

IV.

THE FOUDS, LAWRIGHTMEN, AND RANSELMEN OF SHETLAND
PARISHES. BY GILBERT GOUDIE, F.S.A. SCOT.

The Fouds, Lawrightmen, and Ranselmen constituted the machinery of local government and justice in every parish in Shetland. Coming down from a period of undefined antiquity, those Parish Fouds lingered on, latterly disguised by the Scottish appellation of "Bailie," until well into last century; the Lawrightmen seem for the most part to disappear from view towards the close of the sixteenth century; and the Ranselmen, though some of them survived to our own day, are perhaps without a single representative now living.

1. THE FOUDS.

Etymologically the Foud is the *Fógeti* of the Old Northern (or Icelandic) tongue, the *Foged* of Norway. That country at the present day contains eighteen counties or *Amts*, each *amt* divided into bailiewicks, termed *Fogderier* or Foudries, in the same way as Shetland was designated a "Foudrie" in the olden time. Each of these *Fogderier* or Foudries is presided over by the *Foged*, or Sheriff, an official of some consequence whom we constantly encounter in country districts in Norway. The *Foged*, who is appointed by the king, is entrusted with the maintenance of law and order, the carrying out of judgments, and the collection of the revenues of the Crown. No more accurate definition than this could be given of the duties and responsibilities of the Great Foud of Shetland up to the close of the sixteenth century. What we have now to consider is the position of the *Under-Foud*, who discharged the duties of a similar but subordinate office in each parish.

The spelling of the term varies. Sometimes it is *Foud*, *Foude*, and *Fowde*; occasionally *Fold*, *Fould*, and *Feald*. A pretty reliable indica-

tion of the pronunciation is found casually in a letter from Sir Nicholas Throckmorton, English ambassador at Edinburgh to Queen Elizabeth, when he refers to the "principal man of the isle" [Shetland] "called *Fogge*," which is as near as may be to the modern pronunciation in Norway. The Foud (or *Foged*) in question was Oliver Sinclair of Havera, who was apparently favourable to Bothwell, and entertained him in Shetland on his ill-starred visit to the isles in 1567.

While the Great Foud was the chief civil official, a functionary termed the "Lawman" held the important office of legal adviser and judge of assize, and had generally the superintendence of the framing and interpretation of the law. The Foud derived his authority from the Crown, or those representing the Crown, but the office of Lawman was apparently elective. Nicol Reid of Aith, in the island of Bressay, who was "elected" as "Lawman-General of all Zetland in the Tingholm of Tingwall" on the 27th July 1532,¹ was probably one of the last, if not the last, of these native officials.

There is no explicit definition of the powers and duties of the Parish Fouds left to us from the era of Scandinavian supremacy in Shetland; but, from a document of the transition period when the Scottish system was beginning to be forced upon the islands with the strong hand, we obtain a sufficiently clear view of their functions as then recognised. This document is the record of the trial at Tingwall, in 1576-77, of Laurence Bruce of Cultemalindie, Foud of Shetland, who received that appointment from Lord Robert, first of the Stewart Earls, in 1571, and used it, for the benefit of his master and himself, in the oppression and plunder of the islanders under his control. In this record² the Under Fouds and their duties come frequently into view. They themselves had received their appointments from previous Head Fouds, but many of them now incurred the displeasure of the tyrant, and deprivation of their office when they did not fall in with the requirements of his misrule usually followed.

¹ Cultemalindie Papers, Balfour's *Oppressions*, p. 36.

² *Oppressions of the Sixteenth Century in the Islands of Orkney and Zetland: from Original Documents*. Presented to the Maitland and Abbotsford Clubs by David Balfour of Balfour and Trenabie. Edinburgh, 1859.

To trace their duties somewhat in detail :—

The butter, oil, and *wadmell* (a coarse, native-made cloth) in which the rents and duties were paid, after having been weighed and measured by the Lawrightman on behalf of the people, were delivered to the Fouds “swa that baith the Fowde and Commownis gat just mesour and wecht, without hurt, fraude, or gyle” (Balfour, p. 19).

An approved *Bysmar* for weighing was kept, usually bearing the mark both of the Foud and of the Lawrightman (p. 37); and merchandise exposed for sale was valued and priced “be the Fowde, and certain honest, discreit men of the cuntrie quhilk knawis the lawis, consuetudes, and pryces, bayth of the cuntrimentis wairis and merchandis strangearis resortand thair” (p. 40).

It was the duty of the Under Fouds to hold periodical Courts in their respective districts, and also what were called *Shuynd* Courts, for the division of the estates of deceased persons among the heirs. As it is quaintly expressed in the record: “It is the use and consuetude of the countrie quhen ony man or woman deceisses, haveand landis, guidis, or geir, to be divydit amangis the airis, the Underfowde (quhilk is the Bailie of the parochin or yle), accompanyt with certane honest nichtboris, comes to the principall houss quhair the persoun deceissit, callit the Heidbull, for making of the division of the said airschip, callit ane Scheind” (p. 58). For this the Under Foud received a fee of nine shillings Danish, which is declared to be equal to six shillings Scots. Cultemalindie abolished this part of the Fowde’s duties, and instead of the nine shillings fee of Danish money, seized for himself a “sax shilling ox, quhilk is the maist sufficient ox that can be had,” out of the goods of every deceased person (p. 58). Some examples of the simple and interesting process of serving heirs and dividing heritable and personal estate by the *Shuynd* Court are extant.

When Bruce of Cultemalindie was Great Foud, he sometimes forced the position of Under Foud upon individuals against their will, as in the cases of Nicholas of Cullivoe and Garth of Ulsta, both of which were the subject of complaint at the trial. The former had to pay six dollars for the uncoveted honour, and the latter a silver spoon, which cost eight guddlings; but Cultemalindie, though for his own reasons he did not

allow them to discharge the duties, refused their claim for re-delivery of the consideration which they had paid.

The name of a few Parish Fouds of olden time have been preserved, and may be noted here, viz.:—

Andro Tollach,	Foud of Northmaven,	. . .	1545
Willom, in Brustedt,	„ Delting,	. . .	„
Henrie Halcro,	„ Tingwall,	. . .	1575
Olaw,	„ Unst,	. . .	„
Andro Giffurde,	„ Delting and Scatsta,	. . .	„
Thomas,	„ Northmaven,	. . .	„
John Smyth,	„ Dunrossness,	. . .	„
Gilbert Coupland,	„ Dunrossness,	. . .	„
James Sutherland,	„ Fetlar,	. . .	„
Walter Smyth,	„ Unst,	. . .	1581
Vylzeam Mansone,	„ Unst,	. . .	„
William [in] Neip,	„ Nesting,	. . .	1602
Ollaw Sutherland,	„ Fetlar,	. . .	„
William Fermour,	„ Dunrossness,	. . .	1603
David Sinclair,	„ Burra,	. . .	„
John Hawick,	„ Yell,	. . .	1604
William [Manson],	„ Unst,	. . .	„
Alexander Thomasone,	„ Tingwall,	. . .	1610
Magnus Bult,	„ Bressay,	. . .	1612

The island of Unst had two Fouds in 1581, due no doubt to its extent and population, or, possibly, to the addition of an assistant or colleague to an aged or infirm official. The case of Dunrossness, where there were also two Fouds in 1575, is explained by the large area of that parish, which, then as now, included the parishes of Sandwick and Cunningsburgh in the one united parish, or “ministry,” of Dunrossness.

There is little doubt that the Parish Fouds, like their superior the Great Foud in the chief Court, acted under a recognised legal system modified to meet insular requirements from an original derived from Norway, sometimes referred to as the *Book of the Law*. Even after the transaction of pawn to Scotland, it was not uncommon for decisions

to be advocated from *Courts in Shetland to Courts in Norway*. An example of this is the Decree by the Lawman of Bergen in 1485, reversing a Shetland decision, given in the Appendix to Mackenzie's *Grievances of Orkney and Shetland*. In the trial of Cultemalindie in 1576-77, the "auld use and consuetude" and the "lawis and auld custome" of the country are frequently appealed to as the rule of government and justice, well known and conformed to, as the natives alleged, for "twa hundreth yearis by past;" that is, back to, at any rate, the middle of the fourteenth century. In point of fact, as proved by numerous deeds extant, several of which I have had occasion to submit to this Society, the legal usages and the language of deeds retained for very long a strikingly close resemblance to the contemporary Norwegian forms.

But with the advent of the Stewart Earls in the later years of the sixteenth century, a new era opened. The aim of the new masters was the subversion, as far as was possible, of all local laws and institutions, or, at any rate, their assimilation to Scottish forms, the supreme object being, as is well known, the substitution of an oppressive feudalism for the free and simple system of odal possession and transmission of property which had existed from immemorial ages. Accordingly, the *Book of the Law* disappeared; the Great Foud found a representative in a Sheriff or Stewart-depute, and instead of his ancient Court of the *Althing*, or native Parliament, "Lawting," Sheriff, and Justice Courts now framed the laws and mulcted delinquents. The Under Fouds were at the same time transmogrified into the Scottish "Bailie."

In this way, with the overthrow of the old and the substitution of a new regime, fresh legislation by these Courts for the local government of the islands became a necessity; and this gradually resulted in the formation of a comprehensive set of municipal Acts, passed at various times during the seventeenth century. The administration of these Acts in every parish was charged upon the Bailies, thus standing in place of the Under-Fouds; and a very fair idea of what their duties and responsibilities were may be gathered from the multifarious provisions which the Acts contained. But I have in my possession an original commission of a parochial Bailie, of date 1671, which authoritatively defines his

duties and the extent of his jurisdiction. The document is unique, nothing of the kind being hitherto on record or known. It is as follows:—

Be it kend till all men be thir present lettres, We, Mr George Scott of Giblestone, Stewart Principall Justiciare and Admirall of Orknay and Zetland, having power be vertue of my tack therof to nominat and appoynt bailyies within the respective yles and paroches of both countreyes during the tyme and space therin mentionat, and knowing the integritie, qualificacione and fidelitie of Gilbert Olasone of Islesbrugh and of his abilitie to exerce the office of Bailyerie within the paroch and bounds of the parochine of Northmavein, lyand within the Stewarrie of Orknay and Zetland, and mainland of the said countrey of Zetland: Thairfoire, witt ye me to have nominat, constitute, and ordained, lykeas I be the tenor heirof do make, nominat, constitute, and ordaine the said Gilbert Olasone Bailyie of the said parochine of Northmavein, giveand, grantand, and committand to himself allenarlie, secluding all deputes, full power and commissione to exercee the office of Bailyerie within the hail boundis of the said parochine, and for keeping of good neighbourhood and order amongst the parochiners therof, and for doeing of them justice, and for that effect to fence and affix Bailyie Courts within any pairt of the said paroch at all lafull, needfull, and convenyent ocasioness, clerks and uyther members of Court to creat and causse be sworne for thair faithfull administracione in ther offices (for whom he is holdine to ansuer), decreis in matters of neighbourhood to pronunce and for payment of small sowmes within ten pounds Scottis money, and not to exceid the same valowe and amercemends of the said Bailye Court, with all priviledges and casualities belonging to that office to apply to his awin use for his labour, and generallie all and sundrie uyther things to do, use, and exercee concerning the said office, conforme to the Judiciall Acts made theranent; and especiallie with power and chaarge to the said Gilbert Olasone to assist his minister for putting of the acts and statutes of the Kirk to dew executione. And sicklyke with power to him to intromitt with and secure all wrack and waith goods, conforme to the instructions to be emitted be me or my deputes theranent, for which he is holdine to be comptable to me or them from tyme to tyme: Provyding alwayes, lykeas it is heirby speciallie provyded, that the said Gilbert Olasone sall use all means possible to provyde lafull tennents for his Majesties ley lands within the said Bailyerie, and that he shall use all endeavour to prevent the lying ley of any pairt of the samen lands, and shall not suffer the same to be incrotched upon be the ffewaries, udallers, and uythers, but that he shall defend them against all oppresione; and ffarder, that he shall cause the ffewares, udallers, tennendes, occupiers of the landis within the said Bailyerie to make tymeous and thankfull payment of

ther duties, conforme to the rental ; and finallie with this provisione, the said Gilbert Olasone give in beffor me or my deputtes yeirlie, at the head court to be holdine be me or them, ane register of his proceeding in the said office, togither with the names of the committars of all bloods, ryots, theft, witchcraft, and all uytter crymes committed within the said Baillyerie, and that he conceall no manner of wrong nor offence done withiu the same, nor committ no fact nor deid contrair to the generall acts made anent the Bailyies dutie, under the paines contained in the said Acts ; and thir presentis to continue during will and pleasur allendarlie. In witnes quhairof, written be Thomas Moir, servitor to Robert Drummond, Stewart Clerk of Orknay, I have signed and subscopyed the samen at Scalloway, the second day of September jxvj^o threiscore eleavin yeires, beffor and in presence of thir witnessis, Gilbert Neven of Windhous, David Drummond, merchant in Kirkwall, and the said Robert Drummond, inscriber of the dait, name and witnesses.

Gilb : Neven, *witnes*.
 D. Drummond, *witnes*.
 R. Drummond, *witnes*.

GEORGE SCOTT.

L. S.

(*Dorso*)—Commissione of Bailliarie for Gilbert Olasone, Baillie of Northmaven, 1671.

The seal bears arms as follows, viz.:—

Or on a bend engrailed azure, a mullet between two crescents of the field, and in the sinister chief point a crescent for difference, an esquire's helmet with mantling. The crest a pelican in her piety proper : motto, *Lux in tenebris*.

John Scott of Gibliston, near Colinsburgh in Fifeshire, who grants the commission of bailliarie, was Stewart of Orkney and Shetland from 1670 to 1675. He appears to have settled in Shetland, and his family is now represented by the Melby and Scalloway families. He was a grandson of Sir John Scott of Scotstarvit.

The terms of his appointment and the Acts which he was bound to administer sufficiently indicate the position and duties of the Parish Baillie ; and while these duties need not be further alluded to, the local statutes are so uniquely curious as to deserve some consideration in this connection.

Regulations in petty matters of district management were "statut and ordanit" from time to time from the beginning of the seventeenth century, and doubtless at much earlier dates, though the records do not

exist; but the first attempt at compiling a regular code of laws for Shetland appears to have been at a Court held in the Castle of Scalloway on the 1st and 3rd of August 1615.¹ A code of a similar character, but with divergences suitable to Orkney, was passed at a Court held in the Palace of the Yards in Kirkwall, on the 7th November of the same year. These enactments formed the basis of all subsequent legislation, their provisions being enlarged and amended in succeeding years. The result was a body of laws of a most exhaustively comprehensive character, but too profuse to be practically workable, or even to be readily accessible to those charged with putting them in force. This, again, led to the compilation of an abbreviated collection, which was known as the "Country Acts," consisting of 41 separate enactments or provisions. A contemporary printed copy is preserved in the Advocates' Library (M.S. 34. 1. 12), and one is also in my own possession; but as the original version of these is probably that given by Gifford of Busta, in his work written about the year 1733 (but which was not printed till 1786), it may be well to abide by his copy as the text. These laws of a former age are so little known, and they so strikingly illustrate the primitive modes of life then existing in the islands, that their reproduction here seems pertinent to the present inquiry:—

THE OLD COUNTRY ACTS, OR ABRIDGEMENTS THEREOF.

Act 1. That the baillie in each parish concur and assist in the discipline of the kirk and execution thereof.

2. That none miscarry or lay down the Cross,² under a penalty of ten pounds Scots, *toties quoties*.

3. That all weights and measures be yearly adjusted, marked and observed, conform to the several Acts made thereanent, under the paine of ten pounds Scots, and doubling thereof as often as contravined.

4. That all thiggers³ of wool, corn, fish, and others be apprehended wherever they come, by any that can find them, and to put them in firmance, to be punished with the stocks and jogs; and that none receipt them in their

¹ The enactments passed on this occasion are quoted in the *Miscellany of the Mailland Club*, vol. ii.

² The Cross. For summoning meetings at the church or elsewhere, or for the king's service.

³ Thiggers = beggars.

houses, nor give them hospitality or service, under the paine of ten pounds Scots, *to. qu.*

5. Anent destroying of ravens, corbies, &c., in manner and under the pains in the Act of Parliament made thereanent.

6. That good neighbourhood be observed and kepted by timous and sufficient bigging of decks,¹ and putting up of grinds² and passages, keeping and closing the same; and that none big³ up accustomed grinds or passages through towns,⁴ or any way close up the king's high road, under the pain of ten pounds [Scots]; that all decks be sufficiently built before the first of March, so as all cattle may be kept without decks from the time that the labouring begins; and whatsoever person shall wilfully allow their cattle to tread upon their neighbour's ploughed land or meadows before the first of May, shall pay for each swine ten shillings [Scots], for each sheep two shillings, for each horse, mare, or nolt six shillings, doubling the same pains after the first of May, besides payment of the damages; and that they pay forty shillings Scots for each winter slap⁵ found in their decks after the first of May: That whoever neglects to close the grinds, or breaks down or goes over decks, shall pay for each time they do so forty shillings Scots, besides the damages; that all within one deck keep good neighbourhood to others by tethering, herding, and folding, as well by day as by night, and not to pasture upon or overlay others with their cattle, nor unlawfully hound or drive upon others, under the pain of forty shillings [Scots] for each fault *to. qu.*, beside damages; and that none have more swine than effeiring to their land labourings; and that none have swine pasturing upon their neighbour's lands, meadows, grass, commonalty, and pasturage, neither within nor without decks that hath no swine pasturing upon them, and that they keep their swine upon their own ground, under the pain of ten pounds [Scots] by and attour⁶ the damages, and that buillings, pundings, and herdings be used in lawful way before or a little after sun-setting, and that none scare, hound, or brack up their neighbour's punds⁷ and buills,⁸ under the pain of ten pounds [Scots], besides damages.

7. That none go into other men's holms⁹ or isles, under the pain of ten pounds [Scots] for the first fault, twenty pounds for the second, and for the third to be repute as thieves, and prosecute accordingly: moreover, by Act the

¹ Decks, *i.e.*, dykes, the enclosing walls of turf or stone.

² Grinds = gates.

³ Big = build.

⁴ Towns = *tuns*, cultivated settlements, or townships.

⁵ Slap = a breach or opening in a dyke.

⁶ Attour = above or beyond.

⁷ Punds = enclosures, or parks, on the commonly walled in with a dyke.

⁸ Buill = sheltering places for cattle or sheep (Icelandic *bol*).

⁹ Holms = uninhabited islets.

3rd of July 1628, that the said penalties be exacted, and the one half thereof to be delivered to the judge and the other half to the dilators¹ or owners of the holms.

8. That none keep sheep dogs but such as are appointed or allowed by the sheriff or bailie, with the advice of the special honest men in the parish, whose names are to be recorded in the Court Books, and each of them to be answerable for their actings; and that none run after sheep with a dog unaccompanied, or take in and kill any until first showing the mark to a Rancellman or other honest man, under the pain of ten pounds Scots money for the first fault, besides payment of the damages, and doubling the said pain for the second, and for the third fault to be a point of ditty,² and the contraviners to be holden and repute as thieves, and discharged to use or keep a sheep dog in all time coming; and that none mark lambs or row³ sheep where there is different owners in the flock but at the sight of sufficient witnesses, under the pains foresaid: moreover, if any person shall use a sheep dog, and run therewith after his own sheep amongst those of his neighbours unaccompanied, mark, row, or take home any without showing the same as aforesaid, shall pay for the first fault four angels,⁴ for the second six angels, and for the third, or at any time under the cloud of night, shall be holden and repute a common thief, and punished accordingly.

9. That none blood, hurt, or mutilate their neighbour's nolt,⁵ sheep, or horses, under the pain of ten pounds Scots, besides payment of damages.

10. That all dogs in the respective parishes be tried yearly by the bailie or the Rancellmen and other honest men in the parishes, and if any be found to have dogs that take or may take sheep, who are not allowed to keep sheep dogs, they shall pay according to the former Act, and the dogs so found to be hanged; and all running dogs to be discharged, under the pain of forty shillings [Scots], to be paid by the owner of the dog, *to. qu.*, and the dog to be hanged.

11. That the Rancellmen be yearly sworn and examined, or as often as needful, and give an account to the bailie anent their diligence; and that they see all wool-skins, heads, and marks whatsoever; and that they see all clothes and stockings made of wool, and compare the same with the stock of the makers, and all lines and tomes⁶ made of horse-hair, and keep accounts

¹ Dilators = informers or accusers.

² Ditty = indictment.

³ Row = to take the fleece off sheep by plucking, as usual in Shetland, instead of shearing.

⁴ Angels = gold coins, worth about 10s. sterling.

⁵ Nolt = cattle.

⁶ Tomes = fishing lines made of horse-hair (*Icelandic taumr*; *Danish tomme*).

thereof; and that they take up inventories from smiths and websters of all work wrought by them; and that none refuse rancelling, or to give up inventories, or quarrel or offend at rancelling, under the pain to be repute and punished as thieves.

12. That none fee or seduce another man's servant, except they be discharged of their masters, or that they have discharged them forty days before a lawful term; and that none receipt such servant who are not free of their service, nor give them hospitality, nor entertain them, nor flit them either by land or sea; nor are they to be received nor entertained, though free, into any other parish without a testimonial; and that none keep in their houses idle women, vagabonds, or loose folk, nor let houses to such, under the pain of ten pounds, *to. qu.*

13. Act, August 1630, ratifying the former Act, forbidding any person to marry and set up house who has not forty pounds Scots of free gear, or some lawful trade to live by; and that none set house or land to such persons, under the pain of ten pounds said money; and that none seduce, force, or transport any other man's son, daughter, or servant furth of the country, under the pain of one hundred pounds Scots money.

14. That none ride, labour, or use any other man's horse without liberty of the owner, under the pains following, viz., within the parish where the owner dwells, to pay four marks to the Sheriff or Baillie and other four marks to the delators or informers; and from one parish to another to double, triple, and quadruple the foresaid pain effeirent to the parishes he passes through; and that none cut other another man's horse tail or main, under the pain of ten pounds [Scots]. Moreover, 3rd of September, this Act ratified, and the contraveners thereof the second or third time to be punished as thieves.

15. That none hide nor conceal any kind of theft, sorcery, witchcraft, riots, blood, or other injury and prejudices done, but shall delate and report the same to their Baillie, as they will eschew to be repute as partakers thereof, and punished according to law.

16. That the Baillie in each parish take order with the trying and adjusting of bismers with the stoups, cans, and other mets and measures, under the pains contained in the Act of Parliament; and that a lispund upon the bismar used for receiving of rent-butter, and other merchandise bought and sold, be 28 pound or one quarter of an hundredweight, allowed by law in all grocery ware; and that the can wherein the rent oil is measured, as also that used in bying and selling, contain one Scots quart and a mutchkin of water and no more. That the ell on which all coarse cloth, linen, and stuffs are measured by be 3 feet 1 inch, or 37 inches long; and that the ell called the webster's ell be 3 feet 4 inches, or 40 inches long, on which only unscoured cloth is measured.

17. That none row sheep on Sunday, under the pain of ten pounds.

18. That none meddle with other men's goods or gear at their own hand, under pretence of alledged debt, especially the goods in their own keeping, under the pain of ten pounds Scots, besides restoring of the goods with their profits.

19. That none buy victual in wholesale, and retail it at a greater price, before publication of eight days' warnings, under the pain of forty pounds Scots, *to. qu.*

20. That no brewer sell ale dearer nor effeirent to the price of the malt ; and that it be sufficient drink and measure, under the pain of confiscation.

21. That none mix ale, beer, or wine, under the pain of confiscation.

22. That bounds¹ have no more persons in their families than effeirent to their estates and land labouring, and that they put one or more of them to another master that needs servants, conform to the ancient custom of the country.

23. That none delve, till, or pasture upon their neighbour's land or grass, under the pain of ten pounds Scots, besides the payment of damages.

24. That none repair to feasts uncalled, under the pain of forty shillings Scots.

25. That pointed goods be loosed within six hours after advertisement and the sute satisfied, under the pain of forty shillings Scots ; and being advertised, denies the goods, shall pay six pounds Scots ; or if they take them away at their own hands, shall pay ten pounds Scots.

26. That none remove from lands or houses of their own accord, or shall demolish or take away anything belonging thereto, although furnished by themselves, under the pain of twenty pounds [Scots], besides payment of the damages.

27. That all persons have sufficient corynaryd dykes, and that no mends be made for corn eaten within corynaryds, except where more than one is concerned in the yard ; he that hath the insufficient dyke must pay the other's damages, as also for all marks, the owner whereof must pay the damages.

28. That none libb any beast upon Sunday, under the pain of twenty pounds Scots.

29. That all bloods and riots be assithed according to justice.

30. That all briggs and common passages be kept in repair by the persons used to repair them, under the pain of ten pounds [Scots].

31. That none use staff bismers, nor any other save such as are adjusted and marked to buy and sell on, under the pain of twenty pounds Scots.

¹ *Bounds*. The survival of the ancient Norse term *bondi*, peasant farmer, by which the great body of the population of Norway were designated.

32. That every scatald¹ have a sufficient pund, under the pain of ten pounds Scots.

33. That none use mussel bait or other bait but such as all or most part of the fishers have, under the pain of ten pounds [Scots] ; and that none fish with haddock lines within voes² from Belton³ to Martinmas, or so long as they can draw haddocks on hand-lines, under the like pain of ten pounds Scots ; and that none take bait nor cast tang in another man's ebb, under the like pain of ten pounds.

34. That all persons living in neighbourhood keep order, law, and good neighbourhood in tilling, labouring, and manuring the ground, conform to the ancient custom formerly observed, under the pain of twelve pounds Scots, and, failing therein, to be put from land labouring and ordered to service.

35. That all horses belonging either to outscattalders or inscattalders, oppressing and overlaying the neighbourhood, be instantly removed, after due advertisement given to their owners, and at the kirk door, under the pain of being confiscat and escheat to the king.

36. That none contemptuously pasture upon, rive flawses, cut floss, or cast peats in their neighbour's scatald, under the pain of ten pounds Scots ; nor that any cut floss before Lamma-day in their own scatald, without due advertising of their neighbours belonging to the said scatald, under the pain of forty shillings Scots, *to. qu.*, and that none have more swine than four upon a last⁴ of land over winter, under the pain of ten pounds.

37. That none keep scar⁵ sheep, except it be in holms or nesses, dicked in and properly belonging to themselves, under the pain of ten pounds Scots and forfeiture of the sheep after six months advertisement.

38. That none bring nor tether their horses within the decks [dykes] of kirktowns, under the pain of forty shillings Scots for each time they do so without liberty asked and granted.

39. That the Sheriff⁶ of each parish, with twelve honest men there, ride the marches of the parish betwixt the 1st of October and the last of April yearly, or when required thereto by the scattalders, under the pain of forty pounds.

40. That each Sheriff⁷ have the heall Country Acts authentikly extracted under the Steuart-Clerk's hands, and cause read at least the abbreviate thereof in their Sheriff⁸ Courts twice a year, or once at least, that none may pretend

¹ Scatald = the common pasture ground of a district, whence the district itself is sometimes termed a "Scathald."

² Voe = a bay (*Norse Vaag*).

³ Belton = Beltane.

⁴ Last = 18 merks of land.

⁵ Skar = wild, untamed (*Icelandic*, skjarr).

⁶ Sheriff. Apparently a misprint for "baillie."

⁷ *Ibid.*

⁸ *Ibid.*

ignorance of the same, and take true tryal of the breaches thereof, and cause poynd for the same, and that they find caution for what part thereof may be due to the Sheriff, or Procurator-Fiscal in his name, and deliver the same to the Sheriff at the head Court, under the pain of deprivation ; and that each Sheriff¹ have an authentic Court-Book, wherein all his acts and process of Court shall be written or set down, and that the same be produced to each clerk at the Circuit Courts kept in the parish, under the pain of deprivation.

41. That none go to sea or be employed about fishing from sun-set on Saturday night till sun-rising on Monday morning, nor travel by sea or land about their secular affairs or business, or any other way [be] employed therein on the Sabbath day, except in works of necessity and mercy, under the pain of ten pounds Scots, by and attour the penalties and punishments ordained by law against all Sabbath breakers.

42. That no person any way impede, molest, or abuse a Rancelman in the full and free exercise of his office, under the pain of ten pounds Scots money, besides personal punishment and a greater fine, as the offence given shall be found to deserve ; and that none refuse to aid and assist a Rancelman in the execution of his office when required thereto, under the pain of ten pounds money foresaid.

In the execution of these regulations, which seem to have encompassed the entire circle of life and industry in the islands, the Parish Bailie continued, like his predecessor the Under Foud, to be charged with functions which, if they ministered to their own importance and responsibility, must have rendered them officious, if not censorious, neighbours. But in a rude age minute regulations and acute penalties were no doubt the essential basis of government and of the maintenance of public order.

In 1724 an important Act was passed, having for its object the establishing of parochial schools through the whole county of Shetland ; and a final attempt at adjustment of the native code was made in 1725, when, at a Court held at Burravoe on 17th November, following upon petitions presented by various kirk-sessions and heritors, there was ordained as law what was termed—

A Compend of the Country Acts for directing the Rancellmen, and Society for Regulating of Servants and Reformation of Manners, with their Instructions.

¹ Sheriff. Apparently a misprint for "bailie."

These Acts provided with great minuteness and stringency for the observance of religion and morals and of the Sabbath day; the training of children, the management of servants, and the maintenance of the poor; condemned swearers, liars, and scolds, with suitable apportionment of fines on delinquents; and, finally, defined the duties of the Rancelmen.

Under these amplified regulations justice continued to be administered and order to be maintained in the different parishes, until the entire system was swept away by the abolition of heritable jurisdictions about the middle of last century. It would be interesting if we could reproduce with certainty the forms of procedure in the Courts of the Parish Fouds, but, unfortunately, no formal records of Court proceedings in Shetland in Scandinavian or later Scoto-Scandinavian times are preserved, if we except a few *Shaynd Bills* and documents of a similar kind, which merely served to register the decisions arrived at in particular cases. But the records we have of District Courts and of Bailie Courts of a somewhat later, and even down to a comparatively recent, date, are sufficiently interesting, and bear evidence of the persistent survival of ancient native forms. Perhaps the most curious of these was the compurgatorial system, the exculpatory oaths on behalf of persons criminally indicted, of six men and twelve men, termed respectively the "saxter aith" and the "twelter aith," as also the "lawright aith," which were continued well into the 17th century. The Fouds and Bailies had formerly their councillors (*Raadmen*) selected from the most reputable men of the district, forming an assize to assist them. The attendance of all householders was required both in these inferior Courts and at the head Courts at Tingwall and Scalloway, and this itself indicates the survival of the essential feature of Scandinavian Courts and meetings (*Things*), namely, the presence and equal voice and vote of every free-born member of the State, as contrasted with an elected representative assembly.

The Bailie Court Book of the parish of Dunrossness, from 1731 to 1735—Andrew Sinclair, Bailie—is preserved, and is doubtless one of the last records of the kind extant. A transcript is in my possession. The minutes usually begin thus:—

“In a Bailie Court, holden by Mr Andrew Sinclair, Bailie of Dunrossness, Sandwick, and Cunningsburgh. Court lawfully fenced, Stembord called, and Country Acts read. The Court adjourned till to-morrow at 10 o'clock before noon at . . . when the Rancelmen and all others concerned were ordained to attend.”

Laurance Sinclair of Goat was usually “Procurator Fiscal” of Court. The obscure term “Stembord” probably means, either the list of those present or of those who ought to be present, or it may be the list of cases set down for trial.

This parochial Court Book was noticed in a brief communication to the Society by Mr Thoms, Sheriff of the county, in 1882 (*Proceedings*, vol. xvi. p. 157), and need not be further referred to. Since the ending of those local judicatories, at the abolition of heritable jurisdictions by the Act 20 George II. c. 43, in 1747, the judicial administration of the islands has been assimilated to the ordinary system in Scottish counties, the survival until recently of the Rancelmen as subordinate criminal officers being, perhaps, the only noteworthy exception.

I have contented myself with thus briefly glancing at these unique native Courts of Shetland, but much learning was expended, perhaps uselessly, by Dr Hibbert on an elaborate disquisition on the subject, “Memoir on the Tings of Orkney and Shetland,” based upon presumptive evidence derived mainly from Icelandic and Scandinavian literary sources, which appeared in volume iii. of the *Archæologia Scotica* (1831), and to which any one interested further in the subject may refer.

2. THE LAWRIGHTMEN.

From information ordinarily available, any idea of the functions of the Shetland Lawrightmen could be inferred chiefly from the etymological significance of the term, from such indications as might be gathered from Icelandic or Scandinavian analogies, or from stray references by old authors, such as Gifford, who, until recently, was practically unknown. In the *Cleasby-Vigfusson Icelandic Dictionary* the following definition is given :—

LÖGRÉTTU MENN. In the Norse law, as also in Iceland after the union with Norway, lögrétta was the *public court of law* held during the general assembly

(Thing), and presided over by the Lagman (Lawman); the members (lögréttu menn), were delegated from all the counties represented in the assembly. See *Norges Gamle Love* 10; as also *Jons-bok, Thingfara-balk*, chapter 2.

But when the record of the trial of Lawrence Bruce of Cultemalindie in 1577, formerly referred to, was printed, the Lawrightmen and their functions were brought into view, though at a period approaching the close of their career in Shetland, with a clearness that leaves no doubt as to what their position was in the economy of local government there. Balfour accordingly was enabled to supply the following definition, viz.:—

LAWRIGHTMAN.—Norse Lögrætta madr, *Scabinus*. An official chosen by the Vard-Thing, and charged with the custody and application of the standards of weight and measure, and the general interests of the herad or parish, especially in the Lag-Thing ["Lawting"], where he acted as Assessor of the Lawman or Foud. The name was latterly given to the inferior local umpires of minor questions of scandal, marches, or breaches of the Sheep Acts, more correctly called Rancelmen.

In the complaints against Bruce of Cultemalindie, it was charged by the inhabitants of Whiteness, Tingwall, and Weisdale that there had been no Lawrightman in their united parishes since his entry as Great Foud in 1572; "quhilk Lawrichtman," as the record proceeds, "of auld use and consuetude was ane necessar officiar in everie severale yle and parochie of the cuntrie, chosin with the common 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 quhair-with thair mett thair clayth, callit wadmell, quhilk is ane dewtie thair pay to the Kingis Majestie for thair scat and landmales yeirlie. And siklyk to keip the just wecht callit the bismeir, quhairupon thair hail buttir, bayth of scat and landmales, wes weyit, togidder with ane just can quhairwith thair mesurit thair ulie payit in scat to the King. With the quhilk cuttell, bismeir, and can the said Lawrichtman mesurit, met, and weyit the saidis dewiteis of butter, wadmell, and ulie fra the Commownis, and delyverit the saimen to the Fowdis, swa that bayth the Fowde and Commownis gat just mesour and wecht, without hurt, fraude, or gyle. And mair attour it was ane pairt of his office, as ane speciale

man chosin for his discretioun and jugement to be Chancellor of the Assyiss in all Courtis, that quhair ony difcill questioun come in hand, he schew the law, use, and practick thairupon, and gave the rest of the assyiss informatioun how to decerne, and pronuncit the decreits, perqueyre, in default of scrybis; and hade an ordinar stipende of the Commownis thairfoir, and was as ane procuratour and defendar of thair richtis and commonwelth."

This description of the character and duties of the Lawrightman, which was not attempted to be controverted, justifies our acceptance of him as a genuine *tribune of the people*, as useful in the old commonwealth of Shetland as was the *tribunus* for the defence of the interests of the plebeians of Rome, and it is not necessary to adduce any further evidence regarding him. The names of a few of the ancient Lawrightmen have been preserved. Among these are the following, viz.:—

Magnus Tollach,	Lawrightman of Northmaven,	.	1545
Orme of Bw,	„	Dunrossness,	1558
Nichole [in] Hardwall,	„	Delting and Scatsta,	1575
Erling of Bw,	„	Dunrossness,	„
Erasmus of Kirkbustare,	„	Bressay,	„
David Tulloch,	„	Northmaven,	„
Christopher Laurenson,	„	Walls,	„

It is remarkable that while the Lawrightmen were the first of the local functionaries to be set aside by the new alien authorities from Scotland, they seem to have lingered on, though it may have been little more than in name, till well into last century. So late as 1733, Gifford, in his *Description, &c.*, quite distinctly states that—

“There is also in every parish a *law-right-man*, that is an honest man, appointed judicially by the bailiff, as the Rancelmen are. His business is to weigh and measure the rent-butter and oil, and also to judge of the quality thereof; and, if he finds it insufficient, to return it as not receivable. He is sworn to do justice, and keep just weights and measures.”

This account shows some declension from the position of the Lawrightmen as described in 1577, and some confusion of his duties with those of the Foud. In the course of time the conversion of payments of

rents, teinds, and duties in kind into current money rendered the office of the Lawrightman obsolete by a natural process, and he has long since ceased to be heard of. But this is no reason for his being forgotten in a country where he honourably served his day and generation.

3. THE RANSELMEN.

Etymology.—The word *Ransel* commonly used in Shetland as to *search, examine*, and which is evidently from the Norse *Ransage*, to search thoroughly, akin to the English “ransack,” indicates in itself the character of the Ranselman, which was simply that of an authorised “searcher” into scandals and misdemeanours in his district.

According to Gifford (1733)—

“The Rancelman has the power of a constable to command the inhabitants to keep the peace and to call for assistance, and to enter any house within the parish at all hours of the day or night, and search the house for stolen goods, which they call *ranciling*; and if they find anything that the owner of the house cannot give a good account how they came by it, then they seize him directly and carry him to the bailiff, who takes precognition of the cause; and if it infers the crime of theft, then the thief, with the fangs or thing stolen found in his custody, is sent to the prison, and the Stuart Depute acquainted thereof, who appoints a day for trying the thief according to law; and in case the bailiff finds that the representation of the Rancelman will not amount to any proof of the crime of theft, he dismisseth the suspected thief upon his good behaviour, with certification.”

For the sake of completeness in this inquiry in regard to the native officials of Shetland, I am induced to quote the codified instructions to Rancelmen, drawn up in their present form in 1724, and which are given only in Gifford’s book of 1733 (reprinted in 1876) and in Sheriff’s *General View of the Agriculture of the Shetland Islands*, published in 1814, both works which are little known:—

Instructions for Rancelmen.

In a Baillie Court, lawfully fenced, the whole householders in the parish being present, the Baillie is to cause his clerk to read out a list of such honest men in the parish as are fit to be Rancelmen, and then he is to enquire each of

them if they are willing to accept of the office of Rancelman, and if any of them refuse and can give no good reason for his refusal to accept, the Bailie may fine him in ten pounds Scots ; and those that accept, the Bailie is to enquire of the whole householders present if they have aught to object against either of those men why they may not be made Rancelmen ; and no objection being made, then the following instructions are to be read to them :—

1mo. You are at any time, night or day, you see needfull, to call for assistance, and to enter within any house within the parish, and search the same as narrowly as you can ; and upon any suspicion of theft, if they refuse you keys, you are to break open their doors or chests, and if you find anything that is stolen, you are to bring the thief and the fang to the baillie, or secure both, and acquaint the Bailie. If you have any scruple about any things you find in the house, you are to enquire how they came by it, and if they refuse to tell, take witness upon their refusal, and let the things be secured till you acquaint the Bailie. You are also to examine the house stores of flesh and meale and see if they be correspondent to their stocks, and likewise the wool, yarn, webs, stockings, &c., and inquire how they came by all these ; and if they cannot give a satisfactory account thereof, and brough and hamele,¹ you are to inform against them.

2do. You are to inquire into the lives and conversations of families, whether there is any discord or unbecoming carriage between husband and wife, parent and child, master and servant, or any other unchristian or unlawful practice in the family. You are to rebuke such and exhort them to amend ; and if they obey, it is well ; if not, you are faithfully to represent such to the judicatory competent, and bring the best evidence you can against all such offenders.

3tio. You are to prevent all quarrels and scoldings, as far as in your power, by commanding the contending parties to the peace ; and if they persist, require witness against them, and call for assistance to separate them, and give in a faithful report thereof to the Fiscal, or Clerk of Court. And in case you are not witness to any scolding or quarrelling that happens, you are to gather the best information thereof you can, and make report of the same as aforesaid.

4to. If you hear any person cursing or swearing, you are to demand of them the fine ; and if they refuse to pay it, you are to require witness against, and report it to the Court, one-third of which fine is to yourself, and two-thirds to the poor.

5to. That you narrowly inquire in your neighbourhood who sits at home from the kirk on the Sabbath-day and from diets of catechising ; and if they can give no sufficient reason for their so doing, that you cause them to pay the fine, to be applied as aforesaid. And that you take particular notice in your

¹ *Brough and hamele*, an old term of law, meaning proof of ownership.

neighbourhood anent keeping the Sabbath-day, and if you find any breach thereof, that you report the same.

6to. You are strictly to observe the Country Acts anent keeping good neighbourhood, such as that none injure others in their grass and corn, and rebuke the offenders, with certification, if they continue so to do, you will inform the Court against them ; and that they build their dikes sufficiently and timeously, under the pains contained in the Act.

7mo. That tenants do not abuse their lands nor demolish their houses through sloth and carelessness ; that you reprove such, and if they continue so to do, acquaint the land master.

8vo. You are to inquire if there is in your neighbourhood any idle vagrant person, and to acquaint such that they must either betake themselves to some honest employment, or you will inform against them, so as they may be punished and ordered to service ; and that the poor be taken care of in their respective quarters and not suffered to stray abroad. Nor are you to allow any beggar or thigger from any other parish to pass through your bounds ; and, if they offer so to do, you will secure them till they be punished, conform to the Country Act.

9no. That you try all the dogs in your quarter, and that none be allowed to keep a dog that can take a sheep, unless he is allowed to keep a sheep dog by the Baillie ; and that none keep scar sheep otherways nor in the Act, and that the Acts be observed anent punding, hounding, marking, and taking of sheep.

10mo. You are to inquire in your quarter anent all persons using any manner of witchcraft, charms, or any other abominable and devilish superstitions, and faithfully inform against such, so as they may be brought to condign punishment.

11mo. You are to examine all tradesmen in your bounds and see that they make sufficient work, and do not impose upon any in their prices ; and, if you find any such transgressors, that you inform against them, so as they may be punished as the law directs.

12mo. Upon any suspicion of theft, two or three Rancelmen may take as many witnesses with them, and go to the neighbour parish and rancell ; and, if they catch a thief, they are to acquaint the Baillie of that parish thereof, who will order the thief to be secured.

And, in the last place, as you are intrusted with a power of inspecting the lives and manners of others, so let your own life and conversation be exemplary unto them for good, and take care you are not found guilty of those faults yourselves that you are called to reprove in others ; for, if you should, your punishment shall be double to theirs. Now all those instructions, as far as it is in your power, you promise and swear solemnly in the sight of Almighty God, and as you shall answer to Him at the great day, faithfully and honestly to observe and perform.

The closing head anent impeding, maltreating, or abusing Ranselmen, has already been given as Act 42 of the Country Acts *ante*.

One Ranselman, if one only, is known in literature, namely, Niel Ronaldson, whom the genius of Scott has presented as the "Ranselman" of Dunrossness in the story of *The Pirate*. I can myself remember one excellent and respected Ranselman, James Sinclair, Out Voe, in the same parish, the last in that quarter of the country.

The last appointment of a Ranselman, so far as I am aware, was made in 1836. The petition to the Sheriff, and his deliverance thereupon, presented by Mr Thoms, Sheriff of the county, are preserved in the Advocates' Library, and are as follows, viz.:—

Lerwick, 15th Dec. 1836.

Unto the Honorable the Sheriff of Orkney and Zetland, and his Substitute for Zetland, the Petition of John Bruce of Sumburgh, Tutor-at-law for Miss Robina Hunter of Lunna,

Humbly sheweth,

That by a set of wholesome local regulations, called the "Country Acts of Zetland" (of which a printed abridgment is herewith produced), acknowledged on all hands to be admirably adapted to the peculiarities of these islands, and which have been acted upon for generations back, a description of parish officers called Ranselmen, whose principal duty is to check and detect petty thefts, are appointed to be yearly, or as often as needful, sworn before the Sheriff, to the faithful performance of the duties of their office, which are fully detailed in the said Acts.

That in the parish of Lunnasting, the greater part of the property of which belongs to the petitioner's ward, the appointment of Ranselman has for some time been neglected, and the consequence is that petty thefts have increased to an alarming extent, and the petitioner, as the only possible plan of preventing the progress of so distressing an evil, has resolved to apply to your Lordship to have a set of trustworthy persons sworn in as Ranselmen, to act in the above mentioned parish.

May it therefore please your Lordship, in considering the premises, to direct Robert Anderson, Hamnavoe; Laurence Humphray, Vidlin; Michael Humphray there; Andrew Laurenson, junior, Skelberry; Laurence Humphray, Flugarth; Thomas Laurenson, Luning; James Pearson, Hamnavoe; William Johnson, Lunna; William Johnson,

Kirkabister; and Robert Thomson, Gilsbrake, to appear before your Lordship, in order to be examined, sworn in, and admitted as Ranselmen to act within the foresaid parish of Lunnasting, in terms of the regulations above mentioned.

According to Justice, &c.,

GILB. DUNCAN, *for the Petitioner.*

Lerwick, 16th Dec. 1836.

The Sheriff-Substitute having considered this petition, grants warrants to and appoints the persons within named and designed to be Ranselmen within the bounds and limits of the parish of Lunnasting, with all the powers pertaining to the said office by the immemorial law and usage of these islands, and ordains the same persons to appear in presence of the Sheriff-Substitute to be sworn into office.

AND. DUNCAN.

Lerwick, 16th Dec. 1836.

In presence of the Sheriff-Substitute, compeared this day the within named Robert Anderson, Laurence Humphray (Vidlin), Michael Humphray, Andrew Laurensen, Laurence Humphray (Flugarth), William Johnson (Lunna), William Johnson (Kirkabister), and Robert Thomson, to whom he administered the oath *de fidei*.

AND. DUNCAN.

(*Dorso*)—Petition to the Sheriff for Appointment of Ranselmen in Lunnasting, 15th December 1836.

If the above is not the last instance of the appointment of Ranselmen, it is certainly one of the latest, and it may not inappropriately conclude this attempt to set out the character and functions of the time-honoured Fouds, Lawrightmen, and Ranselmen of Shetland parishes.

Since the above was written, I have learned that Sheriff Mackenzie, late Substitute at Lerwick, had an application made to him within the last few years, for the appointment of Ranselmen in the island of Fetlar. He did not accede to the application, as the practice had fallen into desuetude.

I am also informed by Mr Bruce of Sumburgh that there was some talk of appointing fresh Ranselmen about 1862 or 1863, but it was

then thought that the system was getting out of date, and there were doubts of its legality. In consequence of complaints of petty thefts in the Fair Isle, of which Mr Bruce is proprietor, he swore in two Ranselmen in that isle so late as in 1869. This had the desired effect at the time, and in a few years their office became a sinecure, and their employment was discontinued.
