

NOTES ON OLD BUTESHIRE CRIMINAL TRIALS.

BY A. W. HERBERT.

(Read 24th February, 1914.)

An early reference to the Prison of Rothesay is contained in the following Extract from some Old Council Records:—

"1669, July 22. The Laird of Loup having been a 'prisoner in the Tolbooth of Rothesay, a great body of 'armed Highlanders arrived privately in the night time, 'attacked the Magistrates, broke open the prison and rescued 'the prisoner. The Magistrates having by Proclamation 'summoned the inhabitants to their assistance and for the 'defence of the Prison an Act was made of this date for 'punishing some who wilfully absent themselves and for 'banishing the jailer who appears to have been particularly 'faulty."

In the year 1662 four women were executed as Witches at that then dread and well-known jut of rock called the Gallowsraig, which was situate near what is now called the Gallowgate Street of Rothesay; and eleven years afterwards, namely in 1673 occurred the last recorded trial for Witchcraft in Bute. That was the trial of Janet M'Nicol, which is mentioned in Doctor Hewison's "Bute in the Olden Time." The Indictment and the Sentence are fully given at p. 262 of the second volume of Doctor Hewison's Book, so that I need not repeat them here.

In the same month, viz. October 1673, John M'Fie in Scoulag Farm, James M'Jamie in Kerrylamont, Robert Bannatyne of Clachnabae, Alex. M'Intilour in Bualiechrieg, and John M'Thomas, Stuck, were tried for moor burning, cutting of green wood, and killing of black cock; but were all found "quit and free" of the foresaid crimes.

Again in the same month, viz. October 1673, one Mary M'Thomas of Rothesay, was accused and pursued, as the charge then ran, of the abominable crime of Incest and Charmeing. It appears that Mary M'Thomas had co-habited with one John M'Kinnon of Rothesay, by whom she had a son and that thereafter she fell in fornication with one John Campbell, in Otter, uncle to the said John M'Kinnon. For this offence she was sentenced to be taken to the Gallows of Rothesay and hanged to the death upon Friday the 24th day of October 1673, and her goods and gear to be escheat.

These cases are I think all referred to either in Blain's "History of Bute" or in Doctor Hewison's "Bute in the Olden Time." Indeed so carefully and fully have the events of the time prior to 1800 been chronicled in these pages that I feel little justification needed for bringing you down now to the time when these historians left off.

I accordingly come to the beginning of the nineteenth century; but before leaving the days of witchcraft I might mention the following Old Scots Acts which refer particularly to the County of Bute, and which doubtless found a place in the Criminal Code of their time:—

"In 1503, an Act ordaining that the Justice-Ayre of Bute, 'Arran, Knapdale, Kintyre and Mekill Cumray be held at Ayre 'or Rothesay."

"In 1594, an Act ordaining that thieves and reivers in the 'Shire of Bute were to be tried at the Justice Courts to be held 'at Stirling twice in the year."

"In 1644, an Act provided that Ninian Stewart of Kilchattan 'was to enforce the Act against runaways and deficients in the 'Shire."

"In 1672, it was enacted that a Correction House for the 'Shire of Bute was to be provided; and in 1685, it was provided that the Sheriff should enforce the Game Laws in Bute."

By Act of Parliament passed at Edinburgh on 10th July 1689, several noblemen and others, among them Sir James Stewart, Sheriff of Bute and Mr Robert Stewart, Commissioner for Rothesay, were charged to make payment of certain fines for failure to attend the dyets of Parliament at Edinburgh. Sir James Stewart being fined one hundred pounds, and Robert Stewart one hundred merks, Scots money.

About the year 1800 there went to Glasgow from Rothesay one John M'Dougall. From being at first in a small way as Agent of some of the Rothesay and Campbeltown Packet Boats, M'Dougall advanced to be owner of several small brigs adventuring out to sea. At an early period he seems to have formed the plan, and took care to insure every one of his vessels and their cargoes to their full value and sometimes considerably beyond it. After a time the disastrous news would reach the underwriters in Glasgow that several of Mr M'Dougall's ships—largely insured—had been lost or foundered at sea, but that the captains and crew had all been most providentially saved. Of course the honourable underwriters cashed up for the loss to M'Dougall and he in turn to show his gratitude would invite them to sumptuous repasts. As time went on it began to be noticed that the more M'Dougall's ships were lost or foundered at sea, the more of them he began to purchase and build, and that M'Dougall in spite of his apparent misfortunes continued to grow rapidly rich. He continued to give good dinner parties and fashionable balls, and he built himself a mansion at Tighnabruaich and a house at Pointhouse, Ardbeg, Rothesay.

As vaulting ambition doth o'er leap itself, so with our friend M'Dougall. He built two large ships, one called the "Friends" and the other the "Mary," and these laden with calico goods were despatched ostensibly for Hamburg and Trinidad respectively. On these two ships M'Dougall had taken care to take out policies of insurance for upwards of £40,000. Not long after the departure of these vessels it happened that one day while a Mr Colin Gillespie, a Calico Printer in Glasgow at that time was walking into the Tontine

Coffee Room in Glasgow, he observed a poor woman with a basket selling small pieces of printed calico. Mr Gillespie was about to give the woman something and pass on but was amazed on looking more earnestly at the basket to recognise that some of the woman's remnants were part of his own printed calicoes having his own peculiar dye, and he further recognised some which he had recently sold to M'Dougall for shipment abroad by the "Friends" and the "Mary." The woman on being interrogated explained that she had purchased the goods in M'Dougall's stores.

This was the first real clue which led to M'Dougall's subsequent arrest; for, antecedent to this simple occurrence the startling news had arrived in Glasgow that the ship "Friends" had foundered at sea off the coast of Holland, but that the captain and crew were most providentially saved.

To cut the story short suffice it to say that ultimately M'Dougall was arrested on the charge of fraudulent casting away or sinking of ships at sea. M'Dougall was counting his money in his office when arrested and so great was his dismay that he at once confessed his guilt.

This crime was by a statute of George III. punishable by death and in order to escape this sentence M'Dougall afterwards feigned insanity. His confession was founded on by the Crown but M'Dougall's agent tried to contend that he must have been insane when he made it; and so well did M'Dougall play his part that he puzzled no fewer than eight of the most notable physicians of the time who were called in to give their opinion as to his mental condition.

Finally on Friday the 11th day of February 1821, M'Dougall was sentenced to be banished to Botany Bay for life and his subsequent career there proved his alleged insanity to have been feigned. John M'Dougall was a native of Rothesay, and it is said that the house which he built at Pointhouse was for many years afterwards popularly believed to be haunted.

Another instance of this coarse and uninteresting form of crime I found took place on the 13th of January 1832. The libel, omitting the legal redundancies of the time, runs as follows:—

“Christian M'Alpine, Charles Flinn and Daniel M'Fie did wickedly and feloniously and in a tumultuous and riotous manner assemble with a great crowd of other disorderly persons on Guildford Street and parade the said street armed with sticks and stones and other missiles and did with shouts and yells disturb the peace of the burgh and alarm the inhabitants thereof. And the Most Honourable Maria Marchioness of Bute accompanied by Miss Crawford of Auchinames having arrived in their coach the said Christian M'Alpine did wickedly and feloniously excite, instigate, and encourage the mob to invade, attack, and assault the coach; and Charles Flinn leapt upon the coach, and others pursued the coach shouting and yelling and making a great noise, and the coach having been stopped opposite the shop occupied by James Miller & Co., Merchants in High Street, and the Marchioness having looked out at one of the windows of the coach, Christian M'Alpine called out: ‘What the Devil is she but an anti-reformer.’ This expression seems to have had the effect of inciting the fury of the mob for the coach suffered some damage ere it drove away and the windows were broken. At this juncture, however, the coach with its gentle occupants was saved further molestation by the timely appearance on the scene of John Muir, one of the Bailies of Rothesay. For the crowd turning its attention for a moment to Mr Muir, called him a ‘Borough-monger’ and threatened to handle him severely. Meantime the coach was enabled to escape into the Foley Grounds.”

The instigators of this riot were sentenced to 30 days imprisonment and bound over to keep the peace for six months.

One wonders where the police of Rothesay were at that time.

But though assault cases were very common about this time, yet occasionally the calendar of crime is relieved from this monotony by other forms of lapses from the path of virtue.

At the Inverary Circuit before Lord Gillies on 20th and 21st April 1824, Charles Munn, designed as late prisoner in the Tolbooth of Rothesay, was tried on the charge of having wickedly and feloniously administered tartar emetic and arsenic to Mary Fisher, daughter of Robert Fisher, Weaver, in Rothesay, for the purpose of causing her, who was then pregnant, to abort.

The Jury found the panel guilty of this charge, and the sentence was as follows:—

The Lord Gillies Decerns and Adjudges the said Charles Munn, pannel, to be transported beyond the seas to such part or place as His Majesty by and with the advice of his Privy Council shall appoint, and that for and during the space of fourteen years from and after the date of this sentence; with certification to him that if after being so transported he shall before expiry of the said term of fourteen years return to or be found in any part of Great Britain or Ireland without some lawful cause and shall be therefore lawfully convicted, he shall suffer death in terms of the statute made thereanent.

At the Autumn Circuit held at Inverary in 1824, John M'Alpin was brought before Lord Succoth on the charges of Hameucken or otherwise of Assault. The charge against M'Alpin was that he did upon the 29th day of June 1824, feloniously enter that part of a house situated at the head of Bridgend Street of Rothesay, occupied by Ann Clark or M'Alpin, widow of the deceased Angus M'Alpin, Seaman in Rothesay, and where the said Ann Clark or M'Alpin lay and rose nightly and daily, with intent to assault the said Ann Clark or M'Alpin.

The panel pleaded guilty of the assault and was sentenced to nine months' imprisonment in the Tolbooth of Rothesay.

The Old Scots Crime of "Stellionate" is defined by Erskine as a term used in the Roman Law to denote all such crimes where fraud or craft is an ingredient as have no special name to distinguish them by.

On a charge of "Stellionate" there were indicted at the Inverary Circuit before Lord Justice Clerk Boyle on 16th September 1829, Peter Flin, Cabin Boy, and William Drummond, Sailor.

While detained in Rothesay Prison on the charge of stealing from a lockfast chest on board the sloop "Mary M'Gill" lying in Rothesay Bay, Ebenezer M'Kirdy, Guildford Street, Rothesay, a boy eight years of age, looked in at the window of the cell in which Flin and Drummond were confined, and the prisoners were charged with thrusting a needle at the end of a stick into the boy's eye, whereby the boy's eye was totally destroyed. The *nomen juris* given to this crime was "Stellionate."

Though charged with this crime Flin and Drummond were not brought to trial on the charge; but at the same circuit they were tried on the charge of stealing from the "Mary M'Gill" and were each sentenced to seven years transportation.

On the 20th of October 1832 the Castle Street of Rothesay was the scene of a somewhat brutal assault. It appears that one Daniel M'Dougall and Hugh Logan, a worker in the Rothesay Cotton Mills who resided in Mill Street had quarrelled about some matter, but M'Dougall however does not appear to have agreed to differ. He attacked Logan with a gaip or fork, and so good use did he make of this instrument that Logan died a few days afterwards. As a reward for his efforts, M'Dougall was sentenced to be transported for 7 years.

From about this time, 1830 to 1850 and later, it would appear from the number of cases on record that illicit distillation and smuggling were occupations more congenial to the minds of the natives of Arran than the unproductive

drudgery of husbandry labour; and they who amid darkness and tempest could successfully steer their skiff and land their cargoes unchallenged in the hidden creeks on the Ayrshire Coast, were respected for their intrepidity and daring.

Trials for deforcement and obstructing and assaulting Officers of the Law were very frequent about the middle of the last century, these cases being in consequence of attempts to resist and prevent the Excise Officers in the execution of their duty.

Sheep stealing cases were not uncommon in Bute at one time. In 1845 before Sheriff Hunter at Rothesay, Colin Davidson was sentenced to twelve months' imprisonment for stealing sheep from the farm of Pienlister, Arran. The prisoner would apparently have received a heavier sentence had not the jury recommended him to the leniency of the Court on account of the state of his health.

On 12th April 1856, Bryce Martin was brought to trial before Sheriff Hunter and a Jury on a charge of sheep stealing. The accused was defended by Alexander Moncrieff, Advocate, and was acquitted—the jury bringing in a unanimous verdict of not proven.

At the Inverary Circuit in September 1858, an Arran man (Daniel Cook, Junior), was charged with sheep stealing and sentenced to four years' penal servitude.

In September of the year 1852, one James Malcolm was at the Inverary Circuit sentenced to be transported for seven years for housebreaking. He escaped from Rothesay Prison in November 1852 but was apprehended in Manchester in April 1858, and at the Inverary Circuit in September of that year he was charged with prison breaking from Rothesay gaol and assault, and sentenced to six month's imprisonment.

A well known character to the Police about this time was Neil M'Intyre Ramsay, who was found by the night watchman in the early hours of a Sunday morning along the West

Bay with two Ducks in his possession from which he had wrenched off the heads. Though only 26 years of age, he had been committed to prison 31 times and twice sent to Perth Penitentiary. He was tried at Inverary on 17th September 1863, for the theft of the ducks and sentenced to four years penal servitude.

The practice of fishing with trawl nets began to be introduced about 1838. So destructive did the practice become that in 1851 an Act was passed declaring the use of the trawl net illegal, and in 1860 and 1861 further enactments were found necessary before the practice could be completely suppressed. The Act of 1860, besides providing against Trawling imposed a "Close Time." The result of these statutes, however, had no other result, than, in the words of the Treasury Commission of 1837, to keep a considerable population in habitual and successful violation of it. Trawling Prosecutions and convictions were numerous about this period—1850-60.

A point of interest to students of Criminal Law was brought before the High Court of Justice in the year 1861, when Robert Hawton, Boatswain, and William George Parker, a Marine, on board Her Majesty's Steamer "Jackal" which will still be remembered by many Rothesay people, were charged with murder or culpable homicide. Some fishermen were engaged in illegal trawling in Loch Fyne and the accused were ordered to fire on the fishermen's boats first with blank cartridge for the purpose of bringing the boats to; but no attention being paid by the fishermen the accused were ordered to fire ball, but wide of the fishermen's boats.

One of the fishermen, Peter M'Dougall, was killed by a cartridge from one of the rifles.

The two men were acquitted on the ground that they were bound to obey their superior officer unless his orders were flagrantly illegal.

The case is reported in Irvine's Justiciary Reports.

About this period there was keen rivalry between the different pleasure steamers which plied on the Clyde and between 1860 and 1870 there are numerous cases in the records of Masters and Owners being prosecuted for Steamboat Racing, and for overcrowding and for culpable neglect.

Indeed so serious did this become that on 30th January 1865 a meeting of steamboat Owners was held in the Board of Trade Office, Glasgow, for the purpose of taking into consideration the subject of overcrowding of River Steamers. The meeting had been convened by the Board of Trade and was attended by nearly all the Clyde skippers. Reference was made to the difficulty which Masters of Vessels experienced in dealing with persons who were the worse of liquor and created a disturbance on board as well as in restricting the number of passengers to the legal complement. A strong wish was expressed that the local authorities at the intermediate ports should provide additional police especially during the holiday season; and the Board of Trade were requested to write to the Sheriffs and request them to endeavour to secure the presence of additional police at the quays.

In spite of these laudable efforts to mitigate the perils of excursionists, prosecutions continued to be frequent; and it was not until 1868 that the crop of cases before the Courts began to diminish, and it arose in this wise:—

At the Inverary Circuit on 16th April 1868, the Masters of the steamers "Eagle" and "Levan" were tried by Lord Deas for culpable neglect of duty. Lord Deas sentenced them each to one month's imprisonment without the option of a fine.

This decision to take no fine created quite a sensation at the time, but appears to have had a salutary effect.

If I come down beyond this period I shall be treading on quite modern ground, but having got so far, there is one more case, which recalls a now historic incident in the Town Council of Rothesay, and which I should like to make mention of.

The case is that in which Provost Charles Duncan was fined £6 by the Sheriff for assaulting Mr Comrie, one of the Town Councillors, at a Council Meeting by *pulling his nose*.

In justice to the memory of Provost Duncan and also of Mr Comrie, it is only fair to say that afterwards they were both good friends.

PLANKTON.

(ABSTRACT OF A LECTURE DELIVERED AT THE BUTE MUSEUM ON
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BY J. GRAHAM KERR.

The animal organisms which inhabit the sea may be divided into two sets—(1) those which live on the solid substratum either at the bottom or round the coasts, and (2) those which lead a pelagic existence independent of the substratum. It is customary again to divide the pelagic fauna into the swimming fauna or *neuston*, including those animals which are strong swimmers and which consequently can travel about at their own free will, and the drifting fauna or *plankton* including those forms which from their relatively slow independent movements drift hither and thither the sport of tidal and other currents.

Various subdivisions of the Plankton are in use, *e.g.* Holoplankton and Meroplankton, the latter including animals which belong to the Plankton during only a part of their life history as is the case with those very numerous marine animals which possess a planktonic larva and conversely with those other forms such as Hydromedusæ where the adult sexual phase of the life history belongs to the plankton, while earlier phases lead an attached existence. The only subdivision of the plankton that we need use in this lecture is the rough one which divides off the relatively large-sized animals that constitute the *macroplankton* from the small ones which constitute the *microplankton*. The microplankton is of special interest and a word or two may be said as to the methods employed in its investigation.