FORVIK

An examination of the source of the UK government's authority in Shetland.

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I am indebted to and thank Professor Kent McNeil of Yorke University, Toronto, author of many books and articles on the subject of sovereignty, for taking the time to read the manuscript for this booklet and for his comments. I found his book *Common Law Aboriginal Title* particularly illuminating and drew upon it heavily in my writing.
Having said that, the views and conclusions expressed herein are mine alone and Professor McNeil carries no responsibility for them.

1. Introduction

I have for some time been carrying out various 'illegal' activities to challenge the legitimacy of the UK authorities in Shetland. I have withheld money from HMRC VAT and Income Tax departments and in June 2008 I declared the island of Forvik a Crown Dependency to push things a little further. The reaction of the authorities has been interesting to say the least. Some, like HMRC VAT and Income Tax offices have threatened legal action, before backing off when asked to provide proof of their authority. Others have passed the buck to other authorities, while others have simply ignored me. My efforts to get a UK authority into court to explain how they derive their authority have so far met with no success, while the list of authorities declining the opportunity to explain how they derive their power keeps growing.

All UK and Scottish authority in Shetland rests on the assumption that Shetland is part of Scotland, so it seems reasonable to ask when it happened. Thus far, nobody can tell me, so I'm drawn to the conclusion that it never happened - in fact the evidence shows that from a legal standpoint it could never have happened, unless the Crown had taken a particular action that it neglected to do.

It is legally accepted[1] that the basis for the relationship between the United Kingdom and Shetland is the 1469 marriage document. Chapter 3 attempts a full interpretation of that vital document as part of he task to unravel Shetland's history and reveal its true constitutional position.

The UK government asserts that Shetland is part of Scotland and therefore part of the UK. Although almost nobody questions the legitimacy of that claim, it appears that the whole of UK authority in Shetland rests, not on any legal argument, but simply on an unquestioned assumption. Like the Emperor's clothes, it exists because nobody questions it. I am asking a very simple question that nobody seems able to answer: 'When did Shetland become part of Scotland?' In the absence of a convincing answer it must be assumed that it never happened, that neither the UK nor Scotland has any authority here and that many of their actions have been and continue to be illegal, fraudulent and to Shetland's detriment.

In an attempt to settle the issue I have been searching for a definitive date, or document. If there was a date on which Shetland became part of

Scotland, it should be easy enough to find. Somebody must be able to point me to a piece of paper, an Act of Parliament for instance, that spells it out. The harder I looked, the more it became apparent that it did not exist and never could have existed. As my grasp of events grew I began to realise just how far the Crown and the Scottish and UK governments had gone in their deception of the people of Shetland.

I will be showing on what a shaky foundation the Crown bases its claim to the sea and seabed around Shetland. I will explain why the actions of previous monarchs have placed the Crown in the difficult position it now finds itself. I will be pointing out why it is so important to the Crown to foster the belief that Shetland is part of Scotland – so important that it finds it necessary to ignore the law and to hide Shetland's true history.

I'll be looking at various dates in Shetland's history and considering the question 'Was Shetland part of Scotland?' at each point.

The clarification of a date on which Shetland became part of Scotland is a pretty important issue to both Shetland and the UK. Today, in pure money terms, assumption of the fact that it happened is what gives the Crown Estates the right to take money from the salmon farmers, Shetland Islands Council and anyone wanting to use the seabed. It's what gives the government the legitimacy to license the oil companies to extract over £5 billion worth of oil from around Shetland's shores every year. It's what makes Shetland a net contributor to the UK Treasury to the tune of around £100 million every year and it's what ties us to the raft of EU directives that we have to cope with.

Chapter 18 recounts my 'illegal' actions, both on the island of Forvik and the Shetland mainland. The unwillingness of the various UK authorities to engage with me indicates how weak their position is and the list of bodies declining to enforce their perceived power grows ever longer.

Finally, I am looking at this whole question from a legal, rather than an historical perspective. As far as I am aware this is the first time this has been attempted. While a historian may be content to simply recount a sequence of events, a lawyer is interested in the legality of those events. I am not a legal expert, but I have had the benefit of some pretty heavyweight legal minds and the documents speak for themselves.

Much of what follows applies equally to Orkney, but there are important historical differences and this account confines itself mainly to Shetland.

2. Background

From a legal perspective there are three accepted means by which one territory can be acquired by another. They are Conquest, by force of arms, Cession, by treaty, or mutual agreement and what is called Terrae Nullius, when there are no inhabitants and no legal system. Terrae Nullius obviously does not apply in Shetland, so that just leaves Conquest and Cession.

Many historians will agree that the Vikings came and conquered Shetland around the ninth century, so this provides a starting point. We need to look no further back than that for a legal starting point.

The next interesting date is 1266 – the date of the Treaty of Perth. By this treaty Norway sold The Sudreys (The Hebrides) and the Isle of Man to Scotland for 4000 marks and an annual payment of 100 marks – The Annual of Norway. This was a mutually acceptable agreement and we have an example of the second legally acceptable method for acquisition – Cession. There was a legal change of ownership, the territories became part of Scotland and there is no doubt about the date on which it happened.

But it's not quite that simple. Why is the Isle of Man not part of Scotland now? It is a Crown Dependency with its own parliament and a great deal of autonomy. I will show that Shetland has at least as much right to that status as the Isle of Man.

Although not directly to do with Shetland, The treaty of Perth also confirmed Norwegian sovereignty over Orkney and Shetland and had other important consequences here.

At first the Scots paid The Annual of Norway, but by the 14th century they were in arrears and the resulting friction culminated in the 1468/69 pawning. The French King Charles VII had mediated in the dispute and the issue was settled by an agreement that the Scots King James III would marry Princess Margaret of Denmark, King Christian's daughter. At this time, Norway was owned by Denmark and King Christian signed the agreement as King of Norway.

Scotland wanted ownership of Shetland, but King Christian engineered a deal that has provided problems for the Scottish and United Kingdom

3. The Pawning

Unique to Shetland and Orkney's history are the events of 1468/69[1]. At that time Shetland was part of Norway and Denmark owned Norway. The Danish King Christian had agreed to provide a marriage dowry of 60,000 Rheingulden on the occasion of his daughter's wedding to James III of Scotland. Unable to come up with all the money at once, he pawned his lands in Orkney for 50,000 in 1468, leaving the balance of 10,000 to be paid in cash. Only being able to come up with 2,000 in time for the wedding in 1669, he pawned 'the king's lands' in Shetland to James until he or his successors could come up with the 8,000 balance.

It has been missed by most commentators that it was only the king's lands that were being pawned, not the whole of Shetland. Under Norse law, the king had no overall ownership of land in the realm as in the Scottish feudal system. He was king of his people, rather than king of the land. What the king did not personally own was owned by other land owners and owned absolutely by them. The king could not pawn something he did not own and the subject of the document is quite clearly stated as 'the king's lands in Shetland'. Those lands represented only a small part of Shetland.[2] This was a commercial contract and King Christian could not offer as security something he did not personally own.

There was an obligation to retain the language and laws of Norway, which was not only implicit in the pawning document, but is acknowledged in later correspondence between James III and King Christian's son John (Hans).[3]

Another aspect that seems to have been universally missed is that this was a personal matter between the two crowned heads. By pledging 'the king's lands', Christian was offering his personal property. It did not concern the realms of either country. It was not a matter for Parliament and there is nothing in the parliamentary record of the time to suggest otherwise. Parliament was not a party to the contract and there has been no means by which it could have been legally involved since.[4]

[2] Smith, Shetland Documents 1195-1579, "the crown had only a small landed estate in Shetland".

[3] Appendix 3, p.43.

[4] McNeil - Common Law Aborginal Title, p.114: "Parliament could legislate for the Crown's overseas dominions, but not for the king's personal dominions." Of course, as a trusteeship, Shetland did not even

Sovereignty was not being relinquished by Norway, a fact asserted by them without challenge from Scotland, on a number of occasions since the pawning. Confirmation of this is also in the text of the document:

> "....we, our heirs and successors, kings of Norway, shall warrant and forever defend against all mortals the aforesaid lands of Schethland"

If he were relinquishing his sovereignty, king Christian would hardly undertake to forever defend Shetland.

Implicit in any contract of this nature is the expectation of the owner to gets his goods back in the same condition as when pledged. James was not empowered to change anything so fundamental as the legal system.

The same day, Christian wrote to the people of Shetland instructing them to be obedient to James and to pay their skat to him. It is significant that this is a separate document and does not form part of the contract between the two kings.

After the pawning, James was left in this rather weak position:

- He held the king's lands (not the whole of Shetland), in trust only, until they were redeemed by the Danes.
- Under the Norse law most of Shetland belonged absolutely to other land-owners.
- The contract was between the two kings and was not a matter for Parliament.
- He acquired no sovereignty, only the obligation to administer.
- The people of Shetland were instructed to pay their skat to James until the king's lands were redeemed.
- The people of Shetland, through the Ting (the Norse law equivalent of a parliament), had a share of the sovereignty.[5]
- He was obliged to keep the language and laws of Norway.

Clearly, Shetland was not part of Scotland at this point, but James had what Charles II later referred to as 'the jewel in his crown' (for which read 'cash in his hand'). Confirmation of the marriage document in 1471 put the value of Orkney & Shetland at one sixth that of Scotland.[6]

[5] Roberstad, Udal Law, Shetland and the Outside World, Edited By Donald Withrington, p.56: "The king shared sovereignty with the people, who were represented by the things, especially the lawthings. Thus

[6] APS. 13 May, 1471 Confirmation of the Dowry: In the event of Margaret surviving James, she was to

4. 1472

At a talk in September 2008, Shetland's archivist proposed 1472 as the date when Shetland became part of Scotland. At first sight it would seem to be a reasonable argument (if, by some means Shetland had come into the possession of the Crown by then) – James III, by his 1472 Act of Annexation makes what appears to be a claim of ownership. However, it was not in James' power to do this as he well knew. Only three years before he had agreed with King Christian to hold the king's lands in trust until the Danish king could come up with the money to take them back. Without the agreement of both parties this contract could not be changed.

To put it in simple terms: If you got a letter from your building society saying 'even if you come up with all the money to pay off your mortgage, we're keeping your house' – would you think that was acceptable? Can the building society in that way remove you right of redemption? Obviously not, but in effect, that is the interpretation of the 1472 Act if it is seen as making Shetland part of Scotland.

Regarding the 1472 Act, Donaldson[1] states:

> "This is of course related to the Earl's private property and had no direct bearing on either sovereignty or the international status of the islands."

That even James did not think that the Act of Annexation gave him ownership or sovereignty is made very plain by his letter[2] (only recently unearthed by Shetland archivist, Brian Smith) fourteen years later to King Christian's son, John. John has apparently heard rumours that James was about to remove the inhabitants of the islands and replace them with Scots, which would make the job of imposing Scots law much easier (he would then effectively have a Terrae Nullius situation – no inhabitants - and could possibly make a quasi-legal claim). Whether James actually intended this ethnic cleansing or not, his remarks to John are very interesting. He goes to great lengths to placate John, assures him that no inhabitants have been removed and there is no intention to change the laws or language of Norway.

This is what James says in the letter:

[2] Appendix 2

> 'Last summer Rothesay Herald brought John's letters to James, from which he understood that John was moved [to learn] that subjects of the isles of Orkney and Shetland were to be taken from their birthplace and James's subjects brought over to inhabit those islands and be governed by Scots language and laws, which had caused no little indignation among John's councillors.'

The clear implication is that the inhabitants of Shetland are ~~not~~ James' subjects.

James goes on:

> 'In truth he has removed no inhabitant of those islands from his native place nor has he changed the language or laws of Norway. Pacts still in force were concluded and sealed between John's father (King Christian) and James, He will have these looked at and will take care that their terms are observed on his part……….' (my emphasis and parenthesis)

If James thought that by the 1472 Act of Annexation he had secured ownership of the islands, he would just tell John to go away – it would be none of his business. He clearly was under an obligation to keep the language and laws of Norway. He also felt the need to justify his actions to John. All this is consistent with his being aware that he only held a small part of Shetland in trust and that he was well aware of the terms and implications of the pawning agreement.

The king's letter makes it clear that Shetland was not part of Scotland and that the Crown did not have ownership in 1472 or 1486, but there is a lot more supporting evidence for my contention that it never happened at all and that at no point has the Crown satisfied the requirements for the acquisition of sovereignty.

5. Sovereignty

For an understanding of sovereignty I have drawn heavily on Kent McNeil's excellent and authoritative *Common Law Aboriginal Title*, which gives a full account of the ways by which it could be achieved.

Sovereignty as understood by James III (and most Scottish and English trained lawyers and academics to this day) was quite different to King Christian's concept of the term. To James, as well as being the right by which he ruled his people, it meant ultimate ownership of the whole realm. Anything, or any part of the realm that was not claimed was automatically the property of the king and any land owned was owned under a charter from the king. This is the essence of the English and Scottish feudal system, everybody who owns land owns it under a feudal charter granted by the king. Of course, before he can grant a charter, the king must first own the land in question, either personally or as a result of his feudal superiority.

Christian, on the other hand, understood sovereignty simply as the right by which he administered his country and people – the right by which he was Head of State. There was no concept of overall ownership – everybody owned their land under God. He was king of his people, whereas James was king of the realm. This is the principle difference between the udal and feudal systems and what makes them diametrically opposed.

What Christian transferred could not possibly include ultimate ownership in the feudal sense. He could not transfer something he did not have.

By asking the people to give their scat to the Scottish king and telling them to be obedient to him, Christian was not transferring his sovereignty. For example, in Orkney, the Earl was so empowered, but had no sovereignty.

In Norse law, sovereignty was shared between the King and the people[1], a concept completely unheard of in the Scottish system, where the monarch ruled by the divine right of kings. In every Nordic region, including Shetland, the Lawthing was able to make and alter laws within the overall structure of the main law. By owning their land outright and by taking part in the law-making process, Shetland land-owners demonstrated a share in the sovereignty. If sovereignty was shared, then that part

owned by the people could not simply be usurped by an outside power unless by force of arms. Stair[1] says:

> "*Campbell v. Hall* is authority for the proposition that the laws of a country over which another state acquires sovereignty continue in force until altered by the acquiring state."

The Norse law should have continued in operation and there is no reason why it should not have done since it was continuously updated in Bergen. In Shetland it has never been legally possible to change the law because sovereignty has not been acquired by Scotland or the UK.

In one of the cases that has seemingly settled the issue in favour of the Crown, the judges in *The St Ninians Isle Treasure case* failed to consider whether sovereignty in Shetland was any different than in Scotland:

> "None of the judges therefore addressed the questions of what were the rights of the Norwegian Crown at the time the islands were pledged .... and by what right the British Crown extends or has extended the prerogative powers which it has acquired at best by way of prescription."[2] (My emphasis).

The idea that sovereignty can be somehow acquired over time (prescription) is not legally tenable. In Shetland's case it would have been necessary to have had either conquest or cession, followed by a public declaration of sovereignty.[3] By not taking either of these positive actions, the Crown finds itself in the unsatisfactory position of still only having trusteeship of the 'king's lands' in Shetland. Ownership and part sovereignty at least rests with the people of Shetland. McNeil[4], quoting Jacobs J. In *New South Wales v. Commonwealth of Australia* says:

> "Unless under another sovereign, a subject of the English Crown could not own land except of that Crown because, if he could, he would be sovereign of that land."

Green's Encyclopaedia of the Laws of Scotland:

> "Where is not the feod, there remains the alod."[5]

[2] Stair, Vol. 24, p. 230.

[3] Ibid., p.117: "Sovereignty must be completed by a public taking of possession."

[4] Ibid., p.150

Does this mean that the landowners of Shetland, being allodial owners, are already sovereign?

Regarding property rights: The courts have never upheld the fiction that The Crown is the feudal superior in Shetland. The idea that the royal prerogative enables the Crown to presume ownership must be considered as essentially a feudal concept and not applicable in Shetland. In the absence of sovereignty, the prerogative cannot operate and no Crown property rights exist.

The question must be asked 'If the administrative rights now exercised by the Crown are no more than those transferred by King Christian, how can the Crown do any more than hold the islands in trust? Even if the Crown has acquired sovereignty by some means, any evidence for which is scant, that would not have given it the property rights necessary for the issue of leases and licenses. McNeil:

> "The Crown's paramount [feudal] ownership is itself proprietary. .... There is no conflict between this proprietary title of the Crown and any title which the indigenous inhabitants may have to the land itself. But where the feudal doctrine of tenure does not apply, the Crown can be sovereign without being lord, as in the case of the Orkney and Shetland islands."[1]

The Crown can be sovereign without being lord. Without being lord it has no ownership rights, so if it exercises rights over and above those required for administration, how did it acquire them? In order to charge rents and to exploit resources, the Crown must have ownership. The onus is on the Crown to provide the proof that it has such ownership.[2]

Of course Norway would still theoretically be in a position to assert its sovereignty, but by now it would probably be politically impossible for that country to put forward a serious claim. The people of Shetland on the other hand, with ownership rights and as the only other body with sovereign rights, should be able to take that action should they so wish.

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[2] Ibid. p.85: "The Crown must prove its present title just like anyone else."

6. 1469 -1667

Having got hold of the islands, James was not about to let go. He and his successors fended off all attempts by the Danes to redeem them, not by contesting the validity of the claim, but by simply avoiding the issue.

During this period the islands were being passed back and forth between the Crown and, as Balfour put it, 'various needy and rapacious courtiers'. The Crown would grant a 'tack' to whomever it pleased, for the recipient to be the beneficiary of whatever income could be extracted from the islands and would then take them back if the grantee fell out of favour. Fourteen times granted out and five times taken back, according to Balfour - each time suffering worse depredations as laws were changed, weights and measures altered and the language suppressed.

Historians refer to a process of 'feudalisation' as a means by which Shetland supposedly became incorporated into Scotland, particularly during the 17th century. The term is a nonsense because a feudal charter requires ownership by the Crown[1] - ownership it has never had and has never openly claimed to have had. As late as the 20th century the courts declared that no land in Shetland was under feudal tenure.[2]

The two hundred year period after the pawning saw the Danes make a number of attempts to pay the mortgage and redeem the islands, but the Scots always managed to avoid the issue. However, at no time did they try to assert that the Danish claims were not valid. If, at any point during that period, Shetland had become part of Scotland, the Scots would have wasted no time in saying so.

Goudie[3] has given a very full account of a letter and one of the special embassies (1585) that were sent to Scotland in order to secure the return of the islands by payment of the pledge. Representations by formal letter, or by special embassies were made in 1549, 1550, 1558, 1560, 1585, 1589, 1640, 1660 and other intermediate years. Details of these represen-

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[1] McNeil - Common Law Aborginal Title, p. 139: "If the Crown grants land where it has neither title nor possession, the grant is simply void." - p. 82: "In common law, if the king was not in possession, he could not grant." - p.93: "For the Crown to be in possession of land its title in most cases must appear as

[2] Lord Johnson, *Lord Advocat v. Balfour,* 1907. SC 1360 at 1368.

[3] Gilbert Goudie, The Danish Claims upon Orkney and Shetland, Proceedings of the Society of Antiquar-

tations are to be found in the Danish archives, but are apparently absent from the Scottish record.

The 1585 delegation was shamefully treated by the Scottish court and had to be content with a gold chain and a promise of meaningful discussions at a later date. James VI uses the excuse that, because of the plague in

Edinburgh, he was unable to get access to his papers.[1]

> "Tharefore the King besoght the ambassadors to tak in patience for that tyme, for he sould send an ambassador of his awin, with the first commoditie, who sould give a resolute answer in that purpose."

It is clear from the Lawbook[2] that in 1604 Norse law applied in Shetland. Even half way through that century the Sheriff exercised the legislative

functions possessed by the Lawting.[3] Up until 1611 the Norse udal law formed a whole body of law by which Shetland was governed. In that year the Scottish Privy Council, probably spurred by the introduction of a new version of the Lawbook by King Christian IV in Denmark, purported to abolish the old law and replace it with Scots law. However, subsequent events were to show that this action was no more legal than the farming out of the islands under feudal charters. After all, only twenty-six years before, in 1585, the king had promised to send an embassy to Denmark to settle the issue of redemption.

Goudie lists 17 legal documents[4] in the Norse language, some of which were written in Norway. This attests to the fact that Norwegian influence was still a force into the late 17th. century.

A Charter by Frederick III of Denmark[5] signed in 1662, concerns lands in Sumburgh, of which the King was the udal owner. The charter confirms a mortgage to a Norwegian man, a transaction that would have been impossible if those lands were part of Scotland at this time. The 1667 Treaty of Breda was about to confirm this.

[2] Roberstad, Udal Law, *Shetland and the Outside World*, Edited Donald Withrington, p.57.

[3] *Miscellany of the Maitland Club* M.DCCCXL p. 144

[4] Gilbert Goudie, *A Norwegian Conveyance of Land in Shetland*, 1537, Proc. of the S.A.S, vol. 25 p. 188.

[5] Gilbert Goudie, *Notice of a Charter of Confirmation by King Frederik II of Denmark and Norway and other documents in the Norse language relating to Shetland*, Proceedings of the Society of Antiquaries of

7. The Treaty of Breda 1667

The Treaty of Breda (Netherlands) was a pivotal event for Shetland. Its direct concern was the redistribution of colonial lands throughout the world after the second Anglo-Dutch war. It was signed by ‘the plenipotentiaries of Europe’ - delegations having full government power.

The Danish delegation tried to have a clause inserted to have the islands returned without delay, but the British pleaded they ‘had no instructions on the matter’. The matter was left open with the stipulation that the original marriage document still stood in its full force. Goudie, quoting Torfaeus[1] translates the stipulation as:

> “That the suspension of the restitution of the forsaid islands should be without prejudice to the most serene and mighty King of Denmark and Norway, whose claims to recover them should not suffer thereby, but should continue entire, unenfringed and open, until a more fitting opportunity should arise.”

The Crown had spent the best part of two hundred years granting out the islands under feudal charters. For a feudal charter to be valid, the Crown must own the land in question, so this stipulation had the worrying implication that all disponements since 1469 had been illegal.

Charles II was faced with a difficult problem. By recognising the Treaty of Breda he had conceded that the original marriage document still stood. This made his and previous monarchs’ actions in granting out the islands under feudal charters illegal. This was a difficult pill to swallow, but his only alternative was to act in defiance of the Plenipotentiaries of Europe by declaring an overt act of sovereignty over Shetland, which was clearly not an option.[2] Conceding to the Danish terms was obviously a worthwhile compromise against the advantages of the remainder of the treaty.

Acceding to the terms of the Treaty of Breda confirmed that his hold over Shetland was no stronger than the weak position achieved by James III two hundred years before. The king still only held ‘the king’s lands’ in trust. He held no sovereignty and remained under an obligation to keep the language and laws of Norway.

So, by 1667, Shetland was still not part of Scotland.

[2] McNeil - *Common Law Aborginal Title*, p.110: “For assertion of sovereignty to have effect it must satis-

8. 1669 Act of Annexation

The Treaty of Breda was not something Charles II could ignore. In 1669 he responded with his Act of Annexation of Orkney and Shetland, which restored the situation much as it had been in 1469. He declared that the feudal charters he and his father had entered into were illegal. He abolished the office of Sheriff and 'erected Shetland into a Stewartry', having 'a direct dependence upon His Majesty and his officers'. Although the term was yet to be invented, what he had set up was what we would today call a Crown Dependency[1].

Charles II also provided that, in the event of a 'general dissolution of his majesty's properties' by which he clearly meant the Act of Union, Shetland was not to be included. Having been forcefully reminded by the Treaty of Breda that Shetland was not his to do with as he pleased and that he only actually held 'the king's lands' in trust, it was obvious that legally and constitutionally Shetland could not be incorporated into the realm of Scotland, let alone the proposed new union with England. The terms of the marriage document also meant that any Acts of Parliament before or after the pawning could have had no relevance to Shetland. By this Act, the Parliament acknowledges this position, returning Shetland to the personal care of the Crown.

The 1669 Act of Annexation is very comprehensive and lengthy, in contrast to the many short Acts of the time. It was obviously thought important at the time and it certainly is a document of great importance to Shetland, but I have found only one reference to it in all of the historical texts I have studied. For example, it is mentioned only as a passing footnote in the Encyclopaedia of Scottish Law. Without it 1707 would become a strong contender for the date when Shetland became part of Scotland and the UK, with the Act of Union.

In the Act, Charles II declared that his and his father's actions[2] in granting the islands out had been 'contrary to the laws and acts of Parliament of this Kingdom'. By implication, the disponements of Shetland by all

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[1] The Isle of Man is a Crown Dependency. It is one of Her Majesty's personal dominions, not subject to Acts of the UK Parliament. In Shetland, because it is only in the position of having trusteeship, the Crown has an even weaker hold than it has in the Isle of Man, so a new description would have to be in-

[2] Green's Encyclopaedia of the Laws of Scotland, p.325: Prior to the Act, the 1669 action *King's Advocate v. Earl of Morton and Viscount Grandison* pronounced the charter to the Earl of Morton and all its

previous monarchs after the pawning had also been illegal - an astonishing admission that showed the pressure he was under.

Regarding the inhabitants of the islands, he declares:

> 'That without interposing any other Lord or Superior betwixt his Majesty and them, they should have an immediate dependence upon his Majesty and his officers'.

Although the term had yet to be formally used, it is difficult not to see this as the creation of a Crown Dependency. The term he used was a 'Stewartry':

> "And farther, his majestie, with advice and consent of the estates forsaid, hath suppressed the said office of shirreffship, and hath erected and heirby erects a stewartrie within the bounds forsaid of the said earledom and lordship and iles of Orknay and Zetland."

According to Goudie[1], one of the earliest incumbents as Steward was George Scott of Giblestoun: "Stewart Principal, Justiciare and Admiral pf Orkney and Zetland" in 1671.

As a Crown Dependency, the Isle of Man is regarded as one of Her Majesty's personal dominions and is not automatically subject to UK statutes. It had previously been incorporated into the realm by the Treaty of Perth. On the other hand, Shetland, never having been incorporated into the realm and only held in trust by the Crown, is even further removed from the influence of the Scottish Parliament and Charles II underlines this in the 1669 Act.

Regarding future acts of dissolution of the realm, he says:

> 'And further it is Declared That if any general act of Dissolution of his Majesty's property shall be made at any time hereafter; The said Earldom & Lordship and others above mentioned & annexed Shall not be understood to fall or be comprehended under the same'.

That he meant by 'any general act of Dissolution' the proposed union of Scotland and England, can be deduced from the fact that the previous piece of Parliamentary business that day was the reading of a letter from the King to the Parliament exhorting them to get on with finalising the union.

Reinforcing this point, he goes on:

> 'And if the said Earldom and Lordship or any part thereof shall be annalied or disponed, or any right of the same shall be granted otherways than is appointed and ordained in manner above mentioned His Majesty with consent forsaid Doth Statute and Declare That all dispositions investments and other rights of the said Earldom & Lordship, or any part thereof which shall be granted contrary to this present Act with all acts of dissolution and Ratification & other acts of Parliament concerning the same shall be from the beginning & in all time coming void and null and of no effect'

With the consent of Parliament, Charles was taking the exclusive rights to the islands back to the Crown for all time coming. Furthermore, he was specifically excluding Shetland from the coming Act of Union, even going so far as to say that the Act of Union itself would be null and void if Shetland were to be included.

Apart from the fact that he describes the islands as his property – which, as the Treaty of Breda had just reminded him, he was no more entitled to do than any of his predecessors, the 1669 Act of Annexation restores the situation as it was in 1469. The islands are under the direct personal control of the king, to the exclusion of Parliament, a situation set 'for all time coming' and that even if Parliament shall legislate otherwise, such legislation will be null and void with regard to the islands. This reinforces the supposition that Charles intended to keep the islands separate to himself – as indeed was his only legal option.

As confirmed by the Treaty of Breda, with which he was now complying, the king still only held 'the king's lands' in trust. He held no sovereignty and remained under an obligation to keep the language and laws of Norway.

This document is particularly important since it crystallises the situation two hundred years after the pawning, confirms Charles II's acceptance that the pawning document still stood in its full force and excludes Parliament from any further influence.

Shetland was still not part of Scotland in 1669 and the hunt is now on to find a way by which that could have happened at a later date.

8. The Act of Union

In February of 1707, as part of the preparations for union with England, Queen Anne made a final disponement of Shetland to the Earl of Morton in the form of a feudal charter. Unless the Queen had somehow obtained ownership, this feudal charter can be no more valid than any of its predecessors throughout the centuries, all declared illegal by Charles II. The provisions of the Treaty of Breda and the 1669 Act of Annexation must have seemed of little importance against the political turmoil of the time and the perceived need to drive through the Act of Union. However, I am looking at the legal position and it is impossible to see how this disponement can be legal in the absence of the Crown's ownership.

According to the official line, Shetland emerges from the Act of Union as a county of Scotland, but how had that been achieved? There was no legislation to change it from the Stewardship set up by Charles II (which removed it from the influence of Parliament) and to incorporate it into the realm – there could not have been, because Shetland did not belong to the Crown, was not part of the realm and was outside the scope of Parliamentary legislation. Despite the Union, the Stewardship, 'having a direct dependence on his Majesty and his officers', survived – there still being a Steward in Shetland at least until 1732. Shetland could not possibly be both a Stewardship outside the realm and a county of Scotland within the realm at the same time.

The Act of Union is seen by many Scots as a botched and bungled affair, but to Shetlanders it was even more botched and was legally irrelevant.

Shetland is not even included in the list of boroughs to be included. Although at that time Orkney and Shetland were lumped together into asingle borough, that was only a matter of administrative convenience. Legally they had always been two separate entities. In her indecent haste, Queen Anne simply swept the inconveniences under the carpet and they remained unnoticed by those most affected – the people of Shetland.

Shetland had never been the legitimate concern of Parliament, but the Act of Union goes so far outside the law as to make any pretended dominion of the United Kingdom over Shetland transparently worthless.

The events of 1707 do not make Shetland part of either Scotland, or the new Great Britain.

9. After the Union

Since the union of Scotland and England there has been an almost unquestioned assumption that Shetland is part of Scotland and today people might be forgiven for thinking that after another long period, the crown must by now have achieved what it would like us to believe. However, there has still not been a mechanism, a document or a date when it happened. In 1907, Lord Johnson stated

> "nothing has occurred since 1468 which amounts to a general acceptance in Orkney (or Shetland) of the Scots Feudal System".[1]

He was not alone. Judges in 1839 and 1903[2] had forcefully expressed similar views - views that were not to be judicially challenged until 1963.

If nothing has happened to change the legal position since 1469, then the Crown is in just the same position as it was then. It is holding 'the king's lands' in trust. It is entitled to collect the skat. It has no sovereignty and has an obligation to keep the language and laws of Norway. There has been no basis for the introduction of Scots law - to do so would have required specific legislation and Shetland to have been part of the realm.

We have to ask what could have happened? Only an overt and public declaration of sovereignty could have abrogated the marriage document. Charles II had elected not to take this course after the Treaty of Breda and no other monarch has done so before or since. Instead, the choice has been to ignore the issue and hope it will go away. By not grasping the nettle, the Crown has left itself in an impossible situation.

However, in spite of having no prior right or title, the Crown somehow found itself able to extend its territories to include the seas and seabed around Shetland. This can only have been done legally if Shetland was part of the United Kingdom before The Crown Lands Act of 1866. If not, the Crown's purported ownership of the seas and seabed around Shetland is open to question and any licenses to extract oil may well be invalid. Another case of the Crown giving out something it does not own.

The evidence shows that as late as 1963 Shetland was not part of Scotland, or the United Kingdom. I am not aware of anything that would have changed the situation since.

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[2] Lord Glenlee in *Spence v. The Earl of Zetland,* 1839 and Lord Kinnear in *Smith v. Lerwick Harbour*

10. The Crown Estates

The Crown Lands Act of 1866 was the first of the Crown Lands Acts to make specific mention of the bed of the sea. It was, for the first time, transferring the rights of the Crown in the sea bed and foreshore from the Commissioner of Woods to the Board of Trade. Later legislation made the transfer to the Crown Estates Commissioners, but this Act sets out what was being transferred in the first place.

Section 25 states:

> 'Nothing in this Act contained shall extend or increase or be construed to extend or increase the Powers or Authorities, Rights or Privileges, of the Crown over the Foreshore, or any Part thereof, but as between the Crown and all other Persons such Powers and Rights shall continue as the same existed before the passing of this Act.'

This Act specifically says that the Crowns rights and privileges in the foreshore and sea bed 'shall continue as the same existed before the passing of this Act.' In order for the Crown Estates to have any authority in Shetland, they must be able to point to some legislation that shows they owned the foreshore and seabed around Shetland before 1866. The Courts, up until 1963[1] have confirmed this is not the case. Any later legislation would proceed from the assumption that Shetland is part of the UK and would be irrelevant here. Consequently, and also because the Crown owns no foreshore in Shetland, the 1866 Act can only have applied to England, Scotland and Wales, not to Shetland.

Regarding the foreshore and sea bed, Section 7 states:

> "From and immediately after the Thirty-first Day of December One thousand eight hundred and sixty-six all such Parts and Rights and Interests as then belong to Her Majesty in right of the Crown of and in the Shore and Bed of the Sea, and of every Channel, Creek, Bay, Estuary, and of every navigable River of the United Kingdom, as far up the same as the Tide flows (and which are here-in-after for Brevity called the Foreshore),…"

In the whole of English law, the foreshore and sea bed are inextricably linked. In the relevant legislation, and in this Act in particular, reference is constantly made to 'the shore and bed of the sea' and other similar

terms. No distinction is drawn between them. You cannot have one without the other – they are one and the same. Exactly the same is the case in udal law. If pushed, the Crown would have difficulty proving any right to the territorial seas out to twelve miles around Shetland – simply because it doesn't own the foreshore. In England it does not make a claim to the seabed without owning the foreshore – neither can it here.

The Crown Estates' behaviour in Shetland reflects its tenuous position, but it has been emboldened by the questionable verdict in the Salmon Farmers'

case and has since been taking a stronger line. [1]
Although the following occurred in Orkney, the same would have applied in Shetland under the same circumstances: An oil company had negotiated a fee with the Crown Estates to lay a pipeline across the foreshore. When the udal proprietor realised his rights were being infringed, he protested and the Crown Estates were forced to hand over the fee to him. Another case of the Crown dispensing rights it did not possess.

A letter from The Crown Estates[2] indicates seemingly feudal pretensions:

> "The Crown Estate can be proprietor of foreshore in Shetland if the area is not subject to a valid Udal title which includes foreshore and the foreshore is not subject to any other valid legal title."

This seems to assert the feudal maxim that whatever is not claimed belongs to the king and indicates a worrying ignorance of Shetland's position.

A letter from the Crown Estates Solicitor[3] states:

> "Seabed has always been Crown Estate property since Orkney and Shetland acceded to the UK."

This is the first time I have seen an assertion that such an accession took place and there is no indication as to when it might have happened.

The Crown Estate charges for moorings elsewhere in the UK – why not in Shetland? When I enquired they said that in Scotland they deal with moorings associations and that if any group of moorings owners in Shetland wanted to form an association, they would be pleased to deal with ~~them. Not likely~~ I think. The whole of their claim here is built on sand.

[1] 1991, *Shetland Salmon Farming Association and The Port and Harbour of Lerwick v. Crown Estate*
[2]Letter from The Crown Estate dated 4 March 2004.

11. Oil, Fishing, Crofting, The EU.

Oil:

Going back to the 1866 Crown Lands Act, which transferred Crown property to the Board of Trade, later the Crown Estates, the Crown made a smart move by holding back the mineral rights.

These Crown rights were taken care of in the 1964 Continental Shelf Act, when the government appropriated the seabed around the whole of the UK outside territorial waters. In Shetland this was done despite the fact that until 1965 the courts had denied any property rights of the Crown in Shetland and the Crown had no prior claim to that seabed. The Crown either didn't know or didn't care that they had no legal basis on which to proceed.

I have shown that the Crown has no ownership rights in Shetland and only holds the king's lands in trust.

In the action, *Kelsey* v. *Baker,* heard before Heath J. in late 1803, in a note endorsed on one of the documents in the case, he said:

"If the King possessed it exclusively, he could grant it exclusively. If he has it as a Trustee, he could not grant it."

Granting Shetland out under feudal charters has been declared illegal and accepted by the Crown as such in 1669, but it still continues today.

Neither the Crown nor the government can grant what it doesn't own. This has interesting ramifications for the oil companies to whom the government has granted licenses. It is vital from the government's point of view to maintain the fiction that Shetland is part of Scotland at any cost.

Recent revelations in the Times newspaper[1] showed that in the 1970's ministers were considering promoting Shetland's independence as a means of thwarting the Scottish National Party's claim to the oil. The figures and maps showed that 53% of North Sea oil belongs to Orkney and Shetland. The government's duplicity is again in evidence.

The onus rests on the Crown to prove their ownership. As McNeil observes:

"The Crown must prove its present title just like anyone else.[2]"

[1] The Times, Scotland Edition, Feb 14th, 2009

[2] McNeil, Common Law Aboriginal Title

Of course, with over £5 billion worth of oil annually passing through Sullom Voe alone and no sign of it coming to an end (in spite of what the oil companies say), there are pretty strong reasons for the Crown to hang on to it.

Fisheries:

Without any prior right or title, the Crown had no business offering the fisheries around Shetland as a bargaining chip to enter the EEC. Yet another case of its giving away something it did not own. Those fisheries, as part of the Common Fisheries Policy, have suffered from the heavy hand of Brussels and stocks have suffered accordingly. They will be much better looked after under the control of a community that has fishing at its heart.

Crofting and taxation:

Crofters are always complaining about the burden of complying with EU directives, many of which are seen to be irrelevant and unworkable. On the other hand people ask me how Shetland would manage without all the EU and UK grants and subsidies. They never bother to ask where that money comes from. In fact it comes out of our own pockets. The grants and subsidies are but the breadcrumbs given back out of the taxes we pay. (See chapter 20 for actual figures). Properly supported by a prosperous community and getting a proper price for their produce, crofters would have no need of subsidies.

The EU:

Shetland voted in 1975 to come out of the EEC as it then was. In the absence of any proof that it was part of the United Kingdom, it had no business being in to begin with. Ignoring my jaundiced personal view of the EU as a corrupt and bankrupt financial black hole, there is no legal reason for Shetland to be a part of it.

12. Recent Court Cases.

Two court cases have appeared to settle the question in favour of the Crown:- the St. Ninian's Isle Treasure case and the Salmon Farmers' case. However, both were decided on feudal principles that cannot apply in Shetland, so both verdicts, in the opinion of many lawyers, are open to question. If the Crown wants Shetland to believe its claim, the onus rests on it to prove ownership.

Before 1963, there was no doubt that udal law took precedence over feudal where land was concerned. Udal law had been introduced into Shetland around 900 AD and had survived for over 1,000 years. It enjoyed a far better pedigree than Scots law. There is plenty of evidence for this, but the following three statements illustrate it:

In 1839: in *Spence v Earl of Zetland* Lord Jeffrey says: "there is not the slightest appearance of its ever having been held that the overlord of these islands of Shetland had been the original proprietor of all the lands they contain. There is no feudal supremacy, and there is not a shadow or trace of an original property in the lord or sovereign"

In 1903: in *Smith v. Lerwick Harbour Trustees* Lord Kinnear: "I do not think it possible to doubt that the land law of Shetland is allodial and not feudal … it is certain that in that system the fundamental doctrine of the feudal system as to the right of property has no place."

Lord Johnson, in the 1907 case *Lord Advocate v. Balfour* said 'nothing has occurred since 1468 which amounts to a general acceptance in Orkney (or Shetland, of course) of the Scots feudal system'

Two cases were to turn this accepted situation on its head but with flawed verdicts, as accepted by many lawyers. The first was:

The St. Ninians Isle Treasure Case

The doctrine of Treasure Trove gives the Crown ownership of buried treasure in English and Scottish law. It's an essentially feudal concept, but was used to decide the St. Ninian's Isle Treasure case. In spite of over 1,000 years of evidence to the contrary, the single judge on the case decided it was time to bring Shetland in line with Scotland. On appeal, the court dodged the need to even consider the udal law implications by deciding the case in terms of Scottish feudal law – law that was not applicable in Shetland. Lord Patrick made the astonishing statement:

> "What is certain is that since 1468 the right of sovereignty has belonged to the kings of Scotland and later Great Britain."[1]

Nothing is actually less certain, as Donaldson remarks,[2] but this case set the precedent for the Salmon Farmers' case below. Although the renowned udal law expert, Professor Roberstad had made himself available to testify, his evidence was not allowed.

The Salmon Farmers Case

The 1990 verdict in the Salmon Farmers case is the one on which the Crown Estates base their whole authority in Shetland. In his report and commentary after the case,[3] Professor Gordon wrote:

> "If that sea bed were not instantaneously the property of the Crown at the moment when the territorial waters around the Shetland islands came to be within the sovereignty of the Crown, then, in my opinion, the sea bed, being owned by no one, was a res nullius [no owner] and instantly became the property of the Crown." (My parenthesis).

1) Res nullius is an essentially feudal concept and 2) Professor Gordon offers no evidence for the assumption that sovereignty exists. Without such evidence the Crown Estates base their claim on a flawed verdict.

Crucial to the case was an agreement between the parties beforehand that udal law did not apply beyond the foreshore. It is well known in Shetland even today that under udal law, individual rights extended to a short distance beyond the lowest tide. After that that community rights took over and for instance seal hunting and fishing rights on outlying skerries were rotated in the community and administered by the ting. After the case it was remarked that the Crown must have heaved a sigh of relief that counsel were unable to find express authority for applying udal law to the bed of the sea.[4]

Thus the two crucial cases in Shetland's recent history have both been decided on legal concepts that do not apply here, but the chances of a successful outcome were slight when the Crown was ruling for itself.

[2] Stair Miscellany II, Donaldson: *Problems of Sovereignty and Law in Orkney and Shetland, p.25*. "None of those lawyers explained their grounds for believing that sovereignty had been transferred"

[3] Gordon W.M. *Scottish Civil Law Reports 1990, Commentary* p.512.

13. The Seabed

I have made a particular study of the seabed question because it is of such relevance to Shetland.

To illuminate the Crown's claim to the seabed it is necessary to understand how it makes that claim in English law.

In Stuart times and after, writers such as Digges, Selden and Hale proposed that the monarch owned the seas and seabed around England. It is quite clear that the Crown's claim to the foreshore, sea and sea bed arises as a consequence of its feudal superiority in the land.

The king first of all owns the land as feudal superior. Because he owns the land, he can claim the foreshore. Because he owns the land and the foreshore, he can claim the sea bed. The sequence is: Land > Foreshore > Sea bed.

Today, the territorial seas extend to a breadth of twelve miles from the coast. Beyond that, the UK claims sovereign rights over the continental shelf to a distance of two hundred miles, or to the median line between it and another state.

Without the land, there can be no claim to the foreshore or seabed.

This is most vividly illustrated in the case of Rockall. When the Crown wanted to claim the two hundred-mile limit around Rockall, presumably in case there was oil there, there was no question of its doing so without claiming the rock. Although the rock itself was worthless, ownership of it gave the right to the surrounding sea and sea bed. It would be unthinkable to consider claiming a piece of seabed without the land to go with it. The rock is only 65ft high and yet control of it gives control over an enormous piece of seabed.

This is an example of **T**erra Nullius. The rock was obviously devoid of inhabitants and therefore open to a lawful claim.

What I've described sounds pretty logical and yet there is actually nothing solid about it. Here is an insight into the tenuous nature of the Crown's claim to the sea bed, even under English law:

The 1866 Crown Lands Act received the Royal assent in August 1866. Four months later, in December of that year, the Permanent Under

Secretary of State at the Board of Trade drew up a memorandum, at the end of which he wrote, in reference to the sea bed:

> 'There can be little doubt that we shall have, sooner or later to bring in a Bill or Bills for the following purposes:
>
> To ascertain, or give facilities for ascertaining, the Crown's title.
>
> *This will be a delicate matter and must be postponed for some time."*[1]

So, even after the Act was in force the Crown's title had not been ascertained and yet this Act was the means by which it could grant leases and licenses for works on the sea bed. Yet again the Crown is proposing to give out something it doesn't own, and it knows it. This would be plain fraud if perpetrated by anyone else. And this is in English law – how much less certain is that claim in Shetland?

This is just another illustration of the difficulty of the Crown's situation in Shetland, and the lengths to which it will go to get its way.

At the time of the pawning, there can be no doubt that the seas between Shetland and Norway were Norwegian, under the control of the Danes. There is nothing to say that Scotland had even the vestige of a claim. It was universally accepted that if a state owned the opposite shores, the sea between also belonged to it. For Scotland to claim sovereignty over Shetland would involve a change in the borders between Norway/Denmark and Scotland. It is inconceivable that this should be something that could happen gradually as is proposed by the supporters of a prescriptive acquisition theory. It would have to happen at a stroke as the result of an international agreement.

As is illustrated by Rockall, the Crown cannot claim an area of seabed without the associated land. In Shetland in 1469 there was no prior occupation or other right in the sea or sea bed. The Crown makes no claim to ultimate ownership of the land. It makes no claim to the foreshore and yet remarkably it purports to own the seabed. so where does the Crown's claim to the sea and sea bed around Shetland come from – unless Shetland is part of Scotland? It thus becomes very clear why it is vital, from the Crown's point of view, for this fiction to be upheld.

The absence of written udal titles to the seabed does not mean that no rights exist – any more than the absence of a written udal title on land

does. Udal property was transferred by a handshake. That udal rights existed in the sea is illustrated by the fact that every udal landowner owns the foreshore adjoining his property. It is also generally accepted that individual udal rights extend beyond the low water mark to a point variously defined, but generally approximating to a depth of 2 metres.

Where individual rights ended, community rights took over. In Orkney it required a billet from the Ting to fish the North Shoal. Fishing and sealing rights around offshore rocks and skerries were rotated in the local community in both Shetland and Orkney. There was no distinction between land and sea as far as hunting and fishing rights were concerned. Both were divided into infield and outfield. The outer limit of community ownership was the Marrebeke – where the seabed suddenly dropped off, the edge of the continental shelf. These community and individual rights in the foreshore and surrounding sea have never been taken away from the islands.

In other words, there were established rights in the sea, but they belonged to the people of Shetland, not the Crown.

The questionable verdict in the Salmon Farmers Case[1] is the one on which the whole authority of the Crown Estates rests in Shetland. It is based on the erroneous premise that there are no udal rights beyond the foreshore. Even if that were true, the onus would still be on the Crown to prove its ownership before it could issue licenses and charge rents for the

seabed.[2-3] There seems to have been a presumption of ultimate ownership as in the feudal system in this case[4], but this is in English law and could not apply in Shetland under udal law, and especially when the Crown is only in the position of a trustee.

The Crown claims to own the seabed without any prior right or title, without feudal or personal ownership of the land or foreshore and against the existing rights of the people of Shetland. In doing so it purports to change international boundaries. The onus is on the Crown to prove its present title. In the face of the evidence I do not believe it can.

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[2] McNeil: Common Law Aborginal Title, p.85: "Even if the possessor had no right, it did not follow that the Crown had right."

[3] Ibid. p.217: "If occupancy of the seabed were to be proved, occupancy by the Crown would be precluded" ____________" (my emphasis). This is in English and Scottish law, but does not apply in Shetland if Shetland is not part of the realm.

14. The legal system

The Vikings brought with them their native Norse law and it is widely agreed that at the time of the pawning the law of of Shetland was the Gulathing law, or Magnus Code, of Magnus Lagabeter (the lawmender).

After the pawning, James III was under an obligation to keep the language and laws of Norway. This would be implicit in any redeemable contract - the owner would expect to get his pawned possessions back in the same condition as they were pledged, but it is also confirmed in the 1486 letter from James III to King Christian's son Hans. Changing something as fundamental as the legal system was completely outside James' competence. His right to do such things in his own realm is undisputed, but Shetland was not part of the realm, simply held in trust.

The Magnus Code was a body of law given out to the various regions, each of which had the capability to add, remove and change within the overall structure according to its needs.[1] This is in sharp contrast withthe Scottish system where the law was handed down without any possibility of alteration, except from above. Shetland was severely disadvantaged by having this degree of sovereignty removed from the people by the infiltration of Scots law.

A process of 'feudalisation' has been credited with bringing Shetland into the realm of Scotland, but such a term is a myth designed to give a semblance of credibility to what was an illegal process. As Lord Wellwood stated in 1897:

> "no length of time can by itself convert tenure from udal to feudal."[2]

Passage of time cannot give the Crown the ownership necessary to give out feudal charters, grants, or licenses.

It might have been thought that by 1667, nearly two hundred years after the pawning, the Crown had achieved some kind of sovereignty simply by prescription (the passage of time) by which it would have had the authority to change the laws, but this this was proved wrong by the Treaty of Breda.

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[1] Stair, The Laws of Scotland, vol.24, p.303: Referring to Iceland: "conform to that which was the Gu-

[2] Green's Encyclopaedia of the Laws of Scotland, 1933, vol.15, p. 330: *Spence v. Union Bank of Scotland*

Stair says: [1]

> "Lord Patrick's view that 'gradual abandonment' could abrogate laws is understandable in the context of fact, but less easy to found on legal doctrine.
> If udal law is based on statute, the Scots law doctrine of desuetude and contrary use would seem inapplicable, as the Magnus code was revised periodically for Norway and the text was accessible in Bergen."

Norse law and practice covering all aspects of the law survived well into the seventeenth century as is evidenced by the lawbook of 1602-4:

> "It is at once evident that it represents much of the old Norwegian laws as they were printed by Laurence Larson, and Professor Roberstad identified the law operating in Shetland specifically as
>
> the law found in the lawbook of Magnus the Lawmender."[2,3]

Up to 1538, judgements given in Shetland according to the Gulathing law were being confirmed in Bergen.[4] As late as 1662 Frederick III issued a charter confirming a mortgage of land in Shetland. These actions would clearly be in conflict with any idea of Scottish sovereignty.

According to Goudie,[5] Shetland was still making its own laws, which covered all aspects of life, until the middle of the eighteenth century. The 'Country Acts' were administered by Under-Fouds in each parish. (Foud is derived from the Old Norse Fógeti. Norway is still divided into Foudries, just as Shetland was at this time).

The introduction of Scots law to Shetland would only have been legally possible by means of legislation, which would presuppose that Shetland was part of the realm. It would have happened at a stroke, not piecemeal as the history shows. Instead, under the influence of Scottish nobles to whom the Crown had granted out Shetland under illegal feudal charters, Scots law infiltrated and gradually displaced the original Norse law. This process was no more legal than the feudal charters that purported to ~~co-exist with it~~ because Shetland was not part of the realm.

[2] Donaldson, *Problems of Sovereignty in Orkney and Shetland, p.32.*

[3] Laurence M. Larson, *The Earliest Norwegian Laws.*

[4] Stair: vol. 24, p.303.

Prescriptive acquisition is an argument put forward by historians and by the government to explain how sovereignty was acquired – it's been going on for so long that it must be right. Professor Donaldson makes the tenuous assertion that British sovereignty now exists by prescription, but is unable to say whether it was effective at the 1707 Act of Union.[1] He omits any mention of the 1669 Act of Annexation, knowledge of which may have caused him to change his argument.

In the opinion of Dobie:[2]

> "the subsequent centuries of undisturbed Scottish occupancy and administration may by now have created a title of Scottish sovereignty".

A very tentative statement and he does not explain how he comes to this view. He also omits any mention of the 1669 Act.

According to Gray & Gray,[3] the following conditions are required for prescriptive acquisition:

- A knowledge on the part of the servient owner of the acts done
- A power to stop the acts, or sue in respect of them
- And an abstinence on his part from the exercise of such a power.

It is unlikely that many people at the time knew what was being done. They certainly did not have the power stop it happening. By this definition the requirements for prescriptive acquisition are not met.

The right of redemption has been repeatedly recognised[4] and the pawning document is the one that defines the relationship between Shetland and Great Britain. The 1667 Treaty of Breda confirmed that the pawning document still stood its full force and nothing since could have given the Crown any stronger claim than than that gained by James III. There can be only one system of law in operation at one time and the introduction of Scots law could only be by legislation - legislation that would be predicated on Shetland being part of the realm of Scotland.

It is therefore clear that there has never been any legal basis for the ~~introduction of~~ Scots law in Shetland.

[2] Dobie, *The sources and Literature of Scots Law* p.449.

[3] Kevin Gray, Susan Francis Gray, *Land Law*, p. 209.

15. Democracy

What passes for democracy today simply serves the needs of the corporations and we get the best government that money can buy. The fact that we have liars, thieves and tyrants in government is simply because it is designed that way. Finding themselves in positions of power and being more or less unaccountable for upwards of four years, it is a person with a remarkably strong sense of service who does not take advantage of his or her position.

Of course, complete direct democracy - simple rule by the majority - would have equally disastrous consequences. What is needed is a more balanced system that give access and control to the whole population, but tempered with the stability generated by an electoral system.

I have looked at various models and have been struck by the completeness of Roger Rothenberger's 'Beyond Plutocracy'. Here is a quote from his website www.beyondplutocracy.com:

> "Limited direct democracy and limited representative democracy are joined together and judiciously balanced resulting in a wise amount and just distribution of governmental powers that does not unduly favor any particular group. The limited direct democracy is added to our government as a new fourth branch I call the demos, pronounced as in democrat. The demos is a nationwide electronic network in which the entire electorate practices a new kind of democracy of my own design I call consensus democracy by deliberating, voting, and achieving consensus on a fixed set of our nation's key economic and electoral issues."

Using the power of technology it is now possible for everyone to have a direct input into selected areas of government. Instead of government representing the interests of the already rich and powerful, it will be possible for a truly representative government to be formed. One of the key components is putting the tax-raising powers in the hands of the people. Best of all, it is something that can be 'bolted on' to an existing system; making the change easy and without conflict.

For anyone interested in these questions, I recommend you read Beyond Plutocracy. The whole text is available at:

www.beyondplutocracy.com.

16. Correspondence

Since 2006 I have been in correspondence with Her Majesty the Queen, The Lord Chancellor and Justice Department, the Scottish Government and others. In answer to the questions about how the UK derives its power, the standard explanation is that we send parliamentary candidates to Westminster and Holyrood and we pay our taxes to the UK Treasury. This circular argument does not prove any basis for UK authority in Shetland and in fact compounds the fraud of charging taxes if that authority does not exist.

I thought the best place to get information about this whole subject is from the top, so I wrote to the Queen. Reminding her of the pawning and pointing out the provisions of the 1669 Act of Annexation, I asked Her Majesty for the return of Shetland's sea bed, return of the fisheries and, since Shetland had voted not to remain in the EEC in 1975, for removal from the EU.

Her Majesty's reply, via her correspondence secretary, was that, as a constitutional Sovereign, she could not get involved and had instructed my letter to be passed to Lord Falconer of Thoroton QC, the Secretary of State for Constitutional Affairs.

I replied that, because of the provisions of the 1669 Act, this was not a matter for parliament, but between Her Majesty and the people of Shetland.

Her correspondence secretary wrote back saying that the Queen, as a constitutional Sovereign, could not get involved and had instructed my letter to be passed to the First Minister in Edinburgh.

I got a reply back from the Scottish Executive, saying a reply would be sent as soon as possible. When a reply did come some six months later, it simply evaded the issue.

Not having heard back from Lord Falconer of Thoroton, I wrote again to the Queen, asking if I should expect a reply from him.

Once again the familiar: 'the Queen, as a constitutional Sovereign, could not get involved', but this time had instructed my letter to be passed to the Secretary for Justice and the Lord Chancellor.

The reply came back that Shetland sends representatives to both Westminster and Holyrood and pays its taxes to the UK Treasury. If the people of

Shetland have been duped into thinking that because they send representatives to parliament, they have some legal obligation to pay UK taxes, they have been seriously misled.

The correspondence is interesting, not because of any result, but because it illustrates that even at the highest level there is confusion about what to do with Shetland. Even the Queen does not know who to refer my correspondence to, and none of the people to whom she has referred my correspondence seems able or willing to give the information required.

Since this exchange I have advised Her Majesty of my Declaration of Direct Dependence for Forvik and have corresponded with the highest legal authorities in the land - none of whom is able to give a definitive document or date when Shetland became part of Scotland. In the absence of that evidence, I have to assume it never happened and that all actions of the UK government in Shetland are illegal and/or fraudulent.

The correspondence is extensive and continuing. Every letter is displayed on the website: www.forvik.com/Documents/Official Correspondence.

17. Are we Norwegian?

You might think that from all I've said, the only option is our returning to Norway. Not a bit – although it might be a distant option. If there is to be any change in Shetland's status – and that can only happen if the people of Shetland want it – it would, in my view be as a strong and vibrant community making whatever arrangements it wanted with other states. The options range from doing nothing and gradually losing our identity in a European federation, through being a Crown Dependency, to full independence - or anything in between. Just as all the other previous colonies of the British Empire now control their own destinies, so could Shetland.

At the time of the pawning, King Christian was an elected monarch. The other Shetland land-owners of the time were of high standing and one has to assume that they could well have had some say in his election. Those rights would have been passed down to today's land-owners, who should also be able to determine the future constitutional position of Shetland.

So, who does own Shetland?

King Christian did not have ownership under the udal law system because every landowner owned his land absolutely. Where individual rights ended, community rights took over. Ultimate ownership remained with the people - and still does. This is the really scary bit for the Crown – the bit we can never be allowed to know. The Crown cannot get ownership rights without taking them from the people of Shetland. They are safe in their deception as long as we don't know.

Ownership has never been taken away - the people of Shetland own it themselves. The facts have been hidden and obscured with such concepts as 'feudalisation' and an assumption that feudal law could supersede the original udal law. Udal law has survived and still takes precedence in many land transactions. Feudalisation is described as a gradual process, but it is one that is impossible to justify in a legal sense. A feudal charter, which is the basis of all feudal landholdings, can only be granted by the sovereign. Before he can grant it, he must own the land in question. This has never been the case in Shetland, so no so-called 'feudalisation' can legitimately have taken place here.

The important thing for people to understand is that the present position is without foundation and is only kept in place because we do not question it. It's a house of cards and Shetland holds all the cards.

18. It's too late to do anything.

People often say to me: 'after all this time there's nothing we can do', which is but another way of saying time cures all. A couple of documents I've come across and a very recent court case show otherwise.

It took until 1860 for the legal systems of the Channel Islands to be recognised by a Royal Commission on the basis of a no longer existing document of 1215, The Constitutions of King John.

A 1981 land dispute in the Isle of Man successfully relied on 1405 documents.

These cases were relying on much older documentation and in neither of them was there anything like the wealth of evidence that supports the Shetland case. The elapsed time in both instances was greater than in Shetland's case.

After a long-running battle with the UK government, the Chagos islanders finally won their case in the House of Lords in October 2007. The case involved the government evicting them from their homeland in order to rent Diego Garcia to the Americans for use as an airbase. The principles clarified during this case are very relevant to Shetland since they involve the illegal use of the royal prerogative.

19. Benefits of More Autonomy

There is no reason why Shetland should not be a lot better off if it had more autonomy. There are plenty of examples of small islands that do very well without being part of a large unit. The Isle of Man and the Channel Islands are obvious examples, but there are many more throughout the world.

How would we manage without EU and UK grants and subsidies? It might be expected that a place so far out on the periphery would be a net recipient in the tax/grant/subsidy merry-go-round. Not so. In 2003 (the latest figures I can get), Shetland's contribution to the UK Treasury in direct and indirect taxes amounted to £200 million. In the same year it received back £100 million in support, grants and subsidies.[1] In other words, half the tax we pay supports the UK government in its adventures in Afghanistan and Iraq, its contributions to the EU and other 'essentials'.

As a Crown Dependency with responsibility for our own taxes we would be around £100 million per year better off with no risk and no environmental cost. One is tempted to compare this against the dubious financial benefits and certain environmental destruction of a giant wind generation plant.

The £100 million per year outlined above is without taking into account the oil. My view on the oil is that it would be foolish for Shetland to expect to claim the whole of the oil tax revenue. However, having proved a legitimate right to it, the money could come into a Shetland bank and remain there for a period earning interest while the figures were worked out. After adjustments were made for the taxes, grants and subsidies currently paid and received, the money would be passed on net to the Treasury.

Shetland would have immediate use of its money and both the Treasury and the EU would benefit from the money not going back and forth. We would be less subject to blackmail by the oil companies about where they bring it ashore - if it's our oil, it's up to us to say that we want it brought ashore in Shetland.

Shetland would also be able to benefit from all the activities open to an offshore jurisdiction. Although undoubtedly a challenge, the potential benefits could be huge.

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20. What I'm doing.

See www.forvik.com for the latest news on my activities.

If I'm right about the constitutional position, it naturally follows that the United Kingdom government's position in treating Shetland as a county of Scotland is illegal and its imposition of tax regimes is fraudulent.

In order to test the theory, on April 29th 2008 I was given a small island – Forewick Holm by a well-wisher. I re-named it Forvik, the Nordic version of the name. The idea was not, as some people have thought, to have my own 'kingdom', but to show in microcosm what the whole of Shetland could achieve if it asserted already existing rights revealed by this new interpretation of its constitutional position.

Eventually the island could have its own currency, stamps, banking, registration for vehicles, ships and companies, broadcasting – anything that an offshore island can do. The same opportunities are open to Shetland as a whole.

The flag (shown on the cover) is based on the Shetland flag (white cross on a blue background). Superimposed is a shield with a Norwegian lion holding a legal scroll and the motto 'Með løgum skal land byggja', stolen from the SIC's insignia. It is in old Norse and means 'By laws the land shall be built'. I have no hesitation in using it since the SIC signally fails to live by it.

The first job was to design and build a boat to access the island and transport building materials to it. That done, a suitable landing place was found and the materials for a house of 25 square metres floor area were taken over from Sandness, about 1 mile away across a very treacherous stretch of water. To withstand the winter storms the house was built like a boat with glued and screwed construction and an arch shape. Until there is a better harbour it is not possible to use the island in the winter, but the house withstood the ravages of the 2008 winter, so it bodes well for the future.

All my confrontations with the 'authorities' have two possible objectives – either to get them to take me to court, where they know that both

growing list of bodies who have threatened court action, but failed to follow through when they realise the implications.

Putting up a building without planning permission anywhere in Shetland would normally invoke the ire of the planning authorities. Despite being well publicised on the website www.forvik.com and the media, no action was taken – the SIC providing the lead for other authorities to follow. The strategy seems to be to ignore me and hope I go away and has been followed by the VAT and Income Tax authorities, Northern Constabulary, SIC Environmental Department, Scottish Natural Heritage, The Crown Estates and the DVLA.

In July 2008, HMRC VAT Department sent a sheriff's officer with a court paper saying they would bankrupt me and remove my possessions if I did not pay within fourteen days. I handed them a letter saying that I would pay as soon as they were able to tell me when Shetland became part of Scotland. Until then, I did not recognise them or the court and regard their actions in Shetland as fraudulent. I've heard nothing since.

A similar response to HMRC Income Tax Department evoked the reply that I need not send in self-assessment forms after 2005-2006. Apparently they are no longer interested in my income.

As a delicious aside, all HMRC correspondence comes addressed to:

Stuart Hill
Steward's Residence
Crown Dependency of Forvik
Shetland ZE2 9PL.

This must be some kind of recognition!

Scottish Natural Heritage made some indirect noises about disturbing the ground on Forvik, but have not contacted me directly.

Northern Constabulary went to extraordinary lengths to avoid court action when I put an old Land Rover on the road with Forvik Tax disc and number-plate, without UK Tax, MOT or insurance – and even admitted in writing to driving it! On the matter of having no MOT, they took no action 'because I was not driving the car at the time'. On the Road Tax, they passed the buck to the DVLA, who are currently silent after an initial correspondence and threats of court action.

There has been no official response to my offering Forvik waters to oil companies for exploration.

Changing my electoral roll address to Forvik triggered an automatic Council Tax demand on the house. This was withdrawn when they realised I was not living on the island permanently. However, the house is still there and would attract Council Tax under normal circumstances.

How far will I have to go to get an official reaction? The list of official bodies now declining to use the powers they are supposed to have includes:

- HMRC VAT Department.
- HMRC Income Tax Department.
- Shetland Islands Council Environmental Department.
- SIC Planning Department.
- SIC Council Tax Department.
- Northern Constabulary.
- The DVLA.
- Scottish Natural Heritage.
- The Crown Estates.
- HM Treasury.

It seems that the people in each department carry out the normal enforcement procedures until somebody higher up the chain sends them instructions to back off.

I will simply carry on doing more and more 'illegal' activities until they either take me to court, or people start to realise that I'm right and follow my example.

Here's an action any Shetland resident can take without any risk of getting into trouble (templates available at www.forvik.com):

Write to the Queen saying you recognise her as Queen of the United Kingdom with the same authority in Shetland as that given to James III. You do not recognise the UK government, in particular the tax authorities.

Send a copy of this letter to your Income Tax office demanding back all the Income Tax you have paid during your working life in Shetland since it was taken fraudulently and without authority.

21. Summary

It is acknowledged by all authorities that the pawning document is the basis of the relationship between Shetland and the United Kingdom. All it gave James III was trusteeship of the Kings lands, receipt of the scat and an obligation to keep the language and laws of Norway. The evidence shows that the legal relationship between the Crown and Shetland remains unchanged since 1469. It shows that the king's lands alone are still held in trust and the Crown has no sovereignty or ownership rights. The authority the Crown now exercises appears to have no legal basis and is kept in place simply because nobody questions it.

Shetland might be regarded as one of the Crown's personal dominions, but even this is doubtful when ownership has not been established. King Christian was an elected monarch who shared his sovereignty with the people. The land-owners in his kingdom were only those with the highest status[1] and, having the right to make their own laws within the Norse law system, they shared in the sovereignty. That status has been passed down to today's Shetland land-owners, who own their land absolutely together with those rights. The Crown cannot obtain ultimate ownership and sovereignty of Shetland without taking it from the current land-owners.

In submitting to the provisions of the Treaty of Breda, Charles II confirmed his acknowledgement that that the terms of the marriage document still stood in their full force. He took the unprecedented step of admitting that his and his father's actions (and by the same token, those of previous monarchs) were illegal when they granted out Shetland under feudal charters. Similarly, the 1611 action of the Privy Council in abolishing the 'foreign' laws must also be illegal in the face of the Crown's obligation to keep the 'language and laws of Norway'.

What the Crown (or the government acting on their behalf) is and always has been after is the income available from Shetland. Today, that income is principally the oil revenues, direct and indirect taxes, plus the Crown Estates income. The difficulty they face is that, because of the pawning, they have never acquired the rights that would enable them to legitimately license the oil companies, to raise taxes, or to charge rents for the seabed. As I've shown, they have gone to great lengths to present a veil of legitimacy, but have left a trail of dirty deals and deception behind them. Any contracts or licenses purporting the Crown's ownership of Shetland's

seabed are fraudulent if ownership cannot be proved. The onus is on the crown to prove its present title. If that title cannot be proved, it is unfortunate for the oil companies that they have been misled by the government.

In the absence of either ownership or sovereignty, the UK government has no basis for its assumed authority in Shetland. The questions must be asked: "How did the UK government acquire the rights to oil in Shetland waters and how was it able to use Shetland's fishing rights as a bargaining chip to enter the EEC?" The whole can of worms must be open to question.

My requests to the various authorities concerned have uncovered no satisfactory answer. If the UK government's position has any legal basis, it should be easy for them to produce the evidence that underpins their authority, but they have been unable to do so. If that authority simply relies on unquestioned obedience on the part of Shetland people, it reveals a fraud of breathtaking proportions carried out at the highest level over hundreds of years and continuing to the present day.

It would seem to be too politically embarrassing for Norway to press a claim for Shetland. A principle tenet of the UN is that all peoples should have self-determination, which must leave the people of Shetland being able to decide what relationship they want with the rest of the world.

As a Crown Dependency, with terms negotiated to its benefit, Shetland would immediately be better off to the tune of at least £100 million every year - a permanent benefit without any environmental cost - and this is without bringing the oil into the equation. One is tempted to compare this with the doubtful benefits of a giant wind generation plant.

People tell me they would not trust our existing administrators with any more power than they already have. I'm more optimistic than that. With a more transparent form of democracy and with the people having more direct control of their representatives, those representatives can rise to the challenge. A Shetland with more autonomy and a lighter tax regime would generate challenging opportunities to attract qualified people, including Shetland's own young people.

With more autonomy, Shetland could even have a financial sector and benefit from all the opportunities open to offshore jurisdictions.

The UK government has no authority - will Shetland assert its rights?

Is this all true?

It has taken me around seven years to research this material. My belief is that much of Shetland's history has been purposely buried and obscured. If you are a Shetlander, ask yourself how much of this were you taught at school? Piecing the story together has only been possible because of access to the Internet and with the help of people by email. Nowhere will you find a concise history of Shetland - the real truth is too embarrassing for the government.

The documents speak for themselves, but the reticence of any UK authority to come forward and prove their authority in court tells me that what I'm saying in this book is correct and that the authority of the UK government in Shetland is a sham, kept in place only because nobody questions it. I will continue pulling off the emperor's clothes.

CONTRIBUTIONS:

If you are aware of any documents about this subject that I may have missed, or if you have personal knowledge of udal rights relating to land, foreshore, or seabed, please contact me. Any information, no matter how insignificant you may think it is, can be valuable.

LATEST INFORMATION:

To keep up to date go to: www.forvik.com. Buy the T-shirt, become a citizen!

Latest correspondence is in Documents/Official Correspondence.

It is my earnest hope that Shetland will prove to be a beacon for the world when we get rid of the liars, thieves and tyrants in government and make our politicians our servants rather than our masters. Buying this book helps towards that end - thank you.

Stuart Hill.

Appendix 1 - The Polls

Five Tests of Shetland public opinion in recent times have shown:

1975: Shetland and the Hebrides were the only places to vote not to continue as members of the EEC

1978: 90% of voters in a referendum requested a Commission be set up to investigate Shetland's constitutional links with the UK.[1]

1992: A Shetland Times poll showed 62% would like more autonomy.

2003: A leaflet circulated with the Shetland Times drew over 1,000 responses asking for more autonomy.

2004: A SOUL petition revealed over 1,000 wanted more autonomy.

2006: A Tory poll found 77% wanted more autonomy.

There is an appetite for change, but it has been ignored.

[1] Manifesto of the Shetland Movement

Appendix 2 - The marriage document

Copenhagen, 28 May 1469

Mortgage by King Christian of Denmark to King James of Scotland of his lands in Shetland.

Christian, by the grace of God king of Denmark, Sweden, Norway, the Slavs and the Goths, duke of Sleswig and count of Holstein, Stormarn, Oldenburgh and Dalmenhorst, to all and sundry who shall see our present letters, greeting and royal good wishes for increasing prosperity.

Since in our other letters given at the town of Havn on the eighth day of the month of September one thousand four hundred and sixty-eight, to the ambassadors of the most excellent prince James, king of Scots, we promised and undertook that we would fully pay the sum of ten thousand florins of the Rhine, and give effectual satisfaction thereon in counted money before their return to the kingdom of Scotland from our kingdom of Denmark; but because, hindered by the insults of our enemies and rebels and by other unlooked for events, we are unable conveniently to pay from our exchequer the aforesaid sum as laid down within the limit agreed with the said spokesmen; therefore, having considered the convenience and advantage of our Norwegian kingdom and with the consent and assent of the prelates, magnates and greater nobles of the aforesaid kingdom of Norway, we have granted, pledged and mortgaged, and under assured security and pledge do grant, mortgage and pledge all and sundry our lands of the islands [omnes et singulas terras nostras insularum] of Schethland, with all and sundry rights and their rightful pertinents whatsoever, under the earth as above the earth, not named as named, pertaining or that can pertain in any way to us and our predecessors, kings of Norway, by royal right; to be held and had all and whole our lands of the islands of Schethland aforesaid, with all and sundry customs, profits, freedoms, commodities, easements and their other rightful pertinents whatsoever, pertaining or that can rightfully pertain in any way in the future to the aforesaid lands of Schethland, by the most excellent prince James, king of Scots, our beloved son and ally and by his successors, kings of Scots whomsoever; until the aforesaid sum of eight thousand florins of the Rhine outstanding in the aforementioned letters has been faithfully, fully and completely paid in the church of St Magnus in Orkney whensoever in the future, and satisfaction effectually made by us, our heirs or successors, kings of Norway, concerning the same, to the

aforesaid most illustrious James, king of Scots, his heirs or successors, kings of Scots; and we, our heirs and successors, kings of Norway, shall warrant and forever defend against all mortals the aforesaid lands of Schethland thus as promised, pledged and mortgaged to the said James, king of Scots, and to his heirs, kings of Scots whomsoever, firmly binding us and our successors, kings of Norway, to this by the tenor of these presents; and we promise and acknowledge on our word as a king that we will not come against the aforementioned concession and impignoration, or make it to be contravened directly or indirectly by any designed pretext or scheme in any way.

In testimony of this impignoration, our private royal seal is appended; given in our castle of Havn on the twenty eighth day of the month of May in the year of our Lord one thousand four hundred and sixty-nine.

No original is known to exist: transcript in British Library, Royal Mss., 18.B.vi, p.13. Latin. Printed in NgL, 2nd series, ii, no. 116; the above translation is based on that in B.E. Crawford, 'The earldom of Orkney and lordship of Shetland: a reinterpretation of their pledging to Scotland in 1468-70', in Saga-Book, xvii, 1966-9, pp.175-6.

Appendix 3 - 1486 Letter

Letter[1] from James HI to John King of Denmark and Norway and elect of Sweden EC 1486]

Last summer Rothesay Herald brought John's letters to James, from which he understood that John was moved [to learn] that subjects of the isles of Orkney and Shetland were to be taken from their birthplace and James's subjects brought over to inhabit those islands and be governed by Scots language and laws, which had caused no little indignation among John's councillors. In truth he has removed no inhabitant of those islands from his native place nor has he changed the language or laws of Norway. Pacts still in force were concluded and sealed between John's father and James, He will have these looked at and will take care that their terms are observed on his part, thinking that John will not go against his father's contracts and agreements.

John's father promised a dowry with his beautiful daughter, James's wife, which James received sixteen years ago, and it is to be hoped that John would not wish to take back or interfere with what was given to his sister, mother of three children, against law and good faith, Therefore James hopes that firm friendship and goodwill may continue between them and that the cause of this conflict and controversy should be suspended and not taken further by armed force until next summer, when a fleet will bring his embassy furnished with the fullest powers, He has given N, John's esquire, letters to bring to him through the stormy winter seas, praying that the delay should not be attributed to neglect on James's part, He will take care to send members of his council with power to bring to completion the pacts made between John's father and himself and not cause prejudice to him against law and equity.

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[1] Edinburgh University Library, Laing MSS, La. Ill - 322, pp 16-17

Appendix 4 - 1669 Act of Annexation

Act for annexation of Orknay and Zetland to the crown

Forasmuch as the iles of Orknay and Zetland are a great and so considerable a parte of this his majesties' antient kingdom, that for diverse ages they wer the occasion of much trouble and expence of blood and money for mantaining therof against the invasion of forraners, and recovering the same out of their hands by armes and treaties; and the saids iles, being of a great and large extent of bounds and so remot and at such a distance from the ordinary seat of justice and judicatories, that the inhabitants within the same are not able to travell in the winter season, and at other times cannot, without great trouble and expences, repair to the saids judicatories to complain when they are oppressed and greived, it is not only fit in order to his majesties' interest, but will be the great advantage of his majesties' subjects duelling there that, without interposeing any other lord or superior betuixt his majestie and them, they should have an immediat dependence upon his majestie and his officers, being their great security against forrane attempts and oppression at home. And seing it is most expedient and necessar that a publict patrimony and certane revenew in lands, lordships and others should be setled upon and annexed unto his majesties' croun for supporting of his royall estate and government, and the great and necessar charges of the same, which if not defrayed out of his majesties' oune proppertie and revenew, would undoubtedly† ly and be a heavy burden upon his majesties' leidges, and to that purpose diverse acts of annexation have been made from tyme to tyme, and in spetiall the earledome of Orknay and lordship of Zetland, with the pertinents of the same, wer annexed to the croun in the yeer one thousand, fyve hundreth and fourtie, and one thousand, sex hundreth and tuelff respective; and yet, importunity prevailling with his majestie and his royall father, their goodnes and inclination to gratifie their subjects, they have been induced to give away and part with so great a jewell of their croun, and to dispone and grant rights of the said earledome and lordship which, being fund to be to the great prejudice of his majestie, his croun and subjects and contrarie to the laws and acts of parliament of this kingdom, by a decreit of the lords of session, obtained upon the tuentie-fyft day of February last past, at the instance of Sir John Nisbet of Dirletoun, knight, his majesties' advocat, for his majesties' interest, against William, earle of Mortoun, Charles, lord Dalkeith, his son, George, viscount of Grandisoun, and certane other persons therin men-

tioned; the saids lords, by their decreit forsaid, have reduced the contracts, dispositions, infeftments, acts of dissolution and other rights therin mentioned, made and granted by his majestie, and his royall father, to and in favours of the deceased William, earle of Mortoun, grandfather to William, now earle of Mortoun, and the said George, viscount of Grandistoun, of the said earledome of Orknay and lordship of Zetland, with the rights also therin mentioned depending therupon, and the saids lords have fund and declared that his majestie hath good and undoubted right to the said earledom and lordship as his annexed proppertie, for the reasons thairin contained, as the said decreit at lenth proports. Thairfor, his majestie, with advice and consent of his estates of parliament, doth ratifie and confirme the said decreit, and ordains the samen to be of full force, strenth and effect, in all tyme coming, holding and willing this their ratification to be als sufficient and effectuall as if the said decreit and whole tenor of the same wer insert heirin. And his majestie, following the lawdable example and practice of his royall predicessors, doth with consent forsaid, ratifie the said former annexation of the samen to the croun; and without prejudice therof, doth of new again unite, annex and incorporat to his croun of this his antient kingdom, to remain inseperablie with the samen in all tyme comeing, the said earledome of Orknay and lordship of Zetland, with all and sundrie yles, holmes, udall lands and other lands whatsoever, of what name and by what designation soever the samen are of or may be knoun, lying within the shirreffdom of Orknay, and perteaning to the said earledome and lordship, and belonging to his majestie in maner forsaid, in proppertie or superiority, or by any other right or title, together with all castells, tours, fortalices, milns, multers, fishings, annualrents, reversions, patronages of kirks and teinds, personage and viccarage perteining to his majestie within the bounds forsaid, and all and whatsomever myns of gold, silver, copper and other minerals within the forsaid bounds, with the heretable office of justiciary, shirreffship and foudrie and admiralitie within the forsaid yles, and belonging to the said earldome and lordship, with all other parts, pendicles and pertinents, casualities, priveledges, jurisdictions, offices and others whatsoever perteaning to the samen; all which his majestie, with consent forsaid, doth unite and annex to his croun, declareing the generality forsaid to be sufficient, to the intent and effect forsaid, as if each parte, parcell, pertinent, office, patronage or priviledge belonging to the said earledome and lordship wer heirin exprest. And it is statute and declared that the said

earledom and lordship, lands, teinds and others above mentionat, annexed to the croun in maner forsaid, shall remain thairwith in all tymecomeing, and that the samen or any parte therof shall not nor may be given away in fie and heretage, nor in frank tenement, lyverent, pension or tack, except for the full duetie which may be gotten from and payed by the tennents, nor by any other maner of alienation, right or disposition whatsomever to any person or persons of whatsoever estate, degree or qualitie they be, without advice, decreit and deliberation of the whole parliament; and for great, weighty and reasonable causes concerning the good weillfare and publict interest of the whole kingdom, first to be proposed and to be advised and maturely pondered and considered by the estates re integra, befor any previous grant, right or deid be given, made or done be his majestie or his successors concerning the disposition of the said earledome or lordship, or any parte therof which may any ways predetermine them or the estates of parliament and prejudge the freedome of their deliberation and consent. And if, at any tyme heirafter, it shall be thought fit to dispone or grant any right of any parte of the said earledome and lordship, it is declared that the generall narrative of good services, weighty causes and considerations shall not be sufficient, bot the particular causes and considerations wherupon his majestie and his successors may be induced to grant, and the estats to consent to such rights, are to be exprest that it may appeare that the same is not granted through importunity or upon privat suggestions or pretences, bot for true, just and reasonable causes and considerations of publict concernment. And farther, it is declared that if any generall act of dissolution of his majesties' proppertie shall be made at any tyme heirafter, the said earledome and lordship and others abovementioned and annexed shall not be understood to fall or be comprehended under the same, and if the said earledome and lordship, or any parte therof, shall be annalied or disponed, or any right of the same shall be granted otherways then is appointed and ordained in maner abovementioned, his majestie, with consent forsaid, doth statute and declare that all dispositions, infeftments and other rights of the said earledom and lordship, or any parte therof which shall be granted contrarie to this present act, with all acts of dissolution and ratification and other acts of parliament concerning the same, shall be from the begining and in all tymecoming voyd and null and of no effect; and notwithstand- ing therof, that it shall be lawfull to our soverane lord and his successors for the tyme, to tak bak and receave, at thair pleasure, for their oune use,

without any processe of law, the lands and others aboveannexed, or any parte therof which shall be annalied or disponed; and these, in whose favours any such rights and alienations shall be made, shall be comptable for and lyable to refound and pay all proffeits, intromission or benefite taken, uplifted or enjoyed be them in the mean tyme. And it is declared that all other clauses, articles and provisions contained in any former act or acts of annexation to the advantage of his majestie and his croun, are and shall be holden as repeited and insert heirin. And farther, his majestie, with advice and consent of the estates forsaid, hath suppressed the said office of shirreffship, and hath erected and heirby erects a stewartrie within the bounds forsaid of the said earledom and lordship and iles of Orknay and Zetland, to be called in all tymecomeing the stewartrie of Orknay and Zetland, ordaining the tennents, possessors and inhabitants within the bounds forsaids, and other persons who wer formerlie answerable and lyable to the jurisdiction of shirreffship and foudrie abovementioned, to be anserable to his majesties' stewart off the said stewartrie, with all priveledges competent to any stewartrie of his majesties' proppertie within this realme. Lykas, it is declared and statute that the forsaid office of stewartrie shall not be given heretablie to any person or persons and their airs without advice and consent of parliament in maner abovementioned; and all rights of the same which shall be granted otherwise, at any tyme heirafter, shall be from the begining and in all tyme comeing null and voyd. It is always declared that this act and annexation forsaid shall not prejudge the bishop of Orknay of his patrimony and priveledges belonging to him, or of any parte therof and that he and his successors shall be in the same cace as they wer befor the makeing heirof. And likewise, it is declared that the annexation forsaid, and the suppressing of the said office of shirreff,† shall be without prejudice to his majesties' vassalls within the saids yles of their libertie and priveledge to have and send commissioners to parliament, to represent them in the same maner as they did or might have done formerlie.