

II.

NOTICES OF TWO BILLS INTRODUCED INTO THE LAST PARLIAMENT OF SCOTLAND, THE ONE FOR THE REGISTRATION OF BIRTHS, BAPTISMS, MARRIAGES, AND BURIALS; THE OTHER, FOR THE ESTABLISHMENT OF A SYSTEM OF FREE TRADE. By JOSEPH ROBERTSON, Esq., F.S.A. Scot.

The two bills which I submit to the notice of the Society, came under my observation a few weeks ago, when I was arranging some original papers of the Parliaments of Scotland, in Her Majesty's General Register-House.

The bill "for Keeping of Registers of Births, Baptisms, Marriages, and Burials," was an abortive attempt to enforce, by the expiring authority of the Scottish legislature, what was not accomplished until two years ago, when Lord Elcho succeeded in carrying through the Parliament of the United Kingdom "An Act to provide for the better Registration of Births, Deaths, and Marriages in Scotland." The history of our Parochial Registers has lately been carefully and successfully elucidated by one of our members,—the learned gentleman who now holds the office of Secretary to the Registrar-General for Scotland. Mr Seton's work¹ leaves little or nothing to be added, except where, as in the present instance, unknown or unpublished documents happen to be brought to light. From a collection of the canons of the Scottish Church, among the manuscripts in the Archbishop's Library at Lambeth, it appears that, so early as about the year 1300 the Bishop of St Andrews passed a diocesan statute, by which it was provided, under certain penalties, that not only the parochial clergy, but the chaplains in the diocese, should bring with them to the annual synod held after Easter, a list in writing of the number and names of all persons dying within their parishes, of whatever age, state, or condition, and whether testate or intestate, in order that the Bishop might see that last wills were faithfully executed, and especially that bequests for pious uses took due effect. Imperfect as this measure was—aiming only at the registra-

¹ Sketch of the History and Imperfect Condition of the Parochial Records of Births, Deaths, and Marriages in Scotland. By George Seton, Esq., Advocate. Edinburgh, 1854.
VOL. II. PART III. Y

tion of deaths—nothing more seems to have been attempted, when, after the lapse of nearly three centuries, the Reformed Church first took the subject into consideration. The clergy of the old faith had meanwhile projected a more comprehensive scheme. By a canon passed in 1551, and renewed and ratified in 1559, by the last Provincial Council which met in Scotland in the obedience of Rome, it was enacted that there should be in every parish a register, carefully preserved and duly inspected, in which the proclamation of banns should be recorded, as well as the names of all baptized children, together with the names of their parents and god-parents, the day, year, and month of the baptism, and the names of two witnesses of the event. Nothing is said here, it will be observed, of the registration of burials or deaths. It may possibly be that that end was already held to be secured by the canon of the beginning of the fourteenth century, to which I have referred.

Hitherto the attempts to establish registration had been made by ecclesiastical authority. But in the year 1616—on the same day that the State first interposed its sanction to the erection of our Parochial Schools—it interposed its authority also to the institution of our Parochial Registers. You will find in Mr Seton's work an outline of the Act of Privy Council passed for this purpose,—a wise and well-digested scheme, worthy of the statesmen who a few months afterwards established that system for the registration of Land Rights, by which Scotland has so long been honourably distinguished. The “Act anent ane Register of deceast, maryed, and baptised personis,” seems, unhappily, for some cause or other, not to have become generally operative; and, after the lapse of twenty years, another fruitless endeavour had to be made to attain the same end. The thirteenth chapter of that ill-starred Book of Canons of 1636, which was one of the more immediate causes of the overthrow of the Episcopal Church, is in these terms:—

“Of Christenings, Weddings, and Burials to be registered.

“In every paroch church within the kingdom, a parchment book shall be provided, at the charge of the parochin, wherein shall be written the day and year of every christening, wedding, and burial, which shall be kept and laid up in a sure coffer, to be provided also by the parochin, and not to be taken forth by the presbyter, or any other, except when the christenings, weddings, and burials are to be recorded. And to the effect these be not neglected, the presbyter shall, every Lord's Day, after prayers or sermon, take forth the said book, and write therein the names of all persons christened, with the names and surnames of their parents; the names also of all persons married and buried in

that paroch in the week 'preceding, with the day and year of every such christening, wedding, and burial. And every year once within one month after the first day of January, transmit unto the bishop of the diocese a true copy of the names of all persons christened, married, and buried the year before within his parochin, with the days and months of every such christening, marriage, and burial, subscribed by his hand, to the end the same may be preserved in the bishop's register. Wherein if he shall be found negligent, he shall be called and censured for the contempt of this necessary constitution."¹

If the system contemplated by this canon be less perfect than that laid down in the Act of the Privy Council of 1616, it is at least better than the system to which, in 1703, the last Parliament of Scotland was in vain asked to give its sanction :

“ Copie of some private lawes to be presented to the Parliament.

“ Act for keeping of Registers of Births Baptisms Mariadges and Burialls.

“ Our Sovereigne Lady for clearing the qwestions that often occur anent the tyme of persones Births Baptisms Mariadges and Burialls with advice and consent of the Estates of Parliament statutes and ordaines that ane authentick register be kept in every paroch of the Kingdome by the respective clarks of there Kirk Sessions of the tyme of all Births Baptisms Mariadges and Burialls within the said paroches which register shall containe the name and designatione of the party concerned and of certain of the persones of the best respect present thereat and who may be witness of the foresaid tyme and shall be subscribed by the said clark and ministers of the said respective paroches or in case of vacancy by two of the Elders in place of the Minister and ordains that Extracts out off the said register under the hands of the said clark of session and minister with two Elders for the tyme shall be a sufficient probation off the tyme and dates of the said Births Baptisms Mariadges and Burialls Certifyeing such clarks of Kirk Sessions as shall neglect to keep the saids registers that they shall be liable to the paine of ffyftie pounds Scotts and deprivation from their office when ever convickt before any Judge Ordinary ffor the said neglect.”

Of the author of this measure I have been able as yet to learn nothing. I am equally ignorant of the grounds upon which it was rejected.

¹ The seventieth chapter of the canons of the Church of England of 1603 obviously suggested both this thirteenth chapter of the canons of the Church of Scotland of 1636, and the forty-sixth chapter of the canons of the Church of Ireland of 1634.

I know little more of the remarkable bill in which some member of the Scotch Parliament of Queen Anne shadowed forth, not obscurely, the outlines of those great measures of enlarged commercial policy which have distinguished the Imperial Parliament of Queen Victoria.

Mr Burton, in his late valuable "History of Scotland," has shown how largely the narrow and exclusive system of trade adopted by England at the Restoration contributed to the causes which brought about the Union between the two kingdoms in 1707. So early as 1686, King James VII. tempted the Scotch burghers to connive at religious toleration, by holding out conditional hopes of relaxing the fetters on their commerce with England. That scheme failed; but English statesmen never lost sight of the hold which their commercial monopoly gave them upon Scotland. It was their one great instrument for bending the pride and prejudices of their northern neighbours to an incorporating union. It was in vain that the Scots struggled against the dire necessity of their position. On the one hand, they felt the still-increasing poverty which was the result of their loss of trade; on the other, they knew that only on her own terms would England admit them to share in her commercial advantages. In 1703 they attempted, by the well-known "Act for the Security of the Kingdom," to compel England to a more liberal course. By that measure it was declared that the crowns of England and Scotland should not be held by the same person, "unless a free communication of Trade, the freedom of Navigation, and the liberty of the Plantations be fully agreed to, and established by the Parliament and Kingdom of England, to the Kingdom and subjects of Scotland." But though this bill passed the Scottish Parliament, it was well known that it would never receive the consent of the Crown. It was in these circumstances that, on the 25th of August 1703, the following bill was laid on the table, and ordered to be printed:—

"Overture for an Act to make this Kingdom a Free Port.

"Our Sovereign Lady, considering that nothing contributes more to the enriching of a Nation than the encouraging of Trade; and that the best way to encourage the same is, that it may be free of all burden and impositions: Therefore her Majesty, with advice and consent of the Estates of Parliament, statutes and ordains, That, from henceforth, this Nation shall be a free Port, and that all goods and merchandise, either exported or imported (which are not by law prohibited to be exported or imported), whether by subjects of this Nation or foreigners, shall be free of all Custom, Excise, or other imposition whatsoever: And that her Majesty may sustain no prejudice by making of this kingdom a free port, the said Estates declare, That they will give her

Majesty also as great a sum by a Land Cess as the saids Customs and Forreign Excise hath been set for a tack to tacksmen at any time before, and rescinds, casses, and annulls all Acts and Constitutions contrair to, and inconsistent with this present Act.”

We have here, you will observe, not only a clear unqualified assertion of the great principle of Free Trade, but a suggestion almost of the very means by which the late Sir Robert Peel carried that principle into effect—that is, the imposition of a direct tax to supply the loss occasioned by the repeal of the indirect taxes upon exports and imports. The only point of difference is, that the direct tax of 1703 was to be levied only on real property, while the direct tax of 1842 was levied as well upon income as upon property, whether real or personal.

The “ Act to make this Kingdom a Free Port” seems never to have advanced beyond the first stage. Before it could be discussed, the Parliament was adjourned. The name of the member by whom it was brought in is not recorded; but I think there can be little difficulty in recognising in its bold tone and nervous language, the stamp of Fletcher of Saltoun.