William Balfour Baikie
Kirkwall Aug^{t} 17th 1844

THE GENERAL

GRIEVANCES AND OPPRESSION

OF THE

ISLES

OF

ORKNEY AND SHETLAND.

BY

MR JAMES MACKENZIE,

WRITER.

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CONTENTS OF THE PREFIX.

NOTICE OF THE WORK.

A VERY limited impression of this work was made, at the middle of the last century, in reference to the celebrated Pundlar Process, a lawsuit raised by several heritors in Orkney against the Earl of Morton, about the County Weights, the standard by which the feu-duties were paid.

No more than what follows was ever printed. The publishers have not been successful in their inquiries, as to whether what was promised to be continued, exist in manuscript or not.

This work came out anonymously: the authorities * agree in stating it to be the production of Mr James Mackenzie.

The original orthography has been retained. The whole notes are by one of the coadjutors in the publication.

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MEMOIR OF THE AUTHOR.

Mr JAMES MACKENZIE, the author of the following work, was a great-grandson of Bishop Mackenzie, one of the last prelates of Orkney, and was a younger brother of Murdoch Mackenzie the celebrated nautical surveyor.

He was bred a writer in Kirkwall, and afterwards removed to Edinburgh, where he practised as a solicitor before the Supreme Courts.

When the lawsuit, which occurred about the middle of the last century, at the instance of several of the Orkney heritors against the Earl of Morton, and which is commonly called the Pundlar Process, was raised, Mr Mackenzie was appointed agent for the Heritors, and entered with great zeal into the conducting of their cause. About the close of the action he removed to London, where he died a bachelor.

The above are the principal authentic particulars which we have been able to attain.

NOTES.

(1.) Part I. Chap. I. Page 1.

Orkney alone was mortgaged or pledged by Denmark to the Scottish Crown, in the marriage-contract between James III. and Margaret daughter of Christian I., in security of fifty thousand of the sixty thousand florins fixed as her dowry.[1] It is admitted by our Scottish historians,[2] on the authority of Torfæus,[3] that, when Margaret left Denmark,[4] Christian pledged Zetland, in the same manner as he had already done Orkney, for eight thousand of the ten thousand florins stipulated to have been sent with her; and there seems no reason to doubt the fact, as both Orkney and Zetland were annexed to the Scottish Crown in 1471.[5] The deeds executed by James, however, in implement of his marriage-contract, only recite that deed as given by Torfæus, and do not mention Zetland.[6]

The Scottish historians assert, in opposition to Torfæus, that the right of redemption, retained by the Crown of Denmark in 1468, was afterwards expressly renounced, though they differ as to the period when this took place.

Boethius states that it was renounced by the King of Denmark on the birth of his grandson Prince James, afterwards

[1] Sept. 8. 1468. Torfæus, p. 191; Fol. Stat. ii. p. 181–188.
[2] Pinkerton, vol. i. p. 266, et alii.
[3] Torfæus, p. 188.
[4] 20th May 1469.
[5] Fol. Stat. ii. p. 102.
[6] May 13. 1471, Fol. Stat. ii. p. 181; Oct. 12. 1473, Fol. Stat. p. 188.

James IV.; and he adds: *Hujus renunciationis tabulas in Archivis Scotorum Principum asservari* AUDIO.[1] Upon which passage, Torfæus remarks with much spirit and reason: *Recte scripsit, audivisse tantùm, non item vidisse quemadmodum de tabulis nuptialibus scribit: Tales enim si extitissent tabulæ renuntiationis, jam dudum â Scotis contra Danos jus suum toties repetentes ex archivis protractæ fuissent, et Scotorum historiographi eas in commodum Regni archiva patria scrutando haud neglixissent, sed expressiùs laudassent, præsertim in re tunc controversâ, nec Scoti ullo in consessu earum unquam meminerunt.*[2]

Buchanan, after evidently confounding the mortgage of Orkney with the annual of Norway, which the Ambassadors to Denmark were alone commissioned to treat of,[3] and which was discharged by the contract of 1468,[4] concludes thus: *De nuptiis facile cum Dano transactum, omni jure quod in omnes circa Scotiam insulas,* (he is treating solely *de Orcadibus et Scetlandicis insulis*) *majores ejus sibi arrogarant, dotis nomine remisso.—Sunt qui pignori expositas, donec dos solveretur, scribant, sed postea Jacobo nepoti, ex filia recens nato, Danum omne jus suum in perpetuum cessisse.*[5] Now, here it will be observed, that his own statement is contradicted by the contract, which he cannot have examined, or he would not have fallen into such a mistake, or mentioned the true nature of the right thereby conceded as one which rested merely on doubtful report—*sunt qui scribant*; while for the alleged subsequent absolute cession, he refers to no authority. Truly, then, may Torfæus say—*Buchananus nihil certi asserere ausus.*

[1] Boeth. Appendix. It is proper to state that this Appendix is not from the pen of Boethius, who only brought down the history to the accession of James III. The subsequent period was added by a foreigner named Ferrerius, about 1574.

[2] Torfæus, p. 189.

[3] Fol. Stat. ii. p. 85; ibid. p. 98.

[4] Torfæus, p. 195.

[5] Buch. Lib. xii. c. 27.

Sir Thomas Craig, again, writes: *Illi vero Orcades et Schetlandiam, post cum Margarita Jacobi Tertii conjuge, et Christiani primi filia, in dotem dederunt, sub pacto de retrovendo ut nostri loquuntur, cui etiam reversioni postea renunciarunt, ex vi et tenore fœderis illius, quod inter Serenissimum Principem Jacobum quartum, et Christianum secundum Danorum Regem intercessit, Alexandrique sexti Romani Pontif. autoritate confirmatum, et in acta registri Romanæ curiæ relatum.*[1]

A defensive alliance was entered into between France, Denmark, and Scotland, in the year 1498, *which appears to have been the only treaty concluded between the two latter kingdoms during the reign of James IV.;* and in that year, though Alexander VI. was Pope,[2] John, not Christian II., was King of Denmark.[3] John succeeded his father Christian I. in 1481, and reigned until the end of February 1513, when he was succeeded by Christian II. James IV. ascended the Scottish throne in 1488, and fell at Flodden in September 1513.[4] It is, therefore, almost impossible that any treaty could have been entered into between James IV. and Christian II., as stated by Craig. The treaty in 1498 has never been alleged to contain any stipulations concerning these islands, and from its nature is not likely to have done so.[5] It is thus noticed in the foreign work referred to at the foot of the page: "Le Roi Jean, de "Retour en Danemark, conclut, l'an 1498, une triple alliance "défensive avec le Roi de France Louis XII. et Jacques IV.

[1] Craig, De feud. Lib. i. dieg. 15.

[2] Bower's History of the Popes, vii. p. 328–367.

[3] Pinkerton, ii. p. 34. L'Art de verifier les dates des Faits Historiques, &c. par un Religieux Bénédictin de la Congregation de S. Maur, Tom. ii. p. 94, &c.

[4] Pinkerton, ii. p. 1–104.

[5] Ibid. ii. p. 34.

"Roi d'Ecosse."[1] The ratification mentioned by Craig, in all probability, refers to a ratification of the contract of marriage in 1468,[2] which was sought from Innocent VII. in 1485, and which may not have been obtained, if it ever was obtained, until after the accession of James IV. and Pope Alexander VI.

Sir George Mackenzie states, that the King of Denmark renounced all right to Orkney and Zetland in favour of his son-in-law in 1461,—a misprint for 1468,—and he refers to Sir John Skene as his authority.[3] But, instead of confirming Mackenzie's statement, Skene never once mentions Orkney and Zetland, and speaks solely of the Hebrides, for which the annual was paid, *and of the discharge of that tribute and its arrears* in 1468.[4]

Mr Gifford, in his History of Zetland, written in 1733, states, that the renunciation made by Christian I. on the birth of his grandson, was ratified by Christian IV. on the marriage of James VI. with Anne, daughter of Frederick II. of Denmark.[5] He does not mention any authority; but we have seen the statement elsewhere, though we cannot at present refer to the author. By whomsoever made, it will be seen to be erroneous, and just the reverse of the fact.[6]

Mr Chalmers[7] says, that the right of redemption was released soon after the original mortgage was made, and even prior to the act of annexation in 1471; and if so, before the birth of James IV.[8] He likewise, however, refers to no authority for this statement.

We find it accordingly repeated by all our modern historians,

[1] L'Art de verifier, &c. *antea.*

[2] Fol. Stat. *postea.*

[3] M'Kenzie's Obs. on the Stat. p. 115.

[4] Skene, *de verb. significatione—verb.* "ANNUEL."

[5] Gifford, p. 38.

[6] Fol. Stat. *postea.*

[7] Chalmers's Caledonia, vol. i. p. 335, Note.

[8] 10th March 1472; Pinkerton, i. p. 278.

general and local, with few exceptions, that the right of redemption had been expressly renounced by Denmark. Mr Pinkerton, while admitting that she originally retained such a right, and that it had been claimed to be exercised in 1549, 1558, 1560, 1583, 1640, 1660, and 1667, is silent as to its discharge. He contents himself with saying, truly, that if the claim was on its first revival doubtful, *as buried in prescription*, it may now be considered as lost; though he somewhat inconsistently adds, that "Nature, by proximity, assigned Orkney "and Zetland to Scotland, and the possession by the Norwe- "gians for six centuries was only an usurpation of maritime "force."[1] But surely, apart from other objections to such an argument, Scotland cannot under it fairly found her claim to these islands on a title derived from such an usurpation, or on an interrupted possession of less than four centuries.

Notwithstanding, therefore, of the various authorities quoted, we consider not only that no evidence has been adduced of any formal renunciation by Denmark of her power to redeem Orkney and Zetland, as has been stated by one talented native author;[2] but we go a great deal farther, and assert that the Scottish records that have been published afford evidence of the contrary.

In 1485, the Archbishop of St Andrew's is delegated Ambassador to "o^{r}. haly fad^{r}. y^{e}. Paip," with instructions that he shall, among other things, "impetrait and desir of o^{r}. haly fad^{r}. "a confirmacoun of y^{e}. convencons confederacouns & bands "maid betwix o^{r}. Sov^{r}ne Lord & y^{e}. King of Denmark that "last decessit of y^{e}. donacoun & impignoracoun of y^{e}. landes "of Orknay & Scheteland and of ppetuale exon̄acoun Renus- "sacoun & discharge of y^{e}. contribucoun of y^{e}. Ilis after y^{e}. "forme of y^{e}. said convencons."[3] The confirmation here sought

[1] Pink. Hist. i. p. 266–7.

[2] Edmonston, vol. ii. p. 267.

[3] 9th May 1485; Fol. Stat. ii. 171.

is evidently of the contract of 1468, between James III. who died in 1488, and Christian I. who died in 1481. The instruction admits that Orkney and Zetland were only *impignorated*.

Forty years later,[1] there occurs this very curious entry in the minutes of the Lords of the Articles: "Comperit Jhone "Skrimgeor Mast^r^. and askit Instrumentis y^et^. he advertist y^e^. "Lordes forsaid how y^et^. y^e^. tyme of his being in Denmark he "knawis y^et^. y^e^. discharge of Orknay & Scheteland my^t^. have "been had sovirly to y^e^. King's grace and y^et^. y^r^for y^e^. Lordes "suld now laubor for y^e^. samyne."[2] Such a protestation would not have been made, or at least received, without answer, unless it had then been matter of notoriety that Denmark still possessed a right to redeem the islands.

In 1587, a commission was granted to certain persons, with "power to heir determyne & conclude in y^e^. matter of the an-"sw^r^. to the Petitionis of the King of Denmark anent Ork-"nay."[3]

Some years afterwards, in 1592, we find a ratification by James VI. of the Earl-Marischall's proceedings in Denmark, treating of the King's marriage with Anne, daughter of Frederick, and second sister of Christian IV. the elected King of Denmark; which bears, that the contract entered into between the Queen of Denmark and the said elected King, and the four Regents and Governors, on the one part, and his Highness's Ambassadors on the other part, dated 20th August 1589, was read and exhibited before his Highness and Lords foresaid; "Togidder w^h^. y^e^. forme & tenno^r^. of the attestatioun seillit "subscrivit & deliverit be thame to the saidis Regentis anent "the Isles of Orknay proporting in effect a grant maid at their "requisitioun be the foirsaidis King & Regentis that all fur-

[1] 19th June 1526.

[2] Fol. Stat. ii. 302.

[3] Fol. Stat. ii. 437.

" ther claim or repetitioun of the foirsaidis Ilis upon quhatso-
" ever p̃ndit richt or interesse allegit thairto be that Crown
" sal be supersedit & continuit for thair partis unto the s^d.
" elected Princes perfite aige. And the saidis Ambassadouris
" acceptatioun thairof in name foirsaid always but prejudice of
" quhatsoever richt or title acclamit thairto be ather of the
" Crownis as at mair lenth is contenit in the said attestatioun.
" Quhairof the authentiq subscrivit be the handis of the saids
" haill four governors bearing the dait foirsaid was likwayes
" exhibited & red befoir his Hieness & Lordis foirsaidis:"
And it finds, that the Ambassadors have conformed themselves in every point to their commissions and instructions.[1]

It is thus distinctly proved, from the authentic *Scottish records*, that the statements made by Boethius and other Scottish authors are erroneous; that it was not alleged, either by the Scottish governors or nation, down to the end of the 16th century, that Denmark had ever expressly renounced the power of redeeming Orkney and Zetland; but, on the contrary, it is proved that, in the years 1587 and 1592 at least, she had insisted on her right to exercise it. We see, farther, that the examination of these records corroborates and supports the accuracy of Torfæus. That author states authorities, dates, and facts, with a precision which contrasts favourably with the vague and unauthorized statements of our own authors. Indeed, his arguments rather than his facts have been sought to be controverted. The former we are not disposed to review, but we cannot hesitate to pronounce him to be an author, for the period when he wrote, eminently trustworthy. See a curious letter on this subject by the Reverend Alexander Pope of Reay, who contemplated translating the " Orcades" of Torfæus, quoted in a pamphlet[2] printed at Edinburgh in 1831.

[1] Fol. Stat. iii. 566.

[2] Thoughts on Orkney and Zetland, p. 23.

(2) PART I. CHAP. I. SECT. 1. PAGE 214.

The charters mentioned under heads 1st and 2d of Sect. 1, as well as others of a similar nature, are all to be found in the Great or Privy Seal Registers. A charter to Lord Robert Stewart in 1581, and that to Earl Patrick in 1600, are printed at length by Mr Peterkin in his Notes, App. pp. 8 and 16.

The act 1503, c. 79, has been sometimes founded on, as negativing the argument maintained in this chapter. We should have deemed, from the very terms of that act, that it did not apply to Orkney and Zetland; but the late publication from the original records of the whole proceedings of the Scottish Parliament, &c., by which the first draught of the statute has been brought to light, seems to place this beyond doubt. The act, "as originally proponit and red," stands as it is here copied. "Item y^t. all our Sovrane Lords lieges beand und^r his obesance & i spe'ale all y^e Ilis "~~ba^t. w^tin Orknay Scheteland & y^e Ilis & oy^r places~~ be reulit "be o^r. Sovrane Lords awne lawis & y^e. common lawis of y^e. "Realme & be nai oy^r lawis."—Fol. Stat. ii. 244. Among the acts "advisit and concludit," it appears in these terms: "Item It is statute and ordanit that all o^r. Sovrane Lorde's "lieges beand und^r. his obeysance and in speciale y^e. Ilis be "Reulit be o^r. Sov^rane Lorde's awne lawis and y^e. comon lawis "of y^e. Realme And be nai oy^r lawis."—Fol. Stat. ii. p. 252. As originally framed, therefore, it included Orkney, Zetland, *and the Isles*—"ba^t. w^tin Orknay Scheteland and y^e. Ilis;" but as altered, and apparently in reference to Orkney and Zetland, it only includes the Isles—the former being deleted, and the latter, which previously stood along with them, retained. Nay, as if lest any ambiguity should arise from the insertion of the

adjective "all"—"all y^e^. Ilis"—as first altered, this word is omitted in the act as finally approved.

It is well known that "the Isles" was a term applied generally to, and descriptive of, the Hebrides exclusively. Sometimes they are even spoken of as the South and North Isles; but always under circumstances clearly denoting that the Hebrides only are referred to. Those islands annexed to Argyle seem to have been termed the South Isles, those annexed to Ross and Inverness the North. Thus in 1540, James V. annexes to the Crown, "In y^e^. first y^e^. landis of all his Iles south "and north: The twa Kintyris w^t^. y^e^. castellis partening y^r^to "and thare p̃tinentis. The landis and Loirdschip of Orknay "and Zetland and y^e^. Ilis p̃teni̇̃g yareto and thare p̃tinentes." —Fol. Stat. ii. p. 361; see also Pinkerton, ii. p. 368. Other proofs of this might be quoted, both prior and subsequent to the mortgage of Orkney and Zetland to Scotland; but we must content ourselves with a mere reference to a few: Statutes, &c. in 1429, Fol. Stat. ii. p. 19; in 1503, ibid. p. 249; in 1549, ibid. p. 453; in 1576, ibid. p. 189; in 1631, ibid. v. p. 238; in 1633, ibid. p. 53, &c.

When Orkney and Zetland are treated of in our statutes and records, they are invariably referred to by their distinctive appellations, and usually as "the countrey," or "lands and she- "riffdom or *foudrie* of Orkney and Zetland."—See Statutes, &c. before quoted; and Fol. Stat. iii. pp. 449, 459; iv. pp. 184, 237, &c. &c. &c..

Sir George Mackenzie, indeed, in his Observations on the Statutes, p. 115, declares this act to have been framed in reference to Orkney and Zetland; and it truly appears to have originally been intended to embrace these islands, though it is equally clear that they were excepted from it as completed, and

apparently because they were not strictly under the king's obeysance. Sir George wrote nearly two centuries after the passing of the act; nor is it unreasonable to suppose that he possessed less distinct information on the subject than we do in the present times. This act appears to have been simply a renewal of one passed in 1425, 48th James I, to exclude the Danish laws in the Hebrides,—M'Kenzie's Observations, p. 16,—and which seems to have failed in effecting its object. We know that the "Lords of the Isles" were independent of the Scottish Crown long after their cession to Scotland in 1263, and even down to the sixteenth century.—Pinkerton, i. p. 42, and the authorities there referred to.

But there is other evidence that the act 1503, c. 79, was not meant or considered to apply to Orkney and Shetland. Among the articles to be presented in Parliament under date 6th December 1567, and under the head of "the articlis concerning "y^{e}. comone weill of y^{is}. Realme w^{t}. y^{e}. s^{d}. assembleis" (apparently a committee of the Estates of Parliament whose names are set down) "declaratioun and judgement yairupon," we find the following:

	"Quhidder Orknay and Zetland sal
"ffinds yai aucht to	"be subject to y^{e}. comone law of
"be subject to	"of y^{is}. realme or gif yai sal bruk
"yair awne lawis."	"yair awne lawis."

Fol. Stat. iii. p. 38, 41.—Now, had the act 1503, c. 79, been considered to apply to Orkney and Zetland, this question never could have arisen, much less could it have been disposed of in the way it was; and, without pausing to discuss what authority may be due to this as an enactment, we apprehend it affords incontrovertible evidence that these islands were, at that period, governed by a code of laws peculiar in many respects to

themselves, and that it was the opinion of those then vested with the legislative authority that they should be left subject to that code.

But perhaps it may be said that these laws were effectually annulled by the act of Privy Council 1611. This act was issued in consequence of the great oppressions of which Earl Patrick had been shortly before accused, and for which he was soon after executed, as appears on the face of the act. "It is of ve-"rity that some persons bearing power of magistracy within "the boundis of Orknay and Yetland has thir divers yeirs "bygane, meist unlauchfully tane upon them, for their own "private gain and commodity, to judge the inhabitants of "the said countries be foreyne lawis, making use sometimes "of foreyne lawis, and sometimes of the proper lawis of "this kingdom, as thai find matter of gayne and commo-"dity," &c.—Peterkin's Notes, App. p. 68. It is evident, then, that it was directed entirely against the gross conduct of Earl Patrick in regulating himself by his own evil dispositions alone, and by *no* fixed laws—making use now of one law, now of another, as best suited the object he had in view at the time—and then, among the other falsehoods and calumnies stated in his Answers to the charges against him, most falsely founding a justification of his misdeeds on, and sheltering himself under, the alleged authority of peculiar and ancient Danish laws. But his whole life and proceedings formed one continued breach of the island laws; and all the numerous complaints against him and his predecessors are for such breaches. We at the same time consider it clear that an act of Privy Council never could abrogate laws and usages secured to these islands at the time of their original *mortgage*, and by the very nature of such a transaction,—recognised by an act of Parliament,—and confirmed by the observance of a century and a half. Indeed as the

validity of many of the local and peculiar usages of these islands has been asserted by legal writers, and has been recognised and enforced by the supreme judicatories in later times, the act 1611 has been thus solemnly adjudicated to be illegal and inoperative, and seems to require no further comment; so that we may conclude, in the words of Bankton, that where or by what treaty " their own laws were secured to Orkney and Zet- " land is not material, it being acknowledged on all hands that " they were reserved."—Bank. b. i. p. 343. We refer to Peterkin's Notes, p. 81 to 144, for a distinct and spirited, though brief, view of the subject, and to Dr Hibbert's learned work on Zetland.

We cannot close this Note without expressing regret that the early records of the local courts of Orkney and Zetland, in the Register House, Edinburgh, have not been more accurately examined. The extracts given in this chapter, and in Mr Peterkin's Notes, lead us to expect that much valuable evidence connected with local usages, and particularly with the land-rights of the islands, may there be found. Let us respectfully remind the landholders, that important claims connected with lands are presently being made on them by the Crown and Lord Dundas, and suggest to them the propriety of opening up such a record before it be too late to be useful. A very trifling sum would suffice to have copies made for both parts of the stewartry. Mr Graham Dalyell has derived much curious information and illustration for his late work on the Darker Superstitions of Scotland, from these records.

(3.) Part I. Chap. II. P. 21.

This chapter is believed to have been written with a view to induce the landholders of Orkney to make the attempt they did,

about the middle of the last century, to reduce the lispund to its original weight of twenty-four merks of eight ounces each. The proceedings in the litigation on this subject between them and Lord Morton are extremely learned and voluminous. A proof was taken, in which it was distinctly established that the Norwegian lispund was twenty-four merks of eight ounces; and that such was the Orkney lispund long after the annexation of the islands to Scotland. The Court, however, found that the landholders had not established their case, and subjected them in expenses to Lord Morton. The case does not appear to have been reported, and we have never seen the ground of judgment assigned; but it most probably was usage, beyond the years of prescription. His Lordship's expenses were grievously complained of, and with reason, as he never deigned to appear by fewer than *six* counsel. They amounted to between L. 600 and L.700, exclusive of agent's fee and expense of extract, two items which would then double that amount. The Court seem to have viewed the account as exorbitant, for we find it stated in a manuscript note by counsel, on a printed copy of the pleadings before us, that the Lords cut off L. 100 and modified the agent's fee to L.100.—Session Papers, 1759.

This appears to have been a question more agitated and important to Orkney than to Zetland, from the heavy grain as well as butter rents payable in the former. The lispund only seems to have been in later times known in Zetland; and butter was the only article of crown rent and feu-duties paid by weight—these being partly paid in *wadmill, oil,* or money. The weights varied in different districts both of Orkney and Zetland. We learn from Gifford's Zetland (p. 62) that, in 1733, "a lispund was 28 lb., and in each lispund is 24 marks." At present a lispund in Shetland is 24 marks of 1¼ lb. each mark, or 30 lb.—Edmonston i. 135; and in the parishes

of Dunrossness and Aithsting, the lispund has long been 40 lb.

Dr Barry says, in his History of Orkney, p. 221, that the least deviation from a mark cannot be less than 10 oz., nor can the same deviation from any one setteen on the pudler be less than 8 lb.; while a certain dexterity in those who are accustomed to weigh much on these instruments enables them to cheat to a great amount without the possibility of detection. His editor, Mr Headrick, endeavours to explain the reason of this in a long note, to which we must refer. If the statements of these gentlemen be correct, it is indeed singular that the instruments should have continued so long in use.

The subject having now lost the importance and interest which once attached to it, we shall simply refer those wishing to inquire farther into the subject to the pleadings already mentioned. They will also find the Orkney weights described by Sir Robert Sibbald, p. 6; by Sir James Balfour, who was Lyon King-at-arms about the year 1660, as quoted by Sir Robert, p. 13; and by Brand, about 1700, p. 28 and 37. It may, however, amuse some persons to quote the conclusion of the passage by Skene on the Orkney weights referred to at p. 47. "Item "the flesh is delivered be apprising viz. 10 meales makes ane "sufficient cow and ane sufficient oxe. Also ane gild oxe is ap- "prised to 15 meales, and ane wedder is 4 meales. Item ane "gouse is twa meales. Item ane capon is half ane gouse viz. "1 meale." A gild ox is one that is large and full grown, and so a ling fish of a certain large size was formerly termed gild in Zetland. The proportion between the value of oxen and geese is somewhat curious, even if we admit what is said by Sir R. Sibbald, Brand, and Gifford, that the oxen and cows were considerably less in size in Orkney and Caithness than in Zetland.

In the Bibl. Top. Brit. vol. x. pp. 84 and 85, is to be found a

document which, if there rightly translated, it seems difficult to reconcile with the measures as stated in the text:—" Observe, " that, in the year of our Lord 1328, the 25th day of July, did " Gialdfaldr Ivarson of Shetland (*Hialltlande*), pay to the " Rev^d. Lord Auldfin Lord Bishop of Bergen, Suein Sigurd- " son, Comptroller of the King's household, the tenths due to " the Pope, viz. 22 cwt. of wool, less than 16 pounds, accord- " ing to the standard of Shetland (*tale Hiallta*), being 36 span " Shetland weight of wool."

(4.) PART II. CHAP. I. Page 103–106.—" *Udal Land.*"

Pontoppidan, in his History of Norway, states, that in the northern languages ODH signifies *proprietas*, and ALL *totum*: hence he derives the *odhal* right in those countries, and the *udal* right in Finland, &c. Upon this Mr Chitty remarks, in his edition of Blackstone, that " the transposition of these " northern syllables ALLODH will give us the true etymology " of the *allodium*, or absolute property of the feudists; as by a " similar combination of the latter syllable with the word FEE " (which signifies a conditional stipend or reward) FEODH or " *feodum*, will denote stipendiary property."—*Blackstone by Chitty*, ii. p. 46.

In one of the branches of the noted case of Sir Lawrence Dundas against the Landholders of Orkney and Zetland, the view maintained in the text, that *udal* was synonymous with allodial, was distinctly recognised by the Court of Session. In this case, it is said, " parties differed as to the meaning of *udal* " lands; it was said, on the part of the heritors, that udal lands " are allodial lands; that they are enjoyed by the proprietors " of them *tanquam optimæ maximæ*, without their being obliged " to acknowledge any superior, and that their right was simple

" and unburdened. On the other hand, it was alleged, that al-
" though the lands called udal lands are held without writing,
" yet, nevertheless, they are feudal holdings, and are liable in
" payment of a yearly duty, called Skat," &c.

" But in arguing this point on the Bench, the Lords seemed
" generally of opinion that *udal* meant allodial." " Lord
" Hailes, in particular, was of this opinion, and derived the
" word from the two words *all* and *od*, signifying *plenum vel*
" *absolutum imperium*."—Brown's Sup. v. 610.

Those who desire to inquire more fully than is done in the text, into the history and nature of udal property and tenures, may consult the various authors referred to by Dr Jamieson in his Scottish Dictionary, under the word *udal*, and Dr Hibbert's work on Zetland. We deem, however, that Dr Hibbert has fallen into some mistakes in treating of these subjects, though we speak with becoming hesitation and deference in so expressing ourselves of any part of the work of an author so learned and so kindly disposed towards our native county. Many interesting illustrations of these and other usages in Orkney and Zetland may also be obtained from an examination of the laws of Norway and Iceland. Very beautiful editions of the laws of these countries, in the original languages and Latin, have been lately published at Copenhagen, from the *MS.* of Arnas Magnusson. That learned commentator, who died towards the middle of the last century, bequeathed his large collection of *MS.* and charters to the University of Copenhagen, together with considerable funds, which last enable his trustees, appointed and incorporated by royal charter in 1772, to maintain a secretary and two clerks, whose duty it is to publish at least one of the *MS.* yearly.

(5.) Part II. Chap. I. Page 112.

It is to be regretted that the author of this work did not complete the plan he had sketched, or if he did so, as is generally supposed, that the result of his labour should have been lost. From the researches of a person so eminently fitted for the task into the much controverted subjects of skat and teinds, great light must have been thrown upon them.

The landholders of Orkney, about the year 1750, brought an action against Lord Morton to have it found that the *Skat* was the old Danish land-tax, and had ceased from the year 1667, when their lands paid supplies by assessment, with the rest of the kingdom. His Lordship *denied* that *skat was of the nature of a land-tax.* "The Lords gave no judgment on the "general point; but, sustaining the general defence of prescrip- "tion, they assoilzied the defender from the conclusions of the "declarator with respect to skat duties."—1st July 1752, Morr. Dict. 16393.

In a work already referred to—Bib. Top. Brit.—we learn that, in the year 1329, the Canons of Bergen, and subcollectors of the Papal tithes, had gathered 93 *marks* of *pure silver*, as a papal tithe of the Orkneys (*Orkneium*).

There may, perhaps, be some who will deem the title of this work, no less than the conclusion to which it draws, as exhibiting an exaggerated picture of the oppressions to which the inhabitants of these islands have been subjected. We think the facts detailed there alone fully vindicate the conclusion. Those acquainted with the history of the district know that they might be easily increased. In defiance of the act 1471, and of the various subsequent annexations, as well as of the more recent and solemn act of 1612, by which they were *perpe-*

tually re-annexed to the Crown, these islands were for two centuries conferred upon a series of unworthy favourites, by whom they were plundered and oppressed in the most shameful manner. Earl Patrick, following the example of his father Earl Robert, at length drew upon himself the just punishment of his crimes. Of the gross and cruel nature of his oppressions, the charges against him, which he admits and justifies, though he denies their relevancy, afford ample evidence. They will be found in the first indictment against him, and his answers thereto, given by Mr Peterkin, Notes, App. p. 77. Mr Gifford says, p. 42, that this nobleman doubled the amount of the Crown rents of all sorts; and it is notorious that Douglas of Spynie, between the years 1664 and 1669, compelled the udallers to take out charters from him, for which he charged a heavy composition, whereby many of them were sunk so far in debt as to be obliged to sell their lands. He in this way raised L. 15,000 Scots in Zetland alone.—Gifford, pp. 43 and 57. As the islands were in ancient times cursed with the presence of those in right of the Crown, so, since the grant to the Earls of Morton, they have felt deeply the absence of the grantee for the time, a person having a great interest in the district, but unacquainted with, and possessing an exaggerated notion of, the nature of his rights. Accordingly, for upwards of a century, perhaps hardly a period could be pointed out in which the Earls of Morton, or those who succeeded that family, have not been engaged in litigation with the landholders of Orkney and Zetland. If, then, we consider the various oppressions to which they were formerly subjected, of which our public records afford such ample evidence,—the direct increase of the Crown rents under Earl Patrick—the exactions of Spynie—the covert increase of the weights and measures by which these rents were paid—the imposition of a

double land-tax—the attempt to subject the whole lands of the district to a feudal superior—the deprivation of Zetland of all political rights down to 1832—the litigations with which they are still compelled to grapple if they would retain any, but the smallest, share of the soil they have thus so dearly paid for—if we consider these things, (and the catalogue could be enlarged), who shall say that any terms can be too strong to characterize such an unparalleled series of oppressions, in a district so poor and so unable to struggle against them as these islands? Such oppressions would have deeply affected the richest and most fertile county,—how much more, then, must they have injured and impoverished such places as Orkney and Zetland?

We have mentioned the litigations between the Morton and Dundas families and the landholders of these islands. Many of them, as the *Skat* process, the Pundler process, the processes in relation to the Superiority of the whole islands, the litigations in the Courts of Exchequer and Session within the present century as to the rule of Accounting for the Feu-Duties, &c. and the existing litigations regarding the Scatholds or Commonties, and numerous others carried on with individual landlords on matters involving the general interest of the body, are well known, or to be found in our records.

A curious instance of the reckless and changing nature of the pleas maintained by the Crown's grantee came lately accidentally under our notice. In a paper, now before us, entitled, "Objections for the Right Honourable Lord Dundas to the "Rental of Fetlar and North Yell," it is stated—

"The rental of the parish of Fetlar, as given up by the mi-"nister, states:—

"1. The landrent of every heritor in the parish;

" 2. The *skat-duties* payable to the objector, as superior or " overlord of the district.

" These duties ought not to have been included in the ren- " tal, as, from their nature, no part of them ever was or can " be payable to the Minister as teind. The origin of the skat " duty was a tax similar to the land-tax of Scotland, which " was imposed on the islands of Zetland when under the domi- " nion of the King of Denmark, and on occasion of their being " transferred to the Crown of Scotland that tax was continued, " and by the grant which was originally given to the family of " Morton, and subsequently acquired by the objector's father, " the tax has been continued. It is a duty payable, not by the " heritors of lands, for in no one instance does it ever en- " ter their rentals, nor are they liable for it to Lord Dundas " the superior. It is alone payable by the *tenants* or *occupiers* " of the lands; and, consequently, when lands are lying ley or " waste, the duty is not payable, and the objector does not re- " ceive it; so that, in fact, it is a contingent tax, sometimes le- " viable and sometimes not; but *in no shape connected with rents* " *of lands, or the proprietors of lands,* NEITHER THEY NOR THE " LANDS THEMSELVES BEING SO MUCH AS LIABLE for it, so that " there is no principle whatever upon which it can be added to " the rental of the parish, and a fifth part thereof considered " as teind. The value thereof, as given up by the minister, " amounts to L. 31 : 9 : 6, and which, consequently, will fall to " be deducted from the rental." And, still more strongly, he urges in his replies, " These duties are not in any shape levia- " ble by the heritor," &c. " If they run in arrear, *the heritor* " *is in no shape liable to Lord Dundas for them. Neither are the* " *lands or the fruits of the ground liable for such arrears. It is* " *a personal claim against the occupiers as inhabitants of the* " *islands,*" &c. " The teinds, again, are *debita fructuum;* the

" scatt, on the other hand, is a mere personal debt against the " occupier of the lands, for which Lord Dundas has no claim " against the landlord, nor any right or security over the pro- " duce." And Lord Robertson, on 15th January 1811, upon considering the objections, with answers, replies, and duplies, sustained the objections, and appointed the rental to be rectified accordingly.—No. 8. and 9. of Process of Augmentation, the Minister of Fetlar, in Teind Office, Register House.

Now the statement of facts here made by Lord Dundas was perfectly correct, and entitled him to the deduction which he claimed and received. But he was bound, both in fairness and law, to abide by that statement on which this claim had been preferred and sustained, in all events and in other cases. Instead of this, he shortly after came forward maintaining a state of facts regarding skat-duties, in every essential particular, especially in reference to the liability of lands, their fruits, and proprietors, for these duties, the reverse of what he had previously alleged.

This is matter of record; for we find that, about the year 1820, Lord Dundas brought an action against Mr Gifford of Busta, an extensive proprietor in Zetland, to have it found " that certain feu and umboth duties, with *scatt*, wattle, sheep, " and ox money, were *debita fundi* (that is, real burdens on the " lands, like proper feu-duties), and *exigible from the proprie-* " *tor*. Mr Gifford pleaded that the scatt, wattle, &c. were *de-* " *bita fructuum*, being, according to immemorial usage, payable " by the tenants only when the lands produced fruits; but that " when the lands were not in a profitable state of occupancy " (or ley) no such duties were exigible." " That when lands " are let, and are in profitable occupation, these prestations of " scatt, wattle, &c. *are paid by the tenants*, the landlords paying " only the proper feu-duties." The Lord Ordinary, in respect

the amount of the scatt, &c. was not disputed, decerned in terms of the libel against Mr Gifford the proprietor, and to this judgment the Court ultimately adhered.—Shaw & Dunlop, ii. 741, 26th February 1824; and Condescendence for Mr Gifford, p. 2.—Session Papers, 1824.

Here, then, it will be seen that Lord Dundas admitted that *skat* was the Danish land-tax, which his author Lord Morton had so strenuously denied in 1752; and that he successfully pleaded in 1811 a much broader doctrine (for Mr Gifford admitted the skat to be *debita fructuum*) than that which Mr Gifford ineffectually sought to maintain against his Lordship in 1824. At the former period Lord Dundas urged that *skat* could not be levied from either lands or their proprietors, or even from the produce of the ground, not being *debita fructuum*; at the latter, that skat, &c. could be levied from either or all of these, being not only *debita fructuum* but *debita fundi*; and his pleas at both periods, were given effect to. Such facts require few comments.

But the claims presently making by his Lordship, whether as regards the grounds on which they are rested, or the consequences, if they be sustained, to the improvement of the islands, are the most extraordinary and vexatious of any that have been yet propounded by himself or his more immediate predecessors. He claims, in effect, 1*st*, The whole commons or scattolds, that is, nineteen-twentieths of the surface of the islands, with all mines, minerals, wrack and ware; or, lest he should fail in this, he claims, 2*d*, one-third of such commons. He claims the whole commons, so far as we can understand his argument, upon the ground that he "has by infeftment a right of pro-"perty *in the whole lands* in the lordship of Zetland;" that "a merk-land is a denomination as distinct as an acre;" and that a conveyance to merks-land, though the description be

closed in the usual words " with mosses, muirs, parts, per- " tinents," &c., and though it may have been followed by immemorial possession of the common, can give no right of property therein. All these statements are, in point of fact, incorrect. What right of property can Lord Dundas have in lands held direct of the Crown, or in udal lands of which the proprietors have never taken charters from him? " A merk-land," says Dr Hibbert, p. 177, " is still as indefinite as it was " in the days of Harold Harfager." The division into merks-land was not an apportionment of lands into sections all of a similar and defined extent of surface, as acres, but into portions the extent of which was determined by reference to a fixed standard of value. There are, besides, various classes of merks, as denoted by pennies, from a fourpenny merk, the lowest, up to a twelve-penny merk. Not only, therefore, does the extent of merks of the same class vary in different places, but there are different *classes* of merks, which vary greatly in extent and value from each other. These facts are notorious; but we may refer in support of them to Gifford, p. 67; Edmonston, i. p. 188, &c.; Sheriff, p. 32. of App. &c.; and Hibbert, p. 300, &c. Hibbert considers that the pennies denote the proportions of scattold contained in the merk-land; thus, that a four-penny merk contained four proportions of scattold, a six-penny merk six proportions, and so on; and he says that divisions of scattolds have been made according to this rule, p. 318. He certainly mentions some reasonable grounds for this opinion; but those acquainted with the manner in which *skat* was rated on lands,—and which duty he holds, justly we think, to have been originally leviable for the scattolds,—know that not only that, but many other circumstances, are not explicable consistently with this theory; and of his statement that it had been adopted in divisions, we have not

seem any evidence. Though, therefore, the pennies attached to the merk-land are still generally somewhat descriptive of their relative value, all divisions and assessments have been long made by the merk, without regard to whether it was a four-penny or a twelve-penny merk. Suffice it to say farther, in relation to his Lordship's statements on this head, that, in all deeds and contracts connected with lands, a merk-land has, in Zetland, ever been held to contain a proportion of the adjoining scattold, including mines, minerals, &c.; and that the proprietors of merks-land have, in virtue thereof, ever possessed and exercised rights of common property in the scattolds; while his Lordship has bought and sold, and exchanged, merks-land upon that footing. Indeed he would seem not to be very sanguine of his ability to establish this claim, from his stating an alternative claim, as proprietor of the earldom and lordship, to a third of the commons, which he rests on the allegation that he pays one-third of the cess or land-tax. It is true that, by some arrangement between the landholders and his authors, the grounds of which we have not hitherto been able to discover, they did long pay one-third of the cess. But it must not be forgotten that they have been hitherto freed from all county burdens, such as rogue-money, &c., in Zetland at least,—that they held the office of heritable justiciary, for which they received £7200,—of admiral,—that they were proprietors of feu and other duties to a very large amount,—and that Lord Dundas is still proprietor of an extensive property in lands and feu-duties there, and patron of twenty-eight churches. If, then, the proportion of land-tax paid by his Lordship's authors was fixed, not in reference to all these various sources of income and influence, but even in reference to their properties and exemption from other county assessments alone, it would seem to have been fixed lower than it fairly ought to have been. But,

as *regards Zetland*, it is not true that his Lordship pays one-third, or even one-seventh, of the cess. He has sold, under the authority of an act of Parliament, almost the whole feu and scatt duties there, and has taken the purchasers bound to relieve him of a proportion of the cess effeiring to the lands whose feus have been purchased. So that Lord Dundas, a constant *absentee* proprietor, has, for some years, if not upon the whole, actually paid a smaller amount of county assessments, in proportion to the extent of his property, than the other heritors of Zetland.

It is on such grounds, and in such circumstances,—without being able to allege any possession of the commons, except in virtue of his property lands in the neighbourhood, the same as other proprietors,—in the face of his own rentals, and of innumerable statements in his former litigations entirely contradictory of his present claims,—in the knowledge of numerous appropriations and divisions of commons, to which he and his predecessors have been parties,—and while he is at the present moment, as he has been for many years, drawing a share of minerals, as he formerly did of kelp, according to the same rule as other proprietors,—that Lord Dundas has lately brought forward these very extraordinary claims.

But, supposing for a moment that his Lordship were to establish his right to the whole commons; as the proprietors of arable lands have every where acquired exhausting servitudes of all sorts over them, the only effect would be to keep them undivided, and to prevent all improvement of them, either by himself or others. His success, however, in any of his pleas, we consider *impossible*, though it can hardly be wondered that the general anxiety of various heritors to obtain divisions of the commons, and who have brought processes for that purpose, is not suffi-

cient to induce them, with past experience before them, to embark in a litigation with his Lordship; and, in the mean time, a step, necessarily preliminary to extensive improvements, is prevented from being taken.

The author of this note entertains no feeling towards his Lordship but that of profound respect. We believe him to be an amiable and honourable man, anxious to do what is right, and inclined to forward the improvement of the county. In the exercise of his patronage, he has ever evinced a desire to attend to local recommendations. But he is ignorant of the district, and of the nature and extent of his other rights. Such claims, therefore, as we have alluded to, he must leave to others to decide upon; and his advisers, who are also strangers to the islands, from an almost necessary ignorance of their peculiar system of land rights, naturally feel great diffidence and difficulty in dealing with them. To such causes alone we impute the proceedings of which we complain. At the same time, we think that it does come within the fair exercise of his Lordship's own judgment to direct his advisers to inquire carefully into the grounds of the claims he is now making, and at once either to abandon them, or, by a general measure against the whole landholders, seek to establish them, instead of, by their statement in every separate case, at a great expense to himself, obliging the party to desist, because too poor to follow him to the Court of last resort. Such a mode of acting would, we deem, be more consonant to his dignity: we are sure it would be more conducive to his interest. We are, indeed, at a loss to conceive what possible object or advantage he proposes to himself by his present mode of proceeding. He is an extensive proprietor, and it is his interest as much as that of others, that such questions should be settled and divisions made. We

cherish the hope that he only requires to be properly made aware of the truth to take the same view. At all events, as a sincere wellwisher to our native county, we will never shrink from stating what we believe to be the truth; and, according to our opportunities, urging its claim to redress from whomsoever we may conceive to be pursuing, however unintentionally, measures hostile to its prosperity.

But we have been here reminded that the Crown also possesses property in the county. The Church, it is well known, had formerly extensive possessions in Orkney and Zetland, which lay everywhere intermixed in runridge with the lands of the Earldom and Lordship. But in consequence of the act 1612, an exchange was effected between the Crown and Bishop Law, by which a revenue was assigned to the bishopric out of certain districts in *Orkney*. In this way, the possessions of the Church were concentrated in that part of the stewartry; and while the church lands in Zetland passed to the subsequent grantees of the Crown as part of the lordship, those in Orkney, when they finally reverted to the Crown in 1688, appear to have been from time to time farmed out, at certain low rents, to those who had influence to get grants. Towards the close of the last century, Sir L. Dundas obtained a lease of the whole Crown property for a rent of £50. This lease was recalled about twelve years ago, and the property placed under the management of the Barons of Exchequer.

When this resumption took place, the tenants and feuars on the property, and those connected with the district generally, confidently anticipated great benefits from it. Nor are we entitled to say that these hopes have not been, in some particulars, realized. But, notwithstanding of this, we believe it to be the opinion of those best acquainted with Orkney, that the Crown property, under present circumstances, is, in many instances, an

insuperable obstacle to improvements by neighbouring proprietors, except at the certainty of litigations with the Crown, which has asserted claims similar to those we have alluded to as made by Lord Dundas.

Thus it appears, that the possessions of the Crown, instead of proving a benefit to the district, have in times past been an evil; while, notwithstanding of the interest of the Crown in the islands, and though few places have higher claims on it, there are few counties that have been so little, none certainly could be less, favoured by its bounties. We are not aware that Orkney ever received any grants for roads or other improvements;—we know that Zetland never did. Though the gross revenue of the Bishopric is very considerable, we believe the free revenue entering the Exchequer is small, owing to the great expense of management. If, instead of having been leased at almost nominal rents to wealthy families, the revenues of the Bishopric had been applied to the improvement of the county, what a different aspect it might have now exhibited; and if, instead of being now retained and managed at an almost exhausting expense, such an application of them were still to be made, it would involve little pecuniary sacrifice on the part of the Crown, and would only be a slight reparation for the evil treatment these islands have received at its hands, and for their subjection for so long a period to a double land-tax. Truly was it said by a late amiable functionary, that a great arrear of kindness and care was due by the British Government to these much neglected islands,—an opinion that we know to be fully and advisedly participated in by his successor, a gentleman who has deemed it a part of his duty to make himself intimately acquainted with their past history and present condition. It is, however, an arrear which we have not yet seen symptoms of an intention on the part of any government to

discharge. But we have at least a right to demand, that the possessions of the Crown, and of its grantees in the district, shall no longer be made the means of oppression, or interposed as a barrier to rational and judicious improvement.

THE GENERAL

GRIEVANCES and OPPRESSION

OF THE

I S L E S

OF

ORKNAY and *SHETLAND*,

Under the following HEADS;

VIZ.

I. Of the gradual and continued Increase of the Weights used in these Islands, above the true Measure and Standard of Norway, from whence they are derived.

II. Of the Tribute-real, or old Land-tax, which is here kept up, under the name of Skat, notwithstanding the new assessment of the Islands, in which it should have sunk, as all over the rest of the Kingdom.

III. Of the double Tithes here exacted, particularly in the Island South-Ronaldsha.

IV. Of the true Rental of these Islands, called the King's Rental, and the burdensome Rental imposed in place of it, notwithstanding the general Grants of the Islands, and the particular infeodations made to the Insulars, referring to the King's Rental, as the rule and Measure of the Crown-rent.

V. Of the arbitrary prices kept up in these demesne countries, instead of the Exchequer prices, made for every other demesne country of the Kingdom.

VI. The conclusion; shewing the dreadful effects of so much oppression.

All in two PARTS.

WITH

An APPENDIX of PIECES.

EDINBURGH,

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[To be continued.]

PART I.

Of the *Norvegian* WEIGHTS, retained in the ORKNAYS and Isles of SHETLAND, since the Time of their Dependency upon the Crown of NORWAY; and the gradual and continued Increase of these Weights under the SCOTS, above the true Measure and Standard of NORWAY, from whence they are derived.

CHAP. I.

Of the true Foundation of the Argument.

BEFORE the year 1468, the islands of Orknay and Shetland were subject to Norway: The inhabitants spoke the Norvegian language, were governed by the laws, and adhered to the customs of that kingdom, in the same manner as the inhabitants of Iseland, and the Feroes do at this day. In the year 1468, the Orknays and Isles of Shetland were pawned to James III. King of Scots, by Christian I. of Norway, for the payment of his daughter's dowry, whom James then married. But tho' the inhabitants thus changed their masters, they were not, however, to change their condition: For Christian, purposing soon to redeem the islands, and being sensible of the confusion that would attend a change of their publick state, if in the meantime they should be made subject to the laws and civil government of Scotland, which so much differed from it, made it an article of the treaty, that they should be kept distinct from Scotland, and retain their own senate, or little parliament, and their laws, magistrates, and

whole customs, as formerly, when under the dominion of Norway. Accordingly, the Norvegian laws, language and whole polity, were kept up in these islands, for the most part in full vigour, tho' sometimes, in face and appearance only, almost for 200 years after; not a few of the peculiar customs of Norway, particularly as to its weights and weighing instruments, with the Norvegian names of both, subsisting there at this day. And as the foundation of the following work is laid in this distinct polity, and in these its consequences, we shall take along with us what proofs we have of it, as fully as amidst a general shipwreck of the monuments of this country, the thing will admit.

SECT. I.

Notwithstanding the Mortgage of these Islands to the Scots, *they were kept distinct from the Civil Government of* Scotland, *and retained their own Senate, and their Laws, Magistrates and whole Customs, as formerly, when under the Dominion of* Norway.

WHEN the sovereignty of this country was engaged to the Scots, the inhabitants, as we said, were not to change their condition, but their masters only: This is owned by Buchanan the Scots writer, in his life of James III. *De nuptiis* (says he) *facilè cum Dano transactum, omni jure, quod in omnes circa Scotiam insulas, majores ejus sibi arrogârant, dotis nomine remisso; tantùm ut privatis agrorum possessoribus caveretur, ut agros, quos ibi haberent, utì antè possederant, ita tenerent.*

What this writer here feigns, and indeed the Scots writers in general, as to the cession of these islands, I am not concerned for: Had they followed their own records, when they followed one another, they would not have delivered such figments to posterity. But I am not to contend for the rights of the King of Norway, which is not my present business. What I am concerned for is, the peculiar system of these islands, after

after their connexion with Scotland; that proper Norvegian system, at first founded upon a treaty, as said above, and afterwards declared to, and retained by the inhabitants, till disfigured first by the Earls of Orknay, and at last almost quite subverted under the tyranny of the Commonwealth. Therefore this being our argument, let us consider it under particular heads.

I. The senate, or general head-court, called LAWTING: Of this, in the Norvegian times, we find frequent mention in the Orcades of Torfæus; but more particularly, as to the constituent members, in that notable act of state preserved by the Lord Sinclair; and from another copy, which had belonged to Bishop Robert of the Orknays, exhibited also by Dr Wallace, in his description of these islands. Now this act is passed in the Lawting *in nostra publica & generali sessione*, says the meeting, *i. e.* in the general sessions, or the general head-court, which, in the language of the country, was called Lawting. And that this Lawting, or head-court, was not abolished under the Scots, but on the contrary, recognized and kept up, appears thus: *Anno* 1587, James VI. with consent of his council, confers the Orknays and Isles of Shetland upon the Lord Chancellor of Scotland, and the Lord Justice-clerk, *cum potestate curias capitales, vocat.* Lawtings, *assignandi* —— *& easdem, quoties opus fuerit, continuandi.* The same power also is committed to the Earls of Orknay, particularly in a grant of these islands made to Robert the first Earl, *anno* 1589, —— *cum potestate* (says the king) *curias capitales, vocat.* Lawtings, *assignandi.* —— And hence it is, that in a record of the publick transactions under his son Patrick, from the year 1601, to the year 1604, we find laws for the country enacted, and other acts of government exercised and transacted, as in a distinct country, having the free administration of its own affairs. Hence also that collection of edicts, made by the farmers who succeeded the Earls of Orknay, down to the year 1670. For the Book of the Law, which afterwards shall be mentioned, having been lost or destroyed, under the last Earl of Orknay, the farmers therefore, in some measure

The Senate, or Lawting.

to

to supply it, began in the Lawting to make those edicts or by-laws, now called Country-acts; which at this day continue in such use, that every FOUD (in English under-sheriff or bailiff) gets a duplicate of them upon his admission, in order to serve as the rule of his government. And the high-court, called Lawting, being thus declared and retained, whilst the consequent practice of making laws in the Lawting subsisted till the year 1670, the use of these laws prevailing also at this day; all this, I think, amounts to a very pregnant and sensible proof of the distinct polity of these islands, after their connexion with Scotland.

The Laws. II. Another proof of this distinct polity, we have in the distinct laws of this country; those ancient laws derived from Norway, the mother-country, and under the Scots declared and retained in various instances. *Anno* 1565, when Gilbert Balfour, master-houshold to King Henry and Queen Mary, is by them made Governor of the Orknays, he gets power to administrate justice, and punish transgressors. —— But how? "conform "to the laws of the country." And in the grant before mentioned, made to the Lord Chancellor of Scotland and his colleague, *anno* 1587, besides their right of convoking and adjourning the Lawting, they have power likewise of appointing Fouds under them, and of administring justice, and punishing malefactors.—— According to the laws of Scotland? No truly; *secundùm leges & consuetudinem patriæ Orcaden. & Zetlandiæ;* according to the laws and usage of the islands themselves. And again, in the *Reddendo, Agen. & facien. nobis & successoribus nostris, pro dictis officiis justitiarii & foudriæ, —— debitam & legitimam administrationem justitiæ, legeis & incolis dictarum patriarum Orcaden. & Zetlandiæ, aliisque quibus decet, secundùm leges & consuetudinem earundem, & formam justitiæ in eisdem priùs usitatam.* Also, in the other grant before mentioned, made to Earl Robert of Orknay, *anno* 1589, *Cum potestate* (says the king) *justitiarii & foudriæ deputatos creandi —— justitiam partibus conquerentibus ministrandi, & punitionem super legum transgressoribus*

&

& malefactoribus, secundùm leges & consuetudinem patriæ Orcaden. & Zetlandiæ exequendi & puniendi. And in the *Reddendo* —— *Ac etiam administrando justitiam in dictis officiis, tenentibus & inhabitantibus dictarum terrarum, & aliis quorum interest vel intererit, secundùm leges patriæ Orcaden. & Zetlandiæ, prout dictus comes, & sui prædicti, Deo omnipotenti & nobis desuper respondere voluerint.* Also in a new grant of these islands, made to Earl Patrick, *anno* 1600, we meet with this clause in the *Reddendo* —— *Ac præstando debitam & legitimam administrationem justitiæ nostris legeis & inhabitatoribus dictarum regionum, & omnibus aliis quorum interest, secundùm leges & consuetudinem earundum patriarum Orcaden. & Zetlandiæ, ex præscripto justitiæ tantùm.* And the municipal laws and customs of the deposited islands being thus declared, after their connexion with Scotland, it thence results, that they were kept distinct from it, the *depositum* notwithstanding.

III. Moreover the laws and customs of this country stand directly opposed to the laws and customs of Scotland; which is another evidence of the distinct marches between them. *Anno* 1566, King Henry and Queen Mary grant an estate in the Orknays to Gilbert Balfour of Westra, and his heirs-male, *Sic quòd omni tempore affuturo, unicus hæres masculus successor post alium, quamdiu vixerit, possideat & gaudeat hasce terras, secundùm consuetudinem Scotiæ, non obstantibus legibus patriæ Orcaden. eandem gavisionem seu possessionem recusantibus.* Also in the 1587, King James VI. confirms an estate in Shetland to Hugh Sinclair of Brugh, and his heirs, *Secundùm formam & modum successionis infra regnum nostrum Scotiæ observat. sciz. quòd unus hæres immediatè post alterum succedet, absque divisione, non obstantibus legibus & consuetudinibus patriæ Zetlandiæ in contrarium observatis.* Also in the 1591, the king grants some land in the Orknays to Moody of Breckness and his heirs, *Ita quòd omni tempore affuturo unus solus hæres masculus, successivè post alium, quamdiu vixerit, gaudeat & possideat hasce terras, more Scotico, non obstante jure municipali vel consuetudine patriæ Orcaden. in contrarium prohibente & statuente.* And

The Opposition of these Laws to the Laws of Scotland.

And when the laws and customs of this country stand thus opposed to the laws and customs of Scotland, this is a convincing proof of the distinct polity we are mentioning.

The Book of the Law.

IV. The laws of this country, thus opposed to the laws of Scotland, and yet declared as above, were moreover digested into a book, called the Book of the Law, which is a farther confirmation of the argument. Of this book we find special mention in the Orcades of Torfæus, *ad annum* 1423. And again *anno* 1514, in the Lagman's doom or decree here exhibited, Numb. 2. of the Appendix. Also in another decree *anno* 1519, the High-foud or Lagman, (for so the chief judge was called) to give a sacred and venerable authority to his sentence, confirms it, "be the fayth of the law-buik," as now a-days men confirm their testimony, by the faith of the Holy Gospels. Moreover, in the records of the privy council of Scotland, Feb. 9th, 1575, and in Lord Haddington's Collections from the Minutes of Parliament, &c. Fol. 179. Earl Robert of Orknay, then Lord Robert Steuart only, stands indicted by Nicol Randal, an Udalman, for outing him of the island Gersa, which was his by inheritance, having by a garbled jury, seized upon it for himself. And here Mr John Sharp, as Lord Robert's sollicitor, pretending to cover the injustice under the peculiarity of the laws of this country, and alledging, that the answer of the jury was not untenable according to these laws, "Wherefore (it follows) the "regent and council ordain the said Mr John to bring "and produce THE BOOK OF THE SAID LAW, together "with the process and sentence pronounced be the said "assize, before them." Also in the record before quoted, under Earl Patrick of Orknay, August 23d, 1602, there is an entry against Adam Sinclair of Brow, as concerned in the slaughter of Matthew Sinclair of Ness, it appearing that the night before the thing happened, he gave up friendship with the deceased, and afterwards intercommuned with his own servant, by whom the murder was perpetrated: "Quhairipto (it follows) the "assize taking long and mature deliberation, be the "in-

" inspection of the chapturis of the LAW-BUIK, and " practicks of the country in sick cases, decern———" Whence it appears, that the laws of this country, retained as above, were not uncertain and arbitrary, depending upon the will of the magistrate, but a plain digest, or regular collection, being disposed into a book, called THE BOOK OF THE LAW, and recourse had to it as occasion required; which (as we said) is a farther confirmation of the argument.

V. This book of the law was apparently the same with the law-book of Norway, differing perhaps in modification, but not in canon; which carries the argument quite home to our purpose. And this, I think, is self-evident, if we allow these islands to have been a dependency of Norway; which I will thank no man to grant me. Or if we allow Torfæus to be a good witness of this sameness of their laws, I need only direct to his Orcades, Lib. i. Cap. 25. for the proof of it. And Lib. ii. *ad annum* 1427, when Bishop Thomas of the Orknays, was by Eiric King of Norway made prefect of these islands, we have from the archives of Norway the profession which he made; wherein he promises to administer justice to the insulars, according to the laws of Norway, and the common usages of the islands. " *Promittimus etiam* (says he) *nos* " *subditis terrarum istarum, jus, secundùm leges Nor-* " *vigicas, & antiquas consuetudines ad nos devolutas, pro-* " *nunciaturos.*" The same with the Law-Book of Norway.

But the identity of these laws will best appear by a comparison of those rights which are their chief objects. The law-book of Norway, under the article of selling and redeeming odal-land, Lib. v. Cap. 3. Art. i. in English (for the book is in Gothick) runs literally thus. " Will a man sell his odal-land? Then " shall he summon all the odal-born [his kindred] and " notify to them, that he is to sell such odal-land, mak- " ing them the first offer, if they will buy, and have no " impediment, such as the want of money, and the like. " Also ne shall proclaim, or cause be proclaimed, in " the publick market, that he is to sell such odal-land, and

" shall

" shall again offer it to his own kindred, the odal-born, " whether known or unknown; but first to those who " stand in the nearest degree of relation to him, whether " male or female, that so the thing may come to their " knowledge, though they should not be there present." Now, with this law compare the Lagman's Doom before mentioned, Numb. 2. of the Appendix, and then the particular chapter in the law-book of this country, on which that doom is grounded, will evidently appear to be the same with this in the law-book of Norway. Also, with this law compare that declaratory law (for a new law it is not) made in the Lawting of Shetland, August 22, 1604; as we have it in the record under the the Earl of Orknay, before quoted. " Taking consideration (it be- " gins) of the great confusion usit within the country of " Zetland, anent the buying and selling of land thereinto, " continually remembered be the complaints and suppli- " cations of the commons of the country, to the great " hurt of the commonweal thereof: Therefore it is " statute and ordained, that no person or persons frae " this forth, either buy or sell ony sort of lands with " others, without the samen be first offered to the near- " est of the seller's kin, according the use and constitu- " tion of the country." Compare, I say, these things together, and then say, if as to sales of land, and the fixing it in mens families, which is the great object of the law-book of Norway, the laws and law-book of this country were not the same.

In like manner, as to the rights of primogeniture, and of succession in general, which make another great object of the Norvegian laws, the Law-book, Lib. v. Cap. 2. Art. 63. delivers itself thus: " Does a father leave odals " behind him? Then shall the eldest son succeed to the " principal mansion and estate; the other children re- " ceiving an equivalent out of the other land; every one " his own lot, a brother, a brother's lot, and a sister, a " sister's lot, according to the estimation of neutral men. " Is there no son? Then descends the chief manor to " the grandson by the eldest son, or by the second, or " any other son in order, as nearer the inheritance than " daughters.

" daughters. Are there no grandsons? Then belongs " the chief manor to the eldest daughter, the rest of the " sisters getting land in equivalent, as said concerning " the children in general. Is there not land enough to " compensate the chief manor? Then must the coheirs " be satisfied in money or goods. Do these fall short " too? The eldest shall yet keep the manor, giving the " rest a share only of the income, as by neutral men shall " be determined. As for the other manors, these, with " the woods, shall belong to the sons; for daughters " shall only have their lot in the most remote and dis- " contiguous lands. But can they not have a lot in these, " nor in moveable, nor city-goods neither? Then " shall the brothers who receive the manors, make up " their lot by some other equivalent; otherwise they " shall admit them for partners in the manors, for so " much as the sisters have right to." Now, with this law as to the right of primogeniture, compare the following entry, August 19, 1602, in the record before quoted. " Anent the action and cause (it is said) persuit be Mar- " garet Murray, oy to umquhil Niager Williams-Daugh- " ter, heretrix of the lands under written, and Hierome " Umphray, her spouse for his entres; against John Mur- " ray of Stendail, and Robert Murray his son, anent the " richt and tytil of six mark land uthel, lying in the town " of Gruting, disponed be the said umquhil Niager to " the said Margaret Murray her oy, in her minority: " Compeirit Hierome Umphray, and pruifit sufficiently " the said umquhil Niager to have conquest and giftit " the foresaid six mark land, and disponit the samen to " her said oy, and placit her in possession thereof, be " casting of peits, and uplifting the debts and duties " thereof, in her name. Compeirs the said John Mur- " ray and his son, and alledgit that the said six mark " land was the HEAD BUIL, [i. e. the principal manor] " and so could not be giftit nor disponit frae the princi- " pal air. Quhilk alledgance was found relevant, and " therefore assigns them to pruif the samen at the next " Lawting, this beand the first diet of the actioun, and " then justice to be ministered in the said matter as law

" lewis.

" lewis. And in case the samen beis proven to be the " HEAD-BUIL, the complainer to have als meikle, als guid " other land in another part, according to the use and " consuetude of the country." Again, as to succession in general, compare with the law-book of Norway another entry, July 21st 1603, in the above record; " Anent the action and caus persuit be Alexander Cheyn, " ane of the sons and airs of umquhil Mr Robert Cheyn " of Ury, agains Thomas Cheyn of Walla, his eldest bro- " ther, for making an airff and division of all lands and " moveables appertaining to the said umquhil Mr Robert, " amangst the haill airs, to the effect the said Alexander " may be kend to his part thereof. —— Quhilk being " considerit be the assize, in presence of the said Thomas, " they ordain him to make an lawful airff and division " of all lands and moveables pertaining to his said father, " at the airff-house of Norby, —— be twelve neutral " men, to be chosen with advice and consent of the said " haill airs, —— and to make every one of the said airs, " either sister or brother, to be kend to their own parts, " according to the the laws, use and consuetude of the " country." Compare (I say) these two entries with the last mentioned article of the law-book of Norway, and it will appear, that in matters of inheritance, as well as in sales, it is the same with the laws, and consequently with the law-book, of this country. And when in these chief objects of the law of Norway, the two books were the same, this is so persuasive that we need seek no farther.

The Ministers of the Law.

VI. As the Norvegian laws were retained in this country, after the engagement of its sovereignty to the Scots, so the ministers and officers of the law were after the manner of Norway also, viz. the high-judge, called the GREAT-FOUD or LAG-MAN, in Latin Legifer, in English Law-man; and subordinate to him several little Fouds, or Under-sheriffs, as in Norway.

The Great-foud or Law-man.

Of the GREAT-FOUD or Law-man, the Exchequer-roll of 1476, makes mention in these words,——*De quibus allocatur computanti, per solutionem factum Legifero Domini Regis, infra dictum dominium de Orknay, vulgariter nuncupato*

nuncupato LAW-MAN, *pro feodo sibi concesso per literas domini Regis——de anno computi, & de tribus annis præcedentibus hoc computum*, 48 *lib.* Also in the 1485, Sebiorn Guttormson, law-man of Bergen in Norway, and Neils Williamson law-man of Shetland, by their decree, Numb. 1. of the Appendix, reverse a sale of land in Shetland, as made contrary to law. And here, by the bye, is a Norvegian magistrate concerning himself in the affairs of this country, and exercising authority over it, which looks not as if the King of Norway had formerly ceded his right to these islands, as Buchanan in his history reports; but rather as if indeed he had a property and interest in them, and such as he thought not inconsistent with the mortgage made to the Scots, no more than the property and interest of the Lord Paramount is inconsistent with that of the Mesne Lord: But this only by the way. James IV. of Scotland, in the 14th year of his reign, which was 1501, directs a letter to Henry Lord Sinclair, then Captain-general and Governor of these islands, mentioning a confirmation and new erection made to Andrew the Bishop, of the temporalities of his bishoprick, and therefore charging the Lord Sinclair——"to stop no "Law-man in the supplying of the said reverend fa- "ther his servants and officers, in the ministration of "justice." Also the next year after, there is another letter to the same effect, directed "to the Law-man of "Orknay." And *anno* 1514, the law-man of Orknay and Shetland, and the Rætmen his assistants, affirm a sale of land in this country, as made according to law. This is the decree, Numb. 2. of the Appendix, which adds great light and strength to the whole argument.

So also as to the Fouds, next under the high-foud; we find frequent mention of them in the record before quoted, about the beginning of the last age. August 24th, 1602, certain offenders are appointed to be presented to the Foud, in order to be tried by an assize; and in the same entry mention is made "of the Fouds of "ilk parochin or isle." Also July 5th, 1604, "the "haill

The Subfouds.

" haill Fouds of the country" are ordained to bring a criminal to trial in the next Lawting, where there sat with the Law-man 22 jurats, or assistants, of whom six were Fouds. Therefore laying all this together, it plainly appears, that as the Norvegian laws were declared to this country, as shewn above, so the ministers and officers of the law, thus kept up in the Scottish times, were after the manner of Norway also.

The Customs of the Inhabitants.

VII. The customs of the inhabitants, like the rest, were all Norvegian; their language the Norse, or that dialect of the Gothic which is spoken in Norway, and disused only within this present age, by means of those English schools erected by the Society for promoting Christian Knowledge. Nor to this very time is it quite disused, being still retained by old people, and in vulgar use amongst them at this day. So also as to those Norvegian officers called Lagrætmen. As the High-foud was assisted by a council, thence called Raadmen, i. e. counsellors or assessors; so the Sub-fouds, in imitation of him, had a council also called, Lagrætmen, *i. e.* legalmen, or (as we now English it) law-right men; a sort of subalterns, known only in Norway and this country, where they still continue very numerous, no island nor parish wanting some. As for their business at present, they still assist the little-fouds, or sub-sheriffs, as formerly, and are many ways subservient to them, tho' they sit not with them in judgment.

In like manner, as to the Allodia, or hereditary lands of these islands, Whence this establishment, and that Mosaick doctrine which in part we have shewn concerning it, except from Norway? And whence but from Norway, the consequent privilege which here prevails, of possessing lands in mens own right, without the use of tenures? Or whence withal the use of those weights which here also prevail, and of those weighing instruments, the Pundar and Bysmer? Terms not known upon earth, nor the terms of the weights neither, of the Bysmer at least, and the Seteen, the Pund, the Span and the Meil, except in Norway and these islands,

islands, or those of Iseland and the Feroes, provinces of Norway.

And now having shewn what proofs we have of the Norvegian polity, kept up in this country under the Scots, let us in the next place sum up the evidence, and consider what it amounts to. It resolves, I think, into this proposition, which we laid for the foundation of our argument, viz. "Notwithstanding the mortgage of "these islands to the Scots, they were kept distinct from "the civil government of Scotland, and retained their "own little senate, and their laws, magistrates and "whole customs, as formerly, when under the domi-"nion of Norway." Hence those Norvegian customs which prevail here at this day, particularly the use of those Norvegian weights, and weighing instruments, not used elsewhere, except in Norway and its provinces. And the weights of this country, being thus apparently derived from Norway, which seems, I think, self-evident, and to carry its own proof and conviction with it, the true measure and standard of these weights is in like manner to be fetched from thence. This is all the conclusion I desire to make, and the force of this conclusion shall be afterwards considered.

Sum of the Evidence.

SECT.

SECT. II.

Of the Norvegian *Weights retained in these Islands, their Terms, Proportions, and the Instruments used in weighing.*

The Weights, and their Denominations.

THE smallest of these weights is a Mark, which is the root and foundation of the rest, as in Norway. Twenty-four Marks make a Seteen or Lispund, also a Pund, Bysmer or Span, being all equivalent and convertible terms. Six Seteens or Lispunds make a Meil, and twenty-four Meils a Last, as in the following table.

24 Marks	make	1 Seteen or Lispund, Pund, Bysmer or Span.
6 Seteens, &c.		1 Meil.
24 Meils		1 Last.

The terms in this table are mostly peculiar and proper to Norway only, and its provinces, and were all in use here formerly, but are not all in use here now. The term Span in particular is now in disuse, tho' as frequent as any in a rental or survey of the Orknays, *anno* 1492. There it is used as a convertible term for the Lispund, containing also twenty four Marks, like the Norvegian Span, taken notice of by Torfæus, par. 3. Lib. iii. Cap. II. of his history of Norway. Here Torfæus takes notice likewise of the Norvegian Mæl or Môl, which is the same with our Meil in the table. And elsewhere he mentions also the Norvegian Mark, as the root and standard of the rest, being all multiples of it, as in this country. But of the Norvegian Mark I will speak more particularly in due place; and likewise of the Norvegian Bysmer, or Pund, called also Bysmer-Pund, or pund upon the Bysmer. Here the term Pund, like the Span, is not now in use, tho' common enough in the last age, as may be seen in those grants by the bishop of Orknay to Buchanan of Sound, Book 57. Numb.

Numb. 289. of the Great-seal Register. For there the Pund and the Lispund are used as equivalent and convertible terms, like the Span and the Lispund in former times; which shews that the term Pund was then in common use, and the Pund also of the same value with the Lispund. In like manner the term Bysmer, as appropriated to one of the weighing instruments, is here still kept up, as in Norway, the Bysmer, in this sense, having no other name; but as applied to its proper weight of twenty four marks, being the same with the Lispund, it is now in disuse, like the Pund and the Span; but in disuse only within this present age, having just before been in vulgar use, as appears by an establishment which afterwards shall be noticed, designed by Elphinston of Lopness, *anno* 1691. For there we find mention of the Bysmer of victual of all sorts, of the Bysmer or Lispund, the Bysmer commonly called Lispund, and the like; which shews that the terms Bysmer and Lispund were then equivalent, and indifferently used, like the Pund or Lispund, and the Span or Lispund before. And now, except these three terms, the Span, Pund and Bysmer, the rest are all retained, being in daily use, and no other; which justifies the use of them in our table. And as for the three terms now here in disuse, it is enough for our purpose, that here they were in use, tho' not so now; that in Norway they continue in use, and are there all equivalent, as I have shewn they were here, containing twenty four marks each, like the Lispund, which at once they expressed, and were expressed by. This, I think, justifies the use of them in our table also. And the terms in the table being thus cleared, let us next examine the proportions of the weights, as there stated.

Proportions of the Weights.

And 1st: The proportions in the table are agreed to on all hands, on the adverse side, as well as on this. For in a memorial by the Earl of Morton to the Court of Session, June 23, 1748. "The least denomination (says his lordship) of their weights in "Orknay, for grain, is that called a Mark——24 of "these Marks make a Seteen; 6 Seteens make a Meil, "and

" and 24 Meils on the Malt-pundar make a Chalder," ——which is the same with our Last in the table. And again, " the lowest denomination (continues he) " of their weights for butter and oil, is likewise the " mark, 24 of which marks make a Lispund." Here then is such a harmony and consent, as to the proportions in the table, that it seems superfluous to seek any farther. And when this is so well agreed to, here indeed we might rest, and leave the matter upon this issue; if it were not a fundamental part our argument, which we cannot dismiss without the utmost proof.

Therefore, 2dly, In the formentioned survey of the Orknays, *anno* 1492, made by Henry Lord Sinclair, who then rented them; and again, in that other survey, made by Earl Patrick of the Orknays, *anno* 1595. now in the General-Register-House, 24 marks are uniformly stated and summed up, as a seteen or lispund; six seteens as a meil; and twenty four meils as a last; which is a demonstrative proof of what is shewn above. So also, in all those censual books, or accounts of the Crown-rent of these islands, which are yet extant, first under the Earls of Morton, from the year 1643. to the year 1669. then under the farmers who succeeded them down to the year 1707. and again under the Earls of Morton, from the year 1707 to this present time; the Mark is constantly valued and counted as the twenty fourth part of a Seteen or Lispund; the Seteen or Lispund, as the sixth part of a Meil; and the Meil as the twenty fourth part of a Last; which is another demonstration of what is shewn above. And,

3dly, Upon this principle is is, that the rents of these islands are valued and converted into money, in all those instances where such conversions are met with. In modern terms, the books before mentioned, from the 1643. and downwards, exhibite a multitude of examples; and in times more remote, though instances are not less frequent, yet few, I think, may serve us at present. And first: In the record of the thirds of benefices in these islands, *anno* 1569 under the subscription of the Lord Register, the Bishop of Orknay and other

other officers of state, we find this entry. "*Item*, "the Comptare charges him with the third of the "flesh of the Bishoprick of Orknay, the Zeir comp- "tit, extending to four Lasts, twelve Meils, four "Seteens, twenty two Marks and one third; quhilks ar "sald at the Kirkis command be the Comptare, for "thre shilling the Meil——extending to 16*libs.* 6*sh.* "5½d." Now, if this number of Lasts and Meils, Seteens and Marks, at the price here stated, extends to 16*l.* 6*s.* 5½*d.* then it results, that the price of the Last must be 3*l.* 12*s.* which is twenty four times the price of the Meil; the price of the Seteen 6*d.* which is the sixth part of the price of the Meil; and the price of the Mark one fourth of a penny, which is the twenty fourth part of the price of the Seteen; otherwise this number of Lasts and Meils, Seteens and Marks, at the price here stated, will not produce 16*l.* 6*s.* 5½*d.*

Therefore the value of the distinct weights being represented and determined by the distinct prices, the quantity of the Mark is to the quantity of the Seteen, as one to twenty-four; the quantity of the Seteen to the quantity of the Meil, as one to six; and the quantity of the Meil to the quantity of the Last, as one to twenty-four; all in concurrency with what is shewn above.

In a grant made by Adam Bishop of Orknay, *anno* 1584†, the *Reddendo* bears..."*Summam undecim Lasta-* "*rum, septendecim Mœlarum, trium Setinarum & octo* "*Mercarum carnis; vel pro qualibet Lasta ejusdem, sum-* "*mam triginta sex solidorum monetæ, extenden. in integro* "*ad summam* 21*l.* 2*s.* 2½*d.*" which makes the price of the Meil (upon the principle here mentioned) 1*s.* 6*d.* the price of the Seteen, 3*d.* and the price of the Mark, one eighth of a penny. Also in a grant made by the Master of Orknay, to James Steuart of Græmsa, *anno* 1592. the *Reddendo* is——"For every meil of two "lasts, five meils and two seteens bear, the sum of "40*d.* usual money of Scotland.....extending in money "to 8*l.* 17*s.* 9½*d.*" which, upon the same principle, makes

† Book 42. Num. 4. of the Great Seal Register.

makes the price of the last 4*l.* and the price of the seteen 6⅔*d.* Also, "For every lispund (it follows) of "ten lispunds, ten marks skat-oylie of the said isle, "4*s.* extending to 41*s.* 8*d.*" which makes the price of the mark 2*d.* Now the different Lasts and Meils, &c. in these two grants, at the prices there stated, will not produce the extended sums there mentioned, except upon the principle which we have laid down. And therefore, according to this principle, the price of the Seteen or Lispund, being twenty-four times the price of the Mark; the price of the Meil, six times the price of the Seteen or Lispund; and the price of the Last, twenty four times the price of the Meil; the different quantities, consequently, of the different weights are by the same proportion. And thus the weights here used, and their just proportions, being fully cleared, we now proceed to consider the instruments used in weighing, viz. the Pundar and Bysmer.

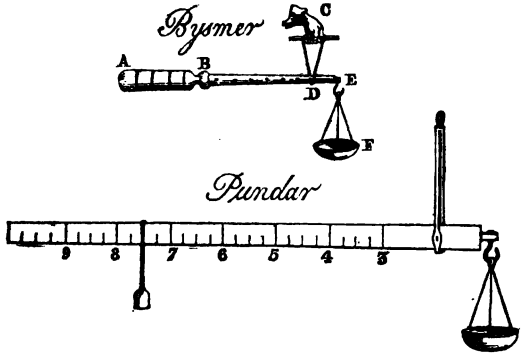
The Weighing Instruments.

As the weights of this country are derived from Norway, so are the instruments used in weighing, being there also termed Pundar and Bysmer, as Torfæus informs us, Part 4. Lib. vii. Cap. 3. & 6. of his History of Norway. Nor is it the name alone that is here retained, but the very thing itself, as will be obvious to him who compares them; or who compares but the figure of the Norvegian Bysmer as exhibited by *Olaus Magnus*, *Hist. de gentibus Septent.* Lib. xiii. Cap. 47. with the description and figure of the Orknay Bysmer, here following.

The Bysmer.

By the Bysmer are estimated Marks and Seteens, or Lispunds; by Pundar, the Seteens and Meils. The Bysmer is a lever or beam of wood, about three foot long. From one end to near the middle, it is a Cylinder, about three inches diameter; from thence it gently tapers to the other end, which is about one inch diameter. From the middle, all along this small end, it is marked with small iron-pins, at unequal distances, corresponding to, and exhibiting the weight of the bodies weighed, from one mark to 24, or a Lispund. The body, or commodity to be weighed, is hung by a hook

hook in the small end of the Bysmer, which is then horizontally suspended, by a cord going round it; the weigher still shifting the cord this and that way, till the commodity equiponderates with the gross end of the Bysmer, which serves as a counter-balance to it. Then the pin nearest the cord, at the time of *æquilibrium*, shews the weight of the commodity in Marks. The annexed figure may make this more plain. AB. represents the gross end, or counter-balance; BE. the small end; E. the hook; F. the body weighed; C. and D. the cord or suspender; and the dotes, along the small end, the pins indicating the weight in marks.



The PUNDAR is the same with the Steelyard, or Statera Romana, which is so well known that it needs no description. See its figure above. There are two Pundars used in the Orknays, one for weighing bear only, therefore called the Bear-pundar; the other for malt and meal also, distinguished by the name of Malt-pundar; which is the Pundar we are generally to speak of. The other Pundar, tho' of the same make in all respects, is one third less in its weights, every Meil, or other weight upon the Bear-pundar, being but two thirds of the like weight upon the Malt-pundar; which in this respect is considered as the standard of the

The Pundar.

the Bear-pundar. And thus the Bear-pundar being *to* the Malt-pundar in a subsequiple proportion, like two to three, the malt-pundar therefore is to the bear-pundar in a sesquialteral proportion, like three to two, that is, as much and half as much more. "The Malt-"pundar (says the Earl, in his Memorial before men-"tioned) is a third more than the Bear-pundar; so "that 24 Meils upon the Malt-pundar are equal to "36 Meils upon the Bear-pundar." And thus we are perfectly agreed, both as to the proportions of the weights, and of the instruments used in weighing.

But there is one thing yet, as to which there is not the same consent, and that is the relation of the Lispund to the Barrel, as another integer to which the Lispund refers. Here the Barrel is never used for grain, but for butter and oil only. Twelve Barrels make a Last; this the Earl does not disown; and besides, the censual books and surveys before mentioned abound with examples. But when his Lordship says, "ten Lis-"punds are commonly computed to a Barrel"†, this, I think, would require explication. And first, I would desire to know what Lispund is here meant, whether the present corrupt Lispund, or the true and equal Lispund, before it was corrupted. If the present corrupt Lispund, then I would demand what that is? And this, I am sure, no man can resolve, being so roving and voluble as to be altogether out of ken, and therefore not computable. If the equal and uncorrupted Lispund is meant, then is it not true, that ten Lispunds are computed to the Barrel, the standard being indeed fifteen Lispunds, as afterwards shall be shewn. And if fifteen equal Lispunds make the standard of the Barrel, whilst the Barrel has lost nothing of its prime and original content, being as capacious now as at first, which likewise shall be shewn; then admitting what the Earl says, "That at present "ten Lispunds are commonly computed to the Barrel," a very material question will arise, viz. How comes this to pass? Why are ten Lispunds now counted equal to fifteen

† See the Memorial before mentioned.

teen Lispunds before? Or in other words, why do ten Lispunds now fill the same Barrel, which formerly held fifteen Lispunds? Not that I would be so understood, as if I thought the present Lispund to the equal one as ten only to fifteen. No; the disproportion, I know, is much greater, tho' by how much no man knows. But this is the just consequence of what the Earl says, even when he deserts the thing now called a Lispund, and gives us something for it, which is much less, a Lispund (to wit) about one tenth only of the Barrel, as if there was no way of defending the present corrupt Lispund but by seeming to desert it, or by changing it into something that comes nearer to the original. And this brings me now directly to the argument, the beginning and Foundation of it being sufficiently cleared.

CHAP. II.

Concerning the true Measure and Standard of those Norvegian *Weights, here kept up, and the Continuity of their Increase above the Standard, since the Disjunction of these Islands from* Norway.

IT seems a prodigy in the government of Scotland, and yet a greater in the government of Great Britain, that the Isles of Orknay and Shetland, that valuable limb of the British dominions, (if so indeed they may rightfully be counted) and capable of being rendered the most beneficial to Great Britain, perhaps of any part of these Kingdoms, should yet, for near 300 years, have been continually sacrificed to some inconsiderable profit, or to the support of some necessitous, or the gratification (admit) of some deserving, court favourite, for the most part, without any profit at all. Since the first moment of their connexion with Scotland, the publick

publick Revenue arising out of them, partly from the Crown-lands, which then were but few, and partly from the general land-tax called Skat, has never almost been in collection for the Crown, as at all times it ought to have been, according to the general practice of the kingdom; but either let out to destroying farmers, like the Dutch pachters, accustomed to live by extortion and plunder; or, what was fully as improper, dol'd away to craving, and mostly to indigent courtiers, (like the two Earls of Orknay) subject to the same passions and appetites with the farmers, and alike ready to prey upon the properties of the short-sighted and unguarded inhabitants. Nay, being poor themselves, and yet having great titles to support, which made them ambitious of living in splendor and luxury, they were forced upon evil courses for money, more than the farmers, and indeed proved by much the worst masters of the two. But what had a dreadful effect upon this country, was the uncontroulable power with which they were alike intrusted: For both received the islands alike, almost in Sovereignty, having the power of life and death without appeal. And being at once both magistrates and publicans, this ministered to them continual opportunities of turning justice into oppression, and of using their authority to the undoing of those for whose preservation it was given them. Nor, let them oppress as they would, was there a remedy almost against their will, by reason of the great distance from any higher seat of justice, which made all redress very difficult and expensive to come at. And tho' now and then some very wicked oppressor was removed from his place, and another sometimes condemned to due punishment, yet no reparation having been made to the oppressed, this was but mock-justice as to them, and worse than none. For thus the excesses committed by one tyrant never ended with himself, but being rather countenanced, than restrained, were continued by those who came after him, with the addition always of more. And thus the sluices and flood-gates of oppression being more and more multiplied and increased,

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as the expiring people became more and more exhausted, every corner of the country was at last deluged with those overflowings of mischief, which have since produced so melancholly a change in these once fortunate, but now unfortunate islands.

My subject at present is confined to the mischief of false weights only, in which the rulers of this remote country, have always had so immediate an advantage: And so much the more, that in this country only, and in no other patrimonial or demesne country of the Crown, the Crown-rent is yearly levied in kind, and not by the yearly exchequer conversions; which is another great mischief, and a very grievous partiality, thus to be distinguished from all the subjects of the kingdom, and without any reason denied that relief which the rest all enjoy. Therefore having shewn from whence the weights of this country are derived, viz. from Norway, the mother-country, and also the proportions which they bear to each other; the just measure of their standard, and their gradual increase above the standard, fall next to be considered.

SECT. I.

That in these Islands the true and equal Standard of the Mark *is eight ounces, and no more; and that of the* Pund *or* Lispund, 12 Libs. *and no more; the* Meil *and the* Last *being in proportion: Also that* 15 Punds *or* Lispunds *make the Standard of the* Barrel.

BY the table exhibited in the former chapter, it appears that the weights of these islands take their rise from the Mark, which is the root and foundation of the rest, they being all multiples of it. The Mark is so well known in most countries of Europe, that there is no difficulty in determining its quantity in other known weights. In Denmark, and all over Germany, it consists of eight ounces, or half a pound; in Sweden and Poland, France, Spain and Holland, it is the same; and in Scotland also and England it is no more. But

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as our business here is not to assert things, but to prove them, I refer to these following authorities, viz. Budæus *de Asse, Lib.* ii. G. Agricola, *de restituendis mensuris atque ponderibus*, p. 241, 243. *Le traité de commerce, par M. Ricard. Le Negoce de Amsterdam, par Sieur Le Maine de Lespine;* Jacob. Serenii *dictionarium Anglo-Suethico-Latinum*, printed at Hamburgh, anno 1734. *Dictionnaire universel de Furietiere.* Chassanæus *de consuetudinibus Burgundiæ*, Rub. i. § 7. Verb. 65. Solz Tournois. Also to *Skene de Verb. sig.* under the word Mark; Hunter on the Weights and Measures of Scotland, and Sir George Mackenzie on Act 96. Parl. 6. James IV. or, for a compendious view of all, to that excellent book, Dr Harris's Lexicon Technicum, vol. i. under the word Weights.

The Mark of these Islands 8 ounces, or half a Pound.

I. Now first, the Mark being thus universally known almost all over Europe, and moreover wherever it is known, being uniformly eight ounces, or half a pound, it follows from the reason and nature of things, that in these islands it was eight ounces also, there being no other mark known upon earth. The universality and uniformity of the Mark, taken together, afford a very strong proof of this; for tho' the evidence may not be absolutely certain, *i. e.* so certain as to exclude all possibility of the thing's being otherwise; it is yet so clear from the reason and nature of things, and the presumption so very strong, that it throws the necessity of the proof upon those who deny it; and by consequence leaves the proposition undeniably evident, till a plain and positive proof is brought to the contrary.

II. The Mark, which universally is half a pound, is so more particularly in Norway, the mother of these island, from whence it is derived to them. This is yet somewhat more, and carries the evidence still higher, by so much as it makes a more direct and immediate advance towards the thing to be proved. And as the Burgo-master of Bergen, Superintendent in chief of the Police of Norway, like our great chamberlain of old, is likewise custodier of the standards of weight

and

and measure in that Kingdom, his testimony in this matter admits of no exception.

By the Burgo-master of Bergen, *in* Norway, *Superintendent in chief of the Police, and Conservator of the Standards of Weight and Measure in that Kingdom; a Certificate as to these Standards, for clearing the Measure of those* Norvegian *Weights, retained in the* Orknays *and Isles of* Shetland, *since the time of their Dependency upon the Crown of* Norway.

CUstos publicorum ponderum & mensurarum, Bergis in regno Norvegiæ depositorum, insulas Orcadenses & Hetlandibus colentibus, salutem. Quemadmodum supplicatio vestro in nomine mihi sit delata, in hisce verbis; " David Covingtry de New-wark, insularum Orcadensi-" um incola, in nomine omnium hasce insulas, & insu-" las Hetlandicas, colentium, publicorum ponderum & " mensurarum, quæ pro regulandis cæteris omnibus " mensuris & ponderibus in regno Norvegiæ publicè " conservantur, custodi dignissimo, salutem. Insulas Or-" cadensibus & Hetlandicis de regno Norvegiæ ab anti-" quo pendentibus, pondera in hisce insulis usitata, in-" strumenta etiam, quæ in ponderando utuntur, PUN-" DAR sciz. & BYSMER, sunt ad morem Norvegicum, " etiamsi augmentatio grandis, quoad quantitatem, in " hisce ponderibus gradatim facta sit, maximo omnium " incolarum damno; qui ideo, ad Norvegiam, patriam " antiquam, ut probationem veræ normæ in regulandis " hisce ponderibus & instrumentis, ab hinc derivatis, " inde habeant, recurrere sunt coacti. Placeat igitur cu-" stodi & conservatori dignissimo, debita in forma, nos " certos facere de quantitate horum ponderum publico-" rum, speciatim de quantitate *Marcæ, & Pund* sive " *Lispund*, vulgo *Bysmer-Pund* nominati, ponderum " sciz. radicalium, à quibus illa pondera vulgo MŒL & " LAST appellata, notis proportionibus fluunt. Dat. " Edinburgi in regno Scotiæ, 5to Julii, A. D. 1748. " ——DAVID COVINGTRIE." Et quemadmodum vestræ petitioni obedientiam præstare justum & æquum sit,

vos igitur certos facio, & in veritatis testimonium sit omnibus notum, quòd à longissimis retro temporibus, MARCA NORVEGICA OCTO UNCIAS, SIVE DIMIDIUM LIBRÆ, quæ radicale est pondus, valet; & quod Norvegicum *Pund*, usitatius *Bysmer-Pund*, viginti quatuor Marcas, sive duodecim libras continet: quæ libræ, simili modo, normam regulatricem dictorum *Punden*, sive *Bysmer-Punden*, constituunt. Dat. sub manu & sigillo meo, apud Bergas, anno 1748, die 27. Augusti. N. S.

L. S. *Henricus Mathieson, sacræ reg. majes. Dan. & Norveg. Bergis Norvegorum Consul, politiæ præfectus & censor urbanus.*

That the proof which arises from this paper may be rightly understood, we must look back a little. The Isles of Orknay and Shetland (we said before) having been ancient dependencies of the Kingdom of Norway, the laws and language, weights, measures, and whole usages were entirely Norvegian, like those of Iseland and the Feroes at this day. Nor was the publick state of these countries to suffer any change, when the islands themselves were pawn'd to the Scots: On the contrary, it was stipulated, that they should be kept distinct from Scotland, and retain their own senate, or little parliament, and their laws, magistrates and whole customs, as formerly, when under the dominion of Norway. Accordingly, the Norvegian laws, language and whole polity, continued in these parts, almost for 200 years after, not a few of the peculiar customs of Norway subsisting there at this day; particularly the use of Norvegian weights, and weighing instruments, the Pundar (to wit) and Bysmer, terms not known upon earth, nor the terms of the weights neither, of the Bysmer at least, and the Seteen, the Pund, the Span and the Meil, except in Norway and these islands, or those of Iseland and the Feroes, provinces of Norway. All which considered, it seems self-evident, and to carry its own proof and conviction with it, that the weights used in this country were indeed received from Norway, the mother-country; and by consequence, that their true

true standard is in like manner to be fetched from thence. In Norway (as in this paper the Burgo-master testifies) the root and standard of all weight is the Mark; which in like manner, is the root and standard of all weight in these islands. And the Norvegian Mark being from all antiquity eight ounces (as is likewise testified) it thence follows, by the utmost evidence on this side sense and demonstration, that in these islands it was eight ounces also.

III. So likewise, as to the Norvegian Pund or Bysmer-Pund; the Burgo-master testifies, that from all antiquity it contains 12 Libs, consisting of twenty four Marks, of half a pound each. And of the Bysmer or Pund in these islands, which is derived from Norway, consisting of twenty-four Marks also, this proves, upon the above principle, that both these Punds, and by consequence, the component Marks, were originally the same.

IV. Every Mark-land in these islands, contains eight Eyrer, or Ounces: "*Continet autem quælibet* "Marca *terræ octo eyrer, seu uncias,*" says *Torfæus*, speaking of the division of land in the Orknays, *Rer. Norveg.* hist. p. 4. lib. iv. cap. 48. And again, in his Orcades, lib. ii. p. 169. Also, in the Isles of Shetland, the Ure or Eyre-land, *i. e.* the Ounce-land, is uniformly the eighth part of the Mark-land, and no more; as appears by the Earl's own proof, and judicial rental of the estate of Quendal, anno 1747, from p. 1. to p. 9†. Now, if the Mark by weight was not rated by the Mark-land, it results, that the Mark by weight was made the standard to rate the Mark-land by, which indeed is the most likely. And the Mark-land in these islands containing eight ounces, it thence follows, by an immediate and positive proof, that whether the Mark-land was rated by the Mark-weight, or the Mark-weight by the Mark-land, the constituent ounces were still the same, and the Mark-weight, consequently, eight ounces.

V. As

† See it in the Process of Sale of this Estate, now pendent.

V. As the Mark-land, here, is eight ounces, and the Mark by weight all over so, the Mark by tale was the same likewise; being two thirds of the tale-pound, which originally weighed twelve ounces in the balance, where ever it was known. Nay, when the pound by tale has so decreased in weight, that at last, instead of twelve ounces, in England, it now weighs but four ounces; in Scotland, but the third of one ounce; and in France, yet one half less; the Mark by tale, though decreasing always with the pound, like the shilling and the penny, has invariably maintained its original proportion notwithstanding; being still to the tale-pound what it was at first, *i. e.* as two to three, or as eight ounces to twelve. And the Mark by tale, as well as by weight, being originally eight ounces in the balance, where ever it was used, and notwithstanding its perpetual decrease with the tale-pound, continuing still in proportion, as eight ounces to twelve; this carries along with it an evident proof of the proposition, That the standard of the Mark, considered in all possible lights, was eight ounces, and no more.

VI. About the year 1584, when the weights of this country first suffered an increase, as afterwards will appear, the radical Mark, under that first increase, was changed into a weight of ten ounces, being then the twenty-fourth part of fifeteen libs. which is ten ounces, or a Mark and one fourth. Therefore, before this increase happened, the Mark must have been less than ten ounces, because, if it were not so, there was then no increase. Now if the Mark at first was less than ten ounces, the consequence, I think, is unavoidable, viz. That from the great proximity which it still kept to the true standard (being under the increase but two ounces more) it must at first have been even with it, *i. e.* it must have been eight ounces and no more. To suppose it more, implies a contradiction, because then (men may call it what they will, but) a Mark it is not.

VII. As

VII. As the Mark is known in most countries of Europe, and in each country is eight ounces only, more particularly in Norway, from whence it was derived to this country, so likewise it appears, that till the year 1584, it has here the same also. For till the year 1584, or about that time, the Orknay Barrel, which contains of butter 180 libs neat, held 15 Punds or Lispunds, as will afterwards be proved. Each Pund or Lispund contains 24 Marks; therefore 180 libs were equal to 15 times 24, or 360 Marks; which by a direct and positive proof, makes the Mark in Orknay, till that time, eight ounces, or half a pound.

These proofs, even singly considered, appear very strong, but when united, they compleatly demonstrate what we had to prove, viz. That in these islands the true and equal standard of the Mark is eight ounces, and no more. And this being proved, the true extent of the other weights, viz. the Pund or Lispund, the Meil and the Last, is proved of course, being all multiples of the Mark, to which they refer, by known and agreed proportions.

Upon this principle every addition made to the Mark, which is the root and standard of those other weights, must necessarily and by the same proportion, influence all the rest, resulting from, and depending upon it. And thus the true and equal Mark being eight ounces, as shewn above, whilst the thing now called a Mark (as the Earl says) is about 20 ounces†; this deceitful Mark is to the true and equal Mark, as twenty to eight nearly, or five to two, *i. e.* twice as much and about half as much more; and the other weights, by consequence, all in proportion. Therefore a proof apart, as to the proportionable increase of each distinct weight, seems absolutely superfluous, as the thing plainly follows by a necessary and unavoidable consequence: For it wants no proof but this, and to seek for more seems almost impertinent. Nevertheless, if possible

† "The least Denomination of the Weights in Orknay, is that "called a Mark, being about 20 ounce weight Dutch." Memorial by the Earl of Morton to the Court of Session. June 23d 1748.

sible, to give contentment to all, parriculaly to the Earl, we shall pursue this proof, with all the precision that the few monuments which have escaped the search and hands of oppressors shall enable us.

The Pund, or Lispund, 12 lib. as in Norway.

As the true and equal standard of the Mark is half a pound, and no more, so is that of the Pund or Lispund 12 libs, and no more: which is thus proved:

I. In Norway, from whence our weights are derived, the Pund or Bysmer-pund, which is the same with our Pund, Bysmer or Lispund, consisting also of 24 Marks, is from all antiquity (says the Burgo-master of Bergen, in his paper before mentioned) 12 libs, or 24 Marks. The Pund or Lispund of these islands, derived from Norway, consists of 24 Marks also; therefore these two Punds, like the constituent Marks, were undeniably the same, viz. 12 libs each; undeniably at least till a positive proof is brought to the contrary.

II. In a record of the thirds of benefices in these islands, anno 1568, under the subscription of the Lord Register, the Bishop of Orknay, and other officers of state, the accompt of the thirds of the Butter-rent of Orknay stands thus; " *Item*, the Comptare charges him " with the third of the butter of the Bishoprick of " Orknay the Zeir comptit, ex- *Lasts* *Barr.* *Lisp.*
" tending to - - - - 2 $10\frac{1}{2}$ 2
" Quhairof there aucht to be de-
" feasit and allowit to the Com-
" ptare, the third of my Lord
" Justice-clerk and his bairns pen-
" sioun, out of the said Bishop-
" rick, extending the Zeir comp-
" tit to - - - - - - —— $5\frac{2}{3}$ *Barr.* ——
"
" *Lasts* *Barr.* *Lisp.*
" Swa restis - - - - 2 4 12
"

" quhilks ar sald be the Comptare at 5 libs the barrel,
" and convertit in money, extendis to 144 libs. *Re-*
" *spondet Computans* - - - L. 144 ... ..."

Hence

Hence it is evident, 1. That the number of Lispunds which the barrel contained, must have exceeded 12, otherwise the 12 residual lispunds would have been counted as a complete barrel, and the fractional lispunds only, if any then remained, taken down in the accompt. 2. From 2 lasts, 10⅓ barrels and 2 lispunds; 5 barrels and 2 thirds being deducted, the residue is 2 lasts, 4 barrels, and 12 lispunds, as above. Whence it results, that the third of the barrel was five lispunds, the two thirds 10 lispunds, the whole barrel 15 lispunds, and the lispund therefore the fifteenth part of the barrel. 3. The price of the barrel being 5 libs, as above, the of price the lispund is 6*s*. 8*d*. For as 144 libs, is to 2 lasts 4 barrels 12 lispunds, so is 6*s*. 8*d*. to one lispund. Whence it follows that 6*s*. 8*d*. the price of the lispund, being the fifteenth part of 5 libs, the price of the barrel, the lispund, thus also, was the fifteenth part of the barrel. And the barrel weighing 180 libs, as shall be shewn, the lispund therefore weighed 12 libs, and no more.

III. In the other record before quoted, of the thirds of benefices in these islands, anno 1569, the account of these thirds of the butter-rent of Orknay is again entered in the very words of the former record, anno 1568. Whence the same conclusions therefore plainly follow, viz. that the barrel consisted of fifteen punds or lispunds; also, that in this country, as in Norway, the pnnd or lispund weighed twelve libs, and no more. And what is now called the Lispund being near thirty libs, (admitting the Mark to be about 20 ounces, as the Earl is pleased to say) this false Lispund is to the true as 30 to 12 nearly, or 5 to 2, *i. e.* twice as much, and about half as much more; precisely in the same proportion that the present false Mark bears to the equal Mark, as shewn above.

To prove the like increase in the Meil: 1. By the record last quoted, anno 1569, under the thirds of the cost of these islands, which is malt and meal promiscuously; "malt and meal called cost," as explained in other

The Orknay Meil, about three seventhes of the Scots Boll.

other records †, and by Sir John Skene also, under the weights of Orknay; "26 Lastis, 7 Meils cost ar sald "be the Comptare at the kirks command, for 16 "Marks the Last, and convertit in money, extendis to "280 Libs, 8*s*. 10$\frac{2}{3}$*d*." And under the thirds of the victual of these islands, which is bear only, the malt and meal being already stated, as above, "three Chal- "ders 10$\frac{2}{3}$ Bolls victual ar sald be the Comptare at a "Mark the Boll, and convertit in money, extendis to "39 Libs, 2*s*. 2$\frac{2}{3}$*d*." Hence it appears, that Orknay bear, sold by the Scots measure, gave 13*s*. 4*d*. the boll, when Orknay cost, sold by the weight of this country, gave 16 Marks the Last, or, which is the same thing, 8*s*. 10$\frac{2}{3}$*d*. the Meil. But cost (as we said) is malt and meal promiscuously, and half meal commonly, which gives about one fourth more than malt; therefore, to reduce the cost to malt, a deduction of one eighth of the price is necessary; and then the quantity of malt in a Meil is to the quantity of bear in a Boll, as 7 and three-fourths to 13 and one third. And one Meil of malt, being equal to 1$\frac{1}{3}$ Meils of bear, or (which is the same thing) the malt-pundar Meil of bear, being one fourth less than the Meil of malt, which is another stated rule‡, "well understood (says the Earl, "in his memorial before quoted) and acquiesced in as a "fixed rule, in the country of Orknay;" therefore the quantity of bear in a Meil is to the quantity of the same bear in a Boll, as 5 and five-sixths to 13 and one-third; which makes the Orknay Meil, malt-pundar weight, about three sevenths of the Scots Boll.

II. In

† Viz. in the Comptrollery Accounts of Sir John Seton of Barns, anno 1587, and in the Reddendo of a Grant of these islands, made to the Lord Chancellor of Scotland, and the Lord Justice-clerk, Book 37. Numb. 414. of the Great Seal Register.

‡ "Payand therefore yearly (says the Bishop of Orknay, in a "grant to one William Irvine, June 10th 1615)—ane Last good "and sufficient malt, or aught Seteens (i. e. a Meil and a third) "good and sufficient bear for ilk Meil thereof." And again, "Pay- "and four Seteens of malt, or five Seteens eight Marks bear (equal "to four Seteens of malt) at our option yearly." Great Seal Register, Book 47. Numb. 489

II. In the book of assignations and modification of ministers stipends, anno 1574, a record now in the Advocates' Library, the victual of Caithness (*i. e.* bear, for so the record itself shews) is valued, one year with another, at twenty Marks the Chalder, which makes the Boll 16*s.* 8*d.* and the cost of Orknay, one year with another, at twenty Marks the Last, which makes the Meil 11*s.* 1½*d.* From the price of the cost deduct one eighth, as above, in order to reduce to malt the meal which is therein included; and then the quantity of malt in a Meil, is to the quantity of bear in a Boll (for betwixt the prices in Orknay and Caithness there could be but little difference) as nine and two thirds nearly, to sixteen and two thirds. And the Meil of bear, malt-pundar weight, being one fourth less than the Meil of malt, as shewn above, the quantity of bear in a Meil, is thus to the quantity of bear in a Boll, as seven and one fourth nearly to sixteen and two thirds; which makes the Orknay Meil somewhat less than three sevenths of the Scots Boll. And the present deceitful Meil being nearly equal to a whole Boll, this proves, that the increase of the Meil, and consequently of the Last, corresponds as precisely with that of the Mark and the Lispund, as the nature of such proofs will admit.

And further I am not concerned; nor indeed for these proofs from measure to weight, am I almost concerned at all, because the evidence rests not so much upon this issue, as upon that of the former proofs, viz. upon weight, which is the only sure and immoveable foundation. In weight, the extent and increase of the radical Mark is already shewn, and likewise of the centrical Lispund; from whence the extent and increase of the Meil and the Last result of course; in weight also, and with a demonstrative certainty, which in proofs from measure to weight is not to be looked for. Here then we may and ought to rest, without going farther, since we want no farther arguments to prove that which we certainly know already. And this I desire may be remembered, in order to obviate all exceptions from the seeming

seeming uncertainty of the Scots Boll, with which our Meil may sometimes again compared. For tho' our argument from thence, when considered by themselves, may not seem sufficient to exclude all doubt, yet when united to the other proofs, with which so exactly they fall in, they then receive such accession of light and strength, as to become irresistible: And therefore, when at any time the evidence is put upon them, it is not to rest upon them singly, but in conjunction always with the proofs resulting from weight, which I desire may be also remembered.

Sum of the Evidence.

And now to close this section, what in the beginning we laid for our foundation, will appear, I hope, completely proved, viz. That in these islands, as in Norway, the true and equal standard of the Mark is eight Ounces, and no more; and that of the Pund or Lispund, 12 libs, and no more; the Meil and the Last being in proportion. Also that 15 Punds or Lispunds make the standard of the Barrel. Thus much, I think, is completely proved: And the true measure and standard of the weights being shewn, the next step is, to follow them in their progress beyond it.

SECT. II.

That under Robert *Earl of* Orknay, *about the year* 1584, *the Weights of these Islands first suffered an Increase; the* Mark *and the* Lispund *being then either raised, or having then grown, a complete fourth part,* viz. *the* Mark, *from* 8 *Ounces to* 10; *the* Lispund *from* 12 libs *to* 15; *and the* Meil *and the* Last *in proportion.*

FRom the year 1468, to the year 1565, the kings of Scotland ruled these islands by a substitute, with the title of Captain. The captain held his office by farm, and also the publick revenue of the islands, which was then of small value, being commonly rented, land-tax and all, for three or four hundred libs. Scots by year. In those times, it is very probable, there were fixed and well kept standards to appeal to, after

after the manner of Norway†; which would serve as some restraint upon this first race of farmers, and may be the reason, that under them the weights of this country suffered no increase, as may be seen above. But anno 1565. when these islands were first given out of the Crown, and conferred upon Sir Robert Steuart of Strathdon, afterwards created Earl of Orknay, he, being brother-natural to the queen, and relying on his interest at court, would bruik no restraint, but with extreme rigour lorded it over those countries which he had in charge to defend. And lest the inhabitants should repair to Scotland, in order to complain of his cruelties, what does he, but coop them up within the islands, and there miserably oppress them, till released at last by an order of the Privy-council of Scotland, yet extant in the Archives, upon the following Narrative: 1575, Jant 31:

Robert Earl of Orknay.

" Forsameikle as my Lord Regent, and the Lords of
" Secret-Council, considering the mony and divers
" complaints maid be sundry inhabitants of the coun-
" tries of Orknay and Zetland———for that not only
" are they heavily troublit, hereit and oppressit be
" companies of suddartis [soldiers] and others, bro-
" ken men, now remaining in the said countries, depend-
" ars upon Lord Robert Steuart, bot als are so halden
" under thraldom and tyranny, that they can have na
" passage, neither be sea nor land, to repair to thir
" partis, to complain heirupon, and sute redress and
" remeid be the course of justice, nor yet to do others
" their lefull errandis and business, as our sovereign
" lordis frie lieges, beand expressly inhibite thairto
" be proclamacioun, and the Ferris and all others
" common passages stoppit be the said suddartis, and
" others bearand charge of the said Lord Robert,
" quhairthrow the said countries and inhabitants
" thairof

† There the Law was, what in the Law-Book, Lib. iii. Cap. 10. Art. 1. concerning measure and Weight, stands yet established, viz. "That the standards of weight and measure, or dupli-
" cates of them, be deposited in the Court-House of every city
" and sea-port, that so recourse may be had to them on all occa-
" sions."

" thairof is able to be all utterly wrakit and hereit " for ever."

1577, April 24. Not long after, commissioners are sent——" To " enquire into the truth of the mony high attemptis, " inordinate oppressions and new exactions daily com- " mitted upon, and complained of by, the inhabitants ... Aug. 5: " of Zetland." And by and by, " Patrick Lord " Lindsay of the Byris, and his son, are bound as " cautioners for Lord Robert Steuart, feuar of Ork- " nay and Zetland, that he shall remain in ward, " within the Palace of Linlithgow, and no ways escape " forth thairof, till he be fried and relieved be the King, " under the pain of 10,000 Libs."

When he had been kept prisoner about six months, ... Jan. 30. he procured some respite from the Regent of Scotland, upon a bail-bond by no less than three sureties, for his re-entry, and remaining in ward, " To answer to " sic things as may be laid to his charge, touching his " keeping of good rule in the parts of Orknay and " Zetland——under the pain of 10,000 Libs."

What those excesses were which the Earl had committed, or those high attempts, inordinate oppressions and new exactions, mentioned above, does not certainly apear, the privy-council records here quoted, except a few fragments, being mostly all lost. But if an historical evidence may be admitted, we are particularly informed of one thing, viz. That on pretence of distraining for a private debt, he seized upon the charter-chest of the town of Kirkwal, and destroyed all the town's charters and records. So writes Provost Craigie of Kirkwal, in a Ms. under his own hand. " The box (says he) coffer or trunk, wherein the " charters and evidents of the said burgh were usually " locked up and kept, was also poinded and away taken " be the said Earl." And again, " Swa the said Earl " did by himself, and others in his name, away put, " cancel, burn, and destroy all the said town's papers " and evidents." And very probably, among the rest, the publick standard of the weights, which, after the manner of Norway, would readily be deposited in the town-

town-house, as mentioned above. But whatever is in this, we shall build nothing upon it; for whether the original standard was destroyed by him or not, it is enough for our purpose, that under him the first deviation was made from it, which is instructed thus:

I. In a grant of the temporalities of the bishoprick of these islands, made to the Earl by the Bishop himself, *anno* 1584†, the *Reddendo* bears,——*Quatuor lastas; quinque barrellas, sex petras, aliàs lispondas butiri, vel pro qualibet barrella butiri, summam trium librarum ejusdem monetæ, extenden. in integro ad summam centum sexaginta librarum & decem solidorum monetæ prædictæ.* Thus the value of the Barrel being 3 libs. the value of the Lispund is 5*s*. For as 5*s*. is to a Lispund, so is 3 libs. to a Barrel, and 160 libs. 10*s*. to 4 Lasts, 5 Barrels and 6 Lispunds. Therefore the price of the Lispund being the twelfth part of the price of the Barrel, the Lispund at this time must have been the twelfth part of the Barrel. And the Barrel which was formerly proved to contain 15 Lispunds, containing now but 12, it follows, that the Lispund must have grown, or been raised to 15 libs. instead of 12, the true standard; because 12 Lispunds must consist of 15 libs. each, to make the Barrel 180 libs. which (as we shall presently shew) is the quantity of butter that it contains.

1584. The Lispund, or Seteen, (and the Mark of Course) increased one fourth, viz. from 12 to 15.

II. In a progressive grant, made to John Earl of Carrick, of some parts of the above temporalties‡, the original conversion is retained, as in the forementioned grant, anno 1584. For here every Barrel of butter is valued at 3 libs. and every Lispund at 5s. which is the twelfth part of the price of the Barrel; therefore, at the time of the original grant, the Lispund, which by consequence is a twelfth part of the Barrel, must have grown, or been raised, one fourth, *i. e.* from 12 libs. to 15, as said above.

III. At

† Book 42. Numb. 4 of the Great Seal Register.
‡ Ibid. Book 53. Numb. 184.

III. At this time, viz. about the year 1584, and never before, the lispund is expressed by the term *petra, i. e.* by the Troy or Scots stone, which then consisted of fifteen Troy pounds†; just so as in after times, when the Orknay Last came at par with the Scots Chalder, both terms began to be indifferently used, Last or Chalder; *Reddendo inde annuatim* (in the words of the grant first above quoted) ...*sex* petras, *aliàs* lispondas, *butiri*. And afterwards, in a renovatory grant of the same lands, referring to the original in the 1584‡; *Reddendo annuatim.....duas* petras, *lie* lispondas, *butiri:* and again, *unam* petram, *lie* lispund, *butiri;* and again, *Quinque* petras, *lie* lispondas, *butiri;* and lastly, *Quatuor* petras, *lie* lispondas, *butiri*. All plainly proving, that the Orknay Lispund, and the Scots or Troy Stone, by which it is expressed, (as in after times the Orknay Last came to be expressed by the Scots Chalder) were then both the same; and consequently, that the Lispund consisted of fifteen Troy pounds, which made the standard of the Petra or stone, till raised to 16 libs. anno 1587.

The content of the Barrel, 180 libs.

Hence also the true capacity of the Barrel is clearly ascertained; for the Barrel consisting of 12 Lispunds, as shewn above, whilst the Lispund was the same with the Scots Troy stone of 15 libs. its true content therefore must be 180 libs. and no more, as all along has been said. And the one fourth of increase in the Lispund, as mentioned above, viz. from 12 libs. to 15, excludes all suspicion of a diminution in the Barrel; for the 12 Lispunds of 15 libs. each, its content at this time, being adequate to the 15 Lispunds of 12 libs. each, which it formerly contained, the content of the Barrel is therefore the same. I observe farther, if the Mark at first was half a pound, as all the world over (except in these islands) it still continues; or if the Pund originally

† See the Books of *regiam majestatem*, under the Assize of Weights and Measures, and under the Statutes of King Robert III. Cap. 22. Also Par. 3. Cap. 57. and Par. 4. Cap. 69. Ja. I. Also Par. 3. Cap. 33. Ja. IV. and Par. 7. Cap. 114. Ja. V.

‡ Book 42. Numb. 149, of the Great Seal Register.

ly was 12 libs. as in Norway it still continues, then was the Barrel from the beginning 180 libs. and no more. But to exclude all exceptions on this head, let us for a moment only look forward, and from the medium of the Barrel, that certain mark and criterion of the truth, as will afterwards appear, take a general survey of the whole increase of our weights from first to last. Before the weights were augmented, the barrel was capacious of fifteen Lispunds. In the 1584, when the first increase appeared, it could only contain twelve. About the beginning of the next century, and from thence generally to the year 1712, it could hold but ten Lispunds: afterwards but eight Lispunds; and now at this present time (if the Earl's testimony is admitted†) but six. Now this difference in the number of Lispunds, which at different times the Barrel contained, can only be owing to one of these causes; either to a continued decrease in the Barrel, a continued increase in the Lispund, or partly to both. If we say it is owing to a continued decrease in the Barrel, then should the content of our barrel at present be to the content of the original Barrel, as six to fifteen, or two to five, and the present decayed Barrel, by consequence, little more than one third of the original, which in fact is not true. If we say that the difference, peradventure, is not all owing to a decrease in the Barrel, but in part only, yet neither will this do, because, if at all it were owing to such decrease, then should the content of our present Barrel be so much less than that of the original Barrel; which in fact is not true neither, being still capacious of 180 libs. as much as at first. From all which it follows, that as the difference in the number of Lispunds, which at different times the Barrel contained, is not owing to any decrease in the Barrel, it must therefore be owing to a continued increase in the Lispund, viz. from 12 libs. the original Lispund,

† For if the present Mark, as his Lordship says, is about 20 Ounces, then is the Lispund about 30 libs. and the Barrel by consequence capacious of six Lispunds only.

pund, to 28 or 30 libs. (as the Earl says) the present spurious Lispund. And this, I think, seems self-evident, and like some of our former arguments, to carry its own proof and conviction with it; six of these spurious Lispunds, which fill the Barrel at present, being adequate to the fifteen equal Lispunds which filled it at first; and consequently to the true content of that Barrel, whose capacity has not varied from what at first it is shewn to have been.

Moreover, as the Barrel is made by known rules, and its standard fixed by measure as well as by weight, under such checks, it could not well vary, like the other weights, which are not so fenced. Of liquids, such as oil, it contains sixty Scots pints, or seven gallons and a half, besides two or three supernumerary pints, allowed for leakage and refuse. This in the Orknays makes the standard of the Barrel in measure; and this, as the Earl himself has proved†, makes the standard of the Barrel in Shetland also. A gallon of oil or butter, which is the same, weighs twenty four libs. therefore seven gallons and a half must weigh 180 libs the present as well as the prime standard of the Barrel in weight. And thus the true standard of the Barrel continuing the same, which proves the mobility to have been all in the Lispund, we shall endeavour the more closely to keep sight of the Barrel, and, like a polar star, to steer by it in the rest of our course.

But because another pretence may be urged against the uniformity of the Barrel, we shall here remove it, tho' not in due place, that so it may not afterwards interrupt the thread of our proof.

" However the Barrel in former times, might have " been capacious of 180 libs only, yet certain it is, that " of late years it contained 200 libs." The late Earl's servants, it is true, took upon them, without consulting any person concerned, to make a rule for themselves, that no butter should be received in Barrels, under 200 weight the Barrel. Till that time the rule had

† See in Dury's Office the judicial Rental of the Estate of Quendal, p. 164. 165.

had been to fill the Barrel up to the head, in such manner as no vacancies might be perceived when pierced with an augar. And in this way 180 libs of butter, moderately pack'd, is indeed sufficient to fill the Barrel. But instead of this, when 20 libs more were added, all the force of men's hands, and also of those heavy weights in the Earl's store-house, made use of for that purpose, could not cram so uncommon a quantity into the Barrel, unless the butter was of a better quality than used, or ought, to be paid. And upon this such murmurings ensued, and daily clamour, that the Barrel at last was received in the ordinary way. The laying down the thing therefore in this manner, is a proof of the error the Earl's servants were in when they took it up; and this, I think, is an argument for the continuity of the standard, instead of being an objection against it. To return:

The Meil and the Last proportionably increased with the Mark and the Lispund.

Having shewn that the Lispund or Seteen, (and the Mark of course) about the year 1584, had increased one fourth, viz. from twelve to fifteen, we shall next shew, at the same time, a proportionable increase in the Meil and the Last. In an authentick rental of the provostry of Orknay, the same year 1584, in the provost's own hand-writing, and under his subscription, it is noted thus: "Memorandum, 24 Meils beir, "upon the malt-pundar, make an Last, and ilk Last "malt makis 18 bollis Scottis measure." Now the Last of malt, as may be seen above, page 32. is equal to, or the same as, one and a third Lasts of bear, which therefore made 18 Scots Bolls also. And thus the Last of bear upon the malt-pundar, or 24 Meils, being then equal to thirteen and a half Scots Bolls, the Meil by consequence was nine sixteenths of the Boll, or somewhat more than half a Boll. And being formerly but three sevenths of the Boll, or somewhat under, as shewn above, it follows, "That under this Earl, as the Lispund "(and the Mark of course) was either raised, or had "grown a complete fourth part, viz. the Mark, from 8 "ounces to 10, and the Lispund from 12 libs to 15; "so the Meil and the Last have increased in proportion."

Sum of the Evidence.

SECT. III.

That under Patrick *Earl* of *Orknay, the Weights of this Country suffered a new Increase, the* Mark *and the* Lispund *being yet farther raised, or having yet farther grown one fifth part more,* viz. *the spurious* Mark, *from* 10 *Ounces to* 12; *the spurious* Lispund, *from* 15 libs *to* 18, *and the* Meil *and the* Last *in proportion.*

1591, Patrick Earl of Orknay. TO Robert Earl of Orknay succeeded his son Patrick, a man of the same kidney with his father. He is well known in story; but our proofs notwithstanding shall be fetched from records, as more unexceptionable. And first, in the Books of Privy Council, of him are these following memorials.

1608, Dec. 27. "A charge be open proclamation against the Erle of "Orknay, to compear upon the second of March, to "answer to the complaints of the poor distressit people "of Orknay." And again,

1609, July 4. "The Lords of Secret Council having heard the report "of the Commissioners, who were appointed to examine "the processes of the poor complainers of Orknay, against "the Erle of Orknay, and having heard, seen, and consi- "dered the probation which has been received in the said "processes, and being advised therewith, the said lords "for the present will give no final sentence thereup- "on, bot will be advised with his Majesty thereanent; "and in the mean time, ordains the said Erle to "be remitted to sure ward in the Castle of Edinburgh, "therein to remain upon his own expenses, ay and "while his Majesty be acquainted with the processes, "and return his will and pleasure thereanent."

1611, October. 1. And in another record, where mention is made of this Earl, it follows, —— "Who has been this lang "time prisoner, and at commandment, within the "Castle of Edinburgh, as he is yet, for his violent and "masterful oppressions, committed upon his Majesty's "peaceable and good subjects, within the bounds of "Orknay

" Orknay and Zetland." Or as it is more fully expressed in a temporary commission to the Bishop of Orknay; " Forsameikle as the government of the countries of " Orknay and Zetland, has been thir many years by- " gone, very far interrupted, neglected, and over-seen, " partly be the iniquity of the bypast times, and part- " ly be the rebellion of Patrick Erle of Orknay, whom his " Majesty authorised with his royal power and commis- " sion within the said bounds; who abusing that credit " and trust, whilk his Majesty reposit in him, did under " colour of his Majesty's princely authority, commit " many great enormities and insolences upon his Ma- " jesty's poor people, inhabitants within the said bounds; " whereupon many complaints has been made, and " sufficiently qualified, in presence of the lords of his " Majesty's Privy Council, for the whilk the said Erle " is now prisoner within the Castle of Dumbarton——" 1612, June 16.

Of what nature those complaints were, which had been so qualified, we cannot certainly say, the records here quoted being so broken and interrupted, that, in the general, we are only certain of manifold oppressions and enormities. And, amongst the number of these enormities, if the augmentation of the weights was not one, yet at least, that under this Earl they truly had increased, is thus made evident.

I. In a manuscript collection from the records of Parliament†, &c., falling in with the period we are now under, viz. the beginning of the seventeenth century‡, the Orknay Last at that time, and its sub-divisions, are with great nicety and exactness reduced into Scots measure. And then, as to the Orknay Barrel (page 181,) it is said——" 24 Marks butter make a Lispund, and " 10 Lispunds Orknay butter make a Barrel." Therefore the Lispund then, being only a tenth part of the Barrel, instead of a twelfth part, as under the former Earl, it must have grown, or been raised, one fifth, viz. from 15 libs to 18; because 10 Lispunds must consist of The Lispund, and consequently the Mark, yet further increased, viz. one fifth more.

† A work of the Lord Haddington's, now in the Advocates' Library, Edin. A. 4, 7.

‡ For so the dates make appear, particularly page 1. and 88.

of 18 libs each, to make a Barrel, which is 180 libs, as shewn above.

II. By an account made with the Earl himself, for the crown-rent of the island Stronsa, anno 1608, in the hand-writing of the time it refers to, and under the subscription of the accountant;..." The Compter " exoneris him of 40 Lispund scat-butter, packit in four " barrellis, and sent in upon the shallop to Kirkwal, to " Magnus Hueston, as his buik of resait beirs, —— 40 " Lispund." Thus the four barrels contained 10 Lispunds each, and no more, instead of 12, as under the former Earl; consequently 10 Lispunds now were equal to 12 then, which makes the increase one fifth, as said above.

III. Also in the same account, the price of the Barrel is all over stated at 24 libs, whilst the price of the Lispund is all over 2 *lib.* 8*s.* which is ten times included in the price of the Barrel. And in an original grant, made by the Bishop of Orknay, to one William Irvine, June 10. 1615, recorded and confirmed in the Great Seal Register, Book 47. Num. 489. the Reddendo is, —— " Ane Barrel twa Lispund butter, or the sum " of 26 *lib.* 13*s.* 4*d.* for the price of the said Barrel " butter, and 53*s.* 4*d.* for the price of ilk Lispund of " the said twa Lispund butter." And thus, the price of the Lispund, under this Earl, being ten times included in the price of the Barrel, which makes the Lispund a 10th part of the Barrel, instead of the 12th part, as under the former Earl; the Lispund therefore must have grown, or been raised, from 15 libs to 18, and the Mark by consequence from 10 ounces to 12.

To shew a like increase in the Meil and the Last.

And the Meil and the Last in Proportion.

1. By the forementioned account with the Earl, anno 1608, "The Compter exoneris him of twa Chalder " beir, extending to thré Last beir —— as my Lordis " ticket and his discharge beirs. —— 3 Last beir." And again... " Of ane Chalder beir, delyverit to James " Scollay, —— as his ticket beirs, extending to 1 Last " 12 Meils beir." Now if 2 Chalders bear, or twice 16 Bolls, extended then to 3 Orknay Lasts; and 1 Chalder,

der, which is the same thing, to a Last and a half, *i. e.* bear-pundar weight, (for so the account shews) it follows, that the Last of bear on the malt-pundar, which is the same with a Last and a half on the bear-pundar, must have equalled the Chalder also: consequently the Orknay Meil, which is the 24th part of the Last, being in like manner the 24th part of a Chalder, or of 16 bolls, was therefore, at this time, two thirds of the Scots Boll.

II. In the Book of Collections, from the Records of Parliament &c., before quoted, the proportion of Orknay weight to Scots measure, about the year 1611, is thus stated: "1 Last beer, upon

	Boll.	*Fir.*	*P.*	*Lip.*
" the beer-pundar, is just the twa				
" part of an Chalder, that is -	10	2	2	$2\frac{1}{2}\frac{1}{4}$
" Half-last is - - - -	5	0	5	$1\frac{1}{4}\frac{1}{8}$
" 6 Meils beer - - - -	2	2	2	$2\frac{1}{2}$
" 1 Meil - - - - -	0	0	7	$\frac{1}{2}\frac{1}{3}$
" 1 Seteen - - - -	0	0	1	$\frac{1}{6}$"

Now if a Last of bear upon the bear-punder, was then "just the twa part of an Chalder, that is 10 Bolls 2 Fir-"lots, 2 pecks, $2\frac{1}{2}\frac{1}{4}$ Lip." it follows, that a Last of bear upon the malt-pundar, which is a Last and a half upon the bear-pundar, was just a whole Chalder, that is 16 Bolls; and the Orknay Meil, by consequence, two thirds of the Scots Boll, as above.

III. Again, in the same book, under the article of conversions of cost into bear, it is said —— "Echteen "Meils malt upon the malt-pundar, makes a Chalder "beer." Therefore the Last of bear, or 24 malt-pundar Meils, which is the same with 18 Meils malt, must make a chalder also; and the Meil by consequence being two thirds of the boll, instead of nine sixteenths, as under the former period, this makes the increase of the Meil and the Last, as nearly the same with that of the Mark and the Lispund, as the reduction of weight into measure will admit.

Nor is it any argument, as some would have it, because in an action before the Steward of Orknay, January 24th 1623, the libel bears, that 28 Meils, 5 Seteens bear, 1623.

bear, upon the malt-pundar, extended in the South-measure, *i. e.* the measure of Arbroth and Montrose, to 22 Bolls; that therefore 28, or rather 29 Orknay Meils, were then indeed equal to 22 Scots Bolls, and the Meil by consequence to three fourths of a Boll, instead of two thirds, as above. 1. Because a libel or summons is not always strictly laid according to truth, but oft-times amplifies things, and extends them beyond truth. 2. Because the sentence upon this libel is partly disconform to the libel itself, which is thereby in the part remitted; but whether for the excess of the price libelled, or the excess of the measure libelled, does not appear. And lastly, tho' the sentence upon this libel had remitted nothing of what was claimed, yet is it the sentence of a judge, viz. of the farmer of these islands, who was himself too much interested to be scrupulously upright in the matter; a sentence at least, in contradiction to his own practice the very next year after, when, treating for himself, he sets things to rights again; not by a judgment, depending upon adventitious circumstances, but what is much stronger, by a deliberate agreement, as in the following article.

1624. IV. 1624, September 28. The farmer of these islands Sir John Buchanan of Scotscraig, enters into contract for the sale of his rents this year; whereby, for the victual of this country, the buyer is to pay..." 10,000 " lib. Scots money, as the price of fivescore Lasts of " bear, counting ane hundred punds money foresaid, " for ilk Last or Chalder thereof, upon the malt-pun-" dar." Hence I observe two things, 1. That the Orknay Last was then at par with the Scots Chalder, and the Meil, consequently, with two thirds of the Scots Boll. And 2. That our Last, when thus even with the Scots Chalder, came of course to be expressed by it, as an equivalent and explanatory term; just so as our Lispund, when even with the Scots Stone, came of course to be expressed by it, as we have seen above, p. 38.

V. These proofs, I think, afford the utmost testimony, stronger by far than history or authorities could do. I will close them, however, with what Sir John Skene delivers, in his book *De verb. sig.* under the word

word Serplath, viz. That of malt and meal, called cost, the Orknay Last makes a Scotish Chalder; that a Last and a half of Bear, containing thirty six Meils [*i. e.* bear-pundar meils] make a Chalder also; and that a Stone and two Pounds Scottish [*i. e.* eighteen pound-weight] make the Orknay Lispund. All which so exactly agrees with the proofs here exhibited, falling in also with the same Æra to which they belong †, that the harmony and good correspondence betwixt these proofs and Sir John's authority, reciprocally strengthen and confirm each other. Nor is it any argument, because Sir John errs in the conclusion, when he writes, "that fifeteen Lispunds make a Barrel," instead of ten Lispunds, that therefore what he had advanced before is erroneous also. For if this is not a typographical error, like what is said just before, viz. "That six "Seteens make a Lispund," instead of one Seteen (the 6th figure for the 1st) it must undoubtedly refer to the prime and original Lispund of 12 libs. it being then true, and then only. "that fifteen Lispunds made a "Barrel," as elsewhere is shewn. And to apply these words to any other meaning, is to make this writer oppose a variety of concurring facts, in contradiction to which, his authority, and a hundred more, would be to no purpose.

And thus, I hope, it is made appear, That as under Earl Robert of Orknay, the Mark was either raised, or had grown, from 8 ounces to 10, the Lispund, from 12 libs. to 15, and the Meil and the Last in proportion; so now, "under his son Patrick, the "Lispund (and the Mark of course) was yet farther "raised, or had yet farther grown, one fifth part "more, viz. the spurious Mark, from 10 ounces to "12, the spurious Lispund, from 15 libs. to 18, and "the Meil and the Last in proportion." An increase at

Sum of the Evidence.

† For Sir John wrote towards the close of the 16th Century, viz. in the Year 1597, when he also concludes his collection of the Laws, and his table of the Scots Kings, saying, "this year "1597. is the 31st. of the reign of Ja. VI."

at which these weights continued, at least till the year 1624 as shewn above; and to which, after various fluctuations, they twice also rolled back, before the year 1707 as next shall be shewn.

SECT. IV.

After various Fluctuations from the State and Condition which these Weights were brought to, under the last Earl of Orknay, *chiefly by means of some wicked Attempts still more to increase them, they twice returned to the same State and condition before the year* 1707.

EARL Patrick of the Orknays, having added rebellion to his other crimes, fell at last a sacrifice to justice; and then all redress of his wrongs, as it usually happens, was forgot in his punishment. After his death, these islands were again let out to farmers, till the year 1643. when granted for support of the family of Morton, then labouring under very ill circumstances †. William, who procured the first gift, died soon after. His son Robert quickly followed him; and William II. succeeded in their room.

1643.

William Earl of Morton.

The Iron-Standard; and the Standard-Weight of 16 libs.

In his time, there was a steel-yard of iron, commonly called the Iron Standard, and a brass weight of sixteen libs. probably the counter-balance of it, deposited with the assayer, as a standard for framing the weights to; and this, very possibly, since the time of Earl Robert of Orknay, when the Lispund also, or Malt-Seteen weight, consisted of 15 Troy Pounds, or 16 pound Scotish, which then were the same. For after the first standard was left, or destroyed, the moveable weight, or counter-balance, of the Assize-pundar, was next assumed for the Assize-weight, or Regulator; and being of the same weight with the centrical Lispund

† See Scotstarvat's staggering state of the Scottish Statesmen, in his account of William the first Grantee; also decreet for the Earl of Morton, against Brown and others, Feb. 28. 1718.

pund (for this is a clear rule) the other weights were all set off and proportioned by it, as by the assize or standard to which they were framed. Therefore, when this William of Morton made his entry upon the islands, however roving and variable the weights might then be, yet the standard-weight of the country, or the counter-balance of the Assize-steelyard, which is the same, weighing only sixteen libs. as afterwards will occur, the reputed Lispund of the time is thereby determined, being sixteen libs. also, and the other weights all in proportion.

Notwithstanding this, in the necessitous circumstances of affairs under the protectorate, when the discharge of men's duty to the King had rendered them obnoxious to the resentment of the usurper, and of those governors whom he had set over them; in these times (I say) a new standard is sought to be set up, consisting of 28 libs. in opposition to the brass standard of 16 libs. which subsisted at the time: And the occasion thus. Under Earl Robert of the Orknays, when the first deviation was made from the Norvegian or primitive standard, the Orknay Lispund or Malt-seteen weight, being then at Par with the Troy-stone of 15 libs. or the Scots-stone of sixteen libs. which was the same, it came of course to be indifferently termed, Stone or Lispund, *Petra sive Lispunda*, as shewn above. Afterwards, under his son Patrick, a new stone happened to be known in Scotland, improperly termed the Trone-stone †, consisting of nineteen libs. or nineteen and one half; which furnished Patrick with a pretence, that the Orknay Lispund, still equal to the Scots or Troy Stone, should consist of nineteen libs. also; only because it was termed Stone, as well as Lispund, though the new Trone-stone does not appear to have been known when first it received that appellation. But as human projects

 are

† For the Trone (or Standard) Stone properly so called, was no other than the Troy Stone, of fifteen libs. See Fleta, lib. ii. cap. 12. and Blount's Law Dict. under the word Weights. Also, in the Books of *Regiam majestatem*, see the Assize of Weights and measures by K. Dav. I. and K. Rob. III. compared with *Iter Camer.* cap. 30. and the Statutes of Dav. II. cap. 39.

are often disappointed by unexpected causes, our Earl lost his life before the design could be quite carried into execution, having only lived to see the lispund advanced to eighteen libs. which indeed is a very near approach to all he seems to have aimed at. After the Trone-stone succeeded the stone of Dantzick, which Sir John Skene calls the Spruse (*i. e.* Prussian) Stone, consisting of twenty-eight libs. It was first introduced by some Scots merchants trading to the coasts of the Baltick, but of use only in mercantile business, particularly amongst ship masters, employed in the portage of bale and sack goods: Yet in the violent times of Cromwel's protectorate, when these islands are recorded to have suffered many wrongs and impositions, such as no other part of the Kingdom was subject to, it was enough for his deputies that it was termed Stone, to assume it as the standard of the Orknay Lispund, only because the Lispund also had been so termed for many years before.

1659, Feb. 4. A new Standard-Weight of 28 libs. set up by Cromwel's deputy.

"The justices of his Highness's peace for the shire "of Orknay and Shetland (says one of the governors) "being met in quarter sessions, ordered that the "whole Pundars and Bysmers within this shire be "justed conform to the Malt-seteen weight, which "being this day tried by two of the said justices, "and two of the baillies of Kirkwal, is found to "weigh twenty-eight libs. conform to the French "weights." And why twenty-eight libs. rather than sixteen libs. according to the Assize-weight mentioned above? Because, by the volubility of the weights after the year 1624. where, in the last section, we left them, the Lispund, or Malt-seteen, *i. e.* the moveable weight of some particular Malt-pundar (which, on that Pundar, is the same with the Lispund, or Malt-seteen) had, by little and little, wrought its way, or on set purpose been raised, to this exorbitant height: An argument this, entirely grounded upon the weight of some particular balance, without any regard to the whole, as by the paper itself plainly appears.

Besides,

Besides, the assayer, or pundar-maker, is but newly ordained custodier of this regulator, as of a thing which had not been in his custody, nor a rule to him before. " It is likewise ordered (continues the govern- " or) that George Mouat be appointed keeper of the " said weights, and juster thereof accordingly:" Where- as the true assize-weight of the time, containing six- teen libs. was then already in his keeping, along with the iron-standard, *i. e.* the assize-pundar of the country, as afterwards will be seen.

I observe farther, that on this order nothing can be built, having been superseded upon the King's restora- tion, alike with the laws and ordinances enacted by the usurpers, and those in authority under them. Nor can any thing be built upon this following regulation, proposed by the other governor, when deputy only to Morton, having met with so ill reception, that it took no effect neither.

But superseded upon the King's Restoration.

Curia capitalis vicecomitatûs Orcaden. *&* Zetland. *tenta apud* Kirkwal, *in templo* Sancti Magni *ibid. per honorabilem verum* Patricium Blair *de* Little-Blair, *principalem vicecomitem deputatum ejusdem vicecomitat.* 12. Novem. *anno* 1661.

1661, Novem. 12.

" THE quhilk day: In presence of Patrick Blair of " Little-Blair, Principal Sheriff of Orknay and " Zetland, sitting in judgment, compeared divers " of the gentlemen of the said sheriffdom, and gave " in a general complaint, anent the unjust measures " and weights of Pundars, Bysmers, and other " weights within the same, to the great prejudice " of the lieges therein, as the said complaint in it- " self at length bears: Wherewith the said Sheriff " being well and ripely advised, he, with consent of " the remanent gentry and heritors of the country, " did unanimously refer to the Commissioners of Excise, " to see all the Pundars, Weights, Bysmers, and Mea-

And proposed again by Morton's Deputy.

" sures

" sures †, justed and regulate according to twenty-eight " libs. for the Seteen: and to report and give in an " account of their diligence at the next Head-court, " in January next. Likeas, they joined with the said " commissioners, William Young, keeper of the Earl " of Morton's girnel, and George Smith, merchant; " and hereby referred to the said commissioners who " should be their juster, and what should be his price, " and to give an account betwixt and the day above " written ‡."

1662, Jan. 15. The Head-court met; when the few who were present, though apparently in Morton's interest, yet so far slighted this project of his deputy, as to take no notice of it; the imposition, I suppose, appearing so gross, that men (they thought) would not suffer, but rise and exert their force against it. Therefore, instead of a great change, like what the Sheriff-depute proposed, they seek only to introduce for a standard, the Pundar used in his master's store-house, which indeed might be larger than the Assize-pundar of the country, though not so excessively but the difference perhaps might pass unheeded. "It was ordained (say they) by the com-

But contradicted by the country.

Morton's Pundar set up for a standard.

" missioners, with consent of the country Udalers " and commons then present, that the whole Pundars " and Bysmers within the town of Kirkwal, Mainland, " North and South Isles of Orknay, should be righted " and justed according to my Lord Morton's Pundar " in the New-house, and that the commissioners would " be pleased to pass an act thereupon at their first " meeting‡."

—Jan. 29. The commissioners met again, having been conveened by the Sheriff-depute himself, who also sat with them.

† The Bull (to wit) and the Kan; not known in the Orknays, but in Shetland only.

‡ This paper is not an original, but an extract only, signed by one R. Drummond, of whom we know nothing, nor of the warrant of his extract.

‡ Transactions of the Commissioners of Excise, Fol. 14. A register of this country, beginning in December 1660 about seven months after the King was proclaimed and restored. See Act 14. Par. 1. ch. II.

them. But instead of authorising the order of the last meeting, as recommended, they recur directly to the Iron-standard, or the Assize-pundar of the country, ordaining all the Pundars of the islands to be made and assayed by it, "The Commissioners ordain, that conform to "the Iron-standard, all the Pundars within the town "of Kirkwal, parishes and Isles of Orknay, should be "made and justed by George Mouat indweller in Kirk-"wal †." And as for Morton's Pundar, how nearly soever it might agree with the Iron-standard, yet is it not proposed as a standard, but only as a model or pattern to the assayer, that some additional iron-work, then thought requisite, might be fashioned according to it. "The said George Mouat (it follows) is in every thing "to conform the said Pundars and Bysmers to my Lord "Morton's Pundar and Bysmer in the new house of "Kirkwal." But how to conform them?——"With "a substantial plate of iron upon the head of the Pun-"dar, where the iron stapple goes in; with another sub-"stantial plate of iron round about the axle-tree, in-"folding the whole shaft of the Pundar therein; and "the axle-tree and two nuts to be made of good steel "well wrought." Thus only referring to the workmanship of the irons, being better guarded (as they thought) against fallacy, or more quick on the axle, than usual.

But instead of it, the Assize-Pundar restored.

And Morton's Pundar proposed for the Model only.

But the commissioners only thought so: For in less than a twelvemonth they were taught by experience, that when the irons were fashioned according the workmanship of Morton's pundar, the weights could neither be brought to an uniformity, nor reduced to an agreement with the Iron-standard. And the inconveniency of following any rule but this, being not only felt, but generally complained of, the Sheriff-depute was obliged to call the commissioners again, and in a meeting where himself sat preses, to recal the order of the last meeting, except the first part only, ordaining Pundars and Bysmers to be made and adjusted according

† Excise-register before quoted, Fol. 14.

Nov. 14. The Assize-pundar, or Iron-standard confirmed.

ing to the Iron-standard. "Upon a great complaint "(say the commissioners) against the new form of "Pundars and Bysmers, their ticklishness, variance, "and uncertainty, both in town and country; and "George Mouat maker of them being called before us, "declared, that considering the smiths here in town "could not frame the irons as was formerly ordered, "so that he could hardly promise to make them that "they should all agree together conform to the Stan-"dard; therefore the commissioners —— regarding the "good days and peace of the country, ordered all the "pundars and bysmers, made or to be made henceforth "within the country of Orknay, to be reduced to that "old form used before the change made in anno * * *, "and ordain orders to be emitted to the several bai-"lies, for causing all the pundars and bysmers under "their several bailiaries to be brought in to George "Mouat, to be new-formed as said is, who is to be "countable that they shall agree and be conform to the "Standard †."

As for the balance of this Standard, or, which is the same, the proper assize-weight of this time, in order to render it equally durable, and as little liable to fallacy as the Standard itself, which was of iron, an assize-weight of brass, we find, had been thought necessary. For in a very full meeting of the commissioners, the fullest by far in all this record, and also of the fouds or parish-bailiffs all over the islands, "The whole "table ordains their clerk to pay to David Craigie of "Over-Sanda, 20 marks Scots for [the] sixteen Pound "Weight of Brass, which is in the custody of George "Mouat our juster's hand, for regulating the weights of "the country.‡" And as this sixteen Pounds, or this Stone-weight of Brass, was then in the custody of the assayer, for regulating the weights of the country, it thence appears to have been the regulator, or assize-weight of the time. And the regulator, or assize-weight

1663, Dec. 3. The Standard-weight 16 libs.

† Excise-register, Nov. 14. 1662.
‡ Ibid. Dec. 3. 1663.

weight of the time, being the proper standard of the Lispund for the time, the Lispund therefore, by these regulations, must have weighed sixteen libs., or a Stone Scottish, and no more †.

But this, it seems, did not relish with Morton, he having resolved once more to attempt the Spruse-stone, after the example of Cromwel's deputy, without looking into the error and unwarrantableness of the precedent. For in another meeting, about a twelvemonth after, there being present himself only, his deputy, his factor, and five other members, all of his party, the Standard-weight (or Scots-stone) of 16 libs. is by them countermanded, and the Spruse-stone, of 28 libs., authorised in its place. "They ordain George Mouat car- 1664, Nov. 10.
"penter, to deliver up that Weight of Brass to Arthur "Baikie he was entrusted with by the commissioners, "and the clerk to give him a warrant under the "preses's hand for that effect. Sicklike, it is ordain- Morton again attempts the great Standard-weight of 28 libs.
"ed by the said commissioners, that Arthur Baikie "shall bring home from the south, with the first occa- "sion, for the publick use of the country, an GREAT "Weight of Brass or Copper, containing 28 lib. weight‡." A Proof this, of there being no such assize-weight then in the country, when yet it remained to be imported from abroad, notwithstanding the mock-regulations of 1659 and 1661.

Whether Morton's great Weight of 28 libs. designed for the assize-weight, instead of the Brass-weight of 16 libs., the assize-weight of the time, was ever thought of again, or whether, like an untimely birth, it died before production, our record here leaving us, I cannot say, nor is it material to enquire. It is enough for our purpose, that things at last returned to the state they were in, anno 1624, Morton's invasion of the weight of the time proving no less fruitless than that which his deputy had attempted before. For had his design been carried into execution, this would have appeared in its effects But to no purpose.

† See this argument further pursued in the beginning of the next section.

‡ Excise-register Nov. 10. 1664.

fects and consequences. The Barrel (for instance) which formerly held 10 Lispunds, of 18 libs. each, in this case, could not have held quite 6 Lispunds and a half, of 28 libs. each. Also the Meil, formerly equal to two thirds of the Scots Boll, would then have been more than a whole Boll; and the Last, formerly the same with the Scots Chalder, more than a Chalder and a half, which will not be alledged. Therefore, however, Morton's order, or the orders rather of a juncto, watching their opportunity of stealing a march upon the country, may prove an attempt of assuming an arbitrary standard, they do not prove, that indeed an arbitrary standard was assumed, having in this no evidence *ab extra* to support them: And yet, by this only it is, viz. the general and corresponding influence of so great a change upon the weights, that such proof can be brought; an order alone, without a visive and corresponding effect, being no more than an unsuccessful attempt, which is not denied.

But some still object the almost sovereign authority of Morton in these parts, "That being armed with all the "power of the Crown, he did what he pleased, and "would not therefore fail, while his power lasted, of "exacting obedience to his own orders, however it "may have fared with them upon the resumption of his "rights, anno 1669." To this I answer two things; 1. If the present Morton would carry this point, it concerns his lordship to prove it: For he should not take that for granted which he knows may be denied. And 2. Admitting the objection, viz. a consequent practice from the year 1664, when the last change was attempted, to the year 1669, when Morton's power ceased, yet would this be no argument for continuing the false standard, but on the contrary, a very strong argument against it; because when Morton's right was resumed, things, we shall shew, returned to the state they were in under the last Earl of Orknay; and this proving more and more the mobility of the false standard, leads directly to the true standard, instead of being an objection against it.

Nor

Nor is this argument of any consideration, " That " notwithstanding the contrast of standards, and the " changeableness of the weights, after the year 1659, " yet according to what is said, by Cromwel's deputy, " the Lispund, or Malt-seteen, being then 28 libs, the " presumption is, that it was so before, perhaps for a " length of time sufficient to abrogate the true standard, " and to constitute another in its place."

1. He who would make good this argument, must tell us what length of time is sufficient to abrogate that which is true, and to make that true which is false; for if it be granted, as undoubtedly it must, that no length of time can do this, or what is the same, that no length of time can alter, much less abrogate, the nature of things, then is this a foolish objection against the true standard, being indeed an invincible argument for recurring to it.

2. Tho' it were true, that time could alter, and even abrogate, the nature of things, and tho' the order of Cromwel's deputy should also be sustained in the utmost latitude, yet the arrival and continuity of the Lispund at 28 libs, before the year 1659, and for a length of time too, sufficient to constitute this for the standard, is surely a fact that deserves some proof, and so much the more that the whole force of the objection rests upon it. But if this, notwithstanding, is more than can be proved, which I am sure it is, then the whole evidence of the objection resolves into a simple averment; and to the simple averment of a fact, without one proof, or one convincing argument, to enforce the belief of it, no answer needs be given but a contrary averment.

3. If the slow and gradual increase of the weights in after times, points out the manner of their increase in former times, then is this contrary averment well founded. For if the increase was not effected all at once, by open force, but leisurely only, and by craft, this takes away the foundation of the objection, by disproving the supposed length of time on which it is grounded. From the year 1659 then, to the year 1664, or, if you will, to the 1669, the weights were never

never constant and uniform, as we have seen, but roving always and variable, sometimes on the increase, and sometimes on the wane, as Morton's faction grew or declined †. But in the year 1669, when Morton was removed, and the country by that means had recovered some quiet, the weights at once resolved to the state they were in, anno 1624, being then the same as under the last Earl of Orknay, the Lispund, viz. 18 libs, and the other weights in proportion. In this state they continued till the year 1681, or about that time, as presently will appear; but from thence to the year 1691, they gradually increased, or were gradually raised, a third part more, the centrical Lispund being then 24 libs. And when imperceptibly they had arrived at this height, then were they fixed by a law, which afterwards shall be mentioned; not bravely however, and all at once, for this would have opened men's eyes on a sudden, but after this short-sighted and unguarded people, by the neglect of a slow and gradual increase, had given way to it. So also, about the year 1738, when the same thing was acted over again. Before the year 1707, the Lispund had rolled back to 18 libs, as formerly, which shall be shewn, but from that time to the present, that is, under the late Earls of Morton, so unsettled have the weights been, and so extravagant their motions, that it will be difficult to shew they have had any stability at all, or that even their proportions have at any time been preserved. From 18 libs, the weight of the Lispund about the year 1707, and for some years before, it grew by degrees, or by degrees was augmented, to 28 or 30 libs, which the Earl pretends is the weight of the Lispund at present; and when step by step it had slowly arrived as it were, at its meridian, then only was it fixed, and no sooner, by a new law made about the year 1738. For then was it that the Lispund was esta-

† Hence these continued changes of the Pundars and Bysmers all over the islands, with which the record above quoted so much abounds; particularly amidst that contrast of standards, almost at once subsisting from the year 1659, to the year 1664, the Pundars and Bysmers being always called in and changed, according as this or that standard prevailed.

established at 28 or 30 libs, I know not which, and the other weights in proportion; not with a high hand, and by the lump, for this would not have done, but after the Earl's servants had taken great pains to deceive the country, by compassing the thing gradually. And just so in the year 1659. For a tract of time before, very probably from the year 1624, or soon after, the weights had never been the same, but in a perpetual flux and motion; and when at last, by a slow and continued increase, the Lispund, from 18 libs, or more probably from 16 libs, had wrought its way to 28 libs, then was this proposed for the standard; but not till the Lispund, or some noted one at least, had byi nsensible gradations, been carried to this height. For a transition so excessive, attempted at one leap, would be a forced, violent and unnatural conceit; whereas, by a leisurely progression, the belief of it is easy, natural, and analogous to what afterwards happened, I believe, to what always happened. And if the increase of the weights, from the year 1624, to the year 1659, was not bravely attempted, at once, but by a slow and gradual progression, then this overthrows the pretended continuity of any standard under that period, taking away the objection by the foundation, and leading back to the prime and original standard.

To go on: What was acted in the year 1659, was acted over again in the year 1691. After various fluxes and refluxes, the Lispund then appeared at 24 libs. And here Colonel Elphinston of Lopness, at once steward, justiciary, and admiral, as well as collector of the crown and bishop-rents of these islands, took upon him to fix it by a law, after the injurious practice of his predecessors. Having procured the consent of six merchants in Shetland, and five only of the landed interest, men yielding to the chain, to escape a worse fate, he found and enacted, "That the Bysmer, com- A new Standard-weight of 24 libs.
"monly called Lispund, of victual of all sorts, butter,
"feathers, and wool, ought to consist of 24 libs, each
"pound consisting of 16 Ounces, according to the pre-
"sent

" sent current weight within the Kingdom of Scotland†."

This law, or regulation, as some urge, " is made " in Shetland, and ought therefore to affect that part " of the stewartry only." But this, I own, is of no consideration; as the united Isles of Orknay and Shetland make but one stewartry, having left Norway together, and never been parted since. Besides, having the same customs, particularly the same weights, they were alike subject to the same regulations; and as every regulation made in the Orknays, equally affected the Isles of Shetland, so this regulation, though made in Shetland, equally affected the Isles of Orknay. To confirm this, I observe three things, 1. In a progressive grant of the bishop-lands of these islands, made to Earl Patrick of Orknay, anno 1660‡, the Lispund of Shetland is always expressed by the term Petra, as well as the Lispund of Orknay; which plainly proves, that as both islands make but one stewartry, so they had but one and the same Lispund. 2. The other regulations of 1659 and 1661, mentioned above, make no distinction between the weights of the united islands, but extend alike to both islands, which proves their weights the same. And the commissioners of excise, in their regulations, making no distinction neither, this is a farther confirmation, or a good negative Proof, of the same thing. And 3. When the Lispund was declared twenty-eight or thirty libs. anno 1738, as said above, this regulation was made in Shetland, as well as the other regulation, anno 1691, but though in Shetland only the Lispund was declared twenty eight or thirty libs. yet this of course became the reputed lispund of Orknay also. And so the Earl acknowledges in his memorial before quoted, when he makes the Mark in Orknay about twenty Ounces, and the Lispund, consequently, about twenty-eight of thirty libs. for this has no foundation, except in what we observed above, viz. That every regulation made in Shetland,

† Here our law-giver names an assayer also, after the example of his predecessors.

‡ Book 42, Number 149 of the Great Seal Register.

Shetland, equally affected the Isles of Orknay, as every regulation made in the Orknays, equally affected the Isles of Shetland; making both but one stewartry, which had never been parted, using the same weights, and being alike subject to the same regulations. This I do not deny. Nor shall I deny, but Lopness exacted obedience to his own law, as is said of Morton and his law, that is, whilst his power lasted. It may be so, for any thing I know; therefore, I say, I shall not deny it. Besides, as this is all that can be contended for, viz. a consequent practice for some years only, whoever will have it so, in this shall have no adversary.

But of no effect, or for a short while only.

All I am concerned for, and what is now our business to prove, is, the return of the Lispund to eighteen libs. first, after the year 1669, when Morton was outed, and again, after the year 1693, when Lopness was outed, notwithstanding the arbitrary regulations of 1664, and 1691, and the consequent practice supposed to attend them. And both these facts will appear thus: In the censual books, or accounts of the Crown-rent of these islands, kept by the farmers who succeeded the Earls of Morton, viz. a book in the year 1670, but for the year 1669, a book for the year 1671, and the books of 1675, 1677, 1679, and 1681, being all of the kind, perhaps, now extant, except what may be in the Earl's own possession, and all originals too, standing on full as good authority as his lordship can produce for any of his modern books†; in these books, I say, the Half-barrel always, whether butter or oil,

The Lispund returning to 18 libs. notwithstanding.

† The books here mentioned, kept by the farmers, contain a stated account with every individual land-lord. First, the *quantum* of his Crown-rent is entered, as a charge against him; then the payments made, or his discharge; and lastly, the balance, with the time and manner of its clearance. It is on the credit of such books, that the Earl at present grounds his action against those, who, upon the plea of false weights, have withdrawn their Crown-rents since the year 1736. And these books of the Earl's carry no evidence that is wanting in the farmers' books; whereas the books of the farmers, for the purpose we have adduced them, are supported by an evidence which the Earl's books want, viz. the testimony of two Crown-Chamberlains, as will be mentioned. And thus, what we prove by the farmers' books, is also, in a great measure, proved without them.

oil, is stated and expressed as five Lispunds, and the whole Barrel, as ten Lispunds, which makes the Lispund a tenth part of the Barrel, or eighteen Pound-weight. Also, every fractional Lispund is all over valued and stated as a tenth part of the Barrel, which is a distinct proof of the same thing. Moreover, in a rental of the island South-Ronaldsha, anno 1703, and another rental of the whole islands, anno 1704, both signed and attested by the Crown-Chamberlains for the time, not only are the fractional Lispunds summed up to ten, and then reduced to a barrel, as to the integer of which they are fractions, but in an explanatory table of the Orknay weights, annexed to the rental last mentioned, it is in express terms said, "An Last of butter or oil, "contains twelve Barrels; an Barrel contains ten "Lispunds; and an Lispund, twenty four Marks." All which considered, it is evident, that after the year 1669, when Morton was out of power, the Lispund returned to eighteen libs. and continued so, at least till the year 1681, notwithstanding the regulation of 1664. Also, that after the year 1693, when Lopness was out of power, the Lispund again came back to eighteen libs. and continued so, at least 'till the year 1704, notwithstanding the regulation of 1691.

And the Meil and the Last in Proportion.

In like manner, as to the Meil: In the censual book before mentioned, anno 1681. Elphinston of Lopness is charged for the waste-freight of some bear which he had not delivered, viz. twelve libs. Scots the Chalder, or 6*sh.* 8*d.* the Bear-pundar Meil. This makes the waste-freight of the Boll 15 *sh.* and the waste-freight of the Malt-pundar Meil 10 *sh.* And 10 *sh.* the waste-freight of the Malt-pundar Meil, being two thirds of 15 *sh.* the waste-freight of the Boll, the Malt-pundar Meil, therefore, was two thirds of a Boll. Also, in the explanatory table above mentioned, annexed to the rental of 1704, it is farther observed, "An Chalder of "bear contains thirty six Meils;" *i. e.* Bear-pundar Meils, as the rental itself shews; equal to twenty four Malt-pundar Meils. And in the other rental of 1703, thirty six Bear-pundar Meils are again converted into a Chalder,

Chalder, thus likewise made equal to twenty four Malt-pundar Meils. Therefore the Malt-pundar Meil must of course be the 24th part of a Chalder, or of 16 Bolls, *i. e.* two thirds of a Boll, as formerly. And thus it appears, that as the Lispund returned to 18 libs, notwithstanding the regulations of 1664 and 1691, so the Meil also, and the Last, came back in proportion.

Sum of the Evidence.

And so the sum of all is this, "That after various "fluctuations from the state and condition which these "weights were brought to, under the last Earl of Ork-"nay, chiefly by means of some fruitless attempts still "more to increase them, they twice returned to the "same state and condition, before the year 1707."

Then were these unfortunate islands again granted away for support of the family of Morton†; and then the weights, losing all stability again, arrive once more at their meridian, and pass out of sight.

SECT. V.

That under the late Earls of Morton, *viz. from the year 1707, so mutable have the Weights been, and so extravagant their motions, that almost all this period, having lost their Proportions, they have been out of ken.*

Instead of one known Standard-weight only.

After the first deviation from the Norvegian Standard, it appears to have been the practice, instead of a set of Standard-weights, to have but one regulator or Standard-weight only; and this also of solid metal, such as brass or copper, commensurate to the centrical Seteen or Lispund for the time. When the weights were brought back to the state they were in, anno 1584, whatever time this was done, the regulator then authorised was a brass-weight of 16 Scots Pounds, equal to 15 Troy Pounds, the weight of the Seteen or Lispund

† "For support of the family of Morton,...for the honourable "aliment and support of the family of Morton,...for preserving "the family of Morton," says the late Earl Robert of Morton. See the decreet for this Earl, against Brown and others, Feb. 28. 1718.

pund at that time. And when in place of this Standard-weight of 16 libs, a great Standard-weight was so greedily sought, as we have seen, it was not a weight corresponding to the advanced Meil, or the new radical Mark, that was thus proposed for the great Standard-weight; much less an entire pile of weights, decreasing from the Meil to the Mark respectively; but a weight corresponding to the advanced Seteen or Lispund only; from which the rest, as from their common center, were to be set off on all Pundars and Bysmers made or adjusted by the assayer. "It is ordained (says Mor-"ton) that Arthur Baikie shall bring home from the "South, with the first occasion, for the publick use of "the country, an great Weight of brass or copper, con-"taining 28 Pound Weight." A great Weight (to wit) commensurate to his own great Lispund, being to serve as a regulator, or governing weight, for setting off the lesser and greater corresponding weights by. And so also as to Cromwel's deputy: "It was ordered (says "he) that the whole Pundars and Bysmers within the "shire, be justed conform to the Malt-seteen Weight." And again, "That all the Pundars, Weights, Bysmers, "and Measures (says Morton's deputy) be justed "and regulate according to 28 libs for the Seteen." And in like manner, as to the regulation of 1691, "That the Bysmer, commonly called Lispund, of victu-"al of all sorts, butter, feathers, and wool, ought to "consist of 24 libs, each Pound consisting of 16 Oun-"ces, according to the present current weight within "the Kingdom of Scotland." All which regulations run into one another, and resolve themselves into this, that the weight of the Lispund or Seteen, the publick Standard-weight of the country, and likewise (if you will) the counter-balance of the Assize-steelyard or Pundar, were one and the same. When the Standard-weight of 16 libs, mentioned above, was deposited with the assayer, for regulating the weights of the country, this of course became the measure of the lispund, or Malt-seteen; and contrariwise, when the whole Pundars and Bysmers were ordered to be justed conform to the Malt-

Malt-seteen Weight, or according to 28 libs for the Seteen, this of course became the measure of the Standard-weight. Also, when in place of the Standard-weight of 16 libs, a new Standard-weight was authorised, consisting of 28 libs; this by consequence became the mass or quantity of the new Lispund: And contrariwise, when the Lispund was declared 24 libs, this by consequence became the mass or quantity of the new Standard-weight. All which proves, that as far back as we know, the practice was to have but one regulator or Standard-weight, and this a known weight too, the same with the Seteen or Lispund for the time.

While this practice continued, tho' it did not correct the perpetual mutation of the weights, it served however as a touch-stone, to prove every change as it happened; and some of the last race of farmers, or those who came after them, seeing the error of this, as a custom that might bring danger to their craft, took care therefore to set it aside; and instead of one known regulator, as before, to introduce a multitude of different bodies, stones, bones, bits of lead, and the like, not only unknown both as to number and weight, but without any regularity either of size or figure. And as this afforded the assayer (some obscure person who on set purpose is made custodier of these trumperies) an easy opportunity of falsifying them, either by changing or adding to their number as he pleased, or should be influenced, without even a possibility of being controuled; so thence it has come to pass, sometimes by running lead in the bones, and sometimes by changing or adding to the stones, that the weights henceforth have never been the same, but more roving and voluble than at any time before.

An undetermined Number of ludicrous Standard assumed.

By continual Additions made more ludicrous.

The first change that occurs was under James Earl of Morton, about the year 1712; to instruct which, we must begin with a transaction of the year 1743. When these mingle-mangle Standards were brought in question by a meeting then conveened by the Earl; this meeting, who had never seen such riff-raff before, nor indeed heard that such things were, called the assayer (Tho-

1712, The first Addition.

mas Aitken by name) before the Dean of Gild of Kirkwal, and his council, in order to account how he came by them, and also for the various additions which visibly appeared to have been made to them. What the assayer's confession was, will afterwards be understood, though the Dean of Gild and his council, out of respect to their superiors, declined to enter it on record; which obliged the meeting by petition to the steward-depute, to apply for a precognition, "by what authority "Thomas Aitken got such things for weights, as these "stones, &c. to make Pundars and Bysmers by? "When he got them? From whom? And if any "additions or alterations were ever proposed to him-"self, or known to have been used by his predeces-"sors †?" For what reason the steward-depute refused this petition, and two or three more to the same purpose, I will not say; but instead of a judicial deliverance, as might have been expected, in a letter addressed to the meeting, May 2. 1743. he excuses himself in these words: "What if I (says he) were "to examine Thomas Aitken, deacon of the wrights? "That gentleman being already taken unawares by the "Dean of Gild, and challenged upon some particulars "concerning the weights, did, in order to screen him-"self, say, That the late James Earl of Morton ordered "the deacon, his predecessor, to put Lead in the "Weights; and afterwards, when he was publickly "spoke to upon that head, he said, he heard his predeces-"sor and master, Deacon Fouhister, was talking to "James Earl of Morton about the weights, and that was "all."

Now, whether this confession, emitted by the assayer, even minc'd and pair'd as here we have it, was indeed a device of his own, in order to screen himself; or whether those words put in his name, *afterwards*, (as we are told) *when publickly spoke to*, were not rather a device of the Steward-depute, for a certain purpose which needs not be mentioned, I will not dispute. For

† See the Sederunt of this meeting, 1743.

For the question is not, by whom the pretended Standards of these times were falsified, but, false as they were in themselves, if yet they were then more falsified. And this being the proper enquiry, let us try the thing two ways; by the fact itself, and by what farther evidence arises *ab extra*.

I. By the fact itself: This seems to be well enough agreed. For at the same time that it is confessed by the assayer in judgment, it is so far from being denied on the adverse side, that while the steward-depute seeks to clear Foubister the deacon, whom the assayer had accused; he plainly acknowledges the fact, by laying the guilt of it to the assayer himself. "That gentleman (says he)——did, in order to screen "himself, say, That the late James Earl of Morton "ordered the deacon, his predecessor, to put Lead in "the Weights." He said so, "in order to screen him-"self;" which is a direct acknowledgement of the "action, notwithstanding the recrimination as to the actor.

II. To try the thing by what evidence arises *ab extra*: (1.) In the second Sederunt of this meeting, April 8. 1743. when the steward-depute himself, and the Dean of Gild and Magistrates of Kirkwal, sat as members, we have an entry in these words: "The "meeting having got exhibited before them, by the "Pundar and Bysmer-maker, what things he said "were the weights by which he made Pundars and "Bysmers, which all (except a very old Iron-Steelyard, "wanting a plumb) were of brook, broken stones, and "boars-teeth, some whole, some partly filled up with "lead, some coupled or knit with stones and pieces of "lead, and all without any mark or device of con-"nexion, more than of confused rubbish.——Therefore, "all unanimously agreed, that the said stones, &c., "should be taken out of Thomas Aitken's custody, and "put into the keeping of the Dean of Gild, and under "the seals of the magistrates, till due trial be made "thereof, and justice done to the inhabitants of the "country, according to equity, that they may bear

lea]

"leal testimony of themselves, that what we have "found them to be, unjust and fallacious, is verity." And so, by whose order soever the false standards of these times were thus farther falsified, yet thus it appears, that farther falsified they were; the lead that was then run in them, and the stones and pieces of lead then tack'd to them, remaining there still, with the addition of more, as a sensible proof of the falsification. And (2.) As a consequence of this, it appears, that a new rise began in the weights anno 1712, towards the close of his administration under whom the abuse happened, which is a farther confirmation of the assayer's confession, and another very sensible proof of the falsification. For in the year 1704, the Barrel held ten Lispunds, as we have shewn; and that the Lispund continued a tenth part of the Barrel, till the year 1712, will not be denied; whereas in this year 1712, when the effects of the falsification first appeared, the Lispund begins to be stated, summ'd and received, as one eighth of the Barrel, instead of a tenth; which the count-books of the late Earls, their clearances with their servants, and the clearances of their servants with the Crown-vassals of the islands, abundantly testify. And instead of a tenth part of the Barrel, the Lispund becoming thus the eighth part; this shews, that from 18 libs it must have been raised to $22\frac{1}{2}$ libs, it requiring 8 such Lispunds to make a Barrel, which is 180 libs.

This is the first change that occurs under the late Earls of Morton; a change confessedly wrought, and moreover proved by the circumstances attending it.

Other gradual Additions.

Any rapid and sudden addition to the Mock-standards, might have opened the peoples eyes, artless and short-sighted as they are; therefore a slow and gradual increase was next projected. To effect this, the stewards and chamberlains of the country, never satisfied with encroachments, set their own Pundars and Bysmers in motion, but leisurely only, as they found men would bear it, till the growth at last became right considerable; and then the landlords, blinded indeed at first, thought themselves under a necessity of raising their weights

weights also, that so they might draw as much from their tenants as was exacted from themselves. And though they soon saw the error of this, and would fain have redressed themselves, yet could they not attempt it, without incurring the displeasure of men in authority, who had but too many means, of curbing and keeping them in awe. Nor in so unworthy a business did the assayer want his own advantage: For being a brewer by trade, as well as a house-wright, and therefore a buyer of victual, but never a seller, this not only led him to connive to the fraud, but, in point of augmentation, to make his Balderdash-Standards keep a leasurely pace with the Pundars and Bysmers. Whence it is, that from the year 1712, the weights of this country have almost had no stability at all, shifting always like the wind, and evermore upon the increase. As a consequence of which, this will appear from the count-books of our Earls, and also from the evidence of the Crown-vassals concerned, that from the year 1712, of butter and oil it had been usual to pay a Barrel, or eight Lispunds, as one pleased, being then the same 1728.
thing; whereas since the year 1728, when the weights of this country, and their pretended Standards, by perpetual mutations, had grown more burdensome, the Barrel and eight Lispunds have no more been the same: Nor from this time, have the Earl's servants been in use of receiving the Barrel for eight Lispunds, as formerly, having, instead of this, exacted the Lispunds apart, whereby, upon every Barrel, there was so much over.

And when, by such success in this way, their desires were enlarged, and their boldness increased to seek more, in order to render the design less obvious, some old and useful customs, introduced as checks upon them, began to be laid aside. A Weigh-master, for instance, used to be appointed in every island, who had a salary for his trouble, and was sworn to weigh justly betwixt the king and the subject; whereas about 1731.
the year 1731, these Weigh-masters were turned out, and the late steward-depute, who was also the Earl's factor,

factor, took their office to himself; which not only proved a temptation to unfair practices, but far more served to over-awe the inhabitants, and to silence their complaints, than the former practice could have done. Moreover, the same steward-depute, having screwed himself into the co-partnership of those merchants who were then in contract with the late Earl for his rents, and what was formerly for the advantage of his master only, becoming thus his own advantage likewise, he so changed and heightned his Pundars and Bysmers, and besides, instead of just and equal weight, exacted such excessive over-weight, that, in order to allay the clamour which ensued upon this, there appeared a necessity of settling the weights somewhere, provided the thing could be managed to purpose. In the Orknays, there was no hope of this, some having begun to withhold their Crown-rent, and some to pay upon protestation, by reason of the injustice and continual increase of the weights, against which their remonstrances had proved vain. And though in Shetland the weights were equally overgrown, and the general cry of the people perhaps no less grievous, yet being more at a distance, and therefore less dreaded, this island was proposed for the scene of the enterprize. There we took notice of a regulation, anno 1691, declaring the Lispund twenty four libs. Notwithstanding this, having since wrought its way to thirty libs. nearly, or rather to twenty eight libs.†, there was it fixed by a new regulation, made about the year 1738. A regulation, it is true, established only in Shetland, but equally affecting the Isles of Orknay, or equally intended to affect them, as shewn above‡. And by the march thus stolen upon the Orknays, the band being taken from the eyes of those who were hoodwinked before,

1738. The Lispund declared 28 libs.

† The weight (to wit) of the Spruse-stone, which the Lispund, or Petra, cannot exceed; for the Spruse-stone being the largest in Scotland, and the term Petra, by which the Lispund was expressed, fixing it to some Stone or other, beyond this it can never be carried, there being no pretext for it.

‡ Page 60.

before, they now saw, that the late Earls of Morton, as well as the former Earls, out of a natural love to themselves, had shewed so little regard to the welfare of these islands, as, upon occasions, to use their power and authority to the utmost against them. They thought it out of all question, that a law imposed by stratagem, without their knowledge, and so much to their detriment, was an abuse of power, on purpose to add weight to their chains, and hold them in fetters for ever. Therefore, having found themselves aggrieved, they set up their cry, and this so loudly, that even the Earl was not long able to protect himself against it.

On which an outcry ensues.

Whether his calling the meeting of 1743, mentioned above, was merely intended to divert this clamour, or if indeed it was intended (as we were told) to set things to rights, upon a sure and unexceptionable foundation, I will not enquire. It is enough to observe, that on the part of the meeting nothing was omitted, and on the part of the Earl, that nothing yet has been done. On the part of the meeting the procedure was thus:

1743. The Earl calls a Meeting.

April 8. The steward-depute and they, also the Dean of Gild and Magistrates of Kirkwal, try, and unanimously condemn, the falsified bones, pieces of lead and broken stones, set up by the assayer for standards, as mentioned above, P. 67.

The Mock-standards tried and condemned.

April 9. The meeting, and the Dean of Gild and Magistrates of Kirkwal, about thirty persons in all, having, in presence of the steward-depute, made trial of a number of Pundars and Bysmers, and found a mighty disagreement amongst them, as well as amongst the respective subdivisions of each Pundar and Bysmer, and in general, a surprising excess in them all, unanimously agree, and make report, some from experience and knowledge, and some from documents to be condescended on, "That the weights of this country, "to wit, Pundars and Bysmers (after duly examining "the same) are a most fallacious weight, and are en-

Also, the weights framed by them.

"creased

"creased and overgrown for many years past †." Here also the Mock-standards are discharged, and again appointed to be taken from the assayer, and deposited with the Dean of Gild, under the seal of the Magistrates, "That they may bear leal testimony of "themselves, that what we have found them to be, "*unjust* and *fallacious*, is verity."

The Trial continued.

April 11. Upon application of the meeting, and also of the stewart-depute, the Dean of Gild of Kirkwal, having called in and tried the Bysmers used in town, makes this report. "The Dean of Gild of Kirkwal, "having this day, upon an intimation dated the 9th "current, subscribed and given in to him by many of "the gentlemen, heritors, and freeholders of the "country of Orknay, touching the fallaciousness of "Pundars and Bysmers, and upon a motion made to "him by Mr. Andrew Ross steward-depute of Orknay, "for trial of the Bysmers within the said town of "Kirkwal, ordered his officer of court to call in the "haill Bysmers of the said town, in order to a trial "of them; and accordingly, he, having tried the 39

Disagreement of the Bysmers.

"Bysmers belonging to the persons marked upon this "and the preceeding two pages, found an inequality "and discrepance amongst the said number of Bysmers "——as follows, viz. Three of the foresaid number "of Bysmers, to weigh forty libs. Amsterdam, at "half and half betwixt the crosses and the nail ↓: "One at 39 libs. two at 38 libs. two at 37 libs. eigh-"teen at 36 libs. one at 35 libs. four at 34 libs. five at "33 libs. and three of the said Bysmers at 32 libs."

The variant weight of the Pundars.

April 14. Upon another application made to the Dean of Gild, having called in and tried the Pundars used in Kirkwal, it appears by his report, they weighed thus:

½ *Meil*

† Report of the Meeting, dated and registred April 9, 1743.

↓ The Crosses represent the weight of the Lispund: When the suspender rests upon them, this is just and equal weight; but when it rests half way betwixt the Crosses and the Nail, this is a Lispund, and from 4 to 8 libs. of over-weight.

Pundar.	½ Meil. libs.	4 Set. libs.	5 Set. libs.	Meil. libs.	7 Set. libs.	8 Set. libs.	Ml. & ½ libs.
1 - -	100	132	160	187	213	245	276
2 - -	104	138	167	195	227	254	284
3 - -	108	- -	- -	200	228	265	297
4 - -	100	- -	- -	184	212	244	272
5 - -	108	137	169	201	229	268	297
6 - -	102	129	158	183	211	245	272
7 - -	104	133	161	188	216	249	277
8 - -	108	136	162	194	218	252	281

Also, that the Earl's Bear-pundar (the rest being Malt-pundars) weighs thus; the Half-meil 68 libs; the 4 Seteens 89 libs; the 5 Seteens 109 libs; the Meil 129 libs; the 7 Seteens 149 libs; the 8 Seteens 167 libs; the Meil and a half 188 libs; the 10 Seteens 207 libs; the 11 Seteens 227 libs; and the 2 Meils 247 libs.

To set this proof in as clear a light as we can, we must observe the variant weight, (1.) Of all these Malt-pundars together, considered with respect to one another: And (2.) Of each Pundar apart, considered with respect to the Meil, as the centrical weight, or division of the Malt-Pundar.

I. We must observe the variant weight of all these Malt-pundars together, considered with respect to one another. And thus the Half-meil weighs 100, 102, 104, and 108 libs; the 4 Seteens 129, 132, 133, 136, 137 and 138 libs; the 5 Seteens 158, 160, 161, 162, 167 and 169 libs; the Meil 183, 184, 187, 188, 194, 195, 200 and 201 libs; the 7 Seteens 211, 212, 213, 216, 218, 227, 228 and 229 libs; the 8 Seteens 244, 245, 249, 252, 254, 265 and 268 libs; and the Meil and ½ 272, 276, 277, 281, 284 and 297 libs; Which proves, I think, that these Pundars have no agreement with one another. And as for the Bear-pundar, which in its weights should be ⅕ less than the Malt-pundar, it is impossible, amidst

With respect to one another.

this confusion, that with the Malt-pundar it should have any correspondence at all.

With respect to themselves.

II. We must observe the variant weight of each Pundar apart, considered with respect to the Meil, as the centrical weight, or division of the Malt-pundar. And thus;

Pund. 1. The Meil weighs 187 libs, and the other weights thus, viz. the Half-meil 100 libs, instead of 93; the 4 Seteens 132 libs, instead of 124; the 5 Seteens 160 libs, instead of 155; the 7 Seteens 213 libs, instead of 218: the 8 Seteens 245 libs, instead of 249; and the Meil and a half 276 libs. instead of 280.

Pund. 2. The Meil weighs 195 libs, and the other weights thus, viz. the Half-meil 104 libs, instead of 97; the 4 Seteens 138 libs, instead of 130; the 5 Seteens 167 libs, instead of 162; the 8 Seteens 254 libs, instead of 260; and the Meil and a half 284 libs, instead of 292.

Pund. 3. the Meil weighing 200 libs, the Half-meil should weigh 100 libs, instead of 108; the 7 Seteens 233 libs, instead of 228; the 8 Seteens 267 libs, instead of 265; and the Meil and a half 300 libs, instead of 297.

Pund. 4. The Meil weighing 184 libs, the Half-meil should weigh 92 libs, instead of 100; the 7 Seteens 215 libs, instead of 212; the 8 Seteens 245 libs, instead of 244; and the Meil and a half 276 libs, instead of 272.

Pund. 5. The Meil weighing 201 libs, the Half-meil should weigh $100\frac{1}{2}$ libs, instead of 108; the 4 Seteens 134 libs, instead of 137; the 5 Seteens 167 libs, instead of 169; the 7 Seteens 234 libs, instead of 229; and the Meil and a half 301 libs, instead of 297.

Pund. 6. The Meil weighing 183 libs, the Half-meil should weigh 91 libs, instead of 102; the 4 Seteens 122 libs, instead of 129; the 5 Seteens 152 libs, instead of 158; the 7 Seteens 213 libs, instead of 211; and the Meil and a half 274 libs, instead of 272.

Pund. 7. The Meil weighing 188 libs, the Half-meil should weigh 94 libs, instead of 104; the 4 Seteens 125 libs, instead of 133; the 5 Seteens 156 libs, instead of 161; the 7 Seteens 219 libs, instead of 216; the 8 Seteens

teens 251 libs, instead of 249; and the Meil and a half 282 libs, instead of 277.

PUND. 8. The Meil weighing 194 libs, the Half-meil should weigh 97 libs, instead of 108; the 4 Seteens 129 libs, instead of 136; the 7 Seteens 226 libs, instead of 218; the 8 Seteens 259 libs, instead of 252; and the Meil and a half 291 libs, instead of 281.

PUND. 9. The Bear-pundar Meil weighing 129 libs, the Half-Meil should weigh 64 libs, instead of 68; the 4 Seteens 86 libs, instead of 89; the 5 Seteens 107 libs, instead of 109; the 8 Seteens 172 libs, instead of 167; the Meil and a half 193 libs, instead of 188; the 10 Seteens 215 libs, instead of 207; the 11 Seteens 236 libs, instead of 227; and the 2 Meils 258 libs, instead of 247.

All which proves, that these weights have lost their proportions, having as little agreement with themselves as with one another. To evince this farther, let us consider the disproportion betwixt the Meil and the parts of the Meil, and betwixt the parts of the Meil and the Meil and its parts.

	Disparity. *libs.*
PUND. 1. The Meil weighs 187 libs, and twice the Half-meil, which should be the same, 200 libs, - - -	13
Also, the Meil and a half weighs 276 libs, and thrice the Half-meil, which should be the same, 300 libs, - - -	24
Also, 8 Seteens, or the Meil and a third, weighs 245 libs, and twice 4 Seteens, or twice two thirds of the Meil, which should be the same, 264 libs, - - -	19
PUND. 2. The Meil weighs 195 libs, and twice the Half-meil, 208 libs, - -	13
Also the Meil and a half weighs 284 libs, and thrice the Half-meil, 312 libs, -	28
Also the Meil and one third weighs 254 libs, and twice the two thirds, 276 libs, - - - - -	22

PUND.

	Disparity. libs.
PUND. 3. The Meil weighs 200 libs, and twice the Half-meil, 216 libs, -	16
Also the Meil and a half weighs 297 libs, and thrice the Half-meil, 324 libs, -	27
PUND. 4. The Meil weighs 184 libs, and twice the Half-meil, 200 libs, -	16
Also the Meil and a half weighs 272 libs, and thrice the Half-meil, 300 libs, -	28
PUND. 5. The Meil weighs 201 libs, and twice the Half-meil, 216 libs, -	15
Also the Meil and a half weighs 297 libs, and thrice the Half-meil, 324 libs, -	27
Also the Meil and one third weighs 268 libs, and twice the two thirds, 274 libs, - - - - -	6
PUND. 6. The Meil weighs 183 libs, and twice the Half-meil, 204 libs, -	21
Also the Meil and a half weighs 272 libs, and thrice the Half-meil, 306 libs, -	34
Also the Meil and one third weighs 245 libs, and twice the two thirds, 258 libs, - - - - -	13
PUND. 7. The Meil weighs 188 libs, and twice the Half-meil, 208 libs, -	20
Also the Meil and a half weighs 277 libs, and thrice the Half-meil, 312 libs, -	35
Also the Meil and one third weighs 249 libs, and twice the two thirds, 266 libs, - - - - -	17
PUND. 8. The Meil weighs 194 libs, and twice the Half-meil, 216 libs, -	22
Also the Meil and a half weighs 281 libs, and thrice the Half-meil, 324 libs, -	43
Also the Meil and one third weighs 252 libs, and twice the two thirds, 272 libs, - - - - -	20

	Disparity. libs.
PUND. 9. A Bear-pundar: the Meil weighs 129 libs, and twice the Half-meil, 136 libs, - - - - - -	7
Also 2 Meils weigh 247 libs, and twice the Meil, 258 libs, - - - -	11
Also the Meil and a half weighs 188 libs, and thrice the Half-meil, 204 libs, -	16
Also the Meil and a third weighs 167 libs, and twice the two thirds, 178 libs, -	11
Also ten sixths of the Meil weigh 207 libs, and twice the five sixths, 218 libs, -	11
Also the 2 Meils weigh 247 libs, and 4 times the Half-meil, 272 libs, - -	25

And thus it farther appears, as these Pundars have no agreement with one another, so neither do they agree with themselves, the Meil bearing no proportion to the parts of the Meil, nor the parts of the Meil to the Meil and its parts. And this the Dean of Gild takes notice of in the close of his report, April 14th, as follows: "In presence (says he) of a committee of the gentlemen of the country of Orknay, and of Mr. Andrew Ross steward-depute of Orknay, and in presence of several others, having tried eight Malt-pundars belonging to the eight particular persons marked upon this and the three preceeding pages, and the one Bear-pundar above mentioned, according to the custom and way victual at this time, in this country, is weighed ‡; I found an inequality and discrepancy amongst the said eight Malt-pundars,——and found a great inconsistency in the weights of each particular Malt-pundar; and also found an inconsistency in the weights of the said Bear-pundar."

April

‡ That is, after just and equal weight, counting always 12 or 15 libs, of over weight; a custom introduced, or greatly promoted, by the late steward-depute, when concerned in the contract for his master's rents, as said above.

The Trial still continued,

April 16. The Pundars and Bysmers of Kirkwall being thus tried and condemned, those used in the country, or such of them as had not been tried before, were next called in, by an order of the steward-depute, upon this narrative; "Whereas the Pundars and Bysmers "of Kirkwall are found to be in themselves fallacious "and deceitful weights, and that there is just cause to "believe, that the Pundars and Bysmers used in the "country are equally fallacious, all of them being "made and adjusted by the same rule and method, "which is manifestly subject to error, and tending in- "differently to the prejudice of the users of these "weights, as well the deliverers as the receivers; "these are therefore, &c. ‡" And April 28. this new trial, like the rest, having been made in presence of the steward-depute himself, and the management of it by him referred to a committee of the meeting, they make this report; "That trial being made of the Pundars "and Bysmers of the country, they were found falla- "cious and deceitful weights, and have been increased "these many years past †."

And the Weights still condemned.

The Steward-depute himself joining issue.

Nay, so far does the steward-depute himself join issue in this, that in his letter addressed to the committee of May 30, taking occasion to mention these trumperies by which the weighing instruments are made and adjusted, he terms them instruments of iniquity. "Did not the Dean of Gild (says "he) sign the paper or intimation (so named) along "with yourselves? Did not he consent to it? And "even take in custody your instruments of iniquity from "the deacon, before your paper was recorded?" That is, did he not sign the report of April 9. along with yourselves? And in pursuance of this, and of the minutes of Sederunt the day before, did he not take up from the assayer those counterfeit bones and broken stones, which he sought to obtrude upon you for Standards? And if thus confessedly the obtruded Standards are instruments of iniquity, the weighing instruments framed by them must be equally so.

June

‡ See this order in the minutes of the Meeting.
† Sederunt of the Meeting, April 28. 1743.

June 1. The meeting require from the Dean of Gild and his clerk, "Extracts of the whole proof of the "country Pundars and Bysmers, and of those imposed "stones, leads, bones, &c. supposed contrived, and ta- "ken up at hand, for making weights by†.' This indeed seemed useful, for clearing the report of April 28, mentioned above; but the Earl being then in the Orknays, this was denied; nor could it ever be obtained since. In general, the Pundars and Bysmers used in the country, were considerably less in their weights than those used in the town, tho' in respect of themselves, and of one another, the disagreement was rather higher. How amazingly they differed in respect of one another, will best be discovered when the Dean of Gild shall be in humour to return his certificate. And with respect to themselves, it is observable, that on the Pundar, the fractions of the Meil always exceeded the integer; whereas on the Bysmer, the integer always exceeded the fractions. When the Meil was divided into two moieties, the Half-meil would be equal to one of those moieties, and from 6 to 12 libs over; and contrariwise, when the Lispund was divided into two moieties, the Half-lispund was never equal to one of those moieties, but one fifth, one fourth, or one third less: So three times 8 Marks could never make a Lispund, which is 24 Marks; nor 4 times 6 Marks, or 6 times 4 Marks, nor even 3 times 9 Marks, being from 3 to 10 libs less. And as for any correspondence betwixt the Pundar and the Bysmer, or between the weights of the Malt-pundar and those of the Bear-pundar, so little is this to be looked for, that counting 200 Pundars in the islands, and 500 Bysmers (the fewest we can suppose) of all this number, not two will be found to correspond together, nor so much as one to correspond with itself.

All which considered, what we laid for our founda- Sum of the Evidence.
tion seems abundantly clear, "That under the late Earls "of Morton, viz. from the year 1707, so mutable have "the weights been, and so extravagant their motions, "that

† Sederunt of the Meeting, June 1.

" that almost all this period, having lost their propor-
" tions, they have been out of ken."

CHAP. III.

What farther Evidence we have of the mighty Increase of these Weights, and what Sort of Arguments and Pretences are urged against it.

HAving established the just standard of our weights, and also their gradual and continued rise above the standard, let us next consider the effects and consequences of this rise, in farther confirmation of the general argument.

SECT. I.

The Increase of the Weights evident from its Effects and Consequences, and from the present State of the Islands.

OF the effects and consequences of this increase, I will exhibit some instances, which strongly confirm our former proofs, tho' their nature is such as not to read in connexion with them.

I. There are many charters, and some rentals, under the Bishops and Earls of Orknay, wherein the yearly duty of the land is mentioned in Lispunds and Meils. The same land is now better cultivated, and the rent also augmented, by a good addition of arable grounds, which before were not in tillage; and yet for this it does not now, nor possibly can it, produce the same number of Meils that by these rentals and charters it formerly owed. When the modern rental of the provostry of Orknay, is compared with that ancient rental men-

mentioned above †, and also with a grant of the same lands, anno 1610 ‡, it appears, that the land of Thurriger, which in early times yielded 52 Meils malt, in the year 1584, yielded only 40 Meils, whilst in the 1610, it was yet granted for 35 Meils, and in modern times has never yielded above 27 Meils. Also that the land of Barswick, which in ancient times yielded 48 Meils, in the year 1610, was granted for 40 Meils, whilst at present it yields but 30 Meils: So also as to the land of Stews, and the rest of the provostry, which in former times yielded a greater number of Meils than the same lands either do, or can yield at present; insomuch that by this means, not these lands only, but indeed all the church-lands of the islands, had doubtless been lost to the owners, if by their infeodations the old rent were not valued and converted. And all these lands, yielding formerly a greater number of Lispunds and Meils than at present they can produce, this proves the present Lispund, and the present Meil, much larger than the Lispund and the Meil of former times; the decrease of their number, even after the improvement of the land, being incomprehensible, and not to be accounted for, but by the increase of their quantity.

II. About the year 1662, when the Earl of Morton, and his trustees, feu'd out some Crown-lands in this country, according to the king's rental, the purchasers paid a good price for them, which shews, that then they were thought advantageous. Notwithstanding this, by the gradual increase of the weights, the Reddendo has swelled so high, that few of the lands at present, after the most careful and assiduous culture, can produce so many Lispunds and Meils as by the investiture they owe. Many of the lands, therefore, overburden'd with the load, have already reverted to the Crown; the lands of Berridale (amongst others, and those of) Leyland, Grindally, Langskeal, Saverton, and

† Page 41.
‡ Book 46. Num. 446 of the Great Seal Register.

and Pow. And as for the rest, most of the owners would gladly part with them, if the Earl's factor would consent to receive them; but so much favour has been long denied, particularly to Mr Randal of Gill, unless, with the Crown-land, he would give up his *Alodia* also. All which shews, that the Crown-rent now, is not the same that the feudataries submitted to, having grown with the weights, and by that means become intolerably burdensome.

III. Besides the Crown-lands mentioned above, many yet remain which were not infeodated, both in the King's part of the country and the Bishop's. In other countries it is usual, every now and then, to heighten a little the farm-rent of lands, or the number of farm-bolls which they owe, in proportion to their improvement by culture or otherwise. But in the case of the demesne-lands of these islands, the perpetual rise of the weights has rendered this impracticable, and a contrary practice quite necessary; the number of Lispunds and Meils charged upon the lands, having evermore been upon the decrease, as the weights which influenced them were upon the increase. And hence that new form which in all our modern count-books has obtained, with respect to the demesne-lands here mentioned. Instead of a single rent, as formerly, the old rent is first entered, which the lands had been in use of paying; "The lands of A should pay 40 Meils;" then the modern rent, for which they are now let out; "But now set for 20 Meils;" and lastly, the number of Meils in abatement; "Given down 20 Meils;" In this manner is every article of the demesne-lands now entered, both in the King's part of the islands and the Bishop's. In the King's part, according to the Earl's own books, and his clearances with his factors, the abatements made to the demesne-tenants, in butter, amount to five Barrels; in malt to six Lasts and a half; in bear, to five or six Lasts; and in money, to 400 libs. besides some meal and oil: A considerable part of the demesne-rent this, if the weights had not risen; and yet for this is not the demesne-

rent

rent a whit diminished, but on the contrary, stretched and screwed up beyond measure. So also, in the Bishop's part of the islands, anno 1716, the collector of the bishop rents gets credit in Exchequer for Abatements made to the demesne-tenants, and for the rent of vacant lands, in default of tenants, by reason of the over-grown and ruinous rent at the time; in butter, for five Barrels and a half; in oil, for two Barrels and a half; in malt, for nine Lasts and a half; in meal, for a Last and a sixth part; in bear, for four Lasts and a third; and in money, for 257 libs. And yet, for all this, is the demesne rent of the bishop's part of the islands no way diminished, but racked and augmented, like the king's part; which shews, that the diminution of the Lispunds and Meils by tale, is owing to their increase by weight, being indeed a consequence of it.

IV. The same cause that produced this effect, with respect to the demesne tenants, extended its consequences alike to the Udalmen and Crown-vassals; those vassals, I mean, who are subject to a duty in kind. As their interest in the propriety of the islands greatly exceeds that of the crown, the burden on them fell so much the heavier; even so much, that by this means, the heritages of hundreds are already swallowed up; whilst almost all the rest, by the same means, are so incumbered to the Earl, that if relief is not speedily obtained, he must soon become master of them also.

In the year 1661, when the landlords were enrolled, in order to a supply which was then to be levied, their whole number, in the Orknays alone, apart from Shetland, amounted to 776, as appears by the excise register mentioned above. At present, their whole number does not exceed 155, which is four fifths less: And if we take this along with us, That the heritage of the landlord seldom went to one son, but was generally divided amongst all the sons, we may fairly conclude, that since the year 1661 about nine tenths of the landlords, both of Orknay and Shetland, have been sunk in the vortex of these false weights. And that by the

the same means, if the rest are not timeously relieved, they must soon be devoured also, may be plainly foreseen: (1.) From the fate of those fair estates which already the Earl has made his own, or which, by adjudication and publick sale, he is now in the way of doing so †. And (2.) from his petition to Parliament, *anno* 1742, wherein he complains of his rents here being so ill paid, "That there was then in arrear 6,000 "libs. Sterling, and upwards, notwithstanding the ut-"most care in collecting the same." And if the arrear in the King's part of the islands was then 6,000 libs. and upwards, the arrear in the Bishop's part could not be much less, besides what in both may since be incurred. All which proves the dreadful effects of false weights in this country, and what a precarious thing property is rendered by so consuming a mischief.

V. But another effect, more dreadful than this, is the mighty decrease of the rest of the inhabitants, to the no small detriment of the nation in general, being thereby deprived of one of its best sources of hardy and adventurous seamen, which otherwise might have continued flowing, to the advantage of all the British dominions. In the year 1686, and for ten years after, the inland-excise of Orknay and Shetland, upon ale and spirits only, was farmed at 2925 libs. *per annum* ‡; whereas at present, not only the excise of these islands, but also the malt-duty, and the duties upon soap, candle, leather, &c., are all farmed for less than one half of what ale and spirits produced before. Therefore the number of inhabitants must have greatly decreased since the year 1686, this branch of the revenue depending upon the consumpt, as the consumpt does upon the number of inhabitants. But to go further back: Bleau, in his Atlas, takes notice of a general muster of the inhabitants of this country, apart from

† The Estates (to wit) of Lopness, Quendal, and Gerda, besides many more, incumbered for Crown-rent above the value.

‡ Exchequer Registers, March 26, 1686, and Aug. 2, 1692.

from Shetland, under the last Earl of Orknay; whereby it appeared, that no less than 10,000 effective men could be spared, upon any emergency, after leaving a sufficiency behind for all rural occupations. At present, the whole inhabitants of this country, male and female, from six years old and upwards, do not exceed 25,000, of whom the effective men cannot exceed 5000, and of these, any number that could be spared from husbandry would be very inconsiderable. In former times, therefore, the inhabitants were almost twice as numerous as now: And this I ascribe to the perpetual out-goings of their country, particularly by means of those over-grown weights in which its productions are all swallowed up. For thus the present inhabitants, deprived of subsistence at home, forsake their native islands at this day, without either the hope or desire of returning; and thus has it fared with the former inhabitants also.

VI. The increase of these weights may likewise be evinced from its influence upon the wealth of this country, being at present no way comparable to what it used to be. In the 1595, and for two years after, the Earl of Orknay imposed and levied, in these islands, an extraordinary tribute of 20,000 libs. by year†. But who will do this now? Or could this country at present sustain such out-goings as under the Commonwealth, when almost all at once, besides all burdens in common with the rest of the kingdom, it farther sustained these following drains, viz.

By two English rovers, which infested the coast, anno 1650 - - - -	L. 10,000
By the equipment and transport-money of 2000 men raised for the King's service, the same year - - - - -	40,000
By a levy of 300 horse, at 300 marks for each, then imposed by the committee of estates - - - - -	60,000

By

† Registers of Parliament, Book 20, Num. 30.

By the arms and transport-money of a new regiment raised for the King's service, anno 1651 - - - - - - 6,666

Summa L. 116,666

And yet, in the year 1662, besides the ordinary contingencies of that year, the Orknays at once cleared 50 months' arrears of extraordinary maintenance, under the commonwealth, viz. - - - 41,368

And the Isles of Shetland, 60 months, viz. †-- 24,000

Summa totalis 182,034.

Circumstances so unlike what the country at present labours under, that such change of condition cannot be accounted for, but by the excessive increase of the weights, every year growing more burdensome, to the consumption of the wealth of the islands.

VII. The same may be said of the trade of the islands, which is now quite lost, for want of means to pursue it, as formerly. At this day, there are not above eight or ten vessels, and a few trading boats, in all this country; whereas, within this present age, or not long before, there belonged to it above twenty vessels at once, besides a multitude of stout boats, for the Shetland trade, and that with Norway and Scotland. While the natural commodities of the country were of use to it, the inhabitants had the means of traffic; but when most of its productions were turned into one destructive channel, and this, chiefly, by the drain of false weights, a loss of trade became the necessary consequence.

Thus

† See the Excise Register before mentioned, Dec. 5. 1660, Nov. 22. 1661, and July 11. Sept. 3. and Oct. 9. 1662.

Thus I have shewn what evidence we have of the mighty increase of these weights, from its effects and consequences, viz. the depopulation of the islands, and the ruin of their liberty, property, wealth, and trade. I proceed now to consider what sort of arguments and pretences are urged against all this.

SECT. II.

Objections answered.

I. "THE Isles of Orknay and Shetland, when let "out to farm, yielded a greater revenue to the "Crown, than at present arises out of them to the Earl, "which is no symptom of the weights having increa-"sed, to the damage and oppression of the inhabi-"tants, as by them is alledged." In answer to this, I desire to know, what is here meant by a greater Revenue? If those revenues are meant which arose from the rights of admiralty, the toll of ships, the customs and imposts, and the tenths and excise of herrings and white fish, all rented and enjoyed by the farmers, alike with the crown-rent; if this (I say) is the revenue here meant, it signifies nothing to the argument, that *when these islands were let out to farm, they yielded a greater revenue to the Crown, than at present arises out of them to the Earl;* his Lordship, at present, having none of those rights which the farmers enjoyed, and from whence this revenue arose, the crown-rent only excepted. If by a greater revenue, therefore, the Crown-rent only is meant, apart from the rest, to this I answer two things: 1. If it were true, that under the farmers, the Crown-rent alone yielded a greater revenue than now arises from it, this would be no proof that the weights have not increased. And 2. Though it could prove this, yet that the Crown-rent alone yielded a greater revenue under the farmers than it does now, or only half so much as now, is more than can be proved. Therefore, "if an ex-"cess of Crown-rent under the farmers, above what "arises

"arises now to the Earl, would indeed be no sym-"ptom of the weights having increased;" it follows, by retortion, that an excess of Crown-rent now, above what arose to the Crown under the farmers, must indeed be a symptom of such increase.

II. It is objected, "That the rental of this country, "anno 1601, (1600 it should be) exceeds the present "rental by 11,000 Marks, *converting both into money* "*at the same price;* and that this decrease of the "rent seems to contradict any increase of the weight, "as being inconsistent with it." 1. Admitting in the present rental, a decrease of the number of Meils and Lispunds contained in the rental of 1600, which is all, I suppose, that by a decrease of rent is here meant, yet would this decrease of their number, or of the Meils and Lispunds by tale, be no contradiction to the increase of their weight or quantity: For Meils and Lispunds by tale, and Meils and Lispunds by weight, are distinct things, or things that may be parted; and so we may take from the one, and add to the other, without any contradiction. 2. If by a Decrease of Rent, any more is meant than a diminution of the number of Meils and Lispunds in the rental of 1600, whoever would make good this objection, must shew, that the weight of 1600 was equal to the present weight, for if the quantity was not the same, neither should the conversion be the same; and therefore, till this is proved, it signifies nothing, though it were true, "That the rental of this country, *anno* 1600, exceeds "the present rental by 11,000 Marks, *converting* "*both into money at the same price.*" And 3. Admitting the weight of 1600 to have been equal to the present weight, and that the quantity being the same, the conversion should be so likewise, it is still a mistake in fact, "That the rental of this country *anno* "1600, exceeds the present rental by 11,000 Marks." For though the rental of 1600 is then declared the highest rental that these islands had ever been brought to, yet does not the number of Lispunds and Meils in this rental amount to one half of the number of Lispunds

punds and Meils in the present rental. And if the number of Lispunds and Meils in the present rental, now when the Lispund (as the Earl says) weighs 28 or 30 libs. is more than twice their number in the rental of 1600, when the Lispund weighed but 18 libs. his Lordship must have twice the rent now that was had in the year 1600, and as much more, twice over, as makes 18 equal to 28 or 30. Consequently, the present ruinous rental must be more than thrice as burdensome as the rental of 1600, instead of being 11,000 Marks under it.

III. It is objected, "When this country was engaged "to the Scots, it became part of the proper estate or "patrimony of the Crown, and was given out in feu- "dality at the full rental, which came nearly up to "the whole income of the islands: Therefore, what- "ever the landlords may now fancy, with respect to "their burdensome vassalage at present, this is no "way the product of false weights, but the original "condition of those tenures derived to them from "their predecessors." If by this Country in general, its sovereignty only is meant, this was never given out of the Crown of Scotland, having still been in it, as at this day. But if by the Country in general, the propriety of the Country is meant, as distinguished from the sovereignty, this was neither in the Crown of Scotland nor in the Crown of Norway, but all in the Udalmen or private owners of lands, as at present, the rights of the church, and a very few Crown-lands, only excepted. I observe farther, that tenures were not known in this country, when thus it is said to have been given out in feudality, they having made their entrance only with the Reformation, which happened near an hundred years later. And as the lands therefore were mostly all Alodial, owing no rent, but tithes only to the church, and to the State for protection, tribute or land-tax, called Skat; the publick revenue of the whole islands, arising from this tribute, as well as from the Crown-lands, consisted of 50 Chalders bear

only, 120 libs. of money, and 120 Salt-marts†; which is little in comparison with the whole income of the islands, though all this revenue had arisen from the Crown-lands alone. But instead of this, when it chiefly arose from the tribute alone, and not the tenths perhaps from the Crown-lands, this shews, how very inconsiderable the Crown-lands were, admitting they had been feudalized, and how small a portion of the islands then, tho' obtruded upon us for the whole.

IV. It is objected, "That standards or models of "the weight used in this country, have, past memory, "been kept by the magistrates of Kirkwal; that no "complaint has been made of any increase of weight, "since the union of the two kingdoms, that is, since the "grant made to the Earl's family, anno 1707; and "that the weights used by the Earl's servants, are of "the same kind that is used all over the islands, and "no heavier than what the landlords themselves re-"ceive by from their tenants."

As for the first argument, it is a mistake in fact, that those ludicrous things called Standards, or Models of Weight, have past memory been kept by the magistrates of Kirkwal. The magistrates of Kirkwal do not appear to have been in the secret of these things; nor indeed to have heard that such things were, till the year 1743, that this was discovered by the assayer, with no less astonishment to them than to the rest of the country. I add, that the office of assayer depended not upon the magistrates of Kirkwal, but upon our task-masters rather, the superintendents of the jurisdiction of the islands, as may be seen in the several regulations mentioned above ‡. And if the office of assayer was in the disposal of our rulers, so were the Standards, or Models of Weight, being an incident of the office, from which they could not be parted.

To the second argument: If no complaint has been made of any increase of weight, since the union of the two kingdoms, this is their fault, by whose means

† See the Rolls of Exchequer, *ann.* 1474 & *seqq.*

‡ See page 51, 52, 60.

means all commissions of the peace have been long suppressed in this country, that so the oppressed people might have none in the islands to complain to, except the very persons by whom they were oppressed. If it be said, they might have carried their complaint out of the islands: Every body knows the vexation and expence of carrying any complaint against the deputies of men in power before the higher seats in justice. A single man, or a few men, will not venture upon it; and it is very difficult to get a great number to concur in the complaint, much more to get them to contribute to the expence: Therefore, if there never had been any such complaint, this would be no proof that there never was any such increase. But I must put the Earl in mind of the continued cry of the country, since the year 1728: and also of those Crown-rents with-held by many since the year 1736, for which they are still in process with his Lordship, defending themselves still upon the plea of false Weights. And when not only this is considered, but likewise the trial and condemnation of these weights, as shewn page 71, his Lordship, I think, has no good reason to object, that since the union of the two kingdoms, no complaint has been made of their increase.

The absurdity of the third argument shews itself at first sight; as if the case of a tenant, with respect to his farm-rent, which seldom endures above three years at once, were the same with the landlord's case, with respect to his Crown-rent, to which he is fixed for ever. A tenant for years, or at will, like a buyer or seller, makes his bargain according to the weight of the time; and when he pays by such weight, there is no injury done him. But the weight of the time, tho' just and equal as to the tenant, may yet be deceitful and oppressive as to the landlord, or *Udalman*, who only can be bound for the prime and original weight of the country. There is nothing more common than to see masters let out their land, or sell their meal-rent, at 9 Stones for the Boll, instead of 8 Stones, the legal standard; but would this be a good reason for

for the Crown-chamberlains to exceed the legal standard, and of the Crown-vassals, for every boll, to exact 9 Stones also? I suppose it would not. In like manner, it signifies nothing to the argument, by what sort of weights the landlords here buy and sell, or by what sort of weights they receive from their tenants: For tho' the weights they now use, are of the same kind with what the Earl now uses, and perhaps equally heavy, this is no proof, that since the time of the union, the Earl's weights have not increased: On the contrary, we have formerly shewn, that by how much the present Lispund exceeds 18 libs, by so much does the present weight exceed that of 1707; and this none of his lordship's arguments contribute in the least to disprove.

V. "Notwithstanding this increase of the weight, "prescription may yet be pled for its support, the "Earl and his family having been in possession since "the year 1707." In possession of what? Not of a just and equal weight, nor of a constant and uniform weight, nothing of which can be pretended: What then? Of a thing indeed we know not what: A roving, counterfeit, and oppressive weight; by continual changes and additions made more oppressive, and on this account tried and condemned by the Earl's own authority. All this we have shewn above; and therefore, to ground any plea on such a possession, what is this? It is to stand forth as an advocate for oppression, and to justify, and seek to perpetuate it, by an use which cannot be justified.

VI. "Ay, but if use avails not since the year 1707, "it cannot be pled beyond that; for this takes away "prescription by the very foundation, and so leads "directly to the prime and original Standard." If we have any retrospect at all, it must be to the Standard, and there is no proper standard but the original; the first departure from it having been tyranny, and the effects of that departure tyranny, which no law can justify. And as there can be no proper Standard but the original, to fix on any other, is not to restore truth,

truth, but to establish error: For then must the radical Mark be more than 8 Ounces, and then it is no more a Mark; then must the centrical Pund or Lispund be more than 12 libs, and then it is no more a pund. Besides, the weights and measures of a country are apparently in the nature of those publick rights which fall not under commerce, and consequently not under prescription: Or tho' indeed they could be carried by prescription, which I look on as nonsense, yet, as we have formerly shewn, they had so little stability after the first deviation from the standard, that their constant flux and motion, like a current account, keeps things open, and excludes prescription. Nor in this case, where every addition to the standard was indeed a high crime, can one avail himself of the law of prescription, nor so much as plead it, in avoidance of a plenary redress, without making other men's crimes his own, and bringing the guilt of them upon himself.

VII. "But the re-establishment of things upon the "original foundation, seems still too distant a retro-"spect, if not for the ancient Udalmen, and those who "succeed in their right, yet for such at least as ac-"quired any Crown-lands, particularly about the year "1662, who ought to be subject to the weight of the "times their charters refer to." Why so? The purchasers of those Crown-lands, it is true, became subject to a rent; but they do not agree that this rent shall be levied by a corrupt weight. They agree to a rent in Meils, Lispunds, and Marks; but they do not agree to a rent in what is neither Meils, Lispunds, nor Marks; that is, they agree to no Mark more than 8 Ounces, because this is no Mark; to no Pund or Lispund more than 12 libs, because this is no Pund; and to no Meil more than 72 libs, because this is no Meil. It is farther observable, that their charters are either wholly open in the *Reddendo*, with a reference to the king's rental; "paying there-"fore yearly * * * conform to the rental;" or for a very general and undetermined *Reddendo*, viz. "the "rents and duties justly owing out of the said lands, "conform to the rental." This they agree to, being the

the rule and condition of their charters; but to an unjust rent, or a rent to be levied by an *unjust Weight*, which is the same, they do not agree, this being oppressive, and a contradiction to the rental their charters refer to: The King's rental, I mean, which is the uniform rule and measure of their payment; leading them back likewise beyond the year 1584, when the first corruption appeared in the weights. I observe farther, that the lands of this country, except a few Crown-lands, are either alodial, *i. e.* free and independent, or have their dependency immediately of the Crown: Therefore, tho' this exception were indeed well grounded, or how equitably soever it might come from the Crown, it is nothing to any private person, not even to the grantee of the Crown, having no one vassal in all the islands.

Such are the pretences and excuses urged against us: And having thus cleared them, I should have rested here, if the account that is given of the Earl's title to this country, and its being considered by his Lordship's council as the proper estate of his family, did not call for some notice. First, we are told "of the good ser-"vices of Earl William of Morton to King Charles I. "as if the original grants of these islands, made to the "family of Morton, were indeed but a just remunera-"tion of those services, and of the Earl's constant and "loyal adherence to the king's person and govern-"ment." To the first part of this assertion, I oppose the act of resumption and annexation, *anno* 1669, which ascribes these grants to mere importunity, on one side, and to a prevalency of goodness, and a complying inclination, on the other. And to the last part of this assertion, viz. the Earl's constant and loyal adherence to the king's person and government, I oppose the transactions of the Committee of Estates in the years 1647 and 1648 †, which prove the contrary.

So likewise as to the grant of 1707, and that also of 1742, which is grounded upon it, there is an apparent necessity of ascribing both these grants to the mere bounty and liberality of the Crown, having been sought and

† Two books in the General Register-House.

and obtained as an act of favour only; and yet the Earl's council would not have it look as if a demesne-country of the Crown had been given away as an act of favour only, lest at some time or other the grant should be called in question: Therefore their aim is, to convert these last grants into a debt, by making them look like an act of restitution, instead of an act of favour, upon a pretence, that the original title had been taken away by hardships, or stretch of law. Now to this I oppose the testimony of Earl Robert of Morton, in his memorials to the Court of Session, *anno* 1718, viz. "That the original gifts of these islands, "made to the family of Morton, having been without "good causes,——and only for the honourable aliment "and support of this family, were therefore most for-"mally and effectually reduced, and *in totum* annulled, "by a solemn and formal decreet of the Lords of Ses-"sion, *anno* 1669, ratified in Parliament that same "year†." Also, that the gift in 1707 was by no means a restitution upon the merits of any former gift; because "Restitutions (says the Earl) must complain "of injuries and injustice, which he neither did, nor "could do, with regard to the reduction and ratification "*anno* 1669,—having proceeded upon uncontrover-"tible grounds of law, and conform to laws not on-"ly standing in force, but absolutely necessary for pre-"serving the patrimony and demesne of the Crown; "——that it was no other than the reduction of a "right without a title,——a right manifestly against "the laws of the land,——to the possession whereof "the Crown might have summarily entered, even be-"fore or without the reduction, in terms of the act "of annexation in 1669:——*Quâ fronte* therefore "(continues his Lordship) can the grant in 1707, be "called a restitution *per modum justitiæ?*——It was "an original grant,——an original new grant, by "and

† And afterwards also, upon an agreement with the officers of State, homologate and ratified, both by the then Earl and his son, who once and again renounce their pretensions for ever. See the Earl of Morton's Petition to the Parliament 1693, and the Lord Advocate's Answer, in an unprinted act of that year.

" and from the favour of the Sovereign :——For the " Earl owns, (it is said) and of absolute necessity must " own, this whole gift as a favourable donative from " the Crown,——a pure gift,——a donative of favour, " ——a gift which he owes to the bounty of the Crown, " ——sought and craved out of nothing but favour, " ——grace and favour allenarly †——."

And as the Earl here urged, so the Lords determined, viz. " That this gift proceeded, and was granted, " *per modum gratiæ*, and not *per modum justitiæ*:" Which shews the error of those who would now obtrude the contrary. And if the Earl's title to these islands is indeed an act of favour, the fruit of mere bounty and liberality, it would be an imputation on his Lordship to suppose or imagine, that in any way it were used as a grievance to the insulars; and a very high imputation would it be on the Throne, to suppose or imagine, that in any way this was meant, or would be tolerated. " That my grants (says Queen Elizabeth, " in her golden speech to her last Parliament) shall be " made grievances to my people, and oppressions be " privileged under colour of our patents, our princely " dignity shall not suffer it. When I heard it, I could " give no rest unto my thoughts until I had reform- " ed it; and those varlets, lewd persons, abusers of " my bounty, shall know that I will not suffer it. And " Mr. Speaker, tell the House from me, I take it exceed- " ing grateful, that the knowledge of these things is " come unto me from them,—which gives us to know, " that no respect or interests have moved them, other " than the minds they bear to suffer no diminution of " our honour, and our subjects' love unto us; the zeal " of which affection, tending to ease my people, and " knit their hearts unto us, I embrace with a princely " care, far above all earthly treasure."

To conclude, I have shewn from whence the weights of this country are derived, the just measure of their stan-

† See all this, and much more to this purpose, in a decreet for the Earl of Morton, against Brown and others, Feb. 28. 1718.

standard, and their gradual and continued progress beyond the standard. If the Earls of Orknay raised the weights with a high hand, which yet is not very clear, I have shewn, that those who came after them saw the error of this, and took pains to effect the thing gradually: That by insensible gradations having stealthfully increased the weights, by arbitrary regulations, they attempted to settle them when brought to a great height: And that it was not in the nature of these men ever to be satisfied with encroachments, or to think they had made enough, whilst they could make more; having step by step carried on this art to the last, insomuch that the weights at present, and consequently the Crown-rents, are confessedly twice as much as at first, and about half as much more. "The least "denomination of their weights in Orknay (says the "Earl†) is that called a Mark, being about 20 Ounce "weight Dutch." And the first and equal Mark being 8 Ounces only, as we have shewn, the thing therefore which is now called a Mark (admitting the Earl indeed knew its value, which he cannot) is to the first and equal Mark as 20 to 8 nearly, or 5 to 2, that is twice as much, and about half as much more. As a consequence of this, I have shewn, that numberless little heritages, and some fair estates also, are already swallowed up, whilst many more are ready to be swallowed up, the Crown-rents having so increased with the weights, that when the years are not very plentiful, the whole fruits of the grounds are not sufficient to satisfy them. Hence that mighty decrease of the landlords, which we have shewn, about nine tenths of their number being sunk in the vortex of false weights, and this since the year 1661. And what greatly increases the mischief, the woeful decrease of the inhabitants in general, is likewise the offspring of these false weights, depriving men first of their land, then of their other fortunes, and at last, like a consumption, seizing their very persons, and driving them out of the islands: They see

† In his Memorial before quoted, *supra*, p. 29.

every year the productions of their country, which for so many months they have been cultivating, carried away before their eyes, whilst themselves must be contented with what gleanings they can gather for their own use; the springs of their subsistence being turned into one destructive channel, and this chiefly by the drain of false Weights, the abomination lying heaviest upon them: Nor is the kind patronage, and fatherly care of the government extended to them, as to their fellow-subjects; For being out of the eye of the Court, they are neither in its care, nor under its protection; but manacled by laws, against all law interposing a subject betwixt them and the throne; and thus left to wrestle with authority as well as power, under the heaviest injustice and oppression that can afflict human nature.

PART II.

Of those other Grievances under which the Isles of Orknay and Shetland universally groan, breathing for deliverance from them also.

HAVING thus largely considered the mischief of false weights, let us now consider those other oppressions by which this mischief is so many ways aggravated.

CHAP. I.

Of the Tribute-real, or old Land-tax, which is here kept up, under the name of SKAT, *notwithstanding the new assessment of the Islands, in which it should have sunk, as all over the rest of the Kingdom.*

SKAT is the common and constant land-tax, which the inhabitants of these islands were in use of paying, first to the Crown of Norway, and afterwards to the Crown of Scotland, when they became subject to it. Like the old taxation in Scotland, it justly subsisted till the method of assessment was changed, about the year 1649, but after this it could not justly subsist, no more than the old taxation subsisted in Scotland, having been alike abolished in the new assessment that succeeded. And yet the grantee of these islands, as if they had not been rated a-new, and as if no new assessment had followed, continues to exact the ancient Skat, or Land-tax also; not indeed under the name of Land-tax, because this would belong to the State, and is moreover levied a-part, but as if Skat were a feu-duty, and all lands

lands were subject to it, without even the pretext of a feudal relation. Now the absurdity of this excuse will appear, and also the injustice of the practice grounded upon it, if we consider, that Skat is not only all one with Tax or Tribute, but that it cannot possibly imply any thing in the nature of feu-duty. And this is evident,

I. From the term itself, Skat, which in the language of Norway, from whence it is derived to the Orknays, signifies Tax or Tribute. Thus *Matth.* xxii. 17. which our English version renders, *Is it lawful to give Tribute unto Cæsar, or not?* The version of Norway renders thus, Er det tilladt at give Keyserer Skat, eller ey? Is it lawful to give Skat unto Cæsar, or no? Then follows; *But Jesus perceived their wickedness, and said,* ——— *Shew me the* Tribute-money.——Lader mig see Skattens mynt,——says the version of Norway; Let me see the money of the Skat. Also *Rom.* xiii. 7. *Render therefore to all their dues; Tribute to whom Tribute is due, Custom to whom Custom.* The Norvegian version renders thus, Saa giver alle de ting i ere Skyldige; den Skat, som bor Skat, den Told, som bor Told; the Skat to whom Skat, the Toll to whom Toll. Also *Luke* ii. 1.——*There went out a Decree from Cæsar Augustus, that all the world should be taxed.* The version of Norway renders thus, Der udgik en befalning fra Keyser Augusto, at alle verden skulle beskrive til Skat, that all the world should be censed or enrolled, in order to a Skat. Then the different versions run thus; *And this taxing was first made when Cyreneus was governor of Syria:* Denne Beskrivelse var den allerforste som skeede der Cyrenius var Landsherre i Cyrien: And this *Census* or enrollment was first made, &c.——*And all went to be taxed, every one into his own City;* Og de ginge alle at lade sig beskrive til Skat, huertil sin stad: And all went to be enrolled for the Skat, every one into his own city,——*And Joseph went also up from Galilee,——to be taxed with Mary his espoused wife.* Da drog og Joseph op af Galilaea——at hand skulle lade sig beskrive til Skat, med Maria, sin trolovede hustrue: ——In order to be censed for this Skat, which Mary, his espou-

espoused wife. So also in many passages of the Old Testament, particularly *Dan.* xi. 20. *Ezra* vii. 24. and 2 *Kings* xxiii. 33. and 35 the words rendered Tax or Tribute in the English version, and their derivatives, are in the version of Norway expressed by the term Skat, and its derivatives. Therefore, in the language of Norway, which was likewise the language of these islands, Skat is the term for Tax or Tribute, which is not in the Nature of Feu-duty.

II. Olaus King of Sweden, is sirnamed SKOT-KONUNG, *i. e.* the Tributary-King, because he sent tribute to the Pope, and made his kingdom subject to the Holy See. *Rex Sueciæ Olaus*, SKOT-KONUNG, i. e. *tributarius Rex cognominatus esse existimatur, quod hortatu Præsulum Sueticorum ad pontificem Romanum misisset tributum.* Loccen. Hist. Suec. lib. ii. SKAT therefore, which the Swedes sound Skot, is the term for Tax or Tribute, as shewn above.

III. SCATA, says Sir John Skene, (under the word *Scaccarium*) is an old Saxon word, "quhilk signifies "treasure, taxation, or impost." Skat in the Gothick is the same with Scata in the old Saxon, which has a very near affinity with the Gothic: Therefore Skat, when issuing from land, is not a feodal rent, but taxation, or ground-subsidy.

IV. When these islands were engaged to the Scots, King Christian of Norway sent letters to the insulars, requiring them to own the King of Scots, and to pay their tribute to him, till the islands should be redeemed†. Therefore, by these insulars there was a tribute then due to the King of Norway, which was afterwards to be paid to the King of Scots; and yet of them the King of Scots received no Tribute, nor claimed any, but Skat only; which is therefore the Tribute mentioned in Christian's letters.

V. As Skat in Norway is the term for Tax or Tribute, so Farm-rent, in contradistinction to this, is there called LAND-SKYLD, *i. e.* Land-duty, with us Land-mail; by which we also express Crown-rent or Feu-

† Torf. Orcad. Lib. 11. p. 189.

Feu-duty, in contradistinction likewise to Skat. And hence those distinguishing marches kept up betwixt them, not only in our rentals or surveys, but likewise in the books of the farmers and grantees of the islands; the Skat being first entered, and charged by itself, under its proper name, and apart from this, as a separate thing, the Feu-duty or Land-mail by itself, under its proper name: Therefore Skat cannot be that, nor in the nature of that, from which it is thus distinguished, *i. e.* Feu-duty. But in the rental or survey of the Orkneys, *anno* 1595, now in the General Register-house, Skat is Englished by the word Stent, which is a convertible term for Extent or Land-tax ‡: Therefore Skat is Land-tax.

VI. In domesday-book, the entries of land in order to Hidage, are first by counties, then by towns or manors, and lastly by hides, half-hides and virgates of land, according to which the Hidage is fixed and limited: So also with us, the entries are first by islands, or parishes, then by towns or villages, and lastly by Mark-lands, pennies and farthings, according to which the Skat is fixed and limited. Therefore Skat with us is in the nature of Hidage in domesday-book, that is, Tribute-real, Land-tax or Ground-subsidy.

VII. *Beneficia*, or Fees, are not known in Norway, nor in these islands were they known, till an entrance was wrought for them by the reformation: And yet in these islands, as in Norway, all lands owed Skat to the state, whilst fees with us, as well as in Norway, were yet unknown: Therefore Skat cannot be feodal rent. But the *Alodia* owed Skat, as well as the Crown-lands, and those of the Church; yet no where does *Alodium* owe ought to the State, but land-tax only: Therefore Skat is land-tax.

To clear these *Alodia*, or the Udals of these islands, I suppose it will not displease to touch upon them, because

‡ See Skene *de verb. sig.* also Act xi. James I. in the black Acts of Parliament, compared with an Exchequer-book in the Advocates' Library, intitled, King and Church-rents, and Tax-rolls, p. 57.

cause this matter is not much known abroad, and yet is very useful to confirm what we have advanced.

UDAL-LAND is such as the owners have in *All-hood*, acknowledging none but God alone for it. Latin writers call this *Alodium*, or *Alodum*; the French and English Alod or Aleud; the Germans and Scandinavians Aoidal, Audal, Othel or Odal; and the Orknay men and Shetlanders, Authel, Uthel or Udal: A compound of the Tuetonick Ode, signifying propriety or possession, and of Ole or Ale, which in the same language signifies *ancient*†. And thus by an Udal or Aleud, an Odal or Alod, is meant an ancient inheritance, patrimony or possession.

The owners of these lands of inheritance were by the Germans called Othel-men, and by the Anglo-Saxons Edel-men. In Norway they are called Odal-men, and in these islands Authal-men, Uthel-men, or Udal-men; a name (says *Eccard in loc. citat.*) equipollent to noblemen. Hence the *proceres Orcadum*, so frequently noticed in the Orcades of Torfæus, and also in his history of Norway. And hence the optimacy, or noblesse of these islands, noticed in that act of State mentioned page 3. †, and likewise by Buchanan in his life of James V. ‡.

But not to insist on this: If we consider the law-book of Norway, under the head of selling and redeeming Odal-land, it is plain, that the Udal-right has its foundation

† *Eccardus ad leges salicas, in voce* Authumia.

† An act (to wit) presented to the King of Norway, by the little Parliament of this country, on behalf of William their Count, *anno* 1443. To clear his title, they exhibite from their chronicles the whole series of their Counts, from the year 874, to this year 1443, fetching William their Count at the time, from Rognvald their first Count, by a continual succession. *Illustri* (they begin) *& excellentissimo domino nostro, Norvegie regi—Thomas Dei & apostolici sedis gratia, Episcopus Orcadis & Zetlandie, canonici ecclesie cathedralis Sancti Magni martyris gloriosissimi, Legifer, ceterique* proceres, nobiles, *populus ac communitas ejusdem, gracia, pax, caritas, &c.* And again, *Hinc est quod nos Thomas Episcopus, capitulum, canonici, legifer, ceterique* proceres, nobiles, *populus, communitas sive plebs antedicti, coram Deo in fide ac fidelitate attestamur.*

‡ *Primum* (says he, speaking of the King) *ad Orcadas appulit; ibi turbas exortas composuit, paucis e* nobilitate *captis & in custodiam datis.*

dation in the Mosaical institutions. It was allowed by the law, that if a man had sold his land, and was not able to redeem it, his next relation might redeem, and the buyer could not refuse. So likewise by the law-book of Norway †, not only may the Odal-born, or the next heir of an Odal-man, redeem from a stranger; but if he is not able, any of his kinsmen may: and so may another kinsman, if nearer than he who redeems, redeem back from him, till the land returns to the Odal-born. By the law no man was allowed to sell his house or his field, till the time of jubilee, except for necessary provision, when compelled by poverty. And just so in Norway, or in these islands, which is the same, when one was to sell his land, it was not enough to make the first offer to his kindred; but he could not sell at all, except for the relief of his necessities. This, I think, is plain from the law-man's doom, Numb. 2. of the Appendix. By the law, a man whose poverty had constrained him to sell his land, might redeem it before the year of Jubilee, and so might any of his near relations: But then (say the Hebrew doctors) this was to be honestly done, and not with borrowed money, on purpose to carry the land from the buyer to another. By the law-book of Norway, the Odal-born cannot redeem but for himself; and if the buyer mistrusts him, he must clear himself by oath, that he seeks back the land to his own Odal, and to no other ‡. By the law a man was to redeem his field according to what was given for it, though the buyer (say the doctors) had sold it to another for twice as much. By the law-book of Norway, the Odal-man, or Odal-born, is to redeem his land for the price which was first paid for it, according to the letter of sale, and this though he redeems from one of his own kindred, who had already redeemed it for more ⸸. By the Law, houses within walled cities, if not redeemed within a year after the sale, remained with the buyer as his own,

† *Lib.* v. *cap.* 3. *art.* 2.
‡ *Ibid. art.* 7.
⸸ *Ibid. art.* 5.

own, and the jubilee would not restore them. By the law-book of Norway, the owners of houses and lands within cities, may freely alien them, without making any offer to their kindred, as the law provides when Odal-land is sold ‡. Lastly, By the law the eldest son had right to a double portion of his father's estate, and the other sons had their equal shares, the daughters, in this case, being incapable of any inheritance, but of legacies only, in money or moveable goods. And thus, for the most part, it is by the law of Norway, which in this matter is much alike, differing more in modification than in substance, as may be seen above, page 8. All which shews, that the Udal-right of Norway, and consequently of these islands, is very much Mosaical, both in the design and manner of it. And the same thing is observed of *Alodium* in general, by that learned Scots lawyer Sir Thomas Craig, in his book *de feudis.*

The heritage of the Udal-man, his *terra alodia*, or Udal-land, is so entirely his own (say foreign writers) *ut eo nomine nulla neque gratia, neque merces, neque opera debeantur;* that neither homage, nor rent, nor service, is due for it. And the reason is, he owns no seigneural superior, but holds *de Deo & sole*, of God and Heaven only, like the late Prince of Haynault, and most of the German princes, at present. For this reason, the Udal-men with us were likewise called Roth-men, or Roythmen †, *i. e.* Self-holders, or men holding in their own right, by way of contradistinction to feudataries, who hold derivatively, or by a dependence on others. And hence their Udals, at this day, are not transmitted like other lands, but with the Roth always, or Royth, and the Rœt, Aynin and Saymin; that is, with the very or sole right and dominion, the very or compleat propriety and demesne of the subject.

As they acknowledge no seigneural superior, so neither did they inherit by seigneural titles, after the manner of feudataries, as we have seen above, page 10.

‡ *Ibid. art.* 18.

† See the Law-man's Doom, Numb. 2. of the Appendix.

10. And hence that distinction betwixt the Udal-right and the feudal, which occurs in a grant made by James VI. to an Udal-man of Shetland, Book 35. Num. 30. of the Great-Seal Register. Hence likewise that law of King William, which in these islands allows the small vassals of the church, formerly possessing by the law of tenures, to possess for the future by the Udal-right, without the use of tenures; thus opposing the Udal-right to the Feudal, which indeed is the true characteristick of it. For Udal-lands (we have shewn) are free lands, which men hold *pleno jure;* the reverse of our Feudal-lands, which owe rent to the Crown, and depend upon it.

Tithes indeed they owe, alike with other lands, and also Land-tax, with us called Skat, from which no lands are exempted; but besides all this, the Feudal-lands owe a Crown-rent, with us Land-mail, to which the Udals are not, nor can be subject. And as this is a distinguishing character of them, the Skat cannot be Crown-rent, being opposed to it, by so much as *Alodum* is opposed to *Feudum*. But Skat with us is the term for Land-tax, and, moreover, from the nature of *Alodum*, appears indeed the very thing: Therefore, if the old Land-tax, and the new assessment were not intended to subsist together, no lands which yield assessments to the State, can at once be incumbered with this and Skat also.

If we object, "That the Skat was annually levied, "and the old Land-tax but seldom;" I answer, the new assessment is annually levied, and ever has been so, tho' no less a Land-tax than the old assessment. Besides, as the Skat was to continue after the manner of Norway, and this by compact, in the view of a speedy redemption of the islands; there was no necessity of levying it after the Scottish manner, it being enough that it represented their Land-tax, and served instead of it, tho' levied year by year, like assessments at present.

If we object, "That after the year 1597, when the "King's proper patrimony was first taxed, the Isles of "Ork-

" Orknay and Shetland became subject to Land-tax, " apart from the Skat." This, I answer, if it were true, would likewise prove, that before the year 1597, the Isles of Orknay and Shetland were subject to Skat only. Now all lands owe tax to the State, even *Alodium* being every where subject to it, tho' free in respect of other lands; therefore, if the lands of Orknay and Shetland, till the year 1597, owed no tax to the State, but Skat only, then Skat was Land-tax. And if Skat was Land-tax, as we have shewn, representing the Land-tax of Scotland, and serving instead of it, tho' till the year 1597 only, it signifies nothing to the argument, that then they began to subsist together, rather than under the commonwealth, because in justice they could not subsist together at all.

Besides, it is not true, that when the King's proper patrimony was first taxed, the Isles of Orknay and Shetland became subject to Land-tax, a-part from the Skat. If by the Isles of Orknay and Shetland, the Earl of Orknay is meant, that he was taxed, is not denied; and this in consideration of the King's proper lands which he possessed, and also of the general Skat of the islands, which he levied from the landlords and demesne-tenants under him. But if by the Isles of Orknay and Shetland, the private owners of land are meant, it is a mistake in fact, that they were concerned in this or any such tax, till their lands were rated a-new under the commonwealth. To confirm this, I observe, that in the tax-rolls of Scotland, all the lands of the kingdom are entered and rated with precision, the lands of each shire and stewartry in a roll a-part, except the lands of this stewartry only, of which there is no roll at all, neither in the year 1597, nor at any time after. And when all the shires and stewartries of the kingdom had their distinct and particular rolls, the stewartry of Orknay and Shetland only excepted; this, I think, is a pregnant negative proof, that in these islands the private owners of land were not subject to tax, after the manner of Scotland. I observe farther, from the tax-roll of 1613, that then all the shires and stewartries of the King-

kingdom had been singly called on, in order to a review of their rolls, this only stewartry still excepted. And tho' some of those stewartries, having been remiss in complying, are therefore distinguished from the rest, and taxed to the full, as their rolls then stood; yet is not this stewartry mentioned then neither, though so fair an occasion offered. All which shews, that here the national Land-tax extended not to the private owners of land, except as comprehended in the general Skat of the islands, which represented it. And it will add no small strength to the argument, if we consider how the tax-rolls of Scotland were formed, viz. from the extent or retour-duties of land; which indeed might be a good rule in Scotland, but in these islands could be none. For when the King's proper patrimony was first taxed, retour-duties with us were so little known, and those customs incident to tenures, that not one landlord in fifty had a tenure; and having no tenure, he could have no retour-duty, and therefore no Ratement, nor Land-tax, after the manner of Scotland.

If we object against the abolition of the Skat, "That "about the year 1648, many of the *Alodiarii* con- "verted their hereditary lands into fees, by accept- "ing tenures from the Earl of Morton; and then the "King's Skat having been changed into a sort of "feu-duty, in this character it could not be sunk in the "assessment of the islands." In the year 1646, (I answer) when the King could refuse nothing, Morton, it is true, procured a new grant of the islands, and with this a new power also, beyond what had been given him before, and beyond what could be given him; a power (to wit) of objecting to the Udal-right of this country, and of selling or infeodating the *Alodia* to whomsoever it might please him, being tacitely, and in general words, granted to him for this purpose †. It is likewise true, that about the year 1648, when Morton might do what he pleased, being one of the

† Privy-Seal Register, beginning October 17. 1646, Fol. 53.

the Committee of Estates for promoting the ends of the Covenant ‡, he, and his son Robert after him, under the authority of this grant, laid claim to the hereditary lands within their jurisdiction, and by the exercise of their unconstitutional power, compelled many of the Udalmen, who hitherto had no feudal titles, to accept tenures from them. All this is true: But it is no less so, that the very root of those tenures was afterwards destroyed, when the grants made to Morton and his family were resumed by the Crown. And as the branches cannot subsist when the root is destroyed; neither could the feudal relation betwixt Morton and the Udalmen, with the obligation arising out of it, when the foundation was taken away: Therefore the Udalmen, having recovered their liberty, laid their charters aside, and from this time, as self-holders, possessed in their own right. And the Skat, by consequence, having subsisted no more as a feu-duty, but returned to itself, in this proper character, it should have been abolished in the assessment of the islands.

If against all this it is objected, "That Skat and "assessments having at once subsisted since the time "of the commonwealth, this use of paying both in "times past, will subject the islands to it for ever, "notwithstanding the injustice of its beginning;"——— As if it were wrong to introduce an evil, but not to continue it when it is introduced; or because this evil was not sooner redressed, as if therefore it were no evil; and because by use it grows perpetually more grievous, therefore it is too late to correct it. A strange plea this, if we consider it under the head of justice and humanity. And tho' we should consider it under the head of Positive Law, yet is the plea alike hateful, if we take along with us, how this use of payment was kept up, viz. just as it began, by violence.

For first, when men would not pay the Skat, looking upon it as their own, not only were they condemned to pay it, but condemned by the very persons who pro-

‡ See in the General Register-House, the transactions of this Committee, in the years 1647 and 1648.

prosecuted them, being at once both magistrates and publicans, as said above, page 22. And, what is oppressive beyond measure, it was not always left to the regular course of justice, whether they should pay it or no; but by violent hands were their heritages seised, without even allowing them those outward forms of justice which the most perverse magistrates generally take care should attend their judgments. Nay, as if such deeds had been justifiable, the farmers sometimes avow them in their books, without giving themselves the trouble of seeking for an excuse to cover them; "This "man's land (say they) escheat to the King for debt;" that is, for non-payment of the Skat, which they called King's debt, and at last Feu-duty: Thus blending the King's name with their own, profaning and prostituting it to the worst purposes, and making it at once their weapon and their shield. And what they got by violence, they held by violence, securing all from any attempts of recovery, under the borrowed name of the King; "The lands of ———— formerly Udal, "now King's Land;" or, "the lands of ———— now "fallen in escheat to the King:" Examples of which are frequent in all the books of our farmers, before the year 1707.

2dly, Tho' in modern times this practice began to be disused, yet have other practices been kept up, no less arbitrary, and equally enforcing the payment of Skat, whether men would or no. For in these modern times not only were the landlords condemned to pay it, as formerly, by the very persons who prosecuted them, but when they could not pay in kind, after the ancient manner †, penal prices were moreover imposed, at the will and pleasure of their masters, viz. the current price of the thing, and a fourth or a half more, in

† When money (to wit) having been rare in these parts, the Skat was levied in such things as payments were then made in, butter, oil, and grain, as well as in money. Thus the Germans and English-Saxons, instead of money, used to pay all things, even pecuniary mulcts, in grain, cattle, and other goods, valued on purpose at a certain rate in their laws. *Ll. Alured. c.* 10. *Ll. Saxon. Tit.* 18.

in name of penalty, for the non-payment. This practice the Earl of Morton avows himself, and even contends for, as his right, in a representation to the Court of Session, Jan. 16. 1749. His Lordship's demand for these penal prices having been over-ruled by the Court; for all this "he wants (we are told) to have it understood, that he yields this point as to bygones only, "and by no means to have an influence in time coming. For, were the matter of importance, (says "his Lordship) he apprehends he would have no difficulty to bring evidence, which behoved to satisfy the "Court, that he is intitled to a penal price, upon failing to deliver the Feu-duties payable in kind, particularly the oil and butter. And he shall state one "fact (he says) which is notorious, and can also be "proved by writ, that it has been the constant practice in Orknay, to strike Fiars † betwixt the King and "his vassals, and the Bishop and his vassals, somewhat higher than the current prices, in order to be a "compulsitor upon the vassals to deliver the Feu-duties payable by them:" That is, in order to enforce the payment of Skat, now entered in the Earl's books, and here disguised by his council, under the name of Feu-duty.

3dly, Besides the invention of penal prices, the Skat was extorted by another invention, kept up likewise on purpose, viz. a prohibition upon export, or a sort of interdiction from trade. For proof of this, facts might be instanced in; but I shall produce one evidence for all, viz. the testimony of our late steward-depute, in a letter addressed to Mr. Traill of Saba, April 14. 1729. "I am extremely surprised (says he) you have "not sent in your corn to the store-house, for your "lands in St. Andrews——So I must intreat, for your "own sake, you will not neglect it. Please acquaint "Risick to put in his meal; for I have left notice "at the Custom-house to stop all ships' cockets till the "su-

† Absolutely (it should be said) and at will, to impose penal prices, without any jury or evidence whatever. Such are the fiars here meant, this having been the practice, and continuing so.

" superior-duty be paid, conform to the country-acts." A salutary practice this, in a country addicted to traffick, and so capable of it, if the liberty of the inhabitants, and all the remains of publick freedom, were not quite overthrown. And yet the steward-depute, we see, openly avows it, as the Earl does his penal prices; either under an assurance of being able to protect himself against clamour, or that the miserable people, in their present enslaved condition, would not dare to clamour at all.

From all which it appears, that the use of paying Skat, after the imposition of assessments, was not a voluntary thing, but the product of injustice and oppression; such cruel oppression as can be compared to nothing but the arbitrary spirit of Turky. And as no law can support this, even Jupiter's lap being no sanctuary for oppression, the Earl cannot avail himself of it.

[*To be continued.*]

APPENDIX
OF
PIECES.

APPENDIX.

NUMB. I.

DECREE by the Law-man of Bergen *in* Norway, *and also by the Law-man of* Shetland, *and their Council, reversing a Sale of land in these Islands, as made contrary to Law.* Vid. supra, p. 11.

ALlum manum som dette Breff see elder høre, ender Sebiorn Gottormſon Gulatings og Berwen Lagman, Neils Willemſon Lagman i Hielcland, Erland Anderſon-Frack, Jon Sturkarſon, Mattis Jenſon, Endrith Swenſon-Roſtungh, Aſmond Salmonſon, Raaumen ther Sameſteds, Willem Thomaſon Logrettiſman i Hielcland * * * Kunſtgiorende at mithe wors i Sacreſtiet i Kros-Kyrkie, liggende i Fornefnte ſtad Berwen, Manedaghen neſt for St. Lauris dagh. anno Domini 1485. Seghon ogh giordan aa at their heldo handon ſaman aff enen halfwo Beſkedelig man, Jeppe Zeirſen Radman i tratnefnte ſtad, i fullo umbode huſtrue Marion Jons-dotter, eighee kono ſinne. En aff Andra halfuone, Thomas Engilisk, i fulle umbode Dyoneth Aleranders-dotter, eighte kono ſinne * * * ſaa mange Jorder ſom Thomas foreſagd ulogligh koyt hadde af Anders Skot, afnefnte huſtrue Marions fadee broders, ſom liggeri Hielcland, och herefter nefnes. primo, i Linngoyo i Hivalſoyo sunde thio Marker brenda dui penſinga aff marken. Item, i Jaale i Hedderokill vti marker, nio peninga aff marken. Item, Miſtadt i Jala ſex marker, ſex peninga aff marken. Item, i Hwle i Jala nio marker, ſex peninga aff marken, undan tratnefnte Thomas och hans Erfdinga, och under ofuennefnte Jeppe hans huſtrue och theris Erfdinga, til ewineligh egn, och als forrad, innengords och utthen, til lands och Fiarls i mindelwch eder meira med allo tui, ſom tilliger eller tilliger hafuer * * *. Til ytermer biſſo hengia, wii iwor inſigle for dette breff, med forſagdo Thomas ſom ſcreſuit, er dagh och aar ſom forſagher.

Ex originali, penes Dominum Sinclair; sub octo sigillis, quorum sex avulsa sunt, duo supersunt.

A P-

APPENDIX.

The TRANSLATION.

" TO all men who shall see or hear this Decree, " Sebiorn Guttormson Law-man of Gulating and " Bergen, Neils Williamson Law-man in Shet- " land, Erland Anderson-Frak, John Sturkarson, Mat- " tis Jenson, Endrith Swenson-Rostungh, Asmund Sal- " monson, Council-men of the same place, William " Thomason Lagrettman in Shetland, [send greeting.] " Know, that in a convention held in the quire of the " Cross-Church of Bergen aforesaid, upon the Monday " before St. Laurence Day, *A. D.* 1485; there being " present, on one side, a judicious man †, Jeppe Zeir- " son, Council-man of that place, in right of his law- " ful wife Marion John's-daughter; and on the other " side, Thomas Engilisk, in right of his lawful wife " Dyoneth Alexander's-daughter: We said * * * that " the lands in Shetland, herein after mentioned, which " Thomas aforesaid had unwarrantably bought from " Andrew Scot, the above Marion her father's brother, " viz. primo, in Linga in Whalsey-sound, ten Mark-land, " VIII pennies the Mark less: Item, in Yell in Heddero- " kel, VII Mark-land, nine pennies the Mark less: " Item, in Uldstadt in Yell, six mark-land, six pennies the " Mark less: Item, in Hule in Yell, nine mark-land, " six pennies the Mark less; shall all pass from the said " Thomas and his heirs, and return to the above " Jeppe, his wife, and their heirs, for an everlasting " possession; with all the appurtenances likewise, with- " in the hamlets, or without the hamlets, where the " lands ly, whether hills or dales, that do belong, or have " belonged to them * * *. In confirmation of which " thing, we, and also the said Thomas, do seal this Decree " the day and year mentioned above."

APPEN-

† *Beskedelig* Man; in Latin, *providus vir.*

APPENDIX.

NUMB. II.

Decree of the Law-man of Orknay *and* Shetland, *and his Council, affirming a Sale of Land in these Islands, as made according to Law* †.

AT Kirkwall, on Tuisday in the Lawting, in the moneth of Junii, the zeir of God ane thousand fyve hundreth and fourtein zeiris: A Dome dempt be me Nicoll Hall, Lawman of Zetland and Orknay for the tyme, and ane certane of famows, discreit and unsuspect personis, of Rothmen and Rothmenisonis, chosin, the grit ayth sworne, and admitit to dissyd in ane Matter of heritag: their names followis, that ar to say; Johnne Flet of Harray, Hendrie Cragie, Thomas Cragie, Nicol Cragie, brether-german to Johnne of Cragie, umquhile Lawman of Orknay, Peiris Loutfut, Hendrie Fowbuster, Andro Linclet, Williame Clouthcath, Alexander Housgarth, Magnus Comra, Magnus Aitkin, Andro Skarth and Johnne of Birsto; betwixt Thomes Adameson, in the Umbuth of ane nobill and potent man, Schir William Sinclair of Warsetter knycht, and in the Umbuth of Nicoll Fraser, sone and laufull air to David Fraser, on the ane part; and Alexander Fraser, the said Nicollis father-brother, in his awin Umbuth, on the toder part: Quhair the said Thomas Adameson, in the name and behalff of the said Schir Williame, producit lauchfull witnesses, of full bying and selling of all and haill the said Nicollis father heritag, that he airit, or mycht air be ony manner of way, lauchfullie sauld fra him and all his airis, to the said Schir Williame and all his airis; and gart reid the Writtingis maid thairon, as it beiris: And proponit, allegit and schew ressonabill caussis, as the law levis, that is to say, That

† From the protocal of Mr. *William Peirson*, and another notary, in possession of the Lord *Sinclair*.

That the said Nicoll, diver sindrie tymis, come to the said Alexander, and offerit him the bying of all and haill his rychtis, and his fatheris heritag, befoir ony utheris, and he refussit it all tymis: And thaireftir, he come before the best and worthiest in the cuntrie, and divers and sindrie tymis, in courttis and heidstenis; and maid knawin that he was fameist, and perachand of hungar, in falt of fude, and naikit in falt of cleithing; and tuk witnes, that sen the said Alexánder had refusit the bying of his rychtis and heritag, that it was force till him to sell to ony that wald by: Quhilkis the said Schir William thaireftir bocht, as his chairtor maid thairon mair fully proportis. And the said Alexander shew for his evidentis, that he had gewin the said Nicollis father, his broder, foure markis usuell money of Scotland, in part of payment of his part of heritag. All the saidis parteis allegance and evidentis, be ws avisitlie and ryplie considderit, hard, sene and undirstand, havand God befoir é †, hes deliverit, decreitit, and, be the Cheptor of the Law-buk red thairon, for final dome gewin, that the said Schir William's bying and selling fra the said Nicoll is lauchfull, and thairfoir he sall bruk, joiss and posses, perpetuallie to him and all his airis, the saidis Nicollis father part of all and sindrie his rychtis, landis, heritag, malingis, steidingis, togidder with the principal chemis place ‡ in Toob ↓, as eldest brother thairto. And the said Alexander bying and selling, fund of nane availe, becaus it is weill knawin, and fund, that he smikit and defraudit his brother foirsaid, and did siclyck to the said Nicoll, his brother sone. And the said Schir William to lous ane sister part of the foirsaid landis and heritag, togidder with the tane half of the teind pennie, and the feird, as the eldest brother in the foirsaid heritag. And the foirnamit foure markis usuell money, gewin be the said Alexander to the said David, with all utheris that he may preiff gewin to the said Nicoll, befoir the said Schir

† *I. e* Before their eyes.

‡ The Head-buil, or principal Manor. *Vid. supra*, p. 9.

↓ Now *Tob*, a village near *Saba*, upon the mainland of the *Orknays*.

Schir William's bying and selling of the said heritag, sal be allowit in the landmaillis and ogude, sa far as it extendis to. And siclik, all that the said Alexander may preif that his foirsaid brother David Fraser tuk upe of the pament of the tenement in Sowyr, mair nor he gat, sal be allowit in pament of the said land-maillis and ogude, sa far as it extends to; and all that wanttis be rycht compt and reknyng, the said Alexander sall mak pament to the said Schir William, togidder with the land-maillis of the eldest brotheris part, fra the day and dait of the said Schir William's bying and selling, quhyll the making of this present writ. And the said Schir William and Alexander to be at the Arffhows and chemeis, betwixt this and Allhallow-evin nixt eftir the dait of this present writ, to mak ane lauchfull shone and ayrfkest, as law levis. In witnes of the quhilk thing, I the foirsaid lawman hes hungin my seill to this present dome. And for the mair verificatioun and sikkerness, we the foirnamit domismen hes procurit, with grit instance, the seilis of venerabill and discreit men, that ar to say, *Fredrick Newplar* Notar-publick, and *Gilbert Kennedy* Burges of *Kirkwall*, for ws, to be hung to the present dome, befoir thir witnessis, *Thomas Tullo* of *Ness*, *James Murray*, *William Scot*, and *Alexander Borthwick*, with utheris divers, day, zeir and place abovewrittin, befoir thir witnessis, *Schir Umplair Clerk* Officiar, *Schir Matho Farcar*, and *Schir William Boswale*, with utheris divers.

Hæc copia concordat cum suo originali in omnibus, aliena manu (me aliis præpedito negotiis) fideliter copiat. ac collationat. per me Magistrum Willelmum Peirson *notarium publicum, teste hoc meo cyrographo.*

Ita est *Willelmus Peirson* notarius publicus manu propria.

Alterius notarii testimonium et subscriptio avulsa sunt.