

I.

NOTICE OF THE COURT BOOK OF THE BAILIE COURT OF DUNROSSNESS, SANDWICK, AND CUNNINGSBURGH, SHETLAND, 1731-1735; WITH A STATEMENT OF ITS CONTENTS. BY GEORGE HUNTER THOMS, SHERIFF OF CAITHNESS, ORKNEY, AND SHETLAND, F.S.A. SCOT.

The MS. Book exhibited was discovered at the re-arrangement of our records after they were transferred to the New Sheriff Court-House in Lerwick. It is the Minute-Book of a Bailie Court of Dunrossness, Sandwick, and Cunningsburgh, in Zetland, from 1731 to 1735. Heritable jurisdictions were not abolished until 1747 by the Act 20 Geo. II. c. 43, and therefore this may have been the Court either of a Barony of Regality or a plain Barony. I have attempted to find out whether any such barony ever existed, but the only information I could obtain was from Colonel Balfour of Balfour, an undoubted authority, and he said that there was such a Barony, but whether of Regality or not he could not say. Another difficulty is created by the use of the word "Stembord." The Stembord is always called after the Court is lawfully fenced, and before the Country Acts are read over. We have in the book the records of sixty-five criminal and *quasi* criminal trials, and in twenty-nine there are acquittals. The great bulk of the cases recorded are "mutual riots." In the second case the defender's oath was admitted to prove the case against him, and in the third the trial went on though the accused was not present, but out of the country. In the eighth recorded case, not only is there a reference to the accused's oath, which results in his being found not guilty, but as he did "give needless trouble to the Court," he was fined forty shillings Scots, "to be paid to ye fiscall of Court." Fines are the only punishment meted out, and they are all to be paid to the Procurator-Fiscal. As officials in those days had no salaries, this was the source from which judge, fiscal, and clerk were paid. In the ninth case (and there only), besides a fine, the accused was ordained to find caution "for Keeping his Matie's peace to y<sup>e</sup> Lieges under y<sup>e</sup>

pain of ten pounds Scots or imprisonment." In one capital case (No 10), and on the serious charge of "Stealing Corn," the Bailie remits to the Judge Competent; while in other two cases (Nos. 63 and 65), there are remits to the Kirk Session and Commissary. The keeping of unlawful dogs (No. 15), as well as the keeping an insufficient dog (No. 32) are among the crimes tried by the Bailie. In the thirty-first case the Fiscal charges Simon Malcolmson with calling Laurence Smith a thief, but while Malcolmson is assolizied from the complaint in all time coming, the Bailie, "in regard y<sup>e</sup> s<sup>d</sup> Simon Malcolmson hath succumbed in his probation, and by his calumny and slander hath injured y<sup>e</sup> s<sup>d</sup> Laur. Smith in his good name and reputation; Thirfor fines and americiats y<sup>e</sup> said Simon Malcolmson in y<sup>e</sup> sum of ten pounds Scots." This case pales, however, before another (No. 52), in which a Cunningburgh man gets into trouble through taking home a foal from the cliff, "most unwarrantably and illegally at his own hand, and without any person present." Laurence Barn had had a mare and foal on these cliffs, and having got the concurrence of the Procurator-Fiscal, he brings a complaint against Alister Nineanson, on the narrative that "it is highly presumable that the said foal belongs to the complainer, and ought to be restored to him accordingly." The Bailie, after evidence led, fines Alister Nineanson in ten pounds Scots, and further "finds by the sds Depositions the foal to pertain to neither purs<sup>r</sup> nor def<sup>r</sup> and yrfor decerns and adjudges the same to pertain to ye fiscall of Court for behoof yrof."

[On remarks on this paper being called for, Mr. Gilbert Goudie, F.S.A. Scot., submitted that this Book was the record of the doings not of a Baron Bailie, but of a Parochial or Parish Bailie, a functionary whose existence in Zetland at this time was undoubtedly proved. Dunrossness, Sandwick, and Cunningburgh were an united parish at the date of the Trials, and continue to be so. And he exhibited a commission to a parish Bailie (the successor of the old Scandinavian Under Foud), granted by George Scott of Giblestone, designed as "Stewart principall, Justiciare, and Admiral of Orkney and Zetland," in favor of Gilbert Olasone of Hlesburgh, to act as Bailie for the parish of Northmavine; dated at

Scalloway, 2nd Sept. 1671. This document prescribes the powers and duties of the parish Bailie almost precisely as these are exemplified in the Court Book submitted by Sheriff Thoms.¹]