

THE LAWS OF GALLOWAY A PRELIMINARY SURVEY*

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In 1244 Alexander II and his council enacted an assize whereby the justiciar of Lothian was to hold inquests in each sheriffdom within his bailiary in order to find out those who had committed crimes. But it was provided that this should not apply in Galloway, 'which has its own special laws'.¹ Eighty years later Robert I granted to the captains and men of Galloway that in future when a Galwegian was accused of a crime he should have a good and faithful assize and should not need to purge or acquit himself 'in accordance with the old laws of Galloway'; but these laws were still to apply where the accusation was against one of the king's Galloway sergeants or officers, or concerned with one of the four pleas of the Crown, treason, or the killing of foreigners.² Despite this, the laws of Galloway were still in use as late as 1384 when parliament agreed that they should be preserved as against the provisions of a statute just enacted, which provided that if a person accused in one sheriffdom should flee into another then the first sheriff should write to the second who could then cite the fugitive to appear before a court.³

What were these laws of Galloway? So far as I know, this question had never been fully answered, although there have been valuable studies of what were undoubtedly vital elements of the laws — notably the articles by George Neilson and W. C. Dickinson on *surdit de sergaunt*, and a number of remarks on the same topic by Geoffrey Barrow in the course of more general works.⁴ This essay is not an attempt at a definitive study but should be regarded as a report on work in progress on medieval Galwegian law and customs with reference also to the neighbouring province of Carrick, from where there is evidence for a virtually identical system and form of society in the same period. It focuses in particular on the subject of *kenkynnol* but also ventures a few remarks on other aspects of the law in Galloway, the study of which seems worth pursuing in more detail than has been done to date.

The word *kenkynnol* is found in a number of well known medieval documents relating to Carrick.⁵ It is a form of the Gaelic phrase *ceann cineail* meaning 'head of the kindred',⁶ but Professor Barrow has pointed out that it is also cognate with the Welsh *penenedl*, which has precisely the same meaning.⁷ It is also found in documents coming from Scotland north of the Forth, sometimes in the form 'kenkynie'.⁸ The evidence that *kenkynnol* was also a feature of the laws of Galloway is a single entry in the *Formulary E* collection of royal writs printed by Professor Duncan, a style *ad constituendum capitaneos super leges Galwidie*.⁹ In translation it reads:

The king to all etc. Know that we have constituted X captain (*capitaneus*) of all his kin (*parentela*) or, of a certain kin, of which by right and according to the customs of Galloway used hitherto he ought to be captain. Wherefore we command all others who are of the said kin that they submit to X their captain in everything just as it was done according to the said laws and customs of all his kin.

The importance of the document is that it is a style used in the king's chapel; in other words, it was not unusual for clerks of the chapel to have to produce such a writ. In the reign of David II there are references which probably illustrate the *Formulary E* style in use: appointments of Donald Edgar as chief of the Clan MacGowin, of Gilbert Maclellan as chief of the Clan Connan, and of Michael MacGorth as chief of the Kenelmen.¹⁰ And there were many other clans, or kin groups, with captains in Galloway and Carrick. For example, the 1282 inventory of the royal muniments referred to an undertaking made to the king by the captains and freeholders of Carrick.¹¹ The chief men of Clan Afren in Galloway submitted to Edward I at Wigtown in 1296,¹² while various clans within Carrick brought themselves under the captaincy of the Kennedies of Dunure at different times in the fourteenth and fifteenth centuries: the Muntercasduf, the Makmaykanis, the Werichsach and possibly the Kynchaldiis.¹³ The treasurer's accounts of 1473 referred to a composition with 'MacDowele for the resignacioune for the . . . hed of kyne in the partis of Galwaye',¹⁴ while in 1490 parliament considered certain customs 'usit be heedis of kin' in Galloway and Carrick.¹⁵ It seems likely that when the mid-thirteenth-century English chronicler, Matthew Paris, wrote of the *duces ac magistrates* of Galloway, he was referring to men who were the chiefs of their clans.¹⁶ Presumably all these captains, chief men and heads of kin exercised the rights of *kenkynnol*, whatever these may have been.

Our only direct clue, apart from the literal meaning of the word, as to what *kenkynnol* involved lies in the phraseology of some charters and confirmations giving it to the Kennedies of Dunure in Carrick. In 1372 Robert II issued three confirmations, all apparently in favour of John Kennedy of Dunure. Only two of these need concern us here. By the first he confirmed a confirmation of Alexander III, dated January 1275/6, of the gift by Neil, earl of Carrick, to Roland (Lachlan) of Carrick and his heirs, that he should be head of all his kindred both *in calumpniis* and the other matters pertaining to *kenkynnol*, together with the office of bailie of Carrick and the leadership (*duccione*) of the men of that district under whomsoever should be the earl of Carrick.¹⁷ Secondly, King Robert confirmed the charter by which Earl Neil had made his grant to Roland, the terms of the grant being exactly as outlined in King Alexander's confirmation.¹⁸ Earl Neil's charter must have been made before 1256, the year of his death; probably it was occasioned by the requirement that the head of a kin-group be male, while he himself had only female issue

(Marjorie, who succeeded him as countess of Carrick in accordance with the feudal rules of inheritance which had become the common law of Scotland by the mid-thirteenth century). The verbal formula first used in this document — to be the head of the kindred *in calumpniis* and all other matters pertaining to the office — remained virtually unchanged in subsequent grants of *kenkynmol* to the Kennedies up to 1455.¹⁹ Additionally, the holding of weapon-showings is mentioned as a further duty in some of the fifteenth-century grants.

Thus the only specific item in the early charters is the right to *calumpniis*. What were they? Since Lord Hailes in the eighteenth century, historians seem to have thought that this meant the taking of *calps*.²⁰ *Calp* in Galloway was a form of the tribute-render which Sir John Skene described as follows at the end of the sixteenth century:²¹

Calpes in Galloway and Carrick signifies ane gift, sik as horse or other thing, quhilk an man in his win lifetime and liege poustie gives to his Maister, or to onie uther man that is greatest in power and authoritie, and speciallie to the head and chiefe of the clann, for his maintenance and protection . . . (Skene then goes on to show his Edinburgh lawyer's disapproval of this) . . . like (he says) as for the samin effect and cause sinderie personnis payis Black mail to thieves, or maintainers of thieves, contrair the lawes of this realme.

Whatever one may think of *calps*, I am not convinced that this is what we should understand by *calumpniis* in the *kenkynmol* documents. The word *calumpnia* means 'charge', accusation' and its primary use in medieval Scotland was in a legal context to describe what was done by somebody commencing a litigation — the complaint against the defender, or, in a criminal context, the charge against the accused person.

Discussion of charges and accusations in the south-west of Scotland brings to mind another important feature of that area's legal history, the *surdit de sergaunt* or *superdictum servientium*. There is much thirteenth- and fourteenth-century evidence that in Galloway and Carrick there existed a class of functionaries called sergeants, whose role was basically policing the countryside. Their policing function consisted in the finding and accusing of criminals. The evidence of a royal charter of 1364 granting Terregles on the borders of the Stewartry and Dumfriesshire to John Herries suggests that they also had powers to carry out summary justice — that is, they could execute robbers taken red-handed. Otherwise, the accusation of the sergeant laid upon the accused the burden of proving his innocence of the crime. Hence the *surdit* (French) or *superdictum*, the 'saying upon' somebody, the accusation. They seem to have operated in small groups and to have travelled widely, perhaps on some kind of circuit, and not to have been confined in their operations by territorially-defined jurisdictions like baronies. They had a right to claim one night's hospitality wherever they happened to be, to sustain them in this role; this privilege was termed

sorryn et frithalos, Gaelic words meaning 'quartering and attendance'.²² In all this there is a clear parallel with the sergeants of the peace still to be found in Wales and northern England in the thirteenth century.²³ It is clear that when Archibald Douglas, lord of Galloway, obtained exemption of his lordship from the act of 1384 about the pursuit of fugitive criminals, parliament agreed to it because in Galloway there already existed a system which could ignore jurisdictional frontiers.

There is no doubt that these sergeants held office under the control of some lord. Thus, in 1225 the earl of Carrick agreed that the clergy in his earldom should not be liable to give hospitality to his sergeants (who, we are told, are also called *kethres*).²⁴ In 1285 Robert Bruce, as earl of Carrick by virtue of his marriage with Countess Marjorie, exempted the Carrick tenants of Melrose Abbey from the *superdictu* or accusation 'of our sergeants'.²⁵ In 1305 the community of Galloway explained to the conquering Edward I of England that the barons and great lords were using the strange and tortious custom called *surdit de sergaunt* to the grievance of the land.²⁶ We can see therefore that the lords had control of these sergeants; further, we can see that the earl of Carrick in particular had, in addition to *kenkynnol* prior to 1256, sergeants with accusatorial powers. It is the powers of these sergeants which I suggest are indicated by the *calumpniis* of the *kenkynnol* charters.

It is important to note that the sergeant's charge compelled the accused to clear himself by compurgation at the period with which we are principally concerned, perhaps by battle as an alternative earlier on. Compurgation meant getting a number of people to swear one's innocence. Probably this took place in the court of the lord; certainly the failure to clear oneself would mean at the very least some sort of fine to the lord, as the 1285 Bruce charter suggests.²⁷ Outwith Galloway from the mid-thirteenth century onwards, criminal actions were increasingly made only on private appeals or by presentment and indictment by a jury (it is this which is referred to in the assize of 1244 mentioned at the beginning of this paper). Elsewhere in Scotland, of course, a person indicted of a crime by the jury of presentment would then have his guilt or innocence determined by an assize or visnet, but a Galwegian had apparently to make a special request for this prior to 1324.²⁸ In that year, as we have seen, Robert I granted to the captains and men of Galloway that, subject to certain exceptions, anyone accused by a sergeant might have a good and faithful assize rather than being required to purge himself under the old laws of Galloway.²⁹ Neilson appears to misunderstand this grant as introducing the jury of presentment to Galloway,³⁰ but it seems clearly to preserve the accusatory role of the sergeant and to be only an attempt to offer the assize to the accused as an alternative to compurgation. Sergeants could therefore continue to be a significant source of income for the lords in the south-

west after 1324, and there is no sign of their being formally abolished at any stage in the fourteenth or fifteenth centuries.

It is obvious that many south-western lords apart from the earls of Carrick had sergeants with the power to force people to clear themselves of criminal charges and the right to claim hospitality; and it is likely that many of these lords also claimed *kenkynnol* within their kindred groups. I would argue that sergeants were one of the means by which a *kenkynnol* fulfilled his obligation to protect the members of his kindred, assisting them in the righting of wrongs against them. It may be the fact that the sergeants exercised jurisdiction on a kin rather than on a territorial basis that explains the 'assize of Galloway' enacted by William I and referred to in his brieve in favour of Melrose Abbey; it provided that the lords of Galloway were to assist in the pursuit of thieves.³¹ The Melrose brieve suggests that the aim of the assize was the integration of outside settlers like the monks and their men into the kin-based system in Galloway. This may also explain some of the later complaints against the sergeants; claiming criminals wherever they might be for the court of the *kenkynnol* might have trespassed on other jurisdictional claims based on territorial rather than kindred rights. This is surely what lies behind the Melrose exemption from the Carrick sergeants in 1265: the abbey wanted to justice its own tenants.³² Similarly, the Terregles charter laid great stress on baronial freedom from outside interference.³³

All this suggests that the *kenkynnol* and his sergeants played an important role in the blood-feud and the system of compositions between kin-groups for homicides and other injuries, which probably survived into the later medieval period in Galloway or elsewhere in Celtic Britain.³⁴ It has also been argued that the text known as the *Leges inter Brettos et Scotos* is a written version of the composition tariffs used in Galloway because it employs a curiously mixed terminology to describe different types of compensation payment. The words used include *cro*, *galanas* and *gelchach* or *kelchin*, which are found variously in Irish and Welsh sources as terms for compensation payments; this combination of different linguistic traditions reflects, it is said, the racial mixture existing in medieval Galloway.³⁵ But other views are possible. Professor Jackson believes that the text was produced at the end of the eleventh century as part of the integration of Strathclyde within the kingdom of the Scots and that this explains its multi-lingual character;³⁶ this would also suggest that it formed part of the general law of Scotland. Further, the text found its way into the treatise *Regiam Majestatem*.³⁷ If we accept that it formed part of the original *Regiam Majestatem* and that the *Regiam* was an attempt to set out the general Scots law (and it must be admitted that these are both debateable points),³⁸ then it is difficult to see why the compiler chose to incorporate into such a work a text with a purely provincial application. Moreover, the words *cro* and *galanas* turn up in another chapter of

Regiam,³⁹ suggesting that these were terms known as part of the general law. On the other hand, the text is found on its own and in French in the thirteenth-century Berne MS, where it follows immediately after three chapters all relating to Galloway, possibly indicating a Galwegian connection.⁴⁰ On the whole question, therefore, the verdict must be one of Not Proven.

A few other points about the nature of the *kenkynnol*'s lordship may be made. The giving of *calps* was of course an important recognition of the lordship of the head of the kin which at the same time imposed on him the duty to provide protection to the giver; it survived in Galloway and Carrick until 1490 at least, when parliament sought its abolition.⁴¹ Then it was described as a custom used by the heads of kin. *Calps* can be found elsewhere in the Celtic world, in Scotland north of the Forth and in Ireland.⁴² But its character differed in Galloway from northern Scotland, where *calp* was paid on the death of the client and took the form of the best eighth of his goods and his gear or his best brindlebeast. In this respect it was like the feudal due of *herezeld* or heriot due from a deceased tenant's estate to his lord and found in use throughout Scotland. But the definition of Galwegian *calps* given by Skene is clear that the payment was made by the client 'in his awin lifetime'. This contrast may wholly explain why only in Galloway and Carrick was it abolished in 1490 (it was 1617 before it received its quietus north of the Forth).⁴³ Here, therefore, Galloway appears distinct from the rest of Scotland, and in particular from Gaelic Scotland.

The other matters mentioned in the *kenkynnol* charters, apart from the office itself (that is, the office of bailie of Carrick with the following of the men of Carrick and the holding of weapon-showings), seem to bring us back into line with the rest of Scotland. These tasks surely suggest the duty of common army service owed to the king by the men of Carrick, which is specifically mentioned in a charter of Robert Bruce as earl in 1302.⁴⁴ Such military service is found throughout Scotland and has pre-feudal origins; it was the *mormaer* or *toisech* of each province who was originally responsible for calling out his men, whose service was return for his protection.⁴⁵ But this duty was not, I think, related to being *kenkynnol*; it was a public task performed for the king involving all able-bodied men in the province, not merely the kin of the officer concerned. Presumably there were similar obligations on the Galwegians who in the twelfth century seem to have claimed the right to hold a special place in the Scottish army.⁴⁶

Other officers who appear in Galloway and Carrick are apparently the counterparts of ones found elsewhere in Celtic Scotland. There are several references to *judices* in Galloway and Carrick, who no doubt functioned much like the *judices* of the other provinces of Scotland, that is, as the repositories of the traditional laws and customs of the region.⁴⁷ If so,

some of their recorded judgements in the twelfth century (for example, on the burden of cain, a food render to the king found all over Scotland, and on trial by combat) raise interesting questions about the relationship between Galloway and the Scottish crown in the early medieval period and about whether judicial duels were really a Norman innovation in Scotland, as has usually been held.⁴⁸ In another case we find the *judices* of Galloway sitting with the *judices* of Scotia in Edinburgh finding one Gillespie Mahonegen liable to the king for failure to find hostages (possibly cautioners for good behaviour).⁴⁹

The judgement about cain refers to 'mairs' as the executive officers responsible for its collection in Galloway. Again, officers with this title are found all over Scotland in fairly similar roles.⁵⁰ David Sellar in his 1985 O'Donnell lecture has drawn attention to the interesting note by Skene in his 1609 edition of *Regiam Majestatem*, referring to a grant of the *officium serjandie comitatus de Carrik, quod officium Toschadorech dicitur, vulgo ane mair of fee*.⁵¹ Were the mairs collecting cain in the twelfth century simply the sergeants with the power to accuse of crime under another name? The grant noted by Skene appears to be the same as one entered in the indices to the Great Seal rolls of the fourteenth century;⁵² there also survive in the Great Seal register two further grants of the office of sergeant of the earldom of Carrick, registered in 1440 and 1450 respectively.⁵³ The reference to the officer as a *toiseachdeor* is made only by Skene, who as Lord Clerk Register would have had access to the original roll and was presumably quoting from it.⁵⁴ The office of the *toiseachdeor* is one for which there is again evidence from many other parts of Scotland, including Nithsdale, as well as in the Isle of Man. Part of their function seems to have involved the pursuit of criminals.⁵⁵ No evidence for the word *toiseachdeor* in Galloway has been unearthed as yet, but on the information now available it seems that this is most likely accidental. We may also note in this context reference in the Terregles charter to the king's coroners and their sergeants, who had rights to 'ransel' and to arrest,⁵⁶ and another entry in the Great Seal indices recording a grant of the office of coroner west of the Cree in the reign of David II.⁵⁷ Whether or not any of these officers were known as *toiseachdeors*, it should not be forgotten that in Carrick some were called *kethres*.⁵⁸

There is some evidence for the existence and late survival in Galloway of customs relating to marriage, status and the rearing of children, which were at variance with the norms of the Church as expressed in the canon law. Again in this the Galloway evidence is consistent with that for the rest of Celtic Scotland and also Ireland and Wales.⁵⁹ The disapproving comment in Walter Daniel's *Life of Ailred*, that in Galloway '... chastity founders as often as lust wills and the pure is only so far removed from a harlot that the more chaste will change their husbands every month and a man will sell his wife for a heifer',⁶⁰ suggests the ready dissolubility of

marriage in Galloway. One or two other pieces of evidence allow further inferences about customs regarding status which were inconsistent with the canon law. When Alan of Galloway died in 1234, he left three daughters, who were legitimate under canon law rules, and a son, Thomas, who was not. Perhaps Thomas was the son of a concubine; Galwegian recognition of him as Alan's successor, which was still strong enough for Edward I to seek to use it at the end of the thirteenth century, surely implies a relaxed concept of legitimacy by comparison with that of canon law.⁶¹ Another practice disapproved by the Church was fosterage,⁶² but there can be no doubt that it occurred at the highest levels of society in both Galloway and Carrick; there is mention of Gillechatfar, the foster brother (*collactaneus*) of Uhtred, in the twelfth century, while Barbour's *Brus* refers to the foster brother of Robert I several times.⁶³ Both Uhtred and Robert must have spent much, if not all, of their childhood in foster homes. Finally, a late source refers twice to fosterage amongst the Kennedies in the fourteenth and early fifteenth centuries;⁶⁴ although the second story has been correctly characterised as 'a tissue of untruths' from the historical point of view,⁶⁵ the familiarity of the custom in the south west is evident.

This is also an appropriate point at which to quote in full A. O. Anderson's fine translation of Matthew Paris's colourful description of the entry into blood-brotherhood by the chiefs and men of Galloway in 1235 when they rose in support of Thomas, the bastard son of Alan:⁶⁶

And that in attempting this they might more surely attain to their desire they made an unheard-of covenant, inventing a kind of sorcery, in accord nevertheless with a certain abominable custom of their ancient forefathers. For all those barbarians, and their leaders and magistrates, shed blood from the precordial vein into a large vessel by blood-letting; and moreover stirred and mixed the blood after it was drawn; and afterwards they offered it, mixed, to one another in turn, and drank it as a sign that they were thenceforth bound in a hitherto indissoluble and as it were consanguineal covenant, and united in good fortune and ill even to the sacrifice of their lives.

While the tone of this passage reflects the biases of a self-perceived higher civilisation, it may contain the essence of events and perhaps another aspect of Galwegian custom.

The decline of the laws of Galloway is not a matter for which there is any direct evidence. It has been suggested that the well-known statute of 1426, which provided that the king's laws were to prevail over 'particulare lawis . . . speciale privilegis (and) the lawis of uther cuntries and realmis', was directed at the laws of Galloway but it seems more probable that if there was any immediate occasion for the act, it was either a preliminary to the attack on barratry which developed in the following years, or an attempt to nullify the law of the Clan Macduff which might otherwise have been used to benefit the adherents of the recently executed Murdoch

Stewart, duke of Albany and earl of Fife.⁶⁷ It also seems clear that another statute enacted in 1504 in terms like those of 1426 was aimed at Celtic laws and customs, not within Galloway, but in the Western Isles.⁶⁸ In any event, it is certain that elaborate structures of customs like those that we have been examining could not have been abolished at a stroke by mere acts of parliament; it is a striking testimony of the efficacy of such attempts that the law of Clan Macduff was still in operation in 1548.⁶⁹

The disappearance of the laws of Galloway is much more likely to have been a long and slow process brought about by shifting concepts of law and morality, and by changes in the power structure within Galloway, in particular the gradual replacement of native lords working within the traditional system by those who recognised different rules and values. The two most important influences in this process were probably the monarchy and the Church. Galloway was first brought firmly under direct Scottish authority in the twelfth century, and from then on came into increasing contact with the institutions and rules of the developing common law of Scotland. The settlement of outsiders who employed norms of tenure and jurisdiction which cut across the kin-based system in Galloway, and who saw that system as 'strange and tortious' began to restrict its scope. *Kenkynnol* and *surdit de sergaunt* survived where there was continuity of native settlement and also, we may suspect, because of its value to the crown in maintaining elementary order in what was a difficult area. But by 1455 when the Douglas lordship of Galloway fell to the crown by virtue of forfeiture, its legal administration could be incorporated into the general system with barely a hiccup, while in 1490 the custom of *calps* as used by heads of kin in Galloway and Carrick could be abolished because it was inconsistent with the common law. The history of the laws of Galloway was at an end.

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Notes

1. *APS*, i, 403 c.14.
2. *RMS*, i, app. i, No.59.
3. *APS*, i, 550-1.
4. Neilson, G., 'Surdit de sergaunt: an old Galloway law', *The Scottish Antiquary*, 11 (1897), 155-7; Dickinson, W. C., 'Surdit de Sergaunt', *SHR*, 39 (1960), 170-5; Barrow, G. W. S., 'Northern English Society in the twelfth and thirteenth centuries', *Northern History*, 4 (1969), 1-28 at 22-3; Barrow, G. W. S., 'The pattern of lordship and feudal settlement in Cumbria', *JMH*, 1 (1975), 117-38

- at 128-30; Barrow, G. W. S., *The Anglo-Norman Era in Scottish History* (Oxford, 1980), 159-61; G. W. S. Barrow, *Kingship and Unity* (London, 1981), 11-13.
5. See below, nn. 17-19.
 6. This seems to have been first pointed out by J. Bartholomew in *SHR*, 2 (1905), 190-1; See also W. D. H. Sellar, 'Celtic law and Scots law; survival and integration', *Scottish Studies*, xxix (1988), 1-27 at 8.
 7. Barrow, *Kingship and Unity*, 12.
 8. E.g. *Cawdor Book*, 130; *Black Book of Taymouth*, 185. 'Kenkynie' represents Gaelic *ceann cinidh*. Kenneth Nicholls tells me that neither of the forms *ceann cineil* or *ceann cinidh* is found in later medieval Ireland.
 9. *Formulary E: Scottish Letters and Brieves 1286-1424*, ed. A. A. M. Duncan (University of Glasgow, Scottish History Department Occasional Papers, 1976), No.82.
 10. *RMS* i, app.ii, Nos. 912, 913 and 982. See also Kermack, W. R., 'Kindred of the Bear', *Scottish Genealogist*, 19 (1972), 14-15, I am indebted to David Sellar for this reference.
 11. *APS*, i, 109.
 12. *CDS*, ii, No. 990.
 13. See *RMS*, i, app.ii, No. 914 and SRO, GD 25/1/63. These clan names present a number of problems which cannot be considered here through lack of space, but Geoffrey Barrow has suggested to me that 'Muntercasduf', conventionally interpreted as 'the household of the black feet', should be 'the household of the servants of Duff', citing a late twelfth-century charter of Duncan, earl of Carrick to Melrose which is witnessed by Gillebride Macmekin Acnostduf and his brother Ean (*Melrose Liber*, i, No. 32). The lineage name 'Achostduf' seems to embody *quas*, 'servant, devotee' and the name Duf. My father suggests that the preceding 'A²' should also be seen as a lineage term in the usual south-western form (cp Ahannay, Adair, etc.) like the Irish O'Neil, O'Donnell, etc. An example of the interchangeability of 'A²' and 'O²' in Galloway in this context is provided by the Okenental/Acconeltan family mentioned in *Melrose Liber*, i, Nos. 31 and 192. Finally, what is the relation between the Gillebride-Macmekin Acnostduf in *Melrose Liber*, i, No. 32 and the Macmaykanis who come under the captaincy of the Kennedies in 1455?
 14. *Treasurer Accounts*, i, 6.
 15. *APS*, ii, 214, c.5 and 222, cc.19 and 20.
 16. Matthew Paris, *Chronica Majora*, ed. Luard, H. R. (Rolls Series, 1872-83), iii, 365. I owe this reference to Professor Alan Harding. See further below, text accompanying n.66.
 17. *RMS*, i, No. 508.
 18. *RMS*, i, No. 5009.
 19. See *RMS*, ii, Nos. 379 and 414; SRO, GD 25/1/40, 52, 58, 60 and 66.
 20. For Hailes see *The Additional Case for the Countess of Sutherland* (Edinburgh, 1770), 108; also Cowan, D., *Historical Account of the Noble Family of Kennedy* (Edinburgh, 1849), 7; Paterson, J., *History of the County of Ayr* (Ayr and Paisley, 2 vols., 1847-52), ii, 273, 276; *Scots Peerage*, ii, 424.
 21. *De Verborum Significatione* (Edinburgh, 1597), s.v. 'calps'.

22. See generally Dickinson, 'Surdit de sergaunt', and sources given therein for this account. The Terregles charter is *RMS*, i, No. 192.
23. Stewart-Brown, R., *The Sergeants of the Peace in Medieval England and Wales* (Manchester, 1936), throws much light on the Scottish evidence.
24. *Glasgow Registrum*, i, No. 139. There is a virtually identical grant by the earl of Lennox two years later: *Glasgow Registrum*, i, No. 141.
25. *Melrose Liber*, i, No. 316. It is explained that the tenants received this privilege because they claimed *legem Anglicana*. Dr P. A. Brand has suggested to me that the *lex Anglicanum* (i.e. English written law) in question may have been clause 38 of Magna Carta, which provided that no bailiff should put someone to his law by a simple complaint but should lead faithful witnesses to it. See Holt, J. C., *Magna Carta* (Cambridge, 1965), 226, 326-7.
26. *Memorando de Parlamento*, ed. Maitland, F. W., Rolls Series (London, 1893), 171-2.
27. It talks about the goods and escheats and damages falling to the earl by the exercise of his jurisdiction.
28. See *APS*, i, 56, c.22: 'Nullus Galwidiensis debet habere visnetum nisi refutaverit leges Galwidie et visnetum postulaverit'. The provenance of this law is uncertain (see Duncan, A. A. M., *Scotland: The Making of the Kingdom* (Edinburgh, 1975), 185, note) but the term 'visnet' is early. Pace Dickinson, 'Surdit de serguant', 172, n.5, the law is not found in the Berne manuscript.
29. *RMS*, i, app.ii, No. 59.
30. Neilson, 'Surdit de serguant', 176.
31. *RMS*, ii, No. 406.
33. *Melrose Liber*, i, No. 316.
34. On the bloodfeud generally see Wormald, J., 'Bloodfeud, kindred and government in early modern Scotland', *Past and Present*, 87 (1980), 54-97; also Black, R., 'A historical survey of delictual liability in Scotland for personal injuries and death', *Comparative and International Law Journal of South Africa*, 8 (1975), 46-70; Davies, R. R., 'The survival of the bloodfeud in medieval Wales', *History*, 54 (1969), 338-57; Nicholls, K. *Gaelic and Gaelicised Ireland in the Middle Ages* (Dublin, 1972), 54-7.
35. The different versions of the text may be studied most conveniently in *APS*, i, 663-5. For the theory of a connection with Galloway see *APS*, i, 49 and Barrow, G. W. S., *Robert Bruce and the Community of the Realm of Scotland* (3rd ed., Edinburgh, 1988), 135-6. I am indebted to my friend William Windram who several years ago drew my attention to a number of problems concerning the *Leges* which make any conclusion about them somewhat hazardous. In particular we should not make too much of the title. Our only medieval evidence that there was a law so called in the 1305 ordinance of Edward I concerning the governance of Scotland which abolished 'l'usages de Sots et de Brets' (*APS*, i, 22). It was Sir John Skene who in 1609 identified certain chapters near the end of *Regiam Majestatem* as the *Leges inter Brettos et Scotos* (see p.103 of his Latin edition of the text). Skene probably knew nothing of the 1305 ordinance, which was not printed until 1661 (Ryley, W., *Placita Parliamentaria*, 503-8). He also noted that in certain MSS the chapters were grouped separately under this title and were written in French rather than in the Latin of the *Regiam*. This comment is borne out to the extent that there is an early text of these

- laws separated from *Regiam Majestatem* and written in French, amongst the miscellaneous collection of *leges Scocie* in the thirteenth-century Berne MS. However, there the laws have no title at all. It is of course perfectly possible that Skene saw another MS like the one he describes but which is now lost; until it is recovered, we must accept that the identification of the usages of the Scots and the Bretts abolished by Edward I with the texts labelled by Skene rests on uncertain grounds.
36. Jackson, K. H., 'The Britons of Southern Scotland', *Antiquity*, 29 (1955), 77-88 at 88. See also Duncan, *Scotland: The Making of the Kingdom*, 107-8.
 37. See the versions of *Regiam* in *APS*, i at 640-1, in *Stair Society*, 11 at 275-8.
 38. See Duncan, A. A. M., 'Regiam Majestatem: a reconsideration', *Juridical Review*, 6 (1961), 199-217 at 204; Harding, A., 'Regiam Majestatem amongst medieval lawbooks', *Juridical Review*, 29 (1984), 97-111.
 39. *APS*, i, 637, *Stair Society* 11, 269.
 40. For discussion of the Berne MS see my article on Scots law under Alexander III.
 41. Skene, W. F., *Celtic Scotland* (2nd ed., 3 vols., Edinburgh, 1886-90), iii, 319-21; Duncan, *Scotland: The Making of the Kingdom*, 108-9.
 43. *APS*, iv, 548, c.21.
 44. *Melrose Liber*, ii, No. 351.
 45. Duncan, *Scotland: The Making of the Kingdom*, 110-11, 378-83.
 46. Anderson, *Scottish Annals*, 193, 199-200, 202-3, 247. Note also the royal *citacio exercitus* addressed to *omnes capitaneos Gallowidiae* (*Formulary E*, No. 88).
 47. *Fife Court Book*, introduction, lxvi-ix. For a discussion of the lists of *judices*, including those of Galloway and Carrick, see Barrow, G. W. S., *The Kingdom of the Scots* (London, 1973), 69-82. See also Nicholls, *Gaelic and Gaelicised Ireland*, 46-7; Davies, R. R., 'The administration of law in medieval Wales: the role of the *ynad cwmwd* (*judex patrie*)', in *Lawyers and Laymen*, ed. Charles-Edwards, T. M., et al (Cardiff, 1986), 258-73.
 48. *APS*, i, 378, cc.22 and d 23. See Duncan, *Scotland: The Making of the Kingdom*, 185-6, and Bartlett, R., *Trial by Fire and Water: The Medieval Judicial Ordeal* (Oxford, 1986), 49. The judicial duel was known in early Irish law (see Kelly, F., *A Guide to Early Irish Law* (Dublin, 1989), 211-3, a reference for which I am indebted to Kenneth Nicholls), although not in early Welsh law (Jenkins, D., *The Law of Hywel Dda* (Llandysul, 1986), xxxii).
 49. *APS*, i, 398, c.3. See Duncan, *Scotland: The Making of the Kingdom*, 529.
 50. See *Fife Court Book*, introduction, lxii-vi.
 51. Skene, *Regiam Majestatem*, 13. I am grateful to David Sellar for allowing me to read a typescript of his lecture, 'Celtic law and Scots law: survival and integration', and to draw upon it here. It was delivered in Edinburgh on 9th May 1985 and is published in *Scottish Studies*, 29.
 52. *RMS*, i, app. ii, No. 1032.
 53. *RMS*, Nos. 231 and 413.
 54. See also Murray, A. L., 'The lord clerk register', *SHR*, 53 (1974), 124-56, especially at 139; Murray, A. L., 'Sir John Skene and the Exchequer 1594-1612', *Miscellany I* (Stair Society, 1971), 125-55, especially at 135.
 55. Dickinson, W. C., 'The toschederach', *Juridical Review*, 53 (1941), 85-109; see further Sellar, 'Celtic Law', 9-11.

56. *RMS*, i, No. 192. For ranselling see Dickinson, 'Surdit de sergaunt', 175 and *n.l.*; Anglo-Norman Era, 159, n.81.
57. *RMS*, i, app. ii, No. 1303. Note also the coroner between the rivers Ayr and Doon (*ibid.*, No. 844) and the resignation of the 'crounareschipe . . . in the partis of Galwaye' by MacDowele in 1473 (*Treasurer's Accounts*, i, 6).
58. See above, text at n.24.
59. See Sellar, W. D. H., 'Marriage, divorce and concubinage in Gaelic Scotland', *Transactions of the Gaelic Society of Inverness*, 51 (1971-80), 463-93, for Scotland and Ireland, and Davies, R. R., 'The status of women and the practice of marriage in late medieval Wales', in *The Welsh Law of Women* ed. Jenkins, J. (Cardiff, 1980), 93-114, for Wales.
60. Ed. Powicke, F. M. (Nelson Medieval Classics, 1950), 47; MacQueen, J., 'The Picts in Galloway', *TDGAS*, 39 (1962), 127-43 at 131; Sellar, 'Marriage', at 475.
61. See Duncan, *Scotland: The Making of the Kingdom*, 530-1; Barrow, *Robert Bruce*, 112.
62. See Goody, J., *The Development of the Family and Marriage in Europe* (Cambridge, 1983), 68-9.
63. *Holyrood Liber*, No. 23; *Barbour's Bruce*, ed. MacDiarmid, M. P., and Stevenson, J. A. C., fostering as a Gaelic custom see Skene, *Celtic Scotland*, iii, 321-3; Cameron, J., *Celtic Law*, 66, 220-1; Nicholls, *Gaelic and Gaelicised Ireland*, 79; and Sellar, 'Celtic law', 12.
64. *Historical and Genealogical Account of the principal families of the name of Kennedy from an original manuscript*, ed. Pitcairn, R. (Edinburgh, 1830), 3 and 6.
65. See Agnew, A., *The Hereditary Sheriffs of Wigtownshire* (2 vols., Edinburgh, 1893) i, 238.
66. Anderson, *Scottish Annals*, 341-2, translating the *Chronica Majora*, iii, 365. See above n.17. For Matthew Paris see Vaughan, R., *Matthew Paris* (Cambridge, 1958, reissued 1979) especially at 143-5.
67. The Statute is *APS*, ii, 9, c.3. For discussion see Nicholson, R., *Scotland: The Later Middle Ages* (Edinburgh, 1974), 309, and (on barratry) 293-5; also Balfour-Melville, E. W. M., *James I King of Scots 1406-1437* (London, 1936), 130-36; Duncan, A. A. M., *James I 1424-1437* (2nd ed., University of Glasgow, Scottish History Department Occasional Papers, 1984).
68. *APS*, ii, 252, c.24. See Nicholson, *Scotland: The Later Middle Ages*, 546; Murray, A. L., 'Sinclair's practicks', in *Lawmaking and Lawmakers in British History*, ed. Harding, A. (Royal Historical Society, 1980), 90-104 at 102 n.49; Donaldson, G., 'Problems of sovereignty and law in Orkney and Shetland', in *Miscellany II*, ed. Sellar, W. D. H. (Stair Society, 1984), 13-40 at 26.
69. See *The Practicks of Sir James Balfour of Pittendreich*, ed. McNeill, P. G. B. (Stair Society, 2 vols., 1962-3) ii, 511-12.



Devorgilla's Bridge, Dumfries: view from south.