

## IV.

## THE ORKNEY BAILIES AND THEIR WATTEL.

BY J. STORER CLOUSTON, F.S.A.Scot.

It is a considerable number of years since Captain Thomas and Mr Gilbert Goudie contributed to these *Proceedings* their studies of the ancient Orkney and Shetland rentals.<sup>1</sup> Among the features which they both found to be particularly obscure and perplexing was that tax called the "Wattel." Both accepted the explanation that it formed (in the case of Orkney) a payment to the parish bailies, or (in the case of Shetland) to the corresponding underfouds; though at the time they wrote no very trustworthy evidence even of this seems to have been forthcoming.

Since then some definite evidence has been unearthed with regard to the wattel in Orkney, making certain points pretty clear, and, though the earlier history of this tax still remains a matter of speculation, it may be worth while setting down what is actually known, and also what may reasonably be inferred from the known facts; especially as fresh light is thereby thrown on those elusive functionaries, the early Orkney bailies, whose very names—with one or two rare exceptions—have vanished from record, and of whose exact position in the social fabric there are singularly few hints.

In the first place, I may say that personally I think one can accept without hesitation the derivation of the word "wattel" suggested by Mr Goudie in a footnote to his paper republished in *Antiquities of Shetland* (p. 181). He there derives it from *veizla* (= *veitsla*),<sup>2</sup> the reception or entertainment which the Norse kings, or their barons and stewards, were entitled by law to exact from the landowners of the different districts visited. In Orkney the earl would, of course, take the place of the king, and that this obligation should then crystallise into a tax, and its name be corrupted from "veitsla" into "wattel," seem very natural developments. No other explanation, with any show of reason or evidence to support it, has been brought forward.

The earliest documentary evidence is contained in the grants of the island of Burray to the Bishop of Orkney in 1494, and of the lordships of Orkney and Shetland to Lord Sinclair in 1501, and in Lord Sinclair's rentals of 1492 and 1502-03.<sup>3</sup> In the first two cases we find

<sup>1</sup> "What is a Pennyland?" (Thomas), *Proceedings*, 1883-84; "Notes on Unpublished Rentals" (Goudie), *ibid.*, 1884-85.

<sup>2</sup> See *Oxford Icelandic Dictionary*, under letter Z.

<sup>3</sup> Transcripts of first three in Mackenzie's MSS. (Balfour Castle). 1502-03 rental published in Peterkin's *Rentals of the County of Orkney*.

the term included among the pertinents of the lands granted, and in the rentals we see it among the duties to be levied by the tacksman of each parish and paid by him to Lord Sinclair at the rate of one setten of malt, or its equivalent, from every pennyland paying seat or rent to the Crown (bishopric lands being exempted). In the North Isles this equivalent took the regular form of  $1\frac{1}{2}$  settens beir. In the rental of Burray the amount of wattel is stated, followed by the words "apart from halkhens and other *balliatus*." So that from these references alone we know it formed part of the bailiary perquisites, or fees earmarked for administrative work; that it was at the disposal of the governor for the time; and that it was paid to him direct and not to his subordinates, the local bailies.

There is, unfortunately, a long gap before the next rental—that of 1595. By that time the wattel had vanished altogether from the rental as a duty to be paid to the earl, but it makes one ambiguous appearance in the island of Sanday: "Thomas Sinclair pays yearly furth of his wattel of the bailyerie of Sanday 12 meils bear." Evidently Thomas Sinclair was bailie, and apparently was handling the wattel himself, but why he should be paying 12 meils of beir out of it is left unexplained.

It is only in the latter half of the seventeenth century that we come at last to some specific evidence as to the relation of wattel to bailies.

On the last day of March 1673, in a sheriff court held at St Nicholas Kirk in Hoy,<sup>1</sup> Alexander Mowat of Swinzie, "Bailzie of the said yle," complained that he could not get the "Bailzie service" performed for him, and it was therefore ordained that if any person refused to perform the "service use and wont as to Bailzie dauargs<sup>2</sup> and uther dew service," they should be fined £2, 10s. Scots. Further, "anent the complaint given in be the said Bailzie anent the deficiencie in payment of the wattel dewtie," it was ordained that "ilk pennyland in the said Bailzinarie shall make payment of a halff setting malt and a wattel fowl from each house yeirely."

Again, on 5th June 1688, there is a note of the services and wattel due to John Sinclair of Brabister, lately appointed bailie of Firth.<sup>3</sup> The services consist of "thrie dayes bailzie darges . . . out of everie reik<sup>4</sup> of the parochine." Then at the end we get this: "Nota that the wattle is payaball out of the pennyland at the rait of halff setting of malt or sixtene merk of bear out of each pennyland in the paroch, the bear or

<sup>1</sup> Papers in author's possession.

<sup>2</sup> Darg or dark=a day's work. In this case they were day's work done for the bailie.

<sup>3</sup> Papers in author's possession.

<sup>4</sup> Reik=a house.

malt at the optione alwayes of the said Jon Sinclair, together with a wattle foule out of everie reik<sup>1</sup> of the parochine."

Alexander Mowat and John Sinclair were new brooms, both being Caithness lairds recently settled in Orkney, and in Firth these bailie services had evidently become a dead letter and were now strongly resented, for a paper dated 1688<sup>2</sup> narrates a supplication to the Sheriff Principal by William Corrigan, John Hervey, Magnus Hervey, and William Tailzeor in the "Mid ursland"<sup>3</sup> in the parish of Firth, in name of the rest of the said ursland. They complain of the exactions of John Sinclair in charging them for "ballie dawarkes and such emoliments" never paid to bailies before, such as David Heart, John Sclater of Burnes, George Ritchie, chamberlain, or James Baikie of Burnes. On the other hand, "bailerie daarks" were certainly being enforced in St Andrews parish in 1666 under penalty of 4s. Scots "for ewerie duark that they are absent in the yeir according to use and custome."<sup>4</sup>

It is thus clear that the wattel by this time was paid direct to the bailie, and also that it had been reduced to half the old rate, the other half having evidently been commuted into services and fowls.

With so much certain information, we can now work back from this point and learn something of the more distant past. The Compt Book of Orkney for the years 1612-14<sup>5</sup> provides a couple of very instructive items: the fees paid to two known bailies of the period. In the parish of Firth, Thomas Robertson had "assignit to him in his fie" certain rents and teinds amounting in all to 1½ barrels of butter and 7 meils of malt annually; evidently a fee of long standing, for it is stated that he is "alleging right thairto during his lyfetyme." We actually find him bailie of Harray and Stenness from 1592 onwards,<sup>6</sup> and as William Sclater of Burness is found as bailie of Harray, Stenness, and Firth at a later date,<sup>7</sup> and Thomas Robertson got his fee in Firth lands, he was evidently bailie of Firth also. A number of charters from 1585 to 1600<sup>8</sup> concur in making a barrel of butter equal to 12 meils of malt, so that his fee amounted to 25 meils in all; while the combined wattel of the three parishes in 1503 was 28½ meils. His fee was thus a little less than the wattel.

That this is no mere coincidence seems clear from the fee of another known bailie given in this Compt Book. Edward Scollay of Strynie had 1½ lasts of beir "allowed yearly in his fie" out of Stronsay, and though

<sup>1</sup> Hence frequently termed "reik hens."

<sup>2</sup> Kirkwall Record Room.

<sup>3</sup> One of the four ancient divisions of the parish of Firth, each containing a chapel of its own.

<sup>4</sup> Kirkwall Record Room.

<sup>5</sup> General Register House.

<sup>6</sup> *Records of Earldom of Orkney*; also Auchinleck's Protocol Book (Gen. Reg. House).

<sup>7</sup> Skail charters.

<sup>8</sup> Mackenzie's MSS.

Stronsay is not in the early rentals, its wattel (omitting bishopric lands which were never included) can be calculated from the 1595 rental. It amounts to  $1\frac{1}{2}$  lasts,  $4\frac{1}{2}$  meils of beir (24 meils making the last). So that again, we find the bailie's fee fixed at a little less than the wattel.

It thus appears that from an early date the wattel formed the standard for the parish bailie's fees, though not unnaturally the Orkney tacksmen or earls would be on the safe side and see that the fee did not *exceed* the wattel. Then at length, the bailies were left to collect the wattel themselves, which they did, as we have seen, with varying degrees of rigour. It may be added, by the way, that Captain Thomas's observation regarding the absence of any wattel at all in certain parishes and islands is corrected by the 1492 rental, where wattel is entered for them also. Probably some question as to its exact amount (owing to untenanted lands, etc.) was the cause of its being omitted for the moment in making up the second rental.

Going now still further back, there is no further information till we reach the two early rentals of 1502-03 and 1492. In these, several fees are recorded: three in St Ola parish and one in Sandwick in 1492; two in St Ola, two in Stromness, and one each in Deerness and Rendall in 1502-03. The St Ola fees, all in the outskirts of Kirkwall, may pretty safely be put down to officials in the town, probably connected with the castle, the custody of which was included in the lease to Lord Sinclair. But in the outlying parishes the only officials known to record were the bailie, tacksman, and officer, with the possibility of any of Lord Sinclair's factors or chamberlains having their fees paid in this way.<sup>1</sup>

The Compt Book already quoted gives the standard for tacksman's and officer's fees. In Stronsay the tacksman's fee was less than half the bailie's, and the officer's quarter of that; while in Sandwick the tacksman was only paid 8 meils, and the officer  $3\frac{1}{2}$ . All these fees in the early rentals were much too large for tacksman or officer, so that they would seem to be bailie's fees for this reason alone, and as a matter of fact in four out of the five cases (St Ola being excluded) this can be established by a comparison with the wattel.

In 1492 Alexander Sinclair got "all detts" of seven pennylands in Sandwick "in his fee be me lord's writt," for a payment of a much reduced rent. The difference of rent, constituting the fee, amounted to 17s. sterling, while the wattel for Sandwick in 1492 came to 19s. sterling. So that one has again the same sort of ratio found in the Compt Book.

In 1503 Sir Robert Sutherland got two tacks in Stromness with similar reductions, "all the laif in his fee of my lord" in one case, and "citer

<sup>1</sup> Most fees of all officials—bailies included—were evidently paid by lump sum and not reduction of rent.

(cetere) in his fee" in the other. The total fee amounted to 11s. 7d. sterling, and the combined wattel of Stromness and Graemsay (which was a "pendicle of the maneland and payis all the kirkis dettis to the kirk of Stromness quhilk is the proper parochie kirk") came to 12s. sterling. A clerical bailie, it may be added, was rare but not unknown, Mr William Mudy and Mr Harry Colville both being found as bailies later in the same century.

In the parish of Rendall in 1503 John Sclater paid  $1\frac{1}{2}$  lasts (36 meils) for the six pennyland of Tingwall, instead of the old rent of 24 meils, "and 12 meils in his fee." The wattel, though omitted in the summa, comes to 14 meils  $2\frac{1}{2}$  settens (6 settens to a meil)—once again a little greater than the fee. And in the parish of Deerness the fee of William "Swoundyis" (probably a misreading of Swannyis or Sweinson) in 1502 amounted to 13s. 10d. Scots,<sup>1</sup> while the wattel was 16s. 10d. Scots. In both these last cases the greater difference between fee and wattel finds an explanation in the rental itself. In Rendall some of the land was untenanted, and in Deerness a considerable share of the scats of the king's land was uplifted by the bishop, thereby reducing the revenues in both cases. As some offset to this, a little was evidently clipped from the bailie's fee.<sup>2</sup>

The remaining case is that of Magnus Sinclair, who, in 1503, held lands in Cairstane in Stromness for a greatly reduced rent, "Citer in his fee." In this instance the fee was much too great to be that of a bailie, and suggests rather one of Lord Sinclair's factors or chamberlains. But that the other four must have been bailies' fees and not mere cases of coincidence seems established by further considerations. In the first place, an investigation of the innumerable other cases of rent reduction (which occur in every other township in most parishes) shows only three instances in which the reduction happens by chance to approximate to the wattel; and in the second place, the wide difference in the amounts of all these fees is explained at once by a comparison with the wattel, but would otherwise be curiously capricious and devoid of any apparent meaning.

Beyond this point the Orkney wattel cannot be traced, and, till some fresh evidence comes to light, it must be left at the end of the fifteenth century as a special bailiary tax, introduced at some unknown date

<sup>1</sup> This entry in the published rental contains an evident misprint (or possibly misreading of the original). His rent is stated to be 20 meils "price 40s. in his fee," the old rent being 24 meils. This makes no sense at all. No doubt "Cit" (for "Citer") has got transformed into "40s." In all cases the fee was the difference between the old and the reduced rent. He also got "the grassum therof ilk iii yeir xxs. in his fee"—*i.e.* 6s. 8d. Scots a year.

<sup>2</sup> In the case of untenanted Crown lands the bailie was held (partly at least) responsible. Commissions of bailiarie enjoin that he shall "use all possible meanes to provyde lawful tennents for his majesties ley land, and use all means to prevent the lying ley thereof."

previously in lieu of a still earlier obligation to entertain the earl when he moved about the islands (I think there can really be no doubt of this), collected by the governor for the time, earl or tacksman, whoever he might be, and used in each parish as the basis of the bailie's fee.

Coming to the bailies themselves, reference was made at the beginning of this paper to the obscurity surrounding their origin and early status. This obscurity can perhaps be best realised by comparing them with the analogous officials in Shetland, the parish underfouds. Shetland was removed from the jurisdiction of the Orkney earls at the end of the twelfth century, and placed under direct Norwegian control, and "foud" is the Norwegian *fogeti*, an official whose functions the fouds actually filled; they collected the taxes, held local courts, administered law and order, and most, or sometimes all, of them are found upon each of the Shetland Lawting Courts of which record is left. Again and again one finds them in documents of various sorts: Magnus Bolt, underfoud of Vawiss (1510), William Lyusson, foud of Yell (1538), Bernard Gray and William Gray, underfouds of Unst (1543), are a few instances from the scanty collection of Shetland deeds of the period.

In Orkney the very name "bailie" is Scottish, and there is no trace of any Norse title ever applied to these officials. They held local courts and administered the law, as in Shetland; but, except very occasionally when the offices of bailie and tacksman were combined, they did not collect the taxes, and though an infinitely greater number of Orkney deeds survive from the fifteenth and sixteenth centuries, one scarcely ever finds a bailie with his title of office attached as in Shetland (apart from the bailies of Kirkwall). Indeed, before 1546 only two Orkney parish bailies are known, besides one bishopric bailie. That there was something radically different in the genesis of the two sets of functionaries, and also in the precise position they occupied, seems certain, and any further gleam of light on the early bailies is most valuable.

Hitherto it has only been possible to study them after the middle of the sixteenth century. By that time a strong flavour of imported feudalism is apparent. One of the great territorial magnates created by the feuing of large tracts of bishopric and earldom lands from 1560 onwards is usually found as "bailie principal," while under him a "bailie depute" generally held the courts and did most of the work. In a number of cases the office of bailie of the lands feued and of the parish in which they lay was included in the feu charter. In other cases, again, a less opulent and widely aced gentleman would hold

the office and do the work himself, but such cases would seem to have been decidedly the exception. Even before the first recorded feu charter, Oliver Sinclair of Pitcairns, the first sheriff of Orkney, appointed in 1541, had made one of his factors, Edward Sinclair of Strome, bailie principal of St Andrews parish,<sup>1</sup> and in 1558 an edict directed to the "bailie depute of Harray" is on record.<sup>2</sup>

It is before 1541, before the substitution of a sheriff for the old lawman, and the marked Scottification of Orkney which can be traced from that date, that one wants more evidence concerning the bailies; and this small collection of three names in 1502-03, added to James Spens, known to have been bailie of Harray in 1504,<sup>3</sup> and Richard Sinclair, recorded as bailie of South Ronaldsay in 1508,<sup>4</sup> gives five parish bailies of this period (apart from Alexander Sinclair, bailie in 1492, but no longer having the same fee in 1503), and provides a little further information.

One can note in the first place that though all seem probably to have been landowners, not one of the five belonged to the largest land-owning families in their respective parishes. The Spences, for instance, owned only a very little land in Harray, besides a little in Stenness (which always seems to have been conjoined with Harray), and James Spens himself—assuming him to be the same man—held a substantial tack in Stromness parish in 1492. It is thus certain that the early bailies were not associated with the largest estates in the district, like the later bailie principals.

A second feature is that out of the five there is only one who can possibly be identified with any of the names on the six extant decrees of court between 1500 and 1522, and that is John Sclater, who may perhaps be the same as John of Burness (certainly a Sclater) found in 1522. To realise the significance of this, we may compare this absence of the known bailies from the decrees of court with the presence of other names in the rental. Three transactions respecting land in Paplay, Stenness, and Wyre are witnessed by four men each, evidently representative landowners or large tacksmen, making eleven in all (one appears twice). Of these eleven no fewer than eight appear in one or other of the six decrees, several of the names occurring in two or three different dooms.

Statistics are said to be capable of proving anything; but if the Orkney bailies were, like the Shetland fouds, regular members of the head courts, surely such a very extraordinary difference would be impossible. The conclusion indeed seems inevitable that though some bailies may have been "roithmen" or head court representatives

<sup>1</sup> *Records of the Earldom of Orkney*, No. L.

<sup>3</sup> *Ibid.*, No. XXXIV.

<sup>2</sup> *Ibid.*, No. XLIX.

<sup>4</sup> *Ibid.*, No. XXXVIIA.

(possibly in districts where there were no sufficiently representative "landitmen"), they were not so as a rule.

All these facts (and perhaps particularly its Scottish title with no recorded Norse equivalent) point to the office of bailie in Orkney as not being a very ancient institution, but probably a creation of the Sinclair earls for the better administration of the islands. As to the question of what machinery was there before them, that offers a wide field for speculation—too wide to be entered upon in this paper.

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