

## IV.

NOTICE OF TWO CHARTERS IN THE NORSE LANGUAGE, FOUND  
AMONG THE PAPERS OF THE SHERIFF-COURT OF SHETLAND.  
By GILBERT GOUDIE, Esq., F.S.A. Scot.

In the year 1840, a small collection of early charters and other legal documents connected with Orkney and Shetland, most of them in the Norse language, was printed anonymously, but at the instance, I believe, of the late Sheriff Maconochie and Lord Neaves. Some of these, and several other Norwegian and Danish documents relating to the islands, are to be found included in the great northern collection, the *Diplomatarium Norvegicum*, issued by authority in Norway. By the kindness of Mr Thoms, the present sheriff of the county, I am now enabled to submit two further deeds, also in the original Norse, and both relating to heritable subjects in Shetland.

Formerly the records and miscellaneous papers belonging to the County Court of Shetland received little care or attention. The accommodation provided for them was in every respect unsatisfactory. The documents were left to their fate from age to age, loose or in bundles, in open shelves in the public office of the sheriff-clerk, and many papers must doubtless have perished. It is gratifying to know that this state of matters has now been entirely remedied. By the exertions of the present sheriff and the gentlemen of both groups of islands, handsome and commodious court-houses have been erected, with the assistance of Government, both in Kirkwall and in Lerwick, and ample provision has been made for the safety and proper preservation of all the existing county papers. Fortunately another portion of the early records had been removed to Edinburgh, and is preserved in the General Register House.

In the year 1873 Sheriff Thoms permitted me to examine the papers in the office of the sheriff-clerk of Zetland. The result of that examination, necessarily hurried and imperfect as it was, is embodied in a list now in the hands of the Sheriff, of about one hundred documents or bundles of documents and bound volumes, whose dates extend over a period of more than three hundred years. Many of these documents are of great interest

in their bearing on local history, and would well repay a detailed examination, both on historical and legal grounds.

It was in the course of this examination that the two Norse documents now submitted came under my eye. I reported the circumstance at the time to the Sheriff, upon whom, as the successor and representative of the Great Fowde of Shetland (the supreme officer of law and justice in the ancient native system), the legal charge of the county records devolves; and in returning from a recent official visit to the islands, he brought the deeds south with him temporarily, intending to submit them to the Society. He has been unable at present to do so, and has requested me instead to lay them before the present meeting, with such explanations regarding them as may occur to me.

Neither document bears a title, but the first, dated 1516–1545, may be termed a Confirmation of a Certificate of Excambion, in connection with a heritable succession in the ancient *Udal*<sup>1</sup> form; and the second, dated in 1536–1544, a similar Confirmation of a Deed of Sale, or Disposition, usually termed in the Norse a *Skiodde* or *Kaup Bref*. Both documents are in a fair state of preservation, especially the former, in which almost every word is legible. In the latter there are several lacunæ, which it is not easy to supply, but the sense is nevertheless perfectly intelligible throughout. The seals were gone, but some of the tags by which they were suspended remained attached. The documents themselves were folded, crumpled, and partly torn when I found them, but they have now been laid on cloth, at the sight of Mr Dickson, Curator of the Historical Department of the Register House, and by this process much of their original appearance has been restored.

Both deeds are written on parchment in ordinary charter handwriting of the period in the Scandinavian North,—that of the Deed No. I. more nearly approaching the modern character,—and both are in the ordinary Norse language then vernacular in the islands, as in Scandinavia generally. The divergence, by the gradual process of disintegration, from the early type of the Old Northern tongue, as stereotyped in Iceland, is very observable in both, but perhaps somewhat more in the Deed No. I., written

<sup>1</sup> *Odal* is, etymologically, the more correct form, but I prefer here the term *Udal*, as stereotyped in the islands for ages, and recognised by Scottish jurists.

in Shetland, than in the second deed, which is executed at Bergen, in the mother country of Norway. This is not to be wondered at. The wonder rather is, that with the encroachment of Scottish influence and usages from the time of the Impignoration to Scotland in 1468, and even earlier, documents in such comparatively pure Norse should have continued to be framed in the islands down to so comparatively recent a period as the middle of the sixteenth century. Indeed, certain of the ancient grammatical forms are more distinctly exhibited in the composition of the native document than in the other framed in Norway. And contemporaneously with these deeds we have some others, expressed in good current Scotch, in Mr Maconochie's collection, significantly indicating the conflict then going on between the old and new systems and races—the beginning of the process of supercession of Udal by feudal tenure; the gradual transition of laws, language, and usages from the ancient native to modern forms.

Both deeds have been placed in the hands of Mr Jón A. Hjaltalin, a very competent scholar in the Old Northern tongue. The transcription and translation furnished by him I have carefully collated, and now venture to submit as follows:—

#### DEED No. I.

##### 1. *Transcription.*

Vij efftherschiffne Sier andro Hiel Sogneprest och official offuer Hieltland ý týmandigt Syer Andro wissiarth sogne He[rr?] Herr wdj sandzting Andres tollach ffögütt nordenn moffue Magnus tollach laugretthmandt ibid och willom brustedt ffögitt wdj Dalletingom Gierre witthrlüg ffor alle att wij haffue setth Horth och grandgüffuelügen offuerlest eyth obitth pappyers breff medt helle Indsigle wstungenn vbeskorenn, och wdj alle Modhe wfforfalskütth Lyend ordt ffræa ordt som her effthr fielger

Allom godom mannom thenam som thette breff Hendhr fforr atth Komma Helssom wij effthrschiffne Mendt Niels willomssonn lauggmandt wdj hieltlandt Tomes Rigadzonn Mag[n]us Jonsszonn Tomes Engusszonn Tndbýgge ý samme landhe Kierlige medt gude Kunnochgorend atth anno dñi M. D. och xvj Mandagenn nesthann fforr Gregorij war wij fforssam-

ledhe paa eydye y eystingom y ffornefnde lande Atth gierde eyth wenlügt och skellügt bytthe Mellom Niels tomnesszonn och Margrette sanders dott Alexander tomesszonn skolgetinn dotthr och arffua y sodanna Maathe ath ffornefnne Niels tomeszonn kom ffor oss y fulle och lauglgs wmbodhe sielffzins paa Eyno Halfuo, Enn paa andre halfuo Torwaldt Hendrichsszonn y fullo wmbodhe ffornefnne Margrette dott dotthr synna waar thaa thett fullkommelige samtýck och medt fullo jaaorddhe stadffest erffwin-gianna emellom atth ffornefnne Niels tomessonn skulle haffue y ffornefnne Eyde xx mercker brendhe och x mercker y westhri brecko, enn fornefnne Margret Sanderss dott lottnast y hennar parth igenn xij mercker y Heelle som hennar ffader Koýss siig ffor Hóffuidt bólle y fullo wiide sýno paa Retta syuanda dag med synna [ ] stett och waar ffornefnne Sander elsthe brodhr, Ther ffor eige handseg ffiorsthe wilkor och skall thaa taga andra jarder och leggja Indtill Hóffuidt bólle och giora thet jamgodt som Eyde aat marke talle och haffue the paa badhe sýger samtýck thett biótte, atth wbrideligen geld skall till evindelígg tiid. Túll sandende her wm tryckom wij fforschreffne mendt worr Indsigle nedhenn ffor thette breff som schreffuedt er aar och dag som fforr staar

Huilchet fforschreffne obne pappyr's breff som er Lyend och Indeholdend wdj alle sýnne punckter och artikler som fforschrefuet staar thet wittner wij fforschreffne Sier andro Hiel sogneprest wdj Jenst och officiall offuer Hieltlandt, Sier andro wissiarth sogneprest wdj Sandzting, andres tollach ffogett nordenn moffue Mag[n]us tolach, laugrette mandt ther samedteds, och willum paa brostedt ffogett wdj dalletingom medt worr Indsigle hengend nedhen ffor thette breff som schriffuet er paa Edhe y Eydztingum Anno domini M. D. xlv thenn xxvj dag aprillis.

## 2. Translation.

We, the afterwritten Sir Andro Hiel, parish priest and official over Hieltland in temporals Sir Andro Wissiarth, parish master in Sandzting, Andres Tollach Foud [of or in] North Mofue (Northmavine), Magnus Tollach, Lawrightman of the same place, and William [in] Brustedt Foud in Dalleting, Make known to all that we have seen, heard, and carefully read over, an open paper letter, with an entire seal unpierced, uncut, and in every way unfalsified, reading word for word as follows :—

To all good men into whose hands this letter may come, we the after-written men, Niels Willomson, lawman in Hieltland, Tomes Rigadzonn, Mag[n]us Jonsson, and Tomes Engusson, inhabitant of the same land, send a hearty greeting in God; making known that we were gathered together at Eydye, in Eysting in the aforesaid land, A.D. 1516, the Monday next before [the feast of St] Gregory, that we made a friendly and just exchange between Niels Tomesson and Margrette Sanders daughter, the lawfully born daughter and heiress of Alexander Tomesson, in such manner, that the said Neils Tomesson, on the one part, came before us with full and lawful powers for himself, and on the other part, Toreualdt Hendrichson, with full powers on behalf of this Margaret, his daughter's daughter. Then an agreement was made, and it was confirmed, with full consent, among the heirs, that the said Niels Tomesson should have twenty merks burnt [of silver] in Eyde, and ten merks in West Brecka; but the said Margret Sanders daughter should get for her share in return twelve merks in Heelle, which her father chose for himself as a Head Bull, while in full possession of his faculties, on the right seventh day with his [ ? ]. And the said Sander was the oldest brother, and had therefore the first choice. And the other lands are to be taken and laid under the Head Bull, and it is to be made equally good as Eyde, according to the number of merks; and this exchange has been consented to on both sides that it shall be valid and inviolable everlastingly. In confirmation of this, we, the above-written men, impress our seals underneath this letter, which is written year and day as above.

That the above-written paper letter reads and contains in all its points and articles as written above, do we, the above-written men, testify: Sir Andro Hiel, parish priest in Jenst and official over Hieltland; Sir Andro Wissiarth, parish priest in Sandzting; Andres Tollach, Foud [of or in] North Moffue; Mag[n]us Tolach, Lawrightman of the same place; and William at Brustedt Foud in Dalleting, with our seals hanging under this letter, which was written at Edhe, in Eydzting, Anno Domini 1545, the xxvi. day of April.

This document, dated in the year 1545, is an instrument on parchment by official men, who certify the existence and terms of a previous certi-

ificate of excambion between Udal proprietors.<sup>1</sup> Its phraseology contains suggestive references to the Udal system of succession and land transfer, and to other peculiarities of the ancient laws and institutions of the "Countries of Orkney and Zetland," as they were termed. The original deed of excambion, which is embraced verbatim in the parchment deed of 1545, is dated in 1516. At both dates the islands were subject in mortgage to Scotland, but the deed clearly shews that the native Norwegian laws and usages, the preservation of which was solemnly guaranteed by treaty, were still subsisting comparatively unimpaired. Their supercession and gradual assimilation to the laws and institutions of Scotland had been undertaken at an earlier period, and was too successfully accomplished in the course of time by the Stewart Earls and their successors. I have endeavoured, in the form of an appendix, to explain, so far as I have been able, the position of the old native officials referred to, now extinct, and the terms of native law and consuetude occurring in the two deeds, which afford those significant glimpses of the ancient system to which I have alluded.

In attempting to analyse the contents of the deed, it may be well to consider these in the order of the two distinct parts of which the document consists, viz.—(1st), the original Certificate of Excambion, executed in the year 1516; and (2d), the certification of that certificate, dated in 1545.

I. *The Certificate of 1516.*—The narrative describes an exchange, or excambion, as it would be termed in Scots law, of certain lands in Shetland, between Niels Tomesson (Thomson) and Margaret Sanders' daughter, carried out in the presence of persons of repute, four in number, who attest and confirm the arrangement in the form of a certificate, then deemed an amply sufficient title. The whole parties are designated patronymically in the style formerly almost universal in the islands, and which has been observed occasionally even within the present century. Niels Thomson appears for himself, but Margaret Sanders' daughter is represented by one Torwaldt Hendrichsson. This Torwald is in all proba-

<sup>1</sup> Both the deeds seem analogous in character to the lately abolished Scottish *seisin*, which was a deed on parchment evidencing, among other things, an existing deed of conveyance by a proprietor to a disponee.

bility the same Thorvald Henricksson of Borg, who, as "Thorrald of Brucht," is nominated as one of his executors by Sir David Sinclair of Sumburgh, chief captain of the palace in Bergen, and governor<sup>1</sup> of Zetland, in his testament dated ten years earlier than this—namely, at Tingwall, 9th July 1506.<sup>2</sup> Thorwald is supposed, by the late Professor Munch of Christiania, to have been a son of Henrik Thorvaldsson, descended from Herr Thorvald Thoresson, who, in the year 1299, possessed the great estate of Borg (or Brough).<sup>3</sup> This estate in 1587 passed into the hands of the Sinclairs, Barons of Brough, parish of Nesting.

Margaret Sanders' daughter is declared to be in possession of the subjects excambied by her in right of her father, who, as eldest brother of the family, had the right, by choice, of the "Head Buil" (*hofud ból*) or principal manor farm of the property—a right of the eldest odal-born, expressly provided by the Law Book of Norway,<sup>4</sup> and recognised as a leading principle in odal succession in every *Shuynd*, or division of heritable or moveable estate.<sup>5</sup>

The persons at whose sight the excambion was arranged, are Niels Wilómsson, designed as "Lawman in Hieltland,"<sup>6</sup> Tomes Rigadzonn (Ringansson or Niniansson), Magnus Jonnson, and Tomes Engusson (Angusson).

<sup>1</sup> Sir David Sinclair was the Fowde of Shetland for the time. See the Charter of 1498 in his favour, by William, Earl of Caithness, and the other sons and daughters of the late Earl William St Clair of Orkney, conveying to him the estate of Sumburgh, in which he is so designed (*miles et Fildus Zetlandiæ*).

<sup>2</sup> Copy printed in the 3d volume of the "Miscellanies of the Bannatyne Club."

<sup>3</sup> See the deed, Anno 1299, in the *Diplomatarium Norvegicum*, and also paper by Professor P. A. Munch, *Geographiske Oplysninger om Hjallland*, in the *Annaler for Nordisk Oldkyndighed og Historie*, Copenhagen 1857.

<sup>4</sup> The mode of succession is thus laid down in the Law Book, lib. v. cap. 2, art. 63 :—"Does a father leave odals behind him? Then shall the eldest son succeed to the principal mansion and estate, the other children receiving an equivalent out of the other land; every one his own lot, a brother a brother's lot, and a sister a sister's lot, according to the estimation of neutral men. Is there no son? Then descends the chief manor to the grandson by the eldest son, or by the second, or any other son in order, as nearer the inheritance than daughters. Are there no grandsons? Then belongs the chief manor to the eldest daughter, the rest of the sisters getting land in equivalent, as said concerning the children in general."—*Grievances of Orkney and Zetland*, p. 8.

<sup>5</sup> See Appendix,—HEAD BUIL and SHUYND.

<sup>6</sup> See Appendix,—LAWMAN.

The only one of these whom we can identify is Williamson the Lawman. Thirty years earlier he was present at a convention held in the choir of the Cross Church of Bergen, in 1485, sitting in judgment upon a case arising out of a disputed sale of certain lands in Shetland<sup>1</sup>—a very noteworthy, though by no means uncommon instance, inasmuch as, though the islands were at the time subject in mortgage to Scotland, the appeal is not advocated to a Scottish Court, but to the court of the Lawman of Gulating and Bergen in Norway—a circumstance which would seem to indicate that the permanent severance of the islands from the mother country was not then contemplated either in the islands or in Norway; indeed, that their resumption by that country was considered only a question of time.

The date on which the succession of Margaret's father, Alexander Tommesson, was arranged, is singularly expressed—"the right seventh day"—(*paá retta syuanda dag*), the meaning of which I am unable to explain.

The place where the arrangement of excambion is carried out is Aith, in the parish of Aithsting, and the properties referred to are there and at West Breck and Heelle (see Appendix). The land is measured by the usual local denomination of *merks* (see Appendix). The transaction being an exchange, there is no *consideration* or price.

2. *The Confirmatory Certificate of 1545*.—This certificate, which is also executed at Aith, in Aithsting, 26th April 1545, repeats, as has been mentioned, the former document *verbatim*, and its object is virtually stated in itself to be the preservation of evidence of the excambion therein described. Not that feudal succession, or transfer by sale or otherwise, seems to have required the intervention of written instruments, any more than it did of confirmation, in the feudal sense of the term, at the hands of a superior; but we find that in later times such ratification by formal deed was very frequently resorted to. It does not appear whether the persons before whom the deed was presented were brought together for the settlement of this particular question, or whether they were constituted as an ordinary court for adjudication in such or in general causes. More probably the latter was the case—a district court (*Vard-Thing* or *Herads-Thing*),<sup>2</sup> at which, *inter alia*, all necessary attestations or confirma-

<sup>1</sup> Grievances of O. and Z., App. p. ii.

<sup>2</sup> See Appendix,—THING.



tions of this kind would fall to be made. The practice of such confirmation by men of repute was by no means uncommon, though this is perhaps the only known instance, executed in Shetland, by formal deed in similar terms. The other deed (No. II.), a purely Norwegian instrument, having apparently no reference to this one, though also referring to lands in Shetland, is drawn in precisely the same form. The signatories testify that they also "have carefully seen and read over" a former deed, whose terms they repeat and confirm, as in the present instance and in numerous similar instances in those times in Norway, recorded in the *Diplomatarium Norvegicum*. It was a constant practice in the local administration of justice in Shetland, down to comparatively recent times, to have matters of dispute or of personal right determined before local recognised officials, informally or in open court, as the case might be; and I am informed that a similar practice exists in Iceland at the present day. At a district court called *Mann-tals-thing*, held periodically in that country, all deeds or agreements by written instrument, executed in the interim, are read over and marked; and this is held as equivalent to publication, as registration is in this country. It is to be observed, however, that, common as the practice may have been in Shetland, as elsewhere in the Scandinavian north, it does not appear in the instances under consideration that this form of ratification was a *necessary part* of the legal formula involved in completing such transactions, because, in the case of the first charter, the ratification is *twenty-nine years*, and in the second, *eight years*, after the dates of the respective transactions.

Of the individuals by whom the confirmatory certificate is granted, two are parish priests—Sir Andrew Hiel (or Hill), of Unst, and Sir Andrew Wissiarth (or Wishart) of Sandsting. These were probably the last incumbents of their respective parishes prior to the sweeping away of the whole fabric of the ancient Church, fifteen years later, at the Reformation of 1560. We are unable to say with certainty whether these pre-Reformation vicars saved their livings by turning with the tide, or whether they remained Roman Catholic and were ejected. They have not been recognised as Protestant clergymen. The first ministers of the Reformed Church, according to the *Fasti Ecclesie Scoticane*, were presented to the two parishes not long afterwards—namely, James Hay to Unst, 31st

October 1576, and William Watson to Sandsting in 1574 (he having been previously appointed reader there in 1567).<sup>1</sup>

Sir Andrew Hiel is witness to a deed, drawn in Scotch in 1528, in which he is designed "*Sr Andro Hill, Vicar off Onst*;"<sup>2</sup> and he is mentioned in another deed of 1569.<sup>3</sup> From the latter, in which his former designation of Vicar is retained, it may perhaps be inferred, though he is not classed among the Reformation ministers, that he retained the benefice during his lifetime—that is, till probably near the date of the appointment of James Hay in 1576, as mentioned above. Sir Andrew appears from the present deed to have possessed, like many churchmen of the time, a temporal authority in addition to his spiritual charge. The precise nature of that authority or jurisdiction implied in the terms, "official over Shetland in temporals," it is not easy to determine. It was certainly not the purely secular position of either the great Fowde, or of a parochial or under-Fowde. Nor could it have been that of the highest local official of the church, for the incumbent of the parish of Tingwall seems also to have been Archdeacon of Zetland,<sup>4</sup> and, as such, representative of the bishop, who was resident chiefly in Orkney. This co-ordinate authority, whatever it may precisely have been, of a churchman in temporal affairs, does not, however, appear to have been singular. In a *Shuynd Bill*, or division of an estate, drawn in Scots, in 1558, Sir George Strang, the then Vicar of Nesting, is similarly designated "official of Zetland."<sup>5</sup> And in other parts of the Scandinavian north, the title was sometimes borne by churchmen representing absent bishops in temporal matters. In the present instance we may therefore regard it as indicating a commissioner in charge of the bishopric estate, or other temporalities of the church.

The other priest, Sir Andrew Wishart of Sandsting, also bears in the deed a curious designation—*Sogne Her Herr*—"parish lord lord," or "master," implying also a secular dignity or charge. It is only in what

<sup>1</sup> *Fasti Ecclesie Scoticanæ*, Synod of Shetland.

<sup>2</sup> Deed of Sale, July 15, 1528. (Maconochie's Col. No. VIII.)

<sup>3</sup> Charter of Sale, 1569. (Maconochie's Col. No. XI.)

<sup>4</sup> *Diplom. Norveg.—passim*. See letter from Pope Honorius to Nicolas, Archdeacon of Shetland, dated 3d November 1226. Dip. I. p. 8.

<sup>5</sup> *Shuynd Bill*, 1558. (Maconochie's Col. No. XIV.)

we may call the *testing clause* that he is termed "parish priest" of Sandsting. Whatever the precise meaning implied in the words *Her Herr* (repeated) may have been, the same formula is used in the designation in a deed of 1532, of the Archbishop Gowte of Drontheim;<sup>1</sup> and in a document of the same year, the same words are found prefixed to the name of King Frederick of Denmark.<sup>2</sup>

The other attesting parties, along with the clergymen, are Andrew Tulloch, Fowde of Northmavine; Magnus Tulloch, Lawrightman there; and William of Browsted, Fowde of Delting—of none of whom does there appear to be any other record. These parochial officials—Fowdes and Lawrightmen—performed important functions in the police and government system of this little *imperium in imperio* of the Northern Isles.<sup>3</sup> By their means the machinery of local administration was carried on in early times, in a manner that fully maintained the interests of the ruling power—the all potent Jarl, in the absence of his distant suzerain, the King of Norway—and, at the same time, that most jealously guarded the rights and liberties of the people. The abolition of their offices has been concurrent with the destruction of much of those ancient local liberties, and the ruin of most of the old native families, odal proprietors of the soil.

As to the identification of the place-names mentioned in the deed, see Appendix, under the respective names.

## DEED No. II.

### 1. *Transcription.*

Thett Bekendis Wij efter<sup>no</sup> Mattie Stórsson Laugmandt wdj Bergen ; Jonn symonssonn och Anders pederссónn Raadmendt thr samestets att wij haffue szeett och grandgüffueligen offuerlest ath obit papürs breff met ath innsigl och füre mercker vnder screffne : Lydendis ordt fran ordt som her efter filger.

<sup>1</sup> *Herre hæv Gowte med Gutz raade erchebysp i Trondem (Diplomatarium, ii. 818).*

<sup>2</sup> *Herre her Ffrederick Danm[ar]kis Wendis oc Gottis Konung (Ibid. vii. 746).*

<sup>3</sup> See Appendix,—FOWDE and LAWRIGHTMAN.

Alle Mendt the som thz<sup>o</sup> breff see elder. hóre : Kundgöri jeg niels angusson att jeg haffuer selth Jon magnus bondiszonn alle mýne jorde partter som ieg agher ý hieltlandt som han kand vpspyria mz lagh oc rett : oc effterfolge scall : som er vi mercker ý hañmerlande oc y giotonn : och andzmere hvor han kand thet vp at spýrie vnden meg oc mýne erffuinge : och vnder hann och hns erffuinge tiill ewerdelig eignar : met alt thz som vnderligger oc leigit haffuer : fra den offste stein ý fælde oc tull den neste stein i fioren : och al Aenge \* \* \* \* \* Rec \* \* \* \* \* och tull ydermer wissen oc sandz : szo byder ieg thesse gode mendt som saa hetha gewys bý : thomes ionsson : Sýmon erlandsson : Heming'ollszonn sette sýne mercke nedenfore for thze breff : som giort war ý bergenn ste Laffrens dag Anno Domini m d xxxvj

\* \* \* tull thne wor vdscrefftes sandhets stadfestning haffue wij same pap[úrs bre]ff \* \* \* \* \* seg sielff att beuisse saa lenge thet ware \* \* \* \* \* wij thet met wor signetter her vnder \* \* \* \* \* thne wor widisse sandt oc fast at were vdj alle maade : som giort er vdj Bergenn odensdagen \* \* Margarete Anno &c m d xliiij

## 2. Translation.

We the after [written], Mattie Storsson, Lawman in Bergen, Jon Symonsson, and Anders Pedersson, Councillors of the same place, acknowledge that we have seen and carefully read over an open paper letter, with a seal, and subscribed with four marks, reading word for word as hereafter follows :—

To all men who see or hear this letter, I, Niels Angusson, make known that I have sold to Jon, son of Magnus the Bondi, all my parts of farms which I possess in Hieltland which he may find out lawfully and rightly. They are as follows :—Six merks in Hammerland and Giotonn, as well as other parts wheresover he may find them out, from myself and my heirs to him and his heirs, for perpetual possession, with all that belongs and has belonged to them, from the highest stone on the hill to the lowest

stone on the beach, and all meadows \* \* \* \* \*  
 wreckage \* \* \* \* \* and for still further certainty  
 and verity, I ask these good men who are called Thomes Jonsson, Symon  
 Erlandsson, Heming Ollsson, to put their marks under this letter, which  
 was done at Bergen on St Lawrence day, A.D. 1536.

\* \* \* for confirmation of the truth of this our copy, we have  
 \* \* \* \* the said paper letter \* \* \* \* \*  
 to prove itself as long as it lasts \* \* \* \* \*  
 \* \* \* with our seals underneath, we [testify] that this our certi-  
 ficate is true and unassailable in every way. Done at Bergen, Wednesday,  
 [St.] Margaret's [day]. Anno, &c., 1544.

This deed is shorter than the former, and deficient, comparatively, in local interest. The general tenor of both is similar, as already observed. A deed of sale, executed at Bergen in 1536 by Niels Angusson, in favour of Jon Magnusson, of all his property in Shetland, is ratified at Bergen by the Lawman of Bergen and his assessors, of date 1544. The remarks under the former deed as to the prevailing conformity of laws and usages in Shetland and in the mother country, are therefore equally applicable here.

Of the parties to the transaction, nothing further, so far as I am aware, is known. No designation of the seller is given, but he is presumably resident in Norway; and this and other instances of Shetland landholders residing in that country, recall the pretty frequent references to be found in Shetland documents to lands belonging to "the lordis of Norroway," even so late as the seventeenth century, though all knowledge or trace otherwise of those magnates and their possessions has passed away.<sup>1</sup> The

<sup>1</sup> In the thirteenth century a Norwegian duke (*Hertug*) was an extensive landowner in Shetland, including the island of Papa Stour, in which he had a house. (*Diplomatarium*, i. p. 81.) Hibbert alludes to a tradition, that during the reign of terror of Earl Patrick Stewart, more than half a century later than the present deed, "many wealthy Scandinavians hastily sold to Scottish inhabitants their estates and interests in the country, seeking a refuge in the more kindly bosom of the parent region from which their ancestors had originally emigrated." ("Shetland Islands," p. 205.)

disponee is named simply "Jon son of Magnus, *Bóndi*" (*i.e.*, residenter, peasant proprietor.).

The properties disposed are Hammerland and Giotton, probably Hammerland and Gott, in the parish of Tingwall;<sup>2</sup> and the conveyance is expressed in the widest terms, embracing the lands named—"as well as other parts, wheresoever he may find them out." The descriptive phrase, "from the highest stone on the hill to the lowest stone on the beach," is one common in Shetland titles of the period; and the partly illegible clause, commencing "and all meadows (*Aenge*) . . ." may be made up in the phraseology of later native deeds, expressed in Scoto-Norse, thus:—"And all Eing and outhwell, ryt and roith, eis and Intres [ish and entry], hous and harbry, toftis, thowns [*túns*] moillis, inpastor and outpastor," &c.

The word *Rec* rendered "wreckage" (apparently distinct in itself, though the words immediately before and behind it are illegible), seems to indicate that the right to wreck cast ashore went along with the property, instead of being as in Scotland, where udal holdings are unknown, vested in the Crown. Such a claim by the Crown has recently been successfully contested by an Orkney landowner, standing upon the specific terms of his titles, confirmed by Crown Charter, which in all likelihood merely perpetuated the form of the original holding under the Norse system, as exemplified in the terms of the present deed.<sup>3</sup> In Iceland, wreckage still belongs to the private property on which it is cast. In Norway, the same rule prevailed (as may indeed be gathered from the present deed), that only which landed on the public common being held as pertaining to the King.<sup>4</sup> The competing rights of landowners and salvors in captured whales, which have

<sup>1</sup> See Appendix—BONDI.

<sup>2</sup> See Appendix—Place Names.

<sup>3</sup> See the case, Lord Advocate *v.* R. J. Hebden, First Division, Feb. 26, 1868. It was contended that the Crown had "sole and exclusive right to all wreck cast upon the shores, or floating upon the coast of the said island of Eday," subject to provisions as to wreck in the Merchant Shipping Act and other statutes, and claims of rightful owners. This contention was repelled, the defender's charters containing right to "wreck and waith," &c. (VI. D. 489).

<sup>4</sup> Old Norwegian Law—"Rek thau öll er rekr i almenninga, thá á Konungi."—Norges Gamle Love ii. 165.

immemorially been a subject of contention in Shetland, have probably grown into form gradually along with this question of the right to wreckage and derelict property.

The deed distinctly states that the transaction is a *Sale*, but there is no consideration named, unless the number of merks specified may be regarded as both the extent of the land and its price in merks of silver.<sup>1</sup>

The witnesses are Thomas Jonsson, Symon Erlandsson, and Heming Ollsson, without designations, but presumably Norwegians; and the date is St Lawrence Day, 1536.

Eight years later this deed of sale is ratified like the other, or, as we may say, has its tenor proved, in the confirmatory deed, which is the completed parchment document now under consideration. The parties attesting are—Mattie Storsson, lawman in Bergen, John Symonsson, and Anders Pedersson, councillors (*Raadmen*) there; and the date is at Bergen, Wednesday, St Margaret's Day, 1544.

Generally, in looking at these deeds, what is most noticeable is their simplicity and brevity, in such marked contrast to the tediously lengthened forms of later conveyancing. Even what we deem the essential formality of signature is dispensed with; the appended seals of men of repute being the guarantee of the *bonâ fides* of the document and the validity of the transaction. There are accordingly none of our customary clauses or formalities, no narrative of the *seller's title*, no specified *term of entry*, no clause of *warrantice*, unless the vain assurance that the property shall remain to the purchaser and his heirs "for an everlasting possession" (*til æverdelig eignar*); no feudal *vassalage*, no claims or *casualties*; no holding, but of God and their own right arm only. The description of the subjects, too, is very vague—the seller's so many merks land in such a place; in the second deed, or "*anywhere else*," as the purchaser may discover! The difficulty of identification would be an insuperable objection to such a title in modern practice; and its sufficiency in a former age exhibits a singularly primitive state of society, in which the mere *possession* of a certain extent of land by inheritance or purchase, attested by witnesses of repute, with or without the evidence of writ, was deemed a sufficient, if not an indefeasible, title.

<sup>1</sup> See Appendix—MERK.

In concluding these imperfect remarks, thrown together on short notice at the latest moment, I must express my regret that the subject has not been dealt with by a lawyer, especially as I am not aware of any analysis of a Scandinavian legal instrument of the kind previously attempted. The period in question is a remote one, and the subject involved in many obscurities. It deserves more careful treatment at more competent hands.

I have to acknowledge my great indebtedness to Sheriff Thoms in the whole matter; and I have also to thank Mr Mure, sheriff-substitute in Lerwick, and Mr John Scott Smith, the sheriff-clerk, for their courtesy in affording me every facility in their power for the examination of the local records.

---

## APPENDIX.

### EXPLANATION OF PLACE NAMES AND LOCAL TERMS.

**BRECK, West.**—This is probably the Brekka, a portion of which appears in the division of Hans Sigurdsson's estate as falling to Herr Alf Knutson. It is previously mentioned in a deed of the year 1299, in the *Diplomatarium Norvegicum*, p. 81.

**BRUSTEDT.**—William in Brustedt is Fowde of Delting in the first deed. According to Munch, this is "Byrstad"—Byjarstadir or Busta, which, in the division in 1498 of the estate of younker Hans Sigurdsson, fell to Herr Otte Mattsson-Romer and his brothers and sisters.<sup>1</sup> Busta is now the manor place of a considerable estate.

**EYDYE** (*Eid*, an isthmus).—Village of Aith in Aithsting (also *Eyde* and *Edhe*).

**EYDZTING.**—The parish of Aithsting, west mainland (also Eysting).

**DALLETING.**—The mainland parish of Delting (*Dalathing*).

**GJOTONN, GIOT.**—Gott in Tingwall?

**HAMMERLAND.**—Six merks here conveyed by Niels Angunsson to Jon Magnusson (Deed No. II.) *Hamarr* in Northmavine belonged to the Monastery of St Michael in Bergen (Munkeliv's Cloister), given to it in the year 1403 by Thiodhild, daughter of the priest Sira Helge.<sup>2</sup> But I have little doubt that the place at present in question is Hammerland, in the parish of Tingwall.

**HEELLE.**—There is said to be a place of this name in the parish of Northmavine. A place called "Heleland," is mentioned in the division of Hans Sigurdson's pro-

<sup>1</sup> Annaler for Nordisk Oldkyndighed, 1857, p. 361.

<sup>2</sup> *Codex Diplomatarius Monasterii*, pp. 97, 98, 167, 169.



perty, before Archbishop Gaute and others in 1490 (*Diplomatarium Norvegicum*, vii. 436). Heylor (*Heellr*) is near Hillswick, in this parish.

JENST.—This is another variation of the name of the island of Unst, the etymology of which has proved so puzzling. It is difficult to explain its meaning by Norse etymology. It should, I think, be referred to the Pictish period.

NORDENN MAFFUE.—North Mavine. The original name, as it appears in old documents in the *Diplomatarium*, is Maveid (*Mewaith*, narrow portage or isthmus), which most appropriately describes the locality from which the name of the whole parish is derived. It is called *Nordan Mawed* in a document of King Eric (the Pomeranian), 15th April 1412, and *Nordhan Mawid* in a deed of 1490 (*Diplomatarium*, vii. 436). The testimony, as in this case, to the early existence of the present distribution of the Shetland parishes is very clear. In the south of Shetland the northern districts of the country generally are still termed “*da Nordenn*,” *i.e.*, the North.

Of native offices and institutions the following referred to in the charters, or in the foregoing explanatory paper, may be noticed :—

LAWMAN OF ORKNEY. } The chief officers of law and justice in Orkney and Shetland  
FOWDE OF ZETLAND. } in ancient times. The question of their relative positions is somewhat obscure. They are thus defined by Mr Balfour of Balfour, to whom every student in this department of historical inquiry is under deep obligations :—

LAWMAN (Norse LÖGMADR, *nomophylax*).—“The President of the Althing, Keeper and Expounder of the Law-book, and Chief Judge of Orkney, ultimately abolished or merged in the office of Sheriff.”

FOWDE or FOD (Norse FOGETI, Danish FOGUD, *questor Regius*).—“Collector of the King’s Skatt, Skyllds, Mulets, &c., afterwards Chief Judge, and ultimately Sheriff of the Foudries of Zetland” (OPPRESSIONS—Glossary).

The two titles appear to have been used indifferently in Shetland. At one time, again, the same person is designed “Lawman of Zetland and Orkney”; at another time, when Shetland was politically separated from Orkney, and connected instead with Feroe, one individual bears the title of “Lawman of Zetland and Feroe” conjoined. The first FOWDE of Zetland was appointed by King Sverrer in 1196.<sup>1</sup> In a deed of the year 1307 the names of several persons who were “Lawmen of Shetland” at that date are specified.<sup>2</sup> In 1405 Svein Markusson is designed “Lawman in the same land.”<sup>3</sup> In the charter of 1498, by William, Earl of Caithness, and others, his brother, Sir David Sinclair of Sumburgh, is denominated “Foud of Shetland” (Foldus Zetlandiæ). In 1485, and again in the present deed No. I., of 1516, Niels Williamson is termed “Lawman” there.<sup>4</sup> He may probably have been a subordinate lawman or parish Fowde, because at the same time, in 1514, Nicoll Hall, designed Lawman of Zetland and Orkney, pronounces doom in the Lawting Court at Kirkwall.<sup>5</sup> If,

<sup>1</sup> “Oppressions in Orkney and Zetland,” Introduction, p. 20.

<sup>2</sup> *Diplomatarium Norvegicum*, i. p. 97.

<sup>4</sup> Mackenzie’s Grievances, Appendix No. I.

<sup>3</sup> *Ibid.* i. p. 439.

<sup>5</sup> *Ibid.* Appendix No. II.

however, Hall, as resident lawman in Orkney, claimed titular superiority over Shetland, as he appears to have done, Williamson may have been the contemporary Chief Lawman or Great Foude there, the probability of which is supported by his appearance as Lawman of Shetland in a Court held at Bergen, in Norway, in 1485. On the 27th July 1532, Nicol Reid of Aith, was elected "Lawman Generale of all Zetland" at the Lawting Court held in the Tingholm of Tingwall;<sup>1</sup> and Niels Thomasson (of Aith) is denominated "Lawman of Shetland" (*laugmann offuer Hættland*) in a deed of 1538.<sup>2</sup>

About the middle of the sixteenth century, Olaw Sinclair of Havera was the great "Fowde"; and in 1572 Laurence Bruce of Cultemalindie appeared upon the scene in the same capacity, as the instrument of the extortions of Lord Robert Stewart first Earl and Lord of the Stewart race. On the deposition of Cultemalindie the Scottish Sheriff seems gradually to have assumed his place and functions.

The name of Olaw Sinclair of Havera is linked with a strange incident in Scottish history. It was while he was Fowde, in October 1567, that Bothwell, Duke of Orkney, fleeing from the vengeance of his enemies, paid his hurried visit to Shetland on his way to Denmark, and was entertained by Sinclair. Sir Nicholas Throckmorton, the English ambassador at the Scottish Court, makes a curious but natural mistake in reporting the circumstance of this visit to his mistress, Queen Elizabeth. He writes:—"The principal man of the isle, named *Fogge* doth favoure Bodwell, as yt ys sayde, whereby hys partye shall be the stronger," supposing *Fogge* or Foud to be the family name instead of his office.<sup>3</sup> The anonymous contemporary author of the *Diurnal of Occurrents*, is more accurate. He says:—"In this mene tyme the said erles schyppis passed to ane place quhair the said erle and his complices being in the time foresaid upoun the Ile of Zetland, at his dinner with Olave Sinclare, foude of Zetland, &c."<sup>4</sup> Bothwell himself gives confirmation to the story in his first declaration addressed to the King of Denmark, in which he speaks of the arrival of his pursuers while he was "on shore at the house of the Receiver" of the Islands.

The country of Zetland was termed a Foudrie; and the "Foldrie," *i.e.*, the office, jurisdiction, and revenue of the Foud, was confirmed to Lord Robert Stewart by the charter in his favour of 28th October 1581. In the charter to Earl Patrick in the year 1600, the "Faudrie de *Orkenay* et Zetland" is specified, and the "Foudrie of Zetland" alone is annexed to the Crown, along with the Earldom and Lordship by the Act of the Parliament of Scotland, in the reign of Charles II., 1669.<sup>5</sup>

The Fowdes were paid by a small tax called *Thing-för-Kaup* (Forcop).

UNDER FOWDES or PARISH FOWDES.—These were important parish functionaries thus defined by Mr Balfour:—

"An official in every parish of Shetland, with local duties and powers

<sup>1</sup> Complaints contra Cultemalindie, art. 2.

<sup>2</sup> *Diplomatarium Norvegicum*, ii. p. 833.

<sup>3</sup> Letter, Throckmorton to Sir William Cecil, 1st September 1567.

<sup>4</sup> *Diurnal of Occurrents* (Maitland Club), p. 123.

<sup>5</sup> Act for Annexation of Orkney and Zetland to the Crown, 17th December 1669.

similar to those of the Head Foud, especially in representing and watching the interests of Government, latterly superseded by the Bailie."

So late as 1604 the "Fouds of ilk parochin and isle," are mentioned in local acts, but they gradually disappeared thereafter. The tombstone of one of them, "Thomas Boyne, sometime Foude of Tingwall," bearing date 1603, remains in good preservation in the churchyard of Tingwall. The names of most of the parish Fowdes about the middle of the sixteenth and the beginning of the seventeenth century can be gathered from the records. The title was variously spelt *Foud*, *Fowde*, *fold*, *feald*. *Votn-tel* was the name of the assessment for the maintenance of these officials.

**LAWRIGHTMAN** (Norse *Lög-retta-madr*).—The office of the Lawrightman was as ancient as it was honourable. He was "ane discreit man"—a kind of Tribune of the people—chosen by the Vard-Thing for the protection of their rights and interests, especially in the matter of the Standards of Weight and Measure, of which he was charged with the responsible custody. It was the first point of complaint against Bruce of Cultemalindie that he had put down these officials by the strong hand, appointing instead creatures of his own, who by falsified standards of weights and measures, defrauded the people in the payments of their rents and duties which were accounted for in kind. The sworn testimony of the inhabitants in the trial of Cultemalindie in 1576, thirty years after the date of the two charters, describes in quaint language the native conception of the position and duties of the Lawrightman:—

"The Lawrichtman of auld vse and consuetude was ane necessar officiar in everie seuerale yle and parochie of the cuntrie, chosin with the commoun consent and electioun of the Fowde and Commownis to keip and giff attendance to the lawful and just cuttell; quhilk is thair mesour or elwand quhairwith thair mett their clayth, callit Wadmell, quhilk is ane dewitie thair pay to the Kingis Maiestie for thair scat and landmales zeirlic. And siclyk to keip the just wecht callit the Bismeir, quhairupoun thair hail buttir, baith of scat and landmales was weyt, togidder with ane just Can quhairwith thair mesourit thair ulie payit in scat to the King. With the quhilks cuttell, bismeir, and can, the said Lawrichtman measurit, met and weyt the saidis dewities of butter, wadmell, and ule fra the Commownis, and delyverit the saimen to the Fowdis, swa that bayth the Fowde and Commownis gat just measour and wecht without hurt, fraude, or gyle. And mairattour, it was ane pairt of his office, as ane speciale man chosin for his discretioun and judgement, to be Chancellor of the assyiss in all Courtis, that quhair ony difficill questioun come in hand he schew the law, use, and practik thairupoun, and gaif the rest of the assyiss informatioun how to decerne, and pronouncit the decreits, perqueyre, in default of scrybis; and had ane ordinar stipende of the Commownis thairfor, and was as ane procuratour and defender of thair richtis and commonweith."<sup>1</sup>

A number of special charges were "hevillie lamentit and complenit, be the said auld Lawrichtmen of the Cuntrie of Zetland" themselves, at the same time

<sup>1</sup> Probations contra Cultemalindie, MS. Printed by Mr Balfour for Maitland Club, p. 18.

that the general complaints were brought forward by their countrymen (1576). Gradually after this their offices fell into disuse as the native laws and usages were abrogated. The last shadow of their existence or indeed of that of any of the old native officials was the RANCELMAN, whose duties in reference to Theft, Scandal, and Marches, were laid down in the "Country Acts" framed in the seventeenth century.<sup>1</sup> The last known appointment of Rancelmen in Shetland was in the year 1836, for the parish of Lunnasting, on a Petition to the Sheriff by the Tutor at Law for a landowner in minority.<sup>2</sup> One Rancelman, James Sinclair, of the parish of Dunrossness, probably among the very last of the race, was known to me more than twenty years ago.

HEID BUIL or HEAD BULL (Norse *Hofud Bol* or *Bu*).—The principal farm of the *Odalshjord*; hence, Bow or Bu, a common place-name, used either singly or as an affix, in Orkney and Shetland. Thus, Boe, Bu of Orphir, Exnaaboe. It has already been explained in a note that the "Head Buil" became, by the Odal rules of succession the property of the eldest Odal-born son, as we have also seen from the Charter No. I.

SHUYND, SCHYND, SCHOIND, SCHEIND, SCHOWND (Norse *Skynd*).—An inquest of Thingmen to examine and arrange all *Erffs*, or divisions of real or moveable estate.

In the complaints above referred to, the Lawrightmen explain that it was "the use and consuetude of the cuntrie quhen ony man or woman deceissis, haveand landis, gudis, or geir, to be divydit amangis the airis, the Underfowde (quhilk is the baillie of the parochin or yle), accompanyit with certane honest nichtboris (come) to the principall hous quhair the persoun deceissit, callit the Heidbuil, for making of the said airschip, callit ane Scheind," &c. Specimens of the SHUYND BILL framed on such occasions are extant.

THING (Norse).—A meeting, court, or assembly, of which there were various kinds.

1. ALTHING.—The great Assemblage of the Freemen of the country; the name by which the Parliament of Iceland is known at the present day. In Orkney, the Althing Court, presided over by the Earl, met at St Magnus Cathedral, the Circle of Stenness, or other convenient place on the mainland. In Shetland, the place of meeting was the Thing-holm in the Loch of Tingwall (*Thingvöllr-vatn*), the Fowde presiding. Latterly the LAWTING Court (Norse *Loththing*), a Court of Law, became the better known name for the great annual assembly, as the occasion for a meeting of freemen for political and general purposes grew less. According to the *Complaints and Probations* against Cultemalinde—"This Lawting is the principall Court haldin in the cuntrie in the hail yeir, to the quhilk all men aucht to cum, bayth Mayneland and yles, that hes land and heritage or grit takkis of the King." The last shadow of a local THING was held in 1691. The word Thing came in course of time to signify a district, and hence forms part of the name of several Shetland parishes—Delting, Aithsting, Lunnasting, Sandsting; Tingwall.

<sup>1</sup> Printed by Hibbert, and also in Sheriff's "Agriculture of Shetland."

<sup>2</sup> MS. Advocates' Library. Petition by John Bruce, Esq. of Sumburgh, for Miss Hunter of Lanna.

While the ancient system of local administration was in operation there were several minor courts, viz. :—

2. HERADS-THING.—A district or parish meeting.
3. HIRDMANS-THING.—A council of warriors.
4. VARD-THING.—A ward, or district assembly.

BONDI.—In the second charter, executed at Bergen, the lands described are sold to “Jon son of Magnus Bondi.” It is not easy to give a satisfactory equivalent for the term, which, originally signifying a *dweller*, a tiller or husbandman, came to designate the entire body of Odal-born freemen, somewhat resembling the “yeomen” of England. In Orkney and Shetland, as in Norway, the Bondi became an important political class. In the latter country they rose in rebellion and slew Saint Olaf, their king, in the battle of Sticklastad. In the islands they maintained their rights in the Parliament of the Althing, where every Odal-man (*Odals-madr* or *Bondi*) had an equal voice and vote. In the words of Mr Balfour, “he was a Peasant, for he tilled his own land, and claimed no distinction among his free neighbours; but he was also Noble, for there was no hereditary order superior to his own. The king might wed the Odaller’s daughter, or match his own daughter to the Odal-born without disparagement, for he himself was but the Odal-born of a larger Odal. The king might enforce the military service of the Jarl—the Odallers owed none to any of them.”<sup>1</sup>

About the time when this deed was framed, the term was common in Orkney and Shetland, and it continued to be used down to a much later date.

MERK.—This is the usual denomination of land measurement in Orkney and Shetland from the earliest times to the present day. The entire islands seem to have been divided into *Merks* and *Ures* (ounces), when the lands of the Udallers were valued and taxed by King Hacon IV. in 1263.<sup>2</sup> The measurements are indefinite in extent, representing rather the *value* of the ground. That is to say, what is reckoned as so many merks of *intin*, or good cultivated ground, will be much smaller in extent than an equal number of merks of bare, uncultivated, or inferior ground (*outfield*). In the present and other early deeds the merk-land is regarded as equal in value to the equivalent number of merks of burnt (*i.e.*, refined) silver, in contradistinction to the base coinage current at the time. The value of the land was further estimated as being of so many *pennies* the merk, as is so commonly to be observed in Orkney and Shetland titles.

<sup>1</sup> *Opus. cit.*, Introduction, p. xxx.

<sup>2</sup> Torfæus *Rerum Orcad. Hist.* p. 169.