



# The Scottish Justices Association

## *The Scottish Justice – eNewsletter*

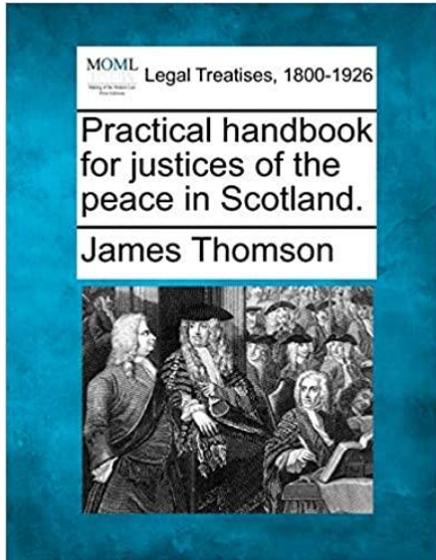
***April 2021***

Welcome to the first of this year's newsletters. This reaches you at a time when courts are still very much in lockdown but with a firm date now from the Lord President for courts to begin the process of reopening for business. It will clearly be some time before we return to anything like normality, but this date is a significant milestone in the journey back to the bench!

As you may recall, the 2019-20 SJA Annual Report was published electronically earlier this year. The Association has now arranged the printing of a limited number of hard copies of the report and these have been distributed to all Sheriff-Principals and to all SLA staff. In addition each Executive Committee member has a few available, so if any member wishes a copy please contact your local SJA Executive Committee member.

The Association continues to work hard on behalf of all members and the Executive Committee hope you find this newsletter an informative and interesting read. If you've any comments or thoughts on any of the articles in the newsletter the Association is always pleased to receive your comments which can be sent to [editor@scottishjustices.org](mailto:editor@scottishjustices.org)

**Book review – “A Practical handbook for Justices of the Peace in Scotland” by James Thompson MA LLB. Reviewed by David Caddick, JP, GH&I**



I picked up an original copy of “A Practical handbook for Justices of the Peace in Scotland” after reading a biography of Lord Haldane,<sup>1</sup> a remarkable, but little remembered man. Born in Charlotte Square in Edinburgh, he became a renowned Barrister, Politician and Reformer. He is perhaps best known for his reorganisation the British Army after the Boer War, including the establishment of the Territorial Army. He was also a key figure in the founding of the Red Brick Universities of the early 20th Century that transformed Higher Education. In his legal career he established many of the statutes and laws of Canada and with his interest in science and industry he was instrumental in the development of aviation in Britain and the founding of the Medical Research Council. The link between Lord

Haldane and this handbook is that it is dedicated to his sister, Elizabeth Haldane, who was the first female Justice of the Peace appointed in Scotland. A remarkable woman herself she was effectively Lord Haldane’s secretary, editor and ran his domestic affairs as well being a renowned writer and social reformer in her own right. She was appointed Companion of Honour in 1918. She was probably a great influence on Lord Haldane and her appointment as a JP was significant.

The handbook details the duties of JPs one hundred years ago. Many of those duties seemed to be taken up with civil proceedings, in particular licensing of liquor sales, licensing of playhouses and game dealers and the issuing of pawnbrokers’ certificates. The handbook also sets out the procedures for the witnessing of documents and issuing of warrants. Interestingly there was a provision for JPs to execute deeds on behalf of persons who could not read; literacy was by no means universal in these times, and despite the 1872 Education Act that made education compulsory for children between the ages of 5 and 13, a significant percentage of the population would not have had anything other than a basic grasp of reading and writing<sup>2</sup>, certainly not enough to understand complex legal documents. The role of the JP was to ensure that individuals were not taken advantage of by the unscrupulous. Related to education, JPs also had the authority to fine or imprison parents who failed to educate children and had the power to send children to industrial schools.<sup>3</sup> Regarding criminal matters, we can still recognize much of what JPs duties were:

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<sup>1</sup> Campbell John. ‘Haldane: The Forgotten Statesman Who Shaped Britain and Canada’. Hurst, London. 2020.

<sup>2</sup> Lloyd, Amy J. ‘Education, Literacy and the Reading Public.’ British Library Newspapers. Detroit: Gale, 2007

<sup>3</sup> Certified industrial schools provided industrial training and residential care for destitute and vagrant children, between 1857 and 1933 in England and between 1854 and 1933 in Scotland. Geara G. C. Unpublished PhD thesis. University of London Institute of Education. 1999

*“Criminal cases coming before the Justices are now chiefly restricted to breaches of the public peace, petty thefts, assaults, and breaches of the revenue laws, where small fines or short term of imprisonment meets the ends of justice.”<sup>4</sup>*

And the powers of punishment were not dissimilar:

*“Justices can impose a fine not exceeding five pounds or imprisonment for sixty days”<sup>5</sup>*

And remember, as my dear mother used to say, five pounds was: “a lot of money in those days”. However, there are some punishments that JPs could order that we would now regard as barbaric, namely the Whipping of Juveniles:

*“Justices do not often sentence juveniles to be whipped, but, where they have the power to fine or imprison, they may sentence a juvenile male offender, under fourteen years of age, to be whipped with birch rod. The number of strokes requires to be specified, and must not exceed twelve.”<sup>6</sup>*

However, we must bear in mind the norms of the time. Children in Scotland were routinely beaten in school with a leather tawse for the most minor infringements (some readers may have personal experience of that but being educated in England where there was no state-sanctioned instrument of punishment in schools my experience is of the cane, the ruler, the gym shoe, and anything else that came to hand, including the hand!). We should also remember that the death penalty was still on the statute books. Between 1900 and 1964 thirty-four executions by hanging (33 men and one woman) were carried out in Scotland, the last in 1963 being Henry Burnett in Aberdeen for murder.<sup>7</sup> Finally we might also note that the sentences of penal servitude and hard labour were only repealed in 1949.<sup>8</sup>

Another striking difference is the almost total lack of reference to motoring offences, which probably take up the bulk of a JPs time in court these days, other than to say: *“Justices have also jurisdiction under several penal statutes relating to revenue, highways and fishings”<sup>9</sup>*

There are also duties that are no longer carried out by today’s JPs. One of my favourites is the attesting of recruits into the Army under the 1881 Army Act in which the JP is advised:

*“On making such appearance and declaring his intention to enlist, if the Justice is satisfied that he is sober, the would-be recruit is duly cautioned to speak the truth.”<sup>10</sup>*

JPs also had a duty to requisition accommodation and impress carriages into service for the Army if requested, with payment rates detailed in accordance with the Army Act of 1919. In

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<sup>4</sup> Thompson, James. ‘A Practical handbook for Justices of the Peace in Scotland’, William Hodge and Company Ltd, Edinburgh and Glasgow, 1920. p40

<sup>5</sup> Ibid p 41

<sup>6</sup> Ibid

<sup>7</sup> <http://www.capitalpunishmentuk.org/hanging1.html> accessed 21 January 2021

<sup>8</sup> Criminal Justice (Scotland) Act 1949 Chapter 94, Para 16(1) and 16(2)

<sup>9</sup> Thompson, James. ‘A Practical handbook for Justices of the Peace in Scotland’, William Hodge and Company Ltd, Edinburgh and Glasgow, 1920. p40

<sup>10</sup> Ibid p14

extreme circumstances JPs could also be required ‘read the Riot Act’, which, if twelve or more persons were unlawfully assembled, literally involved the JP standing in front of the crowd and reading aloud an extract from the Riot Act of 1715 calling upon the crowd to disperse peacefully. If after one hour the rioters had not dispersed, they faced a sentence of not less than 15 years of penal servitude or 3 years imprisonment and the Justice:

*“is freed from all liability if any of the rioters should happen to be killed or wounded in resisting such apprehension”.*<sup>11</sup>

Somewhat topically the handbook has a section titled Miscellaneous which only contains a single paragraph. This is regarding the Vaccination (Scotland) Act of 1863 in which parents could, within 6 months of the birth of a child, make a statutory declaration that they conscientiously believed that vaccination would be prejudicial to the health of the child and would therefore be exempt from prosecution under the Act. Who in 1920 would have thought that vaccinations would be the topic of so much discussion today?

Overall, “A Practical handbook for Justices of the Peace in Scotland” is a fascinating insight into the role of the JP a hundred years ago. It helps us to understand the very different world of our predecessors, the challenges they faced and the legal system and society that they operated in. Reading this book made me realise how things have changed and improved for the better. It also strikes me that we should all realise that the office of Justice of the Peace in Scotland was established in 1587<sup>12</sup>, and it took three hundred and thirty-three years for a woman to be appointed as a JP. Even one hundred years later women are still underrepresented in the role. Which brings me back to the start of this review and Elizabeth Haldane. I can find little reference to her work as a JP, but I am sure that there must be some out there and I am confident that her appointment, and the dedication of this handbook to her, was a signal to the judiciary, the legal profession and society that times had indeed changed.

“A Practical handbook for Justices of the Peace in Scotland” by James Thompson MA LLB was originally published by William Hodge and Company Ltd, Edinburgh and Glasgow in 1920

David Caddick, JP GH&I

### **Judicial mandatory retirement age**

The SJA has been informed by the Lord President that the Cabinet Secretary for Justice intends to seek an increase in the judicial mandatory retirement age to 75yrs. This is in line with the Lord Chancellor’s decision following a recent consultation exercise. Legislation will be required and the rise in the mandatory retirement age is not expected before 2022 at the earliest.

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<sup>11</sup> Ibid p18

<sup>12</sup> ‘All Manner of People, The History of the Justices of the Peace in Scotland’, Johan Findlay. The Saltire Society, Edinburgh. 2000

## **Ministry of Defence Police**

The Ministry of Defence Police (MDP) is a statutory civilian police force, established by the Ministry of Defence Police Act 1987. It comprises of around 2,900 police officers and 260 non-uniformed civilian staff. The Force provides specialist armed policing services to the Ministry of Defence (MOD), other UK Government Departments and US Visiting Forces.

We are located at 36 sites throughout the UK, including Scotland, with the largest located within the HM Naval Base Clyde Group, which comprises RN Armaments Depot Coulport and HM Naval Base Clyde. Officers who are deployed operationally at these sites are trained to the national police Authorised Firearms Officer Counter Terrorism role profile. The MDP also has various other specialist policing capabilities, which include Police Dogs and Marine Policing officers.

Training for our Recruit Training Programme is delivered by our Operational Capability Centre (OCC) that is located at the Force Headquarters in Essex. Student Officers are trained in either English & Welsh or Scots Law, dependent on the officer's posting location.

Scottish-based officers are trained from a curriculum that is agreed and quality assured by Police Scotland via the Scottish Police College at Tulliallan and MDP has an officer embedded at Tulliallan who supports Police Scotland's Recruit Training Programme.

With the impact of Coronavirus on Police Training nationally, a decision was made by MDP to deliver the Scots Recruit Training programme in Scotland. This was due to the implementation of various Covid 19 risk mitigation measures, the impact of which was a reduction in class sizes and to reduce travel where possible in line with Government/MOD advice.

As a result of this change a number of issues arose, one of which was recruit attestation. Initial contact was made with Dumbarton Sherriff and Justice of the Peace Court, leading to early dialogue with Tom Finnigan JP. On explaining our requirements, and with Tom's support, agreement was reached to carry out the attestation at our temporary training venue in Scotland, RN Armaments Depot Coulport. As part of this, we discussed the lack of access to attend court to observe proceedings which is an essential part of training. Tom kindly offered to assist and came up with the proposal to provide a mock court at our training venue.

After several discussions with Tom and his team the training delivery, including the setting up of a mock court, was organised and access for Tom, Mairi MacNeil, Sheriffdom Legal Adviser for North Strathclyde, and Julie Scot, Legal Adviser, to attend RN Armaments Depot Coulport was approved.

The mock court provided the opportunity for Tom and the team to explain roles and responsibilities in the court environment and the setting up of a mock court provided for scenario-based training to be provided that MDP Student Officers could actively participate in. There were several opportunities during the training to pause proceedings and reinforce

the learning experience by providing an explanation of what was occurring and why. This is something that could not have been done in a “live” court case, which all the students found very beneficial.

In addition to our Recruit Training programme, the participation in the mock court training was extended to Probationer Police officers within RN Armaments Dept Coulport, one of whom was due to attend a court hearing. This officer took part in the scenarios aligned to giving evidence, experiencing what would be required as a police officer in a court.

The support that Tom and his team provided has been a critically important element in ensuring that our OCC Training provides appropriately trained and attested police officers who can be operationally deployed in Scotland in support of our policing requirement to the MOD and, if required, with our policing partners in Police Scotland.

Jim Bell  
Inspector  
Recruits Training Manager

Stuart Wilson  
Chief Inspector  
Head of Training



Picture shows Tom Finnigan and Mairi MacNeil being presented with an official Ministry of Defence Police Plaque, by Chief Inspector Stuart Wilson, to acknowledge the assistance given in the training of recruits.

(This picture was taken before the current face coverings guidance came into place)

Tom Finnigan JP DL

### **Reflections from the chair....**

Having been on the SJA Executive Committee for a number of years and seeing how four previous Chairs handled the business and the actual meetings, and I have to say, picking up different methods from them all, I was really pleased to be asked to take on the role in 2018. Having been the Vice Chair for the previous two years, albeit you look forward to taking on the actual Chair role, it is not a shoo-in and there is always the chance that somebody else may be nominated for the position and a vote takes place, which I have seen in the past. Personally I have always thought that this, whilst it may look good that there is competition for places, it has led to splits on the Committee in the past, which have not been conducive to the smooth running of the Committee. Fortunately, for me, there was no other nomination for the position and I looked upon it as an honour to represent the SJA, as I have always done.

It has to be said that my period in the role was somewhat curtailed by the Covid virus, which has meant a lockdown since March 2020. This has been a strange time for the Justice system and we are not out of it by a long chalk. Notwithstanding the present lockdown there is something of a return to normality in the JP Courts.

My period of Office was defined by a long drawn out negotiation with SCTS on the subject of JP expenses. There was some headway made in respect of travelling allowances, which will benefit rural based JP's in particular, however, the low rates of increase on subsistence allowances, which were nowhere near even the rate of inflation, was not met with universal agreement. The fact that JP expenses had not been adjusted in the previous ten years, made it difficult to negotiate 'massive' increases, which might have been expected. This has been a lesson learned, in that no long delays like this should be allowed to happen again. SCTS have given a commitment, and should be held to this by those following in the role after me, to review again in 2-3 years' time.

It is something I actually enjoyed, attending various meetings to negotiate on behalf of the SJA and I really did try my best to represent all views, which is never easy.

The one disappointment for me during my time as Chair, was that I was unable to attend CMJA Conferences in Papua New Guinea and Australia, due to being unable to get Insurance to fly after an Operation for a 'blood clot on the brain'. Having attended previous Conferences in Tanzania and Guyana, which were a great experience, I was looking forward to more exposure to that type of setting with other Justices from throughout the Commonwealth. I thought I would get to Cardiff this year for the Conference, with no need to fly, but as luck would have it the Covid ensured it was cancelled. That's the way it goes at times. My advice to everyone would be, to avoid getting a brain injury, do not dive into the shallow end of a swimming pool as I did.

To carry out the role of Chair, you need the support of the Committee and most certainly back-up from the Office Bearers, who attend meetings on behalf of the SJA also, and the Secretary role is of vital importance. There is a lot of paperwork to get through and the Secretary carried the burden. Particularly with the greater amount of 'papers' which we have submitted for consultations in the last two years.

After a number of years debating how we could introduce more IT into the SJA meetings, we were forced down that road by the Covid crisis and we now have Zoom meetings, including our recent AGM, which has catapulted us forward at an alarming rate, considering how slow we had been in the past. It now looks as if this will be the norm for the future, although I would still like to see face to face meetings when necessary. Personally I get so much more out of them, however, I suppose you have to go with the flow on this one.

The role was certainly enjoyable and I would not have missed it for the world. I will still be serving on the SJA Executive Committee and I pass on my best wishes to Grace who is taking over from me, having been Vice-Chair for the two years of my Office. It has been my pleasure to serve as Chair of the SJA.

Gordon Hunter JP SSD&G

### **And finally.....**

The following exchanges are alleged to have been said in court. Keep a straight face if you can!

Q: What is your date of birth?

A: July fifteenth.

Q: What year?

A: Every year.

Q: What gear were you in at the moment of the impact?

A: Gucci sweats and Reeboks.

Q: This myasthenia gravis, does it affect your memory at all?

A: Yes.

Q: And in what ways does it affect your memory?

A: I forget.

Q: You forget. Can you give us an example of something that you've forgotten?

Q: How old is your son, the one living with you?

A: Thirty-eight or thirty-five, I can't remember which.

Q: How long has he lived with you?

A: Forty-five years.

Q: What was the first thing your husband said to you when he woke that morning?

A: He said, "Where am I, Cathy?"

Q: And why did that upset you?

A: My name is Susan.

Q: And where was the location of the accident?

A: Approximately milepost 499.

Q: And where is milepost 499?

A: Probably between milepost 498 and 500.

Q: Sir, what is your IQ?

A: Well, I can see pretty well, I think.

Q: Did you blow your horn or anything?

A: After the accident?

Q: Before the accident.

A: Sure, I played for ten years. I even went to school for it.

Q: Do you know if your daughter has ever been involved in voodoo or the occult?

A: We both do.

Q: Voodoo?

A: We do.

Q: You do?

A: Yes, voodoo.

Q: Trooper, when you stopped the defendant, were your red and blue lights flashing?

A: Yes.

Q: Did the defendant say anything when she got out of her car?

A: Yes, sir.

Q: What did she say?

A: What disco am I at?

Q: Now doctor, isn't it true that when a person dies in his sleep, he doesn't know about it until the next morning?

Q: The youngest son, the twenty-year old, how old is he?

Q: Were you present when your picture was taken?

Q: So the date of conception (of the baby) was August 8th?

A: Yes.

Q: And what were you doing at that time?

Q: She had three children, right?

A: Yes.

Q: How many were boys?

A: None.

Q: Were there any girls?

Q: You say the stairs went down to the basement?

A: Yes.

Q: And these stairs, did they go up also?

Q: How was your first marriage terminated?

A: By death.

Q: And by whose death was it terminated?

Q: Can you describe the individual?

A: He was about medium height and had a beard.

Q: Was this a male, or a female?

Q: Is your appearance here this morning pursuant to a deposition notice which I sent to your attorney?

A: No, this is how I dress when I go to work.

Q: Doctor, how many autopsies have you performed on dead people?

A: All my autopsies are performed on dead people.

Q: All your responses must be oral, OK? What school did you go to?

A: Oral.

Q: Do you recall the time that you examined the body?

A: The autopsy started around 8:30p.m.

Q: And Mr. Dennington was dead at the time?

A: No, he was sitting on the table wondering why I was doing an autopsy.

Q: Are you qualified to give a urine sample?

Q: Doctor, before you performed the autopsy, did you check for a pulse?

A: No.

Q: Did you check for blood pressure?

A: No.

Q: Did you check for breathing?

A: No.

Q: So, then it is possible that the patient was alive when you began the autopsy?

A: No.

Q: How can you be so sure, Doctor?

A: Because his brain was sitting on my desk in a jar.

Q: But could the patient have still been alive nevertheless?

A: Yes, it is possible that he could have been alive and practicing law somewhere.