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The Ancient Local Government of the Shetland Islands.

By GILBERT GOUDIE, Esq., F. S. A. Scot., Edinburgh.

At the present time, when the question of local government in districts is being urged forward for practical solution in Great Britain, as a new departure in administrative reform, it may be of some interest to point out that the principle is an old one, and that a striking example of it existed for ages in at least one district of Scotland.

Until the abolition of heritable jurisdiction and the establishment of a uniform system of judicature in counties, about the middle of last century, law and justice and internal affairs in the Shetland Islands were administered in a manner that had little in common with the system prevailing generally in Scotland. In their general aspects the native arrangements were, indeed, an almost complete system of Home Rule — an *imperium in imperio* on a small scale. The abnormal character of these arrangements was simply the survival, in a debased, but still active form, of the old local institutions existing while the Islands were an appanage to the Crown of Norway. And the striking feature is just this survival, amid many counteracting forces, from the romantic Scandinavian period to a time so comparatively near to our own.

It would be beside the mark to allude here particularly to the ancient Althing Court of Shetland during the purely Norse period, which met at least once a year beside the loch

of Thingwall near Lerwick, as did the kindred Althing of Iceland at Thingvalla in that island. Much that has been hinted about the Shetland Althing is conjectural, and some of it apocryphal, because the records do not exist; but we are on firm ground of record evidence when we come to consider the Lawting and Justice Courts which succeeded it in the seventeenth century. This was not a time when the islands, conjoined with Orkney, formed a semi-independent State, under a Jarl whose homage to the Crown of Norway was at times little more than nominal; but when the Scottish rule was hard, fast, and oppressive, and the islands an integral part of the kingdom of Scotland.

The constitution and powers of this provincial assembly cannot perhaps now be defined with accuracy. Composed originally of all udal freemen, and afterwards of heads of families cultivating the soil, the Lawting Court, the successor to the Althing, appears latterly in its decadence to have been made up of heritors, feuars, and larger tacksmen.*) Attendance at the periodical meetings became a stipulation in titles to property, and fines were imposed on absentees.

The President of the Lawting was the Lawman (old Norse *Lögmaðr*), whose duty was to expound the law as laid down in the native *Book of the Law*, and decide causes in conformity with its regulations, either with the aid of a selected Assize, or guided by the votes of the whole Assembly. The representative of Government, in the collection of skatts and maills, or rents, was the Great Fowde, (old Norse *Fogeti*) under whom were subordinate Fowdes charged with the administration of every separate parish. In the course of time the Lawman and Great Fowde were superseded by the Stewart-Depute or Sheriff, and the parochial Fowdes by the Scottish Bailie.

The Lawting Court of Shetland (old Norse *Lögþing*) was a primary and not representative assembly. It was a Parlia-

*) Heritor = landowner. — Feuair = holder of land paying fixed annual duty. — Tacksmen = one who farms a whole and considerable farm. Ed.

ment of one chamber, exercising both legislative and judicial functions. The criminal jurisdiction extended to punishment by death. The records, so far as preserved, begin with the year 1602, and exhibit a very curious collection of enactments for the regulation of local affairs, and of judgments in criminal causes, from petty offences to graver charges of assault, witchcraft, slaughter. As has been said, there was usually in later times a regular assize, numbering a dozen or fifteen persons, appointed to aid in criminal trials. There are frequent instances of the compurgatorial system; persons charged with offences being doomed to acquit themselves by the oaths, in their vindication, of a sufficient number — six or twelve, as the case might be — of honest neighbours (termed the *saxter* and the *twelver aith*), or that of some official of reputation, *e. g.*, the *laryt aith*, the oath of the lawrightman. The laws, or police regulations, were enacted usually „with advice and consent of the gentlemen, suitors of Court, and Commons;“ otherwise the „Bailies of parishes,“ the old parochial Fowdes, take the place of the „Commons“ as consenting parties.

While the lawting was the head Court of Shetland, corresponding to the more ancient Althing, the extraordinary feature of the system was, that a complete form of local government and judicature was also established in every parish. Here the supreme official was the Under Fowde (latterly *Bailie*) administering justice and collecting the rents and duties. The rights and privileges of the people were again protected by the Lawrightmen (*Lögrettamenn*), chosen and appointed on their behalf in every parish; while subordinate officials termed *Ranselmen**), who have scarcely yet died out, were empowered to make inquisition in case of theft, and generally to aid in the maintenance of order and good neighbourhood.

The modes of procedure in the conduct of Court business appear to have been orderly and formal, with sufficient, but

*) *Ranselman*, *Rancelman* or *Ransellor* = a kind of Constable or Searcher. E d.

not excessive, technicalities. The minutes record the sittings in the usual phraseology — *the suitis callit, the Court lawfullie fencit, the esseis chosin, sworn, and admittet*; after which the names of the assize follow, and the roll of cases is gone over. Space does not permit illustrations of those cases in a brief notice like the present, but one or two examples may be given. In a Circuit Court held in Dunrossness in 1602, „Grigerous in Lie and Mareonn Paterson ilk ane found to have Sclanderit utheris and thairfoir ilk ane of them are decernit to pay iij merkis to the King.“ Again „Magnus Erasmusson for bein fow and drunken, contrair and against the actis maid thairanent of befoir, and for bleiding himself be his drunkenness beneath the ene (eyes); thairfoir is decernit to pay for his fowness 10 libs, and for his bluid beneth the ene 4 markis, in exampil of uthers.“ Lastly, „it is tryit and provin be certain Ranselmen that Intale Antonnison in Seter has stown (stolen) certain fische out of the skoes (drying houses) of St Magnus parochin, and thir fische found in his house under the nybors markis; and thairfoir his hail guidis and gear decernit escheit, and gif he beis apprehendit with the walor (value) of an uristhif heiraftir, to be tane and hangit be the craige quhil he die, in exampil of utheris (!).“

Cases of similar character comprise the proceedings at all these Courts, though sometimes the graver responsibility of acting as life-and-death tribunals is assumed, as in the case of the Egyptians (gipsies) indicted for slaughter at Scalloway on 21st August, 1612, when Katherine Faa was ordained „to be tane to the bulwark and cassin over the same in the sea, to be drownit to the death;“ while unfortunate wretches arraigned as witches found no mercy from either the „brethren of the ministry“ or the Court, and perished by judicial murder as elsewhere.

Less painful to follow, more instructive, and more pertinent to the question of local government than these criminal records, are the legislative enactments of the native Courts. These enactments were passed into law at meetings extending

over a lengthened period during the 17th century, and eventually took shape in a collection termed the *Country Acts*. These have been printed, and form a very comprehensive municipal code. No doubt, while the Lawting Court was presided over by Earl Patrick Stewart and his deputies, some of the laws enacted were of an arbitrary and tyrannous character. Those of an earlier and later date are characterised by sagacity and common-sense, in the then circumstances of the country, though sometimes, of course, at variance with principles of Free-trade and social conventionalisms as now recognised. It was ordained, for instance, in 1604, „in respect the victuallis are guid scheape in the contrie, praisit be God, that the hail brousteris (i. e. brewers of home-made ale) within the parochin of Dunrossnes sall sell na dearrer aile nor twelff penneis the pynt fra this furth.“ Very drastic treatment was provided for liars. For the first offence the offender was to „tyne*) his rycht hand and sword, and for the next lie to tyne his movablis and to be baniest the countrie!“ The vice of inebriety was likewise severely punished.

The careful and exhaustive nature of this legislation is evidenced by the following subjects of special enactment. It is provided, for example, that no servants pass out of the country without licence (to prevent injury by lack of labourers); that *quhitred eirnis* and *corbeis* (weasles, eagles, and ravens) be destroyed; that oxen be not removed from the parish or sold to strangers; that no land be sold without its first being offered to the nearest of kin of the seller (an old principle of Udal law); that beggars and vagabonds, also sin and vice, be punished; that no „chapmen“ buy goods from ships or stranger merchants, without the inhabitants being first apprised by intimation at church, and opportunity given to them to make their purchases at lowest prices; that no man presume to ride other men's horses; that all persons honour the King's majesty, and be sufficiently armed; that false weights and measures be suppressed by proper marking of *pundlers* and

*) Tyne = to lose. Ed.

bysmers; that wild horses be secured; that *grinds* and *yetts* (gates) be kept shut; that no sheep be rowed (that is, have the fleece pulled off, as is still the custom in Shetland) on Sunday &c. &c. Finally these sagacious law-makers regarded it as also within their function to invade the domain of the family relations, of course in the public interest, as witness the following act of 1612: — „Forsameikle as thair is monie serviable persons that mareyis and takis up housis nocht having wherupone to live, wherby the inhabitantis and indwelleris in the cuntrey ar damnefeit and hurt for lack of servantis; thairfor it is statut and ordaint with consent of the gentilmen and comowins of the cuntrey That it sall not be lesum*) to servile persones not worth three skoir gulzeonis quhilk is 72 pundis Scottis' to tak up housis nor no man to set to them housis or land.“ Severe as this seems, and at variance with the principle of personal freedom, it is an ordinance not repugnant to the theories of Maltus, and something akin to it might perhaps be salutary at almost any time.

It is not claimed for these enactments, the general character of which has been indicated above, that they exhibit the highest type of legislative wisdom, judged by nineteenth-century standards. But it may be affirmed that they were suited to the requirements of the country and of the time, and served their purpose well. It is also undeniable that this system of local government, coming down from early Norse times, tended in a high degree to the maintenance of order and to the liberty and well-being of the people, in accordance with the instincts of freedom of the northern race. But by-and-bye these cherished local institutions were overthrown: The Lawman and Fowdes, the parish Fowdes, the Lawrightmen, and Ranselmen all disappeared. Scarcely a shred of local independence was left, and the people were reduced to the verge of ruin.

Shetland now possesses all the paraphernalia of a Scottish Sheriff Court with right of appeal to a learned Sheriff-Principal

*) Lesum = allowable, lawful. E d.

and the Supreme Court in Edinburgh. Shetland has also clergymen, lawyers, doctors, schoolmasters, and taxgatherers from no one knows where. But she may well heave a sigh for her old native functionaries and her vanished Home Rule of other and happier times.

In the old native laws and the form of local government in Shetland briefly glanced at above, a strong kinship will be readily observed to the system which prevailed in early times, and which indeed still largely prevails, in the fatherland of Norway. The preservation to the Orkney men and Shetlanders of their native laws and usages, derived from their Scandinavian forefathers, was a district understanding at the time when the islands were pledged to Scotland by the Danish sovereign (A. D. 1468—69). They accordingly clung to these laws and usages tenaciously, though the aim of the Scottish rulers was to abolish the entire system; and it has been shewn that it is only in times comparatively recent that this system finally disappeared.

It would be of much interest if some member of the Universitets-Jubilæets Danske Samfund would supplement this notice by observations on the connection which formerly subsisted between Orkney and Shetland and the Dano-Norwegian Kingdom, with a comparison of the old Shetland system of local government with that now or formerly prevailing in Denmark or Norway.

Is not also the question of the restitution of the Orkney and Shetland Islands to Denmark, one deserving the consideration both of students of history and of statesmen in Denmark?

Edinburgh, February 1886.

Gilbert Goudie.