

NOTES ON AN UNPUBLISHED MS. PRESERVED AMONG THE PRIVY COUNCIL DOCUMENTS IN THE GENERAL REGISTER HOUSE, WITH REFERENCE TO CERTAIN CHARGES AGAINST NINIAN NEVEN OF WINDHOUSE, SHETLAND. BY T. W. L. SPENCE, SECRETARY TO THE BOARD OF LUNACY. COMMUNICATED BY SIR ARTHUR MITCHELL, K. C. B., M. D., LL. D., *Foreign Secretary.*

Mr Gilbert Goudie recently read before the Society a paper dealing with an unpublished MS. preserved among the Privy Council documents in the Register House, and headed "Oppressiounes, Tirranies, and falcetis and cruelties done and committit be Neniane Neving upon the poore Inhabitantis of the Cuntrie of Zetland."

In this paper Mr Goudie makes certain statements and arrives at certain conclusions which seem to me not to be warranted by the facts in so far as they are at present known ; and as the persons assailed on the MS., Ninian Neven of Scousburgh and Windhouse, Gilbert Mouat of Garth, who was Minister of North Mavine, and his son James Mouat of Olla-berrie, are ancestors of well-known Shetland families who, though recently extinct in the male line, have left numerous descendants, there are personal as well as historic reasons for looking into the facts somewhat more closely than Mr Goudie seems to me to have done.

Mr Goudie says, at the beginning of the section of his paper treating of this MS., that, "apart from legalised tyranny at the instance of donatories of the Crown lands and revenues of Shetland, the native population

suffered much from oppressors of a lower type, legal adventurers and others, who swarmed upon the country." It may or may not be true that Shetland was swarming with legal adventurers in the early part of the seventeenth century. But if Mr Goudie has good grounds for believing this true, he is unfortunate in having selected Ninian Neven as the type. His father, James Neven of Scousburgh, and his grandfather John of Scousburgh, were both Shetlanders born, and the sons of Shetland Sinclairs, his grandmother being a daughter of Malcolm Sinclair of Quendale, who entertained Don Juan Gomez de Medina, of the Spanish Armada, after the wreck of his ship *El Gran Grifon* on the Fair Isle. His great-grandfather, Adam Neven, may have "come to Shetland," but it is not certain that he also was not a Shetlander by birth. The Mouats, who are also equally involved in many of the charges made in the MS., have from the earliest times on record to the present day been a leading family in Shetland. Ninian Neven, therefore, did not come to Shetland, and he cannot be described as an adventurer, either in the modern sense in which the context shows that Mr Goudie uses the word, or in the old and blameless sense of a man who fared abroad to try his fortune. He was beyond doubt a Shetlander born and bred.

I have carefully examined the MS. in the Register House on which the charges against Neven and the Mouats practically rest, and I note the following facts in regard to it:—

(1) It is not dated. Mr Goudie says it appears to be of the year 1641, but the context shows that the document cannot have been written so late as 1633. One Swannie Johnson is said by the writer of the MS. to have "deceiset ane twentie yeir since," and were the MS. assumed to have been written so late as 1633, this puts his death back to 1613. But no time would then be left for the peaceable possession by his sons said to have followed his death, for the death of the eldest son, and the obtaining of the charter from the grandson, all of which events preceded Ninian Neven's alleged forcible possession of Windhouse in 1613.¹

¹Two of Swannie Johnson's sons, John and James, record testaments in July 1615—*two years after the date of the alleged ejection*—and both are therein designated as being "in Windhouse."

A date, about 1641, is further inapplicable to the expression used to indicate the time of the death of Swannie Johnson's eldest son, which is said to have taken place "laitlie within the last few yeiris." The only way of bringing this phrase at all nearly into harmony with the dates given is to suppose the MS. to have been written about 1624—the year following that of a date of registration mentioned in it. This would make Swannie Johnson's death to have occurred about 1604, and the phrase "to laitlie within the last few yeiris" would then apply to an event which had taken place eleven years before. In any case it must apply to an event either of that age or of a still greater age. The adoption of the date 1624 involves, however, the conclusion that when the dispute between the parties engaged the attention of Parliament in 1641, the MS. must have been some seventeen years old.

(2) The MS. is not signed; all internal evidence of its authorship is concealed; and it bears no official doquet or remark which gives any clue to the person who lodged it, or any indication of how it was regarded or dealt with by those who received it.

(3) It is not a petition or supplication, nor does it indicate any public body to whom it is addressed or before whom it is intended to be put. It can only be described as an anonymous undated paper, full of grave charges against the persons named in it.

(4) The middle portion of the MS. is occupied with a statement of the alleged wrongful acquisition of Windhouse by Ninian Neven not less certainly than eleven years before the MS. was written, and over a quarter of a century before the disputes between James Mouat and Ninian Neven on the one hand, and James Sinclair and John Edmondston on the other, came before Parliament. This charge is not said to be made at the instance of or with the knowledge of any of the persons alleged to have been dispossessed, and their names are not even given. It states that it has been the ancient custom among the inferiors and common people of Shetland that heritage left by a man at his death shall be equally divided among his children; and in illustration of this custom, it is said that Swannie Johnson's four sons inherited each 10 merk of the 40 merk land of Windhouse. To give colour and emphasis to his charge against Ninian Neven, the accuser has, however, unfortunately for

his argument, stated that Swannie Johnson was "the eleventh man that had succeeded and possesst the land." Had such a custom as is mentioned been followed as regards this land, it is impossible that the eleventh man in succession could have found himself possessed of the whole 40 merks. The fact that he was the eleventh in possession goes far to prove that he left it, like his forefathers, to his eldest son, and that his grandson, from whom it was bought, would therefore be able to give a good title to it.

(5) The two "items" of the MS. which follow this charge cannot be said to be charges at all in a legal sense. They are allegations in support of which no names or facts are mentioned, and no specific acts are adduced. The first of these states that "thair being dyveris cuntrie men rood and ignorant," the said Ninian "causes them to do onything he pleassis," such as that he gives a charter to a pendicle in room of the rest of their lands, subscribed by himself alone as notary, and then "causes others to buy the same lands," and gives them another kind of infettment signed by two notaries, by which dealing it is said "the haille cuntrie of Zetland is oppressit and so useit be the said Ninian." This alleged proceeding would involve to all appearance a great deal more risk than profit to the operator. No aggrieved person is named, and no offer is made to produce documentary evidence of what is alleged, though, according to the terms of the MS., the aggrieved must have been numerous, and documentary evidence abundant. The other of the two "items" referred to is practically a complaint that, whereas in former times a charter "formed be the minister of the parochie, or ony uther that had knowledge of letters, and could wreit and reid," was held effectual, Ninian Neven makes, for the buyers of lands held under such charters, "new Charters and Seasines thair of, conforme to the form now useit, . . . by the quhilk dangerous interpryss thair is likely to fall out, as undoutillie it will breid greatt dissentioun and inconvenientis in the haille cuntrie of Zetland." Sir Walter Scott remarks in *Kenilworth*, speaking of the time of Queen Elizabeth, that "in these simple days the clergy were often the advisers of their flock in law as well as in gospel;" and the passage in the MS. above referred to is interesting, as showing that not long after

Elizabeth's time the legal function of the clergyman had been transferred in Shetland to the lawyer—a transference which every one will not hold, with the writer of the MS., to have been an unmitigated misfortune.

(6) The beginning and end of the document and its greater part is occupied with charges against Gilbert Mouat of Garth, James Mouat of Ollaberry his son, and Ninian Neven, in regard to their dealing with the lands of the deceased John Mouat of Hugoland, who died in 1617. To secure John Mouat's brother Gilbert Mouat of Garth and his son in these lands, Ninian Neven is alleged to have made a series of false contracts and antedated bonds, to have caused others to make antedated bonds (in virtue, no doubt, of his alleged power of making people do "anything he pleassis"), and to have entered as witnesses to such bonds the names of living persons who denied that they were witnesses. The conclusion to which all these accusations converge is summed up in the statement in the MS., that by the means referred to it is sought "to debar all the creditors [of the umwhile John Mouat] of their lawful debts." It would seem that James Sinclair of Scalloway was interested in the lands left by John Mouat of Hugoland, either as a creditor or as a claimant to their possession by purchase. The MS. states that Ninian Neven compelled one Olla Bodderson to grant a charter of half merk land to Mr Gilbert Mouat, and "also compellit all the rest of the tenants to mak payment to him of all the rest of the meallis and dewties, notwithstanding they have payit the same to James Mouat of Ure (son of John Mouat of Ure). In a petition to Parliament of 1641, afterwards mentioned, James Mouat of Ollaberry states that James Sinclair of Scalloway intends to denounce him to the horn, and to debar him from appearing either in parliament or assembly, and to apprehend his person, "for ane verrie unjust cause, viz., as cationer in a suspension raised be certane udallers and heretors in Yetland aganis quhom the said James Sinclair obtained ane wrangous decreit for the maills and dewties of their awin udall lands possessit be them past memorie, and quhairof he purchased ane pretendit infetment under the greate seale over the heads of all kyndlie heretours and udallers thereof, like as Mr Gilbert Mouat, sone to James Mouat of Ure." It therefore appears that

James Sinclair of Scalloway had private and pecuniary motives for making such charges as those made in the MS.

(7) It further appears clear from the parliamentary records that the ecclesiastical turmoil of the time, and the embittered feelings attending it, were in full force in Shetland. John Edmondston, whose name is associated with that of James Sinclair in the probable authorship of the MS., was in 1641 a deprived minister—a fact not necessarily to his discredit; and the records indicate that James Mouat and Ninian Neven had taken a prominent part in the proceedings which had brought that suspension about. Mouat and Neven, in their supplication to Parliament in 1641, expressly declare that John Edmondston, and John Mitchell, late minister at Tingwall, have bound themselves with James Sinclair and others named, and in order to “prevein the just complaints and grievances against them, have forged a scandallous lybell, fomented with calumnies and untreuthes.” The scandalous libel spoken of has no doubt reference to rumours which had reached the petitioners of allegations such as those contained in the MS. But it seems certain that in August 1641 Mouat and Neven had no knowledge that such charges existed in the shape in which they appear in the MS. Had they possessed such knowledge, it is incredible that, in the supplication of August 1641, announcing their having come to Edinburgh to meet their adversaries, they should have been altogether silent about the grave and detailed charges made against them. The petitioners are not even able to distinguish the two persons to whom the authorship of the MS. is described from their other opponents. A comparison of what is said in the MS. and in the supplication, upon the one point on which they both touch—that already referred to, in which the interests of Mouat and Sinclair in the maills and duties of Hugoland clash—will offer convincing proof that the writer of the supplication of August 1641 did not have any knowledge of the statement upon the same point made in the MS.

(8) It is a consideration not without weight that in these days it was a “far cry” to Shetland; and that had the accused really been guilty of such deeds as those laid to their charge in the MS., it is improbable that they would have come personally and willingly to Edinburgh in support of their petitions, as they repeatedly did.

(9) All the serious charges in the M.S. refer to alleged events which had become very old when the disputes between the parties were remitted in 1641 to the Secret Council. The most recent was twenty-three years old, and the earliest no less than thirty-eight years old.

(10) The charges themselves, if closely examined, will be seen to bear the stamp of improbability. As an illustration of this, the charge first preferred in the MS., of an antedated and false seisin alleged to have been drawn up by Ninian Neven for Mr Gilbert Mouat, deserves careful consideration. This antedated seisin contained, it is said, the names of no fewer than eight witnesses falsely inserted in it, of whom four are said to be dead, and four living. These witnesses are not named. But assuming the truth of the statement that there were four surviving witnesses to the deed who "declairis they never knew thair of," this simple declaration would go a very short way to prove the deed false. Witnesses were seldom subscribers in these days, and the witnesses in question are not said to have been subscribers. The fact that they were probably not so strengthens my case; but even if they had been subscribers, the case would have been hardly different. Those who have followed the proceedings of the Crofter Commission will be aware of the occurrence of cases in which all knowledge of the subscription of deeds of no great age was denied until other evidence showed the denial to be due to forgetfulness, and these lapses of memory referred to matters in which the subscribers had a personal interest. How many of us remember, or for that matter ever knew, the contents of one out of twenty deeds we may have subscribed to as witnesses? Evidence of this nature, which looks so formidable at a first glance, is really evidence of the most easily procurable and untrustworthy kind. Taking this charge as being the first in the MS., and a measure of all the rest, let us look at it from another common-sense aspect. This false and antedated seisin was drawn up by a man who was then the leading lawyer in Shetland, and his enemies evidently give him credit for being an astute man of business. The possession of the most ordinary prudence would surely have suggested to such a man, when he came to consider the false insertion of witnesses in his false deed, that it would be desirable that he should insert the smallest

possible number of names that would give the deed validity. Is it conceivable that in such circumstances he should have inserted the names of no fewer than eight men to rise up and witness against him. The existence of this deed, executed about twenty-four years before these disputes, was no doubt unwelcome to Sinclair of Scalloway. He took the only course left to him and declared it, and other deeds equally embarrassing, to be antedated and false. There is nothing whatever beyond this mere anonymous assertion to show that they were so. The number of witnesses to this deed is a proof of its genuineness. It is at least as easy to believe that the statements of a secret and interested accuser are false, as to believe that all whom he accuses are guilty of the complicated and easily-detected frauds so freely ascribed to them in this MS.

It should not be lost sight of, in dealing with charges of this kind, made in the first half of the seventeenth century, that it was an age of heated feeling, and of reckless and vehement invective. To attach to charges made in those days the same weight as to charges made in the present day, would be to follow an utterly misleading historical method. Not long after this Shetland dispute engaged the attention of the Scottish Parliament, a no less great man than John Milton, in his *Defensio pro Populo Anglicano*, repeatedly charges Charles I. with having murdered his father by poison, and with other infamous acts of which he was innocent. On the other hand, charges were made, with the most minute circumstance, against Colonel Robert Hammond, Governor of the Isle of Wight, of brutal treatment of Charles I. while under his care, though it is known that in reality Colonel Hammond treated the King with the utmost courtesy and consideration.

I have shown, with regard to the MS., upon which these charges rest:—

(1) That it is undated, unsigned, addressed to no specified body, and that it conceals, as far as possible, its authorship.

(2) That though it professes to speak for the "hail cuntrie of Zetland," its contents show that the persons with whom after-events indicate that its authorship may be associated, were persons who had

personal motives for making the charges, either of a pecuniary or of an ecclesiastical nature.

(3) That the persons whom it accuses, at least up to August 1641, when they presented a supplication to Parliament, which Mr Goudie describes as a "counter petition," had no knowledge that the MS. existed.

(4) That the alleged events were old, and some of them very old, when the disputes came before Parliament.

(5) That some of the charges made are mere allegations of a general nature, in support of which no proof or fact of any description is adduced.

(6) That some, at all events, of those charges, in which specific facts are alleged, bear internal evidence that they are unworthy of belief.

This is the document which Mr Goudie instantly accepts, not merely as making a series of grave charges, but as also proving them. Mr Goudie goes on to say that "the persons accused, Ninian Niven, notary, and James Mowat of Ollaberrie, *had the hardihood to plead innocence*, and to present a counter petition." I am most ready to give my friend Mr Goudie full credit for having been betrayed in writing thus by feelings of sympathy with those believed by him to have been wronged. All the same, it must be said that the passage which I have underlined is the language of judicial tyranny in its most intense form. In hastening to sympathize with the oppressed, we must surely not overlook the elementary principles of justice, which are as applicable to the dead of two or three hundred years ago as to the living.

The petition presented to Parliament by Mouat and Neven in 1641 was not a "counter petition." It is the first petition in the case recorded in the parliamentary proceedings. The MS. was not a petition to Parliament, and was not presented to Parliament.

The order of events, as recorded in the proceedings of Parliament, is as follows :—

(1) In 1634, Charles I. of England, "upon a humble petition of Mr James Mouat of Ollaberrie, for himself, and in name and behalfe of the remote inhabitants of Zetland," gave an order to the Privy Council for

remedying and rectifying the grievance of the Island, and for "authorising a Commissionaire for going thither for trying and rectifying all abuses there, which order the said Councill did approve." This order, owing to bad weather and other causes affecting the Commissioner, took no effect. This petition is not recorded under the date 1634, but the facts as stated are given as a preface to the first recorded petition, which follows.

(2) On 3rd August 1641 is read before Parliament a supplication by Mr James Mouat of Ollaberrie and Ninian Neven of Windhouse. In this petition James Mouat of Ollaberrie says that—

"being elected and nominat laick elder for the presbiterie and Ile of Yetland, conform to his commission produced," he is come to represent to Parliament and Assembly "the disorders, grievances, and abuses committed be certain factious persons, disaffected and evill disposed, alsweill of the clergie as laicks, for the quhilkis some of them are suspended be lawfull sentence of the Presbiterie, and others are under their legall tryall and censure—of quhilk number¹ John Edmestoun, lait Minister at Yell, and Mr John Mitchell, lait Minister at Tingwall and archdeane of Yetland, are tua, quha are lawfully suspended for their grosse miscariages. And they, fearing their just deserved punishment, have combynd and bound themselves with James Sinclar of Scalloway, Arthur Sinclar of Hous, Mr Patrick Cheine of Halry [Valey], Lawrence Gifhart, fear of Wedderstra, and Mr William Hay, Archdeane of Yetland, lykewise a deprived minister, who politicklie and subtilie, to prevein the just complaints and grievances aganes them, have forged a scandallous lybell, fomented with calumnies and untreuthes, and therupon have purchased ane warrand from the Committe of Estates for summonding a number in Yetland who have lawfullie proceeded aganes them according to the discipline of the Kirk."

James Mouat further states that, to debar him from appearing in support of his allegations in Parliament or Assembly,

he is threatened with apprehension, at the instance of James Sinclair of Scalloway, on account of his being "cationer in a suspension raised be certane udallers and heretors in Yetland aganis quhom the said James Sinclair obtaned ane wrangous decretit for the mails and dewties of their awin udall lands possesst be them past memorie, and quhairof he purchased ane pretendit

¹ The names which follow are not, with the exception of those of John Edmondston and James Sinclair of Scalloway, elsewhere referred to, so far as is known, in connection with this matter.

infetment under the great seale over the heads of all kyndlie heretors and udallers thereof like as Mr Gilbert Mouat."

Ninian Neven states that John Edmestoun has denounced him to the horn of set purpose, to debar him from defending the said causes ; and both petitioners pray, as they are come for clearing themselves and to represent the grievances of the country, that their persons be protected, and that they may be enabled to appear safely before the Parliament and Assembly.¹

(3) On 3rd August 1641 this supplication, "with another in the contrair thereof be James Sinclair," was publicly read in Parliament, and the protection sought was granted. The terms of the supplication by Sinclair are not recorded. It was probably a formal denial of the statements in the petition by his opponents, to give time for the preparation of the petition next mentioned—the only other document recorded in the parliamentary proceedings which can be called a "counter petition."

(4) This supplication presented on 16th November 1641 "be James Sinclair of Skalloway and John Edmonestoun, Minister at Yell, for their selfis, and in name and behalfe of the cuntrie of Zetland," states that the "said Cuntrie of Zetland being heavily opprest be Maister Gilbert Mouat of Garth, Mr James Mouat his sone, Ninian Niven of Windhouse, and diuerss utheris their complices, the common oppressors," the petitioners crave redress of the grievances, assert that their advarsaries seek protection as Commissioners to Parliament, but can show no lawful commission, say they are ready with their witnesses, and crave an immediatè hearing. On the other hand, their opponents protest, through their agents, to the contrary, and crave that their defence may be reserved and heard before any witnesses are received. On the same day "the Estates of Parliamant remit the same to the Lords of Secrit Counsale."

¹ This supplication is written in remarkably good English. Its style is not only in marked contrast to the archaic, involved, and hardly intelligible language of the MS., but, judged from an English standard, it is better in style and more modern in spelling than the records of the time as written by the parliamentary officials. This is noted as a curious fact in the case of a document drawn up in a place so apparently "remote" as Shetland.

This supplication makes no specific charges, and contains no allusion to the MS., a document then probably seventeen years old.

(5) The only other parliamentary mention of this quarrel occurs under the date 20th July 1644, in a record of a "Judicial Act of Submission be James Sinclair, John Adamsone, and Niniane Nivine." "Adamsone" in the heading of this record is obviously put in error for "Edmestoun."

This record begins by referring to a supplication to Parliament, not elsewhere recorded in the printed proceedings, by Ninian Neven against James Sinclair and John Edmondstoun, in which he makes mention of a pursuit against him before the Secret Council, and desires liberty to repair home to Shetland for doing his lawful business there,

"sieing he is content upoun lafull citatione ather to compeir and ansuer before the Secret Counsell or before the Commissionares to be appoynted for setling the affaires in Zeland, as the supplicatioune proportes," and the record then proceeds:—"Quhilke Supplicatione and pairties above named being this day motioned and called in audience of the Parliament, compeired personally, in presence of the saides estates of Parliament, the saides James Sinclaire and Johne Edmestoune, for themselves, one the ane pairt, And als Compeired personally the said Niniane Nivine, for himself, one the other pairt. And baith the saides pairties sua personally present, submitted the foirsaid Complant and persut depending betwixt them before the Secret Counsell, And all otheres actiones, materes, and questiones, both Criminall and Civill, betwixt the saids pairtes, and quhilkes they or ony of them hes or can lay to otheres chairges, for whatsomevir cause or occasione bygone, to the arbitrimint and determinatione of Williame, erle of Mortoun, and anie he shall call to himselfe; and baith the pairties personally present obleist themselves, *hinc inde*, To underly, obtemper, and fullfill the decreit and determinatione to be givine heirupon, conforme to the tennor therof, without appellatione therefra, lykeas the said Williame, Erle of Mortoun, being personally present, accepted the decisioune of the said mater in and upoun him." (*Acta Parl. Scot.*, vol. vi. part 1, p. 179, 1644 A.D.)

In this "Judicial Act of Submission" all mention of the charges against the Mouats is dropped. I do not see that any other construction can be put upon this fact than that all the charges of false seisins and antedated bonds, &c., which Ninian Neven is alleged to have drawn up on behalf of the Mouats, and which form the bulk of the

accusations in that document, either were never formally made at all, or if so made, had been departed from by 1644.

The fact appears to prove that the "Complaint" mentioned in this record cannot be the MS. under discussion—a document then some twenty years old. The "Complaint" would no doubt have been placed, together with all relative papers, in the hands of the arbiter. I hope, with Mr Goudie, that further information on the subject may yet be disclosed. In the meantime, we can only judge the matter by the results so far as they are known.

William, Earl of Morton, died in 1648. Ninian Neven did not, as Mr Goudie surmises, die soon after these proceedings. He lived and practised his profession for nearly twenty years afterwards, and remained undisturbed in his possessions. He does not, in the course of a long and busy life, seem to have acquired much property beyond what he inherited from his father. But his son Gilbert (by his wife Ursilla Edmondston), to whom he left Scousburgh and Windhouse, added greatly to the latter property.

Ninian Neven may have been a masterful man, and too ready, when opposed, with his "great batoun" and his "drawen quhinger," as the MS. asserts. I have no intention of giving him a certificate of character. But he is clearly entitled, in view of the facts, so far as they are known up to the present time, to be held as acquitted of the charges made against him.

I shall merely add that the Neven family, through descent or marriage, were connected with most of the leading families of Shetland, and that a slight research would at any time have disclosed the main genealogical facts about them. The researches of Mr Francis J. Grant, W.S., Carrick Pursuivant, made subsequent to the publication of Mr Goudie's paper, have however rendered these facts easily accessible. There is no traditional remembrance in Shetland of Ninian Neven as an oppressor. The only tradition I ever heard about him was the names of his six dogs—a tradition which seems to show that his personality took hold to some extent of the popular imagination, though not in an evil sense. Mr Goudie ought not to have referred to Windhouse as "acquired in the manner described in the petition to Parliament." The

NOTES ON CHARGES AGAINST NINIAN NEVEN OF WINDHOUSE. 235

true description is, that it was alleged to have been wrongfully acquired, according to an ineffectual charge, made in an anonymous MS. lodged with the Secret Council, probably by persons who are expressly designated by Ninian Neven in his petition to Parliament as his "professt enemies."