

# RECORDS OF THE EARLDOM OF ORKNEY

1299-1614

Edited with Introduction and Notes by

J. STORER CLOUSTON

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## PREFACE

IT was originally intended that the material for this volume should include all early available deeds both from Orkney and Shetland, but as the search for documents proceeded it very soon became apparent that there were more than enough for one volume in Orkney alone. Accordingly a certain number of early Shetland deeds, particularly illustrative of the period, have been retained, but the records are otherwise confined to Orkney. Mr. A. W. Johnston was to have been joint editor, and before he withdrew (owing to pressure of other work), he had already made several footnotes to some of the transcripts. These are marked 'A. W. J.,' as are also those made by him and appended to documents originally published under his editorship in the *Old Lore* series of *Orkney and Shetland Records* (generally referred to hereafter as *O. L. Rec.*).

Before the inception in 1907 of the quarterly (latterly annual) instalments of these *Old Lore Records*, the number of printed Orkney deeds of an early date was exceedingly small, and even those were scattered among various inaccessible publications; though in Balfour's *Oppressions* and Goudie's *Antiquities of Shetland*, Shetland had been much better treated. The earliest deeds contained in the *Old Lore* Series, and a few others, have been reprinted here, but the vast majority of the documents appear for the first time. The year of the abolition of the native laws in the islands (1611) was originally fixed as the latest date qualifying a deed for inclusion. One only is slightly later, but the mass of earlier material proved so considerable that very few are actually after the year 1600.

Of early essays in constructive history dealing with the constitution of the islands, mention may be made of the very shrewd and sound work of James Mackenzie in his *Grievances* (1750), which, however, was limited to a few points germane to a specific legal inquiry; and of Colonel David Balfour's introduction to *Oppressions in Orkney and Zetland* (1859). This last is a most spirited piece of writing in the manner of Macaulay, and enjoyed considerable repute for its historical information. Unfortunately subsequent research has proved (to put it very moderately) that it is considerably more picturesque than accurate.

More recently the present editor, in a series of papers contributed to the *Old Lore Miscellany* and the *Saga Book* of the Viking Society from 1909 to 1912, covered most of the ground dealt with in the following Introduction; though later information has enabled him to amplify, and occasionally to correct, these essays. Finally, Mr. A. W. Johnston has lately (October 1913) published an *Introduction* to the *O. L. Records*, which also covers this ground, but comes to a number of quite different conclusions. The editor feels with regard to such of these conclusions as fall within the scope of his own Introduction, that it is only due to Mr. Johnston's reputation as editor of the *O. L. Records* to state clearly why he differs from them.

Of the kindness and courtesy of Mr. Baikie of Tankerness, Colonel Balfour of Balfour, Mr. J. A. S. Brown, the Venerable Archdeacon Craven, Mr. Sutherland-Graeme of Graemeshall, Mr. D. J. Robertson, Mrs. Watt of Breckness (to name only the largest contributors), and the other owners of documents, one and all, acknowledgement is made in the Introduction, and the editor's thanks are repeated here. He takes this opportunity also of expressing his deep obligation to all those whose advice, assistance, and encouragement have so greatly helped him. His thanks are specially due to Mr. W. Rae Macdonald for

his valuable notes on Orkney and Shetland seals ; to Dr. Maitland Thomson for his indispensable help with the map, the illustrations, and a score of things besides ; to Professor A. Taranger for all the information received both from his books and his most kind correspondence ; to Mr. R. K. Hannay and the staff at the Register House for what he can only term their hospitality ; to Dr. Craven for his ever ready counsel, in addition to his generous contribution of documents ; to Mr. F. J. Grant for his advice and notes regarding the pedigrees ; to Mr. A. W. Johnston for giving access to various volumes in his possession ; to Mr. William Smith for his indefatigable assistance in the search for documents locally ; to Mr. Magnus Flett and Mr. J. White, Sheriff Clerk, for their kind help also in the collection of these records ; and to Mr. P. N. Sutherland-Graeme, Mr. W.P. Drever, Mr. J. W. Cursiter, Mr. A. Francis Steuart, Mr. R. St. Clair, and many other friends and correspondents for their practical interest and encouragement.

Almost all the transcripts were made by the Rev. Henry Paton, and they were, in any case, revised by him ; and he also made the translations from Latin ; while the translations from Norwegian were made by Dr. Edvard Bull of Christiania. To both, the editor owes his sincerest thanks for their care, and for the information they have given him on numerous occasions. A special word of acknowledgement is due to Dr. Bull for various additional notes which he most kindly sent at the editor's request. Whenever there was any doubt, the footnotes (in the first section of these records), explanatory of Norse terms in the documents, have been supplied or confirmed by him.

The Index has been prepared by Mr. Henry Paton, junior.

J. S. C.



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*At end of volume*

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2. CHARTER BY ROBERT YORKSTOUN TO WYLYAME OF CORGYLL OF ESCHEATED ODAL LANDS, 1489 (No. XCVI).
3. SEALS AND SIGNATURES OF THE ASSIZE IN A COURT HELD IN ST. MAGNUS CATHEDRAL, 1584 (No. LXXIII).



## INTRODUCTION

### I

NINE hundred years ago there were two sovereigns in Scotland, neither of whom could claim to be much more formidable than the other: the one was the King of the Scots, the other the Jarl of the Orkneys. The dominions of Jarl Thorfinn embraced, his Saga tells us, twelve Scottish earldoms, and he twice defeated his southern rival in pitched battle. To this pinnacle of efficiency the island earldom could scarcely be expected to attain frequently, but for several centuries it was a factor to be reckoned with both in Norse and Scottish affairs. So late as the very end of the twelfth century King William of Scotland paid its Jarl the compliment of marching against him with 'a very mighty host'; and he only escaped a similar attention from King Sverrir of Norway through the mediation of the island bishop.

Most fortunately it was the golden age of literature as well as arms up in those northern waters, and in the *Orkneyinga Saga* we still can read the annals of that stirring time; how Sweyn returned to Gairsay with the silks he had won by his sword sewed to his sails, how St. Magnus the Martyr died, how Earl Rognvald fought and sang all the way to Jerusalem. From the middle of the ninth to the early part of the thirteenth century, sea-kings, jarls, and chieftains pass in a picturesque procession; their deeds accurately chronicled, their ways of life and their very speech portrayed, so that, considering how long their swords have been rust, we can still move in their society with surprising familiarity.

On at least one reader of those sagas, the question has long forced itself on looking round Orkney to-day: What became of that heroic age? How was it that high-born chieftains shrank into 'peerie<sup>1</sup> lairds' and their drinking halls into butts and bens? Why should the swords of the Vikings be beaten so completely into ploughshares, and their sons go so regularly to kirk? There seems to be such a deep gulf fixed between the present and the past. Read a few chapters of the *Orkneyinga Saga*, and then examine an Orkney parish: it is like the contrast between a gale at sea and a calm upon a mill pond. Nothing appears to connect the two. Those landmarks which in other places keep alive the memory of the past and carry back our imagination to it: the ruined castle, the moated grange, the ancient timbered village houses, the immemorial oaks planted by such and such a monarch, the baron or squire still representing some historic name and showing a charter with King Richard's or King David's seal; those links are lacking here. It is as though the islands' past had dived over a precipice and become the present at the foot.

It is true that both in Orkney and Shetland their pre-historic peoples have bequeathed a rich legacy of brochs and arrow heads and standing stones, but, apart from St. Magnus Cathedral, the famous race of sea-rovers and saga-writers have scarcely left us one stone still standing on another. Very probably the Hall of Cursetter and the oldest parts of Skail House and Burness may date from the sixteenth century, but scarcely beyond, and even then there is no tradition connected with them going even so far back as that. Take the most typical and Scandinavian parish in Orkney, the parish of Harray, where till the latter part of the eighteenth century the Norse language was still spoken by old people, where old native surnames are thick, and their bearers still own the soil and can still talk of

<sup>1</sup> Small.

pennylands and township customs. Their oldest traditions show an entire unconsciousness of things ever having been materially different from what they are to-day. Where did the great halls stand where guests gathered to drink through Yule? Where were the *things* and law-courts held? What Harray man followed Earl Rognvald on his crusade, or even fought at Summerdale four centuries later? You will not get an answer to one of these questions.

The records collected in this volume do not unfortunately answer every such question one would like to put, yet they throw enough light on the past to make the passing of the old order and the gradual process of transformation seem clear compared with their obscurity heretofore. And possibly they may show now and then that there still exist unsuspected links with very far-off times.

Some clear idea of the people and the land as they were when the Norse power was in its zenith will help greatly towards an understanding of these mid-way records. Lacking this (largely, it is to be presumed, for want of accessible works by Scandinavian scholars), earlier writers have sometimes gone astray through not knowing quite what developments to expect. It is true that we have no account of the actual settlement of Orkney and Shetland, but we have a very minute and vivid account of the settlement of Iceland by their cousins and brothers at the same period; and everything we learn of the life there is borne out by what we glean of the earldom from its own saga; while the constitution of society in the motherland of Norway has been analysed from king to cotter.<sup>1</sup>

One of the most striking and essential features of that adventurous people, dwelling in the dawn of northern history on the shores of the Norwegian fiords, was the

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<sup>1</sup> My obligations are deep to Professor A. Taranger's *Udsigt over Den Norske Rets Historie*. It is from this source that the following references and quotations are taken.

abundance of landowners; the *bonder*, as they seem originally to have been collectively styled; the freemen holding land as their *odal*; *i.e.*, their very own, without charter from monarch or knee bent to liege lord. But from the earliest recorded times these odal-men were divided for practical purposes into two classes by the ancient, inevitable distinction between the leaders and the led. The leaders were the *höfðingjar*, the chieftains; while to the led alone, the term *bonder* became in later times applied; and it may be mentioned that in the sagas one sometimes finds *bonder* applied in its old sense to all landowners, and sometimes to the lower as opposed to the upper class. Apart from the kings (or rather kinglets) of ancient Norway, and the jarls, who seem originally kinglets under another name, there were chieftains bearing an actual hereditary title, the *hersar*, or lords of smaller districts. Though the position was hereditary, these *hersar* were, says Professor Taranger, elected by the people, who decided which of the family should hold the rank (which probably meant that in extreme cases they decided who was *not* desirable). They held sovereign powers over their districts, being leaders in war, temple priests in peace, maintainers of law and order, and presidents of the *things*. He adds that they seem to have been originally *bonder* nobility, as opposed to the princely families eligible for royal rank. Vigfusson describes them as 'no doubt the prototype of the barons of Normandy and Norman England.'<sup>1</sup> Such an one was Kǫveldulf, of whom the *saga* tells,<sup>2</sup> 'wealthy was he both in land and chattels: he took baron's (hersir's) rank as his forefathers had done and became a great man.' Of his duties and of his independence we get a glimpse in his reply to the summons of his sovereign, Audbjorn, King of the Firth-folk, calling on his nobles to join him in assist-

<sup>1</sup> *Oxford Icelandic Dictionary* under *HERSIR*.

<sup>2</sup> *Sága of Egil Skallagrimson*.

ing the King of Mœra to defend his land. 'It is my duty to the king to take the field with him if he have to defend his own land, and there be harrying against the Firth-folk; but this I deem clean beyond my duty, to go north to Mœra and defend their land.'

The kinglets, jarls, and hersar, with their kindred, composed the noble class, the 'göfugir menn' (worshipful men), 'rikis menn' (mighty men), or 'stór menn' (great men), of whom such as were actual as well as born leaders were termed 'höfðingjar' (chieftains).<sup>1</sup> In the very ancient poem 'Rigspula,' the three classes of chieftains, bonder, and thralls are typified under the names of Jarl, Karl, and Træll. Summarising the picture there given, Taranger says that, 'the Jarl or noble lives as a landowner, not as a ground-worker. He works his estate with thralls or free labourers or sets it to free or half-free tenants. He has constantly about him a war band, a guard (*hird*) of free men, who also are employed as labourers. Such were those chieftains (*hövdinger*) who undertook Viking voyages, and who colonised Iceland.'

It will thus be seen, even in the very earliest times, how inapplicable was that description (more than once quoted) of 'the odals-madr, Bondi, or *Peasant-Noble* of Orkney and of Norway,' who 'was a Peasant, for he tilled his own land and claimed no distinction among his free neighbours; but he was also Noble, for there was no hereditary order superior to his own.'<sup>2</sup> The two classes, here and elsewhere, are obviously confounded. It is essential, however, to realise that though there was no such distinction between the great and small odaller as existed in feudal countries between the lords of the manor and all else on the land,

<sup>1</sup> See the passage in Hrafnkel's Saga (*Origines Islandica*, vol. ii. p. 509) where Thorkel, the nobly born but landless brother of the goðe Thorgar, says to Thorgar, 'I should act so if I were a chief (*hæfðinge*) myself.'

<sup>2</sup> Balfour's Introduction to the *Oppressions*, p. xxx.

and though the presence of these independent small bonder enabled a breeze of democratic freedom to purify the whole structure of society, yet on the other hand, the extreme democracy often attributed to Norse institutions is much exaggerated. Within the period of recorded history the bonder did *not* make their own laws and decide upon their own destinies by a mass meeting in a meadow. The picture suggested by some writers of a thousand 'peasant-nobles' clanging their shields in stern approbation of their own address as legislators, may conceivably have done justice to Norse jurisprudence in the Stone Age, but not in historical times. So early as the reign of Hakon the Good (935-960), the Norwegian lawthings were organised on the basis of the representation of each 'fylke,' or shire, by so many delegates, each member of the assembly having his expenses paid; and the representation of the Crown and Church by the king's 'umbothmen' (*i.e.* the nobles, stewards, etc., who held his commission) and by certain of the clergy. At these delegate assemblies of picked men, new laws were approved or amended by a smaller selection of members called the 'logretta,' and cases were tried by a court formed of so many members; while the actual initiative in law-making lay with the king and his council composed of the greater nobles.

In Iceland, so soon as the land was fairly settled, the *goðsar* (who were but the *hersar* under another name—hereditary chieftains of each district) compiled a constitution, of which the two essential features were a kind of House of Lords, composed of themselves, for legislative purposes; and courts, nominated by themselves, for judicial purposes; and one of the commonest incidents in Icelandic sagas is the impossibility of obtaining legal redress until some chieftain takes up the case.

Returning to the two archipelagoes which lay invitingly between the Norwegian and Scottish coasts, it was natur-

ally not long before a seafaring race discovered them, and there is ample evidence from the place names and other considerations that a partial settlement had taken place during the century or two before their saga opens. In the Orkneys, the places where this earliest settlement took place may perhaps be indicated by the curious fact that in certain parts the land from ancient times was divided for purposes of taxation into 'urislands,' or ounce-lands, (each containing eighteen pennylands), or into half-urislands; whole districts having no odd fractions of an ounce-land—such as Evie, Outer and Inner Stromness, and Sanday; whereas, as a rule, one finds six pennylands, three pennylands, four and a half pennylands, etc. Now the urisland was the original unit, and it is significant that in almost all these urisland and half-urisland districts, the pennylands composing them had by the year 1500 come to be of less value than the normal pennyland; which seems obviously to imply that there had been less room for developing such districts. In other words, they were early settled, and, so to speak, ripe for taxation when 'seat' was first laid on the islands. When one further discovers that these districts lay, in the great majority of cases, along the mouths of sounds, or beside bays, or else in the isles to the north-east—next to Norway—the conclusion seems to be that they were the lands first seized and settled by the Norsemen.

A map of Orkney with such districts marked would show these prehistoric settlements to have included the islands of Sanday and North Ronaldsay, parts of Stronsay, Shapinsay, and, indeed, most of the north isles; the lands along the shores of Evie Sound, Holm Sound, and Hoy Sound, South Walls, a certain area round Skail and Marwick bays, and possibly another on the shores of the loch of Stenness.

But whatever partial settlement had taken place before

the dawn of history, the evidence of the sagas is clear that the real filling up of the land occurred at the same time as the colonisation of Iceland, and was the result of the same momentous cause, the towering up in the Norse world of the mighty figure of Harald Harfager, the nation-maker and conqueror of kinglets. To the chieftains his message was peremptory: 'Become my man!' If they wished to rule in Norway, it had to be in future by royal commission, and not because they came of a ruling race—and liked ruling. The terms he offered were handsome. The *hersar* remained as before chieftains of the *bonder*: they were made, we read, even richer and greater men; but they were now styled 'lendirmen' (landed men), who, in addition to their odal estates, held fiefs of the king, whose rank was not *de jure* hereditary, but had to be re-granted to their sons,<sup>1</sup> who were, in fact, royal vassals instead of independent lords of their mountain valleys. And not only was the power of the chieftains thus limited, but the odal lands of all were declared to be royal property and held, like feudal estates, by royal grace. This last enactment was annulled by Harald's son, King Hakon the Good, and the odal rights resumed by the landowners, but long before that time, Harfager's policy had covered the western seas and filled the isles with the proudest spirits in the north. Scores of chieftains fled the country, taking with them wives, children, slaves, free-born *bonder* followers, household goods and gear; everything that could be put on board a ship. And thus Iceland, Shetland, Orkney, Normandy, were settled by the ancient aristocracy of Norway, the pick of the land.

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<sup>1</sup> Though, as a matter of fact, they were so strictly hereditary a class that it was looked upon as an unfitting and most exceptional thing for one not *lendirman*-born to be made a *lendirman*, and their sons held *lendirman* rights till they were forty years old, when (if they were not made *lendirmen*) they lost them.

In that wonderful record called *Landnama Bok*, the book of the land-taking, we get a minute and vivid picture of the way in which those chieftains settled Iceland. Generally the account begins with the settler's pedigree. For instance: 'Beorn Buna was the name of a mighty and noble herse in Norway. He was the son of Veðrar Grim, herse of Sogn. Beorn had to wife Velaug. They had three sons. . . . They were noblemen and from them is come the greatest race that is told of in this book.'

Or again: 'Bodvar the White was the son of Thorlaf Midlung, the son of Bodvar, the son of Thorlaf Whale-fringe, the son of An, the son of Erne-Horn, the son of King Thore, the son of Svina-Bodvar, the son of King Caun, the son of King Saulge, the son of King Hrolf, the son of Svasa, the giant from the north of Dofre.' Twelve generations, including four kings and a giant, counting upwards from the ninth century!

Then we learn the lands the settler took. These were generally extensive, and in the case of very powerful chieftains, like the race of Biorn Buna, they covered immense tracts of country. These tracts they filled up by gifts of land to their kinsmen and friends: the original landtaker and his descendants becoming hereditary chiefs of this territory, supported by the swords of an army of cousins; though it must always be understood that nothing that could strictly be called either patriarchal authority or feudal superiority accompanied the relation of a *goðe* to his 'thingmen.' It was necessary that the bonder should have a chief, it was traditional that he should belong to a certain race, and it was usually suicidal to affront him. If to these be added the universal principle that to him who hath shall be given, the position of an Icelandic or Orkney chieftain in the ninth and following centuries is fairly accurately defined.

These are the men whose blood feuds and lawsuits,

banqueting halls and feasts, tragedies and comedies, may still be read in that great collection of Icelandic sagas which stands as their monument to-day. These sagas were the tales of the great families current in the countryside, shaped by constant telling, and, a few generations later, written down. Hjalte with his drinking hall that held fourteen hundred guests; Garrid, who built hers across the highroad, so that no traveller could escape being entertained; Gudmund the Powerful (a very mighty chief), with his hundred retainers; Ketil Blund (a lesser, but wealthy, magnate) with his thirty tenant farms, give us a very clear idea of the material conditions of their lives. Fighting, feasting, and athletic sports were the chieftain's amusements; farming and fishing his necessities; and administering the law his duty. Of Gudmund the Powerful we read: 'It was his wont to go north in the spring to visit his thingmen and decide on the rule of the country and settle cases between men. He often rode with thirty men, and would stay in places six nights, and would have as many horses.'<sup>1</sup> That is a glimpse of a *goðe* in his public capacity.

The thingmen—the rest of the landowners—appear sometimes as kinsmen of the *goðar* and small chiefs themselves, sometimes as hard-working, long-suffering farmers seeking redress from some chieftain's oppression, sometimes as poltroons, eccentrics, or other comic relief to the tragedy of a blood-feud. But they always have the familiar outspokenness of freemen, and there is never any sign of the social cleavage in feudal lands.

It is this life and these social conditions that we may picture in Orkney and Shetland all through the saga period (which takes us into the thirteenth century), and no doubt for some time afterwards; and it is reminiscences of it that must be watched for later.

There was, however, one potent factor absent in Iceland

<sup>1</sup> *Liosvetninga Saga (Origines Islandicæ, vol. ii. p. 369).*

—the earl. The *Orkneyinga Saga* tells how the islands were too near Norway to evade the long arm of Harfager, and how he set his jarl over them; and in its pages may be traced various consequences of having a ruling overlord. We see the odal lands twice falling into his hands: once when they were surrendered voluntarily by the odallers in return for the payment by Earl Einar of a fine laid by King Harald on the islands; and again by decree of Earl Rognvald; though on each occasion they were resumed by the owners. These were incidental reminders of the presence of an overlord, but there are many evidences of his permanent influence. He had a *hirð* (bodyguard or court) like the Kings of Norway, and, like theirs, his came to include the chieftains who administered the islands under him, followed him in war, and formed his council in peace. Sweyn Asleifson and Thorbiorn Klerk, two of the greatest chieftains of their day, are described, the one as *hirðmaðr* (hirdman or courtman) to Earl Rognvald, the other as *raðgjafi* (councillor) to Earl Harald. Like the royal court also, theirs had its dish-bearers or pages, and its court priest, and Sweyn Hroaldson is found beginning as a page and ending as one of Rognvald's greatest chiefs, like the scions of the Norwegian nobility. The exclusive character of the *hirð* is the explanation of the episode in chapter lxxxv. of the *Orkneyinga Saga*,<sup>1</sup> where Hall, the Icelandic poet, finds such difficulty in getting 'leave to live at the earl's court,' as the translation phrases it. The actual word in the original is *hirðvist*, being, or becoming, a hirdman, a very different thing.

The later records provide ample proof that there never grew up in Orkney that official class which in Norway came in time to supersede the old hereditary *hersir* element altogether. This is seen very clearly in the difference

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<sup>1</sup> Rolls edition (in all cases quoted).

between Shetland, which for long had been administered directly from Norway and abounded in official fouds and lawrikmen, and Orkney which had remained self-governing and whose dissimilar conditions will be examined presently. Yet a certain imitation of the Norwegian model was inevitable, since some sort of a relation between the jarl and the chieftains had to be established.

These vassal chieftains were styled the jarl's *gæðingar*, a word almost peculiar to the *Orkneyinga Saga*.<sup>1</sup> Their jarl is found inviting them to feasts at Yule, summoning them to his assistance when threatened by invasion, complaining that they had broken their oaths to him. Some of them, like Sigurd of Westness and the Havardsons, were his kinsmen, and always appear as his loyal friends and right-hand men: others, like Sweyn Asleifson, provided him with numerous opportunities for exercising the princely virtue of magnanimity: all, it may be safely assumed, held some form of *gæði*, or emoluments, from the earl, and it is from this sense of *gæði*, and not the general sense of 'wealth,' that the word *gæðingar* in all probability was derived. Kugi of Westray certainly held the earl's bordland of Rapness, and a gift of escheated land to another *gæðingr*, Thorkell Flett, is recorded. Local administration by these hereditary chieftain families acting in the earl's 'umbboth' in most districts, and administration by *aarmenn*, or stewards, in such districts as Hoy, which was entirely earl's bordland, may be accepted as the system on which the Norse jarls' authority was delegated.

Several of the *Saga* extracts (in Appendix A) explain why there is no mention of those lawsuits which are so conspicuous a feature of Icelandic sagas. In Orkney it was the earl alone who was accepted as the arbiter in the quarrels of the great—and the quarrels of small men do

<sup>1</sup> For the *Saga* references, see Appendix A.

not find their way into history. Out of his own pocket he paid the fines his hirdmen had incurred, his own authority he interposed in their feuds, and his own personal influence he threw across the path of their adversaries. No paltry lawsuit disfigures the high-spirited career of Sweyn Asleifson: the various earls whom he alternately served and rebelled against were themselves the sole tribunal who fined him, forgave him, ransomed him, or exiled him, with no intervention of lawman or lawthing. Whether the case were chieftain *versus* earl, or chieftain *versus* chieftain, the tribunal seems to have been the same—the jarl himself. If a lesser man fell out with a noble, neither law nor earl seemed to afford him much satisfaction, to judge at least from the answer of Earl Rognvald to Jon Wing, whose brothers had fallen into the hostile hands of Sweyn, and who, as a kind of *quid pro quo*, kidnapped Sweyn's son Olaf, then in fosterage with another chieftain, Kolbein Hruga.

'Carry him back,' said the earl, 'as fast as thou canst, and do not dare to do him any harm, whatever has become of thy brethren; for thou wilt have no peace in the Isles either at Sweyn's or Kolbein's hands, if thou doest aught to him.'

When it is remembered that the period of these incidents was not the early Viking days, but after the middle of the twelfth century, when meetings were already being held in the new Cathedral of St. Magnus, and the lawthing organisation had been established in Norway for a century and a half, it is manifest that we must not expect to find in the Orkney head courts or lawthings of a later period—the body that had then come to hold all the supreme judicial and certain administrative functions—much democratic element.

Sprinkled all over the islands in these closing years of the saga period, we see the high-pitched roofs of the chief-

tains' halls, the *hirðmenn* and *gæðingar* of the earl. Sometimes they lived, like Sweyn, on their odal lands; sometimes, like Kugi of Rapness, on the bordlands held in fief of the earl; the odal lands being divided at their death among their children; the earl's lands perhaps being given again *i len*<sup>1</sup> to a son, or perhaps going to some one higher in favour; so that a family which had many sons and also lost its fiefs would cut a very different figure in the next generation. Of one such Orkney chieftain we get an intimate glimpse, wherein we see the redoubtable Sweyn living in his great drinking hall at Gairsay with his eighty retainers who followed him on the warpath twice a year, and between times sowed 'a great breadth of corn'; again, we see him rowing round the islands collecting his rents; and then again, visiting his other estate in Caithness. Finally, at his death, we learn that his two sons not only divided his lands, but put up a partition wall in the hall and shared that also; so that there may be said to have sprung up two half chiefs in place of one whole chief. And this indeed is the story of all those odallers, high and low—gradual disintegration of their estate, wealth, and position in life (whatever it was), as at each generation the diabolically equitable land law smashed their property in pieces and presented a fragment to each heir.

Of the bonder, as distinguished from the chieftains and hirdmen, we get no intimate knowledge from the sagas, but it is plain that the smaller a property, the sooner would odal subdivision reduce it to a state in which it would no longer be worth the keeping. A couple of bad harvests in succession, and the poverty-stricken heirs would be only too glad to exchange their rights for a little money, and their condition for service on a larger farm.<sup>2</sup> The power of the

<sup>1</sup> Land held *i len* meant practically land held on non-heritable feudal tenure.

<sup>2</sup> This class largely disappeared as landowners in Norway in the course of the centuries following the Saga period.

Church was only in its infancy in the islands in saga days; still the bishopric was firmly established, and there was no doubt beginning that great accumulation of Church estates out of the lands of the poor, the pious, and the wicked, which came in time to rival even the ever-widening lands of the earls. Into those two wide-mouthed receptacles had dropped bit by bit most of the odal lands in Orkney by the time we next see them.

## II

From the middle of the ninth century down to the early part of the thirteenth, we have in the sagas a picture of the islands and their people such as, perhaps, no other county in the kingdom possesses. From the early years of the fifteenth century survive a variety of records, scanty at first, though occasionally (like the 'Complaint' of 1424) full of curious information, and suddenly becoming at the end of that century sufficiently copious to enable one to reconstruct in tolerably close detail the Orkney of the later Norse and early Scottish period.

But between these record-lighted periods still exists a gap of almost utter darkness. It is true that a few Shetland records exist, illustrating the transfer of land and procedure of the courts, and preserving the names and even the seals of a number of leading Shetlanders. Unfortunately, however, Orkney and Shetland were so distinct and separate that what applies to the one does not necessarily apply to the other. The saga only mentions Shetland or Shetlanders once or twice incidentally, and then just at the end of the saga period the Shetlands were taken from the Earl of Orkney and afterwards administered directly from Norway. As these records will show, appointments in the fourteenth and fifteenth centuries to rule Orkney or administer its revenues did not include Shet-

land; while the presence of a well-defined official class, the confirmation of Shetland decrees by the Bergen courts, the numerous Norse Christian names and universal patronymic surnames among the native Shetland families, and various other things, prove a very real difference between the course of events in Shetland and in Orkney. What immediately follows concerns Orkney alone, except where particularly mentioned.

As it is not the purpose of this Introduction to deal with events, but rather with the people, the courts, and the land; and as, in any case, the events chronicled (in the first section of these records) are either—such as the appointments of new governors—of the driest kind, or—like the ravages of the Lewismen—referred to in the briefest terms, their narration in such detail as exists may be left to the records themselves.

To summarise briefly, we first find Orkney in 1312, and again in 1321, ruled by Scottish earls of the Angus line, but still a purely Scandinavian land, in which Scotsmen, to judge from the ungracious treatment they received, were regarded as highly undesirable aliens. Indeed, the earls themselves do not seem to have been resident in the islands, for in 1312 the *ballivus*, and in 1321 the *ballivi* of the King of Norway were held responsible for the ill-treatment of a Scottish subject and for a breach of treaty, though in the first of these years Magnus, Earl of Orkney, appended his seal to the indenture, and so was certainly 'in being.'

In 1329 is recorded a purchase of land by the widowed countess of the last earl of this line, and in 1369 we are in the midst of the confusion caused by the failure of the Stratherne line and the claims of contending candidates. Hakon Jonson, son of Agnes, daughter of King Hakon of Norway, had been appointed Governor of the islands, and had evidently found them in the grip of Bishop William, with whom he had waged something like a small civil war.

Judging by the terms of the agreement made between them, the churchman had not only fully held his own, but had established himself as the popular governor, associated with the chief native families in resenting official Norwegian interference. No doubt it was to cure this state of things that King Hakon, in 1379, preferred the claims of the powerful Lord of Roslin to the earldom, and made him swear not to 'establish any friendship' with the bishop, and it is probably doing the new earl no injustice to associate this hint with 'the mournful tidings that Bishop William was slain in the Orkneys,' heard in 1382.<sup>1</sup>

Of the princely state maintained in the isles by the house of St. Clair, the coins they minted, the laws they passed, and the lacqueys who attended their walks abroad, a full account may be read in the pages of those veracious historians, Hay and Van Bassan. Unfortunately, however, the unsympathetic records tell us nothing of this pageant. From the reigns of the first and second Sinclair earls, only one local document survives, though that unquestionably gives some colour to these stories in the presence of several knights as witnesses at Kirkwall.

It was no doubt on the death of the second earl that Bishop Tulloch was appointed governor during the minority of his son, and thereupon followed the islands' first taste of Scottish misrule. The learned bishop appears to have been more fond of books than administration, for, three years after his appointment, he is found witnessing a commission to David Menzies of Weem to act as the royal foud or administrator of Orkney, and thereafter, when inquiry was made into the condition of the islands, is discovered studying at St. Andrews.

Menzies had already been engaged in embezzling the revenues of the late earl, for whom he had evidently acted

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<sup>1</sup> *Icelandic Annals.*

as factor. In addition to dishonesty he now had the opportunity for exhibiting a mean and spiteful rapacity worthy of the Stewarts who were to follow. The sordid story of his administration is told in the Complaint of 1424. On learning of its despatch to the king, he probably bolted immediately with his plunder, for there is no record in the Norwegian archives of any further inquiry, and yet by the following year he had been gone sufficiently long to be not even named—though clearly referred to—in the document which follows.

We next find the young earl, William Sinclair, installed (1434); the last of the Orkney jarls. Of him Balfour says: <sup>1</sup> 'His efforts to extend and consolidate his power and estates had offended the king, estranged the odallers, and embroiled him with the bishop and the lawman'; but where he found the evidence for this statement I am unable to imagine. The old Rentals show that he made extensive additions to the earldom estates by purchases of odal land all over the islands, and the offending, estrangement, and embroiling are probably courageous deductions from this. These records show him in 1460 and 1461 busied in the defence of the islands against the ravages of the Lewis pirates led by John, Earl of Ross. In 1468 Orkney passed in mortgage to Scotland, followed shortly by Shetland; and in 1471 the Scottish Crown took over the earldom with all its rights and lands, and William was earl no more.

A lease of these earldom lands and rights was given first to Bishop William Tulloch, then to Bishop Andrew,<sup>2</sup> and in 1485 to Henry, Lord Sinclair, grandson of the last Earl William. With him the influence and domination of the Sinclairs returned. In a sense they had more practical power than ever, for the altering conditions (as Scottish influences grew stronger) enabled them to endow them-

<sup>1</sup> Balfour's Introduction to *Oppressions*, p. xv.

<sup>2</sup> *Exchequer Rolls*.

selves with lands on a more generous scale than had previously been dreamt of. Various early cadet branches are found by 1500, such as the Sinclairs of Air, of Stromness, and of Tenston, but their estates were only of the ordinary 'gentleman utheller' type, small affairs compared with the properties held by the numerous families descended from Lord Sinclair's brother, Sir William of Warsetter.

After Henry's death on Flodden field, this Sir William and his family, now very widely aced, descendants of the old earls and natural leaders of the people, stepped into his shoes as the paramount family in the islands. At the same time, the earldom leases were held not by them, but by Lady Sinclair, Henry's widow, and after the death of Sir William of Warsetter,<sup>1</sup> her son, William, Lord Sinclair, was appointed Justice, and took up his residence in Kirkwall Castle as the Governor of the Islands.

So much we know for certain of the prologue to the drama of Summerdale. To what extent the sons of Sir William were inspired by resentment at having their influence suddenly eclipsed, or how far the indignation of the islanders with their new ruler was general and caused by an attempted, or intended, infraction of their odal rights, there is no direct evidence to show. It would surely seem, however, that the Warsetter family could hardly regard the intrusion of their cousin with perfect complacency, and at the same time most improbable that so conspicuously independent a race as the Orkneymen would have risen as they did and run the risks they ran in a mere Sinclair family quarrel. There must certainly have been some strong and unusual provocation, though it is naturally not mentioned in the subsequent complaint of Lord Sinclair.<sup>2</sup>

<sup>1</sup> He was dead before 13th May 1529 (*Reg. Great Seal*).

<sup>2</sup> No. xxv.

What actually happened we can learn by putting the various accounts together. Lord Sinclair was expelled from the Castle, several of his kinsmen and servants were slain, and he himself fled to Scotland. There he provided himself with the Royal Letter of four forms summoning the king's rebellious subjects under pains and penalties to deliver up the castle again, and with a still more formidable weapon in the company of his kinsman, the Earl of Caithness and 'a great army.' The defiant reply of Orkney was probably as unexpected as it was spirited. Against the invaders marched the descendants of Thorfinn's warriors, their hands still in touch with a sword hilt, thanks to marauding Lewismen and English fleets; their leaders the brethren of the fighting house of Sinclair. Landing on the Orphir coast, the Caithnessmen, instead of marching east on Kirkwall, were either headed or decoyed northwards into the Stenness moors. There, on Summerdale field, the Orkney men descended on them, the vision of St. Magnus urging on their host. The Earl of Caithness fell in the first onset, a great part of his army were slain on the field or in the flight (tradition has it that they were annihilated), Lord Sinclair and the survivors were captured, and for eleven years the islands remained the prize of the victors.

What follows is somewhat bewildering. Lord Sinclair accused his cousins and their adherents of cold-blooded and lawless butchery, in addition to flat rebellion. Yet James Sinclair, the ringleader, was knighted and received a grant of the islands of Sanday and Stronsay. He having been thus rewarded, his brother Edward and thirty others were 'respited' for their 'crimes' of 'slaughtering' the Earl of Caithness and his men. Finally, in 1540, King James v. visited Kirkwall in person, took hostages from the 'nobility,'<sup>1</sup> and the following year appointed Oliver Sinclair of

<sup>1</sup> Buchanan's *Life of James V.*

Piteairns sheriff. The most rational explanation of these inconsistencies lies in a factor not referred to in the records of them: the danger that Denmark might assert her claims to redeem the islands, and that, if not humoured, James Sinclair and his men might throw in their lot with their ancient suzerain. At the same time King James could hardly overlook open rebellion without some comment; hence the ingenious compromise of knighting one brother and respiting the other, and so tiding things over till the occasion was ripe for seizing the nettle firmly. It only stung once again, and that in a very half-hearted fashion.

What a landmark this royal visit in 1540 made, with its consequent appointment of a sheriff, may be seen in the second section of these records—the collection of decrees of court. No longer do we read of lawthings and lawmen and roithmen, but only of sheriff courts, sheriffs, and the assize, just as in any Scottish county. This difference will be examined presently; in the meantime it may be noted as one notes a difference of accent on crossing the Solway. Henceforward one observes on all sides a rapidly quickening process of Scottification; the appearance of feu charters and the names of new Scottish feuars, a foreign complexity in the wording of odal charters, and various records of sinister and destructive happenings.

A series of documents illustrating the events subsequent to 1540 would cover ground that has already been pretty thoroughly explored. The records of Earl Robert's and Earl Patrick's misrule may be found in Balfour's *Oppressions*, Peterkin's *Notes*, Mackenzie's *Grievances*, and other places. Here it is only necessary to say, that following upon a series of leases to various people, the earldom rights and revenues, and with them the sheriffship, were, in 1564, granted by charter to Robert Stewart, illegitimate son of King James v., and that there then began a period of

## 1 RECORDS OF THE EARLDOM OF ORKNEY

tyranny and plunder which resembled more nearly Turkish misrule than anything we associate even with the worst administrators of our own race, and in the rudest times. Into how miserable a condition this thieving creature and his son had reduced the province entrusted to them may be gathered by a comparison between the state of the islands before their rule and after it. Of the trade of Orkney in 1424, glimpses are got in the 'Complaint,' and it is especially notable that even in a time of great scarcity shiploads of corn were being sent to Scotland. Writing in 1521, John Major says: <sup>1</sup> 'They [Orkney and Shetland] produce in plenty oats and barley, but not wheat, and in pasture and cattle they abound.' In 1527 Hector Boece bears witness to the same effect.<sup>2</sup> He distinguishes, however, between Orkney and Shetland. Orkney has no wheat and no woods, but 'all other corn grows in it with great plenty.' The ewes have two or three lambs at a birth; wild fowl and tame are more plentiful than in any other part of Albion, and fish incredibly abound; while the people are celebrated for their deep potations of 'the starkest ail of Albion,' their remarkable powers of consuming this potent beverage without getting 'wod, daft, or drunken,' their longevity, and their fair and strong bodies. Of Shetland, he says that its riches lie only in fish dried in the sun, but adds that it does a great trade in skins with Holland, Zealand, and Germany, and that its people are of the same nature and condition as the Orkneymen.<sup>3</sup>

<sup>1</sup> John Major's *History of Greater Britain*.

<sup>2</sup> Hector Boece's *History of Scotland*.

<sup>3</sup> Balfour (Introduction to *Oppressions*, p. xlv) gives figures showing that the rental of Orkney about 1540 was nearly thrice that of Fife. It is quite possible that this may be a correct estimate, but unfortunately Balfour's statistics, given in his appendix, are (one may almost say) mysteriously inaccurate. He had copious material for these in the monumental MS. volume by Mackenzie, whose Herculean labours included a minute analysis of fiars prices all over Scotland in the fifteenth and sixteenth centuries, yet on checking Balfour's statistics by these, his conversion values (on which his statistics depend) are found to be invariably, and generally grossly, incorrect.

Contrast these accounts with the reports of the Orkney parishes made in 1627,<sup>1</sup> with their picture everywhere of poverty and evil conditions, of land overtaxed and over-rented, till in many places it went out of cultivation,<sup>2</sup> the funds that should have paid the ministers' stipends and supported schools appropriated by favoured donataries, the Crown tenants in a wretched state, the odallers in a worse. So might a report have read on the Balkan provinces of the Turkish Empire.

One of Robert Stewart's most insidiously destructive devices is thus described by Bishop Graham: 'Robert Erle of Orknay, sone to King James the Fyft, obteyned a few of Orknay and Shetland; and thairupon intendit to stres the Udillandis<sup>3</sup> and augment a rental on these their landis. He ceased fra it and found out ane uther way to doe his turne. He was abbot of Hallyrudehouse, and Adame Bodwell then bishope of Orknay: they maid ane excambione and Erle Robert became in these dayes bischope *in omnibus*, and set his rental of teyndis upon these udillands above the availe, yea triple above the availe. This rental stands to this day.'<sup>4</sup> Other examples of his methods are met with in these records: his excheats for 'theft' and other invented offences; his squad of parasites—Dischington, Monteith, Scollay, and Caverton, who, combining the functions of servitors, vassals, and depute sheriffs, passed decree upon decree in their master's favour. These give some understanding of the causes that plunged the islands into poverty for a couple of centuries afterwards.

<sup>1</sup> Peterkin's *Rentals*.

<sup>2</sup> *e.g.* the report on Orphir: 'This forsaid rental, land maillis, and dewties is so highe and extreame that thair is no man able to pay it be ane grit daill, quhilk oftymes causis the land to ly ley.' In almost every parish there is a similar complaint.

<sup>3</sup> *Sic*, though possibly in error for 'udillaris.'

<sup>4</sup> *i.e.* about 1640.

Stewart's temporary imprisonment in consequence of the outcry from his suffering subjects, his return to his career of fraud and pillage adorned with an earl's coronet, his son Patrick's endeavours to outdo him in rapacity, his imprisonment with its much more fitting end, the foolish and abortive rebellion of his natural son, and the substitution of a halter for a coronet as their reward, have been often told already.

Orkney was rid of the Stewarts at last, but if ever the evil men do lives after them, theirs assuredly lived.

### III

In the meantime, while dynasties of earls were succeeding one another, governors being appointed, and skirmishes fought with plundering Lewismen, a steady cleavage was taking place in that which formed the very basis of society—the land. On the one hand, there were the diminishing odal lands, held by their owners in absolute possession without trace of vassalage, with rights attached (such as those of the foreshore) which in feudal countries were the jealously preserved perquisite of the Crown, shared by his family on the odaller's death, and redeemable by any odal heir, or 'roithman,'<sup>1</sup> from any stranger to whom they might be sold. On the other hand, there were the increasing Earldom and Church estates, all (with the exception of the earl's ancient 'bordlands') once upon a time odal, but afterwards set on lease to tacksmen. Not till about 1560 is there any record of a heritable grant of Church or 'King's' lands (as the Earldom lands became after 1471),<sup>2</sup> so that up till then the only people who possessed 'heritage

<sup>1</sup> The same word etymologically as roithman, a councilman, but used in this sense to mean redeptioner. See Note 1 at the end of this Introduction.

<sup>2</sup> With the exception of the curious charter to Sir James Sinclair in 1535. See No. CXIV.

lands,' who were lords of the soil and 'counted' politically, were the odallers.

But once the process of feudalisation had begun it spread like a heather fire. Out of these Church and Crown lands were formed almost all the large estates found from 1560 down to to-day (though to many odal lands have been added piecemeal from time to time). A transformation scene resulted. By the latter part of the sixteenth century the grinding tyranny of the Stewarts had so impoverished the odallers as to make impossible that system of inter-family purchase and redemption of which we find so many instances in the earlier charters of sale, whereby the odal properties were for centuries prevented from falling altogether to pieces. They now burst like a shell, and the earl put a considerable number of the fragments in his pocket. Thenceforth the feudal holders of the Church and Crown lands were the upper class, the landed gentry and island magnates, while the 'gentlemen uthellaris' remained, at best, as 'peerie lairds' upon a fraction of their ancient properties; or, for the most part, sank into the tenant class.

From the Rentals of 1492 and 1502-3, supplemented by the 1595 Rental, and the Uthel Book (1601)<sup>1</sup> the exact extent and situation can be seen of all the odal, King's, and Church lands in Orkney at the end of the Norse period.<sup>2</sup> The odal lands were very decidedly in the minority, but on the other hand they formed the chief bulk of the land in certain districts. The North Isles were mainly King's and Church land; only in Rowsay and Sanday was there any considerable amount of odal land, and in Sanday it

<sup>1</sup> Copies of the 1492 Rental and Uthel Book are contained in Mackenzie's MSS. at Balfour Castle. The Rental compiled from 1497 to 1504 (though almost all in 1502-3), is included in Peterkin's *Rentals*. For the sake of brevity it is frequently referred to in this volume simply as the 1500 Rental.

<sup>2</sup> With the probable exception of a few lands whose rents and duties belonged to certain chapels, and which had separate rentals. At least, certain lands are not entered in any known rental (*e.g.* Ness in St. Andrews), and it is difficult to account for such omissions otherwise.

was but a small fraction of the island. Apart from South Ronaldsay, the South Isles were almost wholly King and Church, and so were the Mainland parishes of Birsay, Evie, Orphir, and St. Ola. In the East Mainland (apart from St. Ola) King and Church preponderated, though the odal lands were extensive. In the West Mainland, apart from the three parishes above, most of the land was odal, Harry and Firth being almost entirely so. The Mainland and South Ronaldsay, in short, were the last odal strongholds: hence every odal charter and decree of court in this collection of records deals with land in those two islands; and, with two or three exceptions in the North Isles, all the old representative families came from them. The other districts are practically recordless.

As, in the light of these records, we examine that curious old society dwelling on the odal lands of Orkney, one feature becomes increasingly impressive—its conservatism, in the widest sense of the word. Except that there are no longer great chieftains who go on viking voyages, it is essentially the society we parted with in the sagas, especially as we last saw it in the dales and on the fiord shores of Iceland, in those intimate pictures which show us what it must also have been like in our own islands. The same laws in full working order, the same divisions of the family inheritance and dissensions among the heirs, the same lawsuits between one landowner and another, the same ridings to the *thing* of the Lawman and the greater odallers 'to settle cases between men,' like Gudmund; the same life of farming and fishing on the ancestral estate, with the old 'Head Bu' generally standing on the shore of some quiet bay or loch, or beside a stream where the fish came up 'in the tyme of the roding,' and a neighbour's mill had to be 'brookin doune far evermare' if it 'stopit their passing up and down; we find all these things in Orkney in the sixteenth century as we found them in Ice-

land in the tenth.<sup>1</sup> There is more law and less violence than we left Earl Rognvald's chieftains enjoying, and no such picturesque figure as Sweyn Asleifson (though his descendants still drink the 'starkest ail in Albion'); the departure of the earls with all their trappings and glitter, and the shrinkage of *gœðingr* and hirdman into gentleman uthellar, has left Orkney with less material for a saga, but the actual life and the main structure of society is just as ever.

Indeed, there seems to be evidence of a link with an even more ancient past, a past that was swept away by the swords of the first Vikings long before Harfager made Sigurd his earl over the islands, the past of brochs and flint arrow heads. This link—if it is one—is to be seen in those 'town-ships,' or 'towns' as they were originally called, which may be said to have formed the unit of property for an odal family of good position at the period of these early records.

A typical township, as it was in the year 1818, is thus described by Peterkin: <sup>2</sup> 'A *Town*, then, is a portion of ground, partly arable and partly pasture, separated generally from *the hill*, or common moor, by a massy turf dyke round the whole (unless when bounded on any side by the sea), and containing a greater or less number of *houses*, according to the extent of the town; each *house* being occupied by a different udaller or tenant, and having attached to it various proportions of the arable lands—originally, and still generally, in run-ridge—with patches of grass land, and sometimes detached and separate pieces of ground near the houses called *Tumails*, or little enclosures called *Quoys*.' <sup>3</sup>

<sup>1</sup> The actual Icelandic code of laws was different, but their essence was the same.

<sup>2</sup> Peterkin's *Notes on Orkney*, p. 5.

<sup>3</sup> The problem of the 'pennylands,' 'merklands,' etc., into which these towns were divided, is so complicated and technical that instead of touching on the subject here, a separate Note (No. 3) is added at the end of this Introduction.

Except that the turf dykes are no longer kept up and land no longer in run-rig, this description would apply to the townships in many parts of Orkney to-day. They are still recognised as distinct areas or small districts, and their boundaries can still be pointed out even when their fields join those of other townships. In all the Rentals the parishes are entered township by township, and each town is treated as a separate entity, having its own particular number of merks per pennyland and its peculiarities in the nature of its taxation. In old days a parish and its townships might be likened to a railway carriage and its compartments, so definitely were they divided from one another, and so various were the circumstances that one might find in each. And in at least one parish, somewhere within the dykes of every township, is still to be seen a hint of its possible origin—the traces of a prehistoric broch. This parish is Harray, about which I have been able to get pretty full information, but in other parishes inquiry has almost invariably the same answer: that prehistoric relics of some kind are found within each township. Nor is this all. In a Perambulation of 1681,<sup>1</sup> the township dyke is referred to several times, and on each occasion is described as the ‘picka dyke’ (Picts’ dyke), a term remembered by old people still.

Whether or not we are to regard these towns as representing the cultivated areas of the pre-Norse inhabitants, and simply continuing what had existed for ages before the Vikings landed, it is certain that a township formed the *garð* or *staðr* of a greater *odaller*. Indeed a great many of their names, as recorded in the oldest rentals, ended in ‘garth’ or ‘stath’ (now generally ‘gar’ and ‘ston’). It is impossible, of course, that every township originally formed a single owner’s estate, since the properties of the

<sup>1</sup> ‘Decreet of Perambulation of the landis of Clowstan in Stennes,’ 8th March 1681 (Record Room, Kirkwall).

chieftains and the small bonder differed much more widely in size than the townships differ. Also, so late as the time of these records, a few native families owned either more than one township or slices of several: and under the odal system estates steadily tended to diminish in size. But by the fifteenth and sixteenth centuries what one may call the 'township type' of family formed the odal aristocracy, the 'gudmen,' 'gentiles of the country,' or 'gentlemen uthallers,' as they are termed in Scottish documents; the 'nobiles' of Latin deeds. Almost every representative odaller of native family in these records has his surname derived from his township (a fact best illustrated in the decrees of the head courts).

It was Scottish misrule that eventually destroyed this old order of society, yet there can be little doubt that the acquisition of odal lands by early Scottish settlers of good family, and the appearance of their descendants in the forefront of these representative odallers, kept the whole class in friendly relation with the new rulers, and enabled the order to endure as long as it did. It is manifest from the first two deeds in this collection that down to 1321, Scottish settlers were few and unwelcome. Probably they seldom ventured much outside Kirkwall, though in the ancient borough itself Scottish householders from a very early date appear to have been a more influential factor than Norse, to judge from all the town records. Scottish bishops, Scottish earls, and Scottish aptitude for commerce account readily for this.

But from the latter part of the fourteenth century the invasion increased in volume and spread over the country. Of the names of the arbiters in 1369, Sinclair, Mure, and Irving soon became associated with odal lands, and by the seventeenth century were among the commonest in the islands. A deed of 1418 included in the Halero Inventory <sup>1</sup>

<sup>1</sup> Balfour Castle charter chest.

narrates an agreement between 'the brethren of the Cragys,' regarding lands in Rowsay, showing that that family had been odallers for at least a generation previously. The Frasers acquired the twelve pennyland of Tolhop before 1438, Richard Fotheringham and Nicol Tulloch were lawrikmen in 1443; and Cromartys and Louttits are among the most frequently represented families in the decrees of court at the beginning of the next century. And this Scottish element was not only strong and influential, but as jealous of odal privileges, as learned in the technicalities of odal law, and as litigious over their odal rights as any Paplay or Flett. As a matter of fact the Irvines, the Cromartys, and the Tullochs certainly acquired odal estates by marriage with native heiresses,<sup>1</sup> and probably this was the case with most of these early Scottish families; so that they were at least half Norse.

It is, however, to the native families<sup>2</sup> that we must turn for the purest type of odaller, the characteristic 'gudman.' Indeed, in the heart of the odal country, the West Mainland, where the very Norse language lived far into the eighteenth century, hardly any Scottish names are found. With the exception of the Louttits, and possibly of the Sclaters, all the names from this district which appear most frequently in the early lawthings and head courts are native, and even so late as the seventeenth century we find on the earlier suit-rolls a considerable number of such families, entered frequently as 'of that Ilk,' among the gentlemen suitors of court; though very few are found in other parts of Orkney. It is worth while therefore examining the West Mainland with particular attention, as we find it in the early sixteenth century.

<sup>1</sup> Edane Paplay, Cristen Cara, and Helen Ness.

<sup>2</sup> That in most cases the native families can be quite clearly distinguished from those of Scottish origin was shown by the present editor in a paper on 'Orkney Surnames': *O. L. Miscellany* for January and April 1912.

A pretty accurate idea of the property owned by each family may be formed in this way. The odal lands can be exactly distinguished by the Rentals, and where a township was held by a family of the same name, the odal lands of that town may be credited to the family of that ilk (another family might have a slice of them, but against this may be set the supposititious slice they would hold of another family's township). There then remain the other lands to be apportioned in the light of any evidence available. Such evidence ought to be to hand without much further seeking in the 'Uthell Buik,' compiled by Earl Patrick in 1601, which purports to give the owners of all odal lands in Orkney. Unfortunately, however, a detailed examination shows that wadsetters and tenants were in many cases entered promiscuously with heritors. Still, with the aid of charter evidence to check this record, a fair general idea can be formed of the lie of the odal lands in 1600. Such charter evidence exists in great bulk from the beginning of the seventeenth century onwards, especially after 1617, when the register of sasines begins, a comparatively late deed frequently proving ownership for some generations previously; and this register I have searched down to the year 1784. Furthermore, the valuation made about 1640-50, gives all the landowners then, and can be used as another check.

The results of this survey establish the 'township families' very clearly as the chief owners of odal lands. A smaller type of landowner appears in fair numbers in certain districts (Sandwick and Marwick, for instance), but the total amount they held was comparatively small, by far the greater proportion of the land being in the hands of the township families. Each township family as a rule held little land outside its own town (at this period), but the exceptions are significant, since it was from such larger families that the early lawmen and most of the 'roith-

men,' or councilmen, came, the representative landowners of the district. Further proof of the ancient state of society preserved on the odal lands is seen in the phrase 'roithmen and roithmen's sons' applied to the members of the Lawthing in 1514. For generations these same leading families had ridden to the head courts as people in authority, representatives of their local districts, to 'settle cases between men.' Towards them one would naturally look in seeking for descendants of the ancient *gœðingar*, and a few apparent instances of such descent are noted in the pedigrees at the end of this volume.

Returning from the owners to the land itself, a certain amount of analogy may be discovered between the townships and the smaller manors of feudal England, different as they were in many respects. Like a manor, a township was what may be called the requisite estate for a landowner of the upper class; corresponding to the *desmesne* of the manor, we find within the township a head house or head-bull (or *bu*),<sup>1</sup> with its lands, wide in comparison with the other farms, which by the strict law of Norway were the sole and indivisible inheritance of the eldest son; and in all but the smaller townships were—as in the manors—other lands originally set to tenants.

The two fundamental differences were the nature of the tenure—complete odal possession as opposed to feudal vassalage, and the divisibility of the township. The lands 'without the auld bow' (*i.e.*, outside the old *bu*), frequently—perhaps generally—formed the daughters' portions, and being 'outlands' were not redeemable by the brothers, unless their sisters desired to sell. In consequence they tended to pass out of the family into the hands of the earl, the Church, female descendants, or outside purchasers (when the family was unable or unwilling to redeem them).

<sup>1</sup> Frequently termed the manor house in seventeenth-century charters, and sometimes in sixteenth. See No. CXXVII.

In the head-bu the younger brothers were only entitled by Norwegian law to have an interest when there were no other 'manors'<sup>1</sup> to compensate them, the eldest son remaining the legal owner. In practice, however, we constantly find in Orkney a division of the demesne lands, and even of the mansion itself, among the sons. Then if a son left only an heiress (who married), part of the demesne would go out of the original family into her husband's, as for instance actually happened in the case of the families of Ness and of Irving (Nos. XXXVI. and XLII.).

One case examined in detail throws considerable light on the breaking up of one of the larger odal properties. There one finds at least three small estates (one township and two parts of towns), together with several odd pieces of land, owned by the family, in addition to the township from which they took their name. About the year 1600, six distinct branches of the family owned these outlying properties, two (or possibly three) of these having shares or interests in the chief township. The head bu of this chief town was by this date divided into two, and the larger portion, with 'the house' of the township on it, had again been divided, and a small part gone into another family, evidently by marriage. Finally, on the larger part lived the eldest (or what was presumably the eldest) branch of the family.

Usually, however, one finds an odal property almost confined to one township, and the whole process of disintegration going on within its dykes, the term 'portioner of that ilk' being in the seventeenth century applied to three or four members of the family, and possibly being applicable to a dozen. Then in charter after charter these portioners are seen selling their shares, till in very few cases did any fraction of the township remain in the hands of

<sup>1</sup> This very word is used in Mackenzie's translation of the Norse laws bearing on the subject.—*Grievances*, p. 8.

the ancient owners. And this is the story of the 'uthal men' and their land, not only all through the West Mainland, but everywhere in Orkney.

It will thus be gathered that one must look upon the odal family rather than the individual odaller as the owner of the odal estate. At the same time, there are two arguments, one theoretical, and the other practical, which show that the rapid and disintegrating process of subdivision as we see it going on by the beginning of the seventeenth century must have been greatly retarded in previous centuries, and that the odal families (or the principal families anyhow) had in early days a definite head, one man who held the greatest share of the estate, keeping it more or less together, and representing the family.

In the first place, a simple mathematical calculation makes it plain that if, in the case of the greater families, the individuals' shares had constantly grown smaller at every generation, the property of each of those families must at one time have embraced nearly the whole of Orkney! Indeed, such a calculation proves that there *must* have been comparatively little actual subdivision at one time. In other words, though the estate was theoretically subdivided, the various heirs cannot have, so to speak, walked off with their shares. And this is confirmed by the second argument: that it is almost always the same member of a family who appears in such deeds as the decrees of court, and who as Scottish fashions came in was termed on these occasions 'of that Ilk,' : e.g. John Flett of Harray, William Cloustath, Henry Foubister, etc., in early dooms, and Andrew Hourstane, Robert Isbister, William Linklater, etc., in later decrees.

There are not many facts recorded concerning the share of the family estate held by such heads of families; still, there are a few. Andrew Halcro of that Ilk is found as the bishop's baillie and also as roithman in 1509. His estate

included half the town of Holland *alias* Halero, and exactly as much scattered among nine other townships—eleven pennylands in all. The extraordinarily scattered character of this last part suggests that he had been buying odd parcels of land, but he may certainly be taken to have owned 'in heritage' the largest estate of any of the numerous branches of the family then recorded, judging by all the facts obtainable. Again, that branch of the Corrighalls termed 'of that Ilk' was descended from one man who shortly before 1490 owned most, if not all, of the lands afterwards in possession of the name. The case of the Irelands of that Ilk is still more emphatic. Here all the property in Ireland owned by three branches in the latter part of the sixteenth century was inherited from their common ancestor, Gilbert Ireland, who died about 1558.

There were several means whereby these odal estates were held together. The right of buying up sisters' shares of the head-bulls, sales by brother to brother, judicious marriages, and the right of the 'tent penny and ferd,' all appear in these records. This last consisted in the power which an odaller had of bequeathing to whom he pleased a tenth part of inherited, and a fourth part of acquired property, a proportion which, it seems, was averaged as a sixth of the whole.<sup>1</sup> An eldest son, who was given this extra share, who had the first choice of the lands and the head-bull, who bought out his sisters and a brother or two, and who married well, would be in a fair way towards keeping together his ancestral estate.<sup>2</sup>

The advantage to the property of having a small family is obvious, and there is an evident and significant connection between the rarity of the surname Ireland and the fact that their property remained in bulk longer than any

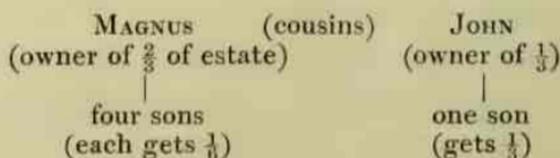
<sup>1</sup> See note to No. LIN.

<sup>2</sup> This does not apply to early days, when many properties (*i.e.* Sweyn's) were large enough to divide into two or three moderate estates.

other.<sup>1</sup> But besides these causes, another appears from a study of the two early Rentals. The names of by no means all the tacksmen of earldom lands are given, yet it is noticeable that many of the largest recorded tacks were granted to representative odallers.<sup>2</sup> The roithmen seem to have been particularly favoured. Of seven names on a West Mainland court about 1500,<sup>3</sup> four are on record as large tacksmen, and many others are found all through the islands. It seems only reasonable to suppose that the profits of a tack would frequently be employed in the purchase of kinsmen's shares of the odal inheritance.

Critics of the science of genealogy are fond of averring that it serves no useful purpose, and no doubt critics, like weather prophets, happen sometimes to be correct. But it is certainly a valuable aid to the study of this old odal society. In endeavouring to trace the pedigrees of some of these families, several facts, at first bewildering and then instructive, came to light. For instance, the term 'portioner' is sometimes omitted, and one finds such curious usages as two contemporary Haleros 'of that Ilk,' and a John and Hew Hourstane, both 'of Hourstane,' appearing in the same document; implying a divided headship of the family and a carelessness of primogeniture utterly foreign to feudal ideas.

Again, one may have first one branch and then another of a family appearing as the apparent main line. This may be accounted for by such a hypothetical pedigree as this:—



Here the son of John comes to own twice as much of the inheritance as any of the sons of Magnus.

<sup>1</sup> Apart from the exceptional case of the Haleros. See note to No. CXVIII.

<sup>2</sup> See Appendix C.

<sup>3</sup> No. XXXIII.

Or, perhaps, a junior branch might be favoured by a tack or feu. To take an actual instance, we find on an assize in 1559, Nicol, James, and Alexander Foubister, all 'in Foubister.' Of these portioners, James appears on the head court assize of 1564 as 'of that Ilk,' and again on a head court in 1584. In 1586 William, eldest son of William Foubister 'now blind and impotent' (and therefore no youth in 1559), resigns certain lands on behalf of his father in exchange for a tack of the teind sheaves of Foubister.<sup>1</sup> William's son, Malcolm, then appears on the suit-rolls of 1617-26 as 'of that Ilk'; yet it was not his only son James, but a Thomas Foubister who was considerably the largest landowner of the family in the Valuation of 1640-50. Fortunately this is an extreme case, but it illustrates very well the peculiarities of this tenure.

(In connection with these old families it may be noted, by the way, that they were constantly termed 'in' their property when the Scottish usage is 'of.' For instance, Henry Sinclair was 'in' and 'of' Clumlie indiscriminately, and the same thing is found with many other landowners of extremely good position. This was no doubt because the native usage was almost always 'in' or 'at'.)

Of certain aspects of the odallers' lives these records give many glimpses, particularly of the litigious aspect. We see them riding to the *thing* to try other men's suits, and we see them constantly involved in lawsuits of their own. The rival claims of heirs in an inheritance, the rival claims of neighbours in a stream, disputed 'outreding' of a sister's share (a very constant cause of quarrel this), disputed boundaries and 'balks' of land—the constant records of these might give one a somewhat quarrelsome impression of this old society, but for the sobering thought that if no records of our own time were to survive for the

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<sup>1</sup> Auchinleck's Protocol Book (Gen. Reg. House).

edification of our descendants save the police news and the contents of our solicitors' pigeon-holes, they might entertain an equally critical opinion of ourselves.

As for the way men lived, dressed, and dined, the size and appearance of their houses, and the number of their household, their surviving records are almost a blank. The very interesting and surprising inventory of a Shetland heiress's possessions in the fourteenth century, given in No. XIII., shows a remarkable standard of luxury among the wealthier odallers at that date, and the evidences of the islands' early prosperity already quoted are corroborated by the constant incursions of marauders. There is, besides, one reference to 'silver work' as part of an inheritance,<sup>1</sup> and also a partial inventory of the House of Essinquooy.<sup>2</sup> The Complaint of 1424 mentions that the lawman's church had been broken into, by which is evidently meant one of those small township chapels still remembered by tradition or visible in ruin, and this reference seems to establish them as appurtenances of wealthy landowners' estates; while the preservation, among the meagre collection of surviving armorials, of the arms of three native roithmen families in Orkney, and of several Shetlanders, is interesting evidence of the definitely aristocratic position at one time held by these *nobiles*.

Of the eminently Scandinavian character of their houses far into the sixteenth century, there is curious proof in the complaint of Arthur Sinclair of Ayth in 1576.<sup>3</sup> It is there stated that his intending murderers sought for him in the house of Magnus of How, a Shetland landowner. 'Thomas Marteynsoun . . . deponis that he was lyand sleipand in his awin bed in his awin houss, quhilk is ane part of the lugeing of Magnus of How. . . . And he affirmis that incontinent thai tuik Robert Patersoun and gart him

<sup>1</sup> No. CVIII.

<sup>2</sup> *Oppressions*, pp. 79, 80.

<sup>3</sup> No. CXXX.

beir the candill againis his will throw the hail lugeing, fra houss to houss.' We have here simply a Norse chieftain's house of the tenth century—a group of separate houses round a courtyard; and that this type of mansion formed the model on which the houses even of the largest Orkney landowners were built in the seventeenth century, is shown by a photograph of the old house of Graemeshall, taken shortly before its demolition. There one sees three quite separate houses, the main one joined end to end with another, and separated from the third by a courtyard. The old mansion of Burness, with two ancient houses on either side of the court, joined by a more modern building on the third side, is another excellent example.

If this type of 'lugeing' be conceived as consisting of houses no better built than the older farms, and even mansions, existing in Orkney to-day, it is easy to see what happened to it, and why no specimen of it survives. In the first place it lent itself to—nay, invited—division among the sons of the family, and the fate of a divided house is sealed. Then one has only to imagine the storms of one wild winter after another beating on the decaying 'lugeing,' which all the while was growing too spacious for the decaying fortunes of its inhabitants, and before many generations had passed there would be nothing to show that anything more pretentious than a small cluster of huddled farm buildings had ever stood there.

## IV

From the odal lands to the odal law is but a short step—hardly, indeed, a step at all, so intimately were they connected. Tribunals of landowners adjudicating concerning the land and its varied rights: each decree of court in the collection is covered by this epitome. What precise

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code of laws was in force, whether the New Gulathing code of Norway or a mixture of Old and New Gulathing, how far the 'customs' always mentioned in conjunction with the laws were local modifications, and if so to what extent they modified the Norwegian code, are questions that can only be satisfactorily answered by Scandinavian experts after they have studied the records in detail. From the fact that the old earls undoubtedly had the power of making and amending laws, from the insistence on these 'customs,' and from the peculiarities in the constitution of the Orkney courts, one would hardly expect to find a precise identity of codes with Norway. Numerous instances in which the law was identical naturally occur, since in any case the divergence would not be wide, but it is hardly necessary to say that a hundred such instances would not prove the complete identity of the codes, whereas one example of a difference would establish non-identity.

Again, it is very possible that Shetland was ruled by the letter of the Norwegian law, while Orkney was not, since the Norwegian machinery of justice is found in the northern group, but not in the southern, and the argument to the contrary recently adduced,<sup>1</sup> that the same man is found acting as lawman in both groups, is of less weight than it seems, for this reason: that Nicol Haw, the lawman in question, only stepped into the dual office in 1510,<sup>2</sup> forty-two years after the islands had passed into Scottish hands, and that by making him a pluralist the Scottish Crown was saving itself twelve pounds a year (a considerable sum in those days), the salary of the Orkney lawman.<sup>3</sup> Additional point is given to this objection by the significant fact that immediately after Summerdale the Orkney leaders

<sup>1</sup> Mr. Johnston's *Introduction to Orkney and Shetland Records*, p. xxxvi.

<sup>2</sup> He had been lawman of Shetland since 1485 (No. XXXI.). Niels was the Norse equivalent of Nicol, and Niels Willomson was still lawman in 1516 (*Antiquities of Shetland*, p. 82).

<sup>3</sup> *Exchequer Rolls*, 1476.

descended upon Shetland and 'headed' the lawman. More practical evidence that his intrusion into Orkney was unwelcome it would be hard to adduce.

If this question of the codes be disputable, still more so is the statement made in the same place,<sup>1</sup> that 'there were precisely similar officers in both Orkney and Shetland: lawman, justice or foud, underfouds (or baillies), and lawrightmen.' Delete the word 'precisely,' and there is a certain amount of truth in the statement; though, even so, it is apt to mislead. One has to insist on differences at least as jealously as on analogies, and the differences in this case are significant.

The Shetland administrative and judicial machinery was, on a small scale, that of Norway. There was the Head-foud, who may pretty correctly be called the governor of Shetland. He was acting head of the administrative machinery, and evidently ostensible president of the judicial.<sup>2</sup> Under him were a number of Under-fouds, one for each district. Their functions we know to have included the collection of the revenues of their districts, presiding over the local courts, and forming, with others, the head-courts.<sup>3</sup> They were, in fact, like the Head-foud, both administrative and judicial officers.

The Lawman and the Lawrikmen or Lawrightmen appear to have been, originally at least, purely judicial functionaries. The Lawman was the acting president of the head courts, and the Lawrikmen were originally the delegate members from each district who formed the 'logretta.' This may have been originally only the kernel of the Lawthing, as in Norway, and the Lawrikmen chosen after the Lawthing assembled. But, in any event, that very early ceased to

<sup>1</sup> Mr. Johnston's *Introduction*, p. xxxv.

<sup>2</sup> See No. xxxviii., and also Goudie's *Antiquities of Shetland*, p. 144.

<sup>3</sup> For information regarding the duties of the under-fouds and lawrikmen, see the Complaint of 1576 in Balfour's *Oppressions*, particularly p. 18.

be the case, and we find them as, so to speak, all-the-year-round lawrikmen. They came in fact to be regular district officials, who represented the interests of the commons (as opposed to the fouds who represented the Crown), and who acted as chancellors on the local assizes and gave their advice on points of law. The old Shetland Lawthing may be seen in full working order in 1307 (No. xxix.) and the duties of Fouds and Lawrikmen are very precisely laid down in the Complaint of 1576; and this information is supplemented by various documents. It is to be noted, further, that the titles of foud and lawrikman are usually put after the holder's name whenever it appears on a document; also that there remained in Shetland as late as 1733 a single lawrikman in each parish, whose duties retained something of their old nature.<sup>1</sup>

In Orkney there was the Justice, who corresponded very closely, if not exactly, to the Head-foud. In his judicial capacity he is found on several occasions presiding over the head courts (though in only one instance—No. xli.—is he found taking part in the giving of the decree), and in his administrative capacity he has in 1516 (No. xl.) to 'direct his deputes' to put a doom into force.

But it is different with regard to baillies and under-fouds. In Shetland the under-fouds collected the revenues, which indeed may be said to have formed their chief *raison d'être*. In Orkney this was done by the 'takmen,' who in the Rental of 1500 are found directly responsible to the Justice, Henry Lord Sinclair, and who were not the same as the baillies.<sup>2</sup> So inconspicuous were these

<sup>1</sup> Gifford's *Description of Shetland*, a contemporary account by a particularly reliable authority (quoted *Antiquities of Shetland*, p. 241).

<sup>2</sup> e.g. William Sinclair was baillie of St. Andrews in 1571 and Andrew Yenstay tackman from 1567 to 1572; and at the end of the sixteenth and beginning of the seventeenth centuries, while Thomas Robertson and then Malcolm Isbister were baillies of Harray and Stenness, Malcolm Ireland and afterwards Thomas Douglas were takmen.

baillies in early days that in only three of the early decrees (or in any other document whatever of that period) is there found any reference to them, and though they become much more conspicuous latterly, the title is very rarely added to a man's name (except in the case of the baillies of Kirkwall, quite different people). It is thus evident that the Orkney baillies were in these early days a relatively less important part of the machinery than the fouds of Shetland.

By the end of the sixteenth century under-foud and baillie are several times referred to as equivalent titles, and in one solitary document of the year 1570 (No. LIX.) an Orkney baillie is termed a 'fold,' but much water had run under the bridge by then. Indeed, it cannot be too strongly insisted on that in the study of ancient Orkney institutions we must keep our eyes fixed on the period before 1540, and after that date only admit as evidence what is clearly not of Scottish origin. It need hardly be added that the office of baillie was a marked feature of feudal Scotland, and in these records we see the Orkney baillies waxing greatly in importance as the century proceeds, till they finally came to be the chief Scottish territorial magnates in each parish, with one or more baillies depute under them.

To come to the actual constituent members of the Orkney head courts (apart from the more or less ornamental Justice), we find, in the first place, a lawman whose duties and position seem in every way similar to those of the lawman of Shetland. From the glimpses afforded by the records, he appears as an active magistrate, holding courts all through the year in different places, issuing edicts directing minor courts to be held or arbiters to divide an estate, and publishing 'testimonials' certifying that his directions have been carried out. It is to be noted that all his work, as far as we see

it, is judicial, not administrative. At the head courts he is seen merely presiding. The 'roithmen' take an equal part with him, not only in weighing evidence, but in giving the decree; and in the year 1516 the lawthing is even found being held without a lawman at all. The roithmen could act without their president.

From the early years of the fifteenth century the Orkney lawmen are (so far as one can judge) continuously recorded. In 1422 and 1424 we have William Thurgilson; shortly before 1438 John of Kirkness; in 1438 and 1446 Henry Rendall; in 1455 John Cragy; in 1480 William Cragy; from 1496 to 1509 John Cragy; from 1510 to 1519 Nicol Haw, the Shetlander; while at one period after this, James Irving of Sabay appears to have been lawman, though when and for how long is uncertain.<sup>1</sup> Certainly there is no record of the office being in existence after 1540, when the sheriff is found acting on every occasion where the lawman used to act.

One small but significant circumstance is to be noted in connection with the three Cragys' tenure of the office. In most cases where an office-bearer of any kind is mentioned, the phrase 'for the time,' 'at the time,' or 'in the time,' is used. Occasionally it may be omitted, but not often, except in two instances. Robert Stewart, feuar and *hereditary* sheriff, has never this addendum, and none of the Cragys have it. It would thus appear probable that the office of lawman had actually become hereditary in that family. In view of the different families who held the office previously, this would seem on the face of it evidence of early Scottish influences. On the other hand, two early lawmen of Orkney are mentioned in Norwegian deeds. They were Sigvat Kolbeinson (in 1325), and Sigurd Sigvatson (in

<sup>1</sup> In the complaint of Magnus and Gilbert Irving in 1587 (*Oppressions*, p. 95) it is said 'that quhar thar umq<sup>10</sup> father (Lawman of Orknay for the tyme),' etc., but this is the only reference to his tenure of the office.

1338), names which strongly suggest that they were father and son. Very probably a *customary* hereditary tenure of the office may have been the rule rather than the exception, though the necessity for efficiency would sooner or later break the entail, since even Solomon was not altogether fortunate in his progeny.

When one comes to the other members of the Orkney head courts, an interesting problem is presented. The term 'lawrikman' was certainly used in Orkney, but it was used exceedingly seldom. In all the early records it occurs only twice. In 1446 three lawrikmen append their seals,<sup>1</sup> and in 1576 a baillie court decree is written 'at the desire of the lawrikman Robert Isbister.'<sup>2</sup> Comparing the volume of Orkney records with the mere dribblet of Shetland deeds, the contrast between these two references to lawrikmen in Orkney and the constant references in Shetland is too suggestive (one would have thought) to be overlooked. For this reason alone it is evident they must have been somewhat different functionaries, and this difference is further indicated by the fact that in the seventeenth century, instead of a single lawrikman per parish, as in Shetland, we find the Orkney parishes provided with a regular staff of these officials. In the record of a sheriff court held at Skaill in Sandwick on April 27th, 1678,<sup>3</sup> ten Sandwick lawrikmen are enumerated. In the record of a criminal process undated, but evidently about 1670-80,<sup>4</sup> seven Firth, two Harray, and two Stenness lawrikmen are named; while the number of lawrikmen in South Ronaldsay in 1696 amounted to thirty-eight.<sup>5</sup> It is probable that these numbers are considerably in excess of the numbers about the year 1500; still, the contrast with

<sup>1</sup> No. XXI.

<sup>2</sup> Deed in Record Room, Kirkwall.

<sup>3</sup> Craven's *Church Life in South Ronaldsay and Burray*.

<sup>2</sup> No. LXIV.

<sup>4</sup> *Ibid.*

Shetland is too striking to be without some significance.

The two peculiar and distinctive terms applied to members of the early Orkney head courts are 'gudmen' and 'roithmen.' Gudmen is clearly *goðirmenn*, men of good position, found constantly in Norwegian records. Roithmen is as certainly *raðmen*, councilmen,<sup>1</sup> and was evidently the technical term for members of court, 'gudmen' being simply equivalent to 'gentlemen.' (See Dr. Bull's note on page 37.) That 'roithman' was not equivalent to 'lawrikman' in the Shetland sense of a tribune of the people, is shown by the fact that Andrew Halero appears in 1509 as baillie to the king—the nearest Orkney approximation to under-foud—and in the same year as roithman. On the other hand, that it was not equivalent to foud is proved by the fact that in 1504 John of Spens was baillie of Harray (a bailliewick that subsequently, and presumably then, included Stenness), and that he is not one of the several roithmen from Harray and Stenness who appear on contemporary decrees.

It is also to be noted that 'roithman' is never used except in decrees of court, and putting these indications together, the most reasonable reading of them is that the members of the Lawthing were baillies or lawrikmen at home, and roithmen when they came to court. We have already seen that they consisted of—indeed, were confined to—the leading odallers, that many of them were also large tacksmen, and that—as was inevitable in such a conservative society—the hereditary element was marked. Probably even the first roithmen of Scottish family were roithmen's grandsons in the female line.

The head courts or 'head steins' may for the moment be classified briefly as *A*, the Lawthing, the great annual head court (originally no doubt with legislative functions),

<sup>1</sup> See Notes 1 and 2 at the end of this Introduction.

held at Kirkwall in the 'moneth of Junii,'<sup>1</sup> and lasting evidently for a week, since the decrees are simply dated 'the Tuesday,' 'the Wednesday,' etc., 'of the Lawthing.' *B*, Other head courts held in Kirkwall. *C*, Head courts held locally, presumably when the lawman at stated times went on circuit. Among the early decrees we have records of *A* and *C*. Nos. XXXII., XXXIX., and XL. are Lawthing decrees. Nos. XXXIII., XXXVII., and XLI. are decrees of courts held up country by the lawman, and No. XLII. would seem to be the decree of a local head court held without the lawman (he being doubtless in Shetland at the time), but providing for an appeal to him within a year and day, if either of the parties thought the doom 'heavy.' As it was sealed by the Justice, Sir William Sinclair of Warsetter, he evidently presided (though the decree omits to mention this), and from this fact, and also from the number and distribution of the members, it may pretty safely be considered a head court.

As the names of the roithmen are given on five of these dooms, and as almost all of them belonged to known families, and can be identified with known estates, a good deal can be deduced. In all cases the members come from various parts of the country and are clearly representative delegates from local districts,<sup>2</sup> and, on an average, half the members of each court appear on some other decree (several of them on two more) out of these five chance dooms distributed over about twenty-two years.

An analysis of a large number of Norwegian decrees<sup>3</sup> between the years 1446 and 1471, all given in Hedemark within (roughly) a twenty mile radius, shows rather less repetition of the logretta-men's names, and as these

<sup>1</sup> No. XXXIX.

<sup>2</sup> This was worked out in some detail by the present editor in 'Odal Orkney,' *Saga Book of Viking Club*, vii. 100. Later information has corrected the localisation of one or two of the names.

<sup>3</sup> *D. N.*, vol. ii. part 2.

logretta-men were sworn in for life and limited in number, it seems only reasonable to conclude, both from the figures and the analogy, that they had the same system in Orkney : so many sworn representatives per district, out of whom a limited number attended each court.

What were these districts ? Not the modern parishes apparently, since from some (owing to the scarcity of odal land and absence of representative families) no representatives are found, while others have up to four representatives on one court. Probably, then, wider districts, embracing two or even three parishes, and perhaps corresponding to the ancient 'herads,' of which again traces may possibly be seen in such combined bailliewicks as Harray and Stenness.

Further, there seems to be hint of a division of all Orkney into four quarters (like Iceland) in the compilation of the 1500 Rental. Lord Sinclair or his factor, or both together, visited the East Mainland and South Ronaldsay from 27th to 30th April 1502, and the rental of each parish was then 'made.' In June 1502 Sanday (and presumably other of the North Isles)<sup>1</sup> were visited. From 27th to 30th April 1503 the rentals of Stromness, Orphir, Walls and Hoy were made locally ; and then from 4th to 20th March 1503, the rentals of the rest of the West Mainland and of Rowsay were made at Kirkwall. It is further to be noted that in the Uthel Book the parishes and islands are entered practically in the same order as in this rental,<sup>2</sup> not purely geographically as in the 1595 Rental.

There is no direct evidence one way or the other with regard to such a quartering of the islands ; nor, indeed, any touching the smaller divisions ; but it would accord

<sup>1</sup> Following the rental of Sanday, several pages are missing.

<sup>2</sup> It is specially noteworthy that in the Uthel Book, Rowsay is sandwiched between the two mainland parishes of Evie and Rendall, instead of coming among the other North Isles.

excellently with the actual distribution of the roithmen if we were to assume that they came to each court from the four quarters in this ratio: East Mainland and South Ronaldsay, nine; West Mainland and Rowsay, nine; Hoy, Walls, Stromness, and Orphir, three; North Isles, three. Also, that there were, say, six to nine lawrikmen or baillies (*i.e.* qualified delegates, whatever they were called) in each small division; and that from the quarters the men were drawn on any given occasion without strict regard to the smaller divisions within them, one of these sending perhaps three or four delegates and another one—or even none at all. Such irregularity can hardly have been part of the *original* system, but this may well have relaxed in detail before 1500.

The number of roithmen who formed a head court seems pretty certainly to have been twenty-four. This number is only stated once (No. xli.), but in the other two decrees at Sabay we find twenty-one names ‘with others divers.’ The numbers on the Lawthing at first presented a baffling puzzle. In 1510 we find fourteen; in 1514 thirteen; and in 1516 twenty names ‘with others divers.’ The explanation is, however, pretty simple. The Lawthing lasted for a week, twenty-four roithmen were chosen, and then from day to day, a certain proportion of them (sometimes all) sat in judgment. Hence the phrase in 1514, ‘ane certane . . . of roithmen and roithmen’s sons, chosen,’ etc. Thirteen were obviously chosen out of the twenty-four, presumably with the consent of the parties.

No. xxxiii. is an exception. Here we find only seven names ‘with others divers,’ and all of them from the West Mainland. That it was a head court of a type is clear from three considerations—the presence of the lawman, the standing and distribution of the members, and the fact that they ordered a subordinate inquest to be held to settle certain details. This court seems to support the quarter

theory, and to have been a quarter head court, probably of twelve members.

## V

Thus far this Introduction had been written, when, in a fortunate hour, there was sent to me by my friend, Mr. W. P. Drever, a paper on 'The Constitution of the Isle of Man,' by Mr. R. D. Farrant, contained in the July number of the *Law Quarterly Review* for 1909; and I have left what was written as it stood, to show how far the results of research into the constitution of Orkney had already pointed in the direction towards which that paper has now decisively turned them.

Mr. Farrant's case is the remarkable analogy between Iceland and Man. Iceland was divided into four quarters, each quarter into three *things*, and each *thing* into three *goðords*, or districts ruled by a *goðe*. The thirty-six *goðar* formed the original *Althing*, corresponding to the Tynwald<sup>1</sup> of Man and Lawthing of Orkney. Man was (and still is) divided into two districts, each district into three 'sheadings,' and each sheading into three parishes, with the exception of one sheading which has two parishes. The original Keys, who formed the Tynwald, numbered twenty-four, sixteen from Man and eight from the 'Out Isles' (the Hebrides). As Mr. Farrant points out, the sixteen were obviously eight representatives from each district; *i.e.*, one from each parish, with one left out to balance the two districts.

This exact similarity of divisions into quarters in the larger island and halves in the smaller, then into thirds, and then into thirds again (these last thirds in Man being the modern parishes), occurring in two such widely separated places as Iceland and Man, one a republic, and the other

<sup>1</sup> Strictly speaking, the Tynwald was the place where the Lawthing was held, but it is used in old Manx documents of the court itself.

ruled by a king, tributary to the King of Norway, as well as various marked points of identity in matters of detail,<sup>1</sup> naturally encouraged further inquiry into the Lawthing of Orkney on the lines of the quarter theory. The results are so striking as to raise the unpleasant suspicion that a more enterprising inquirer would have discovered them sooner.

Taking the quarters as suggested (proclaimed, it now seems) by the old Rental, the North Islands' quarter originally consisted of exactly nine parishes, grouped in threes.<sup>2</sup> Stronsay contained three parishes, to which were attached (as pendants to the three) Eday and North Ronaldsay. Sanday contained three; and Westray and Papa Westray formed three.

The West Mainland and Rowsay quarter also contained nine parishes (counting North and South Sandwick as separate parishes, in accordance with all the rentals). Of these, there are several indications of an alliance between Harray, Stenness, and Firth. In an undated deed, evidently about 1670-80,<sup>3</sup> a case of theft in Firth was investigated by the lawrychtmen of Firth, Stenness, and Harray. The earliest recorded baillie courts of Harray and Stenness were presided over by a Firth landowner (William Sclater),<sup>4</sup> and generally contained one or two Firth names. And in the 1500 Rental, under Stenness, John Flett, William Clouston, Hutcheon Germiston, and William Heddle,<sup>5</sup> with divers others in this parish' bear witness. As two of these were Stenness landowners, one Harray, and one Firth, it would seem that for 'this parish' is to be read 'this district,' or group of parishes—what in Man would be called a sheading.

Birsay and the two Sandwicks are both geographically united, and show evidence of administrative union in a decree at Birsay in 1574, where the assize is drawn

<sup>1</sup> The remarkable similarity of these details is noticed by Gudbrand Vigfusson in *Origines Islandicæ*, vol. i. pp. 334-337.

<sup>2</sup> Reports of the Earldom Parishes in Peterkin's *Rentals*, pp. 81, 88, 95.

<sup>3</sup> Already referred to (p. lxxiii).

<sup>4</sup> Nos. LXXII., LXXIV., and LXXX.

jointly from them.<sup>1</sup> As to Evie, Rendall, and Rowsay, they are geographically adjacent, but there is no evidence apart from this.

Turning to the East Mainland district, we have St. Andrews, Holm, and Deerness forming an obvious trio, and also jointly supplying an assize in 1559.<sup>2</sup> Burray and the two parishes in South Ronaldsay form an equally obvious group of three; while St. Ola and Shapinsay would represent a 'one short' third, like the sheading mentioned in Man.

But what of the remaining quarter? The first difficulty that Stromness, Orphir, Hoy, and Walls form *four* parishes disappears, I think, when it is realised that there never was an acre of odal land in Hoy. It was all earldom 'bordland,' and so could never have supplied even a solitary 'landed man.' But this leaves us short of two whole thirds; and now the Man analogy becomes increasingly valuable. Eight men came to the Tynwald from the 'out isles.' Look from Hoy and Walls across the narrow Pentland, and there, manifest to the eye, lies the remaining two-thirds of that quarter. Caithness (including what is now Sutherland) was part of the Orkney earls' dominions, and would surely have been represented in the Lawthing, and geographically it would obviously be included in this particular quarter district.<sup>3</sup>

It may be remembered that the proportion of roithmen per quarter had already seemed to be 9 : 3 : 9 : 3. The two nines are exactly in accord with the further developments, and the three for the Walls quarter is just what would be

<sup>1</sup> No. LXI.

<sup>2</sup> No. I.

<sup>3</sup> Information regarding the ancient parishes in the diocese of Caithness is to be found in the Charter by Bishop Gilbert (1222-1245) and the Bagimond's Rolls (1275, 1276), printed in *O. L. Rec.*, Caithness and Sutherland Series, Nos. 9, 16 and 35. It is, however, uncertain how much of the country therein included was under the rule of the early Orkney earls and would be represented in the Lawthing.

left when Caithness parted company from Orkney. It is not unreasonable to suppose that by the time this occurred, the centre of gravity had completely shifted from the North Isles (where the land is seen to have been earliest developed, and where the Vikings must obviously have first landed) to the Mainland; and hence their representation was cut down from nine to three, thus making the total number of the logretta two twelves instead of three twelves. Certainly by the date of the earliest of these records, the North Isles contained so few landed families of importance, and so little odal land, that they and their inhabitants are seldom referred to; and geographically they were, of course, far removed from the seat of government.

Equally in accord with the Man and Iceland model are the facts already noted about the roithmen. In Iceland, the members of the Althing were the hereditary district chieftains. In Man, the Keys were till quite lately a self-elected body confined to the larger landowners, holding office till death, bankruptcy, gross misconduct, or (a significant condition) loss of their landed estate. In Orkney, we have seen that the roithmen were a limited selection from the greater odal families, consisting of 'the best landed men,' and that their office was of a hereditary nature. How decidedly the office tended to run in families may be seen from the Sabay decree of 1522, where a contingent of nine 'gudmen' came from the West Mainland, five of these belonging to two families, and three out of the other four not only appearing in other dooms, but having other roithmen members of the same family.

By the date of the recorded decrees (probably more than six centuries after the Orkney Lawthing was first constituted), the roithmen had certainly ceased to be drawn one from each parish, and if they ever had been limited strictly to thirty-six, or afterwards twenty-four (*i.e.* the same men appearing at all courts), their number had been

very considerably increased. But this is entirely consistent with the view that they were the hereditary representatives of the old chieftain families. An Icelandic *goðord* was constantly divided among the heirs of a *goðe*,<sup>1</sup> any one of whom was eligible to sit at the Althing, and this system would inevitably lead in Orkney to several families in one parish having hereditary rights to be roithmen; while, in another, the extinction of the chieftain stock or the absorption of their estates into the earldom or bishopric lands would leave it without any. And the records show us both these cases.

It may be taken that female descent did not in old days confer this right, since by the earliest laws daughters got no share in the landed estate; but it seems highly probable that heiress-marrying settlers acquired the right under the St. Clair régime. The Sinclair earls must naturally have desired an infusion of Scotsmen in the Lawthing, and were certainly powerful enough to have their desires respected. Of course, these Scottish roithmen may have simply been given the right, but female descent seems a natural enough explanation.

Again, it is quite possible that at head courts held locally for a specific purpose, though most of the members were unquestionably the roithmen of the Lawthing, yet occasionally one or two other landowners *may* have been included (possibly as substitutes for absentees). Some of the names in the 1522 doom suggest this possibility, since such a comparatively large proportion are found on no other decree, and consequently there may not have been quite as many true roithmen as appears.

Another feature of the Orkney head courts (when held

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<sup>1</sup> See 'Liosvetninga Saga' (*Origines Islandica*, vol. ii. p. 362), where one finds by the end of the tenth century a *goðord* divided into thirds, Thorgar *goðe* holding one third, his four sons another, and Arnstein (whose relationship is not stated) the third.

in Kirkwall) is on all fours with the practice in Iceland and Man. At the Althing the whole 'bonder' of Iceland, and at the Tynwald the whole 'commons' of Man, were assembled to watch the proceedings and to hear and approve the enactments of the *goðar* and of the Keys. In Orkney, on August 1st, 1547,<sup>1</sup> we find the sheriff sitting in judgement, 'and there were gathered together all and sundry the inhabitants of the country of Orkney for the most part, as the custom is.' Again, in a letter dated February 5th, 1560,<sup>2</sup> Bishop Bothwell mentions 'ane gret multitude off the commonis at the first heid court eftyr Yeuil'; while in the early seventeenth century the sittings of the head courts were several times attended by 'the commons.'<sup>3</sup>

Summarising the features of the Orkney Lawthing thus reconstructed, we have: (1) Four quarters, of which three were divided into thirds, and these again (with one exception), into three parishes per third, the exception containing two parishes.

(2) A fourth quarter containing one-third in Orkney, and the other two-thirds made up from Caithness.

(3) A logretta originally of thirty-six chieftains (who came to be styled *raðmenn*<sup>4</sup> or roithmen), nine per quarter, sitting in presence of the assembled bonder, and presided over by the lawman.

(4) A reduction to twenty-four roithmen by the elimination of six from the North Isles, and six from the South-west quarters.

<sup>1</sup> No. XLV.

<sup>2</sup> Craven's *History of the Church in Orkney*, 1558-1662, p. 6.

<sup>3</sup> Barry's *History of Orkney*, Appendix. Overlooking the analogous cases of Iceland and Man, Mr. Johnston uses this last reference to support the opinion that the Lawthing of Orkney was a primary assembly which proceeded to elect its own logretta on the spot.

<sup>4</sup> *Rað* meant not only 'counsel' or 'council,' but 'rule,' 'authority,' etc., and *raðmenn* is very occasionally found in the sense of the nobility, *i.e.*, the rulers of the land. At what period this specific name was given to the members of the Orkney courts is quite uncertain.

(5) Roithmen still remaining 'roithmen's sons,' *i.e.*, descendants of the old chieftain families.

(6) Over lawman and logretta the earl in old days presided, and was represented in these records by the Justice.

Finally, it may be stated definitely that there is no recognisable allusion to the Lawthing in the *Orkneyinga Saga*. Several passages purporting to illustrate the Lawthing from this source are quoted,<sup>1</sup> but in only two instances do they refer to anything at all like a general *thing* or assembly. Not only were these two *ad hoc* gatherings specially summoned, but their dates make it out of the question that they were Lawthings. One (of all the chieftains) was held 'very early' in spring, and the other (of all the bonder) some time after Michaelmas.

Of the subordinate courts in early days we get three glimpses: in No. xxxiii., where twelve men are ordered to be 'upon the ground'; in No. xxxii., where the Lawthing directs the baillie and twelve of the worthiest men of the parish to carry out its edict; and in No. xxxvii.A, an interesting and unique example of the actual decree of such a court, embodied in the 'testimonial' of the lawman confirming it. It was held in the south parish of South Ronaldsay, was presided over by the king's and bishop's baillies, and consisted of twelve local men, not one of them found on a head court. This was so precisely similar to the baillie court decrees found from 1553 onwards that it is clear this form of court remained unaltered into the seventeenth century.

Since practically all we know about the other head courts held at Kirkwall is derived from the later sixteenth century records, we must now pass on from the old days of lawmen and roithmen to the times of sheriffs and their assize.

Statutes regulating the Scottish sheriff courts are to be found in *Acts Parl. Scot.*, vol. ii. pp. 17 and 358 (6th March

<sup>1</sup> Mr. Johnston's *Introduction*, pp. xxviii, xxix.

1429, and 10th December 1540), and the best example of such an old sheriff court in full working order is contained in the *Records of the Sheriff Court of Aberdeenshire* (New Spalding Club). Here it may briefly be recalled that as a condition of holding their fiefs, all the barons and freeholders within the sherifffdom had to give 'suit,' or 'suit and presence,' at three head courts annually, and at all other courts 'set upon fifteen days' warning'; the suit-rolls containing their names making a practically complete list of the county gentry. The assizes were then formed by 'calling' these rolls, and choosing, and then swearing in and admitting, a selection of the suitors.

This model was certainly followed in Orkney in the latter half of the sixteenth century. Not only do we invariably have the formula of the 'suits callit, the assize chosen, sworn, and admittit,' but we still have the suit-rolls in the early part of the seventeenth century,<sup>1</sup> and comparing the sixteenth-century assizemen with the names therein, it is seen at once how closely they approximate, especially if one allows for the fact that the suitors appeared solely in respect of their lands. The same lands will frequently be found represented though they had changed owners.

In consequence of the obligation of attending the head courts (under penalty of a fine) being a form of service or vassalage incident upon feudal land holding, the pure and simple odallers, who owed no service for their estates, dropped out of the assizes altogether, those who are found being all holders also of crown lands, or of the office of parish tackman or baillie. To them were added an admixture of the early Scottish feuars, and a number of tacksman of the larger crown estates. In short, a sheriff court had to be a court of vassals, and so vassals of various types were collected. That so many of the old roithmen families continued to be represented was pro-

<sup>1</sup> See Appendix B and accompanying notes.

bably due, in the first place, to the fact that odal law was still being administered, and they alone knew its intricacies; in the second place, to the Stewart policy of forcing Orkney into a feudal mould. This is excellently illustrated by No. cxciii., where Earl Robert is seen regranteeing their odal lands to illegally escheated 'gentlemen uthellaris,' on condition of their doing 'thair deuetefull and trew service to his Lordship' as 'trew servandis and wassallis.'

The three head courts annually were held nominally in January, June, and November, but after 1559 there is no further record of a June court, and by 1579 it was not being held at all,<sup>1</sup> the reason probably being that as the sheriff's jurisdiction included Shetland, and as Sumburgh roost is stormy in the winter months, he selected summer as the season for holding his head court there. Thus the Shetland Lawthing flourished (under its old name) into the seventeenth century, presided over by Earl Patrick,<sup>2</sup> while the season of the old Orkney Lawthing became a blank in the legal calendar.

One fortunate consequence was that there have thus been preserved the ancient names of the January and November courts. The January court was 'callit the Herdmanstein'; the November court was 'callit the Alhallo Court'; and a third court 'callit the Wappenstein' is recorded in February 1580. Of these, the Herdmanstein is of great interest and antiquity. It is on record even before the Orkney Lawthing decrees begin, for in No. xxx. will be found a testimonial (dated January 20th, 1438) by the lawman and two others, recording a verdict given by Earl William Sinclair and the 'gentles of the country' in the herdmanstein.

The origin of the court is clear, since the *hirðmanna-stefna*, or court of the King's *hirðmenn*, was a regular

<sup>1</sup> See Nos. LXVI. and LXVII.

<sup>2</sup> Sheriff Court Book of Shetland in Gen. Reg. House.

institution in Norway, and was, as in Orkney, held in January. In Norway, its functions were the settlement of the internal affairs of the *hirð*, and the administration of the land.<sup>1</sup> In Orkney, the 1438 Herdmanstein is found acting as an ordinary court of law, and Mr. Johnston is, I think, wrong when he states<sup>2</sup> that this particular court consisted of the earl's 'hirð or bodyguard, who were appropriately described as the "gentles" of the country'; and still more so when, in referring to the herdmanstein in January 1573-74<sup>3</sup> held by Lord Robert Stewart and including two Shetland landowners, he says that, 'Lord Robert Stewart attempted to revive all the prerogatives of the old Norse régime, and naturally would wish to have his *hirð* or bodyguard, which actually included some Shetlanders, and was therefore not an exclusively Orkney court.'

As a matter of fact, 'the first heid court eftyr Yeuil' in 1560<sup>4</sup> was held several years before Robert Stewart came to Orkney, and we have a record of a head court held on January 15th, 1564-65,<sup>5</sup> certainly before he was in authority as sheriff; while after the herdmanstein of 1574, we find January head courts in 1579-80,<sup>6</sup> in 1584 (No. LXXI.), in 1598 (No. LXXIX.), and in 1604 (No. LXXXI.), thrice actually termed the herdmanstein and once not. That is to say, we have a continuous record of a January head court both before and after Robert Stewart's time, sometimes 'callit the herdmanstein,' and sometimes without this addendum, while it was certainly a January court in 1438, so that unless we are to suppose the name had been dropped and in an access of antiquarian enthusiasm he revived that, it is clear that he merely carried on what he found.

The presence of Shetland landowners is readily explained

<sup>1</sup> *Udsigt over Den Norske Rets Historie*, vol. ii. p. 207.

<sup>2</sup> Mr. Johnston's *Introduction*, p. xxxii.

<sup>3</sup> No. LX. of these records.

<sup>4</sup> See footnote 2, p. lxxxiii.

<sup>5</sup> No. LIV.

<sup>6</sup> Referred to in No. LXIX.

by the 'suit and presence' system by that time in force. We find two Shetland and four Caithness landowners on the Orkney rolls in the seventeenth century.<sup>1</sup> As for the existence of anything resembling the ancient *hirð* of the Norse earls so late as 1438, and in connection with so thoroughly Scottish a nobleman as Earl William Sinclair, one would need to have some very strong proof of such a surprising survival. The herdmanstein in that year was doing the work of an ordinary head court; the earl, as Justice of Orkney, would naturally preside at the courts (as his grandson, Sir William Sinclair, did after him); the roithmen of the Lawthings and other head courts were actually the 'gentles of the country'; and an ordinary January head court 'callit the herdmanstein' appears in the next century. Of course, there may quite possibly have been some peculiarity in the constitution of the herdmanstein still persisting in 1438 (though certainly not in 1574), but it is certain that its functions had become those of an ordinary law court, and there is no evidence to indicate whether, and if so how, it differed at that date from the other courts.

## VI

The part played by the town of Kirkwall in the old régime is worthy of more attention than can be paid at the end of an introduction which is already at least as long as a considerate introduction should be. Fortunately the ancient island capital has a great part of its history recorded in the admirable *Kirkwall in the Orkneys* by the late Mr. Hossack. The present records add much valuable information regarding the citizens and the locality of their houses at a much earlier date than his annals cover. They also point very emphatically to a marked difference between the citizens and the land-owning class. Comparatively few

<sup>1</sup> See Appendix B.

landowners' names occur as witnesses to charters made at Kirkwall, and (as a corollary) hardly any men known to be burgesses appear on the early head courts. As has been noticed previously, the leading citizens were mostly Scotsmen even at a very early date.

Still weightier was the influence of the Church; but to deal with ecclesiastical polity is to pass from local history into the affairs of one of the principalities of a cosmopolitan state. Besides, the *History of the Church in Orkney* has already been written, and to Dr. Craven's able and exhaustive work these records can only add, at most, a little incidental information.

## VII

Finally, a few words must be said as to the records themselves. To collect them, the General Register House, the Record Room at Kirkwall, all the charter chests of the chief properties, the offices of the Kirkwall and Stromness lawyers, and the houses of a great number of 'peerie lairds' have been ransacked, and the editor cannot sufficiently express his obligations to the owners and custodians of these various repositories for the uniform kindness and consideration with which they have treated him. Though in some cases their suspicions were at first not only natural, but unconcealed; and though in most they were put to some personal inconvenience, they have in all instances been kind, and in many so actively helpful that he is at a loss to know how to thank them.

The result has been that there can now be very few unpublished Orkney deeds of an early date. Possibly the publication of this volume may attract the attention of some unsuspected custodian of such documents, and perhaps he may be kind enough to contribute to that information as to the past which only documents can give.

Speaking generally, this search has shown that as a rule *all* the documents connected with a property, earlier than the seventeenth century, have been lost or destroyed. Now and then an odd document may survive, but the extent of the destruction may be judged from the existence of the early and curious group of documents dealing with the family of Corrigall, lent by Mr. J. A. S. Brown.<sup>1</sup> Considering the number of township families of the same type as the Corrigalls, and that there is no reason at all why one of them should have had more deeds than another, it is manifest how wholesale the loss of records has been.

The best hauls have been preserved as the result of some fortunate fluke. For instance, the great collection of Irving deeds, together with several dealing with Tohop (including between them most of the dooms of the old courts), were evidently preserved as the result of a lawsuit which overtook the then combined estate in the latter half of the seventeenth century.

The Ness and Yenstay deeds, again, have been preserved through the early absorption of these properties in the estate of Tankerness; and, indeed, it is through this cause that almost all the old charters have survived, since the smaller lairds have proved very ill tenders of family papers.<sup>2</sup>

In the words of the old saga-writers, here is now an end of telling about the Earldom of Orkney.

J. STORER CLOUSTON.

(See also 'A Note on the Shetland Lawthing,' Appendix F, p. 429, written after going to press.)

<sup>1</sup> Nos. XXXII. to XXXV., and Nos. XLVIII., LXV., LXXV., LXXX., XCVI., XCVII., and CLXXI.

<sup>2</sup> It may be mentioned that the search for these documents (confirmed by going through the Register of Sasines) has proved that there are now extremely few small proprietors in Orkney who have held their lands for any great length of time. One frequently hears the contrary stated, but investigation very seldom shows a continuous tenure going further back than the eighteenth century.

## NOTE 1

ROITHMEN.—As this curious term is not only peculiar to Orkney, but confined to a small number of documents written within a limited period, and as another explanation of its meaning has been put forward, it is perhaps well to state briefly the *pros* and *cons* of the case. The other explanation may be found in the Glossary to Balfour's *Oppressions* and in Jamieson's *Dictionary*, but is most fully set forth by Mr. Johnston in his *Introduction* (p. xxxiii). He says, 'royth and roythmen were used in Orkney, in 1544 and after, as meaning the right of redeeming of odal, and the person [*sic*] who had that right.' This is common ground and beyond dispute. He continues: 'The same meaning must be attached to the *roythmen* as members of the logretta of the lawthing, viz., a class of persons who were eligible for nomination as members of the logretta or lawthing court, in virtue of being odal-born.' And then, later: 'Technically the term *roythmen* was applicable to all odalmen, and we find their sons on the assize designated as "Younger."' He quotes no documentary evidence, and on this assumption that *roythman* was equivalent to odal-born and to odaller, the case for the alternative explanation is founded. It may be mentioned in passing, that (as will be seen from these records) the term 'younger' was just as often applied to one of two brothers, or to a nephew or cousin, as to a son; but this is a minor point.

The facts are these. Leaving the dooms of court out of account for the moment, there were two quite separate and distinct meanings of the word *roithman* or *rothman* in Orkney.

1. It meant a man with the roith or redemption rights of land. Every known instance of this use is included in these records, and by consulting first No. cxviii., where the *roith* is defined, and then Nos. lxi., cxxiv., cxxii., clxxxvi., cc., cciv., and ccvii., it becomes quite apparent that in six out of these seven cases the *roithmen* were the *kinsmen*, as distinguished from the odaller who owned the land, the 'next' or 'nearest' *roithman* being the next of kin to him.<sup>1</sup> No. cxxxii. is curiously worded, but there it is at least certain that he was the purchaser and not the seller. It is also to be noted that whenever undoubted odallers are referred to, they are *invariably* described as uthallers or uthal men. In the 1500 Rental alone they are so termed nine times, and never before or after is an odaller termed a roithman. No doubt, as the odaller held the roith of his own property, he was *theoretically* one of the roithmen of that property, and in two seventeenth-century

<sup>1</sup> This is particularly well marked in No. clxxxvi., where the only heir termed a 'rothsman to the lands of Sabay' is Wm. Irving, who inherited no land in Sabay (getting Horrie instead); the parties who actually did own Sabay not being so styled.

sasines (and two only) I have seen the term 'utheller and roithman';<sup>1</sup> but the technical usage of *roithman* in the sixteenth century is quite clear, and, indeed, a technical term for the next of kin redeemptions—a term which should not be used indiscriminately also of the odallers—was a legal necessity. Mr. Johnston's view would thus imply that in dooms of court, and only then, this technical term was appropriated and applied to the odallers present, instead of giving them their usual designation.

2. In the Inventory of Writs printed in Appendix D (writs contemporary with the early decrees of court), Zoppinn Segarson, otherwise Jeppe Zeirsson, *radman* of Bergen (see No. xxxi.), is styled *rothman* of Bergen; and again, the *Rikissen Radh*, or King's Council of Norway, is termed the *Riggyn Roith*. Rothman or roithman, and roth or roith were thus the Orkney forms of *raðmaðr* and *rað*, council-man and council. As the Lawthing actually was a *rað*, and the term *en ollum rað* is applied generically to all Orkney courts and councils in 1369 (No. viii.), there is obviously no difficulty in the way of accepting *council-man* as the meaning of *roithman* in Orkney decrees.

But there is positive evidence in the decrees themselves that proves without any doubt that the word there meant council-man. In No. xxxvii. and in No. xl. (endorsement), the members of court are referred to, *when acting in their official capacity*, as roithmen. If the meaning were 'odalmen' (the *qualification* for being a member of court), this would be exactly equivalent to our reading of the 'verdict of the householders' in the report of a jury trial. Neither in old Norwegian, Scottish, and Orkney deeds, nor in modern usage, have I been able to find any instance of members of a jury, council, committee, etc., being described in such a way when acting in their official capacity.

However, the endorsement on the back of No. xl. is absolutely decisive. 'The dome of the best landed men, and<sup>2</sup> roithmen in Orkney *at that time*.' Innumerable instances of the use of 'for the (or that) time,' 'at that time,' and 'in the time,' will be found in these records, and always do these phrases imply official capacity of some kind—justice, sheriff, baillie, clerk of court, etc.<sup>3</sup> I have consulted Dr. Maitland Thomson, Mr. R. K. Hannay, and Mr. F. J. Grant, who between them will generally be admitted to have a tolerably wide acquaintance with Scottish documentary records, and they are agreed that the phrase is always used with

<sup>1</sup> (a.) In a sasine registered 6th February 1634 (Rendall to Cragy); and (b.) in a sasine of 1668 (*Reg. Sas.*, vol. ii., 2nd series, p. 106). By the earlier of these dates the odal laws had been for over twenty years abolished, and the term lost all significance: though even then the phrase is 'utheller *and* roithman.'

<sup>2</sup> The 'and' is superfluous, and merely idiomatic. Cf. 'knycht and justice of Orkna for the tyme' in the same deed; also Nos. c., cx., and cxiii.

<sup>3</sup> See *ante*, p. lxxii.

this implication, and that a landed or odal man 'at that time' would be a phenomenon outside their experience. It would, indeed, be just as extraordinary as 'Mary Smith, Esquire,' or 'Miss William Jones.'

## NOTE 2

GOOD-MEN.—The Norse word *gōðir-menn* having been given lately an explanation different from the rendering in these *Records*, it seems only proper to add a note on this point also. On p. li of his *Introduction* Mr. Johnston says that the odallers 'were indiscriminately, rich and poor, described as *gōðir-menn*: good men, *i.e.* good, honest, and respectable men.' No evidence is quoted to support this view, and against it may be set the evidence afforded by the occasions when the term *gōðir-menn* is used in these records; namely, Nos. VII., VIII., X., XVII., XVIII., and XXVIII. (where in each case it has been translated 'good-men'); also by the fact that the Scotticised form *gudmen* is never found except as applied to the 'best landed men' in the decrees of the head courts.

But the question is really one for a Scandinavian scholar to answer, and Dr. Edvard Bull<sup>1</sup> has done so very explicitly in his footnote on p. 37.

It may be mentioned that the footnote on p. 15 adds to Dr. Bull's opinion merely what I have noticed in going through a few volumes of the *Diplomatarium Norvegicum*.

## NOTE 3

LAND VALUATION.—Avoiding all doubtful and controversial points, the main facts concerning land valuation in Orkney in old days are very briefly these. *Urislands* or *oucelands*, *pennylands*, and *farthing-lands* were merely taxable areas. At one time no doubt they each approximately represented a certain area of cultivated ground, but long before the earliest rentals, urisland had come to differ widely from urisland and (consequently) pennyland from pennyland. Their ratio was:—1 urisland=18d. land; 1d. land=4 farthing lands.

*Merklands* defined land as measured by its purchase price: hence by 1500 we find one pennyland with eight (or even more) merks in it, and another with two-thirds of a merk. Four was the average number, however; so markedly so, that in the seventeenth century *merklands* and *farthinglands* were not infrequently used synonymously when they ought not to have been.

*Merklands* in turn came to vary in actual value, and land became

<sup>1</sup> Absolutely authoritative in such a matter. See also Vigfusson's authority expressed in the phrase—'Gæðinga-ættir, or families of Nobles, or "Good-men" in the Orkneys.'—Introduction to *Ork. Saga*, Rolls Ed., Norse Text, p. xlv.

referred to more and more in terms of *mailling* (*i.e.*, rent). The measures of mailling were: 1 meil=6 settens, 1 setten=24 marks (*i.e.*, 'marks mailling,' not to be confounded with merklands). Generally speaking, 1 merkland in the seventeenth century=1 meil mailling, and 1 pennyland in the North Isles=1 farthing (or merk) land in the Mainland and South Isles;<sup>1</sup> though there were numberless exceptions.

Space and the complexity of the subject forbid my going very far into it here, but I may mention that there seems very good reason to think that some, at all events, of the eccentricities characterising the relation and value of merklands and pennylands may be explained by one curious feature in the 1492 Rental. There the great majority of the odal townships in the West Mainland, and many elsewhere, had their malt scat reduced owing to the 'lave of the land' being 'ley'; *i.e.* part of the town was out of cultivation, and the *malt scat* (that duty in kind which was the product of the bear grown on arable land) was proportionately reduced. Where the reduction was great, the number of merks per pennyland (as stated in this Rental) was *invariably* low.

Now, taking one marked example of this, the 9d. land of Wasbister in Sandwick, we find 2 merks per pennyland, and the malt scat reduced from 36 to 13 settens. If there had been 18 merks *originally*, there would then be left only  $18 \times \frac{13}{36} = 6\frac{1}{2}$  merks. Farms at that date averaged about 2 to 3 merklands, and yet a seventeenth-century Compt Book shows that there were then eight farms in Wasbister, and the whole 9d. land was under crop. Such a transformation, during a period of depression and increasing poverty, is quite incredible. The only reasonable explanation is that after so much of the town went ley, there remained 18 merks, and the value of the pennylands was re-adjusted to 2 merks each.

This would explain a number of otherwise inexplicable cases: *e.g.* Hundscarth in Harray, where the very Rentals contradict each other, 1492 stating that 3 merks made the pennyland, and 1503 that 2 merks made a halfpenny land (the latter statement being, on this theory, the old proportion): also Clouston in Stenness, where 3 was the official number of merks per pennyland, and yet various facts show that there must certainly have been 4 at one time. In both cases there was ley land; in Clouston its amount exactly accounts for the change from 4 to 3, and in Hundscarth approximately.

An analysis of a considerable number of other townships strongly suggests that a merely approximate adjustment was the rule, and that the merklands were frequently reduced in value to make them go round: *e.g.* if a town was a 6d. land and 9 merks remained in crop, these might be, so to speak, 'spread thin' over the town at the rate of 2 merks per pennyland, making each merk  $\frac{2}{3}$  its old

<sup>1</sup> See footnote to Rental of Sanday, Appendix C.

value. This supposition is borne out by the subsequent rented value of the Hundscarth merklands, and it would account for the curious deviations in value of many other merks from the old standard value in the fifteenth century, when a merkland was simply the value in land of a merk 'Inglis,' or 13s. 4d. sterling (see No. LXXXVII.).

It may be added that in the Rental of 1502-3 full malt seat was again charged, and that in one instance, at least, and no doubt in numerous others, part of the ley lands were recultivated, thus adding fresh complexities.<sup>1</sup>

Certain figures regarding the extent of a pennyland and a merkland in modern acres were given by Captain Thomas in his paper 'What is a Pennyland?'<sup>2</sup> As the pennylands varied so widely, no kind of an average conveys any real idea, but in six examples he gives, a merkland works out as  $1\frac{1}{2}$ , 3, 4,  $4\frac{1}{2}$ , 4, and  $6\frac{1}{2}$  acres of *arable*, and another known case gives 5 acres; though there was evidently meadow land in addition (see No. LXXXII.), and one must add to the arable about half as much pasture if an ancient farm is to be compared with modern conditions, where the same land is, in rotation, under crop and lying ley. The number of servants, and of horses and oxen for the plough specified in the seventeenth-century testaments dative of odallers of known estate throw valuable light on this question and show conclusively that neither merklands nor meadows could have been any *smaller* than this estimate. In fact, in many cases, they strongly suggest the converse. Quite lately I have come across several very curious seventeenth-century deeds dealing in minute detail with some of the old townships; and these might possibly make a starting-point for further investigation.

<sup>1</sup> See note to No. XLVII. and corrected notes to Nos. LXXXII. and LXXXIII. in the Corrigenda.

<sup>2</sup> *Proc. Soc. of Antiq. Scot.*, April 1884.



## ADDENDA ET CORRIGENDA

### ADDENDA

*Roithman*, p. xci, Note 1. A very interesting addition to the instances of the use of 'roithman' occurs in a charter of Upgetrie, dated 27 Jan. 1597-98, by which John Irving disposes his inheritance to his nephew, William Irving of Sabay. Provision is made 'in case it sall happin ony of my airis, assignayis, or uthers my kynnismen or freinds acclameand ony rycht to my saids lands . . . be ony *rothe* or wther way quhatsummewer,' whereby William Irving may lose these lands; in that case the granter 'ordains the saids *rothemen* or wtheris acclameris quhatsummewer,' to repay the said William the money disbursed on his uncle's upkeep. This is one of the clearest proofs of the technical usage of *rothe* and *rotheman* as right of redemption and kinsman with that right.

*Lið*, p. 12, Note. It should have been mentioned that *Lið* reappears as *Lythis*.

*Orkney Knights*, p. 28. Witnesses to No. XII. Though the word 'militibus' is certainly used, yet of these 'knights' only Sir Thomas Kirkness belonged to a known family, while 'of Papay' and 'of Westray' strongly suggest parish priests. Possibly there were a mixture of knights and clerics, and 'militibus' was applied in error to them all.

*Insklyft*, p. 84, footnote 1. Dr. Jakob Jakobsen informs the editor that this meant a division of grass lands; and it is found used clearly in this sense in a *sasine* of Sept. 5, 1643, dealing with land in Harray.

*Tumale*, p. 84, footnote 6. Undoubtedly old people to-day know the term only in the sense given by Mr. Watt. Conceivably the older definition gives the origin of the *tumales*, and the later what they became.

*Docket on 1516 Decree*, p. 91, No. XL. Last two lines [*on the back*]. A recent examination of the original of this deed disclosed the fact that the docket was written in instalments. Down to 'tyme' the handwriting is that of the writer of the deed. The remainder is one of a series of similar brief dockets on the backs of all that collection of deeds, written in a different hand at a much later date. (The examination was made by Mr. Henry Paton and the editor to check an erroneous note on the subject, published in the *Old Lore Miscellany*.)

*Meadow Lands*, p. 179. Note to No. LXXXII. Subsequent investigation shows that what actually happened in Clouston was, as mentioned on p. xciv, a

relapse of arable land into ley, and the meadow lands in question were part of this.

*Meadow Lands*, p. 181. Note to No. LXXXIII. Later research has cleared up this point also. Gravis consisted of 3d. land of Wester Gravis and 1½d. of Easter Gravis. Wester Gravis alone was dealt with by the arbiters. The pennyland ('twopenny' must be an error) of meadow was apparently a pennyland in the urisland which included Gravis, mentioned as ley in 1492.

*Sclater of Burness*, p. 251, footnote 1. Further consideration shows that William Slater of Burness can hardly have been identical with Wm. Slater, baillie of Kirkwall in 1566 (No. CCXXXVIII.). The latter signs 'with my hand at the pen.' Wm. Slater of Burness, in No. LXVII., signs his own name, and as baillie of Harray and Stennes, signs again in No. LXIV. There is no reason, however, why he should not have been a burges of Kirkwall, like several other landowners at that time.

*Tulloch of Lambholm*, p. 265, No. ct. By an oversight (for which the editor alone was responsible) the following clause was omitted in the abstract of this deed: John Cromarty binds himself to 'fortife, defend, and manteyne the said James and Margret Sinclair, his spous, in the peacebill bruikin and josin of *thair* heretage, rowmis, and stedings, at the utermaist of his and *thair* power' (the italics are the editor's). Taken in conjunction with the place Lyaxnes, this identifies his spouse as the daughter of Sir James Sinclair and Lady Barbara Stewart (cf. Nos. CXXV., CXXXI., and CXCII.). The meaning of the clause is explained by this item in an old Graemeshall inventory: 'A charter of wodsett betwixt James Tulloch, on the (ane) part, and Jo<sup>n</sup> Cromartie of Caray on the other part, of a portione of Lambholme; daited 8 of Nov. 1560.' From the date, these are obviously the same parties as in No. CL., and evidently the wadset (like the wadset in No. CL.) was being redeemed, each party simultaneously relinquishing his claim on the other's estates; hence the reciprocal guarantee by John Cromarty. This again identifies James Tulloch as portioner of Lambholm.

*Scollay*, p. 373, footnote 3. Dr. Jakobsen is emphatically of the opinion that Scollay is derived from the place name *skáli* (a hall), usually found in Orkney as Skail, but in Shetland as Scolla. Skail in Sandwick was certainly Scalle in the 1492 Rental, and it now seems probable that Richard Skail, the roithman of 1500 (see p. 400, footnote 3) was the ancestor of this family. Mowir and Feall were practically next door to Skail, and it is a further significant coincidence that Richard Skail was a large bishopric tacksman (Skail itself being bishopric land), while Duncan Scollay, the first to appear with the name in that form, was in the service of the bishop (No. CCXX.). His earliest appearance on record was on May 30, 1539, as witness at Kirkwall to a feu of bishopric land in Caithness, along with two clerics (*Great Seal Register*), when his name was spelt Scola. In the 1503 Rental, Richard's name is once spelt Scale.

*Roithmen*, pp. 397-403, App. B. It now seems as if the term roithman were too widely used in these lists (and also in the pedigrees). Very probably the first twelve names only, in the decree of 1522, were strictly speaking roithmen; nine of them being found on other courts, and none out of the last nine. They were, however, all representative landowners, or, in one or two instances, apparently sons of roithmen.

*Map*, p. 426. Map of Orkney. Not till the map was complete did the editor notice the mention of Scalle (Skaill) in Sandwick, in the 1492 Rental. This is practically the original form *Skalli*.

*Orkney Parishes*, p. 432. The antiquity of the Orkney parishes is strongly supported by some recent work on the urislands forming them, which seems inevitably to point to the conclusion that the original scat must have been laid on them *after* their present boundaries were determined.

*Orkney Lawthing*, p. 432. A further note on the Orkney Lawthing. Two efforts to estimate the total number of roithmen forming the whole body of the Lawthing, contained in the lists about the year 1500, agree in suggesting 72 as a probable figure. One method was a calculation of the chances, founded on the number of repetitions of the various roithmens' names; the other was based on the view that *odallers* found in the early Sheriff Court Assizes would in all probability be representatives of the roithmen families, and that on this assumption a list not very much short of the old total could be formed. 27:27:9:9, seems a likely distribution of roithmen among the four quarters.

## CORRIGENDA

P. lxxiv l. 11. Andrew Halcro was baillie to the king, not the bishop (see No. xxxvii. A); apparently a kind of ultramontane underfoud.

P. lxxiv l. 14. For John of Spens, read James of Spens.

P. 85, No. xxxviii., l. 4. For Kyrvall, read Kyrkvall.

P. 90, No. xl., l. 7. For Fovbsiter, read Fovbister.

P. 90, No. xl., footnote 2. The recent examination of this deed proves that the older reading, 'Patre' Brandeson, was correct. The *t* can be distinctly seen over the end of the *s*. This, of course, makes it impossible that Piers Louttit was meant.

P. 234, note to No. cxxiv. l. 1. For title-deed, read title-deeds.

P. 265, No. cl. For Original in possession of Mr. D. J. Robertson, Kirkwall, read Original in possession of Mr. P. N. Sutherland-Graeme of Graemes-hall.



EARLY RECORDS



## EARLY RECORDS, CHIEFLY FROM *DIPLOMATARIUM NORVEGICUM*

### I

AGREEMENT BETWEEN HAKON, KING OF NORWAY, AND  
KING ROBERT THE BRUCE, regarding injuries inflicted  
by the Scots on Orkney and Shetland, and reprisals  
on Scottish subjects.

*D. N.*, II. p. 98.

*Translated from the original Latin*

*Oct. 29th, 1312.*

*Inverness.*

It is to be remembered that on the Lord's Day next after the Feast of All Saints, 1312, at Inverness in Scotland, the most serene prince Lord Hakon the Fifth, by the grace of God King of Norway, by Sir Bernard of Berke-  
re, <sup>1</sup> his baron, and Iver, son of Olaf, canon of the churches of Bergen and Orkney, as his procurators and special messengers on his behalf, met with King Robert, by the same grace King of Scotland, personally, for the treating together and for pacifying and removing of certain wrongs and matters of dissension which had arisen and had been committed between the said kings, their kingdoms, and the inhabitants of their kingdoms, and for the reformation and amendment thereof on either side; at which day and place the procurators and messengers of the King of Norway foresaid, in name of the said king and his men who were interested therein, sought that satisfaction should be made in a friendly way and reparation of certain

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<sup>1</sup> Bjarkey, the estate of one of the most ancient Norwegian baronial families.

#### 4 RECORDS OF THE EARLDOM OF ORKNEY

injuries, losses, and displeasures to the men of the said King of Norway and their goods within his proper lands of Orkney and Shetland, by whatsoever malefactors of the said kingdom of Scotland these had been brought about and perpetrated, whether by invasion of the lands of Orkney or by the taking of the noble man, Sir Bernard Peff . . . knight, the appointed steward of the said King of Norway in those parts, who in addition to the loss of his own goods taken and carried away with himself, was obliged to redeem his life at the hands of the said malefactors with the moneys of his lord the King, which he had collected and uplifted in the parts aforesaid. The said lord, the King of Scotland, although he was altogether unaware and guiltless of this assault and misdeed and of the damages stated, as was faithfully and often protested by him in the hearing of the said messengers, for the reverence which he had to the said King of Norway, and of which in the parts aforesaid they had not otherwise heard by report, for the cherishing of a good peace between the King of Norway and Scotland begun in times past, and the maintenance of greater affection in time to come, agreed to give to the said messengers in name of the King of Norway for the damages done in Orkney by the aforesaid malefactors, 600 merks sterling to be paid down in numerate money to them in the church of St. Magnus in Orkney, which sum of money so promised for the said damages, the said procurators and messengers, in name of their said lord and his people, willingly agreed to receive in payment, discharging the said lord King of Scots and his kingdom and men for ever from any obligation and action on account of this misdeed to the King of Norway and his realm of men, so that if the damages done should in any way exceed the sum of 600 merks, they acknowledged the same to be altogether discharged by these presents, and they left the punishment of the said malefactors and their supporters entirely to the will of the foresaid King of Scots. The amends to be made for injuries committed in Shetland, with the consent of the said messengers, are to remain in suspense until they themselves shall have made trust-

worthy inquiry upon the damages done, so as to determine the quantity thereof, and when this shall have been sufficiently intimated to the foresaid King of Scotland he shall cause reasonable amends to be made therefor. On the other hand, satisfaction was sought and amends on behalf of the King of Scotland and his subjects, himself being present, for the incarceration of the burgesses and merchants of his city of St. Andrews in Scotland, who in no way offended against the said King of Norway or his people, and for the taking of their goods in the kingdom of Norway by that King's bailies and ministers, he himself being in the kingdom, which goods extended to the sum of £600 sterling, and of which goods the foresaid merchants have not been able to get delivery, but after long imprisonment and many other distresses returned empty to their own country. Likewise satisfaction and amends were sought for the taking, beating, and putting in chains Patrick of Mowat, esquire of the said King of Scotland, and the spoiling of his goods in Orkney by the bailie of the King of Norway, who detained the said Patrick in chains until he was compelled to purchase his liberty and his life for 40 merks sterling. Then the said messengers in respect of the amicable response of the King of Scotland and the reasonable satisfaction made to their demands, as was meet, promised under their hands to liberate and fully restore to the said merchants or their attorneys the goods of the foresaid merchants taken in the kingdom of Norway by the King's bailies, as said is, and hitherto detained there, provided that the said goods are not again taken on account of any cause which had arisen before the date of the making of these presents, and as if the said merchants had returned with their goods from the kingdom of Norway as if driven back by a storm. Likewise they promised under their hands to repair and make good the injuries done to, and damages sustained by, Patrick of Mowat aforesaid, as far as the truth shall be ascertained by a faithful inquiry in presence of the men of the King of Scotland appointed for this purpose. To the faithful observance of all and sundry the premises, the foresaid

Bernard of Berkereye and Iver Olafsson, the procurators and messengers of the King of Norway aforesaid, publicly swore on the soul of their said king and on their own souls; and the said King of Scotland by the venerable father, Ferquhard by the grace of God Bishop of Caithness, the noble man, Sir Magnus, Earl of Caithness, and the discreet man, Mr. Roger of Inverness, chancellor of the church of Moray, having his special command so to do, gave their public oath on his and their souls. In testimony of all which this present memorandum in form of indenture is made, of which one part is to remain with the King of Norway, having the seal of the King of Scots thereto, and the other part is to remain with the King of Scotland, having the seals of the said messengers in name of their master, together with the seals of the venerable father, William by the grace of God Bishop of Orkney, and of the noble man, Sir Magnus, Earl of Caithness and Orkney, in testimony and for the good faith and confirmation thereof.

## II

LETTER BY KING ROBERT THE BRUCE to the Baillies of the King of Norway in Orkney, demanding that Alexander Brown, the King's enemy, be given up, and complaining of the ill-treatment of Scottish subjects in Orkney.

*D. N.*, V. p. 63.

*Translated from the original Latin*

*Aug. 4th, 1321.*

*Cullen.*

Robert, by the grace of God King of Scots, to the Baillies appointed by the King of Norway in Orkney, greeting. Among the many and various treaties made between the predecessors of the King of Norway and our progenitors the kings of Scotland, and lately renewed between Hakon, King of Norway, last reigning, of good memory, and us, to be observed under the penalty of ten thousand merks,

we have observed this clause that no enemy of either of the foresaid kings is to be received within his kingdom unless under the hope of procuring reconciliation, which if it is not accomplished within the space of a year, such a foreign fugitive is nowise to be entertained, but if the accused has been guilty of treason he is not in any wise to be received in either of the said kingdoms, and if such an one is received the receiver becomes manifestly a transgressor of the foresaid treaty and so incurs the aforesaid penalty. Now whereas we understand that Alexander Brown, our enemy, convicted of the crime of treason, has been received by you recently within your bailliary of Orkney and instantly required from you by Sir Henry of Sinclair, knight, our bailie in Caithness, and that you have unduly refused to deliver him, contrary to the aforesaid treaty; moreover, we understand that the violators of the foresaid treaty have certainly fallen under the said penalty of ten thousand merks for this transgression and we believe that in process of time matters will become graver for you and the other inhabitants of the land of Orkney who are your neighbours, as truly may be feared, which, on account of your neighbourhood and the old affection maintained between us in times past we have never wished to happen or take place: Wherefore we have thought good to intimate to you that we wish and desire to know your reply to be made to us thereupon by your letters patent, whether this entertainment and above-mentioned breach of the treaty has been done by you on the instruction of the King of Norway aforesaid or on your own authority, which letters you will deliver to the bearer of these presents, if you please, who will faithfully await upon your reply. Moreover, we understand by the narrative of certain trustworthy persons given to us almost daily that you not only rashly violate the said treaties in this matter but also that you have men of our country dwelling among you not in that manner in which they ought to, or as men of your nation sojourn among us, but who oppress us in these days with continuous injuries and annoyance, at which we marvel not a little, because that

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our enemies are not prohibited from sojourning among you, while the faithful men of our kingdom whose natural and human right it is to be protected and cherished wherever they be, are not received ; concerning which also we desire to be certified by those letters which you remit to us, if it pleases you, whether the same is on your own authority or by royal command.

Given under our Privy Seal at Cullen, 4th August, in the sixteenth year of our reign.

### III

APPEAL ON BEHALF OF ROGNVALD OF RENDALL to the Bishop of Bergen, in which he seeks to recover his wife Alice, who had some years before eloped with John of Hyprys. Also the Bishop's reply.

*D. N.*, VII. 107 and 108.

*Translated from the Latin*

1325-26.

(*Kirkwall ?*)

Reverend father, Sir Audfinn, by divine permission Bishop of Bergen, Whereas among other works of charity it is not the least to recover the sinner from his sin, so, as a certain diseased and naughty sheep of the flock of your Holiness, whose disease is to be cured by your pastoral office, namely Alice, who was many years ago espoused to a certain man named Rognvald (Rechinaldus) of Rendall, was while in residence with the Lord Bishop of Orkney carried away and rent by a certain rapacious wolf within the town of Bergen under the shadow of your wings, of which there is no need to adduce testimony or probation because the neighbourhood rings with the story ; also a violent presumption consenting indicates, and other facts point to the same conclusion, that the name of this wolf is John of Hyprys ; but concerning other things I say nothing. Now the foresaid Rognvald, the spouse

of the said Alice, acting on a divine impulse, notwithstanding the adultery, sent for her to an esquire of the foresaid Lord Bishop of Orkney and required her to be given in marriage to him that her life so badly injured might be turned to the fruit of a better life ; and he wished the foresaid fault to be altogether concealed, notwithstanding that it is said that he is the patron of baseness who conceals his wife's fault. However the reply of the woman is shameful to declare. Wherefore your holy paternity will ordain accordingly, and may the Governor and Ruler of the world long preserve you. This is written not for the purpose of accusation but of denunciation.

REPLY of Bishop Audfinn to the foregoing letter.

*Translated from the Latin*

1325-26.

(*Bergen ?*)

Whereas you have written to us, Audfinn, Bishop of Bergen, concerning Alice who was espoused to Rognvald of Rendall, who has forsaken her husband's company as a bad sheep by erring and sinning mortally ; whom her husband, as you say, notwithstanding the adultery committed by her, desires to be reconciled unto again, as you have intimated in letters by a certain foreign priest ; but it is not fitting that proceedings should be taken in the name of any one against this woman whom I do not know, until a charitable warning precedes her denunciation, by which she may be brought to repentance ; wherefore let him appear when it shall please him before us in the position of a judge, who shall be able and willing to plead against the said woman as to this alleged adultery, for although the office of judge is proposed as for an action, when restitution is required in entirety it demands the contest of a litigation ; wherefore necessarily it will appear that the person accusing and the defender should compare together before a competent judge, seeing it cannot be that the

person denouncing in such a case and the person concluding by sentencing are the same, especially when you are altogether ignorant respecting the matter.

NOTE.—This deed gives a glimpse of the owners of the estate of Rendall in Orkney, midway between the appearance of the chieftain Kolbein of Rendall in 1231 (Saga of Hakon Hakonson) and of Henry Rendall, Lawman of Orkney in 1438. From what we know of the remarkable tenacity with which the odal families retained their property over long periods of time, it is probable that these were all of the same race. Certainly Henry the lawman would not have held that post unless he had belonged to a well-established landed family.

## IV

LETTER FROM KATHERINE COUNTESS OF ORKNEY to Herra<sup>1</sup> Erling Vidkunnsen, steward of the King of Norway, asking him to confirm an agreement for the purchase by her from his kinsmen of lands in South Ronaldsay in Orkney.

D. N., II. No. 168.

*Translated from the original Norwegian*

March 27th, 1329.

Kirkwall.

To the honourable lord and her dear friend, Herra Erling Vidkunnsen, steward<sup>2</sup> of the king of Norway, Katharin, countess of the Orkneys and Caithness, sends God's and her own greeting. I make known to you, that I have bought of Herra Sigurd Jodgierson, your commissioner,<sup>3</sup> those lands which you and Herra Hakon and Lady Kristin possessed at Ronaldsey; concerning that 14 pounds worth which Herra Hakon and Lady Kristin owned in the lands, which were judged to [be the property of] my lord the earl for the debt which Herra Hoskoll owed to Earl John, and which my lord gave to me, [as

<sup>1</sup> Herra was a title of honour originally applied only to the king and his sons, earls, and bishops. In 1277 King Magnus remodelled his court and nobility: he introduced the European titles of baron and knight instead of the old national titles, and conferred upon all members of these classes the privilege of being styled 'Herra.' From that date abbots and canons were also styled Herra, and in the course of time it gradually became applied to all the clergy.

<sup>2</sup> *Drotzeta*.

<sup>3</sup> *Unbodz manna*.

to that value], I and Herra Sigurd have made this agreement, that if you send to my commissioner in Bergen your open letter, that you, on behalf of Herra Hakon and of the heirs of the before named Lady Kristin, free<sup>1</sup> all these lands to me, then I will, for the sake of your friendship, give you 25 pounds English, and have them paid this summer in Bergen to you or your commissioner, who has the before mentioned letter;—these same goods in English coins or in good coins of old validity, provided you will keep to the before mentioned agreement. But if you do not like it, this same case about the lands shall stand unprejudiced as to the law;<sup>2</sup> then I will pay no money there, and you may know that I would not have come to any agreement in this matter if I had not done it for the sake of my good-will to you. This letter was made at Kirkwall on the eve of Mary's mass in Lent, in the tenth year of the kingdom of my worthy lord Magnus, king of Norway, the Swedes and the Goths, and in testimony of this agreement the before named lord Sigurd put his seal to it.

[The first seal is lost; of the second only the shield (the Norwegian lion with the axe) is left.]

## V

NOTIFICATION BY KATHERINE COUNTESS OF ORKNEY that she has completed the purchase of the previously mentioned lands in South Ronaldsay from Herra Erling Vidkunsson.

D. N., II. No. 170.

*Translated from the original Norwegian*

April 4th, 1329.

Kirkwall.

To all men who see or hear this letter, Katharin, countess

<sup>1</sup> *Frialsæt.*

<sup>2</sup> *i.e.* if Herra Erling does not ratify the agreement made by his agent, this same agreement shall do no prejudice to the cause of the Countess, but she reserves her right to prosecute by law.

of the Orkneys and Caithness, sends God's and her own greeting. We make known to you that we bought of Herra Sigurd Jodgierson those lands which Herra Erling Vidkunnson, the steward of the king of Norway, possessed at Ronaldsey, and which were not before judged to us [to be our property]. [Sigurd was] his [*i.e.* Erling's] authorised commissioner to sell what is testified in Herra Erling's letter to this effect, which we have with us, viz. in Stufar 20 shillings' worth, and in Kvikobba 20 shillings' worth. Item in Kleter 12 merk, item a six penny land in Thor-darekre for 21 merk; item a 3 penny land in Borgth for 9 merk, item in Leikakvi 6 merk's worth; and in Lið 20 shillings' worth; item in Haugsæiði 10 shillings' worth; item Petland's sker, without any house, for 20 merk. We paid to Herra Sigurd for the three parts in these lands, which Herra Hakon Thoreson and Lady Kristin gave to the lord steward, 50 merk burnt,<sup>1</sup> 20 shillings, 6 pennies in good English coins, 13 shillings and 4 pennies in each merk. But for the fourth part, that Lady Elin owned in the same lands, we had before paid to Herra Erling 18 merk, 4 shillings and two pennies, as his open letter testifies. And therefore he, on behalf of the often mentioned lord steward, freed to us all the aforesaid lands with such houses as now are thereon, and all those appurtenances that belong to them and shall belong to them from old and recent times. And in true testimony Sira<sup>2</sup> Gunnar Gellirson and Hakon Bjarnason put their seals, together with our seals, to this letter, which was made at Kirkwall in the Orkneys, on the feast of Ambrosius, in the year of grace 1329.

[The seals are lost.]

NOTE.—With the exception of Kvikobba, all these lands are found with little essential change of name in the 1492 and 1502 Rentals. They appear as Stowis (in other districts this name remained Stoif till much later), Clait, Thurdrakir Burgh, Leoquoy (afterwards found as Lykquoy), and Hoxay. Petland, Sker are the Pentland Skerries. I cannot identify Kvikobba.

<sup>1</sup> *i.e.* of pure gold or silver, as the case might be.

<sup>2</sup> The Reverend.

## VI

CONVEYANCE BY KOLBEIN KOLBEINSON TO LADY HERDIS  
THORVALD'S daughter, of lands in Shetland.*D. N.*, III. No. 284.*Translated from the original Norwegian**April 14th, 1355.**Sande, Hjaltland.*

To all men who see or hear this letter, Sigvald Halfdanson, church-priest [rector] at Papey, Erlend Sigurdson a<sup>1</sup> Kallbak, Sigurd Kuldr, Harald a Sande, Björn a Sætre, Hakon Einarson, send God's and their own greeting. We make known to you that we were present and saw the handshake of the honourable lady, Lady Herdis Thorvald's daughter, on the one side, and Kolbein Kolbeinson, on the other side, with this agreement, that the aforesaid Kolbein conveyed and resigned to the aforesaid Lady Herdis [those lands which he] has at Totaberg, Skarvaseter, Westquiar, and Vadsnes, respectively, amounting to 6 merks burnt, with everything that belongs or has belonged thereto from old and recent times, nothing excepted, from me [*i.e.* Kolbein] and my heirs unto her and her heirs irrevocably as perpetual property for evermore. On the same terms the aforesaid Kolbein conveyed to the aforesaid Lady Herdis the land of all his brothers and sisters in the same place and on the same conditions as above mentioned, undertaking that if the children or their umbothsmen<sup>2</sup> desire lands in compensation, then shall the aforesaid Kolbein provide for and give to them out of his own. And for what prejudice there may, in consequence of this, arise on behalf of the children, the oft-mentioned Kolbein shall answer to all men. And in testimony hereof, because I [*i.e.* Kolbein] have no seal myself, I asked Sira Jon Knutson, the priest of Lady Herdis, to

<sup>1</sup> a=at. It is left in the Norse form for purposes of comparison with the same form found in sixteenth-century Orkney deeds.

<sup>2</sup> Agents or procurators.

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append his seal, together with the seals of the aforesaid men, to this letter, which was made at Sande, the first day in summer in the thirty-sixth year of the reign of my honourable lord, Magnus by the grace of God King of Norway, Sweden, and Skane.

[The seal of Erlend Sigurdson is still extant.—*Norske Sigiller*, No. 627.]

### VII

DISPOSITION, MARKUS GUDBRANDSON and his wife to Lady Herdis Thorvald's daughter, of various lands in Shetland.

*D. N.*, III. No. 310.

*Translated from the original Norwegian*

*March 4th, 1360.*

*Sandwick (Shetland).*

To all men who see or hear this letter Markus Gudbrandson sends God's and his own greeting. I will make known to you that on the Wednesday before the mass-day of Perpetua and Felicitas, in the long fast in spring [*i.e.* Lent], in the fifth year of the reign of my worthy lord Hakon by the grace of God King of Norway, in the lopt [*i.e.* a two-storied house] at Sandvik, we have made an agreement with handshake; Sira Sigvald Halfdanson on the one side, with full power from the honourable lady and well-born, Lady Herdis Thorvald's daughter, and on the other side I, the above named Markus, and Helga my wife. It was settled under this our handshake, that we, man and wife, conveyed Eya with everything that belongs and from old and recent times has belonged thereto, and that was at Eya when Gjavauld died, inside the homestead<sup>1</sup> and without, near or far, on sea or land, from us and our heirs to the aforesaid Lady Herdis and her heirs as perpetual property, so that she may give or pay or sell it as she likes. Besides, we conveyed to the aforesaid Lady Herdis in perpetual property 7 merk burnt in Hafgreney; item in Skaga 2 merk burnt; item in Kleberg 6 merk burnt;

<sup>1</sup> *Garð.*

item in Papile two merk burnt; item in Krokedal 4 merk burnt; item 4 merk that Fatta Jon owned; item 3 merk burnt that Ragnvald in Vik owned; item one merk burnt that Thorgils a Borg owned; item 3 merk burnt in Grjotjord; item in Sal-land two merk burnt; item Breideseter by Bassegaard 13 merk burnt and 8 ortug;<sup>1</sup> item in Vallegaard 4 merk burnt; item in Kalvedal 12 merk burnt.

And in true testimony hereof these good-men<sup>2</sup> appended their seals at my request, together with my seal: HERRA WILLIAM JONSON, Archdeacon of Hjaltland; HALLSTEIN THORSTEINSON, Lawman in the same place; HENRY WILLIAMSON, GUDBRAND SVEINSON, BJORN EYVINDSON, GYRD ROLFSON, to this letter that was made on the day and in the year as before mentioned.

[*On the back in ancient handwriting:*] Markus and his wife's letter about Eya.

[*In a later hand:*] Letter that belongs to Karl son of Knut—

Letter about goods in Hjaltland, Unst.

[Only the fourth seal (Henry Williamson) is left on the original parchment (now in Copenhagen).]

### VIII

AGREEMENT BETWEEN HAKON JONSON, the Norwegian Governor of Orkney and Shetland, and Bishop William, to end the quarrels between them and their men.

*D. N., I. No. 404.*

*Translated from the original Norwegian.*

*May 25th, 1369.*

*Kirkwall.*

In the name of the Lord, Amen. This indenture bears

<sup>1</sup> 8 ortug =  $\frac{1}{3}$  merk.

<sup>2</sup> *i.e.* men of good position, and hence reliable witnesses. It is a term constantly employed in old Norwegian documents, implying sometimes—in a State document—the nobility, and sometimes the logretta-men and other representative people of a country district. In these records 'good-men' and 'gudemen' may be taken as equivalent to 'gentlemen.' See footnote to No. xviii.

witness to the agreement between the worthy lord and spiritual father, Lord William by the grace of God bishop of Orkney and Hjaltland, on the one part, and on the other part the honourable and well-born man Hakon Jonson. This agreement was made between these good-men about the quarrels that existed between them and their men in various matters, in the presence of these men, Sira William of Bucchan, archdeacon in the Orkneys, Sira Walter of Bucchan, canon in the same place, Sira John Proktur, Sira Richard of Rollesey (Rowsay), Sira Christian of Teyn, Sira Christian of Sandey, Sira William Wod, Thomas Arland [Ireland], Fergus of Rosce, Henry Williams, John of the Orkneys,<sup>1</sup> William Storm, John of Boduell [Bothwell], John Robertson, Adam of Mwre [Mure], Gudbrand Andersson, Sigurd of Papple, John Sinclair, Patrick Kaldar, Duncan of Karmkors,<sup>2</sup> Bube Skinner, William Erwin, John of Dunray, Olav Skutt, that the lord bishop on his own behalf and Hakon on his behalf pledged themselves bodily with a sworn oath to keep and inviolably hold what the before named men settled between them.

This was the first, that the lord bishop should pay a hundred and twelve true golden coins and twenty-one what are called nobles, and as much butter as the afore-said lord bishop had seized,<sup>3</sup> into the hands of our lord the king. It was agreed that the lord bishop should deliver the before mentioned golden coins to Hakon, and he to be responsible for their use to our lord the king.

And then as for the men and their property whom the lord bishop had arrested in order to inquire into their crime, those men he should release and give up to Hakon, and their property as well; [both] that which was taken

<sup>1</sup> These two names can also be read as one: Henry Williamson of the Orkneys. That, however, would make the number of the arbiters twenty-three, and as it may safely be assumed they would be twelve chosen by either party the reading in the text is no doubt correct.

<sup>2</sup> Or Karinkors: no doubt the Scottish surname Cairncross, since the Christian name is Scottish. John of the Orkneys is probably identical with 'Johanis Horreli.' See chapter on Seals.

<sup>3</sup> Literally, 'had seized cattle.'

from learned and lay men in the Orkneys and Hialtland, and the property that Hakon owned; on this condition, that Hakon and his men should give back all that property which he and his men have taken from the men of the lord bishop, both learned and lay, in the Orkneys and Hjal-land.

It was also settled and agreed that the lord bishop and the 'rikest'<sup>1</sup> men in the Orkneys and Hjal-land shall be first and foremost in all councils<sup>2</sup> henceforward, as regards the king, the church, and the people, according to the laws and custom of the country.

And the lord bishop shall have good native men of the Orkneys and Hjal-land in his service, as other bishops have had and have in the realm of the king of Norway.

Also, the lord bishop and his men shall freely enjoy the jurisdiction of the holy church, both learned and laymen, without hindrance from Hakon or his men. And if it happens that any of the bishop's men trespass against the men of Hakon, then they shall make atonement for their crime after the law and custom of the country; this agreement not to be considered broken thereby. And if it happens that any of Hakon's men trespass against the men of the lord bishop, then they shall atone for their crime as before said, unless they both prefer to settle it between them. And the lord bishop, his clergymen, laymen, and tenants shall be safe from Hakon and his men, except by law. And Hakon, his men, and tenants, shall be safe from the lord bishop and his men, except by the law.

And it was settled and agreed between the lord bishop and Hakon, that each shall be the friend of the other in all just causes for their lifetime with inviolable friendship. But whichever of them breaks or causes men to break

<sup>1</sup> Most powerful or noblest; *i.e.* the 'good-men' or 'nobiles'. The provision made in this clause is that the native nobility shall have control of local affairs, not the Norwegian officials. It is a concession on the part of Hakon Jonson, and the next clause is a concession by the bishop.

<sup>2</sup> *En ollum rað*; cf. the raðmenn or roithmen of Orkney found in early sixteenth century deeds.

[this agreement], he shall pay a hundred pounds English and [send] a man [to go as a pilgrim] to old Rome. And in true testimony of this, the seal of the lord bishop is put to that part of the indenture which Hakon has, with the seals of the before named men, and the seal of Hakon is put to that part which the lord bishop has with him, with the seals of the before named men. As was written at Kirkwall on the day of the holy pope Urban. In the year of the Lord 1369.

[*On the back in a hand of the fifteenth century:*] 200 nobles is the cathedral owing to Hakon Jonson.

[Of thirteen seals, Nos. 4, 8, 10 and 11 are left on the original parchment (now in Copenhagen, in the library of the University). *Diplomata Arnæ Magnæi*, fasc. 100, No. 5 c.]

## IX

COMMISSION BY HAKON, KING OF NORWAY, to Alexander of Arde, constituting him Governor of Orkney for a year.

*D. N.*, II. p. 337.

*Translated from the original Latin*

*June 30th, 1375.*

*Oslo.*

To all who shall see or hear this present writing, Hakon, by the grace of God King of Norway and Sweden, greeting in the Lord everlasting. Whereas the noble man, Alexander of Arde, has come to this our kingdom of Norway for winning our favour and goodwill, we for the confidence which we have in him do by these presents commit to the said Alexander the keeping of our land of Orkney until the feast of the Nativity of St. John the Baptist next to come, that is for twelve months, ordaining and appointing the said Alexander our true and powerful lieutenant, captain and keeper of the said land, under the conditions hereafter expressed, namely, First, that of all and sundry the

lands and income, pensions and revenue whatsoever which belongs to the earldom of Orkney or has of old belonged thereto, he shall spend half for his own use and the other half he shall transmit to us at Bergen, saving, however, that all things which are due from the foresaid land by right to the king shall remain to us entire. Further we grant to the said Alexander that all moneys uplifted by him as the fines of delinquents he may appropriate to his own use, except only those which are due for manslaughter and inemendable causes which are called in the language of Norway 'orbotamal,' which causes and fines due for manslaughter we specially reserve by our royal right. Dated at Oslo, under our seal, on the Saturday within the octaves of the apostles, Peter and Paul, 1375, and twentieth year of our reign.

## X

NOTIFICATION BY KING HAKON to the people of Orkney that he has appointed Alexander of Arde Governor.

*D. N.*, II. No. 438.

*Translated from the original Norwegian*

*June 30th, 1375.*

*Oslo.*

Hakon, by the grace of God king of Norway and the Swedes, sends all men in the Orkneys who see or hear this letter, both lay and learned, God's and his own greeting. We desire that you know that, with counsel and consent of our dear kinsman, Lord Sigurd Hafthorson, and of others our good-men of our council,<sup>1</sup> we have given and handed over to the honourable man Alexander de le Ard our country here with you, with all those things and appurtenances which belong to the kingdom and to the earldom, with smaller things and greater, nothing excepted, on the condition that he shall come to our presence at St.

<sup>1</sup> This phrase, the *godra manna* of the *radh*, is clearly akin to the terms godmen and roithmen found in Orkney degrees of court.

John the Baptist's day now next coming, in midsummer, to give us evidence of what right and reason he asserts he has to the lordship or the earldom; [and to give] a full and whole account of our revenues which he has collected or henceforth may collect; and moreover to prove to us and our council how the contest between the bishop of the Orkneys and him is turning out. He then shall discharge and appoint public officers as he likes. He shall be at the head of this our country and people, on our account, as is explained in other of our letters, according as he will answer for God, us and other good-men. We ask and command you all jointly, both lay and learned, and everybody for himself, under our favour and our grace, that you are ready, benevolent, obedient and compliant towards him and his officers in all those things which you owe to us and the kingdom and the earl, after the law of the country and old custom; but to no other man in any way—unless everybody who acts otherwise wishes to be an actual traitor to us and the crown of Norway. And particularly if any troubles befall the country, then we order both the lawman here with you and all our people, both rich and poor, to be obedient and helpful to the before named Alexander and his officers in all matters affecting the security of the country, and in which they lay their commands on you. Then we command the spiritual father lord William, by the grace of God bishop of Orkney, and all others our men to assist the often mentioned Alexander and help him to justice and to law, everybody who can. This is particularly necessary, if any foreigners or natives attempt to force him or his officers from their right and ours, which we have committed to his charge; and especially, if anybody will prejudice our country of Orkney; then both the bishop must help him and our other men and the people, as we trust them and as they will keep their oath to us and the crown of Norway. We also order the often mentioned Alexander and his officers to dispense law and justice to everybody, though with mercy and lenience where that is proper. But he and his officers shall trouble nobody beyond law

and justice, and you shall know this :—that we have not given him the country in any other way than as our officer,<sup>1</sup> keeper and steward.<sup>2</sup> This letter was written in Oslo, the next Saturday after St. Peter and Paul's mass in the 20th year of our reign in Norway, and was sealed in our own presence.

[*On the back in later writing :*] About Orkney.

## XI

INSTALLATION OF HENRY SINCLAIR, as Earl of Orkney.

*D. N.*, II, p. 353. Printed in *St. Clairs of the Isles*.

*Translated from the original Latin*

*Aug. 2, 1379.*

*Maestrand.*

To all who shall see or hear these present letters, Henry of Sinclair, Earl of Orkney, Lord of Roslin, greeting in the Lord. Whereas the most serene prince in Christ, my beloved Lord, Lord Hakon, by the grace of God, King of the realms of Norway and Sweden, appointed us of his grace to rule over his lands and islands of Orkney, and raised us to the state of earl over the foresaid lands and islands, with that dignity which is required therefor, we make known to all men both present and to come that we had rendered fealty to the same lord our king by the kiss of his hand and mouth, and rendered to him a true and due oath of fidelity to be observed so far as giving counsel and assistance to our said lord the king and his heirs and successors and to his kingdom of Norway, and therefore be it made known to all men that we and our friends whose names are set forth hereafter have firmly promised in faith and honour to our said lord the king and his men and councillors, that we ought faithfully to fulfil all the agreements, conditions, promises, and articles which are con-

<sup>1</sup> *Höfudsmannne.*

<sup>2</sup> *Systemanne.*

tained in this present letter to our foresaid lord the king and his heirs and successors and to his kingdom of Norway.

In the first place, therefore, we firmly oblige ourselves to serve our said lord the king outwith the lands and islands of Orkney with one hundred good men or more, fully equipped in arms, for the convenience and use of our said lord the king, whensoever we shall have been sufficiently required thereto by his messengers or his letters, and forewarned hereto within Orkney for three months, but so that when we shall come with them to the presence of our said Lord the king, from that time he shall provide us and ours with victuals.

Further, if any persons design to attack or invade hostilely the said lands and islands of Orkney, or even the land of Shetland, in any way, we promise and oblige us forthwith to defend the said lands with the men which we shall be able to gather for this purpose, in good condition, not only from the said lands and islands but also with the whole strength of our kin, friends, and servants.

Likewise if it shall happen that our lord the king is obliged by any right or other reason or necessity to invade any lands or kingdoms, then we shall be forthcoming to him in help and service with our whole power.

Further, we promise in good faith that we will not build or construct castles or other fortifications within the lands or islands aforesaid, unless we shall have obtained the favour, good pleasure, and consent of our said lord the king.

And that we shall be bound to cherish and to hold the foresaid lands and islands of Orkney and all the inhabitants thereof, both cleric and laic, poor and rich, according to their rights.

Moreover, we faithfully promise that we will not at any time alienate or sell the aforesaid earldom and that lordship or lands or islands belonging to the said earldom, or our right which by the grace of God and our lord the king we have now obtained in the said earldom, lands, and islands, away from our said lord the king or his heirs and successors or their kingdom, nor shall we make over the

same to any one in wadset or pledge, or otherwise deal with them contrary to the will and good pleasure of the king and his successors.

Further, if it shall happen that our said lord the king or his heirs and successors wish to come to the said lands and islands for their defence, or other reasonable cause, or to direct thither his councillors and men, we shall then be bound to assist with all our power our said lord the king and his heirs and his councillors and men, and to provide competently on their expenses our said lord the king and his heirs, men and councillors, with those things of which they shall be in need and as necessity shall then require so to ordain from the said lands and islands.

Further, we promise that we shall not raise or begin any war, litigation, or dissension with any persons, either strangers or inhabitants, by occasion of which war, litigation, or dissension, our lord the king and his heirs and successors or his kingdom of Norway or the foresaid lands and islands may receive any damage.

Likewise if it shall happen, which God forbid, that we shall do any notable wrong and injustice to any person within the foresaid lands or islands or cause any notable injury to any one, as loss of life or mutilation of members or depredation of goods, in that case we shall answer in presence of our said lord the king and his councillors, and satisfy according to the laws of the realm for our faults.

Moreover, whensoever our said lord the king shall call us to his presence for any reason, where or when he shall wish to hold his general assembly, then we shall be bound to proceed thither to him for rendering to him counsel and assistance.

Moreover, we promise that we shall not infringe the truces and security of our said lord the king nor in any manner of way violate the peace which he has made or confirmed with strangers or natives or with any whomsoever, but shall defend all such with our whole power and hold all those for our confederates whom our said lord the king of Norway desires to esteem his friends and supporters.

Further, we promise that we shall make no league with

the Bishop of Orkney nor enter into or establish any friendship with him unless with the good pleasure and consent of our said lord the king, but we shall assist him against the said bishop until he shall do what of right or deservedly he ought to do in those things in which our said lord the king desires or may reasonably demand of the said bishop.

Further, when God shall be pleased to call us from this life, then this earldom and lordship, with the lands and islands and with all right, ought freely to return to our oftmentioned lord the king and his heirs and successors, and should we have left male children, one or more, procreated of our own body, then that one of them who shall have claimed the foresaid earldom and lordship ought to seek herein the grace, good pleasure and consent of our said lord the king and his heirs and successors.

Likewise we faithfully promise that we shall be bound to pay to our said lord the king or his official at Tunsberg at the next feast of St. Martin, bishop and confessor, one thousand gold pieces which are called nobles in English money, in which we acknowledge ourselves to be bound as a just debt.

Likewise we promise because we are now promoted to the earldom and lordship aforesaid by our said lord the king, that our cousin, Malise Sperre, should cease from his claim and altogether demit his right, if he is known to have any, to the said lands and islands, so that our lord the king and his heirs and successors shall sustain no vexation or trouble from him or his heirs.

Moreover, if we shall have made any compact or understanding with our cousin, Alexander de le Arde, or have purposed to enter into any treaty with him, then we shall do similarly in his case and on behalf of our lord the king and his heirs and successors and kingdom, according to the precautions taken with regard to Malise Sperre.

Moreover, we, Henry of Sinclair, Earl aforesaid, and our friends and kinsmen underwritten, namely, Symon Rodde and William Daniel, knights, Malise Sperre, William Crichton, David Crichton, William of Byketone, Adam of Bybertone, Thomas of Bennyne, and Andrew Haldany-

stone, esquires, with one consent faithfully promise to our oftmentioned lord, King Hakon, and to his eldest son, the Lord King Olaf, and his counsellors and men underwritten, namely, Sir John Haffthorsson, Sighurd Haffthorsson, Ogmund Fyndzson, Eric Ketilsson, Narve Ingewaldisson, John Oddasson, Ulph Holngersson, Ulph Jonsson, Gynter of Wedhousen, John Dansson and Hakon Euindasson, knights of our said lord the king, and Hakon Jonsson, Alver Haraldsson, Gaute Eriesson, Erlend Philippusson and Otto Remere, esquires, and hereto for preservation of our honour we oblige us and each of us with one consent to the lords abovewritten, that we shall truly and firmly fulfil all the agreements, conditions, and articles which are above expressed to our said lord the king before the above written feast of St. Martin, bishop and confessor, as each business is separately declared above.

And that all these things now promised may have the greater confirmation and be more quickly implemented, we the foresaid Henry, Earl of Orkney, place and leave behind us as hostages in the kingdom, our kinsmen and friends, namely, Sir William Daniel, knight, Malise Sperre, David Crichton, and the lawful son of the said Sir Symon, by name Alexander; which hostages oblige themselves hereto and promise on their oath that they shall not depart publicly or secretly from our said lord the King of Norway or from that place in which he shall desire them to be within his kingdom of Norway, before all the above-written articles shall have been entirely and altogether in their integrity fulfilled to our said lord the king, and specially and particularly the conditions and articles for the observance of which the underwritten reverend fathers, bishops and prelates of the churches of the kingdom of Scotland, and other nobles of that kingdom, underwritten, namely, William, Bishop of St. Andrews, Walter, Bishop of Glasgow, William, Earl of Douglas, George, Earl of March, Sir Walter of Halyburton, Sir Patrick of Hepburn, Sir Alexander of Halyburton, Sir John of Edmonstone, Sir George of Abernethy and Sir William of Ramsay,

knights, shall faithfully promise, and for this send their open letters with true seals to our said lord the king within the time abovewritten, as is more fully declared in our letters granted hereupon.

Likewise we faithfully promise that we shall assume in no manner of way to ourselves the lands of our said lord the king, or any rights or others which his progenitors and our said lord the king have reserved to themselves, nor shall we intromit with those lands or rights in any way whatsoever, which lands and rights within the earldom of Orkney they have reserved as aforesaid, but such lands and rights shall remain in all respects reserved to them, but if hereupon we shall have his special letters then we shall be especially obliged thereafter to our said lord the king.

Moreover, if it shall happen, which God forbid, that all those things aforesaid shall not have been brought to an end and fully performed to our lord the king as is above expressed, or if we shall have attempted anything against any of the foresaids, then the promotion and favour which now we have obtained from our said lord the king and of his grace shall be no longer in force, but this promotion and favour shown to us shall be altogether broken and totally void and inept in its entire force, so that we and our heirs hereafter shall have no right of claiming the foresaid earldom or the lands or islands aforesaid or of intromitting in any manner of way with the said lands and islands, but that it may be manifest to all that we have this promotion and favour confirmed by no way of law or justice, and therefore we append our seals, together with the seals of our said friends, to these present letters in testimony and confirmation of the whole premises. These things were done at Maestrand on 2nd August 1379.

## XII

CHARTER BY HENRY, EARL OF ORKNEY, to his brother David of the lands of Newburgh and Auchdale in Aberdeenshire.

*D. N.*, II. p. 401.

*Translated from the original Latin*

*April 23rd, 1391.*

*Kirkwall.*

To all who shall see or hear this Charter, Henry of St. Clair, Earl of Orkney and Lord of Roslin, greeting in the Lord everlasting. Know ye all that we have given and granted, and by this our present Charter have confirmed, to our beloved brother, David of St. Clair, for his homage and good service paid to us and to be paid throughout the whole term of his life, and also for any right and claim in the parts of Orkney or Shetland falling to him by reason of Isabella of St. Clair, his mother, or in any other way, our whole lands of Newburgh and Auchdale with pertinents lying within the sheriffdom of Aberdeen: To be had and held of us and our heirs by the foresaid David and his heirs for his homage and service aforesaid to be rendered to us and our heirs, with all liberties, commodities, and easements in waters, fishings, pools, muirs, marshes, roads, pathways, meadows, pastures and pasturages, mills and their sequels, both under the earth and above the earth, freely, quietly, fully and honourably, well and in peace, without any hindrance, fraud or guile whatsoever in all time coming. And if it shall happen (which God forbid) that the said David, our brother, shall die without a lawful heir procreated of his body, the foresaid lands with their pertinents shall fully revert to us and our heirs without the confusion of law, and this we notify by the tenor of these presents to all persons who have or can have interest therein; witnesses, the discreet and noble men, Sir Walter of Buchan, archdeacon of Shetland, Sir Simon of Papay, Sir Thomas of Kirkness, Sir John Punkyne, Sir

Michael of Westray, and Sir Hakon, knights, Richard of St. Clair, Thomas of Laysk, Alexander of Claphame, and Thomas of Leth, with many others. In witness whereof we have appended our seal at Kirkwall, 23rd April 1391.

NOTE.—This gathering of local knights is the most tangible evidence I have seen in support of the stories of the princely magnificence of the St. Clair earls of Orkney and the 'court' with which they were surrounded.

### XIII

INVENTORY OF THE DOWRY OF GUDRUN, daughter of Sigurd the Shetlander, in Tinggard, when she married Arnbiorn of Husavik in Faroe (evidently about the middle of the fourteenth century).

Reprinted from *Deeds Relating to Orkney and Shetland* (Edinburgh, 1840), and described there as coming from *Arn. Magn. Diplom. Samling*. The six deeds included there are printed separately in *D. N.* and also in the collection of Faroe records edited by Dr. Jakobsen. These six deeds form the record of a process by which Thronð Dagfinson obtained the property in question. The first three narrate his dealings with Magnus Erlingson, the previous owner. The last three are given below. No. 4 describes the property of Arnbiorn, and 5 and 6 specify the estate once belonging to his wife Gudrun.

*Translated from the Norwegian*

1403-07.

*Faroe (and Shetland ?)*

4. To all those men, who see or hear this document, Bryniolfur Thorbergson minister in Sandey, Jon Olafsson, Svein Magnusson, lawrightmen in the said Sandey, send God's and their own greetings, making it known that it is known to us, that Arnbiorn Gudleiksson who had Gudrun, daughter of Sigurd the Zetlandman, in Tinggard, as his married wife, he was proprietor of Husavik and Dal, so much as belonged to Husavik, and in Skalavik and Skarfuanes and Sandi, so much as has belonged to Husavik, and that the said Arnbiorn had a lawfully begotten son and daughter by the aforesaid Gudrun, and he was named

Sigurd; and he inherited [after] the foresaid Arnbiorn, his father, and then the lawfully begotten sister inherited [after] the said Sigurd, her brother, and then she died, and then was the oft-named Gudrun the next heir after her lawfully begotten daughter, and before God we know nothing hereabout more true, and in testimony hereof we put our seals to this document, which was made at Vareide, the next Saturday after Benedicts-mass, Anno D<sup>ni</sup> 1404.

5. To all those men, who see or hear this document, Jon Einarson, minister, Jon Niculasson send God's and their own greetings, making it known that there were we present and heard, that Arnora Anbiarnardaughter declared first, and thereafter swore, with a full book oath, that Gudrun Sigurdsdaughter, whom Arnbiorn Gudleikson has had as a married wife, was proprietor of the whole Tinggard, and half part of Bratin; and (possessed) a head-dress, valued at 13 ore or 14, and a full dress-suit with shields so large that the garment was covered down to the waist on the forepart, and moreover round the garment on the loins, and a great silver buckle and a rosary with silver (beads), and a small buckle from Curland of silver gilt or of gold, and one finger ring of gold, and two silver-bowls and she was uncertain what more else she might be possessed of, but she had not heard otherwise; and two cloaks, and the gowns thereto with buckles, and there were other bed-ornaments and curtains with silk, red and green, and bright ornaments so many, that she wore no other head-dress, excepting only on the Friday a coarse head-garment, and she did not remember how many there were during her stay with her, and 5 beds or 6, and pillows thereto with covers of precious workmanship and fringes, and a large chest furnished; thereafter basins and bathing-tubs on two feet, and other plates, cans and pots and cauldrons and goblets, so that she did not know how much there was, only she possessed plenty of all these things; and two sets of house-dressings, with tapestry-hangings and coarser carpets embroidered, and checkered cloth for covering the Saints; and that she received land-

rent from Zetland, and she was owner of it, but she did not remember of how many pounds her rent consisted for every year of the said landrent, and in testimony hereof we put our seals to this document, which was made at Husum the next Sunday before Dionysumass, Anno D<sup>ni</sup> 1403.

And that all these aforesaid goods belonged as dowry to the oftnamed Gudrun, wife of the foresaid Anbiorn.

6. To all those men who see or hear this document, Sigurd Birgisson, Dagfin Nikulasson send God's and their own greetings, making it known that they were present and heard that Ingihrid Eyvinddaughter declared first, and swore thereafter full book oath, that she knew that Gudrun Sigurdsdaughter at Tinggard, the wife of Arnbiorn Gudleikson in Husavik, possessed these goods as dowry (viz. when she was married to) the aforesaid Arnbiorn; it was first, the whole Tinggard, and there were therein 15 building and 60 and 8 rooms in the manorhouse; and two parts in Brattin, and that she did not know how many buildings there were (there) in; and three farms at the shore of Hrossaland, and one of them was named Laudufall, the other Myri, and the third was called Leiti; and 10 measured farms in Ryghia-fylke; but so much in Zetland, that the rent did amount to 6 shillings and 40 for every twelvemonths; and 6 beds with down-pillows and precious fringes, and the large pillows thereto with goose-feathers and good covers of precious workmanship on them all, and a head-dress valued at 13 ore, and rosaries with silver (beads) and 3 finger rings of gold, and a full-dress-suit with shields, and 2 silver-dishes, and another dish of silver with a foot, 3 cloaks with fur and the gowns thereto, and a mourning dress, and two sets of house-dressings, one to the staterooms, the other to the bedrooms upstairs, with fine tapestry-hangings and embroidered under-carpets, and checkered cloths for covering the Saints, and a cauldron which took 6 barrels, and thereto all sorts of goblets, and hereafter overmore cans and plates and pots and other drinking-cups, but she did not remember how many they were, and a great silver-buckle; and, as she had sworn hereupon full book oath, then she said, that she had known

that the aforesaid Gudrun . . . curtains with silk, red and green, and that she had heard it told that the oft-named Gudrun possessed 10 measured farms at Sogni, but she said that she could not swear that she knew this ; and in testimony hereof we put our seals to this document, which was made at Vidareide, the latter Mariemass night, Anno D<sup>ni</sup> 1403, and in testimony hereof, we the aforesaid men put our seals to this transcribed document, which was made at Thorshaven on the Sunday next after Svitun-week day, Anno Domini 1407.

NOTE.—I have not been able to discover where the various places mentioned in this document lie. Tinggard and Bratin seem obviously to be in Shetland, Ryghia-fylke is presumably the district of that name in Norway, and Thorshaven is, of course, in Faroe.

## XIV

COMMISSION FROM KING ERIK TO BISHOP THOMAS TULLOCH, placing the Orkneys in his charge.

*D. N.*, II. 657.

*Translated from the Norwegian*

*June 17th, 1420.*

*Laaland (Denmark).*

We, Thomas de Tholach, by the grace of God bishop in Orkney, own by this our open letter, that we have obtained and received from the high-born prince and our gracious lord, Lord Erik, by the grace of God king of Norway, Denmark, Sweden, and the Goths, and duke of Pomerania, all the Orkneys with all royal rights, to hold them under the hand of him and his legitimate heirs, future kings of Norway, and to retain them as long as his grace orders, and to deliver up to him and his legitimate successors the before mentioned country to the crown of Norway, free and unobstructed without any craft and wicked cunning, when the before named our gracious lord King Erik or his heirs and succeeding kings of Norway claim and desire it again. We also promised him that we, the before named people of the before named Orkneys, shall keep law and justice

according as the Norse lawbook mentions, and the old obligatory custom of the country hereto has been. All this before written we, the before named Bishop Thomas, promise with our good faith, to our before named worthy lord, Lord Erik, king of Norway, and his heirs and successors and the crown and kingdom of Norway, steadily and trustily to keep in all ways as is written above. And to the greater certainty and testimony hereof we have let our seal be hung to this letter, and we have asked the honourable fathers with God, our beloved brothers, Lord Aslak, bishop of Bergen, and Lord Arnbjorn, bishop of Hamar, to let their seals be hung in testimony to this letter which was done near the church of Vestenskov on Laaland<sup>1</sup> on the day of Botolfsmass in the 31st year of the reign of our worthy lord, Lord Erik, by the grace of God, king of Norway.

[*On the back in nearly contemporary writing:*] Bishop Thomas of Orkney's letter that he shall hold the Orkneys under the hand of my lord the king and his successors and keep it with Norse law.

[The original parchment is preserved in the Danish Record Office: all the three seals are extant.]

NOTE.—This Commission to Bishop Tulloch evidently followed close upon the death of Earl Henry St. Clair (who died 1420, Fordun, *Scotichron.* xv. cap. 32), his son William being then too young to rule the islands.

## XV

ACKNOWLEDGMENT BY BISHOP TULLOCH that he has received the castle of Kirkwall and country of Orkney in fief from King Erik.

*D. N.*, II. 670.<sup>2</sup>

*Translated from the Norwegian*

*July 10th, 1422.*

*(Orkney?)*

We, Thomas de Tholach, by the grace of God bishop in

<sup>1</sup> In Denmark.

<sup>2</sup> This letter is now better printed in *Norges Gamle Love*, second series, ed. by A. Taranger (1388-1604), first vol. No. 56.

Orkney, make known and acknowledge by this our open letter to all who are now and hereafter may come, that we on trust have obtained and received from the high-born lord and prince, Lord Erik, by the grace of God king of Denmark, Sweden, Norway, the Vends, and the Goths, and duke of Pomerania, our gracious lord, that castle and fortress [of] Kirkwall, situated in Orkney in Norway, with the country of Orkney and the count-ship in the same place, not for mortgage or debt or indemnity, and in no other wise, but on right good trust and *slotloven*,<sup>1</sup> as a faithful man ought to receive castle and fortress, land and fief, from his rightful lord, on such terms and conditions, that we in every wise shall build and better the same castle and fortress and hold [rule over] those, who have their abode in the before mentioned country, with law and right, peace and justice, after our utmost power, and in no wise do them any wrong, as we will answer before God and also before the above named our gracious lord King Erik. And we will and shall deliver the before named castle and fortress and country up again to the before named our gracious lord King Erik, free and unobstructed, whenever he claims and will have it again from us.

[Then follow provisions covering the possibilities of the various known heirs of King Erik succeeding to the throne, or of any paternal kinsmen who 'bear the griffen' (in their arms). In each specified case Bishop Tulloch has to deliver up the castle and country on demand. Nicolas de Tholach and John de Folerton, armigers, are conjoined with the bishop as sureties, and all three append their seals on July 10, 1422. The place is not mentioned. All three seals are preserved on the original parchment in the Danish Record Office].

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<sup>1</sup> *Slotloven* is the vassal's pledge, when he takes possession of the castle and the fief, especially his promise to hold the castle under the hand of the king, of the council of the kindom, or of the successor of the king.

## XVI

PASSPORT OR TESTIMONIAL GIVEN TO JAMES OF CRAGY by the Lawman of Orkney, canons of St. Magnus, and citizens of Kirkwall.

Original in Gen. Reg. House. Printed: *Spalding Misc.*, vol. v.;  
*O. L. Records*, No. 26.

Nov. 10th, 1422.

Kirkwall.

*Abstract*

William, son of Thurgys [Thorgil], Lawman of Orkney, Nicolas of Anynd<sup>1</sup> and Lawrence of Turay canons of St. Magnus Church, Jon Magnusson, William of Erwin, Peter of Paplay, and Walter Andresson, citizens of Kirkwaw, testify that James of Cragy 'dominus' of Hupe,<sup>2</sup> 'the bearer of these presents' is a liegeman (*manu-captus=handgenginn*)<sup>3</sup> of the King of Norway residing in Orkney, and that he is married to Margaret, lawful daughter of Elizabeth of Stratherne and Lord Henry St. Clair, late Earl of Orkney (Elizabeth being lawful daughter of the late Lord Malise of Stratherne, Earl of Orkney). The lawful birth and the merits of James of Cragy are set forth, and it is particularly mentioned that he was the firmest supporter of the late Bishop of Orkney, John of Colchester, and endured many troubles through the adversaries of the said bishop. The seals of the granters of this testimonial are appended at Kirkwaw, Nov. 10, 1422. Endorsement: 'Ane testimoniall annentes the auld priuilyge of the Cragys avisz har. . . .'<sup>4</sup>

<sup>1</sup> This name is not now legible. It was thus read when transcribed for the *Spalding Misc.* It surely must be a misreading of Myre. See No. XVIII.

<sup>2</sup> Huip is in Stronsay, but this is the only indication of any connection of the Cragys with that place.

<sup>3</sup> See footnote to No. XXIX.

<sup>4</sup> The rest is illegible. The sense no doubt is: 'A testimonial regarding the old privilege of the Cragys. Advise (hereupon).'

## XVII

ACKNOWLEDGEMENT BY DAVID MENZIES OF WEEM that he has been appointed administrator [Foud] of Orkney on behalf of the Crown of Norway.

*D. N.*, II. 676.

*Translated from the Norwegian.*

*July 15th, 1423.*

*Copenhagen.*

I, David Menyes, lord of Wime, of arms [*i.e.* belonging to the nobility], notify to all those who see or hear this letter, that I, of the mighty, high-born lord and prince, my gracious lord King Erik of Denmark, Sweden and Norway, and of the mighty, high-born lady and princess, the queen of the before named three kingdoms Denmark, Sweden, Norway, etc., my gracious lady, and of their particular grace and favour, and on due trust and promise, have obtained and received, and by this letter obtain and receive on trust, on account of them and of the kingdom of Norway, the earldom and the country of Orkney, as much as there justly belongs to the crown and kingdom of Norway, to manage, administer and preserve it on behalf of them and their successors, kings of Denmark, Sweden, and Norway, duly and lawfully, as a good-man ought to do on behalf of his rightful lord in matters of trust, as long as their will and grace orders—on condition, however, that I suffer no injury in my right and the agreement which I have and in which I sit with the father of the young lord, Junker William<sup>1</sup>—and to deliver the before named earldom, office, and administration free and unobstructed back again up to the before named my gracious lord and lady, King Erik and Queen Philippa, and the succeeding kings of Denmark, Sweden and Norway,

<sup>1</sup> It is clear from this that David Menzies had made some compact with the late Earl Henry of Orkney, beneficial to Menzies and giving him rights or powers in the islands which were not to be prejudiced by this appointment as foud or administrator on behalf of the crown of Norway. See the next document and particularly the note to it. Junker William was William St. Clair, Earl of Orkney.

whenever their grace claims and will have it. This before named faith and these before named articles and parts, all and every one of them particularly, I promise to keep steadily, firmly, and inviolably, on my good faith and truthfulness, without wickedness, to the before named my gracious lord and lady and the succeeding kings of Denmark, Sweden, and Norway. So promise we too, Thomas de Tholach, bishop of Orkney, and I, Walter Fraser, jointly with one hand. And for the better keeping and confirmation of this, we three before named have hung with consent and good will our seals to this letter. Given in Copenhagen in the year of the Lord 1423, on the 15th day of the month of July.

[*On the back in later writing:*] David Menyes's letter about Orkney.

[*And from a still later time:*] Acknowledgment from David Menyes, lord of Wime, that he has Orkney in fief.

The original parchment is preserved in the Danish Record Office. All the three seals are extant].

NOTE.—The presence of Bishop Tulloch as surety shows that this grant to Menzies cannot have clashed with the two preceding grants to the bishop. The phrase, 'as much [of Orkney] as there justly belongs to the crown,' and the absence of any pledge that the native laws should be respected, indicate that Menzies's sphere was confined to the rights and revenues of the crown of Norway. What further powers he derived from his compact with Earl Henry is not stated, but it is clear from the next deed that, whatever they were, he grossly exceeded them.

## XVIII

### COMPLAINT OF THE PEOPLE OF ORKNEY about the misrule of David Menzies of Weem.

*D. N.*, ii. No. 691, in Norwegian. A very free and somewhat inaccurate Latin translation was published by Torfæus and reprinted in Balfour's *Oppressions*; and an English translation from the Latin was published in *St. Clairs of the Isles*. The present translation is from the Norwegian.

(1424.)<sup>1</sup>

(*Orkney.*)

These are the things of which the whole country of

<sup>1</sup> In *D. N.* this deed is described as 'undated, 1426 or before.' For the reasons for dating it 1424, see note at end.

Orkney makes complaint against David Menzies, and which have greatly helped to ruin the land.

First, when the country was suffering from a dearth of corn, all the people of the country made an agreement with David Menzies that no corn should be exported, but should be distributed and sold within the country at a reasonable price; and after this the aforesaid David let four ships sail with corn from the country to Scotland in that same year. And before the agreement mentioned above was made, the aforesaid David let five or six ships sail, and thereby the country was almost ruined.

Item: the aforesaid David introduced foreigners who heavily oppressed the commons of the country, both when we should sit in the law court and at other times, and were a veritable pest to the people and did much harm and great injury in the country.

Item: the aforesaid David took the seal of the country from the Lawman and used it as he pleased, against the will of the people and the Lawman; and because a good-man<sup>1</sup> of the country called Criste Ælingeclæt [a Linklet] said that then he could write under that [seal] whatever he pleased, for these words he lost [*i.e.* was fined] a large sum of money. And when the Earl came and asked for the aforesaid seal [to be affixed] to the evidence proving his birthright to the earldom of Orkney, and desired the good-men born here in the Orkneys<sup>2</sup> to go with him to our gracious lord, the King's grace, to tell him how it stood

<sup>1</sup> With reference to 'good-man' and 'good-men,' I am indebted to Dr. Edv. Bull for the following note: 'In the complaint of Orkney I think *gentleman* is quite a good equivalent for *godman*, *goda man*, etc.: the term certainly does not imply more than good family and good social position; no doubt it is sometimes also used of good character, but this is mostly in religious books and never, so far as I have seen, in documents like this complaint. I feel quite sure that it is meant as an important fact when these *goda man* are described as "born here in the country." Of course phrases like this may occur in other Norwegian documents, but it is by no means as a mere formula; they seem on the contrary always to be said with a certain emphasis.'

<sup>2</sup> This emphasis on native birth was, Professor Taranger informs me, a characteristic of documents after the union of the Scandinavian kingdoms, each partner laying stress on the rights of its native born people. See preceding footnote.

here in the country and bear true witness for the Earl, he could neither get the men nor the seal, but only Thomas Sinclair and the Archdeacon of Hialtland and two servants of those who were born here in the country.

Item : at the time the Earl was in Denmark with our lord the King, and when, in the following year, David should go to Denmark, he then gathered all the [people of the] country and asked us for a letter in witness of how he had lived here in the land, and that letter we gave him on this condition :—that 24 of the best men who were in the country and were born here, should accompany that same letter and give a report to our aforesaid gracious lord, the King, to the advantage of the Kingdom and of the country here, and [tell him] how the aforesaid David had lived here. And if these above mentioned men had been able to come forward, then they would not have concealed the truth from our aforesaid lord the King ; but the aforesaid David would by no means allow them to go ; and with this he went away, and he had the seal of the country and had none of the good-men of this country with him.

Item : the aforesaid David decreed that the money of our aforesaid lord the King should not go for more than 2 pennies for one Scotch penny, till <sup>1</sup> he had [got into his own pocket] almost all the money of the country : and when Thomas Sinclair came this last time from Denmark, then he decreed it to be of full value as it goes in Norway ; and thus it goes now.

Item : the aforesaid David collected the fines belonging to our aforesaid gracious lord and to the Earl most harshly and unreasonably, and not as clemency, the laws, and the royal letters amending the laws enjoin, which did the country infinite mischief.

Item : the wife and kinsmen of the Lawman complained that he was twice taken and put in prison.<sup>2</sup> The first case was this, that Jon of Baddy, the servant and kinsman

<sup>1</sup> *Sua længe*, a Swedish expression=till. Both Swedish and Danish words are found in this deed (Professor Høegstad *per* Dr. Bull).

<sup>2</sup> *I torn*, in the tower ; no doubt the Earl's castle in Kirkwall.

of the Lawman, took back his horse from Michael Magy [MacGee], kinsman of the aforesaid David, who had taken it from him and would have ridden [away]: for this cause he [David] seized the Lawman in the street of Kirkwall, and then put him in prison. Item: after this, when he [the Lawman] had come out, he then sent foreigners from Caithness to the Lawman's homestead<sup>1</sup> and let his church<sup>2</sup> be broken open and everything that was in it be taken out, and everything, more or less, that was in the homestead be destroyed, so that nothing was left, and he seized the Lawman and took him to the tower. And this he did because he would not give him the seal of the country so that he might write under it what he liked; and there he [the lawman] lay until at last he had to make submission,<sup>3</sup> and until his wife had laid the seal and the lawbook on the altar of St. Magnus. And afterwards the aforesaid David took the lawbook and the seal to himself and appointed another Lawman who reluctantly took [the office] upon him.

Item: at the time when the aforesaid David let the Lawman be in prison, then he took a native born goodman of the country and put him in prison with the Lawman for no reason and without [authority of] law.

Item: Jon Logge [Logie] complained that David M. took him and put him in prison, and that on account of the seal of the country; for the aforesaid David said that he had it in custody; but he had it not.

Item: Thomas Sinclair complained on behalf of the count, with full and legal commission from him, that the aforesaid David has collected out of the Earl's rents here in the country as much property as amounts to 800 pounds English, since his father died and a year before he died, besides much more that the Earl intends to report for himself to our gracious lord, the King's grace.

<sup>1</sup> *Gard.*

<sup>2</sup> 'His' church clearly points to the fact that it was a private chapel on his estate, such as the chapel recorded at Halcro and others whose ruins still stand in some of the townships.

<sup>3</sup> Literally, must become his (David's) man.

Item: the aforesaid Thomas complained on his own behalf that he was a native born man in the country here, and had a letter from our gracious lord the King [granted] to him, to the effect that the aforesaid our gracious lord the King's grace took him, his men, and all other his property, and everything else that belonged to him, under his royal protection and into his peace, and in spite of this his servant David Smid [Smith] was seized and beaten blue and bloody within his own homestead and home-peace; and they threw him into the depths of the tower and put him there in irons. And at that time Thomas Sinclair was in Scotland, and when the aforesaid Thomas returned to the Orkneys, then good-men brought about a truce between him and David, and Thomas Sinclair went with his men to his own house; and thereafter the truce came to an end, and then came James of Krage [Cragy], his son, and several others, and advised him to flee to the church or away to some other place, unless he and his men wished to be burned in his house. When he came to the church he offered to answer to the canon law and the law of our aforesaid gracious lord the King, and he exhibited the letter that he had from our aforesaid lord the King; but all this did not help him, so that at last he fled secretly from the church with one companion, and gathered our gracious lord the King's and his own friends in the country, and showed them the aforesaid letter and asked them to help him to his rights for the sake of our gracious lord the King, and he offered [to answer to] law and judgement for himself and for his men; and at the time when he came back to the church with our gracious lord's and his own friends and took his men out of the church, then his sister's son was slain, and thereafter this arrangement was come to by the counsel of the Lawman and several other good-men of the country, that the aforesaid Thomas and David should give security on both sides to our gracious lord the King's grace and his council, or to the Earl, and that they should let each other enjoy<sup>1</sup> as much as they were [respec-

<sup>1</sup> *Plegha*=to let enjoy, another Swedish word.

tively] entitled to. And the aforesaid Thomas found 12 men to act as securities for him, and this he did most willingly. But the aforesaid David did not do so. And when Thomas Sinclair came to Scotland, then was the Earl dead.<sup>1</sup> When the aforesaid David learned this, then he laid a fine of 36 pounds English upon the same 12 above mentioned men, and he would not wait till they had both come before our gracious lord the King and his council. When this was done, then the aforesaid David laid a fine of 80 pounds English and 50 shillings English upon Thomas Sinclair's men who were with him at the church and corroborated the letter from our gracious lord.

Item: these are the good-men who heard the words of the aforesaid Thomas and David at the time when Thomas offered to answer to law and judgement: first, Herr<sup>2</sup> Niels Myre [Mure], Herr Laures [Lawrence], Herr John, canons; <sup>3</sup> William in Hedal [Hedde], Alexander of Sutherland,<sup>4</sup> James of Kraghe, William Yrwing, William Flet, Adam of Nestagard,<sup>5</sup> Criste in Ællingeklat,<sup>6</sup> and many other good-men in the country, both clergy and laymen.

Item: the aforesaid David took William Bres and put him in the pillory and fined him 7 merk English without law and judgment, and because he went to Scotland to speak with the Earl.

Item: the people of Ronaldsay complained to their

<sup>1</sup> Appeal was provided for either to the King or the Earl. Evidently Thomas Sinclair went to the Earl, but found he had died. Thereupon Menzies proceeded to wreak his spite upon Sinclair and his adherents without waiting for appeal to the King (who, no doubt he considered, was at a safer distance than the Earl had been in Scotland).

<sup>2</sup> A title indicating that a man belonged to the upper ranks of the clergy.

<sup>3</sup> In all probability Niels' Myre and Lawrence were identical with Nicolas of Anynd [?] and Lawrence of Turay, canons mentioned in No. XVI.

<sup>4</sup> Very possibly Alexander Sutherland, afterwards of Dunbeath (charter of Dunbeath, 24th Oct. 1429), whose daughter Marjorie married Earl William Sinclair as his second wife. In his testament, dated 15th Nov. 1456, six 'trentallis' are to be said for his soul in Orkney, and corn, cattle, and debts owed him in Orkney are mentioned; also several Orkney names.

<sup>5</sup> Probably Nistagar in Evie, a property which was subsequently acquired by Earl William Sinclair (1503 Rental).

<sup>6</sup> The *a* (=at) and Linklet have been run into one word and the 'in' added in error. The surname is now Linklater.

Foud<sup>1</sup> that the 'wild Scots' came in such numbers to them and did them great injury to their goods, meat, and drink, and much other mischief; and they said they would rather die than live and suffer such things any longer. Then answered the aforesaid David that they should not die all of them on one day, but that they would die every day as long as he had power over them.

Item: David Menies took from Henry Gariok two merk English because he was with the aforesaid Thomas and corroborated our gracious lord the King's letter.

Item: Jon Simonson complained that the aforesaid David took from him 11 shillings English, and for the same cause.

Item: Malcum Jonson complained that the aforesaid David took from him a ship and other goods to the value of 20 nobles, for no cause, and without law and judgement.

Item: the aforesaid David had Jon Jonson seized and smitten blue and bloody; and put him in prison, and fined him a six oar boat of the value of 2 pounds English and many other goods, and for no cause.

Item: skipper Thomas Brun complained that the aforesaid David had him put in prison because he did not go to him on the instant at the first summons.

Item: at the time when the aforesaid David came this last time from Denmark,<sup>2</sup> he then took the aforesaid skipper Thomas and his ship laden with goods and took it from this country to Scotland against his will, and there took from him wheat meal to the value of 24 nobles, and kept him there almost all the winter; and when the aforesaid skipper Thomas should have sailed home, then he lost ship and goods and a part of the men who were in the ship, because it was so far into the winter.

Item: John of Logge [Logie] complained that David took from him out of the aforesaid ship 16 barrels of beer, 8 barrels of wheat meal, 6 barrels of tar, one cask of Os-mund,<sup>3</sup> 11 stones of wax, 26 kettles large and small, 2 pans,

<sup>1</sup> *i.e.* David Menzies himself, *fogeti* of Orkney.

<sup>2</sup> Presumably in July 1423. See No. xvii.      <sup>3</sup> A kind of iron from Sweden.

2 basins, 3 stones of hemp, 6 tin cans, 9 dozen dishes red and white. The sum of money that these aforesaid goods amount to is 26 pounds English.

Item: the aforesaid David took from Anders Jonson 7 kettles, of the value of 6 nobles, and from the same ship.

Item: the aforesaid David took from Niels Jeepson [Jameson] 40 shillings English in gold and silver, because he was with Thomas Sinclair and corroborated our gracious lord's letter; and he offered [to answer to] law and judgement, but it did not help him.

Item: Patriek Tyrgilson [Thorgilson] complained that the aforesaid David took from him 3 cows and a bull, and for the above mentioned cause.

Item: the aforesaid David had John Fife taken and put in prison, and laid him harshly in irons and fined him 6 nobles without law and judgement, because [he said] that the earl had better right to the earldom than he [Menzies], and because he [John Fife] belonged to [*i.e.* was in the service of] the earl.

Item: the aforesaid David took from Jon Blare about 50 merk English, and the aforesaid Jon offered [to answer to] law and judgement, but it did not help him; and he took these aforesaid goods away in the night, and for the reason that he went with Thomas Sinclair and corroborated our gracious lord's letter.

Item: William Gra [Gray] complained that the aforesaid David forced him to take his ship and his men and send them to an island that is situated far out in the ocean and is called Soolsker [Sule Skerry], or else he should have had to flee the country. And so he sent the ship away with two of his brothers and 8 other men, and there they all remained; <sup>1</sup> which ship cost him with her equipments and other goods that were therein, 15 merks English.

Item: Sampson Williamson complained that the aforesaid David took him by force out of the church and had him fettered like a condemned man, and would have beheaded him, but then came the canons and his wife and begged for his life, and therewith he fined him 51 shillings English

<sup>1</sup> This may mean that they were all drowned.

without judgement and law, and for the reason that David said he had wounded one of his servants; but the aforesaid Sampson was ready to bring good-men forward in his defence after the law of the country,<sup>1</sup> and it did not help him.

Item: Piris Lutfut [Piers Louttit] complained that the aforesaid David had him put in prison and laid him harshly in irons, and there he lay for 3 days and 3 nights; and he fined him 10 merk burnt without law and judgement for the reason that he went with Thomas Sinclair and corroborated our aforesaid gracious lord's letter.

Item: the aforesaid Piris had the aforesaid letter read to David, who then took it from him and said he would buy a translated letter in Denmark for 18 English [*sic*], and that letter he kept and has it still.

Item: the aforesaid David Menzies took from Thomas Biubson, 26 merks English without judgement and law, and for no reason.

Item: the aforesaid David took from Magnus in Renaland<sup>2</sup> one lest<sup>3</sup> of barley, worth 24 shillings English without law and for no cause.

Item: the aforesaid David had William Berendson<sup>4</sup> seized and his horse taken from him, and put him in prison and fined him 14 merks English without law and judgement, and because he was with the aforesaid Thomas and corroborated our gracious lord's letter.

Item: the aforesaid David took from Sander Brun about 28 merks English. These goods he took in the night, and because he went with the aforesaid Thomas and corroborated our gracious lord's letter.

Item: the aforesaid David took from William, the servant of the aforesaid Sander, 11 merk English, and for the same cause.

Item: Herr Niels Myre and Herr Lawrence, canons, complained that the aforesaid David took from them the

<sup>1</sup> *i.e.* to clear himself by their oath.

<sup>2</sup> The modern Redland in Firth appears as Raynland in the 1502 Rental and is no doubt the Renaland in question. Redland in Stromness appears both in that and the 1492 Rental as Raland, so cannot be the place.

<sup>3</sup> *i.e.* 1920 kilogram, nearly two tons.

<sup>4</sup> Possibly Will Bernardson, found a few years later. See No. xxx.

seal of the chapter from the chest in the vestry and kept it away more than half a year, and what he wrote under it, and what he did not, they did not know.

Item: there was assuredly much more to write to our aforesaid gracious lord the King's grace (about the deeds) that the aforesaid David Menies has committed here, and has done the country and the people here in the Orkney much harm thereby. And it amounts to so much that we cannot on this occasion write as explicitly of all matters as we ought.

Item: in further testimony and confirmation of these above mentioned things, we affix the seal of our aforesaid country and people here in the Orkneys to this writ, and therewith [the seals of] the honourable and honest men, who are William Thyrgilson, Lawman here in the same place, Kolbein Flet, John Magnusson, and William Yrwing.

NOTE.—Comparing this deed with Nos. XIV, XV, XVII, and XIX, the order of events seems to have been as follows: sometime before Earl Henry's death in 1420 he had made Menzies his administrator in Orkney; the grants to Bishop Tulloch in 1420 and 1422 left Menzies's powers unhampered (the Bishop presumably being occupied with his studies at St. Andrews, see No. XIX); in 1423 Menzies's authority was still further increased by his appointment as Royal Foud of Orkney; in 1424 came this complaint, and by March 1425 (see the next deed) Menzies had evidently been removed, since there is no mention of him in the report on Orkney affairs, though allusion to 'strangers, who have been appointed governors in our affairs,' seems clearly to refer to his recent misrule. This inevitably makes the date of the complaint 1424. It is clearly later than the royal appointment of July 1423, and had Menzies still been in Orkney in March 1425 some reference to him would certainly have appeared in the appeal.

## XIX

APPEAL OF THE PEOPLE OF ORKNEY TO THE QUEEN OF NORWAY, asking that the young Earl be appointed their governor, and that the native laws and constitution be observed.

*D. N., VI. No. 423.*

*Translated from the Latin*

*March 28th, 1425.*

*Kirkwall.*

To the most excellent lady, Philippa, by the grace of

God most illustrious Queen of Norway, Denmark, Sweden, and of the Slavs and Goths, and Duchess of Pomerania, the most humble servitors of your most noble Highness the canons, clerks, gentlemen, and all others of your community of Orkney, with all due reverence and honour in all readiness to serve you. Your most gracious Highness will be pleased to know that we, the subjects and servitors of your most exalted Excellency, have received with all reverence and honour and fully understood your venerated letters lately directed to us by your most excellent nobility and honourably presented to us by the discreet man, Sir Nicholas, chaplain of our most illustrious prince, our Lord King, and your most dignified Highness, extending to us the tokens of the distinguished favour and bountiful grace of your Highness, in which also mention was duly made that a complaining narrative had reached the ears of your noble Highness and your venerable Council, of discords and sundry controversies which had arisen between our governors, that is to say, the bishop and earl,<sup>1</sup> and desiring that we your humble servants should more fully certify your distinguished Highness by whom the said litigious movement of disagreement was fostered or first arose. Accordingly your noble Highness will please know that our said governors through our intervention and advice were wholly reconciled with regard to all and sundry the former acts, which were fully remitted and forgiven before the presentation of the letters of your illustrious Highness to us, and they are firmly united in the bonds of peace and friendship, as the bearers of these presents will more clearly make known to your noble Highness. Moreover your most excellent Grace was desiring that our aforesaid governors with any gentlemen of our community should appear before your exalted Highness and your venerable Council for the correcting of those things which required correction and the reformation of that which needed reformation, and that everything necessary for the government of our community and the lands of our lord the King should

<sup>1</sup> Bishop Thomas Tulloch and Earl William St. Clair.

be better determined by the direction of your Excellency : but our foresaid governors were in the kingdom of Scotland when your honourable letters were presented to us, for our said bishop occupies himself diligently in his studies at the University of St. Andrews, while the earl remains with his Highness the King of the foresaid realm for dealing with certain necessary and difficult business affecting his lordship lying in the said kingdom. However, we have written to the foresaid bishop and earl sending the substance and purport of the letters directed by your distinguished Excellency to us, and we have sent of our community two prudent and trustworthy men, namely, Robert of Gening, our beloved fellow burgess of Kirkwall, and Eugene Johnson, effectually instructed with our intentions, to the presence of your Highness until our before-mentioned governors appear before your royal Highness. Wherefore we humbly entreat your illustrious Grace that you would deign to give the fullest credence to the said Robert and Eugene respecting those things which on our behalf they shall make known to your distinguished nobility, as is more fully contained in our written instructions sealed with the seals of our Lawman (*legifer*) and other honest men. Moreover, where inquiry was made by your aforesaid chaplain and messenger of us why our aforesaid earl interfered with our government of the lands of our lord the King, it was (as we have declared to him, and your illustrious Highness by the tenor of these presents will understand), at the unanimous desire and with the counsel and assent of all of us that our foresaid earl undertook the said rule, being ardently and humbly besought by us with all our hearts to do so, so that if it may please your royal and illustrious Majesty of your grace to appoint our earl and no other as our governor, and that he may maintain and govern the royal lands until he shall come to the most excellent presence of our lord the King and your Highness ; for, as he is come of an illustrious, ancient, and noble stock and family, so he is our true, lawful, and naturally born earl and stands as most acceptable and full debtor for all and sundry things which are

known to pertain to our said lord the king in our parts of Orkney; and likewise we, the servants of your most noble dignity, have been very often unjustly overborne by strangers who have been appointed governors in our affairs, sustaining innumerable losses, indignities, and shame; wherefore we with our most humble prayers earnestly entreat your exalted nobility that you would deign favourably and graciously to respond to us concerning those and all and sundry other things which our aforesaid messengers shall declare to your serene Highness, carefully returning those things which seem more useful or necessary for the maintenance of our community and which you particularly instruct in your said letters to be strictly observed, so that no judge or governor among us shall presume to introduce any new laws, customs, or novel constitutions whatsoever, but that they shall be irrefragably bound to observe the ancient laws approved by his Highness, King Olaf, and the ancient constitutions and customs, as well as the royal letters sent to us which are commonly called among us the letters of law or rectitude, or corrective letters; and may your most noble Grace with all mature deliberation of your Council deign to do these things and send back to us quickly our foresaid messengers. May He who is the Most High Lord preserve your excellent nobility in continual prosperity and honour.

Written under the seal of our community at Kirkwall the 28th March 1425.

## XX

INSTALLATION OF WILLIAM ST. CLAIR AS EARL OF ORKNEY,  
and the obligations he undertakes.

*Norges Gamle Lov* (edited by Professor A. Taranger), No. 74.

*Original in Latin*

*August 9th, 1434.*

*Copenhagen.*

[The conditions in this document are, with a few exceptions, word for word the same as those laid down on the

occasion of Earl Henry's installation—see No. XI. These exceptions include the omission of the clauses with regard to Malise Sperra, Alexander Ard, and the payment of a thousand nobles. The clause regarding the Bishop is less uncompromising; the earl now undertaking to assist the Bishop in just causes, and so long as he is loyal to the King and his men. Also a clause is inserted stipulating that the tower or castle (*illa turris*) which was built in the town of Kirkwall without the consent of the King of Norway shall be ceded, along with all Orkney and the Orkney Isles, on the death of the Earl. The following Scottish sureties are quoted: Henry, Bishop of Aberdeen; Columba, Bishop of Moray; Robert, Bishop of Caithness; Archibald, Earl of Douglas; William, Earl of Angus; George, Earl of March; William of Gorthweke and Alexander of Ramsay, knights; and John of St. Clair and Andrew of Keith, armigers. On behalf of the Earl, the following friends and kinsmen append their seals:—Thomas Sincler, David Muntower, Alan Beton, Alexander Brown, Robert Benyn and John Haraldson, armigers. For King Erik, the following of his councillors are surety:—Alsac, Archbishop of Nidaros; Thomas, Bishop of Orkney; John, Bishop of Oslo; Audun, Bishop of Stavanger; Peter, Bishop of Hamar; and Olaf, Bishop of Bergen; Endred Erlendson, knight; and Olaf Hakonson, Sigurd Jonson, Guttorm Benedictson, Harnichinus Henryson, Erlend Endredson, and Hakon Bolt, armigers.]

## XXI

## DIPLOMA OF THE SUCCESSION TO THE EARLDOM OF ORKNEY

Two copies of this document, one the Latin original and the other a translation 'out of Latin into Scottis,' exist or existed. Both have been printed more than once, and the parallel texts, together with some account of the documents and some valuable notes by Professor Munch (pp. 189-191), are to be found in a volume of *Extracts from the Bannatyne Miscellanies* (vol. iii, pp. 181-196). One point, curiously enough, does not seem to have been noted either by the editor or Professor Munch, and that is that the 'Scottis version was

not translated from the existing Latin version but from a lost copy. The Latin is dated May 4th; and the seals of the Bishop and chapter, the common seal of Orkney, and the seal of Henry Randle, lawman, were appended 'in nostra publica et generali sessione.' The copy from which the translation was made was dated June 12th, and was sealed by a number of other people as well (whose names are noted below), without any mention of a public and general assembly. Evidently this was a duplicate copy made a few weeks later for the Earl of Orkney (since it was in the possession of the Sinclairs of Roslin in 1554), and the extra seals were added to certify it. The purport of the document was the establishment of Earl William Sinclair's right to the earldom, in response to a demand by King Christian of Norway for authentic evidence of his descent. A few extracts that seem to throw a little light on affairs in Orkney are given here.

May 4th, 1446.<sup>1</sup>

Kirkwall.

'We, Thomas,<sup>2</sup> Bishop, the canons of the chapter, the Lawman and other dignitaries (*proceres*), gentles (*nobiles*), people, and community foresaid . . . in our presence, assembled together, compeired a magnificent and very potent lord, Lord William of St. Clair, Earl of Orkney, and Lord Sinclair, in the Cathedral kirk of St. Magnus martyr in Orkney. . . . [The Earl gave evidence] how that divers charters, evidents, instruments, compt-books, and divers other kinds of proof were consumed by fire, destroyed, and lost in time of hostility and wars of certain rivals and enemies, through absence and lack of a secure house or mansion inexpugnable, where such might have been harboured. . . . But true it is and in verity we bear witness by the relation of our trustworthy predecessors and forefathers that the principal and special house or mansion of the lord Earls of Orkney has been divers times burnt and reduced to nothing and totally destroyed and the whole country spoiled and wasted by our rivals and enemies, through which depredations, wastage, and destruction we firmly believe that the principal evidents, charters, and divers others letters patent have been and are lost and destroyed, pertaining to and concerning the predecessors and ancestors of the said lord Earl, through default of

<sup>1</sup> Possibly 1443 (Munch).

<sup>2</sup> Thomas Tulloch.

a castle in which the said evidence, charters, and other valuables of the country might have been safely harboured.'

[From the Scots translation.]

'To the fayth and witnessing of all and singulare thir premissis, our sailis, that is to mene the seill of Bischop Thomas, and of the chanonis of the Chapture forsaidis, and of all the pepill and communitie of the cuntre of Orchadie, quhilk is callit the commune seill, the seill of myne Henrie Randale, lawman, of Nicholaie Tullach myne, of Joanne Cragy myne arming, of Richard Fod-rungame, lawrikmen,<sup>1</sup> myne, of Alexander Sinclar myne, of Joanne Tod myne, of James Lask myne, of Alexander Broun myne, and of Angus Mangson myne, with certane seillis of otheris faythfull personis of the cuntre, till thir presentis ar to hangit, at Kirkwaw in Orchadie, the first day of the moneth of Junii, the yeir of our Lord ane thowsand, fowr hundretht and . . . sex.'<sup>2</sup> . . .

## XXII

LETTER FROM THE BAILLIES, OR STEWARDS<sup>3</sup> OF KING CHRISTIAN OF NORWAY, in Kirkwall, to the King, excusing the Earl of Orkney for his non-attendance at the Norwegian court, on the ground that he is engaged in defending the islands against the Earl of Ross.

*D. N., II. p. 599.*

*Translated from the original Latin*

*Feb. 29th, 1460.<sup>4</sup>*

*Kirkwall.*

To the most excellent prince and most dread and invincible lord, Christian by the grace of God King of Dacia,

<sup>1</sup> Evidently Nicol Tulloch, John Cragy, and Richard Fotheringham were lawrikmen.

<sup>2</sup> Professor Munch conclusively proved the date to be either 1446 or 1443.

<sup>3</sup> See note at end of deed.

<sup>4</sup> On the assumption this is dated by the Norwegian calendar, in which the year began January 1st, otherwise the true date would be 1461.

Sweden, Norway and of the Goths and Slavs, Duke of Histonian and Earl of Oldenburg and Delmenhost, your most faithful liege servants and most sincere and humble commissioners, Thomas of Kyrknes and John Mager,<sup>1</sup> burgesses and baillies of your burgh of Kirkwall, and the community of the earldom of Orkney, render due reverence and condign honour with all fidelity and subjection to our so great a prince. Let the noble and gracious ears of your most serene royal excellency deign of your most clement piety to notice and attend in our necessity to the petitions of your straitened, poverty-stricken people, how that the mighty and potent lord, John, Earl of Ross and Lord of the Isles, our old great enemy, has striven with all his power, which is not little, most savagely to destroy us from year to year and day to day, burning our buildings, carrying away our goods, and destroying all your loyal inhabitants to the uttermost, against whom and such power we know no defender after God but your Highness, unless our so gracious and noble prince, William, Earl of Orkney and Caithness and Lord of Sinclair, who for our defence in the foresaid has laid out himself and his in our deadly struggle to his no small suffering and loss, bearing the expense, labours, and dangers of the war chiefly for the sake of the honour of your excellency. But meanwhile, and chiefly after deliberation lately with James, the illustrious King of the Scots, he has been wisely engaged in his earldom of Caithness and elsewhere in putting a stop to the malicious and savage attacks of these cruel enemies, so that in this way, praise be to the Highest, he has happily kept us safe, unharmed, and peaceful from these imminent dangers, without whose presence and defence we had been utterly lost and destroyed by the sword and fire. Considering therefore these things and others not a few, and not to weary your excellency with writing, will you deign graciously to excuse our lord for his long absence from your Majesty, for now, as it truly appears on account of other hindrances from the said illustrious King of the Scots,

<sup>1</sup> MacGee? This seems the only known Orkney name it can be.

and matters being undecided between him and the foresaid Earl of Ross, which it is thought will be shortly determined, so that he may go from us your lieges and our saved lands to your most gracious presence, as shall be more fully declared to your grace by your native chaplain, John Nory, to whom we beg your excellent Highness and illustrious royal dread Majesty will deign to give ear on our behalf. May Christ, the Creator of all things, preserve you and grant you the desire of your most noble heart. Written under the common seal of Orkney with consent of the whole community at Kirkwall, last of February 1460.

NOTE.—Who were the '*ballivi*' who sent this letter? On the one hand they are described as *ballivi* or baillies, and burgesses of Kirkwall; on the other hand they are also described as the king's commissioners, and they write officially on behalf of the community to excuse the absence of the earl, so that they can hardly have been ordinary town baillies. On one or two other occasions the baillies of Kirkwall at this period are found acting in a very responsible way. I venture to suggest the theory that the baillies of Kirkwall were at one time primarily the King of Norway's *ballivi*, appointed by royal warrant, but also acting as civic officials; but one would like to get some more evidence on the subject.

## XXIII

LETTER FROM THE BISHOP OF ORKNEY TO THE KING OF NORWAY, excusing the absence of the Earl and himself on account of the recent invasion and devastation of Orkney by the forces of the Earl of Ross.

*D. N.*, II. p. 605.

*Translated from the original Latin*

June 28th, 1461.

Kirkwall.

Most illustrious and serene Prince and most reverend and invincible Lord, after due reverence and all manner of worthy fidelity to a prince and king so greatly to be feared, the writer places himself and his always at the good pleasure and commands whatsoever of your Highness. It is deserving to be known to your royal Majesty of your distinguished benignity that in this present month of June in the year

1461 the renowned lord, the Earl of Orkney and Caithness and Lord of Sinclair, was personally residing with the most serene prince, James, illustrious King of the Scots, for the purpose of keeping his royal person during his tender age by the desire and anxious care of the three estates of the realm of Scotland, as he still does, and for treating of peace between the said lord, Earl of Orkney, and the renowned prince, the Earl of Ross and Lord of the Isles, who with his men from Sodor, Ireland, and the Scottish caterans, very often invaded your lands of Orkney in a hostile way and visited the inhabitants of your said lands with all manner of cruelty, but now what I sorrowfully relate is that while the said Lord, Earl of Orkney, is detained under hope of treaty and, as aforesaid, with the said most serene King of the Scots, far removed outside of his earldom, the foresaid caterans and men of Sodor and Ireland and others in the foresaid month of June entered in great numbers with their fleets and boats in warlike manner the said earldom of Orkney and burned your lands, towns, houses, and buildings to the ground, and most cruelly destroyed your people of both sexes and all ages with the sword and carried away with them their goods, animals, plenishing, jewels, money, and everything they could for their own use; leaving little or nothing unless the burnt soil of the ground empty and useless, and this in the most fertile and principal of your lands of the earldom of Orkney and islands thereof. Will not this my lamentable message move your Majesty's most merciful ears, as I dare not conceal the truth of the matter from your Highness! I expect that these things so wickedly, cruelly, and inhumanly perpetrated will prevent the said lord, Earl of Orkney, from visiting your most gracious Majesty so soon as he intended, for it is hoped he will reside with the above mentioned prince, the illustrious King of the Scots, until the avenging of what is above narrated, when, if by treaty or otherwise these are brought to an end, he will, I firmly believe, in this present year visit your royal Majesty with great willingness. This terrible desolation of your people, loss of friends and kinsmen,

the emptying of my diocese of Orkney and exceedingly prevalent poverty, force and compel me, although not willingly, as God is witness, to forgo coming readily to your wished-for royal presence, yet I design nevertheless as quickly as I conveniently can, considering these things, and am making arrangements with anxious mind presently to visit your illustrious Majesty and royal dread presence, whom may Christ, the King of Kings and Lord of Lords, preserve and guide in happy rule and prosperity to the uttermost wish of your heart. Written under my seal at Kirkwall 28th June year foresaid.

## XXIV

CONTRACT OF MARRIAGE BETWEEN JAMES III., KING OF SCOTS, AND PRINCESS MARGARET, daughter of Christian the First, King of Denmark, Norway and Sweden, dated 8th September 1468.

Extract translated from the Latin in Peterkin's *Rentals of Orkney, etc.*, Appendix, pp. 7-14.

We, Christian, King of Denmark, Sweden, Norway, etc., for the sacred bond of marriage and the dowry of the foresaid Margaret, our only daughter, and that love, affection, peace, and friendship may the more firmly possess the minds of the kings and more effectually and fruitfully be rooted among the kings and their realms, the consent and assent of the prelates, peers, and nobles of our kingdom of Norway having been obtained, and likewise the welfare and good of both kingdoms being diligently considered, do grant, bestow and by the tenor of these presents give as part of the dowry with our only daughter, Margaret, to the foresaid prince, James the most excellent King of Scots, and Margaret, our daughter, spouse of the said King, and their heirs and children only, an annual pension of 100 merks sterling due to us and our heirs, the kings of Norway who shall be for the time, yearly from the Islands of Sodor and Man. Moreover, we entirely remit all sums relating

thereto, losses, depredations and injuries occasioned by reason of the foresaid pension between our predecessors the kings of Norway and Scotland, and solemnly renounce all contracts, evidents, letters and documents thereupon made, and will that these contracts, obligations, evidents, letters and documents shall be held as if express mention of them had been made word for word in these presents. Likewise we promise and undertake for ourselves our heirs and successors the kings of Norway never to contravene or cause to be contravened the foresaid gift, grant, warrant and renunciation or to permit the same to be done directly or indirectly under any excuse, device, or pretence, altogether renouncing every action, exception, relief or remeid of law, canon or civil, in this matter. Moreover, in addition to the whole dowry, we promise, engage, and oblige ourselves and our heirs and successors to pay to the foresaid most excellent prince, James, most serene King of Scots, and his procurators, sixty thousand Rhenish florins, of which sum we shall entirely and faithfully pay ten thousand florins foresaid to the said procurators before their return to the kingdom of Scotland from our realm of Denmark and shall speedily and effectually satisfy them thereanent, and as for the remaining sum of fifty thousand florins of the whole sum aforesaid we, Christian, King of Norway, with consent and assent of the prelates, peers and the greater nobles of our kingdom of Norway foresaid, do give, grant, pledge and place under sure hypothee and mortgage, likeas we have mortgaged, all and sundry our lands of the Isles of Orkney, with all and sundry rights, services and their just pertinents lawfully belonging to us and our predecessors, the kings of Norway, or which by any manner of way may be held to belong thereto : to be had and held all the whole our lands of the Islands of Orkney foresaid, together with all and sundry customs, profits, liberties, commodities and other their just pertinents whatsoever, as well named as not named, belonging to the foresaid lands of Orkney, or which may justly be held to belong thereto by any manner of way in time coming, by the before mentioned most excellent prince, James,

King of Scots, our dearest son and confederate, as part of the dowry with our foresaid daughter, Margaret, aye and until the foresaid James, King of Scots, and his heirs or successors shall have been fully, entirely and effectually satisfied and paid by us and our heirs or successors of Norway of the remaining sum of fifty thousand Rhenish florins, being part of the said dowry given, bestowed, and assigned to the foresaid James, King of Scots, with Margaret, our daughter aforesaid. And we and our heirs and successors, kings of Norway, shall warrant and for ever defend the foresaid lands of Orkney thus mortgaged and wadset as aforesaid to James, King of Scots, and his successors, the kings of Scotland, against all deadly.

## XXV

COMPLAINT BY WILLIAM, LORD SINCLAIR, to the King and Lords of the Council against James Sinclair (of Breks), Edward Sinclair (of Strome), and their adherents, for the slaughter of his friends and servants.

Mackenzie's MS. collection at Balfour Castle. Reference is given in the margin to 'Buch., v. i. p. 305.'<sup>1</sup>

(Dated in the margin 1529.)

Soveraine Lord, unto your gud grace, and to the richt reverend, nobill, and mychty Lords of youre Counsale, humblie meinis and compleins I youre servitour, Williame, Lord Sinclair; That quhar in the Passion-owk<sup>2</sup> in the yeir of God 1528 yeiris I wes in your Grace's house of Kirkwall in . . . cumin in that cuntrie as Justice thairof for keping of gud rewle and ministratioun of justice to the inhabitants thairof, traisting na troubill of ony personis, bot to have liffit under Godis peax and youris; Nevertheless James Sinclair, Edward Sinclair his brother, and thair

<sup>1</sup> Inquiry at the General Register House has failed to identify this reference: the document, however, seems unquestionably genuine; though it probably presents an extremely one-sided and very likely an inaccurate account of what occurred.

<sup>2</sup> Week.

complices, to the noubner of . . . personis, bodin in feir of weir,<sup>1</sup> undir silence of nycht set upon me and my servands ututh<sup>2</sup> your said hous and crewellie slew John Sinclar, Nichol Sinclar, and David Sinclar, brether bairns to the said James,<sup>3</sup> with othir seven gentilmen my servands, after that thai war holdin and their wapponis deliverit to the said James, cryand mychtily for God's saik on their kneis; and tuke myself and on force gart me rander and deliver your grace's hous to thame, or ellis thai wald have slaine me; and sen syne thai haf haldin it ay continualie in thair handis, like as it is yit. And in Mai of the yer of God 1529 yeris I compleint heron and obtenit your grace's letters in the first, secund, thrid, and fourt formis, charging the saids personis to restore and deliver againe to me your said hous, or ellis to enter in warde, and failzeing thairof to put thame to the horne, and sicklike to find sourtie to underlie your lawis for the said crewell slaughter; and, gif thai disobeit, charging umquhile Johne Erle of Caithnes and his folkis to tak my part and pass upon thame and recover your said hous fra thame and bring thame to your lawis. And quhen David Lawrie, messenger, sheref in that part, past to execute your said letters upon thame, the said James Sinclar tak and put your said messenger in prisoun and spulzeit him of his wapponis and wald not suffer him to execute your said letters; and with gret convocatioun of your liegis of Orknay he set upon me and the said Erle,<sup>4</sup> and at the first onset slew the said Erle and uthir 30 personis and maa, and syne slew 100 men and maa fleand to thair botis, and that samin day, viz. the 7 day of Junii<sup>5</sup> *eodem anno* thai tuk 22 pour cariage men in ane boit and broucht thame to land and thair crewellie slew thame at the sey-side and tirffit [*sic* in the MS.]<sup>6</sup> thame nakit and leit the sea have thame away. And,

<sup>1</sup> Prepared for a warlike expedition.

<sup>2</sup> Without.

<sup>3</sup> This must mean that John, Nicol, and David were sons of more than one brother of James Sinclair.

<sup>4</sup> At the Battle of Summerdale in Stenness. See note at end.

<sup>5</sup> Holinshed gives the date of the battle as 18th May.

<sup>6</sup> Jamieson gives *tirr*, to tear, to pull off one's clothes.

perseverand in thair cruell malice, 22 daies thairafter thai tuk fort of the kirkis of our Lady of Grace, Sanct Lawrence, Sanct Mawnis, and utheris divers kirkis of the countrie, 30 men fled to the saids kirkis for girth, and tirffit thame in the saids kirkis and kirk yards thairof, and syne drew and harlit thame on force furt of the samyne nakit, and cruellie slew thame in hie contemptioun of God and Holy Kirk, and breking of the privilege of the girth. And the samyn tyme the said Edward Sinclar, at command of the said James, tuk Mawnis Sinclar, Sir David Sinclar's sone, and uthir 3 personis with him, and hedit thame without ony law or dome; and sicklike hedit and slew in ane bern 7 men of Zetland quhikis came to serve me at your grace's command. And in July next thairefter, the said James past to Zetland and thair hedit your Lawman<sup>1</sup> thairof, and divers uthirs, and hangit ane uthir part of thame at his awn hand without ony autoritie, commissioun, or power of your grace: and that samyn tyme he gart heid 3 young boyis for malice he had to their masteris; and swa has slane 300 personis and maa. And thairefter I purchest your letters charging the said James to deliver to me Williame Sinclar, my sone, being in his handis, quhilkis he disobeit sicklike as the first and held my sone quhill he deit. Attoure it is abhominable to here quhat reif, oppressioun, and extortioun the said James, his brothers [*sic*], and complices has usit thir 14 yeris<sup>2</sup> bygane upon your pour lieges of Orknay and Zetland, and has banisht divers of thame furt of Orknay, quhilkis with thair wiffs and barnis ar now thigand<sup>3</sup> thair mete in England and Norway, quhilk is gret schame that sick thingis sald be hard within this realme unpunisht; and the said James Sinclar, kingis-like, as he war ane king in thai partis and like as thar war na law, king, nor justice in this realme, in hie

<sup>1</sup> Balfour, who quotes from this account in his *Oppressions*, gives the lawman's name as Nicol Hall: a mere guess.

<sup>2</sup> From this Balfour jumped to the conclusion that James Sinclair was elected Governor in 1515. This was certainly not the case. His father, Sir William of Warsetter, was Justice of Orkney as late as 1522.

<sup>3</sup> Begging.

contemptioun and lytlying<sup>1</sup> of your grace's autoritie, and in evill exampill to uthiris to do siclyke and<sup>2</sup> this remane unpunischit. Herefore I beseik your gud grace and lordschips of remeid in sic sort that thir cruell slauchteris and crymis above written may be haistilie punisht with all rigour, according to your grace's honor and to the law, in exampill of uthirs to eschew siclike in tyme cuming.

NOTE.—The following account of the Battle of Summerdale is quoted in the same MS. collection from Holinshed's *History of Scotland*: 'The 18 of May in the year 1529, the Earl of Caithness and the Lord of Sincler with a great army by sea passed into Orknay, to have taken that isle into possession; but the people of the country assembled at the commandment of James Sinclair of Kirkwall, their captain, who gave battle to the Earl and his army with such courage that he discomfited the enemies. The Earl with five hundred of his men was slain and drowned in the sea unto the which they were driven. The Lord Sinclair and all the residue were taken. The Orknaymen held opinion that their patron saint, Saint Magnus, was seen that day to fight in the field on their side against their enemies.'

## XXVI

RESPITE TO EDWARD SINCLAIR OF STROME and 30 others  
of the Orkney army which fought at Summerdale.

*Reg. Privy Seal*, vol. 13, fol. 28. Printed: *O. L. Records*, No. 61<sup>3</sup>.

Sept. 19th, 1539.

Stirling.

'Ane Respitt maid to Eduerd Sincler of Strome, Magnus Sincler of Wersetter, Johne Sinclare of Tollop, Williame Sincler of House, Olyver Sincler of Helwra, Magnus Sincler, Lawrence Sincler, James Sincler, James Cragy of Burgh, Johne Rendale, Adam Selater, Johne Burness,<sup>4</sup> Johne Cromate, Magnus Cromate, Robert Hercas, Johne Hercas, George Hercas, William Peirsond, Johne Jamezing,

<sup>1</sup> belittling.

<sup>2</sup> *Sic*: surely a mistake for an=if.

<sup>3</sup> A transcript of the original charter was printed in Barry's *History* (app.), and a copy of that in *St. Clairs of the Isles* (app.). This original charter is now lost. The original, however, is preserved in the Register House of an exactly similar respite to Magnus Cromate, Johne Cromate, Magnus Garioch, and Edward Byrsto, dated at Stirling 19th September, the twenty-sixth year of the king's reign.

<sup>4</sup> One of the Selaters of Burness.

William Herdy, Gilbert Cragy, William Yorstone, Walter Forester, Christie Jame, Magnus Midhouse, Johne Lowtit, Johne Papplay, Magnus Gariach, William Cragy, Johne Cragy of Bankis, and Eduerd Birsten, and generalie to all and sindry utheris personis, kynnismen, freyndis, servandis, assistaris, adherentis, parttakaris and complices with the said Eduerd and personis abone writtin duelland within the Ilis of Orknay and Zetland being with thame in cumpany at the committing of ony crymes and art and part with thame thairintill in ony tyme bigane befor the day of the dait heirop, for art and part of the convocatioun and gadering of our soverane Lordis liegis in arrayt batell aganis umquhill Johne, Erle of Cathness, and for art and part of the slauchter of the said umquhill Johne, his freyndis, servandis, and parttakaris being with thame in cumpany at that tyme, and for all utheris slauchteris, mutilationis, oppressionis, reffis, forthocht felonyis, tressonis, crymes, transgressonis, and offenses, etc., tresoun in our soverane Lordis awne propir persoun allanerlie except, and for the space of xix yeris to indure, etc. At Stirling the xix day of September the yere forsaid [1539].

*'Per signaturam.'*

## XXVII

COMMISSION AS SHERIFF AND TACK OF THE CROWN RIGHTS  
IN ORKNEY AND SHETLAND, given to Oliver Sinclair  
of Pitcairns.

*Reg. Privy Seal, vol. xiv. fol. 83.*

*April 20th, 1541.*

*Stirling.*

Ane lettre of tak, maid to Oliver Sinclare of Pitcairnis, his airis and assignais ane or maa, of all and sindry our soveranc lordis landis and lordschippis of Orknay and Zetland, and of all the ilis, partis, boundis, and fischingis therof and all thair pertinentis, togidder with the constabulary and keping of the castell of Kirkwall; and als makand the said Oliver and his airis male justices, shereffis,

admirallis, and baillies of all and sindry the forsaidis landis and lordschippis, baith be sey and land, for all the dayis, space, and termes of thre yeiris nixt to cum efter the feist of Lammes last bypast, quhilk feist was the entre of the said Oliver, his airis and assignais, in and to the forsaidis landis, lordschippis, and offices; and thereafter to indure and to be peceably broukit and joisit be thame ay and quhill the saidis thre yeiris be füllelie and togidder compleit and outrunnin; as the forsaidis landis and lordschippis lvis in lenth and breid, in housses, biggingis, touris, fortalices, woddis, forestis, mylnis, multuris, fischingis, and with all and sindry utheris privilegis, fredomes, proffittis, aisiamentis, and richtuis pertinentis quhatsumever, pertenyng or ony manner of way may pertene therto; with power to the said Olyver and his airis male courtis of justiciary, scherefship, admirallie, and bailliarie, within all the partis and boundis of the forsaidis landis and lordschippis, bayth be sey and land respective, to the tenantis and inhabitaris therof and all utheris quham it efferis, to sett, begin, afferme, hald, and als oft as neid beis to continew; soittis<sup>1</sup> to mak be callit, absentis to amerchiat, transgressors to punise, unlawis, amerchiamentis, and eschetis of the saidis courtis to lift, upraise, and to thair awine use, utilite, and proffitt for their laubouris, to apply and inbring; and gif neid be, to poynd and distrinze therfor; the inhabitantis within the forsaidis boundis befor quhatsumever juge or juges spirituall or temporale thai be attechit or areistit to the privilege and fredome of the saidis courtis of justiciary, scherefship, admiralie and bailliary forsaidis to replege, reduce and again bring; caution of coleraich<sup>2</sup> for justice to be ministerit to parteis complenand within term of law; to gif and fynd deputis ane or mae under thame in the saidis offices, with clerkis, seriandis, dempstaris, and all utheris officiaris and memberis of court neidfull to mak, create, ordane, and causs be sworne, for the quhilkis thai salbe haldin to answer; the tenantis, occupiaris [of] the saidis landis and lordschippis

<sup>1</sup> suits.<sup>2</sup> surety.

to remove and output and utheris in thair places to input als oft as thai sall think expedient, quhatsumever pleis, causses, and questionis to be movit befor thame in the saidis courtis of justiciary, scherefschip, admiralrie, and bailliary within the boundis forsaidis pertenyng to the saidis offices to heir, discuss, decyde, and finalie decerne; for useing and exerceing of the quhilkis offices, our soverane lord gevis and grantis to the saidis Oliver and his airis male all feis, proffittis, and dewiteis pertenyng or ony maner of way may pertene to the sammyn be sey and land; and generalie all and sindry utheris thingis to do, etc., ferme and stable, etc.; Payand yeirlie the saidis Oliver, his airis and assignis, to our soverane lord, his comptrollar or factouris for the saidis landis and lordschippis, the soume of trie thousand merkis money of the realme at tua termes in the yeir, Beltane and Lammes, by equale portions, begynnand the first payment at the feist of Lammes nixttocum efter the day of the dait of thir presentis, etc. At Stirling the twenty day of Aprile the yeir of God i<sup>m</sup> v<sup>c</sup> xli yeiris. *Per Signaturam.*

NOTE.—This commission marks the end of the old order of Lawmen and Roithmen, and the appearance of Sheriffs and Suiters of Court instead; the replacement of the Norse machinery of justice by the Scotch (though the actual laws administered remained as before).



DECREES, AND OTHER RECORDS, OF  
THE COURTS

The records in this section cover both Orkney and Shetland. Even those which have been published previously are printed here in full, so that the evidence they afford regarding the ancient constitution of the earldom may be presented consecutively and completely.

## DECREES, AND OTHER RECORDS, OF THE COURTS

### XXVIII

THE LAWTHING-MEN OF SHETLAND TESTIFY TO THE EVIDENCE BROUGHT AT THE LAWTHING BY THORVALD THORISSON, about the news spoken to him by Ragnhild Simun's daughter in the Duke's<sup>1</sup> house in Papey, with regard to landskyld in the islands, etc.

*D. N.*, i. p. 81. Printed : *O. L. Records*, No. 25.

*About May 15th, 1299.*

*Shetland.*

*Translated from the Norwegian*

To all the men who see or hear this letter, all the lawthing-men of Hiatland send the greeting of God and their own. Be it known to you that, in the year when 1299 winters had passed from the birth of our Lord Jesus Christ, Herra Thorvald Thorisson let witnesses bear before us at the lawthing the words spoken by Ragnhild Simun's daughter. Iuar bondi of Eiði and Harald in Borgarfiorð bore witness that they were present in the living room of the Duke's house in Papey, the Monday in Passion Week, when Ragnhild spoke thus: that Breka sætr was not included in the skattland of the house and the Duke should take full rent though Breka sætr were not included. But Thorvald said: So many good-men have taken this in hand, such as Thorkel of Nes, Herra Eirik, Sigurd archdeacon, Herra Eindriði and many other able men who had full power

<sup>1</sup> King Magnús, in 1273, created Hakon Magnússon Highleg a duke, and in his ducal appanage was included Shetland. He succeeded his brother King Erik on August 10, 1299.—A. W. J.

from my lord the Duke as to how much landskyld they were to take for him in Papey formerly. Ragnhild answered: I gave no heed to the mad Eindriði who ran away from Norway hither and knew not where to lay his head, but you, all of you, who knew, have deceived the Duke. But Svein the priest and Halfdan of Bruar sætr bore witness that they were present in the morning of the following Tuesday out in the *tún*<sup>1</sup> of the aforesaid house when Ragnhild said to Herra Thorvald: Thou shalt not be my Judas, though thou be Judas to the Duke. Herra Thorvald called all those present as witnesses of these words. There will never be found higher prices from all Papey than there have always been from of old, a mark of burnt gold for arable land from every pening-land; and as landskyld<sup>2</sup> one mælir<sup>3</sup> and a half from every mark burnt, and there are then 2 sáld [due] for every pening-land. Now as Herra Thorvald and the others she had spoken to, wish to deny this lawfully before the Duke himself, we gave this letter of inquiry to our honourable Lord, the Duke, about the aforesaid matters, and as we have not the seal of the lawthing, the following of our companions set their seals on this letter for true witnessing: Herra Eirík the Young. Gregorius Benedictsson. Iuar Sperra. Magnus Högnason. Erlend Geirmundsson. Gunni of Gnípar. Erlend Alfett.<sup>4</sup>

[The seals of Herra Eirík, Gunni of Gnípar, and Erlend Alfett are still extant.—*Norske Sigiller*, Nos. 15, 16, 17.]

NOTE.—Thorvald Thorisson was probably the Thorveldus de Shetland, mentioned in a Latin diploma of April 1, 1289 (Rymer, *Fædera*). This is the first occurrence known to me of the form *Shetland*.—A. W. J.

<sup>1</sup> *Tún*, homefield, the field adjoining the house.—A. W. J.

<sup>2</sup> *Landskyld*, New Icelandic 'landskuld,' rent of land.—A. W. J.

<sup>3</sup> *Mælir*, plural *mælar*, a measure of corn and liquids, six of which went to a *sáld*. The size of the *mælir* varied in different parts of Norway. Land sown with one *mælir* of seed or grain was called one *mælir land*.—A. W. J.

<sup>4</sup> An eke-name, stiff-neck, but possibly *Alfeitr*, very stout.—A. W. J.

## XXIX

DECREE OF THE LAWTHING OF SHETLAND regarding the agreements between Mistress Bjorg of Kollavaag and Herra Thorvald Thoreson.

From *D. N.*, i. No. 109.

May 19th, 1307.

*Thingavöllr*,<sup>1</sup> *Hetland*.

*Translated from the Norwegian*

To all men who see or hear this letter, Ivar, lawman, Ivar Spera, Arnfinn Thorfinnson, Sigurd a<sup>2</sup> Kallbak, Erlend Geirmundson, Sigurd Gregoriusson, Gregorius Ivarson, Halvdan in Arnafjord, Hogne in Reydarfjord, Nicholas a Gryting, Gisurr a Breidaseter, Halvdan Ravnson, and all the lagretta men of Hjaltland send God's and their own greeting. We make known that in the eighth year of the reign of our honourable lord, King Hakon, on Friday of Whitsuntide week in the church of Thingvoll, Bjorg, mistress of the house (*hus freyja*) of Kollavaag, made complaint against Herra Thorvald Thoresson and wished to rescind the two agreements she had made with him. It was proved there before us that the aforesaid Bjorg had incurred a fine of 24 merks to the Crown, and that Herra Thorvald had offered her the choice of going to the Lawman and the Lawthing or coming to terms. And she came to this agreement: that she should pay 6 merks of silver the next summer in Norway. If that was not paid, the agreement was to be annulled. And Bjorg admitted that it was not paid that summer. But next spring when Herra Thorvald came to the northern islands, he revoked the agreement because he had not got the above mentioned debt, and he asked her again whether she would come to an agreement or take her case to the Lawthing. She then again came to an agreement on these conditions: that she mortgaged to him 6 merks burnt,<sup>3</sup> of her land in

<sup>1</sup> Now Tingwall.

<sup>2</sup> Cf. footnote to No. VI.

<sup>3</sup> See footnote 1, p. 12.

Kollavaag, on the stipulation that she was to redeem it with 3 merks burnt in Hjaltland coinage before the *thing* [*i.e.* Lawthing], and if she failed, these 3 merks should be forfeited. The other 3 merks burnt, she was to pay the next summer in Norway with current old coins. Now she again admitted that those 3 merks burnt, which should have been paid in Hjaltland, were not paid. But for those 3 merks that ought to be paid in Norway, there were offered [by her] 9 merk silver—silver [of such quality] that 3 merks were equivalent to one merk of the old coinage. And Herra Thorvald would only accept [money] as he accepted from other people by whom land was mortgaged; and the lawmen, Herra Hauk and Ivar, advised that for the sake of leniency he should take 2 merks for one. Now, since it seemed to us that she had not kept the aforesaid agreements, and we said that the only right thing was to keep them, therefore I, Ivar the Lawman, with advice and consent of the king's officers<sup>1</sup> and the logretta-men (*handgengenna manna ok logretto manna*) declared the aforesaid estate which should have been redeemed in Hjaltland, forfeited to Herra Thorvald. But [as for] those 3 merk [lands] burnt, for which coins were offered in Norway, though they were not of full value, he should possess them and take their rents, on the condition that she should be entitled to redeem them this summer in Norway with payment in butter. But if these 3 merks [of money] were not paid as now specified, they [the 3 merk lands] should be forfeited as the former three, until the rightful odalsmen redeem them with valid payment for land (*jarðar aurar*). And for witnessing the truth thereof we set our seals to this letter, which was made at Thingvoll, year and day foresaid.

[The seals of Erlend Geirmundsson and Hogne in Reidarfjord are still extant.—*Norske Sigiller*, Nos. 40 and 41.]

[*On the back in a sixteenth-century hand.*]—Letter regarding Kollavaag in Jala in Hjaltland.

<sup>1</sup> The *Handgengenna* men were those who had taken oath of fealty, the king's barons, stewards, knights, and all others in his service. In this case they were the Fouds of Shetland; and the logretta men, the lawrik men, or delegates of the people. See Introduction.

## XXX

ATTESTATION BY HENRY RENDALL, Lawman of Orkney, and others, of a decree of the Hirdmanstein<sup>1</sup> respecting the sale by John of Kirkness, late Lawman of Orkney, to Thomas Sinclair of the 12d. land of Tollop.

Original in Gen. Reg. House. Printed: *Spalding Miscellany*, vol. v. :  
*O. L. Records*, No. 2.

Jan. 20th, 1438-39.

Kirkwall.

Til all and syndri lele folk in Cryste to quhais knowlagis thir present letteris sal to cum, Henry Randell, lawman of Orkney, Johne Haraldson, balye off Kirkwaw, and Jamis off Lask, greting in Gode ay lestand. Sen medefull and meritabill thing is to bere witnessse to the suthfastnes, and namly in the cassis quhar the hyding off suthfastnes ma genner scathe, schame, or prejudice till ane innocent man, fra theyne it is that we, the forsaide, testifeis sekyir witnessis and for the schawing of suthfastnes til yowr universite makis kende that we, the forsaide, bystude, saw, and onherde,<sup>2</sup> and for witnessis wes tane, quhen that John off Erwyne and Will Bernardson swore on the hirdman stein before owr lorde, the erle off Orknay, and the gentiless off the cuntre, that thai bystude, saw, and onherde, and for witnessis wes tane, quhen that Thomas Sinclere, the soun of quhilum Dauy Syncler, callit in the vestre in Sant Mawnus kirk, Johne of Kirknes, than lawman off Orknay, befor syndre gude men off the cuntre, and saide to the forsaide Johne off Kirknes, that it wes demit in the cuntre that he, the fornemmit Johne, saide that agayne his will he had selit the charteris off the xij penny lande off Tollop to the forsaide Thomas; quharfor the forsaide Thomas peroffrit to the said Johne his charter and the saide lande agayne, giff he the saide Johne walde giff til hyme, the forsaide Thomas, the golde that he the saide Thomas giff for the charteris off hyme the said Johne. And than the fornemmit Johne answerd and said playnly

<sup>1</sup> See Introduction.

<sup>2</sup> *Anherd* = consented or adhered.

that it wes nocht agayne his will, and to the mare sikkirnesse off the saide lande to the saide Thomas, the saide Johne hanselde the saide Thomas off the fornemmit land for the forsaide golde that the fornemmyt Thomas craff, ande syne the saide Thomas hanselde Wat Fresell off the saide lande and the saide Johne confermit it thare and hanselde the saide Wat of the fornemmit land fra hyme the saide [Johne and his] ayris to the forsaide Thomas and Wat, bath as ane and ane as bath, and al thare ayris foreuer mare, with al fredomis and profytis, as the saide charter of [the saide lande beris]. And thar atowre the saide Johne grantit hyme fullely payt and content for the forsaide land be the fornemmit Thomas, the first and the last and al that betweyne. In wisse of the quhilk thing, we the forsaide has set owre sele to thir present letteris, at Kirkwaw the xx day of the moneth of Januar, the yere off owre Lorde mcccc<sup>e</sup> xxxviiij yere.

NOTE.—This deed records the sale of the 12 pennyland of Toab or Tollop, by John of Kirkness to Thomas Sinclair, who then sold it to Walter Fraser. Frequent references to the property and to the Frasers will be found in later documents. It may be mentioned here that Toab was a considerable district and included two townships, Above-the-Yard and Beneath-the-Yard, and that this 12 pennyland formed two-thirds of one of them (or possibly lay in both).

## XXXI

CERTIFICATION BY THE LAW-COURT OF BERGEN of an agreement affecting lands in Shetland.

Original at Wemyss Castle. Printed: 'Grievances of Orkney and Shetland' (Mackenzie), *O. L. Records*, No. 33.

*August 8th, 1485.*

*Bergen.*

*Translation from the Norwegian*

To all men who see or hear this letter Sebiörn Guttormsson, lawman of Gulathing and Bergen, Niels Willemsson, lawman of Shetland, Erland Andersson Frak, Jon Sturkarsson, Mattis Jensson, Endridh Swensson Rostungh, As-

mund Salmonsson, councillors<sup>1</sup> in the same place [Bergen], Villem Thomasson, lawrightman in Shetland send the greeting of God and of themselves, making known that we were in the vestry of Cross church situate in the said town of Bergen the Monday next before St. Laurence day A.D. 1485, [and] saw and heard that they joined hands, on one side the honest man, Jeppe Zeirsson, councillor of the said town, as warrant for Mrs. Marion Jon's daughter, his wife, and on the other side Thomas Engilsk [the English] as warrant for Dyoneth, Alexander's daughter, his wife. It was agreed by their handshake that the said Jeppe and his wife Marion shall possess and have as an everlasting possession as many lands as the said Thomas had unlawfully bought of Anders Skot, the fatherbrother of the said Marion, which are in Shetland and are called as follows: 1<sup>o</sup>, in Liwngöy in Hwalsöysund x mark burnt at viii pence the mark. Also in Iaale in Hedarokill vii mark at ix pence the mark. Also [in] Vlstadh in Iala vi mark at vi pence the mark. Also in Hule in Iala ix mark at vi pence the mark, from the said Thomas and his heirs to the said Jeppe, his wife and their heirs, to possess and hold for ever, inside and outside the garth, on land and on foreshore, in less or more, with all that appertains or has appertained to it, of old and of new, nothing excepted. For greater certainty we append our seals to this letter, together with the above Thomas, and it is written on the day and in the year named before.

[*Endorsement in a contemporary handwriting:*] This lettir in Nornn beres all the lanndis that Zoppinn Segarson aryt be his wif, Johne Scottis douchter, and alsua the lanndis quhilkis he wan fra Thom Jngliss that he claimit of Andro Scot at [*i.e.* that] was his wifis fader bruder and the said Zoppynn sauld jt to Sir Dauid Sinclare: Jn primis jn Linga in Quhalissan Sound x merk at viij d. the merk, jtem in Herokle of Zale vii merk at ix d. the merk, jtem in Vlstaithe in Zaill vi merk at vj d. the merk, jtem in Howle of Zaile ix merk at vj d. the merk. Aviss gif thir lanndis be in the rentale.

<sup>1</sup> Radmen (old Norse *radmen*); cf. roithmen in the following Orkney decrees

## XXXII

DECREE OF THE LAWTHING OF ORKNEY in favour of William of Corgill in an action to prohibit Magnus of Corstath from interfering with the fishing in the burn of Corrigall.

Original in possession of Mr. J. A. S. Brown, Stromness.

1496 (*probably June*). *In the Lawthing (Kirkwall)*.

## Jhesus Maria

On Tyisday in the Lawting, the yere of God mcecc. nynte and vj yeris, a dome dempt at Kirkwall be Jhone of Cragy, lawman of Orknay, and ane certain worthy personis with hym, betuix Williame of Corgill one the ta part and Mawnis of Corsta one the tother part, as twiching the bigging of ane myll that Mawnis of Corsta bigit on the rod watter<sup>1</sup> benewth the said Williame, and the said Williame domlad<sup>2</sup> and alleging that the forsaid mill stopit the passing up and down of all fisch in the tyme of the roding, in the greit damage and hurting off hym. Quhairfor I the said lawman hes sene and understandin, with the secht<sup>3</sup> of gudmen,<sup>4</sup> that the said mill is onlawchfull bigit, and gifis for dome that the said mill salbe brookin doune far evermare, and the foresaid Williamis mill to be uphaldin as scho was of before, becawse that scho standis [at the] hed of the rod ;<sup>5</sup> and within xiiij day eftir the lawting the said partiis to be apone the ground with the balze and xij as worthiast men off the paroschen . . . the said Mawnis suffisand grownd without the dikkis guhar it can nocht do skaith to the said Williame or his catell be ony way be sicht of the xij persones. In witenes

<sup>1</sup> Water where the trout spawned.

<sup>2</sup> *Dóm-lagði*, laid before the court. <sup>3</sup> By the advice or with the counsel.

<sup>4</sup> The old Norse 'good-men,' the same as the 'gentle off the cuntre' in No. xxx.

<sup>5</sup> And therefore could not interfere with the fishing rights on properties below.

of the quhilk thing I the said lawman hais subscriwit my awne hand.

(Signed) JHONE OF CRAGY lawman of Orknay, *manu propria*.<sup>1</sup>

NOTE.—The townships of Corrigall, Corston, and Garth lie on the burn of Corrigall in the order named, counting downstream, while the trout come upstream from the loch of Bosquoy to spawn. These facts explain both this and the next decree.

## XXXIII

DECREE OF THE LAWMAN OF ORKNEY AND 'GUDMEN' as to the respective rights of William Corgill and Magnus Akynson in the Burn of Corrigall.

Original in possession of Mr. J. A. S. Brown, Stromness.

*April 29th-30th or November 25th (about 1500).*

*West Mainland (apparently Harray).*

One the morne eftir Sant Catrine day, a dome dempt be the lawman and worthy men with him, that ar to say, Johne Flett, Sande Flett, W. Haldell,<sup>2</sup> Riche Seale, Ade Talyeor, James Loutit, W. Cloustatht,<sup>3</sup> with ather diverse; the lawman and gudmen hes dempt at thai suld be one the grand<sup>4</sup> with xij personis, and se gif thai thoct spedfull till Mawus Ackinsone myll to gang,<sup>5</sup> and ther the forsaid personis hes gevin in [*sic*] Mawus Ackynsone<sup>6</sup> chose geve<sup>7</sup> he will leif Will Corgill to fish in his his [*sic*] fredome benew the myll, and the said Mawus tilbe at his wantage till gadder the watter till the hycht of the hill in his awin fredome, and the thing fund of awaill.

NOTE.—The date of this decree can be fixed as before 1513, since William Heddle was dead by then. See No. CCXII. The fact that six out of the seven gudmen and one of the parties are all found in the 1502-03 Rental, and the close resemblance between this action and the one recorded in the 1496 decree

<sup>1</sup> The whole decree is in the same handwriting as the signature.

<sup>2</sup> Heddle.

<sup>3</sup> Clouston.

<sup>4</sup> ground.

<sup>5</sup> And see if they thought it expedient to go to Magnus Ackinsone's Mill.

<sup>6</sup> This name might equally well read Atkynsone in both cases, but as it is found in the form Akynson in the 1503 Rental it is read *ε* here.

<sup>7</sup> choice if.

make it probable that it was rather before than after 1500. As all the gudmen were West Mainland landowners, the court was evidently held in the West Mainland. What happened is a little obscure, since the scribe has achieved brevity at the expense of lucidity, but evidently the court either adjourned to the mill accompanied by twelve local arbiters, who then adjusted the dispute, and the court finally confirmed the award, or else two separate transactions are described as though they were one: the decision of the court to leave it to arbiters, and the subsequent award of the arbiters. The point at issue, however, is plain. Magnus Akynson owned the odal lands and rented the king's lands of Garth (see note to preceding decree); his mill interfered with William Corgill's fishing in the upper reaches, and William had retaliated by shutting off the water when Magnus wanted to grind. The compromise arrived at was that William should be allowed to fish below Magnus's mill, and that Magnus should have all the water he required.

## XXXIV

DECISION OF FOUR ARBITERS, acting on a commission from the Lawman of Orkney, regarding the heritage of Will of Corgill.

Original in possession of Mr. J. A. S. Brown, Stromness.

(November) 1504.<sup>1</sup>

(Harray?)

*In Dei nomine Amen.* Be it kend till all lele folk in Crist be this presens writ that we, David Synclare, Thome Loutfut, Jhone Flet, and Will Flet, we war dempt be the lawman to cum to Corgill within the sevynt day to mak new arschip to Will of Corgill, langand his [*sic*]<sup>2</sup> of fader and moder, and we the said personis layd quhat fell to Will of Corgillis part befor Jhamis of Spens and Andro Lynclater and all the aris, and [ther we] layd at his part drew<sup>3</sup> thre mark and halff and a fourty penny grip,<sup>4</sup> with viij s. of sylver pament for houshald gere. In witness of this we haff [procurit the persoun of] Orpharis sele, and this gyft was gyffin hym befor thir witness, Jhon Flet, Bere<sup>5</sup> of Randell and Will Flet and Jhamis of Spens; in primis,

<sup>1</sup> See date of following deed.

<sup>2</sup> The word 'gift' has been left out. See following deed.

<sup>3</sup> Ordained that his part extended to.

<sup>4</sup> Possession: in this case a bit of property added.

<sup>5</sup> Barne or Bernard.

three mark in to Corgill, and vi mark in Corstay in Beghow,<sup>1</sup> v mark in Myrkumbuster,<sup>2</sup> both and [this ?] giftit off befor Jamis of Spens balze in the tyme.

NOTE.—Read in conjunction with Nos. LIX., and XCVII., this deed throws much light on the old odal estates of the period. I. The gift in question, given by William Corgill's father and mother, and laid to his part before the other heirs (*i.e.* to his advantage as compared with them), was the gift of the 'ferd and tent-penny,'<sup>3</sup> that portion of his estate which an odaller might bequeath to whom he chose. A portion, at least, of this was enjoyed by his widow for her lifetime (No. LIX.), and the mention of the 'sevnynt day' makes it plain that William's mother had died within seven days previously. The 'tent and ferd' having been left to him in preference to any other heirs, he then desired a 'new' division of heirship, and the lawman commissioned four men to adjust this. They gave him, we see,  $3\frac{1}{2}$  mks. and a '40 penny grip' in land. A merkland was divided as though it had been a merk of money (13/4d.), so the 40d. would be  $\frac{1}{4}$  mk. The tent and ferd was therefore *in land*  $3\frac{3}{8}$  mks. But it appears from No. LIX. that the tent and ferd was reckoned as the mean of  $\frac{1}{4}$  and  $\frac{1}{10}$ , *i.e.* practically  $\frac{1}{5}$  of the whole estate. Therefore his parents owned about  $22\frac{1}{2}$  mks. of land. II. William had a brother Magnus (Nos. XCVI. and XCVII.) whose share of the property is shown by its equivalent paid by William in 1490 (No. XCVII.) to have been about  $7\frac{3}{8}$  mks. It is also shown there that William increased his own lands by about  $2\frac{3}{8}$  mks. out of Magnus's share. Therefore in 1504 William ought to have—his brother part (the same as Magnus,  $7\frac{3}{8}$  mks.) +  $2\frac{3}{8}$  mks. + tent and ferd ( $3\frac{3}{8}$  mks.) = practically 14 mks. At the end of the above deed the arbiters specify the lands with which this 'new heirship' left William, and they come to exactly 14 mks. As no other hypothesis (and I have tried all that could be wrung from the facts) reconciles all these given data, it follows that these estimates are correct. III. We can go a step further and reconstruct the parents' estate as follows: two sons' portions =  $15\frac{1}{4}$  mks. + tent and ferd =  $3\frac{3}{8}$  mks., which comes to just about 19 mks. But it ought to be  $22\frac{1}{2}$  mks. The difference,  $3\frac{1}{2}$  mks., is so nearly half a brother's part that it may safely be assumed to be a sister's part. And we actually find that in addition to Andro Linklater (representing his wife, Magnus's daughter, see No. XCVII.) James of Spens was an heir. He clearly must have been the husband, or possibly son, of a sister of William and Magnus. IV. Putting this deed and No. XCVII. together we find the parents' property to have consisted of 3 mks. in Corrigall, 6 mks. in Corston,  $7\frac{1}{2}$  mks. in Mirbister (precisely half of each of these townships),  $2\frac{1}{2}$  mks. in Feaquoy in Stromness, and  $3\frac{1}{2}$  mks. unknown. These last, in all probability, included some, if not all, of the remainder of Corrigall. V. It is thus seen how this particular odal estate lost  $8\frac{1}{2}$  mks. in one generation. On the other hand, if William married with as much discrimination as his nephew-in-law, Andro Linklater, he would add, in land or land's worth, between 7 and 8 mks. to his property, which would practically make it what his parents' had been. If, however, he was injudiciously romantic the family would take a stride on the road towards peasant-proprietorship.

<sup>1</sup> Biggo in Corston was long in possession of the Corrigalls.

<sup>2</sup> Now Mirbister.

<sup>3</sup> The tenth and fourth. See Introduction.

## XXXV

CERTIFICATE BY THE LAWMAN OF ORKNEY that he has seen and approved the preceding deed.

Original in possession of Mr. J. A. S. Brown, Stromness.

*November 16th, 1504.*

*Kirkwall.*

Be it kend till all men be this present writ, me Johne of Crage, lawman of Orknay, grantis that I have sene ane lettir undir Schir Willyame Broun seill, nocht spalt <sup>1</sup> nor vitiat in it self, the tennor therof eftir folowis as thus: Be it kend till all lele folkis in Crist be this present writt that we, David Sincler, Thome Lowttfute, Johne Flett, and Will Flett, we war dempt be the lawman to cum to Corgill within the sevynt day to mak new ayrschip to Will of Corgill, langand his gyfft of fadir and modir, and we the saidis personis layd quhat fell to Will of Corgillis part before Jamys of Spens and Andro Lincletter and all the airis, and ther we layd at his part drew thrie merk land and half and a fourty penne grip, with viij s. of sylver payment for houshald gere. In wittnes of this we have procurit the persoun of Orpharis seill for ws all to be affixt to this present writt: And this till all and sindry quham it efferis I the said lawman makis knawin. In wittnes of the quhilk thing I have hungin to my sele to this present writt at Kirkwall, the xvj day of November, the yere of God j<sup>m</sup> five hundreth and iiij yeris.

## XXXVI

DECREE BY A COURT OF ARBITRATION, apportioning the estate of Ness between the families of Ness and Tulloch.

Original in possession of Mr. A. Baikie of Tankerness.

*March 11th, 1507-8.*

*Kirkwall.*

At Kirkuale, the xj day of Marche, the yere of God j<sup>m</sup>v<sup>e</sup> and vij, it is appuntit and accordit betwix Thomas

<sup>1</sup> Spoiled.

Tulloch, sone and ayer till Helene off Ness, on the tane part, and Wilyam off Ness, for hii (*sic*) selff and his bruder Thomas of Nessis barnis, as ombisman<sup>1</sup> (the eldest barne, Jhone Ness, and his modir<sup>2</sup> thay beand present for the thym, and with thar consent,) on the tother part; sworn ather party to tother to stand to the appuntament, and according to certane and worthi personis undyr writin; that is to say, till ane nobil and rycht worthtsehupfull man, Schir Wilzame Sinclare of Warsettir, knyght, a worthi and discret man Jhone Cragy, lawman of Orknay, as owirmen, and till ane worthsehupfull clark Maister Hendre Phankuth, Archdene of Zetland, Schir David Lochmill, parson of Stronsay, Wilzam Flett, Jhone Yrwyn of Sabay, Thome Hakkat,<sup>3</sup> Gilbert Kempty, Jhon Hawero, Jhone Nory, Gilbert Mason, Bernard Campstay, Olawe Lutyty, and Hendre Fowbuster; the quhilkis personis has decretit and ordanit in this ways as eftir folowis, that is to say that the said Thome Tulloch and his ayris sal hafe the halff of all the landis of Ness, inland and owtland, with howss and howss fredome, and Wilyam of Ness and his brother Thomas of Nessis barnis sal haffe that tother halff and the forst chose of the heyd chymyss,<sup>4</sup> and Thome Tulloch to chyse therefftir, and, thinkis hee nocht spedfull, hee sall byg apon his awne halff quhare it plesis hym best;<sup>5</sup> and gyff it swa by<sup>6</sup> that the said Thome Tulloch manuris nocht his halff of Ness, the said Wilzame and his brother barnis sall haff the said Thomas halff in tak before ony other man, payand thairfor as otheris will gyff; and sylyk the said Wilzame and his brother barnis manuris nocht thar half, the said Thomas Tulloch sall haff the said

<sup>1</sup> Agent: *i.e.* William appeared on his own behalf and also as acting for his brother's children.

<sup>2</sup> A copy here supplies 'Mareon Towris.'

<sup>3</sup> In *Exchequer Rolls* for 1484 and following years Peter Hakkat and Andrew Kympty are found acting as factors in Orkney. In 1498 Gilbert Kempe appears in the same capacity. This is the only mention of Thomas Hakkat.

<sup>4</sup> Principal messuage.

<sup>5</sup> *i.e.* if he did not think it expedient to choose an existing house, he might build where he pleased on his share of the property.

<sup>6</sup> If it so be.

halff in tak befor ony otheris, hee payand thairfor as otheris will gyff; and all other evidence, litteres, instrumentis, and charteris quhatsumevir thay be to be na awale contrar this appuntament in thyme to cum; and as for the thenne penny and the ferd giffin till Helene Ness, Thome Tulloch mothir, be Andro Ness hir fathir, the said Helene Ness gaff the said gyfft to Schir Jhone Stewart, the quhilk gyfft Schir Jhone sall bruk quhil the thyme the forsaidis Thom<sup>1</sup> and Wilzam, or his brother barnis, will lose owt the handis of the said Schir Jhone, ilkane for the halff, gyff lawe will; and at all thir puntis be keptit lelely and trowly, but fraud or gile, the saidis partis ar sworne as said is; and in mare sikkernes the forsaidis nobil, discret, and worthschupfull men, Schir Wilzame Sinclare, Jhone Cragy, Maister Hendre, archdene, and Gilbert Kempti, hass howng thare awne selis to this present letters, and the saidis Schir David Lochmill, parson, Wilzam Flett, Jhon Yrwyn, Thomas Hakkat, Jhon Hawero, Jhon Nory, Gilbert Mason, Bernard Campstay, Olawe Luty, and Hendre Fowbuster, for cause thay had na selis of thare awne present, thay haffe ane as all and all as ane procurit the sele of ane honorabill man Frederik Newfare, notare public, to be howng for thame all to this letters, gyffand it the strentht and forse of thare awne; day and place abowin writin, befor their witness, Schir Thomas Chamer, parson of Hoy; Schir Nicol Hawero, parson of Orphare; Schir Hendre Wischart, chaplane; Robert Yorgstone, yownger; Andro Bell; and Nicol Gryff, with otheris diverss.

[Four tags and cut for another, but only two seals now remain.

There are two paper copies of the above, one made by Mr. William Peirsoune, notary, and the other by John Williamson, notary.]

NOTE—This division will be best understood by a reference to the Ness and Tulloch pedigree. Points about it are these: 1. The estate had been held *pro indiviso* by the heirs of Peter of Ness ever since his death in or before

<sup>1</sup> Thom Tulloch.

1447 (No. LXXXVII.). 2. This can be the only explanation of the fact that heirs not descended from Andrew had redemption rights in the tent and ferd penny given by him to his daughter. Evidently Peter had given the tent and ferd of the whole estate to Andrew: it had then been given away by Andrew's daughter, and the alienation was treated as though it had been made by Peter himself, the heirs of his two sons having equal rights of redeeming it. 3. This deed and No. XLII. show conclusively that the right which male heirs had of buying out female, only held good if they were brothers and sisters. Male cousins had no rights over the lands of female cousins.

## XXXVII

DECREE OF THE LAWMAN OF ORKNEY AND ROITHMEN,<sup>1</sup>  
regarding the boundaries of Sabay and rights of its  
owners.

Original in Record Room, Kirkwall. Printed: from an imperfect transcript, *The Scottish Journal of Topography*, Oct. 1848, and *O. L. Records*, No. 88. The original has since been found and transcribed afresh. Several words now missing (owing to fraying at the edge) have been supplied from the former transcript.

*April 27th, 1509.*

*Sabay and Toab.*

Jesus

One the sewyne and xx day of Apryll in the yeir of God ane thows[and] v<sup>c</sup>ix yeris, ane ogane and a dome dempt at Saba and Toop befor ane nobil[l] and potentt man Schir Wilyeam Synclair of Wairseytter, knyght, be me Jhone of Cra[ge], lawman of Orknay, the wirdeest and best of the land gaderytt, landytt men and roythmen,<sup>2</sup> that ar to say, Jhone of Randeyll, Alexander Synclair of Stromness, Andr[o] Hacro, Manys Cromede, eldeyr, Periss Lowthitt, Dauyd Lowthytt, Manys Cromede, yownger, Jhone Synclair of Air, Olay Lowthit, Jhone of Yensta, Wilyeam of Hed[eill], Cobeyne of Grynbuster, Thome Synclair of Tenste, Rechertt of Ierland, Thom[as] Edamesone, Jhone Nore, Andro Reyd, Jhone Gereok of Home, Robartt Yorkstane, Jhone Fleytt of Hare, Thomass

<sup>1</sup> *Raðmenn* = council-men. See Introduction.

<sup>2</sup> There is now no sign of 'and.' The deed, however, is torn at the edge and the space suggests that there must have been a word between 'landytt men' and 'royth men: 'and' was read by the previous transcriber.

Halle, witht wder dyweris ; betuix Dauyd Kantt, chamur-lane, in the kyngis owmuth,<sup>1</sup> Wilyeam Stewartt, brudyr jermane to ane rewerane fardyr in God, Adward, bysschop of Orknay, in the said bysschopis owmuth, Alexander Fyrsale and the leyff of the neboris of Toop, one the ane part ; and Jhone Irwyn of Sabe, in his awin owmuth, one the wdyr part, anentt mark-stenys, leyll meyrcheis and methis betuix Saba and Toop, as the said peirteis alegenss, ewede[nts], and prewis, hard, sein, and ryplie wndir-standyng be me the [sai]d lawman and peirsonys forsaid, fyndis be the lawbuik the dyk-steith that strekis fre the wyyr-dame<sup>2</sup> of Saba to the mark-stane att standis att the sowith-wast end of Meissegere, waiss, is, and sall be meyrche one the ane part betuyx Saba and Toop, and fre the said dyk and stane to the lawest of the se and sand, as fre the wast pontt of Gruttquhy beris lyne sowith-wast to wast one the bankis of the wast schoir, that to meyrche one the vder part ; and be resone that the ix penne land of Saba lyis in ane inskeyft<sup>3</sup> withtin hyttself<sup>4</sup> in lentt and breyd, that the neboris of Toop and all wdyr peirsonis quhatt sumewir sall keyp ther guydys of the grownd of Saba, beyth summyr and winthir. And also we find the ix penneland of Saba is sa fre gyffin and cheyngytt be the last eryll of Orkna be his chartturis and his seillis meyd to the said Jhone Irwyngis fadyr and mother for ther landiss of Paple, Hurttoso, and Okillseytter, that nether persone nor p[er]sonis sall not intromeytt nor tayk awa nodyr erd nor stane, gerss [no]r waitter, nodyr wrack,<sup>5</sup> wattill, wai[r], nother wring<sup>6</sup> nor ne wder manyr of thing of the grownd of Saba, wnder the pane of ane mark Orkneis

<sup>1</sup> O. N. *umboð*, commission.—A. W. J.

<sup>2</sup> wyyr = uvir, *i. e.* over.—A. W. J.

<sup>3</sup> In No. XLI. the corresponding word relating to the same estate in 1519 is *amisskopft*. This is probably O. N. *hafnskipti*, which is explained in *N. G. L.* as a *pro indiviso* estate, only temporarily divided among the heirs, and changed about or redivided from time to time. In Orkney and Shetland hafn > ham and pt > ft.—A. W. J.

<sup>4</sup> O. N. *hitt*.—A. W. J.

<sup>5</sup> O. N. *vreck*, jetsam.—A. W. J.

<sup>6</sup> Orkney *uer*, mud, clay ; O. N. *aurr*, wet clay, loam : with suffixed article *aur-inn* = wring.—A. W. J.

to be paytt to the aneris of Saba for ilk leyd or buirdyng takyne awa without gwyd will and lesense of the said Jhone Irwyng, his eris and eftercumeris, bot that he and his eris awth and sowl browk fre the lawest of the se and up to the hiest and fairest of the said grownd and fredum of Saba, witht all that is beytter to haue nor to wantt, allssweyll nocht neymitt as nemytt, exseyp aleneyrlie thre meillss cost, ane lysspone and ane halff lysspone buytter in skaytt, as the said erllis rentell and charttur chawyne befoir ws, beris. In wytness of the quhilk I, the said lawman, att the instance of the said roythmen, for me and thame heis affyxit my seyll<sup>1</sup> to this presentt dome, day, yeir, and place abone wrytin.

XXXVIIA<sup>2</sup>

TESTIMONIAL BY JOHN CRAGY, Lawman of Orkney, confirming the decree of a local parish court held in Our Lady parish, South Ronaldsay to divide the property of David Halero from the lands of the Trinity Stuk<sup>3</sup> (both lying in Thurrigair).

Original in possession of Mr. W. P. Drever, Kirkwall.

29th May 1509.

Kirkwall.

Till all and sindry quham it efferis to quhais knalege this present letters sall cum to, Johne of Cragy, lawman of Orknay, sendis gretting in God everlesting. Sence neidful and meritable thing is that to beir lele wittnessing to the suthfastness, and namely quhar the ocultation of verite may gener harme or skaith to ane inocent man: Thynce it is that I, the forsaid lawman, to your universite makis knawin, that on the xvij day of October in the yere of God j<sup>m</sup> v<sup>c</sup> and awcht yeris, quhare thare comperit at Thordorkore in Oure Lady parischin in Ronaldsay ane venerable clerk Master Henry Phancuth, Erchedene of

<sup>1</sup> The seal, still attached, is that of Sir William Sinclair of Warsetter.

<sup>2</sup> This deed was discovered after going to press.

<sup>3</sup> From old Norse *stuka*, a sleeve, applies to parts of a church built out from main building, such as a chapel.

Zetland and persone of the Trinite stuk in the said Ill of Ronaldsay, on the ta part, and David Haueru and Schir Nycoll Haueru his sone, persone of Orphare, in his said fadaris umbuth, on the tother part, as twiching the debaite of fyff penny landis inskyft<sup>1</sup> and fredome pertening to the said Trinite stuk, and ane penny land pertenit to the said David and his aris.<sup>2</sup> The quhilck day the said parteis was content, chesset, and to byd at the decerning and devyding of inskyftis, touneland, and owtchistis pertening to the fyff d. land of the Trinite stuk and ane d. land pertening to the said David and his aris ; quhilkis personis ar to say, Henry Gariocht, Andro Leslye, Mangus Jonsone, Adam Flawis, Cobane Robsone, Rob Donaldsone, Edward Nycolsone, Johne Wyndwek, Sandy Brystane,<sup>3</sup> Mangus Skartht,<sup>4</sup> Malcom Sandysone, and Johne Smythe ; the quhilkis persons bure,<sup>5</sup> swere, and schew ilk penny land, in skyft, and towmal<sup>6</sup> be it self of the fyff d. land pertening to the said Trinite stuk, and that the thowmalis and inskyft of the penny land pertening to the said David and his airis beginnys and extendis at the twa grene hellokkis suthvest fra the said David house, extendand ryecht west to the heicht of the Greit How, and fra thyne richt northt to the burne of Ranskow, the quhilck fredome Richart Sinclare, bailze to the King for that tyme, and Andro Haueru, bailze to my lord the Bischop for that tyme, and be the seicht, understanding, and uter determination

<sup>1</sup> See footnote to No. xxxvii. In this case *inskyft* is clearly not from *amis-skeft*. It seems to mean (in this deed) a division *within* the township.

<sup>2</sup> Thurdrakir contained sixpenny land, one penny uthale, and fivepenny 'that the bischop takis.'—Rental 1502.

<sup>3</sup> Berstane.

<sup>4</sup> A Firth name ; the only instance of its occurrence in South Ronaldsay. All the others are local names.

<sup>5</sup> O. N. *bera*, to give a verdict.

<sup>6</sup> Thomas defines this as the grass plot round a house which never went into runrig, and repudiates the definition in the 1595 Rental of a tumale as 'ane peece land whiche wes quoyland, bot now enclosed within the dykis.' The only authority he quotes is the late Mr. W. G. T. Watt, and he does not state why nineteenth-century evidence should be preferable to sixteenth. The *Uthel Book* contains numerous references to tumales which are much more consistent with the old definition.

of the said persons abouinwritting, and the said David and his aris to bruk his towmalis, as weil with outpastor as with inpastour, extendand to the hille, within the dyk and without the dyk ; and as twiching the debait of ane ryg of out braik callit the ryg of the gait, the said persons and lawman abouinwriting has ordanit the halff of the said ryg to the Trinite stuk and the tother half to the said David and his airis, the ryg beand als lang as ony ryg nixt thare besid. In witness of the quhilk thing I the said lawman has hungin my proper sele berand the strentht of my armys to this present testemoniale at Kyrkwaw the xxix day off May, befor thir witness, Schir Alexander Young and Schir Alexander Yorgston, chaplanis, Nycol Cragy, and Alexander Work, with otheris diverse, the yere of God ane thousand fyff hundretht and nyne yeris.

[Seal still attached.]

NOTE.—The decree herein endorsed by the Lawman is by far the earliest doom extant of an inferior local court of twelve men. Similar courts for the adjustment on the spot of 'debates' connected with the land are ordained to be held in Nos. XXXII. and XXXIII. They were presided over by the parish baillies, and are frequently met as 'baillie courts' later in the century.

### XXXVIII

DOOM OF THE LAWMAN OF SHETLAND following on a previous doom of the Lawthing in Orkney, regarding the ownership of Hurre in St. Andrews, Orkney.

From the original in the Record Room, Sheriff Clerk's Office, Kirkwall.

Printed : duplicate in *Miscellany of the Spalding Club*, vol. v. p. 394 ;  
*O. L. Records*, No. 36 p. 60. Remains of one seal.

*July 23rd, 1510.*

*Tingwall, Shetland.*

Be it kend til al men be this present lettres, me, Nychol Hawe, lawman of Schetland, that thair comperit befor me and the vordeast <sup>1</sup> in Orkna, one Fursday <sup>2</sup> in the lawting, in Kyrvall, Schir [Wi]lzem Sinclar of Versater, knycht, sitant for iustice, Rychert Sinclar in the umbuss of Jhone

<sup>1</sup> Worthiest.

<sup>2</sup> Thursday.

Adem[sone], one the tayne part, and Vil[ze]m Flet in his awyne vmbuss [one] the tother part, as anent the [qui] callit Hurre liand in Sant Andress parisone, the quhilk land [Schir] Dauit Sinclar, quhom God [as]olze, had conquest fra the said [Jhone and gewyn hym] therfor four [merk of land lyand in Myn in Burray in Schetland, and this I] and xiiij [of the wor]deast has dempt that the said Vilzem and Jhone sal com[peir] batht in Zetland or the feist of [Allhall]omess nex efter the dait [of] this present vrit, and gif the said Vilzem cane mak the said [land]is of Myn fre to the said Jhone, lyik ass the conditione vess bet[ui]x schir Dauit and the said Jhone, sua sal the said Vilzem bruik the [p]laice of Hurre; and gif he ap[eris] nocht and freis nocht the land [of] Myn to the said Jhone, sua zall the said Jhone and his bruther so[ne] lauful gottine, enter to the said [land]is of Hurre perpetual for eve[r m]air, vitht al profetis and vgang <sup>1</sup> sene Schir Dauit deit. And because the [said] Vilzem apperit nocht to varand the said landis of Myn, as ves [d]empt, I, the said lawman, and Thorald Hendirsonne of Burg, heidfold of Schetland for the tyme, Jhone of Quendal, lawrychtman of Dunrossnes, Jhone of Strom, Magnus Bolt, underfold in Vawiss, Brunzam Andersone, lawrychtman of the sammyn, vytht vtheris gud vordy men, giffis for dome and decretis the said Jhone and hys bruther sone sal gang peciabile to the landis of Hurre vithtout ony impediment for euermar. In vitnes of the quhilk thing, I, the said lawman and forsaid personis hes set to our selis to this present vrit at Tinguell, the xxiiij day off Julij, the zeir of God ane m.vc. and x zeris.

Productum secundo Mercij in iudicio anno, etc., lxxviii.  
J[?] BRUCE.

NOTE.—See note at end of No. XL. for an explanation of this deed.

<sup>1</sup> Probably from O. N. *afgamgr*, (1) surplus, profit; (2) settlement of account.  
—A. W. J.

## XXXIX

DECREE OF THE ORKNEY LAWTHING regarding the sale of  
land in Tob (or Tollop), Orkney.

From the original on parchment in the possession of the Venerable Archdeacon Craven, D.D., Kirkwall. Facsimile in *National MSS. of Scotland*, vol. iii. No. 11. Cf protocol in Mackenzie's *Grievances*, App. p. iv. Printed: *O. L. Records*, No. 89.

June 1514.

Kirkwall.

✠ Jhesus Maria ✠

At Kirkwall on Tyisday in the Lawthing, in the moneth of Junii, the yere of God ane thousaund five hundreth and fourtene yeris, a dome dempt be me Nicoll Haw, lawman of Scheatlaunde and Orkynnay for the tyme, and ane certane of famous, discret, and unsuspek persouns, of roith men and roith mennis sounis, chosin, the greit aitht suorn, and admittit to decide in ane mater of heretage; thare names folowis, that ar to say, Johne Flett of Herry, Henry Cragy, Thomas Cragy, Nicoll Cragy, brethir germane till Johne of Cragy, umquhile lawman of Orkynnay, Peris Loutfit, Henry Fowbuster, Andro Linclet,<sup>1</sup> William Clouchstath,<sup>2</sup> Alexandir Housgarth, Mawnis Cawra, Mawnis Atkyn, Andro Scarth, and Johne of Bersto, betuix Thomas Adamson in the umbuth of ane nobill and potent man, Schir William Sincler of Warsettir, knycht, and in the umbuth of Nicoll Fresell, soune and lauchtfull air to David Fresell, on the ta part, and Alexander Fresell, the said Nicollis fadir bruthir, in his awyn umbuth, on the tothir part; quhar the said Thomas Adamsoun, in the name and behalf of the said Schir William, producit lauchfull witnes of full bying and selling of all and hail the said

<sup>1</sup> Linklater. The final *er* is simply the Norse nominative form.

<sup>2</sup> Clou (Norse *kla*, a claw) has here been Scotticised as clouch (Scots *cleuck*, *clouk*, etc., a claw). That clou is the earlier form is proved by the old Rentals which, under all their eccentricities of spelling, preserved to a remarkable degree the original forms of the Orkney place names. The same change occurred in various other names: e.g. Withwick into Woodwick.

Nicolis fadir heretage that he arit or mycht air be ony maner of way, lauchfully sauld fra him and all his airis to the said Schir William and all his airis, and gart reid the writtingis maid theron as it beris, and proponit, alegiit, and schew resonabill causis as the law levis, that is to say, at the said Nicoll diverse sindry tymes com to the said Alexandir and offerit him the bying of all and haile his richtis of his faderis heretage before ony utheris, and he rafusit it all tymes; and thare eftir he com before the best and worthiast in the cuntre eftir diverse and sindry tymes in courtis and hed stennis<sup>1</sup> and maid knawin that he was fameist and peresaund of hungir, in faute of fude, and nakit in faut of clething, and tuk wittnes that sen the said Alexandir had refusit the bying of his rychtis and heretage that it was fors till him to sell to ony that wald by, quhilkis the said Schir William thereftir bocht, as his chartir maid theron mair fully propertis; and the said Alexander schew for his evidentis that he had gevyn the said Nicolis fadir, his brudir, four markis usuale mone of Scotlaund in part of pament of his part of heretage. All the saidis partiis allegeans and evidentis be us avisitly and riplly considerit, hard, seyn, and undirstandin, havand God before ey, has deliverit, decretit, and be the cheptare of the lawbuke redd theron for finale dome gevin, that the said Schir Williamis bying and selling fra the said Nicoll is lauchfull, and therefore he sall bruk, joyise and possess perpetually to him and all his ayris the saidis Nicolis fadir part of all and sindry his rychtis, laundis, heretage, malingis, stedingis, togidder with the principale chemeis place in Tollop, as eldast bruthir tharto; and the said Alexanderis bying and selling fund of nane availe, because it is weill knawin and fund that he swekit and defraudit his bruthir forsaid, and did siclik to the said Nicoll, his bruthir soun; and the said Schir William to louse a sistyr part of the foirsaid laundis and heretage, togidder with the tane half of the tend penne and the ferd, as the eldast bruthir,<sup>2</sup> in

<sup>1</sup> *Stefna* or *stemna*, an appointed meeting; used in Orkney as practically synonymous with law court.

<sup>2</sup> See note at end of deed.

the forsaid heretage, and the fornemmit four merkis usuale money gevin be the said Alexandir to the said David with all utheris that he may preif gevin to the said Nicoll before the said Schir Williamis bying and selling of the said heretage salbe allowit in the laundmales and ogude<sup>1</sup> safar as it extendis to; and sielik all that the said Alexander may preif that his forsaid bruther, David Fresell, tuk up of the pament of the tenement in Sowyr mair na he gat salbe allowit in the pament of the said laundmalis and ogud sa far as it extendis to, and all that wauntis be rycht compt and reknyng the said Alexandir sall mak payment to the said Schir William, togidder with the laundmalis of the eldast bruthir part fra the day and dait of the said Schir Williams bying and selling quhill the makin of this present writt. And the said Schir William and Alexandir to be at the arff house<sup>2</sup> and chemois betuix this and Alhalow evin next eftir the dait of this present writt to mak a lauchfull schone<sup>3</sup> and ayrskiff<sup>4</sup> as the law levis. In witness of the quhilk thing I, the forsaid lawman, has hungin my seil to this present dome, and for the mair verificatioun and sikerness we, the fornemmit domismen, has procurit with grete instans the selis of venerabill and discret men, that ar to say, Fredrik Newphar, notar public, and Gilbert Kenidy, burges of Kirkwaw, for us to be hungin to this present dome, before thir witness, Thomas Tullo of Ness, James Murra, William Flett, and Alexander Borthuik, with uther diverse, day, yer and place about writin, befor thir wittnes, Schir Umfre Clerk, officiale, Schir Mathow Farcar, and Schir William Boswell, with uther diverse. (*Loca sig.*)

NOTE.—The privilege granted to Sir William Sinclair of obtaining the chemys or mansion house of the estate, as holder of the eldest brother's share of the property, is absolutely in accordance with Norse law. The statement, however,

<sup>1</sup> O. N. *ögðsi*, profit.—A. W. J.

<sup>2</sup> O. N. *arfr*, inheritance. 'Arfhouse and chemys' appears to indicate that this term was applied to the chief house of the estate where the division of the inheritance was made.—A. W. J. (This is confirmed by later references.—J. S. C.)

<sup>3</sup> *sjaund*, a period of seven. A division (usually temporary) of an odaller's inheritance had to take place seven days after his death.

<sup>4</sup> *arfskipti*, a division of inheritance.—A. W. J.

that 'as the eldest brother' he may 'louse' (redeem) a sister's share and half the tent and ferd penny is puzzling at first sight, since it ought not to have mattered whether he was the eldest or not; he could have done these things as youngest brother. The explanation must be that 'eldest' is mentioned merely incidentally in this instance.

## XL

DECREE OF THE LAWTHING OF ORKNEY regarding the inheritance of the quoy of Hurre (St. Andrews parish).

Original in Record Room, Kirkwall. Printed from an imperfect transcript, *Spalding Club Miscellany*, vol. v. The original has since been found. One or two words now illegible or missing have been supplied from the older transcript.

[June] 1516.

Kirkwall.

Jhesus Mari[a]

One Weddinissday in the lawting in the yeyr of God ane tho[us]and [v c.] and xvi yeris, ane dwyme dempt at Kirkwall befor ane nobill and potent man Schir Wilzem Sinclere of Wersetter, knycht and justice of Orkna for the tyme, be ane serten of worthy personis, that ar to sey, James of Rendell, Mavniss of Crummatte, elder, Thomas Cragy, Andro Bell, Henry Fovbsiter, Adam Selater, David Loutit, Jhone Sincler of Air, Jhone Nory, Robert Yorstone, Andro Lincler yonger, Andro Paplay, Peter Papla, Alexander Fryssal, Jhone, elder of Yensta, Olay Yensta, Jhone Acu[n]sone,<sup>1</sup> Thome of Muyr, Wilzem of Fothergem, and Pare<sup>2</sup> Brandesone, witht wther diuerse, betuix Richert Sincler in the wmbuth of Jhone Schalte, one the ta part, and Wilzem Flet of Howbister in his awin wmbuth, one the twtther part, as tuching the airschip of the quj of Hwrrre;

<sup>1</sup> Or Acinsone.

<sup>2</sup> Wrongly read 'Patre' in the older transcript, the stroke of an *s* above being mistaken for a *t*. Pare is most probably a diminutive of Peris or Piers; like Mane, Jame, Bere, Riche, Ade, Dave, etc., for Magnus, James, Barne, Richard, Adam, David, etc. in other deeds. If so, Pare Brandeson is probably Piers Louttit who appears in the decrees of 1509 and 1514. His property was Houth in Orphir, and in 1492 Barnet of Houth was party to a deed at Kirkwall.—Halcro inventory at Balfour Castle. The name Piers was peculiar to the Louttit family. This alternative of the true surname and a patronymic was very common in Orkney down to a much later period.

thir guid men fyndis and gyffis for dwyme at sen it is prowyn that Schir Daudid Sincler, quhome God asolze, left and commandit at his deand day at the said Jhone Schalte suld be restorit to his awne quj of Hurre, and sen it is prowyn at my Lord Sincler, quhome God asolze, at deit in Flodown, passit to Zetland in the instant yeyr of the said Schir Daudidis dissess, the sed lord tuik fra the said Jhone Schalte ane quj in Zetland at schir Daudid had gein to him for his quj of Hwrre, quhilk wes the kingis land, and the said lord commandit the said Jhone Schalte to pas to Orkna to his avne quj of Hwrre, and yit he is stopit be the said Wilzem Flet. And now the said Jhone hes schawin the kingis grace letteris and the said lordis to haif iustice and rycht of his awne, we the said dwymiss men haiffand God befor e, has gyffyn for dwyme at the iustice withtin v dayis sall derak his deppittis, and sall possess the said Jhone Schalte in the said quj of Hwrre, and [thair]effer to bruk the sammyn as maist rychtwuss air thairto ; and for the byrown mailis <sup>1</sup> at the partyis sal be as dempt men one Alhallow ewin and tak as law vill. And for the mayr sykkyrnes the said domissmen hes proewrit the seylle of Thomas Tulloch of Nes for tham to be afixit to this present dwyme, day, yeyr, and place abone writtyn.

Productum secundo Marcij in iudicio anno, etc., lxxvij<sup>o</sup>.  
J[?] BRUCE.

[*On the back :*] The dome of the best landit men and royht men in Orkna at that tyme. The thred dowme of Horre.

NOTE.—In the Testament of Sir David Sinclair of Sumburgh, July 10th, 1506 (*O. L. Records*, No. 87), Sir David left all his lands in Orkney (with specific exceptions) to William Flett and his brother Criste. He also made this provision, 'Item, the pair folk that come out of Orknay wyth me, I leife thame thar awne land, or ellis ass gude.' The above deed and No. xxxviii. illustrate the consequences of these contradictory legacies. The 'pair folk' found William Flett in possession of their 'awne land.' In this case the difficulty was rendered acute by the fact that the land given to John Adamson or Schalte<sup>2</sup> by Sir David in lieu of Hurre turned out to be king's land, and he was removed by Henry, Lord Sinclair. By the decree of 1510 he would seem to have been reinstated in Hurre at that time, but something evidently intervened and postponed the settlement till 1516.

<sup>1</sup> Arrears of rent.

<sup>2</sup> The Shetlander.

## XLI

DECREE OF THE JUSTICE, LAWMAN, AND ROITHMEN regarding the boundaries of Sabay, and the privileges of its owners.

Original in Gen. Reg. House. Printed: *O. L. Records*, No. 37.

October 24th, 1519.

*Saba [Orkney]*.

On the xxiiij of October j<sup>m</sup> v<sup>c</sup> and nynteine yeiris, ane ogang and doome dempt be me Schir William Sinclair of Walsetter, knicht, justice for the tyme, [and] with me Nicoll Haw, lawman of Zetland and Orkney for the present, and with ws xxiiij of the wairdrest and best of landit men, roathmen; we the said judge and lawman with the xxiiij with us compeirit at the auld mairehstaine of Saba, that standis that standis [*sic*] in the south wast nvk of Messegger;<sup>1</sup> thair compeirit befor ws ane worschipfull man Johne Irwing of Sabay, in his awin vmbouscht on the ane pairt; and Alexander Frissell in his awin ounbotht, and in the laif<sup>2</sup> of the nychtbouris of Toepis ounbotht, on the other pairt, quha was all present with ws, the said Alexander Frissell; the said Johnne Irwyne offerit to proof that he sustinet great wrang of the nychtbouris of Toep in pasturing of thair guidis<sup>3</sup> on his ground, bath winter and symmer, without his leiff, and eit baith his cornes, meills, and girse, quhilk was provin befor ws, and sicklyk cam to his ground and bankis of Quhago and tuik away his wair without leive or payment, as thay war wont to pay for to him yeirlie. Alexander Frissell and the hail nichtbouris of Toep being requyirit be wse, the judge and lawman, gif thay clamet only richt ather to the ground of Quhago or to the wair, quha all in ane voyce befor ws said thay nather had nor clameis ony rycht, nather to the ground nor wair, bot that thay haid with leive and payment, as wtheris did of befor. The said

<sup>1</sup> Also called Messegate, *i.e.* Mass-gate, Church-road.—A. W. J.

<sup>2</sup> Scots, lafe, the remainder.—A. W. J.

<sup>3</sup> Gudes, goods, *i.e.* live stock.—A. W. J.

Alexander Frissell and the rest of the nichtbouris of Toep requyirit Johnne Irwing, befoir ws, gif he was nocht thankfullie payit for his wair leif of thame of all yeris bygaine to that present yeir, quho confest the same, bot had nocht . . . with him for the laiff of thaise guidis. And als the said Johnne Irwing pruducit to pruiff the auld mairchis betuixt Sabbay and Thoep and Tankernes, and allswa to . . . and to affirme his evidentis and decreitis past of befoir sax famous and wordie discret men off great aige, to wit Johne Skae, David Fubister, Iwer . . . [*sic*] of Fubister, Gawane Herre, Johnne Smyth, Ola Yitster,<sup>1</sup> hes testificatioun on thair saull and conscience that thay knew perfytlie the mairchis betuixt Sabay and Thoep and Tankernes, for quhen thay war xxj yeir auld thay red behind thair fatheris bak on a horse quhen thay red all the mairchis of the parochin, that the skatt dyk of Toep that passis fra the overmylne dame of Sabay pasand quhill it cum fornent the auld mairch staine of Sabay that standis in the south wast nuik of Messeger, is the just mairch betuixt Sabay and Thoep on that part, and fra the said dyk and staine to the schoir as quhar the wast point of Gruitquhoy becomes southwest to Wasteene<sup>2</sup> on the wast bankis, and that to mairch on the wther pairt betuixt Saba, Thoep and Tankernes. And be ressoun that the nyne penny land of Saba and fredome thairof lysis within ane amis skopft<sup>3</sup> within it selff, and nather the nychtbouris of Thoep nor na wtheris lysis in curig nor rendell,<sup>4</sup> girse pairk nor wair pairt, nor ony other pairting of fredomes within ony parsoneis bot onlie within thame seluis, thairfor we the said lawman with the advyise of the judge and xxiiij persoune, and be the suyth of the law

<sup>1</sup> It is difficult to read this name otherwise, but it is surely intended for Ola Yinsta, who is found in the decree of 1516, and who was a next-door neighbour. No such place or surname as Yitster is known.

<sup>2</sup> This has been identified by Mr. Magnus Spence as 'Wast Stane,' a standing-stone alongside the road from the United Free Manse to the shore. It still forms the boundary between Tankerness and Toab, but the lands of Sabay do not now extend so far.—A. W. J.

<sup>3</sup> See footnote to No. XXXVII.

<sup>4</sup> Runrig or rendell, lands of different owners or tenants, intermixed.—A. W. J.

buik, findis that the nichtbouris of Thoep and all wtheris sall keip thair guidis af the ground of Sabay, baith winter and somer, wnder the paine of making of the haill guidis donafieing, efter thay be thryise tymes biddin at kirk or court. And becaus it is notourlie knawin the ground and land of Quhaigo justlie appertenis to the airis of Saba, and thairfor doome giwis that the nyctbouris of Thoep nor na wtheris sall tak nather aird nor stane nor wair nor ony wther thing af the ground of Saba, without leive askit and giwin, and gif thay do nocht, to pay a mark for everie laid or loading vnaskit leive or grantit thairto. And we the lawman and xxiiij with me hes in absens of our seillis hes requyrit the said judg to append his seill for him and ws to this our doome, day, yeir and place forsaid, etc.

## XLII

DECREE OF A COURT OF 'GUDMEN,' held at Sabay, Orkney, regarding the respective rights in Sabay of William Flett of Howbuster and the heirs of John Irving of Sabay.

From a duplicate in the Record Room, Kirkwall.

*July 6th (1522).*

*Sabay.*

Ane dome dempt at Sabay the vj day of Julij, the yeir of God im. vc. and xvij yeris,<sup>1</sup> be ane certane of worthy personis, that ar till say, James of Randell, Johne of Skea, Johne Synclar of Air, Mawnis of Cromatte, eldar, Mawnis of Cromatte, younger, Adame Selattar, young Andro Lynclater, Andro Papla, Johne of Burneiss,<sup>2</sup> Williame of Clustay, Johne Mansone, Mawnis Etkin, Nycholl of

<sup>1</sup> The date 1517 is certainly wrong, because John Irving of Saba was still alive in October 1519 (see No. XLII.). It cannot have been 1527, since both William Flett of Hobbister (see No. CCXIII.) and Sir William Sinclair of Warsetter were dead by then; yet it must have been in the twenties. 1522 is the only date that would not imply two errors on the part of Paul Fleger the copyist; xxii being wrongly read or copied as xvii.

<sup>2</sup> *i. e.* John Sclater, one of the portioners of Burness. Thomas Burness was another.

Fyrtht, Alexander Ewesone,<sup>1</sup> Thome of Burness, Alexander Potyngair, Mawnis of Clustay, Thome Potyngair, yong Johne of Yenstay, Williame of Burra, Williame Thome Petersone,<sup>2</sup> witht wther syndrie diuerss, betuix Rechart Synclair in the vmbutht of Alexander Irven, Peter Irven, and Mergret Irven, on the ta part; and Williame Fleit of Howbuster in his awin vmbutht, of the tothir part; as twyching the partyng of houssis in Sabay; we thir gudmen fyndis and gyffis for dome that the said Williame is fund the eldest air and to haue the first choiss of the howssis; that is till say, gyf the said Williame chesis the Nether Houss, the said Williame till pay till the airis of wmquhill Johne Irruwyne, quhame God assolye, xij poundis of vsuall money of Scotland; and gyf the said William chesis the Over Houss, the foirsaid airis till pay to the said Williame thre poundis of vsuall money of Scotland; and gyf he chesis the Nedder Houss, the airis till byde still in till thame ay and quhill the said Williame outred thame the soume of twel poundis, and thame till remuf the houss than; and this soume til be put (*sic*) in gold, siluir, oxin and kye, syk as may louss landis priss; and quhilk of thir twa parteis that thinkis this dome hevy, tyll seik tyll ane lawman withtin yeir and day, and the party that repentis till warne his partie withtin moneth and day. And for the mair sikkirnes, we the said personis abone writtin had nane sele of [our] one present, we haue procurit the seill of ane honorable man Schir Williame Sinclair of Warsetter, knight, for ws till be affixit to this present dome, day, yeir, and place abone writtin.

Hec est vera copia principalis decreti	P F
de re suprascripta fideliter de verbo in	[mark]
verbum copiata et cum originali veraciter	N. P.
collationata in omnibus cum suo originali conformis preter	

<sup>1</sup> In the 1492 Rental Alexander Ewnyson held a large tack of Kingsland in the island of Graemsay.

<sup>2</sup> Probably William of Ness (No. xxxvi., and *Ness Pedigree*), who was a land-owner in the near neighbourhood, and whose father was Thomas and grandfather Peter. Ness was a surname which vanished completely, no doubt being replaced by a patronymic. Many similar cases are found. Petersons and Petries thenceforward appear in the same locality as the lost family of Ness.

sigillum prefati Willielmi Sinclair [coniunctis ?] quod affixum principali mihi Paulo Flegerio, notario publico hoc meo testante chyrographo lucide apparebat.

Ita est Paulus Flegerius notarius publicicus [*sic*] teste manu propria assero.

NOTE.—From this decree it appears that William Flett of Hobbister, in right either of his wife or mother (it is not quite certain which) was declared senior heir to the Sabay estate. This could only have happened if the Irving heiress, from whom he derived this right, had no brothers alive (or who left issue), and also if her father was an elder brother of the deceased John Irving of Saba (see *Irving Pedigree*). Part of Sabay remained in possession of the Fletts for long afterwards; as late as 13th November 1624, Magnus Flett of Gruthay sold half of Sabay heired from his grandfather (son of William of Hobbister, see *Flett Pedigree*) to William Sinclair.

### XLIII

DECREE OF THE KING'S COURT in Bergen confirming a decree of a court held at Yell in Shetland, by which Gervald Williamsson acquired the lands to which he had succeeded after his father, and of which Magnus Olson had taken possession without leave of the rightful heirs.

Original in Gen. Reg. House. Printed: *O. L. Records*, No. 41.

July 6th, 1538.

Bergen.

#### *Translation*

We, the following, Tord Roed, esquire,<sup>1</sup> commander of Bergenhus, Anders Hansson, burgomaster, Gottorm Nielsson, lawman of Gulathing, Jon Ellingson, Christian Torbernsson, esquires, Jon Thommesson, Andres Sygenn, Olaf Personn, Jon Thomsson, Söffren, clothdresser, Rasmus, smith, Thomas Nielson and Olaf Ormsson, counsellors in Bergen, make known to all by this our open letter that in the year after God's birth, 1538, on the Saturday next after the day of the Annunciation, there came before us and the common people who that day visited the Council room of Bergen, the honourable and able man Geruolld Willumsson, with an open vellum letter, with seals, with

<sup>1</sup> *Aff Waben*, entitled to bear arms.

no cuttings, erasures or falsifications whatever, which Niels Thomasson of Eide, lawman of Shetland, has deemed right and appended seal to, and the same letter we have seen and heard at Gierde in the said Shetland, being word for word as hereafter follows :—

Before all and sundry men who see or hear read this letter, we the following, Niels Thomasson, lawman of Shetland, Willom Jonsson, lawrightman in Unst, Rolf Nesbit, lawrightman in Yell, all alive, swore a full oath on the holy book, and of the people:<sup>1</sup>—Willum Thomasson, Magnus Sinclair, Olaf Persson in Boeness, Olaf Nedersson, Sander Spens, Gottorm Einarsson, Jon of Holland, Benedict Persson, Einar Benedictsson, and Swend Gottormsson, all dwelling and residing in the same country, make known by this our open letter that in the year 1538 on the Monday next after Peter's and Paul's day, Midsummer-day, there came before us and other good-men in the court in Gierd in Rødefjord parish in Yell, present and sitting an honourable, highborn man, Willum Melwin, esquire, on behalf of the highborn prince, His Royal Majesty, the dearest and most gracious master of us all, King James of Scotland,—in the absence of the honourable and highborn knights, Edward Sinclair and Willum Sinclair, fouds of the said Shetland,—on one side Willum Lyusson, foud and officer of Yell, sitting and acting for Margret Laurens' daughter, to whose soul God be eternally merciful,—and Magnus Olsson got [the land] after Willum Geffualdson, may God save their souls; but on the other side Gervald Willumsson, about his father's inheritance, lands, money and live stock which Magnus Olsson took possession of, without any leave from the right heirs, without their will and consent, and during his lifetime rendered no account of their land, landskyld [rent], ox rent, cow rent and all other profits. Then after questions, answers, reasonable sworn evidence, evidence from honest living men, oaths taken on the holy book, and the tenor of letters from honest reputable men who then came before us

<sup>1</sup> *i.e.* The Court consisted of the Lawman, two Lawrightmen, and ten others 'of the people'

in the court, with living voice and full, sworn evidence, among whom these discreet, reputable men were : Thomas Nielsson, Olaf Torstensson and Geffuoldt Ellingsson who served the said Willum Gerualdson at the time he died ; we said and by full and right judgment adjudged to the said Geruald Willumsson 21 mark burnt, in land, 12 Shetland shillings in every burnt mark, in Shetland weight, and by this our open letter on vellum we judge and have given a full and right serious judgment, according to the Gulathing law [that he] ought to and shall have and take back, enjoy, use and hold all the land that he is able to find in Shetland, wherever it is or may be, which the said Magnus Olafsson had and of which it was proved by Suend Guttormsson, Einar Benedictsson and Magnus Martensson in Gerde that the said Magnus Olafsson declared in illness and ill health that he prayed and begged God often and frequently that he might live so long that he could give back to the said Geruald Willumsson his money, rent, ox rent, cow rent, with all other emoluments and rights, for his great loss and damage which he has had for 20 years, of rent, ox rent, cow rent and horse rent. He shall therefore have, use and hold as a mortgage  $7\frac{1}{2}$  mark burnt, situate in the said Gerde in Yell until the nearest heirs of the said Magnus Olafsson themselves redeem this their land from the said Geruald Willumsson for as many mark burnt, as is written above, that is 21 mark burnt, every mark burnt at 12 Shetland shillings, no ure or penny to be got by loan or borrowing from any man but . . . If this same land is not redeemed by the said Magnus Olafsson's nearest heirs within 3 years, it shall belong to the said Geruald Willumsson, with ownership and odal, for ever, with lots and emoluments which to it appertain or have appertained, of old and new, within and without the garth, nothing excepted whatever it is or may be. For further witness, better confirmation and certitude that the above is thus [as described], written in Shetland in the year and on the day, shown above, with our seals appended.

Which letter we the abovenamed, in all its points, words and articles which it contains and exhibits, with full power

have confirmed and judged to be held unchallengeable for all time, for born and unborn, in every way. For further evidence and better proof that the above written is true we let our seals and signets be appended to this our open letter, written in the said Bergen, the year and day written above.

## XLIV

DECLARATION BEFORE THE SHERIFF regarding James Irving of Sabay's rights in his mill. (The parts in brackets are in Latin in original.) This is the first appearance of a Sheriff in Orkney, in place of the old Lawman.

Original in Record Room, Kirkwall. The lacuna is caused by part of the parchment being torn away.

*February 13th, 1542-43. The King's Castle, Kirkwall.*

[In the name of God, Amen. Be it known to all men by this present public instrument that on 13th February 1542, in the first indiction and ninth year of the pontificate of the most holy father in Christ by divine providence, Pope Paul the Third, there personally compeared in presence of me, the notary public, and witnesses underwritten, a venerable and circumspect man, James Yrrewing of Sabbaye, appearing judicially in presence of the venerable and circumspect man . . . Redpeth,<sup>1</sup> justiciar and sheriff of Orkney for the time, then sitting in judgment, and addressing sundry parishioners of the parish of St. Andrews and certain other persons who were present at the time, who made it their concern to grind their multures at his mill, and broke forth in these words following in the common tongue.] That heir commonis of Sainet Androis parochin or ony otheris, sa monye as vsit in tym bygane . . . that your vittelis to grynd at mi myll, I ask yow

<sup>1</sup> No doubt James Redpath, one of the factors to Oliver Sinclair, then Sheriff of Orkney (see No. XXVII.), and evidently his Sheriff-Depute. Edward Sinclair of Strome, the other factor, was certainly also Sheriff.

heir in jugement be the fayth in your bodiis, as ye vill ansuer one the Daye of Jugment, to expre(ss the ?) condetione and compromit ye maid to me for the gryndein of your corne. [To which all and sundry things, all and sundry the parishioners and other persons whomsoever there present in a loud voice replied in this fashion as follows in the common tongue.] That we grantt we gawe nane corne for the gryndein (of our ?) corne at your myle, bot aluterlye<sup>1</sup> quhilk vas our aune free corne in your multer, and for lauboris and expens, and oblessis vs heir presentlye in jugement to fre yow thairof now and in al tymmis to cum, and we confess and grantis that ye at al tymmis, bayth at paroch kyrk and hede courtis, prohibeit and forbade ws to cum wytht our corne to your myle excep we come one our awne peruell; and to fre batht ws and yow of the said multer; the quhilk we obless ws to do for al tymmis bygane and to cum. [Upon all which and sundry, the above mentioned James Yrrewing desired me, the notary public underwritten, to make to him an instrument or instruments, one or more. These things all and sundry were done at the royal castle in Kirkwall within the sherifffdom of Orkney, about two o'clock in the afternoon or thereby, year, day, month, indiction and pontificate as above, there being present the venerable and discreet men, David Peirsonde, John Paplay, John Rendell, Robert Scletter, John Tulloch, . . . Rendell, with numerous others called and required to the premises.

And I, Sir James Scull, priest of the diocese of St. Andrews and notary public by apostolic authority, etc.]

NOTE.—The witnesses to this deed seem to have been all representative land-owners and members of the court then being held by the sheriff. David Peirson of Weland in Shapinsay is mentioned as recently deceased on March 7, 1547-48 (*O. L. Records*, No. 62). John Paplay is found on the Summerdale respite (1539) and other deeds, John Rendall of that ilk in No. CCXXXVI., and John Tulloch of Ness in several documents of this period.

<sup>1</sup> Entirely.

## XLV

COPY OF JUDICIAL RECOGNITION of the legitimacy of Agatha Sinclair as daughter of Sir William Sinclair of Warsetter, and of her right to her sister part of her father's property. (Translated from the Latin.)

Original in possession of Mr. A. Baikie of Tankerness.

*August 1st, 1547.*

*King's Close, Kirkwall.*

In the name of God, Amen. Be it known to all men by this present public instrument that on first August one thousand five hundred and forty-seven, fifth indiction and tenth year of the pontificate of the most holy father in Christ, Pope Paul the Third, in presence of me the notary public and witnesses underwritten, before a venerable and discreet man, Alexander Innes, sheriff for the time of the lordship of Orkney on behalf of the King, then sitting in judgment for the administration of the civil law, and there were gathered together all and sundry the inhabitants of the country of Orkney for the most part, as the custom is, there compeared these prudent and circumspect persons, William Grot for his interest, and Agatha Sinclair, his spouse, lawful daughter of the deceased William Sinclair of Versater, knight, of good memory, and Ellen Gordon, as she affirmed; having and holding in their hands certain letters of her Highness the Queen of Scots directed to the said Alexander Innes, Sheriff of Orkney, requiring recognition to be made thereupon, as far as is possible, that she is lawfully procreated between the before mentioned William Sinclair of Versater and Ellen Gordon, his spouse, which the foresaid Agatha Sinclair handed to the said Sheriff sitting as judge, and he having received them handed the same to the clerk, the tenor whereof is as follows: **MARY**, by the grace of God, Queen of Scots, to our lovit . . . Sheriff-Depute of Orkney for the time, etc. . . . as is more fully contained in the same, which having been read in the

presence of all those assembled and standing by, in a clear and intelligible voice for their information, the said sheriff, Alexander Innes, appointed certain prudent persons who were personally present, to be assessors in the matter, who being called, sworn, and admitted, were ordained by him to take cognition in terms of the foresaid letters as to the legitimacy of the said Agatha and how that matter had been held and considered in times past, and so to discern and declare; all and sundry which assessors hereto chosen having first considered the deposition of witnesses and been well advised thereanent, having God before their eyes, discerned the said Agatha Sinclair to be the lawful daughter of the said deceased William Sinclair of Wersater, knight, and Ellen Gordon, his spouse, procreated in lawful wedlock, so that she is recognised by them and all the bystanders, according to the probation of the witnesses and also the definitive sentence aforesaid, as the custom of the country of Orkney is; and they declared that the said Agatha Sinclair, as thus recognised lawful daughter of the said deceased William Sinclair of Wersater, together with her husband, William Grot, and their heirs lawfully procreated or to be procreated between them, should heritably, lawfully, and peacefully possess her sister's part of land of all and sundry the heritable lands, both in town and country, belonging to the said deceased William Sinclair of Wersater, knight, of good memory, while he was alive; as also all his goods, movable and immovable, gold and silver, coined and uncoined, and chattels whatsoever, justly and heritably belonging or which can belong to her said sister's part; to which, all and sundry, William Sinclair of Wersater, grandson (*nepos*) of the aforesaid deceased William (here 'Willielmi' has been changed to 'Magni' and possibly there is an omission of the relationship of Magnus to William) Sinclair of Wersater, brother of the said Agatha,<sup>1</sup> fully obliged himself for making over

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<sup>1</sup> Magnus was son of Sir William and brother of Agatha. The William here mentioned was son and successor of Magnus. See *Sinclair Pedigree*.

and delivering to the said Agatha and her spouse in name of their heirs as aforesaid the charters and obligations upon the several lands both in town and country which belonged to her sister's part, as becomes according to the force, form, and tenor of the civil laws of Norway and Orkney; upon all and sundry the which premises, the foresaid William Grot and Agatha Sinclair in name of their heirs asked me, the notary public underwritten, to make to them one or more instruments. These things all and sundry were done at the King's Close <sup>1</sup> in Kirkwall about eleven forenoon or thereby, year, day, month, indiction and pontificate above stated, there being present the venerable and discreet men, John Rendall, Walter Tulloch of Lambhom, Peter Sinclair of Aire and William Corigill, with sundry others called and required to the foresaids.

And I, James Scuil, priest of the diocese of St. Andrews and notary public by apostolic authority, etc.

NOTE.—What was said in the note to the preceding deed applies to the witnesses to this document. All will be found in other records of the period.

## XLVI

JUDICIAL DECREE OF THE PROVOST OF ORKNEY confirming the discharge by William Sinclair of Warsetter of his obligations to his sister Agatha. (Parts in brackets in Latin in original.)

Original in possession of Colonel W. E. L. Balfour of Balfour and Trenaby.

*April 16th, 1550.*

*Kirkwall.*

[In the name of God, Amen. Be it known to all men by this present public instrument that on the 16th April in the year of our Lord 1550, eighth indiction and sixteenth year of the pontificate of our most holy father in Christ, Pope Paul the Third, in presence of me, the notary

<sup>1</sup> 'Cla' in the copy, followed by a space. Evidently the word in the original was *Claustra*, which the copyist was unable to read. See No. XLIX.

public and witnesses underwritten, personally compeared in judgment an honourable man, William Sinclair, son and eldest heir of the deceased Magnus Sinclair of War-sitter, cited at the instance of an honourable man, William Groat, burgess of Kirkwall, in the following matter, in presence of the venerable and distinguished man, Mr. Malcolm Halero, provost and official of Orkney for the time, sitting in judgment; and without compulsion or led away by error, of his own free will and mature deliberation declared as follows:] I, Williame Sincleir of Wersatyr, sone and eldest aire to umquhile Mavnis Sincleir my fader, grantis me to haif tane full compt, raknyng, and payment for my part, of ane honorabill man and my freind Williame Grot, burgeis of Kirkwall, and executoure dative and intromettour witht the gudis and geir pertenyng to the foirsaid umquhile Mawnis my fader, quhom God assolze, and now partenyng to me be resone of his deceiss, of all landis, land malis, gudis movable and unmovable, for my part of the same, and of all inseycht geir, and als of the tennement and houses the quhilk the said Williame occupiis dalie, liand anent [*sic*] Sanct Olays kirk in the brught, and als of the landis of Tankarnes and Burnes, quhilk I gaif to the said Williame Grot for ane sister part to his wyf Agatha Sincleir, my fader sister, with the houses and pertinentis thairof, and als effermeis the chartouris and evidentis maid to the said Williame thairapoun, and siclik of all gold, silver, cunyeit and uncunyeit,<sup>1</sup> cleithing, and, attoure, of all maner of dewiteis, taikis, roumeis, gressomeis, and byroune malis of the samin, quhilkis the foirsaid Williame Groit intromettit with in to my minorete and youtheid, insafer as concernis to my part, as said is, as eldest aire, and partenyng to me, or any tyme afoire the deceiss of the foirsaid umquhill Mavnis my fader, or in ony tyme sen syn on to the day and dait of this present write: Thairfoir for me, my airis, executouris, and assignais, exhoneris, quitelameis, and dischargeis the foirsaid Williame Grot, his airis, executouris,

<sup>1</sup> Coined and uncoined.

and assignais, of all and syndry the premisses abone expremit, and of all maner of clameis at concernis or partenis to my part of the samine, and grantis me be the tennour of this my present discharge and acquittance sythit<sup>1</sup> and payit thair of for now and evar and in to all tyme to cum; and I the forsaid Williame Sincleir oblissis me, my airis, executouris, and assignais, nevar to cum in the contrar of this my present discharge and acquittance befor ony juge or jugeis, spirituale or temporale quhat-sumevir, *sub pena perjurii* and violatioun and defamatioun of my faitht . . . [And in all the premises the foresaid judge interponed his judicial decree, whereupon the foresaid William Groit asked from the notaries public underwritten that public instruments, one or more, might be made to him hereupon; and because the foresaid William Sinclair has no seal of his own, he procured the seal of a discreet man, Sir Magnus Strang, Sub-Chantor of Orkney, to be appended to these our present instruments for their greater confirmation. These things were done in the aisle<sup>2</sup> of St. Columba the Abbot within the Cathedral Church of St. Magnus of Kirkwall about 11 A.M. or thereby, year, day, month, indiction, and pontificate as above, there being present the venerable and circumspect men, Mr. Malcolm Halero, provost and official of Orkney, Sir Magnus Strang, Sub-Chantor of Orkney, David Clerk, burgess of Kirkwall, and Sir David Anderson, notary public. Attested by Andrew Gray and David Anderson, notaries, in common form.]

## XLVII

DECREE OF SANDWICK (ORKNEY) BAILLIE COURT regarding the redemption of land in Housgarth by John Cromarty, younger of Cara.

Original in Gen. Reg. House.

December 7th, 1553.

Housgarth, Sandwick.

Ane curt haldin at Howsgar in Sandwik be Henry

<sup>1</sup> satisfied.

<sup>2</sup> *Insula* in the Latin; cf. No. cxi.

Synclar,<sup>1</sup> belze for the tyme, the curt lawfully fensit, the vij day of Dissymbre *anno* fyfte thrie yeiris, with thir syis men :—

Alexander Synclar	Alexander Kyrknes
Johne Syncler	Burne Instabele
Johne Smyth	Nycoll of Brek
Andro Lyncelet.	Tom Godegar.
Stewin Moir	
Huchon Lyncleter	
Jamis Bake	
Jamis Lutfut.	

The quhilk day anent the lowsing<sup>2</sup> of the land of Howsgar that Johne Cromate, yonger, was dempt to lows fra his syster Cristan Cromate, and his fader<sup>3</sup> and he to pay hir the byrun malis<sup>4</sup> syn the desais of hir mother,<sup>5</sup> sa far as scho wantit; at the afixit day Johne Cromate, yongar, comperit as he was dempt and maid raknyng to Johne Lowransone syn his intromission, and entirit the said Johne Lowransone in payment of the malis byrun for his awin pairt, and also lowsit ane markland and the thrid part of ane mark land lyand in Howgar [*sic*] that fell to his syster Cristen Cromate in airschip eftir air mother, with full landis prise confurmit to the lawe of the cuntray, in presens of the balze and the dowme men abune writin; and also becaus Johne Lowransone alegit that thair is ma markis in the penny land nor he mycht pref that day and tuk hym to pruf the sam, the syis hes gywin hym xiiij dayis eftir Candilmis to pref, and gywe he prewis ma markis in the penny land nor . . . [*torn*] . . . merk,<sup>6</sup> sa sall Johne Cromate, yonger, pay to hym aferend to the . . . [*torn*] . . . And Johne Cromate, yongar, sall caus his fader to compeir that instant day and mak raknyng to Johne Lowransone of his weffis<sup>7</sup> byrun malis sa far as

<sup>1</sup> Probably Henry Sinclair of Clumlie.

<sup>2</sup> redemption.

<sup>3</sup> John Cromarty of Cara. See No. CVIII.

<sup>4</sup> arrears of rent.

<sup>5</sup> Marion Cragy.

<sup>6</sup> Proving that the number of merks in the pennyland was open to dispute.

<sup>7</sup> Cristen Cromarty, wife of John Lawrenceeson.

scho wantis,<sup>1</sup> as he is demp at the wit of the cuntray ; felland as he compeir nocht, Johne Cromate, yonger, sall mak raknyng and payment to his sister of all byrun malis or fynd hir payit, or than to dissist fra hir part of the land quhill the raknyng be maid ; and for the mair securite the balze Henry Synclar hes put to his mark to this downe, day and yeir abonewritin. [*On the back:*] This is tua decreittis pertening to Cristaine Cromarty my sister.

NOTE.—The bearing of this decree will be seen by reference to No. cviii., in which James Cragy of Brough disposes to his sister Marion and her husband, John Cromarty, a fourpenny land in Housgarth. At the death of Marion Cragy a division of her property was evidently made, and John Cromarty and his son John, younger, were 'dempt' to buy out Marion's daughter Cristen Cromarty. Cristen's husband, John Lawrenceson, now receives payment from John Cromarty, younger ; but the case is adjourned for a fortnight to obtain proof of the true number of merks per pennyland in Housgarth. According to the old rentals there should be three, but John Lawrenceson probably argued there should be four, and that the land should therefore be redeemed at a higher price.

## XLVIII

DECLARATION BY WILLIAM CÖRGYLL, youngest, that he is lawful heir to his brother Thome in consequence of their brother William, eldest, refusing to hold Thome in upgestry (see note at end).

Original in possession of Mr. J. A. S. BROWN, Stromness.

*Midsummer, 1557. The Kirk of Harray (Orkney).*

At Mydsummir *in anno* lvij<sup>40</sup>

The said day at the persyse kirk of Harray.<sup>2</sup> Thome of Corgyll comperit vith xx s. mone and profferrit to his brother Villiam Corgill, eldest, the quhilk mone the said Villiam lent to him apone ane h. merk land in Corgill, and desyrit malis for ane uther h.<sup>3</sup> merk land. The said

<sup>1</sup> lacks.

<sup>2</sup> I have put a full stop after 'Harray,' because it seems clear that Thome of Corgyll did not compeir then, but that the whole deed is a narrative of something that had taken place some time before.

<sup>3</sup> Presumably for 'half.'

Villiam refusit the mone and vald nocht resaif [?] it at that tyme. Thome laid the mone under evin handis to Alexander Sinclare; the said Alexander kepit the xx s. ane yeir and better; quhen that the yeir ves gane, the said Thome profferit the xx s. to his brother Villiam agane. The said Villiam refusit as he did before at the said tyme, and thane Thome profferit to his said brother to uphold him in met<sup>1</sup> and clathis to his deand day ilk uther day and to browk the merk land forsaid [?], and Villiam yongest to do siclyk and to browk the tother merk land. William eldest refusit all this and said that he vald nocht gyf him ane nychtis met, and it stuid in point of his lyf in that tyme. Thome . . .<sup>2</sup> his brother Villiam eldest for landis, housis, and all ayrschip pertenant to him, and maid Villiam Corgell yongest his procuratour and umbothman, and gave him his full power vith hand and hand-band to defend his landis, housis, and heritage aganis the said Villiam eldest, his ayris or ony uther man levand, to persew his rycht in that mater be justice; in the mane tyme varnit the said Villiam eldest that he nor his ayris sold ayr vyr<sup>t</sup><sup>3</sup> ane d. in landis or ayrschip efter his decess. It is xvij yeris sen that the said Thome begouth<sup>4</sup> to proffer the mone for the h. merk land and desyrit malis for the tother h. merk. Befor thir vitness, Robert Ysbuster, James Spens, Villiam Lenay, Thome Burcht, James Talyour, and all the voce in the perisoun, the said Villiam allegis that [be the] law of the cuntre he is rycht heritour to Thome of Corgill.

*Ita est, Ro. Movat*

*Item,*<sup>5</sup> it is suorne befor the balze, Andro Hurstane, be thir vitness, James Talyour and Mawnis Lenay, that

<sup>1</sup> Meat.

<sup>2</sup> Hole in paper here, and apparently one word of four to six letters is missing. The first letter is s, the last d: 'sued' is the sense.

<sup>3</sup> Apparently vyrtht = worth. The sense is 'should not heir worth a d. in lands,' etc. The d probably stands for nothing more profane than 'penny.'

<sup>4</sup> Began.

<sup>5</sup> This addendum is in the same hand, and was clearly written at the same time as the rest of the deed.

Thome Corgill gave his full power to his brother Villiam Corgill yongar to follow and defend all [the rycht of landis . . . ] heritage that ever he ayrit, bayth out landis and in landis, committit that power to the said Villiam and to nane utheris.

NOTE.—The transactions here recorded with so much ambiguity as to the order in which they occurred were these: there were three brothers, William, eldest, William, youngest, and Thomas: Thomas (an unprosperous person) had borrowed twenty shillings from William, eldest, on the security of a half merk land, and another half merk William leased from him. Eighteen years previously (in 1539) Thomas began to offer to repay the twenty shillings and demanded rent for the other half merk; but William, eldest, kept on refusing to meet him in either respect. Then Thomas offered himself to his two brothers in 'Upgestry' (see also No. CIV.), a plan by which one party handed over his property to the other, and the other supported him 'in met and clathis.' William, eldest, was thereby to keep the said merkland as his own, and William, youngest, to take another merk, and they were each to support him 'ilk uther day.' William, eldest, refused and William, youngest, evidently accepted the offer. Thomas thereupon gave him full powers over his whole property, and warned William, eldest, that he could hope for nothing at his decease. Now (Thomas being presumably dead, though the deed does not say so) William, youngest, claims to be his lawful heir. First, he declares the facts before the assembled parish, and then gets witnesses to swear to them before the baillie.

## XLIX

DECREE OF THE SHERIFF COURT OF ORKNEY, in the action between Richard Ireland and his sisters.

Original in Gen. Reg. House (given by Mr. W. Isbister of Bigswell). Printed: *O. L. Records*, No. 94.

June 22nd, 1558.

King's Castle [Kirkwall].

The Schiref Court of Orknay haldin at the Kingis Caistell cloise of the samin be ane honorabill man Monsieur Bonald,<sup>1</sup> shiref and commissioner to our grece masteres the Quenis grace of the lordschip of Orknay, the xxij day of Junij *anno* 1558 yeris, the suittis callit, the court lauchfullie fenssit, the assise choissan and admitit.

<sup>1</sup> Bonot, a Frenchman, was appointed Governor of Orkney by Marie de Guise Lorraine, Queen Dowager and Regent of Scotland, on or after 1543 when she obtained possession of the Castle of Kirkwall.—A. W. J.

*Nomina assisae*

Thom Tulloicht	Johne Cullane
Harie Sincler	Henry Sincler of Clumle
Jamis Person	William Sclaitter
Duncan McFassen	Johne Broun
James Reidpetht.	Jamis Tulloicht.
Nicol Tulloicht	Andro Yensta
James Irving	William Hadell
George Monepenne	William Corregill, elder
Edward Sincler, younger	Robert Isbister
Johne Cromatte.	Olay Ska.

The quhilk day anent the moving of the action movit betext the sisteris of [sic] Irland, Marion and Margret Irland, *contra* Reche Irland, anent land and heritage, the assise ordanis the balze deput of Harray to be apoun the grund and xij honest unsuspect men that ves laist with hym thair befor within xv dayis, and se that everi sister and brother be maid alik and outreid conform to thair decreittis, under the pane of tynsell of his office, day and place forsaid, writtin be me Thomas Cumeng, clark of the court that tym, wyth my hand.

## L

DECREE OF A SHERIFF COURT held at Tankerness, regarding the boundaries between Tankerness and Yenstay.

Original in possession of Colonel W. E. L. Balfour of Balfour and Trenaby.

*June 23rd, 1559. Tankerness (St. Andrews parish).*

Ane schireff court off Orknay haldin at Sanct Androuis kirk in Tankirnes be Eduard Sinclair off Stocholme, schiref depute of Orknay, baillie principall off Sanct Androuis parochine, the tuentie third day of Junii, the yeir of God ane thowsand fyve hundreth fiftie nyne yeiris, the sutis callit, the court lauchfullie fensit and affermit, as use is, ane condingne assise chosin, suorne and admittit.

*Nomina assise*

Peter Sinklair of Air	Jhone Langskaill in Lank-
Henrie Aikin in Deirnes	skall
David Stoiffe in Stem-	Nicholl Flavis in Okkillsettir
bister	Nicholl Foubister in Foubistir
Niniane Flet of How-	James Foubister in Fubistir
bistir	Andro Langskaill in Lank-
Jhone Aikin in Sandes	skell
Jhone Skay in Deirnes.	Jhone Couper in Dernes.
	Niniane Masoune in Luddell
	Jhone Yairfa in Dernes
	Jhone Tullocht of Nes
	Alexander Foubister in Fubister
	Henrie Smith in Tolhop
	Henrie Freser in Tollop
	Villiam Tait in Deirnes.

The quhilk day in the actioun and caus of divisioun and merching of landis, intendit be Villiam Grot and James Irving of Saba, portioneris of Tankirnes, and remanent possessouris thair of, aganis Thomas Cuming and Thomas Rovane, procuratoris for the Quene and Bischopis chalmerlanes, for thair entres, and aganis Androu and Villiam Yenstais, heritouris of Yensta; the richtis, resonis, and allegationis of athir of the saidis parteis harde, sene, considerit, and understand, lang and mature advyse and consultatioun had thairupone, the depositionis off Jhone Couper, Barnard Burray, Androu Langskaill, Henrie Smith, Jhone Vassand, and Mannie Lesk, ancient, auld, and famous vitnes, resavit, admittit, and suorne, but ony contradictioun, the juge and assessouris being at lenth advisit thairvith, the holie evangell tuichit, haifand God and gude conscience befor thair eis, decernis and ordanis that the landis of Tankirnes hes just richt and titill heritable, as properte apertening thairto, to the fredome of Skibvik, fra the burne to the hailye under the bankis, and fra that to ane gray stane in the mure bevest Vassand, quhilkis boundis frelie in properte is decernit to remane heritable vith the landis of Tankirnes according to ane

decrete past thairupon of befoir, als veill under bankis as abone, at the lest ay and quhill the heritable titill haiffaris of the landis of Yensta produce ane bettir titill and richt, ether be vrit or be mair ancient famous agit vitnes, geif thai ony haife, reserving actioun to thame thair anent for production thairof for the space of ane yeir, geif vrit or vitnes be out of the cuntre; and geif in the yles for the space off ane moneth; and geif in the maynland for the space of fouretene dayes; utherwayes never to be hard, bot the boundis foursaidis according to the lau and practik of the cuntre to remane in all tymes thairefter heritable in properte *ad perpetuam remanentiam* vith the saidis landis of Tankirnes: quhairupon the saidis Villiam Grot and James Irving for thame selfis *et aliorum coherentium* of the landis of Tankirnes requirit act of court.

Ita est Robertus Innes scriba dicte curie admissus ad premissa rogatus et requisitus testante hac mea subscriptione; R. Innes assero.

Producit at Sabay *in judicio* the xj day of Januar 1599. The juge and the essaye ratefeis and apprewis the decret of devisioun abone writin in all poyntis according to the tennour ay and quhill the samin be ordourlie reducit be the law, and ordanis that preceptis and executoriallis be derset thairupon acording to the law.

(Signed)

THOMAS AUCHINLEK, scriba.

## LI

VERDICT OF ARBITERS in the division of the estate of Cara, South Ronaldsey, among the heirs.

From the original in the possession of Mr. Duncan J. Robertson,  
Kirkwall.

March 5th, 1562-63.

Cara.

The fyft daye of Merche, in the yeyre of God ane thousand, fywe hundretht threscore and tua yeris, thayre comperit at Caro ane sertane of honest, famous personis josyne [*sic*] be Johane Cromate, eldest sone and ane ayre

off wmqhile Johane Cromate of Caro, on the ane part, and Wilhelme Cromate, brothyre germane to the said Johane and of the secund mariage of thayre sayd fathyre, for the discernyng and dewiding of thayre fathyre-systyre lands, wz., Janote Cromate; and als towart the dewiding of all and syndre thayre fathyre landis as is at mayre lentht contenit in ane compromit maid betuxt the saydis Johane and Wilhelme, dayttit at Kyrkwall, the xxij daye of Julij, *anno* lxij yeris, ondyr the syng manuall of maister Allxr. Wais, noter public, witht the subscriptione of ane venerable clerk maister Allxr. Dyk, prowost of the Cathedrale kyrk of Orknaye, quhayre the fornemmit men in the forsaid compromit comperit at the raquest of the forsaid parteis, wz., for the sayd Johane Cromate: Huchone Cromate, Johane Halero, and Johane Bersto of Clettis; and fore Wilhelme Cromate:—yowng Eduerd Sinclayre, Henre Synclayre, Sir Thomas Ratter in absens of James Wyndwyk and Mangnus Gareocht,<sup>1</sup> Wilhelme Halero owreman, contenit in the fyrst compromit; quhilk war josyne be the sayid Wilhelme, all parteis consentand to the samin, the sayedis Johane and Wilhelme witht the rest of thayre brethyr and systyris beand present for the tyme, wz., Thomas Cromate, Mangnus Cromate, Wm. Schalmer the spowse of Elspet Cromate, Barbera Cromate, Malle Cromate, all beand obligat and sworne to stand and byde at the delyuerance of the forsaid arbetoris and owreman, and the forsaid arbetoris and owreman hes sworin to discerne equalye betuxt the forsaid parteis.

The quhilk daye, as twching the dewiding and partyng of the landis ayrit be the sayd Janote Cromate eftyre hyre wmqhile fathyre and mothyre, the forsaid arbetoris owrman witht consent of parteis hes seansit and consyderit the propirteis commoditeis of all and syndre the forsaid landis per [*sic*] petenand to hyre fathyre and mothyre, and als fyndis that the sayd Janote was in possessione of sax melis malene lyand in Papla, of the quhilk, tua melis malene was wyne and owptenet fra hyre be law,

<sup>1</sup> Apparently Henry Sinclair and Sir Thomas Ratter acted in absence of James Wyndwick and Magnus Garrioch. See end of deed.

quhilk land was gyffine to hyre be hyre sayd wmquhile brothyre, Johane Cromate, in arff<sup>1</sup> eftyre hyre wmquhile fathyre, Mangnus Cromate; and becauis the tua melis malene forsaid was owptenit be law fra the sayd Janote, the forsaydis Johane and Wilhelme, witht consent of all ayris abone wryttine, hes layid to the sayd Janote ten settenis malene in Clet, lyand in Owre Lade peresone, saye far as it maye extend in hyre fyrst arff, for inlayk and want of the tua melis malene forsaid, and als thayr is layid incontrare the samin to hyr wmquhile brothyre Johane Cromate, ellewine melis, tua settenis, in Hoxa in Sanct Peteris peresone, in full payment and recompance of his fyrst arff eftyre his wmquhile sayd fathyre; and as twching the rest and resedew of all and syndre landis pertenyng to thar fathyre and mothyre, Mangnus Cromate and Cristiane Caro, ouer mentionat, falland to the latter arff betuxt the sayd Janote Cromate and hyre brothyre bayrnis, wz., tua melis, fower settenis, in Hoxa; in Caro and Grymnis, ten melis fowre settenis; in Quysis in the towne of Holland, nyne settenis; in Skowsattyre, fowre melis ane settene; in Ronaldiswo, sex melis fowre settenis. Thyre forsayd forsayd [*sic*] landis of the lathrye arff estimat and consyddrit, diuisione maid tharapone be the forsayd arbetoris and owreman witht consent of all the forsayd ayris, beand equalye dewidit in thre partis, the guidnes of the samin consyddrit be the forsayd ayris and adwice of the forsaid arbatoris and owreman hes fwndin the ten mellis malene and fowre settenis in Caro and Grymnis to be ane tua part, and the sax melis fowyre settenis in Ronaldiswo to be ane thyrd, haueand nyne settenis malene in Quysis in Holland to aquiet the forsayd thyrd; the guidnes of the forsaydis landis of Caro and Grymnis to be say mekle bettyre fore the tua part nor thyre forsayd landis of Ronaldiswo and Quysis ar for ane thyrd. Of the quhilk landis the forsayd Johane Cromate wmquhile gayf to his last wyf, Janote Skaye, the forsayd six melis and fowre settenis in hyre coniunct fe indurand

<sup>1</sup> As her share of inheritance (or part of it).

hyre lyftyme, quhilk all ayris hes apprewit the samin and tharfore is consyddrit to stand stand [*sic*] in the sayid Johannis part wmqhile as josyne land, and the othyre tua partis, wz., the ten melis malene in Caro and Grymnis, is ordinat to be dewidit in tua parttis betuxt the saydis Johannis ayris and Janote Cromate, And as to the pleyland <sup>1</sup> in Skowsatter, wz., iiij. melis, ane settene, and the od land of Hoxa onlayd abefoyre,<sup>2</sup> wz., tua melis iiij settenis, it is ordinat that Janote Cromate sall haue tharof tua melis othyr half <sup>3</sup> settene in Skowsattyre, and the sayd Johane Cromateis ayris to haue the rest of the land of Skowsattyr witht the fornemmit tua melis iiij settenis in Hoxa fore ane brothyre part. Swa is the hale arf of landis ayrit be Janote Cromate eftyre hyre fathyre and mothyre wmqhile equalye dewidit frome hyre brothyris forsaid wmqhile Johane Cromate. Swa is thar to be dewidit, and be consent of the sayd ayris is dewidit, in presens of ws the forsaid arbetoris and owrman, all and syndre the forsaid Johane Cromateis landis ayrit eftyr his fathyr and mothyre, quhilk abefoyre is nocht mentionat, lyquitat nor dewidit frome all other ayris, wz., fywe melis tua settenis malene in Caro and Grymnis, in Hoxa fowrtene melis malene, in Qwyis nyne settenis malene, in Skowsattyre ellewin settenis and ane half settene. The samin beand partit amangis all the brethyr, layand tua systirris for ane brothyre, of the quhilk the fyrst thre C[romateis, be]and eldest and of the fyrst beid, ar layit togyddyr in arff, and hes josyne befoyre ws the saydis arbetoris and owrman, and hes tayne to thay[re p]artis be owre advice and consent of the yowngest ayris, the fywe melis malene and tua settenis in Caro and Grymnis, the nyne settenis in Qwyis, witht the ellewin settenis in Skowsattyr playeland. Swa ar the ayris of the fyrst get <sup>4</sup> cleyrlye owtred of thayre fathyre arff frome the ayris of the last get, and the ayris of the last get hes tayne thame to thar brethyre part witht consent

<sup>1</sup> Sco. *pleyable*, debateable at law.—A. W. J.

<sup>2</sup> *i.e.* undivided before.—A. W. J.

<sup>3</sup> *i.e.* one and a half.—A. W. J.

<sup>4</sup> Begotten by the first marriage.

of the eldest ayris, the fowrtene melis malene in Hoxa ; swa are thaye payit and setifeit of thar fathyre arff. And as to the sax melis and fowre settenis lyand in Ronaldiswo gyffin be thar said fathyre to his wyf Janote Skaye fore hyre tyme, the samine land to be fwrtht cumand tyll all ayris of the samine Johannis alyk, eftyr hyr dessess. And gyf ony of the forsaid pleyable landis beis owptenit be law, all ayris sall stand owp alyk and defend as brethyre and wyn and tyne alyk, and fra quhat ayris ony of the forsaid pleyable landis beis owptenit thaye salbe fyrst staykit <sup>1</sup> in the sax melis and fowyr settenis in Ronaldiswo efytre the saydis Janotis dessess, aye and quhill tha be alyk ; and in quhayis handis the landis [above mentionat] schansis to be owptanit thaye sall resaeue malene fra the resedew of the sayid ayris indurand the said Janote Skayis lyftyme, and thareftyre to be fyrst staykit in the forsaid landis as saydis. To the quhilk all and syndre thyre premissis, and for obseruing and keyping of the samin, we the forsaid ayris hes procurit witht instance the seile of ane discreit man Sir Thomas Ratter, vicar of Renaldsaye, to be hungyne to this present, witht the subscriptione of the forsaid arbeteris and owreman, daye and dayit abone wryttin.

HUCHONE CROMATE

JOHANE HALCRO

JOHANE BERSTO of Clettis

EDUERD SINCLAYR,

yowngest

HENRIE SINCLARE

} witht owre handis at the  
pen led be the forsaid  
Sir Thomas Ratter.

Ita est Thomas Ratter manu mea propria conformiter wt supra.

[One tag ; seal gone.]

[*On the back :*] Productum in iudicio at Sant Pettris kirk in Suytht Ranaldsaye the xxiiij day of Februar the yeir of God i<sup>mo</sup> v<sup>c</sup> and lxxvij yeris befor ane noble lord Robert Stewart.

Quhilk day the hail personis within mentionate ffermit

<sup>1</sup> O. N. *stika*, to measure with a yard measure.—A. W. J.

effermit [*sic*] this evindent to be guid and sufficient in the self and grantit the samin to be done at thair awyss as is within mentionat quherupoun . . . tuik act in my handis.

(Signed) D. BRUCE *manu mea*.

NOTE.—The gist of this deed may be briefly summarised thus. Magnus Cromarty and his wife Cristen Cara owned between them an estate of 44 meils, 4 settens (1 meil = 6 settens), and two 'arffs' or divisions of it took place, this document being the record of the second.

*First Arff*.—Magnus died, leaving a widow and two children, John and Janet, and the estate was then partially divided, Janet getting 6 meils and John presumably 12. This may have meant that the estate of Magnus was 18 meils and that the rest belonged to his wife; or, as his widow, she may have been life-rented in part of his property.

*Second Arff* (after the deaths of John and his mother).—The estate is now completely divided, I. between Janet and the heirs of John.

*a.* Janet having lost 2 out of her 6 meils by law, the first arff is readjusted by laying 5 meils, 4 settens to her share, and 11 meils, 2 settens to the heirs.

*b.* The remainder was then divided into thirds, Janet getting  $\frac{1}{3}$  and heirs  $\frac{2}{3}$ . Adding these shares to the first arff portions, Janet now has  $\frac{1}{3}$  of the whole estate of Magnus and Cristen (reduced now by the 2 meils lost at law), and the heirs have  $\frac{2}{3}$ .

II. The share of the heirs was then divided: *a.* One brother's share was laid against two sisters' shares, and the heirs of John's two marriages took their shares separately. The heirs of the first marriage numbered three, and from the extent of their share it follows that they consisted of a brother and two sisters, the second family consisting therefore of three brothers and one sister.

*b.* John's widow was then provided for during her lifetime out of the heirs' portion.

It is to be noted that the property known to have come to John by his first wife Marion Cragy (see Nos. CVIII. and XLVII.), and any property that came by Janet Skea, his second wife, are not dealt with in this division. Further, it is to be noted that John and Marion's daughter, Cristen, had already got her full inheritance out of her mother's estate (No. XLVII.) and so takes no share now.

## LII

DECREE OF THE ORKNEY SHERIFF COURT held at William Grot's house (presumably in Tankernes, St. Andrews), apparently giving James Irving right to sue William Grot for the rent of a piece of land in Tankerness.

Original in possession of the Venerable Archdeacon Craven, D.D.

December 21st, 1563.

[*St. Andrews.*]

The xxj day of December *anno* 1563 yeris.

The schiref deput court of Orkna haldin at Wylliam

Grottis house be ane honorabill man George Ballandyne, schiref deput for the tym, the suddis callit, the court lauchfullie fensit, the assise choissin and admitit; the quhilk day James Irving comperit in jugement and maid protestatioun that he hes ane peise of land lyand in Tankernes that William Grot hes occupiit thir certene yeris bygane, and sa feir as he and William Grott agreis nocht for the prophettis bygane, that he ma hef place to call the said William Grott or his airis, as he thinkis tyme, for the rest of the samin, day and place forsaid. Writtin be me as act of court therupon.

THOMAS CUMYNG, clark of the court, with my hand.

## LIII

PRECEPT DIRECTED BY THE SHERIFF OF ORKNEY to his officers, directing them to summon William Grot to appear at the next sheriff court at the instance of James Irving.

Original in possession of the Venerable Archdeacon  
Craven, D.D., Kirkwall.

*February 26th, 1564-65.*

*Kirkwall.*

## Jhesus

Patrek Ballendene, schiref prinsipall of Orkna, to oure lovitis Thomas Bakie, James Crawford, our officiaris in that part, wit ye it [is] menit <sup>1</sup> to ws be oure lovitis James Irrwyne, that wmquhill William Grot eftir the desese of Johane of Papla intrometit with certane landis in Tank[ernes] pertenant to the said James, and has browkit the samin with the maist part of the profettis thairof sensyne, and instantly eftir the ded and departyng of the said William his son Male[um] Grot has intromettit with that landis and the profettis thairof at his awne hand and will mak na pament thairof without he be compellit as is allegit: Oure will is and we command yow or ony ane

<sup>1</sup> Made known.

of yow incontinent, this oure precept sene, that ye pass and layhtfully sowmone, warne, and charge the said Malcum Grot that he compeir befor ws personaly to the fyrst shiref curt eftir your execution at the howre of cawse, to ansuar and to do law to the said James for the profettis and malis of that landis, and this ye faile nocht to do as ye will ansuar to ws apone the executioun of your offyse, and eftir your executioun [? subscribe] the samin and deliver to the barar.

Subscrivit with our hand at Kyrkwall the xxvj day of Februar the yeir of God a m. v<sup>o</sup> saxty foure yeris.

(Signed) P. BELLEDENE, schireff of Orkay.

[*On the back:*] The xxvij day of Februar, I, Thomas Baky, put this precept to executioun, and efter the tennor of this precep sowmond Malcum Grot personly to the first schiref court that is to be haldin bfore the schiref or his deputtis in to the toun of Kirkwall in quhat place the court is to be haldin, to the instance of Jamis Urwing quhat he hes to say to him be the law. This I did befor thir witnes, Wilzeam Halero, Alexander Suderland, Jhone Baky.

## LIV

DECREE OF THE SHERIFF COURT of Orkney as to the action by John Twat against the rest of the heirs of Twat regarding his title to five sisters' parts of the estate, founded on a decret of November 4, 1563.

Original in the possession of Mr. R. A. Clapperton Stewart of Massetter

*January 15th, 1564-65.*

*Kirkwall.*

The sheref court of Orknay haldine at Kirkwall, the xv day of Januare *anno* 1564, be Patrik Bellendene of Stenhous, sheref principall of Orknay, and James Redepeth, sheref depute, the sutis callit, the court lauchfulle fensit, the assise chosin, sworne, and admittit.

*Nomina assese*

Duncane Scolay burges of Kirkvall	James Lutefute of Lyking
Jhone Houstoune burges of Kirkvall	Robert Ysbister of that Ilk
Gilbert Cragy in Holme	Jhone Crot in Orphar
Villiam Hadell of that Ilk	Villiam Richane in Houbister
Niniane Flet of Hovbister	Robert Tait in Tuskabister
Hew Halero of that Ilk	Henre Fara in Etha
Andro Keldall in Holme	Thomas Betovn in Stromnes
Donald Milair in Holme	Edward Sinclair in [T]ollope

Villiam Linkleter of that Ilk  
 Henre Sinclair of Clumlie  
 Jhone Sinclair of Tensta  
 Villiam Halero of Aikiris  
 Andro Hurstane of that Ilk  
 James Fovbister of that Ilk  
 Henre Gareoch in Holme  
 [ of that Ilk ?].

Quhilk day as to the actiounes persewit be Jhone Tuait contrar the rest of the airis of Tuait, anent fyve sister pairtis of Tuait, as is contenit in ane decreit productit be the said Jhone gevin befor James Alexander, sheref deput of Orknay, of the dait at Kirkwall the fourt of Nouember *anno* 1563 yeiris, discerning the said Jhone to haif iust titill and rycht to the saidis fyve sister pairtis, as is at mair lenth contenit in the said decrete; quhairvpoun the said Jhone obtenit our souerane Ladeis letteres direct to the sheref and his assesouris to tak trew tryell geif sik ane decrete ves gevin be ane condign assise, and geif the samin wes fund of verite, ordanit the samin to be put to executiounes without ony forther delay, and the said Jhone to be put in possessiounes of the landis contenit thairin. James Irvinge compeirande as procuratour for the eldest air of Tuait allegit that the said Jhone aucht to haif na possessiounes nor the forsaid productit decrete to haif na effect, be resoun the forsaid eldast air for quhom the said James is procuratour ves nevir somondit nor yit

dempt to the said Jhones actiones, and forther offerit to preif the said Jhones forbear callit Villiame Tuait ane bastarde, quhairby the said Jhone aucht to posses na landis; nochttheles the sheref and assise haffand consideratioune of the decrete producit be the said Jhone, and takand cognitioune thairintill, hes fund the samin ordourle procedit and justlie vpoun the depositioun of certane famous vitnes aganis the vthiris airis of Tuait, and thairfoir discernis the said decrete to be put to dew executioun in all punctis efter the forme and tenour thairof, and ordanis the said Jhone to be put in possessioun of the saidis fyve sister pairtis of the lands of Tuait conforme to the decrete and dispositioun forsaid, vithin sevin dayes, reserving place to the said James Irving to reduce the said decrete, geif he may, be resone he ves nocht lauchtfullie somondit nor dempt, and to preif the said Jhones forbear Villiam Tuait ane bastarde, with all vther allegationis that the said James can vse in the said Jhones contrar, and the said Jhone to ansuer thairof [*sic*] at the nixt heid court as ane dempt man.

Extractum de libris actorum curie vicecomitatus Orcha-  
densis per me Robertum Innes scribam manu propria  
xvj<sup>o</sup> January *anno* 1564 yeiris apud Kirkwall, Patrik  
Bellenden sheref of Orknay present.

Quhilk dait Jhone Tuait protestit that quhateuir James Irving producit in his contrar, this day or ony vthir tyme to cum, it suld turne the said Jhones actioun to na preiudice be resone the man quhom James Irving procurit for, nor his father, nor nane vthir in thair names, ves in possessioun of the landis that the said Jhone persewit, and in sa far as this day is ane peremptour day to the rest of the airis of Tuait quhom aganes the said Jhone persewit to produce thair defensis peremptourlie, and producit nane, that thai suld haif na tyme nor place in tyme cuming to produce ony; quharwpoun the said Jhone tuke act in court.

Ita est Robertus Innes scriba in premissis manu propria.

## LV

PRECEPT BY THE SHERIFF DEPUTE OF ORKNEY to his officers, instructing them as to the complaint of James Irving of Sabay against James Cowpland.

Original in possession of the Venerable Archdeacon Craven, D. D.

October 4th, 1566.

Kirkwall.

Jhesus

Johane of Balfoure, schiref depute of Orkna, to my lovitis . . . offisers of Sanct Androis parochen, wit ye it is complenit to me be James Irwyne of Saba that umquhill Johane of Paplay [and] Johane Cowpland, with thair complexes, reft fra his wyf, Jonet Ska, ane quy callit Quy Tob, lyand in Tankerness, nochtwithstandyng the said Jonet and hyr fyrst husband uptenit the said quy befor Arthour Synclar, schiref of Orkna at that tyme, and wes put in possesioun be Monsieur Bonald and his officiaris, and be Edward Synclair of Strome, schiref for the tyme, as the said James Irwyne has schawne to me thair decretit and preceptis thairapone; nochtwithstandyng, James Cowpland, the soun of the said Johane Cowpland, wiolently intromet with the said quy agane and will nocht desist without he be compellit, as is allegit. Quhairfor I command, this my precept sene, that ye in the awtoriteis name arest the corne of that quy and put it in a just equell mannis yard, and thair to remane ay and quhill that trew triell and just cognission be tane quha hes maist rycht to the samyn, and at na man intromet nather with the quy nor corne quhill it be law endit, onder the paine of tene pundis; the quhilk to do I commyt to yow my power, and also at ye somon the said James, complainer, to the fyrst schiref court, for to do law to the said Jonet Ska for the said quy and corne forsaied.

Subscriwit with my hand at Kyrkwall, the feird day of October, *anno d. m. v<sup>e</sup> saxti sax yeris.*

(Signed) A. ROBERTSONE.

[On the back as far as can be made out now:] *Anno, etc. 66 the . . . off October, I, Andro Fowbustir, officier off*

Sanct Androis parisone, hes dewle executt this [?] precept beffor thir witnes, Jhone [?] Paplay [off Qu ?], Edward Sudderland, James . . . with wderis divers.

## LVI

SUMMONS BY THE SHERIFF OF ORKNEY AND SHETLAND at the instance of William Irving, son and one of the heirs of the deceased James Irving of Sabay, against John Atkin, his tenant, for not removing from his lands.

Original in the possession of Mr. J. W. Cursiter, Kirkwall.

Printed: *O. L. Records*, No. 67.

*November 4th, 1567.*

*Kirkwall.*

Robert Stewart of Strathdown, knyht, fewar of the landis and lordschip of Orknay and Zet[land] and sherif principall of the samyn, to our louittis . . . our officiaris in that part coniunctlie and seueralie specialie constitute greting. Forsamekile as it is humblie menit and schawin to ws be Williame Vrwin, sone and ane of the airis of vmquhile James Vrwin of Sabay, that quhair the said Williame hes succedit heritable be deceiss of his said vmquhile fader in and to the landis of Horrie with the quoyis callit Quoykay and Horssak with thair pertinents lyand within the parochin of Sanct Andrews and sherifdome of Orknay, and to the effect that the said Williame suld haue na impediment in broukin of the samyn peceable, his said vmquhile fader befor his deceiss wrait to Gilbert Balfour, than sherif for the tyme, desyring him to direct furth his precept to enter and possess the said Williame heritable in and to the saidis landis and quoyis with thair pertinents, at quhais desyer the said sherif directit furth his precept to the effect foirsaid quhilk wes put to dew executioun be Andro Daudisoun, officiar,<sup>1</sup> and the said Williame enterit and possessit con-

<sup>1</sup> Evidently the same as Andro Fowbustir, officer of the same parish in the preceding deed; probably son of David Foubister in No. XLI.

forme to the tenoar thairof, as the indorsatioun thairof beiris; Neuirtheless Johne Atkin, occupyar of the saidis landis of Horrie as subtennent to the said vmquhile James, will nocht remoif himself, his guidis and geir, of the saidis grund and landis, bot, by ony just titill of richt, intendis to sit violentlie and occupy the samyn, and vpon wrangus informatioun hes obtenit our vther precept to keip him in possessioun of the samyn, albeit the samyn is ewill giffin *tanta et suppressa veritate* as is allegeit. Heirfoir we charge yow, this our precept sein, ye pass, summond, warne and charge the said Johne Atkin to compeir befor ws and our deputis the third day of this instant Lawting, thair to ansuer at the instance of the said Williame in the said mater, bringing with him our vther precept, impetrat be him as said is, to be sein and considerit be ws and to heir and se the samyn suspendit simpliciter and the said Johne decernit to remove fra the saidis landis with the pertinentis, and to leif the samyn red and voyd to the said Williame to be broukit and josit be the said Williame in tyme cuming, conforme to his heritable titill, or ellis to schaw ane ressonable causs quhy the samyn suld nocht be done; with certificatioun to the said Johne that quhidder he compeir or nocht the saidis day and place, we will proceid and minister justice in the said mater in sa fer as we may of law, conforme to the ordour and practik of the cuntrie; and this on nawys ye leif vndone as ye will ansuer to ws thairupoun. Subseryvit with our handis and vnder our signet at Kirkwall the fourt day of November, 1567.

(Signed) ROBERT STEWART.

*Endorsement.*—At Horrie the fourt day of November in the yeir of God I<sup>m</sup> V<sup>c</sup> saxtie vii yeirs, I, Andro Dawysone, hes put this precept to exicutioun conforme to the charge contenit [thair]intill, befor thir witnes, Johne Abrek, Jhon Tailyeour, Johne <sup>1</sup> with vtheris dyuers.

*Endorsement.*—Quinto Novembris Anno, etc., lxxvii. This atioun reffairit till arbitouris and the pairteis bund

<sup>1</sup> Name illegible.

and obleist to stand at the desatioun of the persons vnderwritten, thay ar to say, Mr. Magnus Halero, Thomas Mudie, Johne Crummartie, Thomas Tullo, for the pairt of the airis of James Irrewine; Williame Selatter, Robert Sinclaire, Mr. John Dischingtoun and Alexander Robert-soun<sup>1</sup> for the pairt of Johne Akin; and Henrie Halero overman in caice of wareance, and to decyde thairintill betuix the dait herof and Settirday nyxt to cum inclusive.

And in absence of ony of the personis foirsaidis vtheris to be chosin in thair place.<sup>2</sup>

WM. IRRVYNE with my hand. JOHNE AKIN and HENRIE AKIN with our handis at the pene becaus we culd nocht wreit ourselfis, led be the shireff clerk vnder wrettin.

(Signed) WALTER BRUCE.

## LVII

EDICT BY AN ASSIZE, APPARENTLY AT KIRKWALL, with regard to an impending action between Lord Robert Stewart and the heirs of James Irving of Sabay, regarding the lands of Horrie (St. Andrews, Orkney).

Original in Gen. Reg. House.

March 2nd, 1568-69.

(Kirkwall ?)

Secundo Marcij, anno j<sup>m</sup> v<sup>e</sup> lxviii. Quhilk day anent the actioun of Horry, acclamit be Thomas Cummyng, procuratour fiscall for ane noble lord Robert Stewart etc., aganis the airis of umquhile James Irrewing of Sabay, possessouris presentile of the samin, the assys havand consideratioun and inspectioun of the witesbirtht<sup>3</sup> examinat and deducit in the said caus, and lykways of certane domes gevin be the lawman of Zetland and Orknay, quhair ane Johne Adesoun wes dempt to be put in possessioun of the saidis landis of Horrie,<sup>4</sup> and als havand con-

<sup>1</sup> Robertson added in different ink.—A. W. J.

<sup>2</sup> O. N. *vitnisburðr*, giving witness.—A. W. J.

<sup>4</sup> See Nos. XXXVIII. and XL.

<sup>3</sup> In different ink.—A. W. J.

sideratioun of ane charter productit be the saidis airis of umquhile James Irrewing, berand that ane Iggagartht Hurrie, dochter of Adame Hurry and lauchfull air to Johne Hurry, with consent and assent of Johne, Magnus, and Nicholl Curstanis, and of hir broder oy, had sauld and annaleit the half of the place of Hurry to umquhile James Irrewing of Sabay for full landis price, and gevin our the uther half for half ane barrall of buttir or xxx<sup>s</sup> Scottis, as the said charter at lentht proportis, of the dait the xxj day of Junij, *anno*, etc., xlv yeiris, at the croce kirk of Dunrosnes under the procurit seallis of Schir Nicholl Wisheart pentionar of Dunrosnes, Adame Neving of Skuriburgh, and Magnus of Quendallis, and becais the assys undirstandis nocht how this Iggagartht succedit to thir landis after Johne Adesoun, beand ane woman and na man, as yit (nocht) knawand quhom of scho wes cum, thairfor that na pairteis havand ony intres thairto be hurt for laik of lauchfull warning, ordenis the saidis airis of umquhile James Irrewing to produce the hail airis of the said umquhile Johne Adesoun in the nyxt lawting ayther in Orknay or Zetland, quhair it salhappin my lord to be for the present, that the said actioun may be cognoscit in thair hail presens, swa that na falt be found in the proceeding of justice, and thair to defend in the said caus as they will wine and tyne, and that day to be peremptour and last dyat, and ordenis my lord to produce all rentallis, witnessis, or uther probatioun that he hes in fortificatioun of his lordships caus; and in respect of the witnes-birtht deducit in the said actioun, ordenis my lord to be put in possessioun presentlie, the land maillis remanand in evin handis quhill the day foirsaid and finall decissioun of the said pley,<sup>1</sup> and the said day my lord, or his lordships procuratouris, to answer as dempt thairto *salvo jure cujuslibet* under the pane of proceeding in the actioun.

Extractum de libro actorum per me Valterum Bruice scribam.

(Signed) V. BRUCEI manu mea.

NOTE. — This deed is to be read in conjunction with the deed that follows.

<sup>1</sup> Action at law.

## LVIII

DECREE OF A COURT HELD AT DUNROSNESS (Shetland),  
substantiating the evidence brought forward by the  
Irvings of Sabay as to their rights in the lands of  
Horrie in Orkney.

Original in Gen. Reg. House.

7th June 1569.

*Dunrosness.*

At Dunrosnes in the cross parischone of Zetland, the  
vij day of June, the yeir of God ane thowsand fyve hundreth  
saxty ix yeiris, ane court haldin at Lee within the said  
parischione be ane honorabill man Gilbert Cowpland,  
underfold and juge for the tyme, haweand ane commission  
of ane nobill and potent lord, Robert Stewart of Strayth-  
doin, knycht, feware of the landis and lordschip off  
Orknaye and Zetland and shireff principall of the samyn,  
subscreyvit with his awin subscription; the hail parichion-  
aris of the said paroche convenit, gadderit, and congregat  
togidder to consult, consider, and sentences geyff furth  
apon sik lauchfull materis as suld happin to cum befor  
the said juge and his assissoris choissin and sworn in  
jugement presentlie befor the said juge and hail com-  
munite of that paroche, to the nowmer of xv famous,  
worthy, and unsuspect personis (quhilk juge and famous  
personis, as afoir is said, sittand in jugement, thair com-  
perit befor thame ane honest young man callit William  
Irwyng, sone and ane of the airis off umquhill James  
Irwyng off Sabaye in Orknay, quhilk deit in the moneth  
off October the yeir off God ane thowsand v<sup>e</sup> saxty vii  
yeiris, and than the said William Irwyng requyrit and  
desyrit Nicoll Andersone, induellar in ane place callit  
Crosta within the parischion off Dunrosnes, sone and  
lauchfull ayre to his moder Engagarth Adamis dochter,  
quha succedit lawchfullie to the landis, houssis, and  
tenementis of the quye off Horrye in Sanct Androis per-  
schione within the cuntray of Orknay, efter the deceis of  
hir umquhill fader Adam of Horrye and als hir umquhill

broder Jhone Adamson, eldest sone off the said Adam, quhilk Jhon deceissit in Quharf in the cuntre of Zetland without lauchfull successione procreat off his bodye, as it was cleirlye seine be dyvers in the said parischione quha affermit and apprevit the samyn just and trew, but fraud or gyle, befor the said juge and his assyssoris, day, yeir, and place forsaid). Geyff the said Nicoll, lauchfull begottin ayre off Horrye, wald ratefie, afferm, and byd at all the haill heidis and poyntis and lykways all clausses with the contentis contenit within serten chartouris, evidenceis, and compremittis maid be the said Nicoles moder Yngagarth off Horrye, with the consent and assent off hir thre sonis, Jhone, Mawnis, and Nicoll Andersonis, tueychand the selleine and analiation off the half off the land and quy off Horrye to James Irwyng off Sabay, umquhill fader onto the said William Irwyng, into the quhilkis chartouris, evidenceis, compremittis, and escriptis, beirrand the seillis off honorabill men quhilkis ar to saye Sir Nicoll Wischart, umquhill viccar pensionare off Dunrosnes, Adam Neving, and Mawnis off Quendaill, the said Engagarth, Jhon, Mawnis, and Nicoll hir lauchfull sonis and airis, ar compremittit, bundin, and oblegat in the stratest form off obligation and under the pane of paying xl pundis to the said James and his airis, and als violation off thair fames, as at mair lenth is contenit within the saidis chartouris, never to revock, agane call, nor to be hard in jugement befor na juge nor jugeis spirituall nor temporall to procur in contrar that action and chartouris maid be the said Engagarth, Jhone, Mawnis, and Nicoll hir lauchfull airis, off the selleine and analiation and cleirlye ofhenteine and away putteine off the half off the land and quy off Horrye, and als off the tother half appertening umquhill to the said Engagarth and now to the said Nicoll, hir lauchfull sone and ayre, off the said half quhilk is unwadsett or analleit, bot set in fewis and heretabill takkis to the said James and his airis be the said Engagarth and hir airis for the sowme off ane half barrell butter, or thane ellis threttye schillingis Scoittis usuall money off Scoitland gud and sufficient pament, to be payit yeirlye

in the land maillis and dewteis off the half off the landis and quy of Horrye quhen it is requirit, as at mair lenth is contenit within the saidis chartouris and compremittis, evidentis, and escriptis maid thairapon be the forsaide Engagarth and hir airis to the said James and his airis; to the quhilkis heidis and petitionis requyrit be the said William Irvyng, sone and ane off the airis off umquhill James Irvyng off Sabay, befoir the said juge, assessoris, and parichionaris, the said Nicoll ansuerit sayand that he aucht and suld have nane mair dewteis nor maillis off the half off the quy off Horrye quhilk he heritable airit efter his umquhill moder Engagarth off Horrye and efter his bretheren Jhone and Mawnis, bot only ane half barrell butter or than ellis threttye schillingis Scoittis gud and usuall moneye of Scotland, as the said Nicoll confessit him bundin and oblegat in the saidis chartouris maid be his moder and hir sonis thairapon to the forsaide James and his airis, and als he sweyr the greit aeth off fre motive will befoir the said juge and haill parichionaris that nother he himself, his airis, nor nane in his behalf nor thairis suld cum incontrar the smallest syllabe off ony heidis or contentis contenit within the saidis chartouris maid, or ony utheris wrettingis or dischargeis maid, be the said Nicoles moder, himself, and his bretheren to the saidis James and his airis, bot suld and sall afferme, appreve, and defend the saidis wrettingis and chartouris as far as he is oblegat thairintill; and for the mair verification and affirmation off the said Nicoles ratefication maid heirapon in jugement befoir the juge and assessoris, and that this his affirmation maid heirapon suld be off the mair valour, strenth, fors, and effect, becaus he had na seill nor signat proper off his awin, he purchesit with greit instance the signat of ane honorable man Gilbert Cowpland off Sowl Irland, juge and underfold for the tyme, to be affixit for him and in his name, togidder with his hand led at the pen at his greit request be Peter Symson, cowrt clark for the tyme, togidder with the clarkis awin subscription, befoir thir witnes, Henrye Smyth, James Lesk, William of Brek, Nicoll Lewball, James Brek, with utheris divers off the assyssoris

and commonis; day, yeir, and place abone writtin; quhairapon the said William Irwyng tuik ane act in court and rasis ane instrument in ane notaris hand instantlie in jugement.

NICOLL ANDERSON off Costane [*sic*] with my hand led at the pen be Peter Symson court clark for the tyme.

Ita est Petrus Symson scriba curie pro tempore.

## LIX

DIVISION OF THE ESTATE OF THE DECEASED THOMAS TULLOCH OF NESS between his heirs, made by the baillie of St. Andrews and a court of arbiters.

Original in possession of Mr. A. Baikie of Tankerness.

February 12th, 1570-71.

Ness (Orkney).

The tuelf day of Februar 1570 yeiris.

The quhilk day comperit at the Arff hous<sup>1</sup> of Nes, quhair Johne Tullocht deit, William Sincler, balze of Sanct Androis parresone, and court being fensit of his autorite, comperit Marrabell Ingsetter, spous to umquhill Johne Tullocht of Nes, with consent of his [? her] sonis and dochteris, *videlicet*, Gilbert and Villiam Tullochtis etc., on the ane part; and Gilbert Tullocht, thair faider brouther, and Nicoll Tullocht, thair faider brouther sone, on the uther part; and thair thai of thair awne fre motive willis, in presens of the juge, compremittit thame to stand and abide at the sentence and deliverens of the personis underwrittin, equalie choysin with all thair consenttis; to wit, Jamis Sincler the foldis<sup>2</sup> sone, Eduard Sincler, Patrik Cant, Johne Langskaill, Andro Yensta, Alexander How, Hendre Smyth, Jamis Grind, Magnus Irving, Johne

<sup>1</sup> The house where the division of inheritance was made, *i.e.* the mansion house of the estate.

<sup>2</sup> Foud, *i.e.* William Sinclair the bailie. This is the only instance of the use of 'foud' in Orkney (apart from No. XVIII.).

Iwer,<sup>1</sup> Johne Papla, and Thomas Cuming as jugis arbitra-  
 touris to be sworne to do equall justice to baith the parteis ;  
 and be baith thair consenttis hes choissin the said William  
 Sincler, balze, to be odman and oursman <sup>2</sup> that upone all  
 actionis dependand betuxt the parteis that ar undecernit,  
 contenit in the decrett gevin at Nes the first of Februar  
 1569 yeiris ; and to tak calcall and exseme <sup>3</sup> the calcala-  
 tioun past thane, and quhar it is wordy to be raformit, to  
 raforme the samin ; and also upone all questionis debat-  
 able betuxt thame that thai ma be jugis compitent thairto ;  
 and either of the parteis sworne thair gret aythis to stand  
 and abid at the said jugis deliverence and decret thairof,  
 that under the pane of perjure and infame, quhilkis  
 subscrivit at baith thar commandis and raquest be Jamis  
 Sincler forsaid ; quhilk jugis and oursman beand con-  
 venit at the said house the said da, and in presens of  
 parteis beand sworne thair gret aythis, heirand all parteis  
 allegeance and defencis producit befor thame, and thar  
 awne consenttis thairto, finddis the first calcalatioun  
 nocht sa just as neid requerris, bot presentlie of the xij  
 merkis land of Nes, the tent penne and the ferd thairof  
 tane of the haill, and than the rest in halfarris <sup>4</sup> with the  
 tua mellis mailling in Oabak in South Ronaldsa, that  
 thair faillis to everi brouther (the tane half of the tent  
 penne and the ferd being devidit in thre partis) of the  
 landis efter umquhill Thomas Tullocht of Nes, to wit : to  
 Gilbert Tullocht in Nes tua mellis and four settenis cost <sup>5</sup>  
 melling ; <sup>6</sup> and to the gud wyf and hir barnis for thair  
 brouther part and the tane half of the tent penne and the  
 ferd that faillis to the gud vyf indurrand hir lifyme, is  
 thre mellis fiwe settenis iiij merk quarter merk cost ;

<sup>1</sup> Cf. Iwer of Fubister in No. XLI. Ivers are found in the seventeenth century selling land in Foubister. They were evidently a branch of the Foubisters descended from that Iwer (Ivar).

<sup>2</sup> Chief arbiter with casting vote.

<sup>3</sup> Jamieson gives exeme=exempt, but apparently the sense here is: take, calculate, and examine the calculation, etc.

<sup>4</sup> *i.e.* half of Ness, minus the tent and ferd, was thrown in with Oback and divided as follows.

<sup>5</sup> 'Cost,' was a mixture of one-third meal and two-thirds malt,

<sup>6</sup> Rent.

and to Williame Tullochtis barnis, the yongest brouther, the ij meil melling in Oabak in South Ronaldsa with four settenis mailling in Nes, to mak thame also gud ane brouther as the rest ar ; and ordanis the fift rige of the haill landis under the hous of Nes to aperten to the tent penne and the ferd, and the gud wif to hef the tane half, and the tother half to be devidit in thre thridis amangis the brether, as said is ; and ordanis everi brouther to hef ij m[eilis] fleche ; and the gud vif and hir barnis, for the tent penne and the ferd and thair brouther part, to hef iij m[eilis] ane setten iiij merkis ; and also ordanis the rest of the land <sup>1</sup> to be devidit amang thame be the sycht of iiij honest men according to thair mailling forsaid, or plucht pass tharupone, with the outbrekis and hous freddomis that apertenis to thame siclike : and as to the new houssis contenit in the decret the xvj da of Februar 1569, thai beand presentlie prissit be honest men, the jugis ordanis the tua brether Gilbert and Villiam, gif thai vilhef the tua houssis befor the dur,<sup>2</sup> to pa the gud wiff befor the raset tharof, four li. xiiij s. iiij penneis ; uthervayis gif thai rafuse, the gud vyf to pa thame the four li. xiiij s. iiij d. for thair partis, betuxt this and our Lady da of Lentren nixt cumis, and also ordanis the house contenit in the first decrett that wes ordanit to Villiam Tullocht, to aperten to his airis and to be as yit in thair possessions, as is decretit ; and the gud wif to satisfy in all his sone for the by rounis <sup>3</sup> thair-of, under the panis contenit in my Lordis precept direct tharupone, and thareftir the gud wif or Gilbert, quhilk of thame vilhef the housses, to big his hous in Ronaldsa with deligence, according to the first decrett, or thai hef ony entres to his housses in Nes except be his licience, under sic panis of violence as [are competent in ?] law to be im[posed ?] aganis thame or ony ane of thame that hes the entres thairto. This wes gevin for decrett, da, place, and yeir forsaid, subscrivit with the oursman and assisouris with thair handis and handis led at the pen as

<sup>1</sup> *i.e.* the other half of Ness.

<sup>2</sup> Door.

<sup>3</sup> Arrears of rent.

followis (*subscritur*): THOMAS CUMING, ane of the assisouris, with my hand; JAMES GRIND, ane of the assisouris, with my hand led at the pen be Thomas Cuming and at my command.

NOTE.—The principle on which the above division was made was this: Thomas Tulloch of Ness had left three sons (see pedigree) between whom his estate fell to be divided. He had left the 'tent and ferd penny' to the eldest, John, who had subsequently agreed to divide it equally with his brothers (see No. CXLVI.). Now John and his brother William were both dead and the division took place between the widow and heirs of John, Gilbert the surviving brother, and the heirs of William. The tent penny and ferd was first deducted and divided into halves. One half was equally divided into thirds, and the widow was life-rented in the other half (which on her death would likewise be divided into thirds). Then half the rest of the estate was equally divided into thirds; and finally the other half was ordered to be divided into thirds likewise. Thus the widow and heirs of John got half the tent and ferd penny over and above the other two shares; though they would only have this advantage so long as the widow lived. From a comparison of the 'cost' and the flesh it would seem that there were two meils more cost than flesh, and this would indicate that the two meils in Oback were meils of cost only. As the tent and ferd consisted of  $\frac{1}{3}$  of the whole lands 'under the house of Ness,' and as the widow's share exceeded the two others both in cost and flesh by 1 meil, 1 setten, 4 to  $4\frac{1}{4}$  mks.,<sup>1</sup> and as this excess was  $\frac{1}{2}$  the tent and ferd and therefore  $\frac{1}{6}$  of Ness, it follows that the total value (measured in rent) of Ness was as near as possible 12 meils cost, 12 meils flesh (which was a normal rent for 12 merks of land at that period). The value of cost was practically three and a half times that of flesh in the years 1564-68 (see *O. L. Records*, Nos. 66 and 68), so that the tent and ferd ( $\frac{1}{3}$  of Ness) came to rather more than  $\frac{1}{3}$  of the whole estate. But the history of the property as given in Nos. XXXVI. and CXLVI. makes it plain that this was Thomas Tulloch's 'heritage' which was being divided, land heired by him and not bought. There ought not in this case to have been any 'ferd' at all;  $\frac{1}{6}$  should have been portion of the property falling under either head. It seems clear then that by this time the tent and ferd had become a fixed proportion of an estate, obtained by taking the mean of  $\frac{1}{3}$  and  $\frac{1}{4}$ ; i.e. a little over  $\frac{1}{5}$ . This proportion has been used in the calculations in the Note to No. XXXIV., and fitted all the other data so well that, I think, there can be no doubt that it was the accepted estimate at the time. From this it follows that, if the tent and ferd penny is known, the total size of the property can be approximately told by multiplying by six.

<sup>1</sup> 6 settens = 1 meil, 24 merks = 1 setten.

## LX

DECREE OF THE SHERIFF COURT OF ORKNEY, called the Harmansteine, in the action between Malcolm Ireland and his father's sisters.

Original in Gen. Reg. House (given by Mr. W. Isbister of Bigswell).  
Printed: *O. L. Records*, No. 95.

January 23rd, 1573-74.

Kirkwall.

The Schireff Court of Orknay callit the Harmansteine <sup>1</sup> haldin in Sant Magnus Kirk of Kirkwall the xxij day of Januar the yeir of God j<sup>m</sup> v<sup>c</sup> and lxxij yeiris, be ane noble and potent lord, Lord Robert Stewart, feware of Orknay and Zetland, and schireff principall of the samin, the suittis callit, the court lauchfullie fensit, the assyse chosin, admittit and sworne.

*Nomina assise*

Robert Sinclar of Nes	Robert Isbuster
Williame Selatter of Burnes	Arthour Sinclar of Aitht in Zetland
Johne Broun of Veland	Henri Sinclar in Clumlie
Magnus Sinclar of Skaill,	Andro Hourstane
William Richane	Williame Linklatter
Johne Sinclar of Tensta	Williame Kirknes
Thom[as Cursetter] <sup>2</sup>	Oliver Selatter of Isbuster
William Bea[ton]	Johne Kirkbuster
Andro Linklat[t]er	
Alexander Spens in Girne	
	Williame Hendersoun
	Patrik Muntetht
	George Isbuster
	Andro Yinsta
	Johne Morray in Zetland
	[Thomas G]une,
	Johne Cavertoun
	Williame Fargusoun
	Johne Irrewing

<sup>1</sup> See Introduction.

<sup>2</sup> The names partially in brackets occur at torn places, but enough can be seen to restore them as above. It is just possible, however, that the last might be Thomas Bethune instead of Thomas Gune.

Quhilk day, anent the actioun and caus persewit be Malcolme Ireland aganis his fader sisteris, Marione and Margaret Irlandis, and their spoussis, Thom Loutfute and Johne Garmastoun, desyrand thame to decist and ceise fra thair sister part of landis, becaus thair is na thing producit in contrar the said Marione nor scho persewit and hir spous, Johne Garmastoun, at this dyat, thairfoir the assyse absolvis thame fra the persewairis clame and ay and quhill thai be of new summound agane be ordour of law; and as concerning the said Margaratis pairt, quhair thair is ane charter of alienatioun producit in jugement quhair scho hes annaleit hir sister pairt for certane sumes of money contenit thairintill, quhilk scho deliverit agane to George Irland, hir broder, quha coft the samin rycht fra hir, as the said pretendit charter specifies of the day and yeir of God, etc., xliiiij<sup>o</sup>., and the assyse beand riplie avisit heirwitht, togidder witht certane decreittis gevin befor the schireffis of Orknay and thair deputis sene the dait of the foirsaid pretendit charter, findis the said Margarat to haif bene possessit in hir said sister part of land be wertew thairof and b[rukit] and josit the samin sensyne, and als beand under contract of mariage with Thom Loutfute. . . . [Here the fragment ends.]

## LXI

DECREE OF THE SHERIFF COURT OF ORKNEY regarding the alienation of three farthing land in Scabra in the parish of Sandwick, Orkney.

Original in the Record Room, Kirkwall.

*March 31st, 1574.*

*St. Magnus's Kirk, Birsay.*

The sheriff court of Orknay and court of regalitie of the sammyn respective, haldin at Sanct Magnus Kirk in Birsay, the last day of Marche the zeir of God j<sup>m</sup> v<sup>c</sup> and lxxiiij<sup>o</sup> zeiris, be ane nobill and potent lord, Lord Robert Stevart, fevar of the landis and lordschippis of Orknay and Zetland, sherif principall and bailze iusticiar of the regalitie of the

samyne, beand present in iudgement, the suittis callit, the court lauffullie fensit, the assyse chosin, admittit, and sworne.

*Nomina assise*

Andro Hurstane	Olipher Sclaitter	William Rynd
Johne Smytth	Eduard Ingissay	Johne Donuldsoun
James Kennedy	Johne Kirkbister	Johne Ingissay
Magnus Svinney	Oliver Hunto	
William Linclettir	Johne Moir	

Quhilk day anent the actioun and caus persevit be Katherein Man and James Gray, hir spous, for his entries, aganis Magnus Sinclair in Skaill for the<sup>1</sup> [thre] farding land in . . . iday in Scabray in the parochin of Sandvik ; in respect of the chartour of alienatioun productit be the said Magnus, maid be vmquhile Margret Man, vith consent of hir spous William Innes, to vmquhill Williame Yorstan, of the half of the forsaid thre farding land, liand as said is, contenand na liquidat soume, and of the dait the tuentie fyft day of Apryle *anno* i<sup>m</sup> v<sup>c</sup> fourtie fyve zeiris, and als of the vitnesburtht led and deducit in the said actioun ; the assyse havand consideratioun of the haill, and havand God and guid conscience befoir ee, findis that the said Kathrein and hir spous, persevaris, hes entres, full rycht, and titill to the ane half of the thre farding land above specifeit, as rychtious roythis voman thairto and air to hir said [*sic*] vmquhill father David, and to the vther half thairof alsua, be ressoun forsaid ; consignand presentlie thairfoir tua ky and tuente fyve schillingis money in the judgis handis to be furtht cumand to all thais havand entres thairto ; and thairfoir decernis and ordenis hir to be possessit and enterit in the haill thre farding land, as said is liand, to be broukit, josit, set, occupyit, vsit, and disponit vpoun be hir and hir said spous as thair propir heritage in all tyme cuming ; reseruand place to thame to call and persev for thair byrun dewteis thairof as accordis of the law ; and executoriallis to pas heiropoun in forme

<sup>1</sup> Altered to *thre* by a recent hand.—A. W. J.

as efferis, and for the fornamyt tua ky and tuentie fyve schillingis money, George Ysbister in Grinay is becum actit be the tenour heirof that the samin sal be furtht cumand to all havand entres thairto.

Extractum de libro actorum curie vicecomitatus et regalitatis Orchadensis per me Valterum Bruce scribam eiusdem, W. Bruce manu mea.

## LXII

ADJUDICATION BY DAVID SCOLLAY, BAILLIE OF KIRKWALL, and eight arbiters, regarding the dimensions of the house property in the Midtown of Kirkwall belonging to Janet Guid.

Original in possession of Mr. A. Baikie of Tankerness.

*July 9th, 1575.*

*Kirkwall.*

ix<sup>o</sup> Julij anno 1575 yeris.

Quhilk day comperit at the desyir of William Tulloch, Robert Lesk, and William Bortyke, on the ane part, and Janet Guid for hir self on the wthir part, on the grund and landis lyand in the Midtoun of the brugh of Kirkwall, viz. Johnne Broun, William Garzeoch, Gavein Tailyour, for the part of William Tulloch and Robert Lesk; Alexander Robertsoun, Stewin Papla, and Magnus Papla, for the part of Janet Guid; Alexander Lesle and Johne Kingsoun, chosin for the part of William Bortyk; and David Scollow, bailze, od and owrisman; in the caus and effect following, severalie chosin be athir of the parteis consentis forsaid, that thai suld pas upone the grund of the wthir tennement pertening to the saidis William Tullo, Robert Lesk, and William Bortyk, nixt adjacent therto, and thair upone thair conscience mak equall partising and divitioun of the talis, yairdis, and fredomes pertening athir of the saidis tennementis, be equall met<sup>1</sup> of lyne; and eftir the saidis honest mennis sychting and metting of athir the saidis tennementis, bayth bak and forlandis,

<sup>1</sup> measurement.

findis the said Janet Guidis tennement to be of breid on the foir gait and bigit land thairof, tuentie tua futtis and ane handbred mair; and thairfor ordanis hir to have the said tuentie tua futtis handbred mair to breid of yaird, straik-and fra hir southmest gavill<sup>1</sup> of hir said tennement unto the commoun loyn<sup>2</sup> lyand to the landis of Pabdaill wart;<sup>3</sup> ordanand lykvyse to the said Jonet the half of the close, extending to four futt and ane half of breid, straikand thairfra to the loyn forsaid; and this our decreit to all and sindrie we mak patent quhom it efferis. Subscryvit wyth our handis in maner following, day, yeir, and place forsaid. (*Signed*) DAVID SCOLLOU, vyth my hand; JOHNNE BROUN, wyth my hand at the pen led be Magnus Paplay; MAGNUS PAPLAY, wyth my hand; A. ROBERTSONE, bailze for the tyme.

## LXIII

DECREE OF THE BAILLIE COURT OF STENNESS, in the action between John and Robert Leith and Edward Omand. [All styled Onston in the deed.]

From a copy in Gen. Reg. House (given by Mr. W. Isbister of Bigswell).  
Printed: *O. L. Records*, No. 98.

*April 4th, 1576.*

*Kirk of Stenness.*

Ane court haldin at the keirk of Stenhouse the fourt of Aprile 1576 yeires be the baillie, William Sclaitter, the suitis callit, the court lawfullie fensit, the assise chosen, sworne and admittet.

*Nomina Assese*

William Linclat	Johne Germestoun
James Corrigaill, eldar	Andro Gairmestoun
Rob Ysebuster	Robe Bellie
Johne Ysebuster	Magnus Book,
Malcolme Ysebuster	Nicholl Ysebuster
Rob Lenay	Malcolme Yreland
James Lesk	Alexander Sclaitter.

The quhilk day anent the actioun muiffet be Edwart

<sup>1</sup> gable.

<sup>2</sup> loan, a narrow street.

<sup>3</sup> to . . . wart = towards.

Onstay on the ane part aganis Johne Ownstay and his soune, Robert Onstay, on the uther part, in forme and effect as efter followis, that is to say, anent the possessing of grass, outbrekis and balkis,<sup>1</sup> heirfor the assese ordaneis as the merkstaneis wes set of befoir within the dykis, sall haiff his bak to the hill.<sup>2</sup> Wretin be me Robert Stewart, lectour of Haray, clerk for the tyme, at the command of the assese abonewritin. *Subscritur*, Wm. Sclaitter. Tenet cum principali. Ita est Jacobus Jack, notarius publicus premissa attestans.

## LXIV

DECREE OF THE BAILLIE COURT OF STENNESS, regarding land belonging to John and Robert Leith and Edward Omand. [All styled Onston, as in preceding decree.]

Original in Gen. Reg. House (given by Mr. W. Isbister of Bigswell).

Printed: *O. L. Records*, No. 99.

July 23rd, 1576.

Onston.

The xxij day of Julij 1576 yeiris. The bailze curt off Stanhowis haldine at Onestone be the bailze, William Sklater, the suttis callit, the curt lauchfullie fensit, the assyis chosin, sworne and admittit.

*Nomina assise*

Robert Ysbister	Thomē Luitfit	James Maches
Jhone Ysbister	William Garmiston	Malcum Ysbister
Robert Garmiston	Nicoll Ysbister	Magnus Book
Jhone Garmiston	Reche Yrland	James Lesk

Anent ane actioun persewit be Johane Onstane and his sone Robert Onsta, beand procutour for thame Alexander Scletter, contrar and aganis Edward Onsta and his procutour Johane Lesk, anent the fredome of ane baik to the hill as the marcheis was settled within the dykis,

<sup>1</sup> Sc. Eng. *balk*, a strip of uncultivated land; O. N. *bálkr*, balk, a partition; in this case it had been cultivated and used as a means of access to the hill.—A. W. J.

<sup>2</sup> *i. e.* Edward Onston shall have his balk or access to the hill.—A. W. J.

biand occupyit be the said Edward the said baik be the space of xvj yeris or therby, aye and quhill that William <sup>1</sup> Onsta and his sone Robert, as said is, stoppit the said Edward till pas to the hill with the fredom of the said baik, as the said Edward was demit befor, conforme to ane decret gyffin at Onsta be the bailze William Sclatter, of the dait . . . . . [illegible] for yeires of befor, decernis and ordanis the said Edward Onsta till brouk possessioun of the said baik on to the hill bayth within and without. And becaus the said Robert Onsta occupyit the said baik eftir as it was dempt fra hyme, ordanit the crope therof to the said Edward, and Robert Onsta till pay ane dum-raw <sup>2</sup> to the bailze for nocht fulfilling of the former decret; and as to the thre rigis that Edward Onsta hes lyand besyd Johane Onstais hous, quhilk biand desyrit be the said Johane in presence of the assyis that he suld haif thame for uther thre rigis of his lyand besyd the said Edwartis hous, ordanit Johane till brouk Edwardis thre rigis and Edward till brouk Johanis. Writtin at the desyre of the larik man,<sup>3</sup> Robert Isbister, be me, Stephane Paplay.

(Signed) WM. SCLATTER.

## LXV

DECREE OF A COURT HELD BY THE SHERIFF SUBSTITUTE and composed of an assize chosen by the parties, regarding a claim to a sister part of Corrigall made by the heirs of Margaret Corrigall.

Original in possession of Mr. J. A. S. Brown, Stromness.

(Soon after November 7th, 1578.) *Corrigall, parish of Harray.*

Ane curt haldin at the Arff howis off Corgell wythin the parochin off Harra[y] be David Scollow, substitute to

<sup>1</sup> In error for Johane.—A. W. J.

<sup>2</sup> O. N., *dómrof*, a fine for disregard of judgment.—A. W. J.

<sup>3</sup> Lawrightman, O. N., *lögréttumaðr*.—A. W. J.

Patrik Menteyth, schireff depute off Orknay for the tyme, the suitis callit, the curt laufulle fensit, the assiis sworne, chossin, and admitit.

*Nomina assise*

William Halero off [Akirs]	Thomas Cursater Jhone Millar in	Malcolme Irland Robert Grantoft
Andro Hurstane	Fyrtht	in absence of
William Lincletter	James Flet	Johne Wishart
Alexander Spens in Gyrne <sup>1</sup>	Andro Linclater Malcolme Isbister	Andro Cursetter Peter Flet

The quhilk day anent the actioun persewit be Mawnis Papla, procurator for Huchone Curcum and his sisteris Kathrein [*sic*] Curcumis, the lawfull aris off umquhill Margret Corgell thair mothir and William Curcum thair father, contrar and againes James Corgell, Jhone and Robert Corgalis, sonis and lafull aris off umquhill William Corgell, yonger, concerning the airchip off landis and movablis pertening to the said umquhill Margret. Comperit bayth the parteis and producit twa ordinances gyffin in dyvers schireff curtis, ordanand thaim to the Arff howis off Corgell befor the schireff depute and certan honest men chosin be the saidis parteis, and thair the mater to be decydit but forder delay, and that diat to be peremptour, as the saidis ordinances off the daitis respective the thrid day of July *anno* 1577 yeris and the 7 off November *anno* 1578 yeris in thair selffis at mair lentht properts. Comperit the said James Corgell, his said brether, and Williame Sclaitter thair procuratour, and producit the maner off ane discharge gyffin befor famus witnes and subscriyvit be Schir Robert Moat, sumtyme curat off Byrssay and Harra, off the dait at Sanct Michaelis kyrk in Harray the xxviii day off Jemvar [*sic*] the yeir off God 1535, macand mentione that the said Margret, wyth consent off hir husband William Curcum, war owtred<sup>2</sup> bayth off land and

<sup>1</sup> Now Grain, near Kirkwall.

<sup>2</sup> Released or cleared off: *i.e.* payment was made to them and their claim on the estate was satisfied.

movables that scho arit efter hir umquhill father, and that be hir said brother William Corgell, yonger, and tharfor aquitclomit and dischergeit the said William and his aris for ever, as at mair lenth is contenit in the said discherge; to the quhilk discherge the said Mawnis Papla, procurator forsaid, aponit hyme, allegeand the samin nocht to be formell and that the samin wes generale and irrelivant and aucht nocht to be admitit, quhilk beand referrit to interloquitor, the assis resonand in the mater, requyrit the parteis Corgelis gyff thai had ony forder probatioun upone the said Margret Corgelis confessione that scho wes satifeit <sup>1</sup> off hir sister part off land and movablis, as said is, efter father and mothir; quha producit thre famus witnes attour the said discherge, quhilk witnes beand sworne and admitit, viz. James Tailyour in Quayka, ane man off thre scoir twa yeris or thairby, mareit, deponit he beand at ane schireff curt at Hallowmes in the towne off Kyrkwall, acompaneit wyth William Corgell yongest, and hard Margret Corgell, mothir to the said Huchone Cureum, desyr hir brothir the said William to cum to hir howis and to remaine all the nycht; quha grantit to do the samin; and swa, sittand at thair supper, the said William Corgell requyrit his sister Margret gyff scho had ony kynd off airchip to lay to his cherge uthir efter father or mothir that scho sold have arit; the said Margret ansuerit and said, 'Nay, brothir, I have na thing to lay to your cherge, bot I am sateisfeit off all thingis that evir I arit efter father and mothir, bayth off landis and movablis, and gyffis yow all sister benesone,' and he gaiff hir all brothir benisone, and hir husband beand present confessit the samin. And than Jhone Corstowin, ane mareit man off thre scoir xvj yeris or thairby, beand dilligentlie exemenat, deponis conforme to the said James Tailyour in all pointis; and inlykmaner Jhone Stewartson,<sup>2</sup> dilligentlie exemenat, deponit conforme to the uthir tua witnes abonewretin in all pointis, and forder that the said Margret confessit hir

<sup>1</sup> Satisfied.

<sup>2</sup> Also found in the forms Schewartson and Scheurie: all corruptions of Sigurdson.—(Information from Dr. J. Jakobsen).

payit of all thingis anent hir airschip and owerpayit. Quhilk witnes beand hard and considerit be the assiis, thai ordand the said discharge to be valeid and to tak effect in all tymes cuming as accuntit, and swa fyndis the said Margret lawfuller lowssit bayth off landis and movablis be hir said umquhill brothir. Nochttheles it wes allegit be the said Huchone, his sisteris, and thair said procuratour, as ane peremptour defence that [nochtwithstanding ?] off the premissis the said Margret and . . . . . mycht nor culd . . . . . said sister part off land or movablis thair aris be . . . . . wythout consent off the said . . . . .; quhilk defence in lyk maner beand refarrit to interloquitor, repelis the said defence for the caussis forsaid, and fyndis the said Margret lafullie owtred be the law off the cuntre, as said is, and the aris to have na place to ganecall nor never to reclame the samin in ony tyme cuming, becaues the said land lay under the haid bwile or Howis,<sup>1</sup> and thair wes na owtlandis to outred the sister, except the wit off the cuntre brak the samin,<sup>2</sup> or at the persewaris can fynd ony preparative or practik past in contrar the lyk actioun [thairfor ?]; and this owir decret we mak it patent to all and sundry quhome it efferis.

Subseryvit wyth our handis as followis day, yeir, and place abonewrittin (Signed) DAVID SCOLLOU scriba curiae pro tempore, ANDRO HURSTAN, WILLIAM LINCLETTER, ALEXANDER SPENS, THOMAS CURSETTER, JHONE MILLAR, JAMES FLET, ANDRO LINCLATER, MALCOME ISBISTER, ROBERT GRANTOFT, ANDRO CURSETTER, PETER FLET, wyth owir handis led at the pen of David Scollow. [Indorsed] 'Corgelis decret.'

NOTE.—This deed gives the fullest account of a type of action that frequently came before the old Orkney courts (cf. Nos. XLIX. and LX.): brother or heirs of a brother *v.* sister or heirs of a sister. They arose out of the rights of the brothers to buy out the sisters' shares in the lands of the Head Bu, or other chief farms on the property. In this instance such a buying out had taken place forty-

<sup>1</sup> Head Bull or House: *i.e.* the chemys place or principal mansion.

<sup>2</sup> Unless the wise men of the country split up the Head Bull into a smaller Head Bull and outlands. Sisters could only claim a share of the outlands; if there were none they had to take their inheritance in the form of personal property.

three years previously, and the heirs of the sister were now maintaining that the sale had been invalid, and the deed of discharge 'not formal' but 'general and irrelevant.' Fortunately for the heirs of the brother certain ancient inhabitants were still alive to testify to the *ipsissima verba* of the brother and sister on the occasion, and they won their case.

## LXVI

EDICT BY THE 'JUDGE' [Sheriff of Orkney] directing the Frasers and their procurator to have their evidence ready by the next Lawthing, in the case *versus* Magnus Sinclair.

From the original in the Record Room, Kirkwall.

March 12th, 1578-9.

(Kirkwall).

The xij<sup>o</sup> day of Marche *anno*, etc., lxxvii<sup>o</sup> zeiris, quhilk day anent the actioun and caus persewit be the airis Fressyris and thair procuratouris contrair Magnus Sinclair and his procuratour, Dauid Sclaw[*sic*], for the sax penny land of Swartabrek in Tohope and thre penny land of Havell; thair compeirit the said Dauid, as he wes ordanit, and producit certane exceptionis contrair the libellit summondis producit be the said Fressyris; and the juge beand avisit heirwitht and vndirstanding thaim be of small effect, yit that na summaritie may be allegit to bene usit in the defendarris contrair, and als for laik of ane conding<sup>1</sup> number presentlie, the juge be interloquitour of assyse ordenis the saidis Fressyris and thair procuratouris to mak thair ansueris to the saidis exceptionis agane the lawting<sup>2</sup> nixt heirefter, and als ordenis baytht the perteis to compeir the said steine,<sup>3</sup> as dempt tharto, witht all and sindrie thair just and lawchtfull defencis, titillis, evindentis, and wtheris wreattis quhilkis thay have in the said caus, to be producit be thame for defenss of thair caus, all wtheris frewall exceptionis and cavellationis of law to be

<sup>1</sup> Condign, adequate.

<sup>2</sup> The case was actually tried on November 5, so that it would seem that at this date that was the first Lawthing after March 12.

<sup>3</sup> O. N. *stefna*, used here as synonymous with Lawthing.

secludit and sett apart becaus thai ar found to be aganis the lawis of the cuntrie, and that day as beand the thrid dyet to be ane peremtour dyet for thaim baytht as thai will wyne and tyne<sup>1</sup> of the law.

[Extractum de libro actorum curie vicecomitatus Orcha-  
densis per me Valterum Bruce scribam eiusdem.

V. BRUCE manu mea.]

## LXVII

DECREE OF THE SHERIFF COURT OF ORKNEY, CALLED THE  
ALL-HALLOW COURT, affirming an excambion of lands  
in Tohope made in 1527 to be valid.

Original in Gen. Reg. House.

November 5th, 1579.

Kirkwall.

The Sheriff Court of Orkney callit the Alhallo Court, haldin at Sant Magnus Kirk of Kirkwall be ane noble and potent lord, Lord Robert Stewart, feware of Orknay and Zetland, the fift day of the moneth of November, the yeir of God j<sup>m</sup> v<sup>c</sup> and lxxix yeiris, the suittis callit, the court lauchfullie fensit, the assys chosin, admittit, and sworne.

*Nomina assise*

James Tullo in	Gilbert Tullo	Andro Yinsta
Schapinschaw	Williame Linklatter	Oliver Selatter of
Williame Halero	Robert Isbuster	Isbuster
of Acarris	Williame Beatoun	Andro Linklatter
Williame Selatter	David Spens	Thomas Cursittor
of Burness	Rany Elphingstoun	Johne Sinclar in
Andro Hourstane		Tensta
	Thomas Gune	
	Stevin Paplay	
	James Morray	
	Magnus Paplay	

<sup>1</sup> win or lose.

Quhilk day anent the actioun and caus dependand betuex Henrie Frissall, his colligis, and thair procuratour Gilbert Irrewing, contrar and aganis Magnus Sinclar in Skaill, sone and air of umquhile Johne Sinclar of Tohope, and his procuratour David Scolaw, anent the six penny land of Swartebrek in Tohope and thre penny land of Havell thair. Comperit bayth the saidis perteis, as in the terme peremptourlie assignit to thame to produce all richtis, titillis, evindentis, and utheris defenssis quhilkis thai had in the said caus, and the said Gilbert, procuratour foirsaid, conforme to the last ordinance maid thairanent of the dait at Kirkwall the xij day of Marche *anno* j<sup>m</sup> v<sup>l</sup> lxxvij<sup>o</sup><sup>1</sup>, producit for his part ane Charter of Alienatioun maid be umquhile Nicholl Frissall, sone and lauchfull air of David Frissall, of all and sindrie his landis liand in Tohope, to his fader broder Alexander Frissall, with ane confirmatioun of his umquhile faderis selling of the samin to the said Alexander his broder, with all rycht and clamis thay had thairto, as the samin at mair lenth proportis, of the dait at Kirkwall the penult day of August, *anno* ane thowsand fyve hundretht and sevin yeiris, with the procurit seallis of Frederik Newphar, notar publict, and Gilbert Kennedy, burges of Kirkwall, with sum utheris wreattis impertinent to the said actioun, and upoun the production thairof tuik actis. And likways comperit the said David, procuratour foirsaid, and producit ane Charter of excambioun and coss maid be umquhile Thomas Frissall, sone and air to the said umquhile Alexander Frissall, fra him and all his airis, executouris, and assignayis, with the consent of Sandie Frissall his eldest sone, of all and hail his landis and heritages quhilkis he airt be the deceis of his said umquhile fader, togidder with the chemeiss hous of the samin, liand on the suythsyd of the gait in Tohope, with all the pertinentis pertening thairto and rycht and rotht of the samin, to ane honorable man Johne Sinclar of Tohope, his airis and assignayis, for evir,

<sup>1</sup> See preceding deed. As it is specifically stated here that its injunctions had been obeyed, this *must* have been the 'next lawthing.'

and that for thre penny land of the said Johnnis liand in Havell in Tohope, on the north syd of the gait, with houssis, toftis, tumallis, rycht and roytht of that ilk, togidder with samekle land as wes gevin of auld of befoir for keping of the grund, as is contenit in the said Johnis charter of cossing maid to him thairupoun, as the said charter and evident of the dait at Kirkwall the xxiiij day of September, *anno*, etc., tuentie sevin yeiris, with the procurit seallis of Maister Alexander Scot, persoun of Vestray and official of Orknay, and Sir Nicholl Halero, persoun of Orpher, at mair lentht proportis. And the said Gilbert, procuratour foirsaid, in lyk maner producit the said charter of excambion maid be the said umquhile Johne Sinclar to the said umquhile Thomas Frissall of the foirnammitt thre penny land of Havell, as is abone expremitt, for the saidis Thomas landis and heritage liand on the suyth syd of the gait in Tohope, with the rycht and rotht thairto pertening, quhilke effermit, ratefeit, and apprevit the said cos to be guid in it self, as the samen of the dait at Kirkwall the foirsaid xxiiij day of September, *anno*, etc. xxvij yeiris, with the samin seallis of the foirsaidis umquhile Sir Nicholl Halero and Maister Alexander Scot, at mair lentht beris; quhilkis hail beand red, hard, sene, and considerit be the assys, and thay thairwith riplie avisit, eftir lang reasoning and mature deliberatioun, havand God and guid conscience befoir E,<sup>1</sup> findis the said excambion and charteris maid thairupoun guid in the self and weill gevin, and the charter of alienatioun producit . . . [*torn*] of the anterior dait null and of nane effect be reassoun of the said excambion, and thairfoir decernis and for finale sentence gevis that the samin excambion sall stand in effect, and everie ane of the foirsaidis parteis to bruik thair awin landis quhilke thay presentlie posses, but ony interruption or contradiction in al tyme cuming, and quhat utheris titillis or rychtis the saidis Fressallis hes of the saidis landis of Tohope as yit unproducit and sene, to intent and persew thairfoir as law levis.

<sup>1</sup> Eye.

Extractum de libro actorum curie vicecomitatus Orcha-  
densis per me Valterum Bruce, scribam ejusdem. (*Signed*)  
ROBERT STEWART. V. BRUCE *manu mea*. DAVID SPENCE,  
with my hand led be Stephane Paplay at my command.  
WM. BETON, with my hand led be Jhone Stewart, reidar  
at Kirkual. OLIUER SCLATTER in Isbister, with my hand  
led be Thomas Cuninger, at my comand. JAMES MURAY  
of Garth with my hand. THOMAS GUN, with my hand.  
ROBERT ISBISTER, with my hand led be Stewin Paplay at  
my command. WILLIAM HALCRO with my hand. WM.  
SCLATTER of Burnes. [ANDRO HURSTANE, WILLIAM  
LINCLET, JHONE SINCLAIR in Tensta, ANDRO LINCLET,  
with our hands at ye pen leid be Wm. Smytht reidar at  
Sandwik.]<sup>1</sup> STEPHANE PAPLAY, with my hand. GILBART  
TULLO, with my hand at ye pen leid be Wm. Smyt<sup>t</sup> reidar.

## LXVIII

AGREEMENT MADE BEFORE THE BAILLIE OF SANDWICK  
and an assize of arbiters, between the sons of James  
Louttit of Lyking, regarding the division of his estate.

Original in possession of Mrs. Wilson, Stromness.

*December 20th (30th ?), 1579.*

*Lyking, Sandwick (Orkney).*

At Lykin in Sandwik, the xx[x ?] day of Desembair,  
the yeir of God ane thowsand fyw hundir thriescoir nyn-  
teine yeiris, it is apoyntit, concordit, and fynalie agreit  
betuix brethir germane, that is to say betuix Jhone Lowtit,  
sone to James Lowtit of Lykin, on the ane part, and  
Magnus Lowtit his brothir, on the wthir part, in maner,  
forme, and effect as eftir followis; that is to say the said  
Jhone Lowtit is cum beffor the belze, Magnus Sinclair  
off Skaill, in ane fensit cowrt . . . honest assisouris beand  
present quhais nemmis followis, Andro Hurstane, William  
[Lincllet ?], [Oliph]air Sclatter, Jhone Sinclair, Magnus

<sup>1</sup> Those in brackets are all in one hand—the notary's.

Burvik, James Hervy, Jhone Kirknes, Andro Reidland, [Thomas] Reidland, Alexander Linklet, Jhone Browne in Forswall; the saidis Jhone Lowtit [produced] . . . ane compromit and conditioun that was maid betwix him and . . . thair fathir James Lowtit, that beiris in itself that Jhone Lowtit sall [haif and is] content to resaif in full contentatioun of his hail airschip, bayth eftir his mothir Agnes [Cragy who] was departit at the plesour off God, and alsua eftir his fathir James Lowtit . . . thane as gyf he haid bene departit,<sup>1</sup> bayth of land and mowabill gudis and geir; the said Jhone sall haif to him and his airis to his part, the hail landis quhilk apertynit propir heritage to his said fathir and modir, that is to say he sall haif and is content to rasaif ane mark land in Stromnes, . . . markland in Swanbuster in Orphir, ane penny land callit Cotquy in Rowsay, ane meillis mailling in Scartane in Sandwik, ane mark land in Burvik, with the hail howsis in Kirkwall, part therof in the Innis, and ane wthir part lyand in the lang close in Kirkvall; and that in full contentatioun of his hail arff bayth [after] fathir and modir, to him and his airis, and the said Magnus his brodir is content to haif and resave the hail land in Lykin with howsis and pertynantis, that is the hail owdell heritabill land and the Kingis grace land quhilk thair fathir haid in tak and assedatioun, the hail land of . . . <sup>2</sup> hail owdell and Kingis grace land for his part and his . . .

[At this point half of the lower half of the deed is lost. Judging from the half lines remaining, the main division of the property seems to have been made in the above comparatively intact part of the deed, and questions of detail occupy the remainder, together with warrandice on both sides, and provisions made in case they—or one of them—be ‘persewit be the law.’ At the end signed, ‘I, Jhone Lowtit, with my hand at the pen laid at the pen [*sic*] be William Smyth, reidar at Sandwick and Stromness.’]

<sup>1</sup> The absence of ‘umquhile’ before their father’s name, and this phrase ‘as if he had been departed,’ suggest that he was not yet dead but possibly *non compos mentis*.

<sup>2</sup> Half a line is missing.

## LXIX

DECREE OF THE SHERIFF COURT OF ORKNEY, CALLED THE WAPPENSTEINE,<sup>1</sup> confirming the judgment given in the Alhallo Court, and dismissing the Frasers' appeal.

Original in Gen. Reg. House.

February 24th, 1579-80.

Kirkwall.

The Sheriff court of Orknay callit the Wappinsteine, haldin be ane noble and potent lord, Lord Robert Stewart, feware of Orknay and Zetland, and shireff principall of the samin, etc. ; at the Place of the Yairdis in Kirkwall, the tuentie ferde day of Februar, the yeir of God j<sup>m</sup> v<sup>c</sup> and lxxix yeiris, the suittis callit, the court lauchfullie fensit, the assyse chosin, admittit, and sworne.

*Nomina assise*

James Tullo in Schapinschaw	Oliver Selatter of Isbuster
Thomas Mudyne in Hoy	Andro Yinsta thair <sup>2</sup>
Malcolme Grott of Tankernes	Williame Selatter of Burness
Johne Crummartie of Charay	David Spens in Scalpay
Williame Grott of Sandvik	Edwart Spens in Weitfurde
Andro Hourstane of Hourstane	Rany Elphingstoun

Williame Tait in Langro<sup>3</sup>

Mr. Johne Dischingtoun

Johne Broun of Veland

Magnus Scalpay

James Corgill,

Magnus Ingsitter.

Quhilk day anent the summondis producit be David Scolaw, procurator for Magnus Sinclar in Skaill, contrar Henrie Frissall and his colligis and Gilbert Irrewing thair procurator, comperit the said David and producit tua protestationis maid in judgement at the Harmansteine last

<sup>1</sup> Literally weapon-court; cf. Scottish wapenshaw.

<sup>2</sup> There, *i.e.* in Yinsta.

<sup>3</sup> Lingro in St. Ola parish.

ves,<sup>1</sup> quhilkis mentionattis that insafar as thai had nocht persewit the risting of the decreit gevin in favours of the said Magnus at the said steine, according to the mynd and tennour of thair summoundis quhilkis thai rasis to that effect, that thai suld nevir be hard to persew the samin in ony tyme thaireftir, be reassoun it wes ane peremptour terme assignit to that effect and had circumducit the samin, as the saidis protestationis at mair lentht beris; togidder with ane instrument tane in Williame Fermoris handis notar publict, to the samin effect, and siclik protestit this court beand the secund dyat and court<sup>2</sup> sene the geving of the said decreit, and the actioun of reducioun as yit nocht intentit nor persewit be thame, and the defendaris readie to ansuer thairto, bot circumducit, likewise that the juge and assissors wald proceed conforme to the lawes of the countrie and gif thame proceis and decreit, and thairupoun desyrit interloquutor of court; and the assyse avisit heirwitht all in ane voice findis the saidis Davides protestationes relevant and admittis the samin, and thairfoire decernes in tym cuming and commandis the saidis Fresseris and thair procuratouris to ceise fra all fordar persuit in the said caus and trubling of the said Magnus in the peaceable brukin of his landis of Tohope contenit in the samin last decreit, and nevir to have fordare place to persew the reducioun thairrof, bot perpetuale silence to be put to thame in all tyme cummyng, and all sic evidentis as was producit be thame befor the geving of the foirsaid decreit to be cancellatt and cuttit to the effect abonewreattin; and as concerning the pairt of the summondis quhair the Fresseris ar summound to heir thame decernit to tyne thair haill movablis for cuming in contrar the excambioun maid in the saidis landis according to the clause contenit thairintill, the assyse undirstanding the said claus to be generall, and nevir befor thame practickit quhair ony sic thingis wes upliftit, and als beand ane claus of fayth of bodie appertenand to the

<sup>1</sup> was.

<sup>2</sup> The Harmansteine (or January court) being the first court since the giving of the said decree by the Alhallo Court.

Commissaris jurisdiction, quhilk thai remit to be jugit be him ; or thane the lik practice to be producit the nyxt head court and thane to have proces.

Extractum de libro actorum curie vicecomitatus Archadensis per me Valterum Bruce, Scribam ejusdem.

(Signed) V. BRUCE manu mea.

NOTE.—It appears from this deed that the Frasers had begun an appeal against the judgment given by the Allhallow Court on November 5, but had not followed it up. In consequence they were debarred finally by this decree from pursuing it any further. A further question considered by the court was the enforcement of a clause contained in the original deed of excambion (of 1527). See the Allhallow Court decree by which the parties were bound to keep its conditions under penalty of forfeiting their whole movable goods. The Frasers by 'coming in contrar the excambion' had by the letter of the law incurred this penalty, but such an extreme measure never before having been enforced, the assize were clearly reluctant to enforce it now. They referred the question either to the commissary's court as being a case of violation of faith falling within ecclesiastical jurisdiction, or else to the next head court, if the pursuers could prove a precedent.

## LXX

PRECEPT FROM LORD ROBERT STEWART to his officers, directing them to summon the parties to an impending action to appear at a Sheriff Court in St. Magnus Kirk, Kirkwall, and also to summon an assize to try the case.

Original in possession of Mrs. Wilson, Stromness.

*February 27th, 1579-80.*

*Kirkwall.*

Robert Stewart, fewar of Orknay and Zetland, shireff principall and baillie justiciar of the regalitie of the samin, To my lovittis Magnus Halkland, John Gray, Thomas Cogill, my officeris in that part, conjunctle and severale speciale constitut, greting : Forsameikle as ther is ane action and cause depending befor us betuix John and Magnus Louttites, persewars, on the ane pert, and the airis of Agnes Cragy ther motheres,<sup>1</sup> and William Halero and Maister Magnus Halero of Burgh, for his part, on the uther part, and als John Crummerty of Caray for himself for his entres ; quhilk action being oft and diverse tymes

<sup>1</sup> *i. e.*, as heirs of Agnes Cragy.

continewit fra court to court this lang tyme bipast, hes seilepit and as yit hes nocht tane finale end, to the said compleneres havie hurt and skaith, as is alledgit : theirfoir I charge yow, or ony ane of yow, yit as of befoir incontinent efter the sycht heirof ye lawfullie summond, wairne, and charge [baith] the parties abonewrittin to comper befoir me or my deputis ane . . . day in ane schireff court to be haldin within the toun of Kirkwa in Sanct Magnus kirk therof, the fyftene day of March nixtocum in the hour of cause, to ansuer at the instance of the said compleneris, to heir and se it be proceidit quher it left, and proces to be led and deducit therin as efferis, or ellis to schaw ane resonabill cause quhy the samin suld nocht be done ; with certificatioun gif thay comper nocht the said day and place in the hour of cause, we will proceid and minister justice therin insafar as we may of law ; and to that effect that ye lawfullie summond, wairne, and charge ane sufficient and condigne assise therto, that is to say :—Malcolme Irland, Magnus Cloustoun,<sup>1</sup> Gilbert Irrewene, Magnus Irrewene, Edward Spens, David Spens, William Tait, Magnus a Scapa,<sup>2</sup> Olipher Selater in Obester,<sup>3</sup> William Bettoun, Thome a Cragy, Thomas Gun,<sup>1</sup> James Murray, John Broun, Andro Linkletter, Alexander Linkletter,<sup>1</sup> Johnn Linkletter, Johne Kirknes, Johne Irvine,<sup>1</sup> Olipher Selater in Stoiff, John Broun in Forsuell, Johne Velzeone, Edward Bettoun, Magnus Bettoun, and Andro Reidland ; and als the said William Halcro as principall partie for his interest, to comper the saidis day and place to pas upoun ane inqueist betuix the saidis parties, ilk persoun under the pane of xl s. unforgiffin according to justice, as yow will ansuer to me therupoun ; the quhilk to do I commit to you conjunctle and severale my full power be this my precept . . . indorsit . . . to the berar [?] Giffin under my subscription manuall att Kirkwall, the xxvij day of Februare, 1579 yeirs. (*Signed*) ROBERT STEWART.

<sup>1</sup> Above this name is written 'ab,' *i.e.* absent ; presumably when the court was held.

<sup>2</sup> This is pure Norse : *a* (=at) was the preposition generally used in such cases ; where we would say 'of.'

<sup>3</sup> Isbister.

[*On the back.*] Upoun the xxvij day off Februare, the yeir of God within wryttin, I, Magnus Halkland, officer within constituit, past at command of this precept, lawfullie summonit, wairnit, and chergit Malcolme Irland, Magnus Cloustoun, Gilbert Irrewene, Magnus Irrewene, Edward Spens, David Spens, William Tait, Magnus a Scapa, Olipheir Selater in Osbester, William Bettoun, Thome a Cragy, Thomas Gun, James Murray, all personale apprehendit to compeir befoir my Lord or his deputis in ane schireff court to be haldin within Sanct Magnus kirk, or quher it sall happin thame to sit for the tyme, the xv day of March nixtocum in the hour of cause, to ansuer to all pointis, clauses, and artielis heirin containit, efter the forme and tenour of the samin in all pointis. This I did befoir thir witnes William Linkleter [?], Robert [?] <sup>1</sup> Sinclair, Andro Houstone,<sup>2</sup> Magnus Sinclair; and for verificatioun heirof I haiff affixit heirto my stamp.

Upoun the last day of Februare, the fyift day of March, and the xij day of March, respective, we Thomas Cogill, Magnus Halkland, and John Gray, officers in Stromnes respective, past at command of this precept, lawfullie summond, warnit, and chergit William Halero as principall partie within wryttin and . . . Johne Broun, baillie of [Kirk]wall . . . Andro Linkleter . . . John Linkleter, John of Kirknes, Johne Irving, Olipheir Selater in Stoiff, Johne Broun of Foswell, John Velzeoun, Edward Betton, Magnus Bettoun, and Andro Redland, all personale apprehendit to comper befoir my Lord or his deputis in Sanct Magnus kirk within the toun of Kirkwall, or quher it sall happin them to sit for the tyme, the xv day of March 1579 yeiris, to ansuer to all heidis and articles contenit in this within wryttin precept, efter the forme and tennour of the samin in all pointis; of the quhilkis I deliverit ane just coppe to the said William Halero. This we did befoir thir witness, James Thryssall,<sup>3</sup> Robert Stewart, William Kirknes, Magnus Sinclair, Johne Sinclair,

<sup>1</sup> Or John? The word is very indistinct.

<sup>2</sup> No doubt Andro Hourstane, frequently found in deeds of this period.

<sup>3</sup> James Kirkness of Thryssall.

with utheris diverse [?] and for verificatioun heirof I haiff affixit heirto my stamp.

[?] Productit and continewis this actioun to the morne in the samin forme and effect bot prejudice of parteis.

[*On the edge* :] The last Februar, Thome Cogill, officer, summoned William Halcro *per se*, and John B[?]un assys[er]. Witnes, William Thrissal<sup>1</sup> and Robert Stewart. The xxvij Feb. 1579.

NOTE.—This summons to the assizemen to ‘pass upon an inquest’ was given February 27 and 28; and the court was to be held on March 15. It was therefore a ‘sheriff court set upon 15 days warning’ regulated by Act of Parliament, 6th March 1429 (vol. ii. 17). ‘Item, it is statute and ordained upon the serving of inquestes and retours againe to the Kingis Chappell, that all Free-holders dwelland within ony schireffedomes compeir at the head courtes in their proper persones with their seales; bot gif it happen them to be absent upon a reasonable cause. And gif onie be absent in that case, that he sende for him a sufficient gentle-man, his attourney, with the seale of his armes, and swa in the Schireffe courtes set upon fiftene daies warning.’

## LXXI

DECREE OF A SHERIFF COURT OF ORKNEY in favour of Earl Robert Stewart, regarding the lands of Sabay.

Original in Record Room, Kirkwall.

January 18th, 1583-84.

Kirkwall.

The xvij day of Januar, the yeir of God j<sup>m</sup> v<sup>c</sup> and fourseoir thrie yeiris, [the] schireff court haldin at the toun of Kirkwall be Mr. Johne Dischingtoun, Johne Cavertoun, Patrik Munteyth, and David Scollaw, schireffis speciallic constitute be . . . sioun of our soverane Loirdis Sessioun, the court lauchfullie fensit and effermit: The quhilk day in the actioun and caus persewit be ane nobill and potent lord Robert, Erle of Orknay, contrair and aganis Magnus, Gilbert, and Edwart Irvingis, brether; comperit the said nobill Lord be his procutour William Irvyng of Sabay,<sup>2</sup> and produsit ane summowndis quhair all the foirsaidis

<sup>1</sup> William Kirkness of Thrissal in Scorwell, Sandwick.

<sup>2</sup> Brother of Magnus, etc., and creature of Earl Robert. The lands thus got from his brothers were feued by his patron to him.

brether war lauchfullie summound to compeir this day to ansuer at his instance and to heir and sie them, and ilkane of them respective, for thair awin partis, dicernit be dicreit of court to warrand, extend, and renew the charteris, evidentis, and utheris wraittis maid be them to the said nobill Loird of the four penny land and ane halff with the thrid part of ane merk land lyand in the toune of Sabay, with thair partis of the onsettis ; that is to say, Twyngnes, Messager, the Gart, Carabrek, thrie mylne quoyis with the mylne mwlteris, togidder with all partis and pendiculis pertening thareto, all lyand within Santandrois paroschin, mainland and schirefdome of Orknay, conforme to the claus of warrandice maid be them to the said nobill Loird in thair uther chartour of the saidis landis now productit theranent, sauld and dispoit be them to him ; and siclyk of fyve merk of land lyand in Sabay sauld and annaleit be the said Edwart Irrewing to the said nobill Loird with the pertenantis. And all the foirsaidis brether, viz. Magnus, Gilbert, and Edwart Irrewingis, comperand personalle in jugment, beand requyrit be the foirsaidis jugis gif thai ony ressonabile caus haid to apoine aganis the said libell, or that gif thai had bene ony wayis coactit or compellit to sell, renunce, and dispoine the foirsaidis landis to the said nobill Loird ; quha ansuerit that thai wer on na wayes compellit bot that thai did the same voluntarlie ; quhairupoun the said nobill Loirdis procutour tuik act of court ; quhilkis haill beand considerit be the juges abone specifeit and thai ryplie avisit thairwith, dicernis, dicreittis, and ordainnis the foirsaidis Magnus, Gilbert, and Edwart Irrewingis, bretherin, thair spousiss Cristiane Yinsta, Barbera Crummartie, and Jonet Pottinger, and all thair airris quhatsumevir, to warrand, acquiat, and defend the said nobill Loird, his airis and assignayis quhatsumevir, in the landis abone expremitt in all tymeuming conforme to thair charteris of alienatioun and venditioun maid to the said nobill Loird therupone, of the daittis at Kirkwall the vij day of September the yeir of God j<sup>m</sup> v<sup>c</sup> and four scoir ane yeiris, and Edwartis chartour of the dait at Kirkwall the fyft of September

1582 ; and als till extend and renew the saidis evindentis to the said nobill Lord, his airris or assignayis, als oft as neid beis or as the said nobill Loird or his foirsaidis sall requyr the same to be done, and ay and quhill thai be in dew and compitent forme as efferis. Extractit furth of . . .

(*Signed*) DAVID SCOLLAU w<sup>t</sup> my hand ; P. MUNTTY<sup>r</sup> of the Fair Ill ; MR. JOHNE DISCHINGTOUN w<sup>t</sup> my hand.

NOTE.—This deed and No. LXXIII. illustrate the successful grabbing by Earl Robert of the estates of the larger Orkney landowners. It will be noticed that this case was tried by his own sheriff and underlings (all four held lands of him) *without* an assize ; and that there was something radically wrong with the charter of sale herein affirmed is proved by the fact that after urgent complaints made by Gilbert and Magnus Irving, the Lords of the Secret Council, on Oct. 16th, 1594, ejected William Irving from Sabay.<sup>1</sup>

## LXXII

DECISION OF A COURT OF PERAMBULATION anent the marches between Saba, Tolop and Tankerness.

From what is clearly a copy in a somewhat illiterate hand, probably of the seventeenth century, in the possession of Mr. Alfred Baikie of Tankerness.

January 27th, 1583-84.

(*Sabay* ?).

On the twentie seventh day of Janwary 1583 yeirs, ane perambulation holden be me Robert Stewart, Earl of Orknay and Lord of Zetland, and justice generall of the samin, and with us certain of the wisest and descreitest gentlmen of Orknay, called Mr. John Dishintoun, Laurance Bruce off Colmender [*sic*],<sup>2</sup> William Halero of Aikers, David Scolay of Tofts, Malcom Groat of Tankernes, James Stewart off Grymsay, William Gordan of Kerstoun, John Cavertoun of Shapinshay, with certain of wther honest men to the number of fyftein famous persones, [to] pass upon the ground with us and sie the old marches betwixt

<sup>1</sup> Inventory in possession of Archdeacon Craven. By an agreement with Gilbert Irving, William subsequently regained the property.

<sup>2</sup> Misreading of *Cultmalindy* by the copyist.

Saba, Tolop, and Tankernes, the day forsaid, al the old marches bieng sein, the marches of Saba that stands on the south west nuik of Mesigar, and be reason of the complaints made to us be the wther men <sup>1</sup> of Tolop as weill as be our own tennants, both of the Kings land as Bishops, on William Irving off Saba, that whair the said William wold not sufer them cast fealls on the east syd of the seat dyk of Tolop nor yet would suffer them to tak up wair from the banks off Waiggo without libertie asked and given of him and that they should pay for the samin. The said William compeired befor us and the asysers forsaid and aledged that he had just cause to do the samin be reason the ground and the wair libirtie justlie did pertain to him ; and he being required what he could produce for verificatioun of the samin, the said William produced befor us and the asysers being witnes therto, ane Charter made and subseryvit be William Sinclair, Earl of Orknay, to Crystie Irving and Genno <sup>2</sup> Paplay his wyff, of the dait off the sixtein off May 1478,<sup>3</sup> making mention off the meithes and marches of the nynpenny land of Saba, Tollop, and Tankerness ; and sicklyk the said William produced befor us [a decree] given under [Henrie] Lord Sinclair, justice of Orknay, and William of Cragie ; <sup>4</sup> and wther lawmens dooms, was produced befor us, given befor Sir William Sinclair of Worseter, knight, justice for the tyme, and John of Cragie, lawman,<sup>5</sup> the three lawmens dooms was produced given befor Sir William Sinclair of Wasetter, knight, and Nicoll Laurnan,<sup>6</sup> [*sic*] lawman for that tyme ; all the forsaid lawmens dooms and decreits maks mention

<sup>1</sup> Uthelmen ; another obvious mistake of the copyist.

<sup>2</sup> Misreading of Edane.

<sup>3</sup> This can only have been a charter of confirmation. The original charter of excambion between Earl William and Criste Irving and Edane Paplay, by which they got Sabay, Grotsetter, and lands in Tohop in exchange for the lands mentioned in No. xxxvii, was dated April 27th, 1460.—Inventory in possession of Archdeacon Craven.

<sup>4</sup> William of Cragy was lawman in 1480 (No. xci.). John of Cragy had succeeded him by 1495 (No. xcvi.).

<sup>5</sup> No. xxxvii.

<sup>6</sup> Nicol Haw. The decree referred to is No. xli.

that the said scatt dyk off Tolop that striks out off the over mildam of Saba and pases forward whyll it coms forment the old march stone of Saba which<sup>1</sup> is and shalbe just marches betwixt ; on the wther pairt, sicklyk, fra the said dyk and stone to the shoar where the west pairt off Gragwey bears south-west to west on the west banks, was, is, and shalbe the just marches betwixt Tankernes, Tolop, and Saba ; and by reason of the Earls and lawmens dooms and decreits, and sundrie famos honest men as witnes do testifie and declair befor us the forsaid marches are just and trew in themselves ; and by reasan that the lawmens dooms maks mention off the airth<sup>2</sup> of the sky, thairfor we have tryed the sam with a compas and have found the dooms, compas, and witnesses agrie together ; and we find Wiliam Irving of Saba to have the just right to the ground and to al the wair that coms ashoar within the forsaid marches, and thairfor decreits and ordanis that no person or persons shall tak any wair from his banks of Whago or any uther pairt of his shoar within his marches or any pairt of his ground without his libertie asked and given, under the pains contained in the forsaid dooms and decreits. And becaus we find the old marches to be just and true in themselves, and for ratifying and affirming of the old marches forsaid in all tym coming, we with advyse of the asysors decerns that the sheriff shal go with certain of the honest men with [*sic*] and shall sett one march stone with two wittneses on the end of the dyk stith at the uper mildam off Saba ; so pasing fra that stone along the dyk stith to Kelskrook, and thair another stone to be sett with two witnesses ; so pasing that dyk by the northeast syd of the hous off Hawell, so pasing that stone to the south west nuik off Mesigar, so pasing from that ston to the shoar ; and then for devyding Tankernes from Tolop and Saba, to go to the west syd of the poynt off Grut quoy, and thair southwest be west on the west banks, and straught from thence to the hill till it coms to

<sup>1</sup> The words 'stands in the south-west nuik of Messeger' have been missed out after 'which.' See Nos. XXXVII. and XLI.

<sup>2</sup> Airt, quarter of the heavens.

the fyve hilloks and ston Loe, and thair sett ane march stone and two wittneses; and what is betwixt Tankernes and Saba to properlie belong to the nyn penny land off Tolop called Aboveyard; and efter this forsaid stones and marches is sett down, to be arested be the shereiff and honest sufficient men to remain in all tym coming perpetuall belonging to the said lands. And for the verificatioun heiroff we and our asysors hes subscriyvit this our decreitt and afixed our signett heirto day place and yeir of God forsaid. *Sic subscribittur, Orknay.*

## LXXIII

RECORD BY WILLIAM BANNATYNE, acting on a royal commission, of the process by which he apprised the estate of Brough in Rowsay for arrears of duties, by means of a court held by him at Kirkwall, and subsequently sold the property to Earl Robert.

Original in possession of Colonel W. E. L. Balfour of Balfour and Trenaby.

November 12th, 1584.

Kirkwall.

[Williame Bannantyne, messenger, sheriff in that part, narrates that Robert, Earl of Orkney, Lord of Zetland, etc., and Mr. Johne Dischingtoun, his chamberlain, had obtained from the king letters directed against Jonet Halero and Rany Elphingstoun her spouse, Katherine Halero and Rolland Hamiltoun her spouse, and Henry Halero of that ilk. These letters make mention that Earl Robert obtained a decree before David Scola, Patrik Menteith, and Johne Cavertoun,<sup>1</sup> indwellers in Orkney and sheriffs, against Mistress Margaret Sinclair relict of the deceased Mr. Magnus Halero of Brught, and the other persons above-mentioned, heirs of the said Mr. Magnus, ordaining them to pay the following sums of money for arrears of land mails and other duties of the lands occupied by Mr. Magnus.

<sup>1</sup> It is a significant coincidence that these are the same underlings who executed a similar job for their master in No. LXXI.

For the year 1575, in flesh, seat butter, seat silver, and cost, all converted to money, £149, 0s. 10d. : for 1577, £260, 17s. 6d. : for 1578, £174, 9s. 6d. : for 1579, £212, 12s. 6d., amounting in all to £1009, 12s. 6d.<sup>1</sup> Of this sum Mistress Margaret Sinclair paid £335, 0s. 2d. after her husband's death, and owes now for her part of the balance £169, 16s. 4d. ; and the heirs owe £504, 16s. 5d.<sup>2</sup> The earl and his chamberlain 'past fra the persuit' of the widow '*pro loco et tempore*' and obtained a decree of the Lords of Council dated 14th July 1584 against the heirs. In conformity with this, Williame Bannantyne, on the 13th and 14th of October passed to the grounds of the lands of Brught in Rowsay and Anehallow and sought for the movable goods, corn, cattle, etc. of the aforesaid heirs, to apprise them for the debt, but could neither find nor hear of any to seize. Thereupon he denounced the said lands to be apprised in a court to be held in the borough of Kirkwall on November 12, 1584, and affixed a copy of the letters and a 'ticket' of the denunciation upon the house of the lands of Brught. On the 16th and 17th of October he warned the defenders to appear in this court, delivering to each a copy of the letters and the denunciation, and he repeated this warning at the market cross of Kirkwall on October 25th. The deed then goes on as follows.]

Upoun the quhilk tuelft day of November, the yeir of God forsaid, I compeirit in Sanct Magnus kirk of Kirkwall quhair the justice courtis and schireff courtis usis to be haldin, and thair eftir lauchfull creatioun of my officiaris and memberis of court, I causit tua severall courtis to be deulie fensit, and causit ane of my officiaris to call the said Jonet Halero, Katherine Halero, and thair saidis spouses for thair enteress, and the said Henry Halero of that ilk, and all utheris haveand or pretendand to have enteres, to compeir befor me to heir and see the said apprysing deulie and lauchfullie led ; and immediatlie thaireftir compeirit Mr. Johne Dischingtoun, procuratour for the

<sup>1</sup> The year 1576 has evidently been omitted by mistake.

<sup>2</sup> The error of 5d. is Mr. Dischington's, not mine.

said nobill Lord, and desyrit proces ; and siclyk compeirit Rany Elphingstoun, spous to the said Jonet, Rolland Hammiltoun, spous to the said Katherine, and protestit for thameselffis and in name and behalf of thair saidis spouses that nathing that suld happin to be done in the said apprysing suld prejugé thair richtis and titillis quhilk thai have to the saidis landis of Brught in Rowsay ; and lykwayis compeirit William Halcro of Aikeris and allegeit him to be infest heretabillie in all and hail the four penny landis of the saidis landis of Brught in Rowsay, as he suld verifie and produce befor the assyis, quhilk allegeance wes admittit and fund relevant ; and the said Mr. Johne Dischingtoun desyrit forder proces in respect that na rycht nor titill wes produceit to stop the samin, and producit ane rentale of the saidis landis of Brught in Rowsay with the said Lordis clame ; quairfor I chusit and electit ane inqueist of the personis eftir specifeit, quhilkis wer lauchfullie summound to that effect, sworne, and admittit in jugement ; thay ar to say, Alexander Robertsoun, James Murray, Thomas Murray, Alexander Urie, James Kyntour, William Halcro, Stevin Paplay, Johne Broun, Thomas Diksoun, Johne Tuait, Johne Sinclair, Johne Fallisdail, William Mayne, Andro Hourstane, William Linkletter, Oliver Sinclair, Gilbert Irving, Nichole Nether-toun,<sup>1</sup> James Flet, Johne Linkletter, James Corgill, Malcolm Ireland, James Foubister, Edward Spence, and William Knarstane ; quhilkis personis of inqueist departand furth of court and agane enterand thairintill, being ryplie and at lenth avisit with the saidis letters and decreit quhair-upoun the samin proceidit, and with the clame and rentall gewin in be the said nobill Lord and his procuratour, haveand God and guid conscience befor thair eeis, all in ane voce aggreand with Williame Halcro of Akeris chancellor of the said assyis,<sup>2</sup> fyndis and hes fund that the

<sup>1</sup> Nicol Garrioch of Nethertoun in Holm.

<sup>2</sup> He had just previously appeared as an interested party. Judging from his appearance in No. CXCIII. (in company with Mr. Dischington), and in 1590 as a baillie (*Reg. Privy Coun.*, Addenda, p. 375), he enjoyed the confidence of his noble ruler. His activity on this occasion would seem to justify it.

saidis landis of Brught in Rowsay, and Quhome thair, extendis to nyne penny land and ane farding, quhairof thair is to be deduceit for the said William Halerois part of the saidis landis, pertening to him heretabillie conforme to his infestment and titill productit, four pennyland; sua restis to be apprysit fyve penny land and ane farding quhilk payis in yeirlye dewetie frie, all debtis and uther deweteis being deducit, ane barrell buttir quhilk the said assyis fyndis to be worth yeirlye ilk yeir ourheid<sup>1</sup> the soume of sax pundis Scottis money; and thairfor the said inqueist apprysit all and haill the said fyve penny land and ane farding land of Brught and Quhome in Rowsay quhilkis pertenis to the said umquhile Mr. Magnus heretabillie the tyme of his deceise and now pertenis to his airis abone specifeit, for the sowme of sax scoir pundis money forsaid in part of payment of the sowme abone wrettin contenit in the said decreit and letters, as for the principall; and for the sowme of sax pundis, as for my schireff fee in the deductioun of this apprysing, becaus the said nobill Lord hes satisfeit me thairfor, eftir the forme and tennour of the act of Parliament, and findis the sowme of ij<sup>e</sup> lvj li. xij s. viij d. to be restand awand of the sowmeis abone wrettin unsatisfeit and payit; and I causit my officiaris be oppin proclamatioun to offer the said fyve penny land and ane farding land of Brught and Quhome in Rowsay, apprysit as said is, to the saidis personis or ony utheris hawand or pretendand to have enteres thairto or to ony utheris that wald by the samyn for the sowmeis abone wrettin for the quhilkis thai ar apprysit; and becaus nane of thame compeirit to that effect and that I culd fynd na byaris thairfor, I be vertew of my office, conforme to the said act of Parliament, sauld and assignit, and be thir presentis sellis and assignis, the heretable uthale rycht and propirtie of the said fyve penny land and ane farding land of Brught and Quhome in Rowsay, with thair houses, bigingis, toftis, croftis, quoylandis, outbrekis, pendiclis, and pertenenentis thairof abone wrettin,

<sup>1</sup> In the gross.

to the said noble lord, Robert, Erle of Orknay, his airis and successouris and assignaais, superioris thairof, to be consolidat, adjonit, and to remane with the said erledome and superioritic thairof in propirtie perpetualie in all tyme cuming, siclyk as the said umquhile Mr. Magnus or ony his predicessouris broukit the samin befor this present apprysing; and ordanis the rest of the saidis personis landis and guidis to be poyndit and apprysit for the sowmeis abonewrettin quhilkis restis unsatisfait; and this my proces of apprysing till all and sindrie quhom it effeiris, I notifie and mak knawin. In witnes of the quhilk thing, to this present proces of apprysing the seillis of the maist part of the saidis personis of inqueist being heirto appendit, the samin is inclosit under my seill; day, yeir, and place forsaidis, befor thir witnesses undersubscrivand.

(Signed) WILLIAM BANNATYNE, messinger, and schireff in the said appryssinge, with my hand; WALTER BRUCE, clerk, with my hand; JAMES KYNTOR wyth my hand; THOMAS DICKSON with my hand; JHONE TWAT wyth my hand; WILLIAME MAIN with my hand; JHONE SYNCLER with my hand; THOMAS MURRAY with my hand; ALEXANDER WR with my hand; WILLIAME HALCRO of Acris with my hand; A ROBERTSON with my hand.

[Twelve seals appended, viz. of Johne Sincler, Alexander Robertson, Thomas Dickson, Stevin Pauplay, Jamis Murra, James Kintor, Olifair Sincler, Johne Broune, William [Halcro], Villiam Ma[yne], Malcolm Ireland, Thomas [Mur]ra.

Two other seals cut away.]

NOTE.—Just as in No. LXXI., we find here an apparently orderly process of law attended by a number of curious circumstances. The original decree given in the earl's favour by his obliging nominees (he was sheriff-principal and they his deputies), and the peculiar facts concerning the chancellor of the assize, have been noted. Another point concerns the names of the assize. The tables in Appendix B show that these assizes were composed of landowners, but in this particular case there is quite a sprinkling of men who cannot be found in connection with any property. Alexander Robertson, Alexander Urie, James Kyntour, Thomas Dickson, John Fallisdail, and William Mayne would all seem to have owed their summons to some other cause. Its nature may possibly be indicated by one of the charges brought against Lord Robert Stewart

in 1575;<sup>1</sup> that of 'imputting of his own household and domestic servants and suldarts upon their assize, and so condemnit innocent men at his private malice and desire.' Another feature of the proceedings was the celerity with which the lands were put up for sale and knocked down to the noble earl with a notable absence of competition. This clearly occurred on the same day that the court was held, for the date of the deed is that of the court and the assizemen append their seals. Finally, in 1586 the 5 penny, 1 farthing lands of Brough and others in Rowsay were granted by Earl Robert to his natural son George Stewart.<sup>2</sup>

## LXXIV

RECORD OF A PROCESS OF APPRISING OF THE LANDS IN STROMNESS belonging to the heirs of James and Henry Halcro, for arrears of rent due by them for land they occupied in South Ronaldsay.

Original in possession of Mrs. Watt of Breckness.

*February 20th, 1584-85.*

*Stromness, Orkney.*

*(Abstract)*

Instrument of Apprising by John Gray, officer of the parish of Stromnes, in terms of a precept from Robert, Earl of Orkney, dated at Kirkwall, April 27, 1584, following upon a decret at the instance of Marion Halcro and William Smyth, reader, for his interest, and acting for the heirs of the deceased Andrew Halcro; against Thomas Mudie acting for the heirs of the deceased James and Henry Halcro, dated at Kirkwall, June 28, 1581; whereby the said William and his spouse were to be put in possession of 'twa melis maling lyand in the toune of Flawis,' in South Ronnaldsay, and he was to prove the prices and fiars for 36 years of bygone duties; and having produced the account before Mr. John Dischintoun, sheriff depute, the latter with his assessors, David Scolaw in Toftis, William Halcro of Aikers, and John Broun of Weland, by their decret found that the widow of James Halcro called Janet Cragie, for herself should pay 9 £ 7 s. 6 d. 'as for the pricis of the land malis of the yeiris intromettit with be hir,' and Thomas Mudie, as procurator for James Halcro's

<sup>1</sup> *Oppressions of Orkney and Shetland.*

Balfour Castle charter chest.

heirs, a like sum, and as procurator for Henry Halero's heirs, the sum of 66 £. Accordingly the officer on February 20, 1584-5, and preceding days, passed to the ground of a half penny land in the town of Stoif within the Uttertoun of Stromnes and a penny land and a half lying there, pertaining respectively to the heirs of James and Henry Halero, and finding nothing poindable, he on Feb. 20, with Magnus Bettoun, Andrew Ridland, William Sinclair, and James Fea, as his assessors, comprised at the house of Stoif two merk of land pertaining to the heirs of James Halero and his widow Janet Cragie, for the sum of 18 £ 15 s., and a penny land and a half and a half merk land pertaining to Henry Halero's heirs, 'with the hail houss of Stoiff,' for 66 £. Precept is given to Thomas Blair to give sasine thereof to the said William Smyth and his spouse Marion Halero.

William Fermoir, notary, signs for the officer and his assessors, and the seal of Cuthbert Henderson is appended.

[*On the back :*] 1584-5, Feb. 20, Thomas Blair, burgess of Craill, gave sasine of the above subjects to said William Smyth, reader at Stromnes, upon the ground thereof at 4 P.M.; witnesses, Magnus Bettoun, James Fea, William Sinclair, Robert Bettoun, William Guddell, James Crawford, and William Mathesoun.

## LXXV

PRECEPT DIRECTED BY EARL PATRICK TO THE BAILLIE OF HARRAY, cancelling a previous precept directed to the depute baillie, as being vitiated by the earl's ignorance of the proper procedure, and bidding him now hold a court according to the legal forms.

Original in possession of Mr. J. A. S. Brown, Stromness.

*December 5th, 1592.*

*Birsay.*

Patrik, Erle of Orknay, Lord Zetland, and Justice generall of the samin, To our lovittis Thomas Robertsoune . . . oure baillie of Harray; For samekle as we

have directit our uther precept of befoir to your deput, James Flett,<sup>1</sup> for takin tryall and cognitioun of ane certane allegit wrang done be James Corgill, eldar, and Johne Corgill to thair frend and kynnisman James Corgill, youngar, anent the complaint of tua riggis of land pertenant to his maling, lyand in the said toun of Corgill, wranguslie grippit be thame, with the croppis thair of acclamit, etc. ; In the quhilk precept it is ordenit the said James, undirbaillie, to cheise<sup>2</sup> xij honest men to pas witht him upoun the ground of the saidis landis within ane certane space thairin expressit : And becaus we ar sensyne informit that the trew tryall thair of cane nocht be had except the haill toun be sychtit and perambulat, and speciall day assignit to that effect, the xij honest men warnit thairto, and dew provisioun maid to the samen be ather parteis, and siclik be reassoun the complenar allegis to find the said James, youngar, als mekle als guid outbrek landis besid him self, and that the outbrek acclamit wes nevir in his possessioun nor yit appertenis to his maling ony way ; thairfoir our will is and we charge yow that ye in our name and auctoritie summond, warne, and charge bayth the saidis parteis to compeir befoir yow at ane certane day as plessis yow assinge, togidder witht xij honest men chosin with consent of partie, quhilkis failyeand, ye to choise for thame thair upoun the ground, eftir your court beand fensit caus thame be sworne, to pas throucht the haill rendallit land, alsweill infeild as owtfeild, outbrekkis girse as utheris, and mak ane equale devisioun thairupoun, and gif unto everie ane of the saidis parteis according to thair yarromanna<sup>3</sup> and malingis and na otherwayis, admittand thame thair just and lauchfull defenssis ; and gif the foirsaidis tua riggis beis found to appertene to the said James, younger, according to his forsaid [?] complaint, that he be placit and possessit thairwith, or utherwayis with alsmekle als guid, etc. and forder

<sup>1</sup> James Flett of Pow.—Skaill Charters.

<sup>2</sup> choose.

<sup>3</sup> O. N. *jarðar-meginn*, *jarð-munnr*, a portion or division of land ; explained in N. G. L. as land in regard to its extent and produce. Dan. *jordsmon*, soil, ground.—A. W. J.

in all thingis according to justice, suspendand heirby our uther precept gevin to the said James, younger, and effect thair of, unto the said day for the caussis foirsaidis and justice; and this ye lave nocht undone as ye will ansuer to us thairupoun; the quhilk to do we commit to yow our full power be this our precept, delivering the samin be yow deulie execut and indorsat agane to the berar.

Gevin under our signet of office, at Birsay the fift day of December 1592. (*Signed*) W. BRUCE, *scriba*.

## LXXVI

SETTLEMENT OF HERITAGE RIGHTS between Andrew Sinclair and his nephew, John Sinclair, by the baillie and chosen arbiters.

Original in possession of Mr. P. N. Sutherland-Græme of Græmeshall.

*April 1st, 1593.*

*The House of Air, Holm.*

At the hous of Air in Holm, the first day of Apryll the zeir of God 1<sup>m</sup> v<sup>c</sup> fourscoir and threttein zeiris, comperit personally befoir me Edmond Sinclair of Flottay, bailze of Holm and Paplay. And there, in presens of the said bailze, Andro Sinclair there and Johne Sinclair, his brother soun, of thair avin mutuall and fre consentis and motywe willis, hes appointit and and [*sic*] aggreitt be the adwys of Jon Sinclair in Skaill, Nicoll Natherton, Wm. Oglessetter, Nicoll Craigy, James Hestuall, and Troylus Gareuche, and the said bailze as odman and ourman equally chosin betuix tham, anent all questiones, quarrellis, and debaittis that ather of tham hes to lay to utheres charge, and specially for the brother part of land and houssis aeclamit be the said Jon Sinclair, lyand wnder the said hous of Air, quhilk is aggreit be the aduys forsaid as followis, To wit, the said Andro Sinclair, Mareone<sup>1</sup> Allane

<sup>1</sup> Should be Margaret.

his spous, James Sinclair their soun, and their airis, acknowledges the haill tuay sellaris ben of, and byr on the taill<sup>1</sup> thereof, to apertein to the said Johne Sinclair, as also acknauledges him to haue entres to ellevin settens, vii mark mailing quhilk thaye presently occupie, to be his just brother part and portione of the said land under the said hous of Air, as air to wmquhill Hendry Sinclair his father, Quhilk the said Johne Sinclair for the present, in respect of gratitud and guid deid schavin to him in nam of entres and gresume<sup>2</sup> gevin be the said Andro to him, hes sett, and in assedation lattin, and be the tenor heirop settis and in tak and assedation lattis, all and haill the saidis haill tuay sellaris and byr on the taill thereof, together with the saidis elevin settens vii mark mailing, to the said Andro Sinclair, Margarett Allan, James Sinclair their son, and his airis, during all the space, zeiris, and termes of sevin zeiris nixt and immediatly following their entres thereto, quhilk salbe and begin at Alhallowday *in anno* i<sup>m</sup> v<sup>c</sup> fourscoir and Threttein zeiris and frathinfurth to indure during the space of sevin zeiris abonevrittin; to be peceabilli bruikit, joisit, occupiett, labourit, and manurit be the saidis Andro Sinclair and his forsaidis, frely, quietly, weill, and in peax, but ony reuocation, trubill, impediment, or again calling quhatsumeuir; payand for the saidis haill tuay sellaris and byr and elevin settens vii mark mailing, zeirly elevin settens vii mark mail, guid and sufficient stuif veyit vpon ony equaell pondlair vithin the parochin. And I forsuith, the said Jon Sinclair and my airis, oblisses vs to warrand the said tak abonevritin during the space forsaid as law vill, but fraud or guill. In vitnes quhairof bayth the saidis parties hes causit [the] notar vndervrittin to subscriwe for tham becaus thai culd nocht subscriwe themselfis, as also the said ourman hes subscriwit the sam, day, zeir, and place abonevrittin, Befoir

<sup>1</sup> *i.e.* the two rooms at the ben end of the house and the byre at the end of them.

<sup>2</sup> Grassum, money paid by a tenant on entering into possession.

thir vitnes, Magnus Nicoll and Magnus Irving greif of Greinvail.

E. SINCLARE of Flotty,  
vitnes.

ANDRO SINCLAIR and JON  
SINCLAIR with our handis  
tuiching the pen of the notar  
undervrittin at our command  
becaus ve can nocht writ  
ourselvis.

(Subscription of notary, JAMES NEVEN.)

## LXXVII

DECREE OF THE BAILLIE COURT OF STENNESS in favour of  
George Clouston, about some corn alleged to be stolen  
by his servant.

Original in possession of Mr. William Clouston of Netherbigging.  
Printed : *O. L. Records*, No. 77.

. . . 23rd, 1595.

*Ireland, Orkney.*

Wpone the xxij day off . . . anno 1595 yeiris, ane court  
haldin at Iyrland be the bailye, Thomas Robertsoun, the  
seetis callit, the court lawfullie fensit, the assise choissin,  
sworne and admittit.

*Nomina assissa*

James Flett	Richey [?] Germestoun
James Corrigall	Andrew Germestoun
Malcolm Isbister	William Phea
Magnus Isbister	John Boak, elder
Alleschender Cloustoun	Magnis Bea
Thomas Wailyom	Andrew Hervie
Robert Ritehey	Peiris Louttit

The quhilk day, anent fyw scheiffis off corne alledgit  
tane off Thomas Trochane's rig in willing<sup>1</sup> and sett upone  
Georg Cloustoun's rige be the said George's man quhilk was  
making on his corne, the said man nocht knawing the said  
Thomas corne [to] be Georgis corne because bayth the

<sup>1</sup> Unintentionally.

saidis mene's cornes was off ane band and nocht na difference betuixt bayth the bandis, swa the said Thomas cumand to the rig and missis his corne off the rig and nocht knawand quha had tane away the corne off the rig, beand wpon day-lycht and ewerie man leidand corne besyd, com to the said George's rig and seand his fyw<sup>1</sup> scheiffis stand and upone the rig and nocht knawand the ane scheiffis be the other, because thai war bayth off ane band bot onlie that the said George's corne was eettin with guides<sup>2</sup> and the said Thomas corne was hail, yit newertheless the said Georg knew nocht that the corne was wpone his rig quhill the said Thomas tauld him and swa fetchit the officer and the said Thomas resaiffit his corne agane. Heirfoir the judg and assys seand the matter to be nocht off weritie and nocht done be himself nor be his command nor be his mane's will, bot in willing because bayth the bandis off the cornes was allyk, absolves the said Georg off that cornes, that he newer to be callit thairfoir agane nor sielyk nane within the paroschin off Stenhous reprof the said Georg nor nane of his theroff, wnder the pane off ane domrair,<sup>3</sup> to ilk persowne quha repruiffes him thairfoir; and for the mar werefecatioun off this our former decret we, the judg and assyse, hes causit Hector Robertsoun to subseryw this in our names becaus we could nocht write ourselfis.

THOMAS ROBERTSOUN, bailze,

HECTOR ROBERTSOUN, clark for the tyme.

NOTE.—The 'band' mentioned in this deed in connection with the sheaves of corn was a feature of the old Orkney townships in the run-rig days. Each proprietor had a distinctive band of straw round his own sheaves, distinguished from his neighbour's bands by the number of knots in it, etc. In this case, it is noteworthy that both George Clouston and Thomas Trochane used the same band. Trochane owned no land himself though he occupied two merklands in Clouston (Uthel Book), and these (and other) circumstances make it probable that he was a tenant of George Clouston's. If this be so, it makes it still more surprising that there should have been such a serious inquiry made about these sheaves of corn, and one cannot help suspecting that this deed throws some light on the constant forfeitures of land by the Stewarts for 'theft.' The charges were pro-

<sup>1</sup> Fyve.

<sup>2</sup> Cattle or sheep.

<sup>3</sup> O. N. *dómrof*, a fine for contempt of court.

bably (in many instances) trumped up on the strength of some such trifling misunderstanding as this. A hint of scandal would reach some local informer; it would be reported to headquarters; and an inquiry would be ordered on the chance that the earl might be able to 'bag' another estate.

## LXXVIII

PRECEPT DIRECTED BY MR. JOHN DISCHINGTON to the under baillie of St. Andrews, at the instance of William Irving of Sabay.

Original in the possession of the Venerable Archdeacon  
Craven, D.D., Kirkwall.

*April 10th, 1596.*

*Kirkwall.*

William Okilsettir, under bailye of Sainct Androis parrochin, Forsamekle as I am informit be William Irving of Sabay that quher there is ane Thomas Wassene within the said parrochin quha is detfull to the said William of certane restis of victuall, silver, and utheris contenit into ane futtit compt maid betuix the said William and the said Thomas at lenth contenit therinto, quha in defraud of the said William intendis to delapidat, dispone, and away put his hail guidis and geir: Quharfor ye sall nocht fail to inhibit and discharge the hail commonis of the said parrochin to by, blok,<sup>1</sup> or sell with the said Thomas, ay and quhill the said William be satisfeit of sic thingis as he can lay to his cherge, under pane of fourtie pundis money to ilk persoun quha contravenis the samin and restoring of the gudiis agane, as ye will ansuer upon your obedience. Subscrivit with my hand at Kirkwall the x of Apryle 1596.

*(Signed)* MR. JOHNNE DISCHINGTOUN.

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<sup>1</sup> Bargain.

## LXXIX

PROTESTATION BY DAVID KENNEDY, servitor to Earl Patrick, before the Head Court called the Harmanstein, regarding James Stewart of Graemsay's feu charter.

From Auchinleck's Protocol Book in Gen. Reg. House.

*January 19th, 1597-98.*

*Kirkwall.*

At Kirkwall, the nynteine day of Januar 1597, the quhilk day in presence of us noteris publict and witnes underwretin, personalie comperit Jaspert Flett in Howbister, ane under bailzie of Orphair, in presence of ane nobill and potent lord, Patrik, Erle of Orkney, Lord of Zeitland sittand in judgement at the head court callit the Harmanstein, haldin at the place of the Yairds in the toun of Kirkwall, befor the haill woit<sup>1</sup> of the countrie, quha being sene to James Stewart of Gramsay at the said nobill Lordis command to desyre him to produce befor his lordship at the said court his few chartour of Yle of Gramesay and Clastrane, the Bull of Orphair, and uther landis conteint thairintill, to be registrat in the said nobill lordis buikis, according to the ordour, and as the rest of the fellowis and frie halderis in the countrie hes done with certificatioun; gif he did nocht, that his lordship wald proceid be ordour of law aganis the said James swa far as law wald permitt. And his man James Schortes being sene in againe to schaw this propositioun to his maister, allegeit nocht to be at hame, come furthe againe and said that the last tyme that his Lordship summond his maister southe he careit his said few chartour thair, quhilk he delyverit to his man of law, and as that is in his custode as yit; upoun the quhilk refusall, David Kennedie, servitour to the said Erle, tuik instrument in judgement and maid protestation that law and justice sowld proceid according to the ordour, and tuik instrument heirupoun. Done as said is at ane after none in the hall of the Yairds of Kirkwall befor thir witnesses, William Vrowing of Sabay, Magnus

<sup>1</sup> Vote.

Louttit of Flek, Nicole Sinclair, burges of Kirkwall, and Gilbert Vrowing. This answer of the said James Stewartis man proponit be the said Jespert, and thair verefeit be thir witnesses, James Cloustoun, officiar, Steven Kirkbister, and Johne Norie, personalie present with the said Jespert at that tyme, all sworne and deponit in judgment.

## LXXX

DECREE OF THE BAILLIE OF HARRY and an assize of arbiters regarding the just division of the lands of Corrigall.

Original in possession of Mr. J. A. S. Brown, Stromness.

*April 15th, 1601.*

*Corrigall (Harry).*

Ane owgang haldin at Corigill the xv day off Apryll 1601 be Thomas Robertson, bailye, and the asyss wnderwritin. For the pairt off Marioun [Is]bustar.

Alexander Hammar <sup>1</sup>	For the part	William Corigill
John Housbie <sup>2</sup>		and James Corigill
William Bruche	. . .	Ritchie
Adame Moir	[Andrew]	Welzian
Malcolme Irland	. . .	Knairstan
Andrew Linklettar		Robert Sandy <sup>3</sup>
		Andrew Linklettar yownger
		James Isbuster

The said day the bailze and the xij chossin men abonc-writin hawing seine the debattabill land off Corigill conforme to my Lordis twa preceptis direct thairanent, the anc at Birsay the first of Apryll, and the wther gewin at Birsay the xiiij day of the same moneth, baith contening ane heid, and that is concerning the parting of the houssis, house fredomes, landis, girse, and girsebankis, and all wther thingis pertening thairto, pertening to Marioun Isbustar and William Isbustar . . . complenaris, contrair

<sup>1</sup> Alexander Isbister of Hammar in Greenay.

<sup>2</sup> John Linklater of Housbie.

<sup>3</sup> Robert Knarstane (son of Alexander).

and aganis William Corigill, elder, James Corigill [sons of ?] James Corigill elder . . . glus. . . . The quhilk day [compeirit] William Corigill and produced ane decreit gewin the nynt of July 1572 befor William Settarr [*sic*],<sup>1</sup> bailze than, and twelf honest men with him, the quhilk decreit is subscribit be Robertt Stewart as clark for the [tyme] than being lector off Birsay and Hara, and wnder the subscrip-tioun of William Sclattar bailye of the said parochin, quhilk decreit befor mentionat in the self beiris decerning James and Robert Corigillis to have thair entres and house fredomes on the wast syid off thair houssis with barne and corneyaird, and siclyik ordening John Corigill to have his entres and housfredomes on the eist syid of his hous : And now compeirand wpoun the ground the foirnamet judg and assyse, and eftir lang adwysment taking thair-intill and heiring the aledgeances of baith the saidis parteis, the foirsaid judge and assyse, considdering the heidis heirof, ordanes sex n[eu]trall [?] [men] to pas with the bailye wpoun the foirsaid hous and house fredome within fywe dayis, to be chossin be the consent off partie, and thair to sie and cognose gif ony of the saidis parteis he [*sic*] wrangit wtheris in ony part of the foirsaidis landis laid to thair partis off befor, and giff ony in wrang be, to be partit of new agane be the foirsaid sex men and [to] mak tham part and partlyik acording to thair brethir part, debt, tilth, [and] yarromang,<sup>2</sup> and to mak aiche of thair partis also gud as utheris is, and to repone ony quha is displaced, and siclyik ordanis the judge and sex men . . . all landis quhair ony of the saidis parteis ar plentous, and to . . . the forsaidis parteis hes chosin [as ?] for the part of Mario[un] . . . [Malcolm] Irland, William . . . Androw Walzean, and for . . . , eldar and yownger, Johne Housbie, Alexander Hammar, and . . . Knairstan, and the forsaidis men hes gewin thair aitheis to do rycht to everie . . . according to thair jugement. And for the mair verificatioun heirof we have causit Thomas Dowglass

<sup>1</sup> Mistake for Sclater, see below. William Sclater certainly was bailie of Harray and Stennes at that time.

<sup>2</sup> See footnote to No. LXXV.

subscrywe the samein in our names and at our speciall commandis.

(Signed) THOMAS DOWGLASS.

[*On the back :*] At Corigill the xv day off Apryill anno 1601. The said [*sic*] compeirit J[ame]s Corigill in Firth and said that he was villing to obey my Lordis precept [in] all poyntis, and father protestis that na proces sall pas . . . this day in respect that he is nocht lauchfulle summond thairto co[n]forme . . . [t] of my Lordis precept. *Extractum, etc.*

(Signed) T. DOUGLASS.

The said day compeirit James Corigill of new agane and protestit that he was nocht lauchfullie summond to this day and desyrit that na proces suld pas againes him ay and quhill he be lauchfully summond. *Extractum, etc.*

(Signed) T. DOUGLASS.

### LXXXI

DECREE OF THE HEAD COURT called the Harmansteine, in an action regarding land in Smiddie in South Ronaldsay.

Original in Gen. Reg. House.

January 19th, 1603-04.

*Kirkwall.*

The six day of Januar, the yeir of God j<sup>m</sup> vj<sup>e</sup> and thrie yeiris, in the heid court callit the Hermansteine haldin at the place in the yairdis. Quhilk day annent the actioun and caus of ane maillis mailling of land, with the pertinentis, lyand in Smiddie in Grymnes within the Yle of Sowth Ronaldsay, persewit be William Irrowing of Sabay, contrair Robert Smyddie, present occupyar of the samen, and Nicholl Sinclair, wodsetter of the samen, to the said William quhom of he can get na payment of the yeirlic dewteis fra the said tennent sen the tyme of the wodsett thair of; and baythe the saidis pairties compeirand, the said Nicholl confest and grantit the said wodsett to be of trewth, quhairfoir the judgeis assys ordanis him to warrand

the samen to the said William, as it is maid and gevin, and to mak the complenar thankfull payment of all byrun dewteis sen the dait of the said wodsett, quhilk is the xiiij day of August the yeir of God j<sup>m</sup> v<sup>o</sup> hundreyth and iiij<sup>xx</sup> xvj yeiris, and siclyk yeirlie in all tyme cuming, or ellis to caus the said Robert to do the samen, reservand the said Nicholl place to persew his tennent for all byrunnis as accordis of the law, and that wes gevin for dowme.

Extractum de libro actorum curie vicecomitatus Orhadensis per me Walterum Bruce scribam ejusdem.  
W. BRUCE, manu mea.

## LXXXII

DIVISION OF THE MEADOW LANDS OF CLOUSTON by the baillie of Harray and Stenness, following on a wadset of the same by George Clouston of that Ilk.

Original in possession of Mr. William Clouston of Netherbigging.

Printed : *O. L. Records*, No. 79.

*October 7th, 1605-September 8th, 1607. Clouston, Stenness.*

*Abstract*

On 7th October 1605, sasine was given to Richard Ewmoundsone by William Leyth in Onstoun, on a charter of wadset by George Clouston in that Ilk, of  $\frac{1}{2}$  merk land uthall, together with  $\frac{1}{2}$  pennyland meadow, in Cloustoun, in the parish of Stenhouse, mainland of Orkney, dated 31 May 1604. Witnesses :—Thomas Trochane, Jhone Leisk, Magnus Sympsoun, and George Book, all in Clouston.

[*On the back are the following :*] 1. Precept by Edward Scollay<sup>1</sup> to Malcolm Ysbister, bailzie of Harray, bidding him 'tak tryell be the sycht of nychtbouris' to see if Richert Omondsoun be in peaceable possession of the above lands, wadset by the now deceased George Cloustoun, 'now inclusit within termis,' and if he be so, and 'nocht lawfullie warnit and redeemit thairfra,' he is to be fortified and defended in his possession, and Robert Book and all

<sup>1</sup> Sheriff-depute of Orkney.

others prevented from troubling him, 'becaus the complener is now inclosit within termis in tilthe tyme.' Dated at Kirkwall, 13 March 1607.

2. A note by Malkcome Eyesbuster, balay, that he has put Ryschert Onstowne [*sic*] in peaceable possession. Witnesses:—George Myller, Thomas Troichene. (Undated.)

3. A more peremptory summons by Edward Scollay to Malcum Ysbuster, stating that Richert Omondsoun in Onstoun complains that though he has good title to the above lands, 'nochtheles Robert Boak . . . will nawayis suffer nor permit him to mell with his awin pairt of the medow forsaid belanging to his foirsaid land, to his hevie hurt and skaythe. Quharfoir ye sall nocht faile to pas, accompaneit with certane honest nychtbouris, with diligence, to the grund of the foirsaidis landis in the presens of the said Robert, and thair tak diligent tryall quhat medow belangis to the said complener as also to the said Robert Boak, and be the sycht of the said honest nychtbouris mak tua pairtis thair of according to thair richtis of the samin . . . and discharge the said Robert that he nawayis truble or molest the said Richert in his possessioun thair of fra this furthe, under the paine of xl libs. Do this according to equitie and pronounce your decretit therein under the paine of xl libs. to be pait be your selff, in caise of your disobedience or delay of justice.' At Kirkwall, 8th September 1607.

4. 'I, Malkcom Eysbuster, ballay, past at the command of this yowr precep and hes pairtit the said meidew and gress, and gevin the said Rychert Ewmonsone his pairt thair of according to his rycht, becaws we fand the said Rychert Ewmondsone in pesebill posesioun with ane halfe penny medow, quhilk the said Rychert Ewmondsone haid in wodset fra the said Goirge Klowstowne, with ane half mark land and medew quhilk the said Rychert hes in wodset in lykwyse, and we haife dyschayrgit the said Robert that he of nawayis trubill or molest the said complener ay and quhill that he be payit his silwer and be civelyly put thairfra and schairit fowrtie dais befoir Mairtie-

mess or Witsonday. And this I did befor thir witness, William Onstowne<sup>1</sup> and Thomas Trowchen, Hew Dewer.'

NOTE.—This deed and No. LXXXIII. are the only two records dealing at any length with township meadow lands, and in both they are reckoned in penny lands. It has generally been held<sup>2</sup> that the 'penny lands' were purely arable, so that these two documents seem at first sight to demolish an accepted theory. An examination, however, of the land records of Clouston in charters and rentals brings out the singular fact that from a penny to a penny halfpenny lands seem to vanish, and I have no doubt that these were the meadow lands mentioned in this charter, part of which were wadset with such quarrelsome consequences. The probable theory would seem to be that the view is correct which holds that only arable land was reckoned in the penny lands (or rather that they were mainly arable with a certain allowance of pasture thrown in),<sup>3</sup> and that these meadow lands of Clouston had once been arable and then became ley, thus ceasing to be included in the rentals and valuations.

## LXXXIII

DECISION OF THE BAILLIE DEPUTE OF HOLM and a court of arbiters regarding the share in the rendall [arable] and meadow lands of Gravis belonging to Ninian Meason.

Original in the possession of Mr. P. N. Sutherland-Græme of Græmeshall.

*December 5th, 1605.*

*Gravis, Holm.*

At Grawis in Home, the fyft day of December 1605 yeiris, ane ogange haldin be Nicoll Craigie, bailye deput of Home and Paplay, be vertew of ane connessioun [*sic*] derset to him be Edward Scollay of Strynie, shereff deput of Orknay, thair convenit twelff honest men; chossin for the part of Niniane Meassoun, partie persewar:—Barnet Hestuall, Magnis Nicoll, Andro Caldell, Pettir Kirkbreke, Walter Bankis, and Edward Cragie; and for the part of Trollis, John, and Magnus Garioches; Magnis Hestuall, Williame Coplayne, John Sinclar, Andro Sinclar, Huchioun Magnis sone, and Nicoll Okilsitter. The court lawchfully fenssit, the assycc chossin, suorne, and admittit be the haill parties foirsaid. The quhilk day we, the twelff men,

<sup>1</sup> William Leith, portioner of Onston.

<sup>2</sup> See 'What is a Pennyland?' by Captain Thomas, R.N., *Proc. Society of Antiquaries*, April 1884.

<sup>3</sup> The phrase 'a half mark and meadow' in the last of the above addenda shows this.

decernit and ordanit Niniane Meassoun to haiff present possessioun of the ferd <sup>1</sup> fite <sup>2</sup> of the thrie penie land in Grawis within the parochin of Home, of the rendall land ; as also decernis the said Niniane to be possessit in the ferd fite of the twa penie land quhilk is gerse land of the same, becaus it was prow in it wes drawin off befor be the occupyaris of the samyn. Lykwayis ordanis the said Niniane to pass within fyftein days heirefter with the bailye and sex honest men, and rendall the foirsaid land according to his decret ; and vpoun the same day the said Niniane to preiff onie gerse land occupyit be the occupyaris of the thrie <sup>3</sup> penie land appertenit to him, and he to haif possessioun of the ferd fite tharof, gif onie be ; and falyeing of pruiff, the said Niniane to haif als mickle als weill lyand girss be the sycht of honest men as fallis to his part, to brek vpoin for thrie yeiris, and thane to pairt the penie land of girss land in four partes and he to haif the feird fite tharof, conforme to his part. And ordanis all parties haiffing entres tharto to be thair that same day.

[*On the back :*] Be this our decret subscryuit with our hand at Grawis, day and deat within writin, be Robert Broun writer heiroy at our commandis, because we cowl nocht writ our selfis.

(*Sic subscribitur*) NICOLL CRAIGIE, balye deput, with my hand.

MAGNIS HESTUALL, with my hand,

WM. COLPLANE, with my hand.

ANDRO SINCLAR,

JON. SINCLAR, with my hand.

BARNAT HESTUALL, with my hand.

PETTER KIRKBREK, with my hand.

MAGNIS NICOLL, with my hand.<sup>4</sup>

(*Signed*) ROBERT BROWN, with my hand, clark to the premisses.

<sup>1</sup> Fourth.

<sup>2</sup> Foot ; every fourth foot.

<sup>3</sup> The word looks more like ' thrid,' but might be thrie, which seems better sense, if one reads ' his part of the thrie penie land.'

<sup>4</sup> All these names are in the same handwriting—that of the writer of the deed.

Wpone the xvj day of December 1605 yeir, I, Nicoll Cragie, bailye deput of Home and Paplay, convinte to the house of Vestergrawis, accompaniet with sax honest men chossin be the parties following, to vit, for the part of Niniane Massoun partie persewar:—Barnat Hestuell, Petter Kirkbrek and Magnis Nicoll; and for the pairt of Magnis Garioche:—Andro Sinclar, Magnis Hestuell and John Sinclar; and thair because the said Niniane culd get no probatioun, as he wes ordanit in the former decretit, I and the chossin men abowritting hes enterit and possessit the said Niniane in als mekle gerss as come to hes part of the penie land apperteining to the foirsaid house of Vestergrawis, mett with schaft and lyne, and that for his part of the manwrit land. And this we dit [*sic*] according to the decretit within writtin and merchet it about.

[*Signed*] ROBERT BROWN, writter heirof and witnes.

NOTE.—This is the second deed dealing with meadows by the pennyland (see note to No. LXXXII.). The sense of the transaction seems clear: that Ninian Meason was declared possessor of the fourth part of the arable lands in the township of Gravis, and along with that he was given, as its proper perquisite, a fourth of the meadow lands. The scribe, however, would have made things plainer had he not first referred to the two penny and then to the penny land of meadow, as though they were the same; also if he could have made the lands mentioned come altogether to the  $4\frac{1}{2}$  pennylands, which is proved by all the rentals to have been the extent of Gravis. But as he gives the 'rendall' lands as three penny lands, neither of his statements as to the meadows will fit this known valuation. Such minute precision in dividing land is shown in these old deeds that there must be some rational explanation of these apparent discrepancies.

## LXXXIV

VERDICT OF THE BAILLIE OF HARRAY and an assize regarding the perambulation of the boundaries of Nierhouse.

From the original in the possession of Mr. Alfred Baikie of Tankerness.

May 7th, 1606.

Nearhouse, Harray.

Ane ogang haldin at Nierhous the 7 May 1606, betuix David Kincaid, Helias Kleland, and remanent compleneris of the lands of Neerhous, be Malcolme Yisbuster.

*Nomina assise*

George Millar	Andro Linkleter	Thomas Settar
Wm. Flet, elder	Wm. Corstane	Alexr. Cogill
Wm. Flet, yonger	Wm. Millar	Jon Yisbuster
Wm. Corgill	Wm. Linkleter	Robert Leask

The quhilk day compeiritt Malcome Yisbuster, bailye of Harray, with the xii chosin men abouvretin, according to the Shereffis commissione, and conforme to ane former dicrett, to pas to the ground with lyne and mett,<sup>1</sup> to gif everie man hawand entres his just part of the landis of Nearhous. Quhilk judge and chosin men hawand past to the ground with lyne and met and tane diligent tryell of all landis debattabill betuix David Kincaid, Helias Cleland, and the remanent compleneris, Ordanis them and everie ane of thame to part with culter and sok<sup>2</sup> conforme to thair yarromungy,<sup>3</sup> and everie ane as said is to haue thair just pairt. And as to the hous fredomes, quhilk is alreidy mett, continewis the same to ane forder tryell, or then agrement betuix the pairteis. And for the mair verificatioun heirop we haue causit Thomas Dowglas to vreitt and subscribe thir presentis in our names and our speciall command.

(Signed) THOMAS DOUGLASS, clark for the tyme.

[On the back:] Perambulatione of Neirhous, 7 May 1606.

## LXXXV

PRECEPT FROM EDWARD SCOLLAY TO ROBERT MOWAT, baillie of Evie, directing him to hold a court and try an action between Alexander Louttit, and James Louttit and James Velziam. Also precept from Robert Mowat to John Hourston (officer of Evie)<sup>4</sup> to summon an assize.

Original in possession of Mrs. Watt of Breckness.

April 20th, 1610.

Kirkwall.

Robert Mowat, bailye of Evie; Forsamekill as it is

<sup>1</sup> Line and measure for measuring the lands.

<sup>2</sup> *i.e.* with a plough.

<sup>3</sup> See footnote to No. LXXV.

<sup>4</sup> John Hourston, officer of Evie, is mentioned in a sasine of April 18, 1631.

humlie menit and complenit to me be Alexander Lowtit in Mirkbuster that James Loutit, his broder soune, and James Vilyean in Mirkbuster wrangouslie hurtis and prejugis the said Alexander in the peceabill possessioun and occupatioun of his pairt and portioun of the balkis<sup>1</sup> in Mirkbuster, conforme to the rendale rigis, as lykwyis in the peceabill possessioun of his pairt of the saidis rendale riggis; Thairfoire it is my will and I command yow that incontinent this my precept sene, ye failt nocht be your precept to summound and cause compeir befor yow bayth the saidis parteis, and be the abvyse, counsale, and assistance of tuell honest, indifferent, and unsuspect men, to be chosin and sworne be yow to that effect, tak tryell quhat wrang the saidis James Lowtit and James Vilyean hes done to the said Alexander Loutit in the saidis balkis and rendale riggis; and to this effect that ye hald ane lauchfull court and creat all memberis of court neidfull, and that ye pronounce your decret heirin hevand [?] put the said [precept ? to] executioun conforme to the tenour thairof; and that ye charge bayth the saidis parteis to compeir befor yow to the effect foirsaid, ilk persoune under the paine of ane unlaw; and this onnawayis ye leiff undone within ane moneth nixt eftir thir presentis beis presentit to yow, under the pane of xl li., as ye will ansuer to me thairupoune; the quhilk to do I commit to yow my full power be thir presentis, subscrivit with my hand at Kirkwall the xx day of Apryle 1610.

(Signed) EDUERD SCOLLAY.

[*On the back:*] Johne Millar, David Nedertoun, Johne Crantat, William Spence, Johne Harwie [?]<sup>2</sup> Johne Sclaiter, Sandie Hammer, Alexander Fea, William Harvie, Georg Millar, James Smyth, William Flett in Coulstoun,<sup>3</sup> . . . Gilbert Knarstane.

Johne Hourstane, ye sall nocht failt to pas and summond the personis abone wryttin, ilk persoune vnder the pane of x li., to compeir at Mirkbuster, the xvij day of

<sup>1</sup> See footnote to No. LXIII.

<sup>2</sup> This name is very indistinct.

<sup>3</sup> Culston in Stenness.

May instant, and lykwayis the parteis to the said day,  
 vnder the said pane. (Signed) ROBERT [MOWAT].

Upone the xj day and xij dayis off May 1610 yeirs, I, Johne Hourstoun, and Robert Hourstoun past and laffullie chargit and summondit all the parteis abone wreittin and to the day foirsaid, acording the tenor of the within precept in all pointis ; and this I did befor [thir ? witnesses] James Sinclair, James . . . die in [Heuth ?], Thomas Sinclar, and Robert Sinclair, Huchoun Isbister, Adam Isbister, Johne Harvie, and . . . [Pebliis ?], Oliver Sandie.<sup>1</sup>

NOTE.—Mirkbister (now Mirbister) is in Harray and all the parties were Harray men, so that it seems curious that the baillie of Evie should have been directed to try the case. It is quite exceptional so far as these records go. The assize was a mixed bag, from Evie, Birsay, Harray, and Stenness.

## LXXXVI

DECLARATION BY THE SHERIFF DEPUTE OF ORKNEY AND  
 SHETLAND regarding the property and heirs of the  
 deceased Henry Sinclair of Burgh.

Original in Gen. Reg. House.

*July 20th, 1610.*

*Scallowaybanks, Shetland.*

Till all and sindrie quhome it effeiris, to quhais knowlege thir presentis sall cum, we undersubscryveand dois testifie and beir witnes that in all tymes bygane past memorie of man thair hes bene ane ancient law, custome, and consuetude within the cuntrey of Zetland, be the quhilk it hes bene inviolablie obseruit that quhan ony landis man, haueand landis within the said cuntrey, depairtit this mortall lyffe, the haill landis and heretage appertening to him in his lyftyme immediatlie efter his [decease] was equallie and lawehfullie diuydit amangis his haill bairnis, alssweill sones as dochteris, comptand alwayis tua sisteris pairtis for ane brotheris pairt, and being sua diuydit the eldest brother has na farder prerogatiue abone

<sup>1</sup> Oliver Knarstane.

the rest of his brother except the first chois of the pairtis and parcellis of the landis diuydit, and that it is trew and of veritie that umquhile Henrie Sinclar of Burgh deceissand at the faith and peace of our umquhile souerane lady Marie, be the grace of God queine of Scottis, left behind him four sones on lyffe, viz., umquhile Hew Sinclar of Burgh, his eldest sone, Capitane Williame Sinclar, his second sone, Eduard Sinclar of Marrasetter, the thrid, and umquhile Oliver Sinclar of Esthous the fourt, thay than being all minors of the aige of four, fyve, or sax yeiris or thairby, and during the tyme of thair minoriteis the rentis of the haill landis and heretage, togidder with the haill moveabill guidis pertening to the said umquhile Henrie the tyme of his deceis, war intromettit with and uptaine be the said umquhile Hew Sinclar, the eldest of the saidis four brether, his tutors and curators for the tyme, and at the perfyte aige of the said umquhile Oliver the said umquhile Hew, conforme to the said ancient law and custome inviolablie obseruit within the said cuntrey of Zetland, as said is, delyuerit and resignit to the said umquhile Oliver his brotheris pairt, being a fourt pairt of the landis and heretage pertening to the said umquhile Henrie the tyme of his said deceis, to wit, aughtene merk land in Esthous in Quhytness, aucht pennyis the merk, sax merk land in Wodbuster in Quhytness, sax pennyis the merk, sax merk land in Hagrasetter, sex pennyis the merk, aucht merk land in Kirkgord in Weisdaill, aucht pennyis the merk, four merk land in Trestay in Aithsting, nyne pennyis the merk, and four merk land in Burgh at Zelsound within the parochin of Delting, nyne pennyis the merk, quhilkis landis as being the fourt pairt of the haill landis pertening to the said umquhile Henrie Sinclar of Burgh, the said umquhile Oliver, his feird sone, bruikit and possest fra the tyme of his entrie thairto (quhilk was in the beginning of his perfyte aige) contenuawlie to the day of his deceis, be the space of tuentie aucht yeiris, togidder as his awin proper land and heretage haldin frielie of the king for payment of scat and wattell and of the teynd therof to the kirk, according to the custome of the said cuntrey and

as is payit be utheris heretors of landis within the samyn, but stop, trubill, impediment, contradictioun, or interrup-tioun maid thairto be ony persone or personis quhat-sumewer; and that it is lykewayis trew and of veritie that the said umquhile Oliver Sinclar deit in peciabil possessionoun of the landis particularlie abonenameit as his awin proper landis and heretage haldin be him as said is for payment of the dewtie foirsaid at the faith and peace of our souerane lord James, be the grace of God King of Grit Britan, Franc, and Ireland, Defendar of the faith, and that the said Eduard Sinclar of Marrasetter is neirest and lawthfull air to the said umquhile Oliver Sinclar his brother of all and haill the landis abonewrittin, and that he is of perfyte aige. Quhilkis all and sindrie premisses we undersubscryveand testifie to be trew and of veritie to all and sindrie quhome it effeiris, be thir presentis subscryuit with our handis at Skallowaybankis the tuentie day of July the yeir of God j<sup>m</sup> vi<sup>e</sup> and ten yeiris.

(Signed) EDUERD SCOLLAY of Stryne, shref deput of Orknay and Zetland; ARTHUR SINCLAR of Aysse; LA. SINCLAR; ALEXR. THOMASONE fould of Thingvell; ANDRO WMPHRAY of Bettie; ALEXANDER BRUCE, no<sup>r</sup>ius; J. SINCLAIR fiat off Quamdell.

DISPOSITIONS OF LAND IN ORKNEY

The following deeds cover Orkney alone. The collection of unpublished charters relating to Shetland lands still remains to be done by some one with the time, taste, and opportunity. Down to the year 1540 everything available is here printed, whether published or not (with only two exceptions, which have appeared in *O. L. Records*, Nos. 31 and 52). Of those previously published, brief abstracts are given to complete the Orkney records to that date. After 1540 abstracts are only given of such previously printed charters as have some illustrative feature, but almost all the available unpublished material is included down to about 1580. The omissions are chiefly one or two purely feudal charters and a few of the less important Irving deeds (mostly discharges). In the end of the sixteenth and beginning of the seventeenth centuries the mass of material is too great to print more than a selection. This selection has been made with a view always to illustrating points characteristic of the old order of things.

## DISPOSITIONS OF LAND IN ORKNEY

### LXXXVII

WADSET, THOMAS OF NESS TO ANDREW OF NESS, of  
4 merk land in Ness.

Original in possession of Mr. A. Baikie of Tankerness.

*August 3rd, 1447.*

*Kirkwall.*

Be it made kende till al men be thir present letteris, me Thomas off Ness, the spowsit sone qwhylowme off Patry off Nesse, till haff bene at kownt and reknyng with Andro off Nesse, my full brothir, off all my faddir eritage, off the quhilkis he hasse gyffyn me lele kownt and reknyng and ful pament ; ande at I haffe wedsete with hande and hand-bande ande be thir my present letteris wedsettis till the sade Andro, fowr markis wortht off lande lyande in Nesse with all pertynance thar till langande, for fowr mark Inglis <sup>1</sup> pait to me be the sade Andro, the first penny ande the last and all thar betwene, the forsade lande to be haldyn and to be hade with all pertenance to the sade Andro, hysse ayeris and assigneys, on to the tyme that I the sade Thomas or myne ayeris lais downe on a dai to the sade Andro or his ayeris four mark Inglis. In witesse of the qwhilk thing, I the forsade Thomas, because that I hade no sell of myne awne present, I hafe procurit wytht instance the sele off twa worschipfull men, Alexander Wode and Jamys of Tulacht, burgesses off Kyrkwaw, to be to set to thir present lettris at the sade twene, the thryd day off the moneth of August, the yhere of oure Lorde a thow-

<sup>1</sup> Showing that a merk of land was the equivalent of a merk of money sterling (13/4d). In later charters of this period a merkland will be found selling for £2 Scots as a general rule.

sande four hundretht fowrty yhere ande sewyne, befor thir witnesses, Scher Wilyeme Flete, Scher Dawy Wode, chapelanys, Duncane of Futhas, ande Mawnus of Clat,<sup>1</sup> and othir syndry.

[Tags for two seals.]

## LXXXVIII

DISPOSITION, MAGNUS OF LUDDAL TO ANDREW OF NESS,  
of  $\frac{1}{2}$ d. land in Tankerness in St. Andrews parish.

Original in possession of Colonel W. E. L. Balfour of Balfour and Trenaby

1455.

*Kirkwall.*

Be it made kende till all be this present letter, me Mawnus of Luddal, son and are till my fadir Androw of Luddall, till haff sawlde and with hand and handband frely till haf ofhend[it ?] fra me and all myne aris till myne eme<sup>2</sup> Androw of Nes and his aris, a half penny lande, the quhilk I arit eftir my fadir, liande in Tanskerness by side Sanct Androwis kirk, for ii markis of sufficiand gudis<sup>3</sup> giffin to me in my grete necessite, [of] the quhilk sowme I halde me fullely pait and content, the first penny and the last and all thare betuene; the said lande to be haldin and to be had fra me the saide Mawnus and my aris till the saide Androw and his aris, with all fredomis, profitis, esmentis, and rychtwise pertinence that to the saide half-penny lande [*sic*] or lawchfully be ony maner of way may perteine in tyme to cum. In witnes of the quhilk thing, because I the sade Mawnus had na sele of my awne, I haf procurit with instance the sele of a worthy man, that is to say Johne of Cragy, lawman of Orknay, Schir Johne Synclar, chanown, to be put till thir present[s], at Kirkwaw, anno Domini m<sup>mo</sup> cccc<sup>mo</sup> lv<sup>o</sup>, befor thir witness, that is to say, Schir Nichol Duthe, Schir Jamis of Cragy,

<sup>1</sup> Probably Cleat in St. Ola, since the great majority of the witnesses were local.

<sup>2</sup> Uncle.

<sup>3</sup> The worth of two merks sterling. A halfpenny land in Tankerness contained two merklands.

Davy Lowtfut, Will of Birsay, Johne of Corss,<sup>1</sup> and utheris sundry.

[Seals gone, one tag.]

## LXXXIX

DISCHARGE, SIR MAGNUS NESBYTT AND HIS SISTER MARGARET, heirs of their mother Meg of Kulane, to Peter Sinclair and Katrine of Kulane, their mother-sister, for their part of their mother's heritage.

From the original in possession of Mr. P. N. Sutherland-Græme of Græmeshall.

*March 16th, 1455-56.*

*Kirkwall.*

Be it made kende til al men be this present letteris, vs Shir Magniss Nesbytt and Mergret Nesbytt, his systir, barnis and ayris qwhyllum to Meg of Kulane, that we grant, and be thir present letteris makkis knawin, that we ar wele content and fullely paide of all the gudis that Petir Syncler and Katryne of Kulane, owr modir systir, bur vp of herytage of owr behalfe efftyr owr fornemmyt modir Meg of Kulane; of the qwhylyk heritage all and syndre, we the forsade Shir Magniss and Mergret, as is befor sade, ar fullely content and payde, the fyrst peny and last and al thir betwene, and qwyttelemis the sade Petir Syncler and Katryn his wyff, thar ayris, executouris, and assigneis, for now and for ewyr mare. In wyttness of the quhylyk thyng, becauss we had na sele of owr awin, we hafe procurytt wyth instance the selys of twa honorabill men, Donald Cristyson and Jamiss of Tulach, burgess of Kyrkwaw, befor thir wyttness, Anguss Magniss,<sup>2</sup> balzhe of Kyrkwaw, Sir Jamiss of Crage, Androw Browster, and Androw Forsyth, and othir syndre, to be put to thir present, in Kyrkwaw, the xvj day of Marche, anno Domini m<sup>o</sup> cccc<sup>o</sup> l<sup>o</sup> v<sup>o</sup>.

[Two tags, seals gone.]

NOTE.—This discharge to Peter Sinclair and his wife is among the Græmeshall charters. The only Sinclair properties covered by these charters are Air

<sup>1</sup> Probably Corse in St. Ola.

<sup>2</sup> *i.e.* Magnusson.

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and Greenwall. As the Greenwall family were not descended from this Peter, there can be little doubt he was an ancestor of the Air Sinclairs, especially as Peter is found later as a Sinclair of Air name. (Nos. XLV. and L.)

### XC

#### CONFIRMATION OF A LEASE, Bishop of Orkney to Thomas of Cowpland.

Original in Gen. Reg. House. Printed: *Spalding Club Misc.*, vol. v.;  
*O. L. Records*, No. 30.

*March 21st, 1465-66.*

*Kirkwall.*

#### *Abstract*

William Tulloch, Bishop of Orkney and Shetland, confirms a life tack of 3<sup>d</sup> land in Stanbuster in the parish of Sant Andross, in Orkney, made by his predecessor Bishop Thomas Tulloch to his servant and man, Thome of Cowpland, 12 July 1455; the grantee paying yearly one barrel of butter and 4 meal of malt, both for rent and teind. He has already paid as 'gersome' 8 merk of silver 'to the uphald off Sant Magnus werk.' The confirmation is sealed by Bishop William at Kirkwaw, 21st March 1465.

### XCI

#### CONVEYANCE, JAMES CRAGY TO HIS BROTHER, WILLIAM CRAGY, Lawman of Orkney, of his part of the heritage.

Original in Gen. Reg. House. Printed: *O. L. Records*, No. 32.

*January 31st, 1480-81.*

*Kirkwall.*

#### *Abstract*

James Cragy, youngest son and one of the heirs of the deceased Jhone Cragy, sells to his eldest brother germane Williame Cragy, Lawman of Orkney, his 'herytabill landis concerning my part of herytage, wonnyn or for to be wonnyn, within the boundis of Orkney and Shetland,' for £20 Scots. The lands are to be held with their pertinents 'fra the heast stane in the hill to the lawest in the eb,'

and 'alswele vnder eird as abufe,' but there is no mention of rycht and roith, etc. At Kirkwau, 31st January 1480, sealed by 'rycht honorabill and worschipful men,' Master James Kynnard, archidene of Orkney and persone of Cannasby, and Thomas Inglis, justice of the said land and fowde of Shetland; and James Cragy appends his own seal also. Witnesses:—Schir Jhone M'gy, persone of Ronaldsay; Schir Daudid Tullach, vicare of Normaueth; Johne Peyrsoune, Criste Cragy, Mawnus Flet, Sande Clerk, with others divers.

## XCII

DUPLICATE OF A DISPOSITION, JOHN OF PAPLAY AND BERNARD OF SKEA TO JOHN MASON of two merks of land in Gravis in the parish of Holm.

From the duplicate in the possession of Mr. P. N. Sutherland-Græme of Græmeshall.

*October 24th, 1481.*

*Kirkwall.*

Be it kend till all menn be this present write, vs Johnn of Paplay and Bernard of Sca, with hand and handband till hawe sauld and annaliet tua merkis of land lyand in Gravis in the parochane of Home till ane discrete mann Johnn Masoun, burgess of the burgh,<sup>1</sup> for the sowme of fyve merkis and a half of vsuale mone of Scotland geivin till ws be the said Johnn in our vrgent necessite, the first penny and the last with all ther betuix; of the quhilk we the saidis Johnn and Bernerd quytelamis the said Johnn, his aris, executoris, and assignais, the said tua merkis of land, witht rothe, rycht, fredomis, asyamentis, and profytis quhatsumewer; to be haldin fra ws the saidis Johnn and Bernerd, our aris, executoris, and assignais, to the said Johnn Masoun, his airis, executoris, and assignais, for ewer, without reuocatioun or ganecall of ws or any of ouris. In witnes of the quhilk thing, we the saidis Johnn and Bernerd hawand na sellis of our awne has procurit with instance the sellis of tua worthy channownis,

<sup>1</sup> The Burgh of Kirkwall.

Schir Johnn Sinclair and Schir John M<sup>t</sup>Ge to be hungin to this presente vrite befor thir witness, schir Andro Wischard, thesaurar of Cathniss, Schir Walter Havyek, persone of Sant Olaue Kirk, Johne of Touris, Thome Broune, with other diuerse at Kirkway, the xxiiij day of the moneth of October, the yere of God a thowsand four hundreth auchty and a yeir.

Tenet præsens copia cum suo principali nihilque additum aut diminutum quod rei substantiam mutet aut intellectum variet fideliter per me notarium publicum subscriptum copiata et collationata.

Ita est Jacobus Jack <sup>1</sup> notarius publicus in premissis requisitus attestans. [Followed by the notary's mark and the letters] A K.

## XCIII

DISPOSITION, MAGNUS ANDREW QUHITQUOY'S SON <sup>2</sup> AND JONAT MAGNUS CUTHAMY'S DAUGHTER <sup>3</sup> to John Mason, burgess of Kirkwall, of a halfpenny land in Wasbister in the parish of Holm.

Original in the possession of Mr. P. N. Sutherland-Græme of Græmeshall. Referred to in Dr. J. B. Craven's *History of the Church in Orkney to 1558*, p. 101.<sup>4</sup>

February 16th, 14[8]2-3.

Kirkwall.

Be it kend till all men be this present writ, vs Mawnus Andro Quhitquiysson and Jonat Mawnus Cuthamys dochtyr, witht consent of our vmbythisman, witht hand and handband till haue sauld analiit [*sic*] a half penny land lyand in Wasbuster in the parochan of Hom, till a discrete man, Jhon Masoun, burgess of Kirkwau, for the sowme of fyve cronis of vsuale mone of Skotland and twa ky, gevin till vs be the said John in our gret necessite, the first penny and the last witht all thar betuix ; of the quhilk we, the

<sup>1</sup> James Jack, notary, is found in 1616.

<sup>2</sup> *i.e.* Magnus the son of Andrew of Quhitquoy.

<sup>3</sup> *i.e.* Janet the daughter of Magnus of Cuthamy. Cuthamy can hardly be other than Quoythome in Paplay (now included in the parish of Holm).

<sup>4</sup> There dated 1402. See note at end of deed.

said Mawnus and Jonat, quytelamis the said Jhon, his aris, executoris, and assignais, the said half pennyland, with the rothe, rycht, fredomis, asyamentis, and profittis quhatsumeuer; to be haldin fra ws the saidis Mawnus and Jonat, our aris, executoris, and assignais, to the said Jhon Mason, his aris, executoris, and assignais, for euer, withoute reuocatioun or ganecall of vs or ony of ouris; with the housse of Wasbustyr. In witnes of the quhilk thyng, we the saidis Mawnus and Jonat havand na selis of our awne, has procurit with instance the selis of two worthe men, Schir Jhon Synclar and Jhon Peyrson to be hungin to this present wryt befor this witnes, Mawnus Flete, Fene Skatht,<sup>1</sup> James Pase, and Jhon Bolloke, with otheris diuerse, at Kirkwau, the xvi day of Februare, the yere of God a thowsand four hundreth [aucht] and twa yeris.

[One seal gone and one illegible.]

NOTE.—The actual date in the deed itself is 'four hundreth and twa yeris'; but this is clearly wrong for these reasons: 1. It is improbable that an Orkney charter would be written in Scots at that date (though it is possible). 2. The names of John Mason, Sir John Sinclair, John Peirson, and Magnus Flett are all found about 1480, and it would be too remarkable a coincidence if a group of duplicate personages (representative men, as all these early witnesses were) existed eighty years previously in Kirkwall. 3. A comparison with the preceding deed (No. XCII.) will show that it is practically word for word the same. No. XCII. is dated 1481, and though it is only a duplicate it is a certified copy, and the names in it establish the date as correct.

#### XCIV

DISPOSITION, JOHN MURRAY TO HIS BROTHER HENRY,  
of his brother part of Garth in Stromness.

Original in Gen. Reg. House (given by Mr. W. D. Firth, Stromness).

*August 24th, 1483.*

*Kirkwall.*

Be it maid kend till all men be thir present letters, me Johne of Murray, son and ane lauchfull aire to my fader umquhile Angus of Murray, till have sauld and frely offhentit with hand and handband fra me and all myn

<sup>1</sup> No doubt Scarth.

aris till my eldest brother germane Schir Henry Murray, vicar of Hom,<sup>1</sup> and to his aris, all and hale the part belang- and to me off ane place callit Gerth within the parochan of Stromnesse, that is to say, twa markis and four schilling worth <sup>2</sup> of land, or neyr tharby, the quhilk I arit effter my fader forsaid ; for the sowme of fyve markis usuale mone of Scotland, viz. threttein schillingis and four penneis the mark ; gevin to me upon a day be the said Schir Henry in myn urgent necessite ; of the quhilk sowme of fyve markis I hald me fullely payt and content, the first penny and the last and all thare betuix ; the said land to be haldin and had fra me the said Johne, myne aris, exequutoris, and assignis, to the said Schir Henry, his aris, exequutoris, and assignis, with rothe, hows, tofftis, towmalis, fredomis, commoditeis, esmentis, and rychtwise pertinentis quhatsumever, to the said land pertenant, or lauchfull be ony maner of way may perteyn in tyme to cum. And I forsuthe, the said Johne and myn aris, to the fornemmyt Schir Henry and his aris, the said land sall warand and defend fra all dedly men and wemen for ever. In witness of the quhilk thing, because I the said Johne had na sele of myn awne, I have procurit the selis of twa worthy and discrete men, Schir William Browne, person of Orphar, and Johne Peyrsone, burgess of Kirkwau, for me to be affixt to this present charter, at Kirkwau, the xxiiij day of August, the yere of God a thousand foure hunder fourescore and thre zheris, before thir witnes, Master William Greves (or Gerves ?), channone, Schir William Duthe, Schir Johne Fraser, William Thurphinson,<sup>3</sup> with otheris diverse, and for the mare securite I have subscrivit this write with myn awn hand. I Jhon of Murra swbscrybis this write with myn awn hand.

[Seal gone.]

<sup>1</sup> The parish of Holm.

<sup>2</sup> Shillings sterling, *i.e.* three-tenths of a merkland.

<sup>3</sup> This is, no doubt, the original form of the Orkney surname Turfus. It appears in Sanday in 1601 in the intermediate form of Turphison.

## XCV

DISPOSITION BY JOHN SWANSON, son of Swannie of Gruthill,<sup>1</sup> to Bernard Skea, of four merks of land in Deldail [parish of Deerness].

Original in the possession of Mr. Alfred Baikie of Tankerness.

*April 24th, 1488.*

*Kirkwall.*

Be it maid kend till all menn be this present write, me, Johne Swansoune, vmquhile sone to Swannie of Gruthill, till haif sawld, analijt, and ofhentit, and be this present write sellis, analijs, and ofhentis, fra me and all my airis, executouris, and assingnais, to Barnard Ska and to all his airis, executouris, and assingnais, four merkis of land lyand in Deldail, witht ane hous and all fredomes, commoditeis, asiamentis, proffittis, and richtus pertinentis perteneng or that may pertain to the said four merkis of land, for the sovme of full landis price usuell money of Scotland payit to me in my greit mister,<sup>2</sup> the first penny and the last and all thair betwix, be the handis of the said Barnard Ska ; fra the hiest stane of the hill to the lawest stane of the eb, under the eirth as abone ; the saidis four merkis of land to be joysit and brukit be the said Barnard, his airis, executouris, and assingnais, fra me, my airis, executouris, or assingnais, als frelie as ony sik land is brukin within the paitis of Orknay for now and ever ; and mairatour,<sup>3</sup> I, the said Johne, oblisis me, be the treuth in to my body, to warrand and defend the said four merkis of land to the said Barnard Ska and to all his airis, aganis all leifand or deidle. In witnes of the quhilk I, the said Johne Swansoune, becaus I had na seill propir of my awin,

<sup>1</sup> No doubt Gritley in Deerness.

<sup>2</sup> Sc. necessity ; Dan. *miste*, to lose ; O. N. *missa*, to lose ; *missa*, *missir*, loss.—A. W. J. (The constant use of this phrase, even when the seller was a man of wealth, shows that it was a legal fiction employed to get round the strict odal land-laws which permitted a sale to no one but the nearest of kin, except in the case of dire necessity.—J. S. C.)

<sup>3</sup> moreover.

I haif procurit wiht instance the seill of ane worthy chanounne, Schir Johne Maggy, persoune of Ranaldsay, to be affixit to this present write, at Kirkwall, the xxiiij day of Aprile, the yeir of God, ane thousand, foure hundreth, auchtie and aucht yeiris, effeter the compt of the kirk of Orknay,<sup>1</sup> befoir thir witness, Alexander Sincler, Richart Sincler, Dauid Johnesoune, wiht vtheris diuerss.

[One tag, seal gone.]

### XCVI

DISPOSITION BY ROBERT YORKSTONE, the royal factor,<sup>2</sup> to William of Corgyll, of Corgyll property escheated to the crown.

Original in possession of Mr. J. A. S. Brown, Stromness.

January 28th, 1489-90.

Kirkwall.

Be it maide kande tyll al men be thir present letters, me, Robert Yorkstone, eldar, tyll haff solde ande analyit, and be the tenor off this present letteris sellis ande analysis, all my part off a certane off lande, the quhilk I the said Robert optanit in the umbouth<sup>3</sup> off the King off Mawnis off Corgyllis aris for the fellone<sup>4</sup> distructione and slauchtir off the said Mawnis,<sup>5</sup> wytht all rycht and roth that I haff or may haff to the said lande, tyll a worthy manne Wylame off Corgyll, brothir germane to the forsaid Mawnis, for a certane sowme off silver; off the quhilk sowme I the forsaid Robart grantys me fully content and payit, the fyrst penny and the last and all thar betuext, and quytclamys and dyschargis the forsaide Wylame and hys

<sup>1</sup> Does this mean that the year began on January 1st, as in Norway, and not on March 25th as in Scotland (which, however, does not affect the date of this document)?—A. W. J.

<sup>2</sup> He is found as factor in *Excheq. Rolls* for 1476 and subsequent years.

<sup>3</sup> *i.e.* as the king's agent.

<sup>4</sup> violent.

<sup>5</sup> It would appear from this that Magnus had been slaughtered, but as his land was escheated in consequence, and escheated 'be umquhill Mardnis Corgyll' (see following deed), he must have died by his own hand. This was a frequent reason for the forfeiture of property.

executorys and assygnis for now and evir. In witness off the quhilk thing, because I hade na sele propyr present of my awne, I haff procuryt wytht instance the sele off a worthy man, Johne Persone, balye and burges, to be hungyne to this present writ at Kyrkwall the xxviij day off the moneth of Januar, the yer off our Lorde a thousande four houndretht auchty and nyne yerys, befor thir witness, Wat Nore, Gawane Gra, ande Johne Cristis, witth other syndrye.

NOTE.—This is an example of the exercise of the right, under odal law, of redemption by a kinsman of escheated lands.

## XCVII

INDENTURE BETWEEN WILLIAM CORGILL AND ANDREW LINKLATER, regarding lands escheated from Linklater's father-in-law, Magnus Corgill, and redeemed by William. See note at end of deed.

Original in possession of Mr. J. A. S. Brown, Stromness.

October 17th, 1490.

Kirkwall.

This indentour maid at Kirkwall, the xvij day of the moneth of October, the yere of God j<sup>m</sup> iiiij<sup>c</sup> lxxxx yeris. It beris in the self in maner forme and effec as eftir followis, that is to say, betuix twa worthy men, Vilzame Corgill in his awne umboth on the ta part, and Andro Linclater in his wyfis umboth on the tother part; it his appontit and cordit [*sic*] betuix the said personis that the said Andro ourgifis all rycht clamis and lousing that he has to the land of Corgill that fell in chetry to the King be umquhill Mawnis Corgyll, fader to the forsaid Androis wyf, fra thame, thair aris, executoris, and assignais to the said Wilyame, his aris, executoris, and assignis, for evermare, foroutyn revocation or gaine calling, for ane halff penny land lyand within the parochin of Burch in the Herry,<sup>1</sup>

<sup>1</sup> The present parish of Harray. This shows that the original 'herað' was a large district of which the present Harray formed part. In the 1492 Rental the parish is called Burgh St. Michaels, and in the 1503 Rental, Hurray [*sic*] Brugh.

viz. tua merkis and a halff,<sup>1</sup> and a qui<sup>2</sup> called Fewqui<sup>3</sup> in the parochin of Stromness, and fyve poundis and a sewin s. of sylver of uswall mone Scotland; of the quhilk sown off sillver I, the said Andro, haldis me well content and pait of the first penny and the last and all ther betuix it, and dischargis the said Wilyam, his aris, executouris, and assignis for now and evyrmare; and the forsaid halff-penny land and qui to be haldin and had fra me the sad Wilyam, myn aris, executouris, and assignes to the said Andro, his aris, executouris, and assignis for evermore; and mare atour I, the forsaid Wilyam, bindis me, myn aris, executouris, and assignes, to the said Andro, his aris, executouris, and assignes, for to warand and defend the forsaid land agane all dedly. In witness of the quhilk thing, because I the said Andro had na sele propir present of myn awin, I haff procurit with instance the sele of ane worshipfull man, Schir Jhone M'Gy . . . of . . . Ronaldsay, to be affixit to the parte remannand with the said Wyllyam, befor thir vitness, Olaiff Loutffut and Gaw[ane] Gray, with other divers. . . .

NOTE.—I. William Corgill redeemed his brother Magnus's portion of the family estate which had been escheated. Presumably he did so on behalf of Magnus's daughter and with her money, otherwise he would have come remarkably badly out of the transaction. The daughter (represented by her husband, Andrew Linklater) had first claim, as nearest heir, on this inheritance, but William preferred to keep it himself and compensate the Linklaters with an equivalent in money and outlying lands. (The Linklaters continued to hold these lands in Mirbister and Fealquoy well into the seventeenth century.) II. Magnus's portion was the equivalent, in land, of what William gave the Linklaters, *i.e.*  $2\frac{1}{2}$  mks. of land + Feaquoy + £5, 7s. Taking land at £2 the merk, £5, 7s. would represent  $2\frac{3}{8}$  mks. In 1622 and 1633 Alexander Linklater in Fealquoy first wadset and then sold  $2\frac{1}{2}$  mks. in Fealquoy. This would make Magnus's portion  $7\frac{3}{8}$  mks., which so exactly fits the data in No. XXXIV. that it may be taken as approximately correct. III. William is seen to have increased his own lands by  $2\frac{3}{8}$  mks., the equivalent of £5, 7s.

<sup>1</sup> This halfpenny land evidently lay in the township of Mirbister, since that was the only Harray township which had five merks in the pennyland. See No. XXXIV.

<sup>2</sup> Quoy.

<sup>3</sup> Afterwards found as Fealquoy.

## XCVIII

DISPOSITION BY MARGARET LUDDALE and her sisters, to Margaret Murray, widow of John Mason, of six merks of land of Luddale.

Original in possession of Mr. A. Baikie of Tankerness.

*July 25th, 1495.*

*Kirkwall.*

Jhesus Maria

Be it kend till all men be thir present letters, us Meg Luddale, Marion Luddale, Jonet Luddale, Ingburgh Luddale, and Katrine Luddale, the dochteris and lauchfull ayris of umquhile Bernard Jhonsone of Luddale, with full consent and assent of our husbandis and umbothis-men, with hand and handband fully and frely till have confermit the bying and selling that was maid betuix our forsaid fadir and Jhone Masone, quham God assolze, anent the sex merkis worth of land of Luddale lyand within the parochane of Sanct Andro in Tanskernes, as the charter maid thairupone mare fullyly proportis. And attour, we, the saidis Meg, Marione, Jonet, Ingburgh, and Katrine, sellis and ofhentis fra us, our ayris, executouris, and assignis, all and hale oure grund rychttis, clames, and rothe of the forsaidis sex merkis worth of land, togidder with housis, toftis, towmelis, and fredomis quhatsumever belangand the sammyn, till ane worschipfull woman Margarete Murray, the spouse of umquhile Jhone Masone forsaid, for the soume of fourty schillingis the gude and usuale monie of Scotland payt us thankfully in our grete mystar, the first penny and the last with all thar betuix, of the quhilk fourty s. we quitclame the said Margarete, hir aris, executoris, and assignis; the forsaid land with the pertinentis thairof, as said is, to be haldin and had fra us and ouris till hir and hirris for ever, with all clausulis [*sic*] of warandice at can lauchfully be devisit be mannis resonable understanding. In witnes of the quhilk thing, because we had na selis propir of our awne, we have procurit with instance the sele of ane honorable man Jhone

of Cragy, lawman of Orkney, for us to be hungin to thir present letters, before Alexander Nore, Alexander Cragy, William Flett, and Jhone Nory, tane as for witnes to the purchesing of the said sele, at Kirkwau, the xxv day of July in the yere of God a thousand four hundreth nynte and fyve yeris.

[No seal, but short tag.]

NOTE.—This is a sale of the 'rothe,' or right of redemption, by the heirs of a property which had already been sold, a feature of odal law which must have considerably damped the pleasures of purchasing an estate.

### XCIX

GIFT OF THREE HALFPENNY LANDS FROM EDANE PAPIAY,  
to her daughter Marion Irving.

Original, in Latin, in Gen. Reg. House.

#### *Translation*

*September 30th, 1504.*

*Kirkwall.*

In the name of God, Amen. Be it known to all men by this present public instrument, that in the year of our Lord one thousand, five hundred and four, the last day of September, seventh indiction and first year of the pontificate of our most holy lord, Pope Julius the Second, there personally compeared in presence of me, notary public and witnesses underwritten, a discreet and honourable woman, Eden Papla, and with entire, mature, and deliberate mind, gave by way of motherly donation to her daughter, Mariota Erweyn, a lawful sister's part of her whole goods, moveable and immoveable, according to the lawful custom of the country, and this as a gift, three oblates<sup>1</sup> of the lands lying in the town of Sabay called Evyrhows. And if it shall happen that her son, John Erweyn, shall oppose this donation of three oblates of land, the said Eden gives freely, quietly, and peacefully to the said Mariota, her daughter, both the tenth and the

<sup>1</sup> halfpennies.

fourth penny of her whole goods, moveable and immoveable, without any revocation for ever; upon which all and sundry, the said Mariota Erweyn asked me, the notary public underwritten, to make to her a public instrument or instruments. These things were done in the house of John Lymare, husband to the said Mariota, at nine A.M., day and date above written, in presence of John Cragy, lawman of Orkney, Sir John Stewart, commissary, priest, Nicholas Cragy, Alexander Dundas, and John Garioch, and many other witnesses called and required to the premises.

And I, Ninian Wallace, master of arts, priest of St. Andrew's diocese, and notary public by imperial authority, because I was personally present with the before-named witnesses while all and sundry the premises as above written were acted, spoken, and done, and I saw, knew, and heard these things thus to be done and took a note thereof, therefore I have made this present public instrument thereupon, faithfully written with my own hand, and have signed the same with my usual sign and name, and I ratify this word 'millesimo' interlined coming between the word 'dominice' and the word 'quingentesimo,' and likewise I ratify this word 'Cragy'<sup>1</sup> as deleted in the eleventh line, being hereto required in faith and testimony of all and sundry the premises.

NINIAN WALLACE.

C

DUPLICATE DISPOSITION BY HENRY, LORD SINCLAIR, Justice of Orkney, to Barnard of Skea, of two merks of land in Deldall, in Deerness, escheat for theft from Mege Gruthailay and her husband, Hucheon Gruthlay.

Original in the possession of Mr. Alfred Baikie of Tankerness.

August 23rd, 1505.

Kirkwall.

Be it kend till all men be thir present letters ws, Henry, Lord Sinclair and justice of Orkney, etc., till haue sauld

<sup>1</sup> 'Sir John Cragy Stewart' had been written in error above.

and annalyt, and be thir present letters sellis and annalijs heretable to Barnard of Ska and his airis, all and hail the twa merk land witht the pertenantis lyand in Deldaill within Deirnes, the quhilk pertenit vmquhile to Mege Gruthailay in heretage and till hir husband, Hucheon Gruthlay, quhilk was dempt outlaw for thyft and all his landis and gudis dempt cheit till ws in the kingis name. The quhilk twa merk land witht the pertenantis we haue sauld to the said Barnard and his airis and sall warrand thame the samyn for the sowme of foure pund Scottis payment, of the quhilk sowme we grant ws weill content and paijt. In vitnes of the quhilk thing to this present writ subscrivit witht oure hand we haue affixit oure signet at Kirkwall, the xxiiij day of August, the yeir of God 1 m v<sup>e</sup> and five yeris.

*Sic subscribatur* HENRY LORD SINCLAIR and justice of Orkney, etc.

[Certification by William Peirsoune, N.P., that this is a correct copy of the original.]

## CI

DISPOSITION, ALEXANDER SCLATER to his nephew, Adam Sclater, of a merk of land in Burness, parish of Firth.

Original in possession of Mrs. Watt of Breckness.

*May 4th, 1520.*

*Kirkwall.*

Jhesus Maria

Be it kend till all men be this present writt, me Alexandir Sclater till have sauld, analiit, and ofhentit fra me and all my airis, executouris, and assignais, till my bruther sonn Adame Sclater, and till all his ayris, executouris, and assignais, ane mark of laund in Burness, liand in the perisoun of Fyrtht, for full laundis prise; of the quhilkis soume of full laundis pricis in gold, silver, and uther gud gudis, extending till the full price and wortht of the said mark of leand, I the said Alexandir grauntis me thaunkfully content and pait be the haundis of the said Adam, gevin and deliverit to me in my grete neid and mistar, my

wiffis, sonniss, and barniss, and with thair full consent and assent is pait and tane up the first penne and the last and all thair betuix, and thair of for me, myn airis, executouris, and assignais, I quitclame and discharge the said Adame and all his airis, executouris, and assignais for evirmair; the forsaid mark of laund wyth houssis, toftis, toumellis, commoditeis, asiamentis, fredomes, inpasture, outpastur, undir the erd and abone, fra the hiest in the hill till the lawest in the eb, and all maner of richtuise pertinens pertening or that lauchfully may pertene till the said mark of laund be ony maner of way, togidder with all richt and roight of the samyn, tilbe haldin and haid fra me the said Allexander [and all] myn ayris, executouris, and assignais, to be perpetually joysit, possessit, and brukit be the said Adam and all his ayris for evir; and mairattour, I the said Alexander grauntis gif it happinnis me to sell or wedsett ony of my saidis laundis eftirwart, the said Adam sall haf the first proffir thair of before ony utheris. In wittnes of the quhilk thing, because I the said Alexaundir had na seill of myne awne, I have procurit with instance the seile of ane venerabill clerk Maistir Henry Phankouth, Archiden of Schetland, for me tilbe hungin till this present writt, at Kirkwall the ferd day of May, before thir wittness, Maistir Andro Farquhar, Alexander Cumyng, James Murray, Edward Winduik, and Thomas Saundsound, with uthir diverse, the yere of God j<sup>m</sup> v<sup>c</sup> and twenti yeris.

[Seal gone.]

## CII

DISPOSITION, WILLIAM AND HENRY PAULSON TO JOIN SINCLAIR OF TOLLOP, of their mother's heritage.

Original in Gen. Reg. House. Printed: *O. L. Records*, No. 54.

*March 17th, 1522-23.*

*Kirkwall.*

### *Abstract*

William Paulsoun and Henry Paulsoun, sons and lawful heirs of the deceased Mawnis Paulsoun and Cristiane

Sinclair, sell to an honourable and worshipful man, Johne Sinclair of Tollop, all the rights and heirship, heired by them after the decease of their mother, which she heired after her father, Thom Sincler<sup>1</sup> and her mother, Margaret Wilsoun, 'bath of feild land and borowland' in Orkney and Shetland, 'for ane sufficient sovme of money and other gud gudis, extending to the full worth and availe of all our sister part of heretage pertenyng to the said Cristiane our moder.' Pertinents enumerated, including 'all rycht and roitht' and all righteous pertinents that may pertain to 'our richtis and roitht of our said moderis sister part of heretage.' Having no proper seals of their own, the granters procure the seals of venerable and discreet men, Schir Henry Peyrsoun, vicar of Halkyrk and Skenan, and Schir Nicoll Hacrow, persoun of Orphar. Witnesses: Schir Hew Hacrow, vicar of Wawis, Schir James Seay, Schir William Berclay, Schir George Hunter, cheplanis, and James Murray, with others divers. At Kyrkwall, 17 March 1522.

NOTE.—In the Rental of 1502 Magnus Paulson held certain lands in Sanday (see App. C), which by a comparison with the 1595 Rental can be shown to have included Stove. On a stone over the house of Stove the following inscription, referring to the family of Fea of Clestrain, could still be seen in 1804,<sup>2</sup> '*Septem proavi haec nobis reliquerunt*,' seven ancestors bequeathed this to us, with the date 1671. It is difficult to see how this can reasonably mean anything else than that the family had been there for seven generations previously, or over two centuries. In the *Uthel Book* (1601) James Fea (then of Stove and Clestrain) is not mentioned, but James Palsone is found as part proprietor of Grindlie and Arie, the other proprietor being Stevin Angusson. The Angussons' share was bought by James Fea's son Robert in 1618 (*O. L. Savines*, No. 40). From that time there is no further record of Paulsons in Sanday, and in no deed earlier than 1592 is there any record of Feas there. It would, therefore, seem that the Paulsons had dropped their patronymic and taken the surname of Fea, probably from the lands of Fea in the near neighbourhood of Stove, which very possibly were at one time their odal property, Stove being held on tack.

<sup>1</sup> Cf. No. CIV., where Alexander Sinclair and his wife Margaret Wilson are mentioned.

<sup>2</sup> Neill's *Tour*.

## CIII

DISPOSITION, NICOL SCLATER TO HIS NEPHEW, ADAM SCLATER, of 2 merks of land in Burness, parish of Firth.

Original in possession of the Venerable Archdeacon Craven, D.D.

*July 7th, 1523.*

*Kirkwall.*

Be it kend till all men be this writt, me Nicoll Sclater, soun and ane lauchfull air till Adame Sclater, till have sauld, analiit, and ofhentit fra me and all myn airis, to my bruther soun, Adame Sclater, and all his ayris, twa merkis of laund liand in Burness in the perisoun of Fyrtht, in rig rendale <sup>1</sup> with the landis that my bruther Alexander Sclater sauld to my said bruther soun of before,<sup>2</sup> for the soume of sax markis usuale mone of Scotlaund, pait to me in gude gudis of full laundis prise in my urgent necessite be the said Adame, the fyrst penne and the last and all ther betuix.

[He quitclaims and discharges Adam. The land is sold with consent of his sons and lawful heirs, Adam, Johne, and Nicoll Sclater. Pertinents, including 'full rycht and roitht,' as in No. CI.]

In witness of the quhilk thing, I the forsaid Nycoll Sclater because I had na proper sele of my awn, I have procurit witht grete instans the selis of honorabill and worshipfull men, that ar to say, William Stewart, bruther german and bailze till ane reverend fadir in God Edward Bischop of Orknay, and Schir Nycoll Hacrow, persoun of Orphare, for me to be hungyn to this present, at Kyrkwall, the vij day of July, before thir wittness, Mawnis Sincler, Mawnis Hacro,<sup>3</sup> James Murray, Cobane Grynbuster, Gilbert Boge, David Traile,<sup>4</sup> with uther diverse, the yere of God jm fyve hundreth and xxiiij yeris.

[Seal gone.]

<sup>1</sup> lying in runrig.

<sup>2</sup> See No. CI.

<sup>3</sup> Probably Magnus Halcro of that ilk mentioned in No. CXLIII.

<sup>4</sup> This appearance of David Traile seems to indicate (in view of there being no tangible evidence to the contrary) that the Traills settled in Orkney much earlier than has been supposed.

## CIV

DISPOSITION, MARGARET SINCLAIR TO JOHN SINCLAIR, her son, of her sister part of lands and heritage.

Original in Gen. Reg. House. Printed: *O. L. Records*, No. 56.

May 20th, 1527.

Kirkwall.

*Abstract*

Margaret Sinclair, a daughter and lawful heir of the deceased Alexaundir Sinclair<sup>1</sup> and Margaret Wilsoun, resigns to her son, Johne Sinclair, her 'sister part of laundis and heretage baitht feild laund and borowlaund, gudis movabill and vnmovabill, in Orkna and Scheitlaund,' with richt and roitht pertaining to the same, on the condition her said son upholds her honestly all the days of her life, 'and eftir my deceise to uphald yerly myn derige<sup>2</sup> and saule.'

Having no proper seal of her own, the granter procures the seals of venerable and discreet men, Schir Henry Peirsoun, deyne cristiane,<sup>3</sup> persoun of Strounsay, vicar of Halkyrk and Skenane, and Schir Nicoll Hacrow, persoun of Orphar, together with the seal of an honourable man, Thomas Tulloch of Ness. At Kirkwall, 20 May 1527. Witnesses: Mr. Johne Tyry, archiden and official of Orkynnay, Mr. Alexander Scot, persoun of Westra, Schir Mathow Farquhar, vicar of Saint Olaivis Kirk, Schir William Berela, Schir Mawnis Reid, and Schir Donald Mansoun, cheplanis, Thomas Cummyng, James Murra, and William Hardy, with others divers.

NOTE.—This is an instance of 'Upgestrie,' the practice under Norse law of giving one's property to a relative on the condition of being supported for the remainder of one's life.

<sup>1</sup> Cf. footnote to No. CII.

<sup>2</sup> dirge.

<sup>3</sup> Rural dean.

## CV

DISPOSITION, THE DAUGHTERS OF HUTCHEON CLOUSTON  
TO JOHN SINCLAIR, of 3 merk lands in Clouston.

Original in possession of Mr. William Clouston of Netherbigging.

Printed: *O. L. Records*, No. 57; since re-examined and corrected.

February 24th, 1527-28.

Kirkwall.

*Abstract*

Elene Clouchstay,<sup>1</sup> Marioun Clouchstay, and Katryne Clouchstay, daughters and lawful heirs of the deceased Huchone Clouchstay, with consent of their step-father Donald Seartht,<sup>2</sup> their lawful umbouthman, sell to an honourable and whorshipful man, Johne Sinclair, son and lawful heir to the deceased Maw(nus)<sup>3</sup> Sinclair, 3 merklands in Clouchstay in the Corse [Cross] parish of Stannes, for £6 Scots. The land is sold with its various pertinents, including the rycht and roicht<sup>4</sup> of the same. Having no seals of their own, the granters procure the seal of a venerable canon, Schir Nicoll Hacro, parsoun of Orphir. At Kirkwall, 24 February 1527. Witnesses: Master Walter Auchtirlony, Adame Selater, Thomas Cummyne, Alexander Cummyne, James Murra, and Sande Grot, with others divers.

[Seal gone.]

## CVI

DISPOSITION, CHRISTIAN TULLOCH TO JOHN TULLOCH, her  
brother, of her heritage in Ness.

Original in possession of Mr. A. Baikie of Tankerness.

September 7th, 1529.

Kirkwall.

Be it maid kend til al men be this present vret, me Christeane Tullocht, ane douchter and lauchful air to my faider, Thomas Twlloch of Ness, that for sa mekil as I am to pas in pylgramage to the Haly Crose off Forinen [?]

<sup>1</sup> Clouchstay throughout, not Clouchston as in *O. L. Records*. 'Stay' is a contraction of stath (staðr).

<sup>2</sup> Not Scoocht as in *O. L. Records*.

<sup>3</sup> Three letters can now be read.

<sup>4</sup> In this deed *c* is clearly distinguished throughout from *t*, and there is no doubt this word is here written roicht, not roight.

in Norrowaye, be this my present wret, wyth consent and assent of my fader aforsaid, grantis me to haf sauld, annelleit, and offhenit, and be the tenor of this present wret sellis, anelleiis, and offhinttis, fra me and al my airis, executouris, and assingnais to my eldest broder, Jhone Twlloch, his airis, executoris, and assignais, all and hail my sister part of land of heritage, bayth landis and louse guddis, that I lauchfully may air and fallis to my heritabil part efter decese of my forsaid fader, Thomas Twllocht, for ane soume of monye and uder guddis giffin to me in my gret urgent mister and necessete be the handis of my forsaid broder, extending to the ful price and avail of my sister part of land and heritage aforsaid, the fyrst pennye and the last and all thair betuix, and thairof for me, my airis, executoris, and assingnais, I the forsaid Cristeane Twllocht quietclamis and dischargis the forsaid Jhone Twlloch and al his airis, executoris, and assingnais of the forsaid soume and uder gudis, extending to the ful price of my sister part of land and heritage efter the decese of my fader, as said is, for nowe and evirmair. In vitness of the quhilk thing, be cause I the said Cristeane Twlloch hed nane sceil of my awne, I hafe giffin my ful power with hand and handband to honorabil and discreit men, Jhone Hertsid, Alexander Stevinssone, and James Murray, conjunctly and severly, al is [*sic*] ane and ane [*as*] al, to procure with instance the sceil of ane honorabil and discreit man Schir Nycol Hawcro, persone of Orpher, for me to be hungin to this present charter, at Kyrwall, the sevint daye of September in the yeir of God m v<sup>c</sup> xxix yeiris befor vitness.

[No seal or tag.]

## CVII

DUPLICATE OF A WADSET, THOMAS OMAND TO PETER  
RUSLAND, of a merkland in Kirbister.

Original in Gen. Reg. House (given by Mr. W. Isbister of Bigswell).

Printed: *O. L. Records*, No. 90.

*Midsummer*, 1530.

*Apparently Harray.*

*Abstract*

Midsummer, 1530. Thome Omond wadsets 1 merk

land in Kirkbuster in the parish of Orphare to his well-beloved friend, Peter Rusland for £3, a 'gillat,'<sup>1</sup> and a horse foal. Witnesses: Alexander Sinclair, Thome Burgh, William Leiry (Linay), Thome of Clerk, and Thome Rusland, with divers others. Subscribed by Robert Mowat.

NOTE.—On April 2nd, 1574, John Rusland, son and heir to Peter Rusland, acknowledges redemption by Edward Omandson of one merk land wadset to his said father, for £7. At Harray, written by Robert Stewart, lector. Witnesses: Andrew Hourston, John Sinclair, William of Knarston, James Flett, elder of Pow, John Isbister, and the foresaid Robert Stewart (*O. L. Records*, No. 97). As both charters were found in the title-deeds of the same estate, there can be no doubt they refer to the same transaction.

## CVIII

DUPLICATE OF GIFT BY JAMES CRAGY OF BROUGH to his sister Marion and her spouse, John Cromarty of Cara, of 4d. land in Housgarth in Sandwick, in exchange for two sisters parts of land.<sup>2</sup>

Original in possession of Mr. Duncan J. Robertson, Kirkwall.

*July, 5th, 1530.*

*Kirkwall.*

Be it kend till all men be this present chairtor, me James Craigie, sone and ane lawfull air to Johne Craigie lawman of Orknay, quhome God assoilze, to haif frelie gevin, and be the tenour of this present chairtour frelie gyffis, fra me and all my airis, executors, and assignayis, four penny terre [*sic*] callit Housgarth, lyand within the parochin of Sanduik, with all fredomes, asiamentis, commodeteis, pertinents that pertenis or reychtcheouslye may pertain thereto, fra the heast of the hill to the lawast in the eb, togydder with inpastour and outpastour, to my weil-beluffit sistir Marzeoun Craigie, hir spous Johne Cromartie, and to thair airis lawchfullie gottin betuixt thame, and to perpetualie jois and bruik the forsaid four d. terre in Housgarth for ony clame or gaincalling of me, my airis, executoris, or assignayis, or ony wthiris quhatsumeuir,

<sup>1</sup> Either a filly or young mare, or a gelding or riding horse.

<sup>2</sup> See No. XLVII.

in tymes cuming, for the saidis Marzeoun Cragie and hir sisteris Barbara Cragyis partis of land that thai airit eftir thair fader Johne Cragie, as said is, quhome God assoilze; and be the tenour of this present chairtor I, the forsaid James Cragie, bindis and oblissis me, my landis heritabill, [and my ?] guidis movabill and immovabill, to warrand and defend the forsaidis Marzeoun Cragie, hir spous Johne Cromartie, and thair airis, as said is, in the peaciabill bruiking, manuring, posseding, and josing of the foirsaidis four d. terre of Housgarth, fre fra all molestatioun, inquietatioun, and persecussioun of ony personis quhatsumeur in tymes cuming. Gyffand and grantand my full powar to the said Marzeoun, hir spous, Johne Cromartie, and thair ariis, to follow and persew and obtain all guidis movabill and immovabill, gold and siluir or siluir wark,<sup>1</sup> that pertenit or reychtcheouslye mycht pertein to me and my sisteris forsaid be the decese of our father Johne Cragye, and yit mycht apertein to me or my sistiris afforsaid be the decese of our father, Johne Cragye, and zit possessit and bruikit be Cristane Hacro, the spous and relict of wmqhill the said Johne Cragye; and swa obtenit to be josit, bruikit, and possest be the saidis Marzeoun Cragy, hir spous Johne Cromartie, and thair airis, for now and euir. And be the tenour of this present chairtour we the forsaidis Marzeoun Cragy, my spous Johne Cromartie, for ws our airis, executoris, and assignayis, discharge and quytelames the forsaid James Cragy, his airis, executoris, and assignayis, for all and hail twa sistir part of landis, that is for to say, ane sistir part of land pertenant to me the forsaid Marzeoun Cragye, and ane sistir part of land pertenant to my sistir Barbara, the quhilk twa sistir partis of land airit be the decese of my forsaidis fader Johne Cragye and my sistir Barbara, quhome God assoilze, to gidder with the land maills byrune sen the decese of the said Johne Cragye, and all guidis, movabill and immovabill, gold, siluir, and wthir guidis quhatsumeur, and all pleyis, executioun, and debtis

<sup>1</sup> Silver plate.

movit betuixt ws the forsaidis, James Cragye and Johne Cromartie, in tymes bygane, to be secludit, away put, and forzet in all tymes cuming. In witnes of the quhilk thing becaus we haid na selis propir of our awin present, we haif procurit with instance the selis of honorabill and discret men, Sir Nicoll Halero, parsons of Orphar, and Sir Johne Stewart, prebendar of Sanct Colme, for ws to be put to this present chairtor, at Kirkwall, the fyft day of Julii in the zeir of God ane thowsand five hundreth and threttye zeris, befor thir witnes, James Sinclar of Brekis, Edward Sinclar of Strome, Sir David Camroun, William Cunyngame, George Monypenny, Thome Vicar, and Sir James Scuill, with wtheris diuerss.

This Is the auctentic copy of the principall, trewlie and faithfullie copijt and collationat be me Mr. Williame Peirsoune, notar publict, word be word, na thing different fra the originall, testifeis this my hand wret to all that recognosces the samyn.

Ita est Magister Willielmus Peirsoun notarius publicus teste hoc meo cyrographo et signo notariatus manuali.

Mr. Willielmus Peirsoun notarius publicus manu propria.

## CIX

DISPOSITION, THOMAS LOUTTIT and his sons to John Sinclair of Tollop, of 2 merklands in Deerness.

Original in Gen. Reg. House.

*April 27th, 1531.*

*Kirkwall.*

Be it maid kend til all men be this present chartor, me Thomas Louttit, sone and lauchtful air to my fader Magnus Louttit, and us David Louttit and Alexander Louttit, sones of and lauchfull airis to our fader Thomas Louttit, wyth full consent and assent of al our airis lauchfully gottin, conjunctly and severly all as ane and ane as all, grantes ws to haf sauld, anelliit, and ofhint, and be the tenor of this present charter fully and frely with hand and handhand sellis, anelliis, and of hintis, fra ws and all our airis, executorris, and assigneis, to ane hono-

rabill and discreit man Jhone Sinclar off Tollop, and to all his airis, executorris, and assigneis, all and hailt twa markis land lyand within the parrochin of Deirnes in Brabuster callit Oabak, wyth houssis, toftis, townmellis [*sic*], inpastor, and outpastor, onder erde and abone, fra the hiest of the hill to the lawest in the ebbe, als veil nocht nemmit as nemmit, and all that is bettir to haf nor for to forga, togidder wyth all rycht, rotht, and rychtuis pertinens that pertenis or that rychtuisly may pertain to the saidis land and houssis; for the ful landis price bayth of land, houssis, toftis, townmellis, rycht and rotht, as said is; payit to ws the forsaidis Thome, David, and Alexander in our gret mister and urgent necessite, the fyrst penny and the last and all thair betuix, be the forsaid Jhone Sinclar of Tollop, in penny and pennyworthtis; off the quhilk soume of landis price, as said is, we the saidis Thome, David, and Alexander, for ws, our airis, executoris, and assignais, granttis us weil content, payit, and assithit,<sup>1</sup> as said is, quietelameand and dischargand the forsaid Jhone Sinclar, his airis, executoris, and assignais, for now and evirmair; and atour, gif sua beis that ony personis in tymes comeing clameis or persewis the said land wyth rycht, rotht, and pertinens, as said is, be waye of heritage, and hapinis to oupten the samen be ony just titil of lawe, cannone or sivell, swa we the saidis Thome, David, and Alexander, byndis and oblissis ws, our airis, executoris, and assignais, be the faythis of our bodyis in straitest forme of obligacione, to warand and defend the forsaid Jhone Sinclar in paciabil brukin, manuring, poscedeing, and jossing of the forsaid landis, with rycht and rotht as said is; and to deliver als meikil of our best rotht<sup>2</sup> land to the ouptenar of the aforsaidis twa merkis land as said is; and swa the forsaid Jhone Sinclar of Tollop, his airis, execu-

<sup>1</sup> Satisfied.

<sup>2</sup> This is the only deed in which 'rotht land' is spoken of, clearly in the sense of the possessor's own odal land, instead of with a specific allusion to the right of redemption. Too much weight, however, cannot be attached to the fact since the scribe has strewn 'rothtis' through the document so generously as to suggest that he used the term without much discretion. It differs from all the other deeds in this respect.

toris, and assignais, sal bruk, jois, and posceid the forsaidis twa merkis land of Oabak, with hous and pertinens and all rycht and rotht, as said is, als frely, quietly, and paceably as ony rotht land is brukit, joissit, and posceidit within the boundis of Orkna; fre but ony molestatione, inquietacione, or perturbacione of ony personis quhatsumevir. In witnes of the quhilk thing, becaus we the saidis Thome, David, and Alexander had nane scellis propir present of our awine, we haf procurit wyth instance the sceillis of venerabil and discreit men, quhilkis ar to say, Maister Malcome Hawero, Archiden of Zetland, and Schir Henry Persone, vicar of Halkirk and Skrynen, for ws to be hungin to this present chartor, at Kyrewall this xxvij daye of Aprile in the yeir of God j<sup>m</sup>v<sup>c</sup> and xxxj yeiris, befor thir witnes, Maister Alexander Craik, persone of Hoye; Schir Nycoll Hawero, persone of Orpher; Sir Hew Hawero persone of Rannaldsa; Schir Magnus Cragy, vicar of Rolsa;<sup>1</sup> Schir Jhone Stewart, prebendar of Sanct Colme; and Schir Magnes Strang, prebender of the Cross, wyth otheris divers.

## CX

DISPOSITION, CRISTE AND JOHN IRVING, sons of John Irving of Sabay, to their brother James, of all their interests and rights in Sabay.

Original in Gen. Reg. House. Printed: *O. L. Records*, No. 38.

*June 15th, 1534. Linæness (St. Andrews parish).*

*Abstract*

Criste Yrrewing and Jhonne Yrrewing, sons and lawful heirs of their father Johnne Yrrewing of Sabbay, dispone to their dearest brother James Yrrewing, 'all and haill bayth rycht and rotht quhatsumevir that pertenis' to them within the half uris<sup>2</sup> land of Sabbaye, 'with all rychtis of the teind penny and the ferde penny, gyffin be

<sup>1</sup> Rowsay.

<sup>2</sup> An uris or ounce land contained eighteen pennylands. Sabay was a nine pennyland.

owr guddame Edane off Paylaye to owr eldest broder Criste Yrrewyng, quhome God asolye.' They also sell their rights in a sister part of Sabbay held by Wilyam Flett and his heirs. Stipulation is further made that the 'conquest' lands of either party shall be free from any claim by the other. Having no seals present of their own, the granters procure the seal of an honourable and discreet man James Sincler of Brekis 'and Justice of Orkney for the time.' At Linxness, 15 June 1534. Witnesses: Schir James Scuill, Lawrence Sincler, Thomas Mowet, and Gilbert Tulloch, with others divers.

## CXI

DISPOSITION, THE SONS OF ALEXANDER PETYRSONE to Edward Sinclair of Strome, of a merk and a 'cow's price' of land in Deerness.

Original in the possession of Mr. Alfred Baikie of Tankerness.

*June 16th, 1534. St. Colm's Aisle, St. Magnus's Cathedral, Kirkwall.*

Be it kend tyll all men be this present chartur I, Thome Allexandersone and my brether, quhylkis ar to saye Fynne Allexsandrsonne, Magnus Allexsandersone, Petyr Allexsandersone, Jame Allexsandersone, and Bernat Allexsandersone, sounis and lauchfull aris to our fadyr Allexsander Petyrsonne and to our moder Armiger Robs-wertis docthtter, granttis wss tyll heff sellyt, analyt, and offhynt fra wss and all our aris, executouris, and assyngness tyll ane honorpill [*sic*] and potent man Edwart Synclayr of Stroyne, and tyll his aris, executoris, and assyngness, ane merk of land, togyddyr wytht ane kowis price of land lyand in our Lady parysone of Deyrness in the twne of Sandvyk for full landis pryce as the uise of the cuntre.

[They quitclaim the grantee of the price and give the usual warrandice. Having no seals of their own, they procure the seals of honourable men, Sir NYCOLL HAUCRO, parson of Orpher, and Master ALEXANDER CRAYK, parson of Hoye and Official of Orkney. At Kirkwall in the cathedral kirk of St. Magnus in

'Sant Collmyss aile,'<sup>1</sup> 16th June 1534. Witnesses: Sir NICOLL WYSCHART, SIR WEYLLEM PERQUER, DONALD KYNG . . . t., JAMIS ATKYNE, DAVID LOWTIT, WMFRA WYNNDWYLL, with others divers. Sir Nycholl Hawcro and Alexander Craik sign.]

[Two tags, seals gone.]

## CXII

NOTARIAL INSTRUMENT as to the disposition to Magnus Baikie and his son of 3 farthing land in Isbister, parish of Birsay by Michall Myreman.<sup>2</sup> (The parts in brackets are translated from the Latin.)

Original (apparently a late seventeenth century copy) in the possession of Mr. Alfred Baikie of Tankerness.

*September 27th, 1534.*

*St. Cross Kirk, Sanday.*

(In the name of God, Amen. Be it known to all men by this present public instrument, that on twenty-sixth September in the year of our Lord one thousand five hundred and thirty-four, seventh indiction and eleventh year of our lord, Clement the Seventh, by divine providence Pope, in presence of me, the notary public and witnesses underwritten, personally compeared the discreet and honest men, Brandam Burgar, Christopher Burgar, Stephen Mvir,<sup>3</sup> Alexander Marekyrk, Magnus Spens, Magnus Johnston, Michall Mvir,<sup>4</sup> David Sinclair, parish clerk, and Richard Johnston, having been cited, called, and carefully examined by me, Sir Edward Blair, curate of Sanday, appointed commissary for the time for this purpose, in presence of an honourable and potent man, Magnus Sinclair, Lord of [Wa]rsater, and spake and deponed as follows in the common tongue.) That is to say . . . [*sic*] sauld ther is three fardene land lyand in the Maneland of Orkany, parochie of Birsay, within the dyks of the town of Isbester, with all freedoms, comodities pertenant thairto or justly may pertene, fra him, his airs, executouris, and assignais whatsomevir, to me friend Mane Bakye, his airs, executouris, and assignais, for the soume of fyfthe ss. in

<sup>1</sup> Cf. No. XLVI.

<sup>2</sup> Stephen Nivir in the copy, in obvious error.

<sup>3</sup> Mithach Nivir in the copy, in obvious error.

<sup>4</sup> Now Merriman.

grots and plaks,<sup>1</sup> guid and usuall money of the realme and country, and ane gyld<sup>2</sup> meart<sup>3</sup> to complyt payment for the said three fardene land witht the pertinensis, and the forsaid Michall Myreman holds him well content and pait and dischargit, and quitelams the forsaid Mane Baykye, his airs, executouris, and assignais, for the forsaid land for now and ever, and say [*sic*] the forsaid three fardene land bought and sauld als well as any land for so mickle withtin the ground of Orkany; and mareattour, the forsaid witness provs and says that they hard and saw Michall Myrreman when he was in the articall of deyth grant and upon him tak that he was thankfully content and payt of the first penny and the last, and that Mane Bayke conditionat him for the forsaid thre farden land. (Whereupon all and sundry the premises Thomas Baykye, son and lawful heir of his father, Magnus Baykye foresaid, asked from me the notary public a public instrument or instruments one or more. These things were done on the foresaid day at the church of Holycross in the Isle of Sanday about eleven or thereby in the forenoon, year, day, month, indiction and pontificate as above, there being present, David Tyre, Peter Lynelay, Boniface Cragy, Andrew Garaye, Richard Fodringhame, John Fodringhame, and John Burray, with certain others also called and required to the premises.

And I, Edward Blair, priest of the diocese of Aberdeen and notary public by apostolic authority, etc.)

## CXIII

AGREEMENT BETWEEN JAMES IRVING OF SABAY and the heirs of William Flett of Hobbister as to their interests in Sabay.

Original in Gen. Reg. House. Printed: *O. L. Records*, No. 39.

January 12th, 1534-35.

Kirkwall.

*Abstract*

An indenture made at Kirkwall, 12 January 1534,

<sup>1</sup> A small copper coin equal to  $\frac{1}{2}$ d sterling.

<sup>2</sup> great.

<sup>3</sup> A cow or ox killed and salted for winter provision.

between David Flet, Mawnis Flet, Niniane Flet, and Anne Flet, bairns of the deceased Weyllem Flet, on the one part ; and James Irvyng, son and heir of the deceased Jhone Irvyng of Sabay, on the other part. The parties agree that if either exchanges, sells, wadsets, gives away, or sets for rent their rights and lands in Sabay, the other party shall have the first option of acquiring the disposed rights. If any debatable points arise, they agree ' to tak nay maystermen in thar defence or suple [support] bot eqhell men and the laow.'<sup>1</sup> They bind themselves to observe these conditions under the penalty of £20 Scots. ' For the mair sekyrnes,' all the parties procure the seal of a noble and potent man, James Syncler of Brekkis ' and Justice of Orkney.' Witnesses : Schir James Sewyll, Schir Nicoll Wyschart, Jhone Harkcas, Weyllem Wyrk, George Monypeny, Sande Scot, Henry Blak, and Gelis Seelpaye, with others divers.

## CXIV

FEU CHARTER, KING JAMES V. TO SIR JAMES SINCLAIR,  
of the islands of Sanday and Stronsay.

*Register Great Seal, lib. xxv. No. 200. Printed : O. L. Records, No. 58.*

*June 20th, 1535.*

*Edinburgh.*

*Abstract*

Crown charter of feufarm in favour of James Sinclair of Sanda, Knight, and Barbara Stewart, his spouse, granted by King James v. of Scotland. The lands specified are the lands and island [*sic*] of Sanda and Stronsay, with the holms thereof called Rymtsay, Papay, and Owskaire, lying in the lordship and earldom of Orkney. They are to be held of the King, ' as earl and lord of Orkney,' and his

<sup>1</sup> Mr. A. W. Johnston gives maystermen=learned men, but gives no note regarding what follows. Jamieson says that master in composition denotes what is ' chief or principal of its kind.'<sup>2</sup> I venture to suggest that the sentence may mean that the parties were not to refer debatable points to the umpirage of some man (or men) of high position, but to arbiters equally chosen between them, and to the law.

successors, by the said James and his spouse, their heirs male; and failing them, their heirs female; 'without division of the aforesaid lands,' in feu and heritage for ever. The grantees are to pay 200 merks, in equal portions at Whit-Sunday and Martinmas, in name of feufarm 'for the increase of our rental yearly in all payments in the sum of 50 merks.' Their heirs are to double the said feufarm in the first year of entry, after the custom of feufarm. The grantees and their heirs have also to build and maintain on the foresaid lands and island a sufficient mansion-house. At Edinburgh, 20th June 1535.

NOTE.—This is the earliest feu charter of lands in Orkney or Shetland. Tradition says that Sir James Sinclair obtained this grant by representing the two islands to be uninhabited holms, but the duties charged show this to be nonsense. It seems pretty certain, however, that King James can scarcely have realised what he was granting, since the island of Sanday contained a considerable amount of odal land belonging to various families, and Stronsay a little, and odal lands were never feued out (except to the owner by his own desire) until they had first been acquired by the Crown or Church. In fact, the charter—as worded—was absolutely *ultra vires*.

## CXV

CHARTER, IN FEUDAL FORM, BY KING JAMES V., confirming James Irving of Sabay and his heirs in their possession of their odal estates.

From a parchment in the Gen. Reg. House containing the whole of another and part of this charter.

[*February 1536-37* ?] See note at end.

Jacobus Dei gratia Rex Scotorum, Omnibus probis hominibus totius terre sue clericis et laicis salutem: Sciatis nos, Forsameikell as we find be the wreats and evidents producit to ws that James Irving of Saba and his predicesors had and hes guid and undowtit right to all and hail the nyn penny udall land of Sabay, with the onsets, outbraks, and pertinents thereof; all and hail the mill lands, mill quoys, muleters, and sequells of the said mill; all and hail the thrie penney half penney land of Grotsetter; all and hail the thrie halfpenney land in Thoip, lyand within the paroch of Sanctandro; and all and hail the

eghtin penny land of [Yeskembea]; all and hail the twa penney land callit Fea in Neugar; all and hail the ane penny land callit Qwoyes ther, lying in the paroch of Sandwick in the Mainland of Orkney;<sup>1</sup> and we being nowayes willing that the said James sould be prejudght in his rights maid and grantit to him and his forsaid predicessors of the saids lands and wthers abon-written, but rather to strenthen and confirme the samyn, quhilk wreats and evindents, contracts [?], bonds [?], and all uther wreats maid and grantit to the said James Irving, his predicessoris and authoris, anent the said lands and wthers forsaid, in all thair poyntis, artickels, conditiones, and serkeomstances quhatsomever, in all and be all the formes and effects thair of, we aprove and ratifie, and for ws, our aires and successoris for ever, confirmes; and we of new againe, butt prejudice of oney former right, give, grantis, and dispones, and be the tenour of this present charter give, grantis, and dispones, to the said James Irving and Helline Lesley his spous, the langest living of them twa, and efter ther deceesse to James Irving ther eldest sone and his aires maill; quhilk fealling to Magnus Irving, his aires maill; quhilk fealling, Gilbert Irving, his airis maill; quhilk fealling to Edward Irving, his airis maill; quhilk fealling, to William Irving ther youngest sone and his aires mlial; quhilkis fealling, as God forbid, to returne to the said Jmaes Irving ther faither and his aires maill and assigneys quhat-somever; all and hail the saids nyn penny udall land of Sabay with the onsets and outbraks and pertinants thereof, all and hail the mill lands, quoyes, multeris, and sequells of the said mill, all and hail the thrie penny half penny land of Grottsetter, all and hail the thrie half penney landis in Thoip in the paroch of Santandro, all and hail the eightine penny land of Yeskenibie, all and hail the twa penny land callit Fea in Neugar, all and hail the ane penny land callit Quyes ther in the paroch of Sandwick, all lying within the mainland of Orkney; togedder with all and sundrie housses, biggines, yairds, barnes, stabells, toftis, croftis,

<sup>1</sup> All these lands were odal.

toumells, quoyes, outbrekes, onsets, mosses, mures, meadows, grasseings, cuninggars, peits, pettmosses, . . . swatters [*sic*], loches, stankes, burnes, halking, hunting, foulling, fishing in fresh and salt watter, sklett and skletthews, sten and stenquarrell, lym and lymkilles, dowes, dowcketts, wrack and ware [? waith], with all and sundrie uther pertis, pendickells, and pertinentis quahatsomever, pertaining to the saids lands and mill . . . therof, as weill nott neamit as neamitt, under the earth as abowe, far and neir, with frie esshew and entrie therto, and that fra the hiest of the hill to the lawest of the ebb: To be halldine and to be had all and hail the said nyn penny udall land of Sabay, the said mill lands, quoyes, mulsters, and sequells, therof, all and hail the thrie penny half penny land of Grotsetter, all and hail the thrie half penny land in Thoip, all and hail the eightin penny land of Yeskenbie, all and hail the twa penny land callit Fea, all and hail the ane penny land callitt Qwoyes, and with all and sundrie housses, bigings, yairds, barnes, stabells, toffs [*sic*], croftis, towmallis, quoyes, outbraikes, onsets, pairts, pendickells, and pertinants quahatsomever, belonging therto, lyand and boundit as said is, to the said James Irving, Helling Leslie, and efter ther desess the said James, Magnus, Gilbert, Edward, and William Irving, ther airs mail, in maner as is abowespecifeit, whilks fealing the said James and his aires mail and assigneys, of us our aires and successours in feie and heritage for ever, be all right meithss merchiss old and dewydit as the samein lythes [*sic*] in lenth and breid in housses, bigings, yairds, . . . tofts, crofts, towmells quoyes, outbraiks, onsets, perts, pendickells, and pertinants therof quahatsomever belonging therto, freilie, quyetlie, . . . weill, and in peace, but ony rewocation, objectione, impediment, or ganecalling quahatsomever: Savand and reservand every personis interest[?] . . . thereof. Payand therfor yeirlie the said James Irving, Helling Leslie, and the said James, Magnus, Gilbert, Edward, and William Irvings, ther airs mail, in maner as is abowe writtin, to ws, our aires and successouris, the scatt, teind, and wtheres dewties dew to be payed out of the said

lands, mill and pertinants therof, conforme to the rental of Orknay, and in kaiss it sall happin [?] them or ther forsaid rather to retine the forsaid dewtie in ther handis [so ?] as to pay the same conforme to the rental, it sall be leison to them and to retine the same.

[Here the deed ends, at the foot of the parchment, and is evidently continued on some missing page.]

NOTE.—The date of the immediately preceding deed on the same parchment is Edinburgh, Feb. 8th, 1536-7 in the twenty-fourth year of king's reign, so that it is probable this charter is of about the same date. The king who grants it is certainly James v., as the wife of James Irving is here stated to be Helen Lesly. On October 4th, 1566, his wife was Janet Skea (see No. LV.), and he died in October 1567 (No. LVIII.), while James VI. was not proclaimed king till July 1567. It is therefore certainly earlier than December 1542, when James V. died, and is of considerable interest as being the earliest feudal charter of a private Orkney estate (the grant to Sir James Sinclair of Sanday and Stronsay is of a different kind). It is to be noted that it is not a feu of Crown or Church lands, but a confirmation of odal possession. It may be added that despite this apparent feudalisation of their estate, the Irvings continued to partition and redeem it just as before. In this respect it may be contrasted with the Halcro charter of a few years later (No. CXVIII.).

## CXVI

DISPOSITION, CRISTANE MAISON TO EDWARD SINCLAIR OF STROME, of a pennyland in Tankerness.

Original in possession of Colonel W. E. L. Balfour of Balfour and Trenaby.

July 11th, 1543.

(Kirkwall.)

Be it maid kend till all men be this present chairtour that I, Cristane Maisone, doichter and lauchfull air to my fader Jhonne Maisone, and to my moder Margrete of Morraye, with the consent and assent of my bairnis Margret Lesk and Alysett of Lesk, and with the consent of my brother sone Niniane Maisone, sone and air to Angus Maisone, his fader, conjunclic and severalie ane as bayth and bayth as ane, grantis . . . <sup>1</sup> and thai about writtin to have sauld, annalit, and ofhentyt, and be the tenor of this present write sellis [annaliis] and ofhentis, fra ws and all our airis, executouris, and assignais, ane penne land liand

<sup>1</sup> Torn at end of several lines.

in Tanker[ness] within Sanct Andros parisoun, extend-  
 ande to four merkis lande, with housis, tofftis, towmellis,  
 inpastuir, out[pastuir], with all rychtouse pertinens per-  
 tenand thairto or that may pertene in tymes cuming be  
 rycht, fra the hiest of the [hill to ?] the lawest in the see,  
 with all wther rychtis that is better to have thane to vant,  
 and with the rycht and roytht of the [said ane ?] pene  
 land; to ane honorabill man, Eduard Sincler of Strome,  
 and to all his airis, executouris, and assig[nais], for the  
 sowme of aucht pundis gold and silver usuall mony of  
 Scotlande, pait to us for compleit pay[ment] of full landis  
 price for said [*sic*] penne land in Tankyrnes, the first penne  
 and the last and all thare betuix, in our gret urgent neces-  
 site and myster.

[They bind themselves to warrant Edward Sinclair in the land  
 and quitelaim and discharge him of the price.]

In wytness of the quhilk thing, because we the forsaid  
 persons had na selis propir of our awne, we have procurit  
 with instance the seil of ane honorabill man James Cragy  
 of Brouch, togydder with the seill of office of the  
 cathedrall kyrk of Orknay, for ws to be hungin to this  
 present chartour the xj day of July, the yere of God  
 ane thousand five hundreth and fourty thre yeris, befor  
 thir vitness, Olyver Douglas, Williame Grote, Andro  
 Cursetter, Gawane Chalmer, Andro Pharquhair, Magnus  
 Tailzeour, with wther diverss.

[Two tags, both seals gone.]

## CXVII

AGREEMENT BETWEEN JOHN AND GILBERT TULLOCH and  
 MARION NESS AND JOHN YINSTA, as to sale or wadset  
 of their lands. (The original is undecypherable in  
 many places; and the transcript being full of gaps,  
 an abstract is here given.)

Original in possession of Mr. Baikie of Tankerness.

September 30th, 1543.

Kirkwall.

*Abstract*

On the last day of September 1543, the 'venerable and

circumspect persons, John Tulloch and Gilbert Tulloch, his brother, on the one part, and Marion Ness and Jhone Yinsta, her spouse, on the other part, agree as follows. If John Yinsta and Marion Ness happen to 'sell, annalle, or affhint' any lands pertaining to them, heired by Marion Ness after the decease of her father Jhone of Ness, they bind themself to sell them to John and Gilbert Tulloch, and none others, for full land's price, provided John and Gilbert do not refuse. John and Gilbert Tulloch bind themself in the same way to sell any lands they heired of their father Thomas Tulloch only to John Yinsta and Marion Ness, under the same conditions. They then make the same mutual stipulation as to wadsetting any of these lands. These things were done in the cemetery of the cathedral church of St. Magnus in Orkney in presence of these witnesses, 'venerable and discreet men': Thomas Lesk, Duncan Telyour, Thomas Cante, and Alexander Mertyn, with several others. James Scull, clerk of the diocese of St. Andrews, was notary and appended his docquet and sign manual.

## CXVIII

CHARTER OF CONFIRMATION BY QUEEN MARY of the entail of the estate of the deceased Andrew Halero of that Ilk, by his sons, upon various members of the family of Halero.

*Great Seal Register, vol. xxix. No. 234.*

*April 30th, 1545.*

*Edinburgh.*

*Abstract*

Mary, Queen of Scots, confirms a Charter by Sir Hugh Halero, canon of the cathedral church of Orkney, and Mr. Malcolm Halero, provost of the said kirk and arch-deacon of Zetland, sons and heirs of the deceased Andrew Halero of that Ilk, with consent of Elizabeth Halero their sister, and nearest heir to succeed, and Gilbert Mudi her spouse, for his interest, for good deeds and services rendered

to them by their beloved cousin Hugh Halero,<sup>1</sup> and for the welfare and stability of the house of Halero, each single heir succeeding to the whole estate on the death of the preceding heir, without dividing the same, granting and disposing to the said Hugh Halero and his heirs underwritten all and whole their lands, viz. 5½d. lands of Halero *alias* Holland, 1 farthing land in Quoyis, a half farthing land in Terland, 3d 1½ farthing land in the town of Linkletter, 1 farthing land in Sandwyk, a half farthing land in Garvy,<sup>2</sup> a halfpenny and half farthing land in Kirk, a half farthing land in Acryis, a farthing land in Grutha, and 1½ farthing land in Quoyis in the town of Grufnes [*sic*], lying in the Island of Rannaldsay and parishes of St. Mary and St. Peter, within the lordship of Orkney : To be held all the foresaid lands with pertinents to the said Hugh Halero and the heirs male lawfully procreated or to be procreated of his body ; whom failing, Nimian Halero, brother of the said Hugh, and his like heirs ; whom failing, Edward Halero, brother german of the said Hugh, and his like heirs ; whom failing, Henry Halero, son of the deceased Magnus Halero, and his like heirs ; whom failing, James Halero, brother of the said Henry, and his like heirs ; whom failing, Magnus Halero, son of Andrew Halero, and his like heirs ; whom failing, William Halero,<sup>3</sup> son of the deceased John Halero, and his like heirs ; whom all failing, to the granters and their heirs whomsoever ; of the granters and their heirs in fee and heritage for ever by all their right marches ancient and divided, etc., and in houses, buildings, etc., with privilege of gathering and leading away sea ware for manuring the lands, etc., the eldest heir to possess the estate *in toto* without partition among brothers and sisters. . . . Moreover we have given and granted to the said Hugh Halero and the heirs foresaid, one succeeding after the other as above, our *roith*,<sup>4</sup> or the reversions and

<sup>1</sup> Natural son of the above Mr. Malcolm Halero.

<sup>2</sup> Garay in another part of the deed.

<sup>3</sup> Evidently William Halero of Aikers. A number of the deeds in the Halero inventory show that he was a near kinsman of the Haleros of Halero, though the exact relationship is nowhere stated.

<sup>4</sup> This definition proves what precisely was meant by the 'roith' or 'rothe.'

privilege of redeeming all and sundry lands within the lordship of Orkney pertaining to us by heritable right or right of succession, or by any other rights, anywise belonging and falling to the said house of Halero and lands foresaid, or which may in anywise be found justly to belong thereto in time coming.' Paying therefor yearly to the granters and their heirs a penny of silver in the feast of St. John Baptist in name of feu-farm if asked, and to the Crown the seat and other services due and customary; also to cause a chaplain celebrate a mass in the chapel of Our Lady of Halero every Sabbath day yearly and perpetually and to pray for the souls of the granters' father and mother and themselves and their successors; reserving the granter's liferents. Sealed with their seals and those of Elizabeth and her spouse, and subscribed with their hands, at Halero, 20th January 1544. Witnesses, Henry Sinelar, Henry Halero, Sir Nicolas Wischart, Alexander Mowat, Hugh Cawra, John Cowlis, Henry Lene, and Magnus Flawis. Confirmed at Edinburgh, 30th April 1545.

NOTE.—This is the only instance of one of the native Norse families deliberately giving up the old odal succession and formally adopting the Scots system of primogeniture. How far such a step was strictly legal is, I should imagine, very doubtful, since it was nothing more nor less than putting a certain property outside the land laws of the country. The validity of this entail never seems, however, to have been disputed. The exceptional circumstance that brought it about was undoubtedly the equally exceptional fact that the joint heads of this native family were clerics and men of learning and worldly wisdom (one of them a high dignitary of the Church), with shrewdness and knowledge enough to see that the odal families were doomed to very speedy dissolution and decay. The further steps that were taken to convert the Halcros from an old type family of 'gudmen' into a wealthy family of the new (to Orkney) feudal type can be traced in the very interesting Halcro 'inventory of writs' preserved at Balfour Castle. On September 17th, 1545 the four 'bastard' sons of Mr. Malcolm Halcro (all but Magnus, who was a priest, mentioned in the entail) got letters of legitimation. On January 15th, 1553 Mr. Malcolm entailed his 'conquest' (acquired) lands in the same order as his inherited lands, thus more than doubling his 'cousin' Hugh's estate. And from that time onward follows a succession of purchases and good marriages till the Halcros became one of the largest landowning families in Orkney.

## CXIX

DISPOSITION, THOMAS GORY TO MR. MALCOLM HALCRO,  
Provost of Orkney, of a croft in Marsetter in South  
Ronaldsay.

Original in possession of the Marquis of Zetland.

July 9th, 1545.

Kirkwall.

Be it kend till all men be this present wryt, me Thomas Gory, with the consent and assent of my spous Elezebeth Gareoche, dochter and lauchfull air to umquhill Magnus Gareoche, hir fader, and Malie Innes, hir moder, to have sauld, annaleit, and ofhyntit, and be the tenour heirolf sellis, annaleis, and ofhyntis, fra me and all my aris, executoris, and assignais to ane venerabill clerk Maister Malcum Halcro, prowest of the cathederall kirk of Orknay, and all his airis and assignais, ane towmell croft and housses, liand within Marsatir in Our Lady paroche within the Ile of Rynaldsay; of the quhilk my said spous airt ane part eftir hir said fader, umquhill Magnus Gareoche, and ane uther part therof I coft fra Robert Gareoche and Agnes Gareoche, broder and sister to my said spous; and that for the sowm of thre pundis usuall money of Scotland payt to me the said Thomas and my spous in our gret mister and urgent necessite.

[He discharges the said provest of the price, and warrants him in peaceable possession of the 'said towmell croft housses rycht and roitht,' and all pertinents.]

In securite heirolf, becaus we hed na sele propir of our awne, I the said Thomas and Elezebeth my spous hes procurit with instance the sele of ane venerabill clerk, Schir Magnus Strang, subchantour of Orknay, for us to be hungin to this present chartour, at Kirkwall, the nyne day of Julii, the yeir of God ane thousand fyve hundredth and fourty fyve yeris, befor thir witnes: Robert Sincler, burges of Kirkwall, William [?] Coupland, Alexander Willok, Troyeilus [?] Symson, and Sir David Andersone notar publict, with utheris diverss.

(Signed) SCHIR MAWNUS STRANG, subchanter of Orknay.

[Tag for seal, seal gone.]

## CXX

DISPOSITION, OLAVE SINCLAIR of Havera to Mr. Malcolm Halero, 6 merks of land in Breckness in Stromness.

Original in possession of Mrs. Watt of Breckness.

*January 14th, 1545-6.*

*Dunrosness (Shetland)*

Be it kend till all men be this present writ, me Olaue Sinclar of Haluara, for the greit fauor and kindnes I haue to ane venerabill clark Maister Malcum Halero, prouest of Orknay and archiden of Zetland, and the greit lauboris that he hes done for my weill and myn <sup>1</sup> in tymis bypast, to haue gevin and grantit, and be the tenor of this my present chartor gifis and grantis, to the said Master Malcum, all his airis and assignais, sax mark land lyand in Breknes in Orknay in the vter toun of Stromnes in the parichin of the haly cros, quhilk sax mark landis I gat in the way of perpetuell excambioun and cossin with Williem Sinclar, Henry Sinclar, sonniss and lauchfull airis to wmqhill Henry Sinclar of Skelberry thair fader, and Jhone Lesk, with the consent and assent of his spous Margret Sinclar, douchter and ane lauchfull air to the said wmqhill Henry Sinclar of Skelberry, that for sax mark land lyand in Dunrosness in Zetland, inde thre mark land in the toun of Lobell in the parichin of Sanct Nichollus and the vther thre mark land lyand in Seatnes in the parichin of Sanct Gregorii and therefor the said sax mark landis forsaid lyand in Breknes with all rycht and routh, housses, towmellis, toftis, out pastour and inpastour, and all rychtuiss pertinentis that pertenis or of just titill may pertene to the saidis landis, fra the hieest stane in the hill to the lawest in the eb, vnder the zird and abune, with all it that is better to haue nor to forga, to be haldin and had fra me the said Olawe, my airis, executoris, and assignais, to be broukit and possessit and josit be the said M. Malcum, his airis and assignais, irriuocabilly for all tymis to cum ; and I the said Olaue renuncis for me and my airis, executoris, and assig-

<sup>1</sup> For the welfare of me and mine.

nais, the benefite and priueilage of gane calling of gift in falt of ganzild or ony vther caus in thir premisses for euer mair. In securite heiroy I the said Olawe hes hun[g]ing my awin proper seill of harmis to this present chartor at the cros kirk of Dunrosness, the fourtene day of Januar, the zeir of God ane thousand fyve hundreth fourty fyve zeirs, befor thir witness, schir Alexander Strang, vicar of Ewie, Schir Nicholl Wischart, vicar pentioner of Dunrosness, Thomas Cuming, Magnus Quendell, Schir David Anderson noter publik, with vtheris diuerss. (*Signed*) OLAVE SINCLAR of Haluara apprevis this seill be this my subscriptioun, my hand beand led at the pen be Schir David Anderson noter publik.

[Tag, seal gone.]

## CXXI

PRECEPT OF SASINE in favour of Hugh Halero, to infest him in the lands of Holland, etc.

Original in possession of the Marquis of Zetland.

May 6th, 1546.

*Halero (South Ronaldsay).*

*Abstract*

Precept by Sir Hugh Halero, canon of the cathedral church of Orkney, and Mr. Malcolm Halero, provest thereof, Archdeacon of Shetland, sons and heirs of the deceased Andrew Halero of that ilk, to John Cromarty of Hoxy<sup>1</sup> and William Sclater of Burnes to give sasine and infestment in terms of No. cxviii. The lands are described as now pertaining to the Laird of Halero, in the parishes of St. Mary and St. Peter in Ronaldsay, with the reversions and roth of the same. Dated at Halero, 6th May 1546. Witnesses, Sir Thomas Ratter, vicar pensioner of Ronaldsay, Nicol Tulloch, bailie of the said parish (*hujusdem parochie*), Sir William Paterson, chaplain, Gilbert Copland, Alexander Willok 'Nicho,' and Sir David Anderson, notary public. Sealed with granters' own seals.

[Two tags for seals.]

<sup>1</sup> No doubt John Cromarty of Cara, whose principal estate lay in Hoxa. See No. LI.

## CXXII

DISPOSITION, WILLIAM SINCLAIR OF WARSETTER TO  
WILLIAM GROTE of 3d. lands and 3 merklands in  
Tankerness and 2 merks in Quoy Bewmont

Original in possession of the Venerable Archdeacon Craven, D.D.

*August 8th, 1546.*

*Kirkwall.*

Be it kend til al men be this present wret, me William Sincler of Versetter, sone and lauchfule air to my fader wmquhill Magnus Sincler, quhom God assolyze, to have sauld, anelliit, and offhint fra me and al my airis, executoris, and assignais, to ane honorabil and discreit man William Grote,<sup>1</sup> and to al his airis, excutoris, and assignais, thre penny lande and iij merkis land in the toune of Tanskerness, wyth ane quye callit Bewmonte containand twa merkis of lande, lyand wythin Sanct Androwis parochin in Orknaye.

[With houses and all pertinents, for £40 Scots paid to the granter in his 'gret mister and urgent necessite.' He quitclaims and discharges William Grote; the land to be held, 'joissit,' etc., by Wm. Grote 'alse frelie, veil, and in paxe as onye outwell [*i.e.* odal] lande' is held within the bounds of Orkney.]

Aye and quhill I the said William Sincler or my airis lay doune one ane daye betuix the sone rissin and goin to rest, one Sanct Magnus Altar wythin the cathedrall kyrk of Orknaye, the forsaid soume of fourte pundis to the said William Grote or to his airis, excutoris, or assignais

[William Grote binds himself in this case to deliver up the land again without impediment.]

In vitnes heirop, because I the said William Sincler hed nane seil propir present of my awne, I have procurit wyth instance the seill of ane honorabil man Schir Magnus Strang

<sup>1</sup> William Grote of Duncansby in Caithness. See No. CXCIX. This charter narrates the first acquisition by this family of the land in Tankerness, or, so far as is known, anywhere else in Orkney.

subchantor of Orkna, for me to be hungin to this present chartor at Kyrkvall, the aucht daye of August *anno* xlvj<sup>o</sup>, befor thir vitness, Jhone Hartsid, Jhone Hyll, Duncan Scolay, burges in Kyrkvall.

[Seal much defaced.]

## CXXIII

CHARTER, JOHN LEITH AND OTHERS TO EDWARD SINCLAIR OF STROME, of six marks of land in Campston, in the parish of St. Andrews, in exchange for six marks of land in Onston, in the parish of Stenness.

Original in possession of Mr. Alfred Baikie of Tankerness. The parchment is much dilapidated.

*August 29th, 1546.*

*Kirkwall.*

Be it kend till all men be this present vret, vs Jhone Letht, Ed[en] Letht, yownger, Eden Letht, elder, and Edduard Homandson, sounceis and douchteris and ai[r]is lauchtfull till v]mqhill Jhone Jhone [*sic*] Leitht and Margret Cromete, to haue cosst and intereheingeist and be the tenor heir[off be] hand and handband fullelye, frely, and irreuocabilly cossis and intercheingeis, six markis of lande ly[and] in C[amp]sta, wythtin Sanct Androwis parochin, wytht rycht rotht and reversion of the samen, wytht al privileges [leissone]is, fredomeiss, asiamenthis, and ony rychtuiss pertinnens pertenant tharto or that may rychttouisly perten [therto in] croftis, toftis, tumellis, inpastor, and outpastor, fra the hiest stane in the hill to the lawest stane [in the eb tel] ane honorabil and discreit man Edduard Sincler of Strome, for sex mark land lyand in Onsta [wythtin] the parochin of Stennis; the quhilkis sax markis lande in Campsta we, the saidis Jhone Letht, Eden Letht [younger, Eden Letht] elder, and Edduard Homondson, lauchfullye airit efter fader and moder above vrittin.

[The granters bind themselves to warrant and defend Edduard Sincler, his heirs, etc., in the said lands. Having no seals present of their own, they procure the seals of honourable and discreit

men, Mr. MALCUM HAWCRO, provest of Orkney and Archdeacon of Zetland, and Sir ALEXANDER STRANG, vicar of Ewe,<sup>1</sup> (In St. Magnus kirk ?), Kirkwall, August 29th, 1546. Witnesses: WILLAZEM SINCLER, GEORGE MONEYPENNYE, ARCHE SYPBET, and Sir JAMES SCULL, N.P., with others divers.

One tag gone, and one tag with seal illegible.]

## CXXIV

CHARTER, EDWARD SINCLAIR OF STROME TO JOHN LEITH and others, of 6 merk lands in Onston in Stenness, in exchange for 6 merks in Campston.

Original has been lost, but a transcript exists in the possession of Mr. Andrew Wylie, Stromness, made by the late Mr. Beaton, an experienced transcriber.

August 29th, 1546.

Kirkwall.

Be it kend till all men be this present vret, me Edduard Sincler of Strome, to have cossit and intercheingeit, and be the tenour heiroy wyth hand and handband fulllelye, frely, and irrevocabilli intercheingeis, sex mark of lande lyand in Onsta wythin the parochin of Stennis (the quhilkis land[is] I coft fra Jhone Nesbit, the spousit sone of umquhile Williame Nesbit and Margret Irland his moder, dochter and air lauchfull till umquhill Williame Irland; and the said Jhone Nesbit haveand [als ?] rycht [as ?] assignaye till ane honorabil man Irving Courtson,<sup>2</sup> spousit sone and lauchfull air to umquhill Cristiane Irland, spousit dochter and lauchfull air to the said Williame Ireland, as thair chartouris maid thairupoun propertis) with ane discreit man Jhone Letht, sone and lauchfull air to Williame Letht<sup>3</sup> and Margret Cromite, and the leave<sup>4</sup> of the airris of the saidis Williame and Margret, that is for to say, Edduard Homondsone, Eden Letht younger, Eden Letht

<sup>1</sup> Evie in Orkney.

<sup>2</sup> There can be little doubt that this was Jorenn Kortson, *radman* of Bergen, Sept. 1st, 1514 (*D. N.*, ii. No. 1046). In a deed of Aug. 3rd, 1615, a charter is quoted dated at Bergen June 10th, 1574, granted by Anne, eldest daughter of Gilbert Ireland (of that ilk—the Gibbon mentioned in this document), showing an early connection of the Irelands with Bergen.

<sup>3</sup> John Letht in the preceding charter.

<sup>4</sup> rest.

eldir, brother and sister[is] to the said Jhone Leitht, and lauchfull airris to the said Margret Cromite; for sex mark of land lyand in Campsta wythin Sanct Androwis parochin, and of that halfe ane mark of land quhilk the said Jhone Letht out lousit wyth tua kyes price as rothman<sup>1</sup> fra James Aikine; wyth all fredomeis, asiamenttis, houssis, toftis, tummellis, inpastour, and outpastour.

[Edward Sinclair binds himself by the faith in his body to warrant and defend the Leiths and Edward Homondson in the land. And he]

has delyverit to the said Jhone Letht the chartouris and evidentis of the samin landis, that is for to say: the chartour of alienatione that I had fra Jhone Nesbit, ane chartour of alienatione gevin to me be Gilbert Irland and the uther airris of Irland, as the chartour proportis in theself, wyth ane testimoniall and twa dommiss,<sup>2</sup> togidder wyth ane horss the price xxx schillingis,<sup>3</sup> attour his defens. In vitnes heiroff I the said Edduard Sincler of Strome have affixit my seill of armis to this present chartour of intercheingeing, at Kyrkval, the xxix daye of August in the yeir of God j<sup>m</sup> v<sup>c</sup> and xlvj yeiris, befoir thir vitneßs, William Sincler, George Monypennye, Arche Sypbet, and Schir James Scuill notar publict, wyth uderis dyverse.

NOTE.—This is the only odal charter containing a list of the title-deed handed over with the property; it also contains the first recorded instance of the use of 'rothman' in the sense of redemptioner, a use which occurs fairly often in later documents. A curious tradition connected with this deed still exists in Onston: that when the township was bought by the Leiths and Omands (whose descendants hold land there to-day) a cow was thrown in to make up the price. The animal was actually a horse, but it is a far cry to the year 1546.

<sup>1</sup> The man with the 'roth' or right of redemption; *i.e.* out of the six merk John Leith redeemed half a merk.

<sup>2</sup> Dooms or decrees of court.

<sup>3</sup> Presumably as the equivalent of the two cows paid by John Leith to redeem the half merk.

## CXXV

EXCAMBION, MARION NESS (her heritage in Ness) with Dame Barbara Stewart (10 rigs of land in Linxness).

Original in possession of Mr. A. Baikie of Tankerness.

April 7th, 1548.

Kirkwall.

Be it kend till all be this present vret, me Maryone Ness, lauchfull spoussit dochter and ane lauchtful aire to my fader umquhill Jhone Ness and my moder Jonet Magnus dochter, wyth consent and assent of my spouse Jhone Yensta, grantis me fullely, frely, and irrevocabilly to have cossit and interchengit, and be the tenor heirof wytth hand and handband for me, my airis, executouris, and assignais, cossis and interchengeis, al and hail my sister part of land lyand in Ness wythin Sanct Androwis parochin wythin the erldome of Orknay, quhilk I lauchfullye airrit or mycht aire efter the decese of my forsaidis fadir and modir, togidder wyth all rycht roht and reversione <sup>1</sup> quhatsumevir pertenis to me or maye pertein to me be just titill of lawe wyth in the boundis of Ness abone vrettin, wyth ane honorabill and discreit ladye Barbara Stewart, Ladye of Lewis and relic of umquhill Schir James Sincler of Sanday, knyght, for tenne rygis land in Linxness and house thairof, quhilkis my spouse Jhone Yensta and I now instantlye manureis and induellis, as [*sic*] the said Ladye Barbara is obligacione maid to me, my spouse, or to the langest lufar of ws twa and ane air gottin of our body, for ane meil vittell and ane meil flecht to be paiit yeirlye be oure aire to the said Ladye Barbara or hir airis, gife he or scho our aire be abil thairfor, as is mair largelye contenit in forsaid obligacione as it proportis in the selffe ;

[The pertinents are enumerated in the usual form, and warrandice is given that the Lady Barbara Stewart shall possess the land as freely as 'only outhwall land or rycht, roht, or reversione' is possessed in Orkney.]

<sup>1</sup> This phrase might be read with 'rycht' counted as an adjective and paraphrased thus: all legal powers of redemption and rights of reversion. Or it might be read; rycht, roht, and reversione.

In vitnes of the quhilk thing, because I, the said Maryone Ness, had nane seill propir present of my awne, wyth consent and assent of my spouse Jhone Yensta I have procurit wyth instance the seillis of honorabill and discret men, Maister Peter Houstone, subdane of Orknay, and Jhone Browne, burges in Kyrkwall, for me to be hungin to this present charter of interchengein, at Kyrkwall the sevint daye of April in the yeir of [God] j<sup>m</sup>.v<sup>c</sup> and xlvijj yeiris, befor thir vitnes, Schir George Guffurde, William Mude, Andro Yensta, William Chamer, and Schir James Scuill noter publiq, wyth uderis diverss. (*Signed*) PETRUS HOUSTOUN, subdecanus Archaden[is].

[One tag, seal gone.]

## CXXVI

DISPOSITION BY THE FACTORS OF OLIVER SINCLAIR OF PITCAIRNS TO WILLIAM YENSTA and his wife of 2½ merks and ½ merk land in Yensta, previously escheated from John Yensta.

Original in possession of Mr. A. Baikie of Tankerness.

*December 19th, 1549.*

*Kirkwall.*

Be it kend till all men be this present vret, us Edduard Sinclar of Strome and James Redpetht, factouris to ane honorabil man Olever Sincler of Petcarneis<sup>1</sup> wythin the boundis of Orknaye, grantis us be the tenor heiroy and throcht the verteu of our commissione giffin to us be the said Olever to the resavein and uptakin of his dettis awand to hym wythin the boundis of Orknaye, and that of the restis<sup>2</sup> of the yeiris of God ane thousand fywe hundreth and xliij and xliij yeiris, to have fullelye, frelie, and irrevocabilli sauld, anelleit, and ofhintit, and be the tenor heiroy fulleli, frelie, and irrevocabilli sellis, ane leis, and ofhantis, to ane discret man Villiam Yensta, sone and ane of the lauchful airis of umquhill Jhone Yensta that tym takman of Sanct Androuis parochin, wythin the lordschipe

<sup>1</sup> Lessee of the crown rights and sheriff. See No. xxvii.

<sup>2</sup> arrears.

of Orknaye, and to his spouse Maryoune Bell, and to al thar airis, executoris, and assignais, twa merkis, half ane merk, and the third part of ane merk land lyand in Yensta wythin the forsaid parochin of Sanct Androw, wyth houssis, toftis, tummellis, impastor, outpastor, bayth under erde and abone, also veil onenenmit as nemmit, and it that is better to have nor to forgaye, fra the hiest stane in the hill to the lawest stane in the ebbe, togidder wyth al rychtuis pertinense that pertenis or lauchfully may pertein thar to, for the soume of fourte markis gud and usuall monye of the realme of Scotland, thankfully paiit to us the saidis Edduard and James, factoris, be the said William Yensta in redemptione of saidis landis and houses abonevrettin; of the quhilk sowme abonevrettin we grant us veil content and paiit and dischargeis the said William heirof for now and evir; the quhilkis landis and houses, wyth al commoditeis perteinand therto, pertenit herretabilli to the said umquhill Jhone Yensta takman, and because of the demittur<sup>1</sup> he fel in at makin of his comptis of his intromissione wyth the fructis of Sanct Androuis parochin in the yeiris of God abone vrettin, quhilk demitur extendis to xliij li. x s. iij d. and the twa part of ane pennye, the saidis landis, houssis, gudis, and corne var accomprisit to us in payement of the said soume, lykas is contenit in ane instrument of stait and possession maid thare apone proportis in the selfe; and ve, the forsaidis factouris, offerrit diverse tymmis the saidis landis and houssis to the rychtuis airis for redemein and payement of the abone vrettin soume of demitur, the quhilk al and sindri demit<sup>2</sup> bot the said William Yensta; therfor the saidis landis wyth houssis and commodieteis abone vrittin to be perpetualli brukit and heretabilli joissit be the saidis William Yensta, his vif Maryone Bell, and al thar airis mascul or femall quhat sumevir, in tym to cum, also frelie, veal, and in paxe as ony uthwell land is brukit wythin the bondis of Orknaye, fre but onye clame, persut, or impediment or exceptione civell or kannoun to be proponit in the con-

<sup>1</sup> deficit.

<sup>2</sup> gave up (the lands).

trare and violatiōne of this our chartor, be us the forsaidis factoris or the airis of the said umquhill Jhone Yensta or ony uderis quhatsumevir in tyme [*sic*], and the said William and his airis to be exonerit of al dettis and demituris that the said Jhone his fader incurrit in that yeiris bygane. In vitness heirof, we the saidis Edduard and James has hungin our sellis to this our present chartour, at Kyrkvall, the xix daye of December in the yeir of God j<sup>m</sup> v<sup>c</sup> and xlix yeiris, befor thir vitness, Henre Hawero, William Synklar, Nyniane Flet, Gawene Daussonne.

[Two tags, one broken off, the other with half of a seal, evidently that of James Ridpeth.]

## CXXVII

SASINE TO WILLIAM YENSTA of the above land in Yensta.

Original in possession of Mr. A. Baikie of Tankerness.

January 16th, 1549-50.

Yensta.

*Abstract*

Sasine given to William Yensta, son and one of the heirs of the deceased John Yensta, in name of his (William's) wife Mariota Bell, and their heirs, 'being in the manor or dwelling house of the said deceased John Yensta' while he lived in the flesh, within the town of Yensta, of  $2\frac{1}{2}$  merklands and  $\frac{1}{3}$  merkland, on the preceding charter by Edward Sinclair and James Redpeth. Edward Sinclair is described as Sheriff of Orkney and baillie of the parish of St. Andrews, and Oliver Sinclair as sometime tacksman of the earldom of Orkney. Alexander Banxe, servant and messenger in that part, gives sasine in the common form. At the mansion house of Yensta foresaid. Witnesses, the 'venerable and discreet men,' Henry Aikin, Henry Veidaye *alias* Androwsone, Andrew Yensta, James Yensta, Andrew Watson, James Aykeris, and Magnus Petersone. Sir James Scull acts as notary.

## CXXVIII

DISPOSITION, WILLIAM DIRDE TO JOHN CROMARTY OF CARA  
and his wife, of one merkland in Deldail in Deerness.

Original in possession of Mr. A. Baikie of Tankerness.

1550.

*Kirkwall.*

Be it kend til al men be this present chartor, me Villiam Dirde, vitht consent of my sone James Dirde, grantis me til haue sauld, analiit, ofhenttit, and away put, and be the tenor of this present chartor vitht hand and handband fullelic and frelie sellis, analiis, ofhentis, and away pvttis, fra me the said Villiam Dirde and al my aris, executoris, and assignais tyl ane honorable man, Johne Crummate of Cara, and Jannet of Ska his spous, and thair aris, executoris, and assignais, ane mark land liand vithtin the tovn of Deldail withtin the vicareg of Derenes and our Lady parochin of the sammyn. The said mark land to be haldin and had be the said Johne Crummate, Jannet Ska his spous, and to al thair aris, executoris, and assignais, fra me the forsaid William Dirde and all my aris, executoris, and assignais, for now and evir, and al odir in our nem, be sellyng, as the said mark land lysis in lenth and breid; vitht al rychteus pertinence that pertenis or lauchtfullie may perten thairto that Barnard of Kampstay had in possessione of befoir pertenant to the said mark land in muyr and dail, witht auld marchis and new, fer and neir, and witht baytht rycht and roith that the forsaid mark land hes or may haf.

[All the usual pertinents enumerated. The land sold for full land's price 'to beitt my neid and misteres in my urgeant necessite.' Discharge and warrandice given.]

In wytnes heirol, I the said Villiam Dirde, becaus I had na seil of my avin, witht instance I haue procurit the seillis of honorable and worschifull [*sic*] men to be hungin to this present chartour, that is to say, William Levyngstoun, brodir german to Alexander Lord Levingstoun, Schir Magnus Strang, subchantour of Orknay,

at Kirkuald, the [*sic*] day of            [*sic*], the zeir of God  
 j<sup>m</sup> v<sup>c</sup> and fyftie zeris,<sup>1</sup> befoir thir witnes, William Ska,  
 David Hucheisson, balze of Dernes for the tym, James  
 Grynd, Johne Fynneseon, William Tait, James Atkynn,<sup>2</sup>  
 Barnard Atkyn, and Johne Thomson, witht odirris diuerss.

[Two tags, seals gone.]

### CXXIX

DISPOSITION, WILLIAM SINCLAIR TO EDWARD SINCLAIR OF  
 STROME, of lands of Essinquoy, Graemsetter and  
 Clett.

Original in possession of Mr. A. Baikie of Tankerness.

April 15th, 1550.

Kirkwall.

#### Abstract

William Sinclar, eldest son and heir of Magnus Sinclar of Werseter, and his mother Janet Ketht, 'quhome God assolze,' with consent of his younger brother german, David Sinclar, sells and dispones to his father's brother Edward Sinclar of Strome, and his heirs, executors, and assignees, 3d. land called Essinquye in St. Andrews parish, and 1d. land called Gramsetter in St. Ola's parish, with a piece of land called Clett pertaining to Gramsetter lying beneath Gramesquye bordering with the meadows of Weitfurd, and the meadow pertaining thereto, with the chapel of Essinquye, and all plenishing 'now beand; bayth bourdis, formes, trestis,<sup>3</sup> beddis, durris, lokkis, and all insycht within the saidis plecis of Essinquye and Gramesetter, togidder with howssis, toftis, twmmellis, in-pastour and owtpastour bayth, mosis, medous, marress [*sic*] watteris, halkin, hwnttyng, fawldis, and quyis, and all rychtows commoditeis, eisementis, and pertenance pertinand or rychtowslie may pertene to the saidis Esinquye, Gramesetter, and to the Clett, togidder with all rycht

<sup>1</sup> The blanks left for the date and the fact that all the witnesses (the last name being uncertain) are Deerness men make it seem probable that the charter was really made at Deerness and then possibly sealed at Kirkwall.

<sup>2</sup> Or Ackynn in both cases.

<sup>3</sup> beams.

royth and reversion of the sam and pertenant theairto, fra the hiest stane in the hill to the lawest stane in the eb,' and that for six score of crowns of the sun at 22 s. 6 d. each, with 100 merks, delivered by the said Edward to 'my mawycht'<sup>1</sup> William Grotte in name of the said William Sinclair in his great need, which sums the said William delivered to Mr. Malcolm Hawero, provost of Orknay, 'for the owtreding of the wedsett of the landis of Veitfurd and quysis in Gramsay,' and to William Grotte, his 'mawycht,' for paying his father's debts 'and owtreding of Margaret Sinclair my fader sister'; for which sums paid by the said Edward, the said William Sinclair gives a full discharge, and undertakes to warrant and defend the fore-said subjects to the said Edward in the strictest and fullest form. Having no seals present of their own, he and his said brother David have procured the seals of Sir Magnus Strang, subchantor of Orknay, James Rydpetht, and Sir James Scuil notary, to be appended, at Kirkwall, 15th April 1550. Witnesses, John Cullen, William Sinclar, indweller in Ropness, William Fergusson, William Dis-chington, with others.

'xvj<sup>o</sup> mensis Februarii anno etc. lxxx<sup>o</sup> in judicio apud Kirkwall. (Signed) V. BRUCE.'

[The said three seals are appended.]

## CXXX

WADSET, WILLIAM SINCLAIR TO EDWARD SINCLAIR OF STROME, of lands of Essinquoy, Graemsetter and Clett.

Original in possession of Mr. A. Baikie of Tankerness.

April 15th, 1550.

Kirkwall.

*Abstract*

William Sinclar, as in preceding deed, with consent fore-said, sells, wadsets, and dispones to Edward Sinclair of

<sup>1</sup> O. N. *mágr*, a brother-, father-, son-in-law, etc.—A.W.J.

Strome, the foresaid subjects for the said sums of money, applied as above,<sup>1</sup> and grants full discharge thereof, and warrants the subjects to be held as any other udal land is held in Orkney, until he or his heirs repay the foresaid sums of gold and money for redemption of the subjects; and if these are adjudged for any reason, he and his heirs are to infest the said Edward in equivalent lands in Orkney; and if his heirs revoke this charter they shall pay down the foresaid sums on St. Magnus altar in the cathedral kirk of Orkney with all the expenses that the said Edward Sinclair shall have incurred in upbuilding and repairing the houses of Essinque and Gramesetter. Sealed at Kirkwall as above. Witnesses, John Cullane, William Sincler of Ropness, William Fergusson, Alexander Paupla, and William Discheintone, with others.

[The three seals are here appended.]

[On the back is the following:—]

‘This is the howsauld geir that I gat in the ples of Esinque and I resavit in Sanday; in the fyrst, ane stannand bed,<sup>2</sup> ane small buking cownter;<sup>3</sup> in the selleris,<sup>4</sup> ane meit amrye,<sup>5</sup> ane seller dowr; in the hall, ane he buird maid of buirdis of aik,<sup>6</sup> tua sait buirdis maid of fowr buirdis of rawcheter,<sup>7</sup> ane auld scheir,<sup>8</sup> ane fire hall dur; afor thir witness Jone Cullan, Manus Mainland, Henry Wethain,<sup>9</sup> David How, Alexander How.’

<sup>1</sup> All as in preceding charter.

<sup>2</sup> A bed with posts, as distinguished from one that might be folded up.

<sup>3</sup> Probably same as comptour-burd, a board divided into squares to facilitate the counting of money.

<sup>4</sup> rooms.

<sup>5</sup> meat cupboard.

<sup>6</sup> oak.

<sup>7</sup> ‘Perhaps a batten or a rafter.’—Jamieson.

<sup>8</sup> chair.

<sup>9</sup> Or Wechain.

## CXXXI

NINETEEN YEARS LEASE of the islands of Burray, Flottay, and Swonay, with holms, by Robert Reid, Bishop of Orkney, to Dame Barbara Stewart, her daughter, and future son-in-law.

Original in possession of the Marquis of Zetland.

November 16th, 1550.

Kirkwall.

*Abstract*

Robert, Bishop of Orkney, with consent of the provost and canons of the chapter, grants a nineteen years tack of the lands and isles of Burray, Flattay, Swinnay, with the holms of Swethay, Glumholme, Hunday, and calf of Flattay, together with their teind sheaves, all lying in the lordship of Orkney, to an honourable woman Dame Barbara Stewart, Lady of Lewis, Margaret Sinclair, her daughter, and James Tulloch, future spouse to the said Margaret, the heirs to be procreated between them, and their assignees and subtenants to be admitted with the Bishop's express consent. The lands with their pertinents are to be held as freely, quietly, etc., as the said Dame Barbara presently and formerly possesses or possessed them, with the liberty of holding courts and administering justice in lesser causes between the tenants and occupants of the said lands. The grantees have to pay £60 Scots yearly, 24 straw baskets each containing 1000 little fishes or 500 bigger fishes, and 80 pairs of rabbits if they can be found, or if not, fourpence for each pair; together with the furing<sup>1</sup> and flitting usual and customary. The wrak and waith are reserved. The common seal of the chapter is appended at Kirkwall, 16th November 1550. Signed by Ro. Bishop of Orkney; Malcolm Halero, provost of the cathedral church of Orkney; Stephen Culross, treasurer; Peter Houston, subdean; Magnus Strang, precentor; William Peyrsound, rector of Holycross; John Maxwell, rector of St. Marys; and Sir John Ryd, prebendary of St. Catherine.

[Seal gone.]

<sup>1</sup> conveyance.

## CXXXII

DISPOSITION DAVID LOUTTIT AND HIS SONS TO MAGNUS  
LOUTTIT, of 2 merklands in Bigswell.

Original in Gen. Reg. House (given by Mr. W. Isbister  
of Bigswell). Printed: *O. L. Records*, No. 92.

*April 10th, 1551.*

*Kirkwall.*

*Abstract*

David Loutfite and his sons Johnne and Henrye sell to an honourable man and their near kinsman Maunis Loutfute, 2 merklands in Bixwell, in the parish of Stane-hous and lordship of Orknay, together with the Neder Byr of Bixuell, for £4 Scots paid to David; also 12s. paid to Johnne, and 10s. and a meal of bear paid to Henrye for their consent to the charter. 'The quhilk twa mark land I, the said David, lousit<sup>1</sup> out of the handis of our freind and kynisman, maister Williame Sincleir, and grantis that the said Maunis is nerrest rothman to lous the said land.' Maunis has, besides, to deliver to David during his lifetime a meal of victual yearly in Bixwell or Kirkwall, as David pleases. At the house of Sir Magnus Strang in Kirkwall, 10th April 1551. Sealed by Sir Magnus Strang. Witnesses, the honourable men Mr. Robert Hall, William Cok, James Gyfhart, and Henry Kirknes. Andrew Gray acts as notary.

## CXXXIII

DISPOSITION, JAMES HOLLAND TO NICOL HOLLAND, of a  
merk land and a cow's worth in Holland in Firth.

Original in possession of the Venerable Archdeacon Craven, D.D.

*August 30th, 1551.*

*Kirkwall.*

Jhesus Maria Amen

Be it kend tyle al men be this present chartour, me James Villiamsone *alias* Holland, sone and lauchful air to my fadir umquhyl William Swansone *alias* Holland,

<sup>1</sup> redeemed.

quham God assolze, granttis me tile haif sauld, analiit, ofhenttit, and away put, and be the tenour of this present chartour vith hand and handband fullely and frely sellis, analiis, ofhenttis, and away puttis, fra me the said James and al my aris, executoris, and assigis, ane merk land and ane kowis wortht mair, for full landis price, extendand to fowr pundis mone usual of the realme of Scotland, tyl my weilbelovit frend and kynnisman Nychol Magnussone *alias* Holland, and his aris, executoris, and assigis, lyand in Holland within the parochyne of Firth and wicareg of Stanhous, with rycht and roitht that pertenis thairto.

[The land is to be held with the usual pertinents. The granter gives discharge for the price—paid him in his urgent necessity, and warrants him in peaceful possession.]

And als grantin that I the said James hes sauld al the byrun maillis of the said merk land and kowis wortht mair to the said Nychol and his aris, executouris, and assignais, to follow and persew the sammyn befoir ony jug or jugis spiritual or temporal at al handis that hes had entres or intromitting tharto now or tymmis bygan sen the deceis of umquhill William Swansone my fadir, quham God assolze; and I the said Nycholl grantis me to be ane gud frend to the said James in tym to cum. In witnes heiroy I the said James, becaus I had na seil of my avin, vith instance I haif procurit the seill of ane honorable man Johne Broun burges of Kirkuald, and the sing manuel of Master Alexander Vaus notar public, to be hung and put to the sammyn, at Kirkwald, the thretty day of August, the yeir of God ane m. fyf hundreth and fyfty ane yeir, befoir thir vitnes, Johne Broun, Thomas Bakye, burgessis of Kirkuald, Magnus Clustane,<sup>1</sup> Johne Inglis, and Mastir Alexander Vaus, notar public, with odirris diverse, etc. A. V. Alexander Vaus, notarius publicus.

[Seal, 'S. Ihonnis Broun, B.K.']

<sup>1</sup> Not the Magnus found in No. CLXXIV. and later deeds, about whom enough is known to date him as too young in 1551; also, as shown by context, not a burges of Kirkwall. Probably the 'gudman' found in No. XLII.

## CXXXIV

WADSET, ROBERT FLET TO JOHN FLET, of his brother part of lands in Stromness, Harray, and Sandwick.

Original in possession of Colonel W. E. L. Balfour  
of Balfour and Trenaby.

*May 31st, 1552.*

*Kirkwall.*

Be it maid kend till all men be this present chartor, me Robert Flet, sounne and ane lawehfull aire to my father Johne Flet and my mother Elezabetht Holland, grantis me to have analeynt and wodset to my bruther Johne Flet and to his aris, executouris, and assignaiis, fra me, my airis, exccutouris, and assignaiis, ane bruther part of land pertenant to me lyand in Stromnes, with ane bruther part of land lyand in Benbuster in Harray, and ane bruther part of land lyand in Skalbrek<sup>1</sup> within the parrisoun of Sandwyik; with all rycheouse pertenens tharto pertenant or be the law justlie may pertain; and that for the sowme of ten merkis usuall money paiit to me in my gret mister and urgent necessite, the fyrst penny and the last and all thair betwixt.

[He warrants Johne Flet in the land until such time as it is redeemed by the granter or his heirs with their own money.]

In vitnes of the quhilk thing, becaus I the said Robert had na seill propir of my awin, I have procurit with instance the seill of ane venerabill man Schir Magnus Strang, subsehantour of Orknay, for me to be hungin to this present chartor to roborat and strentht the same, befor thir witnes, David Scolow, James Gyfhart, and Villiam Flet,<sup>2</sup> with utheris diverse, at Kyrkwall the last day of May, the yeir of God ane thousand five hundretht

<sup>1</sup> Scabra.

<sup>2</sup> Probably Flett of Netherbrough and son of John Flett of Harray. See No. CLII.

and fyfte twa yeris. (*Signed*) S<sup>r</sup> MAWNIS STRANG, subchanter of Orknaye, wyt my hand.

[Seal.]

NOTE.—These were the Fletts of Redland in Firth. They were the only branch to own land in Scabra and Binbister (Uthel Book), and on April 17th, 1633, a sasine is registered by which William Flett, elder, in Redland acquires from James Flett (only son of the deceased Mathew Flett and oy and heir of the deceased John Flett, who was lawful brother and one of the heirs of Robert Flett, who again was one of the sons and heirs of John Flett of Redland), land in Redland wadset by the said Robert to the said John, grandfather to the said James and father to William, elder; and also wadset to Magnus, brother of Robert and John. The first John was no doubt John Flett *alias* Brandeson mentioned in a charter of 1624 as having sold land in Redland to the grandfather of John Hourie of Stove.

### CXXXV

DISPOSITION, HELEN LEASK, with consent of her daughter Jyne Flattay, to Ninian Mason, of a merkland in Westerbister in Holm.

From a transcript in the Advocates Library, 34, 3, 25., p. 138.

January 31st, 1552-53.

Kirkwall.

Carta venditionis unius merceate terre viz Quhyitqwy Niniano Mason confecta ex autographo pergameno penes eundem predictum mercatorem.

Be it kend till all men be this present chartor, me Helen Lesk, the relik of umquhile Thomas Flattay and lafull aire to my father Alexander Lesk, youngar, and to my mother Cristein Mason, with consent and assent of my dochter Jyne Flattay, ane as baith and baith as ane, to have frelie sauld fra us and all our airs and eftireumaris quhatsumevir to our weil beluffit friend and kynesman Niniane Mason, and to his airs, executors, and assignays, ane merkland lyand in Westerbuster in Holme, callit Quhitqwy, togydder with all rycht and roight that we may have to ony land or lands within Orknay, with rychteous pertinens therto pertenand or be the law justlie may pertain, with housses, towmellis, and tofts, as it lysis in lenth and breid, with all othir commoditys and profetis sic as outpastor and inpastor, and that for the sowme of

thre pundis usuell money of Scotland paid to us in our greit mister and urgent necessite, the first penny and the last and all thair betwixt.

[Usual clause of warrandice.]

In witnes of the quhilk thing, becaus we had na seill of ours, we have procurit with instance the seill of ane honorabill man James Rydpetht for us to be hungin to this present chartor, befor thir witness, Duncan Scolow, burgess in Kyrkwall, Johne Wyschart, William Tullocht, Archibald Dundas, Angus Peace,<sup>1</sup> Thomas Cant, and Maister William Peyrsone notar publick, with utheris divers, at Kirkwall, the last day of Januar, the yeir of God ane thousand five<sup>2</sup> hundreth and fyftie twa yeris. James Ridpetht.

Ita est Willmus Peyrsoune Rector Sancte Cruci notarius publicus ac testis ad premissa vocatus.

### CXXXVI

DISPOSITION, ELIZABETH LEGROW TO JAMES IRVING of SABAY, of the three merkland of Legrow in Holm.

Original in possession of Mr. P. N. Sutherland-Græme of Græmeshall.

March 1st, 1552-53.

Kirkwall.

Be it kend tyll all men be this present charttor, me Elizabetht Legrow *alias* Patriks docthir, quham God asolze,<sup>3</sup> vith consent of Margret Legrow my sister, als vith consent of James Fowbister, my vmbouthis man, grantis me tle<sup>4</sup> hauc sauld, analyt, and ofhenttit, and be the tenour of thir presentis vith hand and handband fully and frely sellis, analijs, and ofhenttis, fra me and all my aris, executoris, and assignais, tyll ane honorable man James Irvyng of Saba and to his aris, executoris, and assignais, thre markis land callit Legrow liand in Estter-

<sup>1</sup> 'Peate' in the transcript, *c* being evidently misread as *t*.

<sup>2</sup> 'Four' in the transcript. This is obviously wrong, both from the names mentioned and the form of the charter.

<sup>3</sup> *i.e.* God assolze the late Patrik.

<sup>4</sup> till.

buster vithin the parochin of Holm and vicareg of the sammyn, with the by rvn maillis of the sammyn, for the sovme of full landis price giffin to me the said Elizabeth be the said James in my gret neyd and myster and vrgent necessite.

[Pertinents, discharge, and warrandice as usual.]

In witnes of thir presentis, becavs I the said Elizabeth haid na propir seill of my avin, with instance I hauc procurit the sing manvell and subscriptione of Master Alexander Waus, notar public, to thir presentis, At Kirkvald, the first day of merche, the zeir of God 1 thousand fyf hundretht and fyfte twa zeiris, befoir thir witnes, Alexander Potynger, Henry Lovtfut,<sup>1</sup> Stevyne Walzing<sup>2</sup> in Harra, and William Lena with oderis diverss.

## CXXXVII

DISPOSITION, MARGARET LEGROW TO HER SISTER ELIZABETH, of the 3 merkland of Legrow in Holm (Orkney).

Original in possession of Mr. P. N. Sutherland-Græme of Græmeshall.

March 12th, 1552-53.

Kirkwall.

*Abstract*

Margaret Legrov, *alias* Patrik's daughter, with consent of her umbothsman James Fowbister, sells to her sister Elizabeth Legrov the 3 merkland called Legrov. The byrun maills are stated to be 'for the space of 24 years by the hands of John Patrikson unjustly' [detained?]. Otherwise this and the preceding charter are practically word for word the same. The witnesses alone are different. They are, Johne Magnussone, Hwchone Lee, Henry Murray, and Alexander Hawbrek. It is by the same notary and in the same hand.

NOTE.—Comparing this and the previous charter, it appears on the surface as if Elizabeth Legrov had sold the three merkland of Legrov to James Irving before she had acquired the ownership of it. The explanation is to be found

<sup>1</sup> As the last two witnesses were Harray men, this was very probably Henry Louttit of Mirbister in Harray, father of Alexander in No. LXXXV.—*Skail Charters*.

<sup>2</sup> Velzean.

in the complexities of odal inheritance. Evidently Margaret had a share in or claims on the property, and either she brought these forward after the sale to obtain a portion of the price, or James Irving brought about the second transaction to make sure of his own title. Charters of sale were frequently worded as if they covered the whole of a property, when in reality only an interest in it was being sold. In such cases it may be taken that the whole property once belonged to an ancestor of the seller, and it was thought safer to extinguish all possible claims by phrasing the deed in this form.

## CXXXVIII

DISPOSITION, ROBERT HOLLAND TO NICOL HOLLAND, of  
1½ merkland in Holland in Firth.

Original in possession of the Venerable Archdeacon Craven, D.D.

June 18, 1553.

Kirkwall.

Be it kend till all all men be this present chartour, me Robert Holland, sone and ane of the airis pertenant to umquhill my fadyr Magnus Holland, quhome God assolze, and to my modyr Inza Yowyll,<sup>1</sup> grantis me to haif sawld sawld [*sic*], annaliit, and ofhentit, and be the tenor of this present chartour wyth hand and handband fullely and frely sellis, analis, and ofhentis, fra me and all my ayris, exequitouris, and assignais, till my brodyr germen Nycholl Holland, his ayris, exequitouris, and assignais, ane mark land and half mark land lyand in Holand wythin the parisone of Fyrth, for the sowme of xvj pundis usuell mony of the realme; and this forsaid sowme of xvj pundis never to be deliverit bot gif it be be the forsaid Robart Holand or els of ane lachfull ayr of his gottyne of his awyne body and vythin the band of materymonye, becaws my brodyr germen geff me the forsaid sowme in my my [*sic*] gryt neid and necisare causis.

[He discharges Nycholl of the price of the 'oder half merkland' (*i.e.* 1½ merk lands) with royth and rycht and all other pertinents, and gives him warrandice.]

In wytnes of this present wret, becawis I the said Robart Holland had nane propyr seill off my awyne,

<sup>1</sup> Yule.

wyth instance I heff procuret the seyll of ane honorabill man Jhone Browne, balze of the towne of Kyrkway wythin the diocess off Orknay, to be [hungyn] to this present wret, at Kyrkuall the auchtyne day in the moneth of Junij, the y[ere of God one] thowsand five hundryth fifty and thre yeris, befoir thyr witnes, Gylbart Selater, balze in [Kyrkwall ?], [William ?] Grot, burges in Kyrkuall, Meehell Vatson, Jhone Vychart, vyth oderis diverse, and upon that that [*sic*] Robart Holland purcheisit the seill off Jhone Browne balze; the said Jhone tuyk ane instrument in the handis of Schir Jhone Crab, publycly.

[Seal gone.]

### CXXXIX

DISPOSITION, ADAM, JOHN, AND NICOL SCLATER, with consent of their sons, to William Sclater, of a merk land in Burness, in Firth.

Original in possession of the Venerable Archdeacon Craven, D.D.

*October 10th, 1553.*

*Burness (Firth).*

Be it maid kend till all men be this present writ, us Adame Sclatter with consent and assent of my sone Thomas Sclatter, Jhone Sclatter with consent and assent of my sone Wilyame Sclatter, and Nicholl Sclatter with consent and assent of my sone Nicholl Sclatter, brethir germane, sounis and ayris of umquhill Nicholl Sclatter in Burness our fathyr, to have irrevocablye sauld and ofhentit, and be thir presentis irrevocablie sellis and ofhentis, fra us and all our ayris, executoris, and assignais to our tendir freind and kinnisman Wilyame Sclatter, burgess of Kyrkvald,<sup>1</sup> and to all his ayris, executoris, and assignais, ane merk land lyand in Burnes within the parochin of Phyrth, quhilk merk land we the saidis Adame, Jhone,

<sup>1</sup> Clearly William Sclater of Burness (found frequently in other deeds) from this purchase of his kinsmen's shares of Burness: probably son of Adam who bought another part of Nicol's land (No. CIII.); also, from the fact of his being burgess of Kirkwall, no doubt identical with William Sclater, baillie of Kirkwall.

and Nicholl ayrit eftir our said fathir, with all rycht that we have or may have to the said merk land, and that for full landis price pait and deliverit to us the saidis Adame, Jhone, and Nicholl in penny and penniworth be the handis of the said Wilyame in our gryit mister and urgent necessite.

[They discharge William of the price. His entry is to be at the 'feist of Alhallowmess nixt,' 'cunningaris' are included among the pertinents, and 'rycht and roith' are not mentioned. The usual clause of warrandice follows.]

In vitnes heirop, because we the saidis Adame, Jhone, and Nicholl Scletteris haid nain seill propir of our awin, hes procurit with gryit instance the seill of ane venerabill man Schir Magnus Strang, subchantour of Orknay, for us to be affixit and hungin to this present chartour, at Burnes in Orknay, the tent day of October in the yeir of God ane thowsand fyft hundreth fyfye and thre yeris, befor thir witnes, Schir Magnus Strang, subchantor of Orknay, James Crawford, James Machesone <sup>1</sup> and Schir Jhone Gyfhert, noter public, with utheris diverss. (*Signed*) SR. MAWNIS STRANG, subchantor of Orknaye, wy<sup>t</sup> hand [*sic*].

[Seal.]

## CXL

DISPOSITION, HUCHEON LINKLATER TO JAMES IRVING OF SABAY, of 4 merk lands in Tankerness, in exchange for land in Sandwick.

Original in possession of Colonel W. E. L. Balfour of Balfour and Trenaby.

*October 10th, 1553.*

*Kirkwall.*

Be it maid kend till all men be this present chartour, me Hucheon Lynklet, the eldest sonniss soune of Katheren of Kyrknes, with ane ryipe and sad <sup>2</sup> consell, weill awisit with

<sup>1</sup> Possibly Matheson, but as the charter is dated at Burness, it is probably the local Firth name Matches in its original form (Matches is once or twice found as a Christian name, evidently the same as Mattias or Mattias, the old Norwegian form of Matthew).

<sup>2</sup> wise, prudent.

the consent of my eldest spousit sounne, Thome Lynklet, to have giffin, grantit, confirmit, and ofhentit, and be this present chartour giffis, grantis, confirmis, and ofhentis to eldest James Irvein of Saba, four markis land lyand in Tankyrnes, with rycht and roight, as I am aire to and aucht to aire eftir my father and father mother; and that be way of permutatioun, chaingein, and cossing for certain landis of the said James with the pertinentis, lyand in Sandwik, giffin to me heretable, as his chartour maid to me thair apoun proportis: the forsaid foure merkis land with all roight and reversioun, and generalie all that evir I the said Hucheoun hes rycht to aire efter my father and father mother in Tankyrnes forsaid.

[An elaborate clause of warrandice follows. James Irvein is to possess the lands as freely as Hucheon or any of his 'forbearis' possessed them; and the granter binds himself by the faith in his body, 'the haly ewangell twecheit.']

In witnes of the quhilk thing, becaus I the said Hucheoun had na seill of my awin, I have solistit Maister Villiam Peyrsone, notar public, to set his sing manuall to this present chartour, togydder with his subscriptioun, at Kyrkwall, the tent day of October, the yeir of God ane thousand five hundretht and fyfte thre yeris, befor thir witnes, Maister Johne Maxwell persoun of Marekyrk in Sanday, Nicoll Tulloch, and James Fowbuster, with utheris diverss.

[Subscriptions of Mr. William Peyrsone and Mr. John Maxwell.]

NOTE.—From a mouse-nibbled sack of litter lying in the Sheriff Court House, Kirkwall, the editor rescued half a decree of court bearing on these lands in Tankerness. Unfortunately it is a longitudinal half, so that it is too dislocated to print. The date is 1570, the court was held by Olywer Synclar, baillie, and of the names of the assize only Andro Talyor, Thome Cowpland, Andro Yensta, and Andro Fowbyster survive. The parties were Malcolm Grot and the heirs of Saba, represented by Gilbert Irving as procurator. Kattyryne of Kirkness is twice mentioned, once followed by 'and hir airis'; and either these heirs or the Sabay heirs were descended of two marriages (or 'gets'). Five pennyland is also mentioned, apparently as the land in dispute. It would seem from this that Katharine of Kirkness must have been a tolerable heiress, and that her lands in Tankerness were bought from her heirs (of whom Hucheon Linklater was one), possibly both by the Irvings and the Groats, who then quarrelled over their rights in them; or, possibly, she married John Irving of Sabay as one of her husbands.

## CXLI

DISPOSITION, JOHN ROBSON TO HIS BROTHER WILLIAM MUDY, of the half of Leirquoy in Stromness.

Original in possession of the Venerable Archdeacon Craven, D.D.

May 27th, 1554.

Kirkwall.

Be it kend till all men be this present writ, me Johne Robsoun, son and ane of the lauchfull airis of umquhill Kattrine Sinclair my moder, to have sauld, annaleit, and ofhent, and be the tenour of thir presentis sellis, annaleis, and ofhentis fra me my airis, executouris, and assignais, to [my] weilbelovit broder William Mudy, his airis and assignais, all and haill the ane half of Leirquhy liand in Wttertoune in Stromness in Orknay, with all rycht and roytht pertenant thairto, with housis, begynnys, toftis, croftis, and uthir pertenance quhatsumevir, for the soume of four poundis usuall money of Scotland, thankfullie giffin and payit to me the said Johne Robsoun be the handis of the said William in my gret mister and urgent necessity.

[He discharges William Mudy of the price and warrants him in the land, 'as weill as ony siclik land is brukit within the lordschipe of Orknay,' along with 'all rycht titill of rycht roytht.']

In witnessing of the quhilk thing, becaus I the said Johne hed nocht ane proper seill of myne awine, I have procurat with instance the seill of ane venerabill man Maister Petir Huxtone subdane of Orknay to be hungyne to thir presentis chartour of alienatioun, at Kirkwall the twenty sevin day of Maii in the yeir of God m. v<sup>c</sup> fyfty four zeris, befor thir witnes, venerabill and discret men, Maister Petir Huxtone subdane forsaid; Schir Johne Gifferd, chorist of the cathedrall kirk of Orknay; Maister Johne Huxtone, scoill maister; Alexander Cromarty; Henry Chalmir; Andro Scartane, with uthiris divers. (*Signed*) 'PETRUS HOUSTOUN, subdecanus Orchaden.'

[Seal gone.]

## CXLII

DISPOSITION, HELEN PAPLAY TO JOHN PAPLAY of two merk lands, less 5 shillings,<sup>1</sup> in Sands in Deerness.

Original in possession of Colonel W. E. L. Balfour of Balfour and Trenaby.

*August 26th, 1555.*

*Kirkwall.*

Be it maid kend till all men be this present chartour, me Helein Paplay, with consent of my husband, Alexander Stoiff,<sup>2</sup> Anne Paplay, and Katherin Paplay, airis to oure father, Thom Paplay, grantis us with ane consent to have sauld, and be this present chartour irrivocablic sellis, fra us and all our airis, twa mark land, five schillingis les, callit Sandis, in Deirnes, within Our Lady parochin, to oure freind and kynnisman Johne Paplay,<sup>3</sup> soume and airc to Villiam Paplay.

[The pertinents are briefly indicated, 'rycht and roith' not being mentioned. The price is £5, 12s. usual money of Scotland, and 'ane kow with calf,' paid to the sellers in their 'mister and necessity.' Discharge and warrandice are given as usual.]

In vitnes of the quhilk thing, becaus we the saidis Helein, Anne, and Katherin had na selis of oure awin, we have procurit with instance the seill of ane venerabill man Sir Magnus Strang, subchantour of Orknay, for us to be hungin to this present chartoure, at Kirkwall, the twenty saxt day of August, the yeir of God ane thousand five hundretht and fifty five yeris, befor thir witnes, Johne Hartsyid burges in Kyrkwall, Johne Work, and Maister Villiam Peyrsound, parsons of the Croce in Sanday and notar publick, with utheris diverse.

[Seal of Sir Magnus Strang appended.]

<sup>1</sup> A five shilling land was three-eighths of a merk land.

<sup>2</sup> Now Stove.

<sup>3</sup> No doubt ancestor of the Paplays of Newhouse, as this charter is among a number dealing with that branch and their property.

## CXLIII

DISPOSITION, HEW HALCRO OF THAT ILK AND MR. MAGNUS HALCRO (his brother) to the heirs of Magnus Halero of that Ilk,<sup>1</sup> of 16 meils mailing in Stromness and Sandwick, in exchange for the lands in Halero heired from the said Magnus.

Original in possession of Colonel W. E. L. Balfour of Balfour and Trenaby.

*February 2nd, 1555-56*

*Kirkwall.*

Be it kend till all men be this present chartour, ws Hewe Halero of that Ilk and Maister Magnus Halero chantour of Orknay, airis of tailye and executouris testamentaris to ane venerabill man, umquhill Maister Malcum Halero provest of Orknay, bayth with ane consent and assent, to have frelie and irrevocablie gevin, disponit, changit, and annaleit, and be this oure present chartour to have confirmit to oure rycht trest freindis and kynnis-men, Henry Halero and the bairnis and airis of umquhill James Halero, broder german to the said Henry, sounis to umquhill Magnus Halero of that Ilk; and be the tenour heiroyf giffis, disponis, changis, and annaleis, and be this present chartour confermes to the said Henry and umquhill James' barnes, thair airis, and assignais, all and haill oure land liand in Stromnes in Orknay, extending to twelf melis maling yeirlie of victuall, togidder with all and haill oure land liand in Westbyster within the parochin of Sandwik, extending to foure melis maling yeirlie of victuall forsaid; extending in the haill to sextene melis maling yeirlie of victuall forsaid; and that for the renunciatioun [of] thair gud will and gift giffin to the said umquhill Maister Malcum oure fader, and to me the said Hew Halero, of ane part of the land of Halero, *jure* rycht and titill thairof quhilk thai airit heretable as sounis and airis to the said umquhill Magnus Halero, fader to the

<sup>1</sup> Probably brother of Andrew of that Ilk. See pedigree.

[said] Henry and umquhill James, as notorly knawin ; reserving and excepting to the said Henry and umquhill James barnes thair titill *jure* and rycht of the hail landis of Halcro contenit in the chartour tailye and new infestment maid thairupone be oure soverane Lady the Quenis grace, with advise, consent, and auctorite of the governour hir grace tutour for the tyme, to the said umquhill Maister Malcom ; the fornammitt sextene melis maling forsaidis to be equalie dividit and partit betuix the said Henry and the saidis umquhill James barnes.

[The pertinents are enumerated, including 'cunningaris' and 'rycht and royth,' and reserving 'to the Quenis grace hir deuity usit and wont.' Then follows the warrandice.]

And for the mair security and testimony of all and sindry the premisses, becaus we hed na sellis of oure awin,<sup>1</sup> we have procurit the sellis of venerabill and honorabill men, Schir Magnus Strang, subchantour of Orknay, and James Redpeth, burges of Kirkwall, to be affixt to this present chartour, togidder with the sing and subscription manuell of Maister William Mudy notar publict, at Kirkwall, the secund day of Februar, the yeir of God j<sup>m</sup> v<sup>c</sup> fyfty fyve yeris, befor thir witnes, William Halcro, Thome Mudy, William Lok, Thome Piper, Alexander Pappla, Magnus Mowet, and Maister Williame Mudy notar publict, with uthiris divers. (*Signed*) SR MAWNIS STRANG, subchantour of Orknaye ; JAMES REDPETH, burgess in Kyrkuall ; V. M. WILLMS MUDY no: publicus.

[Two seals.]

NOTE.—This deed is to be read in connection with the Halcro entail (CXVIII.). That entail consolidated the estate of Andrew Halcro. His grandsons now add to it the share in the lands of Halcro possessed by Magnus Halcro, giving to his heirs in exchange lands in Stromness and Sandwick. At the same time these heirs expressly retain their rights of succession under the entail.

<sup>1</sup> Cf. No. CLXI., where Hew Halcro appends the seal.

## CXLIV

DISCHARGE, NICOLL CROSTA TO JAMES IRVING OF SABAY,  
of the rents of the Quoy of Hurre.

Original in Gen. Reg. House.

October 25th, 1556.

Kirkwall.

Jhesus Maria Amen

Be it kend till all men be this present letter, me Nycholl Crosta, son to Inggagarth Hurre, sister and air to Johane of Hurre, grantis me to haif tane cunt, rakning, and compleit payment fra James Irrwyne the son of Johane Irrwyne of Saba, of all and haile the malis of the tane half of the qui and land of Hurre, all the dais and yeris sen the said James intromettit fyrst with the said land and qui, to the yeir of God a<sup>m</sup>v<sup>c</sup> lvj yeris, of the quhilk land malis I grantis me weill content and compleitly pait, of the quhilk malis I quitclame the said James and his aris for evir.

[He warrants James Irrwyne in the land mails; grants that WILLIAM, his mother's 'brother oy' (her grand-nephew), his brother, and himself have sold to the said James the mails of the said land 'that wes uptane wrangusly be WILLIAM FLET and all other personis afor the said James entres to the said land'; and confirms a previous charter under the seals of Schir NICOLL WISCHART, ADAM NEWYN, and MAWNIS of Quendail (evidently in Shetland).]

In witnes of the quhylk thyng, becaus I the said Nicholl Crosta had na sayll, I haif procurit with gret instanss the sail of ane venerabill clerk, Schir Mawnis Strang sub-chantor of Orkna, to be effyxt to this present letter, at Kyrkwall, the xxv day of October, the yeir of God a<sup>m</sup>v<sup>c</sup> lvj yeris, befor thir witnes, Johane Smyth, Mawnus Mowat, and Adam Nicholas, with utheris divers.

Ita est Dominus Mangnus Strang succentor Orchadensis.  
[On the back :] Nycholl Crostais Discharg.

## CXLV

DISPOSITION, FERGUS OF GARAY<sup>1</sup> TO HUGH HALCRO of that Ilk, of land in Garay, Sandwick, and Lythis (with clause of redemption).

Original in possession of the Marquis of Zetland.

April 12th, 1557.

*Halcro (South Ronaldsay).*

Jhesus Maria

Be it kend tyll all men be this present vryt, me Farguis of Garaye, sone and lawchtfull ayre to umquhyle Nicholl of Garaye my fadyr and Margaret Sinclayr my modyr, to have sauld, analiit, and ofhenttit, and be the tenor heyrof sellis, analiis, and ofhentis, fra me and all my ayris, executouris, and assingis, to ane honorabill man Hew Halcro of that Ilk, his ayris, executouris, and assignais, ane half fardene land lyand in Garaye, and ane ferdene land lyand in the towne of Sandwik in Our Lade paresone, and ane half fardene land lyand in Lythis in Sanct Peteris paresone, all within the Ile of Renaldsaye within the zeyrldome of Orknaye, with rycht and roytht, howsis, towmellis, toftis, and owththell pertenant therto; that for the soume of twynte pundis guid and usuall mone of Scotland.

[He quitclaims the said Hew of the price. The 'said pennyland [*sic*]<sup>2</sup> lyand in syndrye townis as forsayid, with all rycht and roitht, owthell and sammyne,' etc. is to be held by the grantee till the granter or his heirs repays the money at our Lady Chapel of Halcro. A clause of warrandice follows.]

In securite heyrof, I the sayid Fargus, becaus I heid naye seile proper of my awin, I have procurit with in-stance the seile of ane discret man Sir Thomas Rattar, vicar of Ronaldsay, to be hungin for me to this present chartour, at Halcro, the xij daye of Aprile in the yeyr of God ane m<sup>o</sup>, v<sup>co</sup> fyfte and sevin yeris, befoyr thyr vitnes

<sup>1</sup> This family are afterwards found as '*alias* Halcro'; they were an early branch of the Halcros.

<sup>2</sup> The lands as enumerated only amount to a halfpennyland.

Willame Halero, Nicholl Halero, Arthour Robsone, Thom Mowet, Magnus Mowet, with otheris diverss.

[Half a seal.]

[*On the back :*]

I, Henric Halero of that Ilk, grantis me to be halelie and compleitlye satefeit for the half farding land in Lythtis within contenit, and be thir presentis deleittis the said half farding land fra of the said chartour within contenit, and that conforme to anc assignatioun maid to Magnus Garcoche and his airis as the samyn will specific at mair lenth, be this my delatatioun subscreyvit with my hand at Thurrageo, the iij day of Appryll, anno 1600 yeiris, befor thir witnes, William Garioch burgess in Kirkwall, Gylbert Irland of Laquay, Alexander Mair, Edward Irland, and Edward Ingsettir in [?] with wthir dyverse. (*Signed*) HENRE HALCRO of that Ilk; EDWARD INGSETTER, witnes; EDUARD IYRLAND.

### CXLVI

AGREEMENT BETWEEN THE SONS OF THOMAS TULLOCH OF NESS regarding the 'tent penny and ferd' of his estate, given to the eldest son but now divided equally.

Original in possession of Mr. A. Baikie of Tankerness.

*June 20th, 1557.*

*Kirkwall.*

At Kyrkwald in Orknay, the twenty day of the moneth of Junii in the yeir of God ane thousand fyf hundreth and fyfty sewin yeiris, comperit afor me, noter public wnder wretin, thir personis following, that ar to say, Jhone Tullocht in Ness, Gilbert Tullocht and Willame Tullocht duelland in Kyrkvald, his brethir, quha all togydder maid it kend to me quhow thay all airit the landis and heretaig that pertenit wmquhill to thair fathir Thomas Tullocht, quha gaif the tent penny and the ferd of all his said land, abone the partis of the said Gilbert and Willame, to the

said Jhone ; and the said Jhone, for luf he beiris to his said brethir, is content to part the said tent penny and ferd as proper and lawchfull gift to hym of the said heretaige, equalie betuix hym and the said Gilbert and Willame at Alhallwness nixt to cum, or ony wthir convenient tyme it sall pleis the said Gilbert and Willame to charge, swa that ilk ane of tham sall have ane equaill thrid of the said haill heretaige ; and als the saidis Jhone, Gilbert, and Willame, every ane for thair awin pairt respective, annullit, dischargit, and quitlamit ilk ane wthir of all and sindry gudis and geir contractis, instrumentis, obligationis, acquittanciis, that aythir of thame culd lay to wthiris chargis efter the decese, or sen the decese, of thair fathir and mothir, to the day and dait of this present contract ; and in cais ony man in tyme cumin wald put at ony of the said brethir or persew tham in the law for recovering of ony part of the said land of Ness, quhilk wes thair saidis fathiris heretaige,<sup>1</sup> fra tham or ony ane of tham, in tha[t] cais all the saidis thre brethir sall concurr togydder with consaill and substance to defend the samin ; and gif thai all thre togydder, or ony ane or twa of thame, recoveris or yit vinnis ony of the landis of Ness that ves thair forbearis ony tyme bigain, quhen it is wone the expensses maid in the law salbe maid equalie be the saidis thre brethir, and the land salbe siclyik partit equalie betuix thame, all thre and ilkane of tham sall tak afald<sup>2</sup> part with wtheris in all lesume and just actionis in all tym to cum, be the fayth and trwth in thair bodeis and wnder the pain of perjurie and violatioun of thair fayth.

[This was done in the house of the Treasurer of Orkney. Witnesses : SIR STEPHEN CULROIS, Treasurer of Orkney ; WILLIAM INNES, and DUNCAN RAMSAY, chaplains. JOHN GYFHART, of the diocese of St. Andrews, acted as notary.]

<sup>1</sup> Heired, not bought by their father, an important fact in connection with the tent and ferd (see No. LIX.), and confirmed by the mention here of the remaining lands of Ness which they did not own. See No. XXXVI.

<sup>2</sup> honest.

## CXLVII

DISPOSITION, WILLIAM TOURS, *alias* HOLLAND,<sup>1</sup> TO JAMES POTTINGER, *alias* GRIND, of 2 cows' worth of land in Deldale, Deerness, in exchange for the tent penny and ferd given by William's father to the said James.

Original in possession of Mr. A. Baikie of Tankerness.

January 16th, 1557-58.

Kirkwall.

Be it maid kend till all men be this present writ, me Wilzame Tovrss *alias* Holland, sone and ane lauchtfull ayr to my fader Thomas Towrss and my moder Dovsse Stoif, to haue analiet and ofhenttit, and be the tenor of this present chartor analiis and ofhenttis, fra me and all my ayris, executors, and assignais, to my weilbeluffit freynd James Potinger *alias* Grynd and to all hys ayris, executoris, and assignais, twa kyis wortht of land lyand withtin the towne of Daildail withtin our Lady parochin of Deyrnes, quhilk land I the said Wilzame ayrit efter my saidis fader and moder; and that for the renunttiatione and kyndnes of the tent penny and ferd of all my said faderis guddis and [ge]yr, quhilk [tent penny] and [ferd] my said fader g[aif to] the [said James] for the kyndnes done to my fader be the said James in hys ligepostay,<sup>2</sup> and nov giffin to me the said Wilzame be the handis of the said James in contentatione of the saidis twa kyiswortht of land forsaid.

[Usual discharge and warrandice.]

In witnes and securete of the same, because I the said Wilzame had nain seill propyr of my awin, I haue procurit for the luf of God the seill of ane wenerabill man Schir Magnus Strang, subchantor of Orknay, for me to be affixit

<sup>1</sup> Holland in Deerness, not Holland in Firth which gave its name to the family of Holland found in previous deeds.

<sup>2</sup> Apparently from O. N. *liggja* or Sc. *lig*, to lie or recline, and Sc. *postit* or *post* used in connection with sickness (see Jamieson); *i.e.* when he lay bed-ridden.

and hungin to this present chartor, at Kyrkvald, the xvi day of Januar in the zere of God ane thousand fyf hundretht and fyty sevin zeris, befor thir witnes, Schiris [*sic*] Robert Sincler, Wilzame Tailzor, and Schir Jhon Gyfhart noter public. (*Signed*) SCHIR MAWNIS STRANG, subchantor of Orknay wyth . . .

[One tag, seal gone.]

### CXLVIII

SASINE, DUNCAN SCOLLA AND MARJORY BROWN, his spouse, in the lands of Work in St. Ola on a 19 years' tack by Adam Bothwell, Bishop of Orkney.

Original in Latin in possession of Mr. A. Baikie of Tankerness.

October 11th, 1560.

*Work, St. Ola.*

#### *Abstract*

Sasine given to Duncan Scolla, burgess of Kirkwall, of the lands of Wirk in St. Ola, by an honourable man Edward Tulloch, natural son to Nicolas Tulloch, acting as baillie in that part in accordance with a precept directed to Magnus Mowat and Edward Tulloch in a charter granted by Adam, Bishop of Orkney, with consent of the provost and canons of his chapter. The charter narrates that the Bishop has leased and let in feu-farm to Duncan Scolla, burgess of the city and borough of Kirkwall, Marjory Brown, his spouse, and their lawful heirs, the lands of the Island of Egilsa, and Wirk and Yairsay in St. Ola for the term of 19 years, and is dated at Kirkwall, 20th Sept. 1560, in the first year of the consecration of the said Bishop, there being present the honourable men Oliver Sinclair of Quhytkirk, sheriff of Orkney, Gilbert Balfour of Birsay, John Balfour and George Balfour, his brothers, and Mr. William Lauder, N.P., with sundry others. Sasine was given near the east end of the lands of Wirk about 11 o'clock of the forenoon, before these witnesses, the honourable men, John Wischart, burgess of Kirkwall. Finlay Gardenar, officer of the Bishop, Patrick Mobray and Magnus Mowat, indwellers in Kirk-

wall, and John Eunsone in Wirk. Paul Flegeour, clerk of the diocese of St. Andrews and notary public, writes the deed.

## CXLIX

CHARTER BY ANNE GRIMBUSTER TO HER BROTHERS, ALEXANDER AND MAGNUS GRIMBUSTER, of her sister part of their lands in Firth, extending to 2 merks and 2 yows' worth of land.

Original in the Record Room, Kirkwall.

*March 8th, 1560-61.*

*Kirkwall.*

Be it maid kend till all men be this present writ, me Anne Grymbuster, doch[t]er and ane aire to Symon Grymbuster, witht the consent and assent of my husband, Thome Lenay, and my sone and aire, Henry Lenay, grantis me content and payit of my sister pairt of land, viz., of twa merk land witht houssis, toftis, and towmellis and all vther rycheous pertenenentis thairto pertenant, lyand within the towne of Grymbuster within the parochin of Firtht, togydder with ane zowe<sup>1</sup> wortht of land mair in Grymbuster and ane zow wortht of land in Holland in the parochin of Firtht, and that be the handis of my weilbeluffit brether Alexander Grymbuster and Magnus Grymbuster.

[Discharge for price and clause of warrandice follow. At Kirkwall, March 8th, 1560. Witnesses: OLIVER SINCLAIR, son of EDWARD SINCLAIR of Strome, JOHNE KYNGSONE, and GAVEIN PIPER, with others divers. ANNE GRYMBUSTER signs with her hand led by the notary Mr. WILLIAM PEIRSOUND, who appends his sign manual. No tag or seal.]

<sup>1</sup> Yow, a ewe.

## CL

REDEMPTION BY JOHN CROMARTY OF CARA <sup>1</sup> of the lands wadset by Janet Cromarty to James Tulloch.

Original in possession of Mr. D. J. Robertson, Kirkwall.

*April 13th, 1561.*

*Kirkwall.*

*Abstract*

Contract between honourable persons, James Tulloch and Johne Cromarty of Cawray, by which the latter redeems the land and heritage in the Isle of Ronaldsay (now South Ronaldsay) heired by Jonet Cromarty after the death of her parents, Magnus Cromarty and Cristen Cawray, and wadset by her to the said James Tulloche for six score pounds. James Tulloch now transfers to the said Johne and his son, Magnus Cromarty, as being the nearest of kin to the said Janet, all his rights in these lands, on payment of the above principal sum of £120, together with three score pounds for expenses 'debursit and spendit be the said James in persuit of the saids landis and byrown melis affoir the dait heiroff,' and also 'ane sufficient foure areyn boit' <sup>2</sup> worth £10. Till the complete payment of all the above, James Tulloch is to continue in possession of 4 meils mailling in Paplay. The agreement was made at Lynxnes, 8th November 1560, and this contract is subscribed by 'athir of the saids parteis,' at Kirkwall, 13th April 1561 ('ane part thereof to byid with vthiris'), with their hands led at the pen by Maister Villiame Peirsound, N.P. Witnesses: Duncan Scollow, burgess of Kirkwall, Villiam Halero, Johne Murray, and Sir Paule Flegeor, N.P., with divers others. Signed by James Tulloch with his hand led.

<sup>1</sup> From the fact that his son Magnus is conjoined with him in this deed, this John would appear to be the nephew and not the brother of Janet. If it were the first John of Cara, his eldest son John would surely have been the son mentioned. Magnus actually was the son and successor of the second John of Cara.

<sup>2</sup> Four oared boat. See footnote to No. CCXXXVIII.

## CLI

NOTARIAL INSTRUMENT narrating the disposition of a tack by Edward Sinclair of Strome to his son Oliver, of lands in Sandwick, and also the gift of Sandside, all in Deerness.

Original in possession of Mr. A. Baikie of Tankerness.

*July 5th, 1561.*

*Sandsyde.*

*Abstract*

The instrument narrates that on July 5th, 1561, an honourable man, Edward Sinclair of Strome, for the filial love he bore towards his son Oliver, made the said Oliver his irrevocable assignee to all and sundry lands, both king's lands and bishop's lands, which he has within the banks of Sandwik in Deirnes; and also gave him that little town called Sandsyde with the crop growing thereon, and the goods movable and immovable thereon, as more clearly appears in an inventory. These things were done on the ground of the lands of Sandsyde. Witnesses: Mr. Peter Houston, subdean of Orkney, John Oabak, James Stoif,<sup>1</sup> David Stoif, James Grynd, Magnus Cragy, and Patrick Houston, with sundry others, Mr. William Peirsoun, of the diocese of Orkney, acts as notary.

Sasine given on the same day to the said Oliver by a discreet man, William Grote, on the lands of Stoif and Sanday in Deerness, before these witnesses: Mr. Peter Houstone, John Oabak, Magnus Cragy, Magnus Tailyor, James Stoif, Mr. John Houstone, John Etkin, and Patrick Houstone.

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<sup>1</sup> Now Stove.

## CLII

DISPOSITION, EVOT FLET TO HER UNCLES, WILLIAM AND JOHN FLET, of all her claims on her father's property in Burght<sup>1</sup> in St. Michael's parish.<sup>2</sup>

Original in possession of Mr. J. Spence of Pow.

*August 30th, 1561.*

*Kirkwall.*

Be it kend till all men be this present chartour, me Ewat Flet, dochter and aire to my fader Alexander Flet, quhom God assoilze, with the consent and assent of my husband, Johne Johnesone, to have fullelie, frelie, irriuocable sauld fra me and all my airis, all rycht propirte and clame I had or may haue as heretrix to my fader forsaid, of all and hail the land pertenant hyme lyand in Burght in Sanct Michaelis parochin, Mainland of Orkney and scherefdoome of the samyn, to my weilbeluffit freindis William Flet and Johne Flet, brethir germain to my fader forsaid; and that for the sowme of thre pundis money usuell of Scotland payt to me the said Ewat in my greit mister and vrgent necessite, the first penne and the last and all thair betuix.

[Usual discharge and warrandice. The granter having no seal, WILLIAM PEIRSON, the notary, appends his sign manual, at Kirkwall, the penultimate day of August 1561. Witnesses: Sir THOMAS RYCHARTSON, vicar of Halkirk and Skenand, ROBERT YSBUSTER, and THOMAS ANDROSONE, with others divers. The granter signs with her hand led.]

## CLIII

NINE YEARS LEASE BY THE HEIRS OF MAGNUS FLETT TO JAMES IRVING OF SABAY, of 2d. land in Sabay, with discharge of former rents.

Original in Gen. Reg. House.

*November 17th, 1561.*

*Kirkwall.*

Be it maid kend till all men be this present writ, us

<sup>1</sup> 'Brough' was generally used to mean Overbrough, but in this case probably covered both Over and Nether Broughs, as the latter was the Fletts headquarters. The three brothers were evidently the generation between John Flett of Harray and the five Fletts found in No. CLXXI. and later deeds.

<sup>2</sup> Harray.

Ninian Flet, Sande Flet, Margret Flett, Beatrice Flett, with the consent of our husbandis Johne Cromarty and Rob Sutherland, airis to umquhile Magnus Flet; and Cristen Flet with the consent of Sande Flett my umboithman; and Mariorie Lowtit with the consent of my spous Andro Mowat, grantis us all with ane consent for us and our airis to have tayne just compt, reknein, and payment of oure freind James Irvein, soun to umquhile Johne Irvein of Sabbay, of all yeris and termis bygaine of all and hail the twa penny land in Sabbay allegeit pertenant to the said Magnus Flett and now to us efter his deces; quhairoff be this present writ quhytelamis and dischargis the said James Irvein and his assignays thairoff for now and evir; quhays assignays namis namit befor us and the witnes undir writin followis, videlicet, Magnus Irvein, Gilbert Irvein, Edward Irvein, and thair airis, and failzeand thame the saidis James dochteris and thair airis; and als fra this furtht, settis and for maill lattis the said twa penny land with all rychteous pertinentis pertenant thairto within the said towne of Sabay to the said James and his assignais forsaide for all the space and termis of nyne yeris nixt and immediatlie followand; quhais entres salbe in and to the said twa penny land at the feist of Alhallowmes in the yeir of God ane thowsand five hundreth thre scoir and twa yeris, and thaireftir till induir ay and quhill the said nyne yeris be compleitlie outrown; payand yerlie be the said James and his assignays forsaide to the saidis airis, foure melis cost in the towne of Kirkwall, quhar the saidis airis sall have ane factor reddy to ressave at every Alhallowmes viij stonis flesche and viii sh silver for the uthir twa melis flesche, and at the feist of Candilmes or Festronisevin to ressave the victuall. And giff the said airis hes na factor in manner forsaide to ressave the samin, than sall the said James or his assignays sell and dispone the said flesche and victuall as the price gangis in the towne, and giff the price to the said airis, and swa yeirlie, to induir ay and quhill the said nyne yeris be compleitlie furtht runnin; and gif the said airis occupeys nocht the said twa penny land with thair awin plewecht

eftir the nyne yeiris takkis is outrown, in that cace it salbe lesum proportionalie to the said James Irvein and his assignais forsaid to posses and labour the samin, payand yeirlie to the airis forsaid the malis and dewiteis as is aboun exprimit; and in lykmaner sall mak no manner of selling or wadsetting of the said twa penny land to na manner persoun or personis in defraud of the said James and his assignays, quhilk and they do sall have no strenght nor effect.

[Usual warrandice. The granters procure the sign manual and subscription of Maister WILLIAM PEIRSON, parson of the Croce and notary public. At Kirkwall, November 17th, 1561. Witnesses: NICOLL TAILYOUR, THOMAS BAKY, DAVID TAILYOUR, and ANDRO CRAK in Ronaldsay, with others divers.]

## CLIV

PRESENTATION BY ADAM, BISHOP OF ORKNEY TO MR. GILBERT FOULSIE, of the prebend of St. John.

Original in possession of Mr. A. Baikie of Tankerness,

*January 24th, 1561-62.*

*Kirkwall.*

*Abstract*

Letters of Presentation by Adam, Bishop of Orkney and Shetland, in favour of Mr. Gilbert Fowlse, priest of the diocese of Aberdeen, to the prebend of St. John which has been resigned by Mr. James Annand in the Bishop's hands; with precept to Sir Magnus Strang, subchantor of the Cathedral Church, and all and sundry the other canons for his investiture therein and in the fruits thereof, dated at the Palace of the Yairds, 24th January 1561 and first year of the Bishop's consecration. Witnesses: Gilbert Balfour of Westray, Mr. James Annand, chancellor, Mr. Francis Bothwell, treasurer of Orkney, and James Alexander. Signed Adamus Epus. Orchaden et Zetlandie

[Seal broken.]

On the back there is a Notarial Instrument, dated

February 1st 156[1] narrating the investiture of the said Mr. Gilbert Fowlse by Sir Magnus Strang, subehantor and official of Orkney, who delivered to him the Books of the Old and New Testaments with the ornaments of the altar and installed him in his place in the choir, there being present Mr. James Annand, chancellor of Orkney, Gilbert Balfour of Westray, Sir John Gyffhart, vicar of North Mawyng, James Alexander, John Balfour, Thomas Rankeillor, and Thomas Meldrum; William Lauder being notary.

## CLV

DISPOSITION, ROBERT YINSTA TO HIS BROTHER WILLIAM YINSTA, of his claims to certain lands (in Yinsta).<sup>1</sup>

Original in possession of Mr. A. Baikie of Tankerness.

*March 9th, 1562-63.*

*Kirkwall.*

*Abstract*

Robert Yinsta, son of the deceased John Yinsta and Marjorie Nicolas daughter, for the affection he bears towards his brother germane William Yinsta, relinquishes all claims to 2 merk lands,  $\frac{1}{2}$  mk. land, and  $\frac{1}{3}$  mk. land in the parish of St. Andreas and vicarage of Derenes, with rycht and roitht and all pertinents, and warrants him in possession of the same. These things were done in the dwelling house of Gilbert Lymer, burges of Kirkwall. Witnesses: Gilbert Lymer, burges of Kirkwall, William Yule, William Galloway, Nicholas Dravar, Robert Clerk, and Magnus Stevenson, with sundry others. Alexander Vaus, master of arts of the diocese of Glasgow, and notary public, executes the instrument.

<sup>1</sup> See No. CXXVI. The lands are evidently the same in the two deeds.

## CLVI

CHARTER OF FEU-FARM BY ROBERT STEWART, feuar of the crown lands of Orkney and Shetland, to Mr. William Mudy of Breckness and his heirs, of the kings lands in Outer Stromness, and others.

Original in Latin in possession of Mrs. Watt of Breckness.

*January 20th, 1563-64.*

*Kirkwall.*

Robert Stewart, feuar, etc., grants to Mr. William Mudy of Breknes for his life, and to Adam Mudy his eldest lawful son and Grizel Stewart, daughter of the said Robert Stewart, apparent spouse to the said Adam, and the survivor of them in conjunct fee and their lawful heirs male, 'but so that one heir male only successively after the other shall enjoy and possess, according to the custom of Scotland, these lands following, notwithstanding the municipal laws or custom of the country of Orkney being to the contrary,' all and sundry the 7 penny, 3 farthing King's lands of Uttir Stromnes,  $\frac{1}{2}$  penny land called Stannagarth, and the quoy called Smethyquoy. Pertinents enumerated in usual feudal form. Payments:—21 meils, 5 settings 'of meal commonly called cost,' at 5/ per meil, extending to £5 9s. 2d. in money: 12 meils, 5 $\frac{1}{2}$  sett flesh, at 3/ per meil, extending to 38/9d. in money: 2 stones or lispounds and 14 marks of oil, at 4/ per stone, extending to 10/4d in money; and 6/4d. in money seat, all being the old duties. Also in augmentation of rental 25d., coming altogether to £8 16/, to be paid at Whitsunday and Martinmas in equal portions. Likewise three suits of court to be rendered at the three head courts to be held yearly at the town of Kirkwall or elsewhere, and the feu duty to be doubled in the first year of the heirs' entry. Clause of warrandice in the usual feudal form. Precept of sasine directed to Edward Bettoun. At Kirkwall, January 20th, 1563.<sup>1</sup>

<sup>1</sup> *Sic*, though this is antecedent to the first recorded grant of the crown lands to Robert Stewart.

Witnesses : William Henderson, N.P., Cuthbert Henderson, Walter Bruse, and several others. Sealed by the granter and signed Robertus Stewart.

[Seal gone.]

## CLVII

WADSET, WILLIAM IRVING TO HIS UNCLE JAMES IRVING,  
of his brother part of heritage.

Original in Gen. Reg. House.

*February 9th, 1563-64.*

*(Kirkwall.)*

Till all and syndry quhome it plessouris, to quhois knaulage this present letter sall to cum, me William Irrwyne, son to unquhill Criste Irrwyne and Gelis Peirsoun, quham God assolze, to zour universite makis knawin that sen the deces of my father and mother forsaid I culd nother get land malis nor lous gudis fra my fateris executoris and utheris intromitteris thairwith ; therfor now in extreme darth, neid, and powarte hes . . . [torn] . . . me be fors to dispone one my said heretage to my father brother James Irrwing be ressonne I had na nerar freind to relief . . . [torn] . . . has disponit as eftir followis. Be it kend till all men be this present letter me William Irrwyne, sone and ane ayr to unquhill Criste Irrewyne and Gelis Peirsoun, grantis me with hand and hand band till haif wedset and in pand laid, and be the tenor of this present letter wedsettis and in pand layis, all and hail my brother pairt of heretage arit be me eftir my said father and mother, to my said father brother James Irrwync, for the sowme of four poundis usuall mone of Scotland thankfullie payit to me be the handis of the said James.

[Pertinents, including 'rycht and roith,' enumerated. Land to be held till its redemption. Sealed by an honourable man, JAMES REIDPETH, burgess of Kirkwall, February 9th, 1563. Witnesses: ROBERT BOSWALL, JOHNE SANGAR, CRISTALL REIDPETH, JAMES HARDE, with others divers. Seal broken on paper.]

## CLVIII

CONTRACT BETWEEN EDWARD SINCLAIR OF EDAY AND JAMES PEIRSON, by which the latter renounces his claims on Eday in return for certain benefits.

Original in Gen. Reg. House.

*April 12th, 1564.*

*Kirkwall.*

*Abstract*

Contract, dated at Kirkwall, 12th April 1564, between Edward Sinclare of Ethay and James Peirson, son of the deceased James Peirson, burges of Kirkwall, whereby the former obliges himself to pay to the latter 100 merks, half at Petermas next, 29th June, and half at Martinmas thereafter, and find security therefor, and allow the said James's oxen, kye, sheep, and horses, to pasture on his lands of Ethay for a year; and to support and assist the said James in all honest and lawful actions, 'and in speciall to ony tak or rowme that may be fund commodious or convenient for the said James, ather in the Mayne Land or Ilis of Orknay, in so far as the said Edward may support ather be diligence of trawell or guid consell, so far as guid conscience and lawe will admit,' and also to support and help the said James's mother and the rest of his brothers and sisters with good counsel and support of his gear, at the sight of Edward Sinclair of Strome, Robert Sinclair, his son, Mr. Alexander Dyck, provost of Orkney, Mr. Peter Houston, sub-dean of Orkney, Mr. William Peirson, parson of Cross in Sanday, and John Browne, burges of Kirkwall, such gear to be distributed among the mother and brethren aforesaid till such time as God provide, and all this only during the said Edward's will; Whereupon James for himself and his mother and brethren overgives and transfers to the said Edward all right or title they can claim to the lands and isle of Ethay, and obliges himself to warrant and defend him in possession thereof. Mr. Robert Creychtoun, John Scharpe, and Clement Lytill, are appointed procurators for registration of the deed, which is attested by Edward Sinclair of Strome, Mr. Alexander

Dyck, provost of Orkney, Mr. Peter Houstoun, Robert Sinclair, John Browne, and Mr. William Peirsoun.

NOTE.—According to the 1595 Rental, supported by the Uthel Book, the island of Eday would appear to have contained no odal lands, but to have been entirely Church property; yet the Peirsons seem to have had hereditary rights in it. There is a very curious and entertaining ‘Discription of the possessors and heritors of the lands of Eday’ in the charter chest of Mr. Baikie of Tankerness, in which the first known of these possessors is said to be James Peirson; evidently James, burgess of Kirkwall, mentioned in this deed. The transactions of his son with Edward Sinclair are retailed in a manner that reflects little credit on Sinclair’s honesty and Peirson’s wisdom, but in the light of this contract the story is evidently highly coloured and based probably on local tradition. As to the nature of the Peirsons’ rights in Eday, the ‘Discription’ says they were founded on ‘naked possession,’ but as it goes on to narrate a story of abstracted title-deeds, both statements may be taken for what they are worth.

## CLIX

ENTAIL BY SIR NICOL CRAGY, vicar of Holm, of the lands of Skaill in Holm, upon his natural son Gilbert, and Gilbert’s sons.

Original in possession of Mr. P. N. Sutherland-Græme of Græmeshall.

*January 19th, 1564-65.*

*Kirkwall.*

Be it kend till all men be this present wret, me Shir Nicoll Cragy, vicar of Holme, of my awin fre motive will, uncoackit, compellit, or seducit be ony way, and for sindre ressonabill causis moving me, as at mair lentht followis, to haue fullelie and frelie our gevin, and be the tenour heirot irriuocablie and frelie gevis, all and hail the houssis callit Skaill in Akirbuster within the parochin of Holme, with towmellis, landis, and all vthir pertinentis pertenyng thereto (quhilk landis and houssis I conquest, as the chartor thereapon at mair lentht proportis in the self), fra me to my naturall sone and cousing Gilbert Cragy, and to his eldest sone Nicoll Cragy eftir hyme, and to the eldest air of the said Nicoll, maill and nocht famell; and failzeand the said Nicollis aire maill, it sall descend to his nixt bruther Edward and his eldest air, maill and nocht famell; and failzeand the said Edward and his air maill, to the rest successive:—Hew Cragy, Daniell, and Gilbert

brethir germanis to the said Nicoll ; with all and sindre guidis and geir, movabill and immovabill, presentlie at the said plaice and houssis ; fra me, the said Schir Nicoll Cragy and all my airis, executoris, and assignays ; and that for guid deid, gratitud, and service done and to be done to me be the said Gilbert and Nicoll my cousingis forsaid, and als for ane zeirlic pensione to be payt to me therefor zeirlic during my lyiftyme for full contentatione thereof for evir, viz. : sax melis scheill maill <sup>1</sup> and thre melis malt sufficient stuff on the auld pundar <sup>2</sup> [*sic*] for weycht in Holme, or quhatsoevir part within Orknay it sall happin me to remayne for the tyme ; and sall releive me of all chargeis of Kyng and Bischope. The quhilk to do the said Gilbert and Nicoll and thair airis forsaid ar bund and oblist but fraud or gyile ; and failzeand of thankfull payment to me heirof zeirlic induring my lyiftyme, in that caice it salbe lesum to me to intromet with the said place under crope as the said Gilbert ressaut it, and dispone and use the saidis houssis, landis, and pertinentis, as I sall think expedient ; and gif it sall happin, as God forbid, the said Gilbert to deces beffoir me, his spous Marzeon Halero sall remaine with the said Nicoll hir sone in the said place als lang as scho kepis hir self fre fra ony man, and quhowson <sup>3</sup> that scho mellis <sup>4</sup> with ane man scho sall remvif fra the said place and laive the samin fre to hir sone Nicoll ; als the said Nicoll is oblist nocht to mary by <sup>5</sup> my advyis and consell during my lyiftyme. Provyding allway that nocht withstanding the clausis beffoir mentionat, the said plaice and houssis thereoff salbe patent to me to pas, repas, and remaine therein on my awin expensis quhen it sall pleis me duryng my lyiftyme, without ony impediment ; and for the mair securite, becaus we the saidis Schir Nicoll Cragy, Gilbert, and Nicoll Cragy had na selis propir of our awin, we haue with instance procurit the sing manuall and subscriptioun of Maister William Peirson, persone of the Croce in Sanday and notar publict, togydder with

<sup>1</sup> Meal separated from the husks ; the best quality.

<sup>2</sup> Pundlar, the old Orkney and Shetland weight.

<sup>3</sup> how soon.

<sup>4</sup> mixes.

<sup>5</sup> without.

the seill of ane discreit man Schir Magnus Murray, vicar of Wallis in Schetland, for wss and in our nayme to be affixt to this present writ; and als the said Schir Nicoll hes subseriuit the samin with his awin hand, lyik as he and his cousingis forsaide hes causit the notar under writin subscriue the samin with their hand led at the pen be hyme. At Kirkwall the xix day of Januar, the zeir of God ane thowsand five hundretht and thre scoire four zeiris. Beffoir thir witnes, Johne Houstoun, burges of Kirkwall, Arche Chalmer, Stevin Paplay, and James Murray, with wtheris diverss.

DOMINUS NYCOLL CRAGY with my hand.

GILBERT CRAGY with my hand at the pen led be Maister William Peirsona notar publict.

NICOLL CRAGY with my hand at the pen led be Maister William Peirsona notar publict.

SCHIR MAGNUS MURRAY vicar of Vallis wyth my awin hand.

[Notary's docquet.]

NOTE.—This family of Cragy of Skaill in Holm is to be distinguished from the Cragys of Skaill in Rowsay. The latter Skaill lies next door to Brough and was evidently at one time part of the property; its owners being an early offshoot from the old family of lawmen. Who the Sir Nicol of this deed was I can find no evidence. It seems hardly possible that he can be Nicol Cragy the roithman of 1514 and brother of John Cragy lawman in 1495.

## CLX

CONTRACT BETWEEN JAMES IRVING, elder, son of John Irving of Sabay, and James Irving, son of Cristie Irving.

Original in Record Room, Kirkwall.

March 10th, 1564-65.

Kirkwall.

*Abstract*

At Kirkwall, 10 March 1564, James Irving, elder, son of Jhone Irving of Saba, freely gives James Irrvyne, Crystie Irrvyneis son, the brother part of heritage sold him by Henry son of the said Cryste. In return James son of

Cristie binds himself that he and his heirs 'sall newer sell nor wedset nor coss nor change nor dispone na vther maner of way apone his landis in Orknay' to anybody except the said James son of John. James son of Crystie procures the seal of an honourable man James Redpeth burgess of Kirkwall. Witnesses:—Maister Alexander Was, N.P., Jhone of Murray, Thomas Redpeth, Sandie Mure, with others divers.

[Seal remains.]

## CLXI

DISPOSITION, HENRY CRAGY TO WILLIAM HALCRO OF AIKERS, of his brother part of heritage in various parts of Orknay, and of lands in Aikers obtained by excambion.

Original in Gen. Reg. House.

*March 13th, 1564-65.*

*Kirkwall.*

Be it kend till all men be thir present lettres, Me Henrye Cragy, ane of the lawfull sonis and airis of umquhill James Cragy of Burgh and Margaret Stewart my parentis, with consent and assent of my elder brother Magnus Cragye, uncompellit, coactit, or in ony wyis circumducit, bot of my awin fre motyve and will, my weill, utilite, and proffyt considerit and forsene, to haif sauld, annaleit, and ofhintit, and be the tenor hereof sallis, analeis, and ofhintis, fra me my airis and assignayis to my weilbelovit frend William Halcro of Acres, Margaret Cragye his spous, my sister, the langer levir of thame twa and the airis gottin or to [be] gottin betuix thame, quhilkis failzeand, the saidis Williamis airis quhatsumevir, all and haill my brother part and portion of the landis of Burgh, with the houssis, biggingis, and quhatsumevir uther pertinentis therof, lyand wythin the Yle of Rowsay and sherefdome of Orknay, fallin to me be the deces of my said umquhile fader; all and haill my brother part and portion of the nyne penny landis of Tenstay, wyth houssis, biggingis, and utheris pertinentis quhatsumevir thairof, lyand wythin the per-rochyne of Sandwik, Mayneland and sherefdome of Orknay forsaid, fallin to me as said is be deces of my said

umquhil fader ; all and haill my brother pairt and portione of the burrow landis lyand wythin the toun of Kirkwall, and specialye of the tenement of land callit the Innes situat upon the Air <sup>1</sup> of Kirkwall, with the houssis, yardis, and pertinentis thairof ; togidder with my brother pairt and portion of anc tenement of land lyand in the sayd toun of Kirkwall, with the houssis, yardis, and pertinentis thairof haill, and the commoun . . . on the west ; Reid-island on the south ; and the landis of umquhile Williame Peirsonis airis on the north ; fallin to me be deces in maner forsaid of my umquhile fader ; all and haill my landis of Acres lyand in Sowth Ronaldsay quhilkis I gat in excambion fra the said Williame Halcro for my brother pairt of the landis of Tenstey forsaid, togidder with the rycht, royth, uthall, and sainyng of all and sindrie the fornमित landis, and lykwis of all and sindry utheris landis, annuelrentis, and tenementis, wyth thair pertinentis quhatsumever, lyand wythin the boundis of Orknay and sherefdome of the samin, quhilkis pertenit heretably to my said umquhile fader or moder or ony my progenitouris, and be deces of thame pertyning to me, or quhatsumevir uther way may pertene in tyme cumming. And that for the fostering, upbringing, and sustenyng of me sen the deces of my said parentis be the space of aucht yeiris or mair, and to continew inlykwys in tyme cuming and indureing my lyfe tyme in upholding and sustening me honestlie and sufficiently in meit, drink, and clathing according to my degre ; quhilik beand done in tyme cumyng, as said is, as he hes done hethertillis sen my first entres to the said William, I hald me weill content, satisfait, and payit for my saidis brother part of the landis, tenementis, with thair pertinentis, rycht, rotht, uthal, and sainyng, of the samin, and all heritable title that I had hes or may haif onywyis thairto ; and be the tenour heiroyf quitelames and dischargis the saidis William, Margaret, and thair airis forsaidis of all farther chargeis

<sup>1</sup> The peninsula of gravelly beach to the west of Kirkwall, still called by this name.

to be sowcht of thame for the saidis landis, tenementis, and thair pertinentis be me my airis or assignayis for now and ever; renuneeing the benefite of all farder gift for gainzeall in tyme cummyng. The saidis landis, tenementis, with thair pertinentis to be haldin, brukit, and joysit heretable be the said William, Margaret, and thair airis and assignays forsaid als frely as ony landis is holdin within the sherefdom of Orknay . . . sauld and devysit as the samen lysis in lenth and breid, with houssis, biggingis, toftis, planis, muris, maressis, wayis, gaittis, walteris, stankis, lochis, burnis, medowis, pasturis, mylnis, multuris and thair suckinnes, halking, huntting, fischeing, fouling, peitis, turffis, colis, cole huchis, cummyngis, cunnyn-garis, dowis, dowcottis, smydis, bromes, woddis, cuthillis, schawis, treis, quarrellis, stane and lyme, with commone pasture, fre ysche and entre in and to the saidis landis, with all and sindry uther fredomes, eismentis, and rychtuus pertinentis quhatsumevir, alsweil namit as unnamit, abone the erth and onder, far and neir, pertening to the saidis landis and tenementis or rychtuouslie may pertene in ony sort in tyme cummyng, frelie, quietlie, weil, and in peax, but contradictioun or impediment quhatsumevir; payand thairfor the saidis William, Margaret, thair airis and assignayis forsaid, to kyng and kirk the dewteis aucht and wont of the saidis landis and tenementis with the pertinentis, for all exactioun, questioun, demand, or service that may be requyrit thairof be quhatsumevir person or personis in tyme cummyng ony maner of way allanerlye. And I forsuthe, the said Henry Cragye, my airis and assignayis, sall warand, acquiet, and defend all and sindry the fornमित landis and tenementis with thair pertinentis to the saidis William, Margaret, thair airis and assignayis, als frelye and fully in all and be all thingis in forme and effect as is affoirsaid, and als frae all escheittis, seatfalling, . . . setting of tak . . . befoir the date of thir presents. In witnes of the quhilk I haif subscrivit this present chartor with my hand led at the pen . . . at Kirkwall, the threttein day of Marche, the yeir of God j<sup>m</sup>v<sup>c</sup>lxiij yeiris, befoir thir witnessis, Thomas Reidpeth sone to

James Reidpeth forsaid, Christell Reidpeth his brother, Johne Firth, Maister Williame Peirson, and Williame Hendersone notaris publict, with utheris divers.

HENRY CRAGY with my hand at the pen led be Maister Williame Peirson notar publict.

MAGNIS CRAGY with my hand.

*Ita est WILLELMUS notarius publicus ad premissa requisitus ac testis eorundem manu propria.*

*Ita est WILLELMUS HENDERSONE notarius publicus testis in premissis requisitus manu propria.*

HEW HALCRO off that Ilk with my hand to this my scill is affixit and the saids Hanry and Magnus ar obligat to byd at the same.

JAMES REIDPETH with my hand to this my sell is afixit and the said Hendre and Mangis ar obligat to beyd at the same.

NOTE.—This is printed in full as being an example of a charter of odal land with a distinctly feudal flavour, and showing the steady change that was taking place in Orkney.

## CLXII

DISPOSITION, OLIVER SINCLAIR TO MR. WILLIAM MUDY OF DONRA,<sup>1</sup> of the mansion of Breckness.

Original, in Latin, in possession of Colonel W. E. L. Balfour of Balfour and Trenaby.

Sept. 10th, 1565.

Kirkwall.

*Abstract*

Oliver Sinclair, son and one of the heirs of the deceased Robert Sinclair of Breknes, and 'dominus' of the principal messuage mansion, and one merkland thereof, sells to his well-beloved friend and kinsman Mr. William Mudy of Donra, the aforesaid principal messuage or mansion and merkland of Breknes, lying in the 'Wttirtoun' (Outertown) of Stromness and sheriffdom of Orkney; with consent of

<sup>1</sup> Downreay in Caithness.

Robert Sinclair, his son and apparent heir, and others having interest ; for ' a certain sum of money.' The land and messuage are to be held of the Queen in fee and heritage for ever, as they lie in length and breadth, etc., with the ' roht and samyn ' etc. Paying to the Queen one penny Scots on the ground of the said lands at Whitsunday in name of blench, if asked, ' besides the old seat,' ' and that for all other burden, secular service, exaction, or demand,' which can be demanded from the said lands. The usual warrandice follows. Having no seal of his own, the granter obtains the seal of a prudent man, John Brown of Weland. He then gives precept of sasine to Thomas Gownn and Andrew Card. At Kirkwall, 10th September 1565, before these witnesses : Mr. William Peirson, canon of Orkney, William Sinclair in Ropnes, William Tulloch, and John Brown, with sundry others.

## CLXIII

WADSET, JAMES IRVING, SON OF CRISTIE IRVING TO JAMES IRVING OF SABAY, of 2 merk lands in Sandwick.

Original in possession of Mrs. Watt of Breckness.

*October 8th (1565 ?),<sup>1</sup>*

*Kirkwall.*

Jhesus Marie.—Be it kend till all men be this present letter, me Jamis Irrwin, sone and eldest air to umquhill Chryste Irrwin, quhom God asolze, grantis me to have wadset and in pand layid, and be the tennor of this present lettir wadsettis and in paund layis, ij mark land lyand within the paresone of Sandveik, with sa mekill mair as I have rycht to, that I arit in the said paresone eftir my said fadir and mothir, to my darrest fadir brothir Jamis Irrwin of Saba, for the soume of sax pound usuall mony of Scotland.

[Discharge given and pertinents of land enumerated in usual form. The granter agrees that no one shall redeem the said land till the time he redeems it himself with his own hand and goods.

<sup>1</sup> No year is mentioned and the nearest clue is No. CLX. The chances would seem to be that this deed was executed soon afterwards. It may, however, be earlier.

If, however, any one does so he binds himself to give James of Saba a nine years' lease of it after the redemption, for the same rent as was paid for the land to his father before, viz., one meill on every merk of land; half victual, half flesh. At the end of this lease James of Saba shall 'lay the said landis and housis [with] pertinens as he intromettit, excep we gre fordir.'

In wytnes of the quhilk, I the said Jamis Irving Chrysteis-sone hes wrettin this present lettir with my auin hand and hes procurit with instance the sail of ane wenerabill clark Schir Mag(n)us Strang, subschantor [of Orknaye, the] viiiij day of October at Kyrkwall, befoir thir witnes, Schir . . . [at least two names illegible] . . . Jamis Craferth, Pette Cullen, Johne Wales. (*Signed*) SCHIR MAWNIS STRANG, subchantor wyth my hand; JAMIS IRRWIN, sone to Chryste Irrwine wt my awin hand.

## CLXIV

CHARTER OF FEU FARM, Robert Stewart, feuar of Orkney and Shetland to John Mowat, of 5d. land in Rendall,<sup>1</sup> previously acquired from James Rendall of that Ilk.

Original, in Latin, in Gen. Reg. House.

December 7th, 1565.

Edinburgh.

*Abstract*

Robert Stewart, perpetual Commendator of the monastery of Holyrood near Edinburgh, and feuar of the earldom of Orkney and Shetland, grants a feu charter of the 5d. lands of Rendall in Orkney to John Mowat, son and apparent heir of Malcolm Mowat of Brabistermyre.<sup>2</sup> These 5d. lands with their pertinents formerly belonged heritably to James Rendall of that Ilk, and were surrendered by him into the granter's hands 'as in the hands of the overlord therof' at Holyrood House. They are to be held heritably by the grantee and his heirs male in fee and heritage for ever,

<sup>1</sup> The township of Rendall, from which the Rendalls took their name, in the parish of Rendall.

<sup>2</sup> In Caithness. See Henderson's *Caithness Families*.

‘with one heir only in time coming, notwithstanding of the laws and customs of the country of Orkney to the contrary.’ The usual feudal pertinents are enumerated. The grantee has to pay the services, duties, and seat due and wont. Precept of sasine is directed to Stephen Cowbister in Howe. The granter appends his signature and seal at Holyrood House, 7 December 1565. Witnesses: James Monteith of Salcoats, James Johnstone of Elphinstone, James Kennedy, the granter’s servant, and several others.

[Seal utterly defaced.]

NOTE.—Something must have happened afterwards to invalidate this charter, for there is no record in the Rental of 1595 or the Uthel Book of 1601 of the change of five pennyland anywhere in the parish of Rendall from odal to feudal land, and no further record of the Mowats as feuars in Rendall. It illustrates, however, the policy of the Stewarts from the first moment they had anything to do with Orkney.

## CLXV

WADSET, GEORGE BROUN TO MR. WILLIAM MUDY OF BREKNES, of a merk land in outer Stromness.

Original in possession of Colonel W. E. L. Balfour of Balfour and Trenaby.

March 29th, 1566.

Kirkwall.

Be it kend to all men be this present writ, me Georgie Broun, sone and aire to umquhill . . . [sic] Broun, to have sauld, annaleit, and wedset, and be the tenour heirof, sellis, annaleis, and wedsettis, to ane honorabill man Maister William Mudy of Breknes, the airis lauchfull gottin or to be gottin of his body; quhilkis failyeing, to Gilbert Mudy broder germane to the said Maister William and to the lauchfull airis to be gottin of his body, and thair assignais; quhilkis failyeing, to the said Maister Williamis narrest and lauchfull airis quhatsumevir, being ane aire maill onlie, broking the said Maister Williames surname and armes; all and hail my merk land liand in the town of Utter Stromness pertening to me in heretage.

[‘Rycht, royth, and samyne,’ and other pertinents enumerated. The price is £8 Scots, and redemption is provided for. Warrandice

was forgotten and put in at the end. Having no seal of his own, the granter procures the seal of an honourable man, *JOHNE BROWN* of Weyland, burgess of Kirkwall. At Kirkwall, March 29th, 1566. Witnesses: *THOMAS GOUNN*, *JOHNE TAILYEOUR*, *STEPHIN STENBISTER*, *JOHNE BARD*, *JOHNE SINCLAIR*, son to *SANDE SINCLAIR*, *JOHNE SINCLAIR* of Stank, with others divers. Seal.]

## CLXVI

*WADSET*, *WILLIAM BAKY* TO HIS BROTHER *THOMAS BAKY*, of his part of land in Isbister and Northdyke.

Original in possession of Mr. A. Baikie of Tankerness.

*May 2nd*, 1566.

*Kirkwall*.

Be it maid kend till all men be this present chartour, me *Williame Baky*, sone and lawchfull aire to my father *Magnus Bakye*, to have alienat and wedsett and be the tenor heirof alienatis and wedsettis fra me my airis and assignais, to my bruther *Thomas Baky*, burges in Kirkwall, his airis and assignais, all and hail my part of land quhilk I airit eftir my father *Magnus Baky* lyand within the parochens of Birsay and Sandwik and townis of Ysbuster and Northtdyik.

[Usual pertinents. £6 Scots paid to the granter in his urgent necessity. Land warranted to the grantee till its redemption. Subscribed by *WILLIAM BAKY* with his hand led at the pen by the notary Mr. *WILLIAM PEIRSONE*, who appended his sign manual. At Kirkwall, May 2nd, 1566. Witnesses: *DAVID CLERK*, *ANDRO ROBERTSONE*, and *JOHNE URQUHAT*, with divers others.]

## CLXVII

*SASINE OF DAME BARBARA STEWART* and her daughter *Margaret Sinclair*, in the islands of Burray, Flotta, etc.

Original in possession of the Marquis of Zetland.

*August 26th*, 1566.

*Burray*.

*Abstract*

Instrument of Sasine by *William Hendersone*, notary public, narrating that on 26th August 1566 compeared in

his presence John Broun of Weyland, bailie to Adam, Bishop of Orkney and Zetland, upon the Bishop's lands of Burray, having a Charter by the Bishop and his chapter containing a precept directed to him to infeft Dame Barbara Stewart in liferent and Margaret Sinclair, lawful daughter procreated between the said Dame Barbara and the deceased Sir James Sinclair of Sanday, knight, in the lands and isle of Burray with the manor place, mills, and fishings thereof, the holms called Hunda and Glummis-holme, and all their pertinents, and the lands and isles of Flattay and Swonay with the holm of Sowthay [*sic*] and the Calfe of Flattay, and all their pertinents, with the teind sheaves of all and sundry the foresaid lands and islands included; whereupon he gave sasine to John Cromarty of Charay, as attorney for the said Dame Barbara and Margaret, in front of the entry to the manor place of Burray, called the Bull of Burray, at 3 P.M., in presence of Alexander Sinclair, servitor to Edward Sinclair of Ethay, William Cullan, William Chalmer, James Chalmer, William Leyth, Magnus Scotty, Magnus Hendersone, Richard Brandy, and John Magnussone.

NOTE.—This sasine is upon a feu charter by Bishop Adam (Bothwell) to the above parties, whom failing, James, Earl of Moray. Dated at Kirkwall, Aug. 26, 1566; also in possession of the Marquis of Zetland.

## CLXVIII

DISPOSITION, ISOBEL LOUTIT TO HER BROTHER ALEXANDER LOUTIT, of  $\frac{1}{2}$  farthing land in Tronston, Sandwick.

Original in possession of Mr. J. W. Cursiter, Kirkwall.

March 8th, 1566-67.

Kirkwall.

Be it kend till all men be this present writ, me Issobell Loutit, dochtir and ane of the aris to Tomas Loutit and Aggues Gwttery, my fadir and moder, quhom God assolze, grantis me to haif sawld, analeit, and offenetit, and be the tenour of this present writ sellis, analeis, and ofhenttis, ane half fardein land, the quhilk I arit eftir my foirsaid fadir and moder, lyand within Sanct Peter parochin and

viccaregge of Sandwik, fra me and all my airis, execu-  
touris, and assignais, to my broder Alexander Lowtit and  
till his aris, executouris, and assignais, for now and ewir,  
and that for the sowme of twenty s. mony and twa settingis  
meill gevin to me to beit my misteris<sup>1</sup> in my urgeant  
necessity.

[Discharge for price of foresaid land 'in Trunstoun' (Tronston  
in Sandwick), sold with 'rycht and roith,' etc. Usual warrandice.  
Subscribed for the granter by Master ALEXANDER WAUS, notary  
public, at Kirkwall, March 8th, 1566. Witnesses: ALEXANDER  
POTTINGAR and ANDRO SINCLAR, with others divers.]

## CLXIX

DISPOSITION, JAMES SCLATER IN BURNESSE TO WILLIAM  
SCLATER OF BURNESSE, of his heritage in Burness  
(except two merklands).

Original in possession of Mrs. Watt of Breckness.

*February 6th, 1567-68.*

*Burness (Firth).*

In Dei nomine Amen. Per hoc presens publicum instru-  
mentum cunctis pateat evidenter et sit notum quod anno  
Incarnationis Dominice millesimo quingentesimo sexa-  
gesimo septimo mensis vero Februarii die sexto et regni  
illustrissimi Domini nostri Jacobi Sexti Scotorum Regis  
anno primo, the quhilk day in presens of ane noble and  
potent lord, Lord Robert Stewart, fewar of Orknay and  
Zetland, me, notare publict, and witnesses underwrittin,  
James Sclatter in Burnes sauld, annaleit, and wedsett  
to William Sclatter of Burnes, his airis and assignais, all  
and hail his landis wythin Burnes pertenyng to him in  
heritage (except twa merkis land of the samin) wyth all  
and sindry thair pertinentis, lyand in the said toum of  
Burnes, parochin of Firth and shirefdome of Orknay,  
wyth the richt, rothe, owthale, and samyng of the saidis  
landis.

[To be held with all pertinentis by the said William and his

<sup>1</sup> relieve my need.

heirs and assignees for yearly payment to King and Kirk of the customary scat and duty. All this is done for the sum of 50s. Scots delivered by the said William to James Selatter in presence as above, and the subjects are redeemable on repayment thereof upon the ground of Burnes at the said William's dwellingplace thereof. Clause of warrandice. Done at William's said house in Burnes at 9 A.M. in presence of the said Lord ROBERT STEWART, Mr. GILBERT FOULSE, minister, JAMES ALEXANDER, Commissary of Orkney, THOMAS CUMMYNG, burgess of Kirkwall, DAVID DOLAIS, JAMES GUDE, and WILLIAM GUDE indwellers there. WILLIAM HENDERSON is notary.]

## CLXX

SASINE OF PATRICK BALLENDEN OF STENNESS AND KATHERINE KENNEDY his spouse in various lands in Orkney, in terms of a feu charter by the sub-dean of Orkney.

Original, in Latin, in possession of Mr. A. Baikie of Tankerness.

*August 2nd, 1568.*

*Sandwick and Kirkwall.*

*Abstract*

Instrument of Sasine, dated 2nd August 1568, narrating that in terms of a Feu-Charter granted by Archibald Douglas, subdeacon of the cathedral kirk of Orkney and prebendary of St. Duthac therein, with consent of Adam, Bishop of Orkney, and his chapter, in favour of Patrick Ballenden of Stenhou and Katherine Kennedy his spouse and the survivor of them in conjoint infeftment, and the heirs male lawfully procreated or to be procreated between them, whom failing the heirs male lawfully to be procreated of the body of the said Patrick, and their assignees, whom failing, Sir John Ballenden of Auchnoull, Lord Justice Clerk, brother of the said Patrick, and the heirs male lawfully to be procreated of his body, and their assignees, whom failing, to Patrick Ballenden, natural son of the said Patrick, and the like heirs and assignees, whom failing, Mr. George Ballenden, precentor of Glasgow, and the like heirs and assignees, whom all failing, to the lawful and nearest heirs or assignees whomsoever of the said Patrick Ballenden of Stenhou, without division, con-

form to the custom of Scotland and notwithstanding the custom of Orkney; of the 3d. lands of Brek in Setherquoy, 3d. lands of Cogingsgar, 4½d. lands of Hurgisgair, 4½d. lands of Nether Garsand, 1d. land of Noba, 2d. lands of Skoruall and Half Quoys, 9d. lands of Newgair, ½d. land of Linday, 5d. lands of Newbegair, 1d. land lying in Gorne, 4½d. lands of Tensta, ½d. land of Vingair, ½d. land of Skettobrek, lying in the parish of Sandwik, ½d.[?] land of Lie in the parish of Stromness, a piece of land called Pakkequoy in St. Ola parish, 3d. lands of Newbegin in Hoy, with manor and teindsheaves, the towmells of St. Colm's Chapel, [towmells of Varsetter in (or and ?) Warbister] in the parish of Hoy, ½d. land of Moudwall, with the manse of the vicar of Unst, ½d. lands of Bardie [?] with the towmells, in Snelsetter in Wais, with quoylands, outbrecks, etc., . . . of St. Duthac called Cogingsgar in Sandwik, with the manse of the said subdeaconry in the town of Kirkwall, . . . also the office of bailiary of all the foresaid lands : to be held of the subdeacon and prebendary and their successors in feufarm and heritage : directed to John Giffard in Gorne and William Arcas as bailies, and dated at the cathedral kirk in Kirkwall, 23rd March 1567-8, and at Edinburgh 1st August 1568, witnesses being, Mr. Francis Bothuell, Treasurer of Orkney, Alexander Kincaid [?], vicar of Wallis, and James Hay ; and signed by Adam, Bishop of Orkney and Shetland, Mr. Archibald Douglas, subdeacon of Orkney, Mr. Magnus Halero, precentor of Orkney, Mr. Francis Bothuell, Treasurer, John Grahame, rector of Our Lady in Sanday ; the said John Giffard, as one of the bailies, gave sasine on the lands of Cogingsgar to Robert Innes as attorney for the said Patrick and Katherine, and also on 6th August, William Orcas [*sic*], the other bailie, gave sasine to him at the manse in Kirkwall. Witnesses, at Cogingsgar, Magnus Sinclar of Tollope, William Flauies in Cogingsgar, Robert Kirk, Magnus Smyth in Hurkisgair, and Allan Millar in Newgair ; and at Kirkwall, William Cant [?], servant to the said Patrick Bellenden, John Fallusdell, and Thomas Galt, indwellers in Kirkwall. William Gray, clerk of the diocese of Caithness, is notary.

## CLXXI

DISCHARGE by the daughters of William Corrigall (younger) to their brothers for the price of their share of their father's property, purchased from them by the brothers.

Original (in a fragmentary condition) in possession  
of Mr. J. A. S. Brown.

*December 10th, 1571.*

*Haray.*

*Abstract*

1571, December 10th.—Elspet and Janet Correglls [*sic*], daughters and heirs of the deceased William Correglle, with consent of their husbands John Knarstane and John Gayr of Marwik, grant receipt of 5l. 10s. Scots from their brothers James, John, and Robert Correglls, in complete payment of their 'arff' heired from their father, in lands and loose gear, and discharge them therefor. Being unable to write they requested Robert Stewart, rector of Haray, to subscribe for them. Witnesses (at Haray), James Flet, elder, of Nether Brucht, James Flet, younger, Andrew Flet, Magnus Bore, Andrew Lynklet, younger, James Aken, elder, James Tailyour, Andrew Awelgeing,<sup>1</sup> William Knarstone, He[nry ?] Hownskarth, Peter Flet, John Flet, and others.

## CLXXII

DISCHARGE, ANDREW YENSTAY, tackman of St. Andrews Parish, to William Irving of Horrie.<sup>2</sup>

Original in Record Room, Kirkwall.

*September 1572.*

*Kirkwall.*

*Abstract*

Discharge by Andrew Yainistane, tackman of St. Andrews parish, to William Irvyne of Horre for all the

<sup>1</sup> Andrew a Velzian, the old Norse form. See footnote to No. vi.

<sup>2</sup> Afterwards William Irving of Sabay. Horrie was his share of his father, James Irving of Sabay's estate,

debts and duties resting or owing by the said William to the said Andrew in his lord's name for 1567, 1568 and 1569, both victual and butter, or others, 'and of the x setteis of wytell that Mans Lawttane and James Grosetter deliverit to him.' Subscribed by him (his hand led by John Twat) at Kirkwall . . . September 1572. Witnesses: Manis Synclar of Skyll,<sup>1</sup> and Symond Bettowne and William Synclar, 'burgeis' of Kirkwall, and John Twat, servant to 'me lord.'

## CLXXIII

DISCHARGE, JANET IRVING TO HER BROTHER WILLIAM IRVING, for payment of the price of part of her sister part of heritage.

Original in Gen. Reg. House.

*February 20th, 1573-74.*

*Kirkwall.*

Be it kend till all men be thir present lettres, me Jonet Urwing, lauchfull dochter and ane of the airis of umquhle James Urwing of Saba and Elinor Leslie my moder, with consent and assent of my derrest spous Donald Allane, forsamekle as ther is ane decreet pronuncit befor the wit of the cuntrie in the shireff court decerning and ordaining everie ane of my breder to outreid<sup>2</sup> ane of us thair sisteris (and my broder Williame Urwing fell to outred me), to have ressavit fra the said Williame compt and rakning of my said sister pairt, and grantis me to have ressavit fra the said Williame at the making heiroff ane lykand kow with calff, and ane kirtill with ane paitlat,<sup>3</sup> in compleit payment and full satisfioun of my sister pairt of land and lous gudis quhilkis I airit eftir my said umquhile fader and moder; except onlie thrie merkland lyand in Burwyk within the parochin of Sandwyk; quhairoff I hald me weill contentit and payit as in compleit payment of my said sister pairt batht of landis and gudis, except

<sup>1</sup> Magnus Sinclair of Skail and of Tollop.

<sup>2</sup> Release or clear off (as of a debt).

<sup>3</sup> Presumably *patelet*, a kind of ruff.

befoir exceptit, and bindis and oblissis me, my airis and assignais, never to cum in the contrair heiroff under the pane of periurie and infamie and violatioun of faitht. In witness of the quhilk thing I have subseryvit this my present discharge with my hand as followis, togidder with the subscriptioun of my said spous, in sing and takin of consent and assent heirunto, at Kirkwall, the xx day of Februar, the yeir of God j<sup>m</sup>v<sup>e</sup>lx threttein yeiris, befoir thir witness, Andro Banx, Magnus Leslie, Matho Woill, and Magnus Murray, with utheris dyvers. Jonet Urwing with my hand at the pen led be the notare underwrittin at my command becaus I can nocht wryt.

Ita est Cuthbertus Hendersoun notarius publicus de mandato diete Jonete scribere nescientis teste hoc meo chyrographo.

xxj<sup>o</sup> mensis February a<sup>o</sup> etc. lxxx<sup>o</sup>. Pro-  
ducit in iudicio apud Sabay at ane arf [?]  
day. P. BRUCE.

## CLXXIV

CHARTER BY LORD ROBERT STEWART TO MAGNUS CLOUSTON  
of lands in Orphir and Harray from which his father  
William Clouston had been escheated.

Original in possession of Sir Thomas Clouston of Holodyke.

Printed: *O. L. Records*, No. 70.

*April 1574.*

*Kirkwall.*

*Abstract*

Lord Robert Stewart, fewar of Orkney and Zetland, of favour and grace and for a certain sum of money paid him by Magnus Cloustane, lawful son of Williame Cloustoone, grants to the said Magnus 1 merkland in Grymstane in Haray and 3 merklands in Kirkbustare in Orphair, Magneland of Orknay and sherifffdom of the same, 'quhilk landis pertenis sumtyme to the said Williame Cloustane in heritage, and now pertenis to me and are cummyng in my handis be ressoun of eschet for certane crymes of thift committit be the said Williame Cloustane, quhairof he wes convict in ane shereff court callit the hermanstein

haldin be me and my deputtis on the twentie day off Yule<sup>1</sup> in the yeir of God 1<sup>m</sup>v<sup>cl</sup>x threttene yeiris.' The grantee has to pay the scats, duties, and due service of the said lands, 'usit and wount, as the said Williame Cloustane payit of befor the king and bischop allanerlie.' At Kirkwall . . . April 1574. Signed 'Robert Stewart' and his seal appended. No witnesses given.

*Endorsements* (1) Sasine given April 4th, 1574, by Magnus Ingseter, baillie depute of Orpher, to Magnus Cloustane of the 3 merklands in Kirbister. Witnesses: Jhone Hawschonsone and Jhone Kirbister with others divers. Signed by Magnus Ingseter. (2) Sasine given May 3rd, 1574, by Williame Selatter, baillie of Haray, to Mawnis Cloustone, of the merkland in Grymstone. Witnesses: Andrew Flet, James Flet, . . . [*illegible*].

NOTE.—References to land 'evicted for thift' occur constantly from this period onwards, and the probable explanation of many of them has been pointed out in No. LXXVII. An allusion to this particular case is to be found in the complaint of 1575 (*Oppressions of Ork. and Shet.*), article 22, in which Lord Robert Stewart is charged with usurpation of the royal authority by pardoning convicted persons, among them William Clowst(a)ne. He is likewise charged with pronouncing wrongful sentences on people and afterwards reducing them for valuable consideration. The allusion in this deed to a 'certain sum of money' makes it plain that this was such a case. The lands thus recovered by Magnus Cloustone were sold by his son Thomas to Nicol Sinclair, April 8th, 1614. (They were not, however, all the escheated property, which included four merklands in Kirbister, as shown by all the following rentals.)

## CLXXV

WADSET, BESSIE GRYMBUSTER and her spouse, to her sister Marion Grymbuster and her spouse, of her sister part of land in the Mainland of Orkney.

Original in possession of Colonel W. E. L. Balfour of Balfour and Trenaby.

*April 30th, 1574.*

*Kirkwall.*

Be it kend till all men be this present chartour, me Bessie Grymbustar, lauchfull douchter and ane of the airis of umquhile Johne Grymbustar, with consent and assent of

<sup>1</sup> January 13th: wrongly printed 'Jule' in *O. L. Records*.

my spous Gilbert Stewart, to have wodset and in pand layde, and be this present chartour wodsettis and in pand layis, to my sister Marioun Grymbustar and Magnus Grymbustair hir spous, thair airis and assignais, all and hail my sister part of land quhilk I airit eftir my said fader Johne of Grymbustar, with thair pertinentis, lyand within the Mayneland of Orknay and schirefdome of the samyn ; and that for the sowme of auchtein pundis gude and usuale monie of Scotland tauld down and delyverit to me and my said spous in our grit mister and urgent necessitie.

[She gives discharge for money, and the pertinents of the land are enumerated ('rycht and roith' are not mentioned). Warrantice and provision for redemption follow. Having no seal of their own, Bessie Grymbustar and Gilbert Stewart procure the seal of an honourable man, DAVID SCOLA, burgess of Kirkwall, and sign with their hands led. At Kirkwall, last day of April 1574. Witnesses: DAVID SCOLA, MALCOLME GROT of Tankerness, and THOMAS KIRKNESS, with others divers. Seal gone.]

## CLXXVI

DISPOSITION, HELEN BROUGH and her son, to her brother Magnus Brough, of her sister part of land in Brough, Harray.

Original in possession of Mrs. Watt of Breckness.

*June 26th, 1575.*

*Harray.*

Be it kend till all men be this present writt, me Helene Brought, with consentt and assent off my sone Gilbert Skarlatt, grantis ws to haiff sald, anayleit, and affhentit and away puttin fra ws and all our ayris, executouris, and assingnays, all maner off rycht and tytill thatt we had or justle be the law mycht till haiff ayritt or had [to] ane sister part off land lyand in Brought in Haray, with the land melis thairoff, to my brothir Magnus Brought and his ayris, executouris, and assingnays; and that for the sowme off xls. guid and usuall mony off the realme of Scotland giffin to ws in our greit mister and urgent necessete.

[She discharges Magnus of the price and gives him warrantice.

There is no enumeration of pertinents. Because they could not write themselves, Helene Brught and Gilbert Skartlatt get ROBERT STEUART, lector at Birsay and Haray to subscribe the deed. They themselves sign with their hands led. At Sanct Michallis Kirk in Haray, June 26th, 1575. Witnesses: ANDRO HOURSTANE, ANDRO FLETT, JAMES FLETT younger, JAMES YSBISTER younger, JOHNE CORGILL, MAGNUS TAILYOUR, WILLIAM QUVIS, with others divers.]

## CLXXVII

TACK TO OLIPHER SINCLAIR and his spouse of the lands of Skokness, Græmesquoy, Stenbister, and Garth for nineteen years.

Original in possession of Mr. A. Baikie of Tankerness.

October 28th, 1576.

January 24th, 1576-77

and

Edinburgh.

Kirkwall.

*Abstract*

Lord Robert Stewart, feuar of Orkney and Shetland, Dame Jeane Kennedy his spouse, and Lord Henrie Stewart their son and apparent heir, 'fear of the samyn' (with consent of his father as tutor and governor to him), grant a nineteen years' tack to Olipheir Sinclair, son of the deceased Edward Sinclair of Strome, 'takkisman and kyndlie tennent and possessour of the landis eftir following,' and to Elizabeth Logane, his spouse, for assisting the granter's jurisdiction, tenants, and privileges with his body and friends 'as he hes promesit us,' and for the sum of £200, together with 'ane horse haiknay,' worth £40. The following are the lands and the duties to be paid for them:—the 6d. land of Skoknes in Rowsay with the mill and holm thereof (one barrel 'meitt' butter); the lands of Sandis in Deirnes (20 merks money); the lands of Gremisquoy in Sanct Olave parish (5/); Stenbister in Sanctandros parish (one barrel butter and 4 meils beir); Garth in Sanctolave ( $\frac{1}{2}$  barrell butter); also all other duties and dew service, 'usit and wont.' The tack is to begin at Martinmass 1584 (?), and the lands are not to be sublet by

the grantees or their heirs to any one of higher degree than themselves.

Signed and sealed by the granters at the Castle of Edinburgh and the Yards in Kirkwall, respective, 28th October and 24th January 1576. Witnesses: Master Alexander Cowistoun, baillie of Leith; Johnne Logane, son and apparent heir to Mr. Johnne Logane of Craighouse; James Hay, the granter's servitor; and James Logane, scribe. (Also, evidently at Kirkwall), Mr. William Mudy of Breknes; Mr. Gilbert Foulsey, minister; Oliver Kennedy; Johnne Dick, burgess of Edinburgh, with others. Signed by the three granters, Mr. William Mudy, Mr. Gilbert Foulsey, Johnne Dyck, and J [?] Martyne.

## CLXXVIII

DISPOSITION, DAVID SINCLAIR OF HUNTO<sup>1</sup> to his son Edward Sinclair and Margaret Maxwell, his future spouse, of the 6½d. land of Hunto in Stronsay in fulfillment of a marriage contract.

Original in possession of Colonel W. E. L. Balfour of  
Balfour and Trenaby.

*April 12th, 1577.*

*Kirkwall.*

*Abstract*

David Sinclair, fiar of the 6½d. lands of Hunto, in the parish of St. Peter, in the Isle of Stronsay and sheriffdom and regality of Orkney, in fulfilment of a marriage contract between him and Mr. James Maxwell, vicar of Stronsay, dated at Stenstay in Stronsay, 13th June 1571, grants these lands to his lawful son Edward Sinclair and Margaret Maxwell, daughter of the foresaid Mr. James, his future spouse, in conjunct fee, and to the heirs lawfully to be procreated between them; whom failing, to his second lawful son (not named) and Janet, second daughter of the

<sup>1</sup> In Mackenzie's MS. (Balfour Castle) a charter is quoted from Mr. James Maxwell to David Sinclair, eldest son of the deceased Lawrence Sinclair, burgess of Kirkwall, of the 6½d. land of Hunto in Stronsay, dated 10th Ap. 1577.

said Mr. James, and their heirs as above; whom also failing, to his lawful sons successively with the lawful daughter successively of the said Mr. James whomsoever; provided, however (in accordance with the foresaid contract of marriage) that the marriage has been solemnised in face of the Church, otherwise the lands go to the foresaid Margaret and her heirs and assignees. (It is stated a few lines later that the lands are granted to the foresaid sons and the foresaid daughters of Mr. James Maxwell who shall have contracted marriage, otherwise to the foresaid Margaret.) The pertinents do not include 'rycht and roith,' the land not being odal, but held in feu. Payment for the lands is to be made to the said James Maxwell and his successors (apparently in the chaplainry) of 40d. for each meil of 36 meils of barley, together with the king's seat as contained in the king's rental, 'as for the whole other duties and fermes of the said land.' Also 3/4d. is to be paid in augmentation of the rental. There is a clause of warrandice and a reservation of the granter's life-rent. Precept of sasine is directed to Hector Sinclair and Edward Scollaw. The charter is signed with the granter's own hand at Kirkwall, April 12th, 1577, and the seal of an honourable man, David Scola, burgess of Kirkwall, appended, because he has no seal of his own. Witnesses: David Scola, John Brown, William Halero, Gavin Taylor, and Magnus Paplay, burgesses of Kirkwall, with sundry others. Signed, 'Dauid Sinclair off Huntoune wt my hand.'

[The seal is gone.]

### CLXXIX

WADSET, GILBERT IRVING (portioner of Sabay) to John Irving of Garsetter, of 3 meils mailling of land in Sandwick.

Original in possession of Mrs. Watt of Breckness.

January 21st, 1579-80.

Kirkwall.

#### *Abstract*

Charter by Gilbert Irving, son and one of the lawful heirs of the deceased James Irving of Saba, wadsetting to his

friend and cousin John Irving and his heirs and assignees, his 'thre meillis mailling callit Quoyis of Neagar' in Sandwick parish, for 40l. Scots, with clause of warrandice. Dated at Kirkwall, January 21st, 1579. Witnesses: Thomas Kirknes, William Kirknes, and Robert Inksitter. 'And in caice ony person aelame ane titill to the land aboun specifeit, than the said Johne sall have ingres to als mekill of my best land in Saba.'

'Gilbert Irvein with my hand at the pen,' etc.

Ita est Willelmus Peirsones, notarius, etc.

[*On the back:*]

1590, May 17, John Irving of Garsetter grants receipt from William Irving of Sabaye, brother of the said Gilbert, of the sum of 40l. for redemption of the subjects. Mawnis Irving, son of the said John, and the rest of John's brethren consent. Witnesses: Thomas Kirknes, Robert Fowbister, Thomas Bakye, burgess(es) of Kirkwall. The said Thomas Bakye signs for the said John and Mawnis.

### CLXXX

DISPOSITION, WILLIAM SINCLAIR OF STANK to his kinsman Thomas Gunn, of the head house of Stank, etc., in Stromness.

Original in possession of Mrs. Watt of Breckness.

1580.

*Kirkwall.*

#### *Abstract*

William Sinclair, eldest son and lawful heir of umquhile Magnus Sinclair of Stank, with consent of his spouse Marioun Loutfut and Thomas Sinclair his eldest son, sells to his friend and kinsman Thomas Gune 'the housses and bigingis with toftis, croftis, and barne yaird liand adjacent with the said hous of Stank, with the rycht and roith broukit be me efter father, guidschir, and grandschir, that is to say the heid house callit Stank, with all maner of houses thairto belangand respective,' with their pertinents, in the parish of Stromnes. Price £7 Scots; discharge

given for this, and usual warrandice. He also undertakes that if he, his heirs, or assigns sell, wadset, excamb, etc., any other of their lands, the said Thomas is to have the first offer, 'for the first change of sa mekill mailling or utherwayis . . . as ane brother to ane uther; and that becaus the said Thomas wes advocat and defender of me and my brether quhen we war left pupillis and minoris efter the deceis of our umquhile father.' Thomas also has the right to redeem any lands pertaining to William or his brothers 'haldin of that heid house of Stank' that have been wadset before. The granter subscribes with his hand led at the pen and also procures the seal of an honourable man, William Halero of Acris, and the subscription and sign manual of Mr. William Peirson, N.P. At Kirkwall, the . . . [*sic*] day of . . . [*sic*] 1580. Witnesses: William Halero of Acris, James Pape, and Thomas Geddas, burgesses of Kirkwall, Gilbert Seater, and Magnus Hurstane. Magnus Hurstane signs, in addition to the granter and notary.

[Seal gone.]

### CLXXXI

DISCHARGE, MARJORY LOUITT AND HER SPOUSE, WILLIAM SINCLAIR OF STANK, TO MAGNUS LOUITT OF LYKING, for the price of her part of lands and goods.

Original in possession of Mrs. Wilson, Stromness.

*June 24th, 1580.*

*Quhome, Stromness.*

The xxiiij day of June *anno* 1580 yeiris, quhilk day I Maryione Luttit, douchttit [*sic*] to Jemis Luttit in Lykine, with the consent and assent of my husband Wilyeme Sinclair in Stank, granttis me be this present discharge to hawe resavit fra my brodir Magnys Luttit in Lykine, in penne and penne worththys, compleyt payment and satisfactione of my part baitht of landis and howses, gowddis and geir, quhilk I hawe airrit and [is ?] for to airr of [my fadir] J[ames ?] Luttit and of my modir Agnys Crage be the comone law of this contray of Orknay, and therfor

grantis me will contentit and compleyle payt for the samen.

[Discharge and warrandice. As Maryone and Wilyeme cannot write themselves, they get Master HIEROME TULLOCH, minister of Sandweyk and Stromness, to subscribe for them and affix his signet. At Quhome in Stromness. Witnesses: NICHOLL SANDISONE, WILYEME CLARK, with others divers. MARYONE LUTTIT and WILYEME SINCLAR sign with their hands led. Paper seal of Mr. HIEROME TULLOCH.]

## CLXXXII

FACTORY BY JAMES RENDALL, burgess of Bergen, to his brother David Rendall in Rendall.<sup>1</sup>

Original in possession of Mrs. Watt of Breckness.

*September 18th, 1580.*

*Bergen (Norway).*

Factory by James Hendrykisszen, burgess and indweller in Berren, to David Hendrykisson, indweller in Randell, to 'ressaiff and persew' all his heirship goods and gear pertaining to him, in the parish of Randell in Orkney. Dated 18 September 1580, witnesses being Matse Brun and Thomas Ballum[bie ?] and [Henre ?] Skott burgesses of Beren.

[Four little seals have been attached but are now gone.]

## CLXXXIII

WADSET, ROBERT LOUTTIT AND HIS SON ALEXANDER, TO BEAGIS WATTERSTOUN, widow of William Selater of Burness, of a merkland in Burness.

Original in possession of Mrs. Watt of Breckness.

*November 25th, 1580.*

*Kirkwall.*

*Abstract*

Charter by Robert Louttit, husband of the deceased Janet Selater, with consent of, and as tutor to, Alexander

<sup>1</sup> These were the sons of Henry Rendall of Ellibister in Rendall, though residence in Norway had converted the name to Hendrykssen (this is established by another charter in the same bundle, dated June 1601).

Louttit his son, selling and wadsetting to his good friend Beagis Watterstoun, widow of William Selater in Burness, and 'to his bairnis gottin with hir allanerlie,' one merk land with pertinents lying in Burnes, parish of Firth, which pertained to his said spouse and now to the said Alexander, their heir, and that for 40s. and 'twa gild ky' now delivered to him; to be held with all the usual pertinents and privileges for yearly payment to the King and Kirk of the customary fruits and duties; redeemable for the above money and ky, and an assedation of the subjects to be granted for nineteen years after redemption for payment of 5s. yearly to the granter and his heirs 'for everie meill of victuale the said land payis, and for everie meill of flesche aughtene penneis,' and this because the granter has received other kindnesses and good deed from the said Beages besides the above; provided however that if the said Alexander himself redeem the subjects for 40s. and two yeild [*sic*] ky, of his own gear unborrowed, then there shall be no posterior tack granted. Precept is directed to John Flett to give sasine, and the granter, under the seal of William Halero, subscribes at Kirkwall, November 25, 1580. Witnesses: William Halero of Aikeris, John Selater, William Murheid, reader, William Sinclair, and William Fermour, notary public.

'Robert and Alexander Louttittis with our handis at the pen led be the noter underwrittin at our command becaus we cannocht wryt our selffis.'—Ita est Willielmus Fermour, notarius, etc.

## CLXXXIV

WADSET, MAGNUS TWATT TO MARGARET CRAGY, of 3 merks of land called Halkland in Sandwick.

Original in possession of Mrs. Watt of Breckness.

January 25th, 1580-81.

Kirkwall.

*Abstract*

Magnus Tuait, son and one of the lawful heirs of the deceased Johne Tuait, wadsets to an honourable woman

Margaret Cragy, widow of the deceased Henry Sinclair in Clumlie, 3 merks of land called Halkland, in the parish of Sandwick, mainland of Orkney, for £39 10s. This land the granter holds in wadset from his brother germane, Adam Tuait, on a charter dated at Kirkwall, March 12th, 1578, under the seal and subscription of Mr. William Peirson, parson of the Croce in Sanday. In case the granter and his heirs cannot warrant this land to Margaret Cragy, he obliges himself, his heirs, and assigns 'to infett and sease be chartour and instrument the said Margaret, her airis and assignais, in also many landis liand in Tuait within the parochin of Birsay' as will compensate her for the 3 merks in Halkland. Precept of sasine is directed to Magnus Halkland. He procures the seal of an honourable man David Scollow, sheriff depute of Orkney. Dated at Kirkwall, 25th January 1580. Witnesses: William Halero of Acris, Gilbert Irving of Sabay, Magnus Paplay, commissar clark, Magnus Hurstane [*sic*], servitour to Mr. Johne Houstoun [*sic*];<sup>1</sup> Thomas and William Kirkness, burgesses of Kirkwall; with others divers. Signed by David Scollau, Magnus Hurstane [*sic*], and Magnus Paplay.

[Tag for seal.]

On the back is a note that sasine was given January 31st, 1580, by Magnus Halclane [*sic*] to the said Margaret Cragie. Witnesses: John Sinclair in Stenstone,<sup>2</sup> Thomas Crage of Wetquoy, William Flawys, and Mr. Jerome Tulloch, notary, who attests the fact.

<sup>1</sup> This is one of several instances proving that the surnames Hourstane (now Hourston) and Houstoun, both found frequently in these deeds, are quite distinct. Hourstane is a township name from Sandwick, Houstoun is Scottish.

<sup>2</sup> Tenston.

## CLXXXV

WADSET, MARION BROWN TO WILLIAM SMYTH, reader of Stromness, of a merkland in Outer Stromness, granted because he has supported her, and her relatives have refused, even though she offered them this merkland (*i.e.* he has upheld her in 'upgestry').

Original (a contemporary copy by William Fermour) in possession of Mrs. Watt of Breckness.

*August 4th, 1581.*

*Kirkwall.*

Be it kend till all men be this present chartour, Marioun Broune *alias* Daill, lawfull dochter and air to my father Johne Broune *alias* Daill and to my mother Jonett Smyth, grantis me to haif wodsett and in pand laid, and be the tenour heirof wodsettis and in pand layis, to my guid freind Williame Smyth, reider of Stromnes, and his airis and assignais, all and haill anc mark of land lyand in the Utter toun of Stromnes and parochin of the samin and schirefdome of Orknay and Maneland of the samin, and that for the sowme of aucht poundis usuale monie of Scotland tauld doune and delyverit to me be the said Williame in numerit monie at the makking of this present, with uther guid deid done to me be the said Williame thir twelf yeiris bigane in geving me hous rowme, meit, and drink, quhen I culd gett nane at ony of my kin; I offering thame the said mark land and thay refusit the samin.

[She discharges WILLIAM SMYTH of the price. Pertinents are mentioned but not detailed. There is the usual warrandice, and provision is made for redemption. In this case the grantee is to have a tack of the lands for nineteen years after the redemption at a rent of 5s. The charter is dated at Kirkwall, August 4th, 1581. The granter signs with her hand led by Mr. WILLIAM PEIRSOUNDE, N.P. He and CUTHBERT HENDERSON both sign and append their sign manuals. Witnesses: GEORGE BROWN, THOMAS LIE, ROBERT INSITTER,<sup>1</sup> with others divers.

The precept of sasine follows, dated at Stoiff, in Stromness, Feb-

<sup>1</sup> Ingsetter.

ruary 20th, 1584, directed to THOMAS BLAIR. Witnesses: MAGNUS BETTOUN, JAMES FROLAW, WILLIAM SINCLAIR, ROBERT BETTOUN, WILLIAM GUIDDELL, JAMES CRAWFORD, and WILLIAM MATHESOUN. MARION BROWN signs by the notary, WILLIAM FERMOUR.

Upon which day, at 4 P.M., the said baillie gave sasine of the said markland to the said WILLIAM SMYTH: same witnesses. WILLIAM FERMOUR, notary, appended his doequet.]

## CLXXXVI

SASINE OF LORD ROBERT STEWART in 4½d. land and ⅓ mk. land in Sabay, on a charter from the Irvings.

Original in Record Room, Kirkwall.

*September 9th, 1581.*

*Sabay.*

*Abstract*

Instrument of Sasine, narrating that on September 9th, 1581, compeared Mr. John Dishington, attorney for Lord Robert Stewart, feuar of Orkney and Shetland, and delivered to David Spens in Scapa a Charter of alienation and vendition made by Magnus and Gilbert Irving, Christian Yinsta and Barbara Cromartie their spouses, with consent of James Irving, their eldest brother's son, and of James Irving, eldest son and heir of the deceased Alexander Irving, their father's brother, and of William Irving, brother german to the said Magnus and Gilbert, 'next rothsman to the lands of Saba,' in favour of the said Lord Robert Stewart, of the said lands of Saba extending to 4d. land and a half, and the third part of a merk land, with pertinents, lying in the parish of St. Andrews, Mainland and sheriffdom of Orkney; desiring execution thereof. The said bailie thereupon gave sasine to him as attorney foresaid, upon the ground of the lands and in the dwelling-house of the said Magnus and Gilbert Irving, about 3 P.M., in presence of Edward Spens, Magnus Scapo, William Tait, younger, John Quoybanks, Magnus Clouston, and James Irving. William Fermor is notary.

The charter was subscribed at Kirkwall, September 7th, 1581, in presence of John Cavertoun, Mr. John Dischintoun,

Walter Bruce, Alexander Kincaid, William Fermour, notary, Thomas Robesoun, and Mr. William Peirsoune, notary, Malcolm Grot, William Halcro, and William Henderson, notary; and the seals of William Halcro and John Broun were procured to be appended.

## CLXXXVII

GIFT, ROBERT STEWART, EARL OF ORKNEY, TO HIS COUSIN,  
MARIE STEWART, of lands in St. Andrews and Deerness  
eschated from Magnus Sinclair of Tohop.

Original in Gen. Reg. House.

*August 21st, 1584.*

*Kirkwall.*

Be it kend till all men be this present vrett, us Robert Erle off Orknay, Lord Zetland, etc., to have frelie gevin and grantit, and be the tennour heiroff frelie gevis and grantis, for the luiff and favour we bair towardis our cusingnes Marie Stewart, all and hail the fyve penny land, ane half penny land, and ane farding land in Brabister; thre penny land in Havell; and twa penny land in Swartebrek; <sup>1</sup> all the saidis landis lyand within the parocheis of Sanct Androis kirk and Deirnes; quhilk fell to us in escheit be vertew of ane decretit gevin in our favouris contrair and aganis Magnus Sinclair, father to Johne Sinclair, spous to our said cusingnes Marie Stewart, at Air in Deirnes, the xxvij day off Marche, the yeir of God 1584 yeiris, and in respect the said Magnus was accusit for succeeding in his fatheris vyce for steiling and grippind the kingis landis and for with halding of certane outbrakis brokin furth upoun the kingis balk,<sup>2</sup> and bigit houssis thairupoun betuix the kingis land and the hill, and appropriat the samen to thair awin heritage, as at mair leynt is contenit in the said diereit off the dait above wrettin. Quilk fyve penny land, halff penny land, and ane farding land in Brabister; twa penny land in Swartabrek; and thre

<sup>1</sup> Havell and Swartabrek were in Tohop, Brabister in Deerness.

<sup>2</sup> See footnote to No. LXIII.

penny land in Hawell, all lyand in Deirnes and Sanct-androis parocheis as said is, for favour we bair to our cusingnes forsaid, with houssis, toftis, croftis, towmellis, outpastour, inpastour, with fre ysche and entre, fra the hiest in the hill to the lawest in the eb, with all maner off commoditeis that is knawin rychteouslic to apertein thairunto, we frelie gevis unto the said Marie for all the dayes, space, and termes off hir lyftyme, without ony gersum, land maillis, or ony uther kynd of dewteis to be payit to us, our airis or chalmurlanes quhatsumevir, except scat and teind allanerlie. And this lyfrent to be als frelie broukit be the said Marie as ony uther lyfrentis within the boundis of Orknay, but ony revocatioun or impediment, provyding always that the said Magnus Sinclair brouk the former gift gevin be us to him thairupoun, as it portis in the self. And we forsuith, the said Erle, our airis, and assignais, sall wairand, acquiet, and defend the said Marie during hir lyftym, but fraud or gyle, as law will. In witnes heiroy to this present subscribit with our hand, our signet is affixit at Kirkwall, the xxj day off August 1584, befoir thir witnessis, Thomas Robesoun and Robert our servandis, with utheris divers. Orknay.

WM. GUID.

NOTE.—In *O. L. Records* (No. 72) is an instrument of resignation and sasine, in which Magnus Sinclair in Skaill, in fulfilment of a marriage contract made between his eldest son John and Marie Stewart, brother daughter to Lord Robert Stewart, resigns to the said John all his heritable lands, both conquest and pertaining to him in heritage, in Orkney and Shetland, dated May 17th, 1580. Sasine was then given on the lands of Tohop and Brabister.

### CLXXXVIII

CHARTER OF FEUFARM, ROBERT, EARL OF ORKNEY TO MR. JEROME TULLOCH, and his spouse, of land in Quholme and others, in Stromness.

Original in possession of Mrs. Watt of Breckness.

*January 19th, 1584-85.*

*Kirkwall.*

Be it kend till all men be this present chartour, we Robertt Erle of Orknay, Lord Zetland, and Justice Generall

of the samin, to haif sett and in fewferme lattin, and be the tennour heirof settis and in fewferme lattis, to Maister Hierome Tulloch, subchantour of Orknay, Alesoun Lyndsay his spous, and the langest levand of thame twa in conjunct infestment, and the airis lawfullie gottin or to be gottin of thair bodies, quhilkis failyeand to thair narrest and lawfull airis and assignais quhatsumever, all and hail the landis underwrittin, thatt is to say, twa penne land in Over Quholme, ane penne land in Bowbrek, Kingis land; with ane half penne land in Garsand; all liand within the toun of Quholme, parochin of Stromnes, schirefdome and maneland of Orknay; quhilk halfpenne land of Garsand fell under confiscatioun and become in our handis and at our dispositioun be vertew of escheitt for certane criminall causes committit and done be unquhill Oliver Sinclair, lawfull air to Alexander Sinclair his brother, last possessour of the samin. The saidis landis with thair pertenenentis to be haldin and hed be the said Mr. Hierome, Alesoun Lindsay his spous, and the langest levand off thame twa, thair airis and assignais foirsaidis, of ws and our airis in few-ferme heretable for ever, be all richt merchis auld and devisit, as the samyn lysis in lenth and breid, fra the hiest of the hill to the lawest of the eb, with housses and biggingis, and in speciall the houss callit the Hall of Quholme, quhilk is biggit upoun the Kingis baik<sup>1</sup> outwith the auld bow<sup>2</sup> and now laid and plankit to the same; with towmelis, toftis, croftis, mossis, moris, boundis, feildis, pastouris, lesouris, medowis, fewell, girse, and wair; with all the outbrekis within Quholme and Bowbrek brokkin fourth alsueill be the udall men as be the Kingis tennentis; and in speciall the outbrekis that Nicoll Broun and Johne Fidler hes brokkin fourth within the boundis of Quholme and Bowbrek.

[The yearly payments to be made by the said Mr. Hierome Tulloch and Alesoun Lindsay are specified in detail. They are to be paid either in kind or money at the grantees' pleasure; the

<sup>1</sup> Same as balk. See footnote to No. LXIII.

<sup>2</sup> Bu or head house.

equivalent values being: 13/4d. per meal of cost, 6/8d. per meal of flesh, and £1 per lispound of ulie.<sup>1</sup> In all they amount to £12, 18/6d., including 3/4d. in augmentation of the rental; together with 'services wsit and wont.' Precept of sasine is directed to ALEXANDER KINCAID and Mr. JOHNE DISCHINGTOUN. The granter signs 'ORKNAV' and appends his seal at Kirkwall, January 19th, 1584. Witnesses: Mr. JOHNE DISCHINGTOUN, ROBERT STRANG, ALEXANDER BROG, and WILLIAM FERMOUR, N.P., with others divers. All sign.]

[*On the back:*] Sasine given on 18 Feb. 1584 by Alexander Kincaid, as baillie, to Mr. Hierome Tulloch and his spouse of the foresaid subjects. Done upon the ground of the lands about 10 A.M.; witnesses, John Brown *alias* Joynking, Thomas Broun remanand in Lie, Simon Broun in Newhous, Robert Home, Alexander Broun in Garth, and others. William Fermour, notary, appends his docquet.

## CLXXXIX

DISPOSITION, ROBERT SINCLAIR OF NESS TO ROBERT SINCLAIR his second son, of 15 merklands in Campston in St. Andrews.

Original in Gen. Reg. House.

January 25th, 1586-8.

Kirkwall.

*Abstract*

Robert Synclar of Nes dispones to Robert Synclar, his second lawful son, his heirs male and assigns whatsoever, whom failing, his nearest heirs whatsoever, 15 merks of land in Chamstaine in St. Andrews parish, with all rycht and rothe and pertinents, for payment of sundry and certain sums of money. They are to be held for the payment of 1d. in blench farm yearly. The granter includes with these lands 'my undouttit rycht tittill clame of rycht quhilk I have or may have to the kirkland of the samin.' Precept of sasine directed to Magnus Selatter. At Kirk-

<sup>1</sup> oil.

wall, January 25th, 1586. Witnesses: William Urwyn, burgess of Kirkwall, Hendre Sinklar of Vessettar, David Philip, N.P., with others divers. Signatures:—Robert Sinclair, Johne Elphinstoun, wites; Wylzcame Iryne of Sabay as wittnes.

## CXC

DISPOSITION, AGNES SINCLAIR, daughter of the deceased William Sinclair of Warsetter, and Henry Sinclair, her spouse, to Malcolm Groat of Tankerness, of lands in Graemsay and St. Ola.

Original in possession of Colonel W. E. L. Balfour of Balfour and Trenaby.

*February 6th, 1586-7.*

*Kirkwall.*

*Abstract*

Agnes Sinclair, lawful daughter and eldest heir of the deceased William Sinclair of Worsetter, with consent of Henry Sinclair her spouse, sells to her loving good friend and kinsman Malcolme Grot of Tankernes, William Grot, his son, and their heirs male; whom failing to the said Malcolm's heirs whatsoever, all title she has or may claim to 3d. land uthale in the Isle of Grymsay 'forgane Hoy,' and 3d. land uthale in Wester Weidfuird in Sanct Olawis parish, 'with all rycht roith reversioun, propertie, possession, uthale, and samyng' which she may claim to the said lands. In exchange, Malcolme Grot transfers to her his tacks of the lands of Waldibrek, Garth, and Lambnes in Cross parish in Sanday, which he obtained from Robert Earl of Orkney at the cost of 'greit sowmeis of money,' and of which there are twenty three years to run; together with 'the hail steill bow guidis<sup>1</sup> and corneis presentlie upoun the fornammitt landis.' Precept of sasine directed to Magnus Paplay. Having no proper seal of her own, the seal of an honourable man David Scollow, provost of Kirkwall, is appended at Kirkwall, February 6th, 1586. Witnesses: Hew Sinclair of Brught, William

<sup>1</sup> Goods on a farm which are the property of the landlord.

Halero of Aikeris, Mr. Johne Dischingtoun, commissar of Orkney, and Magnus Paplay. The first three sign. Agnes Sinclair signs with her hand led, and Henry Sinclair, her husband, with his own hand.

[Seal.]

In another hand is added 'Quhilk lands wes excambied for Linxnes.'

### CXCI

CHARTER OF FEUFARM, EARL ROBERT TO MAGNUS CURSETTER of that Ilk, of the lands, partly odal and partly King's lands, held by Magnus and his predecessors.

Original in possession of Mr. J. W. Cursiter.

Printed: *O. L. Records*, No. 75.

May 30th, 1587.

Kirkwall.

#### *Abstract*

Robert, Earle of Orknay, lord of Yetland, 'for polisching and decoratioun of the contrie . . . and for profeit to us and our airis,' and for certain sums of money paid him by Magnus Cursetter in that Ilk in name of feu gersum, and in respect that Magnus and his predecessors have been in peaceable possession of the lands underwritten past memory of man, grants in perpetual feu and heritage to the said Magnus Cursetter and Agnes Stewart his spouse, and after their decease to James Cursetter in Wasdeall, son and heir of the deceased Androw Cursetter there, brother germane to the said Magnus, the following lands: 4 merk lands udall, being 1d. land, called Wasdeall; 4 merk lands udall, being 1d. land, called Setter; 3 merkland udall in Bingascart; and 3d. land of King's land called Cursetter, extending altogether to 5 penny and 3 merk lands; together with the meadows of Rosmyre, and the teind and teind sheaves thereof included with the stock; all lying in the parish of Firth, mainland of Orkney. The granter reserves, 'furth out of this present chartour,' to Thomas Cursetter and Jennet Stewart his spouse, the just and equal half of the 3 penny king's land of Cursetter

for the remaining years of a 19 years' tack of the said land, given by him to the said Magnus and Thomas Cursetter and their spouses at Kirkwall, August 13th, 1579. The duties to be paid by the grantee are detailed. He is 'to give seit [suit] and presentis at our head courtis with dew service, as use is.' Precept of sasine is directed to John Miller in Firth. At Kirkwall, May 30th, 1587. Witnesses: James Stewart of Gramsay, John Cawertoun of Shapensha, Alexander Kinked, Thomas Achenleck, N.P., Thomas Murray, baillie of Kirkwall, Jeorm Challmer, burgess there.

NOTE.—This is a somewhat curious charter: the lands included are partly the Kingsland of Cursetter, of which the Cursetters had been tacksmen 'past memory of man' (long enough to have taken their name from it), and partly of their old odal property. The former was held jointly on tack by Magnus and Thomas Cursetter, and the latter was also owned by other members of the family. Apart from James mentioned here, on October 10th, 1639, David Cursetter, as only son and heir of the deceased Thomas and oy and heir of the deceased David Cursetter, sold one merk in Binscarth and a half merk in Wasdale. Yet Magnus Cursetter is given a feu charter of the whole of these lands. That it was *ultra vires* and not subsequently treated very seriously seems clear from the piecemeal dispersal of the property and various other indications.

## CXCII

EXCAMBION, EARL ROBERT AND MALCOLM Groat OF  
TANKERNESS, of various lands.

Original in possession of Colonel W. E. L. Balfour of  
Balfour and Trenaby.

June 28th, 1587.

Kirkwall.

*Abstract*

At Kirkwall, June 28th, 1587, Robert, Earl of Orkney, and Malcum Grote of Tankernes, make a contract of excambion as follows:—Earl Robert excambis the lands of Linxnes in St. Andrews parish, which he conquest from Mistress Margreit Sinclair, for Malcum Grote's 3d. land called Quoyis in Grimsay within the parish of Hoy, 3d. land in Wester Weidfuird in the parish of Sanct Ollaw, and 1d. land in Hennisbuster in the parish of Holme; together with his claim to the sum of 300 merks Scots which the said Malcum has lying on wadset upon the lands of Northbruche

in Westray pertaining to Olifer Sinclair of Ropnes, and the yearly profits of these wadset lands. If these present deeds of excambion be not sufficient security, the two parties agree to reform and renew them 'be the sicht of men of law als oft as neid beis.' Both parties sign the charter. Witnesses: William Gordoun, Walter Bruce, and Thomas Auchinlek, N.P. At the end is a clause by which the parties agree that the 'nobill lord' is to take sasine upon the lands of Voster Veitfurd for the rest of the lands excambed to him, and Malcum Grot upon the lands of Linxnes.

## CXCIH

GRANT BY EARL ROBERT to the 'Gentlemen Uthellers,'<sup>1</sup> of their odal lands previously escheated by his Courts of Perambulation: in this case to James and John Germiston of their lands in Germiston, Stenness.

Original in Gen. Reg. House. An identical grant of the same date to James Corrigall, elder, and James Corrigall, younger, of their lands in Corston, Harray, is in possession of Mr. J. A. S. Brown, and many more must at one time have existed.

*September 4th, 1587.*

*Kirkwall.*

At Kirkwall in Orknay the ferd day of September the yeir of God j<sup>m</sup> v<sup>c</sup> and four scoir seven yeiris.

The quhilk day ane noble and mychtie lord, Lord Robert Stewart, Erle of Orknay, Lord Zetland, and Justice General of the samin, eftir consultatioun tane with his Lordships frendis and weilwillaris, mature and ripe deliberatioun had theranent, havand likuayis foirseine the great weill and comoditie that heireftir may insew to his Lordship and posteritie be the disposing, renunceing, and overgiving againe to the gentlemen uthallis<sup>2</sup> and inhabitantis of the countrie of Orkney, als weill Mainland as Iles, off all his uthall landis, quoylandis, and utheris heritages

<sup>1</sup> Odallers.

<sup>2</sup> Uthellers. The sense of this passage is: gentlemen uthellers inhabiting etc. See later in this same deed.

as wes evictit fra thame be his Lordships courtis of perambulationis and ogangis haldin therupoun, and dyveris places therof mentionat maist specialie in his Lordships court bukis, and likuayis for trew, thankfull, and auefeld<sup>1</sup> service to be done be thame and ilk anc of thame, thair kyne, freindis, and allya, in tym to cum, to his Lordship, his airis, and successoris; to haue gevin, grantit, and frilie disponit, lik as be the tenor heirof gevis, grantis, and feilie disponis to thame and ilk anc of thame respective, in generall and be their names in speciall as thai ar mentionat in the saidis bukis of perambulations, sic as to James and Johne Garmistonis, (and) thair airis, all and haill thair uthall lands, quoylandis, and utheris heritages liand in the toun of Garmistoun and Mainland of Orknay, evictit and becumin in his Lordships handis be way and maner of perambulationis and ogangis haldin therupoun in maner abone-rehersit, except all sic landis as ar coffit, eschangit, sould, or resignit to his Lordship be titillis and evidentis patentis; renunceand and overgevand fra his Lordship and all his airis to the saidis uthallis and ther airis quhatsumevir all rycht and titill of rycht quhilkis he or thai may haue thairuntill ony way heireftir, be wertew of ony dome or decreit past theranent befor the day and dait heirof; to be peaceable brukit, josit, occupiit, usit, and disponit be thame and their airis, in and be all thingis als frilie as thai did befor the geving and pronouncing of the samin domes, for evir; decernand the samin and haill proces led and deducit thairanent null and of nane effect in al tym cummyng, and the samin to be deletit and rasit furth of his Lordships bukis: Providand alwayis that be the sycht of the honest men underwreattin, thai ar to say, Malcolme Grot of Tankernes, William Halero of Acarris, Mr. Johne Dischingtoun, and Walter Bruce, commissionaris deput be his Lordship, quhilkis sall pas throughout the haill land of Orknay of new agane, and thair veseit, tak trew tryall and cognitioun quhair the King or Bischopis landis ar ony way hurt be the uthall men thair besyde; and, as

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<sup>1</sup> honest.

beis fundin be thame, the King and Bischope beand maid als guid of ilk penny land in yeirlic rent and others commoditeis as the uthall landis in all places, thay to set down marche stanis thaireftir to stand for evir; and siclik that be the sycht of the foirsaidis four men with utheris tua to be nominat for assisting and concurring with thame in the actioun following, his Lordship to be satisfcit and recom-pensit for all sic wrangis as the saidis uthallis or ony ane of thame hes done to his Lordships landis in gripping and withholding the samin wranguslie sene the edictis and pro-clamationis maid thairanent, togidder with the yeirlic rent thairof, to be modefeit be the saidis juges at thair discretioun. And gif in caice the gentilmen of the countrie, uthallis and indwellaris tharintill,<sup>1</sup> beis fundin in tym cuming nocht to do thair deuetefull and trew service to his Lordship auefeldlie, as becummit trew servandis and was-sallis as is abone expremit, and thai or ony ane of thame tryit and found culpable thairof, in that caice this his Lordships gift maid to thame or ony ane of thame quhat-sumevir to be null and of nane availl, efficacie, nor strentht, and his Lordship reponit in his awin place agane as con-cerning thir pairtis to be convict in particular, and na utherways. And for the mair warificatioun and attes-tatioun of the premissis, gift, and renunciatioun abone-wreattin, the said noble Lord hes subseryvit the samin and ordenis it to be interit and registrat in his schireffis bukis and bukis of regalitie of Orknay, and the commonis desyrarris and requirarris at his clerkis handis to have the auctentik transumpt of the samin *ad perpetuam rei me-moriam*. Extractit furth of the register be me Walter Bruce, clerk of the samin and subseryvit as eftir followis.

(Signed) W. BRUCE, *manu mea*.

NOTE.—This deed illustrates very clearly Robert Stewart's policy of convert-ing the free and independent odallers into vassals holding their land in return for 'dutiful and true service.' The fact of their holding the king's lands and bishop's lands mentioned in this deed as lying among the odal lands, was prob-ably the chief reason for an odal family appearing on his suit-rolls; but here we have an attempt to place their odal estates on the same footing.

<sup>1</sup> See footnote 2, p. 311.

## CXCIV

CHARTER OF FEUFARM, EARL ROBERT TO MR. JEROME TULLOCH, of lands in Stromness, which had been escheated from their odal owners.

Original in possession of Mrs. Watt of Breckness.

August 29th, 1588.

Quholm (Stromness).

*Abstract*

Robert, Erle of Orknay, Lord of Zeitland, grants to Mr. Hierome Tulloche, subehantour of Orknay, and Alisoun Lindsay his spouse, the longest liver of them, and their heirs and assigns, 1 merk land in Daile in the Uter toun of Stromnes 'quhilk wes evietit fra Androw Rodland <sup>1</sup> [*sic*] and Mareoun Sinclair his spous for thift,' and the house with the barn and corn yard thereof called Done, with 5 shillings worth of land belonging thereto, also in the Utertoun of Stromnes 'lykwayis evieted for thift fra Alexander Sinclair, sone and air to umquhill James Sinclair in Done.' These lands to be held in perpetual feu and heritage, paying for the merk land the seat conform to the rental, and for the house of Done and 5 shilling land <sup>2</sup> 'ane blak cok and ane blak hen yeirlie gif it beis requirit,' with due service as use is. Subscribed 'Orknay,' at Quhome, August 29, 1588. Witnesses: Jhone M<sup>c</sup>Cainzie, William Twait, and James Auchinlek, N.P.

[*On the back:*] 'Chartor Herome Tulloch upone [*sic*] be Alexander Browne in Breknes.'

## CXCv

DISPOSITION, EARL ROBERT TO MAGNUS LOUTTIT OF LYKING, of a  $\frac{1}{2}$ d. land in Sandwick, in exchange for  $\frac{1}{2}$ d. in Brough in Rowsay.

Original in possession of Mrs. Wilson, Stromness.

September 24th, 1588.

Kirkwall.

Be it kend till all men be thir presentis, ws Robertt Erle of Orknay, Lord of Zetland, and Justice generall of the

<sup>1</sup> Redland.

<sup>2</sup>  $\frac{3}{4}$  merkland.

samin, forsameikill as we have gottin be way of excambion fra Magnus Louttit in Lyiking ane half penne land lyand in Broch in Rowsay, of the quhilk we have possessioun and hes intromettit with peciablle with the land malis and yeirle dewties thairoff thir thre yeiris bigane, for the quhilk half penne land we be thir presentis, giffis, grantis, and disponis to the said Magnus Louttit, his airis and assignais quhatsumever, all and haill our uther half penne land lyand in the parochin of Sanduik, that is to say ane farding land in the toun of Wesbester and ane uther farding land in the toun of Hestuell in the said parochin, Maneland and schirefdome of Orknay, extending yeirle to aucht settingis victuall and twa settingis flesh, with all partis and pertenenis thairof, to be haldin of ws and our airis heretablle for ever for yeirle pament of scatt and wther dewties conforme to wse and wont allenerle, quhilk land wes confiscatt and escheitt to ws for certane criminall caussis committit and done be the possessouris thairof, as the domis past theranent beris.

[Pertinents, etc., in usual terms. Warrantice given on both sides. Precept of sasine directed to MAGNUS BAKHOW and MAGNUS SUTHERLAND. Subscribed and signet affixed at Kirkwall, September 24th, 1588. Witnesses: WILLIAM GORDOUN, ALEXANDER KINCAID, JESPART SMYTH, and THOMAS AUCHINLEK, N.P. Signed 'ORKNEY.' MAGNUS LOUTTIT also signs with hand led. Written by THOMAS AUCHINLEK.]

## CXCVI

CHARTER, JAMES IRVING TO HIS KINSMAN WILLIAM IRVING OF SABAY, selling 5 merklands and leasing 4 merklands, all in Yesnabie in Sandwick parish.

Original in possession of Mrs. Watt of Breckness.

*April 7th, 1589.*

*Kirkwall.*

*Abstract*

Charter by James Irrewing in . . . to his good friend and kinsman William Irrewing of Sabay and his heirs and assignees, of his five merk of land lying in Zeskynebea in Sandwick parish, with pertinents, 'that is to say twa merk theroff for my sister part of land in

Norroway<sup>1</sup> to the quhilk the said William wes maid assignay,<sup>2</sup> and the uther thre merk for the byrun maillis and dewties of the said land be the space of . . . yeiris ellis liquidat and modefeit'; to be held 'with richt, roth, udall, and sameyn and all pertenenis' of the granter and his heirs 'heretable and out of the ground for ever,' for yearly payment to King and Kirk as effeirs. Also he sets in tack to the said William Irving and his foresaids his four merk of land with pertinents lying in the said town of Zeskynnebea, over and above the said five merk land, for nine years after Whitsunday 1589, for yearly payment of two meils victuall and two meils flesh. He warrants the same, provided the said William 'stand my guid freind in my honest and lawfull adois and be proeutor for me in my honest actionis and causes, I usand his counsall in the mene tym.' Dated at Kirkwall, April 7th, 1589. Witnesses, William Mairtene, Angus Neilsoun, Thomas Kirknes, and John Chrystie.

James Irrewing with my hand at the pen, etc.

Ita est Willelmus Fermoir, notarius, etc.

### CXCVII

WADSET, WILLIAM IRVING OF SABAY TO JOHN SINCLAIR,  
of land in Tollop, St. Andrews.

Original in Gen. Reg. House.

March 13th, 1589-90.

Kirkwall.

#### *Abstract*

William Irving of Sabay wadsets to his good friend Johne Sinclair, spouse to Mare Stewart, 1d. land 'quhilk I had of Walter Firsellis airis,' in Swaltabrek (Swartabrek) abone the yaird in Tollop, for £30. At Kirkwall, March 13th, 1589. Witnesses: Mr. William Peirsoun, minister at Dernes, Nichol Tullocht, and Edwart Inksetter. The granter and all the witnesses sign.

<sup>1</sup> 'sister part'; therefore in right of his mother who must have inherited land in Norway.

<sup>2</sup> *i.e.*, whoever was next in succession to this sister part had assigned his redemption rights to William, who now acquires the land itself by excambion.

## CXCVIII

WADSET, MR. WILLIAM MUDY OF BRECKNESS TO MAGNUS  
LOUTTIT OF LYKING, of 3 half penny land in Lyking.

Original in possession of Mrs. Wilson, Stromness.

June 29th, 1590.

Hammager (Stromness).

Be it kend till all men be this present chartour, me Maister William Mudy off Brecknes to have analiet, wadset, and in pand layit, and be the tenour heirof analysis, wedsettis, and in pand layis, to my weilbelovit freind Magnus Lowtit of Lykyne, sone to James Lowtit off the samen, all and haill my thrie half pennie land lyand in the tounce off Lyking, in the parochin off Southsandwik, fallin to me in skatfaa for none payment off the skait thairoff and for none payment off the malis off thre half penne land off the Kyngis grace occupeyit be umquhill Jhone Loutit tennant thairof be the space of ten yeris contynallie rining togither, and for certane sowmes of money gevin be me to the said Jhone for guid conscience saik [in his gr]et and urgent [necessite . . .].

[Pertinents enumerated and warrandice given. Price £60 Scots. Redemption provided for at the Hall of Breckness or . . . [*name illegible*]. At the House of Hemmager in the parish of Stromness, June 29th, 1590. Witnesses: Master JEROME TULLOCH, subchantor of Orkney, THOMAS MUDY, and ALEXANDER BROUNE, with others divers. The granter affixes his seal and subscription manual. Also signed by ADAME MUDY and Mr. HIEROM TULLOCH, witness. Seal gone.]

## CXCIX

CHARTER OF FEUFARM, ROBERT, EARL OF ORKNEY, TO  
ALEXANDER KINCAID and his wife, of 6d. King's  
land in Yenstay (with sasine).

Original in possession of Mr. A. Baikie of Tankerness.

August 3rd, 1591.

Kirkwall.

*Abstract*

Charter by Robert, Earl of Orkney, to his servitor Alexander Kincaid, and Christian Bryssoun his spouse, and

their heirs male between them procreated, whom failing the heirs male of the said Alexander, without division, of 6d. King's land in the town of Yinsta in St. Andrews parish, to be held in feu of the granter, with houses, towmells, etc., etc., paying yearly 24 meils malt and 4 meils seat malt, 24 meils flesh, 6s. 6d. scat silver, two leispund butter, and 12 poultry, conform to the rental, with 6s. 8d. of augmentation payable at Whitsunday yearly, and to give suit at head courts conform to usage. With clause of warrandice, and precept to Thomas Smyth to give sasine. Dated at Kirkwall, 3d. August 1591. Witnesses: Jasper Smyth, William Tuait, and Thomas Auchinlek, notary public. 'Attour the said Alexander and his foirsaidis sall pay yeirlie to us and our airis the tyme of [L]enteroun four casseis<sup>1</sup> of coklis witht tua hundretht pintill fiches<sup>2</sup> callit spowtis, in augmentation of the rental.' (Signed) ORKNAY; Jaspert Smyth, witnes; William Tuat, wittnes.'

Sasine on above given August 7th, 1592, by Thomas Smyth. Witnesses: David Houstoun, burgess in Kirkwall, Olaw Yinstall (Yinsta), Ninian Smyth, and John Langskaill, younger. David Arthour acts as notary.

## CC

DISPOSITION, MARGARET CRAGY OF CLUMLIE TO MAGNUS LOUITT OF LYKING, of 1½d. land in Lyking in Sandwick.

Original in possession of Mrs. Wilson, Stromness.

November 24th, 1592.

*Lyking.*

*Abstract*

Margaret Cragie of Clumly, for certain sums of money paid her by her good friend Magnus Loutfutt of Lyking, 'as narrest and rychteous rothisman of the landis underwritin,' discharges him of this money and ordains him and his spouse Maribell Spens, their heirs, etc., her lawful

<sup>1</sup> straw baskets.

<sup>2</sup> The pipe-fish or launce.

and undoubted 'cessioneris, donatouris, and assignayis *veluti in rem suam*' in and to her penny land and half penny land in Lyking in Sandwick, with pertinents. These lands were evicted and came into the hands of Earl Robert for theft, and were disposed by him to the granter. She gives Magnus Loutfutt the charter and sasine on parchment given her by the Earl, and all other writs and securities. Her signet is affixed and she signs with her hand led, at Lyking, November 24th, 1592. Witnesses: Hew Spens, Magnus Bakhow, Jhone Donaldsone, Thomas Louttit, all indwellers in Sandwick, and David Arthour, N.P. David Arthour acts as notary.

## CCI

DISPOSITION, NEILL AND ALEXANDER GARAY TO THOMAS GARAY<sup>1</sup> of lands in Garay and Lythis.

Original in possession of the Marquis of Zetland.

July 16, 1594.

*Flekawo, Norway.*

*Abstract*

Charter by Neill and Alexander Garayis, sons and heirs of the deceased Fergus Garay, to their well-beloved friend and kinsman Thomas Garay, and his heirs and assignees whomsoever, irredeemably, of their 'brether' part of land called Garay, with a 'meills maling' lying in Lythis, with the parts, pendicles, and pertinents thereof, in the Island of South Ronaldsay; and that for the sum of ten 'auld dollaris,' two barrels of meal, and two barrels of malt, paid and delivered to them in their necessity by Magnus Murray, burgess of Kirkwall, in name of the said Thomas; to be held of the granters with the usual privileges and pertinents, for payment yearly of a penny Scots of blench farm at Whitsunday to the granters if asked, and the seat and teind due to King and Kirk. And because these lands of Garay were wadset by their said father to the deceased Hew Halcro of that Ilk and Edward Johnes-

<sup>1</sup> *Alias* Halcro.

toun, under reversion, for 18l. Scots, and the said meils maling in Lytheis was wadset to the deceased William Garcoche for 3l., therefore they assign the rights of reversion to the said Thomas, and the money is to be paid to Magnus, James, and Thomas Garcoch, heirs of the said deceased William, for redemption of the said meils maling. There is a clause of warrandice, and a blank precept for infeftment. Sealed with the granters' seals and dated at Flekawo in Norway, July 16th, 1594. Witnesses: Angus Neilson, Magnus Murray, Magnus Cambie, Edward Scottie, and William Gud, youngest, indwellers in Kirkwall. William Gud, youngest, cooper in Kirkwall, signs for the granters, who cannot write. David Arthour, notary public, signs for the other witnesses.

[One seal quite defaced.]

## CCII

TACK, CUTHBERT HENDERSON TO MR. ROBERT HENDERSON,  
of the vicarage of North Ronaldsay.

Original in Gen. Reg. House.

*August 1st, 1595.*

*Kirkwall.*

*Abstract*

Tack by Cuthbert Hendersoun, Treasurer of Orkney and vicar of Northrounoldsay, with consent of Patrick, Earl of Orkney, and the canons and chapter of the cathedral kirk of Orkney, to Mr. Robert Hendersoun, eldest son and heir of the deceased William Hendersoun, Treasurer of Orkney, of the vicarage of Northrounoldsay, with the rents, teinds, and profits thereof, during his lifetime and the lifetime of his heir or heirs succeeding, and for nineteen years thereafter, for the yearly payment of 20 merks. Dated at Kirkwall, August 1st, 1595. Witnesses, Harry Colvill, parson of Orpher, Walter Ballingall, burgess of Craill, William Fermour, notary public, and Andrew Crawford.

## CCIII

GIFT, MARION HALCRO TO HER SON ADAM SMYTH, of a brother part of land under the House of Halcro, and the lands of Stove in Stromness.

Original in possession of Mrs. Watt of Breckness.

August 5th, 1597.

Kirkwall.

*Abstract*

Marioun Halcro, widow of the late William Smyth, reader at Stromness, 'undouttit heretrice of the landis underwrittin,' gives to her son Adame Smyth ('for the special lufe, hartlie favour, and affectioun' which she has for him, and that he 'may have entres and consequentlie be sure in possessioun' of the said lands,) 'the heretabill rycht titill and propertie of that brother part and portioun of wthall land with the housses and pertinentis thairoff lyand wnder the heid bull and house of Halcro in the yle of Sowth Rannoldsay,' which she has heired or in any manner of way may heir after the decease of the late Androw Halcro her father, or after Edward and Magnus Halcrois her brothers [presumably deceased also, but not stated], 'be arffe, schound,<sup>1</sup> or devisioun, conforme to the lawis and practique of the cuntreyth of Orknay.' She also gives him her proper 3d. land and  $\frac{1}{2}$  merk land called Stoiffe in Stromness, with the 'rycht of rothe reversioun, uthall, aynig, and samming' in all the above lands. Kirkwall, August 5th, 1597. Witnesses: William Elschinder, burgess of Kirkwall, Jhone Maynie, David Keldell there, Robert Mouss, servitor to my lord Erle of Orknay, and David Arthour, N.P. The granter signs with her hand led by David Arthour, who appends his seal.

[Seal gone.]

<sup>1</sup> The division within the seventh day after death.

## CCIV

WADSET, GILBERT RICHANE, portioner of Hobbister, to William Martin, of 4 merk lands in Hobbister in Orphir.

Original in possession of Mr. W. D. Firth, Stromness.

August 19th, 1597.

Kirkwall.

*Abstract*

Gilbert Richane, portioner of Hobuster, wadsets to his loving friend Williame Mairteine, baillie in Kirkwall, 4 merks uthall land, extending in yearly rent to  $\frac{1}{2}$  barrel butter, lying in Hobuster, in the parish of Orphar, for £88 Scots. The pertinents include 'power to mak outbrekis, to ryve out corne land and girse, and to alter, flit, and remufe dyikis, quoyis, and fauldis from ane part to ane wther within the propper boundis of the saidis landis'; also with power 'to set and raise the saidis landis, input and output tennentis thairintill als oft as neid beis.' Redemption is provided for 'uppoun ane day betuix the sone ryissing and doun passing of that ilk, within the cathedrall kirk of Kirkwall uppoun ony patent place within the samin, meit for numbering of money.' Also provision is made in case 'ony wtheris my assignayis or narrest rothismen of the saidis landis be the law fund haveand rycht thairto' shall redeem the lands. Precept of sasine is directed to Duncane Isoun. Having no seal of his own, the granter procures the seal of William Irwing of Sabay. At Kirkwall, August 19th, 1597. Witnesses: Thomas Murray, burges of Kirkwall; Patrick Rattray, burges of Elgin; William Cullane in Papdail; Allester Bankis [cordiner?]; and David Arthour, N.P. All sign. The granter signs with his hand led.

[Seal gone.]

[*On the back:*] Instrument of sasine, at Hobbuster, mid-day January 11th, 1598. Given by Duncan Isoun to William Martin personally. Witnesses: Henric Richane in

Hobuster, Patrik Gardner, Robert Richane<sup>1</sup> son of the said Gilbert, 'and the said Gilberttis selffe willinglie consentting heirto becaus of the grit ewill will that his freindis bure towartis him quhilk he remittit to God to requyt.' David Arthour, N.P. appends his docquet.

## CCV

DISPOSITION, JANET PETERSON TO MALCOLM GROAT OF TANKERNESS, of her sister part of lands in Skea and Tankerness.

Original in possession of Colonel W. E. L. Balfour of Balfour and Trenaby.

*November 9th, 1597.*

*Kirkwall.*

*Abstract*

Jonet Petersone, lawful daughter and one of the heirs of the deceased Madie Skae, with consent of William Spens her spouse, sells to an honourable man Malcolme Grott of Tankerness, 'the heretable rycht and titill of ane sister part of land of the tua markis land with the pertinentis, lyand in the toune of Skae in Deirness, and of thre markis land in the toune of Tankerness,' in the parishes of Deirness and Sanetandros respectively, heired by the said Janet from her said mother Madie Skae. The price is 'certane sowmes of money and wther gratitudis and gud deidis payit and to be payit and bestowixt upoun us be the said Malcolme as he sall happin to recover and obteine the samin fra the violent possessouris thairof.' The granter also dispones and transfers to the grantee 'the hail byrun maillis, girsumis, and utheris dewties of the saidis landis . . . lyikwyse wrangouslie detenit and withhaldin fra us be the violent possessouris foirsaidis.' At Kirkwall, November 9th, 1597. Witnesses: Henric Sinclair of Tow-

<sup>1</sup> This deed was found among the Richan of Linklater papers, and there can be little doubt this Robert is identical with Robert, father of Robert Richan, first of Linklater. There was a contemporary Robert, son of Alexander, who was certainly not ancestor of the Richans of Linklater; and there is no evidence of there being three Roberts.

quoy, William Linklitter in the Yle of Sanday, James Feaw, younger, and Mathew Baxter, servitouris to the said Malcolme. Jonet Petersone and William Spens sign with their hands led by the notary David Arthour.

NOTE.—This is one of the extremely rare instances of the term ‘sister part’ or ‘brother part’ being used of lands sold to other than near relatives. In these exceptional cases the extent of land is undefined, and the term is evidently used because of some doubt as to this extent. The significance of the phrase (in its ordinary use) lies in the fact that there was no difficulty, under odal law, in the way of sales to members of the family, but a great deal in the way of sales to those not of the kindred.

## CCVI

DISPOSITION, MR. JOHN DISCHINGTON, acting for Earl Patrick, to Margaret Cragy of Clumlie, of a merk land in Easter Voy in Sandwick, escheated from its former owner.

Original in possession of Mrs. Watt of Breckness.

January 30th, 1600-1.

Saviskaill, Rowsay.

*Abstract*

Maister Johne Dischingtoun, sheriff and Justice Depute of Orkney, taking the burden for a noble and potent lord, Patrik Erle of Orknay, Lord of Zeitland, sells to Margrete Cragie of Clumblie, 1 merk land in Eister Woy, in the parish of Sandwick, ‘quhilk pertentit to William Grind in Eister Woy and now pertening to the said nobill lord as escheitt for thift,’ for £40 Scots. The land is to be held in free blench farm for payment of 1d. yearly, with the seat, service, and teind paid by the said William Grind before. Precept of sasine directed to Robert Selaitter, baillie of Birsay. The granter’s seal is appended at Savaskaill in Rowsay, January 30th, 1600. Witnesses: Mr. James Tullocht of Rothisholm, Thomas Alexander in Savaskeill, Adam and Hew Selatter in Burness, Thomas Auchinlek, N.P., and Robert Scollay, writer of the deed. Signed by Mr. John Dischington and all the witnesses, except Thomas Alexander.

[Seal appended.]

[*On the back:*] Sasine given on ground of said land, February 29th, 1600, by Robert Scلائter to Margaret Cragie, 'guidwyfe' of Clumblic personally. Witnesses: Walter Sinclair, son of the said Margaret, Stevin Norne<sup>1</sup> in Woy, Thomas Harpar, servitor to Mr. John Dischingtoun, Thomas Auchinlek, N.P., and Robert Scollay, writer thereof.

## CCVII

DISPOSITION, ADAM GARRIOCH TO HIS NEPHEWS HENRY AND MAGNUS GARRIOCH, of his 'arffe part' of lands in Gravis in Holm.

Original in possession of Mr. P. N. Sutherland-Græme of Græmeshall.

*February 25th, 1603-4.*

*Kirkwall.*

*Abstract*

Adame Gareoche, one of the lawful sons and heirs of the deceased Thomas Gareoche, 'of the secund arffe,' heritable proprietor of the lands underwritten, for himself and taking the burden on him for his sister Jonet Gareoche, spouse to William Maill, 'of the samin arffe,' whose rights in the aforesaid lands, if she had any, had been conveyed to the said Adame, sells to his well-beloved brother sons 'of the first arffe,' Henrie Gareoche and Magnus Gareoche 'induellar' in the parish of Holm, 'as the narrest and rychtteous rothismen' of these lands, and to their heirs and assignees, by equal halves and portions, all and hail his 'proper arffe part' of the lands of Gravis in Holm which he heired after the decease of his father or obtained by the free disposition of his sister. The lands extend in yearly rent to 18 merks mailling ( $\frac{3}{4}$  of a setting), and the price is 7 merks money Scots, paid to the granter in his 'grit mister and urgent necessitie.' The charter then meanders on with the innumerable repetitions which by

<sup>1</sup> These Nornes in Woy are found as *alias* Woy (Sasine, February 13th, 1623), who were stiled 'of that Ilk.' They were also called Norie (Sasine, October 24th, 1662), and very probably represented the old roithman family of Nory.

this date had replaced the old simplicity of these odal charters. The grantees are described as brothers germane, and among the pertinents is mentioned 'all wther rycht titill of rycht of rothe reversioun.' Precept is directed to Troelius Gareoche to give sasine. Written by David Arthour, notary public in Kirkwall, and subscribed at Kirkwall, February 25, 1603. Witnesses: Helias Kneland, servitor to the Earl of Orkney, John Rynd, indweller in Kirkwall, David Kirkuod, tailor there, and David Arthour, notary. Kirkwood and Rhind sign; the granter signs touching the notary's pen.

NOTE.—The explanation of the first and second arffs would seem to be that there were two divisions or arffs of the inheritance of Thomas Garrioch (cf. No. LI.), and that the father of Henry and Magnus got his share apportioned to him at the first division, while Adam and his sister got their share at the second division.

DISPOSITIONS OF TENEMENTS  
IN KIRKWALL



DISPOSITIONS OF TENEMENTS  
IN KIRKWALL

CCVIII

GIFT BY DUNCAN OF LAW TO DONALD CLERK, of part of a  
tenement in the Burgh of Kirkwall.

Transcript in Gen. Reg. House, made from the original, communicated  
by Mr. S. A. Maconochie. Printed: Deeds relating to Orkney and  
Shetland, *O. L. Records*, No. 86.

*June 6th, 1433.*

*(Kirkwall.)*

*Abstract*

Duncan of Law, son of deceased Jon of Law, gives to Donalde Clerk 'in mariage as movable gude wyth Janet Law, my sister,' his part of the tenement which his father and mother owned, with the pertinents, in the borough and freedom of Kirkwaw, 'the quhilk lysis one the north halfe of Olaf's house.' To be held in fee and heritage for ever, 'with all rycht merkis and devisiss,' as it lies in length and breadth, with free issue and entry and all other freedoms, etc., under the earth and above, far and near, named and unnamed; giving to the said Donalde, his heirs and assigns, 'to the saide fredome off the fornemmit burght as uthir burgeses dois in yeris or cotidiane dais, but fraude or gile, efter the maner and the statut off the contre.' Clause of warrandice of the usual kind. Having no proper seal of his own, the granter procures the seals of 'twa worthi,' Robert of Bening, baillie of the borough of Kirkwaw, and Thom Maunsson. Witnesses: Jon Qwitine, burgess of Edynburght, Donalde Cristison, Thom Patonson, and Friskyn [*sic*], with sundry others. June 6th, 1433.

(No place mentioned, but no doubt executed at Kirkwall.)

## CCIX

DISPOSITION, ALEXANDER FLEGIAR TO DUNCAN OF FUTHAS  
of a tenement in Kirkwall.

Original, in Latin, at Wemyss Castle.

*Translation.*

*June 19th, 1435.*

*Kirkwall.*

To all who shall see or hear this Charter, Alexander Flegiar, greeting in the Lord everlasting. Know ye that I have sold and by title of sale with hand and handband finally alienated to a prudent man, Duncan of Futhas, my whole tenement lying within the town of Kirkwau, between the land of Walter, son of Andrew, on the south, and the land of John of Gallway on the north, for seven and a half merks usual money thankfully paid to me in penny and pennyworth, that is to say fully rendered and paid in oxen and cows and other goods, the first penny and the last and all between; To be had and held the foresaid tenement by the said Duncan and his heirs and assignees of me and my heirs and assignees in fee and heritage, freely, fully, quietly, well, and in peace, with all commodities, liberties, properties, and easements and their just pertinents whatsoever, by all their right meaths, ancient and divided, as they lie in length and breadth, both under the earth and above the earth, as well not named as named, with the sundry just pertinents belonging to the foresaid tenement or which by any manner of way may justly be held to belong thereto in time coming. And I, the said Alexander, and my heirs, shall warrant, acquit, and for ever defend the foresaid tenement to the foresaid Duncan and his heirs and assignees against all deadly. In witness whereof because I have at present no seal of my own I have procured with instance the seals of prudent men, Thomas of St. Clair, Warden of Orkney, Robert of Benyng, William of Erwyn, and Alexander of Wood, burgesses of Kirkwall, to be appended to these presents at the foresaid burgh the nineteenth day of this instant

month of June, in the year of our Lord one thousand four hundred and thirty-five, before these witnesses, Sir Andrew of Tulach, notary public, John of St. Clair, William Broun, Alexander Broun, John Tode, with many others called and required to the premises.

## CCX

DISPOSITION of a toft and the ground of a house in the Burgh of Kirkwall, James of Nisbet to John of Guthrie.

From a transcript in the Advocates' Library (34, 3, 25, p. 135).

[?] 20th, 1480.

(Kirkwall).

Carta venditionis tofti etc. Johanni de Guthre confecta ex autographo pergameno penes . . .

Be it made kend till all lele folk in Crist throw this present charter, me Jamys of Nisbat, son and her to Wat of Nesbat, till haff sauld and analyt, and be this present charter fully sellis and annalys, with hand and handband fra me and all myne ayrs to John of Guthre and his ayrs and assigneys, a toft and the grund of a hous stede quhilk suld pertene to me be ayrschip, lyand in the burght of Kyrkwaw next and abone the house of John of Guthreys on the south gavill; the quhilk toft and housted my fadir boucht fra Adame of Horve,<sup>1</sup> and the said hous stede and toft I haff frely sauld to the said John of Guthre for a mark of silver usuale pament of Scotland payd to me into my myster, the first penny the last and all thar betwex; of the some [*sic*] I hald me fully content and pait and quhitlamys the said John therof for evir, and giff it hapnis the said hous and toft to be recoveryt or won be law be ony man fra the said John of Guthre, I the said Jamys obliss me and myne ayrs to warrand the said toft stede and hous, or ellis to brouk and joys als mekill as it is of valow of the hous up in the toun at my moders dwelling maill [*sic*]: The forsaid toht [*sic*] stede and house to be haldyn and had to the said John

<sup>1</sup> Probably Horre, Adam of Horre, father of John Adamson of Horre (mentioned in several of these records), certainly lived at this time.

with all fredomis, profeits, and richtwiss pertinans, under erth and abov, as it lysis in lentht and brede, lik as sic other housis in the said burecht or auther to haff of law or of custom, fra me the Jamis [*sic*] and all myne ayrs for evir mar, boucht and sauld ; befor thir witness, David Sinclar, Thomas Bron, Magnus of Sea, and Andro Henryson, with divers atheris. This selling made with full conesnt of my moder Isobell Fresall. In witness of the quhilk I the said Jamys has purchast the sele of twa honorabill men, Henry Scherale of Balnacassy, Sir William Bron person of . . . befor thir witnessis, Sir . . . Murray, Sir Cristy Sinclare, David Sinclar, Donald Mason, et Schir Magnus Mason. Written the xx day of . . . m<sup>mo</sup> cccc<sup>o</sup> octogesimo.

CCXA<sup>1</sup>

DISPOSITION, KATHERINE LEASK TO DAVID SINCLAIR, FOUO OF SHETLAND, of a tenement and part of a tenement in the Burgh of Kirkwall.

Original at Wemyss Castle.

*April 16th, 1488.*

*Laxford (Shetland).*

Be it maide kend to all men be this present writ, me Katrine Lask, lauchfull dochter to Wilyam of Laske and Jonet Harraldsone, to haf sellit with hand and handband to ane worschippfull man and my dere and wele belovit maister, David Sinclare, fold of Zetland, a tenement liand in the burghe of Kirkwau within the erldome of Orknay, the quhilk tenement wes gevin to my fader and moder in to meriagis gude be my grantschir<sup>2</sup> Jhone Harraldsone, quhome God assolze, as thare is diverse and mony at has declarit and can declarit baith in Norway, Zetland, and Orknay, quhilkis war at my fader and my moderis bridale ; the sade tenement liand within the sade towne of Kirkwau betuix my sade grantschiris bygging on the northt syde, on the ta part, and a tenement of Jhone Olaffs sone on the southt syde, on the tother part, and alsua my part of the

<sup>1</sup> Discovered after going to press.

<sup>2</sup> Great-grandfather.

principale tenement of the Ayr,<sup>1</sup> the quhilkis I understand was bocht with my grandamys gudis, Effe Gariocht, quhill my grantschir was in the Est landis, as gude men and wemen can yet declar and pristis [*sic*] thareto ; the quhilkis tenement and house, baith my awne heritagis and my part of the principale house of the Ayr, I frely sellis, ourgyffis, and deliveris, with the malis bigane of xxxij yere and with all rychtwise pertinen that pertenis or may pertene of law, fra me, my ayris, executouris, or assignays, to my forsade maister, David Sinclare, his ayris, executouris, or assignays, now and for ever; and alsua I, the sade Katrine, freli sellis as forsade is, all my fader heritage batht movable and unmovable quhilkis was tane up be my fader fader James of Lask, with all profyttis thareof and rychtwise pertinen, ewin as sade is of before ; of the quhilkis I the saide Katrine Lask haldis me wele content and payt the first penny and the last and all thare betuix of all thir thingis forsade, and quitlamis him now and for evermare. In vitnes of the quhilk thing, because I the saide Katrine Laske had nor usis na sele propir of my awne, with instans I haf procurit the selis of twa worthy men, that ar to say Jhone Reyd, burgess of Birrown, and Wilyam of Wegisgarth, laurycht men, to be affixt to this present writ at Laxfurde in Zetland, the xvj day of Aprile the yere of God a thousand four hundretht aucti and aucht yeris, before thir witnes. . . . [*No names filled in.*]

[Two seals illegible.]

## CCXI

GIFT, DAVID SINCLAIR TO HIS WIFE SONNETA, of a tenement in the Burgh of Kirkwall.

Original in Latin in Sheriff Court House, Lerwick. Printed :  
*Antiquities of Shetland* (Goudie).

September 11th, 1491.

Kirkwall.

### *Abstract*

David Sinclair, a prudent and a discreet man, for the affection<sup>4</sup> he bears his wife Sonnetta, gives her, of free gift,

<sup>1</sup> See footnote, p. 278.

all and whole his tenement or land with its pertinents lying in the burgh of Kirkwall, in which the said David and his wife and family dwell on the day of the making of these presents. David Sinclair reserves his life interest; and after his and his wife's death the tenement goes to their nearest heirs. Hereupon at the request of Sonnetta, John Heroun, clerk of the diocese of St. Andrews, notary public by imperial and regal authority, made this instrument in the dwelling house of David and Sonnetta. Witnesses: Gavin Gray, Andrew Gray, and Alexander Lestir, with many others.

## CCXII

DISPOSITION, EFFIE IRELAND, widow of William of Heddle, and her sons, to William Flett (of Hobbister), of a tenement in the Burgh of Kirkwall.

Original in Gen. Reg. House. Printed: *O. L. Records*, No. 53.

May 10th, 1513.

Kirkwall.

*Abstract*

Sale by Effe Airlaunde, spouse of the deceased William of Heddell, daughter and a lawful heir to the deceased Gibboun of Airlaunde, 'quham God assoilze,' and her 'spousit sonnys,' Johne, William, and Gibboun Haddell, to an honourable man William Flett, burgess of Kirkwall, of a tenement lying in the burgh of Kirkwall. It has, on the east, the tenement and bigging now pertaining to the heirs of Gilbert Masoun; and on the west, the tenement and bigging now pertaining to the heirs of Johne Masoun. It is sold with all pertinents, as it lies in length and breadth 'streakand from the say on the north part till the farrest partis that pertenis to the said tenement and fredom on the south part,' for 10 merks Scots. There is no mention of 'rycht and roith,' or any of the distinctive features of land charters.<sup>1</sup> Warrantice as usual. Having no proper seals of their own, the granters procure the seals

<sup>1</sup> This applies to all the following charters (unless stated). Their pertinents are covered by the preceding charters.

of venerable and discreet men, Fredrik Newfar, notary public, and Gilbert Kenidy, burgesses of Kirkwall, and cause the said Fredrik to subscribe the deed. At Kirkwall, May 10th, 1513. Witnesses: Sir Umfrid Clerk, Archdean of Orkney, Sir David Lochmyll, parson of Strounsay and vicar of Ronnaldsay, Sir Johne Reid, vicar of Sainet Olaiuis kirk, James [Beat?], and James Murray, with others divers. Subscription signed 'F. N.'

## CCXIII

DISPOSITION, DAVID FLETT OF HOBBISTER TO WILLIAM WORK, of the above-mentioned tenement in the Burgh of Kirkwall.

Original in Gen. Reg. House. Printed: *O. L. Records*, No. 55.

June 27th, 1526.

Kirkwall.

*Abstract*

David Flet of Howbustir, with the consent of his brothers Mawnis and Rynzeane, and of his sister Anne, lawful heirs to the deceased William Flet of Howbustir, 'quham God assoilze,' sells to an honourable and worshipful man, William Wyrk, burges of Kirkwall, a biggin and tenement in Kirkwall, having on the east side, the tenement pertaining to Robert Masoun,<sup>1</sup> and on the west, the tenement pertaining to the heirs of Johne Masoun, with pertinents as described in the preceding charter. The price is £8, 10s. Scots, paid to the granter in his 'gret neid and mystar.' The tenement is described as bought by his father from Effe Ayrland. Usual warrandice. Having no seal of his own, the granter procures the seals of discreet men, Sir Nicoll Hacrow, parson of Orphar, and Thomas Tulloch of Ness. At Kirkwall, June 27th, 1526. Witnesses: Adame Sklater, baillie of Kirkwall for the time, James Murray, Thomas Murray, Robert Masoun, and Gelis Scapay,<sup>2</sup> burgesses in the said town.

<sup>1</sup> Mansoun, wrongly, in *O. L. Records*.

<sup>2</sup> Two of the witnesses names are wrongly given in *O. L. Records*.

## CCXIV

DISPOSITION, BONIFACE LEASK TO WILLIAM YORSTOUN, of  
a tenement in the Midtown of Kirkwall.

Original in possession of the Venerable Archdeacon Craven, D.D.

June 27th, 1532.

Kirkwall.

(Abstract)

Boniface Lesk, son and lawful heir of umquhile Thomas Lesk and his (Thomas's) spouse Agnes Synclar, 'quham God assolze,' with consent of his spouse Katryne Ryng, sells to an honourable man William Yorstoun 'ane tenement hous and biggyne lyand in the vest part of the mydtoun of Kirkvald, with yard and grond pertenant to the said hous' . . . fra the gait to Hwndpoll,<sup>1</sup> strekand in lenth and breid fra the landis of Thomas Cragy one the sowtht syd, ond haffand on the northt part the landis of Thomas Lesk.' No price is specified, but usual money of Scotland was given the said Boniface in his 'mister' and 'becaus the foirsaid teniment and hous was cumand down.' Usual warrandice. Having no proper seal of his own, the granter procures the seal of a venerable clerk, Master Alexander Craik, official of Orknay and parson of Hoye. At Kirkwall, June 27th, 1532. Witnesses: Anddro Cur-sattour, William Wirk, Edward Wyndwyk, Alexander Gareoch, and Master Alexander Wass, N.P., with others divers. Subscription of Alex. Wass.

[Seal gone.]

[*On the back, in Latin and very dirty:*] On 28th May 'Millesimo 30' (probably 1553), Thomas Yorstoun sold the above tenement to John Brown for £20 usual money, and his brother Robert Yorstoun's consent was procured for £8. The seal of an honourable man Thome Tulloch of

<sup>1</sup> No doubt the 'Hempow,' a burn which formed in ancient times the boundary between the 'Burgh' and the 'Midtown of' Kirkwall.—Hossack's *Kirkwall in the Orkneys*.

Fluris 'ac camerarii' [?] of Robert, Bishop of Orkney,<sup>1</sup> was appended. Witnesses: Henry Rendell of Ellibuster, Alexander Malcum, Thomas Cumyng, John Vischart, John Kyng[soun?], Sir George Quhyit, and Mr. William Persoun, N.P., with divers others. On 'xx., xxv.' October, the consent of Robert Yorstoun was given before these witnesses: Nicol Selater, Duncan Scolow, and Nicol Tulloch, with divers others. Written by William Peirsoun, N.P.

## CCXV

NOTARIAL INSTRUMENT narrating the transfer by David Flett of Hobbister to Patrick Barde, of a tenement in the Burgh of Kirkwall.

Original, in Latin, in possession of Mr. D. J. Robertson, Kirkwall.

July 28th, 1536.

Kirkwall.

(Abstract)

On July 28th, 1536, in presence of the notary public and witnesses subscribing, David Flet, son and heir of the deceased William Flet of Hobister, with consent of his spouse Giles Leslie, went personally to a tenement with garden lying in the royal burgh of Kirkwall, between the tenement of Robert Mason in the west, the lands of St. Catherine, called St. Catherine's quoy, on the east, the land or tenement of David Flet on the south, and the tenement of Patrick Barde on the north, and there 'purely and simply resigned and gave over' the said tenement and yard with pertinents to Patrick Barde, for 30/ Scots; without any reversion. Whereupon the said Patrick asked for a public instrument, one or more. Witnesses: Adam Selater, Sir William Parqueyr, Andrew Corsatir, William Wyrk, John Kyrstallson, Magnus Grene,<sup>2</sup> and Edward Red, with sundry others. Sign manual of Sir David Fallusdell, priest of the diocese of Glasgow and notary public, is appended.

<sup>1</sup> Robert Reid. This dates the document on the back as between 1541 and 1558.—Craven's *History of the Church in Orkney*. As Wm. Yorstoun was alive in 1545 (No. LXI.), the date cannot be 1543.

<sup>2</sup> Or Greue.

## CCXVI

NOTARIAL INSTRUMENT narrating the transfer of a tenement in the Burgh of Kirkwall, by Sir Nicholas Halero to William Tulloch and his spouse.

Original, in Latin, in Gen. Reg. House.

*April 20th, 1545.*

*Kirkwall.*

*(Abstract)*

Sir Nicholas Halero, precentor of the Cathedral Church of Orkney, gives, confirms, and alienates to his beloved servant, William Tulloch, and Mariota Boswell his spouse, a house or tenement 'lying near the Bridge of St. Olave within the Burgh of Kirkwall on the east side of the highway at the tenement of the deceased Alexander Leask on the north side at the sea.' Which tenement was sold to the granter by the deceased venerable man Henry Phancouth, with consent of Margaret Campe, daughter and one of the heirs of Magnus Campe, and of David, John, and Mariota Fif, sons and daughter of the said Margaret. It formerly belonged to Swane Erik, and the consent of Robert Erik and his (Robert's) brothers was also given. The grantees are to pay yearly one mass and dirge on the anniversary of the death of the said Sir Nicholas for the salvation of his soul and the souls of the founder and benefactors of the 'said' foundation, at the altar of St. Nicholas in the Cathedral Church of Orkney, annually; failing the said services, the tenement reverts to the said Sir Nicholas and his heirs. 'And because I have no seal of my own I have procured the seal of the said Sir Nicolas,<sup>1</sup> with the seal of a venerable clerk, Mr. Malcolm Halero, provost of Orkney.' Whereupon William Tulloch asked for this present public instrument. These things were done in the house of the said Sir Nicholas, about 3 P.M., 20 April 1545. Witnesses: Robert Sinclair, Thomas Bake, John Brebener, William Halero, Archibald Sibbet, with sundry others. David Anderson, notary, appends his docquet.

<sup>1</sup> This must surely mean that the notary had no seal, though 'I' and 'me' are generally used in the deed to mean Sir Nicholas.

## CCXVII

NOTARIAL INSTRUMENT narrating the transfer of a tenement in the Burgh of Kirkwall by Edward Windwick to John Hartside, and payment of the price.

Original, in Latin, in Record Room Kirkwall.

*August 7th, 1545.*

*Kirkwall.*

*(Abstract)*

On August 7th, 1545, an honourable man Edward Vyndvik grants that he has been paid by John Hartsyd £55 for a tenement lying in the Burgh of Kirkwall (which tenement he had bought from William Fleyt of Howbuster), and £5 for some household goods which were in the houses of the said tenement. Whereupon John Hartsyd asked for an instrument. These things were done in the house of the said John at 2 P.M. Witnesses: Sir Robert Thomson, Alexander Doske, Robert Kykgour [*sic*], and John Simpson, with several others. Sir George Strang, priest of the diocese of St. Andrews, acts as notary.

## CCXVIII

DISPOSITION, WILLIAM SINCLAIR OF WARSETTER TO JOHN HARTSIDE, of a cot house in Kirkwall.

Original in possession of Mr. D. J. Robertson, Kirkwall.

*December 9th, 1547.*

*Kirkwall.*

*(Abstract)*

Villiam Sinclere of Vorsetter in Sandaye, son and heir to umquhile Magnus Sinclere of that Ilke, sells to an honourable man Jhoun Hartsyde, burgess of Kirkwald, 'ane litille cot housse lyand betuix the houses pertenyng sumtyme to Henry Guttre ande the zaird of the sammyn one the est part, and on the southt syd the lairdis awin tenement, and on the northt syd the houses of Andro Strange.' No price specified. Having no seal of his own the granter procures the sign manual of Sir Henry Morray, priest and notary public 'berand the strenght of ane seill,'

and appends his 'awin mark' in his 'awin hand,' in addition.<sup>1</sup> At Kirkvall, December 9th, 1547. Witnesses: Jhone Maxwell, parson of Marekirke in Sanday, Villiam Grot, burgess of Kirkwale, William Tait, and Jhon Laing, with others divers.

## CCXIX

EXCAMBION of the Archdeacon's and Sub-dean's Manses in Kirkwall.

Original, in Latin, in possession of Mr. A. Baikie of Tankerness.

*February 3rd, 1553-54.*

*Kirkwall.*

*Abstract*

Notarial Instrument narrating that Robert, Bishop of Orkney, met this day with his chapter, and they decided that it would be a very proper and useful thing if a house and suitable ground could be found where the choristers and perpetual vicars of the cathedral church could prepare themselves for divine service, and it was the mind of all that the manse of Mr. John Tyre, archdeacon of Orkney, was the most suitable for the purpose, if another manse could be provided for him in exchange. Mr. John Tyre hearing of this, consents willingly to exchange his manse, yard, and pertinents, for the manse and pertinents of Mr. Peter Houston, subdean of Orkney, and the latter with similar pious motives willingly agrees to the exchange; it being provided for the part of the archdeacon that the vicars and choristers in all time to come shall celebrate an anniversary each year on the day of his death for his soul and the souls of his predecessors and successors, such as singing a requiem Mass in becoming manner, and during his life they shall cause to be celebrated once every year at the altar of St. Andrew in the cathedral church five masses for the five wounds of Christ; and in like manner for the part of the subdean, the bishop and chapter consent to

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<sup>1</sup> This mark survives as an example of the 'lairdis' artistic skill. It looks like a prophetic glimpse of a wrecked aeroplane.

the construction within the archdeacon's manse of a suitable chamber with inner closet and cellar, wherein the subdean may have quiet residence, because in absence of the provost he has charge of the vicars and must look after their betterment in learning, morals, and right government, as becomes churchmen; and he is to sit at table with the choristers in the hall and take cognisance of such as absent themselves by night, and deal with them as he thinks fit. The chaplains and choristers, for themselves and their successors, voluntarily bind themselves to dwell and reside in the chambers assigned to them, and observe the conditions appointed by the bishop and chapter, under penalties. Thereupon the bishop and chapter agree to the exchange of manses, and accept resignation from, and grant possession and transfer of the manses to each of the parties respectively. In witness whereof the bishop appends his own seal and the chapter seal. Done in the place of the chapter and on the ground of the said manses on February 3rd, 1553, in the twelfth year of the bishop's consecration, between eleven and twelve forenoon. Witnesses: Thomas Annand of Ouchterallon, Mr. Edward Bruce of Kennet, Thomas Tulloch of Fluris, constable of Orkney, William Grote of Dungasbe,<sup>1</sup> burgess of Kirkwall, James Tulloch, James Rydpetht, Charles Diksoun, James Glen, Andrew Reid, Finlay Gardner, and Mr. Peter Galbreth, notary public.

Stephen Culross, of St. Andrew's diocese, notary, appends his docquet.

(*Sic subscribitur*) Ro. Orchaden. Ep̄us.; M̄gr. Alexr. Dik, prepositus manu sua; M̄gr. Jo<sup>es</sup> Tyre, archidiaconus Orchaden.; M̄gr. Petrus Hustoun, subdecanus Orchaden.; Dñs. Magnus Strang, succentor Orchaden.; Mgr. Villus Peyrsound, rector Sancte Crucis in Sanday.

True copy made by William Peyrsound, notary, and compared with the principal.

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<sup>1</sup> Duncansby in Caithness. On September 13th, 1625 William Groat of Tankerness sold one pennyland in Duncansby that had pertained to his grandfather, Malcolm Groat of Tankerness.

## CCXX

CHARTER OF FEUFARM of two tenements in the Laverock of Kirkwall, and a piece of waste ground, Bishop Adam to Duncan Scollay and his spouse.

Original, in Latin, in possession of the Venerable Archdeacon Craven, D.D.

*April 12th, 1561.*

*Kirkwall.*

*Abstract*

Bishop Adam, with consent of his provost and chapter, gives a charter of feu farm to 'our beloved servitor,' Duncan Scola, burgess of Kirkwall, Marjory Brown, his spouse, and their heirs, of two tenements in 'our city of Lawarok at Kirkwall,' and a piece of waste ground, described as in the succeeding precept of sasine. One tenement formerly belonged to Thomas Cumming, burgess of Kirkwall, gifted to him by Giles Farquhar; and the other formerly belonged to 'us and our predecessors.' The grantee pays for the tenements 'one pound of wax with a fourth part,' and for the waste ground, one pound of wax, if asked only; 'together with service in our courts as our other burgesses and inhabitants of the said city render and yield for all other burden, exaction, question, demand, or secular service.' 'In witness whereof to this our present charter, subscribed with my hand and the hands of the canons of Orkney, our chapter, our round seal and the common seal of the said chapter are appended. At the chapter house of the said church April 12th, 1561, in the second year of our consecration, before these witnesses, Gilbert Balfour of Westra, John Kincaid of Warriston, John Balfour, James Alexander, James King.' Signed by Adam, Bishop of Orkney and Shetland; Alexander Dyck, provost of Orkney; James Annand, Chancellor; Robert Chein, prebendary of St. Magnus; Magnus Halcro, precentor; Francis Bothuell, treasurer; Magnus Strang, sub-chantor, William Peyrsound, prebendary of St. Cross in Sanday.

[Tags for two seals, both gone.]

## CCXXI

PRECEPT OF SASINE directed by Bishop Adam to Gilbert Balfour of Westray, on the preceding charter of two tenements in the Laverock of Kirkwall.

Original, in Latin, in Record Room, Kirkwall.

*April 12th, 1561.*

*Kirkwall.*

*(Abstract)*

Precept directed by Adam, Bishop of Orkney, to Gilbert Balfour of Westray, directing him to give sasine to Duncan Scola, citizen of Kirkwall, and Marjory Brown, his spouse, of 'all and whole our two tenements of land with their pertinents lying contiguous in our city of Lawarok at Kirkwall, on the west side of the highway which leads from the place of Banx and the said Lawarok to the royal castle and the cemetery of our foresaid Cathedral Church of Kirkwall, now occupied by the said Duncan; between the lands or [*sic*] our tenement now occupied by William Cowper on the north, and the highways and public place on the south and east,<sup>1</sup> and the sea on the west thereof; also a certain waste land of ours of 44 feet in width, with its pertinents, lying in our said city and neighbourhood of the said two tenements, on the east side of the foresaid highway; between the lands or garden of the new dwelling place of the chaplains now occupied by Mr. Peter Houston, subdean of Orkney, on the north; and the lands adjoining the chaplainry of the Blessed Virgin Mary, founded by the deceased Sir William Sinclair of Warsetter, knight, of good memory, on the south; and the garden of our Palace of Yardis on the east; and the said highway on the west.' 'Subscribed with our hand, our round seal is appended at our Palace of Yardis, 12th April 1561, and second year of our consecration.' Witnesses: John Kincaid of Warristoun, Gilbert Balfour of Westray, John Balfour, his brother, William

<sup>1</sup> Described in the charter as having 'the common shore roads on the south, and the said highway which goes from Lawarok to the King's Castle and the cemetery of the said cathedral church on the east.'

Lauder, and James King. Signed by Adam, Bishop of Orkney and Alexander Dyck, Provost of Orkney.

*Sasine.* Given April 14th, 1561, by Gilbert Balfour to Duncan Scolla personally. Witnesses: Magnus Halero, precentor of the Cathedral, William Sinclair, 'dominus' of Sanday,<sup>1</sup> James King, notary public of Edinburgh, John Murray and David Litstar, burgesses of Kirkwall, Edward Tulloch, John Erwyne, and Magnus Mowat there. Paul Flegeour, clerk of the diocese of St. Andrews, acts as notary.

## CCXXII

DISPOSITION, MR. ANDREW DICK, provost of the Cathedral, to William Ferguson and his spouse, of part of a tenement in Kirkwall.

Original in possession of Mr. A. Baikie of Tankerness.

*April 1571.*

*Kirkwall.*

*Abstract*

Charter by Mr. Alexander Dick, provost of the cathedral kirk of Orkney, to William Fergusson and Katherine Hamyltoun [?] his spouse, of the south part of his tenement in Kirkwall, with close, yard, and pertinents, inhabited by Elizabeth Scalpa and other tenants, having on the north side the northern part of the said tenement, inhabited by William Gude, on the south the tenement belonging to the Treasurer of Orkney, on the east the cemetery and high street or square of the town of Kirkwall, and the Oyse [on the west]: To be held of the granter in fee and heritage, with all usual pertinents and privileges, for yearly payment of 20s. Scots to the granter and his successors in office, with 10s. in lieu of a fathom of peats due therfor, and also 40d. in augmentation. Clause of warrandice. Precept to Alexander Robertsoun to give sasine. Dated at the cathedral kirk of Orkney, . . . April 1571, the seal of Sir Robert Stewart, the granter's patron, and the common chapter seal being procured. Witnesses, James

<sup>1</sup> William Sinclair of Warsetter.

Sinclair, Malcolm . . . . . and William . . . . . Some signatures, including those of Mr. Alexander Dick, Francis Bothwell, Robert Stewart, and Mr. James Annand, chancellor.

[Seal gone.]

## CCXXIII

DISPOSITION, BERNARD IRVING TO WILLIAM IRVING, of his brother part of borough land in the Midtown of Kirkwall.

Original in Gen. Reg. House.

*February 4th, 1571-72.*

*Kirkwall.*

*Abstract*

Transfer by Barnard Urwyng, son and one of the heirs of the deceased John Urwyng of Saba, of his brother's part of the borough land inherited from his father, lying in the Midtown of Kyrkwall; bounded on the south-west by the houses possessed by William Clapertoune pertaining to the deceased Henry Leith; and on the north-east by the houses pertaining to the deceased John Cullane; on the north-west by the sea; and on the south-east by the common causeway; in favour of his friend and kinsman William Urwyng, burgess of Kirkwall, and his heirs. Magnus Papla and Mr. William Peirson, are to subscribe for him. Dated at Kirkwall, February 4th, 1571. Witnesses, Stevin Papla, Magnus Tailzour, and Magnus Murray, with others.

## CCXXIV

DISPOSITION, MR. JEROME TULLOCH TO ELIZABETH KINNAIRD AND MR. GILBERT FOULSE, her spouse, of a tenement in Kirkwall.

Original in possession of Mr. A. Baikie of Tankerness.

*July 2nd and 30th, 1572.*

*Kirkwall and Leith.*

*Abstract*

Charter by Mr. Jerome Tulloch, subchantor of Orkney, with consent of Lord Robert Stewart, fiar of Orkney and

Zetland, patron of all benefices in the diocese of Orkney and Zetland, and with consent of Adam, Bishop of Orkney and Zetland, and the chapter, to his cousin Elizabeth Kynnaire and her spouse, Mr. Gilbert Fwilsie, archdeacon of Orkney, for certain sums of money converted to the use and repair of the churches belonging to his subchantry, and to the survivor and the lawful heirs of the marriage, whom failing the lawful and nearest heirs of the said Mr. Gilbert whomsoever, of a tenement fore and back, with yard and the whole limits pertaining to the erection, at present not built upon except for a little house almost ruinous, and bounded by a tenement pertaining to the archdeacon of Orkney on the south, the treasurer's manse on the north, the common way leading to the Laverok on the east, and the sea-flood called the Wist on the west, within the town of Kirkwall; to be held of the granter and his successors in fee and heritage, in all houses, liberties, and pertinents, for payment yearly of 10s. Scots as the old farm duty and 2s. in augmentation. There is a clause of warrandice, and precept to Alexander Robesoun to give sasine. The granter's and chapter seal are to be appended. Dated at Kirkwall and Leith, 2d and 30th July 1572. Witnesses, James Tulloch in Schalpingsay, James Hay, James Kennedy, John Dannune, Stephen Paplay, Robert Achesoun. Signed by Robertus Stewart; Magister Hieronymus Tullocht, succentor Orchaden.; M. Jacobus Annand, cancellarius; Mr. Franciscus Bothuel, thesaurarius; Mr. Alexr. Dyck, prepositus Orchaden.; Mr. Willus Peirsoun, rector Sancte Crucis in Sanday.

[The only seal extant is that of Lord Robert Stewart, and there is another tag without a seal.]

## CCXXV

DISPOSITION, MR. GILBERT FOULSE, ARCHDEACON OF ORKNEY, TO JAMES TULLOCH in Shapinsay, of his tenement in Kirkwall (apparently adjacent to the preceding tenement).

Original in possession of Mr. A. Baikie of Tankerness.

*January 1st and February 10th, 1573-74*

*Kirkwall and Edinburgh.*

*Abstract*

Charter by Mr. Gilbert Fulse, Archdeacon of Orkney, with consent of Adam, Bishop of Orkney and Shetland, and the canons and chapter thereof, to James Tulloch in Schapansay, for certain sums of money, and to his assignees, of his tenement, fore and back, with yard, with pertinents; which tenement is so waste and ruinous that none can presently without hazard of life inhabit the same, neither for a long time has it been habitable; having the sub-chantor of Orkney's tenement on the north, a piece of waste ground belonging to the chancellor of Orkney on the south, the common way leading to the Laverok on the east, and the seashore (*littus maris*) called the oyse on the west, within the town of Kirkwall: To be held of the granter and his successors in fee and heritage, with all pertinents, privileges, and easements, for payment yearly of 24s. Scots as the old farm duty and 2s. in augmentation, and providing that whenever the granter or his successors reside in Kirkwall they shall have free residence in the said tenement in return for preaching the Gospel. There is a clause of warrandice, and a precept directed to John Broun to give sasine. Sealed by the granter, the bishop, and the common chapter seal, and dated at Kirkwall and Edinburgh, 1 Jan. and 10 Feb. 1573. Witnesses: Alexander Robertsoun, John Danone, Stephen Papla, Alexander Kineaid, and Robert Gourlaw. Signed by M. Gilbertus Fulouse, archidiaconus; Adamus, Episcopus

Orchadei ac Zetlandiæ; M. Jacobus Annand, cancellarius; M. Alexr. Dyck, prepositus Orchaden.; Mr. Franciscus Bothwell, thesaurarius; Magister Magnus Halero, precentor; Mr. Hieronimus Tulloch, succentor Orchaden.; Mr. Willelmus Peirson, rector Sancte Crucis in Sanday.

[The seals of the bishop and granter are attached but the chapter seal is lost.]

## CCXXVI

SASINE, ELIZABETH KINNAIRD AND HER SPOUSE MR. GILBERT FOULSE, of the same tenement in Kirkwall as in the preceding charter.

Original in possession of Mr. A. Baikie of Tankerness.

*March 17th, 1573-74.*

*Kirkwall.*

*Abstract*

Instrument of Sasine narrating that on 17th March 1573, Elizabeth Kynnarde and Mr. Gilbert Fulsee her spouse exhibited to Alexander Robesoun, baillie, a Feu-Charter by Mr. Jerome Tulloch to them of his ruinous tenement fore and back, with yard and whole limits pertaining to the subchantry, bounded as aforesaid, granted with consent of the bishop and chapter, and dated at Kirkwall, 1st January 1573, before witnesses, Alexander Robertsoun, John Denone, Stephen Paplay; and at Edinburgh, 10th February, before witnesses, Alexander Kinkayde and Robert Gourlay; sealed by the granter's and the chapter seal, and subscribed by the granter, the bishop, Mr. Magnus Halero, precentor, the provost, chancellor, archdeacon, treasurer, and parson of Sanday. Sasine is accordingly given to them on the ground of the said tenement, about 11 A.M. Witnesses, James Cowper, burgess of Edinburgh, John Denone, and John Wallace. Cuthbert Henderson, of the diocese of St. Andrews, notary, appends his docquet and sign manual.

## CCXXVII

CHARTER BY JAMES TULLOCH IN SHAPINSAY TO ELIZABETH  
KINNAIRD, of the same tenement in Kirkwall.

Original in possession of Mr. A. Baikie of Tankerness.

*April 29th, 1574.*

*Kirkwall.*

*Abstract*

Charter by James Tulloch in Schapansay, to his beloved cousin Elizabeth Kynnarde and the heirs lawfully procreated between her and Mr. Gilbert Fulsee her spouse, of the tenement formerly leased to him and his assignees by the said Mr. Gilbert Fulsee, pertaining to the archdeaconry of Orkney, with yard and all the limits thereof conform to the erection, bounded by a tenement belonging to the subchantor on the north, a piece of waste land belonging to the chancellor on the south, the common way leading to the Laverok on the east, and the strand called the Oyse on the west, within the town of Kirkwall, and that for a certain sum of money; to be held in fee and heritage from the granter of the archdeacon of Orkney and his successors, for payment yearly to the latter of 24s. Scots as the old ferm, and 2s. of augmentation, conform to the granter's infestment. There is a clause of warrandice, and a provision that the archdeacon's successors on coming to Kirkwall to preach shall have free residence in the house during their stay. There is also a precept directed to John Brown of Weyland to give sasine. Having no seal present of his own, the granter borrows that of his brother, Mr. Jerome Tulloch, subchantor. Dated at Kirkwall, 29th April 1574. Witnesses, Stephen Paplay, John Duncane [*sic*], Thomas Watsoun. Cuthbert Henderson, notary, signs for the granter, who cannot write.

[Subchantor's seal appended.]

Endorsed as next to Egilshay's tenement.

## CCXXVIII

SASINE, ELIZABETH KINNAIRD, WIFE OF MR. GILBERT FOULSE, in the same tenement in Kirkwall.

Original in possession of Mr. A. Baikie of Tankerness.

*April 29th, 1574.*

*Kirkwall.*

*Abstract*

Instrument of Sasine, 29th April 1574, following upon the preceding Charter, whereupon John Brown of Weyland gives sasine, as baillie, to Elizabeth Kynnarde of the said tenement, about 11 A.M. on the ground thereof. Witnesses, Matthew Stevinsoun, surgeon, Thomas Watsoun, and John Duncane, servitor to James Tullocht (granter), Donald M'Kurtane, servitor to Mr. Francis Bothwell, and John Hoge, servitor to the said Mr. Gilbert Fulsee. Cuthbert Hendersoun, notary, appends his doequet and sign manual.

## CCXXIX

SASINE, JOHN FLETT AND HIS SPOUSE FROM JOHN BROWN OF WEYLAND, of a piece of ground in Weyland on the outskirts of Kirkwall.

Original in possession of the Venerable Archdeacon Craven, D.D.

*July 19th, 1573.*

*Weyland.*

*Abstract*

Sasine given to Johne Flett and Marioun Scletter his spouse by Johne Broun of Weyland on July 19th, 1573, of a piece of ground lying within the dykes of Weyland, on the south side thereof, next adjacent to the town of Kirkwall 'over forment ane tenement thair of pertening to Magnus Paize.' The said ground extends to 40 feet in length and 14 feet in breadth, and is 'to be erectit in ane tenement and ane yaird.' It is to be held of Johne Broun in feu and heritage for ever, for the payment of 'thre cane foulis at the feist of Alhallowmess, and uphaldand ane daylie

scherar in tyme of hervist, and to be reddie himself and his airis male foirsaid sufficientlie armit with armour and wapounis to do service to the said Johne Broun and his airis at quhat tyme he sall requyre thame thairto, with all uthir dew service bayth be see and land.' In case of failure in fulfilling these conditions this feu is to expire. Witnesses : Andrew Swanysoune, servant of David Scolla, burgess of Kirkwall ; William Coupar 'fabro lignario' (carpenter) ; and Margaret Sinclair, spouse of the above David Scolla ; with divers others. Subscribed by Cuthbert Henderson, N.P.

## CCXXX

DISPOSITION, MARION AND JANET CURSETTER TO JANET GUDE, of a tenement in the Midtown of Kirkwall, together with later charters referring to this same tenement.

Originals all in possession of Mr. A. Baikie of Tankerness.

*January 27th, 1573-74.*

*Kirkwall.*

*Abstract 1*

Charter by Marion Cursettare and Janet Cursettare, lawful daughters and heirs of the deceased Andrew Cursettare and Katherine Borthuik, their father and mother, with consent of William Tulloch and Robert Lesk, 'our spouses,' selling their tenement of land, inherited by them from their parents, lying in the Midtoun of Kirkwall, 'abak and affoir,' with yard and pertinents, between Gilbert Tulloch's tenement on the south, the granter's tenement now possessed by John Sinclair on the north, the dyke and lands of Papdale on the east, and the common street of the town of Kirkwall on the west, to Janet Gude and her heirs and assignees, for a certain sum of money : To be held of the granters heritably, with all usual pertinents. Clause of warrandice. Precept of sasine directed to William Henderson and Alexander Robesoun, baillies of Kirkwall. Dated at Kirkwall, January 27th, 1573.

Witnesses being Nicol Nethertoun,<sup>1</sup> Thomas Baikie, Alexander Thomsoun *alias* Tailyour, Gilbert Tulloch, and John Ronaldsay.

‘Marioun Cursettare and Williame Tulloch my spous, Jonet Cursettar and Robert Lesk my spous, with our hands at the pen,’ etc.

*Ita est* Cuthbertus Hendersoun, notarius, etc.

#### *Abstract 2*

Instrument of Sasine, February 11th, 1573-4, of said Janet Gude, given by Alexander Robertsoun to her on the ground of the said tenement at 10 A.M. Witnesses: Thomas Cummyng, Mr. John Houstoun, schoolmaster, Walter Tyrie, James Gude, William Gude, and William Magnusson, all dwelling in Kirkwall. Cuthbert Henderson, notary.

#### *Abstract 3*

Instrument of Sasine, April 25th, 1575, of Alexander Houstoun, in the east part of the said tenement (being newly built by Janet Gude) and half of the yard, on the resignation thereof by his mother Janet Gude in his favour in the hands of Alexander Robertson, baillie of Kirkwall; reserving her liferent. Done on the ground of the said tenement, 10 A.M. Witnesses: Mr. John Houstoun, Thomas Cummyng, Magnus Paplay, Thomas Baikie, burgesses of Kirkwall, William Garyoche, and William Borthuik. Same notary.

#### *Abstract 4*

Instrument of Sasine, January 13th, 1585-6, of Thomas Baikie, cordiner, burgess of Kirkwall, of the said whole tenement, back and fore, with yard, tail and pertinents, on the voluntary resignation thereof to him by Janet Guid, his spouse, reserving her liferent; to be possessed by him and after his decease by Alexander Houstoun her son (who is to ratify this deed on attaining his majority). For this

<sup>1</sup> *i.e.* Garrioch of Nether-ton.

favour the said Thomas Baikie has made her conjoint liferenter with himself of his part of the town of Isbester in the parish of Birsay, the property going, after their decease, to the said Thomas's nearest lawful heirs and assignees. Thereupon each of them took instruments, as also David Houstoun on behalf of the said Alexander his brother. Done on the ground of the said tenement, at 10 A.M. Witnesses: Alexander Robertson, baillie of Kirkwall, Mr. William Peirsoune, parson of the Croce kirk of Sanday, Mr. John Houstoun, master of the grammar school of Kirkwall, David Houstoun, and Henry Sinclair, servitor to said Mr. John. William Fermoir, notary. On the back is the blank form of ratification to be signed by Alexander Houstoun, 'sone naturall to umquhill Johnc Houstoun and Jonet Guid my mother.'

*Abstract 5*

Disposition by said Alexander Houstoun, son of deceased Janet Guid, sometime spouse to Thomas Baikie, cordiner, selling to his good friend James Guid, burgess of Kirkwall, and his heirs and assignees, his right, title, and kindness of the foresaid tenement, and all other lands and moveables falling to him by her decease, for a certain sum of money. Dated at Kirkwall, February 26th, 1590-91. Witnesses, William Mane, Patrick Ross, William Brig [*sic*]. Signed by Sandee Housoun egem hande; William Manie, witnes in the premiss, William Brog [*sic*], witnes; P. Ros, witnes wt my hand; William Fermour, notary.

[*On the back:*] 9th March 1590-1, at Kirkwall, the said Alexander passed to his tenement of land presently occupied by Thomas Baiky, cordiner, and made resignation thereof in the hands of James Murray, baillie of Kirkwall, who delivered sasine to James Guid, at 11 A.M. Witnesses, David Houstoun, Stevin Paplay, William Thrissill,<sup>1</sup> and Thomas Baiky, burgesses of Kirkwall. William Fermour, notary.

<sup>1</sup> William Kirkness of Thrissill.

## CCXXXI

## DISPOSITION OF TENEMENTS IN KIRKWALL, Thomas Geddes to Mr. John Houston.

Original in possession of Colonel W. E. L. Balfour of  
Balfour and Trenaby.

May 31st, 1578.

Kirkwall.

Be it kend till all men be this present chartour, me Thomas Geddas, burges of Kyrkwall, with consent and assent of my eldest lauchfull dochter Margret Geddas, in my greit neid and urgent necessite throw the greit dartht, penuritie, and skernes of victuellis that is presentlie in the cuntrey of Orknay, and for want of my craft to sustein me upone, to have sauld, annaliit, and ofhent, and be the tenour heirot sellis, annaliis, and ofhentis perpetualie, fra me, my airis, and eftireumaris, to my guid freind Mr. Johne Houstone, prebendair of Sanct Peteris stuik and scuill master of the towne of Kyrkwall, his airis and assignays, all and haill my tenementis of land, baksyd and forsyid, quhilk I had in few and heretage of ane reverend fader in God, Adame, Bischope of Orknay, with the houssis, biggynnis, clois, yairdis, and pertenantis quhatsumever, pertenant thairto; havand on the eist syid the quoy callit Quoybankis and Thomas Hallis hous, and on the northt syid the see oise, and on the west the houses pertenant to James Pap, and on the south syid the taill of Quoybankis strakand to Scalpay, and that for the sowme of ane hundreth and ten pundis gud and usuell money of Scotland, tauld doune, numerit, payt, and deliverit to me be the said Mr. Johne at the making of this present chartuir.

[The tenements to be held by the grantee in perpetual feu and heritage of the Bishop of Orkney and his successors, paying to them and their factors a pound of wax at the term of Whitsunday 'with deu service as effeirs,' as the granter held before him. Precept of sasine directed to ALEXANDER ROBERTSONE and THOMAS CUMYNG, 'baillys of Kyrkwall within the Laverok.' The granter having no proper seal of his own procures the seal of a venerable

man Mr. WILLIAM PEIRSONE, parson of the Cross in Sanday and N.P., together with his subscription and sign manual. At Kirkwall, May 31st, 1578. Witnesses: ALEXANDER ROBERTSONE, baillie of Kirkwall, JOHNE STEWART, vicar of Sanct Olave and reader in St. Magnus Kirk in Kirkwall, MICHAEL GUIDAILL, and MAGNUS HURSTANE, 'with utheris divers, viz. WILLIAM MUREHEID.' THOMAS GEDDAS signs with his hand led. All the witnesses sign, including WILLIAM MURHEID, 'lectour of Stanehouse.' Seal gone.]

## CCXXXII

DISPOSITION, part of a tenement lying beside S<sup>t</sup> Olaf's Brig in Kirkwall, John and Henry Tailyour to Magnus Paplay.

Original in possession of the Venerable Archdeacon Craven, D.D.

*July 31st, 1580.*

*Kirkwall.*

Be it kend till all men be this present chartour, we Johnne Tailyour and Henrie Tailyour, brethir germane, and airis to our wmqhill fathir Andro Tailyour, wyth matuir deliberatioune and weill awysit counsell, grantis us till have frelie irrevocabillie ourgiffin and sauld, annaliit and disponit, lykas we be the tenor heiroff frelie and irrevocabille annaliis and disponis, to our weilbelovit freind Magnus Paplay, Katerein Angussoun his spous, thair airis and assignais, all and haill ane hall and seller<sup>1</sup> and chalmer thairabone, wyth yaird and pertinentis thairto pertening quhatsumevir, lyand adjacent to Sanct Olaiiffis brjg, kirk and kirkyaird of the samyn, having one the est part tharoff the houssis pertening to Symound Beatoun, on the west part Sanct Olaiiffis kirk and yaird of the samyn, on the south part the houssis pertening to Johnne Vysehart and Sant Olaffis burne rinnand thairbetuix, and to the north part Sanct Katereins quoyis; and that for the soume of threttie thre merkis guid and usuall money of the realme off Scotland, in numerat money tauld down and payit till us the said Johnne and Henrie, the first penny and the

<sup>1</sup> room.

last and all thair betuixt, in our gret mister and urgent necessite.

[The said hall, etc., to be held as freely, quietly, etc., as any burrowland within the borough of Kirkwall. If any of the houses above written, or any part of them 'be evict fra the said Magnus' or his heirs, they shall have 'regres and ingress to the radiest of our feild landis.' Precept of sasine directed to JOHN BROWN, baillie of the borough of Kirkwall. Having no seal proper of their own, the granters procure the seal and sign mannal of a venerable man Mr. WILLIAM PEIRSOUN, N.P., and parson of the Cross in Sanda. At Kirkwall, 31st July 1580. Witnesses: ROBERT STENHOUSE, GILBERT PEKOK, ROBERT LESK, ROBERT INKSETTER, STEPANE [sic] ANGUSSOUN, DAVID SCOLLOW, younger, and ANDRO SCOLLOW, with others divers. The granters sign with their hands led.]

## CCXXXIII

SASINE OF A TENEMENT in the Midtown of Kirkwall, John Brown to John Clephane.

Original in possession of Mrs. Watt of Breckness.

*August 30th, 1581.*

*Kirkwall.*

*(Abstract)*

Sasine given August 30th, 1581, to an honourable man John Clephane in Burntisland by an honourable man John Brown, burgess of Kirkwall, of the said John Brown's tenement in the Midtown of Kirkwall, now occupied by himself. It lies between the tenement of the deceased William Sinclair on the west, the tenement pertaining to the Leasks in Shetland on the east, the King's highway on the south, and the burn called Huntpow on the south. The liferent of the said tenement with its garden is reserved to Barbara Bonar, spouse of the said John Brown, providing she will maintain the said house and garden. Witnesses: Henry Colvill, parson of Orphir, William Mureheid, his servant, James Orrok, soldier, John Flet, John Clephane, son of James Clephane, John Rynd, and Magnus Prince, with others. Subscribed by Cuthbert Henderson, William Fermoir, and William Peirsone, notaries.

## CCXXXIV

CHARTER OF FEUFARM OF THE CROSS HOUSE in the Midtown of Kirkwall, William Halero of Aikers to Magnus Baky and his spouse.

Original in possession of Colonel W. E. L. Balfour of Balfour and Trenaby.

January 26th, 1585-86.

Kirkwall.

Be it kend till all men be this present chartour, me, William Halero of Acris, heretabill possessour of the Croce hous underwritin, to have gevin, grantit, and in fewferm placit, and be the tenour of this present chartour giffis, grantis, and heretablie in fewferm settis, to my lovit Magnus Baky and Katherein Smyth, his spous, and the langar leiffar of thame twa and the airis gottin or to be gottin lauchfullie betwixt thame quhatsumevir, all and hail the said Croce hous lyand within the Mydtoun of Kirkwall, the southt gevill thairof adjacent to the lang gutter callit the lang clois, and the northest gevill to Johne Twatis yet, havand on the northt part the Kingis comoun cassay, with ane part of the yaird lyand to the southt to [*sic*] the comoun passag abone the towne betwix the tail of the said yaird and Papdell; quhilk croce hous, with twa forbuthis upone the get and ane sellar within the clois, all lyand under the said croce hous, all presentlie rewinus and mister of greit beitment.<sup>1</sup>

[To be held by the grantees in perpetual feu farm and heritage for 20/ Scots a year. If they dispose of it, William Halero and his heirs shall have the first offer, 'for the lyik sowme as utheris wald gif.' The granter appends his own seal and signature. At Kirkwall, January 26th, 1585. Witnesses: GEORGE TAILYOUR, burgess in Kyrkwall, JOHNE SANDESOUNE, and JOHNE SINCLAR, burgesses of the same, MR. WILLIAM PEIRSON, parson of the Cross in Sanday, and ROBERT YNGSETTER, with others divers.]

[*On the back* :] Note of sasine, Jan. 28th, 1585-86, given by William Halero himself to Magnus Baky and Katherein

<sup>1</sup> in need of much rebuilding.

Smyth. Witnesses: Magnus Yngsetter, Johne Sinclair, burgess in Kirkwall, William Dick [?] cordiner [?] . . . Robert [?] Yngsetter [?] . . . Mr. William Peirsoun.

## CCXXXV

DISPOSITION OF THREE TENEMENTS IN THE LAVEROCK and one in the Middtown of Kirkwall, Mr. John Houston to Oliver Houston.

Original in possession of Colonel W. E. L. Balfour of Balfour and Trenaby.

*March 11th, 1595-96.*

*Kirkwall.*

Be it kend till all men be this present chartour, me Maister Jhone Houstoun, schoilmaister of Kirkwall, for the greit luife, favoure, and effectioun borne be me to Olifer Houstoun my kinnisman, and for summis of money payit and delyverit to me be the said Olifer befor the making heirof, quherof I hald me weile content, satefeit, and payit, and thairfoir exoneris, quietclamis, and dischergis the said Olifer, his airis, executouris, and assignayis, thairof for ever. Thairfoir to haife sawld, annaleit, and disponit, and be the tennour heirof frelie sellis, annaleis, and disponis, to the said Olifer, his airis and assignayis quhatsumevir, all and haill my tenement of land bak and foir, with the close, yard, and taile thairof, with the pertinentis, lyand in the Laverok in Kirkwall, haifand on the eist syde the quoy callit Quoybankis and Thomas Hallis hous, the sie use on the northe, the hous pertening to James Paipe on the west, and the taile of Quoybank strykand to Scalpa on the sowth partis; quhilk tenement, boundit as said is, pertenit to umquhill Thomas Geddes; togidder with all and haile the tenement and houses with the yard and pertinentis thairof pertening to umquhill Thomas Bothwell, lyand in the Laverok foirsaid, haifand the hous and yard pertening to Andrew Bistane [*sic*] on the northe, the hous and yard pertening to umquhill Hendrie Walker to the sowthit, the commoun gait and sie use to the west, and the Quoybank to the eist partis;

togidder with all and haile the tenement and houses with the yard and pertinentis thairof possess be umquhill Jhone Roresoune and Agnes Thomsoune and umquhill Jhone Watchman, with ane cott hous pertening thairto, occupit be Hendrie Hutchesoun and Elizabeth Reid his spous, pertening to Robert Blak, lyand in the Laverok upone the south syde of the yard of Baux, the principall hous pertening to Robert Blak on the north syde, the commoun streit and ane house of Androw Birstane on the south, the commoun gait and sie use to the west, and Quoyangrie to the east, wodsett to me be the said Robert Blak wpone the summe of threttie pundis monie; togidder with ane chalmer and ane foir buyth, with ane kitchin under the said chalmer, pertening to umquhill Magnus Angussone, with the pertinentis, lyand in the Midtoun of Kirkwall on the hie gait strykand to the north est part of the said Magnus hall and dwelling hous, haifand on the south est part the hous and dwelling place of umquhill William Halero, the grund and hous pertening to Robert Sinclair on the northe est part, and the commoun gait to the west part, wodsett to me be the said umquhill Magnus wpone the summe of fourtie pundis. . . . Payand thairfoir yeirlie, the said Olfir, his airis and assignayis abone wretin, to my lord Erle of Orknay, his successouris and chalmerlanis, for the said Geddes tenement with the pertinentis, ane pund sufficient quhite walx, and for the said Thomas Bothwellis tenement ane uther pund quhite walx, at termis of payment usit and wount specialie mentionat in my infestmentis thairof; and for the saidis houses and tenementis wodsett to me be Robert Blak and umquhill Magnus Angussone, to pay to me and my airis thairfoir ane pennie usuall monie of Scotland in name of blensche ferme at the feist of Vitsunday yeirlie gif it beis requirit, for all uther dewitie allanerlie.

[The granter reserves his liferent; and also the liferent of ELSPETT CHALMER, relict of the deceased DAVID HOUSTOUNE, in half of the Geddes tenement. Precept of Sasine directed to WILLIAME MORISONE. The granter appends his own seal and signature. At Kirkwall, March 11th, 1595. Witnesses, THOMAS MORRAY, merchant

and burghess of Kirkwall; JAMES RETTRAY, merchant burghess of Dundee; MAGNUS HOUSTOUNE [*sic*], and THOMAS AUCHINLEK, N.P. All the witnesses sign, including 'Magnus Hurstane.'

[*On the back:*] Note of sasine 13th March 1595, given by WILLIAM MORESOUNE to the granter personally. Witnesses: THOMAS MORRAY, merchant in Kirkwall, WILLIAME HAIR, vicar of Schapinschaw, MAGNUS HOUSTOUNE, JAMES RETTRAY, JAMES BROUNE, merchant, and THOMAS AUCHINLEK, N.P. MAGNUS HURSTANE, JAMES RETTRAY, and THOMAS MORRAY sign.]

A FEW MISCELLANEOUS DOCUMENTS



## A FEW MISCELLANEOUS DOCUMENTS

### CCXXXVI

FOUNDATION AND ELECTION of certain offices in the Cathedral Church of Orkney for the service of God, by Robert Reid, Bishop of Orkney.

Translated from the Latin in Peterkin's *Rentals of Orkney*, Appendix, pp. 18-25.

October 28th, 1544.

Kirkwall.

To all and sundry the sons of mother church to whose notice those present letters shall come, Robert, by the mercy of God, Bishop of Orkney, greeting, with the divine benediction. Know ye that we, among other things which concern our pastoral office in our Cathedral Church and divine service therein, were inquiring by a visitation of the six canons and as many chaplains which were known hitherto to be erected within the same; and what pertained by the foundation to each of them neither is known nor appears by writings, through carelessness and negligence or the great length of time, on account of the wetness of the country whereby everything is easily destroyed; and to us and the said six canons it did not seem sufficient that this small number of canons could carry out the work in nightly and daily watches so that divine service would be so honestly attended to as becomes such a church.

Wherefore after long and mature discussion and consideration with them, we have thought good and decreed and ordained, likeas by the tenor of these presents we determine, appoint, discern, and ordain for the honour of the whole and undivided Trinity, Father, Son and Holy Spirit, the blessed and undefiled Virgin Mary, and all the saints, and particularly the glorious martyr, the blessed Magnus, our patron, and for the comeliness and increase of divine worship in our said Cathedral Church, to erect from the prebends of the said six canons and other benefices

of our diocese, without prejudice or damage to the parish churches and chaplainries, obsequies, and episcopal rights formerly due, or to the possessors of the said benefices in the peaceful uplifting of the fruits, rents, and profits thereof during their life; so that this erection of dignities shall not affect the uplifting of the fruits, and so that there shall be made one provost, one archdeacon, precentor, chancellor, treasurer, subdean, and succentor; and seven other prebends, thirteen chaplains, and six boys for all time coming, each of these possessors of benefices having first of all appeared before us upon special citation from us, and by themselves or their procurators consented to the underwritten, as public acts and instruments thereupon attest. We have also expressly determined what shall pertain to each.

First to the provost, Mr. Malcolm Halcro, bachelor of sacred letters, the prebend of the Holy Trinity and the vicarage of Rannaldsay with the maintenance of the church of Barwik. To the archdeacon, Mr. John Tyrie, the ancient archidiaconal rights, the vicarage of Birsay, and the chaplainry of St. Olave within the Cathedral Church, with the maintenance of the church of Harray. To the precentor, Sir Nicholas Halcro, the prebend of Orphar and vicarage of Stanhous. To the chancellor, Mr. Alexander Scott, the prebend of St. Mary of Sanday and vicarage of Sanday. To the treasurer, Sir Stephen Culross, the rectory of St. Nicholas of Stronsay and the vicarage of Stronsay. To the subdean, Mr. Peter Houston, the rectory of Hoy and the vicarage of Wallis. To the succentor, Sir Magnus Strang, the prebend of St. Columba. To the first prebendary, Sir Thomas Richardsoun, the Rectory of Haly Croce; Sir Hugh Halcro, the prebend of St. Magnus; Mr. Henry Bartoun, the chaplainry of St. John the Evangelist in the said Cathedral Church; to

the chaplainry of St. Mary and the vicarage of Evie; to John Maxwell the chaplainry of St. Laurence; to the prebend of St. Catherine; to the prebend of St. Duthac. And this provestry and all the other dignities and canonries and prebendaries as often as they become vacant shall pertain and belong of plenary right to the disposition and collation of us and our successors.

And we ordain that no one shall be admitted to the provestry unless a doctor of theology after careful examination, or at least one who has become a bachelor of theology, who shall be a man of good fame, conversation, and name, and (after the bishop) shall be first inquisitor of the whole diocese of heretical pravity; to whom the correction of the canons, prebends, and chaplains shall belong in this chapter, and, in his absence, the subdean; and if they be negligent or remiss, the bishop for the time, or he to whom he shall have committed the management, shall act in his place; and he shall be bound to preach four times in the year in the Cathedral Church to the people in the common tongue.

The archdeacon, the second dignity after the provost, shall be at least a master of arts, a man of probity of life and manners, a priest of good erudition in divine and human letters, so that he may be able to carry out the bishop's charges to the clergy and people and exercise his office conform to the order of common law; and he shall be bound to preach four times in the year to the people in the common tongue, otherwise he shall be reputed among non-residents and fined.

The precentor, the third dignity after the provost, shall be bound to raise and terminate the singing in the choir, to regulate the singers and the celebration of divine service on Sunday,<sup>1</sup> to ordain and set down on tables in the *preciosa* in the chapter for the following week and affix the same in writing on the wall of the chancel or in the choir, and to admit boys to the choir. And the precentor himself must be a master of arts or a graduate in another faculty, and well instructed at least in the Gregorian chant, and found fit in the judgment of the provost or president for the time, and of two canons and four vicars of the choir in their consciences, before he shall be installed by him or his procurator; and for the defects of the choir which he has deferred to correct, he himself shall be reproved by the provost or his substitute.

Likewise no one shall be admitted to be chancellor unless he be a doctor in both laws, also after strict examination, or a declared bachelor in some flourishing university, at least in canon law, who shall be a man of upright life and able to exercise judgment and justice in spiritual things at the command of the bishop; and the chancellor who shall be for the time, shall hold the third place after the provost, and shall be bound to read publicly once in the week, unless otherwise lawfully hindered, in the canon law in the chapter house to all the canons, prebends, chaplains, and others who desire to take an interest therein. And should it happen that he shall not read every week for the greater part of a year for which he is bound to make residence, he shall not participate with the rest in the common goods but shall be reputed and fined among the non-residents; and he shall look after the keeping and repairing of the books of the choir and register, and shall keep one key of the little coffer which holds the common seal, also the key of the common library with the catalogue of the books authenticated at the beginning of his installation by the hand of the provost and four of the canons, which shall be open to the bishop, provost, and canons as often as they wish to enter for the study or resolution of questions.

The treasurer, who is the fourth dignitary after the provost, shall be a master of arts, an upright and circumspect man, and a prudent priest, and he shall receive the treasures of the church

<sup>1</sup> *Die Sabbati* seems from the context to mean Sunday in this instance.

and the ornaments, vestments, and precious jewels for safe keeping, and at his installation these shall be given him in inventory by the provost and at least four of the friars, and he shall give his written obligation upon the number thereof conform to the inventory of the provost and canons for their safe keeping, preservation, and restoration to them. He shall have the charge of the bread, wine, wax, oil, and food, for the lights of the church, and shall distribute them discreetly and honestly, and shall cause the vestments of the high altar and also of the altars of Our Lady and the Holy Blood to be washed four times in the year, and the albs thrice or twice in the year, at the expense of the bishop; and he shall keep in his hand the key of the wax which is used for the common seal, and shall cause the decayed vestments, torn or rent, to be repaired, likewise at the expense of the bishop.

The subdean shall be a master of arts, a priest well instructed in both Testaments, so that he may know how to deal with old and new matters and supply the place of the provost in his absence for the correction of faults in the chapter in all things; and he shall be bound to give continual residence and thrice in the year to preach in the cathedral church, as also to exercise the office of penitentiary of the bishop in cases reserved.

The succentor shall be a priest well instructed in all respects in both kinds of song, and especially a skilled player upon the organ, and being so qualified he shall be installed or admitted by the provost and four canons and as many chaplains upon their consciences, and he shall act in place of the precentor in his absence and be bound to continual residence; and every Sunday and feast days during first and second vespers, high mass, and in the time of the more solemn feasts, shall be obliged to play upon the organ the *Te Deum Laudamus* and the *Benedictus*, unless he is hindered by infirmity or other lawful impediment.

The remaining seven prebendaries shall be canons, and each of them a priest within the first year after his installation, otherwise the prebends shall *de facto* be held to be vacant, and each of them by turns every Sunday and in the more solemn feasts shall sing both vespers and high mass as shall be appointed by the precentor on Saturday by his table; in doing whereof if any of them shall fail continuously for three days in the year, or delay to sing, he shall be reputed among the non-residents and fined. And in the more solemn feasts while the provost or any of the other four dignitaries shall sing mass or vespers, two of them shall be side by side with him at vespers and in the procession; and the deacon and subdeacon shall be bound to be present every day at mass and also at the chancellor's reading, under the penalty of his loss of the distribution that day, which shall be paid to the said chancellor who reads.

The prebendary of Haly Croce shall be chief sacrist under the

treasurer and shall keep the clock by himself or by another person, have the charge of the ringing of the bells at all hours, and find material at the expense of the bishop for the lighting of the lamps of the church, and also he shall look to the cleanliness of the pavement of the church that it is clean and swept with brooms every month. The prebendary of St. Mary shall be master of works of the church and shall take care of the roof and glass of the church, and that at a suitable time of the year it is repaired and mended at the expense of the bishop; and the bishop himself and his successors shall be bound on the warning of the said prebendary, immediately to find workmen to make good defects in the roof and windows of the said Cathedral Church and for their repair. And these two prebendaries shall be bound to make continual residence. The prebendary of St. Magnus shall be the vicar and confessor of the household servants of the bishop, provost, canons, prebendaries, and their servants, and at Easter he shall administer the most Sacred Body of Christ to them.

To which provost, dignitaries, canons, and prebendaries, to the number of fourteen, we assign, erect, and depute the parish churches and teind sheaves thereof and whole rents and profits belonging to the rectories of St. Columba of Wallis and Haly Croce of Westray, also the vicarage of the parish churches of Sandwik and Stromness with their pertinents, for their daily distributions which shall begin in the principal feasts in the four greater hours (*horis majoribus*) in the first vesper watch of the first day; but on Sundays and other principal feasts, in the three greater hours; and on other days, at one greater hour at morning or evening high mass and (thus) continuing throughout the whole year; for which the said provost and each of the other canons shall receive for their residence at least for each feast day six pence, for each Sunday and lesser feasts eight pence, and for the greater feasts twelve pence. Provided that the distribution be made to each according to the amount of his residence and the nature of his benefice by the Yconimi of that year, who shall be one canon and one prebendary, to be changed annually by the chapter, who shall uplift year by year all the fruits of the said churches and vicarages, and an accounting shall be made by them every Saturday in the chapter in the time of the chanting in presence of the resident and canons residing there for that week, and of which an entry shall be made in the books of the chapter by a notary.

We will also that the provost and canons and prebendaries shall begin their residence annually in the feast of All Saints, at least within eight days thereafter, otherwise they shall not participate with the rest for the quarter of the year immediately following; and payment shall be made to the resident canons four times in the year, the first payment being in the feast of the Purification of the Virgin Mary, in which feast, or within eight days

thereafter, it shall be lawful to any canon who has not entered at the feast of All Saints to enter then in residence for the rest of that year. The second payment shall be at the feast of the Invention of the Holy Cross, in which or within eight days thereafter, it shall be lawful to the canon or prebendary who has not entered in residence in any of the former feasts to enter for the rest of the year and participate with the others. The third payment shall be in the feast of St. Peter ad Vincula, in which feast also any who has not entered in one of the three former feasts may begin his residence for the fourth quarter of that year and participate with the others at that time. And the fourth payment shall be at the feast of All Saints. But all the canons and greater dignitaries shall be bound to make residence for the greater part of the year, and the prebendaries for a quarter of the year; and the subdean, succentor, prebendary of Haly Croce, and the prebendary of St. Mary shall be bound to make continual residence; so that it shall not be lawful to the provost or any of the dignitaries to be absent during the year from their residence at the cathedral church for the entire half of the year, nor to the foresaid subdean, succentor, or prebendaries of Haly Croce and St. Mary for an entire quarter of the year. When, however, any of them in fulfilment of his office shall have visited the diocese or preached the Word of God to the people therein, he shall be held to have made residence; but all who do not make residence according to the nature of their benefice (unless from necessary causes or for the sake of study, and this with consent of the bishop and chapter) shall pay the fourth part of the fruits thereof to the canons in residence, for payment whereof the official and vicar of the bishop for the time shall take summary cognition of the fact that such canons or prebendaries are non-resident, and shall direct their letters *compulsitor* year by year for the sequestration of the fruits, against the parishioners, farmers, and intromitters with the fruits of their benefices, for payment thereof to the said Yconimi, even although the party be not called; which fourth part of the fruits of these non-residents, and what remains of the common goods, shall be distributed among the resident canons by just tabulation according to the proportion of their residence.

Moreover we ordain that the chaplainry of St. Peter shall be the first of the whole thirteen and incompatible with any other benefice to altarage or perpetual service, of which the chaplain shall be a master of arts and an erudite grammarian. He shall be the master of the Grammar School and shall attend on solemn days and feast days in his surplice in the choir for two, or at least one, greater hour. Before he is admitted he shall be carefully examined by the provost, archdeacon, chancellor, and subdean, or three of them, and this upon their consciences. The second shall be chaplain of St. Augustine and must be a doctor in both kinds of song by all their numbers, and before his installation shall be

examined in the same manner as the succentor, as he will be the master of the Song School; and his chaplainry shall also be incompatible with any other benefice, altarage, or perpetual service. And these two masters shall be bound to teach freely all the boys of the choir and the poor people who are willing to be taught.

The third shall be the stallholder of the bishop, the fourth that of the provost, the fifth that of the archdeacon, the sixth that of the precentor, the seventh that of the chancellor, the eighth that of the treasurer, the ninth that of the subdean, the tenth that of the prebendary of Haly Croce, the eleventh that of the prebendary of St. Mary, the twelfth shall be chaplain of St. Catharine, and the thirteenth chaplain of Haly Croce; and each of these stallholders shall have in the year, one last in victual and ten merks Scots in money for his stipend, besides the daily distributions which shall come out of the produce of the vicarage of the Cathedral Church of Orkney, and out of the foundation of the deceased Thomas, Bishop of Orkney, from Shetland, and £12 out of the foundation of the most illustrious kings of Scotland, the late James III. and James IV.; to be paid by the bishop for the maintenance of masses in the morning, and daily, of the Blessed Mary, and two masses of the Holy Blood every Thursday, and a requiem every Monday throughout the whole year, as shall be appointed on the Saturday in the *preciosa*, and this by each chaplain in his turn. Further, each of the canons and prebendaries shall present his stallholder to the bishop or to his vicar in spiritual things, having his special commission, within two months after a vacancy shall have occurred, by whom he shall be collated for life; and all the stallholders shall be priests and before their admission shall be examined by the provost, precentor, and subdean, and in their absence by the president of the chapter and other two canons of the first order, all residents for the time, on their consciences, whether they have been well instructed in both kinds of song and in reading; otherwise they are not to be admitted. Moreover it is our will that all these provostry, dignities, canonries, prebends, chaplainries, and vicarages of the choir shall be incompatible among themselves, as otherwise (simply from no cause, or in course of time) it would be lawful for two of these to be possessed by one person, and while service should be done for one month, two would thereby be vacant without any declaration.

Further, we ordain that there be one minor sacrist who shall ring the bell, light the candles, bring fire and water into the church, and who shall have his customary provision of what is given for ringing of the bells, and 40s. from the bishop. He shall also be vested with a becoming surplice, and walk in front of the procession with a white staff like a beadle. Likewise, the first of six boys shall be nominated and maintained by the bishop, the second by the prebendary of St. Magnus, the third by the prebendary of St. John, the fourth by the prebendary of St.

Laurence, the fifth by the prebendary of St. Catharine, and the sixth by the prebendary of St. Duthac; each of whom shall have 20s. yearly and shall be examined and admitted by the precentor and succentor. They shall be candle-bearers and shall sing the responses and versicles and other things, as the custom is in the choir, and as they shall be instructed by the said precentor and succentor.

Further, as in our other charter we have assigned to the provost, dignitaries, canons, and prebendaries, certain distinct lands to each of them for their manses at the said Cathedral Church, so we require that each of them within three years after they have taken peaceable possession of their benefices, shall build a manse such as shall befit the value of the fruits of their benefice, in which he shall sleep; otherwise he shall not be considered to make residence among the rest. We also will and ordain that the perpetual vicar pensioner to be nominated and placed by us and our successors as often as required, shall be bound to serve the cure personally by himself, and shall have 10 merks Scots in money and half a last of victual out of the fruits and emoluments of each vicarage of a parish church erected in this present foundation. The bishop himself shall be canon of St. Olave and before being installed shall swear to observe inviolably the statutes of the foundation of this church and chapter; as likewise the provost, all the canons, prebendaries, chaplains, and stallholders before they are installed shall swear the same by themselves or by their procurators specially appointed for this purpose.

And in case this present erection and foundation shall by the means of the bishop or his successors, or any others whatsoever, be broken or neglected, which God forbid, then the provost and canons shall reclaim against and oppose the same, and notwithstanding any lapse of time, shall procure with all their efforts and expenses a just reformation at time and place and before the court, as circumstances and times demand; and that the present foundation and statutes of the chapter shall be clearly and distinctly read four times in the year by the subdean, viz., when they begin their residences as above; and that if any one shall presume (which God forbid) to contravene or infringe this present foundation, in whole or in any part, directly or indirectly, under any question, colour, or device, we pray that the wrath of Almighty God, the Blessed Virgin Mary, and of all the saints, and particularly of St. Magnus our patron, may fall upon him.

In faith and testimony of all which the premises, our own seal, together with the common seal of our chapter and our subscriptions manual, are appended to these presents at our Cathedral Church, the 28th of October 1544, before these witnesses; Patrick Chene of Essilmonth, knight, Patrick Mowate of Boquhelly, Alexander Banerman of Watertoun, Edward Sinclair of Strome, Alexander Innes, constable of Orkney,

Thomas Tulloch of Fluris, James Cragy of Burgh, John Randaile of that ilk, Gilbert Sclater of Burnes, James Cummyng, Henry Freuche, Mr. Robert Glen, Henry Reid, and Mr. Peter Galbrath, notary public, with sundry others. Signed by Ro. ORCHADEN, Episcopus; NICHOLAUS HAWCRO, Rector of Orphar; STEPHEN CULROS, Rector of Stronsay; PETER HOUSTON, Rector of Hoy; JAMES MAXWELL, Rector of St. Mary of Sanda; NICHOLAUS HAWCRO, Archdeacon of Shetland and Prebendary of the Holy Trinity; MAGNUS STRANG, Prebendary of St. Columba.

## CCXXXVII

A RECORD OF THE PROCESS directed against the occupiers of the lands of St. Lawrence Stouk,<sup>1</sup> Sandwick (Orkney), to make them pay their teinds

Both originals in possession of Mrs. Watt of Breckness.

*October 1565-March 1565-66.*

*Sandwick.*

*Abstract 1*

Housgair, 8 Oct. 1565

On this day Jhoin Kirknes, Magnus Kirknes, and Nicoll Housgair, of their own free will 'actit' themselves conjunctly to make payment to Wm. Boithwaill of 16 meils, 3 settens cost, the third part thereof meal, for the teinds of Housgair of the crop in 1565. 'And the said Wm. hes gevin down off the rentaill this yeir because the coirnis is euil. And thir personis ar content that this present act haif the strentht of ane decretit, and the jug to interpoin his authoritye heirunto.' The judge ordains letters to pass hereupon if need be.

Tronstane, 11 Oct. 1565

On this day James Beaqui,<sup>2</sup> Thomas Bynne, and Jhoin

<sup>1</sup> See No. XXXVIA.

<sup>2</sup> Without doubt James Baikie. In the Uthel Book (1601) three Baikies held land in Tronston (the other names there being Binnie, Fidlur, Loutit, Instabillie, and Tronston). Also, James Baky is found in Sandwick in 1553 (No. XLVII.). Beaqui can hardly be a misspelling: it must surely be the original form of the name. The township of Beaquoy (a 4<sup>1</sup>/<sub>2</sub> d. land in the 1595 Rental)

Fidlair bound themselves in the same terms as above to pay for the teinds of Tronstaye yearly during the space of three years, 5 meils malt and 2 meils meal: their entry to be in this present year.

Skoirvaill, 15 Dec. same year

On this day Olipheir Sklettair indweller in Skoirwall bound himself in the same terms to pay Wm. Boithwall of Quholpside, for the fifth part of the teinds of Skorvall, 4 meils, 4 settens, 20 marks cost, of which 1 meil must be in meal.

On the same day Robert Hutchisoin, Jhoin Clairk, Robc Kirknes, and Jhoin Hutchisoin bound themselves severally, each to pay a fifth of the teinds of Skorvaill, the amount in each case to be the same as Olipheir Sklettair paid.

*Northdik*

(This 'town' was taken in 4 instalments as follows—all payments to William Bothwell of Whelpside.)

Ouer Garsoind, 9d. land. 18 Dec. same year

On this day Jhoin Erewin indweller in Northtdik bound himself to pay for the fifth part of the teinds of Noirthe Dik, 7 meils, 1 sett, 6 mk. cost, of which 1 meil must be meal.

Instabellie, 9d. land. 4 Feb. same year (1565-66)

On this day James Stiklair and Androw Thirsill<sup>1</sup> bound themselves to pay for the 9d. land of Noirthe Dik (*i.e.*, Instabilie), the same amount as John Irving. Where they do not intromit with the teinds themselves, they must

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lies in Birsay, near the Sandwick border, and would seem to have given rise to this surname. The only other instances I have found of the form Beaquoy as a surname are (1) a sasine of December 16th, 1631, where Janet Velzian, one of the two lawful grand-daughters and heirs of the deceased Andrew Velzian and Helen Beaquoy, sells half of 5 mks. in Velzian in Harray and half of 16 settens in Beaquoy in Birsay. (2) A sasine of January 19th, 1644, where John Hervie of Buckquoy, as grandson and heir of Katherine Beaquoy and Magnus Clouston of Buckquoy, sells a sister part of Beaquoy.

<sup>1</sup> Andrew Kirkness of Thirsill.

find debtors to pay them; if they cannot, they must pay themselves.

Nadder Garsand. 4 Feb. same year

On this day Alexander Garsent, Cristye Stiklair, and Nicoll Brek bound themselves to pay for the teinds of the 9d. land of Neddër Garsent the same as above, and with the same condition attached. 'And attour the said Wm. is content that Alexander Garsoin keip his auld possessioun of the quoye callit Marrehaw, etc.'

Mowir and Feal,<sup>1</sup> 18d. land. 2 March same year

On this day William Bothwall of Quholpsid produced a citation, lawfully executed and endorsed, upon William Stiklair, James Erewin in name and behalf of his father, Nicoll Brek, Cristye Stiklair, Magnus Stiklair, and Alexander Neddîrgarsant.<sup>2</sup> These persons compeired and bound themselves to pay for their 'out teilling' (out tilling) in the towns of Feaye and Moir, for the teinds thereof, conform as they paid for the penny lands set to them within the toun of Noirtht Dik, in meat and meal, in due time of payment. Further, the said William had summoned to compeir on this same day Mathow Taitt, Alexander Linklett, Thom Kirknes, Jhoin Linklet, Olipher Sklettar, Villiam Skollair,<sup>3</sup> and Robert Kirknes. These persons did not compeir, and for their contumacy were decerned to pay for the teinds of their 'ut tylling' in the

<sup>1</sup> Mowir and Feal are not found in any rental, but they obviously corresponded to the two 9d. lands of Mobisland (anciently Mobisyord) and Linahow, both in Northdyke, and neither included here. Such alternative landnames were common enough, though it is curious that two should occur together. Mowir or Moir seems the evident origin of the Sandwick surname Moar (formerly Moir).

<sup>2</sup> This form shows the name is not the same as Garson of Garson (now of Bea) in Scabra.

<sup>3</sup> This can only be Scollay. In the 1595 Rental, Mathew Scolla and his brother are mentioned as having sold land in the neighbouring township of Isbister, and James as grievè of Skaill in Sandwick. In the Uthel Book, Adam and William hold land in Isbister. This looks as though the family originally came from this part of Orkney (since there is no evidence of their having come from anywhere else). Can the form Skollair be the original form?

towns forsaid, conform to their set of the 'inlands' which they had taken of the said William before. 'And the juge decernis thaim to paye euerye man respectiue ffor the penni land of their out teilling conforme to wse and wont quhatsumever,' under penalties. Extracted from the act book word by word by Nicoll Alexander, clerk. (*Signed*) 'NICOLL ALEXANDER, comissary clairk wytht my hand.'

[*In another hand* :] 'Summa of this wittuail abointhe writtain, yeirle, 3 last, 20 meils.'

### *Abstract 2*

Letters of horning, etc. (in the four forms) at the instance of Adam Boithuile, provided to the chaplainry and altarage of St. Laurence in the cathedral kirk of Orkney, against the parishioners, tacksmen, tenants, etc., for payment of the fruits and profits thereof for six years past. Directed to Malcolm Sinclair, messenger, and dated at Edinburgh, 22 October 1569.

[*On the back* :] 21 Dec. 1569, Malcolm Sinclair intimated the same at the market cross of Kirkwall. Witnesses: Mr. William Peirsonne, Magnus Paplay, John Houstoune, Sir John Sadlar, Andrew Williamsone, James Crychtoun, and George Sudderland.

15 Feb. 1569-70, he charged Olipher Sklatter in Isbuster and Olipher Sklatter in Skorwall in Stoif and Alexander Nethir Gersetter [*sic*], personally apprehended. Witnesses: William Sinelar, Alexander Robesone, Mr. William Peirsonne, John Broun of Weland, and James Beverage.

April 13, 1570, he passed to the parish of Sandwek and charged 'the occupyaris of St. Lowrance Stouk' to pay their teinds. Witnesses: Michael Guidaill, William Rynde, and Flory Wark.

April 15, 1570, he charged all the occupiers of St. Louranceis Stouk, conform to a list of their names given to him. Witnesses: William Rynde, Michael Guidaill, and Flory Wark.

September 26 and 27, 1570, he charged all the occupiers and tenants foresaid, convened in Kirknes in Sandwek, to make payment of their duties. Witnesses: John Sinelar of

Tenstay, John Irving of North Dik, Alexander Kirknes, Michael Guidaill, and William Rynde.

In each of these cases the messenger signs 'M. Sinclair w<sup>t</sup> my hand,' and attaches his seal.

[All the seals, except one, remain. They are of paper and bear the Sinclair engraved cross with the initials M. S.]

## CCXXXVIII

NARRATIVE BY THE BAILLIES OF KIRK WALL and other citizens of the true facts as to the theft of William Irving's ship, and certain acts of piracy committed in the Orkneys.

Original in Record Room, Kirkwall.<sup>1</sup>

*September 18th, 1566.*

*Kirkwall.*

To all and syndr[ie] to quhais knowlage thir present letteris sall to cum, and in speciall before the maist mychttty potent lordis of the Cunsall of the realme of Sco[t]land, and to all vtheris quhome it efferis, wittis zour lordschippis that we zour humill subiettis and servatouris, James Sinclair, Johne [B]rowne, Williame Selaitter, bailzeis of the burght of Kirkwall, with the rest of the comonalte, with certane of the s[pi]rituallit[y] of the said burgh, beand convenit for the [furth] setting of iustice and taking of g[uid or]dour for the commone weill thairoff, comperit before vs in iugement Williame Irrewing, [ane] of the lawchtfull sonis of James Irrewing of Sabay, duelland in Sant Andross parachone within the lordschip of Orknay, and thair desyrit ws for the zeill and luf we aucht tyll God and to the verite, that we suld testefie in quhat maner his schip wes stollin furtht of the raid<sup>2</sup> of Kirkwall, sua that the trewtht thairof being iustlie triit, he myeht compla[n]e and persew justice befoir zour lordschippis; and sua it is of verite that vpone the first day of September last bypast

<sup>1</sup> Rescued from a sack of litter in very bad condition.

<sup>2</sup> Roadstead.

of this instant zeir of God 1566 zeiris, James Culross induellar in Leytth, Johne Fyndlasoun, induellar in Caitnes, Thome Bane, induellar in Craill, Jacob Thomesone, Inglisman, Androw Barclay in the Brunteland. Williame Nicholsoun, boy, thair, witht thair complexis, came vndir sylence of nyecht to the towne of Kirkwall, and thair obscuirly ramanit but knowlage of the townschipth, . . . Williame schip, beand of the byrth of xiiij last or thairby, lyand in the raid rady furnesit with victuallis and all vthir necessari . . . to hir, alanerlie waittyng upone ane prosperus wynd to pas to Innernes for tymmir and vthir effairis, the said Williame [being ?] . . . nochtwithstanding, the forsaidis personis at thre houris eftir mydnyecht tuk ane fourhering<sup>1</sup> boitt fra ane honest man callit Johne . . ., passit one burde upone the said Williame schip, and thiftuislie stall hir furth of the said raid; and quhowsone we th[e] . . . and commonalte had knowlage of the way taking of the said schip, incontinent addressit vs in our best abulzemont in feir of [weir ?]<sup>2</sup> to tak the said schip and thewis,<sup>3</sup> bot be ressonne the sylence of nyecht obscuirit hir frome our sycht, we culd nocht comprehend hir no. . . . Sua the wynd beand prosperus to thame, thai passit to the North Ilis of Orknay, and thaireftir to sewart; quhair thai ar ar . . . we ar nocht [c]ertane; and atour the said Williame desirit ws as we wald ansour in Goddis p[re]sens, till declair quhow the s[aid] personis and [wtheris thair com]plexis had vsit thame selfis in [the coun]tretht of Orknay this last somer, and sua we thocht it expedient to deel[air the] hail ver[it]e concernyng thame, for exoneration of our conscience and for punisment of trespassouris; and sa it is of verite that the [said] personis, with wtheris thair complexis, beand in cumpany with thame afor the uptaking of the said schip, callit Grant Johne, Fra[nchman], . . . [sic] Blank, a new Franchman, Alla Gray, Franchman, David Strahone, marinar of Aberdein, nocht abone ex-premit, came to the ile . . . pertenyng the byschope

<sup>1</sup> O. N. *fer-arings*, a four-oared boat.—A. W. J.

<sup>2</sup> war.

<sup>3</sup> thieves.

of Orknay and Johne Hartsyd takisman thairto, witht ane gret saxhering<sup>1</sup> both quhilk thai had ta[ken fra] . . . Johne Homound duelland in Caitnes, and thair tuk fra the said Johne Hartsyd ane small tow<sup>2</sup> of fourty fawdome or thairby, [with ?] certane scheip and wthir victuallis; and thaireftir passit to the ile Pappay Stronsay in Orknay pertenying to the que[enis grace ?] maieste and to the fould of Zetland as takisman thairof, and thair reft, spulzeit, and tuk certane lispoundis buttir, togyddir with sum malt and meill; quhilk wes done preceding the taking of the said schip the space of aucht dais or thairby; and sen it is prouidit, bayth of the law diwine and humane, to beir suthfast vitnesing of the trewtht, we the forsaidis bailzeis and commonalte testifeis the haill premissis in all pontis to be of verite, as we will to the eternall God mak ansuar vpon the day of jugement. In vitnes of the quhilk, to this our present letters testimoniallis we haue subscrivit the samyn with our handis as followis, and for corroboratioun heiroy hes effixit our propir signettis heirto, at Kirkwall, the xvij day of September, the zeir of God 1566 zeiris.

JAMES SINCLAIR, balze of Kirkwall, wt. my hand [*seal illegible*]. WILZIAME SCLATTER, bailzie of Kyrkwall, wt. my hand at the pen [*seal gone*].<sup>3</sup> MAISTER GILBERT FOULSE, archeaden [*sic*] of Orknay [*seal gone*]. MR. WILLIAME PEIRSON, person of the Croce in Sanday in Orkney, wt. my hand testifeis this present testimonial to be just and trew and hes affixt my signet heirto for roboration of the samin [*seal gone*], THOMAS [TULLOCH of] Fluris wt. my [hand]. DAUID SCOLLOU, burgess of Kyrkuall, wt. my hand [*seal gone*]. WILLIAM HALCRO of Acris wt. my hand R [*document torn away*].

<sup>1</sup> O. N. *sax-aringr*, a six-oared boat.—A. W. J.

<sup>2</sup> rope.

<sup>3</sup> This seal was still attached when the document was found, but has since been lost. It was a round seal with the device  $\frac{\text{R}}{\text{X}}$  between the initials I. C.; evidently a borrowed seal.

## CCXXXIX

DECREE OF THE LORD REGENT AND LORDS OF SECRET COUNCIL regarding the complaint of Nicol Rendall that he was wrongly ejected from the odal lands of the Island of Gairsay by Lord Robert Stewart.

*Reg. Privy Council, vol. ii. p. 488.*

*February 14th, 1575-76.*

[*Edinburgh.*]

Anent the complaint maid to my Lord Regentis Grace and Lordis of Secreit Counsale be Nicoll Oliverisoun, sone and lauchfull air to umquhile Oliver Randveill, makand mentioun that quhair his said umquhile fader, being heretour of the udall land of the Yle of Gairsay in Orknay, deceisand and levand the said Nicoll, his sone, ane young infant the tyme of his deceis, and he being compellit be necessitie to leif his native cuntre, past to Norroway be the space of fourty yeris bigane, quhair he remanit during the same space quhill within thir thre or four yeris bigane; that hering justice to be ministrat the bettir within Orknay sen my Lord Regentis Grace regiment then afoir, quhairfoir he come in Orknay and persewit his said umquhile faderis heretage, conforme to his rychtis and infestmentis, befoir my Lord Robert Stewart, Fewar and Sheref of Orknay, and his Deputtis, and hes obtenit thair decreit aganis Johnne Mureheid, Margret Sinclair, and Maister Magnus Halcro, allegit possessouris and heretouris of the saidis landis, decerning that he, as nerrest and lauchfull air foir-said, sould be possess in the saidis landis and Yle of Gairsay as his awin propir heretage; and be vertew of the said Lordis precept he wes possess thairintill, as the samyn beris. Nocht theles the said Lord schortlie thaireftir, in the said Nichollis absence, enterit and placeit ane callit Issobell Broun in his saidis landis and heretage, trusting that throw his lang absence, being as a strangeare, werit and beggarit in persute of his just heretage, sould be compellit to steill fra the samyn, and swa intendis to defraude him of his saidis landis, without remeid be providit. And

anent the charge gevin to the said Lord Robert to have comperit befor my Lord Regentis Grace and Lordis of Secreit Counsale at ane certane day bipast to answer to the said complaint, under the pane of rebellioun and putting of him to the horne; with certificatioun to him and he failyeit he sould be denunceit rebell and put to the horne, lyke as at mair lenth is contenit in the said complaint, executioun and indorsatioun thair of. Quhilkis being callit, the said Nicholl Oliverousoun comperand personalie, and the said Lord be Maister Johnne Scharp, his procurator, it was allegeit be the said Maister Johnne in name of the said Lord, that—as be ane assyise and precept of the said Lordis passing thairupoun, the said Nicholl wes possest in certane landis and possessionis quhilk his said unquhile fader broukit and possest in the said Yle of Gairsay in his tyme, reservand place to all personis havand titill to the samyn to persew thairfoir as law wald—sa be ane uther assyise gevin thaireftir, wes the said Nicoll decernit to haif na titill to the saidis landis, bot the samyn be the law and practik observit within the said cuntre of Orknay in tymes past, wes fund to appertene to the said Lord. Quhairfoir my Lord Regentis Grace, with avise of the saidis Lordis, ordanis the said Maister Johnne to bring and present the bukis of the said law, togidder with the proces and sentence pronunceit be the said last assyise, befor his Grace and Lordis foirsaidis, the first day of Apryle nix to cum, to the effect that forder ordour may be takin heiranent as efferis; with certificatioun and he failye, his Grace and Lordis foirsaidis will proceid and tak the said ordour as appertenis.

[On April 4th, 1576, the Lords of Secret Council pronounce verdict that the reasons and allegations of both the parties having been heard and considered, Lord Robert Stewart shall within thirty days reinstate Nicoll Rendall in his lands and heritage till he be lawfully put therefrom, under penalty of being put to the horn.—P. 517 of same volume.]

NOTE.—On October 30th, 1562, Margaret Sinclair, daughter of the deceased Sir James Sinclair of Sanday, made an agreement with her good friend Johnne M'heid, regarding her lands of the Isle of Gairsay, in which she had previously infest him.—Gilbert Grote's Protocol Book.

## CCXI.

INVENTORY OF THE ' TOCHER ' GOODS GIVEN BY ALEXANDER LOUITT OF MIRBISTER TO MARION RENDALL ON HER MARRIAGE.

Original in possession of Mrs. Watt of Breckness.

*Undated (early seventeenth century). (Harray ?)*

The Invitour of the Claythis quhilk [Ma]rion Rendall had quhen schoe yeid <sup>1</sup> fra me Alexander Lou[tit], quhilk is in satisfectiōne of the ten li that I promist [hir] [in] tocher guid.

Item, in the first, ane plaid worth vij li.

Item, mair ane quhyt blankat worth four li.

Item, tua quhyt wylicotis <sup>2</sup> worth iiij li.

Item, ane new blak wylicot worthe xxx s.

Item, ane new garit <sup>3</sup> kirtill worth iiij li.

Item, ane new bodeis of Scottis blak worth xxx s.

Item, thrie ell of blak stuff worth xl s.

Item, tua sarkis <sup>4</sup> worth xl s.

Item, ane conditione and contract on our expensis, xx s.

Item, ane kow worth vij li. tain upe to the brydell, and thrie fattit geis, price xiij s.

Item, ane quhyt scheipe worth xxx s.

All this claithis forsaied was maid on my expens and on my geir; thairfor beseikis your L[ordschip] <sup>5</sup> for justic heiroy for God s[aik].

NOTE.—From a discharge, dated October 12th, 1638, by Margaret Velzian relict of the above Alexander Louttit, with consent of her son James Rendall, this Marion Rendall was evidently Alexander Louttit's step-daughter. The inventory gives a curious glimpse of the trousseau thought requisite for the daughter of the laird of one pennyland <sup>6</sup> in the depths of the West Mainland at the beginning of the seventeenth century, and also of the fare provided at the bridal banquet.

<sup>1</sup> went.

<sup>2</sup> An under-vest, generally worn in winter; or an under-petticoat.

<sup>3</sup> striped.

<sup>4</sup> shirts or shifts.

<sup>5</sup> Earl Patrick. He was imprisoned early in 1610, so that this paper must be before that date.

<sup>6</sup> Testament of Alexander Louttit.

## CCXLI

ACCOUNT OF THOMAS MAINE WITH WILLIAM IRVING OF  
SABAY and his wife Elspet Thomson, and their son  
William.

Original in Gen. Reg. House.

December 14th, 1614.

Sabay.

The Gudman and Gudwyf of Sabayis compt, and thair  
sone William his compt, beginning in May 1614 yeiris  
efter as his band was maid to me, Thomas Maine in  
Sabay, contening a hundreth merkis.

Item, in the first, send to yow be my wyf a much- kin <sup>1</sup> aquavytie, . . . . .	viiij <sup>s</sup>
Item, at my hancoming out of the south to Cobler a pound fegis, <sup>2</sup> . . . . .	v <sup>s</sup>
Item, to your servant Cobler a kag wyne sek pryse, . . . . .	xi <sup>lii</sup> .iiiij <sup>s</sup>
Item, to your servant Barnis a pund fegis, a pund plumdames <sup>3</sup> prys, . . . . .	ix <sup>s</sup>
Item, to him a muchkin aquavitie prys, . . . . .	viiij <sup>s</sup>
Item, to him a pound succour <sup>4</sup> prys, . . . . .	xxxij <sup>s</sup>
Item, to the gudwyf hirself twentie ell tyking <sup>5</sup> prys, . . . . .	xxij <sup>lii</sup>
Item, to your oy Elspit Butter a pound succour prys, . . . . .	xxxij <sup>s</sup>
Item, to the Belman for ringing belis to the gudmanis buryell, . . . . .	xxx <sup>s</sup>
Item, to Mans Hamie belman for his bel ringing and drink to them, . . . . .	xij <sup>s</sup>
Item, to be a mortclaith <sup>6</sup> thrie ell thrie quarteris stenning <sup>7</sup> prys, . . . . .	xv <sup>lii</sup>
Item, send yo Sabay to be Wiliam a pair schankis <sup>8</sup> to his blak claths ij quarteris stenning, . . . . .	iiij <sup>lii</sup>
Item, delyverit to William your sone a hat with a pair greine schankis, . . . . .	viiij <sup>lii</sup>
Item, to him self a pair broune glufis, . . . . .	vj <sup>s</sup> .viiij <sup>d</sup>
Item, that he borrowt in my both <sup>9</sup> to drink in Claray Murayis, . . . . .	xij <sup>s</sup>

<sup>1</sup> A measure equal to an English pint.

<sup>2</sup> Damascene plums.

<sup>6</sup> pall.

<sup>8</sup> stockings.

<sup>2</sup> figs.

<sup>4</sup> sugar.

<sup>5</sup> A kind of cloth.

<sup>7</sup> A species of fine woollen cloth.

<sup>9</sup> booth.

Item, send to William with Elspit Butter a pair dry leder schone, <sup>1</sup> . . . . .	xxx <sup>s</sup>
Item, send to your son William with Barnie quhen he made his clais 4 drop blak silk, . . . . .	vij <sup>s</sup>
Item, to William Vaiker for dresing William your sonis brekis, . . . . .	ij <sup>s</sup>
Item, send to the gudwyf with Barnie a keam, <sup>2</sup> . . . . .	xvj <sup>l</sup>
Item, to the litster <sup>2</sup> for liting the gudwyfis greine claith, . . . . .	xxiv <sup>s</sup>
Item, coft <sup>4</sup> fra Jamis Carat <sup>5</sup> to William to his hat and schone ij ell half el rubinis, . . . . .	xx <sup>s</sup>
Item, that William your sone borowit to gif Androw Edemsons talzour, . . . . .	xxiiij <sup>s</sup>
Item, at Lambes quhen William geid to the wyne with Edward Scolay in Robert Chalmeris after as he had soupit with me he borowit to pay his wyne, . . . . .	xxxvj <sup>s</sup>
Item, to William him self a pair wemenis glufis to gif Jeane Gib, . . . . .	v <sup>s</sup>
Item, to William a blak sowrd belt prys, . . . . .	xiiij <sup>s</sup> iiiij <sup>l</sup>
Item, lent to William to pay his pynt wyne in David Moncreifis with Patrik Vas, William Coventrie, David Moncreif, and me, . . . . .	xij <sup>s</sup>
Item, send to Thomas Kirknes to William with ane of your greifs sons, and his knyf send to me in ane taikin he being drinking thair, . . . . .	xij <sup>s</sup>
Item, comptit be your sone and my wyf for ail drinkin with Jams Irving and utheris, . . . . .	xxij <sup>s</sup>
Item, send to Sabay to William with Barnie a pond resingis, <sup>6</sup> . . . . .	vj <sup>s</sup>
Item, delyverit to him a pair glufis to Magie Scolay as he said, . . . . .	v <sup>s</sup>
Item, to him quhen he resavit this glufis a pond resingis, . . . . .	vj <sup>s</sup>
Item, borowit fra my wyf to gif Robert Cobler in my for <sup>7</sup> chamber, . . . . .	xij <sup>s</sup>
Item, druckin at this sam tyme be your sone and Robert Cobler, . . . . .	ij <sup>s</sup>
Item, to Williamis buryell for aill and bred to Nicolay, . . . . .	xxxv <sup>s</sup>
Item, to Margret Carmichall for aill, . . . . .	xvj <sup>s</sup>
Item, to the belman for belis ringing, graif making, drink, and al, . . . . .	xliij <sup>s</sup>
Item, for a kist, . . . . .	l <sup>s</sup>
Item, for a winding scheit, . . . . .	xlviij <sup>s</sup>

<sup>1</sup> leather shoes.<sup>2</sup> Presumably comb.<sup>3</sup> dyer.<sup>4</sup> bought.<sup>5</sup> Or Carac?<sup>6</sup> raisins.<sup>7</sup> front.

Item, for candill, . . . . .	xxij <sup>s</sup>
Item, for drink efter buryell to James Irving and utheris, . . . . .	xvj <sup>s</sup>
Item, send to the gudwyf quhen the Laird of May sould haif com out, a doson baikis, <sup>1</sup> . . . . .	vij <sup>s</sup>

This abone wretin compt is subscrivit at Sabay, the fourtein day of December 1614, befoir thir witnessis, Robert Sinclair of Campstane, Magnus Sinclair of Gorne, William Merschell.

ELSPET THOMSOUN, with my hand at the pen led be the notar underwretin at my comand, becaus I culd not wreit.

Robert Sinclair of Campstane, witnes, Wm. Merschall, witnes.

Ita est Willelmus Sinclair notarius publicus ad hec rogatus et requisitus de speciali mandato diete Elizabethę scribere nescientis teste manu propria. 4 schor libs. xvijj. Compt and rakning with the gudwyf of Sabay, in presene of Jaspert Flet and Robert Banatyne, of al thingis contenit in this compt gewine and laid be Jaspert Flet in my chamber in Kirkwal, quhilk extendis to thrie schor sevin-teine pound and auchteine schiling, this the fourt of March 1615, this by and atour the twa meilis malt quhilk the gudwyf is awin me for hir dochter Besse Irwing that hir father left hir.

NOTE.—William Irving of Sabay died June 1614 (Inventory in possession of the Venerable Archdeacon Craven). His eldest son Patrick predeceased him, and he was succeeded by his grandson William, the last Irving of Sabay. His second son, William (mentioned in this compt), was killed at the siege of Kirkwall Castle towards the end of the year 1614.

<sup>1</sup> Small cakes or biscuits.



## ORKNEY AND SHETLAND SEALS

ATTACHED TO DOCUMENTS IN THIS VOLUME

By W. RAE MACDONALD, F.S.A.Scot., Albany Herald.  
(With Notes by the Editor.)

### I. SEALS ON DEEDS IN *DIP. NORV.*

(Reproduced in *Norske Sigiller* and described from the facsimiles.)

1. Herra Erik Unge. A sword erect between two roses slipped issuing from the hilt. (Beaded border.)  
*Legend*, s[IGILLUM ERI]CT VN[G]A. No. XXVIII. (1).

2. Gunni of Gnipum. In a beaded circle, a rose of six petals. *Legend*, SIGILLUM G[V]NNAR[I]. No. XXVIII. (6).

3. Erlend Alfeitr. On a round seal, a lymphad with flag from mast. Legend gone. No. XXVIII. (7).

4. Erlend Geirmundson. A dagger erect between two stars of eight points in chief. *Legend*, . . . G . . . No. XXIX. (5).

5. Hogne in Reidarfiord. A fleur de lys seeded. Legend illegible. No. XXIX. (9).

6. Erlend Sigurdson. A round seal with impaled arms viz. :—Dexter—a fleur de lys dimidiated. Sinister—two stars in pale. *Legend*, s'ERLENDI : [SIG]VRDI. No. VI. (3).

7. Henry Williamson. On a bend, three pheons points upward. In sinister chief, the letter H bend-sinisterways. *Legend*, [s : H]EINRICI : FILII : WILI[ALMI]. No. VII. (4).

8. [Thomas Ireland].<sup>1</sup> A long cross pattée. Legend gone. No. VIII. (8).

9. [Uncertain.]<sup>2</sup> A round seal. Legend, . . . ON . . . No. VIII. (10).

10. Jon Thorkelson. A shield bearing impaled arms, viz.—Dexter, two chevronells dimidiated. Sinister—blank. Legend, S'IOANIS [T]HORKELI.<sup>3</sup> No. VIII. (11).

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<sup>1</sup> Seals Nos. 8, 9, and 10 are attributed on the tags, in later handwriting, to William Storm, Sigurd of Paplay, and Duncan of Karinkors, but in *Norske Sigiller* the first two are described as uncertain, and the last attributed to the obvious owner John Thorkelson; the later guesses on the tags being manifestly wrong from the fact that in Norse deeds the order of the seals was invariably that of the names in the deed. Starting from that basis, the three seals can be assigned to the proper arbiters with tolerable certainty. The agreement took the form of an indenture, there were twenty-four arbiters (who are stated to have appended their seals), each of the two principals affixed his to the other's half of the indenture, and there were 13 seals altogether on the extant deed. It is thus clear that twelve arbiters attached their seals to one half of the indenture, and twelve to the other. The two doubtful points are: (a) which half have we got (*i.e.* with seals 1 to 12, or 13 to 24)? (b) Did the principals put their seals before or after the arbiters? The three extant seals given in *Norske Sigiller* were (in their order on the deed) 8, 10, and 11. On the assumption that this was the first half of the indenture and that the principals appended their seals last, these then become the seals of Thomas Arland, Henry Williamson, and John of the Orkneys. As the vaguely styled 'John of the Orkneys' is infinitely the most likely John to be John Thorkelson, this alone seems to show that assumption to be correct; and the fact that the Ireland arms actually were a cross (seal No. 18) may not unreasonably be taken to confirm it. None of the alternative assumptions are nearly so probable, and not one has any fact to support it.

<sup>2</sup> The remains of a device are visible, which in *Norske Sigiller* are explained as a beast's head with open mouth, though the seal itself must have been more distinct than the facsimile is, to justify any great confidence in this reconstruction. According to the calculation in the preceding footnote, it should be the seal of Henry Williamson, but that it was a borrowed seal seems pretty certain, since the letters ON (coming about two-thirds of the way round the legend) correspond to none of the arbiters' names. As Henry Williamson was a Shetlander, it is likely enough that he would have had to borrow a seal in Kirkwall.

<sup>3</sup> Wrongly read as 'Horreli' in *Norske Sigiller*. The legend, however, is plain to see in the facsimile, and the letter can be compared both with the preceding *r* and with the *rs* and *ks* in other legends. Besides, the genitive termination shows it to be a patronymic, and there was no such Christian name as Horrel (or Thorrel). There is just enough space for a missing *T* at the beginning; or, quite possibly, the inevitable Orkney change of *th* into *k* had begun already, and the seal engraver actually engraved 'Horkeli.'

## II. SEALS ATTACHED TO ORKNEY CHARTERS

11. Bothwell, Adam, bishop of Orkney. An ornamental shield, with scroll ornament at top and sides, bearing arms:—On a chevron, between three trefoils slipped, a star. *Legend*, S · EPI · ORCHADÆ · PPETVA · COMENDATARI · S · SCTE · CRVCIS · PROPE · EDINBURGV. Diam.  $1\frac{5}{16}$  in. No. CCXXV.

12. Brown, John, of Weyland, burgess of Kirkwall.

(1.) On a chevron between two fleurs de lys in chief and a star in base, a crescent. Foliage at top and sides of shield. *Legend*, S IHONNIS BROVN B.K. Diam.  $1\frac{4}{16}$  in. Nos. CLXII. and CLXV.

(2.) A chevron between three fleurs de lys. *Legend*, S IOHNE BROVNE. Diam.  $1\frac{6}{16}$  in. No. LXXIII.

13. Cragy, John, lawman of Orkney. On a fess, between six stars (three in chief and three in base), three crescents. Slanting lines at top and sides of shield. Legend illegible. Diam. 1 in. No. XXXVII.A.

14. Dikieson, Thomas. A werewolf passant with two stars in chief. *Legend*, S THOMAS DIKSON. Diam.  $1\frac{6}{16}$  in. No. LXXIII.

15. Dischington, Mr. John. An ornamental shield, with initials I.<sup>M</sup>.D. at top and sides, bearing arms:—On a bend three escallops. No legend. Diam.  $1\frac{4}{16}$  in. No. CCVI.

16. Halcro, William, of Aikers. On a mount a lion rampant with [two] guttes in chief. *Legend*, S WILLIAM HALCRO. Diam.  $1\frac{6}{16}$  in. (Very imperfect.) No. LXXIII.

17. Henderson, Cuthbert, notary. Arms defaced. Foliage at top and sides of shield. *Legend*, SIGILLVM CVTHBERTI HENDERSONES. Diam.  $1\frac{9}{16}$  in. No. LXXIV.

18. Ireland, Malcolm of that ilk. A cross. *Legend*, S MALCOLM IRELAND. Diam.  $1\frac{6}{16}$  in. No. LXXIII.

## 388 RECORDS OF THE EARLDOM OF ORKNEY

19. Kintore, James. A saltire between a star in chief and a crescent in base. *Legend*, S IAMIS KINTOR. Diam.  $1\frac{5}{16}$  in. No. LXXIII.

21. Main, William.<sup>1</sup> On a fess, between three loaves, a star. *Legend*, S VILLIAM MAYNE. Diam.  $1\frac{5}{16}$  in. No. LXXIII.

21. Murray, James, of Garth. A chevron between three stars. *Legend*, S IAMIS MVRRA. Diam.  $1\frac{5}{16}$  in. No. LXXIII.

22. Murray, Thomas,<sup>2</sup> burgess of Kirkwall. A chevron between three stars. *Legend*, S THOMAS [MVR]RA. Diam.  $1\frac{5}{16}$  in. No. LXXIII.

23. Newfar, Frederick, notary public. Only charge visible is a mount of three tops in base. *Legend*, S Friderici.  
. . . . . Diam.  $1\frac{2}{16}$  in. No. XXXVI.

24. Orkney chapter Seal. Three canopied niches: in the centre on a bracket St. Magnus bareheaded with a sword erect in his right hand; in each of the side niches on a bracket a monk kneeling with arms raised and extended in adoration towards the saint. *Legend*, † SIGILLVM · CAPITVLI · ORKADENSIS · ECCLESIE · SANCTI · MAGNI. Beaded borders. Diam.  $2\frac{1}{16}$  in. No. CCXXV.

25. Paplay, Steven, burgess of Kirkwall and portioner of Sands. Three guttes, with a star at fess point. *Legend*, S STEVIN PAVPLAY. Diam.  $1\frac{5}{16}$  in. No. LXXIII.

<sup>1</sup> This seal bears quite different arms from those on the tomb of William Maine, burgess of Kirkwall, who died in 1592. In Mr. Norton Smith's *Orkney Armorial*, these are described, 'on a bend sinister, between a unicorn's head coupé contournée in chief, and a pheon point downward in base, three fleur-de-lys.' Yet it is a little difficult to believe that there were two contemporary arms-bearing William Mains in Kirkwall, wholly (or at all events, armorially) unrelated.

<sup>2</sup> He married Clara Murray, daughter and heiress of James Murray of Garth (see *Reg. Sas.*, 3rd August 1643), and in 1597 is described as his good-son and apparent heir (*Reg. Privy Council*). His father is unknown (to the editor at least).

26. Phankuth, Master Henry, archdean of Shetland. A shield with scroll ornament above it, bearing arms:— On a chevron, between three cinquefoils, a buckle? *Legend*, *ſ magri*. . . . Diam.  $1\frac{5}{16}$  in. No. xxxvi.

27. Redpath, James, burgess of Kirkwall. Three boar heads erased with a cross pattée in chief. Foliage at top and sides of shield. *Legend*, *ſ IACOBI REDPETHT*. Diam.  $1\frac{4}{16}$  in. Nos. cxxix., cxxx., clvii., and clx.

28. Robertson, Alexander, baillie of Kirkwall. Quarterly: 1st and 4th, A helmet; 2nd and 3rd, A cross-crosslet fitchée.<sup>1</sup> *Legend*, *ſ ALEXANDER ROBERTSVN*. Diam.  $1\frac{6}{16}$  in. No. lxxiii.

29. Scollay, David, provost of Kirkwall. An ornamental shield, between the initials D. S., bearing arms:— Quarterly: 1st and 4th, A saltire between two — in chief and base, and as many — in flanks; 2nd and 3rd, A saltire between two stars in chief and base and as many crescents in flanks.<sup>2</sup> *Legend*, *ſ DAVIDIS SCOLA BVRGENSIS DE KIRKVAL*. Diam.  $1\frac{8}{16}$  in. No. cxc.

30. Scuil, Sir James, notary public. Three beast heads erased. *Legend*, *ſ Dni iacobi ſcuell*. Diam.  $1\frac{1}{16}$  in. Nos. cxxix. and cxxx.

31. Sinclair, John, of Tohop.<sup>3</sup> A cross engrailed. *Legend*, *ſ IOHNE SINCLER*. Diam.  $1\frac{6}{16}$  in. No. lxxiii.

32. Sinclair, Oliver, of Essinquooy. A cross engrailed. *Legend*, *ſ OLIFAIR SINCLER*. Diam.  $1\frac{6}{16}$  in. No. lxxiii.

33. Sinclair, Sir William, of Warsetter, knight. A shield supported on the breast of a griffin sejant, between the

<sup>1</sup> These are the arms of a family of Robertson of that ilk, quite distinct from the Struan family (though in these records the name is always spelt 'Robertson').

<sup>2</sup> The arms of Scollay in 1687 are described in *Orkney Armorial* as 'a saltire between four mullets, in base a heart.' These would seem to be a modest selection from the exuberant coat of the old provost.

<sup>3</sup> The only other John Sinclair who might have been on an assize and used this seal was John of Tenston. He, however, could not sign his name (see No. lxxvii), whereas this John Sinclair signed.

initials V. S., bearing arms :—A cross engrailed. Diam.  $1\frac{3}{16}$  in., on red wax covered with paper. No. XXXVII.

34. Stewart, Robert, feuar (afterwards earl) of Orkney. Couché, A lion rampant debruised by a ribbon, all within a royal tressure. Above the shield, a helmet with mantling, but no crest. *Legend*, S · ROBERTI · STEVART · FEVDIFIRMARI · ORCHADEN & ZETLA. Diam.  $2\frac{2}{16}$  in. No. CCXXIV.

35. Strang, Sir Magnus, subchanter of Orkney. On a chevron, between three mascles, a crescent. Foliage at top and sides of shield. *Legend*, S DNS MAGVS STRANG SVBCANTOR ORCHADEN. Diam.  $1\frac{5}{16}$  in. Nos. CXXIX., CXXX., CXXXIV., CXLII.

36. Tulloch, Master Jerome, subchanter of Orkney and Shetland. On a fess, between three cross-crosslets fitchée, as many stars. At top of shield a fleur de lys, and at sides palm branches. *Legend*, S. M. HERONIME TVLLO'. Diam.  $1\frac{5}{16}$  in. Nos. CCXXV. and CCXXVII.

NOTE.—A survey both of the extant seals and those mentioned in the charters as having been appended, shows that by the middle of the fifteenth century the use of seals in Orkney had become practically confined to the Justice and Lawman, and a few of the clergy and leading burgesses of Kirkwall. After that period extremely few of the landed families are ever recorded as using them. This is in marked contrast to the early practice, as shown by the oldest deeds in this collection, and by the Norwegian deeds in *Dip. Norv.* In Norway, not only the nobility and the officials, but all the more substantial bonder used seals: armorial in the one case; distinguished by a letter or mark, in the other; and it can hardly be supposed that the influx of Scottish gentry did anything to discourage their use. One would rather think it would be the reverse, yet, after the year 1424, there is only one instance (in 1597, see No. CCIV.) of any member of the conspicuous family of Irving of Sabay appending a seal, and none of any of the Cromartys or Louttits, or of the Sinclairs of Warsetter, apart from Sir William the Justice (to take representative Scottish families alone). A few seals, such as those of Sir Nicol Halcro, Sir Magnus Strang, and James Redpath, were in constant requisition, and seemed almost to take the place of a Government stamp. Even in the earliest dooms of court, the roithmen procured one of these, so to speak, standard seals, instead of attaching their own. The very array of seals attached to No. LXXIII. indicates, when closely examined, a paucity of seals in the islands. As soon as they had been through his hands, Mr. Rae Macdonald pointed out they are all the same size, and of precisely the same design, down to the ornament and

the lettering of the legends; and it may be added that they share the curious feature of not having the Christian names Latinised. Mr. Rae Macdonald suggests that they must have been specially made for the occasion, and it is hard to doubt that this was the case. The employment by William Sclater of a borrowed seal in No. CCXXXVIII. (see footnote 3, p. 377) is confirmatory of this view. In fact, it almost looks as if at some time in the fifteenth century an enactment of the Lawthing had decreed that only certain seals should thenceforth be what one might call 'legal tender,' and give efficacy to a charter. The difficulties and complexities in the way of a transfer of odal land would be reasonable justification for such a safeguard, and the disuse and gradual disappearance of all other seals would certainly be the inevitable consequence.



## APPENDIX A

### EXTRACTS FROM THE *ORKNEYINGA SAGA*

(Illustrating certain features of the ancient constitution  
of the Earldom.)

#### I. THE EARL'S COUNCIL

(1) *Circ.* A.D. 1021. Ch. 20. Then the earl (Thorfinn) begged the king to grant him time till the next summer, and that he might fare home first of all. 'All my councillors (*raðuneyti*) are at home,' he says, 'and I am but a child in years.'

(2) A.D. 1116. Ch. 51. Havard Gunní's son was on board the earl's ship, a friend and councillor (*raðgjafi*) of the earls, and a fast friend to both (earls) alike.

(3) A.D. 1151-52. Ch. 100. Anakol was a Viking, and a man of high birth and great hardihood, a south islander by kin; he was (Earl) Erlend's councillor (*raðgjafi*).

(4) A.D. 1152. Ch. 100. Then Sweyn offered to the earl his following and counsel (*fylgð sína ok raðuneyti*).

(5) A.D. 1155-56. Ch. 110. When they came home from Scilly, Thorbjorn Clerk fared to Earl Harald and became his councillor (*raðgjafi*).

#### II. THE NOBLES

[Allusions in the *Saga* are constant to the *höfðingur* (chieftains), *rikis menn* and *stormenn* (great men or magnates), *göfgir menn* (noble or worshipful men), etc., but the extracts below relate to the peculiarly Orkney term *gæðingar*, the specific and semi-feudal nobility of the earls. The last quotation establishes the distinction between this class and the ordinary *bouder*.]

(1) A.D. *circ.* 1064. Ch. 38. (From the song on the exploits of Earl Thorfinn.)

'Thorfinn, trusty lord of Thanes (*gæðingr*),  
Long may God him guard alive!'

## 394 RECORDS OF THE EARLDOM OF ORKNEY

(2) Same period. Ch. 39. These (Sigurd of Westness, Hakon Barn, Benedict, and Havard Gunni's son, and their descendants) are all earl's kin and noblemen (*gæðinga*) in the Orkneys.

(3) *Circ.* A.D. 1090. Ch. 41. Havard Gunni's son and all the other noblemen (*gæðingar*) of the earls came one day between them.

(4) A.D. 1126. Ch. 57. There soon arose great divisions between the great men (*stormenni*), and the chieftains (*gæðingar*) threw themselves very much into two sides.

(5) A.D. 1128. Ch. 59. They (Sigurd of Westness and his sons) were all chieftains (*gæðingar*) of Earl Paul.

(6) A.D. 1136. Ch. 68. Then the earl sent word to Kugi in Westray and Thorkell Fletti, they were wise men; and many other chieftains (*gæðingum*) he summoned to him.

(7) A.D. 1136. Ch. 69. Then he (Earl Paul) had a great feast and bade to him his chieftains (*gæðingum*).

(8) A.D. 1137. Ch. 74. After that Dagfinn had set fire to the beacon, he set off to find Earl Paul, as was before said, and thither came all the earl's chieftains (*gæðingar*).

(9) A.D. 1148-50. Ch. 89. The earl had also Bishop William at his feast that Yule, and many of his chieftains (*gæðinga*).

(10) A.D. 1153. Ch. 98. It was told him (Earl Rognvald) that there was great strife, and the chieftains (*gæðingar*) had gone into two bands . . . and when the earl heard that, he sang this song:—

'Now have the *gæðingar* gone back on many an oath . . .'

(11) A.D. 1159. Ch. 113. Then began to speak Magnus, the son of Havard Gunni's son, a chieftain (*gæðingr*) of the earls and their kinsman: he was the man of most birth and worth (*göfgastr maðr*) in the band with Earl Harald.

(12) A.D. 1137. Ch. 77. But most of the mighty men (*riks menn*), and the freemen (*bændr*) too, wished to buy Earl Rognvald off with money.

### III. LEGISLATION

(1) *Circ.* A.D. 1060. Ch. 37. Then he (Earl Thorfinn) left off warfare; then he turned his mind to ruling the people and land, and to law-giving (*laga-setning*).

(2) A.D. 1116-26. Ch. 55. Then he (Earl Hakon) set up in the Orkneys new laws (*setti . . . ný lög*), which pleased the bonder much better than those that had been before.

(3) A.D. 1137. Ch. 80. But as the building (of St. Magnus Cathedral) went on, it grew costly to the earl, and his money was far spent. Then the earl sought counsel of his father. But Kol gave him that advice that the earl should bring in a law to the effect that the earls had taken all the odal lands in inheritance after men, but that the heirs had to redeem them for their own, and that was thought rather hard. Then Earl Rognvald made them call together a *Thing*, and offered the bonder the choice of buying their odals out and out, so that there was no need to redeem them. And that they agreed on among themselves, so that all were well pleased. But a merk was to be paid to the earl for every plough-land over all the isles. And thenceforth money was not lacking for the church-building; and that building is wrought with much toil and pains.

#### IV. THE ADMINISTRATION OF JUSTICE

(1) A.D. 1139-48. Ch. 84. The earl said: 'I will not that ye two [Sweyn and Thorbiorn] be at strife.' And after that, Earl Rognvald fared to Gairsay and tried to bring about an atonement between them, and that was easy, for they were both willing that the earl should settle the matter.

(2) A.D. 1139-48. Ch. 86. The earl said: '. . . But ye shall not strive with him [Sweyn] about this. I will give you as much out of my goods as ye lose by him; my will also is that ye make no claim against him for this.'

(3) A.D. 1150-51. Ch. 90. Sweyn . . . sent word to Earl Rognvald that he should take an atonement for the slaying of Arni Spindleshanks. And as soon as these words came to him, he (the earl) summoned to him all those who had the blood feud for the slaying of Arni, and made matters up with them, so that they were well pleased, and he paid up the fine himself. Much other mischief the earl made good with his own money that was wrought that winter both by the Easterlings and Orkneyingers, for they pulled very ill together.

(4) A.D. 1154. Ch. 104. Earl Erlend's men made their way to Kirkwall and took shelter in Magnus's church. The earls also fared thither, and then a meeting for a settlement was fixed in the church.

(This extract and the next show the early use of the Cathedral for legal or quasi-legal proceedings.)

(5) A.D. 1155. Ch. 108. As soon as ever he (Earl Harald) came into the Orkneys, Earl Rognvald sent men to him to say that his will was that he and Sweyn should make friends anew. And then the meeting for an atonement was fixed for the Friday in the Holy Week in Magnus's Church, and Earl Rognvald went with a broad-axe to the meeting and Sweyn with him. Then the selfsame atonement was agreed upon which had been brought about the winter before.

(6) A.D. 1156-57. Ch. 110. (A quarrel occurs between a court-man—*hirðmaðr*—of Earl Rognvald, and a follower of the chieftain Thorbjorn Clerk.) Then that was told to the earls, and they came to the spot to part them. Thorbjorn would not let Earl Rognvald utter an award in the quarrel.

(7) *Circ.* A.D. 1000. From the Story of Helgi and Ulf, p. 369. (In the days of Earl Sigurd Hlodver's son, Ulf the Bad abode in Sanday and Harald and his son Helgi in North Ronaldsay. Ulf offers to buy Harald's estates, and on his refusing, slays him.) This deed was ill-spoken of, and when Earl Sigurd heard of it, he blamed the deed. Ulf came to see the earl and told him of it. The earl says that he likes ill such undertakings, 'and my will is that thou payest a fitting atonement to his kinsfolk.' Ulf said he should have his way in that; but said too that much mischief had been wrought against him by Harald. Now the suit was not very speedily taken up, as Helgi was not in the isles. (Helgi returns to Orkney, and without waiting for process of law, slays Bard, Ulf's nearest kinsman.) But when Earl Sigurd heard that, he summoned Helgi to come to him. And when they meet, the earl said, 'Thou hast done an ill deed in return for thy wrongs, and hast not looked towards thine own honour with our help; now this quarrel had been already settled and thine honour cared for.' Helgi answers, 'Then everything shall still be placed in your power; but I knew nothing at all about that settlement.' The earl says, 'It must be my will to bring about settlements between my men here in the isles.' (Both Ulf and Helgi, however, honour the earl's wishes solely in the breach. Ulf endeavours to fall on Helgi, Helgi descends upon Ulf's house and carries off his daughter, and after a sea fight between their fleets, Helgi flies from the islands with his prize.)

(There are no references in the *Orknueyinga Saga* to any other tribunals of justice.)

## APPENDIX B

## MEMBERS OF THE OLD ORKNEY HEAD COURTS

*Column 1.* Members of known landowning families on the Court of Arbitration in 1507 are added to this column in brackets: also names of previously recorded Lawmen and Lawrikmen.

*Column 2.* Names of witnesses in Nos. XLIV. and XLV. are added in brackets.

In both these columns if there is doubt as to a man's parish, his name is marked \*.

If there is no satisfactory evidence to identify him with any parish, the name is entered at the end as 'Uncertain.'

Neither of these two columns professes to give a *complete* list of all eligible members of Court, but judging by the repetition in the names, by what is known of the landowners at the time, and by a comparison with Col. 3, there seems to be no great number of omissions. Col. 1. contains comparatively few names, but reasons are given in the Introduction for thinking the Roithmen were more limited in number.

In these two columns the number of times a name occurs is put in brackets.

*Column 3* contains the earliest recorded suit-rolls, for both earldom and bishopric, which in 1614 had been separated, the suitors attending different courts. St. Ola, Holm, Hoy, Walls, Orphir, Stromness, Sandwick, and Shapinsay were the bishopric parishes; the rest being earldom. Both rolls are taken from the respective Court Books in the General Register House, and in each case cover a year or two after 1617 (the year in which both begin), so as to include a few names not entered in the very earliest roll. The order in which the names appear has no significance, as they are always found divided between two columns, 'present' and 'absent,' and even in those there is no regular order.

It may be added that these rolls became very much less exclusive by the middle of the seventeenth century, as feu-charters were taken out for a great many small odal and crown properties. In South Ronaldsay alone there were forty-nine suitors in 1667, chiefly—if not entirely—the result of feuing the scattered kingslands in 1648-49. At the same time the chief odal families had gone still further down hill, and 'of that ilk' became a rare designation.

The order in which the parishes are put is that of the Uthel Book.

ROITHMEN (1500-22).	ASSIZEMEN, HEAD COURTS (1558-84).	SUITORS OF COURT (1617).
<i>Deerness</i>		
<p>Olay Louttit (2). Thom. Hallay. And. Paplay (2). Peter Paplay. <sup>2</sup>John Aikenson (Aitken).<sup>1</sup> John Skea. Alex. Pottinger Thom. Pottinger</p>	<p>Olay Skea. Stevin Paplay (2). Mag. Paplay.  (John Paplay.) See No. XLIV.</p>	<p>John Cromarty of Skea. Alex. Paplay, for lands in Sands. Jas. Sinclair of Murkle,<sup>2</sup> for Air and other lands. Wm. Paplay of Newhouse.</p>
<i>St. Andrews</i>		
<p>Henry Foubister (3). John Yenstay, elder (2). Olay Yenstay. Alex. Fraser. John Yenstay, yr. William Ness.<sup>3</sup>  (John Irving of Sabay)<sup>4</sup>, 1507. (Bernard Campston), 1507.</p>	<p>And. Yenstay (4). Jas. Irving (of Sabay). Edw. Sinclair in Tolhop. Jas. Foubister of that Ilk (2). Mag. Sinclair of Tolhop.<sup>5</sup> Gilbert Tulloch (of Ness). Malc. Groat of Tankerness. Mag. Irving Gilbert Irving (2) } (of Sabay). John Sinclair (yr. of Tolhop). Oliver Sinclair (of Essinquoy).  (John Tulloch.) See No. XLIV.</p>	<p>Edw. Sinclair of Essinquoy. Wm. Sinclair of Tolhop. Rob. Sinclair of Campston. David Kincaid of Yenstay. Malc. Foubister of that Ilk. Wm. Irving of Sabay (heirs of). Malc. Groat of Tankerness (heirs of). Jas. Tulloch of Ness. And. Foubister in Foubister.</p>
<i>Holm and Paplay</i>		
<p>John Sinclair of Air (3). John Garrioch of Holm.</p>	<p>Gilbert Cragy in Holm (of Skail). And. Keldall in Holm. Donald Miller in Holm. Henry Garrioch in Holm. Nicol Garrioch (of Nether-toun).  (Walter Tulloch of Lamb-holm.) See No. XLV. (Peter Sinclair of Air.) See No. XLV.</p>	<p>Wm. Sinclair of Greenwall. Walter Keldall of that Ilk. Thomas Garrioch in Nether-ton. Nicol Garrioch in Nether-ton. Pat. Smyth of Braeo, for Skail in Holm and Lamb-holm. Abraham Stevenson of Duc-row. Jas. Sinclair of Air. Jas Stewart of Burray.</p>

<sup>1</sup> Presumably an Aiken of Sand Aiken in Deerness.

<sup>2</sup> A Caithness laird.

<sup>3</sup> See footnote to No. XLII.

<sup>4</sup> The infrequent appearance of Irvings in early decrees can only be due to the fact that either they, or their near kinsmen the Fletts, or their hostile neighbour Alex. Fraser, were parties to the cases.

<sup>5</sup> Often described as 'of (or in) Skail' in Sandwick.

ROITHMEN (1500-22).	ASSIZEMEN, HEAD COURTS (1558-84).	SCITORS OF COURT (1617).
And Halero. Mag. Cromarty, elder (3). Mag. Cromarty, yr. (2). Mag. Cawra. <sup>1</sup> John Berston. (John Halero), 1507.	<p style="text-align: center;"><i>South Ronaldsay</i></p> Nicol Tulloch. <sup>2</sup> John Cromarty, I. (of Cara). Hew Halero of that Ilk. Wm. Halero of Aikers (3). John Cromarty, II. of Cara. Wm. Groat of Sandwick.	Hew Halero of that Ilk. Edw. Stewart of Brough. Hew Halero of Aikers. Mag. Cromarty of Cara (heirs of). David Cromarty of Newbigging. Rob. Berston of Kirkhouse. Duncan Cromarty of Kirkhouse. Mag. Cromarty of Sandwick. Mag. Flett of Gruthay. Wm. Berston of Cletts.
	<p style="text-align: center;"><i>(Hoy and)<sup>3</sup> Walls</i></p> Thom. Mudy in Hoy. *Mr. John Dischington.	Hew Halero of that Ilk, for Bull in Hoy and Rackwick. David King of Warbister. Mr. Andrew Dischington, for lands beneath the hill. Edward Mowat, portioner of Brabister. Francis Mudy of Melsetter. Agnes Guid of Air. <sup>4</sup>
Alex. Sinclair of Stromness.	<p style="text-align: center;"><i>Stromness</i></p> Thos. Beaton in Stromness. Wm. Beaton (3). *Thom. Gunn (3). *Rany Elphingston (2). <sup>5</sup> Jas. Murray of Garth (3). Mag. Beaton. Edw. Beaton. And. Redland. <sup>6</sup> John Brown of Forswell.	Wm. Gordon of Cairston. Jerome Tulloch of Quolm. John Redland of that Ilk. John Beaton of Clouk. Mag. Beaton of Pow. Thom. Beaton of Dale. Mag. Beaton of Quoy. Edward Sinclair of Ness. Clara Murray of Garth. <sup>7</sup> Jerome Kirkness of Mousland. John Cursetter in Kirbister. Robert Elphingston of Hammager. Alex. Brown for his lands in Stromness. Adam Smith of Stove. Jerome Redland in Kirbister.

<sup>1</sup> Just possible that he was Mag. Cromarty of Cawra (Cara), either elder or younger, who evidently obtained Cara in right of his wife Cristane Cawra; but more probably the father or brother of Cristane.

<sup>2</sup> Baillie of South Ronaldsay (No. CXXI.).

<sup>3</sup> Hoy omitted in Uthel Book, as there was no odal land there.

<sup>4</sup> Widow of Jas. Sandison of Air.

<sup>5</sup> His charter of Hammager is dated May 2nd, 1580, and his appearances on assizes are immediately previous.

<sup>6</sup> Forswell is in Sandwick, but John was evidently father of Alex., who appears in Stromness Roll (Charter to Alex. Brown, 21/6, 1610, in possession of Mr. Firth).

<sup>7</sup> Daughter and heiress of Jas. Murray of Garth.

ROITHMEN (1500-22).	ASSIZEMEN, HEAD COURTS (1558-84).	SUITORS OF COURT (1617).
<i>Orphir</i>		
<p>Piers Louttit (3).<sup>1</sup>  (Wm. Flett of Hobbister),  1507.</p>	<p>Ninian Flett of Hobbister.  John Crot in Orphir.  Wm. Richan in Hobbister (2).  Rob. Tait in Tuskerbister.  Mag. Inkster.  Mag. Clouston.<sup>2</sup></p>	<p>Rob. Halero of Cava.  Jaspert Flett of Hobbister.  Edward Sinclair for Gyre,  Swanbister and Hangabak.  Jas. Aikers in Swanbister.  Malcolm Aikers there.  Mag. Hourie for the lands of  Stove.  Mag. Wishart in Kirbister.  Jas. Stewart of Graemsay,  for lands of Clestrane.</p>
<i>Sandwick (North and South)</i>		
<p>Rich. Skail.<sup>3</sup>  Adam Taylor.  Jas. Louttit (of Lyking).  Thom. Sinclair of Tenston.  And. Linklater.  And. Linklater, yr. (2).  Alex. Housgarth.</p> <p>(John Kirkness, lawman be-  fore 1438).</p>	<p>Henry Sinclair of Clumlie (3).  Jas. Louttit of Lyking.  Wm. Linklater of that Ilk (4).  John Sinclair of Tenston (3).  And. Hourston of that Ilk (5).  Wm. Kirkness.  John Irving (of Over Garson),  (2).  *Thos. Cragy.<sup>4</sup>  Alex. Linklater.  Oliver Selater of Stove.  John Kirkness.</p> <p>(Andro Linklater. See Har-  rray.)</p>	<p>Margaret Cragy, for lands of  Clumlie.<sup>5</sup>  Wm. Irving of Sabay, for  Yesnabie and Burwick.  Mag. Louttit of Lyking.  Andrew Linklater of that Ilk.  Mag. Irving of Over Garson.  John Linklater of Scabra.  John Kirkness of that Ilk.  Hew Hourston of that Ilk.</p>
<i>Harray</i>		
<p>John Flett of Harray (3).  Alex. Flett.  Mag. Aitken (2)</p>	<p>Wm. Corrigall, elder.  Rob. Isbister of that Ilk (4).  And. Linklater (3).<sup>6</sup>  Jas. Corrigal (2).  Jas. Flett.  Wm. Knarston.  (John Velzian. See under  Uncertain.)</p> <p>(Wm. Corrigall. See No. xlv.)</p>	<p>John Swenton of Kings-  house.<sup>7</sup>  Gilbert Knarston of that Ilk.  Wm. Corrigall of that Ilk.  Jas. Louttit of Mirbister.  Mag. Peterson of Rusland  (heirs of).<sup>8</sup>  Wm. Brough of Overbrough.  Rore Isbister of that Ilk.  Wm. Isbister there.  Alex. Flett of How.  Mag. Flett of Netherbrough.</p>

<sup>1</sup> See footnote to No. XI.

<sup>2</sup> Presumably he appeared for the lands granted by Charter No. CLXXIV. They were sold in 1614; hence the name does not appear in 1617. The Stenness Cloustons remained a purely odal family.

<sup>3</sup> This is the only appearance of this surname in Sandwick. I believe it to have been an *alias*, possibly for Sinclair. Sinclairs held his tacks both immediately before him and some time afterwards.

<sup>4</sup> There is reason to think that this was Thos. Cragy of Vetquoy in Sandwick. See No. CLXXXIV.

<sup>5</sup> Widow of Henry Sinclair.

<sup>6</sup> Andrew, elder and younger, both appear in Harray, and owned land in Mirbister there.

<sup>7</sup> This is the 2<sup>d</sup>. kingsland which the Aitkens held in 1500. They still retained their odal lands in 1617, which illustrates very clearly how only the vassals holding kings (or Church) land appeared at the head sheriff courts.

<sup>8</sup> No doubt this was an *alias* for the chief branch of the Ruslands of Rusland. See Peter of Rusland, No. CVII.

ROITHMEN (1500-22).	ASSIZEMEN, HEAD COURTS (1558-84).	SUITORS OF COURT (1617).
<i>Stenness</i> <sup>1</sup>		
Wm. Clouston (3). Rich. Ireland. *David Louttit (2). <sup>2</sup> Mag. Clouston.	Malc. Ireland (2). (Mag. Clouston. See Orphir.)	Adam Ballenden of Stenness. Rob. Halcro of Cava, for lands of Ireland.
<i>Birsay</i>		
	Oliver Sclater of Isbister (4). *John Kirbister. <sup>3</sup> George Isbister (in Greenay). John Linklater (of Housbie) (2). John Twatt.	Oliver Linklater of Housbie (heirs of). Alex. Isbister of Greenay. Wm. Hervie of Sabiston.
<i>Evie</i>		
		Arch. Dundas of Airsdale in Costa. Clara Murray, for Woodwick. Adam Ballenden of Stenness, for lands in Evie. <sup>4</sup>
<i>Rowsay</i>		
*Rob. Yorston (2). <sup>5</sup> Henry Cragy. Thom. Cragy (2). Nicol Cragy.  (John Cragy, lawrikman 1446, and lawman 1455. (Wm. Cragy, lawman 1480). (John Cragy, lawman c. 1500).	*Pat. Monteith.	Rob. Monteith of Egilsay.
<i>Rendall</i>		
John Rendall. Jas. Rendall (2).  (Henry Rendall, lawman 1438- 46.)	(John Rendall (2). See Nos. XLIV. and XLV.). (? Rendall. See No. XLIV.).	Jas. Rendall, <sup>6</sup> for lands in Rendall.

<sup>1</sup> Before 1574 Pat. Ballenden held all the Church and King's lands in Stenness, except  $\frac{1}{2}$ d. in Germiston; and on October 10th, that year, he was reinstated in them. Hence the almost complete absence of vassals in Stenness.

<sup>2</sup> Probably D.L. of Bigswell in Stenness found in 1551 (No. CXXXII.). He was then evidently aged, and was dead by 1557.

<sup>3</sup> A John Kirbister is also found in Orphir (No. CLXXIV.), but judging from No. LXL., this appears likely to have been a Kirbister from Birsay.

<sup>4</sup> Entered in Bishopric Roll.

<sup>5</sup> An early connection of the Yorstons with Burray is indicated by the old rentals, but they can have been no more than tacksmen there. The evidence of the Uthel Book points strongly to Rowsay as their home, and is corroborated both by later documents, and by the fact of an early marriage with the Cragys of Brough (Halcro Inventory).

<sup>6</sup> A younger son (see Rendall Pedigree). John R. of Breck, one of the largest surviving odallers, is not on rolls, again showing they were confined to vassals.

ROITHMEN (1500-22).	ASSIZEMEN, HEAD COURTS (1558-84).	SUITORS OF COURT (1617).
<i>Firth</i>		
Wm. Heddle (2). Kolbein Grimbister. And. Scarth. Adam Selater (2). John Selater. Thom. Selater. Nicol Firth.	Wm. Heddle of that Ilk (2). Wm. Selater of Burness (4). Thom. Cursetter (2).	Ariam Selater of Burness. Matthew Flett of Redland. Harie Heddle of that Ilk.
<i>St. Ola</i> <sup>1</sup>		
*Alex. Eweson.	*John Cullane. John Brown of Weyland (5). Alex. Spence in Grain. David Spence in Scapa (3). Edw. Spence in Wideford (3). Wm. Tait in Lingro (2). Magnus Scapa (2).	John Finlason of Papdale. Rob. Chalmer of Ryssay, for Wideford, Fea, and Can- ningill. John Henderson of Weyland. Cuthbert Henderson (heirs of), for Lands of Cleat.
<i>Shapinsay</i>		
	Jas. Tulloch in Shapinsay (3). John Caverston.  (David Peirson. See No. XLIV.)	Jas. Tulloch, for Sound. Jas. Tulloch, for Horralds- garth. Wm. Beg of Mussater. Wm. Irving of Kirbister. Jas. Tulloch of Ness, for Skenistoft.
<i>Stronsay (and Eday)</i> <sup>2</sup>		
	Jas. Peirson. Henry Faray in Eday.	Wm. Sinclair of Eday. Mr. Rob. Henderson, for Hol- land and North Ronaldsay. Jas. Sinclair of Brough, <sup>3</sup> for Housbie. Jas. Fea of Clestrain. Jas. Tulloch of Rothiesholm. Edward Scollay of Strynie.
<i>Sanday</i>		
Thom. Mure. Wm. Fotheringham.  (Rich. Fotheringham, lawrik man 1446).		John Henderson of How. Jas. Scollay of Tofts. John Groat of Tresness. Jas. Maxwell of Mariekirk. Wm. Sinclair of Warsetter.
<i>Westray and Papa</i>		
		Malc. Sinclair of Quendall, <sup>4</sup> for Rapness. Alex. Stewart of Clett. Mitchael Balfour of Garth. John Beinstoun, baillie of Westray.

<sup>1</sup> In St. Ola there was hardly any odal land; hence only one name in Col. 1. In Col. 2 most of the names are large tacksmen. In Col. 3 these have been replaced by feuars.

<sup>2</sup> Eday is not included in the Uthel Book, as there was no odal land there.

<sup>3</sup> Brough in Shetland.

<sup>4</sup> A Shetland proprietor.

ROITHMEN (1500-22).

ASSIZEMEN, HEAD COURTS  
(1558-84).

SUITORS OF COURT (1617).

*Burgesses of Kirkwall*<sup>1</sup>

Duncan Scollay, burg. of  
Kirkwall.  
John Houston, burg. of Kirk-  
wall.  
Thomas Murray.  
Alex. Robertson.  
Thom. Dickson.  
Wm. Mayne.

*Uncertain*

John Nory (3).  
Thom. Adamson.  
And. Reid.  
And. Bell.  
John Manson.  
Wm. of Burra.<sup>2</sup>

(Gilbert Mason), 1507.<sup>2</sup>

Thom. Tulloch (of Flures?).  
Harry Sinclair.  
Duncan M'Pherson.  
Jas. Redpath.  
George Moneypenny.  
Edw. Sinclair, yr.  
Robert Sinclair of Ness.<sup>4</sup>  
Wm. Henderson.  
Wm. Ferguson.  
John Velzian.<sup>3</sup>  
Alex. Urie.  
Jas. Kintore.  
John Fallusdail.

(Robert Selater. See No. XLIV).

*Caithness Suitors on  
Bishopric Roll*

George, Earl of Caithness, for  
Bartoun (*sic*) in Caithness.  
Alex. Lord Forbes, for Dun-  
rea in Caithness.  
Jas. Sinclair of Murkill, for  
Tubeg and Schebister in  
Caithness.  
Rorie Mackbethson, for Hal-  
kirk in Caithness.

<sup>1</sup> There can be little doubt that a number of the 'Uncertain' assizemen were merely burgesses and did not appear for lands. At the end of a copy of the 1595 Rental (Gen. Register House) is a list, evidently early seventeenth century, of twenty-eight tenements in Kirkwall which paid 'feu maills,' and of their feuars. Presumably these early burgesses appeared for these.

<sup>2</sup> He may or may not have come from Burray. Families of Burrays are found in the East Mainland and North Isles.

<sup>3</sup> The Masons, or Measons, held lands in St. Andrews and Holm, but these can all be traced to John Mason of Kirkwall. This Gilbert was apparently a relative, but clearly not one of his heirs. See Nos. CXVI., CCXII. and CCXIII.

<sup>4</sup> Where this particular Ness was is uncertain.

<sup>5</sup> A Hurray name, but John does not appear in any contemporary Hurray record.

## APPENDIX C

TACKSMEN OF THE KINGSLANDS IN THE 1492 AND 1502-03<sup>1</sup> RENTALS, WITH THE AMOUNT OF LAND THEY HELD. (Including also a few odallers, witnesses, etc.—everybody mentioned in the two rentals.)

Except where the number is stated, it may be taken that there were from three to five merklands in the pennylands mentioned, the usual number being four. More than five merks or fewer than three are specified. This will give an approximate idea of the relative value of the lands. Merklands were supposed to be of equal value all over the islands, though in point of fact they varied a little.

The originals of both these rentals are missing. The 1502-3 Rental is printed; the other is very clearly written out by Mackenzie in a transcript now at Balfour Castle.

## RENTAL MADE AT KIRKWALL, 3 JULY 1492

PAROCHIA SANCTI OLAVI.<sup>2</sup>

Thome Broun, the 3 farthing quoyland of Westirnele, 'in manibus executoris Thome Broun.'

Sir John M'Gy, the 3f. land of Grymsetter, 'outhwel land tane in manibus Domini Joanni Magy.'

Olaye Irwyn and his brother, holders of the 3d. odal land of South Widefirth (whether odallers or tacksmen not quite clear).

Thome Leith, tacksmen (apparently) of North Widefirth, 2d. odal land.<sup>3</sup>

<sup>1</sup> Too late to correct earlier references, the editor has found that, strictly speaking, this should not have been referred to as the 1500 Rental. Lord Sinclair got a fresh lease of the earldom, May 1st, 1501, at an increased rent (*Ex. Rolls*), and from internal evidence it is clear that he had a new Rental compiled in consequence in 1502-03. The references to 1497 and 1504 (Westray and Wyre) are accidental exceptions.

<sup>2</sup> Most of the land in St. Ola had 5 or 6 mks. per pennyland.

<sup>3</sup> 'In manibus Thome Leith' seems to imply tenancy, as all the tacksmen are 'in manibus,' while the odallers mentioned are 'pro.' This is consistent with the fact that the Ewinsons, or Eunsons, seem to have been the early odallers of North Wideford. Possibly Alexander Ewnysoun (see later) lived on his tacklands of Graemsay and let his odal lands of Wideford.

Sir William Duthe, tacksman of Clova, 1f. quoyland.

John Spence  
Michael Soulys } tacksmen of Lyngrow, 4½d. land.

Donald Grym, tacksman of Nethir Knarstane, 2d. 1f. land.

Makryche, tacksman of Ovir Knarstane, 2d. 1f. land.

David Sinclair, tacksman of Orgwill, 1d. quoyland, 'ad voluntatem Domini.'<sup>1</sup>

Donald Fife, tacksman of Instable, 1½d. land.

'Farthquhare,' tacksmen (*sic*) of Warbuster, 5f. land.

Malcolm Tailyour, tacksman of Tofts, 1d. land.

Barry (Barne or Bernard) and his bairns, tenants of Carlyngs Toft, 1f. land, 'given by my Lord for the use of God.'

(All the kingslands in St. Ola are here accounted for.)

#### INSULA DE BURRAY

Robert Yorkstoun, 'quondam' tacksman of the links.

#### RONALDSAY

##### A. *Parochia Sancti Petri*

William Beg, tacksman of 3d., 3f. land in Widewaw benorth the burn.

##### B. *Parochia Sanctae Mariae*

David Haucrow, tacksman of Qwybrown, Ossaqwy and Qwylith, 1d. land.

John Sinclar, tacksman of Bureh and Tarland, 7d. 3f. land.

Sir John M'Gy, held the seats of 1½f. land in Hoxsay, 1½f. land in Burrowland, and 5d. in Thurrok (*sic*), and all Bishopric lands.<sup>2</sup>

#### ORPHARE<sup>3</sup>

Thome Akirris,<sup>4</sup> tacksman of 6d. land in Tuscarbuster, and of Garay in Swanbuster, 1d. land; and held seats of Sowly in Swanbister, 1d. land.

<sup>1</sup> 'Domini,' *i.e.* Lord Sinclair.

<sup>2</sup> These lands lay in both parishes.

<sup>3</sup> In all these places in Orphir, except Groundwater, the number of marks per pennyland was high.

<sup>4</sup> 'Akinis' in the Manuscript. In the next rental it is 'Alluris.' In the 1595 Rental 3 mks. in Sketebustar pertaining to the Aikers is mentioned, and this I am sure should be the reading in both the early rentals. There was a farm called Aikers in Swanbister. See also Appendix B. under Orphir.

Margaret Craigy, held tack of Grimswatter (*sic*),<sup>1</sup> 9d. land.

Bernard Betown, }  
Mawnis Richen, } odallers of 2d. land in Howbustir.

Huchon Akirris,<sup>2</sup> tacksman of 6 mk. land in Sketybustir in Swanbustir.

James Betoun, odaller of Benorth the Gate in Swanbustir, 2d. land.

Patrick Hagbak (*sic*), tacksman of Hangabak (*sic*),  $\frac{1}{2}$ d. land.

William Inkseter, tacksman of Skelbustir and Gyre,  $\frac{1}{2}$ d. land.

Mr. John Rollok, tacksman of Quycelerk,  $\frac{1}{2}$ f. land.

Huchown Inksettir, tacksman of Gryndale, 2d. land.

Simond Taleyour, tacksman of Oikirk (*sic*)  $\frac{1}{2}$ d. land.

James Lesk, tacksman of Clatestrand benorth the burn, 1d. land.

(The greater part of the Kingsland in Orphir is here accounted for.)

#### NORTH SANDWIK

John Kirknes, }  
Sir Stephanis son, } tacksmen of Ovir Garsent,  $7\frac{1}{2}$ d. land.

Sir Stephin,<sup>3</sup> odaller of  $2\frac{1}{2}$ d. land and tacksman of  $4\frac{1}{2}$ d. land in Housgarth.

#### PAROCHIA SANCTI ANDREAE

Margaret Wilson, tack of 6d. land in Yenstaith.

Alexander Fraser, tacksman of 1d. land in Tollope above the Yard.<sup>4</sup>

John Smith, tacksman of 3d. land in Tollope beneath the Yard.

#### MARWEK

Thomas Mor, }  
Mawnis Burowgar,<sup>5</sup> } tacksmen of 9d. land in the urislands<sup>6</sup> of  
James Flawis, } Marwick.

<sup>1</sup> Misreading of Grundwater (now Groundwater).

<sup>2</sup> 'Akinis' in MS. See footnote 4, p. 405.

<sup>3</sup> Either Kirkness omitted, since it had just previously been mentioned, or Housgarth. Alex. Housgarth held Sir Stephin's tack in the next rental.

<sup>4</sup> Only 2 mks. per pennyland in both the Tollopes. <sup>5</sup> Afterwards Bargar.

<sup>6</sup> Each of the two Marwick urislands contained 2 mks. per pennyland.

- Houchoun the Wate,<sup>1</sup> tacksman of 2 mk. land in Grenyng and Bankis.  
 Ade Pers, tacksman of 2 mk. land in the Nethirtown of Grenyng.  
 Nicolas Norre, tacksman of Evirbustir and Howle, 2½d. land, 'ad voluntatem domini.'

HOLME<sup>2</sup>

- John Lauchtane, tacksman of 5f. land in Estirbustir.  
 Marjory Duthe, tack of Hundclett, 3d. land.

## PAPLAYE AND GRENEWELL

- Laurence Cornequy, tacksman of the 1d. scat-land of Cornequy.  
 Thome Walter, tacksman of Dowerow, 1d. land.  
 Petir Coupland, tacksman of Banks, 1d. land, and Carlqwy and Quaythome, 1d. land.  
 Alexander Flawis, tacksman of Flawis, 3d. land.  
 Gallowaye, } tack of Braqui, 3d. land. The widow also tack  
 'The Wedow,') of Quyingebres, 1d. land.  
 Sandy and David Richesoun, tacksmen of 2d. in Feaw, also Sandy of 1d. land there.  
 John Haye, tacksman of Angusquy, 1d. land.  
 Thomas Coupland, tacksman of Sotland, 3 f. land.  
 Will Smyth, } tacksman of Bow of Scale, 4½d. land. Also W. S.,  
 Henry Ritche, } tacksman of the Holmys, 1d. land; and H. R.,  
 } tacksman of Orklandquy and Suthirquy, 5f. land.  
 Petir Johnstoun, tacksman of Quaybernardis, 3f. land, and Vega, 2d. land.  
 Andro Lytill, tacksman of 2f. quoyland.  
 Riche Okkelsettir, tacksman of Okkilsetter, 1½d. land.  
 John Scale and Edane Flett, once odallers of Rossnes Head, 4 mk. land: sold it to Earl William (*i.e.* between 1434 and 1471.  
 (Practically all of Paplay and Greenwall accounted for.)

<sup>1</sup> Also referred to as Huchoun Wate.

<sup>2</sup> Though Holm and Paplay were entered separately in the early rentals, they formed one parish. See Reports of Parishes, *Peterkin's Rentals*, p. 48.

BURGH SANCTI MICHAELIS<sup>1</sup>

Magnus Attkinsone,<sup>2</sup> tacksman of 2½d. land in Garth.  
 Magnus of Corstath, odaller of 2d. land in Corstath.  
 Wilyam Corgill, odaller of the other 2d. land of Corstath.  
 John of Spens, tacksman of 1d. land in Ovirburgh.  
 'The Widow,' tack of 3d., 1½f. land in Noutland.  
 John Flet, tacksman of ½d. land in Hundisgarth<sup>3</sup> (*sic*).  
 Bettoun, tacksman of 1d. land in How and Ranyisgarth.  
 Magnus Lyne and his brother, tacksman of 2d. land in Grymes-  
 tath.

(All kingsland in Harray except 1d. land accounted for.)

## PERROCHIA DE STANES

James Spence, tacksman of 2 mk. land in Clowstath.  
 Thome Scott, tacksman of ½d. land in Grimistith (*sic*).<sup>4</sup>

## SOUTH SANDWIK

James Loutfut, tacksman of 6½d. land in Lyking.<sup>5</sup>  
 Adam Tailyor, tacksman of Wawis-be-West, 3d. land, and 2d.  
 land in Ayth and Upsale.  
 John Flet, tacksman of Clumly,<sup>6</sup> 6d. land.  
 Alexander Sinclair, tacksman of 7d. land in Southirqwy ('his fee  
 be my lord's writt'), and Lerely, 18d. land.<sup>7</sup>  
 Baddy, tacksman of the links.

## WESTRA

A. *Parochia Sancti Crucis*

Will Randell, Brandy Dravar, John Dravar, Mawnis Maib-  
 soun (?),<sup>8</sup> Henry Randell, Wilyame Young, with divers others,  
 'the best of Pappay and Westra,' gave evidence before 'Henry  
 Lord Sinclare and Justice of Orkynnaye for the tyme' how the  
 stent butter was paid in old times. Before Sir Wilyame Duthe,

<sup>1</sup> The parish of Harray.

<sup>2</sup> This curious spelling may be a misreading of Awkinsone. Hauquinus was the Latinised form of Hakon.

<sup>3</sup> Misreading of Hundiskarth (Norse *skar* 8, a valley).

<sup>4</sup> Misreading of Germistath.

<sup>5</sup> Only 1 mk. per pennyland.

<sup>6</sup> Looks like 'Cluny' in the Manuscript, but the word is blotted. The place usually called Clumlie is meant.

<sup>7</sup> Only 12 mks. altogether in Lerely.

<sup>8</sup> Probably a misreading of a contraction of Mawnisoun.

Alexander Lesk, Robert Haithwy, John Lynclett, with others divers; at Sanday,<sup>1</sup> October 28th, 1490.

William Sinclair,<sup>2</sup> tacksman of 3½d., ½f. land in Clait, the Bordland of Swarthmale, the Bull of Rapness, etc.

Will Ruthven, tenant of ½d. land in Garth, with the seats 'pro Dei amore.'

Thomas Harraldsoun, tacksman of Tukquy and Are, 13d. land.

John Draver, tacksman of 6 'copis' (= 4 or 5 average pennylands).

Andro Gor, tacksman of Pretty, 2 'copis.'

B. *Parochia Sanctae Mariae*

Thomas Cordner, tacksman of 1d. land in Rakwic.

Brandy (Draver?), tacksman of 1f. land in Burgh.

PAPPAY IN WESTRAY

Brandy (Draver?), tacksman of 2d. land in Besouth-the-Yarde 'for all the days of his lyfe.' Also tackman<sup>3</sup> of the island.

WYRE INSULA

Schyr Jhone Sinclare, tacksman of Wyre, 12d. land, 'for all the tyme of my [*i.e.* Lord Sinclair's] takks.'

INSULA DE WAWIS

Henry Greve, tacksman of 2½d. land in Kirkbustir.

Donald Wawis, tacksman of Manclett, 2d. land.<sup>4</sup>

INSULA DE FARAY

Thome Calway, tacksman of Faray, 3d. land.<sup>5</sup>

STROMNESS

Sir Robert Sutherland, tacksman of 2d. land in Ovir Quham, and 1d. land in Bowbrak.

<sup>1</sup> 'In Sunday' in the transcript; but October 28th, 1490 fell on Thursday; and, besides, Sunday was a most improbable day for such a meeting, and 'in' an improbable preposition to place before it.

<sup>2</sup> Sir William Sinclair of Warsetter, Lord Sinclair's brother.

<sup>3</sup> This distinction between tackman and tacksman is arbitrary. It serves to distinguish the farmer of the parish taxes from the ordinary tacksman.

<sup>4</sup> 8 mks. per pennyland.

<sup>5</sup> Containing 20 mk. lands.

## 410 RECORDS OF THE EARLDOM OF ORKNEY

- James of Cragy, tacksman of Cetyr, 1d. land.<sup>1</sup>  
 Margaret Sinclare, held How in Kerstane, 5d. land, 'ad voluntatem domini non assedatur.'  
 Magnus Sinclare, tacksman of the Bull of Kerston, 16d. land.  
 James of Spens, tacksman of Navirshow, 4d. land.  
 Thom. Culro<sup>t</sup>, tacksman of Garisend, 1d. land.  
 David Sinclair, tacksman of Ness,  $\frac{1}{2}$ d. land; How, 2d. land; 1d. in Inner Stromness; and 2d. land in Outer Stromness.  
 James Beton, odaller of 4d.,  $\frac{1}{2}$  mk. land in Inner Stromness.  
 Thome Trowluf, tacksman of Howbuster land in Inner Stromness, 3d. land.  
 Elizabeth Irwin, odaller of 1d.,  $\frac{1}{2}$  mk. land in Inner Stromness.  
 Alexander Birngarth, tenant of 1d.,  $\frac{1}{2}$  mk. land in Inner Stromness, 'pro amore Dei.'  
 Johne Obak, odaller of 1d. land in ditto.  
 Will Sinclair, tacksman of Stanagarth,  $\frac{1}{2}$ d. land.  
 Symon Folkart, tenant of 2d. land in Inner Stromness 'pro amore Dei.'  
 Will Pow, odaller of 3 $\frac{1}{2}$ d. land in Inner Stromness.  
 Meg Irwin, odaller of 1 $\frac{1}{2}$ d. land, ditto.  
 Alexander Sinclair, tacksman of 3d. land, ditto.  
 Thome Grahm, tacksman of 1 $\frac{1}{2}$ d. land in Outer Stromness, for 5 meils rent, 'the fyft meil given him quyte for Goddis sake quare valete pauper.'  
 James Sinclare, tacksman of 1d. land in Outer Stromness.  
 (Almost all the kingsland in Stromness accounted for.)

### GRYMESAYE<sup>2</sup>

- Alexander Ewnysoun, tacksman of Corgill, 6d., and 5d. 1f. land in Suthirgarth.  
 Sir Robert Suthirland, tacksman of 8d., 1f. land in Sandisend.  
 (This accounts for all the kingsland.)

### INSULA DE HOYE

- Mr. Will Mudy, tacksman of the Bull of Hoyer, 9d. land.

### SCHALPANDSAY<sup>3</sup>

- Margaret Cragy, tack of 3 $\frac{1}{2}$ d. land in Weland.  
 John Halderstoun, tacksman of Hollandiswic, 1d. land.

<sup>1</sup> Containing 9 mks.

<sup>2</sup> 2 to 3 mks. per pennyland.

<sup>3</sup> Only 1 to 2 mks. per pennyland.

- 'Lachtane and his falowis' (fellows), tacksmen of Cultisgew, 3d.,  
1½f. land.  
Thom Couper, 'suisque complicibus,' tacksmen of Buroustoun, 7f.  
land.

## Evy

- Henry Flawis, tacksman of Nestigarth, 6d. land.  
Alexander More, tacksman of Quysis, 4½d. land.  
William Ayrland, }  
Patrick Skarlet, } tacksmen of Negarth, 3d. land.  
Andro Quysis, }  
Henry (Flawis ?), tacksman of Spitalisquy, 4d. land.  
Angus Olaysoun, tacksman of 2d. land in Growagarth.  
John Brek, tacksman of ½d. land in Curquy,  
John Pow, tacksman of ½d. land in Costa.

(Most of the kingslands accounted for.)

## RANDALE

- John Selatter, tacksman of Tyngwell, 6d. land.  
Adam Selatter, tacksman of 1½d. land<sup>1</sup> in Waswic and How.  
David Randale, the deceased odaller of 3d. land in Gorteis (*sic*)<sup>2</sup>  
which he gave to St. Ninian. The seats of this remained in  
the rental, 'notwithstanding, Henry, Lord Sinclair, enduring  
his will to pray for him has given Schir John Makgy the  
seats of the said 3d. terre.'

RENTAL OF 1502-03<sup>3</sup>

## PAROCHIA SANCTI OLAVI

(Made at Kirkwall, 27th April 1502.)

- Donald Greme, tacksman of Nether Knarstane.  
Robert Huchoun, tacksman of Orquile.  
Angus Portar, tacksman of Toftis.  
Mannie Millar and his brother, tacksmen of the milne of Scalpay.

<sup>1</sup> 6 mks. per pennyland.

<sup>2</sup> Also referred to as Gorysness: it contained 2 mks. per pennyland.

<sup>3</sup> In this rental the amount of land in each tack is not specified if the same as before.

## 412 RECORDS OF THE EARLDOM OF ORKNEY

### PAROCHIA SANCTI ANDREE

(Made at Greinval, 28th April 1502.)

Sandie Freser, tacksman of 1d. land in Tohop abone the Yairde.

### PAROCHIA DE DEIRNES

(Made at Greinewall, 28th April 1502.)

Andro Johnstoun, once odaller of 1½d. land in Sanday, now  
'conquist.'

Will Swoundyis (*sic*),<sup>1</sup> tacksman of 3d. land in Breck in Kirkbuster.

Thome Hallay, tacksman of 1f. land in Hallay.

Magnus Laurence,<sup>2</sup> tacksman of Stoif, 1d. land.

Olay Loutfut, tacksman of Sandisend, 4½d. land,<sup>3</sup> the links of  
Sandisend, and of Gloupuoy, Bot Quoy, and Spannis Myre.

### PAPLAY AND GRENEWALL

(Made at the Castle of Kirkwall, 5th May 1502.)

Henry (Ritche), tacksman of the Holmes.

Sandy, takman,<sup>4</sup> } 'borch<sup>5</sup> and dettour' for the rents of  
Sandy Flawis, } Rosneshead.

Robert Hathtwe,  
Bernard Campstayth,  
Sandie Freser,  
Johne Irvin of Saba, } witnesses to an agreement between  
Lord Sinclair and the tenants of Rosnes-  
head.

(HOLME, made at St. Nicolas Kirk of Greinval, 28th April 1502; no names given.)

### BURRAY

(Apparently made same day and place as Holm.)

Robert Yorkstoun, 'quondam' tacksman of the links.

<sup>1</sup> Probably misreading of Swanneyis; *i.e.* Swanney's son (Sweynson).

<sup>2</sup> Down to the seventeenth century this family appear either as Lawrence-son or Stove.

<sup>3</sup> Containing either 20 or 24 mks.

<sup>4</sup> Comparing the complete list of landholders in the last rental, this must be Sandy Richesoun.

<sup>5</sup> Surety.

## RONALDSAY

(Made at 'our Ladie Kirk of the samin,' 30th April 1502.)

A. *Parochia Sancti Petri*

Magnus Cromertie, tacksman of Quyscharpis, 1d. land.

Thome Birsto, tacksman of Sourquoy, 1d. land.

Anne Camstath,<sup>1</sup> tack of  $2\frac{1}{2}$ d. land in Burrowland and Stowis.

B. *Our Lady Parish*

Gilbert Sinclair, tacksman of 1d. land in Gossakir.

Richeart Sinclair, }  
Henry Gareoch, } tacksmen of Burgh and Terland.

Richeart Sinclair, }  
Magnus Cromertie, } tacksmen of 'Arneip, viz. Burwik,' 6d. land.<sup>2</sup>

## INSULA DE WALLIS

(Made at the Bull of Hoy, 30th April 1503.)

Chrystie Thomesoun, tacksman of Ryssa,  $\frac{1}{2}$ d. land.<sup>3</sup>

Sir Robert Yuile, odaller of 1d. land in Osmundwall, which Lord Sinclair bought from his heirs.

Willie Yuile, tacksman of above 1d. land.

Robert Hathwy, tacksman of Faray.

## INSULA DE HOY

(Made at the Bull of Hoy, 30th April 1503.)

Mr. William Mudy, tacksman of 15d. land in Werbuster beneath the hill.

Sandie, tacksman of Rakwik, 3d. land.

## INSULA DE GRYMESAY

(Made at Kirkwall, 20th March 1503.)

Sir Robert Sutherland, same tack in Sandisend.

Mr. William (Mudy), apparently tacksman of 'the bull' (possibly the tack that Alex. Ewnysone had).

<sup>1</sup> 'Canistath' in the text, but no such name or place is known.

<sup>2</sup> Two mks. per pennyland.

<sup>3</sup> Containing 12 mks.

## 414 RECORDS OF THE EARLDOM OF ORKNEY

## PAROCHIA DE STROMNES

(Made at How<sup>1</sup> in Orphair, 27th April 1503.)

Sir Robert Sutherland, same tack.

Magnus Sinclair, same tack.

Alexander Sinclair, tacksman of Stanagar.

David Sinclair, tacksman of Mydhous, 3d. land (in Inner Stromness).

Syme Fokhart, once odaller of 1d. land in Inner Stromness, 'conquist' by Earl William.

James Fokhart, tacksman of above, half the rent allowed 'in almous.'

William Sinclair (David's son), tacksman of 1d.  $\frac{1}{2}$  mk. in Inner Stromness.

James Sinclair, same tack.

Thome Brek, tacksman of 2d. land., less  $\frac{1}{2}$  mk., in Outer Stromness.

Symoun Beatoun, tacksman of Nethir Mousland, 1d. land.

## PERROCHIA DE ORPFAIR

(Made at Flec, 27th April 1503.)

Thome Akuris,<sup>2</sup> tacksman of 4d. land in Tuskerbustar.

Thome Akuris's son, tacksman of 2d. land in Tuskerbustar.

Margaret Cragie, same tack.

Johne Beatoun, tacksman of Gara in Swanbuster, and 1d. land in Claistrand benorth the burne.

Angus Couper and his son, tacksman of the 6 mk. land in Sketebustar.

James Beatoun, odaller as before.

Andro Nortoun, tacksman of the Nethertoun, 1 $\frac{1}{2}$ d. land.

Andro Hall, tacksman of the Bull of Orphair, 9d. land.

Peiris Loutfut, tacksman of 3d. land in Howth.

John Leithis's wife, tack of 3d. land in Claistrand benorth the burne.

(Still more of the kingsland accounted for by this.)

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<sup>1</sup> Howth. The rentals of Stromness and Orphair were made at the same place; Flec being in Howth.

<sup>2</sup> See footnote 4, p. 405.

## FIRTH

(Made at Kirkwall, 21st July 1502.)

Johne Flet, tacksman of 2 $\frac{2}{3}$ d. land in Holland.Hucheoun Scletter, tacksman of 3 $\frac{1}{2}$ d. in Firth.

## HURRAY BRUGH

(Made at Kirkwall, 20th March 1503.)

Elezabeth Urving, obtained 1d. land in Garth by 'coffing' with Earl William, for 3 mk. land in Claistrand in Orphair.

Magnus Akynsoun, same tack.

Johne Spence, tacksman of 3d., 1 $\frac{1}{2}$ f. land in Noltland.

John Flet, same tack.

James Corgil, tacksman of the 1d. land in How.

Johne Ismond's son, tacksman of Winksetter, 1d. land.

## PERROCHIA DE STANEHOUS

(Made at Kirkwall, 20th March 1503.)

Johne Flet, tacksman of the 2 mks. in Cloustaith.

Drumdar (*sic*)<sup>1</sup> of Airland, odaller of Dowskarth, 3d. land, of which he gave 2d. land to the Crose Kirk.

The heirs of the Lutfuttis, now odallers of the other 1d. land in Dowskarth.

Yovan (*sic*), tacksman of  $\frac{1}{2}$ d. in Garmistane.

Thome Scot, tacksman of 1d. in Garmistane.

John Haddale, tacksman of 1d. in Garmistane.

James Touris, once odaller of one of these 1d. lands.

Elezabeth Touris, } His daughter and her husband, who sold  
Thome W<sup>t</sup> hand (*sic*) } the said 1d. land to Earl William.Johne Cloustane, } She, when his widow, sold the other 1d. land  
Evot, his wife, } to Earl William.

<sup>1</sup> This, I think, must be intended for the old Norse name Throndr, often found as Tronder in later Norwegian documents. *o* generally became *u* in Orkney: e.g. Thursthath, Thursthainshow, etc., and the *T* might easily become *D*. Probably Drunder has been misread as Drumdar. (In *Norske Sigiller* the seal of Thrond Erlingsson—No. 580—is inscribed in the legend 'Dronde Erlingson.')

Johne Flet,  
 William Cloustaith,  
 Hucheoun Garmistath,  
 Will Haddale, } witnesses to validity of above purchases  
 (and of another) by Earl William.<sup>1</sup>

(All kingsland accounted for except  $\frac{1}{2}$ d. land described in earlier rental as held by the vicar.)

## SOUTH SANDWIK

(Made at the Castle of Kirkwall, 4th March 1503.)

Sir Johne Sinclair, withheld the scat of 4d. land in Tenstaith 'to Sanct Duthoi's Chapell.'<sup>2</sup>  
 Johne of Cragy, 'and the laif of the uthale men' withheld part of the scats of 3d. land in Tenstaith.  
 James Loutfut, same tack.  
 Adam Tailyour, same tacks.  
 Thome Broun, tacksman of Clumlie.  
 Richeart Skail, held the same tacks as Alexander Sinclair in last rental.  
 Cristie and Johne Hestwale, tacksmen of  $2\frac{1}{2}$ d. land in Hestwale.<sup>3</sup>

## NORTH SANDWIK

(Made at Kirkwall, 6th March 1503.)

Sir Johne Sinclair, withheld scats of  $4\frac{1}{2}$ d. land in Nether Garsend, 1d. land in Sowlisyard, and  $1\frac{1}{2}$ d. land in Botulyford.  
 Sir Robert Sutherland, odaller of  $1\frac{1}{2}$ f. land in Ovir Garsend. Withheld scats of this and of 1d. in Mobisyord.  
 Sir Stevenis son, } tacksmen of the 7d., 3f. land in Ovir  
 Johne of Kirknes'son, } Garsend.  
 'The Wedow,' tack of 1d. land in Mobisyord.  
 Males Sparri,<sup>4</sup> once odaller of 2d. land in Eustabillie,<sup>5</sup> 'conquist' by Earl William.

<sup>1</sup> The purchases must have been made between 1434 and 1471, but the witnesses are contemporary with the rental. The two pennylands are not in the previous rental at all. Evidently something went wrong which was righted in 1503.

<sup>2</sup> These presumably were the scats of his own property. Reference is made in another entry to his heirs, who were no doubt the Sinclairs of Tenston often mentioned in these records.

<sup>3</sup> Two mks. per pennyland.

<sup>4</sup> Sir Malise Sperra.

<sup>5</sup>  $1\frac{1}{2}$  mks. per pennyland in this and all the above places in North Sandwick.

William Housgarth, tacksman of How, 2d. land, and Stoddisyord *alias* Gryndlenth (*sic*), 2½d., both in Housgarth; also of links of North Sandwick.

Arling and his son, tacksman of Pow, 3d. land, in Housgarth.

Johne Angussoun, tacksman of Myre, 3d. land in Housgarth.

Cristie Johnesoun, tacksman of Hammerclet, 2d. land in Scalbra.

(A considerable amount of the kingsland seems to have been of little value and not set on tack. Most of the rest is covered by the two rentals.)

## MARWIK

(Made at Kirkwall, 14th March 1503.)

Thome Moir, } tacksman of 6d. land in Urislands. T. M. ' and  
Thome Davidson, } his fellowis' held also 3d., 1f. land.

Magnus Burgar, tacksman of 3d. land with house of Netherskaile.

## EVIE

(Made at Kirkwall, 20 March 1503.)

John of Quendale, } Gudbrand, ' grandsire ' <sup>1</sup> to John of Q., gave 4d.  
Guidbrand, } land in Garth to the Kirk of Evie.

Johne of Brek, }  
Magnus Burgar, } with divers others in the parish swore to  
Olave Angussoun } circumstances of above bequest.

## RANDALE AND GAIRSAV

(Made at Kirkwall, 20th March 1503.)

Johne Scletter, same tack; also 2 mk. land in Halkland.

Baddi, once odaller of 1½d. land in Goirisness, escheat for bloodshed in kirkyard.

Hucheoun Olawis soune, tacksman of Morsetter, 9 mk. and 10s. land.

Mege Wilson, tack of 4d. land in Ellibustar.

## INSULA DE WYIR

(Made at Kirkwall, 22nd June 1504.)

James of Cragie and his wife, held tack of Wyir.

John Cragie, lawman, }  
Robert Hathwy, } witnesses to James of Cragie's tack.  
David Cant, }  
Adame Tailyour, }

<sup>1</sup> Great-grandfather.

## ROWSAY

(Made at Kirkwall, 16th March 1503.)

Sir Hew of Randale, prebendary of Wyir, sent by Earl William to 'Norroway,' and rewarded with the gift of Awaldschaw (4d. land) for his lifetime.

Johne Lummisdaill, tacksman of 1½d. land in Trymland.<sup>1</sup>

Will Unyebuster, } tacksman of 3d., 2 mk. land in Nether  
 Johne Stevin, } Howelet.

Johne Cragy, odaller of 6d. land of Brugh, and tacksman of the other 1d. land<sup>2</sup> (called Brek).

Sir Thomas Cragy, tacksman with Johne Cragy of 2d. 1f. land in Quham.

Sir Malis Sparri, once odaller of above land in Quham, and of 1½d. land in Quendale.

Henry Moden, tacksman of Brek, 3f. land, in Quham.

## WESTRA, PARROCHIA SANCTE CRUCIS

(Made at Our Lady Kirk of Noltland, 13th August 1497.

The tacks expired in 1500, and the rental was again made at a date not stated.)

William Sinclair, 'my Lordis brother'—all the former tacks in this parish now stated to be in his hands, except Garth.

(PAPPAY PROPE WESTRAY, presumably made at same place and date as Westra.)

SANDAY<sup>3</sup>A. *Parrochia Sancti Crucis*

(Made at Warsetter, 10th June 1502.)

Sir William Sinclair, 'my Lordis brother,' odaller of Wybuster (*sic*),<sup>4</sup> 9d. land; and tacksman of 17d. land in Garth, and 7d. land in Walbroch.

Sir Robert Flet, bought 'of lait' 4d. land in Lyrland.

<sup>1</sup> 6 mks. per pennyland.      <sup>2</sup> 6 mks. per pennyland in Brough and Quham.

<sup>3</sup> The land all over Sanday only averaged about 1 mk. per pennyland. In 1623 it was decreed that no land should be set to any one 'unless they be able with thair oune goods and gear to labour in the main land, and south Ylles ane farthing land, and in the Northyles ane pennyland' (Barry's *History*, p. 422, 1867 edition); the North Isles' pennylands being reckoned as only equivalent to ordinary farthing lands.

<sup>4</sup> Evidently misreading of Nybuster.

Symoun Ramsay, seats of  $4\frac{1}{2}$ d. land in Hobsta free in his heirs' hands 'because of the land male that he coffit and gaif to Erle William in the bull of Karstan.'

Johne of Cragie, odaller (apparently) of 3d. land in Housgarth.

Nichole Tulloch, now deceased: bought 8d. land in Housgarth, 'fra uthale men.'

William of Clait (*i.e.* William Mure), tacksman of Bull of Brugh, 18d. land.

Magnus Paulsoun, tacksman of the Bull of Halkisnes, 18d. land; Gardymelis, 18d. land; Frow and Wattin, 9d. land, and two towmales.

Richeard Strobok, tacksman of half the links.

*b. Parrochia Sancti Columbi*

(Made 13th June 1502.<sup>1</sup>)

William Fothringhame, tacksman of  $5\frac{1}{2}$ d. land in Harmannisgarth.

*c. Parrochia Sancte Marie*

(Made at Clat, 10th June 1502.)

Will of Mure and his brother, odallers of Clat, 18d. land, the seats of 6d. land being free in their hands 'betuix coffing of landis with Erle William in Ronaldsay.' W. M. also tacksman of 4d. land in Lewisgarth, and the seats of  $4\frac{1}{2}$ d. land in Brusgarth free in his and his heirs' hands 'for als meikill land male of ane uther seat land' which was excambed for the said seats and given to Earl William at North Strynie in Stronsay.

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<sup>1</sup> The place is not mentioned.

## APPENDIX D

## AN OLD INVENTORY

This Inventory belongs to the Wemyss Castle charter-chest. It is written on four pages of foolscap, and is in extremely good preservation, but is entirely without any title or description. It contains a list of forty-eight charters, narrating purchases in Orkney and Shetland, chiefly by Earl William Sinclair, Henry Lord Sinclair, Sir David Sinclair, and an ancestor of one of them (Item 11), together with a few earlier dispositions of the same lands or tenements. The great majority are Shetland charters; the deeds relating directly to Orkney being items 5, 6, 14, 16, 17, (21 ?), 23, 25, 29, 35, 36, 39, 40, 41, 46, and 48. One is a purchase by Earl William, one by 'my forgranschir and Effame Sinclair,' several by Henry Lord Sinclair, and the greater number by Sir David Sinclair. The handwriting is certainly not later than the sixteenth century, though expert opinion differs as to whether it belongs to the beginning or the latter half. Internal evidence gives no clue to the precise date, and the sole method of arriving at it seems to be by answering the question: How did the purchases of Henry Lord Sinclair and his grandfather, Earl William, come to be included in the same inventory as the purchases of Sir David Sinclair? The only occasion actually on record when this conjunction might well have taken place was when Margaret Hepburn, Lady Sinclair (widow of Henry, Lord Sinclair), obtained a gift of bastardy from the Crown of the estate of Sir David. This charter was dated 6th February 1523-24, and a certified copy of it is, like the Inventory, at Wemyss Castle. The year 1524 seems thus to be the likeliest date for the Inventory.

The actual wording, however, belongs to earlier dates than this, for the various 'Items' are evidently copied, word for word, from the endorsements on the backs of the charters. This can be demonstrated by the case of Item 19, which is simply a copy of the endorsement in No. xxxi. A number of other items are of exactly the same type, while in Items 11 and 12, the words 'my' and 'mine' are distinct proof of copied endorsements (since they obviously cannot refer to the notary who wrote the Inventory). The early forms of Shetland place-names thus preserved may therefore be worthy of some attention, and in this connection it may be mentioned that *c* and *t* are clearly distinguished throughout the document.

The latest possible dates for the Sinclair purchases are known from the facts that Sir David's testament was dated 1506 (and he was certainly dead before 1510), Lord Sinclair fell at Flodden, and Earl William's connection with the islands ceased in 1471.

(1) *Item*, ane chartour of ix merkis landis in North Mavay callit Glus cumyng be cosing fra Olave Maunsone to Henry, Lord Sinclair, and his airis.

(2) *Item*, ane chartir of tua merkis land and ane half in Garthishouse of Sandisting cumin be cosene and chaynge fra Mangnus Bolt to Henry, Lord Sinclair.

(3) *Item*, ane chartir of wedset of xij merkis land in Sowth Stromfirth within Scheitland be Maunus Haw to Henry, Lord Sinclair.

(4) *Item*, ane chartir of three merk land callit Corbustanch<sup>1</sup> bocht be Henry, Lord Sinclair, in the Ile of Ounst in Scheitland.

(5) *Item*, ane allienatioun of tua borowagis<sup>2</sup> landis of Thome Harroldsonis liand in Kirkwall, sald to the Erle of Orkney. [*In margin* :] 'Summa supra xxvj merkis landis, and  $\frac{1}{2}$  merk, bocht be Henry, Lord Sinclair.'

(6) *Item*, ane chartir of Clunne in Scheitland of sax markis landis lyand within the parische of Dunrostnes, and thre merk land partenying the erledome of Orkney and lyand within the parischoun of Firth callit Benuar.<sup>3</sup>

(7) *Item*,<sup>4</sup> ane chartir of tua merkis land callit Wethwik in the Ile of Yell bocht be my Lord Sinclair fra Johne Lowtit and his spouse.

(8) *Item*,<sup>4</sup> Schir Henry Harroldsonis chartir of xij merkis landis of Clunny pertenyng to my Lord Sinclair.

(9) *Item*, ane lettir beris thre merk land sald be the lawman,<sup>5</sup> inde ane merk t<sup>6</sup> at Esterschald in Sandisting, and tua merk land in Leascole be North Mavay, and thir landis ar in the rentale.

(10) *Item*,<sup>4</sup> ane chartir of ix merkis land callit Hagrascath within the parischone of Quhitnes, bocht be my Lord Sinclair fra Sewart<sup>7</sup> Maunsone and his spous.

(11) *Item*, ane writeing of certane landis be Donald Cristisone

<sup>1</sup> Cf. Stank in Orkney (No. CLXXX.).

<sup>2</sup> Borough.

<sup>3</sup> Binyereth, in 1502 Rental.

<sup>4</sup> In margin 'H. L. Sinclair.'

<sup>5</sup> Presumably Nicol of Haw or Haule, mentioned several times in this Inventory.

<sup>6</sup> Probably for *terre* (land).

<sup>7</sup> Sigurd.

bocht in Scheitland fra Thomas Kirknes, Begis Tullochis moder faider, in Inglis, sold to my forgranschir <sup>1</sup> and Effame Sinclair.

(12) *Item*, ane lettir of tua merk landis in Ounst in Upswall yard besyde Scarpo, bocht be Schir Fergus Tulloch bocht [*sic*] fra Erling Finnis sone, and now is myne.

(13) *Item*, ane chartir of half j merk land in Garthishouse of Sandisting bocht fra Olave, Maunus Boltis bruder, be Henry, Lord Sinclair.

(14) *Item*, ane letter of releive to lowse five merk land in Flenstath <sup>2</sup> in Derenes for foure pundis to be redemit fra Peter Paplais airis.

(15) *Item*, ane lettir of xj merkis landis lyand in Scarpo in Ounst bocht frelie with rycht and roith be Schir Fergus Tulloch fra Berne Bolkasone.

(16) *Item*, ane allienationn of Johne of Wyndwikkis of ane merk land lyand in Wyndwik within Rannaldsay within the parische of Our Lady, sald to Schir David Sinclair.

(17) *Item*, ane letter in Northin <sup>3</sup> quhou [that] Schir David Sinclair bocht fra Schir Henry Harroldsone all his landis and guidis in all partis of Orknay, with rycht and royth.

(18) *Item*, ane lettir in Northin berand quhow that Gardar Andersone hes sald to Pawle Ranyson xvij merk land in Leaskole and xvij merk in Osenes, all in the parische of North Mavay, and the said Paulis airis sald all the landis quhilkis tha hed in all partis of Scheitland to Schir David Sinclair and his airis.

(19) *Item*, ane lettir in Northin <sup>4</sup> berand all the landis that Yopyne Segarson airit be his wif Johne Scottis dochter, and alsua the landis quhilkis he wan fra Thome Inglis that he clamit of Andro Scot at wes his wifis faider bruder, and the said Yopyn sald it to Schir David Sinclair: *Imprimis*, in Linga in Quhalisay Sound x merk ʒ <sup>5</sup> viij d.; *Item*, in Herikle of Yell vij merk ʒ ix d.; *Item*, in Ulstaythe in Yaile vj merk ʒ vj d.; *Item*, in Howle of Yaile ix merk ʒ vj d.

<sup>1</sup> Great-grandfather (same as grandsir).

<sup>2</sup> *alias* Sands. <sup>3</sup> Norse.

<sup>4</sup> No. XXXI.

<sup>5</sup> Here this symbol clearly represents 'at.' Presumably different symbols were used in the original endorsements, but were sufficiently alike to be confused by the writer of the Inventory.

(20) *Item*, ane lettir in Northin berand that Patre Johnesone in Quhailegarth in Ounst sald viij merk land of his in Quhailegarth to Hanstoun [*sic*] Coupman in Birroun for iij<sup>xx</sup> and foure lyeht guidlyngis, quhilk the said Schir David bocht the said Hansis rycht of.

(21) *Item*, ane lettir of xij merk land in Gletnes that wes wedset to David Cristisone and lousit be Schir David Sinclair fra Sandie Laisk.

(22) *Item*, ane lettir that Yopyne Serssone, merchand and rothman<sup>1</sup> in Birroun, hes sald with the consent of his wif all hir landis in Scheitland, for full pament, to Schir David Sinclair, lyke as Yoppin Seggarsonis lettir beris quhare thir landis lyis.<sup>2</sup>

(23) *Item*, ane lettir in Northin of the King of Norwayis is [*sic*] of the skattis of Orknay umquhile givin to Bischop Williame Tulloch for his lifytyme and eftir him givin to Schir David Sinclair.

(24) *Item*, ane lettir in Northin berand the full principale lettir of the plane selling be Olave Maunusone of all the forty sax merkis of land of Howle with the housis in Ounst to Schir David Sinclair.

(25) *Item*, ane chartir of foure penny land with howss and harbry and all fredomis callit Skarf<sup>3</sup> lyand within the erldome of Orknay and parischone of Firth, coft be Schir David Sinclair.

(26) *Item*, ane lettir of Schir Henry Harroldsonis of full quitclame to Schir David Sinclair and his airis grantand him full payment for all his landis and gudis.

(27) *Item*, ane lettir in Northin of x merkis land lyand in Quhitnes sauld be Eryke Braid to Schir David Sinclair.

(28) *Item*, ane lettir of sax merk land lyand in Metheland in Ounst laid in wed<sup>4</sup> be Ade Corrisone to Nicholle of Haw, and the said Nichole hes laid the said vj merk of land in wed to Schir David Sinclair for sax barrellis fat guid.

<sup>1</sup> In No. XXXI. he is described as *radman* of Bergen. See original Norse in *O. L. Rec.*, No. 33.

<sup>2</sup> Item 19.

<sup>3</sup> This can only be Scarth, a name usually synonymous with Setscarth. Setscarth, however, was only a 3d. land, and there is no further evidence of Sir David or his heirs having land there. Possibly the 4d. land of Binscarth was meant.

<sup>4</sup> Wadset.

(29) *Item*, ane lettir of Gelis Nassis alienatioun of all and hale hir landis within the dyosie of Orkney to Schir David Sinclair.

(30) *Item*, ane lettir in Northin beand ane chartir maid be Olave Maunussone of xxij merk land of Houle in Ounst to Schir David Sinclair and his aris.

(31) *Item*, ane lettir in Northin beand ane chartir quhou that Gardar Andersone sald to Paule Ranysonne fourty sax merkis of land in Ounst callit Houle, and the said Paulis dochter sone callit Olave Maunusone sald all the saidis landis to Schir David Sinclair.

(32) *Item*, ane lettir in Northin berand that Johne Olavesone sald till Olaive Assulsone xij merk land in the Ile of Sandfre, vj merk brennd<sup>1</sup> land in Fiskholme, in Hagraskath iiij merk ʒ, in Garde of Dunrostnes iiij merk ʒ, and in Skattistay tua merk land; and all thir said landis the said Olave Assulsone sald to Schir David Sinclair.

(33) *Item*, ane lettir in Northin berand the domes lettir be riggyn royth<sup>2</sup> in Norway that all the landis of Houle, of ony uther placis in Ounst, and in all partis of Scheitland, quhilk at ever pertenit to Gardar Andersone is dempt to Paule Ranysonne, and be thame [*sic*] sald to Schir David Sinclair and his aris.

(34) *Item*, ane lettir of sax merk land the quhilk Nicholl of Haule laid in wed to Sir David Sinclair in Mayland in Ounst for vj barrellis fat guid, as Ade Corrisonis lettir beris, for this lettir and that lettir are bayth of a mater.

(35) *Item*, ane lettir of certane landis bocht be Schir David Sinclair in Rannaldsay, j merk land lyand in Wyndwik.

(36) *Item*, vij farding land in Sandwik<sup>3</sup> sald be Kathrene of Hastwallis dochter, and the said land is callit itself Hastwall, and sald to Schir David Sinclair.

(37) *Item*, ane lettir of ix merk land conqueist be Schir David Sinclair in Myngya, and thre merk in Dunrostnes in Gett.

(38) *Item*, ane lettir of ix merk land in tua diverse placis in Ounst bewest the hill laid in wed be Maunus Ornasone to Jacobe Scryvir in Schir Davidis name.

<sup>1</sup> Presumably burnt merks.

<sup>2</sup> *Rikissen radh*, the King's Council.

<sup>3</sup> The parish of South Sandwick in Orkney.

(39) *Item*, ane lettir of certane landis sald to Schir David Sinclair in Rannaldsay be Elene Hewch extending to ane merk land.

(40) *Item*, ane lettir of the selling of Thomas Harroldsonis house of the Aire in Kirkwall to Schir David Sinclair.

(41) *Item*, ane lettir of certane landis in the burgh of Kirkwall sald to Schir David Sinclair be Kathrene Laisk.<sup>1</sup>

(42) *Item*, ane lettir of sax merk land in North Laxfirth laid in wed be Nichole of Haw to Schir David Sinclair.

(43) *Item*, ane chartir of Schir David Sinclaris of all the landis of Scheitland and Frunlay [?] lyand within the kinrik<sup>2</sup> of Norway pertenyng to the erledome of Orknay.

(44) *Item*, ane lettir in Northin concervis [?] that Garder Andersone grantis him and his airis fullilie pait for all the landis that he sald at Houle in Ounst and all uther partis of Scheitland to Paule Ranysonne, quhilk sald all the saidis landis to Schir David Sinclair.

(45) *Item*, ane lettir in Northin berand that Garder Andersone grantis for him and all his airis that Paule Ranysonne and his airis hes maid him full pament for all landis and guid bocht and sald betuix thame for ever mare and the saidis Paulis aris and all sald to Schir David Sinclair.

(46) *Item*, ane lettir of Scarff sald be Thome Harroldsonne.

(47) *Item*, ane lettir of Clummyng in Scheitland wadset be Walter the sone of Will of Stronsay.

(48) *Item*, ane lettir quhare Alexander Law sald his hale tennymment in Kirkwall till Johne Harroldsonne.

<sup>1</sup> No. CCX.A. The preceding 'lettir' is evidently the sale of the rest of the Haraldsons' 'principal tenement' on the Air.

<sup>2</sup> Kingdom.

## APPENDIX E

## THE MAP OF ORKNEY

THE great majority of the names in this map are given in the forms found either in the 1492 or the 1500 Rentals.<sup>1</sup> A certain number of names not included in either of these Rentals have been added, and these are distinguished by a cross after the name.

Generally speaking, the names are those of townships, and the rings are placed so as to indicate approximately the centres of these townships, so far as they could be told from the one inch to the mile Ordnance Map, aided in some cases by the editor's local knowledge. Places that could not be located by these means have been put in brackets, with no ring beside them. The editor has to confess, however, that (unlike other editors) he has been at times a trifle inconsistent. These occasions generally arose when he was confronted (as in the parish of Orphir, and the islands of Westray and Rousay) with a mixture of true townships and mere farm names, the latter having been for some reason entered in the Rentals separately. In dealing with these last, he has gone on the two principles of putting in such as could be located and such as he had room for. If there was plenty of space, the second principle guided him; if there was little, the first. This procedure will justly be accounted unscientific by all who have never made maps themselves, and he can only hope that by anticipating their censure he may mitigate its rigour.

Again, in one or two districts which were wholly or partially omitted in the early Rentals (particularly Birsay and Stronsay), he has helped himself generously from later records, but left others (such as Eday and North Ronaldsay) a blank. Here he has been guided partly by the material in the 1595 Rental, and partly by the possibility of localising the names. Eday, for instance, is a blank even in the later Rental, while most of the very few place names in North Ronaldsay mentioned in 1595 are no longer recorded—certainly not on the maps.

<sup>1</sup> See Appendix C.

Most of the names with crosses attached were obtained from this 1595 Rental, though a certain number came from earlier records, and one or two from later. It did not, however, seem worth while giving any reference to the source, since the vital distinction lies between place names contained in the two early Rentals, and names not contained. Not only are these two Rentals venerable in themselves, but their constant allusions to still older records which lay before the compilers as they wrote, and with which they compared many of their entries, taken together with the antiquity of the forms they preserved, show that we have in them a kind of high road, down which the place names of the Scandinavian colonisation have come, garbed sometimes in strange spellings, but with singularly little essential alteration. The most striking proof of this is the township in Holm, corrupted as early as 1509 (No. xxxvii.) to *Hurtoso*, the form it has ever since retained, but preserved in the almost contemporary 1492 Rental as *Thurstainshow*. Here the change of the third letter from *o* to *u*, and of the last syllable from *hang* to *how* is all that has happened to it in the Rental, though in common speech it had already been mangled out of recognition. Other noteworthy instances are the uncorrupted *Clatestrand* in Orphir, for *Clestrain*; *Rothland* (*Rauðland*) and *Withwic* (*Víðvik*) in Evie, for the translated forms *Redland* and *Woodwick*; *Thorwaldishow* in Firth for *Horraldshay*; *Thurstath* (*Thordstaðr* or *Thorestaðr*) in Sandwick for *Hourston*; and the group of names ending in 'yord' (*jörð*) in North Sandwick.

At what date the very first rental was compiled, we have no means of saying, but it was clearly when the Norse speech was in full vigour in the islands, and when only a slight corruption of the place names had taken place. Thenceforward the compiler of each rental simply copied what he found in the last. Certain concessions to the times are seen in the occasional substitution of 'stane' for 'stath,' the contraction of *Thurstainshow* into *hurtishow* in the 1500 Rental, etc., and, as usual, the independence of each scribe was vindicated by spirited eccentricities of spelling, but on the whole this copying was done with a fidelity for which we cannot feel too grateful to-day.

In the present map the forms found in 1492 (when they differ from those in 1500) have been used in most instances, though now and then the older form was found in the second rental. Occasionally the editor has taken the responsibility of correcting what seemed obvious misreadings, especially in the manuscript 1492

Rental. The present Culston in Stenness, for instance, found constantly from the sixteenth century onwards as Culstane or Culston, was transcribed as 'Cottystaith' by Mackenzie, but this is so evidently a misreading of Collystaith (*Kolstaðr*) that it would have been absurd to preserve the error.

The great majority of the townships are found, as one would naturally expect, near the coast or beside lochs and streams, and it is to be borne in mind that the rings merely indicate their position, and that the lands of each extended (often widely) on all sides. In fact, along the sheltered shores the cultivated lands formed, as a rule, a nearly continuous belt, with a hinterland of heather hills. Such parishes as Evie and Orphir are excellent examples of this to-day. Driving along the coastwise road, one seems to be in a well-cultivated country; but ascend a hill, and the farms appear now as a mere border of green fringing a brown wilderness of moors. On the other hand, certain of the North Isles, a great part of the East Mainland and South Ronaldsay, and the basin of the Harray and Stenness lochs have always formed wide areas of arable land, low-lying and gently undulating, with every hollow holding a meandering burn or a little marsh, full of ragged robin and the scent of peppermint.

Little difficulty should be found in identifying these old place-names with the land-names of to-day. Apart from the instances already mentioned, Burgh St. Michael's for Harray, Mele for Graemeshall, Stanesakir for Stenso, and Crannystoft for Crantit, are among those most disguised. Where an alternative name is given in the Rentals, it is put as an *alias* (marked *als.* in the map); and once or twice alternative readings of *c* and *t* are included. One curious point is the resolution of the various places to-day called Isbister into two separate original forms, Eisterbuster (*Austrbustaðr*) and Osbuster (*Óssbustaðr*), and of the Redlands into Rothland, Raland (presumably also *Rauðland*), and Raynland. This last may very well be from *Reynirland* (i.e. Rowanland), since the remains of an ancient wood have been found in a peat bog just below the township.

## APPENDIX F

## A NOTE ON THE SHETLAND LAWTHING

So conscious was the editor of his inadequate knowledge of Shetland that, while writing the Introduction, the idea of analysing also the ancient constitution of the Shetland Lawthing occurred to him merely to be dismissed as impracticable, since he felt that he had no facts to build upon. It was only after going to press that he realised how much information of the very kind required was already published and accessible, especially in Mr. Gilbert Goudie's *Antiquities of Shetland*. Thanks to this invaluable collection of essays, supplemented by Peterkin's *Notes*, Balfour's *Oppressions*, *Deeds Relating to Orkney and Shetland*, and these present records, the apparently impossible suddenly became quite feasible, and in this Note a summary of the evidence is given.

This evidence may perhaps be best presented by referring first to Peterkin's *Notes* (App. p. 29). There, it will be seen that the Sheriff-Court Book of Shetland for 1602-04 shows the existence of a regular series of circuit courts held annually (in addition to the Lawthing). These local courts were always held in the same districts, and in 1602 were taken in the following order: 1. Nesting, Lunasting, Whalsay, and the Skerries; 2. Fetlar; 3. Unst; 4. Yell; 5. Delting; 6. Wawis; 7. Aithsting; 8. Burray; 9. Dunrosness; 10. Bressay; 11. Tingwall.

Turning next to the *Oppressions*, we find that in 1576 the commissioners collected evidence from the inhabitants of Shetland, district by district, as follows: 1. Tingwall, Whiteness, and Weisdale; 2. Bressay; 3. Nesting, Lunasting, and Whalsay; 4. Gulberwick, Quarff, Trondra, and Burray; 5. The Skerries, Yell, Fetlar, and Unst; 6. Delting and Scatsta; 7. North Mavine; 8. Wawis and Papa; 9. Aithsting and Sandsting; 10. Dunrosness. The three north isles of Yell, Fetlar, and Unst are grouped together, otherwise the divisions are the same as those indicated by the circuit courts. There is, however, the important addition of North Mavine, so that we thus have twelve divisions, eleven of them provably associated with circuit courts.

Coming now to the *Antiquities*, there is on p. 155 a Report

made by the Rev. James Pitcairn between 1579 and 1612, giving the rentals of the benefices 'with the number of the kirks pertaining thereto as they have been of old.' These benefices are simply the twelve divisions, except that Burray and Bressay are taken together, while the number of kirks indicate the number of parishes originally contained in them. Occasionally the number of kirks is not given, but it is stated in most instances. This information can then be supplemented by turning to p. 163, where a list of old dedications of churches and chapels is given, and by a study of the Shetland sasines in the *O. L. Rec.* Examined in the light of all the facts available, the divisions give the following results: 1. Nesting, Lunasting, and Whalsay—three parishes and three kirks. 2. Fetlar—one kirk, and no evidence of division within it. 3. Unst—three kirks and three parishes. 4. Yell—three kirks and three parishes. 5. Delting—two kirks, but three known dedications. 6. Wawis—contained Wawis, Sandness, Papa Stour, and Foula, of which Wawis and Sandness, at least, were separate parishes. 7. Aithsting and Sandsting—two kirks. 8. Burray—contained three parishes, Burray, Gulberwick, and Quarff. 9. Dunrosness—three parishes and three kirks. 10. Bressay—one kirk, but three known dedications. 11. Tingwall—contained three parishes, Tingwall, Whiteness, and Weisdale. 12. North Mavine—three kirks.

It is thus apparent that seven of these twelve divisions certainly contained originally three parishes; three contained at least two; one (Bressay) shows evidence of once having had three kirks; and only one (Fetlar) seems to be exceptional in showing no sign of any early division. The remarkable correspondence of this with the Iceland, Man, and Orkney model needs no insisting on. We clearly have exactly the same constitution, *i.e.* a division into quarters, then into thirds, and then again into thirds, with apparently one or two irregularities as in Man and Orkney (though in Shetland there seems to be no indication of what the quarters were, beyond the obvious grouping together of Unst, Yell, and Fetlar as a North Isles quarter).

To confirm this conclusion, all the above quoted sources were then examined, and the names and districts of all the recorded Under Fouds were collected. They are: 1. *Nesting*—William of Neip (1602). 2. *Fetlar*—James Sutherland (1558-76), Ollaw Sutherland (1602). 3. *Unst*—Magnus Makrihe and Magnus Arneson (1561), Bartole Strang (1574), Walter Smyth and William Manson

of Gardy (1581, and W. M., 1604). 4. *Yell*—William Lyusson (1538), Nicol of Culzevo and Garth of Ulsta (1576). 5. *Delting*—William of Brustedt (1545), Andrew Gifford (1576). 6. *Wamis*—Magnus Bolt (1510). 7. *Aithsting*—John Murray (1576), Peter in Twatt (1624). 8. *Burray*—David Sinclair (1603). 9. *Dunrossness*—John Smyth and Gilbert Coupland (1576, and G. C. in 1569). 10. *Bressay*—Magnus Bolt (1612). 11. *Tingwall*—Henry Halero (1576), Alexander Thomason (1610), and Magnus of How, foud of Whiteness (1576). 12. *North Mavine*—Andrew Tulloch (1545). These are all the fouds on record (so far as is known to the editor), and it will be noticed (*a*) that every one of the twelve divisions was a separate 'foudrie'; (*b*) that no other foudries are mentioned, except for the presence of a separate foud for Whiteness in 1576. If the names of all the recorded lawrikmen are examined, it will be found that every division, except Fetlar, Aithsting, Burray, and Tingwell, has at least one lawrikman on record, and that no fresh division or constituency is ever mentioned.

Regarding the lawrikmen, one fact still further emphasises their difference from the Orkney lawrikmen and roithmen, and also shows the distance which Shetland (under Norwegian officialdom) had travelled from the original form of its lawthing. It is this, that each division of three parishes has as a rule only one lawrikman for the whole division (see particularly the *Oppressions*, pp. 27, 29, and 34). In fact, the only known exception is a deed of 1528, where two lawrikmen of Unst are mentioned.

Another point of interest is that the term 'parish' is constantly used to mean a group of three parishes, which greatly strengthens the presumption on p. lxxix that this was the meaning of the phrase in the entry in the Stenness rental of 1503.

This accumulation of examples of the same type of constitution in what may be called the Norse colonies seems to justify one or two general conclusions. Since the same model is found in each of the four places examined, far scattered over the Western seas though they were, it seems only reasonable to look for it wherever the Norsemen made a permanent settlement. Also, it seems pretty clear that it must have been adopted from *somewhere*; and whence could it have come save from the ancient small Scandinavian kingdoms which perennially sent their sons down to the sea in ships? And, again, since the sea kings came from all of these kingdoms, it would appear that the model must have been common to them all.

Another conclusion which seems inevitable, is that we have now found the origin of the parishes in Orkney and Shetland, and that they are very, very old indeed. Bounded by the marches of a heathen lord's jurisdiction, the parish minister visits his flock to-day; hard by the site of the temple where that forgotten chieftain sacrificed to Thor, he preaches on a Sunday; and probably in the pews beneath him sit more than one of his descendants.

#### A FURTHER NOTE ON THE ORKNEY LAWTHING

Too late for the Introduction, the editor, when going over the lists of the roithmen and sixteenth-century assizemen, realised that the very order of the names throws a further gleam of light on the constitution of the early courts. If any two of the *early* lists be compared, which contain a number of the same names, e.g. 1509 and 1516, it will be found that these names occur almost exactly in the same relative order in both decrees. In 1509 we have John Rendall, M. Cromarty elder, D. Louttit, J. Sinclair, J. Yenstay, J. Nory, and R. Yorston. In 1516, Jas. Rendall, M. Cromarty elder, D. Louttit, J. Sinclair, J. Nory, R. Yorston, and J. Yenstay; J. Yenstay alone being out of order. Comparing the names which overlap in 1516 and 1522, J. Sinclair alone is out of order; and again, comparing 1514 and 1522, and substituting A. Linklater yr. for A. Linklater, the three names which then overlap are in the same order.

Let any one try to achieve this result by starting with, say, thirty imaginary names, and making from these half a dozen lists of ten (or even fewer) chosen at random, and he will realise that it is a task of hours, unless he starts with a *complete numbered list* of all the thirty names. To arrive at such a result in lists of twenty odd names years apart is clearly impossible without this condition.

In marked and instructive contrast, the names which are identical in any two lists of the later sixteenth-century assizes (formed from a fluctuating and ever increasing body of vassals) appear in utterly different relative order each time.

From this it seems certain that (as has already appeared likely) the roithmen were a definitely limited body whose names were contained in a list in a certain order, and at each court the twenty-four who attended were pricked off from this list, and their names, naturally, written in the same order; though occasionally a name was evidently overlooked, and then put in out of its place.

Further, the suggestion on p. lxxxii, that other landowners were sometimes added to make up local head courts, and that the 1522 decree is an instance of this, now seems in all probability correct.

## PEDIGREES

### OF SOME ROITHMAN FAMILIES

THE following pedigrees had to be limited in number, owing both to the exigencies of space and the time required for their compilation. They have therefore been confined (with one exception) to roithman and lawman families, and to such of these as could most readily be traced through a number of generations. The exception is the family of Corrigall, who may be counted as of the same standing (appearing on the earliest Sheriff Court Assizes), and for whose pedigree such exceptional material exists.

For some general considerations regarding these old odal families and their estates, see the Introduction, pp. lvi-lxv, and pp. lxxxi, lxxxii.

The symbol **R**=Roithman, **A**=Assizeman of the sixteenth century head courts, and **S**=suitor of court in the seventeenth century.

Where strict proof of a father and son relationship could not be obtained, the generations have been linked thus ||. In a number of such cases there is practically no doubt of this relationship; only it seemed better to be on the safe side. In all of them it may be taken that the doubtful link was certainly a representative member of the family and that such a relationship is reasonably probable. In one or two cases where no evidence exists even for this, the name has been put in brackets.

To save space no references are given to documents included in this volume.

The dates of references to documents in the Register of Sasines are the dates of registration.

Where such a reference (in brackets) is used to prove a marriage, it does not imply that the marriage took place that year, but merely that the spouse is named in a deed of that date.

**Bl.**=baillie: **K'll**=Kirkwall: **U.B.**=Uthel Book: **Por.**=portioner.

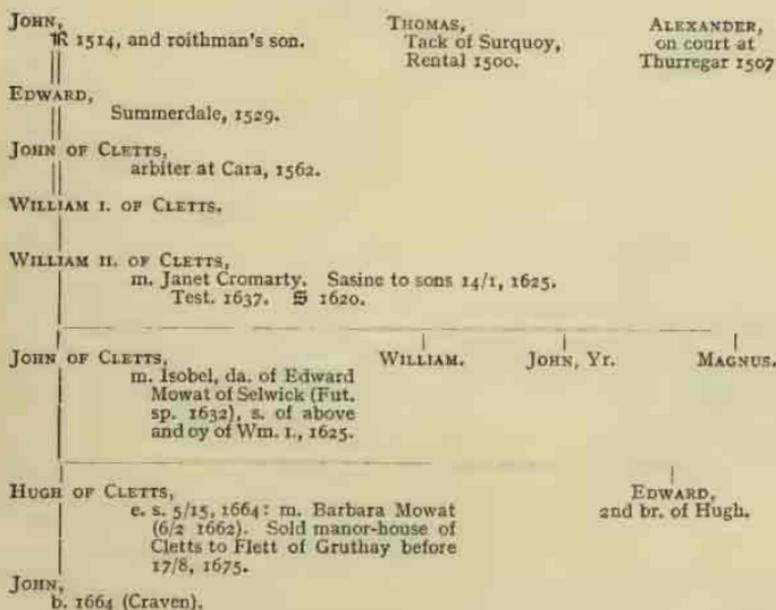
Test. (testament) implies that the issue (or sometimes brothers and sisters) have been found, or confirmed, from that source.

In most cases the order in which sons and daughters are placed has a documentary basis, but occasionally it has had to be merely arbitrary.

The object of these pedigrees is to throw light on a distant period, and in the few cases where the families are traced to the present day, the later generations are not given in detail, while it is very possible that in other instances a further descent could be proved.

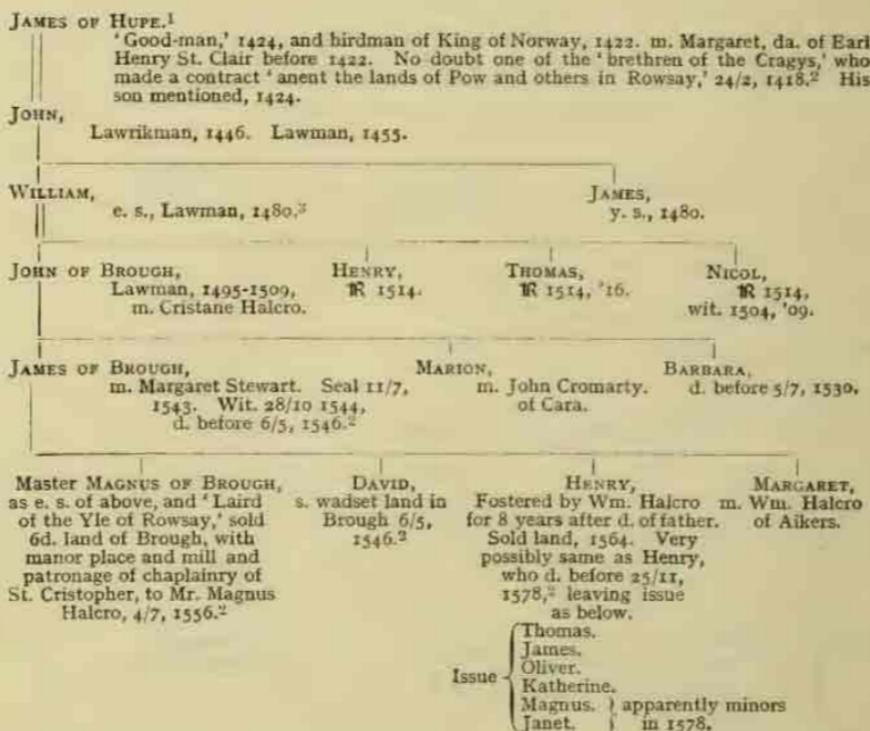
## PEDIGREES

## BERSTANE OF CLETTS



*Lands.*—The family of Berstane owned the greater part of the odal lands in Paplay (including Berstane), Cletts, land in Aikers, and other land, all in South Ronaldsay. Berstanes of Berstane, of Cletts, and of Kirkhouse, are found in the seventeenth century, having shares in each other's property, and apparently descending from a common ancestor at no great distance of time previously.

## CRAGY OF BROUGH



*Note.*—Apart from the chance of earlier cadet branches, the existence of the three roithmen in 1514 points to the probability of three branches arising then. Cragys of Banks (Rowsay) are found in 1539, of Skail (Rowsay) in 1556,<sup>2</sup> of Skail (Holm) in 1564, of Vetquoy (Sandwick) in 1580, and of Brough (Westray) before the end of the sixteenth century. From which of these the well-known seventeenth-century family of Cragy of Gairsay derived, I have so far failed to discover. Magnus, father of William, first of Gairsay, may have been identical with Magnus, son of Henry. On the other hand, a note shown me by Mr. W. Traill suggested a possibility of their descent from the family of Banks (in Frotot!), who most probably were descended from one of the three roithmen of 1514.

*Lands.*—The 6d. land of Brough and various other lands in Rowsay; and the 9d. land in Tenston, and 4d. land in Housgarth in Sandwick, apart from lands in Westray, Sanday, and Sandwick, etc., owned by various branches.

<sup>1</sup> See footnote to No. xvi.

<sup>2</sup> Halcro Inventory.

<sup>3</sup> This deed of 1480 (No. xc1.) is included also in the Halcro Inventory, showing that it was one of the title-deeds of the property of Brough, and so establishing William and his father as owners of Brough.

## CROMARTY OF CARA

JOHN,    bought land in Garay in S. Ronaldsay 24/8, 1479 (Halcro Invent., which includes various Cromarty of Cara titles, so that he was presumably ancestor of this family).							
MAGNUS, elder, R 1509, '16, '22, m. Cristen Cara.	From the dates of their appearances, these were probably of the same generation—brothers or cousins. Either may have been Magnus, husband of Cristen Cara. As he is not termed younger, it is here assumed he was Magnus elder.			MAGNUS, younger, R 1509, '22.			
JOHN I. OF CARA, H 1558, Summerdale, 1529, m. (1) Marion, da. of John Cragy of Brough.				JANET, <sup>1</sup> (2) Janet Skea.			
JOHN II. OF CARA, H 1580, m. Marion Hervie (Rental 1595).	ELSPET, m. Wm. Chalmer.	BARRARA, m. Wm. Chalmer.	WM.	THOS.	MAGNUS.	MALLIE.	
MAGNUS OF CARA, <sup>2</sup> (See No. CL.) Agreement with Marion Hervie and rest of fath.'s heirs 22/2, 1593. m. Margaret Groat (20/10, 1608). d. Dec. 1616 (Test.). S (heirs on roll) 1617.				JOHN IN CARA, fath. bro. of John III. of Cara 16/3, 1633.			
JOHN III. OF CARA, e. s. 18/5, 1632. Retoured heir 1631, m. Annas Stewart; d. June 1647 (Test.).							
MAGNUS OF CARA, m. 12/1, 1663, Margaret Flett (Craven).	JOHN.	JAMES.	(HENRY ?).	ROBERT			
JOHN OF SOUTH CARA, b. 1663; and inhabitant of S. Ronaldsay 1696 (Craven), m. Margaret Smith (1715).	HELEN, b. 1665 (Craven).		NICOL, b. 1666 (Craven).				

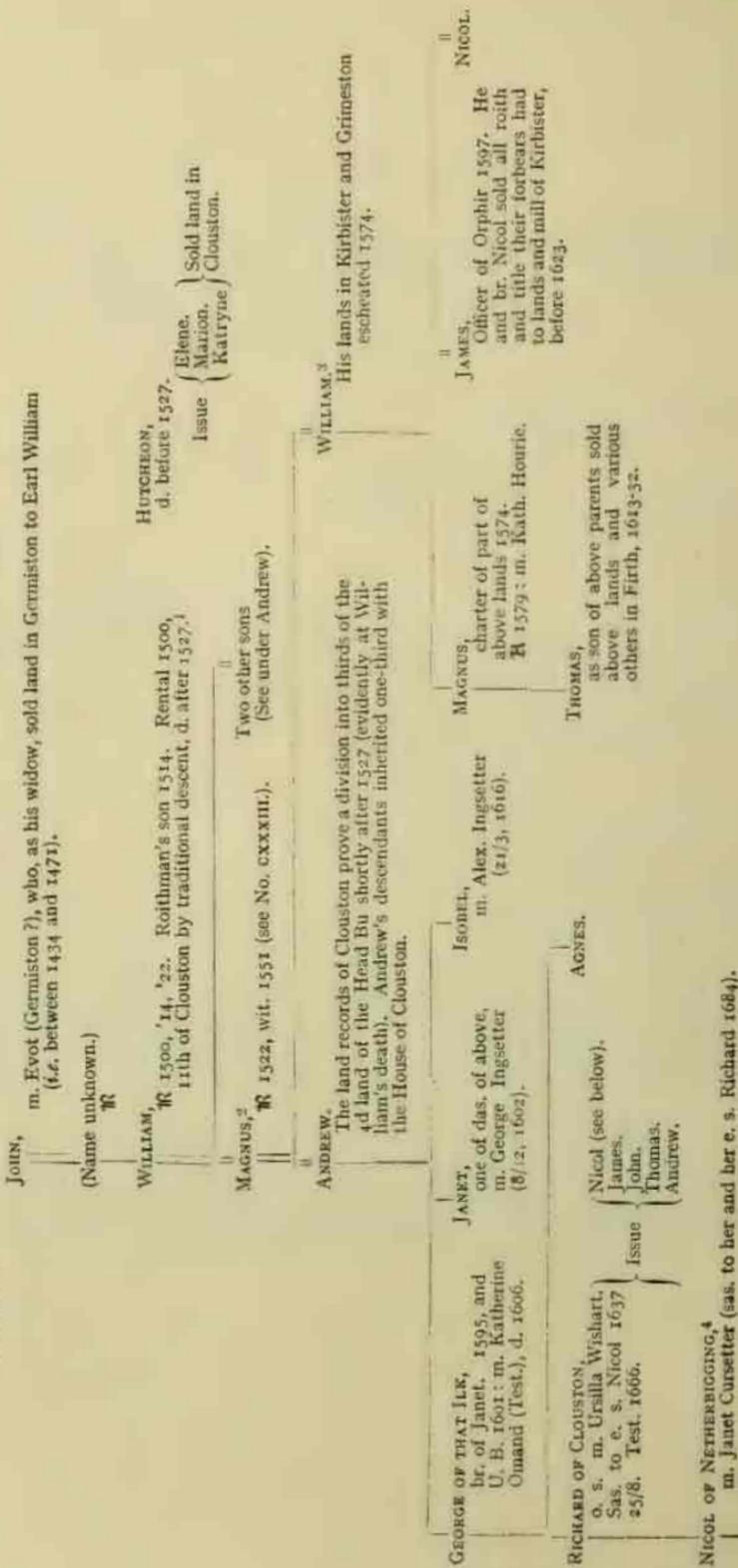
*Lands.*—Extensive throughout South Ronaldsay, especially in the north parish. Cromartys of Newbigging, Sandwick, Kirkhouse, and Halbrek are on record (besides the Cromartys of Skea in Deerness), descendants probably of the Magnuses, elder and younger. They are traditionally (and probably) of Scottish origin, though 'Cromede' (as it is found at least once) might easily be a corruption of Krummedyke, the name of a noble Norwegian family in the fifteenth century.

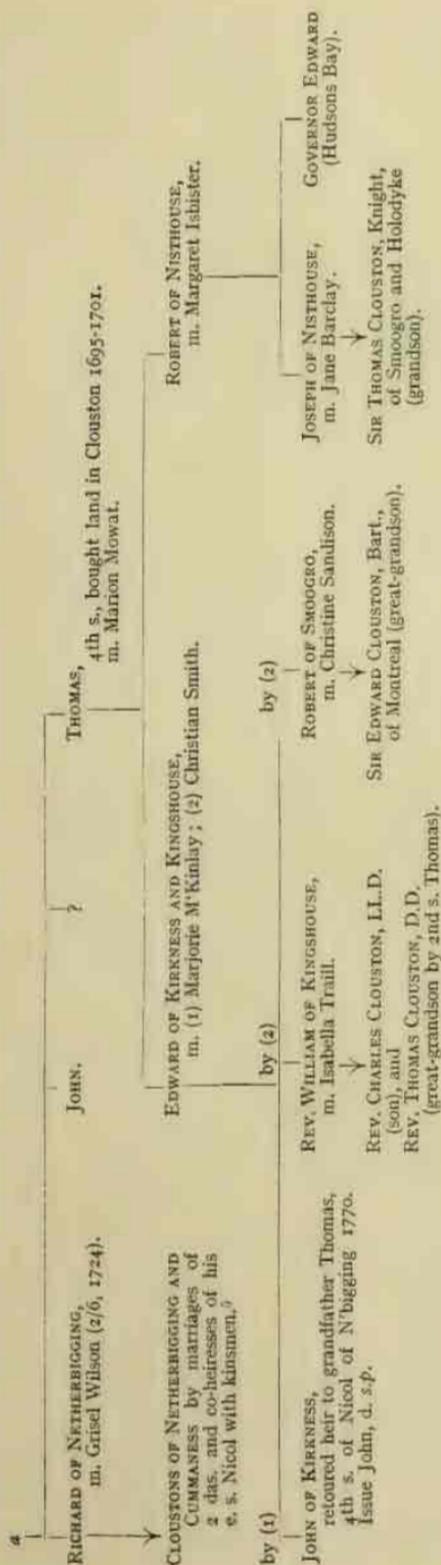
<sup>1</sup> Very possibly from one of the sons of Janet Skea descended the Cromartys of Skea, who had supplanted the Skeas as chief proprietors of Skea before the end of the sixteenth century.

<sup>2</sup> His son John III. is once or twice referred to (e.g. in the retour) as son of Magnus 'younger' of Cara. Yet all the evidence available points to his being the same as Magnus, son of John II. Possibly 'younger' was simply used to distinguish him from his uncle Magnus. Certainly John III. is sometimes termed 'younger,' and his uncle John 'elder' (once at least actually being styled 'elder of Cara').

CLOUSTON OF CLOUSTON

From Hakon Klo (1128-59, 2nd son of Havard Gunn's son and Berglot, da. of Earl Paul of Orkney), the name Klostadr, found as Cloustath in the earliest rentals; the traditional descent taking this rothman family back to that date. Hakon m. Ingigerd, da. of Sigurd Slembi, and left issue:—Havard, Sigurd, Harald, and Etnk. (See Ireland of Ireland.)





*Lands*.—The 6d. land of Clouston and 1½d. land of Ness in Stennes, the township of Above-the-Dykes (about 8d. land) in Grimston, and land in Netherborough and Kusland, all in Harray, and part of Kirbister in Orphir. These were divided among seven or eight branches by the end of the sixteenth century.

<sup>1</sup> Tradition extant about 1820, when the 19th was in Clouston. Cf. Swanie Johnson (fl. 1575) who was 'the 11th man that had succeeded and possessed' Windhouse in Shetland (Mowat-Niven case, 1624); see also Note to No. cii.

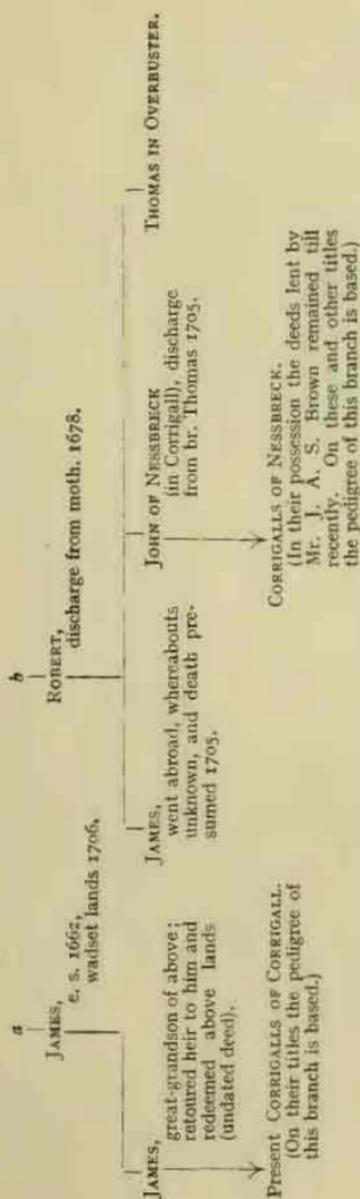
<sup>2</sup> Though Andrew seems certainly eldest grandson of William, it can only be said to be very probable that Magnus was William's eldest son.

<sup>3</sup> The Orphir marriages of Janet, Isobel, and Richard show near kinship to the Orphir branch, and as Andrew's and William's properties were of the same extent, they were presumably brothers.

<sup>4</sup> Netherbigging is found also as the House of Clouston.

<sup>5</sup> Traditionally the property was promised to whichever daughter married a Clouston, and as both immediately qualified it was divided.





*Lands.*—For the lands of this family in the fifteenth century, see No. xxxiv.

<sup>1</sup> By his acquisition of Thomas's share (see No. XLVI.) William, yr, made his descendants the wealthier branch of the family down to the time of Hew's purchase of land.

<sup>2</sup> This branch must have descended from William, elder. Their possession of part of Biggo in Corston indicates descent from William of 1504, and they were certainly not descended either from Thomas or William, younger. Also, they owned exactly 1/3 of Corrigan in 1601 (U. B.), and the descendants of William, younger, 2/3 (the shares of William, younger, and of Thomas). James 1. seems therefore inevitably son of William, elder.

<sup>3</sup> This seems very possibly the Rob. Corrigan in Corrigan, who married Janet Clouston, widow of Walter Tulloch of Lambholm (Tests. of W. T. and J. C.).

## FLETT OF NETHERBROUGH

THORREL FLETT was a chieftain of Earl Paul: slain 1137, and succeeded by son HAFLLID.

KOLBEIN,  
( ' good-men ' 1424 )  
= WILLIAM.

(Name unknown) R

JOHN OF HARRY,

R 1500, '09, '14. Rothman's  
son 1514. Rentals 1492, 1500.  
Arbiter 1504.

ALEXANDER.  
R 1500.

WILLIAM. { bought lands from }  
WIL. 1552. { Evot 1561. }

JOHN.

ALEXANDER,  
d. before 1561.

Evot, m. John Johnson before 1561.

JAMES ELDER OF NETHERBROUGH,

also elder of Pow,

R 1584. El. Dep. of Harry 1592, '94.  
m. Cristiane Sinclair: d. before 1596.

ANDREW IN POW,

WIL. 1571-'75. U. B. 1601,

m. Cristiane Flett,

d. before 1610.

Held lands in N'borough and  
Hunsearth which had be-  
longed to their predecessors  
' past memory of man ' (18  
and 20 June 1632).

Issue { Andrew in Pow.  
William,  
James,  
Robert. }

JAMES YR. OF N' BROUGH (and yr. of Pow).

WIL. 1571, '75. U. B. 1601.

Issue { Andrew, e. s. 2/6, 1624, }  
          { James, yr. of 2 sons. } }

MAGNUS OF N' BROUGH,

also ' in Pow ' and ' in Curkabrek 2

' in Pow ' s. of Jas. 12/6, 1639. br.

of Hallow 27/4, 1635, m. Margaret

Flett (Test.). S 1617-46.

MALCOLM,

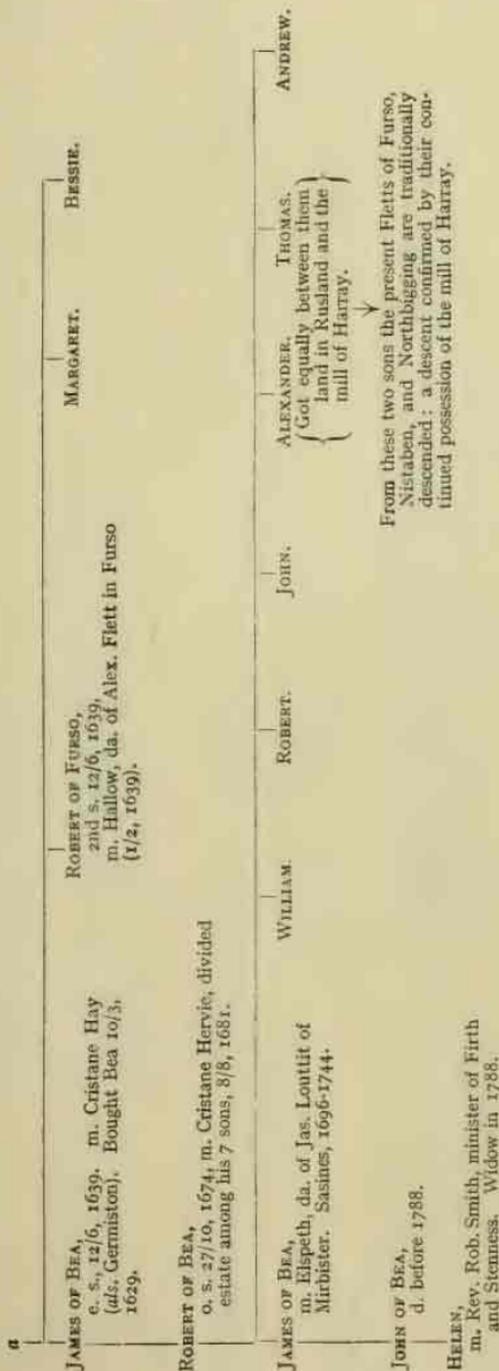
son of above parents, 16/6, 1624,

br. of Hallow 1647.

HALLOW, Alex. Flett of How.

m. (1) Alex. Flett of Burness.

(2) John Sclater of Burness.



From these two sons the present Fletts of Furso, Nisabon, and Northbigging are traditionally descended: a descent confirmed by their continued possession of the mill of Harray.

*Lands*.—The 12d. land of Netherbrough and part of Overbrough and Hunscaith in Harray. Another branch owned Redland (Firth) and lands in Bimbister, Sandwick, and Stromness. See also Fletts of Hobbister and Gruthay.

1. Pow was in Netherbrough and evidently the Head Bu.  
2. Yeddabrek, wrongly, in 1653 valuation.

FLETT OF HOBBISTER AND OF GRUTHAY

For early references, see Flett of Netherbrough. The two families were branches of the same stock, as both the Hobbister and the Gruthay Fletts also owned lands in Netherbrough and Hunscaith.<sup>1</sup>

MAGNUS, wit. 1480, '82. (These two appearances point to his being a burgess of K'ill. As Wm. of Hobbister was burg. of K'ill, it is very possible he was son.)

WILLIAM OF HOBBISTER.

He and his br. Criste were Sir David Sinclair's heirs (1506) to lands in Ork. and 'Innes' in K'ill. m. da.<sup>2</sup> of (David) Irving and adjudged eldest heir of Sabay 1522. Burg. of K'ill. and frequently on record. d. by 1526.

CRISTE.

DAVID OF HOBBISTER,  
m. Giles Leslie.

JANET,  
m. Magnus Sutherland als.  
Brebner (Sabay Invent.).

MAGNUS,  
m. Marjorie Loultitt,  
d. by 1562.

NINIAN,<sup>3</sup> ALEXANDER OF GRUTHAY,  
m. Margaret, da. of Jas.  
Irving of Sabay (Sabay  
Invent.).

MAGNUS OF GRUTHAY,  
as s. of Alex. and oy of Mag., and with consent of s.  
and app. heir Mag., sold claims to half of Sabay  
13/11, 1624.  $\text{£}$  1621-26. Test. 1643.

MAGNUS OF GRUTHAY.  
Test. 1667, m. Euphame Sutherland.

NINIAN OF HOBBISTER,  
 $\text{£}$  1564. Sheriff cl.  
Tankerness 1559.

ANNE.

ROBERT OF HOBBISTER,  
23/8, 1589. Cautioner for good rule  
in  $\text{£}$ 1000, 30/6, 1597. (Reg. Privy  
Council.)

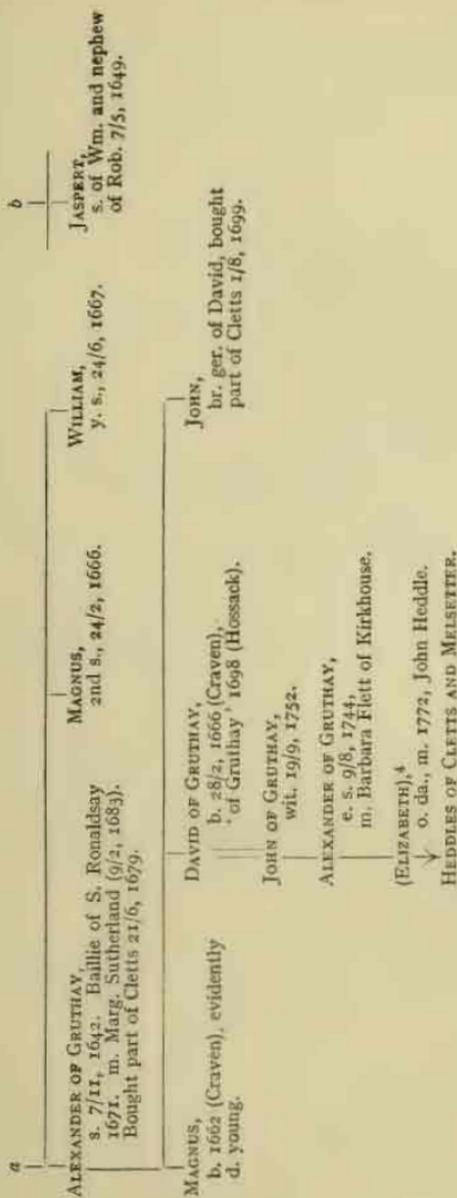
JASPER OF HOBBISTER,  
s. of Rob.  $\text{£}$  1617-32.

ROBERT OF HOBBISTER,  
s. of above, m. Margaret  
Ballenden; sold Hobbister  
to Edward Pottinger 4/12,  
1633.

WILLIAM. HELEN,  
sist. of Rob.  
m. Wm. Richan  
por. of Hobbis-  
ter; m.c. 28/12,  
1635.

b

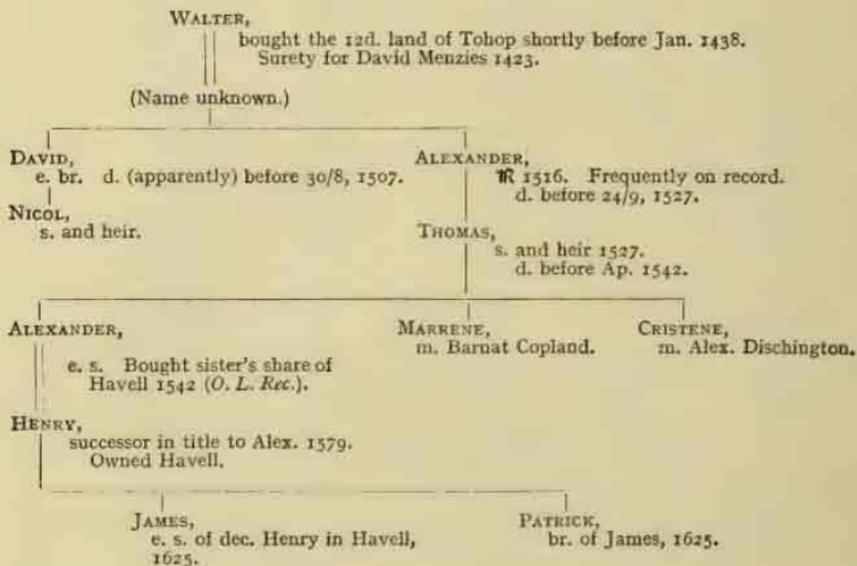
a



*Lands*.—Most of the 6d. land of Hobbister in Orphir (from which they took their designation), Hobbister in Sanday, part of Sabay, lands in Netherbrough and Hunscaith in Harray, Gruthay and other lands in South Ronaldsay, and probably other property at one time, as Sir David Sinclair's estates were considerable.

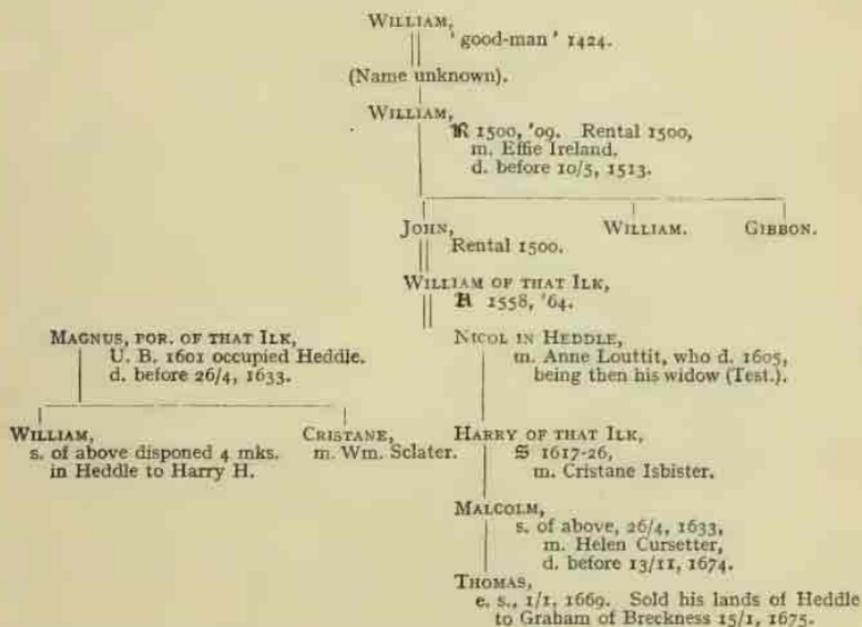
<sup>1</sup> John of Harray and Wm. of Hobbister were probably very near relations, as John appears on neither of the courts which tried cases to which William was a party.  
<sup>2</sup> The dates make it almost certain it was Wm. F. and not his father who married her (cf. Irving pedigree).  
<sup>3</sup> There is no positive proof to show whether this Ninian or his uncle succeeded David in Hobbister. A comparison of dates with the Gruthay branch makes it, however, tolerably certain that it must have been the uncle.  
<sup>4</sup> Information from Mr. F. J. Grant. Hossack (p. 205) gives Elizabeth's father as John Flett in Cletts. Whether Alexander left male issue I do not know.

## FRASER OF TOHOP



*Lands.*—The 12d. land of Tohop.

HEDDLE OF HEDDLE

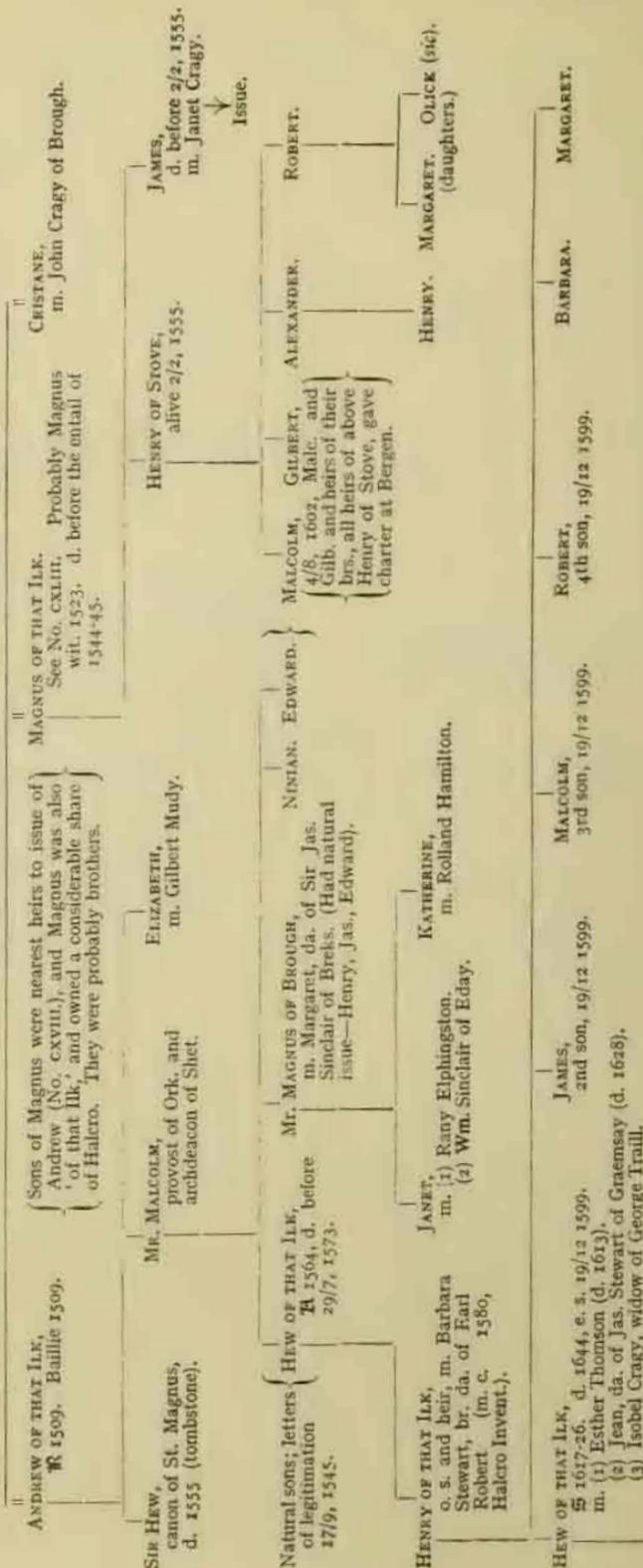


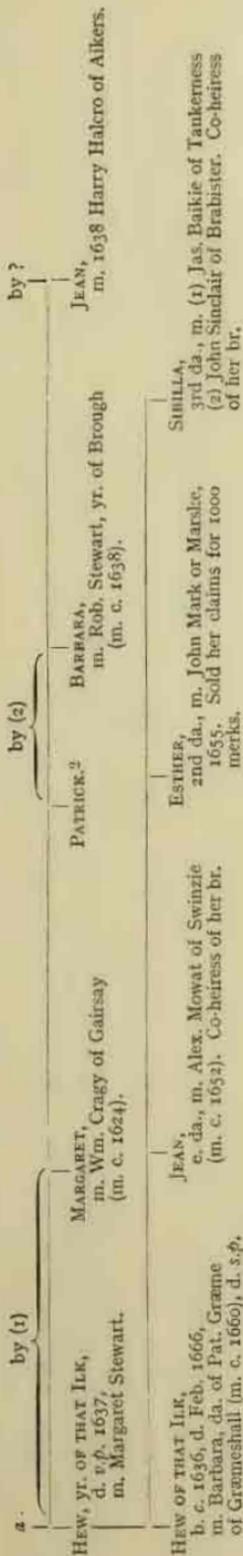
Lands.—Only recorded property was the 3d. land of Heddle, and half of 1½d. land in Ireland (U. B.).

HALCRO OF HALCRO 1

(See Note to cxviii.)

Van Bassan, writing in the early part of the seventeenth century, states that Halcro of that ilk was 'lineally descended of a natural son of King Sverrir of Norway' (1174-1202). Van Bassan's work is largely fictitious and wholly untrustworthy. It is, however, possible that such a tradition actually existed at the time, and if so it is quite likely to be correct. Another tradition associates the Halcros with Robert the Bruce, and it may at least be taken as certain that they were an ancient and important family in Orkney when they first appear on record.





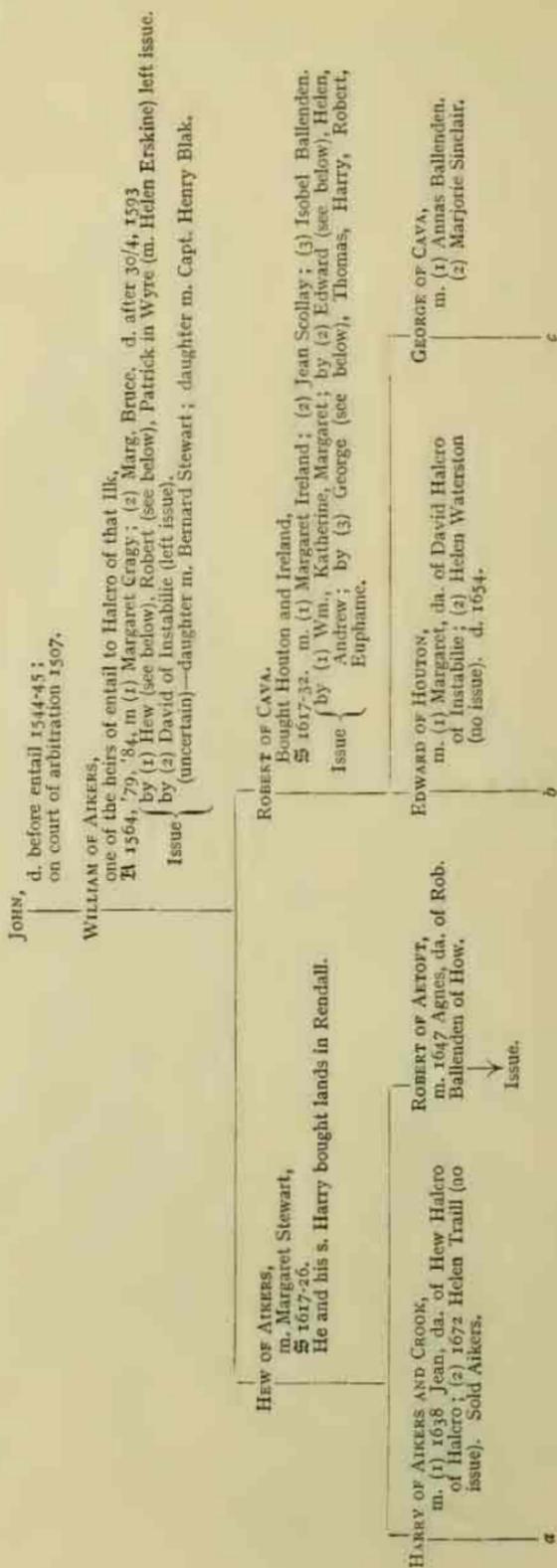
*Lands*.—The estate of Andrew of that ilk consisted of 112. lands in S. Ronaldsay (No. cxviii.). In addition, Magnus, Andrew, and John (of Alkers) were all landowners mentioned in the entail: besides David of Thurregar (No. xxxvii.a) and Fergus Garay (as, Halcro), both mentioned in a deed of 1495 (Invent.) evidently as nearly akin. It is clear that a considerable property in S. Ronaldsay, mostly in the south parish, was already divided among various branches by the beginning of the sixteenth century. They were, in fact, a typical Orkney rothman family, and the theory that they came from Caithness, bringing the place-name Halcro with them (advanced by Mr. R. St. Clair and apparently endorsed by Mr. Johnston) would require some very good evidence to support it. The fact that the Orkney estate was styled 'Holland alias Halcro' is of no significance. Such land *adises* are constantly met with in Orkney rentals and charters: one only has to read enough charters. The other fact that they seem to have had early marriage connections with Caithness is easily explained by a glance at the map, where Halcro is seen to be considerably nearer Caithness than it is even to the nearest part of the Orkney mainland. It may be added that (so far as I am aware) no one of the name of Halcro has ever—in early days, at least—been found in, or directly connected with, Caithness.

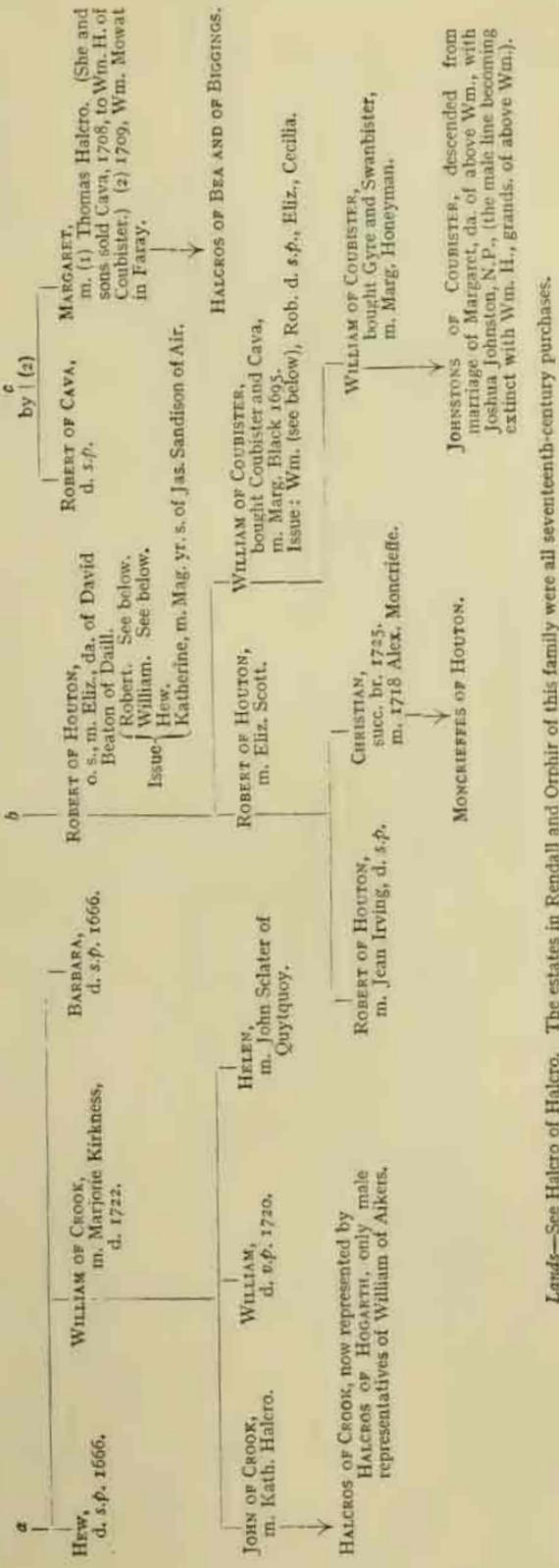
1 For the latter part of this pedigree I am indebted to notes supplied by Mr. A. W. Johnston. In the earlier part, these records are supplemented by the Halcro Inventory (Balfour Castle).

2 Described as '3rd son,' 13/8, 1629, but 2nd son not mentioned.

HALCRO OF AIKERS<sup>1</sup>

(See also Halcro of Halcro.)



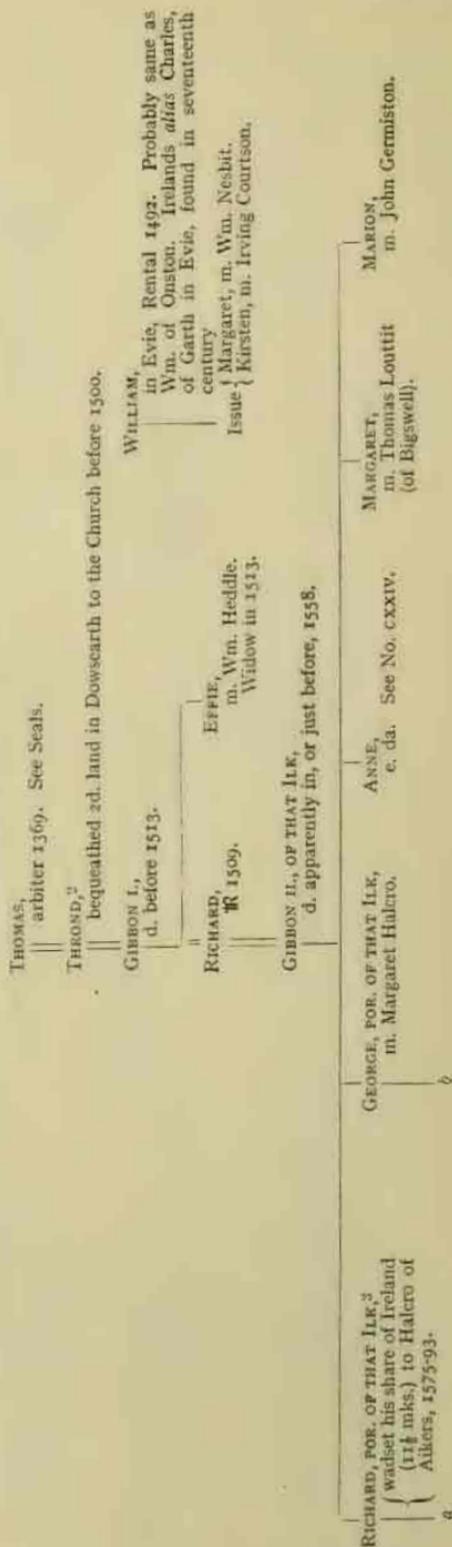


Lands—See Halcro of Halcro. The estates in Rendall and Orphir of this family were all seventeenth-century purchases.

1 Compiled almost entirely from information from Mr. A. W. Johnston.

IRELAND OF IRELAND

Ireland—the largest township and with the greatest head bu in the West Mainland—lies beside Clouston, and that corner of Stenness seems to have been the chief estate of Hayard Gunn's son, the Irelands representing Magnus, the Crusader, his eldest son, and the Cloustons his second (see Clouston of Clouston), a descent supported by the cross forming the Ireland arms.<sup>1</sup>





IRVING OF SABAY<sup>1</sup>

WILLIAM,  
arbitrator 1369.

WILLIAM,  
" " " " " "

JOHN,  
" " " " " "

CRISTE OF SABAY,  
m. Edane Paplay, Got Sabay by excambion  
1460. See Nos. XXXVII, and LXXII.

JOHN OF SABAY,  
Frequently on record 1500-19.  
Criste, d. young.  
Alex. See below.  
James. See below.  
Patrick.  
Issue { Criste. See below.  
John. Alive 1589, when he evidently lived  
in Stronsay.  
Bernard. See below.  
Margaret.

JAMES OF SABAY,  
Lawman of Ork.<sup>2</sup> B 1538.  
m. (1) Helen or Elmor Leslie,  
(2) Janet Skeca  
James. See below.  
Magnus B 1579, m. Cristane Venstay.  
Gilbert. See below.  
Issue { Edward. m. Janet Pottinger.  
William. See below.  
Janet. m. Donald Allan.  
Margaret. m. Alex. Flett of Gruthay.

JAMES IN CLAITT,  
s. and heir of Alex., who  
was s. and " eldest heir "  
of John of Sabay, 15/11,  
1581.  
Issue { Katherine.  
Margaret.

ALEXANDER,  
1522.

MARION,  
da. of Alex.,  
1560.

DAVID,  
See No. XLII,  
Gave power to his br. John to " pursue  
his lands in Ork. 1483.  
A daughter,  
m. Wm. Flett of Hobbister.

JAMES OF SABAY,  
m. Geillis Peterson,  
Both d. by 1563.

CRISTE,  
" " " " " "

JOHN,  
" " " " " "

JAMES OF ISGARETH,  
31/8, 1624.

MARION,  
m. John Lymait

BERNARD,  
" " " " " "

CRISTE,  
" " " " " "

JOHN,  
" " " " " "

JAMES OF ISGARETH,  
31/8, 1624.

MARION,  
" " " " " "

BERNARD,  
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CRISTE,  
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JAMES OF ISGARETH,  
31/8, 1624.

MARION,  
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BERNARD,  
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JAMES OF ISGARETH,  
31/8, 1624.

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BERNARD,  
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JAMES OF ISGARETH,  
31/8, 1624.

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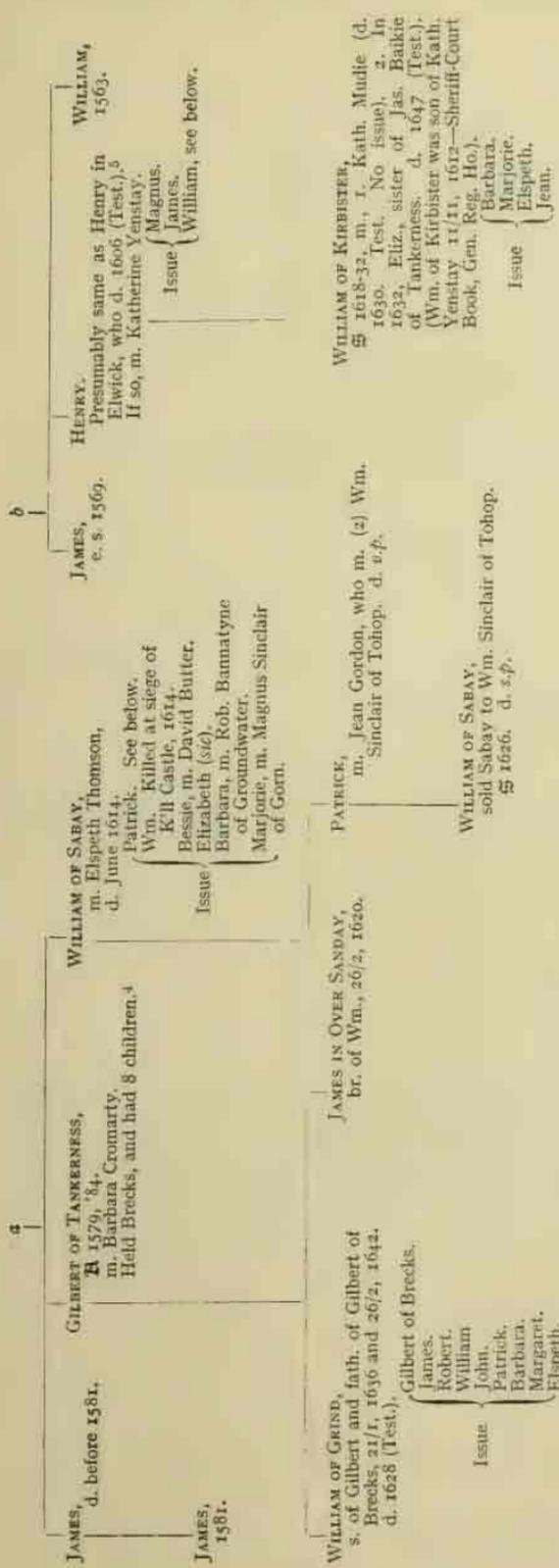
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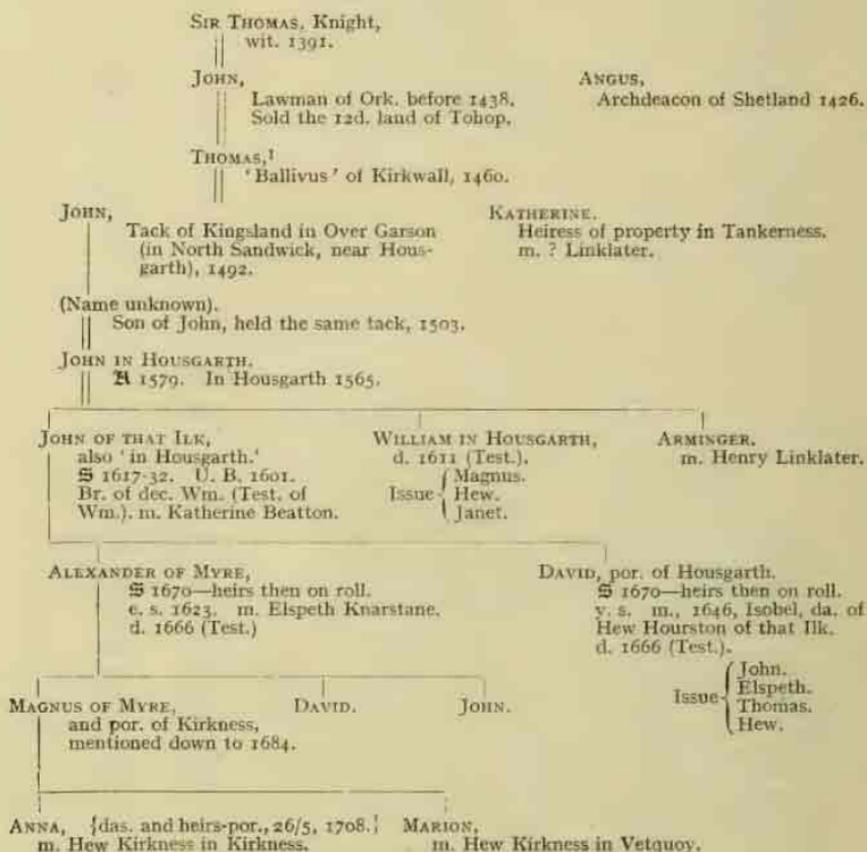
JOHN OF SABAY,  
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*Lands*.—See No. cxv. The lands there enumerated did not, however, belong solely to James of Sabay (as the charter would indicate). His brothers and the Fletts of Hobbister were portioners with him.

1 Apart from deeds included in this volume and from registered sasines and testaments, etc., this pedigree is founded on two inventories of Irving charters in the possession of the Venerable Archdeacon Craven, and on a number of still unpublished sixteenth-century deeds in the record room, Kirkwall (all, or almost all, discharges from one Irving to another).  
 2 *Oppressions of Orkney and Shetland*.  
 3 Descendants of these Irvings of Over Garston exist in Sandwick to-day.  
 4 *Oppressions of Orkney and Shetland*.  
 5 That these Feirs were identical seems the more probable from the fact that the Feirs were a Shapinsay family.

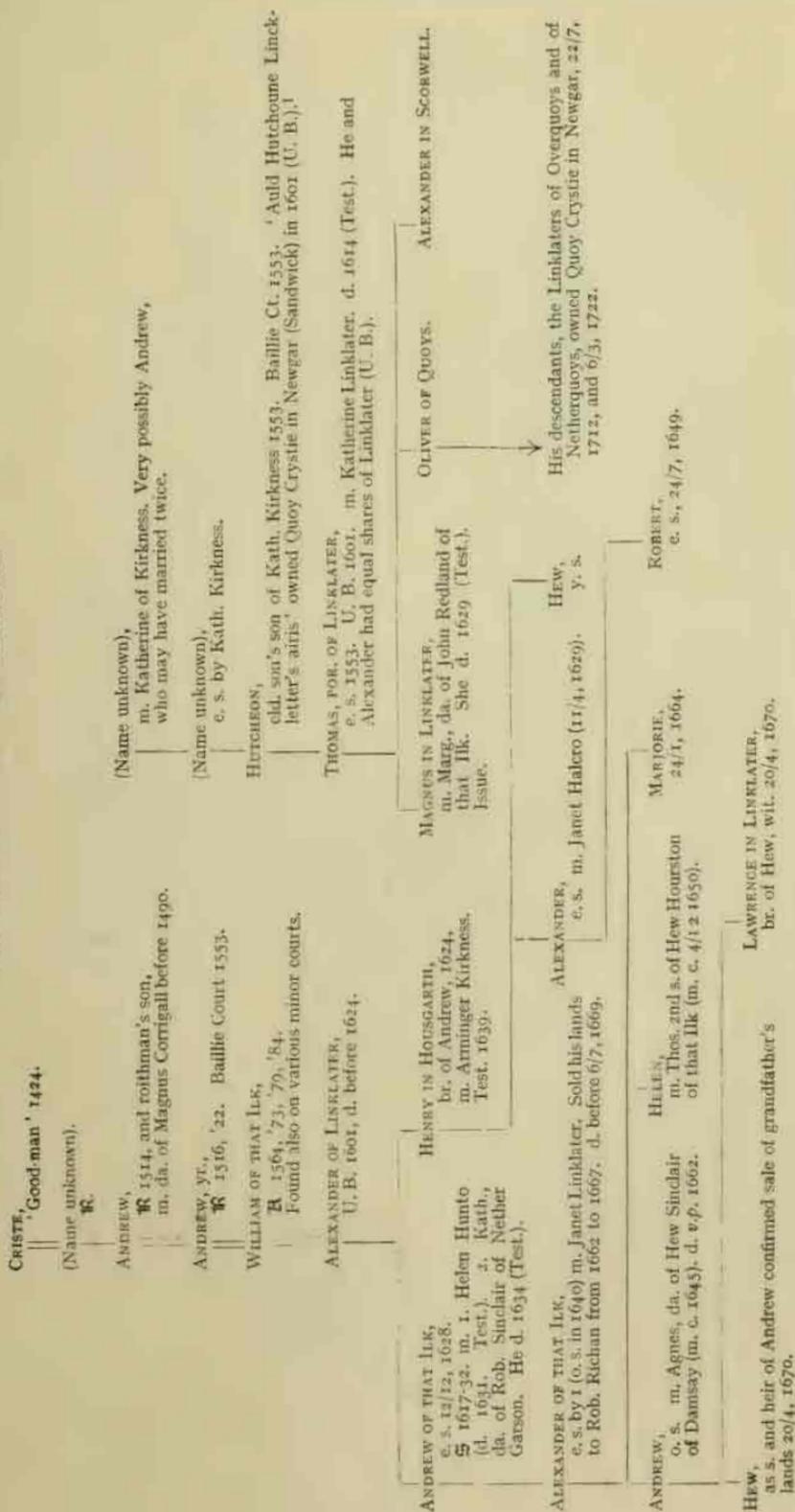
## KIRKNESSE OF KIRKNESSE



*Lands.*—The township of Kirkness (apparently 6d. land, from U. B.), and lands in North Dyke, Scorwell, and Housgarth, all in North Sandwick; land in Marwick; the 1½d. land of Over Mousland in Stromness; and at an early date the 12d. land of Tohop and (apparently) 5d. land in Tankerness, in St. Andrews. Also lands in Shetland (App. D.) By the beginning of the seventeenth century Kirkness is found in small fragments belonging to numerous portioners, including the Kirknesses of Mousland and the Kirknesses in Kirkwall, a burgess family of good standing. The Housgarth Kirknesses were, however, the chief landed branch.

<sup>1</sup> It was presumably this Thomas who was Begis Tulloch's mother's father (App. D., Item 11.), since Donald Christison, who purchased from him, is found in 1433 and 1455-56 (Nos. ccviii. and lxxxix.).

## LINKLATER OF LINKLATER



<sup>1</sup> Lands.—The 3d. lands of Linklater, and various other lands chiefly in Scabra, Northdyke, and Scorwell, all in North Sandwick (where they were much the largest proprietors in the seventeenth century—apart from the Grahams, who held Bishopric lands on feu-charter); also land in Mirbister in Harray, in Stromness, Graemsay, and Birsay. The Linklaters of Mirbister, of Housbie, and of Scabra were the chief branches.

<sup>2</sup> Evidently the land exembmed by the Irving's. See No. cxv.

## LOUTTIT OF LYKING

PIERS<sup>1</sup>

|| 1424.

DAVID,

|| wit. 1455.

JAMES I. OF LYKING,

|| R 1500. Rental 1492, 1500, when he held the king's lands of Lyking.

(JOHN),<sup>2</sup>

|| Summerdale 1529.

JAMES II. OF LYKING,

|| H 1564. m. Agnes Cragy (of Brough).

JOHN IN VOY,  
divided property with Magnus 1579.Peter,  
Issue { Abraham,  
Magnus.  
7/5, 1595. { John.

MAGNUS OF LYKING,

|| S 1617. Bailie of Sandwick, 18/9, 1612,

m. (1) Marabell Spens (24/11, 1592).

|| (2) Eliz. Sinclair (no issue). Test.

|| d. 6/7, 1624. Test.

MARION,

|| m. Wm. Sinclair of Stank (1580).

THOMAS OF LYKING,

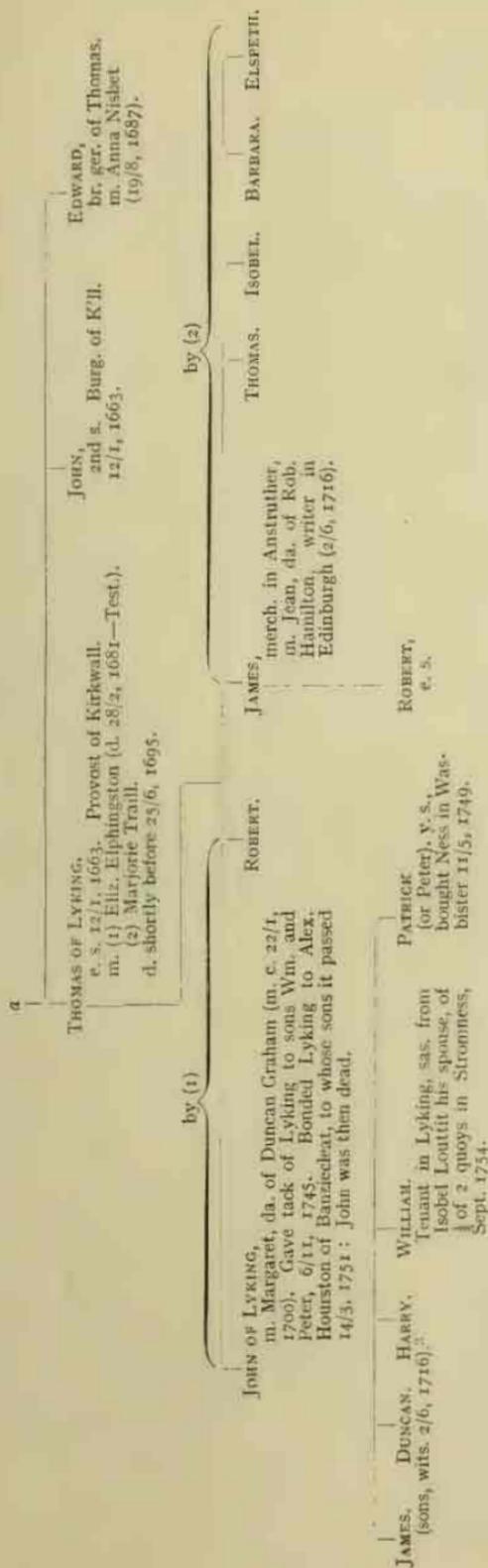
|| S 1631, m. (1) Kath. Cursetter (d. Oct. 1637—Test.).

|| (2) Marion Sclater, his widow, 18/2, 1648 (apparently  
no issue).JAMES IN WEST VOY,  
|| m. Janet, da. of Malcolin Ireland  
of that ilk (20/4, 1620).

MAGNUS OF LYKING,

|| S 1674. m. Janet Sinclair (12/1, 1663).

|| JANET.



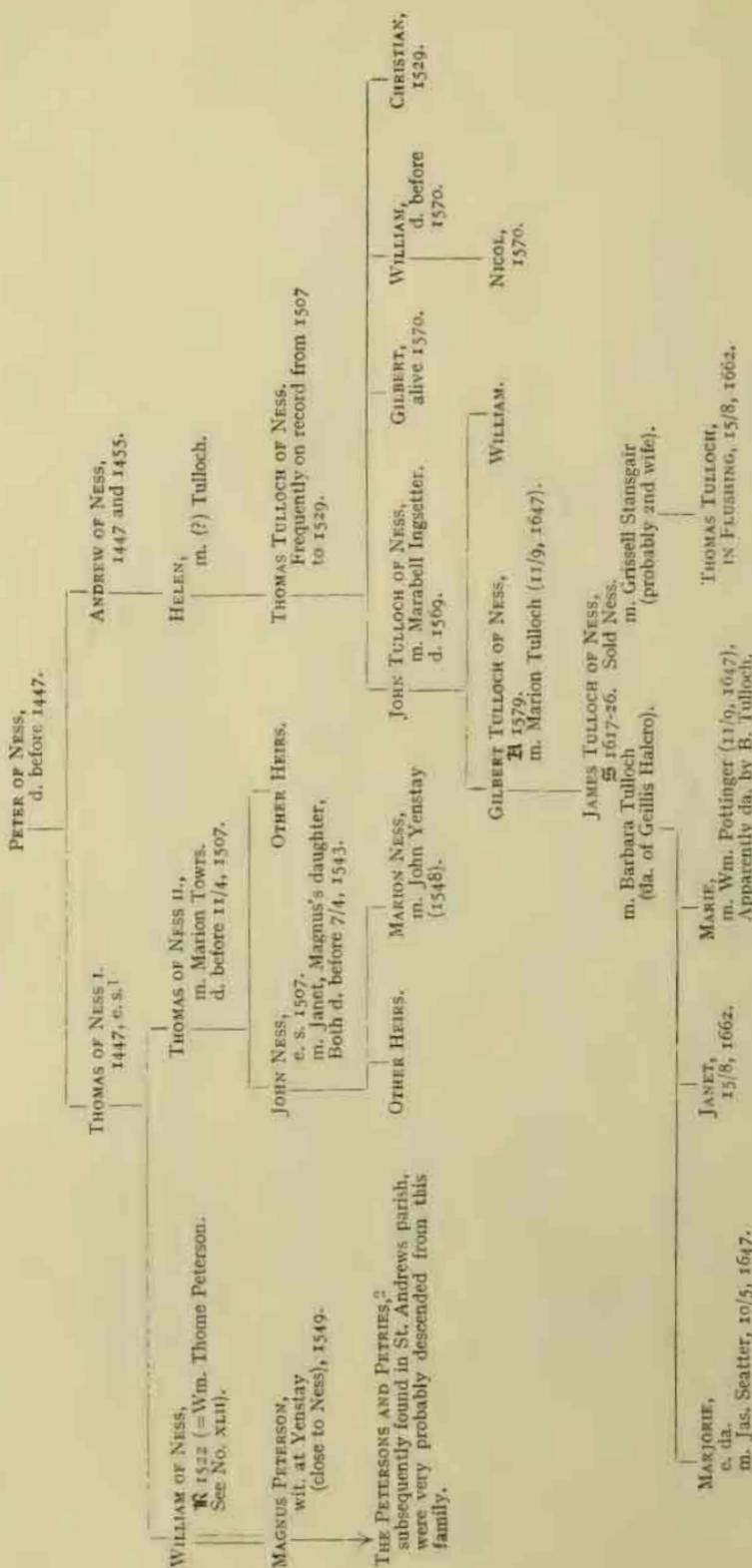
*Lands*.—See No. LXVIII, for the estate of this Sandwick branch of the Louttits before 1579 (Lyking was 54d. land odal and 64d. king's land). Other early branches were the Louttits of Fieck, or Houth (Orphir), of Bigswell (Stennes), and of Sandiscud (Deerness), all represented by roithmen:—Piers, David, and Olaf: also of Mirbister in Harray, who dated certainly from the earlier part of the sixteenth century. Bigswell passed by marriage first to the Omunds, and then to the Isbisters, and is now in possession of Mr. Wm. Isbister of Bigswell, representative of the Louttits of Bigswell.

<sup>1</sup> These Orkney Louttits or Louttits were no doubt a branch of the Lovetoffs or Louttuffs of Stratheme, who were probably descended from the important Norman family of Louetoff in Huntingdon (see *Inchaffray Charters*, Scot. Hist. Soc., Introduction p. lxxxii). There is nothing to identify either Piers or David with any particular branch of the Orkney Louttits, but they were no doubt all of the same stock.

<sup>2</sup> The marriage of James II. with a Cragy of Brough, and his possession of an 'Innes' in Kirkwall, make it probable that John of the Summerdale respite was of Lyking. Most of the families named in the respite were connected with Kirkwall, and they included a strong Cragy contingent.

<sup>3</sup> Both this date and that of their father's marriage are correct (which suggests that this was John's second wife).

## NESS AND TULLOCH OF NESS



*Lands.*—Ness is nowhere entered in the rentals, but was apparently a 6d.-land of 24 marks. The Tullochs' share of it was certainly 12 marks in 1579 and 3d. land in 1601 (U. B.). In 1455 Andrew of Ness bought land in Tankerness, but no other property is recorded.

1 Apart from the stated facts in No. xxxvi., it is clear from the legal points decided: (1) That Andrew of Ness had only one brother, (2) That this brother was the elder, (3) That William and Thomas II. were his sons, (4) That Andrew had only one child.  
2 That the name Petrie is simply a variant of Peterson seems clear from an entry in the earldom suit-roll of 1621, where the heirs of Magnus 'Petrie' of Ruotland appear, the name being usually entered as Peterson.

PAPLAY OF PAPLAY AND SANDS

The antiquity and early importance of the Paplays, and the fact that through their marriages with the Irvings, Murrays, Cragys, and Baikies, few of the later landed families in Orkney can fail to have at least a little Papplay blood in their veins, give them a special interest, and, failing anything that can reasonably be called a pedigree, a few notes are appended.

1. Sigurd I., of Paplay, an Orkney chieftain, married before 1116 Thora, widow of Earl Eideold and mother of St. Magnus, and had issue Hakon Karl, who also lived at Paplay. It is quite possible that the three gouttes in the Paplay arms may commemorate the incident where Earl Hakon, moved by her entreaties, shed tears. (*Ork. Saga*, Koll ed., p. 271). The priest-written life of St. Magnus, in which it is found, no doubt remained the standard Church narrative, so that the incident might have taken heraldic form at any time afterwards.

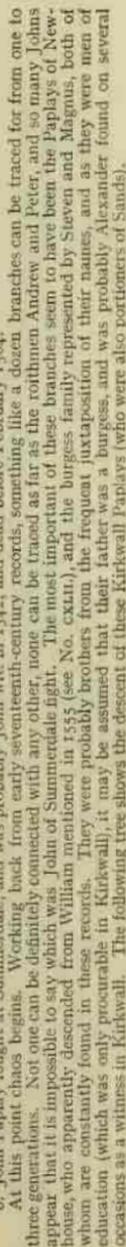
2. Sigurd III. of Paplay was one of the arbiters in 1309.

3. Peter of Paplay, burg. of Kirkwall 1422, is probably the same as Peter whose heirs held land in Flenstaith (afterwards called Sands). See App. D.  
 4. Edane Paplay, evidently the heiress of the head of the family, brought to her husband, Crisic Irving, the lands of Paplay, which were subsequently excambied for Sabay. Paplays thenceforth appear in connection with Sands, most of which they owned, as well as land in Tankerness and elsewhere in the East Mainland. (Paplay was in Holm.)

John Paplay is found in 1482, and was apparently of the same generation as Edane.

5. Andrew Paplay was rothman 1516, '22, and Peier, rothman 1516.

At this point chaos begins. Working back from early seventeenth-century records, something like a dozen branches can be traced for from one to three generations. Not one can be definitely connected with any other, none can be traced as far as the rothmen Andrew and Peter, and so many Johns appear that it is impossible to say which was John of Summerdale fight. The most important of these branches seem to have been the Paplays of Newhouse, who apparently descended from William mentioned in 1555 (see No. 2611), and the burgess family represented by Steven and Magnus, both of whom are constantly found in these records. They were probably brothers from the frequent juxtaposition of their names, and as they were men of education (which was only procurable in Kirkwall), it may be assumed that their father was a burgess, and was probably Alexander found on several occasions as a witness in Kirkwall. The following tree shows the descent of these Kirkwall Paplays (who were also portmen of Sands).



<sup>1</sup> She also appears as Marabell Barclay.

RENDALL OF RENDALL

KOLBEIN OF RENDALL,  
 || 1231, kinsman of Hanef, steward of Orkney (Hakon's Saga).

ROGNVALD OF RENDALL,  
 || m. Alicia, before 1325. See No. III.

HENRY RENDALL,  
 || Lawman of Ork. 1438, '46.

DAVID,  
 || d. before 1492, leaving 3d. land (= 6 mks.) in Gorness to the Church.<sup>1</sup>

JOHN I., { These might be father } JAMES,  
 || R. 1509. { and son. } || R. 1516, '22. BAENE,  
 || || wil. 1504.

JOHN II. OF THAT ILK,  
 || Summerdale, 1529.  
 || || wil. 1542, '44, '47.

JAMES OF THAT ILK,  
 || || 1565.

JOHN III. OF RENDALL, { Each credited with 3d. land in township }  
 || 1601 U. B. { of Rendall. } || GILBERT OF BRECK,<sup>2</sup>  
 || || 1601 U. B.

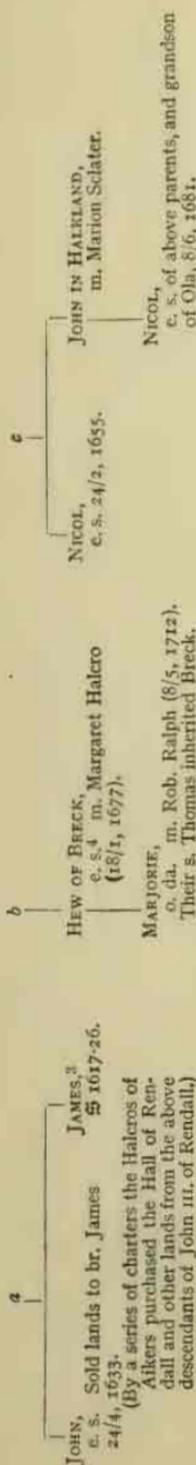
JOHN IN COTTASCARTH, DAVID IN RENDALL,  
 || e. s. d. s. p. { both d. before } || 2nd son.  
 || { 24/4, 1633. } || || d

JOHN OF BRECK,  
 || { Sold land in Halkland to }  
 || { br. Ola, 8/11, 1630. } || b

OLIVER OF GAIRSAV,  
 || d. c. 1535.  
 || || Nicol,  
 || || b. shortly before 1535;  
 || || Protest. 1575.

(If the same as Nicol in Tingwall who d. 1613 (Test.), his descendants can be traced down to Robert Rendal, carpenter in Leith in 1743).

OLA IN HALKLAND,  
 || m. Helen Schater. || c



*Lands.*—The 9d. land of Rendall (township), including the Hall of Rendall and Breck; also Gairsay, Ellibuster, and part of Halkland and Gorness, all in Rendall parish. Most of the odal lands in the parish belonged to them. Various branches are found in possession of these lands by the end of the sixteenth century. Gairsay, the odal inheritance of this family, was the estate of Swoym Aslerison and his descendants, who very possibly may be represented by the Rendalls. Breck in Rendall is quite distinct from Breck in Westray, the estate of the seventeenth and eighteenth century family of Rendall of Breck. The Westray Rendalls are found as a separate branch as early as 1492. (See App. C.)

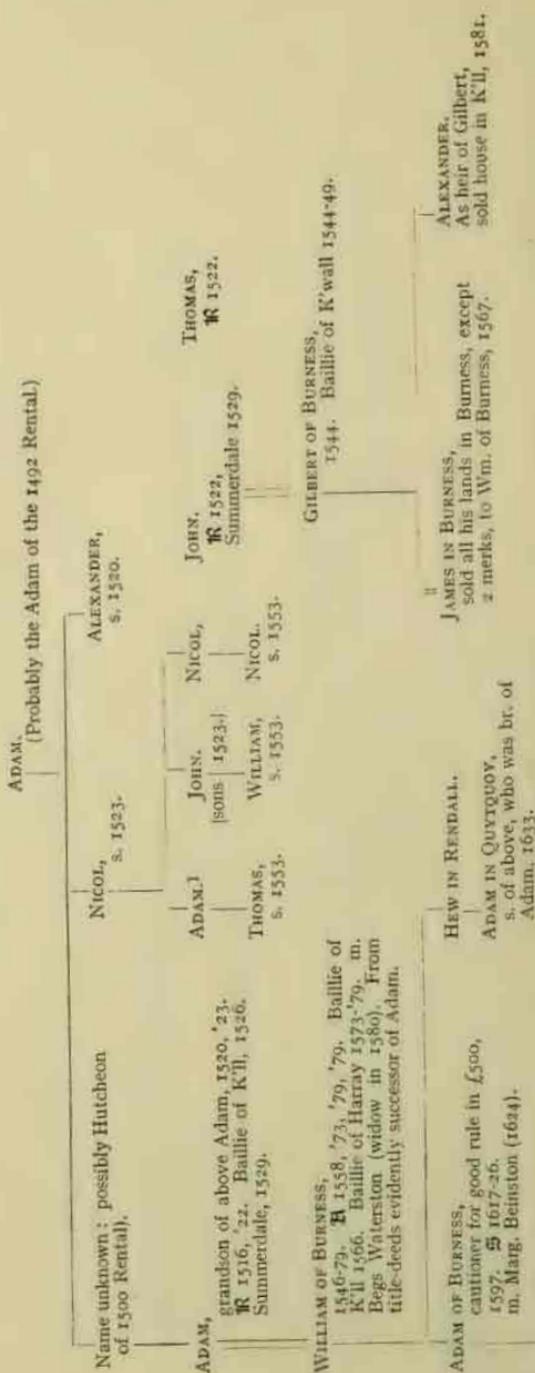
<sup>1</sup> This may be taken as not more than one-sixth of his estate—the tent penny and ferd, which he had the right to give away. See No. LIX.

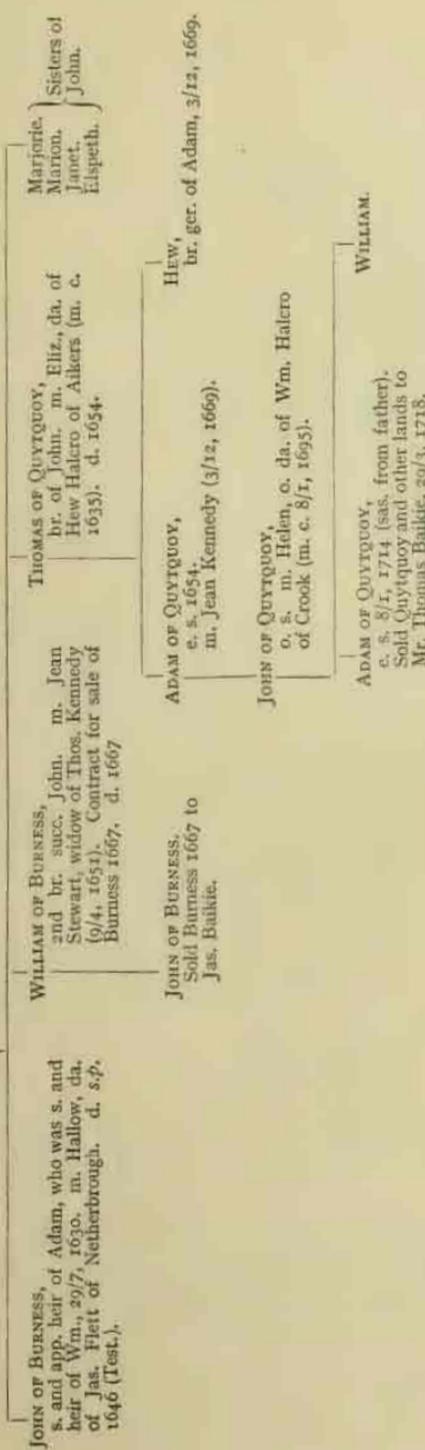
<sup>2</sup> Breck in Rendall.

<sup>3</sup> There seems to have been no other James Rendall likely to be the suitor of court. He presumably held a tack or feu of some of the extensive king's lands in Rendall, for which he appeared.

Stated in error in one charter to be grandson of James.

## SCLATER OF BURNES

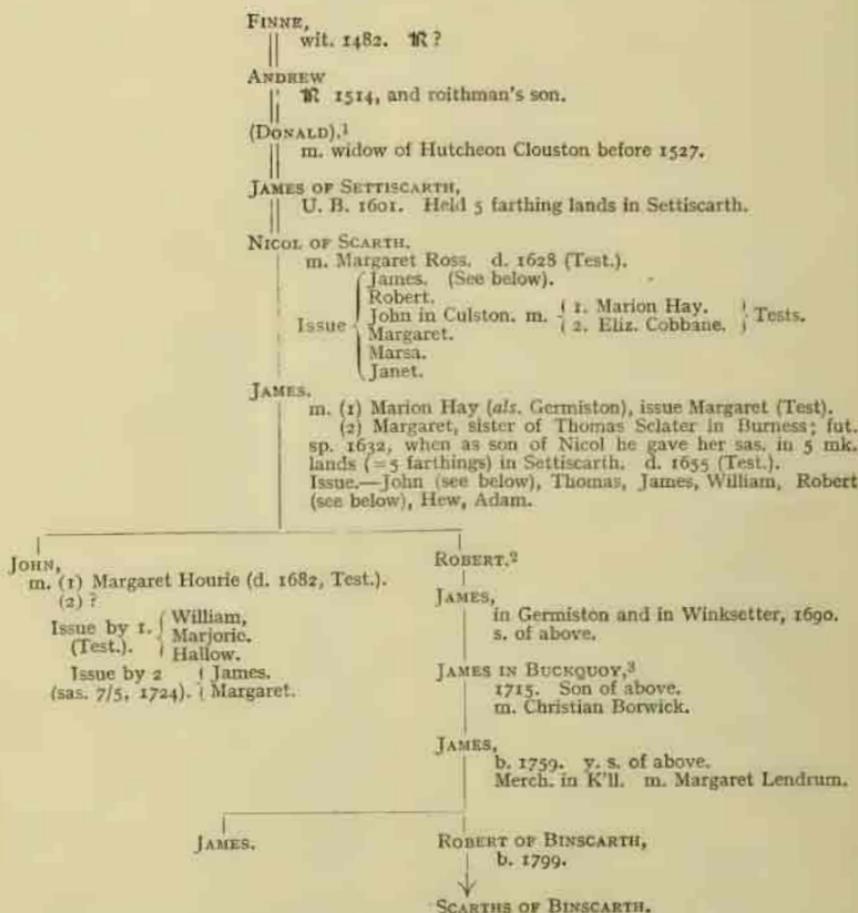




*Lands.*—The 6d. land of Burness (of which 3½d. was odal), and others in Firth and Harry acquired at the end of the sixteenth and early seventeenth centuries. Various other land-owning branches are found all over the West Mainland, but at what period they acquired these lands is not clear. Several Sclaters were larger tacksmen of king's lands in 1492 and 1500, and an early and continued connection with Kirkwall existed. Whether the family was native or early Scottish seems an open question.

<sup>1</sup> It is possible that this Adam and his brother John were the Sclaters who fought at Summerdale, though it seems more likely to have been the more important Adam and John (the two roithman) who were mentioned in the respite.

## SCARTH OF SCARTH



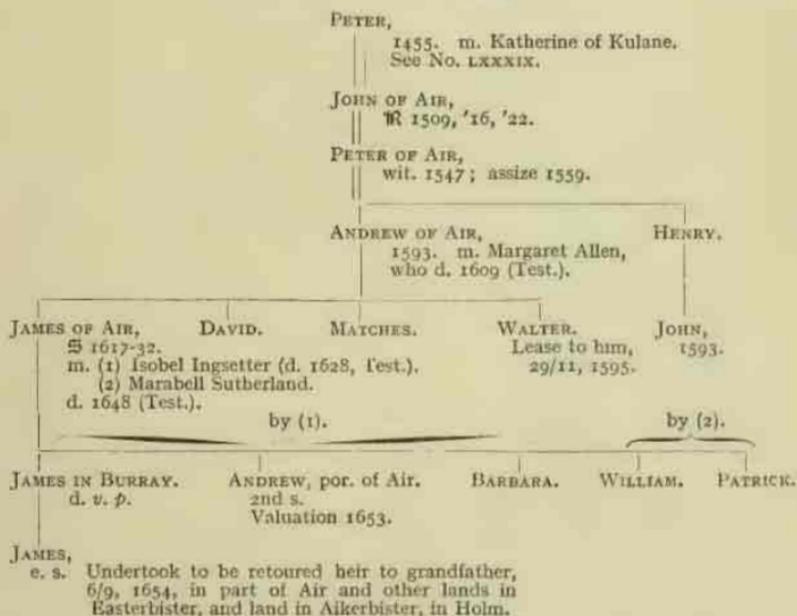
*Lands.*—In all probability 'Scarth' originally included both the 3d. land of Settiscarth in Firth and the contiguous 3d. land of Cottascarth in Rendall, but there is no record of the family having property outside Settiscarth.

<sup>1</sup> There is no evidence to place this Donald.

<sup>2</sup> The descent from Robert depends solely on notes made by the late Mr. Scarth of Binsicarth. As his notes of the earlier generations were absolutely accurate, there seems no reason to question the correctness of his pedigree connecting the Scarths of Binsicarth with this Robert.

<sup>3</sup> James Scarth was certainly tenant of Buckquoy in 1756 (sasine of 24/5, 1753).

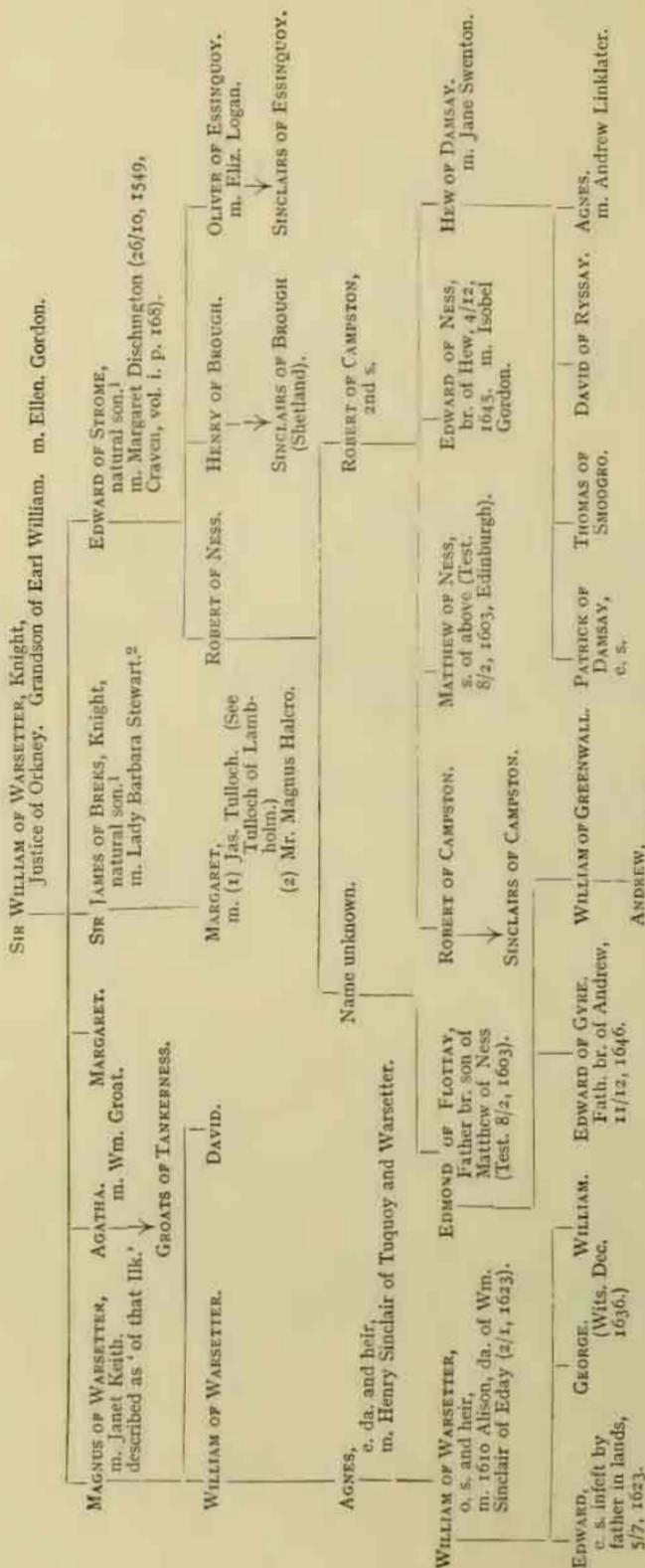
## SINCLAIR OF AIR



*Laird* — From 2d. to 4d. land in Easterbister, and some land in Aikerbister, in Holm, can be traced as being in their possession at the end of the sixteenth century. They are the oldest traceable cadet branch of the Sinclairs in Orkney.

SINCLAIR OF WARSETTER

(An outline, indicating the branches.)



Note.—This pedigree professes to be no more than an outline showing the connection with one another of the branches probably descended from Sir William of Warsetter. In addition to the above branches, John Sinclair, first of Tolhop, was evidently closely akin to Sir William (cf. Nos. xxxix. and lxxv.), though it is pretty certain he was not his son, for if, as seems likely, it is the same John who appears in Nos. civ., and cv., he was son of Magnus and Margaret Sinclair (for them, see p. 410).

<sup>1</sup> The statement is here provisionally accepted that James and Edward were natural sons, though I understand it has been questioned.  
<sup>2</sup> Daughter of Andrew, second Lord Avondale, and sister of Lord Methven, who married Margaret Tudor, Queen Dowager of King James iv. Barbara Stewart married, 2nd, Mackleod of Lewis.

TULLOCH OF LAMBHOLM<sup>1</sup>

Nicol,<sup>2</sup>  
 armiger 1422. <sup>¶</sup> (lawrikman) 1446.  
 ||  
 WALTER I. OF LAMBHOLM,  
 d. in or (probably shortly) before 1480.

WILLIAM OF LAMBHOLM,  
 1480. (From the dates probably grand-  
 father of Walter II. and James.)

JASSET,  
 m. Wm. Irving. Sold a mk. in L'holm to  
 Wm. T. 1480 (presumably also a sister).<sup>3</sup>

WALTER II. OF LAMBHOLM,  
 WIL. 1547  
 (see John II.).

MARGARET,  
 da. of Walter I. of L'holm, sold her sister part of  
 L'holm to bro-german Wm. of L'holm in 1480.<sup>4</sup>

MR. JEROME OF QUHOLM,  
 subchanor of Orkney, bro. of James  
 in Shapinsay, m. Alison Lindsay.

JEROME OF QUHOLM,  
 s. (Pet. Rentals). <sup>¶</sup> 1617, 32.

WALTER III. OF LAMBHOLM,  
 m. Janet Clouston,<sup>5</sup> who m. (2) Rob.  
 Corrighal, por. of Corrigall (15/11, 1667,<sup>6</sup>  
 and her Test.). He d. Ap. 1604 (Test.).

JOHN I.,  
 He and Walter IV. sold  
 part of L'holm to Earl  
 Patrick 29/1, 1608.<sup>7</sup>

WALTER IV.,  
 Presumably s., and certainly heir of Jas., being only portioner in 1608,  
 apart from Walter III. and John I., and owning half of L'holm.  
 See John I. [Same as Walter, 'son-in-law' (step-son) of John  
 Caverton of Shapinsay (16/8, 1626), and 'son of good-wife of  
 Shapinsay' (Marg. Aikman), 21/8, 1591?].<sup>8</sup>

MR. JAMES OF ROTHESBOLM,  
 charge of Rousay,  
 1590-1600 (Graven).

JOHN II., (Test.). With consent of fath. bro. John I. sold rest of L'holm 8/2, 1608.<sup>9</sup> As s.  
 of Walter III., and of Walter II., sold L'holm to Pat. Stewart of Gyre, 17/4, 1633.<sup>10</sup>  
 Very possibly same as John, who owned land in Grimston (Harrey) in 1650 valuation.

JAMES OF ROTHESBOLM,  
 o. s. of above, 1626. <sup>¶</sup> 1617, m. Ellen Maxwell;  
 bro. son of Walter (step-son of J. Caverton) and  
 heir to his lands in Shapinsay, 26/8, 1626.<sup>11</sup>

*Leads*.—Lambholm (now an uninhabited island) was a 3d. land, and on its purchase by Earl Patrik was set for the high  
 rent of 18 mels malt and 6 mels meal; though the 1614 Rental states that even by that time it was unable to pay so much. It  
 seems to have been the original estate of the layman family of Tulloch in Orkney (the clerical side held, of course, the Bishopric  
 estate while they were in office). Walter Tulloch also held 1d. land in Sandis in Deerness in the U. B., Røthesholm, the lands  
 in Shapinsay, Quholm, etc., were all feued lands of a later date.

<sup>1</sup> Founded largely on an old inventory and a few seventeenth century charters in possession of Mr. Sutherland Graeme of  
 Grammeshall. References to these are marked \*.

<sup>2</sup> Nicol's position as lawrikman implies a substantial odal estate, and only the Tullochs of Lambholm and of Ness have such  
 in the U. B. (or in any other record); and Ness was only acquired by marriage at the end of the fifteenth century.

<sup>3</sup> They were divorced before Jan. 1564. See *History of the Church in Orkney*, 1558-1668, p. 34.

<sup>4</sup> Sister of James Clouston in Harroquoy (in Grimston, Harrey) and presumably da. of Alex. C. of Harroquoy (U. B.).

<sup>5</sup> Unless there were three contemporary Walters (which seems unlikely, judging from the negative evidence available at  
 this period), these must be the same, and the probability is increased by the fact that Walter IV. was heir and presumable son  
 of a Jas. T., while Jas. T. in Shapinsay seems evidently father of Walter, step-son of J. Caverton, and his heir of entail, falling  
 issue of J. C. and Marg. Aikman (26/8, 1626). The two Jameses and the two Walters are surely identical.

<sup>6</sup> Such sales were common. They seem to have been sometimes intended to confirm under Scots law purchases made (before  
 1611) under native law; and at other times mere piratical attempts to 'jump' a claim founded on such an earlier purchase.



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*The Editor is personally responsible for the differentiation of individuals of the same name. In most cases absolute certainty in this matter is impossible, but the evidence and the presumptions have been weighed to the best of his ability.*

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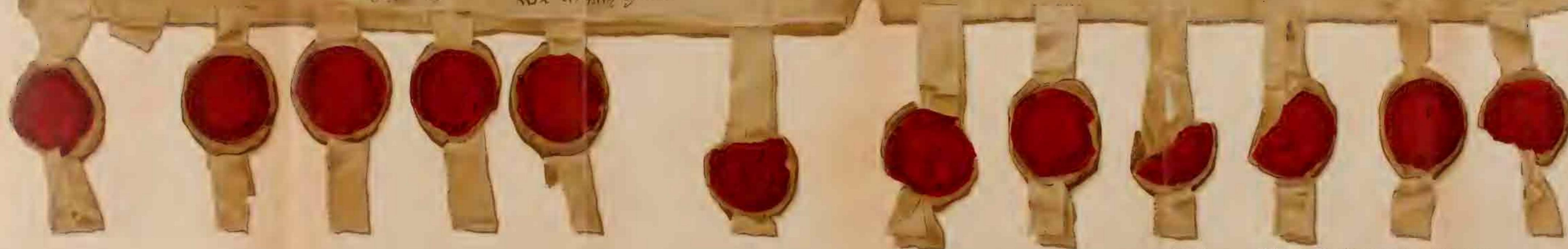
Walter Bence Clerk  
with my hand

Janet's sister and her husband  
William Fisher of ...  
with my hand  
Robertson of my hand

Thomas Dickson  
with my hand

Thomas Dickson  
with my hand

Thomas Dickson  
with my hand



Seals of the jury in a process of appraising, at the instance of Robert, Earl of Orkney, against Janet and Catherine Hutton and their husbands vs Hutton, 12 November 1584.



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