

ART. XIV.—*Memoir on the Tings of Orkney and Shetland.*

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THE present memoir may be prefaced by a brief statement of the early annals of the two groupes of islands named Orkney and Shetland.

Near the close of the first century, when Agricola sailed round Britain, Orkney was inhabited by a people of whose race, whether Celtic or Gothic, not the least light is to be elicited from the pages of history. In about a century and a half afterwards, this country was described by Solinus as a perfect desert. Orkney and, probably, Shetland were next the lurking places of Saxon rovers, who were routed, A. D. 368, by Theodosius. The Scandinavian Vikingr then gradually succeeded in the possession of these islands. They were the progenitors of the present race of inhabitants in Orkney and Shetland. Three or four centuries afterwards, these tribes were subdued by Harold Harfagre, who annexed them, under the form of a colony, to the government of Norway.

This is the earliest history of Orkney and Shetland, which it is necessary to keep in view while I explain the origin and practice of the Scandinavian *thing*, named by us a Ting, or court of justice, as it formerly existed in these Norwegian colonies.

It will be shewn, first, that the ting was, by our Gothic ancestors, either held on the site, or was made an appendage of the hof or temple, which was dedicated to the rites of the Edda.

In the second place, an inquiry will be instituted into the

general forms and customs of the ting, prior to the introduction of Christianity into Scandinavia and her colonies.

Next will be noticed the changes which took place in the forms and customs of the ting, after Christian churches had been established.

And, fourthly, will be described the latest practice of the tings of Orkney and Shetland; under which head will be explained, in due order, the three species of tings which formerly existed in these islands, namely, the tings held for the preservation of good neighbourhood, the circuit tings, and the al-ting.

SECT. I.—*Evidence that the Ting was, by our Gothic ancestors, either held on the site, or was made an appendage of the hof or temple, which had been dedicated to the rites of the Edda.*

In this division of the memoir, it will be expedient previously to advert to the different religious tenets of the Celtic and Gothic tribes, who in succession possessed the west of Europe.

The Celtæ were the first inhabitants of the west of Europe. A Gothic or Teutonic people, issuing from the vicinity of the Euxine and Danube, next succeeded in establishing themselves in the regions possessed by the Celtæ, speaking a very different language, such as is perpetuated in the Scandinavian dialects of Norway, Sweden, Denmark, Iceland, and Ferro, or in the Teutonic dialects, of which the German, Dutch, English, and Lowland Scotch, are varieties. It was not, however, until the third or fourth century, that they became formidable to Europe, when they extended their encroachments to the Roman boundaries. The Celtæ, already limited in their territories, then became lost as a distinct people, or were compelled to retire to such fastnesses as the Highlands of Scotland, Ireland, Wales, Cornwall, and Armorica afforded.

The Scythian or Gothic tribes of the North-west of Europe embraced a religion very different from that of their predecessors

the Celtæ. The religion attributed to the latter was named Druidic, the chief principle of which was that the soul never dies, but transmigrates—a doctrine said to have inspired them with courage and a contempt of death. The Druidic religion is supposed by Cæsar to have originated in Britain; but as it is far superior to any thing which can be expected from Celtic tribes in so savage a state as the Britons then were, a suspicion has long since arisen that it was derived from some more refined people; and while some antiquaries have even attempted to deduce its tenets from the Brahmins of the East, with whom they have supposed that a communication was held so far remote as the patriarchal ages; others have, with more plausibility, attributed the system to some refined nation, who had actually visited and formed a settlement in the British islands; and no people has answered this requisition so well as the Phœnicians, who had long been in the habit of resorting to Britain for the sake of the metals which it contained. This hypothesis, which a century ago was a favourite one of archæologists, has been recently revived by Mr Sharon Turner. “Of the Druidical monuments,” he observes, “we have no monuments remaining, unless the circles of stones which are to be seen in some parts of the island are deemed their temples. Of all the suppositions concerning Stonehenge and Avebury, it seems the most rational to ascribe them to the Druidical order; and of this system, we may remark that, if it was the creation of a more civilized people, none of the colonisers of Britain are so likely to have been its parents as the Phœnicians and the Carthaginians. The fact so explicitly asserted by Cæsar, that the Druidical system began in Britain, and was thence introduced into Gaul, increases our tendency to refer it to these nations. The state of Britain was inferior in civilization to that of Gaul, and, therefore, it seems more reasonable to refer the intellectual

“parts of Druidism to the foreign visitors, who are known to have cultivated such subjects, than to suppose them to have originated from the rude unassisted natives” (a).

I shall now glance at the very different tenets which were entertained by the Gothic tribes. In that most curious record of their doctrines, the Edda, several subordinate tenets appear relative to the origin of giants, of dwarfs, of the proper human race, and of the family of the Asæ, of whom Odin was the most powerful, while Thor was most renowned for strength and valour. But the leading feature of their religion consisted in the personification of an evil principle, under the name of Sertur, who, at the end of the world, would doom the whole universe to flames, when Odin, with the gods, giants, and dwarfs, would be consumed. An universal and beneficent father (Alfader) would then come from his lofty abode to render divine justice, and to prepare a new place of punishment for perjurers, assassins, and seducers, as well as a new earth, lovely and delightful, for good and just men. “Thus,” as Dr Percy has remarked, in the distinction he has so ably drawn between the Teutones and the Celtæ, “while the Druids taught the transmigration of souls, the Edda of the Teutonic nations had a fixed elysium, and a hell.”

In the Edda of the Northmen, two systems of religious belief, each referable to very different dates, have been evidently incorporated. The more ancient of these involves the worship of the sun, the moon, and the stars. The later system has been founded on the deification of heroes, as of Odiu, who was the conductor of the Gothic tribes of the west of Europe in their emigration from the city of Asgard, of Thor, and of the rest of the family of the Asæ. Hence we find that the oldest temples of Scandinavia and her colonies were dedicated to the heavenly bodies,

(a) Turner's History of the Anglo-Saxons, 4th Edit. vol. i. p. 74.

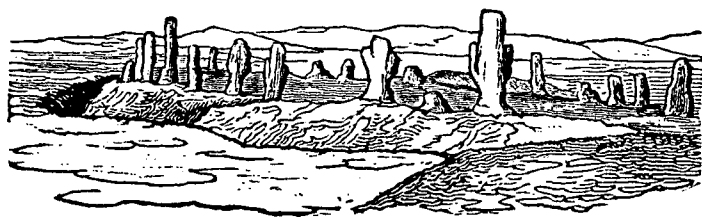
and were open to the sky. Of this description was the very ancient circular range of upright stones at Stennis, in the island of Pomona, in Orkney, which was reared in honour of the sun; while a contiguous semicircular pile was dedicated to the moon. These monuments of a remote era display a rude magnificence little inferior to that of many similarly planned structures which are to be found in the south of England. A brief account of them may now be given.

The site of these remarkable piles of stones is on the banks of the Loch of Steinhouse, which extends for several miles through the country in a direction from south-east to north-west, and falls into the sea at Stromness. The temple dedicated to the moon is situated on a tolerably level piece of ground on the east of the lake. Its semicircular form is indicated by an investing mound of earth; on the margin lofty stones were placed erect, which were from fourteen to eighteen feet high, and about five broad (b). They were originally about seven in number; four remain. The semicircle opens to the south. The diameter of the range, if the circle were completed, would be about one hundred feet. A large horizontal slab, supposed to have been an altar, is in the centre. At a little distance from the temple is a solitary stone about eight feet high, with a perforation through which contracting parties joined hands when they entered into any solemn engagement, which Odin was invoked to testify (c). If we proceed in a westerly direction from the temple of the moon towards the edge of the lake, following the line which is described

(b) “A stone lately pulled down,” says Dr Traill, “had two feet only buried in the earth; but it had been firmly wedged by several blocks of stone fixed around its base. This stone measures 18½ feet by five feet, and is 22 inches in thickness.”—See article *Orkney* in Dr Brewster's Edinb. Encyclopædia, vol. xvi. p. 5.

(c) This stone, along with two pillars of the semicircle, was barbarously destroyed by a farmer in the year 1814.—See Dr Brewster's Edinb. Encyclop. vol. xvi. p. 5.

by three or four stones which are to be met with at intervals, we shall observe before us the projection of a westerly neck of land where the banks nearly meet. The channel is at this place so narrow that it may be forded across even when the tide flows. But here there is a bridge; and at the place where we commence crossing it, there stood (or perhaps may still stand) a stone, computed to be sixteen feet high above ground, and about four feet below, the breadth four feet, and the thickness eighteen inches. It was called the watch-stone. After crossing the bridge, we arrive at the projecting point of land from which the course of the lake appears to be diverted in a north-westerly direction. We here meet with a circle of standing stones, called the Temple of the Sun. The stones are placed erect upon the edge of a trench which is dug around them, the area of the circle being elevated above the adjacent ground. The diameter of the circle is 336 feet. The number of stones, which originally formed the temple, is supposed to have been thirty-five, but this is uncertain; sixteen were standing in the year 1792, and eight had fallen to the ground. The entrance to the temple, as it still appears, is from the east, but there is an avenue of equal size to the west. A solitary stone (supposed to have been a sacrificial stone) stands without the circle on the south-east.



From this description, it is evident that the circular Temple of Steinhouse resembles in its plan those which are ascribed to the Druids in the south of England. But the archæologist of Wales

would deem it the greatest of heresies to doubt that the columnar circle was not, wherever it occurs, of pure Celtic origin. He would probably contend that the Temples of Orkney had been used by Celtic tribes, and, having been abandoned by them, had subsequently become occupied by Gothic invaders, and dedicated by them to the sun and moon. But circular ranges of upright stones occur in countries which, from their earliest period of history, have been exclusively peopled by Gothic tribes. Iceland may be adduced as an instance, which in the ninth century was possessed by a Scandinavian colony from Norway. The first object of this people in landing was to erect a temple to the god Thor, which is described in the Eyrbyggja Saga as a circular range of upright stones. And this description, as Sir Walter Scott has very properly remarked in the abstract which he has given of this saga, "may confute those antiquaries who are disposed to refer such circles to the Celtic tribes, and to their priests the Druids" (*d*).

In consonance with a later system of religious belief, namely, Hero-worship, the temples dedicated to the heavenly bodies began to be associated with the names of the family of the Asæ. The worship of the sun, for instance, was in time confounded with that of Thor. With the view of obtaining a propitious year and fruitful seasons, it was customary to hold a Iuul feast in honour of Thor or the sun. The reason for this substitution is naturally involved in great obscurity. Thorstein, a priest and warrior of Iceland, believed in that god as the most mighty who had created the sun. From such a notion as this, therefore, Thor, the

(*d*) Illustrations of Northern Antiquities, page 480.—My arguments against the claim of the Druids to stone circles have been published in my account of the Shetland Islands. See also a dissertation on this subject by Dr Macculloch, which has appeared in his Highlands. He has wielded the hammer of Thor with very signal success in aid of the demolition of the Druidic theory.

Hercules of the Northmen, might in time have been invoked along with that heavenly body, which eventually became his symbol. We thus see a reason why a stone pre-eminent above all the others in Stennis should be placed near the bridge which immediately led to the circular temple of the sun. This monument was usually named a Thor-stone. The moon, however, had the precedence in the Gothic cosmogony, under the notion that the evening brought forth the day. Hence it is not remarkable that Odin, the father of the gods, should be found in Orkney to have his rites intermingled with those of the orb which rules the night; for this fact is indicated by the stone through which contracting parties joined their hands being still named the Stone of Odin. At a later stage of the process of this species of worship, rude and uncarved stones themselves (*mæsta simulacra deorum*) were substituted for the gods of the Edda, and had divine worship paid to them. This was the case at the close of the 10th century in Iceland (*e*). The Laplanders, however, among whom the worship of Thor was introduced, formed their idols of rude trunks of the birch tree (*f*). The rites originally paid to the sun and moon were at the same time less regarded; and hence

(*e*) In Gilia erat lapis, quem majores eorum religiose coluerant, utpote a genio suo tutelari inhabitari tradentes. Kodran prius se baptizatum iri negavit, quam nosceret, utrum plus posset Episcopus an genius lapidis incola. Accedit Episcopus ad lapidem, et cantum super eum recitat, usque adeo ut disrumperetur. *Kristni-saga. Hafniæ, A.D. 1773, p. 11.*

(*f*) They make these idols of birch, the head out of the root, the body out of the trunk. For birch growing commonly in fenny grounds has its root round, which, sending forth some lesser branches of roots, may be easily fitted for the shape of a man's head. They make the image of Thor (or Tiermes) out of wood, with a hammer in his hand: and drive an iron nail and small piece of flint stone into his head, to strike fire with when he pleases, or as an emblem of the fire which they worshipped at the same time in the image of Thor. The hammer is the ensign of Thor, which distinguishes him from the rest. The idols of Thor are nothing else but large trunks of trees, being on the top shaped like the head of a man.—*Scheffer's Lapland. (Transl.)*

the frequent use of covered temples instead of such as had been open to the heavens (*g*).

The more ancient temple of the Scandinavians appears to have been carefully fenced, and therefore it was named a *hof*; which, according to Scheffer, merely implied that "it was not built "with walls and with a roof, as our modern temples are, but "only enclosed with a certain fence; for the word *hof* implies "no more—*hof* signifying to this day any place enclosed round "about, though open at the top. Thus the halo by which the "Latins understand the circle round the moon is called moons-*hof*" (*h*). According to this definition, the stone circle of Stennis was in every sense of the word a *hof*; and by this name I shall in future designate every temple of the same kind to which the Druids cannot lay claim. The circular *hof* of Steinhouse, dedicated to the sun, was invested with a fosse thirty-five feet broad and from nine to fourteen feet deep; and when covered temples began to be in use, they were still surrounded by a *hof* or fence, and were thus entitled to the same name that was given to the more early fane, which was an open one (*i*).

(*g*) "The Jarl conducted Sigmund to a small elevation within the wood, where they "found an inclosure formed of wood, and a house comely and adorned with gold and silver. "Hacon, Sigmund, and two others, entered the building, which contained many glass "windows, so that light was every where diffused. Many images of the gods stood there; "and upon a bench opposite sat a woman [an image] gorgeously attired with a gold ring "on her hand."—*Abstract from the Færeinga Saga.*

In some parts of Britain, Odin was worshipped in a cave. Near the town of Manchester there formerly existed a cave, which, in old records, was named the Den of Woden. It was afterwards used as a Christian temple. This was indicated by the crosses which appeared among older grotesque ornaments that were referable to a Pagan period. I recently visited the place, but found that the owner of the ground had completely defaced the cave, and obliterated the whole of the sculptures, in order to save his field from antiquarian trespasses.

(*h*) The Danes at the present day call the sun's parhelion *hof om solen*.

(*i*) Scheffer, in his Lapland, has the following remarks on this subject:—"They

When a hof was formed, it was generally placed under the care of a priest, who was named a Godordsman or Gode. This personage was frequently distinguished by the name of the deity whom he particularly worshipped; thus, in Iceland, the chief priest of the hof of Freir was named Freirsgode (*k*). The Godordsman did not exercise his sacred functions to the neglect of his profession of arms; for Rolf, a noble Norwegian, is recorded to have been both a Godordsman and a warrior (*l*). He was also very commonly the forestander or chief of the district in which he resided.

“approached, says the history of Olaus, to a certain grove, and in it they found a very high fence, the door of which was locked. Here you find the fence and the door mentioned, by which those were excluded who were not to be admitted to the worship of Jumala. In this they did imitate most of the other ancient nations, who, though they commonly worship their gods in groves; yet were they always careful to defend the sacred residence of their idols by a sufficient fence or *hoff*, which is the same with what the Romans call *Templum*.”

(*k*) In Helges og Grims saga, we have an illustration of the fence which was considered indispensable to the more modern temples. Droplauge's sons, upon their wandering in a snow storm, were surprised to remark ice under their feet, notwithstanding they were far from a river. They went therefore to see, and came to a place, where they found a fence (*virke*) higher than Helge could stretch. They paced it round about; it was circular. A door was upon the fence with a shutter, and well fastened. Helge told his brother that they were come to Berse's sacrifice-house, and that the ice which they had traversed was upon Berse's fountain. Grim exclaimed, Let us immediately depart hence. No, said Helge, I must within, and see how this domicile is furnished. He approached the door, struck the fastening off with his sword-hilt, and broke it open. Thereupon went they into the temple, which was a covered one.

(*l*) Hrafinkel sailed, in Harold Harfagre's time, with his father Halfred to Iceland, where they landed in the Eastland. After much wandering about, the father settled himself in Jœku'sdale, which was fully inhabited. The son went farther into the land to a fruitful but uninhabited dale, which he took into his possession. There he offered up a great sacrifice, and built a godehouse. He lauded no other god save Freir, with whom he shared his best valuables. Soon he cultivated the whole dale, and gave land to all such as wished it, but reserved to himself the supremacy. He obtained then the godord, and was called Freirsgode.—*Hrafinkel Godes Saga*.

The hof or temple was devoted to four important uses: *first*, to divining purposes; *secondly*, to sacrifices instituted for the propitiation and conciliation of the deities of the Edda; *thirdly*, to the ratification of solemn compacts or agreements; and, *fourthly*, to judicial and legislative acts and decrees. The three first uses of the hof I shall notice in a comparatively slight manner; the fourth will be explained at greater length, as it relates to the more immediate object of this dissertation.

*1st*, The hof was devoted to divining purposes. It is well known that the Scandinavians had among them scalds, who, with talents analogous to those of the Celtic ovates or bards, composed and performed sacred and prophetic hymns, and were skilled in physic and magic. They had even female sybils deified after death under the name of Nornæ, or destinies, who, like the druidesses, were gifted with the faculty of foretelling future events. In the earldom of Orkney, they were consulted within the recesses of a gloomy cavern (*m*). But it was at the hof or temple that divination was chiefly practised. Among the ancient Germans, after a solemn invocation of the gods, lots and auguries were determined by the priest.

*2d*, The hof was devoted to sacrifices which were demanded for the propitiation and conciliation of the deities of the Edda. This use of the hof is evident from numerous passages which might be extracted from the Sagas. Thorolf, so named from having the custody of the hof of Thor, because he had housed a friend who

(*m*) *Torffsei Orcades*, p. 36. A certain man named Darradus explored the cavern of the Nornæ. He observed, through an opening intended to convey light, twelve women dooming, in a wild song, the fate of the warriors who were to fall with the Earl of Orkney in an engagement on the Irish coast. They were employed on a strange loom, where human entrails furnished the materials for the warp, foemen's heads for treadles, swords dipped in gore for shuttles, and darts for woofs. When the incantation was ended, the women each tore a portion of the cloth, and, mounting their horses, six rode away towards the north, and six to the south.

had been declared an outlaw, was menaced by Harold Harfagre with banishment if he did not deliver himself up to the king's power. Thorolf repaired to the temple of Thor, and, after having made a great sacrifice, questioned the god, who was his friend, whether he should venture to appear before the king, or set out for the land which Ingulf had two years before discovered. The answer of Thor was to repair to Iceland.

The offerings made to the deities of the Edda were of various kinds. "In the earliest ages," remarks Mallet, "the offerings were simple, and such as shepherds and rustics could present. They loaded the altars of the gods with the first fruits of their crops, and the choicest products of the earth: afterwards they sacrificed animals. They offered to Thor, during the feast of Iuul, fat oxen and horses; to Frigga, the largest hog they could get; to Odin, horses, dogs, and falcons, and sometimes cocks and a fat bull. When they had once laid it down as a principle that the effusion of the blood of these animals appeased the anger of the gods, and that their justice turned aside upon the victims those strokes which were destined for men, their great care then was for nothing more than to conciliate their favour by so easy a method (*n*)." In a later period nobler victims were required, and these were selected from among the human race. The annual sacrifice of men as an offering to Baal, or the Sun, with whom, in a later system of hero-worship, Thor and even Freir were occasionally confounded, is preserved to us in the popular and well known ceremony of the Baal-ting, which means a judicial

(*n*) Mallet's Northern Antiquities. Translation by Dr Percy, vol. i. p. 133.

In the Floamanna-saga, we read that a proselyte to Christianity, Thorgil, was long driven about upon the sea, and at last was in want of provisions. In a dream, Thor appeared before him with menaces for not invoking him, which Thorgil repelled with disdain. But when the Thunderer again demanded that he should pay attention to him, Thorgil, the day after, caused an ox which, from the time the animal was a calf, he had promised to Thor, to be cast overboard.

assembly, held in honour of Baal, where, upon May-day, lots were cast who should be the devoted person. The penalty now is not that of life, but to leap three times through the sacrificial flames (*o*).—In Iceland, when the gospel was first preached in that country, the Heathens, with the view of averting the contagious spread of Christianity throughout the land, ordered that two men from each fiording should be rendered up to the gods; upon which some of the converted Icelanders offered to be victims for the sake of their master Christ. The familiarity of the Scandinavians to human sacrifices is well illustrated in the Jomsvikinga saga.—"Then went Hacon the Jarl into a wood upon the island Prinsigd to invoke Thorgerde Horgabrud for a victory to Norway; but she was deaf to him. He observed her anger, and made an offer of different men as a sacrifice of blood. She would not accept them. In vain did he increase the offer; she still refused. He even prostrated himself to the earth before her. As a last attempt, he presented to her his son Erling, a beloved child of tender age. She appeared to accept him. The Jarl then gave directions how his son should be sacrificed; and, after surrendering the youthful victim to his thrall, Scopte Karf, who put into effect the bloody command, returned to his fleet, and renewed the fight. As the evening drew nigh, a furious tempest rose from the north, and stood against the Vikingr of Jomsborg, whose destruction began. The two troid-queans, Thorgerde and her sister Yrpo, were seen on the prow of the Jarl's ship, from each of whose fingers flew arrows, each arrow being a man's death. Victory declared for Hacon. On the morrow, the Jarl, after taking his repast, ordered the Vikingr to be put to death. The thralls plaited wil-

(*o*) The attempt of antiquaries to derive the origin of this custom from Celtic tribes, and, in fact, to confine it to them, is a decisive failure.

lows in the hair of the prisoners, and Thorkel Leire cut off their heads." (*p*)

These examples are sufficient to shew the great frequency of sacrifices; and hence we are entitled to expect that the remains of the hofs in which these rites took place ought still to exhibit in their form or structure some indications of the custom. It will accordingly be found that either a single incumbent or upright flat stone, a cromlech or a cairn, are the usual appendages to a heathen temple. In the *Eyrbyggja Saga* it is mentioned, that Thodr Geller, by the consent of the

(*p*) A romantic narrative of a similar cast appears in *Gœthrek's* and *Hrolf's* Saga. King Vikar and his men laying at a holm for some days, interrogated the oracle in what way their departure could be speeded. Odin replied, that he would accept a man out of the army, who must be hanged. The lot having fallen upon the king, his counsellors proposed to save him by the sacrifice of a calf, and the application of its entrails to the purpose of a rope, which it was expected would break, and thereby indicate the god's acceptance of the lesser sacrifice. But with Odin the juggle would not pass. The king approached the fatal fir-tree. Starkadr, his secret enemy, bent down a bough, to which he attached the entrails of the animal, and secured them around his sovereign's neck. He then drew forth a reed which he had received, with secret instructions, from the king of the gods himself, and touching his royal master with it, exclaimed, "Now give I thee to Odin." The reed became a spear, which instantaneously infixed itself in the heart of the king. Starkadr at the same moment let loose the bough. The entrails became equal to withies in strength; the elastic branch sprang up, and the king remained suspended in the air.

In another story of the same romantic kind, we read that Erik went to Odin's hof, and proposed to the god, that at the expiration of two years he would offer up his own life as a sacrifice, on condition that in the battle in which he was about to engage he should obtain a victory. Shortly after, he saw a man enter the hof, with a long hat, who gave him a reed, which he was directed to shoot over *Styrbiœrn's* army, repeating the words, "Odin will have you all." This was done. Blindness struck *Styrbiœrn* and his army, and they were routed. Some of them were destroyed by the falling of a mountain.—*Thattr om Styrbiœrn.*

In the *Hervarar Saga*, it is related that, in a year of famine, the wise men declared that the noblest child in the land should be sacrificed. *Heidrek* promised to give up his son, on condition that each alternate man of the people would swear to be his followers. With this army he took king *Harek* prisoner, and sacrificed him and his men to Odin.

men of the West Fiording, removed the fiording-thing to a new site. A doom-ring was to be seen there, where men were doomed to sacrifice; and attached to that circle stood a *Thors-teinn*, upon which the spines of the victims were broken. The stone is said to have long retained the crimson colour with which it was imbued. In the temple of the moon at *Steinhouse*, in Orkney, where the rites of Odin were celebrated, it has been observed that in the front was a large horizontal slab, which was the sacrificial stone. It is a current belief that, upon this stone, a victim of royal birth, commemorated in the ancient sagas, was immolated. *Halfdan* the long-legged, the son of *Harald* the fair-haired, in punishment for the aggressions of Orkney, had made an unexpected descent upon its coasts, and acquired possession of the Jarldom. In the autumn succeeding, *Halfdan* was retorted upon, and, after an inglorious contest, betook himself to a place of concealment, from which he was the following morning unlodged, and instantly doomed to the *Asæ*. *Einar*, the Jarl of Orkney, with his sword, carved the captive's back into the form of an eagle, the spine being longitudinally divided, and the ribs being separated by a transverse cut as far as the loins. He then extracted the lungs, and dedicated them to Odin for a perpetuity of victory, singing a wild song, "I am revenged for the slaughter of *Rognvalld*—thus have the *Nornæ* decreed. In my fiording the pillar of the people has fallen. Build up the cairn, ye active youths, for victory is with us. From the stones of the sea-shore will I pay THE LONG-LEGGED a hard scat."

There are also in the hofs of *Steinhouse* other indications of the sacrifices paid to the *Asæ*. A lively tradition prevailed that victims were bound to a perforated stone, (*q*) which has been described

(*q*) My authority is the description of an old drawing, made nearly half a century ago, of the temples of *Steinhouse* by the Rev. Dr Henry. A copy of it is given in page 122 of this volume.



as standing without the semi-circular temple of the moon (*r*). At the distance of a few paces from the contiguous circular temple of the sun, was a solitary upright stone, which was likewise said to have been a sacrificial pillar. A much loftier stone, elevated sixteen feet above the ground, was apparently a Thorsteinn. Near the circle was a mound, which, from the command it had over a large flat plain, was named a watch-tower. Notice was probably communicated from its summit if foemen approached to interrupt the immolation of the victims who were devoted to the gods.—An altar laid over with iron was also customary: upon this was preserved the sacred fire which was never to be extinguished. Here, likewise, was placed the brazen cup which was destined to receive the blood of consecrated cattle and of men, with which the idols and the persons of such as attended the sacrifice were sprinkled.

But occasionally the mode of sacrifice differed. The victims were rolled into a well or pit named a sacrifice-kettle, and, if taken up again, were either hanged in a sacred grove, or their bodies burnt. Such a well or kettle appears to have existed in the island of Unst, in Shetland. On the slope of a beach near the sea, a deep precipitous cavity is produced by the natural decomposition of a friable rock of gneiss, the bottom of which communicated with the ocean, so as to admit the flow of the tide. The cavity is attributed to a giant named Saxe, whose name an adjoining Vord or Watch-hill bears. The appellation which the well has received of Saxe's *kettle* indicates the use to which it was applied. Another mode of sacrifice was to hurl the victim over a rock. A voluntary dedication of this kind was often made to Odin, to avoid the evils of sickness, or the debility of old age.

(*r*) This is stated in the communication from the Reverend Dr Henry, made to the Society of Scottish Antiquaries in the year 1784, and preserved among their archives. I shall shortly allude more particularly to this very curious document.

3d, The Hof was devoted to the ratification of solemn compacts, or to the administration of oaths.—One of the upright stones of Steinhouse, about three feet high, and distant about one hundred yards from the temple of the moon, has been described as having a circular perforation, through which contracting parties passed their hands, and invoked Odin to be a witness of their promises or covenants. Scandinavia and her colonies having been much later than any other country in Europe in embracing the cross, this custom, incidental to pagan rites, appears in Orkney to have long outlived the introduction of Christianity. Before the worship of the Asæ had given way to the spread of the gospel, victims were immolated, and the circular perforation or stone-ring was rendered a more solemn medium for the performance of covenants by being bedewed with the blood of the sacrifice. This offering of blood was the first rite which was denied to Odin by the early Christian missionaries; but they could not prevent the god, whose actual existence was for centuries never doubted, from being invoked as a witness to serious compacts. He was still believed to constantly preside at the hof which was dedicated to him, and to retain sufficient influence to punish the infractions of solemn covenants. This is most remarkably shewn in a communication relative to the temple of Steinhouse, made in the year 1784 to the Society of Scottish Antiquaries by the Reverend Dr Henry. As this singular document has not yet been published, I shall quote at full length the account which is given. “There was a custom among the lower class of people in this country which has entirely subsided within these twenty or thirty years. When a party had agreed to marry, it was usual to repair to the temple of the moon, where the woman, in presence of the man, fell down on her knees, and prayed the god Woden (for such was the name of the god whom they addressed on this occasion) that he would enable her to perform all the promises and obligations

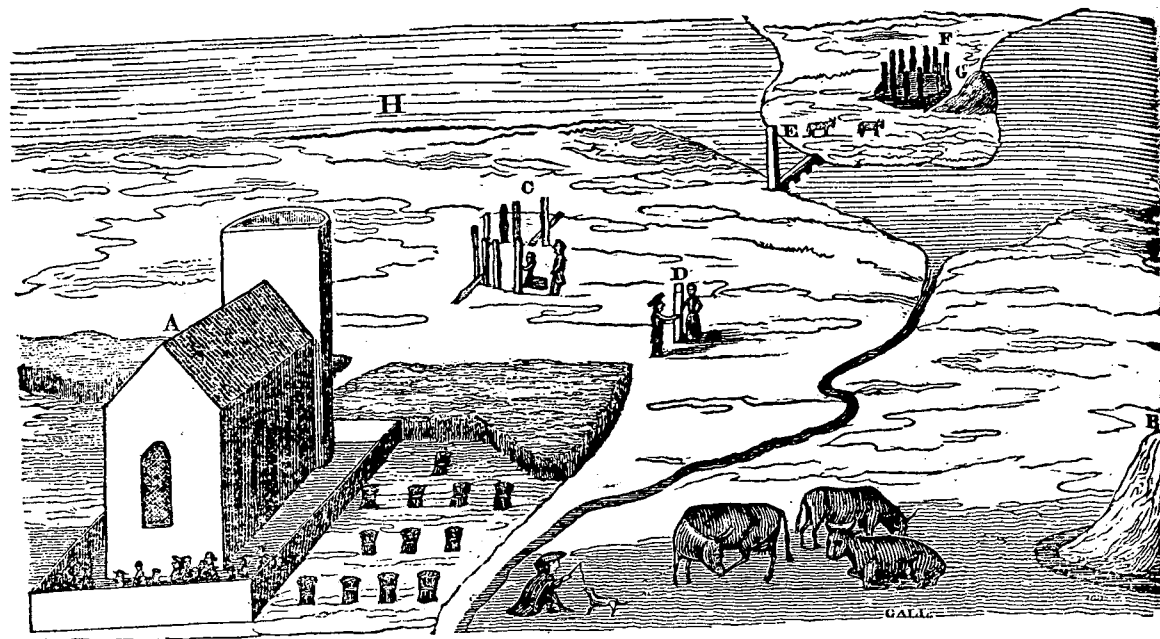
“ she had and was to make to the young man present ; after  
 “ which they both went to the temple of the sun, where the man  
 “ prayed in like manner before the woman. Then they repaired  
 “ from this to the stone north-east of the semi-circular range ;  
 “ and the man being on one side, and the woman on the other,  
 “ they took hold of each other’s right hand through the hole in  
 “ it, and there swore to be constant and faithful to each other.  
 “ This ceremony was held so very sacred in those times, that the  
 “ person who dared to break the engagement made here, was  
 “ counted infamous, and excluded all society.”

This is the narrative given by Dr Henry. Principal Gordon, of the Scots College at Paris, who visited Orkney eight years afterwards, has a story to the same effect. It has been published in the first volume of the Transactions of the Society of Scottish Antiquaries. “ A young man had seduced a girl under promise of marriage, and she proving pregnant, was deserted by him. “ The young man was called before the session ; the elders were particularly severe. Being asked by the minister the cause of so much rigour, they answered, You do not know what a bad man this is ; he has broken the promise of Odin. Being further asked what they meant by the promise of Odin, they put him in mind of the stone at Steinhouse, with the round hole in it ; and added, that it was customary, when promises were made, for the contracting parties to join hands through this hole, and the promises so made were called the promises of Odin.”

In Iceland, a less bulky ring for the ratification of engagements was introduced. Within the hof was a division, like a choir in a church, where stood an elevation in the middle of the floor, and an altar. Upon the altar was placed a ring, without any joint, of the value of two oras. These rings (idly named Druidical amulets) are variously formed of bone, of jet, of stone, and even of the precious metals. Some are so wide as to allow the palm of the hand to be passed through them, which rings were used

when parties entered into mutual compacts. In a wood cut given in an old edition of Olaus Magnus, the solemnization of a betrothing contract is represented by the bridegroom passing his four fingers and palm through a large ring, and in this manner receiving the hand of the bride. This is similar to the mode practised in Orkney, where contracting parties joined hands through the perforation, or, more properly speaking, the ring of a stone pillar. In the oath administered to an individual as a test of veracity, it was sufficient that he held in his hand a ring of small size, dipped in the blood of sacrificial victims, which must accompany his invocation to the gods to witness his declaration. The mode in which an oath was administered on the ring is described in Viga Glum’s Saga. Glum had a wedding in his house to which four hundred persons were invited. At this assembly he called upon Thorarin to appear, who had instituted the action against him, to hear his oath. As custom was, Glum took in his hand a silver ring of the value of three oras, which had been dipped in the blood of the sacrificed animals, and cited two persons to be present who could testify that he had sworn the oath of the hof upon the ring, and had called the gods to witness that he denied the charge.

It has at length been shewn that the construction of the hof had a reference to the purposes of divination, sacrifices, and solemn compacts, and that Orkney has perpetuated, even to the last century, evidence to this effect. This is incontestibly proved by the very curious document written about forty years ago by the Reverend Dr Henry, which was accompanied by a bird’s-eye view of the temples of Steinhouse, as they existed at that period. The following wood-cut is a copy of the drawing, which, though rudely executed, is highly valuable for the information it gives of the state of comparative integrity under which the temples of Steinhouse existed, before the barbarous work of demolition, the disgrace of the present century, commenced. The heathen custom of making compacts to Odin is faithfully represented.



A is the old church of Steinhouse.

B is described as an artificial mound, with a large trench thrown up round the foot of it, said to have been raised for archers to shoot at. Some of Oliver Cromwell's soldiers are reported to have dug tolerably deep into the mound; but, it is added, they found nothing but earth.

C is the semicircular hof or temple of standing stones dedicated to the moon, where the rites of Odin were also celebrated.

D is the stone to which, says Dr Henry, victims for sacrifice were tied. But its most important use was for the solemnization of contracts, which is indicated by the betrothing compact into which a man and woman are represented as entering, by the ceremony of joining hands through the perforation, or stone-ring of Odin. At the temple of the moon, C, the woman is invoking the king of the gods, on her knees, to enable her to fulfil her promise. The man performs the same ceremony at the temple of the sun, marked D.

E is named the watch-stone, but it rather answers to the character of a stone dedicated to the Thunderer, designated a Thorsteinn. Its name of a watch-stone may possibly have been derived from the circumstance that it was situated on the brink of the ford which commanded the passage to the great temple of the sun, where a watch would naturally be placed to preserve the rites of sacrifice from interruption.

F is the temple of the sun, indicated by a circular range of standing stones. A small sacrificial stone is situated to the south-east; but this was probably too minute to be represented.

G is a small mound, named a watch-hill or tower, probably thrown up as a place of guard to prevent the hof from being violated.

H is the loch of Steinhouse.

After this necessary preliminary investigation, we may now enter on the more immediate subject of this essay.

4th, A fourth important use of the hof was to enforce judicial and legislative enactments and decrees. The gode was not only a priest, but a judge likewise, and an hereditary magistrate over a certain portion of territory (*s*). Many of the laws enforced by him were supposed to have a divine origin. It was expected, therefore, that the priest of the hof should be an expounder of the law. Helga, an Icelander, is said to have tarried long with Thorkel, a godordsman, to learn the laws. The godordsman was also re-

(*s*) *Gode*, a *God*, numen, pontifex, erat antistes sacrorum, simulque judex et magistratus certi territorii, quorum quaelibet insulæ provincia novem circiter habuit. Hæc dignitas hæreditaria quidem erat, et antiquis temporibus cimeli vel præcipui, filiis imprimis debiti, loco habita, vendi tamen et alienari potuit.—*Note to Kristni-saga. Hafniæ 1773, p. 92.*

sponsible to the deity of the Edda, to whose rites he administered, that the laws were faithfully executed.

The tests of guilt or innocence were three in number: these were the trials by judicial combat, by ordeal, and by compurgation. They will be considered in succession.

The first test of guilt or innocence was by judicial combat.—This was in perfect correspondence with the religious belief of a people of warlike habits, that the Asæ alone determined the fate of battles. It was customary with the ancient Teutonic tribes of Europe (as indeed we are assured by Tacitus) to procure a captive from the nation with whom they were at war, and then to select an individual from among themselves to enter the lists with him; and, according as the victory fell to the one or the other, they saw to which army the gods were most inclined, and thus drew a presage of the general issue. In conformity with this religious belief, the godordsman was justified in sanctioning the requisition of a plaintiff that a defendant should submit to this divine test. The principle, however, we know to have been a false one. The laws of the benevolent deity whom the Christians worship do not require for the investigation of truth a wanton sacrifice of life. The original patrons of duels were the pagan gods of our Gothic ancestors.

Care was, notwithstanding, taken, that in every test of judicial combat the deities of the Edda should be unbiassed in the decision which they gave. For it was naturally supposed that, as they delighted in the immolation of victims, they were not proof against a sacrifice of oxen, when previously and secretly offered to them as a sort of bribe for victory. It was, therefore, determined, that a practice so detrimental to justice should not be allowed, and that the Asæ should sit upon judgment fasting; for which reason no sacrifices were permitted, until the issue of the judicial test had been determined. We read in one of the old Sagas, that Eigil, an Icelander, challenged on the ting, to mortal

combat, a Norwegian chief; upon which an offer-ox was led to the place of meeting, to be sacrificed upon the spot to the gods, by him who should conquer. In this instance, the ox may be regarded as a proper fee of the court in which the Asæ presided.

The sites of ground selected for judicial combat were such as rendered flight from the deadly strife impossible. The party about to engage would sail for this purpose to some islet or holm, whence the duel often acquired the name of the *Holmgang*. We read that Eigil summoned Bergannund to the *Holmgang*, imprecating confusion on all who should strive to prevent it, there to determine to whom an inheritance should fall.—At Quendal Bay in Shetland, there is a small islet named “the Little Holm,” the apparent site of ancient judicial combats: it is nearly of a circular form, and around it is a rude fence of stones, calculated no less to diminish the chance of a retreat, than to preserve the space clear from spectators. Within the area are the remains of some stone coffins, not improbably the graves of discomfited warriors, whose bodies were interred on the scene of their disaster.—When a holm was not at hand, a battle ring of stones was often formed. An author has conjectured (*t*) that many of the Druidical circles, as they are called, were merely battle-rings. He is correct: in the island of Papa Stour, in Shetland, a circle marked out by stones existed, which, according to a very old tradition of the natives, was a site where a duel was fought, in which Tairvil, a Norwegian, was a combatant (*u*). Sometimes an arena was enclosed by hazel-stangs; and when a very desperate combat was meditated, the warriors fought upon a hide nine

(*t*) Edinburgh Review.

(*u*) For this information I am indebted to a MS. tour through Shetland, in my possession, by the Reverend George Low, an eminent naturalist, and a correspondent of Mr Pennant. The tour was made fifty years ago. A sunken rock (named by the Shetlanders a *Baa*) upon which Tairvil is said to have perished in a boat, is still called Tairvil's *Baa*.—See my Description of the Shetland Islands.

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ells in length. Great publicity was likewise given to their combats; hence the selection of a site where three roads met, intended, no doubt, as a centre to which mutual friends, summoned to see fair play, might repair. It was likewise a law that the defendant, or challenged person, should be allowed the first blow at his antagonist. "Hew thou first," says a champion, "for it is I who have the single combat provoked, and, as the Holmgang law is, I must stand quiet the while." (See *Thorstein's Saga*).

A judicial combat was originally fought with desperation, and its issue was a fatal one. But as the savage manners of the northern nations relaxed, it was considered as a sufficient indication of the judgment pronounced by the gods, that his was the unjust cause whose blood first stained the ground; and he was accordingly declared to be the vanquished individual. It is related in an old Saga that Gunnlaug summoned Rafn to the Holmgang, because he had married the damsel to whom the plaintiff had been betrothed. Rafn, who as the challenged person first hewed at his antagonist, inflicted on him a slight wound, upon which their mutual friends declared that the Holmgang was at an end. It was even a law that the combatant who was beaten out of the ring should be held vanquished. But these mild edicts were easily evaded by a revengeful warrior. He would attempt the infliction of an ignominious wound, which, to the high-minded Northman, was infinitely worse than death. The Scandinavians were wont to punish base crimes, such as theft, with mutilation; hence the foot, the arm, or the hand of an opponent were particular objects of aim; and, if the blow was successful, the mutilation was attributed to the judgment of the gods who presided over the Holmgang (*x*).

(*x*) In a duel which Gunnlaug had with Rafn, he hewed off his adversary's foot. Rafn did not fall, but supported himself against the foot of a tree. "Now art thou un-

The issue of a judicial combat involved in it pecuniary penalties. In one of the Sagas, we read that he who overthrew another in single combat should be the heir to the conquered, and that the king should be heir to the foreigner who died in the land. We are told in Eigel's Saga, that Eigel reflected with mortification that he had not inherited after Liotr the pale, whom he had vanquished.—This severe penalty was in other cases mitigated. In a duel recorded of two warriors, Gunnlaug and Rafn, it was declared that "the law of the Holmgang was, that he who was the first wounded should pay three marks of silver."

We thus find that the appeal of the Holmgang was considered instrumental to the ends of justice, in as much as the gods themselves were supposed to defend the right. A refusal, therefore, to submit to this test, subjected the recreant to the ignominy of being posted. When the day was appointed for a double combat between Finboge and his kinsman Berg, on the one part, and Jœkul and Thorstein on the other, so furious a tempest arose that the former considered themselves as exonerated from attending the summons. Then Jœkul prepared to upraise a coward-post or *nidstang*. He cut the end of a stake into the form of a man's head—inscribed upon it certain *runes*—slew a mare—perforated the breast of the animal, and so fixed it upon the stake that it turned against Finboge's house. The consequences of the *nidstang* were most serious. The *niding* lost his law, being ever afterwards incapacitated from defending himself by an oath, or from being received as a witness.

armed," said Gunnlaug, "I will not, reptile, longer strive against thee." "Had I only somewhat to drink," answered Rafn, "I yet would prove myself a man." "Be not treacherous then," said Gunnlaug, "and I will bring thee water in my helm." Rafn assented; but, when the helm filled with water was brought him by Gunnlaug, he received it with his left hand, and with his right gave his adversary a severe wound. "Wretch," exclaimed Gunnlaug, "deceivest thou me when I trusted thee?" "I prohibit thee the fair Helga's embraces!" replied Rafn.—They slashed anew, and Rafn fell.

The edicts of the Holmgang certainly gave every thing to the strong, and left little or nothing to the feeble. If an individual of a weak frame of body had a dispute with one of a more muscular make, the latter had merely to insult his powerless adversary, and the test of arms was inevitable. "If a man," says an ancient law, "speaks to another words which ought not to be spoken, as 'Thou art not man's make, and not a man in thy heart; I am as good a man as thou art.' Then let them meet where three ways meet." The inconvenience sustained by the great command exercised by the strong over the weak, naturally led to counter regulations. It was allowed to the feeble to send a substitute to the Holmgang of an equal match with the combatant. It is mentioned in an ancient Saga, that Eigil on his way from the Gulathing visited Arinbiorn's sister, whose young son Fridgeir had been challenged by a powerful warrior, Liotr the Swede, to meet him at the Holmgang. Eigil offered to fight in Fridgeir's place, and overthrew Liotr.

One great cause of the frequency of judicial combats was, that each relative of a slaughtered person was bound to see that the death was avenged. If he was slow in the execution of this office, a bloody garment was thrown over him, the meaning of which he understood, and dare not disobey the obligatory symbol. In the Isle of Man, the practice of personal revenge existed so late as the 15th century, and is thus described in the Manx laws: "In ancient time, in matter of high difference between party and party, or relation on either side, if a fray or falling-out happened, and that one party did either wilfully or casually, *forte fortuito*, chance medley, *se defendendo*, or the like, desperately wound or kill another, the friends or relations of the injured party were accustomed to take revenge or satisfaction of the same nature at their own hands. That they held retaliation enough, and was to stand as satisfaction for the prejudice received as aforesaid, the which was termed by them prowess."

Another cause of the frequency of judicial combats was the solemn and mutual pledge into which a certain number of individuals often entered, to support each other in their quarrels. This was named swearing fast-brotherhood. The oath which was taken on the occasion was of the greatest antiquity, having relation to a system of worship preceding that of Odin and the family of the Asæ. Tacitus mentions that the German nations universally joined in the worship of Hertha, or the mother Earth, whom they believed to interpose in the affairs of men. In swearing fast-brotherhood, it was usual for the parties to cut a strip of green sod, one end of which was left attached to the earth, while the centre was supported by a spear; they went under it—wounded themselves—let their blood flow upon the ground beneath, and mixed the earth and blood together. They then fell upon their knees, and vowing to the Gods that each would revenge the other's wrongs as a brother, joined hands in pledge of their mutual obligation.

I have dwelt thus long on the subject of judicial combat, because its principles ought to be distinctly comprehended before an explanation can be given of the frequent appeals which were made to this supposed test of right, of innocence, or of guilt, in the failure of human evidence to separate truth from blind error or wilful falsehood.

A second judicial test consisted in that peculiar appeal to the gods for a manifestation of their judgment, which is known by the name of the Trial by Ordeal. If an appeal was made to Niordur, the God of the Waters, the individual against whom the charge of guilt had been alleged, was bound with cords, and cast into deep water. If he sank, it was an indication that he had been received by the god, and he was accordingly declared free from crime; but, if he swam, it was evident that the deity had rejected him, and he received the doom of guilt. When an appeal was made to Hertha, the Mother Earth, a green strip of turf was

cut, and the extremity fastened to the subsoil. The defendant, who was disposed to clear himself from guilt, went under it ; if the turf did not yield to the pressure upwards, Hertha had received him : but, if the green strip broke and fell upon him, the accusation was true, and he was rejected by the goddess. It is not necessary to say more on the test of ordeal, the general practice of which is well known, and its principle understood.

A third judicial test of right or of innocence was that of compurgation. This test, of such importance to be known by all who would study the origin of European laws, has been too often imperfectly defined, and in many cases greatly misrepresented. A good example of the test of compurgation is to be found in the Eyrbyggja Saga.—Geirrida is accused before the Godordsman of witchcraft. She brings forward twelve persons to assert, upon their oath, that she is innocent, and is accordingly absolved. These twelve individuals were in a later period named *Compurgators*. The question, therefore, now is, In what light were these compurgators anciently held, so that their oath could obtain the acquittal of an accused person, or, in other words, restore him to society, cleared or compurgated of the offence with which he was charged ?

Compurgation was in fact nothing more than an acquittal, which was the result, not of divine, but of human investigation ; and, in this sense, compurgation stood opposed to the tests of judicial combat and the ordeal, where the gods, and not men, were considered as compurgators. The twelve men who had freed Geirrida had taken their oath conscientiously. It was understood that they had previously inquired into the validity of the evidence upon which the charge was founded—that they were acquainted with the general character of the accused—and that they were enabled to state, from their knowledge of these circumstances, whether it was probable that she really had practised the arts of witchcraft imputed to her or not. M. Mallet is, there-

fore, incorrect in supposing that “ it was not necessary that the compurgators ever had, or should have, any knowledge of the affair in question, but that they were simply to swear that they were persuaded the accused spoke true :” and Sir Walter Scott, in his abstract of the Eyrbyggja Saga, has given too limited a notion of compurgators, when he has imagined that they were at first nothing more than a kind of witnesses, who, upon their general knowledge of the character of the accused, gave evidence of his being incapable of committing the crime imputed. The truth is, that the twelve compurgators who had freed Geirrida united in themselves the functions not only of witnesses, but likewise of the jury of modern times. As witnesses, they were supposed to include among their number some who were enabled from contrary evidence to refute the charge, and others who could speak to the general character of the accused : and, as jurymen, it was understood that they had enquired into the actual circumstances connected with the accusation.

The three judicial tests to which the decision of a cause was submitted, agreeably to laws ascribed to the gods, have been at length explained. It remains, therefore, to be stated, that whenever the godordsman summoned before him an assemblage of persons to try a cause by the test of compurgation, and to give doom upon the event of such a cause, this assemblage, or *forum judiciale*, was named a *thing* or *ting*. In time, however, a ting was not merely a judicial, but also a legislative assembly, summoned to enact laws, and make provisions for the general weal. In this more ample sense, the practice of the Scandinavian ting, which forms the chief subject of this essay, now falls under investigation.

There can be little doubt but that, as the pledge of the ring dipped in the blood of consecrated victims was necessary for the administration of the oaths of the compurgators, as well as of those who gave doom, the judicial trial by compurgation was ori-

ginally held on the site of the hof or temple, described by a circle of upright stones. But in order to preserve the temple from unholy strife, the natural concomitant of suits of law, it was not unusual to select an adjoining site for the ting; and when a field was selected, it frequently acquired the name of the Thingvöllr, now corrupted into Tingwall. Iceland has its Thingvöllr, and Shetland and the Isle of Man, as well as various parts of Scotland where the Northmen have intruded themselves, possess a Tingwall. The Dingwall of Ross-shire has acquired its name from a field where a ting was held: there is also a Tingwall in Dumfries-shire. The north-west of England received a great colony of the Danes; hence we find a Tingwall in the hundred of Wirrall in Cheshire, and in Lancashire (*y*). When Thorolf, the priest of Thor in the island of Moster, emigrated to Iceland, he made a previous sacrifice to the god; and, upon approaching the land of his destination, cast the wooden pillars of the high seat of Thor's temple into the sea, with the determination of establishing his residence wherever they should be cast ashore. The relics were driven by the tide to a promontory which was hence named Thorsness, and here the new temple was erected. It was then ordered, that upon the extremity of the Ness all men should have doom, and that in that place there should be set the Herad ting. In Shetland, likewise, there is a bold promontory to be seen, which was anciently named Thorsness (*z*). The summit is crowned by a large and tall block of granite, apparently transported, by some great convulsion of the earth, from an adjoin-

(*y*) There is perhaps more of the character of the rude Vikingr to be found among the peasantry of Lancashire, than in any other portion of Great Britain. The name of Thurstain (*Thorstein*) very significant of a northern origin, not unfrequently occurs among the familiar names of that province. In the following entry, of the date of 1311, a landed inheritor of that name is associated with a Thingwall:—"Ricardus filius Thur-stain ten' un' caruc' t're in Thingwall de dno rege in excambio habend' Suoin Snoddon quem dms Rex posuit in forestam suam."—*Gregson's Lancaster, Appendix*, p. 46.

(*z*) The ness is more generally stiled the Ness of Hillswick.

ing north-western headland. This was, no doubt, revered as a Thorsteinn, and must have given to the ness its name of Thorsness; while, in a contiguous part of the headland, (as in Iceland) a ting was erected, which still retains the name of "the Ting of Thorsness." Not unfrequently, the high plain of a hill was selected for the ting, as at Crucifield, in the island of Unst, (one of the Shetland groupe) and at the isle of Man, where numerous ancient tings occur. Often the ting was held under some well known tree.

A hof and a ting appear to have been attached to each of the numerous divisions or sub-divisions into which the various settlements of Scandinavia and her colonies were resolved. Wherever the Northmen disposed of themselves, they were consolidated into societies proportioned to the ships they could fit out, or the number of men by which these ships could be manned. A herad was a territory which could furnish a hundred soldiers: a fylke was a province that could fit out twelve ships well equipped with men and arms, each vessel being manned with sixty or seventy warriors: a fiording was a fourth part of any large tract of country, and might comprise within it several herads or fylkes. There were again other divisions, strictly warlike, into which it is needless to enter (*a*). It is sufficient to remark, that in each integral community, as, for instance, a herad or a fylke, the chief man, variously named *Forestander* or *Hovding*, had a hof and a ting over which he had controul, and was hence named the gode or godordsman. All the indwellers of a herad were plighted to work for the Hovding, and to pay tribute for the support of the hof; and, on the other hand, it was required that the godordsman should maintain the temple at his own expence, that nothing might spoil, and that he should provide the sacrifices. As the godords-

(*a*) See the glossary (under the heads of Fylke and Herad) to the *Leges Gulathingenses*, edited by Professor Thorkelin. *Havnix, A. D. 1817.*



man had also a ting under his superintendance, the men in each herad or fylke were bound in suit and service to it, and were hence named his tingmen (*b*), while the district where the jurisdiction was exercised was wont to be named a *Thing-soken*. In Shetland, the appellation of soken was retained so late as the last century, being applied to every district, which, from having contained a ting, was placed under the jurisdiction of a bailiff. Thus, Sir Robert Sibbald, in his Description of Shetland, printed A. D. 1711, speaks of the *sucken* of Tingwall as being the third bailierie or ministerie of Shetland; and, in another place, he defines the term *sucken* as a district under the bailiff's jurisdiction. The office of the gode was hereditary, and could be sold and alienated (*c*); but whenever the succession to the godord or herad forestander-ship became doubtful, it was either determined among the claimants by lots being cast, or it was given to the most wise and valiant (*d*).

The conservation of the sacred pale of the ting from being the scene of lawless interruption or riot, was a great object of the godordsman. This was sometimes effected by the ting being held on a holy site. In the Eyrbyggja Saga, we are informed

(*b*) It is mentioned in Hrafnkel Gode's Saga, that when Hrafnkel sailed to Iceland, and settled in Jökul's dale, and built a hof, he was named Freir's Gode. He then obliged the Jökul's dale people to be his *tingmen*.

(*c*) Note to Gunnlaug's Saga. Hafniæ, 1775, p. 79. See also note to Kristni Saga. Hafniæ, 1773, p. 92.

(*d*) We read in the Vatnsdale Saga, that after Ingolf's death, there was a strife for the herad's forestander-ship, when a wise man, Thorkell Silfre, was, by lot-casting, nearly obtaining it. Thorngrim said to his son, then twelve years of age, who was of illegitimate birth, and had been disowned by his father, that he would acknowledge him to be his son if he would infix the axe, which he threw to him, in his adversary's head. The lad sprang upon the man, obliged him to shield himself, and cut him down. The relations insisted there were good grounds for this treatment, and the father took much to him. Thorkell Krafla, the son, became afterwards a renowned man, and was chosen herad forestander. He was baptized when Christianity was proclaimed by law, and built a church upon his land.

that there was a field on Thorsness for which Thorolf had so much veneration, that he forbade any one to visit it without ablution. No animal dwelling on the ground was allowed to be slain. He called it Helgafell; and expected that he and all his relations would go thither after their death. Upon the extremity of the Ness he ordered a ting to be held; and this place was considered so sacred that none dared soil it with blood, or profane it with any other kind of nuisance. When Thorolf died, he was succeeded in the forestander-ship by his son, Thorstein Torskebider, in whose time the chief of another district was envious that the indwellers of Thorsness should consider their land more holy than any other; he therefore gave notice that upon a following day it should be defiled. Thorstein prepared to defend the sanctity of the Ness, and a conflict ensued. Thorodr Geller, the chief hovding in Breidafiord, afterwards settled the dispute. He doomed that the earth which had been soiled with blood was no longer holy. The site of the ting was then removed farther into the land; and the two rival chiefs were adjudged to contribute equally to the cost of the hof, and to be joint sharers in its rents.—In Orkney, there is little doubt but that the site of ground upon which the circle of Steinhouse is erected, was considered no less holy than the Helgafell of Iceland. On the outside of the fence are still to be seen several *tumuli*, which were probably the cairns raised over the ancient godes or chiefs of that province.

The summons given by the godordsman to his tingmen to attend, in an impending cause, either as doomers, or as parties at the ting, was obeyed in a manner that evinced the religious sense which was entertained, that the godordsman united in himself the functions of the priest and the judge, and that the ting was an indispensable appendage of the hof or temple. The delivery of a piece of stone or slate, on which the gode signed his runes, was the sacred token which none may disobey. In the

isle of Man, the stone tokens introduced by the Scandinavians were not abolished until the year 1763 (e). In Norway the delivery of a message-stick was a legal summons. "Now shall the message be carried by the right message-bearer to the winter-house, and not to the summer residence. If any one neglect the message-stick, let him forfeit an ora of silver to the king. Let all the bondes, to whose houses the message-stick arrives, journey to the ting, except those who have no servants." Sometimes a hieroglyphic token was used. If a man was murdered, his heir was required to send about an arrow to assemble a ting.

The refusal of an accused person to attend the summons of the ting, and submit to its judgment, was attended with the penalty of outlawry. Gretter was accused of having killed the two sons of a chief of Iceland. The defendant being absent in Norway at the time of accusation, and no person in the ting answering for him, he was declared an outlaw, and a price set upon his head. After twenty years had passed from the time of his doom, it was urged that the outlawry could not exceed this period.

When the gode assumed his judicial functions, and entered the ting to give doom, he was generally recognized under the name of the *Laugman*; while the chief or best men of the district, from whom each *duradom* or jury necessary in a cause was selected, were named *Laugrightmen*. The number of laugrightmen chosen to make up a *duradom* was usually twelve, agreeably, as it was supposed, to the revered practice of the Asæ. It was the law of Asgard, according to Snorro, that the twelve priests of the palace (called Drottner) should be the mightiest

(e) "And whereas the method of procedure by granting stone tokens for charges and executions by and from the several courts, judges, and magistrates of this isle, is much liable to counterfeit and irregularities, and hath been the cause and encouragement to contention and litigiousness, and also unbecoming the authority and solemnity of a court of justice, be it therefore enacted, by the authority aforesaid, that, from and after the publication of this act, the granting and issuing of stone tokens shall absolutely cease and be discontinued."—*Laws of the Isle of Man*.

over all; that they should rule over the sacrifices, and give the doom between man and man. In the romantic sagas a similar alleged origin is repeated. During the night, says Gothric and Rolf's saga, Hrosharsgrani (who was Odin himself in disguise) wakened his foster son Starkad, and bade him follow. They embarked in a small boat, and rowed to an island. In this island was a wood, which they entered, and found in it an open place, well peopled with warriors, where a ting was set. Eleven men (gods) were seated on stools—the twelfth seat was vacant. Hrosharsgrani sat on the twelfth stool. All hailed him as Odin. He bade the doomers doom the fate of Starkad.

It is remarkable that, in some of the mythological accounts of the ting at which the gods sat, there is no account of the divine personage who presided over it, as at the ting held by mortals. The godordsman in Scandinavia was not in his own ting one of the twelve doomers; but he was a thirteenth individual, to whom the judicial twelve, whenever they found it necessary, made an appeal. In the Swedish law, the men of a herad were required to name an assize of twelve næmpdemen, and the laugman was to be the thirteenth. The question then is, who was supposed to be the thirteenth personage who presided over the ting of the gods? No answer can be returned to this interesting question, but that he was considered to be the Alfader of the oldest religious system of the Goths, who, being robed with immortality, would exist when the family of the Asæ were no more.

Before a cause came on, the godordsman summoned all his tingsmen, who were in any way concerned with it, to repair to the hof. Thither the laugrettmen were required to attend, before they could be constituted a *duradom* or sworn doom; and thither also hastened the various parties in the impending action, the pursuer, the defendant, and the witnesses or compurgators. A sacrifice ensued, when every individual about to be concerned in the ting took the necessary oath upon the ring, which was dip-

ped in sacrificial blood, otherwise his judgment or his evidence would be invalidated. This is shewn in Ulfiot's law, which appears in the Landnama book: "A ring of two oras or more shall be on the high place of each head temple. Such a ring shall each gode have upon his hand at all the law-tings which he himself may hold; and he shall first redden it with red neat's blood that he sacrificed there himself. If a person has to transact law business at the ting, let him before-hand make an oath upon the gode's ring, and name to himself two or more witnesses [of the oath]. Then let him say, 'I testify that the oath I give upon the ring is a lawful oath. So assist me FREIR and NIORTHUR, and the ALMIGHTY AS, that I may in such way pursue this action, or defend it, or bear witness in it, or doom, as I know to be most right and true, and all law questions expound that are submitted to me while I am at this ting.'" This was the general oath taken, as it was understood that a tingman was liable in different actions, to appear either as a doomer, a pursuer, a defendant, or a witness.

We now see the reason why it was necessary that the hof and the ting should either be held on the self-same site, or, if actually detached, should be contiguous to each other. It was expedient, before the proceedings of any law case could take place, that a sacrifice should be made, and that oaths should be administered; and, with the view that the duty should be regularly enforced, the offices of the godordsman and the laugman were in the same individual united. All antiquaries, in speculating upon the religious and juridical remains of our Gothic ancestors, whether they appear in the form of stone circles, or whether they assume any other kind of structure or appearance, should keep in view this important fact. It can be shewn that whenever a godordsman founded a hof, the accompaniment of a ting was demanded; and, *vice versa*, whenever it was conceived necessary that a ting should be founded, the formation of the hof or temple, and the

election of a godordsman, as a matter of course, followed. It is related that Hoeskuld, an Icelfander, paid his addresses to Hildigunna, a high-minded dame, who would not wed any one beneath the rank of a godordsman. Nial, his foster father, contrived that a fifth tribunal should be instituted in the land as a superior ting, by which means a new godord (a sacred oracle) was required, over which Hoeskuld presided. The ambitious damsel then honoured the suitor with her hand.

When the hof and the ting were not combined in one site, but were distinct, the circumscription of each was very often exactly similar. Each was described by upright stones; whence we see the reason why circles of stones are not always found solitary, or why there is often in one tract of ground a system of stone circles. In Denmark, circles of this kind are formed by vast unhewn stones, generally twelve, corresponding with the number of doomers who were required to give doom in all actions. In Aberdeenshire and other parts of Scotland, where similar structures appear, (the labour of invading Northmen) the number of the circumscribing stones is not unfrequently the same. The amount of encircling stones was often some multiple of twelve, as twenty-four or thirty-six. The latter was, I suspect, the original number of stones which composed the circle of Steinhouse in Orkney. Whether there was a correspondence in this respect meditated with the number of laugrettmén, who in the larger provinces were summoned to a ting, it is impossible to offer more than a conjecture. In Norway, thirty-six laugrettmén were selected out of the best men from various districts, from whom each duradom of twelve, necessary to the different actions, was formed.

But it was by no means necessary that the structure of the ting and the hof should be invariably alike: the former was even occasionally a covered building. The ting, however, has continued, in some countries, until a very late period, to be held in

the open air. At the Isle of Man, this custom prevails at the present day. Neither was it essential that the ting should be circumscribed by columnar stones. In short, the construction indicative of the site of a ting can be reduced to no general uniformity; nothing was essential to it but a fence, within which peace was proclaimed (*k*).

Regarding the general character of the fence, a short description will suffice.

In describing the construction of the hof or temple, I remarked, that it was always surrounded with a fence, which was intended to protect its rites from interruption or violation. But, if the fence was thus considered essential to the temple, it was regarded as equally so to the ting. When a ting was described by a circular range of stones, the fence was usually a fosse or ditch; and, accordingly, numerous stone circles occurring in different parts of Scotland are thus encompassed. In Shetland, the site of a ting, where no upright stones were erected, was often marked out in the most simple manner, namely, by shallow furrows scooped into the earth, within which loose rubble stones of various sizes were piled, until they reached a foot or two above the surface of the ground. The fence which encircles the artificial mound of earth where the ting of the Isle of Man is still annually kept was formed of turf. The general law-ting of Shetland, was held on a small holm in a fresh water lake, still named *Tinga-holm*, having its natural fence in the water with which it is encompassed. From this holm, there was a communication to the shore by means of stepping stones. In the next place, the fence, instead of being a permanent one, was often merely temporary; that is, fixed up for no longer a

(*k*) In the philological work of the late Dr Murray, it is supposed that the word ting originally signified *to surround*. Whether the incident of fencing a *forum judiciale* first suggested as a name to it the word *ting*, I will not pretend to determine.

period than while the ting was sitting. Thus, we learn from the old Sagas, that a ting was in Norway set in the midst of a wide meadow, the fence of which consisted of hazle stangs, arranged in the form of a circle, and connected together by a holy cord, composed of withy. This feeble barrier was named the *ve-bonde* or bond of peace.

Not unfrequently the fences of a ting were concentric; the intent of which was to preserve among the different personages of the ting a proper distinction of rank. The central area was always occupied by the *laugman*, and those "who stood with him;" and the outer spaces by the *laugrettmenn*, out of whom the *duradom* was selected, the contending parties, and the *com-purgators*.



The last circumstance in the construction of the ting remaining to be noticed is its entrance.

The entrance into the ting was generally on the east; and it was a special injunction, in the edicts of the Scandinavians, that the *laugman*, in giving doom, should sit with his face to that revered quarter of the heavens. The custom is of inappreciable antiquity; the earliest of all heathen adorations being to the sun. This reverence paid to the great luminary is in perfect character with the estimation in which the ting was originally held. So late as the fifteenth century, the doomsters of the Isle of Man, in reply to the question of Sir John Stanley in what manner he should approach the ting as the king of Man, thus addressed him: "Our doubtful and gracious lord, upon the hill of Tyne-wald, you shall sit in a chair covered with a royal cloth and cushions, AND YOUR VISAGE UNTO THE EAST, and your sword before you, holden with the point upwards." Agreeably to this

observance, there is in many stone-circles, which have been examined, an opening to be detected at this point of the compass, which is often planned with the most scrupulous exactness. In other instances, the entrance into the ting is not so carefully designed, which circumstance would incline us to award a date of foundation posterior to Christianity, when the obeisance to the east gradually ceased to be indispensable.

These remarks conclude what I have to say under the first head of this investigation, which was to shew that the ancient Scandinavian ting was either held on the site of, or was made an appendage to, the hof or temple which was dedicated to the rites of the Edda. A brief recapitulation, therefore, of the progress which has been made in this inquiry may now be stated.

An explanation was given of the different forms of the temples which were erected by the Scandinavians, and dedicated to their gods. It was pointed out that their site was often described by those circular or semi-circular ranges of upright stones, which are erroneously named druidic. It was observed, that to each division of territory occupied by a distinct community a hof was attached, under the superintendance of a gode or godordsman, and that this hof was devoted, *first*, To divining purposes; *secondly*, To sacrifices instituted for the propitiation and conciliation of the deities of the Edda; *thirdly*, To the ratification of solemn compacts and agreements; and, *fourthly*, To judicial and legislative acts and decrees. In explaining the last mentioned design of the Scandinavian temple, it was shewn that in judicial cases it was demanded, either that an appeal should be made to the gods for their declaration of right or innocence by the event of a wager of battle, or that the accused should clear himself by ordeal, or, as a third mode of absolution, that he should sue for a verdict in his favour by the oaths of a certain number of individuals, which test was named Compurgation; an acquittal by

the last mode being considered as the result not of divine but of human investigation, and in this sense standing opposed to the test of judicial combat and the ordeal, where the gods, and not men, were supposed to be compurgators. It was likewise observed, that whenever a judicial assembly was convened for the purpose of trying a cause by the test of compurgation, the temple of the presiding godordsman, or some adjoining piece of ground, generally considered holy, was made the site of convocation, the reason for which admitted of the following explanation: It was necessary, before a ting was held, that a sacrifice to the Asæ should be made; and that every individual about to be concerned in the legal proceedings should, upon the ring of the temple, dipped in sacrificial blood, take a previous oath of fidelity, otherwise his judgment or his evidence would be invalidated.

Regarding the peculiar construction indicative of the site of a ting, proofs have been adduced that, like that of the hof, a ting was not unfrequently encompassed by large stones, but that it was not essential that the structure of the hof and the ting should be invariably the same: that the circumvention of the ting by a sacred fence, with the view of preserving its deliberations from interruption or violence, was indispensable; that the fence was often of a concentric form, the design of which was to preserve a proper distinction of rank among the various members of the ting; and that the entrance was frequently to the east.

Such is the progress which has been made in this part of the present dissertation, where it has become necessary to shew, that by our Gothic ancestors the ting was either held on the site, or was made an appendage of the hof or temple, where were solemnized the rites of the Edda.

I shall now proceed to the subject of the second section.

SECTION II.—*An inquiry into the more general forms and customs of the ting which existed previous to the introduction into Scandinavia of Christianity.*

The first circumstance to be noticed in this section is the different legal functions with which the tings of Scandinavia were endowed, the causes of which may now be investigated.

The numerous herads or fylkes which originally existed in Scandinavia, as integral communities, became, either by dint of conquest from external enemies, or by internal factions, or both, gradually united under one common master, lord, or sovereign. Iceland, for instance, owing to the numerous successive small colonies by which it was peopled, was at one period split into countless herads, which, in time, were united under a few more general governments that bore the name of fiordings. But, although Iceland was resolved into only four or five great political divisions or fiordings, the original communities, or herads, which each fiording comprehended, still continued under the internal yet subordinate control of their respective forestanders or godes, whose right to them was confirmed by distinct laws of inheritance. Each of these godes presided over his own temple and his own ting, to the support of which each tingman paid a toll or tax. Whenever, therefore, a government became thus complicated, there was appointed a superior ting, over which the chief, under whose government numerous petty *tingdoms* had been united, was considered as the supreme head. This pre-eminent ting was reserved for the best men of the province, when deliberations were required for the common weal. It was named, in contradistinction to subordinate tings, the ALTHING, because all men owed to it suit and service; and it was named the LAUGTHING, because men assembled there to legislate. It possessed

the privilege of trying all descriptions of causes, where justice was not to be procured elsewhere; and it listened to judicial appeals, being invested with the power of reversing the unequitable decrees of all inferior courts. When an alting or lawting was held for the purpose of legislating, the altars of the gods were first sprinkled over with the blood of immolated victims. Leaders were then elected, under a vow to protect their country, to revenge its wrongs, and to extend its boundaries. Taxes were also levied for the maintenance of religious rites and ceremonies; and supplies of men and vessels were voted for predatory excursions, and for defence.

We thus find that, in an early period of Scandinavian history, two descriptions of tings rose into existence, the common ting and the alting or lawting.

In the next place, certain circumstances may be considered which led to other regulations regarding tings, particularly those which were calculated to render their proceedings free from interruption.

In the rude and turbulent state of society which characterised the early Scandinavians, a great obstacle to the administration of justice was the attempt of one suitor to prevent, by force of arms, the appeal of his adversary at an approaching ting. All who went to the ting were armed; and not unfrequently a party was obliged, at the head of a numerous band of warriors, to maintain a suit at law, otherwise he ran the risk of being way-laid by the opposite party, and of being forcibly prevented from appearing in person to answer the summons of the ting, in default of which, he lost his cause, and was even declared an outlaw. Numerous remarkable instances of these conflicts are recorded. Glum, a northern warrior, was, for the murder of Thorvald, summoned to a ting, where, having few friends, he enlisted to his aid a hundred men, and then contrived, by force of arms, that the sunrise should begin before the action could be decided. By this

device, the suit, according to law, was referred to the decision of the Alting, where he had hopes that his cause would meet with more support *(l)*.

One of the remedies by which these evils were attempted to be corrected was the multiplication of tings. This was readily suggested in the case of a community spread over a large district of country. Independently of the great distance to which a ting-man was compelled to travel, before he could obtain redress in a suit of law, or assist his chief by his counsel, he was often frustrated in his object by being way-laid. We read in Hœnce Thorer's Saga, that, on the occasion of a bridal feast, Herstein rose from the board, and mounting a high stone, with the view of engaging the general attention, thus declared himself:—"This vow do I make, that before the Alting of this summer is past, I will either contrive that Arngrim Gode shall be found guilty, or I will secure for myself the right of prosecuting my action."—Upon which Gunnar stood up and answered, "And I make this vow, that before the Summer-aling is past, I will either cause Thorvald Oddson to be banished, or obtain a right for myself to pursue this action." Each party then collected followers. Thordgeller, the supporter of Herstein and Gunnar, first took out a

*(l)* Viga Glum's Saga.—It would be very easy to multiply instances of these legal feuds, as they are very common incidents in the ancient Sagas. Thorbiorn having an action at law with the powerful Hrafnel, sought the aid of his nephew, a young warrior, who, with a small band of fugitives, endeavoured to secure for his uncle admission into the ting, but, by a superior force, was impeded. Shortly afterwards, the nephew contrived to procure a legal summons for Hrafnel, who again sought, by means of his retainers, to drive the appellant away, but, on reaching the ting, found that it had been previously encompassed by a more formidable band of warriors than his own, who had been engaged to support the cause of his adversary. Hrafnel being thus prevented from entering within the fence of the ting to appear to the summons against him, and to reply to the appellant, was declared guilty. Thorbiorn's nephew was well pleased with this issue, but he was told that Hrafnel could not be outlawed until the doom had been proclaimed at the defendant's domicile, which should be done within 14 nights after the weapon-ting that usually succeeded to the alting.—*Hrafnel Gode's Saga*.

summons against the other party to the ting which lay nearest the place where Herstein's father was burnt; but Tunguodd, with the aid of four hundred men, prevented his passing over the White River. Thord Geller then adjourned the alting, where he had many supporters, and prevented Tunguodd from coming to the ting-place. After seventeen persons had fallen, some good men interposed, and the action was decided favourable to the hopes of Thord Geller. Arngrim and Hens Thorer were declared guilty, and Thorvald banished for three years. Hens Thorer then attempted to surprise Herstein, but was slain by him. Thord Geller got it at the same time proclaimed, that because it had been dangerous to seek for doom in a far distant place, there should be held many tings in each of the lands of the Fiording.

When a multiplication of tings in a province had been thus effected, it was not unusual for a chief to make a circuit at stated intervals round his province, there to exercise jurisdiction. It is recorded of Gudmund, a chief, or herad-forestander, that in the spring he was accustomed to ride round his herad, and to doom in his tingmen's actions.

Sometimes, however, the bands of warriors collected at a ting were so numerous as to dictate even to the chief the doom that he was to utter. Swend, a Jarl of Norway, in a dispute with Gretter, was so enraged at some of his followers having been slain, that he cited him to the ting over which he presided; and, notwithstanding the offer of a friend of the defendant to pay a great pecuniary compensation, doomed his adversary to lose his life. But Thorfin enlisted in the cause of Gretter a numerous troop of warriors, who, together with the relatives of the accused, prepared to make an obstinate resistance to the sentence of the law being put in execution. Upon which, the Jarl was compelled to accept of the proposed mulct *(m)*.

*(m)* Gretter's Saga.

The ting was again liable to interruptions from other causes. Whenever it was held, some adjoining site was selected for the celebration of games and public revelry. In the vicinity of Steinhouse in Orkney, a large mound was raised up, the purpose of which tradition has assigned to the public competitions which took place in archery. (See page 122.) These sports and feasting too frequently induced bloody frays and riots, which materially impeded the proceedings of the ting.

These were the various causes which, in a rude state of society, too often counteracted the wholesome effects of the law. A remedy, however, was at hand, whenever the individual, who presided over the ting, united with his judicial attributes the sacred office of ordsman or guardian of some sacred oracle. He then proclaimed THE GRID, or public peace, which was pledged in the name of himself, and of all who were fenced in the ting. The security which the Grid afforded did not merely extend to those who had law affairs to transact, but likewise to those who as guests came to the sports, to wrestling and to mirth, while it comprehended a period of time which ended with the return home of every one present. Odin was invoked as a guardian of the Grid, and he who violated the same after it had been once declared, was denounced as a GRID-NIDING or truce-breaker; being doomed to suffer for ever the penalties of excommunication, as an outcast from the Gods and all good men. The security of the Grid was so comprehensive as to protect, during the period that the ting was sitting, the persons of notorious outlaws or criminals, who might fearlessly mix with the tingmen, provided they conducted themselves for the time with propriety. Thus it is recorded, that a price was set upon the head of Gretter, an outlaw, who had taken refuge in an island, where, for many years, he had remained concealed. He heard that a ting was appointed to be held in the neighbourhood. He went thither disguised, and began to attentively observe the games. The people were

importunate that the tall and strong man (for so he was named) should strive with them, but the outlaw waited until he heard the solemn grid proclaimed; and then, doffing the clothes in which he was concealed, all men recognized Gretter Størke. Some muttered threats of arresting him; others denounced so flagrant an assault as a violation of the grid; but all men viewed with satisfaction the proofs which Gretter evinced of his great strength, and he was allowed to retire unmolested.

On the site of some tings, it is probable that a perpetual grid or security was proclaimed. This appears to have been the case in Shetland, where two or three tings, the vestiges of some of which still remain, severally take the name of THE GRID TING. One of these grid tings was in the Isle of Fetlar, another was in the parish of Walls, (where it has given its name to a voe or inlet of the sea, named Gridting Voe) and a third was probably situated in Dunrossness, upon a promontory or ness still named the Grid Ness.

After the grid had been proclaimed, the greatest importance was attached to the fence within which the sacred pledge had been given. It was named THE VEBONDE, or bond of peace; and its integrity was considered essential to the legality of every verdict. Thus, a curious example of the indispensable requisite of a perfect fence, in order to render the proceedings of a ting legal, is to be found in Eigil's Saga. Bergannund maintained that the wife of Eigil could not, as being thrall-born, divide, for her share of an inheritance, with heirs sprung from free parents. But Arionborn proved, with twelve witnesses, that her birth was legitimate; and when the doom was about to be given, Queen Gunhilda, fearful for the issue, ordered her friends to cut asunder the holy line or vebonde by which the ting was fenced. The act was instantly followed by the dissolution of the ting, and no doom could be pronounced.

But another cause remains to be mentioned, which particular-



ly called for the interference of the proclamation of the grid. When contending parties were not satisfied with the doom of the laugman, it was not unusual for them to resort to what they conceived to be a higher tribunal, and thus take the law into their own hands. In Eigil's Saga, it is recorded that this hero was dissatisfied with the verdict of a ting, and challenged his opponent to fight with him; the latter was subdued. To prevent adventures, therefore, who, in the first instance, had rested the justice of their cause on the result of human investigation, from hazarding a further trial by the test of judicial combat, the motive for which was rather to gratify private enmity than to serve the public ends of justice, the laugman frequently bound the hands of the parties to the grid or mutual security, for which, in heathen times, he was supposed, as a godordsman, to have authority from Odin. The original heathen formula is, from its solemnity, peculiarly worthy of admiration. "I now, in this place, set the public grid and full peace between these two men. See, Odin, to the public grid, the gods and all good men! The public grid is set according to law between these two men in all places named and unnamed. The public grid is set by hand-fasting and by words which bind. The public grid is proclaimed in the earth beneath, in the heavens above, and in the seas without, so that the whole land is encompassed by it. Should the public grid be not held, and should any one of these men break the truce, let him be expelled and driven forth from all good men as a GRIDNIDING and truce-breaker! Hold now well the public grid!" (*n*).

(*n*) The following remarks on this subject occur in a beautiful essay on the ancient laws of Scandinavia, which appeared a few years ago in the Edinburgh Review:—"In times when the deadly feud might be compensated by the blood fine, no legal proceeding could be of greater importance than the ceremonies which taught the avenger that his hand was staid; and hence the ASSURANCE OF TRUCE which was given to the murderer was invested with impressive solemnity, and marked by deep poetical feeling. 'Strife

When the ting was set, it was governed by institutes to which a divine origin was ascribed; but this is only a proof of their very great antiquity. It is said that Odin set such laws in the land as were before in use among the Asæ. A great part of them was certainly framed during heathen times. It is recited, in a preamble illustrative of the founders of the Westrogoth laws: "Here are found the names of those men who compiled and published the Westrogoth laws. The first was Lumber, from whom the code received the name of Lumberian. He is said to have digested and compiled a great part of our laws. He was born in Wangom, and there lies in a cairn; for he was a heathen." The deemsters of the Isle of Man, in the year 1422, attributed the formation of their code to their pagan king Orry, whose name as a legislator several stone circles, the sites of the very ancient tings of that country, continue to bear. In Norway, four codes adapted to four different provincial jurisdictions were, in the year 940, promulgated by Haco; these were the Ædsiviathing law, the Gulathing law, the Frostathing law, and the Borgarthing law (*o*).

From the earliest period, the proper administrator of the laws was the gode or godordsman, whence the name which he received, in the ting, of the laugman; and as the law-book was held in the most sacred light, its earliest institutes being attributed to

"was between Harold and Thorwald," spake the judge, "but now I and the country have set peace between them. The fine hath been told which the deemsters doomed; and let them be friends in the guild and the guesting house, at the folkmoat and at the bidding, in the church and at the hall."

(*o*) It is stated in the Landnama Book of Iceland, that Ulfiott, the laugman, went to Norway to study the laws, where he remained three years. When he returned, there was an athing set, and men had afterwards one law in the land. Between the years 1125 and 1135, Gudmund the judge compiled the code called Gragas or Gray Goose. After Iceland had been annexed to Norway, Haco, the son of Haco, introduced the Gulathings law.—Much information on this subject is condensed in a dissertation on the ancient laws of Scandinavia published in the Edinburgh Review.

Odin, no appeal was ever made to it but with the solemnity due to its ascribed origin.

These remarks conclude what I have to say on the second department of this memoir, which has been to inquire into the more general forms and customs of the ting which existed previous to the introduction into Scandinavia of Christianity.

SECTION III.—*The changes which took place in the Forms and Customs of the Ting after Christian churches had been established.*

Olave Triguesson was the most renowned of the Scandinavian kings in spreading the gospel; but the manner in which he introduced it into the colonies of Norway will find few imitators at the present day. Thrænd, a noble Feroese chief, being urged to turn Christian, held a ting on the occasion, which confirmed him in his resistance to the new faith. Olave, being thus baffled, surprised the heathen, and brandishing over his head a large battle-axe, the baptism of the captive and his pagan subjects was instantaneously complied with.—Again, at the head of six armed vessels, the king landed at South Ronaldsay, in Orkney; and there invited on board Sigurd the Jarl, and his young son Hindius. “You are now,” said Olave, “in my power. Present yourselves with all your subjects at the holy font, or the whole of these islands shall be destroyed by fire and sword.” “Truly, O King!” replied the Jarl, “I am not more clear-sighted than my ancestors; and have yet to learn in what respect the rites which you enforce are better than our own.” Olave, seeing him obstinate, unsheathed his sword, and seizing Hindius, exclaimed, “Now will I keep my vow. You are a father obstinately bent on your own ruin; and unless you and all your fiording comply with my demand, your son shall perish before your eyes, and one common destruction shall follow.” The Jarl was unable to

resist this powerful argument, whereupon the baptism of the whole of the Orcadians followed (*p*).

But unremitting as were the pious endeavours of Olave, the sainted king of Norway, the Scandinavians were several centuries behind the rest of Europe before they fairly entered within the pale of Christendom. The presumed indication of conversion was when the people consented, of their own free will, to give a tenth of their substance to the clergy. The gode then, in some degree, renounced his hof, and built and endowed upon his demesnes a Christian church; his herad becoming a parish, over which the ting, apart from the temple, exercised a civil jurisdiction (*q*). So slow, however, was the progress of conversion, that

(*p*) The history of the conversion of Scandinavia is most singular. The same monarch, Olave Triguesson, meeting with a most obstinate heathen, proposed to decide by a wrestling and swimming match, which was the true belief. Olave was victorious; and the Pagan, true to the wager, renounced idolatry.—Other proselytisms were no less remarkable. Helga, a northern hero, and his companion, being lost in a snow-storm, had invoked the Asæ to free them from their perils. They afterwards stumbled upon a heathen temple, nearly overwhelmed in a snow-drift, and observing there the images of Friggia and Freia, reviled them for their neglect, and disrobing the idols, abandoned them for ever. Swendam Finn's change of sentiment was expressed in nearly a similar manner. He cast the effigy of the Thunderer out of the temple, hewed it asunder, and burning it, diffused the ashes in the drink that was given to his dogs.—Some conversions were promoted by miracles. A pagan offered to a stone divine worship; a bishop muttered imprecations on the block, and it flew into pieces.—The heathens too had their miracles. The Icelanders were invited to be baptised, and fire issued out of the ground. This was supposed to be an omen of the wrath of the Asæ, until a very pertinent question was asked, “Why had the same wonder occurred so frequently before?”—At this time many martyrdoms took place. In order that the gods might chase the Christians out of the land, a gode directed that they should be appeased by human sacrifices, upon which the Christians volunteered themselves as martyrs in the cause of the Cross. Nor were the Christians in their turn less persecuting. Very obstinate pagans were punished with the loss of their eyes.

(*q*) It is stated in the Landnama book, that in each fiording of Iceland were three or four thing-sokens, and that each thing-soken included within it three godordar, to each of which a temple was attached. “There were men chosen,” adds the Landnama

it was not unusual for one part of a church to be dedicated to the celebration of the Eucharist, and another part to be used for purposes of pagan divination. Although a Christian church had been built contiguous to almost every pagan temple, the rites still held to be due to the Asæ continued to be long acknowledged. In Orkney, the church of Steinhouse boasted a steeple which was built in a semicircular form, imitating the crescentic range of stones that formed the adjoining temple of the moon; which blended structure was an attempt to suit the taste of the partly pagan and partly Christian religion of the general mass of the Orcadians (see page 122): for, so late even as the last century, betrothing parties repaired to the pillar of Odin, and, with hand-fasting, invoked the god as a witness of the vow to which they were plighted, which vow was named the promise of Odin. It is true that the church denounced all such marriages as unlawful; but this denunciation served no other purpose than the aid which it afforded to couples betrothed, and afterwards tired of each other, to procure a divorce. It was usual, when a couple, whom the promise of Odin had made husband and wife, became wearied of each other, to come within the pale of the Christian church, in order that the marriage might be rendered null: "They both came to the kirk of Steinhouse," says Dr Henry of Orkney, "and after entering the kirk, the one went out at the south, and the other at the north door, by which they were holden to be legally divorced, and free to make another choice" (*r*).

After these preliminary remarks, I shall enter upon the immediate subject of the present section.

book, "to take charge of the temple. They were to name the doomers at the ting, and rule over the actionable offences. They were called godes. Each person was required to give toll to his hof, as he now does for the church tythes."

(*r*) MS. in the possession of the Society of Scottish Antiquaries.

It has been fully explained that judicial tests were three in number; the test of the wager of battle—the test of ordeal—and the test of compurgation. The effects of Christianity on each of these will be, therefore, briefly considered.

I. *The effect of Christianity on the test of judicial combat.*—The effect of the mild tenets of Christianity in repressing judicial combats was at first hardly perceptible. This is not surprising. It was the religious belief of the Scandinavians that the gods alone determined the fate of battles; the appeal, therefore, made to them to declare for the guilt or innocence of disputants in a wager of battle, was perfectly natural: and, when the reverence paid to pagan deities was superseded by the tenets which inculcated the guardianship of good spirits, as constantly influencing human events, judicial combats were still resorted to, though with this difference, that the appeal was no longer made to the family of the Asæ, but to ministering angels. This is evident from the following narrative:—Valnaliot was esteemed the mightiest of warriors. Men were accustomed by his dress to judge of the disposition of his mind; when he appeared in a short black kirtle, with a bent iron-shafted axe in his hand, he was intent on blood: but if he had a brown kirtle upon him, he was in good humour. With this man Hall would fain try his prowess. Christianity had, by law, been newly established, and Sunday was made holy. Valnaliot had, on St Michael's feast, divided among his brothers a piece of land, which act was noticed by Hall, who summoned him to the ting for profaning a holy day. The defendant begged, in the most conciliating manner, that the action might be allowed to fall through; but when his adversary would not consent, he paid down the mulct of fifty pieces of silver, which was half of what was exigible for the slaughter of a free man. He was induced to do this, not only from his dislike to a summons at law, but from

fear of the angel whose feast he had profaned. In the mean time, he kept an eye upon Hall:—meeting with him, therefore, one day, he thus began: “Now will we prove if thou hast striven against me with a good intent or not. If thy motive has been pure, the angels will give thee victory; but if a base love of self, or a quarrelsome disposition, has incited thee, then wilt thou be vanquished.” They fought, and Hall was slain.—In a later period of Christianity, the doctrine of ministering angels had less weight. The appeal to defend the right was made to the deity alone.

In Iceland, where even in pagan times some salutary laws had been made to render the combats of the holmgang less ferocious, it was attempted, upon the introduction of Christianity, to abolish this judicial test altogether. In a duel between Gunlaug and Rafn, the latter, as the challenged person, being allowed to hew at his adversary the first, inflicted upon him a slight scratch; upon which both their friends declared the holmgang to be at an end: and when Gunlaug threatened that he would challenge Rafn anew, a law was the next day promulgated, that all holmgangs should be abolished in Iceland.

II. *The effect of Christianity on the test of ordeal.*—A second test of guilt or innocence was the trial by ordeal. On this head it may be observed, that the influence of Christianity in repressing the trial by ordeal was not at first much greater than had been evinced by the wager of battle. The test by ordeal was continued, with this difference, that instead of Hertha or Niordur being invoked, the deity supposed to preside over the trial was the God of the Christians. Consequently, instead of this test being superintended by a gode or godorsman, the laws directed that it should be assigned to a Christian bishop (*s.*)

(*s.*) It is related that a female who had been arraigned by her husband for releasing one of his enemies, of the name of Dromund, was required to clear her innocence before a

III. *The effect of Christianity on the trial by compurgation.*—A third test of guilt or innocence was the trial by compurgation; an acquittal by this last mode being considered as the result not of divine but of human investigation. It has been explained, that whenever a judicial assembly was convened for the purpose of trying a cause by the test of compurgation, the temple of the presiding godordsman, or some adjoining site of ground, generally considered holy, was made the site of convocation; the reason for which was, that every individual about to be concerned in the legal proceedings should, upon the ring dipped in sacrificial blood, take a previous oath of fidelity, otherwise his judgment, or his evidence, would be invalidated. We have, therefore, now to consider the important influence of Christianity in superseding the necessity of this oath, and, consequently, of rendering the judicial ting perfectly independent of the pagan temple.

The greatest change which took place after the introduction of Christianity was the abolition of sacrifices, particularly of such as were human. Yet this renunciation was not made without a struggle; hence the predilection, which was for centuries manifested even by Christians, to commemorate the great sacrificial day of the pagans, by assembling on a hill to light up the fires of the Belling, and by still keeping up the ancient form of drawing lots for the human victims that were to be immolated. Nor has the merriment which ensued been much less than that to which our ancestors had been accustomed in the good old days of Odin. From the time, then, that sacrifices to the Asæ were disused, we must date the separation of the ting from the heathen temple. It was no longer necessary that, before the laugman or the laug-

bishop, which object she accomplished by an artifice. Being afterwards divorced from her husband, she married the man whom she had liberated.—In another case, Gretten is summoned to the kirk before the king and bishop, and required to clear himself of an accusation by the familiar test of iron-bearing.

rettman could sit in judgment on the ting, he should repair to the hof, and with a ring dipped in sacrificial blood invoke Odin to bear witness of the impartiality with which he was pledged to try the cause submitted to his decision. Nor was it necessary that the compurgator should use a similar form of oath to give more solemn weight to the affirmation which he delivered. The obligation imposed in the Christian era was a simple appeal to the Deity. "Now each named laugrettman," says the statute, "shall make oath, before he proceeds in jury, that he declares to God that he will decide in every man's action as he sees most right before God, according to the law and his conscience, as well for the plaintiff as for the defendant; and this shall he always do when he is named in jury. The first time he goes on jury shall he swear this oath, but not oftener, though he should be more times named" (*t*).

Such was the important change which followed the introduction of Christianity. When the oath of the ring dipped in blood was no longer required, the separation of the ting from the pagan temple instantly ensued (*u*).

Many other changes from the same cause took place: some are of moment; others relate to little more than forms or ceremonies. Of the latter is the obeisance to the east upon entering the ting. This form was retained, with the exception that the adoration

(*t*) In the Isle of Man the obligation imposed during the early period of the Christian era upon the deemster of each cause, was founded upon the reverence which was paid to the sacred volume. "By this book, and by the holy contents thereof, and by the wonderful works that God hath miraculously wrought in heaven above and in the earth beneath, in six days and seven nights, I do swear that I will, without respect of favour or friendship, love or gain, consanguinity or affinity, love or malice, execute the laws of this island justly betwixt our Sovereign Lord the King and his subjects within this isle, and betwixt party and party, as indifferently as the herring's back-bone doth lie in the middle of the fish."

(*u*) The Museum of the Society of Scottish Antiquaries is particularly rich in specimens of these rings, and it is impossible to conceive of more interesting relics.

was no longer considered as due to the sun, but to our Saviour. "We must turn our face to the east," was the precept of Saint Magnus, "and pray unto Christ to grant us good tide and peace, that we may keep our land without travail; and our king, the lord of our land, with health and grace: May he be our friend, and may we be his friend for ever more."

One of the changes effected upon the introduction of Christianity merits, from its salutary effects, particular notice. It consisted in the provisions by which the ting was maintained more free from interruption and violation than it had been in pagan times.

The Christians were particularly anxious to afford a perfect security to those who submitted their differences to the decision of the laugman, and to thus administer to the freedom with which justice ought to be awarded. Although public sports were always held on some site of ground adjacent to the ting, they were less liable to end in quarrels injurious to the peace of those who had law affairs to transact, than the inordinate feasting and drinking which occurred on these occasions. All persons were, therefore, directed, in the Christian edicts, "that they should seek the ting when the sun was in the east, and that they should be upon the ting until mid-day; but if any one gave himself up to meat and to drink, and considered these as of more importance than the ting, then should he be disqualified from bringing on any cause which he had that day to bring into the gulathing." And any drink offered for sale upon the ting, or otherwise brought there, was forfeited to the tingmen.

Another obstacle to the administration of justice was the custom of carrying arms to the ting, whence the very frequent creation of frays. This usage was of the greatest antiquity. In the time of Tacitus, the Goths repaired to their judicial assemblies well accoutred, and gave their assent to the various decrees which were published by a clashing of arms. But it is recorded in the

Christendoms Saga, that "John the bishop caused so much peace in the land, that many ceased to bear weapons; that the bondes all rode quietly to the ting, and put up their horses together in peace." Eventually, the bearing of arms to a ting was prohibited by law, as well as the manifestation of approval by the clashing of arms. None might carry weapons to the gulating without the leave of the King's Ombudsman; and any weapons borne were forfeited, and mulcts imposed upon the wearer.

The ancient custom of bearing arms to a ting had, however, this advantage, that a knowledge could at any time be obtained of the military force of a province or kingdom, and of the arms which each person could bring into the field in defence of his country. In order, therefore, that a muster of this kind might still be made which should not interrupt judicial proceedings, it was commanded that a weaponting should be held within three weeks after each general lawting, to which all bondes should give their service. This ting was under the government of a sysselman, whose duty it was to examine each weapon, and see that it was efficient; while a heavy mulct was imposed on all who should break the peace by quarrels or frays (*x*).

But the protection of the ting from violation could always be effected when THE GRID or public security was proclaimed. This solemn formula, which, in pagan times, no lips may utter save those of an ordsman or diviner of some sacred oracle, was

(*x*) A curious story is told of a fray at one of these tings. At a weaponting, the scene of which is laid at Constantinople, Thorstein Dromund recognised, in the hands of Aungul, the sword of his elder brother Gretter. He inquired of the wearer the cause of a notch in it. "I killed the owner with his own sword," was the reply, "and the hardness of the skull made the notch." Thorstein obtaining leave to examine the sword, forthwith aimed a blow at the boaster, and cut him down. He was instantly arrested for breaking the peace of the ting; and there having been unfortunately no witness near him to vouch for the truth of the provocation which he pleaded, he was fined, and cast into prison until his mulct was paid.

still retained, the only change which was made in it being an imprecation to the God of the Christians to punish the gridning, or peace-breaker, instead of invoking Odin, the gods, and all good men. It is recorded that Hafer (a semi-Christian) was a great ordsman, who, in the name of himself, and of all who were fenced in Hegranness ting, proclaimed to his tingmen the public grid. "I, and all who are fenced in Hegranness ting, give pledge for the public security, for the full peace of these our own men, and for the full peace of those who are our guests, and are come to the sports, to wrestling and to mirth, even from the time that they bend their way hither to the time that they journey home again. Whether they have affairs of law to transact, or proclamation to make to the land, let them, so long as they have business here, enjoy security in all places named and unnamed, until they return home. I set this peace for friends, for kindred, and connexions; and whoever breaks the public security, is a GRID-NIDING, who shall be an outcast from God and all good men. He shall be an outcast from wherever men assemble, and the roof-timber smokes; from wherever Christians seek the church, or heathens worship in the hof; from wherever the flame is kindled, and the earth is green, and the son calls to his mother, and the mother cherishes her son, and all men light up fires: He shall be chased from every spot where the ship sails, and the shield glistens, and the sun shines, and the snow falls, and the fir-trees grow, and the falcon flies the live-long night, and the firmament revolves: He shall be an exile from every place where habitations are built, where the waves mount with the wind, and where the karle sows corn. He shall be driven far from the church and Christian men, and far from every abiding place, save hell.—Now, during the journey, let all men be reconciled, and be in fellowship wherever in their way they meet, whether on horseback, or on shipboard, or on rock, or in haven. Let them while journeying together con-

“tinue to be reconciled, even as a son is with a father, or a father with a son. And now let us join hands together, and hold well the public grid; and be witness all good men, who hear these my words.”

Such was the solemn formula of the grid, which originated with our pagan ancestors, yet was continued to be used by their Christian successors for several centuries. So late as the year 1514, the publication of the grid was considered indispensable in the lawtings of Orkney and Shetland, as the following extract from an old record of this date fully shews: “At Kirkwall, on Tuesday in the lawting, in the moneth of Junii, the zeir of God ane thousand fyve hundreth and fourtein zeirs. A dome dempt be me, NICOLL HALL, lawman of Zetland and Orknay for the tyme, and ane certane of famows, discret, and unsuspect personis, of Rothmen and Rothmenisonis (Raadmen and Raadmen’s sons) chosen THE GRIT AYTH SWORNE (*y*).

In cases, however, where there was no ordsman, or no one who was authorised, as the guardian of a sacred oracle, to proclaim a solemn grid, pecuniary mulcts, and, in some instances, the penalty of life, awaited all infractions of the peace of the ting. But even these were considered lenient, when compared with the consequences of excommunication. So late as the fifteenth century, one of the laws of the Isle of Man directs that “the chief coroner, that is, the coroner of Glenfaba, shall make a fence upon pain of life and limb, that no man make any disturbance or stir in the time of tynwald, and that there be no murmur or rising in the king’s presence, upon pain of hanging and drawing.” A law of Scandinavia enacts, that if the men who are without the circle cause there any tumult or disturbance, so that the laugrettmen (doomers) cannot in quietness hold the laugrett, and that those who have the laugman’s and laugrettmen’s leave to bring

(*y*) Description of the Shetland Islands by S. Hibbert, M. D. p. 309.

their actions to an issue are prevented, each for his offence has forfeited an ora of silver.

Some few remarks may be, lastly, made on the changes which the codes of the pagan legislators underwent after the introduction of Christianity into Scandinavia.

After Christianity had been established, such alterations were made in these laws as were dictated by the milder tenets of Christianity. Olave, the King of Norway, better known by the name of Saint Olave, was one of the first who reformed the pagan laws. His praises were in every mouth: “The Shetlanders,” says Sir Robert Sibbald, “were accustomed to relate strange things of him in their visics.” But the Norwegian code underwent various revisions from subsequent legislators, the last of whom was King Magnus, the son of Haco the Norwegian. This digest was introduced into Orkney and Shetland, and acquired the name of ~~our~~ **THE BOOK OF THE LAW** (*z*).

The code treats, in order, of judiciary citations, of oaths of fealty, of war, of the rights of persons, of marriage, of the right of redemption [in udal lands], of division of lands, buildings, &c. of

(*z*) It is the same as the *Jus Commune Norvegicum*, or *Leges Gula-Thingenenses Regis Magni Legum Reformatoris*, an edition of which has been recently published by Professor Thorkelin of Copenhagen. The author of an excellent treatise on the Ancient Laws of Scandinavia, published in the Edinburgh Review, gives the following account of the Christian legislators, to whom the Code of Norway was in part indebted:—“The code of the pagan Haco was modified by Olave, the sainted king of Norway, who directed the abrogation of such laws as were hostile to the milder spirit of Christianity. Magnus the Good, Olave the Peaceable, and Magnus Erlingsen, incorporated various laws which had received their assent in the codes of Haco and St Olave; and the older text probably experienced a silent revision. In the reign of Magnus, the son of Haco, the Norwegians required that their codes should be again modified. The new digest was accomplished under the auspices of the king, who thence acquired the epithet of Lagabætir, or the amender or reformer of the law. In the conclusion of the code, it is declared, ‘King Magnus collected together, out of all the books in the land, the laws which he thought to be the best, with the advice of the best men; and he caused this book to be written. Then did he appear in the folk-mote of Guloe, and caused it to be read aloud.’”

selling and buying, and of theft. The law-book likewise contains the articles of Christian faith, which were recognized as the law of the land; and whenever these were violated, the symbol of the cross was sent round to the dwelling of each bonde, to indicate that a ting was about to sit to punish the transgressor. The Christian precepts which the law-book contained, as well as the sainted reformers to whom it owed its origin, caused it to be held in such reverence, that it was never opened for consultation, while the ting was sitting, without the greatest form and solemnity. A law of Norway commands that, as often as the laugman goes to the ting with the law-book, he should cause the great bell to be rung, and that this bell should not be rung for any thing else as long as the ting stood. A similar, or even greater reverence was long paid to the same law-book in the Norwegian colony of Orkney and Shetland. "In the year 1519," remarks an author, who quotes from authentic documents, "the laugman, in order to give a sacred and venerable authority to his sentence, confirmed it 'by the fayth of the law-buik,' as now-a-days men confirm their testimony by the faith of the holy gospels" (a).

SECTION IV.—*The latest practice of the tings of Orkney and Shetland, including an account of the three species of tings which formerly existed in these islands, namely, the tings held for the preservation of good neighbourhood, the circuit tings, and the lawting.*

It was explained in the second section of this memoir, that, owing to the constant frays which took place in the attempts of contending parties to resist the wholesome interference of the law,

(a) Grievances of Orkney, &c. p. 6.—In concluding the three first sections of this memoir, where so many illustrations have been given from the ancient Sagas, there is one book which I would wish to mention particularly, for the information which it incidentally

the event was a multiplication of tings, which had been effected with the view of rendering justice accessible, and bringing it as near as possible to every man's threshold. Eventually, however, it was an occurrence far less frequent that a district had to complain of a deficiency of tings, than that it had to boast of a superabundance of them. This grievance was, therefore, obviated, not by a reduction of their number, but by a limitation of their privileges. The ting, which, in its original institution, could take cognizance of the highest offences of the law, and could award to them the severest penalties, became no sooner included in the extensive jurisdiction of some fortunate conqueror, and amenable to the alting over which a new chief presided, than it became gradually shorn of its proud distinctions, and at length was permitted to exist with no other functions granted to it than the punishment of such minor offences as militate against good neighbourhood, among which were trespasses on land, or the poundage of cattle (b). A ting of this kind, which originally was under the jurisdiction of a herads-forestander, continued in Scandinavia to be named a herad's ting. It is described as a court in which country affairs were transacted. "The most circumscribed court in Denmark," says an English writer, "is the herred-foughds, being similar in nature to the English Leet Court. It is a tribunal appointed for the dispatch of business in the country, to which the byfoghd's court corresponds in towns and cities." After the introduction of Christianity, when the district of each herad-forestander became a parish, and the hof was converted into a parish-church, the ting held for the preservation of good neighbourhood was named a Parish ting.—To a ting of this description all bondes were required to give their services.

affords of the ancient juridical state of Scandinavia; it is the *Saga Bibliothek*, by the Reverend Dr Peter Erasmus Muller, 3 vol. 8vo, Kiobenhavn, 1817.

(b) It might be shewn, that in some of the old Saxon Courts of England a similar reduction of privileges gradually took place.



We thus find that in Scandinavia and her colonies three descriptions of tings existed: the lowest was the ting for the preservation of good neighbourhood; the second in degree was the ting where weightier causes were tried (generally a circuit ting) one of which existed in every province that entered into the division of an extensive territory or kingdom; while the third and higher was the alting or law-ting, to which an appeal lay against the decisions of all subordinate tings.

These will in due order be investigated.

*1st, THE PARISH TING.*—The herad or parish ting, for the preservation of good neighbourhood, was a very common description of court in Scandinavia. In Orkney and Shetland, there existed two descriptions of parish tings. The first bore the name of an AIRFF; its object being the confirmation of landed inheritance, according to the laws of udal succession; the second was for preventing minor breaches of peace, and for adjusting differences regarding trespasses on land, poundage, &c.

The first of these we shall now consider, namely, AIRFFS; but it will be in vain to attempt a description of the nature of these tings without a previous knowledge of what is meant by UDAL POSSESSIONS.

The ancient landholders of Orkney and Shetland have been described, from time immemorial, under the name of UDALLERS. The etymology of the word *odel*, or *udal*, has been much disputed. Odel is perhaps compounded of the two words *æde* and *dale*, signifying an uninhabited or waste dale or valley, the term being peculiarly appropriate to the condition under which land originally became the property of the early inhabitants of Scandinavia and her colonies. In order to encourage the cultivation of the soil and the pursuits of husbandry, land which was uninhabited or waste might be possessed by any one; the possessor of it was therefore an *odaller* or *udaller*. This fact is curiously exemplified in an ancient saga. A house takes fire: Thorbiorn, who

had coveted the land on which the house was built, immediately takes advantage of the circumstance, and, repairing to the reeking rubbish, snatches from it a half-burnt birch stake, and, riding with it around the ruin against the sun, exclaims "This land do I appropriate to myself, for here is no builded place. Hear this, ye witnesses!" Upon which, he rides away. In a later period, in proportion as soil became more valuable from cultivation, land was not procured on such easy terms; very rigid laws were therefore enacted, with the view of confirming the possessor in the enjoyment of it, and of securing it for the use of his posterity. These provisions were named odal or udal rights; for landed possessions continued to bear the name originally attached to them of *udal*, though it had ceased to be applicable to their more cultivated state; and when military or feudal tenures began to prevail in Europe, the same term was still retained to indicate a very contrary description of possession, the word *udal* being applied to *absolute* property, the word *feudal* to *stipendiary* property (*c*). Again, in Orkney and Shetland, the term *odal* or *udal* became still more restricted. When Harold Harfagr, in the tenth century, subdued these islands, which had been possessed by the Vikingr or Sea-Kings, he sought to reclaim the natives from their piratical habits; and, with the view of encouraging permanent settlers on the soil, exacted a scat or tax from the uncultivated waste which was used for pasture or grazing land, whence the name it received of *scathold*; but the land which was actually enclosed for cultivation became free from a scat, and, consequently, retained its ancient name of *udal*.

Such was the origin of the word udal, as applied to the an-

(c) "Odh, proprietas, et *all* totum omne denotat." Sir William Blackstone suggests that the transposition of these northern syllables, *alldh*, gives the true etymology of allodium.

cient land-holders of Orkney and Shetland. They were likewise named adelbondes or bondes, the term implying, in later times, that they held land as derived from their ancestors, not holding it conditionally, as to a superior, but by distinct laws of udal succession (*d*).

Now, in each parish of Orkney and Shetland, there was an important personage, named a foged or foude, employed by the jarl as a sort of steward or prefect, who was accountable to him for the revenues of the district in which he resided (*e*). This officer was required to be distinguished for honesty and prudence (*f*); and he was to be possessed of a certain income of land, for fear his poverty should expose him to contempt or corruption (*g*). He presided over all the tings of his parish, assisted by "the best men." But the most important trust reposed in him was the guardianship of the lands of his parish, and his responsibility that, on the decease of an udaller, the patrimony should be properly divided according to the law of udal succession. This law of inheritance is well explained in an original document, now in the Register-House of Edinburgh (*h*), where it is stated, "that

(*d*) The subject of the present dissertation does not allow me to enter further into the nature of udal property. I have discussed the subject at considerable length in my description of the Shetland Islands, and have endeavoured to correct several erroneous notions relative to it, into which lawyers had fallen, in endeavouring to draw the line of distinction between udal and feudal property.

(*e*) This was a very ancient duty attached to the office. It is related in Eigil's Saga that, when the possessions of a foreigner who died in the land had been forfeited, the King's foude immediately laid an arrest upon the property.

(*f*) In the church-yard at Tingwall, in Shetland, there is the following inscription:—  
"Here lies an honest man, Thomas Boyne, sometime fowd of Tingwall."

(*g*) The latter qualification had been probably insisted upon by King Olave the Holy. In going through Osterdale, he had been informed that a great robbery of cattle had taken place, but on diligent search having been made, the plunder was traced to the foude himself.

(*h*) It is a testimonial for Edward Sinclair of Marrassetter, of the date of 1610, which was lately in my possession; but as it is an authentic document of the prevalence of the

"there has been an ancient law, custom, and consuetude, within  
"the country of Zetland, by the which it has been inviolably ob-  
"served, that, when any landman havand lands within the said  
"county, departed this mortal life, the hail lands and heritage  
"appertaining to him in his lifetime, immediately after his de-  
"cease, were equally and lawfully divided among his hail bairnes,  
"as well sons and daughters, counting always two sisters' parts  
"for one brother's part, and, being so divided, the eldest brother  
"had no farther prerogative above the rest of his brothers, ex-  
"cept the first choice of the parts and parcels of the lands divid-  
"ed." This law, as it is thus explained, was very faithfully ren-  
dered by the Shetlanders from an edict of King Magnus in the  
*Jus Commune Norvegicum* (*i*).


Such being the law of inheritance, the foude was required, upon the death of every udaller, to make a division of lands to the right heirs, which division was named an AIRFF, and, in the case of considerable heritors, to confirm them in the possession of their inheritance by a SHEWN or SHYND bill, the term being said to mean a deed or writing made in court. An illustration of the airff is afforded in the verdict of a lawting of Shetland, dated July 21st 1603, relative to an action brought by Alexander Cheyne against his eldest brother Thomas Cheyne, when the dispute was ordered to be settled at a shewn of the parish where the parties resided. It was ordained that an airff should be made at the airff-house of Norbie, between this date and All Hallowmass next to come; Arthur Sinclair of Aithe to be the judge and depute, and to elect and choose twelve of the most neutral men in

Norwegian laws in Shetland at the time mentioned, I placed it in the General Register-House, as the proper repository of such records.

(*i*) The same law is thus translated by Professor Thorkelin, from the Code of St Magnus:—"Parentibus, sive pater fuerit, sive mater, defunctis, hæreditatis hunc in modum fiet distributio. Duæ filiæ æquam cum filio hæreditatis capiunt portionem."

Zetland, by the advice of the hails, and in case of their refusal, the said Arthur to choose them himself; all the oaths to be taken before making the division and dividing the property, after first deducting the expences of the airff and all lawful debts. The depute to summon witnesses for declaration of the truth, under such pains as he choose, and to admit defences and reasons of each party, and administer justice (*k*).

The place appointed for the adjudication of airffs was originally the site in which all other parish tings were held.



It was indicated by loose rubble stones, so arranged as to form a double concentric circle, in the centre of which a pile of stones was raised, to afford a seat for the judge, while the remaining part of the inner circle was occupied by the doomers. The opposite parties in the cause, and the witnesses or compurgators, stood in the outer circle. In the commencement of the 17th century, the parish tings had ceased to be held in the open air, a covered building having been provided for the purpose.

Mr Gifford has described the ting, which was held, after the following manner: "After the death of an udaller, his children, or nearest of kin if he had no children, made application to the fowd to divide the inheritance amongst them, who appointed a day and place, ordaining all concerned to attend; and having called a court, he caused the heirs to give up a faithful inventory upon oath of the whole substance left by the heritor deceased, which he divided equally amongst them, according to the udell or St Olla's law, and caused a shynd bill to be writ-

(*k*) When Earl Patrick Stuart wished to feudalize the ancient udal lands of Orkney and Shetland, he was anxious to do away with these airffs, which he styled an usurpation of the King's authority. Accordingly, John Dawick, fowd of Yell, was accused on this plea, for "holding of shewnis and airffs without commission." The defendant submitted himself to the judge's will or amercement.

"ten thereupon, which was signed, sealed, and delivered to the heirs."

There was also another important udal law, for the due execution of which the fowde of each parish was made responsible. No one could sell land unless upon most urgent claims of poverty, or unless the land was first offered to the nearest of the seller's kindred; a right of redemption remaining for them a considerable period after the sale had been effected (*l*). Mr Gifford in his Description of Shetland has on this subject observed, that "if any man was to make a purchase from an udaller with consent of his heirs, without which the purchase was not good, the property was conveyed to the purchaser by a shynd-bill, with this addition, that the disponent did judicially acknowledge that he

(*l*) "Will a man sell his odal-land?" says the law-book of Norway. "Then shall he summon all the odal-born (his kindred) and notify to them, that he is to sell such odal-land, making them the first offer, if they will buy, and have no impediment, such as the want of money, and the like; also he shall proclaim, or cause to be proclaimed, in the public market, that he is to sell such odal-land, and shall again offer it to his own kindred, the odal-born, whether known or unknown; but first to those who stand in nearest degree of relation to him, whether male or female, that so the affair may come to their knowledge, even though they should not be there present."

Pontoppidan has also observed in his Account of Norway, "that no odels-gods or freehold can be alienated by sale, or any other way whatsoever, from him that can make him appear that he has the best title to it, by being the right heir or odels-mand. If he has it not in his power to redeem it, then he must declare every tenth year at the sessions, that want of money is the only reason; and, if he surmounts that difficulty, or if he or his heirs to the second or third generation be able to redeem it, then he that inhabits it, who is only a possessor *pro tempore*, must turn out directly, and give up the premises to the odels-mand. For this reason they keep a strict register of their pedigree; and formerly, about mid-summer, every family used to meet together and make themselves merry; and if any of their kindred had deceased since their last meeting, they marked his name on the tal-stock provided for that purpose." Pontoppidan adds, that, "according to the old law called Odelsbalken, thirty years' possession was required to establish the odal's right. The law now requires but twenty years. This right could then never be forfeited to the Crown, unless by treason or felony."

“ had received the full value of the land disposed, and desired  
 “ that his property therein might be instantly transferred to the  
 “ purchaser and his heirs ; and the apparent heirs of the disponent  
 “ being also present, consented to the sale ; and the shynd-bill  
 “ being signed and sealed, was delivered by the fowd to the dis-  
 “ poner, who did judicially deliver it to the purchaser with a be-  
 “ nediction.”

Also when an udaller was desirous to make a will, which could not legally be done without the consent of the udal born, the foude was obliged to hold a ting. This court has likewise been described by Mr Gifford : “ A man having a mind to dispose  
 “ his estate, invited the fowd and three or four of the best men  
 “ in the country to his house, where he had an entertainment  
 “ provided for them. And being all convened, the fowd kept a  
 “ court, before which the heritor compeared, and did there judi-  
 “ cially make his will, disposing his estate, heritable and move-  
 “ able, particularly mentioned, and divided to his children, re-  
 “ serving his own liferent of the whole, and a liferent of a part  
 “ to his wife, if she survived him ; which will the clerk of court  
 “ wrote, and being done was publicly read, all parties concerned  
 “ being present ; and, if approven by the disponent, it was signed  
 “ by the fowd, and then by three or four gentlemen that sat with  
 “ him as assessors, and all put their seals to it, and, being re-  
 “ corded in the court books, the principal was delivered to the  
 “ disponent, who kept it till his death ; and then all the heirs  
 “ mentioned in the shynd-bill entered to their respective por-  
 “ tions contained therein, and were all equally chargeable for the  
 “ defunct’s debts and funeral charges” (*m*).

(*m*) There was again a law in Shetland, empowering udallers, with the consent of their heirs, to part with their patrimony to any person who would undertake their support for life. Such disponents were then received into the house of their maintainer under the name of *opgesters* ; and hence the law, by which estates could be alienated from the udal-born for such a purpose, was named the *custom of opgestry*. In the year 1602, William

The second description of parish tings was intended for the preservation of the peace of the district, by correcting minor breaches of law, by preventing trespasses on land, or by settling such disputes as related to the impounding of cattle, &c. &c. But, before describing these tings, it will be necessary to be acquainted with other civil officers of the parish, who were subordinate to the foude.

The officer in rank immediately under the foude, upon whom the internal government of a parish materially depended, was the laugrettman, whose duty it was to regulate weights and measures. “ He was an honest man,” says Mr Gifford in his description of Zetland, “ whose business it was to weigh and measure the  
 “ rent butter and oil, and to determine its proper quality, and, if  
 “ found insufficient, to return it as not receivable : he was sworn  
 “ to do justice, and to keep just weights and measures.” The weights and measures kept by the laugrettman were again annually subject to the regulation of the *laugthing*, named in Shetland the Lawting Court. “ William Gairdy Fold of Unst,  
 “ and the lawrightman,” were ordered to bring “ their canns,  
 “ bismers, and cuttellis, to be rightit at the next lating court.” In the mother country of Norway, there was a similar provision made for the rectification of weights and measures ; a laugman was appointed to have proper ones under his charge ; and there was a sysselman, whose duty it was to examine them annually upon the lawting.

Mansone of Gardie, in Shetland, accepted as his domestic inmate for life, or *opgester*, Freia Rasmusdochter, and her aged mother ; and for their support received the amount of four marks of land. As Freia Rasmusdochter was married, and had children, the husband’s agreement to part with his wife was requisite, as well as the consent of the udal-born to the alienation of the estate. It is but too probable that poverty rendered necessary this deed of *opgestry*. A ting or court was essential to give validity to the alienation, which was said to be composed of “ famous and descreet men.” This deed of *opgestry* has been printed in my Account of the Shetland Islands. The original was in the possession of the late Thomas Mouat, Esq.

There were again other officers in each parish or petty district, subordinate to the foude and laugman. When the householders of a district were assembled, they were empowered to select ten or twelve respectable individuals out of their number to serve the offices of rancelmen. The clerk of the court read a list of such honest men in the parish as were proper for the office; and a refusal of the appointment, without assigning a sufficient reason, was attended with a penalty of ten pounds Scots. The rancelman was certainly invested with a very dangerous and mischievous authority. He was required to scrutinize the lives and conversations of families; to prevent all quarrels and scolding; to inquire who sat at home on the Sabbath; to see that all tradesmen made sufficient work, and did not impose upon their customers; to overlook the building of dikes; to punish trespasses on land; to try the merits of sheep dogs; to make a report to landlords when tenants abused their lands and houses; to punish the idle and all vagabonds; to inform against persons using witchcraft, charms, and other devilish superstitions; and, *lastly*, to enter any house in quest of stolen goods, which last act was popularly named *rancelling* (*n*). In Norway, similar duties were required from the herredsmen of a parish, who were assisted in ransacking for stolen goods by the sysselman; and when a theft was committed, the offender was given in charge to the King's ombudsman.

The laws which regulated the parish tings of Orkney and Shetland had their origin in the legislative meetings of the law-ting. The last time that this very ancient code was revised, was in the year 1615, on which occasion it bore the title of THE AULD LAWS OF ORKNEY AND ZETLAND (*o*). The code is a curious one,

(*n*) The act in which the duties of the rancelman are detailed is given in Mr Sherriff's Agricultural Account of Shetland. A more correct copy is in my possession from the MSS. of the late Reverend Mr Low. It has been printed in my Description of Shetland.

(*o*) A copy of the ancient parish laws of Orkney and Shetland of this date is in the

and contains numerous regulations for the preservation of good and orderly neighbourhood (as it was called) in each district. By these laws, punishments were inflicted on the dissolute, lands were preserved from trespasses, the equity of commercial dealings was protected, and means were provided for searching out or securing offenders, whose crimes it was necessary to submit to the proper tribunals of the country.

In Shetland, the foude of a parish or small island convened two courts in the course of the year, namely, at Martinmas and Michaelmas, at which all the respectable householders were required to be present. Here the laws or country acts which directed the foude's decrees were first read over. The foude (afterwards named bailiff) then proceeded to try such causes as came before him. "But," as Mr Gifford has remarked, "he was only a judge in small matters, such as keeping good neighbourhood, and could discern in no cause above the value of a dunira, supposed to have been half an angel, but which was afterwards restricted to ten pounds Scots."

In passing judgment, the foude was assisted by the opinion of the laugrettman and others, the best men.

But besides the courts which were periodically held in a parish, particular cases of emergency authorised the convention of extraordinary tings. If a defrauded person could bring forward sufficient evidence to swear that there were grounds for a charge of theft, he might name as many tingmen as he thought requisite to assist him in search of the lost property; and he was entitled, at a few days' notice, to summon a ting, in order to obtain justice, or to recover possession of his goods.

When the bondes met periodically at their parish ting, they

General Register-House, Edinburgh. A part only of it has been printed by Mr Peterkin in his Orkney and Zetland Chronicle, I believe from a transcript supplied him by my intelligent friend Mr A. Macdonald. Less genuine copies are to be found in Dr Barry's Orkney, and Mr Gifford's Zetland.

formed themselves into a sort of legislative community; and as no other kind of punishment was inflicted for minor offences except fines, it was probably from this source, aided by taxation, that distress, when arising from causes which were inevitable, was removed. Thus, in Scandinavia, when any man's house was burnt down, or when a stock of cattle was lost by contagion, the bailiff taxed each bonde according to his substance; and in order to prevent any abuse of such resources of indemnification, no man was entitled to a vote in the ting, who had failed in honour upon any occasion, or was too poor (*p*).

These are all the illustrations which it is necessary to give of the ancient practice of the parish tings of Orkney and Shetland.

II. *The tings where weightier causes were tried, or circuit tings.*—The next description of tings which may be explained, includes those which were held for hearing weightier causes.

Over the tings in which important suits were tried, the worthiest of the land presided. In Norway, the sovereign was held in the light of the general conservator of the law, an appeal being always made to him as its tutelar guardian. In Orkney and Shetland, the Jarl (or Earl) presided over the superior tings of the country. At the commencement of the seventeenth century, Patrick Stewart, Earl of Orkney, presided in person over his tings, under the Scottish title of Justiciary of the Country.

But a sovereign or chief generally found it convenient to delegate to others the jurisdiction of the various districts into which his kingdom or province was partitioned out. In Norway, a laugman was the representative of the king; and in Orkney and Shetland, a laugman represented the Jarl.

The laugman of Shetland had, however, another office attached to his justiciary character. This province, owing to its great

(*p*) Mallet's Northern Antiquities, vol. i. p. 175.

distance from the Jarl's seat of government in Kirkwall, was committed to a superior officer, who was charged with the care of the whole of its revenues, whence the name which he acquired of THE GREAT FOUDE, in contradistinction to subordinate parish foudes. Shetland was also named in old charters a Foudrie. The great foude or laugman of Shetland administered justice in conformity with THE BOOK OF THE LAW.

In the seventeenth century, the name of laugman appears to have been growing obsolete. The tings were held, in the absence of the Earl of Orkney, by a representative bearing the name, new to the country, of sheriff-depute.

Whenever the Jarl of Orkney, or, in his absence, a laugman, sat in the ting, he was assisted in his decrees by raadmen or councillors, who are simply described as "the best men" of the district. The raadmen of Olaus Triguesson, by whom he was surrounded, were godordsmen (*q*).

In the next place, whenever a ting was formed, a number of individuals, named laugrettmén, were chosen from one or more districts, to assist in conducting the proceedings of the court, out of whom the raadmen were often selected, but in every instance the doomers. It is mentioned in the law-book of Norway, that the men named in the laugrette were to determine according to law what is right in all the cases for which they were legally summoned together, and in all the cases wherein men are accustomed to give each other their hands before two witnesses.

The duradom of each cause was selected from the laugrettmén present. This institution, as I have observed, was attributed to the family of the Asæ, who were always supposed to sit in doom

(*q*) In Orkney and Shetland the name of raadmen was familiar to the natives so late as the seventeenth century. From the dom-boc of William of Normandy it appears that there were numerous raadmen in England at the time of the Conquest, who evidently officiated in the ancient tings introduced by the Northmen. These Raadmen possessed considerable estates.

upon the affairs of men, having been vested with this power by the supreme judge or Alfader. The Alfader was again supposed to hold the same relation to Odin and the rest of the family of the Asæ, as the king or laugman of a ting did to the doomers. This is an important distinction to be kept in view, if we would seek to explain many difficult passages which occur in the mixed mythology of the Edda. The number of doomers was originally twelve, though, after the introduction of Christianity, this particular amount was less regarded (*r*). The decision of a cause was left to the doomers, as long as unanimity in their verdict was preserved; but, if this could not be procured, a reference was required to be made to the laugman and those "who stood with him," or his raadmen, with the reservation of an appeal, if found necessary, to a higher ting, should any such exist, as to the ting of the sovereign.

(*r*) As the Asæ were supposed to be constantly sitting in a duradom of twelve to determine what shall be the doom of mortals, we are accordingly presented, in one of the romantic sagas, with a cause in which this divine council held a debate. I have before alluded to the fable (see page 137). When Hrosharsgrani, who was Odin himself in disguise, rowed, with his foster son Starkad, to an island which contained a wood, and when, on entering the wood, they found that a ting was set, in which were eleven stools, the twelfth being vacant, it is added, that Odin himself took the twelfth seat. The gods then began to doom the fate of Starkad. First, Thor took up the word, and, on account of some ancient grudge which the Thunderer bore to the grandsire of the youth, his boding was evil.—"I ordain that he shall never have son or daughter, and thus shall end his race."—Odin: "I ordain that he shall live three men's ages."—Thor: "In each of these ages he shall do a niding's deed."—Odin: "I award to him the best weapons and armour."—Thor: "He shall never own land or strand."—Odin: "I gift him great riches."—Thor: "He shall never think he has enough."—Odin: "I give him in every combat victory and discretion."—Thor: "In every combat he shall receive many wounds."—Odin: "I give him skaldship that he shall have a ready faculty in making verses."—Thor: "He shall forget what he has sung."—Odin: "I gift that he shall be venerated by the nobles and best men."—Thor: "He shall be hated by all the commons."—Then doomed the doomers all this against Starkad; and so was broken up the ting.

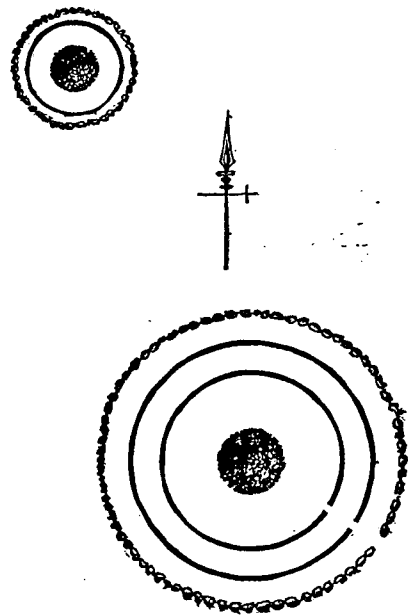
In a later period of the history of Orkney and Shetland, the distinction between the raadmen and the duradom, or perhaps the laugrettmén, seems to have been much lost. They doomed in all causes conjointly, and in this mixed state were registered in the court-book under the name of an assize. The assize always acted, as Mr M'Kenzie, in his "Grievances of Orkney," has properly explained, in the quality of jurats or assistants to the judge, their number greatly varying, being from fifteen to even many more.

Shetland appears, in its original state, to have resembled one of the fiordings of Iceland, where each fiording is said to have contained a certain number of thing-sokens, and each thing-soken to have included within it a certain number of the original communities possessed by Godes, to each of which a hof was attached (*s*). The districts possessed by the ancient Godes of Shetland must have been far more abundant than is indicated by the number of the parishes which existed in comparatively recent times. This is an inference deducible from the great amount of churches and tings in ruins still to be detected in this group of islands. Each thing-soken of Shetland originally included within it several minor provinces, each under a Gode, which afterwards became parishes. For the reasons stated, it would be in vain to speculate upon the number of thing-sokens into which the country was originally divided. About a century ago, they were estimated at ten or twelve.

The construction of the tings by which the Shetland thing-sokens were characterised, deserves particular notice. As superior causes were tried in them, they appear to have been formed by means of ranges of loose stones piled a foot or two high, into

(*s*) According to the Landnama Book, Iceland was divided into fiordings or quarters; each fiording contained three or four thing-sokens, and each thing-soken included within it three godardar (the districts of Godes).

circles trebly concentric; while adjacent to them was occasionally to be seen a circle intended for the lesser or parish tings, which was only doubly concentric. At the Hill of Crucifield, in Unst, the sites of ground thus marked out are three in number. The first of these is formed by three concentric circles cut into the stratum of soil that covers the rock, into which boulder stones and earth were thrown, until they rose above the level of the ground; the diameter of the outermost circle being 67 feet, of the middle one  $54\frac{3}{4}$  feet, and of the innermost 40 feet. There is a small central heap of stones in the middle of the inclosure 12 feet in diameter.—About a mile from this circle is another ting, in the centre of which is a small heap of stones; the diameter of the outermost circle being 55 feet, and of the central heap  $10\frac{1}{2}$  feet. And at the distance of about 80 feet from the last mentioned ting is a third, consisting of a central heap, inclosed by no more than two concentric circles, the diameter of the outermost being 22 feet, and of the innermost 17 feet.

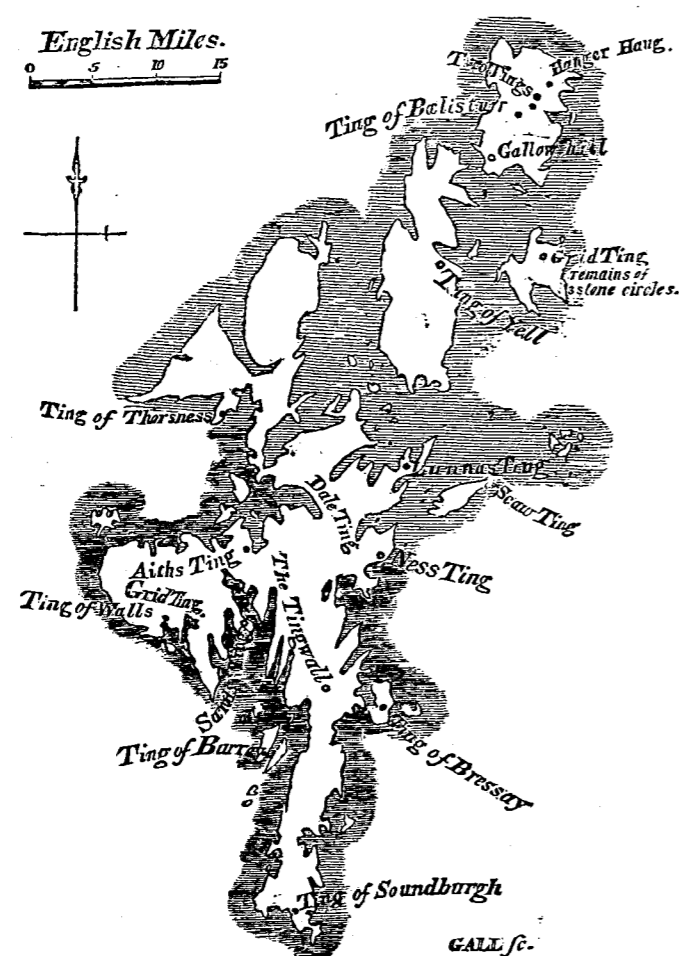


In the north of the island of Fetlar, in Shetland, similar concentric circles formed of loose stones were constructed. They are about thirty-six feet in diameter, having a single stone in the centre.

It cannot be doubted but that these circles were severally intended to divide, in an order of precedence, the different ranks of the tingmen who were convened. When the concentric circle was treble, the central space must have been devoted to the accommodation of the laugman, and to that of the raadmen or councillors who were with him; the large central stone, or pile of stones, being his doom-stool. The interval, which was formed by the second concentric circle, was intended for the laugrettmén. Thus, it is directed in the Norwegian laws that the ting should be so spacious, that there should be left space for those who are in the laugrette. The last and largest interval formed by the third concentric circle was probably reserved for the opposite parties in an action, the plaintiff and defendant, for the compurgators and witnesses, while the populace stood on the outside; for, as the law of Norway expressly states, none who were unnamed could remain within the circle. Such was the division of office among the tingmen, for which the trebly concentric circle afforded ample lines of demarkation. But this particular inclosure was only designed for a superior ting, where causes of graver moment were tried. I have observed that when a ting of lesser importance was held, as when such slighter causes were to be tried as arose from the breach of laws framed for the preservation of good neighbourhood, the doubly concentric circle would suffice. It is worthy of notice that Crucifield, in Unst, exhibits in contiguity each of these descriptions of tings.

The geographical sites of the tings in Shetland, of which actual vestiges or traditional records remain, may be explained in a sort of chart, which is intended at the same time to throw some light on the ancient juridical state of the country.





It was customary in Scandinavia for a chief or his laugman to make a circuit at stated intervals round the province under his control, in order to dispense justice; whence these courts obtained names significant of their being circuit courts. When the great foude or laugman of Shetland made his annual circuit of the tings, he came attended with a numerous retinue of raadmen and other members of his court; and as the bondes were obliged, during the circuit, to find accommodation and entertainment for him and his tingmen, much dissatisfaction was often the result. But these complaints were far from

being uncommon wherever circuit tings were instituted. Gudmund, an Icelander, is said, by old historians, to have been so rich that he had a hundred servants and a hundred kine. In the spring, he rode round his herred to judge in his tingmen's actions. But setting out with a train of thirty men and horses, and sometimes remaining six nights at one house, he thereby caused penury in the land. Now, there was a wealthy man of that place named Ofeigr Jarngardsen, to whom the tingmen, in one unfruitful season, made their complaint. Ofeigr hearkened to them; and in the beginning of the year took thirty of these tingmen along with him to Gudmund's house, there to sojourn for a week. The tingmen's horses were stallions, and they must therefore be kept in a stable; whence it came to pass that food began very soon to grow short, and Gudmund must needs buy both hay and corn. When the guests were about to take leave, Gudmund asked them what might be their errand: upon which Ofeigr reminded him from experience how difficult it was to support so many persons; and then laid open to him the complaint of the bondes. Gudmund was very wroth. The next year, however, he rode round his herred with only two men, and stayed at each place only three nights.

The custom in Shetland of making the circuit of the tings was kept up so late as the eighteenth century (*t*). In the years 1602 to 1604, Earl Patrick Steuart, as justiciary of Shetland, made his circuit of the tings, which were situated in Soundburgh, Burray, Bressay, Walls, Aithsting, Delting, Fetlar, and Unst. The circuit ended in the middle of August, at which time the lawting commenced. In the following year, the circuit took place on the 9th of June, and ended at Tingwall on the 15th of

(*t*) Mr Gifford, who wrote in the year 1733, has observed, that the steward-depute having no salary could not afford to be at the charge of travelling through the country with such a retinue as all the members of the court made out; and, therefore, these circuit courts were much laid aside.

July, the lawting being held on the third day ensuing; and, in 1604, the circuit lasted from the 20th of June to the 20th of August, the lawting sitting six days afterwards. The circuit ting was then named "the sheriff and justice court."

When a circuit ting was to be held, which was published by the symbol of an axe or a staff being sent round to the tingmen, the following was the order of the proceedings:—The suits were called; the ting was lawfully fenced, and frequently the grid proclaimed; then the names of the raadmen, stiled by the Scottish settlers the *rothmen*, and of the laugrettmen, were called over. The raadmen were designated in the court books of the Scottish Earls of Orkney, as "famous, discreet, and unsuspect persons;" and they were required to assist the laugman with their counsel. These raadmen, as I have stated, were eventually confounded with the laugrettmen, in consequence of which, the original duradom of twelve, which gave doom in every cause, blended its functions with those of the raadmen, the whole being registered in the Shetland court-books as an assize that was chosen, sworn, and admitted. Deeds of court always passed in the name of the judge and the assize, or the sheriff and the assize. In the circuit courts of Patrick Steuart Earl of Orkney, these jurats or assistants to the judge were about fifteen in number.

But it is now expedient to explain more fully one of the most interesting of the incidents connected with ancient tings. It has been a leading object of this memoir to illustrate, from Scandinavian usages, the three judicial tests to which guilt or innocence were submitted; these were judicial combat, the trial by ordeal, and the trial by compurgation. The practice of the tings of Orkney and Shetland is peculiarly interesting, from the information which it gives of the last named test.

In explaining the principle of compurgation, a reference was made to the case of Gierrida (page 130). Thorbiorn accused her of witchcraft. The cause was tried in the ting of Thorsness,

Snorro the gode standing on the part of Thorbiorn. Arnkell, also a gode, approaching the place of doom, made a solemn testimony upon a ring which rested on the high seat; which oath was confirmed by that of Thorarin and ten others.—Numerous cases of a similar kind are recorded in the old Sagas. Atle cited twelve men's oaths that he had not in his possession any of Eigil's goods; and the accused was declared to be free from the charge.

Now it appears from these cases that the privilege of bringing into the ting a number of compurgators belonged less to the plaintiff than the accused. The plaintiff explicitly made his charge, and either simply stated his case, or brought forward additional support to it by witnesses. But the defence upon which the defendant reposed was the oath of compurgation sworn upon the ring by a certain number of individuals, often twelve, who might include among them two or three descriptions of compurgators. Some of them might be witnesses who could directly refute the charge of the plaintiff: others might be friends of the accused who could give their oath on no other grounds than the favourable light in which they regarded the character or general habits of the accused; while a third party, belonging to the same jury of compurgators, might justify the oath which they took, less upon direct evidence or knowledge of character, than from a rigid inquiry which they had instituted into all the circumstances connected with the case. The fault in the law of compurgation, as it originally existed, is sufficiently glaring. Provided a defendant brought into the ting a full jury of compurgators, it was no obstacle to his complete acquittal if they should consist more of friends, who could ground their oath on no other pretension except that of general character, than of less interested individuals, whose oath was founded on direct evidence or judicial investigation. There is reason, however, to suppose that, in process of time, whenever a strongly contested case came before

the doomers, they would naturally inquire into the quality of the compurgators upon whose oath the defendant sought for an acquittal. But the defect was at last attempted to be remedied. In the law-book of Norway, the acceptance of the twelve men's oath, the six men's oath, and the three men's oath, became limited to certain conditions. These will be now considered.

The *Tylfteraid* (or *Twelver-aith*, as it was named in the seventeenth century by the Scottish settlers in Shetland) is thus explained. Should the king prosecute any one for high treason, then let him deny it with the oath of twelve men. In the same manner shall a man defend himself in all capital crimes. There shall be named six men [living] upon each side of the accused, who must be of like condition with him, dwelling nearest to him, and must have the most complete knowledge of the case; and these men shall be neither his relations, his intimate friends, nor his enemies; they shall be full aged and impartial men, who have not previously been detected in giving false oaths or false testimony. Seven of these may he [the accused] take, and be himself the eighth, and four shall be chosen for certifying to the oath, who shall be men that have never been detected in perjury.

But there was another defect in the law of compurgation, namely, that the evidence required was much less for a small crime than for more weighty offences. The *tylfteraid*, or twelve men's oath, was demanded for crimes of the gravest moment, as for high treason; but if the charge was less serious, a *settareid*, or six men's oath, was deemed sufficient. It was directed in the *Jus Commune Norvegicum*, that the *settareid*, or six men's oath, should avail for all actions which were denominated "eight or-tugas' and thirteen marks' actions." The selection was to be made from men dwelling on each side of the accused; three from each side being put in nomination, after the manner pointed out in the twelve men's oath. Three of these men the accused might then select, and be himself the fourth; and it was allowed

him to choose two men for certifying to the oath. But for actions of five marks only, the *lyrittareid*, or three men's oath, was held sufficient; the conditions of which were, that, from men living on both sides of the accused, two from each side might be put in nomination, out of whom the accused might retain two, and be himself the third. Again, in a three marks' action, and for such actions as were of still less weight, the *lyrittareid* required that there should be named, out of men living on both sides of the accused, one man from each side, and that from these the accused might select one person, and be himself the second, while a third might testify to the oath; but that this oath was not to be used except when a two men's oath or one man's oath was considered sufficient. For an action of one ora, it was allowed one person to swear; for an action of two oras, two persons; and so on. It thus appears that, in trivial cases, one, two, or three compurgators were accepted, while in more important suits an oath of six or twelve men was demanded. It is unnecessary to add, that this law of evidence must have been highly detrimental to the ends of justice.

Such was the varied number of compurgators that was considered requisite for offences of different magnitudes. This law prevailed in Orkney and Shetland so late as the 17th century. The *tylfteraid*, or twelve men's oath, was named by these islanders the *twelver aith*; the *settareid*, or six men's oath, acquired the name of the *saxtar aith*; and the *lyrittareid*, or three men's oath, was denominated the *lauryt aith*. If an accused person was absolved by his compurgators, he was said to have quitted himself of the *lauryt aith*, the *saxtar aith*, or the *twelver aith*. These circumstances are well illustrated in the court-book of Earl Patrick Steuart, which is still extant (*u*). It also appears from these records, that, in correspondence with the law of compurgation, as

(*u*) In these illustrations of the practice of the Shetland tings, I am indebted to the curious extracts from the Court-books of Earl Patrick Steuart, made by the late Mr

it is divulged in the Norwegian code, the penalty awarded to a failure under this test increased with the number of compurgators demanded; thus, the measure of punishment allotted to a failure under the three mens' oath was greater when an unfavourable issue attended the six mens' oath, and was still greater when it followed the twelve men's oath; the number of men's oaths required was therefore determined by the degree of weight attached to the charges brought forward. For instance, an accused person "was decerned to quit himself of theft by the twelter aith, because the stowth was great." Another person was ordered to clear himself for theft with the saxter aith only, in respect of his minority. "Pool Watson and his wyffe were dempt to quyte thameselffis of the stowt of thair nyhbour's profeit of butter, in respect that thair is mair butter found with thame with twa or thrie ky, nor with thair nyhbors quilk has sevin ky, and that with the saxter aithe, because the actioun is wechtie; and, failzeing thairof, to pay sax markis silver, and to underly the law thairfoir as wichcraft."

It also appears that, if a man failed quittance under the test of compurgation, a new trial was occasionally granted him; in which case, the compurgators were sometimes the same and sometimes more in number. But it is to be presumed that, according to the laws of Norway, if the accused failed quittance, first by a

James McKenzie of Orkney, and published in Mr Peterkin's interesting work entitled "Notes on Orkney and Zetland." The originals are in the General Register House at Edinburgh. To avoid an unnecessary multiplication of notes, I would premise that, whenever I quote cases illustrative of the practice of the Shetland tings, and do not accompany them with references to the source whence the information is derived, it must be understood that I quote from the documents now described. In my work entitled "A description of the Shetland Islands," I had frequent occasion to allude to the practice of the Shetland law-tings, but had to lament the paucity of the materials from which my information was derived. But this blank having been supplied by the publication of the extracts from the Earl of Orkney's Court-book (of the existence of which I was before unconscious) I have consequently been induced to embark in the present investigation.

three men's oath and afterwards by a six men's oath, his punishment for not succeeding in the latter would be proportionally increased. In Earl Patrick's court-book, we find it recorded, that "Donald Smyt is dempt to quyte himself of the breaking of David Spence's skeo, and taking an turbit fisch out thairof, with the saxter aith, in caise he failzie the lauryt aithe of befoir; and failzeing of the saxter aith, to pay saxe marks, and to underlye the law thairfoir as stowth." We also read that a man is decerned "to quyte himself of another stowth with the twelter aithe, because he has failziet twice the lauryt aithe of befoir, and failzeing thereof, to pay 12 marks, and to underly the law thairfoir as stowt."

Again, an additional circumstance in the law of compurgation is illustrated in the records of the circuit court of Shetland. Whenever an accusation was brought forward, and the defendant was ordered to clear himself by an oath of three, six, or twelve men, it was customary to allow him twelve months for the trial, namely, the interval between the circuit court of one year, and that of the succeeding year. After this period had elapsed, the verdict of the compurgators became recorded, and a sentence was pronounced. Thus, it is entered in the court-book of the Earl of Orkney, that a man "had failed quittance of the saxter aith for the stowt of lines the last year." He was, therefore, ordered to "quit himself this year by the twelter aith; and, failing, to pay twelve marks, and underly the law as stowt." In the case of two individuals who "had died under quittance," that is, during the interval between one circuit ting and a succeeding one, "their moveable goods and geir" were "decernit to be escheat." This appears to have been a great injustice.

These are the illustrations which the Shetland court-book affords of the ancient test of compurgation (*x*). I shall, there-

(*x*) Sir Walter Scott has supposed, in his abstract of the Eyrbyggja Saga, that the northern compurgators gave origin to the modern establishment of juries. But we have

fore, next notice the sentences which were pronounced in the circuit tings of Shetland, agreeably to the Norwegian BOOK OF THE LAW.

The doomers who, upon the oath made by the compurgators of the guilt or innocence of a party, gave doom or final sentence according to the book of the law, were, as I have stated, selected from the chosen men named laugrettmen. They were likewise assisted in their judgment by the laugman and his raadmen. But, as it has been also remarked, the distinctions of raad-men and doomers was, in the judgments given, much confounded. Originally, the number of doomers varied in each cause. For minor offences a six mens' doom was sufficient; but if any man stabbed another with a knife, or even bit him, or if there was a charge of adultery, a twelve mens' doom was required.

I shall now mention some few of the crimes, and the penalties attached to them, which appear in Earl Patrick Steuart's court-book of Shetland, dated about the commencement of the 17th century.

Civil actions were tried, the most important of which were

in England two descriptions of juries; the grand jury and the common jury. The compurgators of our northern ancestors are the genuine predecessors of the grand jury of England; but it is a benignant and merciful provision of our modern laws that the verdict of this body of men, who deliberate with closed doors, is confined to the power of absolving, not of convicting. To try cases of presumed guilt, another description of jury rose into existence. The common jury of England, like the duradom of Scandinavia, is selected from named men—men presumed to be the best in the district where they live. But here the correspondence ceases; as the same jury has not the power, that the duradom possessed, of passing sentence or doom. A common English jury, therefore, much more resembles in its functions the ancient compurgators, with this advantage, however, over the older system, that the evidence which it scrutinizes is brought forward in open day, and before all men. In short, when a *common* jury was established, compurgators still existed, though, as a *grand* jury evinces, limited in their power; while the functions of the duradom, whose peculiar province it was, after the oath of the compurgators had been received, to give doom according to law, eventually became blended with those of the supreme judge.

connected with udal rights. So rigidly were udal rights preserved, that no lands could change their possessors without the sanction of a ting; and the appeals which were made to the laws on this subject were very numerous. If land was to be sold, a previous proclamation was indispensable; and, in disputes concerning it, six doomers were appointed on each side who were to be neither friends, relations, nor enemies. On the 1st of July 1603, there is the following entry: "The which day compeirs Magnus in Dafirthe, and alledgit that he had guid rycht and titil to ane brotheris pairt of land lyand in Grundzervo, with houses and pertinents thairof, extending to 2 mark land, and thairfoir protestit that he might have place to persue the samen as law beirs." On the 6th of August 1603, it was tried "whether Magnus Flett and Geillis Keillo were lawfully married or not, and whether Francis Flett was lawfully begotten from them." The ting determined in the affirmative.

Minor civil causes also appear in the court-book of the Earl of Orkney. Andrew Hawick, owing Hew Sinclair money, was ordered to make payment to him within a month, "on pain of poynding." But it was customary in the circuit courts, for the sake of economising time, to transfer disputed accounts and other differences to the judgment of some foude and other honest men. Thus, two individuals promised the court to reckon and count before the foude and six honest men; the claims of the parties to be ready on the 1st of August, with witnesses in proof, under the pain of forty pounds. In a dispute between a landlord and his tenants, William Neap, foude, and three honest men, were to minister justice between them, and "to place every man with his pairt of the ruiff of the house and house-mails restand." A man having gripped half a rig of his neighbours land, the judge and assize fined him for it, and "ordained the hail land in Skelberry of the king, kirk, and udal, to be

“partitt by the fold and sax honest neighbours, and each owner  
“to be possessed of his part according to the use of the neigh-  
“bourhood.”

At each circuit ting the laugman assumed the power of reversing or confirming the decrees of the parish foude. It was ordered, according to Mr Gifford, that each foude of a parish should bring his court-book wherein all causes were recorded; which book was submitted to the laugman, who had the power of reversing any unjust decrees, as well as of punishing complaints, if well founded, against the administration of justice, in minor causes relating to the preservation of good neighbourhood (*y*).

Again, whales and wrecks were presented at the circuit court, for which each foude of a parish, as steward over the revenues of the Earl of Orkney, “was answerable to my Lord.”

Crimes were generally compensated by mulcts. But for offences of graver moment, particularly for those against the commonweal, branding in the skin, banishment, confiscation of goods and chattels, and even capital sentences were doomed. A few petty crimes were punished; as, the refusal to pay certain debts according to the decree of the parish foude, which subjected the defaulter to the fine of a dunira. The breaking of an arrest of the foude of Yell incurred a penalty of ten pounds Scots. A master for detaining his servant in opposition to a decree of the ting was sentenced to pay a mark for each night of detention. Suicide was visited with a confiscation of the property of the deceased. July 23d 1602, “Janet Thomas-dochter having slain herself in the sea, her guidis and gere were declared escheit.”

(*y*) The judge and the assize ratifies and approves the folds dome of Waiss made anent the swyne of Papa: That thai sall be sayfeit and ringid in tyme of summer and winter also, to the effect that the haill nylobors in their griss land and cornis may be free of their skayth; and failying thairof, the fold to direct his officer be the syght of nylobors to mark thame upon my lord's mark to his lordship's use.

Intoxication was severely punished. “Magnus Erasmusson for  
“being fou and drunken contrair and agains the actes maid there-  
“anent of befoir, and for bleiding himself be his drunkenness  
“beneath the ene, thairfore is decernit to pay for his fowness 10  
“libs, and for his bluid beneth the ene 4 merkis, in example of  
“uthers.” (*z*)

But the sentences attached to the crime of theft are the most interesting. “It is not permitted,” says the *Jus Commune Norvegicum*, “that any one of us steal from one another. Now is it  
“in this manner determined, that, if any man, who cannot labour  
“for his support, steal meat to save his life from starvation, then  
“is that theft not deserving punishment. But, if the man who  
“can work for his food steal to the amount of an ora, yet has not  
“been before known to have thus aggressed, then let him be sum-  
“moned to the ting, and free his skin with three marks of silver:  
“If he steal another time to the amount of an ora, then let him  
“free his skin with six marks of silver; and if he do not then free  
“his skin, let him forfeit it, and be burnt with a key upon his  
“cheek: If he steal a third time to the amount of an ora, then let  
“him forfeit his skin, and let the king take six marks of silver from  
“his goods, if there should be found so much: If the same man  
“steal oftener, let him forfeit his life. If any one, who has not  
“before been known to thieve, steal to the amount of half a mark,  
“let him be conducted to the ting, and free himself with eight  
“ortugas, and thirteen marks of silver to the king, or be outlaw-  
“ed. If any one steal to the amount of a mark of silver, then has

(*z*) It is difficult to understand the nature of one of the charges recorded. “Ingager in  
“Leady is tryit to have steyit the deid unburyit, and thairfore is decernit to pay 40  
“sh. under the pain of poynding. The haill commons of Yell are ordered to burie  
“their dead without delay, under the pain of 40 sh.” Probably this sentence had refer-  
ence to some disease of a contagious nature then prevalent, which it was thought expedient  
to obviate by burying the dead with the least possible delay.

“ he for the first offence forfeited all his goods to the king ; and  
 “ let him incur such punishment as they, to whom the king has  
 “ given lawful power of awarding quittance, shall impose upon  
 “ him ; the thief’s life is then preserved. But, if the same man  
 “ steal oftener, then has he forfeited his goods and security, lands  
 “ and moveables, and his life besides.”

We shall now see, from the cases recorded in the court-book of Earl Patrick Steuart, that the principles which, in the Norwegian laws, inculcated the distinction that ought to be made between the incipient and confirmed thief, and the thief from necessity, was kept in view, though the actual sentences were perhaps more severe than this code ever contemplated. On the 10th of July 1602, Margaret Peters-dochter was accused “ for the theft-  
 “ ous steilling of an sheip of hir nyhbors.” The prisoner “ confessed the stowth,” but pleaded “ that it was done in plain hunger  
 “ and necessitie.” It is then added, that the assize, considering this to be the first fault, “ decernit her hail guidis and gere, and  
 “ landis, gif ony be, to be escheit, and hirsself to be banist the  
 “ countrie within the space of an monet, at the least in the first  
 “ passage ; and gif she beis apprehendit with the valor of ane  
 “ uris-thift [ounce-weight theft] afterwards to be tane and drownit  
 “ to the daith, in the example of utheris.—July 8th, 1603, it is  
 “ tryit that Ringzeon Cowpland has stowin an sheif of bere fra  
 “ Allan Anderson, and is said to be ane common and notorious  
 “ pykir, and an theife ; thairfoir decernis his landis, guidis and  
 “ gere to be escheit, and himself banist the countrie within the  
 “ space of a monet, at the leist, in the first passage ; and gif he  
 “ beis apprehendit with the valor of an uris theft heirafter, to be  
 “ tane and hangit be the craige quhill he die, in example of  
 “ utheris ; and ordains that none reset him in thair houses fra this  
 “ furthe, ilk persoun under the pain of ane mark in the nyght.”  
 July 23d, 1682. In a case of repeated theft, the criminal having

“ been a notorious thief thir mony yeirs of befoir, thairfoir they  
 “ [the assize] in one vote, decernis his landis, guidis, and gere,  
 “ to be escheit, and himself to be tane to the Gallow Hill, and  
 “ thair to be hangit be the craige while he die, in example of  
 “ utheris.”

When capital punishments were doomed, it was ordered that the criminals should be conveyed for this purpose to a stony hill, where there should be neither arable land nor greenfield, even though the sun were direct in the south. In Shetland, no place could answer this requisition better than one in the north of the island of Unst, near the site of three tings. It is a barren hill, formed of the rock named by geologists *Serpentine*, and so surcharged with the impregnation of ferruginous matter, that scarcely a blade of grass will grow upon it ; added to which, it is covered over with stones which have exhibited a process of disintegration that has continued for ages. One of the small peaks which rises abruptly like an artificial tumulus from the high platform of a hill, is named Hanger Heog ; and at the foot of it is a heap of stones, which goes under the title of the Place of Justice. The top of the peak was reached by a flight of rude steps, where another heap was to be seen, named the Place of Execution. A tradition prevails, that whoever ascended the steps of Hanger Heog never came down alive ; and, in confirmation of this saying, two bodies supposed to have been executed criminals, were, about sixty years ago, found buried in disorder near the base of the lower heap of stones. Another place of execution of a similar character, perhaps more recently used, is situated on the south of the island of Unst. It is named Gallows Hill. Adjoining to it is a cairn under which, probably, the bodies of some noted criminals repose. In the seventeenth century, criminals paid the last forfeit of the law on a hill near the Earl of Orkney’s castle in Scalloway.

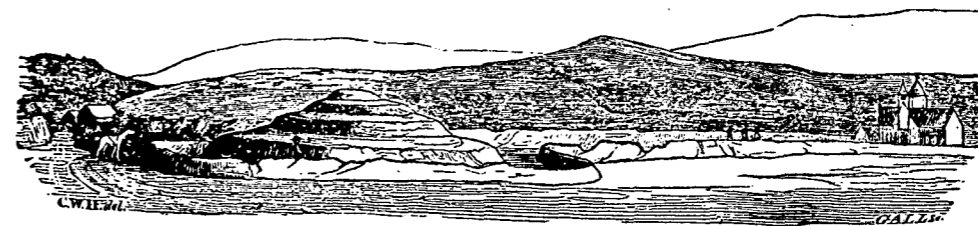
Capital punishments were not, however, popular ; and when every church afforded the privileges of sanctuary, the doom pro-

nounced was not unfrequently evaded. Brand, the missionary, who visited Shetland in the commencement of the last century, has remarked, that when any person received sentence of death upon the holm, if afterwards he could make his escape through the crowd of people standing on the side of the loch, without being apprehended, and touch the steeple of the church of Tingwall, he obtained a reprieve. But there was one circumstance, which powerfully militated against the escape of a criminal condemned to die for murder; if the relations or friends of the deceased did not avenge his death, they were considered infamous. In the Isle of Man, the prowess or combat which invariably ensued between the relative of a slaughtered person and his destroyer could not be put down until the seventeenth century, even though a law subsisted against it which had been passed above two hundred years before. In the year 1644, it was declared that "this manner of requital was found very insufferable to be retained in any well governed commonwealth. It was, therefore, provided, by a certain law, enacted at the Tynwald holden at Killabane in the year 1429, that such prowess should be put down, saving in the Lord's cases; and that such matters should be determined by God and the country instead of prowess." A similar spirit of retaliation displayed itself in Shetland. In the ting of the island of Unst, it was usual, after a doom of death had been pronounced, for the condemned person to try to effect his escape to the neighbouring sanctuary of the church of Bøelistur; and if the effort was successful, his safety was insured. But if the criminal had committed murder, his interception was attempted by all who were related in consanguinity to the deceased. Revenge, coupled with the horror of infamy, as long as the murder of a kinsman was unrequited, often rendered the pursuers infuriated and desperate. The figures of crosses scooped on the plain where the ting of Unst was held, still shew the sites where malefactors, in attempting to reach the

neighbouring sanctuary, had been slain; and from the great number of these crosses remaining, the eminence where they occur is named the hill of Crucifield.

These observations conclude what I have to say on the circuit tings of Shetland.

III. THE LAW-TING.—In every large province or colony of Scandinavia, a central situation was chosen for the alting or law-ting, to which the whole of the bondes might resort, for the purposes of legislation, and for hearing appeals from subordinate tings. In Denmark, the sovereign was elected at a ting, the site of which was described by a columnar range of stones. We learn from Wormius, that in each of the three kingdoms anciently included in Denmark, namely at Landen in Scania, at Leyra in Zealand, and at Wiburg in Jutland, a stone circle was to be seen, where, according to tradition, a ting was held, whenever, upon the death of a sovereign or leader, an election took place of his successor. The site of the alting or tynwald, in the isle of Man, was formerly on the summit of a hill; but it was afterwards removed to an artificial mound, so modelled as to allow scope for a proper distinction of ranks. It diminishes in circumference towards the summit; and is carved around into parallel ledges, upon each of which were arranged the different orders of tingmen (*a*).



(*a*) A similar provision for the distinction of rank is to be found in the Hill of Pleas at Iceland. On each of the three benches which surrounded the summit of the hill, forty-eight men were accustomed to sit; the fourth in the centre being for the bishops and the laugmen.



The *laugthing* or *lawting* of the foudrie of Shetland (for we know little or nothing of that of Orkney) to which all the udallers owed their service, was situated in a valley, which, from this circumstance, was named Thingvöller, now corrupted into Tingwall. The actual site of the lawting was in a small holm adjoining the north shore of a fresh water lake; the communication to the shore being by means of stepping stones. The tingaholm (as it is named) is not more than about ninety feet in diameter. The stones were of a size evidently intended to afford seats for the laugman and laugrettmén. They are now much torn up and displaced. After Patrick Steuart Earl of Orkney had built Scalloway Castle, the lawting became removed to the open fields adjoining, named Scalloway Banks.

The lawting was generally convened once a year, agreeably to the general laws of Norway: "You shall hold your laugthing each year on the eve of Botolf's mass in Gula, upon the right thing-place. There shall all they who to the thing are named, and have not lawful hinderance, be present." In Shetland, the lawting was convened in July or August immediately after the circuit tings had been held.

Throughout the provinces and colonies of Scandinavia, each herad or fylke was obliged to send to the alting a certain number of chosen men, who were to legislate and to doom. The law states, that the lehnsman, sysselman or foude, or their legal umbodsmén, were to name at the midfast-ting a regulated number of men of each fylke to attend the laugthing; these named men were to be such as kept overseers. Those who named them were to declare upon oath, on the first oath day of the Gula [or other] laugthing, that they had named such as they believed to be the most skilful; and that they had not been actuated by bribes. It is said that in Shetland all udallers indiscriminately were obliged to attend the lawting or alting. But this is probably a mistake. It is much more likely that such as were re-

quired annually to give their service to the tingwall were *named* or *chosen* men (*b*). The chosen men who attended the lawting had, in Norway, very ample provision made for their support (*c*). But it does not appear that in Shetland any farther recompense was afforded than the reservation of lands for the support of the tingmen's horses during the time that the ting was sitting. The udallers, in assembling from different parts of the country, were mounted on the hardy race of animals known by the name of Shelties. They first halted at the houses on the east side of the Loch of Tingwall, where persons were appointed to tether their horses, and to undertake the charge of them; for the loss and trouble of which the occupiers were repaid from the proceeds of the usual impost of scat. "The udallers coming all on horse-back," says Mr Gifford, "had their horses grazed in the neighbourhood thereof, for which the proprietors of Griesta and

(*b*) In the Isle of Man, twelve men of each sheading were nominated for the alting, forming a sum total of seventy-two. But Sir John Stanley, who was no less averse to such a number than to a popular election, destroyed the freedom of representation in that island, and reduced the amount to twenty-four, who are now self-elected.

(*c*) "Twelve men shall be named from Egda Fylke; each man to have 10 oras of silver for journey money.

"30 Men from Ryge Fylke; each man to have, if from the south of the Fiord, - - - - - 1 mark of silver.

if from the north Fiord, 7 oras silver.

"40 Men from Horda Fylke, each from { South Hordaland, 5 oras.  
North Hordaland, 3 oras.

"20 Men from Sogna Fylke, each man to have - - - 5 oras silver.

"20 Men from Fiorde Fylke, each from { South Fiorde, 6 oras.  
North Fiorde, 7 oras.

"12 Men out of Sondmor Fylke, each man, - - - 10 oras.

"4 Men from Valders,

"2 Men from Haddingdale, } each man a mark of silver.

"3 Men from Seatre,

"This shall be paid in Bergen by the laugman or sysselman, and by them who keep the townsmen's money."

“Astar (two adjoining rooms or towns) were bound to make up their damage, for which one had the scat of some lands in Wiesdale, and the other the scat of Quarf, and half of the scat of Coningsburgh.”

The sovereign or chief of a province was always acknowledged to be the head or supreme judge of the lawting, and in his absence a laugman presided. When the chief himself was present, great form and ceremony often ensued. In the fifteenth century, Sir John Stanley, king of Man, asked his deemsters to commit to writing all the laws as well as ceremonies appertaining to the ting; when their reply on the mode in which he should preside at the Tynwald Hill, was as follows:—“Our doubtful and gracious lord, this is the constitution of old time how you should be governed on your Tynwald day. *First*, You shall come thither in your royal array, as a king ought to do, by the prerogatives and royalties of the Land of Mann, and upon the hill of Tynwald sit in a chair, covered with a royal cloth and cushions, and your visage unto the east, and your sword before you, holden with the point upwards; your barons in the second degree sitting besides you; and your beneficed men and your deemsters before you sitting, and your clerks, your knights, esquires and yeomen about you in the third degree; and the worthiest men in your land to be called in before your deemsters, if you will ask any thing of them, and to hear the government of your land, and your will; and the commons to stand without the circle of the hill, with three clerks in their surplises” (*d*).

(*d*) It is interesting to see how the ancient form of the Tynwald Hill is still preserved, when the descendant of the ancient kings of Man, the present Duke of Atholl, presides over his annual alting. The following is extracted from a Manx Gazette, on the occasion of his Grace, about five years ago, holding his Tynwald court.

“**TYNWALD COURT, ST JOHN'S.**—Friday last, the 5th inst. was appointed by his Grace the Duke of Atholl, governor-in-chief, and captain-general of the Isle of Man, for holding the annual Tynwald court, on the Mount of St John's, agreeable to immemorial usage. His Grace on this occasion wore the full uniform of a chief governor,

In Orkney, the Jarl was at the head of his lawting, and in his absence a laugman. In the 17th century, the Scottish Earl of Orkney presided at the lawting, having the name of justice-general and sheriff, while his representative in his absence was a sheriff-depute. In 1604, the sederunt of Shetland is thus entered:—“The lating court of the countrie of Zetland, callit the principal and head court thairof, haldin be an nobill and potent Lord, Patrick, Erle of Orknay, Lord Zeitland, Justice-General, and Sheriff principal of the samen, and M<sup>r</sup> Jhone Dishingtoun,

richly embroidered, having on the star and ribbon of the most Ancient and Noble Order of the Thistle; next followed his Grace's travelling carriage, in which was the Honourable Captain R. Murray, dressed in full uniform, who bore the sword of state.

“The chapel of St John's had green rushes strewed over the aisles, a custom on those occasions, the origin of which is beyond the memory of man. Divine service was performed; after which, the procession to the Tynwald Mount commenced its progress. The order of the procession.—Constables.—Coroners.—High bailiffs.—Clergy: the junior clergy first.—House of keys.—Clerk of the council.—Clerk of the rolls.—Water bailiff.—The deemsters.—Attorney general.—Receiver general.—Vicar general.—Arch-deacon.—Lord Bishop of Sodor and Man.—Sword-bearer.—His Grace the governor-in-chief.—Captains of parishes.—Special constables, bearing the batons of office.

“On the summit of the Mount an octagon canopy was erected; at the rear of which, on a lofty staff, was hoisted the great Union flag. Beneath the canopy were two state chairs covered with crimson cloth; one for the governor, the other for the Lord Bishop. As the governor passed between the files formed by the military, arms were presented, the officers saluted, and the drums rolled.

“His Grace and the Lord Bishop having taken their seats, surrounded by the other members of the legislature, the deemster directed the Coroner of Glanfaba to make the usual proclamation.”—

“His Grace the Duke of Atholl then advanced to the front of the canopy.—‘I have the honour this day to stand on this antient mound, whence, time immemorial, your laws have been promulgated; and, as governor of the Isle of Man, to represent his Majesty the King.

“In the discharge of my duty, I shall ever do what in my power lies, for the general benefit of the country, and that, without respect of persons, truly, faithfully, and as upright as the staff I now hold in my hand.’” &c.

After a charge to the ting relative to the general affairs of the island, his Grace then directed that the new coroners should be sworn in, &c.

“his depute, at the Castle of Scalloway-Bankis, the 20th day of August 1604,” &c.

As soon as the Udallers of Shetland had assembled to their lawting, the suits were called. This form continued for the three first days, and Mr Gifford states that, for non-appearance, each person was liable to the fine of forty pounds, Scots money.

The fencing of the court followed, which act was performed with the greatest solemnity.—The manner in which the tings of the Isle of Man were fenced by the deemster, when the king was present, is very striking:—“I do fence the king of Man and his officers, that no manner of men do brawl, or quarrel, or molest the audience, lying, leaning, or sitting, but do shew their accord, and answer when they are called by licence of the king of Man and his officers. I do draw witness to the whole audience that the court is fenced. It is the king of Man his pleasure and his officers, to keep court twice in the year, that all men, both rich and poor, deaf and dumb, halt, lame, and blind, do come thither upon horseback or a-foot, to be drawn thither upon horse or car, that they may know the king of Man his pleasure and his officers, and the law of his country.”—In Orkney and Shetland, the fencing was often accompanied with the proclamation of the grid (*d*).

The next circumstance which occurred in the convening of the alting was the choosing of the assize. In the sederunt of the Shetland lawting held in 1604, the entry is as follows:—“The suits callit, the court lawfully fencit, the assize chosen, sworn, and admittit.” In the ancient laws of Scandinavia, we have abundant evidence how the laugrette or jury was appointed. Each laugrette that doomed in a trial was formed from the chosen men out of each district who had been summoned; and, when a cause came on, a place was made for them in the ting.

(*d*) See the third section of this Memoir, page 162.

“Those who are in the laugrette,” says THE BOOK of the law, “shall have place in the ting; there shall be three dozen men; and they shall in such a manner divide themselves, that there may be of each fylke some named who are considered to be thereto well adapted.” In Eigil’s Saga, it is also stated:—“Within the circle sat the doomers, twelve from Fiorde province, twelve from Sogne province, and twelve from Hærda province; because three tribes were to judge every action.” These remarks will assist us in an explanation of the quality and number of persons who in the commencement of the seventeenth century composed the assize of the Shetland lawting. This assize was formed from the chosen men out of each district of the country that were summoned to the lawting. The late Mr MacKenzie, author of the Grievances of Orkney, has remarked that, while in the circuit court the number of men that formed the assize were often about fifteen in number, in the lawting they were one year nineteen, and in another twenty-eight, and always in the character of jurats or assistants to the judge; even deliverances upon petitions, and warrants for registering private deeds, passing always in their name as well as the judge’s, though the Earl himself were in the judgment. In the lawting of 1604, twenty-two persons formed a jury, six of whom were foudes.

After the assize was chosen, actions at law commenced. Although the parish tings and the circuit tings were courts to which all causes were in the first place submitted, yet, under particular circumstances, they might be immediately transferred to the decision of a lawting. A criminal, for instance, had fled from justice, and as it was probable that he had sought refuge in some distant thingsoken in the country, it was ordained, “be the advice of the haille perischin, that the haille foldis in the countrie should bring in Ormie Olawson, quherever he may be had, to the lawting-court next to come, to be accused upon stowth.” When a person of considerable rank in the country, as for instance a foude, had a civil action against him, or was indict-

ed for any crime, the cause was often tried before the lawting. On the 19th August 1602, Adam Sinclair of Brow was convicted before this tribunal "of violent intromission with goods of a broken Dutch ship," for which offence his whole moveable goods and gere were decerned to the will of the Earl, with power to satisfy the party; and again, in four days afterwards, an arrow having probably been sent round to the udallers as a symbol that they were to sit in judgment upon a murderer, the same person was indicted for conspiring the death of Mathew Sinclair of Ness, in as much as he intercommuned with the actual perpetrator of the slaughter, his own servant, and furnished him with money and other necessaries for carrying him out of the country. The assize, therefore, sentenced the whole of the said Adam's moveables, goods, and gear, heritable lands and possessions, to be escheat, and himself to be banished the country within the space of fifteen days; and if he was afterwards apprehended, "to be tane to the Headinghill of Scalloway-Bankis, and thair his head to be tane and strukin frae his bodie, in exampill of utheris."—Cases also difficult to decide appear to have been submitted to the lawting. Of this kind was an action brought by a Shetland gentleman against his skipper, for the recovery of the value of some butter sent as land mails and duties "to the Lordis of Norway," with the freight of which the defendant had been entrusted, but had pleaded the necessity he was under of selling the property for the use of the plaintiff's ship. The defendant lost his cause.—In the year 1514, a trial came before the lawting of Kirkwall, in Orkney, to enquire if a sale of udal land was sufficiently valid; proofs having been advanced, that it was poverty and wretchedness alone which prompted the disposer to an alienation of the inheritance of his fathers (*e*).

But a great province of the lawting was to sit in judgment upon appeals from inferior courts. Several appeals, for instance,

(*e*) The trial is inserted at length in my Description of the Shetland Islands.

lay against the verdicts of the parish foudes, who had decided regarding the partition of lands among heirs, according to the old udal laws of the country, by which all sons inherited alike, while the share of a sister was half that of a brother. A newer law of inheritance favouring primogeniture had, however, been introduced into Norway; and an appeal was made to the lawting by interested parties, with the view of setting the old Shetland custom aside. The complainants were successful. In one of the decisions, it was ordered, that an airff should be made "in presence of the depute to be appointed by my Lord and twelve honest men of the parish, for division of all lands and moveables of the deceased; the airff to be held within the space of one month, under the pain of forty pounds Scots." Appeals also lay from the circuit courts to the lawting. Thus, a confirmation made by the judge and the assize of a circuit court, relative to the decree of a parish foude, concerning the ringing of swine, was complained of as grievous, and was ordered to be reduced.

The regulation of weights and measures came under the consideration of the lawting. The foudes and laugrettmen were annually required "to bring their kanns, bisners, and cuttels to be rightit at the lawting court, whether the same be sufficient or not." On failure to do this, they were liable to the fine of one hundred pounds, and the deprivation of their office, as well as to a prosecution against them for perjury (*f*).

Offences committed against the justiciary were brought forward in the lawting. Thus, the transgressor of a law against "entering my Lord's holmes" was ordered to be presented "to the sheriff, or under fold of ilk parochin, in order to be tried by an assize." The Earl of Orkney also claimed an old annual tri-

(*f*) In the year 1602, it was ordered at the lawting that no Dutch or other foreign merchants should use any other weights and measures than such as were sanctioned by the country, and yearly confirmed by the foudes and six neutral men of each parish, under the pain of confiscation of their ships and goods.

bute of "a shewnd ox," and twelve accustomed wethers, &c. which were confirmed to him.

Complaints regarding the political state of the country were likewise made the subject of redress. During the tyranny of Earl Patrick Steuart, a considerable emigration had taken place, which at length became an affair of serious consideration. On the plea that a great part of the lands was likely to lie ley, the foudes were ordered not to persist in giving licence and testimonials for indwellers to pass out of the country; the penalty of such a licence being that which results from an usurpation of the king's authority. Again, in reference to a complaint which was made that actions were brought against the inhabitants by persons *within* the country, and submitted to the Lords of Session and other judges *out of* the country, it was ordained that no one could adopt such proceedings without forfeiting for ever the benefit of the laws which did exist in Shetland. Certain edicts existing in the Norwegian "book of the law" were also confirmed, as that no udaller could sell land without the same being first offered to the nearest of the seller's kin; but a supplement, for the convenience of the Earl, was appended to this law, namely, that if the nearest of kin did not chuse, or were not able to purchase the seller's land, the next offer for purchase should be made to the Earl, as the magistrate and superior of the country. Again, another law in "the buik" was confirmed, that "if any one falsely traduced his neighbour "to my Lord without sufficient probation, for the first lie, he "should tyne [lose] his right hand and sword, and for the next "lie, he should tyne his moveables, and be banished the country."

In the lawting, the fines were ordered to be levied. The "Unlaws" of Shetland ordained to be levied and pounded in the year 1602 amounted to £1163, besides the confiscations, which were many (*g*).

(*g*) The attempt of some writers to exculpate the conduct of Patrick Earl of Orkney, and to prove that he was almost immaculate, is really surprising, in the face of such con-

The lawting of Shetland, at the commencement of the seventeenth century, generally lasted about a week.

It may be now observed, that, when an appeal was made in the lawting against the decision of an inferior court, as, for instance, of a circuit ting, the laugrettmen had no power to reverse a decree which the laugman had made: for the Book of the Law states that the laugman is set above the law, or rather constitutes the law. But an appeal against a lawting, when the sovereign

demning evidence as his court book and rental present. That Earl Patrick had enemies who contrived that he should have an unfair trial, and that the accused was unwarrantably sentenced to pay the forfeit of his life, I am willing to allow. But this is no reason why we should shut our eyes against the ill use which he made of the power with which he had been improvidently invested. He was bound to administer justice according to the BOOK OF THE LAW; but he *played* with both Norwegian and Scotch laws, just as suited his purpose. The inhabitants of Shetland were pressed into the service of giving up their time, labour, or money, to build the new castle of Scalloway, the refusal to obey which summons was severely punished. Thus, James Barnetson and Adam Cromartie, no doubt common labourers, "having disobeyed to gang to my Lordis' work in Scalloway, as they were decernit," were each fined in the sum of 40s. The resistance offered to an officer of justice was a tenfold greater crime when it was in opposition to some exorbitant claim of the Earl of Orkney himself. June 20th 1604, Arther Skelberrie, for the deforcing of Jhone Heefuird, officer, in poynding for my Lordis dettis and duties," was sentenced to have his "guids and gere and lands escheat," and himself to be banished the country "within the space of ane monet at the least in the first passage." But if it be considered trifling to bring solitary instances of tyranny, what will be said to the summary of the Earl's administration of justice for one year? No circumstance is more indicative of mismanagement than a black calendar of offences. In the small thinly inhabited province of Shetland alone, Mr M'Kenzie has remarked, that "from July 3d to August 26th 1602, the pecuniary fines to the King (as it is said) for petty thefts, "slanders, &c. are in number about 200; the confiscations of lands and goods, and perpetual banishment, or pain of death, the women to be drowned, and the men hanged, "or sometimes, instead of banishment, scourgings round the parish kirk on the Sunday, "are about 28, and the capital sentences 2; nor do they seem to be fewer in any of the "following circuits. The banishments so often inflicted are said to have been in Norway. After the lawting, we have always an abstract of the unlaws of the whole circuit, "with the compositions and modifications of the same, all to be raised or levied by distress, of which 1163 libs. were the amount in 1602." Surely this calendar exhibits a state of society that can only find a parallel in the government of some Turkish province.

did not personally preside over it, might at any time be made to the king and the worthiest men's council. When an appeal from Shetland was presented to the King of Denmark and Norway, he was in the habit of remitting it to the laugman of Bergen, who was considered as presiding over a superior court. In the year 1485, there was a decree by the laugman of Bergen reversing a sale of land in Shetland as contrary to law (*h*).

There was again another appeal, which was considered as the highest of all. This was the reference for the justice of a cause to the Deity himself, the test of which was the event of a judicial combat. It was upon the alting of Norway that Gunlaug summoned Rafn, because he had married a damsel who had been betrothed to him. The Holmsgang law at that time was, that he who was wounded should pay three marks of silver. In Shetland, a circle of stones existed in Papa Stour, where duels

(*h*) This appeared in a rare work, entitled the Grievances of Orkney. It is copied in my Description of the Shetland Islands, and the following is Mr M'Kenzie's translation of it:—"To all men who shall see or hear this decree, Sebiorn Gottormson, lawman of Gulating and Bergen, Neils Williamson, lawman in Shetland, Erland Anderson-Frak, John Sturkarson, Mattis Jenson, Endrith Swenson-Rostungh, Asmund Salmonson, raadmen of the same place, William Thomason, lagrettman in Shetland (send greeting). Know that in a convention held in the quire of the cross church of Bergen aforesaid, upon the Monday before St. Lawrence day, A. D. 1485, there being present on one side, a judicious man, Jeppe Zeirson, raadman of that place, in the right of his lawful wife, Marion, John's daughter; and, on the other side, Thomas Engilisk, in right of his lawful wife, Dyoneth, Alexander's daughter: We said ..... that the lands in Shetland, herein after mentioned, which Thomas Engilisk aforesaid had unwarrantably bought from Andrew Scot, the above Marion, her father's brother, viz. *Primo*, in Linga in Whalsey-sound, ten mark-land, viii pennies the mark less; *Item*, in Yell in Hedderokel, vii mark-land, nine pennies the mark less: *Item*, in Ulstadt in Yell, six mark-land, six pennies the mark less: *Item*, in Hule in Yell, nine mark-land, six pennies the mark less; shall all pass from the said Thomas and his heirs, and return to the above Jeppe, his wife, and their heirs, for an everlasting possession; with all the appurtenances likewise, within the hamletts, or without the hamletts, where the lands lie, whethir hills or dales, that do belong, or have belonged to them ..... In confirmation of which, we, and also the said Thomas, do seal this decree, the day and year mentioned above."

were fought, and the site of a holmsgang was an islet in Quendal Bay (*i*).

In the last place, after a lawting had been held, great care was taken to publish the verdicts pronounced. In Norway, it was ordered, that each provincial judge should hold a ting within three weeks after his return home, and should explain to the people what had been discussed, and what sentences had been awarded in those actions which were in his province; and in Shetland the foude of each parish was ordered to publish in his own district the recent verdicts and decrees of the law-ting (*k*).

In Norway, the lawting was followed by a weaponting or weaponshaw, held for ascertaining the military force and arms of the country; it was therefore ordered that the sysselman who presided over it should publish the decrees of the lawting, and, in case of complaints against false witnesses, a reference might be made through him to another lawting for a new decision.

But it is now time to draw this memoir to a close. In the commencement, I endeavoured to shew the original connection which subsisted between the Pagan temple of the Scandinavians and the ting, as well as the circumstances which caused the civil jurisdiction of the latter to separate itself from the obligations imposed upon it by heathen tenets. During the course of this investigation, an attempt was made to explain so much of the construction of the temple and of the ting, as might be necessary to guide the antiquary in his investigation of a species of antiquities abounding in Scotland, which are interesting to every one who would be acquainted with the ancient religious and juridical state of his native country. That these remains have

(*i*) See page 125.

(*k*) A certain law in the Norwegian Code, which had been confirmed and acknowledged by the lawting of Shetland, in the year 1602, was ordered to be "extractit out of the buik, be the folds of the countrie and isles, and publisht through the haill land, ilk persoun under the pain of 40 libs."

been lamentably misunderstood, is owing to the blind assent which, for more than a century, has been given to a druidic theory.

Another object which I had in view, was to explain the general forms and customs of the ting, both before and subsequent to the introduction into Scandinavia of Christianity, the details of which are well illustrated in the documents still remaining of the ancient juridical proceedings of Orkney and Shetland; which curious records confirm the opinion first expressed by Spelman, that "the northern kingdoms are the fields whence so many roots of our law have of old been taken and transplanted" (*l*). It is a character of the Scandinavians, who, in the ninth century, colonized Iceland, Feroe, and the islands to the north and west of Scotland, that they had no sooner taken possession of a country, than they immediately proceeded to elect magistrates, and to give their government a regular form; the whole appearing, as the Abbé Mallet has emphatically remarked, "to settle as without any effort." Some part of this progress of juridical consolidation we have endeavoured to trace, in the general character of the laws which the Scandinavians framed, and of the tings which they organized. That a favourable view is presented of the civil constitution adopted by the northmen, can be scarcely denied. "When we read of Scandinavia," says an eloquent writer, "it seems involved in a perpetual snow-storm. Its inhabitants are pictured in our imagination as a race of stern and barbarous warriors, intent only upon war and plunder; yet, according to their polity, the members of the community were knitted together by the closest social bonds. Moral duties were enforced by the penalties of the law, which came in aid of the precepts and dictates of friendship, of charity, and of natural affection."

(*l*) I wish," says this quaint writer, "that some worthy lawyer would read them diligently, and shew the several heads from whence those of ours are taken. They beyond seas are not only diligent, but very curious on this kind; but we are all for profit, taking what we find at market, without inquiring from whence it came."