

### III.

A NORWEGIAN CONVEYANCE OF LAND IN SHETLAND, 1537. By  
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It has been the practice of the Society to welcome, and to place on record, early documents illustrating life, language, and legal forms in Scotland, and especially such as relate to outlying districts like Shetland, where the local characteristics, due to historic origin and growth, are marked with peculiar distinctness. I therefore presume to submit for record in our *Proceedings* the following Deed of Conveyance, in the Norse language, of a small holding in Shetland, executed in Norway in 1537, about seventy years after the islands were pledged to Scotland. It is written on parchment, size about 10 in. by 4 in., is well preserved, and can be read without much difficulty. It is in the following terms, viz.:—

Alle men theim som thette breff see eller hóre kennest jeg Anna Oluffsdotter mz thette myt opne breff ath jeg haffwer sealth arligh ok fornostigghne man

<sup>1</sup> *Anatomy of Melancholy*, part ii. sect. 2, chap. 4, printed 1600.

<sup>2</sup> *Pills to purge Melancholy*, fourth ed., 1719, vol. ii. p. 53.

Mans Thomessonne pa Scatstadh en gardh liggende i Hietland som Hammnawogh heithe i Lunnesting sogne ok presthe geldh undan mig ok myne arff [inge] ok effther commendhe ok wudher forscreffne Mans Thomesson ok hans arffinge ok effther commendhe frith ok frielst for mig ok hveriom manne meth latrom ok lunnendom mz holthe ok haghe till fielh ok till fyere innen gardh ok wttan ok alth thne deldh som forscreffne gordh tilligher eller liggith haffwe for forno ok nyo som betther er ath haffwe en mysse intlz wndan skilth ok kennest jeg forscreffne Anna wphaffwe borith mynstha penningh ok mestha ok alth ther mellom effther thy som i wort Kop kom ok till yttermere wissa ok sannighnn bedhe these arlighe Dannemen som saa heithe Jorghen Wynther ok Andres Scredr for thetta breff sam scriffne er i Berghen. Anno Domini MDXXXVII.

Two tags are attached, one of them having about three-fourths of the seal appended, but the face bearing the impression is worn off. On the back of the deed is written in a different hand, seemingly by the owner of the property in Shetland, "The Wretting of Hamnavo in Luneisting, 1537."

Folded up with the deed is a translation, perhaps not of contemporary date, for a translation at the time would probably have been unnecessary, the Norse tongue being then sufficiently well understood in Shetland. It is more likely of the date of about a century later, say, of the beginning of the seventeenth century. An accompanying translation preserved in this way is almost unique. It is written on paper, and is therefore in a worse state of preservation than the original parchment. It is rather a free than a strictly correct or literal rendering, and, so far as legible, is as follows :—

To al and sindrey to whos presences this sall come I Ana Oloffs dochter makes manefast by this my present letter that I have sauld to ane honeraball and diskritt mane Mans Tamesone, of Skatstae ane *an omission here*] Zettland called Hamnawoe lyand in the parros of Lwnastang fre me and [my] aires to the said Manes and his aires frieley and . . . . and sindrey the pertenentis wode and watter [fra the] hill to the ebe within dykes and without with all pertenentis pertening therto with all that is better to have nor to have [*sic*] nor to want grantis me to have resavit hail and complet paiement of the full landis pryce and therfor discharges the said Manes and his aires and becais I had no selle proper of my awen I have procurit the selles of diskritt men that ar to say Gorg Wenter and Androw Skriner to be aponted heirto at Berrane in Norwaye ano Dominay jai [vc] xxxvij yeires.

Some of the legal terms do not readily shape themselves to literal analogues in our language, but attempting as nearly as possible a word-for-word translation, the original Norse may be rendered thus :—

To all those men who see or hear this letter I, Anna Oluff's daughter, make known by this my open letter that I have sold to an honourable and discreet man, Mans Thomessone in Scatstadh, a farm in Hietland which is called Hamnavogh in Lunnesting parish and priest *geldh*<sup>1</sup> from me and my heirs and successors, and to the before written Mans Thomessone and his heirs and successors freely and securely from me and all men with . . . .<sup>2</sup> with wood and pasture from hill to foreshore, within dykes and without, and all the pertinents which belong to the aforewritten land or have belonged in olden time and now, which it is better to have than to want . . . .<sup>3</sup>; and I, the aforewritten Anna, acknowledge to have received the smallest penny and the greatest, and all there between, as arranged in our bargain, and for further testimony and verification I ask these honourable [and] worthy men who are called George Winter and Andrew Scredr [to append their seals] to this letter, which is written at Bergen, Anno Domini MDXXXVII.

This deed, executed at Bergen, conveying land at Hamnavoe in the parish of Lunnasting in Shetland, may be regarded as an ordinary example of conveyancing in Norway at the period, and in its style and language it is practically the counterpart of similar instruments of sale of udal lands framed in Shetland, though the progress of differentiation in the course of centuries from the standard forms of the earlier language is quite perceptible both in the Norwegian deeds and in those written in Shetland. A deed of sale executed at Unst in Shetland in 1465 is closely akin to the language of the Sagas, while this Norwegian deed of 1537 shows a distinctly nearer approach to the modern Norse, *i.e.*, Danish. In point of fact, the law and the language both in Shetland and in Norway proceeded on parallel lines, and continued to do so for a considerable time after the islands passed under the sovereignty of

<sup>1</sup> *Prestgeldh*, the circuit of a priest, sometimes comprising more than one parish, an arrangement perpetuated in the modern "ministry" of the Church in Shetland.

<sup>2</sup> *Latrom* and *lunnendom*. The meaning of these words is somewhat uncertain.

<sup>3</sup> *Inthz vndan skilth*. There is some dubiety as to the appropriate rendering of these words.

Scotland. Even when the use of the Scottish language became more general, and superseded the Norse in the framing of deeds, the old Norwegian style and forms of expression were tenaciously clung to, the general tenor remaining, as a rule, but slightly changed, and some of the quaintly characteristic phraseology of the Norse being simply translated into the current Scottish. But with the advent of the Stewart earls towards the end of the sixteenth century a marked change took place. Scottish notaries of an indifferent class found their way to the islands in the train of the rapacious overlords, and otherwise; and in their ignorance of native forms, and their struggle to superimpose the alien forms of Scottish practice, confusion in style and language followed, but it was still a long and tedious process before the assimilation to Scottish forms was finally accomplished. In illustration of what has been said as to the uniformity and persistence of style, the following examples may be quoted, viz.:—

The vague definition of the boundaries of the land sold, *till fielh ok till fyere*, i.e., “from hill to sea” or foreshore, used in the present deed, appears in a Shetland deed of 1551 as *fra den offste stein y fælde oc tull den neste stein i fioren*, i.e., “from the highest stone of the hill to the lowest stone of the foreshore;” and in a deed drawn in Scottish the same is expressed thus: “Fra the hiest p<sup>t</sup> of the hill to the laues stein off thye Ebb” (signed at Unst 1528); also “Fra the hiest of the hill to the lawest of the Eb” (deeds of 1558 and 1575); and in the same form as late as 1587 in a Disposition by Lord Robert Stewart to his natural son William Stewart, of lands of Ayth.

The expression in the deed *innen gardh ok wttan* is in Shetland conveyances drawn in Scottish rendered literally “within dykes and without” (1561, 1569, 1575, &c.). The clause is an essential one in reference to properties in Shetland, as explaining that the land conveyed comprehended not only what was inside the enclosure from the hill, but also its inalienable right to the Scathald or commonty of the uninclosed hills.

The form of acknowledgment of the receipt of the price of the land sold, given in the present deed as *uphaffwe borith mynstha penningh ok mestha ok alth ther mellom*, i.e., “have received the smallest penny and

the greatest, and all there between," is expressed in similar terms in a deed executed in the island of Unst in Shetland seventy-two years earlier (1465), thus :—*Hafuir upborit hin fyrsta peningh ok hin sedhista ok alla thoer imillom, i.e.*, "have received the first penny and the last, and all there between." In another Shetland deed, of 1551, it is put thus : *opborit forsta penning och ssijst, i.e.*, "received the first penny and the last." This appears in Scottish garb in a Shetland deed of an earlier date, "grantis me content and payit of the full landis pryce the first penny and the last" (signed at Tingwall 27th October 1525); as also in a deed of a few years later—"grantis me content and peit of the first ð and the last and all thare betuix" (signed in Unst 24th June 1536), and so late as 1581 in a deed signed at Burgh in Nesting.

The curious phrase in reference to the pertinents—*som betther er ath hafue en mysse, i.e.*, "which it is better to have than to want"—is quoted in the same way, *som beder er at hafue en mijste*, in a native Shetland deed of 1551; and is used in a word-for-word translation, "all thingis that better is to haif nor want" in a deed executed in the island of Unst in 1561.

Similarly, the averment by the granter of the deed that he is possessed of no seals of his own, and is therefore under the necessity of asking certain discreet and honourable men to append theirs, is common both to Norwegian and Scottish deeds.

But apart from these coincidences and peculiarities of phraseology, what will more readily arrest the attention of the student of law is the absoluteness of the title given, the absence of any recognition of *superiority* in a feudal or any other sense, or of any condition or reservation to impair the completeness and freedom of possession. In earlier times the phrase *til aeverdelig eignar*, "for everlasting possession," was frequently used, but a reasonable doubt as to the efficacy of such eternal warrandice seems in the course of time to have arisen, and the phrase fell into disuse. It is further observable that the right of the seller to grant the deed is assumed, as matter of public notoriety, without question and without production or description of title.

The number of ancient documents in the Norse language relating to Shetland is considerable, as these are recorded in the *Diplomatarium*

*Norvegicum*, issued in Norway, and since reprinted at Lerwick by my friend the late Arthur Laurensen, a corresponding member of this Society. In addition to these deeds which have been brought to light by scholars in Norway, a number of others in the old Norse have been preserved in Shetland. Of these, the following are printed in a pamphlet issued in 1840 anonymously, but it is understood at the instance of Sheriff Maconochie and Sheriff (afterwards Lord) Neaves, viz. :—

1. Deed of Sale, Andrew Williamson to Simon Hognason, of land of Walol in Unst. Dated Unst, 1465.

2. Deed of Conveyance by Olaff Persson, residing in Fedie in Norway, to David Sanderson in Refirth, Yell, of land of Westhus in Burgh in Whalsay. Dated at Bergen, 24th April 1567.

3. Deed of Conveyance by Niels Monson, described as a native of Shetland, in favour of the said David Sanderson, of lands of Gerde in St John's parish in Yell. Dated at Bergen, 27th April 1567.

4. Deed of Conveyance by Marion Sigurd's daughter, residing in Bergen, from herself and her late sister, in favour of her "dear relative," David Sanderson Scott, residing at Refirth in Hietland (Shetland), of lands of Biella in Fetlar. Dated at Bergen, 16th August 1575.

5. Deed of Conveyance by Anna Sanders' daughter, residing in Bergen, in favour of her "dear brother, David Sanderson Scott" before named, of her odal lands in Refirth. Dated at Bergen, 18th August 1575.

There is recorded in Mackenzie's *General Grievances and Oppressions of the Isles of Orkney and Shetland*, published at Edinburgh in 1750, a document issued in Norway, viz. :—

6. Decree by the Law-man of Bergen, and also by the Law-man of Shetland, and their Council, reversing a sale of land in these Islands as made contrary to law. Bergen, 1485.

The deed No. 1 of the above list is reproduced by the photozincographic process in the *National Manuscripts of Scotland*, part ii. No. lxxviii.

In addition to the above Norse deeds previously known, it has been my own good fortune to come upon the following ten documents, including the one described in the present communication, among the public papers of Shetland, or in the charter chests of gentlemen connected with the county, viz. :—

7. Attestation by certain Parish Priests, Fouds, and a Lawrightman, in 1545, of an Agreement of Excambion, between Niels Tomesson and Margrette Sanders' daughter, of land at Aith, in Aithsting (*Eyde y Eystingom*), in 1516.

8. Attestation, dated at Bergen, 1544, by a Lawman and two Councillors there, of a Deed of Sale by Niels Angusson to John Magnusson, of 6 merks of land in Hamerland and Giotoun in Shetland, in 1536.

9. Charter of Confirmation (in Danish) by King Frederick the Third of Denmark and Norway, of Assignment by Peder Pedersen and Carl Rosenmeyer in favour of Captain Lorentz Medelton (Laurence Middleton) and his spouse, of 4 merks of land at Sundbrog (Sumburgh), formerly belonging to the Provost of the Dom Kirk (or Cathedral) of Bergen. Dated at Copenhagen, 28th August 1662.

10. Attestation of Sale by Ingemund Endredsson (or Henderson), as representing his wife and children, to William Skogson, of 4 merks of land at Papil in Unst. Dated 2nd August 1551.

11. Agreement by Christian Jonnsson Forsell (Fraser), Burgher in Bergen, in reference to the succession to certain lands in the island of Yell belonging to him. Executed at Bergen, 1594.

12. Mandate by the said Christian Jonnsson in favour of William Donnellsson Forsell in Shetland to intromit with the rents of the above-mentioned lands, 1595.

13. Deed of Sale by Herluff Lauritzon (Laurenson), Burgess in Bergen, acting for Sigurd of Urim in Hardanger, to Andrew Smith, residing at Noderseater in Hillswick Bay, of 5 merks of land there. Dated at Bergen, 27th July 1601.

14. Receipt by Margaret Suen's daughter to James Spens for 28 ells Wadmäl and a half can butter on Kristin Dave's daughter's account, 1602.

15. Acknowledgment by William Monson of indebtedness to Soerren Spens for 9½ dollars, 1607.

16. Deed of Sale by Anna Oluff's daughter to Magnus Thomessone in Scatsta of a farm in Hamnavoe, parish of Lunnasting. Dated at Bergen, 1537 (transcribed and translated above).

The documents in the Norse language relating to Shetland which have been preserved in the islands are thus, so far as known, sixteen in number, besides one, as yet unpublished, in the possession of the representatives of the late Mr Arthur Laurensen, making seventeen in all. I have been particular in describing these documents briefly here, because it may not be improbable that the series is complete, and that no further relics of the kind may ever be discovered in the islands. The ten documents contributed by myself are printed with translations in the *Proceedings* of the Society—Nos. 7 and 8 in volume xii. (1878) p. 472 *et seq.*, and Nos. 9, 10, 11, 12, 13, 14, and 15 in volume xiv. p. 13 *et seq.*, and No. 16 in the present communication. It has already been mentioned where the other documents referred to are to be found recorded.

While so many as seventeen documents in the Norse relating to Shetland have been preserved in the islands, only one such document is known to have come to light in Orkney,—a Deed of Sale by Henrik Soost to Guttorme Georgeson and William Georgeson of the land of Holland in Papa Westray, dated 1452.

These documents, preserved in the islands from the time when the current native dialect and the language and legal forms of Norway were mutually intelligible, and interchangeable, form a not unimportant item in the material from which a just understanding of local history may be derived. Some of them are written in the islands, and some in Norway, evidence not only of this community of language, but still more emphatically of the then continuing community of race, interests, residence, and intercourse, all which in recent times have entirely disappeared. They are also interesting to the lawyer and to the philological student as illustrating the gradual development, and the process of assimilation of the law and the language of the islands to Scottish forms, for which purpose they require to be studied along with examples of conveyancing and other documents in the Scottish tongue by which they were immediately succeeded in the sixteenth and seventeenth centuries.