

Thesis for the Degree of Doctor of Philosophy in the
Faculty of Arts.

TITLE. THE BURGH OF THE CANONGATE AND ITS COURT.

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INTRODUCTION.

The foundation of this thesis is a manuscript Court Book of the Regality of Broughton and Burgh of the Canongate covering the period from August 1592 until September 1600. Supplementary documentary material is provided by the Protocol Books of James Logan, the contemporary clerk of Court. The Court Book was made available through the kindness of Dr. Marguerite Wood, the Edinburgh City Archivist, and the latter through the courtesy of Mr. C.T. Macinnes of H.M. Register House.

Its title is perhaps a misnomer in that the Regality of Broughton receives as much consideration as the Canongate itself. This was inevitable as the Burgh and Regality Courts were usually held together in the Canongate Tolbooth and shared the same Court Record.

In brief, four main but connected themes are followed. The territorial limits and judicial and administrative competence and functions of the Regality are firstly indicated. Thereafter, the Canongate and its Court are related to the Superior Jurisdiction and its Tribunal. In this are considered the purposes of a Burgh of Regality like the Canongate, the control exercised by the Baron of Broughton over his Burgh, and the competence of the Burgh Court itself.

The actual contents of the Court Book then receive more direct attention. The procedure of the joint-court, its officials and sessions are considered together with the details

of its administrative duties and of the principal types of civil actions held before it. The few criminal causes are also touched upon.

The four concluding chapters stand to some degree apart from the rest of the thesis, although all are based upon the two primary authorities. One deals with the deeds of the Regality criminals, rather than their mode of trial, and another with a few gleanings upon Burgh life as revealed by the Court entries. The last two, drawn mainly from the Protocol Books, are devoted to the vassals of the Regality, their lands and tenants.

The thesis is therefore moulded and directed by the manuscript sources. This limitation has excluded certain aspects of Burgh and Regality affairs. The history of the Canongate and Broughton, the story of the Canongate and its Superiors after 1660, and the Burgh Gilds have been generally disregarded. This is due in part to these subjects being covered elsewhere. The straight history^{ies} of Burgh and Regality are recorded in the two Books of Mackay mentioned in the Bibliography, while the Gilds are the concern of numerous articles in the Book of the Old Edinburgh Club. Again, the Court Book has little fresh information upon these matters.

In general character the thesis is an essay into legal and institutional history. The economic functions of the Canongate are sacrificed to its position within the administrative and judicial life of the Regality, and to its own

administration and Court. The title should accordingly be interpreted as comprehending a study of the Burgh of the Canongate as a unit within the Regality of Broughton and of the broad relationship between the Burgh and its overlord. The last part of the title covers the institutional detail and work of the Court of the Canongate which was held along with the principal Regality Tribunal. The concluding chapters being drawn from material provided by the Records, are also comprehended within the title.

CHAPTER 1.

The Burgh of the Canongate and the Regality of Broughton.

The ancient ecclesiastical Burgh of the Canongate is now little more than the lower portion of the High Street of Edinburgh. Its houses have decayed and its status has fallen low, but traces survive of its former glories. The site of the Netherbow is a reminder that Edinburgh once halted half-way down the road to Holyrood: while the Canongate Tolbooth, bears witness to an independent burgh with its own bailies, court, and prison. The names of Huntly and Moray,¹ although perhaps attached to the wrong houses are at least a reminder that once the Canongate provided town residences for the old Scots nobility.

The most outstanding memorial to the former burgh is the ruined Abbey next to the Palace of Holyrood. The Canongate, or "way of the Canons", owed its being to the Augustinians planted there by David I. The monarch allowed his canons to found and establish a burgh:² and upon this permission arose the houses, tenements and gardens which occupied the ridge between the Abbey and Edinburgh. While Edinburgh was a royal burgh, an immediate vassal of the Crown, the Canongate was an ecclesiastical burgh held by the Abbot and convent from the King. The Canongate rested on a lower rung of the feudal ladder than did Edinburgh, but for centuries, belonged to Superiors in no way related to, or dependent upon, the royal burgh.

The Abbey of Holyrood possessed more than the Burgh of the

Canongate. David and succeeding monarchs, pious laymen and landowners, had gifted to it lands not only in the Sheriffdom of Edinburgh, but also throughout southern Scotland. To these was eventually accorded administrative and judicial unity, by the creation of the Regality and Barony of Broughton. The Canongate formed an integral part of this wider, although later, organism; so much so that in many respects, the Burgh was in no way distinguishable from the other elements within the body politic. Yet again, the Canongate was a distinct unit, and this dual aspect of the Burgh in relation to the Regality makes it impossible to disregard the latter. To do so, would be to create an artificial barrier which would be only partially justified. Some features of the Canongate court, of the burgh's economic life, of its feudal position would remain unaffected: but others, many more, would remain unexplained.

Both the Canongate and the Regality of Broughton must be considered, and this involves, firstly, an investigation of the territorial extent of particularly the superior unit.

The Canongate and the other Abbey lands remained for some time constitutionally unaffected by the Reformation. From 1539, secularisation had been heralded by the succession, in place of abbots, of the three commendators, Robert Stewart, an illegitimate son of James V,³ Adam Bothwell, Bishop of Orkney,⁴ and from 1582, John Bothwell, the former's son.⁵

Despite the substitution of a lay head, the convent in theory, and until the 1570's⁶ in practice, still survived. The

Act of Annexation of 1587, not only dissolved all convents and chapters but also annexed ecclesiastical lands to the Crown.⁷ From this provision, the Holyrood lands were exempted,⁸ for the greater part, comprising the baronies of Broughton, Kerse and Whitekirk had been resigned by John Bothwell, who retained the Abbey, the barony of Dunrod and a feu of half the lands of Whitekirk.⁹ These, with the barony of Whitekirk were in 1607, erected into the Lordship of Holyroodhouse.¹⁰

The bulk of the Abbey lands, with the hereditary bailiary and justiciary of Broughton and Dunrod¹¹ were, in 1587, made into the secular Regality and Barony of Broughton, with its principal messuage at Canonmills and held in blench farm from the Crown, in favour of Sir Lewis Bellenden, Lord Justice Clerk.¹²

The Bellendens were a noted ^{5^a} local and political family of the day. Sir John Bellenden of Auchnoull had steered an adroit political course under Mary of Lorraine and Mary, Queen of Scots, and had acquired the hereditary justiciary and bailiary of Broughton, as well as some of the Regality's lands.¹³ His son Lewis was an equally successful politician, one of his greatest rewards being the Regality of Broughton.¹⁴

Of the constituent baronies, that of Broughton was the senior, consisting of lands granted by David I.¹⁵ Situated within it was the Canongate, which was divided from Edinburgh by Leith Wynd, the Netherbow and St. Mary's Wynd.¹⁶ Leith Wynd ran northwards, all its eastern side, with the exception of Paul's Work,¹⁷ at its foot, being within the Canongate. The

Strand, or outlet of the North Loch skirted the bottom of the Wynd, and flowed down the back of the gardens of the north side of the Burgh.¹⁸ The north-east exit from the Canongate was the Watergate, both sides of its approach being part of the Burgh.¹⁹ Behind the tenements on the east side were the Abbey gardens.²⁰

The other, southern boundary of the Canongate, from St. Mary's Port, was the road, an extension of the Edinburgh Cowgate, along the rear of the south tenements.²¹ On this side the Canongate stopped short near the Palace Yard.²² Excluded from the competence of burgh bailies was the sanctuary,²³ and from the Regality's jurisdiction the royal policies and gardens,²⁴ the Abbey and the yards and feus within its limits.²⁴

The Barony, as distinct from the Canongate, began with Godbairnscroft. This croft lay immediately to the north of the Abbey cemetery being bounded on the north and east by the lands of St. Anthony, and upon the west of the Commendator's gardens.²⁵ The lands of St. Anthony were, in strictness, divided from Godbairnscroft by the Strand, and on their other sides were bordered by the road to Clocksorrow Mill and Restalrig. They had at no time formed part of the Barony.²⁶

The two Commendator's gardens had been feued to ~~the~~ Stewart's magister hospitii in 1567.²⁷ Both lay between the cemetery and St. Anthony's lands; but were divided by a road, which emerging from the graveyard, ran north to meet the road which left the Watergate for Leith. The west garden was bordered in the west by a royal garden which lay behind the

houses beside the Watergate.²⁸

Outside the Watergate was the Brokhous Bog which formed part of the barony, being within the small wedge-shaped territory of Ironside, which rested upon the Strand but was otherwise practically enclosed by the lands of the Barony of Restalrig.²⁹ Of these, MacNeil's craigs came down from the Calton Hill, followed the western march of Ironside and bordered the Strand, occupying the area delimited by Ironside, the Strand and the road which led from Leith Wynd past Trinity College, and St. Ninian's Chapel to Leith.³⁰ On the west side of this road the Calton Hill was entirely within Restalrig, save for the Broughton Greenside and Green. These tiny feus were immediately to the south of the more famous Greenside of Edinburgh, and to the west of another section of the MacNeil lands.³¹

The north fringe of the Calton Hill, from Greenside to the Quarry Holes was within the Barony of Restalrig. Wrightslands, a Broughton territory, had a ragged southern border with this Restalrig portion, roughly upon the line of the present London Road.³² Wrightslands' eastern border was formed by the road from Holyrood to Leith, but its northern continuation, Fluiris left the road for the Greenside Burn, passing to the west of the Under Quarry Holes, and striking the Edinburgh to Leith road at about Springfield Street.³³

The west side of the road from Edinburgh to Leith was

was practically entirely within the Broughton Barony from the foot of Leith Wynd to the northern march of Pilrig. Trinity College Church and its lands were now the property of Edinburgh,³⁴ but its neighbours Fergusson's Croft³⁵ and St. Ninians Row³⁶ were within the Regality. The line down the Leith road was continued by St. Ninian's Chapel,³⁷ Multraisehill,³⁸ the territory of Broughton,³⁹ by the Canongate's common moor and Gallow Lee,⁴⁰ and finally by Pilrig.⁴¹

The southern limit of this area was formed by Halkerston's Croft which approached almost to the North Loch and adjoined Fergusson's Croft on the east.⁴² Halkerston's Croft vanished into the marshes at the head of the Loch,⁴³ and thereafter the Lang Gaitt marked the border between the Barony of Dalry and Coates, although the latter strayed across the road to follow Dalry Loan, only to return to the Lang Gaitt just short of Coltbridge, leaving Roseburn to Dalry.⁴⁴

On the far side of the Water of Leith, no Broughton territory was to the north of the Lang Gaitt, but on its other side were the Barony lands of Saughton and Saughtonhall. The former was forced away from the road by the protruding wedge of the town and lands of Corstorphine.⁴⁵ The Stank, an artificial waterway, probably made a more accurate boundary; cultivated areas of Saughtonhall adjoining it, and approaching very near to Corstorphine Castle between the two lochs.⁴⁶ The Broomhouse lands of Saughton followed the Stank, as it made a semi-circular sweep around the village of Corstorphine; the lands lying to the

west of the township.⁴⁷

Broomhouse, Lairdship and Sighthill, all part of Saughton marched with the Gogar possessions of Restalrig, ~~the~~ Sighthill having the Lordship of Hailes on the south.⁴⁸ Saughton lay almost entirely to the west of the Water of Leith, but Saughtonhall crossed the river to border the lands of Gorgie Mill, the line of Gorgie mill-dam, and, in the north, Roseburn on the Haughs of Dalry.⁴⁹

From Coltbridge towards the sea, the Water of Leith was a clearly defined north-western march of the Barony: and its territories of Coates, Meldrumsheugh, Broughton, Canonmills, Walkmills and Battlehaughs.⁵⁰ At Canonmills, however, the Barony again strayed over to the far bank. Warriston's eastern limit was formed by the road separating it from the Barony of Inverleith, its northern by the Anchorfield Burn some distance to the north of the present road from Leith to Queensferry. Beyond the burn were lands belonging to the Crown.⁵¹

The Anchorfield Burn divided Warriston's western neighbour, Bonnington from the former Barony lands of Newhaven, while on the east Bonnington was flanked by Hillhousefield.⁵² Hillhousefield ran down to the Water of Leith, and was bordered on the north and east by the Green. Beyond the Green was the Forth and North Leith. Hillhousefield, the Green and North Leith all belonged to the Barony, occupying the rough triangle between sea and river. Bonnington crossed the Water of Leith,

joining Broughton and Pilrig to form the solid Barony territory west of the Edinburgh to Leith Road.⁵³

Pilrig and Bonnington were held off from South Leith by the interposing bulk of Leith Links. South Leith and its pendicles belonged to Edinburgh, but a small area, although in the Barony of Restalrig, had for long been incorporated within the Regality of Broughton. This region of St. Leonards lay on the other side of the bridge from North Leith, and included the Coalhill, the Vaults, Tower and Blackhall. St. Leonard's Wynd enclosed it on the south, the Shore or track along the river on the north, and the road to the bridge on the east.⁵⁴

So much for the baronial lands which lay to the north and east of the Abbey and Canongate. On the other side lay a smaller region. One boundary was made by the royal south garden at Holyrood.⁵⁵ From there another line ran along the wall enclosing the King's Park, although in strictness it crossed at one stage, to include part of the Park,⁵⁶ and halted at the northern bound of Priestfield, outwith the Barony.⁵⁷

The opposite line skirted the gardens of the south back Canongate to St. Mary's Port.⁵⁸ A useful intermediate boundary was then formed by St. Leonard's Way, which emerging from the Port, made its way to St. Leonard's Chapel, and eventually to Dalkeith.⁵⁹ Within this region, were Meadowflatt, Dishflatt,⁶⁰ the chapel and crofts of St. Leonards,⁶¹ the eastern part of the village of St. Leonards, or Pleasance,⁶² and part of the Crichton

St. Leonard's lands.⁶³

On the other side of the road, the Barony's north east corner was the croft of the Pleasance, immediately to the south of Blackfriar's Croft,⁶⁴ which in its turn, was divided from Edinburgh by the Thief Row or modern Drummond Street.⁶⁵

From the Pleasance proper, the Broughton line made its way along the East⁶⁶ and West Crofts of Bristo,⁶⁷ included⁶⁸ within the Barony the Thief Acre behind the Potterrow, and reached at the bottom of the row, the road which left Edinburgh at the Bristo Port.⁶⁹

This road made its way southwards, skirting the eastern shore of the Burgh Loch. Until Preston Street, it made the west border of Broughton, the whole being comprehended within St. Leonards.⁷⁰ A small strip of Broughton, the land of Lochflatt, lay however, to the west of the road, between the Dalry lands of Highriggs and the Burgh Loch, appropriating part of the north shore.⁷¹

At Preston Street, the St. Leonard's boundary moved eastwards, following the line of that street, and its continuation Park Road back to the wall surrounding the royal park.⁷² At the east end of Preston Street, however, the Edinburgh lands to the south thrust in the wedge of Spittalfield or Gallowgreen, forming an alien triangle, based on Preston Street, bounded on the east by the road to Dalkeith and extending to beyond the Montague Street of to-day.⁷³

These regions, now largely absorbed within the modern

city of Edinburgh formed the core of the Barony of Broughton: and their inhabitants were the principal participants in the affairs and concerns of the Regality Court in the Canongate.

Detached portions of Broughton still remain to be mentioned: Slipperfield to the south of West Linton, Little Fawside near Tranent,⁷⁴ Pendreich near Lasswade,⁷⁵ Harlaw and Barbourland,⁷⁶ Sandersdail,⁷⁷ Back and Fore Spittal,⁷⁸ and lands near Linlithgow,⁷⁹ were all additional, and often later parts of the Barony.

The Barony of Whitekirk was situated entirely within the constabulary of Haddington, being centred upon the ancient church of the same name, a few miles inland from North Berwick.⁸⁰ Its lands included the Mains of Whitekirk, Pilmure, Gilliswall, Stonelaws and the lands of Ford, together with Linton Mill and portions of East Fortune.⁸¹ The Holyrood part of Saltpreston, including Prestonpans also belonged to this Barony, although, through usage, it had become attached to the Barony of Broughton.⁸¹

The final constituent barony was that of Kerse and Ogilface. Ogilface lay in the extreme west of the Sheriffdom of Linlithgow, mainly in the parish of Torphichen⁸² and to the west of the Barbauchlaw Burn near Armadale:⁸³ its lands including Brighouse, Birkenshaw, and Hillhouse, Canty or Killicanty, Badlormie and other regions.⁸⁴

Ogilface was incorporated by Robert III into the Regality and Barony of Kerse.⁸⁵ This large jurisdiction, or more particularly, its lands had been gifted to the Abbey by

Alexander II,⁸⁶ and lay along the Stirlingshire coast between⁸⁷
the Avon and the Carron. Here its lands included Bearcroft,⁸⁷
Abbotsgrange,⁸⁸ Newhouse,⁸⁹ Bowhouse⁹⁰ and Reddoch.⁹¹ Further
inland, the barony comprehended Little Kerse,⁹² Polmont,⁹³
Gilston,⁹⁴ Redding,⁹⁵ Mumrills⁹⁶ and part of Falkirk⁹⁷ and
moving towards the Carron, Middlefield⁹⁸ and Carronbank.⁹⁹

Along the Carron were the lands of Inche,¹⁰⁰ Saltcoates,¹⁰¹
the pendicles of Heuck,¹⁰² and Heuck¹⁰³ itself on the far bank.
West Kerse, Mongwell and Randeford belonged to another, and
distinct Barony of Kerse.¹⁰⁴ On the other shore of the Carron,
the Holyrood Kerse included not only Heuck, but also Letham,¹⁰⁵
and a few acres of Airth.¹⁰⁶ The remainder of Airth,¹⁰⁷ the
Haughs of Airth, Powfoulis¹⁰⁸ and other lands occupied the
sea-coast until Heuck was once more reached.

CHAPTER 1.

1. Certainly so in the case of Huntly House.
2. Holyrood No. 1.
3. Scots Peerage: vi p. 572.
4. Scots Peerage. iv p. 429.
5. Scots Peerage: iv p. 432. R.M.S. v. No. 337.
6. Wood: p. 212: pges 299/300.
7. A.P.S. 1587 c. 29.
8. Supra.
9. John Bothwell evidently retained Dunrod, for it was not gifted to Lewis Bellenden. In 1587/8 Bothwell was confirmed in the lands and barony of Whitekirk with privilege of Regality and of Bailiary (R.M.S. v. No. 1484): of which lands his mother, Margaret Murray already held half in feu (supra. No. 119). Whatever the effects of this grant, it did not prevent Henry Sinclair, Margaret Murray and the Laird of Niddry, from performing service in the Broughton Head Courts, although James Bellenden did not take sasine of the lands in 1591 (Exchequer pges 541 et seq.).
10. Scots Peerage. iv. pges 432/3.
11. Exchequer: p. 538 - James Bellenden given sasine of Bailiary of Dunrod.
12. R.M.S. v. No. 1304.
13. Scots Peerage. II p. 64 et seq.
14. Scots Peerage II p. 68 et seq. R.M.S. v. No. 1304.
15. Holyrood No. 1. With a few later additions.
16. Leith Wynd ran northwards, and St. Mary's Wynd southwards: the site of the Netherbow is still marked. For this boundary see Gordon of Rothiemay's map.
17. Paul's Work lay at Leith Wynd Port on east side of Wynd. & Rothiemay.
18. The Strand followed line of North Back Canongate

(O.E.C. v. 23 p. 143/4) and is always given as the northern boundary of the tenements on north side of the Canongate, despite the presence of a road on south side of burn.

19. For position of Watergate see Rothiemay: the retour of Johne Makcall (M.S. 6 March 1595/6) to an annualrent of 40s. "de toto et integro vno tenemento terre ante et retro subtus et supra cum pertinen. ----- Jacen in dicto burgo vicicanonicorum prope communem portam eiusdem nuncupat. Lie Watteryett Inter tenementum Andree Chalmeris ac hortum eiusdem tenementi ac hortum sacriste dicti monasterij ex orientali, communes vias regias ex occiden. Ex australi partibus et prefatum hortum dicte sacriste ex parte boreali"; places the north side of Watergate in the Canongate.
20. M.S. 6 March 1595/6. By Rothiemay, the Sacristan's garden was probably the north royal garden.
21. The present Holyrood Road. See also Note 63.
22. In Horse Wynd which skirted the Abbey Close (Ainslie. 1780).
23. For the history of the sanctuary see Mackay: Canongate p. 157 etc: the Canongate from the Girth Cross was within its bounds. Sanctuary after the Reformation was provided only for debtors.
24. The buildings and yards within the Abbey were held as secularised holdings from the Commendator: amongst these vassals was the unlucky Earl of Gowrie (Logan: 3 Jan. 1601).
25. Logan 4 Dec. 1588. For Mr John Hairt, son of late John Hairt, the croft called Godbairnis Croft, next to the garden of Commendator formerly occupied by Christina Stevenson, mother of late John Hairt.
E. & W:- Lands of the Chapel of St. Anthony, occupied by John Acheson.
W. & S:- Said garden and Abbey cemetery.
26. Logan 3rd July, 1579: For David Livingston son and heir of late D.L. Burgess of Edinburgh.
10 acres lying next to Monastery.
N. & E. Common way to bridge called Clocksorrow Mill.
S. & W. Stream descending next to cemetery and gardens of monastery to Clocksorrow Mill.
Held from John Leirmonth.
Logan 7 July 1579 - For John Acheson, master coiner to King, and Margaret Hamilton, his wife - these acres sold and alienated by D. Lindsay.

27. R.M.S. iv. No. 2557: gardens granted to John French, Magister hospitii 26 April 1567.
28. M.S. 9 July, 1595: Extract from retour of Robert French, son of above.
 "---de toto et integro illo horto --- Jacen. Ex parte boreali cemiterij monasterij antedict. Inter communem viam qua itur, a mansione dicti monasterij ad villam de Leith ex parte orientali hortum S.D.N. regis ex parte occidentali dictum cemiterium ex parte australi et terras olim occupat. per quond Davidem Levingstoune nunc vero Johannem Achesoune ---- ex parte boreali. Necnon de tota et Integra illo altero horto -- Jacen. Ex dicta boreali parte dicti cimiterij Inter dictam communem viam ex parte occidentali terras quond. Johannis Hairt nunc vero magistri Johannis Hairt ex parte orientali dictum cemiterium ex parte australi et terras olim occupat per quond Davidem Levingstoune nunc vero per dictum Johannem Achesoune --- ex boreali."

By Rothiemay the dividing road ran northwards from a gate roughly half-way along the cemetery.

29. Ironside and the Brokhous Bog: O.E.C. v. 23 pges 143/4: Young No. 173. Logan 19 May 1580. For Alexander Lawson, servitor to James, Earl of Morton: inter alia, two acres in Barony of Restalrig.
 E - Barony of Restalrig: S. The Stryip and Ironside.
30. MacNeill's Craggs.
 Logan 16 Oct. 1577. Lands resigned by William MacNeill in favour of Mr Robert Wilkie, son of James Wilkie, Burgess of the Canongate. (Lands on Crag Engalt descending) to the lower west part of the lands of Ironside, and from there go along the commonway which skirts the gardens of the Burgh of the Canongate, to the west to the Church of Trinity College. From there the lands pass by the said Church along the commonway which goes from Edinburgh to Leith, right up to the lands called Greenside. From ^{which} the lands go to Lawson's Acre occupied by the late John MacNeill, and thence directly south to the west part of the lands wadset to John Logan of Coatfield --- which are at the top part of the lands of Ironside. From there, they descend "per fossam" to the forsaid west corner of Ironside.
 Archibald Wilkie.
 The Burgh and later Regality, bailie, Master Archibald Wilkie was probably an elder son of James Wilkie. He certainly possessed James' Canongate tenements (M.S. 6 March 1595/6 -- "de toto et integro occidentali tenemento quond Jacobi Wilkie nunc pertinen magistro Archibaldo Wilkie -- ."

31. The Broughton Greenside. Logan. 7 March, 1579/80.
For John Norwell, indweller in Raith.
1) Greenside. N. Edinburgh (Greenside).
2) The Green: N.- Greenside and the playfield next to
Burgh of Edinburgh.
For Edinburgh Greenside: see ^{Edin.} City Charters: xxxvi pgs
82/83.

32. Greenside: Quarryholes: Wrightslands.
1) Logan 16 Oct. 1577: For Mr Robert Wilkie (see 30).
a) 3 acres below Craigengalt on north side.
E - Barony of Restalrig. W - Greenside.
S - Craigengalt: N - Lands of Wrightslands and
Chapel of Holyrood.
b) 2 acres etc: below the west and over Quarryholes.
E.W.S - Lands of Barony of Restalrig and the
Quarryholes. N - Wrightslands.
c) 4 acres: W - commonway from Holyrood to Leith.
E. & W: the above Restalrig lands: S - road from
Canongate to Restalrig.
2) Logan (as 30).
6 acres below west Quarryholes: E - MacNeill's lands.
N - Wrightslands.

By Ainslie 1804, the lands of Heriot's Hospital crossed
the proposed Haddington road to an irregular boundary on
lower slopes of Calton Hill.

The Quarryholes lay on east side of Easter Road in
London Road and Carlton Terrace area. (Ainslie 1804 and
Lothian Map 1825).

33. Wrightslands and Fluiris.
Ainslie 1804 - Heriot's Hospital lands occupied entire
area between Easter Road and Leith Walk to a point
roughly parallel to the north end of the present
Shrubhill (or old Physic Garden): and then, on the
Easter Road side, made a V shaped course to the Greenside
Burn. This burn flowed through the middle of the area
gradually shifting to the west. The region between the
burn and Leith Walk is marked by Ainslie as Heriot's land
and stretched either to Springfield Place or to Duke
Street. This coincides with; Logan, 22 April 1580.
For Florence Balfour.
3 acres of Coatfield in Nether Quarryholes.
S - Coatfield lands. W - Lands of Fluiris pertaining
to James Logan: E - Wester Quarryholes.
The Nether Quarryholes lay to the west of Easter Road
(Ainslie 1804) near Lorne Street. That Fluiris was the
Regality land, west of the Greenside Burn and the Nether
Quarryholes is shown by Logan: 3 Nov. 1590: For John
Bellenden and Helen Tekpill, his wife.
The Bog in north part of Wrightslands.
E.S.W. Wrightslands. N - Fluiris.

34. R.M.S. iv. No. 1802:
35. Logan: 23 Oct. 1577. For Robert Henry, burges of Edinburgh, and his wife, Helen Mowbray. Two acres of Fergusson's Croft, to the west of Craigenfalt.
N - lands of St. Ninian's Chapel. S - lands of Trinity College. W - Lochflatt: E - Road from Edinburgh to Leith.
36. The village of St. Ninian's Row lay on east side of road between the two churches (O.E.C. 19 p. 105) in the Barony of Broughton. In 1595 part at least, belonged to William Cockie, by then owner of Fergusson's Croft:
M.S.: 20 July, 1595.
"The quhilk day in presens of Johne Bellendene baillie depute --- compeirit Master James Bannantyne and Williame Cokkie quha of thir awin frie & motive willis become actit band & obleist thame to latt nor sett ony of thir landis in S. Nunianisraw to na maner of tennent nor tennentis but to sik as salbe fund responsale & honest & to keep guid & sufficient ordour in the kirk and keip the saboth day ---."
37. St. Ninian's Chapel O.E.C. 19 p. 92/3 "at the fute of --- Leith Wund --- upoun the entrie of -- the Lang Gait."
38. Multraisehill. Area now covered by General Register House and adjacent buildings. e.g. EOGAR's Map 1742.
39. The eastern boundary of Broughton was formed by the road from Edinburgh to Leith, and further south by Pilrigmoor.
- A) Wood p. 116 23 Nov. 1569.
The lands of Drum in Broughton.
E - common way from Edinburgh to Leith.
 - B) M.S. 20 March, 1593/4. Retour of Martha, Elizabeth and Euphemie MacCalyeane.
Acres of the Oxinfald and Fluiris of Broughton.
E - Pilrigmuir.
 - C) Logan 29 May 1588 - For Helen Robertson, wife of John Vaus in Leith.
 - 1) 5 acres in the Gallowlee Shot of Broughton.
S - Edinburgh - Leith road.
 - 2) 5 acres - the Fluiris and Brigis of Broughton.
E - Pilrig and the Fairneyhill.
40. Mackay. Canongate p. 87 - Gallowlee situated at Shrub Hill.
41. Pilrig ran down Leith Walk from Pilrig Street to near the Kirkgate (Ainslie 1804).

42. O.E.C. v. 13: Bearfords Park. and note 39.
43. O.E.C. v. 13 as above.
44. Logan 28 July, 1577. For John Kincaid of Warriston.
 1) inter alia - lands in the "betuix the croces In & ta
 lie Bellis croce ---" shot.
 E - the road from Edinburgh to its common mills
 (Bells Mills).
 S - the Lang Gaitt.
 2) a piece land - the Howpairt. S - lands of town of
 Dalry.
 N - the commonway.
 3) 7 acres in the Howpairt. S - the loan of Dalry.
 O.E.C. 25 p. 115T 552. By THE MAP OF 1810 FACING
 P 72 MELORUMSHEUCH ALSO CROSSED THE LANG GAITT BEING
 BOUNDED BY LOTHIAN ROAD.
45. Upton Selway p. 5: Map of Corstorphine Village 1777.
 Corstorphine lands extended to about present Pinkhill.
46. Logan 11 June 1590 - For Nichol Dalzell and his wife
 Catherine Wood. Three Butts lying together below the
 Carrick and one rig called the Stanksyid.
47. Upon Selway as 45. Broomhouse and the other Saughton lands
 divided from Corstorphine by the Stank.
 Gogar and Hailes.
48. R.M.S. v. No. 49: 800: Hailes had belonged to the
 Preceptory of St. Anthony in Leith. (R.M.S. v. No. 1850).
49. Saughtonhall.
 Logan 26 June 1590 - For Thomas Wilkie.
 1) 2 rigs on east side of Water of Leith and on south
 side of royal way.
 a) 1 rig - E. - lands of Gorgie Mill.
 W - said royal way.
 S & N - other Saughtonhall feuars.
 b) 1 rig - E - Gorgie mill-dam.
 W - Water of Leith.
 N & S - above portioners.
- Logan 11 June 1590 - For Nichol Dalzell - etc.
 A piece land lying "apud domum" of Alexander Reid.
 M.S. - 28 May 1595 - John Reid, son to Alexander Reid
 indweller in the Haughs.
50. None of these lands crossed the river eg. O.E.C. no 44.
 (old Edinburgh Maps No. 2). The last does
 place a small portion across the stream from the Water

of Leith, but this map does not place the Barony lands of the Sixteenth Century. Battlehaughs, Walkmills and Canonmills all belonged to the Bellendens (eg. R.M.S. iv No. 1385). The first is almost certainly the Canonmills Haugh of Ainslie 1804, immediately to the north of Fettes Row.

51. Warriston. Logan 3 Oct. 1588. For John Kincaid.
 - W - lands of John Towers of Inverleith.
 - E - Bonnington.
 - N - lands of common muir feued to tenants by late King.
 - S - Broughton.
 - Ainslie 1804 - modern west boundary - Howard Place and Inverleith Row. North - Anchorfield Burn.
52. Bonnington: O.E.C. v. 19 p. 142 - northern boundary - Anchorfield Burn.
 - M.S. 20 Sept. 1600 - N - lands of Newhaven (also Logan 10 Nov. 1577).
 - S - Water of Leith.
 - For internal bounds of Bonnington see O.E.C. v. 19 pge 142 et seq.
53. Hillhousefield.
 - Young 190 - Bonnington on west; also Logan: 11 Sept. 1589: Logan. 14 April 1580 - Water of Leith on south.
 - Logan. 14 April 1580
 - 25 May 1588. Green on north and east.

North Leith and Green: eg. Young No. 142.
54. St. Leonards, Leith.
 - Edin. Charters No. xxvi pges 64/66.
 - YoungL No. 620.
55. Meadowflatt and Dishflatt: Logan 27 Sept. 1589.
 - E - Gardens of S.D.N. King of Holyroodhouse occupied by John Moreson.
 - W - Crofts of St. Leonard's Way.
 - N - The steep and gardens of the Canongate.
 - S - Lands of St. Leonards.
56. O.E.C. v. 23 p. 111.
57. O.E.C. v. 23 p. 112.
58. On the road down the back of the Canongate.
 - M.S. 14 May, 1600. The half of a half acre of James Liberton "liand in sanct leonardis wynde now callit pleasance on the eist syde of the transe thirof --- the commoune venneal on the noirth the landis of

Dishflatt on the eist and the commoun King Gaitt on the west pairtis".

59. eg. O.E.C. v. 23 p. 112: Old Edinburgh Maps.
60. As 55.
61. O.E.C. v. 23 et seq.
62. The Pleasance was a name properly applicable only to the Pleasance Croft; but already at this period its use had spread to the entire village eg. M.S. 23 Feb. 1596/7: "The Berne yaird of Johne Hendersone in pleasance!" although "sanct Leonardis Gaitt" was still employed (M.S. 1 June 1594).
63. O.E.C. v. 23 p. 132.
64. O.E.C. 23 p. 137/8.
65. O.E.C. v. 3. W. Muir Bryce: The Black Friars of Edinburgh: esp. map.
66. O.E.C. v. 24 pges 198/9.
67. O.E.C. v. 22 p. 64.
68. O.E.C. v. 23 p. 133.
69. O.E.C. v. 22 p. 64.
70. O.E.C. v. 23 pges. 111/112.
71. Logan, 14 Oct. 1577. For Halbert Maxwell.
The lands of Lochflatt.
W & N - lands of Heidrieis.
E - Common way to the gate of the Friars Minor of Edinburgh.
S - South, or Burgh, Loch.
72. As 70.
73. O.E.C. v. 10. Frontispiece Map & O.E.C. v. 24 pges 234/33.
74. (Slipperfield)
Holyrood App. II. Nos. 5: 6: Gifted by Richard Cumin in reign of William the Lion.
(Little Fawside)
Holyrood No. 38: Gifted by Earl of Winton under William.
75. Holyrood No. 1. Lawrie p. 382.

76. R.M.S. v. No. 645.
77. These lands belonged to the Browns of Comston.
(Maitland pges 283/4).
78. Laing No. 662: 676:
79. R.M.S. II 2864. R.M.S. ix No. 525: 114 acres received in
exchange for the lands of Newhaven.
80. Holyrood No. 1: Laurie p. 385: R.M.S. v. No. 119:
Wood p. 303/4. In full the Whitekirk lands were Ford,
Gilliswall, Stanelaws, Linton Mill: Whitekirk Mains,
Pilmure, with four marklands of Ford.
81. Young No. 447. Saltpreston in the Barony of Hammyr.
82. Holyrood Nos. 35: 37: No. 104.
83. Ordnance Survey.
84. R.M.S. III No. 2298. vi. No. 1989.
In full, Badlormie, Killigante, Birkinshaw, Nether & Over
Hillhouse, Craiginlaw, Straths, Mill of Strath: Craigs.
85. Holyrood App. II No. 18.
86. Holyrood No. 65.
87. Holyrood No. 130: with Sowlisland.
- 88-90. R.M.S. iv. No. 1662.
91. Maitland pges 283/4.
- 92-96. Holyrood II. No. 37. The Arran feu consisted of the
following towns and lands, all within the Sheriffdom of
Stirling:- E. & W. Saltcoates; part of Saltcoates;
Carronflat: Daratho: Carsybank: Polmont and its mill:
Little Kerse: Hill: Over, Nether and Little Gilston:
Brokenheugh: Reidheugh: Whiteside: Redding: Middlerig:
Letham: Lethambail: Mumrallis: Elrig: Cauldcoates:
97. The remainder of Falkirk was in the Barony of Callendar.
(R.M.S. II No. 3560).
- 98-99. See 92 et seq - probably Middlerig and Carronflat:
100. Holyrood No. 123: Lands of King's Inche "inter terras
dictorum abbatis --- ex parte orientali ex parte vna et
terram de Westkers et aquam de Caron ex parte occidentali-!

- 101-103. Logan: 21 Oct. 1588. For John Kincaid of Warriston.
- 1) E - lands of Saltcoates: S - lands of the Inshe:
W & N - the Carron and the sea at its mouth. (The present Heuck is on the north bank of the Carron and the above description is applicable provided Inshe was separated from Heuck by the Carron: and that Saltcoates was on the other side of the river near the modern Grangemouth).
 - 2) Lands of Watterdykeland - the Oxgang - and four acres of the Middleflat.
E - The Coitland occupied by late Alexander Oswald.
Lands of the Overshott occ. by late Jn. Forrester.
" " Cuthbertlands pertaining to Abbey of Arbroath.
" " Scottisflatt occ. by late William Wethirspune.
S - Lands of Middleflatt occupied by late William Wethirspune.
W - The Homelands of Kerse i.e. the Reidflatt:
The eight acres of the Cannoflat & lie Batts occupied by late Alexander Oswald.
N - Lands of the Wattirdykeland occupied by late A. Oswald.
 - 3) The Scottisflat - $1\frac{1}{2}$ acres.
E - The Saltlands occ. by late John Forrester.
S - The Scottisflat occ. by above.
W - The Middleflat occupied by late William Wetherspoon.
N - Lands occupied by A. Oswald.
 - 4) Lands of the Wester Waird - 1 acre.
E - William Wetherspoon.
W - Cambuskenneth lands occ. by late John Rannald.
N & S - late Alexander Oswald.

The tack of William Wetherpune was little Saltcoates (R.M.S. III No. 3061): the Forresters occupied part of the Arran Saltcoates (R.M.S. iv No. 1662) and the Oswalds were feuars of Wester Saltcoates (Logan 23 Sept. 1589).

All these lands formed part of a greater Saltcoates bounded by the Carron and the Forth, and by Abbotsgrange on the south west. Oxgang borders the latter upon the north (Ordnance Survey). The area is therefore covered by Grangemouth.

104. R.M.S. iv. Nos. 325: 716.
105. Holyrood No. 18.
106. Holyrood No. 1. Laurie p. 337.
107. Laing No. 113. R.M.S. iv. No. 1073. Exchequer p. 192.
108. R.M.S. supra.

CHAPTER 2.

THE REGALITY OF BROUGHTON.

Over these lands in the superior possessed rights of regality. In other words, the whole formed, from 1587, the Regality and Barony of Broughton.¹ Before that year, the constituent baronies of Broughton, Kerse and Ogilface, Whitekirk and Saltpreston were distinct and separate units, but all within the Regality of Broughton and Kerse.²

In attempting to define^a Regality or Barony, it is advisable to return to the basic feudal principle which permitted a landholder to hold court over his tenants.³ By Scots practice, in contradistinction to that of England⁴ this right held true only if the vassal was expressly invested in it by his overlord.⁵ A landowner infeft "cum curiis" could deal in his court, with questions and disputes over rights of pasturage and the like: with the payment of rents and other dues.⁶ Parties could be either tenants or inhabitants on both sides, or the vassal on the one hand and one or more of his tenants on the other.⁷ The lord of the court, could, for example, pursue for his own rents, dues and non-entries.⁸ Cases of minor injury came also within the competence of the court, as did the social and economic regulation of the

community.⁹ A partially adequate, although late, illustration of the powers of an ordinary feudal court is provided, in 1621, by the Archbishop of Glasgow, when he reserved to himself, the right to hold courts only for the bringing of actions against his vassals and tenants and other debtors of his rents, for payment of rents, mails, kains, customs, and other duties due to the Archbishop and his successors.¹⁰

By this charter, the exercise of much more extensive judicial and administrative powers was confirmed to the Duke of Lennox, the hereditary bailie and justiciar of the regality. For by the creation of the Regality of Glasgow, in 1450, the bishops were empowered to hold chamberlain and justice eyres and were endowed with the rights of pit and gallows, soc and sac, thol and theme, infangthief, outfangthief, hamsoken, with privilege of chapel.¹² The Abbots of Paisley had received much the same array of powers in 1396;¹³ while in 1452, their Regality of Kilpatrick was granted the four pleas of the Crown.¹⁴

It is sufficiently obvious that while a landowner infest "cum curiis" possessed only a normal feudal jurisdiction: more fortunate fellow members of the feudal hierarchy received from the Crown, a varying degree of the rights of royal justice. For all justice had its source in the Crown;¹⁵ and by 1579, even the quasi-criminal bloods and blood-wites were regarded as part of "merum imperium," and incapable of delegation by any

beyond the king.¹⁶

The Crown could, however, delegate the exercise of part of the royal justice to specially favoured tenants-in-chief:¹⁷ and a barony was essentially a feudal tenement held from the Crown, the possessor of which being endowed not only with the normal feudal jurisdiction but also with the right of furca et fossa.¹⁸ In short, the baron could deal in his court with slaughter and theft, and thus make his contribution to the maintenance of public order.¹⁹ A Regality was still a barony: "in unam integram et liberam baroniam et in liberam regalitatem:"²⁰ or a collection of baronies held by the same person,²¹ but it was a barony with a larger share of public justice and of administrative responsibilities.²² The Regalities of Kirkpatrick,²³ St. Andrews,²⁴ and Kerse²⁵ possessed the four pleas of the Crown: and unlike baronies, regalities were endowed with right of chapel:²⁶ a privilege which excluded royal briefs in favour of those of the regality. The service of heirs, of tutors, the division of lands, the allocation of widows' terces and other concerns of administrative import thus came within the competence of the Regality:²⁷ and reverted to the Crown only under exceptional circumstances. The continued absence of the Superior,²⁸ or the interregnum between the accession of a new ecclesiastical superior and the decease of the old being two instances, when the royal chapel could issue its own writs in Regality lands.²⁹

The rights of public justice enjoyed by the Regality of Broughton were acquired over a period of some two hundred years. The original charter of David I granted the Abbots the power to hold courts and to use trial by battle, water and hot iron.³⁰ Criminal jurisdiction was thus enjoyed from the very beginning; and long before the formal erection of the barony and Regality of Broughton in 1343. This charter of the second David, merely laid down that the Abbot and Convent were to hold their lands in free regality, as freely and as quietly as any other regality in Scotland;³¹ but the documents covering the lands of Kerse, donated to the monastery in 1234, give greater detail. The original grant of Alexander II included the clause, "Cum furca et fossa. Cum sūcco et sacca. Cum Tol et Theme-et Infangandthef --"; but withheld the pleas of the Crown;³² the creation of the Barony in 1390 added out-fangthief;³³ while three years later, the advent of the Regality of Kerse brought the four royal pleas.³⁴

These rights belonged initially only to the original lordship of Kerse, with its incorporated lands of Falkirk, Lathem, Ogilface, Cauldcoates and Friertoun;³⁵ but it is probable that they were already enjoyed by the senior Broughton jurisdiction and formed no more than an extension of existing privileges. St. Andrews, a regality older than Broughton, had the four pleas by 1309,³⁶ and the charter of

David I placed the Broughton court on an equality with that jurisdiction, and with those of Dumfermline and Kelso.³⁷

Practical illustrations of the later Sixteenth Century provide a further knowledge of the judicial powers of the Broughton Regality. In the first place, the jurisdiction could repledge its men even from the High Court of Justice and for crimes extending to slaughter.³⁸ Treason was, however, beyond its competence; a limitation common to all private jurisdictions.³⁹ although, particular cases could be referred by the Crown to the regality authorities.⁴⁰

Simple slaughter, or murder committed openly and followed by immediate pursuit was fully within the competence of the Regality court, as it was still, in theory, within the range of an ordinary baronial court.⁴¹ Most of the Broughton assassinations being generally the result of riots in the Canongate, fell within the category of simple slaughter.

Murder proper, or "forthocht felony" committed privately, and unknown to all save the assassin and his accomplices was a plea of the Crown.⁴² Two Broughton cases come close to this description. John Moreson, a prominent Canongate cordiner was indicted for "the cruel and unmercifull murthir and slauchter of --- Johne Robesoune --- commitit and done be him and his complices under clwid and sylence of nicht betuix nyne and ten houris at ewin -- At the croce of

the burgh of the cannogaitt:"⁴³ while a few years later, in 1600, the Laird of Warriston was murdered at night by his wife and servants.⁴⁴

The first episode appears to be a clear case of murder.⁴⁵ The alleged offence was committed after curfew with there being little likelihood of witnesses: and the acquittal of Moreson and the date of his trial prove that he was not apprehended redhanded.⁴⁶ The Kincaid episode is different. The Lady of Warriston was apparently captured on the scene of the crime:⁴⁷ and under these circumstances, even a baronial court was capable of doing justice.⁴⁸ However, it can be said from these examples, that the Broughton judicial rights, even at a late period, were still used, even in cases close to murder.⁴⁹

The privilege of outfangthief was also still in active use and employment. A baron so infest could judge all thieves taken within his jurisdiction; even if he was not their feudal lord.⁵⁰ Accordingly, in 1597, a man from Tweed-side who had stolen sheep in Woodhouselee and sold them on the Burghmuir of Edinburgh to a butcher was condemned by a Regality Justice court:⁵¹ as was another sheep stealer who had confined his depredations to Fife.⁵² The other cases of theft, are infangthief: either the accused was caught redhanded, or the articles stolen found in his possession or dwelling place.⁵³

A Regality was something more than a powerful criminal jurisdiction. Broughton, with its privilege of chapel, issued briefes which over a wide area, influenced the destinies of lands and persons.⁵⁴ The civil competence of its courts embraced all actions save those of ejection,⁵⁵ apprising of lands⁵⁶ and the contravention of lawburrows,⁵⁷ and those within the care of the ecclesiastical courts.⁵⁸

The Regality was also, as a unit of local government, as important as the shire. The former's bailies, like the sheriff, maintained muster-rolls,⁵⁹ held weaponshaws,⁶⁰ and led the jurisdiction's levies in the field.⁶¹ National taxation within the Regality was stented and collected by its own officials,⁶² the escheats of those denounced rebel for non-payment, falling to the overlord.⁶³

The Crown in Parliament used shire, regality and barony as vehicles for the enforcement of its ever increasing array of social and economic regulations. Sheriff, baron and bailie were ordered to suppress football in favour of archery⁶⁴ to encourage the planting,⁶⁵ and preservation of trees⁶⁶ and hedges;⁶⁷ to protect game⁶⁸ and destroy vermin⁶⁹ and to apply the laws regulating prices,⁷⁰ those against sorners and vagabonds,⁷¹ witches,⁷² gypsies⁷³ and enforcing the sowing of wheat, peas and beans.⁷⁴

That the Regality was "a frie jurisdictione within

itself and not subject to the shireffe"⁷⁵ was certainly true; but it was not necessarily an irresponsible feudal unit. Not only was the Regality incorporated within the framework of government; but in the exercise of its more purely judicial functions it was subject to the supervisory authority of the Crown.

Bailies who failed to do justice or were partial, lost their offices for a year and a day, and were fined in proportion to the offence,⁷⁶ while the sheriff, or a royal official, could intervene to give the necessary justice.⁷⁷ A lord of regality was answerable to the crown for his judicial conduct.⁷⁸

In criminal matters, each regality was supposedly to hold a twice yearly justice eyre:⁷⁹ and to deliver to the Crown an extract of processes,⁸⁰ while in common with all jurisdictions it had to provide a sufficient number of courts for the dispensation of justice in all actions.⁸¹ Originally, a baronial court could exercise its criminal jurisdiction only in presence of the sheriff or his deputies.⁸² This provision was not applicable to a regality court; but in Broughton, in the trial of Lady Kincaid⁸³ and in later witchcraft trials,⁸⁴ the Crown exercised a watching brief by associating a royal justice-depute with the regality bailies.

In addition, it was possible for the individual person either to appeal to the higher royal courts, or to effect the removal of his cause to the Court of Session or

other relevant tribunal. By the middle of the sixteenth Century, the old procedure of falsing the doom had fallen into decay, being replaced by advocations, suspension^s and the like.⁸⁵

The former, in the form of letters of advocation, could be obtained from the Court of Session by any party who had excepted to the jurisdiction of the judge, or who had objected to any interlocutor, before the pronouncement of the final decree.⁸⁶ The letters removed the action to the Court of Session, and could be issued against a Regality court.⁸⁷ A similar result was obtained by letters of suspension which were obtained after the decree had been ^{GIVEN} obtained, and which halted the effect of the decision until it had been reviewed by the Session.⁸⁸ The advocation or suspension of criminal causes could be performed^{FORMED} by either the Court of Justiciary, when sitting in Edinburgh, or, before 1672, by the Session.⁸⁹

A further check upon the Regality and other inferior courts was the Privy Council which had a supreme jurisdiction in all matters which bore upon the public peace.⁹⁰ Inhabitants of Broughton and the Canongate used it either as a court of first instance, or as a court of appeal upon the decisions of their own bailies. A Canongate indweller blooded, wrongfully imprisoned and spuilied by his neighbours approached the Council directly, which ordered the warding of the defenders and their punishment by the Burgh Bailies.⁹¹ John Watson of

Saughtonhall, warded in the Canongate Tolbooth for his refusal to pay unlaws imposed upon him by the Regality bailie, not only raised an action against the Baron and Bailie in the Court of Session, but appealed, in vain, to the Privy Council for his release from ward.⁹² A few years earlier, Jonnett Neilsoun in Wallacecraig, found innocent of theft by a Regality Jury, pursued her ~~accusers~~^{ARRESTERS} not before the Broughton court, but before the Council.⁹³ So in various ways, the latter was a valuable correcter and supplementer of the proceedings in the private, and inferior court.

The jurisdiction of Broughton and its courts were accordingly important components of the national system of justice and administration. This part, rather than that of an unrestrained feudal tyranny emerges from the pages of the court record. These show the rare exercise of the powers of pit and gallows, but the common use of the jurisdiction's courts as the places for the serving of brieves and the settlement of disputes, and actions between tenant and tenant.

It now remains to trace the organisation of the Regality as a judicial and administrative unit with the primary task of placing the burgh of Canongate in its position in the economic and judicial life of the Regality of Broughton.

CHAPTER 2.

THE REGALITY OF BROUGHTON.

1. R.M.S. v. No. 1304.
2. The Regality and Baron of Broughton was erected in the fourteenth year of David II, "Et volumus quod omnes terras suas predictas habeant teneant et possideant in liberam regalitatem cum plena administracione eiusdem in omnibus et per omnia adeo libere et quiete sicut aliqua regalitas in regno nostro tenetur ---" (Holyrood No. 95). The beginning of this charter confirmed that of Robert I (Holyrood, No. 86) which in its turn re-enacted the Great Charter of David. The core of the future barony of Kerse was acquired under Alexander II (Holyrood No. 65), and would not therefore be included in the lands confirmed by David II. In fact, by Robert III, the Regality of Broughton is described as the lands of the Abbot and Convent, "iacentes infra vicecomitatum de Edynburgh". (Holyrood No. 106): which at this period would include the monastery's lands in not only the modern Midlothian, but also in East Lothian, (Fife, app. D, p. 354), and also West Lothian, (Fife, supra, p. 356). This is borne out by another charter of Robert, which on the same day erected "omnes et singulas terras baronie et dominii del kars cum pertinentiis infra vicecomitatum de Striueylene: et alias terras subscriptas videlicet terras de fawkirk et de Lathem infra dictum vicecomitatum de Stryueylene: terras de Ogilfas que pertinent ad dictum vicecomitatum: ac etiam terras de Caldecotis: terras etiam de Frerton infra vicecomitatum de Edinburgh. Tenendas et habendas --- in perpetuam et liberam regalitatem" -- (Holyrood, App. II No. 18). Therefore the true Regality of Broughton was limited to Lothian: while the Regality of Kerse comprehended the Abbey's Stirlingshire lands, with the addition of Friertoun.
- 3.)
- 4.) e.g. C. Med. Hist. v. p. 513.
5. Craig: 2. 8 Sect. 30. p. 535.

6. Supra.
7. Supra.
8. M.D. I III, p. 7296 No. 5. 3 March, 1630. Lorn v. Panholes. M.D. VII: III, p. 7544: No. 261. 30 July, 1554: Lord Angus v. Laird of P: p. 7545: No. 262: 26 July, 1627. Hay v. Crichton.
9. Craig: supra. sect. 31. p. 536.
10. Glasgow: p. 320.
11. Glasgow: p. 316/7 - Bailie to hold Bailiary and Justiciary Courts in criminal and civil causes: and to direct Regality Brieves.
12. Glasgow: p. 28/31.
13. Paisley: p. 15/16 or 16/17.
14. Paisley: p. 20.
15. Carnwath, p. xxxix.
16. M.D. Criminal Jurisdiction: p. 7542, No. 255. 16 Dec., 1579. Laird of Tough v. Laird of Strathurd.
17. Carnwath. e.g. as 15.
18. Carnwath: esp. pages xxvi - xxvii. and D.V.S. "Baro."
19. By enforcing in his court, the justice of the King.
20. Carnwath. p. xl.
21. Carnwath. p. 1.
22. Carnwath. p. xl.
23. As No. 14.
24. Carnwath: xl - xli.
25. Holyrood. App. II no. 18, pages 225/6.
26. As had Broughton: Glasgow (p. 316/7) Paisley and many other Regalities. e.g. Carnwath, p. XLI-XLII.

27. The principal brieves were those of Service, Tutory, Idiocy, and of terce, division, perambulation and lining. (e.g. Spotiswoode, p. 773/76).
28. Craig, 2.17.22. p. 737.
29. Dunfermline B.R., p. 34 - 19 March, 1491/2.
If Lord of Regality has any interest in Lands, Brieves concerning them should be issued by Royal Chapel.
(M.D. Service of Heirs, p. 14419, No. 1. March, 1589. Carmichael v. E. of Angus).
30. Holyrood, No. 1.
31. Holyrood, No. 95.
32. Holyrood, No. 65.
33. Holyrood, App. II. No. 16.
34. Holyrood, App. II. No. 18.
35. As 34.
36. Carnwath: pages XL - XLI.
37. Holyrood, No. 1. See also Holyrood: No. 95, note 2.
38. Pitcairn, l. III. p. 185/6.
39. A.P.S. 1535 c 32.
40. Spynie, p. 123. 28 Dec., 1594. p. 126/27. 3 Jan, 1594/5, provides an example of a Regality repledging from Royal Justice, and trying members of its jurisdiction accused of treason.
41. Hope VIII. 12. 2. p. 298. (R.M. 4, 5. 3 and 6). Ther ar two kynds of slauchter ... The other is simple slaughter, quhilk is done oppewlie, and quherupon presentt clamour followes. For power of Barons to judge upon simple slaughter - Q.A. c 77.
42. Hope VIII: 12. 2. p. 298.
43. App. I.
44. App. II.

45. Was only murder if Moreson had premeditated his crime (e.g. Mackenzie IV. 4. 19 p. 480): But private slaughter, or murder, is defined by R.M. (supra:) Hope (supra) as "quhilk is committed secretlie, non knoweing but the actor and his complices, swa that na clamour is raised therupon incontinenti .." Moreson was tried for the murder on 22 May, 1595, the slaughter being committed upon the 5th March. This combined with his being found innocent excludes simple slaughter as defined above.
46. App. I.
47. Pitcairn II. II. p. 446-7. Her offence was both secret and premeditated (App. 2).
48. Hope V. 10. 1. p. 42 (R.M. Malc. II. c 13. 2 and 3).
49. By the Seventeenth century, Baronial courts had largely ceased to deal with actions of life and limbs. (Carnwath. p. XLVII).
Broughton still exercised its criminal jurisdiction in the early Eighteenth Century. See also Chapt. II. App. 3.
50. B.P. "of Baronis". c.4.
51. App. 3.
52. App. 4.
53. e.g. App. 5 and 6.
54. See 27.
55. Ejection and Spuilie were evidently borderline cases. Ejection was in 1586 found beyond the competence of a Regality, or other Bailie, (M.D. pages 7481/2. Nov. 1586. Home v. Home): although one such case was tried before the Broughton court on 29 March, 1598. Spuilie was nominally within the competence of the Sheriff (e.g. Mackenzie, l. 4. 2 p. 35): and of Lords and Bailies of Regality: (B.P. "Anent Regalitie", C. 1), but the Court Book containing no cases of spuilie, affords no positive evidence.
56. This was initiated by letters of the Court of Session (e.g. Mackenzie: II, 12. 2 p. 244).

57. M.D. V. 1. p. 7482, No. 195. 12 March, 1622: Marshal v. Blair; save only in small sums. In general, the Court of Session was the sole primary court in declarators of property, in actions involving heritable rights, proving of the tenor, restitution of minors, and reductions of decrees or writings. (e.g. Mackenzie, I. 3. 12, p. 28).
58. The Church's jurisdiction in matter affecting marriage, divorce, alimony, bastardy and confirmation of testaments was from 1564 exercised, inter alia, by the commissary court at Edinburgh, with a primary jurisdiction over the Lothians, Stirling and Peebles, and an appellate over rest of country. (e.g. Mackenzie, I 5, 24. et. 25).
59. A.P.S 3 (S): Ja. V. 6 c. 89.
60. A.P.S. (S): Ja. II. 14: c. 65. For Broughton musters: vide, e.g. Maitland, pages 340/42: R.P.C. (2) V. III, pages 161/2: 166/7.
61. A.P.S. (S) Ja. VI. 11. c. 29.
62. Holyrood. App. II, pages cxvi-viii.
63. A.P.S. (S). Ja. VI: 15. c. 274.
64. A.P.S. (S). Ja. II: 14. c. 65.
65. A.P.S. (S). Ja. IV. 6. c. 74.
66. A.P.S. (S). Ja. VI. 6. c. 84.
67. A.P.S. (S). Ja. V. 4. c. 9.
68. A.P.S. (S). Ja. VI. 6. c. 84:/^{c. 89:} Ja. VI. 7 c. 123.
69. A.P.S. (S). Ja. I. 7. c. 104.
70. A.P.S. (S). Ja. I. 7. c. 102.
71. A.P.S. (S). Ja. VI. I. c. 21.
72. A.P.S. (S). Mary. 9. c. 73.
73. A.P.S. (S). Ja. VI. 12. c. 124 c. 147.

74. A.P.S. (S). Ja. II. 14 c. 82.
75. Hope: V. 9. 3, p. 38.
76. A.P.S. 1457 c. 76.
77. Hope, V. 9. 1. p. 38.
78. A.P.S. 1426 c. 94.
79. Hope, V. 9. 2. p. 38.
80. As. 79.
81. e.g. A.P.S. 1592 c. 126.
82. Hope V. 10. 5 (R.M.S. Alex. II. c. 14. 1).
83. App. 2.
84. Wood. 1655/65 - 23 Oct., 1661. p. 264.
85. Hamilton-Grierson. III. p. 97/8
86. Supra. p. 88/89.
87. e.g. Melrose, pages 41/42.
88. Mackenzie, IV. 3. 5. p. 457.
89. Supra: I. 3. 15 p. 30.
90. Supra: 1. 3. 5 p. 24: By A.P.S. 1469 c 26 - If an ordinary Judge failed to administer justice, or gave partial justice, or did wrong in the administration of it, the party aggrieved should summon him before the King and his Council.
91. R.P.C. vi. p. 71.
92. R.P.C. vi. p. 419.
93. R.P.C. vi. p. 6.

CHAPTER 3.

The Burgh of the Canongate and the Courts of the Regality of Broughton.

The creation of the dual Regality of Broughton and Kerse made the Canongate the centre of its judicial and administrative life. This position was of gradual development, but it had already become established by the middle of the Sixteenth Century.

The Burgh was, however, founded and erected by David I, only to enable his favoured Canons to share in certain economic privileges which royal policy, particularly under William the Lion, tended to confine to Burghs, especially those holding directly from the Crown.¹ The Canons and their men in the new burgh were allowed to buy and sell in the markets of Edinburgh, to trade, buy and sell throughout the realm unhindered by customs and tolls, while, within the Canongate, none could injure their bread, cloth, ale and other wares.² The Canongate was thus endowed with the essential characteristic of a Burgh, the right to manufacture and to trade.³

Unfortunately, these powers came into conflict with the later royal policy of dividing the country into a series of enclaves, within each of which there was a single royal burgh with the sole monopoly of trade and industry.⁴ By this

economic development, neighbouring Edinburgh possessed a liberty extending from the Almond to the similar enclave of Haddington in the east.⁵ Against this concentrated right, the wider privileges of the Canongate had no hope of survival. If the Burgh had been given the Regality as a monopolistic area, as was Glasgow with its jurisdiction,⁶ it might have welded Broughton into a single trading unit. As it was, the Barony fell under the commercial monopoly of Edinburgh; as Kerse and Whitekirk similarly were treated by Stirling and Haddington.⁷

The Canongate, of course, did not yield its privileges without a struggle; and even at the end of the Sixteenth Century, its burgesses bought leather and other materials from Fife skippers and the like;⁸ but, in general, Edinburgh succeeded in confining to its own merchants the import of the staple goods of wine, wax, victuals, iron, timber and pitch, and the export of wool, hides, skins, salmon and cloth.⁹

These commodities were the express monopoly of royal burghs,¹⁰ and Edinburgh took practical measures to enforce its rights. The Barony's port of North Leith, as also all other unfree ports within the liberties of Edinburgh, was subjected to harbour and anchorage dues,¹¹ and to the supervision of water-bailies.¹² Incoming skippers declared their cargoes to the Edinburgh authorities,¹³ and found caution to deal only

with city merchants.¹⁴ Staple goods such as iron,¹⁵ hemp,¹⁶ and lint¹⁷ were removed upon landing to the Edinburgh Tron to be weighed, priced and sold. Outgoing staple goods from the Canongate and Leith were taxed by the Edinburgh customers.¹⁸ Broughton inhabitants, attempting to avoid any of these restrictions were subject to the jurisdiction of the Burgh courts, and could not be repledged by their own bailies.¹⁹

The Canongate did however, preserve its manufacturing privilege; although this is only implied in David's charter. The more detailed charters of later non-royal burghs allowed the inhabitants to have brewers, bakers, butchers and craftsmen, with power to make, buy and sell within the confines of the burgh, and to hold markets and fairs for the convenience of those dwelling within the barony or regality.²⁰

The Canongate conformed to this general pattern. It had its four gilds of hammermen, cordiners, baxters and tailors,²¹ its maltmen, wrights, barbers and other craftsmen. Aided by the proximity of the court, it went further and possessed armourers,²² halbertmakers,²³ dagmakers,²⁴ lorimers,²⁵ listers,²⁶ cutlers²⁷ clockmakers,²⁸ goldsmiths²⁹ and other skilled and specialized craftsmen.³⁰ It had its fairs and markets, and acted as the centre for the sale of vegetables, grain, fruit and other rural produce;³¹ while it disposed of its wares, not only to indwellers of Broughton,

but also to the inhabitants of Wardie and other territories.³²

In these spheres it had also to face the rivalry of Edinburgh, but here the Canongate was better able to withstand the royal burgh's hostility.³³ Even apart from Edinburgh, the Canongate had not a complete manufacturing monopoly within the Barony of Broughton.

Despite the injunctions of Parliament and the Burghal policy of the Crown, the unincorporated villages of North Leith, of St. Leonard's Way, Canonmills, and St. Ninian's Row were the homes of weavers in particular, but of other craftsmen as well.³⁴ The Canongate gilds regularised their relations with their appropriate counterparts by bringing them under their authority,³⁵ but this remedy was denied to the unincorporated Burgh crafts. In North Leith, the weavers had their own gild by 1594,³⁶ the corresponding Canongate gild was possibly not formed until after 1610,³⁷ while the Leith tailors, smiths and mariners had also some form of organization.³⁸

These extra-mural crafts were accordingly, interlopers upon both the Canongate and Edinburgh privileges; and were detested by the royal burgh.³⁹ It had, however, done much to create these nests of intruders, partly by the restrictive policy of its own gilds, and by the conduct of individual citizens who employed the unfree craftsmen.⁴⁰

The Canongate, neither commercially nor industrially, was the centre of the Barony of Broughton. This position, it achieved, to a considerable degree, only in the administrative and judicial fields.

The first beginnings of this later importance came with the creation of the Barony and Regality. Until then, the Canongate was only an economic organism: while the Abbots' Courts were presumably held at the Abbey of Holyrood as caput of their lands and jurisdictions.⁴¹

The caput of a sheriffdom, regality, barony, or any other jurisdiction was the place at which the holder took sasine, or made resignation of his lands, titles, rights and dignities,⁴² and as a physical feature it could be castle⁴³ or monastery⁴⁴, episcopal palace⁴⁵ or manor-place⁴⁶, Market Cross⁴⁷, or Chapel⁴⁸ or any other traditional spot. As the concrete symbol of judicial rights it was the logical place for their exercise; and eventually, the three principal or "head" courts were by custom confined to the caput, although other courts were not so limited.⁴⁹

The Canongate was never the head-place of the Regality; that position was occupied by the Abbey until 1587: thereafter by the manor of Canonmills.⁵⁰ There was no real reason for the Canongate becoming incorporated within the judicial framework of the Regality, but particularly in

the sheriffdoms, the Fifteenth Century saw a drift of courts from the caput to the more convenient burgh.⁵¹ This shift in location was more irregularly followed by many private jurisdictions, including that of Broughton.⁵² Parliament, especially in the Sixteenth Century, acknowledged and perpetuated the change, by incorporating the burgh within an increasingly intricate local judicial and administrative system. The burgh of the shire became the alternative place for the holding of Justice Eyres,⁵³ for the proclamation of briefs and other letters,⁵⁴ for the making of appraisings,⁵⁵ and the summoning of persons.⁵⁶ In addition, the Tolbooth of the Burgh was made the prison of the jurisdiction.⁵⁷

The Canongate was not only adjacent to the monastery, but was also the sole burgh within the Regalities of Broughton and Kerse.⁵⁸ It therefore, became not only the place of the Regality head-courts, but also the scene for the execution of the administrative duties involved in the possession of a Regality. It occupied a position analagous to that of the principal burgh of a shire, or, in other words, it developed into the Head Burgh of the Regality and Barony of Broughton.⁵⁹

With the acquisition of rights of Regality by its superiors, the Canongate came to be invested in functions far removed from its original purpose. These new duties

and parts became so closely associated with the Burgh in general, that by the Seventeenth Century, there was a strong tendency to regard a Burgh as essential to the Regality. In 1644, Parliament discovered that the Regality of Callender and Ogilface had no head burgh, therefore it elevated Falkirk to that position, and to be the place for the proclaiming of Regality brieves.⁶⁰ When the Barony of Logyfintry was divorced from the Regality of Lindores, Halton was made a Burgh to replace Newburgh as the scene for the proclamation of hornings, and for the execution of citations, letters and brieves.⁶¹ Kirkliston,⁶² Polmont,⁶³ Tynninghame,⁶⁴ Monymusk,⁶⁵ Inverbrora,⁶⁶ and Aberdour,⁶⁷ were other towns made into burghs upon the erection or revival of their respective Regalities. All received the usual Burghal privileges but their main purpose was to satisfy the administrative and judicial needs of their jurisdictions.

The Canongate, as a unit of local government, was the scene of the Head Courts of almost the entire jurisdiction of Broughton.⁶⁸ From the early Sixteenth Century, nearly all the feufarmers in Kerse⁶⁹, Broughton⁷⁰ and Whitekirk⁷¹ were obliged to give service in the three annual Head Courts held in the Burgh of the Canongate. Only once, is the Abbey given as an alternative place.⁷² In addition, brieves

affecting the entire jurisdiction were proclaimed at the Canongate Market-Cross and served in the Burgh Tolbooth.⁷³ Citations and proclamations affecting Broughton and Whitekirk were also made in the Burgh.⁷⁴

The position of Kerse complicated the issue. This Regality and Barony was not apparently incorporated with Broughton until 1587.⁷⁵ Until then it was, in strictness, a distinct and separate jurisdiction entitled to possess its^{own}/caput and courts. A barony, even if comprehended within a Regality was an indestructable entity until formally dissolved by the Crown.⁷⁶ Consequently within many regalities constituent baronies retained their own courts, as did those of Musselburgh,⁷⁷ and Kirkliston,⁷⁸ in the Regalities of Dunfermline and St. Andrews and some of the baronies within the Regalities of Melrose⁷⁹ and Paisley.⁸⁰ In these baronies, vassals owed suit to the baronial courts, and were only rarely, expressly cited to the court of the Regality.⁸¹

On the other hand, the Baronial court could be held at the head place of Regality⁸² or as was the case with the Paisley Regality of Kilpatrick,⁸³ the court of a junior Regality could be called to the caput of the senior jurisdiction. The only distinguishing mark would lie in the form of enrolment.⁸⁴ As a half way measure, the

superior could confine the baronial court to civil causes only, advocating to his Regality court all criminal rights of justice. The baronial court of Torry was so treated; its competence being limited to civil actions while the Abbot of Arbroath's rights of Regality were reserved to his own courts.⁸⁵

The position in Broughton and Kerse was something similar. Kerse vassals owed head court service to the Regality Court at the Canongate; in theory, to the Superior as Baron of Kerse and Lord of the Regality of Broughton.⁸⁶ The Regality of Kerse was a jurisdiction which is rarely designated beyond the middle of the Fifteenth Century.⁸⁷ Until 1566, there was a distinct Bailie and Justiciar of Kerse and Ogilface with power to hold justice courts within the barony. In that year, the office was abolished and its powers merged with those of the bailie and justiciar of Broughton.⁸⁸

Thereafter, all justice courts were held, as a rule, in the Canongate,⁸⁹ Such was not essential save with the two annual justice eyres.⁹⁰ An ordinary court of justice could be summoned to any part of the jurisdiction, although either the neighbourhood of the crime or the usual court place was preferred.⁹¹ In the present record, one justice

court was held in the Tolbooth of North Leith.⁹²

By the latter half of the Sixteenth Century, the vassals of Kerse owed suit to the head courts in the Canongate, were tried by Justice courts usually called to the Canongate, and had their briefs proclaimed and served in the Burgh.⁹³ Civil actions between Kerse inhabitants, apprisings and other matters did not appear in the Regality Court, unless specifically brought there by the parties concerned.⁹⁴ It is possible that a Bailie court of Kerse, similar to that of Torry still existed.⁹⁵

Meanwhile, the ordinary intermediate courts of the Regality and Barony of Broughton had followed their head courts to the Canongate Tolbooth.⁹⁶ These courts were not limited to the caput or head burgh; but already by the end of the fifteenth century, were tending to meet in the Tolbooth.⁹⁷ A century later, only extraordinary courts, deserted the Canongate for Leith⁹⁸ or Saughtonhall,⁹⁹ or any place which required a visiting court. These courts in the Burgh acted as the ordinary tribunal for the inhabitants of Broughton and probably of Whitekirk.¹⁰⁰

The position of the Canongate as the place of Head and Justice Courts for the entire Regality, and of ordinary courts for the Barony of Broughton was encroached upon by the existence of various minor courts.

While a tenant-in-chief could not endow his vassals with a slice of his public justice; he could give them an ordinary feudal jurisdiction over their tenants, with often bloods and bloodwites.¹⁰¹ Such a competence enabled the recipient to pursue his tenants for rents and other dues,¹⁰² and particularly if they had expressly submitted themselves to his authority to judge in disputes between individual tenants.¹⁰³

In 1553, the Earl of Arran had not only acquired the greater part of Kerse but had also received from the Commendator, the right to hold courts and to judge upon bloods.¹⁰⁴ This resulted in ^{THE} Hamiltons erecting their own judicial system. They bound their sub-vassals to service in their courts, and for many purposes, withdrew the inhabitants of their lands from the highst Regality or Baronial courts.¹⁰⁵

Moreover, over limited areas of the Regality, the Superiors had established courts fenced and held by Bailies appointed by them. Such courts existed in the Canongate,¹⁰⁶ in North Leith,¹⁰⁷ in Falkirk,¹⁰⁸ and in probably Saltpreston,¹⁰⁹ These were under the ultimate authority of the principal courts, as indeed were those of the vassals, but within their territorial limits, served as the ordinary tribunals for their inhabitants.¹¹⁰ None possessed any criminal jurisdiction, and only the Canongate Court had the right to serve brieves.¹¹¹ North Leith had its own head

courts, but as a generalisation, none had more than an ordinary civil competence.¹¹²

The Canongate as the home of the Regality's administrative and judicial system had a more commanding influence than it possessed in the realm of economic affairs. As the centre of the Regality's courts and of its administrative life, it was at one with the superior jurisdiction. As an organism partly distinct from the Broughton Regality, the Canongate pursued a course of its own; although it was not completely apart from the Baron of Broughton and his Regality. It now remains to consider the relationship of the Canongate, as a Burgh with its Bailies, Council and other officials and offices to its overlord and his greater jurisdiction.

CHAPTER 3.

The Burgh of the Canongate and the Courts of the Regality of
Broughton.

1. Grant: Chapter III. *SCOTS. BURGHs. CHAPTER V.*
2. Holyrood No. 1.
3. Grant: supra: esp. pages 128/135.
4. This was more deliberately the policy of William the Lion (e.g. Grant: p. 123, p. 128-135). David by his grant to Holyrood disregarded this future custom.
5. Grant: p. 132; Holyrood: App. I, p. xl. Edinburgh, in its action against the Canongate, claimed that it possessed all liberties and freedoms pertaining to free burghs within Edinburgh and for four to five miles around it, in particular, in the buying and selling of wine, wax and other staple goods, and in preventing all others from doing so. These privileges comprehended the Canongate, Leith and Newbattle (p. xlv.). Edinburgh also rightly observed that the Canongate had never received special clauses and concessions of freedoms usually expressed in the erection of free burghs.
6. Glasgow: p. 14/15; Alex. II: 11 Jan. 1242/3 - in Argyle and Lennox and throughout the realm, without hindrance from Dumbarton or any other burgh.
7. As being within the freedoms of these royal burghs.
8. App. 1.
The action mentioned in No. 5 arose from the Canongate's trade in wine.
- 9- The staple goods were confined to royal burghs and
10. burgesses (A.P.S. (S) Ja. IV. 6. c. 84). Of Edinburgh statutes enforcing this privilege (e.g. E.C.R. I. p. 95, p. 178/80 - decision of Lords of Council).
11. Edin. Charters No. lxix, pages 211/2.
12. E.C.R. I. p. 193, 20 Nov. 1519.
13. E.C.R. I. p. 168/9.
14. E.C.R. II. p. 119.
- 15- E.C.R. II. p. 128.
- 17.

18. Edin. Charters: No. lx, pages 189/90.
19. E.C.R. II, p. 205: 25 Nov. 1554.
20. E.g. Paisley, pages 29 or 31 et seq. Charter of Erection, 19 Aug. 1488.
21. The four Canongate gilds at the end of the century were the hammermen (O.E.C. 19, p. 2); cordiners (Holyrood II, No. 39); tailors (Holyrood II, No. 40); baxters (O.E.C. 14, p. 27). The four remaining gilds were of later foundation (O.E.C. 14, were not included in agreement of 1610).
- 22-30. Many of these, e.g. the armourers, dagmakers and halbert-makers, were members of the hammermen's gild (O.E.C. 19, page 1 et seq). The later wrights and coopers gild of 1612 included masons, bowers, coopers, glasswrights, and gunstockers (A.P.S. V, Chap. I, c. 348). The list of prominent jurors contains the dagmaker, John Kello, John Smith, arrowheadmaker, Hector Balclawie, bowmaker, and Alexander Murray, steelbonnet maker; besides several maltmen, a halbertmaker, cordiners, weavers, stablers, saddlers, wrights and coopers, cutlers and bakers. The clockmaker was Abraham Wanweyneburgh (O.E.C. 19); the goldsmiths included James Fairt (Logan, 17 Nov. 1602) and George Cunningham (M.S. 13 Dec. 1598). The court record also mentions hatmakers (e.g. George Melville, John Hucheson and James Aitkin, skimmers (John Bowie), (M.S. 9 Sept. 1592), bonnetmakers (Patrick Rannald - M.S. 6 Oct. 1592), and swordslippers such as Thomas Hutcheson (M.S. 8 Nov. 1592).
31. M.C.R. I, p. 326. Market days were Mondays, Wednesdays and Fridays (e.g. Apprisings).
32. App. 2.
33. Edinburgh attempted to suppress the maltmen, and timbermen in South Leith (E.C.R. I, p. 111, 119, 168/9) and periodically took brute action against the Canongate (Marwick, pages 106, 135, etc.). The royal burgh was also protected by the Act of Parliament of James VI which forbade the exercise of crafts in suburbs of royal burghs (A.P.S.(S): 12. c. 154).
34. E.g. Gild Seals of Cause: there were maltmen and smiths in the Pleasance (e.g. Robert Simson, maltman; William Sprottie, smith - M.S. 1 June 1594), besides a numerous body of weavers. In Leith there were maltmen (e.g. James Corstoune - M.S. 30 July 1595) and tailors and smiths (e.g. James Campbell, Andrew Masoun, John

Henderson, Samuel Kie - M.S. 5 June 1594).

35. Gild Seals of Cause: e.g. Seal of Sir William Bellenden to wrights incorporated those in the Canongate, St. Leonard's Way, St. Ninian's Chapel, the Pleasance, North Leith, and Canonmills. Usually the non-burghal craftsmen could not ply their trade in the Canongate (e.g. O.E.C. 19, p. 4).
36. M.S. 30 October 1594. Provision for the stipend of Robert Davidson, reader at Chapel of St. Nicholas in North Leith. "Johne Waus indwellar on the noirth syde of the brige of Leith Robert Linkwpe skipper thair Robert Ramsay als skipper thir Johne Qhippo eldar thair John Gray Andro Wallance John Ramsay als skipparis & indwellaris... (with others)...Mair twentie markis none quhilk the Masteris & marinaris promittis faithfullie to outtak of thir box & pay the said Robert Yeirlie...Mair the saidis foirnemit nychbouris ordanit Samuel Kie deacon of the wobstaris to pay in name & behalff of his said craft the sowme of four markis... Item thair haif ordanit Malcome Broun (smith) as for himself remanent nychbouris of the samin craft to pay to the said reiddar yeirlie fourtie shillingis...Item thair haif ordanit the tailyeouris to pay to the said Robert yeirlie xl. s.

The possession of a common box was a characteristic of the gild (e.g. O.E.C. 19, p. 3), and so the skippers and mariners had at least that feature of a gild. The weavers had equally certainly a box and deacon. The Leith tailors (Holyrood: App. II, No. 40) and smiths (O.E.C. 19, p. 4) were however subject to the relevant Canongate gilds, and in accordance with this, no mention is made of box or deacon, but only of the neighbours, acting as individuals.

37. Mackay: Canongate: p. 99, is vague upon the date of the foundation of this gild, but it is not included in the Agreement of 1610 (O.E.C. v. 13). It may be that Kie was deacon of all the weavers within the Barony.
38. As 36.
- 39-40. Grant: pages 417-418: while the Edinburgh crafts and council were hostile to the outside craftsmen; individual citizens gave them work to do.
41. The Abbey was not specifically mentioned as caput of the Barony of Broughton (e.g. Holyrood: No. 95); but sasines and resignations were at one time made in the monastery, or its great hall (Y⁶³) or Abbot's Hospice

(Y. 123) or cemetery (Y. 157) or elsewhere in the Abbey policies.

42. Fife: XII - XIII.
43. R.M.S. IV 1535.
44. R.M.S. IV 1632.
45. R.M.S. IV 1264.
46. R.M.S. IV No. 1737: 1905: 434.
47. R.M.S. VII No. 560.
48. R.M.S. IV No. 878, 1354, 2718.
49. Fife: XIV - XVI.
50. R.M.S. V No. 1304.
51. Fife: XIX - XX.
52. Although many jurisdictions remained at the old Head place. In the early Seventeenth Century, the Melrose Regality Court still met in or about the monastery; the Dryburgh Court in the Abbot's Hall (Melrose: 1 p. xliii; Dryburgh: App. xlvi, p. 374). In other jurisdictions, the tenants were bound to Head courts held in episcopal palace or monastery (e.g. R.M.S. IV 1264; 2026 - vassals of Bishop of Aberdeen; R.M.S. IV 1605 - Arbroath).
53. A.P.S.(S). Ja. VI: 11. c. 81.
54. Q.V.S. p. 24.
55. A.P.S.(S).
56. A.P.S.(S): Mary 6.c. 32 and 33; Ja. VI: 11. c. 65; Craig: p. 1071-2.
57. A.P.S.(S): Ja. VI: 15. c. 273. This Act of 1597 applied to burghs of regality.
58. With the late exception of Preston - R.M.S. IV: No. 720.
59. E.g. M.S. 31 July 1599. "...the Burgh of the Cannogaitt being the heid burgh of the Regalitie and Baronie of Brochtoune."
60. A.P.S. VI p. 1, 1644 c. 280. Falkirk was created a Burgh in 1600 - M.C.R. I p. 431/2.

61. A.P.S. IV: James VI 1621 c. 99.
62. A.P.S. IV: James VI 1621 c. 47.
63. R.M.S. VII: No. 560.
64. A.P.S. IV: Ja. VI: c. 52.
65. A.P.S. IV: Ja. VI: c. 70.
66. R.M.S. VI: No. 1170.
67. R.M.S. IV: No. 809.
68. With the probable exception of North Leith, see No. 108.
69. R.M.S. 3: No. 2298: 5 March 1541; Holyrood: App. II, pages 276/88.
70. O.E.C. 19: p. 147: 1524.
71. R.M.S. V: No. 119. The earliest feu charters are alone mentioned.
72. Holyrood: as 69.
73. E.g. M.S. 6 April 1597 - the brieve of John Sword in Falkirk was proclaimed by William Inglis, witnessed by Archibald Ramsay, the Burgh Bellman, and, inter alia, by Laurence Robesone, assistant clerk.
74. E.g. proclamations of apprising of lands.
75. Chapter 2.
76. Carnwath: XXXVI-VII.
77. R.M.S. IV: 1475 - in the Tolbooth of Musselburgh.
78. The town of Kirkliston is and was the head burgh of the Lordship and Regality of St. Andrews, south of the Forth (A.P.S. IV: Ja. VI: 1621 c. 47).
79. The Melrose Barony of Mauchline - site of Head courts the manor place of Mauchline (R.M.S. IV: 159: 2171).
80. R.M.S. 4: No. 136: 2279: "Dicti domini de Munktoun...in Regalitate de Paslay."
81. In most of these charters the vassals were bound to suit of Head court at the Baronial Court. In one Paisley instance, the vassal was obliged to appear in the

Regality head-courts if cited in writing (R.M.S. IV: 2853 - Red. - ac prestando tres sectas ad tria placita capitalia apud Paslay cum citati essent in ~~san~~scriptis.

82. Carnwath: li - lii.

83. The Regality of Kilpatrick consisted of Paisley's Dumbartonshire lands (Paisley, p. 20) and did not include the Barony of Mauchline. Its vassals owed suit to the Head Courts held in the Tolbooth of Paisley (R.M.S. IV: 2314: 2568).

84. Carnwath: li - lii.

85. Arbroath: 1) pages 463/4: 3 July 1527. The Abbot appoints Gylbert Menzies, provost, and Wilyem Rolland, bailie, of Aberdeen, his bailies of the Barony of Torry, with power to appoint substitutes, to collect rents, to execute judicial sentences, to collect the fines of court, and to apply half to own use, to repledge tenants and servants to the courts of the Abbot and to perform all other matters belonging to the office of bailie.

2) pages 465/6: 5 July 1527. Abbot granted Gilbert and William Rolland the Barony of Torry cum... (inter alia)"feudis et annuis redditibus ville de Torre... Reddendo included...faciendo sectas ad curias capitales abbatis cum premoniti fuerint tantum...(but reserved to the Abbot) tamen iure regalitatis cum cadusula de inquietand." These grants gave the bailies a civil jurisdiction, but retained criminal matters in the hands of the Abbot.

86. M.S. 6 April 1597 (Head Court). The Retour of John Swoird to a 16s. 8d. land in Falkirk. "Et quod dicta terra de Falkirk...de Iacobo Bellendene barone baronie et Regalitatis de Brochtoune...tene(n)tur in capite... Reddendo...unacum seruitio in curiis capitalibus dicti Jacobi Bellendene baronis dicte baronie de Kerse...ac seruitiis in curiis dicti Iacobi Iusticiarie et camerarie cum alteris seruitiis solitis et consuetis..." Such a description of court service is rare, but is probably correct. Sword's head court service was, of course, performed in the Canongate, e.g. among "Absente Baronie", of Head Court of 26 April 1598, "Johne Swoird".

87. The Regality and Barony of Kerse is mentioned in the fourteenth year of James II (Holyrood: No. 123): but in 1461, Airth is described as being "in baronia de Brochtoune" (Holyrood: No. 128). In 1541, there appear "balliuis nostris regalitatis et baroniarum nostrarum de Brochtoune et Kerse..." (Holyrood: No. 130) while,

finally, in 1552, there is "dominii nostri de Kers" (Holyrood: App. II No. 37) for lands in which was paid "tres sectas curie ad nostra tria placita capitalia regalitatis nostre prefate apud monasterium...seu alibi aut in pretorio infra dictam nostram regalitatem seu vicum canonicorum..." (Holyrood: App. II No. 37). These extracts seem to prove that from at least the early Sixteenth Century, Broughton and Kerse were considered to be a single Regality.

88. R.M.S. IV: No. 1985. Although John Bellenden was created hereditary bailie and justiciar of the entire Regality of Broughton upon 23 August 1565, special reservation was made to Alexander Bruce of Airth of rights of bailiary in the lands of Kerse and Ocilface. These were now cancelled for administrative and judicial convenience and Bellenden was made the sole bailie and justiciar within the Regality, including Kerse and Ocilface. Bruce had therefore bailiary, and probably justiciary rights within Kerse.

89. Although no reason why they should. The trial of Jonet Neilson (App. 3) is not a good example as she was apprehended in the Canongate (R.P.C. VI: p. 6: 21 June 1599).

90. As 53.

91. M.D. VII: Baron Court: No. 258 - Jan. 11, 1623: Innes v. Grant: p. 7543/4: 1). A baron-court could be held at any part of the jurisdiction, as well as at the head court place.

2). Bailie could hold court at place where blood was committed, or where defender lived; and it was sufficient that criminal courts & for blood could be held in feriot time, and that those who dwelt nearby and were summoned to an assize could be unlauded for disobedience.

92. M.S. 14 August 1594.

93. As 73.

94- This possibility is based upon the complete absence in the
95. Court Record of civil-causes involving inhabitants of Kerse. There are no poindings, appointing and discharge of curators, taking of lawburrows or civil actions, including those for small debts, affecting Kerse, within the Record. Either there were none of these, which seems impossible over a period of eight years, or else they were resolved outside the principal Regality Court. The last was probably the case; and it may well be that the

bailie-court at Falkirk handled them. The inhabitants of Kerse did, on occasion use the Regality Court for the registration of contracts (~~App.~~); while the Superior pursued for his rents in the same court (Wood: p. 299/300).

96. These were not bound to a fixed place (Fife: XVI); but the Broughton Courts rarely moved from the Canongate Tolbooth (Court Lists: Chapter 7).
97. At that period the intermediate court ranged between the Canongate St. Nicholas' Chapel, Leith, or the Chapelhill, with an occasional visit to Whitekirk, and, no doubt, other places as well (Young: 189, 295, 398, 492, 528).
- 98-99. Court Lists: Chapter 7.
100. Whitekirk was originally part of the Regality of Broughton and under the authority of the Bailie of Broughton (e.g. Young: No. 446); but in 1588, Adam Bothwell, Bishop of Orkney, received in liferent, and his son in feu, the lands and barony of Whitekirk "cum privilegio regalitatis et balliatus cum potestate balliuos creandi...etc..." (R.M.S. V: No. 1484). This grant did not, even after the erection of the Lordship of Holyroodhouse, exclude the feufarmers from suit at Headcourts in the Canongate and from service in Justiciary Courts (R.M.S. VIII: No. 2069); but presumably enabled the Bothwells to exercise a civil competence.
101. Craig: II: 8. Sect. 30, p. 535/6.
102. As above.
103. M.D. Jurisdiction of Subvassals: VII, Sect. III: No. 26B - Jan. 30, 1630. Dennistoun v. McLinto, p. 7545 - although only for breaches of duties as tenants.
104. Holyrood: App. II, pages 2761/88.
105. R.M.S. IV: No. 761, No. 762. Feuars of Earl of Arran bound to forensic service and "tres sectas ad tria placita capitalia super terras de Kers".
106. The Canongate court was presided over by bailies appointed by the Superior before the Charters granted to the Burgh by the Abbots.
107. There was a dual situation in Leith. The Abbey lands in South Leith were in the Barony of Restalrig and the bailiary rights of the Lord of Broughton exercised by the Barons of Restalrig (Edin. Charters, p. 64/65).

South Leith tenants were however returned by Broughton briefes and held "vnacum seruitiis curiarum in tribus curiis capitalibus sicut ceteri liberi tenentes ville de leith reddunt et faciunt". (Retour) of "Williame Meneteith sone & air of Vmquhile Williame Meneteith sumtyme ane of the baillies of the toun of Leith". (M.S. 30 April 1597). The tenants of North Leith, entirely within the Barony of Broughton were bound to a court service loosely described "unacum seruitiis in eorum curiis sicut ceteri liberi tenentes dicte ville de Leith reddunt et faciunt..." (M.S. 25 May 1597.)

This court service did not seem to mean suit in the Head courts held in the Canongate, for not one of the many Leith vassals is recorded amongst the absent. One Regality Court, on the 7th April 1597, is enrolled: "Curia capitalis Regalitatatis et baronie de Brochtoune Tenta apua villam de Leith ex parte boreali aque eiusdem in pretorio ibidem Coram Johne Grhame balliuo deputato eiusdem..." Although no list of absent suitors is appended, an occasional court held in Leith may have sufficed for the Head Court service of the Leith vassals.

The same entry gives the name of the Leith Court officer, Donald Shane, but the Leith bailies are nowhere recorded. The town court could only have had limited powers and suffered from the cumulative jurisdiction of the Regality Court. Petty debts (App. 4), lawburrows (App. 4) and apprisings affecting Leith appeared often in the Regality Court, while the latter moved to Leith to deal with annualrents (App. 4), with actions of neighbourhood (App. 4).

108. The Falkirk bailie was Andrew Lyall (M.S. 6 April 1597).
109. R.M.S. IV: No. 720 - right to have burghal court included in Royal Charter.
- 110- The Leith Court had its competence impaired by actions
112. appearing in the Regality Court (as No. 107), but this can be explained by the privative jurisdiction of the latter and its proximity to Leith. The actual competence of the Canongate Court, originally presided over by the Abbot's bailies, and the non-appearance of civil causes from Falkirk, Kerse, Whitekirk and Preston, suggest that a bailie without power of justiciary had, in at least Broughton, much more of a judicial authority than that normally permitted to a sub-vassal; in effect, competence over all civil matters proper to a Regality.

CHAPTER 4.

The Relationship between the Burgh of the Canongate and the Lord of the Regality.

The burgh in regality or barony was created by the Crown in favour, and in the interests of the Baron and not for the benefit of the prospective burgesses and inhabitants.¹ The foundation charter of the Canongate is brief and without detail but later grants of the Crown not only erected the Burgh, but also conferred upon it and its inhabitants the right to buy and sell certain articles, to have craftsmen and other necessary tradesmen, to hold markets and annual fairs, to have courts, market-cross and Tolbooth: and to possess burgesses, bailies and other officers of Burgh and Court.² The Superior was usually expressly reserved some control over Burghal affairs;³ but in any case, the precise application of these privileges depended upon his subsequent charter of erection and not upon the original royal grant.⁴

Often the overlord granted no such supplementary charter:⁵ but upon a number of burghs, such were, in fact, conferred: and of these the Canongate was one.⁶

The average superior's charter falls into two natural sections: what the overlord gave to his burgh and what he demanded in return. He usually transferred to his burgh and

burgesses five main rights. The privileges of trade and industry, with the right to hold markets and fairs devolved upon the inhabitants, who were also permitted to admit their own burgesses, craftsmen and stallingers. The inhabitants were allowed to administer and make laws for the governing of the burgh, and to punish their transgressors. Often they were permitted to choose their own bailies and other officials, necessary to fence, hold and continue the burgh courts; and to receive resignations and give sasines of Burghal lands. Lastly some part of the petty customs, burgess fees, amercements and unlaws passed from the superior to the common good of the Burgh.⁷

In return the Superior demanded three main services and renderings. The burgh being held by its inhabitants from him in feu-farm, they owed either an annual payment, or the annual dues from burghal tenements and lands, and often both.⁸ In addition, the burgesses were obliged to render suit at the Superior's head courts and were thirled to his mills.⁹ Any other exactions were covered by a general phrase,¹⁰ while in burghs of regality the overlord expressly retained the right to continue to hold his Chamberlain and Justice eyres within the burgh.¹¹

The privileges and obligations possessed and owed by the Canongate fit within this general framework. Putting together

scraps of information in lieu of missing charters,¹² it can be seen that the inhabitants held their burgh from the Barons of Broughton with the following concrete rights.

They possessed the powers of trading and the exercising crafts. In addition, the burgh could admit its own burgesses, craftsmen, maltmen, and others;¹³ although these rights were no longer exercised in the burgh court. Until about 1572, burgesses were still admitted by the Bailies in open court;¹⁴ but overlapping this older system, was the newer practice of receiving their oaths and compositions before the Council.¹⁵ Within the present records, no burgess was admitted by the Bailies in court. The fee of four lib. was appropriated by the burgh and did not go to the Superior.¹⁶

Overlords sometimes limited the right of admission to indwellers of the burgh,¹⁷ and in effect, a majority of the Canongate burgesses were either the heirs of deceased burgesses¹⁸ or the husbands of their daughters.¹⁹ An additional number were nominees of the Lord Superior,²⁰ or servants and officials of the Royal Court.²¹ Strangers could, however, acquire burgesship, although possibly only with consent of the Baron.²²

Incorporated craftsmen were admitted by the relevant gild.^{22a} The gilds themselves received their Seals of Cause from the Superior²³ who, in theory, possessed the right to

determine the guilds' constitutions and retained an overall authority.²⁴ With the four Canongate guilds, details of the constitutions, had been left to the Burgh council;²⁵ and, within our period, neither the Barons nor the Canongate councils interfered overmuch in guild affairs; although the latter, with only poor success, attempted to enforce the prior creation of craftsmen as burgesses.²⁶

Over all unincorporated craftsmen and unfreemen the Council exercised a control, attempting in 1567,²⁷ 1574²⁸ and in 1588²⁹ to force them to seek freedom and burgesship; such freedom being conferred by the council in return for compositions.³⁰ And so in the admission of Burgesses, freemen and craftsmen, the Council and guilds had a practically unfettered control. Conversely they had a full title to deprive inhabitants of their trading and craft privilege.³¹

The inhabitants, through their council also possessed or exercised the right to make "pretendit lawis actis statutes & constitutionis for reuling & governing the said burcht and --- (to impose) --- fynnes & penalties taxatiounes & Impositiounis vpoun nichtbouris Inhabitantes & Induellaris within the said burcht vpliftis ressaues & uses the samin at thir plesoure."³² The Council determined the prices of wine³³ and ale³⁴ fixed the weight of the loaf of bread,³⁵ examined the quality of goods offered for sale³⁶ and introduced standard

weights and measures.³⁷ It also searched out the sick through its quartermasters,³⁸ and banished the plague-stricken to the Calton Hill.³⁹ To relieve the poor and needy, the Council stented the inhabitants;⁴⁰ and having obtained patronage of the Grammar School appointed, paid and dismissed the Schoolmaster.⁴¹ In matters religious, the council salaried from 1572, minister and reader,⁴² took action against Papists,⁴³ provided communion wine⁴⁴ and mortcloths,⁴⁵ and closed taverns during hours of worship.⁴⁶

The Burgh Council was also responsible for raising the Burgh's quota of the Regality's share of national taxation,⁴⁷ and until 1629 the burgh fencibles were mustered by the burgh and not by the Regality bailies.⁴⁸ Unlaws imposed for the breaking of burgh statutes were devoted to the common good of the Canongate.⁴⁹

As is shown below, the bailies, council and all other burgh officials were elected, or appointed by the burgh itself. From 1567 the provisions of the municipal Act of 1469~~4~~ were observed: this practice remaining uninfluenced by the Barons of Broughton until 1625.⁵⁰

As for the income of the Burgh, it is sufficient to add that the Abbots, apart from surrendering to the community burgess fees and other compositions, the unlaws from the breakers of statutes, and fines of court, had also allowed

their burgesses to set and appropriate a custom upon wine entering the burgh,⁵¹ to impose 'mails upon all pends within the Canongate and liberties,⁵² a stock mail upon fleshers⁵³ and, certainly at a later date, dues were also exacted from the keepers of green and fruit stands, and upon fish, fruit and vegetables sold in markets or streets.⁵⁴ From the Crown, and not from the Lords' Superior, the burgesses also enjoyed the income from annualrents originally belonging to the altar of Our Lady in the Abbey,⁵⁵ and dues upon all carts entering the burgh by the Watergate.⁵⁶ From the Abbots on the other hand, the Canongate had received the common moor near Pilrig; a property feued in 1521;⁵⁷ and also a few burgh tenements conferred upon the council and community.⁵⁸ The Gallowlee, adjacent to the moor, also belonged to the Burgh: being leased by roup at periodical intervals.⁵⁹

The Canongate was not ungenerously treated by its overlords, although its privileges depended upon the latter's annual consent.⁶⁰ Yet the return made by burgesses inhabitants and burgh was both onerous and considerable.

The burgh income, derived almost entirely from the sources indicated, had to meet the expenses of all the burgh officials,⁶¹ part of the upkeep of the parish Church,⁶² and pay a portion of the stipends of minister and reader,⁶³ and provide for the maintenance and repair of the Tolbooth,⁶⁴ the burgh

gates⁶⁵ and streets.⁶⁶ These expenses the Regality avoided either in whole or in part.

A considerable revenue derived from the Burgh went directly to the Baron. Financial gain was one reason why the privilege of Burgh was sought by private persons from the Crown, and many Burghs in Regality and Barony were drained of their profits well into the Nineteenth Century. Dalkeith, for example, was subjected to a form of extortion by its overlords. The Superiors levied customs on bea^s, grain and carts entering Dalkeith and upon vegetables, fish and other commodities sold in markets and shops.⁶⁷ In Eyemouth, the overlord levied the "cyze boll" on every cargo of specified goods landed at the port, anchorage dues upon every ship in the harbour; and customs upon certain articles sold in the Burgh.⁶⁸ In Abernethy, the burgh received the first hundred marks of the customs of fairs and markets; the remainder belonged to the Superior,⁶⁹ while in Dunkeld the Athole family appointed customers, fixed the rates of dues and imposed them upon practically every commodity likely to be sold in the burgh.⁷⁰

The Abbots of Holyrood had disposed of these customs and dues to the Canongate; but a substantial revenue remained to the Barons. The inhabitants of a burgh usually held the subject from the Superior for an annual feu-farm. Newburgh

gave the Abbots of Lindores six pennies for every perch of land;⁷¹ Glasgow from 1636, gave the Crown an annual twenty marks and its Archbishop, sixteen.⁷² Hamilton by its charter of 1670, returned to the Dukes forty golden marks;⁷³ while Abernethy following the example of Newburgh, paid its Superior five Scots pennies for each rood.⁷⁴

In addition or perhaps as an alternative, many burghs, or their feu-holders, owed annual returns upon the Burghal tenements. Paisley rendered both an annual farm and rents upon tenements, mansions, yards and acres.⁷⁵ In Huntly, the inhabitants gave feu-duties to the Superior, although this burgh was ruled directly by a baron-bailie,⁷⁶ and this practice applied, in general, to all burghs which had no privileges or had lost them.⁷⁷

The same was true of the Canongate. There is no record of its returning an annual farm to the Barons of Broughton, but the superior received the feu-duties of the tenements and yards of the Burgh.⁷⁸ Moreover, he was entitled to all the other dues and rights which attached themselves to feudal ownership.

The Canongate was treated only as a collection of fiefs held from the overlord. For certain purposes, these had been incorporated into a burgh; but from the strictly feudal point of view this economic facade did not exist. All that was

visible was a packed mass of feudal tenements.⁷⁹

From each of these the Superior received at Whitsun and Martinmas a money return.⁸⁰ Upon the death, or resignation of a vassal, his fief reverted to the overlord, and remained at his disposal until another was granted sasine.⁸¹ From each tenement, upon the accession of a new vassal, was possibly due a duplicand or double the annual return.⁸² The superior received an annual return, the fruits of the tenement during non-entry,⁸³ possible a duplicand upon entry, and the escheat of the holding,⁸⁴ save in cases of bastardy when it fell to the Crown.⁸⁵ In addition the goods of a criminally escheated Canongate inhabitant passed into the hands of the Baron.⁸⁶

The rights of the Superior did not end with purely monetary considerations. A burgage holder was liable to service in the harvest fields of the overlord:⁸⁷ although this had probably fallen into disuse by the early years of the Sixteenth Century. But long after the end of that century, each vassal was thirled to the mills of the overlord at Canonmills:⁸⁸ while the Baxters' gild was expressly bound to this service.⁸⁹

Moreover, the Canongate feuwar was bound to render service in the Head and Justice courts of the Regality,⁹⁰ and he and his fellows were frequently employed upon inquests serving briefes relating to landward areas of the Regality.⁹¹

From this survey it is clear that by the grace of the Superior, the inhabitants of the Canongate could elect their own bailies, council and officials, hold burgh courts, make and enforce burgh laws. They could admit their own burgesses, craftsmen, maltmen and traders, and could appropriate to their common good, unlaws imposed upon breakers of statutes, fines of court, burgess fees and similar compositions, and customs upon goods entering and sold within the burgh.

On the other hand, the Barons of Broughton awarded themselves by treating the Canongate, in some ways, as a collection of feudal fiefs, and therefore applied to their own use the purely feudal financial assets, and imposed, in addition, a series of labour and judicial burdens.

CHAPTER 4.

The Relationship between the Burgh of the Canongate and the Lord of the Regality.

1. The Royal Charter was granted to the tenant-in-chief and not to the Burgh. The former expected to gain financially as well as increasing the number of his vassals. A burgh was also, of course, of advantage to the inhabitants of his jurisdiction, particularly if far removed from a royal burgh (e.g. Ballard ~~?~~ *S.H.R.* 13)
2. E.g. Paisley, pages 29-31; Melrose: M.C.R. App. XIV, pages 175/6.
3. Especially over the election of burgh officials, and admission of burgesses. The Royal Charter could either confine these appointments to the Superior (e.g. Aberdeen, pages 326/7); or grant them to the inhabitants subject to annual approval of the Superior (e.g. M.C.R. Eyemouth: App. XI, pages 172/3).
4. The Royal Charter erecting the Burgh of Paisley gave the Abbots the right to appoint burgh officials (Paisley, pages 30/31). The Abbot's Charter of 1490 transferred it to the burgesses (Paisley, pages 35/38). The Royal Charter erecting the Burgh of Faithlie (Fraserburgh) gave the right of election to the free burgesses (M.C.R. App. IX, pages 171/2). By contract of 1601, Superior, as hereditary provost, undertook to nominate council and bailies with assent of the old council. In practice, Superior behaved as he willed (M.C.R. III p. 59). There are many other instances of divergences between the Royal Charter and the subsequent grant of the overlord.
5. E.g. Melrose (M.C.R. III p. 133): Eyemouth (M.C.R. III p. 55): Kelso (M.C.R. III p. 97).
6. Vide Chapter 5.
7. Lindores, pages 220/23: Paisley, pages 34/39: M.C.R. App. XV: Abernethy, pages 176/7.
8. By the majority of Superior's charters the burgh was set in feu to its inhabitants (vide Paisley: Abernethy: Lindores and the indentures of the Abbots of Dunfermline with the inhabitants of Dunfermline, Kirkcaldy, and Musselburgh (Dunfermline, Nos. 396, 432, 460). This made the burgh a feudal subject held by the inhabitants from the Superior (M.D. Burgh of Barony, No. 4: Nov. 22nd, 1732, p. 1825). For annual returns see *Vis et seq.*

9. Paisley: Lindores: Abernethy as 17.
10. As in Paisley (pages 36/39). All other burdens, exactions and secular services which can be justly exacted.
11. As 9, with Dunferline Indentures.
12. The burgh charters were in existence as late as THE EARLY SEVENTEENTH CENTURY AND MAY HAVE BEEN REMOVED TO EDINBURGH AFTER 1650 (WOOD 1655/65 p 174)
13. App. I, Maitland, pages 305, etc., 306, etc.
14. Wood, page 316.
15. A.P.S.(S) Ja. IV: 6 c. 86 - No burgess to be admitted without consent of great council of burgh. This meant, in effect, admission in open court (e.g. Peebles, page 155: Dunfermline B.R., page 48;) but by end of Sixteenth Century admission was limited to bailies and town council (Lanark, page 120).
16. Burgh Accounts: Maitland, pages 325/6, 332/3, etc. Four lib. was the official entry fee, although some burgesses were admitted free and others for more. William Fendar paid five lib. (Maitland, page 345); William Smith, 6s. 8d. (Maitland, page 349); and five servants of the King, gratis (Maitland, page 351).
17. Lindores, pages 220/3: Paisley, page 35 or 38 (granting of burghal tenements): Abernethy (M.C.R. App. XV, pages 176/7.
18. E.g. Hector Balclawie (Wood, page 816).
19. Maitland, page 358, page 349.
20. Maitland, page 346, page 345.
21. Maitland, page 351.
22. Maitland, pages 358, 349, 345, etc. These persons were admitted, with no reasons attached, and paid a heavy composition. In 1835 strangers were made burgesses at twice the normal fee.
O.E.C. 19, page 6 et seq.
23. Holyrood: App. II: Nos. 39 & 40; A.P.S. V: pages 563/3, c. 348.
24. M.D. Burgh of Barony, No. 6, page 1830, 8 Jan. 1755 - Feuers and inhabitants of Kelso v. D. of Roxburgh.

In the Seventeenth Century Canongate, baron-bailie on behalf of Edinburgh, as Superior, had right to appoint visitors to sight and report upon the Flesher's Gild (M.D. supra: No. 3, page 1824, Nov. 22nd, 1677 - Fleshers of Canongate v. Town of Edinburgh).

25. Holyrood Charters, No. 23.
26. Maitland, page 303, 23 Oct. 1567. This burgh statute was in accordance with the Aberdeen "Common Indenture" of 1587 (Grant, page 436) and was similar to Edinburgh provisions of various dates (e.g. Edin. R. III, pages 39, 72). The reason for this insistence was that the obligations of watch and ward, military service and the like, fell upon burgesses alone (Grant, 396/7, pages 411/12). By avoiding burghship, a craftsman obtained the advantages and escaped the obligations of living in a burgh.
27. Maitland, page 305.
28. Supra, page 330.
29. Supra, page 356.
30. Supra, page 306: 4 Dec. 1567. A stallenger admitted upon annual payment of four shillings; a skinner allowed to continue until Whitsun for a similar composition.
31. Maitland, pages 358/59.
32. App. I.
33. Maitland, pages 304, 307, 311/12, 315, 325, 346.
34. Maitland, pages 314/5.
35. Maitland, pages 314/5.
36. Maitland, page 351 - the examination of a flesher's meat.
37. Maitland, pages 305, 306, 378.
38. Maitland, page 313.
39. Maitland, pages 313/4.
40. Maitland, pages 313/4, 315, 317. For the poor on the Hill.
41. Maitland, pages 345/6: 5 April 1580: Schoolmaster surrendered the gift of the school made to him by Adam Bothwell, in favour of bailies and council.

42. Maitland - as 63.
43. Maitland, page 316.
44. Maitland, page 317.
45. Maitland, page 338.
46. Maitland, page 317.
47. Maitland, page 348: 9 Nov. 1581: Bailies and council ordered a stent of 30 lib. to be collected to relieve taxation of Lord Holyroodhouse of xl,^m lib. to King's Stent.
48. R.P.C. (2nd) V.III. 1629/30, pages 161/2, 166/7, 541.
49. Maitland, page 351: great unlaws, over 8s. devoted to common works.
50. Chapter 5.
51. Maitland, pages 315, 325 - set annually by the council.
52. Maitland. *page 328/9.*
53. Maitland, page 330.
54. M.C.R. I, page 326.
55. Maitland, pages 318/9.
56. M.C.R. I, page 326.
57. Maitland, page 325 - feued to Monypennys of Pilrig.
58. Maitland, pages 321/2.
59. Maitland, pages 348, 355, 356.
60. M.C.R. I, pages 324: Decision of James VI - 15 June 1620.
61. Maitland: Burgh Accounts, pages 325/6, 332/3: Maitland, pages 320/1, 335/6.
62. Maitland. *p. 335*
63. Maitland, pages 319, 326. From 1573, Brand received 40s. per annum from bailies and council from burgh annuals, together with a further 22 lib. (Maitland, page 344), or 26 lib. (Maitland, page 347). The reader was given a stipend of 10 lib. per annum (Maitland, page 344), or 16 lib. (Maitland, page 347).

64. Maitland: Burgh Accounts, pages 336/7.
65. Maitland, pages 310 & 330.
66. This was reason for tax on carts entering Watergate (vide Act).
67. M.C.R. III, page 27.
68. M.C.R. III, page 55.
69. M.C.R. III, page 4.
70. M.C.R. III, page 42.
71. Lindores, pages 220/23.
72. Glasgow, pages 392/94.
73. M.C.R. II, page 73.
74. M.C.R. Abernethy, App. IV, pages 176/7.
75. Paisley, page 35 or 39.
76. M.C.R. III, page 90.
77. E.g. Dunkeld (M.C.R. III, page 42): Melrose (M.C.R. App. XIV, pages 175/6).
78. Not mentioned in Burgh Accounts nor in Letter of James VI.
79. This attitude rendered the Burgh of Regality or Barony liable to all feudal incidents, and marked an important distinction between them and Royal Burghs (e.g. Craig, pages 797/98).
- 80- Vide relevant Chapters.
- 83.
84. Not specifically mentioned in Burgh Charters.
85. Vide relevant Chapter.
86. M.S. 23 Feb. 1596/7 - conviction of Thomas Weir in Canon-gate and his complices "And haill personis guidie foirsaidis to be escheat & Inbrought to the superiour vse..."
87. Young: No. 1269 - 20 Nov. 1502 - a day's work in harvest. Feuing of Abbey lands would end this obligation.

88. Laing: 2395, 13 July 1649: 2849, 4 March 1687.
89. Mackay: Canongate, page 93.
90. Young as above: Laing, 2369, 26 August 1646.
91. Chapter upon Juries.

CHAPTER 5.

The Bailies and Council of the Canongate.

From this initial survey of the broad relationship between the Canongate and its Lord Superior, it is now proposed to consider the precise mode of election of the Burgh's bailies, Council and officials. This, together with the powers of these persons and institutions, formed a fundamental part of the general relationship between overlord and burgh. The position in the Canongate is peculiarly interesting, because by its frequent alteration it shows the extreme variability of this aspect of the main subject.

Originally bailies and council were nominated by the Abbots of Holyrood: a nomination which passed, probably in the early years of the Sixteenth Century, to the inhabitants of the Burgh.¹ In 1567, this right of appointment was restricted to the old council;² but in 1625 the revolution was partially completed by the third Baron of Broughton, once more acquiring for himself the power of nominating the bailies.³ This right passed to the Earl of Roxburgh:⁴ and thereafter to the city of Edinburgh.⁵ At length, the latter first attempted to nominate the council, and then abolished it.⁶

The various Canongate modes are, each, typical of practices which either permanently or temporarily, prevailed in

most Burghs of Regality and Barony. The burgh belonged to the overlord and he treated it as he willed. Some superiors, notably the Abbots of Dunfermline,⁷ but also the overlords of Newburgh⁸ and Abernethy,⁹ gave their burgesses complete power to elect their own bailies and council. Others, as in Glasgow¹⁰ and Kilmarnock,¹¹ nominated bailies from leets presented to them by the burgh councils: while in Stonehaven, the inhabitants presented the Earls Marischal with the names of two resident burgesses. Once accepted by the Earls, the new bailies elected the Council.¹² The Abbots, and secular lords, of Paisley nominated one bailie, while the old and new councils appointed the other.¹³ In Torry,¹⁴ Melrose,¹⁵ Dalkeith,¹⁶ Kelso¹⁷ and many other burghs,¹⁸ the Superior contented himself with a normal baron-bailie: while in Fraserburgh,¹⁹ and Rosehearty²⁰ the respective overlords endowed their burghs with the trappings of bailies and council; but retained the hereditary provostships with the right to nominate the council and officials.

The Crown, by its charter of erection allowed a burgh to have courts, bailies and all other necessary officials: but it remained with the Superior to determine by his charter, the details of the Burgh's constitution. Often he never put the royal provisions into force: as often he retained a varying degree of control over Burghal institutional affairs. More

rarely, he removed his direct influence altogether. In all cases, however, the burgh retained its fundamental characteristic of an industrial and trading organism.²¹

The Canongate bailies, once nominated by the Abbots, were until 1566, elected in the Michaelmas Head Courts by "The Counsale and maist parte of the communitie."²² An ancient and once universal mode of procedure, but one which contravened the provisions of the Municipal Act of 1469.²³ In this disregard the Canongate was by no means alone, for even royal burghs, such as Peebles, followed the old custom well into the Sixteenth Century.²⁴

The method of election was by no means democratic: for it is probable that the "maist parte" meant more than a numerical majority; but rather election by the best and worthiest of those entitled to appear in court. Those, who in Aberdeen, were personally warned to appear, while the others were summoned in general by hand-bell:²⁵ or those who in Peebles, settled the burgh affairs before the rest of the court.²⁶ Burghal communities were not advocates of manhood suffrage and along with mere numbers, wealth and influence played their parts.

In 1567, the Canongate came into line with the 1469 Act and its supplement of 1474.²⁷ Henceforth, the old council nominated the new on the Thursday before the Michaelmas Court:

and two days after the four crafts had already elected their deacons. On the following Tuesday, the two councils, including the deacons, appointed the two new bailies, the treasurer and all other officers; who were then sworn de fidelis administratione in the Head court. The bailies formed part of a council which was composed of the two old bailies, and the old treasurer, the new officials, three ordinary members of council, and the four deacons of craft.²⁸

Direct control over these appointments and elections was not exercised by the Barons of Broughton: although at one stage, the superior nominated one bailie as a deputy of the Regality.²⁹ This forged a close link between burgh and regality courts: but was an expedient not recorded in the last decade of the century.

Relations between the Canongate and its Superior deteriorated in the time of Sir William Bellenden, who became baron in 1606. At length in 1625, Bellenden obtained the reduction of many of the burgh's privileges especially that pretended power by which the inhabitants of the Canongate: "without the consent of the said persewer -- Electis -- yeirlie baillies, counsaill -- (etc). -- at thir plesoure --". Subsequent superiors left the Canongate council untouched, but from 1625, the Burgh bailies were appointed by the overlords.³⁰

From 1640, once the Canongate was firmly in the hands of Edinburgh, the city council nominated each autumn the bailies of the Canongate, usually at the same time as the selection of the Edinburgh officials.³¹

As a general rule, one bailie, the bailie quoad criminalia et civilia, was an Edinburgh burgess and often a past, present, or future member of the city council.³² He represented not only the old burgh bailies, but also, by his criminal jurisdiction, the former bailie of the baron, with his competence limited to the new Regality of the Canongate.³³ He was also usually the baron bailie of Broughton, appointed by the council acting as governors of Heriot's Hospital.³⁴ The Bailie quoad criminalia was evidently expected to dwell for at least, part of his time, in the Canongate.³⁵ But he was a creature of Edinburgh, whose relations with the indwellers of the Canongate, and his brother bailie were often strained.³⁶

The bailie quoad civilia was the representative of the old line of Canongate bailies. Occasionally there were two, but more usually one.³⁷ The bailie quoad civilia, as was the law, held office for a single year, but was usually continued for two or more.³⁸ Such continuation was unknown in the period of the Court Book: but, then, the bailies were nominated from the narrow conciliar clique. As a result, the same names re-appear at regular intervals.³⁹

The bailie quoad civilia was liable to dismissal at the will of the Superior: a fate which fell upon an unfortunate bailie, who, in 1655, was unwise enough to quarrel with the baron-bailie.⁴⁰

The Canongate bailies were not rewarded over highly for their services. From 1572, each received a single burgess fee of four pounds per annum.⁴¹ The basis of this payment remained unaltered, although by 1835, the burgess composition and the bailie's award had fallen to three guineas.⁴² Compared with the Paisley magistrates' annual twenty pounds,⁴³ the bailies of the Canongate were poorly served, especially since the former also received a proportion of fines and unlaws.⁴⁴ The bailies of the Canongate had divided all unlaws between them in 1572:⁴⁵ but from 1583 unlaws over eight shillings were diverted to the common good.⁴⁶ The bailies were still entitled to sasine fees,⁴⁷ sentence-silver,⁴⁸ and possibly the small unlaws.⁴⁹ In addition, the bailies and council helped themselves to the common good, bringing, or so it was claimed in 1612, the Burgh to ruin.⁵⁰

In social position the Burgh bailies were craftsmen, University graduates and men of prominence in the affairs of the Burgh. They included Master Archibald Wilkie,⁵¹ and Master John Hairt, doctor of medicine and owner of Ironside and Godbairnscroft.⁵² John Smith was a baxter and feufarmer

in the territory of Broughton.⁵³ Andrew Borthwick was probably related to the Borthwicks of Glengell and Bancreiff,⁵⁴ while George Cunningham was one of the few burgh goldsmiths.⁵⁵ Hector Balclawie, on the other hand was one of the diminishing band of bowmakers.⁵⁶

The burgh bailies presided over the burgh court, or with the deputes, over the joint Regality and Canongate tribunal; at one stage admitted burgesses in open court: and still continued to issue precepts of warning, to book poindings, grant sasines, and to attend to the other tasks outline^o below. From 1652, the burgh bailies, along with the Bailie quoad criminalia et civilia assumed the duties of the council, admitting burgesses, gathering casualties and dues, and issuing decrees for the governance of the Burgh.⁵⁷

The council retained the essential character created in 1567, although by 1625 it was in numbers composed of the two bailies and treasurer, seven ordinary members of council, and of eight deacons of craft.⁵⁸

The last increase was due to the erection of four new crafts, and achieved a balance between the crafts and the unincorporated inhabitants of the burgh, especially the maltmen who had ruled the Canongate from 1600 until 1612.⁵⁹ The Council had always been "closed" with the old practically re-electing the new. Of the bailies in our period, some had appeared on

the council as far back as 1573, while Wilkie, Smith and Borthwick, to mention only three, had obviously been continuous members of council from at least 1591.⁶⁰ From 1600, the same group of nine maltmen had perpetuated itself year by year, with its own nominees being returned as bailies.

The outraged deacons secured in 1612, a Privy Council order to the old council, enforcing the creation of seven new councillors.⁶¹ Unfortunately, no provision was made to include the deacons amongst the seven: and while the crafts were electing their deacons, the old council and the seven locked themselves in the Tolbooth and produced a new council composed of the old bailies and treasurer, two new bailies from the old council and of four old councillors. Of the remaining members, possibly some were drawn from the seven, but the deacons were excluded.⁶²

The Privy Council restored the old set from 1613, and the new crafts created a balance. The events of 1625 left the council unharmed, and the body established in 1567 survived, although with its rights often disregarded, until 1652.⁶³

In that year Edinburgh attempted to change the set. The Canongate council of 1653 was to be composed of fifteen members of council, all nominated by the Edinburgh council. Thereafter, the retiring council was to submit a list of sixteen to the latter. To this list, the council of the royal

burgh would add three names, and from the nineteen appoint the new council of thirteen and the two bailies.⁶⁴

Edinburgh's main intention was to end the political power of the Canongate crafts, and although the Canongate rejected the proposals, the royal burgh succeeded in its aim, by abolishing the council and transferring its powers to the bailies.⁶⁵

Long before this date, the Canongate council had been steadily retreating before the encroaching authority of Edinburgh as Superior. The City council adopted the policy of disregarding the existence of its rival, and legislated for the Canongate, intervened directly in its affairs and also used the Canongate council as its executive tool.

In the economic field, the Edinburgh council attempted to suppress the Canongate wine trade, by forcing all wine to enter both burghs through the customers at the Netherbow.⁶⁶ It also attacked the Canongate barbers and surgeons,⁶⁷ unlicensed unfree, and foreign traders,⁶⁸ forbade the sale of cut corn⁶⁹ and made other ordinances. The Burgh council also mustered the Canongate fencibles,⁷⁰ heard complaints from inhabitants of the burgh of regality,⁷¹ extended to the Canongate and Leith its rules upon sasine,⁷² and even imprisoned within the Edinburgh Tolbooth, the Deacon of the Canongate Bakers.⁷³

If before 1652, the Canongate council saw the

imposition of its Superior's authority, the Canongate was in an even worse plight after that year. Thenceforward, the appointments not only of bailies, but also of treasurer,⁷⁴ and even the jailor⁷⁵ were in the hands of the Edinburgh Council, although the payment of the salaried officials fell to the Canongate.⁷⁶

With doubtful legality, the royal burgh also took action against the Canongate crafts and unincorporated trades.⁷⁷ Skinners were forbidden to the Canongate, Leith and Portsburgh,⁷⁸ visitors were appointed to the craft guilds,⁷⁹ while incomers were allowed by Edinburgh to ply their trades within the Canongate.⁸⁰ The prices of foreign beer, and other commodities⁸¹ were determined for the Canongate by the council, which also stented and collected national taxation within the Canongate,⁸² and imposed duties upon ale, wine and sack made or sold in Edinburgh and its pendicles.⁸³

In the latter half of the Seventeenth Century, the Canongate, despite its distinct bailies, treasurer, other officials and court was little more than a suburb of Edinburgh. The latter as Superior, either immediately or through the Canongate officers, regulated its affairs, much in the same way as the baron-bailies ruled Melrose and Dalkeith.

The Canongate court still survived, but before dealing with its fate under Edinburgh, it is necessary to trace its relationship to the Court of the Regality of Broughton.

CHAPTER 5.

The Bailies and Council of the Canongate.

1. M.C.R. I, page 323.
2. Maitland, page 302.
3. Chapter 4, App. I.
- 4.- Wood, 1626/1641, App. XVIII, pages 332/3.
- 5.
6. Wood, 1626/1641, pages 280 & 281/2.
7. Dunfermline, Nos. 396, 432, 460: Abbots retained power to remove delinquent bailies.
8. Lindores, pages 220/23.
9. M.C.R. III, App. XV, pages 176/7.
10. Glasgow, pages 119/21, 126/129.
11. M.C.R. II, page 139. By Superior's Charters of 1700 and 1705, the bailies, councillors and community presented, annually, a leet of five, which always included the youngest "old bailie". From the five, the Superior chose the new bailies. He appointed the Burgh Clerk for life.
12. M.C.R. III, page 153. By a contract of 1624.
13. Paisley, pages 153, 216/20. Letter of Factory to the Master of Paisley by L. Claud Hamilton - the Master to nominate yearly, as use is, one of the Burgh bailies.
14. Arbroath, page 383.
15. M.C.R. III, page 133.
16. M.C.R. III, page 27.
17. M.C.R. III, page 97. - From 1757 - addition of 8 stent-masters nominated for life by baron-bailie, and 7 elected annually by incorporated trades.
18. E.g. Alloa (M.C.R. III, page 7): Duns (M.C.R. III, page 49): Eyemouth (M.C.R. III, page 59): Huntly (M.C.R. III, page 90): and Portsoy (M.C.R. III, page 144).
19. M.C.R. III, page 59.

20. M.C.R. III, page 147. In neither Fraserburgh or Rosehearty were these provisions observed. In the former, the new council was supposedly nominated with the consent of the old; but in practice the council was nominated permanently by the Superior, while the Burgh bailie and baron-bailie were usually the same person.
21. Vide Chapter 3.
22. Maitland, page 285, 3 October 1561.
23. A.P.S. II, page 95. The act which laid down that the old council should elect the new, and both together were to nominate the bailies and other officers. The crafts were also to elect representatives to take part in the choice of officers.
24. In Peebles, the bailies and treasurer were appointed by the votes of the court until 1570 (Peebles, page 311, 1 Feb. 1569/70 - treasurer, page 307, 4 Oct. 1568 - bailies). In Lanark, it was not until 1589/90, that the provost and council made an ordinance ordering the election of provost and bailies by council and deacons of craft (Lanark, page 95). In Kirkcaldy, 1583, a bailie was elected by the other bailies and neighbours, and the council probably chosen at the same time (Macbean, page 79). The burgh clerk was appointed by the council in 1596 (Macbean, page 141), but it was not until 1662 that the Kirkcaldy council was specifically modelled upon the 1469 Act (Macbean, pages 169/70). See also Scot. Burghs, p. 22 et seq.
25. Aberdeen, pages 102, 104/5, 118.
26. Peebles: 16 Jan. 1485/6. Mills set by the bailies with a sufficient number of the best and worthiest of the burgh - witness the whole court. The "best and worthiest" was about thirty-five which constituted a "plain court" (pages 192, 174, 155). The total number present could be as many as 146 (page 231).
27. Maitland, page 302. R.P.C. IX, 494/6. Act of 1474, ordered continuation of four "old" members of council upon the new. (A.P.S.(S). Ja. III, 7: c. 56.)
28. R.P.C. IX, 462/4: 494/6. In practice, the Canongate council varied in numbers. In 1568/9 (Maitland, 312), it was composed of three bailies, three deacons, and eight councillors; the next council was thirteen in all: three bailies, three deacons, and seven councillors, and included six of the old council (Maitland, 330). Eight of the 1567/8 council served on the one of the following

year (Maitland, 301 & 312). The mode of election of deacons and composition of council are described in 1612 (R.P.C. supra).

29. Wood, pages 184/5, 257/8, 296/7, et seq - period 1569 and immediately afterwards.
30. Chapter 4, App. I.
31. ~~App. I.~~ ^{As BELOW} First regular appointment of Canongate bailies was in October, 1640 (Wood, 1626/41, p. 243).
32. ~~App. I. &c~~ Wood 1642/55 pages 1104-132 etc.
33. The Regality of the Canongate was erected in 1639 (R.M.S. IV, No. 929).
34. ~~App. I. &c~~ Wood. 1642/55: pages 77-213 etc
35. Wood, 1655/65, page 11.
36. Wood, 1642/55, page 357.
37. ~~App. I. &c~~ Wood 1642/55: pages 77-213 etc.
38. By Act of 1469 - no burgh officer to be continued for more than a year. In practice, bailies were re-appointed, if they assented (e.g. Aberdeen, 311/12).
39. ~~App. I.~~ COURT LISTS
40. As 36.
41. Maitland: Burgh Accounts, 332/3, 336/7: Maitland, 325/6.
42. M.C.R. I, page 324.
43. Paisley, page 284.
44. Paisley, supra.
45. Maitland, pages 325/6.
46. Maitland, page 351.
47. M.D. Sasine - Ox. No. 1, page 14337 - Jan. 2nd, 1594 - Somervell v. L. of Balivie. By custom, bailie always took a sasine-ox. provided land more than 27 acres; a corresponding fee was taken by the Burgh bailies (Chapter 4, App. I.).

48. M.D. Consuetude VI, No. 29, page 3110, Dec. 17th, 1684: Cathcart v. Irvine. By then, sentence-silver had passed to clerk.
49. Destination of these not mentioned.
50. R.P.C. supra.
51. ~~App. I.~~ CHAPTER 7 C.
52. ~~App. I.~~ List of Regality Vassals.
53. As 52.
54. M.S. 4 July 1594 - Andrew Borthwick along with James Bellenden, younger, of Pendreich, became cautioner for James Borthwick in Leith. "And Johne Borthuik of Glengell & William Borthuik of Soltray Johne Borthuik portionar, of Bancreiff..." promised to warrand and relieve them.
55. M.S. 13 Dec. 1598 - George Cuninghame "aurifabrus et balliuis".
56. ~~As 52.~~ CHAPT 12. APP 27.
57. These duties emerge from succeeding chapters. The Provost of Inverness in 1573 (Inverness 232) ordered his bailies to -
- (1) Take order with the injuries and offences of the Burgh for the administration of justice.
 - (2) Hold courts at least once a week.
 - (3) Punish all who did not attend Church on Sunday.
 - (4) Take order with the common ostlers, correct wrong weights and measures, and deal with stablers and forestallers.
- Wood, 1642/55, pages 281/2.
58. Chapter 4, App. I.
59. R.P.C. IX, 462/4.
60. Andrew Borthwick was on council of 1573/4 (Maitland, 330). John Schort appears on the councils of 1067/8: 1568/9: 1569/70: 1581/2; a John Smith was a councillor in 1568/9: 1569/70: and 1581/2; Shoirt and Smith may not be the same persons as those in the later councils, but Mr Archibald Wilkie appears in 1581/2 (Maitland, 348/9), as does also Mr John Hairt: Andrew Borthwick: John Kello and John Black, all prominent in the Court Record. In

addition, John Hairt, probably father of Mr John (Chapter I, no. 29) appears on councils of 1567/8: 1568/69: 1569/70: 1573/74; and James Wilkie, probably father of Mr Archibald (Chapter I, no. 34) was a member of the councils of 1569/70: 1573/74. If the old bailie was a de iure member of the new council, and was elected a bailie at the end of the new council's life, he had been on the council for three years in all.

61. R.P.C. IX, pages 462/4.
- 62.- R.P.C. IX, pages 494/6.
- 63.
64. Wood, 1642/1655, page 280.
65. Wood, supra, pages 281/2.
66. Wood, supra, page 81.
67. Supra, pages 198, 206, 207, etc.
68. Supra, page 14.
69. Supra, page 261.
70. Supra, page 34.
71. Supra, pages 124/5.
72. Supra, page 306.
73. Supra, page 31.
74. Wood, 1655/65, pages 41, 165, 344.
75. Wood, 1655/65, page 277.
76. Supra, page 277. M.C.R. I, page 327.
77. Definitely so, by a later decision, if Superior's intervention injured economic functions of Burgh (M.D. page 1830).
78. Wood, supra, page 175.
79. M.D. "Burgh of Barony", No. 3, page 1824.
80. Wood, supra, page 369.
81. Supra, page 321.

82. Wood, 1642/55, page 240 - actually in 1640. Wood, 1655/65, pages 127, 128, 218.
83. Wood, 1655/65, page 127.

CHAPTER 6.

The Court of the Burgh of the Canongate.

Despite any detailed description or definition, it is a fairly easy task to determine the approximate limits of the Canongate Burgh Court.

As a subsidiary Court within the Regality of Broughton,¹ it is a natural supposition that the Burgh Court possessed no criminal jurisdiction. In practice, some tenants-in-chief did delegate part of their rights of public justice to their sub-vassals; while some burghs assumed without charter privilege, a competence over minor criminal offences.² The Crown could also confer infanethief and outfanethief upon specific regality or barony burghs, as it did in the instances of Fraserburgh,³ ~~Frestwick~~⁴ and Eyemouth.⁵ Nevertheless, the Canongate was not so endowed by either Superior or Crown.

Within the Canongate, as in Glasgow,⁶ Queensferry,⁷ Hamilton,⁸ and Abernethy,⁹ the Lord of Broughton retained his "officiis justiciarie et balliatus baronie et regalitatis de Broughton, burgi et ville vicecanonicurum;"¹⁰ and these passed to the council of Edinburgh as overlord of the Regality of the Canongate.¹¹ As a result, criminal trials, even when the offences were committed within the Burgh by Canongate inhabitants, were held by the Regality bailies in Broughton Courts of Justice.¹²

Trials of thieves, in particular, often fell upon the

normal court day of the joint Regality and Burgh Court.¹³ Sometimes the former element was enrolled as a Court of Justiciary;¹⁴ but often this formality was not observed.¹⁵ It seems probable that in these instances, the Burgh Magistrates sat in judgment with the Regality deputies, but in the capacity of additional officials of the superior jurisdiction.¹⁶ More probably, theory did not come into the scene at all. Unofficial relations between burgh and regality were close, and undue attention to judicial theory was hardly likely to be considered in the trial of a self-confessed criminal. A sufficient number of instances show that it was the justice of the regality, and not of the Canongate that was inflicted upon thieves.¹⁷

Bloods and bloodwites were not true criminal actions,¹⁸ but in Broughton, they were regarded as such.¹⁹ These were not, accordingly, a ^{propria} true part of the royal regalia, although the Court of Session did in the middle of the Sixteenth Century appropriate them to the Crown.²⁰ Generally, however, bloodwites could be granted to a sub-vassal or annexed by him without warrant.²¹ Amongst subordinate burghs, Prestwick,²² Kirkcaldy,²³ Kirkintilloch²⁴ and Culross²⁵ had been given or assumed, a competence over them; while Newburgh had attempted to judge upon bloods, until halted in 1493.²⁶ The Canongate made no such endeavour: and Burgh bloodletters appeared in the Regality courts.²⁷

The positive activities of the Burgh bailies and court

were the serving of regality briefes, and the settlement of an extensive array of civil actions.

The privilege, or duty, of serving briefes had been granted by the Abbots before the Burgh had received the right to elect its own bailies and council,²⁸ and this right was confirmed by James VI in 1620.²⁹ A few years later, the Baron of Broughton took exception to the keeping of "curtis for serveing of breives";³⁰ although the burgh was in effect, easing the burden of his own bailies.

The Canongate bailies and officers summoned courts, warned assissors, proclaimed the briefes, held the necessary courts and retoured the briefes to the chancery.³¹ For this expenditure of time and labour they personally received compensation,³² but the briefes had been purchased from the Regality Chapel,³³ were returned there,³⁴ and were concerned with property which belonged to the Lord Superior.³⁵ The burgh bailies and officers were acting as additional deputies to the Abbots or Barons. Of positive advantage to the Burgh and its court there was none.

This is brought out even more clearly in the consequent granting of infeftment and sasine which was carried out by the burgh bailies, but only upon the receipt of a precept from the Superior.³⁶ Similarly, resignation of burgage feus could, in strictness, be accepted by the burgh bailies only if they had been given a mandate by the Superior to act as his deputies.³⁷

In the granting of sasines, the bailies of a burgh of barony were not only situated differently from their fellows in royal burghs;³⁸ but so far as the Canongate is affected, its bailies were motivated and constituted by the order and command of its overlord.

The Burgh and its bailies had one concrete advantage in their ability to give sasine and accept resignations. Burghal feus which passed to singular successors, those who acquired the lands by gift or purchase or in any other manner save by inheritance, were resigned by the disponent into the hands of the burgh bailies and by them conferred upon the purchaser.³⁹

This custom was an encroachment upon the rights of superiority, for a feudal superior was bound to accept as vassal only the heirs expressed in the investiture.⁴⁰ William Bellenden was justified in his complaint upon this score, although in reality, the Canongate had transgressed to no great extent. Creditors, apprisers and adjudicators could not be refused infeftment by a superior,⁴¹ while the parties in a straight sale, could adopt indirect means to force the hand of an obstinate overlord.⁴² In effect, no tenant-in-chief, such as William Bellenden, had any real control over alienations of lands or admission of vassals.⁴³ The Canongate's conduct was neither exceptional nor radical.

Pleasable briefs initiated some few civil actions, and here, the Burgh court was competent to constitute inquests of division⁴⁴ and probably to decide upon the remaining causes

established by briefes.⁴⁵ Yet even here, it is to be observed that the ultimate authority was the Regality, which by issuing the writ ordered the burgh bailies to constitute the necessary court.⁴⁶

The Burgh court had, however, a competence equal to that of the Regality in causes initiated by precept. The Burgh bailies judged in actions of removing,⁴⁷ in all causes involving liquid sums,⁴⁸ and could accept lawburrows,⁴⁹ and the nomination,⁵⁰ discharge,⁵¹ and denunciation of curators.⁵² Like the Regality court, the Burgh assembly had lost ground to the Court of Session over the apprising of immoveables,⁵³ over ejections,⁵⁴ and reductions of infeftments,⁵⁵ while it could not reduce its own decrees.⁵⁶ Yet it could issue precepts of poinding,⁵⁷ make arrestments,⁵⁸ force caution to be found in civil causes,⁵⁹ while it acted as a court of record for the registration of all forms of contracts and obligations involving loans, alienations of lands and the like.⁶⁰ Often the authority of the bailies was expressly attached to these, giving them the force of decrees of the burgh court.⁶¹

Nevertheless, the Canongate court, even in its civil jurisdiction, was inferior to that of the Regality. Territorially, the competence of the burgh court was limited to the Canongate and its liberties;⁶² a small area. This meant that although the burghal authorities could summon parties, witnesses, members of inquest and other interested persons from within the burgh limits; like all inferior jurisdictions, they

could not cite anyone from outside.⁶³

This limitation was applicable even to indwellers in the rest of the barony. Unless an inhabitant of Broughton, or any other outdweller, specially renounced his own jurisdiction and submitted himself to that of the Canongate, he could be forced into the burgh court only by the party pursuer obtaining letters from the Crown, or possibly from the Regality authorities.⁶⁴

The converse did not hold true. The Canongate inhabitant was subject to the jurisdiction of the Regality court,⁶⁵ and could be, and often was, summoned to that court by the officers of the superior jurisdiction.⁶⁶

Moreover, hanging over the head of the Burgh court was the Baron's privative jurisdiction. The Superior had granted his burgh and its court certain rights of jurisdiction, but unless he had specifically renounced his authority, he still retained the competence to exercise within the burgh all his judicial powers.⁶⁷

This produced several conflicts between burghs and their Lords. Kirkintilloch acquired in 1670, the privilege to elect its own bailies and council, with the right to hold courts for the administration of justice.⁶⁸ In 1733, its Superior, the Earl of Wigton and the Burgh had a sharp dispute over the judicial rights of their respective courts.

For the Superior's bailies it was claimed that in their own court they dealt with complaints from the bailies and

inhabitants of the town: that they usually judged on bloods and bloodwⁱytes: and that they held courts in Kirkintilloch itself, to fine and punish those guilty of hunting, fishing, fowling and transgressing other public acts.

The town bailies and witnesses admitted the general truth of these assertions; but added that the Burgh bailies did determine cases of blood, bloodwⁱytes, breaches of the peace, and those concerned with marches, debts, rents and the like.

They then made the significant admission that the Lord's bailies judged in the same matters when complaints were made to him, and that he who made the prior citation was held to be the proper judge.⁶⁹

In 1666, an equally significant case had occurred. Culross, a former regality burgh, had been made a royal burgh with privilege of Heading and Hanging and all other judicial rights proper to a royal burgh, and the burgesses claimed that their bailies in effect, exercised a complete criminal and civil jurisdiction. Lord Colvil, the hereditary bailie, presented the counterplea that his rights of justiciary and bailiary antedated the erection of the royal burgh, and survived to the extent that his bailies still judged upon bloods committed within the town. The Lords of Session found in his favour: and ruled that even the privileges of a royal burgh could not exclude the anterior rights of a bailiary.⁷⁰

In Abernethy a few years later, the procurator-fiscal of the Regality pursued the burgh weavers for breaking certain

Acts of Parliament. Again the plea of the burgesses that their bailies were the only proper judges was set aside on the ground that their jurisdiction was only cumulative and not privative.⁷¹ In a similar Kirriemuir action, the same decision was reached, and the Kirkintilloch admission enforced, that the prior citation was preferred, either that of the Superior or of the burgh bailies, in actions upon which either could decide.⁷²

From these cases it is sufficiently clear that the Superior could continue to exercise his prior rights of jurisdiction, even if he had delegated powers to his subordinates. In the Kirkintilloch episode, the Court of Session found that the Superior, even although he had given charters to his burgh, had granted no more than a subordinate jurisdiction.⁷³ These prior judicial rights survived even the erection of a royal burgh. In the exercise of these powers of court, the individual cause went to whichever court issued the first citation.⁷⁴

In not a few courts it is possible to discern the working of the principle of accumulative jurisdiction. In Paisley, much to the displeasure of the Master of Paisley, many burgesses avoided their own court, and appeared in his.⁷⁵ Kirkcaldy lost actions to the Regality Court of Dunfermline;⁷⁶ and even after this burgh had purchased the hereditary bailie's rights of justiciary and bailiary, his deputed attempted to

advocate criminal causes to the Regality Court.⁷⁷

The Canongate court was held as a rule along with that of the Regality, which makes it impossible to discern if the bailies depute judged alone in burgh actions, although they certainly presided alone with the burgh magistrates.⁷⁸ No Regality court by itself determined a burghal cause: and at this period with Canongate inhabitants forming the bulk of the Regality bailies, relations between the two courts were smooth.

With Edinburgh as superior, the position was altered. Both the council⁷⁹ and the court of the royal burgh assumed an immediate jurisdiction over the inhabitants of the Canongate. This usurpation could not be justified by the accumulative jurisdiction of the Superior, as the Edinburgh court was in no way connected with that of the Regality and Burgh of the Canongate. Nevertheless it was sustained by the Court of Session because of the constant custom of the Edinburgh bailies in exercising this competence.⁸⁰

To the dangers threatened to a minor court by the superior jurisdiction of its overlord, may therefore be added those of consuetude. Encroachments upon its rights, even if illegal, resulted in the permanent loss of its competence.

So far, there have been considered the relationships of the Canongate council and court to their overlords, with the addition of that of the Burgh as a whole to the Abbots and

Barons. From this stage the work of the joint court will be investigated, and, firstly, the rules affecting its meetings and proceedings.

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CHAPTER 6.

1. Carnwath pge 11 et seq.
2. Ea. Newburgh. note 26.
3. M.C.R.III App. x. Charter of 9 April 1588 - gave infang and outfangthief to the burgesses.
4. ~~Prestwick.~~
5. M.C.R.III App. xi: Charter of 1597 - pit and gallows: infang & outfangthief.
6. eg. Glasgow, 215/25: 3 Nov. 1587.
7. M.C.R.II p. 349.
8. M.R.C.II p. 73 - Charter of Duchess Ann, 1670.
9. M.C.R.III p. 176/7. App. XV.
10. R.M.S. viii No. 1651: No. 114.
11. R.M.S. ix No. 929 - The Regality of the Canongate included the Burgh - save for some tenements - North Leith, Abbeylands in S. Leith and the Pleasance.
12. Appendices as below.
13. ~~Chapter II. Appendices~~
14. Extremely rare: the form in App. II was the usual one.
15. App. 1.
16. App. 2.
17. App. 3.
18. Fife. App. B. p. 335.
19. App. 4. They were initiated by dittay and judged by an assize.
20. M.D. Criminal Jurisdiction No. 255: Dec. 16 1579 - p. 7542. None but the King's immediate vassals can judge in matters of blood, or levy bloodwites and this power being merum imperium cannot be delegated.
21. As with the Earl of Arran (Holyrood, App. II pges 276/88).

22. Prestwick: p. 82. Jan. 5 1592/3. Inquest ordained that whoever slandered or invaded another in blood shall pay 5 lib unlaw - one half to the town and the rest to the Laird.
23. Macbean p. 96. 12 Oct. 1584: Bloods were not specifically mentioned in the Indenture of 1450 (Dunfermline 432); but were bought from the hereditary bailie by the burgh at a later date. (A.P.S.vi. I: 1644 c. 287).
24. Kirkintilloch: pgs 153/etc. Wigton v. Town. 20 Dec. 1733.
25. Stair: Decisions pgs. 368/69: Lord Colvil v. Town of Culross.
26. Newburgh, p. 180.
27. App. 4.
28. Young: No. 199. 1 April 1489: 206: 219 - in last two court held by Abbot and Burgh bailies.
29. M.C.R.i. p. 324.
30. Chapt. 5 App. I.
31. As 30.
32. The officers received 3s. in 1835 (M.C.R.i. p. 324).
33. As 31.
34. Retourable briefes were returned, sealed by bailie and inquest to chancery of Regality.
35. As burgage tenements were held from Superior.
36. If purchaser of briefe was the heir by descent or relationship. see singular successors.
37. Craig III. l. 6: Sections 7 & 13 - in strictness resignations had to be made into the hands of the Superior. The Canongate bailies were presumably acting on behalf of Superior and in his absence.
38. In royal burghs, the bailie could cognosce a person heir without a jury and at the same time give infeftment by hasp & staple. (Mackenzie:lll. 8. 34 p. 379).

39. App. 5. This custom again goes back to at least the late Fifteenth Century (Young 5: 25 etc.), but the right of the burgh bailies to receive resignations was challenged in June 1490 (Y. 219: 220). In this instance an heir to a tenement in the Canongate desired service, without prejudice, to the conjunct infeftment of his brother's widow. Her conjunct infeftment was questioned by his procurator, because her husband had resigned the land into the hands of a burgh bailie, who then gave sasine to husband and wife. Of right, this resignation should have been made into the hands of Abbot and convent, because the Canongate was only a burgh in barony, and therefore the bailie had no power to receive the resignation or to give sasine, because no bailie could do so save the King's bailie in his free burgh.

Bellenden claimed in 1625, that the Canongate bailies gave sasine by hasp and staple. These were the customary symbols in royal burghs, although they did not become the universal order until 1708 (Mackenzie II 11. p. 191). At the end of the Sixteenth Century the burgh bailies employed earth and stone (eg. Logan 29 Jan. 1588/9), the customary but not statutory symbols for non-burghal lands (M.D. Sasine: No. 5 pges. 14312/8: Jan. 1725). The Canongate may have assumed the burghal symbols at a later date.

40. Mackenzie: II. 7. p. 135.
41. Supra: II. 7. 135.
42. Craig: 3-1. 13 pges. 847/98. By seller obliging himself to the purchaser for a large and imaginary sum. Upon the former removing his moveables well out of the way, the latter could initiate the process of apprising the ground, and then obtain entry as a creditor.
43. In theory, a vassal could not alienate his feu to the extent of rendering himself unable to perform the duties due to the Superior while restrictions upon alienations were attached to Broughton Charters (eg. R.M.S. iv. No. 1385) but these were ineffective.
- 44-45-46. Division is the only breve employed.
- 47-52. Vide relevant chapters.
53. Craig 3.2.7. 927/8. Initiated by letters of Court of Session.

54. M.D. V. I. No. 193: pges 7481/2. Nov. 1586. Home v. Home.
55. Reductions of infeftments etc. belonged to the Session (B.P. of the sessioun c9).
56. M.D. V.III. No. 213 pge. 7495. 23 Feb. 1627 - Service v. Chalmers.
57. Decrees of poinding could follow normally upon civil actions: see Chapter 10.
58. App. 7.
59. Chapter 10.
- 60-1. App. 6a & 6b. In any case, by registering an agreement, the parties secured not only "remembrance" but also the full authority of the bailies and court. Most registrations expressly contained this provision (eg. 7b): the first extract (7a) shows the wide use of the Canongate Court Book even by parties with no connection with the jurisdiction. As a decree of the Burgh court, the obligation, if necessary, could be enforced by the Court of Session.
- 62, 63 & 64. All inferior courts were, of course, limited in competence to a definite territorial area; and none could summon outdwellers. The method of securing the attendance of such was either to apply to the judge of the relevant jurisdiction (Inverness pge. 23): or to obtain royal letters of citation.

The Canongate court could not summon indwellers of the Regality (Wood p. 184) unless they submitted themselves to its jurisdiction. Both Regality indwellers and others from outside the jurisdiction in obligations and taking of cautions renounced their own jurisdictions and submitted to the Canongate court for that case only. This enabled the Burgh court, if necessary to cite and judge upon the outland party (eg. App. 6a).
65. By cumulative principle.
66. Presumably when summoned to Regality inquests and assizes and by Regality inhabitants to the Regality court.
67. Craig 2. 8. 30 pges 585/6. M.D. Jurisdiction: 1. III No. 5. p. 7296. 3 March 1630. Lorn v. Panholes.
68. M.C.R.III p. 109.

69. As 24.
70. As 25.
71. M.D. p. 7298 15 Jan. 1668.
72. Supra 14 Jan. 1668.
73. Supra p. 7299.
74. As 24. Although Glasgow, when it was ^{reaffirmed} made a royal burgh in 1636, received bloodwites, pit and gallows, infang and outfangthief, these were not to prejudice the rights of the Duke of Lennox as hereditary bailie of the Regality (Glasgow: 375/95).

By a case of 1672, it was found that the prior citation was not sufficient to exclude the alternative jurisdiction, but that the prior court had also to use diligence to bring action to a sentence (M.D. 9 Nov. 1672: pges 7315/6).

Accumulative jurisdiction applied to all inferior courts including those of royal burghs and Regalities.

75. Paisley pges. 172/3.
76. Macbean, p. 322/3.
77. Macbean, pges 54/5. In 1731 the citing officer was consigned in the Tolbooth by the Provost.
78. By the wording of certain entries it would seem as if the bailies-deputes continued to sit along with the burgh magistrates in burgh causes.
79. As Chapter 5.
80. M.D. pges. 3099/10: Nos. 9 & 10: A.D. 1730 & 1736.

CHAPTER 7.

The Court of the Regality of Broughton and Burgh of the Canongate.

The joint court of the Regality and the Canongate was bound by inflexible rules of date, time and terms. The judicial year extended from October until the middle of August; and was divided into three terms. Each term began with a Head court held at a customary place, upon a fixed day and at a traditional hour.¹ All the Broughton vassals were bound to render suit at these courts,² and no special citations were issued, being clearly unnecessary in face of the set rules affecting the head courts.³

The Head Court of Michaelmas, in general met on the first Tuesday after the twentyninth day of September: the Yule on the first Tuesday after Hilary: and the Pasche on the second Tuesday after Easter day.⁴ The Broughton Head Courts, however, varied this custom by gathering in the Canongate on the corresponding Wednesday.⁵ The legal time of meeting was eleven in the morning; or at least, before noon, but there is no evidence, either way, if Broughton followed this practice.⁶

The Head Courts were probably the only ones at which the full ceremony of fencing was observed.⁷ The fencing of court meant the legal constitution of court, and the establishment of its peace.⁸ The ceremony involved the presence of all the necessary officials, or "keys" of court,

and began by the clerk enrolling the court in the court book. The enrollment contained the name of the court and the place, date and year at which it was held; together with the names of the presiding judges.⁹ To this form, the Broughton and Canongate courts gave close adhesion.¹⁰ Thereafter a sergeant of court, with wand in hand, and in a set formula fenced the court being echoed by the dempster. The sergeant thereupon called the suits thrice, each suitor entering from outside the Tolbooth or court building as his name was called. The clerk entered the names of the absent, who were amerced if they had not appeared by the rising of the court.¹¹

The full form of fencing, the calling of suits was employed in Broughton intermediate courts in the late Fifteenth Century.¹² This fell into disuse elsewhere during the subsequent century; and in Broughton, as in other courts, the ceremony was summed up in the purely formal phrase "curia affirmata".¹³ The Broughton head courts, on the other hand, all contained lists of absentees; and often included the name of the dempster. This official apparently called the suits, probably from the Tolbooth window.¹⁴

The appended lists of absentees provide little scope for speculation. They contain nothing more than a mass of names.¹⁵ The feus for which suit was being given are rarely entered,¹⁶ dead or former vassals are on occasion recorded as being absent,¹⁷ and most important of all, it is never indicated whether suit alone or suit and presence was required.¹⁸

A vassal who owed suit alone was expected to despatch to court, a properly qualified suitor who performed the necessary services.¹⁹ He who owned several fiefs sent the corresponding number of suitors.²⁰ A landholder who owed suit and presence had not only to present a suitor, but had also to appear in person or by attorney.²¹ A fully entered list of court absentees, indicated the presence, or absence, of suitor, or of suitor and vassal. This is never observed in the Broughton Head Court lists.^{22.}

Broughton charters, infeftments and retours provide little further assistance. The average vassal was burdened "cum seruitiis curiarum in tribus curiis capitalibus annuatim et aliis --- curiis quibuscunquē toties quoties requisiti fuerint infra burgum vicicanonicorum ten. ac in curiis --- Justiciarie et camerarie cum contigerint".²³ Services of court probably meant, as far as the Head Courts were concerned, little more than suit; and, in fact, the two expressions, when limited to these courts, were probably interchangeable.²⁴ Suit could possibly include "suit and presence":²⁵ therefore the Broughton "services of Head Courts" could mean either the attendance of the vassal and a suitor, or of a suitor alone.

The irresistible conclusion is, however, that the true suitor had disappeared from the Broughton Head Court. The Winrham episode shows an ignorance of the disposition of the feu, which would not have been if the feuar had entered

regularly a suitor. Vassals, like Kincaid of Warriston,²⁶ Moreson of Saughton and Saughtonhall²⁷ and John Vaus in Leith²⁸ possessed several feus; and should accordingly have been entered as absent against each; and should also have provided a suitor for each feu. Usually they appear only once,²⁹ and the names of suitors are never recorded. Furthermore, particularly the Kerse vassals are recorded as absent with a monotonous regularity. If they neglected "presence", they were hardly likely to observe suit. On, conversely, if they did appoint suitors, the latter either always attended, and thus did not appear in a record devoted to absentees alone; or else, if the vassal owed suit alone, his suitor was lax in attendance.

Such arguments are singularly barren; but upon the positive side it is to be observed that many persons who owed service of court, and who do not appear amongst the absentees, were actually in the court.³⁰ These included not only feuars in the Canongate; which as a burgh was not affected by the provisions affecting suitors,³¹ but also landward vassals such as Aleson Pratt in Saughtonhall.³² This combined with the fact that the Broughton vassals appear far less frequently amongst the absentees, suggests the personal performance of suit. All these positive and negative reasons, combined with the additional factor that no vassal is recorded as entering a suitor, indicate, although not over strongly, that Broughton,

by the end of the Sixteenth Century, did not observe the general practice of the appointment of suitors.³³

The court lists do reveal the presence of fractional suits, created, in the main, by the feu being held by several heirs.³⁴ A single feu owed one suit:³⁵ which could be completed only by all its owners contributing his or her proportion.³⁶ Thus in 1594 the three MacCalyane³⁶ sisters were returned to nine acres in Broughton,³⁷ and in subsequent Head Courts, the husbands of two, Master James Wardlaw³⁸ and his brother advocate, David Ogilby appear among the absent.³⁹ Similarly in May 1597, the four Blyth sisters succeeded to their brother's Canongate tenement,⁴⁰ while in the following Easter Head Court "the sisteris of the Blythis" were not present.⁴¹ In a later court, after the division of the tenement, two sisters did not compear,⁴² while in the following court the fifth portioner failed to give suit.⁴³ Another group of sisters, the two Blaikies in the Pleasance, are also mentioned in the record.⁴⁴

Fractional or proportional suit was also incumbent upon fiefs temporarily divided between a liferenter, or tercer, and the feuar.⁴⁵ There were several pairs of this character: Kincaid of Warriston and his mother, Jean Ramsay:⁴⁶ the Laird of Corstorphine and Jonet Lauder, his sister-in-law:⁴⁷ and John Vaus and his mother Catherine Dickson,⁴⁸ being a few.

Women figure prominently amongst the vassals of the Regality, either in their own right, or as liferenters or conjunct

feuars.⁴⁹ They were incapable of undertaking the actual burdens of court service: although some, at least, almost certainly appeared in the Head Courts.⁵⁰ Others such as the MacCalyeanes were represented by their husbands, while another, Issobella Mowbray, a Bonnington conjunctfiar is recorded as absent on several occasions:⁵¹ but once, William Logan, her second husband, and ~~another~~ ^{NOT HER} co-feuar, appears in her stead.⁵² This, perhaps, indicates that he usually acted as her attorney, his absence being recorded under the vassal's or his own name. This form of representation may have extended to the other women.

Upon emerging from these doubtful conclusions, it is apparent that the Broughton Head Court with its huge list of absentees had fallen upon evil days. Formerly, the Head Court with its large complement of suitors could deal with important causes which scantily attended intermediate courts could only postpone.⁵³ The Michaelmas court once saw the election and admission of burgh bailies,⁵⁴ while all were presided over by the principal judges of the jurisdiction.⁵⁵ The Pasche Court witnessed the confirmation of burlaw decrees,⁵⁶ ~~while~~ ^{AND} in all Head Courts the judges were supposedly to make inquisition upon assisters of thieves and others who broke the laws.⁵⁷

The Broughton Head Courts were sometimes confined entirely to the calling of suits;⁵⁸ others dealt with actions in no way exceptional. Not infrequently, only one of the burgh

bailies presided along with a bailie depute;⁵⁹ while no legislation of any kind was confirmed; nor any record made of the admission of officials.⁶⁰

This decline in importance was due probably to the corresponding fall of the suitors who were once the judges of court:⁶¹ but had lost their position to the presiding official from about the middle of the Sixteenth Century.⁶² At least two suitors were still essential to constitute a legal court;⁶³ a requirement which could be easily met by the presence of a few Canongate or Pleasance inhabitants. If such were sufficient, there was no reason to postpone matters to the Head Courts: or to insist upon the presence of a large number of vassals from distant parts of the jurisdiction.

Each Head Court marked the beginning of a judicial term. The joint court held meetings from the Michaelmas court until almost Christmas Day.⁶⁴ The Yule girth intervened and continued until Hilary.⁶⁵ The Hilary Court began a new term the conclusion of which depended upon the date of Easter.⁶⁶ The last court usually fell upon the latter part of March, but always some three or four weeks before the Easter Head Court.⁶⁷ From this court, until the second week of August, extended the final term of the year.⁶⁸

The most important vacation was the harvest feriot which ended after Michaelmas, although inferior courts resumed activity with the Head Court, which was strictly before the end

of the vacation.⁶⁹ Courts could be held during the harvest vacation, but their legality depended upon the party pursuer obtaining letters of dispensation from the Lords of Council.⁷⁰ Such letters were purchased both by Regality and Canongate vassals mainly to obtain the serving of briefes.⁷¹ Dispensation was evidently not required for similar courts during the other vacations; or if it was, the necessity is not mentioned.⁷²

Justice courts could be held at any time without dispensation;⁷³ and this was so with those of Broughton; although the Regality authorities sometimes postponed trial until the beginning of the new term.⁷⁴

During each term, the normal court day was Wednesday.⁷⁵ An alternative day was Saturday;⁷⁶ and often the court was held on both days in the same week.⁷⁷ Usually the court met once a week; although there were sometimes an interval of three to four weeks between one court and the next.⁷⁸ The Regality court often ceased to meet a few weeks before the end of the session;⁷⁹ the Burgh court continuing to the final date.⁸⁰

The Wednesday and Saturday day rule was already established by the middle of the Century. Then, it was possible for a bailie in July 1570 to assign as a day for the hearing of a cause, the next court day after the Michaelmas Head, or Wednesday, the 11th October.⁸¹ A Canongate ordinance of 1569 ordered the clerk to have ready on the Tuesday before court all

processes and depositions of witnesses, for examination by the bailies.⁸³ The normal day for conciliar meetings was upon Thursday, and this order perhaps strengthens the position of Wednesday, as the day of court.⁸⁴

Court days were assigned on fifteen days warning, including the day of the warning as one.⁸⁵ This was in accordance with an Act of Parliament of the mid-sixteenth Century.⁸⁶ Only minor actions could be decided upon the first day;⁸⁷ and as far as it can be ascertained, the normal period of continuation was eight days;⁸⁸ again including the first court day as one of the period.

Justice courts followed a different day cycle. Many of these were the ordinary joint-court, sometimes fenced as a court of justiciary.⁸⁹ Others lay outside the normal courts, and these were always called to the beginning or end of the week. In July 1594, a justiciary court was continued until a day in October.⁹⁰ A similar court meeting upon a Friday in the following January was postponed to the last Friday of the following month;⁹¹ while amongst other examples a court held upon a Friday in September, 1592 continued the trial of one of the accused to the following Friday.⁹²

The exact hour of fencing of the intermediate courts presents some difficulty. By law, this was determined as eleven in the morning;⁹³ but the present record confines itself to the non-committal "hour of cause".⁹⁴ A Canongate ordinance

of 1569, which dealt with the officers of court ordered them to be present every court day "in the Tolbuith with the dempstar at ix houris afoir the incumine of the bailleis".⁹⁵ This suggests an unusually early hour of fencing, but on the other hand, a court of neighbourhood was held at ten in the morning.⁹⁶ Unfortunately, this court lay outside the normal cycle; and cannot be regarded as typical. Yet it may be that ten was the normal hour of fencing.

The intermediate court, as was the Head Court, once fenced, was competent to deal with any criminal or civil action within the range of its jurisdiction;⁹⁷ and there are numerous examples of the one court serving regality briefes, trying a criminal, and dealing with civil actions.⁹⁸ Before proceeding with the work of the court, and its procedure, attention must be devoted to the executives of the joint court; the bailies and other officials.

CHAPTER 7.

1. eg. Fife pges xv: xxiv. Melrose iii p. 45 - protested the former clerk on behalf of Earl of Haddington "that it is past twelve hours befor the court wes fenced, and the baillie oppones the sun dyell being scarce yett twelve acloake."
2. The Broughton charters to lands in the baronies of Kerse, Broughton, including the Canongate, and Whitekirk all contain the clause "with services in three head courts held in the burgh of the Canongate" eg. R.M.S. iv No. 1385 and 1662: V. No. 645. There are a few exceptions, as the charter to Robert French of the gardens at Holyrood (R.M.S. iv. No. 2557), but these feuars also appeared at Head Courts (eg. App. 3). Accordingly, service of Head Court was practically universal.
3. Fife pges lxxii - lxxiii.
4. Fife: pge. xv.
5. Court lists, and ~~note.~~
6. A.P.S. 1587 c.87: Fife xxiv - xxv: Melrose as 1.
7. Fife App. A:
8. Fife App. A: Carnwath: p. xcvi. In court held not in the Tolbooth, but upon the ground of a feu or tenement, it is clear that fencing - in the sense of demarcated the limits of a court held in the open - was still observed -- M.S. 6 Feb. 1595 - "The quhilk day in the fensit court haldin vpoune the ground of the foirsaidis yairdis --- (the liners) -- past furth of court -- (to examine the boundaries) -- and reenterand agane --:"
9. Fife App. 1 p. 406 et seq.
10. Curia Regalitatatis et baronie de Brochtoune tenta in pretorio burgi vicicanonicorum Coram Johanne Bellendene balliuo deputato dicti Regalitatatis et baronie Necnon curia dicti burgi tenta ibidem Coram magistro Archibaldo Wilkie vno balliuorum dicti burgi vicesimo septimo de mensis Februarij Anno domini Im. Vc. Nonagesimo tertio Curiis affirmatis.
11. Fife. As 9.
12. Young No. 343.

13. As 10.
14. Broughton thus differed from the formula outlined above. In most of its Head Courts suits were called by the dempster - Archibald Ramsay, and only occasionally by William Inglis, a Regality sergeant (.M.S. 6 April 1597). The calling of jurors and parties was made from the Tolbooth window.
15. Apps. 1 etc.
16. Supra.
17. The best illustration is provided by the history of the quarter of Saughtonhall belonging to the Winrhames. This feu was resigned by Mr Robert Winrhame in favour of James Winrhame who received sasine on 31st January, 1591 (2) (M.S. 28 June, 1598). James died in August 1593, (M.S. 26 June 1598) and the feu remained in "manibus domini" until the return of his^{son} James (M.S. as above).

The Head Court lists run as follows:-
4 October, 1592: no mention.
17 Jan. 1593: absent - Mr Robert Winrhame.
25 April 1593: as above.
3 October 1593: as above.
16 Jan. 1594: in manibus domini.
10 April 1594: in manibus domini.
2 October 1594: no mention.
15 Jan. 1595: absent - Mr Robert Winrhame.
30 April 1595: in manibus domini.
1 October 1595: absent - Mr Robert Winrhame.
21 Jan. 1596 - in manibus domini.
21 April 1596: as above.
26 April 1598: as above.
4 October 1598: absent - James Winrhame.
18. As is for example in Fife p. 25 -
"s.p. Pin(k)ertoune: s. Lethalland." Johne Spens of Lethalland was present in court.
19. A.P.S. (S) Ja. v. 6: c.71 - 1540 A.D.
20. Fife lxxviii.
21. D.V.S. p. 4.
22. As in Fife lists in No. 18.
23. M.S. 28 June 1598.

24. R.M.S. v. 57: 119: The Court service of the feuars of Whitekirk "et prestando 3 sectas ad 3 placita regalitatis de Brochtoun --- cum servitiis in curiis justiciarie et camerarie". The feuars are not recorded as having entered suitors, but personal names are recorded as were those of the Broughton vassals.
25. Fife lxxxi.
26. Feuar of Warriston and of Heuck in Kerse. (List of vassals).
27. Feuar of Sighthill in Saughton and lands in Saughtonhall (Supra).
28. Feuar in Broughton and Hillhousefield (Supra).
29. App. 1 - John Kincaid of Warriston; the second John Kincaid, is Kincaid of Broughton: Bruce of Airth does however appear twice.
30. Eg. H.C. 18 Jan. 1598: George Dewar in Pleasance: four Canongate inhabitants: 2 Oct. 1594: Thomas Blaikie in Pleasance: 15 Jan. 1595: Mungo Fortune, Canongate, 1 Oct. 1595.
31. Lees. Burg. c. 43. There are three Head Courts yearly within burgh, at the which all burghesses should compear. While this applied primarily to royal burghs it seems to have been imitated by some Regality burghs eg. Macbean p. 105 - when the Kirkcaldy Head Court was continued because of the absence of the most part of the neighbours.
32. M.S. 5 Oct. 1597. She renounced a tack before the meeting of the Head Court.
33. To argue or deduce from a featureless list of names is profitless: but the use of suitors, and the performance of suit and present was not only common (see Fife lxxvii-lxxxiii) but also was a feature of other courts of the late Sixteenth Century (eg. Hamilton-Grierson in S.H.R. xiv 1-18 and Fife p. lxxviii). The question has therefore to be considered in relation to the Broughton Court. It may be added that as far back as 1561 (Mait.p. 233/4) the Regality Head Court lists were as unindicative of the presence of suitors, and of suitors and vassals.
34. Fife: lxxiv: for other reasons for such a division.
35. Fife lxxiv.
36. Fife: supra.

37. M.S. 20 March 1594.
38. In Head Courts of 15 Jan. 1595: 1 Oct. 1595: 21 Jan. 1595:
6 October 1596: 5 Oct. 1597: 18 Jan. 1598: 4 Oct. 1598:
17 Jan. 1599: etc.
Absent - Mr James Wardlaw.
6 April 1596 - Mr David Ogilvy - absent.
Wardlaw was husband of the second daughter (M.S. 20 March 1594), so he was not at first performing suit for the three heiresses (see Fife lxxiv No. 4 - suit performed by holder of principal message). Ogilvy was on the other hand, the husband of the eldest: the third was married to Henry Sinclair of Whitekirk, a vassal in his own right (M.S. 20 March, 1594).
40. M.S. 4 May 1597.
41. M.S. 26 April 1598.
42. M.S. 17 Jan. 1599.
43. M.S. 18 April 1599. "Absentees Burgi --- John Oliphant, Robert Cunynghame Alexander Ramsay". Cunningham was the fourth heir (M.S. 25 May 1593). His position in the absentee list corresponds to that of the Blyths on 17 Jan. 1599 -- "John Oliphant the tua sisteris of the Blythis James Githane." This appearance could, however, be in connection WITH HIS NEIGHBOURING FEU ¹³. CHAPTER 12: APP 4.
44. M.S. 30 April 1595.
21 Jan. 1596.
45. The liferenter assumed her proportion of the burdens upon the estate.
- 46-48, 49. Lists of Vassals. App. I.
50. As Aleson Pratt - 32.
51. She was widow and conjunctfeuar of John Thomson, maltman indweller in South Leith. The lands were resigned on her behalf by William Logan, in September 1600. (M.S. 20 Sept. 1600). Her Head Court absences included 26 April 1598: 18 April 1599: 3 Oct. 1599 - "John Waldie the R. of John Wardlaw, John Logan of Lowstone the R. of John Wardlaw. Logan appeared on the 17 January 1599." John Robesone Williame Logane Katherine Waus the R. of John Wardlaw".

The positions of the two names amongst Bonnington and Hillhousefield lands makes it probable that both performed suit for the same feu. So far as can be ascertained William Logan was not a feuar in either of the territories (Court Lists).

53. Fife pges. xiv - xv.
54. For the Canongate Michaelmas Court - Maitland (p.285) in Regality officials were supposedly admitted at same court. (A.P.S.(s). Ja. v. 6 c.73).
55. By the Act of 1540 (A.P.S. (s): Ja. v. 6. c.71). In Broughton even when there was an active bailie-principal this rule was not always observed (eg. Wood pges. 257/8: 290/7: 337/8: 412/3). This was typical of most jurisdictions of the later Sixteenth Century (Fife xxi): although the Broughton bailie did not appear at even the Michaelmas Court (supra: 257/8: 377/8).
56. Carnwath p. 68 etc.
57. A.P.S. (s) Ja. vi. 1. c.21: c.30.
58. As 4 Oct. 1592: 25 April 1593.
59. Court Lists.
60. At no Head Court is there any record of Regality deputes, burgh bailies or any other official being admitted.
61. Eg. Fife lxvi - lxix: lxxvi - xcl.
62. Fife xc - xci.
63. Fife App. H. p. 404: The first court of apprising of Ninian Weir (M.S. 31 July 1599) consisted of an officer, a clerk, a dempster, and four witnesses.
64. Court Lists - some courts were held after Christmas Day: eg. 27 December 1592: but the term usually ended between the 15th and 21st December.
65. The Yle girth - or time of abstinence extended to at least the 11th January (Glasgow B.R. II. 19 Jan. 1573/4).
66. Fife xv - according to date of Easter and its effect upon Pasche Head Court.

67. Court Lists - In 1593 the last regular joint court was upon the 4th April: the Pasche Head upon the 25th: in 1596 upon the 24th March with the Head Court upon the 21st April: the respective dates in 1597 were 26th February and 6th April.
68. The concluding date was usually the 16th August, or within a day or two of it. For the general rules affecting ferriots see Fife xxii - xxiv.
69. M.D. v. iv. No. 216 p. 7497. 30 June 1675 - Wardlaw v. Wardlaw.
70. Peebles p. 307: Macbean p. 78. Fife xxiv.
71. Court Lists.
72. No court held during the Yule and Easter girths is so marked. The origins of the girths and harvest vacation were different. The former were along with Sundays and other feast days, holy days: while the latter came to be the period of vacation of the Court of Session, during which no inferior court could be held.
73. A.P.S. (s) Ja. 1. 6. c.95. Holy days not exempted from the provisions affecting trials of slaughterers.
74. Once only, with the result that one of the accused escaped (M.S. 11 April 1597).
- 75-77. Court Lists.
- 78-80. It is noticeable that between 1592 and 1600 the annual number of courts steadily declined (eg. Court Lists. vacation).
81. Wood: 6 August 1569. Monday 18 July, Wednesday 20 July. The Michaelmas Court was held on the 5th October a Wednesday.
82. Wood pges. 233/4 - 8 July 1870 - the next court day after the Michaelmas Head Court, which is the 11th October. The Head Court was held upon the 4th October (p. 259):
83. Maitland p. 324/5.
84. Supra p. 302.
85. Wood pges. p. 23: Maitland p. 286.

86. A.P.S. (s) Ja. v. 6. c.72.
87. By an Act of 1449 c.30 - the defender was entitled to a triple citation, the cause going against him only upon his third failure to appear. This procedure was certainly obsolete in minor causes.
88. Wood pges. 11. 22: Chapter upon Civil Procedure.
89. Court Lists.
90. Chapt. 9 - Coroner. App. I.
91. Supra - App. 2.
92. Vide Chapter upon Criminal Procedure. M.S. 30 Sept. 1592.
93. A.P.S. 1587 c.87.
94. Hour of cause probably meant only the actual calling of the case. Fife p. xxiv note 7.
95. Maitland p. 320.
96. M.S. 5 Feb, 1595/6 - "quhilkis personis the saidis baillies ordanit thir officiaris to warne thame -- to compeir -- vpoune the ground of the saidis yairdis the morne --- at tene houris befoir nwne."
97. Fife. App. A. p. 309.
98. The Regality and Burgh Court of 1 Feb. 1597/8.
 - A) Dealt with the objections to a brieve of division.
 - B) Tried James Harrower for sheep-stealing.
 - C) The bailie-depute judged upon an action concerning arrears of an annualrent.

CHAPTER 8.

The Officials of the Court of the Regality of Broughton and Burgh of the Canongate I.

A.- The Superior.

Sir Lewis Bellenden, the first Baron of Broughton raised the Devil and promptly died of fright.¹ This disastrous experiment led to the accession, by November 1591, of his son James to the lands and judicial rights of the Regality of Broughton²

James was a minor under the tutory of his mother Margaret Livingstone; being born after 1581³ but not later than 1584.⁴ By February 1598,⁵ his mother had given way to four curators, three of whom were maternal relations. These were John Livingstone of Dunipace,⁶ Livingstone of Ogilface⁷ and Alexander, Fourth Lord Elphinstone.⁸ The Fourth was probably Master Adam Bellenden.⁹

By the following October,¹⁰ one of the Livingstones had disappeared, being replaced by Bellenden of Newtyle, a distant paternal relation.¹¹ As the elder Livingstone of Dunipace probably died in the course of 1598,¹² the alteration in curators is almost certainly explained.

As testamentary tutor, Margaret had charge of the person and property of the heir,¹³ being competent to pursue for his rents and duties, to grant leases and to renew the investitures of the heirs of deceased vassals.¹⁴ In these tasks she was probably assisted by John Graham, Rector of Sanday in Orkney.¹⁵

The curators succeeded to Margaret Livingstone's responsibilities, but in February 1598,¹⁶ delegated their exercise to Walter, twelfth child of John Bellenden, and a graduate of Edinburgh University.¹⁷ In October he was replaced by Adam Bellenden, the parson of Falkirk and later Bishop of Aberdeen.¹⁸

The commissioner performed the feudal and administrative duties of the Superior, who, as a minor could not undertake them himself. He received the entries of heirs, resignations of lands and other properties, and levied the necessary compositions. He conferred donations of non-entry, of escheat and other titles of right. With the assent of the heir and his curators, he could also pursue for non-entries and for the reduction of infeftments and other titles of the vassals of the jurisdiction. He held office during the pleasure of the minor and curators provided he rendered an annual account of his conduct.¹⁹

Adam probably continued as commissioner, until his nephew attained his majority;²⁰ and associated with him was the Chamberlain John Bellenden,²¹ whose predecessors at any rate, followed vassals in the Regality Court for arrears of rents and dues.²²

Neither the commissioner nor the chamberlain had any right to fence, hold and continue courts for the dispensation of the judicial rights of the Superior. This privilege belonged to the hereditary bailie and his deputies.

B.- The Hereditary Bailie of Broughton and Kerse.

A baron could sit in judgment himself, or else employ a deputy, or bailie.¹ The Abbots of Holyrood occasionally presided over civil actions;² but being clerics, could take no part in criminal trials.³ For this, and other reasons of expediency, the Abbots entrusted the work of court to a long succession of bailies.⁴ There is no evidence that any of these held office upon a hereditary tenure until in 1565, John Bellenden of Auchnoull was made hereditary bailie and justiciar of Broughton.⁵ The possibly hereditary rights of Alexander Bruce of Airth in Kerse and Ogilface were abrogated by the Commendator in 1566;⁶ while in 1569, Master David Makgill, bailie-principal surrendered his unspecified "right kyndnes propirtie and possessioun" which he had to the bailiary of the Regality of Holyroodhouse.⁷

From 1570, when Bellenden took formal possession of his office,⁸ Broughton was burdened with a hereditary bailie. Mediaeval offices tended to become vested in a single family,⁹ and the bailiaries of the great ecclesiastical jurisdictions were no exception, particularly upon the approach and consummation of the Reformation. The Scotts of Buccleuch became hereditary bailies of Melrose in 1525;¹⁰ the Kers of Cessford of Kelso in 1473.¹¹ Coldingham had fallen to the Homes in 1465,¹² while the bailiary and justiciary of the Regality of Glasgow passed firstly to the Boyds of Kilmarnock¹³ and then to

the Lennox Stuarts.¹⁴ The Lords Sempill, in Paisley,¹⁵ the Setons in the Lothian Lands of the Regality of St. Andrews,¹⁶ the Lovat Frasers in Beauly¹⁷ are only a few further illustrations of a universal practice.

The hereditary bailie was always commissioned to fence, hold and continue his Superior's courts.¹⁸ In these, he wielded the judicial rights entrusted to the Lord: although, as in Glasgow¹⁹ and Paisley,²⁰ ~~although~~ ^{BUT} not in Broughton,²¹ the latter could retain his simple feudal competence used in his own courts by his own officials. The bailie appointed his officers of court, bailies-depute, clerk, sergeants and all necessary officials;²² although, as in Glasgow, the Superior could insist upon the dismissal of delinquent and negligent subordinates.²³

The perquisites of the bailie varied considerably; some received along with, or in place of the profits of court, an annual payment from the Superior,²⁴ while others held a feu of land.²⁵ In some ecclesiastical jurisdictions, the bailie was granted a proportion of tithes, and on occasion, he was expected, in return for his award, not only to administer justice but also to defend the monastery and lands.²⁶ In Glasgow,²⁷ St. Andrews,²⁸ and Broughton²⁹ escheats of felons belonged to the Superior, but in the former³⁰ and in Dunfermline,³¹ all other fines and profits of court, including sasine oxen, fell to the bailie. The hereditary bailie of Broughton drew each year from the mails, farms and duties of Kerse, 26lib.13s. 4d, together with all other fees, capons, and other customs pertaining to the bailiary and

justiciary.³² These unspecified dues probably included fines of court, sentence silver and sasine fees, although definite information is not forthcoming.³³

The bailie, hereditary or otherwise, was bound to present his commission in court, and make faith de fideli administratione;³⁴ a ceremony performed before the Canongate bailies, by John Bellenden in April 1570.³⁵

Once admitted, the bailie either in person or through his deputies, was competent to hold the courts of the jurisdiction. Even with a hereditary bailie, the Superior was not excluded from sitting and judging, unless he had expressly renounced that right.³⁶ The inherent privileges of jurisdiction still remained vested in the baron or lord of Regality. The bailie, no matter his actual power and influence, was no more than the Superior's lieutenant.

By a process of historical accident the hereditary bailie of Broughton became Baron of the Regality. Such was not unusual, for not infrequently, the hereditary bailliary was but a prior step towards its holder gaining complete control and ownership of the lands of the jurisdiction.³⁷ This combination removes the bailie-principal from the present record. The bailliary and justiciary still, however, remained in being. William Bellenden, the third Baron, retained until 1607, his rights of bailliary over the Barony of Ogilface,³⁸ although the Barony and Lands had passed to the Earl of Linlithgow,³⁹ ~~while~~^{and} later, the Earl of

Roxburghe acquired the remnants of Broughton "cum officiis
justiciarie et balliatus baronie et regalitatis de Brochtoun".⁴⁰

While, during our period, it is probable that precepts were
directed in the name of the bailie and his specific deputy.⁴¹

The bailiary ceased to be strictly hereditary when it was
vested in the Edinburgh council for the Regality of the Canongate,⁴²
and in the Governors of Heriot's Hospital for the reduced
Regality of Broughton.⁴³ Nevertheless, the extensive powers
which it represented survived intact until 1748.⁴⁴

C.- The Bailies-depute.

The active heads of the Regality court were the bailies-depute.¹ All bailies-principal were obliged to appoint a sufficient number of deputies,² for whose actions they were responsible to the Crown.³ The Broughton deputies were appointed by the bailie,⁴ were sworn and admitted in court,⁵ and hold office during the pleasure of the bailie,⁶ although in strictness, such appointments were subject to annual renewal.⁷ The deputies exercised a conjunct and several authority over the entire jurisdiction.⁸

Until the autumn of 1597, the bailies-depute were three in number. Of these one was John Bellenden, bailie from at least 1588,⁹ and a maltman in South Leith.¹⁰ He was also a substantial feuar in Fluiris¹¹ and Wrightslands,¹² and husband of Helen Tempill, widow of James Logan, portioner of Fluiris.¹³ Probably related to the baronial house, he was involved in its affairs, and was evidently a man of some substance and position.

A second deputy was Master Thomas Bellenden, a son of John Bellenden of Auchnoull, at one time a Lord of Session, and husband of the widow of the Laird of Newtyle. He died in July 1597,¹⁴ and was succeeded by Master Archibald Wilkie.¹⁵

Wilkie was probably a graduate of St. Andrews,¹⁶ but was more certainly a son of James Wilkie a Canongate burgess¹⁷ and member of council.¹⁸ Archibald, himself, was upon the council of 1581,¹⁹ and was a frequent burgh bailie.²⁰ Along with his

wife, Jonet Inglis, he was also the holder of Canongate feus.²¹

John Graham, the last deputy, was also a Canongate burgess and indweller, but is a much more indistinct figure than his brother bailies-depute.²²

Of the four, only Thomas Bellenden, and possibly Wilkie, were professional lawyers.²³ Judges ordinary were subject to certain broad conditions or qualifications. They were supposedly wise and knew the law,²⁴ possessing knowledge and understanding of the laws of the realm and Acts of Parliament.²⁵ In which learning, they were, from 1592, examined by the Lords of Session.²⁶ In addition they could be neither Catholics²⁷ nor ministers of the established Kirk.²⁸ Our deputies presumably fulfilled these negative conditions, but Graham and John Bellenden could have acquired their legal training only through practical experience upon the bench. In this they were by no means alone.²⁹

The bailies-depute followed no set plan in their apportioning of court sessions.³⁰ Sometimes two appeared together,³¹ but usually only one presided in court with one or more of the burgh bailies.³² Thomas Bellenden tended to concentrate upon Justice Courts,³³ but he neither monopolised nor confined himself to such tribunals.³⁴ In general, Thomas presided but rarely in court, while John Bellenden appeared regularly until May, 1596.³⁵ From then, until October 1597, his place is taken by John Graham who is replaced thereafter by Master Archibald Wilkie.³⁶ Until May 1596, the two Bellendens and

Graham appear in each year of the record.³⁷ Thomas makes his last bow in April 1597;³⁸ and Graham in the Michaelmas Head Court of that year.³⁹ It is possible that John Bellenden relinquished his office in 1596, and Graham in the following year, although both continued to play a part in Regality affairs.⁴⁰

It is impossible to determine the perquisites which fell to the bailies-depute, although presumably each received some proportion of the fines and sentence silver levied in court. The court record preserves an unbroken silence upon this point.

D.- The Bailie in hac parte.

For certain purposes, the Superior could nominate a specific person to perform a single act.¹ On its performance, the recipient's commission terminated. In Broughton such temporary officials were used only in the granting of sasines and receiving of resignations of lands and annualrents.²

The taking of sasine was essential to complete one's claim or right to any feu, annualrent or non-hereditary office.³ The claimant upon proof of his title, received from the Superior, or his commissioner, a precept directed to the bailie in hac parte, ordering him to give sasine to the party.⁴ The bailie so designated could be the ordinary judge of the jurisdiction.⁵ In the Canongate, the burgh bailies, probably because of the custom prevailing in royal burghs,⁶ were usually selected,⁷ but John Bellenden and Wilkie, as Regality bailies, were also, often employed as bailies in hac parte.⁸

Often, however, a private individual was nominated. Gavin Carmichael of Wrightslands;⁹ Alexander Hill, Merchant burgess of Edinburgh,¹⁰ and Thomas Rannald, burgess of the Canongate, are only a few of these.¹¹

Sub-vassals of the Regality, holding in feu-farm were returned by briefs of the jurisdiction,¹² but were granted sasine by their immediate superior.¹³ Accordingly, in 1599; "Personaliter accessit Robertus Gordoun ballius in hac parte honorabilis viri Johanni Kincaid," portioner of Coates, at the

house and garden in ⁰⁹Castles belonging to the late John Fiffie, and there gave sasine to the deceased's daughter. Other examples are numerous, both the bailies¹⁴ of the Regality and private persons such as Gordoun being employed.¹⁵

Resignations were made usually into the hands of the Superior.¹⁶ In 1579, for example, the unscrupulous Adam Bothwell, Bishop of Orkney and Commendator of Holyroodhouse, received in person the return of a quarter-acre St. Leonard's feu.¹⁷ On the other hand a bailie in hac parte could be appointed, as illustrated by John Dalzell of Saughtonhall, who, in 1577, resigned twenty of his acres into the hands of David Mar, burges of Edinburgh, and bailie in hac parte.¹⁸

These bailies were not officers of Court, although their duties were, in the main, the result of the deliberations of the inquests summoned to answer the points of brieves, and they thus completed a process initiated in the Courts of Broughton and the Canongate.

E.- The Sheriff in hac parte.

This official was an extraordinary judge appointed by the Lords of Council, or by the Court of Session.¹ In the Sheriffdoms, he was first employed when the ordinary judge was partial; while later he developed into the messenger of the Session advocating cases to that court.²

The Broughton Regality Court was not subject to the same degree of interference, and the Sheriff in hac parte appears only twice.

In both instances he was appointed by the Court of Session to execute letters of apprising of the ground purchased from that Court.³ The letters on one occasion constituted an ordinary bailie-depute as Sheriff in that part,⁴ and on the other, a messenger of the Session Court. Both practices were common; particularly the latter.⁵

The important distinction between the bailie in hac parte and the Sheriff in that part, is that while the first was appointed by the Lord of the jurisdiction, the second was a representative and nominee of the Superior Civil Court of the Crown.

CHAPTER 8.

A.- The Superior.

1. Mackay: Canongate p.26.
2. Exchequer p. 541-43: p. 538: James had received sasine of the bailiary of Broughton and Dunrod and of the Regality of Broughton by 5 Nov. 1591.
3. Scots Peerage v. p.443. Margaret seventh child of William, 6th Lord Livingstone married Sir Lewis in 1581.
4. James still had Margaret as tutor in January 1596 (R.P.C. v. p. 671 24 Jan.) but had received his curators by February 1598. (App. 1). Curators were nominated on the completion of the heir's fourteenth year. (Craig: II 20. 8. p. 808). This places his year of birth as 1584 at the latest.
5. App. 1.
6. App. 1. John Livingstone of Dunipace: the Dunipace Livingstones appear to have had no nearer kinship with Margaret than their common descent from the father of the 1st Lord Livingstone (eg. Livingston: Chapt. XIV).
7. App. 1. Name appears to be Lochiltree, but there was no such Livingstone cadet, a likely curator would be Sir George Livingstone of Ogilface, second surviving son of the sixth Lord (Livingstone p. 288).
8. Scots Peerage III p. 537/8. Alexander, 4th Lord Elphinstone, Lord Treasurer 1599-1604, married Jane, eldest daughter of William, 6th Lord Livingstone.
9. Initial in App. 1 obscure: but probably Adam Bellenden mentioned as curator in App. 2. Adam was the eleventh child of John Bellenden (Scots Peerage II p. 66/67).
10. App. 2.
11. App. 2.
12. Livingston p. 347. died about 1598: App. 1 & 2 would appear to confirm this, unless the younger Dunipace was the curator.
13. Spotiswoode p. 344.

14. eg. Mackenzie 1.7.9. p. 83.
15. John Graham acted as procurator for Margaret in Court on 2nd May 1593, besides performing a similar task for Adam Bellenden (App. 2): and Thomas (21 Sept. 1592). A woman could succeed to superiorities, non-entries and relief and enter vassals (B.P. "airis and successors" c.25).
16. App. 1. An additional complication is provided by the marriage of Margaret Livingstone to Patrick Stewart, Earl of Orkney (Scots Peerage v. p. 443). This possibly took place between January and December 1596; for there is a reference to "Johne Batesone seruitour to the Ladie of Orkney" (M.S. 22 Dec. 1596). If Margaret is meant she would probably have lost the tutory of the heir upon her remarriage (Hope iv.10.20 p. 331).
17. Scots Peerage II p.67.
18. App. 2: Scots Peerage II p.66/7.
19. App. 1.
20. Certainly until 1599 (Logan 18 Feb.)
21. App. 1, contains the sole reference to this official. John Bellenden was perhaps the fifth child of John Bellenden (Scots Peerage II. p.66) who was born before 1563 (O.E.C. 10 p. 135) and was still alive in 1587 (Scots Peerage II p. 66).
22. Wood pgs 22/23.

B.- The Hereditary Bailie.

1. Eg. Corshill p.167: Carnwath App. B.
2. Young eg. 219: 634: 656.
3. Statutes of the Scottish Church: p. 65.
4. Notably George Kincaid who was already bailie in 1485 (Young No. 4) and was still in office in 1501 (Young No. 1118). His son George was by then bailie of the Canongate (eg. Young 1046).
5. R.M.S. iv. No. 1985. George Kincaid despite his long tenure was probably not a hereditary official; if only because of

his divided control of the Regality Bench with the Abbot.

6. R.M.S. iv. No. 1985.
7. Wood p. 184/5.
8. Wood p. 186/7.
9. Eg. Fife: xxxv-xxxvii - upon the hereditary sheriffdoms.
10. Scots Peerage: II. p.229.
11. Supra VII p. 327.
12. Supra IV p. 448.
13. R.M.S. III No. 2407.
14. Scots Peerage v. p.160. Glasgow I. p.219/20. Glasgow I. pge. 315 et seq.
15. Scots Peerage vii. p. 551.
16. A.P.S. IV Ja. vi. 1621 c. 47.
17. Scots Peerage v. p. 528.
18. eg. Glasgow p. 315 etc: Inchaffray. App. VI p. 159/160.
19. Glasgow p. 320.
20. Paisley p. 316/20: 2 Oct. 1598: Lord Claud Hamilton granted commission to Master of Paisley, empowering him to appoint Regality officials, to administer justice, to repledge, uplift and dispose, at his will, escheats, while the Master already exercised some form of jurisdiction. (Paisley pges 172/3). On the other hand Lord Sempill, hereditary bailie appointed his deputies in 1602 (Paisley p. 250/1). The commission was probably an attempted usurpation upon the part of the Hamiltons: but the second entry shows that they did exercise some form of jurisdiction.
21. Wood pges 22/23: the superior used the ordinary Regality Court for the pursuit of his rents.
22. As 18: In Broughton the bailie appointed the deputies (Wood pges 184/5: p. 271).
23. Glasgow p. 319.

24. As 32.
25. R.M.S. iv. No. 1709 - Lord Home as bailie of Coldstream received all unlaws, fines and escheats of Court, together with half of the fishing of Littell-Haugh. R.M.S. iv. No. 1787.
26. R.M.S. iv. No. 1760: v. No. 155 V. 584: "cum 12 equitibus et peditibus --".
27. Glasgow: p.317: all escheats of Court save those of convicted of homicide and murder.
28. R.M.S. iv. No. 1836: proviso -- et quod proficua et escheata curiarum itineris justiciarie, salvo jure coronatoris, dicto episcopo pertinerent.
29. M.S. 23 Feb. 1596/7 - goods of convicted thieves fell to Superior.
30. As 27. R.M.S. v. No. 73.
31. Glasgow p. 317.
32. R.M.S. iv No. 1935: The Kers of Cessford received, as bailies of Kelso only 10 lib. (Scots Peerage vii p. 327): the Homes from Coldingham 20 lib (supra iv. p. 448). The Colvils from Culross, 40 lib. (R.M.S. iv. No. 1835) as did also the bailies of Dunblane (R.M.S. iv. No. 2910). The Broughton fees also compare favourably with those of the Sheriffs (Fife p. L-LI).
33. Sentence silver was the fee paid by the defeated in a civil cause to the judge (Hope vii. 18.8.p. 278). Later, in the Canongate, it fell to the clerk (M.D. Consuetude: p. 3100 No. 29 17 Dec. 1684). The only fee specifically mentioned is that exacted in apprisings of the ground. This belonged to the bailie in his capacity as Sheriff in hac parte.
34. A.P.S.(s): Jac.1.6. c.83.
35. Wood pges. 184/5: 186/7.
36. M.D. p.7658: No. 361: 7 Feb. 1610. E. of Bothwell v. L. Cessford.
37. A glance at the Scots Peerage bears this out. The Kers of Roxburgh, the Earls of Home, the Lords Colville and many others obtained the lands over which they were bailies.

38. Scots Peerage: p. 71. 6 Oct. 1607.
39. Scots Peerage II. p. 71.
40. R.M.S. ix No. 114.
41. ~~APP.~~ ^{SWAPT} 13. App b.
42. R.M.S. ix. No. 929.
43. ~~R.M.S.~~ Mackay. BROUGHTON. p. 96 ETC.
44. The Act of 1633 c13 reserved to the hereditary bailie the rights of his office granted before the erection of the benefice into a secular lordship, except in all regalities pertaining to bishops and archbishops "and the regaltie of Bruchton to the Earle Roxburghe". This would appear to abolish the hereditary bailiary of Broughton, investing its rights in Roxburghe, as Superior (A.P.S. 1633 c.13). Mackay. Broughton p. 114.

C.- The Bailies-depute.

1. Court Lists.
2. A.P.S. 1424 c.6.
3. A.P.S. (s).
4. Wood p. 184/5 p. 271.
5. Supra: in accordance with the Act of 1540 (A.P.S.(s) Ja.V. 6.c. 73). No entry is however made of the admission of Archibald Wilkie in October 1597.
6. The two Bellendens, Graham and Wilkie all held office for years (eg. Court Lists).
7. A.P.S.(s): Ja. V. 6. c.73.
8. Eg. Court Lists: each deputy, either alone, or with the others could preside upon any competent cause from all parts of the jurisdiction.
9. Logan: 31 July 1588. For John Bellenden, bailie of the Regality, and his wife, Helen Tempill.

10. Bellenden was probably a maltman. A John Bellenden pursued a Leith woman for the price of malt bought in 1595 (M.S. 7 Jan. 1594/5). Helen Tempill was widow of a maltman, who was also portioner of Fluiris.
11. Logan 22/23 Oct. 1589.
12. Logan 3 Nov. 1590.
13. M.S. 3 Feb. 1589/90: From Retour of John Logan, son of James Logan, portioner of Fluiris. "decem acre terrarum nunc existunt et denegerunt in manibus dicti Jacobi Bellendene-- ob dimissionem -- feodum per Johannem Bellendene spousum Helene Tempill matris ipsius Johannis Logane."
14. Scots Peerage II. p.66.
15. By the date of Wilkie's first appearance as a deputy.
16. St. Andrews: p. 266: An Archibald Wilkie matriculated at St. Leonards in 1558, while a Robert Wilkie was in the same College from 1563 until 1566 (Supra. pges 270 & 161).
17. M.S. 6 March 1595/6. From retour of John Mackcall "--de toto et integro vno annuo redditu viginti sex solidorum et octo denariorum --- de toto et integro occidentali tenemento quond Jacobi Wilkie nunc pertinen magistro Archibaldo Wilkie -- ". James Wilkie had a son, Master Robert (Logan 16 Oct. 1577); so it may well be that Archibald, as an elder son, succeeded to the family's Canongate property.
18. Maitland pges. 323: 330.
19. Supra p. 348/49.
20. In 1591/2: 1593/4: 1595/6. eg. ^{Court Lists} List of bailies.
21. As 17: and Logan 13 June 1589. For Jonet Inglis, wife of Master Archibald Wilkie, a liferent of posterior lands of his two Canongate tenements.
22. "Johne Grhame indwellar in the Cannogaitt" appears several times (eg. M.S. 6 April 1594): while "Johne Grhame persone of Sanday", acted as procurator for the Bellendens. The two may be the same, although the latter, if a cleric, could not by law be a judge. ^{THIS WAS NOT STRICTLY OBSERVED; AND GRAHAM HAD CEASED TO BE VICAR BY 1585 (FASTI: 7. p. 262)}
23. Scots Peerage as 14.

24. B.P. "the keys of Court" p. 273.
25. A.P.S. 1592 c. 126.
26. A.P.S(s) Ja. vi. 12: c.124.
27. A.P.S. 1567 c.9: 1581 c.9.
28. A.P.S. 1584 c. 133.
29. Neither barons, hereditary bailies nor burgh bailies were necessarily trained lawyers, knowledge and understanding of the law being sufficient.
30. Court Lists.
31. Court Lists.
Eg. 6 Oct. 1592: 11 Oct.1592: 3March 1593.
32. Court Lists.
- 33.-39. Court Lists.
40. Graham sometimes acted as witness to the proclamation of briefes (M.S. 28 June 1598: 4 August 1599): and Bellenden as a bailie in hac parte (Logan 28 Feb. 1599).

D.- The Bailie in hac parte.

1. Young No. 656. The Abbot appeared in a Court held at Whitekirk, with a bailie specially constituted. The ordinary judge could not preside over a cause, if he was related, friendly with or at enmity with either of the parties (B.P. "of jugeis" c.15).
2. "In hac parte" referred to the particular cause, and had no territorial import (Fife lxix-lxx).
3. Eg. Mackenzie ii: 3: p.137/8). A hereditary office required no sasine, but only right, title and possession (Hope III. 6.17. p.170).
4. Eg. A.P.S.(s) Ja.iv.6. c.89.
5. Mackenzie 11.3.p.133. Any person, whose name was inserted in the precept of sasine, could execute it as bailie.

6. A.P.S. 1567 c.27.
7. Logan 29 Jan. 1588/9: 11 July 1579:
8. Logan 30 Oct 1588: 18 Feb. 1598/9: 28 Feb. 1589/90. 16 June 1590.
9. Laing Charters 680.
10. Logan 5 April 1591: for Lewis Bellenden, annualrent from Canonmills.
11. Logan 27 Sept. 1589.
12. Eg. M.S. 7 Sept. 1597 - retour of Mariote Fyffie to a tenement in the town of Coates "Et quod -- domus -- de Clemento Kincaid de coittis (etc.) -- domino Imediato superiore -- in feudifirma -- tenentur".
13. As 14: 15.
14. Logan 23 June 1599.
15. Logan 23 June, 1577: George Hereot bailie in that part to David Robeson in St. Leonard's Way. Logan 14 July 1577 - John Schoirt for George Touris of Birsto. 4 July 1589: William Bannatyne, servitor to John Stratoune, for Thomas Henrysoun, merchant burghess of Edinburgh.
16. See Chapter 6 note 37.
17. Logan 30 Jan. 1578/9.
18. Logan 16 May 1577.

E.- The Sheriff in hac parte.

1. Fife: p. lxx.
2. Fife: p. lxxi.
3. M.S. 1 June 1594.
M.S. 31 July 1599.
4. M.S. 1 June 1594: Till all and sindrie quhome it effeiris to quhais knowlege thir present lettres sall cum Johne Bellendene baillie deput of the regaletie and baronie of Brochtoune Judge and sereff in that pairt onlie within the said regaletie specialie constitut to the effect undirwrittin-

5. M.S. 31 July 1599: Ninian Weir, messenger and sheriff in hac parte. Fife: lxxi-lxxii: for Court of apprising held in Edinburgh see Fife App. B. p.330.

AS THE RECORD

The Sheriff was one of the Lords of Court, but nevertheless he never appears in the Court Record. This is due to the paucity of criminal actions, for it was with these alone that the Sheriff was concerned. His principal business was to arrest or attach those contained in the Porteous Roll, as directed by the clerk, taking care if possible, and if this was not forthcoming to arrest the party's goods or person. The Sheriff, the Clerk answered for his agreements, and in Justice when his command was put to him.

So far as can be ascertained, the Sheriff was solely responsible for the appearance of the accused in Court, and for the discharge of the duties imposed on him. Accused persons could usually find caution and their sureties were liable to the loss of property if they failed to appear in Court. Those who could not find caution, or who failed to appear, were liable to imprisonment. The Sheriff, the Bailiffs were bound to guard these prisoners, and to bring them before the Court when required. During the period the Sheriff was responsible for the execution of public justice was very much curtailed.

In the period of the Sheriff's office, the Sheriff was the only officer who could execute public justice.

CHAPTER 9.

THE OFFICIALS of the COURT of the REGALITY of BROUGHTON and
BURGH of the CANONGATE II.

A. THE CROWNER.

The Crowner was one of the Keys of Court,¹ but nevertheless he never appears in the Court Record. This is due to the paucity of criminal actions, for it was with these alone that the Coroner was concerned. His principal task was to arrest or attach those contained in the Porteous Roll² provided by the clerk,³ taking surety if possible, or if this was not forthcoming to arrest the party's goods or person.⁴ In Court, the Crowner answered for his arrestments,⁵ and in Justice Eyres, his conduct was put to an Assize.⁶

So far as can be ascertained, the Coroner was not responsible for the appearance of the accused in Court, save for those whose goods he had impounded.⁷ Accused persons could usually find caution and their sureties were faced with the task of presenting them in Court.⁸ Those who could not secure bail, or who, as redhanded slaughters or thieves were not entitled to this privilege, were lodged in prison.⁹ In the Sherifffdoms, the Sheriffs were bound to guard these unfortunates, and to enter them before the Royal Justice Court.¹⁰ During the Eyre, the Sheriff was responsible for the accused until justice was done upon them.¹¹

In Broughton, there was an approximation to these general rules. Accused who had found caution were entered

before the Justice Court by their sureties.¹² An indefinite approach to a Coroner is provided by Master Archibald Wilkie, who once as a Burgh Bailie and on a further occasion as a private person took caution "for the entrie of the haill personis contenit in the Roll that he sall enter thame within the Towbuith..." at a future date.¹³ The Courts were never held, so the extent of his responsibilities are unknown. Either he had become private cautioner for a few persons, or else, he had performed the Coroner's duties of attachment with the task of presenting them in Court. The former is more probable.¹⁴

The Bailies of the Canongate, and to some extent the Bailies-Depute more surely undertook the duties of the Coroner, together with those of the Sheriff with additional responsibilities. Long before¹⁵ 1597,⁵ the Burgh Bailies kept the Tolbooth in repair, appointed the Jailer and made injunctions upon the maintenance of the prisoners in his charge.¹⁶ Within its walls were housed persons apprehended not only in the Canongate, but also in Leith and elsewhere in the Regality.

A warded inmate of the Tolbooth, could be released under surety to appear for trial, and caution was taken by either the Burgh or Regality Bailies,¹⁷ who therefore assumed one of the Coroner's tasks. By keeping other prisoners in ward, the Burgh Bailies, in particular, shouldered a duty of the Sheriff.

The Bailies also exercised a certain discrimination over whom they incarcerated in their warehouse. Often they simply

banished without trial, the petty thieves who had been apprehended. The Canongate Magistrates so expelled offenders captured in Leith,¹⁸ while their Regality associates performed the same office with others who had committed offences in the Canongate.¹⁹ There was no regard paid to respective jurisdictions, nor did the expulsion take place necessarily in a fenced court.²⁰

A probable reason for this leniency was the absence of a private accuser; for the Regality was reluctant to pursue upon its own initiative. This was certainly the case with George Lockhart, a Canongate apprentice who had stolen from his master's wife. His master was abroad, and Lockhart's release from the Tolbooth was: "But prejudice of the satisfioun^E of the said...(Master)...for his skaith ⁴actione of his geir at the handis of the said George quhen he salhappin to persew and crave thairfoir heirefter as acc^Oairdis of the law."²¹ While this reason may not be the only one, it certainly helps to explain the inconsistent conduct of the Regality which simply banished without trial a woman who had stolen from four persons in Leith,²² but drowned another for a similar career of crime.²³

Upon summing up, it can be said that the Coroner is never mentioned in the Court Book, and in view of the Regality's carelessness in holding either regular Justice Eyres or even intermittent justice courts, he probably did not exist. The Bailies undertook his duties to the extent of releasing wardees upon caution, and also held other accused within the

Tolbooth for eventual trial. As Regality prosecutions were few and far between, responsibility for producing the other accused in Court would fall in the main upon their friends and other cautioners.

B. THE JAILER.

This official was not a member of Court, but his duties were closely linked with its criminal jurisdiction. He was appointed annually, by the Bailies and Council, from Whitsun to Whitsun, being sworn and admitted to office in Court, finding caution de fideli administratione. During his term, he was subject to the rules and conditions laid down by the Regality and Burgh Bailies and Council; and was lodged in quarters within the Tolbooth. Only one jailer is mentioned by name, James Hutton, an officer of the Canongate.¹

C. THE PROCURATOR-FISCAL.

The office of Regality Prosecutor appears once in the Record, when it was occupied by John Graham, one of the Bailies-Depute.¹ The use of a Bailie was legitimate, provided that the Court was not fenced in his name.²

A regular Procurator appeared in many Burgh Courts in the Sixteenth Century, replacing the Treasurer who usually undertook the office.³ The Broughton Court, however, probably had no regular official to perform an uncommon task; although at a later period, the Treasurer of Heriot's Hospital appears as

Procurator.⁴

In other private jurisdictions, the Procurator was sometimes an officer,⁵ while the Laird of Breadalbane not infrequently pursued his vassals before his Bailie not only for personal wrongs but for injuries inflicted upon other inhabitants of his jurisdiction.⁶

D. THE CLERK OF COURT.

This important official had been from 1567, James Logan, Public Notary and indweller of the Canongate.

The clerk was one of the Keys of Court,¹ and his principal duties were the making and writing of the Court Record, and its preservation.² That the protocol books of John MacNeil, a former clerk, remained for some years in possession of his widow, is perhaps indicative of the Canongate's regard for the latter necessity. The maintenance of the Court Book was, however, of great importance, as the Joint Court was a Court of Record, from its records extracts could be taken, and the Court Book had to be supplied on demand to the Privy Council and other superior bodies.³

The clerk was usually, although not necessarily, a Public Notary,⁴ admitted by the Court of Session,⁵ upon his appointment by the Superior or by the hereditary Bailie.⁶ Logan as Clerk of the Burgh Court was supposedly re-elected annually by the Council.⁷ In practice, he held office for life,⁸ and was succeeded by his son.⁹

With the acquisition by Edinburgh of the superiority, the Canongate Clerkship became a pendicle of that of Edinburgh.¹⁰ As a result, the dismissal of the Edinburgh Clerk involved the fall of his Canongate subordinate.¹¹ This fate overtook Master James Logan in 1648, but he bought back his office in the following year.¹²

Apart from writing the Record of Court, the Clerk was obliged to give, upon demand, extract of civil processes,¹³ and only he could grant instruments of Sasine, extracts of returns and the like.¹⁴ Depositions of witnesses were also taken by the Clerk in conjunction with a Bailie¹⁵ and claims were given into him.¹⁶ All evidences, the final libel, and the issuing of precepts were drafted, kept or issued by the Clerk.¹⁷

In matters criminal, the Clerk of Court prepared the Porteous Roll and presented it to the Coroner,¹⁸ took caution from pursuers,¹⁹ and at the end of the trial either granted extract to the acquitted defender,²⁰ or contrariwise conveyed him to the place of execution, reading his doom to those assembled.²¹

Amongst the other duties of Logan, as Clerk, was the issuing of Regality briefs and their subsequent confirmation in Court.²² As a Public Notary, he attended the ceremonies of Sasine and Resignation of Lands,²³ and drafted contracts, obligations, reversions and their discharges.²⁴

He had as assistant clerk, David Robeson²⁵ who was

succeeded by another Robeson, Laurence.²⁶ The office was again practically hereditary; a John Robeson being Deputy Clerk of Court in 1560.²⁷ Details of appointment are not, however, indicated.²⁸

The perquisites of the Clerks are, again, not given. In general the Clerk appropriated fees for the granting of extracts of processes,²⁹ and for his general clerical work,³⁰ while he was entitled to two shillings of every amercement levied in Court.³¹ At a later date, the Canongate Clerk received sentence silver,³² while by 1835, he was given an annual ten guineas, with his assistant obtaining half that amount.³³

E. THE DEMPSTER.

For the greater part of the period covered by the Court Record, the Dempster was Archibald Ramsay, the Canongate Bellman.¹ His office had had a famous history in the Scots legal system, and the Dempster was still essential to the legality of Court, being supposedly able to bear witness, to give doom, and to keep the laws of the Court.²

In practice, Ramsay limited his activities to two tasks. Either he or one of the Regality officers called the suits at Head Courts,³ while in criminal trials, once the verdict had been given by the Chancellor of the Assize, the Dempster, following the words of the Judge, pronounced the doom or sentence: "And this wes gevin for dome and pronunceit be the

mouth of Archibald Ramsay Dempistar of the said Court for the tyme."⁴

According to the Baron of Broughton in 1625, the Dempster was appointed annually, not by the Superior, but by the Canongate Council.⁵ There are no indications of the fees acquired by the Broughton Dempster; although elsewhere an annual forty shillings was his due.⁶

The Broughton Dempster, like his fellows in other Courts of the late Sixteenth Century, was a shadowy and unimportant figure. He still survived in the Canongate in 1637,⁷ but had disappeared by 1835.⁸ Elsewhere the Dempster became the common hangman.⁹ This was ^{PERHAPS} true of Broughton in the middle of the Seventeenth Century; but Ramsay is nowhere designated as such.¹⁰

F. THE OFFICERS OF COURT.

The officers fall into two distinct groups. Some four were appointed by the Canongate Council and were concerned with the affairs of the Burgh Court. They were elected annually, but, in effect, held office over a considerable period of years. Patrick Speir, James Hutton, Robert Crawford and the other officers held their places for more than a decade.¹

In addition to being appointed by the Council, the Burgh officers were also subject to its regulations. From 1569, each officer bore on his breast the Canongate arms in silver, wearing a sword, save on Sundays. On Court days, the sergeants appeared in Court at nine to await the arrival of the Bailies. During

the holding of the Court, they stood at the bar, bare-headed, with halberts, and silent unless addressed by the Bailies. For these and other labours, the officers each received an annual four lib:² a fee which, by 1835, had fallen to three guineas.³

The other group of officers consisted of the Regality sergeants: appointed by the Superior or his Bailie, and again, Regality officers such as William Inglis and William Allan retained their positions for years.⁴

In Court the sergeants acted as orderly officers. From the Tolbooth window, they thrice called parties, members of inquests and witnesses,⁵ ^{They also} and committed persons to ward;⁶ the last being, on occasion, a difficult enough task.⁷ Outside the Court, they proclaimed brieves at the Burgh Market-Cross;⁸ served citations either to the party in person, or at his dwelling place,⁹ made arrestments and attachments; impounded and appraised moveable goods at the Market-Cross.¹⁰ They signed and stamped brieves, citations and the like with the signet ring each officer had by law to wear,¹¹ and the culmination of all their duties was their making faith before a Bailie of due and proper execution of the proclamation of the brieve, or serving of citation or appraising of goods.¹²

The officer was protected in the execution of his tasks by the penalties attached to deforcement, or the forcible prevention of a Court officer in executing his warrant.¹³ An officer so prevented broke his wand of office; which he always

carried on duty.¹⁴ The Court Book contains no example of deforcement, although on one occasion, the Bailie-Depute took caution from a Leith timberman that he would not attempt such an act.¹⁵

Conversely, the ordinary inhabitant was protected, in theory, from the exactions and tyrannies which the officer in the furtherance of his duties could inflict and impose. Officers were supposedly men of honesty, discretion and credit:¹⁶ and Hutton, Speir, Inglis and the others were certainly not drawn from the lowest order of Regality society. Hutton was a Canongate indweller and a person of some substance,¹⁷ Inglis was a tenant in Broughton¹⁸ and Speir a Burgh tenant and the possessor of an annualrent in the Canongate.¹⁹ In addition, the laws regulating dress and badge, and procedure were designed to reduce the more unpleasant characteristics of officers, and to make them responsible for their acts.²⁰ Officers disregarding formalities of dress and of process were liable to the penalties of law, or, at least, to the loss of normal perquisites.²¹

The latter were not inconsiderable. In 1835, the Burgh officers were entitled to three shillings for every service expedited before the Bailies, and to the normal fees for citations and the like.²² Without descending to detail, it is sufficient to add that the executing officer received 12d of every lib liquidated in appraisings,²³ thirty pence of every amercement levied in Court; and a similar small reward for

every act performed by him.²⁵

The Regality and Burgh officers, although owing allegiance to different authorities, worked closely together. A Regality sergeant often performed his duties, proclaiming briefs, apprising goods and the like, before his Burgh counterparts, as witnesses,²⁶ while the reverse was equally²⁷ true.²⁷ Not infrequently, a Burgh officer, such as Hutton, acted as a Regality sergeant; which suggests that the Burgh officers were subject to the orders of the Regality Bailies.²⁸

G. THE BELLMAN: PIPER AND DRUMMER.

These minor officials were not, properly speaking, officers of Court; although Ramsay, as Bellman, is frequently entered in the Court Record, as a witness to the proclamation of briefs, and of appraisings.¹ Presumably, such proceedings were heralded by the sounding of his hand-bell. In addition, the Bellman, aided in the open proclamation by the Council, of Burgh laws, of conventions and musters.² Elsewhere, the Bellman summoned the Burgesses to Court.³

The Drummer was, like the Bellman, appointed annually by the Bailies and Council.⁴ His principal duty was to drum his way through the Burgh at four in the morning and at eight in the evening.⁵ In addition he aided the Bellman in various ways, and performed with the Piper at the musters of the Burgh fencibles.⁶ All three players were paid for their services;⁷ the piper receiving allowances for his clothes.⁸

CHAPTER 9.

A. THE CROWNER.

1. B.P. p. 273.
2. A.P.S. 1487 c. 99.
3. A.P.S. 1436 c. 139.
4. A.P.S. 1528 c. 5.
5. D.V.S. p. 77.
6. A.P.S. 1487 c. 103.
7. Fife p. xlv. esp. Note 8. Although more probably he only proved the fact of the arrestment. A.P.S. 1474 c. 52.
8. A.P.S. 1587 c. 81.
9. B.P. p. 548.
10. A.P.S. 1487 c. 102.
11. D.V.S. p. 78.
12. As was John Bowie: 6 Oct. 1592: "Compeirit George Cwnynghame for himself and the rest of his cautionaris and tuk instrumentis that thai haid enterit Johne Bowie in the Towbuith within the bar."
13. Apps. 1 and 2.
14. Or else in view of No. 9 - he was acting as a Sheriff. If the persons were in ward there seems no reason why he should take caution for their appearance.
15. A.P.S. 1597 c. 277 ordered that all Burghs should build warehouses.
16. Vide Jailor, App. 7.
17. App. 6 - not a good example: but the extracts show that Brown was first warded, and then released under caution. The practice is better illustrated with civil instances: e.g. Chapter 10, App. 13, and with lawburrows. By the Act of 1528 c. 5 - the Crouner was to arrest a person's goods or person until caution was found. Presumably it was to the Coroner that this belated bail was made.

18. App. 3.
19. App. 4.
20. App. 4 & 5. It was the duty of the Sheriff to report and indict all criminous persons, and to deliver the indictments to the Justice-Clerk who then made up the Porteous Roll (e.g. Fife p. xlv.). The Bailies were evidently performing this task: although only reporting a proportion of the criminals at their disposal.
21. M.S. 26 March 1595. Burgh Bailie Master John Hairt outwith judgement.
22. App. 3.
23. Margaret Smith, Chapter *b. App. 3.*

B. APP. 7.

C. THE PROCURATOR-FISCAL.

1. M.S. 21 April 1593 + "Persewaris: John Grhame procuratour fischall for the said Regaletie."
2. Inverness p. 99.
3. Inverness p. 187 : 25 April 1570: Prestwick p. 85: 27 Oct. 1601: Edinburgh III, 228.
4. Mackay, Broughton. p. 84:
5. Corshill p. 143. Taymouth p. 368/9.
6. Taymouth p. 380; 388.

D. THE CLERK OF COURT.

1. B.P. p. 273.
2. Supra.
3. Wood p. 259 et seq: Court Books were liable to disappear into private hands: see Fife Lx - Lxi: Macbean, p. 306, e.g. R.P.C. pages 494/6.

4. Hope v. 10, 11, p. 42.
5. A.P.S. 1540 c. 76.
6. Vide the Hereditary Bailie, Chapter 8.
7. So Sir William Bellenden stated in 1625: Sheriff and Baron Clerks were also subject to annual nomination (Fife Lix. et seq: A.P.S. (S): Ja. vi. 12 c. 124.)
8. Certainly from 1567 - 1607. (Protocol Books & Com. Edin. p. 253.)
9. M.S. 14 Feb. 1624 - note attached "per Walterum Logane". Wood 1642/55, pages 214/5. Master James Logan, son of Walter, was still alive, and Clerk, in 1668 (Com. Edin. p. 253).
10. Wood, supra, pages 179: 214/5.
11. Wood, pages 214/5.
12. Wood, pages 214/5.
13. Hope vii. 18.4 p. 277: A.P.S.(S) Ja. IV. 11 c. 67.
14. A.P.S. 1540 c. 81: A.P.S. (S) Ja. VI. 12 c. 124.
B.P. 'of brevis' c. 5.
15. Stair II p. 960/1.
16. E.g. Aberdeen p. 301: Kirkcaldy p. 317: Prestwick pages 71-72. For Canongate Clerk's possession of processes and depositions of witnesses see Maitland, p. 325; and M.S. 1 Feb. 1597/8. "The quhilk day compeirit Robert Cunynghame and desyrnit to be admitit for his enteres. As he quha is heretour...& for instructing thirof...ane sensing quhilk is in the clerkis handis..."
17. Issue of precepts upon initiative of Judge.
18. A.P.S. 1449 c. 28: 1487 c. 99.
19. A.P.S. 1587 c. 86.
20. E.g. M.S. 22 May 1595 - "Fand the said Johne Innocent... (who)...askit act of court & instrumentis...and protestit for his testimoniall thirupone."
21. Hope: VIII. 4. 16. p. 294.

22. As Keeper of the Regality Chancery, usually Robeson, appear in Court as a witness, and probably affirmed the genuineness of the brieve.
23. Resignations could be made into the Superior's hands in presence of a notary (A.P.S. 1568 c. 81). Sasine was given by Superior or Bailie in presence of a notary who granted the recipient the instrument of Sasine or infeftment; the notary, save with Royal brieves and Sasines in Royal Burghs did not need to be the Clerk (e.g. Hope: III. 6 - 20 - 22). Logan however was usually the notary.
24. Only as one notary amongst several: by A.P.S. 1579 c. 80. All contracts were to be subscribed by the principals, or if they were unable, by two notaries, in presence of four witnesses. Thus the contract by which Marioun Wardruppar sold her tenement to George Rathman (M.S. 6 April 1594) was witnessed by John Graham, Master James Eistoung and James Hammiltoune, writers, William Inglis, sergeant: the notaries were David Robeson and Logan. Of the interested parties, only Marioun's son, Thomas Rannik, could write, the others having their hands led by Robeson.
- 25.- David Robeson made his last appearance on 10 July 1594, and
26. Laurence his first on the 27 November 1594.
27. M.S. 13 Dec. 1598 - "Quond Johannis Robesone notarii publici Necnon clerici deputati dicti burgi...Vicesimo nono die mensis Januarii anno domini millesimo quingentisimo quinquagesimo nono..."
28. There is no record of the admission of Laurence Robesone.
29. A.P.S.(S) Ja. IV. 6. c. 67.
30. Brieves, precepts and the like were purchased; and presumably the clerk appropriated part of the fee.
31. B.P. p. 272.
32. M.D. p. 3100.
33. M.C.R. I p. 324.

E. THE DEMPSTER.

1. At the beginning of the Record the Dempster was David Forrest (M.S. 29 Sept. 1592). Archibald Ramsay does not regularly appear until 1594 (e.g. M.S. 16 March 1593/4.)
2. B.P. p. 273 - Fife: Lxvi et. seq.
3. E.g. Head Court Lists.
4. E.g. M.S. 15 July 1598.
5. Chapter L. App. I.
6. Fife: Lxix.
7. Mackay, Canongate. p 56.
8. M.C.R. I p. 324: not mentioned amongst officials.
9. Fife: Lxix.
10. Mackay, supra.

F. THE OFFICERS OF COURT.

1. App. 9.
2. Maitland p. 320/1.
3. M.C.R. I p. 324.
4. As. 1..
5. Chapter 10.
- 6.-7. Maitland p. 358/59.
8. A.P.S. 1503 c. 94: relevant chapter.
9. A.P.S. 1540 c. 75: Chapter 10.
10. Relevant Chapters.
11. A.P.S. 1469 c. 32: 1540 c. 74: relevant chapters.
12. A.P.S. 1429 c. 112: relevant chapters.

13. A.P.S. 1579 c. 75: 1581 c. 118: 1592 c. 152.
14. Fife: p. Lxv.
15. App. 8.
16. E.g. D.V.S. p. 91. B.P. p. 273.
17. M.S. 22 Nov. 1592: John Hutton and his wife, Issobell Young also made and sold ale.
18. E.g. Logan: 25 May 1588 - 1 acre.
19. M.S. 8 March 1597/8: an annual rent of 6 marks: he was a tenant of a low dwellinghouse (M.S. 6 June 1598).
20. For measures to improve standards of Royal officers see A.P.S.(S) Ja. VI. 11. c. 46.
21. Fife: App. B. p. 325: A.P.S. 1540 c. 75: A.P.S.(S) Ja. I. 6. c. 99.
22. M.C.R. I p. 324.
23. A.P.S. 1503 c. 66.
24. B.P. p. 272.
25. For a detailed list of an officer's perquisites see Fife: App. F.

G. THE BELLMAN: PIPER AND DRUMMER.

1. See Chapters upon apprisings and briefes.
2. Chapter 4, App. 1.
3. E.g. Aberdeen: pages 102 etc.
4. As. 1. Maitland: p. 355/6.
5. Maitland supra: pages 340/2.
6. Maitland: p. 340.
7. The Drummer received 30s. for his playing at the muster; the Superior's Drummer 6s. 8d.; and the Piper 8s. (Maitland, pages 340/1). The Burgh Drum cost 4 lib. (343).

8. Maitland: p. 333. His clothes cost the Burgh 14s. 8d. in 1574.

CHAPTER 10.

THE CIVIL PROCEDURE OF THE COURT.

Originally all civil actions had been initiated by briefes of chapel directed to the Judge ordinary ordering him to settle the dispute by inquest.¹ This procedure continued to survive in only a few types of action, but with the increasing influence of the Sixteenth Century Court of Session, the bulk of causes were now initiated by a summons or citation issued upon the authority of a Judge at the request of the pursuer and served upon the other party in the suit.²

The pursuer gave in his claim to the Clerk of Court who reduced it to the bounds and parlance required by the law.³ An exact description of the matter at issue was necessary to withstand the counterpleas of the defence;⁴ and in Kirkcaldy and elsewhere the Bailies refused to consider claims which had not been drafted by the Clerk.⁵ Citation followed, at the request of the pursuer; the summons being served upon the defender within a year of the date of its issue.⁶

The precept of summons contained the names of the defender, pursuer, and presiding Judge together with the time, date and place of Court.⁷ Until the early years of the Eighteenth Century the libel was not necessarily embodied within the precept;⁸ but in Broughton and the Canongate it was probably included in the majority of important causes; although less certainly in the average action of petty debt.⁹ In any case, the defender was entitled to receive upon demand a copy of the

precept or of the bill of complaint,¹⁰ as well as inspection of all supplementary evidence placed in the Clerk's hands by the¹¹ pursuer.¹¹ In Aberdeen, a defender could retain such evidences for twenty-four hours;¹² although in the Canongate bills, evidences and depositions of witnesses had to be "tabled" a day before the hearing for examination by the Bailies.¹³

The form of citation in the Canongate as elsewhere was regulated by a statute of 1540.¹⁴ The officer to whom the precept was directed, acting always before witnesses, if possible, presented the warning to the defender in person.¹⁵ An elusive defendant of the character of Williame Seytoun, a Canongate tailor,¹⁶ was visited at his dwelling place, or the normal habitation of himself, his wife and family. The sergeant knocked six times at the principal door, offering a copy of the precept to whosoever was within. Failure to gain entry enabled the officer to attach the copy to the door. No further warning or copy was thereafter necessary; the officer sealing and endorsing the precept, indicating if it had been served in person or at the dwelling place, and then returned it to the pursuer.¹⁷ The fuller form of summoning upon the ground and at the cross of the head Burgh was employed only in a few actions.¹⁸

The *induciae legales* varied according to the nature of the action. Fifteen days was probably a normal period, in personal actions.¹⁹ Sixty were allowed to defenders abroad

such as the Englishman William Baxter,²⁰ or the Pleasance minor David Blaikkie.²¹ These citations could be made only by the Court of Session,²² being executed, although only by custom, upon the Shore and Pier of Leith.²³ Privileged actions saw the abbreviation of the *induciae legales*,²⁴ while, in the present Record, contracting parties in obligations reduced the execution of letters of poinding, warding and horning to six or three days.²⁵

The defender once cited was not obliged to find caution to appear and defend, always provided he had lands or goods which could be distrained or poinded.²⁶ If he was not so endowed, inferior Courts of the nature of the Canongate and Broughton usually required the entry of the party by a cautioner who could be made responsible for answering the possible decree against the defender.²⁷ Otherwise, the Courts had no effective means of enforcing their decisions.²⁸

Margarete Turnbull was one such defender so bound to find caution and her non-appearance rendered her surety liable to the payment of the sum principal and court expenses.²⁹

Further litigation between defender and cautioner could lead ultimately to the latter recovering his loss.³⁰

On the day appointed both parties were called to Court usually thrice, and in the Canongate from the Tolbooth window.³¹ If both appeared, the defender was entitled to demand inspection of the libel and of its supporting evidence; in short, the claim was produced and read in Court.³² The more detailed

Broughton cause always contained a recapitulation of the bill, indicating the observance of this procedure. In one instance the pursuer is expressly mentioned as having produced libel precept, supplementary evidence and other documents proving his right to pursue.³³

Formerly the defender was not obliged to offer any defence on the first day, but was assigned a special term.³⁴ Such postponement now probably depended in Broughton and elsewhere upon the decision of the Judge, and was no longer a de iure privilege of the party.³⁵

The defender presented his objections and defences in a set order. Firstly he could make dilatory exceptions which had nothing to do with the cause itself but impugned the competency of the Judge,³⁶ the title of the party to pursue,³⁷ and the validity of the citation and libel.³⁸ Each exception had to be countered by an interlocutor and if successful ended the cause in favour of the defender. If repelled in toto, the stage of litiscontestation was reached when proof and counter-measures affecting the actual cause were produced.³⁹

The Broughton defenders have had few of their exceptions recorded. The partiality of the Judge could however be asserted as occurred in the Regality Court of Melrose⁴⁰ and Burgh Court of Inverness,⁴¹ while the form and conclusions of the libel,⁴² and the method of execution of the summons were equally sensitive to challenge.⁴³

The title of a party to pursue was susceptible to doubt

in a variety of ways. A pursuer could appear by himself or through a procurator;⁴⁴ while a minor appeared through his curator.⁴⁵ A procurator had to produce his mandate to pursue and was subject to both national and local qualifications.⁴⁶ A defender could accordingly demand proof of his right to act on behalf of the party pursuer, or assert that he was either a Papist⁴⁷ or minister:⁴⁸ both being national disqualifications. In some Burghs, Inverness amongst them, stallingers, unfreemen and outdwellers could not procure in any action;⁴⁹ while there and elsewhere specific persons, usually of bad character were likewise debarred.⁵⁰ In Peebles, a disgusted Court reversed this order by ordering a talkative suitor to appear in future only by procurator under pain of being put in irons.⁵¹

A curator or tutor could also be compelled by a defender to produce proof of his position.⁵² It was for this reason that the curator of Edward Kincaid of Meldrumsheugh presented in Court his extract of the Act of Curatory constituting his office.⁵³

Many of the pursuers and defenders particularly in the Burgh Court were women. By law, a married woman could be neither pursued nor yet sue without the consent or association of her husband.⁵⁴ A woman pursuer although often conducting often conducting the cause herself always cited her opponent in her name and in that of her husband for his interest. Otherwise her right to pursue could be successfully challenged by the opposite party.⁵⁵

On the other hand, a pursuer had to cite both the wife as contractor of the debt and her husband for his interest,⁵⁶ even although it often happened that the woman alone appeared to defend and was sometimes under caution to appear.⁵⁷ The omission of the husband as a defender was sufficient to nullify the proceedings.⁵⁸ In these and other ways it was possible for the defender to impugn the title of the other party.⁵⁹

In many of the causes in the present Record the defender failed to appear in Court. This meant loss of suit, the Burgh and Regality citations demanding proof by oath containing the warning that noncompearance would result in the pursuer's oath of verity being taken; which meant the de facto loss of suit and the holding of the defender as pro confesso.⁶⁰ Forfeiture did not ensue in cases of illness which prevented appearance in Court ; always provided that such was testified in Court by witnesses including the parish minister.⁶¹

A similar indulgence was permitted to sick pursuers as indeed the Record bears witness in the instance of Katherine Dickson, a Broughton liferenter whose oath of verity was taken in her home by the Bailie-Depute and Clerk of Court.⁶² Otherwise, an absent pursuer was liable to the expenses of the defender and his witnesses,⁶³ while his cause fell into oblivion unless revived by a fresh precept.⁶⁴

The pursuer could prove his claim by witness, writ or by oath. Of these methods the first was the most unsatisfactory. It could not be employed in actions involving sums greater than

one hundred pounds,⁶⁵ in those affecting fee or heritage,⁶⁶ and generally in any involving a debt or right constituted by writing.⁶⁷ Further, two witnesses were essential,⁶⁸ and a large number of persons were disqualified. Women could not testify unless no other witness was available;⁶⁹ nor could pupils, infamous persons, heretics and other undesirables.⁷⁰ A wife could not be compelled to bear witness against her husband,⁷¹ a yearly tenant either against or for his landlord,⁷² a servant for his master,⁷³ nor the latter for his servants,⁷⁴ while poor men could be excluded on occasion.⁷⁵

Witnesses do appear in the present Record. Their depositions were taken beforehand probably by a Bailie and Clerk,⁷⁶ and they would be summoned sworn and objected to, in the normal way. They were used in civil actions of theft,⁷⁷ and in conjunction with written evidence in causes of wrongful occupation and of debt, often of considerable amounts.⁷⁸ The compressed nature of the entries precludes, however, any information upon the exact nature of their evidence.

Written proof was more usually employed. Pursuers for arrears of annualrents presented their infeftments of the sum principal and, if possible, precepts of poinding embodying part of the arrears claimed;⁷⁹ their fellows in removings, their infeftments and precepts of warning. In short, the pursuer armed himself with as much written proof as he could find, to substantiate his claim. Such material had to be presented no later than the day assigned for probation.⁸⁰

Such proof could indicate the right of the claimant to an annual rent or debt but could not furnish evidence of non-payment.⁸¹ It might prove his title to a land or feu, but not his claim that he was justified in ordering a tenant to remove, or that the ground was wrongfully occupied. The defender was expected to produce contrary evidence;⁸² or else, he was assigned a day upon which to give his oath of verity.⁸³

An action could be decided from the beginning by oath. In the actions of petty debts the defenders were cited to give their oaths of verity.⁸⁴ Again, after documentary evidence had been produced, the defender could be ordered to give his oath upon the claim against him, or else the defender could refer the libel to the pursuer's oath. In all these, the oath was the final proof; it supplemented and completed any other evidence brought forward, and ended the cause.⁸⁵

No party could pass from oath of verity to witnesses or writ; but the reverse was possible at any time before decree.⁸⁶ Accordingly the Canongate cordiner John Paterson was perfectly within his rights when at his term of probation he abandoned his written proof and referred his claim to his opponent's oath of verity. The latter's failure to compear led to loss of suit.⁸⁷

Usually it was the defender who was first called to give his oath.⁸⁸ If he did so, and denied the validity of the claim, the Bailie decerned in his favour; as occurred when John Smith deponed against James Millar.⁸⁹ The defender could, however,

pass the onus to the pursuer who could either swear upon the truth of his claim,⁹⁰ or pass the oath back to the defender.⁹¹ The defender could then take his oath, or by his continued refusal lose his action.⁹² As a possible alternative, the Judge could, when the oath was returned to the original party, decide which one was to swear.⁹³

In the Joint Court, the defender frequently either failed to appear upon the day of proof, and thereby lost the cause through default,⁹⁴ or made open confession in Court. These alternatives indicate a certain reluctance to take the oath of verity; a natural hesitancy as a charge of perjury could be levied against a false swearer.⁹⁵

Such a danger was reduced by no party being compelled to swear until the other had sworn that he had in his possession no contrary evidence;⁹⁶ and by the party being entitled, before swearing, to depone what conditions and qualifications he intended to attach to his oath.⁹⁷ A person neglecting these precautions, had no defence against a charge of perjury.⁹⁸

The oath of calumny differed from that of verity in that it was not one used in probation, but was one supposedly taken from each party at the beginning of the suit; that it was good and valid.⁹⁹ In practice, at any time before the decree, either could demand the other to take the oath, that he had good cause to defend or to pursue.¹⁰⁰ Refusal to do so led to loss of suit.¹⁰¹ As a way of ending a possibly long and unfruitful cause, the pursuer could compel the defender to give

his oath of calumny before he instructed his claim; and this occurs in a few instances in the present Record. In general, the oath is, however, but rarely encountered.

Its most interesting appearance is in the action brought by Gilbert Huttoune, Mariner of Dunfermline, against Robert Bairdis, a timberman of Leith. The entry is as usual highly compressed, and the cause was lost by the defender through his final noncompearance. At one stage, however, the Leith timberman had placed the seaman upon his oath of calumny that he had received part of the sum demanded in his libel. This the pursuer had acknowledged, and the final decree was for the difference and not for the original amount.¹⁰² The action is of interest for no pursuer was obliged to give his oath upon every point or party of his libel, but to state only that he believed that he had just cause to pursue the claim. In this episode part of the libel had been challenged; and the oath of calumny used rather as an oath of verity in probation; although before the term assigned to the defender's probation.¹⁰³

The oath in *item* like that of calumny is one of infrequent appearance in the Burgh and Regality Courts; although it was doubtlessly more commonly employed than the records bear witness. Such an oath was used by the pursuer to state or assert the value of goods, or the extent of damages, removed from or inflicted upon, him by the illegal act of the defender. It was applicable only in actions of spuilie, wrongful intromission and the like; and being only an assertion

by the injured party, the amount claimed was subject always to modification by the Judge.¹⁰⁴

The final decision, once probation had been ended, rested with the presiding Judge. The pursuer had presented his evidences, the defender had been assigned various terms to reply to these; and as often as not the final scene was the oath of verity taken by one party or the other. Throughout, proceedings had been guided and directed by the presiding Bailie, who as a concluding act pronounced sentence and decree.

Earlier in the Sixteenth Century, the final decision had, of course, rested with the body of the Court, or with the jury or committee of court.¹⁰⁵ In the Court Book, no inquest is employed in any civil action save those initiated by the briefes of the Regality chancery. As a rule, it is the Judge acting alone who directed proceedings and gave the final decision. Frequently, however, in the longer and more involved causes, in one of wrongful occupation,¹⁰⁶ in several affecting arrears of annual rents, including one held in Leith Tolbooth,¹⁰⁷ and in actions of removing,¹⁰⁸ the Bailie decerned "with adwyse & assent of his assissouris of court".

The assessors were descendants of the old jury of the court,¹⁰⁹ but no information upon their exact identity is accorded to us. Elsewhere by this period, the assessors had evolved into an almost professional body of legal advisers. In Lanark from 1595, there were eight assessors, all former

Bailies, two of whom in rotation sat in Court with the Judges;¹¹⁰ while in Inverness, they seem to have been distinct from the rest of the Court.¹¹¹ Paisley had a single assessor;¹¹² as was later the case in the Canongate.¹¹³ It is possible that in Broughton and the Canongate, a similar body of probably only a few persons aided the untrained Judges in the dispensation of justice. That such was their function is clear not only from the Court Record, but from proceedings in Lanark and elsewhere. In the former Royal Burgh the assessors were not only enjoined to give good counsel to the Bailies, but also to guard the common good of the town.¹¹⁴

With or without the advice of his assessors the Burgh or Regality Bailie gave decree. The sentence was limited to a set form, care being always taken that it conformed to the wording of the libel,¹¹⁵ and that it was pronounced upon a lawful day and lawful place.¹¹⁶ The Broughton and Canongate sentence, as was usual, recapitulated the claim, indicated the method of proof employed, and stated the reason for the Judge's decision.¹¹⁷

The decree contained the amount due by the defender, if a liquid sum was involved, with an addition fee, or expenses of plea.¹¹⁸ The latter in the average petty action was six shillings and eightpence,¹¹⁹ although it could fall to six shillings, or even less.¹²⁰ Other actions cost the vanquished a mark,¹²¹ or two,¹²² or as much as four pounds.¹²³ The Judge had power to modify expenses,¹²⁴ probably in accordance with

the party's resources. In many Canongate causes the expenses are left blank,¹²⁵ probably indicating their later assessment, although this practice disregarded the letter of the law which demanded the insertion in the decree of expenses.¹²⁶

In addition, the unsuccessful contender had also to pay sentence silver, or twelve pennies of every pound of the liquid sum to the Judge as his fee.¹²⁷ Sentence silver, although not recorded in the Court Book, was in fact exacted in the Joint Court.¹²⁸

The decree was registered in the Books of Court, and a copy extracted and subscribed by the Clerk.¹²⁹ Thereafter, the execution of the sentence depended entirely upon the initiative of the pursuer.

The defender, if ordered to pay a specified sum, or to deliver particular properties or articles, was given a period or term of law in which to obey.¹³⁰ If he failed, the pursuer had before him a variety of alternatives. Usually in Broughton or the Canongate he obtained letters of poinding from the Judge ordinary directed against either the defender or his cautioner.¹³¹ Accordingly, in June 1594, Robert Gray obtained a decree against James Wilson ordaining him to return some woad and to pay a mark for expenses. Upon Wilson's failure to obey, Gray secured the poinding of his goods.¹³² Alternatively the pursuer could secure the warding of the debtor,¹³³ or purchase letters of horning from the Court of Session.¹³⁴

Decrees of removing, of poinding of the ground and the

like were enforced by the pursuer obtaining the necessary precept and presenting it to an officer for execution.¹³⁵

Until then the decree remained in suspended animation, although a precept, once obtained, had to be carried out and enforced against the defender.

Journalist, in the Court Book, p. 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

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CHAPTER 10.

1. Fife: App. A. p. 310.
2. Mackenzie: IV. 1. 35. pages 437/8.
3. That such was the custom is shown by the examples of Prestwick (p. 70): Taymouth (p. 387): Aberdeen (p. 301): Macbean (p. 317) and Inverness (p. 226), and the formalized entries in the Court Book together with the provision of 1572 (Maitland, p. 325) ordering the Clerk to be present in the Tolbooth with all processes, etc., suggest that something of the same habit was observed in the Canongate. The wording of some claims, however, show that they were not always redrafted by the Clerk.
4. E.g. B.P. "of libel or clame", c. 19.
5. Macbean: p. 317.
6. Mackenzie: IV. 1. 36. pages 438/9.
7. Hope: VII. 2. 1. page 235.
8. Mackenzie: IV. 1. 36. p. 438.
9. The entries refer to "bills", "claims" and libel precepts. The latter probably included the libel, while the former could mean that the bill was not included in the precept of summons.
10. By A.P.S. 1540 c. 75 - the officer was to leave a copy of the citation. A defender could not be made to defend until he had received a copy of the bill (Prestwick: pages 68, 70).
11. Aberdeen: p. 301; Melrose: 1. p. 43/4. The defender was not compelled to give the pursuer any written material, but only its dates and inspection (B.P. "of the defender": c. 7).
12. Aberdeen: p. 301.
13. Maitland: p. 325.
14. A.P.S. 1540 c. 75.
15. He could be summoned in Court (Fife: App. A. p. 311).
16. App. 1.

17. As 14. App. 12.
18. E.g. Craig: 3. 7. 21. p. 1072.
19. This seems to be so by the Act of James V, 1540 c. 72, and by actions in Melrose (l. p. 38 et seq.). Mackenzie, however, dealing with the Eighteenth Century Court of Session gives twenty-one days (IV. l. 36. p. 438), which coincides with A.P.S. 1466 c. 7. App. 14 assigns fifteen days, although the extract is concerned with breaking of ward.
20. See Chapter on Declat^{ors} of Escheat.
21. M.S. 1 Feb. 1598 - the said David... "laughfullie summoundit...vpoune thrie scoir dayis warnyng be ressonne... (of his)... absence furth of this realme..."
22. Spotiswoode: p. 318.
23. Spotiswoode: 4 June 1631. Chrystiew^v Jack.
24. E.g. Spuilye. A.P.S. 1503 c. 65.
25. E.g. M.S. 22 Dec. 1596 - letter of obligation of Thomas Black - "with lettres... & executioug of hoirnyng poiding or wairding to be direct heirvpone on ane simple chaarge of thrie dayis..." By A.P.S. 1593 c. 177, horning followed on a charge of ten days.
26. Spotiswoode: p. 33.
27. App. 5. Not the cautioner de iudicio sisti bound only to enter the defender in court (B.P. "anent... cautioneris" c. 6.). The Canongate cautioners were iudicio sisti and iudiciatum solui.
28. E.g. Spotiswoode: p. 33.
29. App. as 27.
30. R.M. 3. 1. 10. (Hope: II. 11. 1. p. 109). App. 13.
31. App. 2.
32. Fife: App. A. p. 313, and note 34-35.
33. App. 3.

34-5. Balfour ("of the defender" c. 6) states that a defender could not be compelled to defend upon the first day of appearance, but this privilege appears to have depended very largely upon the consent of the Judge. In the Melrose Regality Court, 16 Sept. 1607, (pages 38 et seq), the defenders asked for a day upon which to reply to the pursuer. The latter denied their right to this delay because of the space between citation and compareance, but eventually the Judge gave them ten days in which to prepare their defences, while similar episodes occur in the same Record on pages 43 & 45. In Aberdeen (pages 133 & 228) the Bailies in an action against a breaker of the town statutes and in another of bloods refused the defenders a law-day, committing the first to ward when he refused to plead. In the second, it was claimed that blooding was a privileged action, and such were dealt with summarily (e.g. A.P.S. 1581 c. 118).

Balfour's observation was probably followed in an inferior court like Broughton with the more involved actions if only because the defender was not expected to give in his evidences before his first appearance (e.g. App. 3 & 12 and Wood, pages 22, 23) while much the same was true in Melrose where in the first case the pursuer had not by the first Court presented his evidence, while in Kirkcaldy the defender, again, did not present his evidences upon the first day (Macbean, p. 66).

The Regality Clerk rarely recorded an action until it was completed; but from earlier records and from the appended actions, the full procedure was probably as follows. Firstly the defender was cited and appeared in the first Court. There the pursuer produced his evidences (App. 3), and a day was assigned to the defender to enter his. By the time of the next Court, the defender had no doubt viewed the contrary evidences, had presented his to the Clerk, and eventually the action proceeded. That the final judgement was at the end of lengthy action is shown "that the curators of Kincaid did not obtain a decision until the 6th March 1594. (For the obsolete triple citation see A.P.S. 1449 c. 30: Craig: 3. 7. 21. p. 1072.)

- 36-8. B.P. "of exceptiounis and essouxies" c. 7.
- 39. B.P. "of litiscontestatione" c. 1.
- 40. Melrose: 1, pages 31-2; on grounds of incompetency.
- 41. Inverness: 1, p. 78. Also Macbean, p. 322/3 - defender alleged that Bailie was a rebel.

42. Maitland: p. 287/8. Amongst valid objections to a libel were that its conclusion contained more than its narrative; and that it contained no particular clauses: e.g. B.P. "of libel or clame".
43. The formalities of citation had to be observed: a summons made without witnesses, or unstamped, or wrongly endorsed was invalid.
44. Fife: App. A, p. 315.
45. E.g. the curator ad litem. (Mackenzie: l. 7. 7. p. 81.)
46. B.P. "of procuratouris" c. 4. Fife: supra. p. 315; Inverness: 2. p. 225/6.
47. A.P.S. 1567 c. 9.
48. A.P.S. 1584 c. 133.
49. Inverness: p. 65/6; Lanark: p. 57.
50. Macbean: p. 101. Peebles excluded lawyers as procurators save in actions raised on briefes of heritage (Peebles: p. 215 - 15 July 1555).
51. Peebles: p. 232.
52. To show that he was properly commissioned by the minor.
53. App. 3.
54. B.P. "materis concerning the husband and the wife", c. 1 & 2; App. 5.
55. Supra: Mackenzie: l. 6. pages 65 et seq. App. 5.
56. B.P. as 54. App. 4.
57. App. 4.
58. B.P. "materis concerning the husband and the wife", c. 1 & 2.
59. A further disqualification was the molestation of one party by the other after the raising and execution of the precept (A.P.S. 1584 c. 138; Melrose: l. p. 13).
60. Mackenzie: IV. 2-9. p. 447.

61. Fife: App. A. p. 313. See Hamilton-Grierson, pages 61/2, for other excuses for absence.
62. Appendices of Chapter ^{Chapter 17. App. 1.} upon Removings; Inverness: p. 107/8.
63. A.P.S. (S) Ja. IV. 3. c. 35.
64. B.P. "of the defender", c. 11.
65. Hope: VII. 13. 12. p. 264, although see App. 6.
66. Hope supra c. 11.
67. As 65: Mackenzie: IV. 2. II. p. 449.
68. Inverness: p. 45.
69. Mackenzie: IV. 2. 14. p. 451.
70. Dunfermline B.R.: 21 July 1489 - a man should bear no witness in his mother's action because had revealed an assize. B.P. "of probatioun be witnesses", c. 34-36.
71. Mackenzie: IV. 2. 31. p. 450. Inverness: l. p. 49.
A protested that what B his wife confessed should not be held against him as she was his wife, under his dominion and should answer only by his advice.
72. B.P. as 70.
73. Mackenzie as 71. B.P. as 70.
74. As 73.
75. B.P. as 70.
76. Vide Chapter 9 - Clerk of Court.
77. M.S. 6 August 1597 - William Bissate Baxter accused John Brune of removing twenty pounds fifteen shillings from his booth. "The richtis ressonis allegatiounis writtis of baith the saidis pairtis being hard sene... (etc.)...Togidder with the depositiounis of certane famous witnesses..." Brune proponed a peremptory exception "that he offerit him to preiff that he was all the haill day libellit quhill he was apprehendit be the persewer fra he raise at nyne houris in the moirnyng to the tyme foirsaid in companie in honest manis houses sik as James Aickman & vtheris nichtbouris

within the burgh of Edinburgh" which he failed to prove. Presumably he did not produce Aickman and the others in Court. The witnesses mentioned were therefore probably those of Bissate, and proved the existence of the money.

78. M.S. 29 March 1598. In the action of Margaret Stewart against her son, Nichol Dalzell, the depositions of witnesses were heard. Dalzell won because he proved that Margaret had given him a verbal tack of the lands; and that he had offered the duties in presence of a notary and witnesses. A verbal promise of a tack probably could not be proved by witnesses (Hope: III. 19. 41. p. 231; Mackenzie: IV. 2. 11. p. 449) and Dalzell's witnesses were probably those present at the offer of the duties. The verbal promise could have been referred to Margaret's oath. Margaret Chalmers claimed some two hundred pounds from John Menzies attempting to prove part of her claim by witnesses. The final proof was referred to the oath of the defender who acknowledged some eighty pounds.
79. M.S. 5 Nov. 1595. Adam Bothwell in his action against the Winrhames of Saughtonhall presented -
- (1) A decree of poinding obtained by Thomas Sinclair of the 2nd August 1592, for 15 lib. and 26s. 8d. expenses.
 - (2) The instrument of cession of 6th August 1594, by which Sinclair transferred to Bothwell the sums contained in the decree and the unpaid annuals since then.
 - (3) The infeftment of 12th August investing Bothwell in the annualrent.
80. Hope: VII. 14. 1. p. 269.
- 81-2. E.g. Mackenzie: IV. 2. 3 et seq.
83. The pursuer had to prove the debt and the defender lawful payment, or more broadly, the former had to prove his libel and the defender the contrary. The oath was not evidence, but a contract between the litigants by which they agreed to put the issue of the cause to what was deponed (Mackenzie: IV. 2. 3. p. 442). The pursuer, if possible, presented material evidence, or failing such, placed his claim upon the oath of the defender (e.g. App. 9). The defender could then deny the charge (App. 9); or else either fail to appear or

refer the oath back to the pursuer; the latter then swore upon the validity of his claim (App. 7). In all these instances the onus of disproof fell firstly upon the defender, although the pursuer had previously presented all but the final stage of his proof.

84. App. 1.
85. Fife: App. A. p. 320. Stair: 2. p. 963.
86. B.P. "of probation" c. 39.
87. App. 8.
88. As Appendices.
89. App. 9.
90. App. 10.
91. Hope: VII. 12. 1. p. 260.
92. As 91. Taymouth: p. 370:380.
93. Stair: II. p. 965.
94. E.g. App. 1, provided such was stated or implied in citation (Mackenzie as 60; Stair: 2. p. 967).
95. Mackenzie: IV. 2. 3. p. 443; Stair: II. p. 963.
96. Mackenzie: IV. 2. 3. p. 443.
97. Hope: VII. 12. 11. p. 261.
98. Stair as 93.
99. A.P.S. c. 125.
100. Hope: VII. 16. 1. p. 273.
101. Hope supra. c. 5. p. 274. Paisley: p. 170/1.
102. App. 11.
103. Hope VII. 16. 3. p. 273.
104. Mackenzie: IV. 2. 10. p. 448. Hope: VI. 18. cs. 10, 12, 40, 41.
105. E.g. Fife: App. A. p. 321.

106. M.S. 29 March 1598.
107. M.S. 7 April 1597.
108. M.S. 23 Dec. 1592.
109. Fife: p. Lxxxix.
110. Lanark: p. 110/11.
111. Inverness: p. 258/9.
112. Paisley: p. 258.
113. M.C.R. 1. p. 324. *MacKay. Brounnton, p. 95. by 1637.*
114. As 110.
115. Hope: VII. 18. 3. p. 277.
116. Supra. c. 1.
117. As App. 7.
118. As App. 2.
119. As 118.
120. On the 14th October 1594, Richard Wallace was ordered to pay 4 lib. 16s. as principal and five shillings expenses: and a woman 4 lib. 10s. and five shillings. A few weeks later, on the 11th November, James Wilson, lister, was discerned in 6 lib. 10s. as principal and seven shillings of expenses, while Peter Sysoune was ordered to pay 7 lib. 2 s.; but only six shillings of expenses. Upon the 22nd of the same month James Hutton, the Burgh Officer, recovered 35 lib. and five shillings, and on the 30th November, an exactly similar action for 11 lib. of unpaid malsilver cost the defender ten shillings.
121. App. 6.
122. App. 8.
123. M.S. 5 Nov. 1595. *Borthwick v. Winrhame.* In a similar action for arrears of an annualrent, the defender was ordered to pay 2 lib. (M.S. 1 Feb. 1597/8) while earlier in 1592 (23 Dec.) the defender in an action of removing was obliged to render 2 lib. The long drawn-out *Kincaid v. Touris and Bell* action cost the defenders five lib. with 6s. 8d., the average expense for a single

day's action, and all the other cost mentioned being multiples of a half-mark it may well be that the last cause occupied fifteen court days. (See also App. 13.)

124. A.P.S. 1457 c. 61: 147 c. 49: 1587 c. 43: 1592 c. 144.
125. App. 4 & 5.
126. A.P.S. 1557 c. 64.
127. A.P.S. 1587 c. 43. Applicable strictly to the Court of Session only; therefore not necessarily the amount levied in the Burgh and Regality Court. By Maitland p. 346 THE BURGH COURT AMBACCO WILFEL ALGARDAS 130. FOR EACH LIT FOUND AGAINST THEM. THIS WAS IN ACCORDANCE WITH A.P.S. 1579c.91. PROCEEDS WENT TO THE COMMON GOOD.
128. M.D. p. 3100.
129. A.P.S. 1503 c. 67. Hope: VII. 18. 4. p. 277.
130. App. 2: 4: 5: The exact period is nowhere stated: but in inferior courts the defender was given fifteen days between the order to make payment and poinding of moveables: Craig: 3. 2. 3. p. 923.
131. By App. 5 it seems more probable that the authorization to poind was contained in the decree itself.
132. App. 6.
133. Hope: VII. 19. 2. p. 280, until he found caution to pay. E.g. Hope: VI. 29. 7. 2. p. 181: App. 13.
134. By A.P.S. 1593 c. 181: 1606 c. 10, the Court of Session directed letters of horning upon sight of decrees of inferior Judges. Hornings of persons within Regality were made and executed at the Market-Cross of the jurisdiction's head Burgh, and registered in its Court Books. (A.P.S. 1597 c. 268.)
135. A decree of removing was made effective by Bailies and officers taking the goods of the expelled from out his house and lands (A.P.S. 1546 c. 3). That some of the Broughton decrees were not pressed home is shown by the Cleghorns although being ordered to remove from lands in Saughtonhall on 8th November 1592, were still in possession upon 25th March 1594. In the same way, John Castellaw was on 12th October 1594 still tenant of a Canongate house from which he had been ordered to remove on 6th June 1593. Decrees ordaining the poinding of the ground were likewise not always enforced. These decerned and ordained "the officiaris of the said Regaletie (or Burgh) present & being for the tyme to pas

point appryse and distranye the reddiest guidis & geir
being vpon the ground... And siclik yeirlic & termelic
in tyme cuming... And ordanis preceptis to be direct
heirvpon in forme as effeiris". Nevertheless the
decree obtained by Thomas Sinclair, against Master
Robert Winrham in August 1592, had not been put into
execution by the 5th November 1595.

CHAPTER 11.

THE CRIMINAL PROCEDURE of the COURT of the REGALITY of BROUGHTON.

The Baron of Broughton and his Bailies were not over anxious to enforce their extensive powers of criminal jurisdiction. It has been shown that the Regality's main concern was to persuade criminals to remove themselves from its bounds; where sooner or later it was no doubt hoped a more industrious tribunal would give them a speedy trial and sudden end.¹ On occasion, however, the Regality Bailies and officials were obliged to inflict punishment upon offenders; and from these trials it is possible to discern the procedure employed.

In the majority of instances the accused received short shift before being hurried to the Gallowlee or Quarrelholes. In some, however, more attention was paid to the form and practice of criminal procedure, and these require prior consideration.

The most noteworthy feature is that only rarely did the Regality itself prosecute in criminal matters; a reluctance justified and enjoined by the law of the realm. By law, in cases of murder and slaughter and lesser crimes the private person had the prior right to pursue; and only upon his refusal could the relevant jurisdiction intervene.²

In actions of murder and slaughter, only certain classes of persons could accuse: the kin of the deceased, the master of a servant, or lord of a vassal, and lastly, the servants of a slaughtered master.³

Turning to the Broughton cases, these rules are in the main observed. A woman, for example, could pursue only for injury to herself or to her husband.⁴ In conformity with this, only one such female accuser is not so related. She was Jean Ramsay, dowager Lady of Warriston, who in conjunction with four of her sons accused and followed the wife and murderer of her eldest son, the Laird of Warriston.⁵ The other women accusers, including Issobell Grub, were the wives of the deceased.⁶ Amongst the other private accusers were the four sons of the slain George Wilkie of Saughtonhall,⁷ the brothers of John Robesoune, servant of Master Thomas Ker, who was also associated in the pursuit of the accused,⁸ and the relations of George Dempstar slaughtered by John Wilson, the son of an Edinburgh cordiner.⁹ The other accusers were likewise either the kin or masters of the deceased.

A woman provides the only sure instance of the Regality, through its procurator-fiscal, conducting the prosecution in a charge of slaughter. She was Jonete Cowpar, widow of a tailor killed in a fracas in the Canongate; and although the Regality had initiated proceedings against the accused, her opportunity to pursue was kept open until the beginning of the trial. Only upon her continued refusal was the dittay read against the persons charged.¹⁰

In other criminal pursuits, for theft, blooding and the rest, the obvious accuser was the sufferer himself: and the Broughton pursuers were invariably the person who had suffered

the theft¹, or the bleeding; with the Regality possibly intervening in the absence of private accusers.¹¹

Of the full procedure of citing the accused there is little direct evidence. The part of the coroner at Justice Eyres has already been indicated;¹² and some consideration of the practice observed in actions not held at those twice yearly occasions is required.

In essence, the private accuser obtained from the Clerk, criminal letters, or a precept of citation, directed upon the accused,¹³ but only upon his finding caution to pursue upon the day appointed in the letters.¹⁴ The letters were served by an officer of court, before witnesses, either to the accused in person or at his dwelling-place, and then proclaimed at the Market-Cross of the Head-Burgh between eight in the morning and noon. A copy of the letters was delivered to the accused or fixed to the door, and another to the Cross; the officer then endorsing the letters and making faith of execution.¹⁵

In contrast to the practice in civil causes, the defender was bound to give caution to appear in court at the place, time and day contained in the letters.¹⁶ Refusal to do so involved either the arrestment of his goods, or the warding of his body in the Tolbooth, until the day of trial.¹⁷ Otherwise, the accused remained at liberty under surety; save in cases of redhanded slaughter and theft, in which no surety was allowed.¹⁸

In Broughton, there are some indications that both

pursuer and defender were bound to find caution. Issobell Grub found surety in court to pursue another of her husband's assassins,¹⁹ while the latter was subsequently entered by his cautioners upon the day appointed.²⁰ A few years later, in October 1596, caution was again found in court by an accuser to pursue on the day of trial, and he was entered three days later by his surety.²¹

In the second episode, the accused had committed his offence upon the 22nd October, and was thereupon warded by the pursuer who did not find caution until five days later. The action was not determined until the following August, but before then the defender had also obtained surety.²² In both extracts caution by the accuser was found after the denunciation of the defender; but the principle remained of ensuring a responsible pursuer.

On the day of court both parties were called to the bar; entered by their cautioners who then took instruments that they had performed their duty.²³ The accuser was entitled to appear with four friends and the defender with six,²⁴ including therein their prolocutors, of whom the defender was allowed three.²⁵ The defender in the trial for the slaughter of George Wilkie contented himself with three prolocutors; the accusers with four assisters including Robert Winrhame of Saughtonhall, an advocate.²⁶ Issobell Grub disregarded the letter of the law by appearing with six friends, all Lindsays, and kinsmen of her deceased husband;²⁷ while her second accused brought his full

muster of six friends and prolocutors.²⁸ In these actions, the defence in particular relied upon professional advocates; such as David Guthrie and Humphrey Blindsheils.²⁹

Preliminary proceedings included the reading of the dittay,³⁰ prepared beforehand by the Clerk, and kept unaltered by him,³¹ and the demand on the part of the defence the accusers intended to maintain their action and would swear upon the truth of their dittay.³² The accuser, being sworn to this effect, it was open to the defender to raise exceptions against the accuser,³³ that he was not present to give his oath, against the Judge,³⁴ and against the dittay: that it was not particular as to the detail, place and date of the alleged offence.³⁵ In actions of theft, moreover, the defender could except against the absence of material evidence.³⁶ Such exceptions and objections were resolved by interlocutors of the Judge,³⁷ and, in conclusion, the defender denied the points of the dittay, and placed himself upon his assize.³⁸

The jury was not summoned into court, chosen, selected and nominated until this stage.³⁹ Before the day of court, no more than forty-five persons had been entered in a roll by the accuser and these summoned by an officer. All were supposedly called to the diet, and the absent amerced. From the remainder, always subject to the objections of the accused, the Judge selected the fifteen jurors, placing them upon oath.⁴⁰ Before them, in full court, the pleas and defences of both parties were heard.⁴¹

Advised with these the jury retired to elect its Chancellor and to decide upon its verdict, no one being allowed to visit or interview its members.⁴²

Before 1587, the jury could examine writs and witnesses outside the court;⁴³ but a statute of that year ended this custom.⁴⁴ Owing to inadequate evidence it is impossible to judge its effectiveness within Broughton.

The assize reached its verdict by a majority decision, although the Broughton juries were in practice always unanimous, and upon its return to court, announced it through the Chancellor.⁴⁵ The Judge then pronounced doom,⁴⁶ echoed by the Dempster.⁴⁷

The jury was employed in every crime,⁴⁸ although it was not essential in bloods and bloodwites,⁴⁹ In these, the oath of verity of the party was sufficient;⁵⁰ although the proof of the bleeding, usually a blood stained cloth or bandage was often presented as material evidence.⁵¹ The Aberdeenshire vassals of the Baron of Forbes, an exceedingly quarrelsome and litigious band, went to astonishing extents to gather up the blood spilt in brawls.⁵² Juries were often used in the baronial court of Forbes and elsewhere;⁵³ but frequently the pursuer's oath, and his blood, were sufficient proof;⁵⁴ although witnesses could also be cited.⁵⁵

In Broughton, however, bleeding and bloodwites, were regarded as criminal offences; the accused being charged by dittay and tried by an assize,⁵⁶ the only method of proof in a

criminal cause, save for compurgation which still survived in Breadalbane, where, as late as 1622, an assize ordered a person dilated of theft to clear himself by the oaths of six persons out of twelve, or by four out of eight. He accomplished the latter, and was accordingly acquitted.⁵⁷

Once the assize had announced its verdict, the accused was either sentenced or declared quit and free by the Judge, and, if found innocent, asked instruments and act of court.⁵⁸

The trials so far considered have been those in which the forms of criminal procedure were more fully observed. The bulk of the Broughton Justiciary courts were concerned with habitual criminals, with redhanded slaughterers and thieves, with persons who were not entitled to caution, but were warded until trial.

In such actions and with these accused, the trial proceeded upon indictment,⁵⁹ and took place within twenty-four hours of apprehension with slaughterers⁶⁰ and as soon as possible with thieves.⁶¹ Lady Kincaid was tried upon the second day after her husband's murder,⁶² but in the following month, John Wilson killed a man one evening and was tried the following morning.⁶³ Amongst the thieves, Margaret Smith committed her last theft upon a Monday night to be judged on the Wednesday.⁶⁴ Thomas Walker removed two horses from Reddoch again upon a Monday, was captured by the men of the Commendator of Newbattle and turned over to the Regality. He was judged in the Canongate upon the Thursday.⁶⁵ With other

thieves a period of two,⁶⁶ or four weeks⁶⁷ sometimes elapsed between capture and trial; but compared with the tedious and long civil actions, criminal justice moved with speed.

The hastily drafted dittays of these unfortunates sometimes betrayed little consideration towards either exactitude or fundamental justice. Some points were general and hardly capable of proof,⁶⁸ while the unlucky William Speir was charged with two offences for which he had been already punished.⁶⁹ Nevertheless, all the accused received trial by assize in accordance with the principle that no person could be convicted of any crime or offence until found guilty by his peers.⁷⁰

The defenders all made confession before ^{THE} court, and thereafter the assize without necessarily withdrawing from court found the accused guilty.⁷¹

The Judge inflicted only two forms of punishment, death or banishment, the latter being often preceded by scourging or branding. Men were usually hanged at the Gallowlee,⁷² ^{AND} while women were drowned at the Quarrelholes.⁷³ Unpremeditated ^{LA} slaughterers were beheaded upon the scene of the crime,⁷⁴ while Lady Kincaid and her nurse were condemned to strangulation and burning, a fate actually suffered by the nurse.⁷⁵

Sentence of death was always passed upon stealers of horses, cattle and sheep, for such theft was a capital offence, as was theft of any article above the value of thirty-two pence.⁷⁶ Pickery or petty theft was awarded by the lesser

penalty.⁷⁷

The dividing line was possibly not too closely observed in the Broughton Justiciary courts. A man and woman who had stolen half a boll of wheat from the house of Master Archibald Wilkie were banished, the man being also whipped;⁷⁸ while some years later, in 1597, a similar fate overtook the five rogues who helped themselves to wheat and oats belonging to George Dewar in the Pleasance;⁷⁹ and the three who in the following year removed victual, beef, coal and ale from a cellar in Scott's Close.⁸⁰ John Leith who removed a purse from the sleeve of a Canongate inhabitant was also discerned to be flogged and banished.⁸¹

Some six thieves, not cattle-lifters, were sentenced to death. Margaret Smith's Canongate offences consisted of two distinct attempts at housebreaking. In the first, she made away with cloth, but on the last she escaped leaving her stolen gear behind her.⁸² William Speir also entered a house to disappear with at least ten pounds in gold;⁸³ while James Bennat had broken into a booth and a house, upon each occasion stealing cloth.⁸⁴ Wilson and Aitkinhead robbed no fewer than three establishments of cloth, besides releaving a page of Lady Culros of eight pounds.⁸⁵

All six were lawfully sentenced. With the possible exception of Margaret Smith, all had stolen gear worth more than thirty-two pence; all, including Margaret, had in any case committed capital offences by repeating their deeds and by

acting under cloud of night.⁸⁶

On the other hand, John Leith had stolen a well-lined purse containing more than thirty shillings;⁸⁷ Dewar had been robbed several times,⁸⁸ while the cellar in Scott's Close had been entered on several nights and deprived of a considerable amount of victual, beef and ale.⁸⁹

From these cases the Broughton Judges appear to have sentenced not so much according to the value, but to the nature of the stolen goods. Victual and foodstuffs by themselves never brought death to their stealer, even if he had made several raids by night; cloth or money removed from a house even once did. Yet a purse stolen in the street by day was not regarded as a capital offence.⁹⁰

No detail is provided upon the formalities and date of execution. The latter was probably almost immediately after the passing of sentence. Lady Kincaid was tried and condemned upon the third day of July and executed upon the fifth.⁹¹ Other condemned were probably despatched with equal promptitude.

So far the normal course of criminal prosecution has alone been considered. Two further alternatives existed.

The ancient custom of kinbutt or assythment still survived by which compensation was paid to the kin of the deceased by the committers of slaughter.⁹² It was bound up with the royal power of remission of crimes, being an essential preliminary to the validity of any such act of grace,⁹³ and depended upon the consent of the relatives of the deceased.⁹⁴

The solitary Broughton example observed the main principles and formalities of assythment. The slaughterer, James Borthwick in Leith, was released from the Tolbooth under caution to compensate the kin of his victim and upon the authority of a royal warrant.⁹⁵

A few weeks later Borthwick was entered before Margaret Livingstone and John Bellenden, his cautioners producing a letter of slains.⁹⁶ Such a letter motivated the remission,⁹⁷ being the formal acknowledgement by the kin of compensation received,⁹⁸ and to be effective had, if possible, to be subscribed by the four heads of the branches of the deceased's family.⁹⁹ Normally, all the relatives had to pursue for assythment, unless the actual participant could prove that the others had refused to take action.¹⁰⁰

The letter in the Broughton instance was signed by Margaret Boig, the deceased's daughter, by James Boig, Boig in Innerwick, by Robert Boig, Burgess of Edinburgh, and by Nichol Boig, younger, of Lochend; the four next of kin, and acting on behalf of all other relations and friends.¹⁰¹

These included Daniel Boig, an illegitimate son of the dead man. A bastard could not pursue for the death of his father,¹⁰² but was entitled to his share of the award, half of what was received by the legitimate child.¹⁰³ The amount of assythment was negotiated between the parties,¹⁰⁴ or failing a settlement, was submitted to arbitration.¹⁰⁵

Once the offender had received his letter of slains

his remission became effective and the kin could pursue him neither criminally nor civilly.¹⁰⁶ Public resentment exercised through the Crown and private rancour had both been satisfied.¹⁰⁷

Assythment or compensation extended to theft,¹⁰⁸ but the latter could also be pursued either criminally or civilly,¹⁰⁹ according to the decision of the sufferer. As the only Broughton instance of civil pursuit shows, the pursuer proceeded by libel, no assize was employed while his aim was to secure the return of his stolen property and not the punishment of the defender in life or limbs.¹¹⁰ This cause approached closely to spuilye¹¹¹ the defender being accused of having "reft spuilyeit at the leist intrometit with & away tuik..." the money.¹¹² Spuilye was usually^a civil action,¹¹³ and possibly had to be tried civilly before criminally.¹¹⁴ The pursuer had in the case under review a choice from the beginning of either criminal or civil action, so probably his action was more properly one of civil theft.

Procedure in both civil and criminal causes having been considered, some attentiaⁿ must now be devoted to the composition of the jury, once common to civil and criminal actions alike.

CHAPTER 11.

1. Chapter 9A.
2. Hope: VIII. 3. 1 (R.M. 4. 5. 4): A.P.S. 1587 c. 77.
3. Hope: supra (R.M. 4. 5. 7).
4. Hope: supra (R.M. 4. 5. 8).
5. Chapter 2, App. 2.
6. App. 1.
7. App. 6.
8. Chapter 2, App. 1.
9. App. 2.
10. App. 3.
11. In numerous instances, e.g. Chapter 2, App. 4, the
accuser is not named.
12. Chapter 9A.
13. A.P.S. 1555 c. 33. *MAITLAND, p 286.*
14. A.P.S. 1535 c. 35.
15. As 13: A.P.S. 15 & 7 c. 85.
16. Hope: VIII. 4. 1. p. 292 (R.M. 4. 1. 8).
17. A.P.S. 1528 c. 5.
18. B.P. p. 548.
19. App. 1.
20. App. 1.
21. App. 4.
22. App. 5.
23. App. 1 and 4.
24. A.P.S. 1555 c. 41.

25. A.P.S. 1584 c. 140.
26. App. 6.
27. App. 1.
28. App. 1.
29. App. 1 and 6.
30. E.g. App. 6.
31. A.P.S. 1449 c. 28.
32. App. 1.
33. The pursuer had to appear in person to pursue and give oath (e.g. Spynie, p. 136/9). A procurator could not be employed (Fife: App. A. p. 323). The prolocutors or forespeakers only assisted and did not substitute for the accuser, who alone took the oath that his dittay was true (App. 1: 6).
34. Spynie: p. 136/9. Mackenzie: IV. 4. 54: Justice court peremptory.
35. Hope: VIII. 1. 16. p. 286: dittay had to be particular. Those of Broughton usually contained the date, place and approximate time of at least one of the charges.
36. Spynie à 34.
37. As 36: and Pitcairn.
38. As 36: and Appendices.
39. App. 6. *PITCAIRN. I. III p. 145 or seq.*
40. A.P.S. 1579 c. 76: 1587 c. 89.
41. A.P.S. 1587 c. 91: c. 92.
42. A.P.S. 1587 c. 92.
43. A.P.S. 1587 c. 91: the assize removed, advised, and "be ⁱⁿ examacion of witnes" returned to court.
44. A.P.S. 1587 c. 91.
- 45-47. App. 7 - 10.
48. Mackenzie: IV. 4. 57 p. 501.

49. Spotiswoode: p. 26: Edgar^vDarling: 13 Feb. 1634:
as imported loss of neither life nor limbs.
50. As 49.
51. Forbes: p. 268: 305: 308: etc. Inverness: p. 264:
Macbean: p. 96.
52. Forbes: p. 301: pursuer called for a napkin in course of
fight to gather up blood.
53. Forbes: p. 266: 271: etc. Aberdeen: p. 270/1:
Macbean: p. 96: Taymouth: p. 368/69.
54. Forbes: p. 260: 273: oath alone used.
55. Forbes: p. 252: 262: Macbean: p. 96: assize; witnesses;
and sight of bloods and wounds all employed.
56. Chapter ~~7~~⁶, App. 4.
57. Taymouth: p. 373: an additional manner of proof was
trial by battle. In the Aberdeen Burgh Court in 1475
(13 Jan. 1474/75, p. 406/7), the defender came before
the court, cast down his hat and offered to fight.
This was refused by the pursuer who referred cause to
the assize upon which the defender had already placed
himself. The oath of verity could not be used in
true criminal actions.
58. App. 3.
59. Mackenzie: IV. 4. 50. p. 498.
60. A.P.S. 1426 c. 89: 1469 c. 35: 1491 c. 28.
61. A.P.S. 1436 c. 142.
62. Chapter 2, App. 2.
63. App. 2.
64. Chapter ~~7~~⁶, App. 3.
65. App. 7.
66. 67. Jonet Neilson tried on the 28 April 1599 was arrested
in the Canongate High Street fifteen days before (R.P.C.
^v. 41 p. 6); Young (11 April 1597) had been apprehended
upon 13th March.
68. App. 8.

69. App. 12.
70. Q.A. c. 67: 1 & 2 (Hope: V. 12. 2).
71. As App. 7.
72. App. 7.
73. Chapter 6 , App. 3.
74. App. 2: 7, 12, 13, 14.
75. Chapter 2, App. 2.
76. Hope: VIII. 10. 3. p. 296 (R.M. 4.16. 1 and 3):
Mackenzie: IV. 4. 30. p. 485.
77. Mackenzie supra.
78. App. 9.
79. App. 8.
80. App. 10.
81. App. 11.
82. Chapter 7, App. 3.
83. App. 12.
84. App. 13.
85. App. 14.
86. Both circumstances raised theft into a capital offence,
although the second probably of later date (Mackenzie:
IV. 4. 31. p. 486).
87. As 81.
88. As 79.
89. As 80.
90. As 87.
91. Pitcairn: II. II. p. 446.
92. B.P. "of assythment" c. 1.
93. A.P.S. 1457 c. 74: 1592 c. 157: 1593 c. 178.

94. Hope: VIII. 12. 3. p. 298 (R.M. 4. 17. 3 &4). The King could grant remission, but the kin and friends could still pursue.
95. App. 15.
96. App. 15.
97. B.P. "of assythment" c. 8: A.P.S. as 93.
98. B.P. as 97: Mackenzie: IV. 4. 64. p. 507.
99. B.P. "of assythment" c. 8.
100. B.P. supra c. 6.
101. App. 15.
102. B.P. as 100 c. 2 and 3.
103. Supra.
- 104-105. By A.P.S. 1424 c. 46. By B.P. as 102 c. 4, assythment was modified by judge according to status of committer, of deceased and number and age of his children.
106. Hope: VIII. 1. 10. p. 286.
107. Mackenzie: IV. 4. 64. p. 507.
108. A.P.S. 1457 c. 74.
109. B.P. p. 525.
110. App. 5.
111. A.P.S. 1457 c. 61. Spuilye consisted in part of moveable goods spuilyed, but for the extended meaning of the word to include almost any action in which goods were taken see Fife, App. B, p. 326 et seq.
112. Rief was robbery or theft with violence (Mackenzie: IV. 4. 82. p. 486); wrongeous intromission was loosely a term applied to an action for recovery (Fife, App. B, p. 325).
113. Fife: App. B: but could be tried either civilly or criminally (B.P. "of spuilye..." c. 6).
114. A.P.S. 1535 c. 34.

CHAPTER 12.

The Juries of the Regality and Burgh Court.

Originally the jury had occupied a commanding position in the Scottish Court.¹ Usually a section or committee of the suitors,² but sometimes all,³ the jury exercised the powers of the Court,⁴ with the sheriff or bailie only the presiding official who assisted the jury upon points of law and confirmed but could not alter, its verdicts and decisions.⁵ The jury made Acts of Court,⁶ regulated the conduct of bailies,⁷ modified the procedure of Court,⁸ judged in civil causes,⁹ decided upon the guilt or innocence of persons accused of crime,¹⁰ and assessed unlaws and fines.¹¹

This jury of suitors declined from the middle of the Sixteenth Century.¹² In Burghs, the Head Court assize continued to be called to pass upon the constitutions of the Burgh and to determine prices.¹³ This jury was however appointed by the bailies and its decisions confirmed by them.¹⁴ It did not exist in the Canongate; and there as elsewhere, the faculty of judging was assumed by the bailies.¹⁵

Even in the heyday of the jury it was possible and common for a specific cause, or point of a ^{case} cause, to be referred to a condign assize.¹⁶ A criminal offender could be judged by the ordinary jury, and the latter could deal with several offenders upon the same day.¹⁷ On the other hand, a particular accused

could place himself upon a specially admitted jury.¹⁸ This ceased to have any further competence after the conclusion of the action. Again with civil actions initiated by briefes, the "best and worthiest of yhour burgh (or jurisdiction) and at best knawis guha war --",¹⁹ could be either the ordinary jury,²⁰ although this was objected to in the Dunfermline Court,²¹ or a special inquest which possessed the requisite knowledge.²² A brieve addressed by the Crown to the ~~Sittling~~⁷¹³ Burgh Court allowed the bailies to chose either method,²³ while a special jury could be enlisted to perambulate lands²⁴ to decide upon the badness of onion seed,²⁵ or any other matter.

The condign, ~~or~~ special inquest survived in the joint Regality and Burgh Court for purposes which were common to all other Courts.²⁶ All criminal matters were judged by jury,²⁷ while civil actions initiated by briefes required the services of an inquest. The points of a retourable brieve could be answered correctly only by persons endowed with personal knowledge of the purchaser of the brieve and of his property. The pleadable briefes invoked a procedure which needed the presence of a competent jury.²⁸

Both the criminal assize and the civil inquest were, in theory, recruited from the vassals of the Court.²⁹ A man was entitled to trial by his feudal peers or equals: or by his superiors but never by those below him on the feudal ladder.³⁰ Civil inquests were composed of "worthy" men,³¹ or those against whom there was no grounds for suspicion, and individual persons convicted

of bad behaviour could be permanently excluded from jury service.³² In addition, the "worthy" men had also to be "faithful", or immediate vassals of the Lord of the Court.³³ Accordingly the inquisitors of the joint Court, both in criminal and civil juries, should have been the immediate tenants of the Baron of Broughton.

In practice they were nothing of the kind. The many Canongate and Leith jurors were for the most part immediate vassals of the Regality.³⁴ Apart from these, the jurors consisted of not only tenants and others from within the jurisdiction who owed no service to the Court: but also of a large array of Edinburgh burgesses, Water of Leith websters, of Lothian Lairds and others who dwelt outside the jurisdiction.³⁵ Of the landward vassals of the Regality, only a few from Broughton, the Pleasance, Coates, Saughton and Saughtonhall ever appeared upon a jury.³⁶ Even the inquest of John Swoird of Falkirk held at a Head Court contained eleven unqualified persons, composed of seven Falkirk tenants and four outdwellers.³⁷

The juries were constituted upon principles which bore little relation to feudal conditions. The theory of peerage still faintly obtained in criminal assizes and trials; Lady Warriston, "protestit that sho might haif the benefit of the law grantit that is to say his peirise & mak vpone hir assyse."³⁸ She was accorded a jury of three Pleasance indwellers and twelve Canongate burgesses. The former were probably all feuars as were most of the others. Therefore despite the social distinctions between the accused and

and her assize, she was judged mainly by her peers.³⁹

The composition of an assize was determined by the accuser who presented a list of not more than forty-five names.⁴⁰ From this, the judge appointed the jury, subject to the defender's objections to the kinship or friendship with the pursuer of individual jurors.⁴¹ If the bailie found it impossible to form a jury from those cited, he could either order further warnings⁴² or else impress persons present in Court.⁴³ On occasion, he proceeded with those available, even if these were as few as eight.⁴⁴

The criminal jury owed its being primarily to the accuser, who listed people he knew, and also persons who came from the vicinity of the crime. Assizes in the present record, possibly summoned by the Regality in the absence of a private accuser, almost invariably included jurors from the locus of the offence. Crimes done in the Pleasance were judged by juries including some indwellers of that village:⁴⁵ a Leith offender was convicted by a Leith assize;⁴⁶ another criminal who ranged between Broughton and the King's Park was condemned by a jury which included two Broughton tenants and two Pleasance indwellers.⁴⁷ Only in a few instances, mainly those concerning offences committed outside the jurisdiction or in distant parts of the Regality by criminals caught redhanded, was the territorial element neglected.⁴⁸

The assize influenced by a private accuser and by the notion that some of its members should have personal knowledge of the crime was hardly likely to be affected by the idea of peerage.

John Watson, portioner of Saughtonhall, was tried by a jury which included nine tenants or followers of the Towers of Inverleith and Dalry, three denizens of Edinburgh, and only three fellow indwellers⁴⁹ while even the assize of John Moreson, a Canongate cordiner, was not entirely composed of Canongate burgesses.⁵⁰ Watson had wounded a Dalry tenant upon his own lands:⁵¹ while Moreson had reputedly murdered the servant of a Border Laird.⁵² The jurors in the first assize were in part those who appear upon the civil inquests of the Redis and Russels:⁵³ the Edinburgh burgesses in the second have nearly all Border names.⁵⁴ The presence of both is undoubtedly due to the respective pursuers, and while Watson's peerage was disregarded, attention was paid to the place of his crime.

The same regard for place, and the influence of the personal selection of the accuser modified by the defender is shown in the assize of William Barker in Saughtonhall,⁵⁵ and that of Jonet Neilson in Kerse.⁵⁶ The two Grub juries were probably of the same character; and the presence of Alexander Thomson, procurator for Jeherome Bowie upon the second, indicates that here again the accused had secured the admission of at least one of his supporters.⁵⁷ Either he had excepted to proposed inquisitors or the judge, faced with a scarcity of jurors had pressed Thomson into service. Possibly the former is the case, for the second jury as it was contained four members of the assize which had already convicted Robert Lamby the principal assassin of Issobella Grub's husband.⁵⁸

Meanwhile the theory of peerage had disappeared from civil inquests. This was not confined to Broughton: but was typical of most Courts and especially those of baronial jurisdictions.⁵⁹ Inquisitors were still supposedly "worthy", but faithful came to mean ~~holders~~ ^{LANDOWNERS}, within any jurisdiction who possessed estates of forty pounds annual value or over.⁶⁰ By the end of the Sixteenth Century it was still considered essential that the bulk of the inquisitors should come from the jurisdiction⁶¹ and that only if it was impossible to find a sufficient number should the four neighbouring territories or the "four half quarters adjacent," of the neighbouring jurisdiction⁶ be drawn upon.⁶² Two, at least, of the inquisitors were expected to have personal knowledge of the purchaser of the brieve and of his lands.⁶³ In the event of a false return fines could be gathered from only those with property,⁶⁴ and to particular forms of inquests stiff property qualifications were attached.⁶⁵

The judge to whom the brieve was directed was ordered to summon the persons of inquest.⁶⁶ In this, he was assisted by the purchaser of the brieve who alone possessed the requisite local knowledge.⁶⁷ The average Canongate or Broughton jury always contained an element probably nominated by the purchaser. Sometimes, the whole jury was named by the latter, who had obtained Royal letters of warning against the prospective jurors, and against the bailie ordering him to hold Court.⁶⁸ Such letters were practically the only means of citation upon outdwellers of

the jurisdiction.⁶⁹

The Broughton jury possessed the following positive and negative features. Like the criminal assize it was not necessarily composed of immediate vassals of the jurisdiction. It supposedly contained a majority of indwellers of the Regality or Burgh. Elsewhere in Scotland, this had been neglected particularly with inquests of Barons and Lairds, and the same was true of Broughton. David Crichton of Lugton and St. Leonards was returned by an inquest of fifteen lairds. Of these only ^{ONE} two, James Bellenden of Spittal, and Logan of Coitfield, had any direct connexion with the Regality.⁷⁰ John Kincaid of Broughton and Craighouse had only six Regality vassals upon his jury: the other nine were outdwellers.⁷¹ Similarly, Robert Ker, indweller in West Duddingston had eight inhabitants of that village upon his jury.⁷² William Little, burghess of Edinburgh was entered to a foreland in the Canongate by eleven Edinburgh burghesses and another outdweller,⁷³ while a jury partly concerned with a house and garden in Coates contained eleven persons from the Water of Leith.⁷⁴

Nevertheless these and other juries included the element endowed with personal knowledge. This group was composed of either relations of the purchaser of the brieve, or persons who dwelt near him or those who were owners or occupiers of nearby lands. An individual jury could include any combination of these three. The inquest of David Watson, a feuar in the Canongate and in Broughton is a case in point.⁷⁵ It included the two Watson

portioners of Saughton and Saughtonhall probably as kinsmen;⁷⁶ two inhabitants of Broughton as neighbours of the Broughton feu; and nine men of the Canongate as witnesses to the Burgh holding. The joint inquest of seventeen which returned Katherine Giffert to an annualrent upon the Crichton St. Leonards lands, and John Waldie to his Bonnington acres was composed of three inhabitants of Orkney, two men of the Canongate including a bailie, six Edinburgh indwellers and of five from Leith. The lady was an Orcadian, and Waldie was a native of Leith.⁷⁷ At least one of the Leith indwellers had knowledge of Bonnington,⁷⁸ while the Edinburgh and Canongate jurors dwelt near St. Leonards. Mark Acheson of Milnhaven had his general service made by six inmates of Preston;⁷⁹ while James Wode in Cowsland was returned to his Canongate annualrent by a jury which included six from Cowsland and four from the Canongate.⁸⁰ In September 1600, James Thomson was entered to his Bonnington and Hillhousefield estates by, inter alia, thirteen Leith indwellers. He was a Leith man himself, and no fewer than four of the thirteen were Thomsons.⁸¹

The most interesting of the juries are those which served several heirs. They were formed, in part, by the witness jurors of both purchasers: and show a degree of modification by the Regality and Burgh authorities to produce a competent inquest. On the same day for example were returned Robert Auchinleck to a Pleasance annualrent, Margaret Abercrombie to a Canongate tenement, while John Kincaid of Coates received a general service.⁸²

Auchinleck and Kincaid were returned by the same inquest.

Five members were two Kincaids, John Matheson of Broughton, Thomas Wilkie of Saughtonhall and James Dalzell in the Dean. The first were relatives of John Kincaid, Matheson and Wilkie were neighbours of Coates while Dalzell held lands there.⁸³ That they were primarily concerned with John Kincaid is further illustrated by all save the Kincaids serving upon a later inquest of the portioner of Coates.⁸⁴

Additional jurors included George Auchinleck, uncle of Robert, three Edinburgh inhabitants and five Canongate burgesses. One of the Edinburgh burgesses and one of the Canongate appear in a later Auchinleck jury,⁸⁵ while at least two of the other Canongate inhabitants were also feuars in St. Leonard's Way.⁸⁶ These were obviously the Auchinleck witnesses.

The Abercrombie jury presented nine fresh inquisitors, all, but one, being Canongate burgesses. The additional six were drawn from the first jury, and were Matheson, the Younger Kincaid of Carlowrie, Dalzell and three Canongate men.⁸⁷ The ninth new juror was David Winrhame from Saughtonhall; a guardian of the young heir to the Winrhame quarter.⁸⁸

The implication to be drawn from these juries is that each heir specifically named a few persons whom he wished to be summoned: the outdwellers, if not the others being cited by Royal letters. From these a composite jury was formed for Auchinleck and Kincaid. Winrhame, who appears but rarely in the Court Record

was probably summoned upon the initiative of Kincaid, the logical person to do so. His attendance was made superfluous by the combination of the two groups; and it is possible that Kincaid had cited more persons. This was a common practice necessary to cover possible absences.⁸⁹

Margaret Abercrombie had either warned only eight jurors, or more probably Winrhame and the others had been pressed into service by the judges to replace absentees.⁹⁰ In this way, her retour was not postponed as had happened to Ninian Blaikwode some years previously.⁹¹

The jury of John Winrhame of Saughtonhall and of the three MacCalyeane sisters in Broughton included John Watson of Saughtonhall.⁹² The remaining inquisitors were in part Canongate burgesses and Leith indwellers with two Broughton feuars. Of these some of the former were either feufarmers or tacksmen in Broughton;⁹³ while John Matheson, a Broughton feuar was a member of other Coates and Saughtonhall juries, and was competent to decide upon Winrhame's claim.⁹⁴ In this inquest, the MacCalyeanes had probably nominated the bulk of its members, while the Winrhame heir's guardian had contented himself with only a few, although the Pleasance feuar and the two Edinburgh burgesses may have been present on his behalf.⁹⁵

The various Russell,⁹⁶ Reid⁹⁷ and Nemouth⁹⁸ inquests reveal an interesting story. Gideon Russell was an Edinburgh burgess a feuar in Coates⁹⁹ and occupier of Dalry Mills.¹⁰⁰ John Reid was

tenant of the Haughs of Dalry.¹⁰¹ His mother had been a Jonet Russell,¹⁰² and he was possibly a relation of Gideon. Russell's mother was a Katherine Fisher;¹⁰³ while an Isobel Fisher had married Edward Machane,¹⁰⁴ an Edinburgh burghess.

Russell's first retour to his Coates lands was served by a jury drawn from Edinburgh, Bells' Mills and from Dalry. His second included George Bellenden of Edinburgh, Richard Werno in Dalry Mills and John Coutts in Dalry, all members of the first. It also contained two Fishers and two Machanes which seems to relate him to Isobel Fisher. This jury certainly reflects his various backgrounds of Coates, Dalry and Edinburgh.¹⁰⁵

Reid was returned in May, 1595, to an annualrent in Saughtonhall.¹⁰⁶ His inquest included an Alexander Reid, three other Coutts of Dalry¹⁰⁷ and five inhabitants of the West Port. Some of these and others of the same surname formed part of the assize which convicted Watson of Saughtonhall.¹⁰⁸ The other seven jurors were all from Edinburgh, but had nothing to do with Reid, as the inquest also returned Alexander Nemouth, as tutor to his nephew; and five of the other burghesses figure in a later Nemouth jury.¹⁰⁹ One of this group was a William Nemouth, almost certainly a relative.

The civil jury thus contained a proportion of jurors who from their personal knowledge could guide and assist their fellows in answering the points of the brieve. These came from both outside and from inside the Regality, depending upon the home and

place of origin of the purchaser of the brieve.

These jurors did not always form the entire inquest. Often the jury was padded with persons who had obviously no real knowledge of either the claimant or his lands, for by custom an inquest consisted of an uneven number, usually fifteen.¹¹⁰ The Broughton and Canongate juries nearly always observed this ruling and number. One inquest of division had twelve jurors;¹¹¹ a few inquests seventeen,¹¹² but a majority were limited to fifteen. Like the criminal assize, the civil inquest proceeded by a majority decision;¹¹³ the chancellor possessing the casting vote.¹¹⁴ Under these circumstances, an odd number was essential.

When required, the full complement was made up from inhabitants of the Canongate; or more particularly from a limited group of Burgh men. From the accompanying table,¹¹⁵ it can be seen that the Court possessed an almost professional class of jurors. Persons like Richard Baxter, Mungo Fortune, John Kello and Alexander Bernis served regularly upon both Burgh and Regality juries. They formed almost an hereditary class for towards the end of the Record, the sons were following in their fathers' footsteps. There appeared Charles Fortune,¹¹⁶ the younger Thomas Matheson,¹¹⁷ a younger Kello,¹¹⁸ with a son of Matheson of Broughton.¹¹⁹ These jurors were also prominent in other fields of curial and burghal activity. John Kello was a member of the Burgh Council:¹²⁰ William Fendar,¹²¹ and John Paterson¹²² were at various times deacons of their respective crafts. Malcolm Brown occupied

a high place amongst the Leith Smiths;¹²³ Hector Cranston was an elder of the Parish Church.¹²⁴ Archibald Wilkie,¹²⁵ Andrew Borthwick¹²⁶ and John Schoirt¹²⁷ were Burgh bailies. Other jurors, Kello and John Wilson¹²⁸ amongst them, were often witnesses to apprisings and proclamations of briefes.

These men were the active citizens of the Burgh: those who were willing to serve on inquests, and therefore the ones liable to be called upon. As Ninian Blaikwood found to his cost, unwilling jurors were likely to refuse to answer their citations;¹²⁹ and both purchasers of briefes and the authorities were generally careful to secure the services of those willing to appear. John Matheson and James Crawford were almost the only Broughton feuars to be used by their neighbours in that territory, in Coates and Saughtonhall: William Bains, Alexander Falconer and Malcolm Brown were all frequently called upon to serve on Leith inquests.¹³⁰

In all, between August 1592 and September 1600, there were one hundred and twenty seven juries, with a total of nineteen hundred names. Thirty of these were criminal assizes; while forty-three were civil inquests devoted to Canongate feus, annualrents and heirs. An additional twenty were similarly concerned with Leith, and nineteen with other regions of the Regality. The remaining juries made some eight general services or were double inquests with only part of their attention upon Canongate affairs.

Purely Canongate properties concerned less than half of the

civil inquests, while some sixteen of the assizes dealt with crimes committed in the Burgh. Yet of the total number of names contained in the lists of juries, seven hundred and seventy-two belonged to fifty-eight persons, of whom all but nine belonged to the Canongate. Forty-nine Burgh inhabitants performed approximately two-fifths of the jury service, while a wider range of indwellers appeared at less frequent periods.¹³¹ Of Regality feuars only twenty-one served over the same number of years, while fourteen Leith inhabitants appeared four times or more.¹³²

The Canongate semi-professional juror thus performed a vital part in Regality administration. He swelled ^{/the numbers} upon inquests dealing with Regality lands, besides serving upon Burgh inquests dealing with matters upon which he had personal knowledge. He and his fellows, were used extensively for criminal juries, even the Regality going rarely beyond the Canongate in its quest for jurors.

CHAPTER 12.

1. Fife: p. lxxxvi et seq.
2. Supra. Dunfermline B.R. p. 46: p.58.
3. Prestwick p.30: Dunfermline B.R. p.49: p.90: p.101 etc.
Peebles p.125. In the Peebles Burgh Court (p.189) the Bailies thought a man's petition reasonable, but referred it to an inquest which also decided in favour, and petition was granted by the bailies and whole Court (see also p.157).
4. Fife as 1.
5. Fife supra: although in 1510 the Aberdeen bailies modified fees determined by assize (Aberdeen: p.440).
6. Eg. Peebles p. 213/4: Head Court assizes in general:
7. Macbean p. 118/9: the assize refused the creation of a provost.
supra p: 315: 317: Peebles p. 213/4: p.225: 332.
8. Peebles p. 215. No lawyer to be a procurator p. 293.
Inverness 1.p.121.
9. Fife as 1: Inverness II p. 266/7: Peebles p. 29: Aberdeen p.440
etc.
10. Chapter 11.
11. Dunfermline B.R. 31 Oct. 1497: more strictly a special assize of four chosen by the whole Court: but assize also modified unlaws (eg. p.92).
12. Fife: xc.
13. Eg. Macbean p. 307/8: Stirling p.89.
14. Macbean supra. Stirling supra: earlier in Peebles (p.166) the "dousane" were elected by the Court.
15. Chapter 10. Fife as 12.
16. Dunfermline B.R. p.60: 68: Peebles p. 132: 333: Inverness p.109/11. Aberdeen p.26.
17. Stirling p. 63: Dunfermline B.R. p. 88: 89 etc.
18. Stirling B.R. p. 34: Peebles p. 132:
The defender could also pass from the assize and place himself

upon an inquisition of the whole Court, withdrawing until it reached a decision (Dunfermline B.R. p.114).

19. Aberdeen p. 16/17.
20. DUNFERMLINE AS BELOW.
21. Dunfermline B.R. p. 71.
22. See below.
23. Stirling p. 65: to an inquest of neighbours or ward of Court.
24. Stirling p. 263.
25. Glasgow C.R. p. 92.
26. Fife p. xci.
27. Chapter 11.
28. Chapter 14.
29. Craig 2.17.28 p. 740: Hope v.12. 2 & 3 p. 46.
30. As 29.
31. App. 1.
32. Macbean p. 101: Peebles: p. 293.
33. Craig as 29.
34. App. 27.
35. Lists of Juries.
36. App. 28.
37. App. 2.
38. Chapter 2. App. 2.
39. Her assize was only different from the others in that she demanded trial by her peers. Her jury included few persons who had¹ served upon other inquests and assizes. She probably desired no more than trial by an ordinary jury.

40. A.P.S. 1579c 76; 1587c. 39.
41. Pitcairn. 1. 21. p. 255. *THE TRIAL OF EUPHEMIA MACCALLYCKNE OF CLIFTONHALL AND BROUGHTON.*
42. Pitcairn. 1. 21. p. 209.
43. Pitcairn. 1. 21. p. 148; *ALTHOUGH A HIGH COURT INSTANCE, PROVIDES AN EXCELLENT EXAMPLE.*
44. Forbes p. 271. A case of bleeding.
45. App. 3. In an assize in the Forbes Baron Court (p.266) one juror was an actual witness of the bleeding. He also brought on the same day, a civil action against another juror.
46. App. 4.
47. App. 5.
48. Chapter 2. App. 4: App. 26.
It is difficult to explain the presence upon Harrower's assize of six Leith inhabitants and of one in Restalrig. The circumstances of his apprehension are not given, but he may have been caught in Leith, and the Leith jurors called to bear witness to this. Walker's assize (App. 26) is again interesting. Although hastily brought together it included seven or eight jurors who owed no service of Court: three from the Pleasance: four from Canonmills and one from Broughton. There was no reason why they should have been employed, or specially warned; it is, perhaps, possible that they happened to be present in the Court at the time.
49. App. 13.
50. Chapter 2. App. 1.
51. Vide Chapter 19.
52. Chapter 2. App. 1.
53. App. 10.
54. App. 14.
55. Chapter 11. App. 6 and App. 15.
In this assize, Dalzell, Stenhope and Matheson, as fellow vassals of the deceased were probably selected by the pursuer. Andrew Rose was a mealmaker in the Water of Leith (C.E. p.240): while a John Johnston was bailie of the Water of Leith (C.E. p.1. p.147), and may have been related to the Johnston of the assize.

56. Chapter 3. App. 3. Her married name was Robert. A James Robert was upon her assize.
57. App. 12.
58. App. 12: Birkmyres: Aitkin: Moresone: and Pinkcarton.
59. Craig: 2.17.28 p. 740.
60. As 59: This landed qualification did not apply within Broughton, where most estates were below that annual value: a largish holding in the territory of Broughton had a yearly value of some twenty pounds (M.S. 11 July 1593): in Saughtonhall a quarter was valued at about fifteen pounds (M.S. 20 March, 1594).
61. Craig: as 59. B.P. "of brevis" c. 36.
62. Craig. As 61.
63. Stair: 2. p. 489.
64. Eg. A.P.S. 1471 c. 47.
65. Eg. A.P.S. 1587 c.42: the majority of an inquest upon an action of molestation should be landed men worth 300 merks of rent. These were to be drawn from the parish in which the lands lay, and not the jurisdiction.
66. Eg. Spotiswoode pges. 773/4.
67. By implication from the appended inquests: the judges could not have possibly known of the existence of otherwise obscure inhabitants of the West Port, Water of Leith and the like.
68. App. 1 and Chapter 13.
69. See Chapter 6 Note 62-64.
70. App. 16. ~~Logan of Coitfield had lands in Hillhousefield (List of vassals).~~
71. App. 17. Nevertheless both juries contained a strong element of witness-jurors. The first, of Crichton, included two Crichtons possibly related to the heir. It also contained two members of the House of Dundas. John Dundas of Newliston, a member of the jury, was the husband of Margaret, sister of David (O.E.C. v. 23 p.134); while Patrick Johnston was also married to a Dundas

(C.E.II. p.124): David Crichton's mother was a Hoppringle (O.E.C. as above): Logan of Coitfield was the husband of another (C.E.II. p.253): while there is another upon the inquest. Possibly seven jurors were related to the heir: while the others had lands near either St. Leonard's or Lugton.

The inquest of John Kincaid included three of that surname. In addition, the elder Stenhope was the husband of a Margaret Kincaid (Logan 2 June 1590); while the younger was husband of a daughter of Fairlie of Colinton (Logan 26 June 1590). Possibly at least six of the jurors were related to Kincaid, with others neighbours of either Broughton or Craighouse.

72. App. 18.

73. App. 19.

74. App. 20. Mariote Fyffie was an indweller of the Water of Leith.

75. App. 21.

76. The various Watsons were possibly although not certainly related. Richard Watson of Saughton had three sons (Wood p.36. 128-159). From James portioner of Saughton (C.E.I p.285) was descended Master James the contemporary feufarmer in that terriotry. David Watson, served heir in January 1597, was the son of John Watson, burgess of the Canongate who died in October 1585. Richard Watson had a son John (Wood supra): and a Richard Watson in Broughton had also a son called John (Logan 5 April 1578). It is possible that the two Richards and Johns were the same. One additional difficulty is that by Logan (supra), John's wife was Agnes Dewar: while by the M.S. (as App.21) her name was Agnes Johnstone.

The Watsons of Saughtonhall were probably related although distantly to the Saughton Watson. John Watson received his estate from his father James in 1577 (Logan 22 May). James was the son of William Watson dead by 1570 (Wood p. 175/6).

77. App. 22.

78. William Logan, husband of Issobell Mowbray, widow of John Thomson feuar in Bonnington. (M.S. 20 Sept. 1600).

79. App. 23.

80. App. 24.
81. App. 25.
82. App. 7.
83. List of Vassals.
84. App. 8.
85. App. 9.
86. John Wilson and Alexander Halbert.
87. App. 7.
88. Chapt. 10 App. 7. R.P.C.vi p.666, brother of Mr John Whinrhame of Craigton.
89. Fife p.xcv.
90. By A.P.S. 1503 c.94, enabled the judge to press into service as jurors, those present in Court.
91. Chapter 13. Appendices.
92. App. 6.
93. App. 6.
94. Apps. 7. 8. 10. 11.
95. App. 6.
96. App. 10.
97. App. 10. 13.
98. App. 13.
99. List of Vassals.
100. C.El. p. 241.
101. M.S. 28 May 1595 - "John Reid sone to vmquhile Alexander Reid in the haughis ---".
102. C.E.1. p.231.
103. C.E.1. p. 94.

104. Supra.
105. App. 10.
106. App. 10.
107. Reid's wife was Aleson Coutts (Logan 11th June 1602).
108. App. 13.
109. App. 13.
110. Fife: xcvii.
In Gadzearth v. Sheriff of Ayr; April 1583 (M.D. p. 14422/3),
it was stated that by general practice number of
absentees was never made up unless absentees, dead, or
abroad or at the Horn. The case was, however, concerned
with an inquest of apprising.
111. M.S. 2 May 1593.
112. Eg. App. 22.
113. B.P. "anent assise" c.11.
114. M.D. p. 14422. Dunnipace v. Oliphant. 5 March 1554.
115. App. 27.
116. On four inquests or assizes from 16 Aug. 1598.
117. On two juries from 17 May, 1598.
118. Henry Kello: 6 Aug. 1600.
119. John Matheson younger. 6 Aug. 1600.
120. Maitland p. 348/9: Year 1581/2.
- 121-2. App. 27. and therefore members of Council.
123. Chapter 3 note 6.
124. App. 27.
- 125-7. Wilkie appeared upon seven juries: Borthwick upon four
and Schoirt upon five. In App. 22, Borthwick was not
only a juror, but also a presiding bailie. He and
John Graham probably the former bailie-depute were
possibly added to a jury of fifteen, as Regality
neighbours of St. Leonards.

128. As M.S. 20 March 1594 when the Winrhame & MacCalyeane
brieves were witnessed by John Schoirt: John Wilson
and John Graham Schoirt served upon the inquest.
129. Chapter 13. Absent jurors were liable to a fine (Fife
xcv-vi) or even outlawed (M.D. p.14423: June, 1586:
King's Advocate v. Moncur. CHAPTER 13. App 6.
130. App. 27.
131. Approximately 130 Canongate inhabitants appear upon juries.
132. App. 27. 28.

CHAPTER 13.

The Brieves of the Chancery of Broughton. 1.

A - The Brieves Retourable and Pleadable.

Originally all civil actions had been initiated by brieves obtained from either the Royal or Regality Chapel.¹ By the period under consideration only seven major brieves survived.²

Three of these were retourable and not pleadable. These were the writs of service, of tutory and of idiomy.³ Each was proclaimed at the head place of the jurisdiction; no parties were cited in special, no pleading was allowed; and the inquest summoned was obliged to answer a fixed and stereotyped number of points. The findings of the jury were returned to the Chancery, there registered, and an extract, or retour, granted to the purchaser.⁴

The pleadable brieves, were those of terce, division, perambulation and lining.⁵ They were proclaimed in the same manner as retourable brieves, but interested parties were entitled to particular citation,⁶ and pleadings and objections were allowed.⁷ In each case, the inquest had a specific task to perform; but in none were its decisions returned to the issuing authority, either Crown or Regality.

The seven brieves were concerned with the settlement of affairs of an administrative nature. Their purpose was to make smooth the accession of heirs to their feudal holdings, to appoint tutors to minors, to determine the portions of widows and to

resolve disputed boundaries. While pleadable brieves could result in civil actions, their prime function was the settlement of problems affecting the fiefs and heritages within the jurisdiction. Brieves and their services were accordingly, a vital factor in the feudal life of not only the Regality of Broughton but also of the Kingdom as a whole.

B - The Serving of Brieves.

The Regality of Broughton possessed its own Chapel for the issuing and returning of brieves. This meant that normally, the Royal Chancery and its brieves were excluded from the jurisdictional lands including the Canongate. Only upon the failure of the Superior, after warning, to issue a brieve from his own chapel,¹ or for other specific reasons,² was it possible for the Royal Chancery to intervene. Nor were Regality services returned to the King's Chancery.³

Although Broughton had right of chapel, the method of serving its brieves was subject to the same rules as those which applied to Royal brieves. The brieve was purchased from the Broughton Chancery and directed to the ordinary judges,⁴ either bailies-depute or Burgh magistrates. These were then obliged to summon inquisitors, by special citation, upon fifteen days warning, either the day of citation or the day of compearance in Court being counted as one of the fifteen.⁵

The brieve itself was proclaimed by either a Burgh or Regality officer.⁶ From 1503 this ceremony was ordered to take

place at the Market Cross of the Head Burgh on a market day.⁷

Nearly all the Regality briefes were, in fact, called at the Market Cross of the Canongate.⁸

The site was selected to give the widest possible publicity to the impending service; and with retourable briefes, the proclamation was the only notice given to interested parties.⁹ To ensure the lawful execution of the briefe, the responsible officer had also to endorse and seal the writ;¹⁰ and conduct the ceremony before at least two duly constituted witnesses.¹¹ This was also observed in Broughton.¹² There a common practice with briefes proclaimed by a Regality sergeant, was for his witnesses to be the Burgh officers:¹³ and with those in which a Burgh officer officiated, a mixed party of Regality and Burgh sergeants.¹⁴ Usually there were more than two witnesses: often two or more sergeants, the bellman, and the clerk who had probably drafted the briefe.¹⁵

Upon the day of Court, either the purchaser of the briefe or his procurator produced the document and desired service.¹⁶ The briefe was read and its lawful execution was verified by the officer and witnesses,¹⁷ while the jurors were called thrice from the Tolbooth window.¹⁸ But before the calling of the jurors, the briefe was, to enable all objectors to appear, proclaimed thrice from the Tolbooth window.¹⁹ Once all objections had been settled, the inquest was sworn in, and proceeded to deal with the points of the briefe.²⁰ Upon objections, upon the passing of the briefe to the inquest, and upon the swearing and admitting of the

latter, the purchaser asked instruments at the hands of the clerk.²¹

The objections raised in the Broughton and Canongate services were few and uninteresting although in retourable briefes objections could be raised against the judge and inquest, upon the method of proclamation and upon technicalities within the brieve itself.²²

In briefes of service in particular exceptions could be raised against the heir; that he was a bastard;²³ or a foreigner,²⁴ especially an Englishman;²⁵ an outlaw;²⁶ or incapable of performing his feudal obligations.²⁷ An additional objection, common before the Reformation, was that the heir was a churchman.²⁸ Of all these pleas bastardy was the most effective;²⁹ for once raised, the question was referred to the Church Courts, and the process of the brieve halted until the latter had reached a decision.³⁰ Post-Reformation churchmen were allowed to succeed as were most foreigners,³¹ and even outlaws when, and if, they made their peace.³² Lepers could not succeed if already suffering from that disease,³³ while the only recognized bar to the performance of feudal obligations was idiocy.³⁴ Idiots could be returned heirs, but had no control over the property,³⁵ but the blind, the dumb and the deaf suffered from no such disqualification.³⁶

The Broughton objectors were almost entirely confined to protestations by liferenters and others having interest that the service should not prejudice their rights and titles.³⁷ In

pleadable briefes, however, the range of objections could be much wider, although in the joint Court, few of these briefes were encountered.

The briefes issued from the Regality Chancery were mainly briefes of inquest, with a few of tutory and one of idiocy. Of the pleadable briefes, only those of division were purchased. For reasons explained below, the granting of terce was rare within the jurisdiction: while the briefe of lining was confined to Royal Burghs. Its equivalent of perambulation does not appear.

C - The Briefe of Inquest.

Upon the death of the holder of lands, annualrents or offices, his fief or possession reverted to the Superior from whom it was held; and there it remained until the heir entered upon his heritage usually by means of the briefe of inquest.¹

The public recognition of the rightful heir was of importance to the heir himself, the Superior and a variety of other persons. To the heir, it meant the definite recognition of his position,² although he acquired formal possession of neither lands nor annualrents until he had been given sasine.³ Nevertheless, he was, henceforward, in a capacity to pursue for rents, mails, duties and debts owed to him and his predecessors, and was entitled to all reversions, contracts and obligations made to his predecessors⁴ and to heirship goods.⁵

To the creditors of a deceased vassal, the recognition of an heir was, perhaps, even more important. For unless the heir

had meddled with the property, or had acted as legal possessor,⁶ he could not be held responsible for his ancestor's debts until he was returned heir.⁷ Accordingly, the heir was allowed the annus deliberandi, or a year and a day of grace in which to investigate the liabilities upon the estate and to decide either to renounce or accept the burden.⁸ Although he could be charged to enter heir during this period, he could not be forced to do so until its termination.⁹ Thereafter he was granted forty days within which to enter; and upon his failure the lands could be appraised as if he were lawful heir.¹⁰ John Sprottie upon discovering his St. Leonard's feu burdened with a debt of 380 marks was so warned and failing to enter, witnessed the appraising of his tenement.¹¹

Entry of an heir gave the Superior the same advantages, particularly so far as arrears of casualties were involved,¹² and in addition all the benefits of having a tenant.¹³ While an heir could force his Superior to grant him entry,¹⁴ the reverse was also true, and an overlord could make an heir major take up his heritage.¹⁵

There were two kinds of service: a general and a special. The general service was to no particular land or possession,¹⁶ but gave its recipient right to and power to pursue for all reversions, tacks, heritable bonds and all other rights which did not require sasine and belonging^{so} to his predecessors.¹⁷ Conversely, it enabled creditors to reach the person, goods and

lands of a prospective heir, although not the fief in question.¹⁸

The brieve initiating a general service could be directed to any judge if from the Royal Chancery,¹⁹ and obtained from any private Chancery.²⁰ It was a matter of indifference to which jurisdiction and from what part of the country, the purchaser belonged and came. At a later period the Canongate became notorious for the ease with which such brieves and services were obtained from its Chancery;²¹ and the jurisdiction on at least one occasion was involved in considerable trouble.²² But in the late Sixteenth Century, there were only a few such services.²⁵

The inquest had three points to answer. Did the deceased die at the faith and peace of the King?²⁴ This was assumed unless an objector proved the contrary.²⁵ The specific monarch did not require to be named²⁶ although the Broughton services usually added "ad pacem et fidem S.D.N. Regis Jacobi Sexti."²⁷ The brieve then asked if the claimant was the nearest and lawful heir:²⁸ and this he was expected to prove by the production of evidence showing his relationship to the deceased.²⁹ The last question, was the claimant of full age was not of any great importance, was usually obvious upon visage of the heir,³⁰ and was not included in Royal brieves of this type.³¹

The special service was more searching in its details, and returned the heir to a definite holding or possession. Its brieve set the jury nine points, of which the first was -

1. "Who died last vest and seised as of fee in the property and did he die at the faith and peace of Our Sovereign Lord?"³²

The inquest had here to rely upon both personal knowledge and documentary evidence. The actual death of the vassal was in most cases known to the members of inquest,³³ but if he had died abroad or away from home, the depositions of witnesses, or certificate from the magistrates, or bailies, of the place of decease had to be presented to the inquest.³⁴

The dead man's possession of the feu or annualrent could be verified only by the production by the heir, of his charters, infeftments, or retours;³⁵ a necessity always complied with by those of the Broughton and ^{THE} Canongate.³⁶ If, however, such evidence had been lost through fire or violence, the claimant could secure from the Session Letters ordering the summoning of an inquest by the judge ordinary to determine through its own knowledge and that of witnesses, what were the possessions of the deceased at the time of his death.³⁷ The findings of inquest were returned to the Royal Chancery and a brieve issued to serve the heir.³⁸

Charters and infeftments proved neither that the last possessor had actually died in fee nor at the peace of the King. Here, however, the inquest had only to denominate the correct monarch.³⁹ The onus of showing that the deceased had either voluntarily relinquished his estate or had died rebel, rested with objectors to the service. Otherwise this was assumed by the jury.⁴⁰

The fee itself had to be accurately described.⁴¹ The inquest relied almost entirely upon documentary evidence, merely

adding contemporary detail.⁴² Usually, particularly with those in the Canongate, Pleasance and Leith, the feu was described as being bounded by others belonging to neighbouring vassals.⁴³ Each successive jury, working from the infetment of the heir's ancestor incorporated the neighbours contained in that instrument. Consequently, by the end of the Sixteenth Century, the list of names could reach back for a hundred years.⁴⁴ On some occasions, the inquest could designate long-dead adjoining vassals, but through lack of personal and contemporary knowledge was unable to add the names of the living neighbours.⁴⁵

Usually only a short period intervened between the death of one vassal and the accession of the next. The jury was not, accordingly, faced with a difficult task: but as long as fifty years could elapse.⁴⁶ William Littill was served heir to his grandmother who had died in the reign of Mary.⁴⁷ In a case like this, the jury could do little save assume the affirmative to the question, and avoid rendering any detailed answer.⁴⁸

2. Who is heir to him who died last vest in the said estate?

This was always answered by Canongate and Broughton jurors as being the purchaser of the brieve. Their answer was based partly upon personal knowledge and partly on documentary evidence.⁴⁹ The first verified or disproved the line of descent claimed by the heir, a line which could include several generations: while the latter revealed to the inquest the kind of feu, and the order of succession: whether it was by ~~sale~~ sale only, or by general descent,

or whether special conditions were attached.⁵⁰

The Broughton and Canongate feu-farm holdings were usually open to both ^Mmale and female succession, to the direct descendants of the deceased and then to the nearest collateral.⁵¹ The ^Mmale or single female heir succeeded to the complete holding: but if there were more than one heiress, each, or her descendant, was returned to her portion.⁵² The four sisters of Alexander Blyth were each returned to a fifth part of his Canongate tenement.⁵³ The fifth heir was their nephew, and son of the fourth, but deceased sister.⁵⁴ John Ahannay and Jonet Johnstoun, coheirs of another Burgh feu, were aunt and nephew; John being the son of a defunct sister.⁵⁵

These elementary laws of succession, and intricacies of family relationships had to be known to the inquest, in order to have a correct return.

3. Is the claimant of full age?

This point was always answered in the affirmative by the inquest, for with feu-farm and all other non-military tenures the heir was qualified to enter his inheritance, no matter his age.⁵⁶ James Bellenden, holding in blench for example, although no more than ten, received sasine of his lands, offices and baronies.⁵⁷

The position of the heirs minor of Bellenden's vassals was complicated by their feus being subject to the casualty of non-entry. This incident was normally effective between the death of one vassal and the accession of his successor,⁵⁸ but both

in Broughton and the Canongate, it could persist throughout the minority of an heir.⁵⁹

The father of Margaret Abercrombie died in February 1590,⁶⁰ whereupon the fruits of his Canongate tenement were granted by Sir Lewis Bellenden to Thomas Young and his wife Isobel Bellenden.⁶¹ The donataries still retained the gift in May 1594,⁶² and Margaret still definitely a minor in the early months of 1593,⁶³ was not returned heir until July 1594.⁶⁴ Thereafter she obtained possession of her estate^{IN THE} same year.⁶⁵ Similarly, upon the death of Captain James Edgar in June 1596,⁶⁶ the non-entries of his Canongate tenements were conferred upon Master Walter Cunningham burgess of Edinburgh who, despite the service of Edgar's son in December 1599, retained the fruits until the youth became of age.⁶⁷

The Winrhame quarter of Saughtonhall received similar treatment. James Winrhame died in August 1593,⁶⁸ his elder son John was returned heir in the following March,⁶⁹ while after his death, a younger brother was served heir in June 1598.⁷⁰ John was a minor⁷¹ and the feu remained "in manibus domini" until the accession of the younger James.⁷² Again, the lands of John Kincaid of Coates were in possession of the Lord Superior for ten years.⁷³

On the other hand, some minors were not affected by the disabilities imposed upon Margaret Abercrombie and her associates. The Canongate minor Thomas Nemouth was returned heir in November 1594,⁷⁴ and was granted sasine in the following December,⁷⁵ while

much the same was true of Paul Rannald another Canongate heir.⁷⁶

In these cases, however, the feus were not subject to non-entry being already occupied by liferenters⁷⁷ who, by their tenancy, could exclude the Superior's casualty.⁷⁸

The position in the Regality of Broughton was something as follows. The inquest was correct in stating that a minor was of lawful age, and upon this return the heir could require sasine.⁷⁹

The heir minor was not awarded the fruits of the estate as a consequence of the service, but had to await either his majority or the dispensation of the Superior.⁸⁰ This is brought out especially clearly in the episode of William Duncanson. This Canongate heir received a tutor in December 1596,⁸¹ evidently upon the death of his mother in that month.⁸² He was returned heir to his tenement in May 1597,⁸³ but from January 1597 until after April 1598 the feu was in the hands of the Baron.⁸⁴ Thereafter certainly before his majority,⁸⁵ the feu and its fruits probably came to him,⁸⁶ but Margaret Abercrombie and the others were less fortunate.⁸⁷ Their full enjoyment only came with their majority.⁸⁸

Broughton feu-farm had something within it of the character of wardholding, in that with a vacant feu, the Baron assumed the fruits of non-entry until heir came of age,⁸⁹ twenty-one with a male and possibly fourteen in the case of a woman.⁹⁰ At the same time, the custody of the heir, as was the practice with ward lands did not rest with the Superior, but with the relations or ~~superiors~~ ⁹¹ of the minor.

Nor was the Broughton practice consistent: Duncanson's favoured position was shared by Edward Kincaid of Meldrumsheugh; probably no more than twenty-three in 1598,⁹² he was already in possession of his lands in 1593,⁹³ and able along with his curators to pursue his tenants⁹⁴ and grant tacks.⁹⁵ In these instances only the dispensation of the Superior can be assumed.

Why did minors, whose enjoyment of the feu was blocked by non-entry or by liferent seek service by an inquest?

In Nemouth's case it enabled his tutor to pursue for his heirship goods in possession of his mother, a dispute which was not settled until June 1596, by which time she had remarried.⁹⁶ Only a special service could have placed Nemouth in such a position,⁹⁷ and his reason was no doubt shared by other minors.

In the Winrhame retours, it is to be remarked that the return of John Winrhame was followed over a year later by two decrees ordering the pointing of the ground for payment of arrears of annualrents.⁹⁸ A creditor could not reach the ground of a feu unless the heir apparent was served in special.⁹⁹ Once the latter was so returned, the former could follow even a minor¹⁰⁰ provided he cited not only the heir but also his curators or tutor.¹⁰¹ It is at least possible that John Winrhame was returned in response to the demands of the creditors of the quarter.

That other reasons existed for seeking return by inquest than that of obtaining full possession of the actual fee is

perhaps borne out by some heirs seeking both a general and special service.

Later legal theory held that a special service contained all the elements, advantages and liabilities of a general.¹⁰² In Broughton however, it sometimes happened that the heir obtained either a general return before the special, or both upon the same day. Kincaid of Coates secured a general service a full year before his special,¹⁰³ thus enabling him or his curators to attend to his rights apart from his feu. Mariote Fyffie, on the other hand, was, on the same day, entered to her Coates tenement and served heir in general.¹⁰⁴

4. "Of whom is the feu held?"

This point was answered by documentary evidence and by the personal knowledge of the inquest.¹⁰⁵ The overwhelming majority of Canongate and Broughton feus and annualrents were held from the Lord Superior. Subinfeudation was common in Scotland¹⁰⁶ and was prevalent in the lands of Broughton, Coates, the Pleasance and elsewhere in the jurisdiction.¹⁰⁷ These subvassals were entered by Regality briefes of inquest,¹⁰⁸ although they were given sasine by their immediate Superiors.¹⁰⁹ In their retours, the latter and not the Baron were recorded as the persons from whom the lands were held.¹¹⁰

5. By what services is it held?

The replies to this point were based upon the documentary evidence presented to the inquest.¹¹¹

The Broughton lands were held in feu-farm, a non-military tenure of fairly recent origin,¹¹² and one which required an exact description of the services demanded. This was partly because feudal military service with ward and relief were always assumed to be incumbent upon any fief unless the vassal could prove the contrary.¹¹³ Accordingly in a feu-charter, the phrase "as the annual return or duty in fee farm" was necessarily included to debar military service while the additional "in lieu of all other services or secular claim or demand" excluded the casualties of ward and relief.¹¹⁴

On the other hand, unless expressly mentioned in the charter, the Superior could not demand services of Court,¹¹⁵ relief¹¹⁶ or any other obligation, provided the charter contained the saving clauses noted above.¹¹⁷

The Broughton charter was a document which contained an exact description of what the vassal was to render to his Superior in exchange for his feu.

In the first place, each vassal had an annual payment in money to make, in two portions, at Whitsun and Martinmas.¹¹⁸ Inquests returned this as a consolidated sum, although in strictness the total included the original rental before feuing, a gressum and an augmentation,¹¹⁹ or commutation upon services in labour and kind, added at the time the feu-farm tenure was created.¹²⁰

Originally the monetary annual return was divided between Commendator and Convent.¹²¹ The portions of the two varied

according to the feu,¹²² while pittance silver, or the Convent's share was eventually feued to the younger Bothwell of Whelpside in 1582.¹²³ It may have passed to the Bellendens a few years later, but instruments of sasine still tended to repeat the dual division.¹²⁴

Many vassals were also bound to deliver renderings in kind. These were the remnants of old payments in animals and victual made by tenants before feu-farm,¹²⁵ and now consisted of offerings of capons,¹²⁶ and sometimes hens¹²⁷ or pigs¹²⁸ either at the usual terms¹²⁹ or at Pasche, Christmas; at the Exhaltation of the Holy Cross,¹³⁰ and other festivals. These payments were now largely translated into money equivalents,¹³¹ but were still faithfully recorded by inquests.

Arriage and carriage were due from the feus in Saughton and Saughtonhall,¹³² while harvest work was imposed upon the tenants of Falkirk¹³⁴ ^{AND} while it was probably still comprehended within the Canongate burgage service.¹³⁵

Court service was expressly obligatory upon the great majority of Regality vassals including those of the Canongate. At the most it involved service at the three annual Head Courts held in the Canongate and service in the intermediate Justice and by now obsolete Chamberlain Courts when summoned.¹³⁶ At the least, service in only the three Head Courts was required.¹³⁷

Relief was not usually imposed upon feu-farm,¹³⁸ but in Broughton, including perhaps the Canongate,¹³⁹ the incoming vassal had to pay a duplicand or twice the annual feu-duty.¹⁴⁰

Alienation of the feu without consent of the Superior was prohibited.¹⁴¹ In practice, both in the Canongate and in the Regality as a whole, this provision was disregarded.¹⁴² Despite the threat of forfeiture of the entire holding contained in the charter¹⁴³ not a few Regality vassals alienated, acre by acre,¹⁴⁴ their entire estate, with no opposition from the Lords Superior.

An additional obligation was thirlage to a particular mill. The tenants of the Canongate,¹⁴⁵ the Pleasance and of Broughton were bound to the Canonmills, those of Saughton and Saughtonhall to Stenhope's Mills and so on throughout the entire jurisdiction.¹⁴⁶

These provisions, together with the condition that non-payment of the annual return for more than two terms would cancel the charter,¹⁴⁷ were supposedly recorded by the inquest. In practice juries concerned with Canongate holdings usually merged this point with the previous stating that the feu was held from the Superior "pro seruitio burgi debito et consueto tenentur in capite."¹⁴⁸ Regality inquests sometimes repeated the reddendo as contained in charter or infeftment, but more frequently stated the annual return, sometimes defined^{IN C} the Court service, but often concluded "--et aliis seruitiis vsitatis et consuetis secundum tenorem rentalis."¹⁴⁹

6. "What is now the annual value of the feu and what was its value in time of peace?"

The inquest was again guided by documentary evidence, and was bound to answer each part separately.¹⁵⁰ The present annual value was, in feu-farm, the annual return,¹⁵¹ and this point

presented no difficulty to the jury.

The value "in tempore pacis" was supposedly the annual value under the Old Extent.¹⁵² To this part the inquest simply added the word "tanquam",¹⁵³ and thus prevent any elucidation of an obscure subject.¹⁵⁴

Once, however a jury departed from this universal custom. In the retour of Gideon Russell to two distinct sub-feus in Coates there appeared: "Et quod pecia terre-- Nunc valet per annum summa tres solidorum et in tempore pacis tres solidorum et quatuor denarium,"¹⁵⁵ while the respective values of the second feu similarly differed by four pennies.¹⁵⁶

The two sub-feus were of recent origin. The first had probably been granted to Mungo Russell, by Clement Kincaid, a contemporary portioner of Coates¹⁵⁷ and the second created by James Kincaid the other portioner who had died in 1535.¹⁵⁸ Mungo Russell had certainly been invested in the properties as recently as 1530.¹⁵⁹ The inquest was instructed by his infert-
:ment,¹⁶⁰ and it is at least possible that in this case, the reduction in value was of recent date.

Beyond stating that the second annual value "tempore pacis" was based in some instances upon a comparatively modern estimate it is impossible to do anything more.

7. "In whose Hands the feu now is?"

To this head, the Broughton and Canongate juries always replied the Superior, either the Baron of Broughton, or the

sub-vassal's immediate overlord. Such an answer was ^{PERHAPS} unusual in view particularly of the widespread custom of conjunct infeftment, and of other methods of preventing the intrusion of the Superior.

Conjunct-infeftment was the investing of husband and wife in the same feu at the same time. The partner to whose heirs the fief was destined; apart from those procreated between them, was the actual owner. But upon his death, it was usually the husband, the surviving partner, had the full use of the lands until her death. She could not commit waste or abuse the property; but otherwise, had all the privileges and responsibilities of ownership.

Both in the Regality and the Canongate, conjunct infeftment was the normal provision for widows, lady terciers being rare. From the conjunct fiars, liferenters, and terciers, the Baron of Broughton, received his suit of Head Courts, annual returns and other services, but was deprived of his non-entries.

The heir, if a minor, had to be maintained by the conjunctfiar or liferenter and was excluded both from the active enjoyment of the estate and from its responsibilities. He could, however, be returned as heir, in which case the conjunct feuar would be designated as holder of the feu.

The invariable Broughton and Canongate practice was to break the continuous occupation of the conjunct-feuar by her resigning the fief some half-hour before the service by the inquest. The heir was duly entered: but liferent was specially reserved for the conjunct feuar. In this way, the

feu was rightfully described as being "in manibus domini", while the heir was returned. The conjunct feuar continued in possession of the fief, now a liferenter, but still enjoying the fruits of possession and the corresponding obligations.

8. "Since what date?"

The jury was bound to give exactly as possible the time during which the feu had been in possession of the Superior. Inaccuracy even within a few months was sufficient to invalidate the service.¹⁷⁵ The period was calculated from the death or resignation of the former owner until the day of the service.¹⁷⁶ The fief remained in possession of the Superior until sasine was granted, but this further period was beyond the competence of the inquest.¹⁷⁷

When possible, Broughton juries calculated the period in years, and months, or terms, and with resignations immediately prior to the service in hours and half-hours; usually adding the saving phrase "ob circa".¹⁷⁸ If they did not know the date of the reversion, they left blank the relevant portions of the retour.¹⁷⁹

9. "How, by what service, by whom and why?"

This final point meant little. The inquest confined itself to the "why" and "by whom". The succession was opened by the death or resignation of the previous vassal: and it remained so because of the failure of the heir to follow and pursue his rights.¹⁸⁰ Thereafter, if necessary, a clause was inserted reserving liferent.

In conclusion the findings of the inquest were retoured to the Regality Chapel, under the seals of the judges and inquisitors, and extract given to the purchaser of the breve.

10. The Precept of Clare Constat.

The ensuing precept of the Superior ordering the bailie to grant sasine began "Quia mihi per inquisitionem de mandato meo coram vobis factam et ad capellam meam retournatam compertum est"; and was followed by a recapitulation of the points of the retour.¹⁸² Alternatively, the sentence could run "Quia mihi per autentica, documenta, clare constat et sit notiuo quod--".¹⁸³

This second form indicates another form of securing service as heir. At the Superior's pleasure, he could acknowledge as correct all the points usually answered by the inquest; and in the same document instruct the bailie to grant sasine.¹⁸⁴

Entry by the precept "clare constat" was fairly common in the Regality: but was in the main confined to the greater families within its limits such as the Kincaids of Warriston,¹⁸⁵ and Bellendens of Pendreich,¹⁸⁶ The prominence of such families was sufficient to overcome any possible error; and to circumvent the main disadvantage of this form of entry its inability to withstand challenge by any who refused to acknowledge the parties concerned as true Superior and heir.¹⁸⁷

CHAPTER 13.

A.

1. Chapter 10.
2. Hope V.14.5 p.51.
3. Hope V.14.43p.56: Spotiswoode p. 773/5.
4. Spotiswoode p.773/4: B.P. "of brevis" c.5.
5. Spotiswoode as 3.
6. Spotiswoode p.775.
7. Hope V.14.43 p.56.

B.

1. Craig II.2.17.22. pges 735/6.
2. Chapter 2.
3. M.D. p.14430. No.18. Jan. 19 1667 - Reid.
4. App. 6. Craig as 1.: 25 p.739.
5. A.P.S. 1503 c.94 - Stair II p.489.
6. App. 1 and 2.
7. As 5.
8. By implication FROM WORDING OF ENTRIES.
9. As A.3.
10. App. 2. A.P.S. as 7.
11. A.P.S. 1503 c,94.
12. App. 1-3.
13. App. 1 A. Hutton was a Burgh sergeant.
14. By A.P.S. 1503 c.94 - all the officers of the town i.e. Head Burgh, were to be warned to bear witness. App. 1 B. Speir was a Burgh officer and Inglis, a Regality.

15. App. 1-3. Laurence Robeson was deputy clerk.
16. App. 1-2.
17. App. 1-2.
18. App. 2.
19. App. 2.
20. App. 2.
21. App. 2.
22. A.P.S. 1503 c.94. The only competent objections were to be against the judge; the inquest; and exceptions of bastardy, but this act did not exclude lawful exceptions against the party's right to a special service (Hope V.14-44 p.56).
23. Craig II. 2.18.9 p.756: A bastard could not of course succeed to a heritage (R.M. 2.50.1), (Hope: iv.8.1. p.319) unless by talyie (Craig 2.18.11 p.757) or in practice although not by law, through the subsequent marriage of his parents (Hope: supra).
24. Lanark p.48.
25. Craig supra: 27 p.773/4: Frenchmen were not excluded from the right of succession in Scotland nor were Scots in France (A.P.S.(s) Mary 8 c.65 and 66). To Craig's knowledge no other alien save an Englishman, was ever excluded from succession. The exception was due to English statutes excluding Scotsmen from fiefs in England. Scotsmen living abroad were sometimes objected to as heirs, although without success (Stirling p.82 Glasgow³ p.4).
26. Craig II.2.18.23 p. 770/1.
27. Supra 29 p.775.
28. Supra 22 p.769/70: this plea was raised against a friar in the Stirling Burgh Court (p.82: 24 Nov. 1564): he was, as a friar, dead in the sight of the world. Despite its correctness, the objection was disallowed.
29. Craig. supra: 9 p.756.
30. Craig as 28.
31. Craig as 25.

32. Craig supra. 31 pges 777/8.
33. Craig supra. 28 p. 774.
34. Craig supra. 29 p. 775.
35. As 34.
36. Craig supra 30 p. 777.
37. App. 2.

C.

1. For alternative method see Section 10: there was also general service by ward of Court. (eg. Spotiswoode p.139).
2. Hope iv.5.28 & 38 p.306: only a retour could make an heir active.
3. Eg. Craig II.2.17. 39 p.746/7.
4. Stair II. p.640.
5. Hope iv.5.39 p.307. In strictness all these rights belonged to the heir before he was returned by brieve and inquest: but at that stage he could not pursue for heirship goods if out of his hands (Hope. as 5) nor, if there was any doubt as to his position as presumptive heir, could he pursue ~~for~~ rents etc. without finding caution (Stair as 4).
6. B.P. "anent airis---" c.14.18: Spotiswoode p. 135 Stair II p.655.
7. Stair II p.655.
8. A.P.S. 1503 c.76.
9. Craig II.3.2. 3 pges 929/30: Stair II p.655.
10. A.P.S. 1540 c.106.
11. Chapter 16. App-3.
12. *By Crawford v. Covington, 1. July, 1623, the heir had to pay all nonentries before entry (Hope, 2. 7. 38 p.174)*
13. For these see Brieve of Inquest. point 5.

14. A.P.S. 1474 c. 57.
15. Hope III.8.15 p. 176.
16. App. 7.
17. B.P. "anent airis--" c.40: Spotiswoode p.137: Mackenzie III. 8.29. p.375.
18. Stair II p.656.
19. M.D. p.14420 No. 4 March 6 1630. Laird of Caskiben.
20. App. 6.
21. M.C.R. 1. p.327 "a service in the Canongate is a mere standing joke".
22. Mackay Canongate p.45. A Canongate jury returned Alexander Humphreys as Earl of Stirling, both in general and in special. In 1839, he was convicted by the High Court of forging the documents on which he based his claim.
23. Chapter 12.
24. App. 6. Fife App. B. p.339.
25. Stair II. p.490.
26. M.D. p.14423/24 No. 11. 22 July 1629. E. of Cassillis v. E. of Wigtown. A decision of a later date than the Court Record but the general service of Jonete Harrate (M.S. 13 June 1593) runs "---Obiit vltimo vestitus et sasitus et de feodo ad pacem et fidem supremi domini nostri regis et quod---."
27. App. 7.
28. App. 7
29. As 26.
30. Craig II.2.17.37 pges 745/6: Stair II p.493.
31. Eg. Mackenzie III.8.30 p.376.
32. The order of questions in royal briefes differed slightly from those of Broughton (eg. Craig II.2.17.22 pge.735 etc: & Stair II relevant chapter): otherwise there is no difference.

33. Stair II p.490: proved by the "witness" jurors: although in dealing with long-departed predecessors the juries could only suppose death (eg. App. 5).
34. Stair supra: or by two at least of the jurors.
35. Stair supra: Craig as 32: 30 p. 742/3.
36. App. 2.
37. B.P. "of brevis" c.28. In the Inverness Burgh Court. (Inverness II p.286/7: 24 April 1574), an heir in such a position petitioned the judged to serve him by open proclamation at the market-cross and by the suit roll of the Court, as it was well known to the neighbours that his father had possessed the lands.
38. B.P. supra: the returning inquest acted upon the evidence of the first jury.
39. The particular King had to be named.
40. Craig as 32: p.742/3.
41. Craig supra.
42. As 41.
43. App. 3. Few Regality retours went to this length: although all mentioned the territory and jurisdiction. eg. App.4.
44. An interesting example is provided by M.S. 9 Oct. 1594, in which an anterior land on the north side of the Canongate is described "Inter terras olim quond Jacobi Young notarij publici-- ex parte orientali". This was probably the Canongate clerk of the beginning of the century. For a similar perpetuation of names elsewhere in the Regality see Chapter 22.
45. App. 5.
46. A fief lapsed if no sasine for fifty years.
47. App. 5.
48. The inquests by leaving blank the date of death were also ignoring the period of nonentry which had to be stated exactly so as to avoid ignorant error.
49. Stair II p.490/1.

50. General descent included female succession.
51. Eg. M.S. 6 April 1594 - a Canongate tenement - "To the said George Rathmane Margarete Jak his spous and to the langar lewar of thame twa in coniunct fee and to the aris goittin or to be goittin betuix thame quhilkis faillyeing to the narrest lauchfull aris & assenais of the said George Rathman quhatsumeuir."
52. For rules of succession see Craig II.2.13.2 etc. for female heirs R.M.2.19. 3 & 6 (Hope II.iv.5.3 p.303).
53. M.S. 4 May 1597: "videlicet vnaqueque earum quatuor sororum succeden vni equali quarte parti de quinque partibus--."
54. M.S. 1 Feb. 1598 "Robert Cunynghame---heretour of ane fyve parte---." "vmquhile Cristiane Blyith Authour to the said Robert is lykwayis heretrix-."
55. M.S. 21 Dec. 1597. Annas or James Johnstone son of the late Patrick Johnston---brother of the late---Johnston mother of John Ahannay and brother of Jonete Johnston.
56. Craig II. 33. p.743/4.
57. Chapter ~~10.8~~.
58. Craig II.2.19.4. p.783/4.
59. B.P. "anent airis--" c.14 states that in wardlands even if the King dispensed with the minority of the heir, this did not prejudice the King's donatary, or the Superior, of the benefit of ward. The Broughton persistence of non-entry seems akin to this.
60. App. 3.
61. Chapter 15. Appendices.
62. Supra.
63. As 61.
64. App. 3.
65. Until the Head Court of April 1594 "the landis of Abircrumbie" appear as "in manibus domini"; from October 1594 they are not mentioned.
- 66-67. M.S. 5 Dec. 1599 - Retour recorded that Captain James

Edgar had died in June 1596. On the same day, Cunningham "haifand be gift---the Nonenteres maillis profettis and deweties of all & haill they tua tenementis---ay & quhill the entrie of the righteous air or aris thairto being of lauchfull aige--" obtained declarator of non-entry.

68. App. 4.
69. M.S. 22 March 1594.
70. App. 4.
71. Eg. Chapter 10. App. 7
72. Head Court 4 October 1593: Absentes baronie---James Winrhame--.
73. M.S. 30 July 1595. Retour--"Nunc existit et denerit in manibus dicti Jacobi Bellenden--ob causam mortis dicti quond. Jacobi Kincaid patris prefati Johannes Kincaid-- qui obiit in mense decembris anno domini millesimo quingentesimo octuagesimo--."
74. App. 2.
75. M.S. 19 June 1596. --"the actione & caus persewit be Thomas Nemouth--- & Alexander Nemouth his tutour"---"As the said persewer infetment of the daitt the last day of December The year of God Im.Vc. four scoir fourtene yeiris---."
76. M.S. 8 March 1595 - "Thomas Rannald Hatmacker burges of Edinburgh" served tutor to his nephew Paul Rannald M.S. 12 March 1595. Paul returned as heir to his father Peter Rannald.
77. In Nemouth's case by his mother, Sara Githane (eg. App. 2): in Rannald's by his mother Cristina Melville (M.S. 12 March 1595).
78. Craig II.2.19.14. p.789/90: conjunct infetment completely excluded non-entry. A liferent created by the widow renouncing her conjunct fee in favour of the heir, (as was the case in 77) did not bind the Superior.
79. As 75.
80. The Superior could also make the heir the donatary of his own non-entries. (Craig as 78; 7.p.785).

81. M.S. 22 December 1596: his uncle "Johne Dunkesone".
82. M.S. 11 May 1597: Jonet Porteous, died December 1596.
83. As 82.
84. "Dunkesone--land" appears amongst the lands "in manibus domini" from the Head Court of 19 Jan. 1597 until that of 26 April 1598: save in the Court of October 1597 in which the Canongate feus "in manibus" were not entered.
85. He was under fourteen in December 1596, otherwise he would have received curators (eg. B.P. "of curatouris" c.l.).
86. By implication: there was no liferenter, and the feu was no longer recorded as being in the hands of the Superior.
87. Both Abercrombie and Luncanson held their feus "pro seruito burgi debito et consueto:" so on the face of it they were on an equality in their position to the Superior.
88. Margaret had almost certainly attained her majority. She presented her brieve personally in Court without her curators being present, as did also Kincaid and James Winrhame. This suggests that they were by then free agents.
89. In Wardholdings the Superior had custody of the heir and his lands until his majority (Hope III.25.1. p.250).
90. Craig II.2.19.4. p.783/4. The age of Margaret Abercrombie is not given.
91. Hope as 89: Chapter 15.
92. M.S. 5 August 1598 (Appendices Chapter 15): Kincaid was at least twenty one in that year, and not more than twenty five. His name appears amongst the "absentes baronie" from the Head Court of 21 January 1596, which probably marks the attainment of his majority and assumption of the burdens upon the feu.
93. M.S. 17 Jan.1593. (~~Appendices Chapter~~).
94. As 93.
95. As 92. ~~The Superior. If he had obtained a declarator~~
~~placued tenants.~~
96. As 75.

97. Hope iv.5. 27 & 39.
98. Chapter 10. Appendices.
99. Stair II p.656.
100. Hope iv.9.4. p.323. IN STRICTNESS A.P.S 1540 c.106 DID NOT APPLY TO MINORS; BUT IN PRACTICE THEY WERE CHARGED TO ENTER (See Hope p176)
101. B.P. "of summondis" c.29.
102. M.D. p. 14447/56 No. 29. Nov. 16 1802.
103. M.S. 10 July 1594.
104. M.S. 7 Sept. 1597.
105. Stair II p.491. Jury instructed by the infettment.
106. *ca* R.M.S iv. nos 2332: 2643 etc.
107. Subinfeudation was very common in the Regality. Apart from the position in the Barony of Kerse (Chapter 3) Back and Fore Spittal had been subfeued by Robert Cairncross in 1556 (Laing C. No.662): as were also parts of Broughton (M.S. 20 March 1593/4: Logan 12 Nov.1602): of Coates (M.S. 7 Sept. 1597: Logan 23 June 1599: Laing C. No. 1983): of Fluiris (Logan 14 March 1580): various tenements in the Pleasance (eg. M.S. 29 July 1598) together with Plewlands, and Broomhouse in Saughton (R.M. S.vi. No. 966).
108. M.S. 29 July 1598.
109. Chapter 8 - The bailie in hac parte.
110. As 108.
111. Stair II. p.492.
112. Chapter 21.
113. Craig II.2.17.33. pges 743/4.
114. Craig supra.
115. M.D. p.15005/6. No. 3. 12 March 1630. Bishop of Aberdeen v. his vassals.
116. Hope III 7.18. p.176.

117. As Craig supra: and as 115.
118. Eg. R.M.S. iv. No.1385: 1662: 1593: and appendices.
119. As above.
120. The best Holyrood example of the translation of earlier rents and services into a mainly monetary feu-duty is provided by the Charter to the Earl of Arran (Holyrood pge. 276 et seq).
- 121-122. Warriston returned half of its duty to the Convent (Logan 3 Oct 1588): an oxgate in Saughton about 3s.4d. from its total of some 33s. (eg. Wood pge. 385/6: 268/9:) and Lochthrid 22s.4d. from its 20 marks (R.M.S.iv. No. 1593).
123. R.M.S. v. No. 377.
124. Eg. Logan 3 Oct 1588 - half to Convent and its successors.
125. Eg. Holyrood as 120.
126. Eg. Warriston returned 6 capons at Lord's Passion: (Logan 3 Oct. 1588): John Kincaid of Broughton 4 at Exhaltation of the Holy Cross (M.S. 11 June 1593): and John Winrhame 12 at Pasche (M.S. 20 March, 1593/4).
127. Logan 23 June 1599: Wood p. 385/6: 268/69.
128. R.M.S. iv. No. 2777.
129. M.S. 20 March 1593/4.
130. As 126.
131. Holyrood as 120: Wood p.138: R.M.S.v. No. 409.
132. R.M.S. iv. No. 2777: v. No. 409.
133. M.S. 20 March 1593/4: Logan 28 April 1600.
134. M.S. 6 April 1597 - Retour of John Swoird Reddendo "summam triginta trium solidorum et quatuor denarium duodecim capones et duodecim dietas--".
135. Chapter 5: Young No.1269: one day's work.
136. App. 4.
137. Holyrood as 120: R.M.S. III No. 8223.

138. As 116.
139. Not definitely: not mentioned in Young No. 1269: Laing C. Nos. 1911: 2369: 2395.
140. App. 4. R.M.S. as 118. See also Hope III 7.18. p.176.
141. As 140.
142. Chapter 21.
143. App. 4.
144. As 142.
145. Chapter 22.
146. Chapter 22.
147. As 118. App. 4.
148. App. 3.
149. M.S. 20 March 1593/4.
150. B.P. "of brevis" c.51.
151. M.S. 5 March 1594/5. Retour of David Bairnsfather to one half-acre in Pleasance "--et quod eadem equalis dimedietas dict acre terre--nunc valet per annum summam triginti denariorum vsualis monete---tanquam annualis redditus feudifirme eiusdem et tantum valuit tempore pacis--".
152. Craig II.2.17.34 p. 744.
153. As App. 2-4.
154. Fife App. B. p.340 Note 1.
155. M.S. 7 May 1595.
156. As Above. "Et quod dicte septem acre terre---vulgo nuncupat Landlandis conquest a dicto Johanne ousteane---nunc valet per annum summam viginti solidorum trium solidorum et in tempore pacis viginti trium solidorum et quatuor denarius"
- 157-158. M.S. as 155 - The first was held from Clement Kincaid and the second from James Kincaid. The latter had alienated numerous portions of his estate (eg. List of

Vassals) and may have subfeued to Russell as first sub-vassal.

- 159-60. M.S. 7 May 1595. Russale service. "The Quhilk day the persewer of the breiff (i.e. Gideon Russell)-- produceit his said vmquhile father infeftment vnder the signe and subscriptiounne manuall of Alexander Freir notar of the daitt the last day of Marche The yeir of God Im.Vc. four scoir yeiris."
161. Craig II.2.19.14. p.789/90.
162. Craig II.2.22.4. p.854/55.
163. Craig supra 6 p.856/7. It was a common practice in the Canongate and Pleasance for an heiress to resign her tenement, and accept conjunct infeftment with her husband with remainder to his heirs. This is brought out in the instance of Sara Githane (CHAPTER 20. App 5).
- 164-165. Craig supra. 4 pges 854-5.
166. Such as service of Court:cy CHAPTER 7.
167. List of Vassals.
168. As 166.
169. As 161.
170. MacKENZIE. II. 9. 33 p. 229.
171. Craig II.2.11.35.
172. Craig II.2.17.38 p.746.
173. App. 2.
174. As 173.
175. B.P. "of brevis" c.36.
176. Craig as 172: 39 pges 766/7. Apps. 3 and 4.
177. Supra.
178. App. 2.
179. App. 5.
180. App. 2.

181. App. 3.

182. Logan 29 Jan. 1588/9.

183. Logan 16 July 1602.

184. Supra: STAIN II p488.

185. Logan 3 October 1588.

- 186. As 183.

187. STAIN MS 184.

CHAPTER 14.

The Brieves of the Chancery of Broughton II.

The other brieves served by Regality and Burgh inquests were limited to the retourable brieves of tutory and idiotry, and to the pleadable brieve of division.

A - The Brieve of Tutory.

In lands held by military tenure, the custody of the lands themselves and of the person of an heir minor belonged to the Superior.¹ The fiefs within the Regality of Broughton were held by the non-military tenure of feu-farm and in such holdings the care and maintenance of the heir followed different rules. In feu-farm holdings, derived from the father, the care and upbringing of the minor was entrusted to the nearest cognate on the mother's side;² until the age of seven, this was the mother herself, if she was still alive.³ The fief, if in non-entry, was liable to the fruits of the Superior, but the active administration, pursuit for and care of, the minor's goods, properties and rights belonged to the nearest kinsman or agnate on the father's side, the tutor-at-law if no other provision had been made.⁴ Such an arrangement was not confined to Scotland,⁵ and was sensible as it removed, so far as was practicable, temptation from unscrupulous relations, although the fate of some minors, allowed to starve to death,⁶ shows its limitations.

The tutor-at-law was not the one most favoured by the law, being inferior to the testamentary tutor appointed by the heir's father.⁷ Margaret Livingstone was tutor-testamentary to the

young Baron of Broughton;⁸ and it was only on such occasions that women could be tutors.⁹ Failing a specifically appointed tutor the male next-of-kin was expected to secure his service as tutor-at-law. If he had not done so within a year and a day,¹⁰ the immediate Superior intervened and appointed a tutor-dative.¹¹

The brief of tutory was purchased, proclaimed and served by a specially summoned inquest in exactly the same way as the brief of inquest. It set the inquest only five points to answer.

A- Who is the nearest agnate on the father's side?

This question could be answered from the actual personal knowledge of the jurors: or at least, a sufficient number of them. The Broughton and Canongate inquests always returned the purchaser of the brief as next-of-kin on the father's side.¹² An answer, accurate enough, as the purchaser was usually a brother of the deceased.¹³ The next-of-kin was the immediately younger brother of the deceased, and not the elder;¹⁴ the younger being regarded as heir general.¹⁵

B- Is the next of kin twenty-five years old or over?

This point was again always answered affirmatively by the Regality inquests.¹⁶ Although a man attained his majority at twenty-one,¹⁷ his next four years formed an intermediate period, during which he was able to pursue for restitution for acts committed to his disadvantage during his own minority.¹⁸ He was not completely free from the consequences of his own minority, and probably was not in a sufficiently prosperous condition to

undertake the duties of tutory. For these reasons, and to deal with the possible claims of those more nearly related to the minor, but still under age,¹⁹ the minimum age of a tutor-at-law was twenty-five.²⁰

C- Is he sufficiently provided and able to bear the burden of administering the additional task?

This provision was again founded on commonsense; and was based on the assumption that a man with goods and gear of his own and able to manage his own affairs was not likely to abuse the property of his charge and bring it to disrepute.²¹

The Regality juries again always answered this point in the affirmative.²² The circumstances following upon the murder of John Kincaid of Warriston show the importance of this clause. The senior surviving uncle of the young Laird of Warriston was evidently Master William Kincaid, an idiot.²³ On the same day, Patrick, the second uncle secured the return of his brother as such;²⁴ and himself as tutor to the young heir.²⁵ This double service made doubly certain the failure of the elder, but incapable, brother to secure the tutory.²⁶

D- Is he entitled to succeed the heir in his feu in the event of his death?

The tutor, even if this was so, was not debarred from exercising the duties of his office.²⁷ As it so happens, all the retours of the present record return a negative answer; the heirs evidently all possessing younger brothers or sisters, or another person between them and the tutor.²⁸

The retours, accordingly, made no answer to the last point

of the brieve, which asked:-

E- If so, who on the mother's side is able, is of legal age, and ought to bring up the heir?²⁹

Such a point was obviously dictated by the potential danger to the heir, of being near the person of a tutor who was also his heir.³⁰ The tutor was not in any case, the custodian of the child, but the inclusion of this clause left no doubt as to the identity of the rightful guardian of the heir's person. In the meantime, the tutor and prospective heir could be trusted not to abuse property which might fall to him.

F- The Retour to the Chapel and Caution taken by the Tutor.

The points of the brieve being answered, the retour was sealed by bailies and inquest returned to the Regality Chapel, and the tutor nominated.³¹ The tutor-at-law, as distinct from other tutors,³² had to take the oath de fideli administratione and to find caution.³³ Failure to do so within a year and a day, forced the Superior to replace him by a tutor-dative.³⁴ Thus James Kincaid of Criaglockhart, Clement Kincaid of the Coates and Master James Watson of Saughton bound themselves: "As cautioneris & souerties for Patrik Kincaid tutour of law----to Johne Kincaid--- that he sall do to the said John Kincaid at his aige of fourtene yeiris compleitt All that ane tutour aucht to do of the law And sall mak Raknyng & payment to him of all guidis geir maillis fermes & deweties of landis pertenyng to the said Johne Intrometit or to be Intrometit with be the said Patrik Kincaid during the said Johne Kincaid minoretie At the said John yeiris of fourtene

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yeir foirsaid--"35 This act of caution is typical of others contained within the record: and gives a fair idea of the duties of the tutor.

B - The Brieve of Idiocy.

Idiots, furious persons and those insane were not incapable of succeeding to, or holding, property: but they could not perform the active duties of administration nor alienate any part of their heritage.¹ In short, they could do nothing but enjoy the usufruct of the estate. Like minors, they passed under a form of tutory; the relevant brieve of idiocy being usually obtained at the time of the accession of the idiot to his estate.² The sole Broughton brieve, that returning Master William Kincaid as idiot, was purchased at the death of the Laird of Warriston and the serving of a tutor to his son.³

The brieve contained six points, which differed little from those of the brieve of tutory.⁴ The first and second attested to the mental incapacity of the unfortunate,⁵ and to his inability to administer either his lands or his moveable and immoveable goods.⁶ The third indicated the duration of the idiocy; in the case of William, three years;⁷ while the following answer denominated the nearest agnate.⁸ Previously to 1585, care of the idiot and of his property, belonged to the Superior:⁹ but since then to the nearest agnate, who in the example cited was Patrick Kincaid.¹⁰ The last points asked if the agnate was provided in property of his own, and capable of administering it,¹¹

and was of full age.¹² The brieve was then sealed, returned to Chapel, and extract granted.

C - The Brieve of Division.

When several heirs, or more particularly heiresses, were returned to, and invested in, a single feu, the active exercise of superiority belonged to the senior,¹ non-entries, duplicands and the like being levied by her,² and then divided amongst the others.³ In Broughton, some feus, such as that of the three MacCalyeane sisters⁴ or of the two Blaikkies⁵ continued to be held in common by their owners,⁶ the women drawing the rents and mails, and uniting to perform suit of court and other obligations to the Barons of Broughton.⁷

On the initiative of one heir it was possible to obtain the equal division of the lands and profits of the feu amongst its possessors;⁸ although the feu itself still owed exactly the same amount and number of obligations to the Superior.⁹ The necessary action of division was initiated by a brieve obtained from the Royal or Regality Chancery.¹⁰

The brieve was proclaimed in the normal way: although parties having special interest were entitled to individual citation.¹¹ On the day of Court, pleadings and objections were allowed, before the inquest was admitted and put to its task.¹² In the present record, there is only one instance of such pleading.¹³

A brieve of division was obtained by four of the five heirs of Alexander Blyith.¹⁴ The fifth appeared in Court, and to

instruct his right to appear and to object, referred to his sasine of his portion.¹⁵ This objector, Robert Cunningham firstly complained that he had not been specially cited. His contention that this neglect invalidated the proposed division was correct; but, as the pursuers replied, the brieve had been publically proclaimed and therefore all interested had been warned.¹⁶ This in itself would not have been an effective answer to Cunningham's plea, had he not, by appearing in person and being admitted to defend, obtained the equivalent of a personal warning.¹⁷ Accordingly, the bailies lawfully repelled his objection.¹⁸

His second contention was more serious, in that he claimed that the sisters had disposed of the lands by contract.¹⁹ This accusation should have been backed by written proof,²⁰ but upon his immediate failure to do so, this objection was also repelled and the jury sworn and admitted.²¹

A court of division could not be continued unless by the consent of the purchasers of the brieve; but evidently with this assent the Blyith heritage was not divided for another four months.²² To the second court of division Cunningham was specially warned, although he did not appear.²³ This court was held upon the ground of the tenement, the usual practice in such actions.²⁴

Once the jury had divided the lands into equal portions it returned to the court and delivered its decision through the Chancellor.²⁵ Each heir, in order of seniority, chose his or her portion, later to be formally invested in it.²⁶ Each

received his share of rents and the like from which each was to render the proportionate contribution of annual rents due upon the whole feu.²⁷ In the Blyith instance, Cunningham as heir to the fourth and deceased sister, by his absence blocked the division.²⁸ The three elder sisters each selected her part; but the remaining two fifths remained unallocated until Cunningham decided to make his choice.

D - The Brieve of Terce.

When a vassal died his widow was entitled to such provision from his heritable property as would prevent her from starving and would maintain her in comfortable circumstances.¹ Frequently, she was either a conjunct feuar or a liferenter.² If the latter, she entered into possession of her husband's estate only upon his death, and into enjoyment of its ordinary profits.³

Conjunct infeftment depended upon the joint investiture of husband and wife,⁴ and liferent upon a formal contract concluded by the husband in his lifetime, both being confirmed by the Superior.⁵ If the widow was not so endowed, or if the contracts contained no specific prohibition,⁶ she was entitled to her terce, or third part, of her husband's property.⁷

She obtained her terce only by purchasing a brieve of terce,⁸ which was proclaimed and served in the normal way, although the heir possibly did not require to be cited in special.⁹

This brieve was obtained by Jean Ramsay, widow of John Kincaid of Warriston, in 1589; although she was already conjunct-

feuar of half of Warriston.¹⁰ The jury had to decide if the widow was the lawful wife of the deceased.¹¹ This was sufficiently answered if it was known to the inquest that she was held and reputed to be such.¹²

The second and final point was whether the deceased had died vest and seased in the lands at the peace and faith of the King.¹³ If the vassal had died a rebel¹⁴ or had disposed of the lands,¹⁵ or had entered a monastery,¹⁶ his widow lost all claim to her terce, while if "kenned" in her husband's lifetime she forfeited her terce or liferent if he remained at the horn for more than a year and a day.¹⁷

Lady Warriston proved satisfactory on both accounts and was "kenned" to a third of Warriston, reserving her infeltment of half, and to a third of the Kincaid acres of Hillhousefield and Coates and of the family's tenements in Leith.¹⁸

In the process of "kenning" the bailie decided by lots whether it should begin at the east or west side of the lands.¹⁹ Once this was decided the first two acres were assigned to the heir and the third to the widow and so on,²⁰ each land being visited in turn.²¹ Houses and other buildings were similarly divided; if more than one house, the widow received one, if only a single house it was apportioned between heir and widow.²²

Thereafter the widow was entitled to a full enjoyment of her third²³ and was expected to perform her share of obligations.²⁴

CHAPTER 14.

A.

1. Hope III.25.1.p.250: Spotiswoode p.344.
2. Craig 2.20.6 p. 305/7.
3. Craig: supra 7 p.812.
4. Craig: supra 6 and 7.
5. Eg. Magna Carta: p. \$76
6. Taymouth p.364: 365: p.379: Laird pursued John McIntheir for letting late Finlay McKeissik's children die of hunger, having their goods to sustain them.
7. Craig as 2: 7 p.807.
8. Chapter 8.
9. B.P. "of tutorie" c.7:16: women could be testamentary and dative tutors.
- 10-11. Craig as 7. Spotiswoode p.345.
12. App. 1A and B.
13. App. 1A and B.
- 14-15. Spotiswoode p.343.
16. App. 1A and B.
17. Craig II.2.20.17 p.814.
18. Supra.
19. Hope iv.10.34 p.332. The nearest male relation being a major was tutor until the minor actually next-of-kin became of age.
20. A.P.S. 1474 c.51: 1585 c.18.
21. Eg. Fife. App. B. p.342.
22. App. 1A and B.
23. App. 2.

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24. App. 2.
25. App. 1B.
26. Master William Kincaid was retoured as idiot before the return of Patrick as tutor. As "certified" he could extend no claim as tutor.
27. Mackenzie 1.6.4 p.79.
28. eg *Supra* 13. App 2.
29. Spotiswoode p.774.
30. Mackenzie as 27 - states that this was why tutor-at-law was not allowed to be guardian of the child.
31. App. 1. Fife. App. B. p.342.
32. Testamentary tutor did not take caution or oath (Spotiswoode p.343).
33. Hope iv.iv. 28 p.331.
34. Craig II.2.20.7 p.807.
35. M.S. 6 August 1600.

B.

1. Craig II.2.18.29 p.775.
2. *Supra*.
3. App. 2.
- 4-8.. App. 2. A.P.S. 1475 c.67.
9. A.P.S. 1585 c.18. Craig as 1.
- 10-12. App. 2. Mackenzie 1.7.27 & 28 pges 95/96.

C.

1. B.P. as below. c.25
2. B.P. "airis" and successors c.25.
- 3-6. Chapter 7.
7. As above.
8. B.P. "of brevis" c.92.
9. Chapter 7.
10. App. 3.
11. App. 3L as a pleadable brieve.
- 12-17. App. 3.
18. App. 3. Melrose. i. p. 37/43
19. App. 3.
20. What was founded on writ could be proved by writ only
(eg. Hope vii.14.9 p.270).
21. App. 3.
22. B.P. "of brevis". App. 4.
23. App. 4.
24. App. 4.
25. App. 4.
26. App. 4.
27. App. 4.
28. App. 4.

D.

1. Craig II.2.22.25 p. 869.
2. Liferent was usually contracted before marriage; there were

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many such provisions in Broughton: eg. Logan 21 Oct. 1588: Jean Livingstone future wife of John Kincaid of Warriston given sasine of half the lands of Huick in conjunctfee and liferent; 17 Nov. 1602 for Jean Matheson daughter of John Matheson in Broughton and future wife of James Hairt, Goldsmith, c.7. acres in Broughton and one in St. Leonard's Way. Logan 1 Sept. 1599: For Elizabeth Hepburn, daughter of the late William Hepburn of Gilmerton and future wife of George Logan portioner of Bonnington, twenty acres of Bonnington, in liferent.

3. Craig II.2.22.21 p.866.
4. Craig II.2.22.25. p.869.
5. Craig as 3.14. p.862. A base grant, i.e. not confirmed by Superior, might not exclude non-entry.
- 6-7. Craig as 4. 9 p.858/60.
8. Spotiswoode p.775/6. Craig as 4.31 p.875.
9. Craig as 8. Hope v.14.43 p.56 does not include the brieve of terce amongst the pleadable, but the nonpleadable, brieves.
10. Logan 13 Dec. 1589.
11. Spotiswoode p.775/6: additional point, that husband was reputed to be dead.
12. A.P.S. 1503 c.77: reputed widow enjoyed terce until it was declared by sentence that she was not lawful wife.
13. Fife. App. B p.343.
14. Craig as 3. 35 p.873/9.
- 15-16. Craig II.2.22.35 p.873/9.
17. Hope III.12.30 p.204.
18. Logan as 10.
- 19-20. Craig as 15: 31 p.875.
21. Logan as 10.
22. Craig as 15. 28 p.873.
23. Craig supra 25 p.869/71.
24. Eg. for Jean Ramsay's court service see Chapter 7

CHAPTER 15.

The Appointment of Curators: Declarators of non-entry, escheat and bastardy.

The various briefes did not complete the administrative activities of the court of the Burgh and Regality. The briefes secured the return of heirs, gave them tutors, divided lands and the like, but they stopped short, leaving undone a variety of other necessary duties. Amongst these was the appointment by the heir of his curators.

A - The Curators.

The duties of the tutor ended at the conclusion of the pupil's fourteenth year if a male, and twelfth if a female.¹ Then it fell to the pupil to obtain from the judge ordinary a warrant citing two at least of his kin, in special, and the others in general.² The citation was proclaimed at the market-cross of the head-burgh, on nine days warning, charging them to appear to see curators appointed and returned to the pursuers.³

The Regality and Burgh followed these general rules. The edict could be obtained from either the Canongate or Regality bailie's, and the warnings executed by either the Burgh or Regality officers,⁴ To cite persons outside the jurisdictions, the normal expedient of obtaining letters of the King was employed.⁵ While citations were usually proclaimed at the market cross of the Canongate;⁶ when outdwellers were involved

they were called at the market crosses of Edinburgh and of the Head Burgh of the relevant jurisdiction.⁷ Thus Robert Gourlay, uncle of Margaret, Marion, Helen and Janet was cited at the market cross of the Burgh of Regality of Hamilton.⁸ Nevertheless he did not appear on the day appointed. Persons named, were also supposedly warned either in person or at their dwelling place,⁹ but there is no direct evidence that this was followed.

The Canongate and Regality pupils always summoned the four next of kin which, although a common practice, was not expressly demanded by the Act of 1555.¹⁰ The complete number rarely, if ever, appeared in court. Only two of the kin of the Gourlay sisters came to court;¹¹ only one of the relatives of Marion and Margaret Aird;¹² one of the kin of John Gray, indweller in South Queensferry,¹³ and in the same way one relation of William, son of William Fenton, tailor burghess of the Canongate.¹⁴

The minor usually chose two curators,¹⁵ although James Bellenden possessed four,¹⁶ and there was probably no legal limit to the number he could nominate. Sometimes, although by no means always, the next-of-kin were appointed. The Gourlay sisters nominated their two relatives, Alexander Kincaid, vicar of Wellis and Thomas Chirrie;¹⁷ but earlier, George Harrat, despite the presence of his kinsmen, selected two prominent Canongate burgesses, Hector Balclawie and John Schoirt.¹⁸ Provided the curators-elect were competent and the next-of-kin did not object, their nomination was valid.¹⁹

By way of exception to the normal method of citation and appointment, a minor, without curators, but involved in litigation could either be given curators by the judge or desire them ad lites instantly.²⁰ James Douglas, minor and holder of an escheat, was engaged in an action against his father and another man.²¹ He desired curators ad lites, naming his four next-of-kin, exclusive of his father, and obtained the two who were present in court.²² The authority of curators ad lites terminated with the specific cause or action,²³ although in this episode, the two curators were continued, apparently to administer the escheat.²⁴

The curators, or at least one,²⁵ were obliged to find caution and take ^{THE} oath de fideli administratione.²⁶ Usually each curator became surety for the other.²⁷ The curators, with both male and female heirs, held office until their charge attained the age of twenty-one.²⁸ During their tenure they did not have the care of the minor's person; for from pupillary he was a free agent;²⁹ but were responsible for the care and maintenance of the heir's property within the jurisdiction.³⁰ The curators pursued and defended in their ward's name,³¹ and while the minor,³² without their consent, could marry, warn his tenants to remove, grant reversions of lands wadset to him,³⁴ and confer renewals of investitures:³⁵ he could not alienate nor do anything else to reduce the value of his estate.³⁶

Upon the expiry of their commission the curators accounted for their stewardship, and received a formal discharge from their

ward.³⁷ Accordingly, in June 1594, Alexander Gourlay: "Exonerit
quitclameit and dischairgeit---his curatouris---and---thir
cautiounar of all Intromissioun and sow^Mes of mone quhatsumeuir
asueill of ^Mhaillis as vtherwayis Intrometit with and tane vp be
his saidis curatouris--- And compeirit the saidis curatouris and
Renunceit Re integra thir office of curatourie--- sua that he may
intromet with his awin."³⁸

Without this discharge, the curators were liable to their
former pupil for the damage caused to him by their default during
his minority,³⁹ and, until his twenty-fifth year, the heir could
reduce their actions, provided he offered to restore any profit
obtained therefrom.⁴⁰

Alexander Gourlay, having discharged his curators, a year
later renounced all contracts, wadsets and tacks made by them; in
particular to his sister Margaret.⁴¹ Again, in the following
year, revocation was made by another former minor. Edward
Kincaid in Meldrumsheugh had granted tacks of his land, without
consent of his curators to John Kincaid in Broughton.⁴² These
he renounced as being to his hurt and disadvantage. In this he
was acting within the law, for a minor could cancel even his own
acts between his majority and the age of twenty-five.⁴³

B - Nonentry and Liferent.

It has already been indicated that although an heir was returned by inquest, and even granted sasine, he was not necessarily placed thereby in full possession or even placed in enjoyment of the revenues of the estate.¹

The heir minor saw his feu subject to either the non-entry of the Superior or to the claims of the conjunct-fiar or liferenter, while the heir of full age could witness the latter in continued occupancy of the feu.² Upon the death or resignation of the vassal and the accession of the next, the fief was in non-entry.³ By reason of this failure to enter, the Superior was entitled to enjoy the fruits of the estate or annualrent;⁴ although, in strictness, the feu was not considered to be in non-entry until the Superior had obtained a formal declarator from the court of the jurisdiction.⁵ In practice, the rights of the overlord varied but little, before or after the declarator,⁶ and in Broughton, the declarator appears only when the fruits of non-entry had been gifted by the Lord Superior to someone else.

The overlord could gift the fruits of non-entry to his legatees or donataries.⁷ The donatary could be anyone, even the heir himself;⁸ and upon receiving the gift, he read it aloud, before a notary and witnesses, to his debtor, the heir, or failing his presence, before his house.⁹

The Broughton donataries included friends and relations of the Superior, bailies such as John Graham, indwellers of the

Canongate and burgesses of Edinburgh.¹⁰ Their gifts dated to before the formal declarator: the latter being obtained on occasion when the minor was returned heir.¹¹

Perhaps the best illustration of the declarator of non-entry is provided by that of Thomas Young, Writer to the Signet and his wife, Isabel Bellenden.¹² On the death of Master Andrew Abercrombie, parson of Rattray, his Canongate tenement reverted to Sir Lewis Bellenden, the first Baron; who granted ^{Young and his wife} them the fruits of non-entry or the mails, duties and profits of the holding;¹³ the gift dating from the decease of the minister in February, 1591.

Young and his wife did not seek a declarator until exactly two years later. Then they summoned the presumptive heir, Margaret, daughter of the deceased and her tutor, or curators; who were not named and were possibly summoned in general, which was legitimate provided they were unknown to the pursuers,¹⁴ and also the tenants of the feu.¹⁵

The action, as was commonly the case, was not defended; but it followed normal lines and fell into the requisite decisions.¹⁶ The bailies being advised by the gift of donation decided that the feu was in non-entry and had been since the death of the last vassal, adding as was necessary, the date of his decease,¹⁷ and would remain so until the lawful entry of the heir being of full age.¹⁸ Secondly, the bailies determined the destination of the fruits. Normally this was the Superior and the first decision was usually sufficient to enable him to assume

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the full privilege of non-entry.¹⁹ In the present instance, and
the other Broughton and Canongate examples, the bailies named the
donatory, assigning him the mails, duties and profits, or the
annualrent, from the death of the vassal until the entry of his
heir.²⁰

The curators of Margaret Abercrombie did not defend the
action; nor did others similarly placed. They could however
oppose the claims of Superior or donatory by claiming that a
vassal was already seised in the lands,²¹ or bring forward proof
of conjunct infestment,²² of terce,²³ of the right of courtesy²⁴
or any other claim that the feu was full,²⁵ and not vacant.
Continuation of court was allowed to furnish the necessary
evidence and to obtain a final decision.²⁶

Margaret and her associates thus saw the fruits of their
feus disappear into the possession of their overlord or his
legatees; who pursued the tenants in the years after for rents
and mails.²⁷ Sufficient of the profits had however to be
devoted to the adequate support of the heir;²⁸ and often in
practice, he or she continued to dwell either upon the feu in
non-entry or with the legal custodian. In the Winrhame quarter
of Saughtonhall, there lived as tenants and occupiers Jonet
Carmichael, widow of James Winrhame, her brother-in-law David
Winrhame and probably the heir minor.²⁹

Estates such as the Winrhame quarter were often heavily
burdened with annualrents payable to Edinburgh burgesses and the
like. The creditors, in Broughton, at least, drew their annuals

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from feus in non-entry: the responsibility of payment resting with the heirs and their curators. The Winrhame quarter had two precepts of poinding served against it in 1594; the occupiers goods being poinded.³⁰

This was a partial contrast to the position under liferent and conjunct infeftment. There the liferenter while receiving the fruits and possession of the estate was also liable for the payment of all liabilities upon it.³¹ Accordingly, Sara Githane, liferenter, of a Canongate tenement made herself responsible for the entire array of annualrents due from the holding. She also bound herself to maintain the estate in the same condition as it was upon the death of the last vassal, in particular by keeping the buildings water and wind proof.³²

Sara provides the sole example of a liferenter finding caution to observe these conditions; although such could be demanded from all liferenters.³³ The documents relating to the Nemouth family, in addition, provide a good illustration of the position of an heir while his holding was held by a liferenter. Thomas Nemouth, the minor, was returned to his holding and served with an uncle as tutor.³⁴ Sara remained in occupation of the tenement, and even, until compelled to deliver them, the heir's portion of his father's goods.³⁵

Liferent could have unfortunate results. Non-entry expired upon the majority and entry of the heir: liferent upon the decease or resignation of the liferenter. Until then the

his patrimony. Often the liferenter gave way in return for maintenance. Margaret Stewart, mother of Nichol Dalzell in Saughtonhall Mill, renounced her liferent of two acres in return for "Sax firloittis quheitt sax firloittis beir guid and sufficient chiritit ^Markcat guid & ^Markcat mett yeirlie betuix the feistis of yuill & candilmes to be mett & measourit within the toun of Saughtonhall and to be transpoirtit & carieit to the said Margaret quhair sho salhappin to dwell for the tyme:" and such an arrangement was common.³⁷

On the other hand the liferenter could maintain her hold upon the estate to an advanced age, and allow the tenants to waste and destroy the property. Such a position arose in Smithlands^s, despite all provisions enforcing the finding of caution by liferenters, where Watson of Saughtonhall, heir by conquest, was forced to secure a decree of a court, held on the land, ordering the defenders to cease from breaking the ground, and removing and selling fuel and other materials, under a penalty for each offence.³⁸

C - Declarators of Escheat and Bastardy.

A person put to the horn and denounced rebel for civil causes saw his goods and gear^a revert to the Crown or to the Lord of the Regality.¹ The Superior, or his donatory could intromet with the goods without a declarator, but in practice, such was necessary to avoid any possible charge of spuilie.²

The Broughton and Canongate vassals contrived on the whole to keep within the law: and few were put to the horn for debt or any other civil matter. One indweller of Prestonpans was however outlawed for deserting his wife.³ As a result of this contumacy, he was, on the initiative of his wife, declared rebel to the King and his goods and gear, money, gold and silver, jewels, corn, cattle and all other possessions reverted to the Baron of Broughton. Adam Bellenden, the commissioner, granted them to Williame Merchinstoune portioner of Inveresk: who sought for a declarator of escheat in the Regality court, citing the Englishman and his wife, probably as next-of-kin,⁴ upon the usual sixty days for persons outwith the realm. The cause was undefended, and the goods were declared to belong to Merchinstoune.

Such an escheat endured only until the reduction of the horning;⁵ and intromission with the goods^{THE DONATORY} was spuilie.⁶ During the time of escheat, the donatory was responsible for the debts owed^{by} and charges upon, the rebel;⁷ these being specifically mentioned in gifts of escheats proceeding upon decrees of deforcement, and breaking of arrestment.⁸ In the example cited, no mention is made of provision for the deserted wife: although

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upon divorce she was entitled to her tocher,⁹ and during proceedings, to expenses modified by the Court of Session.¹⁰

Declarator of bastardy can be passed over quickly, as no example is contained in the court record. - The position of the bastard dying without lawful issue is of interest for it is the one instance in which the feu reverted not to the Superior but to the King.¹¹ Accordingly upon the death of Elizabeth Gib, illegitimate daughter of a former bailie of Newhaven, her annualrent from a Canongate tenement passed to James VI: who conferred it upon John Ker of Lump~~ho~~y. The Baron of Broughton was ordered to grant sasine: and this enforcement of vassals upon a probably unwilling Superior had, a century earlier, led to a certain amount of protestation from the Abbots of Holyrood.¹²

A formal declarator of bastardy was useful to both Crown and donatory. It enabled possible lawful heirs to appear, and made clear the donatory's title. Moveables and other goods also reverted to Crown and donatory, and from these, debts and other obligations had to be met.¹³

CHAPTER 15.

A.

1. Craig II.2.20.8 p.808. B.P. "of curatouris" c.1. Thirteen in the case of the Gourlay sisters. App. 2.
2. A.P.S. 1555 c.35.
3. As 2. App. 1 and 2.
4. App. 2.
5. App. 2.
6. By virtue of the Act of 1555.
7. App. 2.
8. App. 2.
9. A.P.S. 1555 c.35.
10. App. 1 and 2. Craig as 1.
11. App. 2.
12. M.S. 8 March, 1594/5 Burgh Court. --"George Aird of Curriemylne Johne Aird his sone As nerest of kin -- on the father syde Adam Thomsone Matelman indwellar in Leith & William Bosuall as nerest -- on the moder syde -- Compeirand personallie in Iudgment the said George Aird on the ane pairt And the said John Aird & Adame Thomsone & William Bosuall --- nocht comperand ---".
13. M.S. 26 March 1600. Of his four next-of-kin Andrew Gray of Bulyeoune, Thomas Paterson, Thomas Wilson and John Orrok only the third appeared.
14. M.S. 9 April 1600. His four relations were Thomas and John Fenton, John Gib servitor to the King, and David Vaus merchant in Edinburgh. Only Thomas Fenton appeared.
15. App. 1 & 2.
16. Chapter 8.
17. App. 2.

18. App. 1. The Airds nominated James Breik, Goldsmith, and Cristal Hume, indwellers in the Canongate: Fenton, Thomas Fenton and William Taylor, Tailor burghess of the Canongate: and Gray Wilson and John Gray, skipper in Leith.
19. A.P.S. 1555 c.35.
20. B.P. "of curatouris" c.3. Hope iv.10.28 p.330.
- 21-22. App. 3.
23. The curator of the permanent nature of those in App. 1-2 was ad negotia et ad litem.
24. His father being alive was his natural curator eg. B.P. "of curatouris" c.12. In this particular instance the father could not be curator in rem suam. supra c.12.
25. By the later case of Laird of Airth and Laird of (11 March 1602: Hope iv.9. 33 p.526).
26. A.P.S. 1555 c.35.
27. App. 1 & 2.
28. As 26. Apps. 1 & 2; applied to both males and females.
29. B.P. "of minors" c. 24-31.
30. App. 1-3. The competence of curators appointed by an inferior judge, could reach only to property within the jurisdiction.
31. Hope v.16.12 p.65.
32. B.P. "of sumboundis" c.29.
33. Hope iv.9.17 p.324.
34. Hope supra. 12. p.324.
35. Hope supra 3. p.323.
36. Spotiswoode p,301. Roughly a minor could do, by himself, nothing to his disadvantage.
37. App. 1-2.
38. App. 4.
39. B.P. "restitutio in integrum" c.2. A.P.S. 1493 c.51.

40. B.P. "of restitution" c.9.

42. App. 5.

42. App. 6.

45. Craig II.2.20 17 p.814.

B.

1. Chapter 13.

2. Chapter 13.

3. Hope III.27.14 p.262.

4. Craig II.2.19.5 p.783/4.

5. Craig II.2.19.8 p.787. The Superior pursued in his own court (Craig supra).

6. In strictness, in feu-farm lands, the Superior before declarator was entitled to only the feu-duty (Hope III.27.7. p.261) App. 7. The declarator in Canongate and Broughton carried mails, profits and duties back to death of last vassal.

7. Craig as 5. 6 and 7. p.784/5.

8. Supra.

9. Supra 8. p.585/6.

10-11. *GC. M.S. 5 DEC. 1599: 6 JAN. 1600.*

12-13. App. 7.

14. B.P. "of summondis" c.29.

15. App. 7.

16. Craig II.2.19.13 p.789: App. 7.

17. Supra: App. 7.

18. Supra: App. 7.

19. Supra: App. 7.

21-25. Craig: supra: 14: p.789/90.

26. Spotiswoode: p.318. continuation not allowed when all

things could be proved instantly in writing: under these circumstances there was summary process on six days warning.

27. App. 8. By App. 7. Cunningham was a tenant upon the Abercrombie holding. (Hope III.27.22 p.263).
28. Mackenzie. II.9.33 p.223. A.P.S (S): Jn. II. 3 c.25
29. Eg. Chapter 10 App. 7. In the Winrhame instance there is no declarator of non-entry recorded, so possibly the Baron took no more than the annual return.
30. As 29: By Hope (III.27.23 p.263) the annuals of an annualrent out of any land during non-entry belonged to the Superior.
31. Mackenzie II.9. 33 p.223.
32. App. 9.
33. A.P.S. 1491 c.25: 1535 c.14.
34. Chapter 14.
35. Chapter 20. App 5
36. App. 10. John Watson of Saughtonhall had bought Smithlands, but was excluded by the liferent of Elizabeth Hamilton from active possession of the estate.
37. Chapter 17. Appendices.
38. App. 10.

C.

1. A.P.S. 1579 c.75: 1592: c.126: App. 12.
2. Hope vi.3L.8 p.185.
3. App. 12. A.P.S. 1573 c.55.
4. Hope vi.30. 1 & 7 p.184 - citation of next-of-kin was probably necessary.
5. Hope vi.27.5. p.155.
6. Hope vi. 18. 44 p.111-
A.P.S. 1592 c.145.
7. A.P.S. 1581 c.118.

8. A.P.S. 1581c.118.
9. A.P.S. 1573 c.55.
10. Hope vi.36.3 p.198. The conduct of Jonet Reid was based upon the Act of 1573 c.55 which established desertion for four years as a ground for divorce.
11. App. 11. Young No. 671 Hope iv.8.4 p.319.
12. Young. supra.
13. Hope supra. 3 & 8 pges 319/20.

CHAPTER 16.

Poinding: poiding of the ground and apprising.

Although administrative duties occupied a considerable amount of the time of the joint Court, it was also concerned with a fair number of civil actions initiated by precept. Many of these dealt with actions in which only a small sum of money was involved. The others fall within a limited range of specific causes, nearly all of which have some bearing upon the system of feudal landownership prevailing within the Regality and the Canongate.

Poinding was the usual remedy resorted to by a pursuer who had obtained a decree from the Court, but was faced by the refusal of the defender to observe its provisions.¹ This failure enabled the creditor to request the judge ordinary to instruct an officer to poid goods to the value of the liquid sum owed.

The procedure of poiding was strictly governed by the law.² A creditor who proceeded without either decree or precept of poiding was liable to the penalties of theft.³ John Crawford, who broke into the Canongate home of Margaret Murray and removed a brown gown, did, in fact, come into the will of the Lord Superior for his contempt of the Baron, his bailies and burgh magistrates in not securing their lawful assistance. What his ultimate composition was, is not recorded, but he had undoubtedly attempted to recover his debt by his own force, and had accordingly placed himself outside the law.⁴

The executing officer was similarly bound by rigid rules of procedure. Certain articles could not be seized, such as plough animals and implements of tillage during the seasons of use,⁵ nor anything fixed within a house.⁶ The sergeant could poind corn growing in the fields,⁷ but as a rule nothing which was essential to the livelihood of the debtor.⁸

In practice, the Canongate and Regality officers, when poinding for small debts, disregarded this general provision, and laid hands upon listers' cloth,⁹ dagmakers' vices and bellows.¹⁰ Such annexations although probably inconvenient to the sufferer would not bring him to ruin, and more frequently, the officer⁵ took possession of iron chimneys,¹¹ pots,¹² cloaks¹³ and gowns,¹⁴ swords¹⁵ and plates,¹⁶ stoups¹⁷ and hagbuts.¹⁸

In the Canongate, the search for moveables took place within ~~eight~~^{FIFTEEN} days of the officer receiving the order to impound.¹⁹ His investigation was conducted in the presence of witnesses, before whom honest and true men appraised goods to a price approximately equal to the sum principal, expenses of plea²⁰ and to the officer's fee.²¹

Thereafter, the officer before at least two witnesses, at the market cross of the Canongate, as Head Burgh, roup'd the goods on three successive market days.²² Either at the conclusion of the third auction or shortly afterwards,²³ he offered the debtor his property at the last price bidden. This was invariably rejected, and the sergeant and his witnesses then made faith before a bailie of true and lawful execution. The bailie

then ordered the registration of the poinding in the Court Record, the sale of the goods to the highest bidder, adding his authority and decree of Court, and granting extract.²⁴

There the matter usually ended. Goods had been poinded and roused to cover as much of the debt as possible,²⁵ and the creditor rested content. Debts founded upon arrears of annual-rents, of feu-duties and upon all other dues and casualties incumbent upon a fief or land, could be pursued yet another stage,²⁶ as could any of large amount.²⁷

The sums involved were often considerable. Arrears of annualrents totalling 480 marks²⁸ or even over six hundred pounds²⁹ are not unknown in the present Record, while earlier the Sinclair holder of the Barony of Whitekirk, accumulated nearly a thousand pounds of unpaid mails.³⁰

In such circumstances the creditor sought in either the Burgh or Regality Court a decree of poinding of the ground of the tenement from which the annualrent or mails were due. He cited the debtor,³¹ his curators if he had any,³² and the tenants upon the feu who were liable to be poinded for their master's debts, although only to the extent of a year's rent.³³

The Pursuer's precept initiated a civil action in which the cited were entitled to defend, using written proof of payment or witnesses, while the pursuer presented his right to the debt and in the ensuing decree was awarded that portion he succeeded in proving.³⁴

The decree of the Court reduced the amount awarded to a liquid sum³⁵ and instructed the officers of the jurisdiction to point and apprise moveables to its value, and to do so in future, yearly and termly when required by the holder of the decree.³⁶

The sentence in itself did not institute the procedure of pointing. The pursuer had firstly to obtain precepts of pointing from the judge, directed to an officer, who upon his receipt of the order, pointed the ground, and followed the procedure already outlined.³⁷ In his search for goods, the officer could receive the assistance of any other person,³⁸ and could follow and point the moveables, even if driven into another jurisdiction.³⁹

In the joint Court Records, there is little indication that decrees of pointing of the ground were enforced. In at least one instance, a decree was definitely not put into action by its obtainer, but was instead transferred to an assignee who secured its inclusion into the essential later Act of Court.⁴⁰ In another, the decree probably led to the apprising of the ground by a messenger of the Court of Session,⁴¹ with the others, there is no subsequent affirmation in Court by the executing officers.

The decree and precept of pointing were usually only the means to obtain entry to the lands themselves. These could not be touched until the moveables had been investigated and found insufficient.⁴² The officers supposedly made diligent search, but this was often a mere formality.⁴³ In the episodes of

John Sprottie⁴⁴ and David Watson,⁴⁵ their creditors approached⁴⁶ the Court of Session to obtain letters of poinding and apprising. The messengers searched the grounds of the tenements, and at once, denounced them, thereby initiating the process of apprising. In neither instance did the creditor first obtain precepts of poinding from the judge ordinary, and thereafter letters of apprising from the Court of Session.

Apprising usually proceeded under letters purchased from the Court of Session;⁴⁷ and was ~~usually~~ ^{GENERALLY} conducted in Edinburgh;⁴⁸ although the two examples contained in the present Record, adhered to the older locus of the Court of apprising, the Head Burgh of the jurisdiction.⁴⁹

The executing officer upon his failure to find moveables denounced the ground, and cited the defenders, the debtor and his tenants, to appear in a Court of apprising,⁵⁰ giving them at least fifteen days' warning,⁵¹ and naming the judge, date and place of Court.⁵² Denunciation and citation were made firstly on the ground before the defender's dwelling, and then at the market cross of the Canongate, as Head Burgh.⁵³ Copies of the precept⁵⁴ and denunciation were left at the ground and affixed to the cross; while the precept itself, endorsed and stamped by the officer, was returned to the pursuer.⁵⁵ The full order of citation was thus employed, although it had died out with most other actions.⁵⁶

The court of apprising, held by the Sheriff in hac parte, named by the letters, was fenced at eleven when the judge appointed

his clerk, dempster, sergeants and other officials.⁵⁷ Nothing else was done until twelve.⁵⁸ Then the debtor^{58a} was called, and if already present was entitled to object to any or all members of court, and thereafter to raise exceptions upon the execution of the denunciation.⁵⁹ Once his objections were dealt with, the creditor presented his claim to the officer;⁶⁰ immediately after the inquest had been called into court,⁶¹ and accepted by the defender who was entitled to object to each juror.⁶²

The defender and other parties having interest could still appear and be admitted during the appointment of the jury.⁶³ Their rights of objection were limited to the inquisitors not yet sworn,⁶⁴ and with the admission of the last juror ended the possibility of any party gaining the right to defend or protest.⁶⁵ Wardlaw asked instruments upon the absence of the defenders and their future inability to plead or object both at the beginning and end of the selection of the jury.⁶⁶ The last protestation closed the door upon the defenders and all other parties.

The juries in the Sprottie and Watson apprisings numbered fifteen;⁶⁷ a usual total, although no more than an odd figure was required.⁶⁸ The jurors were named and summoned by royal letters, being nominated by the pursuer.⁶⁹ In the Watson apprising, the dempster and two witnesses of the first court were inquisitors in the second, the clerk of the first being replaced by James Logan, the ordinary Canongate official; while a third witness became officer in the second; and the original officer the new dempster.

The first court was obviously a purely formal body, composed of the friends of the pursuer, and completely reorganised upon the arrival of the regular clerk.⁷⁰

Once the jury was empanelled the pursuer's claim, precept and other documents were read before it.⁷¹ At this stage, parties present were able to state their case against the proposed apprising;⁷² but if their pleas were rejected ~~upon~~ the inquest visited the feu and decided upon a settlement which would satisfy, and deal justly with, the creditor.⁷³

The inquest knew the amount of the debt and with urban estates had been presented with an estimation of their capital value.⁷⁴ This with rural feus was twenty times a single pound or mark of annual income.⁷⁵ If the debt exceeded the capital value the holding was made over to the creditor, if less, a portion, or an annualrent, was assigned. In practice, particularly with apprisings held in Edinburgh, the jury usually adopted the simple expedient of apprising the whole land, no matter the extent of the debt.⁷⁶

The two juries in the court record were more scrupulous, and observed a modification of the correct procedure. One investigated the annual mails of the Sprottie half-acre in St. Leonard's Way,⁷⁷ which were probably no more than twenty-five marks.⁷⁸ It then reduced the debt of 460 marks to an annualrent of one mark for every twenty, with a final answer of almost twenty-five.⁷⁹ With the annual return and the annual value of

the debt being equal, the jury quite correctly apprised the whole tenement.

The Watson inquest assigned the creditor an annualrent. The debt amounted to 148 lib. and Wardlaw was awarded a yearly 7 lib. 15s.,⁸⁰ which reflected the legal rate of one pound of annual for every twenty of debt. As Wardlaw had from the beginning claimed only an annualrent, he had probably not rendered an estimation of the capital value of this urban feu.⁸¹

The jury reached its verdict by a majority decision, announcing it by the mouth of the Chancellor, upon its return to Court.⁸² It also awarded the Sheriff his fee.⁸³ This was paid by the pursuer and not by the defender, and was a shilling for every pound of the debt.⁸⁴ Bellenden therefore acquired sixteen pounds,⁸⁵ and Ninian Weir 6 lib. 12s.⁸⁶

The judge subsequently offered the defender the land or the annualrent upon the payment of the principal and fees, by proclamation from the Tolbooth window.⁸⁷ The subjects, if refused, were assigned to the pursuer and the Baron of Broughton, or other Superior, ordered to grant him investiture.⁸⁸ The clerk enrolled and extracted the process, to which were attached the seals of the Sheriff and greater part of the inquest.⁸⁹

The pursuer subsequently presented his process to the Lords of Session, who directed the Superior to give infeftment.⁹⁰ These letters could not be disobeyed, provided the creditor rendered a year's mail,⁹¹ or unless the overlord assumed the lands himself, upon payment of the full debt.⁹²

The debtor was not permanently excluded from his former possession, if he could return within seven years the principal, expenses of court and the statutory Sheriff's fee.⁹³ An heir minor, certainly from a later date,⁹⁴ could redeem his heritage before his twenty-fifth year, no matter when it had been appraised.

CHAPTER 16.

1. Chapter 10.
2. Eg. Craig II.3.2.3 p.922/3: Hope:vi.28.7 p.171.
3. Hope, supra 1. p.170 (R.M.4.22.1).
4. App.5.
5. A.P.S. 1503 c.98.
6. Hope as 3: 10 p.172.
7. Supra 26 p.173.
8. Fife. App. B. p.329.
9. Chapter 10. App. 6. M.S. 7 August 1597.
10. 22 Nov.1594. "Ane decreitt obtenit at the instance of Williame Fendar dagmakar the deacon of the craft thirof agains John Castellaw als dagmackar -- rowpit -- ane cruiksuddie -- ane vyce -- ane pair of bellies -- ane vther littill vyce --".
11. M.S. 4 Jan. 1593/4 "ane chimnay of sax stane wecht and thrie quartaris --".
12. M.S. 1 Oct 1594
13. M.S. 16 March 1593/4 "ane frenche blak cloik and ane russate gray cloik --".
14. M.S. 9 Feb.1593/4 "ane broune goune and ane sating pellat --".
15. M.S. 7 August 1597, a sword belonging to John Moreson, cordiner.
- 16-17. App. 4. These articles are suggestive of the equipment of an ale-house, and perhaps indicate a fairly extensive sale of "stock in trade".
18. M.S. 31 Jan. 1593/4. 23 Oct. 1592.
19. Maitland. p. ~~321~~. 355.
20. As 2. App. 4.

21. Not mentioned in the Court Record, but the officer was entitled to poind for his fee as well as for the sums contained in the decree (Hope vi. 28.11. p.172).
22. Hope as 2.7. p.171. App. 4. Chapter 10 App 6. *Maitland as 19.*
- 23-24. Appendices as 22.
25. App. 4.
26. Craig II.3.2. p.922/3 Stair II p.848.
27. Craig supra: App. 2. The distinct between the two poindings was that the first was personal poinding founded upon an obligation to pay and the goods impoinded were the debtor's not those upon a specific land. Poinding of the ground proceeded upon a real right, and could proceed against only the goods upon the land burdened (Mackenzie iv.1.3 and 4: pges 418/19).
28. App. 3.
29. M.S. 15 Dec. 1599: Chapter 21. App. 1.
30. Laing C. No. 600.
31. App. 1.
32. App. 3.
33. App. 1: A.P.S. 1469 c.36.
34. App. 1. Chapter 10. App. 7.
35. Craig II.3.2. p.923.
36. App. 1.
37. App. 3: Hope vi.28.7 p.171.
38. B.P. "of poinding" c.14.
39. Hope as 37. 27.p.174.
40. M.S. 5 Nov.1595; an assignee had to obtain from the judge ordinary an active title to debt (Craig as 35. 7.p.927).
41. A decree of poinding was obtained by John Robertson against John Acheson, portioner in Broughton (M.S. 23 May 1593). By 30 April 1595, at the last, the feu was in possession of Robertson. Although the amount due was barely 90 lib., it ~~Courts of apprising.~~ *IS POSSIBLE THAT THE GROUND WAS APPRAISED.*

42. Hope as 39.8 p.171: Craig as 35. 6 p.926.
43. Craig supra.
44. App. 3.
45. App. 2.
46. Appendices as above.
47. Hope as 42. Craig as 42.11. p.923/3. App. 2 and 3.
48. Hope supra.
49. Hope supra. Fife App. B. p.330.
50. App. 2 and 3.
51. Hope as 42. A.P.S. 1469 c.36. Watson was given seventeen days warning including both the day of citation and of appearance (App. 2): Sprottie two months.
52. App. 2 and 3.
53. Supra Hope as 51.
54. Supra.
55. App. 2.
56. Vide Chapter 10.
57. App. 2: Craig II.3.2.18 p.939/40.
58. App. 2: Craig supra.
59. Craig: supra.
60. Craig supra. App. 2.
61. App. 2.
62. Craig as 60.
63. Craig supra.
64. Craig supra.
65. Craig supra.
66. App. 2.

67. App. 2 and M.S. 1 June 1594.
68. Craig supra: 13: by A.P.S. 1469 c.36.
69. App. 2.
70. Supra.
71. App. 2. Craig supra 19 p.941.
72. Craig supra.
73. As 72: App. 2.
74. Craig as 57.
75. Craig supra. App. 3.
76. Craig as 57: Mackenzie II.12.2 p.244.
77. The inquest -- past all togidder furth of the court to the ground of the said denunceit land and efter diligent sichtiging and tryell of the yeirlie maillis of the samin --".
78. A St. Leonard's tenement of an acre brought its owner an annual 50 marks in rents (M.S. 16 July 1597).
79. App. 3. It made some calculation which involved a mark of yearly rent for 20 of the money owed. This was the basis of estimation of an annualrent (Note 81).
80. App. 2.
81. Craig II.3.2.14 p. 935/36. The ordinary annualrent was 10% of the principal eg. Chapter 21.
82. App. 2.
83. App. 2 and 3.
84. A.P.S. 1503 c.66.
85. App. 3.
86. App. 2.
87. App. 2: Hope vi.23.8. p.172.
88. App. 2.
89. App. 2 and 3. Hope as 87.

90. Hope supra.

91. A.P.S. 1469 c.36.

92. Supra.

93. A.P.S. 1469 c.36.

94. A.P.S. 1621 c.6.

CHAPTER 17.

Renunciations of tacks: actions for mails and rents: actions of removing: ejections.

While apprisings primarily concerned the landowners of the Regality and Canongate, the following actions, with one exception, involved the tenants of the immediate vassals of the Baron of Broughton.

Although the tenures of Broughton tenants are rarely described in any detail in the Court Record, a considerable number held by lease or by tack.¹ A tack was a written agreement whereby the recipient held specific lands in exchange for a prescribed return.² Provided he paid his rent without falling two years in arrears,³ the holder possessed a security of tenure which endured for his life, or for the joint and separate lives of husband and wife, or for nineteen, seven, five, three or one year, according to the terms of the contract.⁴ The tenure survived the forfeiture ^{OF THE LANDLORD⁵} ~~feud~~, ^{THE COMPRISING OF THE FEU⁶} a change of Superior,⁷ and, more doubtfully, the lapse of the fief into non-entry.⁸

The tenant could however, with the assent of the landowner lay down his tack, before the end of the lease, while an incoming feuar if he could not evict the tenants already in occupation, could, persuade them to remove. Further, a tenant approaching the end of his lease, and not prepared to seek renewal, was expected to inform his landlord at least forty days before the Whitsun preceding the date of expiry.⁹

These acts and renunciations were usually made in writing. A landowner was not bound by his verbal acceptance of a resignation,¹⁰ a spoken promise to remove was difficult to prove, while the last obligation was supposedly committed to paper.¹¹

For these reasons, the renunciation of tenancies occupies a portion of the Court Record. The transaction was permanently enrolled in the principal Court Book of the jurisdiction and was available upon any future occasion. Accordingly, Aleson Pratt, at the Michaelmas of 1597, laid down her tack of forty acres of Saughtonhall,¹² while earlier in March 1594, her neighbours in Saughton, James Cleghorn and his wife, renounced before the bailie-depute all claim and title to the lands from which more than a year before they had been ordered to remove.¹³ In the summer of 1595, John Robertson at last secured the voluntary removal of the tenants of the previous owner of the feu, and this was, again, entered in the Court Record.¹⁴

Rents fell due at Whitsun and Martinmas,¹⁵ apart from those paid in victual between Yule and Candlemas.¹⁶ After these terms cases abound of the pursuit of delinquent tenants by their landlords. In March 1594, the great lawyer Master Thomas Craig, feufarmer of Wrightslands followed the conjunct tacksmen of three of his acres for the wheat, barley, capons and coal due to him.¹⁷

In the April of the previous year, three prominent personalities in Canongate and Regality affairs, George

Skathowie,¹⁸ Richard Baxter¹⁹ and John Hill in Multraise²⁰ were pursued for arrears, the first two by Logan of Coitfield²¹ for rents due from Restalrig holdings, and the latter for his Broughton lands held from Jonet Lyon widow of James Hairt.²²

In the Canongate the purely monetary rents were due at the two usual terms. Accordingly in June 1594, John Ahannay owner of a Burgh tenement descended upon its occupiers. Some such as John Castellaw, Robert Telfer, and Henry Murray were ordered to remove from their houses, booths and shops. Telfer and the cautioner of Murray were also discerned to pay arrears of rent.²³ On other occasions John Warrick in Over Liberton pursued Gavin Carmichael and Margaret Polwart his wife for the mails of a dwellinghouse in the Canongate;²⁴ John Paterson, deacon of the cordiners was followed for the rent of a booth occupied by him,²⁵ while John Smith, probably the Canongate bailie, obtained a decree against his tenants for failure to pay rent.²⁶

The record of these actions possesses little intrinsic value. The cases are dismissed by a brief note, and were decided by either the pursuer's oath or the defender's confession. Of more interest are the actions of removing, which followed upon the refusal of a tenant to relinquish his holding.

Formerly, before either Whitsun or Martinmas, a landlord simply ordered his tenant to remove, symbolising the command by breaking a plate on the threshold,²⁷ or in burghs, by chalking

the door.²⁸ If the tenant was still in occupation upon the second day of the new term, the landlord placed some of his goods outside the house and thereafter expelled him by force.²⁹

This procedure inevitably led to tumult and disorder, and save for burghs was ended in 1550.³⁰ Whitsun became the sole day for removal, although it remained a changeable feast until 1690, when for this purpose it was fixed upon the fifteenth day of May.³¹ The tenant was ordered to remove by an officer either in person or at his dwelling-place, and upon the ground of the tenement, forty clear days before the feast. A copy of the warning was delivered to the party, or to his wife or servants, or, as a last resort, affixed to the doors or gates of the house or lands involved. The warning was then read in the parish church, before noon, on Sunday at the time of service, and an additional copy attached to the principal door. The original precept was signed and endorsed by the officer and returned to its purchaser.³²

The landlord had accordingly to act through the authority of the judge ordinary, and if the tenant disregarded the warning, had again to return to the bailie or sheriff. The judge upon viewing the precept cited the tenant upon six days warning only, with certification that his default would lead to loss of action.³³ The judge was, moreover, bound to be ready to sit upon such causes throughout the fifteen lawful days after Trinity Sunday.³⁴

The numerous actions of removing are compressed, giving

little information upon the defences of the cited. No defence at all was frequent probably because the defender to obtain process had strictly to produce immediately a sufficient title to remain in possession of the lands.³⁵ If he arrived armed only with unsubstantiated allegations and statements, probation was not granted unless he found caution to sustain the pursuer in all damages he incurred through delay in gaining entry, provided the defender's claims were rejected.³⁶

The Broughton tenants whose defences are recorded offered lawful exceptions. John Crawford and his wife claimed that before the warning, the pursuer had given them a fresh five years lease for which they had already paid mail. In a Canongate episode the defender alleged the promise, before warning, by the pursuer of a liferent tack. The former exception whether the money had been paid before or after warning was sufficient to end the process in favour of the defender, as was the second if capable of proof by writ. Both were, however, referred to the pursuers' oaths, and denied.³⁷

In addition, the defender could raise the normal dilatory exceptions against the judge,³⁸ against the precept, that it had not been read upon a Sunday,³⁹ or had been raised on less than forty days,⁴⁰ or had been issued at Candlemas or some other feast.⁴¹ Other dilatory or peremptory exceptions challenged the right of the pursuer to the land,⁴² or asserted that all parties interest,⁴⁰ as the tacksman from whom the defender held in sub-lease,⁴³ had not received citation.⁴⁴

More particularly against the cause, the defender could maintain that the landlord had accepted services or rents after the warning,⁴⁵ or allege that he held the lands pro indiviso with other ground.⁴⁶ A further and important defence, valid since 1579, was that if three years had elapsed between warning and citation,⁴⁷ prescription ended action.⁴⁸

The defender was ordered to remove himself, his wife and family, subtenants and servants, goods and gear, so that the pursuer and his tenants could enter and enjoy the land.⁴⁹

The rights of subtenants and cotters ended with the decree against the principal occupant from whom their titles came, and at no time did they require special citation or warning.⁵⁰ The decree in itself was effective against neither tenant nor subtenant, until the pursuer obtained implementing precepts from the judge charging the defenders to remove.⁵¹

This order was satisfied by the tenant finding caution to remove.⁵² If necessary, the bailie passed to the ground, demanded the withdrawal of the recalcitrant occupier, and upon continued refusal instructed the officers to list and carry outside, the moveables in the house.⁵³ Moreover, the longer the tenant remained in wrongful possession, the more he rendered himself liable to the profits due to landlord.⁵⁴

Broughton decrees were not always effective, probably because the landlord did not secure the final precept. The Cleghorns in Saughton evacuated Sighthill in 1594,⁵⁵ although warned to remove in November 1592.⁵⁶ Various Canongate tenants

were similarly warned, but remained in occupation.⁵⁷ The decree appeared to be used as a threat hanging over the heads of tenants to enforce the payment of rent.⁵⁸

The Act of 1555 did not apply to removings within burghs.⁵⁹ Later legal opinion held that there a tenant could be ordered to remove upon the verbal command of the owner alone, at least forty days before the end of the tack, either at Whitsun or Michaelmas.⁶⁰ Only the additional chalking of the door was necessary, the decree of the judge ordinary not being essential.⁶¹

In the Canongate, it is probable that this older mode was followed. Actions of removing against burghal tenants do appear, but they contain no reference to the 1555 Act whereas Regality causes usually do.⁶² The burgh decrees are short, without detail, are no more than an order to remove, and although negative in information hint by their form, at a different and simpler procedure.

The tenant who remained in wrongful possession, or anyone else who entered and occupied lands without legal warrant was liable to be involved in an action of spuilie, or of ejection and wrongful occupation.⁶³ Spuilie, in its narrow sense was concerned with the unjust detention of goods and gear,⁶⁴ the second with the withholding from the owner of lands and buildings.⁶⁵ No conclusive action of spuilie appears in the Court Record, and only one of ejection.

In 1598, Margaret Stewart, liferenter of two and a half

acres of Saughtonhall claimed that her son, Nichol Dalzell, his wife and servants, had, in March 1596, ejected her and her servants and since then had occupied and cultivated the ground depriving her of the profits. She desired the withdrawal of Dalzell and his men and the surrender of the profits of 1596, the sowing of six firlots and two pecks of wheat, estimated in money at the first corn price per boll,⁶⁵ with the fodder, valued at twenty marks.^{65 A.}

In this double demand, Margaret was seeking the two necessary elements in the decree of ejection. The first was the return of the ground to her active possession and the second, the grass and corn, or violent, profits.⁶⁶ She was careful to include her title to pursue, conjunctfeuar or liferenter, particularly necessary in this action,⁶⁷ and to pursue within three years of the alleged offence. Otherwise prescription would have barred her claim.⁶⁸

Dalzell, as defender, probably found caution for the violent profits upon the first day of litiscontestation, otherwise the action would have gone against him.⁶⁹ He proposed a sound and valid exception that the party had removed willingly,⁷⁰ and succeeded in proving this and his offer of the duties by witnesses and writ.⁷¹ The bailie-depute therefore discerned in his favour.

If Dalzell had failed in his probation, Margaret as victor, would, by her oath in litem, have valued her violent

profits.⁷² These, subject to the modification of the judge,⁷³ together with the order to Balzell to remove, would have been contained in the decree.⁷⁴ Obedience to the decree would be met only by the complete withdrawal of the defender from the ground.⁷⁵

CHAPTER 17.

1. Vide Chapter 22.
2. Hope vi.16.7. p.97. A year's tack could be verbal.
3. Mackenzie: II.6.19. p.179.
4. Broughton tacks were often for five years: eg. Chapter 22. Appendices: App. 1. The Cleghorn and Wilkie conjunct tacks could be either for life or for 19 years.
5. Hope III.19.40 p.231.
6. Hope VI. 28. 69 p.180.
7. A.P.S. 1449 c.18.
8. B.P. "of warrandice" c.17.
9. Mackenzie II.6.20 p.179/80.
10. Supra 19 p.179.
11. Supra.
12. M.S. 5 Oct. 1597.
13. App. 4.
14. M.S. 4 June 1595: "The quhilk day --- comperit Iohn Hill in Multraishill Johne Burne in the Westwatar David Roise in Belismylnis & Johne Wardrippar in sanctnun -- ianisraw -- quha --- renunceit -- All & quhatsumeuir richt takis titiII or richt -- pertenying to thame be wertew of ony tak or richt maid be the said -- Johne Achesone". A similar renunciation was made by the two remaining tenants, Peter Home and George Turnate on 20 August. The tenants did not withdraw until after the gatherin^g in of the harvest. (App. 4).
15. Vide Chapter 22.
16. Eg. M.S. 13 Feb. 1597/8: M.S. 10 August 1597: Chapter 22.
17. Chapter 22. App^b
- 18-20. Supra.
- 21-22. Supra 17.

23. App. 5.
24. M.S. 25 May 1594.
25. M.S. 13 June 1593.
26. M.S. 25 May 1594.
27. Fife App. B. p.327.
28. Mackenzie II.6.20 p.180.
29. Fife as 27.
30. Mackenzie supra: Barton. 24 June 1709.
31. Supra.
32. A.P.S. 1555 c.39. Melrose 1. p.11. 25.
- 33.-34. Supra.
35. Supra.
36. Supra.
37. App. 1. 2. B.P. "of assedation" c.4230. A liferent could grant tacks for no longer a period than her life (B.P. "of assedatoun" c.33).
38. A.P.S. 1555 c.39.
39. Melrose 1. p.48. p.81.
40. Melrose 1 p.81.
41. Spotiswoode p.284.
42. Hope VI.39. 3 p.211: provided he had not paid duties to the landlord: he could challenge only an incoming landlord.
43. B.P. "of assedation" c.42.
44. Stair II p.865: Spotiswoode p.284.
45. B.P. "of removing" c.30.
46. B.P. "of removing" c.24.
47. A.P.S. 1579 c.82.

48. Supra.
49. App. 4.
50. STAIR. II p. 866. App. 1.
51. App. 1: B.P. "of sentence and execution" c.33.
52. Hope VI.16.18 p.98.
53. B.P. "of sentence and execution" c.33.
54. Hope. VI.15.22 p.92.
55. App. 4.
56. App. 4.
57. App. 5.
58. Although once the future rent had been accepted the decree ceased to be effective (Hope VI.16.33 p.99).
59. Mackenzie 11.6.20 p.180.
60. Supra.
61. Supra.
62. App. 1. although not in App. 4.
63. Spotswoode, p.92.
64. A.P.S. 1457 c.41.
65. Mackenzie IV.1.20 p.428.
- 65A. App. 3
66. App. 3: B.P. "of spuilzie and ejectione" c.8.
67. App. supra: Spotswoode p.886. She had only to prove lawful possession and ejection (B.P. " of spuilzie --" c.29).
68. A.P.S. 1579 c.81.
69. A.P.S. 1594 c.217. App. 3.
70. Hope vi.15.14 p.91.
71. App 3.
72. B.P. as 66.

73. Hope vi.18. 40 p.111.

74. As 72.

75. Hope iv.15.11 p.91: in contrast to removing satisfied by caution.

CHAPTER 18.

Actions and Acts of Neighbourhood: Lawburrows and Bloods.

The Court Record is singularly lacking in material affecting the economic and social life of the jurisdiction. Laws and regulations upon the casting of fuel and divots;¹ upon the planting of trees and hedges,² upon the protection of crops³ and upon other rural pursuits are entirely ~~lacking~~^{MISSING}; ⁴ while actions of neighbourhood which were concerned with breaches of these rules, and with disputes between tenants over boundaries, pastures, buildings and straying cattle and all other matters liable to disturb good neighbourhood are few.⁵

These laws and disputes were made and settled at a lower level, undoubtedly in the Burlaw Courts in the various parts of the Regality.⁶ In the Canongate itself, the council played a similar part, legislating for the community and punishing breaches of its statutes.⁷ The Regality and Burgh Courts were not however debarred from exercising a competence in actions of neighbourhood, while their books were used for the registering of agreements between neighbours.⁸

Some four or five Canongate episodes illustrate various aspects of neighbourhood and points of burgh law.

The Canongate feus were composed of foreland, backland and of gardens and waste.⁹ The first two, near the common way, were largely covered with buildings, with houses, brewhouses, lithouses and maltbarns.

The dwellinghouses were grouped around the narrow common entry or close, which ran through the centre of the tenement or down its side.¹⁰ The buildings of adjoining feus tended to use each other as supports, and to present to the street a line of dwellings, broken only by the entries to the houses behind. These cramped urban conditions produced problems of boundaries, of drainage, of access to the street, of height and other difficulties liable to create friction.

The tailor James Black, for example, committed a breach of neighbourhood by failing to observe the contract made with his neighbour Andrew White.¹¹ The old stair between their houses was demolished, and Black was allowed to build a pend for his exclusive use within the body of the new one. In return he neither invested White in the compensating annualrent of a mark, nor kept the passage of the stair clear between coble, or water-barrel, and coble, as had been agreed upon. The dispute was submitted to the council and their decision in favour of White was registered by mistake in the Court Book.¹²

No burgh feuar could use his neighbours' walls to support any of his erections, unless he obtained their consent, or unless he held their feus in servitude to his own.¹³ Accordingly, when the lister James Wilson decided to raise the west sidewall of his house, he was permitted, by George Rathman, to build hard against the side of his tofall or addition at the rear of his dwelling. Rathman was given a similar privilege when he was ready to carry out extensions.¹⁴

In the previous year, Richard Storie and Patrick Rannald, the royal baker, had concluded another act of neighbourhood upon much the same subject. The latter allowed Storie to attach the end of his structure to his gable raising his chimney and crow-gable steps to the requisite height.¹⁵

The two acts illustrate the difficulties involved in the drainage of rain water, and the necessity of accurate boundaries. The lands of Wilson and Rathman possessed a common gutter which no doubt led the water to cobles in the ground. Rathman was careful to ensure that the common channel would survive ⁱⁿ the new erections, would continue to be eleven inches wide, and would remain in servitude to both tenements. The joint ownership of the drain was a necessary solution of a difficult problem for unless one tenement was in servitude to the other, the water from the latter could not be allowed to fall into the ground of the first.¹⁶

In the second agreement Rannald made certain beyond doubt that his gable despite Storie's attachments remained a permanent part of his feu. This was a necessary precaution in the event of disputed boundaries.

The acts of neighbourhood were registered in the Court Book, had the authority of the bailies added, and extract was granted to the consenting party.¹⁷ In the event of future dispute he was armed with a decree of Court to substantiate his plea that neighbourhood had been broken. Such occurred in a Leith action, when the sight of the decree and other evidences

obtained victory for the pursuer.¹⁸

The act of neighbourhood had enabled a Leith feuar to build the wall of his backland yard to the height of six quarters. Later, he raised the wall and built a house at the foot of his neighbour's stairs.¹⁹ This was against urban custom which prohibited the erection of anything to a height which damaged or injured the prospect or utility of adjacent lands,²⁰ the second more particularly blocking the common entry.²¹ The offender was accordingly ordered to reduce the wall to its original size and to demolish the house, within forty-eight hours.

A few years later, a Canongate Court investigated another breach of neighbourhood.²² John Robeson, the royal butcher, demolished the baulk of earth and grass which served as a march between his yard and John Oliphant. His rows of plum trees and gooseberry bushes were probably an improvement, but unfortunately the baulk belonged to the neighbouring yard. By his action he had destroyed the boundary and invaded a property in no way in dependence upon his.

The two submitted their dispute to the arbitration of six liners, all prominent Canongate burgesses, chosen equally between them and bound themselves to abide by their decision. The bailies then warned the parties and the liners to a Court to be held upon the yards on the following morning. The Court was duly fenced, and the liners being sworn and admitted, passed forth of Court, cognosed the march driving in a line of stakes. Back in Court, they announced their decision, awarded the

thickness of the poles to Oliphant, ordering Robeson to move back his trees and bushes on the wrong side of the line. The bailies added their authority giving the butcher forty-eight hours, under the pain of five pounds in which to comply.

The action is the only one in the Court Book in which liners were employed; although this form of arbitration was common in earlier Canongate Records,²³ and elsewhere in the late Sixteenth Century.²⁴ It also suggests that the time limit of two days and possibly the penalty of five pounds were commonly employed in the enforcement of decrees of neighbourhood.

In an unruly age disputes between neighbours, family quarrels and other causes of friction were liable to lead to bloodshed. The taking of lawburrows was an attempt to forestall violence by placing the potential aggressor under pledge not to break the peace.

He was charged by the pursuer to give surety, or law borgh before the judge ordinary that he would neither molest or injure the body or goods of the party.²⁵ In the joint Court the judge was usually the bailie-depute, even when Canongate parties were implicated,²⁶ but nevertheless, the Burgh magistrates were also competent.²⁷

The pursuer, such as Marjorie Bryson or James Durwatt made faith before the judge, either in Court or outwith judgment,²⁸ that he or she dreaded bodily harm and therefore desired lawburrows. Upon this necessary affirmation²⁹ the bailie

ordained the defender to secure immediately caution to leave unharmed the deponer's person and those of his family and servants, and untouched his lands, goods and gear. The prohibition included not only the defender himself but also all others acting upon his instigation, and left him only the law as a remedy in any dispute with the pursuer.³⁰ The Broughton Acts of lawburrows were based upon the comprehensive statute of 1531;³¹ earlier only the person³² and the goods of the party were protected.³³

The Act included the unlaw to be inflicted if the lawburrows were broken. The penalty in the jurisdiction was usually forty pounds as in the case of Marjory Bryson and a few others.³⁴ One hundred pounds was also common,³⁵ while John Crawford was forced to find lawburrows under the pain of two hundred marks.³⁶

These penalties bore no relation to the higher fines laid down in the Act of 1593,³⁷ nor even to those determined in an earlier, but temporary statute of James III.³⁸ The first was however concerned with only lawburrows found before the Justice Clerk:³⁹ while even that statute did not destroy the powers of assessment and modification enjoyed by all judges.⁴⁰ The unlaw was determined by the judge: but the regularity of the Broughton impositions, together with the fact that some pursuers included the same monetary penalties in their charges,⁴¹ suggest that they had hardened into customary amounts. The Crawford episode probably indicates an isolated active exercise of the power of

modification by the bailies. The choice of either of the two common penalties possibly represented the degree of apprehension felt by the pursuer.

If the defender could not secure the aid of a cautioner he was committed to ward until one appeared. James Menzies was so lodged in the Tolbooth for some three days.⁴² Once caution was found the act of lawburrows was registered in the Court Record.⁴³

The Act was broken or contravened only if the obtainer could prove that the party under caution had deliberately inflicted actual injury or damage upon the persons or possessions protected.⁴⁴ The intent to do harm was by itself insufficient.⁴⁵ The intention and the act could only be proved by the institution of an action of contravention and by the securing of the relevant decree. This cause belonged properly to only the Court of Session although when small pains were involved the judge ordinary could take cognition.⁴⁶

The defender was either the party under caution or his surety according to the choice of the pursuer.⁴⁷ The decree ordered the rendering of the penalty included in the Act of lawburrows, formerly, to either the Crown or Lord of Regality.⁴⁸ Theoretically, the pursuer was perhaps entitled to damages modified by the judge.⁴⁹ As he in fact, received nothing, contraventions declined until revived by an Act of 1579, which transferred half the penalty to the pursuer.⁵⁰

The cautioner, if pursued, had the usual subsequent right of action against the principal.⁵¹ The pursuer, upon the breaking of lawburrows, could according to the circumstances, raise an action of spuilie,⁵² or of ejection⁵³ or of blood. Thereafter, he could not pursue for contravention.⁵⁴

The essentials of the action of blood and of bloodwite have already been discussed.⁵⁵ It was properly a civil action in which the pursuer, initiating proceedings by citation and claim attempted to prove the wounding and to obtain the finding of the defender in the wite.⁵⁶ In Broughton, as elsewhere, it was regarded as a criminal ca^use, in which the libel was usually misnamed the dittay, and a jury employed.

The "wite" was the monetary penalty due to the King for the breaking of his peace and for the restoration of the offender to the law.⁵⁷ In baronial Courts it could not be more than fifty pounds,⁵⁸ and in practice, was modified according to the degree of guilt and to the rules of the particular Court.⁵⁹ In the Forbes baronial Court it ranged from ten to fifty pounds; in Prestwick it was limited to five.⁶⁰ In private jurisdictions the wite belonged to the Baron or his bailie;⁶² in the burgh Courts to the common good.⁶³

A defender clearly in the wrong could also be ordered to pay the pursuer his "bot" or "assythment";⁶⁴ which was usually modified by the judge, and was invariably smaller than the "wite". In the Forbes Court, the "bot" could be half of the "wite" or a sixth or some other variable fraction.⁶⁵ Elsewhere, it was

sometimes almost the same as the blood penalty.⁶⁶

The Broughton actions of blood mention the amounts of neither "wite" nor "bot". The Younger Hucheson convicted of blooding James Skathowie found caution to compensate him,⁶⁷ but unfortunately the final settlement is not recorded.

1. The Broughton actions of blood mention the amounts of neither "wite" nor "bot".

2. The Broughton actions of blood mention the amounts of neither "wite" nor "bot".

3. The Broughton actions of blood mention the amounts of neither "wite" nor "bot".

4. The Broughton actions of blood mention the amounts of neither "wite" nor "bot".

5. The Broughton actions of blood mention the amounts of neither "wite" nor "bot".

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13. The Broughton actions of blood mention the amounts of neither "wite" nor "bot".

14. The Broughton actions of blood mention the amounts of neither "wite" nor "bot".

15. The Broughton actions of blood mention the amounts of neither "wite" nor "bot".

16. The Broughton actions of blood mention the amounts of neither "wite" nor "bot".

17. The Broughton actions of blood mention the amounts of neither "wite" nor "bot".

18. The Broughton actions of blood mention the amounts of neither "wite" nor "bot".

19. The Broughton actions of blood mention the amounts of neither "wite" nor "bot".

CHAPTER 18.

1. As Forbes p. 224 etc.
2. As Forbes p. 231.
3. As Forbes p. 230.
4. As Melrose 1. p.2: Forbes p. 230.
5. Eg. Carnwath p. ~~cxvii~~ O.E.C. v. 23 p.87.
6. By implication such Courts undoubtedly existed, although unlike many jurisdictions, Forbes and Melrose included, Broughton makes no mention of the Burlawmen. These were often appointed in the Pasche Head Court (eg. Forbes p.226: Carnwath as 5.).
7. Vide Chapter 4: *MAITLAND, p. 350*.
8. The Burlaw Courts were no more privative than any other inferior Court (Carnwath: supra). These decrees and registrations were however very few; about six in all.
9. App. 1.
10. App. 1: Chapter 14. App. 4.
11. App. 2.
12. The Council had its own Minute Book.
13. Mackenzie: II.9.7. pges 207/8.
14. App. 3.
15. App. 4.
16. As 13: 9. p.209.
17. App. 4.
- 18-19. App. 5.
20. As 13. 10 p.209.
21. App. 5.
22. App. 6.
23. Young No. 35 etc.

24. Eg. O.E.C. v.23 p.86.
25. App. 7. A.P.S. 1429 c.129.
26. App. 7.
27. M.D. p.7482: No. 190. 12 March 1622: Marshall V. Blair.
28. Marjorie Bryson appeared outwith judgment.
29. A.P.S. as 25.
30. App. 7.
31. A.P.S. 1581 c.117.
32. As A.P.S. 1429 c.129: 1449 c.13.
33. A.P.S. 1491 c.27: first definite statutory mention of goods, although their inclusion seems to be implied by the preamble of 1449 c.13.
34. App. 7.
35. App. 7. M.S. 26 Feb. 1597/8.
36. App. 7.
37. A.P.S. 1593 c.170.
38. A.P.S. 1466 c.5.
39. As 37.
40. Hope vi. 35. 22 p.196: A.P.S. 1491 c.27.
41. App. 7.
42. Supra.
43. App. as 41: A.P.S. 1491 c.27.
44. Hope vi.35. 5 et 13 pges 194/5.
45. Hope. supra.
46. As 27.
47. A.P.S. 1597 c.273.
48. A.P.S. 1466 c.5: although only a temporary act.

49. Supra.
50. A.P.S. 1579 c.77.
51. Chapter 10.
52. Hope vi.35.16 p.195.
53. Supra. 28 p.197.
54. As 52 and 53.
55. Chapter 11.
56. Fife. App. B. p.335.
57. D.V.S. p 19: MAGNA CARTA p 335/6.
58. M.D. 7490: No. 204: 10 Jan.1612. Bailie V. L. Torphichen.
59. As 61.
60. Forbes pges. 235: 247 etc.
61. Prestwick. p. 82.
62. Eg. Chapter 8
63. Eg. as 61.
64. Fife as 56.
65. Forbes p.250: p.256 etc.
66. Aberdeen. p. 270/1.
67. Chapter 14. App. 4.

CHAPTER 19.

THE CRIMINALS OF BROUGHTON.

Although the procedure followed in the criminal trials of the Regality has already been outlined, it is perhaps not irrelevant to discuss the criminals themselves, as they form an interesting section of the community.

They are headed by Jean Livingstone, wife of John Kincaid of Warriston. Married to the Laird about 1588,¹ she was the daughter of Livingstone of Dunypace,² and as usual with brides of landed families, she departed for her new home with her nurse and other retainers. Kincaid was an elderly man, possibly tainted with madness,³ a brother was certainly insane,⁴ and he reputedly ill-used his wife.⁵ At last, in the summer of 1600, Jean Livingstone, her nurse and male servant strangled Kincaid in his sleep.⁶

Lady Kincaid and the nurse were evidently apprehended upon the scene of the crime,⁷ but Weir, the male servant hid in the ale-cellar of Warriston,⁸ and from there escaped, until eventually he was captured, tried and broken at the wheel.⁹ Long before then Lady Warriston, despite the sympathy of the Edinburgh mob,¹⁰ had been decapitated, and the nurse strangled and burned.¹¹

Warriston had already been touched by violence and by superstition. Jean Ramsay, mother of the murdered Laird had been abducted by Mekle Hob or Robert Cairncross,¹² while in

1599, William Murray, a Highlander resident in Leith, extended to Warriston his reputation as a wizard and healer. To cure an ill child he advocated the rubbing of it with the blood of a cat, while he told Margaret Paitt to make a bannock for the son of the good wife of Warriston of meal, salt, and of one egg. While the recipient ate the cake, Murray said three pater nosters in Gaelic.

This may have been a love potion for one of the Kincaids, but it led to Murray's examination by the two parish ministers, Robert Pont and John Brand. These disregarded his plea that he had acquired his arts from Amy Nicarochoy, whom he desired to marry, if the Church would allow him, and handed him over to the lay authorities. The bailie-depute sentenced him to an hour in the "Jowis", to a whipping through North Leith, and to perpetual banishment.¹³

Witchcraft and murder did not deter the Kincaids who, under Patrick, Tutor of Warriston, and aided by the Towers of Inverleith, waged a bitter feud with the Logans of Bonnington. The conflict included a pitched battle outside North Leith in which the town joined in against the Kincaids¹⁴ and ended in the leaders of both sides being warded in Edinburgh Castle.¹⁵

Another Kincaid had also his full share of trouble. This was John Kincaid, Laird of Craighouse and portioner of Broughton.¹⁶ In 1598, he abducted a girl from her prospective father-in-law's house, only to surrender her to the Privy Council;¹⁷ but in 1600 he repeated the offence by removing her,

now a widow, from the home of the bailie of the Water of Leith.¹⁸ On his way to Craighouse he was captured by the King and a royal hunting party,¹⁹ and lodged in the Castle until John Matheson in Broughton and another became cautioners for him.²⁰ In the following month he obtained remission upon paying the enormous composition of 2,500 marks.²¹ Nevertheless the Broughton estate remained in his family until ^{part was possibly} vacated by his son, Thomas Kincaid.²²

Earlier in 1591, another vassal in Broughton had come to an unfortunate end. Some thirty acres belonged to Master Thomas MacCalyeane,²³ Senator of the College of Justice and owner of Cliftonhall.²⁴ He was succeeded in his estates by his daughter, Euphemia MacCalyeane, who despite her relatively superior social position became involved in witchcraft and treasonable activity against James VI.²⁵ As a result she was convicted in June 1591, by a High Court assize which included the Regality vassals, Clement Kincaid of Coates and John Logan of Cowston, and was burned alive upon the Castlehill.²⁶ Cliftonhall reverted to the Crown,²⁷ and her Broughton lands to the Baron and Crawford of Broughton.²⁸ Her three daughters were rehabilitated a year later,²⁹ and were retoured to the Broughton acres in March 1594,³⁰ but Cliftonhall was never returned to them.³¹

In nearby Saughtonhall there were other turbulent characters. Many years previously George Wilkie, portioner of an eighth, had been accused of supplying victual to the

Marians in Edinburgh.³² In 1592, he was evidently murdered, although his reputed assassin was acquitted.³³

His neighbour, John Watson, was constantly in trouble. He had purchased Smithlands in 1591,³⁴ only to see its tenant waste the property. He halted John Reid's destructive propensities,³⁵ but even after he had probably disposed of Smithlands,³⁶ his relations with the Dalry tenant did not improve. At last in a summer's evening in 1599, Watson mounted and "boddin in feir of weir" invaded the Haughs where Reid was pasturing his horses. There, after hot words had passed, he attempted to cut down Reid, but his horse, taking fright, ran away with him. He returned, dismounted, and wounded his opponent, for which he was punished in the Regality Court.³⁷

This lesson was not sufficient for Watson, for soon afterwards he assaulted Katherine Preston, wife of John Moreson,³⁸ an Edinburgh burghess to whom he had alienated part of his estate.³⁹ This episode resulted in his retirement to the Canongate Tolbooth,⁴⁰ but after his release he became involved in a dispute with Clement Russell, another Edinburgh burghess,⁴¹ and from 1602, owner of Smithlands.⁴²

Watson was obviously a man of quick temper and aggressive nature, but Nichol Dalzell of Saughtonhall Mills was less a sinner than a victim. His daughter was abducted and married by Archibald, second son of the Laird of Dalzell,⁴³

who followed up this offence by a series of attacks upon Dalzell and his property. The millers were chased out of the mill and Nichol's wife assaulted by Archibald and his men.⁴⁴ The mill was wrecked, a mill-hand thrashed for a mile and a half, while Nichol himself was severely mishandled.⁴⁵ Young Dalzell was outlawed, but upon venturing into the Highlands and capturing a member of the proscribed Clan Gregor, obtained a remission under condition of compensating Nichol and his family.⁴⁶

Earlier the Bellendens of Pendreich had committed a number of misdeeds. The younger James Bellenden, coveting the goods of a Lasswade housewife, secured a royal commission to arrest her as guilty of witchcraft.⁴⁷ His design failed but his family had at the same time attempted to deal with another inhabitant of Lasswade by the simpler policy of assassination.

While the Laird of Pendreich professed friendship with the intended victim, Master John Nicholson, his sons and dependents made several unsuccessful attempts to kill him. These were known to various inhabitants of Lasswade, including the minister who strove to end the feud by asking both the Laird and Nicholson to dinner. In this reconciliation the minister achieved a superficial success, but in reality, Bellenden retired to post Hew, a younger son and a band of gypsies at the bridge. An hour or two later, when Nicholson approached the bridge with the minister and his wife, Hew

rushed at him with drawn sword, but unsupported by his followers, only wounded him in the hand.⁴⁸

The same unrestrained violence was also common in the Canongate itself. Henry Allan from Kirkwall thrust his rapier through the heart of Cornelius Inglis, cordiner, ^{before} ~~before~~-his own booth.⁴⁹ A mob of about twenty "in feir of weir with swoirdis pestillotis Jedder stalffis halbertis and vther vaponis", wounded and killed Andrew Lindsay at the Fleshstocks.⁵⁰ In the following year, the four Smiths and their friends similarly invaded and killed a tailor at St. John's Cross,⁵¹ while the cordiner John Moreson, later reputedly led another similar attack at the Burgh Cross.⁵² The younger Thomas Hucheson in 1600, ran his dagger through the hand of another Canongate inhabitant,⁵³ while at about the same time another street brawl led to the decapitation of its leader.⁵⁴

No less personages than Master Adam Bellenden, commissioner of the Regality, his brother Walter, John Bellenden the bailie-depute, and his stepson, John Logan of Fluiris, were responsible for two upheavals in the Burgh. Adam was put to the horn in April 1599, for non-payment of money owed to the widow of an Edinburgh burghess. She raised letters of caption against him, and Bellenden was arrested outside his Canongate house. On his way to the Tolbooth, he was rescued by Walter and his followers.

Shortly afterwards the same officer apprehended him in the Canongate High Street, temporarily detaining him in a house

which was broken into by Walter, John Bellenden, and Logan who carried the prisoner off to the tenement once owned by Sir Lewis Bellenden, and allowed him to escape. Lack of proof enabled the Council to acquit Logan and John Bellenden, although Walter was outlawed for his failure to appear.⁵⁵ So apparently ended the attempts to arrest the acting head of the Regality, within his own burgh.

The majority of persons mentioned were drawn from the better classes of the Regality; their offences were mainly those of slaughter and bodily violence. They can hardly be described as habitual criminals, although obviously they were endowed with hasty tempers and a certain lack of scruple. Few permanent inhabitants of the jurisdiction descended to robbery, theft and petty offences. The bulk of the thieves dealt with in the Court belonged to a floating population recruited from all over the country, and no doubt drawn to Edinburgh and the Canongate by the position of the former as the principal and capital city.

The professional criminals were encouraged partly by the mildness of Regality justice and by the division of authority between Broughton and Edinburgh. It has been shown that banishment was a favourite punishment of the Regality judges,^{55a} and this penalty was often limited to the bounds of the Canongate,⁵⁶ or of Leith⁵⁷ or of the Pleasance.⁵⁸ Edinburgh behaved in exactly the same way; and many thieves simply moved from one town to the other. William Speir was expelled from the Canongate in August 1598,⁵⁹ made his way to

Edinburgh to be banished from there. He shifted himself to Leith to suffer the same fate; and finally returned to the Canongate where he overstepped himself and was hanged.⁶⁰

John Finlay banished from the Pleasance in November 1597,⁶¹ was by August 1598, a fellow inmate of Speir in the Thieves' Hole in the Tolbooth.⁶² Cristiane Dickson expelled along with Finlay from the Pleasance,⁶³ removed herself to the Canongate, from which she was banished in the following May.⁶⁴

Their offences are not of particular interest. Finlay, Dickson and others like them formed small gangs or parties which raided cellars in the Pleasance and Canongate;⁶⁵ more enterprising criminals such as James Wilson and James Aitkenhead provided themselves with false keys with which to enter lighthouses and booths.⁶⁶ There were also a few cutpurses and sneakthieves.⁶⁷ A violent thief like John Matheson deprived a man of his sword and purse, stabbed another evidently in the pursuit which led to his arrest, and broke out of the Tolbooth,⁶⁸ while several women pursued a career of housebreaking removing in the main, articles of clothing.⁶⁹

Some butchers took to cattle stealing. Two Borderers, Sym Allat from Hawick and James Scott from Selkirk, by 1597 a butcher in Leith, each carried a sheep on his back to a house in the Pleasance where the "wedders" were slain. Their apprehension ended their plan to sell the meat in the Lawnmarket, but previously they had lifted three cows with calves from Linlithgow and had sold them in Leith, had removed

sheep belonging to John Robeson, the royal flesher, from the King's Park, and a mare from Craigengalt.⁷⁰

Earlier in the same year Patrick Young had, with two accomplices, driven twenty-two sheep from Woodhouselee to the Burghmuir of Edinburgh, where he delivered them to John Nicholson, butcher. Young and Nicholson were lodged in the Tolbooth, from which the latter escaped during the Easter ferxiot.⁷¹ At the beginning of 1598, Peter Machlane stole sheep from James Crawford of Broughton and his shepherd and a mare from the unfortunate royal butcher, John Robeson.⁷²

The most interesting trial took place in February 1597. John Muir, born in Glasgow, and a weaver, Thomas Weir, raided at night a barley stack belonging to John Henderson in the Pleasance and, on the spot, ground half a boll, which they later sold. Earlier the pair had performed a similar exploit in the teind barnyard of Restalrig, while Muir's son and John Aitken, a Pleasance weaver, had removed peas and wheat from the loft of Andrew Borthwick, a burgh bailie and reset them to the elder Muir and Weir.

In the previous October, at Hallow E'en, the younger Muir and James Thomson, as servants and upon the orders of Thomas Lowrie, weaver, had visited the Craigs of Corstorphine, stolen two oxen and had driven them along the Lang Gaitt to the sheep-fold at Craigengalt, where they were kept by Aitken, until slaughtered by Lowrie. For these offences Lowrie was hanged, and the others whipped and banished, their goods reverting to the Lord Superior.⁷³

Weir, Lowrie, and their accomplices, differed from most of the other thieves in being permanently resident within the jurisdiction, but with the exception of Aitkenhead, born in the Pleasance,⁷⁴ even they had drifted into the Canongate from elsewhere in the kingdom.

CHAPTER 19.

1. Marriage contract was dated 1588 (Logan, 21 Oct. 1588).
2. E.g. Chapter 2, App. 2: Logan supra: the daughter of the younger John of Dunypace who succeeded his father about 1598 (Livingston, page 347).
3. Pitcairn II. II. page 446, etc.
4. Chapter 14 Retour of Idiocy.
5. As 3.
6. Chapter 2, App. 2. All the servants were those of Lady Kincaid and not of Warriston.
7. As 3.
8. Chapter 2, App. 2. The trial of Bartan and Johnstone: they were declared innocent of foreknowledge of the crime by Lady Kincaid (Pitcairn: supra, page 447).
- 9.- As 3. In June 1604.
- 10.
11. As 3. Chapter 2, App. 2.
12. Pitcairn I. III. page 244, 27 May 1591. Probably Robert Cairncross of Colmslie, a Regality vassal.
13. App. 1.
14. O.E.C. XIX. John Russell: Bonnington: Its Lands and Mansions.
15. R.P.C. VII, pages 292/3, 663: in 1607: George Logan and Thomas Kincaid. Patrick Kincaid had died by 1606.
16. M.S. 11 July 1597; M.S. 5 August 1598. "Johne Kincaid portionar of brochtoune now indwellar in craighous..."
17. R.P.C. V. page 453.
18. Pitcairn II. II. page 336: upon 17 December 1600.
19. Pitcairn, supra.
20. R.P.C. VI. pages 187, 674.
21. Pitcairn, as 18, page 339.
22. R.M.S. 1620/35, No. 2150.

23. M.S. 20 March 1593/4.
24. Pitcairn I. III. page 247 et seq.
25. Supra.
26. Pitcairn, supra, page 255.
27. Supra.
28. M.S. 20 March 1593/4. Greater part held from James Crawford in sub-feu; and the lands "nunc existunt et denenerunt in manibus dominorum superiorum respectiue antedict per decessum dicte quond euphame mackcalyane ultime hereditarii possessoris earund. que decessit in mense Junii...(1591). Et ita extiterunt in manibus dict. dominorum superiorum per spatium duorum annuorum et unius terminum ob circa..."
29. Pitcairn, as 27, page 248.
30. As 28.
31. Pitcairn, supra, page 248: it was reserved to Sir James Sandelands of Slammano.
32. Pitcairn, I. 2. page 33, 17 July 1572.
33. Chapter 11, App. 6.
34. Logan, 16/18 March 1590/1. Saving liferent for Elizabeth Hamilton.
35. Chapter 15. App. 10.
36. Logan, 26 Feb. 1600 - Smithlands sold by James Stewart ygr. of Brighthouse to John Reid and Aleson Cowttis his wife. The gap in the Protocol Books between 1591 and 1598 makes it impossible to determine when Watson parted with the lands, but as Logan contains no entry of the resignation it must have been before 1598.
37. App. 2.
38. R.P.C. VI, page 419, 16 July 1602.
39. Logan, 28 April 1602.
40. R.P.C. as 38.
41. R.P.C. VII, page 555, 14 June 1604.

42. Logan, 11 June 1602.
43. Scots Peerage, II, page 406.
44. R.P.C. VI. page 140: offences committed in June 1600.
45. R.P.C. supra, page 423: mill wrecked upon 8 July 1602;
R.P.C. supra, page 483.
46. R.P.C. VI, page 862, 4 August 1603.
47. R.P.C. V. page 495, 16 Nov. 1598.
48. R.P.C. V. pages 491/3, 9 Nov. 1598.
49. App. 3.
50. Chapter 11, App. 1.
51. Chapter 11, App. 3. It is possible that the Smiths involved were the burgh bailie and his son. John Smith and Egedir Malcolm were the parents of Andrew and George (Logan, 6 April 1580: 8 July 1590). The entry "geillis malcome spous of John smyth eldar" once occurs (M.S. 4 April 1593) which suggests that the John Smith, younger, who occasionally appears was his son. This would give the baxter bailie John, Andrew and George as sons: a close approximation to the Smiths indicted.
52. Chapter 2, App. 1.
53. App. 4.
54. Chapter 11, App. 2.
55. R.P.C. VI. page 195.
- 55a. Chapters 9 and 11.
56. E.g. Chapter 11, App. 10.
57. App. 1.
58. E.g. Chapter 11, App. 8.
59. Chapter 9, App. 5.
60. Chapter 11, App. 12.
61. Supra, App. 8.

- 62. As 59.
- 63. As 61.
- 64. Chapter 11, App. 10.
- 65. Chapter 11, Apps. 8, 10.
- 66. Supra, App. 14.
- 67. Supra, Apps. 11, 14.
- 68. App. 5.
- 69. E.g. Chapter 9, App. 3.
- 70. App. 6.
- 71. Chapter 2, App. 3.
- 72. App. 7.
- 73.- App. 8.
- 74.

CHAPTER 20.

The Burgh of the Canongate.

The criminal element of the population formed only a small portion of the whole, and the record of its misdeeds occupies a fraction of the entire Court Book. Of more importance are the extracts, often of only a few lines, which throw light upon the Canongate itself, and upon the way of life of its inhabitants.

As has already been indicated, the Burgh was a very small place whose feus stretched down from the High Street to either the Strand or to Meadowflatt, while the eastern sides of Leith and St. Mary's Wynds were lined with additional holdings.¹ Many tenements were divided in ownership through the accession of co-heirs and through the sale and alienation of portions.² Most, if not all, had upon their ground, dwelling houses and other erections rented to tenants.³

Rents of buildings and yards were paid at the two normal terms of Whitsun and Martinmas.⁴ Usually the rendering was monetary, although on at least one occasion the tenant supposedly undertook to keep her landlord in linen clothing.⁵ Many leases were probably for no more than a year,⁶ while some were for two years or longer.⁷ Rentals varied considerably,⁸ but that of a low dwelling house from five to nine marks,⁹ and of a high dwelling house from fourteen to thirty two.¹⁰ A wooden booth or shop cost its tenant from twelve to twenty two marks,¹¹ a yard from ten to fourteen,¹² and a brew caldron some five marks each year.¹³

The difference between a high and low house was probably in altitude. As Richard Storie shows, a Canongate inhabitant built upwards and not backwards down the slope.¹⁴ A high dwelling house could include a little over chamber with a cellar below, and a hall chamber, kitchen and three lofts above: with additional cellars and lithouses attached.¹⁵ The more modest back low house of Patrick Speir, the Burgh officer, contained only a chamber, a loft and four stables, or small rooms,¹⁶ while the fore chamber and stable rented by Andrew Kellop suggest that already individual floors were being leased to tenants.¹⁷

Renting was a profitable business to the feuar. John Ahannay had tenants in a mid-dwelling house: in a high house and another, and in two booths.¹⁸ These brought him at least forty pounds a year.¹⁹ The Baron of Broughton was much less fortunate. Entire tenements returned to the Superior only ten,²⁰ fifteen²¹ or twenty marks²² and sometimes as little as three²³ or six.²⁴ While rents could increase,²⁵ feu-returns, despite the depreciation of the currency, remained unaltered.²⁶

The rules affecting the succession to landed hereditary property have already been discussed.²⁷ The disposal of moveables lay outside the competence of the secular court save only at a few points.²⁸ Goods were subject to the usual triple destination with all its various modifications.²⁹ The widow was entitled to her portion, the deceased's children to theirs, while the final third was subject to the testamentary conditions of the owner.³⁰

In the Canongate, the executor was often the widow of the deceased,³¹ although in one instance the son, although a minor, was confirmed in the office.³² The executor could not divide the moveables until all claims upon the estate had been rendered.³³ The creditor, once the testament was confirmed, pursued the executor in the ordinary court. Master James Eiston executor to his deceased brother, was ordered to pay the sum for which the dead man had become cautioner,³⁴ while Boswall of Auchinleck as executor for his wife³⁵ and Robert Wetherspoon as executor for his father were similarly followed.³⁶ Again the executor was obliged after confirmation to pursue debtors, as did Catherine Simpson with Richard Storie,³⁷ and could be compelled by the heir to render his inventory within a year.³⁸

Confirmation proceeded only upon this valuation of the moveable estate.³⁹ This in one Canongate instance, was possibly performed by the relations and neighbours of the deceased,⁴⁰ and upon this assessment eventually proceeded the triple division.⁴¹ The latter was modified by the heir's right to heirship goods. This privilege, properly applicable to only Royal Burghs, assured the heir not only his part of the moveables due to the children of the deceased, but also gave him the best one or pair of certain specific articles which were excluded from the three portions.⁴²

Canongate heirship goods bore a close resemblance to those outlined in the Leges Burgorum.⁴³ To Thomas Nemouth, son and heir of a Burgh tailor, fell a chimney or moveable fireplace,

a crook, a board or table, and cover, a churn, a fir-bed, a feather bed and its furnishings including a pair of sheets, of blankets, a cover and bolster. Other articles included chests, a pot and pan, a stoup, besides a Jedburgh staff, a hagbut, and buckler, clothing, a tailor's board, a pair of shears and a pressing iron.⁴⁴ All these moveables, falling into the natural categories of household necessities, personal arms and tools of trade are mentioned in the Laws of the Burghs.⁴⁵

The heirship goods were based upon an antique mode of apportioning, but the heir was probably awarded the monetary equivalents rather than the goods themselves. In the Nemouth action, the heir pursued for either the goods or their monetary values,⁴⁶ while Barbara Wetherspoon was given in place of the moveables their total value of a hundred pounds.⁴⁷ In neither instance did the heir receive the principal, but being a minor had the annual profit devoted to his care and maintenance. This, so far as the "bairnispairt" was concerned was composed of roughly one sixteenth of the whole.⁴⁸ The principal remained in charge of the curators or executor until the heir attained his majority.

The Nemouth heirship goods and another inventory compiled by John Dougal servitor to Sir Robert Melville have attached to them the monetary values of the articles concerned. The former hints at the plenishings to be found in a prosperous Canongate home and the latter at the vestments of the well dressed man. Dougal owned fustian doublets, a cloak of fine green English cloth,

several pairs of breeches and shanks of grey or red stemming and of chamois leather.⁴⁹ Fustian was a cloth common in the Burgh as were also taffetas⁵⁰ and bombasines.⁵¹

The estimated values included fifteen pounds for the cloak, fifty shillings for a pair of grey stemming breeches, four pounds for the leather, while the red stemming shanks were priced at three pounds and the others of grey stemming and of leather at thirty shillings a pair.⁵² An ell of taffeta cost six pounds⁵³ and one of linen twenty four shillings.⁵⁴

Of the Nemouth goods the chimney was valued at five pounds, the fir-bed at two and the feather bed at six. The sheets and blankets were priced at forty shillings for each pair, while amongst the smaller domestic articles, the pewter plate, the trencher and pan were priced ~~respectively~~ at one mark, one half-mark and twenty shillings respectively. The saltcellar was a mere two shillings and the pepper querns only one. The hagbut was worth three pounds, the Jedburgh staff ten shillings and the buckler half a mark.⁵⁵

The average Canongate inhabitant existed upon ale manufactured within the Burgh, and upon bread of wheat, barley and peas, groats, oatmeal, cheese, meat and vegetables including kale.⁵⁶ Ale varied in price but cost in general just over one pound a barrel;⁵⁷ while a boll of peas was sold for seventy shillings in 1593.⁵⁸ Four years later cheese cost thirty two shillings for each stone.⁵⁹ Beef was sold to the consumer for five marks a carcass,⁶⁰ while the price of wheaten bread remained

constant although the weight of the loaf varied from year to year.⁶¹

Foreign beers and wines were imported into the Burgh, being purchased in the main from Edinburgh merchants. Prices were again subject to annual variation, and were usually high. Spanish wine, in 1591, when bought from the importer cost 157lib. for each tun,⁶² customers in the Canongate ale-houses being charged eight shillings for a pint of wine.⁶³ A flagon of hock and another of sack together cost thirty-eight shillings.⁶⁴ A few years later, the importer received twelve pounds for a puncheon of English beer,⁶⁵ while a barrel of Danzig beer was sold for over eight pounds.⁶⁶

The Canongate indweller who entertained two friends for supper, or one for supper and breakfast, at a Burgh inn was involved in the expenditure of forty shillings:⁶⁷ breakfast for two persons cost fifteen shillings.⁶⁸ A girl expelled from home by her father obtained lodgings at a pound a week. The birth of her child added an additional ten shillings, while the cradle, blankets, coat and swaddling belt for the infant were respectively ten shillings, twelve and five.⁶⁹

The nurse in charge of the baby was given five pounds⁷⁰ and medical fees were in general fairly high. The surgeons were Edinburgh burgesses who obliged patients to find caution for their fees. A wound cost five pounds to heal,⁷¹ while the illness of Alexander Bernis forced his cautioner to pay ten pounds.⁷² An injured leg brought in a bill for four pounds,⁷³

and Jonet Law's finger involved her husband in the outlay of some four marks.⁷⁴

These prices and charges were reckoned in Scots money, and if divided by ten or by twelve⁷⁵ approximate to contemporary English amounts.⁷⁶ The bare necessities of life were cheap,⁷⁷ but the Court Record contains little or no reference to wages. A Leith servant woman received as her fee only 15s. 8,⁷⁸ a carter's hand being hired for an annual 4lib. 9s.⁷⁹ Skilled journeymen probably received more,⁸⁰ but upon this matter the Record is silent. The Burgh schoolmaster was due an annual twenty pounds,⁸¹ and the Leith reader forty.⁸² These persons could not indulge in the extravagances of the Nemouth household, or in the garments of Dougal.

The position of servants like the Leith woman and of apprentices, was eased by their being members of the household.⁸³ The income of many families was supplemented moreover by the pursuit of domestic industries. The Canongate housewife was by no means idle. At least one was the tenant of her house, and not her husband,⁸⁴ but more generally she not infrequently assisted her husband in the running of his shop,⁸⁵ and often on her own account made and sold ale,⁸⁶ or span thread from lint purchased from Edinburgh merchants⁸⁷ or from its growers in or around the Burgh.⁸⁸

The former was a particularly flourishing and mainly feminine industry. Women like Aleson Craig,⁸⁹ or the wife of James Hutton the Burgh officer,⁹⁰ hired ale-houses and caldrons

and brewed the malt obtained from the many Canongate maltmen. They, or other women like Agnes Wilkie⁹¹ and Margaret Chalmers,⁹² maintained taverns in which they sold not only native ales but also imported wines,⁹³ employing tavern hands. Margaret Chalmers hired at least two women,⁹⁴ while Agnes Wilkie's servant disappeared with her takings and two stoups.⁹⁵

The brewing industry was undoubtedly encouraged by the Canongate's proximity to the Capital and to the Court at Holyrood. Nobles, lairds, officials and their wives found lodgings in the Burgh and bought from its shopkeepers. In addition, the Court was largely provisioned and supplied by the Canongate inhabitants. John Robeson was the Royal flesher,⁹⁶ Patrick Rannald, the King's baker,⁹⁷ John Seyton the Royal coalman⁹⁸ and Alexander Crawford was cordiner to Anne of Denmark.⁹⁹ Several of the Royal servants were also established in the Canongate. At their head was Thomas Fenton, Keeper of the Palace,¹⁰⁰ and amongst their number, John Boig the Master porter,¹⁰¹ Andrew Wode, servant to the Queen¹⁰² and James Boig¹⁰³ and John Kas servitors to the King.¹⁰⁴

Nevertheless, the Canongate despite its crafts and its other evidences of urban life was still deeply rooted in the surrounding countryside. Even within the Burgh boundaries were kale yards¹⁰⁵ and barley stacks¹⁰⁶ while many of its inhabitants were feuars or tenants of lands in the Baronies of Broughton and Restalrig.¹⁰⁷ Others such as John Robeson¹⁰⁸ and John Kello¹⁰⁹ grazed animals upon Craigengalt and the King's Park. Again,

rural proprietors found individual burgesses a ready source for the disposal of cattle and sheep, hay and straw. John Hill in Multraise sold straw to the Canongate tailor John Black,¹¹⁰ while John Herreot in Clerkington disposed of his straw to stablers like John Donaldson.¹¹¹ Sheep were purchased by butchers such as George Baxter,¹¹² and hay by Canongate inhabitants like Thomas Chirrie.¹¹³

The Court Record standing by itself without being supplemented by additional sources, provides information upon rents of Burgh houses, upon heirship goods and the prices of clothing, household articles and other commodities. It contains material upon a few domestic pursuits, and gives the names of Royal officials, servants and of individual Canongate inhabitants. Of the important organized craft guilds it includes little mention. The Burgh Court was not concerned with these: and accordingly an essential portion of burghal life is neglected.

The Record does however deal with the conditions prevailing within the landward areas of the Barony and these demand some attention.

CHAPTER 20.

1. Chapter 1.
2. Eg. Chapter 14 App. 3.
3. Eg. Chapter 17 App. 5.
4. Supra.
5. App. 1.
6. Eg. Mackenzie II.6.11. p.173: App. 1.
7. App. 1.
8. As below.
9. M.S. 10 March 1591/3 M.S. 20 July 1597, 5 marks.
10. M.S. 9 June 1593: M.S. 13 June 1593, 6 marks: M.S. 30 June 1593 18 marks.
11. M.S. 20 June 1593: M.S. 20 October 1593.
12. M.S. 14 February 1592/3.
13. App. 1.
14. Chapter 18 App. 4.
15. M.S. 21 September 1592.
16. Chapter 17 App. 5.
- 17-19. Supra.
20. M.S. 19 January 1596/7.
21. M.S. 3 June 1598.
22. M.S. 4 May 1598.
23. Laing C. No. 2369, for two tenements.
24. Laing C. No. 2609.
25. Chapter 22.
26. This is shown particularly clearly in Regality feus. The return could be raised provided a graduated increase was included in the Feu Charter.

27. Chapter 13.
28. At this period, the Commissary Courts were the competent tribunals.
29. Mackenzie III. 9.6 etc.
30. Hope IV.1.3 p.285 (R.M. 2.37. 1-5). Mackenzie. Supra.
31. App. 3: 4.
32. App. 2.
33. Mackenzie III.9.7 p.397.
34. Mackenzie III. 9. 14 p.402. M.S. 3 Aug. 1594.
35. M.S. 16 May 1593.
36. App. 2.
37. App. 4.
38. A.P.S. 1503 c.76.
39. Mackenzie as 34. 12 p.400.
40. App. 3. Although only heirship goods are mentioned.
41. With the exception of the dead's part in which the deceased's estimation held good (Mackenzie as 34. 16 p.403)
42. Hope IV. 3. 27 p.293/4: L.B. No. CXVI.
43. L.B. No. cxvi: Frag 20.
44. App. 5.
45. As 43.
46. App. 5.
47. App. 3.
48. App. 6. The bairnspart was the third due to the children of the deceased, and was not the heirship goods.
49. App. 7.
50. M.S. 11 Dec. 1594.
51. Chapter 10. App. 1.

52. App. 7.
53. As 50.
54. App. 7. Steming cost 2 lib. an ell (M.S. 11 Nov.1592).
55. App. 5.
56. For general nature of this diet see De Unione p.417.
M.S. 11 Nov. 1592: 31 Jan. 1592/3.
57. M.S. 12 May 1594.
58. M.S. 14 Feb. 1592/3.
59. M.S. 27 July 1597.
60. M.S. 19 March 1594/5.
61. Maitland p. 314/5.
62. M.S. 6 June 1593: bought by Walter Cunningham, husband of Margaret Chalmers, from William Napier of Wrightshouses, burghess of Edinburgh.
63. M.S. 11 August 1593.
64. Supra.
65. M.S. 8 Feb. 1594/5.
66. M.S. 16 June, 1593.
- 67-69. As 63.
70. Supra.
71. M.S. 24 Feb. 1592/3.
72. M.S. 10 Feb. 1592/3.
73. M.S. 23 May 1593.
74. M.S. 4 November 1592.
75. Henderson p.46: De Unione p. 292.
76. De Unione p.294.
77. Supra.
78. M.S. 6 Feb. 1592/3.

79. M.S. 13 June 1593.
80. O.E.C. 20. p.88: amongst the hammermen the rates of wages were not uniform. Individual wages are not given.
81. Maitland p.353.
82. M.S. 30 Oct. 1594.
83. Eg. O.E.C. 20 p.86.
84. App. 1.
85. Eg. O.E.C. 20 p.87.
86. As 89-90.
87. M.S. 10 Feb. 1592/3: M.S. 24 Oct. 1593.
88. M.S. 31 Jan. 1592/3: Grant p.321.
89. App. 1.
90. M.S. 22 Nov. 1592.
91. Chapter 10 App. 5.
92. M.S. 11 August 1593. 6 Dec. 1592: 10 Feb. 1592/3.
93. Supra: M.S. 6 Dec. 1592.
94. As 92.
95. As 91.
96. Chapter 18 App. 6.
97. M.S. 28 April 1593.
98. M.S. 9 October 1594.
99. Chapter 2. App. 2.
100. M.S. 9 July 1597.
101. M.S. 5 June 1594.
102. M.S. 22 Nov. 1592.
103. M.S. 14 Feb. 1592/3.
104. M.S. 5 May 1593.

105. M.S. 25 Oct. 1592 - one, belonging to Mr John Hairt, lay behind the Tolbooth.
106. Chapter 19, App. 8.
107. Chapters 21 & 22.
108. Chapter 19. App. 6.
109. Chapter 19 App. 6.
110. M.S. 10 Feb. 1592/3.
111. M.S. 23 Jan. 1593/4.
112. M.S. 3 April 1595: M.S. 26 Jan. 1596/7.
113. M.S. 30 Oct. 1594.

CHAPTER 21.

The Feufarmers of the Regality of Broughton.

The common tenure within the Regality was that of feu-farm. Of its nature some indication has already been given. It was of a non-military character, the vassal holding his feu in return for an annual return in money and other services.¹ In its wider historical background, the tenure, apart from its variant in the Burghs, was of a recent origin, dating, at the most, to the Fourteenth Century, but generally to the two succeeding centuries. Its history in ecclesiastical lands was another form of lay penetration; for in place of tenants and tacksmen of the Abbot, or Bishop, there appeared a class of lay vassals hereditarily invested in its lands and placed between the Superior and his former tenants who had existed upon a much less secure tenure.² Consequently, the Superior lost immediate control over the lands feued: the foundations of many Scots landed families were laid; and the peasantry usually found themselves exposed to a master nearer at hand than the overlord, and often suffered accordingly.³

The feuing movement was not democratic and its development prevented any possibility of the evolution of a Scots yeomanry, like that of England.⁴ Its main motivating force was the financial needs or obligations of the Superior, combined with his ties of kinship and friendship. If the tenant could buy his charter of feu-farm, he would probably receive the consideration of his overlord; otherwise some stranger would

forestall him. Again, feu-farm was justified upon the grounds that it advanced the agricultural progress of the country.⁵

In Broughton the feu-farm tenure was practically unknown at the beginning of the Sixteenth Century. The tenements of the Canongate⁶ and Leith⁷ had for long been held in feu, as were the crofts along St. Leonard's Way,⁸ and the lands of Ironside.⁹ Preston in Whitekirk,¹⁰ Airth in Kerse,¹¹ portions of Ogilface,¹² the lands of Pendreich¹³ and Fluiris¹⁴ were also held by feuars. Hillhousefield was feued to mainly Leith indwellers and there the tenure had reached its completion before 1496.¹⁵ Nevertheless the great lands and territories were not set in feu until after the dark days of Flodden and until the approach of the Reformation.

In the fifty years before 1570 the entire structure of landholding was changed. Bonnington was feued to its tacksman, James Crawford, in 1524;¹⁶ Saughton was parcelled out to its existing tenants between 1537 and 1560 - to Watsons,¹⁷ Stenhopes,¹⁸ Learmonths¹⁹ and ~~the~~ Archibalds.²⁰ Halkerston's Croft was feued to William Cairncross, by Abbot Robert Cairncross in 1538.²¹ In the same year the tenantry of Killicanty was formed from six lands and a mill.²² Little Fawside passed to Douglas of Borg,²³ while earlier in 1533, Little Saltcoates had been also set in feu-farm.²⁴

The majority of the Commendator Robert Stewart saw the quick culmination of the movement.²⁵ With the excuse of obtaining money to rebuild the Abbey destroyed by the English,²⁶

he sold the monastic lands; or else disposed of them to his friends and relations. The Earl of Arran obtained some twenty-three lands in the Barony of Kerse;²⁷ Abbotsgrange and four other Kerse lands were feued in 1560.²⁸ Saughton Mills,²⁹ Wrightslands,³⁰ Battlehaughs and Canonmills,³¹ Harlaw and Barbourlands³² and Slipperfields³³ were granted and sold between 1554 and 1560. Back and Fore Spittal,³⁴ the lands of Broughton,³⁵ Pilrig,³⁶ Warriston³⁷ and Whitekirk³⁸ had been feued almost certainly before then; while the feuing of the two Abbey gardens in 1567 makes a convenient end to the process.³⁹

The feu-farmers so favoured, included tacksmen like the Crawfords,⁴⁰ Stenhopes,⁴¹ Watsons⁴² and Archibalds;⁴³ Regality officials, bailies and clerks such as William Crawford⁴⁴ and MacNeill⁴⁵ in Broughton; Edinburgh burgesses such as Patrick Richardson who had obtained part of Fluiris in 1502;⁴⁶ lairds of the character of Forrester of Corstorphine;⁴⁷ servants of the King, as Robert Gibb in Killicanty;⁴⁸ burgesses of Linlithgow;⁴⁹ relations of the Commendator as Laurence Bruce in Lochthrid,⁵⁰ and Stewart's friends and servants, like John ~~Bellenden~~^{BELLENDEN}⁵¹ Robert Carmichael⁵² and John French.⁵³ In many lands existing tenants were disregarded, particularly in the Arran holding,⁵⁴ but also in Abbotsgrange,⁵⁵ Battlehaughs,⁵⁶ both portions of Slipperfield⁵⁷ and, amongst others, in Killcanty.⁵⁸

At the end of the century, the bulk of the feu-farmers still retained a fairly high social position. A high proportion

were barons and lairds who possessed more extensive lands outside the Regality, or who held large feus within the jurisdiction. Apart from the Earl of Arran,⁵⁹ there were Margaret Murray, mother of the Commendator of Holyrood,⁶⁰ Henry Sinclair, descendant of the unlucky general of James V,⁶¹ and the lairds of Niddry,⁶² Fingalton,⁶³ Corstorphine,⁶⁴ Calder,⁶⁵ Penycuik⁶⁶ and Colmslie,⁶⁷ with cadets of the House of Livingstone⁶⁸ in Kerse. More purely Regality vassals included the Kincaids of Warriston,⁶⁹ Broughton and Craighouse,⁷⁰ and of Coates,⁷¹ the Logans in Bonnington descended from the Barons of Restalrig⁷² and Watsons in Saughton and Saughtonhall.⁷³ These families intermarried with Livingstones of Dunypace,⁷⁴ with the Bellendens,⁷⁵ with the Logans of Cowston⁷⁶ and other members of the Lowland gentry. Nichol Dalzell, miller of Saughtonhall, was probably kin to the Lairds of that ilk;⁷⁷ John Logan of Fluiris married a daughter of Fairlie of Colinton,⁷⁸ and George Logan of Bonnington a daughter of Hepburn of Gilmerton.⁷⁹

Even the small Pleasance feuholders included merchants,⁸⁰ goldsmiths,⁸¹ maltmen,⁸² swordmakers,⁸³ and the like. The Hillhousefield vassals were drawn in the main from maltmen,⁸⁴ seamen⁸⁵ and other inhabitants of Leith, and also included Logans of Bonnington⁸⁶ and Kincaids of Warriston.⁸⁷

These feuars only rarely did more than draw rents from their estates. A few like the Wilkies in Saughtonhall,⁸⁸ Matheson,⁸⁹ Crawford,⁹⁰ and Hill⁹¹ in Broughton worked part of

their lands, and sometimes took tacks of their neighbours.⁹² Generally, as in the Pleasance,⁹³ Halkerston's Croft,⁹⁴ St. Leonards,⁹⁵ most of Broughton⁹⁶ and Coates,⁹⁷ the entire feu was occupied by tacksmen, who themselves, not infrequently, either subleased or used the labour of lesser tenants.⁹⁸

The average vassal was not only divorced from the actual cultivation of his lands, but often he had no strong or sustained connection with them. Few feufarmers had possessed tenure of their holdings much before the middle of the Sixteenth Century. A century later, the descendants of most had vanished. In Saughton, by 1700, only the Watsons survived of all the families which had been there for generations.⁹⁹ In Broughton, the Towers of Bristo,¹⁰⁰ Watsons,¹⁰¹ Guthries¹⁰² and MacNeils¹⁰³ had disposed of all their lands before 1590, to be followed ^{IN PART} by the Kincaids in 1633.¹⁰⁴ Within a few decades, the Winrhames in Saughtonhall,¹⁰⁵ the Sinclairs of Whitekirk,¹⁰⁶ Crichtons of St. Leonards¹⁰⁷ and Halkerston Croft,¹⁰⁸ and Hairts of Ironside¹⁰⁹ had gone the way of the ^{OTHERS} Kincaids.

With some, financial necessity had forced this retreat, with others the natural extinction of the family was responsible. Some feuars, no doubt, had no real interest in lands they rarely saw, and sold when convenient.

There is evidence, however, that at the end of the century not a few Broughton vassals were heavily burdened with debt, and this was the primary cause of their disappearance.

Most estates were heavily burdened with annualrents, which represented ten per cent interest upon the principal borrowed.¹¹⁰ The Winrham quarter of Saughtonhall paid each year to various creditors almost fifty pounds;¹¹¹ the Wilkie eighth another twenty,¹¹² while by 1599, George West, portioner of an eighth owed almost a thousand pounds.¹¹³

Nor was the situation in Saughtonhall peculiar. Canonmills rendered annuals totalling 144 lib.;¹¹⁴ St. Leonard's 200 marks,¹¹⁵ and a Kincaid half of Coates another fifty pounds.¹¹⁶ Few of the vassals redeemed these annuals;¹¹⁷ some failed to meet their obligations, and were either pointed or apprised.¹¹⁸

By these means, the feus of Sprottie in the Pleasance¹¹⁹ and of Sinclair of Whitekirk¹²⁰ passed into the hands of creditors. Other vassals lost possession through granting wadsets as security for the principal. George Towers of Bristo so disposed of his Broughton estate by failing to redeem wadsets, by granting annualrents and selling lands to meet his obligations.¹²¹ His neighbour, John Acheson, lost his lands through similar practices,¹²² while William Cockie, before gaining complete ownership of Fergusson's Croft, was invested in an annualrent.¹²³ The extensive Kincaid alienations in Coates,¹²⁴ the change in ownership in some of the Hillhousefield¹²⁵ and Fluiris¹²⁶ feus were due to the same cycle of annualrent and unredeemed wadset.

The creditors were small in number and were drawn almost

entirely from burgesses of Edinburgh, the Canongate and from inhabitants of Leith.¹²⁷ James Hairt in the Canongate, had by 1581 loaned at least two thousand marks to various vassals in the Baronies of Restalrig and Broughton, and had acquired considerable areas of land within both jurisdictions.¹²⁸ John Moreson, merchant of Edinburgh, had most of the portioners of Saughton and Saughtonhall well within his grasp,¹²⁹ while the Canongate baxter and bailie, John Smith, had loaned some four hundred marks to Crichton of St. Leonards.¹³⁰ The bailie-depute John Bellenden,¹³¹ and Adam Bothwell, servitor to the Commendator, drew annualrents from Fluiris, Saughtonhall and the Canongate.¹³²

These men and their associates had surplus capital to invest, and a return each year of a tenth was probably a sufficient inducement to lend to impecunious landowners, particularly with the final security of either wadset or appraisal. From the feudal point of view the latter led to the intrusion of new vassals.

The reasons for the financial difficulties of the extant vassals were probably a mixture of particular and general causes. They had to contend with an antiquated agricultural system and with a rapidly-falling currency.¹³³ The last was partially countered by rents in Broughton trebling themselves in the last quarter of the century,¹³⁴ but this was probably not sufficient.

One thing is clear. The general situation did not

affect the vassals to the same degree. Some like John Watson¹³⁵ and Thomas Wilkie¹³⁶ bought and sold land with a rather bewildering rapidity, while the Watsons,¹³⁷ and Haldanes¹³⁸ in Saughton were acquiring their neighbours' lands. Again, largely urban families, as the Hendersons in the Pleasance,¹³⁹ and Achesons in Broughton,¹⁴⁰ after a period of land acquisition fell into the same financial quagmire as those whom they had dispossessed.

CHAPTER 21.

1. Chapter 13; Grant, page 265.
2. Grant, pages 266, 269/70.
3. Grant, page 270 et seq. *in S.H.R. 13.*
4. Grant, page 285 et seq.
5. Grant, pages 279/80, 269.
6. Young, No. 5, 66, 67, 199, etc.
7. Young, No. 30, 45, 51, 62, etc.
8. Young, No. 3, 18.
9. Young, No. 173, 1268.
10. Young, No. 446.
11. Armstrong Bruce. *p. XXXII ET SEQ.*
12. Young, No. 1118. West Craigs of Ogilface.
13. Holyrood, pages 219/20.
14. Young, No. 1212, 16 March 1502.
15. Young, No. 32, 52, 190, 263. By Young, 840. John Mosman received eleven acres which his mother had held in life tack. Another tenant had had possession between mother and son, and the date of feuing is not clear, but could not have been many years before.
16. O.E.C. 19, page 147.
17. Upton-Selway, page 38. There were Watsons in Saughton at the end of the Fifteenth Century. (Young.)
18. R.M.S. iv. No. 2777. Upton-Selway, page 38: Stenhopes granted tack of Saughton Mill in 1511.
19. R.M.S. v. No. 409.
20. Young, as 43.
21. O.E.C. 13, page 81. Its neighbour, Fergusson's Croft, was resigned by Andrew Fergusson in 1504 (Young, No. 1396).
22. R.M.S. III, No. 2298.

23. Supra, No. 1846.
24. Supra, No. 3016.
25. Scots Peerage, VI, page 572. Robert was born in 1532. There was little or no feuing between 1539 and 1550.
26. E.g. Holyrood, page 276, etc.: R.M.S. V. No. 409.
27. Holyrood, page 276, etc.
28. R.M.S. IV, No. 1662.
29. R.M.S. IV, No. 2777.
30. R.M.S. V, No. 1240. Young, No. 1212: the original name of Wrightslands was Warkisland. Wright was a tacksman before 1500.
31. R.M.S. IV, No. 1385. The Towers were in possession of Walkmills by 1486 (Young, No. 42) and were definitely feuars of Battlehaughs in 1494 (Supra, 759).
32. R.M.S. V, No. 645:
33. R.M.S. IV, No. 2386, 1593.
34. Laing C. No. 662: already feued to Cairncrosses by 1556.
35. Young, No. 1165, 8 Oct. 1501. Most of Broughton was evidently not feued at that period; but was by the middle of the century (e.g. Wood, pages 383/4: Logan, 25 May 1588, etc.).
36. Young, No. 1013.
37. Certainly before 1577 (Logan, 28 July).
38. Laing C. No. 600, 3 July 1552.
39. R.M.S. IV, No. 2557.
40. Thomas Crawford was an indweller in Broughton in 1488 (Young, No. 94).
41. Upton-Selway, page 38.
42. Supra.
43. Young, No. 892: by 1497 there were two generations of Archibalds in Saughton.

44. M.S. 20 March 1593/4: "...quond Willielmo crawfurde balliuo dict. regalitatis et baronie."
45. Wood, pages 383/4.
46. Young, No. 1212.
47. R.M.S. III, No. 3223 - the lands of Friertoun.
48. Supra, No. 2298.
49. Supra, No. 3016.
50. Scots Peerage, VI, page 572: Stewart's mother subsequently married John Bruce of Cultmalundie.
51. R.M.S. IV, No. 1385.
52. R.M.S. V, No. 1240: Laing C. No. 680.
53. R.M.S. IV, No. 2557.
54. Holyrood, page 276, etc.
55. R.M.S. IV, No. 1662 - already occupied by six tenants.
56. R.M.S. IV, No. 1385 - occupied by Elizabeth Inglis, widow of George Towers of Bristo.
57. R.M.S. IV, No. 2386: Yowthird occupied by Margaret Wauchope, widow of John Penecuik of that ilk; Middlethird by John Sinclair of Drydon (R.M.S. IV, No. 1593); Lochthird occupied by two tenants.
58. R.M.S. III, No. 2298: occupied by nine tenants.
59. Holyrood, page 276, etc.: List of Vassals.
60. R.M.S. V, No. 119: in one half of Whitekirk.
61. Laing, No. 600. Oliver Sinclair of Pitciarns and his wife, Kathleen Bellenden, held the entire lands and barony. Kathleen was the daughter of Patrick Bellenden, the first holder of Auchnoull (Scots Peerage, II, page 62) and died before 1568. Pitcairns evidently married at a later date Beatrix Rollock, who was mother of Henry Sinclair (Scots Peerage, VII, page 186: R.M.S. V, no. 57).
62. Wood, pages 303/4: holders of four merklands in Ford.
63. Holders of half Preston.

64. R.M.S. as 47: R.M.S. VI, No. 966.
65. O.E.C. XIX, page 147 et seq: portioners of Bonnington.
66. R.M.S. IV, No. 2386.
67. Laing, No. 662.
68. List of Vassals: Laing, 707: Livingston, page 280.
69. List of Vassals.
- 70.- Supra.
- 71.
72. Logan. *O.E.C. 19p. 148*
73. Lists of Vassals.
74. Logan, 21 Oct. 1588: John Kincaid of Warriston.
75. Scots Peerage, II, pages 62/63: a reputed sister of Kathleen married a John Kincaid of Warriston before 1569.
76. ~~Logan, 26. As 72.~~
77. Vide Chapter 19.
78. Logan, 18 Feb. 1598/9.
79. Logan, 1 Sept. 1599.
80. List of Vassals.
81. List of Vassals.
82. E.g. Thomas Blaikkie and Robert Simpson.
83. Logan, 18 Jan. 1577/8: John Sprottie.
84. List of Vassals.
85. E.g. Logan, 7 March 1579/80.
- 86.- List of Vassals.
- 87.
88. Chapter 22, App. 3.
89. Chapter 22, note 92.
90. Chapter 22, App. 1.

91. As 92: Chapter 22, App. 3.
92. As 88: 89: Hill was occupier of Greenside (E.C.R. IV, page 532): of part of the Acheson (M.S. 20 August 1595) and Crawford lands (App. 1).
93. The Pleasance tenants included Patrick Fairlie and Robert Forbrand upon the Sprottie feu (M.S. 1 June 1594): Maise Dobie upon the Henderson one and one-third acre (M.S. 16 July 1597) and Thomas Pollock, Elspeth Corsbie, Mark Wilson and Andrew Gibson upon the half-acre of Thomas Blaikkie (M.S. 12 Nov. 1597).
94. M.S. 28 Oct. 1594: William Burrell, smith, two acres.
95. Chapter 22, App. 6
96. E.g. Chapter 22, App. 1 and 2.
97. In 1577 (Logan, 28 July): there were at least eight tenants upon one half of Coates.
98. Chapter 22.
99. Upton-Selway, p 38 ~~or 32~~
100. Chapter 22, App. 1.
101. Chapter 22, App. 2.
102. Not mentioned amongst vassals.
103. Chapter 22, App. 2.
104. R.M.S. VIII NO. 2150.
105. Supra. VIII, NO. 1848
106. Supra. VIII, NO. 2069.
107. O.E.C. v. 23, p. 135
108. O.E.C. V, 13, page 81.
109. O.E.C. v 23 p. 144.
110. A.P.S. (S) Ja. VI, 11, c. 52: Logan, 12 March 1590/1: M.S. 4 Jan. 1594/5.
111. App. 1 and 2.
112. App. 1.

113. App. 1.
114. App. 1 and 2.
115. App. 1.
116. App. 2.
117. Patrick Crichton did in 1591 (Logan, 12 March 1590/1),
App. 1.
118. Vide 16.
119. As above.
120. ~~R.M.S.~~ As 106.
121. App. 1.
122. App. 2.
123. App. 2: List of Vassals.
124. App. 2.
125. App. 2: John Luiff.
126. App. 1: John Bellenden.
127. App. 1 and 2.
- 128.- App. 1.
- 132.
133. ~~As 106.~~ As CHAPTER 20: NOTE 75.
134. Chapter 22, App. 6.
135. List of Vassals: App. 1. Watson had also acquired three acres from Nichol Dalzell and twenty from Thomas Wilkie (Logan, 14 May 1602).
136. Thomas Wilkie had purchased the above acres from Dalzell in 1590 (Logan, 26 June).
137. Logan, 5 Dec. 1589.
138. Logan, 19 Feb. 1590/1.
139. App. 2.
140. App. 2.

CHAPTER 22.

The Feus and Tenants of the Regality of Broughton.

The feu-farm holdings were superimposed upon the existing economic structure of town, infield and outfield. Scattered throughout the jurisdiction were small villages or hamlets, Saughton, Coates, Broughton, Airth and many others, each being surrounded by the lands worked by its inhabitants. The Canongate served a similar purpose for Meadowflatt, Dishflatt, Ironside and other adjacent lands, while North Leith was the town of Hillhousefield.¹

There was a variety of possibilities in the feuing of lands. Some territories, such as Warriston,² Bonnington³ and Wrightslands⁴ were feued to a single person; others, particularly in Kerse, were grouped into a single tenantry consisting of several towns and lands.⁵ In both cases, the economic structure of the lands remained unchanged; although a new feudal unit was created, and an intermediate vassal placed between Lord Superior and tenant.

With towns and lands feued to a variety of persons, each receiving a portion, the situation was more complicated. Each was given his share of town, of infield and of outfield. So far as the infield was concerned, this usually resulted in a feu composed of widely scattered rigs and acres. For save in Saughton⁶ and Airth,⁷ most of the Regality lands were runrig.⁸ The subsequent feus generally followed the lines and bounds of the lands occupied by specific tenants.

In the town and lands of Broughton this led to an interesting development. There the feuars in the middle of the Sixteenth Century were eight in all.⁹ Of the larger feuars, George Touris had his lands mainly situated in the south-east of the territory, from Multraise Hill down the road to Leith;¹⁰ the Crawfords were entrenched around Pilrig Moor and Fairneyhill;¹¹ but the Matheson, Kincaid, Watson and MacNeill lands were completely intermingled.¹²

For various reasons, all the original feuars alienated portions of their estates, Towers being a particularly bad offender.¹³ These fractions consisted of detached and isolated acres and rigs. The disposal was not illogical, for in each instance, the feuar sold the lands occupied by certain tenants. The elder John Matheson granted twenty acres to John Vaus, occupied by seven tenants. Of these Agnes Johnston possessed a holding of twelve rigs, and of two dales; James Henryson, three rigs and a head-rig in the Mathmanshot, and four rigs in the Scabbitland; another possessed a rig and a but, while John Chalmers occupied two butts, three contiguous rigs, another two lying together, and a single isolated rig.¹⁴ In a similar manner, Towers ceded to David Vaus, lands occupied by David Kyle, Robert Muir and William Inglis;¹⁵ to James Hairt acres occupied by Hairt himself, bailie John Watson, John Elrig and Alexander Wilkie. Kyle occupied ten contiguous acres, Muir another five and a piece land, and Inglis a single acre.¹⁶ Both Matheson and Towers had alienated the lands of certain

tenants; these lands were runrig, and accordingly the new feus were shaped and moulded by the agricultural configuration.

The Matheson alienations show that this original feu and its neighbours were also runrig,¹⁷ and here, too, the original feufarmers had, in all probability, received either their own holdings or, more probably, those of existing tenants. Towers and Crawford had obtained their more consolidated feus through acquiring the lands of adjacent tenants.¹⁸

The most perfect runrig feus are, however, to be found in Saughtonhall, which at this date, was only beginning to suffer from later alienations. There the largest feu was a quarter and a sixteenth,¹⁹ while there were one of one quarter,²⁰ two of one eighth²¹ and another of an eighth and sixteenth.²² Allowing for these differing proportions, practically the whole infield save for lands like Stoneycroft, near the town of Saughtonhall, was divided rig by rig amongst the portioners. The Dalzell lands, an eighth and a sixteenth, were scattered throughout the Carrick, the Lochflatt, Lochshott, Briefflat, Belfortshot, and other regions of the infield in groups of anything from seven to a single rig, of four or fewer dales, and in similar numbers of buts. A single rig was anything from just under an acre, to as little as twenty-two falls, a dale, or large rig, about an acre, while the but, or an incomplete rig lacking the crown, was probably about the same size as a rig.²³

From the examples of Broughton and Saughtonhall, it can be seen that the feu less in area than the land of which it

formed part was usually a widely dispersed holding. In these territories, this had been dictated by the extant agricultural system. In Saughton and Airth on the other hand, the original tenants had held oxgangs, or solid blocks of thirteen acres,²⁴ and this survived feuing. The feuars in Saughton held one or more oxgang, each feu being situated in Sighthill, or Claysire, or Lairdship or in some other clearly defined part of the territory.²⁵

The same divided feu could be obtained by more artificial means. Hillhousefield had been originally occupied by a large number of tenants, each possessing anything from one to twelve acres, usually, although not always, in a solid block.²⁶ Feu-farm confirmed these allocations, most of the early feuars being the original tacksmen.²⁷ In the course of the Sixteenth Century the number of feu-farmers decreased, but the size of the feus increased. This was due to the accidents of inheritance and alienation; but the result was often to produce a feu distributed over most of the territory. The Bartan feu of 1580, not only comprised the greater part of the old dispersed Mosman tack, but also included, amongst others, the former Joyffrason and Dalrimpill holdings;²⁸ while the Kincaid lands were formed from the Dun and a portion of the Spencer feu of a century before.²⁹

Bonnington had been feued to a single vassal of the Regality,³⁰ but his line had ended in four coheiresses.³¹ The town, lands and mill were quartered amongst the women, the

infield being divided shot by shot, each receiving a belt of contiguous acres in every shot.³² Coates had been similarly divided between two Kincaid portioners, with the result that both are to be found in the Easter and Wester Wards, in the Howpairt and other regions of the territory.³³

The original feuars had also received their proportion of the town, its houses and other pertinents.³⁴ This was also alienated in part or in whole, by many tenants including the Achesons³⁵ and Mathesons³⁶ in Broughton; by both Kincaids in Coates³⁷ and by John Watson in Saughtonhall.³⁸ The practical result was to create feuars who had a foothold only in the town, or to exclude others from the town altogether,³⁹ while many of the more recent feuars had never at any time gained access to the village.⁴⁰

In addition the feuar was invested in his share of the outfield. John Watson, in Saughtonhall, had not only his "infoild Muckitland" acres but also his rights to "prati lie myre quhinnis mwre sykis panneis sta'lris sykis" and to the "Ingerse and commoun gerse".⁴¹

The outfield was not divided permanently as was the infield.⁴² Portions could be ploughed, after cattle had been enclosed upon it, and forced to yield crops until finally exhausted.⁴³ Otherwise, it remained a waste for pasturage and for the winning of peat, fuel, and wood.⁴⁴ The number of animals placed upon it by the individual feuar was determined approximately by the extent of his feu,⁴⁵ but, if necessary,

the exact amount could be decided by the procedure of "souming and rouming", which calculated the number he could fodder in winter upon his own tenement. From this, he was allocated his allowance upon the common land.⁴⁶

These rights could be alienated or leased; either in part or in whole. Watson and Dalzell sold at least a proportion of their outfield privileges.⁴⁷ Mariote Fyffie received a share of the common lands of Coates.⁴⁸ James Crawford in Broughton leased part of his to Andrew Smith,⁴⁹ besides placing on the common his own sheep and those of his shepherd.⁵⁰

The effect of feuing upon lands like Broughton and Coates was considerable. The more a land was feued, cross-feued and divided, the more was injured the broad pattern of runrig.⁵¹ Each feuar within his holding was competent to introduce what tenants he willed, with detrimental effects upon the economic unity of the whole land. In place of a few tenants with rigs dispersed throughout the territory, there could be many with their holdings arranged according to the whim of the individual feu-farmer.⁵² The town tended to fall away from its lands, particularly when feuars of the territory had largely deserted it. James Crawford of Broughton was established in Leith Wynd⁵³ and not in the village of Broughton, while many other feuars and even tenants, dwelt in either the Canongate,⁵⁴ or St. Ninian's Row⁵⁵ or Leith.⁵⁶

Feu-farm also ended any possibility of an annual

redistribution of rigs, as prevailed in England and also in some parts of Scotland.⁵⁷ The feuar obtained clearly defined acres and rigs; the tacksmen acquired from him an equally well described portion. In Hillhousefield, the feus of the late Sixteenth Century still retained the boundaries of a hundred years before.⁵⁸ In 1498, John Dun had obtained a fief of two acres bounded by the Green on the east and by Broomhill on the west.⁵⁹ A century later, it was in the hands of the Kincaids.⁶⁰ The boundaries of the Mossman,⁶¹ Crawford,⁶² Dalrimpill,⁶³ Gardiner⁶⁴ and Joffrason⁶⁵ feus had likewise remained unchanged. In Hillhousefield,⁶⁶ Saughton⁶⁷ and possibly Broughton,⁶⁸ there is no doubt that even before feuing, the reallocation of rigs did not take place. The same is true of probably all the other lands in the Barony of Broughton. Feu-farm in the apportioned lands made it impossible.

In one important respect the original economic system survived unimpaired the advent of feu-farm. In the Barony of Broughton, the Water of Leith from Saughton to the sea was dotted with mills; Stenhope's Mill,⁶⁹ Dalzell's Mill,⁷⁰ mills at Coates,⁷¹ Canonmills,⁷² Bonnington and elsewhere.⁷³ The lands of the Baronies of Kerse and Whitekirk were similarly provided.⁷⁴ To each of these were thirled the inhabitants of the territory.

The tenants of the Canongate,⁷⁵ the Pleasance⁷⁶ and adjacent territories including Broughton⁷⁷ were bound to the mills at Canonmills; those in Bonnington,⁷⁸ Coates⁷⁹ and other territories to their respective mills.⁸⁰ The mills, their

lands and multures, were feued to individual persons, such as the Bellendens,⁸¹ Stenhopes⁸² and Dalzells,⁸³ who were quick to pursue in court any inhabitant sufficiently bold to desert their mills for elsewhere. The miller received from his bound customers his multures, in the case of the Stenhopes one of every six pecks of grain ground at Saughton Mill.⁸⁴

The feuars worked their lands mainly through tenants. The upper ranks of these were tacksmen, or tenants who held their acres by a written agreement which included the rental, and other renderings together with the period for which the tack was to endure.⁸⁵ A common length of time was five years,⁸⁶ although the Wilkies in Saughtonhall, on the Moreson lands,⁸⁷ and others probably held for longer periods. George Wilkie and Aleson Pratt his wife were probably conjunct tacksmen, as were also the Cleghorns in Saughton,⁸⁸ and Mures in Broughton.⁸⁹ Such could endure until the death of the surviving partner, and even longer, embracing the life of the heir of the original conjunct tacksmen.⁹⁰

The rental paid by the tacksman was usually a mixture of money and goods. With the exception of St. Leonards,⁹¹ labour services are rarely encountered in Broughton. In 1569, Matheson in Broughton owed for each acre of his tack, three pounds, a capon and a load of coals, or two shillings for each load, and three for every capon.⁹² Another Broughton tenant rendered for his nine acres, ten pounds in money, and ten bolls of wheat and barley. The latter was commutable for the annual

price of grain; at this period thirty-three shillings a boll:

Other rentals were broadly similar. George Brown in Pilrig gave the Laird for his eleven acres, thirty-three bolls of victual, eleven loads of coal, and eleven capons, the boll being probably reduced to about two pounds in silver, while George Skathowie delivered to John Bellenden twenty-four bolls of barley and twenty thraves of straw, for half of Meadowflatt and Dishflatt. In general, the tacksman rendered some three pounds per acre, if capons, coals and bolls are reduced to monetary equivalents.

At the end of the century, while the rentals were still expressed in the same way, they had trebled in amount. In 1569, a tenant had paid 3 lib. 9s. 6d. for a single acre of Whitecroft, but in 1594 William Burrall, a tacksman in nearby Halkerston's Croft, rendered ten pounds for each acre. Similarly in Broughton, a load of coal was now commuted for five shillings. In neighbouring Wrightslands, the tenants of Thomas Craig owed per acre, two bolls of victual, or eight marks for each, a single boll of oatmeal, or 3 lib. 10s., a capon and a load of coal or a half-mark for each. In all, a single acre cost its occupiers nearly fifteen pounds. In the adjoining Barony of Restalrig, an acre was rented for some ten pounds.⁹³

These dues reflected the steady increase of prices which characterized the last years of the century. They also show the advantages to the landlord, not only of the tack system by which he could raise the rent upon the entry of a new tenant,

but also of the rent expressed in kind. By the latter, the monetary rental could remain unaltered, but the money equivalent of the grain, or coal, or capons, could be regulated by the current prices of these commodities.

The financial inadequacy of the feu-farm tenure to the Baron of Broughton is also illustrated. While Thomas Craig received almost fifteen pounds an acre from his tenants in Wrightslands, the whole land returned to the Superior only about nine pounds.⁹⁴ If in 1570, Mr Thomas MacCalyeane was due 36 lib. 10s., his feu, in 1594, gave the Baron of Broughton 3 lib. 14s. 11d., together with three capons,⁹⁵ while the average return to the Superior from the lands of Broughton was just over seven shillings an acre.⁹⁶ In the Pleasance a croft, an acre in extent, was feued at an annual ten shillings,⁹⁷ but could be rented at fifty marks;⁹⁸ while in Falkirk a 16s. 8d. land now gave the Lord of the Regality thirty-two shillings,⁹⁹ but his vassal received from his tenants nearly thirty pounds in silver alone.¹⁰⁰ In Fluiris, as far back as 1570, a feuar received double his duty to the Superior from his tacksmen.¹⁰¹

With rents being high, it is not surprising that the average tacksmen was of good social position. Particularly in Broughton,¹⁰² but also in St. Leonards,¹⁰³ Halkerston's Croft,¹⁰⁴ Meldrumsheugh,¹⁰⁵ Meadowflatt and Dishflatt,¹⁰⁶ Wrightslands,¹⁰⁷ Pilrig¹⁰⁸ and Fluiris,¹⁰⁹ many of the tenants were burgesses of Edinburgh, of the Canongate and inhabitants of Leith.

Many must have subtacked, or had tenants upon some less secure tenure,¹¹⁰ or else employed the servants mentioned in the decrees of removing.¹¹¹ Certainly, most tacksmen, like many feuars had their main interests centred upon the adjacent burghs and towns. The court record gives little information of the lesser beings who worked the ground of the Regality feus.

CHAPTER 22.

1. By Young, 1269, etc.: the Canongate inhabitants owed harvest work which could have been rendered upon the fields around the burgh. The same was probably true of North Leith.
2. Logan, 26 July 1577.
3. O.E.C. XIX, page 147.
4. R.M.S. V., No. 1240.
5. As Abbotsgrange: R.M.S. IV No. 1662: Killicanty, R.M.S. III, No. 2298.
6. E.g. List of Vassals: the division into oxgangs antedated feuing, e.g. Young, No. 892.
7. Armstrong Bruce. p. XXXII etc.
8. E.g. App. 2 and 3.
9. George Towers of Bristo: John Matheson: James Crawford: Steven Kincaid: Mr Thomas MacCalyeane: Mr John Guthrie: William MacNeil: John Watson.
10. App. 1.
11. App. 1: M.S. 20 March 1593/4.
12. App. 2.
13. Chapter 21, App. 1.
14. App. 2.
15. App. 1.
16. App. 1.
17. App. 2.
18. The Towers of Bristo had for long occupied Battlehaughs, a pendicle of Broughton (e.g. R.M.S. IV No. 1385;) while the Crawfords were descended from a Regality bailie and ultimately from the Crawfords of Bearcroft (Wood, pages 73, 83). Probably few of the Broughton portioners, especially the Guthries, MacCalyeanes and Watsons, had had a long connection with the land.

19. List of Vassals.
20. Do.
21. Do.
22. Do.
23. App. 3.
24. As 6.
25. List of Vassals.
26. Young: No. 32: one acre: 52: five particates: 190: three
and a half acres: 2 $\frac{1}{2}$ of which lay together: Young: No. 263.
27. As 263.
28. App. 4.
29. App. 5.
- 30.-As 3.
- 31.
32. M.S. 23 Feb. 1593/4: e.g. 3 rigs of George Logan:
E. - Calder; W. - Wood; N. - late George Logan.
33. Logan, 28 July 1577.
34. E.g. Wood, pages 383/4, 385/6: R.M.S. V. No. 409.
35. Logan, 28 Oct. 1588.
36. Logan, 25 May 1588.
37. M.S. 7 Sept. 1597: Logan, 23 June 1599.
38. Logan, 28 April 1602.
39. Watson by above sold his South Barn, part of his garden,
his cow byre, and "baikhous" and three houses and gardens.
40. As Logan of Cowston in Bomington: M.S. 23 Feb. 1593/4.
41. Logan, 28 April 1602.
42. Monymusk, page xl.
43. Supra.

44. Supra, page xli.
45. As 41. Watson sold his eighth of gerse.
46. Mackenzie, II, 9. 6. page 207.
47. Logan as 41.
48. As 37: "cum libertate debit. et consuet. per montem dict. terrarum vulgo vocat. lie, loichill." She was allowed by Clement Kincaid - "...affigendi spinas et de super aridandi pannos prout vsitati prius fuerunt infra peciam viride terre contigue supra dictum hortum." (M.S. 7 Sept. 1597.)
49. M.S. 27 July 1597 - "The quhilk day compeirit Williame Smyth in brochtone & become actit...(etc.)...To content & pay to James crawfurde portionar of brochtone...sax scoir markis...as for the price of Fourtene yowis and fiftie markis for girse maill..."
50. M.S. 18 Jan. 1597/8 - "Thrie yowis quhairof tua pertenet to the said James (Crawford) And ane to archibald tod shiphird..."
51. For the allocation of rigs amongst tenants of a single landowner possessing the entire economic organism see Monymusk, page 148. There a single tenant had rigs throughout the infield.
52. Thus the Acheson acres in Broughton in all were occupied by six tenants. John Hill in Multraise, John Burn in the West Water, David Rose in Bellsmill: John Wardropper in St. Ninian's Row (M.S. 4 June 1595): Peter Hume in the West Port and George Turnet in Auldstone (M.S. 20 Aug. 1595).
53. Logan, 6 Feb. 1578/9.
- 54.- As 52, and App.
- 56.
57. Monymusk, page xlil.
58. App. 4 and 5.
59. App. 5.
60. App. 5.
61. App. 4.

62. App. 4.
63. App. 4.
64. App. 4.
65. App. 4.
66. Supra.
67. Young, No. 892.
68. Young, No. 1165.
69. R.M.S. IV, No. 2777.
70. App.3.
71. Chapter 15, App.5.
72. List of Vassals.
73. Laing C.No. 680.
74. R.M.S. III, No. 2298: mill of Straths in tenandry of Killicanty; R.M.S. V, No. 119: Linton Mill in Whitekirk.
75. Laing C. No. 2395, 2849.
76. M.S. 21 Feb. 1592/3 - "The baillie depute decernit... Johme Wallis in the cannomylnis to content and pay to Robert Symssone in plesance...ten markis...Promitit be the said Johme to the said Robert for ane laid of malt quhilk wes tane out of the Canonmylnis pertenyng to the said Robert.
77. Canonmills appeared to be included within the territory of Broughton (R.M.S. V, No. 377).
78. Bonnington Mill was divided amongst the four portioners as late as 1557 (Laing C. as 73).
79. Presumably in view of No. 71.
80. R.M.S. IV, No. 1662.
81. List of Vassals: Sir James Bellenden received the mill multures (Logan, 5 April 1591).
82. As 69.
83. As 70.

84. Logan, 26 June 1590. Saughton Mills were both grain and fuller mills.
85. B.P. "of assedation" c. 23. Chapter 17.
86. E.g. Wood, pages 239/40.
- 87.- Chapter 17.
- 88.
89. Chapter 21, App. 1.
90. Chapter 17.
91. Wood, pages 159/60.
92. App. 6.
93. App. 6.
94. R.M.S. V, No. 1240.
95. M.S. 20 March 1593/4.
96. M.S. 19 Jan. 1596/7: 7s. 8d. for one acre: M.S. 11 June 1593, 22 lib. 1s. 9d. and 4 capons for 57: Wood, pages 383/4, 5 m. for nine: Logan, 25 May 1588, 8 lib. for 20½.
97. Logan, 24 Oct. 1589: 18 Jan. 1577/8: 20 Jan. 1578/9.
98. App. 6.
99. M.S. 6 April 1597: Laing C. No. 2885.
100. App. 6.
101. App. 6.
102. App. 1 and 2.
103. App. 6.
104. App. 6.
105. M.S. 6 March 1593/4. For Coates, Logan, 28 July 1577.
106. App. 6.
107. App. 6.
108. App. 6.

109. Wood, pages 239/40.
110. For the general position of tacksmen, lesser tenants and labourers see Grant, pages 293 et seq.
111. Chapter 17.

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