt pairt and thifteous steilling and rouing aff the woll of seven sheip in ane out skerrie at Moussay about Beltane thrie yeiris syne, and for steilling of a yow furt of Uradaill tua yeiris syne, and of steilling of sheip yeirlie at sundrie tymes out of the ile of Moussay, item for thifteous steilling of tua sheip ferne yeir in winter quhilk he brocht home on horsback under cloud of nycht, and for steilling of ane sheip upoun the tuentie day of September last pertening to Olaw Howland upoun the hill of [Conn]sburch, and for steilling of certane cornes fra Gilbert of Brind ferne yeir in winter; the saidis Lawrence Castisone and Peter in Grobsnes for airt pairt and thifteous steilling of tua sheip pertening to Andro Gifhart of Weddersta out of the ile of Rue, quhilk he eat in the [ ]<sup>1</sup> pertening to Ola Grind in Papa Stour in somer last; item

<sup>1</sup> Word missing.

the said Peter for airt pairt and breking of the said Andro Gifhart his hous callit the new hous and steilling furth thairof thrie kirneingis of butter with certane beiff and thrie fleshes of woll; and the saidis Mans and Olaw Jeillissones in Huisetter for the thifteous steilling fra Marioun in Stove in Wais of ane blak yow tua yeiris syne and maid ane pair of sockis of the woll thairof, and for steilling of ane uther yow, ane gray sheip and tua lambis ferne yeir fra the said Marioun; and generallic all the saidis persones ar indyttit and accusit for comone theiffis and recept of thift, and thairfor aucht and sould pas to the knowledge of ane assyse, as the saidis dittayis at mair lenth beiris; the said procuratour fiscall being personallie present and the saidis defendaris being all lykwayis personallie present, quha enterit on pannall haveing na ressonabill caus quhy etc. they sould not pas to the knowledge of ane assyse wer content to abyd tryell thairof; quhairupoun the said procuratour fiscall askit instrumentis desyring the saidis dittayis to be read and the pannallis to be accusit thairupoun; efter accusatioun the forsaidis haill persones pannallis denyit the haill poyntis of dittay abonewrittin, and thairfor the judge remittit the saidis dittayis to the knowledge of ane assyse quhome [he] ordanit to be callit.

## Assisa

Andro Gifhart of Weddersta  
 Johne Neven of Skowisburgh  
 Hew Halcro of Aithsetter  
 Malcolme Halcro of Hoswick

[17v] James Mowat of	James Kintoir, bailie of
Burrafirth	Tingwall
Alexander Bruce of	Mans in Brindista
Skelberrie	Thomas Blakbaird in
James Neven of Caldclift	Skelberrie
Mans in Aithisnes	David Forrester of Lunay



Peter Olasone in Tuat  
 Christopher Olasone in Tumbling<sup>1</sup>  
 Mans Jonesone in Dayse[t]ter  
 Johne Nisbite of Burrownes  
 Alexander Isbister in Hardwell  
 Christopher in Inhous  
 Mans Irving in Laxo  
 Nicoll Smyth in Udallistoft  
 Andro Pe[i]rsone in Gonfirth and  
 Jerome Nicolsone in North Caldclift

Quhilkis persones of assyse being receaveit, sworne and admittit <but lawfull objectioun of the pannallis>, passing out of judgement nominat and ellectit all in ane voice Alexander Bruce in chancellar of the said assyse, and reentering in judgement agane efter dew deliberatioun haid anent the dittayis produceit, all in ane voice fand and declairit the said Bothwell alias Buttie Erasmussone to be giltie of the steilling of Robert Clerkis yow in the first dittay, and of the sheip that wes fund hid be Garth of Bruch and Jone of Awickis sone in the secound dittay, and of the steilling of Symone in Clipragarthis beiff and breking of his skeo, quhairof ane pairt confest be him selff contenit in the thrid dittay; item the chancellar and assyse for the maist pairt fand Andro Stephansone giltie in steilling of ane young lamb in the ley of Caldclift in voir last, and of the steilling and ruing of the sheip and selling of the woll in Scalloway conforme to the secound poynt of dittay led aganes him; and fand Johanes Andersone giltie of the steilling of ane sheip quhilk he and Elspeth Step[h]-ansdochter rostit in the hous of Vasland be eist Elbista in September 1614 contenit in the thrid dittay led aganes him; item the said chancellar and haill assyse fand the said Robert Manssone giltie of the steilling of a yow pertening to Nicoll in Sand and of

<sup>1</sup> Possibly *Cumbling*.

a lamb pertening to Laurence in Flatabuster; item fand Iver Manssone giltie of the steilling of tua sheip ferne yeir in winter quhilk he brocht home [in] midnycht on horsback, and of ane uther sheip pertening to Olaw in Howland in September last, and of steilling of Gilbert of Brindis cornes in winter last; item fand Laurence Castisone and Peter in Grobisnes giltie of the thifteous steilling of tua sheip pertening to Andro Gifhart contenit in thair first dittay; and fand the said Peter giltie of the breking of the said Andro Gifhartis hous callit the new hous, and of steilling of beiff, butter and woll furth thair of contenit in the secund poynt of dittay; item fand the saidis Mans and Olaw Geillissones giltie of the steilling of ane blak yow fra Marioun in Stove; and last of all fand and declairit Bothwell alias Buttie Erasmusone and Iver Manssone to be reput, [18r] haulding and sclanderit for comone brute of thift; and rais for the rest of the poyntis of dittay *clauso ore* and remittit sentence to the judge and dome to the dempster; quhilk determinatioun the judge thane present acceptit and continwit in giving of sentence to the morne, and ordanit the pannallis in the mean tyme to be incarserat to that tyme.

Quarto Octobris 1615

< Removeing: Mowat et Heart contra Mowatis >

Anent the lybellit sumondis of removeing intentit and persewit befor the said schiref deput at the instance of Jeane Mowat, eldest lawfull dochter to Johne Mowat of Hugoland, heritrix of the landis underwritin, and David Heart, writter, hir spous, for his entres, aganes James Mowat of Burrafirth, Johne Mowat of Hugoland, Andro Mowat, his sone and ap[a]rand air, Thomas Johnsonsone in Liaskoill, Andro Erasmussone in Stow, James [blank] thair, Donald Williamsone in Brawick and Andro Olasone thair, makand mentioun that quhair the said persewar hes . . . all and

sindrie the landis and utheris eftermentonat, viz – all and haill fourte nine mark and a halfe mark land, ix d. the mark, callit Houssayord; all and haill ten mark and half mark land, sex penny the mark, callit North Hous in Ure; all and haill fyve mark land, [ix] d. the mark, callit Esterhous in Ure; all and haill sevin mark and half mark land, sex pennies the mark, callit Liask[a]jill in Ure; all and haill ane mark and half mark land, sex pennies the mark, callit Feale in Ure; all and haill fourtein mark land, nyne pennies the mark, callit Breweik; and all and haill sevin mark land, nyne pennies the mark, callit Stow; with houssis, biggingis, toftis, croftis, towmellis, quoyis, outbrekis, medowis, pairtis, pendicles and pertinentis quhatsumever pertening to the saidis landis or ony pairt thair of, all lyand within the parochin of Nortmaving, lordship and schirefdome of Yetland, pertening to the said compliner heretablie as hir infetment and saising thair of propoirtis; be vertew quhair of the said compliner and hir said spous, for his entres . . . fourtie dayis preceeding . . . Witsonday last bypast, causit lauffullie wairne . . . the saidis James Mowat of Burrafirth, Jone Mowat of Hugoland, Andro Mowat, his sone and ap[a]rand air, Thomas Jonesone in Liaskoll, Andro Erasmussone in Stow, James [blank] thair, Donald Williamsone in Brewick, Andro Olasone thair, and all utheris pretendit tenentis and occupyaris of the saidis landis, to have flittit and removeit thame selves, thair wyffis, bairnes, servantis, families, subtenentis, cornes, cattell, guidis and geir furth and fra all and sindrie the saidis landis, houssis, biggingis . . . and pertinentis thair of . . . to the effect the said persewar and hir said spous, for his entres, thair tenentis, servandis . . . micht have enterit thairto peaciablie . . . [18v] . . . as the said precept . . . at mair lenth beiris; nevertheles the forsaidis persones . . . haif continwallie sen . . . Witsondey last bypast . . . occupyit . . . and withhaldin fra the said persewar and hir said spous . . . the saidis landis . . . and will on nawayis remove . . . without they be compellit; and anent the chairge given to the

saidis defendaris to have compeirit . . . as the said lybellit sumondis at mair lenth beiris. The said persewar being personallie present, quha for verifying the poyntis of the said lybell produceit the precept of wairneing dewlie execut and indorsat, together with ane instrument of saisine of the saidis landis berand the said persewar to be infeft in all and sindrie the saidis landis, of the dait the second day of October 1613 yeiris under the signe and subscription manuell of Alexander Bruce, nottar publict, and past *pro loco et tempore* fra James Mowat of Burrafirthe and declairit she<sup>1</sup> onlie insistit for removeing aganes the rest; and the remanent of the saidis defendaris being all lawfullie sumond . . . and not compeirand, the rychtis . . . of the said persewaris being hard . . . the said schiref deput . . . decernes and ordanes the saidis defendaris not past fra as said is to flitt and remove . . . furth and fra all and sindrie the saidis landis . . . ilk ane of thame for thair awin pairtis thair of sa far as they occupy . . . to the effect the said persewar and hir said spous, for his entres . . . may enter thairto peaciablie . . . conforme to hir infeftment and saisine thair of . . . becaus the saidis defendaris wer lawfullie sumond to have compeirit befor the said schiref deput to this day to have hard and sein decreit given and pronunceit in maner abonewrittin or els to have alledgit ane ressonabill caus quhy etc., with certificatioun to thame and they failyeit the said schiref deput wald decerne in maner fairsaid, and they being lawfullie sumond to that effect they failyeit to compeir to alledge ony ressonabill caus in the contrair; as wes cleirlye understand to the said schiref deput and thairfor he decernit as said is and ordanes preceptis etc.

[19r]

[*Mowat contra Nevein et Mowat*]

Anent the lybellit precept for production of evidentis intentit and persewit befor the said schiref deput at the instance of Johne Mowat of Hugoland aganes Johne Nevein of Skowisburch and

<sup>1</sup> Possibly *they*.

James Mowat of Burrafirth, for his entres, makand mentioun that quhair the said persewar hes divers and sindrie actiounes and caussis to intent and persew aganes divers and sindrie persounes duelling within the boundis of the said schirefdome, for divers and sindrie landis, debtis and soumes of money quhairunto he hes richt, lykas thair is divers actiounes and caussis intentit and persewit aganes the said persewar be divers and sindrie persones duelling within the saidis boundis, in the quhilkis actiounes and caussis the said persewar can nather gudlie persew nor defend without he have the particular writtis and evidentis underwrittin delyverit to him, they ar to say – ane chartour of confirmatioun conte[i]nand ane new dispositioun maid and grantit be our soverane lord the kingis majestie, with consent of umquhill James, earle of Mortowne, his hynes regent for the tyme, to umquhill Andro Mowat of Hugoland, the said persewaris father, of the maist pairt of his landis in Yetland; the precept and instrument of saisine following thairupoun; the contract of mariage maid betuix umquhill Robert, earle of Orknay, for him selff and takand the burdein upoun him for Cristiane Stewart, his dochter naturall, now spous to the said persewar, on the ane pairt, and the said umquhill Andro Mowat and the said persewar on the uther pairt; the chartour of alienatioun maid be the said umquhill Andro to the said persewar, his sone, quhairby he disponit to him his haill landis conforme to the said contract; the instrument of saisine following upoun the same chartour; the procuratorie of resignatioun maid be the said umquhill Andro quhairby he resignit all his landis in the handis of the said umquhill Robert, earle of Orknay, his superiour for the tyme, for new infeftment to be given thair of to the said persewar; the instrument of resignatioun following thairupoun; the chartour maid and grantit be the said umquhill earle to the said persewar upoun the said resignatioun; the precept and instrument of saisine following thairupoun; certane chartouris and dispositiounes maid be divers

and sindrie persounes duelling within the boundis of Yitland to the said umquhill Andro Mowat of divers and sindrie landis within the saidis boundis, with the instrumentis of saisines following upoun the samen; quhilkis evidentis, writtis and securities ar in the handis of Johne Nevein of Skowisburch and James Mowat of Burrafirth, at the least they haid, hes or fraudfullie hes put the samen away and will on nawayis delyver the samen to him to be keipit and usit be him as his awin proper writtis and evidentis in persute and defence of the saidis caussis; nather yit will they exhibite and produce the samen befor the schireff principall or his said deputt to be sein and considderit be thame to the effect they may be decernit to be delyverit to the said persewar to be keipit and useit be him as said is without they be compellit; and anent the charge given to the saidis defendaris to have compeirit befor the said schiref deput exhibitand [19v] and produceand the particular writtis and evidentis abonewrittin, togither with all utheris writtis and evidentis quhilkis they have in thair handis and keiping pertening to the said persewar, at the least quhilkis they haid, hes or fraudfullie hes put away, to have bein sein and considderit be the said schiref deput and being produceit to have hard and sein the samen to be delyverit to the said persewar to be keipit etc., as in the said lybellit precept at mair lenth is contenit; the said persewar compeirand be David Heart, his procuratour, and the saidis defendaris being lykwayis personallie present, thair rychtis . . . being hard . . . the said schiref deput . . . decernes the said James Mowat to restoir and delyver to the said persewar the chartour of confirmatioun and saisine following thairupoun and ane uther evident in parchement < etc. to be keipit etc. ><sup>1</sup> confest be him to be [in] his handis and keiping, and assoilyeis the saidis Jone Nevein and the said James of the haveing of the remanent of the saidis writtis and haill remanent poyntis, and decernes thame quyt and frie thairfra

<sup>1</sup> It is not clear where this marginal note should be entered.

in all tyme cumming; becaus the haveing of the saidis writtis and tenour of the said lybell being referrit be the said persewar to the saidis defendaris thair aithis of veritie simpliciter, the said Jone Nevein confest the recept of the foirsaid chartour of confirmatioun and sasing thairupoun and ane uther writt on parchement fra the said James Mowat quhilk he haid redelyverit to the said James, and gave his said aith thairupoun and that he haid na uther wryt pertening to the said persewar; and the said James being personallie present as said is confest the recept back agane fra the said Jone Nevein of the said chartour of confirmatioun and seasin thairupoun togither with ane uther wryt in parchement, and maid faith that he haid na uther evident nor writ concerneing the said persewar; as wes cleirlye understand to the said schiref deput and thairfor he decernit as said is and ordanes preceptis etc.

< Sentence contra Espleines for thift >

Anent the dittayis and sentence thairintill continwit [*from 28 September*] aganes Nicoll and Christopher Espleines to this day, they reentering on pannall agane the said schiref deput and justiceair decernes and ordanes the said Christopher Esplein efter none to be tane be the lockman to the west hill of Scalloway callit the gallow hill abone Houll, and thair to be hangit be the craig to the daith, and ordanit all his guidis and geir to be esheit and inbrocht to his hynes use for the guiltines of the saidis crymes; and decernit and ordanit the said Nicoll to be tane be the lockman and scourgeit fra the castell yet to the west shoir, and to be banishit the parochines of Wallis, Aithsting and Sandsting, at the least fra duelling and making recidence thairintill during all the dayis of his lyftyme, and sicklyk of his awin consent incaise he sould be fund guiltie of ony thift in tyme cumming heirefter to be hangit without ony tryell of assyse; quhilk Mans Cromertie, dempster, gave for dome.

< Sentence for thift contra Erasmussone, Stephansone,  
Andersone et utheris >

Anent the sentence continwit [*from 3 October*] to this day aganes Bothuell alias Buttie Erasmussone, Andro Stephansone, [20r] Johannes Andersone, Robert and Iver Manssounes, Laurence Castisone, Peter in Grobsnes and Mans and Olaw Jeillissounes, the said schiref deput decernes and ordanes the saidis Bothuell alias Buttie Erassmusone and Iver Manssone to be tane be the lockmane to the west hill of Scalloway callit the gallow hill abone Houll efter none, and thair to be hangit upone the geibitt to the death; and ordanes all thair moveable guidis and geir to be esheit and inbrocht to his majesties use for thair guiltienes of the said cryme of thift contenit [in] thair dittayis and declaratioun of assyse; and immediatlie thairefter decernis and ordanis the saidis Andro Stephansone, Yehan[es] Andersone, Laurence Castisone, Peter in Grobsnes and Mans and Olaw Jeillissounes, for the particular poyntis of thift quhairintill they wer convict be the said assyse, to be tane be the lockmane and scourgeit fra the castell yet to the west shoir of Scalloway, and ilk ane of thame to be banishit the particular parochines eftermentionat, to wit – the said Andro Stephansone to be banishit the parochines of Tinguall and Brassay, at the lest fra duelling and making recidence thairin fra Hallowmes nixt during all the deyis of his lyf tyme; the said Joahnnes Andersone the parochines of Brassay, Burray and Tinguall; the saidis Laurence Castisone and Peter in Grobsnes to be banished the parochines of Delting, Northmaving, Aythsting and Sandsting; and the saidis Mans and Olaw Jeillissounes to be banished in maner abonewrittin the parochines of Aythsting, Sandsting and Wais; quhilkis sentences in maner abonewrittin the dempster gave for dome; and sicklyk the said day the hail persones immediatlie preceeding, not condempnit to the death, becam actit of thair awin consent that incais thay salbe fund guiltie at ony tyme cumming of ony poynt of thift quhat-



sumever, in that cais to be hangit to the death thairfor without ony tryell of assyse to be haid to that effect; quhairupoun the procuratour fiscall askit actis of court.

Curia justiciarie vicecomitatus de Yetland tenta apud castrum de Scalloway bankis per honorabilem virum Magistrum Willelmum Levingstoun vicecomitem deputatum ac justiciarie eiusdem die nono Octobris anno 1615. Curia tenta et legitime affirmata.

< Thift contra Manssone >

Anent the dittay criminall intentit and persewit and given in be the said procuratour fiscall aganes Erasmus Manssone in Girlstay for certane poyntis of thift underwrittin, viz – in the first for the thifteous steilling and airt and pairt of the taking of tua sheip pertening to Mans in Wedbuster seiven or aucht yeiris syne, quhairof tua lambis quhilk haid bein in the yowis wombis wes fund in Chaldernes byir; item for airt and pairt of steilling of ane sheip out of the nes of Gr[imi]sta and chaissing of ane uther sheip thair xii or xiii yeiris syne; item for airt and pairt of the thifteous steilling of Mans in Wedbusteris kaill and certane fowlis out of Ha\*mbursland, and of tua galtis out of the air besyd Daill; item for airt and pairt of the steilling of ane barrell full of saltit mutoun that wes fund in the dyk of Girlstay four or fyve yeiris syne and stollen at sindrie tymes and saltit; item for airt pairt [20v] and thifteous steilling fra David Forrester of Luna out of Keb-[idr]on<sup>1</sup> of tua sheip quhairof he send ane to William Fordyce and ane uther to Hew Tarrell aucht yeiris syne or thairby; item for airt pairt and thifteous steilling of ane wedder and ane yowe out of the nes of Wodbuster thrie yeiris syne or thairby pertening to Mans in Wodbuster; and last of all for the steilling of ane oyre, ane tow and tua fishing wandis out of Andro Gariochis

<sup>1</sup> Possible variants are *Kebidion* and *Kebreron*.

boit in August last, as the saidis dittayis at mair lenth beiris; the said procuratour fiscall being personallie present and the said defendar being lykwayis personallie present, quha enterit on pannall haveing na lawfull caus quhy he sould not pas to the knowledge of ane assyse wes content to abyd tryell thairof, quhairupoun the procuratour fiscall askit instrumentis desyring the saidis dittayis to be put to the knowledge of ane assyse and the pannall to be accusit thairupoun; efter accusatioun the said defendar denyed the haill poyntis of dittay led aganes him except the taking of the aire, ane tow and tua wandis, quhilk he confest he and his companie tuik, haveing broken thair awin oyir and hummb[i]le bandis in ane storme; and thairfor the judge remittit and remittis the saidis dittayis to the knowledge of ane assyse quhom he ordanit to be callit.

Assisa

Alaxander Bruce in Skelberie	James Kintoir, bailie of
James Neven of Caldclift	[Tinguell]
Gilbert Thomassone in	Jerome Halcro in Hambirs-
Suenesetter	land
Jerome Gilbertsone in Balyista	Jerome Nicolsone in North
Laurence Sinclair of Ustanes	Caldclift
	Mans in Goit
	[blank] Tulloc in Howland

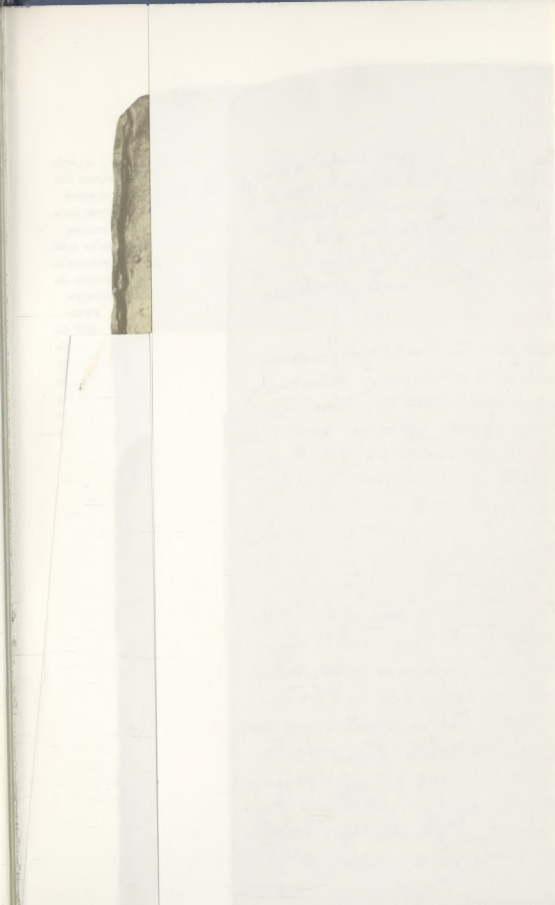
Henrie Frasser in Girdilstay  
 Johne Wishart of Burrofirth  
 William Tait in Tronafirth  
 Mans in Stenswall  
 Jone Eriksone in South Garth

Quhilkis persones of assyse being receaveit, suorne and admittit and passing out of judgement but lawfull objectioun of

the pannall, all in ane voice nominat and ellectit Alexander Bruce in chancellor; and reentering in judgement agane efter dew deliberatioun haid anent the dittayis produceit, all in ane voice be the mouth of the said chancellor fand the said Erasmus guiltie in stailling of the kaill, air, to [*sic*] tow and wanndis contenit in the dittay; and for the remanent poyntis of dittay, in respect they wer nather confest nor provin, rais *clauso ore* and remittit sentence to the judge and dome to the dempster; quhilk determinatioun the judge than present acceptit and decernis and ordanis the said Erasmus Manssone of his awin consent to be banishit the cuntrey of Yetland, and to remove furt thairof betuix and the last day of Maii nixt in respect of the great slander he lyis under; quhairupoun the dempster gave dome.

The said Erassmus fand Laurence Sinclar of Ustanes cautioner for him, quha became actit that he sould fulfill the said sentence and never returne to the said cuntrey during all the dayis of his lyf tyme, and for his lawteth during his remaneing thairintill, under the paine of fyve hundreth markis, and the said Erasmus became actit for the said Laurence his releiff etc.

[*The next entry in this court book is dated 27 July 1616.*]













## GLOSSARY

- abyd* (n.) wait, stay  
*actit* enacted, named in a record as  
 being under an obligation  
*actore presente et reo* in presence of  
 pursuer and defender  
*adois* affairs, business  
*ad pios usus* for ecclesiastical purposes  
*air* ayre, a spit of land or beach  
 separating the sea from an inner  
 water  
*air heir*  
*air, aire* oar  
*aittis* oats  
*allanerlie* only  
*almoise* alms  
*als* as, also  
*angel* gold coin worth £5 to £6  
 Scots  
*anis* once  
*annalie* alienate, dispoine, transfer to  
 another  
*apud acta* with acts, by orders  
 pronounced in open court in  
 presence of parties, requiring  
 attendance without further  
 citation  
*assedatioun* lease, the act of letting on  
 lease  
*assythment* compensation, reparation  
*attour* moreover, in addition (to)  
*auctore, auctour, authour, attour* one  
 who transmits a legal right to  
 another, an ancestor  
  
*band* bond, obligation  
*bear, beir* bere, a kind of barley  
*beirand, berand* bearing  
*beit* mend, make good  
*bestiall* cattle, horses, sheep, etc.  
  
*bind* capacity, size  
*bismer, busmer* weighing instrument  
 operated on the principle of the  
 lever  
*bluidwyf* fine or penalty for blood-  
 shed  
*bogie* sack made of skin or leather  
*bound, boundman, boundis mane* one  
 who has bound himself to another,  
 adherent, tenant farmer  
*brankiss* branks, bridle, instrument of  
 punishment in form of iron  
 framework for the head  
*bray* brae, face of a hill, bank of a  
 river, lake or sea  
*bruik, bruk* enjoy use of, possess  
*brute* bruit, rumour  
*buddis* bribes, gifts intended as  
 bribes  
*burdein, burding* burden  
*busmer* see *bismer*  
*but* but, without  
*by* by, without, besides  
  
*call* (v.) call, drive  
*cannes* measures of capacity  
*captioun, letteris of* royal letters  
 ordering the arrest of a debtor  
*caschie, cassie* caisie, kishie, creel or  
 basket of woven straw or heather  
*chancelar* (of a jury) foreman  
*clenges* cleanses, acquits  
*clew* ball (of thread, etc.)  
*coft* bought  
*comontie, comountie* common  
 possession of pasturage  
*compeir* appear formally  
*compt* account  
*cors, corss* cross, designation of the



*cors*—continued

signal or message for assembling  
the people

*craig* neck

*crear* small trading vessel

*croe* (n.) enclosure for animals or  
plants, sheepfold

*croe, crove* (v.) enclose in a croe

*croussis* ? small earthenware vessels  
(p. 105)

*cullour* colour, pretext

*cuttell* a measure about the length of  
an ell

*dampnifyit, dampnyfyit* injured,  
especially by loss or inconvenience

*dang* beat, struck, assailed with  
violence

*de calumnia* of calumny, defines an  
oath affirming belief that state-  
ments made in a libel or defence  
are just and true

*decerne* (v.) judge, decree

*decreit arbitrall* decree by arbitrators

*delait* (v.) report

*dempster* court official who formally  
pronounced the sentence

*dispone* dispose, convey legally

*dittay* indictment

*dogger* fishing vessel

*dollour* dollar, coin worth about

£2 15s. Scots in early seventeenth  
century

*dome* doom, formal judgment

*duply* (n.) rejoinder to a reply

*duplyit* (v.) made answer to a reply

*dure* door

*duyning* dwining

*earne* erne, eagle

*effeir* be appropriate, fitting or  
customary

*elve* ell (measure of length)

*entres* interest, concern, entry

*ex confessione dicti* by admission of  
the said (person)

*ex confessione (partis) rei* by  
admission of the defender

*executoriallis* instructions or legal  
authority for executing a decree

*farding land* fourth part of a penny  
land (q.v.)

*Fastingis Evin* day before the fast of  
Lent, Shrove Tuesday

*fear* feuar, person possessing the  
property of an estate, over which  
another holds a right of liferent

*fensit* fenced, (of a court) constituted

*fern yeir, ferne yeir* last year

*fier* fiar, fixed price of grain for the  
year

*fleish, flesh* fleece

*fog* moss, kind of grass

*fraucht* freight, fare

*futtit* (of an account) summed up,  
completed

*fyll* find guilty, convict

*gairdcuill* skirt, petticoat

*galt* boar, hog

*gersum* grassum, due paid for  
renewal of a lease (at times  
an annual exaction)

*gif* give, if

*gist* joist

*gowing* putting in the gows (a kind  
of pillory)

*graithing* cleaning, trimming,  
putting in order

*grandschyr* great-grandfather (also  
grandfather)

*grind* gate

*grytumlie* greatly

- gudame* grandmother  
*gudling, gulyeoun* gulden, guilder, florin, coin worth 24s. Scots or 24d. sterling (see p. 93)  
*guidis* goods, cattle, livestock  
*guidschyr* grandfather  
  
*hand lingis* handlines (for fishing)  
*hinc inde* on either side, reciprocally  
*holme* holm, small island  
*horneing, letteris of letters*, usually in the sovereign's name, requiring the payment of a debt or the fulfilment of an obligation  
*humble band* loop of hide or rope for holding an oar  
  
*indorsation* endorsement  
*infeft* invest with heritable property, invested with the same  
*infeftment* investment with heritable property, a document recording the same  
*instrument* formal record, legal document in proof of a transaction  
*intentit* raised, instituted  
*invasive* offensive  
  
*joggis, jogis* joughs, pillory in the form of a hinged iron collar  
*joging* putting in the joughs  
*jois, jos* enjoy, have use of, occupy, possess  
*juramentum* judicial oath  
  
*kirneing* churning  
*kyndnes* apparently a claim to a holding or tack based on long possession, goodwill or friendship  
  
*Lambas, Lambes* Lammas, 1 August  
  
*landmaillis* see *maillis*  
*lating* see *lawting*  
*lawborrowis* legal security against intrusion and injury  
*lawteth* good behaviour, integrity, loyalty  
*lawting, lating* central court (p. xxi); *lating* (p. 64) signifies 'at the time of the lawting'  
*leiding* leading, conveying to the farmyard  
*leispund* measure of weight, 24 marks or one sixth of a meill, equivalent to a setting  
*lesum, lisum* permissible, lawful  
*ley* untilled land, grazing ground  
*li., lib.* abbreviations of *libra* or *librae* (a pound or pounds), now written £ or lb  
*lingis* see *hand lingis*  
*link* ? tie up, shut in (p. 107)  
*lisum* see *lesum*  
*lit* dye  
*litiscontestatioun, act of warrant* granted by the court in certain circumstances for proving conflicting allegations  
*lybell* libel, written accusation, statement of a plaintiff's case  
*lybellit* libelled  
  
*maill* meal  
*maillis, males* mails, rents  
*mark* the mark (or merk) Scots, a coin worth 13s. 4d. Scots or 13½d. stg.; distinct from the mark stg. (13s. 4d. stg.)  
*mark* measure of weight, one twenty-fourth of a leispund or setting  
*mark land* in the fourteenth and fifteenth centuries, land having a

*mark land*—continued

capital value of one mark sterling;

the value was later modified

*meill* measure of weight, six

leispunds or settings

*meithis* boundary marks, land marks

*miln* mill

*misterfull* needy, necessitous

*moscop*, *moscope* company,

association

*moyane* means

*mutone*, *mutounne* mutton, sheep

*mylne* mill

*nes* ness, point of land

*nolt* cattle, oxen, cows

*notar* notary

*ordineris* fixed allowances, e.g. of  
food

*outbrekis* barren, uncultivated land

*oyir*, *oyre* oar

*oylie* oil

*parochin* parish

*parochiner* parishioner

*partibus presentibus et confitentibus* in

presence of the parties under oath

*partibus presentibus et reo confitenti* in

presence of the parties on the oath  
of the defender

*Pashe* Pasch, the Passover, Easter

*peax* peace

*penny land* unit of land value for the  
purpose of taxation

*pirottis* pirates

*pleuch* plough

*pley* plea

*pro confesso* as a confession; a defen-  
der's failure to appear might  
be held *pro confesso* and decree  
pronounced against him

*procuratour* one who acts for another,  
an agent in a court of law

*promittit* promised

*proponit* proposed, propounded

*pund* the pund (or pound) Scots,

worth 1s. 8d. sterling

*pundler* weighing instrument on the  
principle of the lever

*pure* poor

*pyk* pilfer

*pyker* pilferer

*pykerie* pilfering

*quhilk* which

*quhitred*, *quhytred* whitret, weasel

*quoyis* quoylands, land not in  
cultivation when skat, or land tax,  
was first imposed, and which,  
having escaped skat in the  
beginning, continued to do so  
when cultivated

*quyt* quit, acquitted

*rancell*, *ransell* search a house or  
place for stolen property

*ratihabitoun* approval, confirmation

*red* cleared, put in order

*reidis* roads (an anchorage)

*reus* defender in a legal action

*rouing*, *ruing* rooing, plucking

*rowme* space, holding of land

*ruche* rough

*ruiff* roof

*ryot*, *ryott* riot

*rypelie*, *ryplie* ripely

*scattell* scattald, land attached to a  
township

*scrudgit* scourged

*seas* put in legal possession, infest  
*sectis vocatis* the suits having been  
called (see *sutes*)

- sen* since  
*sensyne* since then  
*sententiandum* procedure of sentencing  
*set, sett* (v.) lease, let  
*setting* measure of weight, 24 marks or one sixth of a meill, equivalent to a leispund  
*sey* sea  
*shilling* length (of cloth) equal to six cuttells (q.v.)  
*simpliciter* simply, absolutely, unconditionally  
*skelt* dispersed, dismissed  
*skeo, skeow* open-built stone hut for drying fish etc. and storing produce  
*skrow* skroo, corn-stack, corn-rick  
*spulvie* spoil, plundering, illegal meddling  
*stocking* putting in the stocks  
*stoikis* stocks  
*south* theft  
*sua, swa* so  
*subdittis* subjects  
*sutteris of court, sutteris of court* suitors of court (see *sutes*)  
*sutes* suits, suit roll, a list of 'suitors of court', i.e. land-holders required to give 'suit and presence' at court and serve on assizes and inquests  
  
*take* tack, lease  
*takisman, takman* tacksman, leaseholder  
*thak* thatch, material for thatching  
*threave, threiff* thrave, 24 sheaves  
*throwch* sheet (of paper)  
*tocherguid* marriage dowry  
*toft* site of a house, plot of land  
  
*toties quoties* as often as, each time  
*tow* rope  
*tumail, towmell* toomal, ? unshared land, part of the infield (pp. 36, 112)  
  
*uddall* udal, odal, (of land) acquired by undisturbed possession for several generations, without title-deeds and without a superior  
*uddaller, udaller* person possessing land under udal tenure  
*ulie* oil  
*umquhill* the late, deceased  
*unbesetting* besetting, assailing  
*unlaw* (n.) fine  
  
*voir* springtime, seed-time  
*vois* voes, inlets or arms of the sea  
  
*waith* ? goods cast up by the sea, what is strayed or ownerless (pp. 33, 71)  
*wedder* wether  
*wedmell* woollen cloth  
*wedset, wedsett* (n.) wadset, mortgage, deed assigning rents to a creditor  
*wedset, wedsett* (v.) wadset, mortgage, alienate land etc. under right of reversion  
*whinger* dagger  
*wob* web  
*wobster* webster, weaver  
*woll* wool  
*wrak, wraik* ? seaweed cast up on the beach (pp. 33, 71)  
*wyt* (n.) blame, wrong  
  
*yet* gate  
*yow, yowe* ewe



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<sup>1</sup> The names of persons and places have, for the most part, been indexed under the form of spelling given in the text. Where a particular name is spelt in different ways, variants are shown, in brackets, with the first entry under that name. A single entry in the index may represent two different persons or places; and two separate entries may represent the same person or place. A name may appear more than once on a given page.

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SCOTTISH HISTORY SOCIETY

THE EXECUTIVE

1966 – 1967

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## MEMBERSHIP

*Membership of the Scottish History Society  
is open to all who are interested in the history of Scotland.*

*For an annual subscription of £2 2s. or \$7  
members normally receive one volume each year.*

*Enquiries should be addressed to  
the Honorary Secretary or the Honorary Treasurer,  
whose addresses are given overleaf.*

SCOTTISH HISTORY SOCIETY

REPORT  
of the 80th Annual Meeting

The 80th Annual Meeting of the Scottish History Society was held in the Rooms of the Royal Society, George Street, Edinburgh, on Saturday, 10 December 1966, at 11.15 a.m. Professor G. W. S. Barrow, Chairman of Council, was in the Chair.

The Report of the Council was as follows :

The Council has noted with satisfaction that the second volume of the new Fourth Series, *Miscellany*, volume X, has been well received. It was reviewed as 'Book of the Week' in *The Scotsman* on 13 August 1966. The next volume, *Letters of John Ramsay of Ochertyre, 1799-1812*, edited by Miss B. L. H. Horn, is in proof and will be issued early in 1967. Following it will appear *Court Books of Orkney and Shetland, 1614-15*, edited by Dr R. S. Barclay. The Society has issued no volume dealing with the Northern Isles since *Records of the Earldom of Orkney, 1299-1614*, edited by J. Storer Clouston, published in 1914. Dr Barclay's volume will be a continuation of his earlier work in *Court Book of Orkney and Shetland, 1612-13* (Kirkwall, 1962) and will provide material for many aspects of northern history.

Members will have noted with regret the death in September 1965 of the Rt Hon. Thomas Johnston, C.H., LL.D., who served the Society as its President from 1954 to 1956. A servant of Scotland in innumerable ways, he will also be remembered as the author of a pioneer work on the *History of the Working Classes in Scotland* (1923). The Council has heard with great sadness of the death of Sir William Arbuckle, K.B.E., who served on the Council from 1961 to 1965. His knowledge, both of official life and of many aspects of Scottish history and bibliography, was frequently of great benefit to the Council. As a man noted for his friendliness and helpfulness to others, he will be greatly missed in the field of Scottish historical research and beyond.

The Council has also learned with deep regret of the death of Dr Angus Macdonald, Senior Lecturer in the Department of English at the University of Newcastle upon Tyne. Dr Macdonald was joint editor of *Inchcolm Charters* (1938) and was, along with Dr Annie I. Dunlop, the senior surviving editor of the Society. As such, he was a guest of the Society at the Eightieth Anniversary Celebrations held in May 1966. It is a particular loss to the Society that he died before completing his volume of *Records of the*

*Knights Hospitallers in Scotland*, a subject of which he had a unique knowledge. The transcripts, notes and other papers collected and prepared by Dr Macdonald for this volume have been given to the Society by Dr Macdonald's executors in order that this work may be completed. The Council hopes to find an editor to undertake this task.

Two short items have been accepted for publication in a future *Miscellany*. 'Heinrich Kalmeter's diary of his travels in Scotland, 1719-20', to be edited by Dr T. C. Smout, contains detailed descriptions of Scottish industrial techniques, including lead-mining, salt-panning, sugar-making and soap-boiling. Mr C. Gulvin is editing a 'Notebook of Henry Brown, woollen manufacturer, 1828-9', which throws a vivid light on the habits and outlook of the country manufacturers of the Borders at a critical juncture in the history of the woollen industry. The Council hopes that these two items may form part of a *Miscellany* of documents dealing with the history of Scottish trade and industry and will be glad to hear from any member who knows of other short items which could suitably form part of a volume on this theme. A further item accepted for publication is a series of 'Oldcambus Farm Accounts, 1596-7', to be edited by the Rev. W. E. K. Rankin and Mr Alexander Fenton. These accounts give very full details of agricultural activities at an unusually early date.

The agreement with the Kraus Reprint Corporation for reprinting of the First, Second and Third series has now been concluded. The Corporation expect to make a public announcement of the reprints in Spring, 1967, and hope that production of the reprints will be completed in about eighteen months thereafter. Members are again reminded that it is to their advantage to purchase back volumes now, at the present cost of 30s. each, as the cost of reprints will be greater. An up-to-date list of volumes available will appear at the end of *Letters of John Ramsay*. Enquiries regarding back volumes should be directed to the Honorary Treasurer.

The eightieth anniversary of the Society's foundation in 1886 was marked in Edinburgh on Saturday, 7 May 1966, at a gathering of about 100 members and their guests. The programme included addresses by the President of the Society and the Chairman of Council, a reception by the University of Edinburgh in the Senate Room of the Old College, and a lunch at the Carlton Hotel. The addresses, with a fuller report of the occasion, will be printed with the forthcoming *Court Books of Orkney and Shetland, 1614-15*.

The Council sponsored a Conference of Editors of Scottish Historical Societies, held at the University Staff Club, Edinburgh, on Saturday, 12 November 1966. Attendance at the Conference totalled sixty-eight, includ-

ing representatives of twenty-two societies. The purpose of this occasion was to enable those responsible for editing the publications of such societies to discuss problems and acquire up-to-date information about printing and publishing. Six short papers given by various experts produced much lively discussion. An exhibition of recent publications by societies was on display.

Members of Council who retire in rotation at this time are Professor A. A. M. Duncan, Sir James Fergusson of Kilkerran and Mrs M. O. Anderson, who has served for one year only in place of Professor Campbell, who resigned in 1964. The following will be proposed to the Annual Meeting for election to the Council: Mrs M. O. Anderson, Monsignor David McRoberts and Mr Stuart Maxwell.

During the past year fourteen members have died, nine have resigned, and fourteen have been removed from the list for non-payment of subscription. Forty-six new members have joined. The membership, including 192 libraries, is now 524. This year has seen a greater number of new members than any year since 1923. This is in part a result of the new brochure about the Society's activities. Members are urged to continue efforts to recruit others, as experience has shown that personal contact is the most effective means of bringing in new members. Copies of the brochure may be had from the Honorary Secretary or the Honorary Treasurer.

In presenting the Annual Report, Professor Barrow mentioned in particular the recent Conference of Editors, which had produced many home truths and provided good advice from printing and publishing experts. He hoped that it might prove to be the first of many such conferences. Commenting on the Annual Report, Mrs Rosalind Mitchison congratulated the Council on the arrangements made for the Anniversary Meeting in May 1966, and suggested that similar meetings of members should be held more frequently in future. Dr A. L. Brown proposed the adoption of the Annual Report. Mr John Dunbar seconded this proposal and the Report was duly adopted.

Mr R. W. Munro nominated for election to the Council Mrs M. O. Anderson, Monsignor David McRoberts and Mr Stuart Maxwell, who were seconded by Dr I. M. M. MacPhail and duly elected.

Monsignor David McRoberts then gave an address entitled 'The Scottish Church and Nationalism in the fifteenth century'. The meeting closed with a vote of thanks to Monsignor McRoberts, proposed by Dr Ian B. Cowan.

ABSTRACT ACCOUNT OF CHARGE AND DISCHARGE OF INTRO-  
MISSIONS OF THE HONORARY TREASURER for the year from 1st  
November 1965 to 31st October 1966

I. GENERAL ACCOUNT

CHARGE

I. Cash in bank at 1st November 1965:		
1. Sum at credit of Savings Account with Bank of Scotland	£44 14 6	
2. Sum at credit of Current Account with Bank of Scotland	16 9 11	
3. Sum at credit of Savings Account with Edinburgh Savings Bank	50 1 3	
4. Sum at credit of Special Investment Account with Edinburgh Savings Bank	1,006 17 0	
5. Cash in hand of Bank of Scotland to meet postages	16 4	
	<hr/>	
	£1,118 19 0	
II. Subscriptions received	1,122 15 10	
III. Donations	35 0 0	
IV. Anniversary Celebrations	78 14 0	
V. Past publications sold (including postages recovered from purchasers)	120 12 6	
VI. Postages recovered from Bank of Scotland	1 11 1	
VII. Interest on Savings Account with Bank of Scotland and Edinburgh Savings Bank	77 18 11	
VIII. Income Tax refund	76 10 5	
IX. Sums drawn from Bank Current Account	<hr/>	
	£2,847 18 11	
X. Sums drawn from Bank Savings Accounts	<hr/>	
	£1,540 0 0	
	<hr/>	
	£2,632 1 9	

## DISCHARGE

I. Cost of Publications during year	£1,606	12	3
Cost of printing Annual Report, Notices and Printers' postages etc.		170	0 1
	£1,776	12	4
II. Payments in furtherance of forthcoming publications	205	12	8
III. Miscellaneous Payments and refunds of subscriptions	133	1	11
IV. Anniversary Celebrations	83	8	0
V. Sums lodged in Bank Current Account	£2,991	13	9
VI. Sums lodged in Bank Savings Accounts	£1,829	11	8
VII. Funds at close of this account:—			
1. Balance at credit of Savings Account with Bank of Scotland	£7	5	8
2. Balance at credit of Current Account with Bank of Scotland	143	15	2
3. Balance at credit of Savings Account with Edinburgh Savings Bank	51	6	3
4. Balance at credit of Special Investment Account with Edinburgh Savings Bank	230	19	9
5. Cash in hand of Bank of Scotland to meet current postages	0	0	0
		433	6 10
	£2,632	1	9

## II. DR ANNIE I. DUNLOP SPECIAL FUND ACCOUNT

## CHARGE

I. Cash in Bank at 1st November 1965:	
1. Sum at credit of Savings Account with Bank of Scotland	£720 2 1
2. Sum at credit of Current Account with Bank of Scotland	19 6 0
	<hr/>
	£739 8 1
II. Interest on Savings Account with Bank of Scotland	27 12 0
	<hr/>
	<u>£767 0 1</u>

## DISCHARGE

I. Sums lodged in Bank Savings Account	<u>£27 12 0</u>
II. Funds at close of this Account:	
1. Balance at credit of Savings Account with Bank of Scotland	747 14 1
2. Balance at credit of Current Account with Bank of Scotland	19 6 0
	<hr/>
	767 0 1
	<hr/>
	<u>£767 0 1</u>

EDINBURGH, 23rd November 1966. I have examined the General Account and Dr Annie I. Dunlop Special Fund Account of the Honorary Treasurer of the Scottish History Society for the year from 1st November 1965 to 31st October 1966 and I find the same to be correctly stated and sufficiently vouched.

C. T. MCINNES  
Auditor



# SCOTTISH HISTORY SOCIETY

1886-1966



*A COMMEMORATIVE RECORD*



EDINBURGH

*printed for the Scottish History Society by*

T. AND A. CONSTABLE LTD

1967





Scottish History Society

1967

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1886-1966

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\*\*\*\*\*  
EIGHTIETH  
ANNIVERSARY MEETING  
OF THE  
SCOTTISH HISTORY SOCIETY

7 May 1966  
\*\*\*\*\*

The Scottish History Society was founded at a meeting held in the Signet Library, Edinburgh, on 21 April 1886. The Society is now one of the oldest record-publishing bodies in Britain and it has produced 140 volumes, which form an invaluable storehouse of the documentary evidence of Scotland's past. The Council felt that it was appropriate to commemorate this anniversary and decided to follow the precedent set in 1936 when a lunch was held to celebrate the Society's fiftieth anniversary.

On Saturday, 7 May 1966, about 100 members of the Society and their guests assembled in Edinburgh for the programme of celebrations. The proceedings began at Adam House, where, after morning coffee, the Society heard an address by the new President, Dr W. Douglas Simpson, Librarian of Aberdeen University. At 12 noon a reception was given by the University of Edinburgh in the Senate Room of the Old College, where Professor D. B. Horn welcomed the company. At lunch in the Carlton Hotel, Mrs Annie I. Dunlop and Dr Angus Macdonald, the senior surviving editors, were entertained as guests of the Society. After lunch Professor G. W. S. Barrow, Chairman of Council, spoke on the future role of the Society.

The addresses by Dr Simpson and Professor Barrow are

printed in the following pages. To present a background to Professor Barrow's address, a survey of the Society's past history has been added.

\*\*\*\*\*

THOUGHTS  
ON  
SCOTTISH HISTORY  
AND  
ARCHAEOLOGY

an address by W. Douglas Simpson, CBE, D LITT, LL D, FSA  
*President of the Scottish History Society*

\*\*\*\*\*

Nowadays we are all too familiar with the vast development of thought and the sheer overwhelming burden of fact that confront the student in any of the major scientific disciplines in this third quarter of the twentieth century. Take for example the great and noble science of medicine, which touches all of us throughout our lives. Its ramifications have become so enormous that no one medical practitioner, be he family doctor, academic lecturer, hospital surgeon or house physician, can hope to be conversant with more than a segment of his science. Hence, the moment that we fall ill, we are forthwith committed to the care of a specialist in the particular ailment from which we are believed to be suffering.

Take also the case of geology—the only science (in the strictly limited sense of the term as commonly understood) in which I am at all competent to venture an opinion. If at this stage you will forbear with me in indulging myself in a few personal reflections—I began my career as a geologist; and the first academic post which I held, in fact the first salary I ever earned, was in the Geological Department of Aberdeen University, and that before the First World War. I am indeed the only servant of

my University whose first appointment dates from before that remote period. I have always kept up my interest in this great science, and indeed have found it of much help in my historical and archaeological work. Yet, as I read modern geological writings, I am constantly reminded of the fact that there are vast areas of the science about which I must be content to remain in blank ignorance.

Whether our own discipline of history is a science or an art may admit of discussion. Probably it is both. At all events, there is no doubt that history has shared in the increasing weight of fact and diversity of expertise that confronts its votaries, and the consequent necessity for ever-increasing specialisation, not only in the period or subject matter chosen, but also (for the medievalist at least) in such ancillary but vital studies as palaeography, and Roman and canon law – to mention only two among many. The result is that, in ours as in other fields, the historian is in some danger of becoming a narrow specialist, knowing more and more about less and less.

Today I can presume to address you only as a medievalist – for my own historical work has been mainly confined within this great and glorious stage in human development, to which the name of the Middle Ages has been so inappropriately given in our habitual terminology.

More and more the historian, if his period be the earlier part of the Middle Ages, has been forced to come to terms with the great sister science of archaeology. Thus, practically every general history of Scotland that has recently been published begins with some account of the prehistoric races about whom our knowledge depends, very literally, upon the spade-work of the archaeologist. In such books, too, wide acknowledgement is made of the historian's debt to the archaeological research upon which our knowledge of the Roman period in Scotland so largely depends. In a standard work upon Scottish history,

published nearly half a century ago, this period is referred to as 'the Roman episode'. Yet the Romans were involved in our country for almost four centuries – that is, for as long a period as separates the Scotland of Queen Mary and John Knox from the Scotland of our own times. Surely this is quite a considerable 'episode'! And our knowledge of it today depends overwhelmingly upon the labours of the archaeologist.

Passing onward now to Celtic Scotland, one is glad to find that, whatever opinions may be held about the respective importance of the achievements of St Ninian, St Columba and other early missionaries, no serious student is content any longer to repeat the vague traditional generalities which for so long contented our historians as an assessment of St Columba's work. It is now realised that a right understanding of the evangelisation of Scotland can be achieved only by a patient analysis of the ancient church dedications, a close study of the penetration lines which they reveal, and above all, skilled and meticulous excavation such as has been carried out on key sites like Whithorn, Iona and Ardwall Island. One can but hope that in due course the results of these important investigations will increasingly find their way into what our general historians have to say about Celtic Scotland.

It is when we come to the Middle Ages in the stricter or narrow sense – I mean the period between Malcolm Canmore and the Reformation, and more especially the three centuries preceding the conclusion of the Second War of Independence – it is in this period that one finds an unfortunate reluctance among historical writers to take account of what archaeological research has done to illumine their theme.

As an illustration of the point which I am trying to make, let me call your attention to the surprising number of thirteenth-century stone-and-lime castles which have now been identified on the far side of Drumalban, and indeed in the Hebrides. It is clear that the *reguli* or Celto-Norse rulers of these remote areas



were perfectly able to engage mason-craftsmen of the first rank from the great centres of Romanesque or Gothic construction to build for their patrons fortified dwellings in the most up-to-date fashion. Such a conclusion is in perfect harmony with the evidence now coming in from Norway itself—for example, in the excavation of the twelfth-century Sverresborg at Trondheim.

Another point of the first importance is that these early stone castles of the western seaboard and islands were not destroyed by the Scots when they were recovered from English garrisons or supporters of England. Indeed Barbour tells us expressly that when Bruce captured Dunstaffnage Castle from John of Lorne, instead of 'tumbling it down' according to the usual practice on the hither side of Drumalban, he installed in the castle a well-provisioned garrison. It is clear that King Robert was enforcing two castle policies, directly opposed to each other, on either side of Drumalban. Plainly his motive for preserving the fortalices on the western seaboard was fear of English naval power based on Antrim, and acting in cooperation with Bruce's inveterate enemy, John of Lorne. The same fear led, it is manifest, to the building by Bruce of a new and important castle at Tarbert, barring the isthmus by which a sea-borne invasion could turn the Kintyre peninsula and take all the Firth of Clyde garrisons in rear. Contrary to what has often been said, I believe I am right in maintaining that there is no evidence for a castle at Tarbert before Bruce started building there in 1325. It was a new undertaking, and its significance is unmistakable. The founding of Tarbert should be viewed against the background of the projected invasion of Argyll by an English fleet under John of Lorne's command in 1311; a similar project under Sir Robert Leyburn in 1322; and the clause of the Treaty of Northampton whereby England pledged herself not to aid the enemies of the king of Scots in Man and the Hebrides.

On the east side of Drumalban likewise, I feel that there is

room for our historians of the Wars of Independence to pay more attention to the results achieved since the First World War by the labours of the archaeologist. Let me illustrate my point by just one small example.

In recent months, many of us, I am sure, must have been reading, with deep appreciation, the brilliant and masterly study of Robert Bruce by Professor Barrow. I am sure he will not take it amiss if I venture to call your attention to one point of detail in which an acquaintance with recent archaeological research might have guided him to a different conclusion. In his account of Bruce's winter campaign in Aberdeenshire in 1307, he suggests that the ailing king was carried from Slioch in Drumblade 'first to Strathbogie, perhaps on the way to the safety of Kildrummy Castle'. But in December 1307 there was no safety for anybody in Kildrummy Castle. The year before it had been captured, after a gallant defence by Bruce's youngest brother, by an English force under the prince of Wales. The castle had been set on fire by a traitor, and on gaining possession of the burnt-out shell the stonework was partly dismantled by the victors – 'tumlit down', in the vigorous language of Barbour. Evidence both of the burning and of the masonry destruction has been forthcoming in the conservation work and excavation carried out by the Ministry of Public Building and Works. Thereafter, so far as I know, there is no hint of Kildrummy as a going concern until the reign of David II. When Bruce was lurking at Slioch in Drumblade he was already within the ancient lordship of Strathbogie: and so when Barbour says that the king was carried from Slioch to Strathbogie he must surely mean to the capital messuage thereof – that is to say, the Norman *motte* of Strathbogie Castle, whose owner was Lawrence de Strathbogie, one of Bruce's principal supporters.

Perhaps the most vividly realised event during this Aberdeenshire campaign is one of which our sole knowledge depends upon

the labours of the archaeologist. I refer to the capture, burning, and demolition of Coull Castle, in the Howe of Cromar. This was the principal stronghold of the great family of de Lundin, the Doorwards of Scotland, in the ample lordship that, in the thirteenth century, as the result of a famous lawsuit, they had acquired in the southern half of the ancient Celtic Mormaership or Earldom of Mar. You will remember that Alan the Durward was the virtual dictator of Scotland during part of the minority of Alexander III. A friend of kings, mated with a king's daughter; lord of Atholl, as well as of his vast holding in Mar and the Mearns, owning also the stately castle and broad acres of Bolsover in Derbyshire, Alan Durward was a man of great influence and wealth – well able to house himself, in the capital of his northern demesne, within a stone-and-lime castle of the first rank and in the most up-to-date style of the thirteenth century.

At his death his estates were dispersed, and the manor of Coull became a mere appanage of the great Thanage of Aboyne. Elsewhere I have brought forward evidence which strongly suggests that the well-known references to Aboyne Castle in the records of the War of Independence in fact belong to the Castle of Coull – in much the same way as, at the same time, Balvenie Castle appears as the Castle of Mortlach – Mortlach, a long mile to the south, with its ancient church and former Celtic monastery, being the early nucleus of population. Exact parallels are available from England. Thus it has long been recognised that the *Castellum Warham* of Domesday Book is really Corfe Castle – Wareham being the local centre of population, four miles away. Similarly, Tickhill Castle in Yorkshire is often called the Castle of Blyth, a town in Nottinghamshire from which Tickhill is distant four miles.

Be this as it may, in the course of the nineteenth century the stonework remains of the great Durward stronghold had utterly

disappeared; and the 1902 edition of the 25-inch Ordnance Survey marks only the earthworks, under the designation 'site of Coull Castle'. But between 1912 and the outbreak of the First World War, and again in 1923, the remains were excavated, and in places were found to survive to a height of 17 feet. As was to be expected, they revealed a large and strong castle of *enceinte* in the thirteenth-century manner, with thick curtain walls; bold drum towers, one of which, of great size, formed the donjon; a regular gate house; and a domestic range which included rich First Pointed detail.

As the excavations proceeded, it became increasingly and abundantly clear that the castle had come to a violent end. Traces of fire were everywhere found, particularly at the gatehouse, where much of the stone work was vitrified, and the charred oaken beams and melted or twisted nails of the bridge were found collapsed into the pit, together with the burnt debris of the fascines or brushwood (mostly hazel) which had been used to ignite it. Moreover, the solid masonry of the castle showed clear evidence of deliberate dismantling. On long sections the walls were overthrown, and the towers were breached. That the demolition was military rather than penal was shown by the fact that, while the front wall of the hall range was allowed to survive to a considerable height, its rearward wall, forming part of the curtain, had been overturned from the foundations, and its materials tumbled down the bank of the Tarland Burn.

A large assortment of relics was found, chiefly owing to the fortunate chance that the excavators of 1923 came upon three middens outside the castle, upon which its inmates threw out their broken pottery, tools and kitchen refuse. These relics included knives, skewers, and other implements in iron, fragments of an iron cauldron, iron hinges and bands for strengthening a door, arrow-heads, a sling-ball, roofing lead, large numbers of nails, and quantities of pottery. Valuable evidence for the

lower date of occupation was afforded by the last. No sherds were found later in date than the beginning of the fourteenth century. With the ceramic evidence may be taken the fact that in the eighteenth century silver pennies of Alexander III were dug out of the ruins.

Finally, and with all due apologies for introducing an unsavoury topic, I must mention the grimly suggestive discovery made by the excavators of 1923 when they came to clear out the vertical latrine shaft of the donjon, with its vent corbelled out over the spreading base. The vent was found to be choked up with a hard dark brown material, which also was thickly plastered over the tower base below the vent. So hard was this material that some of it had to be prised out or chiselled off. Samples brought in to Aberdeen University for chemical analysis revealed that the stuff was of excremental origin. It was in fact what the geologist would term a coprolitic mass, formed through induration, indeed fossilisation, by water, highly charged with lime, seeping in from the decaying walls.

The significance of this discovery is surely unmistakable. Had the garrison or household been free to come outside and clear out their drains, the sewer of their main tower would never have been allowed to get into such a filthy state. Obviously the burning and dismantling of the castle must have followed upon a siege, or at least a close blockade. This evidence from Coull casts a grim light upon the reality of medieval sieges which the historian, poring over his sources in the comfort of his armchair, may sometimes be apt to forget. But perhaps some of you may recall the fearful state in which the troops of Henry III found Kenilworth Castle when in 1265 they captured it from the Montfort faction after a six-months' siege.

All the evidence combines to suggest that the destruction of Coull Castle took place during, or shortly after, Bruce's campaign in Aberdeenshire in 1308. Indeed we are expressly told in

the *Rotuli Scotiae* that by May, 1309, the only castle remaining to England north of the Mounth was Banff, which was still in English hands in December of that year – perhaps because it could be reinforced and provisioned by sea.

From the evidence which I have thus set before you, I think it may fairly be claimed that the excavation of Coull Castle has added a new paragraph to the ascertained history of the struggle for independence. Yet, although a full account of the excavations has now been in print for two and forty years, with summaries and further discussion in my two works on the Province and the Earldom of Mar, published respectively in 1943 and 1949; neither in the second edition, which appeared in 1934, of the late Dr Barron's well-known book on *The Scottish War of Independence*, nor in any subsequent work dealing with the period or theme, has any mention been made of the vivid light thus thrown upon Bruce's northern campaign. Moreover, since the last war the large-scale operations conducted by the Ministry of Works upon key sites such as Dirleton, Bothwell and Caerlaverock have cast a searchlight beam upon how these castles fared in the Wars of Liberation. Yet here again our historians have ignored the evidence thus placed at their disposal by the spade.

No archaeologist would think of excavating a ruined castle or church without first of all mastering the documentary record. Yet our Scottish medievalists continue to turn out books and papers without paying adequate attention to the evidence provided for them by the labours of the archaeologist.

As a pendant to the story of Coull, may I invite your attention to what I submit may, without exaggeration, be described as 'The Romance of a Potsherd'.

I have already said that the mass of pottery recovered at Coull belonged to the types of ware normally expected on a site that ceased to be occupied in the first decade of the fourteenth century. One sherd, however, was completely dissimilar from all

the others. It was very thin and hard, with a bold everted rim, and had been decorated with a geometrical painted pattern in blue, brown and yellow, all under a tin enamel glaze. None of those who in 1923 studied the Coull pottery could make anything of it, and in the end it was published in the inventory without comment and without an illustration. Thirty years later, however, the sherd was examined by Mr Gerald Dunning, now of the Ancient Monuments Inspectorate, and the late Mr Bernard Rackham of the Victoria and Albert Museum. They pronounced it to be Italian majolica of the early fourteenth century, probably from the potteries at Orvieto, and that 'almost certainly' it was part of the mouth of an *albarello* or drug jar.

How then, about the dawn of the fourteenth century, did a fragment of Italian majolica find its way on to a midden at a remote castle in the Howe of Cromar? May I venture to suggest a plausible hypothesis?

It is well known that Edward I was always in monetary difficulties. From his extravagant father he had inherited a load of debt, which was increased by the exigencies of his own vigorous foreign policy. In 1292 his troubles came to a head. He had promised to lead a Crusade, and for this purpose an Italian banking firm, the Ricciardi, who handled the papal finances, had arranged, at the request of Pope Nicholas IV, to advance to the king of England the sum of 100,000 marks, that is £66,666 – an amount equivalent, I believe, to something like £7,000,000 at the present day. This sum was secured upon half the yield of the Conciliar Tenth of 1274. Payment had been made to King Edward in 1291. Now, in the next couple of years, Edward found himself involved in two outbreaks of war at once: a rising in Wales, and an attack by the French king upon his possessions in Gascony. On top of all this came the disputed succession in Scotland. Faced with this sea of troubles, and at his wits' end to find ready cash to pay his troops, the king seized upon this

money which had been advanced to him for his Crusade. To satisfy his Italian creditors, Edward gave them wholesale assignments of the revenues from Crown lands, including many baronies that had fallen into his hands as Lord Paramount of Scotland. Among the rents so assigned by the hard-pressed king, on 7 January 1293, were certain sums due on account of the barony of Aboyne – to which, as we have seen, the demesne of Coull was at that time attached.

Now the banking firm of the Ricciardi had their headquarters in Lucca, which is close to Orvieto and in the heart of the majolica country: and the London agent of the firm, Nicolas de Colle, came from a town in the same area. To collect the arrears of rent assigned to his firm from Scotland, Nicholas de Colle, to whom the rentals had been specifically assigned, came down to Berwick and established a sub-office there. From Berwick he himself, or an agent on his behalf, will have had to travel round Scotland collecting the revenues assigned to his firm by King Edward. Doubtless much of these dues would be forthcoming in kind – wool, hides, and other staple commodities which Nicholas de Colle converted into specie, the sum total being accumulated at Berwick for transmission to Italy. Does it not seem plausible that Nicholas de Colle, or one of his assistants, may have visited Coull, then the chief castle in the barony of Aboyne, bringing with him in his baggage a drug jar made in his own country? This jar, it may be supposed, got broken, and was thrown out upon a midden outside the north-west tower – there to be dug up, after more than six centuries, by a Boy Scout excavator.

Perhaps it would be wicked for me to suggest that the *albarello* may have contained ointment for the itch – an ailment which English writers of the Middle Ages asserted to be the national affliction of the Scots!

With this 'Romance of a Potsherd' I must bring my remarks to a close. My purpose has been to appeal for a closer cooperation



in Scotland between the medieval historian and the medieval archaeologist, and to press for greater recognition by the former of the results placed at his disposal through the labours of the latter. Indeed I would go further, and plead for more financial resources to be made available to the excavator on Scottish medieval sites. There are scores crying out for the spade. Among sites famous in the War of Independence, let me mention only a few – Buittle; Tibbers; the castle in the marsh at Caerlaverock; Kinclaven; and the Peel of Lumphanan.

Above all there is Roxburgh. Here we have a town site as well as that of a castle of the first rank. The whole area is fallow, and it is a disgrace to Scottish medieval studies that it has never been probed. Yet what is wanted here is not merely a probe, but the mounting of a major excavation – one comparable in scope and duration to Traprain and Inchtuthil.

Sometimes I have been tempted to think that in the volumes of our Scottish archaeological societies the balance tends to be unduly weighted in favour of prehistoric and Roman digs. Certainly this is the case in the matter of illustrations, where reports of medieval excavations seem to me all too often to come in as a poor third. But the plain fact is that there is just not enough money to go round. The position remains very much as it was once described by the late Sir George Macdonald, who remarked that the plight of the post-war archaeologist resembled that of the unjust steward in the parable: 'I cannot dig; to beg I am ashamed'.

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AN HISTORICAL SURVEY  
OF THE  
SCOTTISH HISTORY SOCIETY

by Grant G. Simpson, PH D, FSA  
*Honorary Secretary of the Scottish History Society*

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When the Scottish History Society celebrated in 1936 the fiftieth anniversary of its foundation, Dr W. K. Dickson, then Chairman of Council, wrote a survey of its first fifty years, which was issued as a pamphlet and later bound up with *The Court Book of the Barony of Carnwath* (Third Series, volume xxix). His work was comprehensive and perceptive, and it would be foolish to re-tread the ground which he covered so well. It is enough to recall here that the Society was founded in 1886, at the instigation of Archibald, fifth Earl of Rosebery, who remained its President until his death in 1929. From its foundation, the Society was fortunate in having as its editors, councillors and office-bearers a body of remarkable men. The first three Honorary Secretaries, for example, who spanned a period of thirty-four years from 1886 to 1920, were Thomas Graves Law, Librarian of the Signet Library, David Hay Fleming, historian of the Scottish Reformation, and John Maitland Thomson, Curator of Historical Records at the Register House.

Those were the brave days, when two volumes a year came with great regularity from the presses, each costing a mere £150-200. Membership of the Society was limited to 400, and one local historian at least proudly described himself on his title-page as 'Member of the Scottish History Society'. Lord Rosebery

remarked in 1905: 'Wherever I go in Scotland, and wherever I find a bookish or historical personage, and I ask them are they members of the Scottish History Society, they are apt to reply with a groan: "No; for us there is no hope; we were not original members, and we think it takes a lifetime to get into the Society"'.

The war of 1914-18 seriously affected the Society's activities. Publication continued, but money was short and post-war recovery was slow. In 1920, the limitation on membership was removed and an appeal for support issued in 1922 produced about ninety new members. Membership reached its highest point in 1927, when it stood at a figure of 655, including 125 libraries.

A high membership figure has always been the basis of the Society's prosperity. It is tempting to speculate about what may produce an increase in the roll - favourable economic conditions, increasing national sentiment, effective publicity or a broadly-based publications policy? Perhaps all play a part. Certainly the 1930s saw a fall in membership. When Dr Dickson wrote in 1936, the total was 544 members, including 132 libraries. In the thirty years since then the figures of membership have first declined and then risen, in an almost perfect curve. Numbers dropped throughout the war of 1939-45 and until as late as 1952, when the total stood perilously low at 375, and the Council warned that further losses would make it impossible to publish one volume each year. But from that point recovery began and in 1967 the membership stands at 559, including 199 libraries, and is therefore back to the level of 1936. There has been a net increase of 100 members in the five years 1962-67.

A decreasing membership meant a falling income and some of the Society's efforts had to be curtailed. From 1939 onwards it was impossible to issue more than one volume per year. War service drew away a generation of potential young editors.

Delays in publication are always liable to occur in a society which depends on the voluntary editorial work of busy men, but in wartime the delays became seriously troublesome. Volumes became slimmer, illustrations became rare and frequent *Miscellany* volumes were used as stop-gaps. Continued rises in the cost of printing added a further problem. By the late 1940s, each volume was costing about £350. (Now, in the late 1960s, each costs over £1,000.) Fortunately, the financial outlook was not entirely bleak, since the Carnegie Trust for the Universities of Scotland began in 1948 to give the Society annual grants in aid of publication, which have continued since then and have been warmly appreciated by the Council. In the difficult times of the early 1950s, this support may indeed have saved the Society from extinction.

In spite of all problems, the standard of editing to be found in the Society's publications since 1936 has remained commendably high. Perhaps the subject-matter of the volumes has been less adventurous than it was in the pioneering First Series. But this can be ascribed, in part at least, to the stand-still in historical studies brought about by the war of 1939-45 and its aftermath. The spread of published material over the centuries has changed a little, as compared with the publications of our first fifty years. Lord Rosebery was somewhat averse from volumes of medieval charters, on which he remarked in 1906: 'I view the publication of charters as rather a crutch than a prominent object of our being'. Down to 1936 the seventeenth and eighteenth centuries took much the largest share of print. Since that date, roughly one quarter of the volumes have come from the medieval period and the remainder have been fairly evenly spread over the sixteenth, seventeenth and eighteenth centuries. The nineteenth century has remained almost entirely neglected.

All the standard subjects of Scottish history have received some attention in the volumes issued since 1936. Political history

has not been especially evident, but *The Letters of James IV, 1505-13* (1953), calendared by R. K. Hannay and edited by R. L. Mackie, and *An Account of the Proceedings of the Estates in Scotland, 1689-90* (1954-55), edited by Dr E. W. M. Balfour-Melville, both provide first-rate political material. Constitutional studies have been few but important. Following his remarkable volume on *The Sheriff Court Book of Fife, 1515-22* (1928), Professor W. Croft Dickinson produced *The Barony Court Book of Carnwath, 1523-42* (1937) and *Early Records of Aberdeen, 1317, 1398-1407* (1957). To each of these three works he prefaced an introduction of vital importance for studies in the law and constitution of Scotland. Following these precedents, Professor George S. Pryde provided in the introduction to his *Court Book of the Burgh of Kirkintilloch, 1658-94* (1963) a thorough study of the long history of the Scottish burgh of barony.

Ecclesiastical history, for so long the staple of historical studies in Scotland, has remained to the fore in the Society's list of publications. Two volumes of *Minutes of the Synod of Argyll, 1639-61*, edited by Duncan C. Mactavish, published in 1943 and 1944, helped to keep the publications programme moving forward during the war. In *Accounts of the Collectors of the Thirds of Benefices, 1561-72*, published in 1949, Dr (now Professor) Gordon Donaldson edited in admirably concise form a primary record source for the administration of the church in Scotland immediately after the Reformation. From a different era and origin arose the material in Mrs Annie Dunlop's second volume of her *Calendar of Scottish Supplications to Rome* (1956), covering the period 1423 to 1428. Also of ecclesiastical interest have been the editions of two collections of medieval charters: *Inchcolm Charters*, edited by the Rev. D. E. Easson and Dr Angus Macdonald in 1938, and Dr Easson's *Charters of the Abbey of Coupar Angus* (2 volumes, 1947). The latter work put into print,

with a wealth of editorial notes, the largest remaining group of unpublished monastic charters in Scotland.

Jacobite material has been much less prominent in the last thirty years of the Society's activities than during its first fifty, and is represented by only one volume, Miss Henrietta Tayler's *Jacobite Court at Rome, 1719* (1938), plus a few *Miscellany* items. Social history, which was particularly well represented in the First Series, has also been less in evidence, but Miss Barbara L. H. Horn's *Letters of John Ramsay of Ochertyre, 1799-1812* (1966) marks a return to this popular and valuable field of study.

Neglect of social material may be surprising and culpable, but to counterbalance this there has been a reasonably strong interest in economic history, in continuation of the Society's early policies, which led to the production of pioneer works such as *The Minute Book of the Managers of the New Mills Cloth Manufactory, 1681-90*, edited by W. R. Scott in 1905. Before the war there appeared Miss Margaret M. McArthur's *Survey of Lochtayside, 1769* (1936), and during it there followed Professor Henry Hamilton's important edition of estate records, *Monymusk Papers* (1945). Mr J. G. Kyd's *Scottish Population Statistics* (1952) made available, under an unfortunately general title, Dr Alexander Webster's pioneering analysis of the population of Scotland in 1755. Estate material from Highland areas has appeared in *John Home's Survey of Assynt* (1960), edited by R. J. Adam, and *Argyll Estate Instructions (Mull, Morvern, Tiree), 1771-1805* (1964), edited by Eric R. Cregeen. Publications now in preparation will consolidate the list in the field of economic history and will strengthen it in the subject of social history.

The names of the Society's office-bearers since 1936 will evoke thoughts and memories for anyone who has been aware of the personalities of the world of Scottish historical studies during the last two generations. It is remarkable that of the ten

Presidents of the Society since 1936 only four have been professional historians. The names of Thomas Johnston, Lord Clyde and Lord Cooper, Dr H. W. Meikle and Dr W. Douglas Simpson reveal that the worlds of politics, law and librarianship have lent eminent men to serve in the Society's highest post. Of the many fine presidential addresses that the Society has heard, the most widely known, and perhaps the most seminal, have been the four which were delivered in 1946-49 by Lord Cooper and published by him under the title *Supra Crepidam* (1951).

In the list of Chairmen of Council, professional historians have naturally been more prominent. So many of the holders of the chairs of Scottish History at Edinburgh and Glasgow have held the office of Chairman that it almost appears to be an additional responsibility which comes to each, willy-nilly, along with his chair. Many members of the Council itself have served ably for long periods and the Society owes a special debt to the band of older members who acted as councillors during the war of 1939-45 and assisted the office-bearers to keep the Society in being. Dr H. W. Meikle and Professor J. D. Mackie successively held the office of Chairman of Council during the difficult days of the 1940s and it was a fitting expression of the Society's gratitude to them that both should later have been honoured by election to the Presidency. Under a self-denying ordinance proposed by the late Professor George Pryde, since 1960 members of Council have not been automatically re-elected after each four-year term of office, and the gradual change in the composition of the Council in recent years has led to a wider representation of interests.

Throughout its history the Society has been fortunate in that many of its executive officers, the Honorary Secretary and Honorary Treasurer, have served for long periods. From 1886 to 1965 there were only six Honorary Treasurers, and the average length of tenure of that office was thirteen years. From

1886 to 1962 only eight men served as Honorary Secretary, and of these Dr T. G. Law, the first Secretary, held office for eighteen years and Dr E. W. M. Balfour-Melville for thirty-one years, from 1931 to 1962. Indeed the last thirty years of the Society's existence can most properly be described as 'the Balfour-Melville era'. He is the only man to have served successively as Honorary Secretary, Chairman of Council and President and was for more than a generation the very embodiment of the Society. The work of administration, editorial supervision and liaison with printers always lies in the background of the Society's affairs. All this he carried through with care, patience and determination. Professor D. B. Horn's memoir of Dr Balfour-Melville, published in *Miscellany*, volume x (1966), revealed with clarity, and to the surprise of many, that the Scottish History Society was only one of numerous bodies to which this remarkable man devoted a lifetime of voluntary service.

The recent history of the Society is too close to permit a balanced assessment. But a few important facts deserve to be recorded. Membership continues to increase each year and this helps to combat rising printing costs. The annual subscription stood at one guinea from 1886 until 1961. In that year a modest increase, to £1 5s, was introduced, but this proved inadequate and in 1965 the subscription was fixed at £2 2s. At this level income from subscriptions alone is still not sufficient to keep the Society solvent, but other sources of revenue, such as grants from the Carnegie Trust, the generous contributions of Mrs Annie I. Dunlop, and profits from sales of back volumes, all combine to enable the Society to meet its commitments, at least for the present. New sources of revenue should appear when, under an agreement reached in 1966 with the Kraus Reprint Corporation, all the volumes of the First, Second and Third Series are reprinted. Sales of these reprints are expected to produce both royalties for the Society and an increase in



library membership in the United States of America. But these developments lie in the future.

Visually at least, the most important recent change in the Society's activities has been the inauguration, in 1964, of the new Fourth Series, in a redesigned format. While even those who planned the change had feelings of regret at the demise of the well-known green cloth series, the brighter binding and the cleaner lines of the new typeface have been widely welcomed. A look forward to the volumes now in preparation for the Fourth Series suggests that it will belong to a new generation of editors, who will give more attention to social and economic history and will rescue the nineteenth century from neglect. But it is also fitting to look back to the conclusion of the Third Series and to salute the older generation who carried the torch for so long. From the end of the war to 1964, the only younger scholars to appear as editors of volumes were Dr Gordon Donaldson and Mr R. J. Adam. The stalwarts of pre-war days – Dr Easson, Mrs Dunlop, Professor Croft Dickinson and Professor Pryde – remained active long after the war and to them the Society owes much.

Several recent events suggest that the Society is now taking a wider interest in historical matters beyond its principal sphere, which must be publication. This marks a return to the ideas of the 1920s when the Society was active in drawing attention to official neglect of the national records. During the last thirty years, the Society has tended to decline any involvement in protests or celebrations, whether political or sentimental. But there are fields in which its voice is now being heard in public. The Council has given evidence in recent years to three government committees examining aspects of record policy. In November 1966, the Council took an initiative in sponsoring a technical conference for the editors of Scottish historical societies. This stimulating and successful occasion enabled more than sixty

individuals, including representatives of twenty-two societies, to gather up-to-date information about techniques of printing and publishing. The Council has also recently agreed to nominate a representative to the British National Committee of the International Congress of Historical Sciences and hopes in this way to press the claims of Scottish history upon a wider world.

To sum up the activities of the Society during the last thirty years is no easy task. But perhaps two achievements are the principal ones. First, the Society has survived. A negative virtue, perhaps; but many factors have been against us – the economic troubles of the 1930s, the war and its after-effects, the rise in printing costs. The loyalty of members and the hard work of the executive have brought the Society once more to a flourishing state. Secondly, the Society has printed since 1936 over 7,000 pages of record material. It has thus provided a channel for publishing historical evidence of a kind which few commercial publishers could afford to issue, even if they wished to do so. The writing of Scottish history is all the more soundly based as a result of the Society's efforts.

Perhaps, at the same time, the last thirty years have sometimes tended to neglect that 'element of readableness' in the publications which appealed so strongly to Lord Rosebery. He held firmly that 'the object of our Society [is] . . . to supply readable records of a past era in Scotland, and more especially those bearing on the social and domestic life of the people which otherwise would not be readily available'. Perhaps these words may be at least one of the keynotes for the next twenty years. Lord Rosebery would no doubt have felt that we had published too many formal records in the last thirty years. But if he was irritated by the sight of medieval charters, he would surely also have been pleased to find the prophecy fulfilled which he uttered when he proposed the foundation of the Society in 1886: 'We should have a society in Scotland for printing the manuscript materials

for Scottish history, especially social history. . . . It would preserve the perishable; it would form a collection valuable to the literature of the whole world, but profoundly attractive to Scotsmen; and it would raise a national monument, even more consistent and durable than those spectral and embarrassed columns which perplex the tourist on the Calton Hill'.

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# LOOKING AHEAD

IN

## SCOTTISH HISTORY

an address by Professor G. W. S. Barrow  
*Chairman of Council of the Scottish History Society*

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One of the advantages of being an historian is that he may look with a relatively detached eye upon the history of societies and comparable institutions formed by his own profession in furtherance of its aims and purposes. Little of that magic of history which consists in the survival of customs until their whole merit lies in their utter pointlessness, or the total obscurity of their origins, is to be found among associations of professional historians. They are only too well aware that, as a certain London newspaper reminded us earlier this week with all its accustomed gravity, 'change is the law of life'. It is not at all paradoxical, therefore, that I should be asking members of this society to look for a few minutes at the way ahead in Scottish history – that is to say, in the study, research, writing and publication of Scottish history.

This Society was founded, as we know, to discover and print unpublished documents illustrative of the civil, religious and social history of Scotland. In its original character, the Society, it is clear, saw itself as carrying out something in the nature of a rescue operation, to which the words of its motto bore witness:

NOTE. I wish to make it clear that what I have to say in this address represent my own personal views, and is not to be taken in any sense as representing the view of the Council of the Scottish History Society. G.W.S.B.

*Colligite fragmenta ne pereant.* The publication, despite two World Wars and rapid inflation, of nearly 140 volumes of unpublished record has been a great achievement for a small band of scholars. As we look forward to our centenary as a Society and perhaps to the second century of our volumes, we must ask whether our aims are still the right aims, and whether we are setting out to achieve our aims in the best possible way.

Speaking for myself, I have no doubt whatever that the discovery and printing of what have hitherto been regarded as typical pieces of historical record must remain *one* of our Society's objects. If, for example, a hitherto unknown Domesday survey of eleventh-century Scotland, an unknown chronicle or cartulary, an unknown treatise by, say, Maitland of Lethington on the Management of Public Affairs in Scotland, or (to speak perhaps less fancifully) an unknown political diary of the post-Restoration or post-Union period, were to turn up in the sale room, the charter chest or salvage depot, the Society's responsibility would be inescapable. But barring miracles the rescue of hitherto unknown documents is subject to the law of diminishing returns. As far, at least, as the medieval and earlier modern periods are concerned, the editing of such *corpora* as the *Coupar Angus Charters* or the *Acta Facultatis Artium* of St Andrews, or of such a unique memoir as the diary of Archibald Johnston of Wariston, is likely to form a steadily smaller proportion of our output. It also seems clear that, with some carefully chosen exceptions – among which one might mention records bearing on population statistics and structure – we should continue to leave to others the task of publishing the records of central government in the strictest sense, records produced by and for central government and still preserved in its custody. This still leaves us a large field in which to work, but we must recognise that this field lies more and more in the modern period, and that the modern period has not just grown

by eighty years since the Society was founded. With a notable historical sense, the Society printed as one of its earliest volumes a diary running to 1803, but with a few exceptions we have in the past operated not an 'eighty-three year rule' but something more like a 'hundred and fifty year rule'. To me this seems to be carrying historians' caution to excess, and if we ever had the opportunity of publishing the letters and papers of someone of outstanding importance in Scots affairs who has only recently died, or even of someone still living, I personally should be glad if we seized it eagerly. I am at all events extremely pleased that we are publishing, under the editorship of Mr Ian Macdougall, the Minutes of the Edinburgh Trades Council, 1859-76. Since the later of those two dates is not far short of a century ago, this may seem a modest venture into modernity. But I hope it will prove a pioneering venture not merely into a field where (I believe) no record-publishing society in Great Britain has gone before us, but also in getting us used to the idea of taking nineteenth- and twentieth-century records in our stride.

This whole question of modern records raises of course one point of fundamental difficulty. A great many modern records are not susceptible of concise publication. To the extent that both central and local government have advanced inexorably into far broader fields of the life of modern society, and have themselves published in blue books and white papers and untold legions of reports some sort of record of their proceedings and achievements, we as an historical publishing society are not directly concerned. But what should interest us, as historians, is the beginnings of things, whether it be the Land Court or hydro-electric power, a new university, the Crofters' Commission, cooperative movements or any of scores of aspects of Scottish life that are worth the historian's attention. Such beginnings are rarely recorded in official publications, but may sometimes be traced in private or informal papers. Here we come

up against a further difficulty: the habit of writing coherently, of setting down on paper not intended, or at least not immediately intended, for public scrutiny, thoughts, ideas and proposals on serious matters, has been dying out steadily for the past two or three generations, and may have vanished entirely in our lifetime. The design of modern flats, houses and bungalows, to say nothing of current social custom, is hostile to the accumulation of sizeable private archives. Nevertheless, I do not think we should despair entirely of our own century: there is sure to be more than we imagine in the way of recent or present-day historical record in private possession, and if our Society can bring some of it to light and give it permanence, so much the better.

In our late President's edition of the *Proceedings of the Estates*, we breached – rightly, I believe – our rule anent unpublished material (although I notice that the wording of the rule still stands). I think the rule has outlived its undoubted value, and that we should consider from time to time – more cogently, from available editor to available editor – publishing new editions of fundamental sources. We already have the Chronicle of Holyrood to light the way. We ought to have the Chronicle of Melrose (for a collotype facsimile, however fine, is not the answer to every need), and we ought to have a definitive edition of the *Scotichronicon* in all its versions, one of the most remarkable efforts in historiography produced anywhere in later medieval Europe. We might also consider an occasional volume of documents gathered from various sources, whether previously printed or not, designed – with the help of a more generous introduction than we have usually allowed – to illustrate some significant theme of history, especially perhaps of social, economic and ecclesiastical history. Scotland possesses a vast quantity of record relating to agrarian and peasant society and the manner in which it exploited its resources of arable,

pasture and forest. Much of this is in print, scattered through innumerable publications many of which are now rare and growing rarer. Much is still in manuscript, and will remain so (as far as we are concerned) if we look too severely on selections gathered from different sources. We have in any case, in the late Dr Reid's calendar of *Wigtownshire Charters*, a recent precedent for such a collection, and we should not exclude other collections in which the documents might be printed in full but assembled to illustrate a particular theme.

In saying all this, I do not mean that we should lose sight of our responsibility for presenting the public and posterity with accurate record. We have moved far from the days when public record was held to preserve and enshrine inviolable truth, and when it was thought possible, in a rather solemn and Germanic fashion, to pin down a chronicler or a diarist or a letter-writer to one single, indefeasibly authentic text, rather as one might pin down one choice butterfly upon a board and keep it there for all time. But in too many quarters our realisation that 'historical record' is bound to be fluid because it reflects the inevitable fluidity of human thought and speech has been turned into a belief that 'historical record' has as much or as little value as the individual historian cares to place upon it. The true position, surely, is that the historian's task has simply become more difficult than he used to think, or – to quote the gloomy but penetrating words of our distinguished Corresponding Member of Council – 'the longer one studies history, the harder it gets to arrive at results which even the author, let alone the reader, can decently consider to be the truth'. But I am sure that Professor Galbraith would not mean this to justify an indifference towards historical fact, and it will be a long time before documents cease to form the bedrock of historical fact. I have myself been taken to task recently for spending too much effort and money on the minutiae of twelfth-century charters, and have been re-



minded that 'the reader today who has doubts about the text or a special interest in palaeography or diplomatic will always go past the printed version and obtain a microfilm or photostat'. I can only say that I wish this hypothetical reader the best of fortune and entertainment as he sets out to obtain his microfilm or photostat of a text at the bottom of a damp tea-chest under the billiard-room stairs of a mansion occupied only in August; in the Town House of a small northern burgh with a part-time town clerk, no photographers, and a strict rule that records may never be removed from the premises; or in a deed-box of a firm of country law agents whose professional scruples prevent alike the wasting of their own staff's time and the intrusion of a stranger for the purpose of making a search. More seriously, again to quote my friendly critic, 'an editor must have the courage of his convictions', and if he is convinced that facts of historical significance are contained in the very make-up and the precise wording and punctuation of the record he is publishing, it will be his duty to make this clear, and in such a manner that these points may be at once apparent. In so doing, he may not be saving himself and his publishers effort and expense, but he will undoubtedly be saving the effort and expense of others. In the matter of fidelity to the text, the Scottish History Society has been accustomed to set a very high standard indeed, and one example drawn from our own volumes will illustrate what I mean. Among the charters of Inchaffray abbey there are a number of original royal charters to which, as it happens, I have not so far been able to obtain access. Two in which I am interested were printed in facsimile, the rest not. But because of the punctuation and use of capitals, faithfully reproduced by the society's editor, I am able to say with some 99 per cent of certainty which of the royal scribes wrote two of the printed charters which I have not yet seen, either with my own eyes or in a photograph. To this sort of textual accuracy, making allowance of course for

the nature of the text concerned, and to the greatest editorial candour towards readers, I hope and trust we shall always adhere. Nevertheless, in spite of the severest efforts to be conscientious, in spite of an abundance of photographic and mechanical aids, in spite of the best printing skills, it remains a surprisingly difficult task for an editor to give his readers an honest and adequate text of an historical document. We shall never attain to perfection, but I hope we shall always enjoy the reputation for publishing our records in a reliable form, even if we know nowadays that nothing in this respect is final.

It has frequently puzzled me how our older historians could manage to produce so much, including some work of the highest quality, with the absolute minimum of technical aids and equipment. In Scottish historiography, it is not just that we are hardly yet out of the stage when every craftsman had to buy and keep all his own tools – we are hardly out of the still more primitive stage when he had to make them as well. Probably the genealogist and family historian was earliest in this field, and here of course we have the *Scots Peerage* and some useful works on heraldry and on the registers of testaments, baptisms, marriages, burials, etc. Some splendid work has been and is being done on the Scottish coinage, although not enough notice has been taken of it by historians. We have Dunbar's *Scottish Kings* and Dowden's *Scottish Bishops*; but we have no really adequate Handbook of Scottish Chronology, despite the valiant contributions to the second edition of the Royal Historical Society's Handbook of British Chronology. What I should like to see is a volume something along these lines containing a really useful variety of basic information on systems of dating, rulers and parliaments, major office-holders, etc., throughout the pre-Union period, and with certain appropriate information carried down to a much more modern time. I do not think such a volume need take more than about five or six years to produce, and

I do not see why its publication should not be undertaken by this society. I should also like to see much more modest volumes – perhaps even durable pamphlets – produced giving the essential particulars of such important tools of the historian's trade as currency, weights and measures, including land measures, technical terms used in various trades and industries, etc. It may be that all this information is in fact available in print somewhere. My plea is that it should be made available in the most accurate and up-to-date form and more or less all together. Again, I do not see why this task should not be shouldered by our Society. If our assumptions with regard to our future financial position are not over-sanguine, and we actually manage to build up a modest balance of funds, then this would seem an entirely proper way of spending it.

I should like in conclusion to raise two more general points about our possible future activities, one domestic and the other as it were external. Sober and fruitful as the Society's work has been in the past, I have a feeling that at times we have been too inward-looking and remote from any general or popular historical interest in society around us. I realise, of course, that we are far from being the only historical society in Scotland, and I have no wish for us to poach or to monopolize. But I am sure that we should make a positive contribution to what I believe is a growing public interest in and appreciation of Scottish history. In recent years there have been a number of highly successful conferences on different aspects of our history. There is no mistaking the fact that there is a real public demand for such gatherings, and this welcome trend should be encouraged. I am not out to tread on anyone's toes when I ask whether in the future the Scottish History Society might not be associated with these conferences and come to regard the convening of them every few years as a normal part of its activity. The Society has always had close, though indefinite, links with the universities

and schools, through individual members. I should like to see these links made stronger, so that there might be some occasions when the appropriate teachers, pupils and students in the schools and universities might join with members of the Society in particular projects or week-end courses or summer schools. It might also be no bad thing, as far as concerns our contribution to the public appreciation of the history of Scotland, if the Society could be consulted in a friendly fashion by those whose notions of making our history come alive for us run to the revival of religious orders, the setting up of flagpoles and the staging of large-scale historical pageants – but perhaps I should not trespass across the march, duly perambulated by the men of old, which divides history from romance, and in any case, short of a professional secretariat and a permanent information bureau, there will always be limits to what we as a Society can do in this respect.

My final reflection concerns our standing in the wider world. My own professional career as an historian, not really through any fault of mine, has been spent wholly in English universities. I have never, unfortunately, had the opportunity to work as a teacher either across the Atlantic or on the continent of Europe, to say nothing of places farther afield. But I have met American and continental historians, and my impression has been that while they invariably shew a polite, sometimes an enthusiastic, interest in Scottish history, their starting point is a deep-rooted disbelief in its existence. A friend of mine, one of the most learned among the younger historians of western Europe, has recently produced a select guide to medieval historical source material – *Kurze Quellenkunde des westeuropäischen Mittelalters* – which will probably enjoy a wide circulation among continental universities and schools. It contains almost nothing for Scotland under any of the numerous categories of sources, texts and guides into which the work is divided. This book is more likely to be symptomatic than exceptional. It is only one of scores and

indeed hundreds of works of historical science which are being published under the impact of the European Community. It can hardly be seriously doubted that before this Society is a hundred years old Scotland will have been brought into some much closer association with the continental nations of western Europe than was the case in medieval times or in the sixteenth and seventeenth centuries. It will of course be argued that when Great Britain 'goes into Europe' most of British history since A.D. 410 will cease to be relevant, whether it be English, Scottish or anything else. This is not, I think, how it will be seen on the Continent, where there will be a quickening of interest in this island's history. It does not seem fanciful to predict that so far as the new larger Europe is concerned, 'British' history will be no more than the history of England, and that Scotland will suffer a not unfamiliar retrospective absorption which would find its justification in the view expressed by Professor Van Caenegem, in the book I have just mentioned, that 'the political, institutional and cultural unification of the British Isles has proceeded from England outwards'. So long as the Scottish History Society exists, there is some guarantee that historical phenomena of the utmost interest in many varied spheres of human life, which happen to have developed within a Scottish context and to have been moulded by Scottish minds, will not be entirely overlooked and will be available for study. But in this matter we need, as a Society, to exercise some positive vigilance. On occasions when historians meet internationally in conference or in congress we should try to see that it is not automatically assumed that when a representative English historian has sat down, the whole of British historiography has had its say.

Not everyone will wish the Scottish History Society to embark on all the activities which I have sketchily adumbrated. No-one will imagine that even if the Society takes up certain of these projects it will be able to carry them out without finding

rather more willing executants, whether as editors or as members of the Executive. Our rules have provided for a council of twelve since the earliest days, when our total membership was restricted to 400. Today we hope for, and are slowly but surely reaching, a considerably larger membership, and there might be a case for enlarging the council and allotting specialist or *ad hoc* tasks from time to time among its members. I believe that the outlook for the future is more hopeful now than it has been for a very long time. We have an increasing number of promising and scholarly young historians, and we have undoubtedly an increasing interest in our aims and activities on the part of the historically educated and sympathetic public. I believe that our aims, which have always been humane and enlightened, can without harm be slightly enlarged. The task and function of the Scottish historian, it seems to me, are precisely those of all historians, so aptly expressed by Marc Bloch: 'There is only one science of men in time, which constantly needs to bring together the life of the dead with that of the living'. If our work assists that 'bringing together' we shall deserve our hundredth birthday, and many happy returns beyond that.



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OF THE  
SCOTTISH HISTORY SOCIETY

1886-1966

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- 1933 Principal Sir Robert Sangster Rait
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- 1940 John, fourth Marquess of Bute
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- 1946 The Rt Hon. Lord Cooper
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- 1962 Dr Evan Whyte Melville Balfour-Melville
- 1963 *Office vacant*
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- 1965 Grant Gray Simpson









