ABSTRACTS OF PROTOCOLS OF THE TOWN CLERKS OF GLASGOW, VOL. I. FIRST PROTOCOL BOOK OF WILLIAM HEGAIT, 1547-55

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WILLIAM HEGAIT

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VOL. I.

FIRST PROTOCOL BOOK OF WILLIAM HEGAIT,
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CONTENTS.

ILLUSTRATIONS.

ADDITION TO INDEX OF NAMES.

ABBREVIATIONS.

I., Indiction; l.l., longest liver, survivor; q., quondam, i.e., late, deceased; t.c., territory of the city of Glasgow.

PREFACE.

The Protocol Book of Cuthbert Simson, published by the Grampian Club twenty years ago, has to some extent familiarised students of local history with the general characteristics of the class of records to which it belongs. But while all the protocol books of notaries officiating in this country possess features in common, their distinctive peculiarities vary with the sphere in which the notary exercised his vocation. Simson was chapter clerk of Glasgow at a time when the ancient church was powerful in the land. He had a large share, if not a monopoly, of the notarial business which the Glasgow clerics had at their disposal, and, accordingly, in his register are to be found not only particulars regarding properties throughout the diocese, but also accounts of proceedings against heretics and other transgressors of ecclesiastical law, together with references to the various matters coming under the wide jurisdiction of the consistorial court. Contrasted with this extensive range of subjects, the Protocols now introduced to the notice of the public deal with matters comprehended within narrow limits, being confined almost exclusively to transfers of property in Glasgow and the western shires; but still the stores of topographical and genealogical information which they contain are such that their publication will doubtless be welcomed by investigators into these branches of knowledge.

Outside legal and archæological circles so little is known concerning Notaries and their Protocols that it has been thought desirable to give a brief outline of their history.

Under the Roman system of jurisprudence, Public Notaries, or Tabellions, as they were otherwise designated, were erected into a school or college, governed by a superior officer holding commission from the Emperor, and care was taken that none should be admitted into the body except those who were of good fame and skilful in the laws. The members were employed in preparing agreements and forming public instruments regarding them, which were treated as probative and entitled to receive legal effect; and they also formed the acts and judicial proceedings of the courts of law. After the fall of the Roman empire, the Emperors who succeeded to the title borne by the Cæsars, and claimed their prerogatives, were accustomed to

appoint Imperial Notaries, who were authorised to exercise their office in any country which had ever been subject to the Roman authority. The Popes also, in virtue of their spiritual supremacy, asserted universal jurisdiction, and appointed Apostolic notaries, for whom was claimed the privilege of exercising their office in any part of the world, both in spiritual and temporal affairs, and to the exclusion of Imperial Notaries in spiritual concerns. For securing the privileges of both orders, Notaries frequently procured admission in a two-fold capacity, and these in their instruments are designed as acting "Apostolica et Imperiali auctoritatibus." In this country an important change was made in the system of admission by an act of the Scottish Parliament, passed in the tenth year of the reign of King James III. (1469 c. 6). Proceeding on the preamble that "oure Soverane Lord hes ful jurisdictioune and fre impire within his realme," it was ordained "that his hienes may mak notaries and tabelliones quhais instrumentis sal have ful faith in all contractis civile within the realme; and in tyme cummyn that na notaris maid, nor to be maid, be the Imperouris autorite have faith in contractis civile within the realme, les than he be examinyt be the ordinare (i.e., the judge ordinary in the ecclesiastical courts), and approvit be the Kingis hienes." While the authority of the Imperial notaries was thus curtailed, it was provided that "ful faith be givin to the Papale notaries in tymes bygane and to cum in all thare instrumentis." With regard to the notaries to be appointed in future by the King, it was ordained that they "be examinit before thair ordinaris bischopis, and have certificatioune of them that thai ar of faith, gude fame, science and lawte (loyalty), according to the said office." Subsequent to this act, notaries who had been admitted by Imperial authority, and in compliance with the new law obtained the Royal approval, were designed as holding office "auctoritatibus Imperiali et Regali."

Another act of parliament, passed in 1503 (c. 8), alludes to complaints made by the lieges against the mal-practices of "fals notaris," and regulations were set down for preventing fraud and insuring greater efficiency. The ecclesiastical judges, "bischopis and ordinaris," were directed to call before them all the notaries within their dioceses, to examine them upon their qualifications and demeanour, and those found acceptable were to be reported to the King, who was to depute certain persons to examine them farther, "and gif thai be ganand (i.e., found fit), to mak them regale gif thai be nocht maid regale of befor."

Previous to this time notaries belonged exclusively to the class of churchmen, but from the terms of a statute passed in 1540 (c. 37), it is to be inferred that laymen were then beginning to enter the profession. By this act sheriffs were required to examine laic notaries, and the "ordinaries" all notaries spiritual, within their respective bounds, and to admit them by acts of court; and, with the view of securing uniformity in the attestation of instruments, notaries were required to insert in a book the signs and subscriptions to be used by them in all instruments passing under their hands. By the statute 1551 (c. 17), which sets forth that the acts concerning notaries had not hitherto been put to due execution, it was ordered that the laws should be duly enforced, and (c. 19) that within a certain time sheriffs should bring or send all "notars temporall men," and the ordinaries "all spiritual notars," within their respective bounds, to the burgh of Edinburgh, and there present them to the lords of council to be examined, and (if found qualified) admitted to the office, till which admission their instruments were to have no effect. It would seem, however, that the laws "anent notars" were not much honoured in the observance, because the next statute on the subject (1555, c. 18) again refers to the preceding acts as having "tane na dew and effectual execution." Sheriffs, bailies, and others, were therefore directed to cause the notaries within their respective districts to appear before the lords of council at Edinburgh, "bringand with them thair creatiounis and haill protocollis . . . to be examinat, and their creatiounis viseit by thame, their protocollis producit to be markit be the saidis lordis, and the levis numberit and the blankis markit . . . And as thai be fundin qualifeit and admittit be the saidis lordis of counsall to use the office of notar thairefter." If any notaries should be convicted of "falset," their moveable property was ordered to be forfeited, "and they to want thair rycht hand, and to be banist the realme for ever." Commenting on the dismemberment part of the punishment, the author of a work on "The Office of a Notary Public" (1812) complacently remarks that "the writing hand being regularly the right one, our statute orders the loss of it; and the reason of this punishment seems to be grounded upon the equity of the thing, for it is but reasonable that that part of the body should suffer which committed the crime."

With the abolition of consistorial jurisdictions consequent on the Reformation, farther changes in the system of admitting notaries were introduced. By the Act 1563 (c. 16), it was ordained that all notaries who had not as yet been examined by the lords of council should appear before them for