

II.

A NOTE ON THE SUBJECT OF PROTOCOL BOOKS AS CONNECTED WITH PUBLIC RECORDS. BY DAVID LAING, Esq., F.S.A. Scot.

There is a well-known work, "The Office of a Notary-Public," of which the fourth edition, with many additions and improvements, appeared in 1792. It was originally published at Edinburgh in 1740, entitled, "*Ars Notariatus*; or, the Art and Office of a Notary-Publick as the same is practised in Scotland." The anonymous author has given a learned dissertation regarding the Notaries or Tabelliones who were subject to the Primicerius Notariorum among the Romans, and other persons exercising the office in ancient as well as in modern times. The Emperor of Germany, as head of the Roman States, claimed a jurisdiction over all kingdoms which had been subjected to the Roman Empire. The Pope, in like manner, claimed a similar authority. Thus, in Scotland, until the reign of King James the Third, Notaries had received their appointment jointly by Papal and Imperial authority. But, at the Parliament held at Edinburgh, the 20th November 1469, an act was passed bearing this title, "*Of Notaris and Tabellionis-making be the King.*—Ca. xxxviii." By this act, the civil jurisdiction of the Emperor was assumed by the King. "*Item, It is thocht expedient, that sen our Souerane Lord hes full jurisdictioun, and free inpyre within his Realme, that his Hienes may mak Notaris and Tabeliounis, quhais instrumentis sall haue full faith in all causis and contractis, civile within the Realme. And in tyme to cum that na Notar be maid, nor to be maid, be the Emperouris autoritie, haue faith in contractis civile within the Realme, les than he be examinait be the Ordinar, and appreuit be the Kingis hienes. And that full faith be geuin to the Papall Notaris in tymes bygane, and to cum, in all thair instrumentis,*" &c.

This act has often been mentioned as a proof of Scottish independence in refusing to recognise any such foreign authority as that claimed by the Emperor. But the King and Parliament being equally jealous of the Pope's usurpation and encroachment upon the prerogative-royal, it was considered, by this act, that Apostolical or Ecclesiastical Notaries, in order to be qualified for executing their office in temporal matters, should also obtain license from the King. It may be observed, that at this period, scarcely any persons, except the clergy, who usually completed their studies abroad, were qualified to act in this capacity, as it required a knowledge of civil and canon law, and a degree of learning which few others possessed. When such persons were competent to be employed in spiritual as well as temporal matters, their proper designation became a matter of importance ;

and in their attestations they uniformly specify the diocese in which they were licensed. In addition to their accustomed signatures, their practice was, along with a motto, to join the initials of their names in some elaborate and complex form, as a monogram; of which I shall exhibit to the present meeting several early specimens.

By a subsequent act, Notaries were subjected to the authority of the bishops-ordinaries. After other changes, the bishops power was abolished, and by act 79, Parl. 9, Queen Mary, 1563, it was enacted, "That no person shall take upon hand to exerce the office of a Notary, by no manner of creation to be made in time to come, under the pain of death, unless they be created by the Sovereign's special letters, and thereafter examined and admitted by the Lords of Session," &c. It is unnecessary to refer to the changes that have since taken place in the mode of admission, and qualifications required for exercising the office of a Notary.

The word PROTOCOL is derived from the Greek *πρῶτος*, *primus*, and *κόλον*, *membrum*, because it used to be the first draft of an instrument. Protocol is a word common to various languages, English, French, Italian, Spanish, signifying, says Minshen, in 1619, "the first draft of a deed, contract, instrument, or evidence of a short register kept thereof." But it is as applied to a Register of Deeds, usually named Protocol Books, to which I beg to call the attention of the present meeting. The Emperor Maximilian, in his Constitution concerning Notaries, § 2, ordains, "That every Notary have a Protocol, and that he keep it carefully, and write in it in order with his own hand, all the Acts and Instruments verbatim to which he was Notary." By various Acts of Parliament in the reigns of Queen Mary and King James VI., all Notaries were ordained to produce their Protocol Books before the Lords of Session to be marked or considered.

Bell, in his "Dictionary of the Law of Scotland," says, "On the admission of a Notary, he receives from the Clerk-Register a book, marked by the clerk, called a Protocol, in which the Notary is directed to insert copies of all the instruments he may have occasion to execute, to be there preserved as in record. These protocols were at one time attempted to be made serviceable as records of sasines; but this, from many causes, failed, and their principal use was to supply the loss of any instrument, which they were allowed to do where the protocol had been regularly kept; but the protocol was seldom regularly kept, and is now entirely in disuse." (P. 789.)

Such Protocol Books, duly authenticated, being regarded as public records, it was deemed of importance that they should be carefully preserved. It was therefore ordained by Parliament, that the Clerk-Register should give satisfac-

tion for the Protocol Books of Notaries deceased ; but the great number and expense, as well as the irregularity in obtaining possession of such books, may have suggested the expediency of establishing a different system, which now has been in use for nearly two hundred and fifty years, in the form of the Register of Sasines.

The class of Protocol Books, however, is one which is very much overlooked in the course of antiquarian investigations. This is partly owing to the circumstance that they are dispersed in all parts of the country, that they form no regular series, and present only a record of deeds executed by individual practitioners. It might therefore be of considerable utility were an attempt made to collect them, and have them deposited in some public repository, such as the General Register-House. The number that still exist must be very considerable. I have, at distant intervals, examined many such volumes in various localities, such, for instance, as Dundee, Perth, Cupar-Fife, Aberdeen, St Andrews, Dunfermline, Haddington, and North Berwick, but without keeping any separate note of the dates, the Notaries, or number of volumes. One volume at Dundee is the Protocol Book of Thomas Ireland, N. P. from 1535 to 1572. Mr Riddell informs me that there are several at Peebles, of an early date, and of some importance as relating to property and families of note in that district.

The Protocol Books of the following Notaries are preserved in the Advocates' Library, most of them in Sir James Balfour of Kinnaird's collection of MSS. :—

James Androsoun, Sheriff-Clerk of Fife, from 1535 to 1548, folio.

Edward Dickson, in the year 1537, 4to.

John Kilgour, Newburgh, Fife, from 1584 to 1589, 4to.

Stephen Patersoun, Falkland, from 1590 to 1612, 4 vols. folio.

John Lytil Johne, formerly servitor of Stephen Patersoun, from 1615 to 1629, 2 vols. folio.

John Philp, Lundores, from 1611 to 1626, folio.

One or two stray volumes of a later date have been acquired for the College Library.

Among the Archives of the City of Edinburgh, in addition to the regular series of Registers of Sasine, there are still preserved twenty-five volumes of Protocol Books, in small quarto, of the following Notaries-Public :—

1. John Foular, 4 vols., from the year 1500 to 1534.

2. Vincentius Strachan, 4 vols., from 1507 to 1553.

3. Andrew Brounhill, 2 vols., from 1536 to 1544.

4. Alexander King, 5 vols., from 1548 to 1563.

5. Alexander Guthrie, 5 vols., from 1557 to 1578.

6. William Stewart, senior, 4 vols., from 1558 to 1580.
7. William Stewart, younger, 1 vol., from 1572 to 1600.

The proper Register of Sasines of the borough of Edinburgh commences in the year 1556, when Alexander Guthrie was city-clerk. It is continued to the present time in a great many folio volumes.

Another early and well preserved series which I have recently examined belongs to the borough of the Canongate, and commences in July 1485. Of this series, one of our members, Thomas Thomson, Esq., W.S., has made copious extracts, and will submit to the meeting an account of the volumes, with transcripts of several interesting deeds. In the General Register-House there is already a large collection of such Protocol Books, commencing with the year 1512, but chiefly of the latter part of the sixteenth century; although at present there is no detailed inventory specifying the names of the notaries, or the localities to which they relate.

It would, however, be desirable that some efforts should be made either for collecting the Books themselves, or for obtaining accurate and detailed notices of their dates, the names of the Notaries, and where the volumes are deposited. I may be permitted to add, that in general such books are, in many instances, wholly valueless to their present custodiers, from their antiquated forms of writing, and from the deeds being now wholly superseded. Notwithstanding, as these Books, when duly certified, are held by law to be authentic records, they often prove very serviceable for identifying persons, no less than for tracing the tenure of lands and the transmission of burgage property.

In concluding this brief notice, I beg to propose that the Society should address a communication to the Lord Clerk-Register, calling his Lordship's attention to such Books, as connected with public records, and suggesting the expediency of his Lordship authorizing a circular letter to the clerks or magistrates of boroughs, and other parties known to have such books in their custody, requesting that any Protocol Books, prior to the year 1617, when the present General Register of Sasines was commenced, should be transmitted for preservation and general use to Her Majesty's General Register House.

Several of the members having made some remarks on the subject, a committee was appointed to prepare a letter to be addressed to the Right Hon. the Lord Clerk-Register, calling his Lordship's special attention to this series of records, and to report to the ensuing meeting.

III.

LIST OF THE PROTOCOL BOOKS, WITH SOME NOTICE OF THE OTHER RECORDS OF THE BOROUGH OF CANONGATE AND REGALITY AND BARONY OF BROCHTON, EDINBURGH, WITH EXTRACTS. COMMUNICATED BY THOMAS THOMSON, Esq., W.S., F.S.A. Scot.,

The Protocol Books in possession of the Clerk of the Borough of Canongate are the following, viz. :—

1.—*Protocol Books of JAMES YOUNG, N.P., originally 17 vols., of which 13 vols. in small quarto remain, viz. :—*

- Vol. I. — July 1485 to 23d December 1488.
 II. 30th December 1488 to 24th March 1489.
 III. 31st March 1490 to 10th October 1491.
 IV. 5th March 1491 to 21st August 1493.
 V. 20th August 1493 to 31st August 1495.
 VI. Wanting.
 VII. 15th November 1496 to 8th March 1497.
 VIII. Wanting.
 IX. 12th March 1499 to 2d December 1501.
 X. 10th January 1501 to 11th April 1504.
 XI. 13th April 1504 to 9th May 1506.
 XII. 11th May 1506 to 13th June 1509.
 XIII. Wanting.
 XIV. 21st February 1511 to 9th December 1512.
 XV. 21st October 1512 to 17th March 1514.
 XVI. Wanting.
 XVII. 24th May 1521 to 28th August 1522.

2.—*Protocol Books of ALEXANDER MACNEILL, N.P., originally 7 vols., of which 3 remain, viz. :—*

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| Vol. | 2d April 1525 to 12th January 1530, | Quarto. |
| | 24th October 1536 to 21st June 1539, | Folio. |
| | 3d April 1542 to 26th October 1543, | „ |

3.—*Protocol Books of JOHN MACNEILL, N.P., originally 7 vols., now 4 vols, viz. :—*

Vol.	19th April 1549 to 15th April 1551,	Folio.
	18th April 1551 to 14th April 1552,	”
	18th August 1552 to 5th May 1553,	”
	5th December 1553 to 14th March 1555,	”

4.—*Protocol Books of JAMES LOGAN, N.P., of which only 4 vols. and a fragment remain, viz. :—*

Vol.	19th March 1576 to 14th March 1580,	Folio.
	14th March 1580 to 24th December 1583,	”
	27th March 1588 to 22d May 1591,	”
	6th February 1598 to 31st December 1602,	”
	1st January 1603 to 20th January 1603, a fragment.	

5.—*Protocol Books of WALTER LOGAN, N.P., originally 6 vols., of which only 1 vol. remains, viz. :—*

Vol. VI.	1st August 1629 to 19th May 1635,	Folio.
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6.—*Protocol Books of JAMES LOGAN, N.P., consisting of 5 vols., viz. :—*

Vol. I.	9th June 1635 to 19th March 1641,	Folio.
II.	6th April 1641 to 6th August 1646,	”
III.	7th August 1646 to 20th January 1653,	”
IV.	1st February 1653 to 10th September 1657,	”
V.	7th September 1657 to 11th November 1665,	”

7.—*Protocol Books of JAMES ROCHIED, N.P., consisting of 4 vols., viz. :—*

Vol. I.	5th January 1666 to 31st May 1670,	Folio.
II.	15th April 1670 to 11th October 1677,	”
III.	11th October 1677 to 15th June 1683,	”
IV.	15th June 1683 to 8th June 1699,	”

8.—*Protocol Book of JAMES HAMILTON.*

Vol.	8th June 1699 to 17th May 1711.
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The number of Protocol Books existing in the year 1570 appears from the following Minute taken from Vol. I. of the Regality Court Books of JAMES LOGAN :—

4th Octr. 1570.

The quhilk day, Johnne Oswald Baillie Depute of the Regality & Barony of Brochtoun and John Schorte ane of the Baillies of the Burt of the Canongait, sittand in Judgement anent the Edict for recognoscing of the Prothegall Bukis of umq^{le} James Young Alexander MacNeill Clerkis of this present Court Donald Foulartoun John Porteous Clerkis Depute of the samyn for the tyme and John MacNeill als Commoun Clerk of this Court and of the Toun of Leith win the baronie of Restalrig Compeirit James Logan now Clerk of this Court and Keipar of the Prothogall Bukis of the said umq^{le} James Young, Alexander MacNeill Donald Foulartoun & John Porteous and producit the samyn, q^{of} the said James Youngis bukis contenit seventene in number the said Alexander MacNeillis bukis contenit seven in number ane of Donald Fullartoun & ane uthir of John Porteous and alsua compeirit Grizell Wilson relict of the said umq^{le} John MacNeill and Kepar of his Prothogall Bukis and producit the samin contenannd sevin in number. Quhilkis Bukis were recognoseit and the said umq^{le} James Young Alexander MacNeill Donald Fullartoun John Porteous & John MacNeill recognoseit as Notaris famous and legal be certaine famous Witnesses, viz. Johne Johnstone Commissar Clerk of Edin^r John Mossman Sheriff Clerk of the samyn Mr Gilbert Grew Writtar to Our Sovereigns Signet James King Maister James Kirkaldie James Young John Dunksoun Robert Muir Alex^r Auchinleck John Sprott & Francis Johnstoun Warnit of befoir to that effect And thairfoir the Baillies above written decernit & ordainit for thair common weil the hail Prothogall Bukis foresaid of the said umq^{le} James Young Alex^r MacNeill Donald Foulartoun John Porteous & John MacNeill so far as the Instruments thairin contenit concerns the Regalitie & Burt abovewritten to be extractit & transumit be the Commoun Clerk y^{of} now present and to cum and thair deputtis and sa far as ony Instrument contenit thairintill concernis the said Town of Leith within the Baronie of Restalrig foresaid to be extractit & transumit be the commoun clerk of the said Town of Leith now present & that salhappen to be for the time & decernit the seill of Cause of this-burt to be appendit to every instrument to be transumit contenit in ony of the foirmentioned Prothogall bukes and yairby the transumpt to be als authentic and of sic like strengthe in judgement and out-with as if the principale Instrumentis had been put at length in maist ample forme under the sign and subscription manuell of the said umq^{le} James Young Alexander MacNeill John Porteous Donald Fullartoun and John MacNeill in thair lifetymes and becaus na parties compeirit in the contrair havand interest

according to the certification of the said Edict being execute upon lx dayis warning the said Baillies imp^t silence to all parties havand interest in tyme coming. Quhairupon the said James Logan and John Robesoun Clerk of Leith askit act of Court and Instrumentis.

There is the following note appended to the last volume of James Young's Protocol Books:—"Quarto Octobris 1570 The hail number of James Youngis bukis extending to xvij bukis now presentit in Jugement befor the Juge subscrivaris heirof,

JOHN OSWALD Baillie.

JOHNE SCHORT Baillie."

These documents show that, of James Young's Protocols, four have been lost, viz.:—

Vol. VI. from 1495 to 1496.

Vol. VIII. from 1497 to 1499.

Vol. XIII. from 1509 to 1511.

Vol. XVI. from 1514 to 1521.

And of Alexander MacNeill's, four have been lost, and three of John MacNeill's, besides the two volumes of the Depute-Clerks, John Porteous and Donald Fullarton.

The original number of the books of the next Notary, James Logan, cannot be positively ascertain'd, but it is probable that he wrote nine or ten volumes, both from the long period during which he held the office of Town-Clerk, and from the dates of the volumes which remain.

Walter Logan compiled six Protocol Books, of which only one now remains, which is titled Volume VI., and was evidently the last volume of his Protocols.

The Protocol Books of the second James Logan, and of his successor, James Rocheid, are complete.

These Protocol Books form an interesting Record, depending for its extent and variety on the amount of business transactions of the Notaries by whom the different Books were kept. It is, therefore, of importance to notice something of the personal history of the writers, so far as that can now be ascertain'd, from the Books themselves. The Notaries resided within the precincts of, or near to the Court of Holyrood, and many of the most remarkable men of the time may be found named as witnesses, or as parties to their Instruments. This circumstance adds to the interest of the earlier volumes.

James Young, the writer of the earliest Books, was Clerk of the Borough of Canongate, and of the Regality and Barony of Brochton, from 1484 to 1522.

He acted also as Notary or Agent for the Abbot and Convent of Holyrood house, in all the transactions and documents relating to their Church lands, or belonging to them as the superiors of the Regality and Barony, and for the numerous proprietors of land holding of the Abbey, as the Forresters of Corstorphine, Drylaw, and Bernetown; the Wardlaws of Riccarton; and the Monypennys of Pilrig. He likewise acted for Robert Logan of Restalrig; W. Haliburton of Dyrilton, the Preceptors of Torphichen, David Lord Lindsay, Alexander Lord Kilmaurs, Sir Oliver Sinclair of Roslin, John Earl of Lennox, Lord Dernely, John Lord Kennedy, William Earl Mareschall, Lord George Seton of Tranent, Robert Ramsay of Cokpen, John Lord Carlill, John Sandilands of Calder, John Haldan of Glenaglash, Robert Hamilton of Pingalton, John Murray of Falahill, and many others. He resided within the Canon-gate, and had an office in Edinburgh, which he calls his "Camera" or "Botha" in several Instruments of Resignation. Like other Notaries, he went to the lands of which he gave Sasine; and there are Protocols of Sasines taken in several parts of Scotland, although those in the county of Edinburgh are the most numerous. In the first volume of his Protocols there are some very curious forms or styles of writs,—as a Letre of Slaines, *Litera testimonialis pro peregrino Carta post forisfacturam, Litera Licencia ab abbate suo canonico ad persequendum suas terras redditus et bona hereditaria*. The object of this letter of licence was to authorize one of the canons to take the steps necessary to obtain the property of his deceased father, who was a rich burghess of Edinburgh, and to dispose of it *ad libitum*. There is also a commission in favour of an Earl, not named, to hold Justiciary Courts within the Barony of Broughton.

The following Instruments in James Young's Protocol Book, Vol. I., are specimens of the contents of his Protocols. They illustrate the internal management and discipline of the Convent:—

xvi^o die mensis Maii Anno Lxxxviii^o indictione vi^a pontificatus Pape Innocentii octavi anno quarto personaliter constitutus discretus et religiosus vir Dompnus Adam Bellantyne, prior monasterii Sancte Crucis de Edinburgh exposuit et declaravit quod omnes et singuli canonici sive totus conuentus dicti monasterii ibidem presentes ipso excepto remouerunt omnes et singulos officarios ejusdem loci de eorum officiis et nouos officarios in eorum loco ad manus proprias imposuerunt absque consensu auisamento seu mandato eorum abbatis et superioris quod de iure minime facere debuerunt vt asseruit. Et ideo ad habendum ipsum excusatum coram dicto suo abbate idem Dompnus Adam a me Notario Publico sibi fieri peccit presens publicum instrumentum. Acta erant hec in dicto monasterio in choro ejusdem hora quasi decima ante meridiem presentibus ibidem discretis et religiosis viris, viz.:—Dompnis Waltero Daidsonne, priore

de Pettinveme; Johanne Crunzeane, Vicario de Vre, Willimo Craufurd Vicar^{lo} de Fawkyrk, & Roberto Hog, Vicario de Tranent, canonicis dicti monasterii cum diuersis aliis testibus, &c.

„ Eodem die et hora Dompni Georgeus Halcerstone, Jacobus Forman, Thos Scot, Johannes Wrycht, Jacobus Maluill, Georgeus Dvne, Laurencius Bigholme, Henricus Litstar, Willmus Falconar, Patricius Burne, Archibaldus Crauffurd, Georgeus Allerdes, Georgeus Forhous, Georgeus Home, Johannes Farfoull, Willmus Hudson, Willmus Wilkyson, Alex^r Barbour, Jacobus Brovne, &

Foular, canonici et conuentus monasterii, Sancte Crucis de Edinburgh, vnanimi consensu et assensu exposuerunt et recitauerunt quod omnes officarios dicti monasterij per ipsos tunc nouiter electos fuit pro bono eiusdem loci. Et quod unanimi consensu et assensu ipsos in defectu eorum abbatis et superioris elegerunt. Et quod Dompnus Adam Bellantyne, olim prior dicti monasterii stetit tunc et in omni tempore preterito in contrarium totalis conuentus vt asseruerunt. Super quibus omnibus et singulis prefatus Dompnus Georgeus Halcerstone, nomine proprio et tocius conuentus antedicti a me Notario Publico sibi fieri peccit hoc presens instrumentum, &c. Acta coram predictis testibus in choro dicti monasterii vt dictum est.

xvii^o die mensis Septembris anno lxxxvii^o personaliter comparuerunt venerabilis in Christo pater Robertus permissione divina Abbas monasterii Sancti Crucis de Edinburgh Ordinis Sancti Augustini Sancti Andreæ Diocesis et Conuentus eiusdem capitulariter congregatus quiquidem Dns Abbas in presencia dicti sui Conuentus interrogauit a discreto et religioso viro Dompno Georgeo Halcerstone priore dicti Monasterii vbi Dompnus Georgeus Home eius Canonicus eiusdem Monasterij fuit quia ipsum in dicto Monasterio ad certos dies elapsos presentem non vidit vt asseruit et ipse Dominus Georgeus Halcerstone prior publice respondendo dixit quod ipse Dominus Georgeus Home extra dictum Monasterium in die veneris xlii^o die instantis mensis Septembris recessit sine sua licencia et contra suum mandatum et preceptum speciale quia ipse prior virtute sue potestatis inhiuit ipsi Dno Georgeo vt non recederet extra dictum Monasterium sine licencia dicti Dni Abbatis sub omni pena que in hac parte competere poterit hoc non obstante ipse Dompnus Georgeus Home extra suum mandatum in dicto die veneris recessit et ad huc ad dictum monasterium non est reuersus vt idem prior asseruit. Et vltius ipse prior publice confessus fuit pro declaratione veritatis quod ipse Dompnus Georgeus Home nunquam in quocunq; tempore preterito peccit licenciam ab ipse priore quando antea ab ipso monasterio diuersis vicibus transire volebat. Super premissis idem Dompnus Abbas peccit instrumentum. Acta erant hec infra dictum monasterium in vestibulo ejusdem hora quasi decima ante meridiem presentibus ibidem Dompno Roberto Hog

Vicario de Tranent Dno Johanne Bathcat Capellano Matheo Forstar de Berne-tone Johanne Creichton Malcolmo Kincaid et Dno Georgeo Cotis Capellano ac Notario Publico cum diuersis aliis.

The other documents in *Young's Protocol Books* are chiefly Instruments of Sasine and Resignation of Lands, or Instruments of Annualrent payable out of property belonging to the Abbey in various parts of Scotland, or situated within their Borough of Canongate. The proportion of writs referring to properties within borough is very small; and there are numerous deeds and instruments in all the volumes in favour of parties apparently unconnected with the Monastery, who probably employed James Young as their private agent.

The second Clerk of the Borough and Regality was ALEXANDER MACNEILL, who is designed Clericus, before his appointment as successor to James Young. He was probably an ecclesiastic; he resided in the Pleasance, within the Regality, and had an office, "*officium*," in Edinburgh. The contents of his Protocols are very similar to those of his predecessor, and his business appears to have been as extensive. He lived in the time of the notorious Abbot Cairncross, the last Abbot of Holyrood, and appears to have been an acquaintance and protégé of this prelate.

Two documents referring to Abbot Cairncross may be taken as a specimen of his Protocols. The one being his investiture as Provost of the Collegiate Church of Corstorphine; and the other a document relating to his appointment to the Bishopric of Ross. This ecclesiastic of the Roman Catholic Church was, say Keith and Brunton, a cadet of the family of Balmashanner. According to Buchanan, he was "*homo humili loco natus*." However humble his origin was, there can be no doubt that he did much to enrich many of his family and friends, and succeeded in naming one to be his successor as Commendator of Fearn. He commenced his career in public life, as appears from the document afterwards engrossed, as Provost of Corstorphine on 5th August 1527, then a stepping-stone to further church preferment. About the same period he was made Chaplain to King James V., in whose favour he rapidly advanced, for, on 5th September 1528, on the fall of the Douglasses, he was appointed High Treasurer of the Kingdom. He held this office for a very short time, having been removed from it on suspicion of holding intercourse with the fallen Earl of Angus, his predecessor in office, in the beginning of the following year. Notwithstanding this disgrace, his great wealth enabled him in a few years to re-acquire the royal favour, and he obtained various preferments, of great honour and emolument in after life. The first of these appears to have been a seat on the Judicial Bench, as he was made a Lord of Session on 17th October 1533.

Buchanan relates an anecdote of Cairncross, which, to the reader of this no-

tice, will appear to be in keeping with his after conduct in regard to the Bishopric of Ross. Having privately ascertained that William Douglas, Abbot of Holyrood, was on the point of death, he laid a wager of a large sum of money with the King, whose Chaplain he then was, that His Majesty would not present him to the office of Abbot on the next vacancy. The King took the wager, and shortly afterwards, in 1528, appointed him to that office. This bribe eluded the rules of the Church against Simony, and it seems to have opened his way to a series of royal favours soon afterwards. On 2d September 1536, he sought and obtained letters legitimating his three bastard children. On 29th May 1537, he was a second time made High Treasurer. From this office, however, he was again removed, to make way for James Kirkcaldy of Grange, on 24th March 1538.

He next applied for the Bishopric of Ross, the temporalities of which he succeeded in obtaining on 22d June 1539, and he was appointed Bishop in 1540. The means which he used to secure this preferment are fully explained in the very curious document of 12th November 1538, after inserted. And, lastly, he received from the King the Abbacy of Fearn in commendam, on the death of Abbot Denoon, on 9th February 1540.

After the death of James V., the Parliament named Abbot Cairncross one of the Privy Council of the Regent Arran,—an evidence that at least he possessed great ability. He died on 30th November 1545, and was buried in the Chanonry of Ross; and at his request on his deathbed, the Pope gifted the Abbacy of Fearn to his relative James Cairncross,—in token, perhaps, of approbation of his successful career, certainly not as a reward for any ecclesiastical virtue.

The first document above referred to is taken from Volume I. of the existing Protocols of Alexander MacNeill, and is an instrument taken on the Investiture of Robert Cairncross, as Provost of Corstorphine, dated 5th August 1527. It is as follows, viz. :—

Pro Dn^o Roberto Carnecross.

“ Quinto die mensis Augusti anno Dni Millesemo quingentesimo vicesimo septimo Indictione decima quinta Pont^{us} Sanctissimi in X^{to} p^{tris} et Dni. nri. Dni. Clementis Divina providentia Pape septimi anno quarto. In mei no^{ri} et ad hoc vocatorum et rogatorum, &c, personaliter constitutus venerabilis vir et circumspectus vir Dn^s Thomas Wilkieston Prebendarius eccl^{ie} Collegiate de Corstorphine ac presedens capituli ejusd. pro tempore per venerabilem etiam virum Dn^{um} Robertum Carnecross p^{brum} retrospectum legitime requisitus eundem Dn^m Robertum in realem actualem et corporalem seu quasi possessionem prepositurum dicte Eccl^{ie} Collegiate de Corstorphin retrospectum secundum tenorem

presentis collationis induxit et investuit stalum in choro et locum in capitulo recepto ab eodem juramento solito et consueto eid. assignavit adhibitis ad hoc solemnitatibus in talibus obsignavi consuetes presentesq collationes L^{ras} Executionis debite in singulis suis punctis secundum illarum vim formam et tenorem demandavit et executissunt de et super quibus omnibus et singulis memoratus Dn^s Robertus Carnecross a me N^{ro} pub^{co} subscripto sibi fieri petiit unum vel plura publicum seu publica Instrumentum et Instrumenta Acta erant hec in dicta Ecc^{lia} Collegiata de Corstorphin, in choro et capitula ejusd. hora undecima ante meridiem vel eo circa sub anno mense sic, &^c, presentibus Ibidem, &^c, Alexandro Forster de Corstorphin milite Alex^{ro} Wardlaw de Kilbaberthon, Nicholayo Carnecors Burgen de Edinburgh Alex^{ro} Wardlaw, D^{no} Alex^{ro} Philip Thoma Thomson Joanne Howessoun Joanne Penny Georgio Swan et Georgio Malice Cap^{uis} Testibus ad premissa vocatis, &^c.”

The second document is taken from the 2d Volume of his Protocols, viz. :—

Pro supremo Dn^o Rege et Abbate Monasterij Sancti Crucis prope Edinr.

“ Duodecimo die mensis Novembris Anno Dni Im v.cxxx viij Indictione duodecima Pontificatus Pape Pauli tertij ano quarto In mei no^{ri} publici et testium subscriptorum p^{ntia} personalitèr Comparuerunt providi viri David Wod de Crag Rotulator S.D.N. Regis et Oliverus Sinclar de Pitcarnis familiares servatores S.D.N. Regis et Ejus nomine ex parte una et Venerabilis in Christo pater Robertus permissione divina Abbas Mo^{ri} Sancti Crucis prope Edinburgh ex parte altera quequidem ptes ex suis certis scientiis et spontaneis voluntatibus ad hanc devenerunt concordiam ut sequitur in vulgari Thir Indentures maid at the Abbey of the Halie Croce besyd Edinburt the xii day of November the zeir of God Im.V^o and xxxviiij zeirs quhilk conteins proportis and beris lele witnessing in thame self that it is appoyntit and finallie aggreit betuixt honorable persones that is to say David Wod of Crag Comptroller to the Kings Grace Oliver Sinclar of Pitcarnis in Or Sovereign Lords name on that ane part and ane Venerable fader in God Robert Abbot of the said Abbey on that uther part In manner as efter follows that is to say Or said Sovereaine Lord sall write his letters of supplication to our Halie fader the Pape and utheris in the Court of Rome quham to the said venerabill fader will desyre his Graces Letters supplicatoris to be directit for his promotioun to the Bishoprik of Ross, now vacand be deceas of umq^{le} James Bishop of Ross last possessor of the samyn for the quhilk promotioun to be maid in manner foirsaid the said Venerabill Fader sall send his lettres of Procuratorie in dew and lawful form as sall be divisit makand sic persounis as sall pleis the Kings Grace to name his Procuratoris for renouncing and resigning and overgiving in Or Halie fader the Pape's hands his Vice Chancellor and utheris

havand power thairto, his Abbacy of Halirudhous to be gevin to ony persone that pleisest the Kings Grace to name thair^{to} and that in case of his promotioun to the said Bishoprick et non aliter neque alio modo or utherwise be his promotioun to the said Abbey to be decernit to vaik and to be gevin to quham the Kings Grace pleisis as said is, Reservand to the said Venerabill Fader the sum of five hundreth merks of pensioun to be upliftit and tane yearly of the fruits of the said Abbey Indurand his lifytyme, And for sicker payment of the said pensioun yeirlie in manner as said is, the said David and Oliver sall bind yame conjunctlie and severallie and also sall caus Mongo Tenand and William Tod Burgesses of Edin^r to be bunden with thame in likewis conjunctlie and severallie for payment of the samyn to the said Venerabill Fader at twa terms in the zeir Witsunday and Martynmes in winter be equall portiouns ay and quhile or said Soverane Lord provide him of benefice or pensioun of benefice extendand zeirlie to the said sum of v^c merks and sall deliver to the said Venerabill Fader thir letteris Obligatoris hereupoun and that the said Letteris of supplicationis and procuratorie sall be sent with all diligence at the Kings Graces plesor and in the meyn tyme quhill the hame cuming of the saidis bullis the said Venerabill fader sal brouk and tak up the fruits of the said benefice and sall not be molestit troublit nor vexit nor stoppit in the uptaking of all the fruits of the said Abbacy or debts awand to him quhatsumever and sall caus him to obtain letteris to be answerit th^rof as accords and to be done upoun Instruments Attor the said David and Oliver sall get or Soverane Lords writings that the said Venerabill fader sall stand in His Grace's favor and the personis underwritten sall not be molestit nor troublit in the brooking of thair fewis landis and stedings qlk thai have of the said Abbay that is to say, Nicol Carnecross, Walter Carnecross, Charles Carnecross, John Carnecross, Andro Carnecross his Cousings Walter Hoppringill, and *Alexander MacNeill*, *Notar* and to the observing keping and fulfilling of thir p^{nt} Indentures and every point and part thairof lelely and trewlie to be observit keipit and fulfillet in manner as is above written a thir parties are bunden oblist and sworn. Ikane to utheris be the faith and trewith in thir bodies the halie evangelis twichitt In witness hereof baith the said parties hes interchangably subscrivit thir Indentures with thir hands at day zeir and place foirsaid befor thir witnes Maister James Foulis of Colyntoun Clerk of Register Mr Thomas Ballendene of Auchnolinshill and Mr Henry Balnaves with divers utheris."

A period intervned between the date of the last Protocol of Alexander MacNeill, and the first of John MacNeill, his successor in office, when two Notaries, Donald Fullarton and John Porteous, acted as his depute-clerks, probably during his illness or old age. How long they continued in office cannot now be ascertained, as the two Protocol Books kept by them have been lost.

JOHN MACNEILL was probably the son of Alexander MacNeill. He held the offices of Clerk to the Borough and Barony down to the period of the Reformation, when there is a considerable blank from 1555 to 1576, during which no Protocols exist. His business was very similar to his father's, perhaps not quite so extensive, as his books do not contain so many documents of historical interest. He, unlike the previous clerks, resided in Edinburgh, and had his office there also.

The Minute before quoted, authenticating the Protocols of the foregoing clerks, proves the miscellaneous nature of their contents, as it only authorises Extracts by the Common Clerks of the Burgh of Canongate and of Leith, in "so far as the Instruments thairin contenit concerns the Regalitie and Burt above written."

These books are of more varied contents, and of greater interest than the Protocol Books of the Logans and their successors, as they are the sole records of the period to which they relate, now preserved in the Canongate. They contain many writs in favour of the vassals of the Abbey, as heirs of their ancestors, and are thus valuable in pedigree questions at a period prior to the date of any services now existing.

JAMES LOGAN, who succeeded John MacNeill, was probably a son of the Laird of Restalrig. He resided in the Canongate, and had his *officina scriptoria* in Edinburgh. He was Clerk of the Burgh and Regality from 1561 to 1606, and wrote nine or ten Protocol books, besides compiling eight Act Books of the Burgh and Regality Courts, and relative Minute Book, and keeping the Book of Charters of the Commendators of Holyrood. His eight Act Books and Minute Book still exist, and two books of Charters, but all his Protocols have been lost, except four volumes and a fragment.

His son, WALTER LOGAN, N.P., who succeeded him, had an office in Edinburgh, called in his Instruments, *Camera* or *Officina Scriptoria*. He held the office from 1606 to 1634, and wrote six Protocol Books, and nine Act Books, and the remainder of the Minute Book. Seven of his Act Books have been preserved, and one volume of Protocols.

The next Clerk was JAMES LOGAN, son of Walter Logan, who inherited considerable property from his father. He succeeded him at the age of 22, and held office from June 1635 to November 1665. He wrote five Protocol Books, which still exist, and about eight Act Books, of which five remain.

JAMES ROCHEID, of the family of Inverleith, was appointed Clerk at the age of 31, and held the office from January 1666 to 1691, having James Irving as his depute-clerk, from August 1684. He wrote three volumes of Protocols, or rather of a Sasine Record, and part of a fourth volume, which still exist. These books are not kept according to date, like regular Protocol Books.

He was succeeded by JAMES CATHCART of Carreston in 1691, whose depute, James Hamilton, did the duties of the office down to 1694, when he demitted in his favour.

JAMES HAMILTON was clerk from 1694 to 22d February 1704.

The following is a list of the other Canongate Records now remaining :—

I. *Books of Charters.*

Second Book of Charters by Commendators of Holyrood, from 12th May 1560 to 30th November 1579; with Index annexed, and Index of a third volume, now lost. 1 Vol. folio.

Fourth Book of Charters of Lords of Erection of Holyrood, from 26th October 1587 to 4th January 1593. No Index. 1 Vol. quarto.

First Book of Charters, by the Magistrates of Edinburgh, superiors of the Borough and Regality, from last June 1640 to 10th September 1647; with table of contents annexed. 225 Folios.

Second Book of Charters, by ditto, from 1st October 1647 to 27th November 1657.

Fourth Book of Charters, by ditto, from 9th January 1680 to 16th May 1711.

II. *Act or Regality Court Books.*

Containing the Proceedings of Borough and Regality Courts of Canongate and Broughton, as Decrees and Claims, and Retours of Service, Briefs of Tutorship, also sentences in criminal or Justiciary cases decided in the Regality Courts.

James Logan's Books.

There is a volume, commencing 1st October 1561, consisting of 22 pages, which seems to have been discontinued, and filled up with rentals, charters, &c. The regular series commences with—

- Vol. I. 4th May 1569 to 24th May 1574.
- II. 26th May 1574 to 15th May 1577.
- III. 6th June 1577 to 2d November 1580.
- IV. 9th November 1580 to 14th January 1583-4.
- V. 15th January 1583 to 30th June 1586.
- VI. 2d July 1586 to 22d November 1590.
- VII. 9th August 1592 to 15th October 1600.
- VIII. 21st June 1600 to 21st February 1606.

Walter Logan's Books.

- Vol. I. 26th February 1606 to 21st May 1608.
 - III. 5th December 1610 to 11th December 1611.
 - V. 23d December 1618 to 6th August 1620.
 - VI. 9th August 1620 to 28th December 1622.
 - VII. January 1623 to 15th November 1626.
 - VIII. 18th January 1627 to 28th May 1631.
 - IX. 4th June 1631 to 20th February 1634.
- Minute-Book, or Abstract of the foregoing Act Books, from 1569 to 1634.

James Logan, jun.'s Books.

- Vol. I. 26th February 1634 to 20th February 1636.
- II. 4th January 1637 to 31st December 1639.
- III. 25th January 1640 to 23d July 1642.
- IV. 7th January 1646 to 25th August 1647.
- V. 3d January 1657 to 3d February 1657.
- VI. 17th October 1663 to 6th February 1666.

James Hamilton's Act Book.

- Vol. 24th April 1694 to 9th March 1732.

Council Books of Canongate.

- Vol. I. Containing the Acts and Statutes of the Bailies of Canongate, admissions of Burgesses, Treasurers' Accounts, &c., from 1st October 1561 to 23d October 1588. 350 pages.
- II. Containing Acts of the Baillies of Canongate, from 24th September 1623 to 8th March 1652; and Admissions of Burgesses by them, from 27th June 1622 to 27th September 1649; also, copies of Charters, from 1556 to 1652. 60 Folios.
- III. From 21st May 1652 to 5th September 1661, and copies of Charters, from 22d July 1652 to 18th May 1672. 93 Pages.
- IV. From 24th April 1694 to 9th March 1732, containing on other side copies of Charters, from 1st August 1695 to 20th May 1710.

Horning and Inhibition Register of the Borough and Regality Courts.

- Vol. I. 12th December 1597 to 6th July 1602.
- II. 23d July 1602 to 9th May 1612.
- III. January 1613 to 20th June 1655.

Miscellaneous Volume, called Book of Privileges of the Canongate.

Containing copies of Charters in favour of the Burgh, and Seals of Cause of the different Corporations in it—Rentals and Taxed Rolls of the Borough and Regality—Papers in Action between the Commendator of Holyrood and Magistrates of Edinburgh (printed in the Maitland Club Miscellany)—Entries of Burgesses, and other similar documents.

It will be observed from the foregoing list that many blanks occur in the existing Canongate Records, while several of the books that remain, particularly the Regality Court Books of Walter Logan and his son James, are torn and defective. These losses are said to have been sustained partly in November 1650, the period when Cromwell's army was quartered in the Canongate, and when a part of the palace of Holyrood was accidentally burnt, but principally in 1745, when the Highlanders took possession of the Court-House. In an action before the Court of Session, at the instance of Andrew Gardener and others against the Magistrates of Canongate, in the year 1758, witnesses were adduced who had seen the Highland soldiers in the act of tossing the books and papers from the windows of the Court-room into the street in front. We are inclined to think that the damage was done chiefly, if not altogether, at this time. There is, however, evidence from the records themselves that there was a break or interruption during the occupation of Cromwell and his soldiers, as from the end of the year 1649 to September 1651 no entries occur in any of the books; but the soldiers were not then quartered in the Court-House, and were not allowed wantonly to destroy any property.

The Justiciary Courts of the Regality of Broughton were, in ancient times, held by a temporal Peer under a commission from the Abbot of Holyroodhouse, as appears from the oldest Protocol Book. After 1560, the Courts, both civil and criminal, were held by the Bailie of Regality, who generally sat along with the two Bailies of Canongate.

In 1636, the magistrates of Edinburgh purchased the Burgh and Regality of Canongate, and, at the same time, the trustees of Heriot's Hospital acquired the Barony of Broughton and lands included therein. The magistrates afterwards obtained a charter from the Crown erecting Canongate, North Leith, Coalhill, and Pleasance into a Royalty, and confirming "their right and privilege of a Regality, chapel, and chancery, within the burgh and other lands, with a right and privilege of serving breives, making retours, and administering justice in all causes and actions, civil and criminal," &c.

These privileges were confirmed by Parliament in 1661, and the division of

the Barony and Regality of Broughton between the Magistrates and Heriot's Hospital completed and ratified. Under this act the Bailies of Canongate have continued to act in the Court of Service as Bailies of the Regality of Holyroodhouse.

From an early period this Court of Regality of Canongate or Holyroodhouse became a favourite tribunal for services of heirs and breives of tutory, not only of parties who held property or were resident within the Regality, but from parties resident in all parts of Scotland.

The whole procedure in these services were at first entered in the Act Books of the Town Clerks from 1569 down to 1732. After that period, no separate record of services was kept till 1780, but the claims of service and procedure in them are, for the most part, preserved.

From the year 1780, the services were recorded in a separate register, which consists of eighteen volumes folio, from 1780 to 1853. Few, if any, of these are special services to landed property, which were always taken before the sheriff of the county in which it was situated, but, besides general services of landed proprietors and others, these books contain a few services to titles of honour, and are therefore very interesting and useful in genealogical inquiries. The greater portion of these services were duly retoured to chancery, and recorded in the Register of Retours.

Since the foregoing notice was written, I have ascertained that there is deposited in the General Register Office, a volume of John MacNeill's Protocol Book of Infestments connected with Leith, from 17th February 1555 to 18th April 1559, and annexed to it a Protocol Book of John Robeson, Clerk of Leith, from 3d December 1569 to 4th February 1572.