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## THE "KINDLY SCOT" AND HIS "AIN LA' "

WILLIAM RENWICK RIDDELL

"Dang thae Englishers, onyway," I heard burst out of the mouth of Sandy MacIntosh, *Consule Planco*, and more than six decades ago. Sandy was a Scotsman—not a Scotchman, who was a creature wholly unknown to him—who sometimes condescended to help us in our harvest. He looked up from the Edinburgh "Scotsman," and glared in my direction. I humbly asked the reason of his heart-felt utterance and he vouchsafed the reply, "They hae ruint Scotland, hae made it no fit for a kindly Scot tae leeve in, spiled oor coorts, spiled oor la' an we micht as weel be English an' dune wi' it."

I recall the sentiments of my old friend, Sandy, when the other day, there came to me from the Scottish History Society, their latest publication, *The Sheriff Court Book of Fife, 1515-1522*, by William Croft Dickinson, M. A., Ph. D., Edinburgh, 1928. I read the volume with great interest; and soon learned something about the "la'," the pestilent Englishers had "spiled," I found how "kindly" these ancesters of Sandy and myself had been, before the corrupting influences from the south had made themselves felt.

The book contains a transcript of the proceedings of the Court mentioned for some seven or eight years.

As in England (see Blackstone's *Commentaries on the Laws of England*, Vol. I, pp. 339, sqq.), so in Scotland, the Sheriff was the official, entrusted with all the King's business in his County, financial, administrative, military, and not least, judicial. While in England, from various causes, the judicial part of his duties dwindled so that in time it became almost negligible, in Scotland his Court maintained its importance. The jurisdiction was both civil and criminal; in this paper I concern myself with the criminal jurisdiction only. This is one of the parts of "auld Scots la'" in which the malign influence of the Southron is believed to have been exercised. The Sheriff was precluded from cognizance of the major offences, the four Pleas of the Crown, Murder, Rape, Robbery and Fire-raising being reserved to the Justiciar: but he dealt with murder when the offender was taken "red-hand," and theft when the thief was taken "with the fang" (which is a little more graphic than the English "taken with the mainour"), also manslaughter and general breaches of the peace.

The jury was always of an uneven number, generally from the vicinage, but chosen not by the Crown but by the accused in conjunction with the officers of the court. Sometimes jurors were found objecting to serve, and this was considered an indication of sympathy with the accused—I see the Commentator says that those accused were generally "arrant rogues." There was no great delay: there were no pleadings, a simple arraignment on an indictment beginning with the words "You are indited and accused . . . ," the accused pleading, making his statement denying the charge (somewhat as in the Georgia practice to-day), putting himself upon "God and the Country" just as he would in England, the "Assize," i. e., the jury hearing what was alleged, retiring from court and bringing in a verdict, not necessarily unanimous, acquitting (rarely) or condemning. If the latter, doom was pronounced and execution carried out at once. These were not the days and Scotland not the place for delays, appeals, etc.; hanging was not so bad in those days—it is of record that a Scottish mother urged her son to "gang awa' an' be hangit tae please the Laird." As the editor of this work says, "Such was the procedure, concluded in one sitting, and if the accused was found guilty, sentence was often carried out immediately on the same day."

I find six criminal cases reported in this volume and it may be worth while to state them as showing the tender mercies of the "kindly Scot" in the first quarter of the 16th century.

On July 7, 1540, Walter Hird was "Inditid & folowit be toung be" several persons of stealing "fra thame . . . ten scheipe . . . tane (taken) with the said Walter . . . : The quhilk thift the said walter denyit & tuke hyme to gode & the knowlaige of the . . . assise . . ." The assise "riply & weil avisyt deliuerly enterit & be the mouth of Thomas ball ingall, delieurit that the said walter had stolen the said scheipe . . . & thane the Juge geif dome of courte tharupone that the said walter suld be had to the gallous for the said thift & hangyt quhill he war ded quhill wes done in continent but (i. e., without) dilay."

On January 11, 1517, Walterus robertsone was found guilty of the theft of two sheep 'et condemnatus fuit ad mortem et per iudicium Curie suspensus,' as the formal record has it, i. e., "and was condemned to death and hanged by judgment of the court."

On October 2, 1520, "patrik Reid" was "accusyt for the thift-wys (larcenous) steling of ane ox," found guilty, and "dome gevine up—one him that he sould be hangyt on ane gallus quhill he wer deyd."

And we may be quite certain that these kindly Scots would see to it that he was good and "deyd," before he was "lifted doon."

On July 23, 1521, one "Robert lyddale" was found guilty of "thyftwys steling . . . twa scheip" and several other articles: the assise "coucht noucht qwyt" him and "It wes decernit decretit & gevine sentens that the said Robert lyddale sould be haid to the gallos & tharon hangyt quhill he wer deyd & tharupone dome gevine."

So much for simple theft; for "slauchtir" the punishment was different. Ninian Forster "strak . . . Johne low . . . witht ane . . . staf upone his heyd . . . his harnys (brains) come furtht . . . and . . . than . . . he straik him witht ane knyf" and killed him. Found guilty of "slachter," May 7, 1521, he was condemned "to be haid to the heyding hyll & thar his heyd to be strikine fra his body."

So, too, on June 22, 1522, "williame andersone" was found guilty of "the cruell slauchtir of . . . James Quharfor" and the "dempstar, murdow hob" was directed by the Sheriff "to give dome tharupone that the said williame andersone sould be hed to the heyding hyll & thar to stryk of his heyd fra his body for the committing of th said slauchtir."

I find some "Scots cousins" of my own in the assises at these courts; but none of them seems to have been so fortunate as to take part in any of these kindly acts—no doubt, to their great regret, for these Scots of the olden time were a dour folk, ill to "meddle wi'," and not a little blood thirsty.

These were the days of real courts, respected by all, and not troubled with the pragmatic interference of appellate courts, and royal clemency. The sinner was hanged before any steps could be taken to save him from a well-merited fate, and technicalities had no place in that jurisprudence. Alas, even the Scot must say *Nous avons changé tout cela*.

The number in the jury in these Scottish courts reminds me of a circumstance in early Upper Canada: before the courts were fully manned with lawyers, a member of the Executive Council received a commission as judge *ad hoc*; he had been educated as a medical practitioner, and not being familiar with the practice of the courts, he expressed his astonishment that the number on the jury was even, and asked how it was certain that a verdict should be obtained, as the jury might divide evenly—His contempt when informed that the jury must be unanimous was profound; and he expressed it in language comparable with that of the immortal Bumble, who had no hesitation in saying that "the law is a ass."