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THE UNSPEAKABLE SCOT

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The author of the famous book "The Unspeakable Scot" may conceivably have been an Englishman; but who or what he may have been, he understood the Scottish genius and the delight Scotsmen take in jibing at their own supposed characteristics—largely mythical, be it said. He has given entertainment to many Scots: and some Scots think that no one but a Scot can understand and appreciate the book—although even a few Scots take it *au sérieux*.

But there was a time when "the unspeakable Scot" was a grim reality—the North of England was subject for centuries to incursions from across the Border by gaunt reivers, carrying their provisions on their horses' croup in the form of a "pickle oatmeal"—their modified if not improved form of the Vergilian *tenuis avena*—ravaging far and wide, slaying if they could not terrorize men and women and "takkin aff hame" all that could be carried, led or driven.

This was quite irrespective of the constantly recurring public wars—Bannockburn, so much sung in Scottish poetry, did not end them, and it, in itself, was but one in a series of hotly contested fights.

Many were the legislative enactments in England directed against Scotland.

In 1353, 27 Edward III, the Second Statute of the Staple, cap. 12, forbade the carrying "hors de nostre Roialme Dengl' . . . a Berwike sur Twede ne nul part aillours en Escoce"—out of our Kingdom of England . . . to Berwick-on-Tweed nor any part elsewhere in Scotland—of wool, &c., "sur les peinez & forfeitures contenez en le . . . tierce article"—under the pains and forfeitures contained in the . . . third article. These pains and penalties were sufficiently severe: "peine de Vie & de Membres & de forfeitures dez ditez Marchandises & dez toutz lour autre biens & chateux devers nous & de forfeiture de lour terres & tenementz devers lez chief Seignurs"—pain of life and of limb and of forfeiture of the said merchandise and of all their other goods and chattels to us (i. e., the King) and of forfeiture of their land and tenements to the

Seigneurs *in capite*. And the penalties extended to the sale of goods to a Scotsman to be taken to Scotland.

The Scots, as is well known, when they were "conquered" by Edward III, refused to stay "conquered"—they are a dour, persistent folk and have a strong feeling for liberty—at least for themselves, some of them have on occasion been known to fail to recognize the necessity or, indeed, the advisability of liberty for others. Richard II found it necessary in 1383, 7 Ric. II, by cap. 16, to enact that no armour or food should be sent into Scotland without the King's Licence—seven years afterwards in 1391, by the Statute, 15 Ric. II, cap. 7, this was explained not to apply to Berwick-on-Tweed, which, as is well known, was for long a kind of No Man's Land.

It was not until the Scottish Solomon, James VI, became King of England, that these Statutes and certain others to be mentioned hereafter were repealed. After a time of comparative peace, the troubles began again in the time of the virile Edward IV—"the reiver Edward," as he was called by the Scottish Parliament in 1482—and continued through the reign of Richard III. The astute Tudor, Henry VII, avoided open war but carried on secret intrigue with the traitorous element in Scotland. He had an Act passed that all Scots not made denizens should depart England within forty days after Proclamation upon pain of forfeiture of all their goods (1494), 11 Hen. VII, cap. 7. This was considered a greater terror than "*vie et membres*"—a mere danger of loss of life never had much terror for Scotsmen—the Scottish fisherman during the late War wore only his oldest clothes when he went to sea and had "practically naething to lose but his life"—but the loss of goods is another story.

In the following reign (1532), 23 Hen. VII, by cap. 16, it was made a felony punishable with death "to sell, exchange or deliver to any Scottishman or within Scotland any horse, gelding, &c."

James V, the cousin of Henry VIII, had taken strong measures against the Border raiders who had become exceedingly active for more than a generation; he visited the Border and hanged a number of the brigand lairds. (No, Riddell of that ilk was not among them; he was an adherent of James, and James did not hold against him, the mere accident of his having stocked his estate with English horses and cows—he but did as the chosen people themselves did, came out of the enemy land "with great substance" after having "spoiled the Egyptians." And Johnny Armstrong's unfortunate fate was due to a deplorable but easily understandable mistake as to his politics).

But Henry's statute was a simple precaution against Scotsmen being supplied with the fine horses of the South.

Nine years thereafter by the Act (1540), 32 Hen. VIII, cap. 6, it was declared a felony, "to deliver any Horse into Scotland or the batable (i. e., debatable) land to the Use of a Scottish man without the King's Licence."

Perhaps a more effective measure was passed in 1544, 33 Hen. VIII, cap. 6, intituled, "An Act concerning Crosbowes and handgunes." (In the Act, "Crossbows" is indifferently spelled "Crosbows," "Crosbowes," and "Crosse bowes," while "Handguns" appears in that form and also as "Handgunes.") This Act, passed to discourage the use of such weapons and to encourage "the good and laudable exercise of the long Bow," nevertheless, by section 21, permitted "any of the Kinges subjects inhabiting within twelve miles of the borders of Scotland . . . to have, exercise and vse . . . Handguns, Haquebuts and Demi hakes . . . within the limits . . . aforesaid so that it be at no maner of Deere, Hearne, Shouelard, Fezant, Partridge, Wild Swan or Wild Elk" (The Shouelard is the Spoonbill, *Platalea leucorodia*). It will be seen that wild Scots were not protected.

The enormous mass of felonies on the Statute book induced those in authority on the accession of the infant King, Edward VI, to have an Act passed (1547), 1 Edw. VI, cap. 12, which by Sec. 4, swept away "all offences made Felony by any Act . . . of Parliament, Statute or Statutes, made sithence the 23rd Day of April (1509) not being Felony before": and accordingly these Acts of Henry VIII fell into the discard.

In Mary's time, there was no little trouble between the two countries: but the abandonment in 1550 by the English of all castles held by them in Scotland looked toward peace. However, treason was abroad in Scotland; and, from the very beginning of Elizabeth's reign, there was in Scotland a strong party looking to her. The Reformation, different in Scotland in some of its features from that in England, had its effect: like the Master adored alike by Catholic, Anglican and Presbyterian, it said: "Think not that I am come to send peace on earth: I came not to send peace but a sword."

Scotland seemed threatening, and she was getting too many English horses—everyone will remember the modest remark of the Scot when it was cast up to him that Dr. Johnson defined Oats as a grain used for food in England for horses and in Scotland for men—"Aye" said the Scot "and whar wull ye fin' sic horses and sic men?"

In 1558, by the Act, 1 Eliz. cap. 7, was revived the Act of (1532), 23 Hen. VIII, c. 16, making it a "felony to sell, exchange or deliver within Scotland or to the use of any Scottishman any Horse."

But on the appearance as King in England of James, son of Mary, Queen of Scots—to use the fulsome language of the Translators, an "appearance . . . as of the Sun in his strength" that "gave all that were well affected exceeding cause of comfort"—danger of international war was over and an Act was soon passed (1606), 4 Jac. I, c. 1, "for the utter Abolition of all Memory of Hostility . . . between England and Scotland. . . ." That took away the right given in 1541 to those within twelve miles of the Borders of Scotland to have and use "Cross-bows, Hand-guns, Hackbuts and Demihakes," and also repealed the statutes mentioned above and other obnoxious statutes. "Seeing," as Section 8, sententiously and apparently not with conscious irony, puts it, "all Enmity and Hostility of former Times between the two Kingdoms and People is now happily taken away, and under the Government of his Majesty, as under one Parent and Head, turned into Fraternity or Brotherly Friendship."

But while the Statutes prohibiting under pain of death the exportation to Scotland of horses, &c., were in force, they were not a dead letter.

West's *Symbolography*, published originally in 1590 and 1594 (the Second Part), a perfect mine of ancient legal lore, gives in Part II in the Chapter of Indictments and Offences, section 123, a form of an "Indictment against a Blacksmith for selling of a gelding to a Scot to bee conveyed into Scotland without the Queenes licence." As an interesting form, I here copy and translate it—inserting in brackets the letters omitted in the Latin text and indicated by signs of contraction.

Ivratores pro domina Regina presentant, quod quarto die mensis Iulii, anno regni dict[ae] dominae nostrae Elizabeth, Dei gratia Angliae, Franciae & Hyberni[a]e, Reglinae, fidei defensoris, &c, Tricesimo quarto, A. B. de C. in Comitatu E., *Blacksmith*, apud quendam locum vocatum *le Ferrie* (in C. pred[icta] in Com[itu] E. pred[icto] existente[m] unum spadone[m] (Ang[lice] dictum *a Gelding*) coloris albi & pretij quatuor librarum legalis monetae Angli[a]e, cuidam A. D. generoso (natione homine Scoto) p[ro] summa quatuor librarum in pecunijs numeratis pred[icto] A. B. per prefat[o] A. D. tunc ibidem solutis voluntarie vendidit. Ac tunc & ibidem, eundem equum in Regnum Scoti[a]e abducendum & conueiandum (absq[ue] aliqua speciali licentia dictae domin[a]e regin[ae] nostr[ae] nunc, p[er]

litteras suas patentes sub magno Sigill[o] Angl[iae] ad idem sic faciendum inde prius obtenta) voluntarie & felonice tradidit ac deliberavit, contr[a] pac[em] dict[a]e d[omi]nae reg[inae] nostr[ae] nunc ac in enervationem huius regni sui angliae necnon contra formam diversor[um] statutor[um] in huiusmodi casu pr[a]eantea provis[orum] & aeditorum. The Jurors for our Lady the Queen present that on the 4th day of the month of July in the 34th year of the reign of our said Lady Queen Elizabeth (i. e., 1592), by the Grace of God, of England, France and Ireland, Queen, Defender of the Faith, A. B. of C. in the County of E., Blacksmith, at a certain place called The Ferry in C. aforesaid in the County of E. aforesaid then being, a certain spado (in English called a gelding), of white color and of the value of four pounds of lawful money of England to a certain A. D., gentleman, a man of the Scottish nation, for the sum of four pounds in numbered coin to the said A. B. by the said A. D. then and there paid, did wilfully sell. And then and there the said horse to the said A. D., with the intent for the said horse to be taken and conveyed to the Kingdom of Scotland (without any special license of our said Lady, the present Queen, by Her Letters Patent under the Great Seal of England the same so to do being theretofore first obtained) did wilfully and feloniously transfer and deliver, against the peace of our said Lady, the present Queen and in weakening of this her realm of England and against the form of divers statutes in such case heretofore made and provided.

It is to be observed that the Jurors do not as they often did at that time and always did a little later, present "super Sacramentum suum"—upon their oath.

After this time, there does not seem to be any legislation at Westminster against Scots until Queen Anne's time. In 1704, by 3, 4 Anne, cap. 7, natives of Scotland with certain exceptions could not inherit lands in England or obtain horses, arms or ammunition from England—cattle, &c., from Scotland were not to be brought into England, Ireland, Wales or Berwick; and, after Christmas of 1705, no "Scotch coals" were to be imported into the same places. But this statute was repealed the next year, 1705, by 4 Anne, cap 3, sec. 10, looking to the Union effected, May 1, 1707, by the English Statute of 1706, 5 Anne, cap. 8, and a corresponding Scottish Statute.

For one of Scottish descent like myself, it is of interest to note that the earlier English use the terminology "Scot," "Scottishman," "Scottishman." I find the adjective "Scotch" first used in the Statute of 1704, 3, 4 Anne, of coals. In literature, "Scotch" does not seem

to have been used either as a separate adjective or in the combination "Scotchman" till well after the middle of the 16th century. I should expect my ancestors of "Ancient Riddell's fair domain" to rise from their graves and denounce a degenerate son if I were to speak of a "Scotchman" or use the adjective "Scotch"—except, indeed, in reference to a well known liquid, to snuff or to a certain admired and admirable cloth; for, as the New English Dictionary has it, "there is no alternative for expressions like 'Scotch tweeds,' 'Scotch whisky.'" I am assured by experts that even with the far off but happy things and bottles long ago, there was no alternative or proper substitute for the articles named, either—but that is quite another story not germane to my theme. Natherless, *crede experto*.

However, the very fact that the author calls his book "The Unspeakable *Scot*" and not "The Unspeakable *Scotchman*" is a strong reason for thinking him to be "ane o' John Tamson's bairns."

It is a little heartening to learn that Queen Elizabeth's time, her serjeant-at-Law, Nicholas Barham, said "A Scot is a Christian man." 1 *Howell's State Trials*, Col. 978. I have known instances.