





THE LIBRARY  
OF  
THE UNIVERSITY  
OF CALIFORNIA  
LOS ANGELES



Harvard

4<sup>50</sup>

C 3152

*With Mr Charles Lawson's  
Compts -*

THE  
HIGH CONSTABLES  
OF  
THE CITY OF EDINBURGH.

*Edinburgh : Printed by John Greig and Son.*



MODERATOR'S GOLD MEDAL.

SKETCH  
OF  
THE HISTORY OF THE  
*High Constables of Edinburgh*

WITH  
NOTES ON THE EARLY WATCHING, CLEANING, AND OTHER POLICE  
ARRANGEMENTS OF THE CITY.

BY  
JAMES D. MARWICK, F.R.S.E., F.S.A. SCOT.  
CITY CLERK OF EDINBURGH.

EDINBURGH :  
PRINTED FOR PRIVATE CIRCULATION.  
1865.



INSIGNIA OF MODERATOR.

DA  
890  
E2 M36



PRESENTED  
TO THE  
**High Constables of Edinburgh,**  
BY  
**CHARLES LAWSON JUN.,**  
EX-MODERATOR.

750162



EX-MODERATOR'S INSIGNIA.

TO  
CHARLES LAWSON, ESQ., YR. OF BORTHWICKHALL,  
EX-MODERATOR OF THE HIGH CONSTABLES OF EDINBURGH.

*My Dear Sir,*

*I now offer you my "Sketch of the History of the High Constables of Edinburgh."*

*When, a few weeks after your election to the Moderatorship of the Society in the winter of 1862, I undertook to prepare this sketch, I had little idea of the nature or extent of the work which it involved. But an investigation of the records of the Town Council shewed, not only that the "Constables" were of considerably greater antiquity than was supposed, but were so largely associated with the watching, cleaning, and other police arrangements of the City, that no sketch of their history would be worth offering which did not deal, somewhat in detail, with these arrangements. The materials for preparing such a sketch, however, had to be sought almost exclusively, so far as I am aware, in the voluminous records and other MSS. in the archives of the City; and to that task I have devoted those portions of my time that were not demanded by my official duties. Taken up thus at intervals, and worked at frequently under considerable physical disadvantages, my sketch has assumed very much the form of notes, without any literary pretensions, and printed off sheet by sheet as prepared. It is, however, the best that I can offer in the circumstances; and with all its defects, of which no one can be more sensible than myself,*

### *Dedication.*

---

*it will, I trust, possess some interest as an attempt to make partially available what, to a large extent, are still unused materials for the history of Edinburgh.*

*Believing that an interest attaches to the precise words of the original documents, which no paraphrase of mine could possess, I have made these documents tell as far as possible their own story. To a general reader this would probably be a great objection. But I venture to hope that you and the other members of the Society will prefer the ipsissima verba of your own and the City's records to any other phraseology.*

*You will observe that the foot-notes, which form so large a portion of the book, contain, in almost every instance, a reference to the authorities for the statements in the text. Any person who may hereafter work in the same field will thus have his labours lightened, while the Society will possess an index to the records illustrative of its history, and be enabled to refer to them without much difficulty.*

*Wishing that my work were more worthy of your acceptance, and more commensurate with my sentiments of regard for yourself and for your family,*

*I remain, My Dear Sir,*

*Very faithfully yours,*

J. D. MARWICK.

10 BELLEVUE CRESCENT,  
EDINBURGH, 1st November 1865.



## CONTENTS.

### CHAPTER I.

#### INTRODUCTORY.

PAGE

Derivation of the term "Constable."—Lord High Constable.—Constables of Castles.—Constables of Hundreds and Tithings, &c.—High and Petty Constables.—High Constables of the City of Edinburgh. . . . . 3

### CHAPTER II.

#### INTRODUCTORY.

Disorderly condition of Edinburgh during the sixteenth and the early part of the seventeenth centuries.—Acts of Parliament, Privy Council, and Town Council, for remeid.—Institution of Constables in the City ; their duties in connection with the suppression of beggars, vagabonds, night-walkers, &c. ; the wearing of fire-arms ; the watching and peace of the city ; the enforcement of the laws against Popery ; the cleanliness of the City ; the provision by the citizens of befitting armour ; the suppression of profane swearing, &c. 15

### CHAPTER III.

#### 1611-1700.

Election of Constables in Edinburgh.—Institution of Justices of the Peace and Constables throughout the country.—Orders and Injunctions for City Constables, and General Articles and Injunctions for Constables.—Watching Arrangements of the City.—Cleaning Arrangements of the City.—Duties of the Constables in relation to these, and as to strangers, lodgers, and loose and dissolute persons within burgh, and as to Sunday observance, &c. . . . . 97

## Contents.

### CHAPTER IV.

1701-1800.

PAGE

Orders for the internal regulation and discipline of the Society.—Elections of Constables.—Legislation against Sunday profanation and immorality.—Duties of the Constables in enforcing that legislation, in attending at fires, in assisting revenue officers, in taking up lists of persons liable to serve as jurymen and in the militia, in attending magistrates on public occasions, in preserving the peace, in assisting recruiting officers, in preparing Parliamentary returns, &c.—Donations by the Society to charitable objects.—“Instructions” to Constables in 1728, 1750, and 1786.—Dangers attending execution of office.—Services of the Society connected with the rebellion in 1745.—Duties of Constables in relation to the watching and cleaning arrangements of the city.—Festive meetings, &c. . . . . 149

### CHAPTER V.

1801-1865.

Elections of Constables.—Regulations by the Town Council as to the constitution and management of the Society.—Question as to the relation of the Society to the ordinary Police.—Society authorised to assume the distinctive title of “High Constables.”—Alterations in its numbers.—Disputes with the Town Council.—Rules enacted by the Society for its internal administration, and questions in connection therewith.—Miscellaneous duties ; keeping the peace ; collisions with the military authorities in the discharge of that duty ; attending magistrates at public ceremonies ; preparation of parliamentary returns, jury lists, and lists of persons liable to serve as militia men.—Philanthropic services.—“High Constables’ Volunteer Company.”—Questions of Precedency with other Local Bodies.—Loyal Addresses.—Festive Meetings.—Annual Excursions, &c.—Insignia.—General Observations, &c. . . . . 214

# Contents.

## APPENDIX.

	PAGE
I. List of Office-Bearers of the Society, from the Union in 1707 till April 1864. . . . .	ii
II. Account of "The Unlaws of Bluid and Injureis in the Toun," from Michaelmas 1608 till Michaelmas 1609. . . . .	xiv
III. Ordour and Maner of the Visitouris in ilk quarter, electet and chosin thairto,—contening thair office, thair naimes, and bounds assignet to thame [3d July 1588]. . . . .	xv
IV. Orders and Injunctions for the Constables of the City [4th September 1611]. . . . .	xvi
V. Act of Parliament as to Constables, 1617, c. 8, with foot-notes shewing alterations effected by the Act 1661, c. 38. . . . .	xviii
VI. Notes on Sunday Observance in Scotland previous to 1698. . . . .	xxi
VII. Orders to be observed by the Constables of Edinburgh. . . . .	xxxiv
VIII. List of Officers of the Society of High Constables, from 1711 till 1865. . . . .	xl
IX. Donations by the Society out of their Box to Charitable Institutions in the City, &c., from 3d December 1717. . . . .	xli
X. Instructions by the Lord Provost, Magistrates, and Council of Edinburgh, to be observed by the Constables in the discharge of their offices within this City and liberties thereof. Approved of by the Magistrates and Council on 23d May 1750. . . . .	xl ii
XI. Instructions for the Constables of the City of Edinburgh, in the discharge of their public duties ; approved of by the Magistrates and Council on 29th March 1786. . . . .	xliv
XII. Rules proposed by the Society of Constables for their internal government, and approved of by the Magistrates and Council on 29th March 1786. . . . .	xlvi
XIII. Rules for the internal government of the High Constables, adopted by the Society on 23d June 1812, to supersede the Rules then in force. . . . .	xlix
XIV. Rules for the internal government of the High Constables, adopted by the Society on 8th August 1814, in lieu of those of 23d June 1802. . . . .	
XV. Rules and Regulations of the Society of High Constables of the City of Edinburgh, approved of by the Society on 12th August 1825. . . . .	lii

## *Contents.*

	PAGE
XVI. Instructions and Regulations by the Lord Provost, Magistrates, and Council, for the Society of High Constables of the City of Edinburgh; confirmed by act of Council, 19th March 1828. . . . .	lvi
XVII. Rules of the Society of High Constables of the City of Edinburgh, approved of by the Society on 14th May 1830. . . . .	lix
XVIII. Rules of the Society of High Constables of the City of Edinburgh, as printed in 1835. . . . .	lxii
XIX. Rules of the Society of High Constables of the City of Edinburgh. . . . .	lxv
XX. Act of Council regulating the Constitution of the Society of High Constables of the City of Edinburgh, 24th February 1857. . . . .	lxx
XXI. Bye-Laws of the Society of High Constables of the City of Edinburgh, approved of by the Society on 11th May 1857, and amended by subsequent resolutions on 13th October 1858, 5th January 1860, 8th February 1861, and 2d July 1861. . . . .	lxxi
XXII. List and Description of the Insignia. . . . .	lxxv
XXIII. Office-Bearers and Roll of Members, 1st November 1865. . . . .	lxxx

---

NOTES on the Powers, Privileges, &c., of the Lord High Constable of Scotland, with especial reference to the questions between him and the magistrates of Edinburgh in regard to their criminal jurisdiction within the city. . . . . [1]

APPENDIX to Notes on the Lord High Constable :—

(1.) Expense of Deputation to London in 1631. . . . .	[44]
(2.) Expense of Deputation to London in 1634. . . . .	[45]
(3.) Expenses incurred by the Town in connection with disputes between the Magistrates and the Lord High Constable during 1632-34. . . . .	[46]
(4.) Letter from King Charles I. to the Magistrates and Council. . . . .	[50]
(5.) Commission to the Magistrates of Edinburgh to act as Deputies of the Lord High Constable during the visit of George IV. to Scotland in 1822. . . . .	[51]
CORRIGENDA. . . . .	[52]

---

INDEX. . . . .	[53]
----------------	------



*HIGH CONSTABLES*  
*OF THE*  
*CITY OF EDINBURGH.*

A





## *High Constables of the City of Edinburgh.*

### CHAPTER I.—INTRODUCTION.

Derivation of the term "Constable."—Lord High Constable.—Constables of Castles.  
—Constables of Hundreds and Tithings, &c.—High and Petty Constables.—  
High Constables of the City of Edinburgh.



THE word "Constable" is, by some authorities, derived from the Saxon words "Koning" and "Stapel," signifying a support of the King ; and by others from the Latin words "Comes" and "Stabuli," denoting a master of the horse. The latter derivation is that adopted by Spelman, Du Cange, and others, and has reference probably to the duties of that officer, well known in the Empire, who had to regulate all matters of chivalry, tilts, tournaments, and feats of arms, which were performed on horseback.

Such also was the duty of the Constable of France, —one of the great officers of State,—who, in virtue of his office, had the chief command of the army, and took cognizance of military offences. The office was suppressed by an edict of Louis XIII., but was revived by Napoleon I., who constituted it one of the six grand dignities under the French Empire. On the restoration of the Bourbon Dynasty in 1814, however, it was finally abolished.

In England, the office of Lord High Constable was instituted immediately after the Norman Conquest, both the name and the office being, according to Blackstone, borrowed from the French. The Constable of England was also an officer of the highest dignity, with duties, powers, and jurisdiction very similar to those of France. He and the Earl Marischal were jointly judges of the Court of Chivalry,—a court which has fallen into entire disuse, but which had jurisdiction over pleas of life and limb arising in matters of arms and deeds of war, as well out of the realm as within it. In right of his office, he was always summoned to Parliament as “Constabularius Angliae.” Like many of the great offices of State of ancient origin, the High Constablenesship was hereditary, and passed by inheritance in the line of the families of De Gloucester and Bohun, Earls of Hereford, and afterwards in the line of their heirs-general the Staffords, Dukes of Buckingham. On the attainder and execution of the third Duke of Buckingham for high treason, in the thirteenth year of the reign of Henry VIII., all his honours were forfeited to the Crown, and the office of Lord High Constable of England ceased to be hereditary. Since that event, it has only been conferred on special occasions, such as coronations, the trials of peers, &c., and then *pro hac vice*. At the last three coronations, viz., those of George IV., William IV., and Her present Majesty, the late Duke of Wellington acted as Lord High Constable of England.

In Scotland also, the office of Lord High Constable is one of great antiquity. Edward was Constable in the reign of Alexander I., and between that time and 1308 the office passed through the families of De Morville, the Lords of Galloway, De Quincey Earl of Winchester, and Cumyn Earl of Buchan. On the attainder of John Earl of Cumyn, in 1308, the office was conferred on David Earl of Athole; and on the forfeiture of his honours and estates in 1314, it was granted by King Robert the Bruce to Gilbert de Hay, knight, the ancestor of the noble family of Erroll, by whom it is still retained. The honours and privileges of the Constable of Scotland were not less distinguished than those of the Constables of France and England, and were very similar in character. He had the command of the army, was proper and sole judge in military affairs, and besides, possessed a criminal jurisdiction which extended to all matters of riot, disorder, blood, and slaughter committed within four miles of the King's person, or of the Parliament or Council representing the royal authority in the absence of the Sovereign. The office was reserved by the Treaty of Union, and by the

act for the abolition of heritable jurisdictions in Scotland, 20 George II. c. 43 (1746).<sup>1</sup>

The name of "constable" was given also to the keepers or governors of the castles of the King or great Barons. Such were the constables of the Tower of London, of Dover, Windsor, Chester, and other fortresses, to the number in the time of Henry II. of 1115. Every manor, it was held, should include one such fortress, bearing the name of the manor, and ruled by a constable. These offices of constable, or "castellan," as they were frequently termed, were often hereditary. Every constable exercised a criminal jurisdiction within the district attached to his castle, in the same way as the sheriffs did within their respective bailiwicks; but the mode in which they and other royal officers exercised their jurisdiction in the trial of pleas of the Crown, excited so much complaint that an express clause was inserted in Magna Charta, 1215 (§ 24), prohibiting every "Sheriff, Constable, Coroner, or other our bailiffs," from "holding pleas of the Crown." Reference is again made in the Statute of Westminster (3 Ed. I.), c. 15, to the same description of constables as "constables of fees," alluding to their perquisites as keepers of the prisons, which formed an important part of all ancient castles. In this character their oppressions called forth the statute, 5 Henry IV. c. 10 (1403), which, after reciting "that divers constables of castles," under "colour of their commissions" as justices of the peace, "take people to whom they bear evil will, and imprison them within the said castle till they have made fine and ransom with the said constable for their deliverance," enacted that "none be imprisoned by any justice of the peace, but only in the common gaol," saving the "franchise" of the lords and others who have gaols. This statute, remarks Tomlins, "seems to have put an end to a race of tyrants, who, by their misconduct, had rendered themselves odious to the people."<sup>2</sup>

In Scotland we find the same office of constable of castles. Throughout the kingdom, and especially in the more important towns, there existed royal castles, established at once for the defence of the country and

---

<sup>1</sup> For a more detailed statement of the honours and privileges of the office, with especial reference to the questions between the Lord High Constable and the Magistrates of Edinburgh, in regard to their criminal jurisdiction within the City, see Notes on Lord High Constable.

<sup>2</sup> Thomson's Magna Charta, p. 204, quoted by Creasy on the English Constitution, p. 141. Tomlin's Law Dictionary, *vide* "Constable."

the preservation of order. Each of these castles was governed by an officer called a "constable,"<sup>1</sup> who enjoyed certain lands attached to the office, known as "constable lands," and exercised jurisdiction, frequently civil as well as criminal, over a circumscribed territory around his fortress. From these offices, Chalmers conjectures, may be deduced those jurisdictions in Scotland called "constabularies," several of which—the constabularies of Haddington and Linlithgow for example—continued to exist till comparatively recent times.<sup>2</sup>

Many of these offices of constable became hereditary in particular families. Thus the constablenesship or keepership of the castles of Dunstaffnage, Carrick, Skipness, and others, was vested in the family of Argyle.<sup>3</sup> The constablenesship of Forfar belonged to the Earl of Strathmore;<sup>4</sup> that of Elgin to the Earls of Moray; the Earls of Huntly were the hereditary constables of Inverness. The constablenesship of Nairn was held by the family of Calder; that of Dundee was held successively by the Scrymgeours of Dudhope, by Lord Halton, and by Graham of Claverhouse;<sup>5</sup> the Kennedys of Carmucks were constables of Aberdeen; the Erskines of Dun were constables of Montrose;<sup>6</sup> the Earls of Annandale were constables of Lochmaben;<sup>7</sup> and, subsequent to 1580, the constablenesship of Dumbarton Castle was possessed successively by the Dukes of Lennox and Montrose.<sup>8</sup>

Others of these offices were granted for life, like that of Haddington to William Lindsay of the Byres; but some, and among these probably the most important, as requiring in an especial manner a *delectus personarum*, like the constablenesships of the castles of Edinburgh, Stirling, and during the earlier portion of its history, Dumbarton, were conferred during the royal pleasure, for a period of years, or for life.<sup>9</sup>

Some of these constables of castles, like the Lord High Constable, had the power to appoint, and exercised their office by, deputies.<sup>10</sup>

<sup>1</sup> Mackenzie's Criminal Laws of Scotland, i. 186.

<sup>2</sup> Caledonia, i. 709.

<sup>3</sup> Stair's Institutes, by Brodie, i. 278; B. ii. § 65.

<sup>4</sup> Ibid.

<sup>5</sup> Caledonia, i. 709. The Thaness of Cawdor—Spalding Club, p. 5.

<sup>6</sup> Fountainhall's Historical Notices of Scotch Affairs, i. 118.

<sup>7</sup> Caledonia, iii. 68.

<sup>8</sup> Ibid. iii. 867.

<sup>9</sup> Irvine's History of Dumbartonshire, 71, 98. Acts of the Parliaments of Scotland, 1585, c. 37; iii. p. 403. 1640, c. 19 and 54; v. p. 303, 321. Caledonia, iii. 867.

<sup>10</sup> Spalding Club, Extracts from Burgh Records of Aberdeen, ii. 414. Caledonia, iii. 866.

In several cases, the sheriffship of the county within which the royal castles were situated, was conjoined with the office of constable. Thus the sheriffship, as well as the constableness, of Elgin, was held in the reign of David II. by the Earl of March, who conveyed both offices to William de Wallibus;<sup>1</sup> the sheriffship of the shire, and the constableness of the castle, of Dumbarton, were held successively by the Earl of Menteith and by others;<sup>2</sup> the sheriffship of the county, and the constableness of the castle, of Edinburgh, were held by the same individuals during the English occupation, and also, it is said, at the Restoration;<sup>3</sup> and in like manner there were associated with the constableness of the castles of Roxburgh, the sheriffdom of Teviotdale,<sup>4</sup> of the Castle of Dumfries the sheriffdom of Nithsdale or Dumfries,<sup>5</sup> of the Castle of Threave the stewardship of Kirkcudbright,<sup>6</sup> and of the Castle of Lochmaben the sheriffship of Wigton.<sup>7</sup>

It would also appear to have been the practice of the constables of royal castles to hold municipal offices in the burghs adjoining. The practice was prohibited by the act of the Parliament of James III., 1469, c. 5, which enacts "that na capitane nor constable of the King's castellis, quhat toun thair evir be in, sall beir office within the said toun as to be alderman, bailzie, dene of guild, thesaurare, na nai other officiare that may be chosing be the toun, fra the tyme of the next chosing furth to-cum."<sup>8</sup> It did not, however, prevent Sir William Kirkcaldy of Grange,<sup>9</sup> George Douglas of Parkhead,<sup>10</sup> and the Earl of Arran,<sup>11</sup> from acting both as provosts of the city and constables or captains of the castle of Edinburgh in 1569, 1576, and 1584.

Most of these constables of castles in Scotland had by grant, or claimed on the ground of prescription, a right to proclaim in the burghs adjoining the castles of which they were the keepers such fairs as had been established there, to levy the customs belonging to these fairs, to exercise criminal jurisdiction within these burghs while the fairs lasted, and to apply the fines and escheats of delinquents to their own use. These powers, granted originally, according to Lord Fountainhall,<sup>12</sup> for the preservation of the King's

<sup>1</sup> Caledonia, i. 709.

<sup>2</sup> Irving's History of Dumbartonshire, 54. Caledonia, iii. 866.

<sup>3</sup> Caledonia, ii. 575, 577, 587.

<sup>4</sup> Ibid., ii. 110.

<sup>5</sup> Ibid., iii. 65.

<sup>6</sup> Ibid., iii. 244.

<sup>7</sup> Ibid., iii. 360.

<sup>8</sup> Acts of the Parliaments of Scotland, ii. 95.

<sup>9</sup> Council Register, iv. 246.

<sup>10</sup> Ibid. v. 66. Records of the Convention of the Royal Burghs of Scotland, i. 91.

<sup>11</sup> Council Register, vi. 116.

<sup>12</sup> Fountainhall's Notices of Scotch Affairs, i. 118.

peace in burghs, at times when "there was a great resort and confluence of strangers, and much bargaining and drinking, and so a probable fear of quarrels," which the ordinary magistrates might not be able to put down without the "auxiliary assistance" of the constable and his forces, appear to have been often exercised most oppressively, and to have formed the subject of frequent complaint. It was to remedy this state of matters, and on the complaint of "the universal burghs," that an Act was passed in the Parliament of James II., 1457, c. 9,<sup>1</sup> prohibiting the taking of distresses of goods of little quantity "for auld use and custum," and regulating the exactions and distresses in regard to cattle and goods brought to market in large quantities. This prohibition was renewed and extended by an Act of the Parliament of James III. 1469, c. 9,<sup>2</sup> which enacts that the extortions referred to shall be "forborn in tyme tocum, and na sic extorsiones be takin of the kingis liegis under the payn of punycioun of thair personis at the kings will, and to be put fra the executioun of their office for a zeir to cum."

So much were these rights and privileges regarded as parts and pertinents of the office of constable, that they did not need to form the subject of special grant. When a royal castle is disposed either in property or custody, the infefment thereof, says Stair,<sup>3</sup> "carries therewith not only the bounds of the castle but the dependencies thereof, as gardens, orchards, parks, meadows, and other ground, possessed by the king or keeper for the use of the castle, and all rents, annuities, jurisdictions, and privileges thereunto belonging, which may be instructed by their charters, their court books, or other writs or instruments, and even by witnesses proving long possession; so," adds he, "though an infefment of constabulary bear only in general *officium constabularii cum feodis et divoriis ejusdem*, yet it was found [in the case of the Earl of Kinghorn v. the Town of Forfar, 18th July 1676] to extend to the proclaiming and riding of fairs anterior to the constitution of the office, and exercising criminal jurisdiction in the town where the fairs were held during these fairs, but not to extend to other fairs recently granted by the King, or to any jurisdiction at other times."

About the same time that the decision in the case of the Earl of Kinghorn was pronounced, however, Lord Halton, Treasurer-Depute and Constable of Dundee, would appear to have obtained from the Privy Council a decree, finding that, as constable, he had the haill criminal jurisdiction within that

<sup>1</sup> Acts of the Parliament of Scotland, ii. 46.

<sup>2</sup> Ibid., ii. 95.

<sup>3</sup> Stair's Institutes, by Brodie, i. p. 278; B. ii. s. 65.

Burgh *privatively*, and the civil jurisdiction *cumulative*;<sup>1</sup> and on this and other decrees obtained by that official from the Court of Session, as it was then "packed,"<sup>2</sup> and of which he was one of the judges, the Magistrates and burghers of Dundee appear to have been subjected to a system of petty despotism, which, even in those days, "caused great outcry."<sup>3</sup> Although the privileges thus recognised were exorbitant and in excess, according to Fountainhall, of what "the Scrymgeours, former constables of Dundee, who were haughty and great men," ever possessed, the reports of these cases illustrate the nature of the powers and perquisites of the office of constable,<sup>4</sup> and so are worthy of perusal.<sup>5</sup>

A still inferior order of constables were those whom the Bishops and Barons, following the example of the Sovereign, appointed keepers of their castles, and who, according to Chalmers, exercised authority over their peculiar district. Of this he gives as an instance the case of William de Landeles, Archbishop of St Andrews, who, in 1383, granted to John Wymes of Kirkaldie, and *his heirs male*, the constablership of the castle and city of St Andrews, together with some lands, and a power to substitute constables in case of minority.<sup>6</sup>

All the inferior constabularies in Scotland were abolished by the Act 20 George II., c. 43, which, however, expressly reserved to the possessors, their heirs and successors, the whole lands, feu and farm duties annexed to these offices. The bailies of burghs, observes Bankton, must exercise the constables' jurisdiction in relation to fairs, now that these offices are extinguished.<sup>7</sup>

Out of the high magistracy of constable, says Lambard, an English lawyer, quoted both by Blackstone and by Mackenzie,<sup>8</sup> were drawn the inferior constables of *Hundreds* in England, from which country, says Mackenzie, we have borrowed the office of constable, and made it subservient to the Justices of the Peace. The connection between offices so dissimilar as those of the Lord High Constable, or even the constables of castles, and those of

<sup>1</sup> Fountainhall's Sup. to Morrison's Decisions, iii. 112.

<sup>2</sup> Fountainhall's Notices of Scotch Affairs, i. 117.

<sup>3</sup> Morrison's Decisions in the Court of Session, 10, 273; 16, 680.

<sup>4</sup> Morrison's Decisions, 16, 680. 21st February 1679. Fountainhall's Historical Notices, i. 129. Fountainhall's Historical Observes, 79.

<sup>5</sup> See also Robertson's "Scotland under her early Kings," i. 306-308.

<sup>6</sup> Caledonia, i. 709. Acts of the Parliaments of Scotland, iv. 496.

<sup>7</sup> Bankton's Institutes of the Laws of Scotland, ii. p. 533.

<sup>8</sup> Blackstone, i. c. 9, s. 4. Mackenzie on Criminal Law, 186.

high and petty constables, is unintelligible, without a reference to those Anglo-Saxon institutions which form the basis of much that is most valuable in our national character and political constitution. With the Anglo-Saxon, as with other branches of the Teutonic race, all political relations rested on the basis of family and kindred. His relation to the State was that of one of a family whose members were bound to render mutual aid against violence ; and this principle availed not only for the protection of the country against foreign aggression, but for the preservation of order and the prevention of crime, by the maintenance of a system of police adapted to the state of society as it then existed. The country was divided into various parts : first and primarily, into *Towns* or *Townships*, which, in the Saxon acceptation of the term, included originally the enclosure surrounding the homestead or dwelling of the thane or lord, but was gradually extended to the whole of the land which constituted the domain.<sup>1</sup> Every township had its lord, and the ceorls resident in it elected a *gerefa*, or *reeve* as chief officer, and "four good and lawful men," who, with the reeve, represented it in the courts of the hundred and shire.<sup>2</sup> In order both to facilitate the organization of the inhabitants for military purposes, and to afford better security against crime, recourse was had, at a later stage of Anglo-Saxon development, to an old, and probably an originally military, division of the country<sup>3</sup> into *Tithings*, each of which included the families of ten freemen, and was presided over by one of the principal inhabitants annually elected by the others for that purpose, and called the *tithing man* or *head-borough*, and in some countries *bors holder* or *borough ealder*. In one or other of these tithings, every freeman, whose rank and possessions were not in themselves a sufficient guarantee, was enrolled, and as each member of the tithing was responsible for the good conduct of the remaining nine, and so was supplied with a motive for vigilance, the tithings of the kingdom were in fact its police,—the most effective system possible in such a state of society.<sup>4</sup> But the tithings did not limit their supervision to cases of unlawful violence and crime. They took cognizance of all matters which "compromised the public weal, or touched upon the rights or well-being of others."<sup>5</sup> The next division

<sup>1</sup> Palgrave's *Rise and Progress of the English Commonwealth*, p. 65.

<sup>2</sup> This division was afterwards superseded by the Norman *Manor*.

<sup>3</sup> Lappenberg's *England under the Anglo-Saxon Kings*, by Thorpe, ii. 332.

<sup>4</sup> Vaughan's *Revolutions in English History*, i. 252, 253.

<sup>5</sup> Kemble's *Anglo-Saxons*, i. 251.

was that of *Hundreds*, or *Wapentakes* as they were termed in the more northern counties, each hundred including ten tithings, or one hundred families. The chief officer of the hundred appears to have been called by different names at different times: *greve* (*gerefa*), *ealderman*, *comes stabuli*, or *bailiff*.<sup>1</sup> The hundred court met usually once a month, and was attended by the thanes whose demesnes were within its boundaries, and by the four men and the reeve of each township. It was presided over by the calderman or earl, assisted by the bishop. The next great division was the *Shire*, composed of an indefinite number of hundreds, and presided over by the *comes*, *ealderman* or *earl*, and the bishop. Each shire had also its *vice-comes* or *reeve*, who, in the absence of the ealderman, presided over the shire or county courts, in conjunction with the bishop, and is still known as the sheriff [*shire-reeve*]. In ancient times the sheriff was annually elected by the freeholders of the county, but now the judges, certain great officers of State, and several of the Privy Council, meet once every year in Exchequer, and propose three persons to the Sovereign, who appoints one to be Sheriff for the year.<sup>2</sup> The county court was attended by all the thanes in the county, the four men and reeve of each township, and by twelve men chosen to represent each hundred, but it is doubtful whether any but the thanes had a voice in this court.

Such were the divisions of the Anglo-Saxon body politic at the time of the Conquest, and great as were the changes effected by the Conqueror, these divisions were not substantially altered. Feudalism was indeed introduced, but the ancient system of the Saxon laws was retained, and accordingly we find a writ or mandate of 36 Henry III. (1216-72), providing "that in every hundred there should be constituted a chief constable, at whose mandate all those of his hundred sworn to arms should assemble and be observant to him, for the doing of those things which belong to the conservation of the King's peace." This is stated to be the first instance in which reference is made in any instrument to the "chief constable" of hundreds;<sup>3</sup> but there is little room for doubt that an officer with corresponding duties existed in Anglo-Saxon times, and that the office itself, under another name, is of much earlier origin. Again, when the statute of Winton or Winchester<sup>4</sup> ordered every

<sup>1</sup> Blackstone, Introduction, i. s. 4, 116. Lappenberg's England, ii. 330. Tomlin's Law Dictionary, *voce* "Hundred."

<sup>2</sup> Tomlin's Law Dictionary, *voce* "Sheriff."

<sup>3</sup> Ibid., *voce* "Constable."

<sup>4</sup> 13 Edward I., c. 6, 1306.

man between fifteen and sixty years of age, according to his estate and degree, to provide a determinate quantity of arms to keep the King's peace, two "constables" were appointed to be chosen "in every hundred and franchise," to see that such arms were provided, and to present the defaults of armour and of the suits of towns and of highways, &c. The enactments of this statute,—changed by the 4th and 5th of Philip and Mary, c. 2, as regards the description of the weapons to be provided,—were not repealed till the reign of James I., in 1604.<sup>1</sup> The constables thus appointed are what are called *constabularii capitales*, or high constables, to distinguish them from the class of officers of like nature, but inferior authority, who were appointed for manors or townships, and tithings, and who are called *sub-constabularii* or petty constables.<sup>2</sup> The earliest reference to this subordinate officer under the name of "constable," is probably the writ or mandate of Henry III., to which allusion has been made, and by which it is provided, "that in every village or township there should be constituted a constable or two, according to the number of the inhabitants."<sup>3</sup> It has, however, been repeatedly acknowledged by great law authorities, that the constable is "one of the most ancient officers in the realm for the conservation of the peace;" and Coke, connecting him with the institution of frankpledge, under the old institution of the tithing, identifies him with the tithing-man or head-borough. So also Blackstone remarks, that in most places the petty constable unites the two offices of tithing-man or head-borough, and of constable and assistant to the high constable in the duty, common to both, of keeping the peace.<sup>4</sup>

The constable of the hundred is elected at the leet or tourn of the hundred, or by the justices of the peace. Until the passing of the recent Statute of 7th and 8th Victoria, c. 33, he was charged with important responsibilities connected with the levying of local rates, and he has still a variety of special duties imposed upon him which it is unnecessary to describe. The petty constable is chosen at the leet, or where there is no leet, at the tourn; sometimes by the suitors, and sometimes by the steward, and now in many towns and parishes by the parishioners, all according to ancient and particular usage. In common with the high constable, it is the duty of the petty constable to repress felonies, and keep the peace, of which both are

<sup>1</sup> 2 (vulgo 1) James I., c. 25.

<sup>2</sup> Year-Book, 12 Henry VII., pl. 18. Quoted in Knight's Cyclopædia *voce* Constable.

<sup>3</sup> Tomlinson's Law Dictionary, *voce* "Constable."

<sup>4</sup> Blackstone, i. c. 9, § 4.

conservators by the common law. They have also a variety of duties to discharge similar to those of the constables in Scotland. These duties have reference, *inter alia*, to the arresting of felons ; the suppression of disorderly houses and persons ; the following of the hue and cry under the statute of Winchester ; the apprehension of persons going armed, under the Act of 2 Edward III., c. 3 ; the searching for, and apprehending of, night walkers and suspicious persons, either by night or by day (5 Edward III., c. 4) ; the punishment of drunkenness (4 James I., c. 5) ; the prevention of Sunday profanation (Carl. I., c. 1. and 29 ; Carl. II., c. 7) ; the levying of penalties on profane swearers (10 George II., c. 21) ; the enforcement of the laws against vagrants, &c.<sup>1</sup>

Thus, then, in England, we have the office of constable, essentially military in its gradations, beginning as far back as the Norman Conquest with the Lord High Constable, one of the chief officers of State, whose prerogative it was to command the army and take cognizance of all military affairs. Inferior in rank we find the constables of castles, royal and baronial, still military, but entrusted at one time with the conservation of the peace and the exercise of the civil duties of justices ; and stretching back to an antiquity probably still more remote, we find the constables of hundreds and of tithings, originally the military leaders and overseers, in matters of arms, of the freemen able to bear arms within their respective divisions,—the constables of tithings bound to see that those under them faithfully performed watch and ward, with all its attendant duties,—and the constables of hundreds entrusted each with the superintendence of the ten tithing men of his hundred. And then, as society progresses, and the early arrangements of watch and ward give place to the police system of modern times, and as parochial divisions are adopted for the purposes of local government, the chief officers of the hundred and of the tithing of Anglo-Saxon times become respectively the high constables and petty constables of the present day.

In Scotland, also, we find the Lord High Constable and the constables of castles with prerogatives and jurisdictions similar in character, and as extensive as those of the corresponding offices in the neighbouring kingdom. We have, however, none of the Anglo-Saxon divisions into hundreds and tithings or townships ; and the organization which existed in England previous to the Conquest, for the preservation of order by the appointment of conservators of the peace—an organization which originally rested on a basis

<sup>1</sup> Tomlin's Law Dictionary, *voce* "Constable." See also Blackstone, *ut supra*.

essentially popular—was scarcely possible in Scotland for many centuries after that event. These conservators, wardens or keepers of the peace, appointed originally by the freeholders in the County Court before the Sheriff, and subsequently by the Crown, were, by the 34th of Edward III., c. 1. (1361), empowered to try felonies, and entitled Justices; while in Scotland the first reference to Justices of the Peace is contained in the Act 1587, c. 57,<sup>1</sup> which empowered the Sovereign to appoint Justices of the Peace. Again, “chief constables” of hundreds, and “constables” of villages or townships, are, as we have seen, ordered to be appointed, by a writ of Henry III. (about 1252); and this order, as regards constables of hundreds, is renewed by the Statute of Winchester in 1306; while in Scotland the first general Act for regulating the appointment and duty of constables is that of 1617, c. 8.<sup>2</sup> Six years previous to this time, no doubt, the Constables of Edinburgh were originated, but this was done under the authority of Acts of the Privy Council in 1608 and 1611.<sup>3</sup> Both of these Acts of the Privy Council, as well as the Act of Parliament of 1617, it will, however, be observed, are of a date subsequent to the accession of James VI. to the throne of England (1603), and subsequent, it must be presumed, to his and the Scottish parliaments having discovered how well the English system of constables was fitted to enable the Crown to exercise its increased authority, and to repress civil disorder. That the office of constable thus instituted in Scotland was borrowed from, and moulded after, that of the constableness of hundreds and tithings in England, the similarity not only of name, but of many of the duties, leaves little room for doubt. We may, therefore, regard the Constables of Edinburgh under their modern title of High Constables, as the offspring of the venerable Anglo-Saxon institutions of the sister country.

<sup>1</sup> Acts of the Parliaments of Scotland, vol. iii. p. 459.

<sup>2</sup> Acts of the Parliaments of Scotland, iv. p. 535. In Edinburgh, the exigencies of their situation at various times suggested to the authorities the division of the town and its inhabitants into quarters and thirties and fifties, &c., and the appointment for each division of officers charged with the duty of seeing that every member of the division was provided with proper arms, and faithfully performed the duties of watch and ward, &c. But this was a mere local arrangement, and formed no part of a national organisation.

<sup>3</sup> Inventory of City Charters, i. 72, 73.

## CHAPTER II.

Disorderly condition of Edinburgh during the sixteenth and the early part of the seventeenth centuries.—Acts of the Parliament, Privy Council, and Town Council, for remeid.—Institution of Constables in the City ; their duties.—Institution of Justices and Constables throughout the Country.—Sketch of the History of the Constables of the City from their institution till the Union of the Kingdoms.



DURING the sixteenth and the early part of the seventeenth centuries, Edinburgh was the scene of frequent and often sanguinary tumults. It was the recognised capital of the kingdom ; the principal residence of the sovereign, and of those who wielded the royal authority during the prolonged minorities of the period ; the seat of the courts of justice, and the place where the parliaments usually assembled. Thither, therefore, resorted those whose business or inclination drew them to court, or to attend the great national assemblies, or who appealed to the tribunals of the country. It was thus often crowded with men whose religious and political differences were embittered by personal animosities and the memory of hereditary feuds ; and as the power of the Crown was virtually overborne by that of the feudal nobility, and was impotent to restrain "the deadly feuds" that disgraced the age, or to suppress the prevailing practice of the time for men to revenge their own quarrels, a casual meeting on the streets might at any time give rise to a *tulzie*<sup>1</sup> which the magistrates and burghers would be unable to put down or to punish. Not unfrequently, also, the conflicts of rival aspirants to the supreme authority were waged within the walls of the capital ; and the guns of its fortress, held

<sup>1</sup> As the broils or street combats of that day were called, from the French, *touill-er*, to mix in a confused manner.

by the one party, were employed to carry destruction into the town, held for the time by the other.

To such encounters, contemporary local records, and the histories of the period, make frequent reference.

Such were the conflicts between the partizans of the Earl of Arran and the Earl of Angus in 1519 and 1520;<sup>1</sup> the raid by the Earl of Angus and his followers in 1524, when they forced their way to the Cross, and held the town for some hours against the queen, under fire from the castle;<sup>2</sup> the assassination of M'Lellan of Bombie, in open day, at the door of St Giles', in 1525;<sup>3</sup> the entry into the city of the Earl of Angus with one hundred horsemen, in 1528, "aganis the tyme of the Parliament to have prevenit the Kingis coming," and their expulsion by the provost and his friends, with the community, after an affray in which many were hurt with hagbuts;<sup>4</sup> the collision between the French and the citizens in 1548, in which the provost, who was also captain of the castle, and several of the citizens, were slain in the strait of the Bow;<sup>5</sup> the slaughter of Sir Walter Scott of Braxholm, Laird of Buccleugh, by Kerr of Cessford, in 1552;<sup>6</sup> the slaughter, about the same time, of John Charteris of Kinclevin by the Master of Ruthven, "upon occasion of old feud, and for staying of a decreet of ane process which the said John pursued against him before the Lords of Session;"<sup>7</sup> the slaughter of Lord Crichton of

<sup>1</sup> Lindsay of Pitscottie's *Chronicles of Scotland*, ii. 285. Tytler's *History of Scotland*, iv. 131, 133. Wilson's *Memorials of Edinburgh*, i. 37.

<sup>2</sup> Tytler's *History of Scotland*, iv. 171.

<sup>3</sup> *Diurnal of Occurrents*, p. 10. Wilson's *Memorials of Edinburgh*, i. 40.

<sup>4</sup> *Diurnal of Occurrents*, p. 11.

<sup>5</sup> Calderwood's *History of the Kirk of Scotland*, i. 258. Lindsay of Pitscottie's *Chronicles of Scotland*, ii. 509.

<sup>6</sup> Chambers's *Domestic Annals of Scotland*, i. 27. Note D to the "Lay of the Last Minstrel."

<sup>7</sup> Bishop Lesley's *History of Scotland*, p. 247. So common did this mode of settling dependent lawsuits become, that it was found necessary to pass the Act 1555, c. 13 (*Acts of the Parliaments of Scotland*, ii. 494), which, "because of the odious crymes of slaughters daylie committit within the realme and speciallie the slaying of parties perseward and defendand thair actionnis," enacted, in addition to the other penalties thereby prescribed, that if the defender should slay the pursuer, decree should go against the former in terms of the summons, and if the pursuer should slay the defender, the heirs of the latter should have absolvitor. This act was declared to exist only till Martinmas 1556, but in 1583 it was renewed for seven years by act and sta-

Sanquhar by Lord Semple in the governor's house ;<sup>1</sup> the riot in 1562, caused by the Earl of Bothwell, the Marquis d'Elbœuf, and Lord John Coldingham's breaking into Cuthbert Ramsay's house in St Mary's Wynd, and making search for his daughter-in-law Alison Craig, the suspected mistress of the Earl of Arran ;<sup>2</sup> the renewed violence of the same persons in the High Street, shortly afterwards, when a serious affray ensued between them and Gavin Hamilton, abbot of Kilwinning, and their retainers, and "shot and bolts flew in all directions ;"<sup>3</sup> the encounter on the High Street between the Laird of Airth and the Laird of Wemyss and their followers in 1567, in which many on both sides were hurt with shot of pistol.<sup>4</sup> Such also were the encounter between the "Hoppringillis and Eluottis" in 1570, wherein we are told that "hade nocht the toun of Edinburgh raid thame thair had been greit slauchter done ;"<sup>5</sup> the rescue in the same year by Kirkcaldy of Grange, then captain of the castle, of James Fleming, one of his soldiers, imprisoned in the tolbooth of Edinburgh for slaughter ;<sup>6</sup> the collision on the High Street, in 1588, between the Earl of Bothwell and Sir William Stewart of Monkton, in which the latter, having lost his sword, fled to the Blackfriars' Wynd, pursued by his enemy, who there "strake him in at the back, and out at the belly, and killed him ;"<sup>7</sup> and the slaughter, in Leith Wynd, in 1592-3, of John Graham of Hallyards, a judge of the Court of Session, by Sir James Sandilands, tutor of Calder, with whom he had a litigation.<sup>8</sup> The frequency with which the abduction or "ravishing of women" is referred to towards the close of the century, also illustrates the lawlessness of the times.<sup>9</sup> Thus, in 1593, we read of the

tute of King James VI., made with advice of the Lords of Council and Session, and ratified by Act of Parliament, 1584, c. 14 (Ibid iii. 299). These several acts were declared perpetual by Act of Parliament, 1594, c. 29, which proceeds on "consideration of the manifold oppressionis done within this realme, and for the maist part occurring betuix parties contending in justice be proud and vndantontit braggarris boisteris and oppressoris" (Ibid. iv. 69).

<sup>1</sup> Bishop Lesley's History of Scotland, 248. Lindsay of Pitscottie's Chronicles, ii. 511.

<sup>2</sup> Knox's History of the Reformation in Scotland (Laing's edition), ii. 315.

<sup>3</sup> Diurnal of Occurrents, p. 70. Knox's History of the Reformation in Scotland, ii. 319. Calderwood's History of the Kirk of Scotland, ii. 162-5.

<sup>4</sup> Birrell's Diary, p. 13.

<sup>5</sup> Diurnal of Occurrents, p. 195.

<sup>6</sup> Ibid. p. 197.

<sup>7</sup> Birrell's Diary, p. 24.

<sup>8</sup> Ibid. p. 34. Calderwood's History of the Kirk of Scotland, v. 361.

<sup>9</sup> See Missive Letter from King James to the Estates assembled in Edinburgh, dated

daughter of John Carnegie being twice abducted from her father's house in Edinburgh, the Lord Hume keeping the High Street with armed men on the latter occasion, which was on a Sunday, till the deed was accomplished. On the following day the provost, with some of the bailies, proceeding to apprehend James Henderson, a burghess, who had been at another "ravishing," were resisted and shot at, and one man was slain. On the Tuesday the magistrates went to the king and complained, but got no justice, though Lord Hume was standing by at the time.<sup>1</sup> In 1595, again, Christiane Johnestoun, a widow in Edinburgh, was ravished by Patrick Aikenhead, but the town having been put "in ane grait fray be the ringing of the commune bell," she was followed and rescued.<sup>2</sup> There are, farther, the encounter at the Salt Trone in 1595, between Graham's kinsman the Earl of Montrose, afterwards Chancellor of Scotland, and Sandilands, in which guns and swords were used in great numbers, and in which the parties were separated by the magistrates with fencible weapons, after many were slain and hurt;<sup>3</sup> the combat between Johnston of Westerhall and Hugh Somerville of the Writes, in 1596, which "cleansed the calsy for a quarter of an hour;"<sup>4</sup> the slaughter of Wauchope of Niddry by the Laird of Edmonstone in Scletter's Close, in 1597;<sup>5</sup> the slaughter of Robert Cathcart, at Peebles Wynd head, in 1598, by William Stewart, son of the Sir William Stewart who, ten years previously, was slain by the Earl of Bothwell, Cathcart being present and assisting;<sup>6</sup> the combat between the Kerrs and the Turnbells, in 1601;<sup>7</sup> the slaughter, in the Canongate, in 1602, of Patrick Bryson by James Stewart of Buquhane;<sup>8</sup> the tulzie at the Salt Trone in 1605, between the Lairds of Edzel and Pittarrow and their accomplices;<sup>9</sup> and the slaughter of Lord Spynie by Lindesay of Edzel in the same year.<sup>10</sup>

Nor were there awaiting riots and tumults among the citizens themselves to tax the energies of the magistrates. Thus we read of the tumult on St Giles's day (1st September) 1558, when the populace attacked and demo-

22d January 1609; Commission by the Estates following thereon, 27th January 1609; and the Act 1612, c. 4. [Acts of the Parliaments of Scotland, iv. 409, 410, 454, 471.]

<sup>1</sup> Calderwood's History of the Kirk of Scotland, v. 252.

<sup>2</sup> Birrell's Diary, p. 34.

<sup>3</sup> Birrell's Diary, p. 34.

<sup>4</sup> Chambers's Traditions of Edinburgh, p. 39.

<sup>5</sup> Birrell's Diary, p. 44.

<sup>6</sup> Ibid. p. 46.

<sup>7</sup> Ibid. p. 55.

<sup>8</sup> Ibid. p. 56.

<sup>9</sup> Birrell's Diary, p. 63. Balfour's Annals of Scotland, Historical Works, ii. 7.

<sup>10</sup> Pitcairn's Criminal Trials, iii. 61, 65.

lished the statue of the patron saint, and caused the canons and clergy, who bore it in procession, to fly, in the words of Knox, "faster than they did at Pinkie Cleugh;"<sup>1</sup> of the great riot on 22d November 1560, in which the corporations, resenting an order of the magistrates to cart the deacon of the fleshers for adultery, assembled in a tumultuous manner, broke open the jail, and liberated the prisoner;<sup>2</sup> and of the tumult on 11th April 1561, when the apprentices broke out into insurrection, entered the city with banners displayed, surrounded the tolbooth, in which the magistrates were sitting, and assaulted them in the execution of their duty.<sup>3</sup> On 12th May 1561, again, there was a great riot, consequent on the magistrates having prohibited the performance of "Robin Hood." One of the chief rioters on this occasion was seized, tried, and condemned to be hanged, but the mob rose on the 21st of June, broke open the prison, releasing not only him but all the other prisoners, and attacked the magistrates, who fled for safety to the tolbooth. The danger was so imminent, that the magistrates were obliged to give an assurance that no person would be prosecuted on account of the sedition.<sup>4</sup> In 1588, the sons of craftsmen, instigated and assisted by a rabble of unfree journeymen, broke out into insurrection, and assaulted the house of one of

<sup>1</sup> Knox's History of the Reformation in Scotland, i. 259, 260; Appendix, 558-561. Calderwood's History of the Kirk of Scotland, i. 346. Bishop Lesley's History of Scotland, p. 266.

<sup>2</sup> Council Records, iii. 60. Knox's History of the Reformation in Scotland, ii. 159. Arnot's History of Edinburgh, p. 25.

<sup>3</sup> Council Records, iv. 6. Maitland's History of Edinburgh, p. 21.

<sup>4</sup> Diurnal of Occurents, p. 283-4. Calderwood's History of the Kirk of Scotland, ii. 123-125. Knox's History of the Reformation in Scotland, ii. 157. Pitcairn's Criminal Trials, i. 409, 410. "Robin Hood" was a favourite May game, both in England and in Scotland, but was opposed by the protestant clergy in both countries, as affording opportunities for dissipation and licentiousness. With it was classed such revels as those of the Abbot of Unreason, the Boy Bishop, the President of Fools, &c., all of which were generally played on Sundays. While not only tolerated, but encouraged by the clergy of the Romish Church, these games were often employed to parody its most sacred ceremonies, and to expose and satirise the vices of the religious orders. They thus indirectly helped the cause of the Reformation, but were afterwards not the less vehemently opposed by the Reformers, and were prohibited under severe penalties by the Act of the Scottish Parliament, 1555, c. 40. (Acts of the Parliaments of Scotland, vii. 500), and by the magistrates of Edinburgh in 1561 (Council Records, iv. 4), 1562 (ib. iv. 29), 1579 (ib. v. 141). It was not, however, an

the bailiës, with the intention of murdering him, and plundering his house.<sup>1</sup> And there was the great riot in 1596, known as "the 17th of December," in which the king, while in the tolbooth sitting in session, was surrounded by the excited populace, and kept there till relieved and escorted to the palace by John Watt, smith, the deacon of deacons. This tumult greatly exasperated the king, who was with difficulty appeased by a payment of 20,000 merks Scots.<sup>2</sup>

These cases illustrate a condition of matters in the capital during the period referred to, which the Regent Murray, speaking of the street broils of his own day, might well have said "would shame the capital of the Great Turk, let alone that of a christian and reformed state."<sup>3</sup> It may be remarked, however, that the authorities do not seem to have been remiss in making such provision as they could for the suppression of these disorders. Their regulations indicate this, and along with the Acts of Parliament and Privy Council shew emphatically the deplorable state of the country and of its capital. Thus, so early as 1498, there is an order by the council on all the neighbours, merchants, and tradesmen, to be provided with weapons in their booths, in case of *tulzies* in the streets, when they are to compare with the officers, and assist the magistrates in the enforcement

---

easy matter to abolish long-established and popular amusements, and complaints were made to the General Assembly, down to the close of the sixteenth century, of the excesses that were occasioned by "the making of Robin Hude" (Cunningham's Church History of Scotland, i. 261, 496). For a graphic description of the game of the Abbot of Unreason, see the "Abbot," (edition 1860), i. p. 207. 222, and notes E and G thereon.

<sup>1</sup> Council Record, vii. 155. Maitland's History of Edinburgh, p. 44.

<sup>2</sup> Birrell's Diary, p. 39. Calderwood's History of the Kirk of Scotland, v. 511, 625. Row's History of the Kirk of Scotland, pp. 184, 185. Acts of the Parliaments of Scotland, iv. 103, 104, 108, 114.

The Edinburgh populace was, in fact, even at this period, noted for its proneness to engage in tumults, and James VI., who well knew their character and tendencies, did not exaggerate when, in his *Basilicon Doron*, or "Book of Instruction," to his son Prince Henry, he thus wrote of the crafts of Edinburgh:—"They think we should be content with their work, how bad and dear soever it be; and if there be anything controuled, up goeth the *Blue Blanket*!"

The tumults consequent on the introduction of the Service-book in 1637, on the Revolution in 1688, and on the Union Debates in 1706, and the Porteous Mob in 1736, shew that the lower orders of Edinburgh retained far into the eighteenth century a fierce determination and courage that made them formidable to any government.

<sup>3</sup> The Abbot, vol. i. p. 308.

of order.<sup>1</sup> An act, in 1524, contains a similar order, "to the intent for till eschew the dyuers and money barganis and tulzeis that hes bene committit in tymes bygane into this towne vpoun the hie streitt, and throw the quihilkis there hes bene sindrie slauchteris committit."<sup>2</sup> A similar act was passed in 1529, on the narrative that "in tymes past thair hes bene slauchteris and murtheris committet within the toune, in defalt of the officeris and nichtbouris that ryseis nocht to resist, and pvnis the same, to the greatt sclander and deffamatioune of the toune, makand it to be frie of all sic mischeiffs."<sup>3</sup> And in 1552 its requirements were renewed in an act which refers to the "greitt slawchteris and vtheris cummeris and tuilzeis done in tyme bygane within this burch and apperandly to be done gif na remeid be prouydit thairfor, and for eschewing thairof."<sup>4</sup> In 1529, in 1535, and again in 1567, there are proclamations against bickerings, both on holidays and week days, under the pain of scourging, banishment, and hanging.<sup>5</sup> In 1554, the frequent robberies and disorders committed in the streets by night are stated as the ground of an order by the council on the inhabitants to hang out lanterns or bowets on the streets and closes from five till nine in the evening.<sup>6</sup> In 1560, an act of Council, renewing the order on all the neighbours to

<sup>1</sup> Council Record, i. 33. This order is frequently renewed during the whole of the sixteenth century. In addition to those subsequently referred to, see Acts of Council in 1557 [ib. ii. 106], 1560 [ib. iii. 56], 1562 [ib. iv. 53], 1566 [ib. iv. 162], 1583 [ib. vii. 31], 1587 [ib. viii. 127], 1589 [ib. ix. 14], and 1591 [ib. ix. 113]. The act of 1566 farther ordains the committers of trublance to be apprehended and imprisoned, without exception, for trial and punishment, on the somewhat curious ground "that some undaunted persons braggers and boasters commonly makes their tulzeis on the High Street, and rather because they are assured to be redd and saved from deadly harm."

<sup>2</sup> MS. Extracts from Council Records, Advocates' Library, p. 184. This extract refers to a similar Act of Council, of date 4th March 1552. The general lawlessness of the country at this time is alluded to in articles concluded between Cardinal Beaton and the Earl of Angus in 1524-5, in which reference is made to the Privy Council as "seand daily slaughteris, murtheris, reiffis, thefts, depredationis, and heavy attemptes that are daily and hourly committit within this realme, in falt of justice our soveran lord beand of less age," &c. (Tytler's History of Scotland, iv. p. 73, footnote).

<sup>3</sup> MS. Extracts from Council Records, Advocates' Library, p. 184. Appended to this extract there is a reference to a similar Act of Council, of date 8th February 1535.

<sup>4</sup> Ibid. p. 188. Appended to this extract there is a reference to a similar Act of Council, of date 8th December 1562.

<sup>5</sup> MS. Extracts from Council Records, Advocates' Library, p. 184, 185. Council Records, iv. p. 185.

<sup>6</sup> Ibid. ii. 238.

attend "in feir of weir with all diligence," to support the magistrates and officers in the suppression of tumults, refers to the "lait deforcementis and in-obedience of the baillies and officiaris of this bruch," the cause of which it declares to be

"the particular hatrent of sum of the subiectis and inhabitantis of the said burgh, inemeis to all gude ordour ; as allsua the inobedience and ignorance of vtheris, nocht regarding nor having in remembrance the commoun weill foirsaid ; quhilkis personis, at all sic tymes as they haif sene or hard the saidis officiaris dissobeyeit and deforsit in executioun of thair offices, hes nocht ryssyn nor cumyng fordward to thair fortedefacioun, bot hes with-drawyn thame selffis and vtheris be thair persuatioun and excampill within thair buthis and houssis, and sua left the saidis officiaris desolait of all support, vpoun the danger and perall of thair lyffis, to the grete schame and sclander of the magistrattis and haill pepill inhabitaris of this burgh, and to the gret discouraging of men of honeste and iudgement to accept office burding or charge within the said burgh, and in lykwyis to the incurageing of euery lycht persoun and outlandis man to ga fordward in thair ine-quietie and contemptioun, to the manifest ourethraw of the saidis magistratis, the com-moun weill of the said burgh, and vter distructioun of the samyn, gif haistie remeid be nocht prouidit."<sup>1</sup>

In 1561, in anticipation of the meeting of Parliament, and the tumults and dissensions likely to ensue, the council ordained "thre scoir able men, hagbuttaris to be liftit and put in wages for half ane moneth to await at all tymes of the day and nycht vpoun the prouest and baillies," and further ordained the "dekynnis to aduertice the maisteris and seruandis of thair craftis to be in radynes to cum to the said prouest and baillies at the sound of the commoun bell trumpet or tabroun in armour and wappinis in case of troubles."<sup>2</sup> And two months later they deputed certain of their number to request the Earl of Arran "to send for his garde of men of armes, and to suffer thame to remane within the toun, to await vpoun the prouest vpoun the townys charges, for repressing of the wikit, vnto the convenyng of the Lordis of Counsale."<sup>3</sup> In 1563, the Laird of Drumquhassill, and several other great persons, having appointed meetings of their friends against a certain day, the council, in obedience to the queen's letter, ordered the whole neigh-bours to be in readiness whenever they were warned, either by an officer or tambour.<sup>4</sup> In 1565, the council ordained the bailies and officers "to pas to all duelling houses within this burgh, and se that euerye fensable persoun inhabiter of the samyn, be sufficientlie prouidit with armour and wappins for

<sup>1</sup> Council Records, iii. 46.

<sup>2</sup> Ibid. iv. 7.

<sup>3</sup> Ibid. iv. 13.

<sup>4</sup> Ibid. iv. 67.

seruing of oure Souerane at this present parliament, and to caus the officiaries of euerye quarter put the names of the saidis inhabitaris, with their wappinis, in roll with diligence, and present the samyn before the counsale."<sup>1</sup> An act of council in 1567, imposing an unlaw on those who should draw blood in their fighting, refers to the "gret and manifest wrangis and oppresionis committit dalie be certane nichtbouris of this burgh, and vtheris resortand thairto, agains vtheris, quhilkis, haiffing nother feir of God nor man, daylie invadis otheris with fensable wappinis, sic as swerdis, quhingaris, battonis, and vtheris instrumentis bellicall, sumtyme committing slauchter mutilatioun or lamyng."<sup>2</sup> In 1568, the council being apprehensive of disorders during the approaching session of parliament, ordered the deacons of the several incorporations to convene their companies, and "tak inquisition be thair aithis quhatt will be thair pairttis in this present troublis."<sup>3</sup> In 1580, a great tumult having taken place on the High Street betwixt the Livingstones and the Guidlets in the day of law between them and the Hamiltons, a representation was made to the King explaining the "part in that tulzie had by the toun, who are daily troubled and put in hazard of their lives in the days of law betwixt parties." His Majesty was pleased to send a letter of thanks to the community for "their good service in staying of trouble on that occasion," and to desire them to act with the like discretion on any similar outbreak. In obedience to this letter, "and for staying of cummer in all time thereafter," it was ordained "that upon ilk day of law betwix greitt pairties ane quarter of the toun be wairnit be the baillie of the quarter to be in thair armour with the said baillie reddy at all adventures to stay all cummer, and the rest of the toun to be in reddyne to support and assist thair nychtbouris gif neid sua sall requyre, as thai sall happen to be wairnit be the commonn bell."<sup>4</sup> And somewhat later in the same year, the council, "for staying of tumults and cummers that may aryse betwix the greitt pairties now being within this burch, and for obedience of the Kings grace writting," ordained "twa corsegairdis to be sett betwix the Trone and Croce in the awld places; the nychtbouris to be wairnit to keep the same be thair quarteris in thair armour, and the baillies to amerciati the absents, but favour."<sup>5</sup> In 1584, the council, finding by experience of an affray at the Kirk of Field port "quhat misordour is liabill to follow heirafter gif the lyke accident sall happin," prescribed "the

<sup>1</sup> Council Records, iv. 130.<sup>2</sup> Ibid. iv. 205.<sup>3</sup> Ibid. iv. 221. Maitland's History of Edinburgh, p. 31.<sup>4</sup> Council Records, vi. 31.<sup>5</sup> Ibid. vi. 95.

pairs of the toune at which every quarter sall convene with thair bailies in armour and guid ordour, as thai sall be wairnit be the alarum or commoun bell ;”<sup>1</sup> and subsequently for preventing broils in the streets by night-walkers and other disorderly persons, they ordered “that at 10 o’clock fifty strokes should be given on the great bell, after which none should be on the streets, under the penalty of 20s. Scots, and imprisonment during the town’s pleasure.”<sup>2</sup> In 1592, it was again found necessary to issue a proclamation against sudden frays, to fix the places at which the several quarters should convene when such frays should arise,<sup>3</sup> and to prohibit the shooting of hackbuts or pistols in forestairs.<sup>4</sup> To such a height had the disorders of the times reached, that in the same year we find an act of parliament passed (1592, c. 12) for the punishment of slaughter within kirks and kirkyards, and it proceeds on the lamentable narrative that “crueltie and bluidsched is cumit to sick ane heichte within this land, that the house of the Lord and his sanctuary is not fre, but filthely pollutit and defilit thairwith in sic sort that commonlie all revenges of quarrellis and deedlie feuds is now execute in kirkis and kirkyards at the tyme appointit to the service of God, and teaching of His holy Word thairin, quhairby diuers personis, for feir of thair lyffes, dar not resort to the preaching of the gospel.”<sup>5</sup> In 1593, the Council found it necessary to employ a number of soldiers to watch the town in armour during the days of law between Lord Fleming and the Laird of Drumelzier, and a subsequent act of Council empowers the treasurer to pay their wages, amounting to £16 scots.<sup>6</sup> An act of the Privy Council, passed on 7th July 1593, reciting that “vile murders have not only been committed within the kirks and other places, but even within the burgh of Edinburgh and suburbs thereof, ewest [near] to his hieness palace, to the great hezard of his awn person, commanded the magistrates of the city, the king’s guard, the master and porter of the palaces, to search for all hagbuts and pistolets worn by any person in the city and in the palace, and to carry the wearers to prison.”<sup>7</sup> And the act of parliament, 1593, c. 22, passed on the 21st of the same month of July, enacted that, “quhasoeuir sal happin at ony tyme heirefter to stryke, hurt, or slay ony persoun within his hieness parliament hous during the tyme of the halding of the parliament

<sup>1</sup> Council Records, vii. 85.<sup>2</sup> Ibid. vii. 101.<sup>3</sup> Ibid. ix. 127.<sup>4</sup> Ibid. ix. 183.<sup>5</sup> Acts of the Parliaments of Scotland, iii. 544.<sup>6</sup> Council Records, ix. 180-201.<sup>7</sup> Chambers’s Domestic Annals of Scotland, i. 249. Pitcairn’s Criminal Trials, i. 299.

within the Kingis inner chalmer, cabbinat, or chalmer of presence, the Kingis Maiestie for the time being within his palaice, or within the inner tolbuith the tyme that the lordis of sessioun setts for administratioun of justice, or within the Kingis privie counsal hous the tyme of the counscall setting thair ; or quhasoeuir sal happin to stryke, hurt, or slay ony persoun in presence of his Maiestie, quhaireuir his hieness sal happin to be for the tyme, sall incur the pane of treasone." Against those who should commit similar offences in presence of judges or magistrates severe penalties were denounced, and every person striking or hurting any judge sitting in judgment was declared to be punishable with death.<sup>1</sup> The lawlessness of the times indicated by the passing of such an act, and the condition of the capital at this period, are further shewn by the act passed in the same year, 1593, c. 35, intituled, "Act in favour of the toun of Edinburgh concerning Tumultis." It refers to the "great confusioun and disordour of this land in all estaitts;" the daily charges of the Privy Council and Lords of Session, and even the commands from the king's own mouth to the magistrates, to apprehend and imprison the contraveners of the laws ; the readiness of the magistrates to do their duty, but their actual deforcement ; the royal commands to the provost and bailies in their own persons to guard within the burgh night and day, as occasion requires ; and the slaughter of divers honest persons while so engaged ; "wherefore," proceeds the act, "the king and his parliament ordain that no person presume to disobey or contravene the orders of the magistrates, nor to hurt them or their officers in the execution of their offices;" and further, "for the better performing of the premises, and defence of the kirk of God within the land, now in this perillous day, grantis and committis to the said provost and baillies, and thair successouris, free liberty, power, and authority to assemble themselves in armour, and to list and raise men of weir for dailie, ouklie, and monethlie wagees, and to beir and use hagbuttis and other armour quhatsumeuvir at all times quhair thai sall think expedient." This act further provides that if any one should be hurt, slain, or mutilated "in redding and putting sundrie parties mentioned in armes within the said burgh of Edinburgh, they always redding the said parties with lang waypynis allennarlie, and not by schuitting of hagbuttis and pistolletes at ony of the parties, in thai cases, and ather of thame, the provost, baillies, counsaill, and communities of the burgh, nor their successors, nor uthers in

---

<sup>1</sup> Acts of the Parliaments of Scotland, iv. 22.

company with them, should be liable to be pursued or molested criminally therefor."<sup>1</sup> In the following year, the council, in consequence of the resort of great numbers of persons to the approaching parliament, enjoined the citizens to appear in arms, at the first warning, to attend the magistrates, and ordered the names of all lodgers or strangers to be sent in nightly to the several bailies, and neither taverns nor ale-houses to be kept open, nor persons to appear in the streets after 10 o'clock.<sup>2</sup> A proclamation of the King and Privy Council in December 1595, required "that nane accompany the Earl of Mar and Lord Livingstoun to thair day of law," it being feared that if the friends of the two parties were to attend, as they were preparing to do, sum grite inconvenient" would "fall oute vpoun the first occasioun of thair meeting, to the brek of his hienes peax."<sup>3</sup> Two acts of Parliament passed in 1600 also indicate the prevalence of the disorders against which they were directed. The first, viz. the act 1600, c. 21,<sup>4</sup> "against singular combattis," and the second, 1600 c. 39,<sup>5</sup> against "persones quha persewis vtheris within ane mile of the Kings Maiesties residence." The latter act refers to the "manyfold indigniteis fra tyme to tyme done to his Maiestie be ane number of vndewtiful and irreverent subiectis quha, to the contempt and dishonour of his Maiestie, makis frequent tulzeis, and seekis the commoditie to revenge thair particular querellis within the burgh of Edinburgh and the Cannongait, and utheris pairties ewest to the place of his Hienes residence, not sparing sumtyme at his Maiesties awin back to vse thair private revenge, to the hazart and perrilling of his hienes maist nobill persone." This act ordains all persons contravening it to be imprisoned for a year and a day, and farther during the royal pleasure. Again in 1606, an act was passed for staying of all unlawful conventions within burgh, and for assisting the magistrates in the execution of their offices (1606, c. 16).<sup>6</sup> It renewed all former acts for staying tumults and unlawful meetings and convocations, and ordained them to be put in force, with this addition, that no persons should assemble within burgh for any purpose until they had first obtained the authority of the provost and bailies to do so; and to the effect that all "unlauchfull meittings, with all vtheris tumultis trublances and pleyis that sal happin to fall out

<sup>1</sup> Acts of the Parliaments of Scotland, iv. 28, 29.

<sup>2</sup> Council Records, x. 18.

<sup>3</sup> Pitcairn's Criminal Trials, i. 351.

<sup>4</sup> Acts of the Parliament of Scotland, iv. 230.

<sup>5</sup> Ibid. iv. 239.

<sup>6</sup> Ibid. iv. 288.

within the saidis burrowes may be substantiously suppressit," the whole inhabitants were ordained on all occasions readily to "assist and concur with the magistratis and officiaris thair of for satling of the saidis tumultis and trublances, and pvnischeing of the authouris and movearis thereof ;" and such as should not so assist and concur with the magistrates and their officers, it declared should be regarded as fosterers and maintainers of the tumults, and punished therefor in their persons, and unlawed in their goods, at the arbitrament of the magistrates and council. Still many insolences and disorders continued to prevail, and on 2d January 1608, the Privy Council passed an act for their suppression, whereby they ordained

"the officers of arms to pass to the Market Cross of Edinburgh, and there by open proclamation, to command, charge, and inhibit all and sundry His Majesty's lieges and subjects, of what estate, quality, or degree soever they were, that none of them presume nor take upon hand, under whatsoever colour or pretence, to commit any such insolence, riots, robberies, or reifs upon the streets of Edinburgh, under silence of night, upon any of his majesty's subjects, men, women, or bairns, under the pain of death ; Certifying them that should do in the contrary, that they should be apprehended and execute to death without favour : And for that effect, to command and charge the magistrates of the burgh of Edinburgh to appoint some persons to guard their streets, and to attend and await if they might apprehend any of the said insolent limmers, and if in pursuit and apprehension of them it should happen the said insolent persons, or any of them refusing to be taken, to be hurt, mutilate, or other inconvenience to follow, the saids Lords declared that the same should be accounted as good and acceptable service."<sup>1</sup>

The proclamations made in virtue of this Act were attended for a time with the desired effect, but the disorders which it was intended to suppress again broke out, and on 19th February 1611 the Privy Council passed the following Act :—<sup>2</sup>

---

<sup>1</sup> Inventory of City Charters, i. 72. The Bailies' account of unlaws for the year from Michaelmas 1608 till Michaelmas 1609, shews the kind of offences which were then common, and the penalties which were imposed. See Appendix, II.

It must not be supposed that down to this period the town had been left unguarded. Watching was one of the essential conditions of burgesship in all towns, and the earliest records of Edinburgh shew that provision was made from time to time for guarding the city, as well against aggressors from without, as against crime and disturbance within. See sketch of the watching arrangements down to this period, p. 41, *et seq.*

<sup>2</sup> Extract under the hand of James Prymrois, Clerk to the Privy Council, in City Clerk's Office. Inventory of City Charters, i. 73.

“Forsamekle as vpoun occasioun of the mony insolenzeis and ryottis committit within this burgh vnder silence of night be numberis of ydill insolent and deboscheit personis, pairtlie strangeris and pairtlie inhabitantis of this burgh, who, debording in all kynd of excesse ryott and drukkennes, not onlie persewit the nightbouris and inhabitantis of this burgh, bot committit diuers robbreis and otheris villenzeis vnworthie to be hard of in a weill governit cite, proclamacionis wer maid and publist heirtfoire wherby the resoirt and repairing of personis vpoun the hie streittis after ten houris at night wes verrie straitlie prohibite and forbidden vnder certane grite paneis mentionat in the saidis proclamacionis, quhilkis for some certane speace thairefter being weill obeyit, and goode quyetnes keipit within this burgh and no misrule nor swaggering hard of within the same, Neuertheles the Lordis of Secreit Counsaill ar informed that the formar swaggering behaviour and cariage of idle and insolent personis within this burgh is renewit, and societeis and companyes of swaggering and idle personis ar nightlie vpoun the streittis of this burgh, behaving thame selfis in all kynd of deboshrie insolence and excesse, and committing of sundrie enormities and villanzeis vpoun his Maiesties peceable and goode subiectis, in contempt of oure souerane Lord, and unregard of law ordour and justice : THAIRFOIR the Lordis of Secreit Counsaill ordouris officiaris of armes to pas to the mercat croce of Edinburgh, and thair, be oppin proclamation, to command charge and inhibite all and sundrie personis, alsweill strangeris as nightbouris and inhabitantis of this burgh, of quhat estait or condition soeuer thay be, that nane of thame presume nor tak vpoun hand to resoirt hant or repair vpoun the streittis of this burgh after the ringing of the ten houris bell at nycht, nor to commit ony insolence ryottis robbreis or reiffis vpoun the streittis of this burgh vnder silence of night, vnder the pane to be takin apprehendit and committit to waird, and pvnist in thair personis conforme to the formar proclamacionis maid thairanent : COMMANDING heirby the prouest and bailleis of Edinburgh to appoynt some personis to gaird thair streittis, and to tak apprehend and commit to waird all suche personis of quhatsomeuir rank and qualitie thay be whome thay find vpoun thair streittis after the said ten houris bell, and yf in the taking of thame ony inconvenience salhappin to fall oute, the saidis Lordis declairis that the same sall not be imputt as cryme or offence to the committaris, bot goode and acceptabill seruice.

These several incidents, acts, and proclamations, referred to as far as possible in the language of contemporary records, tell their own story of the rudeness, disorder, and lawlessness of the times. But something more than acts and proclamations was necessary to correct the chronic derangement of the country. What was required was the strong hand to enforce obedience to the laws, and the power of the crown was now, fortunately for that object, such as could make itself felt and feared. The accession of James VI. to the throne of England in 1603 had placed at his command the power and resources of the richer kingdom, and had added largely to his personal in-

fluence. It had familiarised him, moreover, with English institutions, through the instrumentality of which the law had become supreme in the southern portion of his dominions ; and that supremacy must have stood out in strong contrast with the insubordination so prevalent in Scotland. It was most natural, therefore, that he should seek to employ in this country a part of the machinery which, for centuries, had worked so well and so advantageously in England. Justices of the Peace were already established in Scotland. This had been done sixteen years before the king succeeded to the English crown. The office and its duties were therefore known here, and especially in the capital, the magistrates of which had, in 1589, received the king's commission constituting them his justices within the burgh and its suburbs,<sup>1</sup> and, moreover, held a royal charter, dated in 1609, conferring upon them the authority and jurisdiction of Justices of the Peace within the city and its liberties.<sup>2</sup> But constables as officers of Justices of the Peace had no place in the municipal arrangements of the country, and these it was determined to introduce. The circumstances of Edinburgh, as we have seen, were such as to make it in the highest degree desirable to secure for its magistrates the utmost support in the discharge of their duties ; and this probably could not have been better obtained than by the organisation, under the royal authority, of a number of the citizens, periodically elected by the magistrates themselves, sworn to the faithful performance of the duties assigned to them, and bound by strong ties to support the local authorities in the preservation of peace, the suppression of crime, and the enforcement of the laws and regulations of the town. Letters from the Privy Council were accordingly directed to the magistrates, charging them to elect constables within the burgh. These were formally presented by a messenger-at-arms on the 28th of August 1611, and under that date, the following entry occurs in the Council Records :—<sup>3</sup>

“xxviij August j<sup>m</sup>. vj<sup>e</sup>. xj<sup>o</sup>”

“The same day Robert Logane, messenger, comperand chairges the said prouest baillies and counsall to elect constabills within this burch conform to the letteris of the Lordis of Secreitt Counsall direct thairanent ; in respect quhereof the said baillies and counsall hes aggreit to thair electioun and continewis the samin.”

<sup>1</sup> Inventory of City Charters, i. 62.

<sup>2</sup> Ibid. i. 734. See Notes on Lord High Constable, pp. 17, 18.

<sup>3</sup> Council Records, xii. p. 71.

On the 4th of September, accordingly, the consideration of the charge was resumed, and the following entry occurs in the Council Record :—<sup>1</sup>

“Quarto Septembris jm. vj. xj.”

“The same day, understanding that thai ar chargit to elect constabills within this burch be our Souerane Lords letteris, thairfore thay haif ordanet that thair be to the number of                    persouns elected to that office, the ane half to be of the calling of merchantis and the other of craftismen, throw all the quarteris of this burch, to continew in the said office for the space of sex monethis, and hes maid and set furch the heidis and articles following concerning the office foresaid, and ordanes to be proclamit publictlie, and alsua prentit, that nane pretend ignorance, and the thesaurer to mak the expenssis quhilk sall be allowit, and that the baillies obteyne the consent of the Lordis of Secreitt Counsall thairto.

In accordance with the instructions of the Town Council, the “orders and injunctions” to be observed by the Constables, were submitted to the Lords of the Privy Council, and were approved of by them, and on the 6th of September constables were elected by the provost, bailies, and council, for a period of six months.<sup>2</sup> At this time the town was divided into four quarters, known as the north-east, north-west, south-east, and south-west quarters, each under the more immediate charge of one of the bailies.<sup>3</sup> The election of the constables

<sup>1</sup> Council Records, xii. 73.

<sup>2</sup> Council Records, xii. 75.

<sup>3</sup> The division of the town into quarters dates from a period long anterior to this, if, indeed, it was not made in accordance with a general law or practice originally applicable to all burghs [see Robertson's *Scotland under her Early Kings*, i. 298]. The earliest reference to it, however, in the Council Records, is contained in an order dated 10th August 1498, appointing all merchants and craftsmen to have weapons in their booths to be ready to assist the provost, bailies, and quartermasters in the suppression of tumults, &c. [Council Records, i. 32]. This seems to indicate the existence at that time of quarters, and officers assigned to these with the title of “quartermasters,” whose duty it was to assist the magistrates in the preservation of the peace. A more specific statement on the subject is to be found under date 4th October 1514, in what purports to be a minute of the provost, bailies, and council, whereby “for eschewing of this contagious seiknes of pestilence be Goddis grace,” it is statuted and ordained that the town shall be divided into four quarters, to be assigned to four bailies, with their quartermasters. The first quarter is defined as extending from the Castlehill to Alexander Cant's Close; the second from Cant's Close to Leith Wynd; the third from the “Lopelie stayne with the Cowgaitt” to Lord Borthwick's Close; and the fourth from Borthwick's Close to the Castlehill with under the wall [Extracts from Council Records, Advocates' Library, fol. 208]. The division into quarters was subsequently

was accordingly made with reference to these quarters, each of which was subdivided into three parts, and each part was assigned to an officer and two constables. A district adjoining the north-east quarter, and known as "without the port," had also two constables assigned to it. On this occasion, therefore, twelve officers and twenty-six men were elected constables. Subsequently, two constables were assigned to the Cowgate, making twenty-eight constables in all, besides the officers. On the 13th of September the orders

recognised in many acts of council for watching, taxation, and other municipal purposes. On 13th October 1563 [Council Records, iv. 82], the bailies were appointed to have the government each of a quarter; on 31st August 1565 [ibid. iv. 134], the Council were ordered by "Instructions," under the hand of the Queen and Darnley, to divide the town into quarters, and to have them watched; on 18th May 1578 [ibid. v. 99], the bailies were directed to watch each his quarter until the provost's return from Stirling; and in the following year [ibid. v. 167, 8th October 1579] they were appointed to take the charge each of his quarter. In 1585, the duties of this charge appear to have grown so much as to render it necessary to appoint assistants to the bailies, and three persons in each quarter were elected for the purpose [ibid. vii. 184, 19th May 1585]. That the duties of their office were not of the most agreeable kind, may be inferred from the fact that an act of council was passed three days later appointing these persons to be charged to accept under pain of having their names declared to the king [ibid. vii. 186, 22d May 1585]. When the plague again broke out in 1585, it was found necessary to elect six persons to be called "quartermasters and visitors," for the better government of the town, and they were vested with authority equal to the bailies in visiting their quarter, punishing vice, "outputting and inputting of the foull folk," and all other things concerning the plague. For their services the quartermasters were appointed to receive each £5 [ibid. vii. 208, 20th October 1585]. By a subsequent act of council, dated 21st January 1585, the allowance to each quartermaster was increased to £10 [ibid. vii. 222]. In the absence of the bailie of the south-east quarter, we find an overseer of the quarter appointed on 3d November 1587 [ibid. viii. 116]. Quartermasters were again constituted in time of plague by act of council, 8th November 1587 [ibid. viii. 117]; on the 3d of July 1588, visitors were elected for the various quarters, and "the order and maner of the visitors," prescribed at this time, shew that they were entrusted with several of the duties afterwards assigned to the constables. These duties, however, appear to have been confined to inspecting and reporting to the Magistrates. They had no executive authority, corresponding to that of the town's officers, or of the constables of later times [see Order and Manner of the Visitors, Appendix No. III.]. Under the arrangements made at this time, each of the bailies had his quarter, which was divided into rows, and each row was placed under the charge of an officer, but subdivided into portions specially assigned to the visitors. Thus the north-west quarter had its bailie, three

and injunctions were printed, and five days afterwards the bailies were ordered to agree, and the treasurer to settle with the printer for the printing.<sup>1</sup>

The duties of the Constables, as defined by these orders and injunctions,

officers, and nineteen visitors; the north-east quarter had its bailie, two officers, and eleven visitors; the south-east quarter had its bailie, and nineteen visitors; and the south-west quarter had its bailie and twenty-five visitors. The number of officers assigned to the south-east and south-west quarters does not appear [Council Records, viii. p. 161]. On 30th September 1595, four officers, under the old name of sergeants, were named for each of the quarters [ibid. x. 43], and on 5th August 1597 two neighbours were appointed in each quarter to assist the bailie thereof in time of need [ibid. x. 137]. In the same year an act of council, of date 7th December, bears that the bailies "pairted the quarteris of the toun amangis thame" [ibid. p. 159]. In 1604, an act was made to choose four quartermasters to attend on the four quarters at the town's expense "during the time of the present visitation of the plague" [ibid. xi. 151, 11th July 1604]. What the duties of the quartermasters were at this time does not appear; probably they were similar to those of the quartermasters and visitors elected in 1585 and 1588. Quartermasters are again referred to in 1652, and subsequently, but their duties then appear to have had relation to the quartering of soldiers; the functions of the quartermasters and visitors, as formerly defined, having been included in the ampler duties and powers of the constables.

The division into quarters was also recognised in the ecclesiastical arrangements of the city. On 14th October 1584 [Council Records, vii. 116], the council divided the town into four parishes, according to the several quarters, and appointed for each its proper church, ordaining every person to attend his own parish kirk for divine service. At the same time it was resolved to elect for each parish, with the advice of the minister, three elders and four deacons, who should convene weekly with two bailies and four councillors, to take order with the affairs of the church, the correction of manners, the support of the poor, &c. In 1597, it was resolved to divide the town into eight parishes [ibid. x. p. 131], but this resolution was not carried into effect. In the following year, however, an additional minister was chosen for each quarter, making eight in all [Caldерwood's History of the Kirk of Scotland, v. 713. Charter of the Collegiate Church of St Giles; Preface by Mr Laing, p. liv]. This arrangement remained till 1625, when, in obedience to the requirements, first of James VI. and afterwards of Charles I., the West Port, Cowgate, and Canongate-head, were included in the parochial arrangements; and the whole was divided into four parishes, with two ministers for each. This arrangement was sanctioned by Charles I. on 19th October 1625, and confirmed by an act of the Privy Council on 1st November 1625 [Council Records, xiii. 274-277, 289, 302, 304, 307, 311-314. Maitland's History of Edinburgh, 274-281].

<sup>1</sup> Ibid. xii. 76. See "Orders and Injunctions for Constables," Appendix No. IV.

were of a very miscellaneous character; and before proceeding further, it may be convenient to enter somewhat into detail in regard to several of them.

I. The Constables were required to apprehend all suspected persons, idle vagabonds, or night walkers, and to imprison them till they found security for their behaviour (article 1); to apprehend all vagabonds, beggars, or Egyptians (gypsies), for punishment according to Act of Parliament (art. 6); to apprehend all persons having no visible means of subsistence, with a view to their trial and punishment (art. 7); and to report to the magistrates all vagabonds, beggars, and infamous persons within their bounds, in order to their punishment and removal furth of the burgh (art. 9).

From an early period the law of Scotland established a broad distinction between the truly necessitous, viz., poor aged and impotent persons, whose claim to be maintained by charity it recognised, and those who, though able to work, chose to live idly at the expense of others, viz., vagabonds and strong beggars, against whom it denounced a variety of punishments. This distinction is most clearly defined by the act 1579, c. 12,<sup>1</sup> but it is recognised in the previous acts of 1424, c. 21,<sup>2</sup> and 1503, c. 14;<sup>3</sup> and it is for the suppression of the latter class,—the hordes of vagabonds who infested the country, levying free quarters and oppressing the people,—that the greater part of the Scots Acts on this subject are directed. Of this class were the “katherans,” referred to so early as 1384 in an act of Robert II.,<sup>4</sup> which described them as persons who lived “*commedendo patriam et consumendo bona comitatum et capiendo per vim et violenciam bona et victualia*,” and ordained them to be treated as fugitives and rebels;—the “sorners,” referred to in the acts 1424, c. 7;<sup>5</sup> 1449, c. 9;<sup>6</sup> 1456, c. 13;<sup>7</sup> and 1457, c. 26;<sup>8</sup> and against whom the statutes, 1455, c. 8,<sup>9</sup> and 1478, c. 10,<sup>10</sup> denounced death as thieves and reivers;—the “Egyptians” who were ordered to leave Scotland, by the act 1609, c. 20,<sup>11</sup> which prescribed death as the penalty of non-compliance, adding (what Hume calls) “the convenient but very severe provision that it should be lawful to condemn and execute them to the death, on proof made to this effect only” that they are called known repute and holden Egyptians;<sup>12</sup>—the “unlicensed

<sup>1</sup> Acts of the Parliaments of Scotland, iii. 139.

<sup>2</sup> Ibid. ii. 8.    <sup>4</sup> Ibid. i. 186.    <sup>6</sup> Ibid. ii. 36.    <sup>8</sup> Ibid. ii. 51.    <sup>10</sup> Ibid. ii. 119.

<sup>3</sup> Ibid. ii. 251.    <sup>5</sup> Ibid. ii. 3.    <sup>7</sup> Ibid. ii. 45.    <sup>9</sup> Ibid. ii. 43.    <sup>11</sup> Ibid. iv. 440.

<sup>12</sup> The Egyptians, or Gypsies as they are now termed, were so called in accordance with the popular belief, founded on their own assertion, that they came originally from Egypt. It rather appears, however, that they are of Indian origin, and it has been

thiggeris" referred to in the acts 1424, c. 7 and 21, who were to be burned on the cheek, and banished the country if they did not "labour and passe to crafts for

endeavoured to be shewn that they were driven from India by Timour Beg, when he devastated that country in 1408-9. At all events they were first noticed in Europe about the year 1417, and they soon succeeded in extending from Hungary and Bohemia, where they first appeared, to most of the other kingdoms. At first they professed to be, and were received as, Christian pilgrims; and their chiefs, who assumed the titles of kings, dukes, counts, or lords of Little Egypt, received passports and other privileges and recognitions from most of the European sovereigns. It was soon discovered, however, that their manners and morals were inconsistent with their pretended character. Idle and dissolute themselves, they were joined by the idle and dissolute of every country in which they settled, and became so great a nuisance that it was found to be necessary to expel them. Thus they were banished out of Spain in 1492, out of Germany in 1500, and out of England in 1531.

In Scotland, as elsewhere, they were at first received with favour and consideration. The books of the Lord High Treasurer of Scotland shew various payments to them during the reign of James IV., "by the King's command" [Pitcairn's Criminal Trials, i. 272,\* 277\*]; and the records of the Privy Seal contain several important evidences of the royal favour about the same period; viz., (1) a letter from James IV. to the king of Denmark, in favour of Anthony Gawin, earl of Little Egypt, dated in 1506; (2) a letter under the Privy Seal, by James V., in favour of John Faw, lord and earl of Little Egypt, supporting him in the execution of justice in his company and folk, conform to the laws of Egypt, dated 15th February 1540. This letter refers to a similar letter under the great seal, as having been previously granted to the same individual. (3) A precept to John Wanne, son and heir of the late John Fall, lord and earl of Little Egypt, authorising him to hang and punish all Egyptians within the kingdom of Scotland, dated 26th May 1540. The tide of favour appears, however, to have turned against them shortly afterwards, for on 5th June 1541, the Privy Council having under consideration complaints by certain Egyptians against each other, which the complainers had afterwards agreed among themselves to pass home and have decided before the duke of Egypt, ordained letters to be directed to the provosts and bailies of Edinburgh, and other places where the Egyptians resorted, to command them by open proclamation "to depairt furth of this realme, with their wifis, barnis, and companies, within thirty days after the charge, under the pain of deid, notwithstanding ony utheris lettres or privileges granted to them be the Kingis grace, becaus his grace, with avise of the lordis, hes deschargit the samin" in respect of "the greit thiftis and scathis done be the saidis Egyptians vpoun our soverane lordis liegis" [ibid. iii. 593]. The Lord High Treasurer's accounts for this year contain two entries, under date 23d June, of payments to messengers with these letters to the sheriffs and burghs [ib. i. 310\*]. This order, however, does not appear to have been put to rigorous execution, for in March 1553 and April 1554, we find respites granted to the captain of the Egyptians,

winning of thair living ;"—the "idle men" referred to in the act 1425, c. 20,<sup>1</sup> whom the sheriffs and magistrates of burghs were to arrest till it were known "quhairupon they live," and if they failed "to fasten to lawful craftis," were to be imprisoned to abide and be punished at the king's will ;"—the "overliers and masterful beggars" referred to in the act 1449, c. 9, as then going about the country with "horses hundes and uther gudes," whose property it directed to be escheat to the king, and the owners to be imprisoned until his "maiestie have said his will on them ;"—and in the act 1457, c. 26, which directed the judges at the justice aires to take cognizance of them ;—the persons "that maks thaim fulis, that ar nocht bards, or sik lik vtheris rynars aboute," referred to in the statute, 1449, c. 9, which directed them to be imprisoned so long as they had any goods of their own to live upon, then to have their ears "nailed to the trone, or till ane uther tree, and their ear cutted off, then banished the country," and thereafter, "giff fundin agane" to be hanged.

But these acts, severe though they were, failed to put down the vagabondism against which they were directed. The low moral condition of the people, and the disturbed political state of the country, at once fostered the evil and prevented the execution of the laws. Strong and idle beggars increased, and carried themselves with a high hand, while the poor and impotent lacked necessary subsistence. To remedy this state of matters the act 1579, c. 12, was passed, and it still forms the foundation of our system of poor laws. Referring to the previous statutes as not having been put to due execution

---

his three sons, and several others, for the slaughter of Ninian Small [ibid. iii. 593, 594]. In June 1603, the repeated enactments against rogues and vagabonds, and the previous order of the Privy Council having proved insufficient to restrain them, a new order was issued, banishing them from the country under pain of death, and this order received Parliamentary sanction by the statute of 1609, c. 13. Under this act sentence of death was passed on four of this proscribed class in 1611, and on several subsequent occasions down to 1715 [See Hume's Commentaries on the Law of Scotland respecting crimes, i. 468-470. Pitcairn's Criminal Trials, iii. 201, 397, 559, 561, and 595. Mackenzie's Observations on the Acts of Parliament, 333-4]. Their own excesses, doubtless, provoked this rigour, for an order of the Privy Council in 1630, represents them as going about in the north parts of the kingdom armed, extorting whatever they needed from such of the lieges as were not able to resist them [Chambers's Domestic Annals of Scotland, ii. 54]. The practice of later times has reduced the charge of being an Egyptian nearly to that at common law of being habit and repute a thief.

<sup>1</sup> Acts of the Parliaments of Scotland, ii. 11.

“through the iniquities and troubles of the time bypast, and by reason that there was not heretofore ane ordour of punishment sa specialle devised as need required,” it appointed an “order of punishment” for all idle and strong beggars and vagabonds, viz. scourging and burning through the ear with a hot iron on first conviction, if no honest and responsible person would take and keep the offender for one year in his service, and death as a thief on a second conviction ; it set forth minutely who were to be considered vagabonds and worthy of that punishment, and these were generally all persons between fourteen and seventy years of age, going about the country idle, and not following any lawful mode of earning their bread ; it subjected to fine all who should give money or lodging, or set houses, to vagabonds ; it required the officers and judge of every burgh and parish to nominate persons to search for, receive, and convey vagabonds to the common prison, irons, or stocks, at the expense of the parish ; it required the magistrates in burghs, and the justices to be constituted by the king in parishes to landward, to take inquisition of the aged poor, impotent, and decayed persons born in the burgh or parish, or who had dwelt or had their most common resort therein for the previous seven years, and to levy an annual assessment for their support ; and it allowed any of the lieges, with the consent of the magistrates of burghs, or the sheriff in landward parishes, to take beggars’ children between the ages of five and fourteen into their service, and to retain them till the boys attained the age of twenty-four, and the girls the age of eighteen. The statute, though put to execution in Edinburgh, does not appear to have been generally enforced, or to have realised the expectations that were formed of it. Its only result, indeed, as remarked by Mr Dunlop, seems to have been to create a feeling of the necessity for an increase of prisons and places of confinement to contain the vagabonds against whom the order of punishment contained in the act was directed.<sup>1</sup> The next statute therefore (1592, c. 69),<sup>2</sup> directed these to be erected, not only at head burghs, but at all the principal towns and parish churches, and empowered certain persons, to be appointed by the kirk-sessions, to execute the provisions of the act of 1579. This power was subsequently, by the act 1597, c. 39,<sup>3</sup> vested in the kirk-sessions themselves, and the presbyteries were, by the act 1600, c. 28,<sup>4</sup> appointed to take cognizance of them, reporting their diligence to the ministers of the crown. Subsequently

<sup>1</sup> Dunlop on the Poor Law, p. 14.

<sup>2</sup> Acts of the Parliaments of Scotland, iii. 576.

<sup>3</sup> Ibid. iv. 140.

<sup>4</sup> Ibid. v. 232.

the act 1617, c. 8, § 7,<sup>1</sup> required justices of the peace to enforce the acts against vagabonds, and to punish "their receptors, and setters of houses to them;" but notwithstanding the additional machinery thus employed, the next statute, 1617, c. 10,<sup>2</sup> sets out with the complaint that "the number of idle and masterful beggars hathe daylie incresced more and more," and after propounding the opinion that the non-education of the children of poor parents in habits of industry was the cause of the multiplying of beggars, the act elaborated into a more complete form the system of temporary slavery introduced by the acts 1579 and 1597.

In the enforcement of these acts relative to the vagabond poor in Edinburgh, the magistrates required the assistance of the constables, as they had previously required that of the "visitors and quartermasters" appointed in 1587,<sup>3</sup> and it was no easy task which they were called on to perform. Edinburgh was at this time, and had long been, a favourite haunt of beggars. In his address to the merchants of Edinburgh in the early part of the 16th century, Dunbar had described their burgh as "ane nest" of beggars, and his description seems to have been no exaggeration. The act 1540, c. 21,<sup>4</sup> also refers to the "multitude of vyle, dishonest, and miserable creatures convening daily to the market of meal and other victuals to get sustentation and living," and appoints that market, which was then held in the hiegait, to be removed to some honest ganand and convenient place, where the king's lieges may convene for selling and buying of victuals in time to come." It was also, without doubt, one of the places referred to in the Act of the Parliament held there in 1551 (c. 16),<sup>5</sup> which appoints the former acts against beggars to be put to rigorous execution, on the narrative that "beggars dailie and continuallie multiplies and resortis in all places quhair my Lord Governour and otheris nobillis convenis, swa that nane of thame may pass throw the streittis for raming and crying upon them contrare to the tenour of the said actis." Nor was the condition of matters in this respect

<sup>1</sup> Ibid. v. 535.

<sup>2</sup> Ibid. v. 542. The condition of England at this time was probably not much better. See extract from a letter, addressed by a justice of the peace of Somersetshire to the Lord Chancellor Burleigh, in transmitting to him the calendar of the assizes and sessions held in that county in 1596. Strype's Annals, vol. iv., No. ccxiii., quoted by Mr Dunlop on the Poor Laws, p. 6. See also Sketch of the English Poor Law System, Froude's History of England, i. 77-90.

<sup>3</sup> See Footnote, p. 31. Appendix No. III.

<sup>4</sup> Acts of the Parliaments of Scotland, ii. 374.

<sup>5</sup> Ibid. ii. 486.

improved so late as 1616. An act of the Privy Council against beggars, passed on the 5th of March of that year, describes Edinburgh as infested with strong and idle vagabonds, "having their resets in some parts of the Cowgate, the Canongate, Potterrow, West Port, Pleasance, [and] Leith Wynd, where they ordinarily convene every night, and pass their time in all kind of riot and filthy leechery to the offence and displeasure of God." By day they are said to "present themselves in great companies in the principal streets." Numbers of them "lie all day on the causey of the Canongate, and with shameful exclamations and cursing not only extorts alms, but by their other misbehaviour fashes and wearies as well his majesty's nobility and councillors, as other his majesty's subjects repairing to this burgh, sae that hardly any man of whatsoever quality can walk upon the streets, nor yet stand and confer upon the streets, nor under stairs, but they are impeshit by numbers of beggars." The magistrates of Edinburgh and Canongate were therefore ordered to get these people removed from their respective bounds, and to suffer them no longer to ask alms on the streets.<sup>1</sup>

The acts and proclamations for their suppression, which are to be found in the Council Records, from the earliest period down to comparatively recent times, also shew how much the capital was annoyed with beggars and vagabonds of every description. These acts and proclamations—too numerous for particular reference—are directed against beggars not born in burgh; against giving alms to strangers; against all beggars not having the town's mark; against begging in the streets; against strong and idle beggars; against uncouth beggars repairing to the town; against "outland beggars and such as have no lawful industry;" against beggars and vagabonds lying in kilns; against setting houses to, or receiving, beggars; and for up-bringing of beggars' children. And the whole armoury of punishments seems to have been exhausted against them. Burning the cheek, warding, scourging, fines, putting in shackles, putting in the stocks, banishment to Barbadoes, Virginia, or Carolina, and death itself was prescribed from time to time. Then we find acts for their summary expulsion from the town; for fitting up a house in St Mary's Wynd for their imprisonment; for putting locks on the doors of the college house as a prison for outlawed beggars; acts appointing and paying persons to hold beggars off the streets; ordaining the officers to stop their clamour at the kirk; and directing the porters at the several gates to hold beggars furth, under a penalty of 5s. for every one allowed to enter.

---

<sup>1</sup> Chambers's Domestic Annals of Scotland, i. 474.

It is at the same time gratifying to find, that while thus severe in their dealing with strong and idle beggars, the magistrates were not neglectful of the truly necessitous. The records contain numerous acts for their behoof,—licensing proper persons to beg through the town ; providing for the purchase and distribution of bread to them ; ordering the duty of St Giles' altar wine to be roused for them, and escheat mutton to be given to them ; appointing collections to be made for them of 4d. per pound of the dead's part,—of 12d. on the tun of wine,—of wine from every puncheon,—of extents,—of the fines of absent magistrates,—of weekly contributions by the inhabitants,—of the prime gilt tax,—and of alms at kirk doors, and regulating the application for their benefit of priests' incomes, and moneys mortified by the inhabitants.

II. The constables were farther required to apprehend all persons wearing "pistolets or dagges," and to present them to the magistrates for punishment conform to Act of Parliament.

It has already been seen that firearms were freely used in the fierce and frequent encounters that took place in the streets of the capital in the sixteenth century. To such a length was the practice carried, that on 24th November 1567,—three days after the fray between the Laird of Airth and the Laird of Wemyss, to which reference has been made,—the Privy Council found it necessary to issue a strict proclamation against the wearing of guns and pistols, or any "sicklyke fyrework engyne, under the paine of death," the king's guard and soldiers only excepted ;<sup>1</sup> and on 20th December an Act of Parliament was passed (1567, c. 21),<sup>2</sup> prohibiting all persons, of whatever degree, from shooting with or carrying "culuerings, daggis, pistollettis, or any vther gunnis or ingynis of fyre wark in ony pairt of this realme, nouthor to burgh nor to land," under pain of having their right hand cut off. The preamble of this act refers to the fact that "diueris of our souerane lordis liegis are schamefullie and cruellie murthourit slaine and hurt, quhilks vtherwyse war abill to mak defence sufficientlie for thaim selfis, at all tymes of persute, as hes bene laitlie sene within this brugh of Edinburgh." It would appear, however, from an act of the Convention held at Holyrood on 5th March 1574, during the regency of the Earl of Morton, that the act of 1567 had not received effect in consequence of "the troubles and civil war wherewith the whole realm had been for the most part since then disquieted," but that the unlawful use of firearms by all manner of men was still common, and was the

<sup>1</sup> Birrell's Diary, p. 13.

<sup>2</sup> Acts of the Parliaments of Scotland, iii. 29.

occasion of many murders and slaughters. The act of 1574, therefore, renewed and extended the provisions of the act of 1567,—imposing the penalty of imprisonment for the wearing of firearms, the cutting off of the right hand for shooting at any of the lieges, and the penalty of death when slaughter or mutilation ensued.<sup>1</sup> Still, however, the abuse of firearms continued, and the Convention of Burghs, at their meeting in Cupar in February 1578, resolved “to propone Parliament” on the subject.<sup>2</sup> This having been done, the act 1579, c. 25, was passed. Referring to the act of 1567 as not having been put to execution, partly “by reason of the troubles intervening,” and partly by reason of the reluctance of the ordinary judges to enforce the penalty of death or dismemberment which it prescribed, it substituted a pecuniary penalty and forfeiture of the “gun and armour” of the contravener, “without prejudice of the vther paines, gif the King’s Maiestie will have the saim execute.” It also appointed the magistrates of burghs to carry its provisions into effect.<sup>3</sup> This leniency seems, however, to have failed in its object, for, in consequence of the many murders committed in and near Edinburgh, the Privy Council found it necessary, in 1593, by an act to which reference has already been made, to order a search for all pistols and hagbuts worn by any persons in Edinburgh or in the palace of Holyrood, and the wearers to be imprisoned; and by the act 1597, c. 19, the act of 1567 was again ratified, and appointed to be executed with all rigour against the contraveners, whose whole moveable goods were moreover declared to be confiscated, one half to the king, and the other half to the apprehender.<sup>4</sup> Still the acts do not seem to have been enforced, and by the act of Convention (1598, c. 5) the king pledged himself to cause them to be put to execution; the noblemen present promising to reform their own households, and to enforce the acts with all severity within their several jurisdictions.<sup>5</sup> It is to be observed, however, that the king had not been previously remiss in his endeavours to secure obedience to the laws. On the contrary, by issuing proclamations, and by writing to the magistrates of burghs, he had done all in his power to secure their enforcement, though, it appears, without much success.<sup>6</sup> The several acts above referred to were amended by the act 1600, c. 14, which provided that their contraveners might be pursued either before the Privy Council, but so

<sup>1</sup> Ibid. iii. 84.

<sup>2</sup> Printed Records of the Convention of Royal Burghs, i. 76.

<sup>3</sup> Acts of the Parliaments of Scotland, iii. 146.    <sup>4</sup> Ibid. iv. 134.    <sup>5</sup> Ibid. iv. 164.

<sup>6</sup> Extracts from the Burgh Records of Aberdeen. Spalding Club, ii. 131.

only as to infer the pains of warding and escheat or fine, or if his majesty should so wish, before the criminal courts, who might subject the offender to the full penalties of the former statutes.<sup>1</sup> It is a significant fact, as remarked by Mr Chambers, that while, during the period over which these several enactments extend, firearms were commonly worn and freely used in Scotland, the sword and buckler,—a comparatively harmless furnishing,—was the ordinary gear of gallant men in England.<sup>2</sup>

In conformity with the several acts of Parliament and Convention before referred to, various acts and proclamations against the use of firearms were issued by the Privy Council and by the magistrates of Edinburgh from time to time; and the order to the constables now under consideration was a part of the same policy of discouraging the bearing of mortal weapons on the person,—a practice which, it is observed by Hume, “our legislature have regarded as a preparation for violence, and the sign of a bad and quarrelsome disposition.”<sup>3</sup>

Objectionable, however, as was the practice, none of the acts above referred to ever appear to have been rigorously enforced; and even in Sir George Mackenzie's time (1678) the bearing of arms was more commonly libelled as an aggravation of a crime than as a crime in itself.<sup>4</sup> All these statutes are now in desuetude.<sup>5</sup>

III. By the third article of their orders and injunctions, the constables were required, upon the appearance of any fray or stir, or on the occurrence of any accident within the burgh, either by day or night, to procure assistance and separate the parties, or take such steps as might be necessary,—apprehending breakers of the peace, and imprisoning them, or presenting them to the magistrates. They were further empowered, by Article 4, to break open doors in pursuit of rioters, and to go beyond their bounds after them in fresh pursuit, and to apprehend and commit them to prison.

This duty was closely connected with the watching of the town, which in all burghs had to be performed by the burgesses. The laws of William the Conqueror (A.D. 1066) provided that all cities and boroughs, castles, hundreds,

---

<sup>1</sup> Acts of the Parliaments of Scotland, iv. 228. Mackenzie's Observations upon the Scots Acts, p. 297.

<sup>2</sup> Chambers's Domestic Annals of Scotland, i. 47.

<sup>3</sup> Hume's Commentaries on the Law of Scotland respecting Crimes, i. 439.

<sup>4</sup> Mackenzie's Treatise concerning the Law of Scotland in matters Criminal, p. 158.

<sup>5</sup> Hume, i. 440. Tait's Justice of the Peace, *vide* Breach of the Peace, p. 49.

and wapentakes, should be watched every night, and kept in turn against evil-doers and enemies, as the sheriffs, aldermen, reeves, bailiffs, and the king's ministers, should the better provide, by the common council, for the benefit of the kingdom.<sup>1</sup> The frequent reference in Domesday-book to property in boroughs, "which the burgess *defends* and holds of the king," also implies the service of watching. Such service continued an essential condition of burgess-ship in England, and was also invariably recognised in the Scotch burghs, which were in all respects similarly constituted with those of England. The "Laws of the Four Burghs," enacted by David I. (1124-1153) for Edinburgh, Stirling, Berwick, and Roxburgh,—and probably containing little more than a declaration of the law as even then settled by common consent and immemorial usage,<sup>2</sup>—begin with providing that each burgess shall pay yearly to the king for every "borowage" which he defends and holds of him, "for every rood of land five pennies," a holding precisely the same as that referred to in Domesday-book.<sup>3</sup> Chapter 74 again refers to the watchers or keepers of the town,<sup>4</sup> and chapter 81 requires one watchman to come forth of each house "quhen the wakstaff gais fra dure to dure, quha sal be of eyld, and sal gang til his wache wyth tua wapnys at the ryngyng of the courfeu, and sua gate sal wache wysly and besily till the dawyng of the daye. And gif ony hereof failze he sal pay iiijd. outtane wedous."<sup>5</sup> This exemption from watching in favour of widows was, by chapter 104, however, declared not to extend to those who bought and sold in the burgh. These were appointed to share in all the public burdens, and had doubtless to provide a watchman.<sup>6</sup> The "Articles to be inquired into in burghs by the chamberlain on his ayres,"—a document believed to be of the latter half of the reign of Robert I.,<sup>7</sup>—directs inquisition to be made of the bailies, "si vigilie sufficienter custodiantur in burgo, et si currant hostiatim. Et si vidue compellantur ad vigilandum."<sup>8</sup> So also in the "Mode of Procedure in the Chamberlain Ayre,"—a document apparently of the end of the fourteenth century,<sup>9</sup>—inquiry is ordered to be made whether the bailies "ger nocht walk the burgh on the nycht be

<sup>1</sup> Ancient Laws and Institutes of England, i. 491. William III., 6.

<sup>2</sup> Mr Cosmo Innes's Preface to volume first of the Acts of the Parliaments of Scotland, p. 35.

<sup>3</sup> Leges Quatuor Burgorum Scocie. Acts of the Parliaments of Scotland, i. 21.

<sup>4</sup> Ibid. i. 36.

<sup>5</sup> Ibid. i. 37.

<sup>6</sup> Ibid. i. 41.

<sup>7</sup> Mr Innes's Preface to vol. i. of the Acts of the Parliaments of Scotland, p. 45.

<sup>8</sup> Articuli inquirendi in itinere camerarii. Acts of the Parliaments of Scotland, i. 318.

<sup>9</sup> Mr Innes's Preface, *ut sup.*, p. 45.

sufficient walkaris," and whether "thai ger pur folk walk and nocht rich."<sup>1</sup> In like manner a decree of the Court of Four Burghs, held at Stirling on 4th October 1405, ordains that "the baillie may ilk day except it be ane halie day cognosce and correct . . . . the rebelles and perturbers within the burgh als oft as necessitie requyres and complaint is made,"<sup>2</sup>—all implying the existence of watching arrangements in burghs at these early periods. The Acts of Parliament, 1592, c. 75,<sup>3</sup> and 1597, c. 46,<sup>4</sup> also refer to watching and warding as proper burdens upon the inhabitants, and recognise and regulate the exercise by the magistrates of royal burghs of a power, which must have existed from the earliest periods, to impose and levy local taxes for these and other purposes.<sup>5</sup>

Watching and warding are also referred to as part of the unquestionable duty of burgesses in numerous acts of council defining the duties and conditions of burgess-ship in Edinburgh. Thus on 16th July 1539, we find an order on all persons claiming to be freemen and burgesses of the burgh, to compear within forty days, and make their residence therein, and bear scott, lott, ward, and walk with the other neighbours comburgesses, under certification, if they failed, that they would lose their freedom.<sup>6</sup> Subsequent acts also prescribe residence in the burgh, with a view to bearing in person a share of its burdens, as essential to burgess-ship. Among these are (1) an act dated 17th May 1555, ordering that none be received burgesses but "honest habil qulyfyit men, and that they be maryit, indwel-laris within the bruch, haiffand sufficient substance with stob and staik ;"<sup>7</sup>

<sup>1</sup> *Modus procedendi in itinere camerarii infra regnum Scocie.* Acts of the Parliament of Scotland, i. 331.      <sup>2</sup> Acts of the Parliaments of Scotland, i. 340.

<sup>3</sup> *Ibid.* iii. 578.

<sup>4</sup> *Ibid.* iv. 141.

<sup>5</sup> General Report of Commissioners on Municipal Corporations in Scotland, p. 44.

<sup>6</sup> Council Records, i. 41.

<sup>7</sup> *Ibid.* ii. 49. Bachelorhood seems to have been a recognised obstacle to admission as a burgess at this time. Of this there is an illustration in the case of one John Paterson, deacon of the masons, who, having done the town good service, applied to be made a burgess, as others in similar circumstances had been. To this application, however, it was answered for the council, that "they have nocht been [in] use to grant ony sic libertie or priuelege to men vnmariit, and thairfor quhen it sould happin the said deken to haue ane lauchtfull wyfe and [be] mariit, according to the ordour of the kirk now present, vpoun his gude behaviour and seruice, he sould be considerit in this his desyre and satisfait to his plesour." Upon this the deacon asked instruments [*ibid.* iv. 68, 23d April 1563].

(2) an act dated 30th October 1560, which, on the narrative that many persons had been admitted burgesses and freemen within the burgh "quhilks dwelles noch within the samyne, nor yet nother scattis, lottis, extentis, walkis, nor wardis, nor yet beris na portable charges within this burgh, sicklike as they ought to do, and as oyther nychbouris and freemen of this burgh does, incontinair the ald statutis maid thairvpoun heirfor," ordered all freemen and burgesses to "cum and remane within the samine, and hald their stob and staik tharintill," under certification ;<sup>1</sup> (3) a similar act dated 14th October 1566 ;<sup>2</sup> (4) an act dated 18th June 1567, enacting that "na maner of outlands men be maid burges or freemen of this bruch until he be mariet, and haif stob and staik within the samyn, sua that he may be apprehendit and compellit to paye tax and stent, and bere his present of sic portable charges as oythers freemen, induellaris within the samyn ;"<sup>3</sup> (5) an act dated 24th December 1567, ordaining "that everye man, at the making of him burges, sall obleis himself to haif jak, speir, swerd, bukлар, and steell bonnet for serving of the bailies and gude toun quhen thai haif ado, and to keep the wappinschawing with the nychtbouris, under sic pains as may be laid to their charge ;"<sup>4</sup> (6) an act dated 21st October 1568, ordering proclamation to be made, charging all burgesses who had not stob and staik within the town to "mak thair remayfing within the samyn within forty days," under certification ;<sup>5</sup> (7) an act dated 3d February 1584, prescribing the oath to be taken in future by all burgesses. This oath contains, *inter alia*, the following clause :—"In all taxatiouns, watcheing, wairding, and all other charges to be layen vpoun the burch, I sall willinglie beir my part of the commoun burding thairrof, with the rest of the nichtbouris of the burch, as I am commandet thairto be the maiestrats and officiaris of the burch ;"<sup>6</sup> (8) an act dated 6th November 1588, ordaining no burgess to be received but such as should compeir at the time of their admission before the council with sufficient armour as therein prescribed, "for serving the kings grace and the town ;"<sup>7</sup> (9) an act dated 1st November 1591, renewing the order on all non-resident burgesses to dwell in town, and bear burdens with the others, under certification.<sup>8</sup> Various subsequent acts applied these regulations, and fined and deprived of the rights of burgess-ship persons who would not reside in burgh, and bear their proper share of burgh duty.

The duty of burgesses to watch and ward was also frequently recognised by the Convention of the Royal Burghs of Scotland. Thus an act of that

<sup>1</sup> Council Records, iii. 56.    <sup>2</sup> Ibid. iv. 191.    <sup>3</sup> Ibid. iv. 226.    <sup>4</sup> Ibid. viii. 186.

<sup>5</sup> Ibid. iv. 163.

<sup>6</sup> Ibid. iv. 212.    <sup>7</sup> Ibid. vii. 155.    <sup>8</sup> Ibid. ix. 118.

body, passed at a meeting held in Edinburgh on 4th April 1552, and directed against non-resident freemen and burgesses, ordained a general proclamation to be made in the whole burghs, requiring all who alleged themselves to be free of any burgh to compear within forty days thereafter, "and hald stob and staik therein, and walk waird [and] pay extentes and skattis within the burgh conform to thair substance."<sup>1</sup> This act was ratified in the Convention, held at Dundee in October and November 1578.<sup>2</sup> It was also substantially re-enacted in the Convention held at Aberdeen in July 1580, by an act which required the magistrates of burghs to charge all non-resident burgesses "to cum duell and mak their actual residence, with thair wyfis bairnis familie fyre and flett within the burgh quhair they ar frie, hald stob and staik within the samyn, scatt, lott, watche, walk, and waird with the inhabitants thairof, betwix this and the fifteenth day of December next to cum."<sup>3</sup> This act was duly proclaimed in Edinburgh, though, it appears, there were at that time "na outland burgessis exercising traffique, or doand contra the liberty of the bruch."<sup>4</sup> And it was renewed by the Convention held at Edinburgh on 20th October 1581.<sup>5</sup>

These acts were, in fact, nothing more than a declaration of the constitutional law on the subject, and various acts of convention relative to the qualification of members of that body required them to be merchant burgesses, resident in the burgh they represented, and bearing a share of its burdens with the neighbours and inhabitants.<sup>6</sup>

That a watch was kept in Edinburgh from an early period, usually by the citizens when called on in turn, but occasionally,—in special circumstances, such as plagues, war, the meetings of parliament and convention, &c.,—by hired watchmen, the records of the city afford abundant evidence.

The earliest reference to the subject is found in an ordinance "be the dusane and the counsall for the towne, and be the haill deliuerance of thame," dated 24th November 1442, appointing "the toune [to] be waket ilk nicht with sex persouns watches this winter, and that the watchemen be tane and sett be the baillies at the croce, as thai wer wont to be."<sup>7</sup> On 10th August

<sup>1</sup> Printed Records of Convention, i. 4.

<sup>2</sup> *Ibid.* i. 99.

<sup>3</sup> *Ibid.* i. 122.

<sup>4</sup> *Ibid.* i. 70.

<sup>5</sup> *Ibid.* i. 111.

<sup>6</sup> *Ibid.* i. 70, 15th July 1574; i. 210, 5th May 1586; MS. Records, vi. 312, 8th July 1675.

<sup>7</sup> MS. Extracts from Council Records, Advocates' Library, fol. 181.

At this time the city was unwall'd, and the only artificial protection against assault

1498, an act for the prevention of *tulzies* on the streets, already alluded to,<sup>1</sup> appointed all merchants and craftsmen to have ready in their booths thair “defensible geir, sic as jak, sellet, burgandynis, glufis of plait, and ane hand-ax or sword, or at the least the said ax or suord, with sellit and glufis of plait, to relief thairwith and cum to thair provest and baillies and quarter-

from without was afforded by gates at the end of the main street, and at the several closes leading therefrom on either side. An extract from an act of council in a MS. volume of Extracts from the Council Records in the Advocates’ Library, and bearing date 24th February in the year of God xxxvj. (probably 1436), ordained the common vennel of the brugh to be stekit and closet for a tyme on the common coste, to be tane of the common purse, and ilka tenement to be closet behind on his coste, and thair coste that awe the land, and thairto shall contribute ilk ane man dwelland in the tenement as effeirs till him for his dwelling place. This was appointed to be done “at the sicht and devyse of xij discrete men of the bruch thairto chosin” [fol. 181]. These gates were in existence in 1442, for an act of 24th November in that year ordained the “yettes of the toune to be closed be twa seriandis ilk nicht at couersure tyme, and openit be fyve hours in the morning,” and these seriandis are appointed to receive “of ilk fyre hous and of the best of the toun ijd., and of the simplare folk 1d. [ibid]. On the 30th of April 1450—immediately after the battle of Stark—James II., “being informed by the provost and community that they dread the evil and skaith of our enemies of England, authorised them to forse, bullwark, wall, tower, turret, and otherways strengthen the burgh in what manner of ways or degree is seen most expedient to them.” [See Licence and Leave of King James II., under the Great Seal, in the City’s Archives. Inventory of City Charters, i. 23]. The licence thus granted appears to have been immediately taken advantage of and a wall erected, for a letter issued by James III., under his Privy Seal, of date 28th April 1472, authorised the provost and baillies “to cast down and remove whatsoever houses biggid upon the wall which were needful to be casten down for the strengthening of the town and the defence thereof.” This letter also charged the whole burgesses, neighbours, and indwellers of the town, and also those that had lands, annuals, or possessions within it, to help, contribute, and supply to the fortifying and strengthening of the burgh, after the value of their rents, lands, possessions, annual, and faculty of their goods within burgh, and that as well the outburgesses and occupiers of the freedom of the burgh and persons having lands or annuals within it, as indwellers and inhabitants thereof. [See Letter in Archives of the City. Inventory of City Charters, i. 24.] This wall was extended first after the defeat of Flodden, in 1513, so as to include the Cowgate; and again, in 1620, so as to surround what are now the grounds of Heriot’s Hospital, the City Poorhouse, and a part of the Greyfriars Churchyard.

<sup>1</sup> *Antea*, p. 20.

masteris incontinent quhair ony sic thingis occurris, and to pas with thair said officiaris thus bodin quhair it sal be thocht expedient to thame, for the kingis honour, and defens of the heretage and priuelege of the toun als aft as neid beis ; that heirthrow guid reull may be had into the town bayth day and nycht, and the ordour and priuelege thair of obseruit and kepit." By this act the town's officers were ordered to see that its provisions were carried into effect, and to report defaulters.<sup>1</sup> On 10th September 1513, the day after the disastrous battle of Flodden, at which the provost, magistrates, and a large number of the burgesses were present, we find George of Tours, and the other citizens who were charged with the care of the city during the absence of the magistrates, rising above the grief and distraction with which the news of that disaster filled the town, and issuing an order upon all persons within the burgh to have ready their fensible geir and weapons of war, and to be ready, at the tolling of the common bell, for the defence of the town against those that would invade the same.<sup>2</sup> Speedily, however, the fear of immediate invasion was dispelled by the news that the Earl of Surrey had disbanded his army. But it was no time to be unprepared, and not only was the city's wall extended so as to include the Cowgate, &c., but on 4th December 1513 a night watch of twenty-four persons—the first regular guard levied for the security of the town of which there is any trace<sup>3</sup>—was appointed to be furnished at the expense of all persons "nychtbouris of the toun, . . . baith wedowis and vtheris."<sup>4</sup> On 15th October 1515, however, a new arrangement was made, and one quarter of the town was ordered to watch each night, "ilk man for thair awin heid, with a baillie, quhill my Lord Governours hamecuming." The whole citizens were, moreover, required to be ready "boddin for weir, in thair best array, at a jow of the common bell for the defence of the town, to pass with the president and baillies quhen the case occurris."<sup>5</sup> On 8th November 1524, an act of council was passed, in terms similar to that of 10th August 1498, before alluded to.<sup>6</sup> In July 1528, we are told there was "stark watching in Edinburgh about the king's grace (James V.), after his escape from the Douglasses,"<sup>7</sup> and the magistrates and citizens were, at that time,

<sup>1</sup> Council Records, i. 32.<sup>2</sup> Ibid. i. 5.<sup>3</sup> Maitland's History of Edinburgh, p. 12. Wilson's Memorials of Edinburgh, i. 35.<sup>4</sup> Council Records, i. 5.<sup>5</sup> MS. Extracts from Council Records, Advocates' Library, fol. 183.<sup>6</sup> Ibid. fol. 184.<sup>7</sup> Diurnal of Occurrents, p. 11.

alike able and disposed to perform their duties to the sovereign as well as to the town, for we find that in August of that year, the provost, with the community of the burgh, caused the Earl of Angus and his horsemen, to leave the town. "Heirat," adds the Chronicler, "was mony hurt with hagbutts, and efter this greit and stark waitches wer in Edinbrugh."<sup>1</sup> On 8th October 1529, and 8th February 1535, the order on the citizens to have weapons in their booths, to assist the magistrates in the preservation of the peace, was renewed, and every merchant and craftsman was appointed to "haf ane axe or twa or thre after as thai haif thair seruandis."<sup>2</sup> On 23d December 1545, a nightly watch was ordered from that time till Candlemas following, consisting of one of the bailies, each one answering for his quarter, with four persons, besides the officers of two quarters, making eight in all.<sup>3</sup> On the 30th of May 1546, it was ordered that in future there should be a nightly watch of ten persons and an officer, beginning in the quarter where it left off,—the officer to have double wages and to remain with the watch. A guard of fifteen persons, with a wage each of xxd. per day, was also appointed to attend the provost, armed with jack, javelin, and halbert, or such like long weapon, twelve whereof were to be furnished by the merchants, and three by the craftsmen.<sup>4</sup> On 12th October 1547,—about a month after the battle of Pinkie, where the provost and a large number of the citizens had fallen,—the nightly watch was increased to twelve men, armed with jack, steel bonnet, and halbert, or Jedburgh staff, and they were appointed to convene at the cross, and to continue their watch from eight o'clock till the opening of the ports. It was also ordered that two persons should be charged, night about, to check the watches, and if any were found absent, sleeping, or drinking during the time of watch, they were to be punished.<sup>5</sup> On the 3d of January 1547, this arrangement was changed, and the bailie whose turn it was to walk was appointed to warn as many persons of his quarter as he thought necessary to watch for that night, either by themselves or by substitutes; properly bodin with weapons.<sup>6</sup> On 3d February 1547, the immediately previous order was renewed, and those who failed to attend personally were ordered to pay to the officers of the quarter xijd. to provide a substitute; the keys of the ports were also appointed to be delivered to the bailie of the quarter from the time of closing till the opening of the ports.<sup>7</sup> On 14th June 1548,—two days before the arrival of Monsieur

<sup>1</sup> Diurnal of Occurrents, p. 11.<sup>2</sup> MS. Extracts, Advocates' Library, fol. 184.<sup>3</sup> Ibid. 185.<sup>4</sup> Ibid. 186.<sup>5</sup> Ibid. 186.<sup>6</sup> Ibid. 186.<sup>7</sup> Ibid. 186.

D'Esse, with the French and Dutch troops, sent by the king of France to assist the Scots against their "auld enemies of England,"—a daily watch of twenty-four men, burgesses, craftsmen, and others, warned by the officers for each of the quarters in rotation, and armed with jack and halbert, was ordered to be kept from 4 A.M. till 8 P.M.<sup>1</sup> On 4th March 1552, the order upon the inhabitants to be provided with weapons in their booths to support the magistrates was renewed, and each bailie was appointed to make a search once a month through his quarter, to see that this order was observed.<sup>2</sup> On 6th April 1554, it was ordered that one quarter of the town should walk each week, being charged by the bailies and officers thereto. Neighbours failing to walk in their proper persons were appointed to pay 18s.<sup>3</sup> On 5th February 1556, a night watch was ordered, and all persons were prohibited from being on the streets without a light, viz. a "lantern, kellet, torch, or candell."<sup>4</sup> The order to have weapons was renewed on 18th September 1557.<sup>5</sup> In 1559, several orders were issued relative to watching, the first on 16th June, directing the whole ports, with the exception of the West Port and the Netherbow, to be locked day and night, and twelve able men, with halberts, to be set at each of these two ports all day, "for stopping tumult play or cumeris quihills may happen betwix parties, and keeping of good order in the burch;" other twenty-four able men were appointed to watch the streets during the night, to keep good order; and this order was directed to pass quarterly through the town during the council's pleasure.<sup>6</sup> On the 14th of August the order for a nightly watch of twenty-four men was re-enacted to continue during the council's pleasure, and the neighbours were appointed to watch successively, under pain of being pained for 2s., and of having their place supplied at their expense. This watch was allocated among the ports as follows:—six at the Netherbow, six at Blackfriars, four at Lochend, and two at each of the Cowgate, Kirk-of-Field, and Greyfriars ports.<sup>7</sup> This act was ratified ten days later;<sup>8</sup> and on the 26th of September the treasurer was ordained to pay "William Thomsone, quhisler, vjs. and viijd. for his laubouris in playing vpone the quhissall at the watche be the space of ij nychts in the monethe of July last bypast."<sup>9</sup> On 24th December a watch of twenty-four

<sup>1</sup> MS. Extracts, Advocates' Library, fol. 187.

<sup>2</sup> Ibid. 188; Council Records, ii. 14.

<sup>3</sup> Council Records, ii. 26.

<sup>4</sup> Ibid. ii. 92.

<sup>5</sup> Ibid. ii. 106.

<sup>6</sup> Ibid. iii. 17.

<sup>7</sup> Ibid. iii. 22.

<sup>8</sup> Ibid. iii. 23.

<sup>9</sup> Ibid. iii. 25. In London, where the regulations for the watch were, from the earliest times, most strict, minstrels or musicians appear to have paraded the streets and sounded

men was ordained to be set daily and nightly, for keeping the town and awaiting on the ports, in such order as the bailies should think expedient ; and the neighbours were ordered, on being warned, to convene themselves for the night watch or to send an able substitute ; those summoned for the day watch were bound, if in town, to attend themselves, under pain of warding of their persons and imprisonment at the council's will.<sup>1</sup> On 5th September 1560 the whole neighbours were appointed to attend, in feir of weir, with all diligence, to support the magistrates and officers in the suppression of tumults.<sup>2</sup> In August 1565, Queen Mary and Darnley, being about to proceed to the west country on an expedition against the Earl of Moray and his adherents, required a continual watch to be kept day and night in the capital during their absence, that nothing might pass furth to the rebels, and that no suspected persons might be allowed to enter the city. In obedience to this requirement the council, on the 28th of that month, ordered a nightly watch to be kept by twenty-two persons—six to be placed at the broken wall at Leith Wynd, four at the Greyfriars Port, four at West Port, four at Kirk-of-Field Port, two at the Cowgate Port, two at Netherbow, and the "remnant to be moving through all the streets, visying the others set at the ports," and to be under the charge of an officer and an honest man of the quarter for the night, "because the baillies may nocht walk every nicht." During the day the whole ports were ordered to be closed, save the Greyfriars, West Port, and Netherbow ; and until the night watch was set three men were appointed to be at the Netherbow, three at the West Port, and two at the Kirk-of-Field Port, in armour and weapons.<sup>3</sup> These precautions had not, however, the desired effect, for on the 31st of the same month, the Duke of Chatelherault and other rebel lords, entered the town with six hundred horsemen, and remained till the following night.<sup>4</sup> Their admission was regarded with great dissatisfaction by the king and queen, who, on 3d September, addressed to the magistrates certain instructions, in which it was stated that their majesties "marvel greatly how the rebels have lately entered and been received in the town ;" and after attributing it to the negligence and oversight of their directions, they, *inter alia*, ordered the council to divide the town into quarters, and to appoint each quarter to watch

the watch. See Notes and Queries, 2d S. vii. 480. Liber Albus (Griffin & Co.'s Edition, p. 244, footnote. Ib. Master of the Rolls' Edition, p. 284, 380, 646-653.

<sup>1</sup> Council Records, iii. 28.

<sup>2</sup> *Antea*, p. 20, 21.

<sup>3</sup> Council Records, iv. 133

<sup>4</sup> Diurnal of Occurrents, p. 82.

and ward for the keeping of the ports and walls of the town for the space of twenty-four hours.<sup>1</sup> On 25th July 1567, the council ordered a nightly watch, during their pleasure, "because there is many and divers men of weir and men wanting masters."<sup>2</sup> On 12th May 1568, a nightly watch of one hundred men was ordered, and twenty-four men were appointed to watch during the day. No one under threescore years of age was exempted from attendance at this watch, and even those so exempted from personal attendance were required to furnish able and sufficient substitutes, under a penalty of 18s.<sup>3</sup> On the 11th of August, a strong watch was ordered to be set nightly, for the keeping of the town till the end of the parliament, and conditions similar to those in the former act were enacted.<sup>4</sup> Shortly after this time the plague began to rage in Edinburgh, and in October the council passed a series of regulations on the subject.<sup>5</sup> Many of the citizens appear to have left the town; and on the 18th of November it was ordered that eighteen of the most able men within the burgh should be lifted, to await on the bailies at all times needful, and to keep watch in the town, for safety of the houses and goods of the neighbours that were furth of the same. This watch was appointed to be armed with culverins, and to have £3, 10s. monthly, "to be taken from the haill neighbours at the discretion of the baillies."<sup>6</sup> A nightly watch of twenty-four men was ordered on 17th December, and all who failed to appear had to pay 2s. to provide a substitute. Those who, after entering upon the watch, left it before 6 o'clock A.M. were appointed to be fined 18s.<sup>7</sup> The murder of the Regent Murray at Linlithgow, on 23d January 1569, threw Edinburgh into great confusion, and two days afterwards, the council, in view of the "apparand danger" likely to arise, ordained a watch day and night during their pleasure. The day watch was appointed to be held from 6 A.M. till 7 P.M., and to consist of eight men—four whereof were to be placed at the West Port, and four at the Netherbow—these ports being the only ones to be kept open. The night watch, consisting of twenty-four men, was appointed to be set from 7 P.M. till 6 A.M., when it was to be relieved by the day watch. The watch thus instituted was ordered to be composed of the neighbours of the town, conform to the old order. The day and night watch were each placed under the charge of two men of credence and honesty, who were holden to answer for the

<sup>1</sup> Council Records, iv. 134; Maitland's History of Edinburgh, 27.

<sup>2</sup> Council Records, iv. 197.

<sup>3</sup> Ibid. iv. 218.

<sup>4</sup> Ibid. iv. 221.

<sup>5</sup> Ibid. iv. 223, 224; Maitland's History of Edinburgh, 32.

<sup>6</sup> Council Records, iv. 226.

<sup>7</sup> Ibid. iv. 229.

service of the remanent ; and if any companies entered the town, one of the four men thus selected was appointed to advertise the bailies of their number, what they were, and where they lodged.<sup>1</sup> On 8th March 1569, the council, "for keiping of gude reull amangis the lordis of nobilitie and all vtheris resorting to this toun during the tyme of this present convention," ordered that "thair be dalie foure gaird houssis, and in every ane of thame twenty men of the maist honest nychtbouris of the toun in thair awin proper personis, ten of thame with culveringis and morreonyis, and uther ten with halberttis, pikis, and long wappynis, and to enter every day at the skaling of the nycht wasche, viz., be sex houris in the mornyng, and remain quhill sevin houris at evin that the nycht wache enter againe."<sup>2</sup> On the 22d of the same month, the watch was appointed to remain as formerly ordained.<sup>3</sup> In 1570, various acts of council were passed relative to the watching of the town ; the first, on 14th April, appointing the night watch to be increased during the remaining of the lords in the town, that of the north-west and north-east quarters, each by two neighbours ; and that of the other two quarters, each by three neighbours ;<sup>4</sup> the second, on 9th August, ordaining a watch to be kept during the Regent's absence, directing all the ports to be shut save the West Port and the Netherbow, at each of which three men were ordered to be stationed during the day, and appointing the keys to be kept by the baillies during the night ;<sup>5</sup> the third, on the 15th of August, following on the Regent's writing, ordering a "stark watch" to be kept during his grace's absence by the neighbours in person, and all persons to be ready in arms, at the sound of the common bell, to attend the bailie of the quarter and "follow sic ordour as he sall appoint for them ;"<sup>6</sup> the fourth, on 25th December, renewing the order for a sufficient nightly watch in such number as the bailies might direct ;<sup>7</sup> and the fifth, two days later, ordaining a nightly watch of sixty men to be set by the bailie of the quarter ; the officers to provide able men to watch, at the expense of those who did not provide such themselves ;—"the belman and his brother to lie nichtlie in the steeple and attend to the common bell ;" the ports of the town to be all closed, except the West Port and Netherbow ; and the keys of these ports to be delivered nightly to the bailie of the watch, who was declared to be answerable therefor.<sup>8</sup> After this time we have no farther order till 26th October 1574, when, the plague beginning to rage in the town, the whole ports were directed to be closed, save the Netherbow and West

<sup>1</sup> Council Records, iv. 252.<sup>2</sup> Ibid. iv. 254.<sup>3</sup> Ibid. iv. 261.<sup>4</sup> Ibid. iv. 270.<sup>5</sup> Ibid. iv. 254.<sup>6</sup> Ibid. iv. 255.<sup>7</sup> Ibid. iv. 261.<sup>8</sup> Ibid. iv. 270.

Ports, which were not to be opened earlier than 6 A.M., nor later than 6 P.M.; it was farther ordered that a day watch should be kept "of sic men of the neighbours, or upoun thair charges, as the baillies sall think best."<sup>1</sup> On 9th January 1576, we find an order for a nightly watch of twenty persons, to endure till Pasche next, according to the order appointed by the bailies.<sup>2</sup> On 19th January 1576, the council, in anticipation of a great convention of the nobility with the Earls of Athole and Argyll, ordained two guard-houses be kept daily during the convention, as the bailies would answer.<sup>3</sup> On 7th March 1577, a nightly watch of sixty men was ordered to be kept from that time forward during the council's will, to convene in the nether tolbooth by 8 o'clock P.M. and watch till 6 o'clock A.M.<sup>4</sup> This order was probably issued in consequence of threatened commotions, to guard against which the magistrates evinced an anxiety that evoked the king's repeated expressions of satisfaction.<sup>5</sup> In 1578, a variety of acts of council were passed, consequent, no doubt, on the disturbances anticipated to follow the assumption of the government by the young king, and the dismissal of the Regent Morton. On 8th March, an act fixed the time of the watch, and appointed two persons to support each of the four bailies. Another act, on the 4th of April, ordered a wooden barras (or barrier) to be erected before the castle, and a stark watch to be set, beside threescore of soldiers under the command of Captain Hallyburton, "in case George Douglas and his sulderttis pretend to ische."<sup>6</sup> Sir George Douglas of Parkhead held the castle at this time on behalf of his brother the Regent Morton, whose dismissal had been proclaimed by the heralds at the cross on the 12th of March. Sir George had just been deposed from the provostship by the citizens, who were much enraged at the slaughter of several of the town's people by his soldiers.<sup>7</sup> An act dated 16th April bears that the provost having desired a stark watch, and requested the consent of the deacons thereto, they answered that it was not needful to ask their consent, "besause quhatsumever thing hes bene laid to thair charge for the weill of the toun, thay have ever bene ready quhen thay wer commandit, like as they will be quhen it sall lik the prouest baillies and counsale to command thame, and willis the auld ordour to be keipit."<sup>8</sup> On 28th April, accordingly, a day and night watch of "ane quarter of the toun" was ordered

<sup>1</sup> Council Records, v. 35.<sup>2</sup> *Ibid.* v. 73.<sup>3</sup> *Ibid.* v. 74.<sup>4</sup> *Ibid.* v. 88.<sup>5</sup> *Ibid.* v. 89, 90; Maitland's History of Edinburgh, 34, 35.<sup>6</sup> Council Records, v. 91. <sup>7</sup> Calderwood's History of the Kirk of Scotland, iii. 396.<sup>8</sup> Council Records, v. 94.

till the lords should return from Stirling, each man being required to watch in person, and to convene at 9 o'clock P.M., and at 5 o'clock A.M.<sup>1</sup> On 30th May, a nightly watch of thirty persons was appointed till further order were taken.<sup>2</sup> On 16th July, the king having written the magistrates charging them to have the town watched and warded for his behoof, the whole ports were ordered to be kept closed, the West Port and Netherbow only excepted, and these were appointed to be open only from 5 A.M. till 8 P.M., and to be watched by "four substantial neighbours" during the day, and by ten at night, till further order were taken.<sup>3</sup> On 28th July, the day watch at these ports was increased to twenty "substantial neighbours," each man to guard in his own person, and the ports were ordered to be closed daily at 4 o'clock P.M. For the night, a "stark watch of ane haill quarter of the toun" was appointed till farther order.<sup>4</sup> On 12th August, a nightly watch "of ane haill quarter of the toune" was ordered "to watche for the space of xxiiij houris, begynnand at vj. houris at evin, and to endure quhill the morn at the samyn hour. This watch was directed to consist of "merchants, craftsmen, and vtheris, who, without exception of personis," were appointed "to watch in thair awin persoun, with sufficient armour and weaponis," under penalties; and the order was required to be "kept induring the time of thir troubles, or quhil vther ordour be takin."<sup>5</sup> On 31st January, in consequence of divers "bruittis and rumoris tending be all apperance to sum inquietatioun within this burgh," the nightly watch was increased to one hundred persons, "maist honest and qualefeit men, weill furnesit in their awin personis with armour and vappinis in maner following: viz., the souyth pairt of the town to keep the watche the first sax nichtis, and the north pairt nixt four nichtis, to be set and plaisit with the bailleis of the quarteris and sik as thai sall deuit."<sup>6</sup> On 27th August 1579, it was ordered that, until further order, twenty men be on the watch nightly, and no more.<sup>7</sup> On 2d November 1580, an Act required that, "for keeping of better ordour in tyme coming anent the night watch," the bailies in their quarters should nightly set the watch themselves, and select one of the watch to see to the execution of their duty by the rest, taking care also that none but able substitutes, properly armed, should be allowed to watch.<sup>8</sup> On the 16th of November in the same year, "for staying of tumults and cummeris that may aryse betwixt the grait parties now being within this burch, and

<sup>1</sup> Council Records, v. 95.<sup>2</sup> Ibid. v. 103.<sup>3</sup> Ibid. v. 105.<sup>4</sup> Ibid. v. 156.<sup>5</sup> Ibid. v. 99.<sup>6</sup> Ibid. v. 104.<sup>7</sup> Ibid. v. 130.<sup>8</sup> Ibid. vi. 91.

for obedience of the kingis grace writing," two corsegaids were ordered to be set between the Trone and the Cross, in the old places, and the neighbours were appointed to be warned to keep the same by their quarters in their armour, and the bailies to amerciate the absentees without favour.<sup>1</sup> On 2d December following, a nightly watch of twenty-five persons, able men and well armed, was ordered; the previous act was renewed; and every free-man's wife, in the absence of her husband, and every widow, was required to furnish an able and well armed man "as it falls theme be coures to watche."<sup>2</sup> On 10th March of the same year, the council, "for the weill and preseruacion of this burch in the tyme of apperant troubles, for the better conuening of the nightbouris, and to see thai be weel airmrit," ordained the whole inhabitants to be conuened by their quarters, in such places as the bailies should fix, for the election by themselves of a merchant and craftsman "furth of ilk fiftie men duelling togeddir, of the best and worthiest of that number, quhilk sall haif the cair owersicht and command of the said personis to vsie and se thai be weill airmrit, and to appoynt to thame ane place quhair they sall conuene as the saidis commanderis sall be requyret and charget be the bailies of the quarter in tyme of necessitie; and this to be done and performit with all diligence, and the nightbouris to be admonist to be readie and obedient to the saidis commanders, and the commanderis to be diligent to see their companies be weel airmrit and in reddynes."<sup>3</sup> On the 20th of the same month, the "nightly watche of the neyghbouris" was ordered to be kept by the commanders of fifties and their respective companies night about, at the sight of the bailies.<sup>4</sup> The series of Acts passed in 1582, relative to watching, indicate unmistakably the condition of the country at that period. On 24th August, the Dean of Guild was authorised to fee four able men to guard and watch the steeple, two by day and two by night, "in respect of the apperand trubill and commotion in the countrie amangis the nobilitie." A strict watch was, moreover, ordered to be kept both by day and by night in the town, one quarter every twenty-four hours, and every neighbour in his own person.<sup>5</sup> Three days later, in consequence of the king's writing to that effect, proclamation was made ordering a stark watch to be kept by the neighbours and quarters, beginning at the south-west quarter, and charging the whole neighbours, burgesses, freemen, and others, to be ready to conuene by their quarters when summoned by sound of swesche to the watch. Farther, all not on the watch were ordered

<sup>1</sup> Council Records, vi. 95.<sup>2</sup> Ibid. vi. 101.<sup>3</sup> Ibid. vi. 124.<sup>4</sup> Ibid. vi. 126.<sup>5</sup> Ibid. vi. 200.

to have their armour,—long weapons or hagbuts—in readiness in their houses and fore-booths, and to weir their swords about them, shewing themselves willing and ready in the defence of the town, and the staunching of tumults.<sup>1</sup> On 7th September, the watch on the steeple was discharged.<sup>2</sup> On the 26th October, a nightly watch of thirty men was ordered during the winter, at the sight of the baillie, who was required to see that the rolls were called, and that there was a sufficient armed watch, and thereafter to depute one of the watch with one officer to “await thereon.”<sup>3</sup> On 5th December, an order was issued in conformity with a letter from the king, appointing all houses where strangers resorted to be searched, and any stranger found armed to be reported to his majesty; and directing the ports to be so guarded by one-half of the town, that no companies of men or horse might get access till the king was advised.<sup>4</sup> On 7th October 1583, a nightly watch of thirty able and well-armed neighbours was ordered to be kept, “in consideration that the nicht growis lang, the Parliament approachis, and confluence of peppill in this burch will increas.”<sup>5</sup> In 1584, various acts were passed in regard to watching. An act dated 28th April, fixed the places at which the several quarters should convene with their bailies, in armour and good attire, whenever warned by the alarum or common bell, for the suppression of tumults or disturbance; and being so convened, the bailies were ordered to “caus put the nichtbouris in rankis and guid ordour, and send and direct a certain number, with ane commander, to attend and abyde at the maist needfull parts of thair quarter, the rest to remayne in thair place in quyetness, and to be reddie to pass with the provost and bailzeis as they sall fynd maist necessar.”<sup>6</sup> On 22d July, the king having expressed to the lord provost his desire that a good watch might be kept, especially by night, the council ordered the Kirk-of-Field Port, Watergate, and Cowgate Port to be closed; ten persons to be added to the night watch, and six persons to be put to each of the Netherbow and West Ports, all at the sight of the bailies in their quarters.<sup>7</sup> On 23d October, a new arrangement was made for “keping of ane better ordour and rewle of the watches within the toun be the nichtbouris thair of, and that thai may be the mair reddie to serve the kingis maiestie at all occasiouns.” By this act the whole inhabitants were appointed to be “castin and devydit in thretteis, according to thair quarter, and twa personis of everie threttei,—the ane of them ane

<sup>1</sup> Council Records, vi. 201, 202. <sup>3</sup> Ibid. vi. 214. <sup>5</sup> Ibid. vii. 22. <sup>7</sup> Ibid. vii. 97.

<sup>2</sup> Ibid. vi. 205.

<sup>4</sup> Ibid. vi. 222.

<sup>6</sup> Ibid. vii. 85.

merchant, the uther beand ane craftisman,—to be electit to haif the rewle and commandment of the rest, and ane officer to be assignet to ilk commander of ilk threttie to convene and warne the personis under their charge”<sup>1</sup> This order having been seen and approved of by the king and the privy council, the division therein referred to was made, and commanders were elected—fourteen in the north-west quarter, twelve in the north-east quarter, twenty in the south-east quarter, and twenty-four in the south-west quarter. All those thus elected commanders, or masters of watch, were required by the king and his council to accept of the office, and their several companies were obliged to give obedience by night and by day, as the necessities of the king’s service or the commands of the magistrates might require. It was also ordered that “amangis the clerks and lawiers, maisteris ower numbers of threttie be appoynted in lyke manner,” and that they also be ready for the service of the king and the town.<sup>2</sup> In 1585, during which the plague was ravaging Edinburgh, a series of acts of council relative to watching were passed.<sup>3</sup> On 25th June, the bailies were authorised to hire twenty-four persons to keep watch and guard, and to concur with them in all the affairs of the town—twelve to watch by day, and twelve by night. This resolution was passed “in respect that the nychtbouris are past furth of the town, and hes left the samyn desolat, and their boothis and houssis in danger of brekking be lymmers.”<sup>4</sup> The wage to each man was fixed at £3 per month. On 16th July this act was renewed, the cause still remaining, but each of the bailies was commissioned to choose six men of the watch, for whom he was to be responsible.<sup>5</sup> On 25th August, six persons were ordered to be added to the ordinary watch,<sup>6</sup> and on 10th September it was resolved to retain “the forty” feyet watchmen” till further order were taken. On 5th October, however, the funds for their payment seem to have run short, and Bailie Nisbet undertook to pay them for a month, “others of the council obliging themselves to

<sup>1</sup> Council Records, vii. 119.

<sup>2</sup> Ibid. vii. 125.

<sup>3</sup> The pestilence began upon the 4th of May 1585, and continued till January thereafter. “The haill peipell quhilk wer abill to flee, fled out of ye toun, nevirthless ther dyed of peipill wich ver not abill to flee 14 hundreth and some odd.”—Birrell’s Diary, p. 23.

<sup>4</sup> Council Records, vii. 194.

<sup>5</sup> Ibid. vii. 199.

<sup>6</sup> Ibid. vii. 203.

<sup>7</sup> Authority was given in the previous acts to hire only *thirty* men as a watch, but everything appears to have been in much confusion during the continuance of the plague, and the resolution to employ the additional ten men has doubtless been omitted to be recorded.

relieve him ;”<sup>1</sup> and when that period was about to expire, he intimated that he was not to “mell” further with payment of the watchmen.”<sup>2</sup> On 27th October the Council, on receipt of letters from the king and the provost that the “rebellis were cum out of England and entret in this cuntrey upone na small intryprys,” concluded to take up one hundred men for guarding the town.<sup>3</sup> Two days afterwards, however, they resolved that it was “nocht expedient to have ane hundreth men to be watchmen, but onlie three scoir,” at a wage of £4 per month ; and on 3d November the watch was reduced to “fourty gude suddarts, in respect the toun hes nocht to pay the suddertis and watchmen, and because they thought they might be served by a smaller number.”<sup>4</sup> On 17th December the watch was reduced to twenty-four persons, twenty of whom were ordered to watch nightly, and four, with the porters, to keep daily the Netherbow and West Port.<sup>5</sup> On 23d March,—the town being free of the plague,—it was resolved to discharge the hired watch, and to revert to the former custom of watching by the neighbours.<sup>6</sup> But in the winter of the following year the aspect of affairs again became threatening, and on 16th Nov. 1586 an order was made to have the walls repaired and the ports secured, and “having experience of the slewth of the common watch of the nychtbouris,” the council authorised a hired nightly watch of twenty-four able men, well-armed—the one-half with hagbuts, and the other half with halberts. The wages of these men were fixed at 20s. a-week.<sup>7</sup> On 17th February 1586, this watch was ordered to be reduced to twelve persons ;<sup>8</sup> and on 3d March it was

<sup>1</sup> Council Records, vii. 208.

<sup>2</sup> Ibid. vii. 209.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid. vii. 219.

<sup>5</sup> Ibid. vii. 216.

<sup>6</sup> Ibid. viii. 3. The bailies’ Accounts of Extents and Unlaws, from 1st November 1585 to 24th March 1586, shew that the number of persons who composed the *extraordinary watch* during that time of pestilence varied from week to week. Thus there were sixty-two men on 7th November ; sixty on 14th November ; fifty-eight on 21st November ; sixty on 28th November ; fifty-two men—eighteen halbertmen and thirty-four hagbutters, the former receiving 20s. and the latter 16s. each per week—on 5th and 12th December ; forty men on 20th December ; thirty-two men on 27th December and 3d January ; twenty-four men on 10th January ; twenty-seven men on 17th January ; twenty-eight men—whereof ten were halbertmen at 16s. each—on 23d and 30th January, and 6th and 13th February ; twenty-four men on 21st and 28th February ; twenty-eight men on 7th March,—four being added because of the “law-day” of my Lord Maxwell ; twenty-three men on 14th March ; and twenty-two men during the week and a half which ended on 24th March.—(Bailies’ Accounts of Extent and Unlaws, 1564—1644, pp. 199, 204.)

<sup>7</sup> Council Records, viii. 57.

<sup>8</sup> Ibid. viii. 74.

ordered to be "completely broken up, and the bailie to make a nightly watch of the neighbours.<sup>1</sup> On 1st December 1587, the plague having again made its appearance, and a great number of the inhabitants having left the town, those remaining were ordered to have weapons in their houses and booths; further, "in respect of the slewth of the ordinaire watch of the nychtbouris and ranke of the town," forty persons were ordered to be enrolled as a night watch—twenty of whom were appointed to watch each night, and to "half wedges only for the nicht that thai watched."<sup>2</sup> The guard-house of this watch was the Nether Tolbooth, and they were allowed weekly seven pounds of candle, and two loads of coals.<sup>3</sup> On 31st January 1587, the day watch was ordered to consist of forty of the neighbours, of whom six were to be sent to the Netherbow, and six to the West Port.<sup>4</sup> On 23d February, the hired watch at the ports was ordered to be discharged as unnecessary;<sup>5</sup> and on 15th March, the whole hired watch was appointed to be discharged upon Sounday at even, and the ordinary watch of the neighbours to be begun thatsame evening. The reason assigned for this disbanding was, that "the said feyit watch is verray sumptuous to the town, and is nocht swa necessar at this tyme."<sup>6</sup> On 11th May 1588, "the appearance of trubill" called forth a peremptory order on the neighbours to watch in person, or by able substitutes well armed; the night watch was appointed to continue from 9 P.M. till 4 A.M., and to be set by the bailie of the quarter, who was directed to appoint a merchant and a craftsman to be commander thereof; the third of the quarter was ordered to watch each night for the day watch, and two persons were ordered to be hired, at xld. a-day, to remain in the steeple.<sup>7</sup> On 4th October 1588, the council, in consequence of certain proceedings of Lord Bothwell, required a quarter of the town to watch night about, and put a guard in the steeple; at the same time they required the whole inhabitants to be ready in armour "at the nixt straik of the swesche or ringing of the common bell."<sup>8</sup> This order was substantially renewed on 28th February 1588, in consequence of some "attempts of insurrectioun within the realm for the alteration of the present estaitt."<sup>9</sup> The insurrection of Lord Bothwell and the Marquis of Huntly in April 1589,—which caused the king to take up his residence within the burgh on the 7th of that month,—induced the magistrates to place a guard in the steeple and kirk, to order the walls to be immediately repaired, and to

<sup>1</sup> Council Records, viii. 76.<sup>4</sup> Ibid. viii. 138.<sup>7</sup> Ibid. viii. 152.<sup>2</sup> Ibid. viii. 121.<sup>5</sup> Ibid. viii. 141.<sup>8</sup> Ibid. viii. 177.<sup>3</sup> Ibid. viii. 123.<sup>6</sup> Ibid. viii. 144.<sup>9</sup> Ibid. viii. 201.

require a nightly watch by a quarter of the town.<sup>1</sup> These precautions were redoubled on the 20th of the same month, in consequence of the convocation in arms of Lord Bothwell at Dalkeith; each of the quarters was appointed to watch nightly in turn; quarter-masters were elected to assist the bailies; arrangements were made for a rendezvous of the citizens in case of sudden affrays; a guard-house was kept at the Netherbow; sentinels were placed at the Cowgate Port and West Port; and cross guards were placed on the town wall at the High School, at the Kirk-of-Field, and at the Greyfriars' Port.<sup>2</sup> On 7th January 1589, a hired watch was appointed to be taken up to watch nightly, at a wage of ijs. each person, to be paid by the neighbours "who watches nocht in thair awin bodeis."<sup>3</sup> On 31st December 1591, three men were ordered to be hired to watch in the steeple night and day, at a wage of "fourty pennis in the xxiiij hours;"<sup>4</sup> and on 25th February 1591, the magistrates were empowered at their discretion to raise and augment the watches in the town and steeple, "as thai sall find occasioun be appearance of trubill."<sup>5</sup> On 13th December 1592, the council, "understanding the grett appearance of trubill within the realme," ordered the whole neighbours to be in readiness for defence of the town, and a substantial watch to be kept. With that view they elected twenty persons to be quartermasters for a month, two of whom were required to watch nightly in turn, with a number of the neighbours in their quarter; the month being past, other quartermasters, it was provided, should be chosen.<sup>6</sup> On 5th January 1593, the magistrates were authorised to hire forty men, well armed, to watch for a month and attend to the town's service night and day; the wages of these men were fixed at xld. every twenty-four hours, and the treasurer was ordained to set up a watch-house or guard-house of timber at the Market Cross.<sup>7</sup> On the 26th of the same month two of the watch on the steeple were discharged, and the ordinary watch was reduced to twenty-four persons.<sup>8</sup> On the 24th of August 1593, the ordinary watch was appointed to be reduced to twenty persons in whole;<sup>9</sup> but on the 5th of October, it was again raised to twenty-five persons, and the bailies were appointed to take up this number of "men of weir, well airmit, to be ane watche and guard to the toun bayth day and nicht."<sup>10</sup>

<sup>1</sup> Council Records, viii. 208.<sup>2</sup> Ibid. viii. 211.<sup>3</sup> Ibid. ix. 28.<sup>4</sup> Ibid. ix. 12.<sup>5</sup> Ibid. ix. 139.<sup>6</sup> Ibid. ix. 176. Among the persons elected quartermasters at this time we find the name of George Heriot, younger.<sup>7</sup> Council Records, ix. 180.<sup>8</sup> Ibid. ix. 182.<sup>9</sup> Ibid. ix. 213.<sup>10</sup> Ibid. ix. 222.

On the 3d of November, this watch was ordered to be doubled, "in respect of the greit appearance of trubills within the realme;"<sup>1</sup> and on the 2d of January, that order was ordained to continue for two months,—a guard of the neighbours being conjoined with the hired watch.<sup>2</sup> During the winter of 1594, a watch of the neighbours, from 6 P.M. till 5 A.M., was, by an act of council dated 11th October, appointed to be established,—the north side of the town watching eight nights, and the south side twelve nights, and each night's watch being under the charge of two persons of the watch appointed by the bailie.<sup>3</sup> On the 3d of January 1594, the hired watch at the ports was discharged. On 8th October 1595, an act set forth that "the ordinare nichtlie watche is nocht weil keippit, and that it is not possibill to the baillies to walk all nicht, being sua airnestlie occupieit in the day in thair calling;" it therefore enacted that each bailie, as his watch might fall to him, should appear in the nether tolbooth after supper, and cause the roll of the squadron of his quarter warned to that night's watch to be called; that out of the number present he should depute one to oversee the rest, and that all who should disobey the person so selected, or who should pass home to their beds before the watch was discharged, should be dilated to the bailie in the morning.<sup>4</sup> On 24th November 1596, we find the council, "in respect of the confluence of pepill to be at the solemnity of the prynce's baptism," ordering twenty watchmen to be hired for eight days, or longer as might be necessary, to assist and watch the town and keep guard at the cross; appointing sufficient watchmen to be put in the steeple; and requiring the watch of the neighbours to be augmented.<sup>5</sup> On the 10th of December 1596, certain persons were commissioned to consider and report as to the form and manner of the watch which should be kept till April,<sup>6</sup> but the result does not appear. On the 23d of September 1597, however, the council resolved on having a hired watch, and the provost and bailies were authorised to engage twenty-four men for this purpose—twelve to watch each night.<sup>7</sup> A week later, viz. on 30th September, an act "fynds that the forme of thair nichtlie watche usit within this burch hithertills be the nichtbouris or thair seruants throw thair quarters hes bene sumptuous to the saidis nichtbouris and nathing stedabill to the toun;" it therefore ordained a hired watch of thirty persons, with two commanders, to be taken up, and appointed an extent to be levied

<sup>1</sup> Council Records, ix. 226, 227.<sup>4</sup> Ibid. x. 44.<sup>7</sup> Ibid. x. 146.<sup>2</sup> Ibid. ix. 237.<sup>5</sup> Ibid. x. 99.<sup>3</sup> Ibid. x. 6.<sup>6</sup> Ibid. x. 102.

monthly for their support. This act, it was declared, should continue for one year.<sup>1</sup> The monthly pay bill of this watch appears to have been £86.<sup>2</sup> On 4th May 1599, it was resolved to retain and keep up the guard and watch at the Cross as formerly till further advice.<sup>3</sup> On 4th May 1603, the hired watch at the cross was reduced to eight persons.<sup>4</sup> On 27th July 1604, the bailies were ordered to "fie ane watch of twenty persouns for twa merk in the oulk ilk persoun, and this for the spaice of ane moneth, and farder as the baillies sall fynd gude."<sup>5</sup> On 17th December 1606, the bailies were authorised to take up a night watch of twenty or twenty-four persons, "enduring the council's will, conform to the order vsit of befor."<sup>6</sup> On the 29th of October, in the following year, the bailies were again authorised to take up a watch of twenty-four persons, twelve of them to watch nightly, and to be paid "by the neighbours twelve shillings ilk neighbour in the year."<sup>7</sup> From the bailies' accounts of the watch rolls and extent for the year to Michaelmas 1610, however, it appears that a hired watch of only fourteen men was kept in the town during that year. The amount received from the various quarters for the support of that watch was as follows:—from the north-west quarter, £136, 16s.; from the north-east quarter, £104, 2s.; from the south-east quarter, £111, 12s.; from the south-west quarter, £188. And there was received of watch money, paid to the Dean of Guild by burgesses on their admission, £88; making a total charge of £628, 10s. od. scots. The payments consisted of wages to fourteen watchmen of the guard, with candle, £440, 12s. od.; and allowance to officers for collecting extent, £24; in all, £464, 12s. od. scots. The balance of £163, 18s. was paid over to the City Treasurer.<sup>8</sup> On 5th October 1610, it was resolved that the bailies should fee a sufficient watch of twenty-four persons, and two commanders of able and sufficient men, and to agree with them as they should think good, to be paid by the watch roll, conform to the extent roll to be set thereupon.<sup>9</sup> An act authorising an extent to be raised for their payments was passed twelve days later, "the most substantious not to pay more than 48s., and the lowest 12s."<sup>10</sup> The account of the watch silver collection for this year also exists, and gives the charge of the watch rolls (under deduction of £60 exempted in quarters and thirds of quarters), at £870; the watch money from the new burgesses

<sup>1</sup> Council Records, x. 147.<sup>2</sup> Ibid. x. 148.<sup>3</sup> Ibid. x. 234.<sup>4</sup> Ibid. xi. 122.<sup>5</sup> Ibid. xi. 153.<sup>6</sup> Ibid. xi. 219<sup>7</sup> Ibid. xi. 238.<sup>8</sup> Bailies' Accounts of Extents and Unlaws, 1564-1644, p. 425.<sup>9</sup> Council Records, xii. 48.<sup>10</sup> Ibid. xii. 49.

amounted for the year to £80, 8s., making a total charge of £950, 8s. Out of this fund were paid the wages to the watchmen, whose numbers varied throughout the year, from twenty-six in November and December to ten in June and July, £793, 18s. 8d. ; and allowance to the twelve officers for collecting the watch rolls, at 40s. each, and other payments, £52 ; in all, £845, 18s. 8d, leaving a balance of £104, 9s. 4d, which was paid over to the City Treasurer.<sup>1</sup>

In the watching arrangements thus indicated, we have a glimpse of burgal life in Edinburgh, under one of its most interesting conditions, in the fifteenth and sixteenth centuries. The citizens of that time were divided into two great classes, the merchants and the craftsmen, each of whom claimed rights and privileges that were disputed by the other. Hence arose constant contentions, which ultimately formed the subject of a reference to the king himself, and were dealt with in his decree-arbitral, dated 22d April 1583. But whatever rivalries might exist between these classes, and however much they might dispute among themselves, these rivalries and disputes never interfered with their duty, either to the state or to the town. Both classes bore the burdens and discharged the duties of burghership, national as well as civic ; both acknowledged the authority of the magistrates ; both were provided with weapons in their booths and houses, and when the common bell or the swesche sounded an alarm, or the town officers called them out, both donned their armour, and were ever ready to do their duty ; both were always represented in every contingent furnished by the city for the royal hosts, and under the town's banner both did good service in many a stricken field. How incessant must have been the anxieties and uncertainties of the burghers of this period it would be difficult to over-estimate, did we not make allowance for the effect of habit and familiarity. After every allowance has been made, however, there must have been much that was irksome in that constant liability to be obliged to relinquish the duties of the merchant's booth or of the workshop for those of the soldier, and to take each man his turn in watching the town by day or by night. To this liability the citizens of Edinburgh were exposed more frequently than those of other burghs, for in addition to the ordinary duties of watching and warding common to all, they were often required to perform special services incident to the position of the city as the metropolis. It was the frequent residence of the sovereign, and of those who wielded the royal authority, and the citizens were often obliged to furnish a strong guard for the sovereign or the regent, not only while in Holyrood,

<sup>1</sup> Baillies' Accounts of Extents and Unlaws, 1564-1644, p. 429-432.

or within the walls of the town, but also during their journeyings and residences in other portions of the kingdom. It was the usual seat of the government, and the royal warrants against traitors and persons suspected of disaffection to the crown, had sometimes to be executed by civic levies in districts considerably removed from the capital. It was the place where the parliaments and conventions of the realm usually assembled, and the town behoved to be in arms during their sittings. The supreme civil and criminal courts of the country were also held there, and the burgesses were often called on to preserve order during the "law days" between the barons and other great personages. At no time, in short, could the citizens calculate on immunity from requirements of this nature ; and irksome and harassing as they must have been, it is but just to add, they never seem to have failed to respond to the call.

When such were the liabilities of the burgesses, we can readily understand that the office of the magistrates was no sinecure. Upon them rested the responsibility for the peace of the town, and the means of preserving it were afforded them by royal grants of high privileges and jurisdictions, which at once attested loyal service, and gave to the office a dignity befitting the capital. So it was that the provostship was usually held by noblemen and gentlemen of great influence, and that the names of Archibald Earl of Angus ; Alexander Lord Home, Great Chamberlain ; Robert Lord Maxwell ; the Lord Seaton ; Kirkcaldy of Grange ; Patrick Lord Lindsay ; James Earl of Annan ; Alexander Earl of Dunfermline, Great Chancellor, and many others well known in Scottish history, are to be found on the roll of its chief magistrates. The great burden of managing the city, however, devolved upon the bailies. In addition to their judicial duties, and the duties of the council, they had the special care of their respective quarters, were charged in turn with setting and regulating the watch, and with keeping the keys of the ports, and were expected to head the musters of their districts when the services of the burghers were required. With a view to the efficient performance of these duties, they were armed with almost arbitrary powers over all the inhabitants of their quarters ; could require their attendance for the service of the town when and as often as they thought proper ; could depute to whomsoever they chose their powers of control and supervision over those so called out ; and could deal summarily with all who failed to answer their summons, or to yield them or their deputies befitting obedience. Nor did the law fail to proclaim the respect due to their persons and office. In the matter of dress even, the sumptuary laws of the period provided that the magistrates of burghs

should wear apparel distinguishing them from ordinary burghesses, and this privilege was extended to their wives and families.<sup>1</sup> In some of the later acts, which restricted this privilege to the magistrates of the more important burghs, it was extended to those who had been provosts, bailies, deans of guild, or treasurers of the city of Edinburgh.

The organisation by means of which the magistrates were enabled to provide for the watching of the city is also worthy of notice. First and primarily there was the ancient division of the town into quarters, each under the charge of a bailie, assisted occasionally by quartermasters, with two, and afterwards three, town officers to each quarter. Next, in 1580, there was the division of the inhabitants into fifties, and the election by each fifty of two men,—a merchant and craftsman,—to oversee and command the others in all matters of watching and warding. Then, in 1584, there was a similar division of the whole inhabitants into thirties, and a similar election by each thirty of two persons, a merchant and craftsman, to be commanders or masters of watch of their several companies. And again, in 1611, there was the permanent organisation of the constables, with their well defined districts and duties. All these arrangements rested on the recognised duty of watching and warding, which from time immemorial had been performed by the citizens in person, each quarter furnishing the ordinary watch of the town in rotation, on the summons of one of the officers acting under the orders of the bailie, whose duty again it was to set the watch nightly. In the absence of the bailie, the early practice seems to have been for the watch to be under the charge, sometimes of one of the officers of the quarter alone, sometimes of an officer and one of the citizens on duty, named by the bailie for the purpose, and sometimes of two men “of credence and honesty” selected by him, the persons in charge being in all cases bound to see that the watch was faithfully kept. When commanders of fifties and thirties were elected, they doubtless performed this duty, but that arrangement seems to have been exceptional in its nature and limited in its duration, and was probably superseded, for ordinary watching purposes at least, by the more complete organisation of the Constables.

<sup>1</sup> James II. 14. c. 70. 1457, c. 13 [Acts of the Parliaments of Scotland, ii. 49]. James VI. 7. c. 113. 1581, c. 18 [Ib. iii. 220]. James VI. 20. c. 8. 1609, c. 15 [Ib. iv. 435]. James VI. 23. c. 25. 1621, c. 25 [Ib. iv. 625]. Charles II. 2. 3. c. 10. 1672, c. 21 [Ib. viii. 71]. Charles II. 2. 4. c. 3. 1673, c. 3 [Ib. viii. 212.] All previous sumptuary laws as to apparel were, however, repealed by the act Charles II. 3. 12. 1681, c. 78 [Ib. viii. 348].

In extraordinary emergencies, such as the fear of invasion by our "auld enemies of England," the civil commotions incident to the contentions of rival parties in the state, or the visitation of plague, recourse was had, from the beginning of the sixteenth century, to hired levies, who watched the town sometimes by themselves, and sometimes in conjunction with a guard of the citizens. The cost of these levies was defrayed by extents levied from the citizens. This, however, was an abnormal condition of matters, and it was only towards the close of that century that the burghers seem to have begun to feel that the regular watching of the town would be more efficiently and economically performed by a hired watch than by themselves or their servants, and that an assessment was imposed for the support of the watch. This arrangement appears to have continued for several years,—watch-silver being regularly collected by the town's officers from the various quarters, and watch-money being exacted from burgesses on their admission. From payment of this watch-silver, however, the constables seem to have been regularly exempted, in respect no doubt of the important personal services rendered by them to the town. And it would appear that those citizens who chose to perform in person the duties of watching were also relieved from payment of this tax.<sup>1</sup>

IV. By the fifth article of their orders and injunctions, the constables were enjoined to search within their bounds for "jesuits, seminarie priests, or trafficking papists," and to take and apprehend such as they might find, and present them to the provost and bailies to be tried.

From an early period the Church of Rome asserted its right to sit in judgment upon the opinions of men; and, not content with inflicting its own punishments of penance, censure, or excommunication upon those whom it convicted of heresy, it induced the civil magistrate to interpose his coercive authority, and to inflict upon the victim of ecclesiastical condemnation the severest forms of secular punishment. In every catholic country of Europe the civil magistrate became in effect the executioner of the church; and in

---

<sup>1</sup> The Bailies' Accounts of Extents and Unlaws, 1564-1644. 1613-14, pp. 500-505; 1614-15, pp. 518-523; 1616-17, pp. 566-575; 1621-22, pp. 756-760; 1622-23, pp. 812-818. The reasons for the exemptions during this last year are various, and are briefly indicated thus:—"Constable;" "watches," *i.e.* watch themselves, out of the country; "dwalls in the Canongate;" "Maister maison to his majesty;" "Deyne of Gild;" "unmarriet;" "aged;" and so on. Council Records, xii. 181; xxxiii. 211.

Scotland the act of 1424, c. 3,<sup>1</sup> expressly enacted "that ilk bischop sall ger inquyr be the inquisicione of heresy quhar ony sik beis fundyne ande at thai be punyst as lawe of halykirk requirs. And gif it miteris that secular power be callyt thairto in suppowale and helping of halykirk." This act, however, was but a declaration, in the broadest and most unqualified terms, of an alliance that had previously existed and borne fruit. Sixteen years before, John Resby, a follower of Wickliffe, had been handed over to the secular arm, and had been burned at Perth.<sup>2</sup> The church consigned the soul of the heretic to perdition, the temporal power committed his body to the flames. The Reformation in this country introduced a new religious and ecclesiastical system, under which the standard of doctrine was defined, and the punitive power of the church was curtailed. But the adherents of the new establishment were scarcely less intolerant than those of the old order of things had been, and the legislation of the subsequent century and a half is disfigured by penal laws against papists and nonconformists. Sad enough such legislation is, but in judging of the framers of these penal statutes, we must remember that toleration was the outgrowth of a much later age, and is scarcely yet understood by many, whose intolerance does not admit of the extenuation pleadable for that of the reformers, viz., that it was levelled against a system which involved political elements dangerous to the civil state and constitution of government, not then firmly consolidated, or safe from the persistent attacks of the adherents of the old faith.<sup>3</sup>

<sup>1</sup> Acts of the Parliaments of Scotland, ii. 7.

<sup>2</sup> Cunningham's Church History of Scotland, i. 184.

<sup>3</sup> In truth, however, no party at that time perceived, to use the words of Bishop Heber, "the great wickedness of persecution in the abstract, or the moral unfitness of temporal punishment as an engine of religious controversy. Even the sects who were themselves under oppression exclaimed against their rulers, not as being persecutors at all, but as persecuting those who professed the truth; and each sect, as it obtained the power to wield the secular weapon, esteemed it also a duty, as well as a privilege, not to bear the sword in vain" (Life of Jeremy Taylor, p. 27). See Whately's Essays on the Errors of Romanism, &c., 4th ed., p. 138. So also the Acts of the Scotch legislature against the papists, &c., are directed against them, not so much as persons dangerous to the state as "adversaries to God's true religion." The national covenant subscribed in 1580, and renewed in 1639, expressly recognised and approved of this principle, the essentially popish nature of which, as resting on an assumed infallibility, was pointed out and denounced by Cromwell in his letter to the Governor of the Castle of Edinburgh, 12th September 1650 (Carlyle's Cromwell, ed. 1857, ii. 209).

It is unnecessary to enter into minute details relative to that legislation, but its character and scope may be briefly indicated by a simple reference to some of the leading statutes on the subject. The acts 1567, c. 95,<sup>1</sup> and 1609, c. 7,<sup>2</sup> disqualified all but the professors of the reformed religion then established from holding any public office or employment, and the act 1572, c. 4,<sup>3</sup> rendered them liable to punishment as rebels. The saying or hearing of mass was declared, by the acts 1560, c. 4,<sup>4</sup> and 1567, c. 5,<sup>5</sup> to be punishable, for the first offence, with confiscation of the goods of the contraveners, and punishment of their persons at the discretion of the magistrate, with banishment for the second, and with death for the third offence; the act 1587, c. 3,<sup>6</sup> prescribed tinsel of the moveable goods and liferent of the lands and livings of the defaulter; 1592, c. 14,<sup>7</sup> prescribed the pains of treason; 1593, c. 11,<sup>8</sup> prescribed the loss of escheat for the first offence, loss of the liferent of goods for the second, and the pain of treason and forefaulture for the third offence; and 1594, visited it with death and escheat of goods. The acts 1592, c. 14, and 1594, c. 3,<sup>9</sup> c. 4, were ratified by the act 1607, c. 2.<sup>10</sup> The act 1609, c. 7,<sup>11</sup> ratified the whole acts of the reign of James VI., against the sayers and hearers of mass or their reseters, and the act 1661, c. 37,<sup>12</sup> renewed the prohibition against them under the penalties contained in former acts of parliament. The passing in pilgrimage to chapels, wells, and crosses, and the superstitious observance of papistical rites were, by the act 1581, c. 6,<sup>13</sup> declared to be punishable with fine for the first offence, and with death for the second. Jesuits, seminary priests, professed or excommunicated and trafficking papists, were, by the act 1587, c. 3,<sup>14</sup> made liable to death and escheat of moveables, and their reseters or suppliers for three days and nights were declared liable to lose their liferents. Both the reseters and the reset were, by the act 1592, c. 14,<sup>15</sup> subjected to the pains of treason, while the act 1593, c. 11,<sup>16</sup> made reseters liable to loss of their escheat for the first fault, to loss of the liferent of their land and goods for the second, and to the pain of treason and forefaulture for the third offence.

<sup>1</sup> Acts of the Parliaments of Scotland, iii. 24.    <sup>2</sup> Ibid. iv. 429.    <sup>3</sup> Ibid. iii. 72.

<sup>4</sup> Ibid. ii. 535. See Act and Ordinance of the Privy Council, 28th May 1561. Works of John Knox, Mr Laing's ed. ii. 161-164.    <sup>5</sup> Acts of Parliament, iii. 22.

<sup>6</sup> Ibid. iii. 430. See Act of Privy Council, 6th March 1589, Calderwood's History of the Kirk of Scotland. v. 37.    <sup>7</sup> Acts of Parliament, iii. 545.

<sup>8</sup> Ibid. iv. 17.

<sup>11</sup> Ibid. iv. 429.

<sup>14</sup> Ibid. iii. 430.

<sup>9</sup> Ibid. iv. 62.

<sup>12</sup> Ibid. vii. 26.

<sup>15</sup> Ibid. iii. 545.

<sup>10</sup> Ibid. iv. 371.

<sup>13</sup> Ibid. iii. 212.

<sup>16</sup> Ibid. iv. 17.

The act 1600, c. 27,<sup>1</sup> appointed all jesuits, seminary priests, excommunicate and tried trafficking papists to be apprehended and committed by the magistrates till convicted, banished, or punished, according to the act of parliament; while their reseters were, by the same act, and by the act 1607, c. 2,<sup>2</sup> declared to be punishable according to their rank. These acts were ratified by the act 1609, c. 7;<sup>3</sup> and the statute 1661, c. 3,<sup>4</sup> ordered all jesuits, priests, and trafficking papists to leave the kingdom under pain of death. Profaners of the sacraments, persons suspected to have declined, withdrawers from the preaching of the word, seducers by reasoning, or dispersers of heretical books or letters, were, by the act 1587, c. 3,<sup>5</sup> ordained to lose their moveable goods and liferent. Adversaries of, or apostates from, the true religion were, by the act 1581, c. 8,<sup>6</sup> ordered to leave the country, and banishment and confiscation of moveables were, by the same act, prescribed against the makers, sellers, home-bringers, or dispersers of erroneous books, which the act 1587, c. 4,<sup>7</sup> empowered magistrates of burghs, with a minister, to make search for and destroy, imprisoning the homebringers till they were punished in person and goods.<sup>7</sup>

<sup>1</sup> Acts of the Parliaments of Scotland, iv. 232. This act ratified an Act of the Privy Council, held at St Johnston, on 1st April 1600.

<sup>2</sup> Ibid. iv. 371.

<sup>3</sup> Ibid. iv. 429.

<sup>4</sup> Ibid. vii. 26.

<sup>5</sup> Ibid. iii. 430.

<sup>6</sup> Ibid. iii. 213.

<sup>7</sup> This was precisely the policy of the Romish Church when it was dominant in Scotland. See the acts against heresy, 1424, c. 3 [Acts of the Parliaments of Scotland, ii. 7]; against the professors of the Lutheran doctrines, 1525, c. 4 [ibid. ii. 295]; against the eating of flesh in Lent, 1555, c. 9 [ibid. ii. 493]; and against persons lying under the ban of the church, 1443, c. 1 and 2 [ibid. ii. 33]; 1449, c. 1 [ibid. ii. 35]; 1535, c. 3 [ibid. ii. 342]; 1551, c. 1 [ibid. ii. 482]; 1551, c. 8 and 9 [ibid. ii. 485]. That these acts were enforced to the death there is abundant evidence. The names of twenty individuals are recorded as having been put to death, besides the many who suffered banishment or confiscation of goods, on account of their religion, in the conflict between Popery and Protestantism in Scotland [Cunningham's Church History in Scotland, i. 320; M'Crie's Life of John Knox, edition 1855, p. 15; Note H, p. 312; Pitcairn's Criminal Trials, i. \*210, \*216, \*217, \*252, 255, \*297, \*330, \*400, \*407]. After the establishment of the Reformation, the provisions of the old acts against excommunicated persons were made expressly applicable to all persons "excommunicate be ordour of the true reformed kirk" by the act 1572, c. 14 [ibid. iii. 76 \*]. See also the acts 1587, c. 6, intituled, "For pvnishment of ye commit-taris of disordoures in the kirk in tyme of divine service, or forcearis of ministeris in thair office and function" [ibid. iii. 430]; 1609, c. 3, intituled, "Act anent the chusing of pedagogues to children passing furth of Scotland to schooles," and c. 4, in-

Several of these acts contain orders upon the sheriffs of counties, and the magistrates of burghs, to enforce their provisions against the adherents of the old faith ; and it appears from the records of the city that this was done in a variety of instances by the Town Council. In particular, an act dated 10th June 1560, considering "the grit number of idolatreis, quhoremaisteris, and harlottis daylie resortand within this burgh provokand the indignation of God vpon the saymn, oftymes furthschawin be the preecheris," ordained all

"sic personis [to] cum in presens of the minister or the elderis to gif testimone of thair conversioun fra the saidis abuis respectie, betwix and Friday at none nixttocum, or falzeing thair of the saidis idolatreis to be diffamit be setting thame vpon the merkatt croce, thair to remane for the space of vj houris for thair first falt, caryng of the saids badelaris, houremaisteris, and harlottis throw the toun in ane carte for thair first falt, buryng of bayth the kyndis of the saidis personis on the cheik for the secound falt and banisching the toun, and for the third falt to be punischit to the deid."<sup>1</sup>

Another act, dated 24th March 1560, recites that for the space of three months the priests, monks, friars, canons, nuns, and other papists, had been allowed free liberty to come into their churches to hear the word and to be resolved of their doubts ; but that, notwithstanding, there was no appearance of their conversion, and that they were seducing the common people. Wherefore, it proceeds—

"sen trew it is that be the infallable word of the Eternal, oure God, we are comandit to rute owte frome the middis of ws oure towne and commounweill the wikt and vngodlie, and in speciale quhen the workis of the samyn dois appear to the hurte thair of, as we will eschew the wrath and indignatioun threitnit vpoun ws gif we do nocht oure dewitie for purging of oure said toun of sic vngodlie peple, thair errouris and detestabill workis [we] command and charge in oure souerane Lordis name, and in name and behalf of the lordis of secreit counsule, provest, and baillies of this burch, that within xlvij houreis next heirefter all preistis, monkis, freris, channonis, nunnis, and ytheris of the vngodlie sectis and opinionis quhilkis heirtfore hes joisit the priuelege and libertie aboue writtin, and hes nocht gevin thair repentence of thair

titled, "Act against children that becomes papists when they are out of Scotland" [ibid. iv. 428] ; and 1661, c. 238, intituled, "Act for denunceing of excommunicat persons" [ibid. vii. 228] : all of which not only confirmed the alliance between the church and the state, but degraded the civil magistrate, by making him the mere executor of ecclesiastical decrees. It was not till the reign of William and Mary 1690, c. 58 [ibid. ix. 198,] that all previous acts enjoining civil pains upon sentences of excommunication were rescinded.

<sup>1</sup> Council Records, iii. 37.

formar inequiteis and opinionis, as alsua all mes sayaris, and mes manteinaris, hure-mongaris, adulteraris, and fornicatouris”

depart the toun; but they were informed that if any of them would repent they would thereafter be gladly received.<sup>1</sup> This act, and the proclamation which followed upon it, were highly offensive to the queen, who wrote the town council, reprimanding them for their unjust and rigorous dealings. The council, notwithstanding, by an act dated 2d October 1561, “persaving the priests, monkis, freris, and others of the wicket rable of the antechrist the paip to resort to the toun incontrair the tenour of the proclamation maid on the contrair,” ordained

“the said proclamatioun to be proclamyt of new, chargeing all monkis, freris, priestis, nonnys, adulteraris, fornicatouris, and all sic filthy personis to remove themselves of this toun and boundis thair of within xxiiij houris, under the pane of carting throucht the toun, byrning on the cheik, and banessin the saymn for ever.”<sup>2</sup>

This insult was resented, two days afterwards, by a peremptory letter from the queen to the council, requiring them to depose the provost and the four bailies, which they accordingly did, under protestation that their compliance with the royal command should be without prejudice to the privileges of the toun.<sup>3</sup> Her majesty subsequently sent a list of three persons to the council, from whom they should elect their provost, but the election had been made previous to receipt of the list.<sup>4</sup> Another act, dated May 1563, required the haill neighbours to be on the streets in arms, in consequence of the bishop of St Andrews and several kirkmen being pursued before the justice for the saying of mass.<sup>5</sup> On the 8th of July 1569, again there is an order against keeping company with certain papists, “laitlie excommunicat furth of the kirk of God for abiding at and manteiniyng of the mes, and like abominable idolatrie.”<sup>6</sup> By this time the church had been active in the exercise of its discipline, and had freely excommunicated those who refused to recognise the order of things as then established. With such persons, then, it was necessary to deal, and, accordingly, we find a series of acts of council directed against them. There is (1) an act dated 7th October 1569, ordering proclamation to be made, charging them to leave the town within forty-eight hours, under the

<sup>1</sup> Council Records, iii. 76.

<sup>2</sup> Ibid. iv. 15; Diurnal of Occurrents, p. 69.

<sup>3</sup> Council Records, iv. 16; Diurnal of Occurrents, p. 69.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid. iv. 64. The circumstances connected with this act are detailed in the Diurnal of Occurrents, p. 75. For report of the trial, see Pitcairn's Criminal Trials, i. \*427.

<sup>6</sup> Ibid. iv. 243.

highest pain ;<sup>1</sup> (2) an act dated 6th October 1570, ordering certain excommunicated persons

“to pass to their awin houssis to remane thair in sober maner without resort of companeis quhill this day viij days ; in the menetye to procure forther libertye of the kirk, failling to depairt of the fredome and libertie of the toune betuix and Setterday come viij dayis nowther resort hant nor trafique within the samyn vnder the pane of jc li, and ordainis the baillies to tak cautioun of thame for the samyn ;”<sup>2</sup>

(3) another act dated 9th February 1570, appointing proclamation to be made, charging all excommunicated persons to leave the town

“betwix and the morne at none vnder the pane of extreme impresonment, but prejudice of the forther panis contenit in the lawis, and that all sic as resattis thame cum and reveill the samyn to the baillies vnder pane of banishment, and siclike that the actis of parliament be execute vpoun fornicatouris but faouris.”<sup>3</sup>

(4) two acts against the spouse of John Graham, dated 1st and 6th May 1584, one requiring her to find caution not to receive excommunicated persons into her house, and the other ordering her merchant booth to be closed, because she refused to find caution. These acts proceed on the narrative that Mrs Graham “hes sundrie tymes resett in hir house the young laird of Fintrie, hir husband, and dyuers vther excommunicat personis after sche wes admonist be the kirk to abstene thairfra ;”<sup>4</sup> and (5) an act dated 25th February 1585, discharging indwellers within the burgh from housing, harbouring, resetting, or entertaining any persons “excommunicate and curst be the censures of the kirk,” under the pain of an unlaw of ten pounds for each failure.<sup>5</sup> On 19th April 1587, again, an act ordained a proclamation to be made, charging all persons to remove from their houses at Whitsunday thereafter

“all papists, huireis, thevis, evill and vitious lebares and thair resetteris, or that ar commonely brutet and suspect thairof, and nocht to sett thair houssis in tyme cvming, but sic as hes ather sufficient rent or ane lawfull and honest tred to leif vpoun, vnder the payne of ten pund swa oft as they failzie.”<sup>6</sup>

That these regulations were being enforced in 1592,<sup>7</sup> is shewn by an act of

<sup>1</sup> Council Records, iv. 246.

<sup>2</sup> Ibid. iv. 272.

<sup>3</sup> Ibid. vii. 231.

<sup>4</sup> Ibid. iv. 264.

<sup>5</sup> Ibid. vii. 86.

<sup>6</sup> Ibid. viii. 83.

<sup>7</sup> Though, in a statement of certain grievances given in by the General Assembly to the king, on 20th February 1587, it is complained that sundry papists and seminary priests confessing themselves to have said mass, and preached papistry within the land, being apprehended by the magistrates of Edinburgh and put in ward, had been set at liberty without any punishment or satisfaction to the kirk.—(Calderwood's History of the Kirk of Scotland, iv. 661.)

the Council dated 15th December of that year, which sets forth, that James Gray, advocate, had compeared and obliged himself not to harbour or reset within his house at any time thereafter "the laird of Bonyntoun, younger, excommunicat, nor na excommunicat persoun or persouns under the payne of ane unlaw of xl li., to be payet to the guid toun swa oft as he failzeis."<sup>1</sup>

It is to be observed that, while the magistrates of Edinburgh were thus proclaiming and apparently enforcing the laws against papists and their resetters, it was a subject of complaint by the clergy that the magistrates were very remiss in their duty. Proclamations against papists, both as enemies of the true religion and of the civil order of things, were also issued from time to time by the king, and by the privy council, both before and after his majesty's accession to the English crown; but the church complained of the government too, that no correction followed upon these proclamations. The remissness of the civil powers, however, seems only to have stimulated the zeal of the General Assembly, and the inferior judicatories of the kirk, and their proceedings are full of acts and resolutions against popery, its professors, and their abettors. It was probably through the influence of the clergy that the instructions to search for and apprehend papists were introduced into the "orders and injunctions" for the constables of Edinburgh; and it is noticeable that although royal proclamations were issued against papists and their resetters in January 1593,<sup>2</sup> in November 1600,<sup>3</sup> and in September 1606,<sup>4</sup> no reference is made to them in the specification of the duties of the constables contained in the act of parliament 1617, c. 8.<sup>5</sup>

<sup>1</sup> Council Records, ix. 177.

<sup>2</sup> Birrell's Diary, 29.

<sup>3</sup> Calderwood's History of the Kirk of Scotland, vi. 100.

<sup>4</sup> Ibid. vi. 586.

<sup>5</sup> That the laws against papists were at no time a dead letter is attested by recorded cases against celebrators or hearers of mass: Pitcairn's Criminal Trials, i. \*427 (1563), \*435 (1563), 14 (1570), 30 (1571-2), 31 (1571-2), 35, 38 (1572); ii. 348 (1601), 442 (1604), 530 (1607); iii. 252, 254 (1613), 330 (1615), 377 (1615), against papists, priests, jesuits, and resetters of such. Ibid. i. 167 (1589), 371 (1615); iii. 375 (1615), 541 (1622). Diurnal of Occurrents, 75, 301, 318, 341. Arnot's Criminal Trials, 328, 335 (1615), 335 (1722), and against traffickers with papists to alter religion, Pitcairn's Criminal Trials, i. 172 (1589), 371 (1615). See generally Chambers's Domestic Annals of Scotland, i. 335, 336, 342, 352, 358, 385, 399, 411, 417; ii. 20-28, 36-41, 57-60, 145, 211, 335, 499.

The whole penal laws against popery and papists were ratified and revived by the Act 1700, c. 3 [Acts of the Parliaments of Scotland, x. 215], but were modified by

V. By the orders to which allusion has been made, the constables were charged with important and laborious duties connected with the suppression of mendicancy, the preservation of peace, and the enforcement of the laws against popery. To these, Article 12 added the probably not less troublesome duty of looking after the cleanliness of the town. They were required to see that their bounds were kept free of all filth, middens, and swine, and to this effect were entrusted with a magisterial power to try and fine offenders, and failing payment, to commit them to prison.

This order had reference to a condition of matters which we, accustomed to the sanitary arrangements of modern times, can with difficulty realise. Confined in space,—without the possibility of effective ventilation,—with a most inadequate supply of water,—without those appliances for health, comfort, and decency, that now exist in the houses of almost the humblest citizens, the inhabitants of even the most fashionable localities in Edinburgh at that time, and for a long period afterwards, were exposed to influences which sufficiently account for the frequent visit and deadly ravages of plague and pestilence. Notwithstanding the repeated proclamations of successive magistrates against depositing filth on the streets and closes, and against throwing soil and refuse over the windows,—emphasised as these proclamations were by threats of fines, imprisonment, the pillory, whipping, and banishment,—the practice was continued far into the last century; and contemporary writers represent the sounding of ten o'clock from the steeple of St Giles' to have been the signal for a general and simultaneous discharge from the windows of every house, amid a chorus of "*Gardyloos*." So says the author of the *Cloaciniad*,—

"The clock strikes ten,  
Now from a thousand windows cat'racts flow,  
Which make a deluge in the streets below."

The streets in fact were the receptacles of every description of filth. They formed the common market-place for all kinds of goods. Fish, flesh, and fowls, meal, butter, and eggs, fruit, vegetables, and "cranery wares," were exposed to sale on the calsay, and the refuse from the stalls littered the public thoroughfares. The horses and other beasts of burden that had brought the

---

the Act 31 George III. c. 3 (the Toleration Act); 33 George III. c. 44; 10 George IV. c. 7; and 7 and 8 Vict. c. 102.

wares to market, were stabled and fed on the street. Amidst the garbage thus collected, swine revelled, in close proximity to their cruives, which were freely placed under the projecting stairs, or in any available corner down the steep closes, or vennels as they were called, that led from the High Street on either side. Those who read the minute records of the local legislation, intended to remedy to some extent the then existing state of matters, can well credit the literal accuracy of Dunbar's description of the streets of Edinburgh in the reign of James IV.,—a description that, in all its essential features, must have continued applicable to them far into the last century.<sup>1</sup>

Among the oldest police regulations of which we have any trace, there is a prohibition, in 1450, against allowing swine to run at large, under pain of escheat for behoof of the kirk-wark.<sup>2</sup> In 1490, the lockman was ordered to seize any swine "found upon the gaitt or common throw gangis out of hand," between the Castle and the Nether Bow, and to fine the owners.<sup>3</sup> In 1506, an act prohibited the "holding of swine within the town, in the high streets and vennels, outwith house nor outwith hand, under the pain of slaughter of the samyn by the lockman, Patrick Fresnel,"<sup>4</sup> and in 1542, all cruives for swine were ordered to be immediately removed from "stairs and sydewalls fornent the high street, or in common vennels."<sup>5</sup> Similar orders against swine and swine-cruives were issued from time to time throughout the

---

<sup>1</sup> See in particular his address to the merchants of Edinburgh [Mr D. Laing's edition, i. 34], in which he taunts them with not applying some of their growing wealth to the improvement of the town.

In the present century even, and within the memory of living citizens, the condition of the High Street was, in some respects, far from creditable. "The fruit and vegetable markets," says one,—alluding incidentally to the practice that existed down to 1821, of holding these markets on that street—"were held on the High Street, from the corner of the North Bridge up to the Royal Exchange. During the period from 1818 to 1821 I had occasion to go up the High Street every lawful day at an early hour in the morning, and I hope never again to see such an exhibition in the city. The vegetables were laid down on the street and foot pavement to a large extent, for the purpose of being shewn, just where the scavengers had been plying their calling immediately before; and the gutters were running near in the most offensive way that could be supposed. This perfuming was the preliminary operation to which all our fruit and vegetables were then subjected before being made ready for dinner."

<sup>2</sup> Extracts from Council Records, Advocates' Library, fol. 181.

<sup>3</sup> *Ibid.*, 1st February 1490.

<sup>4</sup> *Ibid.* fol. 182, 26th September 1506.

<sup>5</sup> *Ibid.* fol. 185, 4th October 1542.

fifteenth and sixteenth centuries,<sup>1</sup> and even so late as 1704, a proclamation was ordered to be made through the town, discharging the keeping and feeding of swine upon the high street, open closes, and vennels, under the pain of confiscation of the swine.<sup>2</sup>

<sup>1</sup> Extracts from Council Records, Advocates' Library, fol. 188, 9th October 1553. Council Records, ii. 19. Ibid. ii. 32, 9th October 1554. Ibid. iv. 161, 14th October 1566. Ibid. v. 166, 7th October 1579. Ibid. vi. 217, 27th October 1582. Ibid. vii. 24, 9th October 1583. Ibid. vii. 30, 21st October 1583. Ibid. vii. 180, 30th April 1585. Ibid. vii. 184, 18th May 1585. Ibid. vii. 222, 19th January 1585. Ibid. viii. 116, 132, 3d November and 29th December 1587. Ibid. ix. 113, 118, 1st November 1592. Ibid. xi. 165, 9th January 1605. Ibid. xi. 272, 21st October 1608. Ibid. xii. 5, 17, 19th April, and 6th October 1609.

<sup>2</sup> Council Records, xxvii. 757. 1st March 1704.

The keeping of swine in town, and allowing them to roam about the streets and thoroughfares, it is scarcely necessary to remark, was not confined to Edinburgh. The *Leges quatuor Burgorum*, made by King David I. [1124-1153], and which were applicable to Edinburgh, Roxburgh, Berwick, and Stirling, contain a clause (84) relative to the "manner of swine holding in burgh," which was in all probability directed against, or at all events applicable to, the practice, even at that early period, of keeping these animals at large in burghs. The clause enacts as follows:—"It is nocht leyfull til ony burges wythin the kyngis burgh duellande for to halde swyne in the burgh bot gif he hafe a kepar folowand thaim in the feylde quhar thruch his nychtburis inryn na scathe nor noye, or than that he hald thaim in sty" [Acts of the Parliaments of Scotland, i. 37]. Article 102 of the same laws also refers to this practice—"It is for to wyt that na castellayne sall ryn in the town within a burges house to sla swyne grysyes na geyse na hennys bot he sall cum to the burges house, and he sall ask gif ony fuylk be thar to sell to the kyngis myster. And gif thai ony hafe thai sall sell thaim. And gif thai hafe ony and nane will sell, and thai be fundyn in the streyt, it sall be lefull to the castellayne to slaa thaim, and the nichbouris sall pryse thaim, and the pryse sall be geffin to the possessouris. And this sall nocht the castellaynis do bot thryse in the yhere, that is for to wyt befor the yule paske and quhytsonday, and in the yhere nane oftare be lald of burgh" [Ibid. i. 41]. And the "*Modus procedendi in itinere camerarii infra regnum Scocie*,"—a document, as has been remarked, apparently of the latter part of the fourteenth century,—required the alderman and bailies of every burgh to furnish the great chamberlain at his "ayre" with, *inter alia*, "all the names of thaim that haldis swyn vtought keping in the law statut" [Ibid. i. 329]. Article 40 of the "*Fragmenta quaedam veterum legum et consuetudinum Scotiae undique collecta*" also enacts that "gif a burges or ony other haldis swyn in the burgh or other beestis throu the quhilk the nychtburis takis scathe, the swyn fundin in the scathe with outyn ony kepar folowand thaim may weil be slayn, and made eschet, and ettin

So early as 1505, an attempt seems to have been made by the authorities to clean the streets, and an agreement is recorded between the magistrates

after the law of the burgh" [Ibid. i. 364]. The Records of the Burgh of Aberdeen shew that the practice also prevailed there. Preparatory to the visit of the Queen to that city in 1501, we find a prohibition against swine, young or old, being, "hauldin uteucht band of the foirgait for ane fiftene daes," under pain of slaughter and escheat of the swine, and banishment of the owners. It was also ordered that the town be devoyen of swin croffis under the same payne [Extracts from Burgh Records, Spalding Club, i. Pref. p. xvi, xvii, and p. 70]. Similar orders were issued in anticipation of the Queen's visit in 1511 [ib. i. 81]. Statutes against swine and swine's cruives were also passed in 1530 [ib. i. Pref. p. xxxv], 1547 [ib. i. 274], 1566 [ib. i. 361], 1578 [ib. ii. 32]. So in the Burgh Records of Glasgow, we find an enactment in 1577 against the holding or pasturing of swine or geese within the burrows about the town, "but haldin bund in hous," under the pain of escheating thereof [Extracts, Maitland Club, p. 83].

In London, persons living in the city in the time of Edward I. [1272-1307] were at liberty to keep swine within their houses, but strict injunctions were issued from time to time against the encroachment of pigsties on the streets. Subsequently the licence to keep swine in the city was limited to bakers, and an ordinance of probably later date was directed against the rearing of swine, cows, and oxen within the city. Swine were at all times prohibited from roaming about the streets and thoroughfares, under the pain of being slaughtered by the finder, who might either retain the carcase, or restore it to the owner on payment of a fixed sum. In the reign of Edward I. four persons were appointed and sworn to kill all swine found at large in the city, with the exception of those belonging to the renter of the Hospital of St Anthony (the guardian saint of swine), which were distinguished by a bell round their necks. That even this individual was suspected of unfairly extending his privilege is shewn by the fact that, in the time of Edward II., he was required to make oath "that he will not avow any swine found at large in the city, nor will he hang any bells around their necks, but only those pigs which have been given them in pure alms." [Munimenta Gildhallæ, Londoniensis. Liber Albus, vol. i. Introduction, xli, 270, 335, 590, 591.]

In Paris also, at an early period, swine were permitted to wallow in the filth that encumbered the streets. One of the young princes, however, being killed by a fall from his horse, occasioned by a sow running between its legs, an order was issued against swine running about the streets in future. The monks of the Abbey of St Anthony remonstrated fiercely against the order, alleging that the prevention of the saint's swine from enjoying their accustomed liberty of roaming where they pleased, was disrespectful to their patron. An exception was in consequence made in their favour, on condition that the monks should fasten bells round the necks of their swine [Chambers's Traditions of Edinburgh, p. 91].

and Thomas Glendunwyne, their bellman, under which he undertook "to haif a horse with a close cairt and twa servandis daylie, quhen neid is for purging and clenging of the Hie street, betuix the Castill and Saint Mary's wynd and Leith wynd heads." For this service the bellman was to be allowed to appropriate the fulzie removed by him, and to "tak of every buith, volt, cellar, and chälmer, of ilk fairland plainist and inhabite, ilk quarter of the yeir j<sup>d</sup>. viz. iij<sup>d</sup>. in the yeir," and of each flesher, fishmonger, huckster, or other person whose trade tended to dirty the streets, larger sums specified in the act of council.<sup>1</sup> In 1509, another arrangement was made with "Thomas Johnston, calsaymaker, and Jhone Brown, saltar," under which they undertook to provide horses, close carts, wheelbarrows, and all other implements needful for cleaning the streets, and also to make and complete, each year that they continued to clean the streets, forty roods of calsay wherever the magistrates should direct, receiving for their pains the same remuneration as that assigned to Thomas Glendunwyne in 1505.<sup>2</sup> This arrangement was obviously in operation in 1514.<sup>3</sup> In 1518, however, it would seem to have been discontinued, for an act of council was passed at that time requiring, "for the eschewing of daynger of seikness, that all manner of persons, inhabitants of this bruch, purge and clenge their calsays to myd channel forment their dwelling places housis or buiths, als weill in the Kowgaitt vennellis as on the hie gaitt, of all maner reddis, myddings, or other filth, . . . under the payne of viijs. to be tane of thame that faltis but favouris, . . . and also, that all tar barrellis and wad pypes be remouet of the hie calsay under the payne of escheitt of the samyn;" and another act was passed in the same year, prohibiting muck, fulzie, craimes of stones, or middings from being laid near the common walls of the town, either within or without the same, for the space of twelve feet within, or twenty-four feet without the walls.<sup>4</sup> In 1527, there is a notice from which it appears that "the gait-dichting and duties thereof were set for the year to come, with the adventure of deed and weir, to Alexander Pennycuik for the sum of £20, to be dicht and clenzit sufficiently ilk eight days anes with a dozen of servants," and the tacksman was enjoined to "tak nae mair duties for the dichting thereof, except and allenarly of fish, flesh, salt, and victuals."<sup>5</sup> The course here followed of letting the

<sup>1</sup> Extracts from Council Records, Advocates' Library, fol. 181, 182.

<sup>2</sup> Ibid. 181, 182.

<sup>3</sup> Ibid. 183. 6th October 1514.

<sup>4</sup> Ibid. fol. 183.

<sup>5</sup> Ibid. Chambers's Domestic Annals of Scotland, i. 483-4.

fulzie, appears, however, to have been subsequently discontinued, for in 1542, an act of council was passed requiring the immediate removal, under penalties for failure, of all middings and fulzie or tar barrels on the High Street.<sup>1</sup> In 1548, it was found necessary to enact that "na paynsches be weischen nor dycht at ony wallis, but priuallie in houssis, under the payne of ponising their personis," and to renew the order for the removal of all middings, muck, and fulzie, from the "Hie gaitt, Kowgaitt, or common vennellis," . . . . "for the eschewing of pest seekness and evil savour."<sup>2</sup> An order somewhat similar to that of 1542, but more stringent, was enacted in 1549 and in 1550, accompanied with the regulation that all filth carried out of the town should be taken through the nearest port.<sup>3</sup> The order for the removal of filth from the streets was renewed in 1551,<sup>4</sup> 1553,<sup>5</sup> 1557,<sup>6</sup> 1560,<sup>7</sup> 1562,<sup>8</sup> and 1566,<sup>9</sup> the neighbours being required "on every Setterday at evin [to] mak clene fornent thair awin hous, bayth in the Hiegaitt and Kowgaitt, and vennellis, after the auld vse for keeping of the town clene," under a penalty for each failure. All "pyk or tar barrels" lying on the hie gait were also directed to be removed. That none might pretend ignorance of these orders, the bellman was required to pass through the town every Saturday afternoon, and proclaim them. In 1566, an act of Council was passed ordering all "closets" and "scheildis" to be cleaned before they were full,—prohibiting their being so kept as that the contents should escape and flow into the streets, and requiring that when they were cleaned, "the clenzer carie the saym honestlie and quietlie in the nycht, and nocht to file the street therewith."<sup>10</sup> The

<sup>1</sup> Extracts from Council Records, Advocates' Library, fol. 185. 4th October 1542.

<sup>2</sup> Ibid. fol. 187. 1548, and 3d August 1549.

<sup>3</sup> Ibid. fol. 187. 1st July 1550.

<sup>4</sup> Ibid. fol. 187. Council Records, ii. 3. October 1551.

<sup>5</sup> Council Records, ii. 19. October 1553.

<sup>6</sup> Ibid. ii. 106. 18th September 1557.

<sup>7</sup> Extracts from Council Records, Advocates' Library, fol. 188; Council Records, iii. 55. 30th October 1560.

<sup>8</sup> Council Records, iv. 53. 8th December 1562.

<sup>9</sup> Extracts from Council Records, Advocates' Library, fol. 187.

<sup>10</sup> Council Records, iv. 161, 14th October 1566. These conveniences, subsequently referred to under the name of "privies," appear to have been private. No public convenience of this kind seems to have been provided till 1684, when the council ordered "twa jaques to be made, the one at the foot of the close betwixt Thomas Wilsone's new house, neer to the entrie of the flesh mercate, and ane other

former orders for the removal of filth, &c., from the streets were renewed in

at some close foot at the land mercate," and a "broad to be pute up at the saids closs heads for directing them that are to ease themselves to find the said jaques, and that the same be convoyed be ane syre to the North Loch" [Council Records, xxxi. 49, 6th August 1684]. In the absence of such provision for the public requirements, it cannot be wondered at that every bit of waste ground within the town, and even the streets and closes, were defiled. As it was, it was found to be necessary to appoint persons to keep the entrance to the High Church itself, as well as the churchyard, free from filth. But it was to be expected that a very short experience of these public conveniences would have induced the authorities to provide others in the interests as well of decency as of cleanliness. In 1688, accordingly, they appointed Deacon Sandilands to "make as many office-houses as the magistrates think needful, to be placed in such parts of the city as they think convenient, and that with all convenient speed." This order bears to have been given in consideration of the "necessitie for keeping the citie neat and clean that there be office-houses erected in various places." Provision was also made in the contracts with several tacksmen of fulzie for cleaning out such houses as might be erected by the magistrates. Not only, however, do none appear to have been provided, but the two erected in 1684 seem to have been discontinued prior to 1763, for Theophrastus (William Creech), in his letters published in December 1783, reprinted in the Appendix to Arnot's History of Edinburgh, page 672, quarto edition, says that the old town was even then "without public necessities, although," he observes, it is "the best situated place perhaps in Britain for the purpose, and the old town never can be cleanly without them." "There is," he adds, "one exception to this since 1763, raised by subscription of the neighbourhood, on the application of a citizen, which shews how practicable the scheme is." At present [1865], it may be added, there are thirty-one of these conveniences, and thirty-nine urinals in the city.

In London, public conveniences of this kind, known as "*latrinae*," seem to have existed so early as about the middle of the fourteenth century, at which time many of the lanes leading from the Thames contained *latrinae*, public and private. These were much complained of, and not without reason, we must admit, when we learn that some of them were so constructed, upon gratings, that the filth fell on the heads of passers by [Munimenta Gildhallæ Londoniensis. Liber Custumarum ii., part i. Introduction, p. cix, cxii]. The state of some of these lanes otherwise, as regards filth, appears to have been as bad as it was well possible for them to be. Public latrines not unfrequently, also, projected over the Thames, and continued to be a prevalent nuisance until the great fire of London, A.D. 1666 [Ib. footnote, p. cix]. A document, *sub anno* 1355, also mentions *latrinae* situated on Fleet river, and an ordinance of the time of Henry IV. (1399-1413) refers to the "New *latrina* at Londone Walle" [Ib. Liber Albus, Introduction, p. xlv].

It is curious to find that in this, as in other arrangements for health and comfort,

1582<sup>1</sup> and in 1583.<sup>2</sup> In 1582,<sup>3</sup> and again in 1583,<sup>4</sup> the order for having "closets" and "scheildis" cleaned was renewed. In 1584, the council resolved to return to what is stated to be the "old use" of rousing for the town's behoof, the muck gathered on the high streets, vennels, and open closes, and certain persons were commissioned to set down the conditions on which this was to be done. These conditions prescribed that no filth should be collected save by freemen, their wives and servants, and by them only in suitable places within their stables, enclosures, and houses; that it should be removed at certain appointed times, and not be laid down in any passage of the town without the special licence of the bailie of the quarter; that no inhabitant, other than a freeman, should gather any kind of fulzie, or keep swine, save the tacksman of fulzie; that the whole town fulzie, excepting that of freemen, with "two parts of the penalties exacted from those who should contravene the statutes anent fulzie closets, auld walls, swine, &c.," should be let to the highest offerer; and that the tacksman of fulzie should undertake to clean the whole streets twice a week, and gather the fulzie of the south side of the gate to the Greyfriars port, and of the north side to the Dawwell.<sup>5</sup> In 1585, another order was issued for having privies cleansed in due time, so as to prevent their gorging back and running into the streets; and on the same day it was enacted that no filth or middings should be in the streets longer than three hours.<sup>6</sup> This order appears, however, not to have been effectual, for six months later another act was passed, under which all dung on the streets was given to such persons as would clean and remove the same at their own expense.<sup>7</sup> This arrangement also seems to have

suitable provision seems to have been made by the Romans. Close to the outside of several of the towns in England there have been found many deep and narrow round wells, the contents of which prove them to have been conveniences for personal easement, and receptacles for filth and refuse. As such, they contain a large number of miscellaneous articles of personal and domestic use, and still form a rich mine for the antiquary. So indispensable an adjunct do these conveniences seem to have been considered to the Roman station, that their discovery is always regarded as a sure sign of the proximity of a Roman settlement [Wright's *Celt, Roman, and Saxon*, p. 181. See papers on this subject in *Archaeologia*, xxxii. part II., p. 451. *Ibid.* xxxiv. part I., pp. 21-32].

<sup>1</sup> Council Records, vi. 217. 27th October 1582.

<sup>2</sup> *Ibid.* vii. 30. 16th October 1583.

<sup>3</sup> *Ibid.* vi. 216. 27th October 1582.

<sup>4</sup> *Ibid.* vii. 24, 30. 9th and 16th October 1583.

<sup>5</sup> *Ibid.* vii. 159. 17th February 1584.

<sup>6</sup> *Ibid.* vii. 180. 30th April 1585.

<sup>7</sup> *Ibid.* vii. 208. 20th October 1585.

been ineffectual, for in little more than a month after it was made the council agreed with "the six workmen" to clean the streets.<sup>1</sup> But in truth the unsettled state of the times was in the highest degree unfavourable to any attention being paid to sanitary measures, and beyond issuing a proclamation, in 1586, discharging all persons from voiding their filth and doing their eases at the close-heads under the pain of warding their persons,<sup>2</sup> the magistrates do not seem to have passed any regulations on the subject till 1590, when, with a view to the reception of James VI. and his queen, stringent orders were issued for the removal of the middings and fulzie that then polluted the streets.<sup>3</sup> In 1608, all tar barrels were appointed to be removed from the High Street, and placed in the Grassmarket.<sup>4</sup>

Such were the bural regulations for the cleaning of the capital down to the period when the constables were instituted. That they were not effectual is not to be wondered at: it would have been strange if they had been. The conditions were altogether unfavourable. Sanitary science was not then much thought of,<sup>5</sup> and the habits of the people generally were opposed

<sup>1</sup> Council Records, vii. 213. 26th November 1585. <sup>2</sup> Ibid. viii. 5. 6th April 1586.

<sup>3</sup> Ibid. ix. 40, 87. 15th April 1590, 23d April 1591. Similar orders were issued in anticipation of the entry into Edinburgh of Mary of Guise in 1538 [Extracts from the Council Records, Advocates' Library, p. 189], and of James VI. in 1579 [Council Records, v. 166, 169].

<sup>4</sup> Ibid. xi. 267. 14th September 1608.

<sup>5</sup> This observation applies only to mediæval towns, which, in most matters of sanitary arrangement, seem to have been behind those of ancient times. Recent explorations in Nineveh, for example, shew that house drainage was attended to in that city 1200 years before Christ. Beneath almost every chamber in the older palace of Nimroud, Mr Layard found drains connected with the floor by a circular pipe of baked clay, leading from a hole generally cut through one of the pavement slabs in a corner of the room. These pipes joined one large drain running under the great hall, and from thence into the river which originally flowed at the foot of the mound [Layard's Nineveh and its Remains, ii. 79, 261]. In the remains of Roman towns in England, also, there are still to be found traces of pipes and drains, which are believed to have been intended for carrying superfluous water and filth from the houses into the extensive sewers that seem to have been constructed in all the larger towns. Similar arrangements also appear to have existed in the Roman towns on the continent [Wright's Celt, Roman, and Saxon, pp. 179, 180]. The remains of the great aqueducts that still exist, attest the care with which the Roman people made provision for the water supply of their towns. In some cases that supply was carried to fountains within the walls, and in other cases to reservoirs without them, for the use of the inhabitants. But no provision seems to have existed for conducting water into the houses.

to its restrictions. The proclamations of the period, indeed, seem to have recognised the belief that dirt had some connection with disease; but, judging from the nature of the precautions then employed, the authorities could not have fully understood to what an extent the frightful epidemic pestilences with which Edinburgh and other towns were from time to time devastated, were due to the prevalence of filth, and the defectiveness of ventilation. In a city resorted to largely by the followers of the feudal nobility, and (by what in that day were known as) the "uplands men," and infested by hordes of the beggars and vagabonds that overran the country, almost paralysing its industry, the circumstances of the population were such as to make it little short of an impossibility to enforce regulations for public cleanliness, that must have appeared an almost intolerable interference with their personal liberty and comfort. When the town itself was circumscribed within the narrow limits of the walls, the population crowded together, storey above storey, in the tall houses of the streets and closes, and the families of the most respectable and well-to-do citizens cabined, confined, and exposed to positive discomforts, it is matter of surprise how the families of the craftsmen and artisans, not to speak of the poorest classes, managed to preserve their health at all. With no water in the houses, a small and precarious supply at the public wells, no public conveniences, and no drainage, what could be looked for but filth—filth accumulating and festering beyond the possibility of removal by any number of men whom the authorities could maintain, and beyond the power of prevention by any municipal proclamation.

Yet, to do the authorities justice, they seem, as a rule, to have exerted themselves, as far as possible, to keep down the evils of such a state of matters; and no sooner were they put in possession of the important organisation of the constables, than they employed it to secure the working out of their regulations for the cleanliness of the city. Their frequent, minute, and anxious legislation on this subject, all through these years of trouble and unrest, and almost national disorganisation, is most creditable, and shews their desire to get the better, by such necessarily imperfect machinery as they could command, of a condition of matters which nothing but an effective system of drainage and water supply—the products of modern times—could radically improve.<sup>1</sup>

---

<sup>1</sup> Nor must we forget that the condition of Edinburgh, deplorable though it was, was not much worse probably than that of London and other burghs about the same

VI. The Constables were further required (Article 13) to see that the whole inhabitants within their several bounds were sufficiently provided in armour, according to their estate and degree, for the royal service, and to report defaulters to the magistrates "for ordour taking therewith."

These regulations had reference to the obligation under which every member of the community, between the ages of sixteen and sixty, lay to con-

time. In London, no doubt, kennels appear to have existed, from about the close of the 13th century, for carrying off the surface sewage and rain water. These were usually found on either side of the street, leaving a space for the footpath, and into them the inhabitants behaved to pour all dirty water, carrying it down from their houses for the purpose [Munimenta Gildhallæ Londoniensis. Liber Albus, Introduction, p. xl.]. By reiterated enactments moreover, extending from a period so early as the time of Edward II. (1307-1327), all rubbish, hay, straw, sawdust, dung, and other refuse, were prohibited from being thrown into the streets or lanes. Every householder was bound to clean away all dust from his door, and to be equally careful not to place it before that of his neighbour; and each ward was required to have "rakers" sufficient for cleaning it of divers refuse [ibid. i. 335]. Again, in the reign of Edward III. (1327-1377), it was ordained that twelve carts, each with two horses, should be kept at the expense of the city for the removal of sewage and refuse [ibid. i., Introduction, xli]. The refuse so collected was carried to public laystalls provided for its reception, and these again were emptied from time to time and the contents carted away. Notwithstanding these regulations, however, not more stringent than many enacted by the civic authorities of Edinburgh, we find that disease and pestilence, the result of defective sanitary arrangements, were rife. "One time with another," says Sir William Petty, writing towards the close of the seventeenth century, "a plague happeneth in London every twenty years" [Knight's London, i. 230]; and even so late as the latter part of the reign of Charles II. (1660-1685), London was in a state little, if at all, better than Edinburgh. Macaulay thus describes it:—"In Covent Garden, a filthy and noisy market was held, close to the dwellings of the great. Fruit women screamed, carters fought, cabbage stalks and rotten apples accumulated in heaps at the thresholds of the Countess of Berkshire and of the Bishop of Durham. . . . Saint James' Square was a receptacle for all the offal and cinders, for all the dead cats and dead dogs of Westminster. . . . When such was the state of the region inhabited by the most luxurious portion of society, we may easily believe that the great body of the population suffered what would now be considered as insupportable grievances. The pavement was detestable; all foreigners cried shame upon it. The drainage was so bad, that in rainy weather the gutters soon became torrents. Several facetious poets have commemorated the fury with which these black rivulets roared down Snow Hill and Ludgate Hill, bearing to Fleet ditch a vast tribute of animal and vegetable filth from the stalls of butchers and greengrocers" [Macaulay's History of England, i. 358,

tribute to the defence of the state against the king's enemies at home or abroad, and with that view to be provided with arms according to his means and rank.<sup>1</sup> What these weapons were, was carefully prescribed from time to time by various acts of parliament. Of these, the earliest in existence is that of Robert I., 1318, c. 27, which also appointed weaponshawings to be held at the sight of the sheriff and barons.<sup>2</sup> A subsequent act, attributed to the

359, 360]. In Glasgow, matters were in the same condition, at least in the sixteenth century. Thus in the printed extracts from the Records of that Burgh we find an order, in 1574, against middings in the foregait and on the green, the emptying of the refuse of fleshers on the foregait, and the laying of stones and timber on the streets [Extracts from the Burgh Records of Glasgow, 1573-1581; Maitland Club, p. 24]. The order was renewed in 1597 [ibid. p. 80], and in the following year there was an order for the removal of the haill middings on the foregait [ibid. p. 95]. The Burgh Records of Aberdeen also contain abundant evidence of a similar state of matters there. In 1511, an order was made to all pynouris having horses to cleanse the town of middings, and to do no other labour till the town was cleansed [Extracts from the Burgh Records of Aberdeen, 1398-1625, Spalding Club, i. 82]. This order was renewed in 1524 [ibid. i. 109]. In 1538, the throwing of fulzie or ashes on the streets was prohibited, under penalties; and all middings were ordered to be removed by the owners, or, failing their doing so, by any person who pleased to remove the same [ibid. i. 154]. In 1555, an order was issued against gathering or holding cairns or stones on the calsay, except for building [ibid. i. 290]. In 1561, the town's officers were authorised to exact, for their own behoof, a penalty from every person who laid filth on the streets; and if filth was found there afterwards, the officers were appointed to be imprisoned [ibid. i. 338]. In 1578, the statute against middings on the streets was ordered to be observed [ibid. ii. 32]. In 1617, the Privy Council, anticipating that the king, or members of the court, would visit the town during his residence in Scotland, gave orders to the magistrates to have all filth or middings removed from the streets, and the same kept clean [ibid. ii. 350]; and in 1624 an order was issued for the cleansing of the common ways entering to the burgh [ibid. ii. 392]. The terms of this order indicate a condition of matters in no degree better than that referred to in many of the Edinburgh regulations.

<sup>1</sup> This service secured for all engaged in it immunity from pointing, while with the king's host, or doing duty in the king's castle. *Leges quatuor Burgorum* 33. Acts of the Parliament of Scotland, i. 27. An act of Alexander II., 1220, c. 2, contains a specification of the penalties to be exacted from those who remained from the king's host at that time, and refers to the laws of his predecessor William on the same subject. *Statuta regis Alexander II.* Acts of the Parliaments of Scotland, i. 68. Mackenzie's Observations, p. 3.

<sup>2</sup> Acts of the Parliaments of Scotland, i. 113.

same monarch, was still more comprehensive in its provisions, and required weaponshawings to be held twice a year, according to the Wynton laws.<sup>1</sup> When James I. ascended the throne, he devoted much attention to the defence of the kingdom, and the anxiety of himself and his parliament on the subject is attested by the various acts passed during his reign, viz., the acts 1424, c. 18 & 19,<sup>2</sup> for promoting the practice of archery, and for prohibiting football and golf as likely to interfere therewith; 1424, c. 23,<sup>3</sup> ordering weaponshawings to be held four times a year in every shire; 1425, c. 2, requiring merchants passing over the sea for merchandise to import arms;<sup>4</sup> 1425, c. 17,<sup>5</sup> renewing the order for weaponshawings,—extending the same to burghs, and prescribing the kind of arms to be provided by different classes of the community; and 1429, c. 11, 12, 13, and 14,<sup>6</sup> prescribing with still greater minuteness the armour and arms to be used by persons of various ranks, and the penalties to be exacted from defaulters. These acts also afford interesting information as to the military furnishings of this period. James II. followed the same policy of cultivating the warlike character of his people, and three acts were passed during his reign with this object, viz., the act 1449, c. 7,<sup>7</sup> defining the penalties to be exacted from those who should not provide themselves with arms, in terms of the acts of Parliament, 1456, c. 3,<sup>8</sup> renewing the order for weaponshawings,—requiring all men to be armed with weapons as therein prescribed,—and appointing them to be ready to hasten to the borders, and defend the land, “quhen onie wittering cummis of the in-cumming of a greate English hoast;” and the act 1457, c. 6,<sup>9</sup> ordering weaponshawings to be held four times a year,—prohibiting football and golf, as likely to interfere with the practice of archery which was thereby enjoined,—and ordering a bowmaker and fledger or arrowmaker to be established in the

<sup>1</sup> Fragmenta quædam veterum legum et consuetudinem Scotiæ, 24. Acts of the Parliaments of Scotland, i. 388. Appendix V.

The great statute of Winchester (13 Edward I. c. 6) here referred to, and repeated and expanded on many occasions in after reigns, required every Englishman to be provided with armour corresponding to his rank, and appointed a review of arms to be made twice a year by two constables for every hundred and franchise thereunto appointed.

<sup>2</sup> Acts of the Parliaments of Scotland, ii. 5, 6.

<sup>3</sup> Ibid. ii. 8.

<sup>4</sup> Ibid. ii. 9.

<sup>5</sup> Ibid. ii. 10.

<sup>6</sup> Ibid. ii. 18.

<sup>7</sup> Ibid. ii. 34.

<sup>8</sup> Ibid. ii. 45. Mackenzie's Observations, p. 51.

<sup>9</sup> Acts of the Parliaments of Scotland, ii. 48.

head town of every shire, and to be furnished by the town with the materials of their trade, that all persons between twelve and fifty years of age might be provided with weapons and practise shooting. In the reign of James III., the following acts to provide for the security of the country were passed, viz., the acts 1471, c. 6<sup>1</sup> regulating the length of spears to be imported into the country, or to be manufactured at home,—prescribing the arms to be used by those who could not use the bow, and renewing the prohibition against football and golf, and the regulations as to the practice of archery; 1481, c. 2, 3,<sup>2</sup> regulating the length of spears, and the armour to be used by various descriptions of persons; and 1483, c. 1,<sup>3</sup> ordering the whole of the lieges to be ready, “weill abulzied for war,” to resist the “enemies of England,”—renewing the former enactments as to weaponshawings,—and appointing a roll to be made up of all the fencible persons within each shire. During the brilliant reign of James IV., the order for holding weaponshawings four times a year was renewed, and the kind of arms and armour to be worn by gentlemen, yeomen, and burgesses, was prescribed by the act 1491, c. 13,<sup>4</sup> which also re-enacted the prohibition against football and golf, and the regulations for the practice of archery.<sup>5</sup> The favourable condition of the country at the time, is indicated by the terms of the next act, 1503, c. 20,<sup>6</sup>—which, for the “keping of armour and harnes that it be not spilt nor destroyed in tyme of pece,” ordained “that all Scotland mak thair wappinschawis uppon thurisdai in witsondai wolk.” A long interval, extending over the minority of James V., then passed without any enactment relative to this subject. In 1535, however, the act 1535, c. 19,<sup>7</sup> ratified the act 1503, c. 20, and appointed weaponshawings to be held on the 20th of October and the 15th of June in every year. Five years later, several acts were passed for the regulation of the military affairs of the kingdom,—the first, 1540, c. 21,<sup>8</sup> appointed weaponshawings to be held in June and October, at such times and places as the sheriffs, stewards, bailies, provosts, and aldermen of burghs should appoint; the second, 1540, c. 23,<sup>9</sup> described minutely the kind of arms to be provided

<sup>1</sup> Acts of the Parliaments of Scotland, ii. 100.

<sup>2</sup> *Ibid.* ii. 132.

<sup>3</sup> *Ibid.* ii. 164.

<sup>4</sup> *Ibid.* ii. 226.

<sup>5</sup> The Scotch legislation for the encouragement of archery, and for the repression of all games likely to interfere with it, has its counterpart in the legislation of the sister country. See 12 Richard II. c. 6; 11 Henry IV. c. 4; 3 Henry VIII. c. 3; and 33 Henry VIII. c. 9.

<sup>6</sup> Acts of the Parliaments of Scotland, ii. 251.

<sup>7</sup> *Ibid.* ii. 345.

<sup>8</sup> *Ibid.* ii. 362.

<sup>9</sup> *Ibid.*

by the various classes of the community, and to be presented at the weaponshawings ; the third, 1540, c. 24,<sup>1</sup> prescribed the arms to be used at weaponshawings in burghs ; the fourth, 1540, c. 25,<sup>2</sup> appointed the names and arms of every person attending these national musters to be enrolled and transmitted to the king ; the fifth, 1540, c. 26,<sup>3</sup> defined the warning to be given to the lieges to attend these musters ; and the sixth, 1540, c. 27,<sup>4</sup> ordained captains, one or more, to be chosen for each parish, to train the companies in military exercises, "so that by learning of order and bearing of weapons in time of peace, they might be more expert in putting themselves in order hastily, and keeping the same in time of need." No act of national legislation took place relative to the arming and military discipline of the country, during the reign of the ill-fated Mary, if we except an act of the convention of estates, held at Edinburgh on 3d July 1549, ordering proclamation to be made charging all the lieges between the ages of sixteen and sixty to be ready on and after 1st August thereafter, to attend "weill bodin in feir of weir, as they should be warned to resist their auld enemies of England."<sup>5</sup> In 1574,<sup>6</sup> however, a convention of the estates held on 5th March 1574, during the regency of the Earl of Morton, dealt with the subject. Their act referred to the act of 1540, c. 21, as not having been observed for a long period, "to the great hurt and prejudice of the commonweill,"—appointed weaponshawing to be held throughout the country twice a year, on 20th July and 10th October, "so that none might be furnished with the armour nor weapons of their neighbours but have their own,"—prescribed the armour and weapons to be provided by the nobles gentry, yeomen, and burgesses,—directed the names and arms of all persons attending the weaponshawings to be enrolled, and required the provosts and bailies of burghs to make up the rolls applicable to their burghs. Twenty-three years later, an act of the Privy Council, dated 26th February 1597,<sup>7</sup> referred to the former acts as to arms and weaponshawings not having been put to execution,—described the arms which it behoved noblemen and gentlemen to provide for themselves and their retainers,—extended its provisions to the burghs within which the provosts and bailies were required to see to its execution,—and directed a general muster and weaponshawing of the lieges throughout the realm on 1st May 1599. This act, which was ratified by an act of convention of estates held on 30th June 1598,<sup>8</sup> required every burgess dwelling in town worth five hundred pounds of free gear, to be furnished

<sup>1</sup> Acts of the Parliaments of Scotland, ii. 363.<sup>2</sup> Ibid.<sup>3</sup> Ibid.<sup>4</sup> Ibid.<sup>5</sup> Ibid. ii. 600.<sup>6</sup> Ibid. iii. 91.<sup>7</sup> Ibid. iv. 169.<sup>8</sup> Ibid.

with "a complete light corslet, a pike, a halbert or two headed sword, or else a musket, with forcat, bendrole, and headpiece," and ordered that "for every light corslet and pike within the burgh, there be two muskets." An act of convention of the estates held at Falkland on 31st July 1599,<sup>1</sup> referring to a proposition of the king for having all his subjects provided with arms, narrates that the commissioners of Edinburgh, Dundee, and St Andrews, had undertaken, in presence of his highness and the estates, that all the burgesses in their burghs should within a year be "provided, furnished, and armed, in terms of the acts and proclamations thereanent." The act of parliament 1600, c. 32,<sup>2</sup> ratified the act of the privy council of 1597, and ordained the same to have the force of an act of parliament.

Such were the leading acts of Parliament relative to the arms and military discipline of the country, down to the period when the constables were instituted in Edinburgh, and the frequent orders of the magistrates of the city relative to weapons and weaponshawings during the sixteenth and seventeenth centuries, shew that they were not negligent of their duty in this matter.

Commencing with an order by the Regent (Mary of Guise) engrossed in the council records, of date 19th October 1554,<sup>3</sup> requiring the citizens to shew weapons, conform to act of parliament made thereupon, there is the following series of orders and proclamations relative to weaponshawings :— Act of council, dated 2d November 1554,<sup>4</sup> appointing a weaponshawing in the Boroughmuir, the weapons required being a spear, pike, or culverin. Proclamation by the provost and bailies, dated 24th February 1555,<sup>5</sup> following on the queen's letter, directed to the magistrates by act of the privy council, and appointing a weaponshawing "the nixt morn efter Law Sondag efter Pasche, on the west part of the common burrow more." Proclamation by the magistrates, dated 18th June 1557,<sup>6</sup> following on a similar letter, and ordering a weaponshawing to be held on the 18th of July thereafter, on the west end of Boroughmuir. Proclamation dated 26th July 1557,<sup>7</sup> following on letters direct of new from the privy council, ordering that a weaponshawing be held on the 13th of August, and that better provision of armour than before be made.

<sup>1</sup> Acts of the Parliaments of Scotland, iv. 188.

<sup>2</sup> *Ibid.* iv. 235.

<sup>3</sup> Council Records, ii. 33.

<sup>4</sup> *Ibid.* ii. 36.

<sup>5</sup> *Ibid.* ii. 69.

<sup>6</sup> *Ibid.* ii. 98. On 11th August 1557, James Fawsyde, baxter, was ordered to be paid vjs. viiijd. for playing on the swesche in charging the inhabitants to attend this weaponshawing. *Ibid.* ii. 100.

<sup>7</sup> *Ibid.* ii. 99.

This proclamation appoints a weaponshawing to be held, in terms of the order of the privy council, and requires the citizens to be "weill bodin in feir of weyr in ther best array, with lang wappinis sic as pik, speir, and vther fensable lang armour." Act of council, dated 13th August 1557,<sup>1</sup> authorising the treasurer to pay "Andro Bylle, speirmakar in Sanct Jhonstoun, for thre hundreth speris for seruing of the lieges," at the rate "of vijs. for every speir with the heid," and ordering this be done with diligence, because of the weaponshawing that was at hand. Proclamation dated 14th and 27th August 1557,<sup>2</sup> appointing weaponshawing for Sunday the 29th of August, in terms of letters direct from the privy council, which letters,—on the narrative that it was understood by the regent and council that most of the lieges at the weaponshawings within the realm were insufficiently provided with arms and armour, and that they were not punished therefor,—ordered a new weaponshawing to be proclaimed, and the bailies to be punished in their persons and goods with all rigour if they failed to uplift the unlaws. Proclamation dated 27th August 1557,<sup>3</sup> following on the act of council last referred to. Act of council dated May 1558,<sup>4</sup> ordering "every honest man within burch to have ane schod, schule, spaid, and mattoh within his house, to be in radiness in case the guid toun have ado." Act of council, dated 30th May 1558, ordering the deacons of crafts to be charged to consult with their friends as to what number of men may be furnishing themselves "for resistance of our auld inimeis of Ingland."<sup>5</sup> Act of council, dated 5th June 1558, prohibiting the hiring of another's servant, and requiring every citizen to have his own man armed and ready.<sup>6</sup> Precept by Mary Queen of Scots, dated at Newbattle, 4th August 1558, direct to the provost and bailies, charging them,—“in respect of the wars and the then instant necessity,—to convene the whole inhabitants within their jurisdiction to weaponshawings, and after inspecting and considering how every one was provided conform to his estate, to uplift the fines of so many as they found not lawfully provided with weapons and armour,” under certification that if they failed they would themselves be punished with all rigour.<sup>7</sup> Act of council, dated 24th June 1562, appointing "labour" to be made to get the town's standard out of the hands of John Rynde, on account of a tumult apprehended at the weaponshawing if he were allowed to retain it.<sup>8</sup> Act of council, dated

<sup>1</sup> Council Records, ii. 100.<sup>2</sup> *Ibid.* ii. 101.<sup>3</sup> *Ibid.* ii. 125.<sup>4</sup> *Ibid.* ii. 101.<sup>5</sup> *Ibid.* ii. 124.<sup>6</sup> *Ibid.* ii. 126.<sup>7</sup> Inventory of Writs in Archives of the City, i. 117.<sup>8</sup> Council Records, iv. 33.

13th September 1566, appointing a weaponshawing in the Greyfriar's yards.<sup>1</sup> Act of council, dated 2d June 1567, appointing weaponshawing on Leith Links.<sup>2</sup> Act of council, dated 14th November 1567, ordering inhabitants to have weapons, sic as "pik, speir, hagbute, culvering, mvrioun, and like fensabill armour with furnesing."<sup>3</sup> Act of council, dated 24th December 1567, requiring burgesses, on their admission, to have "jak, speir, swerd, buklar, and steill bonnet," for serving the town and keeping weaponshawings.<sup>4</sup> Acts of council appointing weaponshawings, dated 10th May 1568;<sup>5</sup> appointing payments to be made for Hamburg pikes, dated 17th October 1568;<sup>6</sup> appointing these pikes to be put in the ammunition house, dated 7th January 1568;<sup>7</sup> and appointing weaponshawing in best array, dated 17th May 1570.<sup>8</sup> Act dated 17th March 1573,<sup>9</sup> appointing neighbours to appear with long weapons on 25th May next, and appointing those of Leith who did not attend weaponshawing to be fined, dated 26th May 1574.<sup>10</sup> Proclamation of weaponshawing, dated 1st July 1575, and act of council dated 27th July 1576, ordering those who did not appear to be poinded for their unlaws.<sup>11</sup> Acts of council appointing weaponshawings, dated 4th October 1576,<sup>12</sup> 26th June 1577,<sup>13</sup> 4th October 1577,<sup>14</sup> 8th October 1579,<sup>15</sup> 1st and 16th July

<sup>1</sup> Council Records, iv. 155.

<sup>2</sup> *Ibid.* iv. 192. At these weaponshawings, as in the military musters of modern times, the citizens appear to have marched to the strains of music. An act of council dated 6th August 1557, ordains the treasurer "to pay to Jax Dow, for himself and his twa sonnys the sowme of xxs., for their playing twa dayis the time of the wappinschaw" [Council Records, ii. 100]. On 3d September 1557, the same persons are ordered to be paid xliijs. "for their service and playeing at the wappinschaw last halden vpoun Sunday the xxix day of August last" [Ib. ii. 102]. Again, on 21st June 1559, they are directed to be paid "ane crowne of the sone for thair labouris in playing of the sweis this last wappinschawin." On 11th July 1567, the treasurer is ordained to "pay xxxvs. to the thre trummis and thair pepheris quhilkis playit the tyme of the wappinschawing maid on the Linkis of Leyth, and that by and attour twentye schillingis gevyen of before for thair warning of the gude toun" [Ib. iv. 195].

<sup>3</sup> Council Records, iv. 207.

<sup>6</sup> *Ibid.* iv. 225.

<sup>9</sup> *Ibid.* v. 16.

<sup>4</sup> *Ibid.* iv. 212.

<sup>7</sup> *Ibid.* iv. 230.

<sup>10</sup> *Ibid.* v. 18.

<sup>5</sup> *Ibid.* iv. 218.

<sup>8</sup> *Ibid.* iv. 256.

<sup>11</sup> *Ibid.* v. 50, 65.

<sup>12</sup> *Ibid.* v. 67.

<sup>13</sup> *Ibid.* v. 78. Ensign-bearers were elected by the council for this weaponshawing on 17th July 1577. *Ibid.* v. 79.

<sup>14</sup> *Ibid.* v. 109.

<sup>15</sup> *Ibid.* v. 167. On this occasion four persons were elected to bear hand ensigns, and the councillors were appointed to wear armour.

1580,<sup>1</sup> 5th August 1584.<sup>2</sup> The king having ordered a general weaponshaving, the council, on 15th July 1587, ordained proclamation to be made for the citizens convening in the Greyfriar's Kirkyard, "boddin in feir of weir, and arrayet in thair best armour, to witt either with pik or speir and the armour effeirand thairto, or with hakbuts and the armour effeirand thairto, and nocht with halbarts nor Jedburch staffes.<sup>3</sup> Four days later, Lord Bothwell, as sheriff of the county, ordered the weaponshaving of the sherifffdom to be held on the Boroughmuir, thereby intending "to trouble the new feued parts thereof." A committee of the council was accordingly appointed "to intreat with his lordship and his depute for staying thereof, and to get his lordship's handwritt thereupon, also to cause pen ane article to the parliament for remedy in time to com."<sup>4</sup> This matter was settled by the payment of £200 Scots to Bothwell, who, in June 1588, granted an obligation for himself and his successors not to hold the musters of the sherifffdom on the Boroughmuir, nor to trouble the magistrates and community in the free use and enjoyment thereof.<sup>5</sup> On the 29th of May 1588, an act of council was passed, referring to the act of parliament appointing a general weaponshaving on 20th July, and ordering the whole inhabitants to appear armed "ather with hakbut and the furnesing belonging thairto, or ellis with lang wapouns, sic as pik or speir, with jak and knapskaw, or with twa handit swerds, and that nane presume to come to the gaitt the said day with halberts."<sup>6</sup> On 19th July this weaponshaving was postponed,<sup>7</sup> and on 21st August 1588, absentees, and those who had not had jacks of their own, were ordered to be pointed.<sup>8</sup> The orders for the visitors passed on the 23d of July of this year, required them to see that the neighbours within their respective bounds were sufficiently provided with good and sufficient armour, and to report those who "wantet the samyn" to the bailie of the quarter; they were further required to be in readiness "with the saidis nichtbouris, . . . weill airmitt quhen the prouest and baillies hes ado in the kingis grace or tounis service."<sup>9</sup> On the 6th of November following, the council ordered that no burgesses should be received

<sup>1</sup> Council Records, vi. 54, 57. Ensign-bearers were also appointed.

<sup>2</sup> Ibid. vii. 5. The treasurer was also directed to purchase one hundred footmen's spears.

<sup>3</sup> Ibid. viii. 96.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid. viii. 197. Inventory of Writs in City Archives, i. 152.

<sup>6</sup> Council Records, viii. 153. Ensign-bearers were elected for this weaponshaving on 17th July 1588. Ibid. viii. 165.

<sup>7</sup> Ibid. viii. 166.

<sup>8</sup> Ibid. viii. 171.

<sup>9</sup> Appendix No. III. Art. 2.

but such as appeared before them "with sufficient airmour, sic as they will tak thame to, for serving of the kingis grace and the toun, to witt oither with hakbut and furnessing belanging thairto, sic as flaske, pulder, and bullet, and ane murrioun, or ellis with jak, knapskaw, speir, or pik, and mak fayth that the said airmour is thair awin proper geir, and this by and attoure thair swords."<sup>1</sup> On 27th March 1590, an act of council was made appointing a weaponshawing to be proclaimed preparatory to the king's arrival.<sup>2</sup> A general weaponshawing of the whole inhabitants was ordered, and ensign-bearers appointed, on 2d April 1594,<sup>3</sup> and 21st January 1595,<sup>4</sup> 30th April 1596,<sup>5</sup> 3d May 1598,<sup>6</sup> 4th May 1599,<sup>7</sup> 18th April 1604,<sup>8</sup> 8th July 1607,<sup>9</sup> 27th May 1608,<sup>10</sup> 26th and 31st May 1609,<sup>11</sup> 22d June 1610,<sup>12</sup> and 5th June 1611.<sup>13</sup> Weaponshawings were thereafter ordered annually down to and including 1636, and the orders for them were renewed in 1640, 1643, 1661, and 1666.

In addition to these, orders were issued to the burghesses periodically, to have weapons in their booths, to support the magistrates in preserving the peace of the town.

VII. By the 14th Article of their "orders and injunctions," the constables were required to apprehend all profane swearers and blasphemers of God's name in the streets and markets, or at the wells; and to punish them by imprisonment, or by putting them in the jugs or stocks, according to the measure of their offence.

In dealing with offenders of this class, as well as with vagabonds and nightwalkers (under article 1), and with contraveners of the regulations for the cleanliness of the town (under article 12), the constables were invested at once with judicial and ministerial duties. They were authorised to try as well as to punish offenders.

When these orders and injunctions were enacted, there were two public general statutes against profane swearing. The first, the act 1551, c. 7, passed previous to the Reformation, proceeded upon the preamble that

"Notwithstanding the oft and frequent prechings in detestation of the greuous and

<sup>1</sup> Council Records, viii. 186.

<sup>2</sup> Ibid. ix. 39. And on 1st April ensign-bearers were elected, George Heriot younger being one of them. Ibid. ix. 39.

<sup>3</sup> Ibid. ix. 249.

<sup>4</sup> Ibid. x. 62. This was in consequence of an order for a general weaponshawing throughout the country.

<sup>5</sup> Ibid. x. 76.

<sup>6</sup> Ibid. x. 184.

<sup>7</sup> Ibid. x. 234.

<sup>8</sup> Ibid. xi. 230.

<sup>11</sup> Ibid. xii. 6.

<sup>13</sup> Ibid. xii. 64.

<sup>8</sup> Ibid. xi. 147.

<sup>10</sup> Ibid. xi. 258.

<sup>12</sup> Ibid. xii. 37.

abominabill aithis, sweiring, execratiounis, and blasphematioun of the name of God, sweirand in vane be his precious blude bodie passioun and woundis, denill stick, cummer, gor, roist, or ryfe theme, and sik vthers ugsum aithis and execrationis agains the command of God, yet the samin is cum in sic ane vngodlie vse amangis the pepill of this realme, baith of greit and small estatis, that daylie and hourlie may be hard amangis thame oppin blasphemation of Godis name and majestie, to the greit contemptioun thairof, and bringing of the ire and wraith of God vpon the pepill."

and enacted that whosoever should swear such oaths should be fined for each offence according to his rank. Strangely enough, and as if to wean the people gradually from a habit too inveterate to be curbed at once, the scale of fines exigible from all ranks of offenders was doubled at the end of three months, tripled at the end of six months, and quadrupled at the end of nine months, from the passing of the act till the expiry of a year, when the penalties were fixed as follows :—Prelates, earls, or lords, four shillings for the first fault, eight shillings for the second, sixteen shillings for the third, and banishment or imprisonment for a year and a day, at the will of the prince, for the fourth offence, "and siclyke of all vther estatis, eftir thair qualitie forsaid, to be punishit effeirandlie." The poor that had no gear to pay the fine exigible from them, were ordered to be put in the stocks, or imprisoned for four hours ; and women were appointed to be "weyed and considered, conform to their bloude or estaite of their parties that they are coupled with." The penalties recovered under the act were ordered to be applied for behoof of the poor by those appointed to collect them.<sup>1</sup>

The second act, 1581, c. 5, ratified the previous statute, and appointed it to receive effect,—the penalties being fixed at the highest scale prescribed by the act 1551, c. 7. For the better execution of these acts, censors were ordered to be appointed in the market-places of all burghs, and other public fairs, with power to imprison swearers till they had paid the prescribed fines, and found surety to abstain in future. Householdiers were moreover required, under pain of being dealt with as offenders themselves, to report to the magistrates for punishment the names of those who contravened the acts within their houses ; and magistrates who proved remiss in the execution of the act were declared to be liable to imprisonment during the king's will, and to find security under great pains for its due enforcement thereafter.<sup>2</sup>

This legislation was followed up by a series of acts of the town council, the first of which, dated 30th October 1560, statuted and ordained

<sup>1</sup> Acts of the Parliaments of Scotland, ii. 485.

<sup>2</sup> Ibid. iii. 212.

"That na maner persoun within this burgh tak vpone hand to band, sweir, tak in vane or blasfeme the name of God in ony wys, vnder the pane of setting of thame in the irne brankis, thair to remane during the iudge's will."<sup>1</sup>

The second, dated 23d April 1561, in order

"That the name of God may be had in sic reuerence as in his maist blissit Scriptouris is commandit, and for eschewing of the curse and plaigis hinging oure the heidis of all townis, cuntreis, cieteis, and peple quhair the saymn his blissit name is contemptnit and blasphemit,"

declared that "ane ordoure wald be establischt for pvnischeing of all proud, vane and vngodlie aithis and suerairs thair of without fauouris."<sup>2</sup> The third act, dated 16th October 1583, on the preamble,

"that for lak of pvnishment dyueris of the inhabitantis of this burgh and vtheris ar becom oppin blasphemers of Godis name, sweirers of execrabil aithis, as alsua sklaundereris of thair nyctbouris, and vthers schameles, and vndantit bairdis, nocht spairing at all tymes, without ony feir of God, ciuile honestie, or guid maneris to schute furth thair vennome and vnbydelit furie vpoun all persones, without respect of authoritie or power, as be thair evill nature thai ar movit,"

declared that the pains contained in the act 1581, c 5, should be

"extremelie execute vpoun the saidis blasphemers of Godis name, and sweirers of the saidis aithis, and as to the common bairdis thai sall be tayne incontinent and putt in the jogs, thair to remane be the space of xxiiij houris, and further to pay ane vnlaw of xl s. sua oft as thai failie."<sup>3</sup>

The fourth act, dated 8th September 1591, sets forth that the council

"beand conuenit for suppressing of thir common vyces of flytting, banning, and sweiring, gevis power and commissioun to the elders of the kirk, or any other honest nichtbouris that sall heir or see any persouns committand the saids crymes, to tak and put thame in the jogs for thair saids offences."<sup>4</sup>

And the fifth, dated 29th of October in the same year, proceeds as follows :—

"Forswamekill as for laik of pvnishment dyueris inhabitants and otheris that resortis to the merkets of this burgh ar becom oppin blasphemers of God's halie name, and swerers of maist horribill aythis, as alsua sum ar sclanderers of their nichtbouris and schameles bairds without feir of God or ciuile honestie, Quhairfor the saids provest and baillies declaris that the acts of parliament sall be extremelie execut vpoun the saids blasphemers of God's name, and that thai sall pay ane vnlaw at the discretion of the magestratt ; and as to the common bairds thay sall be tayne incontinent, and putt

<sup>1</sup> Council Records, iii. 55.

<sup>2</sup> Ibid. iv. 4.

<sup>3</sup> Ibid. vii. 31.

<sup>4</sup> Ibid. ix. 103.

in the jogs, thair to remayne at the plesure of the magestratt, and to pay ane vnlaw at the discretioun of the saidis magestratts."<sup>1</sup>

The "orders and injunctions" of the constables imposed upon them the duties of the censors whom the act 1581, c. 5, directed to be appointed for the suppression of swearing in the markets of the burgh and at public fairs, and extended their supervision to the streets and wells also.<sup>2</sup>

The other duties of the constables, as defined in their "orders and injunctions," are generally such as still form part of the duty of all constables; and then, as now, they were empowered to require the assistance of the lieges in the execution of their office. Every person refusing or delaying to assist the constables when called on, was declared to be liable to imprisonment and severe punishment, according to the quality of his offence.

The constables were, by article 11 of their "orders and injunctions," required to present themselves before the magistrates in the council house, on the last Saturday of every month, to give an account of their diligence in their offices. And they were obliged to receive any injunctions or statutes that the magistrates might enjoin for them, after the same had been approved by the privy council.

---

<sup>1</sup> Council Records, ix. 111.

<sup>2</sup> An act of council, dated 16th April 1673, passed for the prevention of the frequent swearing in the fleshmarkets of the burghs, subjected every freeman flesher in the under market, and every "freeman's relict," and also every flesher in the land market, to a penalty of 6s. scots for every oath uttered by them. Upon their servants a fine of 3s. scots was imposed for each oath [Council Records, xxvii. 131]. This act was renewed by an act dated 25th October 1689 [Ibid. xxxiii. 46], and the latter act was extended to the whole markets and wells of the city by an act dated 13th January 1690, which appointed the visitors of these markets and wells to exact the fines from the transgressors [Ibid. xxxiii. 84].



### CHAPTER III.

1611-1700.

Election of Constables in Edinburgh.—Institution of Justices of the Peace and Constables throughout the Country.—Orders and Injunctions for City Constables, and General Articles and Injunctions for Constables.—Watching Arrangements of the City.—Cleaning arrangements of the City.—Duties of the Constables in relation to these, and as to Strangers, Lodgers, and Loose and Dissolute Persons within Burgh, and as to Sunday Observance, &c.



T has been seen that, on 19th February 1611, the privy council passed an act for the suppression of the disorders then prevalent in the capital, especially during the night;<sup>1</sup> that on 28th August they required the magistrates and council to elect constables within the burgh;<sup>2</sup> and that constables were elected, in compliance with that requisition, on 6th September.<sup>3</sup> It appears, however, that the institution of constables was not immediately followed by the desired result, for on 4th November 1611, the privy council are found renewing their former acts against idle and debauched persons, who, “debordering in all kinds of excess, riot, and drunkenness . . . commit sundry enormities upon his majesty’s peaceable and guid subjects, not sparing the ordinar officers of the burgh, who are appointit to watch the streets of the same, of whom lately some has been cruelly and unmercifully slain, and others left for deid.” This act, like that of 19th February 1611, ordered that no one should be on the streets “after the ringing of the ten hour bell at night,” and required the magistrates to appoint per-

<sup>1</sup> Antea, pp. 27, 28.

<sup>3</sup> Antea, p. 30.

<sup>2</sup> Antea, p. 29.

sons to guard the streets, and to apprehend all whom they might find there after the prescribed time.<sup>1</sup>

The second election of constables bears to have been made on 27th March 1612, for six months ; and it is worthy of notice that it was made, *not* by the "provost baillies and council," as prescribed in the "orders and injunctions," but by the bailies, dean of guild, and treasurer, as justices of the peace within the liberties of the burgh.<sup>2</sup> A similar election was made by the bailies, dean of guild, and treasurer, as justices of the peace, with the advice of the council, on 9th October 1612.<sup>3</sup>

How these elections came to be made by the bailies, dean of guild, and treasurer, as justices of the peace, does not appear. The explanation is probably to be found in the facts connected with the institution of justices and constables in Scotland. The act 1587, c. 82,<sup>4</sup> in which reference is made for the first time to justices, ordained justice aires to be held throughout the kingdom twice a year, and regulated the mode in which this was to be done. It authorised the sovereign, with advice of the chancellor, treasurer, and justice clerk, to nominate and give commission to a certain number of "honourable and worthy persons, being known of honest fame, and esteemed no maintainers of evil or oppression, and in degree earls, lords, barons, knights, and special gentlemen landed, experimented in the loveable laws and customs of the realm, and actual indwellers in the same shires, to be the king's commissioners and justices in the furtherance of justice, peace, and quietness, together with four of the council of every burgh within the selfe." These justices it declared to "be constant and continual uptakers of dittay," and they were authorised to take inquisition and make dittay of all persons suspected culpable of certain lesser offences, and to remit those charged with higher crimes for trial by the king's justices at their circuit. Two years later, James VI., by his commission, dated at Edinburgh 6th June 1589, constituted the provost and bailies of the city, present and to come, his majesty's justices of the peace within the burgh, the town of Leith, Links thereof, Newhaven, Soultrie, and other parts belonging to the Trinity College of the burgh, and all other parts, bounds, and privileges of the same, and freedom thereof. This commission was appointed to endure for five years

<sup>1</sup> Chambers's Domestic Annals of Scotland, i. 436. A hired watch existed in Edinburgh at this time (*antea*, p. 63).

<sup>2</sup> Council Records, xii. 88.

<sup>3</sup> *Ibid.* xii. 102.

<sup>4</sup> Acts of the Parliaments of Scotland, iii. 459.

from its date, and further during his majesty's will.<sup>1</sup> On 24th June 1609, the act 1609, c. 14,<sup>2</sup> was passed, which,—after narrating the king's laudable efforts “to extirpate the ungodlie barbarous and brutall custome of deadlie feadis, whilk by the inveterate abuse of many bipast ages wes become sa frequent in this realme,” the success that had attended these efforts, and the expediency of making farther provision for the prevention of tumults and other offences in time to come,—ordained that in every shire within the kingdom there should be appointed by his majesty yearly some godly, wise, and virtuous gentlemen of good quality, moyen, and report, making residence within the same, in such number as the boundaries of the shire should require, to be commissioners for keeping his majesty's peace. These commissioners were authorised, if they found it needful, to require the dutiful and obedient subjects of the shire to concur with, and assist, them and the ordinary magistrates and officers in the execution of the act. Subsequently, by letters patent under the great seal, dated at Whitehall the 10th of November 1609, James VI.,—on the narrative that Edinburgh was the metropolitan or capital city of his whole realm of Scotland; that the supreme council and parliament had their seat there; that it was the resort of many of his subjects for the transaction of their private affairs; and that it was frequently visited by strangers,—conferred on the provost, bailies, treasurer, and dean of guild of the city, during their magistracy, and within the bounds of their liberties, the full power, authority, and jurisdiction of conservators, justices, and commissioners of the peace.<sup>3</sup> The provost, bailies, treasurer, and dean of guild thus exercised the well defined power and jurisdiction of justices and commissioners of the peace within the liberties of the city; and as it appears that the justices and commissioners appointed by the king under the provisions of the act 1609, c. 14, elected constables to aid them in the execution of the act, it may be presumed that the provost, bailies, treasurer, and dean of guild, in virtue of their commission as justices within the city, elected the constables for the burgh, without reference to the terms of the charge by the privy council, directed to the provost, bailies, and council, or to the terms of the “orders and injunctions” to the constables, approved of by the privy council, and which also provided for the election being made by the provost, bailies, and council.

<sup>1</sup> Inventory of City Charters, i. 62.    <sup>2</sup> Acts of the Parliaments of Scotland, iv. 434.

<sup>3</sup> Inventory of City Charters, i. 734.    Registrum Magni Sigilli Regni Scotorum, lib. xlvi. no. 134.    Proceedings relative to Question of Precedency between Edinburgh and Dublin, p. 27.

An election of constables on 29th October 1613,<sup>1</sup> bears to have been made by the bailies, dean of guild, treasurer, and council, for a period of six months; but no reference is made in the records to an election in the following March or April.

By the third article of the "orders and injunctions," it is declared that if any harm should be done to a constable or his assistants, in the execution of their duty, the person doing the injury should be imprisoned, or presented to the provost or bailies to be condignly punished. Of such punishment, the "Bailies' Accounts of Unlaws" affords the following illustration, under date 10th December 1612:—

Item ye tent day of December fra Edward Edeslie for injureing the constable Thomas Flyming. v. lib.

On 3d November 1613, the treasurer was authorised to print 500 copies of the orders and injunctions.<sup>2</sup>

On the 15th of the following month, the council passed the following ordinance:—<sup>3</sup>

Decimo Quinto Decembris Jm. VIc. xiiij.

The same day statutis and ordanis that forsameikle as for conseruation off his Majesties peace, repressing of sundrie and dyverse abuses and insolencies committit within this brugh, and establishing off ane solide ordour for preventing off tumults and vther enormyties that may aryse or ensey, the proveist baillies and counsall hes be comand of his Majestie erected constables within this brugh in the severall quarteris thairroff, with speciall power to thame to see his Majesties peace kepted, abuses and insolencies repressed, and to do all vther things apperteining to the office of ane constable, conforme to the particular injunctiouns givin to thame thairanent, that all inhabitants of this brugh fortefie assist and concurre with the saids constables in executioun of thair office and speciallie in mainteining of his Majesties peace, quyeting off tumults, and repressing off ryots and misorders within this brugh, as thay sal be chairgit be the said constables, vnder the paine off imprisonment and punishing off the persouns quha sal happin to refus assist and concurre with thame in thair bodye and guidis, at the optioun and will off the saids proveist baillies and counsall conforme to the qualitie off thair offence And ordainis this present ordinance to be proclaimed through this brugh that nane pretend ignorance.

The usual elections were thereafter made by the bailies, dean of guild, treasurer, and council, for six months, on 27th May, 1st June,<sup>4</sup> and 28th December 1614.<sup>5</sup> On 10th March 1615,<sup>6</sup> the bailies were ordained "to discharge the last preceding and thir present constables of their watch-sylver;"

<sup>1</sup> Council Records, xii. 135.

<sup>3</sup> Ibid. xii. 138.

<sup>5</sup> Ibid. xii. 174.

<sup>2</sup> Ibid. xii. 135.

<sup>4</sup> Ibid. xii. 152.

<sup>6</sup> Ibid. xii. 181.

and the constables then in office were appointed "to continue till Michaelmas following." On 8th November 1615,<sup>1</sup> accordingly, an election of constables bears to have been made for the following six months, but no election appears to have taken place till 8th November 1816.<sup>2</sup> The period for which that election was made is not specified. An election on 15th October 1617,<sup>3</sup> was made for six months.

On the 28th of June 1617, the first Scottish statute (1617, c. 8)<sup>4</sup> relative to constables was enacted. Under the act 1609, c. 14, it appears the king had issued articles and instructions to the justices and commissioners appointed for the keeping of the peace, "and to the constables who were presented to his Highness and to the Estates by the justices," and the act 1617, c. 8, ratified and confirmed these articles and instructions, as they are therein set forth. The second part of the Act, which relates to constables, declares that these officers are to be chosen by the commissioners and justices of the peace in their quarter sessions throughout the whole country, two at least in every parochin, or more, according to their discretion, "having consideration of the quality thereof." In great towns, likewise (not being cities or free burghs), they are to appoint a number of constables proportionally to the greatness thereof. But in all burghs royal and free cities, the constables are to be chosen by the magistrates, and they are to endure and to be changed from six to six months. This act was ratified by the statute 1633, c. 25,<sup>5</sup> passed in the first parliament of Charles I., and by the act 1649, c. 160,<sup>6</sup> passed in the second parliament of Charles II.; was confirmed during the Protectorate by order of council, dated at Edinburgh, 12th December 1655;<sup>7</sup> and was finally renewed and amended in the first parliament of Charles II., 1661, c. 38.<sup>8</sup> This last act is not materially different from the act 1617, c. 8, and it is interesting to compare them with the orders and injunctions framed for the constables of Edinburgh in 1611.<sup>9</sup>

The points of resemblance between these "orders and injunctions" and the "articles and injunctions" issued by the king, and ratified by the act 1617,

<sup>1</sup> Council Records, xii. 202.

<sup>2</sup> *Ibid.* xii. 239.

<sup>3</sup> *Ibid.* xiii. i.

<sup>4</sup> Acts of the Parliaments of Scotland, iv. 535.

<sup>5</sup> *Ibid.* v. 42.

<sup>6</sup> *Ibid.* vi. 470.

<sup>7</sup> Nicoll's Diary, Bannatyne Club, p. 172. Hutchison's Justice of the Peace, iv. 31-49.

<sup>8</sup> Acts of the Parliaments of Scotland, vii. 12.

<sup>9</sup> See Appendix No. V., in which the Act of 1617 is given *in extenso*,—the more important variations in the act of 1661 being shewn by footnotes.

c. 8, are so numerous, and the resemblance itself so strong, as to suggest the probability either that the latter were the model of the original orders and injunctions "to the constables of Edinburgh ;" or, what is more probable, that these orders and injunctions, submitted to and approved of by the privy council in 1611, formed the model of the articles and injunctions issued to the constables throughout the kingdom. As points of resemblance there are—the regulations as to constables elected, but refusing to act and to take the requisite oath of office ; the oath itself, the phraseology of which is nearly identical ; the order to apprehend for punishment all suspected persons, night-walkers, vagabonds, sturdy beggars, and egyptians, and persons having no honest means of livelihood ; the order to apprehend all persons guilty of any capital crime ; the obligation on the lieges, under penalties, to assist the constables in the execution of their duty, when required to do so ; the order to seize, with a view to punishment, all persons wearing fire-arms ; the order on the constables to attend periodically at specified places, and report their diligence ; the order to put down all frays or tumults, and the power to break open doors and go beyond their bounds in fresh pursuit of offenders. All these are essentially the same, and the differences of phraseology, as well as the additions to the general articles and injunctions, are just what might be expected from the king if the orders and injunctions to the constables of Edinburgh had been taken by him as his model.

The differences are mainly the omission of the instructions to search for and apprehend adherents of the Romish Church ; to see to the cleanliness of the constables' bounds ; and to apprehend and punish swearers,—subjects either not fitted for orders to constables generally, or in which his majesty had no great interest.

The act 1617, c. 8, and the subsequent statutes above referred to, as well as the orders and injunctions, provide for an election of constables every six months ; but it will be observed that, so far as the records of the council shew, this rule was not regularly observed in Edinburgh. In October 1617, the appointment of the usual complement of twelve officers and twenty-eight men to be constables, bears to have been made for the following six months. No subsequent election is, however, referred to till 21st October 1618,<sup>1</sup> when the persons chosen are appointed "for the year to come." Annual elections were afterwards made on 15th October 1619,<sup>2</sup> 11th October 1620,<sup>3</sup> 10th Octo-

<sup>1</sup> Council Records, xiii. 43.

<sup>2</sup> *Ibid.* xiii. 81.

<sup>3</sup> *Ibid.* xiii. 118.

ber 1621,<sup>1</sup> 1st November 1622,<sup>2</sup> 28th November 1623,<sup>3</sup> 20th October 1624,<sup>4</sup> and 12th October 1625.<sup>5</sup>

Seven days after the election last referred to, an important change was effected in the watching arrangements of the city, inasmuch as it was resolved to discontinue the practice of guarding the town by means of a hired watch, which had been in operation since 1607,<sup>6</sup> and to revert to the old method of watching by the burgesses and inhabitants. With this view the whole town was divided into twenty-six watches, according to the number of constables dwelling

<sup>1</sup> Council Records, xiii. 165.

<sup>2</sup> Ibid. xiii. 227.

<sup>3</sup> Ibid. xiii. 298.

<sup>4</sup> Ibid. xiii. 201.

<sup>5</sup> Ibid. xiii. 262.

<sup>6</sup> *Antea*, p. 62. The Bailies' Accounts of Extents and Unlaws afford interesting information as to the number and pay of the hired watch in this and previous years.

In 1612-13, fourteen men were employed for nine months at a wage of £3, 8s., and for three months "in ye deid of wynter," at £4, per man per month.

In 1613-14, sixteen watchmen were employed at a wage of £4 per man per month, with an allowance for candle, "ye haill yeir," £30. In all, £798.

In 1614-15, the winter complement consisted of eighteen men, *i.e.* fourteen "personis of ye gaird," from 1st November to 1st May, and four "men of ye gaird" from 1st December to 1st May. The summer complement consisted of fourteen men, who were employed from 1st May to 1st November. All these were paid £4 per man per month.

The accounts for this year shew that forty-five constables were exempted from payment of watch-silver, the amount exempted being £45, 6s. The numbers exempted in the various quarters are as follow:—North-west quarter, 8; north-east, 10; south-east, 14; south-west, 13. There is nothing to explain the discrepancy between the number given here and in the text.

In 1615-16, the number of the "guard" varied from twenty to fourteen.

In 1616-17, the numbers of the guard were eight from October to January inclusive, twelve from February to May inclusive, and fifteen from June to September inclusive.

In 1617-18 the guard in the several quarters was paid by the bailies separately, and no uniform rule seems to have been observed, either as regards the number of men employed or the duration of their employment. The total number, however, at any time employed does not seem to have exceeded sixteen men.

In 1618-19, eleven men were employed for twelve months, and one man for eleven months, at £4 per man per month.

In 1619-20, twelve men were employed during the six months from November to April, and eight men for the remaining six months, at £4 per man per month. The guard this year is specially designed the "Town Guard."

In 1620-21, the town-guard consisted of twenty men in December and January, ten men from February to September inclusive, and ten men in October, at £4 per man per month.

and appointed within the burgh and ports ; and each watch, or "constable's pairt" as it was termed, was ordered to watch "ilk nicht thair tyme about." This act, which is dated 19th October 1625, is in the following terms :—<sup>1</sup>

"Forsameikle as thair is nothing more for securitie of the commoun inhabitantis thair of then that the same be gairdit in the nicht with ane sufficient number of honest men, for repressing of the insolencie of euill disposed persounes, alsweill theiffis, drunkards, vagabonds, as vthers ryotous nicht-wakers, trublers of the peace of the same ; and that the ordour taiken these late yeires bygone with the watche of the same, by intertayneing of ane gaird of sum hyred persones, nichtlie to attend and

In 1621-22, the town-guard consisted of twelve men from November to March inclusive, eight men from April to July, and seven men from August to October, at £4 per month.

In 1622-23, the town-guard numbered sixteen in November, eighteen in December and January, sixteen from February to May, and eight from June to October.

In 1625-26, the guard seems to have consisted of only six men, the sum "gevin the gaird for candell" for "six monethis, ilk man thrie puns," being stated at "xviij lib."

The watch-silver accounts appear to have ceased about this time, for a reason which is obvious from the text ; but a small hired guard seems still to have been kept up, and to have been paid out of the fines levied by the magistrates. In the account of fines for 1626-27, the following entry occurs :—"Item gevin to ye foure men of ye gaird for twelff moneths service, ilk man xlvij. li., is j<sup>o</sup> lxxxij lib."

The account of fines for 1627-28 also contains the following entry :—"Item to ye four men of ye gaird, ilk man four pund in the moneth, j<sup>o</sup> lxxxij lib. ; item for candell to ye gaird, xxix lib." At this time there were also twelve ordinar (toun) officers receiving £13, 6s. 8d. each, per annum ; and four extraordinary officers receiving £20 each per annum.

Similar entries as regards the guard appear in the accounts of fines for the years 1628-29, 1630-31, 1631-32, 1632-33. The account of fines for 1633-34 contains the following entries :—"Item payit to ye thrie gaird of ye tolbuith, ilk moneth, amangis yame, 12 lib. ane c xliij lib. Item for yr candles, 18 lib. and 9 lib. is xxvij lib."

These entries suggest the probability of the guard referred to in the accounts for 1626-27 and following years being either the regular guard of the tolbooth, or the day guard of the town stationed at the tolbooth,—the night watch, as appears from the text, being kept, subsequent to 1625, by the citizens themselves.

No payments to the guard appear in the accounts of fines for 1634-35 or 1635-36, but they are resumed in the accounts from 1636-37 to 1643-44.

The following entries in the account for 1636-37 shew that both the guard and the watch were exposed to insult in the discharge of their duties :—"Item from James Dowling for abusing the watche, x<sup>li</sup> xvj<sup>s</sup>. Item from Johne Kennedie's taverne for abusing the gaird, v<sup>li</sup> viij<sup>s</sup>."

<sup>1</sup> Council Records, xiii. 300.

waitt vpon the same, hes bein fund verie unprofitable, and scarce secure for the guid of the inhabitantes of the same : Thairfore, the proveist, baillies, and counsall, efter mature advysemment and consultatioun had thereanent, and of the best meanes how to remeid the same in tyme to cum, hes concludet to casseir these persounes intertainied be thame of befoir, and to frie the inhabitantis of this burgh of the moneyis debursit be thame vpon the same, and to returne to the ancient forme obseruit of auld within this burgh, which is to watche the same be the burgessis and inhabitantis of the same, as these who ar most particular interressed in the guid and euill of the samin. And to that effect hes thocht fitt the toun be devydit in twenty-six watches, according to the number of constables dwelling and appointed within this burgh and portis of the same ; and that ilk constable's pairte sall watche ilk nichte thair tyme about."

Proclamation was at the same time ordained to be made, charging the burgesses and inhabitants, in name of the king and of the council, to

"Compeir as thai ar wairnit ilk man in his awin constables pairt in the Nether Tolbuith of the burgh, at nyne houres at nycht to ansuer to thair names, as they sal be callit be the baillies or constable of his pairt, with sufficient airmour, and not depairt therfra till fyve houris in the morning, vnder the paine of ane vnlaw of five pundis, to be payit be the contravenar *toties quoties* ; and this ordour to begin vpon the 25th of October instant."

In the following year a new military organisation was resolved upon, and it is regarded by Arnot<sup>1</sup> as the origin of the trained bands of the city. An act dated 8th February 1626,<sup>2</sup> referring to the foreign wars then existing, the possibility of invasion, and the necessity of being prepared for defence, appointed the whole inhabitants to be divided into eight companies of two hundred men each, and to be regularly exercised and disciplined. Two commanders, with other officers of war, were appointed to each company, and the commanders were required, by personal visitation at the houses of the whole men of their company, to see that they were provided with arms, reporting defaulters to the magistrates. The men of high stature and physical strength were ordered to carry a pike, and to be provided with corslet, lancelot, and head-piece ; those of less stature a musket, with bandalier and head-piece, lead, powder, and match. In this organisation no distinction was made between the merchants and craftsmen. All were dealt with simply as burgesses, but the relative rights and privileges of the merchants and craftsmen were reserved. On 9th April 1627, the city youths were ordered to

<sup>1</sup> History of Edinburgh, p. 504.

<sup>2</sup> Council Records, xiii. 324.

be formed into two companies, that of the merchants to march in the van, and that of the crafts in the rear of the trained bands.<sup>1</sup> Maitland, however, is of opinion,<sup>2</sup> that beyond selecting officers and issuing orders preparatory to the formation of the inhabitants into companies, the arrangements sketched out in these acts of council were not carried into effect. This opinion he founds on the fact that, in 1634, an application was made to Charles I. for authority to distribute the inhabitants into companies, and that his majesty, before proceeding further, required the magistrates "to erect within your citie such several companies as you intend, and so to fitt the way thair of, that it may appear that your intentiones are reall."<sup>3</sup> What followed upon that letter Maitland states his inability to learn, adding that he reads "not anything concerning the same till 1645," when the citizens were "erected into sixteen companies." It is to be observed, however, that, in 1637, the council are found electing officers, not only for the company of merchant youths, but for other companies of the inhabitants,<sup>4</sup> and between that date and 1645, frequent reference is made to the town's companies as actually existing.

Annual elections of constables were made on 13th October 1626,<sup>5</sup> 5th October 1627,<sup>6</sup> 8th October 1628,<sup>7</sup> 14th October 1629,<sup>8</sup> and 20th October 1630.<sup>9</sup> There is no notice in the records of the council of an election in 1631.

It has been seen that, under their "orders and injunctions," the constables were empowered to levy fines from those who contravened the regulations of the town relative to cleaning. It also appears that, about this time, they levied fines summarily for other offences, and accounted for them to the magistrates. The following extract from the "Baillies' Accounts of Unlaws," for the year 1619-20, shews this :—

"Item the same day (5th November 1619), ressauit from Alexander Harrouar, constable, for ane ryot takin up be him from Thomas Trunzionnes wyff, v lib.

Notwithstanding the various enactments for the suppression of vagrancy and mendicancy, to which allusion has been made, the country continued to

<sup>1</sup> Council Records, xiv. 41.

<sup>2</sup> History of Edinburgh, p. 285.

<sup>3</sup> Letter Charles I. dated 14th May 1634, engrossed in Council Records, xiv. 301.

<sup>4</sup> Ibid. xv. 12.

<sup>5</sup> Ibid. xiv. 24.

<sup>6</sup> Ibid. xiv. 71. In the Discharge of the Baillies' Accounts of Fines for the year 1627-28, the following entry occurs :—"Item to Thomas Fynlasone for printing the constabillis instrucciones xxvj li. xiijs. iiijd."

<sup>7</sup> Council Records, xiv. 107.

<sup>8</sup> Ibid. xiv. 141.

<sup>9</sup> Ibid. xiv. 179.

be overrun with beggars. Edinburgh in particular seemed to be a great centre of attraction for them ; and with a view to their employment, as well as to the benefit of the country generally, the magistrates resolved, in 1619, to introduce woollen manufactures into the city. Accordingly, after procuring subscriptions for the purpose of defraying the requisite costs, they engaged William Dickson of Delft, in Holland, to come to Edinburgh with four skilled workmen, and instruct the people in making woollen stuffs, grograms, says, bays, &c.<sup>1</sup> They fitted up a portion of Paul's Work as a manufactory, at a cost of £1359, 4s. 6d. Scots ;<sup>2</sup> and they farther appealed, with considerable success, to the citizens to support the undertaking.<sup>3</sup> This woollen manufactory,—which seems to have subserved the purposes of an industrial school, and to have been often leased out to tacksmen,<sup>4</sup>—existed till 1683, when it was converted into a linen manufactory, in which boys were trained up in virtue and industry ; and the council leased it to Thomas Kennedy and John Trotter, merchants, with power to uplift the annual rents of the mortification, and to apply them in maintaining the boys employed in the manufactory.<sup>5</sup> Kennedy and Trotter subsequently assigned their lease to Sir William Binning, William Binning his son, and George Clark ; but in 1696 the town sought to reduce the lease and assignation as an inversion of the purposes of the Paul's Work mortification. The lease was, however, sustained by a majority of one of the judges, on 22d November 1698.<sup>6</sup> In August 1699, the town paid the lessees £500 sterling, with interest, from Martinmas 1698, in consideration of their renouncing the tack and the whole sums due to them in virtue thereof.<sup>7</sup>

At best, however, these manufactories only dealt with a small portion,—and that by no means the worst,—of the idle and vagabond population, and accordingly on 27th June 1632, the magistrates,

“for suppressing of strong vagabonds sturdye beggars and ydill persounes haill and strong in bodeye and haible to worke, licentious and maisterles persounes and vthers. leiving ydillie without any occupation or craft and givin over to all kynd of sin and wickednes and disobedent to maisters and parentis and for putting of the saids.

<sup>1</sup> Council Records, xiii. 84, 88.

<sup>2</sup> *Ibid.* xiii. 106.

<sup>3</sup> *Ibid.* xiv. 15. Maitland's History of Edinburgh, p. 470.

<sup>4</sup> Council Records, xvii. 45, 22d September 1648. *Ibid.* xvii. 149, 2d May 1649. *Ibid.* xviii. 126, 14th October 1654. *Ibid.* xix. 81, 4th November 1659.

<sup>5</sup> *Ibid.* xxx. 124.

<sup>6</sup> Fountainhall's Decisions, i. 709.

<sup>7</sup> Council Records, xxxvi. 374, 77.

persounes to worke, notwithstanding the number of the foiresaids euill and ydill persounes is daylie augmentit and especiallie within this burgh and flowis hither frome all pairts of this kingdome and from vther pairtis bezond sea whair they live without any kynd of punischement in all kynd of syn and wickednes, procuring daylie be thair lewd and vnlanfull conversatioun the wraith and displeasoure of God to be poured out against this kingdome, and this toun in particular, for avoyding quhairof and to the end that the foresaids may be compellit to betak themeselfes to sum vertew and lauffull calling for wyning of thair leiving, . . . .”<sup>1</sup>

resolved to establish a correction-house. With that view they entered into arrangements with the kirk-sessions,—who agreed to contribute towards the expence of the undertaking,<sup>2</sup>—and ordered the “two eastmost houses upon the south side of the close” of Paul’s Work to be fitted up for the purpose. William Stamfield, indweller in Wakefield, was appointed master of the establishment, and the “eastmost corse-house in St Paul’s Work was assigned as a residence for him and his family. Stamfield was allowed a yearly salary of £90 sterling, and a farther sum of £10 sterling, in respect of which he was bound, *inter alia*, (1) to receive, maintain, and subject to discipline as in correction houses elsewhere, as also to provide work and proper implements of labour for, all persons whom the magistrates might send him or order him to receive,—not exceeding fifty at one time; and (2) to receive such additional number as the house could contain, and the magistrates might send for corporal punishment, or imprisonment for four or five days.<sup>3</sup> The act of council, embodying the arrangements with Stamfield, and regulating the mode in which the correction house was to be kept, was approved of by the privy council on 3d July 1632,<sup>4</sup> and on the 25th of August the following act of council was issued:—<sup>5</sup>

Vigesimo Quinto Augusti J<sup>m</sup>. VI<sup>o</sup>. Trigesimo secundo.

Forsameikle as the proveist baillies and counsall hes for restrayning of beggars appointed ane correctionn hous, thairfore thai ordayne the haill constabillis of this burgh to tak and apprehend all such ydill maisterles persounes and sturdie beggars young or old and to bring theme to the laich tolbuith to be presented to the magistratiss, that therefter the ordiner course for sending of theme to the correctionn hous may be taiken, and ordainis such constabillis as salbe fand negligente in this point to incur ane unlaw of fyve pundis *toties quoties*, as also ordanis the haill officeris of this

<sup>1</sup> Council Records, xiv. 233.

<sup>2</sup> Ibid. xiv. 234.

<sup>3</sup> Ibid. xiv. 238. Maitland’s History of Edinburgh, p. 341.

<sup>4</sup> Council Records. xiv. 369.

<sup>5</sup> Ibid. xiv. 238.

burgh to concur with theme in the execution of this present act, and all other nicht-boures to be requyred be theme under the payne to be pünished be the magistrattis in their persounes and goods.

The correction house thus instituted was attended with beneficial results in Edinburgh, and the king having authorised all his free burghs to establish such houses, the council, by an act dated 3d February 1636,<sup>1</sup> formally declared the houses at St Paul's Work, before referred to, to be a correction house, and ordained

"all vagabonds, strong and sturdye beggars, ydill and maisterless persounes, strong in body and abill to worke, above the age of aucht yeires and vnder the aige of thriescore, servandis disobedient to their maisters, and children dissobedient to parents, leud livers, commoun scaldis, and incorrigibill harlottes, not amending be the ordiner discipline of the church, to be taiken be the magistrattes of this burgh, or constabillis, or such as the saids magistrattis sall appoint, whairsoeur they can be apprehendit within this citie, liberties thairof, toun of Leith, or streittes leidand betwixt Leith and Edinburgh, and to be putt in the said hous to be corrected in maner to be appointed by the saids magistrattis, and to remayne thair so long as they salbe ordaynit; or continewit thairin, according to thair merite, and to be compellit to worke such kind of laubour as salbe appointed to thame be the maister of the said hous; and to ressaive such intertaynement as he sall think thair worke to deserve."

By this act, Stamfield was confirmed in his office, and the regulations to be observed by him were almost identical with those enacted in 1632.<sup>2</sup>

Annual elections of constables were made on 19th October 1632,<sup>3</sup> 6th November 1633,<sup>4</sup> and 4th October 1634.<sup>5</sup>

On 31st October 1634,<sup>6</sup> the council renewed their orders that all the inhabitants should assist the constables in the execution of their duty, under the penalty of £20 *toties quoties*, and farther punishment of the persons of the defaulters at the discretion of the magistrates.

Annual elections of constables were made on 9th October 1635,<sup>7</sup> 21st

---

<sup>1</sup> Council Records, xiv. 368.

<sup>2</sup> This correction-house existed for about a century, when the establishment was transferred to the new buildings and grass yard at the Greyfriars' Churchyard. The correction-house itself was thereafter sold, and its site, with the garden and ground adjoining, were feued to James Macdowal, merchant in Edinburgh in 1750.

<sup>3</sup> Council Records, xiv. 246. <sup>4</sup> Ibid. xiv. 283. <sup>5</sup> Ibid. xiv. 315. <sup>6</sup> Ibid. xiv. 318.

<sup>7</sup> Ibid. xiv. 354. As affording an indication of the size and importance of the city at this time, it may be noticed that, in 1635, an exact account of the houses in the burgh

October 1636,<sup>1</sup> 6th October 1637,<sup>2</sup> 19th October 1638,<sup>3</sup> and 13th October 1639.<sup>4</sup>

The regular watch of the neighbours was intended for ordinary times, and in times of peculiar danger was supplemented by an extraordinary watch. Thus on 4th March 1640, the council "finding the necessitie of thir perillous tymes of ane extraordinar watche, by and attour the ordinary nichtlie watche," ordained, that with consent of the neighbours, "thair be levied three hundreth men to serve nicht and day for ane extraordinar watche so lang as the counsell sall think necessar." An extent was appointed to be set for the payment of this watche,<sup>5</sup> which was armed with "muskets and bandeliers effeirand" out of the toun's magazine."<sup>6</sup> It was also necessary to take strict order with the "regular" watch of the neighbours, which had become very irregular, and the following act was passed on the 29th of May in the same year, to place this watch on a more effective footing :—

"Haiveing talkin to their considerioun the gritt necessitie the haill inhabitants of this burgh hes of ane constant and strong watche of thair oun number in this straitnes of tyme, both for thair awin securitie and saiftie of all the liedges resorting hither, which in ane fair and pleasant way hes bein expected to haue bein performed, bot is fund to be altogether neglected be all the inhabitants of this burgh to thair gritt dainger, haysert, and disgraice, for remeid quhair of the saidis proveist, baillies, and counsall hes statut and ordaynit that the nichtlie watche of the inhabitants sall begin nichtlie at aught houris in the cloak at nicht, and to abyd till four in the cloak in the morning thairetter, And for this effect hes ordaynit that the said watche sall be keiped be ane wholl companye, with the commanders and vther under officers be theme selffis, in ther oun persounes, weill and sufficientlie airmitt, beginning at the secund companie of the northeist quarter of this burgh, and so furth in order, to be in readiness at touck of the drum, before aucht in the cloak at nicht, and sall repayre nightly at 8 o'clock to their colours in the parliament yard, to receive their orders from their commanders."

Annual elections of constables were made on 16th October 1640,<sup>8</sup> 19th November 1641,<sup>9</sup> 13th October 1642,<sup>10</sup> 16th October 1643,<sup>11</sup> and 16th October 1644.<sup>12</sup>

and liberties, with the rental, was taken up by order of the privy council, with a view to raising 12,000 merks yearly for the ministers. From that account it appears that the houses numbered 5071, and the rental amounted to £192, 118, 5s.—(Maitland's History of Edinburgh, p. 70.)

<sup>2</sup> Ibid. xv. 32.

<sup>6</sup> Ibid. xv. 120.

<sup>1</sup> Council Records, xiv. 403.

<sup>8</sup> Ibid. xv. 161.

<sup>11</sup> Ibid. xv. 317.

<sup>3</sup> Ibid. xv. 70.

<sup>9</sup> Ibid. xv. 122–124.

<sup>9</sup> Ibid. xv. 208.

<sup>12</sup> Ibid. xvi. 13.

<sup>4</sup> Ibid. xv. 105.

<sup>7</sup> Ibid. xv. 139.

<sup>10</sup> Ibid. xv. 254.

On the 24th of February 1644, "the necessities of the times" induced the magistrates to order a constant watch to be kept night and day ; and for that effect they appointed "the first company of the north-west quarter under commandment of Captain James Murray and John Turnour, to begin upon Monday next, and to enter to the court de gaird to be placed under the market cross at 10 in the morning and to abide till next day at the same hour." Burgesses, without exception, were charged to be careful to keep the watche, —well prepared and furnished with musket, powder, ball, and match, and such armour and furniture,—daily and nightly, as they were warned.<sup>1</sup> On the 8th of November, the council, "finding the neighbours to be destitute of ane dreill master and wauch master for attending the nightlie watches and other exercises needful of armes in such ane exigence of tyme as the public necessitie of the toun requyres," nominated and admitted "John Brodinstar to discharge the office during the counceils will, for fifty merks Scots monthlie."<sup>2</sup> On the 19th of March 1645, an act of council was passed which, after referring to the urgent necessity that existed for having a strong nightly watch, ordained

"Proclamation to pas throw this burgh, be sound of drum, commanding and charging that all the burgessis and inhabitantis within this burgh, according to their severall companies, keip and attend the said watche the tyme foirsaid, under the paine of fyve pundis for the first fault, ten pundis for the second, and farder punishment of thair persone at the will of the magistratts : And all that comes sero sall pay twelff schillings *toties quoties* : And farder, that in respect the saidis watches cannot be orderlie keipit except they be sufficientlie instructed in militarie discipline, that all the inhabitantis of this burgh be in readiness to marche furth for dreilling under their severall commanderis and cullouris, to the places accustomed, at the towk of the drum, at sex in the cloak in the morning, under the paine of fyve pundis to be payit be ilk person sall failzie."<sup>3</sup>

Subsequently, by an act dated 9th May in the same year,<sup>4</sup> the council remodelled the whole arrangements of the trained bands. The town was divided into sixteen parts, and from each part a company was drawn. Of these companies, ten captains were appointed to be merchants and six craftsmen, and each merchant captain was ordered to have a craftsman as his lieutenant. The ensigns and sergeants of all the companies were to be selected equally from the merchants and craftsmen. On 21st May accordingly, the sixteen captains were elected,<sup>5</sup> several of the commanders of the old companies hav-

<sup>1</sup> Council Records, xv. 336.

<sup>3</sup> Ibid. xvi. 38.

<sup>5</sup> Ibid. xvi. 48.

<sup>2</sup> Ibid. xvi. 17.

<sup>4</sup> Ibid. xvi. 46, 49.

ing previously resigned, and on the 26th of May, the lieutenants, ensigns, and sergeants were appointed.<sup>1</sup> The watch, however, still continued to be kept by the inhabitants, though, in consequence of the ravages of the plague, and the desertion of the town by the greater part of the inhabitants, it became necessary, on 13th August 1645, as an exceptional measure, to hire one hundred soldiers to guard the town by day and night.<sup>2</sup> An act, dated 30th September 1646, ordered this hired guard to be discontinued, and the old form of watching by the inhabitants to be resumed.<sup>3</sup> The citizens were, however, obviously remiss in their watching duties, and as a means of enforcing their observance, the council, on 12th February 1647, appointed Lieutenant-Colonel Auchinlik to take up the unlaws of all defaulters, and of such as would not keep the watch in their ordinary nights.<sup>4</sup> On 31st August 1648, the council being informed that "a great number of the lieges of this realm are assembled in a warlike manner, and to prevent the city being surprised," ordered four whole companies, well armed, to guard the town.<sup>5</sup> This order must necessarily have pressed heavily on the citizens, and probably elicited much complaint, for on 22d September 1648, the council passed the following act :—<sup>6</sup>

"Forsamekle as the counsell taking to thair consideratioun the great danger this brugh hes bein in these severall monethis bypast for laik of orderlie watching of the toun, which cannot be reduced to any right ordour without there be a watche keipit thairin, as weill in the day tyme as in the night, and considering that the day watche doeth heavilie prejudice the nighbouris in taking them from there ordinarie callings and vocationis, Thairfor to the intent that both the toun may be weill guardit in the night time, and the nighbouris fred from guairding thairrof in the day tyme, the counsell hes thought fitt to agrie with Lieutenant Colonell Affleck, upoun the conditionis and pay eftirmentonat, and that he sall keip up a companie consisting of thriescoir souldiers, with a lieutenant, twa serjandis, and thrie corporallis, who sall be obleist to keep the day watche fra \_\_\_\_\_ in the morning to \_\_\_\_\_ at night, according as they sall receive ordour from the magistrattis, as lykways the said Livt. Collonell or some of his officeris sall nightly wait on at the setting of the night watche quhilk is to be keipit be the nightbours, and to sie them orderlie sett on till sick tyme as the counsell sall resolve upoun some more effectuell way of settling the guarding of this brugh."

The monthly pay of the officers and men of this guard, amounted to £763, 6s. 8d. This expenditure seems to have been grudged by the citizens, and on 11th October 1648, an act of council was passed, authorising the neighbours

<sup>1</sup> Council Records, xvi. 50.

<sup>2</sup> Ibid. xvi. 136.

<sup>3</sup> Ibid. xvii. 30.

<sup>4</sup> Ibid. xvi. 57.

<sup>5</sup> Ibid. xvi. 161.

<sup>6</sup> Ibid. xvii. 46.

to be tried whether they would serve as a watch or pay 4s. weekly to the bailie of their quarter for their personal watching.<sup>1</sup> The latter alternative was generally preferred, and on 1st November an act was passed for levying forty men, that being all that the voluntary subscriptions of the neighbours would maintain.<sup>2</sup> Colonel Affleck<sup>3</sup> had a few days previously been removed from his command, which was transferred to Major Thomas Weir.<sup>4</sup> This company of soldiers appears to have been the origin of the regular town guard, co-existing with the trained bands of the city, all of whom were often called out in arms on important occasions, such as the sittings of parliament, the execution of influential persons like the Marquis of Huntly,<sup>5</sup> &c. The collection of the extent for the support of the guard, seems at one time to have been entrusted to the major,<sup>6</sup> but falling into arrear, was transferred to the constables, who, on 16th May 1649, were enjoined to seek from the neighbours "seven months' pay for Major Weir's bygones, and to employ the officers to assist them."<sup>7</sup> They also, however, appear to have failed in recovering these arrears, for shortly afterwards the treasurer was authorised to borrow a sum of money to pay what was still due.

Annual elections of constables were made on 9th March 1646,<sup>8</sup> 13th October 1647,<sup>9</sup> 19th October 1648,<sup>10</sup> and 17th October 1649.<sup>11</sup>

Whatever benefits had resulted to the town up to this time from the institution of the constables, it is but too obvious that they were unable to secure its cleanliness. When James VI. revisited Edinburgh in 1617, the magistrates found it necessary to renew their orders for the removal of filth from the streets; and in the following year, it was made the subject of complaint by the privy council, and the ground of a proclamation against such abuses, that the candlemakers and butchers were allowed to carry on their business within the town to the great disgust of "civil and honest neighbours, and of the nobility and country people that comes there for their private adoes;" and it is added, "It hath oftentimes fallen out that in money streets and ven-

<sup>1</sup> Council Records, xvii. 58.

<sup>2</sup> Ibid. xvii. 69.

<sup>3</sup> Ibid. xvii. 67, 68.

<sup>4</sup> The Major Weir whose crimes, for which he was executed on 14th April 1670, have given his memory a notoriety that still attaches to the locality of his abode at the head of the West Bow. [Chambers's Traditions of Edinburgh, 32-37.]

<sup>5</sup> Council Records, xvii. 124, 21st March 1649.

<sup>6</sup> Ibid. xvii. 97, 29th December 1648.

<sup>7</sup> Ibid. xvii. 154.

<sup>9</sup> Ibid. xvi. 215.

<sup>11</sup> Ibid. xvii. 195.

<sup>8</sup> Ibid. xvi. 78.

<sup>10</sup> Ibid. xvii. 60.

nels of the said burgh, the filth of slaughtered guidis is in such abundance exposed to the view of the people, and the closes and streets sae filled therewith, as there can be no passage had through the same.”<sup>1</sup> This proclamation, however, was not found sufficient to secure the removal of the evils complained of, and on 4th March 1619, the privy council sent an order to the magistrates, requiring them to take measures for having the streets kept clean. The condition of the town at that time is thus described :—

“It is now become so filthy and unclean, and the streets, vennels, wynds, and closes thereof so overlaid and covered with middings, and with the filth of man and beast, as the nobles, councillors, servitors, and others his majesty’s subjects wha are lodget within the said burgh, cannot have ane clean and free passage and entry to their lodgings, wherethrough their lodgings have become so loathsome unto them as they are resolved rather to make choice of lodgings in the Canongait and Leith, or some other parts about the town, nor to abide the sight of the shameful uncleanness and filthiness which is so universal and in such abundance through all parts of the burgh, as in the heat of summer it corrupts the air, and gives great occasion of sickness ; and furdur, this shameful and beastlie filthiness is most detestable and odious in the sight of strangers, who, beholding the same, are constrained, with reason, to give out mony disgraceful speeches against this burgh, calling it a puddle of filth and uncleanness, the like whereof is not to be seen in no part of the world.”<sup>2</sup>

The plan proposed by the privy council for remedying this state of matters was, that the inhabitants should keep “the streets forenent their ain bounds clean, as is done in other civil, handsome, and weel-governed citeis.” How far this order, and the action that may be presumed to have followed upon it, tended to secure a more creditable condition of matters, does not appear ; but in 1621, we find the council proclaiming, by sound of drum, an order on all the inhabitants to clean the steets before the weaponshawing.<sup>3</sup> In 1633, again, the streets were in a very offensive state, and the magistrates,—preparatory no doubt to the visit of Charles I., and his coronation in that year,—passed an act in which, “finding the Hie streittis and publict vennellis of this burgh to abound with all kynd of filth, to the reprochte of the toun wheir straingeris does repair to the same,” they directed each of the bailies to engage a cart and horse to carry away the filth daily, and to get hurle-barrows

<sup>1</sup> Privy Council Register, 17th Feb. 1618. Acts of the Parliaments of Scotland, iv. 627.

<sup>2</sup> Privy Council Registers, March 1619. Council Records, 5th March 1619, xiii. 53.

<sup>3</sup> Council Records, xiii. 152, 4th May 1621.

for cleaning out the closes.<sup>1</sup> Another act of council, in 1641, discharged the gathering of all middings on the "hie streit or vennelis of this burgh, or neir the town wall or dykis, or the Grayfreir yaird;" and directed accumulations of filth already collected, to be removed within forty-eight hours.<sup>2</sup> A similar act passed in 1642, referred to the numerous previous prohibitions against keeping middings on the streets, closes, and other public places of the town, and the "uncivility" of many who continued to transgress these prohibitions "to the great scandal of the burgh, and endangering the inhabitants of infection."<sup>3</sup> In the same year the fleshers of Edinburgh voluntarily engaged, in conformity with the 29th act of the 23d parliament of James VI. (1621, c. 29),<sup>4</sup> to provide sufficient slaughter-houses, either out of the burgh, or at the North Loch side; and undertook meanwhile not to cast forth any blood or filth upon the high streets or vennels, under heavy penalties.<sup>5</sup> In the following year, an order dated 10th November 1643, and proclaimed by sound of drum, directed all middings to be removed, and appointed the whole inhabitants to carry their fulzie to the close heads or vennels, that the same might be the more conveniently removed. Every householder was moreover directed to cause the refuse from his dwelling to be put out twice a-week, on Tuesday and Friday, "with certification to them befor whois dooris any sall be fund, that they sall be punished in thare personis and goods at the discretion of the magistrates."<sup>6</sup> In the following month, the council agreed with Alexander Heeriot to furnish a cart, horses, and servant to clean the streets and vennels, for which service he was to receive eight merks weekly.<sup>7</sup> In 1645, Edinburgh again suffered from the ravages of the plague, the fear of which induced "the greatest part of the inhabitants" to desert the town. It became necessary, in consequence, to provide a hired

---

<sup>1</sup> Council Records, xiv. 261, 4th April 1633. The Bailies' Accounts of Fines for the year 1632-33, contain the following entry, which is the first of the kind:—Paid to James Waddie, cairter, for 26 weeks for keeping ye streitts cleine at 5 lib. vj<sup>s</sup> 8<sup>d</sup>. weeklie, is ane c. xxxviii<sup>li</sup>. xiiij<sup>s</sup>. viij<sup>d</sup>.

<sup>2</sup> Council Records, xv. 187, 23d April 1641.

<sup>3</sup> Ibid. xv. 234, 25th May 1642.

<sup>4</sup> Acts of the Parliaments of Scotland, iv. 627. This act ratified and confirmed the Act of the Privy Council of 17th February 1618, which has been already alluded to.

Council Records, xv. 262, 19th November 1642.

<sup>5</sup> Ibid. xv. 322, 10th November 1643.

<sup>6</sup> Ibid. xv. 327, 8th December 1643.

watch for the protection of property, and also "some uther personis for clenzing the toun." For the payment of these men, a sum of £1800 was ordered to be borrowed till the required funds could be raised from the inhabitants.<sup>1</sup> Proclamation was again made against middings and filth in the streets in 1646;<sup>2</sup> and the penalties imposed for non-compliance were appointed to be collected by the constables, such penalties being declared to be "besyd quhatevir uthir punishment it sall pleas the magistrate to inflict upon the personis offenderis." In 1648, the appointment of one George Watt to be an ordinary scavenger,<sup>3</sup> shews that some machinery for the cleansing of the town continued to exist; but the subsequent legislation of the same year appears to indicate that it was not sufficient for the purpose. An act passed in December ordained the constables

"To exact twelf pennies or tua schillings at most monethlie from everie considerable householder within the same, to be employed be them in the best manner of way they can devyse for carieing away the muck, and keeping the streitt and vennells of this brugh clean,—ilk constable within his awin bounds,—and to vse exact diligence herein under the pain of twentie pounds, to be imposed upon everie constable *toties quoties*, if he be found negligent in his dewtie aforesaid; and to the effect the foresaid constables may be the better answered of the foresaid exactioun, for thè vse foresaid, ordains the officeris and souldiers of the brugh to concur and assist the saidis con-

<sup>1</sup> Council Records, xvi. 57, 13th August 1645.

<sup>2</sup> Ibid. xvi. 148, 2d December 1646.

<sup>3</sup> Ibid. xvii. 55, 4th October 1648. In London, there existed in early times a class of public officers called "*scavengers*," whose duty it was to attend at the quays, and collect the custom on the *scavage* (the showage or opening out) of goods imported into the city. At a later period other duties were imposed upon them, and they were sworn to oversee that the pavements within their respective wards "are well and rightly repaired, and not made too high, in nuisance of the neighbours; and that the ways, streets, and lanes, are cleaned of dung, and all manner of filth, for the decency of the city; and that all chimneys, furnaces, [and] reredoses are of stone, and sufficiently defended against peril of fire." From these officers the *scavengers* of the present day have no doubt taken their name, though their duty in the actual removal of filth was performed by the subordinate "*rakers*" or rakers, a certain number of whom were maintained by each ward to remove the filth from the streets to the public laystalls provided for its reception. The scavengers of each ward were elected by the wardmote, a public meeting of the inhabitants, duly convened and presided over by the alderman or his deputy. [Munimenta Guildhallæ Londoniensis, Liber Albus. Introduction, p. xli. p. 38, 313.]

stables in the prosecution of their dewtie aforesaid, as they will be answerable to the town council thairanent."<sup>1</sup>

Another act of council, passed in the same month, refers to the fact, that notwithstanding the many acts which had been made from time to time with a view to the cleanliness of the town, the same had often proved ineffectual, and never more so than "of laitt, so that the streetts and vennells of this brugh are become altogedder vile and filthic, to the great disgrace of the citie, and offence both of neighbours and strangers resorting thairto." It accordingly renewed the prohibition against throwing filth on the streets and closes, under a penalty of £10, and further punishment of the person of the defaulter, *toties quoties*, and authorised any person in burgh or land to carry away the whole filth on the streets and closes that is offensive to the neighbours or strangers. The act farther ordained

"The constables to see the samyn done within thair awin bounds, and be assistant therein, under the paine of ane unlaw of £20 money, to be exacted monethlie of the saids constables in case of faillie, but favour."<sup>2</sup>

In the following year (1649) the constables were ordained "as of befor to doe all diligence for clenzing the toun betuix and sonday come eacht dayes at furthest; declaring that the constable whose boundis sall not be clenzit betuix and the said day sall pay £20 as the unlaw appointed for his negligence without defaultation; and ordains the moderator of the constables to intimate this ordour to the rest of the constables with all diligence."<sup>3</sup> This act, it will be observed, refers to the "moderator"<sup>4</sup> of the constables, and indicates the exist-

<sup>1</sup> Council Records, xvii. 84, 6th December 1648.

<sup>2</sup> Ibid. xvii. 92, 25th December 1648.

<sup>3</sup> Ibid. xvii. 137, 11th April 1649.

<sup>4</sup> The term "moderator" was synonymous with president, and was not confined, as Jamieson would seem to indicate, to ecclesiastical courts. With the exception of the period between 1745 and 1796, when the term "preses" was in use by the constables, the head of the body has uniformly retained the title of moderator. This was the title also given to the president of the Stent Masters [Council Records, xxxiv. 179, 19th May 1693], as well as to the president of the captains of the Trained Bands, who, it has been seen, received a constitution from the Town Council in June 1663 [Ibid. xxix. 258, 8th October 1680; Ibid. xxx. 79, 7th October 1681]. The captain of the first or "Orange Company," seems to have been the moderator-captain of the Trained Bands *ex officio*.

The President of the Convention of the Royal Burghs of Scotland was also termed the "Moderator." [Printed Records of Convention, i. 30, 25th October 1574, &c.]

ence, even at this date, of some organisation in the body. Two days afterwards, the council, considering how much the common wells and the water thereof "are filthilie abused and unlittered with the stablers' fulzie lying in muck-middings upon the high street, near the said wells, especially now in the summer time," prohibited stablers and all others from laying dung or other filth on the streets near to these wells; and ordained them to remove the middings from the wells furth of the town, or to some remote places, within twenty-four hours, under penalties. On 31st October in the same year, a proclamation was ordered to be made, prohibiting the keeping of swine within the burgh or its liberties, and requiring the whole middings to be removed from the High street and common vennels within twenty-four hours after publication, under the pains and penalties formerly prescribed.<sup>1</sup> Another act of the council, passed on 1st May 1650, refers to the filthiness of the streets and closes, occasioned by the casting forth of dust and excremies by night and day, "the like whereof is not to be seen in any civil cittie," wherefore and because "the same is very pestilentious and noysome, all persons are prohibited under penalties from casting filth in the streets and closes, under the paine of breaking up of thair doors be the watche, poinding of thair houses, imprisonment of thair personis, and inflicting of such uyther punischment upon them as the magistrates shall think fit but favour."<sup>2</sup>

On 31st October 1649,<sup>3</sup> for what reason does not appear, the practice of watching by the neighbours was ordered to be resumed, the whole neighbours being required "to attend the constables of this brugh nightlie upoun watche of thair tour as it comes about to them, and as they are wairned thairto." That this order was not well obeyed, however, appears from the following act, dated 1st May 1650:—<sup>4</sup>

"Forsameikle as the counsell taking to their consideratioun the report of the constables of this brugh anent the kieping of the nightlie watche within the same, that they for the maist pairt consist of hyrelings, both unable in bodie and not worthie of so great trust in this time of trouble, and of so great resort of strangeris and utheris to this brugh, Thairfoir the counsell, being desyrous to provyd for the weill and saftie of this brugh at such a tyme, doe heirby statute and ordaine that ilk persone heireftir, at thair turne, ether [come] personallie themselfis to the watche, or utherwyis send a persone able in bodie weill and sufficientlie armed, and such as the will be answerable for, And that under the paine of fyve pundis money *toties quoties* for ilk failzie; and ordanis proclama-

<sup>1</sup> Council Records, xvii. 198.

<sup>2</sup> Ibid. xvii. 249, 1st May 1650.

<sup>3</sup> Ibid. xvii. 198.

<sup>4</sup> Ibid. xvii. 249.

tioun to pas threw this burgh be towk of drum that nane pretend ignorance of the samen ; and appoyntis the baillies and constables to resave no persone upon watch but such as ar able and worthie of the trust."

This order was followed on 17th July by an act of council appointing the night watch to be kept by the several town's companies in turn, and proclamation to be made to that effect.<sup>1</sup> Nor was the requisition to the neighbours to perform the duty of watching unenforced. On the 6th of August, Gideon Murray, merchant, was fined £20 for eight days' absence from the watch, and ordered to be imprisoned till the fine was paid.<sup>2</sup> This stringency may, however, be accounted for by the fact that the English army under Cromwell had crossed the Tweed on the 22d of July,<sup>3</sup> and was now near Edinburgh, for the defence of which active measures had been taken. "For this end," says Nicoll, the inhabitants had

"erectit scaffoldis within the haill walls of the toun, set up their ensignes thairon, extending to xxxij culloris, mannit the wallis with numberis of men, planted ordinance thairon, demolisched the haill houssis in St Marie Wynd, that the enymie sould haif no schelter thair, bot that thai mycht haif frie pas to thair cannoun, quihilk thai haid montit upone the Neddir Bow. The toun also wes forcit to demolische and tak down the four pricke bigged on the Neddir Bow, quihilk was ane verry great ornament thairto, and placed cannoun thairon. The committee also causit demolische sindrie houssis at the Potterraw Point, and West Point, that the Castell of Edinburgh, and uther pairtes quhair thair cannoun was stellit, mycht haif sicht of the enymie in cais he sould assalt and greater fredome to assalt him, be taking down of the houssis that wer impedimentis to the sight of the enymie, and force of the cannoun." <sup>4</sup>

On the 21st of August the following act of council was passed :—<sup>5</sup>

"Forsameikle as the counsell taking to thair consideratioun how the haill companies of this burgh hes bein upoun the night watche the severall nights bygane without intermission, and to the effect they may have some ease, the counsell appoynts eight companies of the sexten companies of this burgh to be nightlie upoun the watche, and to relieve utheris night about be courses, and that the twa companies of the youths divyd themselves equallie, and the one halfe of ilk ane of thair companies to be upoun the watche nightlie, and the other half to relieve them night about, and this order to be obserued till farder ordouris."

<sup>1</sup> Council Records, xvii. 271.

<sup>2</sup> Nicoll's Diary, p. 19

<sup>3</sup> Council Records, xvii. 218.

<sup>4</sup> Nicoll's Diary, p. 24.

<sup>5</sup> Council Records, xvii. 285.

On the 3d of September the Scottish army was defeated at Dunbar ; and four days afterwards Cromwell and the English forces took possession of the city, which had been deserted by its magistrates,<sup>1</sup> ministers, and principal citizens. In these circumstances the inhabitants who remained elected a committee of thirty of their number, by whom the affairs of the city were managed till December 1651, when the council was re-established.<sup>2</sup> Magistrates were not, however, elected till March 1652.<sup>3</sup> No election of constables appears, in consequence, to have been made in 1650 or 1651, or until 15th October 1652. Doubtless, however, there were constables acting in the city during that time. At all events, we find the council, who, in December 1651, were peremptorily required by the English military authorities to have the streets, closes, and wynds cleaned within fourteen days, and kept clean thereafter,<sup>4</sup> issuing an order to the constables on the subject in January 1652. That order, referring to the filthy state of the town, directed the constables to meet among themselves, and to go about the best and most effectual way for the cleaning of the streets, and to employ, and cause the neighbours to employ, their servants for carrying the muck on the north side of the High

<sup>1</sup> At the desire of the Lord Chancellor Loudoun they had proceeded to Stirling [Council Records, xvii. 291-292].

<sup>2</sup> Maitland's History of Edinburgh, p. 89.

<sup>3</sup> Nicoll's Diary, lxx. 88-92. Maitland's History of Edinburgh, p. 89-91. The magistrates elected in the several burghs at this time continued in office till Michaelmas 1655, "at quihilk tyme thair wes ane proclamatioun emitted for ane frie electioun within all the cities, burghs, and townes in Scotland" [Nicoll's Diary, p. 161 ; Maitland's History of Edinburgh, p. 92].

<sup>4</sup> Nicoll's Diary, p. 70. This was not the only matter in which the English officers interfered with advantage in the internal affairs of the city. It must, no doubt, have been repugnant to the national feeling to be subject to a foreign administration. Yet the people could not but admit that it was in many respects superior to their own, and that justice was obtained from the "kithless loons" who occupied the bench under the English rule, more speedily and certainly than from the Scotch judges, whom, for a time, they supplanted [Nicoll's Diary, pp. 65, 66, 69, 104]. In regard to the lighting of Edinburgh at this time, "conform to the order appointed for hanging out of lanthornes," Nicoll says it was so well obeyed, that the winter night was almost as light as the day for multitude of lanthorns hung out by every house ; so that the expenses bestowed upon candle nightly was accounted to extend to five-and-forty pounds within the town of Edinburgh nightly. And when any house neglected this order, it was presently fined and unlaured in 4s. stg., and the master or mistress of the house was taken and committed to the main guard till it was paid [Diary, p. 73].

Street down to the North Loch side, and those on the south side and Cowgate to cause carry the muck thereof furth at the West Port and Cowgate Port, and other ports adjacent thereto, each person under the pain of payment of an unlaw of twelve pence for each day's absence, ay and until the whole be cleaned ; and, in the event of any person's neglecting or refusing to obey the constables within their several bounds, such persons were declared to be subject to a penalty of twelve pence each day, to quartering of soldiers upon them, and other personal punishment as their fault deserved.<sup>1</sup> Again, on 19th May 1652, we find an election of two persons in room "of two constables removed furth of quarter,"<sup>2</sup> a fact which also shews that the removal of a constable from the quarter for which he was elected disqualified him for the office.

As has already been mentioned, an annual election of constables was made on 15th October 1652,<sup>3</sup> but some of them appear not to have discharged with much efficiency their duties relative to the cleaning of the town. On 9th November 1653, the council, on the recommendation of the judges, appointed a committee to meet anent the cleaning of the streets and other matters,<sup>4</sup> and on the 16th of the same month two persons were appointed for each of the four quarters, to visit the bounds and report the constables' diligence in securing the cleansing of their respective bounds, "to the effect course may be taken with such of the constables who have neglected their charge, and those quho have been cairfull may be relieved, and uytheries chosen to supplie thair place for the yeir to come."<sup>5</sup> What was done under this remit, as regards the constables, does not appear, but fourteen days later the bailies were ordained to convene the stablers, and imprison them until they caused the streets to be cleaned of their middings.<sup>6</sup> The annual election of constables was made on 7th December 1653,<sup>7</sup> and on the 28th of that month, the council, referring to the failure of their manifold previous orders and proclamations, renewed their prohibition against the laying of filth on the streets, directed all middings to be removed, and ordered the whole neighbours to "pay their several proportions imposed upon them by the constables for clenzing of the streitts as neid required, under the paine of poinding for the double but favour, imprisonment of thair personis, and farder punishment at the will of the magistratt."<sup>8</sup>

<sup>1</sup> Council Records, xvii. 293, 14th January 1652.

<sup>2</sup> Ibid. xvii. 317.

<sup>3</sup> Ibid. xvii. 350.

<sup>4</sup> Ibid. xviii. 61.

<sup>5</sup> Ibid. xviii. 62, 16th November 1653.

<sup>6</sup> Ibid. xviii. 64, 30th November 1653.

<sup>7</sup> Ibid. xviii. 65.

<sup>8</sup> Ibid. xviii. 69, 28th December 1653.

During all this time the English troops held undisputed possession of Edinburgh, the castle having surrendered on 19th December 1650 ; but the Scotch army in the north was still active, and throughout the country many collisions took place between the people and the English soldiers. This induced the English to strengthen their garrisons, and to prohibit all persons from leaving their residences and travelling the country without a pass.<sup>1</sup> In pursuance of the same policy, the council, by the following act, dated 21st April 1654,<sup>2</sup> appointed several persons to take a daily account to the constables within their several bounds, of the strangers resorting to, and residing within the burgh—

Appoynts the persones underwritten to take account of [to] the constables designed to them within their severall boundis of the strangers resorting to and residing within this burgh. . . . The same day, forsameikle as thair has bein severall acts orders and proclamatiouns emitted for taking of narrow notice search and tryell of all maner of persones strangers resorting to this burgh, and for giving up a perfytt accompt of the samen daylie and ilk day to the baillies or such as they sould appoynt for that effect, quhilk hitherto hes not been so effectuellie done as wes requisite, Thairfor the provest baillies and counseil ordaines the haill nighbors within this burgh to give up a perfect accompt daylie and ilk day to the constable within their boundis of all maner of persones strangeris resorting to this burgh residing or lodging within the samen, with thair designatiouns qualitie and condition of liveing, to the effect the constables may report the samen to the baillies or such as are appoyntit to that effect. And the samen accompt may be given up daylie and ilk day to the commander of the guaird, under the paine of the loss of their libertie or farder censure at the will of the magistrat. And ordanis proclamatioun to pas throw this burgh be towk of drum that nane pretend ignorance of the samen.

On 15th November 1654, as in the corresponding time of the previous year, two persons were appointed to visit each of the four quarters of the town, and to report as to the diligence of the constables in cleaning their respective bounds,<sup>3</sup> and on the 24th of the same month,<sup>4</sup> constables were elected for the year succeeding.

Annual elections of constables were made on 16th November 1655,<sup>5</sup> 17th December 1656,<sup>6</sup> and 11th December 1657.<sup>7</sup> The constables elected in 1657 seem, however, to have been very remiss in their duty, for on the 24th of November 1658,<sup>8</sup> the council agreed to unlaw

<sup>1</sup> Nicoll's Diary, 123.

<sup>2</sup> Council Records, xviii. 90.

<sup>3</sup> Ibid. xviii. 134.

<sup>4</sup> Ibid. xviii. 137.

<sup>5</sup> Ibid. xviii. 234.

<sup>6</sup> Ibid. xix. 176.

<sup>7</sup> Ibid. xix. 263.

<sup>8</sup> Ibid. xix. 347.

The wholl present constables of this brugh in ten merks scots each persone for their bypast neglect, being all of them fand guiltie of the breache of all or most part of their dewtie in their office, and ordaines thaim to goe to prisone quhil the same be payed.

Two days afterwards the then present and old bailies were appointed to meet at eight o'clock on the morning of the following day, and to convene the constables before them, and take measures for having their injunctions put into execution.<sup>1</sup> This severity may probably be accounted for by the fact that the magistrates themselves had, in the previous year, been fined to the amount in all of £50 sterling "for not cleansing the streets." In their petition to the commissioners of justiciary for a remission of these fines, in April 1657, they alleged that they had "employed scavengers" with a view to give the commissioners satisfaction.<sup>2</sup>

About this time complaints were loud as to the manner in which soldiers were quartered on the citizens, and many disorders took place in consequence. The council having regard to these, resolved, on 17th December 1658, to commit this duty to the constables, taking care that "able men" should be chosen at the next ensuing election, to exercise the "office of constabularie and quartering together."<sup>3</sup> Following up this resolution, the council, on 30th March 1659,<sup>4</sup> taking into consideration the disorders which had arisen through the neglect and evil government of those who had been elected constables, "many whereof have esteimed it below them to exerce that office;" and also the great and many complaints made against the quartermasters for "their partialitie and uthyr defects" in quartering soldiers, joined both these offices in one man's person, and elected "the most able and qualified persones for the saids places, to exerce the offices of constabularie and quartering of soldiers."

On 11th November 1659,<sup>5</sup> the four bailies were appointed to take account with "the constables of all the auld walls within their boundis, to the effect some course may be taken with them, and to report."

At this time the bailies seem to have been in the habit, by turns, of making a nightly inspection of the town, looking after the watch, seeing that the ports were closed at the appointed hours, and taking charge of the keys, or sending them to the house of the provost.<sup>6</sup>

<sup>1</sup> Council Records, xix. 348.

<sup>2</sup> Chambers' Domestic Annals of Scotland, ii. 212.

<sup>3</sup> Council Records, xx. 3.

<sup>4</sup> Ibid. xx. 30.

<sup>5</sup> Ibid. xx. 82.

<sup>6</sup> Ibid. xx. 93, 14th December 1659.

On 13th January 1660, an election of constables took place,<sup>1</sup> and the English garrison having been removed, the duty of watching the city was devolved on the "neighbours," not in companies under the command of the officers of the Trained Bands, but according to the constables' bounds. By an act, dated 24th August 1660, "two constables bounds" were ordered "to be warned to watche nightlie, and the kies of the portes to ly in Bailie Sutters house for the vse of the constables and waitters upon the eccyse."<sup>2</sup>

On 21st November 1660,<sup>3</sup> constables were again elected for the burgh, and on the 23d of August 1661, their orders were ordained to be "mendit" and reprinted as they were formerly in the king's time. Copies were also appointed to be delivered to the constables of Edinburgh, Leith, Canongate, and Portsburgh,—the treasurer to be at the charges thereof.<sup>4</sup>

On the 8th of November 1661, Alexander Wardlaw, vintner was unlawed £20 Scots "for his disobedience and neglect of dewtie as a constable the year of his office, sufficiently verified and proved," and he was ordained to go to prison till the fine was paid. On the same day constables were elected.<sup>5</sup>

In the following year the nightly watch by the neighbours, under the command of their respective captains, was ordered to be resumed, and proclamation was made on 25th July 1662, requiring the inhabitants to attend their commanders, for mounting the guard nightly.<sup>6</sup> On 10th October 1662, the council, in consideration of the times "being a little broken," and of certain attempts at housebreaking, ordained, "that in tyme comeing one of the sixteen captanes with his companie watche the streitts of the toun and keip the gairds."<sup>7</sup>

Elections of constables were made on 9th January<sup>8</sup> and 18th December 1663.<sup>9</sup> In the same year the society of captains of the trained bands received a constitution from the town council. On an overture by Robert Baird for himself and the other captains, the captains were authorised, on 17th June 1663, to meet together at such convenient times and places as they might appoint for contriving and appointing things necessary and convenient for securing decent order among themselves in their several companies, whatever should be enacted by the major part present at every such meeting (nine being always a quorum) being regarded as the conclusion and act of the

<sup>1</sup> Council Records, xx. 101.

<sup>2</sup> Ibid. xx. 175.

<sup>3</sup> Ibid. xx. 203.

<sup>4</sup> Ibid. xxi. 8.

<sup>5</sup> Ibid. xxi. 51.

<sup>6</sup> Ibid. xxi. 143.

<sup>7</sup> Ibid. xxi. 169.

<sup>8</sup> Ibid. xxii. 18.

<sup>9</sup> Ibid. xxii. 85.

whole. They were also empowered to exact penalties and fines from any of their own number that should not observe the orders concluded at these meetings, the greatest fines not to exceed 10s. sterling. The inferior officers were also required to observe all such rules, and whatever orders might be given by their respective captains.<sup>1</sup> At the same time the council appointed Robert Mein, merchant, to be inquisitor of the rolls, taking him bound to pay into the guard box 6s. Scots for each one of the neighbours absent without sufficient excuse, and for his reimbursement and salary he was empowered to exact 18s. Scots from every such absentee. On 15th July 1664, a committee was appointed to meet anent the best way of keeping and paying a constant guard of twenty or thirty men for the preservation of the peace during the night.<sup>2</sup>

On 9th December 1664,<sup>3</sup> constables were elected, and in the following year the constables' watch was resumed. On 16th August 1665,<sup>4</sup> the constables were ordained "to keep their nightly watch as formerlie, and to begin on Moonday next;" and on 2d May following,<sup>5</sup> the bailies were appointed "to cause mak twa dissone of bandit staffis to be delyvered to the constablis for the use of the watches of the toun, and these to be markit on the iron and timber with the castle mark." At this time the keeping of the watch by the constables appears to have been strictly enforced, and a minute, of date 23d May 1666,<sup>6</sup> bears that "James Carrin constable" was "imprisoned for neglect of his dewty upon the watch the night befor, and liveing the same be two o'clock in the morning, at which tyme Mr Standfields house in Bells wynd wes broken, so weir the gaird hous." The same minute contains the appointment of Robert Main, merchant, to be "generall watchmaster of the constablis dureing the Counsellis pleasure, and allowes to him the fynes of absents for his paines." On 13th July 1666,<sup>7</sup> the captains were appointed to "begin to keep the watch this day eight dayes."

An annual election of constables was made on 1st February 1667,<sup>8</sup> and on 3d August thereafter, the "counsell considering the great panis

<sup>1</sup> Council Records, xxii. 48. Under the authority thus granted, the captains of the trained bands formed themselves into a society, the records of which, going back to 1676, are still extant, and are preserved by the member of the town council who holds for the time the office of "captain of orange colours."

<sup>2</sup> Ibid. xxii. 90.

<sup>3</sup> Ibid. xxiv. 29.

<sup>4</sup> Ibid. xxiv. 5.

<sup>5</sup> Ibid. xxiii. 58.

<sup>6</sup> Ibid. xxiv. 33.

<sup>7</sup> Ibid. xxiii. 97.

<sup>8</sup> Ibid. xxiv. 36.

and trouble the constables are put to in the discharge of their offices, thinks it reasonable that they be free of watching so long as the captains have the guards, and discharge the captains to trouble them thereanent."<sup>1</sup> On the 4th of October, however, the watch was appointed to be "kept by the constables from and after Sunday night."<sup>2</sup> On 22d April 1668,<sup>3</sup> the council, considering that the captains had been at great pains and trouble in keeping of the guard this long time bypast, and that the town was in a quiet and peaceable condition, appointed the guard to be kept nightly by the constables.

Constables were elected on 27th March 1668,<sup>4</sup> 14th April 1669,<sup>5</sup> 4th May 1670,<sup>6</sup> 2d June 1671,<sup>7</sup> 18th October 1672,<sup>8</sup> 16th January 1674,<sup>9</sup> 28th April 1675,<sup>10</sup> 18th August 1676,<sup>11</sup> 26th April 1678,<sup>12</sup> 14th March 1679,<sup>13</sup> 10th March 1680,<sup>14</sup> 16th August 1682,<sup>15</sup> 5th January 1683,<sup>16</sup> 22d February 1684,<sup>17</sup> 12th May 1685,<sup>18</sup> 9th February 1687,<sup>19</sup> 8th June 1688,<sup>20</sup> 21st February 1690,<sup>21</sup> 9th January<sup>22</sup>

<sup>1</sup> Council Records, xxiv. 17.

<sup>6</sup> Ibid. xxvi. 126.

<sup>11</sup> Ibid. xxviii. 178.

<sup>2</sup> Ibid. xxiv. 49.

<sup>7</sup> Ibid. xxvii. 27.

<sup>12</sup> Ibid. xxix. 60.

<sup>3</sup> Ibid. xxv. 87.

<sup>8</sup> Ibid. xxvii. 106.

<sup>13</sup> Ibid. xxix. 130.

<sup>4</sup> Ibid. xxiv. 81.

<sup>9</sup> Ibid. xxvii. 183.

<sup>14</sup> Ibid. xxix. 213.

<sup>5</sup> Ibid. xxvi. 58.

<sup>10</sup> Ibid. xxviii. 62.

<sup>15</sup> Ibid. xxx. 137. No record of this election appears on the day on which it was made, but two days afterwards bailies Kennedy and Prince reported "that ther is sextein or seventein of the constables that wes the last councill day named to be constables that refuses to accept, in respect they alledge they have been so long continewed in office formerly, and becans of ther refusal they had, conforme to the order of the councill, imprisoned them till they accept of their respective offices, or pay ane unlaw of ane hundred pounds, and delyver up ther burges tickets to be cancelled." The council approved of the bailies' report, and appointed "the said constables and each of them to remane in prison till they accept of ther offices, and in caice they refuse, that the constables so refusing shall pay the said unlaw of ane hundred pounds and forfait their liberty of the good toun." It does not appear how this dispute ended.

<sup>16</sup> Council Records, xxx. 164.

<sup>17</sup> Ibid. xxx. 294.

<sup>18</sup> Ibid. xxxi. 172.

<sup>19</sup> Ibid. xxxii. 87, 88.

<sup>20</sup> Ibid. xxxii. 213. On 19th July 1689, a constable was elected to supply the place of one Alexander Bernard, who had been deposed from the exercise of his office, "in respect of a great ryot committed be him in breaking up the door of the relict of David Pringle, chirurgeon, her house, and robing and away taking from her five brasse candlesticks and several oither things" [Ibid. xxxiii. 25].

<sup>21</sup> Ibid. xxxiii. 98.

<sup>22</sup> Ibid. xxxiii. 216.

and 18th and 30th December 1691,<sup>1</sup> 11th April 1694,<sup>2</sup> 14th February 1696,<sup>3</sup> 8th April 1698,<sup>4</sup> 12th May 1699,<sup>5</sup> 10th April 1700,<sup>6</sup> and 22d November 1700.<sup>7</sup> During all this time they were entrusted with important duties connected with the watching and cleaning arrangements of the city; and to these, in their order, reference will now be made somewhat in detail.

On 28th May 1669,<sup>8</sup> the bailies were appointed to consider whether it is fitter to continue the captains' guard, or to appoint that of the constables'. Their report is not given, but the former practice seems to have been adhered to, the watch being kept by the town's companies under the command of their respective captains,<sup>9</sup> relieved occasionally by a guard of the neighbours under the charge of the constables.<sup>10</sup> Obviously, however, the irksome duty of watching was performed by the citizens in a very unsatisfactory manner, and the records of the council contain various orders intended to provide a remedy. Thus, an act dated 1st December 1669,<sup>11</sup>—setting forth that the neglect of the citizens to keep guard, or the employment by them of hirelings to do so, had led to the breaking open of shops and houses and the disquietude of the city,—ordained all the neighbours, by themselves or by their actual servants, to attend their respective captain's guard in future, and punctually to watch during the whole time appointed to them, under the penalty of £3 Scots, and farther punishment at the discretion of the council. Another act, dated 24th November 1676,<sup>12</sup> alluding to the practice of the citizens appointed to attend the guard, absenting themselves from that duty without even providing substitutes, ordained that whenever the guard should not turn out in sufficient force to protect the city, the captain on duty should be held responsible for the fines of the absentees, reserving his relief against them. And on 27th December 1676,<sup>13</sup> the council are found recommending the bailies to enforce the act rigidly against the captains of the various companies. Still the neglect continued, and on 9th February 1677,<sup>14</sup> the council renewed their

<sup>1</sup> Council Records, xxxiii. 325, 327.    <sup>4</sup> Ibid. xxxvi. 71.    <sup>7</sup> Ibid. xxvi. 683, 686.

<sup>2</sup> Ibid. xxxiv. 313.

<sup>5</sup> Ibid. xxxvi. 291.

<sup>8</sup> Ibid. xxvi. 28.

<sup>3</sup> Ibid. xxxv. 237.

<sup>6</sup> Ibid. xxxvi. 506.

<sup>9</sup> Ibid. xxvi. 116, 2d March 1670; Ibid. xxvii. 6, 15th February 1671; Ibid. xxvii. 79, 21st June 1672; Ibid. xxviii. 165, 21st June 1676; Ibid. xxviii. 248, 18th May 1677.

<sup>10</sup> Ibid. xxvi. 81, 4th August 1669; Ibid. xxvi. 116, 2d March 1670; Ibid. xxvi. 169, 30th November 1670; Ibid. xxvii. 21, 21st April 1671; Ibid. xxviii. 150, 7th April 1676.

<sup>11</sup> Ibid. xxvi. 101.

<sup>12</sup> Ibid. xxviii. 204.

<sup>13</sup> Ibid. xxviii. 210.

<sup>14</sup> Ibid. xxviii. 224.

act of 17th June 1663, and appointed Robert Johnston, the town's major, to be inquisitor of the watch rolls, taking him bound to pay into the guard box 6s. Scots for each absentee, from whom he was entitled to exact 18s. Scots for his own relief and payment.<sup>1</sup> But this expedient also failed to secure the proper watching of the city, which was so ill performed that the privy council found it necessary to interfere, in January 1678, and to intimate to the lord provost, who was called before them, that the watch must in future be kept by the militia of the city. His lordship, however, succeeded in inducing them to allow the watch to be kept by the trained bands, for whose care and vigilance he engaged for himself the magistrates and council.<sup>2</sup> Fourteen of the sixteen town's companies were thereafter, on 23d January, appointed to guard the town nightly by turns, and the remaining two were ordered to join with the Canon-gate and Potterrow in watching the Abbey.<sup>3</sup> Any improvement which this arrangement may have effected was evidently of short duration, for, on 13th March 1679, the council are found passing the following act:—<sup>4</sup>

“The which day the lord provost baillies councill and deacons of crafts ordinar and extraordinary and the nighbours abovementioned being conveyed to the speciall effect vnderwritten, it was represented by the lord provost to them that the lords of his majesties privie councill does greatly complaine that the toun guairds are soe ill kept that ther is noe suitable strenth or couradge to resist any comotion which may happen within the City, as they have frequently found when any stirr or vproar hapned, and that if they will not vndertake to keep a strong and constant guaird for securing the peace of the place ther lordships will be necessitat to make vse of his maiesties forces for that effect, and to quarter them within the City; and lykwayes represented to them that it wes the oppinion of ther lordships that noe les number of men could keep a sufficient guaird then eight scoir besyd officeris whom they ought to maintaine. The which affair being fullie debated by the councill with consent of the nighbours, conveyed within the old church, and they in consideration that ther is much truth in the forsaid representation, and that to ther owne experience notwithstanding of all the strick proclamations for keeping the guaird and often poynding of the nighbours when absent by the captanes yet all these method hes proven hitherto very vneffectuall, and that albeit a considerable number of the nighbours doe munt the guaird, yet within a feu houres there is scarce any to be seen, swa that ther munting is but a formell shew

<sup>1</sup> The appointment of an inquisitor at this time was made at the request of the society of captains, whose minute of 5th February 1677 refers “to the great trouble that they are att by poynding of the neighbours for not mounting of the gaird.” [Minute Book of Society of Captains, i. 3].

<sup>2</sup> Council Records, xxix. 39.

<sup>3</sup> Ibid. xxix. 41.

<sup>4</sup> Ibid. xxix. 129.

without leaving any visible force to make resistance in caice of accidentall occasions : As lykwayes considering that the inhabitantis whoe are obleided to guaird and watch the City are necessarlie employed in ther lawfull callings during the day tyme, wherby they becom wearie and vnfit to watch in the night tyme, which is the vsuall tyme of any comotion within the City, besyds the mispending of ther tyme and spending of ther money when vpon the watch. Vpon these and other important considerations, and fearing least shouldiers should be quartered within the toun, which at the long run will vndoubtedly follow in caice they have not sufficient strenth of themselves to preserve the peace and tranquility of the place, therefor they condescended and aggried that such a number of men should be raised and officers choysen and mentained vpon dayly pay as the magistrats and counsell from tyme to tyme should think sufficient and requisit for preserving the peace and quyet of the place, with full power to them, for defraying the charges and expensis in mentaining the shouldiers when raised, to take such sober and impartiall wayes for laying the saids charges vpon the nighbours, and that in such a maner and method as the magistrats and counsell of the said burgh shall from tyme to tyme judge fit and expedient ; whervnto they all promise acquiescence obedience and payment of ther proportions accordingly as they shall be stented.”

On the 26th of March thereafter, a committee was appointed to prepare, with the assistance of the captains and constables, &c., a list of those liable and able to contribute to the support of the guard ;<sup>1</sup> but on 4th April the bailies were appointed to convene the neighbours in their respective quarters, and ascertain what they would voluntarily subscribe towards this object, the number of men to be levied being fixed at two hundred.<sup>2</sup> Meanwhile the council, on 26th April, authorised twenty men to be engaged at a daily wage of 6s. Scots, to attend the guard during the day, from 5 A.M. till 10 P.M., under the command of the captain of the guard, leaving the nightly watch to be kept by the captains' companies as formerly.<sup>3</sup> Subsequently, on 17th October 1679,<sup>4</sup> the council, for freeing the neighbours of watching except on extraordinary occasions, ordered twenty additional men to be levied to take their turn with those formerly employed in the watching of the town, by night as well as by

<sup>1</sup> Council Records, xxix. 133.

<sup>2</sup> Ibid. xxix. 136.

<sup>3</sup> Ibid. xxix. 142. The practice previous to this time seems to have been for the neighbours to mount guard at four or six o'clock in the afternoon ; but by a minute of the captains, dated 4th November 1678, the hour was changed to one o'clock [Minute Book, i. 6]. On 30th July 1683, the guard was ordered to be mounted at seven, in consideration of the great trouble it was to the neighbours to do so at one [Ibid. i. 13]. On 6th October 1684, again, one o'clock was fixed on as the most convenient hour in winter [Ibid. i. 16].

<sup>4</sup> Council Records, xxix. 175.

day. Whether these men were levied does not appear, though it rather seems they were not, for on 5th May 1680, an act of council ordained all persons liable in watching, except magistrates and councillors, to attend the guard, under penalty of £10, to be exacted without favour;<sup>1</sup> and on 26th May 1680, the treasurer was authorised to furnish coats for only "the twenty men under the designation of Gray cots," that guard the town.<sup>2</sup> On 24th September 1681, again,<sup>3</sup> an act appointed the guard, which during the sitting of Parliament had been kept by two companies, to be kept by one company only after the rising of Parliament. The difficulty of getting the neighbours to turn out for guard during the day still continued, however, and a minute of the captains, dated 7th September 1681, referring to that difficulty,

"appointed Capt. Sympson to have in readiness against the first occasion twelve men in good attyre to wait on the gaird, in the day tyme or in the night tyme, att the pleasure of the captains, att the expence of the neighbours who shall be absent themselves from mounting or dismounting or watching night or day, excepting onlie those who voluntarily give ther sixpence to be free of watching."<sup>4</sup>

On 12th May 1682,<sup>5</sup> the twenty men of the town's guard called "Greycoats" were disbanded, and on the following day the council resolved to levy a company of one hundred and eight soldiers, with a captain, lieutenant, ensign, three sergeants, and three drummers, as a constant guard. It subsequently appears that this resolution was come to in conformity with the minute of 13th March 1679,<sup>6</sup> already referred to. Fountainhall and Maitland both remark that, though ostensibly adopted for the safety of the town, the measure was really passed at the instigation of the Duke of York (then royal commissioner to the Scottish Parliament, and afterwards James II.), in order to promote his own views.<sup>7</sup> It must be admitted, however, that the unsatisfactory way in which the city was watched at the time afforded abundant excuse for the resolution.<sup>8</sup> On the 22d of the same month, an application was made to the Privy Council for a commission to put the act in force, and this was granted by Charles II. on 15th June 1682.<sup>9</sup> On the 1st of August in the same

<sup>1</sup> Council Records, xxix. 227.    <sup>5</sup> Ibid. xxx. 71.    <sup>6</sup> Council Records, xxx. 121.

<sup>2</sup> Ibid. xxix. 230.

<sup>4</sup> Minute Book, i. 7.    <sup>7</sup> Ibid. xxx. 131.

<sup>7</sup> Fountainhall's Historical Notices of Scotch Affairs, i. 354, 357. History of Edinburgh, p. 286. Chambers's Domestic Annals of Scotland, ii. 438.

<sup>8</sup> See also Act of Council, 24th May 1682, Council Records, xxx. 123; enforced against two captains, 31st May 1682, *ibid.* xxx. 124.

<sup>9</sup> Ibid. xxx. 126. Engrossed in Maitland's History of Edinburgh, p. 287.

year, His Majesty approved of an act of council dated 12th July 1682,<sup>1</sup> setting forth the manner in which it was proposed to levy from the citizens the funds required for the support of the company,<sup>2</sup> and by a letter to the lord provost, magistrates, clerk, and council, dated 17th September 1682,<sup>3</sup> he acknowledged their good service in the matter.

In the preparation and adjustment of the assessment rolls for the support of this company, the constables, along with the captains of the town's companies, rendered important assistance, and the constables were further charged with the troublesome duty of collecting the tax. Proclamation was made requiring the whole inhabitants specified in these rolls to pay to the constables within their respective bounds a month's watch silver, from and after 24th August, when the company entered upon duty, and monthly thereafter. And on 1st September 1682,<sup>4</sup> an act was passed, which, "to the effect the constables may attend carefully vpon thair duty on receiving the said watch money," discharged them

"from goeing furth of this burgh, vnles they lay down some solid way of payment, in ther absence, of the proportions of watch money payable by the inhabitants within ther respective bounds,"

under pain of poiding to the double of the value of the watch money in their list. The collection was subsequently appointed to be made weekly, and the following extract from the council minute of 12th July shews with what *nonchalance* this additional labour was laid on the constables:—

"Beacaus the saids soumes are to be payed weekly, in respect the souldiers are to receave ther pay weekly, and seing it will be almost impossible for one or two collectors to receave the saids soumes weekly from the inhabitants, being soe numerous and the soumes soe small, the expenses in collecting the same weekly wold exhaust a great pairt of the wholl; and the toune counsell being resolved to take all the frugall wayes imaginable, both that the pay may be maid effectuell to the souldieris and that the inhabitants may be eased also much possible, therefore they ordaine the persons lyable in payment of the saidis soumes to make payment of ther respective proportions to such persons whom the toun counsell shall heirefter appoynt to be constables within the toune, or to be leaders, from whom the souldieris shall imediatly receave their pay."<sup>5</sup>

<sup>1</sup> Council Records, xxx. 131.

<sup>2</sup> Ibid. xxx. 136. See letter engrossed in Maitland's History of Edinburgh, p. 288.

<sup>3</sup> Ibid. xxx. 144; Maitland's History of Edinburgh, p. 288.

<sup>4</sup> Ibid. xxx. 141.

<sup>5</sup> Ibid. xxx. 131. Subsequently a person was commissioned by the magistrates and council to receive the moneys collected by the constables. [Ibid. xxx. 142, 6th September 1682. Ibid. xxx. 309, 2d April 1684.]

On the 16th of August,<sup>1</sup> the constables were ordained to collect this watch money "every four weeks together by advance," and on the 1st of September, a proclamation was issued appointing the payments to commence as from the 24th of August, when the guard entered upon duty.<sup>2</sup> The expense of maintaining this guard soon became the subject of much complaint, and on the application of the council, the king, by letter to the privy council, dated 7th May 1688,<sup>3</sup> authorised it to be reduced from one hundred and eight to fifty soldiers, besides officers. The reduction thus authorised was ordered in October 1688,<sup>4</sup> and is stated to have effected a saving to the city of £6000 Scots yearly. Thereafter the train bands were appointed to watch the town, and the minute book of the society of captains contains detailed orders and regulations, of date 15th November 1688, as to the mode in which this was to be done.<sup>5</sup> After the revolution, by an act dated 16th April 1689, which bears to have been passed on the application of the town council,<sup>6</sup> the estates of the kingdom authorised the company to be disbanded.<sup>7</sup> Recourse was then had to the old practice of watching and warding, but only for a few weeks, for on the 1st of June the council resolved to raise a company of one hundred and twenty men, including officers (the lord provost being the captain), for the guarding of the town,<sup>8</sup> and on 2d August 1689,<sup>9</sup> payment of thirty-six days' pay was ordered to be made to the "new company" for their services prior to the 1st of the month when they began duty. The levying of this company was approved by the act of parliament 1690, c. 65;<sup>10</sup> and the magistrates and council were authorised to continue a company of trained and experienced soldiers within the town, not exceeding one hundred and twenty-six in all, including officers, and to assess, for their maintenance,

<sup>1</sup> Council Records, xxx. 137.

<sup>2</sup> Ibid. xxx. 141.

<sup>3</sup> Ibid xxxii. 210.

<sup>4</sup> Ibid. xxxii. 233-239.

<sup>5</sup> Minute Book, i. 37. The guard was kept after this by the town's company and by the trained bands, but the captains of the trained bands seem to have taken exception to the town's company being invested with an authority co-ordinate with their own, and petitioned the council, on 23d November 1688, to give them all the privileges of a main guard [Minute Book, i. 41-44]. Their request was, however, refused [Ibid. i. 44].

<sup>6</sup> Council Records, xxxiii. 1.

<sup>7</sup> Ibid. xxxiii. 5. Maitland's History of Edinburgh, p. 289. Acts of the Parliaments of Scotland, ix. 47, 1689, c. 43.

<sup>8</sup> Council Records, xxxiii. 14.

<sup>9</sup> Ibid. xxxiii. 30.

<sup>10</sup> Acts of the Parliaments of Scotland, ix. 202.

all the inhabitants liable in watching and warding.<sup>1</sup> The maximum sum leviable under this act was, however, fixed at £15,000 Scots, and as this amount proved insufficient to meet the expenses of the company at its full strength, it was reduced to one hundred and two privates on 21st August 1696.<sup>2</sup> Fifteen men were subsequently added, in consequence of the threatened invasion from France; but on the conclusion of the peace with that country in 1698, it was again reduced to thirty-two men, with an officer to command under the provost, called an "adjutant."<sup>3</sup> On the same day<sup>4</sup> the council appointed "Wm Neilson, captane moderatour, to call for and acquaint the respective capitans of the train bands to be in readiness to guard the good toun nightly," after the following Tuesday, "conforme to their ancient privileges of watching and warding." The city guard thereafter fluctuated in number till 1700, when it was augmented to ninety-nine men, with two captain lieutenants.<sup>5</sup> By the 15th article of their orders, the officers of this guard were required to receive "all persons committed by the magistrates, church treasurer, constables, and others, and detain them till examined and discharged by a magistrate."<sup>6</sup>

The duties of the constables in regard to the cleaning arrangements of the city must next be referred to.

On 14th March 1655,<sup>7</sup> all stablers and muckmen were required, by proclamation, to remove their middings from the burgh within forty-eight hours, under certification that, if they failed, the council would employ "country horses to remove the same upon their charges, besides punishment of their persons at the will of the magistrate." This was followed, five weeks afterwards, by the appointment of a committee to meet "the neighbours fer-

<sup>1</sup> Contrary to the former practice, the constables seem to have been subjected in this assessment for the year to July 1690. But in the following December, the "Moderator constable and remanent constables of the good toun," petitioned the council to be relieved in future. The council thereupon "exceemed" the petitioners, and declared them to be "free of paying any watch money during the tyme of thair office, provyding the said constables collect and uplift the haill watch monie, if the council shall think fitt to employ them, and obleidge themselves conjunctlie and seaverallie for paying what shall be collected, and find sufficient caution for thair respective intromissions" [Council Records, xxxiii. 211].

<sup>2</sup> Council Records, xxxv. 278. The cost of this force, including clothing, was £302, 8s. per week, or £14,515, 4s. scots per annum.

<sup>3</sup> Ibid. xxxvi. 54, 5th March 1698. <sup>4</sup> Ibid. <sup>5</sup> Ibid. xxxvi. 564, 28th June 1700.

<sup>6</sup> Ibid. xxxviii. 65. Maitland's History of Edinburgh, p. 290. <sup>7</sup> Ibid. xviii. 162.

mourers in and about the town anent the removing of the muck furth of the brugh, and to lay down a constant way how it may be kept clean for time to come."<sup>1</sup> And on 5th September, an act was passed in which, after reference to the non-compliance by the citizens with former proclamations relative to the cleansing of the town, and the resolution of the council to take a solid course for having the town kept clean in time to come, all middings were ordered to be removed previous to the 20th of September, under pain of £10 of penalty in case of failure.<sup>2</sup> Two days later, an arrangement was formally sanctioned by the council, under which Alexander Steill and four others undertook, each under a penalty of £5 scots per day, to remove to certain places to be fixed by the council outwith the ports, and thence to a greater distance with all convenient speed, all middings and the whole fulzie to be collected by them; to clean the whole streets and closes daily till 1st October 1656; and to provide such number of men and horses, close carts, sleds, muck creels, and other furnishings as might be necessary. On the other hand, they were to be entitled to the whole fulzie so removed, and to a payment, towards the first expenses of the undertaking, of £1200 Scots, which the council resolved to raise by an assessment on the inhabitants.<sup>3</sup> This assessment seems to have been forthwith levied, for Nicoll, writing in October 1655, remarks that "thair wes ane new cess imposit upon the inhabitants of Edinburgh for bying of hors and kairtes for carrying away and transporting of the filth, muck, and fulzie out of the closes and calsey of Edinburgh, which much greived the pepill; and so much the moir," he adds, "because the pepill resavit no satisfacioun for their money, but the calsey and closes continued moir and moir filthie, and no paynes taken for cleyngin the streitts."<sup>4</sup> This dissatisfaction doubtless arose from the failure of the contractors to implement their obligation. They were accordingly required to refund the money paid to them, and a new contract was entered into with a person of the name of Barrenger.<sup>5</sup> This arrangement also appears not to have worked satisfactorily, for on 26th February 1656, a committee was appointed to "take into consideration the office of scavenger, and to deal with fit persons for undertaking the samin, and to close the business [as] conveniently as they may;"<sup>6</sup> and again on 12th March 1656,<sup>7</sup> Bailie Jossie and John Milne were appointed "to lay down a way for clenzing of the toun either be scaffengers or otherways by appointing a man in everie quarter

<sup>1</sup> Council Records, xviii. 197, 22d August 1655.

<sup>2</sup> Ibid. xviii. 201.

<sup>4</sup> Nicoll's Diary, 168.

<sup>6</sup> Ibid. xix. 96.

<sup>3</sup> Ibid. xviii. 204.

<sup>5</sup> Council Records, xviii. 219, 229, 233.

<sup>7</sup> Ibid. xix. 102.

of the toun, with power to them to settle the same the best way they can and to report." What followed on this remit does not appear. On the 5th of December 1660, proclamation was ordered to be made against the laying or throwing out of filth upon the streets by day or night under penalty of £10 Scots, and punishment of the persons of the offenders; and the constables were ordered "to tak narrow notice of all such abuses, and to give information thereof, that the samen may be punished accordingly." On 29th November 1661, the order on stablers and others to remove their middings from the streets and vennels was renewed, under penalty of £10, the removal thereof at the expense of the contraveners, and punishment of their persons.<sup>2</sup> This order states that the magistrates and council "were to assay some solide course of keeping of the streets cleane in tyme coming." But nothing seems to have been done beyond issuing a proclamation against the keeping of swine, or allowing them to go along the streets by day or night, under penalty of confiscation, and punishment of the persons of the owners.<sup>3</sup> On 28th August 1667, an act of council was passed, which, after referring to the abuses committed by several persons in laying down filth in the Parliament close, "the same being a publict and patent place where all persons of qualitie resorts to about their lawful employments," contains a stringent order against defiling that place, under penalties proportioned to the offence.<sup>4</sup> On 10th August 1670, a new contract for cleaning the city was entered into with Robert Leslie, younger, indweller in Edinburgh.<sup>5</sup> It narrates that the council

"Taking to their consideratioun that pairtlie be reasoun of the citiuation of this citie, the streitnness and narrowness of the streets closes and vennells thereof, and that the inhabitants duelling one above another in one tenement of land, together with the laissiness and nestiness of the induellors, hes occasioned and does at present occasioun this citie to be exceedingly dirtie and defyled with filthiness in all the pairts thereof, which is both discreditabill to the place amongst strangers, unpleasant to the beholders, and unwholesome to the inhabitants, and altho their predecessors hed made severall acts thereanent, and made severall attempts for keeping clean the citie, yet the same hes hitherto proven ineffectual, and the councill having now resolved to doe their utmost endeavour for keeping this brugh clean and nett, hes agreid with the said Robert Leslie, who being ane stranger in this place and knowen and skilful in the said affair, gives the councill good hopes of his keeping the citie clean of filth to the general satisfacioun of all the neighbours."

<sup>1</sup> Council Records, xx. 207.

<sup>2</sup> Ibid. xxi. 61.

<sup>3</sup> Ibid. xxiii. 115, 25th October 1665.

<sup>4</sup> Ibid. xxv. 38, 39.

<sup>5</sup> Ibid. xxvi. 143, 144.

Under this contract Leslie had right, for three years, to the whole fulzie of the city, excluding Canongate, West Port, Potterrow, and Pleasance, and he was empowered to remove and sell it for his own behoof, at prices not exceeding those to be fixed by the council. On the other hand, he undertook to sweep and keep clean the whole streets, closes, and vennels, with the exceptions before referred to. For this service he was authorised to collect from the inhabitants a voluntary yearly contribution (the council undertaking to compel those to contribute who did not do so voluntarily), and also to receive for his own behoof the fines of those who should defile the streets by casting filth thereon. It still seems to have been the practice, however, for brewers and others to keep swine in the city and suburbs, and to allow them to prowl about the streets and closes. This was prohibited by an act dated 18th November 1670, which certified that all swine found at large thereafter should be confiscated for the use of the lockman, and the owners subjected to a farther penalty of £10 Scots.<sup>1</sup> From some cause or another the contract with Leslie also failed to secure the desired object. The neighbours, and even the muckmen themselves, continued to lay down filth and middings on the streets and closes in all quarters of the town, and on 13th December 1672, the council are found renewing their prohibition against throwing out or laying filth on the streets and closes, and ordering the stablers and muckmen to keep their middings in their closes. The penalties for the contravention of these orders were most severe, and were appointed to be paid to the informers.<sup>2</sup> So matters seem to have remained till 14th November 1677, when the council, unable apparently to devise of themselves any feasible scheme for cleaning the town of the prevailing filth, appointed the bailies, dean of guild, and treasurer

“to call before them the whole constables the morrow at eight hours in the morning, and take their opinion upon the best expedient for making the whole streitts clean and laying down some effectual method for keeping the toun neat and clean in tyme coming.”<sup>3</sup>

As the result probably of this conference, the council, on the 23d of the same month, ordered

“the whole muckmen to be daylie and hourly employed to cleange the streitts in the respective constables bounds, and the council allowes to each of them threttie shillings scots weeklie for their paines, and the fynes of the transgressors of the acts of council anent the cleanging of the streitts.”

<sup>1</sup> Council Records, xxvi. 167.

<sup>2</sup> Ibid. xxvii. 51, 52.

<sup>3</sup> Ibid. xxix. 24.

Robert Johnston, the town's major, was appointed to uplift these fines, and to oversee the muckmen "that none of them be negligent in their duty."<sup>1</sup> On the 13th of March 1678, a small committee was appointed to meet every Friday after the council, for seeing that the acts regarding the cleaning of the town were put to punctual execution;<sup>2</sup> and this committee was appointed as an annual committee on 8th October 1679,<sup>3</sup> and 13th October 1680.<sup>4</sup> Even this arrangement, however, did not secure the desired object, and on 9th February 1681, the council appointed a committee to meet with Bailie Fyfe, and hear and report on his overture for keeping the town clean as to the closes and Cowgate. This minute proceeds on the preamble that, notwithstanding all the endeavours of the council to clean the town, nothing is made [clean] but the High Street, the closes and Cowgate being still more dirty than formerly.<sup>5</sup> Nothing seems to have followed on this remit, but on 1st February 1682,<sup>6</sup> four horses and four men were hired to take away the muck, and on 26th April 1682,<sup>7</sup> the scavengers were exempted from watching, that their other public duties might not be interfered with. The annual cleaning committee was reappointed on 7th June<sup>8</sup> and 27th October 1682.<sup>9</sup> The former of these minutes empowered the committee to fix the price of the dung to be sold to the farmers in the neighbourhood, and to see that the muckmen did not exact a higher price than that so fixed; the latter minute reiterated what had become the frequent complaint, that "the most pairt of the wholl streets and vennells of this citty are very nesty and filthic." Two years later, the council, on the preamble that "the great occasione of the nestines of the streits flowes from the interalls of slaughtered beasts cairied from the north syde of the toun to the sowth syde thair of, and other places thair about," authorised any person that should see the saids entrails so carried, to seize the same, and dispose thereof at their pleasure;<sup>10</sup> and on the 28th of November in the same year, the council recommended the magistrates to visit the streets, and especially the street of the Canongate, and to lay down some effectual way for cleaning the same, "that they may be neat and clean before his royal highness' arrival in the place."<sup>11</sup> In the beginning of 1685, a new

<sup>1</sup> Council Records, xxix. 27.

<sup>2</sup> Ibid. xxix. 51.

<sup>3</sup> Ibid. xxix. 172. On 17th October 1679, the town was paying £200 sterling yearly to workmen for cleaning the streets [Ibid. xxix. 175].

<sup>4</sup> Ibid. xxix. 259.

<sup>7</sup> Ibid. xxx. 119.

<sup>10</sup> Ibid. xxxi. 74, 24th Sept. 1684.

<sup>5</sup> Ibid. xxx. 9.

<sup>8</sup> Ibid. xxx. 125.

<sup>11</sup> Ibid. xxxi. 107.

<sup>6</sup> Ibid. xxx. 103.

<sup>9</sup> Ibid. xxx. 152.

arrangement was attempted to be made, under which it was proposed that the city should be cleaned by the heritors around the city, who were to receive the fulzie for their pains ; and this arrangement was actually in operation for a few months as regarded a portion of the city and Canongate, which the tenant of Broughton undertook to clean. But it, as well as an arrangement with two other persons to clean another district of the town for an annual payment of £120 sterling, fell through,<sup>1</sup> and on 23d October 1685, a lease of the whole fulzie for seven years was entered into with Archibald Home, who undertook to clean the town daily before eight o'clock in the morning, and to provide a sufficient number of muckmen, carts, and horses, with slyps for the purpose. The whole control of the muckmen was vested in Home, and the council undertook to pay him £500 quarterly, in advance, during his lease.<sup>2</sup> Stringent prohibitions were at the same time issued against throwing filth upon the streets from the windows, and also against laying filth on the streets or closes on any week day, especially on Saturdays, between eight A.M. and eight P.M. during the winter, and between eight A.M. and ten P.M. in summer, "and from eight houris in the morneing that day [Saturday] till Munday morneing they are to lay downe no muck, fulzie, excrements nor ashes, which most be layed down vpon the streits, in the places appoynted, before eight howrs in the morneing." Home was also empowered to remove and sell for his own behoof the fulzie of all stablers and others lying on the streets and public vennels, and the stablers and others were expressly prohibited by an order, dated 4th December 1685, from interfering therewith, under penalties which Home was authorised to exact.<sup>3</sup> Home seems, however, not to have been more successful with his contract, than his predecessors had been with theirs, and on 27th July 1686, the council are found reiterating their resolution "to take some effectuall methods for cleanseing the cittie and Cannogate, and whole wynds, and vennells, and closes within the same, and for that end to enter in contract with some responsall persone or persones that will undertake the cleanseing therof."<sup>4</sup>

At this period the legislature interfered, and the act of parliament 1686, c. 22,<sup>5</sup> intituled, an "act for cleanseing the streets of Edinburgh," was passed. This act referred "to the many complaints of the nastiness of the streets,

<sup>1</sup> Council Records, xxxi. 134, 9th January ; p. 137, 23d January ; p. 142, 13th February, p. 151, 4th March 1685.

<sup>2</sup> Ibid. xxxi. 220, 221.

<sup>3</sup> Ibid. xxxi. 240.

<sup>4</sup> Ibid. xxxii. 17.

<sup>5</sup> Acts of the Parliaments of Scotland, viii. 595.

wynds, closes, and other places of the city, which is the capital city of the nation, where the chiefe judicatories recide, and to which his Majestie's leiges must necessarily resort and attend ;" and ordained the magistrates "to lay doun effectual ways for preserving the toun of Edinburgh, Canongate, and suburbs thereof, from the nastiness of the streets, wynds, and closes, and other places of the said burgh," under the pain of £1000 Scots, without relief out of the common good of the burgh, or by stenting the inhabitants. "For the encouragement of the magistrates," it ordained that the lords of council and session should receive from them or others all proposals which the lords should judge rational to that effect ; and the lords were authorised, with advice and consent of the magistrates, to impose such taxes upon all the inhabitants, burgesses, and others within Edinburgh, Canongate, and suburbs thereof, as they might find just and necessary for purging and cleansing the city. In virtue of this act, the lords, after several meetings with the magistrates, by an act of sederunt dated 25th January 1687, imposed a stent of £500 sterling yearly, for the space of three years, upon all the inhabitants, burgesses, and others within the city, Canongate, and suburbs thereof, including the members of the College of Justice, who freely offered to bear their proportion of the assessment.<sup>1</sup> This was done not before time, if the statements in certain proposals for cleaning the city, drawn up in 1735, were not grossly exaggerated. The dung, it is said in these proposals, was at this time "lying on the streets of the city and suburbs like mountains, and roads were cut through them to the closses or shops before whom [which] these great heaps or middens lay."<sup>2</sup> On the 9th of February 1687, the council recommended "the four baillies to take exact care to see their respective bounds cleansed," and declared that "if they be remiss in performing their dutie, they are to be lyable in payment of the penalty of 1000 merks Scots, prescribed by the act of parliament *toties quoties*, reserving their relief off the constables within their respective bounds."<sup>3</sup> On the 30th of the following month, the council concluded arrangements with Home and two cautioners for cleaning the whole streets, vennels, and closes of the city and suburbs for three years from the previous Candlemas. Under this contract, Home undertook "to keep and maintain twentie closs carts, well pitched and tarred, with ane cover of ane tarr saill over each of them, with two horses for each cairt at

<sup>1</sup> Acts of Sederunt, edition 1740, i. 153.

<sup>2</sup> Proceedings of the Society of Antiquaries of Scotland, iii. 174.

<sup>3</sup> Council Records, xxxii. 88.

least ;" to provide thirty muckmen and twenty carters or more if requisite ; to conform to a variety of regulations for the effective cleaning of the town and removal of the filth, under the penalty of £1000 Scots *toties quoties* ; and to relieve the magistrates of the penalties and certification prescribed by the act of parliament. On the other hand, Home was entitled to the whole *fulzie* collected, and to £6000 Scots yearly, payable by quarterly instalments in advance.<sup>1</sup> At the same time, the magistrates ordered a proclamation to be issued, requiring every family within the city and suburbs to provide sufficient vessels in their houses to contain their soil for at least forty-eight hours ; and prohibiting the throwing of filth out of their doors or windows, under the penalty of four shillings Scots to be paid by each family of the tenement, and of £6 Scots to be paid by the person or family offender. This proclamation contained a number of most stringent regulations for the suppression of the prevailing practice of throwing filth on the streets, and, amongst others, imposed the punishment of fine, the pillory, whipping by the hands of the hangman, and banishment from the city, on those servants who contravened its terms. It required the whole inhabitants to bring their filth nightly to the close carts provided for its reception ; and for their better accommodation it ordained that every night, when it became dark, each family inhabiting the undermost story of tenements, as well in vennels and closes as in the High Street, should bring out lanthorns and candles therein, or other lights, which should continue till eleven o'clock at night, and that the families dwelling in the upper storeys of these tenements should contribute towards the expense of the lanthorn and light under the penalties therein prescribed.<sup>2</sup> It also appointed the constables to exact the fines of transgressors within their respective bounds. This was followed on 20th April<sup>3</sup> by an act in which the council, referring to the act of parliament, the proceedings that had followed upon it, and the above proclamation, enacted as follows :—

"And seeing the saids fynes is to be exacted by the saids constables, and that therfor they are obliged to free the magistrats of the penalties and certifications contained in the act of parliament, therfor the lord provost baillies and counsell hereby statutes and ordaines that the constables present and to come free and releive the magistrats and ther successors in office of the penalties and certifications contained in the said act of parliament, and for that effect appoints the saids constables to give their obligements thairfor, reserving their relieff of their said obligements off the neighbours who shall happen to transgress the said printed proclamation."

<sup>1</sup> Council Records, xxxii. 99, 101.<sup>2</sup> *Ibid.* xxxii. 98, 100.<sup>3</sup> *Ibid.* xxxii. 107.

Subsequently stent rolls were made up, according to which the inhabitants were required to contribute to the tax for cleaning.<sup>1</sup>

Anxiously though these arrangements appear to have been made, they do not seem to have secured the desired object, for, under a remit to the magistrates to consider and report on some better regulations, they are found, on 2d November 1687,<sup>2</sup> recommending that no muckman should receive his weekly wage without a certificate, from the constable of the bounds, that he had done his duty ; that one muckman should be appointed to attend each constable ; that an overseer of the whole muckmen should be appointed, whose duty it should be to visit all the streets, closes, and vennels, and to receive and carry out the orders which the moderator constable might from time to time give him ; that the overseer should be empowered to imprison muckmen who were negligent of their duty ; and that each constable should perambulate his bounds every twenty-four hours, to discover the casting of filth over the windows or shots, and the defilement of the closes or stairs and turnpikes, with a view to the punishment of the offenders.<sup>3</sup> The energy thus displayed by the authorities appears to have been attended for a time with success, "in so far," says the author of the proposals for cleaning the city in 1735, already alluded to, "that the streets have never been in that state and condition since."<sup>4</sup> Either, however, the improvement must have been of short duration, or the judges must have been difficult to please, for Sir John Lauder of Fountainhall records<sup>5</sup> that they were not satisfied with the diligence of the magistrates. On their first session-day in January (11th January) 1688, the lords, considering the account submitted to them by the magistrates of their diligence in relation to the cleaning of the streets, &c., to be in no ways satisfactory, ordered the magistrates to give in on the following day "the names of those who were constables the last year, and lykewaves the names of these who are constables this year," and granted warrant to macers to "cite these who were constables the former year in one of the quarters of

<sup>1</sup> Ibid. xxxii. 138.

<sup>2</sup> Ibid. xxxii. 164.

<sup>3</sup> It was a few weeks after this time that the council, considering how necessary it was for the keeping of the town "neat and clean" that office-houses should be erected in various parts of it, appointed deacon Sandilands to make as many as the magistrates thought needful, and that with all convenient speed [Ibid. xxxii. 181, 4th January 1688, see footnote *antea*, p. 80].

<sup>4</sup> Proceedings of the Society of Antiquaries of Scotland, iii. 174.

<sup>5</sup> Historical Notices of Scottish Affairs, ii. 845.

the toun, to compear before the lords on Tuesday next to answer for their neglect in doeing their dewty incumbent to them, in order to their cleansing of the toun of filth and neastiness, conform to the orders enjoyned, and to hear and see such censures inflicted upon them for the same, as the lords shall find just." The bailies of the former year were ordered to be cited to compear before the lords on Friday, "to hear and see it found that they have incurred the certification contained in the act of Parliament for not cleansing the toun," &c. ; Archibald Home, the tacksman of fulzie, was also required to appear the same day, "to answer for his not performing his obleisment in the contract for cleaning of the toun ;" and intimation was appointed to be made to the magistrates, that the lords "have it under their consideration to order the magistrats [of] the former year to refund the imposition formerly imposed and exacted from the inhabitants upon the account of cleansing of the toun, in regard the same has not been effectually done." The lords at the same time issued various orders in relation to the markets of the city. Against all these proceedings, a representation was made for the municipal authorities, to the effect that though by the act of 1686 the lords had the inspection of the cleaning of the streets referred to them, yet the sole power of the markets, &c., resided in the magistrates, who being both sheriffs within themselves and justices of the peace, and having the government and policy of the burgh committed to them exclusively, by their charters of erection and others, were the sole judges of their constables and servants, and had the only right to the fines arising from their transgression. It was added that if the town and its magistrates malversed and were negligent, they were accountable to the king and his privy council, but not to the session. How the question thus raised was settled does not appear. Probably the order of the lords, given at a time when Fountainhall is careful to remark they had "litle else adoe," was intended to act merely as a spur to the civic authorities, and that having produced the desired result, no further action was taken upon it. Be that as it may, it cannot be doubted, that the doctrine so spiritedly asserted by the magistrates was right and constitutional. The order referred to did, however, stimulate the council, for on the same day on which it was issued, they appointed a committee to meet frequently till the 1st of March, to see to the cleaning of the town.<sup>1</sup> On the 15th of August also, they appointed John Rutherford, vintner, to oversee the muckmen.<sup>2</sup>

<sup>1</sup> Council Records, xxxii. 182.

<sup>2</sup> Ibid. xxxii. 223.

The contract with Home seems to have been continued till the end of 1692,<sup>1</sup> the council renewing from time to time their proclamations against the casting forth of filth on the streets, which seem to have been even dirtier on Sunday than on the other days of the week.<sup>2</sup> Economical considerations then induced them, after advising with various persons commissioned by the lords of session for that purpose, to resolve "to use all effectual means for cleansing the city, . . . in the most frugal and least burdensome maner to the inhabitants possible," and to invite heritors and tenants desirous to have the benefit of the dung and muck of the town, to undertake the cleaning either of the whole town, or of certain parts or quarters of it. On 2d September 1692, accordingly, contracts were entered into with various farmers, under which they undertook, for three years after the Whitsunday preceding, to clean the quarters of the town assigned to them, and to provide and pay a number of muckmen or scavengers sufficient to watch the streets at prescribed times, and to apprehend all contraveners of the orders against casting filth on the streets. For their pains the contractors were appointed to receive the fulzie and one-half of the fines of defaulters. The tacksman of the south-east quarter was further appointed to receive 1200 merks Scots, the tacksman of the north quarter £600 Scots, and the tacksman of the south-east quarter 1400 merks Scots; they were also to be supplied with carts in which to collect and remove the fulzie to depots without the town. But they were taken bound to relieve the magistrates of the fines and certifications contained in the act of parliament.<sup>3</sup> Though these tacks were entered into in September, it appears that they did not come into operation for some time afterwards.<sup>4</sup> Complaints still continued to be made, however, that the streets were not kept clean, and on 24th March 1693, William Carfrae was appointed not only to collect the "muck money," as the assessment for cleaning was termed, but to inspect and oversee both the tacksmen and muckmen. To assist him in this supervision, he was authorised to employ two persons, for whose pay he was allowed "the pay of two muckmen per diem."<sup>5</sup> Two months later, a proclamation for securing the better cleansing of the town was issued, in which the emptying of chaff beds on the streets or vennels, and the throwing out of night soil upon Saturday nights or Sunday mornings, were prohibited.<sup>6</sup> On 13th October 1693, a committee was

<sup>1</sup> Council Records, xxxiii. 325; xxxiv. 81.

<sup>2</sup> Ibid. xxxiii. 301.

<sup>3</sup> Ibid. xxxiv. 83.

<sup>4</sup> Ibid. xxxiv. 143.

<sup>5</sup> Ibid. xxxiv. 159.

<sup>6</sup> Ibid. xxxiv. 175, 12th May 1693.

appointed "to consider the most effectual means for cleansing the streitts and vennels of the citie,"<sup>1</sup> and on 19th September 1694, the council, on the report of a committee appointed to consider certain proposals submitted by Carfrae, the collector of the muck money, who had also become tacksman of the fulzie for the five years subsequent to Whitsunday 1695, resolved, tentatively, to leave Carfrae to exercise his own discretion as to the means to be employed by him. For his services, Carfrae was entitled to collect for his own behoof an assessment at the rate "of 36s. Scots on each £100 according to the annuity books." But there were ordered to be excepted from the assessment, "all rents payed be the present constables, touns servants whose house rents exceeds not ane hundred merks, and pensioners of charity, conform to ane list thair of subscryved by the dean of gild, and house rents at and below £12 Scots."<sup>2</sup> On 24th May 1695, another proclamation was issued, in terms somewhat similar to that in May 1693. It renewed the prohibition against the casting out or depositing of filth so as that it might not be removed by the muckmen. It declared the masters of families to be responsible for the transgressions of their households, giving them relief against their servants who should offend; it appointed a person to collect the fines, one-half of which was assigned to the discoverer, and the other half to the common charge; servants offending were declared liable to be pilloried for the second offence, and whipped by the hangman and banished the city for the third offence; and stablers, cowfeeders, and others allowing their fulzie to lie on the streets, common closes, or any of the town's avenues, were subjected to penalties besides forfeiture of the fulzie.<sup>3</sup> On 11th October 1700, the council appointed Henry Anderson, merchant burgess, to be "supervisor for cleaning the streets from and after Candlemas following," at a salary of £29 Scots per quarter; and he was appointed to see that the filth of the city was laid down for removal by servants and others at the prescribed times, and thereafter properly removed.<sup>4</sup>

It is thus abundantly obvious that, apart from the labours otherwise imposed on them by their orders and injunctions, the constables had onerous and responsible duties to discharge in connection with the watching and cleansing of the town. They were frequently required to relieve the trained bands from their day and night watch, and to keep what was termed the "constables guard;" they rendered material assistance in making up the

<sup>1</sup> Council Records, xxxiv. 261.

<sup>2</sup> Ibid. xxxv. 69, 70.

<sup>3</sup> Ibid. xxxv. 165, 166.

<sup>4</sup> Ibid. xxxv. 660.

watch rolls, and in collecting the rates for the support of the hired guard when it was in existence; they were charged with the enforcement of the town's regulations as to cleaning, with the supervision of the muckmen or scavengers, with the reception and disposal of the complaints of the neighbours as to the sanitary condition of the city, and for a time they were subjected to the pecuniary responsibility of relieving the magistrates from the penalties and certifications of the act of 1686.

In addition to all this, they were called on from time to time to perform a variety of other duties, the nature and extent of which are sufficiently indicated in the following extracts from the records of the council.

On 1st November 1674,<sup>1</sup> "the councill, considereing that there is many waist lands in the citie that thir many yeares bygone has been waist, and to which the good tounne may have right be vertew of the act of Parliament," called the moderator of the constables before them, and directed him to require the whole constables to take an account of all the waste tenements within their respective bounds, and to report the same to the council.

On 15th February 1671,<sup>2</sup> the council ordered a proclamation to be made, commanding "all idle personis that cannot give ane accompt how they leive" to remove from the city and suburbs, and appointed

"the constables in their respective boundis to tak ane exact accompt of the straingeris and vther personis that ludges within the bounds, and present the list of them to the magistrates, that they may pervse the same and tak such effectual course as the quyet of the city be not disturbed."

On 14th March 1679,<sup>3</sup> the council,—in consideration of an act of the privy council, dated the 12th of the same month, requiring the magistrates, *inter alia*, to cause a list of the whole inhabitants in the city and suburbs to be taken up, and nightly lists of all lodgers to be furnished by the bailies to the captain of the guard,—commanded and charged

"the wholl constables of the Citty, Cannogait, south and north Leith, and wholl suburbs of the good toun of Edinburgh, that immediatelie efter publication heirof they take vp ane exact list of the haill inhabitantis, men and women, within ther respective bounds, betwixt the age of sextie and sextein, and to delyver the same to the magistratis; and sicklyk they comand and charge the wholl inhabitantis within the citty that doe at present keip lodgeris, or shall heirefter keip lodgeris, that nightly, befor eight of the clock at night, they delyver vp the names and designations of ther respective lodgearis to thair constable of the bounds wher they receid, that the constable delyver

<sup>1</sup> Council Records, xxviii. 17.

<sup>2</sup> Ibid. xxvii. 6.

<sup>3</sup> Ibid. xxix. 130.

the same to the baillie of the quarter immediatlie efter receipt thereof, under the penalty of ane hundred merks for each persons name if the said lodgeris shall failzie to give vp."

On 2d March 1696,<sup>1</sup> the bailies reported that they had  
 "appointed the constables to search for and bring in lists of all lodgers within their respective bounds, and to intimat to the inhabitants that hereafter nightly they give in lists to the guard of thair lodgers, under the pain contained in the former acts thereanent."

On 17th February 1692,<sup>2</sup> the constables were ordained,  
 "to take up ane list of all loose and dissolut persones in their severall bounds, and to report their diligence betwixt and the second Wednesday of March next, and the officers of the town guard were ordered to concur with any elders deacones or constables that shall demand their assistance for seizeing of anie loose or dissolut persones."

And on 12th May 1699,<sup>3</sup> the council, by the following act, imposed new and onerous duties upon the constables in suppressing, or at all events in punishing, the profanation of the Lord's day

"The council considering that by an act of the Town Councill, August the nyenth day Jm Vi<sup>o</sup> nyntie three yeirs, in pursuance of severall acts of Parliament against the profanation of the Lords day, all persones are strictly prohibit to be found on the streets standing or walking idlie on the Lords day, or to goe in company or vaig to the Castelhill, publick yeards, or feilds, to goe to ale houses or taverns for eating and drinking the tyme of sermon, or unseasonably or unnecessarily at any tyme the said day; and all keepers of taverns or ale houses are forbid to sell any meat or drink but that which is necessary and seasonable; and no water be brought in from the wells except in single pints, under the paines contained in the said act; and the magistrats haveing, besyde the care taken by the sessions, ordained the constables in their respective bounds to visit the same every Lords day and take speciall notice of the transgressors of the said acts, and to (make) up lists of their names, to be present every Munday morning heirafter before the magistrats who are to hold courts for that effect; Therefore the councill ordains intimation heirof to all persons who shall happen to trangress the premisses they shall be prosecute but favours, conforme to the tenor of the said acts in all poynts."

This act, with the previous act of 9th August 1693, referred to in it, indicate the commencement of a crusade (which extended over many years), not only against Sunday profanation and profane swearing, but against every thing which, according to the strict construction of the times, was regarded

<sup>1</sup> Council Records, xxxvi. 71.

<sup>2</sup> Ibid. xxxiv. 11.

<sup>3</sup> Ibid. xxxvi. 291.

as immoral or profane. Such legislation must not, however, be regarded as an expression of narrow-minded notions peculiar to the municipal authorities of Edinburgh. The acts of council above referred to, and all the subsequent acts of that body intended to suppress immorality and profaneness, were really nothing better nor worse than the acts of successive parliaments and general assemblies on the same subject, and have their counterpart in the contemporary municipal enactments of the larger burghs in Scotland.<sup>1</sup>

On the night of Saturday the 3d of February 1700, a great fire, which broke out at the north-eastern corner of the meal market, destroyed the whole of the magnificent pile of buildings (excepting the treasury room), on the eastern and southern side of the Parliament Close, with the Exchange.<sup>2</sup> Kincaid states that two hundred families were computed to have been dislodged by this fire;<sup>3</sup> but Duncan Forbes of Culloden (father of the president of the same name), describing it in a letter to his brother, Colonel Forbes, three days afterwards, says, "Ther are burnt by the easiest computation, betwixt 3 and 400 familys."<sup>4</sup> Probably the correct number of families dislodged had not been ascertained when Forbes wrote, for on the 7th of February the town council appointed the session of the old kirk "to take up a list of the whole families who have suffered by that terrible conflagration, to the effect that the council may know what persons are liable to sustain their losses, and what not, that some speedie remedie may be taken for their relief." By the same act, the constables of the city, Canongate, Leith, West Port, Potterrow, and hail suburbs, were appointed "to make a diligent search for all abstracted goods, to the effect they may be secured for the right owners."<sup>5</sup> This act was followed, on 24th April 1700,<sup>6</sup> by another, in which the council,

"considering the great growth of immoralities of all sorts that is amongst us, and the fearful rebukes of God by a dreadful fire in the Parliament Close, Kirkheugh, and

<sup>1</sup> See on this subject Appendix No. VI.

<sup>2</sup> Maitland's History of Edinburgh, p. 112. Arnot's History of Edinburgh, p. 185. Memoirs of Elisabeth West (1825), pp. 127-130. Chambers's Domestic Annals of Scotland, iii. 225.

<sup>3</sup> Kincaid's History of Edinburgh, p. 82.

<sup>4</sup> Culloden Papers, p. 27. It is curious, as indicating the remarkable progress of Glasgow since that time, to find the following sentence in the letter referred to: "Its said just now by Sir John Cochran and Jordan-hill that ther is more rent burnt in this fyre then the whole city of Glasgow will amount to."

<sup>5</sup> Council Records, xxxvi. 509.

<sup>6</sup> Ibid. xxxvi. 519.

Cowgate, which happened the third day of February last, and other tokens of wrath lately come upon us since ; and moved with the zeal of God, and the eyes he hath laid on us, and that we taken upon ourselves to appear for him in our stationes doe in the Lords strength resolve to be more watchfull over our hearts and wayes then formerly, and over the manners of the people under our care and government, and each of us in our severall capacities to reprove vice with due zeall and prudence, as we shall have occasion, and to endeavour to promote the vigourous execution of these good laws made for suppressing of vice and punishing of the vitious."

This resolution they appointed to be recorded and read at their meetings four times every year, and the "moderators of the toun companies, and constables, and maisters of the merchant societie" were recommended "to move the making of the lyke resolution in their respective incorporations societies, and record the same in their books, and report." The merchant company, "finding themselves in duty bound to do likewise," adopted a resolution in almost the same words on 29th May,<sup>1</sup> and there can be little doubt that a similar course was followed by the constables, but unfortunately the minutes of the society at that date have not been preserved.<sup>2</sup>

On the 25th of December, in the same year,<sup>3</sup> it was represented to the council by Bailie Duncan, that the constables were desirous to have certain alterations made on their "orders and injunctions," and also to be provided with convenient short batons for the pocket. The council approved of the proposed alterations,—the nature of which, however, does not appear,—and ordered the "orders and injunctions" as amended to be reprinted. At the same time they appointed the constables, "out of their fines, to cause provide the said short battonnes at the sight of the said Baillie Duncan."

<sup>1</sup> Mr Mackie's Historical Notes as to the Merchant Company of Edinburgh, &c., (1862), p. 49.

<sup>2</sup> No trace of such a resolution having been passed at this time appears in the Minute Book of the Society of Captains of the Trained Bands.

<sup>3</sup> Council Records, xxxvi. 707.

## CHAPTER IV.

1701-1800.

Orders for the internal regulation and discipline of the Society.—Elections of Constables.—Legislation against Sunday profanation and immorality.—Duties of the Constables in enforcing that legislation, in attending at fires, in assisting revenue officers, in taking up lists of persons liable to serve as jurymen and in the militia, in attending magistrates on public occasions, in preserving the peace, in assisting recruiting officers, in preparing parliamentary returns, &c.—Donations by the Society to charitable objects.—“Instructions” to constables in 1728, 1750, and 1786.—Dangers attending execution of office.—Services of the Society connected with the rebellion in 1745.—Duties of Constables in relation to the watching and cleaning arrangements of the city.—Festive meetings, &c.



It has been seen how largely the constables were mixed up with the municipal administration of the city during the ninety years subsequent to their institution in 1611. For more than fifty of these years they have been found in the possession of an organisation presided over by their moderator; but no information has been obtained as to the nature of that organisation, or as to the inner life, so to speak, of the Society. The records of the city shew sufficiently what were the multifarious public duties of the constable of the sixteenth century, and enable his successors still to realise him in the discharge of some of these duties,—at the head of his watch,—reprimanding a lazy scavenger or a careless householder or servant for contravening the town's regulations as to filth,—dropping into some house of doubtful reputation to note and report the character and doings of its inmates,—stopping in the streets or markets to arrest some notorious beggar or infamous person, or to order some profane swearer to the tolbooth or the jugs,—inspecting and reporting on the waste lands and ruinous tenements so common at that time,—engaged in the obnox-

ous task of making up the rolls of the neighbours, with a view to the imposition of some new stent, or in the still more invidious task of collecting the tax. But no information can be gathered from these records as to the internal regulation of the society, when it met, or how it transacted its business. If the proceedings of the body were recorded at all before 1700, the record has perished. The minutes of the society,—and these of the most meagre description,—commence to run consecutively only from 1708, previous to which date all that remains is a copy of “Orders to be observed by the constables,” having by way of addendum, and as of apparently later date, resolutions of the society dated respectively 24th February, — August, and 3d November 1701, and 22d February 1703.<sup>1</sup>

The first nine of these “orders” exhibit the constables as a well constituted body, requiring on the part of its members regularity and punctuality of attendance at the meetings,<sup>2</sup> mutual support and co-operation,<sup>3</sup> attention to duty,<sup>4</sup> the methodical conduct of business,<sup>5</sup> monthly meetings,<sup>6</sup> and subordination to discipline.<sup>7</sup> In all probability these orders regulated the internal arrangement and discipline of the society from its first institution. Article 10, however, is apparently of later date than those which precede, and extended to extraordinary meetings the regulations as to absentees and *seros* (members late in their attendance) applicable to ordinary meetings. Article 11 imposed fines on swearers at the meetings. Article 12 provided for the regular observance by the society of the kindly custom of attending the funerals of deceased constables, their wives or children. Article 13 defined the exemption of constables from watching and warding. Article 14 required each constable to have his baton in his hand while pointing. Article 15 embodied the order as to the mode in which the constables were to enforce the acts for the proper observance of the Lord’s day. Article 16

<sup>1</sup> Minute Book, i. 3–13. See Appendix No. VII.

The second page of the first volume of the society’s minutes contains a memorandum to the effect that it was bought by the society in 1725, and that a part of it was written by James Gow, the clerk or secretary for that year. The minutes (which it will be observed were appointed to be kept by article 17th of the society’s orders) were probably written on loose sheets previous to that time, and doubtless all that were in the possession of the society in 1725 were transcribed by Mr Gow, who thus has the merit of having taken the first step towards the preservation of the records of the society in a connected series.

<sup>2</sup> Articles 1, 2, 3.

<sup>3</sup> Article 4.

<sup>4</sup> Article 5.

<sup>5</sup> Articles 6, 7.

<sup>6</sup> Article 8.

<sup>7</sup> Article 9.

prescribed the settlement of questions by a majority of votes, and gave the moderator a casting vote in cases of equality; and article 17 required the Society's proceedings to be minuted.<sup>1</sup>

Constables were elected on 28th November 1701,<sup>2</sup> and on 9th December 1702.<sup>3</sup> Those elected on the latter date were appointed to continue till 1st March 1704, and when they were sworn into office, they were privileged to receive an exhortation from "Mr George Hamilton, minister of the New Kirk, to be diligent in their offices and in dilating those to the magistrates who were guilty of immoralities."<sup>4</sup>

Similar elections were made on 21st January 1704,<sup>5</sup> 16th March 1705,<sup>6</sup> and 22d March 1706,<sup>7</sup> and on these occasions the magistrates were recommended "to cause read over the instructions and to administrate the oath to them before one of the ministers of the citie."<sup>8</sup>

Elections of constables were also made on 11th April 1707,<sup>9</sup> 28th April 1708,<sup>10</sup> 25th May 1709,<sup>11</sup> 24th November 1710 (for the years 1711 and 1712),<sup>12</sup> 2d January 1713,<sup>13</sup> 1st January 1714,<sup>14</sup> 5th January 1715,<sup>15</sup> 4th January 1716,<sup>16</sup> 2d January 1717,<sup>17</sup> 8th January 1718,<sup>18</sup> 14th January 1719,<sup>19</sup> 20th January 1720,<sup>20</sup> 4th January 1721,<sup>21</sup> 7th March 1722,<sup>22</sup> 13th March 1723,<sup>23</sup> 18th March 1724,<sup>24</sup> 19th March 1725,<sup>25</sup> 23d March 1726,<sup>26</sup> 17th March 1727,<sup>27</sup> and 18th March 1728.<sup>28</sup> The names of all the constables elected in 1707, and sub-

<sup>1</sup> Previous to this time, and for many years afterwards, the society was merely an annual body, the first act of which, after the members were sworn into office, was to elect its office-bearers, and to adopt, either expressly or by implication, the acts and regulations of its predecessors.

<sup>2</sup> Council Records, xxxvi. 942.

<sup>4</sup> Ibid. xxxvii. 363.

<sup>6</sup> Ibid. xxxviii. 259.

<sup>3</sup> Ibid. xxxvii. 360.

<sup>5</sup> Ibid. xxxvii. 178.

<sup>7</sup> Ibid. xxxviii. 507.

<sup>8</sup> At the very time that the services of the city clergy were thus in requisition to exhort the constables to the faithful discharge of their duties, it is recorded, under date 2d October 1706, that William Crawford, wright, having been convicted before the magistrates of "a gross misbehaviour, was suspended from his office by the council, and declared to be ever afterwards incapable of election" [Council Records, xxxviii. 659].

<sup>9</sup> Ibid. xxxviii. 764.

<sup>16</sup> Ibid. xliii. 51.

<sup>23</sup> Ibid. l. 17.

<sup>10</sup> Ibid. xxxix. 76.

<sup>17</sup> Ibid. xlv. 41.

<sup>24</sup> Ibid. l. 237.

<sup>11</sup> Ibid. xxxix. 359.

<sup>18</sup> Ibid. xlv. 63.

<sup>25</sup> Ibid. l. 462.

<sup>12</sup> Ibid. xxxix. 995.

<sup>19</sup> Ibid. xlv. 118.

<sup>26</sup> Ibid. li. 104.

<sup>13</sup> Ibid. xli. 1.

<sup>20</sup> Ibid. xlviii. 71.

<sup>27</sup> Ibid. li. 301.

<sup>14</sup> Ibid. xli. 315.

<sup>21</sup> Ibid. xlviii. 331.

<sup>28</sup> Ibid. li. 528.

<sup>15</sup> Ibid. xlii. 2.

<sup>22</sup> Ibid. xlix. 196.

sequently, are duly recorded in the minute book of the society. In 1707, the name of the moderator only is given, but in 1708 and subsequent years the minutes of election of office-bearers are regularly entered. The office-bearers consisted of the moderator, treasurer, and clerk, with the addition, in 1721, of the chaplain. In 1740 and 1741, again, a chaplain was elected.<sup>1</sup> The subsequent elections to that office are shewn in the list of office-bearers.<sup>2</sup>

It will be observed that all the "orders" to which reference has been made,—with the exception of Article 15,—had reference to the arrangements of the society within itself. The subsequent articles prescribed the manner in which the constables were to exercise the powers with which they were armed for the promotion of virtue, by detecting and punishing vice and all those minor irregularities of conduct with which the authorities felt themselves called on to deal. Hitherto we have seen the constables mainly occupied in securing the peace, or in looking after the cleanliness, of the city; but for fifty years hereafter a large proportion of their time and labour will be found devoted to domiciliary visitation, and other means for restraining the vice and immorality against which the legislation of that period, secular as well as ecclesiastical, was most anxiously, but it appears not very successfully, directed.

To that legislation, then, so far as necessary to explain the action of the constables under their "Orders and Injunctions," special reference must now be made.

On 27th December 1700, the Town Council, taking to their serious consideration the great increase and growth of cursing, swearing, and Sabbath-breaking, and other gross immoralities in the city,—notwithstanding their several acts for suppressing these immoralities,—prohibited and discharged all persons from committing any of these offences, under the penalties therein specified.<sup>3</sup> Five weeks later the act of parliament 1701, c. 12,<sup>4</sup> ratified, renewed, and revived all former laws and acts of parliament made against drunkenness, sabbath-breaking, swearing, fornication, adultery, and all manner of uncleanness, mocking and reproaching religion, and the exercise thereof,

<sup>1</sup> So long as the office was held by a licentiate of the Church, it seems to have been the practice to allow him an annual fee for his services. The meetings at that time were always opened with prayer, and it was doubtless the duty of the chaplain to perform this duty.

<sup>2</sup> Appendix No. I.

<sup>3</sup> Council Records, xxxvi. 714.

<sup>4</sup> Acts of the Parliaments of Scotland, x. 279.

and generally all other laws made against profaneness ; ordained ministers, kirk-sessions, and heritors to act their parts faithfully in the premises ; and appointed all persons who might be declared by the church to be guilty and contumacious to be reported to the king, "as not fit to be employed or continued in any place of public trust, civil or military." Thereafter the council passed the following series of acts against vice and immorality : An act dated 28th February 1701, by which they ratified all their former acts against Sabbath profanation and immorality ; prohibited all keepers of taverns, alehouses, victual houses, or cellars from furnishing drink on the Lord's day to any but strangers, or such as had not houses of their own in the place ; discharged all persons from carrying through the streets from house to house any kind of clothes, periwigs, shoes, or other apparel, and all barbers or others from trimming or shaving any person in their own houses, shops, or elsewhere on that day ; and prohibited all persons whatsoever from standing idly on the streets, or walking in the fields or upon the Castlehill on that day.<sup>1</sup> An act dated 13th August 1701, by which they discharged all persons from being in taverns, cellars, &c., after ten o'clock at night ; enjoined all retailers of liquors to shut their places of business at the tolling of the ten hours bell ;<sup>2</sup>

<sup>1</sup> Council Records, xxxvi. 764.

<sup>2</sup> From very early times in Edinburgh, as in England under the Curfew Law, the people were required to retire to their homes on the ringing of the common bell, at a fixed hour at night. In England, the hour was eight o'clock ; but in Edinburgh, it was sometimes nine and sometimes ten o'clock. The enforcement of this regulation doubtless served the purpose of a precaution against fire, by inducing every family to put out fires and lights at an early hour ; but it also served what in Edinburgh was perhaps the not less important object of preventing brawls on the streets at night, by compelling the people to be within doors early. It was probably with a view to the latter object that the act of James I. 1436, c. 8 [Acts of the Parliaments of Scotland, ii. 24], enacted that any man "fundyn in taivernys at wyne, aile, or beir, efter the straik of ix houris, and the bell that salbe rongyn in the said burghe," shall be put "in the kings prisone." And it was obviously for the same purpose that the acts of the Town Council and Privy Council, to which reference has been made, were passed in 1584, 1594, and 1661. [*Antea*, pp. 23, 26, 28. See also acts of council dated 25th August 1513. Council Records, i. 4 ; 5th February 1556. Ibid. ii. 93 ; 24th November 1585. Ibid. vii. 212 ; 4th November 1586. Ibid. viii. 54 ; 11th November 1586. Ibid. viii. 56.] Be that as it may, the records of the Town Council contain several acts fixing the hours at which taverns, alehouses, and cookshops should be closed, and after which no person was allowed, without incurring penalties, to eat or drink therein. Thus acts dated 7th November 1589, and 29th October 1591, prescribed ten o'clock [Ibid. ix. 20, and ix.

ordered the constables to be diligent in their duty of taking their turn through the streets, and visiting suspected houses in the night time, and declared their resolution to hold "two courts in the week, allenarly for cognoscing and punishing of immoralities, such as cursing, swearing, drunkenness, breach of the Lord's day," &c., and to give informers the third part of the fines as their reward.<sup>1</sup> An act dated 4th December 1702, by which, after referring to the great fire in Kirkheugh, in February 1700; to another great conflagration in the north side of the Lawnmarket, on 28th October 1701, when "several men and women and children were consumed by the flames and lost by the fall of ruinous walls;"<sup>2</sup> and to a "tremenduous and terrible blowing up of gunpowder in Leith upon the 3d of July last, wherein sundry persons were lost, and wonderful ruins made in the place, they resolved to be not only more watchful over their own hearts and ways than formerly, but to promote the

112]; an act dated 10th February 1608 prescribed nine o'clock in winter and ten o'clock in summer [Ibid. xi. 246]; an act dated 22d October 1603 reverted to the hour of nine [Ibid. xi. 134]. It appears also from these records that the Council were accustomed to subject the keepers of taverns and alehouses to various restrictions and obligations. Thus by an act, dated 27th January 1567 [Ibid. iv. 214], they were ordained to have their houses on the High Street, and not to tap or sell wine within the closes, vennels, and back sides, under the penalty of confiscation of their goods. Acts dated 4th November 1580, and 23d December 1584 [Ibid. vi. 92, Ibid. vii. 144], ordained that no burgess should be allowed to have more than one tavern or booth, under pain of losing his freedom for the third offence. Tapsters, baxters, taverners, common cooks, and stablers, were, by an act dated 2d November 1586, ordered to hang out lanterns before their houses from 5 till 9 o'clock, under pain of 8s. [Ibid. viii. 54]; while two subsequent acts, dated 1st November 1591, and 9th November 1593 [Ibid. ix. 118, and ix. 228], required taverners to have lanterns in their stairs. Their traffic on Sunday was also made the subject of frequent and minute legislation, enforced by domiciliary visitation of the most arbitrary kind [See Appendix No. VI]. All the acts of council above referred to, it will be observed, were passed previous to the act of James VI. 1617, c. 20 [Acts of the Parliaments of Scotland, iv. 548], which "for the restraynt of the vyld and detestable vyce of drunkenes daylie increseing to the heigh dishonour of God and gryit harme of the haill realme," enacted that "all persounes lauffullie convict of drunkines or of hanting of tavernis and ailhoussis efter ten houres at nycht or ony tyme of the day except in tyme of travel or for ordinarie refreshment should be subjected to certain fines, and failing payment to imprisonment." This act was ratified by the acts 1661, c. 282 [Ibid. vii. 262], and 1672, c. 58 [Ibid. viii. 99], 1693, c. 64 [Ibid. ix. 327], and 1696, c. 31 [Ibid. x. 65].

<sup>1</sup> Council Records, xxxvi. 862.

<sup>2</sup> Ibid. xxxvii. 357.

vigorous execution of those good laws made for suppressing of vice and punishing of the vitious." This act was appointed to be read every first council day after Whitsunday and Martinmas, and recommended "the deacons of crafts, captains commandant of the town companies, constables, and masters of the merchant society, to move making of the like resolution in their respective corporations and societies, and to record the same in their books."<sup>1</sup> An act dated 5th April 1704, by which the council, "considering that the frequenting of taverns, and remaining therein at unseasonable hours in the night, doth not only corrupt the youth of this city, but hath pernicious influence upon debauching all ranks of persons resorting thereto," and that the many good and excellent laws

"made for restraining of the said vice had not had the desired success, partly through the obstinacy of the offenders, and partly through the not putting the laws and acts already made to a vigorous execution, by which means virtue and piety are under a great decay, and all manner of scandals and immoralities do daily abound,"—

renewed the prohibition against drinking in taverns and public-houses after ten o'clock at night, and commanded and charged

"all constables and others within their respective bounds to see the execution hereof, as they will be answerable thereanent. And in like manner the captains of the town guard are commanded to cause the soldiers that nightly go the rounds after ten at night, to observe if they find lights and companies drinking in taverns after the said hour, and delate these houses and others, together with such persons as they find drunk upon the streets, to the magistrates the next day, to the end that disorderly houses and persons may be discovered and brought to condign punishment."<sup>2</sup>

And an act dated the 12th of the same month, passed against playing at cards and dice, &c. This act—on the preamble,

"that the playing at cards and dice in coffee houses, taverns, and other public or common houses, is found to be the occasion of horrid cursing, swearing, quarrelling, strife, contention, covetousness, tipling, loss of time, neglect of necessary business, and many other inconveniences, which hath ruined the estates of many, and redacted them and their families to poverty,"

and that these games were discharged by the act 1621, c. 14,<sup>3</sup>—prohibited

<sup>1</sup> Council Records, xxxvii. 357. Similar resolutions were passed and recorded by the society of captains of the trained bands on 4th December 1705 [Minute Book of Captains, i. 79], but no reference is made to the subject in the minute book of the constables.

<sup>2</sup> Council Records, xxxvii. 772.

<sup>3</sup> Acts of the Parliaments of Scotland, iv. 613.

all such play under a penalty of £40 Scots, to be exacted from the keepers of the said houses for the first fault, and the loss of their liberty for the next.

“And for the more strict execution of the said act, the constables and others bearing office and holding their places of the good town, are hereby appointed to dilate such as they know to contravene this act, under the pain of being liable for the fine themselves; and the informer is to have one-half of the fine, and these but prejudice of exacting the other fines contained in the said act of parliament, as persons shall be found to transgress the same.”<sup>1</sup>

On 2d January 1706,<sup>2</sup> the council,—referring to their previous acts against profanity and vice, which had not received such vigorous execution as was to be wished,—appointed all these acts, made since the Revolution, to be printed, along with the proclamation of the privy council, dated 25th January 1698, containing an abbeviat of the acts of parliament against profaneness, and an index “of the whole, shewing the penalties to be inflicted upon transgressors.”<sup>3</sup> Notwithstanding these acts and proclamations, however, and the zealous efforts of the local authorities, civil and ecclesiastical, to enforce them, immoralities continued to prevail to such an extent that, in 1708, it was considered necessary to issue another royal proclamation on the subject.<sup>4</sup> This proclamation, dated 18th August 1708, set forth the resolution of her majesty to discountenance and punish all manner of vice, profaneness, and immorality, and required all judges and magistrates to put the laws against immorality and vice to vigorous execution; appointed courts to be held once a month at least, for trying and punishing offences under these acts; ordained presbyteries, ministers, and kirk-sessions to nominate fit persons to take notice of vice and immorality, and to delate and prosecute transgressors; and required all naval and military officers to exemplify the virtues for the sake of those under them, and to see that the latter duly submitted themselves to the discipline of the church. On 22d June 1709, the council, referring to the proclamation of Queen Anne, enjoined and appointed all whom it concerned “to do what is incumbent on them in

<sup>1</sup> Council Records, xxxvii. 779.

<sup>2</sup> Ibid. xxxviii. 456.

<sup>3</sup> Acts of the Town Council of the City of Edinburgh, for suppressing of Vice and Immorality, &c. Printed by George Mosman, Edinburgh, 1706.

<sup>4</sup> Queen Anne's Pious Proclamation for encouragement of piety and virtue, &c.—Printed by the heirs and successors of Andrew Anderson, printer to Her Majesty. Edinburgh. 1709. 5-12.

their respective stations for putting a stop to the abounding immoralities of this place," and appointed her majesty's proclamation, with the abbreviates of the laws thereto subjoined, and various acts of parliament of the general assembly, town council, and general sessions of the churches in Edinburgh, to be printed, along with an index containing the penalties to be inflicted on transgressors.<sup>1</sup>

By an act dated 7th March 1711, the council revived their former acts of 9th August 1693 and 28th February 1701, relative to the observance of the Sabbath, and certified that the transgressors of these acts should be punished conform to law.<sup>2</sup> Another act, of date 16th March in the same year, appointed the council's act of 28th February 1701 to be read from all the pulpits of the city and suburbs.<sup>3</sup> An act dated 6th May 1719,<sup>4</sup> and another act dated 24th May 1721,<sup>5</sup> passed on the application of the presbytery, interposed the authority of the council to an act of the presbytery dated 29th April 1719 for the better observance of the Lord's day, and certified all persons found standing on the High Street before, betwixt, or after sermons, or taking their diversion by walking, or otherwise transgressing the act of the presbytery, "that the elders, constables, private censures [censors], and officers of this citie and suburbs will take up lists of all transgressors, and

---

<sup>1</sup> Council Records, xxxix. 382. Among the acts of the kirk-sessions printed in compliance with this order of council are, (1.) An act dated 7th June 1709, appointing the ruling elders and deacons of each session to visit the families in their respective bounds at least once every half-year, and to report to the several sessions twice a-year at the times therein specified. This act contains specific instructions to be observed by the elders or deacons in their visitations. (2.) An act of the same date, for the observance of the Lord's day. This act required not only each session "to take their turn in visiting the streets in time of publick worship on the Lord's day, as hath been the laudable custom of this city; but also every session is to take care of visiting their own parishes, and suspected houses therein, at other convenient hours on the Lord's day, by an elder and deacon by turns, with a beadle and officers, and likewise when the day is long that each session go with their beadles and officers through the streets after sermons for the evils above mentioned, and reprove such as they find transgressing, and when persons do not take with reproof, and do not refrain from such practices in time coming, that they be complained of to the session, in order to be censured, and referred to the civil magistrate, to be punished according to the acts made thereanent" [Queen's Pious Proclamation, pp. 71-73].

<sup>2</sup> Council Records, xl. 44.

<sup>3</sup> Ibid. xl. 51.

<sup>4</sup> Ibid. xlv. 157.

<sup>5</sup> Ibid. xlviii. 421. Arnot's History of Edinburgh, p. 204.

lay the same before the magistrates of their respective districts, to the effect they may be punished."

While the higher authorities were thus engaged in a crusade against immorality and the profanation of the Lord's day, it is not surprising to find that the constables were similarly occupied. Upon them was laid to a large extent the duty of enforcing the acts and proclamations referred to, and in addition to their "Orders," various minutes of the society explain how they did so. Thus their first minute, dated 24th February 1701, and forming No. 18 of their "Orders," refers to the prevalence of cursing, swearing, and other vices, especially in the public markets, and sets forth their unanimous resolution "to go through the whole mercats four and four as they are classed, each day of the week (except Munday) in order to punish transgressors, as they shall see cause, according to law."<sup>1</sup> Their second minute, dated in August 1701, and forming No. 19 of their "Orders," refers to the council's act of 13th August 1701, and records their unanimous engagement to go through their bounds two or three nights every week, by fours in company, as they are classed, in order to suppress unseasonable drinking and caballing, and to delate to the magistrates such as are obstinate transgressors.<sup>2</sup> Another minute, dated 22d February 1703, and forming article 21st of their "Orders,"<sup>3</sup> sets forth that, for "the more effectual suppressing of vice and immorality, the four constables who go through the mercats weekly by turns shall be obliged . . . to go through the streets on the Lord's day in the morning, as the first dyet of their week," and also to attend the immorality court during the week, to see that the fines are exacted from transgressors. A minute, dated 3d May 1708,<sup>4</sup> appointed

"the first squad to goe through the streets and mercats this week, and to taverns and cellars each Saturday and Sabbath night, and so each squade successively; and the squade that goes through the week is to advertise the next and so on."

<sup>1</sup> Minute Book, i. 9. In addition to the statutes on this subject already referred to [*antea*, pp. 93-96], see ratification thereof by the acts 1661, c. 282 [Acts of the Parliaments of Scotland, vii. 262]; and 1672, c. 58 [Ibid. viii. 99]. See also acts of the General Assembly against profaneness, dated 16th April 1694, 11th January 1697, 30th January 1699 [Acts of the General Assembly, pp. 241, 259, 280], and "The Queen's pious proclamation for encouragement of piety and virtue," &c., with collection of acts of the General Assembly, and town council and kirk-session of Edinburgh to the same effect [Edinburgh, 1709], pp. 27-40.

<sup>2</sup> Minute Book, i. 10.

<sup>3</sup> Ibid. i. 12.

<sup>4</sup> Ibid. i. 20.

The whole society were also appointed to

"mett in the Laigh Council house each Lords day night at an half befor five o'clock precisely to goe in companys to search taverns cellars and other houses."

Again, on 25th September 1712,<sup>1</sup> the moderator having reported the desire of the parochial societies for reformation of manners in the city, that some one of the constables should be appointed to meet with and assist them at their monthly corresponding meetings, the society approved thereof, and "appointed their moderator to meet with them and others *per vices*, as they happen to meet." On 19th August 1725, the constables passed the following resolution :—<sup>2</sup>

"Taking it to their serious consideration that their is a great many petty houses and cellars down closes and in the fore streets that keeps companys of people drinking in the time of divine worship ou the Lords Day, which sin is a meane to bring one the just judgement of God upon this citie, and upon the lands wherein we live ; And therefore to prevent this for the future the said constables has unanimously agreed that each squad, their turn about, shall meet at the head of Mary Kings close, or any other place, after the ringing in of the bells, with two of the toun officers with them, and they to goe two and two, one each side of the street, down closes from the castle hill to the Netherbow, including Cowgate [and] Grassmercat to search these bad houses, that this great sin may be crub'd ; and resolves to put the good laws against this abominable practice to a rigorous execution."

In the following year the constables are found prompting the magistrates to exercise their authority for the suppression of stage plays. One Anthony Alston, with a company of strollers, having "presumed to set up a stage" in the city, the society, on 27th November 1727, petitioned the council "to restrain and by all means extirpate the said stage," tending as it did "chiefly to the debauching of the faith of this generation in their principles and morals," and "condemned and strictly prohibited by the laws of God and all christian nations."<sup>3</sup> No trace of this petition, however, or of any action following upon it, is to be found in the records of the council.

On 20th April 1729,<sup>4</sup> the constables,—for the more effectual suppression of the apparently increasing profanation of the Sabbath, drinking and walking idly on the streets in time of public worship,—resolved that the

"same four of their number who shall be warned by their officer to go through the streets [on] Sunday morning, the two of them in the forenoon and the other two in the afternoon, shall, in time of public worship on that day go to all the publick houses in

<sup>1</sup> Minute Book, i. 24.

<sup>2</sup> Ibid. i. 60.

<sup>3</sup> Ibid. i. 70, 71.

<sup>4</sup> Ibid. i. 82.

this city, where they suspect people drinking, or otherwise abusing that day, in order that all such houses may be discovered, and the persons so offending secured and brought to condigne punishment," and they recommended to their "successors in office the observance of the above rule in order that indecent practices on that day may be effectually punished, and if possible prevented in time coming in this city."

The various fines imposed upon those who transgressed the laws against Sunday profanation, vice, and immorality, were uplifted by the kirk treasurer, who was charged rigorously with every fine not remitted or modified by the magistrates or session, save in the case of persons unable to pay, and whom he could instruct to have been given over to corporal punishment.<sup>1</sup> Necessarily strict and stern in the discharge of his duty, this officer was a very formidable individual, and the dislike with which he was regarded seems to have been extended even to his "man or servant."<sup>2</sup> This dislike must have been all the greater if,—as is alleged by Bent, an English traveller who visited Edinburgh in the early part of the seventeenth century,—the treasurer practised a system of hired espionage, so that people lay "at the mercy of villains who would perhaps forswear themselves for sixpence." Bent's statement must, however, be received with hesitation, not diminished by his farther surely exaggerated assertion, that he had known the town guard in Edinburgh under arms for a night, besetting a house into which two persons had been seen to enter.<sup>3</sup>

In the discharge of the duties devolved upon them by the several acts against Sabbath profanation and immorality, the constables, as might be expected, were occasionally brought into trouble. Of this there is an illustration in the case of George Young, a shopkeeper in the High Street, one of their number. In the course of his peregrinations through the town on the evening of Sunday the 24th of January 1703, "to see that the Lord's day and laws made for the observance thereof were not violat," Young came to the house of Marjory Thom, vintner, a little before ten o'clock, and finding several companies in different rooms, expostulated with the mistress, and threatened to delate her to the magistrates. The threat was resented by one of the guests, the eldest son of Lord Neil Campbell (a cousin of the Duke of Argyle), who followed Young, and threatened to make him repent it. On the following morning, Campbell went to Young's shop, an altercation ensued, Young was beaten, the guard were called in, and Campbell was made prisoner.

<sup>1</sup> Acts of Council, 2d January 1702, and 5th January 1705; Council Records, xxxvii. 39; xxxviii. 216.

<sup>2</sup> Chambers's Domestic Annals of Scotland, iii. 344.

<sup>3</sup> Bent's Letters, i. 194.

Campbell immediately instituted proceedings against Young before the privy council, which on the 9th of March resulted in a decision against Young, who was found guilty of rioting, and ordered to pay 400 merks to Campbell for expenses.<sup>1</sup>

Reference has been made to the great fires in the Kirkheugh in February 1700,<sup>2</sup> and on the north side of the Lawnmarket, in October of the following year.<sup>3</sup> These calamities, so serious in themselves, and happening so closely, forced upon the magistrates the consideration of how they could best secure order and protect property in such emergencies, and they resolved to request the constables to attend on all such occasions, "to oversee and give needful orders." This request having been conveyed to the society through their moderator on 3d November 1701, they by a minute of that date, which forms No. 20 of their "orders," expressed their willingness to "disburden the magistrates and serve the neighbourhood as much as possibly they can;" and their engagement to "convene at the Laigh Councilhouse, with their long battons in their hands, at the first tolling of the fire bell, to receive and carry out the orders of the lord provost or magistrates."<sup>4</sup> The "regulations anent fires" issued by the council on 20th March 1702, contain the following article (10), "That each year the council recommend it to the several deacons of crafts, town captains, and constables to be present in case of fyre."<sup>5</sup>

A minute, dated 3d January 1713,<sup>6</sup> affords the first trace of the manner in which the fines levied from the constables for breaches of orders and discipline were dealt with. They were deposited in a box, which was opened immediately before the constables went out of office, and were then applied at the pleasure of the society. On the occasion referred to, for example, 20s. sterling were ordered to be paid to George Mowbray, their officer,<sup>7</sup> and the balance that remained was handed over to the moderator for distribution among poor and

<sup>1</sup> Chambers's Domestic Annals of Scotland, iii. 271-273.

<sup>2</sup> *Antea*, p. 147.

<sup>3</sup> *Antea*, p. 154.

<sup>4</sup> Minute Book, i. 11.

<sup>5</sup> Council Records, xxxvii. 102. See also Regulations issued by the Town Council on 21st April 1703 [Council Records, xxxvii. 466; Maitland's History of Edinburgh, p. 330].

<sup>6</sup> Minute Book, i. 24.

<sup>7</sup> At this time and subsequently the society appointed an officer to attend it as its officer, and an annual fee was paid to him for his services. The previous practice, as provided in the rules and instructions for the town officers, dated 26th June 1702, was for the treasurer, captains, constables, and stentmasters to be served "by any of the officers indifferently" [Council Records, xxxvii. 190]. See List of Officers of the Society, Appendix VIII.

indigent persons. On 3d December 1717, the society voted one hundred merks to the Trades Maiden Hospital.<sup>1</sup> In January 1719, they paid over 20s. sterling to the Charity Schools.<sup>2</sup> On 26th December 1720,<sup>3</sup> and 5th January 1721,<sup>4</sup> sums were paid out of the box to James Galloway, a decayed merchant in Edinburgh, and James Sandilands, wright, whose shop had been burned.<sup>5</sup>

It appears from a minute of meeting held on 31st January 1715, that the society were in the habit of sending in to the magistrates and council annually a "long leet" of persons eligible for election as constables,<sup>6</sup> from which leet the constables were chosen. At that meeting it was complained that one of the constables of that year, having been put upon the long leet for four successive years, had been as often elected. To prevent the recurrence of this in time coming, it was accordingly agreed

"that each member who hath served three years in that station shall have a mark at the end of his name in the book, to signify so much, and as they resolve for themselves so they recommend it to their successors in office to take notice that none who hath served three years be given in to the magistrates in their long lite for the future."<sup>7</sup>

On the 25th of April in the same year, the society resolved for themselves, and recommended it to their successors, that when a vacancy occurred in the body, no constable should, under penalty of £6 Scots, *toties quoties*, presume to recommend any person to the magistrates for election, but that such recommendation should be made by the advice of the society and its moderator to that effect.<sup>8</sup> On 26th November 1716, the society came to the following resolution, which, in so far as it assumed independence of the magistrates and council, cannot be regarded as otherwise than *ultra vires*:

"Notwithstanding the constables office in Edinburgh is very honourable, yet it being attended with great trouble; therefore it is agreed to and enacted by this present

<sup>1</sup> Minute Book, i. 34.

<sup>2</sup> Ibid. i. 39.

<sup>3</sup> Ibid. i. 43.

<sup>4</sup> Ibid. i. 44.

<sup>5</sup> For the more important donations subsequent to this date, see Appendix IX.

<sup>6</sup> Eligibility for the office consisted in being a burgess of the city, and in residence within the royalty. See Minute Book, i. 202, 27th April 1754; and Ibid. i. 219, 26th January 1756.

<sup>7</sup> Minute Book, i. 30.

<sup>8</sup> Ibid. i. 31. A member of the society having, notwithstanding this rule, submitted to the council a leet from which three constables were chosen to supply vacancies in 1740, was, on 20th October, ordered to ask the pardon of the society for the affront offered them, and thereafter severely rebuked from the chair [Ibid. i. 116].

society that all those who have served in the station of moderator, or three times constable (they alwayes documenting the same), shall have their names inserted alphabetically att the latter end of the book and though any such should be made choise of by the council they shall not be received by the constables." <sup>1</sup>

From a minute of the society, dated 9th March 1722,<sup>2</sup> it appears, that the magistrates had required the constables to give their assistance at all times to the king's officers, in the execution of an act of parliament, intituled, "An Act for preventing frauds and abuses in the publick revenue of Excise;" that this duty subjected constables "to the reflection" of their neighbours; and that they petitioned the council to be relieved from it. It does not appear, however, either from the records of the council or of the society, what was done in the matter.<sup>3</sup>

On 9th March 1722, a committee, consisting of four persons, besides the treasurer and clerk, was elected "to attend the moderator," and the practice of appointing a committee for that purpose was regularly observed afterwards.<sup>4</sup>

On 18th March 1728, the constable's "instructions" were read to the council, and ordered to be reprinted and recorded.<sup>5</sup> So far as they are essentially the same as the original "orders and injunctions," it is not necessary to refer to them. But they contain some noticeable points of difference, to which allusion must be made.

The power conferred on the constables by article 1 of the "orders and injunctions," to take and apprehend suspect persons, idle vagabonds, or night walkers, was, by article 1 of the "instructions," made applicable also to unfreemen.

Article 3 of the "orders and injunctions" empowered the constables to take the assistance of the neighbours for sundering parties, &c. By article 3 of the "instructions," he was authorised to take the assistance "of the town guard, town officers, and whole neighbours."

<sup>1</sup> Minute Book, i. 33.

<sup>2</sup> Ibid. i. 46.

<sup>3</sup> See appointment of extra constables on 20th June 1739, to co-operate with officers of excise, p. 168.

<sup>4</sup> Minute Book, i. 50. Subsequently the number of elected members varied arbitrarily from four to twelve, and for a time they were called "assistants," as in the merchant company. These committees were appointed sometimes for twelve months, and sometimes for four months. From 1765 [Ibid. i. 194] till 1775 [Ibid. ii. 33], they were termed "the weekly committee," but seem afterwards to have had the title, "the committee."

<sup>5</sup> Council Records, li. 528.

Article 5 of the "orders and injunctions" relative to Jesuits, &c., was not repeated in the "instructions," but article 8 of the "instructions,"—extending the powers conferred by article 9 of the "orders and injunctions,"—authorised the constables to search, not only for vagabonds, beggars, or infamous persons, but also for "priests or jesuits keeping private masses."

Article 5 of the "instructions,"—extending the provision of article 6 of the "orders and injunctions,"—empowered the constables, not only to take and apprehend all idle persons, &c., but to "incarcerat them or putt them in the guard, or present them before the Lord Provost, or any one of the baillies," for trial and punishment.

Article 10 of the "instructions" fixed the "last Monday of every month, at 8 o'clock in the morning," for the constables reporting themselves to the magistrats, instead of the last Saturday of every month, as prescribed by article 11 of the "orders and injunctions."

Instead of article 14 of the "orders and injunctions," article 11 of the "instructions" provided as follows

"Ilk constable within his bounds, or any where else within the city and liberties thereof, shall notice all boudy houses, take and apprehend all banners, cursers, swearers and blasphemers of Gods name, drunkards, sabbath-breakers, or other lewd persons, either in streets, mercats, or at the wells, or in cellars or any where else, and shall commit them to the city guard, the officers whereof shall detain such prisoners untill they are convicted before, and liberat allenary by the authority of, the magistrats. And that no constable shall at his own hand take bail bonds or any sort of consignations for presenting prisoners before them, but before the magistrats allenary, or exact fines or mulcts of any sort untill the offenders are regularly convicted, and that they obtain the magistrats warrant to that effect, under what penalty and censure the magistrats shall inflict."

Articles 12 and 13 of the "instructions" were also different from the corresponding article (12) of the "orders and injunctions." They provided as follows :—

"12. Item, The constable shall be obliged to take notice of the sufficiency of the muckmen, and their seasonable cleansing of the streets and others, and that the tacksmen take away the same in due time conform to the act of council, and poynd such persons as shall be found guilty of throwing over any kind of filth at shots windows or doors in the high streets, or in closses wynds or passages of the city, and for undue laying down the same contrary to the time allowed in the proclamation, when any complaint shall be made to them by any of the neighbours."

"13. Item, That each familie shall be poynded for their children or servants that

nests the streets turnpikes or stairs, closes or vennals of the city, in 4s. scots, when any complaint shall be made."

The provision in article 15 of the "orders and injunctions" was, by article 14 of the "instructions," made expressly applicable to "any person inhabitant, souldier of the town guard, or officer," delaying or refusing to concur with the constable in executing his office.

Article 15 of the "instructions" embodied an entirely new regulation. It provided as follows:—

"15. Item, That every constable, after he is out of his office of constabulary, shall continowe in the office of a censor and assistant to his succeeding constable, for suppressing immoralities, during the time of their immediate successor's office, and to attend the quarterly meetings of the said constables and immoralities," &c.

Article 16 of the "instructions" obliged the constables to receive any injunctions or statutes that the Lord Provost, bailies, and council, should enjoin to them at any time thereafter relating to their office.

On the same day on which these instructions were read, and ordered to be printed and recorded, the council empowered the constables "to apprehend all banners, cursers, swearers, and blasphemers of God's name, drunkards, Sabbath-breakers, or any other lewd persons, . . . on streets, markets, at the wells, in cellars, or anywhere else," and to "demand from these offenders the pecunial mulcts imposed by law. And in case the offenders should make offer of those fines," the constables were "empowered to receive the same, but in case of refusal, the constables were only empowered to commit these persons to the guard, there to lye untill they be liberat by a special comand of one of the magistrats."<sup>1</sup>

Annual elections of constables were thereafter made on 21st March 1729,<sup>2</sup> 6th March 1730,<sup>3</sup> 17th March 1731,<sup>4</sup> 15th March 1732,<sup>5</sup> 14th March 1733,<sup>6</sup> 27th March 1734,<sup>7</sup> 12th March 1735,<sup>8</sup> 10th March 1736,<sup>9</sup> 9th March 1737,<sup>10</sup>

<sup>1</sup> Council Records, li. 531.

<sup>4</sup> Ibid. liii. 314.

<sup>7</sup> Ibid. lv. 58.

<sup>2</sup> Ibid. lii. 219.

<sup>5</sup> Ibid. liv. 43.

<sup>8</sup> Ibid. lv. 360.

<sup>3</sup> Ibid. lii. 498.

<sup>6</sup> Ibid. liv. 342.

<sup>9</sup> Ibid. lvi. 280. "Allan Ramsay, stationer," was one of the constables elected on this occasion, and on 11th March 1736, he was elected one of the annual committee, or assistants to the moderator, under the designation of "merchant" [Minute Book, i. 103].

<sup>10</sup> Council Records, lvii. 219. The corrupt state of the town council for some years previous to this time is the subject of remark in the following extract from Provost

1st March 1738,<sup>1</sup> 7th March 1739,<sup>2</sup> 19th March 1740,<sup>3</sup> 25th March 1741,<sup>4</sup> 19th March 1742,<sup>5</sup> 16th March 1743,<sup>6</sup> 7th March 1744,<sup>7</sup> and 13th March 1745.<sup>8</sup>

From an early period the society evinced the utmost jealousy of its rights and privileges in all questions with third parties, and was not less scrupulous in exacting befitting respect from its own members. Of the strictness of its discipline in dealing with the latter, an amusing illustration is to be found in the minutes, of date 3d November 1729. One George Aiken, a smith, having been elected a lieutenant in one of the town's companies, appeared, and intimated that "he would no longer serve as a constable, and asked the moderator to receive his baton, without signifying a desire to continue, or unwillingness to part with them." The society deeming this conduct disrespectful, resolved "to cross out his name from among theirs, in order that he may be lyable to serve as long in that station as if he had not been elected a constable for the present year."<sup>9</sup>

Notwithstanding the anxiety displayed by the council and the constables, in their respective spheres, to suppress every species of immorality, the presbytery of Edinburgh, on 7th February 1733, addressed an overture to the council, in which,—after referring to the acts against profane swearing of James VI. 1581, c. 5,<sup>10</sup> and Charles II. 1661, c. 282,<sup>11</sup>—they asked the magistrates to "direct the constables or other fit persons, as censors, for frequently visiting the markets and other public places of concourse within the city or suburbs, in order to have the pains of the above and other acts of parliament exacted and executed without exception; and particularly that they would cause

Drummond's diary, under date 7th April 1737 :—"The conduct of our magistrates for some years past has been grieving to all good men in the city. They have been named by the justice-clerk, and have prostituted their power to his will in every instance. The morals of the city has been criminally neglected by them. . . . They have endeavoured to bear down serious religion, not only here, by a bad choice of ministers, councillors, constables, &c., but as far as their influence reaches in the kingdom. . . . A new constitution to the town is the only way to make it prosper" [Sommerville's *Life and Times*, 1741-1814, p. 22, footnote].

<sup>1</sup> Council Records, lix. 50.

<sup>5</sup> Ibid. lxiii. 14.

<sup>9</sup> Minute Book, i. 83.

<sup>2</sup> Ibid. lx. 46.

<sup>6</sup> Ibid. lxiii. 341.

<sup>10</sup> *Antea*, pp. 93, 94.

<sup>3</sup> Ibid. lx. 292.

<sup>7</sup> Ibid. lxiv. 205.

<sup>4</sup> Ibid. lxi. 248.

<sup>8</sup> Ibid. lxv. 134.

<sup>11</sup> Acts of the Parliaments of Scotland, vii. 262. This act is again ratified by the act of the same reign, 1672, c. 58. Ibid. viii. 99.

compear before them the chairmen, the hackney drivers and street cadies, as being many of them notoriously guilty of horid cursing and swearing in the open street, in order to certify them of their firm resolution to execute the laws upon them if they farder continow in these and such like gross abuses ; and they would also direct the captains their command, and finally that they would encourage the constables and others to all faithful diligence in the execution of their office, by assuring them of their ready and cheerful concurrence therein, in order to the most effectual and speedy suppressing of profane cursing and swearing and other gross immoralities which do presently so much abound, to the dishonour of God and reproach of our holy religion.”<sup>1</sup> No trace of this overture is to be found in the records of the town council, but the subsequent conduct of the constables sufficiently proves their anxiety to enforce, to the utmost of their power, propriety of conduct on the part of their fellow citizens.

On 11th March 1729, there is further evidence<sup>2</sup> that the execution of the duties of a constable was not unattended with personal risk. In distributing the monies in the society's box at that time, £15 Scots were ordered to be paid to “a churgion for cureing [William Aikman, cordiner, one of their number] of some wounds and other disorders he received in his body in the execution of his said office.”<sup>3</sup> Nor do they seem to have been exempt from dangers scarcely less formidable in the shape of actions at law. On 6th February 1734, the council, upon consideration of a petition by the society for keeping one of their number (Mr Murray) *indemnis* from the expense of a process depending before the Court of Session, at the instance of Mrs Allardice, superseded “the giving any opinion thereon till the issue of the said process,” and appointed the magistrates and deacon convener to inquire “whether the society of constables have been in use to exact any mulcts, and how the same has been disposed of, and whether they have a common box.” The report on this remit is not recorded, neither does it appear how the petition was disposed of.<sup>4</sup> Again, on 23d June 1736, John Wright, merchant, having, in a petition to the council, set forth the expense and trouble to which he had been put in defending an action of spulzie raised against him by a Mrs Law, in consequence of the execution of his office by order of the bailies, the council resolved to defend the action at the expense of the city, and instructed the town's solicitor to attend to the case.<sup>5</sup> And on 12th May 1742, two accounts

<sup>1</sup> Minute Book, i. 94, 95.

<sup>3</sup> Minute Book, i. 84.

<sup>5</sup> Ibid. lv. 359.

<sup>2</sup> *Antea*, pp. 100, 160.

<sup>4</sup> Council Records, lv. 19.

were ordered to be paid in connection with the prosecution of constables before the Court of Exchequer.<sup>1</sup>

On 5th May 1736, the city treasurer was appointed to provide a set of new batons for the constables.<sup>2</sup>

It has been seen,<sup>3</sup> that in 1652 the removal of a constable from his quarter disqualified him from office. This rule appears to have been subsequently relaxed, and on 7th March 1739 it was made a special instruction by the council to the constables, "that they order it so among themselves as [that] every three of them doe reside in or at least neigh the respective bounds to be allotted to them."<sup>4</sup>

On 20th June in the same year,<sup>5</sup> the council appointed four persons to be constables for the special purpose of co-operating with the officers of excise in making night surveys for the prevention of frauds on the revenue. Each of the persons so appointed was ordered to be paid £12 sterling per annum on behalf of the commissioners of excise, and £8 sterling per annum on behalf of the city. On 11th June 1740, however, the appointments were recalled, not having effected the object intended.<sup>6</sup>

The practice of the council making grants to the constables for convivial purposes seems to have commenced on 22d October 1740, when £5 sterling were voted for an entertainment to the society on his majesty's birthday.<sup>7</sup> A similar grant was made on 27th October 1741,<sup>8</sup> and appears to have been continued annually thereafter. On 29th May 1784, the society applied, but without success, to have this allowance increased.<sup>9</sup> On 19th February 1794, it was augmented to £15 sterling.<sup>10</sup>

There is no evidence that the constables were called upon to assist in the preservation of the peace during the discussions relative to the union with England. The necessity for sterner means of repressing the popular tumults excited by that event, doubtless procured the exemption of the constables from service. But it is noticeable that no reference is made in their minutes to the union riots, to the precautions adopted for the defence of the city on the occasion of the rebellion in 1715, nor to the Porteous mob in 1736. They were called upon, however, to discharge important duties in connection with the rebellion of 1745, and that year is a memorable one in the history of the society.

<sup>1</sup> Council Records, lxiii. 41.

<sup>2</sup> Ibid. lvi. 327.

<sup>3</sup> *Antea*, p. 121.

<sup>4</sup> Council Records, lx. 46.

<sup>5</sup> Ibid. lx. 120.

<sup>6</sup> Ibid. lxi. 16.

<sup>7</sup> Ibid. lxi. 143.

<sup>8</sup> Ibid. lxii. 202.

<sup>9</sup> Minute Book, ii. 69.

<sup>10</sup> Council Records, cxvii. 308.

In the beginning of August, the news of the Pretender being about to invade Scotland reached Edinburgh. On the 19th,—the day on which Prince Charles reared his standard at Glenfinnin,—General Cope set out for Stirling to assume the command of the royal army. On the 31st, the citizens learned with consternation that he had evaded the highland forces at Dalwhinnie, and had gone northwards to Inverness, leaving the lowlands completely unprotected. On the 3d of September the Prince entered Perth; on the 13th he crossed the Forth; and on Sunday the 15th his forces bivouacked at Linlithgow.

Meanwhile the authorities had done little to protect the capital. The citizens were busily engaged in preparing for their municipal elections, and the defence of the city was dealt with as a subject, out of which both the jacobites who were in power, and the whigs who were in opposition, seem to have been mainly anxious to make capital in their burgal politics. The defences of Edinburgh at that time consisted of the walls by which it was surrounded, except towards the north, where it was protected by the "North Loch." But the walls were dilapidated, had no embrasures for cannon, and were overlooked by houses outside; while the loch was fordable at many places. The first thing to be done, then, was to strengthen the walls, and men were employed to do so. The excitements of the civic contests were, however, sufficient to draw away those thus employed, and the needful repairs were suspended till it was too late to make them effectively. The civic forces were scarcely more trustworthy. These consisted of the town guard, which was increased to a hundred and twenty-six men;<sup>1</sup> and the trained bands, which, though composed of upwards of a thousand citizens, were ill armed and ill disciplined,—scarcely able, according to some accounts, to fire off creditably the *feu de joie* with which they regularly celebrated the king's birthday.<sup>2</sup> An attempt was made to supplement these forces, and to raise a regiment to be paid by voluntary contributions.<sup>3</sup> But though the subscription paper filled rapidly, only two hundred men offered themselves, and these of a very inferior class. A body of about four hundred volunteers was no doubt collected, but such hasty and ill-assorted levies could not be depended upon, even had there been energy, decision, and heartiness on the part of the

<sup>1</sup> Council Records, lxx. 277, 291.

<sup>2</sup> Account of the Behaviour of Archibald Stewart. London. 1748.

<sup>3</sup> Council Records, lxx. 308, 312.

magistrates, instead of indecision, incapacity, and a lukewarmness, especially on the part of the Lord Provost, that excited suspicions of absolute disloyalty. It is not necessary to refer here to the proceedings of the magistrates and of the citizens, when the near approach of the highland forces awakened them from their unaccountable apathy. These, and the capture of the city by the Pretender on the 17th of September, and its occupation by him till the 31st of October, are matters of general history,<sup>1</sup> in which the constables, as a society, seem to have taken no active part. Indeed, the only duty which was imposed upon them in connection with the rebellion, previous to this time, seems to have been to make up "lists of all the inhabitants and residents within their respective districts, and report the same to the magistrates;" and to inquire and find out "what strangers may happen from time to time to come within this city, and lodge within their several districts."<sup>2</sup> It also appears from the evidence given by the moderator, Archibald Stewart, at the trial of the Lord Provost for neglect of duty, before the high court of justiciary, that the moderator was in official attendance on his lordship during the two days immediately preceding the capture of the city.<sup>3</sup> After the departure of the rebel army from Edinburgh to invade England, the judges and crown officers, who had left on the approach of the Pretender, returned to the capital, followed in a day or two by Hamilton's and Gardiner's dragoons, and by the foot regiments of Price and Ligonier. These, notwithstanding the privileges of the city to be exempt from quartering, it was necessary to billet on the citizens, and the constables were required on 15th November to make the requisite arrangements. Between that date and the 31st of December, other troops, regulars and militia, arrived, and were also quartered by the constables. The following extract from the minute book of the society explains what took place at this time :—

"Edinburgh, 15 November 1745.

"The Society of Constables having been this day convened by Archibald Stewart,

<sup>1</sup> See Dr R. Chambers's *History of the Rebellion of 1745-46* (6th edition), pp. 63, 68, 74, 96. Maitland's *History of Edinburgh*, pp. 125-131. The Trial of Archibald Stewart, late Lord Provost of Edinburgh, for neglect of duty, &c. (Edinburgh, 1747). Autobiography of the Rev. Dr Alexander Carlyle, pp. 111-155. Burton's *History of Scotland*, ii. 422-539.

<sup>2</sup> Council Records, lxx. 278, 281. 23d and 28th August 1745.

<sup>3</sup> The Trial of Archibald Stewart, Esq., late Lord Provost of Edinburgh, pp. 199, 200.

their precess, he (Mr Stewart) intimate to the society that he had been that morning sent for by the Lord Justice-clerk and other lords of justiciary, who acquainted him that some regiments of the king's forces were that very day on their march from Haddington towards the city of Edinburgh, and that they were to be all quartered within the town; and required the constables to have ready billets for the whole of them betwixt and four o'clock that afternoon. To which it was objected by the society, that as the election of magistrates had been at the preceding Michaelmas interrupted by the present wicked and unnatural rebellion,<sup>1</sup> and consequently no constables then in office, therefore they could not take upon them to billet soldiers upon the inhabitants of Edinburgh, as it was a thing quite unprecedented, and would be attended with many inconveniences. To obviate which objections, the Lord Justice-clerk and other lords of justiciary issued their warrant, *qua* justices of the peace, ordering the constables to act as above required, upon their highest peril. Accordingly Gardner's and Hamilton's dragoons, and Ligonier's and Price's regiments of foot arrived that afternoon, and were quartered over the city. From this time to the 31st of December 1745, a great many routs from the commanding officers for billeting both the troops and militia were issued and execute by the constables. At which time Mr Archibald Stewart having resigned his office of constable, Mr John Dinsmuir, merchant, was elected precess in his room *nem. con.* The same day there was an order presented by him to the society from the Lord Justice-clerk and General Guest,<sup>2</sup> requiring them to collect in their different bounds such a quantity of blankets as would serve to cover the troops who were to be lodged in such houses as were then unpossessed within the city, which order was complied with; and accordingly at two different times blankets were collected to the number of two thousand and sixty-three and a half pairs, which were all distributed among the severall regiments, and none of these blankets were ever returned."<sup>3</sup>

<sup>1</sup> On the 18th of September, the magistrates and council resolved to assemble and to proceed with election business, as prescribed by the set of the city, but in consequence of the "present commotions in the place," and "the passing and repassing of the door of the council house" by armed men, the magistrates and council "judged themselves not in safety to assemble in their ordinary place of meeting." In these circumstances, after taking a notarial protest at the council door, setting forth the circumstances, they assembled at the house of the Lord Provost, and under the advice of counsel proceeded with various steps in the elections. The persons elected, however, would not accept; some of the nominees for the magistracy left town, and others peremptorily declined to take office, so that the elections could not be completed, and the city was left without magistrates for a year [Council Records, lxx. 319, 322, 331. Maitland's History of Edinburgh, 131, 132]. There is in consequence a *hiatus* in the Council Records from 1st October 1745 till 3d January 1747.

<sup>2</sup> Governor of the Castle of Edinburgh.

<sup>3</sup> Minute Book, i. pp. 132-134. The English troops were very cordially received

While English troops and other forces were thus pouring into Edinburgh, the Pretender had pushed forward towards London, as far as Derby, which he reached on the 4th of December. Here, within a hundred and twenty-seven miles of the capital of England, success seemed within his grasp, and perseverance in his bold policy might have led to unimaginable results. But the leaders of his little army wanted his nerve, and resolved on a retreat, which, with sorrow and foreboding, he commenced on the 6th. Passing through Preston, Lancaster, Penrith, and Carlisle, he entered Glasgow on the day after Christmas day, and there he remained till the 3d of January 1746, when he proceeded to Stirling, of which he took possession on the 7th, commencing the siege of the castle on the 10th of that month. By this time Lieut.-General Hawley, who, in the absence of the Duke of Cumberland, held the command of the royal army, had collected a force of nearly eight thousand men at Edinburgh, whence he marched on the 16th of January to relieve the garrison at Stirling, and to offer battle to the rebels. The result of this expedition is well known. Profiting nothing by the fatal experience of his predecessors, Hawley allowed himself to be surprised on the field of Falkirk on the afternoon of the 17th; and on the following evening his jaded and disgraced battalions returned to Edinburgh *minus* cannon, camp, and a large portion of their baggage. On this occasion the constables were required, upon three hours' warning, to provide quarters for seven of the defeated regiments.<sup>1</sup> The minute which sets forth this fact continues as follows :—

“From this time till the army should leave Edinburgh, the society agreed that two of their members should attend at this place [the laigh council house] every forenoon, from ten to one of the clock, and two every afternoon, from two to six of the clock, to issue billets for the troops passing and repassing, under the penalty of one shilling sterling for each absent.”

On the 30th of January, the Duke of Cumberland arrived in Edinburgh, to assume the command of the royal army, which had been considerably reinforced since the battle of Falkirk, and after a stay of thirty hours set out with his troops for the north. On the 8th of February, and while the Duke

---

in Edinburgh, which was illuminated in honour of their arrival. The citizens, moreover, entered into an association to provide the soldiers with blankets [Chambers's History of the Rebellion, p. 183].

<sup>1</sup> Minute Book, i. 134.

was still at Perth, five thousand German auxiliaries, under the command of the Prince of Hesse, arrived at Leith, and were cantoned in the city till they received orders in a few days to join the royal army.

Soon afterwards it became necessary to make arrangements for continuing the services of the constables, whose annual elections took place in March. This, in the absence of the magistrates and council, was done on 20th March 1746, by an order "of Lord Ross, lord justice-clerk, Lord Elchies, Baron Clerk, and Mr Alexander Lind,<sup>1</sup> *qua* justices of the peace . . . constituting and appointing the twenty-seven gentlemen that was appointed in March last, seventeen hundred and forty-five years, as constables of the city, by the then magistrates, to continue in their office of constables," &c.<sup>2</sup>

On the 1st of April, the moderator submitted to the society an order by Mr Sheriff Lind, requiring them to search the city for rebels and arms, which they agreed to do, appointing every member to search his own bounds, and give in his report to the preses, under the penalty of five shillings sterling for not doing so.<sup>3</sup>

Before the date of the next minute of the society, the hopes of the Stuarts were shattered at Culloden, and the Pretender was a fugitive. The battle of Culloden was fought on the 16th of April, and on the 2d of June, and again on the 24th, the constables were required by the sheriff "to attend the burning of the rebels' colours."<sup>4</sup>

The next duty imposed upon them, by an order of the Lord Advocate, was to attend the poll election of the magistrates and town council,<sup>5</sup> which, on 24th November 1746, they agreed to do, "seven members at a time by turns, under the penalty of two shillings and sixpence sterling for each absent."<sup>6</sup>

The municipal government of the city having been re-established, the moderator, at the desire of the society, gave in to the magistrates and council a

---

<sup>1</sup> Of Gorgie, one of the sheriffs of Edinburgh.

<sup>2</sup> Minute Book, i. 135.

<sup>3</sup> Ibid. i. 136.

<sup>4</sup> Ibid. i. 136, 137.

<sup>5</sup> By an order of the Privy Council, dated 30th October 1746, this election was authorised to be made at the sight of the Lord Advocate and others, on whose report the election was approved of and confirmed by the Privy Council on 17th December 1746 [Maitland's History of Edinburgh, 133, 134. Arnot's History of Edinburgh, 229-231].

<sup>6</sup> Minute Book, i. 138.

list of persons proposed for election as constables ;<sup>1</sup> and these were elected on 8th April 1747, the minute of election bearing "that the present constables have served in their stations with great fidelity and care ;" and recommending the magistrates and convener "to convene the late constables, and return them the council's thanks for their good services."<sup>2</sup>

Thereafter elections of constables were made annually on 6th April 1748,<sup>3</sup> 22d March 1749,<sup>4</sup> 14th March 1750,<sup>5</sup> 20th March 1751,<sup>6</sup> 29th April 1752,<sup>7</sup> 4th April 1753,<sup>8</sup> 20th March 1754,<sup>9</sup> 19th March 1755,<sup>10</sup> 24th March 1756,<sup>11</sup> 6th April 1757,<sup>12</sup> 5th April 1758,<sup>13</sup> 11th April 1759,<sup>14</sup> 7th May 1760,<sup>15</sup> 1st April 1761,<sup>16</sup> 24th March 1762,<sup>17</sup> 9th March 1763,<sup>18</sup> 29th February 1764,<sup>19</sup> 27th February 1765,<sup>20</sup> 26th March 1766,<sup>21</sup> 4th March 1767,<sup>22</sup> 9th March 1768,<sup>23</sup> 5th April 1769,<sup>24</sup> 4th April 1770,<sup>25</sup> 6th March 1771,<sup>26</sup> 11th March 1772,<sup>27</sup> 24th March 1773,<sup>28</sup> 30th March 1774,<sup>29</sup> 22d March 1775,<sup>30</sup> 3d April 1776,<sup>31</sup> 26th March 1777,<sup>32</sup> 15th April 1778,<sup>33</sup> 12th May 1779,<sup>34</sup> 3d May 1780,<sup>35</sup> 4th April 1781,<sup>36</sup> 22d May 1782,<sup>37</sup> 16th April 1783,<sup>38</sup> 25th February 1784,<sup>39</sup> 13th April

<sup>1</sup> Minute Book, i. 138. 30th March 1747.

<sup>2</sup> Council Records, lxvi. 164.

<sup>3</sup> Council Records, lxvii. 148. Previous to this time an individual was sometimes elected a constable for two or three years in succession ; and so early as 1715, the election of one person for four successive years resulted in a resolution of the Society, that no constable who had served three years should be recommended to the council for re-election. In the following year, the fact of having been a moderator, or of having served three years, was sought to be established as a ground of exemption from future election as a constable [*Antea*, p. 162]. An annual election of all the constables, however, was the rule. In 1748, the practice appears to have been commenced of making a distinction between those elected for the first time, and those who had been formerly in office,—the oath *de fidele administratione officio* having been administered to the "new members only" [Minute Book, i. 167].

<sup>4</sup> Council Records, lxviii. 69.

<sup>16</sup> Ibid. lxxvi. 261.

<sup>5</sup> Ibid. lxviii. 315.

<sup>17</sup> Ibid. lxxvii. 150.

<sup>6</sup> Ibid. lxix. 229.

<sup>18</sup> Ibid. lxxviii. 238.

<sup>7</sup> Ibid. lxx. 132.

<sup>19</sup> Ibid. lxxix. 290.

<sup>8</sup> Ibid. lxxi. 86.

<sup>20</sup> Ibid. lxxxi. 2.

<sup>9</sup> Ibid. lxxii. 25.

<sup>21</sup> Ibid. lxxxii. 378.

<sup>10</sup> Ibid. lxxii. 383.

<sup>22</sup> Ibid. lxxxii. 359.

<sup>11</sup> Ibid. lxxiii. 236.

<sup>23</sup> Ibid. lxxxiv. 8.

<sup>12</sup> Ibid. lxxiv. 85.

<sup>24</sup> Ibid. lxxxv. 65.

<sup>13</sup> Ibid. lxxiv. 395.

<sup>25</sup> Ibid. lxxxvi. 235.

<sup>14</sup> Ibid. lxxv. 268.

<sup>26</sup> Ibid. lxxxviii. 54.

<sup>15</sup> Ibid. lxxvi. 81.

<sup>27</sup> Ibid. lxxxix. 129.

<sup>28</sup> Ibid. xc. 143.

<sup>29</sup> Ibid. xci. 173.

<sup>30</sup> Ibid. xcii. 189.

<sup>31</sup> Ibid. xciii. 275.

<sup>32</sup> Ibid. xciv. 65.

<sup>33</sup> Ibid. xcvi. 167.

<sup>34</sup> Ibid. xcvi. 270.

<sup>35</sup> Ibid. xcix. 39.

<sup>36</sup> Ibid. ci. 55.

<sup>37</sup> Ibid. cii. 275.

<sup>38</sup> Ibid. ciii. 362.

<sup>39</sup> Ibid. cv. 64.

1785,<sup>1</sup> 3d May 1786,<sup>2</sup> 4th April 1787,<sup>3</sup> 2d April 1788,<sup>4</sup> 1st April 1789,<sup>5</sup> 7th April 1790,<sup>6</sup> 20th April 1791,<sup>7</sup> 18th April 1792,<sup>8</sup> 17th April 1793,<sup>9</sup> 26th March 1794,<sup>10</sup> 6th May 1795,<sup>11</sup> 27th April 1796,<sup>12</sup> 15th March, and 19th April 1797,<sup>13</sup> 16th May 1798,<sup>14</sup> 17th April 1799,<sup>15</sup> and 26th March 1800.<sup>16</sup>

Besides the annual elections thus noticed, various elections were made during several of these years to supply vacancies occasioned by death, election to municipal offices—such as deacons, councillors, and members of the dean of guild court, appointments to commissions in the trained bands, &c. Dispensations from exercising the office of constable were also occasionally granted for various reasons, *e.g.*, bad health, having “a numerous family,”<sup>17</sup> &c.

The constables elected in 1747 appear to have turned their attention, immediately after entering upon their office, to the terms of their printed instructions, and in April of that year they submitted a memorial to the council on the subject. In that memorial they referred especially to article 11 of their instructions, and asked specific directions for their guidance in the execution of “the excellent laws against vice and immorality,” which they expressed their hearty and unanimous desire to enforce to the best of their ability.<sup>18</sup> Pending the consideration of their memorial, the constables continued to exercise their office; but an action brought by the Procurator Fiscal against two persons for insulting a member of the society “in the execution of his office in Mrs Fyfe’s, vintner’s, on a Sabbath morn-

<sup>1</sup> Council Records, cvi. 191.

<sup>2</sup> Ibid. cix. 241.

<sup>3</sup> Ibid. cxiii. 247.

<sup>4</sup> Ibid. cvii. 312.

<sup>5</sup> Ibid. cxi. 155.

<sup>6</sup> Ibid. cxv. 252.

<sup>7</sup> Ibid. cxvii. 303. Mr Peter Lawson, seedsman, the father of the present Lord Provost, and grandfather of the present Ex-Moderator, was one of the constables appointed at this time [Minute Book, ii. 113]. He was elected secretary of the society on 6th April 1792 [Ibid. ii. 117], and held that office till 21st April 1795 [Ibid. ii. 131]. He retired from the society at the annual election on 6th May 1795.

<sup>8</sup> Council Records, cxix. 232.

<sup>9</sup> Ibid. cxxiii. 430.

<sup>10</sup> Ibid. cxxviii. 356.

<sup>11</sup> Ibid. cxxi. 160.

<sup>12</sup> Ibid. cxxv. 351.

<sup>13</sup> Ibid. cxxx. 404.

<sup>14</sup> Ibid. cxxii. 376.

<sup>15</sup> Ibid. cxxvii. pp. 113, 223.

<sup>16</sup> Ibid. cxxxii. 452. At this time Mr James Spittal, afterwards Sir James Spittal, Lord Provost of the city, was admitted a constable [Minute Book, ii. 190]. He was elected secretary of the society on 10th March 1801 [Ibid. ii. 201], and held that office till 20th March 1802. He resigned on 10th October 1806, in consequence of having been elected a merchant councillor [Ibid. iii. 8].

<sup>17</sup> Council Records, lxxvii. 296. 26th October 1748.

<sup>18</sup> Minute Book, i. 141-145.

ing," having been advocated to the Court of Session, and quashed there, the society, in a representation to the council about the month of June, declared their resolution to lay aside the exercise of their office until they had a deliverance upon the "memorial formerly given in by them." From that time till November, accordingly, the constables did not act, but afterwards, at the request of the Lord Provost, they agreed to exercise those portions of their office about which there was no doubt.<sup>1</sup> On 5th January 1748, the opinion of the assessors on the memorial and representation, with the draft of various new instructions prepared by the assessors, were communicated to the society, and formed the subject of considerable discussion. The assessors proposed to restrict the powers of the constables to the execution of the warrants of the magistrates, and to reporting violations of the public law and statutes of the town for trial by the magistrates.<sup>2</sup> The constables, on the other hand, sought to retain their old power of summarily visiting all suspected houses, and of imprisoning and fining transgressors. The arguments of the society, which are vigorously stated, shew that the powers and practice of the constables up to this time were most arbitrary,<sup>3</sup> and that they were very loath to be restrained in their efforts to punish vice and immorality. "Instructions" were finally approved of by the council on 23d May 1750, and were ordered to be printed for the use of the constables.<sup>4</sup> On 7th August 1750, a representation was made by the society to the council, relative to various articles of these instructions which the constables desired to have explained,<sup>5</sup> but the result does not appear.

On 25th April 1748, the society unanimously agreed, when going their rounds,<sup>6</sup> to notice particularly "such shops as are kept open on the Lord's day, and practise selling merchandise," either during sermon, or in the intervals between sermons, or after sermons. At the same time it was recommended from the chair, on the resolution of the society, that the constables should "avoid giving countenance by their conduct to the present bad practice of walking idly on the Lord's day."<sup>7</sup>

On the 7th of June in the same year, it was resolved, in compliance with a re-

<sup>1</sup> Minute Book, i. 146.

<sup>2</sup> Ibid. i. 150, 159.

<sup>3</sup> Ibid. i. 141-145, 160-166, 178-181.

<sup>4</sup> Council Records, lxi. 3. See Appendix X.

<sup>5</sup> Minute Book, i. 187.

<sup>6</sup> On 8th April 1748, it was resolved that these rounds should be made by *three* constables in turn [Minute Book, i. 167]; confirmed on 27th March 1749 [Ibid. i. 177].

<sup>7</sup> Minute Book, i. 169.

quisition from the Sheriff Clerk, that each constable should take up a list, within his own bounds, of persons liable to serve as jurymen.<sup>1</sup> This was made the subject of a standing order, on 27th August 1750, when two lists were ordered to be given in, one for the exchequer and one for the Lords of Justiciary.<sup>2</sup> A minute, dated 15th May 1771, contains further details as to their duties in relation to this matter; their lists were to contain none but tradesmen and merchants of good fame, and to exclude surgeons, butchers, publicans, lawyers, and writers of every denomination.<sup>3</sup> On 13th July 1797, the Lords of Justiciary issued an act of adjournal, in which they required that the lists of jurors reported from the city should not be confined to any particular district or bounds, but should be taken from the inhabitants of the extended, as well as of the ancient royalties, Canongate, and suburbs of the city, and should "contain the names of those fitted for the discharge of that important duty and trust." An extract of this act having been sent to the magistrates and council on 2d August,<sup>4</sup> was transmitted to the society,<sup>5</sup> who, after some correspondence with the council, undertook the preparation of the lists within the ancient and extended royalties, the constables of Canongate, Easter and Wester Portsburgh, and Leith, being required to prepare the lists applicable to their several bounds.<sup>6</sup>

On the 16th of March 1749, the society expressed their disapproval of the shops, even of dissenters, being kept open during the time of sermon on the fast days, or on the Saturday preceding, or on the Monday after, the sacrament; and passed a rule declaring that practice, or any other which the majority of the society might deem a transgression (whether specified in the rules or not), to be punishable at the pleasure of the society.<sup>7</sup>

A representation having been made to the council that the constables' batons required to be repaired in the silver work, the requisite repairs were immediately ordered to be made;<sup>8</sup> and when these were completed, the society, on 8th February 1750, resolved that at every future election, the batons should be inspected, and any injury to the silver work made good by the constable in whose possession it was at the time.<sup>9</sup> One of these batons having been afterwards stolen, and another broken, the council, on 17th April

<sup>1</sup> Minute Book, i. 170.    <sup>2</sup> Ibid. i. 186.    <sup>3</sup> Ibid. ii. 9. Appendix VII. Art. 25.

<sup>4</sup> Council Records, cxxvii. 441.

<sup>5</sup> Minute Book, ii. 153.

<sup>6</sup> Council Records, cxxvii. 505. Minute Book, ii. 161.

<sup>7</sup> Minute Book, i. 173. Appendix VII. Art. 22.    <sup>8</sup> Council Records, lxxviii. 86.

<sup>9</sup> Minute Book, i. 182. Appendix VII. Art. 23.

1771, authorised them to be replaced by the society; and further ordered long batons to be supplied at the expense of the city, in place of three which had been wanting for several years.<sup>1</sup> On 12th March 1794, the council authorised payment of £30, 15s. to be made for painting on the large batons the royal arms and the arms of the city.<sup>2</sup>

In conformity with an overture transmitted by their predecessors on 16th March 1750,<sup>3</sup> the society, on 26th March 1750, ordered that every constable present at the enactment of a woman of bad fame in the magistrates' book of enactments, should transmit a note of her name, with the date of enactment, to the clerk of the society, by whom an alphabetical list should be kept of all such persons, enacted for better behaviour at the instance of the constables, or banished under prosecutions at the instance of the fiscals, with the pains and penalties contained in their sentence.<sup>4</sup>

On 27th August 1750, the society, considering that, "by the flitting and removing at the term of Whitsunday several persons that keep houses of bad fame escape the notice and observation of the constables," ordered lists of such persons to be taken up "with as much care and exactness as possible," and given in at the first general meeting thereafter.<sup>5</sup>

It has been seen<sup>6</sup> that the constables were required to execute poindings. A minute, dated 29th July 1751, referring to "the inconveniency of lodging poinds drawn by them in officer's hands," set forth the agreement of the society, "that for the future each constable shall retain in his own hands each poind drawn by him till delivery of the same to the persons from whom they were taken."<sup>7</sup>

On 1st September 1755, reference is made to a case in which two constables, having given offence to a gentleman whom they had followed to a house of ill fame, were subsequently inveigled into a house and severely beaten by him and two other accomplices. The society memorialised the council on the subject, but in consequence of representations and reasonable offers made to them by the father of the gentleman, and of the constables who were assaulted having proposed terms for an amicable settlement without consulting the society, the society resolved to withdraw their petition, and to take no farther action in the matter, which

<sup>1</sup> Minute Book, ii. 57. Council Records, lxxxviii. 101.

<sup>2</sup> Council Records, ccxii. 358.

<sup>4</sup> Ibid. i. 185. Appendix VII. Art. 24.

<sup>3</sup> Minute Book, i. 182.

<sup>5</sup> Ibid. i. 186. Appendix VII. Art. 26.

<sup>6</sup> *Antea*, p. 150. See also Appendix VII., Article 14.

<sup>7</sup> Minute Book, i. 193.

thereupon seems to have dropped.<sup>1</sup> Another case is recorded under date 17th January 1757, in which four constables, while making their ordinary rounds on the previous Saturday night, for suppressing vice, were deforced by four journeymen tanners, and a riot ensued, in which some of the town-guard were injured. The offence was admitted by the rioters, who, in consideration of the scarcity of tanners, and the injury which would have resulted to their masters, who could not have got their places supplied had they been criminally prosecuted, were subjected in certain fines, a portion of which was applied to rewarding the soldiers of the town-guard and a chairman who had assisted the constables, and the balance was retained by the treasurer of the society.<sup>2</sup> On 29th June 1757, the society addressed an urgent remonstrance to the council relative to a case in which two constables, while visiting houses of bad fame, committed certain females to the guard, and on the following morning appeared at the council house to prosecute a complaint against them. Instead of being punished, however, the girls, at the desire of two members of council, were dismissed unpunished, and the constables were reflected upon for their rashness "in going out of their bounds." This was resented most strongly by the society, who urged the council to strengthen their hands in putting down these houses, which, it is said, were "never in the memory of man" so numerous as at that time.<sup>3</sup> What followed on this remonstrance is not recorded; but it appears that the magistrates were not disposed to support the constables in their claims to exercise an arbitrary power of visiting improper houses. In fact, the *coup de grace* was given shortly afterwards to the whole system of domiciliary visitation, without a magisterial warrant. In September 1760, one Jean Lindsay brought a complaint before the magistrates against two constables "for entering and searching her house late in the night, to the prejudice of her reputation in the neighbourhood, and to the affrighting of her nurse and young child." The society subscribed the funds requisite to defend the case, which was fully litigated. The constables, however, were unsuccessful in their plea, were found liable to Lindsay in £6 of expenses, and had to pay their own expenses, amounting to £18, 18s. 9d. The statement of this case, prepared by order of the society, and recorded in their minute book,<sup>4</sup> concludes with a recommendation to their successors "that they will take care of the rock upon which we have split, and never give themselves any trouble about the suppression of bawdy

<sup>1</sup> Minute Book, i. 207-216.

<sup>3</sup> Ibid. i. 236-243.

<sup>2</sup> Ibid. i. 225-229.

<sup>4</sup> Ibid. i. 257-270.

houses." This recommendation appears to have been acted upon till 1764, when a representation, dated 5th November, was addressed to the council, in which, referring to the fifth article of their instructions, and to the number of improper houses in the city, and persons frequenting the same, the society expressed their readiness to do all in their power to suppress vice and immorality, by carrying out their instructions, but complained that their efforts were not supported by the authorities. Two instances were referred to in illustration of their complaint, that "after spending their time in business of this sort," the constables had "the mortification to find all their endeavours entirely fruitless, and the guilty more and more hardened in their wickedness."<sup>1</sup> The representation was handed to the Lord Provost, who requested to be furnished with a list of all the "houses of bad fame." Lists of them were accordingly prepared by the several constables within their respective bounds, and on 19th November 1764, were appointed to be delivered to his Lordship.<sup>2</sup> After this the constables seem to have been very careful not to force their way into such houses, even on complaint by the neighbours, without a magistrate's warrant. But even that did not secure them from legal proceedings, as appears from a case referred to of date 13th January 1766. In that case the society, approving of the conduct of their member, resolved to support him, and each constable undertook to pay his proportion of the expense in connection with the prosecution.<sup>3</sup> On the 12th of the following month, however, the council assured the constables that if they were ultimately found in the right by the proper judge, the council would indemnify them of all the expense and charge to which they might be put in maintaining their defence.<sup>4</sup>

A minute dated 1st December 1755, records the desire of the magistrates and council that, "in all time coming," the constables should accompany them in their procession, on his majesty's birthday, to drink the health of the king and the royal family, and that the society should also drink the royal healths in a room by themselves.<sup>5</sup> The society seem to have been previously in the practice of accompanying the council on these occasions.<sup>6</sup> But in

<sup>1</sup> Minute Book, i. 287.

<sup>3</sup> Ibid. i. 295, 296.

<sup>2</sup> Ibid. i. 289.

<sup>4</sup> Council Records, lxxxi. 350.

<sup>5</sup> Minute Book, i. 218. Absence on the king's birthday, save in the case of sickness, was, by a minute dated 4th June 1771, punished by a fine of 2s. 6d. [Ibid. ii. 12. Ibid. ii. 102]. For absence from the entertainment in the evening, a minute dated 4th June 1789, appointed a fine of 5s. [Ibid. ii. 102]. See Appendix No. XII.

<sup>6</sup> On 14th June 1800, the society received intimation that, instead of accompanying

that year they did not attend, thinking they should have had an invitation to do so. On ascertaining the reason of their absence, the desire above expressed was conveyed to the society. A minute dated 9th May 1765, describes the costume worn on such occasions to have been "white stockings, white gloves, and other apparell proper for that occasion."<sup>1</sup> These minutes contain incidental allusion to meetings for the purpose of drinking the king's health; but a minute dated 15th May 1771, refers to the society's practice of supping on his majesty's birthday, and recognises the right of the moderator, or preses, as he is there called, to nominate the place where these festive meetings were to take place, "providing that the house shall be thought proper to accommodate them genteely."<sup>2</sup> On the 4th of June 1771, it is accordingly recorded that, after drinking the loyal toasts in the Goldsmiths' Hall, they supped "in the house of their provisor James Hutchison, vintner, who had provided a most elegant supper and desert for their entertainment."<sup>3</sup> This practice was afterwards regularly followed. It appears also to have been the custom of the society to dine together after the annual election of office-bearers;<sup>4</sup> and, indeed, to refresh themselves at the hospitable board after all their more important meetings. The election dinner on 12th May 1796, it may be remarked, is the first occasion on which "the magistrates of the city and other gentlemen of the town" are recorded to have been entertained as guests.<sup>5</sup> The Earl of Errol, Lord High Constable, the Earl of Cassels, and others, appear as guests at the supper on the king's birthday in June 1796.<sup>6</sup> The election dinner on 22d May 1797 was attended by the Lord Provost and most of the council, besides other guests;<sup>7</sup> and the practice of inviting a number of guests on such occasions, was regularly followed afterwards.<sup>8</sup>

the magistrates, they should remain in the justiciary court room, to be in readiness to prevent any riot by the people who assembled to witness the procession. Against this order the society remonstrated very warmly, as an interference with their previous practice and privileges; and it was accordingly recalled [Minute Book, ii. 196].

<sup>1</sup> Minute Book, i. 293. Lord Cockburn furnishes a vigorous description of the mode in which the king's birthday was kept in Edinburgh during the reign of George III. [Memorials of his Time, p. 69].

<sup>2</sup> Minute Book, ii. 9.

<sup>3</sup> Ibid. ii. 11. The annual committee had, by a previous minute, dated 31st May 1771, agreed "to pay their bill at present, and at each of their meetings for the future, as a precedent for the time to come" [Ibid. ii. 10].

<sup>4</sup> Ibid. ii. 75, 77.

<sup>5</sup> Ibid. ii. 141.

<sup>6</sup> Ibid. ii. 142.

<sup>7</sup> Ibid. ii. 147.

<sup>8</sup> The Earl of Errol was again a guest of the society at the election dinners on 31st

On 5th November 1760, the council authorised the city treasurer to cause 500 copies of the constables' instructions to be printed, after being revised by the city's assessors.<sup>1</sup>

On 4th June 1763, the society, referring to the inconveniences attendant on the admission of vintners, and "considering that vintners are frequently exposed to receive loose and irregular companies into their houses, and that it belongs to the constables' office to visit and inspect public houses where such companies resort," recorded their opinion "that it is altogether incompatible with the good order of this society, as well as the necessary and impartial suppression of vice and immorality, to receive vintners or publicans amongst them," and unanimously resolved for themselves, and earnestly recommended it to their successors in office, not to nominate persons of that employment to succeed them."<sup>2</sup> This rule seems to have been acted upon till 1802, when a "spirit dealer" was elected a constable.<sup>3</sup> In the following year three spirit dealers were elected;<sup>4</sup> and the rule may be held to have fallen into disuse.

Between 1763 and 1765, a series of bread riots of a serious description, occasioned by the high price of provisions, took place in Edinburgh. Formal resolutions were passed, and printed proclamations were issued, intimating the intention of the magistrates and council to prosecute all who should take part in them; and proceedings were thereupon adopted with that object, when anonymous letters were sent to the Lord Provost, requiring the authorities at their peril to release their prisoners, and to stop farther prosecutions. A reward of £40 was offered for the discovery of the writer of these letters, and the magistrates continued their precautions to secure the peace of the city. In the riots of 1765, it was found necessary to call out the military in the castle from time to time, and two troops of dragoons were quartered in the town. Throughout all these disturbances, the constables rendered important assistance to the magistrates in the preservation of peace. On 14th December 1763, an account of expenses, amounting to £8, 4s. sterling, incurred by them in connection with the riots previous to that date, was ordered to be

---

May 1805 [Minute Book, ii. 299], and 3d June 1817 [Ibid. iii. 219]; and appears to have been frequently invited to subsequent entertainments. The musical services of Neil Gow and his band were often in requisition on these occasions during the first quarter of the present century.

<sup>1</sup> Council Records, lxxvi. 193.

<sup>3</sup> Ibid. ii. 222.

<sup>2</sup> Minute Book, i. 281. Appendix VII. Art. 27.

<sup>4</sup> Ibid. ii. 234.

repaid to them ; and at the same time the lord provost was requested to convey the thanks of the council to the society for their good services.<sup>1</sup>

On 29th March 1768, the first illustration is given of the mode in which the society dealt with persons elected constables, but who declined to accept office. Robert Johnston and Archibald Gilchrist, merchants, having so acted, the society reported their conduct to the magistrates, and requested that they might be reprimanded and compelled to accept. The magistrates, however, excused Mr Johnston and Mr Gilchrist for one year, and intimated to the society that they might choose two persons in their place. This was regarded by the society as disrespectful, and a petition was accordingly addressed to the magistrates, in which the constables complained of the disrespect and partiality evinced by the magistrates, and intimated that "if they did not return Johnston and Gilchrist to the society as constables then . . . the constables looked upon themselves to be no longer bound to act in their office, and that they waited all in a body to receive the magistrates' answer."<sup>2</sup> The petition had the desired effect. Messrs Johnston and Gilchrist were compelled to accept office ;<sup>3</sup> and in the following year Mr Johnston was elected moderator of the society.<sup>4</sup> A similar course was followed with equal success in the case of James Donaldson, bookseller, in May 1780.<sup>5</sup>

It has been seen that the constables were frequently exempted from assessments for watching. But on 1st August 1774,<sup>6</sup> the society, in conformity with a recommendation of the committee on 31st May, and a previous resolution of the body dated 4th June, presented a petition to the council, praying that "each and all of them, while bearing office, should be exempted from all the proper city burdens, as other officebearers in this city, and constables in other burghs are."<sup>7</sup> After farther consideration, however, the petition was withdrawn, mainly on the ground, apparently, that their exemption would entail a greater burden on the other burgesses, and eventually on themselves, and that thus no real relief would be obtained.<sup>8</sup>

The practice, previous to 1775, seems to have been for the moderator to propose a leet of persons from among whom his successor was elected. On 31st March of that year, however, the society unanimously agreed that the moderator should not have any such *exclusive right*.<sup>9</sup>

<sup>1</sup> Council Records, lxxix. 177.

<sup>2</sup> Minute Book, i. 308, 311.

<sup>3</sup> Minute Book, i. 316.

<sup>5</sup> Ibid. ii. 52, 54.

<sup>4</sup> Ibid. Council Records, lxxxiv. 25.

<sup>6</sup> Ibid. ii. 29.

<sup>7</sup> Ibid. ii. 28, 29.

<sup>8</sup> Ibid. ii. 30.

<sup>9</sup> Ibid. ii. 32, 33.

On 28th May 1777, the constables attended the public funeral of Lord Provost Kincaid.<sup>1</sup>

In consequence of a message from the Lord Provost and others, "commissioners for carrying into execution the act of parliament for comprehending all idle and disorderly persons for soldiers and marines," the society, on 20th July 1778, met the Lord Provost and magistrates, and received his Lordship's recommendation to assist the recruiting of the royal forces, by sending notice to the commissioners of every person within the meaning of the act, whether within their particular bounds or not, with a view to their being examined, and either levied or dismissed, as the commissioners might think proper.<sup>2</sup>

One of the constables having failed to attend the election dinner on 30th April 1785, and having refused to pay his share of the bill, was summoned before the magistrates for payment, but was absolved. The constables thereupon made a strong representation to the magistrates and council on the subject, and on 17th December 1785, returned the badges of their office, "until such time as we are favoured with your instructions for our future guidance." The magistrates, however, induced the constables to continue to discharge their duties, undertaking to relieve them of the expense to which the society had been put, and requesting the society to prepare, for revisal by the assessors of the city, a set of rules and regulations which would be satisfactory to themselves.<sup>3</sup> "Instructions for the Constables in the discharge of their public duties," and "rules" for the internal government of the society, were accordingly framed by the society on 24th December 1785, the former being submitted to the assessors, and the latter being appointed to be signed by every new constable when sworn into office.<sup>4</sup> The "instructions" submitted to the assessors, and revised by them, were approved of by the magistrates and council on 29th March 1786,<sup>5</sup> and were afterwards printed and distributed among the constables, whose duties, as therein defined, were, it will be seen,<sup>6</sup> much more circumscribed than those specified in the former orders and injunctions of the body. The "rules" for the internal government of the society were also approved of by the magistrates and council at the same time,<sup>7</sup> and contain various regulations for securing the attendance of the members on festive occasions. These regulations, how-

<sup>1</sup> Ibid. ii. 39. See Order of Procession, Arnot's History of Edinburgh, Appendix XI., p. 649.

<sup>2</sup> Minute Book, ii. 46.

<sup>4</sup> Ibid. ii. 80.

<sup>6</sup> See Appendix XI.

<sup>3</sup> Ibid. ii. 75, 79.

<sup>5</sup> Council Records, cvii. 227.

<sup>7</sup> See Appendix XII.

ever, do not seem to have gained their object, and on 4th June 1789, a series of new rules of a much more stringent character were enacted.<sup>1</sup>

At the same time, it was resolved to abandon the practice of electing the moderator after the new constables had been admitted, and to elect him at a special meeting to be called for the purpose, previous to the annual election of constables,—at which meeting the leets for new constables should be adjusted.<sup>2</sup> This resolution, it will be observed, related to the moderator alone, but was made applicable to all the office-bearers, who, in 1790 and subsequent years, were elected at the meeting at which leets for new constables were given in.

The limitation of the powers and duties of the constables, especially in their relation to public morals, indicated by the terms of the "Instructions" of 1786, was probably the natural result of the change which was taking place in the feelings and habits of the citizens. Notwithstanding the minute and anxious legislation against vice and immorality to which reference has been made, the strictness of the former half of the century was being succeeded by great laxity of manners and morals. This deterioration is brought out most prominently in Creech's Letters, where he contrasts the state of matters in Edinburgh in 1763 with those in 1783 and 1791. On the matter of Sabbath observance he thus writes:—

"In 1763—It was fashionable to go to church, and people were interested about religion. Sunday was strictly observed by all ranks as a day of devotion, and it was disgraceful to be seen in the streets during the time of public worship. Families attended church, with their children and servants; and family worship was frequent. The collections at the church doors, for the poor, amounted yearly to £1500 and upwards.

"In 1783—Attendance on church was greatly neglected, and particularly by the men. Sunday was by many made a day of relaxation; and young people were allowed to stroll about at all hours: families thought it ungentee to take their domestics to church with them. The streets were far from being void of people in the time of public worship; and, in the evenings, were frequently loose and riotous; particularly owing to bands of apprentice boys and young lads. Family worship was almost disused. The collections at the church doors for the poor had fallen to £1000.<sup>3</sup>

"In 1763—Masters took charge of their apprentices, and kept them under their own eye in their own houses.

"In 1783—Few masters would receive apprentices to stay in their houses, and yet

Minute Book, ii. 102. See Appendix XII.

<sup>2</sup> Ibid. ii. 103.

<sup>3</sup> Edinburgh Fugitive Pieces (1815), p. 100.

from them an important part of succeeding society is to be formed. If they attended their hours of business, masters took no further charge. . . . In 1791, the practice had become still more prevalent. . . .

"In 1791—The wages to journeymen in every profession were greatly raised since 1763, and disturbances frequently happened for a still further increase. Yet many of them riot on Sunday, are idle all Monday, and can afford to do this on five days' labour.<sup>1</sup>

"In 1763—hairdressers were few, and hardly permitted to dress hair on Sundays ; and many of them voluntarily declined it.

"In 1783—. . . Hairdressers were more than tripled in number, and their busiest day was Sunday."<sup>2</sup>

On the subject of public morals again, he writes :—

"In no respect were the manners of 1763 and 1783 more remarkable than in the decency, dignity, and delicacy of the one period, compared with the looseness, dissipation, and licentiousness of the other. Many people ceased to blush at what would formerly have been reckoned a crime.<sup>3</sup>

"In 1763—The breach of the seventh commandment was punished by fine and church censure. . . .

"In 1783—Although the law punishing adultery with death was unrepealed, yet church censure was disused, and separations and divorces were become frequent, and have since increased.<sup>4</sup> . . .

"In 1763—The fines collected by the kirk-treasurer for bastard children amounted to £154 ; and upon an average of ten succeeding years, they were £190.

"In 1783—The fines for bastard children amounted to £600, and have since greatly increased.<sup>5</sup>

"In 1763—There were five or six brothels, or houses of bad fame, and a very few of the lowest and most ignorant order of females skulked about the streets at night. A person might have gone from the castle to Holyrood House (the then length of the city) at any hour in the night, without being accosted by a single street walker. Street robbery and pocket picking were unknown.

"In 1783—The number of brothels had increased twenty-fold, and the women of the town more than an hundred-fold. Every quarter of the city and suburbs was infested with multitudes of females abandoned to vice, and a great many at a very early period of life, before passion could mislead, or reason teach them right from wrong. Street robbers, pickpockets, and thieves, had much increased."<sup>6</sup>

In 1763, early dinners, plain fare, and social tea parties, were the rule. In

<sup>1</sup> Edinburgh Fugitive Pieces (1815), p. 102.  
Ibid. p. 78.

<sup>3</sup> Ibid. p. 101.

<sup>5</sup> Ibid. p. 104.

<sup>4</sup> Ibid. p. 103.

<sup>6</sup> Ibid. p. 105.

1783, the late and prolonged dinner was followed by wine, cards, and supper. Men of all ranks took pleasure in cock-fighting, which was unknown twenty years previously. Among the lower orders, swearing had greatly increased in 1790, but, according to Creech, immoderate drinking was getting out of fashion. "Every one," says he, "was allowed to do as he pleased in filling or drinking his glass. The means of hospitality, and the frequency of shewing it, had increased, and excess on such occasions had decreased." The description of the habits of the upper classes a few years later, furnished by Lord Cockburn, is, however, much less favourable. The two vices of swearing and drunkenness, he says, "were very prevalent, if not universal, among the whole upper ranks. Nothing was more common than for gentlemen who had dined with ladies, and meant to rejoin them, to get drunk. To get drunk in a tavern seemed to be considered as a natural, if not an intended, consequence of going to one. Swearing was thought the right and the mark of a gentleman; and, tried by this test, nobody, who had not seen them, could now be made to believe how many gentlemen there were."<sup>1</sup>

On 13th June 1787, an additional constable was appointed for "detecting thieves, vagabonds, and disorderly or suspicious persons, and committing them to the guard till examined by the magistrates."<sup>2</sup> This seems to have been the origin of a special detective branch of police in Edinburgh. Subsequently, on 7th May 1794, the janitor of the college and his depute were appointed constables, for the more efficient protection of the college and High School,<sup>3</sup> and on 15th March 1797, a constable was appointed for the special purpose of "taking up and committing vagrants."<sup>4</sup> None of these persons, however, were members of the society of constables. The appointment, in March 1797, did not relieve the society from the duty of patrolling the streets to apprehend vagrants. A minute, of date 11th April 1797, shews that two constables were fined for not performing that duty, and ordered to be prosecuted for the fines.<sup>5</sup>

For some years previous to 1788, there had been "riots and disturbances on the streets on New Year's mornings."<sup>6</sup> These the magistrates determined

<sup>1</sup> Memorials of his Time, p. 32.

<sup>2</sup> Council Records, cix. 339.

<sup>3</sup> Ibid. cxxii. 144.

<sup>4</sup> Ibid. cxxvii. 113.

<sup>5</sup> Minute Book, ii. 176.

<sup>6</sup> "In no respect," says Creech, "was the sobriety and decorum of the lower ranks, in 1763, more remarkable than by contrasting them with the riot and licentiousness of 1783, particularly on Sundays and holidays. The King's birthday, and the last night of the year, were, in 1783, devoted to drunkenness and riot; in 1763, they were peace-

to put a stop to in future, and with that view they ordered the constables to meet and patrol the streets. The society accordingly supped together on the last night of the year, and sent out deputations, who, attended by the city guard, cadies, &c., patrolled the streets till 6 o'clock in the morning, and prevented any disturbance.<sup>1</sup> This was the commencement of the practice which, it is believed, has, with very few exceptions, been regularly observed since. Similar patrols were ordered on other occasions of popular excitement, such as illuminations, &c.<sup>2</sup>

In consequence of an order from the Lord Provost, the society, on 23d February 1789, made a general search for vagabond and disorderly persons, believed to be lurking about the city. A number of suspected houses were visited, and in them a number of suspicious persons were found, and committed to the city guard for examination by the magistrates.<sup>3</sup>

In April 1789, the magistrates signified to the moderator their wish to appoint two additional constables for the "new extended royalty," and "ordered two leets to be given in to the council for their choice." These leets having been lodged accordingly, two constables were elected on 15th April. The total number of the society was thus increased to thirty-two.<sup>4</sup>

On 24th July 1790, the society, by order of the magistrates, attended at Holyrood Palace on the occasion of the election of the Scotch representative

---

ful" [Letters on Edinburgh; Edinburgh Fugitive Pieces, p. 107]. A footnote to this passage says, "From 1788 till 1792 this folly had much abated, by the attention of the magistrates to strict police."

<sup>1</sup> Minute Book, ii. 97.

<sup>2</sup> 9th March 1789. Minute Book, ii. 98.

<sup>3</sup> Minute Book, ii. 97.

<sup>4</sup> Council Records, cxiii. 272. Minute Book, ii. 100, 101. The royalty of the city was first extended by an act passed in 1769 [7 Geo. III. c. 27], over a part of the Barony of Broughton, Barefoot Parks, and other lands the property of the corporation, certain lands granted to the town in feu by the governors of Heriot's Hospital, and a part of Broughton Parks belonging to Watson's Hospital [Acts of Parliament relating to Edinburgh, vol. i. No. 17]. By another act passed in 1785 [25 Geo. III. c. 28], it was further extended over an additional part of the lands of Broughton. This act divided the city into two districts, called the ancient and extended royalty [Ibid. i. No. 26]. A third act passed in 1786 [26 Geo. III. c. 113], provided for the extension of the royalty over other portions of the lands of Broughton, which that act authorised the corporation to purchase [Ibid. i. No. 27]. See Special Report on Edinburgh of Commissioners on Municipal Corporations in Scotland, p. 285.

peers, to assist in preserving order among the crowds then assembled. After that ceremony the society dined together.<sup>1</sup>

The system of a triennial rotation, under which one third of the society retired after three years' service, to be succeeded by an equal number of new constables, seems to have been gradually established. In the roll of the society for 1763,<sup>2</sup> a classification was introduced of those who had served one year; and the roll for the following and subsequent years distinguished those who were in their first, second, and third year of office respectively. The rolls for 1764 and subsequent years also shew the names of new constables taking the places of those who had served for three years. But it is only in 1771 and subsequent years, when, the minutes being more fully kept, it is seen to have been the practice of the society to submit to the council leets, with a view to the election of new constables to take the place of those who had served for three years. It further appears to have been the practice to administer the oath *de fidei administratione* only to the new constables thus elected, who were afterwards admitted into the society. A minute dated 14th March 1774, shews that the leets submitted to the council were made up from leets furnished by the outgoing constables, each member who had served three years being required to give in "a list for his successor." These lists were submitted to the committee, under whose directions the general lists were made up for the council;<sup>3</sup> and the committee exercised the power of rejecting the names of those who were considered unsuitable, and of inserting others.<sup>4</sup> On 31st March 1787, the first innovation upon the system of triennial retirement is recorded,—three constables who should have retired, having "at their own request (and by the unanimous consent of the committee), begged to continue for another year in office."<sup>5</sup> In April 1789, only four constables retired,<sup>6</sup> and it appears that there was an inclination on the part of some of the constables to prolong their tenure of office, for on 6th April 1792, the society resolved, almost unanimously, and it was ordered to be observed as a "fixed law," "that no gentleman, after serving the usual period of three years, can stand candidate, or be chosen preses or any other office in the society."<sup>7</sup> This resolution indicates a state of feeling very different from that which existed in 1715 and 1716,<sup>8</sup> when service as a constable was regarded as a burden, which, however honourable, should not be prolonged beyond three years.

<sup>1</sup> Minute Book, ii. 111.

<sup>2</sup> Ibid. i. 278.

<sup>3</sup> Ibid. ii. 25.

<sup>4</sup> Ibid. ii. 51.

<sup>5</sup> Ibid. ii. 86.

<sup>6</sup> Ibid. ii. 98.

<sup>7</sup> Ibid. ii. 117.

<sup>8</sup> *Antea*, p. 162.

During the latter part of the eighteenth century, the subject of reform<sup>1</sup> was exciting much attention in Scotland, and in 1791 a serious riot took place in Edinburgh in consequence of Henry Dundas, afterwards Lord Melville, having opposed the reform of the Scottish burghs. In 1793, Sheridan succeeded in obtaining the appointment of a committee of the House of Commons to consider the petitions of the royal burghs for reform.<sup>2</sup> But the outbreak of the French Revolution, and the atrocities perpetrated by its leaders, created a reaction in British feeling, and enabled the government to oppose any extension of popular rights. Foiled thus in their legitimate wishes, the people formed themselves into organisations, called "Friends of the People," to carry their object. Counter associations, called "Friends of the Constitution," were also formed, and political feeling ran very high. On 11th December 1792, a convention of delegates from the various societies of "Friends of the People" took place in Edinburgh; and in the following year the government, who were at this time engaged in a war with France, resolved to crush the popular agitation by legal prosecutions. Thomas Muir was tried, condemned, and transported. Still the agitation continued, and meetings were held. One held in Blackfriars Wynd on 5th December 1793, was dispersed by the magistrates and sheriff; and a few days afterwards, William Skirving, the secretary of the Convention, was arrested by warrant of the Lord Provost. Skirving, too, was tried, condemned, and transported, as were afterwards other leaders of the movement. But still the agitation continued, and grew more and more powerful, till, in later and happier times, but not without persistent struggle, it gained its object.

Of these agitations the constables were not uninterested spectators. It appears from a minute of council, dated 18th December 1793, that the society "evinced their alacrity in co-operating with the magistrates and sheriff-depute of the county when dissolving the meeting of the persons styling themselves 'The British Convention,'" and for "their uniform steady-

<sup>1</sup> For a description of the political state of Scotland during the last ten years of the eighteenth century, see Lord Cockburn's *Memorials of his Time*, pp. 80-104; and Lord Cockburn's *Life of Lord Jeffrey*, pp. 73-84. So early as 1746, the Merchant Company had under consideration the improvement of the set of the burgh, with a view to its being made more agreeable to the constitution of Britain, where people are represented and governed by men of their own choice [Mr Mackie's Notes, p. 63].

<sup>2</sup> *Historical Sketch of the Municipal Constitution of Edinburgh*. Edinburgh, 1826; p. lvii. This sketch contains an account of the agitation for the reform of the Scottish Burghs. Ibid. pp. xlviii-lviii, &c.

ness on the above occasion," the thanks of the council were voted to the society.<sup>1</sup> Again, on 17th February 1794, the society addressed a letter to the Lord Provost, in which they requested that such of the society as were entitled to retire on account of three years' service, should be permitted to continue their services for another year. The magistrates and council accepted the offer, and passed a unanimous vote of thanks to the constables "for their conduct and alacrity in supporting the magistrates in their civil capacity, and for the resolution of those who go out of office to continue to give their services for preserving the public peace."<sup>2</sup> The effect of this was to increase the

---

<sup>1</sup> Council Records, cxii. 227. Minute Book, ii. 126. On 7th June 1792, the Merchant Company laid down certain rules to check disturbances in the city, and subscribed fifty guineas as a reward for the discovery of offenders. The thanks of the magistrates and council were voted to them, on 13th June 1792, for their support and assistance [Mr Mackie's Notes, p. 73, 74].

<sup>2</sup> Council Records, cxii. 308. The offer of the constables had been anticipated by a similar offer on the part of the society of captains. On 28th January 1794, those captains of the trained bands who fell to retire, as having served the usual time, intimated their willingness to continue their services in their capacity of captains, to support the civil power for another year. This offer, which was communicated by the society to the Lord Provost, was made "in consideration of the late attempts to disturb the public peace, and in testimony of their approbation of the conduct of his lordship and the magistrates" [Minute Book of Captains, vol. ii., not paged]. On 14th February 1798, the magistrates and council suspended the appointing of officers for the trained bands of the city during the subsistence of the Royal Edinburgh Volunteers (which had been raised in 1794), or the pleasure of the council [Council Records, cxviii. 159. Minute Book of Captains, vol. ii.]. In consequence, the society, approving of the council's resolution, minuted an expression of their opinion, that "their duties were at an end," and recorded a statement of the circumstances that had led to their dissolution. Their last minute is dated 4th March 1798 [Minute Book of Captains, vol. ii.]. They still, however, claimed certain rights and privileges, and one of their number having been elected a constable in April 1799, they petitioned the council, not only to be exempted from all service in that character, but to be allowed, on the demise or removal of any of their number, to be allowed to give in a list to the council as formerly, from which the vacancies should be supplied, and the corps kept complete, in the event of a future call for their services. The council, adopting the report of their committee on this petition, only exempted for a period of four years from the date of their respective appointments, those gentlemen who were in office when the services of the corps were dispensed with, and ordered an extract of their minute to be transmitted to the last captain of orange colours [Council Records, cxxx. 415]. As already noticed, the practice of electing a captain of orange colours and commandant of the trained

number of constables to forty persons, at which number it was afterwards maintained till still further increased. It does not appear from the records of the society that any election of office-bearers took place in 1794. The disturbed state of the city at the time probably rendered it expedient to retain the services of the office-bearers of the former year. Assuming that to be the fact, this is the first occasion on which any of the office-bearers held office for two successive years.

On the 31st of May 1794, an offer was made by a "Committee of the Association of Gentlemen for keeping the public peace," to place their services at the disposal of the magistrates and council in the character of constables. The offer was accepted with thanks, and it was remitted to the magistrates to receive and admit as constables such persons as should be named in a list to be given up by the committee.<sup>1</sup> Six hundred persons were thereafter organised and furnished with batons as "Loyal Constables," under Colonel Murray as "Preses and Commandant."<sup>2</sup> The council afterwards, on 29th June 1796, appointed £8, 19s. 8d. sterling to be paid to the assistant secretary of the body, on account of disbursements by him.

At this time the constables also were thoroughly conservative in their sympathies, and were quite prepared to support the magistrates and government. In 1795, accordingly, they are found presenting an address to the Throne, in which they expressed their sorrow and indignation at certain insults which the King had received in going to and coming from parliament at the opening of the session, and their hope that "parliament will adopt such measures as may effectually prevent such abuses in future, and tend to the suppression of every attempt to overturn the constitution of our country."<sup>3</sup>

This was a period of great distress in Edinburgh. On the 4th of March 1795, says Lord Cockburn,<sup>4</sup> about eleven thousand persons, being probably about an eighth of the population, were fed by charity in Edinburgh, and a public proclamation specified the exact quantity of bread which each family ought to consume.

On 22d June 1797, the whole new town, as well as the old town, was divided into districts, one of which was assigned to each of the forty constables.<sup>5</sup>

bands is still continued, and several minutes have been inserted in the minute book of the captains by the gentlemen so elected subsequent to 1850.

<sup>1</sup> Council Records, cxxii. 447.

<sup>4</sup> Memorials of his Time, p. 72.

<sup>2</sup> Ibid. cxxiii. 93.

<sup>5</sup> Minute Book, ii. 148, 313-317.

Minute Book, ii. 135.

In 1797, the society elected James Clark to be their surgeon, and he appears to have held that office till his death in 1802, when Andrew Inglis was appointed to succeed him. No election of surgeons subsequent to 1802 is recorded till 1831, when the office was re-established, and the surgeon became one of the regular office-bearers of the society.<sup>1</sup>

In obedience to a precept by the Lord Provost as Lord Lieutenant,<sup>2</sup> and others deputy-lieutenants, of the county of the city, dated 1st August 1797,<sup>3</sup> the constables took up lists of all the men within the ancient and extended royalties of the city, between nineteen and twenty-three years of age, liable to serve as militia-men. These lists were delivered on 11th September 1797,<sup>4</sup> and for the constables' services in preparing them, the council ordered a payment to be made to the society of £50,<sup>5</sup> yielding 25s. to each member.<sup>6</sup> Similar lists were ordered on 1st August 1799,<sup>7</sup> and were furnished on 3d September thereafter.<sup>8</sup> £50 were paid to them by the council for this service.<sup>9</sup>

In compliance with an order from the sheriff and magistrates, dated 24th April 1798, the constables took up a list of all the aliens, foreigners, and others, not natives of the country, but resident in the city and county of Edinburgh.<sup>10</sup> On 7th June in the same year, they were required by the Lord Lieutenant and deputy-lieutenants of the county of the city, to prepare lists of all the work horses, carts, and waggons, in Edinburgh, with the names of the owners, and the number of carriages and horses belonging to each.<sup>11</sup>

Owing to the war with France, and the deficiency of the crops in the previous year, the price of provisions during the year 1800 was very high,

<sup>1</sup> See Appendix No. I.

<sup>2</sup> On 25th August 1794, His Majesty King George III., by a commission under the great seal, appointed Thomas Elder, Lord Provost of the city, and his successors in office for the time being, Lord Provosts of Edinburgh, Sheriffs and Coroners Principal within the city and its liberties, to be His Majesty's Lieutenants within the city and liberties, with power to raise the lieges in arms, to appoint deputy-lieutenants, &c. This commission was renewed by Her present Majesty on 4th November 1837, in favour of Sir James Spittal, knight, Lord Provost, and his successors in office. See Precedence of Edinburgh and Dublin (Edin. 1865), pp. 84, 87.

<sup>3</sup> Minute Book, ii. 149.

<sup>4</sup> Ibid. ii. 161.

<sup>5</sup> Council Records, cxviii. 227; Minute Book, ii. 165.

<sup>6</sup> Minute Book, ii. 162.

<sup>7</sup> Ibid. ii. 180-182.

<sup>8</sup> Ibid. ii. 183.

<sup>9</sup> Council Records, cxxii. 131; Minute Book, ii. 187.

<sup>10</sup> Minute Book, ii. 167, 168.

<sup>11</sup> Ibid. ii. 172, 173.

and the people suffered great distress. In Edinburgh arrangements were made, by means of voluntary subscriptions, for supplying the poorer classes with food and fuel at reduced prices, and various means were adopted to reduce the consumption of bread as much as possible. Still, however, great suffering prevailed, and several "meal mobs" broke into and pillaged the stores of victual dealers both in Edinburgh and Leith. In the suppression of these riots in the city, the constables, along with the Royal Edinburgh Volunteers, rendered important assistance, and the society's minutes, of dates 29th and 30th April, and 15th May, refer to their services on this occasion.<sup>1</sup>

On 23d May 1800, the society presented an address to the King, congratulating him on his providential escape from assassination in Drury Lane Theatre on the 15th of that month.<sup>2</sup>

While the constables were thus required to exercise a supervision of the morals of the community, and to perform various duties affecting more or less directly the peace and good order of the city, the regular watching of the town (save on two or three occasions when the trained bands were called on to act) was performed by the town guard, whose services, however, the constables were entitled to require whenever they found it necessary to do so.<sup>3</sup> The town guard consisted in 1700 of ninety sentinels, three serjeants, three corporals, and three drummers, commanded by two captain-lieutenants.<sup>4</sup> It was subsequently increased to one hundred sentinels, at which number it is stated in the Cess Assessment Books for 1701-2. One ensign appears also to have been added to the company by that time. On 24th April 1702, it was reduced to ninety sentinels, as from the 1st of May thereafter.<sup>5</sup> On 3d February 1703, the council approved of its being still further reduced by two men,<sup>6</sup> but on 31st December 1703, ten sentinels were added,<sup>7</sup> and the company remained at this strength till 31st May 1704, when ten men were disbanded.<sup>8</sup> On 14th July 1704,<sup>9</sup> the council enacted rules for the regulation

<sup>1</sup> Minute Book, ii. 193, 194.

<sup>2</sup> Ibid. ii. 194, 196. The council transmitted their address on 21st May [Council Records, cxxxiii. 116]; the Merchant Company on 6th June 1800 [Mr Mackie's Notes, p. 74].

<sup>3</sup> See "Instructions" to Constables issued in 1728 [*antea*, pp. 163, 165]; "Instructions" issued in 1750 [Appendix X. Article 7]; "Instructions" issued in 1786 [Appendix XI. Article 5].

<sup>4</sup> Council Records, xxxvi. 564; 28th June 1700.

<sup>5</sup> Ibid. xxxvii. 124.

<sup>6</sup> Ibid. xxxvii. 407.

<sup>7</sup> Ibid. xxxvii. 707.

<sup>8</sup> Ibid. xxxviii. 35.

<sup>9</sup> Ibid. xxxviii. 65.

of the guard, as well in their moral conduct as in the discharge of their official duties. By the 15th article of these rules, the officer of the guard was required to receive all persons committed by the magistrates, church treasurer, constables, and others, and to detain them till examined and discharged by a magistrate.<sup>1</sup> On 15th December 1704, nine sentinels were added to the company, as from the 1st of January 1705.<sup>2</sup> On 31st October 1705, the guard consisted of one hundred sentinels, but was reduced at that time to ninety, as from the 1st of November.<sup>3</sup> In anticipation of an invasion "from French papists," the council, on 21st March 1708, authorised the Lord Provost to increase the company by thirty sentinels, and on the 24th of March thirty more men were added, making a total of one hundred and fifty sentinels.<sup>4</sup> On 12th September 1708, twelve sentinels were ordered to be added,<sup>5</sup> but on 22d June 1709, these were ordered to be disbanded previous to the 1st of July.<sup>6</sup> On 22d January 1714, thirty-six sentinels were ordered to be added, bringing up the company to its full complement,<sup>7</sup> but on the 15th of April 1715, it was appointed to be reduced to seventy-two sentinels.<sup>8</sup> In July 1715, the news of an intended invasion by the Pretender having reached the council, they ordered forty sentinels to be added to the guard, making one hundred and twelve in all.<sup>9</sup> But on 11th April in the following year, the company was reduced to ninety sentinels.<sup>10</sup> On 25th March 1719, the council recommended the magistrates "to take care of the peace and safftey of this cittie," and for that end authorised them to increase the town guard as they might see fit.<sup>11</sup> On 4th November 1720, intimation of a threatened invasion by Spain having reached the council, they authorised the Lord Provost to make such addition to the city guard as he might consider necessary.<sup>12</sup> In May 1722, a communication was received from the government relative to the bishop of Rochester's conspiracy in favour of the Pretender, and the council, on the 17th of that month, ordered eighteen sentinels to be added to the guard, making a total of one hundred and twenty men.<sup>13</sup> On 26th March 1725, it was remitted to a committee "to consider the state of the city guard, and to bring in such regulations as they shall think fit for its better establishment in time coming."<sup>14</sup> The result of this remit does not appear. On 30th

<sup>1</sup> Maitland's History of Edinburgh, p. 289.

<sup>2</sup> Council Records, xxxviii. 208.

<sup>3</sup> Council Records, xxxviii. 414.

<sup>7</sup> Ibid. xli. 329.

<sup>11</sup> Ibid. xlvi. 142.

<sup>4</sup> Ibid. xxxix. 64.

<sup>8</sup> Ibid. xlii. 74.

<sup>12</sup> Ibid. xlviii. 16.

<sup>5</sup> Ibid. xxxix. 216.

<sup>9</sup> Ibid. xlii. 125.

<sup>13</sup> Ibid. xlix. 235.

<sup>6</sup> Ibid. xxxix. 379.

<sup>10</sup> Ibid. xliii. 92.

<sup>14</sup> Ibid. l. 471.

July 1735, the council, considering that the disorders which had arisen in the management of the guard had in a great measure been occasioned by the captains not conforming themselves to the instructions and regulations that were in that behalf made, appointed a committee to revise and amend these instructions and rules as to them might appear necessary.<sup>1</sup> Rules and regulations, as revised by this committee, were accordingly enacted on 6th August 1735.<sup>2</sup> On 8th September 1736, the day immediately after the Porteous mob, the council ordered two companies of the trained bands to mount guard every night by turns till the apprehension of danger had ceased; and further, considering that all or most of the soldiers of the city guard were unfit for service, ordered the captain-lieutenants to dismiss them after they had enlisted others to take their place.<sup>3</sup> On 13th July 1737, a committee was appointed to consider the act of parliament constituting the guard, the present state and condition of the company, and the estimated expense of its maintenance for the year then current.<sup>4</sup> Two days afterwards a committee was named to make out a plan for the intended reformation of the city guard,<sup>5</sup> and on the 22d of that month, the guard was ordered to be disbanded and a new company to be raised,—a company of the trained bands mounting guard by turns between the disbanding of the old and the raising of the new company. A committee was at the same time appointed to prepare a plan for the discipline, clothing, and maintenance of the new company.<sup>6</sup> On the 12th of August, the council resolved that one at least of the three officers to be chosen should have served in the army as a commissioned officer.<sup>7</sup> On the 17th of August, the guard was disbanded, and the trained bands mounted guard by turns.<sup>8</sup> The Lord Provost for the time was authorised to nominate the serjeants, corporals, and drummers, and the sentinels were ordered to be raised by the lieutenants under the direction of his Lordship.<sup>9</sup> From the accounts of cess and watch-money for the years 1737–38, it appears that the new company was organised on 1st September 1737, on which date their pay commenced. The company then consisted of three lieutenants, three serjeants, three corporals, three drummers, and seventy-five private men, and seems to have been kept at this

<sup>1</sup> Council Records, lvi. 69.

<sup>4</sup> Ibid. lviii. 38.

<sup>6</sup> Ibid. lviii. 57, 59.

<sup>2</sup> Ibid. lvi. 81.

<sup>5</sup> Ibid. lviii. 45.

<sup>7</sup> Ibid. lviii. 98.

<sup>3</sup> Ibid. lvii. 54.

<sup>8</sup> Ibid. lviii. 100. No reference is made to this in the minute books of the captains of the trained bands.

<sup>9</sup> Council Records, lviii. 106.

strength till August 1745. On 3d November 1738, a committee was appointed to consider what rules should be observed in enlisting the guard, their height, and what further regulations were necessary to make them useful.<sup>1</sup> On 23d August 1745, as has been seen, the guard was increased by thirty sentinels,<sup>2</sup> and was afterwards, on 2d September, raised to the full complement of one hundred and twenty-six men of all ranks.<sup>3</sup> The extra thirty-nine men thus added were retained till 14th November 1745, and their cost, amounting to £75, was paid out of the city's proper revenue. The subsequent accounts shew that the company was maintained at its former number of seventy-five sentinels, down to 1780. It appears, however, from the records of the council, that it occasionally received extra assistance. Thus, on 18th January 1749, the council ordered sixteen men to be chosen out of the most able-bodied and best recommended scavengers and lamplighters, to watch the town till 1st April, under the direction of the captain of the guard. These men were divided into two companies, one of which was ordered to walk the streets, and the other to be in the guard-house, every alternate hour from 11 p.m. till 5 a.m. The company engaged in out of door duty was provided with watch coats, lanterns, and poles, and each man was appointed to receive fourpence per day in addition to his pay (of equal amount) as a scavenger, the duties of which were finished at 10 a.m.<sup>4</sup> This patrol having proved "singularly useful in preventing riots and disorders in the streets," was appointed to be continued during the following winter.<sup>5</sup> On 14th November 1750, the soldiers of the city guard were ordered to patrol the streets at night as usual, to prevent disorders.<sup>6</sup> On 1st November 1752, two men were ordered to be hired each night as an addition to the guard,<sup>7</sup> and a similar order was issued on 7th November 1753.<sup>8</sup> In 1753, when Maitland published his *History of Edinburgh*, the town guard consisted of seventy-five private men, with three drummers, three corporals, three serjeants, and three captain-lieutenants.<sup>9</sup> On 27th October 1756, and again on 5th November 1760, two men were ordered to be hired nightly as an addition to each squad of the guard during the winter season.<sup>10</sup> But no permanent addition had been made to the force when Arnot wrote his *History of Edinburgh* in

<sup>1</sup> Council Records, lix. 253.

<sup>2</sup> Ibid. lxxv. 277.

<sup>3</sup> Ibid. lxxv. 291.

<sup>4</sup> Ibid. lxxviii. 14.

<sup>5</sup> Ibid. lxxviii. 255, 6th December 1749.

<sup>6</sup> Ibid. lxxix. 145.

<sup>7</sup> Ibid. lxx. 325.

<sup>8</sup> Ibid. lxxi. 333.

<sup>9</sup> *History of Edinburgh*, p. 290.

<sup>10</sup> Council Records, lxxiii. 440 ; lxxvi. 193.

1788, though he says, "considering the enlarged extent of the city, and the increased number of the inhabitants, it ought undoubtedly to be augmented."<sup>1</sup> This, however, could not be done without the authority of parliament, as the maximum sum leviable under the act of 1690 was only £1250 sterling, and the actual cost exceeded that amount, debt being incurred by the magistrates in consequence. It was probably with a view to get over this difficulty that, on 7th February 1787, the council petitioned the House of Commons for leave to introduce a bill for the purpose, *inter alia*, of increasing the number of the guard.<sup>2</sup> But nothing further seems to have been done,<sup>3</sup> and on 8th August 1798, the council directed the sum of £1250 to be imposed for the maintenance of the guard.<sup>4</sup> Two years later, viz., on 20th November 1790, they remitted to a committee to consider the state of the debt on account of the guard. The watching of the city, however, continued to be discharged by the town guard till 1805, when the police act was passed, to which reference will afterwards be made.<sup>5</sup>

Notwithstanding the appointment, on 11th October 1700, of an inspector of

---

<sup>1</sup> The smallness of the guard in 1783, was also the subject of complaint by Creech in his letters on Edinburgh (appended to Arnot's History of Edinburgh, 4to ed. p. 671). "The city guard," he says, "consists of the same number of men as in 1763, although the city is triple the extent, and the manners more loose. The High Street is the only one that can be said to be guarded. The new town to the north, and all the streets to the south, with the whole suburbs, are totally unprotected." Referring to their peculiarities of speech, he adds, "The country in general has improved much in the English language since 1763, but the city guard seem to preserve the purity of their *native Gaelic tongue*, so that few of the citizens understand or are understood by them. On disbanding the army, one would have imagined that a corps of good men, who understood English, might have been procured."

For a description of the police of Edinburgh in 1775, see Topham's Letters from Edinburgh, written in 1774 and 1775 (London, 1776), pp. 355-364.

<sup>2</sup> Council Records, cix. 124.

<sup>3</sup> In a "New Guide to the city of Edinburgh," published in 1792, it is stated that "at present the establishment consists of three officers, and about ninety men who mount guard by turns. The officers have a lieutenant's pay; the sergeants, corporals, drummers, and common soldiers, the same with those in the army. Their arms are the same with those of the king's forces, but when called upon to quell mobs, they use Lochaber axes, a part of the ancient Scottish armour now in use only among themselves."—Pp. 103, 104.

<sup>4</sup> Council Records, cxxix. 58.

<sup>5</sup> See Sketch of the Town Guard, by Sir Walter Scott, in "The Heart of Mid-Lothian," vol. i. chap. iii.

cleansing,<sup>1</sup> it still remained the duty of the constables to oversee the cleansing of the city, and to investigate and deal with the complaints made by the neighbours in regard to that matter. This was expressly enjoined on them, as well as on the inspector, by a proclamation of the council dated 19th December 1701,<sup>2</sup> which renewed the order on the whole inhabitants to provide vessels sufficient to contain the soil of their houses for forty-eight hours; prohibited the throwing of any refuse on the streets or closes, otherwise than as therein prescribed, and under the penalties specified in the proclamation of 1695; directed that no filth should be laid on the streets "on Saturday nights, and the nights before the days of humiliation or thanksgiving;" prohibited the laying down or keeping of middings within the ports, or within six feet of the "good town's causeyes, or of the avenues leading to the city;" and subjected to fine and imprisonment all persons who laid heaps of redd or stones on the streets, courts, or closes of the town without the authority of the dean of guild and his council. It at the same time required the muckmen to have the whole filth removed before seven A.M. from 1st March to 1st September, and before eight A.M. during the remainder of the year, under a penalty of £5 scots per day, to be paid by the tacksmen over and above the penalties specified in their contracts. On the 24th of the same month, George Bell, merchant, was elected overseer of cleansing, with a salary of 200 merks;<sup>3</sup> but not having been sufficiently careful in his oversight, John Russell was conjoined with him on 1st February 1706, and the salary of the former was divided between them.<sup>4</sup> On 4th February 1713, James Riddell was appointed overseer, and was authorised to receive £6 scots yearly from the tacksman of each of the bounds;<sup>5</sup> but this arrangement was terminated on 20th June 1720, and the act of 1713 was declared null and void.<sup>6</sup> Riddell was succeeded by Lauchlan Rattray,<sup>7</sup> but his appointment was recalled on 10th June 1743,<sup>8</sup> and David Jackson was named his successor, burdened with an allowance to Rattray.<sup>9</sup> During this time, the removal of the filth of the city was usually entrusted to tacksmen, each of whom had assigned to him a particular district, the refuse from which, collected by the muckmen, he was bound, under penalties, to carry without the ports before an early hour in the morning, and to lay at least six ells distant from the calsays and avenues leading to the city. Occasionally, however, the tacksmen did not implement the conditions of their tack, and

<sup>1</sup> *Antea*, p. 144.<sup>2</sup> Council Records. xxxvii. 10-13.<sup>3</sup> *Ibid.* xxxvii. 17.<sup>4</sup> *Ibid.* xxxviii. 474.<sup>5</sup> *Ibid.* xli. 21.<sup>6</sup> *Ibid.* xlvi. 73.<sup>7</sup> *Ibid.*<sup>8</sup> *Ibid.* lxiv. 12.<sup>9</sup> *Ibid.* lxiv. 17.

then different courses were adopted. Sometimes, as on 30th December 1702,<sup>1</sup> a proclamation was issued empowering all persons to remove for their own behoof, after the lapse of ten days, such muck as might be found lying within six feet of the calsay and avenues of the city. Again, as on 20th June 1704,<sup>2</sup> all middings found on the good town's avenues were ordered to be sold by the town's servants. At other times, the tacksmen of fulzie were ordered to be called before a committee of the council and dealt with. Of this last there is an illustration under date 3d October 1718,<sup>3</sup> proceeding apparently on the report of a committee dated 13th June 1716,<sup>4</sup> which set forth the fact that the several tacksmen had been most remiss, and had incurred the penalties specified in their bonds, and recommended that their bounds should be assigned to other persons. These tacks were sometimes granted by the council to persons selected by themselves, and were sometimes roused to the highest bidders; and it behoved the constables, under their "Instructions" of 1728,<sup>5</sup> to see not only that the muckmen and tacksmen respectively did their duty, but that those who threw filth from their windows or doors upon the streets, or who deposited dung on the streets at untimely hours, were pointed in terms of the several acts of council. But still complaints were made, and on 7th January 1730, a committee was appointed to consider certain proposals for cleaning the town, submitted to the council by Michael Russell, or any other proposals that might be offered with that object.<sup>6</sup> What followed on this remit does not appear, but certain MS. proposals for cleaning and lighting the city in 1735, now in the possession of the Society of Antiquaries of Scotland, shew that matters were then in a deplorable condition.<sup>7</sup> "There is," it is said, "a very evil practice to be observed, that some mistresses, and those not of the lowest order, do agree and paction with their servants for lower wages on this very account; that they tell them they shall be allowed to cast all their nastiness over the windows, shew them how to do it, and encourage them therein." It was the object of these proposals to put "an effectual stop to that pernicious practice,"<sup>8</sup> and to secure

<sup>1</sup> Council Records, xxxvii. 381.

<sup>2</sup> Ibid. xlv. 73.

<sup>3</sup> *Antea*, pp. 164, 165.

<sup>4</sup> Ibid. xl. 436.

<sup>5</sup> Ibid. xliii. 116.

<sup>6</sup> Council Records, lii. 452.

<sup>7</sup> These manuscript proposals are the work, Mr D. Laing conjectures, of Mr Robert Mein, who reissued his proposals in the form of a tract in 1760, and will be found referred to in the text. See notice of these proposals by Mr Laing in the Proceedings of the Society of Antiquaries of Scotland, iii. pp. 171-180.

<sup>8</sup> It is not to be supposed that this practice, which secured for Edinburgh the un-

that "the streets, winds, closes, &c., of the city" should be kept neat and clean, by employing "two men scaffingers" to serve as many houses as were entered in the stent books at £800 of yearly valued rent. These scavengers it was proposed to pay "half a scots merk a day each," by a voluntary assessment of 6d. in the pound from occupiers; and it was proposed that the proprietors should supply the requisite vessels and utensils for the work, which vessels should remain in the house for the use of the tenants in all time coming. The proposals of 1735 met with considerable support from the citizens, but it does not appear that it was then attempted to carry them into effect; and on 7th November 1739, a committee was again appointed to consider the subject of cleansing the city.<sup>1</sup> Their report, which was presented on 29th August 1740,<sup>2</sup> sets forth, "that in order to remove the many just complaints made of unclean streets," the town should be divided into thirty districts, assigned to the several persons therein named, subject to certain conditions which explain the nature of the cleaning arrangements of the period. These conditions prescribed, (1.) That each district should be kept clean by two scavengers, who should reside in the city, and be ready to assist on all occasions of fire; (2.) That each scavenger should receive 1½d. for each cart load of dung removed; (3.) That each tacksman should pay 8s. sterling for each district to the overseer of cleansing; and (4.) That the dung should be removed out of

savoury reputation that so long attached to it, was peculiar to the capital of Scotland. The height of the houses in Edinburgh, each storey occupied by a separate family, no doubt increased the temptation to adopt ejection by the window or "shot" as the most expeditious and least troublesome mode of getting quit of offensive matter; but there is reason to believe that a similar practice prevailed in most of the large towns of Europe. In his "*Reekiana; or, Minor Antiquities of Edinburgh*," Dr Chambers gives a translation of a chapter in a book of general criminal law, printed at Antwerp in 1570, under the title of "*Praxis Rerum Criminalium*," in which the author, Jodocus Damhouderius, lays down the law "concerning damage by things thrown out of houses." The chapter, Mr Chambers remarks, is headed by an illustrative woodcut, representing a gentleman tapping at a door upon the street, while a woman above is emptying a large vessel, the contents of which hit him right between the shoulders [pp. 48-52]. What was thus made the subject of a chapter in a law treatise was doubtless a matter of frequent occurrence. An order in the *Liber Albus*, that no one "shall throw water, or other thing from the windows, but shall carry the same into the streets," indicates that the practice was known in London during the thirteenth and fourteenth centuries [Munimenta Gildhallae Londonienses, iii. 229].

<sup>1</sup> Council Records, lx. 204.

<sup>2</sup> *Ibid.* lxi. 80.

town every morning at 4 A.M. from 1st April to 1st September, and at 7 A.M. from 1st September to 1st April, under a penalty. On the 24th of December in the same year, however, these bounds were found to be too small, and a new division into twenty-four quarters was substituted ; it was put in the option of the scavengers or rakers to receive  $1\frac{1}{2}$ d. a cart, 4d. a day, or 20d. a week ; and the tack duty payable for each district was increased from 8s. to 10s. a year.<sup>1</sup>

Despite the repeated prohibitions, to which reference has already been made, against throwing filth on the streets, the practice continued, and was made the subject of many acts and proclamations of council. In particular, an act dated 6th January 1714 renewed the order for all families to have vessels to contain their soil for at least forty-eight hours ; prohibited the throwing out of filth on the streets under stringent penalties, of which one half was appointed to be paid to the discoverer, and the other half to the common charge ; gave the masters of families relief as against their servants, who for a second fault were ordered to be pilloried, and for a third offence were appointed to be whipped by the hangman, and banished from the city ; ordained all filth to be brought to the streets between ten P.M. and eight A.M. from 1st September to 1st March, and between eleven P.M. and six A.M. from 1st March to 1st September ; prohibited any filth from being laid on the streets upon Saturday evening, or at any time of the Sabbath day ; and discharged all stablers from keeping their dung upon the High Street longer than twenty-four hours.<sup>2</sup> Still, however, as has been seen, the throwing of filth from the windows remained common ; and on 6th February 1745, a committee was appointed to consider and report as to what measures could be adopted to suppress the practice.<sup>3</sup> This committee appear to have conferred with a committee of the Lords of Session on the subject ; and on 12th July 1745, the Lord Provost reported, as the result of the conference, that the Lords approved highly of the proposals submitted to them by the committee of the council, but suggested some points for the consideration of the council. The remit to the committee was accordingly renewed, and, on their report, the council, on 14th August 1745, passed an act in which they appointed their act of 6th January 1714 to be stringently enforced, and ordained the constables in their several bounds to be aiding and assisting in putting the same to execution.<sup>4</sup> So matters continued till February 1747, when some difficulty seems to

<sup>1</sup> Council Records, lxi. 195.

<sup>2</sup> Ibid. lxx. 262.

<sup>3</sup> Ibid. lxx. 118.

<sup>4</sup> Ibid. lxx. 262. Of a stranger's experiences of Edinburgh about this time, there is an account in a work entitled, "Letters from the North of Scotland," first published

have been experienced in getting the fulzie of the city let on such favourable terms as formerly.<sup>1</sup> On 11th March 1747, accordingly, the town was again divided into thirty districts, one-third of which was ordered to be let for one year, one-third for two years, and one-third for three years.<sup>2</sup> On 1st June 1748, however, the council resolved to let the streets be cleaned by any persons who would find security to do so once a day, at such hours as might be appointed by the Magistrates. This resolution was adopted on the consideration, that the city fulzie had been sundry times advertised to be let in tack; that no bidders had appeared to give any valuable consideration therefor; and that the streets, wynds, and closes were very much encumbered with dung and nastiness. Arrangements were afterwards made with farmers in the neighbourhood, who undertook to clean the streets;<sup>3</sup> and a tack was entered into with them on 20th July 1748 for three years after Lammas;<sup>4</sup> but still complaints appear to have been made, and on 26th October a committee was appointed to consider the contract with the farmers, and to see the same strictly performed, "so as the streets be regularly cleaned, and all after complaints on that head be fully removed."<sup>5</sup> On 18th January 1749, the committee were authorised to concert measures with the farmers

in 1754, and reprinted with notes in 1815. Having been invited to sup in a tavern, the writer says: "We supped very plentifully, and drank good French claret, and were very merry till the clock struck ten, the hour when every body is at liberty, by beat of drum, to throw their filth out at the windows. Then the company began to light pieces of paper, and throw them upon the table, to smoke the room, and, as I thought, to raise one bad smell with another. Being in my retreat to pass through a narrow wynd or alley to go to my new lodgings, a guide was assigned to me, who went before me to prevent any disgrace, crying all the way, 'Haud your haunde!' The throwing up of a sash, or otherwise opening a window, made me tremble; while behind and before me, at some little distance, fell the terrible shower. Well, I escaped all danger, and arrived, not only safe and sound, but sweet and clean, at my new quarters; but when I was in bed, I was forced to hide my head between the sheets, for the smell of the filth thrown out by the neighbours at the back of the house came pouring into the room to such a degree, I was almost poisoned with the stench." He then proceeds to say that, setting himself to consider of this great annoyance, he found it remediless, owing to the peculiar character of the houses. He repudiates the charge made by some "maliciously, or at best inconsiderately," that this evil proceeded from "a love of nastiness, and not necessity;" and adds, "that the main street is cleaned by scavengers every morning early, except Sunday, which therefore is the most uncleanly day."

<sup>1</sup> Council Records, lxvi. 83.

<sup>3</sup> Ibid. lxvii. 205.

<sup>5</sup> Ibid. lxvii. 297.

<sup>2</sup> Ibid. lxvi. 110.

<sup>4</sup> Ibid. lxvii. 221.

relative to cleaning the streets, and for a settlement of the arrears due by them, for which proceedings were in dependence.<sup>1</sup> On 12th July 1749,<sup>2</sup> the council, on a petition from sundry of the inhabitants complaining of the inconveniences to which they and the whole neighbourhood were liable by the scavengers and others emptying foul water and filth on the streets, &c., at unseasonable hours, and the report of the committee to which the petition had been remitted, prohibited filth to be laid on the streets after six A.M. and before nine P.M. from 1st May to 1st August ; nor after seven A.M. and before eight P.M. during August, September, March, and April; nor after eight A.M. and before eight P.M. during October, November, December, January, and February ; nor upon any Saturday except before the hours in the morning before mentioned, all under the penalty of 5s. sterling. In the "Instructions" to the constables, issued on 23d May 1750, they were again required to see to the sufficiency of the muckmen, and that the tacksmen removed the fulzie in due time, conform to the orders of council. They were also charged with the enforcement of the laws against throwing filth on the streets.<sup>3</sup> The tacks with the farmers having expired at Lammas 1751, they petitioned the council to have them renewed ; and their petition having been considered by a committee, it was agreed on 11th September 1751, that though the tacksmen had not implemented the conditions of their tack, "yet as that was in a great measure owing to the negligence and sloth of their servants and of the overseers kept by the tacksmen, and as these gentlemen had engaged to keep two overseers in place of one, and that the council should be at liberty to name any person they pleased as one of these overseers, to whom they agreed to give an allowance of £16 sterling per annum, the tack should be renewed for one year after Martinmas next on the former terms."<sup>4</sup> In December 1752, it was reported to the council "that not only the High Street, but all the other streets and closes within the city have been for some months past so intolerably dirty as to be almost impassable, and had occasioned one universal complaint from the whole inhabitants, especially people of character, and that this no doubt arose from the negligence of the scavengers or others employed in raking ; yet the fault was more immediately chargeable upon those who had the oversight and direction of them, as it is their peculiar business to keep them to their duty, or complain when their orders are not obeyed." And as the tacks to the farmers had expired, it was suggested that the overseer to

<sup>1</sup> Council Records, lxviii. 17.

<sup>2</sup> *Ibid.* lxviii. 134.

<sup>3</sup> Appendix No. X. Art. 9.

<sup>4</sup> Council Records, lxix. 364.

be thereafter appointed should be named by the council, and be subject to them, receiving such salary, payable by the tacksmen, as the council might think reasonable. This matter was accordingly remitted to a committee, on whose report the council, on 13th December 1752, resolved, (1.) That the filthy state of the streets, wynds, and closes, for months past arose from the negligence and inactivity of the overseers, and the insufficient number of the scavengers or "rakers." (2.) That the town should be divided into twenty-eight bounds, as previous to the tacks to the farmers. (3.) That an overseer should be appointed by the council to traverse the different bounds from the time when the rakers began work till the hour appointed for carrying off the dung. (4.) That the overseer should have power to appoint such number of rakers for each of the bounds as he thought necessary, and to dismiss them when they disobeyed his orders; and that he should be answerable to the Magistrates for any complaints that might be made as to the imperfect cleaning of the streets. (5.) That he should make a daily report to the Magistrates of his own diligence, and the diligence or neglect of the several tacksmen and rakers in each of the bounds. (6.) That the tacksmen should, under a penalty, remove all dung from the bounds from 1st March to 1st September before ; and from 1st September till 1st March before ; for which penalty the overseer should be entitled to seize and detain the tacksmen, horse, and cart, the first time they came to remove the dung. (7.) That, further, the overseer should be at liberty to dispose of what dung might remain after the hours appointed for its removal, to whomsoever he should think proper. (8.) That every Saturday morning the tacksmen should pay to the overseer the wages of the rakers for the preceding week, and the salary of the overseer quarterly, or when the council might appoint. And (9.) That the tacksmen and overseer should submit themselves to any regulation or alteration which the council might think necessary in the execution of this plan.<sup>1</sup> At this time Robert Mein held the appointment of overseer of the rakers, but his appointment was cancelled, and Yaaly Davidson, formerly stabler and innkeeper, Cowgate, was appointed to succeed him. At the same time the dung was ordered to be roused, subject to the conditions above expressed.<sup>2</sup> An attempt was thereafter made to rouse the city's dung, but the result does not appear, though in all probability the farmers were continued in their tack for another year. On 29th August 1753, John Douglas, armourer, burgess, was appointed overseer of the streets, at a salary of £36;<sup>3</sup> and in December 1753, another

<sup>1</sup> Council Records, lxx. 357.<sup>2</sup> Ibid. lxx. 360.<sup>3</sup> Ibid. lxxi. 240.

attempt was made to roup the dung, but without success, for on the 26th of that month the roup was adjourned till January 1754.<sup>1</sup> In December 1754,<sup>2</sup> a memorial was given in by the tacksmen, in which they proposed that, instead of the former system of employing rakers who were only engaged a few hours each morning, twenty-four rakers, or such additional number as might be found necessary, should be employed for thoroughly cleaning the streets; that these should begin early in the morning, leaving off about nine A.M. in summer, and ten A.M. in winter, beginning again at three P.M. in winter, and five P.M. in summer, and continuing so long as they had anything to do in their respective bounds; that the fulzie collected by them should be deposited where least offensive; that the rakers should be paid at the rate of 8d. per day, and should not undertake any other business; that the overseer should make a daily report to the magistrates as to how the rakers had done their duty, certifying the names of those who had been negligent; that he should also report whether the tacksmen had carried off the dung, and that the tacksmen so failing one day might be cut off and another appointed. The council having considered this memorial on 11th December, granted the farmers a tack for one year from the preceding Martinmas, and thereafter during the council's pleasure, subject to the conditions noticed above, and subject to the further conditions that the farmers should consign £16 in the hands of the youngest bailie, to be applied for carrying off the dung when they neglected to do so.

In 1758, the farmers, who were still tacksmen of the dung, under the regulations of 13th December 1752, made a representation to the council, setting forth that, in terms of that act, they had given an additional allowance to thirty-three rakers at a groat each per week, but that the effect of this arrangement had been prejudicial to them, inasmuch as they had not got a cartful of more dung than formerly. They therefore asked permission to give this increased allowance to an additional overseer to be named by them, who would keep the rakers more closely to their duties. This representation having been remitted to a committee, the council, on their report, allowed the tacksmen to name an additional overseer of their own, to remain during the council's pleasure.<sup>3</sup>

<sup>1</sup> Council Records, lxxi. 380. On 6th November 1754, an act of council was issued against stablers and others keeping swine or goats, or any species of them [Ibid. lxxii. 368].

<sup>2</sup> Ibid. lxxii. 295.

<sup>3</sup> Ibid. lxxiv. 55; 16th February 1757.

On 6th December 1758, the city was divided into twenty districts for the purposes of cleaning.<sup>1</sup> As thus divided, the dung was exposed to roup, and set in tack to various persons on 31st January 1759.<sup>2</sup> On 7th February 1759,<sup>3</sup> an act of council was passed for keeping the streets clean. That act sets forth that the magistrates, "being sensible of the many complaints that the uncleanness of the streets of this city have but too justly occasioned, and being fully determined to use their outmost endeavours to wipe off a reproach under which this metropolis has so long laboured, had unanimously agreed and resolved" to make various regulations to effect that object. Then follow a series of regulations for keeping common stairs clean; for cleaning the pavements and gutters opposite the several tenements; regulating the time for laying down filth on the streets; prohibiting the shaking of carpets over windows or in common stairs; the riddling of ashes out of doors; the use of timber water spouts for conveying nuisances from houses; the throwing of filth out of doors or windows, &c. It is noticeable that while this act, of which four thousand copies were appointed to be printed and circulated, contains a recommendation to the magistrates to allot one day in every week for inquiring into, and punishing, all trespasses committed against it; requires the town's officers, guard-soldiers, and rakers to enforce its provisions, and appeals to all the inhabitants to "cheerfully concur in a measure so much for the public good;" it does not impose any duty upon the constables.

In 1760, Robert Mein reissued his proposals in the form of a printed tract, entitled, "The city cleaned and improved. By following out this proposed method, for paying only one penny per week for an £8 rent, &c. Edinburgh, 1760."<sup>4</sup> These proposals seem to have met with considerable support, and porters were employed to carry away the fulzie from the houses of those who subscribed to the scheme. Mein was indefatigable in his exertions. A thousand copies of his proposals were printed and circulated among the citizens, and he appears to have gone from house to house advocating the general adoption of his scheme. Thereafter he petitioned the council to give it their support and recommendation, and also to contribute something towards the expense to which he had been put. This petition was remitted to a committee, on whose report £6 were ordered to be paid to him on 4th March 1761.<sup>5</sup> At the same time he was recommended to

<sup>1</sup> Council Records, lxxv. 114.

<sup>2</sup> Ibid. lxxv. 181.

<sup>3</sup> Ibid. lxxv. 192.

<sup>4</sup> Proceedings of the Society of Antiquaries of Scotland, iii. 179.

<sup>5</sup> Council Records, lxxvi. 248.

endeavour to get the whole families within one district to subscribe, so as to give the scheme a fair trial. In this he succeeded, and on 3d June 1761 the council, on the report of their committee, authorised £3 to be paid to Mein, to purchase the utensils requisite for the cleaning of the district from the Castlehill to the head of Forrester's Wynd, in which the experiment was to be made. It was also agreed that he should receive a small weekly allowance to superintend the work.<sup>1</sup> Subsequently, on his application, a further sum of £2, 8s. was ordered to be paid him on account of utensils purchased by him;<sup>2</sup> and Bailie Hutton was ordered to see the plan put into execution; but it was at the same time resolved that no more money should be paid to Mein in connection with it.<sup>3</sup> While the attempt was thus being made to work out Mein's proposals in one of the bounds, the others were let out from time to time by public roup or private bargain, not, however, without complaints as to the inefficiency of the cleaning arrangements. Thus, on 12th October 1763, it was remitted to a committee to consider the act of council of 7th February 1759, and to make such alterations thereon as were considered proper. On 12th August 1767, again, the council, on a petition by Mungo Ponton and others, tacksmen of the city's fulzie, setting forth the inconveniences of the mode of collecting dung, and suggesting a new method for doing so, allowed them to make trial of the plan proposed by them.<sup>4</sup> This petition complained that the system of collecting fulzie from the closes and vennels, and laying it on the streets in small quantities, was most inconvenient, inasmuch as the dung so collected was soon scattered, and the streets were thus dirtied and rendered offensive. To remedy this, it was proposed, by way of experiment, that eight or nine troughs or boxes should be set down in the evening at particular places, and allowed to remain till the morning, for the reception of the fulzie collected by the scavengers; that the carters of the tacksmen should then clean out these boxes; and that, after being emptied, the boxes should be put away till next evening.

On 10th January 1770, a committee of the council reported that all the previous methods had proved insufficient,<sup>5</sup> and they suggested that instead of having thirty scavengers employed during the morning only, twenty should be permanently engaged, not only to clean the streets with rake and besom in

<sup>1</sup> Council Records, lxxvi. 305.

<sup>2</sup> Ibid. lxxvii. 29; 25th November 1761.

<sup>3</sup> Ibid lxxvii. 30. This active and public-spirited citizen died at Edinburgh on the 25th of July 1776, aged 93. See notice of him by Dr Laing in *Proceedings of Society of Antiquaries of Scotland*, iii. 178-180.

<sup>4</sup> Council Records, lxxix. 120.

<sup>5</sup> Ibid. lxxxiii. 139.

the morning, but to gather into suitable places all the occasional filth that might be deposited during the day ; that the wages of the thirty scavengers should be paid to the twenty proposed to be retained, and that they should receive 5s. per week certain, besides a share of the fines exacted from transgressors ; that they should undertake no other business, and that the overseer should see to the efficient performance of their duties. It was also suggested that if any of the tacksmen failed to remove the dung by the hour specified in his contract, the treasurer of the charity workhouse should send the carts belonging to that establishment to remove it for the benefit of the institution. It was further recommended, that the riddling of ashes should be strictly prohibited ; that the scavengers should clean the pavements and gutters on both sides of the streets every Sabbath morning ; that the possessors of shops from the Exchange to the entry to the New Bridge should keep the pavements and gutters on both sides of the streets clean ; and that the youngest bailie and his committee should set apart an hour every week for hearing complaints. The other suggestions in the report, as to keeping common stairs clean, preventing the laying of stones and rubbish on the streets, &c., are very similar to the provisions of the act of February 1759. This report was approved of, and ordered to be proclaimed to the citizens ;<sup>1</sup> and on the same day<sup>2</sup> a letter from the tacksmen of dung was submitted to the council, acquiescing in the proposed change.

In 1771, a bill for the cleaning, lighting, and watching of the southern suburbs, afterwards known as the "southern districts," was under the consideration of the Lord Provost's committee, who reported that it contained nothing objectionable, but that a clause reserving the rights and jurisdictions of the city should be inserted.<sup>3</sup> This was accordingly done, and the act was passed in the same year.<sup>4</sup> In the following year, a bill to provide for the lighting, cleansing, and watching of the Canongate, Pleasance, and Leith Wynd, was carried through Parliament.<sup>5</sup> This act also contains a reservation of the rights of the city.

In 1774, the tacksmen are found complaining that the new method of collecting the fulzie, introduced by the council's act of 10th January 1770, had occasioned them loss. Their complaint was remitted to a committee of the council, who, after a meeting with them, reported, on 17th August 1774, that the scavengers employed under that act had not constant employment ; and that the

<sup>1</sup> Council Records, lxxxvi. 95.

<sup>3</sup> Ibid. lxxxviii. 17.

<sup>5</sup> 12 George III. c. 15.

<sup>2</sup> Ibid. lxxxvi. 100.

<sup>4</sup> 11 George III. c. 36.

cleaning of the city would be as well effected, and the dung better collected, under the following arrangement, viz. :—(1.) That the scavengers should be employed from four to nine A.M. during the period from 1st March till 1st October, and from six till eleven A.M. for the period from 1st October to 1st March. (2.) That the tacksmen should remove the fulzie collected by the scavengers before nine A.M. during the first six months, and before eleven A.M. during the remaining six months. (3.) That four out of the twenty scavengers should be employed during the remainder of the day in cleaning the streets, and sweeping the pavements and gutters on both sides of the street. (4.) That these four scavengers should be paid 5s. per week, and the remaining sixteen 2s. 6d. per week, the overseer previously certifying weekly that they had severally performed their duties; and (5.) That on the death of one of the two then existing overseers, only one should be continued, at a salary of £25 per annum. These recommendations, it appeared, would effect an annual saving of £104 sterling, and as the minute bears that this saving was an "object of great importance," they were approved of, and ordered to be carried into effect.<sup>1</sup> On 15th February 1775,<sup>2</sup> the council passed an act whereby they superannuated Douglas, one of the overseers, and required Cleghorn, the other overseer, to reside within the town, so that he might superintend the rakers. At the same time, finding that the four rakers employed during the whole day to clean the streets were too few, they resolved to increase them to eight from 1st November to 1st April in each year, paying six of them a wage of 5s. each weekly, and two, who were to oversee the others, eight shillings per week. During the period from 1st April to 1st November, it was resolved to employ six rakers, four at 5s., and two, as assistant overseers, at 6s. per week. These assistant overseers were directed to report to the youngest bailie every week as to how the rakers had done their duty; and with a view to encourage those rakers who were only employed in the morning at a wage of 2s. 6d. per week, it was resolved that when a vacancy among the porters occurred, it should be supplied from among those rakers who were most highly recommended as having done their duty in that capacity.<sup>3</sup> On 9th April 1777,\* the

<sup>1</sup> Council Records, xci. 295.<sup>2</sup> Ibid. xcii. 161.

\* Ibid. xcv. 87.

<sup>3</sup> It may be presumed that the description of Edinburgh by Mrs Winifred Jenkins, in "Humphrey Clinker," published in 1771, applies to the state of matters previous to Smollet's last visit to Scotland in 1766. Announcing her arrival "at Haddingborough, among the Scots," Mrs Jenkins proceeds, "They should not go for to impose upon foreigners: for the bills in their houses say they have different easements to let; and,

council passed an act for keeping the streets clean, and for preventing nuisances ; this act was very similar in its provisions, though more minute in its details, than several of the acts already referred to ; and every "town officer, town guard soldier, porter, or scavenger," was required, under pain of dismissal from the town's service, to report to the magistrates at the council chamber, within twenty-four hours, any offence committed against it which might come to his knowledge. The following passage in the act indicates the difficulty which the authorities had in enforcing compliance with their requirements, especially on the part of servants :—

"As by experience it is found, that the prosecuting and convicting of servants has not answered the intention of former regulations upon this subject, the procurator-fiscal is hereby enjoined henceforward to cite the possessors, that is, the master or mistress of the family ; and it is recommended to the magistrates to proceed with perseverance and vigour ; and in questions between masters and servants, to sustain the servants having been guilty of transgressing this act while in their service, as a sufficient ground for dismissing such servant."

behold there is nurro yeaks in the whole kingdom, nor anything for pore servants but a barrel with a pair of tongs thrown across ; and all the chairs in the family are emptied into this here barrel once a day, and at ten o'clock at night the whole cargo is flung out at a back window, that looks into some street or lane, and the maid calls *Gardy loo* to the passengers, which signifies 'Lord have mercy upon you !' and this is done in every house in Haddingborough ; so you may guess, Mary Jones, what a sweet savour comes from such a number of perfuming pans. But they say it is wholesome, and I truly believe it is ; for being in the vapours, and thinking of Isabel and Mr Clinker, I was going into a fit of asteriks, when this siff, saving your presence, took me by the nose so powerfully, that I sneezed three times, and found myself wonderfully refreshed ; and this, to be sure, is the reason why there are no fits in Haddingborough." Some years later, however, a more favourable account of the condition of the city is given by an English visitor, Captain Topham, who, in his "Letters from Edinburgh written in the year 1774-1775" [London 1776, pp. 14, 15], thus speaks : "This town has long been reproached with many uncleanly customs. A gentleman, who lately published his travels through Spain, says [Twisse's Travels, p. 140] 'that Madrid some years ago might have vied with Edinburgh in filthiness.' It may probably be some pleasure to this author, and to those who read him, to learn that his remarks are now very erroneous. But if a stranger may be allowed to complain, it would be that in these wynds, which are very numerous, the dirt is sometimes suffered to remain two or three days without removal, and becomes offensive to more senses than one. The magistrates, by imposing fines and other punishments, have long put a stop to the throwing anything from the windows into the street ; but as these allies [alleys] are unlighted, narrow, and removed from public view, they still continue these prac-

In the following clause of the act, which refers to the constables, they are invested with a semi-judicial character :—

"Persons easing themselves in stairs or in closes, wynds, courts, or squares, to be carried to the next constable, who is hereby empowered to confine them to the city guard for four hours, unless the offender instantly pay sixpence sterling, which shall belong to the person who first makes the challenge."

On 7th May 1783,<sup>1</sup> the council fixed the cleaning establishment as under :— From 1st April to 1st October, eight rakers employed all day at 5s. each per week, ten men employed half a day at 2s. 6d. per week, and an overseer at 6s. per week, making the total weekly cost of the staff during summer, £3, 11s. From 1st October to 1st April, twelve rakers employed all day, at 5s. per week, ten half day's men at 2s. 6d. per week, and an overseer at 6s. per week ; the total weekly cost of the winter staff being £4, 11s. They farther directed that the half day's men should continue their work till 9 A.M. On 3d of September in the same year, the council, on an application by the tacksman, complaining of the way in which the dung was collected, agreed to the appointment of James Baird as joint-overseer of cleaning with Andrew

tices with impunity. Many an elegant suit of clothes has been spoiled ; many a powdered, well-dressed macaroni sent home for the evening : and to conclude this period in Dr Johnson's own simple words, 'Many a full-flowing perriwig moistened into flaccidity' [*Vide* "Idler"]. Such particulars, however, as these scarce merit observation : they are circumstances resulting from the peculiar inconveniency of the buildings, and not from the natural disposition of the Scotch, who love cleanliness and practise it. They lament the impropriety of these customs, and join in the laugh at the accidents they occasion." Further on the same author remarks [*Ibid.* pp. 151, 152.], "I am informed that Edinburgh is greatly improved in this respect [cleanliness] within a few years, occasioned by the diligence and management of the Police ; which set an example, by being particularly careful of the cleanness of the streets, into which, as a common sewer, all the nuisances of the houses are emptied at a stated time in the night, on the ringing of a bell, and immediately removed by persons appointed for that purpose ; and at the same time the reservoirs being set open, which are placed at certain intervals in the streets, carry everything away ; so that in the morning the streets are so clean, that foot-passengers walk in the middle of them. It is likewise a severe penalty to throw anything out of the windows. But I cannot help observing the intolerable stench that is produced at this season of the night, on the moving the tub of nastiness from each floor : such a concatenation of smells I never before was sensible of ; it has been sometimes so powerful as to wake me, and prevent my sleeping till it was somewhat pacified."

<sup>1</sup> Council Records, civ. 21.

Beatson,—Beatson retaining £20 of his salary, and Baird receiving the other £5, with 6s. per week, being the wage allowed the assistant overseer.<sup>1</sup> On 20th October 1783, one of the half day's men was discontinued, and an additional whole day's man was added to the rakers.<sup>2</sup> Subsequently, on 12th April 1786, the allocation of salaries was changed, Baird receiving £15, and Beatson £10 yearly.<sup>3</sup>

On 30th August 1786, the council passed several regulations relative to the cleaning of the streets in the new extended royalty. By these the royalty was portioned out into five divisions, the dung of which was let for one year, and a licence and ticket issued for each division separately. The licence and ticket, which were not transferable, entitled the holder to send carts to the respective divisions for the removal of the fulzie therein,—in summer, from six to eight A.M., and from nine to eleven P.M. on Saturday nights; and in winter from seven to nine A.M., and from seven to nine P.M. on Saturday nights. The carters were ordered to summon servants by ringing bells, and to empty the utensils into the carts; and it was declared that the proprietor of any cart found collecting dung at other hours, or whose carters were guilty of any contravention of the regulations, should forfeit his licence for a month on the first offence, and be deprived of it altogether for a second offence. Any servant contravening the council's act of 9th April 1777, or these regulations, was appointed to be subject to the penalties in that act.<sup>4</sup> On 1st November 1786, the above regulations were ordered to be enforced from and after the 11th of that month, with this exception, that the carts were not to go round on Saturday nights. All fulzie therefore behoved to be either given to the carters on Saturday morning, or retained till Monday morning.<sup>5</sup> On 7th January 1795, Robert Denham was appointed overseer of the streets *vice* Baird, deceased.<sup>6</sup>

Such were the regulations under which the cleaning of the city was carried on, and the records of the council contain, in almost a consecutive series, from 1762 till the appointment of the Police Commission in 1805, abstracts of the accounts for dung during these years. It appears that the tacksmen, at the passing of that act, had paid a grassum to the town for their leases, for on the 3d of July 1805, the city chamberlain was directed to pay a proportion of these grassums to the police commissioners.<sup>7</sup>

<sup>1</sup> Council Records, civ. 74.

<sup>4</sup> Ibid. cviii. 186–188.

<sup>6</sup> Ibid. cxxiii. 257.

<sup>2</sup> Ibid. civ. 268.

<sup>5</sup> Ibid. cviii. 281.

<sup>7</sup> Ibid. cxlii. 125.

<sup>3</sup> Ibid. cvii. 281.

## CHAPTER V.

1801-1865.

Elections of Constables.—Regulations by the Town Council as to the constitution and management of the Society.—Question as to the relation of the Society to the ordinary Police.—Society authorised to assume the distinctive title of "High Constables."—Alterations in its numbers.—Disputes with the Town Council.—Rules enacted by the Society for its internal administration, and questions in connection therewith.—Miscellaneous duties ; keeping the peace ; collisions with the military authorities in the discharge of that duty ; attending magistrates at public ceremonials ; preparation of parliamentary returns, jury lists, and lists of persons liable to serve as militia men.—Philanthropic services.—"High Constables' Volunteer Company."—Questions of Precedency with other Local Bodies.—Loyal Addresses.—Festive Meetings.—Annual Excursions, &c.—Insignia.—General Observations, &c.



NOTWITHSTANDING the discouragement given by the society in 1792 to the practice of constables remaining in office beyond three years,<sup>1</sup> it is noticeable that of the forty members who were on the roll in 1800, there were, one member who had held office for eight years, two for five years, one for four years, and sixteen for three years ; and in the roll of the following year, one member had held office for nine years, two for six years, one for five years, six for four years, and ten for three years. This shews that the triennial rotation, established merely by use and wont, was not in rigorous observance at this period. Those constables who wished to remain in the society beyond three years appear to have done so, and elections were made from time to time to supply the vacancies occasioned by the retirement of those who chose to leave. An explanation

<sup>1</sup> *Antea*, p. 189.

is thus afforded of the differences in the number of those who from time to time were appointed constables at the usual period of the annual elections. Thus, eight constables were elected on 26th March 1800,<sup>1</sup> eleven on 18th March 1801,<sup>2</sup> and twelve on 31st March 1802.<sup>3</sup>

Owing to the extension of the city, and the increase of the duties devolved upon the constables, their office became so burdensome, that in 1802 the society found it necessary to apply to the magistrates and council, either to increase the number of constables by not less than twenty persons, or to order "twenty pay constables" to be placed under the directions of the society, in taking up the militia lists, and other similar duty. In consequence of this application, the council, on 1st December 1802,

"agreed that an additional number of constables shall be appointed, and that the society of constables shall be directed to give in lists of persons for having any number they think necessary, not exceeding twenty additional constables, during the pleasure of the council."<sup>4</sup>

A list containing the names of twenty persons was accordingly given in to the council on 26th January 1803, and on the following day the persons so recommended were elected constables.<sup>5</sup> The council at the same time authorised Bailie Hill and the moderator to settle the divisions of the several districts. The ancient and extended royalties of the city<sup>6</sup> were accordingly, on 1st June 1803, divided into sixty districts, with a view to each of the constables having one district.<sup>7</sup>

<sup>1</sup> Council Records, cxxii. 452.

<sup>2</sup> Ibid. cxxxv. 82.

<sup>3</sup> Ibid. cxxvi. 374. Among the persons elected at this time were, Mr William Trotter, upholsterer, and Mr Kincaid Mackenzie, merchant, both afterwards Lord Provosts of the city.

Mr Trotter was elected moderator on 7th April 1806 [Minute Book, iii. 15], and retired in April 1807.

Mr Mackenzie was elected treasurer on 7th April 1806 [Minute Book, iii. 15], and moderator on 6th April 1807 [Ibid. iii. 27]. He retired in April 1808.

<sup>4</sup> Council Records, cxxvii. 353; Minute Book, ii. 231.

<sup>5</sup> Council Records, cxxviii. 26; Minute Book, ii. 233. Alexander Henderson, seedsman, afterwards Lord Provost of the city, [see Anderson's History of Edinburgh, p. 391; Mr Mackie's Notes as to the Merchant Company of Edinburgh, p. 84] was elected a constable at this time. He retired from the society on 22d April 1809.

<sup>6</sup> See *antea*, p. 188, footnote 4.

<sup>7</sup> A description of these districts is inserted in the end of the second volume of the society's minutes.

Elections of constables, to supply the places of those who retired at the usual period,<sup>1</sup> were made on 16th March 1803, when eight constables were elected.<sup>2</sup> In like manner, five constables were elected on 2d May 1804,<sup>3</sup> and four were elected on 29th May 1805.<sup>4</sup>

In 1805, the position of the society and its public relations were materially changed. The necessity for an improved system of police had long been felt, and at a public meeting of the citizens, held on 29th November 1802, it was unanimously resolved to apply to parliament for an act to establish such a system.<sup>5</sup> The cleaning, lighting, and watching of the southern districts were provided for by the act 11 Geo. III. c. 36, passed in 1771, while the cleaning, lighting, and watching of the Canongate, and the liberties of Pleasance and Leith Wynd, were provided for by the act 12 Geo. III. c. 15, passed in 1772. The lighting of the ancient and extended royalty of the city was provided for in 1785, by the act 25 Geo. III. c. 28, which empowered the commissioners thereby appointed, to impose an assessment, for lighting the

<sup>1</sup> From time to time elections were made to supply vacancies occurring during the year, but to these it is not considered necessary to refer except in special cases.

<sup>2</sup> Council Records, cxxxviii. 90.

<sup>3</sup> Ibid. cxxxix. 442.

<sup>4</sup> Council Records, cxliii. 19. On 19th March 1806, Mr James Ballantyne, "printer" [see *Encyclopædia Britannica*, xix. 821, 822; Anderson's History of Edinburgh, p. 432], was elected [Council Records, cxlv. 329; Minute Book, iii. 11]. On 6th April 1807, he was appointed chaplain [Minute Book, iii. 27], and on 4th April 1808, treasurer of the society [Ibid. iii. 46]. On 22d April 1809, he retired from the society [Ibid. iii. 84].

On 23d April 1806, Mr Archibald Constable, "bookseller" [see *Encyclopædia Britannica*, voce "Constable;" Chambers's Biographical Dictionary of Eminent Scotchmen, voce "Constable;" Peter's Letters to his Kinsfolk, ii. 174; Anderson's History of Edinburgh, p. 393], was elected [Council Records, cxlvi. 194; Minute Book, iii. 20]. On 6th April 1807, he was elected secretary [Minute Book, iii. 27], and on 4th April 1808, moderator of the society [Ibid. iii. 46]. On 22d April 1809, he retired.

<sup>5</sup> The co-operation of the council was thereupon invited; and on 1st December 1802, they appointed a committee to meet with the committee of the inhabitants on the subject [Council Records, cxxxvii. 352]. Thereafter the council are found petitioning parliament for leave to introduce a bill to improve and regulate the police of the city [Ibid. cxxxviii. 37, 47, 125; Ibid. cxxxix. 293; Ibid. cxli. 242; Ibid. cxlii. 30]; and reference is made in their minutes to committees of merchants and traders engaged in the consideration of the bill [Ibid. cxlii. 81]. The Merchant Company also appear to have taken an active interest in the measure [See Mr Mackie's Notes, pp. 72-74].

streets, of two per cent. on the valued rent of all houses, shops, and tenements, within the ancient and extended royalty. The watching of the city was still performed by the town guard, the cost of which was defrayed by a stent, leviable under the act of 1690 from the burgesses liable in "watch and waird." Such was the state of matters with which it was necessary to deal, and the first Edinburgh Police Act, 45 Geo. III. c. 21, passed in 1805, did so.<sup>1</sup> It suspended, so far as regarded watching, the acts of 1771 and 1772, and extended the powers of the commissioners under the act of 1785 to cleaning as well as lighting the streets of the ancient and extended royalty. It reduced the town guard to thirty-seven men, and laid the burden of their maintenance on the whole body of the inhabitants. It established a uniform system of police over the whole of the city and suburbs, placing the administration in the hands of general and resident commissioners, partly official and partly elected by householders possessing a certain qualification. It authorised the imposition of an assessment for the purposes of the act, extending it to members of the college of justice, and it gave the commissioners power to appoint a superintendent, who, besides having the control and direction of the police force, and acting as public prosecutor, was also vested with ample powers as a judge of police.<sup>2</sup>

<sup>1</sup> For a description of the police system established by this act, see Lord Cockburn's Memorials of his time, pp. 197-200. "Nobody foresaw," says his Lordship, "and least of all its authors, the indirect consequences of this police establishment. So far as I am aware, it was the first example of popular election in Scotland. Aversion to be taxed was overcome by allowing the people to choose the police commissioners, a precedent always appealed to till the Reform Act superseded the necessity of using it. The gradual extension of the police system over our towns, trained the people to expect and to exercise the elective privilege; and the effect of this in exciting and organising public spirit was so great, that the rise of the Edinburgh establishment is one of our local eras. Dr John Thomson was not extravagant when, in reference to our position, he used to call it a divine institution." It is to be observed, however, that the act 11 George III. c. 30, passed in 1771, "for cleaning and lighting the town of South Leith, the territory of St Anthony's and Yardheads, thereunto adjoining, and for supplying the several parts thereof with fresh water," and also the act for cleaning, lighting, and watching the southern districts, obtained in the same year, both provided for the election, by the ratepayers, of commissioners to carry out the provisions of these acts. The Canongate act was appointed to be executed by the magistrates and treasurer of the burgh, with the preses of the stentmasters thereof.

<sup>2</sup> The system of police established by the act of 1805, it may be remarked, was  
D d

The body of police constituted by this act had been but a few months in existence, when, in the exercise of their functions, they came into collision with the constables. It became necessary, in consequence, to have the relative duties and powers of the constables and police defined; and on 19th August 1805, the society appointed a petition to be presented to the magistrates and council with that view.<sup>1</sup> In that petition, they referred to the powers vested in them as constables under various acts of the Scotch parliament, and specially under the act 1661, c. 38,<sup>2</sup> no part of which had, they represented, been trenched upon or rescinded by the local police act; they asked whether they were warranted in the opinion they had formed,

“That the batons put into their hands by your Lordship and council, are to be respected by the officers appointed by the superintendant of police, and that in all cases when the city constables come to act together with the said officers of police, within the ancient and extended royalty, that the city constable shall in every instance be

superseded in 1812 by the act 52 George III. c. 172, which laid the foundation of the present system. It suspended the acts of 1771 and 1772 in regard to cleaning and lighting, as well as watching, and repealed the provisions of the acts of 1785 and 1805 for the lighting and cleaning of the ancient and extended royalty by separate commissioners. It placed the whole watching, lighting, and cleaning of the city under the management of one board, and divided the city into wards, each of which chose one general and two resident commissioners, the general commissioners and certain official persons forming the board. It limited the assessment to 1s. 5d. per pound on the rental; constituted the bailies, with the sheriff, judges in the police court; and appointed the superintendent of police to be procurator-fiscal of court. The act of 1812 was amended in 1816 by 56 Geo. III. c. 74, and in 1817 by 57 Geo. III. c. 33, and was repealed in 1822 by 3 Geo. IV. c. 78, which gave the ratepayers a more direct control over the management and expenditure of the police establishment, and extended the police bounds. The act of 1822 was amended in 1826 by 7 Geo. IV. c. 115. In 1832, the police bounds were still further extended by the act 2 and 3 William IV. c. 87, which renewed the previous acts of 1822 and 1826, except in so far as expressly altered. The act of 1832 was continued in 1834 by 4 and 5 William IV. c. 76, and was continued and amended in 1837 by 7 William IV. and 1 Victoria c. 32. All these acts, so far as relating to watching, cleaning, lighting, and paving, were repealed in 1848 by the existing police act 11 and 12 Vict. c. 113, which was amended in 1854 by the act 17 and 18 Vict. c. 118. The powers of the commissioners of police under these acts, were transferred to the council in 1856 by the act 19 and 20 Vict. c. 32, which extended the municipal bounds, making them co-extensive with the parliamentary boundaries.

<sup>1</sup> Minute Book, ii. 303.

<sup>2</sup> See Appendix V.

looked upon as the superior officer, he being always answerable to your lordship and council for his conduct ;”

and they concluded by requesting the council to intimate their opinion and pleasure as to the course of conduct which the constables should follow, in any case in which, while discharging their duty, they might be brought into contact with the officers of police. This petition was remitted to the magistrates, old magistrates, and convener on the 21st of August, and the following report<sup>1</sup> was made by them on 11th September 1805:—

“The magistrates, old magistrates, and convener, beg leave to assure the moderator and society of constables, that they are impressed with the strongest sense of the obligations which the community owe to the society for their public-spirited, important, and gratuitous services on every occasion. To retain the valuable support of the society, will always be the desire of the magistrates and council ; and they conceive the powers of the society to remain unimpaired in all cases where any of their members may be called upon or expected to act.

“But it was impossible to expect that gentlemen occupying the first stations and most respectable and laborious professional employments in the city, should discharge the duties of watching over the peace and police of this metropolis. To provide for the constant discharge of these duties by night, as well as by day, it was therefore necessary to have a peculiar magistrate appointed, with the powers of a sheriff-substitute and justice of peace annexed to his office, and with officers under him with the authority of constables when acting by his orders. This was accomplished by the police act, and the magistrates and council did not apprehend that any interference could take place between the highly respectable society and the common police officers. For they never imagined that the former could be asked to undertake any of the functions of the latter, and never proposed to degrade the society by associating any of their members in the same duties with the hired watchmen.

“Upon all occasions of emergency, and in confidential and important business of the city and lieutenancy of Edinburgh, the magistrates and council hope to merit and receive the able assistance which they have hitherto on all occasions experienced from the society. In no such case is it intended to employ along with any of their members the police officers likewise.

“In the ordinary duties of watchmen and apprehension of disorderly people, and other offenders falling under the magistracy of the police, it is apprehended that the magistrates and council, and the society of constables connected with them, will have no occasion to take a part. One object of the police act is to relieve them from any such call. From respect to the desire of the society, the magistrates and council, however, are bound to say that they apprehend that, in the proper duties of his office,

---

<sup>1</sup> Council Records, cxliv. 109.

the chief magistrate of police would necessarily have authority over all constables who may take a part in the discharge of these duties ; and were the society to do so, their members would stand in the same situation, in point of legal power, relatively to the police officers (upon whom the act bestows the powers of common constables in that capacity), as the society did before the passing of the police act, in relation to the common constables acting for hire by the authority of the justices of peace. It shall be the study of the magistrates to prevent any occurrence which might seem to tend to put the society in any respect upon a level with ordinary constables or police officers, or which might bring their members into collision with those hired servants of the public, who are in every respect so much their inferiors. Whenever the society, or any of their members, are called upon to act, the magistrates and council shall likewise express their desire to the police magistrate that his officers shall treat every member of the society with proper respect ; and the society may be assured that they will permit no indignity to be offered to any of their members without taking that active part which is due to the society in obtaining exemplary redress."

This report was approved of by the council, and an extract thereof was ordered to be transmitted to the moderator constable.<sup>1</sup> The decision of the council was not regarded as "quite so conclusive as the moderator and committee could have desired," but in the circumstances it was not considered advisable to press matters further.<sup>2</sup>

To supply the places of retiring constables, eight persons were elected on 16th April 1806,<sup>3</sup> and four on 22d April 1807.<sup>4</sup> No constables retired, and no election took place, at the usual period in 1808, but six constables were elected to supply vacancies arising during the year.<sup>5</sup> One of the constables thus ap-

<sup>1</sup> Minute Book, iii. 2-6.

<sup>2</sup> Obviously, however, a feeling of jealousy towards the police existed for several years. On 28th September 1820, the society are found instructing the moderator and committee to watch the progress of the new police bill, and endeavour to procure the insertion into it of a clause which would protect the respectability of the society by preventing the possibility of their being subject to any interference either from the superintendent of police or any of his officers, on the occasion of their public duty [Minute Book, iii. 298].

<sup>3</sup> Council Records, cxlvi. 57.

<sup>4</sup> Ibid. cxlviii. 237.

<sup>5</sup> On 20th July 1808, Mr John Ballantyne, "printer" [see *Encyclopædia Britannica*, xix. 821, 822 ; Chambers's Biographical Dictionary, voce "Ballantyne ;" Anderson's History of Edinburgh, p. 365], was elected [Council Records, cli. 253 ; Minute Book, iii. 50]. On 22d April 1809, he was elected secretary of the society [Minute Book, iii. 84], and in July 1813 he retired.

pointed was Mr William Marr, whose election formed the subject of the first serious collision between the society and the council.

One of the constables having died during November 1808, the council, on 21st December,<sup>1</sup> elected Mr Marr without any communication to the society.<sup>2</sup> He was sworn into office, and had his baton and instructions delivered to him on 10th January 1809;<sup>3</sup> but at a meeting of the committee of constables on 13th March 1809, the moderator, Mr Archibald Constable, drew attention to the subject, and moved a series of resolutions to the effect, (1.) That the invariable practice, when a vacancy occurred, was for the society to submit a list of names from which the council supplied the vacancy; (2.) That the election of Mr Marr was a deviation from that practice, and disrespectful to the society; (3.) That, while acknowledging the right of the council to elect constables, the admission of persons into the society, which was a voluntary association, must be the act of the body itself; and (4.) That strict adherence to the ancient mode of recommendation, election, and admission, was essential to the preservation of that concord and unanimity on which the utility of the society depended. These resolutions were adopted by the committee, and subsequently by a majority of the society, on 3d April 1809.<sup>4</sup> On the same day they were communicated to the Lord Provost, who submitted them to the council on the 5th of April. It was then explained that his Lordship and one of the magistrates had called twice for Mr Constable, to communicate with him as to the vacancy, but had not found him at home; and as it was believed that the resolutions were framed in ignorance of that fact, Mr Kincaid Mackenzie, a former moderator of the society, and then the eldest merchant councillor, was authorised to convey to the society the readiness of the council to allow the minute containing these resolutions to be withdrawn. This duty Mr Mackenzie performed with much delicacy in a letter to Mr Bridges, the then moderator, dated 5th April. On the same day Mr Constable wrote the Lord Provost, explaining that owing to an illness of two months' duration he had never learned of his Lordship's call, and stating that, had he known it, he "should certainly have considered such a mark of respect as more than sufficient to have satisfied the society that no slight was intended them." In reply to Mr Mackenzie's communication, Mr Bridges, by letter dated 10th April, also disclaimed any intention on the part

<sup>1</sup> Council Records, cliii. 58. <sup>2</sup> Minute Book, iii. 55. <sup>3</sup> Ibid. iii. 54. <sup>4</sup> Ibid. iii. 55-57.

of the society to give offence to the council, whose right to "enrol High Constables in such manner as they should judge proper" he unreservedly admitted; explained that the resolution was passed in ignorance of what the Lord Provost had done, and stated the willingness of the committee that the resolutions should not be recorded. This letter was transmitted by Mr MacKenzie to the Lord Provost on the 11th of April. Notwithstanding these communications, Mr Callender, depute city-clerk, on the 13th of April, intimated to the society that the Lord Provost and magistrates considered the resolutions of the society "to be derogatory to the council, with whom the nomination of the constables rests," and requested

"that a meeting of the society should be called, and that these resolutions [should] be expunged from their minutes, and a certified extract to that effect transmitted to the Lord Provost, previous to the meeting of his Lordship's committee on Tuesday next, together with a list of the society, and stating the periods which they have severally remained in office."<sup>1</sup>

Mr Callender's letter was submitted to the society on 17th April 1809, when a motion that the objectionable minutes be expunged was lost by seventeen to twenty-two. A series of seven resolutions, moved by Mr James Ballantyne, was then agreed to by a majority of twenty-one to five. These resolutions recapitulated the facts; the satisfaction of the society that no slight towards them had been intended, and their willingness that the previous resolutions should not be recorded in the books of the council, but respectfully declining to expunge the minutes referred to, on the ground that to do so was unnecessary in the circumstances, and would be a virtual acknowledgment of a "charge of disrespect to the magistracy, of which they were utterly unconscious, and which they feel it their bounden duty in the strongest manner to disclaim." A copy of these resolutions, with a list of the members of the society arranged according to their seniority in office, was transmitted to the Lord Provost on 18th April 1809,<sup>2</sup> and was submitted to the council on the following day.<sup>3</sup> At that meeting the council adopted a motion by the Lord Provost, that forty-six of the constables who had served three years and upwards, should be "desired to lodge their batons at the Council Chambers betwixt and Monday the 24th

<sup>1</sup> Minute Book, iii. 63, 64.

<sup>2</sup> Ibid. iii. 67, 76. From this list it appears that, as at 2d April, one member had served ten years; four, nine years; three, eight years; five, seven years; sixteen, six years; two, five years; three, four years; and seven, three years.

<sup>3</sup> By this time four additional members had completed three years' service.

current, so as the council may proceed to the election of other gentlemen in their place."<sup>1</sup> The council's order was intimated to the society on 22d April, when six resolutions expressive of the sentiments of the society as to the inexpediency of the council's conduct towards them were unanimously approved of, and ordered to be transmitted to the Lord Provost; at the same time, as the moderator and two of the other office-bearers were among the number of those called on to retire, the society elected new office-bearers, and afterwards all those who had served three years placed their batons in the hands of the moderator.<sup>2</sup> To supply the vacancies thus occasioned, the council, on 26th April 1809, elected forty-six constables<sup>3</sup> without consulting the society.

Having thus vindicated their rights, and established the rule that no constable should serve longer than three years,<sup>4</sup> the council reverted to their old custom, and on 17th May 1809 made an election of a constable from a list given in by the society.<sup>5</sup> But on 28th February 1810, the council required the society to send in a list of those members who had served three years or upwards as constables, with a list of such persons as were proposed to be their successors,<sup>6</sup> and on 28th March three constables were elected.<sup>7</sup>

On 2d April 1810, the society resolved to request the permission of the

---

<sup>1</sup> At this time Mr Archibald Constable had not completed three years' service, but was included in the list of those called on to retire, while four other constables who had been elected about the same time, and two of whom had voted against the expunging of the obnoxious resolutions, were allowed to remain.

<sup>2</sup> Minute Book, iii. 79-84.

<sup>3</sup> Council Records, cliv. 64.

<sup>4</sup> This regulation had obviously been lost sight of by the society, for, on 7th April 1806, the moderator, referring to the rumoured existence of the law against the election to the office of moderator of any constable who had served three years, observed, "If such a law really did exist, it certainly was not now applicable to the circumstances of the society, for many reasons: that it must have been enacted when the services of members in the society were limited to three years, and imposed as a duty; whereas many of the members present had served voluntarily for seven, eight, and even nine years, and consequently, were such a law to be given effect to, it would follow that most part of the present members were not eligible; and it might even so happen in course of time that, with such a law in force, perhaps no one member would be eligible" [Minute Book, iii. 13]. This view having been adopted by the society, Mr William Trotter was elected moderator; Mr Kincaid Mackenzie, treasurer; and Mr Robert Miller, chaplain; each of these gentlemen having been at the time upwards of four years in office.

<sup>5</sup> Council Records, cliv. 115; Minute Book, iii. 87.

<sup>6</sup> Council Records, clv. 331.

<sup>7</sup> Ibid. clv. 400.

council to use the title of "High Constables of the City of Edinburgh,"<sup>1</sup> as a proper distinction from the officers employed under the sheriff and judge of police;<sup>2</sup> and the requisite application having been made by the moderator,<sup>3</sup> the council, on 4th April 1810, "authorised the society of constables to assume the distinguishing appellation of the Society of High Constables for the reasons before assigned."<sup>4</sup>

Elections of constables, apparently from leets submitted by the society, were afterwards made on four several occasions during 1810; and on 12th December in that year, the council unanimously passed the following resolution:—

"Considering that it is of the first consequence to the peace and tranquility of the city, that the office of constable should be filled by persons of some standing in business in the city, and known to their fellow-citizens," resolved that every "constable to be hereafter appointed, [shall] have been at least three years a burgess and in business, and that no person [shall] be eligible thereto who has not been at least a burgess and in business for three years,"<sup>5</sup>

During 1811, two elections took place, and four constables were admitted. In 1812, three several elections were made, and nine constables were admitted. In 1813, elections of five constables were made on 13th January, 31st March, and 21st and 28th April; but on the last mentioned date, the council again called for a list of members who had served three years and upwards.<sup>6</sup> From the list of thirty-one names furnished on 12th May 1813,<sup>7</sup> in compliance with this requirement, it appears that twenty-six had served upwards of four years. Nothing, however, was done with that list till 9th June 1813, when the resignations of four members, with lists of persons proposed by the society to succeed them, having been lodged with the council,<sup>8</sup> a remit

<sup>1</sup> The society assumed the title in 1805, after which period they used it in memorials to the town council, and in other formal documents, apparently without remark.

<sup>2</sup> Minute Book. iii. 99.

<sup>3</sup> Ibid. iii. 102.

<sup>4</sup> Council Records, clv. 411; Minute Book, iii. 102.

<sup>5</sup> Council Records, clvii. 258. This act of council is inaccurately recorded in the minute book of the society [Minute Book, iii. 109], and it is made to appear that burgess-ship, with having carried on business for three years, was the qualifications required. The real qualifications, it will be observed, was the having been a burgess for at least three years, as well as the having carried on business for the same period.

<sup>6</sup> Minute Book, iii. 138.

<sup>7</sup> Ibid. iii. 138, 139.

<sup>8</sup> Council Records, clxiii. 371.

was made to the magistrates to act in the matter as they might think proper. What they did under the remit does not appear to have been reported ; but on 26th July 1813, twenty-three new constables were qualified, and had their batons and instructions delivered to them.<sup>1</sup> The introduction of so large a number of new members into the society at one time, was felt to be attended with many disadvantages, and on 1st March 1814, the moderator, in submitting a list of three persons from whom the election of a constable to succeed one who had retired after three years' service might be made, represented to the council that it would be of essential service to the society, if a limited number of members (say ten or twelve) were to resign at the end of every year. He added that much inconvenience must have arisen had so large a proportion of the society, strangers to each other, been called upon to act at that time ; and further, that the taking up the jury and militia lists could not be so correctly performed by members recently admitted, as by those who possessed longer experience.<sup>2</sup>

No action on the part of the council appears to have followed on this representation, but they seem to have adhered strictly to their determination to limit the service of the constables to three years. Accordingly, on 19th April 1815, they are found insisting most strongly on compliance with their former orders to that effect. On that occasion there were presented to them two lists of members of the society, who, having served three years, fell to retire. One of these lists contained the names of the secretary and treasurer for the year, and considerable discussion took place as to whether, in conformity with the precedent in 1809, they should not be required to send in their batons. A consideration of the inconvenience which the removal of these office-bearers might occasion the society, induced the council to allow them to remain.

"At the same time, however, the council could not refrain from expressing their surprise and disapprobation, that the society should have elected gentlemen as office-bearers who were ineligible according to the act of council of 1809, limiting the term of a constable's service to three years."

They intimated at the same time their expectation that that act would

---

<sup>1</sup> Minute Book, iii. 143.

<sup>2</sup> Ibid. iii. 148. On 9th March 1814, £26, 12s. 6d. were ordered to be paid to George Lee for painting the batons of the High Constables [Council Records, clxvi. 61].

"be strictly attended to in future, as they are of opinion that the rigid observance of this regulation, without respect of persons, will be the most effectual means of preventing those jealousies which are apt to arise from the zeal or supposed partiality on the part of the office-bearers in selecting those whom they require to resign."

A copy of this act of council was directed to be sent to the moderator for the information of the society,<sup>1</sup> and on 17th May, thirteen constables were elected.<sup>2</sup> Fourteen constables were elected on 24th April 1816,<sup>3</sup> twenty-six on 30th April 1817,<sup>4</sup> six on 22d April 1818,<sup>5</sup> twelve on 21st April 1819,<sup>6</sup> nineteen on the 3d, and four on the 10th of May 1820.<sup>7</sup>

The manner in which the society had invariably distinguished themselves in the discharge of their public duties, induced the council, on 6th December 1820, to resolve to increase the number of High Constables from sixty to one hundred. A remit was at the same time made to the magistrates to prepare and submit a set of regulations for the government of the society; and a supply of long and short batons was ordered to be provided.<sup>8</sup> This resolu-

<sup>1</sup> Council Records, clxviii. 228.

<sup>2</sup> Ibid. clxviii. 301.

<sup>3</sup> Ibid. clxx. 344. Among the persons elected at this time was Mr Adam Black, "stationer" [see Walford's *Men of the Time* (1862), *voce* "Black"], afterwards Lord Provost, and subsequently M.P. for the city [Minute Book, iii. 208]. He had been proposed by the society (as one of a leet of three) for election on 1st March 1814 [Ibid. iii. 148], but was not selected by the council at that time. He acted as secretary of the society from 7th April 1817 [Ibid. iii. 213], to 6th April 1818, and retired in April 1819. While acting as secretary, Mr Black was taking a leading part in the discussion of burgh reform in the Merchant Company and elsewhere [see Mr Mackie's Notes, pp. 78-80; Lord Cockburn's Memorials of his time, pp. 350-352].

<sup>4</sup> Council Records, clxxiv. 42.

<sup>5</sup> Ibid. clxxvi. 132.

<sup>6</sup> Ibid. clxxviii. 206.

<sup>7</sup> Council Records, clxxx. 337, 349. Mr William Blackwood, "bookseller" [see Chambers's Biographical Dictionary, *voce* "Blackwood;," Peter's Letters to his Kinsfolk, ii. 186-202; *Encyclopædia Britannica*, xxi. 877], was appointed a constable at this time [Minute Book, iii. 292].

<sup>8</sup> Council Records, clxxxi. 360. On 10th April 1821, an estimate for furnishing forty small batons, at twelve shillings each, was accepted [Ibid. clxxxii. 259], and on 30th May 1821, the chamberlain was authorised to pay Deacon Fenwick £24 for the batons so furnished [Ibid. clxxxii. 357]. On 13th June 1821, John Jackson was ordered to be paid £10 for painting batons [Ibid. clxxxii. 377].

tion was communicated to the moderator in the most complimentary terms on 8th December, and the society were requested to send in a list of forty gentlemen, to make up the number specified.<sup>1</sup> On the same day a list of sixty persons was prepared by the society, and transmitted to the council, and from this list forty constables were elected on 13th December.<sup>2</sup> Some of those so elected declined to accept office, and others were elected on 20th December.<sup>3</sup> Elections to supply vacancies were made on 2d and 9th May 1821,<sup>4</sup> 17th April and 29th May 1822.<sup>5</sup>

The society did not long consist of one hundred members. For some years the financial condition of the city had formed the subject of much discussion, and in 1822, a committee was appointed to inquire into the municipal expenditure, "and to report whether any and what savings can be made in any branch thereof." That committee reported to the council on 17th July 1822, and *inter alia* recommended, "that the society of High Constables should be allowed to return to their original number of sixty, and that the allowances now given to them should be reduced in proportion."<sup>6</sup> This recommendation having been adopted, the society was reduced, in June 1823, to sixty constables, by the retirement of those whose period of service had expired, and the non-election of successors to them. The batons of the constables who retired were sent to the council on 1st July 1823.<sup>7</sup> Of the sixty who composed the society in March 1824, upwards of forty, having completed three years' service, fell to retire. This was considered by the society to be inexpedient, and on an application by the moderator, the council, on 31st March 1824, appointed the first twenty constables on the list to retire at that time, the next twenty to retire in 1825, and the remaining twenty in 1826. By this arrangement the society obtained an accession of twenty new members in each of these years. On the recommendation of the moderator, the council also allowed any of the constables forming the first twenty, who might wish to remain, to do so, provided an equal number of

---

<sup>1</sup> Minute Book, iii. 303.

<sup>2</sup> Council Records, clxxxi. 372.

<sup>3</sup> Ibid. clxxxi. 397.

<sup>4</sup> Ibid. clxxxii. 284, 324.

<sup>5</sup> Ibid. clxxxiv. 111, 196.

<sup>6</sup> Ibid. clxxxiv. 309.

<sup>7</sup> Ibid. clxxxvii. 120; Minute Book, iii. 375, 376.

the second twenty preferred to resign immediately.<sup>1</sup> In consequence of this change, it became necessary to re-divide the city into sixty bounds, which was done by the committee of the Society on 27th June 1823.<sup>2</sup> Under the arrangement of 31st March 1824, twenty constables were elected on 21st April 1824,<sup>3</sup> eighteen on the 13th and two on the 20th April 1825,<sup>4</sup> fifteen on 19th April 1826,<sup>5</sup> and twenty-one on 18th April 1827.<sup>6</sup>

In consequence of repeated applications from the society to have their instructions, which were issued in March 1786,<sup>7</sup> revised and made applicable to the circumstances in which they were at the time, the council, on 19th April 1826,<sup>8</sup> and again on 16th January 1828, remitted to the magistrates to take these instructions into consideration. "Instructions and Regulations" were accordingly prepared, and, as revised by the assessors of the city, were submitted to the society, by whom they were approved of, with some verbal alterations, on 14th March 1828.<sup>9</sup> On the 19th of the same month, they were finally approved of by the council,<sup>10</sup> who at the same time confirmed the designation of "The Society of High Constables of the City of Edinburgh," and enacted and declared

"that no one but a burgess, and who has been three years in business, shall be appointed a High Constable; and that the period of his service be limited to three years. But if he is appointed at a later period of the year than six months after the election of office-bearers, which it is hereby declared shall take place annually on the first Monday of April, his period of service shall not expire till three years after the election of office-bearers immediately subsequent to his own appointment. Should he, however, be elected an office-bearer previous to the expiry of his time of service, in that case he shall continue in office till the next general election."<sup>11</sup>

At the same meeting the council approved of a report by the magistrates against "the expediency of committing all matters connected with the High Constables, as being purely magisterial, to the Lord Provost and magistrates." A suggestion to this effect had a short time previously been made by the Lord Provost, and referred to the magistrates for consideration.

<sup>1</sup> Council Records, clxxxix. 138; Minute Book, iii. 383, 385.

<sup>2</sup> Minute Book, iii. 374.

<sup>3</sup> Council Records, clxxxix. 203.

<sup>4</sup> Ibid. xcii. 92, 113.

<sup>5</sup> Ibid. cxvii. 195.

<sup>6</sup> Ibid. cci. 40, 76.

<sup>7</sup> Appendix XI.

<sup>8</sup> Council Records, cxvii. 195.

<sup>9</sup> Minute Book, iv. 84.

<sup>10</sup> Appendix XVII.

<sup>11</sup> Council Records, cciii. 62.

Sixteen constables were elected on 16th April 1828,<sup>1</sup> five on 20th August 1828;<sup>2</sup> and fourteen on 15th April 1829.<sup>3</sup>

While the constitution and management of the society were regulated by the magistrates and council, as has thus been described, its internal administration was conducted under rules and regulations, or bye-laws, made from time to time by the High Constables themselves. In 1786, the rules proposed by the society for this object were approved of by the council;<sup>4</sup> but various additions to, and alterations on, these rules were subsequently made by the society from time to time without any confirmation by the council. The more important of these additions and alterations were made on 4th June 1789,<sup>5</sup> 19th March 1803,<sup>6</sup> 27th April 1807,<sup>7</sup> and 18th May 1809.<sup>8</sup>

<sup>1</sup> Council Records, cciii. 162.

<sup>2</sup> Ibid. cciv. 51. At this time Mr William Johnston, afterwards Sir William Johnston of Kirkhill, and Lord Provost of the city, was elected a constable. He was qualified on 21st August 1828 [Minute Book, iv. 107]. On 14th May 1830, he was elected secretary, *vice* Mr George Wright, resigned [Ibid. iv. 184, 185]. On 2d March 1831, he was elected treasurer, *vice* Mr Charles Lawson, now of Borthwickhall, and Lord Provost of the city, elected moderator [Ibid. iv. 214]; and on 21st March 1831, he was elected moderator, *vice* Mr Lawson, resigned [Ibid. iv. 223-225]. At the annual election on 4th April 1831, he was re-elected moderator [Ibid. iv. 230-231]; and he retired from the society in April 1832. He returned to the society, and was elected moderator on 11th January 1839 [Ibid. v. 6], and was re-elected moderator, for a fourth time, on 1st April 1839 [Ibid. v. 10]. He retired finally from the society in April 1840.

<sup>3</sup> Council Records, ccv. 141. At this time Mr Charles Lawson, above referred to, was elected a constable. He was qualified on 20th April 1829 [Minute Book, iv. 123]; was elected secretary on 21st October 1829, *vice* Mr James Pattison who resigned [Ibid. iv. 172], treasurer at the annual election on 5th April 1830 [Ibid. iv. 183], and moderator on 2d March 1831, *vice* Mr Andrew Sievwright, who resigned [Ibid. iv. 214]. He retired from the society on 19th March 1831 [Ibid. iv. 224]. Mr Lawson is the son of Mr Peter Lawson, referred to *antea*, p. 175.

<sup>4</sup> *Antea*, p. 185. Appendix XII. <sup>5</sup> Minute Book, ii. 102, 103. <sup>6</sup> Ibid. ii. 251-252.

<sup>7</sup> Minute Book, iii. 29. At a meeting of the committee held on 18th May 1807, it was unanimously resolved "that a search should be made through the books of the society with a view to ascertain the existing laws, and for this purpose that the treasurer, Mr Constable, should be requested to procure, as speedily as possible, some proper person to examine the books, and to prepare an accurate index or digest of the laws of the society" [Ibid. iii. 38]. So far as can now be ascertained, nothing appears to have been done towards carrying this resolution into effect.

<sup>8</sup> Minute Book, iii. 89. See Appendix, pp. xlvii, xlviii.

On 4th June 1812, the society appointed a committee to revise the "bye-laws," and to report to the next general meeting any alterations and improvements they might consider necessary.<sup>1</sup> The report of the committee was made and approved of by the society on 23d June 1812; and the rules then adopted were ordered to be printed and circulated among the members.<sup>2</sup> On 4th June 1814, however, considerable discussion was raised as to the liability of members absent from the election dinner for their full share of the cost of that entertainment, and it was resolved to have the bye-laws re-printed and copies furnished to all the members "present and future."<sup>3</sup> Several alterations upon the laws adopted in 1812, were accordingly made on 8th August 1814, and as thus amended, they were ordered to be printed.<sup>4</sup> Alterations on these rules were subsequently made<sup>5</sup> on 21st February 1815<sup>6</sup> and 3d April 1820.<sup>7</sup> In 1825 again, the society considered it desirable to have their bye-laws, as then in force, collected, revised, and printed;<sup>8</sup> and the committee had several meetings for this purpose. The committee's report was presented to the society on 2d August;<sup>9</sup> and after considerable discussion, the society, on 12th August in the same year, approved of a series of rules and regulations, which were "ordered to be inserted in the minute book as superseding all former laws, excepting the magistrates' instructions."<sup>10</sup> A set of regulations, drawn up by the moderator, for the guidance of the society at fires and riots, and embodying also "that part of the 'fire regulations' which treated of the duty of constables on such occasions," was approved of by the society, and ordered to be printed.<sup>11</sup> Alterations on and additions to these rules and regulations were passed by the society<sup>12</sup> on 1st May 1826,<sup>13</sup> 23d April 1827,<sup>14</sup> 25th October 1827,<sup>15</sup> 7th April 1828,<sup>16</sup> and 28th April 1829.<sup>17</sup> On 20th June 1829, they appointed a committee to revise the laws;<sup>18</sup> and their report having been lodged on 6th July thereafter, was approved of, and the laws, as then submitted, were confirmed and ordered to be

<sup>1</sup> Minute Book, iii. 121.

<sup>2</sup> Ibid. iii. 125-127. See Appendix XIII.

<sup>3</sup> Minute Book, iii. 176.

<sup>4</sup> Ibid. iii. 179-181. See Appendix XIV.

<sup>5</sup> See Appendix, pp. li, lii.

<sup>6</sup> Minute Book, iii. 187.

<sup>7</sup> Ibid. iii. 289, 290.

<sup>8</sup> Ibid. iii. 417.

<sup>9</sup> Ibid. iv. 1.

<sup>10</sup> Ibid. iv. 8-13. See Appendix XV.

<sup>11</sup> Minute Book, iv. 5.

<sup>12</sup> See Appendix XVI.

<sup>13</sup> Minute Book, iv. 38.

<sup>14</sup> Ibid. iv. 57, 66.

<sup>15</sup> Ibid. iv. 74.

<sup>16</sup> Ibid. iv. 85, 92.

<sup>17</sup> Ibid. iv. 126.

<sup>18</sup> Ibid. iv. 156.

printed.<sup>1</sup> On 31st December 1829, a new law relative to the mode of filling up vacancies occurring among office-bearers during the year, was enacted and added to the laws previously approved of, which, with this addition, were printed under an order of the society on 14th May 1830.<sup>2</sup>

It has been seen how, in 1768, the society upheld its position, and compelled two gentlemen elected constables to accept office. Their successors in 1803 were not less tenacious of their rights. Of the twenty gentlemen elected on 26th January 1803, sixteen were sworn into office on 31st January 1803, but four, viz., Messrs William Forbes, banker; James Stein, banker; James Gibson, merchant; and Charles Hay, insurance broker, sought exemption on the following grounds: Mr Forbes, of non-residence in the city; Mr Stein, of being about to proceed to London; Mr Gibson, of being a justice of the peace for the county; and Mr Hay, of having been chief magistrate of Dunbar, and of being one of the deputy-lieutenants of East Lothian. The society, however, demurred most strongly to these excuses being entertained, and in a memorial to the council, dated 8th February 1803, intimated their expectation, "that in no situation whatever should any person be exempt from taking his share of that duty," and that the magistrates would "either enforce the services of those gentlemen, or authorise the society to levy the fines incurred by their refusal."<sup>3</sup> On considering that memorial on the following day, the council resolved "to adhere to their former nomination and appointment."<sup>4</sup> A good deal of correspondence ensued, from which it appears, as regards Mr Gibson, that the Lord Provost was advised by the Lord Advocate and Solicitor-General, "that by Mr Gibson being in the commission of the peace for the county," he must be "considered as a magistrate, and not amenable to serve as a constable;"<sup>5</sup> and as regards Mr Forbes, that he had obtained an opinion from Mr Adam Rolland, advocate, to the effect that "though engaged in business in the city," he was "not liable to serve if not a residenter."<sup>6</sup> The opinion in Mr Gibson's case seems to have been acquiesced in by the society; and as regards Mr Forbes, it was ultimately arranged with the council that a memorial should be prepared by the society, to be submitted for the opinions of the Lord Advocate and Solicitor-General, the council pledging themselves that if the opinion of these gentlemen should coincide with that of the society, they would compel Mr Forbes to

<sup>1</sup> Minute Book, iv. 160, 167.

<sup>2</sup> Ibid. iv. 173, 176. See Appendix XVII.

<sup>3</sup> Ibid. ii. 237.

<sup>4</sup> Council Records, cxxxviii. 45.

<sup>5</sup> Minute Book, ii. 242.

<sup>6</sup> Ibid. ii. 245.

serve, and the society undertaking that if the opinion should be otherwise, they would not prosecute the business further.<sup>1</sup> A memorial appears to have been accordingly prepared, on the case of Mr Forbes, and also on the case of Mr John Hay (elected on 16th March 1803, and who also declined to act),<sup>2</sup> but the result does not appear, and neither Mr Forbes nor Mr John Hay seem to have ever been members of the society. Mr Charles Hay was sworn into office on 18th March 1803, and Mr Stein having remained in London, a constable was elected in his place on 1st June 1803.<sup>3</sup>

By a regulation of the society, dated 6th April 1792, to which reference has already been made,<sup>4</sup> every person who had served as a constable for three years was declared to be ineligible for the moderatorship or any other office. The expediency of this rule (the existence of which, however, was doubted)<sup>5</sup> was under the consideration of the society at their meeting on 7th April 1806, and it was agreed generally that length of service did not disqualify a member from filling the chair or any other office in the society. But the former law does not appear to have ever been formally rescinded. At the same meeting it was agreed that the election of office-bearers should take place in future on the first Monday of April.<sup>6</sup>

At the election of office-bearers on 6th April 1818, a question was raised as to the eligibility of the moderator for re-election on the eve of his completing three years' service as a constable. Mr John Stenhouse was appointed a constable on May 1815, and on 7th April 1817 was elected moderator of the society. On 6th April 1818 he was re-elected moderator. A protest was immediately taken, and a petition was afterwards presented to the council, praying them not to sanction his election, on the grounds, *inter alia*, (1.) That it was inconsistent with the acts of council 19th April 1809,<sup>8</sup> and 19th April 1815,<sup>9</sup> by the former of which members of the committee had been required to retire though elected previous to the completion of their third year of office as constables; (2.) That it was inconsistent with the principle recognised in the act of council 19th April 1815, which expressed disapproval of the election to the treasurer'ship of a person who was on the eve of completing three years' service as a constable; (3.) That it was contrary to the law of the society passed on 6th April

<sup>1</sup> Minute Book, ii. 246.

<sup>2</sup> Ibid. ii. 271.

<sup>3</sup> Council Records, cxxxviii. 90; Minute Book, ii. 259.

<sup>4</sup> *Antea*, p. 189.

<sup>5</sup> *Antea*, p. 223, footnote 3.

<sup>6</sup> Minute Book, iii. 14, 15

<sup>7</sup> Ibid. iii. 228.

<sup>8</sup> *Antea*, pp. 222, 223.

<sup>9</sup> *Antea*, pp. 225, 226.

1792,<sup>1</sup> explained by a protest taken on 2d April 1810;<sup>2</sup> and (4.) That the re-election of an office-bearer was unprecedented and inexpedient. To this protest and petition answers were lodged, in which it was urged, (1.) That, as Mr Stenhouse had not completed three years' service, his election was quite competent, and unaffected by any act of the council; (2.) That the society, being partly changed every year, had no right to make permanent laws without the sanction of the council, whose ordinances had been strictly observed; and (3.) That there was a precedent for the re-election of a moderator in the case of Mr Burnet in 1794.<sup>3</sup> The council having considered the petition and protest, and answers thereto, on 8th April 1818, refused the desire of the petition,<sup>4</sup> thus confirming the election.

One or two attempts have been made to engraft upon the society schemes quite foreign to its primary object; but these have met with little success. Thus, on 19th March 1803, it was proposed to establish a "charitable fund for the society," to be supported by the payments received for making up the militia lists, and an annual contribution from each member. A committee was appointed to prepare a plan, and to get it printed and circulated among the members for consideration at a special meeting.<sup>5</sup> But the proposal was not approved of by several of the members, and as it could not be carried out without the unanimous concurrence of the society, it was abandoned.<sup>6</sup> Again, on 21st February 1815, it was suggested that a committee should be appointed to consider and report as to the advisability of appropriating the funds of the society as a sinking fund, from which loans on security might be given to members requiring temporary assistance.<sup>7</sup> This proposal was also negatived.<sup>8</sup>

<sup>1</sup> *Antea*, p. 189.

<sup>2</sup> This was a protest against the election of Mr Sutherland Mackenzie as moderator, on the ground that at the time he was within a few days of completing three years of service as a constable. Another candidate having been proposed, was preferred by a vote of the society. There was no decision by the society as to the competency of Mr Mackenzie's nomination [Minute Book, ii. 100, 101].

<sup>3</sup> *Antea*, p. 192; Appendix No. I. p. vi.

<sup>4</sup> Council Records, clxxvi. 88; Minute Book, iii. 228-245.

<sup>5</sup> Minute Book, ii. 251.

<sup>6</sup> *Ibid.* ii. 261.

<sup>7</sup> *Ibid.* iii. 185.

<sup>8</sup> It is curious to find that, on 9th October 1733, the Society of Captains of the Trained Bands resolved to raise a fund for the support of any of their number who should be reduced to poverty, or their wives and children [Minute Book of Captains, i. 133-135, 139; Acts 142, 143, and 147]. £57, 16s. were actually collected for this purpose, but

The annual allowance by the council to the society, which was fixed at £15 in 1794,<sup>1</sup> remained at that amount till 6th July 1803, when, on an application by the society,<sup>2</sup> which had received an addition of twenty members in January of that year,<sup>3</sup> it was increased to £30.<sup>4</sup> On 4th September 1805, the council authorised a payment to the moderator of £36, 19s. for expenses on the evening of the king's birthday, including expenses of printing and other disbursements.<sup>5</sup> An application by the society for an increased allowance was refused on 28th June 1809.<sup>6</sup> On 27th June 1810, the society sent in to the council a bill amounting to £48, incurred by them on the king's birthday, with a request that it would be paid. This, however, the council declined to do, but increased the annual allowance to £40 stg.<sup>7</sup> On 18th June 1817, the allowance was increased to £50.<sup>8</sup> On 6th December 1820, when the society was increased from sixty to a hundred, their allowance was augmented to £84; but on the reduction of the body in 1823 to their previous number of sixty, their allowance was also reduced to the former amount of £50.<sup>9</sup>

Several of the high constables being also constables of Calton, the committee of the society resolved that it was not competent for any person to hold batons in both bodies, and required those members who did so to state in what body they preferred to remain.<sup>10</sup> The committee also required those high constables who were extraordinary constables to send their batons, as extraordinary constables, to the council chambers, with a view to their being transferred to other persons.<sup>11</sup> This resolution was confirmed by the society

---

on 24th November 1738 the inexpediency of the scheme was unanimously admitted, the acts establishing it were rescinded, a portion of the sum which had been collected was distributed among decayed captains, and the balance was paid over as a contribution towards building the Infirmary [Ibid. i. 156, 157]. In taking this course in 1738, the society of captains were advised by Mr James Graham of Airth, advocate, whose opinion is engrossed in the Minute Book, i. p. 157.

<sup>1</sup> *Antea*, p. 168.

<sup>2</sup> Minute Book, ii. 260.

<sup>3</sup> *Antea*, p. 215

<sup>7</sup> Ibid. clvi. 157; Minute Book, iii. 108. In 1814, the arrangement under which the allowance from the city was appropriated to defraying the expense of a supper on the king's birthday was changed, and thereafter it was applied towards the expense of a dinner. The first dinner under the new arrangement took place on 5th July 1814 [Minute Book, iii. 117].

<sup>8</sup> Council Records, clxxiv. 178.

<sup>9</sup> *Antea*, p. 227.

<sup>4</sup> Council Records, cxxxviii. 298.

<sup>5</sup> Ibid. cxliv. 105; Minute Book, iii. 7.

<sup>6</sup> Council Records, cliv. 217.

<sup>10</sup> Minute Book, iii. 268.

<sup>11</sup> Ibid. iii. 269.

on 31st December 1819.<sup>1</sup> At the same time, the society approved of a correspondence which the moderator had had with the Lord Provost,<sup>2</sup> in which his lordship announced that those members of the society who preferred to act as members of the "volunteer body," then being raised, should intimate their preference, when other persons would be elected constables.

On 5th January 1820, the society sanctioned a plan which had been approved of by the Lord Provost, for calling them together speedily on any emergency. Each member of the committee was furnished with a set of tickets containing the names of those constables whom it was his duty to summon whenever required by the moderator.<sup>3</sup>

On 21st February 1820, the society took the oath of allegiance to King George IV., and voted an address of congratulation to His Majesty on his accession to the throne.<sup>4</sup>

As regular and recognised conservators of the peace of the city, the constables, it has been seen, were often required to assist the magistrates in the preservation of order on occasions of public excitement; and frequent reference is made to their services in that character during the present century. Thus, on the occasion of the Union with Ireland on 1st January 1800, it is recorded that the society were ordered to be in readiness to quell any disturbance consequent on the recommendation of the magistrates, founded on the hardship of the times, that no illumination should take place.<sup>5</sup> On 4th June 1801, the king's birthday, they patrolled the streets, and apprehended six rioters.<sup>6</sup> On 23d June 1801, they dispersed a mob in the meal market, and afterwards patrolled the streets, and preserved the peace.<sup>7</sup> On 13th October 1801, they were in readiness, but were not required to act in preserving order during the illuminations, on account of the ratification three days previously of the preliminaries of peace between Great Britain and France.<sup>8</sup> On 27th October 1801, they escorted the magistrates to the meal market and southern suburbs, to suppress rioting there,<sup>9</sup> and next day were on duty at the Council Chamber, to prevent any recurrence of similar disturbances.<sup>10</sup> On 4th June 1802, the society patrolled the streets, and effectually "put a stop to the disgraceful practice of burghering, throwing dead cats," &c.<sup>11</sup> On 4th June 1803, they were on duty, and patrolled the streets, preventing any recur-

<sup>1</sup> Minute Book, iii. 274.

<sup>2</sup> Ibid. iii. 270-273.

<sup>3</sup> Ibid. iii. 276.

<sup>4</sup> Ibid. iii. 281-285.

<sup>5</sup> Ibid. ii. 198, 199.

<sup>6</sup> Ibid. ii. 206.

<sup>7</sup> Ibid. ii. 207.

<sup>8</sup> Ibid. ii. 219.

<sup>9</sup> Ibid. ii. 219.

<sup>10</sup> Ibid. ii. 210.

<sup>11</sup> Ibid. ii. 227.

rence of those former practices, "which were a disgrace to the police of the city."<sup>1</sup> On 30th November 1806 (St Andrew's day), a detachment consisting of thirty members of the society was on duty, assisting in keeping the peace at the procession which took place on that day.<sup>2</sup> On 16th June 1806, the day on which the intelligence of Lord Melville's acquittal by the House of Peers reached Edinburgh, the society were called out to preserve the peace.<sup>3</sup> On the evening of the 25th October 1809,—which was observed as a jubilee in consequence of the king entering the fiftieth year of his reign,—the society patrolled the streets in small parties.<sup>4</sup> On 4th June 1810, they paraded the streets, "where a considerable degree of riot and tumult took place, in which several of the members were severely hurt in the discharge of their duty." After quelling the disturbances on this occasion, and while supping together as usual on the evening of the king's birthday, they were called out for a short time in consequence of a fire in the premises of an old constable in the Grassmarket.<sup>5</sup> On 22d April 1812, the society, by order of the magistrates, attended the execution in the High Street of M'Intosh, M'Donald, and Sutherland, convicted of murder, and in the evening they were on duty to prevent disturbance.<sup>6</sup> On 18th August 1812, the society were called out, along with the military, to quell rioting occasioned by the high price of meal.<sup>7</sup> Next morning, they were again on duty at half-past eight, but were not required to act.<sup>8</sup> On the morning of the 25th of August, they were also on duty from eight till ten o'clock, but no disturbance took place.<sup>9</sup> On 14th July 1813, the constables attended the execution, at the west end of Prince's Street, of M'Donald and Black, convicted of murder.<sup>10</sup> On 25th January 1815, they escorted Kelly and O'Neil (who had been convicted of different acts of robbery

<sup>1</sup> Minute Book, ii. 259.

<sup>2</sup> Ibid. iii. 8.

<sup>3</sup> Ibid. iii. 22. See Lord Cockburn's *Memorials of his Time*, pp. 216-219.

<sup>4</sup> Minute Book, iii. 97.

<sup>5</sup> Ibid. iii. 107.

<sup>6</sup> Ibid. iii. 119, 120. The crime for which these persons suffered, arose out of the practice of ushering in the new year with rioting on the streets. On the morning of 1st January 1812, serious riots took place, many robberies were committed, and a policeman was murdered [Anderson's *History of Edinburgh*, pp. 316, 317]. The excitement connected with this execution was so great that the magistrates enrolled a number of extraordinary constables to assist in preserving the peace, which it was feared would be broken. On 6th May 1812, £31, 1s. were ordered to be paid to George Lee, painter, for furnishing the requisite batons [Council Records, clx. 373].

<sup>7</sup> Minute Book, iii. 128.

<sup>9</sup> Ibid.

<sup>8</sup> Ibid. iii. 129.

<sup>10</sup> Ibid. iii. 141.

under circumstances of great brutality) from the Tolbooth to the limits of the town's jurisdiction, where they were handed over to the sheriff-clerk for execution near Braid's Burn, on the high road to Dumfries.<sup>1</sup> On the evening of the 30th of March, and on the two following evenings, the society were called out to prevent rioting.<sup>2</sup> On 30th December 1818, the society were called out to prevent rioting, consequent on the execution of Robert Johnston for highway robbery. They were also on duty for the same purpose on the evening of the following day.<sup>3</sup> On 14th April 1819, they were assembled to prevent any disposition to riot at the execution of George Warden, a post-office clerk, who had been convicted of opening letters and abstracting money.<sup>4</sup> On 4th June 1819, the king's birthday, the society, along with the extraordinary constables, and the police, cleared the streets and preserved the peace, which there was some disposition on the part of the populace to break.<sup>5</sup> On 18th August 1819, they were in attendance to preserve the peace on the occasion of the execution of James Whiteford for robbery.<sup>6</sup> On 13th December 1819, the authorities, anticipating the receipt of news of insurrection in the west country, called out the society to assist them in preserving the peace. Happily, however, their services were not required.<sup>7</sup> They were again called out under similar circumstances on 31st December 1819.<sup>8</sup> On 5th January 1820, they were in attendance in the bakers' hall, Lawnmarket, on the occasion of the execution

<sup>1</sup> Minute Book, iii. 182.

<sup>2</sup> Ibid. iii. 253, 254.

<sup>3</sup> Ibid. iii. 263.

<sup>4</sup> Ibid. iii. 190.

<sup>5</sup> Ibid. iii. 258.

<sup>6</sup> Ibid. iii. 264.

<sup>7</sup> Minute Book, iii. 267. At this time the country was suffering under great agricultural and manufacturing distress, and in an alarming state. Low wages and the action of political incendiaries had induced, throughout the inland and manufacturing districts of England, a spirit of discontent and insubordination which was fanned into fury by the collision between the military and the populace at Manchester on 16th August. These discontents soon extended to Scotland, assuming the most threatening aspect in Lanarkshire, whither the yeomanry cavalry of Mid-Lothian and the adjoining counties were ordered in the beginning of December. In Edinburgh, a body of volunteers, including the survivors of the old Edinburgh gentlemen volunteers, was raised to garrison the castle (which was drained of regular troops), and to preserve order in the city. Glasgow especially was in a precarious state, and during the whole of the 13th of December the citizens of Edinburgh anxiously awaited intelligence of apprehended tumults there. Fortunately, however, the peace was not broken [Anderson's History of Edinburgh, pp. 339, 340]. Lord Cockburn describes, somewhat in burlesque, what took place at this time [Memorials of his Time, pp. 363-366].

<sup>8</sup> Minute Book, iii. 274.

of Judd and Clapperton for housebreaking and robbery.<sup>1</sup> On 23d April 1820, the first occasion on which the birthday of King George IV. was observed, the society were required, with the assistance of the police, to clear the streets, and to check the disposition to riot.<sup>2</sup> On 17th November 1820, the society were called out to prevent rioting and destruction of property, on the occasion of the partial illumination consequent on the withdrawal by the government of the bill of pains and penalties brought into the House of Peers against Queen Caroline. The civil power, however, was unable to suppress the prevailing disorder, and it was found necessary to invoke the aid of the military.<sup>3</sup> On the following evening, the society, with the extra constables, police, and detachments of cavalry and infantry, were again on duty. The society acted in four bodies with great efficiency.<sup>4</sup> On the 20th of November, the society were in attendance to prevent the threatened recurrence of the previous disturbances, but were not required to act.<sup>5</sup> For their services on these occasions, the society received the thanks of the magistrates. On 11th December 1820, the society were in attendance in the High Church aisle during the execution of John Dempsey for murder.<sup>6</sup> On the evening of 19th January 1821, the day on which King George IV. was crowned, the society were called out to preserve the peace during the illumination of the city, but their services were not required.<sup>7</sup> On 18th January 1823, the society were called out to prevent snowballing between the students in the college, and the boys of the High School, but were not required to act.<sup>8</sup> On the evening of 22d April 1824, the king's birthday, the society did good service in suppressing riots on the Mound.<sup>9</sup> In November 1824, the society were actively employed at the great fires in the High Street, from the 15th till the 17th of that month. On this occasion, the Yeomanry, as well as the police of the city, were also on duty; and the minute of 17th November records, that "at 10 p.m., the society were relieved by the Leith constables, who had offered their services."<sup>10</sup> On 14th December 1824, the society were

<sup>1</sup> Minute Book, iii. 275.<sup>4</sup> Ibid. iii. 201, 202.<sup>7</sup> Ibid. iii. 328.<sup>2</sup> Ibid. iii. 290.<sup>5</sup> Ibid. iii. 202.<sup>8</sup> Ibid. iii. 360.<sup>3</sup> Ibid. iii. 300.<sup>6</sup> Ibid. iii. 304.<sup>9</sup> Ibid. iii. 389.

<sup>10</sup> Minute Book, iii. 395. A description of the great fires of 1824 is given in Lord Cockburn's Memorials of his Time, pp. 420-425, and Anderson's History of Edinburgh, pp. 374, 375. On 24th June, the whole of the large tenement at the head of the Royal Bank Close, including John's Coffeehouse, was destroyed. On 15th November, four lofty tenements at the head of the Old Assembly Close, extending about one hundred

called out, and, with the assistance of the police, put down disturbances which had been growing for some evenings between the lower classes of the inhabitants and the Irish;<sup>1</sup> and on 31st December they were again on duty, with about one hundred extraordinary constables, and a large body of extra police, to check apprehended disturbances, which, however, did not take place.<sup>2</sup> On the evening of the king's birthday, 23d April 1825, the society, as well as the extraordinary constables, were in attendance; but owing to the arrangements of the authorities, who caused the streets to be patrolled, from an early hour, by strong parties of police, the evening passed over "without being marked by any of those disgraceful scenes of riot and mischief which had so long characterised, and been a reproach to, the metropolis of Scotland."<sup>3</sup> On 5th March 1828, the society were assembled in the High Church aisle, to be ready to check any disturbance by the unemployed operatives who had collected on the Calton Hill, but no rioting took place.<sup>4</sup> On 24th December, 1828, the society were again called out to preserve the peace during the trials of Burke and Hare, and remained on duty all night, the trial having lasted till between 9 and 10 a.m. of the 25th. No disturbance occurred, however, though the excitement was intense.<sup>5</sup>

It was also in their character as guardians of the peace of the city, that, on 18th May 1803, the society were requested by the magistrates to appoint deputations to attend at the council chamber on such nights as the press-gangs were to be in town, in order that "the officer having command of the gang might lay before them his information; that they might accompany the gang to the places where search might be made within the royalty, and prevent all tumult, riot, or wanton insult, so frequently committed on the inhabitants on such occasions." After learning from the Lord Provost the precise nature of the duties they were required to discharge, it was arranged on 19th May, that

---

and twenty feet in length, were consumed. Next day the steeple of the Tron Church was burned; and in the evening another fire broke out in one of the highest tenements at the south-east corner of the Parliament Square, and spread along the whole remaining buildings of the square, reducing them to ruins. By these fires in November, about 300 families were rendered houseless, and several persons were killed and injured. See a more detailed description in an account of great fires in Edinburgh since 1700 (Edinburgh, T. & W. Nelson, 1824).

<sup>1</sup> Minute Book, iii. 397.

<sup>2</sup> Ibid. iii. 413.

<sup>3</sup> Ibid. iii. 399.

<sup>4</sup> Ibid. iv. 81.

<sup>5</sup> Ibid. iv. 111. Lord Cockburn's Memorials of his Time, pp. 456-458.

three constables should attend at the council chamber every night when summoned for that duty, and that absentees should be fined a guinea, save when they provided a proxy, as it was provided they might do, the proxy being a member of the society.<sup>1</sup> The moderator and two of the office-bearers attended the pressgang on their first visit to the city on 20th May 1803.<sup>2</sup> On 11th May 1805, the magistrates having again permitted press-gangs to enter the city, each party being under the control of the constables appointed to accompany them, nine members of the society were summoned to discharge this duty, and several suspected persons were apprehended.<sup>3</sup> One of the constables summoned on this occasion failed to attend, and incurred the fine prescribed by the society's minute of 19th May 1803; but the fine was remitted, on the ground that it had not been exacted on other similar occasions.<sup>4</sup>

While employed in preserving the peace, the constables were occasionally brought into collision with the military authorities. On 23d June 1801, the first recorded case of this kind occurred. One of their number, Mr Torry, held a commission as lieutenant in the Royal Highland Volunteer Regiment, and while acting as a constable, was required by his commanding officer, Colonel Campbell, to attend his duty as an officer of the picquet guard. On communicating this order to the society, they held that Torry's civil duties as a constable must be attended to in preference to his military duties, and detained him. Torry was in consequence put under military arrest; but on a complaint by the society, the Lord Provost ordered Colonel Campbell to withdraw the arrest, which was accordingly done.<sup>5</sup> Not content with this, the society appointed a letter to be sent to the Lord Provost, as Lord Lieutenant of the county of the city, setting forth the facts,—representing that more than one half of the constables were also volunteers,—and requesting instructions as to how they should conduct themselves on any similar occasion in future. In answer to that communication, the Lord Provost (Fettes) expressed his opinion that the conduct of the society in Torry's case "was perfectly legal, and that in all time coming the same line of conduct should be observed." At the same time he requested it to be intimated to those constables who were also volunteers, "that it was quite optional their continuing to serve in both capacities."<sup>6</sup> A somewhat similar collision took place on the 30th of November 1806. Mr Thomas Paterson, one of the constables, having used intemperate language to Major Tulloch, commanding the mili-

<sup>1</sup> Minute Book, ii. 253-256.

<sup>2</sup> Ibid. ii. 256.

<sup>3</sup> Ibid. ii. 283.

<sup>4</sup> Ibid. ii. 301.

<sup>5</sup> Ibid. ii. 207, 211.

<sup>6</sup> Ibid. ii. 214.

tary on duty the same evening, was ordered to be arrested. Another constable, Mr Allan, having interfered, was arrested instead of Paterson, but was forthwith relieved by the moderator and other constables. An appeal was immediately made to the magistrates, who had a meeting with the parties on the following day. The magistrates espoused the cause of the constables, while the officers of Major Tulloch's regiment sided with their major, and were supported by Earl Moira, the commander-in-chief. The dispute was at length arranged on the footing that Mr Allan should apologize to the major for having peremptorily refused to give his name when asked, and that the major should apologize "for having refused to acknowledge in a proper manner the powers of the constables." The major, however, was shortly afterwards dangerously wounded in a duel, and the matter was dropped; but not until the originator of the dispute, Paterson, had been obliged to give in his resignation as a constable.<sup>1</sup>

Besides regularly attending the magistrates and council in the procession on the king's birthday, the society were in the habit of accompanying them on other public ceremonials. Thus, on 8th September 1808, they attended the council, with a select party of noblemen and gentlemen, at the laying with masonic honours, by the Hon. Mr Ramsay Maule, of the foundation-stone of a new jail for the city at the middle of Forester's Wynd.<sup>2</sup> On 25th October 1809, they accompanied the magistrates in procession from the Assembly Rooms in Leith to witness the laying of the foundation-stone of the military-works for the defence of the port.<sup>3</sup> On 21st April 1810, they attended the public funeral of Lord Provost Coulter.<sup>4</sup> On 19th September 1815, they accompanied the magistrates in the procession on the occasion of laying, with masonic honours, the foundation-stones of the Regent Bridge and the new jail.<sup>5</sup> On 3d February 1820, the society formed part of the procession

<sup>1</sup> Minute Book, iii. 9-11.

<sup>2</sup> Ibid. iii. 52. This building was intended to supersede the old Tolbooth, or "Heart of Mid-Lothian," which was demolished in 1817. The only portion ever completed, however, was that known as the "the Lock-up," on the space immediately behind the Advocates' Library and Sheriff Court buildings. A more appropriate site for the jail was found on the Calton Hill, and the foundation stone was laid in September 1815. The Lock-up was recently removed, under arrangements between the government and the prison board, whereby the latter have the use of the cells under the High Court of Justiciary.

<sup>3</sup> Ibid. iii. 98.

<sup>4</sup> Ibid. iii. 103; Anderson's History of Edinburgh, p. 313.

<sup>5</sup> Minute Book, iii. 203; *post*, p. 247.

on the occasion of proclaiming King George IV. at the Royal Exchange, at the Castle, and at Holyrood Palace.<sup>1</sup> In 1822, the society took a part in all the more public ceremonials in the city connected with the reception and entertainment of His Majesty on his visit to Scotland ;<sup>2</sup> and their minutes of date 31st July, 5th, 13th, 14th, 15th, 22d, 24th, 25th, and 27th August, are occupied with that event.<sup>3</sup> On the day of the king's arrival (15th August), the society, according to the wish of the Lord Provost and Sir Thomas Bradford, commander of the forces, "took the direction and charge of the military in that part of the line through which His Majesty passed to Holyrood House, extending from the barrier gate erected at the boundary of the city at Picardy Place to the corner of North St Andrew Street." On the 22d of August, when the king visited the castle, the society were stationed in front of the platform erected for the council at the cross, opposite the Royal Exchange. On 24th August, the day of the great civic banquet to his majesty, the society took "charge of the avenues leading to the banquetting-hall, within the Parliament Square, and in front of the Advocates' Library, and the different approaches to the hall." Parties of the society were also stationed in the interior of the hall, and were, as far as practicable, changed every fifteen minutes. On Sunday the 25th of August, the society lined the streets, on either side, from the door of the High Church, where the king attended divine service, to the entrance into the Exchange. And on 27th August they accompanied the magistrates in procession at the laying of the foundation-stone of the National Monument on the Calton Hill.<sup>4</sup> On 28th July 1825, they formed part of the procession at the laying, with masonic honours, of the foundation-stone of the High School at the Calton Hill.<sup>5</sup> For their services on this occasion, they received the thanks of the Lord Provost and magistrates.<sup>6</sup> On 15th August 1826, the society accompanied the magistrates in procession to witness the driving of the first piles of the new pier in Leith ; and afterwards had an aquatic excursion.<sup>7</sup> On 15th August 1827, the society attended the magistrates in the procession to lay the foundation-stone of the new West and South Bridges, *i. e.* George IV. Bridge and the bridge forming part of the west approach by the south of the Castle.<sup>8</sup>

<sup>1</sup> Minute Book, iii. 276-280, where there is a minute description of the ceremonial.

<sup>2</sup> Anderson's History of Edinburgh, 382.

<sup>4</sup> *Post*, p. 247.

<sup>3</sup> Minute Book, iii. 341-358.

<sup>6</sup> *Ibid.* iii. 433-437 ; *post*, p. 247.

<sup>6</sup> *Ibid.* iv. 4, 5.

<sup>7</sup> *Ibid.* iv. 42. Anderson's History of Edinburgh, p. 388.

<sup>8</sup> *Ibid.* iv. 71. Lord Cockburn's Memorials of his time, pp. 426-429.

The society were still occasionally employed in the preparation of parliamentary returns. Thus, on 14th May 1801, the constables of the new town were required to take up the census of the new extended royalty,<sup>1</sup> and in 1811, they were entrusted with the taking up of the census of the ten parishes of the city. An abstract of the latter census is entered in the minute of date 29th June 1811.<sup>2</sup> In 1821, a similar duty was imposed upon them with reference to the eleven parishes into which the city was at that time divided, and an abstract of the census is recorded in the minute book under date 10th July 1821.<sup>3</sup>

On 16th August 1803, they were ordered by the lieutenantcy to make returns of all the men in their respective bounds between the ages of seventeen and fifty-five, dividing them into four classes, as prescribed by the act 43 Geo. III. c. 96.<sup>4</sup> On 21st October in the same year, they were required to take up the names of the owners and numbers of carts, carriages, &c., and horses, in the ancient and extended royalties of the city, that the same might be brought into the public service with the least delay.<sup>5</sup> To facilitate the preparation of this return, the lieutenantcy divided the city into eight districts, and recommended the society to apportion themselves among these districts.<sup>6</sup> In compliance with that recommendation, the whole constables were distributed among the several districts on 24th October, reference being had as far as possible to the position of the constables' bounds relatively to the districts; and the senior constable of each district was appointed convener.<sup>7</sup>

The society also continued to furnish the annual returns of persons liable to serve as jurymen and militiamen; and for the latter duty various payments were made to them by the Exchequer. Thus they received, in 1802, £50,<sup>8</sup> and in 1803, £100.<sup>9</sup> In 1806, however, they were required to make oath to the *exact* time they were engaged, the number of lines of entry in their returns, and other *minutiae*, and they were informed, that unless this

<sup>1</sup> Minute Book, ii. 205.

<sup>2</sup> Ibid. iii. 114.

<sup>3</sup> Ibid. iii. 327. For their services in connection with the taking up of this census, Mr Spankie, moderator, and Mr Brash, secretary, received from the society the present each of a handsome silver punch-bowl, with a suitable inscription thereon [Minute Book, iii. 335, 339].

<sup>4</sup> Minute Book, ii. 262.

<sup>7</sup> Ibid. ii. 267-268.

<sup>5</sup> Ibid. ii. 266, 268, 271.

<sup>8</sup> Council Records, cxxxvi. 229; Minute Book, ii. 220.

<sup>6</sup> Ibid. ii. 263, 266.

<sup>9</sup> Minute Book, ii. 261.

order was complied with, they would not be remunerated for their labour. Finding it impossible to comply with this requisition, the society addressed memorials on the subject to the Lord Chief Baron, on 19th January 1807,<sup>1</sup> and to the Lord Provost as Lord Lieutenant of the city on 24th March 1808.<sup>2</sup> That these memorials were not attended with the desired effect may be inferred from the fact that a petition was addressed by the committee to the Barons of Exchequer in 1809, and refused, on the ground that the constables had not complied with the requirements of the Exchequer regulations on the subject.<sup>3</sup> After that period, however, the committee were authorised to comply with the regulations of Exchequer, and doubtless the allowances to which the constables were entitled were regularly received.<sup>4</sup> On 28th October 1813, the society received £67, os. 4d. from the receiver-general of Exchequer for militia returns.<sup>5</sup> Of the care with which the society required all its members to take up the returns, there is an illustration under date 1st November 1813, when they applied to the magistrates, with effect, to compel a constable to do his duty in this respect.<sup>6</sup> On 16th February 1815, the society received £70, 7s. 10d. from the Exchequer for militia duty.<sup>7</sup> On 19th February 1816, they received £60, 9s. 1d.;<sup>8</sup> in March 1817, £67, 1s. 6d.;<sup>9</sup> in August 1817, £65, 2s. 6d.;<sup>10</sup> and in August 1818, £63, 15s. 2d.<sup>11</sup> In the following year, the Barons of Exchequer, on an application by the moderator, modified the sum to be annually paid to the constables for their Militia returns to £60; and dispensed with the necessity for their making oath to the correctness of their account.<sup>12</sup> In 1819, the society received two sums of £60, 6s. 10d., and £60 from Exchequer.<sup>13</sup>

To equalize as far as possible the labour of the respective constables in taking up these militia lists, the society, on 28th September 1820, empowered the committee to revise and readjust the bounds of the city.<sup>14</sup> This was accordingly done on 24th January 1821,<sup>15</sup> and the division into one hundred bounds, corresponding to the number of constables, was approved of by the society on 2d April 1821.<sup>16</sup> On the reduction of the society to its former number of sixty, the city was re-divided into a corres-

<sup>1</sup> Minute Book, iii. 24, 25.

<sup>2</sup> Ibid. iii. 41-44.

<sup>3</sup> Ibid. iii. 98.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid. iii. 170.

<sup>15</sup> Ibid. iii. 307-320. A description of each of the hundred districts into which the city was divided is here engrossed.

<sup>6</sup> Ibid. iii. 146, 147.

<sup>7</sup> Ibid. iii. 191.

<sup>8</sup> Ibid. iii. 205.

<sup>9</sup> Ibid. iii. 214.

<sup>10</sup> Ibid. iii. 246.

<sup>11</sup> Ibid. iii. 257.

<sup>12</sup> Ibid. iii. 265.

<sup>13</sup> Ibid. iii. 291.

<sup>14</sup> Ibid. iii. 297.

<sup>16</sup> Ibid. iii. 321.

ponding number of districts, on 27th June 1823.<sup>1</sup> Subsequently, in consequence of the extension of the city northwards, and the creation of the new parish of St Mary's, which had been taken from the parishes of St George's and St Andrew's, a new division of the bounds of the different parishes became necessary. This was effected on 2d August 1825.<sup>2</sup>

On 26th January 1825, the society petitioned the Barons of Exchequer for some allowance on account of their trouble in making up the Jury lists, which cost them about £10 per annum of outlay. The petition was refused, however, on the ground that they had no funds applicable to such a purpose.<sup>3</sup> On 9th August 1825, the society received intimation that the duty of taking up Jury lists had been transferred, by the act of parliament 6 Geo. iv. c. 22, from the magistrates to the sheriff, who might not, as the magistrates had invariably done, entrust it to the constables. A deputation was thereupon appointed to wait on the sheriff, and ascertain his wishes on the matter.<sup>4</sup> As the result of this interview, and of subsequent communings, the society continued to take up the Jury lists.<sup>5</sup> It appears, however, that they had considerable difficulty in obtaining remuneration for their services; for on 29th March 1828, they addressed a memorial to the Sheriff on the subject, in which they stated that they had not received any payment for two years' labours, and they claimed £90 therefor.<sup>6</sup> On 24th June, the sheriff was reminded of this claim by a letter from the moderator;<sup>7</sup> and on 1st July, the sheriff's answer was received. It explained that the Barons of Exchequer had decided that they had no power to sustain the claim; that, in consequence, the sheriffs of Scotland had communicated with the Lord Advocate on the subject, but that his reply had not been received.<sup>8</sup> On 11th September 1828, £45 were paid to the society for taking up the jury list of the previous year.<sup>9</sup> A similar sum was paid for the following year.<sup>10</sup> The duty of taking up the jury lists having then been transferred to others, the society, on 28th December, resolved as follows:—

“That this society, understanding that a change has been made by the sheriff of the county in the mode of taking up the lists of persons in the city qualified to serve as jurymen, (while they have no wish to resume this troublesome duty) cannot help expressing their surprise that this change should have been adopted without reason being

<sup>1</sup> Minute Book, iii. 374.

<sup>2</sup> Ibid. iv. 1.

<sup>3</sup> Ibid. iii. 402.

<sup>4</sup> Ibid. iv. 3.

<sup>5</sup> Ibid. iv. 16, 17.

<sup>6</sup> Council Records, iv. 89–90.

<sup>7</sup> Ibid. iv. 102.

<sup>8</sup> Ibid. iv. 104.

<sup>9</sup> Ibid. iv. 108.

<sup>10</sup> Ibid. iv. 118.

given, or any annunciation whatever [being] made to the society on the subject, although they have performed this duty for a very great number of years, to the entire satisfaction of the authorities."<sup>1</sup>

Nor were the services of the constables limited to matters purely official. The organisation of the society has always been available for the promotion of philanthropic and other beneficial public objects. Shortly after the battle of Waterloo, intelligence of which reached Edinburgh on the 24th of June 1815, arrangements were made for collecting a fund for the relief of the widows and orphans of those who had fallen. The co-operation of the constables was invited by the magistrates, and the society responded heartily to the call; the members undertaking to go personally through their respective bounds and receive subscriptions. The result was that £1422, 3s. 6½d. were collected by the society, and paid over to the fund.<sup>2</sup> So also after the great fires in 1824, to which allusion has been made,<sup>3</sup> immediate steps were taken for the relief of the sufferers by these calamities, and the magistrates contemplated an appeal to the society to undertake the collection of subscriptions, as they had previously done for the Waterloo fund in 1815. The Commissioners of Police, however, offered to discharge the duty, and their services were accepted; but the society, though many of its members had previously subscribed, raised among themselves a sum of £40, 8s. 6d., which was paid over to the treasurer of the fund.<sup>4</sup> On 13th March 1826, again, the society acceded to a request made to them by the Lord Provost, that they should co-operate with the members of the committee appointed to raise subscriptions for the new High School on the Calton Hill, the foundation stone of which had been laid on 28th July previous.<sup>5</sup> Books for receiving subscriptions were delivered to the respective constables on 27th March 1826, and they were appointed to deliver them to the city chamberlain, along with the amount subscribed, at the earliest possible period.<sup>6</sup> The subscriptions thus collected were handed directly to the chamberlain, and the amount does not appear in the records of the society.

In the discharge of their various public duties, the society were also called on to assert, as against other local bodies, what they believed to be their rights, not only of precedency but of superior authority. Of this there is

<sup>1</sup> Minute Book, iv. 113, 114.

<sup>2</sup> Ibid. iii. 196-202.

<sup>3</sup> *Antea*, p. 238, footnote 10.

<sup>4</sup> Minute Book, iii. 396.

<sup>5</sup> Ibid. iv. 24.

<sup>6</sup> Ibid. iv. 28.

one illustration in the question as to their relations to the police established under the act of 1805.<sup>1</sup> Another is to be found in the discussions with the constables of Calton, as to which of the two bodies was entitled to precedence within the barony of Calton on occasions of public ceremonial. The question with the Calton constables was first mooted when the foundation stones of the Regent Bridge and New Jail were laid on 19th September 1815. It was again raised in connection with the arrangements for laying the foundation-stone of the National Monument on the Calton Hill, on 27th August 1822, and Mr L'Amy, one of the city's assessors, having been consulted, was of opinion that, when the society formed part of a city procession, and accompanied the magistrates, who were the superiors of the barony, they were entitled to precede the Calton constables even within the barony. The constables of Calton, however, declined to give effect to this opinion, and took possession of the site of the foundation-stone, which they were allowed to retain.<sup>2</sup> The question was again revived in the prospect of the ceremony of laying the foundation-stone of the High School on the Calton Hill, in July 1825.<sup>3</sup> In the course of the correspondence which then ensued between the two bodies on the subject, the society referred to the opinion of Mr L'Amy in 1822, while the Calton constables referred to a minute in their records, dated 2d November 1815, in which it was stated that Sir William Rae, the then sheriff of the county, had investigated the subject, and had taken considerable pains to convince the Lord Provost and magistrates of the validity of the claim of the Calton constables, who had accordingly preceded the high constables<sup>4</sup> at the laying of the foundation-stone of the Regent Bridge. A more detailed statement of the facts connected with that ceremony was furnished in a letter by the constables of Calton to the Lord Provost, dated 23d July 1825.<sup>5</sup> At the ceremony of laying the foundation stone of the High School on the 28th of July 1825, however, arrangements were made by which the decision of the question was evaded by the magistrates and council.<sup>6</sup>

A question was also raised between the society and the constables of Canon-gate, in 1825, as to their respective rights and privileges. On 27th January 1825, the council and the sheriff of the county issued "Regulations to be observed at fires," by which, *inter alia*, the moderator of the high constables of the city was empowered to call out the extra constables, and to give notice to

<sup>1</sup> *Antea*, pp. 218-220.

<sup>2</sup> Minute Book, iii. 358.

<sup>3</sup> *Ibid.* iii. 425.

<sup>4</sup> *Ibid.* iii. 429, 430

<sup>5</sup> *Ibid.* iii. 430-432.

<sup>6</sup> *Ibid.* iii. 433-437.

the moderator of Canongate, Calton, and Portsburgh, to call out the constables of these districts." When these regulations were submitted to the Canongate constables on 1st March 1825, they resolved, (1.) That on the occasion of any fires in the city or suburbs, they would act only under the magistrates or the proper authorities of the city; and (2.) That on the occasion of any fire in the burgh of Canongate, they would act under the authority of the magistrates, or, in their absence, of the moderator of their own body, and would "recognise no other authority or direction except that of the sheriff."<sup>1</sup> Copies of these resolutions were transmitted to the society, by whose direction<sup>2</sup> a communication was addressed to the Lord Provost on 26th April 1825,<sup>3</sup> inquiring whether, in the event of a fire in the Canongate, "the power of the high constables is to be superseded by that of the Canongate constables, or, on the contrary, if the privileges of the high constables do not, like those of the magistrates of the city, extend over the burghs of Canongate and Portsburgh, and barony of Calton."<sup>4</sup> At the same time the society complained of the assumption by the Canongate constables of the title of "High Constables." No reply having been made to this communication, the moderator, on 31st May 1825, recalled the Lord Provost's attention to the subject.<sup>5</sup> On 17th August 1825, the moderator again wrote the Lord Provost, and craved that the "opinion of the city's assessors [might] be taken," and that the printed instructions of 1786<sup>6</sup> might be revised and reprinted for the future guidance of the society.<sup>7</sup> This application, and a subsequent letter from the moderator to the acting chief magistrate on the same subject, dated 19th April 1826,<sup>8</sup> not having secured the desired object, the society, on 11th April 1827, approved of a memorial to the council, in which they reiterated their claim to precedence of all other constables within the magistrates' jurisdiction, and craved the council to declare "that none of the bodies of suburban constables have any right to bear the title of 'High Constables,' and that the society of High Constables of the city shall take precedence of all other bodies of constables within their jurisdiction."<sup>9</sup> This memorial had the desired effect; and, on 14th March 1828, the moderator submitted to the committee a proof of new instructions about to be enacted by the magistrates and council. These were approved by the committee with one or two verbal alterations,<sup>10</sup> and were enacted by

<sup>1</sup> See copy Resolutions engrossed in Minute Book, iii. 423.

<sup>2</sup> Minute Book, iii. 415.

<sup>5</sup> Ibid. iii. 422.

<sup>8</sup> Ibid. iv. 32.

<sup>3</sup> Ibid. iii. 418.

<sup>6</sup> Appendix XI.

<sup>9</sup> Ibid. iv. 61-65.

<sup>4</sup> Ibid. iii. 420.

<sup>7</sup> Minute Book, iv. 15.

<sup>10</sup> Ibid. iv. 84.

act of council, dated 19th March 1828.<sup>1</sup> In terms of these instructions accordingly, the society took precedence of the constables of Calton at the ceremony of opening the new High School, on 23d June 1829.<sup>2</sup>

One instance has been referred to, in which the society resented a resignation by one of the members in terms which were considered disrespectful.<sup>3</sup> Reference has also been made to several instances in which the society asserted its dignity, by insisting on gentlemen who had been elected constables accepting and acting.<sup>4</sup> In 1828, however, a new question was raised, *first*, as to the power of the council to compel any member of the society to serve as a constable for *three* years; and, *second*, with whom rested the right to accept or refuse resignations by members of the society. In 1828, five members resigned before they had completed three years' service as constables, and the committee, on 15th August 1828, recorded their determination to exact the full penalty of five guineas from all persons who should so act in future.<sup>5</sup> On 6th April 1829, accordingly, when Mr Robert Alexander, after being only one year a constable, tendered his resignation, without assigning any reason, the society declined to consider it till he had explained his reason.<sup>6</sup> This, however, he declined to do. The society thereupon requested the moderator "to report proceedings to the Lord Provost and magistrates, in order that the fine imposed for non-completing of service may be levied."<sup>7</sup> The moderator (Mr J. P. Mitchell), accordingly, on 5th May 1829, transmitted to the council a copy of the correspondence which had taken place between the secretary and Mr Alexander, and asked them to impose the fine exigible from those who decline to discharge this necessary duty of a citizen. In reply, the council, on 20th May 1829,<sup>8</sup> directed the following intimation to be made to the moderator:—

"They are of opinion it would not be consistent with the dignity of the society of high constables, to compel an individual to hold a situation which most of the citizens consider to be an honourable distinction; and on this ground they do not consider it to be expedient to enforce the continuance of Mr Alexander by the infliction of any fine, and therefore the magistrates and council have accepted his resignation."

At the same time they intimated that they had accepted of the resignation, by

<sup>1</sup> Minute Book, iv. 157.

<sup>2</sup> Council Records, cciii. 62. Appendix XV.

<sup>3</sup> *Antea*, p. 166.

<sup>4</sup> *Antea*, pp. 183, 231.

<sup>5</sup> Minute Book, iv. 106.

<sup>6</sup> *Ibid.* iv. 119.

<sup>7</sup> *Ibid.* iv. 124.

<sup>8</sup> Council Records, ccv. 222–224.

H h

Mr Alexander Brown,<sup>1</sup> of his office of high constable, and it was added, "You may therefore now take the usual steps for supplying the vacancies thus occasioned."<sup>2</sup> After receiving this intimation, the committee of the society, on 3d June 1829, memorialised the council to reconsider their former application, and to ordain Messrs Alexander and Brown to complete the required period of service.<sup>3</sup> In support of this application, they referred to the cases of Johnston and Gilchrist in 1768, and of Donaldson in 1780,<sup>4</sup> and to the council's act of 19th March 1828, and urged that, to comply with the unanimous wish of the society in the matter, would be "not only to do what is in strict conformity to usage and to law, but what is also necessary to the future prosperity and usefulness of that body which has on so many occasions received the approbation of the magistrates of Edinburgh." The memorial was submitted to the council on 3d June, and having been remitted to the Lord Provost's committee,<sup>5</sup> his Lordship suggested a conference between his committee and the committee of the society. To this conference the moderator agreed, but called a general meeting of the society to receive their instructions. The meeting took place on 15th June, when the proceedings of the committee of the society were approved of, and the following series of resolutions was agreed to, and appointed to be recorded:—<sup>6</sup>

"1st, That although the Lord Provost, magistrates, and council, are empowered to appoint constables, and to accept of their resignations, yet, the practice of permitting the society of high constables of the city of Edinburgh, for upwards of a century, to name its own members, and to accept or decline their resignation as might seem proper to the society itself, affords the strongest proof of the expediency of such a practice, and, as that practice has existed so long, the present members of the society conceive that a privilege has thereby been conferred and acquired by the high constables, which they feel it to be their imperative duty to maintain.

"2d, That the records of the society establish that from the commencement of the last century, the shortest period of a high constable's service has been three years, and that this important fact is confirmed by several acts of council.

"3d, That notwithstanding these laws and established practice, the society has learned with the deepest regret, that the Lord Provost, magistrates, and council had

<sup>1</sup> Mr Brown had previously expressed his wish to resign, but after communicating with the committee of the society, had agreed to complete his period of service [Minute Book, iv. 124].

<sup>2</sup> Minute Book, iv. 128, 129.

<sup>3</sup> Ibid. iv. 130, 131.

<sup>4</sup> *Antea*, p. 183.

<sup>5</sup> Council Records, ccv. 268.

<sup>6</sup> Minute Book, iv. 132, 133.

agreed to accept of the resignations of Mr Robert Alexander and Alexander Brown, who had not completed their regular period of service, and that too, without intimating to the society, through their moderator, such resolution, a resolution in direct opposition to the prayer of the society, which was in the possession of the Lord Provost, magistrates, and council at the time when it was resolved in council to accept of the above mentioned resignations.

"4th, That as the Lord Provost and magistrates had expressed a desire to have a conference with the deputation to-morrow at twelve o'clock noon, the society authorise these gentlemen, along with the standing committee, to wait upon the Lord Provost and magistrates, and to report their proceedings to the society to-morrow evening, at eight o'clock, in the council chamber."

The conference took place on the following day, when it was explained, on the part of the council, that though the power of appointing and dismissing constables lay entirely with them, yet they could not compel any individual to serve for more than one year; that while, under the council's act of 19th March 1828, a constable might serve three years, or in certain circumstances for a somewhat longer period, yet it was not intended to bind, and could not bind, any one to remain for that period; that so far from any disrespect or discourtesy being intended towards the society by the acceptance of these resignations, the council entertained the highest respect for the body, and the non-communication with the moderator previous to the acceptance of the resignations was a mere overlook, which the council much regretted. This explanation, however, did not satisfy the committee of the society, who maintained that so early as 1715, the period of a constable's service was understood to be three years; that the uniform practice since that time supported this view; that while parties who had been appointed constables had been compelled to serve, other parties seeking to retire without a sufficient excuse had been prevented from doing so, their period of service not having been completed, but had afterwards been allowed to retire for reasons deemed sufficient by the society;<sup>1</sup> that the right of granting or declining resignations

<sup>1</sup> The case here referred to was that of George Hunter, on 8th March 1800 [Minute Book, ii. 187]. Hunter resigned on the ground that his "present situation in business would not permit him to hold office." His resignation was remitted to the committee, who were of opinion that the reason assigned was "no reason whatever," and that, in recording it, it was necessary "to assign a more cogent reason to justify their conduct in receiving it." They then, "merely to prevent any encroachment upon the constitution of the society," indicate that Hunter's conduct was such as to render his resignation necessary.

was vested in the society; and they indicated that unless Messrs Alexander and Brown were brought back to complete their period of service, the society might be considered as at an end. The Lord Provost (Brown) and his committee expressed a hope that, should the society resolve to break up, it would at all events delay doing so till it had the written answer of the council to the memorial, which would be submitted to the first meeting of council on the 24th of the same month. He also expressed a wish that the society should attend the procession at the opening of the High School on the following Tuesday. The result of the conference, and the Lord Provost's wishes, were reported to the society on 16th June, when a motion and an amendment were submitted,—the former to the effect that the society should not come to a final resolution on the subject till an answer was received from the council; and the latter, that the constables should at once send in their resignations. Before putting the question to the vote, it was agreed that, whatever should be the result, the minority should acquiesce in it, and follow the example of the majority. In these circumstances, the amendment having been carried by twenty-seven to twenty-one, the whole constables present subscribed a letter of resignation, which was immediately sent in to the Lord Provost, and the moderator declared the society to be dissolved.<sup>1</sup>

On receipt of this communication, the Lord Provost summoned an extraordinary meeting of the council, which was held on the 19th of June, when, after receiving the report of the Lord Provost's committee, the resignations of the constables were accepted, and sixty-one persons were elected high constables, and requested to attend and be sworn into office.<sup>2</sup> At the meeting of constables on the same day, the office-bearers for the former year were unanimously re-elected, and instructions were given to the moderator to demand from the former office-bearers the minute books and properties of the society.<sup>3</sup> Possession of these was immediately got, the treasurer advancing a sum of £128, 15s. 10d. due to his predecessor, and in security of which he claimed to have a lien over the properties of the society.<sup>4</sup> Two of

---

<sup>1</sup> Minute Book, iv. 133, 139.

<sup>2</sup> Council Records, cv. 288, 289. These elections were made from lists furnished at the request of the Lord Provost and magistrates, by those office-bearers who had gone out in April, and it is noticeable, that at least fifteen of those who had resigned on the 16th, were re-elected on the 19th of June.

<sup>3</sup> Minute Book, iv. 150, 152.

<sup>4</sup> Ibid. iv. 153.

the persons appointed constables on the 19th having declined to accept office, the moderator requested others to be elected, but before doing so the council, on 24th June,<sup>1</sup> requested the moderator to state the grounds of their declinature. Having received the moderator's explanation on 1st July, the council sustained the reasons of declinature, and appointed two other persons to be constables.<sup>2</sup>

In connection with the misunderstanding which has thus been described, it is only necessary to observe farther, that Mr Mitchell having declined, when requested by the society, to alter his designation in the attestation of the accounts of the former treasurer from "moderator of the *late* society," to "late moderator of the society," the society on 6th July protested against the attestation, and the implication thereby conveyed that the society was dissolved; and declared, "that the minutes of 16th instant should not be considered as part of the society's records, having been written by Mr Crosbie after he had not only resigned his office as secretary, but his status as a constable." At the same time it was resolved unanimously,

"That as the Lord Provost, magistrates, and council state they have not power to force members to continue longer than one year, the society are satisfied with that understanding of the law, and with the farther declaration that, in future, all resignations shall come through the moderator."

On 21st April 1830, twelve constables were elected,<sup>3</sup> and on 6th April 1831, seventeen constables were elected.<sup>4</sup>

The agitation for parliamentary and burgh reform, nowhere more ably or persistently conducted than in Edinburgh, received a fresh impulse, in November 1830, from the retirement of the ministry of the Duke of Wellington, and the succession of that of Earl Grey. A series of public meetings in favour of the extension of the elective franchise was held, and when Lord John Russell propounded the Reform Bill to the House of Commons, on the 1st of March 1831, a petition by the inhabitants in its favour received thirty-one thousand signatures. This petition was despatched on the 17th of March, and on the following day, a special meeting of the society was convened, in terms of a requisition presented to the moderator, Mr (now Lord Provost) Lawson, requesting him to call a meeting of the society "for the purpose of

<sup>1</sup> Council Records, ccv. 311.

<sup>2</sup> Ibid. ccv. 327.

<sup>3</sup> Ibid ccvii. 214.

<sup>4</sup> Ibid. ccix. 208.

addressing His Majesty, and of expressing their confidence in his ministers and also petitioning both Houses of Parliament to pass into a law the present bill introduced by Lord John Russell, with the sanction of His Majesty and his ministers, for an effective change in the representation of the Commons House of Parliament." This meeting was presided over by the treasurer, Mr (now Sir William) Johnston, in the absence of the moderator, who was confined to his house by ill health, and after affirming the expediency of the society "interfering with political affairs, so far as to vote an address and petition in the present emergency," adapted an address to the throne, and passed a series of resolutions of the nature indicated in the requisition. The address was ordered to be transmitted to the Earl of Errol, with a request that his lordship would present it to the King.<sup>1</sup> Petitions in conformity with the resolutions were also ordered to be transmitted to the Lord Chancellor and to the Lord Advocate, for presentation to the respective houses of parliament.<sup>2</sup> On the following day, the moderator, chaplain, secretary, and seven members sent in their resignations,<sup>3</sup> which were accepted at the meeting of the society held on 21st March, and at the same meeting Mr (now Sir William) Johnston, was elected moderator. He was re-appointed at the annual election on 4th April 1831,<sup>4</sup> and discharged the duties of the office with great tact and ability, during the stirring, and so far as the high constables were concerned, perilous, times of the Reform Bill agitations. To these, and the loyal services rendered by the society in connection with them, reference will afterwards be made. Meanwhile suffice it to observe that the aspect of affairs was so threatening, and the popular excitement so great, that on 11th May 1831,<sup>5</sup> the council approved of a resolution of the magistrates to increase the high constables to their former number of one hundred.<sup>6</sup> This resolution was intimated to the society on 14th May, and on the 18th of May a committee was appointed to confer with the moderator as to the persons to be appointed, with powers to make the requisite elections.<sup>7</sup> The requisite elections having

<sup>1</sup> *Post*, p.

<sup>2</sup> Minute Book, iv. 218-223.

<sup>3</sup> No reason for these resignations was assigned, or appear in the minutes; but it is understood that they were tendered on the ground that, as a society expressly appointed to conserve the peace, and discharge other strictly official duties, it was incompetent for the high constables to interfere with political questions, or to divert their organization to any other purpose than that for which it was formed.

<sup>4</sup> Minute Book, iv. 230.

<sup>5</sup> Council Records, ccix. 335.

<sup>6</sup> *Ibid.* ccix. 335.

<sup>7</sup> *Ibid.* ccix. 336.

been made, twenty-nine persons appeared on 20th May, thirteen on 26th May, and on 10th June were qualified.<sup>1</sup>

On 12th December 1832, three constables were elected.<sup>2</sup> On 31st July 1833, ten were elected.<sup>3</sup> On 4th December 1833, eight were elected.<sup>4</sup> Three were appointed on 18th March,<sup>5</sup> fifteen on 20th May,<sup>6</sup> and ten on 28th October 1834.<sup>7</sup> Twenty were elected on 26th May,<sup>8</sup> and six on 13th October 1835.<sup>9</sup> Four were elected on 8th March,<sup>10</sup> fifteen on 3d May,<sup>11</sup> and eight on 17th May 1836.<sup>12</sup> Seventeen were elected on 28th March,<sup>13</sup> and six on 16th May 1837.<sup>14</sup> Six were elected on 6th March,<sup>15</sup> thirteen on 1st May,<sup>16</sup> and five on 16th October 1838.<sup>17</sup>

At the nomination of office-bearers on 18th March 1833, an objection was stated to the eligibility of Mr John Carfrae as moderator, on the ground that he had completed three years' service as a constable in June, and that while he was entitled to retain his position as an office-bearer till the next election, it was incompetent, under the council's acts of 19th April 1815, and 19th March 1828, to elect him to office for the following year. A vote having been taken on the question of eligibility, twenty-one voted in the affirmative, and seventeen in the negative, six declining to vote. Against this decision Mr Girdwood protested, and took instruments, and subsequently a memorial

<sup>1</sup> Minute Book, iv. 247-249. Mr Duncan M'Laren, afterwards Lord Provost, and now M.P. for the city, was elected a constable at this time, and qualified on 20th May 1831 [Ibid. iv. 247]. He retired from the society on 28th May 1832 [Ibid. iv. 283].

<sup>2</sup> Council Records, ccxiii. 35.

<sup>4</sup> Ibid. ccxiv. 444.

<sup>3</sup> Ibid. ccxiv. 104.

<sup>5</sup> Ibid. ccxv. 372.

<sup>6</sup> Ibid. ccxvi. 184. At this time Mr P. S. Fraser was elected a constable. He was elected treasurer on 4th April 1836 [Minute Book, iv. 432], and moderator on 10th April 1837 [Ibid. iv. 446]. He retired from the society on 2d April 1838 [Ibid. iv. 470]. On 10th August 1838, the High Constables presented him with an elegant and massive silver jug, "in token of the society's regard" [Ibid. iv. 478].

<sup>7</sup> Council Records, ccxvii. 343.

<sup>8</sup> Ibid. ccxix. 193. At this time Mr James Miller, surgeon, afterwards professor of surgery in the University, was elected a constable. On 4th April 1836, he was elected surgeon [Minute Book, iv. 432]; on 10th April 1837, secretary [Ibid. iv. 446]; and on 2d April 1838, moderator of the society [Ibid. iv. 470]. He resigned on 19th December 1838 [Ibid. iv. 487].

<sup>9</sup> Council Records, ccxx. 135.

<sup>12</sup> Ibid. ccxxi. 242.

<sup>15</sup> Ibid. ccxxvi. 214.

<sup>10</sup> Ibid. ccxxi. 49.

<sup>13</sup> Ibid. ccxxiii. 279.

<sup>16</sup> Ibid. ccxxvi. 424.

<sup>11</sup> Ibid. ccxxi. 212.

<sup>14</sup> Ibid. ccxxiv. 56.

<sup>17</sup> Ibid. ccxxviii. 193.

and protest were lodged with the moderator, to be laid by him before the council. This document was transmitted to the council, with a letter, in which the moderator requested instructions as to whether he should "enforce or depart from the acts of council referred to." The council, however, on 20th March 1833,<sup>1</sup> resolved that, "having established certain regulations for the society of High Constables, [they] did not think it expedient to interpret the same on the application of individual members of the society." This decision having been intimated to the moderator, he renewed the application for instructions how to act in the circumstances; and the council on 23d March, "not considering it proper that they should interpret the effect of a law made by [themselves] recommended the parties to consult counsel on the subject."<sup>2</sup> In these circumstances, the moderator consulted Mr L'Amy, one of the city's assessors, and obtained from him an opinion that Mr Carfrae was not eligible. At the meeting on 1st April, accordingly, the moderator reported what he had done, and proposed to read Mr L'Amy's opinion. The society, however, decided by a majority of one that it should not be read, and it was proposed to take the vote as between Mr Carfrae and the other candidate, Mr Kennedy. The moderator thereupon protested that Mr Carfrae was ineligible, and declared Mr Kennedy to be the only candidate for the office of moderator. Subject to this protest, the vote was then taken, when twenty-two members voted for Mr Kennedy, and twenty-three voted for Mr Carfrae, eight gentlemen declining to vote. Against this vote the moderator again protested, took instruments in the hands of the secretary, and having declared Mr Kennedy duly elected moderator, left the chair. It was thereupon taken by Mr Carfrae, who, with Mr Kennedy, severally proposed treasurers for the ensuing year. Considerable discussion ensued, but it was ultimately arranged that the "person who should be confirmed moderator by the magistrates and council, should bring into office with him the parties nominated on 18th March as office-bearers and committee."<sup>3</sup> Both parties then appealed to the council, who, on 17th April 1833,

"resolved, on a division, by a majority of fourteen to nine, that the said John Carfrae jun. was not eligible to hold the said office, found his election thereto null and void, and declared that the said Charles Kennedy had been duly elected moderator of the society."<sup>4</sup>

<sup>1</sup> Council Records, ccxiii. 299.    <sup>2</sup> *Ibid.* ccxiii. 306.    <sup>3</sup> Minute Book, iv. 367, 373.

<sup>4</sup> One of the members of council, who voted in the minority, was a high constable, and his vote was protested against [Council Records, ccxiii. 372; Minute Book, iv. 373, 374].

Messrs Gillespie and Burr (nominees of Mr Carfrae), designing themselves respectively secretary and treasurer of the society, thereafter memorialised the council to confirm the election of office-bearers and committee, which they alleged had been made on 1st April. But the council, on 1st May 1833, "declined either to receive or decide on the request contained in said memorial."<sup>1</sup> Considerable dissatisfaction, however, seems to have existed in the society as to the election of the office-bearers and committee, and on 12th June a meeting was convened by order of the magistrates, to ascertain whether it had been arranged, on the 1st of April, that the person confirmed moderator "should bring into office with him his list of office-bearers and committee." One of the magistrates attended this meeting, and the vote having been taken, it was declared by a majority that such an agreement had been entered into. Afterwards the several office-bearers and members of committee proposed by Mr Kennedy on 18th March were elected in the usual manner. A protest was, however, taken against the legality of the meeting,<sup>2</sup> and a petition was thereupon presented to the council by the protesters, craving to have the elections set aside. The petition was remitted to the law committee, on whose report the council, on 31st December, declined to enter upon the subject, unless there was a reference of the matter.<sup>3</sup> This resolution was adhered to on 14th January 1834.<sup>4</sup> Afterwards a minute by both the parties, agreeing to refer the questions between them to the council, was lodged, and remitted to the law committee, who, by a majority, found "that the names contained in Mr Kennedy's list should be declared office-bearers, as there appears to have been an understanding on the day of election of moderator, that whoever should be found by the town council to have been elected moderator, should have the choice of his new office-bearers." Their report was approved of by the council on 18th February,<sup>5</sup> and on the 25th of the same month letters of resignation from nine constables were read and accepted by the council.<sup>6</sup> Intimation of this was made to the moderator on the following day, and was communicated by him to the society on 24th March, when they "expressed their regret that the magistrates had done so without the concurrence of the society."<sup>7</sup>

<sup>1</sup> Council Records, ccxiii. 399.

<sup>2</sup> Minute Book, iv. 375, 378.

<sup>3</sup> Council Records, ccxv. 62.

<sup>4</sup> Ibid. ccxv. 123.

<sup>5</sup> Ibid. ccxv. 244.

<sup>6</sup> Ibid. ccxv. 274.

<sup>7</sup> Minute Book, iv. 388.

In consequence of the gradual reduction of the society from the number of one hundred members, to which it was raised in 1831, to meet the exceptional circumstances to which reference has been made, and the consequent irregular observance of the system of triennial rotation, it was found in February 1831, that one section of the society had served above three years, while another and more numerous portion had been admitted within eighteen months. With only one exception, the office-bearers and committee were in the first class, and fell to retire in April. In these circumstances, the office-bearers and committee, on 18th February 1835, submitted a statement of the facts to the society, who unanimously resolved

“That considering it is highly expedient that some of the present committee, who are acquainted with the affairs of the society, should continue for another year ; and considering the peculiar circumstances which have occasioned the difficulty, that the standing rules be dispensed with to the extent that any one of the present office-bearers, and any two of the committee, shall be held competent to be again elected as office-bearers or members of committee, notwithstanding of their period of service having expired, but that this departure from the rules shall not be held as a precedent on future occasions when such circumstances do not exist.”<sup>1</sup>

On 19th May 1834,<sup>2</sup> it was proposed by the committee that an application should be made to the council to alter the laws so far as to render persons who had been three years in business in the city eligible for election as constables though they were not burgesses. The proposal was, however, opposed by several members, and it was ultimately agreed to postpone the matter for a time. But it was again brought forward on 27th April 1835,<sup>3</sup> when the society approved of a memorial craving the council to sanction the alteration proposed. This memorial proceeded on the statement

“that in consequence of the great number of respectable citizens who now carry on business in the New Town, and who cannot be compelled to become burgesses, added to the circumstance of the various corporations having waived their privilege in regard to the burgess qualification ; as also from the great proportion of burgesses in the old town having already served, and many of these repeatedly, the period required ; your memorialists have experienced great difficulty of late years in filling up the vacancies of the society with properly qualified persons.”<sup>4</sup>

On being presented to the council, the memorial was remitted to the Lord Provost's committee, who, on 5th May 1835, recommended

---

<sup>1</sup> Minute Book, iv. 403, 404.    <sup>2</sup> Ibid. iv. 391.    <sup>3</sup> Ibid. iv. 413.    <sup>4</sup> Ibid. iv. 416, 417.

“that the desire of the petition should be granted in so far as to dispense with the requisite of being a burgess (the qualification of being in business three years running), provided that the individual recommended should be qualified as an elector of the city;”

and their report was approved of by the council on 5th May 1835.<sup>1</sup> This modification, however, was not long continued. Two persons having, on 4th November 1838, been recommended by the society to the council for election as constables to supply vacancies in the body, it was remitted to the Lord Provost's committee, on the 20th of that month, to consider the propriety of again requiring all persons proposed as constables to be burgesses of the city;<sup>2</sup> and on the report of the committee, the gentlemen recommended were appointed, but the council, on 27th November, resolved that “in future the former practice must be followed out, of giving in lists of three persons for each vacancy, all of them being burgesses of the city.”<sup>3</sup> This resolution was received with great dissatisfaction by the office-bearers and committee, and on 3d December, the moderator applied to the council to reconsider it. The council, however, on 11th December, adhered to the resolution, by a majority of nineteen to eight.<sup>4</sup> A special meeting of the society was in consequence held on 14th December, and the resignation of the whole constables was recommended by the office-bearers and committee.<sup>5</sup> A series of resolutions was thereupon unanimously adopted, setting forth,

“(1.) That from time immemorial the members of the society of High Constables had been elected from the community at large of Edinburgh. That, in the year 1810, the Lord Provost and council resolved that thereafter the members of the society should be elected from among the burgesses of the city only. That this limitation having been found by experience to be injurious to the best interests of the society, the same was, in the year 1835, unanimously rescinded by the magistrates and council, and the ancient and liberal system of election restored.”

(2.) The recommendation and appointment of the two persons referred to, and the resolution of the council on 27th November, already quoted.

(3.) The society's remonstrance, and the adherence by the council on 18th December to their former resolution.

“(4.) That, under the liberal system of election by which the right to become a member of this body is open to all classes of the community, qualified to be electors of the city, the society has attained the highest degree of respectability and efficiency, and no complaint has been made from any quarter as to any want of zeal, discretion,

<sup>1</sup> Council Records, ccxix. 99.

<sup>3</sup> Ibid. ccxxviii. 444.

<sup>5</sup> Minute Book, iv. 483.

<sup>2</sup> Ibid. ccxxviii. 423.

<sup>4</sup> Ibid. ccxxix. 62.

or utility, and therefore it is highly inexpedient to alter, more especially by any measure of exclusion, the present constitution of the body, for which no reason has been, nor so far as the society are aware can be, assigned ;” and

“(5.) That under these circumstances the moderator be requested respectfully to intimate to the Lord Provost, magistrates, and council, that unless their resolutions be immediately rescinded, the members of the society will be under the necessity of resigning. And further, that in that event he shall intimate that they will be ready to deliver up their batons of office on the day after the next ordinary meeting of council ; and that the magistrates and council will accept of this notification of the resignation of the whole members of the society unless in the event foresaid.”<sup>1</sup>

These resolutions were immediately transmitted by the moderator to the council, to whom they were submitted on 18th December, when the resolutions complained of were adhered to by a majority of eighteen to eleven.<sup>2</sup> The constables accordingly met on the following day, when the moderator and fifty-seven members subscribed a declaration of the reasons of their resignation, and gave up their batons of office.<sup>3</sup> These resignations were accepted by the council on 21st December, and it was remitted to the treasurer’s committee to see that the batons of the constables who had resigned were duly delivered up.<sup>4</sup>

On 8th January 1839, sixty burgesses tendered to the council their services as high constables, and of these, many had previously served in that capacity for the full period of three years. The tender thus made was at once accepted,<sup>5</sup> and on 11th January, fifty-one persons were sworn into office, and authorised “to constitute themselves as the society of High Constables,” and to elect their office-bearers. The meeting of the society for this purpose took place on the same day, when Mr (now Sir William) Johnston, was elected moderator, and the office-bearers and committee were empowered to receive the insignia from the former office-bearers, and to conduct such negotiations with them as might be necessary.<sup>6</sup> Considerable correspondence thereafter ensued between the society and the former office-bearers, and ultimately a reference of all questions between them was arranged, under which a sum of £39, 18s. 11d. was found due to the latter. This sum the council agreed to pay on 23d April following,<sup>7</sup> and the whole insignia were delivered over to the society.<sup>8</sup>

<sup>1</sup> Minute Book, iv. 483-486.

<sup>2</sup> Council Records, ccxxix. 93.

<sup>5</sup> Council Records, ccxxix. 203 ; Minute Book, v. 1, 2.

<sup>7</sup> Council Records, ccxxx. 180.

<sup>3</sup> Minute Book, iv. 487, 488.

<sup>4</sup> Council Records, ccxxix. 132.

<sup>6</sup> Minute Book, v. 7.

<sup>8</sup> Minute Book, v. 11.

On 12th May 1840, the council agreed "to admit burgesses as constables, although they do not reside or carry on business within the royalty, provided they have resided for three years within the parliamentary bounds, and that the sheriff shall agree to extend their jurisdiction to these bounds."<sup>1</sup> Sixteen persons were admitted constables on 1st December 1840;<sup>2</sup> eight on 18th May 1841;<sup>3</sup> ten on 1st February,<sup>4</sup> and seventeen on 23d August, 1842;<sup>5</sup> twenty-one on 13th June 1843;<sup>6</sup> twenty-two on 23d July 1844;<sup>7</sup> six on 18th February,<sup>8</sup> and nineteen on 25th November, 1845.<sup>9</sup>

Some of the persons thus admitted appear not to have been burgesses, and on 24th December 1844, Mr James Brydone, one of the members of the society, presented a petition to the council, in which he complained that the society were not acting in conformity with their rules. This petition was ordered to lie on the table,<sup>10</sup> but on the 25th of March following, the complaint was renewed in a petition by Mr Brydone and other members. On this occasion the council resolved that, if any constables had been admitted who were not burgesses, they should either become burgesses or withdraw from the society.<sup>11</sup> This resolution having been intimated to the moderator on the following day, he called a meeting of the society to consider it, when, after a desultory conversation, an adjournment was agreed to, no written objections to the laws or management having been lodged.<sup>12</sup>

Eight constables were elected on 3d March,<sup>13</sup> and twelve on 12th May 1846;<sup>14</sup> and eighteen on 28th March 1848.<sup>15</sup>

On 25th April 1848, the council adopted the following resolution:—

"That in future it shall not be imperative, in the election of high constables, to confine the selection to burgesses; but they may be elected also from merchants and shopkeepers of not less than three years' standing in business, and qualified voters of the city of Edinburgh."<sup>16</sup>

On 24th May 1849, eleven constables were sworn into office;<sup>17</sup> but no record of their election has been discovered. Ten persons were elected

<sup>1</sup> Council Records, ccxxxiii. 12.

<sup>2</sup> Ibid. ccxxxiv. 99.

<sup>3</sup> Ibid. ccxxxv. 93.

<sup>4</sup> Ibid. ccxxxvi. 227.

<sup>13</sup> Council Records, ccxlv. 277.

<sup>14</sup> Ibid. ccxlv. 462.

<sup>15</sup> Ibid. ccxlix. 353.

<sup>6</sup> Ibid. ccxxxvii. 291.

<sup>7</sup> Ibid. ccxxxix. 249.

<sup>8</sup> Ibid. ccxlii. 199.

<sup>9</sup> Ibid. ccxliii. 227.

<sup>16</sup> Ibid. ccxlix. 471; Minute Book, v. 132.

<sup>17</sup> Minute Book, v. 146.

<sup>9</sup> Ibid. ccxlv. 74.

<sup>10</sup> Ibid. ccxliii. 87.

<sup>11</sup> Ibid. ccxliii. 320.

<sup>12</sup> Minute Book, v. 100.

on 25th February,<sup>1</sup> eighteen on 20th May,<sup>2</sup> five on 26th August,<sup>3</sup> and three on 30th December 1851.<sup>4</sup> Six were elected on 30th March,<sup>5</sup> and ten on 11th May 1852.<sup>6</sup> Thirteen were elected on 8th February,<sup>7</sup> five on 10th May,<sup>8</sup> and six on 15th November 1853.<sup>9</sup> Nine were elected on 23d May,<sup>10</sup> five on 5th December,<sup>11</sup> three on 27th March,<sup>12</sup> two on 22d May,<sup>13</sup> and five on 2d October 1855;<sup>14</sup> two on 25th March,<sup>15</sup> and seven on 6th May 1856.<sup>16</sup>

On the 23d of June 1856, "The Edinburgh Municipality Extension Act, 1856,"<sup>17</sup> was passed. By it the municipal boundaries of the city were enlarged so as to be co-extensive with its parliamentary boundaries; the magistrates and council were increased in number, and their jurisdiction was extended over the whole city as so extended; the subordinate and separate magistracies and jurisdictions of the regality of Canongate, and of the baronies of Calton and Portsburgh, were abolished; and the powers and duties of the commissioners of police were transferred to, and vested in, the magistrates and council. It also enacted that the councillors of the thirteen wards, into which it appointed the city to be divided, should be

"head constables in, and have a general superintendence of, their respective wards, for enforcing the provisions of the police acts, and the regulations made in virtue there-

<sup>1</sup> Council Records, cclv. 312.

<sup>6</sup> Ibid. cclvii. 442.

<sup>11</sup> Ibid. cclxiv. 164.

<sup>2</sup> Ibid. cclvi. 70.

<sup>7</sup> Ibid. cclix. 237.

<sup>12</sup> Ibid. cclxv. 114.

<sup>3</sup> Ibid. cclvi. 295.

<sup>8</sup> Ibid. cclx. 120.

<sup>13</sup> Ibid. cclxv. 298.

<sup>4</sup> Ibid. cclvii. 122.

<sup>9</sup> Ibid. cclxi. 244.

<sup>14</sup> Ibid. cclxvi. 214.

<sup>5</sup> Ibid. cclvii. 315.

<sup>10</sup> Ibid. cclxii. 357.

<sup>15</sup> Ibid. cclxvii. 389.

<sup>16</sup> Council Records, cclxviii. 90. In consequence of an intimation by the city clerk to the society, that the constables elected at this time were appointed "conditionally on their possessing the required qualifications," a remit was made by the committee of the society to a sub-committee, "to consult the minutes previously passed relative to the qualifications of gentlemen desiring to become high constables." The report of the sub-committee, dated 23d May 1856, expressed their opinion, that the qualifications referred to were fixed by the acts of council, 19th March 1828, 12th May 1840, and 25th April 1848, and that no persons were eligible as constables, but such as were (1.) Burgesses three years in business; (2.) Burgesses not residing or carrying on business within the royalty, but who had resided for three years within the parliamentary bounds of the city,—the jurisdiction being extended to these bounds; or (3.) Merchants and shopkeepers not burgesses, but of not less than three years' standing in business, and qualified voters of the city of Edinburgh [Minute of Committee, 23d May 1856].

<sup>17</sup> 19 and 20 Vict. c. 32.

of, and for promoting and enforcing all measures necessary for the peace, order, and security of the inhabitants therein.”<sup>1</sup>

In consequence of these and the other changes effected by this act, it became necessary to have the position of the various bodies of constables within the extended boundaries of the city considered; and after the new council had been elected under the provisions of “The Municipality Extension Act,” a remit was made to a committee to report on the subject.<sup>2</sup>

This remit, and rumours of an intention on the part of the council to re-organise the body of high constables, having reached the committee of the society, they appointed a deputation to wait on the Lord Provost (Melville) for information on the subject. His Lordship explained that the city was to be divided into thirteen wards; that each ward should have twelve constables and a captain; and that the affairs of the society should be managed by a committee, consisting of the office-bearers and captains; and he recommended the deputation to confer with the gentlemen who had been constables of Canongate, Calton, and Easter and Wester Portsburgh, with a view to their incorporation into the society as thus proposed to be re-organised. Acting on that recommendation, the deputation had several meetings with the representatives of the several bodies of constables referred to, and finding them favourable to the plan proposed, reported accordingly to the Lord Provost. The Lord Provost's committee thereupon instructed the city clerk to frame the draft of an act of council for regulating the constitution of the society, and the draft having been prepared, the Lord Provost invited a conference with a deputation from the society, to consider its details. At this conference the deputation objected specially to the proposal “to dissolve the society and re-constitute it,” and asked for a copy of the proposed act, that they might take the instructions of the society in regard to it. This, however, was declined, and the conference terminated without anything being done. Subsequently, on 17th February, the deputation had an interview with the Lord Provost, when the whole subject was fully discussed, and the draft of the proposed act was approved of, subject to the following suggestions: (1.) That arrangements should, as far as possible, be made under which the members of the society should have it in their power, if they wished, to be elected members of the re-organised body; and (2.) That after its re-organisation, the society should be empowered, according to the former practice, to

<sup>1</sup> Section 52.

<sup>2</sup> Council Records, cclxix. 321; 18th November 1856.

elect a vice-moderator, who, in the absence of the moderator, should act as chairman of the society.<sup>1</sup> The draft of the act was afterwards approved of by the Lord Provost's committee, who submitted it to the council,<sup>2</sup> along with a report of their proceedings, on 24th February, when both the report and the draft of the proposed act were approved of. At the same time, the council remitted to the Lord Provost's committee to prepare and submit a list of gentlemen to be appointed high constables.

By this act of council, which still regulates the constitution of the society, the number of the high constables was increased to one hundred and fifty-six, of whom twelve were appointed to be chosen from each of the thirteen municipal wards; and it was enacted that one-third of the constables of each ward should retire annually, but should be eligible for immediate re-election; that all elections should be made by the council; that no person should be eligible for election but such as were registered electors of the city, and were either *bona fide* householders or carried on business on their own account within the ward for which they were appointed; and that no members of the town council should be appointed, or hold office as, high constables. The act further prescribed an annual election of office-bearers, consisting of a moderator, a vice-moderator, a treasurer, a secretary, a surgeon, a custodian of batons, and also an annual election from among the constables for each ward of a captain, who should hold no other office in the society; and it appointed the office-bearers and captains to be the committee for managing the affairs of the society. It directed that the powers of the high constables should be exercised in subordination to those conferred on the councillors of the several wards by "The Municipality Extension Act;" authorised the society to make bye-laws for the regulation of their affairs; and repealed all former acts of council affecting the constitution of the society, but confirmed the "Instructions" contained in the act of council dated 19th March 1828, except in so far as these instructions referred to "the former suburban bodies of constables which have ceased to exist."<sup>3</sup>

The society had this act, along with a report from their committee, under consideration on 9th March 1857, when, after a lengthened discussion, it was resolved to apply to the Council to delay further procedure till the society

<sup>1</sup> See Minutes of Committee, 21st and 27th November; 2d, 5th, and 12th December 1856; 8th, 5th, and 28th January, and 18th February 1858. Minute Book of Society v. 289; 27th January 1857. Ibid. v. 291; 9th March 1858.

<sup>2</sup> Council Records, cclxx. 299.

<sup>3</sup> Ibid. cclxx. 295-299. See Appendix XX.

could have time to submit such facts as might induce the council to amend the second and eighth clauses of the act, "in respect it removes from the society the power of nominating their successors—and that those gentlemen now members of the society shall be held as members of the new society." In terms of that resolution, the moderator, Mr Smith,<sup>1</sup> applied to the council on the following day to alter the act, so as to allow the nomination of members to remain with the society, subject to the approval of the council, and to delete that part of the act which required the retirement of the present members. On considering this application, the council, on 10th March, adhered to their former resolution, approved thereof, and authorised the city clerk to extract the act without abiding another reading in council, and to print the same.<sup>2</sup> Afterwards the Lord Provost's committee proceeded to carry out the remit to select and recommend suitable persons to be elected constables, and with this view they constituted the councillors of each ward a sub-committee, the senior councillor being convener, to select and recommend twelve persons to be appointed constables within their respective wards. The requisite list having been prepared from the returns by the several sub-committees, was approved of by the Lord Provost's committee on 18th, and by the council on 24th, March.<sup>3</sup> At the same time the council remitted to the Lord Provost's committee a memorial for the old moderators relative to the act of 24th February. The memorial, which was dated 20th March, requested that the constitution of the society might be allowed to remain unaltered, but the committee reported that this could not be entertained, and their report was approved of by the council on 7th April.<sup>4</sup> On the same day, a letter from Mr Smith, dated 3d April, transmitting a copy of a resolution of the society dated 2d April, was read and ordered to be recorded. The resolution was in the following terms:—

"That the society cannot, consistently with their ancient constitution, enter the body of constables to be sworn into office in the police board room, on Monday the 6th curt., under the act of the Town Council dated 24th February last."

A report by the Lord Provost and magistrates as to the swearing in on the previous day of the newly appointed constables, was also submitted to the council on 7th April, and the society were requested to prepare a list of gentlemen, qualified in terms of the act, whom they recommended to be appointed

<sup>1</sup> Minute Book, v. 291–294.

<sup>2</sup> Council Records, cclxx. 365.

<sup>3</sup> Ibid. cclxx. 442–451.

<sup>4</sup> Ibid cclxxi. 36.

K k

to supply the vacancies in the several wards. The city clerks were also directed to request delivery of the insignia, &c., in the possession of the late members of the society.<sup>1</sup> An application for the insignia was accordingly addressed to Mr Smith on 9th April, and was submitted to a meeting of the former members of the society, on 13th April, when a committee was appointed to wait on the Lord Provost immediately, and on receiving his Lordship's assurance that the ancient laws of the society would not be interfered with, to express the willingness of the society to retain office and assume the gentlemen nominated by the council as colleagues. This resolution, it must be stated, was come to in consequence of information received from a former moderator that the Lord Provost was willing to have the act of council of 24th February altered, so as to reconcile the differences to which it had given rise. On waiting on his Lordship, however, the committee found that he entertained quite a different feeling, and on reporting this to an adjourned meeting of the society held the same evening, they passed the following resolution,

"That all negotiations for the purpose of obtaining a continuance of the long established privilege enjoyed by the society of nominating its members having now been brought to a termination by the magistrates declining to grant this privilege, the society resolve not to join the body of constables created by the act of council, 24th February 1857."

This resolution was immediately read to the Lord Provost, who remarked, that further argument was unnecessary. The meeting thereupon remitted to the committee to act as they might think proper.<sup>2</sup> On the 15th of April, the former secretary replied to the city clerks' demand for the insignia of the society, stating that "the matter was under consideration, and would receive the society's earliest attention." The letter having been laid before the council on 20th April, they "directed the procurator-fiscal to take the necessary legal steps to enforce delivery of the insignia of office."

At a subsequent meeting of the former members of the society, held on 22d April, they adopted the following resolutions :—

"1st, That this ancient society has from time immemorial possessed and exercised the right of presenting to the town council, from time to time, a leet of gentlemen from whom the Council might select and appoint persons to fill up vacancies, or increase, as occasion might require, the number of members.

<sup>1</sup> Council Records, cclxxi. 36-38.

<sup>2</sup> Minute Book, v. 297-300.

"2d, That the town council have lately disputed this right, and now maintain that they have the exclusive privilege of nomination and appointment of high constables, whereby not only would the rights of the society be encroached on, but all control on the part of its members, with respect to the persons to be associated in office with them, would be taken away, and the society would become the mere nominees of the town council.

"3d, That the members of the society cannot consent to continue their services on such a footing, and the meeting now resolve to dissolve the society of high constables; and they hereby declare the same to be dissolved accordingly, immediately upon the fourth and fifth resolutions being fulfilled by the moderator.

"4th, That the meeting further resolve to deliver up to the council the small silver batons of office, and the large wooden batons used in the execution of their duties as constables, and forming their insignia, and also the charter box and papers contained in it.

"5th, That the private property of the society, consisting of five large ornamental batons, silver mounted, with a small silver baton attached to one of them, the gold medal and chain, the snuff-horn, and the seal, which have been acquired through contributions of the private funds of members, and also the small ornamental baton of the moderator, the vice-moderator's small ornamental baton, and the custodier's small ornamental baton, which were recently [presented] by Mr Beattie, Mr Gill, and Mr Mossman respectively, and likewise the ancient box used for fines, and the minute books which the members have kept for their own satisfaction, be presented to the Society of Antiquaries, and that the moderator request that society to accept and preserve them as memorials of this ancient body."

These resolutions were communicated to the Lord Provost on the 25th of April, and were acknowledged on the 6th of May thereafter.<sup>1</sup> On the following day, the procurator-fiscal intimated that he was about to institute legal proceedings for recovery of the insignia, and his communication was submitted to the former constables, who, at a meeting held on 13th May, adopted a series of resolutions, in which they asserted their claim, as a society, to a separate existence, which could not be summarily dissolved by any act of council. At the same time, they declined to surrender the property of the society until the position which they had assumed was shewn to be legally untenable, and they instructed a solicitor to attend to their interests.<sup>2</sup> Legal proceedings were thereupon instituted in name of the council, and of the society of high constables as re-organised, for delivery of the property of the society; and a decree was obtained from the

<sup>1</sup> Minute Book, v. 304.

<sup>2</sup> Ibid. v. 306.

sheriff-substitute (Jameson) on 4th March 1858, affirming the views of the council. An appeal to the sheriff-depute (Gordon) was afterwards entered, and from him also a decision was obtained, on 8th November thereafter, affirming the findings of the sheriff-substitute. The interlocutors of both the sheriff-substitute and sheriff place the position of the society on a footing so clear and distinct as to obviate all further question on the subject.

The interlocutor of the sheriff-substitute, *inter alia*, found "that the society of constables derived their authority solely from the Lord Provost and magistrates of the city, and exercised their office under them, with the exception of the years 1745 and 1746, when, in the absence of the city authorities, they acted under the warrant of certain of the judges as justices of the peace;" that "the constables, whether nominated directly by the magistrates, or approved by them through a leet given in by the old constables, were admitted into their office, and received their batons from some of the magistrates or Lord Provost;" "that the society of constables, or high constables as they were allowed to be called in 1810, was not an incorporation, but was merely the aggregate body of the constables deriving their office from the magistrates of the city, but had no independent or permanent existence as a separate society;" "that for a century and a half there has been a constant succession of constables, who, acting under the civic authorities, chose annually their own office-bearers, and kept records of their principal transactions, and that latterly various insignia of office have been presented to the society, or purchased by them at different times, which records and insignia have been handed from one set of constables to another;" "that these articles being presented to, or provided by, the existing body of high constables for the time, for the purpose of being preserved and used by their successors in office, cannot be legally appropriated to another body, or retained by any office-bearers or members of the retiring society;" "and that the existing body or society of high constables are entitled to the possession of the insignia mentioned in the summons, and that the defender [the moderator of the former society] is bound to restore the same." It therefore ordained the defender to deliver to the office-bearers of the existing society the articles called for, and found the pursuers entitled to expenses. To this interlocutor an elaborate note was appended, in which, reviewing the history of the society as disclosed in its minutes, the learned sheriff-substitute held it to be evident that "it was in the power of the magistrates to limit and increase the number" of constables, to "vary the mode of their appointment, and to regulate their duties as they thought fit;" that "any changes that

were made, in the lapse of time, in regard to the mode of election, the persons eligible, or the tenure of office had either the express or tacit consent of the magistrates," and that the society "were never independent of the governing and electing body." With reference to the plea which had been maintained for the defender, that the society had "two entities or existences, one in its public or official character as constables," in which it was admittedly amenable to the authority of the council, and "the other in its private and social character, as a voluntary association or club of private individuals," in which it claimed independence of the council, the sheriff-substitute remarked, that there was no trace of such a "separation of existences" in the records of the body; that for some years the admission of constables into the society bore on the face of the minutes, to be made by one of the magistrates; and that even as regarded the social meetings, these "were a mere adjunct and not a primary or essential object of the society."<sup>1</sup>

In adhering to the interlocutor of the sheriff-substitute, which he did in a long and interesting note, evincing a careful study of the minute books of the society, the sheriff remarked that these minute books "established beyond all doubt, that during the whole known period of the existence of the society, the right at once to appoint the constituent members of the body, and to clothe the society individually and collectively with official *status* and authority, has been exclusively and invariably vested in and exercised by the Lord Provost, magistrates, and town council of Edinburgh." As for the plea that the "society had a two-fold being,—as a body of public officers, and as a club of private citizens,—and that the insignia belonged to the society truly under its second phase," the sheriff remarked,

"Now assuming this theory to be correct, it is not quite obvious, and there is nothing whatever to shew by what means, or when, or where, the defender himself comes into legitimate possession of these articles *as private property*. Since if they are indeed private property of particular citizens in any one year, the defender could have no more right to pick them up next year and call them his own than the sheriff would have to do so. The private property of gentlemen whose companionship is dissolved at the end of a year, does not, and cannot, because it shall happen to be left lying on the table of the room where they met, become, *ipso facto*, the private property of the next occupants of the room. . . . But really there is not one word in the whole annals of the society, during a hundred and fifty years, which affords the slightest indication of the idea of a double existence. Nor was such a duplicity ever inculcated on

<sup>1</sup> See Interlocutor of Sheriff-Substitute, engrossed in Council Records, cclxxvi. 321.

these pleasant occasions when their guest, with honest gratitude, could recognise in his hosts, within doors, the High Constables of the City of Edinburgh, who had, out of doors, constantly in troubled times strengthened the efforts of the Sheriff with their powerful aid. The *insignia*, in short, including even a snuff-horn as a portion of the furniture of the society, do not belong to any individual, or to any company of individuals, as *private property*, but alike upon legal principle and by uniform usage enforcing the intention either of creation or donation, appertain generally to the society as a society, and when particularly to an office in the society, then in trust to its incumbent during his official life."<sup>1</sup>

Under the new constitution created by the council's act of 24th February 1857, one hundred and fifty-six persons were elected constables on 24th March,<sup>2</sup> and the first meeting of the re-organised society took place on 6th April of that year.<sup>3</sup> On that occasion sixty-seven persons, who had been elected, were sworn into office by the Lord Provost. At a subsequent meeting on 13th April, fourteen constables were sworn into office, and the society elected office-bearers and captains of the several wards.<sup>4</sup> On 20th April, a list of seventy persons willing to act as constables was approved of, and directed to be transmitted to the council.<sup>5</sup> From these, sixty-one persons were elected on 5th May,<sup>6</sup> and on 11th May, forty-nine persons were sworn into office.<sup>7</sup> Eight constables were elected on 16th June,<sup>8</sup> and eleven on

<sup>1</sup> See copy of Sheriff's Interlocutor engrossed in Council Records, cclxxvi. 321; Minute Book, v. 332-345.

<sup>2</sup> Council Records, cclxx. 442.

<sup>3</sup> Minute Book, v. 309.

<sup>4</sup> Minute Book, v. 312-314. The first moderator of the re-organised society was Mr Frederick Hayne Carter, C.A. He was re-elected on 5th April 1858 [Ibid. v. 328]. On his retirement from that office, he was presented by the society with a handsome silver tea service, bearing an inscription acknowledging "the able manner in which he had discharged the duties of moderator." The presentation was made at the dinner of the society on 13th May 1859 [Ibid. v. 354, 355; see also Minutes of Committee, 19th April and 9th June 1859]. He was elected captain of the third ward on 7th April 1862 [Ibid. v. 407], and retired from the society on 19th March 1863.

<sup>5</sup> Minute Book, v. 314.

<sup>6</sup> Council Records, cclxxi. 168.

<sup>7</sup> Minute Book, v. 317-319.

<sup>8</sup> Council Records, cclxxi. 314. At this time Mr Charles Lawson Jun. (the present ex-moderator) was elected a constable [see also Minute of Committee, 14th September 1857]. On 7th October 1859, the committee accepted his resignation. He was re-elected a constable on 18th [Council Records, cclxxiv. 49; see Minute of Committee, 27th February 1862], and sworn into office on 19th, March 1862 [Minute

20th October, 1857.<sup>1</sup> Seven constables were elected on 9th February,<sup>2</sup> four on 23d March,<sup>3</sup> and eight on 28th June 1858;<sup>4</sup> twenty-five on 22d February,<sup>5</sup> fifty-five on 22d March,<sup>6</sup> and seventeen on 13th September 1859;<sup>7</sup> twenty-one on 10th January,<sup>8</sup> forty-nine on 20th March,<sup>9</sup> and thirteen on 9th July, 1860;<sup>10</sup> seventy-four on 19th March,<sup>11</sup> and ten on 11th June 1861;<sup>12</sup> fifty-seven on 18th March,<sup>13</sup> and eleven on 3d June 1862;<sup>14</sup> thirteen on 27th January,<sup>15</sup> forty-nine on 24th March,<sup>16</sup> fifteen on 19th May,<sup>17</sup> and six on 15th December 1863;<sup>18</sup> fifty-two on 22d March,<sup>19</sup> and nine on 20th December 1864;<sup>20</sup> and fifty-two on 28th March 1865.<sup>21</sup>

On 27th March 1865, the society resolved to memorialise the council to "create" the ex-moderator "an office-bearer," and this was done by a letter from the society to the city clerk on the following day. In that letter it was stated, that it was not proposed that the office should have any particular duties assigned to it, but that on all public occasions it should rank next in place of honour to the moderator. "The office," it was added, "will thus be very much of an honorary nature, but this will be sufficient to give the ex-moderator such a status in the society, as to induce a prolonged connection with it." This application was remitted by the council to the Lord Provost's com-

Book, v. 402]; was elected vice-moderator on 7th April [Ibid. v. 407], and moderator, *vice* Mr William Skinner elected councillor, on 13th November 1862 [Ibid. v. 431]; was re-elected moderator on 5th April 1863 [Ibid. v. 459], and again on 4th April 1864 [Ibid. v.]. He became "ex-moderator" under the council's act of 10th April 1865 constituting that office.

His marriage having taken place on 9th June 1864, the committee met in the Café Royal on the evening of that day to celebrate the event [see Memorandum of that date in Committee Minute Book]; and on 16th September, the society presented him with an address of congratulation, and Mrs Lawson with a casket [see Minutes of Committee, 23d and 26th May, 9th June, and 16th September 1864].

<sup>1</sup> Council Records, cclxxii. 349.

<sup>2</sup> Ibid. cclxxiii. 405.

<sup>3</sup> Ibid. cclxxiv. 163.

<sup>4</sup> Ibid. cclxxv. 66.

<sup>5</sup> Ibid. cclxxvii. 164.

<sup>6</sup> Ibid. cclxxvii. 325, 326.

<sup>7</sup> Ibid. cclxxviii. 455.

<sup>8</sup> Ibid. cclxxix. 298.

<sup>9</sup> Ibid. cclxxx. 25.

<sup>10</sup> Ibid. cclxxx. 299.

<sup>11</sup> Ibid. cclxxxii. 72.

<sup>12</sup> Ibid. cclxxxii. 260.

<sup>13</sup> Ibid. cclxxxiv. 49.

<sup>14</sup> Ibid. cclxxxiv. 248.

<sup>15</sup> Ibid. cclxxxv. 404.

<sup>16</sup> Ibid. cclxxxvi. 134.

<sup>17</sup> Ibid. cclxxxvi. 248.

<sup>18</sup> Ibid. cclxxxvii. 360.

<sup>19</sup> Ibid. cclxxxviii. 123.

<sup>20</sup> Ibid. cclxxxix. 306.

<sup>21</sup> Ibid. ccxc. 94.

mittee for consideration on 28th March,<sup>1</sup> and on their report, the council, on 10th April, ordered that "the ex-moderator shall be an office-bearer of the society of high constables as craved."<sup>2</sup> Mr John Greig Jun. having been elected moderator on 3d April, Mr Charles Lawson Jun., the moderator for the two former years, became the first ex-moderator.<sup>3</sup>

The rules printed by the society under their order of 14th May 1830,<sup>4</sup> were engrossed in the minute book for the regulation of the body in 1832, but alterations on, and additions thereto,<sup>5</sup> were made on 22d September 1832,<sup>6</sup> 7th April 1834,<sup>7</sup> and 6th November 1835.<sup>8</sup> At this time it appears to have been the practice to print the rules, with lists of the office-bearers and members, annually.<sup>9</sup> Such a print was specially ordered on 24th September 1833.<sup>10</sup> Subsequently, in 1835, the rules were revised and printed, and there were appended to that print "regulations issued by the moderator for the guidance of the society at fires and riots."<sup>11</sup> How far these regulations were similar to those approved of by the society on 12th August 1825,<sup>12</sup> does not appear. Probably the experiences of 1832 were made available in the revisal of the former. At all events, the articles prescribing the "signals," and the "duty of the surgeon," cannot have been framed previous to 1831, when the "silver calls" referred to were got, and the office of surgeon was revived, after being in abeyance for upwards of thirty years. After the reconstitution of the society in 1839, the laws were again revised, and were ordered to be printed on 1st April 1839.<sup>13</sup> They were reprinted apparently without alteration in 1841 and 1842.<sup>14</sup> The propriety of revising the laws was under the consideration of the society in April 1848,<sup>15</sup> and a print appears to have been ordered at that time ; but no change of importance was made. Additions to the laws were made on 24th May 1849,<sup>16</sup> and minutes of the society, dated 1st April 1850,<sup>17</sup> and 19th March 1855,<sup>18</sup> *inter alia*, created the new offices of "custodier of batons," and "vice-moderator."<sup>19</sup> On the re-organisation of the

<sup>1</sup> Council Records, ccxc. 99.

<sup>2</sup> *Ibid.* ccxc. 139.

<sup>3</sup> Minute Book, v.

<sup>4</sup> *Antea*, p. 231.

<sup>5</sup> See Appendix, No. XVII.

<sup>6</sup> Minute Book, iv. 288.

<sup>7</sup> *Ibid.* iv. 389, 390.

<sup>8</sup> *Ibid.* iv. 424, 426.

<sup>9</sup> *Ibid.* iv. 379.

<sup>10</sup> *Ibid.*

<sup>11</sup> See Appendix XVIII.

<sup>12</sup> *Antea*, p. 230.

<sup>13</sup> Minute Book, v. 10.

<sup>14</sup> See Appendix XIX.

<sup>15</sup> Minute Book, v. 130, 131.

<sup>16</sup> *Ibid.* v. 145.

<sup>17</sup> *Ibid.* v. 166, 168.

<sup>18</sup> *Ibid.* v. 251.

<sup>19</sup> See Appendix XIX.

society in 1857, by the act of council dated 24th February 1857,<sup>1</sup> the society, on 20th April 1857, remitted to the committee to prepare "bye-laws,"<sup>2</sup> which, on their report, were approved of by the society on 11th May 1857, and ordered to be printed and circulated.<sup>3</sup> Several additions to, and alterations on, these bye-laws were made by the society on 13th October 1858,<sup>4</sup> 5th January 1860,<sup>5</sup> 8th February 1861,<sup>6</sup> 2d July 1861.<sup>7</sup> As so amended, these bye-laws,<sup>8</sup> with the "instructions" by the magistrates and council, of date 19th March 1828, and the council's act of 24th February 1857, at present regulate the constitution and management of the society.

In October 1838, the committee of the society had under consideration the propriety of forming a corps of honorary members, and their minute on the subject, dated the 19th, was submitted to the society at a meeting on the 24th of that month.<sup>9</sup> On 7th November following, the society resumed consideration of various resolutions submitted by the committee, when it was agreed to elect honorary members, "only old constables who had served the society with distinction" being eligible. At the same meeting, Sir James Spittal, Messrs William Henderson, Alexander Clapperton, Thomas Sawers, Peter Forbes, and Eagle Henderson, were, on the recommendation of the committee, unanimously elected honorary members.<sup>10</sup> After the rupture between the society and the council, in December 1838, and the reconstitution of the former in January 1839,<sup>11</sup> the subject seems to have been lost sight of, and no further reference is made to it in the minutes.

The allowance by the town council to the society continued at the rate of £50 from 1823<sup>12</sup> till 4th December 1833, when, on the report of the Lord Provost's committee, the council resolved that intimation should be given to the society,

"that in the circumstances in which the revenues of the town now stand, they will not have it in their power to continue the annual pecuniary allowance heretofore in use to be made to the society."<sup>13</sup>

<sup>1</sup> Appendix XX.

<sup>5</sup> *Ibid.* v. 363.

<sup>9</sup> Minute Book, iv. 479.

<sup>2</sup> Minute Book, v. 314.

<sup>6</sup> *Ibid.* v. 376.

<sup>10</sup> *Ibid.* iv. 481.

<sup>3</sup> *Ibid.* v. 319.

<sup>7</sup> *Ibid.* v. 387.

<sup>11</sup> *Antea*, p. 260.

<sup>4</sup> *Ibid.* v. 331.

<sup>8</sup> See Appendix XXI.

<sup>12</sup> *Antea*, p. 234.

<sup>13</sup> Council Records, ccxiv. 445. On 18th March 1834, however, the council, by a majority of fourteen to seven, authorised £5 to be paid to the society, on account of their expenses for refreshments on the night of 31st December 1833 [*Ibid.* ccxv. 314].

This intimation having been made, a representation was addressed to the council by the society, setting forth that their expenses for printing, officer's salary, &c., amounted on an average of five years to about £37, and craving that these expenses at least should be borne by the town. This representation was remitted to the treasurer's committee, on whose report the council, on 25th November 1834, resolved that no specific allowance should be made to the society, but that their necessary expenses for officer, stationery, &c., should be paid on their presenting an account thereof, such payment not to exceed £20 per annum.<sup>1</sup> £20 were accordingly paid to the society for 1833-34.<sup>2</sup> The election of constables on 26th May 1835, was made, however, on the express declaration that the allowance could not be paid unless approved of by the Court of Session.<sup>3</sup> This intimation caused great dissatisfaction,<sup>4</sup> and on 27th August, the moderator wrote the Lord Provost remonstrating against the withdrawal of any portion of the allowance, as indicative that the services of the society were not duly appreciated, and requesting his Lordship to bring the matter "before the council as early as possible, as the result may materially affect the constitution of the society."<sup>5</sup> On receipt of this communication, the council, on 1st September, directed application to be made to the trustees for the city, to sanction the annual allowance of £20,<sup>6</sup> which they immediately did, "considering the services of the society essential to the preservation of the peace of the city."<sup>7</sup> In the following year, the moderator applied to the council for payment of the allowance in advance, but the request was declined on 3d May 1836.<sup>8</sup> On 21st April 1840, the society applied to the council to pay certain tavern bills incurred by them while on extra duty, and amounting to £16, 2s. The council, however, declined to pay more than the annual allowance of £20.<sup>9</sup> At the following meeting of council on 28th April, it was remitted to the treasurer's committee, on the motion of the Lord Provost, to report whether the annual allowance should not be increased to £40;<sup>10</sup> but the committee, on 21st July 1840, recommended that the existing arrangement regarding the allowance should not be disturbed, and the council approved of the recommendation.<sup>11</sup>

<sup>1</sup> Council Records, ccxvii. 428.

<sup>2</sup> Minute Book, iv. 411.

<sup>3</sup> Council Records, ccxix. 193.

<sup>4</sup> Minute Book, iv. 419.

<sup>5</sup> Ibid. iv. 421, 423.

<sup>6</sup> Council Records, ccxix. 419.

<sup>7</sup> Ibid. ccxix. 426.

<sup>8</sup> Ibid. ccxxi. 212.

<sup>9</sup> Ibid. ccxxii. 394.

<sup>10</sup> Ibid. ccxxii. 401.

<sup>11</sup> Ibid. ccxxiii. 181.

On 4th January 1845, however, they authorised payment of an account for refreshments to the constables on the occasion of a fire;<sup>1</sup> and on 14th February 1854, it was unanimously agreed, on the motion of the Lord Provost, that the allowance should be increased from £20 to £30 per annum.<sup>2</sup> After the society had been reorganised and increased to its present number in March 1857,<sup>3</sup> the treasurer applied for payment of the usual allowance, "under reservation of a claim for such additional sum as may be necessary to defray the expenditure of organising the new body, or from their increased numbers, or otherwise." And on 16th June thereafter, the council authorised the usual allowance of £30 to be paid.<sup>4</sup> Afterwards, on 10th March 1858, the society applied for an increase, and on the report of the treasurer's committee to whom the application was referred, the council, on 23d March, increased the allowance from £30 to its present amount of £50, commencing with the payment after the next annual election.<sup>5</sup> For this increase, the society, on 25th March, returned their thanks, in a letter submitted to the council on 6th April.<sup>6</sup>

Reference has been made<sup>7</sup> to the intense interest with which the progress of the Reform Bill through parliament was regarded in Edinburgh, and here, as elsewhere throughout the kingdom, popular excitement sometimes found vent in rioting and breaches of the peace. The bill was read a first time in the House of Commons on the 14th, and passed the second reading by a majority of one, on the 22d of March 1831. In honour of the event, an illumination took place in Edinburgh on the 28th, when several riots happened, and damage was done to property to the extent of £2,000. The society were actively engaged in suppressing these riots, and some of the high constables were injured. For their services on this occasion, the society received the thanks of the magistrates and sheriff.<sup>8</sup> On the 22d of April, the society were again called out to assist in preventing apprehended disturbances consequent on a meeting of the working classes, and the partial defeat of the Bill in Committee. The high constables patrolled the streets till half-past eleven o'clock, when, after partaking of refreshments, they were permitted to retire.<sup>9</sup> They were again on duty on the evenings of the 23d and 25th of April, but

<sup>1</sup> Council Records, ccxlix. 92.

<sup>2</sup> Ibid. cclxii. 26; Minute Book, v. 235.

<sup>3</sup> *Antea*, p. 270.

<sup>4</sup> Ibid. cclxxi. 313.

<sup>5</sup> Ibid. cclxxiv. 137.

<sup>6</sup> Ibid. cclxxiv. 163.

<sup>7</sup> *Antea*, p. 253, 254.

<sup>8</sup> Ibid. iv. 227-229.

<sup>9</sup> Ibid. iv. 236.

happily their active services were not required.<sup>1</sup> Foreseeing that it would be impossible to carry their measure through the House of Commons as then constituted, the government resolved to appeal to the country. Parliament was accordingly dissolved on the 22d of April, and a new election was ordered. In Edinburgh, Lord Advocate Jeffrey was brought forward to oppose Mr Robert Adam Dundas, and the election was fixed for the 3d of May, on which day a petition in favour of the Lord Advocate, signed by 17,000 inhabitants, was laid on the table of the council. So strong, indeed, was public feeling in favour of his Lordship, that on the 2d of May, the society addressed a memorial to the council, in which they represented that they must experience difficulty "in preserving the public peace and property should the council determine on returning Mr R. A. Dundas to parliament."<sup>2</sup> This memorial was courteously received by the Lord Provost, but Mr Dundas was elected, by a majority of seventeen to fourteen,—two members having voted for the Lord Provost, who had previously declined to come forward. The announcement of the result of the election exasperated public feeling to such an extent, that on his way home, the mob attacked the Lord Provost [Allan], who, it is said, narrowly escaped being thrown over the North Bridge, and was pursued into a shop in Leith Street. While there, intimation of the fact was conveyed to the moderator, who stated "that under the present circumstances, considering the unprecedented numbers and fury of the mob it would be a useless waste of life to attempt to do anything;" but a large party of special constables having expressed their readiness to co-operate with the society, the whole body marched from the Council Chambers (where the society had been on duty during the day) to the Register House, and succeeded in dispersing the mob. The Lord Provost was shortly afterwards escorted home by a troop of dragoons. During the remainder of the day, and especially after eight o'clock, the society were actively engaged with the mob, "the great numbers and extreme turbulence" of which made the restoration of order extremely difficult. In this service many of the high constables were severely injured.<sup>3</sup> On the following morning, nine members of the society who had refused to act on the previous day, were ordered to send in their batons. The society were in attendance in the Council Chambers on the evenings of the 4th and 10th of May, but were not required to act.<sup>4</sup>

<sup>1</sup> Council Records, iv. 236, 237. <sup>2</sup> Ibid. iv. 239, 240. <sup>3</sup> Minute Book, iv. 241, 242.

<sup>4</sup> On 8th June 1831, the council authorised £13, 15s. to be paid for jappanning and gilding fifty constables' batons, and empowered the magistrates to settle the bills in

On the latter occasion the office of surgeon was revived, to provide against the inconvenience of not having a properly qualified medical attendant, when, as had several times happened during these commotions, high constables met with severe wounds and bruises in the execution of their duty. An assistant surgeon was at the same time appointed, to act with or for the surgeon in cases of emergency ;<sup>1</sup> and the moderator, treasurer, and secretary, were provided with silver calls, in the form of a boatswain's whistle, by means of which they were enabled to convey preconcerted signals to the body, when acting together or in divisions. On 11th May 1831, the council passed a vote of thanks to the high and special constables, as well as to the different military bodies who had been called out on the 3d of May, for their services on that occasion, and at the same time, as has already been noticed, they approved of a resolution of the magistrates to increase the number of the high constables to one hundred as formerly.<sup>2</sup>

At this time it was also considered expedient to have the high and special constables drilled, and their first exercises were commenced on the king's birthday, 28th May 1831.<sup>3</sup> Subsequently the society met for this purpose twice a week, for a few weeks, members late or absent on such occasions being fined one shilling.<sup>4</sup>

On 22d September, the Reform Bill passed the House of Commons by a majority of one hundred and nine, and was sent to the House of Lords, where on 7th October it was rejected on the second reading by a majority of forty-one. On 11th October, the House of Commons resolved by a majority of one hundred and thirty-one, in a house of five hundred and twenty-seven, to adhere to the leading features of the bill, and the two branches of the legislature were brought into direct collision. Parliament was thereupon prorogued till

---

curred for refreshments to the society during these riots [Council Records, ccix. 400, 401]. In December 1831, a claim of £13, 7s. 6d. was made for surgical assistance, rendered to certain members who had been injured in these riots, and as the value of hats and other articles of dress destroyed at that time. These claims were remitted to the magistrates, who, on 10th December, reported against payment, but on 20th December a committee to whom the subject was remitted, recommended payment to be made, under the express declaration that their doing so should not be drawn into a precedent, and this recommendation was approved of by the council, on 21st December [Ibid. ccxi. 75].

<sup>1</sup> Minute Book, iv. 246.

<sup>2</sup> Council Records, ccix. 335.

<sup>3</sup> Council Records, iv. 248.

<sup>4</sup> Minute Book, iv. 255-258.

the 20th of October. Meanwhile the country was in a highly excited state, and rioting took place in various districts. In Edinburgh, as elsewhere, large meetings were held, and the society were called out on several occasions to prevent apprehended breaches of the peace. For this purpose, they were in attendance on 11th October, but were not required to act.<sup>1</sup> Parliament re-assembled on 6th December, when Lord John Russell re-introduced the Reform Bill, which passed the third reading by a majority of one hundred and sixteen on 22d March 1832. In the House of Peers, the bill passed the second reading by a majority of nine on 13th April. So eagerly was the news of this decision awaited in Edinburgh, that it is said about 10,000 people were congregated on the arrival of the mail to learn the result. On 24th April, a great public meeting of the inhabitants was held in the Queen's Park, to adopt a petition to the House of Lords, expressive of the popular satisfaction at the second reading of the bill, and to pray their lordships to pass the measure. About 40,000 people were present. On this occasion, the society were in attendance in the Council Chambers in case of commotion, but the meeting was conducted in the most orderly manner, and no disturbance took place.<sup>2</sup> Popular expectation was, however, doomed to further disappointment. In discussing the bill in committee, on the 7th of May, the ministry found themselves in a minority of thirty-five, and on the following day recommended the King to create such a number of peers as would ensure the passing of the bill. This, however, His Majesty refused to do, and the ministry resigned on the 9th of that month. The Duke of Wellington was thereupon summoned to form an administration, but failed in the attempt, and on the 18th of May Earl Grey resumed office, receiving the assurance that every power would be placed in the hands of the government to secure the passing of the bill unutilated. The bill was read a third time, and passed the House of Lords on the 4th of June by a majority of eighty-four, and on 7th June it received the royal assent. The Reform Bill for Scotland was passed into law on 17th June, and that for Ireland in the following month, and thus the questions which had so long agitated the nation were happily settled.

It has been seen that, during the Reform Bill discussions, the society did not shrink from expressing their political opinions, nor from representing these opinions to the Crown and to the Legislature.<sup>3</sup> Neither did they hesitate as a society to make known to the council the state of popular feeling relative

<sup>1</sup> Minute Book, iv. 259.

<sup>2</sup> Ibid. iv. 281.

<sup>3</sup> *Antea*, p. 254.

to Mr Dundas and the Lord Advocate Jeffrey, as candidates for the representation of the city in parliament.<sup>1</sup> On the latter occasion, no doubt, they were entitled to justify their representation by the plea that it seriously concerned the peace of the city. But that plea could scarcely be maintained as a ground for their memorialising the council relative to the exercise of the patronage of the University. On the death of Sir John Leslie, in November 1832, the chair of Natural Philosophy was offered to Sir John Herschel, who declined it. Public opinion then seems to have pointed to Sir David Brewster as the person to whom it should be offered; and, with a view it is believed to that, the society, on 23d January 1833, resolved by a majority of twenty-five to twenty-three, to memorialise the council, as patrons of the University, to delay the election. Against this resolution, a protest was taken by thirteen of the members, on the ground that it was incompetent for the society, "elected by, and acting under the Lord Provost and magistrates, for the preservation of the peace and protection of the inhabitants," to interfere in that, "or any other public or political matter emanating from them or their superiors."<sup>2</sup> On 30th January, the council elected Mr James D. Forbes to the chair.<sup>3</sup>

In the discharge of their duties as conservators of the public peace, the society were in attendance on 8th September 1831, the day of the coronation of King William IV. and his queen, Adelaide, to prevent any rioting consequent on the illuminations in honour of that event, but their services were not required.<sup>4</sup> On 17th December 1832, again, the society, by desire of the magistrates, were in attendance in the Royal Exchange coffee-house during the nomination of the two representatives which the Reform Bill assigned to Edinburgh, but no disturbance took place.<sup>5</sup> On 28th May 1835, the anniversary of the king's birthday, the society were called out to suppress rioting in the High Street, and while thus engaged several members were severely injured. They succeeded, however, in suppressing the disturbance.<sup>6</sup> On 17th September in the same year, they were in attendance to check any disorder consequent on the dinner to O'Connell in the hall at Tanfield.<sup>7</sup> On 11th January 1838, the society were called out to assist the magistrates in the preservation of the peace, which it was feared

<sup>1</sup> *Antea*, p. 276.

<sup>2</sup> Minute Book, iv. 291-294.

<sup>3</sup> *Ibid.* ccxiv. 56; Council Records, ccxiii. 131.

<sup>7</sup> *Ibid.* iv. 421; Anderson's History of Edinburgh, p. 447.

<sup>4</sup> Minute Book, iv. 253.

<sup>5</sup> *Ibid.* iv. 290.

<sup>6</sup> *Ibid.* iv. 419.

might be disturbed by the crowds of operatives who were assembled in the Parliament Square, waiting the result of the trial of the Glasgow cotton-spinners. So soon as the verdict of the jury was announced, however, the crowd dispersed without causing any trouble.<sup>1</sup> On the evening of the following day the attendance of the high constables was required in consequence of the "turbulent conduct" of the students in the somewhat celebrated "snowball riot." The riot had been previously suppressed with the assistance of the military, but there still seemed to be a disposition to renew it. After remaining on duty till a late period, the constables were dismissed, but were required to attend next day, to prevent apprehended disturbances. This they did in the morning, and afterwards in the afternoon, and again at night, but their active services were not required.<sup>2</sup> On the evening of the coronation of her present Majesty, on 28th June 1838, the society were in attendance in "Sorlie's Hotel," Prince's Street, to be ready in case of any disorder on the part of the crowds who were in the streets to witness the illuminations, but the evening passed off quietly.<sup>3</sup> On 19th June 1839, the society were in attendance in the Waterloo Hotel, by order of the magistrates, to check any disturbance that might be attempted by the Chartists assembled on the Calton Hill, but they dispersed without trouble.<sup>4</sup> On the evening of 9th June 1846, the Queen's birthday, a riot took place, in which several of the police were injured. The society being in attendance at the Council Chambers, were called out, and patrolled the streets in two divisions till order was restored.<sup>5</sup> On 31st December 1847, they were on duty assisting in extinguishing a fire.<sup>6</sup> On 11th February 1848, they were called out, by order of the magistrates, to repress rioting on the part of the students, but beyond patrolling the streets their services were not required.<sup>7</sup> On the 15th of the same month they were again called out for a similar purpose, but no breach of the peace took place.<sup>8</sup> On the evening of the 7th of the following month their services were required by the magistrates to assist in the suppression of a Chartist riot, which assumed so threatening an aspect that the pensioners, and the cavalry at Piershill, were also called out. With these bodies the constables acted, clearing the streets by successive charges, and

<sup>1</sup> Minute Book, iv. 462, 463.

<sup>2</sup> Ibid. iv. 464, 465.

<sup>3</sup> Ibid. iv. 477, 478

<sup>4</sup> Ibid. v. 15.

<sup>5</sup> Ibid. v. 107.

<sup>6</sup> Council Records, ccxlix. 92.

<sup>7</sup> Minute Book, v. 116.

<sup>8</sup> Ibid. v. 117.

assisting in the capture of several prisoners.<sup>1</sup> On the following afternoon, and again in the evening, they were in attendance, and patrolled the streets, but no outbreak took place. In this emergency the authorities enrolled a strong body of special constables, who were also in attendance at various parts in the city. On the 9th, 11th, and 15th of March, the society were on duty, but happily no outbreak took place.<sup>2</sup> At this time the society again resolved to meet for drill, and spent several evenings in receiving drill instructions. On the 6th, 7th, 8th, 10th, 11th, 17th, and 19th of April, they were called out in apprehension of an outbreak on the part of the unemployed operatives, which, however, did not take place.<sup>3</sup> On the 12th of June, the society met by order of the magistrates, and were directed to disperse a Chartist procession which was reported to be moving up Leith Walk ; but, on arriving at the head of the Walk, they learned that the procession had been dispersed near Pilrig Street. They accordingly returned to the Council Chambers, and, after sending out patrols to inspect the state of the town, were dismissed by the Lord Provost.<sup>4</sup> Meetings for drill were resumed in August 1850, and ten meetings for that purpose took place.<sup>5</sup> Drill meetings were again held on 26th and 27th August 1851.<sup>6</sup> On 5th August 1857, a body of high constables was on duty, and rendered important services at the fire in James's Court, which destroyed the large pile of buildings immediately to the east of the Free Church College.<sup>7</sup> On 11th January 1865, the society were on duty at a fire in Beaumont Place,<sup>8</sup> and on the 13th of the same month they were called out to assist in the preservation of order at the great fire which destroyed the Theatre Royal, Broughton Street. On this occasion, Dean of Guild Lorimer, a former high constable, was killed by the fall of a wall while he was gallantly engaged in the attempt to rescue human life. Five other persons were buried with him under the same wall, and perished. On the 18th of the same month the society formed part of the great public procession at the Dean of Guild's funeral in the West Kirk burying-ground.<sup>9</sup> On 25th March following, the office-bearers of the society were in attendance on the magistrates and council at the ceremony of inaugurating the statues of Professor Wilson and Allan Ramsay,<sup>10</sup>—the latter an old constable of the city.

<sup>1</sup> Minute Book, v. 118.

<sup>2</sup> Ibid. v. 121-123.

<sup>3</sup> Ibid. v. 127.

<sup>4</sup> Ibid. v. 135.

<sup>5</sup> Ibid. v. 174, 176, 179, 180.

<sup>6</sup> Ibid. v. 196, 197.

<sup>7</sup> Ibid. v. 321.

<sup>8</sup> Ibid. v.

<sup>9</sup> Ibid. v.

<sup>10</sup> Minute of Committee, 21st March 1865.  
M m

In accordance with the society's long continued practice of accompanying the magistrates on public ceremonials, the high constables, on 23d June 1829, formed part of the procession at the opening of the new High School on the Calton Hill, and were suitably accommodated in the hall.<sup>1</sup> On 29th September 1829, they attended the magistrates in the procession at the laying of the foundation stone of "The John Knox Church."<sup>2</sup> King George IV. having died on 26th June, and the 30th of June 1830 having been fixed for proclaiming the accession of King William IV., the society accompanied the Lord Provost and magistrates in the procession to the Royal Exchange, the Castle Gate, and Holyrood Palace, at each of which places the proclamation was made;<sup>3</sup> and on the 12th of July, the society took the oath of allegiance to his majesty.<sup>4</sup> On 15th September 1834, the society took part in the procession which accompanied Earl Grey into the city, on his arrival to accept the public dinner to which he had been invited by the citizens. The society afterwards attended the magistrates to the Waterloo Rooms, where the corporation presented his Lordship with an address, and the freedom of the city in a gold box. In the evening, the great "Grey festival" took place, in the pavilion erected for the purpose in the vicinity of the High School.<sup>5</sup> On 20th June 1837, King William died, and on 24th June her present Majesty was proclaimed Queen at the Royal Exchange, the Castle, and at Holyrood Palace. A public procession took place on this occasion, in which the society occupied a prominent position.<sup>6</sup>

About the middle of August 1842, the citizens of Edinburgh were informed that Her Majesty contemplated a visit to her Scottish metropolis, and the society seem to have participated largely in the excitement which that announcement occasioned. A meeting was called on 22d August to make the requisite arrangements, the dress to be worn on the occasion was resolved on, and an application was ordered to be made to the council to have the large batons reduced to a uniform size and repainted.<sup>7</sup> On the 30th of August the society were again convened to receive their orders for the following day, when the Queen was expected to land,<sup>8</sup> and it was arranged that they should escort the magistrates to the barrier gate at Brandon Street, where the Lord

<sup>1</sup> Minute Book, iv. 156-159; Anderson's History of Edinburgh, p. 399.

<sup>2</sup> Minute Book, iv. 169. This church was proposed to be erected where the Victoria Hall now stands, but was never built.

<sup>3</sup> Minute Book, iv. 195-199.

<sup>5</sup> Ibid. iv. 396.

<sup>7</sup> Ibid. v. 71, 72.

<sup>4</sup> Ibid. iv. 202, 204, 205.

<sup>6</sup> Ibid. iv. 445-458

<sup>8</sup> Ibid. v. 73.

Provost was to present the keys of the city to Her Majesty. By some mal-arrangement, however, Her Majesty landed at an earlier hour than was expected, and when the magistrates were leaving the Council Chamber to take up their position at the barrier, it was announced that the royal party were passing through the city on their way to Dalkeith Palace. The whole arrangements for the royal reception were thus overturned, and it was only by a hurried rush down the Canongate, and through the Watergate to the road at the east end of the Calton Hill, that the council and the society obtained a hurried glimpse of the royal *cortege* as it swept on to Dalkeith. The universal disappointment and dissatisfaction occasioned by this *contre-temps* was, however, somewhat allayed when the magistrates—who had proceeded to Dalkeith to request an interview with Sir Robert Peel, and to obtain an explanation—returned, and announced that Her Majesty would graciously make a royal progress through the city on the following Saturday.<sup>1</sup> On the 2d of September the constables were on duty during the illuminations in honour of the Queen's visit.<sup>2</sup> On the following day the society took up their position on the right and left of the barrier gate at the Royal Exchange, when the magistrates presented the keys of the city to Her Majesty. This ceremony concluded, the Queen proceeded to the Castle, attended by the magistrates, who were escorted by the high constables. After inspecting the Castle, Her Majesty proceeded by the Mound and along Prince's Street and Dean Bridge to Dalmeny Park.<sup>3</sup> For their services on the occasion of the royal visit, the society received the thanks of the council on 20th September 1842.<sup>4</sup>

Since that time the Society have had frequent opportunities of shewing their loyalty to Her Majesty. Her marked predilection for Scotland, evinced by her purchasing the estate of Balmoral in Aberdeenshire, and erecting upon it a castle to which she and her family have repaired with unvarying regularity for a series of years, has given to the citizens of Edinburgh frequent opportunities of seeing them in Edinburgh. On the occasions of their reception, the society have always been in attendance on the magistrates and council, and have occupied a conspicuous and honourable position. On 27th September 1849, the society were in attendance on the magistrates and council when they received Her Majesty and the Royal Family, on

<sup>1</sup> Minute Book, v. 74, 77.

<sup>2</sup> Ibid. v. 77-79.

<sup>3</sup> Ibid. v. 80, 81.

<sup>4</sup> Council Records, ccxxxvii. 345.

their arrival in Edinburgh *en route* for Balmoral.<sup>1</sup> On the arrival of Her Majesty at Holyrood on 29th August 1850, the society were on duty at Holyrood, and were assigned a prominent place to the right of the main entrance.<sup>2</sup> On 28th August 1851, the society escorted Her Majesty and the Royal Family from St Margaret's Station to Holyrood Palace.<sup>3</sup> On the arrival of Her Majesty at Holyrood Palace on 28th August 1857, and again on her departure for Balmoral the following morning, the high constables were on duty at the Palace by order of the magistrates. On these occasions the society were drawn up in two divisions, right and left of the grand entrance. A similar arrangement was followed on Her Majesty's return on the 15th of October, and on her departure for the south next morning.<sup>4</sup> The constables were again in attendance at Holyrood Palace on the arrival of Her Majesty on 30th August 1859; on her departure for Balmoral next morning;<sup>5</sup> on her arrival from Balmoral on 22d,<sup>6</sup> and on her departure for the south on the evening of the 23d of October 1861.<sup>7</sup>

In the farther discharge of their duty of attending upon the magistrates and council, while taking a part in public ceremonials, the society, on 29th July 1844, were present at the ceremony of laying the foundation-stone of the Edinburgh Public Baths.<sup>8</sup> On 15th August 1846, they formed part of the procession at laying the foundation-stone of the Scott monument, with masonic honours.<sup>9</sup> On the 30th of August 1850, they were on duty at the laying of the foundation-stone of the National Gallery by Prince Albert.<sup>10</sup> On 31st March 1851, the society took part in the procession on the occasion of laying the foundation-stone of the new slaughter-houses at Lochrin.<sup>11</sup> On 18th June 1853, the society took part in the ceremonial of

<sup>1</sup> Minute Book, v. 151.

<sup>2</sup> Ibid. v. 181.

<sup>3</sup> Ibid. v. 198, 199.

<sup>4</sup> Ibid. v. 323. On these occasions, the constables of Holyrood seem to have claimed precedence of the high constables within the precincts of the palace, and a committee was appointed on 12th November 1857 to investigate their claim [Ibid. v. 324]. This committee reported on 6th January 1858 that the constables of Holyrood had the right which they claimed, and that it would be for the society to consider whether they would attend at the Palace in future [Ibid. v. 324].

<sup>5</sup> Minute Book, v. 357, 359.

<sup>7</sup> Ibid. v. 392, 398.

<sup>9</sup> Ibid. v. 108.

<sup>6</sup> Ibid. v. 390.

<sup>8</sup> Ibid. v. 93, 94.

<sup>10</sup> Minute Book, v. 182, 183. At the conclusion of that ceremony, the society were entertained by the moderator [Mackie] in his house, 108 Prince's Street, whence they were called out to salute Her Majesty and Prince Albert, who passed along in the course of the afternoon.

<sup>11</sup> Minute Book, v. 189, 190.

inaugurating the statue of the Duke of Wellington in front of the Register House.<sup>1</sup> On 7th April 1854, they attended the magistrates and council at the funeral of Professor Wilson.<sup>2</sup> On 2d May 1856, they escorted the magistrates and council to the market cross, to hear proclamation made of the peace with Russia ;<sup>3</sup> and on the 29th of the same month they were invited by the magistrates to take a part in the rejoicings consequent on that event. They were accordingly present at the entertainment given in the police board-room, and were accommodated in the High School in the evening, to witness the display of fireworks in the Queen's Park.<sup>4</sup> On 25th June 1858, the society, by invitation of the magistrates, attended the banquet in the Parliament House to celebrate the marriage of the Princess Royal to Prince Frederick William of Prussia.<sup>5</sup> On 28th September 1859, they accompanied the council at the funeral of Professor Alison.<sup>6</sup> On 23d October 1861, they rendered important services at the laying of the foundation-stone of the New General Post-Office by the Prince Consort. His Royal Highness, and the distinguished party who officiated on that occasion, assembled in the General Register House, whence they passed in procession, preceded by the office-bearers of the society, to the foundation-stone, and after the ceremony had been completed, entered carriages at the north-east corner of the North Bridge and proceeded to lay the foundation-stone of the Industrial Museum. The passage from the Register House to the site of the Post-Office, and thence to the carriages, was admirably kept by the high constables, aided by a strong detachment of the Scots Greys. The society afterwards escorted the council to the site of the Museum, through the College, and witnessed the ceremony of laying the foundation-stone of that important building. Their next meeting, on the 26th of December, was called to perform the sad duty of expressing, in an address of condolence to Her Majesty, their participation in the grief into which the nation was plunged by the untimely death of the good prince, with whose latest public act in Scotland a few weeks previously they had been so closely associated.<sup>7</sup> On the 10th of November 1862, the society attended the magistrates and council, and were assigned a prominent position, at the inauguration of the bust of His Royal Highness the Prince of Wales, in the hall of the High School.<sup>8</sup>

<sup>1</sup> Minute Book, v. 216.<sup>2</sup> Ibid. v. 243.<sup>3</sup> Minute of Committee, 1st May 1856 ; Minute Book, v. 286.<sup>4</sup> Minute Book, v. 288.<sup>6</sup> Ibid. v. 359.<sup>8</sup> Ibid. v. 425.<sup>5</sup> Ibid. v. 325.<sup>7</sup> Ibid. v. 399-401.

On the occasion of the marriage of the Prince of Wales with the Princess Alexandra of Denmark, on 10th March 1863, the office-bearers of the society, attended the council at divine service in the High Church, and afterwards at the banquet in the Parliament House. It was also arranged that, should the services of the society be required during the course of the evening, an electric light would be exhibited on the top of the City Chambers, and the Tron Church bell would be rung.<sup>1</sup> No disturbance, however, took place to mar the feelings of pride and satisfaction with which the citizens contemplated the splendour of the illuminations, which were superior to anything ever before exhibited, not only in Edinburgh, but in Great Britain. On 1st April 1863, the society attended the presentation of the freedom of the city to Lord Palmerston in Queen Street Hall, and the members of committee acted as stewards on that occasion.<sup>2</sup>

On 12th July 1830, the society voted an address of congratulation to King William IV. on his accession,<sup>3</sup> and the moderator was requested to wait on the Earl of Errol, and ask his Lordship to present it to His Majesty.<sup>4</sup> The Lord High Constable received the moderator most courteously at St James's Palace, and readily agreed to attend the first levee and present the address, which he accordingly did on the following Wednesday.<sup>5</sup> On 18th March 1831, the society voted an address to the Throne, expressive of their confidence in Earl Grey's ministry, and requested the Earl of Errol to present the same to His Majesty.<sup>6</sup> This his Lordship undertook to do.<sup>7</sup> On 1st July 1837, the society voted an address of congratulation to her present Majesty on her accession, and the address was transmitted to the Earl of Errol, "that Her Majesty might receive the loyal congratulations of the Edinburgh High Constables, from the Lord High Constable of Scotland."<sup>8</sup> His Lordship, however, not being in London, transmitted the address to Lord John Russell, from whom the moderator received an intimation that it had been graciously received.<sup>9</sup> On 25th February 1840, the society voted an address of congratulation to Her Majesty on the occasion of her marriage with Prince Albert of Saxe-Coburg on the 10th of that month;<sup>10</sup> and at a special meeting called for the purpose, on the 16th of June, they voted an address

<sup>1</sup> Minute of Committee, 5th March 1863.

<sup>2</sup> Ibid. 30th March 1863.

<sup>3</sup> Ibid. iv. 200-202

<sup>4</sup> Ibid. iv. 202.

<sup>5</sup> Ibid. iv. 206, 207.

<sup>6</sup> Ibid. iv. 219, 220.

<sup>7</sup> Ibid. iv. 228.

<sup>8</sup> Ibid. iv. 459-463.

<sup>9</sup> Ibid. iv. 463.

<sup>10</sup> Ibid. v. 19.

to the Queen on the occasion of the attempt on the life of Her Majesty and her royal Consort. The latter address was transmitted to Sir John Campbell, M.P. for the city, for presentation.<sup>1</sup> On the 30th of November, in the same year, they adopted an address of congratulation to Her Majesty on the birth of the Princess Royal, and transmitted it to Mr Macaulay, M.P. for the city, for presentation.<sup>2</sup> On 22d November 1841, the society voted addresses of congratulation to the Queen and Prince Albert on the birth of the Prince of Wales, and directed the addresses to be forwarded to the Earl of Errol, as Lord High Constable, for presentation.<sup>3</sup> On 26th December 1861, they voted an address of condolence to Her Majesty on the death of the Prince Consort.<sup>4</sup> This address was forwarded to Secretary Sir George Grey for presentation, and was acknowledged by him on 7th January 1862.<sup>5</sup> On 10th March 1863, addresses of congratulation were voted to Her Majesty and the Prince of Wales on the occasion of His Royal Highness's marriage with the Princess Alexandra of Denmark.<sup>6</sup> These addresses were transmitted to Sir George Grey for presentation, and were severally acknowledged by him and by General Knollys.<sup>7</sup> On 27th January 1864, addresses of congratulation to the Queen and the Prince and Princess of Wales, on the birth of Prince Albert Victor, were voted by the Society,<sup>8</sup> and were transmitted to Sir George Grey and General Knollys, by whom they were duly acknowledged.<sup>9</sup>

Of late, as in former years, the society have evinced a most laudable desire to promote objects of public philanthropy. Towards the end of 1830, the steady approach of cholera to this country induced the authorities to adopt a variety of sanitary precautions, and on 14th January 1832 a royal commission was issued, constituting a board of health for Edinburgh. On the 27th of that month, the first case of cholera occurred in the city. Two days afterwards, a meeting of the society was held to consider what they could do to assist the authorities, and to alleviate the anticipated public calamity. It was suggested that, as on former occasions, the high constables might institute a general subscription in aid of the funds at the disposal of the board of health. But it was stated that the several kirk-

<sup>1</sup> Minute Book, v. 25.

<sup>2</sup> Ibid. v. 28, 30.

<sup>3</sup> Ibid. v. 63.

<sup>4</sup> Ibid. v. 399-401.

<sup>5</sup> Ibid. v. 414.

<sup>6</sup> Ibid. v. 448-451.

<sup>7</sup> Ibid. v. 452-454.

<sup>8</sup> Ibid. v. 467.

<sup>9</sup> Minute of Committee, 9th March 1864.

sessions contemplated some such measure. A subscription, confined to the society, was thereupon opened, when £73, 9s. 6d. was collected. A number of the members, however, preferred to subscribe otherwise.<sup>1</sup> In 1857, the moderator, secretary, and one of the ordinary members, acted as members of the committee appointed by the citizens to raise subscriptions for the relief of the sufferers by the great fire in James's Court on 5th August 1857.<sup>2</sup> On 13th November 1862, the society having had brought under their notice the efforts which were about to be made throughout the country to raise funds on behalf of the distressed operatives in Lancashire, resolved to co-operate with the central committee in any way that might be considered desirable to further that object; and a committee was appointed to tender the services of the high constables in collecting subscriptions.<sup>3</sup> The offer of the society was warmly received by the Lord Provost,<sup>4</sup> and by the Lancashire Relief Committee,<sup>5</sup> who, at a meeting held on 24th November, adopted the following resolution, moved by Mr Duncan M'Laren and seconded by Mr Adam Black, M.P. :—

“That the society of high constables having offered their services to make a personal visitation from house to house of the whole of the city, to solicit subscriptions in aid of the Lancashire Relief Fund, this meeting do hereby accept of the offer so kindly made, tender their best thanks to the society, and authorise the collection to commence on Thursday the 27th inst. And this meeting trust that the inhabitants will give every possible facility and assistance to the High Constables in their laudable efforts to promote the cause in this city.”

The thirteen municipal wards were thereupon divided into one hundred and thirty-seven sections, and the collection of subscriptions, which was commenced on the 23d of November, was finished on the 1st of December. By this effort £2050, 7s. 1½d. were collected over and above the sum of about £1200 previously subscribed by the citizens spontaneously. The result of this canvass having been reported to the Relief committee, it was moved by Sir William Johnston, seconded by Mr David Smith, W.S.,—

“That the thanks of the meeting be given to the moderator, the society of high constables, and the gentlemen associated with them, for their valuable services in the recent laborious and successful collection, from house to house, on behalf of the funds for the

<sup>1</sup> Minute Book, iv. 263, 264.

<sup>2</sup> Ibid. v. 321.

<sup>5</sup> Minute of Committee, 20th November 1862.

<sup>3</sup> Ibid. v. 431, 432.

<sup>4</sup> Ibid. v. 432-435.

relief of the distressed operatives in Lancashire, which has already produced upwards of £2000."<sup>1</sup>

On 14th June 1859, ex-moderator Carter brought under the notice of the committee the propriety of affording the high constables an opportunity of taking a part in the volunteer movement, by joining the artillery corps then being formed under the command of the Duke of Buccleuch, as Lord-Lieutenant of the county of Edinburgh. The proposal, however, was not adopted by the society; but in April 1860, a meeting of high constables favourable to the formation of a rifle volunteer company was called by the secretary, Mr John Greig Jun., when it was resolved to form a "High Constables' Rifle Company," under the command of the Lord Provost, as Lord-Lieutenant of the county of the city. Eighty members were thereafter enrolled, and the officers were gazetted on 8th June 1860.<sup>2</sup> On 22d May 1861, the committee voted £3 out of the society's funds for a prize to be shot for by the rifle company at their annual competition.<sup>3</sup>

The practice of the office-bearers and other members of committee waiting on the Lord Provost immediately after his election, appears to have been commenced on 8th November 1859, when a deputation waited on Lord Provost Brown Douglas to offer their congratulations, and to assure him of their readiness to act under him.<sup>4</sup> On the election of Lord Provost Lawson in November 1862, the committee waited on his Lordship for a similar purpose.<sup>5</sup>

The records of the society during the present century contain frequent reference to the festive meetings. The more important of these were the annual election dinner, the supper, afterwards changed to the dinner, on the anniversary of the birthday of the reigning sovereign, and the moderator's farewell dinner. Towards the expense of these entertainments, the sums received from the government for taking up the militia and jury lists, the fines levied from defaulters, and such portion of the allowance from the city as was not required for actual and necessary outlays were applicable, but the excess of cost was still large, and had to be borne by the constables individually. Notwithstanding this fact, the society has always shewn the most generous

<sup>1</sup> Minute Book, v. 441-446; Minute of Committee, 1st December 1862.

<sup>2</sup> The officers recommended by the company, and appointed by the Lord Provost (Brown Douglas), as Lord-Lieutenant, were, Thomas Macfarlane, *Captain*; Thomas S. Lindsay, *Lieutenant*; and John Greig Jun., *Ensign*.

<sup>3</sup> Minute Book, 22d May 1861.

<sup>4</sup> *Ibid.* 7th and 8th November 1859.

<sup>5</sup> *Ibid.* 3d November 1862; Minute Book, v. 432-435.

hospitality, not only to the magistrates, sheriffs, and other official personages, but to a large circle of distinguished citizens. In the notices of these convivial meetings, are recorded many familiar names, whose frequent presence on such occasions attests at once the hospitality and high respectability of the society. Among their lists of guests on such occasions, are to be seen the names of the Earl of Errol, Lord High Constable of Scotland, Lord Melville, Baron Clerk Rattray, Baron Sir Patrick Murray, Lord Advocate Macnochie (afterwards Lord Meadowbank), Principal Baird, Sir Henry Jardine, the Right Hon. W. Dundas, M.P., Professor Wilson, Dean of Faculty (afterwards Lord) Moncreiff, Lord Advocate (afterwards Lord) Jeffrey, Solicitor-General (afterwards Lord) Cockburn, Sir John (afterwards Lord Chancellor) Campbell, Sir James Gibson-Craig, Sir Thomas Dick Lauder, Leonard Horner, Lord Advocate (afterwards Lord) Murray, Lord Advocate (afterwards Lord) Rutherford, Sir William Allan, Principal Lee, Drs Inglis, Brunton, Dickson, Peddie, Grant, Alexander, Lee, and Hanna, Dr Abercromby, George Combe, Charles Cowan, M.P., Major-General Walker, Commander of the Forces, N.B., George Harvey, and others. These occasions were also not inappropriately selected for cultivating friendly relations with other societies of constabulary, and it is not uninteresting to note, that after the Leith constables had spontaneously relieved the high constables of Edinburgh at the great fire on 17th November 1824, and had rendered good service on that occasion, they were hospitably received by the high constables at their next dinner on the 9th of December.<sup>1</sup> The practice thus apparently commenced, has been frequently observed and reciprocated since. More recently also, after all disturbing questions were amicably settled, the society encouraged the intercourse of friendly courtesies with the constables of Canongate. The feelings with which these meetings were regarded, may best be gathered from the terms of the minutes themselves, but one, bearing intrinsic evidence of being the production of the secretary, Dr, afterwards Professor, Miller, may be accepted as a highly ornate specimen of the class. It refers to the annual election dinner on 27th February 1838,

“which, by the talented and judicious management of the chairman, ably seconded by the croupier, and each man doing his best to promote the general hilarity, proved, though extended to an almost unusual length, one of unalloyed enjoyment and gratification. A series of happy hours, that glide swiftly by in mirth and harmony, leaving behind no painful regret for time misspent, or efforts misapplied, but which recur to

---

<sup>1</sup> Minute Book, iii. 396.

the memory with feelings, though less tumultuous, still as pleasurable as at first, and leave the bosom calm in the satisfaction that it is good that the social virtues of a leaf and enlightened band of citizens have once more been happily exercised, and that man has met with man in peace and friendship.”<sup>1</sup>

It cannot, however, be said that such meetings were *invariably* unmarked by any unpleasant incidents. One little episode at a convivial meeting on the 25th of March 1762,<sup>2</sup> was considered of sufficient importance to justify the passing by the society of a general order against the admission into the body of vintners or publicans.<sup>3</sup> At the dinner on 1st March 1814, a foolish dispute with the vintner, the details of which occupy upwards of twenty pages of the records, was made the subject of a reference, and cost the constables £29, 6s. 1d.<sup>4</sup> Still more recently, an occurrence in connection with a festive meeting brought the society into collision with the council. In the exercise of what they claimed to be their right, the society excluded one of the magistrates from an invitation to sup with them. This was resented by the Lord Provost (Sir James Forrest), as disrespectful to the magistracy, and as an act of insubordination, and he moved in council and carried by a majority of one a vote of censure on the society, which vote, however, it was afterwards resolved, should not be communicated to them.<sup>5</sup> Two days later, a meeting of the society was held to take into consideration the censure which had been passed upon them, and a series of resolutions was adopted by a majority of thirty to twelve, and ordered to be advertised in the public newspapers. These resolutions set forth the facts of the case, disavowed all disrespect to the magistracy, but asserted the right of the society,

“to exercise the privilege allowed to the humblest individual in the empire, of choosing the guests who shall be admitted to their private company, irrespective of any official character with which such individual may be invested at the time;” and declared that “having on the occasion referred to disobeyed no order, and, in the exercise of their private rights as citizens, neither intended nor offered any disrespect to the magistracy as such, they, with all due respect for the majority of the council, cannot recognise the justice of the censure which has been passed on them.”<sup>6</sup>

On the 31st of December 1841, the society invited the whole of the magis-

<sup>1</sup> Minute Book, iv. 466.

<sup>4</sup> Minute Book, iii. 191-221.

<sup>2</sup> Ibid. i. 274.

<sup>5</sup> Council Records, ccxxiv. 153, 208, 215, 248.

<sup>3</sup> See Appendix VII. Art. 27.

<sup>6</sup> Minute Book, v. 32-35. A full report of the discussion which took place at this meeting, reported for the society, is inserted in the Minute Book, v. 37-56.

trates to sup with them, "upon the understanding . . . that the censure would be expunged from the books of the council." Whether the magistrates were parties to this understanding does not appear, but they accepted the invitation,<sup>1</sup> and on 1st February 1842, the council, on the motion of the Lord Provost, seconded by the magistrate to whom the slight had been shewn, rescinded their act of 12th January 1841.<sup>2</sup> An extract of the council's resolution was thereafter transmitted to the society, and submitted to them on 4th April 1842, and this unfortunate question was thus happily settled.

Besides these more public entertainments, the committee had occasional dinners and suppers, when they met for the transaction of the business of the society. The expense of these entertainments appears to have been frequently charged against the society, but on 31st December 1845, it was agreed that

"the office-bearers and committee be allowed the sum of £10 sterling for their various committee meetings, which sum is distinctly to be understood as comprehending all and every charge (for whatever purpose such committee meeting be called) against the society."<sup>3</sup>

The first reference in the minute books to the annual excursion, which since that time has formed one of the most attractive gatherings of the society, occurs under date 24th May 1849,<sup>4</sup> and the place then resolved on was Melrose. A minute of the committee, dated 25th July 1856, refers to the annual excursion as previously confined to the committee. On that occasion, however, it was resolved to convert the excursion into one for the whole members, "with a view to bring out the society, and keep up the friendly feeling."<sup>5</sup> The excursion accordingly took place on 8th August, the place selected being Roslin.<sup>6</sup> On 26th June 1858, the society had an excursion to Peebles.<sup>7</sup> On 24th June 1859, they proceeded in concert with the Leith high constables to Melrose.<sup>8</sup> On 10th July 1860, they went to North Berwick, where they were entertained by Councillor Girle.<sup>9</sup> On 18th July 1861, the society, with the constables of Leith, had their excursion to the Falls of Clyde.<sup>10</sup> On 26th June 1862, the constables proceeded, on the invitation of the then vice-moderator, Mr Charles Lawson, to his father's mansion house

<sup>1</sup> Minute Book, v. 64.

<sup>4</sup> Ibid. v. 146.

<sup>2</sup> Council Records, ccxxvi. 228.

<sup>5</sup> Minute of Committee, 25th July 1856.

<sup>3</sup> Minute Book, v. 103.

<sup>6</sup> Minute Book of Committee, 25th July 1856.

<sup>7</sup> Ibid. v. 329.

<sup>8</sup> Ibid. v. 356.

<sup>9</sup> Ibid. v. 374.

<sup>10</sup> Ibid. v. 388.

of Borthwickhall, where they were hospitably entertained to luncheon and dinner, in a marquee on the lawn, and returned to Edinburgh by a special train in the evening.<sup>1</sup> On 9th July 1863, the society and the Leith constables had their annual excursion to the Rumbling Bridge.<sup>2</sup> On 13th July 1864, they had their excursion to the Trossachs and Balquhiddy.<sup>3</sup>

Instead of the annual supper, it was resolved, in November 1863, to have a conversazione on the 25th of that month. Professor Archer, director of the Industrial Museum of Scotland, kindly agreed to give the society the use of the Museum for this purpose, and Dr Murray Thomson, surgeon of the society,<sup>4</sup> delivered an address on "Some points on Chemical Manufacture bearing on British Industry."<sup>5</sup>

Rich as the society now is in insignia and other properties, it is somewhat remarkable that, with the single exception of the treasurer's box, to which allusion has been made,<sup>6</sup> they have all been collected within the last forty-one years.

The box is older than any of the society's records, and an inscription upon it bears that it was ordered and paid for by the constables for the year 1698. It passed through the hands of successive treasurers from that time till 1757, when, the treasurer having omitted to hand it to his successor, it went amissing, and was only restored to the society in September 1762. It was then handed to the treasurer of that year, and a minute, dated 24th September 1762, while narrating the fact, embodies the recommendation of the society, that "it be properly taken care of, and duly transmitted from one treasurer to another."<sup>7</sup> When the several high constables who composed the society in 1838, resigned their office under the circumstances previously detailed,<sup>8</sup> they caused an inscription to be put on the box recording the names of the office-bearers and committee, and the resignation of the society. This fact

---

<sup>1</sup> Minute Book, v. 415. A full printed report of the proceedings on this occasion, with photographic groups of the office-bearers, members, and others, are inserted in the Minute Book. This was done under a resolution of the society on 21st October 1862, expressive of "the very high sense entertained by the members of the munificent hospitality of the vice-moderator" on the occasion referred to [Ibid. v. 423].

<sup>2</sup> Ibid. v. 463.

<sup>3</sup> Ibid. v. ; 13th July 1864.

<sup>4</sup> Now Professor of Experimental Science in the Government college of Hooke, Upper India.

<sup>5</sup> Minutes of Committee, 2d and 9th November 1863.

<sup>6</sup> *Antea*, p. 161.

<sup>7</sup> Minute Book, i. 276.

<sup>8</sup> *Antea*, p. 260.

was brought under the notice of the society on 23d May 1839,<sup>1</sup> when they minuted their

“very strong sense of this unwarrantable conduct on the part of the late members, in thus defacing an ancient and curious relic of the body, after the legitimate control and custody of it no longer remained with them, and they unanimously directed that the inscription should be immediately polished off, and the box restored to its pristine condition.”

It is much to be regretted that, notwithstanding this laudable expression of the wish of the society to preserve the box intact, their successors, in 1842, should have defaced it with an inscription to record facts, the remembrance of which it might have been very well left to the minutes to perpetuate. It is to be hoped that in future the society will jealously protect this interesting relic from farther injury.

Mr Alexander Giles, moderator in 1819–20, having presented the society with a handsome ebony baton, “for the use of the moderator as a state baton at public meetings,” a contribution of five shillings was, on 28th September 1820, appointed to be levied from each member to defray the expense of mounting it handsomely with silver.<sup>2</sup> On 10th October of the same year, the moderator, Mr Henderson, presented the society with an elegant silver-mounted snuff-horn, upon which a suitable inscription was ordered to be engraved.<sup>3</sup> On 9th May 1825, the committee resolved “that a seal, with a suitable inscription, should be procured for the use of the society.”<sup>4</sup> In 1828, Mr George Brown, the treasurer, Mr James Patterson, the secretary, and Mr Eagle Henderson, the chaplain, for that year, presented the society each with a baton for the use of the treasurer, secretary, and chaplain respectively.<sup>5</sup> To facilitate the operations of the society when engaged in the preservation of the peace, and the suppression of riots, during the stirring times of the Reform Bill agitations,<sup>6</sup> the moderator, treasurer, and secretary were severally provided with silver calls, in the form of a “boatswain’s whistle,” preconcerted signals on which<sup>7</sup> regulated the movements of the high constables when in action. When, at the same time, the office of surgeon was revived,<sup>8</sup> a large

<sup>1</sup> Minute Book, v. 12.

<sup>3</sup> Ibid. iii. 299.

<sup>2</sup> Ibid. iii. 299.

<sup>4</sup> Ibid. iii. 417.

<sup>5</sup> No reference is made to these presentations in the minute books of the society, and the minute books of the committee previous to 7th April 1856 cannot now be found.

<sup>6</sup> *Antea*, p.

<sup>7</sup> Appendixes XVIII. and XIX.

<sup>8</sup> Minute Book, iv. 246; 10th May 1831.

silver-mounted baton was provided for the holder of that office. In the following year, a small silver-mounted pocket baton appears to have been procured for the surgeon.<sup>1</sup> On leaving office on 5th April 1852, moderator Beattie presented the society with a small silver-mounted baton for the use of the moderator, the old pocket baton being covered with rings.<sup>2</sup> The baton presented by Mr Beattie, is still used by the moderator, and the old one is attached to the large baton presented by Mr Giles in 1820, now held by the ex-moderator. On 19th March 1855, the "custodier of batons" was first appointed an office-bearer of the society,<sup>3</sup> and was ordered to have a silver-mounted baton marked "custodier of batons."<sup>4</sup> A small silver-mounted baton, of apparently much older date than any of the other existing batons, appears to have been thereupon assigned to the custodier. It does not appear that a large baton was provided for that office-bearer previous to the re-organisation of the society in 1857, when the office of chaplain was abolished, and the baton presented by Mr Eagle Henderson was assigned to the custodier. On 19th March 1855, the moderator for the former year was appointed to hold the office of vice-moderator,<sup>5</sup> and the society subscribed the requisite funds to provide a gold medal and chain to be held by him. Mr Gill, the first vice-moderator under this resolution, was invested with this medal and chain on 24th May 1855, and immediately thereafter presented the society with a handsome silver-mounted pocket baton for the use of his successors in that office.<sup>6</sup> A large and handsome silver-mounted baton for the use of the vice-moderator was presented to the society on 29th August 1859, by Mr Alexander Edmonston, who held the office during that and the succeeding year.<sup>7</sup> On 21st October 1862, the society approved of a recommendation by the committee that a gold chain and medal should be provided for the moderator, and remitted to them to obtain the requisite subscriptions.<sup>8</sup> £50 were accordingly raised for this purpose,<sup>9</sup> and on 22d January 1863, the

<sup>1</sup> No reference to these calls, or to the batons for the surgeon, is made in the minute books of the society.

<sup>2</sup> Minute Book, v. 208.

<sup>3</sup> On 24th May 1849, the office of custodier appears to have been first instituted [Minute Book, v. 146], but he did not hold rank as one of the regular office-bearers. On 1st April 1850, number one of the committee was appointed to act as custodier [Ibid. v. 168].

<sup>4</sup> Minute Book, v. 252.    <sup>5</sup> Ibid. v. 252.    <sup>6</sup> Ibid. v. 270.    <sup>7</sup> Ibid. v. 357.

<sup>8</sup> Ibid. v. 422. See also Minutes of Committee, 5th April and 22d May 1861, 5th May, 26th August, 21st October, and 3d November 1862.

<sup>9</sup> See Minute of Committee, 12th January 1863.

society presented their moderator with the handsome chain and medal, which is now used by his successor.<sup>1</sup> At the close of his office as moderator, Mr Lawson, on 27th March 1865, presented the society with a large and handsome silver-mounted baton, to be carried by his successor in office. The baton was fitted up in a fine mahogany case, lined with blue velvet, and had an appropriate stand to be placed before the moderator on all public occasions. The moderator's old large baton, completely covered with silver rings, bearing the names of the moderators by whom it has been held since 1820, was thereupon assigned to the "ex-moderator,"<sup>2</sup> for whose use the present moderator, Mr Greig, on 2d May 1865, presented the society with a handsome silver-mounted pocket baton.<sup>3</sup>

The society appear to have been first provided with short batons for the pocket in 1700, and the cost of them was ordered to be defrayed out of their fines.<sup>4</sup> In 1736, however, the council directed the treasurer to provide a new set of batons for the society ;<sup>5</sup> and these were afterwards from time to time repaired and replaced when injured or lost.<sup>6</sup> When the number of constables was subsequently increased in 1789,<sup>7</sup> and in 1794,<sup>8</sup> and in 1802,<sup>9</sup> the council doubtless provided the society with batons, as they did when the society was raised to one hundred members in 1826.<sup>10</sup> On 28th April 1828, the moderator memorialised the council, setting forth that the batons were old, and many of them broken, and more particularly that they were too large to be conveniently carried in the pocket, and asking the council to provide sixty new pocket batons of much less size.<sup>11</sup> This memorial was submitted to the council on 30th April, but they considered it unnecessary to incur the expense, "as there were several small batons in the hands of the depute clerk, from which any defective ones might be replaced."<sup>12</sup> On 24th April 1832, the society again requested the moderator to apply to the council to remodel the small batons, or to allow the society to do so.<sup>13</sup> Whether any application was made to the council in consequence of this resolution, does not appear ; but on 27th April 1835, the moderator called attention, as a matter which had been "long com-

<sup>1</sup> Minute Book, v. 441.

<sup>2</sup> Ibid. v.

<sup>3</sup> Ibid. v. For a description of the several insignia belonging to the society, see Appendix No. XXII.

<sup>4</sup> *Antea*, p. 148.

<sup>8</sup> *Antea*, pp. 191, 192.

<sup>12</sup> Council Records, cciii. 204.

<sup>5</sup> *Antea*, p. 168.

<sup>9</sup> *Antea*, p. 215.

<sup>13</sup> Minute Book, iv. 281.

<sup>6</sup> *Antea*, pp. 177, 178.

<sup>10</sup> *Antea*, p. 236, footnote 8.

<sup>7</sup> *Antea*, p. 188.

<sup>11</sup> Minute Book, iv. 99.

plained of," to the size of the small batons, and it was resolved to have them reduced to a uniform size.<sup>1</sup> At this time the batons seem to have been of various sizes and ages, some of the time of George III., some of George IV., and some of William IV. On 20th September 1842, £16, 15s. were paid for sorting the batons.<sup>2</sup> On the re-organisation of the society in 1857, one hundred silver mounted pocket batons were ordered for the use of the society.<sup>3</sup> Subsequently, on a representation by the moderator, dated 27th December 1858, the council, on 8th March 1859, authorised twenty-four additional pocket batons to be ordered.<sup>4</sup> On 6th March 1861, the committee ordered the old large batons to be repainted,<sup>5</sup> and on 6th April in the same year, they ordered the large batons for the captains to be made more distinctive, and a few of the small silver batons to be made uniform with the others.<sup>6</sup>

The propriety of the high constables wearing a distinctive badge when on duty, has been frequently under consideration. In some of the chartist riots of 1848, the constables, on the suggestion of the Lord Provost, wore a piece of white satin ribbon in the button hole of their coats.<sup>7</sup> On the 15th of that month, the moderator submitted the design of an elegant silver badge, and it was remitted to the committee to consider the subject,<sup>8</sup> but nothing further seems to have been done at that time. The idea, however, appears to have been often revived, and, on 22d May 1861, it was brought formally before the committee, who appointed a sub-committee to consult the Lord Provost on the subject. His Lordship approved highly of a distinctive badge being worn, and the committee directed a sash and rosette to be submitted to the society for their approval, the sash to be worn by the office-bearers, and the rosette to be worn by the other members.<sup>9</sup> The recommendation of the com-

<sup>1</sup> Minute Book, iv. 413. For doing this, £11, 9s. were paid to Mr Edwin Millidge on 25th July 1835 [Ibid. 431, 434]. On an application by the moderator, the council, on 23d August 1842, authorised the society's large batons to be made of a uniform size, and repainted [Ibid. v. 62, 67; Council Records, ccxxxvii. 290].

<sup>2</sup> Council Records, ccxxxvii. 340.

<sup>3</sup> Council Records, cclxxi. 94, and cclxxii. 54. At this time, one hundred large batons were ordered, and £22, 10s. 6d. were directed to be paid therefor. On 29th July in the same year, £38, 6s. 8d. were directed to be paid therefor.

<sup>4</sup> Council Records, cclxxvii. 325. At the same time thirty-three additional large batons were ordered.

<sup>5</sup> See Minute of Committee.

<sup>6</sup> Ibid.

<sup>7</sup> Minute Book, v. 119; 7th March 1848.

<sup>8</sup> Ibid. v. 123.

<sup>9</sup> See Minutes of Committee, 22d May, 10th and 26th June, and 2d July 1861.

mittee was fully discussed in the society on 2d July 1861,<sup>1</sup> and carried by a majority of one, but considering the diversity of opinion which then existed, the subject was wisely dropped.

How closely the constables of the city of Edinburgh have been associated with the municipal government of the city, and how many and varied have been the services rendered by them during the two hundred and fifty-four years of their existence, these pages may serve to indicate. But the times are changed since they had to discharge the most important of their duties. Many of those matters to which they had to devote their time and attention, down till the beginning of the present century, are now entrusted to a regularly organised staff of public officials, acting in the execution of an established system of police; and in recent years the services of the society have been mainly restricted to attendance on the magistrates at public ceremonials. But their organisation was never more complete than at present; and, apart from the interest which attaches to a body so ancient, and possessing so many historical claims to consideration, no one will undervalue it as affording to the authorities a reliable support, at once moral and material, in times of public excitement and commotion. Surely, however, such an organisation, and so much public spirit and intelligence as are to be found in the ranks of the High Constables, might with advantage to the city and to the society itself have more important and continuous exercise. Of the success with which they might be engaged in the promotion of works of public philanthropy, there is an illustration in the manner in which they arranged and carried out, by a system of house to house visitation, the collection of subscriptions for the Lancashire Relief Fund; and not only on occasions of apprehended epidemics, but at other times, when the magistrates might be desirous to establish a system of simultaneous and intelligent inspection, or to procure important returns expeditiously and systematically, the organisation of the society, admirably adapted for such objects, would doubtless be readily available. Such services as these, however, must necessarily be exceptional and occasional, and it is worthy of inquiry whether they could not be made permanently available. In early times in Edinburgh, previous to the institution of the constables, a certain number of citizens were deputed as "quartermasters and visitors," to look to the sanitary condition of the town during times of pestilence, and to exercise a supervision in a variety of matters over

<sup>1</sup> Minute Book, v. 387, 388.

their respective quarters. More recently, as has been seen, the constables were entrusted with multifarious duties, connected not only with the watching of the city, but with matters of general police, the suppressing of begging and profane swearing, the inspection of armour, the enforcement of the acts against carrying firearms, attendance at fires, reporting on waste lands and ruinous houses, making up returns, supervising the cleaning arrangements of the city, and seeing to the enforcement of the various regulations passed by the council for that and other objects. In all these matters, even when the city was circumscribed within the narrow limits of the walls, the council found the advantage of the co-operation of the constable, who, living in his little district, and knowing every hole and corner in it, could exercise a constant and microscopic surveillance which no irregularity could escape. For the same reason too, doubtless, the police act of 1812 required each of the twenty-six wards into which it appointed the city to be divided to elect three commissioners, residing within the ward, to "take all measures necessary for promoting the general peace, order, and comfort of the inhabitants therein."<sup>1</sup> This arrangement was maintained in the subsequent local police acts down to and including the existing act of 1848, by section 9 of which it was enacted, that besides a general commissioner for each of the thirty-two wards into which it divided the city, there should be "two commissioners for, and resident within, each ward, qualified and elected," in manner therein directed, who should be termed resident commissioners of their respective wards,

"and the general commissioners, and, in their absence, the resident commissioners, shall be head constables in, and have a general superintendence of, their respective wards, for enforcing the provisions of this act, and the regulations made in virtue thereof, and for promoting and enforcing all measures necessary for the peace, order, and security of the inhabitants therein; and the resident commissioners shall report from time to time to the general commissioners, or to their clerk, or to the superintendent of police, inspector of lighting and cleansing, or superintendent of streets, . . . according to the nature of the case, any neglect or infringement of such provisions and regulations."

This provision was repealed by "The Municipality Extension Act of 1856," section 52 of which, however, enacted that the councillors of the thirteen wards into which it appointed the city to be divided should be head constables in, and have a general superintendence of, their respective wards, as was pro-

---

<sup>1</sup> 52 Geo. III., cap. 172, sec. 6.

vided by the act of 1848 with reference to the general commissioners of police; and it was added,

“The magistrates and council shall have power, from time to time, as may appear to them necessary, to appoint, remove, and reappoint, two electors, residing or carrying on business in each ward respectively, who shall in their several wards perform the duties heretofore discharged by the resident commissioners of police, under the authority of the said recited Edinburgh police acts, and shall likewise have, exercise, and possess within the limits of this act all the powers which, by the law of Scotland, belong to the office of constable, and, in the absence of all the councillors, shall be head constables in their respective wards.”

The power thus conferred has not been hitherto exercised, though the magistrates and councillors of the present day have to perform a greater variety of duties than had either their predecessors of a former age, or the commissioners of police. With the demands upon their time and attention in the execution of their higher and more important functions, it is impossible for the members of council to discharge as might be wished the duties of the former resident commissioners. Here the organisation of the High Constables could be made available. If each member of that body had the special charge of a sub-division of his ward, and were bound to see to the efficient carrying out of the provisions of the acts of parliament, and the regulations of the magistrates and council therein, and to report periodically, through his captain, such irregularities or defects as might come under his observation, the whole city would be subjected to a constant and minute supervision in everything affecting the administration of its police, which could scarcely fail to be attended with advantage to the community. Supervision of this kind is what is most needed, and not only would it strengthen the hands of the council and of the heads of departments, but it would give to the High Constables an amount of practical experience of the working of the police system that would render the society still more valuable even than hitherto in introducing its members to public life. Such an apportionment of duty, it is scarcely necessary to observe, would be no innovation. It would be a simple recurrence to the early arrangements of the society, adopted certainly under widely different circumstances, but probably equally applicable to the requirements of the present age.

## *APPENDIX.*

No. I.—OFFICE-BEARERS OF THE SOCIETY OF  
FROM THE UNION IN 1707

DATE OF ELECTION.	MODERATOR.	TREASURER.
1707.	David Grant, merchant.	
1708. Sep. 30.	George Brown, merchant.	Alexander Steven, barber.
1709. June 15.	John Turnbull, merchant.	William Snodgrass, wright.
1710. Nov.	George Wight, glazier.	Francis Newton, merchant.
1711. Dec. 7.	Alexander Steven, barber.	James Burn, wright.
1713. Jan. 2.	Robert Manderson, merchant.	Robert Marishall, merchant.
1714. Jan. 1.	Thomas Renton, merchant.	Andrew Gardner, merchant.
1715. Jan. 7.	Robert Grierson, merchant.	William Ayton, merchant.
1716. Jan. 7.	Alexander Lairmond, merchant.	Hugh Mosman, bookbinder.
1717. Jan. 7.	William Tod, merchant.	David Nicoll, merchant.
... May 27.	... ..	... ..
1718. Jan. 10.	James Bonnar, glover.	William Rankine, wright.
1719. Jan. 19.	David Mastertoun, barber.	James Mack, mason.
1720. Jan. 23.	Robert M'Kinlay, merchant.	Hugh Mossman, bookbinder.
1721. Jan. 6.	William Aytone, merchant.	James Braidwood, candlemaker.
1722. Mar. 7.	James Bennet, stabler.	William Bruce, brewer.
1723. Mar. 13.	James Watson, merchant.	Charles Blair, goldsmith.
1724. Mar. 19.	John Walker, skinner.	James Walker, barber.
1725. Mar.	William Bruce, brewer.	Thomas Trotter, merchant.
1726. Mar. 23.	William Wight, baxter.	David Lindsay, brewer.
1727. Mar. 20.	Hugh Campbell, merchant.	Thomas Newton, merchant.
1728. Mar. 24.	William Braidwood, candlemaker.	John Inglis, baxter.
1729. Mar. 24.	James M'Ewan, barber.	Andrew Good, wright.
1730. Mar. 16.	Hugh Wilson, merchant.	John Brown, watchmaker.
1731. Mar. 19.	Samuel Welch, merchant.	William M'Vey, wright.
1732. Mar. 17.	James Walker, merchant.	James Craig, merchant.
1733. Mar. 16.	Robert Fleming, printer.	James Milroy, merchant.
1734. Mar. 29.	George Gray, wigmaker.	Archibald Sheills, merchant.
1735. Mar. 18.	James Allan, merchant.	Archibald Wallace, <sup>1</sup> merchant.
1736. Mar. 11.	William Ormston, coppersmith.	Edward Lothian, jeweller.
1737. Mar. 11.	Archibald Sheills, merchant.	James Bald, merchant.
1738. Mar. 3.	Hugh Hamilton, merchant.	Alexander Brymer, bookseller.
1739. Mar. 8.	Alexander Boswell, painter.	John Walker, merchant.
1740. Mar. 21.	Andrew Bonner, merchant.	John Walker, merchant.
1741. Mar. 27.	Alexander Crawford, baxter.	William Sutherland, brewer.

<sup>1</sup> Elected a Captain of the Trained Bands in December 1735.

## HIGH CONSTABLES OF THE CITY OF EDINBURGH.

TILL APRIL 1864.

CLERK.	CHAPLAIN.	DATE OF ELECTION.
		1707.
Richard Jackson, merchant.	...	Sept. 30. 1708.
Thomas Scott, brewer.	...	June 15. 1709.
James Forrest, brewer.	...	Nov. 1710.
John Henderson, merchant.	...	Dec. 7. 1711.
Robert Russell, merchant.	...	Jan. 2. 1713.
John Paton, bookseller.	...	Jan. 1. 1714.
John Greenlees, merchant.	...	Jan. 7. 1715.
Robert Clark, merchant.	...	Jan. 7. 1716.
Robert Selkirk, <sup>1</sup> merchant.	...	Jan. 7. 1717.
James Waterston, merchant.	...	May 27. ...
William Brown, bookseller.	...	Jan. 10. 1718.
James Seton, merchant.	...	Jan. 19. 1719.
James Gray, merchant.	...	Jan. 23. 1720.
George Henderson, merchant.	James Blackie, merchant.	Jan. 6. 1721.
John Ferguson, merchant	...	Mar. 7. 1722.
William Hamiltoun, brewer.	...	Mar. 13. 1723.
George Hill, merchant.	...	Mar. 19. 1724.
James Gow, merchant.	...	Mar. 1725.
William Hamilton, brewer.	...	Mar. 23. 1726.
George Hill, merchant.	...	Mar. 20. 1727.
James Gray, merchant.	...	Mar. 24. 1728.
John Angus, merchant.	...	Mar. 24. 1729.
Patrick Manderston, merchant.	...	Mar. 16. 1730.
James Allan, merchant.	...	Mar. 19. 1731.
James Gow, merchant.	...	Mar. 17. 1732.
William Hamilton, merchant.	...	Mar. 16. 1733.
Donald M'Larine, merchant.	...	Mar. 29. 1734.
James Bald, merchant.	...	Mar. 18. 1735.
James Grant, merchant.	...	Mar. 11. 1736.
Alexander Hepburn, merchant.	...	Mar. 11. 1737.
Patrick Ross, merchant.	...	Mar. 3. 1738.
William Sutherland, brewer.	...	Mar. 8. 1739.
John Seton, merchant.	Charles Logan, preacher.	Mar. 21. 1740.
John Craigie, shoemaker.	Charles Logan.	Mar. 27. 1741.

<sup>1</sup> Removed by the Magistrates and Council, and succeeded by James Waterston on 27th May 1717.

DATE OF ELECTION.	MODERATOR.	TREASURER.
1742. Mar. 20.	Gideon Crawford, bookbinder.	Alexander Stirling, merchant.
1743. Mar. 17.	James Bald, merchant.	Wm. (or Alexander) Myles, brewer.
1744. Mar. 8.	Archibald Richardson, bookbinder.	Edward Caithness, merchant.
1745. Mar. 14.	Archibald Stewart, merch., <sup>1</sup> <i>Preses.</i>	John Dunsmure, merchant.
... Dec. 31.	John Dunsmure, merchant, <i>Preses.</i>	... ..
1746. Mar. 20.*	... ..	... ..
1747. Apr. 10.	John Heriot, candlemaker, <i>Preses.</i>	James Lorimer, merchant.
1748. Apr. 8.	Alexander Duncan, druggist, <i>Preses.</i>	Archibald Bowie, merchant.
1749. Mar. 24.	Patrick Bowie, merchant, <i>Preses.</i>	Alexander Noble, candlemaker.
1750. Mar. 16.	John Welsh, goldsmith, <sup>2</sup> <i>Preses.</i>	Robert Walker, tanner.
... Oct. 15.	Adam Anderson, wigmaker.	... ..
1751. Mar. 22.	Robert Walker, tanner, <i>Preses.</i>	Archibald M'Coull, merchant.
1752. May 1.	William Smith, merchant, <i>Preses.</i>	Robert Williamson, merchant.
1753. Apr. 5.	Robert Russell, merchant, <i>Preses.</i>	Robert Dewar, <sup>3</sup> glazier.
1754. Mar. 22.	John Sprot, candlemaker, <i>Preses.</i>	Alexander Smiton, bookbinder.
1755. Mar. 21.	George Pitcairn, merchant, <i>Preses.</i>	John Grieve, merchant.
... Dec. 1.	... ..	... ..
1756. Mar. 26.	George Syme, slater, <i>Preses.</i>	William Clapperton, merchant.
1757. Apr. 8.	Robert Norrie, painter, <i>Preses.</i>	James Craig, baker.
1758. Apr. .	George Winter, wigmaker, <i>Preses.</i>	Nicol Somerville, painter.
1759. Apr. .	Nicol Somerville, painter, <i>Preses.</i>	John Veitch, merchant.
1760. Apr. .	John Veitch, merchant, <i>Preses.</i>	William Hume, merchant.
1761. Apr. 2.	Ebenezer Robertson, printer, <i>Preses.</i>	James Smith, glazier.
1762. Mar. 26.	William Burn, merchant, <i>Preses.</i>	James Young, barber.
1763. Mar. 12.	James Young, barber, <i>Preses.</i>	John M'Lean, merchant.
1764. Mar. 1.	James M'Kay, coppersmith, <i>Preses.</i>	John Duncan, merchant.
1765. Mar. 1.	Andrew Beatson, merchant, <i>Preses.</i>	William Galloway, merchant.
... Oct. 28.	... ..	... ..
1766. Mar. 28.	William Galloway, merchant, <i>Preses.</i>	William Dick, merchant.
1767. Mar. 6.	David Sheppard, merchant, <i>Preses.</i>	James Innes, wigmaker.
1768. Mar. 11.	John Monro, merchant, <i>Preses.</i>	William Balantine, pewterer.
1769. Apr. 7.	Robert Johnston, merchant.	Charles Spalding, merchant.
1770. Apr. 5.	James Torry, merchant.	Charles Spalding, merchant.
... Oct. 23.	... ..	... ..
1771. Mar. 9.	Wm. Downie, watchmaker, <i>Preses.</i>	Henry Hardie, baxter.
1772. Mar. 23.	Archibald Campbell, merch., <i>Preses.</i>	Samuel Paterson, merchant.

\* There was no election in 1746, in consequence of there being no Magistrates and Council; but by an order of the Lord Justice-Clerk and others, as Justices of the Peace, the Constables elected in 1745 were continued in office.

<sup>1</sup> Archibald Stewart resigned on 31st Dec. 1745, and was succeeded by John Dunsmure.

<sup>2</sup> Elected a Captain of the Trained Bands, and succeeded, on 15th October 1750, by Adam Anderson.

<sup>3</sup> Chosen Deacon, and resigned.

*List of Office-Bearers.*

v

CLERK.	CHAPLAIN.	DATE OF ELECTION.
Robert Samuel, merchant.	... ..	Mar. 20. 1742.
Edward Caithness, merchant.	... ..	Mar. 17. 1743.
John Dunsmore, merchant.	... ..	Mar. 8. 1744.
Claud Inglis, merchant.	... ..	Mar. 14. 1745.
... ..	... ..	Dec. 31. 1745.
... ..	... ..	Mar. 20. 1746.
Patrick Bowie, merchant.	Charles Logan.	Apr. 10. 1747.
Patrick Bowie, merchant.	Charles Logan.	Apr. 8. 1748.
John Stenhouse, merchant.	Charles Logan.	Mar. 24. 1749.
Archibald M'Coull, merchant.	Charles Logan.	Mar. 16. 1750.
... ..	... ..	Oct. 15. ...
Robert Williamson, merchant.	Charles Logan.	Mar. 22. 1751.
David Somerville, merchant.	Charles Logan.	May 1. 1752.
John Brown, merchant.	Charles Logan.	Apr. 5. 1753.
John Craigie, merchant.	Charles Logan.	Mar. 22. 1754.
John Brown, <sup>1</sup> ironmonger.	Charles Logan.	Mar. 21. 1755.
Alexander Manners, merchant.	... ..	Dec. 1. ...
Stephen Govan, merchant.	Charles Logan.	Mar. 26. 1756.
Walter Hog jun., merchant	Charles Logan.	Apr. 8. 1757.
John Hay, merchant.	Charles Logan.	Apr. . 1758.
John Hay, merchant.	Charles Logan.	Apr. . 1759.
John Stockle, hosier.	Charles Logan.	Apr. . 1760.
William Burn, merchant.	Charles Logan.	Apr. 2. 1761.
John M'Lean, merchant.	Charles Logan.	Mar. 26. 1762.
John Duncan, merchant.	Charles Logan.	Mar. 12. 1763.
Andrew Beatson, merchant.	Charles Logan.	Mar. 1. 1764.
John Borthwick, <sup>2</sup> merchant.	Charles Logan.	Mar. 1. 1765.
Peter White, merchant.	... ..	Oct. 28. ...
Peter White, merchant.	Charles Logan.	Mar. 28. 1766.
John Monro, merchant.	Charles Logan.	Mar. 6. 1767.
David Skae, merchant.	... ..	Mar. 11. 1768.
James Torry, merchant.	... ..	Apr. 7. 1769.
Richard Richardson, <sup>3</sup> merchant.	... ..	Apr. 5. 1770.
James Gordon, brewer.	... ..	Oct. 23. ...
Alexander Maclardie, stationer.	... ..	Mar. 9. 1771.
James Bowie, merchant.	... ..	Mar. 23. 1772.

<sup>1</sup> Elected a Lieutenant in the Trained Bands, and succeeded, on 1st Dec. 1755, by Alexander Manners.

<sup>2</sup> Demitted his office of Clerk, and succeeded, on 28th October 1765, by Peter White.

<sup>3</sup> Elected a Captain of the Trained Bands, and succeeded, on 23d October 1770, by James Gordon.

DATE OF ELECTION.	MODERATOR.	TREASURER.
1773. Mar. 27.	Samuel Paterson, merchant, <i>Preses.</i>	Alexander Reid, grocer.
1774. Apr. 2.	Alexander Reid, merchant, <i>Preses.</i>	John Richmond, seedsman.
1775. Mar. 31.	John Hutcheson, merchant, <i>Preses.</i>	William Orrock, sadler.
1776. Apr. 6.	Alexander Allan, merchant, <i>Preses.</i>	William M'Lean, merchant.
1777. Mar. 29.	James Spadin, grocer, <i>Preses.</i>	Malcolm Wright, merchant.
1778. Apr. 18.	Robert Allan, merchant, <i>Preses.</i>	Malcolm Wright, merchant.
1779. May 18.	John Aitchison, merchant, <i>Preses.</i>	James Carfrae, merchant.
1780. May 5.	James Carfrae, merchant, <i>Preses.</i>	William Hall, merchant.
1781. Apr. 9.	Eben. Gairdner, damask weaver, <i>Pr.</i>	William Hall, merchant.
1782. May 27.	William Dalrymple, merchant, <i>Preses.</i>	David Deuchar, lapidary.
1783. Apr. 21.	Robert Ford, merchant, <i>Preses.</i>	David Deuchar, lapidary.
1784. Feb. 28.	Robert Burn, mason, <i>Preses.</i>	William Turnbull, merchant.
1785. Apr. 30.	William Phin, merchant, <i>Preses.</i>	William Turnbull, merchant.
1786. May 6.	William Turnbull, merchant, <i>Preses.</i>	George Spankie, merchant.
1787. Apr. 7.	Patrick Taylor, painter, <i>Preses.</i>	George Montgomery, merchant.
1788. Apr. 3.	James Fowler, stationer, <i>Preses.</i>	George Montgomery, merchant.
1789. Apr. 3.	Geo. Montgomery, merchant, <i>Preses.</i>	James Charles, hosier.
1790. Apr. 8.	William Couper, upholsterer, <i>Preses.</i>	Charles Phin, merchant.
1791. Apr. 22.	William Raeburn, perfumer, <i>Preses.</i>	James Ramsay, painter.
1792. Apr. 6.	John Carlier, merchant, <i>Preses.</i>	John Howden, merchant.
1793. Mar. 29.	James Burnet, grocer, <i>Preses.</i>	Daniel Forrest, merchant.
1794. Apr. 24.*		
1795. Apr. 21.	James Goldie, merchant, <i>Preses.</i>	Thomas Smith, tinplate worker.
1796. Apr. 7.	Thomas Hamilton, wright, <i>Preses.</i>	William Lothian, merchant.
1797. Apr. 7.	William Lothian, merchant.	John M'Crobie, merchant.
1798. Apr. 18.	John M'Crobie, merchant.	Thomas King, apothecary.
1799. Apr. 11.	David Robertson, merchant.	Myles Paterson, merchant.
1800. Mar. 21.	Myles Paterson, merchant.	John Turnbull, woollen draper.
1801. Mar. 10.	John Turnbull, woollen draper.	Henry Grieve, grocer.
1802. Mar. 20.	William Henderson, grocer.	William Fraser jun., tailor.
1803. Mar. 4.	William Galloway, insurance broker.	James Baird, merchant.
1804. Mar. 13.	James Baird, merchant.	William Waddel, printer.
1805. May 6.	{ Alexander Gibson Hunter of Bal- skelly, bookseller.	{ Robert Cockburn, wine merchant.
1806. Apr. 7.	William Trotter, upholsterer.	Kincaid M'Kenzie, merchant.
1807. Apr. 6.	Kincaid M'Kenzie, merchant.	Archibald Constable, bookseller.
1808. Apr. 4.	Archibald Constable, bookseller.	James Ballantyne, printer.
1809. Apr. 3.	David Bridges, merchant.	Robert Miller, bookseller.

\* Ten persons were admitted Constables on this date, but no election of Office-Bearers seems to have taken place in 1794, in consequence, probably, of the political disturbances of the times.

CLERK.	CHAPLAIN.	DATE OF ELECTION.
William Gillespie, merchant.	Gavin Wilson, shoemaker.	Mar. 27. 1773.
John Hogg, merchant.	John Peat, upholsterer.	Apr. 2. 1774.
William M'Lean, merchant.	John Wild, tobacconist.	Mar. 31. 1775.
Malcolm Wright, merchant.	John Wild, tobacconist.	Apr. 6. 1776.
John Aitchison, merchant.	John Rae, merchant.	Mar. 29. 1777.
William Hunter, merchant.	William Muirhead, brushmaker.	Apr. 18. 1778.
William Hall, merchant.	Alexander Aitchison, goldsmith.	May 18. 1779.
William Dalrymple, merchant.	Alexander Aitchison, goldsmith.	May 5. 1780.
William Dalrymple, merchant.	Alexander Aitchison, goldsmith.	Apr. 9. 1781.
Robert Ford, merchant.	William Watson, wright.	May 27. 1782.
Robert Burn, mason.	John Mitchell, merchant.	Apr. 21. 1783.
William Phin, merchant.	David Paterson, banker.	Feb. 28. 1784.
John Little, merchant.	James Howden, watchmaker.	Apr. 30. 1785.
John Little, merchant.	James Howden, watchmaker.	May 6. 1786.
James Fowler, stationer	James Howden, watchmaker.	Apr. 7. 1787.
James Charles, hosier.	John Fairbairn, merchant.	Apr. 3. 1788.
Forrest Loudon, merchant.	William Couper, upholsterer.	Apr. 3. 1789.
John Dick, merchant.	William Fraser, tailor.	Apr. 8. 1790.
Thomas Brown, bookseller.	James Tate, brushmaker.	Apr. 22. 1791.
Peter Lawson, seedsman.	James Burnet, grocer.	Apr. 6. 1792.
Peter Lawson, seedsman.	John Swanston, grocer.	Mar. 29. 1793.
		Apr. 24. 1794.
John Grieve, merchant.	David Finlay, perfumer.	Apr. 21. 1795.
James Henderson, haberdasher.	David Finlay, perfumer.	Apr. 7. 1796.
Walter Dickson, seed merchant.	John Keltie, perfumer.	Apr. 7. 1797. <sup>1</sup>
Thomas Sutherland, haberdasher.	James Cuninghame, merchant.	Apr. 18. 1798. <sup>1</sup>
John Milne jun., ironmonger.	James Rennie, slater.	Apr. 11. 1799.
Charles Dalrymple, woollen draper.	William Braidwood jr., ironmonger.	Mar. 21. 1800.
James Spittal, haberdasher.	Robert Armstrong, clothier.	Mar. 10. 1801.
Thomas Patterson, merchant.	John Brown, printer.	Mar. 20. 1802. <sup>2</sup>
Paul Baxter, insurance broker.	James Graham, spirit dealer.	Mar. 4. 1803.
Alexander Smellie, printer.	John Thomson, insurance broker.	Mar. 13. 1804.
David Bridges jun., woollen draper.	John Thomson, insurance broker.	May 6. 1805.
John W. Brougham, merchant.	Robert Miller, bookseller.	Apr. 7. 1806.
George Moncreiff, merchant.	James Ballantyne, printer.	Apr. 6. 1807.
Robert Hall, merchant.	Francis Bridges, merchant.	Apr. 4. 1808.
John Lindsay, merchant.	Robert Green, watchmaker.	Apr. 3. 1809.

<sup>1</sup> James Clark, Surgeon.<sup>2</sup> Andrew Inglis, Surgeon, vice Dr Clark, deceased.

DATE OF ELECTION.	MODERATOR.	TREASURER.
1809. Apr. 22.	John Lindsay, merchant.	Sutherland M'Kenzie, merchant.
*1810. Apr. 2.	John Scott, plumber.	Neil Ryrie, brewer.
1811. Apr. 1.	James Anderson, bookseller.	Alexander Henderson, banker.
1812. Apr. 3.	William Dunlop, spirit merchant.	John Clapperton, merchant.
1813. Apr. 5.	Alexander Ross, linen draper.	John Charles, candlemaker.
1814. Apr. 4.	John Charles, candlemaker.	John Gall, coachmaker.
1815. Apr. 3.	John Gall, coachmaker.	Peter Forbes, spirit dealer.
1816. Apr. 1.	Robert Morton, jeweller.	Andrew Grierson, clothier.
1817. Apr. 7.	John Stenhouse, baker.	William Miller, typefounder.
1818. Apr. 6.	John Stenhouse, baker.	Alexander Giles, upholsterer.
1819. Apr. 5.	Alexander Giles, upholsterer.	John Norrie, painter.
1820. Apr. 3.	James Dallas, wine merchant.	William Burton, grocer.
1821. Apr. 2.	George Spankie, merchant.	Thomas Kinnear, banker.
1822. Apr. 1.	Thomas Sawers, baker.	Peter Forbes, wine merchant.
1823. Apr. 7.	Peter Forbes, wine merchant.	Robert Wright, architect.
... Apr. 23.	... ..	... ..
1824. Apr. 5.	Adam Luke, clothier.	William Marshall, hardware merch.
1825. Apr. 4.	Robert Ritchie, ironmonger.	Thomas Crichton, spirit merchant.
1826. Apr. 3.	William Hunter, bookseller.	Hugh Pillans, printer.
1827. Apr. 2.	Hugh Pillans, printer.	William Glen, wine merchant.
1828. Apr. 7.	John Anderson jun., bookseller.	George Brown, merchant.
1829. Apr. 6.	James P. Mitchell, brewer.	George Kinnear, banker.
† ... June 19.	John Anderson jun., bookseller.	George Brown, merchant.
... Oct. 21.	... ..	... ..
1830. Apr. 5.	Andrew Sievwright, merchant.	Charles Lawson, seedsman.
... May 14.	... ..	... ..
1831. Mar. 2.	{ Charles Lawson, seedsman, <i>vice</i> { Andrew Sievwright, resigned.	{ William Johnston, <i>vice</i> Charles { Lawson, elected Moderator.
... Mar. 21.	{ William Johnston, <i>vice</i> Charles { Lawson, resigned.	{ Andrew Millar, merchant, <i>vice</i> { Wm. Johnston, elected Moderator.
... Apr. 4.	William Johnston, engraver.	Andrew Millar, merchant.
... May 10.	... ..	... ..
1832. Apr. 2.	Andrew Millar, merchant.	Joseph Taylor, wine merchant.

\* In 1806, the Society assumed the title of "High Constables," to distinguish them from the officers acting under the Sheriff and Judge of Police, in virtue of the Police Act (45 Geo. III., cap. 21, 10th April 1805), which came into operation on 15th May 1805. It was not, however, till 4th April 1810 that the Magistrates and Council, on the application of the Society, formally authorised it to assume the distinguishing appellation of "The Society of High Constables of the City of Edinburgh."

† Forty-seven High Constables, including the whole Office-Bearers elected on 6th April 1829, resigned office on 16th June, in consequence of a misunderstanding with the Magistrates and Council. New Constables were, however, immediately appointed, by whom Office-Bearers were elected on 19th June.

CLERK.	CHAPLAIN.	DATE OF ELECTION.
John Ballantyne, bookseller.	John Thomson jun., bookseller.	Apr. 22. 1809.
James Anderson, bookseller.	Richard Paterson, merchant.	Apr. 2. 1810.
Robert Wright, builder.	John Ballantyne, bookseller.	Apr. 1. 1811.
Alexander Ross, linen draper.	William Marshall, jeweller.	Apr. 3. 1812.
John Gall, coachmaker.	John Pearson, ropemaker.	Apr. 5. 1813.
Peter Forbes, spirit dealer.	Thomas Crichton, manufacturer.	Apr. 4. 1814.
William Child, china merchant.	Andrew Grierson, clothier.	Apr. 3. 1815.
Claud Muirhead, printer.	John Lauder, merchant.	Apr. 1. 1816.
Adam Black, stationer.	Anthony Hammond, merchant.	Apr. 7. 1817.
John Macdowall, bookseller.	Anthony Hammond, merchant.	Apr. 6. 1818.
James Dallas, wine merchant.	John Dempster, apothecary.	Apr. 5. 1819.
David Henderson, merchant.	John Boog, saddler.	Apr. 3. 1820.
John Brash, spirit merchant.	Edward Gilchrist, haberdasher.	Apr. 2. 1821.
James Nasmyth, jeweller.	James Aikman, baker.	Apr. 1. 1822.
Adam Luke, clothier.	Thomas Duncan, bootmaker.	Apr. 7. 1823.
...	{ George Bookless, glazier, <i>vice</i> }	Apr. 23. ...
...	{ Thomas Duncan, deceased. }	
Robert Ritchie, ironmonger.	George Bookless, glazier.	Apr. 5. 1824.
William Hunter, bookseller.	Hugh Pillans, printer.	Apr. 4. 1825.
William Hall, merchant.	Andrew Tait, baker.	Apr. 3. 1826.
John Anderson jun., bookseller.	George Brown, merchant.	Apr. 2. 1827.
James Patison, merchant.	Eagle Henderson, seedsman.	Apr. 7. 1828.
George Crosbie, Sec. National Bank.	William Fleming, banker.	Apr. 6. 1829.
James Patison, merchant.	Eagle Henderson, seedsman.	June 19. ...
{ Charles Lawson, seedsman, <i>vice</i> }	{ ... }	Oct. 21. ...
{ James Patison, resigned. }	Alexander Wright, seedsman.	Apr. 5. 1830.
George Wright, agent.	{ ... }	May 14. ...
{ William Johnston, engraver, <i>vice</i> }	{ ... }	
{ George Wright, resigned. }	{ ... }	Mar. 2. 1831.
{ James S. Pringle, silk mercer, <i>vice</i> }	{ ... }	
{ W. Johnston, elected Treasurer. }	{ John Lees, tobacconist, <i>vice</i> Alex. }	Mar. 21. ...
{ John Aitchison, stationer, <i>vice</i> }	{ Wright, resigned. }	Apr. 4. ...
{ J. S. Pringle, resigned. }	John Lees, tobacconist.	
John Aitchison, stationer.	{ Joseph Taylor, wine merchant, <i>vice</i> }	May 10. ... <sup>1</sup>
...	{ John Lees, resigned. }	
John Carfrae jun., bookseller.	Charles Kennedy, surgeon.	Apr. 2. 1832. <sup>2</sup>

<sup>1</sup> Charles Kennedy, Surgeon ; W. B. Hamilton, M.D., Assistant-Surgeon.<sup>2</sup> W. B. Hamilton, M.D., Surgeon.

# Appendix.

DATE OF ELECTION.	MODERATOR.	TREASURER.	CLERK OR SECRETARY.
1832. Nov. 20.	... ..	{ John Carfrae jun., <i>vice</i> Joseph Taylor, resigned. }	{ C. Kennedy, <i>vice</i> John Carfrae jun., elected Treasurer. }
1833. Apr. 1.	Charles Kennedy, surgeon. <sup>1</sup>	... ..	... ..
... June 12.	... ..	Wm. Girdwood, merchant.	George Duncan, bootmaker.
1834. Apr. 7.	William Girdwood, merchant.	George Duncan, bootmaker.	Donald Macdonald, merchant.
1835. Apr. 6.	George Duncan, bootmaker.	Alex. Sclanders, upholsterer.	Robert Brown, merchant.
1836. Apr. 4.	John G. M. Burt, surgeon.	Peter S. Fraser, bookseller.	John Lindsay, bookseller.
1837. Apr. 10.	Peter S. Fraser, bookseller.	John Lindsay, bookseller.	James Miller, surgeon.
1838. Apr. 2.	James Miller, surgeon.	Francis Richardson, merchant.	William Lindores, grocer.
1839. Jan. 11. <sup>2</sup>	William Johnston, engraver.	Andrew Wilkie, silversmith.	George Logan, W.S.
... Apr. 1.	William Johnston, engraver.	Andrew Wilkie, silversmith.	George Logan, W.S.
1840. Apr. 6.	Andrew Wilkie, silversmith.	George Logan, W.S.	James Durham, stationer.
1841. Apr. 5.	John Robertson, musicseller.	Robert Sclater, die cutter.	W. Hutchison, S.S.C.
1842. Apr. 4.	William Dick, veterinary surg.	Robert Anderson, printer.	Charles Blair, silk mercer.
... Aug. 30.	... ..	... ..	... ..
1843. Apr. 3.	William Philip, watchmaker.	William Finnie, brushmaker.	James Newlands, architect.
1844. Apr. 1.	Alex. Murray, <i>Observer</i> Office.	James Newlands, architect.	Alex. Bryson, watchmaker.
1845. Apr. 7.	Robert Sclater, die cutter.	Alex. Bryson, watchmaker.	Alexander Black, architect.
1846. Apr. 6.	Alex. Bryson, watchmaker.	Donald Sinclair, japanner.	Alex. Aitken, ironmonger.
1847. Apr. 5.	George Vallance, clothier.	James Brydone, printer.	James Tod, engraver.
1848. Apr. 3.	James Brydone, printer.	James Tod, engraver.	John Taylor, cabinetmaker.
1849. Apr. 2.	James Tod, engraver.	John Taylor, cabinetmaker.	George Beattie, builder.
1850. Feb. 12.	... ..	... ..	... ..
... Apr. 1.	John W. Mackie, baker.	George Beattie, builder.	Andrew Isles, leather merchant.
1851. Apr. 7.	George Beattie, builder.	Andrew Isles, leather merchant.	Thomas Drummond, builder.
1852. Apr. 5.	And. Isles, leather merchant.	John Smart, bootmaker.	John Hutton, draper.
1853. Apr. 4.	John Hutton, draper.	Thomas Gill, merchant.	William Lyon, auctioneer.
1854. Apr. 3.	Thomas Gill, merchant.	William Lyon, auctioneer.	Robert Smith, builder.
1855. Apr. 2.	{ William Lyon, auctioneer, *Thomas Gill, <i>Vice-Mod.</i> }	{ Robert Smith, builder. }	Adam Mossman, jeweller.
1856. Apr. 7.	{ Robert Smith, builder, William Lyon, <i>Vice-Mod.</i> }	{ Thomas Paton, bookseller. }	Alexander Dowell, auctioneer.

<sup>1</sup> 1833, April 1. The Moderatorship was competed for by Messrs Carfrae and Kennedy. The former had the majority of votes, but on an appeal to the Magistrates and Council, was declared to be ineligible, and Mr Kennedy's election was sustained. The other offices were filled up on 12th June, after the election of the Moderator was settled.

<sup>2</sup> 1838, Dec. 19. The Office-Bearers and Members of the Society resigned, in consequence of a misunderstanding with the Magistrates and Council. Sixty Burgesses offered their services to the Magistrates, were accepted and sworn into office, and the Society was reconstituted on 11th January 1839.

<sup>3</sup> By resolution of 19th March 1855, the Moderator of the former year was appointed Vice-Moderator.

# *List of Office-Bearers.*

CHAPLAIN.	SURGEON.	ASSISTANT-SURGEON.	YEAR.
{ R. S. Oliver, hatter, <i>vice</i> Chas. Kennedy, elected Clerk. }	...	...	Nov. 20. 18
...	...	...	Apr. 1. 18
William Cowan, silk mercer.	W. M. Bathgate, surgeon.	...	June 12. 18
John Boog, saddler.	Thomas Wood, surgeon.	...	Apr. 7. 18
R. S. Oliver, hatter.	John G. M. Burt, M.D.	...	Apr. 6. 18
Thomas A. Forrest, jeweller.	James Miller, surgeon.	Robert B. Malcolm, surgeon.	Apr. 4. 18
William Lindores, grocer.	Robert B. Malcolm, M.D.	...	Apr. 10. 18
Alexander Hill, printseller.	William Dumbreck, surgeon.	Robert Omond, M.D.	Apr. 2. 18
Archibald Thomson, mercht.	James Cowan, M.D.	Alexander M'Glashan.	Jan. 11. 18
Archibald Thomson, mercht.	James Cowan, M.D.	Alexander M'Glashan.	Apr. 1. 18
John Boog, saddler.	James T. Alexander, surgeon.	...	Apr. 6. 18
Benjamin Greig, silkmercer.	James T. Alexander, surgeon.	...	Apr. 5. 18
Andrew Dodds, slater.	James T. Alexander, surgeon.	...	Apr. 4. 18
...	...	James Mercer, surgeon.	Aug. 30. 18
David Young, grocer.	James Mercer, M.D.	...	Apr. 3. 18
Lockhart Fraime, bookbinder.	James Mercer, M.D.	...	Apr. 1. 18
Donald Sinclair, japanner.	<sup>1</sup>	...	Apr. 7. 18
Joseph Robertson, merchant.	Alexander Millar, surgeon.	...	Apr. 6. 18
John Taylor, cabinetmaker.	William M. Mackenzie.	...	Apr. 5. 18
John Shennan, builder.	W. A. Roberts, surgeon.	...	Apr. 3. 18
George Knight, smith.	W. A. Roberts, surgeon.	...	Apr. <sup>2</sup> 2. 18
{ Robert Chisholm, jeweller, <i>vice</i> George Knight, resigned. }	...	...	Feb. 12. 18
James Gray jun., bootmaker.	William Crawford, M.D.	...	Apr. 1. 18
John Smart, bootmaker.	William Crawford, M.D.	...	Apr. 7. 18
J. H. Sanderson.	W. A. Roberts, M.D.	...	Apr. 5. 18
Robert Smith, builder.	W. A. Roberts, M.D.	...	Apr. 4. 18
John Melville, plumber.	W. A. Roberts, M.D.	...	Apr. 3. 18
Thomas Paton, bookseller.	James D. Gillespie, M.D.	...	Apr. 2. 18
John M'Kenzie, 9 George St.	James D. Gillespie, M.D.	...	Apr. 7. 18

<sup>1</sup> No election of Surgeon in 1845, there being none in the Society.

<sup>2</sup> Thomas Drummond, builder, elected Custodier of Batons on 24th May 1849.

<sup>3</sup> On 1st April 1850, No. 1 of the Committee was appointed to be henceforward Custodier of Batons, and Mr James Ritchie, stationer held that office.

<sup>4</sup> Robert Newton, Middleby Street, Custodier of Patons, 1852-53.

<sup>5</sup> Mr Alexander Reid, printer, Custodier of Batons, 1855-56.

<sup>6</sup> Mr William Hill, merchant, Custodier of Batons, 1856-57.

# Appendix.

DATE OF ELECTION.	MODERATOR.	VICE-MODERATOR.	TREASURER.
857. Apr. 13.	Fred. Hayne Carter, C.A.	Alex. Banks jun., bookbinder.	Jas. C. Anderson, ironmonger.
858. Apr. 5.	Fred. Hayne Carter, C.A.	Alex. Banks jun., bookbinder.	Alex. Edmonstone, bookseller.
859. Apr. 4.	Alex. Banks jun., bookbinder.	Alex. Edmonstone, bookseller.	William Elgin jun., stationer.
860. Apr. 2.	Alex. Banks jun., bookbinder.	Alex. Edmonstone, bookseller.	John Baxter, merchant.
861. Apr. 1.	William Skinner, W.S.	John Greig jun., printer.	James Lawson, tobacconist.
862. Apr. 7.	William Skinner, W.S. <sup>2</sup>	Chas. Lawson jun., seedsman.	James Lawson, tobacconist.
... Nov. 13.	{ Charles Lawson jun., seedsman. vice William Skinner.	John Greig jun., printer.	James Lawson, tobacconist.
... Nov. 25.	... ..	... ..	{ A. K. Morison, S.S.C., vice James Lawson, resigned.
863. Apr. 6.	Chas. Lawson jun., seedsman.	John Greig jun., printer.	A. K. Morison, S.S.C.
... Dec. 17.	... ..	... ..	... ..
864. Apr. 4.	Chas. Lawson, jun., seedsman.	John Greig jun., printer.	A. K. Morison, S.S.C.

<sup>1</sup> "The Edinburgh Municipality Extension Act, 1856," *inter alia*, enlarged the Municipal Boundaries of the City, so as to make them coextensive with the Police Boundaries, and transferred to the Magistrates and Council the powers of the Police Commissioners. It became necessary, in consequence, to reorganise the Society, so as to adapt its Constitution to the altered circumstances of the City. This was accordingly done by Act of Council, dated 24th February 1857. At this time the office of Vice-Moderator was established, the practice of electing a Chaplain was discontinued, and the Custodier of Batons was made one of the regular officers of the Society.

<sup>2</sup> Elected a Councillor in November 1862, and succeeded, on 13th November, by Mr Charles Lawson jun.

*List of Office-Bearers.*

SECRETARY.	SURGEON.	CUSTODIER OF BATONS.	DATE OF ELEC
Alex. Edmonstone, bookseller.	James D. Pridie, surgeon	Wm. Elgin jun., bookseller.	Apr. 13. 18
William Elgin jun., stationer.	James D. Pridie, surgeon.	James Thin, bookseller.	Apr. 5 18
John Greig jun., printer.	James D. Pridie, surgeon.	Thomas Duncanson, distiller.	Apr. 4. 18
John Greig jun., printer.	James D. Pridie, surgeon.	James Lawson, tobacconist.	Apr. 2. 18
Alex. Kelly Morison, S.S.C.	James D. Pridie, surgeon.	John Biggar, upholsterer.	Apr. 1. 18
Alex. Kelly Morison, S.S.C.	Murray Thomson, M.D.	John Biggar, upholsterer.	Apr. 7. 18
Alex. Kelly Morison, S.S.C.	... ..	... ..	Nov. 13. .
{ G. T. Bathgate, writer, <i>vice</i> A.	... ..	... ..	Nov. 25. .
{ K. Morison, elected <i>Treasurer</i> .			
George T. Bathgate, writer.	Murray Thomson, M.D.	George Neilson, smith.	Apr. 6. 18
{ John Wilson jun., merchant,	{ Joseph Bell, M.D., <i>vice</i> Mur-	... ..	Dec. 17.
{ <i>vice</i> George T. Bathgate,	{ ray Thomson, resigned.		
{ resigned.			
John Wilson jun., merchant.	Joseph Bell, M.D.	George Neilson, smith.	Apr. 4. 18

## II.

*THE COMPT of the Mony Resauit in fra sick persones as hes transgrest aganest the Statutis and Ordenances of the Guid Toun, the nameis of the personis that payit, and the soum that everie man payit, and the occatione whairfoir they payit; Resauit be Thomas Fischer, William Nisbet, James Aikinhead, and David Johnestoun; begining at Mychelmes 1608 yeirs till Mychelmes the yeir of God 1609 yeirs, the time of thair offices of baillyerie, as follows:—*

## The Unlaws of Bluid and Injureis in the Toun.

Item in the first Robert Scot copp seler for breking of ane puir manis copis and stryking himself,	£5 0 0
Robert Moffet for drawing a dager to Thomas Niccoll,	5 0 0
Thrie meill men for breking of ordor in the merkat,	2 14 0
Johne M'Culloche for drawing a dager,	10 0 0
Robert Aitkin for drawing a dager to Johne Gyffert,	5 0 0
Johne Pudgeunis for drawing a dager to Patryk Cumings wyfe,	5 0 0
Hamiltoun, servand to Johne Inglis, for hurting ane boy,	2 0 0
Ramsay Blexter for drawing a dager to Thomas Wilsone,	3 0 0
Johne Young for drawing a dager to Robert Moffet,	4 13 4
Johne Dobbie for drawing a dager, and strykeing his broyer James,	10 0 0
Ane dryver of nolt for regraiting at the House of the Muir,	3 13 4
George Young for drawing a dager to William Samunt,	3 0 0
William M'Caitney for ryueing George Litilljohnne his compt buik,	10 0 0
For the Tounis part of the unlaws of cutit skynis in the Land Market off the flechers,	10 0 0
Duglass meillmaker for drawing a dager to ane uther,	5 0 0
From the maltmen, for thair unlafull convocations,	100 0 0
Niccoll Ewein his wyfe for stryking Thomas Cochrens wyfe,	5 0 0
Summervell pultrieman for stryking Johnstoun pultrieman,	3 0 0
Robert Wairdlaw for abuissing his uncle Maister Johne.	10 2 0
Josephe Reid's wyf for calling Braidie hen theiff,	5 0 0
Robert Noitman for drawing a dager to ane maltman,	4 14 0
Fra Braiding for miscalling of Joseph Reids wyfe,	3 0 0

James Workman for hurting Johne Hird,	£9	13	4
James Miller for being found be the gaird at 12 hours at evin with ane sword drawin at James Harvie,	4	0	0
Suma of this syde is 228 lb. 10s.			
Johne Cudbert for hurting and wounding Robert Gourlay,	20	0	0
Robert Gourlay for hurting Johne Cudberts sone,	10	0	0
Johne Andersone for ane cuff to Thomas Cochren,	5	0	0
Fra Hennesone tailzer and Dykesone cordiner abusing uthers,	5	0	0
John Montgumrie for being taikin drukin with Johne Schaw upon the nyt,	3	0	0
John Schaw for that nychts work,	2	10	0
Thomas Clarksone for stryking Thomas Cochren,	5	0	0
Thomas Knowis meillman for ane cuff to Robert Wilkie,	5	0	0
David Martche for a cuff to Johne Traill,	5	0	0
Johne Traill for a cuff to David Martche,	5	0	0
Andro Filp for hurting and wounding Thomas Edger,	20	0	0
Johne Gilmor for ane cuff to Johne Gray,	3	0	0
Alexander Bowie for miscalling Lawrence Paycoke,	5	0	0
The guidman of Lambden for drawing a sword to Alexander Haitlie,	10	0	0
Mychell Adamsone for slaying scheip upon the Saboth,	5	0	0
Johne Kerssell for abuissing be words Johne Dunmur,	4	0	0
Johne M'Kilrew for selling aill at 12 hours at evin in his tavern upon the foir gait,	5	0	0
James Miller for the bluid wyte of Patryk Chalmers,	9	18	0
The Boweris wyfe for selling wyne in hir tavern efter 12 hours at evin,	5	0	0

Suma of this syde is 132 lb. 8s.

The soum of thir haill unlawis of the Injureis whilk was committit within this burgh  
the tyme of our being in office, fra Mychelmes 1608 yeirs till Mychelmes 1609 yeirs,  
extends according to thir particullars to iij<sup>o</sup>. iij<sup>xx</sup> lib. xvijs.

### III.

*ORDOUR and MANER of the VISITOURIS in ilk quarter, electet  
and chosin thairto,—contening thair office, thair naimes, and bounds  
assignet to thame. [3 July 1588.]*

First Thay sall trye and owersie the howshalderis and fameleis within thair bounds,  
thair estaitt lyfe and conversatioun, to witt, gif thaire be any fornicatouris, nicht walkeris,  
vagabonnds, idill persouns, singill wemen that ar vnfrie haldand howsses be thame

selfis, drye tapsteris, vnfre taskmen and jurnaymen of crafts that hes nocht ane maister to ansuer for thame, ony vnfre persouns vsand merchandice and trafficque, or occupeand any craft or handy labour, and quha hes sett thair howssis to ony of thir sort of pepill contrar to the touns lawis.

Item that thai se the nichtbouris in thair bounds be sufficiently prouydet of guid and sufficient armour, and quha wantis the samyn that thai declair it to the baillie of the quarter, and that thai, with the saidis nichtbouris, be in reddynes weill airmitt quhen the prouest and baillies hes ado in the kings grace or tounis seruice.

Item that thai tak vp the names of the beggares hantand or dwelland within thair bounds with thair estaitt, gif thai be decrepit and failzeit, or gif thai be stark and haill, and the tyme thai haif bene in the toun, and gif thair names in writt to the baillie of the quarter.

Item quhen ony of thir visitoures passis to the saill, that thai cum in to the Counsall and schaw the sam, that ane vther may be depute in thair place.

[*Followis the names of the saidis Owerseares of the quarteris with the bounds assignet to thame, &c.*]

#### IV.

### ORDERS AND INJUNCTIONS FOR CONSTABLES.

“Ordoris sett doun be the Lord Proveist Bailles and Counsall of Edinburch, to be observed be the Constables thairof in the dischaarge of thair offices within this Burgh and liberties of the samine. [4 September 1611.]

“IMPRIMIS, The constables being elected by the provest bailles and counsell sall be obleist to accept of the charge and office of constabularie vnder the paine of imprisonment of their persones and payment of ane unlaw of ten pund Scottis, and to remaine in waired ay and quhill the same be payit, and under the paine of horning, and for discharge of ane honest dewtie in their offices, being solemnly suorne in presence of the provost baillies and counsell of this burgh, sall give the oath following :—

#### OATH.

That they and ilk ane of thame sall faithfullie and trewlie dischaarge their offices of constabularie within the boundis committed to their charge for the space of sex monthis nixt after their admissioun, and sall not, for favour respect or fear of any persones, forbear to doe that quhilk becommeth them in their office, and abone all thingis they sall regard the keeping and preserving of the Kinges Maiesties peace, and at everie neccessar occassioun come to the proveist and baillies of this burgh or any ane of thame and giv

ane dew and trew informatioun of any break or other insolencie against his Maiesties peace within the boundis of thair commandiment, and sall nowyse hyde cover nor con-ceale the samin, nor anie probation or light that they can give for clearing and proving thereof. So help me God, and be God himselfe.

“1. ITEM, Ane constable sall have libertie to take and apprehend any suspect persons, ydle vagabounds or night walkeris, and imprisone them till they find soverty for their behaviour.

“2. ITEM, Ane constable sall have power to challenge any persone within this burgh, or liberties thereof, that sall be fund wearing pistolets or dagges, and sall present thame before the provost, baillies, or any ane of thame, to be punisched by them for their fault conform to the Act of Parliament.

“3. ITEM, Vpone ane appearance of any fray or stur within this burgh either by day or night betwix any pairties, or any other sudden accident that may fall furth, the constable sall tak vnto him the assistance of his neighbouris for sundering of the pairties, and for ordour taking with any inconvenient that sall happin to ensue, and sall take the partie or parties and commit thame in waird, or present thame to the provost or baillies. Attour, if anie harme sall happen to be done to the constable or any of his assistants, the constable sall take them and put thame in waird, or present them to the provost or baillies, or any ane of thame, to be condinglie punished for their fault.

“4. ITEM, If any person or persons mak any pley or tumult within this burgh, and flee to any house, the constable sall have power to break up the doores thereof, and albeit the partie or parties fle without the boundis of the constables chaarge, yet may the constable follow and apprehend him or them in ane fresch persute, and commit thame to waird to be punished for their fault.

“5. ITEM, Ilk constable sall searche and seek within the boundis committed to his chaarge that na jesuitis, seminarie preistis, nor traffiking papistis, haunt vse ludge or be reset therein, and if they can find or try any, to tak and apprehend them and present thame to the proveist and baillies to be tryed.

“6. ITEM, The constables sall tak and apprehend all vagaboundis and sturdie beggeris or Egiptianes, and put thame in waird to be punished for their fault according to the Act of Parliament.

“7. ITEM, The constables sall take and apprehend all ydle persones quha hes no calling to live by, and quha will not tak thame selfis to some labor trade or occupation, and sall present them before the provost and bailleis, quha, after examinatioun and tryall, sall punish them according to their demerite.

“8. ITEM, The constable being informed of any persone guiltie and culpable of slaughter, murther, thift, or any other capitall cryme quhatsomever, sall then requyre his neighbouris to assist him for the saif convoying of sik persones before the provest and baillies to be punischt for their fault.

“9. ITEM, The constable sall searche and seek the boundis committed to his chaarge, and suffer na vagaboundis, beggeris, nor infamous persones, to remaine dwell or be

reset in his boundis, and if any be within his saidis boundis, to schaw the samine to the magistrate that they may be punished and removed forth of this burgh.

“10. ITEM, Ilk constable sall concur ane with ane other at all occasiounes neidfull.

“11. ITEM, The hail constables sall, vpon everie last Setterday of every moneth, compear and present themselues befor the provost and baillies in the Counselhous, to give ane account of their diligence in their offices, as they will ansuer vpon their obedience.

“12. ITEM, Ilk constable sall cause the boundis committed to his charge be kepted cleane of all kynd of filth, middings, and suyne, and to that effect for keeping the streets and passages cleane, ilk constable sall have power in his awin boundis, after tryell of any person or persons casting out filth at their doores, windoes, or shotes, either in the foregate or baksydes, or laying of anie filth or middings vpon the hie streets, closses, or passages within this burgh, to cause the persone guiltie to pay ane vnlaw of five pounds *toties quoties*, and to commit them in waird, there to remain vntill the same be payed.

“13. ITEM, Ilk constable sall visie the hail inhabitants within his bounds, and see that they be sufficientlie provyded in armour according to their estate and degre for his Maiesties service, and if any be within his bounds vnprovyded sufficientlie, he to report the samine to the magistrat for ordour taking therewith.

“14. ITEM, Ilk constable in his boundis sall tak and apprehend all banneris, suearers, and blasphemers of Godis name, either in the streitis, markettis, or at the welles, and to punisch them, either by wairding or putting them in jogs or stokes, according to the qualitie of their fault.

“15. ITEM, If any persons his Maisties subiects sall refuse or delay to concur with the constable in executing of his office, they sall be imprisoned and sevealie punished by command of the proveist [or] baillies according to the qualitie of their offence.

“16. ITEM, The constables sall be obleist to receave any iniunctions or statutis that the proveist and ballies sall inioyne to thame at anie tyme heirefter, the samine being approvan by his Maiestie's Privie Counsell.”

## V.

### ACT OF PARLIAMENT AS TO CONSTABLES.

(See page 101.)

Act of Parliament, James VI., 1617, c. 8.<sup>1</sup>

(I.) OURE SOVERANE LORD with the adnyse of his Estaittis findis and declaris that the constables ar to be maid choyse of by the commissioneris and justices of peace in

<sup>1</sup> The more important variations in the Act of Parliament, Charles II. 1661, c. 38, are shewn by the footnotes.

thair quarter sessiounes throughout the haill cuntrie, tuo at least in everie parochin, or moe according to thair discretiounes, haveing consideratioun of the qualitee thereof. In gryit tounes, likewyais, (not being cities nor free burghis) they ar to appoynt a number of constables proportionallie to the gryitnes thairoff: Bot in all burghis regall, and frie cities, the constables ar to be chosin by the magistratis off the same, and they are to indue and to be chainged from sex to sex monethis.

(II.) And who sall refuis to accept the chaarge, and not to giff his oathe for dewtiefull execution thereof, salbe imprisoned and fynit at the discretioun of the justice off peace at thair nixt sitting.

(III.) The constables sall tak the oathe following

<sup>1</sup> You sall swaere that you sall faithfullie and trewlie discharge your office of constabularie within the parochin of, &c., indureing the tyme appoynted to yow, and sall not for fauoure, respect, or feare of anye man, forbear to doe quhat becomethe yow of your office, and abone all thingis yow sall regairde the keeping and preserving of the kingis Majesties peace, and sall at everie quarter sessiounes and meitingis of justices give trew and due informatioun of onye breache whiche hes bene maid of his Majesties peace within the boundis of your commandiment, and sall noway hyid, cover, nor conceall the same nor ony of the prufes and evidences whiche yow can geve for the cleiring and proving thairoff. *So help you God.*

(IV.) A constable may apprehend anye suspect man, who for the maist pairt sleipeth all the day and walkethe in the night,<sup>2</sup> and carrye him to the next justice of peace, to find suretye for his goode behaveoure or otherways to be committed to prisoun;<sup>3</sup> and giff he be a man of qualitee the justice of peace sall go with the constable and doe it.

(V.) Constables sall staye and arrist all vagabondis, sturdye beggeris, and egip-tianis, and carrye thame before the next commissioneris of peace,<sup>4</sup> who sall tak ordour for thair committing or punishment, according to the statute of parliament.

(VI.) Constables sall arreist all ydle persounes, whom they knaw to have no meanis to leiff vpoun, and will not talk thame selfis to any labour, tred, or occupation, and sall carie thame before the commissioner off peace, who, efter examinatioun, sall ether commit thame, or tak suretye of thame for their apperance at the nixt sessiounes.

(VII.) Anye constable haveing apprehendit a persoun guyltie and culpable of slauchter, murthor, theft, or onye vther capitall cryme whatsoever, sall then requyre his neighbours to assist for safe conveying of suche persounes to the nixt commissioner, who sall then examine the partie and sett down his depositioun in writting, to

<sup>1</sup> In the Act 1661, the form is given in the first person.

<sup>2</sup> In the Act 1661, the description given is, "suspicious persons who are night walkers and cannot give a good account of themselves."

<sup>3</sup> The remainder of this clause is omitted in the Act 1661.

<sup>4</sup> Throughout the Act 1661, the words "some justice of peace" are substituted for the words "the next commissioner of peace."

be schawin at tha nixt sessiounes, and thairefter sall send him back to prisone.<sup>1</sup> And giff a noble man, prelate or small baroun, or anye in thair names, haveing power, sall acclame the right of juridictoun to proceid agains the delinquent, the said justice sall ressave suretye of the said pairtie who requyred the defender to be deliuered to him, that justice salbe dewlie ministrat, and caus deliuerie off the said persone be made to him. Always the said commissouner of peace, at the nixt sessiounes, sall certefie the whole mater to the benche, to the effect they may inquyre whether justice hath accordingle bene ministred; And giff anye fault be found, to aduertels his Majesties counsell, that ordoure maye be taken therewith.

(VIII.) Any of his Majestie's subiectis of the degree of yeamen,<sup>2</sup> who sall refus or delaye to concure with the constable in the executing of his office, salbe imprissoned and punished by the commissioneris and justices: And giff he be of ane hier degrie and qualitey, the constable sall informe the justice thairoff, that they mak the Lordis of Previe Counsell acquaint, quhome the Estaittis ordains to censure the offender according to the qualite of the fault.

(IX.) A constable sall arrest anye persoun of the degrie of a yeamen, who salbe found weiring hagbuttis, pistolettis, and daggis, and sall carye thame before a commissioner of peace, who is either to tak suretye for there apperance the next sessioun, or commit thame prisoneris tiil they do the same; bot gif the persoun be of higher qualitie, the constable sall informe the justice thairoff, who sall declate the same to his Majestie's Counsell, that ordor may be takin thairwith.

(X.) If anye partie of degree of yeaman doe complayne to a constable that he is thretned by ane vther, then sall the constable apprehend the thretner, and carie him with the partie complaynant before the nixt commissioner of peace: And giff he refus to goe, then sall they carie him to prisone. And if he be af a heeghar degrie, the justice, being informed thereof, sall informe the Counsell, and in the meantyme charge the pairtye to [keep the] peace.

(XI.) All the constables, at the least one of everie paroch, instructed with commissione to answer for the rest within the said paroch, sall attend at everie quarter sessioun, thair to giff informatione of all suche misdemaneris as haue hapned in those boundis since the last session: and otherwayes to geve to the benche further satisfactioun in anye thing quhairin they sall be requyred; and to resave frome the saidis commissioneris, at the end of the sessioun, such ordoures and directiounes as they sall then injoyne and appoynt thame to doe.

---

<sup>1</sup> The remainder of this clause, which is left out in the Act 1661, has reference to the right of lords of regality and others possessing heritable jurisdictions, who could reclaim offenders from other judges, and try them within the courts of the regality, &c. See Notes on Lord High Constable, p. [41].

<sup>2</sup> The words, "of the degree of yeamen," are omitted in the corresponding section of the Act 1661.

(XII.) Upone the apperance of anye fraye or stirre betuix pairties, the constable may tak the assistance of his nightboures for sundering off the pairties. And gif thair be anye harm done to the constable or anye of his assistance, by thame who maid the frey, they salbe punischit by the justices at the nixt sessioun, they being of the qualitie of yeomen, and being of ane heighar qualitie, the counsell salbe informit thairroff, as said is.

(XIII.) When any hath maid ane effraye, and then flies to ane hous, the constable may follow to the hous, and if the dores be schute, he sall tak notice of the maister off the hous, and requyre witnes thairon. And albeit the delinquent sall flie farder without the boundis off the constables chaarge, yit may the constable follow and apprehend him in a fresche persute, and crave concurrence of the cuntrey to that effect.

(XIV.) The constables within everie parochin salbe executaris off the preceptis and warrandis off the justice of peace.

(XV.) Concerning the feyis and satisfioun to be gevin to the constables and clerks for thair paynes; Oure Souerane Lord with aduyis fairsaid, ordanis the saidis justices to gif vp particular notes in wreat to the auditores of His Majesties chekquer of the fynes imbrocht to thame, that out thairroff suche measure and satisfioun may be appoynted and gevin to the saidis clerkis and constables as may recompense thair travellis, wherin gif it salbe found that the saidis fyines will not be sufficient, the said Lordis of his Heighness chekquer sall appoynt suche farder satisfioun to thame as in thair discretioun they sall think thair laboures and diligence doethe deserve, and caus thame be payit of the same, &c.

---

## VI.

### *NOTES ON SUNDAY OBSERVANCE, &c., IN SCOTLAND.*

*(See page 147.)*

Previous to the Reformation in Scotland, the Sunday was not, as it is now happily, observed as a day of rest from worldly labour. On that day fairs and markets were commonly held, sometimes in the kirkyards, and even in the kirks themselves;<sup>1</sup> shops, hostelries, and places of amusement were kept open; weaponshawings took place;<sup>2</sup>

---

<sup>1</sup> 1469, c. 10, Acts of the Parliaments of Scotland, ii. 95; 1503, c. 28, Ibid. ii. 252.

<sup>2</sup> *Antea*, p. 90.

and it appears that the law courts occasionally sat for the transaction of business.<sup>1</sup> It was indeed usually appropriated to mirth and revelry; the people practised archery at the bow marks placed near parish churches for the purpose,<sup>2</sup> engaged in the games of Robin Hood and Littlejohn,<sup>3</sup> gambled, drank, danced, and indulged in all kinds of amusement. To some extent, no doubt, an effort was made to limit this desecration.<sup>4</sup> The act 1469, c. 10,<sup>5</sup> prohibited the holding of fairs on holidays, and the prohibition was renewed and extended by the act 1503, c. 28,<sup>6</sup> which enacted that markets and fairs should not be held on holidays, or within kirks or kirkyards.<sup>7</sup> The practice, with many of the other forms of desecration alluded to, nevertheless continued long after the reformation,<sup>8</sup> and it is abundantly obvious from the habits and legislation of the reformers, that they did not entertain the stricter notions of the sanctity

<sup>1</sup> Cunningham's Church History of Scotland, p. 9.

<sup>2</sup> 1424, c. 9, Acts of the Parliaments of Scotland, ii. 6.

<sup>3</sup> *Antea*, p. 19, footnote 4.

<sup>4</sup> The Anglo-Saxon laws, it is interesting to notice, were most strict in their requirements as to the proper observance of the Lord's day.—See the laws of Wihtraed (A.D. 690–725) [Ancient Laws and Institutions of England, 8vo edition, i. p. 39]; of Ine (A.D. 688–725) [Ibid. i. 105]; of Edward and Guthrum (*circa* A.D. 880–891) [Ibid. i. 171, 173]; of Cnut (A.D. 1017–1035) [Ibid. i. 369–403]; of Æthelstan (A.D. 924) [Ibid. i. 213–241]; of Ethelred (A.D. 978–1016) [Ibid. i. 309, 321, 327, 345]; and of Edgar (A.D. 959–975) [Ibid. i. 265]. The ancient ecclesiastical monuments of the English Church, some of them of still earlier date than these laws, were equally stringent.—See the penitential of Theodore archbishop of Canterbury (A.D. 668–690) [Ibid. ii. 45, 46, 51], which also describes the practice of the early Greek and Roman Christians in this matter; the confessional and penitential of Ecgerht archbishop of York (A.D. 735–766) [Ibid. ii. 161–237.]; the canons enacted under king Edgar (A.D. 959–975) [Ibid. ii. 249]; the law of the Northumbrian priests [Ibid. ii. 299]; the canons of Ælfric [Ibid. ii. 363]; ecclesiastical institutes [Ibid. ii. 421–422].

<sup>5</sup> Note 1, p. xxi.

<sup>6</sup> Ibid.

<sup>7</sup> In Edinburgh, however, the holding of markets for the sale of flesh on Sunday was expressly authorised by the act 1540, c. 43 [Acts of the Parliaments of Scotland, ii. 378].

<sup>8</sup> The practice of holding markets on Sundays was discontinued in burghs sooner than in landward parishes. In the convention of burghs held at Stirling on 25th October 1574, the neighbours of Edinburgh were requested to apply to the next General Assembly to discharge Sunday markets at landward parish kirks, “failzeand that, the general kirk be nocht offendit that sic vther burrowis as are greatlie hurt thairby kep thair mercattis vpoun Sondays as thai had wont” [Printed Records of Convention, i. 35].

of the day which subsequently prevailed in Scotland.<sup>1</sup> "It was on a Sunday," says Dr Joseph Robertson,<sup>2</sup> "that the reformed commendators of Holyrood and Coldingham, both of them lords of the congregation, rode at the ring in women's clothes. It was on a Sunday that the reformed municipality of Edinburgh gave its grand banquet to the Queen's French kinsfolks."<sup>3</sup> Knox travelled on a Sunday, wrote letters on Sunday, and had the Duke of Chatelherault and the English ambassador to sup with him on a Sunday. The Gaelic translator of Knox's 'Forms of Prayer,' the Reformed Superintendent of Argyle and Bishop of the Isles, feasted the queen and the ambassador of Savoy on a Sunday. For more than twenty years after Knox was in his grave, Robin Hood plays were acted on Sundays, and the King of May held his gambols on Sundays in Scotland, as in England masques and interludes continued to be performed before the court on Sundays, throughout the reigns of Elizabeth and James." It was on a Sunday also that the queen of James VI. was crowned, the reformed ministers assisting at the ceremony;<sup>4</sup> and on a Sunday the city of Edinburgh gave a sumptuous and costly banquet to Charles I., the afternoon service in all the town churches being dispensed with in consequence.<sup>5</sup> Dr Gairdner, has shewn that for nearly a century after the reformation, the incorporation of surgeons in Edinburgh held various meetings on Sundays for the transaction of business,—the admission of members, the election of office-bearers, the exercise of discipline, &c.<sup>6</sup>

<sup>1</sup> Principal Lee's Lectures on the History of the Church of Scotland, i. 3, footnote *a*.

<sup>2</sup> Preface to the Inventories of Queen Mary's Jewels, &c. [Bannatyne Club, p. lxxix, and authorities therein referred to].

<sup>3</sup> And also to the Danish friends of King James VI. and his queen on 24th May 1590 [Council Records, ix. 43, 53, 54; Chambers's Traditions of Edinburgh, 249].

<sup>4</sup> Calderwood's History of the Kirk of Scotland, v. 95; Papers relating to the marriage of James VI., Bannatyne Club, pp. 39. On this occasion also fifteen knights were created.

<sup>5</sup> Memorials of the Troubles in Scotland (Spalding Club), i. 39.

<sup>6</sup> Sketch of the Early History of the Medical Profession in Edinburgh (1864), p. 8. During the continuance of this practice, however, the surgeons are curiously enough found legislating against "barbarising on Sabbath," on the ground of its being "absurd and unlawful, contrary to God's word, and debauching of servands," and not only signing the national covenant themselves (in August 1638), but making subscription imperative on their apprentices and servants, and a condition of admission into their body in all time coming [Ibid. 9, 10]. This legislation against Sunday "barbarising" in Edinburgh, had its prototype in an enactment of the time of Henry IV. (1399-1413) against barbers in London following their calling, or keeping their shops open on Sundays [Munimenta Gildhallæ—Liber Albus—I. Pref. p. liii]. The markets for flesh and bread on that day do not seem to have been interfered with, however. In 1598, the kirk-session of Perth also declared "polling and razing" to

The accounts of the treasurer of the city also prove that it was not uncommon to pay accounts on that day.<sup>1</sup> So late as 1574, the practice of performing comedies of a somewhat religious character on Sunday had not been altogether discontinued, and even occasionally received the countenance and approbation of some of the church courts.<sup>2</sup> About the same time also ministers were to be found who accompanied their people to the bow butts on Sunday evenings, and shot with bows and arrows.<sup>3</sup> Shortly afterwards, however, the Act of Parliament 1579, c. 8, prohibited the holding of markets and fairs on "Sunday," and enacted "that na handy lauboring or working be vsed on the sonday, nor na gamyng and playing, passing to tavernis and ailhousses, and selling of meitt or drink, and wilfull remanyng fra their parochie kirk in tyme of sermone or prayers on the sonday be vsed undir the panes" therein prescribed.<sup>4</sup> This act proceeds on the narrative that the "sabboth days" were then "commonlie violat and brokin, alsweill within burgh as to landwart, to the great dishonor of God," by the practices against which it was directed.<sup>5</sup>

Subsequently a series of acts was passed against Sabbath-breaking, &c. The act 1594, c. 8, subjected all who should profane the "Sabboth day" by selling, or presenting and offering for sale, any goods or merchandise on that day, to forfeiture of their whole goods for the king's use.<sup>6</sup> The act 1661, c. 281, prohibited, under severe penalties, which it appointed to be uplifted and disposed of according to the act and instructions anent the justices of the peace, "all salmond fishing, going of salt pans, milnes or kills, all hiring of shearers, carieing of loads, keeping of mercats, or vseing any sorts of merchandice on the "Sabboth-day, "and all other prophanation thairof."<sup>7</sup> The act 1672, c. 58, provided for the execution of the laws against all kinds of profaneness, including profanation of the Lord's day, and "appointed magistrates of burghs and others to execute the laws against such delinquents as might be dilated to them by the

---

be a breach of the Sabbath [Extracts from Kirk-Session Records of Perth, Spottiswood Miscellany, ii. 276].

<sup>1</sup> See, for example, under date 1590, a payment on Sunday 26th April of £3 on account of a sword dance, and payments in relation to causeways on Sundays 12th June, 16th August, 4th, 11th, and 18th October, 1st, 15th, and 22d October.

<sup>2</sup> Principal Lee's evidence before Sir Andrew Agnew's Committee in 1832. Report of Committee, pp. 267-269; Appendix, 299-306. Lee's History of the Church of Scotland, i. 3, footnote *a*, 313. Book of the Universal Kirk of Scotland, March 1574, part i. 322; Ibid. October 1576, part i. p. 375.

<sup>3</sup> Dr Cook's History of the Church of Scotland (1815), ii. 43.

<sup>4</sup> Acts of the Parliaments of Scotland, iii. 138.

<sup>5</sup> See also 1592, c. 17; Ibid. iii. 548. 1593, c. 6; Ibid. iv. 16. Calderwood's History of the Kirk of Scotland, v. 135.

<sup>6</sup> Acts of the Parliaments of Scotland, iv. 63.

<sup>7</sup> Ibid. vii. 262; see also the act 1663, c. 43; Ibid. vii. 481.

kirk-sessions or other church judicatories."<sup>1</sup> The act 1690, c. 55,<sup>2</sup> ratified and confirmed all previous acts against every form of profanity, and peremptorily required magistrates and others to put these acts to execution, with all care and diligence, as they would be answerable. The act 1693, c. 64,—referring to the Sabbath-breaking, profane and idle swearing, drunkenness, and other immorality "that so much at present abound,"—empowered and ordained every presbytery to elect one or more persons "to take notice of the foresaid vices and immoralities, and to delate and prosecute the persons guilty thereof, before the magistrates of the bounds."<sup>3</sup> The act 1695, c. 16,—on the recital that the previous acts had "not taken the wished effect, through the negligence of the magistrats officers and others concerned to put the same in execution,"—subjected magistrates and others who refused, neglected, or delayed to enforce the laws, to a penalty of £100 Scots, and prescribed the mode in which the same should be recovered and applied;<sup>4</sup> and the act 1696, c. 31,<sup>5</sup> revived all previous acts, and declared that, if magistrates and others failed to enforce them, the Privy Council would appoint bailies to do so in their place.

This legislation was earnestly seconded by that of the General Assembly of the Church, who indeed, there is reason to believe, urged upon the legislature the propriety of enacting the early statutes against Sabbath-breaking and other modifications of profaneness.<sup>6</sup> The acts and proceedings of the Assembly exhibit a startling picture of the laxity of morals which existed, and fully justify the statements in the various statutes as to the prevalence of the practices against which they were directed. One of these acts, dated 30th January 1699,<sup>7</sup> contains a special allusion to the habit in burghs, "especially those of greatest resort, as Edinburgh," of many sitting "too late in taverns, especially on the Saturday night, and men of business pretend[ing] they do it for relaxation of their minds, through which some neglect the public worship on the Lord's day in the forenoon, and others attend the worship drowsily. This habit, it is to be feared, existed in Edinburgh till the commencement of the present century."<sup>8</sup>

Nor were the inferior judicatories of the church, as a rule, less zealous in their en-

<sup>1</sup> Acts of the Parliaments of Scotland, viii. 99.

<sup>2</sup> Ibid. ix. 198.

<sup>3</sup> Ibid. ix. 327.

<sup>4</sup> Ibid. ix. 387.

<sup>5</sup> Ibid. x. 65.

<sup>6</sup> Principal Lee's History of the Church of Scotland, ii. 406. His evidence before Sir Andrew Agnew's Committee, q. 4086; Report, p. 267. Booke of the Universal Kirk of Scotland (Bannatyne Club), part i. 19-30, 1562; 312-322, 1574; 339, 1575; 375-377, 1576. Part ii. 746, 748, 749, 1589; 772-776, 1590. Part iii. 874, 1596; 996, 1602. See also Part i. 253, 1572—Part ii. 284, 1573; 536-538, 1581; 769, 1590; 784, 1591. Acts of the General Assembly of the Church of Scotland, 1638-1842 (Edinburgh 1843), pp. 25-29, 1638; 38, 1639; 53-72, 1642; 79, 1643; 141, 1646; 193, 1648; 226, 1690; 241, 1694; and 259-261, 1697.

<sup>7</sup> Acts of the General Assembly, pp. 280, 281.

<sup>8</sup> See Chambers's Traditions of Edinburgh, pp. 132-152; and Domestic Annals of Scotland, iii. 575.

deavours to secure the sanctification of the Lord's day. "Scarcely any subject," says Principal Lee, "is more frequently noticed in the proceedings of synods, presbyteries, and kirk-sessions, in the sixteenth and seventeenth centuries;"<sup>1</sup> "though," he adds, "for a considerable time the transition from the laxity of popish manners to the stricter solemnity of presbyterian discipline was much more gradual than is generally imagined."<sup>2</sup>

The kirk-sessions of Edinburgh, in particular, were, as might be expected, not behind the other courts of the Church in their efforts to prevent the profanation of the Sunday within their bounds. A reference to two of their minutes<sup>3</sup> sufficiently indicates the nature of their action. On 8th May 1644, the six sessions ordained proclamation to be made against vaging and gossiping on the streets after the afternoon's sermon, and against playing, jesting, sporting, and profanely spending the Lord's day; it ordained "ilk elder and his deacon to visit by course the haill particular quarter<sup>4</sup> whereof he is elder, and carefullie to observe that na taverns, ale cellars, or baxters booths be kepted open, but only to sell necessaries for present necessitie, and close up all again."<sup>5</sup> On 1st

<sup>1</sup> History of the Church of Scotland, ii. 406.

<sup>2</sup> Ibid. ii. 407. See also Extracts by him from Proceedings of Church Courts, shewing how the laws against Sabbath-breaking were administered in Scotland. Ibid. ii. 406-415; Appendix No. 3 to Report from Sir Andrew Agnew's Committee. Selections from the Ecclesiastical Records of Aberdeen (Spalding Club), Pref. xxix-xxxi, pp. 16, 18, 19, 21, 23, 24, &c. Extracts from the Records of the kirk-sessions of Perth (Spottiswood Miscellany), ii. 232, 240, 243, 244, 251, 310. Chronicle of Perth (Maitland Club), pp. 58, 63, 65, 67, &c. Chambers's Domestic Annals of Scotland, i. 328-332.

<sup>3</sup> Extracts from which by Principal Lee are printed in the Appendix No. 3 to the Report of Sir Andrew Agnew's Committee.

<sup>4</sup> As early as 1574, "captors," afterwards named "searchers," were appointed by the kirk-session of St Andrew's to visit the whole town, according to the division of "quarters," and enforce the observance of the Sunday. "To that effect," the minute bears, "every Sunday there shall pass a bailie and elder, two deacons, and two officers armed with their halberts, and the rest of the bailies and officers to be in attendance, to assist to apprehend transgressors, to be punished according to the acts of the Kirk." "This practice," says Principal Lee, "was soon afterwards universally observed throughout all the towns of Scotland, and continued to be observed with scarcely any interruption for 150 years" [Principal Lee's evidence before Sir Andrew Agnew's Committee, q. 4087,—Report, p. 268]. For illustrations of the practice in Aberdeen, see Selections from the Records of the Kirk-Session of Aberdeen (Spalding Club), pp. 26, 27, 94 (1603-1609, 1621); in Glasgow,—See Extracts from Burgh Records, 1573-1581 (Maitland Club), 21; Wodrow's Biographical Collections (Maitland Club), ii. 11, 36; in Perth,—where the practice continued till at least 1775,—See Spottiswoode Miscellany, ii. 244.

<sup>5</sup> Extracts by Principal Lee. Appendix to Report of Sir Andrew Agnew's Committee, p. 303.

May of the following year the six sessions appointed the magistrates,<sup>1</sup> attended by the ministers by course, to "go up and down the streets upon the Lord's day after the afternoon sermon, and cause take particular notice of such as sall be found fouth of their houses vaging abroad upon the streets, and cause cite them befor the session to be rebuked and censured."<sup>2</sup>

The Royal burghs also co-operated with the parliament and church courts in the enforcement of Sunday observance. At their convention in Dundee on 4th and 5th November 1578,<sup>3</sup> they enacted that no market be held on Sunday in any free burgh, under penalty of £10, so oft as they failed; and at their convention in Aberdeen on 11th, 12th, 13th, 14th, 15th, and 16th July 1580, it was unanimously resolved that the acts of parliament "anent the discharge of mercatts on Sondagis, and labouring thairon, or playing and drinking in time of sermon," should be executed within the bounds and jurisdictions of the burghs, as they should be answerable therefor in every convention.

But no body shewed more activity in the promotion of the observance of the Sunday within their bounds than the town council of Edinburgh, whose enactments were of the most stringent character. It must not be supposed, however, that that stringency was characteristic of the municipal legislation of Edinburgh alone. It equally marked the contemporary legislation of the town councils of Glasgow, Perth, and Aberdeen; and strict though it was, and inconsistent in many respects with our notions of civil and religious liberty, it undoubtedly reflected the religious spirit of the time in its earnestness as in its sternness. Of these acts,—dating from the time of the Reformation,—the following is a brief abstract:—

An act dated 30th October 1560,<sup>4</sup> appointed "the halie day callit the Sabaothe day or day of rest, commonlie callit the Sounday," to "be kepit holie" in all time coming; prohibited the making of merchandise, the opening of booths, or the carrying on of any kind of worldly business; required regular attendance at both the forenoon and afternoon sermons; prohibited the sale of meat or drink in taverns or hostelrys during the time of service; and changed the flesh market from "Sunday" to Saturday, and the cattle market at the "House of Muir" from Sunday till Thursday. An act (forming one of the town's statutes) dated 23d April 1561,<sup>5</sup>—on the preamble that "it was an old custom of prentices to make ane play of Robin Hood on an Sabbath day in April," and that the council considered "the same to be ane profane and wicked act,"—discharged "the samyn play on the Sabbath," under pain of the masters losing their freedom, and the prentices losing their armour and what is upon them, besides punishment of their persons. An act dated 4th July 1563,<sup>6</sup> ordained, under pain of confiscation to the town's use of the food sold, "that no market nor bargain be made openly or privately of wool, hydes, skins, butter, or cheese, on Sunday." An

<sup>1</sup> The kirk-sessions of burghs in these times appear to have included a number, if not all, of the magistrates, who were thus themselves parties to such orders.

<sup>2</sup> Extracts by Principal Lee, *ut supra*, p. 304. <sup>3</sup> Printed Records of Convention, i. 69.

<sup>4</sup> Council Records, iii. 55.

<sup>5</sup> *Ibid.* iv. 4.

<sup>6</sup> *Ibid.* iv. 73.

act dated 24th January 1564, ordained that, in time of preaching, both on Sabbath and week days, two officers should stand at the kirk doors to stop the clamour of the people on the causeway, and the bellman be within the kirk to keep it quiet.<sup>1</sup> An act dated 7th January 1568, ordered proclamation to be made against keeping taverns open during time of preaching on the Sabbath day, under penalty of £5.<sup>2</sup> An act dated 23d August 1570,<sup>3</sup> imposed a fine on Patrick Porteous, and imprisonment on the carter, for carting wool on Sunday. An act dated 20th September 1570,<sup>4</sup> fined Thomas Lowrye "for handling of skynis vpoun the Sabothe." Following upon the act of parliament 1579, c. 8, an act of council, dated 4th August 1581,<sup>5</sup> ordered proclamation to be made "dischargeing all kynd of gemmis and playis now commonly vsit the said day, sic as bowling in yairdis, dansing, playing, rynning throw the hie streittis of husseis bairnis and boys, with all maner of dissoluitoun of behaviour;" and commanded all "maisteris of houseis to see that their servants, bairns, and families attended the preachings," and refrained from the wantonness referred to, under pain of imprisonment and fine. For the better execution of this act, the bailies were appointed "to owersey the strettis and houssis thair owlk (week) about, and Johne Syme baillie to begyn the next Sounday, and swa furth als weill Sounday as tyme of seruice." An act dated 17th April 1583,<sup>6</sup> prohibited the neighbours from haunting or repairing "to ony Sunday mercats at Tranent, Mussilbruch, Dal-kyth, or vtheris, under the panes prescribed in the Acts of Parliament, and an unlaw of £10." An act dated 19th April 1583,<sup>7</sup> ordained proclamation to be made discharging all Sunday markets within the burgh, "all catchpulling, rolling, playing, drinking, and taverning, and sicklyk in time of sermon on Sunday, or doing anything that may tend to the breking of the Sabboth." An act dated 12th March 1584,<sup>8</sup> ordained all freemen and freemen's wives to attend their own parish kirks every Sunday, as also at the time of the communions, under prescribed penalties; only those who were "tryet, seik and deforset, or ellis sex myle of the toun," to be exempted. An act dated 11th February 1585,<sup>9</sup> contained strict prohibitions against workmen's booths being open, or work being done; against marketing or haunting or repairing to market between 9 A.M. and 4 P.M.; against taverns being open, and cooks selling meat in time of preaching and prayers; against persons being found in the caitchpulle or at the ailey bowlis, "or exerceand any playes or pastyme the said tyme" on Sundays; and against merchants' booths being open, and the butter market being held, during preaching and prayers on Wednesdays and Fridays,—all under prescribed penalties of fine and imprisonment. An act dated 18th March 1585,<sup>10</sup> discharged all markets, worldly labour, gaming, playing, taverning, selling meat and drink, and wilfully remaining from sermon and prayers. An act dated 10th June 1586,<sup>11</sup> required all persons to attend sermon upon

<sup>1</sup> Council Records, iv. 124.<sup>2</sup> Ibid. iv. 229.<sup>3</sup> Ibid. iv. 262.<sup>4</sup> Ibid. iv. 263.<sup>5</sup> Ibid. vi. 149.<sup>6</sup> Ibid. vi. 232.<sup>7</sup> Ibid. vi. 232.<sup>8</sup> Ibid. vii. 166.<sup>9</sup> Ibid. vii. 226.<sup>10</sup> Ibid. viii. 3.<sup>11</sup> Ibid. viii. 20.

the Sunday, and prohibited the frequenting or holding open of taverns, hostleries, caithpules, and "aylaye bowlis" the said time. And another act of same date, appointed "ane bailzie ilk Sondag hes owlk about [to] visie the streitt, tavernis, and utheris commoun places in tyme of sermoun, and pones all offenderris according to the towns statutes." An act dated 24th March 1586,<sup>1</sup> enjoined attendance at the preachings on Sunday, and prohibited "vaging on the streets or fields, and the keeping open of taverns, catchpules, and yards, during the time thereof." An act dated 12th April 1587,<sup>2</sup> charged parents, masters of houses, masters of crafts, and school-masters, to prevent their children, servants, apprentices, and scholars, from "vagand" on the streets on Sundays during time of forenoon and afternoon sermon, or from "bickering" at any time on that day. An act dated 12th May 1587,<sup>3</sup> required all persons to resort to the preachings, "and that nane pas to the feytes or playis the time of the sermones afore or after none on the Sundays." An act dated 22d September 1587,<sup>4</sup>—referring to the prevalance of immorality on the part of "sundrie craftis childer, prenteissis, feyed seruandis, and taskmen," not only during week days, but on Sundays,—prohibited all such from leaving their master's service without leave, and from night-walking after ten o'clock; and required them to attend preachings and prayers on Sundays, so that they "be not found in time of God's service in caithpules, tavernis, aylay bowles, or in the feytes, or vagand in the streitts, or yitt in vnbonest or suspect plaices." An act dated 4th October 1587,<sup>5</sup> discharged bickering, especially on the Sundays. An act dated 29th May 1588,<sup>6</sup> appointed Dickson, the town swescher, to be warded and put in the irons for passing on Sundays to "the May playis at Kirkliston." Acts and Statutes of the Burgh, dated 11th October 1588,<sup>7</sup> 22d October 1589,<sup>8</sup> and 2d October 1590,<sup>9</sup> prohibited the neighbours from keeping booths open during sermons, or from absenting themselves from divine service, and from passing to landward markets, and to pastimes and unnecessary affairs on Sundays, especially during the time of sermon. An act dated 19th May 1591,<sup>10</sup> was directed against persons "vagand up and down the streitts, makand all kynd of missorderer," &c., on the Sabbath day. Another act dated 1st November 1591,<sup>11</sup> was directed against holding markets on the "hie gait" at any hour on the Sabbath day; against taverns and aile houses being open during preaching or prayers on that day; against eating and drinking within the same from sunrise till sunset on that day; and against the using or opening of taverns at night, after the ringing of the ten o'clock bell. An act dated 5th April 1592,<sup>12</sup> appointed an unlaw of £10, paid by James Gechan and his partners for making merchandise on the Sabbath day, to be applied for the use of the poor. An act

<sup>1</sup> Council Records, viii. 79.

<sup>4</sup> Ibid. viii. 108.

<sup>7</sup> Ibid. viii. 178.

<sup>2</sup> Ibid. viii. 81.

<sup>5</sup> Ibid. viii. 111.

<sup>8</sup> Ibid. ix. 3.

<sup>3</sup> Ibid. viii. 88.

<sup>6</sup> Ibid. viii. 154.

<sup>9</sup> Ibid. ix. 62. See statement by the bailies of Edinburgh in the General Assembly in 1590.—Calderwood's History of the Kirk of Scotland, v. 109.

<sup>10</sup> Council Records, ix. 90.

<sup>11</sup> Ibid. ix. 112.

<sup>12</sup> Ibid. ix. 144.

dated 19th April 1592,<sup>1</sup> set forth the duty of all in relation to the Sabbath day, being the Lord's day, and prohibited all the inhabitants by themselves, their children, servants, or families, from being on that day at pastimes or games, "sic as golf, aircherie, row bowlis, penny stane, kaitchpulle, or sic other pastymes;" from engaging in any kind of handy labour; and all daughters and women servants from playing at the ball, or singing profane songs upon the same day. Following upon the act of Parliament 1592, c. 17, passed on 5th June in the same year, the council on 1st September ordered proclamation to be made prohibiting "baxters baik ony meitt upon the Sabbath day fra this tyme furth."<sup>2</sup> On 3d November 1592, the council,—in consequence of divers complaints by the Commissioners of the General Assembly that the holding of markets on Monday led to the profanation of the Sabbath day, by inducing persons dwelling to landward to travel on that day in order to attend the Monday market,—prohibited such persons from bringing their goods into the burgh on Sunday, or from presenting them at the market on Monday; changed the market of dry skins and wool from Monday till Wednesday, and allowed those living to landward to hold and have Wednesday weekly for a market day to their accustomed wares.<sup>3</sup> On 20th April 1593,<sup>4</sup> the council passed an act, prohibiting under pain of fine and imprisonment the practice of people repairing to Leith on the Sabbath day, and vaging about the streets, drinking in taverns, playing at golf, archery, or other pastimes, upon the Links during the time of sermon. The acts 1593, c. 6, and 1594, c. 8, were passed on 21st July 1593, and 8th June 1594 respectively. On 8th April 1601,<sup>5</sup> the council discharged the keepers of the various ports from permitting packs or loads to enter the town on Sabbath, except viuers (provisions). An act of council, dated 11th October 1609,<sup>6</sup> prohibited the holding of any markets on Sunday, at any time of day, and specially the selling on that day "of any kind of pultrie, kaill, bere, or fruitt;" the crying of milk through the town after eight o'clock at evin, and upon Sunday at any time of day. By an act, dated 30th August 1611,<sup>7</sup> the council, "understanding that the Sabbath day is prophane be the sherars convenand on the Sabbath day to be hyret," ordained them to hold their convention in future outwith the West Port. An act dated 20th October 1613,<sup>8</sup> ordained proclamation to be made discharging all persons "to keip merkats, selling kaill and beir outwith houssis vpoun the Sundayes." On 22d November 1648,

<sup>1</sup> Council Records, ix. 146.

<sup>2</sup> Ibid. ix. 162.

<sup>3</sup> The change of the market from Monday to Wednesday excited great discontent and riot among the craftsmen, and provoked what Calderwood designates "some infamous rymes and libells against the ministrie" [Calderwood's History of the Kirk of Scotland, v. 177]. A specimen of these rhymes, taken from the Cotton MSS., is given in a note by the editor of Calderwood [Ibid. v. 177]. It rather appears that, after all, the change was disallowed as unnecessary, and *ultra vires* of the town council [The Historie of King James the Sext (Bannatyne Club), pp. 254-256].

<sup>4</sup> Council Records, ix. 195.

<sup>5</sup> Ibid. xii. 18.

<sup>6</sup> Ibid. xii. 134.

<sup>7</sup> Ibid. xi. 37.

<sup>8</sup> Ibid. xii. 71.

the council, in consideration of certain articles given in to them by the great session of the kirks of the burgh, dated 4th October 1648, anent "the restraining of excessive banquetis at the bapteizing of children on the Lordis day; anent the closing of wyin and aill sellaris that day; anent the restraining of 'vaiging persons,' who have past the danger of the pest abroad, cheiflie on the Lord's day towards the foul lodges; anent the restraining of strangeris and sturdie beggaris; anent the keeping of the portis clos on the Sabbath day," with the council's answer thereto, dated 13th October, ordained proclamation to pass through the burgh "for inhibeteing all such disorder, and restraining all such vyse according to the penall statutes of this bruch." On 19th June 1650,<sup>1</sup> the council, to the effect people may be restrained "fra vaging abroad vpon the Sabbath," ordained the ports to be closed from ten o'clock on Saturday night till four o'clock on Monday morning; and that no one be suffered to come in or pass out during that time, or be found "vaging" in the streets, or repairing to the castlehill, under pain of imprisonment and punishment of their persons, at the will of the magistrate. As a special exception to this rule, the Society, Netherbow, and Leith Wynd ports were allowed to be opened for an hour in the morning and at night for the watering of horses.<sup>2</sup> On 9th September 1657,<sup>3</sup> two of the bailies were appointed to meet with the ministers as to the breach of the Sabbath, especially by the bickering betwixt Leith and Edinburgh;<sup>4</sup> and again on 21st October 1657,<sup>5</sup> a committee of the council were appointed to meet with the ministers and kirk-sessions anent the better keeping of the Sabbath day.<sup>6</sup> On 8th September 1658,<sup>7</sup> in consequence of overtures by the presbytery "for the better keeping of the Sabbath day," the council ordered a pair of stocks to be placed at the Weighhouse, the Cross, the Netherbow, and the Grassmarket, "quhairn are to be put the transgressors in caise of

<sup>1</sup> Council Records, xvii. 260.

<sup>2</sup> This act was doubtless passed on the representation of the kirk-sessions, whose minute of 5th August 1646 embodies a similar resolution [Extracts by Principal Lee, Appendix to Report of Sir Andrew Agnew's Committee, p. 304]. At Glasgow, likewise, the ports were ordered to be closed, but only during certain hours [Wodrow's Biographical Collections (Maitland Club), ii. 11, 38].

<sup>3</sup> Council Records, xix. 242.

<sup>4</sup> This conference followed on a representation by the "Five Sessions" of Edinburgh "anent the great abuse of the bickerings on the Sabbath day, even in the time of sermon" (see Excerpt from their minute, 7th September 1657. Lee's Extracts, *ut supra*, p. 305).

<sup>5</sup> Council Records, xix. 254.

<sup>6</sup> In a minute of the kirk-sessions, dated 5th April 1658, it is stated that "the magistrates is to cause some English souldiers goe along the streets, and those outparts above written, both before sermon and after sermon, and lay hold upon both young and old whom they find out of their houses, or out of church" [Principal Lee's Extracts, *ut supra*, p. 305].

<sup>7</sup> Council Records, xix. 330.

their not paying the penaltie mentioned in the overtures." An act passed on 14th January 1659,<sup>1</sup> refers to a representation from the ministers and kirk-sessions as to the number of persons in the habit of walking or sitting, and playing on the Castlehill, streets, and other places on the Sabbath day after sermons, "so that it is manifest that familie worship is neglected by such, and diverse inconveniencies follow," for remeid whereof stocks were ordered to be provided for the punishment of those who failed to pay the fines thereby prescribed. Following on the acts of parliament 1661, c. 18, and 1663, c. 19, the latter of which materially strengthened the hands of the church judicatories, an act of council, dated 13th January 1664,<sup>2</sup> and relative proclamation, prohibited walking through the streets in time of divine service. This act bears to have been passed upon the representation of the kirk-sessions. A similar act was passed, and proclamation ordered, two days later.<sup>3</sup> By the act of parliament 1672, c. 58, the magistrates of burghs were required to execute the previous acts against those who might be delated to them by sessions and church courts; and as these acts and the town's statutes already referred to seem to have been found sufficiently effective, the council do not appear to have been called on for several years to legislate further on the subject.<sup>4</sup> On 1st May 1689,<sup>5</sup> however, an act of council appointed all the public wells to be closed on Sundays from eight A.M. till twelve o'clock noon, and from one o'clock till five o'clock P.M.; discharged all persons from bringing vessels larger than a pint bottle to the wells for the carrying off of water on the Lord's day; and discharged milk to be sold on that day after seven A.M. during summer, and eight A.M. during winter. Another act dated 13th November 1689,<sup>6</sup> prohibited all coffee-houses in the city from being opened upon the Lord's day in any time coming, under a penalty of £12 Scots; and a third act, dated 25th December in the same year,<sup>7</sup> re-enacted the provisions of the former act as to the public wells; prohibited the bringing of milk into the city after half-past seven o'clock A.M., "that the inbringers of the milk may be in readiness to remove out at the ports at eight of the clock in the morning;" and recommended the bailies to see the act "put to due execution, and to put centries to every cestern during the tyme they rin." An act dated 29th October 1690,<sup>8</sup> ordained intimation to be made from the pulpits that "the scandalous practice" of profaning the Lord's day by standing and vaging upon the streets be foreborne, with certification that those found standing or walking upon the street or castlehill in time of divine worship, without a reasonable cause, should be fined, in terms of the acts of parliament. On 14th October 1692,<sup>9</sup> the council appointed a committee to consider the several acts of parliament made anent keeping of the Sabbath day, and proclamations of council relative thereto; "and to deliberat upon the most effectual methods for the

<sup>1</sup> Council Records, xx. 11.<sup>2</sup> Ibid. xxii. 90.<sup>3</sup> Ibid. xxii. 90.<sup>4</sup> On 6th October 1682 [Ibid. xxx. 148], forty merks Scots were ordered to be paid to the town's officers for their pains in clearing the streets of beggars upon the Sabbath days.<sup>5</sup> Ibid. xxxiii. 5.<sup>6</sup> Ibid. xxxiii. 52.<sup>7</sup> Ibid. xxxiii. 68.<sup>8</sup> Ibid. xxxiii. 183.<sup>9</sup> Ibid. xxxiv. 104.

punctual observance of the Sabbath day in this place, and to report the next council day.”<sup>1</sup> No trace of the report appears, but on 9th August 1693,<sup>2</sup> an act of council was passed, which, after reciting the various acts of parliament against Sabbath-breaking and other immoralities, and the prevalence of the offences against which they were directed, prohibited brewing or other labour, or standing or walking idly on the streets, or going in company or vaging to the Castlehill, public yards, or fields, on the Lord's day, at any time thereof; discharged all persons from going to alehouses or taverns for eating or drinking during time of sermon, or unseasonably or unnecessarily at any time on the Lord's day; prohibited all keepers of taverns or alehouses from selling meat or drink to be eaten or drunken otherwise than as above stated; and discharged all persons from bringing in water from the wells to houses on that day in greater quantities than single pints,—under penalty of £10 Scots for every contravention.

In the interval between this and the subsequent act of council of 12th May 1699, referred to in the text,<sup>3</sup> the acts of parliament 1695, c. 16, and 1696, c. 31, were passed. These were followed by a royal proclamation, dated 25th January 1698, containing an abridge of the laws against profaneness, and for suppressing of vice and immorality. This proclamation was ordered to be duly published, and also to be read twice a year in all the parish churches of the kingdom; and all judges, magistrates, and officers of the law, were required, on their highest peril, to see to the due execution of the laws therein referred to. Among these laws it is somewhat curious to find conspicuous acts of Charles II. against blasphemy, of James VI. and Charles II. against swearing and profanation of the Sabbath; of Charles II. against the custom of excessive drinking; of Queen Mary against adultery; and of Charles II. against “the filthy vice of fornication.”<sup>4</sup>

---

<sup>1</sup> This committee was appointed in consequence of a representation to the council by the “Six Sessions” of Edinburgh, urging the passing of an act for better observing the Lord's day. See Minute of Sessions, 3d October and 14th November 1692. Principal Lee's Extracts, *ut supra*, p. 305.

<sup>2</sup> Council Records, xxxiv. 225. Queen's Pious Proclamation, &c., p. 40.

<sup>3</sup> *Antea*, p. 146.

<sup>4</sup> See Acts of Town Council of Edinburgh for suppressing of Vice and Immorality, with Proclamation of Privy Council, &c. Printed by George Mossman. Edinburgh. 1706.

## VII.

ORDERS TO BE OBSERVED BY THE CONSTABLES  
OF EDINBURGH.<sup>1</sup>

(See page 150.)

*For attending of Meetings.*

1st. Each constable that comes not at the hour to which they are cited by the officer, or at furthest at calling of the roll, shall pay two shillings scotts to the box.

2d. Each absent being in town, or within four miles thereof, shall pay four shillings scotts, unless an excuse for his absence be made, quhilk excuse is to be considered by the society, in absence of the partie, if relevant or not, to whose determination the partie absent must submit.<sup>2</sup>

3dly. If any stay away in slighting the meetings more than one dyet, befor he can be admitted again, either to sitt or vott, he must be lyable to the censure of the society, to be punished as they shall find just.

*4thly. For Concurrence.*

Each constable shall concurr with one another in what belongs to their office, and he or they who shall refuse so to doe shall be liable to the censure of the society, according to the demerit of the fault.

*5thly. Of Negligence.*

Each constable that shall be found negligent in the discharge of his office conform to the printed orders, and especially within his owen bounds, shall be admonished by the Moderator, or any sent from him for that effect, and if, after admonition, he continow negligent, he shall be liable to the censure of the society, and shall submit to thair determination.<sup>3</sup>

<sup>1</sup> The footnotes to these orders shew the alterations made thereon by the Society at various times.

<sup>2</sup> Ordered by minute of 27th June 1739, that no excuse for absence be sustained save sickness, or being "at least four miles" from the town at the time of the meeting [Minute Book, i. 111]. By minute dated 30th March 1740, absentees were appointed to be fined 6d. ; seros, 2d. [Ibid. i. 115]. By minute dated 15th April 1748, absentees were ordered to be fined 6d. [Ibid. i. 168].

<sup>3</sup> This article altered by minute of 15th April 1748, so as to read as follows :—"Each constable that shall be found negligent in the discharge of his office, and particularly

6thly. *Anent going from the table without leave.*

No constable [shall] rise from the table or offer to go away till all business be over, and prayers said, without leave asked and obtained of the Moderator. And if any go away in a disorderly manner, after he meets or votes with the society, he shall submit to their determination, that all such irregularities may be remedied.

7thly. *Anent speaking when mett.*

None shall speak but one at once, and his speech shall be directed to the Moderator, and whosoever shall prove guilty shall pay two shillings scotts for each fault.<sup>1</sup>

8thly. *Anent the time of meeting.*

It is agreed unto by the whole constables that their general meeting shall be on the last Munday of every month, at such an hour as the Moderator shall appoint.<sup>2</sup>

9thly. *Anent refusing to pay fines imposed.*

If any shall refuse to pay the penalties imposed on absents or seros, as particularly befor sett down, or such other fines or penalties as shall be imposed upon them (for their transgressions) by the society, the constables refusing, as said is, shall be liable to be poyned for thrice the value of what he was otherwise charged with ; which fines and poyns shall be disposed of as the society shall think fit.

10thly. *Anent going and attending ordinary and extraordinary meetings.*

It is agreed unto by the whole constables, that each of them, whether at an ordinary or extraordinary meeting, that shall be sero or absent at the calling of the roll, or altogether absent, shall be punished according to the former rules, and this to evite all debate for the future.

11thly. *Anent punishing of swearers.*

Whosoever shall swear by soul, faith, or conscience, &c., or take the name of God in vain, sitting at the table, or at any of the constables' meetings, shall be fined in twenty merks scotts, *toties quoties*, to be paid into the box.<sup>3</sup>

---

in going his rounds, particularly within his own bounds, shall be admonished by the preses, or any member sent by him for the purpose ; after which, if he continues negligent, he shall be liable to the censure of the society, and submit himself to their determination" [Minute Book, i. 168].

<sup>1</sup> By minute of 15th April 1748, this order was appointed to be read at each meeting immediately after calling the roll, and each transgressor to be fined one penny [Ibid. i. 168].

<sup>2</sup> Fixed at nine o'clock A.M. by minute dated 5th November 1739 [Ibid. i. 110].

<sup>3</sup> Confirmed by minute of 15th April 1748, with this addition, "That each person

12thly. *Anent going to burials.*

Each constable, being warned by the officer, shall come to a brother constable's burial, or the burial of his wife or children, and shall appear at the Grayfriar church yard, or any other burial place in town or suburbs, under the penalty of six shillings and eight pence sterling, *toties quoties*, and for the future the officer is ordained to give in an execution of all that shall be warned on such occasions, with an exact account of the absents, that they may be fined as above mentioned. And further the whole constables are ordained and obliged to convene before the burial with the moderator, at his lodging, or where he shall appoint, under the penalty foresaid, they being always told by the officer so to do, in case they have no reasonable excuse to satisfy the society.

13th. *Constables exempted from guard.*

No constable during his office shall mount or dismount the guard, or go out at any rendezvous, under the penalty of five pounds scotts *toties quoties*.

No constable shall be liable to watching or warding in case of a constable guard, and that two years after demission, and new constables chosen.

14th. *Of Poynding.*

Each constable that shall poynd without his batton in his hand, shall pay four pounds scotts, *toties quoties*, and this for avoiding all inconveniences that may happen.

15th. *Of meeting each Lord's day.*

It is agreed unto by the moderator and constables, that each Lord's day, betwixt four and five hours at night (or any other hour they shall appoint at their general meeting) they shall meet at the Laigh Council House, and go from thence, four and four in company, with their battons, and search shops, cellars, and taverns, for idle persons drinking, and when they are found, the constables are to order them to the guard if they see cause, or otherwise as they please, and shall make a delation to the magistrates of the master or mistress of the house, tavern, or cellar, where such persons shall be found, to the effect they may be punished according to law, and it is hereby declared, that the constables are to meet days and place foresaid without any warning; with certification to such as shall be absent they shall be liable in six pence sterling, *toties quoties*.<sup>1</sup>

---

guilty of the crime mentioned, out of the society as well as in it, shall be fined at the discretion of his brethren, met in society" [Minute Book, i. 168].

By an act of the Society of Captains, dated 1st October 1683, a fine of 6s. scotts was imposed on all who should swear at their meetings [Minute Book of Captains, i. 14]. This fine was increased to 6s. sterling by an act dated 1st November 1703 [Ibid. i. 72].

<sup>1</sup> On 3d May 1708, it was resolved that the whole society should meet each Lord's

*Orders to be observed by the Constables of Edinburgh.* xxxvii

---

16th. It is agreed that when any vote is stated and voted, that the plurality of votes shall always determine, and be submitted to, and in case of equality the moderator shall have the casting vote.

17th. *Anent Minutes.*

It is agreed unto by the moderator and whole constables that each sederunt be minuted, and the most material part recorded in all time coming.

18th. *Anent going through mercats.*

Edinburgh, February the 24th, 1701.—This day the constables being convened in the Laigh Council house, it was agreed unto unanimously by them, that for the more effectual suppressing of cursing, swearing, and other vices too much abounding everywhere, but more especially in public mercats, they in all time coming, during their continuance in this station, shall be obliged, and do hereby oblige themselves, to go through the whole mercats, four and four as they are classed, each day of the week (except Munday) in order to punish transgressors as they shall see cause according to law.

19th. *Anent walking at night.*

Edinburgh, August 1701.—The constables being convened in the Laigh Council house, and having caused read the act lately issued out by the Magistrates against the keeping of cellars, taverns, and chops, &c. open after the ten hour bell, and ordaining the constables to be diligent in their duty, and take their turn through the streets, and visit suspected houses in the night time, and having seriously considered the same, they, in testimony of their compliance with the said act, hereby unanimously oblige themselves to go by fours in company as they are classed, through their bounds, two or three nights every week, in order to suppress unseasonable drinking and caballing, and shall delate to the Magistrates such as shall be obstinate transgressors; and if any shall neglect to observe this act, they shall be liable to such penalties as the society shall inflict.<sup>1</sup>

20th. *Anent convening in time of Fire.*

Edinburgh, November 3d. 1701.—The which day the constables being convened in the Laigh Council house, it was represented by the moderator that the Magistrates did desire the constables should give their assistance in case of the dreadful accident of fire in time coming, in an orderly way, it being too burdensome for themselves alone to oversee and give needful orders at such occasions: which being considered by the

---

day, at half-past four o'clock, to go in company to search taverns, cellars, and other houses [Minute Book, i. 20]. See foot-notes 2 and 3, p. xxxviii.

<sup>1</sup> By minute dated 3d May 1708, one squad was appointed to go to taverns and cellars every Saturday and Sabbath night [Minute Book, i. 20]. See foot-notes 2 and 3, p. xxxviii.

society ; and being convinced it was their duty to assist and disburden the Magistrates, and serve the neighbourhood, as much as possibly they can, therefore they hereby oblige themselves to convene at the Laigh Council house with their long battons in their hands, upon the first tolling of the fire bells all time thereafter during their being in that office, and thereafter shall send such of their number as the moderator shall nominat, to the Lord Provost or Magistrates to receive their orders in such cases, which orders are dilligently to be observed ; and if any shall fail to meet timously in manner foresaid, or shall withdraw from meeting at such occasions without leave asked and given, or such reasonable and just excuses as the society shall sustain, they shall be liable to such penalties as the society shall think fitt to inflict, not exceeding ten pounds scotts.<sup>1</sup>

21st. *Going through the street Lords day morning and attending the courts.*

Edinburgh, February 22d. 1703,—This day the constables being conveyened in the Laigh Council house, it was unanimously agreed unto by them that, for the more effectual suppressing of vice and imorality, the four constables who go through the mercats weekly by turns shall be obliged and do hereby oblige themselves to go through the streets on the Lords day in the morning, as the first dyet of their week, as also to wait on the imorality court that week they go through, and to take care that the fines be exacted of these who are guilty, when fined. And if any be deficient or negligent herein, they shall be liable to the censure of the society,<sup>2</sup> as also if any constable shall give in any delations, and shall not punctually attend the immorality court and see the same prosecute, shall likeways be censured.<sup>3</sup>

22d. *Anent keeping shops open on Sacramental Fast days, &c.<sup>4</sup>*

Whereas one of the members of our society did, upon the Fast day and Saturday preceding, and upon the Monday after, the Sacrament last celebrate in this city, keep open his shop in the time of sermons, which practice is disaproved of by us, even in those that discent from the Established Church, because hitherto it has been usual for such to shut their shops, and desist from all public business, on these days, Therefore the society to preserve good order among themselves in time coming, Enact, that any

<sup>1</sup> Confirmed on 15th April 1748, with the variation "That the constables shall meet at the place where fire happens, and so soon as the danger is over repair to the Laigh Council house" [Minute Book, i. 168].

<sup>2</sup> By minute dated 30th March 1740, constables failing to go "through the streets on Saturday night, Sunday morning, and Sunday night, in their turn," were appointed to pay 8d. sterling for each neglect, or 2s. sterling for the whole.

<sup>3</sup> Confirmed on 15th April 1748, "so far as the constables' method of executing their office at the time corresponds with it" [Minute Book, i. 168].

<sup>4</sup> Minute Book, i. 173 ; 16th March, 1749.

member of theirs guilty of the above or any other practice that by the majority of the society may be deemed a transgression (whether specified in the Rules or not) shall be punishable at the pleasure of the society, any constable refusing to pay fines imposed upon them for the above mentioned or any other offences, they shall be liable to be poulded for three times the value of the fines imposed, which fines and poulds shall be disposed off as the society thinks meet.

23d. *Anent Batons.*<sup>1</sup>

That at every future election of constables the short batons be inspected, and if sufficient, each member [shall] be obliged to deliver them in the same condition ; at least if any of the silver be lost, he that loses it shall make it up:

24th. *Anent keeping alphabetical list of women of bad fame, &c.*<sup>2</sup>

That in all time coming each constable when present at the enactment of an woman of bad fame in the Magistrates book of enactments, shall take a note of the name of such person or persons, and the date of their enactment ; and that the clerk of the society shall keep an alphabetical list of such persons, and also of all persons banished in consequence of prosecutions at the Fiscal's instance, together with the pains and penalties contained in their sentence.

25th. *Anent making up lists of Jurors.*<sup>3</sup>

The society of constables . . . having considered that throu inadvertance or want of due information the lists of burgesses fitt to serve on Juries have frequently been neglected to be taken up in due time, their being no rule or order in the society's book for that purpose, do therefore agree that in time coming an order be given on the last Munday of May yearly to take up the lists as above, to be given in at or befor the meeting of the Committee immediately thereafter, or at any time appointed by the Preses, under such penalty as the society shall appoint.

N.B.—*Two lists are to be given, one for the Exchequer, and one for the Lords of Justiciary.*

26th. *Anent making up Lists of Houses of Bad Fame.*<sup>4</sup>

That as by the flitting and removing at the term of Whitsunday several persons that keep houses of bad fame escape the notice and observation of the constables . . . a list of these [shall be taken up] with as much care and exactness as possible, which list [shall] be given in at or before the next General Meeting after the order, as it re-

<sup>1</sup> 8th February 1750. Minute Book, i. 181.

<sup>2</sup> 26th March 1750. Ibid. i. 182-185.

<sup>3</sup> 27th August 1750. Ibid. i. 185.

<sup>4</sup> 27th August 1750, Ibid. i. 185.

quires more time to discover such persons and houses than the taking up the lists for Juries above mentioned.<sup>1</sup>

27th. *Anent the admission of Vintners or Publicans.*<sup>2</sup>

Considering the inconveniences that have arisen from Vintners or Publicans being admitted as members of the society;<sup>3</sup> and farther, considering that vintners are frequently exposed to receive loose and irregular companies into their houses, and that it belongs to the constables' office to visit and inspect public houses where such companies resort, the society are of opinion that it is altogether incompatible with the good order of the society, as well as the necessary and impartial suppression of vice and immorality, to receive vintners or publicans amongst them, and hereby unanimously resolve for themselves, and earnestly recommend it to their successors in office, not to nominate persons of that employment to succeed them.

VIII.

*LIST OF OFFICERS OF THE SOCIETY OF HIGH CONSTABLES.*

(See page 161.)

George Mowbray, from December 1711 till January 1713.

Gideon M'Govan, from January 1714 till January 1715.

Robert Taylor, from January 1715 till January 1717.

James Kinloch, from January 1717 till his decease between January and March 1733.

William Scott, from April 1747 till March 1751.

The name of the person who acted as officer between the death of Kinloch and the appointment of Scott is not mentioned.

John Rintoul, from 22d March till his dismissal on 29th July 1751.

Thomas Crighton, from 29th July 1751 till his decease in 1768.

William White, from 11th March 1768 till his dismissal on 1st May 1775.

William Cruickshanks, from 1st May 1775 till his decease in 1796.

<sup>1</sup> Rules 25 and 26 were ordered to be read along with the other rules of the society immediately after the admission of the constables into office [Minute Book, i. 185].

<sup>2</sup> 4th June 1763. Ibid. i. 280.

<sup>3</sup> Here follows a reference to a case of rudeness on the part of one of the constables, a vintner, at a festive meeting in his house on 25th March 1762 [Ibid. i. 274].

Donald Sinclair, from 1st July 1798 till 1812, when he received a pension, which was paid down to his decease in November 1827.<sup>1</sup>

The name of the person who acted as officer between the death of Cruickshanks and the appointment of Sinclair is not mentioned.

Archibald Campbell, from 1812 till his decease about October 1833.<sup>2</sup>

Alexander Macfarlane, from 12th December 1833 till 31st December 1844, when he received a pension, which appears to have been paid till his decease on 12th February 1848.

Hector M'Fadyen, from 31st December 1844 till 31st October 1860.

Alexander Macpherson, since 31st October 1860.<sup>3</sup>

# IX.

## DONATIONS BY THE SOCIETY OUT OF THEIR BOX TO CHARITABLE INSTITUTIONS IN THE CITY, &c.

(See page 162.)

1717.	December	3.	To the Crafts of Edinburgh and Mary Erskine, their Maiden Hospital,	100 merks.
1719.	January	14.	To the Charity Schools,	20s. sterling.
1724.	March	18.	To the Trinity Hospital,	£6 sterling.
1725.	March	19.	To the Crafts of Edinburgh and Mary Erskine, their Maiden Hospital,	300 merks.
1726.	March	23.	To the Charity School,	£6 sterling.
1727.	March	20.	To the Maiden Hospital,	£10 sterling.
1728.	March	18.	To the Trinity Hospital,	£6 sterling.
1729.	March	3.	To the Trinity Hospital,	£100 scots.
1730.	March	11.	To the Infirmary,	£100 scots.

<sup>1</sup> On 19th February 1807, the society presented Donald Sinclair with a handsome silver watch and chain [Minute Book, iii. 26].

<sup>2</sup> On 4th April 1814, the society presented Archibald Campbell with a handsome silver watch and gold seal [Ibid. iii. 169-173]; and on 4th April 1825, they presented him with an elegant silver snuff-box [Ibid. iii. 411].

<sup>3</sup> On the retirement of Mr Charles Lawson as Moderator in April 1864, he presented Alexander Macpherson with a handsome marble timepiece.

---

1731.	March 17.	To the Infirmary, . . . .	£100 scots.
1732.	March 16.	To the Infirmary, . . . .	£42 scots.
1733.	March 14.	To the Orphan Hospital, . . . .	£7 sterling.
1741.	March 12.	Towards building the Hospital or Workhouse, for maintaining and employing the poor of the city of Edinburgh, . . . .	£3 sterling.
1747.	March 30.	For the use of the Charity Workhouse, . . . .	£10, 10s. sterling.
1749.	March 16.	Value of a small keg of French brandy seized by one of the constables on a Sabbath day, and given to the Charity Workhouse, . . . .	£0, 9s. od.
1752.	June 27.	To the Charity Workhouse, . . . .	£1, 1s.
1753.	April 5.	To the Charity Workhouse, . . . .	£5.
—	April 5.	To the Orphan Hospital, . . . .	£4.
1755.	March 20.	To the clerk employed by the society "for extirpating bad houses," . . . .	£0, 7s. 6d.
1809.	April 22.	To the Charity Workhouse, . . . .	£5, 2s. 6d.

---

## X.

*INSTRUCTIONS by the Lord Provost, Magistrates, and Council of Edinburgh, to be observed by the Constables in the discharge of their offices within this City and liberties thereof. Approved of by the Magistrates and Council on 23d May 1750.*

*(See page 176.)*

1st. Every constable is authorised and required to seize and apprehend all beggars, vagabounds, sturdy beggars, or Egyptians, suspicious persons, or other idle persons who have no calling to live by, nor take themselves to some labour, trade, or occupation, and all persons (not being officers or souldiers in His Majesty's army) wearing a gun, pistol, or other fire arm; and all persons guilty of slaughter, murther, theft, or other culpable crime, or who shall be exciteing or encouraging any fray, stirr, mob, or tumultuous assembly, or otherways disturbing the peace, and all persons who shall molest or obstruct any constable in the execution of his office.

2d. Upon appearance of any fray or stir by day or night, or other sudden accident that may fall out, the constables shall take all proper care and measures for separating

the parties, and preventing any inconveniency that may happen, and shall seize and apprehend the pairty or pairties guilty.

3d. If any person ordained to be apprehended as above, shall flee to any house, the constables shall follow in order to seize him, and if the door shall be shutt against the constables, and access refused, he shall take proper measures to prevent the guilty persons escaping in the meantime, and shall notice to the master or keeper of the said house and other persons refusing him access as aforesaid, and inform any of the magistrates thereof in order to their being proceeded against and punished, And to obtain a warrant for breaking open the doors of such house, and apprehending the criminals. And if a criminal shall flee beyond the bounds of the constables charge, or beyond the limits of the good touns jurisdiction, yet the constables may follow and apprehend him in a fresh pursuit.

4th. Every constable shall carefully inform himself of all beggars or infamous persons, and all priests or Jesuits, or other persons keeping private masses that shall happen to dwell or reside within his bounds, and inform the magistrates or one or other of them thereof, that such course may be taken with them as the law directs.

5th. Every constable shall use all diligence to discover and duely inform the magistrates of all bawdy houses, and persons keeping and frequenting the same, and all banners, cursers, swearers of profane oaths, blasphemers of God's holy name, and profaners of the Sabbath day ; persons guilty of drinking and furnishing of drink at unseasonable and forbidden times, and other lewd and profane persons, that such course may be therewith taken as the law directs.

6th. Every constable is hereby directed when he shall seize and apprehend any person as above ordained, forthwith to present the person so seized to a magistrate, unless the same shall happen at unseasonable hours, in which case he is to secure or detain him in the guard, till he can conveniently be taken before a magistrate, And every constable who shall seize any person or persons, or give information to the magistrates as above, is hereby required to give a particular account of the crime, and as far as he can of the names of the witnesses, and other means for proving it.

7th. That the constables may be the more effectually enabled to execute their office, they are hereby impowered to call for the assistance not only of the other constables town guard and town officers, but whole neighbours and inhabitants, who are hereby charged to assist and concurr with him. And the constable is hereby directed with all convenient speed to inform the magistrates, or one or other of them, of such of the aforesaid persons as shall refuse their concurrence.

8th. That the whole constables shall, upon the last Munday of every moneth, att eight o'clock in the morning, compear and present themselves before the lord provost and magistrates in the councill house, to give ane account of their diligence in their offices, as they will answer upon their obedience.<sup>1</sup>

---

<sup>1</sup> In approving of these "instructions," the council recommended the Lord Provost

9th. That every constable shall be obliged to take notice of the sufficiency of the muck men, and their seasonable cleansing the streets and others, And that the tacks-men take away the same in due time conform to the act of council, and of all persons that shall be guilty of throwing over any kind of filth att shot windows or doors in the high streets, or in closses, wynds, or passages of the city, or of laying down the same att other times than those directed by acts of councill, and shall give the magistrates notice of such delinquents, that they may be summoned before them, and proceeded against in the regular forme of law.

10th. That every constable after he is out of his office of constabulary shall continue in the office of a censor and assistant to his succeeding constable for suppressing immorality dureing the time of their immediat successors office, and to attend the quarterly meetings of the said constables anent immoralities.

11th. That every constable shall be obliged to receive any injunctions or statute that the lord provost or magistrates and councill shall enjoin to them at any time hereafter relating to their office.

*There are some differences between the copy of the Instructions here given and those engrossed in the Constables' Minute Book, vol. i. pp. 150-159. But as they are merely verbal, it has not been considered necessary to refer to them.*

## XI.

*INSTRUCTIONS for the Constables of the City of Edinburgh, in the discharge of their public duties, approved of by the Magistrates and Council on 29th March 1786.*

*(See page 184.)*

1st. Every constable is authorised and required to seize and apprehend all persons suspected guilty of slaughter, murder, theft, or other crime, or who shall be found exciting or encouraging any fray, stir, mob, or tumultuous assembly, or otherways disturbing the peace ; and all persons who shall mollest or obstruct any constable in the execution of his office.

2d. Any citizen presenting a regular written complaint against disorderly or riotous persons, either in the street or in a house, the constables may grant warrant for their

and magistrates "to attend punctually the first Munday of every moneth, to receive the constables' reports" [Council Records, lxix. 3].

commitment to the city guard untill examined by the magistrates ; and upon any fray or stir by day or night, or any other sudden accident that may fall out either in the street or in any disorderly houses, the constables shall take all proper care and measures for separating the parties, and preventing any inconveniency that may happen, and shall seize and apprehend the party or parties guilty.

3d. If any persons lyable to be apprehended as above shall fly to any house, the constable shall follow in order to seize him, and if the door shall be shut against the constable, and access refused, he shall take proper measures to prevent the guilty persons escaping ; and if resisted, he may, after displaying his batton, force his way into the house, even to the breaking open of the door, in order to apprehend the criminal ; and if a criminal shall fly beyond the bounds of a constable's charge, or beyond the limits of the good towns jurisdiction, yet the constable may follow and apprehend him in a fresh pursuit.

4th. Every constable is hereby directed when he shall seize and apprehend any person as above described, to carry him before the sitting magistrate, and failling of him before any other magistrate as quickly as it can be done, and in the meantime to secure or detain him in the city guard till he can be conveniently taken before a magistrate ; and every constable who shall seize any person or persons is hereby required to give a particular account of the crime, and, as far as he can, of names of the witnesses, and the other means for proving it.

5th. That the constables may be the more effectually enabled to execute their office, they are hereby empowered to call for the assistance not only of the other constables, town guard, and town officers, but whole neighbours and inhabitants, who are hereby charged as they shall be answerable after the batton is displayed, to assist and concur with them, and the constables are hereby directed with all convenient speed to inform the magistrates, or one or other of them, of such of the aforesaid persons as shall refuse or neglect to give their concurrence.

6th. That the constables be obliged to receive any instructions that the lord provost or magistrates and council shall enjoin them at any time hereafter relating to their office, in the discharge of which and the other regulations they will support and defend them, and if any unavoidable expense shall arise from the execution of the immediate orders of the magistrates, such expense shall be paid.

---

## XII.

*RULES proposed by the Society of Constables for their internal government, and approved of by the Magistrates and Council on 29th March 1786.<sup>1</sup>*

*(See page 185.)*

1st. That when a meeting is called by the preses, those members who are not at the place appointed within fifteen minutes after the hour specified in their summons, shall pay the treasurer threepence [sterling]. Those who do not attend or send an apology, sustained by a majority [of the members present], shall pay one shilling [sterling]; and every member present without his batton shall pay sixpence [sterling].

2d. After the new constables are appointed by the council, the preses shall summon the old and new ones to meet, in order for those who go out of office to deliver up their battons, and their successors to be sworn in by the magistrates, and to sign the rules. The society then to proceed to the election of their preses and other office-bearers.

3d. That when the elections are over, the new preses shall intimate the day and house where he is to dine, with such of the members as chuse to attend, who shall immediately put down their names, and if not present at dinner shall pay two shillings and sixpence.<sup>2</sup>

4th. The bill to be called at seven o'clock, and any member chusing to go away sooner, shall appoint one present to pay for him.

5th. Any member who does not give notice two days before that he is not to sup with the preses on the king's birthnight, and if absent shall pay two shillings and sixpence.<sup>3</sup>

6th. Any member not returning to the preses or clerk a list of proper and respectable citizens to serve as jurymen within his bounds, on or before the time specified in the card sent him, shall pay five shillings [sterling].

---

<sup>1</sup> The footnotes and words within brackets shew the additions to and alterations on these rules in the copy engrossed in the Minute Book of the Society [Minute Book, ii. 309-312], dated 1st December 1786, and subscribed by the constables.

<sup>2</sup> Five shillings.

<sup>3</sup> Originally "two shillings and sixpence," altered first to "five" shillings, and afterwards to "10s. 6d. sterling."

7th. Any difference arising at a meeting between any of the members, *respecting their duty and behaviour as constables*,<sup>1</sup> the same shall be determined by a majority of the society present.

At a general meeting of the society held on 7th April 1787, it was unanimously agreed that no member of the society who uses any influence with the town council, directly or indirectly, with regard to the lists of persons nominated for constables by the committee, shall be eligible to be elected preses.<sup>2</sup>

*Alterations on the foregoing Rules, and Additions thereto.*

(1.) By a minute of the society dated 4th June 1789, articles 3, 4, and 5 of the above Rules were altered, and the following Rules were made.<sup>3</sup>

3. After the election of preses and other officers, the preses shall inform the society when and where he means to have the election dinner, and every member absent shall forfeit ten shillings sterling;<sup>4</sup> the members going out of office to be invited as usual, but not to be liable in any forfeiture for non-attendance.

4. The calling of the bill to be left to the judgment and discretion of the preses.

5. Any member absent on His Majesty's birthday in attending the magistrates to drink the healths, shall forfeit two shillings and sixpence sterling; and if absent from the entertainment in the evening, shall forfeit five shillings sterling.

Any member not obeying a summons made by the preses for a meeting of the society or committee shall forfeit one shilling, independent of all other forfeitures.

The election of the preses shall be made previous to the annual election of members; a special meeting being called for that purpose, at which the leets for new constables shall be adjusted.

(2.) By a minute dated 19th March 1803,<sup>5</sup> the society agreed,

1. That each member of the committee absent from a committee meeting, when summoned by order of the moderator, shall pay a fine of five shillings; and if a quarter of an hour after the appointed time, one shilling, unless prevented from sickness only.

2. That all fines be strictly levied by the treasurer, who shall deposit them in the

---

<sup>1</sup> The words in italics are not in the copy engrossed in the minute book.

<sup>2</sup> Minute Book, ii. 311.

<sup>3</sup> Ibid. ii. 102, 103.

<sup>4</sup> Increased by minute dated 5th June 1797 to fifteen shillings sterling [Minute Book, ii. 117]; and by minute dated 19th March 1803 to twenty shillings sterling, "which shall go to defray the bill" [Ibid. ii. 251].

<sup>5</sup> Minute Book, ii. 251, 252.

society's box, the contents of which shall customary be sold once a year to the highest bidder, and the price it brings shall go to the fund aforesaid [*i. e.* a charitable fund for the society which it was proposed at that time to establish].

This regulation it was declared should not apply to the fines for absence from the annual dinner, which were appointed to be applied towards payment of the dinner bill.

(3.) By a minute dated 27th April 1807,<sup>1</sup> the society agreed,

1. That in future every member of the society shall, except in case of sickness or being twenty miles absent from town, when the original fine of one pound shall only be levied, pay the full share of the annual election dinner bill, instead of any particular fine.

2. That in future the day for celebrating the annual election dinner shall be the first Friday of May.

(4.) By a minute dated 18th May 1809,<sup>2</sup> the society adopted the following scale of fines, on the footing that absence from town at a distance of twenty miles, or sickness, should always be a ground of exemption.

1st. For the election dinner, to every absent member the full share of the bill of the entertainment.

2d. For not attending on the King's birthnight, one guinea; and it is expressly understood no member shall absent himself from duty after coming from the Parliament House until the time of supper at ten o'clock.

3d. For all meetings called by the Lord Provost and Magistrates for the society to act on extraordinary occasions, every absent member to pay ten shillings and sixpence.

4th. For neglecting to make out the returns of jurymen at the day specified by the moderator, ten shillings and sixpence.

5th. For neglecting to make out the returns of militia lists at the day specified by the moderator, ten shillings and sixpence.

6th. For general meetings of the society every absent member to pay one shilling.

7th. For gentlemen coming to any meeting a quarter of an hour later than the intimation, sixpence.

8th. For every member coming to any meeting without his short baton, sixpence.

---

<sup>1</sup> Minute Book, iii. 29.

<sup>2</sup> Ibid. iii. 89.

XIII.

*RULES for the internal government of the High Constables, adopted by the Society on 23d June 1812, to supersede the Rules then in force.<sup>1</sup>*

1. For the election dinner, to every absent member, the full share of the bill of entertainment.<sup>2</sup>

2. For not attending on the King's birthday, one guinea.

3. For all meetings called by the Lord Provost and Magistrates, for the society to act on extraordinary occasions, every absent member to pay one guinea.

4. For neglecting to make out the returns of Jurymen at the day appointed by the moderator, half-a-guinea.

5. For neglecting to make out the returns of militia lists on the day specified by the moderator, one guinea.

6. For every member losing his large or small baton unless on necessary duty, half-a-guinea.

7. For general meetings of the society, every absent member to pay half-a-crown.

8. For gentlemen coming to any meeting a quarter of an hour later than the intimation, one shilling; and for half an hour, one half of the fine for not attending the meeting of the day.

9. For every member coming to any meeting without his short baton, half-a-crown.

10. The treasurer, before leaving office, shall regularly exhibit a state of the funds of the society.

11. All intimations of the meetings of the society are to be by printed or written notices, otherwise the fines cannot be demanded, except in cases of urgent necessity, when there is not sufficient time to do so. Then a personal intimation is equally binding if made by a brother constable or city officer.

12. An account of all fines incurred by members of the society to be handed by the treasurer as early as possible to their officer, in order that he may collect them; and those objecting to pay such fines must state their reasons in writing to the treasurer, who will lay them before the first general meeting that is held after he receives them.

---

<sup>1</sup> Minute Book, iii. 125.

<sup>2</sup> On 4th June 1814, the society resolved that no case of sickness or absence from town could be considered a sufficient excuse for the non-payment by any member of his share of the election dinner, but that every member should be liable to his equal proportion of the expense [Minute Book, iii. 176].

And should that meeting not consider the reason stated as a sufficient excuse for non-payment of the fine or fines, and those found liable still object to pay the amount, the moderator, in name of the society, will then apply to the Magistrates to oblige such member or members to resign.

It is expressly understood that being twenty miles from town, or cases of sickness, exempt members from incurring any of the above fines *when certified upon their word of honour*; and it is also expressly understood that the same fines are exigible upon any member leaving a meeting without consent of the moderator as upon those who have not attended such meeting.

---

#### XIV.

*RULES for the internal government of the High Constables, adopted by the Society on 8th August 1814,<sup>1</sup> in lieu of those of 23d June 1802:—*

1. For general meetings of the society, every absent member to pay half-a-crown.
2. For all meetings called by the Lord Provost and Magistrates for the society to act on extraordinary occasions, every absent member, one guinea.
3. For not attending on the King's birthday, one guinea.
4. For gentlemen coming to general meetings of the society a quarter of an hour later than intimation, one shilling; half-an-hour, one shilling and sixpence; and at extraordinary meetings (where the fine of absence amounts to one guinea), five shillings for being a quarter of an hour later than the time intimated; and ten shillings and sixpence if half-an-hour.
5. For any member coming to any meeting without his short baton, half-a-crown.
6. For every member losing his large or small baton unless on necessary duty, half-a-guinea.
7. For neglecting to make out the return of Jurymen at the day appointed by the moderator, one guinea.
8. For neglecting to make out return of Militia lists on the day specified by the moderator, one guinea.
9. All intimations of meetings of the society to be by printed or written notices, otherwise the fines cannot be demanded, except in cases of urgent necessity, when

---

<sup>1</sup> Minute Book, iii. 179.

there is not sufficient time to do so. Then a personal intimation is equally binding if made by a brother constable, city officer, or any other authorised person.

10. It is expressly understood that being twenty miles from town, or cases of sickness, exempt members from incurring any of the above fines, *when certified by their word of honour*. And it is also expressly understood that the same fines are exigible upon any member leaving a meeting without consent of the moderator, as upon those who have not attended such meeting.

11. Any member who may be in arrears to the society shall not be entitled to vote or express his opinion on any subject whatever that may be brought before them until such fines are paid up, as expressed by the rules.

12. An account of all fines incurred by members of the society to be handed by the treasurer as early as possible to their officer, in order that they may be collected ; and those objecting to pay such fines must state their reasons in writing to the treasurer, who will lay them before the first general meeting that is held after they are received. And should that meeting not consider the reasons stated as a sufficient excuse for non-payment of the fine or fines, and those found liable still object to pay the amount, the moderator, in name of the society, will then apply to the Magistrates, to oblige such member or members to resign.

13. For the election dinner, every member of the society to pay the full share of the bill of entertainment, no excuse whatever being admitted.

14. The treasurer, before leaving office, shall regularly exhibit a state of the funds of the society.

*Alterations on the foregoing Rules, and Additions thereto.*

(1.) By a minute dated 21st February 1815,<sup>1</sup> the society resolved,

That every motion to be brought before the society must lie over till the next general meeting thereafter.

(2.) By a minute dated 6th April 1818,<sup>2</sup> the society resolved,

1. That the fine for attending any meeting without the short baton should be reduced from 2s. 6d. to 1s.
2. That no canvass for the office of moderator should take place before the moderator's farewell dinner ; and
3. That no member should be eligible for election to the office of moderator till he had served eighteen months as a constable.<sup>3</sup>

<sup>1</sup> Minute Book, iii. 187.

<sup>2</sup> Ibid. iii. 228.

<sup>3</sup> On 1st April 1822, it was objected to the eligibility of Mr Thomas Sawers as moderator, that he had not served eighteen months in the society, but the objection was disallowed by a majority. Mr Sawers had, however, previously served three years as a constable [Ibid. iii. 331].

(3) By a minute dated 3d April 1820,<sup>1</sup> the society resolved, notwithstanding their act of 21st February 1815,

1. That the moderator shall in future be restricted in his invitations to the election dinner to four private friends.
2. That each of the office-bearers be restricted to one private friend.
3. That the gentlemen of the committee be allowed no invitation whatever. Which motion (on the understanding, however, that the committee was to have it in their power to say what gentlemen holding official situations shall be invited) was carried, there being no objection to it by any one present.

## XV.

### *RULES and Regulations of the Society of High Constables of the City of Edinburgh, approved of by the Society on 12th August 1825.*<sup>2</sup>

I. All intimations of the meeting of the society to be by printed or written notices, issued by the secretary, otherwise the fines cannot be demanded, except in cases of urgent necessity, when there is not sufficient time to do so. Then a personal intimation is equally binding, if made by a brother constable, city officer, or any other authorised person.

II. It is expressly understood, that being twenty miles from town, or cases of sickness, exempt members from incurring any of the fines, when certified by their word of honour. And it is also understood, that the same fines are exigible upon any member leaving a meeting without consent of the moderator, as upon those who have not attended such meeting.

III. Any member who may be in arrears to the society, shall not be entitled to vote or express his opinion on any subject whatever that may be brought before them, until such fines are paid up, as expressed by the Rules.

IV. An account of the fines incurred by the members of the society shall be handed by the secretary, as early as possible, to the treasurer, and, when certified by him, shall be given to their officer, in order that they may be collected; and those objecting to pay such fines must state their reasons in writing to the treasurer, who will lay them before the first general meeting that is held after they are received. And should that meeting not consider the reason stated as a sufficient excuse for non-payment of

<sup>1</sup> Minute Book, iii. 289, 290.

<sup>2</sup> Ibid. iv. 8-13.

the fine or fines, and those found liable still object to pay the amount, the moderator, in the name of the society, will then apply to the Magistrates to oblige such member or members to resign.

V. The office-bearers and committee shall decide on such gentlemen holding official situations in the city, as shall be invited to the entertainments of the society. The moderator shall have the privilege of inviting four personal friends, and the treasurer, secretary, and chaplain, one friend each.

VI. For the election dinner, every member of the society to pay the full share of the bill of entertainment, no excuse whatever being admitted, and also his share of any other necessary expenses incurred during the year.

VII. The treasurer, before leaving office, shall regularly exhibit a state of the funds of the society.

VIII. No member serving as a High Constable shall hold a baton or continue a member of any other body of constables during his term of service in the society.

IX. Every motion brought before the society affecting the laws, shall, after being seconded, be given in to the secretary in writing, and lie over till next general meeting; and if then approved of by a majority, the same shall pass into a law.

X. No gentlemen shall be eligible to fill the office of moderator till he has served as constable for eighteen months from the date of his last admission to the society; and the names of gentlemen proposed as candidates for the moderator's chair shall be intimated by letter to the moderator previous to the farewell dinner, but no canvass shall take place before that day, which shall be at least fourteen days previous to the first Monday of April (which is hereby declared to be the day of election in time coming), at which meeting the names of the candidates shall be announced before ten o'clock in the evening from the chair.

XI. No member shall be re-elected to the office of moderator, treasurer, secretary, or chaplain, for two successive years.

XII. Gentlemen retiring from the society, after receiving or giving due notice to that effect, may exercise the privilege of handing a list to the moderator of three gentlemen qualified to succeed them in office, which, if approved by the office-bearers and committee, must be submitted to the Magistrates and Council to make their election; and in case of members failing to do so within eight days from such notice, or returning gentlemen not burgesses, or otherwise disqualified, they shall forfeit their privilege; and the names of others shall be sent in by the office-bearers and committee to the Magistrates and Council.

#### FINES.

XIII. General meetings of the society, every absent member to pay half-a-crown.

XIV. All meetings called by the Lord Provost and Magistrates for the society to act on extraordinary occasions, every absent member one guinea.

XV. For gentlemen coming to general meetings of the society a quarter of an hour later than the intimation, one shilling ; half-an-hour, one shilling and sixpence ; and at extraordinary meetings (where the fine for absence amounts to one guinea), five shillings for being a quarter of an hour later than the time intimated, and ten shillings and sixpence if half-an-hour.

XVI. The small baton ought to be carried at all times, and every member coming to any meeting without it, one shilling ; and without his large baton, when specially instructed to do so, two shillings and sixpence.

XVII. Losing large or small baton, unless on necessary duty, half-a-guinea.

XVIII. Sending either large or small baton to any person not a member of the society, on any occasion whatever, one guinea.

XIX. Neglecting to make out the returns of Jurymen at the day appointed by the moderator, half-a-guinea.

XX. Neglecting to make out the returns of Militia Lists on the days specified by the moderator, one guinea.

### *Alterations on the foregoing Rules, and Additions thereto.*

(1) By a minute, dated 1st May 1826, the second paragraph of Rule X. was altered so as to read thus:—

“And the names of gentlemen proposed as candidates for the moderator's chair *may* be intimated by letter to the moderator previous to, *or be proposed by any member at*, the farewell dinner, &c.”<sup>1</sup>

(2.) By minute, dated 23d April 1827,<sup>2</sup> the society substituted the following rules for article XX. :—

“Neglecting to affix the Militia lists on the church door on the proper day before nine o'clock A.M., one guinea.”

“Neglecting to attend the meeting of Lieutenancy on the day of appeal, one guinea.”

“Omitting the exemption clause on the copy affixed to the church door, five shillings.”

“Omitting to state the day of appeal in the copy affixed to the church door, five shillings in time of peace, and one guinea each in time of war.”

(3.) On 25th October 1827,<sup>3</sup> the society ordered,

“That on all occasions of vacancies in the society, the names of the persons proposed to [supply such vacancies shall] be laid before the committee, previous to being handed in to the Lord Provost and Magistrates.”

<sup>1</sup> Minute Book, iv. 38.

<sup>2</sup> Ibid. iv. 57, 66.

<sup>3</sup> Ibid. iv. 74

(4.) By a minute, dated 7th April 1828, Rule X. was altered as follows<sup>1</sup> :—

“No gentleman shall be eligible to fill the office of moderator till he has served as a High Constable for eighteen months from the date of his last admission to the society ; and the names of gentlemen proposed as candidates for the moderator’s chair may be intimated by letter to the moderator on the first lawful day of March annually, or be proposed by any of the members at the farewell dinner ; but no canvas shall take place before the said first lawful day of March ; and every candidate for the chair shall, at the annual farewell dinner (which shall be at least fourteen days previous to the first Monday of April, the annual day of election), lay before the society a list containing the names of those gentlemen whom he intends to propose as office-bearers and committee-members for the year ensuing. And it shall also be competent for any member of the society, at the farewell dinner, to propose a list of gentlemen to fill the situations of office-bearers and committee-members, in opposition to that proposed by the candidate or candidates for the chair.”

(5.) By a minute, dated 28th February 1829, the 3d, 4th, 5th, 10th, and 12th articles of the above laws were rescinded, and the following articles substituted<sup>2</sup> :—

“Art. 3d. Any member who may be in arrears to the society, shall not be entitled to vote, or express his opinion on any subject whatever that may be brought before them, until such arrears are paid up, the moderator, in all cases of equality, having the casting vote.

“Art. 4th. An account of the fines incurred by members of the society shall be handed by the secretary to the treasurer as early as possible, and, when certified by him, shall be given to their officer, in order that they may be collected ; and those objecting to pay such fines and share of necessary expenses must state their reasons in writing to the treasurer, who will lay them before the first general meeting that is held after they are received ; and should that meeting not consider the reasons stated as a sufficient excuse for non-payment of the fine or fines, and share of necessary expense, and those found liable still object to pay the amount, the moderator, in the name of the society, will then apply to the magistrates to expel such member or members.

“Art. 5th. The office-bearers and committee shall decide on such gentlemen as shall be invited to the entertainments of the society. The moderator shall have the privilege of inviting *four* personal friends, and the treasurer, chaplain, and secretary, *one* friend each.

“Art. 10. No gentleman shall be eligible to fill the office of moderator till he has served as High Constable for *eighteen* months from the date of his *last* admission to the society ; and the names of gentlemen proposed as candidates for the moderator’s chair must be intimated by letter to the moderator on the first

<sup>1</sup> Minute Book, iv. 85, 92

<sup>2</sup> Ibid. iv. 126.

lawful day of March annually; and no canvas shall take place until the second lawful day of March. Every candidate for the chair shall, at a meeting to be held annually for the purpose, at ten o'clock in the forenoon, on the Monday immediately following the farewell dinner, submit to the society the names of those gentlemen whom he intends to propose as office-bearers and committee members. And it shall be competent for any member or members to bring forward at this meeting, but not afterwards, a list or lists in opposition to those named by the candidates for the chair; and, previous to this meeting, no canvas shall take place either for office-bearers or committee members. The farewell dinner shall always take place in March at least fifteen days previous to the first Monday in April, and no business whatever shall be then brought forward.

“Art. 12th. Gentlemen whose period of service in the society has expired, may, within eight days from the date of the general election of office-bearers, exercise the privilege of handing a list to the moderator of three gentlemen qualified to succeed them in office, which, if approved of by the committee and office-bearers, must be submitted to the magistrates and council to make their election.”

---

## XVI.

*INSTRUCTIONS and Regulations by the Lord Provost, Magistrates, and Council, for the Society of High Constables of the City of Edinburgh, confirmed by act of Council, 19th March 1828.*<sup>1</sup>

1st, In cases of breach of the peace, or violent threats of immediate mischief, or obstruction of a constable in the execution of his office, as also in cases of felony which he has seen committed, or has information of from others who are sure of the fact, every high constable is authorised and required to seize and apprehend the person or persons so seen or suspected, and immediately thereafter to carry them before a magistrate of the city or county, to be dealt with according to law.

2dly, Any citizen presenting a regular written complaint, against disorderly or riotous persons, either in the street or in a house, the high constables may take them

---

<sup>1</sup> Council Records, cciii. 62.

into custody, and commit them to any of the police offices, until examined by the magistrates, the sheriff-depute, or his substitute, or the officiating judge in the police court, as the case may require; and, upon any fray or disorder, by day or night, or any other sudden accident that may fall out, either in the street or in any disorderly house, the high constables shall take all proper care and measures for separating the parties, and preventing any inconvenience that may happen, and shall seize and apprehend the party or parties guilty.

3dly, If any person or persons liable to be apprehended as suspected of having committed an *atrocious crime*<sup>1</sup> shall take refuge in any house, the high constable shall follow, in order to seize them; and if the door shall be shut against the high constable, and access refused, he shall take proper measures to prevent their escape; and he may, after displaying his baton, and notifying who he is, and the purpose of his coming, and on being refused admission, force his way into the house, even to the breaking open the door, in order to apprehend the accused; and if they shall fly beyond the bounds of a high constable's charge, or beyond the jurisdiction of the magistrates, the high constable may follow and apprehend them. But no high constable shall break open doors in pursuit of one who flies after committing a breach of the peace, or minor delinquency.

4thly, Every high constable is hereby directed, when he shall seize and apprehend any person or persons as aforesaid, to secure or detain them in any of the police offices, till they can be conveniently taken before a magistrate, or before the sheriff-depute or his substitute, or the officiating judge in the police court, as the case may require; and to state verbally or in writing to the magistrate the nature of the crime or offence with which they are charged, and any other information he may possess, including the names of the witnesses, or other means of proof.

5thly, That the high constables of the city may be the more effectually enabled to execute their office, they are hereby empowered to call for the assistance, not only of the other constables, in the jurisdiction of the magistrates of Edinburgh, and the police officers and town officers, but the whole neighbours and inhabitants who are hereby charged, as they shall be answerable, after the baton is displayed, to assist them; and the high constables are hereby directed, with all convenient speed, to inform the magistrates, sheriff-depute, or his substitute, or officiating judge in the police court, or one or other of them, of such of the aforesaid persons as shall refuse or neglect to give their assistance.

6thly, That, on occasions of all public processions, or otherwise, the high constables

<sup>1</sup> "Under the description of atrocious crimes seems to be comprehended murder; the inflicting of a dangerous wound; rape; assault with intent to commit a rape; robbery; assault to commit robbery; theft committed by housebreaking, picking locks, or the like, or other aggravated theft; breaking into a house in order to commit murder, theft, or other felony," &c.—*Tail's Duties of a Constable*, p. 12, Note.

of the city of Edinburgh, when attending the magistrates, shall have precedency of the extraordinary constables, as well as of the constables of Canongate, North and South Leith, Calton, Easter and Wester Portsburgh, and shall retain their place in the procession even when it moves through these or other of the liberties of the city.

7thly, On the first alarm or suspicion of a riot, the high constables shall assemble as speedily as possible (without waiting for a regular notice being sent them) in the Royal Exchange, which shall be understood to be the rendezvous on all such occasions, there to receive the necessary instructions from the magistrates; and the high constables shall at all times receive and attend to such instructions, in the discharge of their duty, as the Lord Provost or magistrates may enjoin them.

#### *Regulations regarding Fires.*

1. Upon occasions of fire, the moderator of the high constables shall call out the high constables, when it shall be their duty to preserve order, and to protect property; to keep the crowd away from the engines and those employed about them; and, when ordered by a magistrate, or authorised by the head master of the engines, or, in absence of a magistrate, by a member of the committee on fire-engines, to provide men for working the engines.

2. The high constables shall not assume any management, or give any directions whatsoever, except in preserving order, protecting property, and keeping off the crowd.

3. In cases of protracted fire, when extra men may be required to relieve the regular establishment, it shall be the duty of the high constables to collect those wanted from among the persons on the street who may be willing to lend their assistance—mustering them in such parties as may be required—taking a note of their names—and furnishing each individual with a certificate or ticket, with which the moderator of the high constables at the time will be supplied; and no person shall receive any remuneration for alleged assistance given at a fire who does not produce such certificate or ticket.

4. The party or parties so mustered shall be placed and continue under the care of two high constables until required for service, when they shall be moved forward to the engines.

5. The men relieved by the party so moved forward shall be taken charge of by two high constables, who shall see them properly refreshed and brought back within a reasonable time; so that the men employed may thus occasionally relieve each other without confusion, and without being too much exhausted.

On report from the committee, to whom a memorial of the high constables was remitted, the council approved of the foregoing instructions and rules, and appointed them to be observed by the society of high constables, in the public discharge of their office, and that during the pleasure of the council; and appointed these instruc-

tions, with this minute, to be printed, and copies delivered to the different high constables.

*Note.*—It is recommended to each high constable to provide himself with a copy of “Tait’s Duties of a Constable,” for his regulation, in cases of emergency, as containing more full and minute directions.

---

XVII.

*RULES of the Society of High Constables of the City of Edinburgh, approved of by the Society on 14th May 1830.<sup>1</sup>*

I. All intimations of the meetings of the society to be by printed or written notices, issued by the secretary ; otherwise the fines cannot be demanded, except in cases of urgent necessity, when there is not sufficient time to do so. Then a personal intimation is equally binding, if made by a brother constable, city officer, or any other authorised person.

II. It is expressly understood, that being twenty miles from town, or cases of sickness, exempt members from incurring any of the fines, *when certified by their word of honour*. And it is also understood, that the same fines are exigible upon any member leaving a meeting without consent of the moderator, as upon those who have not attended such meeting.

III. Any member who may be in arrears to the society, shall not be entitled to vote or express his opinion on any subject whatever that may be brought before them, until such arrears are paid up. The moderator, in all cases of equality, to have the casting vote.

IV. An account of the fines incurred by the members of the society shall be handed by the secretary to the treasurer as early as possible ; and, when certified by him, shall be given to their officer, in order that they may be collected ; and those objecting to pay such fines and share of necessary expenses, must state their reasons in writing to the treasurer, who will lay them before the first general meeting that is held after they are received. And should that meeting not consider the reason stated as a sufficient excuse for non-payment of the fine or fines, and share of necessary expenses ; and those found liable still object to pay the amount, the moderator, in the name of the society, will then apply to the magistrates to expel such member or members.

---

<sup>1</sup> Minute Book, iv. 173–176.

V. The office-bearers and committee shall decide on such gentlemen as shall be invited to the entertainments of the society. The moderator shall have the privilege of inviting four personal friends, and the treasurer, chaplain, and secretary, one friend each.

VI. For the election dinner, every member of the society to pay the full share of the bill of entertainment, no excuse whatever being admitted, and also his share of any other necessary expenses incurred during the year.

VII. The treasurer, before leaving office, shall regularly exhibit a state of the funds of the society.

VIII. No member serving as a high constable shall hold a baton, or continue a member of any other body of constables during his term of service in the society.

IX. Every motion brought before the society affecting the laws, shall, after being seconded, be given in to the secretary in writing, and lie over till next general meeting; and if then approved of by a majority, the same shall pass into a law.

X. No gentleman shall be eligible to fill the office of moderator unless he has at any time served as a high constable for eighteen months; the names of gentlemen proposed as candidates for the moderator's chair must be intimated by letter to the moderator within the first eight lawful days of March annually;<sup>1</sup> and no canvas shall take place until the second lawful day of March. Every candidate for the chair shall, at a meeting to be held annually for the purpose, at 10 A.M. on the Monday following the farewell dinner, submit to the society the names of those gentlemen whom he intends to propose as office-bearers and committee members; and it shall be competent for any member or members to bring forward at this meeting, but not afterwards, a list or lists in opposition to those named by the candidates for the chair; and previous to this meeting, no canvas shall take place either for office-bearers or committee members. The farewell dinner shall always take place in March, at least fifteen days previous to the first Monday in April, and no business whatever shall then be brought forward.

XI. That on a vacancy taking place in the office of moderator, or in the offices of treasurer, chaplain, or secretary, or in the committee, by resignation or otherwise, at any period of the year previous to the annual election in April, intimation thereof shall be given to the society by order of the moderator, or failing him, by the next highest office-bearer, within one week of such vacancy taking place, when a general meeting of the society shall be convened, within ten days after date of such intimation, for the election (by the majority present) of a member or members of the society to supply the vacancy or vacancies caused as aforesaid; and that until such election the office-bearer or committee member next in order on the list shall act as *interim* moderator, treasurer, &c.

---

<sup>1</sup> Minute Book, iv. 185. By the rules approved of on 6th July 1829, this intimation was ordered to be made "on the first lawful day of March annually" [Ibid. iv. 165].

XII. No member shall be re-elected to the office of moderator, treasurer, chaplain, or secretary, for two successive years, unless to supply any vacancy occurring after the period of the general election of office-bearers.

XIII. Gentlemen whose period of service in the society has expired, may, within eight days from the date of the general election of office-bearers, exercise the privilege of handing a list to the moderator, of three gentlemen qualified to succeed them in office, which, if approved by the office-bearers and committee, must be submitted to the Magistrates and Council to make their election.

*Fines.*

XIV. General meetings of the society, every absent member to pay half-a-crown.

XV. All meetings called by the Lord Provost and Magistrates, for the society to act on extraordinary occasions, every absent member one guinea.

XVI. For gentlemen coming to general meetings of the society a quarter of an hour later than the intimation, one shilling; half-an-hour, one shilling and sixpence; and at extraordinary meetings (where the fine for absence amounts to one guinea), five shillings for being a quarter of an hour later than the time intimated, and ten shillings and sixpence if half-an-hour.

XVII. The small baton ought to be carried at all times, and every member coming to any meeting without it, one shilling; and without his large baton, when specially instructed to do so, two shillings and sixpence.

XVIII. Losing large or small baton, unless on necessary duty, half-a-guinea.

XIX. Lending either large or small baton to any person not a member of the society, on any occasion whatever, one guinea.

XX. Neglecting to make out the returns of Jurymen at the day appointed by the moderator, half-a-guinea.

XXI. Neglecting to affix the Militia Lists on the church door on the proper day (as specified in the precept), before nine o'clock A.M., one guinea.

XXII. Omitting the exemption clause in the copy affixed to the church door, five shillings in time of peace, and one guinea in time of war.

XXIII. Omitting to state the day of appeal on the copy affixed to the church door, five shillings in time of peace, and one guinea in time of war.

XXIV. Neglecting to attend the meeting of Lieutenancy, with certified lists on the day of appeal, specified in the precept, one guinea.

*Note.*—These Rules are again engrossed in the Minute Book for the regulation of the Society in 1832, but in that copy the secretary has precedence of the chaplain [Minute Book, iv. 274-279].

(1) By a minute, dated 22d September 1832,<sup>1</sup> the society ordered,

<sup>1</sup> Minute Book, iv. 288.

"That no member of the society shall in future be allowed to resign, unless he pay his proportion of the current expenses of the year, up to the time he tenders his resignation."

- (2) On 7th April 1834, the society, considering that much inconvenience had occurred on former occasions in consequence of the moderator leaving the chair immediately after the appointment of his successor, ordered,<sup>1</sup>

"That at all future elections, the moderator shall continue chairman of the meeting until the whole election of office-bearers and committee is concluded."

- (3) By minute, dated 6th November 1835,<sup>2</sup> the society reduced the fines prescribed by Law XVI. for being late at extraordinary meetings, to two shillings and sixpence, and five shillings.

## XVIII.

### *RULES of the Society of High Constables of the City of Edinburgh, as printed in 1835.*

#### *General Rules.*

*Note.*—These rules are precisely the same as those approved of by the society on 14th May 1830,<sup>3</sup> except Nos. I., V., VIII., and X., which are amended as follow. A new rule is also added immediately before the "Fines," and forms No. XIV. of the print of 1835.

I. All intimations of the meetings of the society to be called by printed or written notices, issued by the secretary, except in cases of urgent necessity, when a personal intimation, made by a brother constable, city officer, or any other authorised person, shall be held as equally binding.

V. The office-bearers and committee shall decide on such gentlemen as shall be invited to the entertainments of the society. The moderator shall have the privilege of inviting four personal friends; and the treasurer, secretary, chaplain, and surgeon, one friend each.

VIII. No member serving as a high constable shall continue a member of any other body of constables during his term of service in the society.

X. After the words "no canvas shall take place either for office-bearers or committee members," the following sentence is added, "At the annual election meeting, the moderator of the preceding year shall continue chairman until the election of all the office-bearers and committee is concluded."

<sup>1</sup> Minute Book, iv. 389, 390.

<sup>2</sup> Ibid. iv. 424, 426.

<sup>3</sup> *Antea*, lix-lxi.

XIV. That no member of the society be allowed to resign until he pay his proportion of the current expenses of the year, and all fines due by him up to the time he may tender his resignation.

The fines for being late in attendance at meetings are stated in the print of 1835 as follows :—"Any member coming to general meetings of the society a quarter of an hour later than the intimation, one shilling; if half an hour, one shilling and sixpence; and at extraordinary meetings (when the fine for absence amounts to one guinea), two shillings and sixpence if a quarter of an hour later than the time intimated, and five shillings if half an hour.

*REGULATIONS issued by the Moderator for the guidance of the Society at Fires and Riots.*

*Duty at Fires.*

The society will make a point of attending on all occasions when the first alarm of fire is given, whether they receive a notice from the moderator to that effect or not, and shall give instructions to the police officers in their respective districts to call them up.

When assembled, they will endeavour to act strictly according to the fire regulations annexed.

When the moderator is present, they will look to him for particular instructions; and, in his absence, they will obey the orders of the office-bearers, according to their seniority.

They must avoid forming inactive groups on the street; but, on the contrary, disperse themselves where they can be most useful; and while co-operating with the police, they will act as a check upon them, forwarding as much as in their power the removal of furniture, and attending strictly to the protection of property.

*Note.*—Here follow extracts from Fire Regulations, issued by the Lord Provost and Magistrates on 16th April 1828.<sup>1</sup>

*Duty at Riots.*

The Society—shall as often as possible act in a body, without any division whatever. The members, unless otherwise instructed, to form eight abreast, and at all times keep close together, to prevent separation in a crowd.

The Moderator—shall give all the directions and signals necessary for the society while acting in one body, but when the society is required to act in two divisions,—

The Treasurer—shall head the second division, assisted by the secretary, while the

---

<sup>1</sup> *Antea*, p. lviii.

chaplain assists the moderator with the first division. In order to facilitate the division of the society, each member, from No. 1 to 30, shall place himself under the moderator, and those from 30 to 60, under the treasurer, who shall, along with the secretary, occupy the centre of the body, and be prepared at a moment's notice, by separation or otherwise, to take command of his division, when he shall take upon himself all necessary directions and signals.

The Secretary and Chaplain—shall, in the event of any further division of the society, each head a party, under the direction of the moderator or treasurer, as the case may happen.

The heads of divisions will look to the moderator for instructions ; but in the event of wishing for information from him, instead of leaving their command, they shall send a member of committee for that purpose.

Committee Members—shall assist the heads of divisions in keeping their parties together ; and in the event of the separation of their division into small parties, they shall immediately assume the command of the party, and make a point of rejoining the divisions they respectively belong to, or take the party to the place of rendezvous, or act otherwise, as circumstances permit.

Members of the Society—will attend strictly to the orders they may receive from the moderator, or the leader of the division to which they are attached. No member shall leave his division without the consent of his leader ; and as it will often happen in a crowd that the members of the society will be separated from each other, gentlemen in such circumstances, for the purpose of acting in concert, and that their services may be more efficient, will place themselves, for the time being, under the orders of the nearest party assuming the command, and afterwards endeavour to rejoin, as speedily as possible, their respective divisions.

### *Signals*

*To be made by the Heads of Divisions with the Society's Silver Calls, one of which to be worn by the Moderator, and the other by the Treasurer.*

1st, *One long call* shall always be given as a signal to charge or disperse the mob to which the body is opposed.

2d, *A repetition of short calls* will be given as a signal to continue the charge or pursuit.

3d, *Two long calls*, with a short interval between, shall be given as a signal to rally round the heads of divisions, and to form into the order in which the divisions were before making the charge.

### *Duty of Surgeon.*

The Surgeon, when the society is called upon to act in one body in the old town, shall remain in the Council Chambers ; and in the Assembly Rooms, when the society is acting in the new town. He shall on no account leave the place appointed, unless

upon a direct order from the moderator, carried to him by an office-bearer or member of committee ; and shall, on all occasions when the society is called out by order of the magistrates, and with *both batons*, provide himself with the necessary instruments and dressings likely to be required for wounded members.

---

XIX.

*RULES of the Society of High Constables of the City of Edinburgh.*

(See page 272.)

*General Rules.*

I. All intimations of the meetings of the society to be called by printed or written notices, issued by the secretary, except in cases of urgent necessity, when a personal intimation, made by a brother constable, city-officer, or any other<sup>d</sup> authorised person, shall be held as equally binding.

II. It is expressly understood, that being twenty miles from town, or cases of sickness, exempt members from incurring any of the fines, *when certified by their word of honour*. And it is also understood, that the same fines are exigible upon any member leaving a meeting without consent of the moderator, as upon those who have not attended such meeting.

III. Any member who may be in arrears to the society, shall not be entitled to vote or express his opinion on any subject whatever that may be brought before them, until such arrears are paid up. The moderator, in all cases of equality, to have the casting vote.

IV. An account of the fines incurred by members of the society shall be handed by the secretary to the treasurer, as early as possible, and when certified by him, shall be given to their officer, in order that they may be collected ; and those objecting to pay such fine, and share of necessary expenses, must state their reasons in writing to the treasurer, who will lay them before the first general meeting after they are received ; and should that meeting not consider the reason stated as a sufficient excuse for non-payment of the fine or fines, and share of necessary expenses, and those found liable still object to pay the amount, the moderator, in name of the society, will then apply to the magistrates to expel such member or members.

V. The office-bearers and committee shall decide on such gentlemen as shall be invited to the entertainments of the society, not exceeding twelve individuals.

VI. For the election dinner, every member of the society to pay the full share of the

bill of entertainment, no excuse whatever being admitted, and also his share of any other necessary expenses incurred during the year.

VII. The treasurer, before leaving office, shall regularly exhibit a state of the funds of the society, and the whole debt due by the society shall be cleared off annually, and the books brought to an equal balance before the day of the annual election.

VIII. No member serving as a high constable shall continue a member of any other body of constables during his term of service in the society.

IX. Every motion brought before the society, affecting the laws, shall, after being seconded, be given to the secretary in writing, and lie over to next general meeting, and if then approved of by a majority, the same shall pass into a law.

X. At the annual election meeting, which shall take place on the first Monday of April, the moderator of the preceding year shall continue chairman until the election of all the office-bearers and committee is concluded, at which meeting it shall be competent for any member to propose a list of moderator, office-bearers, and committee, who shall be elected by the votes of the meeting present in common form ; and of this meeting, at least eight days' notice shall be given by the secretary to each member, stating the purport of the meeting.

XI. That on a vacancy occurring among the office-bearers or committee, by resignation or otherwise, at any period of the year previous to the annual election in April, intimation thereof shall be given to the society, by order of the moderator, or failing him, by the next highest office-bearer, or committee member, as speedily as convenient, when a general meeting of the society shall be convened, within ten days after date of such intimation, for the election of a member or members of the society, to supply the vacancy or vacancies caused as aforesaid ; and that, until such election, the office-bearer, committee member, or ordinary member (as the case may be), next in order, shall supply the vacancy.

XII. No member shall be re-elected to the office of moderator, treasurer, secretary, or chaplain, for two successive years, unless to supply any vacancy occurring after the period of the general election of office-bearers.

XIII. Gentlemen whose period of service in the society has expired, may, within eight days from the date of the general election of office-bearers, exercise the privilege of handing a list to the moderator, of three gentlemen qualified to succeed them in office, which, if approved of by the office-bearers and committee, must be submitted to the Magistrates and council to make their election.

XIV. Every member shall be held to be upon the strength of the society until his resignation shall have been accepted, and no member shall be allowed to resign until he pay his proportion of the current expenses of the year, and all fines due by him.

#### *Fines.*

XV. Ordinary general meetings of the society,—every member absent during whole time, to pay *one shilling and sixpence*.

XVI. All meetings of the society called by order of the Lord Provost and magistrates,—every absent member during whole time, *five shillings*.

XVII. Any member coming to general or committee meetings of the society, if a quarter of an hour later than the intimation, *one shilling*. Meetings called by order of the Lord Provost and magistrates (where the fine of absence amounts to *five shillings*), *two shillings* if a quarter of an hour later than the time intimated.

XVIII. The small baton must be carried at all times; and every member coming to any meeting without it, *one shilling*; and without his large baton, when specially instructed to do so, *two shillings and sixpence*.

XIX. Losing large or small baton, unless on duty, *half-a-guinea*.

XX. Lending either large or small baton to any person not a member of the society, on any occasion whatever, *one guinea*.

XXI. Neglecting to affix the militia lists on the church-door, on the proper days (as specified in the precept), before nine o'clock A.M., *one guinea*.

XXII. Omitting the exemption clause in the lists affixed to the church-door, *five shillings* in time of peace, and *one guinea* in time of war.

XXIII. Omitting to state day of appeal on the copy affixed to the church-door, *five shillings* in time of peace, and *one guinea* in time of war.

XXIV. Neglecting to attend the meeting of Lientenancy, with certified lists, on the day of appeal specified in the precept, *one guinea*.

#### *Duty at Fires.*

The society will make a point of attending on all occasions when the first alarm of fire is given, whether they receive a notice from the moderator to that effect or not, and shall give instructions to the police officers in their respective districts to call them up.

When assembled, they will endeavour to act strictly according to the fire regulations annexed.

When the moderator is present, they will look to him for particular instructions; and in his absence, they will obey the orders of the office-bearers, according to their seniority.

They must avoid forming inactive groups on the street; but, on the contrary, disperse themselves where they can be most useful; and while co-operating with the police, they will act as a check upon them—forwarding as much as in their power the removal of furniture, and attending strictly to the protection of property.

*Note.*—Here follow extracts from Fire Regulations issued by the Lord Provost and Magistrates on 16th April 1828.<sup>1</sup>

#### *Duty at Riots.*

The society, on being called out, shall, without delay, proceed to form into line

<sup>1</sup> *Antea*, p. lviii.

two deep, according to seniority, and shall on no account proceed to the street until they are so formed, and instructions are given them as to their procedure.

The society shall act in a body, or in two or three divisions, as may be thought advisable ; if in a body, they shall move under the immediate direction of the moderator ; if in two divisions, the first shall move under the direction of the moderator and secretary, the second division under that of the treasurer and chaplain ; if in three divisions, the first shall consist of the secretary, the members of committee, and ten senior ordinary members of the society, under command of the moderator ; the second shall consist of the next eighteen ordinary members, under command of the treasurer ; and the third shall consist of the remaining members under the command of the chaplain.

Heads of divisions shall look to, and take instructions only from, the moderator, who shall generally attach himself to the first division, which, in his absence, shall be commanded by the secretary ; and in the event of any information being required of the moderator, heads of divisions must send for such information, but on no account leave their divisions.

On orders being given to clear the streets in three divisions, the first division shall proceed along the middle, the second and third along the sides of the street respectively. The three divisions shall move at once, and proceed actively, but simultaneously, and in the same direction, till otherwise ordered ; and members are entreated not to break line until ordered by the officer in command, inattention to which has hitherto invariably proved dangerous, not only to the individuals so doing, but to the members of the division to which they belong.

Members are urged to great coolness and forbearance, the first object being that of securing prisoners ; on its being considered necessary, however, to proceed to extremes, it will be equally desirable that they act with vigour and effect.

Members must endeavour to recognise the signals given by the moderator, with the silver calls, which signals shall be repeated by the other commanders of divisions ; but members are cautioned against being betrayed by attempts at imitating them by the mob, which have sometimes proved successful, the consideration of which must suggest to the mind of every member the urgent necessity for individual silence and attention, a disregard to which, besides being subversive of all discipline, cannot fail to paralyze the best intentioned efforts of the high constables.

### *Signals.*

1st, *One long call* shall always be given as a signal to charge or disperse the mob to which the body is opposed.

2dly, *A repetition of short calls* will be given as a signal to continue the charge or pursuit.

3dly, *Two long calls*, with a short interval between, shall be given as a signal to

rally round the heads of divisions, and to form into the order in which the divisions were before making the charge.

*Duty of Surgeon.*

The surgeon, when the society is called upon to act in one body in the Old Town, shall remain in the Council Chambers ; and in the Assembly Rooms when the society is acting in the New Town. He shall on no account leave the place appointed, unless upon a direct order from the moderator, carried to him by an office-bearer or member of committee ; and shall, on all occasions when the society is called out by order of the magistrates, and with *both batons*, provide himself with the necessary instruments and dressings likely to be required for wounded members.

(1.) On 24th May 1849, the Society enacted the following law,<sup>1</sup>

“It shall be imperative that a meeting of the society be called at least a fortnight before the general election, for the purpose of bringing up all business, and at this meeting the committee shall lay before the body the list of the office-bearers they have to propose for the ensuing year.

(2.) On 1st April 1850, the society enacted,<sup>2</sup>

1. That the election of office-bearers, &c., in future be conducted by open vote.

2. That if there are three candidates for one office, two votes shall be taken, and after the first vote, the candidate who has the fewest votes shall be struck off, and if there are more than three the same rule shall apply, taking a vote for every additional candidate, and shortening the list until the office is filled up.

3. That in future, member No. 1 of the committee shall act as custodian of the batons.

(3.) On 19th March 1855, the society resolved,<sup>3</sup>

1. That instead of the moderator leaving the society at the completion of his office, he shall remain for another year as “vice-moderator,” and occupy the chair during the absence of the moderator from committee ; and have the same voice in the affairs of the society as members of committee.

2. That a member of committee shall be appointed “custodian of batons,” who shall be charged with the preservation of the property of the society, and shall have a silver baton marked, “custodian of batons.”

<sup>1</sup> Minute Book, v. 145.

<sup>2</sup> Ibid. v. 166-168.

<sup>3</sup> Ibid. v. 251.

## XX.

*ACT OF COUNCIL regulating the Constitution of the Society of  
High Constables of the City of Edinburgh, 24th February  
1857.<sup>1</sup>*

The Lord Provost, Magistrates, and Council, considering that, in consequence of the recent extension of the boundaries of the city, it has become necessary to re-organise the Society of High Constables, and to adapt the arrangements of the society to those of the extended municipality, did, and hereby do, enact as follows:—

1. The society shall henceforward consist of one hundred and fifty-six members, whereof twelve shall be chosen from each of the thirteen municipal wards.

2. Previously to the first Monday of April next, the magistrates and council shall nominate and appoint the whole one hundred and fifty-six constables; and their appointment having been intimated to them by the town-clerks, such of them as may be willing to accept shall assemble in the council chamber, at 10 o'clock A.M. of the foresaid day, and be sworn into office. The previously existing members of the society shall thereupon retire from office, with the exception of such of them as may have been re-appointed.

3. One-third of the constables for each ward, being the four at the top of the list, shall go out of office annually, on the first Monday of April previously to the election of office-bearers; and the vacancies to be thus occasioned shall be supplied by the appointment, by the magistrates and council, of a corresponding number of constables; which appointment shall be made previously to the foresaid date, and the persons so appointed shall be sworn into office immediately before the meeting of the society for the election of office-bearers. Constables retiring may be immediately re-elected.

4. In the event of any vacancies arising in the society by death, resignation, or non-acceptance, the moderator shall intimate the same to the Lord Provost, in order that the said vacancies may be supplied; and to preserve the proper rotation, gentlemen appointed to supply vacancies shall take the places on the roll of each ward of the gentlemen by whose death, resignation, or non-acceptance, the vacancies are caused.

5. Gentlemen appointed constables must be registered electors of the city, and must either be *bona fide* householders, or must carry on business on their own account, within the ward for which they are appointed. No members of the town council shall be appointed high constables; and in the event of any members of the society accepting the office of councillors, they shall be held to have resigned their office as constables.

---

<sup>1</sup> Council Records, cclxx. 295-299.

6. On the first Monday of April annually, at 10 o'clock A.M., the members of the society shall meet, and, by a majority of votes, shall elect from among their number a moderator,<sup>1</sup> a vice-moderator, a treasurer, a secretary, a surgeon, and a custodier of batons; and at the same time, they shall also elect from among the constables for each ward one gentleman, not holding any other office in the society, who shall be captain of the constables in such ward. These several office-bearers, who shall hold office until next annual election, shall form a committee, to whom shall be entrusted the immediate management of the society's affairs.

7. The moderator, or, in his absence, the vice-moderator, or, in the absence of both, a chairman to be appointed for the time, shall preside at all meetings of the society, and, in case of an equality of vote, shall have a casting vote, in addition to his deliberative vote.

8. The powers of the members of the society of high constables shall be exercised in subordination to those conferred on the councillors of the several wards and others, by the 52d section of "The Edinburgh Municipality Extension Act, 1856."

9. The society may, from time to time, make such bye-laws for the regulations of their own affairs as they may see fit; such bye-laws not being inconsistent with the provisions of this act.

10. All previous acts of council containing rules affecting the constitution of the society of high constables are repealed; but it is hereby provided that the "instructions" contained in the act of council 19th March 1828,<sup>2</sup> shall nevertheless subsist in full force, excepting in so far as these refer to the former suburban bodies of constables which have ceased to exist.

11. The magistrates and council shall make such annual allowance to the society for defraying their necessary expenses, as to them, from time to time, shall seem fit.

## XXI.

*BYE-LAWS of the Society of High Constables of the City of Edinburgh, approved of by the Society on 11th May 1857,<sup>3</sup> and amended by subsequent Resolutions on 13th October 1858,<sup>4</sup> 5th January 1860,<sup>5</sup> 8th February 1861,<sup>6</sup> and 2d July 1861.<sup>7</sup>*

1. All meetings of the society shall, under orders from the moderator, or Lord

<sup>1</sup> By act, dated 10th April 1865, the council, on the application of the society, ordered that the moderator of the former year should, as "ex-moderator," be an office-bearer of the society [Council Records, ccxc. 139].

<sup>2</sup> See *antea*, pp. lvi, lix.

<sup>4</sup> *Ibid.* v. 331.

<sup>6</sup> *Ibid.* v. 376.

<sup>3</sup> Minute Book, v. 319.

<sup>5</sup> *Ibid.* v. 363.

<sup>7</sup> *Ibid.* v. 387.

Provost and magistrates, be called by printed or written notices, issued by the secretary, except in cases of urgent necessity, when a personal intimation made by a brother constable, city officer, or other authorised person, shall be sufficient.

2. Twenty miles distance from town, necessary absence, or indisposition, exempts members from fines, *when certified by their word of honour*,

[(1.) Every member, on changing his residence, shall be bound within eight days to give notice thereof in writing to the secretary.

(2.) Every member shall, on getting notice of any *general or committee* meeting which he may be unable to attend, intimate to the secretary in writing the reason for his absence.

(3.) The moderator shall judge of all excuses ; but any member dissatisfied with his decision may appeal to the next general meeting.<sup>1</sup>]

3. Members in arrear shall not be entitled to vote or express an opinion on any subject that may be brought before the society.

4. Accounts of the fines incurred by members shall from time to time be handed by the secretary to the treasurer, and after being certified by him, shall be delivered to the officer of the society for collection. Those objecting to pay such fines, and their share of necessary expenses, must state their reasons in writing to the treasurer, by whom they shall be submitted to the first meeting of committee. Unless the meeting consider the excuse offered satisfactory, those liable must pay—otherwise the moderator, in the name of the society, will strike the name of such member or members from the roll.

5. The treasurer, before leaving office, shall exhibit a state of the funds of the society, audited by three members of committee duly authorised. The books shall be balanced, and the whole debt due by the society cleared off, before the day of each annual election.

6. Every motion affecting the laws, brought before the society, shall, after being seconded, be given to the secretary in writing, and lie over till next general meeting ; and if then approved of by a majority, the same shall pass into a law.

7. A general meeting shall be held in the month of March, previous to the annual election, for the purpose of *nominating* office-bearers. [The various wards shall have the power to nominate the gentlemen who are to hold the office of captain in the particular wards to which they belong, leaving the election to the society ; the nomination to be in the hands of the chairman, if not more than two members of the ward attend.<sup>2</sup>]

8. At the annual election meeting, on the first Monday of April, the moderator of

<sup>1</sup> Articles (1) (2) (3), with the exception of the words in italics, were added to the bye-laws by the society on 5th January 1860 [Minute Book, v. 363]. The words in italics were added on 2d July 1861 [Ibid. v. 387].

<sup>2</sup> Enacted by the society on 13th October 1858 [Ibid. v. 331].

the preceding year shall continue chairman until the election, as provided for in the 6th section of the act of council (24th Feb. 1857), of the office-bearers is concluded.

9. On vacancies occurring among the office-bearers, by resignation or otherwise, at any period previous to the annual elections in April, a special general meeting, for the election of members to supply such vacancies, shall be convened without delay.

10. No member shall be re-elected to the office of moderator, treasurer, secretary, or custodian of batons, for more than two successive years, unless to supply any vacancy occurring after the period of the general election of office-bearers.

11. Excepting in cases of retirement, as provided in the said act of council, and in cases of members being struck off the roll, every member shall be subject to the said act of council and bye-laws of the society, until his resignation shall have been accepted; no resignation shall be accepted until such member pay his proportion of the current expenses of the year, and all fines due by him.

#### *Fines.*

12. Ordinary general meetings of the society, [and meetings of committee<sup>1</sup>]:—Every member absent during whole time, or leaving without permission from the moderator, *one shilling*; if fifteen minutes later than time fixed for meeting, *sixpence*.

13. All meetings of the society called by order of the Lord Provost and Magistrates [to preserve the peace of the city<sup>2</sup>]:—Every member absent during the whole time, or leaving without permission from the moderator, *five shillings*; if fifteen minutes later than time fixed for meeting, *two shillings*.

14. The small baton to be carried at all times; every member coming to any meeting without it, *one shilling*; and without his large baton, when specially instructed to do so, *two shillings and sixpence*.

15. Losing large or small baton, except when on duty, *half-a-guinea*.

16. Lending either large or small baton to any person not a member of the society, on any occasion whatever, *one guinea*.

#### *Duty at Riots.*

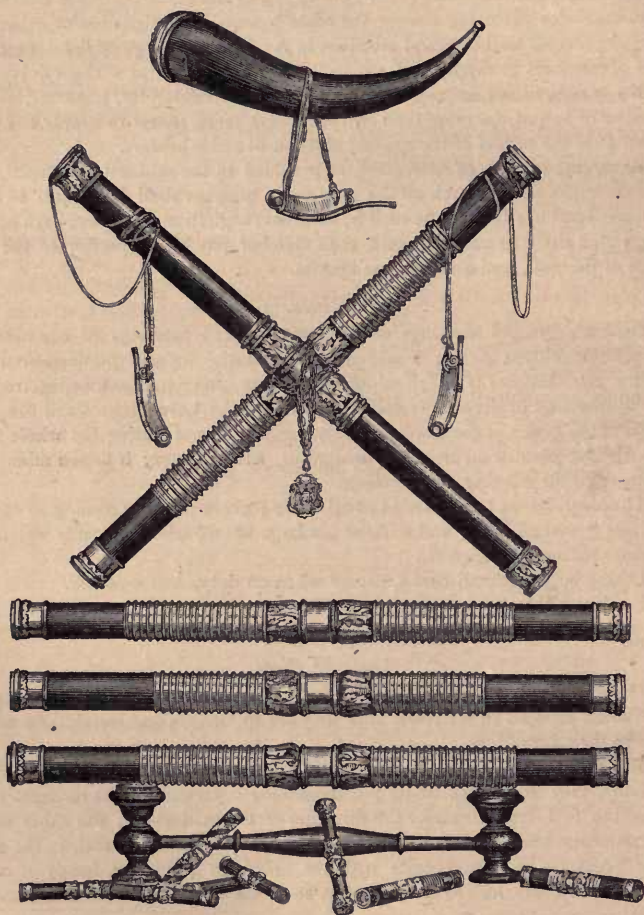
17. The members, on being called out, shall, without delay, form into line, and shall on no account proceed to the street until they are so formed, and instructions are given them as to their procedure.

18. The society shall act in a body, in divisions, as may be thought advisable; and if in a body, they shall move under the immediate command of the moderator; if in divisions, the first shall act under the direction of the moderator; the other divisions under that of the office-bearers present in the order of their rank; and, in the event of it being necessary to communicate with the officer in command, heads of divisions must *depute* members for the purpose, but must on no pretext whatever leave their divisions.

<sup>1</sup> Added by the society on 2d July 1861 [Minute Book, v. 387].

<sup>2</sup> The words "to preserve the peace of the city" were added by the society on 8th February 1861 [Ibid. v. 376].

INSIGNIA OF VICE-MODERATOR AND OTHER OFFICE-BEARERS.



## XXII.

*LIST and DESCRIPTION of the INSIGNIA and other Properties belonging to the High Constables of Edinburgh, classified with reference to the Office-bearers to which they are respectively assigned.*<sup>1</sup>

## I. THE MODERATOR.

1. A Large SILVER-MOUNTED BATON,<sup>2</sup> presented to the Society by Moderator Lawson. The Baton is made of the finest black ebony, mounted richly in silver. The centre plate is broad and massive, with two richly chased wreaths of Scotch Thistles, and each end is covered with a broad band of silver. Each band is divided into two segments by richly floreated thistle wreaths, and each segment contains a richly chased design. On the one band is a design in *alto relievo* of the Edinburgh City Arms, with supporters and motto; the ancient Order of the Thistle, with the motto, "*Nemo me impune lacessit*;" and the letters, "*E. H. C. 1865.*" On the other band are richly chased the Royal Arms and the Imperial Crown, with the letters, "*V. R. 1865.*" On one end of the Baton the following inscription is engraved :—

*Presented to the High Constables of Edinburgh*

*by*

*Charles Lawson Jun., Esq.,*

*Moderator, 1862–1865.*

On the opposite end are the arms, supporters, crest, and motto of Moderator Lawson.

2. A GOLD MEDAL,<sup>3</sup> with a massive gold link Chain, purchased by the Society in 1863. The Medal is oval, with two richly chased wreaths of Scotch Thistles. On the one side are the Edinburgh City Arms, with supporters, crest, and motto finely chased; and on the reverse side is the following inscription :—

*Moderator.*

*The High Constables of Edinburgh.*

*Instituted 1611.*

*Presented by the Society, January 1863.*

<sup>1</sup> This description has been prepared from information kindly furnished by Mr Adam Mossman and Mr Alexander Cockburn, jewellers, 30 Prince's Street, Edinburgh.

<sup>2</sup> *Antea*, p. 296. See woodcut, p. iv. <sup>3</sup> *Antea*, p. 296. See frontispiece, p. ii.

3. A Small SILVER-MOUNTED BATON,<sup>1</sup> richly chased, with the following inscription on the centre silver ring :—

*Presented to the Society of High Constables of Edinburgh*

*by George Beattie, Esq.,*

*Moderator, 1851.*

4. A SILVER BOATSWAIN WHISTLE, and massive silver Chain.<sup>2</sup> On one side of the Whistle are engraved the names of the office-bearers in 1831, as under :—

*“William Johnston, Moderator, 1831; Andrew Millar, Treasurer; Joseph Taylor, Chaplain; John Aitchison, Secretary; Charles Kennedy, Surgeon.”*

The other side contains the following inscription :—

*“Adopted by the Society of High Constables during their arduous duties, 1831.”*

5. A SILVER-MOUNTED SNUFF-HORN or MULL,<sup>3</sup> chased in silver, with a pebble on top, and a shield bearing the following inscription :—

*Presented to the Society of High Constables of Edinburgh,*

*by James Dallas, Esq.,*

*Moderator, 1820.*

## II. THE EX-MODERATOR.

1. A Large SILVER-MOUNTED EBONY BATON,<sup>4</sup> with a Small Baton attached by a chain and swivel. Both the Large and Small Batons were formerly held by the Moderator, but are now held by the Ex-Moderator. These Batons are very richly chased in the centre, and at both ends. On one end of the Large Baton are chased the Royal Arms, the Royal Crown, and the letters, “*G. IV. R. 1820.*” On the opposite end are the date, “*Anno 1820,*” with an anchor and the letters, “*E. H. C.,*” the City Arms, and the motto. The Baton is now quite covered with silver rings, on which are inscribed the names of forty gentlemen, who have filled the office of Moderator. Engraved on both ends is the following inscription :—

*Presented by the Society of High Constables for the City of Edinburgh  
to their Moderator, 28th September 1820.*

<sup>1</sup> *Antea*, p. 295. See woodcut, p. lxxiv. <sup>3</sup> *Antea*, p. 294. See woodcut, p. lxxiv.

<sup>2</sup> *Antea*, p. 295. See woodcut, p. lxxiv. <sup>4</sup> *Antea*, pp. 294, 296. See woodcut, p. vi.

2. A Small SILVER-MOUNTED BATON,<sup>1</sup> in design somewhat similar to the Moderator's large baton. It is richly chased with wreaths of Scotch Thistles. On the one end are the City's Arms, and on the other the Royal Arms. The centre plate bears the following inscription :—

*Ex-Moderator's Baton.*

*Presented to the High Constables of Edinburgh*

*by John Greig Jun., Esq., Moderator.*

1865.

### III. THE VICE-MODERATOR.

1. A Large SILVER-MOUNTED BATON,<sup>2</sup> with richly chased silver centre, and laurel and scrolls. On the centre plate the following inscription is engraved :—

*Presented to the Society of High Constables of Edinburgh*

*by Alexander Edmondston, Vice-Moderator,*

1859.

On the one end are the letters, "E. H. C.," and on the opposite end the City's Arms

2. A Small SILVER-MOUNTED BATON,<sup>3</sup> with a richly chased wreath of scrolls from top to bottom. The City's Arms are chased on the one end, and the Royal Arms on the other. On the centre is the following inscription :—

*Presented to the Society of High Constables of Edinburgh*

*by Thomas Gill, Esq., Vice-Moderator.*

1855.

3. A GOLD MEDAL,<sup>4</sup> in the form of a Shield, with chased scrolls as a border. On one side are engraved the City's Arms, crest, and motto ; and on the reverse side the inscription :—

*"Vice-Moderator of the High Constables of the City of Edinburgh."*

*Instituted 1855.*

Attached to the Medal is a fine gold Chain, of a square cable link. The medal and chain were purchased by the society in 1855.

<sup>1</sup> *Antea*, p. 296. See woodcut, p. lxxiv. <sup>3</sup> *Antea*, p. 296. See woodcut, p. lxxiv.

<sup>2</sup> *Antea*, p. 296. See woodcut, p. lxxiv. <sup>4</sup> *Antea*, p. 295. See woodcut, p. lxxiv.

## IV. THE TREASURER.

1. A Large SILVER-MOUNTED BATON,<sup>1</sup> with chased silver centre, and mounted with plain silver rings. On the centre plate is engraved the following inscription :—

*Presented to the Treasurer  
of the Society of High Constables of the City of Edinburgh,  
by George Brown, Treasurer. 1828.*

On each end of the Baton are the City's Arms, with the initials, "E. H. C."

2. A Small SILVER-MOUNTED BATON,<sup>2</sup> chased and floreated with scrolls ; initials, "E. H. C., Treasurer ;" and engraved on each side are the Royal Arms, V. R., and the City's Arms.

3. A SILVER BOATSWAIN WHISTLE,<sup>3</sup> with silver chain attached. The Whistle bears the following inscription :—

*Adopted by the Society of High Constables  
during their arduous duties, 1831.*

4. The Treasurer's MONEY BOX<sup>4</sup> for collecting Fines, &c.—The Box is made of brass, with a handle at the top, and is used for collecting the fines of members of the Society. It has a hole in the top for that purpose. In front of the Box is engraved the following :—

*"List of the Constables chosen by the Councill of Edinburgh, 21 May 1698, who  
caused make this Box, and payed for the same :—William Lindsay, Moderator ;  
John Anderson, coppersmith, Treasurer ; Alexr. Hay, vintner, Clerk."*

and twenty-five other names. On the back of the Box is marked the date 1782, with the names of the Office-bearers of that year, as under :—

*"William Dalrymple, Preses, mercht. ; David Deuchar, seal engraver, Treasurer ;  
Robert Ford, Clerk, merchant ; William Watson, wright, Chaplain."*

and twenty-six ordinary members. On the bottom of the Box there is the following inscription :—

*On the 1st September 1842, Queen Victoria visited Edinburgh,  
In the procession when Her Majesty visited the Castle, the Society of High Constables  
took a prominent part.*

<sup>1</sup> *Antea*, p. 294. See woodcut, p. lxxiv.    <sup>3</sup> *Antea*, p. 295. See woodcut, p. lxxiv.

<sup>2</sup> See woodcut, p. lxxiv.

<sup>4</sup> *Antea*, pp. 293, 294. See woodcut, p. lxxxiv.

followed by the names of fifty-four ordinary members of the Society. The Box is 167 years old, and is a great curiosity.

## V. THE SECRETARY.

1. A Large SILVER-MOUNTED BATON,<sup>1</sup> with chased silver centre, and mounted with plain silver rings. On the centre plate is engraved the following inscription :—

*Presented to the Secretary of the Society of High Constables  
of the City of Edinburgh,  
by James Patison, Secretary. 1828.*

On either end are the initials, "E. H. C.," with the City's Arms.

2. A Small SILVER-MOUNTED BATON,<sup>2</sup> chased and floreated with scrolls, engraved initials, "E.-H. C., Secretary;" and on each end the Royal Crown, with "V. R." and the City's Arms.

3. A SILVER BOATSWAIN WHISTLE,<sup>3</sup> with silver chain attached, engraved—  
*Secretary to the Society of High Constables.*

## VI. THE SURGEON.

1. A Large SILVER-MOUNTED BATON,<sup>4</sup> with chased silver centre, and plain silver ring mountings. On the centre-piece the following inscription is engraved :—

*The Office of Surgeon  
to the Society of High Constables of the City of Edinburgh,  
Instituted 1831.*<sup>5</sup>

On the rings are inscribed the names of the Surgeon in 1831, and of the gentlemen who have since held that office, with the respective years of their office. On each end of the Baton are the City's Arms and the initials, "E. H. C."

2. A Small SILVER-MOUNTED BATON,<sup>6</sup> chased, and with scrolls—  
*High Constables, Surgeon. 1832.*

On either end the Royal Crown and V.R., with the British Arms, are tastefully engraved.

<sup>1</sup> *Antea*, p. 294. See woodcut, p. lxxiv. <sup>3</sup> *Antea*, p. 295. See woodcut, p. lxxiv.

<sup>2</sup> See woodcut, p. lxxiv.

<sup>4</sup> *Antea*, p. 295. See woodcut, p. lxxiv.

<sup>5</sup> It has been seen [*antea*, p. 193] that the office of Surgeon to the Society was instituted in 1797. It was in abeyance from 1802 till 1831, when it was re-established.

<sup>6</sup> *Antea*, p. 295. See woodcut, p. lxxiv.

## VII. CUSTODIER OF BATONS.

The ancient office of chaplain to the Society having been abolished in 1857, and the new office of Custodier of Batons having been then created, the baton formerly held by the chaplain was transferred to the holder of the new office.

1. A Large SILVER-MOUNTED BATON,<sup>1</sup> mounted in the same style as that of the Surgeon, has engraved on it the following inscription :—

*Presented to the Chaplain of the Society of High Constables  
of the City of Edinburgh,  
by Eagle Henderson, Chaplain. 1828.*

The City's Arms and motto, with the initials "E.H.C.," are engraved on the ends.

2. A Small SILVER-MOUNTED BATON.<sup>2</sup> This is probably the oldest baton belonging to the Society. The two silver ends are fine specimens of antique silver chasing. The City's Arms and supporters are very boldly executed ; and the Royal Arms, although more defaced by time and use, are still in fine preservation. The quarterings of the arms give due prominence to Scotland, and the three *fleur de lis* in the second quarter fix the age of the baton to be before the union of this country with the crown of Hanover. The centre plate and rings are modern. The centre ring bears the following inscription :—

*"Custodier of Batons, 1855. E. H. C."*

In addition to the above, there is a GOLD SEAL, with the arms of the Society engraved thereon. This seal was purchased by the Society in 1825.

Each member has also a Large WOODEN BATON, painted and gilded, for use in active service ; and also a Small SILVER-MOUNTED BATON for the pocket, engraved on the ends with the Royal Arms and City's Arms. A number of these batons bear the inscription :—

*"E. H. C. Instituted 1611."*

---

<sup>1</sup> *Antea*, p. 294. See woodcut, p. lxxiv. <sup>2</sup> *Antea*, p. 295. See woodcut, p. lxxiv.

XXIII.

OFFICE-BEARERS and ROLL OF MEMBERS,

1st November 1865.

Moderator.—JOHN GREIG Jun., J.P., 3 Tantallan Place, Grange.

Ex-Moderator.—CHARLES LAWSON, Yr. of Borthwick Hall, 34 George Square.

Vice-Moderator.—A. KELLY MORISON, S.S.C., 16 Pitt Street.

Treasurer.—JOHN WILSON Jun., 13 Meuse Lane.

Secretary.—WILLIAM DICK, 40 Prince's Street.

Surgeon.—JOSEPH BELL, M.D., F.R.C.S.E., 5 Castle Terrace.

Custodian of Batons.—JOHN WHITE, 10 S. St David Street.

I. CALTON WARD.

John White, Custodier, Plumber.	Thomas Hall jun., Painter.
John Aitchison, Clothier.	Peter Cribbes, Lapidary.
David Caldwell, Trimming Mercht.	John Gibb, Captain, Builder.
James Robertson jun., Jeweller.	James Knox, Glazier.
Robert Dixon, Baker.	W. L. Rausch, Clothier.
David Mackay, Bootmaker.	Alexander Walker, Japanner.

II. BROUGHTON WARD.

Alexander Wylie, W.S.	Alexander Banks, Engraver.
William Porteous, Baker.	John Mackay, Accountant.
Thomas Wilson, Brassfounder.	Thomas Blaikie, Clerk.
J. G. Simmins, Teacher.	John D. Bowie, Muslin Printer.
William M. Laurie, Confectioner.	Andrew Robertson, } Ins. Manager.
Peter M'Farlane, Com. Traveller.	Captain, }

## III. ST BERNARD'S WARD.

<i>David Miller,</i>	<i>Builder.</i>	<i>Robert Hay,</i>	<i>Grocer.</i>
<i>John Nicol, Captain,</i>	<i>Chemist.</i>	<i>Archibald Walker,</i>	<i>Draper.</i>
<i>Wm. Goodlet,</i>	<i>Silk Mercer.</i>	<i>William Traquair,</i>	<i>Writer.</i>
<i>Robert Simpson,</i>	<i>Bootmaker.</i>	<i>George Campbell,</i>	<i>Stationer.</i>

## IV. ST GEORGE'S WARD.

<i>Edward Ayton,</i>	<i>Dentist.</i>	<i>Robert Lamb,</i>	<i>Clothier.</i>
<i>John Graham,</i>	<i>Painter.</i>	<i>Hugh Kerr,</i>	<i>Coach Proprietor.</i>
<i>Henry R. Kay, Capt.,</i>	<i>Plumber.</i>	<i>William Brown,</i>	<i>Joiner.</i>
<i>John Stevenson,</i>	<i>Grocer.</i>	<i>James G. Hay,</i>	<i>Dyer.</i>
<i>Thomas Hobday,</i>	<i>Accountant.</i>	<i>James Macgill,</i>	<i>Ironmonger.</i>
<i>John Armstrong,</i>	<i>Draper.</i>		

## V. ST STEPHEN'S WARD.

<i>Alexander Elder,</i>	<i>Sauce Merchant.</i>	<i>A. K. Morison,</i>	} <i>S.S.C.</i>
<i>J. B. W. Lee,</i>	<i>S.S.C.</i>	<i>Vice-Moderator,</i>	
<i>Wm. Cropper Jun.,</i>	} <i>Painter.</i>	<i>W. J. Matheson,</i>	<i>Builder.</i>
<i>Captain,</i>		<i>David Stevens,</i>	<i>Plumber.</i>
<i>Henry Mackenzie,</i>	<i>Chemist.</i>	<i>William Hislop,</i>	<i>Furniture Dealer.</i>

## VI. ST LUKE'S WARD.

<i>William Reid,</i>	<i>Fishmonger.</i>	<i>William Grant,</i>	<i>Printer.</i>
<i>William M'Ewen,</i>	<i>Spirit Merchant.</i>	<i>Alexander Carrick,</i>	<i>Smith.</i>
<i>Alexander Edmonston,</i>	<i>Bookseller.</i>	<i>George Glen,</i>	<i>Upholsterer.</i>
<i>John Wicks,</i>	<i>Dentist.</i>	<i>Alex. Cockburn,</i>	} <i>Jeweller.</i>
<i>A. C. Paterson,</i>	<i>Surveyor.</i>	<i>Captain,</i>	
<i>Robert Jamieson,</i>	<i>Fruiterer.</i>	<i>R. B. Moore,</i>	<i>Hotel-keeper.</i>

## VII. ST ANDREW'S WARD.

<i>James Douglas,</i>	<i>Dentist.</i>	<i>Thomas Tait,</i>	<i>Smith.</i>
<i>J. K. Crawford,</i>	<i>S.S.C.</i>	<i>W. R. Clapperton,</i>	<i>Merchant.</i>
<i>John Miller,</i>	<i>Hotel-keeper.</i>	<i>Alexander Cockburn,</i>	<i>Jeweller.</i>
<i>Daniel Finlayson,</i>	<i>Clothier.</i>	<i>John Wilsun Jun.,</i>	} <i>Merchant.</i>
<i>David Todd Lees,</i>	<i>S.S.C.</i>	<i>Treasurer,</i>	
<i>Peter Stewart, Capt,</i>	<i>Photographer.</i>	<i>Wm. Dick, Secretary,</i>	<i>Sun Fire Office.</i>
<i>Thomas O. Murdoch,</i>	<i>Engraver.</i>		

VIII. CANONGATE WARD.

<i>Robert Thornton,</i>	<i>Engineer.</i>	<i>Robert Mitchell, Capt.,</i>	<i>Cooper.</i>
<i>Andrew Linton,</i>	<i>Cork Manufacturer.</i>	<i>Wm. Robertson,</i>	<i>Ironfounder.</i>
<i>John Greig Jun.,</i>	} <i>Printer.</i>	<i>William Richardson,</i>	<i>Ironmonger.</i>
<i>Moderator,</i>		<i>David Martin,</i>	<i>Baker.</i>
<i>John Thomson,</i>	<i>Grocer.</i>	<i>Thomas Ramsay,</i>	<i>Baker.</i>
<i>Moses Palmer,</i>	} <i>Coach Lace</i>	<i>Joseph Bell, Surgeon,</i>	<i>M.D.</i>

IX. ST GILES'S WARD.

<i>Thomas Cowan,</i>	<i>Spirit Merchant.</i>	<i>Daniel M'Farlane,</i>	<i>Stationer.</i>
<i>Jn. Thomson, Capt.,</i>	<i>Merchant.</i>	<i>Wm. Picken,</i>	<i>Watchmaker.</i>
<i>John Wishart,</i>	<i>Baker.</i>	<i>Archibald Smith,</i>	<i>Shawl Merchant.</i>
<i>John Forgie,</i>	<i>Grazier.</i>	<i>James Kirk,</i>	<i>Grocer.</i>
<i>William M'Beath,</i>	<i>House Agent.</i>	<i>Thomas Wilson,</i>	<i>Prov. Merchant.</i>
<i>John Forsyth,</i>	<i>Printer.</i>	<i>William Couttie,</i>	<i>Bootmaker.</i>

X. ST CUTHBERT'S WARD

<i>William Allan,</i>	<i>Prov. Merchant.</i>	<i>John Swan, Captain,</i>	<i>China Merchant.</i>
<i>Alexander Turner,</i>	<i>Lathsplitter.</i>	<i>John M. White,</i>	<i>Grocer.</i>
<i>James Millar,</i>	<i>Engineer.</i>	<i>Alexander Trotter,</i>	<i>Grocer.</i>
<i>Thomas Gibson,</i>	<i>Manager.</i>	<i>George M'Culloch,</i>	<i>Draper.</i>
<i>Robert Graham,</i>	<i>Grocer.</i>	<i>David Marshall,</i>	<i>Draper.</i>
<i>Thomas Stewart,</i>	<i>China Merchant.</i>	<i>John Williamson,</i>	<i>Grocer.</i>

XI. GEORGE SQUARE WARD.

<i>Peter Johnston,</i>	<i>Builder.</i>	<i>James Philpot,</i>	<i>Auctioneer.</i>
<i>William Lind,</i>	<i>Prov. Dealer.</i>	<i>Alexander Dobie,</i>	<i>Baker.</i>
<i>Francis Farquharson,</i>	<i>Confectioner.</i>	<i>Murray Thomson,</i>	} <i>Baker.</i>
<i>Wm. R. Wilson,</i>	<i>Printer.</i>	<i>Captain,</i>	
<i>James Gibson,</i>	<i>Clothier.</i>	<i>Chas. Lawson Jun.,</i>	<i>Seedsman, &amp;c.</i>
<i>John Robertson,</i>	<i>Merchant.</i>	<i>Ex-Moderator,</i>	
<i>John Campbell,</i>	<i>Painter.</i>	<i>Thomas Smith,</i>	<i>Joiner.</i>

## XII. ST LEONARD'S WARD.

<i>George Neilson,</i>	<i>Smith.</i>	<i>George Mackay,</i>	<i>Grocer.</i>
<i>John Brown,</i>	<i>Grocer.</i>	<i>Donald Bremner,</i>	<i>Writer.</i>
<i>James Doull,</i>	<i>Carpenter.</i>	<i>William Hamilton,</i>	<i>Bootmaker.</i>
<i>Andrew M'Donald,</i>	<i>} Clothier.</i>	<i>James Bertram,</i>	<i>Bootmaker.</i>
<i>Captain,</i>		<i>Wm. Angles,</i>	<i>Grocer.</i>
<i>John Pritty,</i>	<i>Pawnbroker.</i>	<i>Philip Hunter,</i>	<i>Cooper.</i>
<i>George Waugh,</i>	<i>Merchant.</i>		

## XIII. NEWINGTON WARD.

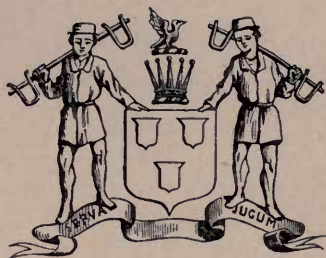
<i>Jas. Thomson,</i>	<i>Corn Merchant.</i>	<i>John Thomson,</i>	<i>Grocer.</i>
<i>Alexander Forbes,</i>	<i>Builder.</i>	<i>Matthew Shiels,</i>	<i>Confectioner.</i>
<i>Peter M'Nab, Capt.,</i>	<i>Merchant.</i>	<i>James Pillans,</i>	<i>Printer.</i>
<i>A. B. Wallace,</i>	<i>Teacher of Music.</i>	<i>Wm. Anderson,</i>	<i>Clothier.</i>
<i>Robert Robertson,</i>	<i>Corn Merchant.</i>	<i>Dun. M'Lachlan.</i>	<i>Bookseller.</i>
<i>John Middlemas,</i>	<i>Spirit Dealer.</i>		

Officer.—A. MACPHERSON, *City Chambers.*

Drill Instructor.—SERGEANT HAY, *134 Causewayside.*



TREASURER'S MONEY BOX.



NOTES

ON THE

*POWERS, PRIVILEGES, &c.,*

OF

*THE LORD HIGH CONSTABLE OF SCOTLAND,*

WITH ESPECIAL REFERENCE TO THE

QUESTIONS BETWEEN HIM AND THE MAGISTRATES OF  
EDINBURGH

IN REGARD TO THEIR

CRIMINAL JURISDICTION WITHIN THE CITY.





POWERS AND PRIVILEGES  
OF THE  
LORD HIGH CONSTABLE OF SCOTLAND.



IN France, the Constable was an officer of the highest dignity, holding the chief command of the army, and entrusted with the regulation of all matters of chivalry and feats of arms.<sup>1</sup>

In England, a similar office was instituted immediately after the Norman Conquest, with duties very like those of the Constable of France;<sup>2</sup> and if we could accept as genuine the laws of Malcolm Makkeneth, the office of Lord High Constable must have existed in Scotland in the early part of the eleventh century. By them the fee of the King's Constable is fixed at £10, and his jurisdiction, jointly with that of the Marshal, is stated to extend to the trial and punishment of all offences committed within twelve leagues of the King's court.<sup>3</sup> But these laws contain internal

<sup>1</sup> The office was suppressed by an edict of Louis XIII.

<sup>2</sup> But since the attainder and execution of Stafford Duke of Buckingham, in the thirteenth year of Henry VIII., the office has been in disuse, except at coronations and state ceremonials, when an appointment *pro hac vice* is made.

<sup>3</sup> Leges Malcolmi Makkenneth. Thomson's Scots Acts, i. 346. "Skene," says Sir George Mackenzie, in his Treatise on Criminal Law, "remarks that the best manuscripts bear only two leagues, or four Scotch miles" (Criminal Law, p. 184). This is incorrect. What Skene says is, "In omnibus ferè codicibus qui ad manus meas pervenerunt 12 leucas legitur. In paucis non adeò fide dignis (duas leucas)."

evidence that they are the products of a later age, and are valuable only as a collection of the fourteenth century, "embodying some rules which bear traces of a yet earlier origin."<sup>1</sup> It is certain, however, that the office did exist in this country early in the twelfth century.<sup>2</sup> Edward was Constable during the reign of Alexander I. and until 1140, when the office became hereditary in the family of Hugh de Morville, from whom, in 1196, it passed to Rolland, Lord of Gallo-way, by his marriage with Elena the granddaughter of Hugh de Morville. In 1234, Roger de Quincey, Earl of Winchester, acquired the office through his marriage with Elena the granddaughter of Rolland; and on the death of the Earl it devolved on his eldest daughter Margaret, Countess of Derby, by whom it was resigned, along with "the right which she had in diverse lands," in favour of her brother-in-law Alexander Cumyn Earl of Buchan, husband of Elizabeth, the second daughter of Roger de Quincey.<sup>3</sup> On his death, in 1289, he was succeeded by his son John, who in the contest for the crown of Scotland was defeated by Bruce in 1308, and fled to England, when both his estates and office were forfeited. The office was then conferred upon David Earl of Athole, who held it till 1314, when, failing in his allegiance to Bruce, he also forfeited it, and in the same year it was granted by Robert I. to Gilbert de Hay, knight, for his homage and service, to be held by him and his heirs in fee and heritage, "with the hostilages" belonging to the said office.<sup>4</sup> In that family the office still remains in the person of the Earl of Erroll, having been reserved both in the Treaty of Union and in the Statute 20 George II. cap. 43, by which heritable jurisdictions were abolished.

In Scotland, as in France and in England, the Constable was an officer of the highest dignity, and his duties were very onerous and responsible. Those of the Lord High Constable of Scotland are fully detailed in a Report by Commissioners appointed by Charles I. to inquire into the honours and privileges of the office.<sup>5</sup> According to that Report, he was lieutenant-general

---

Quam postereiore lectionem usus communis recepit. Nemo enim apud nos minimo rerum uso, aut prudentia praeditus, unquam dixerit jurisdictionem, quam solus constabularius nunc exercit (que tamen et Marescallo et illi, hic tribuitur) extendi ad duodecim leucas; sed ad duas tantum, hoc est, ad quatuor miliaria Scotica, eaque numeranda, circulariter ab eo loco, ubi sacro sancta persona Domini Regis, domicilium seu habitationem habet. Prior lectis 12 leucarum, confirmatur per Statutam Richaud 2. Anno 13 c. 3."—Skene's Annotations on these Laws.

<sup>1</sup> Scots Acts, Pref. i. 45.

<sup>2</sup> Scots Acts, App. to Pref. vol. i. p. 9.

<sup>3</sup> Chalmers's Caledonia, i. 709.

<sup>4</sup> Spalding Club Mis. ii. 211.

<sup>5</sup> Report of Commissioners, 27th July 1631. Spalding Club Mis. ii. 225.

and supreme officer, next to the King, in all royal armies and expeditions. He had the command, direction, and government of the army, and was proper and sole judge in all military affairs, and in all actions concerning the captains, lieutenants, their officers and companies, during their employment or pay in the King's service. He was the supreme<sup>1</sup> judge in all matters of riot, disorder, blood, and slaughter committed within four miles of the King's person, or of the Parliament or Council representing the royal authority in his Majesty's absence, and that as well within as without the Court. The trial and punishment of such crimes and offences was proper and due to the Constable and his deutes, and the Provost and Bailies of the city or burgh, and all other judges within the bounds where such crimes and offences were committed, were bound to rise, concur, fortify, and assist the Constable and his deutes in taking the culprits, and to make their tolbooth patent for receiving them. He had the charge and guarding of the King's person in time of Parliament or Convention, and the keeping of the Parliament House was committed to him, the keys being delivered to him for that effect. He had likewise the chief command of all guards and men at arms attending upon the King's person at such times. It would also appear that his jurisdiction extended to the punishment of officers of arms, messengers, &c.<sup>2</sup>

Various privileges and perquisites were attached to the office. When Margaret, Countess of Derby, resigned the Constabularie of Scotland, she did so "*unacum jure quod habuit in diversis terris nominatis in eadem litera*," possibly lands attached to the office of Constable. And when Robert the Bruce bestowed the office on his faithful follower Sir Gilbert Hay, the ancestor of the noble family by whom it is still retained, he did so to be held "*dicto gilberto et heredibus suis in feodo et hereditate cum hostilagiis ad dictum officium pertenentibus*."<sup>3</sup> What the meaning of the word "*hostilagiis*" is has not been fully determined. The Commissioners appointed by Charles I. report that it was even then "absolute and out of use, and we not knowing perfytlie the genuine sense and meaning therof, and whether the same doeth import the libertie and right of a ludginge deulie furnished and appointed within the King's house (as manye doe suppose), or of ane house in everye toun where the King

<sup>1</sup> Mr Riddell has shewn that his criminal jurisdiction was at least at one time subject to review in the Court of Session. Riddell's Remarks upon Scotch Peerage Law, p. 117, and authorities there cited. See also the case of John Reid, 25th June 1685, after referred to.

<sup>2</sup> See Spalding Club Miscellany II. 215, and preface, p. xcix.

<sup>3</sup> Erroll Papers, Spalding Mis. ii. 211.

did remayne, or if there be any other previledge or casualtye thairby implied we haif in that regaird forborne to delyver our opinionis concerning the same." Du Cange, writing nearly a century after this report was issued, defines "hostilagium" to be "pretium seu salarium, quod exsolvunt mercatores extranei pro locario domorum, seu apothecarum, in quibus reponunt merces suas vendendas et distrahendās in nundinis publicis;" and a high modern authority, adopting this definition, has suggested that the word "hostilagiis" referred to a "right of levying a tax upon hostellaries, or houses within burgh where foreign merchandise was exposed."<sup>1</sup> But Mr Stuart, the editor of the Erroll Papers in the Spalding Club Miscellany, refers to various facts which seem to warrant the belief that the term "hostilagiis" also comprehended some such privilege as that hinted at by the Commissioners of Charles I., of "ane house in everye toun where the King did remayne."<sup>2</sup> The Steward of Scotland would appear to have had a toft or piece of land for a lodging to himself in each of the King's burghs, and evidence is still extant that the Constable enjoyed a similar privilege, at least in the two towns of Colly or Cowie, in the Mearns, and of Inverness.

The Constable was also in use to exact fees in the King's Fairs "of all manner of gudes gret and small that cumes to the Mercat to sell, baith merchandice and vittail," during the time of the Session and General Council and Parliament. But it was enacted by the Act of Parliament of James II., 19th October 1456, "At that use be laide done and forborn in tym to come, bot gif the Constabillis feftment beir him till it, and at that be schawin to the King and the three estatis at the nixt parliament or generale consale. And at in the meyne tyme the Constabill cess, for ther can na lawe be fundyne accordande to that use."<sup>3</sup> This enactment was renewed, in the same terms, on the 6th of March in the following year, by the Act 1457, cap. 22. Nevertheless, an attempt to levy such fees seems to have been made in Edinburgh upwards of a century later, and to have formed the subject of a public complaint to the Town Council, which procured immediate attention and redress. The following entry in the Council Record,<sup>4</sup> of date 16th August 1560, explains what then took place:—

"xvi Augusti 1560.

"The quihilk day ye provest ballies and counsall forsaid efter consideratioun & rype

<sup>1</sup> Riddell's Remarks upon Scotch Peerage Law, p. 114.

<sup>2</sup> Spalding Mis. ii. Pref. 87-92.

<sup>3</sup> Act Parl. James II., 1456, cap. 10, and 1457, cap. 22. Scots Acts, ii. 47, 51.

<sup>4</sup> Council Record, iii. 43.

awysand with ye complaynt gevin in be ye haill comunitie of ye nythbours of yis burgh and uthers our souerains leidges resortand with vituallis and uthers gudds yairto vpoun Wam. hendersoun constable deputt makand mentioun that quhair ye said Wam. had be ye haill space of xv dayis last bipast had be himself & uthers in his name vsit extortion of custoumes at ye portis of yis burgh alledgeand ye samyn to pertain to him as his parliament fies quharthrow all personis resortand with yair guiddis & speciallie with vituallis to yis burgh now in yis tyme of parliament wer compellit to pay dowbill custome viz baith to ye toun & to ye said constable deputt without ony richt or titill gevin to him yairupone bot onlie be usurpation & extortion forsaid as at mair lenthe is contenit in ye said complaint The said Wam. being personallie present wes lawfullie requirit to answer to ye said complaynt The Provest baillies & counsall forsaid findis ye said Wa. to have done wrang in asking and craving of ony dewtie fra our souerains leidgis inwith or besyde ye portis of yis burgh & yairfor ordainis him to desist and ceiss fra all farther usurpation of ye said extortion or asking of ony dewtie at ye said portis or about ye samyn in all tyme cuming Becauss ye said Wa. Hendersoun being personallie present and inquireit gif he had ony richt or titill quhairthrow he myt lefullie use ye said exactioun upone our saidis souerains leidges shew no titill yairupone as wes clerlie understand to ye Provest baillies and counsell forsaid and ye said Wa. protestit for remeid of law & yt ye said decreit wes not prejudiciall to ye privileges of his office."

This order, however, did not put an end to such exactions, though they seem to have been resisted by the Magistrates, and in October 1581 the whole subject was under the consideration of the Privy Council. The leaf of the Register on which the proceedings before that tribunal are recorded is very much mutilated, but it appears that the matter was brought up on the complaint of William Henrysoun, who stated that he had then held the office of Constable Depute for twenty-seven years,

"haifand the same with all feis casualties and deweties usit and wont belangand thairto disponit to him for all the dayes of his lyftyme, As his rycht at length beirs, Be the quhillk he his seruitours and collectoures in his name have continewallie be the space foresaid bene in peciable possession but impediment of all feis casualties and deweties appertaining to the said office and speciallie to collect and uplift certane small custoumes callit of auld the parliament fee, or archearis wyne, for all vituallis and merchandice enterand within ony his hienes burgh quhair the Court of Parliament hes bene haldin for the tyme Lykeas the Constables of this realme and thair deputies hes bene in use and possession thereof past memory all the tyme fra the parliament fensing to the publication of the actes thairof."

Appearance for the city bears to have been made by the Provost and some of the Baillies, who pled the Act of James II. above quoted; upon seeing which, and considering the whole matter, His Majesty [James VI.], with the advice of

his Council, by decret dated 28th October 1581,<sup>1</sup> ordained the Constable, his Deputes, and ministers, to desist and cease in all time coming from taking Constable's fees of any manner of goods, great or small, brought to market for sale in time of the Session or General Council, "ay and until the said Constables infestment gevand him and his deputes libertie to uptak the saidis Constable feis be schawin and producit before his Maiestie his thrie Estaites in Parliament or Generall Counsale, and that charge and declaratioun be gevin thair-upoun as apperteins."<sup>1</sup> This decret was subsequently confirmed by the King in the charter known as the Golden Charter, dated 15th March 1603.

The Constable would farther appear, in consideration of his right to preside in all tournaments and passages of arms, to have enjoyed the privilege on these occasions of using the King's palace or residence ; and David II., having in 1333 granted to Sir John Somerville his palatium at Aberdeen during a tournament, is careful to declare that that grant "should not be held to prejudice the right of the Constable or his successors."<sup>2</sup> The Constable also claimed the materials of the lists or barriers within which tournaments were fought, as well as the arms, weapons, and jewels of those who were vanquished in the lists. There still exist two interesting documents which illustrate this claim in connection with Edinburgh. The first is a Notarial Instrument, under the hand of Henry Strathachin, notary public, dated 30th July 1501, in which are duly set forth the facts that the Provost, Bailies, Treasurer, and certain burgesses and neighbours of Edinburgh, being summoned by the Constable before the King [James IV.] and his Council, for their unjust intromission and detention from him of certain trees, timber, and other materials of the enclosure called Le Barras,<sup>3</sup> in which John Coupante, Frenchman, and Sir Patrick Hamilton, knight, had fought and contended, they were unwilling to stand or appear in place against his Lordship, but had delivered to him a certain sum of money, with which he held himself fully contented for the said Barras. And in consideration of the favours and gratuities to be due and rendered by the said Lord Earl to the Provost, Bailies, and Burgesses, in name of the burgh, they promised to support and maintain him in his full right of his office of Constabulary, and not to molest him in like cases when they should happen, nor in others concerning his office to do or attempt

<sup>1</sup> Privy Council Register, 28th October 1581.

<sup>2</sup> Riddell's Remarks upon Scotch Peerage Law, 114, 115.

<sup>3</sup> The City pays cess still for the "Orchardfield and Barras," as a part of the King's Stables property.

anything against him in all time coming.<sup>1</sup> The passage at arms to which this instrument relates took place near the King's Stables, just under the Castle wall, and was presided over by the King in person. It has been graphically described by Lindsay of Pitscottie.<sup>2</sup> The second document to which allusion has been made is an Obligation by the Provost, Bailies, and Council of Edinburgh, dated 17th February 1507, to William, fourth Earl of Erroll, in which, after narrating that he had constituted them and their successors "his deputs in the office of Constabularie for the term of three years next after the date hereof, and thereafter for his will to endure, as his wreiting made thairupon proptoris," they declare, *inter alia*, that

"notwithstanding that our said lord Constable has given to us the unlawis and escheits of courts and barras with all other things pertaining thairto to our awn use, yet when his lordship happens to be present he to remitt and forgiße them of what pleases him endurand all the tyme that we are deputs to him."<sup>3</sup>

This obligation, it will be observed, makes reference to another perquisite of the office, which must have been of considerable value, viz., the fines and for-

---

<sup>1</sup> Erroll Papers, Spalding Mis. ii. 212. Mr Thomas Thomson, W.S., who has devoted much time to an examination of various Protocol Books in the City Clerk's Office, has kindly furnished the following extract from the Protocol Book of John Foulter, notary public. The extract obviously has reference to the same incident. "Pro domino comite de Erole, Penultimo die Julij [1501] hora decima ante meridiem Alexander Lauder provest John Williamsoun Stevin borthwik baillies William Carmychel thesaurare Andro bertram and vtheris diuers of the nychtburis of the toun past to the presens of a nobil and mychti lord William erle of Erole declarand forsamekle as he had thame vnder summondis before the lordis for the intrometting and withhalding fra him of the barras in the quhilk Johne Coupance and Schir Patrik Hammyltoun facht in Edinburgh thai wald stand in pley with him tharinto bot in contentacioun thairfor thai gaf him certane mone of the quhilk he held him content for the said barras, and als thai promittit to supple the said lord in his office of constabulari in tym tocum and nocht to be in his contrare in sic cais quhen it hapinis nor nain vtheris concerning his office for his fauor and kindnes in tyme tocum testibus Andrea Strathauchin Willelmo Strathauchin Edmond Hay of Meginche Johne Ramsay of Mury and Patrik Hay of Leyis."

<sup>2</sup> History of Scotland, pp. 188, 189. In some copies of Pitscottie, Mr Riddell remarks, the space where the combatants fought is said to be "in the barrace;" in others, within the lists.

<sup>3</sup> Erroll Papers, Spalding Mis. ii. 213. Mr Riddell states that this deed is recorded at full length in the Act and Decreet Book of the Commissary Court of Edinburgh, 9th July 1582.

feitures of persons convicted in the Constable courts, and which, in this case, had been made over to the Magistrates of Edinburgh as his deputies.

The criminal jurisdiction of the Constable, it has been seen, was reported by the Commissioners of Charles I. to extend to all matters of riot, disorder, blood, and slaughter committed within four miles of the King's person, or of the Parliament or Council representing the royal authority. This jurisdiction, conflicting directly with the criminal jurisdiction of the Magistrates of several of the more important burghs, could scarcely fail to be productive of much inconvenience. Even in those burghs which did not possess grants of Sheriffship within their bounds, the Magistrates anciently exercised an extensive criminal jurisdiction. And, independently of their higher criminal jurisdiction, the Magistrates of every royal burgh were vested with the power, and charged with the responsibility, of preserving the King's peace. But Edinburgh possessed a right of Sheriffship under a charter granted by James III. By that charter, which is dated at Edinburgh on 16th November 1482,<sup>1</sup> His Majesty, "considering with a deep sense the faith, loyalty, love, good will, and hearty service which his well beloved and faithful the then officers and whole community of the Burgh" had performed to himself and to his brother the Duke of Albany, granted to the Provost, Bailies, Common Clerk, Council, and community of the burgh, and their successors, the office of Sheriff within themselves in the said burgh for ever, and he ordained the Provost to be always Sheriff within the burgh, and the Bailies to be his Sheriff-Deputes, conjunctly and severally, with power to hold Sheriff Courts, to judge all offenders apprehended within the burgh, and to punish them, according to the nature of their crimes, with death, banishment, or any other punishment. He also granted to them, for the proper use and benefit of the community, the whole escheats, fines, exactions, profits, and fees arising out of or appertaining to the office. With such a jurisdiction, the Magistrates of Edinburgh—then the capital of the kingdom, and principal residence of the Sovereign, as well as the main seat of Government—could not but be brought into frequent collision with the Constable in the exercise of his privileges, and an attempt would seem to have been made to obviate the serious inconvenience of such a state of matters by their obtaining a commission from him to act as his deputies for three years.<sup>2</sup> This doubtless was the main object of the arrange-

---

<sup>1</sup> Inventory of City Charters, i. 33.

<sup>2</sup> These three years had just expired when, on 9th March 1510, James IV., by his charter under the Great Seal, of that date confirmed the grant of Sheriffship made by

ment embodied in the Obligation of 17th February 1507, above referred to, under which they undertook that they

“sall in na tym to come do any prejudice hurt or skait to the said lord in his office of Constabulary but sall advance the privilege honour and profit thairof at all our guidlie and possible power And sall not be halding of our courts pertaining to us, our burrow court sherif court or water court, derogat nor mynis the faculty nor privilege of the said Constable courts by any manner of way but [without] fraud or gyle And also that we sall not sit nor knaw noyther upon the action of blude nor strubulance committed be ony partie or ony persons the Kings Majestie beand in the said toun of Edinburgh or within four miles about but be authoritie of the said Constable courtis. and gif we do, that beand notourlie known done of wilfulness and not of ignorance, the said depute granted be him till us to be reportit.”

The deputation here referred to was probably extended, for a memorandum appears in the Council Record, of date apparently 3d May 1511, to the following effect: “The Constablis Court haldin before ye Prouest and baillies of Edinburgh.”<sup>1</sup> Again, on 15th February 1520, the following entry appears:

“The quhilk day the provost baillies counsall communitie and dekyngs of craftis grantis and consentis yat ye hundreth pundis promittit be ye toun to my Lord Erle of Erroll for ye office of Constabularie deputts be tane of ye comoun gudis, becauss it concerns ye comoun weill, and ordains ane precept to be made and direct to ye thesaurar for payment to be maid yairof as effeirs.”<sup>2</sup>

This last entry explains the nature of the consideration in respect of which the Magistrates obtained their delegation from the Lord High Constable. It besides indicates one source of the emoluments of his office.<sup>3</sup>

---

his father. Inventory of City Charters, i. 38. These two charters were ratified by Act of Parliament 1621, cap. 77. Scots Acts, iv. p. 667.

<sup>1</sup> Council Record, i. 3.

<sup>2</sup> Council Record, i. 14.

<sup>3</sup> So early as 1525, the Magistrates of the Burgh and the Sheriff of Edinburgh entered into an arrangement, under which all collision between them in regard to their criminal jurisdiction was avoided. This arrangement, made in presence of the Lord Justice General and the Lords of Council on the 4th of May in that year, declared, “Quhat time ony theif or trespassour beis apprehendit within ye fredome and jurisdictione of ye burghes of Edinburgh, and beis convict of ony cryme, yat ye said President [Provost] and Baillies sall use ye office of Scherefschip perteinyng to yair office in yat caise; and convoy yame souerly to ye place quhare yai suld be justifyt, and remain yairat quhill yai be dede. And inlikwise ye said Schereff of Edinburgh and his deputis, quhare ony theif or trespassour beis apprehendit outwithe ye fredome of ye said burghes and presentit before ye Justice or his deputis in jugement, gif yai be convict, be our Assise, of quhatsumeuer cryme, yat ye said schereffs sall use his office of Scherefschip

The endurance of the deputation, obtained in consideration of the sum thus paid, does not appear; but there is a case reported by Pitcairn, under date 17th June 1550,<sup>1</sup> in which Gilbert M'Tyer, being convicted before George Earl of Errol, Lord High Constable, "of art and part in Umbesetting the way to John Nycholsoun on Monday June 16 inst. at Sanct Androis Port near the Colledge of the Holy Trinity, when he was quietly returning from the Burgh of Edinburgh and cruelly invading him for his slaughter; and for mutilatioun of the said John of three fingers and the thumb of his right hand; and for stout-reif and plundering (reiving) from him of his horse, sword, two cloaks and sundry other goods, was beheaded." This would seem to indicate that, in 1550, the Lord High Constable was performing in person, in Edinburgh, the duties of his office. No further reference to the Lord High Constable or his deputies appears in the Records of the Burgh of Edinburgh till 16th August 1560, when the following entry occurs:—<sup>2</sup>

"The quhilk day ye provest Baillies and counsall forsaid finds yt Wa. Hendersone constabill deputt aucht hald na Courte within ye libertie of yis burgh but ane baillie and clerk of ye toun & yairfor ordanis ye said Wa. personallie present to desist and ceiss fra halding of eny Courts within yis burgh bot in maner forsaid with certification & he falzie yai will provide sic remeid yairto as yai may of law against ye said Wa. hendersons princepil for remeid."

Again, on the 21st of the same month, the following entry occurs:—<sup>3</sup>

"The same day William henderson Constable of his free will oblezt him yat fra this furt he sall in na time cuming hald any court within ye fredome and libertie of Edr. without ye concurrence of ane baillie and clerk of the samyn, nor attech poynde or arreist within ye saids bounds without ane officer of ye toun adionit [adjoined] to his officer And to yis effect ye provest baillies and counsalle commands and ordains yair officers present and to cum to concur with ye said Williames officer in all lawful poynding summonying or arresting upoun ye reasonable expenses of ye partye And siclike commands ane of yair clerks to be rady at all his courts within ye bounds foresaid for serving of him and nane uther clerk bot ane of yairs as said is."

It would thus appear that, in 1560, the Constable-depute was exercising criminal jurisdiction in Edinburgh, that this was considered an invasion of the privileges of the Magistrates and Council, by whom he was accordingly

---

pertenying to yair office upone ye said trespassouris, and convoy them souerly to ye place quhare yai salbe ordanit to be justifyt, and remane yairat quhill yai be dede."—Pitcairn's Criminal Trials, vol. i. part ii. p. \*129.

<sup>1</sup> Pitcairn's Criminal Trials, i. 351.    <sup>2</sup> Council Record, iii. 44.    <sup>3</sup> Ibid. iii. 44.

ordered to hold no court within the burgh or its liberties without the presence of a Bailie and the Town Clerk ; and that the depute Constable subsequently appeared before the Town Council and voluntarily engaged to comply with this requisition. What were the grounds on which the Magistrates so acted, and on which the Constable-depute was induced to acquiesce in their order, does not appear from the Records. But a manuscript copy of a summons before the Court of Session, at the instance of William Lord Hay, Constable of Scotland, against the Provost and Bailies of Edinburgh, still exists,<sup>1</sup> in which it is stated, that when the summons was signeted in 1629, the Magistrates "pretending to have right to the foresaid office of Constabularie or sum deputtes grantit to them or yr predecessors yairof" by the then Constable or his predecessors, "haldis courtes of Constabularie upon slaughters mutilations bluides and debaites of barres comittit within oure said burgh of Edr. or within the space of four mylles about the samen, albeit yai have no sufficient richt nor tytill swa to doo." This would seem to indicate that, even so late as 1629, the Magistrates claimed to be possessed of an extended, if not a permanent, deputation of Constableness within the burgh and liberties of Edinburgh ; but how that was derived, or for what consideration (if not the £100 referred to in the minute of 3d May 1511), cannot now be ascertained.

In 1565, William Henderson still appears to have been exercising criminal jurisdiction in Edinburgh as Constable-depute, for the verdict of a jury obtained against Janet Dick, in a Court of Constabulary held by him in the Tolbooth of Edinburgh on the 18th of August of that year, "for caussing lett down ane daill quhairwith Grissel Henderson was hurt to the effusion of her blood," was advocated to the Court of Session, and the judgment reversed.<sup>2</sup> The following case is also reported by Pitcairn, under date 5th March of the same year :—

"James Bog being delated of the slaughter of George Hamiltoun son of William Hamiltoun of Pardovan, committed on suddantye in the month of January last produced a respite dated at Edin. 22 Feby. 1565 for nineteen years : Protestis Mr David M'Gill that the entar of James Bog in this Court, be nawise prejudicial to the Regalitie, in respect of the committing of the slaughter libellit within the samin, and that the souerties fundin to this effect, to the Constabill and his deputtis incur na danger. And siclike Williame Hendersoun Constabill depute, protestit that his entre foresaid be nawise prejudicial to his office. Matthew Sinclair of Lochmarmacus, William Ridpeith

<sup>1</sup> MS. in City Clerk's Office.

<sup>2</sup> Riddell's Remarks on Scotch Peerage Law, p. 117, and Act Dom. Con. et Sess. v. 35, 165 b.

of that ilk and Andrew Ridpeith his uncle became cautioners for the satisfaction of the parties."<sup>1</sup>

How the Magistrates of Edinburgh evinced the jealousy with which they regarded the exercise of the criminal jurisdiction of the Constable and his Deputes within the city and its liberties during the eighteen years subsequent to August 1560, does not appear. Probably they were content to offer a merely passive resistance,—neither giving themselves, nor permitting their officers to give, to the Constable and his subordinates any assistance in the exercise of the privileges claimed by them, and refusing to allow their tolbooths to be used for the imprisonment of persons apprehended by the officers of the Constable. This state of matters, represented to James VI., is, doubtless, what he intended to correct by his letter dated "Halyrudhouse, 23d February 1579,"<sup>2</sup> addressed to the Provost and Bailies of the burghs of Edinburgh, Linlithgow, Stirling, Glasgow, Ayr, Perth, Cupar in Fife, St Andrews, Dundee, Aberdeen, and all other royal burghs in Scotland, wherever his presence and palace of honour "salbe for the tyme." In that letter he proceeds as follows:—

"Forsamekle as for pwneischment of trespassouris invaideris and schedderis of vtheris blude within four myllis to our presence It hes pertenis and pertenis to our Constable and his deputtis to tak inquisitoun of all sic personis committeris of the saidis crymes put thame to the knowledge of ane vnsuspect assyise, and the persones quhatsumever apprehendit culpable or being convict to caus be put in waird thairintill to remaine ay and quhill thai mak satisfactioun for thair trespass conforme to the lawis and constitutiones maid and vsit thairanent of befor ffor executioun of the quhilk it is necessar and expedient that all our tolbuithis presonis and warding houssis within our saidis burrowis and vtheris partis of our realme quhair it salhappyne ws to be for the tyme be maid patent and radye to our said Constable and his deputtis and Officieris for incarcering of quhatsumeuir personis committeris of slauchter mutilatioun blude drawing and vtheris crymes pertenyng to the said Office And that your assistance and fortificatioun is requisit for that effect, quhairby sic trespassouris may resaif dew punischment for thair offences in example to vtheris inquiet ws our richt traist counsalouris and nobilitie daylie attending and awating vpoun ws for the welefair of ws our realme and lieges Oure Will is heirfoir and we chaarge yow straitlie and commandis that ye and ilkane of yow be your selfis and your officieris in your names as ye salbe requirit heirto concur fortifie and assist with our said richt traist cousing and counsalour Andro Erll of Erroll our Constabill forsaid and Williame Hendersoun his deput and thair officiaris in executioun of the said office in all tymes cuming conform to the priueledge

<sup>1</sup> Pitcairn's Criminal Trials, Vol i. p. 2, \*477

<sup>2</sup> Erroll Papers, Spalding Mis. ii. 216.

and iurisdiction thair of of auld vsit and vount in all pointis And for that effect that ye mak oppin presoun and your tolbuith durris patent to thame at all tymes for resaving of the saidis transgressouris thairintill, lyk as thair predicesouris and thai hes bene in vse thair of for the better putting of the said office to dew executioun in all tymes bygane, as is cleirly vnderstand and schawin to ws and the lordis of our secreit counsale be sindry letteris and ordinances maid to thame thairwpon be oure maist noble predicesouris of befor, as ye and ilk ane of yow will schaw and declair your dew obedience to ws in your offices thairanent and answer to ws thairwpon as effeiris."

Upon this letter, the Magistrates of Edinburgh were charged to the effect explained in the following extract from the Council Records :<sup>1</sup>—

"Quinto Fery. 1579.

"The quhillk day Alexr. Clark provest (&c.) being convenit in the Counsal house for resoning upon the common affaires Compeirit Ryt. [Richard] bynning messenger and officer to the Constable and his deutes presented the Kings majesties charge charging thame to concur and assist with the said Constabill and his deputis in executioun of his office as alsua to mak oppin [prison] to thame for inputting and detening of sic as sal be found culpabill & conuict be the said Constabill yrin quhillk they acceptit and were willing to obey as the samyn is consauit [conceived], quhairupon the said Ryt. in name of the Constabill depute askit instrumentis."

The willingness on the part of the Magistrates of Edinburgh to co-operate with and assist the Constable and his depute, expressed in the above extract, appears not to have been of very lengthened duration, for, on the 8th of December 1591,<sup>2</sup> James VI. addressed another letter from Holyrood to the Provost and Bailies of Edinburgh, in which, after referring to the power, privilege, and jurisdiction of the Constable, and to the royal charge to the Magistrates of burghs to render him and his deutes every assistance and co-operation, his Majesty proceeds as follows :<sup>3</sup>—

"Notwithstanding it hes bene diuers tymes meanit vnto ws and last now laitlie that ye and the jvelouris not only are slaw and [on] reddie to mak your tolbuith and preasoun oppin and reddie to our said Constabill his deputtis and officiaris, and to concurr and assist thame in executioun of the said office, bot als oftymes ye and your clerkis

<sup>1</sup> Council Record, vi. 7.

<sup>2</sup> It is worthy of note, that at the time when the King was thus upholding the claims of the Lord High Constable, the Earl of Erroll was actively and notoriously engaged as one of the Catholic lords in intrigues against the Government—these intrigues extending with little interruption from 1589, when Slaines Castle, the family seat, was taken and occupied by the King's troops, till 1597, when the Earl was reconciled to the Kirk, and restored to his estates. Tytler's Hist. of Scotland, vol. vii. 146-354.

<sup>3</sup> Erroll Papers, Spalding Mis. ii. 217, 218.

. . . your selfis to be assysois and tak administratioun and rewleing of our saidis Constabill courttis as ye pleis, maist wrainguslie and violentlie vsurpand the said honorabill office vpoun yow, quhairof ye haif na maner of rycht nor tytill likeas we haif sene be ane transsumpt of your predicessouris obligatioun quhairby ye war faithfullie oblist to vmquhill our rycht traist cousing William Erle of Errole Lord Hay Constabill of our realme with all their power to advance him and his deputits in the executioun of the said office, and at na tyme to cum to the courttis thairof vnquireit or to hald ony courtis your self or to attempt ony vther thing that may dirogat or diminische the facultie or priuledge of the said Constabill courttis, and specialie that our saidis prouest and baillies for the tyme nor their successuris suld sit nor knaw vpoun ony actioun of blude or trubulaunce committit be ony maner of persoun within our said burgh of Edinburgh, our predicessouris or their successouris being in the samyn or within foure myillis thairto, as mair amplie is contenit in the said obligatioun and autentik transsumpt thairof In contravenying quhairof we man esteem yow to do wrang, and except ye abstene thairfra in tyme cumming and suffer our said Constabill and his deputtis frelie to exerce and vse the said office be thame selfis and thair officiaris, and on na wayis to interpone yow in ony thing concerning the samyn bot quhan your assistance is craeit We will se sum gude ordour tane for oppressing of your contempt quhairvnto we were laith ye suld mak ws forder occasioun Our will is heirfor and with aduise of the lordis of our secreit counsaile we charge straitlie and commandis yow and your successouris, with all your clerkis present and being for the tyme, That ye nor nane of yow pretend to enter in our said Constabill courttis athir as iudges assyisouris or as rewlaris thairin, bot onelie to gif your assistance quhan ye are requireit be thame, And that ye at na tyme hinder or mak impediment to our said constabill and his deputtis frelie and fullie to vse and exerce the said office be thame selfis on all occasionis, according to his accustomat liberteis and preuiledges of the samyn grantit be ws and our maist nobill predicessouris thairvpoun and as hes bene frequentit and vsit be our Constabillis and thair deputtis in tymes bygane, as ye and ilkane of yow will declair your obedience dew to ws and vnder all hiest pane charge and offence quhilk ye may incur and irin aganis our Maiestie in that behalf, persuading your selfis we will not omit the pvnishment of your inobedience incais ye or any of yow attempt to do ony thing in the contrar thir our letters and charge foirsaid, and that in respect of the priueleges and honour of the said office and that we haif sene quhat your predicessouris oblist thame and thair successouris to the same effect of befor."

Peremptory as this royal letter was, it would seem not to have had the effect of preventing the Bailies of Leith from exercising their authority to the prejudice of the jurisdiction claimed by the depute of the Lord High Constable ; for on the 20th of January 1595, James VI. writes them from Holyrood,<sup>1</sup> as to a complaint made

"be our daylie seruitour Williame Henrysone Constable deputt of our realme That

<sup>1</sup> Erroll Papers, Spalding Mis. ii. 219.

ye have vsurpit his office and hes tane the jugement thairoff vpone yow, quhilk on na wayes pertenis vnto yow, to sitt and hald court vpone the actionnes of slawchter mutillacioun drawing of blude or trubulance within the space and boundis of foure myles cyrcuate our maist royall persoun lykeas the samyn hes been cleirlye understand off and diverss tymes of befor vnto ws and the lordis of oure secreit counsel. Quhairfoir," proceeds his Majesty, "we esteme ye have done wrang in halding of court laitlie vpon Johne Schankis induellar in Lethe, the quhilk we will se repairit be yow. And that becaus Andro Melveill our maister of houshald and Williame Henrysoun our Constable deputt send ane messenger at armes to stay your last court anent that actioun quhilk on na wayis ye wald obey. Quhairfoir we command and chargis yow and everie ane of yow, and thais that salbe for the tyme in your places, as ye will ansuer vnto ws vpone your obedience and vnder the panes and chaarge that thaireftir may follow That ye nor your successouris in any time heireftir hault court cognosce or put vnto tryall befor yow any of the fairsaidis cryms committit within the boundis fairsaidis be any persoun or persounes quhatsumevir, bot licens of our said Constable deputt and his substitutts to try sic criminall actiounis in the Constable court haldin be him and his fairsaidis. And iff any of yow heireftir interpone your auctoritie to stopp or mak impediment to the samyn done by yow or any of yow of wilfulness and nocht of ignorance we will see the samyn reparit and punishitt for your contempt as efferis."

How far these letters were productive of the desired result does not appear, but no farther collision seems to have taken place between the Magistrates and the Lord High Constable for many years subsequent to this date.

On the 24th of March 1603, James succeeded to the Crown of England, and on the 5th of April he left Scotland for his new kingdom. He had previously, however, granted to the City, and to the Provost, Aldermen, Bailiffs, Dean of Guild, Treasurer, Council, Burgesses, and community, and to their successors, the charter known as the Golden Charter, dated at Holyrood the 15th of March 1603,<sup>1</sup> by which he confirmed the previous grants of Sheriffship by James III. and IV., and conferred upon the citizens a variety of privileges of the most important character. Subsequently also to his accession to the throne of England, the city of Edinburgh obtained from him new and important charter-rights, which, it will be seen, were afterwards founded on by the Magistrates in support of their independent and exclusive criminal jurisdiction within the city and its liberties. These were, (1.) A Charter, dated 10th November 1609,<sup>2</sup> whereby he authorised a sword to be borne before the Provost within the liberties of Edinburgh, and appointed the Provost, Bailies, Treasurer, and Dean of Guild, during their magistracy, to have the full power, authority, and jurisdiction of Justices of the Peace within the bounds of these

<sup>1</sup> Inventory of City's Charters, i. 679.—Maitland's History of Edinburgh, p. 240.

<sup>2</sup> Inventory of City's Charters, i. 734.

liberties.<sup>1</sup> (2.) A Charter of Confirmation, dated 25th September 1612,<sup>2</sup> whereby he confirmed the former charter, and of new constituted the Provost and Bailies, and their successors in the said offices in all time coming, Justiciaries and Commissioners of the Peace, with the jurisdiction of the said office, within the burgh and its liberties, and within the town of Leith, on the south side of the Water of Leith, as also within the bounds of all other lands whatsoever, immediately holden of the Provost, Bailies, Council, and community of the burgh of Edinburgh. (3.) A Charter, dated 17th April 1613,<sup>3</sup> whereby he conferred the previous grants of Sheriffship and Justiciary of the Peace, and granted to the Magistrates, Council, and community all fines, amerciements, and other things belonging to these offices, within the bounds of their respective jurisdictions.<sup>4</sup> And (4.) a Charter dated 3d April 1616,<sup>5</sup> by which he confirmed his predecessors' grants of the hereditary offices of Sheriff and Coroner, and extended the same to the town of Leith, on the south side of the Water of Leith, of which they were superiors, to the town of Newhaven, and to the harbours of Leith and Newhaven.

In 1617, Francis Earl of Errol obtained from Parliament<sup>6</sup> a Ratification of

<sup>1</sup> Queen Mary, with the advice and consent of her tutor, James Duke of Chattellherault, Protector and Governor of her realm, had, by signature dated in 1550, constituted Francis Tenent, Provost of Edinburgh, her Justice within the bounds of Edinburgh and freedom thereof, so long as he should remain Provost, and during her said tutor's will, with power to apprehend, try, and punish, according to their demerits, all committers of theft, slaughter, murder, mutilation, and other crimes, within the said bounds (Inventory of City Charters, i. 59). James VI. had also, by his commission dated at Edinburgh 6th June 1589, constituted the Provost and Bailies of Edinburgh, present and to come, his Justices in that part within the bounds of the burgh of Edinburgh, town of Leith, Links thereof, Newhaven, Soultrie, [Soutra] and other parts belonging to the Trinity College of the burgh, then pertaining to the freedom of the burgh, and all other parts, bounds, and privileges of the same, and freedom thereof, the commission to endure for five years from its date, and farther, during His Majesty's will, until specially recalled; with power and commission to apprehend, try, and punish to the death or otherways, after the quality of these offences, conform to the laws of the realm, all and sundry thieves, reseters, inbringers of thieves, and outputters of true men's goods in theftuous manner, within the said bounds (Inventory of City Charters, i. 62).

<sup>2</sup> Inventory of City's Charters, i. 46.

<sup>3</sup> Ibid. i. 48.

<sup>4</sup> These three Charters were ratified by Act of Parliament, James VI., 1621, c. 78; but protestation was "made for the Earl of Errole, Great Constable," as well as for the Earl Marshall—Scots Acts, iv. p. 669, 672.

<sup>5</sup> Inventory of City's Charters, i. 40.

<sup>6</sup> Act of Parliament, James VI., 1617, c. 41.—Scots Acts, iv. 560.

the office of Constabulary, with all rights and titles granted to him or his predecessors thereof, and with all dignities, honours, liberties, privileges, pre-eminences, profits, casualties, and duties belonging thereto. It is by that Ratification declared that, notwithstanding the king's absence from Scotland, the Constable and his deputies should exercise and enjoy their respective offices as hitherto in the same way as if His Majesty were within this realm; and that during His Majesty's absence furth of this realm, "The resident place appoynted, or at any tyme or tymes to be appoynted heirefter for Counsell, shall represent and be equivalent to His Maiestyes royall persoun and presence in that cace." No protestation appears to have been lodged by any of the Burghs against this Ratification, nor does any act *salvo jure cujuslibet* seem to have been passed at the close of this session of Parliament.

Charles I. succeeded to the throne on 27th March 1625, and on the 2d of May 1627, issued a Commission to inquire into the honours and privileges of the office of Lord High Constable,<sup>1</sup> but no report appears to have been made under it. Another Commission was, however, issued in favour of the Chancellor, Treasurer, President of the Privy Council, and other persons, who were commanded to report to his Majesty before the 1st of December 1631. This second Commission was dated 23d June 1630, and sealed 31st March 1631. But previous to its issue, the dispute between the Constable and the Magistrates seems to have been renewed, for on the 12th of August 1629, the summons already referred to,<sup>2</sup> at the instance of the Constable against them, was raised before the Court of Session,—with what result does not appear. On the 27th of July 1631, the Commissioners appointed by the second Commission issued their report;<sup>3</sup> and shortly afterwards the Burghs generally had their attention directed to the subject, as appears from the following entry in the Council Records:—<sup>4</sup>

Septimo Octobris j<sup>m</sup>. vj<sup>e</sup>. Trigesimo primo

"Forsuameikle as the Commissioneris of borrowis Resenting the prejudice they are lieklie to sustein through the encroatching of the grit Constable upoun thair liberties Thairfore they have elected Mr Johnne Hay<sup>5</sup> commissioner for theme for dealing with

<sup>1</sup> Erroll Papers, Spalding Club Mis. ii. p. 222.

<sup>2</sup> MS. in City Clerk's Office.      <sup>3</sup> Erroll Papers, Spalding Club Mis. ii. p. 225.

<sup>4</sup> Council Record, vol. xiv. p. 214. The Records of the Convention of Royal Burghs for that year are awaiting.

<sup>5</sup> Town-Clerk of Edinburgh, and Clerk to the Convention of Royal Burghs; afterwards Sir John Hay, Lord Register and Provost of Edinburgh.

his Maj. for preventing of ye said Constabils encroching and obtaining the declaratioun of his richtes continued to ane parliament and for withstanding of any signatoure to be grantit to him and ordanit the Guid Toun to advance his chairges to be repayed be theme bak againe And the Counsall considering how far they ar interest in the said mater for themselfes, Thairfore they have nominat and chosen, and be thir presents nominattes and choises the said Maister Johnne Hay Commissioner for them. And grauntis and gives full powar and Commissioun to the said M<sup>r</sup>. Johnne for dealing lyikwayis with his Majestie to the effect abone written, and use all meanes for staying the said Constabils patent conforme to the instructions to be set down to him in that mater and other maters concerning the Guid Toun which the Counsall holdis as conteynit in this present Commissioun, And Ordains the Thesaurer to advance the said M<sup>r</sup>. Johnne hay his chairges and the same salbe allowit to him in his compes. And for geiving the said M<sup>r</sup>. Johnne his instructiones Appointes my Lord Proveist, baillies Deyne of Gild, Thesaurer Sir Williame Nisbett Nicoll Uduard Mungo Makcall, Williame Carnegye and James Danielstoun To which persounes the Counsall gives full powar and Commissioun for setting down the saids instructiones in the mater of the Constabularie and in all vther maters concerning the Guid Toun.”<sup>1</sup>

Mr Hay's negotiations with the King resulted in his Majesty addressing a letter to the Privy Council, dated 31st July 1632, to the following effect :—

“Charles R. Right trustie and right weillbelouit cousine and counsellor right trustie and right weillbelouit cousines and counsellours and right trustie and weillbelouit counsellours we greit you weill We have been humbelie moved on behalfe of our free burghes of that oure kingdome that we might be pleased to caus preserve their liberties and priueledges as our lait deir father did and as we have hitherto done to which purpose their humble sute is that they suffer no prejudice herein by a commission granted by us for trying the priueledges of the office of high constabularie of that kingdome if anie new patent be grantit thereupon conteaning additions derogatorie to their former rights and customes As our intenioun is to cause try what justlie doeth belong to that office that according as sall be found our high constable may enjoy the same in suche maner as anie of his predecessours formerlie have done So we do not heirby intend that our saids burghes be prejudged in their rights and priueledges whiche they have ancientlie enjoyed by grants of oure royall predecessors Therefore oure pleasure is that no new gift be expeditiuching the said office of Constabularie if any heirafter shall be presentit unto you till the Commissioners of our saids burghes be first lawfullie cited and heard to object agains the same and if anie questioun sall arise anent their liberties and priueledges that you stay the passing of the said gift in so far as concernes the differences betwix oure high Constable and them conteanit in the said gift untill they be legallie tried and decyded before the Judge competent to quhome we will that the tryell thereof

<sup>1</sup> For an account of the expenses connected with this deputation, see Appendix A to Notes on Lord High Constable.

be remitted So we bid you heartilie farewell from oure Court at Oatlands the last day of July 1632."

This letter was presented by one of the Bailies of the city to the Privy Council on 13th December 1632, and was ordained to be inserted and registered in their books, and an extract delivered to the Lords of His Majesty's Exchequer, to remain with them as a warrant for staying the passing of any such gift as is mentioned in the letter.<sup>1</sup>

On 11th May 1633, the Royal Commissioners' Report was approved of by the King in a letter to the Privy Council,<sup>2</sup> in which he further remitted to the Privy Council to inquire into certain dignities and charges claimed by the Constable in connection with coronations, but which had not been considered by the Commissioners, and these were subsequently duly reported on.<sup>3</sup>

Authoritative as these reports were, the Magistrates of Edinburgh do not seem to have regarded them as affecting their rights of criminal jurisdiction within the bounds of the city, and the disputes between them and the Constable still continued. In 1633, John Keith, servitor to Mr Thomas Nicolson younger, advocate, having hurt and wounded James Tenent, servitor to Sir James Nicolson of Colbrandspeth, was imprisoned by the Magistrates *after* he had been imprisoned by the Lord High Constable. The Constable, deeming this act of the Magistrates an interference with his privileges and jurisdiction, applied to the Privy Council, who, in respect of no defence by the Magistrates, and non-production of their rights, found, on the 23d of July 1633, that the Magistrates had done wrong, and ordered them to desist and cease from all censuring of any matters of slaughter, blood, or riot, within four miles of his Majesty's person, Parliament, or Council, when the Constable was present, by himself or his deputies. Notwithstanding this decret, the Magistrates would appear to have subjected Keith to annoyance, and to have threatened to put him in ward, for he too applied to the Privy Council, and on the 15th of February 1634, obtained a decret, finding that the Magistrates had done wrong by taking and committing him to ward, in contravention of the decret recovered against them at the instance of the Lord Constable.<sup>4</sup> Against these two decrets the Magistrates reclaimed by a Summons of Suspension, in which they expressed their willingness to produce their rights, whereby they had been in immemorial possession of the whole points controverted between the

<sup>1</sup> Privy Council Register (Decreta), 13th February 1634.

<sup>2</sup> Privy Council Record, 13th December 1632.

<sup>3</sup> Erroll Papers, Spalding Club Mis. ii. 229.

<sup>4</sup> Ibid. ii. 229.

Constable and them, with the declaration and protestation that, after the production of these rights, the Lords of the Privy Council would be pleased to remit the trial of the validity of the same to judges competent thereto, and that their production should infer no acknowledgment against them that they did in any case submit the decision of their rights to any other judge, except the Lords of Session ; and that the production which they were to make was out of the reverence and respect they carried to the Privy Council, and not to prejudice their rights. The procedure which followed, and the pleas and arguments of the parties, are minutely narrated in the following quotation from an extract of the judgment of the Privy Council :—<sup>1</sup>

“ And anent the charge given to the said Earle of Erroll lord constable Mr Archibald Halden his deput and to the said Mr John Keith To have compeired personallie before the saids lords at a certane day bygane Bringand producand with thame the saids twa decreits to have beene seene and considerit be the saids lords, and to have hard and seene the same, effectioun and execution yairoff suspendit simpliciter upon the compleaners in tyme comeing for the causs forsaidis Lykeas at more lenth is conteaned in the saids lettres executions and indorsations yairoff Quhillk being callit and Sir Alexander Clerk Provost of Edinburgh, William Rid and Robert Fleeming baillies of the said burgh and Mr Alexr. Guthrie thair toun clerke compeirand personallie wth Mr Thomas Nicolson elder thair prolocutor, and the said Earle of Erroll and Mr John Keyth being lykeweyes personallie present with Mr Robert Learmonth and Mr Rodger Mowat thair prolocutors The said Earle of Erroll and Mr John Keith producit the twa decreits recovered at thair instance agains the toun of Edinburgh, for satisfactioun of the charge given to thame for that effect And the saids Provost and Baillies of Edinburgh for instructing and verification of their right and privileged in judging and censuring of all maters of slaughter blood or ryot comitted be anie person or persons within the liberties of the said burgh produced before the saids lords under protestation alwayes as aforesaid, ane charter and infertment granted to thame by King James the third, and which is ratified in the Parliament haldin in the yere of God 1621, by the which and for the honourable causs yairin expresst they are made and constitutte heretable shireffs within thameselfes As also exhibit ane other charter of the office of shirefship within Leith, with ane gift of Justiciarie, quhairby they are made Justices of Peace within Edr. and Leith both whiche are granted to thame by his Majesties late royal father of blessed memorie After production quhairof the said Mr Thomas Nicolson as prolocutor aforesaid for the said toun haveing repeated thair reason he humblie craved of the saids [Lords] That since the question and difference betwix the Constable and toun of Edinburgh were groundit and dependit upon thair heretable rights and infertments That the tryell and cleiring yairof may be remitted to the Lords of Counsell and Session, Judges competent yairto conforme to the Lawes and custome of the kingdome in maters of the

<sup>1</sup> MS. in City Clerk's Office.

lyke kynde, and according to ane letter directed be his majestie to the saids Lords and enacted in their books, quhairof the extract wes produced, by the whiche his majestie hes signified his royall will and pleasure that all actions intendit or to be intendit before the saidis Lordis agais the toun of Edinburgh quhairof the tryell dependeth upon thair infestments and production of thair rights salbe remitted to the Lords of the Session to be decydit be thame as judges competent yairto<sup>1</sup> Quhairunto it was ansred be the said Constable and his prolocutors that the mater now in question did not concerne their heretable rights and infestments, but only the extent and exercise of the privilegedes dew to the offices of Constabularie, which hath been cleered by the report yairof made to his Majestie by the Commissioners nominat and appoynted to that effect and quhairof the said Constable is in possession be vertew of the saids tua decreits, In respect quhairof and that the office of Constabularie is a pryme office of the Crowne that the Lords of Secret Counsell are most proper judges to the said office and to the extent privilegedes and exercise of the same, And touching his Majesties lettre forsaid quhilk is enacted and registrat in the books of Secret Counsell it was ansrit be the said Earle and his prolocutors that the same cannot be respected, being a privat letter purchest be the toun of Edinburgh agaisn their awne vassalls in Leith quhairof there is no mention made in thair sumonds nor the reasons of suspension groundit yairupon to the which it wes duplyit be the saids provest and baillies and thair prolocutor, That the report made to his Majestie of the privilegedes dew to the office of Constabularie aucht not to be respected nor can not militat in thair prejudice, they never being callit to the tryell of the said privilegedes, nor the Commissioners haveing anie power to conveene thame for yat effect, And as touching the nature and qualitie of the office of Constabularie as being a pryme office of the Crowne, it was ansred that notwithstanding yairof the action resulting yairupon and presentlie depending which is groundit upon heretable rights product be either of the saids parties is merelie civill quhairof the tryell and decision be the Lawis and practique of the kingdome is onelie proper to the Lords of Session and thairfore aught to be remitted to thame as sole judges competent yairto."

The questions at issue would appear to have been reported to the King ; for on 14th May 1634, he wrote to the Lords of the Privy Council the following letter :—<sup>2</sup>

"Charles R. Right trustie and right weil beloved cousin and counsellor, right trustie and right weil beloved cousins and counsellors and trustie and weil beloved counsellors, Wee greet yow wee, Haveing considerit of your lettre and of the differences betwix our right trustie and right weil beloved cousin and counsellor the Earle of Erroll our heich constable of that our kingdome, and the Citie of Edinburgh, and of the suspension raised be thame of the tua decreits obtained by the said Earle before you, And findeing that the question doth now arise which sould be the convenient judicatorie before whome the caus sould be decydit, whither before yow or before our Session, In regarde of the nature of thair right they pretend to have, We have thought fitt

<sup>1</sup> See Inventory of City Charters, vol. ii. p. 550.      <sup>2</sup> MS. in City Clerk's Office.

heirby to requyre yow that (if you sall find your selves competent judges in this differences according to the Lawis and custome of our said Auntient Kingdome) you proceed yairin, bot if yow sall find that it properlie belongeth to our Session, Remit it unto thame, bot withall that no dilations nor tedious formes of law be used And that before which of you this sall happen to be hard, Wee comand that you deferre sentence untill you acquaint us with the particulars of the processe, Wee bid you fareweile, from our manor at Greenwiche the 14th of May 1634."

On the same day, he wrote a letter to the Lords of Session in the following terms :—<sup>1</sup>

"Charles R.—Richt trustie and weilbelowit coosine and counsellor and trustie [and] weilbelowit We greit yow weill Wheras we haue writtin . . . . . tuitching the actione depending before thame betuixt our Constable and . . . . . citie of Edinburgh willing thame to proceid therin in sa far as they sall find thameselfis competent judges and to remit to yow our Colledge of Justice quhat is proper to be judged be yow, It is our plesour iff they doe remit the samen to yow, That ye administer justice thairin with all diligence without admitting dilatoury or tedious formes of law, that convenientlie can be awoydded commanding that ye defer sentence vntill ye acquaint ws with the particularis of the proces quherin expecting your diligence we bid yow fair-weill. From our mansioun at Grenewich the 16 of Maji 1634.

"*In dorso*, To our right trustie and weil belowit coosine and counsellor the Erle of Kynnowll our chancellor of Scotland and our trustie and weil belowit Sir Robert Spottiswood knight president of our Colledge of Justice and remanent senatouris thairof."

So important did the Town Council regard the matter, that they sent a deputation to London, to confer with his Majesty on this and other matters. The following entry in the Council Register, on 29th May 1634,<sup>2</sup> has reference to this fact :—

"Finding that in the mater of ye Constabularie it had pleased the lordis of his Maj. Counsall to consult his Maj. thereanent and haiving lyikwayes sundrie other wechtie affaires with his Maj. concerning both the church and commonweill Thairfore they haue elected and nominatt Lyikas they be thir presentis electis and nominattis William Gray merchand and Maister Alexander Guthrie thair comoun clerk commissioneris for theme for passing and dealing with his Maj. in the saidis particularis and in all vther things concerning the Guid Toun conform to ye instructions sett down to theme theranent and ordains the proveist baillies deyne of gild thesaurer Johnne Sinclair George baillie George Craufurd Willjame Carnegie to sett down the saids instructions and maner of means for presenting what sall be sett down be theme wheranent the saids proveist baillies and counsall grantis and gives vnto theme full powar and

<sup>1</sup> Erroll Papers, Spalding Club Mis. ii. p. 233.

<sup>2</sup> Council Register, xiv. 295.

commission also ordains their saidis commissioneris to deale with his Maj. anent the patent craved to be exped be the Lord Spynnie and to oppose the same sua far as in theme lyes in name of the whole borrowis and ordains the thesaurer to advance vnto theme such soumes of money for thair chairges as yai sall neid and the samen to be soght back again frome the Commissioners of borrowis in the nixt Generall Conventioun of borrowis to be haldin within this burgh wheranent ther presentis salbe vnto the said thesaurer ane sufficient warrand, and ordainis lettres to be drawin up and direct to the Archebischope of Canterberrie, duik of Lennox, Marqueis of Hamiltoun, and the Erles of Mortoun and Stirling for thair favourabill concurrence and assistance.”<sup>1</sup>

On 8th July 1634, the Privy Council, “being well and thoroughlie advysit” on the subject, pronounced the following order:—

“The Lords of Secreit Counsall Remits the Sumonds of Suspension and the reasons yairof in the caise it now stands with the right and libertie acclaimed be either of the saids parties in the mater above-written To the Lords of Counsell and Session Judges competent yairto Intreating heirby the said Lords to grant speedie Justice to the saids parties and to proceed yairin according to the direction of his Majesties lettre written to the Counsell yairanent.”

The letter from the King to the Lords of Session was, on 24th July 1634, presented by the Provost to their Lordships, “quha declarit thay wold have consideratione of the lettre quhensoevir the toun of Edinburgh sall incist in the actiones;”<sup>2</sup> but nothing farther appears to have taken place in regard to the matter. The following entry in the Discharge of the “Baillie’s accounts for Unlaws” for the year from Michaelmas 1634 to Michaelmas 1635, would seem to indicate, however, that Constable Courts were still being held in Edinburgh—“Item ye 28 July [1635] be him [David Fairholme officer] for instruments at ane Constabill Court xix s.”<sup>3</sup>

Early in the reign of Charles I., dissatisfaction would appear to have been expressed with some parts of the Golden Charter of James VI., more especially in what related to the jurisdiction of the Magistrates in various matters, criminal and mercantile, as derogatory to the honour and dignity of the Crown; and in 1630 the Council offered to renounce the benefit of any alleged excesses in that grant, on receiving a new and restricted Charter.<sup>4</sup> This offer

<sup>1</sup> For an account of the expenses connected with this deputation, see Appendix B to Notes on Lord High Constable.

<sup>2</sup> Erroll Papers, Spalding Club Mis. ii. p. 233.

<sup>3</sup> The Town Treasurer’s accounts from Martinmas 1632 to Martinmas 1634, and the Baillies’ accounts of unlaws for the year to Michaelmas 1634, contain many entries which relate to the disputes between the Magistrates and the Constable about this time. See Appendix C to Notes on Lord High Constable.

<sup>4</sup> Local Report on Edinburgh from the Commissioners on Municipal Corporations in Scotland, 1835, p. 285.

was accepted, and Charles I. granted a Charter, dated Newmarket, 23d October 1636, the provisions of which are substantially the same as those of the Charter of 1603, excepting in regard to the powers to which objection had been taken, and which are reserved to the Crown. In particular, it confirmed and renewed the grants of Sheriffship and Justiciary, which have been already referred to.<sup>1</sup>

In 1636, William Earl of Errol died, while his son and successor, Gilbert, was but a child of five years of age. The guardians of the child were, however, evidently not negligent of his interests; and with a view to preserve his office, brought him several times from school, to attend the meetings of Parliament and its Committees, to sit in "the Constable's chaire, and to look upon the guarding and ordering of the hous of Parliament as properly belonging to the Constable's place." Nor did they omit to assert the criminal jurisdiction of their ward. About 1640, one Reid, a painter, appears to have been convicted in the Constable Court for killing Allane Walwood, servant to Lord Cranston-riddell, and to have been sentenced to death, but to have obtained a remission of the sentence.<sup>2</sup> Sir George Mackenzie, in his *Treatise on the Laws and Customs of Scotland in matters criminal*, the second edition of which was published in 1699, also refers to a case as having occurred about this time. "I was told," says he, "that in time of Parliament holden at Edinburgh, anno 1640 and 1641, the Earl of Errol was found by the Lords of Secret Council to have sole criminal jurisdiction, and did repledge

, servant to Sir Thomas Nicolson, the King's advocat, arraigned before the Magistrats of Edinburgh for a slaughter, and assoilzied him upon production of a remission."<sup>3</sup> In 1641, another case occurred which brought the Constable and his guardians into collision with the Magistrates. Mr Thomas Lamb, minister of Kirkurd, having slain John Tuttop near Leith, on Sunday the 1st of August in that year, was apprehended and lodged in the Tolbooth of Leith, whence he was removed on Monday afternoon to the Tolbooth of Edinburgh, with a view to his trial by the Magistrates of Edinburgh. On inquiry, however, it was ascertained that the murder had been committed "within the corne riggis of the baronie of Restalrigg," without the bounds of the Sheriffdom of Edinburgh and its liberties, as well as of the regality of Broughton. The Magistrates, therefore, had no jurisdiction

<sup>1</sup> Inventory of City Charters, i. 832. Maitland's History of Edinburgh, p. 257.

<sup>2</sup> Sir John Lauder of Fountainhall's Historical Notices of Scottish Affairs, 1661-1688 (Bannatyne Club), i. 85.

<sup>3</sup> Mackenzie's Criminal Law, p. 185.

in the matter, but retained Lamb in ward, according to their own statement, "till he were callit befor the Justice-General or his deputis and put to his trial before them." At this stage, the Lord High Constable and his tutor interfered, and charged Lamb to stand his trial, and the Magistrates to produce him, before the Constable and a Court to be held in the Tolbooth on the 3d of the same month. Lamb failed to appear, being detained by the Magistrates, though his counsel stated his willingness and readiness to "enter on pannel conform to the charge given to him for that effect." The Constable thereupon presented a Bill to Parliament on 3d August, setting forth the facts, and craving them to

"give expres ordour and warrand be thir presentis to a messenger of armes or meassir to command and charge the saidis proveist and baillies of Edinburgh To exhibit and produce the said Mr Thomas Lamb delinquent befor ws and our deputtis ane or ma coniunctlie or severallie in the justice court to be haldin be ws as Constabill foirsaid or be our deputtis ane or mae vpon the fyft day of August instant in the houre of caus and at all vther dyettis to be appoyntit and affixit be ws in the said mater or in ony vther of that kynd as the samyn sall happen to fall out."<sup>1</sup>

Upon the same day, the Magistrates presented a supplication to Parliament, in which, after narrating the circumstances of the case, and the charge received from the Constable, to which, they say, they could not give effect without great prejudice, "seing thair is ane questioun depending betuixt the Constable and us anent the rightis and liberties of the said Constabularie within the boundis of our said shirefdome liberties thair of and regalitie foirsaid," they beseech the Parliament to

"give ordour to the justice generall and his deputis to proceed and minister justice vpon the said Mr Thomas to quhom we sal be readie to exhibit him within our said tolbuith, And if that sall please your lordships to give warrand to any vtheris and especiallie to the Constable that the samyn may be declared that it sall be without derogatioun to any of our liberties, and without acknowledging be ws of any right or privileidgis quhilk the said Constabill hes to judge within any pairt of our boundis and libeities foirsaidis, Or to chairge ws to exhibit any persoune within any of our tolbuiths or wardhoussis, Protesting alwayis Lykas we be thir presentes protestes That quhatsumeir sall be done anent the premissis sall be without prejudice of our rightes and liberties in maner foirsaid."<sup>2</sup>

On the 5th of August, also, the Constable lodged in Parliament a memoran-

<sup>1</sup> MS. in City Clerk's Office, and Erroll Papers, Spalding Club Mis. ii. 237. Acts of Parliament, Charles I. 1641. Scots Acts, vol. v. p. 353.

<sup>2</sup> Erroll Papers, Spalding Club Mis. ii. 236. Scots Acts, v. p. 353.

dum, in which, after referring to the general privileges of his office, as claimed by him, and to the fact, that the Magistrates avowedly had no jurisdiction in the case then under consideration, he asks warrant to proceed to the trial and punishment of the

“slaughter comittit be the said Mr Thomas, as the onlie competent judge thairto, Seing it is vncontravertabill that the power of all magistratis ather of royaltie or regalitie in criminall causes sleipes and seids to the Lord Constabillis jurisdictioun in tym of parliament And it wer a great derogatioun to the honour of the Kings Maiestie and parliament iff any inferiour judge sould have the honour of cognosceing and jurisdictioun in materis criminall quhair his Maiesties persoun parliament or suprem counsall sittis Because these suprem judicatories representis his Maiesties awin persoun and the bodie of the kingdome over quhom no inferiour judge sould have power of jurisdictioun Nather sould the toun of Edinburgh be admittit to appeir or have ather any declaratioun or protestatioun in their favouris Seing in the particular now contravertit they confes they have no entres as said is, in respect the toun of Edinburgh grantis that the slaughter was comittit vpon boundis which is without thair jurisdictioun and liberties.”<sup>1</sup>

These several documents were read to the Estates of Parliament, who, by their deliverance endorsed upon the back of the Bill presented by the Lord High Constable, ordained “the Provost and baillies of Edinburgh to exhibit the within writtein delinquent befor the Constabill or his deputtis ane or mae, to the effect within mentioned, But prejudice allways of the Erle of Erroll or toun of Edinburgh their rights or privileges *prout de jure*.”

Afterwards, however, Lamb procured Letters of Slaines<sup>2</sup> from Tutton's friends, and a remission from the King, which being exhibited to the tutor of the Constable, he consented to Lamb's liberation.<sup>3</sup> The Magistrates thereupon

<sup>1</sup> Erroll Papers, p. 240, and MS. in City Clerk's Office. Scots Acts, v. p. 354.

<sup>2</sup> Letters of Slaines were letters subscribed in case of slaughter by the wife or executors of one who had been slain, acknowledging that satisfaction had been given, or otherwise soliciting for the pardon of the offender.

<sup>3</sup> Council Record, xv. p. 198. This letter of consent, which exhibits a curious trait of the times, is in the following terms :—

“I Jon Earle of Kinghorne as tutor testamentar for Gilbert Earle of Erroll Lord High Constable of Scotland consent that the Provost and Baillies of Edr. and their Javeller put Mr Thomas Lamb to libertie furth of the tolbuith of Edr. quhairin he is presentlie deteined for the slaughter of umquhile John Tutton in leyth, and that in respect the said Mr Thomas hes purchast a Lettre of Slaynes daitted the fowrt day of August instant subscribed be the said umquhile Jon Tuttons father and mother kin and friends quhairin they pardoun the said Mr Thomas and descharges him of all actioun civill and criminall competent or that may be competent to them against him in his persone lands guidis and

ordered Lamb to be released from prison, under protestation always that his liberation was without prejudice of their liberty, and should not infer any acknowledgment of any power the Constable had within their bounds.<sup>1</sup>

Lamb's case, it will have been observed, did not involve the jurisdiction of the Magistrates, the crime having been avowedly committed beyond the bounds of the city and its liberties;<sup>2</sup> but, in 1662, the old question was raised. Two persons, named Leith and Gordoun, having been guilty of rioting, were apprehended and convicted by the Magistrates, as justices within the precincts of the burgh. The offenders were afterwards claimed by the Lord High Constable, on the ground that he was the "onlie justice and judge competent in the said mater;" but the Magistrates refused to deliver them up. Thereupon, the Earl of Erroll presented a supplication to the "Lord Commissioner his Grace, and the Right Honourable the Lords of the Articles," setting forth the complaint, and craving redress; and a warrant was issued on 1st July 1662, to cite the Provost and Bailies to answer the complaint upon the 4th of that month.<sup>3</sup> How the matter ended does not appear, but probably it was compromised; for, on the 16th of July, the Magistrates and Council appointed

"John Lauder baillie &c. to meet . . . anent the deputation of the Provost and Baillies under the Earle of Errol Constable of Scotland within Edinburgh the tyme of the Parliament continues until ffriday, and in the interim to consult what is best to be done;"<sup>4</sup>

---

gere and acceptis him in yair favor Quhilk Lettre of Slaynes is registrat in the Bookes of Counsell the first day of September instant quhairuppon the Kings Maj. hes given to the sd Mr Thomas ane remissioun quhairby he hes forgiven the said master Thomas all crime offence and danger he may incurre for the said slaughter in maner specified in the said remission quhilk is daitted the sextein day of August instant And yairfoir I consent to the said Mr Thomas Lamb his liberatioun furth of the said Tolbuith of Edr. quhairin he is deteinid for the caus foirsaid And yir presentis sall be ane sufficient warrant to that effect Be yir presentis subscrivit with my hand at Edr. the first day of Septer the yeir of God j<sup>m</sup>. vi<sup>e</sup>. fourtie ane yeiris (sic sub.) Kinghorne."

<sup>1</sup> See reference to this case in Baillie's Letters and Journals, i. 367, 368.

<sup>2</sup> The entry in the Council Register, of date 3d Sept., refers to the murder as having been committed "within the bounds and jurisdiction belonging to the Toun of Edinburgh;" but the pleadings of both the Magistrates and the Constable before Parliament proceeded on the distinct averment that the crime was committed beyond the bounds of the Magistrates' jurisdiction.

<sup>3</sup> MS. Service Copy Supplication in City Clerk's Office.

<sup>4</sup> Council Record, vol. xxi. 141.

and on the 18th of July

"Report being made be the Baillie John Lauder that the Committee appoynted to meet anent the controversie betwix the Earle of Arroll high Constable and the good Toun the Counsell recommends to the Lord Provost and Baillies to make the best accommodatioun they can in taking a deputation upon good termes and no otherways, And to meitt with the Lord President and Lord Register to that effect and to report the same with yair best conveniencie."

The Constable would still appear, however, to have continued to exercise criminal jurisdiction within the City. On the 5th of September 1672, James Johnston, violer, having been arraigned before the Magistrates, "as Sheriffs within themselves," for stabbing his wife the day before Easter, they took his judicial confession, and summoned an assize for his trial. At this stage of the proceedings, the Constable applied to the Magistrates to have Johnston delivered over to him; and Mackenzie, who reports the case, remarks that the "Magistrates passed from him upon the Constable's application," without a "formal repledgiation." Johnston was tried before the Constable's Deputes, who, upon the 6th of September, sentenced him to be hanged, and to have his right hand which gave the stroke cut off and affixed upon Leith Wynd Port, and "ordained the Magistrates to cause put the sentence to execution upon the 9th of the month."<sup>1</sup> About the same time, the coachman of a nobleman having wounded a child, the Constable commanded the Town's Guards to apprehend the delinquent, which, says Mackenzie, "they accordingly did, till he was freed by a Remission."<sup>2</sup> In July 1673, again, Sir John Lauder of Fountainhall records the case of one James Gibsone, a baxter in the Pleasance, who was fined in the Constable Court 8 score lb. for a pretended riot during the sitting of the Parliament in August 1672. Gibson suspended the sentence upon the ground (1st) that at the time of the alleged riot he was acting in the discharge of his duty as Constable of the bounds; and (2d) that he had a discharge of the sentence and fine from the Constable Deputes. The result of this case—to which, however, the Magistrates were no parties—does not appear, but it is observed by the reporter, that the 'citizens had much cause of complaint against the Constable Court, not only for being "summar and illegal, but also for their exorbitancy and oppression in their fines. And though, it is stated, the Tounes ever controverted this privilege with the Hy Constable, so that he never possessed any jurisdiction within

<sup>1</sup> Mackenzie's Criminal Law, p. 185. But see Sir John Lauder's observations on this case in his Report of the following case of Gibsone.

<sup>2</sup> Mackenzie, p. 185.

Edr, peaceable and pleasantly, yet he gained a greater step that session, 1672, than ever he could arrive at before, by judging Johnston the fiddler, and sentencing him to death for killing of his wife ; whereas, in so long a tract of tyme as the ages since he laid claime to that priviledge, he could never afford an instance, save of one, whom for slaughter they had sentenced to dy, about the year 1640 ;<sup>1</sup> but he obtained a remission."<sup>2</sup>

In 1681, John Earl of Errol obtained from Parliament<sup>3</sup> a ratification of the office of Constabulary, with the whole rights and titles thereof, and of all the dignities, honours, liberties, privileges, pre-eminencies, profits, casualties, and duties belonging thereto, and of the Act of Parliament 1617, c. 41, before referred to. This Act farther ratified and confirmed the Commission by Charles I., to inquire into the honours and privileges of the office, the report under that Commission, and the letter from the King approving of that report, all which are thereby ordained to be good, valid, sufficient, and unquestionable rights to the Constable and his deutes "for bruiking and enjoying the office of Constabularie, with all honours, privileges, immunities, casualties, dignities, and liberties belonging thereto." No protest was taken for the City of Edinburgh, or for any of the other Burghs, against this ratification, but the usual act *salvo jure cujuslibet* (c. 192) was passed previous to the adjournment of the session for five months (till 1st March 1682). In these circumstances the Constable and his deutes appear to have asserted a right of criminal jurisdiction within the City during the adjournment. This forms the subject of observation by Sir John Lauder, who expresses an opinion that "in short adjournments" the jurisdiction of the Constable continues, but when "a Session of Parliament is closed by ane Act *salvo jure*, and ane act of adjournement, his right during that recesse and intervall certainly sleeps, especially when the Imperial Honours are also put in the Castle."<sup>4</sup>

On 16th January 1682, the Provost and Bailies, "as Sheriffs within themselves," advised by Sir John Lauder, their assessor, proceeded to the trial of Alexander Cowburne, their hangman or lockman, for the murder of one John Adamson, a licensed blue-gown beggar. Cowburne was convicted and condemned to be hung in chains between Edinburgh and Leith.<sup>5</sup> Here,

<sup>1</sup> The case of Reid, before referred to.

<sup>2</sup> Historical Notices of Scottish Affairs, 1661-1688 (Bannatyne Club), vol. i. 85. See also Supplement to Morrison's Decisions, iii. 19.

<sup>3</sup> Act of Parl., Charles II. 1681, c. 125. Scots Acts, viii. fol. 371.

<sup>4</sup> Historical Notices of Scottish Affairs, i. 325. <sup>5</sup> Ibid. i. 34<sup>c</sup>.

however, Sir John is careful to note, neither the Constable nor his deputies entered any protestation, "on the pretence of its being a current Parliament." But, in 1685, a case occurred in which the Magistrates and the Constable were brought into collision. The facts are minutely stated by Sir John Lauder<sup>1</sup> as follows :—

9th Junij 1685

"One of the Toun of Edinburgh's sojors, of Captain Patrick Graham's company, called Edward Atcheson, with his baginet stabs a violer named Watson, because he was serenading in the night tyme with his fiddle in the street, (contrare to ane Act discharging it) and gave him ill words. He was imprisoned by the Magistrats, and his libell given him, and ane assise summoned; but my Lord Erroll compearing, and claiming him by his jurisdiction in Parliament tyme, as Lord Hy-Constable, and they being both heard before the Commissioner and Chancelor, the Magistrats were forced to quite him. Erroll produced his gift from King Robert the Bruce to judge all criminall causes happening within 4 miles wher the Parliament or King's Counsell sits; with bonds, given in 1582, by the Magistrats of Edinburgh, acknowledging his jurisdiction, and accepting deputations from him. (See the Report of Erroll's priviledges with the King's ratification theirow in 1633.) Wheiron the Toun of Edinburgh, for preserving their priviledges, took a protestation against Erroll's deputies; who protested in the contrare, and led probation by witnesses, because his confession was qualified, that he was provoked by calling him rascall, and refusing to goe to a Commission-officer. The witnesses clearly proved the fact, so the assise returned him guilty, and then he was condemned to be shot to death in the colledge kirk-yard, on the 17 of June next. Captain Grame, his master, delt much and offered money for ane assythment to the widow to get him of, but it would not doe.

The following extract, from the records of the Town Council, of date 10th June 1685, relates to the same case, and is the last instance in which reference is made in these records to the conflicting jurisdictions of the Magistrates and the Lord High Constable :—<sup>2</sup>

"The same day Baillie Robertsons and Baillie Spence reported to the Counsell that Edward Aitchesone serveant to Capt. Grahame Capitane of the good touns companie had killed John Watsone violer yesterday, the ninth day of Junij instant betwixt two and three hours in the morning, upon the high street at the neather bow And that they had caused apprehend the persone of the said Edward Aitchesone and imprisoned him in the tolbuith, And gave him his indytment, and caused ceite fourtie fyve persones out of which the fyftein assayers upon his inquest wes to be elected, and sumond the pannall and witness and inquest of assyse to appear yesterday at thrie hours in the afternoon, and that they did fence ther court and continewed the dyet to this day at four hours in ye afternoon And that in respect they were intercepted in yair procedar

<sup>1</sup> Historical Notices of Scottish Affairs, ii. 647.

<sup>2</sup> Council Record, xxxi. p. 182.

by the Earle of Arroll Lord High Constable, his pretending the only right and priviledge to judge the persones that comitts murder or the lyke crymes within this Citty and four mylnes about the same the tyme of the sitting of the parliament And that his deputes had raised ane indytmnt against the said Edward Aitchesone and sumoned the witness and asyse against two hours this afternoon And that his Lordship and his deputs wold yairby prevent ther procedar against ye said pannell The counsell thinks fitt that Bailie Robertstone and the clerk repaire to the Lord High Constables Court and protest that ther procedar against the said pannall may not prejudice the good toun of ther right of shiriveship and power to judge comitters of the lyke crymes within ther jurisdictione conforme to ther charter and Ratificatiouns thereof."

On the 25th of the same month the Privy Council, reviewing a sentence of the Constable Court pronounced against John Reid, skipper in Leith, under which he was fined 100 dollars for assaulting and mutilating Malcolm Macalla, also skipper there, on the Links of Leith during the sitting of Parliament, found Reid guilty, fined him 3000 merks, and ordered him to lie in prison till the fine was paid.<sup>1</sup> In this case the Magistrates did not enter appearance, but the principle seems to have been recognised, that even if the Constable had the power "of judging *privative*, yea of repledging from all other Courts, even the Privy Council itself, yet if he did not punish proportionally, and with commensuration to the delict, the Privy council might review it."

Four years later, a noted case occurred, which involved the questio in dispute between the Magistrates and the Constable ; but here again it was left unsettled, both parties contenting themselves with protesting against their rights being prejudiced by what took place. Sir George Lockhart, President of the Court of Session, on his way home from the High Kirk on the afternoon of Sunday the 31st of March 1689, was shot by Chiesly of Dalry, at the head of the Old Bank Close. The murderer was seized by some gentlemen who were accompanying Sir George, and taken to the guard, and afterwards to prison. An extraordinary meeting of the Convention of Estates, or Parliament, was called on the following day ; and having considered a supplication given in by Sir George's friends, "for granting power and warrand to the Magistrates anent the torturing" of the murderer, the Estates, "in regard to the nottorietie of the murder and the execrable and extraordinary circumstances thereof," appointed and authorised the Provost and two of the Bailies of Edinburgh, and "likewise the Earl of Erroll, Lord High Constable, his deputes, if the said deputes should please to concur,

<sup>1</sup> Historical Notices of Scottish Affairs, ii. 650.

not only to cognosce and judge the murder, but to proceed to torture," &c.<sup>1</sup> The trial proceeded the same day, before the Provost, four Bailies, and six Assessors, nominated by the Estates, the Provost protesting that the Act and Order of the Estates should not anyway prejudge the ancient liberties of the good town. Mr David Drummond, advocate, the Constable-Depute, was desired to concur with the Magistrates, but refused, unless the Constable or his Deputes were sole judges in the matter; and he declared and protested that the absence of the Constable should not prejudge his privilege to judge in the matter, because the murder was committed during the meeting of the Estates.<sup>2</sup> Chiesly was convicted, and executed at the Cross on the 3d of April.

This case is referred to by Mr Riddel in evidence of his remark that the Constable Court did not too pertinaciously adhere to their privileges on remarkable occasions, when the good of the country or the interests of the community were at stake.<sup>3</sup>

It would thus appear that for nearly a century and a half before the Union, there existed in Edinburgh a latent antagonism between the Constable and the Magistrates, which broke out periodically into an open rupture, and passed off after some legal skirmishing, without either party being very anxious to press their claims to a final decision. Evidently enough, the grant of Sheriffship in favour of the Magistrates, in 1482, was not originally regarded by themselves as conferring upon them a criminal jurisdiction exclusive of, or even co-ordinate with, that of the Constable. Their acceptance of a deputation from him in 1507, without any reservation of their claim to a higher and independent jurisdiction, indicates the reverse of this. And even in 1629, after that grant had been confirmed, renewed, and enlarged by successive royal charters ratified by Parliament, and after the Magistrates had moreover been constituted Justices of the Peace within the burgh and its

<sup>1</sup> Act and Order of the Estates engrossed in Criminal Register of the Burgh. Acts of Parl. William and Mary, 1689. Scots Acts, vol. ix. p. 30.

<sup>2</sup> See Criminal Register of Burgh. Scots Acts, ix. p. 30. Riddell's Remarks on Scotch Peerage Law, p. 18.

<sup>3</sup> Mr Stuart has supplied a still more memorable illustration in connection with the murder of Darnley at the Kirk of Field in 1567. On that occasion, it would appear, the Constable offered no obstacle to the trial of the assassins proceeding before the Justice-General, though he did not forget to assert his high privileges, and to protest that such trial should "on no ways hurt or prejugé the said Constable his office jurisdiction and infestment thereof in any sort." Erroll Papers, Spalding Mis. ii. Pref. 97.

liberties by a series of other Charters ratified by Parliament, they would still seem to have asserted their right to exercise criminal jurisdiction in the character of *deputes* of the Lord High Constable, without referring to any higher or independent claim. It is only in 1634 that their claim, in a question with the Constable,<sup>1</sup> to an independent and exclusive criminal jurisdiction is rested upon their Charters of Sheriffship and Justiciary, and it is difficult to understand how such a question, so often raised and so anxiously discussed, could have remained so long undecided. It can scarcely be maintained that the Report of the Commissioners of Charles I. in 1631, approved of by his Majesty in 1633, was conclusive against the Magistrates, for, in 1634, the claims of the Constable were expressly founded upon it, while the claims of the Magistrates, which were rested upon their Charters of Sheriffship and Justiciary, were remitted by the Privy Council to the Court of Session, as involving questions of heritable right, and no decision upon them seems ever to have been pronounced. It must be observed, however, that subsequent practice, down to the period of the Union, seems on the whole to have favoured the claims of the Constable, and to have been in conformity with the terms of the Report of the Royal Commissioners.

---

<sup>1</sup> In 1581, they seem to have asserted their claim to a privative jurisdiction as Sheriffs within the Burgh, in a question with the Justiciary. See the case of William Bikartoune of Casch, reported by Pitcairn, of date 15th December 1581. In that case Bikartoune was accused before the Justice-Depute of bearing, wearing, and shooting pistols within three quarters of a mile of the king's person, contrary to the Acts of Parliament and Secret Council, and of feloniously shooting George Auchinleck of Balmanno through the body. The Justice-Depute remitted the matter to an assize, and on the following day Mr Alexander Clerk, provost of Edinburgh, with Mr Alexander King, advocate, appeared, and "declarit that Wm. Bikartoune had committit the crymes aboue written, and committit to thair ward; and in respect they ar Shereffis within thaim selfis, protestit, that the Justice Court and thair proceding upoune him sould be nawise preiudiciall. The (Lord High) Constabill protestit in lyke maner that in respect the samin wes committit within the Kingis," &c. The prisoner remitted himself in the king's will, and was tried by an assize, who found him guilty of the bearing and wearing of pistols, and of shooting Auchinleck, but acquitted him of doing the same upon forethought felony, and within three quarters of a mile to the king's person, in respect it was notour to them that the king was at the hunting, farther than three quarters of a mile from the place where the deed was committed. Bikartoune was thereupon imprisoned in the Tolbooth of Edinburgh."—Pitcairn's Criminal Trials, I. part i. p. 99.

The High Court of Constabulary sat till the period of the Union; and in 1699 there was an arrear, says Mr Riddell, of fifty processes.<sup>1</sup>

But it was not as against the Magistrates of burghs alone that the Constable was careful to preserve the privileges and assert the high claims of his office. During the regency of Mary of Lorraine [1554-1560], a contention existed between him and the Admiral (who was also a peer), for the priority of their vote and place in Parliament, and at that time the precedence of the Constable was recognised, "notwithstanding that he satt not among the rest of the erlles bot for doing of his office in parliament satt laich down in the parliament hous." The contention was, however, renewed in the reign of James VI., in 1585, and the Earl of Bothwell would seem to have voted before the Constable, whose protestation, engrossed in the records of the Parliament held at Linlithgow on the 10th of December in that year,<sup>2</sup> bears that "except the kingis Matie and estaittis restorit him to ye ancient degrie and prioritie in voiting quhilk his predicessours had he Refussit to voit in this present parliament." Again, in 1606, the Constable is found asserting his claim before the Privy Council in a question with the Chief Justice, to take "ordour with this last accident fallen out betwix the Earl of Glencairn and the Maister of Winton at Perth." The Privy Council, however, delegated judges by Commission to deal with the matter, whereupon the Constable addressed himself to the king, in a letter, dated "Logealmond 13 July 1606," in which, after referring to the rights of the Constable "be law and daylie practique, to judge upone bluid and bluidweit, committit within six boundis neir to your Maiesties royal chalmer, and in tyme of parliament," he, in all humility begs his Majesty's

"most gracious favour, be returning ordinance to the Counsell discharging the creatioun of the judges delegat; or els that I may have the benefite of replegiatioun from the Commissioneris as accordis of the law, and the autoritie and assistance of the Counsell interponit, to cleide with the ancient liberties of my office, anent the citatioun of the malefactouris to compeir befor me in my Court of Justiciarie; in the administratioun quhereof, I sall have sik due consideratione as my tender care, and trew regarde to the furthsetting of your Maiesties honour and princely estate sall be cleirlye published unto the world."<sup>3</sup>

It would appear, however, that the king did not interfere in the matter. In the same year a controversy between the Constable and the Earl

<sup>1</sup> Remarks on Scotch Peerage Law, p. 117.

<sup>2</sup> Scots Acts, vol. iii. p. 375.

<sup>3</sup> Letters and State Papers during the reign of James VI. (Abbotsford Club), p. 82.

Marischal "anent the privilege and libertie acclai mit be either of them to the keeping of the keyes of the parliament hous," seems to have arisen during the sitting of the Parliament, then being held at Perth, and to have required the intervention of the Privy Council, who on the 2d of July 1606 found and declared, "That the keeping off the keyis off the Parliament hous and the gairding of the vtter bar and yettis thair of appertenes to the Constabill."<sup>1</sup> Exception having been taken to this finding by the Earl Marischal, parties were again heard, and on 31st July 1607 an Act of the Privy Council was passed,<sup>2</sup> in which "the lordis for eschewing of heit stryffe and contentioun betuix the Lordis Marshall and Constable and thair deputtis," renewed their declaration that the keeping of the keys and guarding of the outer gates of the Parliament House appertained to the Constable, and that he and his Deputes had the charge and commandment of all "outwith the yettis of the parliament hous." They farther declared that the guarding of the "inner bar and the charge of all within the yeattis and duris of the parliament hous appertenes to the Lord Marshall." Even this decision, however, did not suffice to prevent "stryffe and contentioun." In the Parliament held at Edinburgh in 1612, and which commenced its sittings on 12th October of that year, a notification is made at the close of the proceedings of a Protestation made be James Stuart for the Earl Marischal, "and a Protestatioun made be the Earle of Wintoun for the Earl of Erroll Constable."<sup>3</sup> The whole subject was afterwards fully discussed before the King (Charles I.) and his Privy Council, by whom an Act was issued on 17th June 1633, finding, decerning, and declaring

"That the keeping of the keyes of the Parliament hous And the having of ane guard without the hous for guarding of the samen, properly belongs to The Lord Constable And that he shall have only sex men within the hous for guarding and opening of the vtter gaite And of thir sex men that thrie be on either syde of the vtter gaite of the Parliament hous And that thair be ane stoupe set vp vpon the braid staires of the parliament hous to be ane marche betuixt the said Constable and Marshall and thair guardes And siclyke findis and declares That the guarding of the Parliament Hous within from the stoupe forsaide to the barr belongs to The Marschall And decernes both the saidis pairties to conforme themselwis to this present act and ordinance so that no matter of contest fall out betuixt thame and thair serwandis vpon this occasioun heireftir."<sup>4</sup>

<sup>1</sup> Erroll Papers, Spalding Mis. ii. 220.    <sup>2</sup> Ibid. ii. 221.    <sup>3</sup> Scots Acts, iv. p. 522.

<sup>4</sup> Erroll Papers, Spalding Miscellany, ii. p. 233. Ratified by Act of Parliament, Charles I. 1633, c. 55. Scots Acts, vol. v p. 64.

But even this decision does not appear to have obviated all further question between the Constable and the Marischal in regard to their respective jurisdictions. On the 26th of June 1703, Lord Belhaven and Sir Alexander Ogilvie of Forgeland, two Members of Parliament, committed a riot within the walls of the Parliament itself, "by using opprobrious language, and beating one another within the Parliament Hall, betwixt the Amphitheatre and the rails, when the Parliament was sitting." The offenders were taken into custody by order of the Constable, but on the 30th of June presented a Petition acknowledging their fault, and entreating Her Majesty's High Commissioner and the Estates to pardon their offence and repon them to their seats as Members of Parliament. On the same being read, the Constable "was ordered to cause the officer of his guard to bring the Petitioners before the Parliament, and they being accordingly brought to the Bar," were forgiven and reponed.<sup>1</sup> It is stated that in this case the Constable offered no obstacle to the Parliament taking trial of the crime, it being understood "that their assuming and judging of this case shall not be made a preparative, nor derogate from the rights and privileges of the High Constable."<sup>2</sup> On the following day, however, the Marischal protested that his right should not be prejudged by the exercise of the Constable's office, "since he had the jurisdiction as to delinquencies committed within the doors of the House, conform to his ancient rights." This was met by a prompt counter protest on the part of the Constable. No further allusion is made to the subject in the Records of Parliament. But the Minutes of Parliament, of 23d August 1704,<sup>3</sup>—referring to the case of William Cochran of Ferguslie, charged with the fraudulent retention of public funds,—states, that he was ordered by the Lord High Commissioner, and the Estates of Parliament, "to be taken from the Bar by the Earle Mareschall, or the Captain of his Guards, and delivered at the door of the Parliament House to the Earle of Errol High Constable, or to the Captain of his Guards, and brought by them to the Tolbooth of Edinburgh, therein to be kept prisoner by the Magistrates of Edinburgh, and Keepers of the said prison, until he find sufficient caution to answer the several complaints exhibited or to be exhibited against him." There is thus, in connection with this case, a distinct recognition of the respective jurisdictions of the Constable and Marischal. On the 25th of August 1706,<sup>4</sup> the Constable and the Marischal are found co-operating in the assertion of their mutual

<sup>1</sup> Acta Parl. Annae, 1703. Scots Acts, vol. xi. p. 65, and Appendix, p. 20.

<sup>2</sup> Preface to Erroll Papers, Spalding Mis. ii. p. xcix.

<sup>3</sup> Acta Parl. Annae, 1704. Scots Acts, vol. xi. p. 65; see also p. 187.

<sup>4</sup> Acta Parl. Annae, 1706. Scots Acts, vol. xi. p. 309.

privileges. The Articles of Union with England were at this time being discussed in Parliament, in the midst of an undisguised popular hostility, which broke out on the 23d of that month into a somewhat formidable tumult. The riot became ultimately so serious that the City Guard, who were the police and military protectors of the city, and had, in ordinary circumstances, the exclusive privileges of military action within its walls,<sup>1</sup> were unable to suppress it. The Privy Council therefore, with, it appears, the sanction of the Lord Provost, called in a battalion of Foot Guards, who, after dispersing the riot, remained on guard for the security of the Members of Parliament, and the peace of the Town. The proceedings were reported by the Lord Chancellor to the Parliament at their meeting on the following day, when the Constable, for himself and such as should adhere to him, protested "that the continuing of standing forces within the Town of Edinburgh, and keeping guard with them in the Parliament closs and other places within the Town the time of Parliament as at present is done, is contrare to the right of his office as High Constable by which he has the only priviledge of guarding the Parliament without doors, as the Earl Mareschall has within doors, and is an encroachment on the rights and privileges of the Toun of Edinburgh. And if any vote shall pass contrare to his said right, or the rights of the Earl Mareschall, or rights and privileges of Parliament, or the Toun of Edinburgh, that it shall not in any time hercafter prejudice the same or be anyways drawn in consequence." This protest was adhered to by the Earl Marischal, and by fifty noblemen and gentlemen, Members of Parliament. A motion was subsequently made to approve of what the Privy Council had done, and to recommend them to continue their care; but before the vote was taken it was agreed, upon the motion of the Commissioners for Edinburgh, that it should be without "prejudice of the said Toun of Edinburgh's rights and privileges by their charters." The original motion was then carried, and the troops remained in Edinburgh as a military guard during the remainder of the discussion on this most unpopular measure. Their presence, however, did not prevent the excited populace from stoning the Lord High Commissioner on his way home to the Palace on the 18th of November. The journals of Parliament shew, that on the following day this was represented by His Grace to Parliament, who recommended the Lord High Constable to prosecute forthwith the persons who were imprisoned on account of the former tumult, and the

<sup>1</sup> Burton's History of Scotland, vol. i. p. 442. Wilson's Memorials of Edinburgh, vol. i. p. 108.

Magistrates of Edinburgh were ordained to furnish what probation they could to the Fiscal of the Constable's Court against such as were so imprisoned.<sup>1</sup> It is worthy of notice, that throughout the whole of the discussions in regard to the Union, the Constable was a persistent opponent of the measure, and the records of Parliament, of date 7th January 1707, contain his formal protest, that his office "depending upon the Monarchie Sovereignty and Antient constitution of this Kingdome may not be weakened nor prejudged by the conclusion of the Treaty of Union betwixt Scotland and England nor any Article clause or condition thereof."<sup>2</sup>

But though the office of Lord High Constable was reserved by the treaty of Union, the changes effected by that measure have deprived the possessors of the office of the opportunities which formerly existed for the exercise of its privileges and jurisdictions, and have shorn it of much of its prestige. The removal of the seat of Parliament, and the abrogation of the Scottish Privy Council, have necessarily restricted the Constable in the exercise of his criminal jurisdiction to those occasions when the Sovereign visits this part of the British dominions; and on only one occasion since the Union, has the High Constable discharged his functions on Scottish soil. That was during the visit of George IV. in 1822, when the Constable attended His Majesty with a feudal pomp befitting the greatest of the few remaining hereditary offices of the Scottish Crown, and claimed and received, as part of his "Hostilagia," apartments in Holyrood, in the immediate vicinity of the private chambers occupied by the King. "Immediately on His Majesty's landing," says the Editor of the Erroll Papers, "all criminal jurisdiction within four miles of the presence became vested in the constable; and in order that Justice might flow in its accustomed channel, the Sheriff of Midlothian, the Magistrates of Edinburgh and Leith, the Bailie of Holyrood, and the Judges of Police, were constituted his Lordships deputes in the Office of Constabulary."<sup>3</sup> The Commissions here referred to in favour of the Magistrates and Judges of Police of Edinburgh, are in existence, but no reference to them occurs in the Records of the City to shew that they were acted upon, or the footing on which they were granted or accepted. It is presumed it was without prejudice to the rights of parties, and *ob majorem*

<sup>1</sup> Acta Parl. Annae, 1706. Scots Acts, vol. xi. p. 331.

<sup>2</sup> Acta Parl. Annae, 1707. Scots Acts, vol. xi. p. 387.

<sup>3</sup> Pref. to Erroll Papers, Spalding Mis. ii. p. cv. See copy Commission to the Magistrates and to the Judges of Police of Edinburgh, Appendix D to Notes on Lord High Constable.

*cautelam*, though it might well have been maintained, that had the Constable not thought proper to assert his claim to an exclusive criminal jurisdiction in matters of Riot, Blood, or Slaughter, or to repledge from the Courts of the Magistrates and the other Judges, persons accused of these crimes, no question could have arisen as to the administration of justice by the ordinary means. No case has been discovered in which it has been maintained that the criminal jurisdiction of the Constable so absorbed that of the local authorities, or of the Justiciary, as to render it incompetent for them to deal with crimes falling within their ordinary jurisdiction when he failed to assert his right. His privilege appears rather to have been like that of a lord of regality in this respect, that while the lord might repledge or reclaim to his own court from that of the Sheriff, and even from that of the Justiciar, all criminals amenable to the regality, the jurisdictions of these judges continued to exist, and might be exercised by them if he failed to exercise his jurisdiction. "The repledger," says Erskine, "might indeed, in virtue of his privilege, carry the trial from their courts to his own; but if he did not exercise the privilege, it was not only lawful to these other judges, but it behoved them, to proceed with the trial."<sup>1</sup>

In virtue of his office, the Constable necessarily occupied a position of close proximity to the person of the Sovereign in all State ceremonials. The Report of the Commissioners of Charles I. in 1631, bears that "in tyme of parliament the Constable rydis upoun the Kings right hand and carryes a whyte batton in token of Command, and accordingle sitteth apairt from the rest of the nobilitye upoun the Kings right hand, having the Honnouris lyand besyde him." This was confirmed by the Report of the Lords of the Privy Council to the King in 1633,<sup>2</sup> relative to the ceremonies to be observed at his coronation. In this report they state that unto the Constable belongs the guarding of the royal person in time of parliament or coronation, and the command of all guards and men at arms attending upon the sovereign at such public times. They also recommend His Majesty to preserve the Constable's liberties and privileges, as well in the coronation as in parliament and conventions,<sup>3</sup> "he being your Majesty's chief officer unto whom all the ceremonies of the sword and honours of the said office do duely and properly belong so far as we can learn or find by matter of record or

<sup>1</sup> Erskine's Institutes of the Law of Scotland, B. i., T. 4, S. 8.

<sup>2</sup> Erroll Papers, Spalding Mis. ii. p. 230.

<sup>3</sup> For an account of the Constable's duties in riding the Parliaments of Scotland. See Nisbet's Heraldry, vol. ii. part iv. pp. 68, 69

f

otherways." Effect was accordingly given to these reports at the Coronation of Charles I. in Holyrood, in 1633,<sup>1</sup> and of Charles II. at Scone, in 1651.<sup>2</sup> After the Union, however, the position of matters was altered, and the claims of the Constable, Marischal, and others, in respect of their heritable offices in Scotland, to attend the coronation of the British Sovereign in England, had to be adjusted with reference to the claims of the corresponding officers of the sister country. This had to be done for the first time in connection with the coronation of George I., in 1714, and the matter having been referred to the Lords Commissioners for claims, they, on 16th October 1714, reported their opinion, "That the Constable of Scotland do in the procession at His Majesty's Coronation walk on the right hand of the High Constable of England, and the Earl Marshall on the left hand of the Earl Marshall of England; The High Constable and Earl Marshall of England being nearest the sword of State."<sup>3</sup> This Report, so far as the claims of the Constable and Marischal of Scotland were concerned, was approved of by the King in Council, and the Deputy Earl Marshall of England was ordered to give the necessary directions accordingly. The claim of the Lord Lyon to walk after Garter King of Arms was allowed at the same time. None of these officers, however, appear to have attended this ceremony, and no notice of them is taken in the record of it, or in the official announcement in the *Gazette* after the ceremonial. This may be accounted for by the fact, that the coronation took place on 20th October,—the day after the approval of the Report,—when, if the parties were in Scotland, there could not have been time to make the requisite arrangements.<sup>4</sup> At the coronation of George II. on 11th October 1727, the claim of Mary Countess of Erroll to appear by deputy was sustained, and John Duke of Roxburgh officiated in that character; the Marquis of Beaumont having been first proposed, but

<sup>1</sup> Sir James Balfour's Works, vol. iv. p. 385-400

<sup>2</sup> Erroll Papers, Spalding Mis. ii. 243. On this occasion, the youthful representative of the "Constabular Family" was brought from school by his tutors and curators, to take part in the ceremony.

<sup>3</sup> MS. Notes from Herald's College. Erroll Papers, Spalding Mis. ii. 245. It is to be observed, that when four officers walk abreast, the two in the centre have the precedence, so that the High Constable of Scotland would be next the Constable of England, and over the Earl Marshall of England, the Sword of State having precedence over the Constable of Scotland and the Earl Marshall of England.

<sup>4</sup> It may be noticed, however, that the Earl Marischal of Scotland has never appeared in any ceremonial since the Union.

---

disallowed in respect of nonage.<sup>1</sup> At the coronation of George III. on 22d September 1761, the Constable of Scotland was present. At the coronation of George IV. on 19th July 1821, George Lord Gordon (Marquis of Huntly) attended as Deputy to William George Earl of Erroll, who was in minority. The two succeeding coronations, viz., that of William IV. on 8th September 1831, and Queen Victoria on 28th June 1838, were attended by the Constable in person.<sup>2</sup>

---

<sup>1</sup> Erroll Papers, Spalding Mis. ii. Preface civ. p. 246.  
MS. Notes from Herald's College.

## APPENDIX TO NOTES

ON

## THE LORD HIGH CONSTABLE.

A (p. 20).

*Expense of Deputation to London in 1631.*

The following entries in the Town Treasurer's Accounts shew the expenses connected with this deputation:—

<i>Year from Martinmas 1630 to Martinmas 1631.*</i>		Scots.	Sterling.
Item ye 13 October 1631 giwin to Mr Johne Hay at his going to Londoun for ye effeiris of ye guid toun and borrowis conforme to .ane act ye 7 October 1631 j <sup>m</sup> . ij <sup>c</sup> . lib. . . . .		£1200 0 0	£100 0 0
Item ye 2 of November 1631 payit to M. Johne Hay be Johne Johnstoun in Londoune for ane part of ye said M <sup>r</sup> . Johne Hayis chairges in ye effeiris of ye Borrowis conforme to ye act 7 October 1631 j <sup>m</sup> . iiij <sup>c</sup> . xxxiiij lib. vjs. viij d. . . . .		1333 6 8	111 2 2 <sup>s</sup>
Item ye 30 Julij giwin for taking Lettres to Londoun for staying ye patent of ye constabularie ij <sup>c</sup> . xl lib. . . . .		240 0 0	20 0 0
Item for extracting ye articles yranent xx lib. . . . .		20 0 0	1 13 4
<i>Year from Martinmas 1631 to Martinmas 1632.</i>			
Item ye 13 febray payit to Johne Johnstoun be M <sup>r</sup> . Johne Hays bill according to ye act of Counsall ye 7 October 1631 j <sup>m</sup> . iiij <sup>c</sup> . xxxiiij lib. vjs. viij d. . . . .		1333 6 8	111 2 2 <sup>s</sup>

\* For convenience the sums mentioned in the following extracts are stated in modern figures, both in Scotch and Sterling money.

	Scots.	Sterling.
Item for ye annuelrent yrof to Mertimes yrefrir j <sup>c</sup> lib.	£100 0 0	£8 6 8
Item ye 12 Junij 1632 payit to Johne Jossie be M <sup>r</sup> . Jo <sup>n</sup> . Hayis bill according to ye act of counsell ye 7 Octo- ber 1631 ij <sup>m</sup> . vj <sup>c</sup> lxvj lib. xiiij s. iiij d.	2666 13 4	222 4 5 <sup>4</sup>
Item for ye annuelrent yrof to Mertimes yrefrir j <sup>c</sup> xxxiiij lib. xiiij s. iiij d.	133 13 4	11 2 9
Item ye 14 No <sup>r</sup> . 1632 payit to Wm Dick be Sir Jo <sup>n</sup> . Hay his billis according to ye former actis of counsall iiij <sup>m</sup> . vj <sup>c</sup> lxvj lib. xiiij s. iiij d.	4666 13 4	388 17 9 <sup>4</sup>
Item for ane prent act of ye commissione of borrows sent to Londoun to M Johne Hay xxiiij s.	1 4 0	0 2 0

B (p 25).

*Expense of Deputation to London in 1634.*

The following entries in the Town Treasurer's Accounts for the year to Martinmas 1634, shew the expense of this deputation :—

Item payit to Patrick Wood at Witsunday 1634 for the Soumes of money borrowit be W <sup>m</sup> . Gray and M <sup>r</sup> . Alex <sup>r</sup> . Guthrie Commissioners for the borrowis to Londoun the Soume of iiij <sup>m</sup> . iiij <sup>c</sup> xxij lib. 8s. as also advancit to yame befor yair waygoing j <sup>m</sup> . iiij <sup>c</sup> . xxxiiij lib. 6s 8d, whereof upon the Tounes owin proper effaires the soume of j <sup>m</sup> . vj <sup>c</sup> . lv lib 13s 8d. and the rest to be cravet in fra the borrowis conforme to ane Act of Counsall daitit the 25 Junij 1634. The haill De- bursements extending as said is to the soume of v <sup>m</sup> . vj <sup>c</sup> lv lib. xiiij s. viij d.	Scots.	Sterling.
	£5655 14 8	£471 6 2 <sup>8</sup>
Item for exchange of ane pairt of the said soume in gold to yame befor yair waygoing xxj lib. . . . .	21 0 0	1 15 0
Item payit for the Mertimes tearmes annual rent 1634, of the said soume of 4322 lib. 8s—ij <sup>c</sup> . xvj lib. ij s.	216 2 0	18 0 2
Item for the said Mertimes tearmes, annual rent of Tua <sup>m</sup> .		

	Scots.	Sterling.
merkes [2000 merks or £1333, 6s. 8d.] of the said soume lxvj lib. xiiij s. iiij d.	£66 13 4	£5 11 1½

The proportion of the above sums due by the Convention of the Royal Burghs, with interest thereon, amounting in whole to £4600, seems to have been paid by two instalments in the years 1634-35 and 1635-36.

C (p. 25).

*Expenses incurred by the Town in connection with Disputes between the Magistrates and the Lord High Constable during 1632-34.*

The following entries occur in the Treasurer's Accounts :—

*For the year from Martinmas 1632 to Martinmas 1633.*

	Scots.	Sterling.
Item to James Prymrois for registratting and extractting ane Letter againes the Constable the Earle of Arrall the 5 of December 1632 xj lib. xij s.	£11 12 0	£0 19 4
Item to Mr. Gilbert Prymrois for the letter registratting and extractting againes the Earle of Arrall Constable v lib. xvjs.	5 16 0	0 9 8
Item to his man in drinksilver ij lib. xvij s.	2 18 0	0 4 10
Item to James and Mr. W <sup>am</sup> . Douglass maissoris vlib. xvjs.	5 16 0	0 9 8
Item to yame at command of the proveist and Bailzies the 10 of December 1632 for ane meitting against the Earle of Arrall Constable befor the Secreit Counsall v lib. xvjs.	5 16 0	0 9 8
Item mair to yame quhen the Kingis letter was red ane uther day befor the Secreit Counsall v lib. xvjs.	5 16 0	0 9 8
Item to Sir Lwes Stewart and Mr. Thomas Nicolsone Assissoris for adwising the proces againes the Con- stable the 15 of De <sup>r</sup> . 1632 xxix lib.	29 0 0	2 8 4
Item to yair men in drinksilver v lib. xvjs.	5 16 0	0 9 8
Item the 5 of Junij 1633 to Sir Lwes Stewart and Mr. Thomas Nicolsone ane meitting with yame in the Counsall hous at ane consultation againis the Earle of Arrall xxix lib.	29 0 0	2 8 4

	Scots.	Sterling.
Item to yair men in drinksilver v lib. xvj s.	£5 16 0	£0 9 8
Item to Jon Stirling Messenger for charging the Earle of Arrall befor the Secreit Counsall at the Tounes instance iiij lib. vij s.	4 7 0	0 7 3
Item the 13 of Junij ane meitting with the assessors anent the Earle of Arrall given to yame for ane consultation xxix lib.	29 0 0	2 8 4
Item to yair men in drinksilver v lib. xvj s.	5 16 0	0 9 8
Item the 25 of Junij 1633 ane other meitting with the assessoris quhen the King was in Dalkeith for adwysing of certaine effairis with yame anent ye Touns bussines xxix lib.	29 0 0	2 8 4
Item to yair men in drinksilver v lib. xvj s.	5 16 0	0 9 8
Item the 25 of Julj 1633 ane meitting with the assessoris anent the Earle of Arrall his actioun for ane consultation xxix lib.	29 0 0	2 8 4
Item to yair men in drinksilver v lib. xvj s.	5 16 0	0 9 8
. . . . .		
Item the samyn day (14 November 1633) to James Prymrois for extracting ane decreit was obtenit againes the guid Toun at the Earle of Arrall Constable his instance xx lib. vj s.	20 6 0	1 13 10
Item to M <sup>r</sup> . Gilbert his sone viij lib. xiiij s.	8 14 0	0 14 6
Item to his man in drinksilver ij lib. xvij s.	2 18 0	0 4 10
Item the 14 of Sep 1633 at command of the proveist and Bailzies given to James Prymrois for extracting of sindrie wreattis Kingis lettres and decreittis and registratting of yame againes ye Constable Mussilbrut and uthyrs xliij lib. x s.	43 10 0	3 12 6
Item to M <sup>r</sup> . Gilbert his sone xxix lib.	29 0 0	2 8 4
Item to his man in drinksilver viij lib. xiiij s.	8 14 0	0 14 6

*For the year from Martinmas 1633 to Martinmas 1634.*

Item the 21 of Februarij [1634] to Sir Lwis Stewart and M <sup>r</sup> . Thomas Nicolsone for ane consultation anent the Constables suspensioun xxix lib.	£29 0 0	£2 8 4
Item to yair men in drinksilver v lib. xvj s.	5 16 0	0 9 8
Item the 7 of Mairche payit to James Prymrois for raisinge of Sumondis againes the Earle of Arrall his suspensioun and for Tua Lettres for our neichburis schipping and for extract of my Lord Spynnie his		

	Scots.	Sterling.
Lettre and copie of the Kingis Lettre anent the Ministeris Stipendis (to himselff) 16 rex dollors Inde xlvj lib. viij s. . . . .	£46 8 0	£3 17 4
Item to M <sup>r</sup> . Gilbert his sone 5 rex dollors Inde xiiij lib. x s. . . . .	14 10 0	1 4 2
Item to his man in drinksilver 3 rex dollors Inde viij lib. xiiij s. . . . .	8 14 0	0 14 6
Item the 17 Martij to Sir Lwis Stewart and M <sup>r</sup> . Thomas Nicolsone for ane consultatioun anent the Earle of Arrall and my lord Spynnies his actioun xxix lib. . . . .	29 0 0	2 8 4
Item to yair men in drinksilver v lib. xvj s. . . . .	5 16 0	0 9 8
Item the 19 Mairche ane uther consultatioun with the assessouris againes the Earle of Arrall and my lord Spynnies xxix lib. . . . .	29 0 0	2 8 4
Item to yair men in drinksilver v lib. xvj s. . . . .	5 16 0	0 9 8
Item the 20 Mairche giffin to Maister Thomas Nicolsone for his compearance befor the Secret Counsell againes the Earle of Arrall xxix lib. . . . .	29 0 0	2 8 4
Item to his man in drinksilver ij lib. xvij s. . . . .	2 18 0	0 4 10
Item the 24 Mairche to Sir Lwis Stewart and M <sup>r</sup> . Thomas Nicolsone for ane consultation againes the Earle of Arrall xxix lib. . . . .	29 0 0	2 8 4
Item to thair men in drinksilver v lib. xvj s. . . . .	5 16 0	0 9 8
Item the 25 Mairche giffin to M <sup>r</sup> . Thomas Nicolsone for his compearance befor the Secret Counsell againes the Earle of Arrall 16 rex dolloris Inde xlvj lib. viij s. . . . .	46 8 0	3 17 4
Item to his Tua men in drinksilver v lib. xij s. . . . .	5 16 0	0 9 8
Item the 2 of Apryle to the meassouris of Secret Counsell for our Decreit of Continowatioun of the Earle of Arrall his actioun and ministeris stipends v lib. xvj s. . . . .	5 16 0	0 9 8
Item the 29 Aprilis giffin to James Prymrois for giffing us up our Charteris that was productit befor the Secret Counsell againes the Earle of Arrall xxix lib. . . . .	29 0 0	2 8 4
Item to M <sup>r</sup> . Gilbert his sone 3 rex dollors is viij lib. xiiij s. . . . .	8 14 0	0 14 6
Item to his man in drinksilver 2 rex dollors v lib. xvj s. . . . .	5 16 0	0 9 8
Item the 9 of Junij to Sir Lwis Stewart and M <sup>r</sup> . Thomas Nicolsone for ane consultatioun about the Earle of Arrall his Lettre to the Secret Counsell xxix lib. . . . .	29 0 0	2 8 4
Item to thair men in drinksilver v lib. xvj s. . . . .	5 16 0	0 9 8

	Scots.	Sterling.
Item to James Prymrois for extracting the act anent the ministeris stipendis and the copie of the Kingis Lettre anent the ministeris stipendis and extract of the report anent the Constables priviledges and for summondis of waikining againes the Constable and act anent the declinator and lettres againes Doctor Jonstoun 16 rex dollors Inde xlvj lib. viij s.	£46 8 0	£3 17 4
Item to Mr. Gilbert his sone xiiij lib. x s.	14 10 0	1 4 2
Item to his man in drinksilver v lib. xvj s.	5 16 0	0 9 8
Item the 23 of Junij To Sir Lwis Stewart and Mr. Thomas Nicolsone for ane Consultatioun againes the Earle of Arrall xxix lib.	29 0 0	2 8 4
Item to yair men in drinksilver v lib. xvj s.	5 16 0	0 9 8
Item the 24 of Junij To Mr. Thomas Nicolsone for procureing befor the Secretit Counsall againes the Earle of Arrall 20 rex dollors Inde lvij lib.	58 0 0	4 16 8
Item to his man in drinksilver 2 rex dollors v lib. xvj s.	5 16 0	0 9 8
Item was giffin Sir Thomas Hope quhen we gatt our remitt of our actioun fra the Lordis of Counsall back to the Lordis of Sessioun againes the Earle of Arrall 5 dowble angellis at 14 lib the peice Inde lxx lib.	70 0 0	5 16 8
Item to his man in drinksilver 3 rex dollors viij lib. xiiij s.	8 14 0	0 14 6
Item mair was giffin to Sir Thomas Hope younger at command of the proveist and bailzies quhen our actione anent the Earle of Arrall was remitted from the Secretit Counsall to the Lordis of Sessioun 14 rex dolloris Inde xl lib. xijs.	40 12 0	3 7 8
Item to his man in drinksilver v lib. xvj s.	5 16 0	0 9 8
Item to the maissouris befor the Secretit Counsall for remit of our action to the Lordis of Sessioun 5 rex dollors Inde xiiij lib. x s.	14 10 0	1 4 2
Item the 27 of Julij to Mr. Jo <sup>n</sup> Kinneir seruitor to Mr. Jo <sup>n</sup> Skene for passing of ane suspensioun againes the Earle of Arrall Becaus his maister wald tak nae moneyis 3 rex dolloris Inde viij lib. xiiij s.	8 14 0	0 14 6
Item the 26 of October payit to James Prymrois for extracting our Lettres of remit from the Secretit Counsall to the Lordis of Sessioun 15 rex dolloris is xliij lib. x s.	43 10 0	3 12 6

g

	Scots.	Sterling.
Item mair to Mr. Gilbert his son 10 rex dolloris is xxix lib. . . . .	29 0 0	2 8 4
Item to his man in drinksilver 2 rex dollors v lib. xvj s.5	£16 0.	£0 9 8
Item to Jo <sup>n</sup> Stirling for chargeing the Earle of Arrall and Mr. Ar <sup>d</sup> . Haddin and Mr. Jo <sup>n</sup> Keith seruitor to Mr. Thomas Nicolson Yo <sup>r</sup> . to compeir befor the Lordis viij lib. xiiij s. . . . .	8 14 0	0 14 6
Item payit to Robert Flemmying that gave to ane Messenger to goe to the north and chaarge the Earle of Arrall xvij lib. viij s. . . . .	17 8 0	1 9 0

The following entries occur in the Bailies Account of Unlaws for the year 1633-34 :—

Item ye 6 day (of Feb. 1634) for Instruments agains ye Constable xxix s. . . . .	1 9 0	0 2 5
Item ye 27 day for ye Secound Instruments of Interrup- tioun xxix s. and 2 sheits is xxxj s. . . . .	1 11 0	0 2 7
Item ye 16 day (of March) for ane boy going post to Mr. Alex <sup>r</sup> . Guthrie to Hathrondeane xij s. . . . .	0 13 0	0 1 1
Item for extracting my Lord Arrolls suspensioun vij s. . . . .	0 7 0	0 0 7

---

D (p. 21).

*Letter from Charles I. to the Magistrates and Council.*

CHARLES R

Trusty and welbeloued wee greete yow well. We have conferred at length with yowr commissioner anent oure reception into that oure Towne whereof wee heare yow have had a speciall care, expressing thereby your affection vnto vs, for the which wee give yow hartly thanks, and doe earnestly desyre yow to continue yowr endeauours as how have begunne to that effect. We have gevin direction concerning yowr signature for expeding thereof, and as for the High Constable, whereanent wee have beene

moued, yow may be assured yow shall suffer noe wrong therein, and for the matter of oure Counsell and Session, and anent your Ministers, wee will take such a course at oure coming to yow as may give yow all reasonable satisfaction, and as for all other matters propounded by your sayd commissioner, which wee finde to be meere Parliamentary, being vrged by the straitnesse of tyme wee have thought goode to remitt them to our Clerk of Register to be considered of at our coming there, whereanent and anent all other things may tend to your goode yow may expect that wee will not be vnmyndefull, as in reason may be hoped for at the hands of a loneing Prince. Wee bid yow farewell from oure Court at Theobaldes 13th of May 1633.

<sup>1</sup>Ye need not feare in the business anent the Constabulary, for though I meane to mainetaine the Constable in his ancient priueleges, yet I shall see that ye shall have no wronge.

(Inld.)

C. R.

*In dorso*

To our trustie and welbeloued  
the Prouest Bailliffes and Counsell  
of our brough of Edenbrugh.

---

E (p. 40).

*Commission to the Magistrates of Edinburgh to act as Deputes of the  
Lord High Constable during the visit of George IV. to Scotland.*

HOLYROOD PALACE August 12th  
1822, 3d of Geo. 4th.

GENTLEMEN,

His Majesty having announced his gracious intention of visiting this part of his dominions, I William George Earl of Erroll, Lord Hay and Slaines Great Constable of Scotland, do hereby in virtue of the powers and Jurisdiction possessed by me in virtue of my office as Great Constable of Scotland, Nominate Constitute and Appoint you and each of you as my Deputies and Commissioners for Judging and determining in all matters of Riot, Blood and Slaughter committed within four Miles of the Kings person during His Majesty's residence in Scotland, and that as well within the Court as without the same ; And I hereby declare that the trials sentences and punishments instituted and inflicted by you shall be as valid and

---

<sup>1</sup> The postscript is apparently in the king's own handwriting.

effectual, as if the same had been brought before and Judged of by myself personally, for all which this shall be your Warrant.

I have the honour to be,

GENTLEMEN,

Your Obt. hum sert.

(Signed) ERROLL.

H. C.

To Alex. Henderson, Thomas Blackwood,  
John Smith and John Lyall, Bailies of  
Edinburgh, to try all cases of Assault,  
Riot, &c., in the Council Chambers or  
Bailie Court of Edinburgh.

A Commission, in precisely the same terms, was granted to George Tait, Esq., Sheriff-Substitute, John Lyall, Esq., one of the Bailies of Edinburgh, Alexander Henderson, William Child, and Kenneth Mackenzie, Esqrs., Old Bailies of Edinburgh, to try all cases of Assault, Riot, &c., in the Police Court.

### *CORRIGENDA.*

Page [8], Delete the words "enjoyed the privilege on these" on the 11th line, and also lines 12, 13, 14, and 15, with the exception of the last word "claimed."

NOTE.—The statement thus deleted is founded on the remarks of the late Mr Riddell, who quotes as his authority a Charter by King David II., dated on the 26th of February, in the third year of his reign,—a copy of which is in the British Museum. Dr Joseph Robertson, who had lately occasion to examine the Charter, has kindly furnished the following correction of the error into which Mr Riddell had fallen. It is, says he, a declaration by the King that the grant which he had made to John Desmirell, knight, of the barras or palisade made at Aberdein for the tournament lately held there, should in no wise prejudice the right of the Constable. The words of the original are, "Quia assignanimus palacium factum apud Aberdeine ibidem in hastiludio nuper tento Johananim Desmirell, etc., etc." Mr Riddell interpreted "palacium" to mean "a palace," overlooking the obvious meaning which it bears in this passage of "palisade" or "barras," "contextus ac series palorum," as it is defined by Du Cange *voce* "Palacium." The King's declaration, in short, is nothing more than a reservation of the Constable's right to the materials of the lists or barriers within which tournaments were fought.

Page [18], Footnote, line 2. Delete "constituted," and insert "ordained a Commission to be expedite constituting."

## INDEX.



## INDEX.

- Abduction of women, frequency of, 17, 18.  
 Aberdeen, burgh records of, 40, 77, 85.  
   Sanitary condition of, 85.  
 Addresses to the Throne, 192, 194, 235, 254, 286, 287.  
 Adulterers (*see* Fornicators).  
 Alexander I., 4, [4].  
 Alexander II., *statuta regis*, 85.  
 Aliens, lists of, 193.  
 Allegiance, oaths of, 235.  
 Allowance to Society, 168, 234, 273.  
 Anglo-Saxon state, divisions of—townships, 10; tithings, 10; hundreds or wapentakes, 11; shires, 11.  
 Annual excursions, 292, 293.  
 Archery, Acts of Parliament, &c., relative to, 86, 87.  
 Arms, neighbours to be provided with, 20, 21, 22, 30, 44, 46, 47, 48, 49, 56, 93.  
   All men between 16 and 60 to be provided with, 84.  
   Acts of Parliament as to, 12, 86–89.  
*Articuli inquirendi in itinere Camerarii*, 42.  
 Badges, 298.  
 Bailies (*see* Magistrates).  
 Ballantyne, James, 216.  
 Ballantyne, John, 220.  
 Bats on for Constables, 125, 148, 150, 168, 177, 178, 225, 226, 294–297.  
 Beggars, acts against, 33–39, 108, 109.  
   Edinburgh a nest of, 37, 107.  
 Bickerings prohibited, 21.  
 Black, Adam, 226.  
 Blackwood, William, 226.  
 Blasphemers, acts against, 93–96.  
 Bounds of Constables, 31, 192, 215, 228, 243, 244, 245.  
 Burgess-ship, watching and warding a condition of, 41, 45, 63; bachelorhood an obstacle to, 43; conditions of, 43, 44.  
 Canongate, act for lighting, cleaning, and watching, 209.  
 Cards and Dice, acts against playing, 155, 156.  
 Carter, F. H., 270.  
 Censors to be appointed for suppressing swearing, 961 165.  
   Constables appointed, 96.  
 Census, 243.  
 Ceremonials, processions, &c., 241, 242, 282–286.  
 Chamberlain Ayre, articles to be inquired into at, 42.  
   Mode of procedure at, 42, 43, 76.  
 Chaplain of Constables, 152.  
 Charles I., 13, 32, 101, 106, 114, [4], [5], [6], [19], [20], [23], [24], [25], [35], [37], [41], [42], [50].  
 Charles II., 13, 65, 101, 130, 166, [42].  
 Cleaning, arrangements for, 74–83, 113–118, 120–121, 122, 123, 133–145, 164, 198–213.  
   Assessment for, 139, 141.  
   Question between the Lords of Session and the Council anent, 141.  
 Combats, Act against single, 26.  
 Commissioners of Police, resident, 299, 300.  
 Committee of Constables, 163.  
 Conservators of the peace, 13.  
 Constable, derivation of word, 1, [3]; of royal castles, 5, 7; of castles of bishops

- and barons, 9 (*see* High Constables); (*see* Petty Constables).
- Constable, Lord High; of France, 1, [3]; of England, 2, 13, [3], [4]; of Scotland, 2, 13, [4], [5]; his privileges and perquisites, [5], [6], [40], [42]; questions between the Town Council and his deputed as to fees of fairs, [6]-[8]; privileges in relation to tournaments, [8]-[10], [52]; criminal jurisdiction, [10], [26]; deputation by him in favour of magistrates of Edinburgh, [10]; questions with them, [12], [17], [21], [25], [26], [35]; disputes with the royal burghs, [19]; precedence of, [36]; (*see* Earl of Errol).
- Constable, High or Chief, of hundreds or franchises, 9, 11, 12, 14.
- Constables, Petty, of townships or tithings, 12, 14.
- Constables in Scotland, 14, 29, 99, 101; xviii-xxi.
- Articles and injunctions for, 101, v.
- Constables in Edinburgh, institution of, 29, 99.
- Elections of, 30, 98, 100, 101, 102, 106, 109, 110, 113, 121, 122, 124, 125, 126, 151, 165, 166, 173, 174, 175, 215, 216, 220, 223, 224, 225, 226, 227, 228, 229, 252, 253, 255, 259, 260, 261, 262, 270, 271.
- Number of, 31, 188, 191, 215, 226, 254, 258.
- Duties of, relative to
- Beggars and vagabonds, 33-39, 108, 109.
  - Firearms, 39-41.
  - Preservation of the peace, watching, &c., 41-66, 100, 103-105, 124, 125, 127, 235-239, 281.
  - Papists, 66-73.
  - Cleaning the town, 74-83, 106, 113-118, 120-121, 122, 133-145, 164.
  - Armour, 84-93.
  - Suppressing profane swearing, Sunday profanation, &c., 93-96, 152, 158.
  - Old Walls, 123.
  - Waste Lands and Houses, 145.
  - Fires, 161, 230, 247.
  - To furnish lists of inhabitants and strangers, 145.
  - idle persons and strangers, 146.
  - lodgers, 146.
  - Residence of, 121, 168.
  - Philanthropic services of, 246, 287, 289.
  - Rifle Volunteer Company, 289.
- Assisting officers of Excise, 163.
- Attending magistrates, 180, 181, 188, 241, 242.
- Penalty for injuring, 100, 104.
- Taking up fines, 106, 140.
- Fines, how disposed of, 161, xiii.
- Punishment for disobedience, &c., 123, 124, 125, 126, 151.
- Penalty for non-acceptance of office of, 126, 183, 231.
- General sketch of duties of, 144, 149, 299.
- Neighbours bound to assist, 109; also Town Guard and Town Officers, 163, 165.
- Watchmaster of, 125.
- Exemptions of from assessment, 103, 133, 183.
- How elected, 162, 189.
- Qualifications of 162, 224, 228, 258, 259, 261, 262.
- Actions against, 160, 167, 179.
- Dangers of office, 167, 175, 178, 179.
- Annual elections, 1, 74.
- Period of service, 162, 163, 174, 189, 214, 222, 223, 224, 225, 226, 232, 249, 253.
- Triennial rotation of, 189.
- Jealous of rights, 166, 175, 231.
- Questions as to their relations to Police, 218-220.
- Disputes with Town Council, 221-223, 249-252, 259-260, 263-270, 291.
- Questions of precedence with other local bodies, 246.
- Allowance to, by Town Council, 168, 234.
- Authorised to use title of High Constables, 224, 228.
- Foreign objects attempted to be engrafted on the Society, 233.
- Arrangements for summoning, 235.
- Collisions with military authorities, 240, 241.
- Drill of, 277.
- Action of, in regard to public questions, 254, 278.
- Roll of, for 1865, lxxxi-lxxxiv.
- Constables of Calton, 234, 247, 248, 249, 263.
- Constables of Easter and Wester Portsburgh, 262.
- Constables of Canongate, 247, 248, 263.
- Constables, Loyal, 190.
- Constable, Archibald, 216.
- Contributions by Constables to public charities, 162, xli.

- Convention of Royal Burghs, 40, 43, 44, 45, 117, [19].  
 Qualification of members, 45.  
 Conventions, act against unlawful, 26.  
 Conversazione, 293.  
 Correction House established in Edinburgh, 107, 108, 109.  
 Councillors constituted Head Constables of Wards, 262, 300.  
 Craftsmen, 63.  
 Cromwell, 67, 101, 119, 120.
- David II., 8.  
 Domesday Book, 42.  
 Drainage of Nineveh and of Roman towns, 82.  
 Dress of Magistrates of Edinburgh, 65.  
 Drunkenness, 152, 153, 154, 158, 159, 164, 165, 187.  
 Dunbar, battle of, 120.
- Edinburgh, divisions of, 14; into quarters, 30, 31.  
 Disorderly condition of, 15; illustrations, 16-28.  
 Tumults, 18-20; legislation for preventing, 20, 28, 41.  
 Watching arrangements in, 45-66, 103.  
 Cleaning arrangements in, 74-83, 113-118, 120.  
 Size of, in 1635, 109.  
 English occupation of, in 1649-60, 120, 122, 124.  
 Lighting of, 120.  
 Lists of inhabitants to be taken up, 145.  
 During rebellion of 1745, 169-173.  
 State of morals in 1763, 1783, and 1791, 185-187.  
 Distress in, in 1795, 192; in 1800, 194.  
 Charters to, [17], [18].  
 Privileges of, [39].  
 Egyptians, acts against, 33-35.  
 Errol, Earl of, 181, 254, [26], [31].  
 Excommunicated persons (*see* Papists).  
 Executions, services of Constables at, 236-238.
- Fast-days, 177.  
 Festive meetings, 168, 181, 184, 289-293.  
 Fines of Constables, how applied, 161.  
 Box for, 161, 293, 294.  
 Firearms, acts against using, 24, 39-41.
- Fires in Edinburgh, 147, 154, 238, 239;  
 duties of Constables in relation to, 161.  
 Flodden, 46, 47.  
 Football, 86, 87.  
 Foreigners, lists of, 193.  
 Fornicators, acts against, 70-72, 152.  
 Four Burghs, laws of (*see* *Leges Quatuor Burgorum*).  
*Fragmenta quædam veterum legum, &c., Scotia*, 76, 86.  
 Fraser, P. S., 255.  
 Funerals, 150, 184.
- Gates of City, 46.  
 Geese, 77.  
 Gipsies, 33-35.  
 Glasgow, Burgh records of, 77, 85.  
 Sanitary condition of, 85.  
 Size of, in 1700, 147.  
 Golden charter, [17], [25].  
 Golf, 86, 87.  
 Guard, hired, in 1561, 22; in 1593, 24; 1612, 37, 103, 104.  
 Magistrates authorised to raise, 25.  
 ——— Charged to appoint, 27, 28, 98.  
 How paid, 66.
- Harlots (*see* Fornicators).  
 Henderson, Alexander, 215.  
 Heresy, laws against, 67.  
 High Street, condition of, 75.  
 Honorary members of the society, 273.
- Idolaters, acts against, 70.  
 Idle and dissolute persons, lists of, to be taken up, 145, 146, 164, 184.  
 Infamous persons, acts against, 33, 164.  
 Insignia of Constables, 161, 252, 260, 267-270, 293-297; list and description of, lxxii-lxxx.  
 Immoralities, acts and proceedings against, 147, 152-160, 164, 166, 178, 179, 180, 185.  
 Court for trial of, 154, 156, 158.  
 Imprisonment for soldiers and marines, 184, 239.  
 Improper houses, 164, 176, 178, 179, 180, 186.  
 Instructions (*see* Orders and Injunctions).
- James I., 86.

- James II., 46, 65, 86, [6], [7].  
 James III., 7, 8, 46, 87, [10], [17].  
 James IV., 34, 75, 87, [8], [17].  
 James V., 34, 47, 87.  
 James VI., 12, 14, 17, 20, 23, 28, 32, 59, 63, 65, 68, 82, 98, 99, 113, 115, 166, [14]-[17]; charters by, to Edinburgh, [17], [18].  
 James VII., 130.  
 Jesuits (*see* Papists).  
 Johnston, Sir William, 229.  
 Jury lists, 177, 243, 245, 246.  
 Justices of the Peace in England, 14; in Scotland, 14, 29, 98, 99; in Edinburgh, Magistrates constituted Justices, 29, 98, 99, [17], [18].
- Katherans, act against, 33.  
 King's birthday, 180, 181, 187, 235, 239.  
 Kirks, acts against slaughter in kirks and kirkyards, 24.  
 Kirk Treasurer, 160.
- Laws of the Society, digest of, to be prepared, 229 (*see* Orders and Injunctions).  
 Lawsuits, legislation for preventing murder of persons engaged in, 16, 17.  
 Law Days between influential persons, 23, 24, 26, 58.  
 Lawson, Peter, 175.  
 Lawson, Charles, 229.  
 Lawson, Charles, Jun., 270, 271.  
*Leges Quatuor Burgorum*, 42, 43, 76, 85.  
*Leges Malcolmi Mackenneth*, [3].  
 Lighting, provision for, in 1554, 21, 49; 1649, 120, 154.  
 Lodgers, names of, to be reported nightly, 26.  
 London, watch in, 49; swine in, 77; privies in, 80; sanitary condition of, 83-85.  
*Londonienses, Munimenta Gildhallæ-Liber Albus*, 77, 80, 84.  
*Liber Custumarum*, 80.  
 Lot (*see* Scot and Lot).
- Mackenzie, Kincaid, 215.  
 M'Laren, Duncan, M.P., 255.  
 Magistrates, duties and responsibilities, &c., of, 64, 123; Justices of the Peace, 98, 99; Sumptuary laws affecting, 65; Sheriffs, [10], [31], [35]; Deputies of Lord High Constables, [10], [40], [51]; Arrangement with Sheriff of County as to criminal jurisdiction, [11]; questions with Lord High Constable, [12], [44]-[50].  
 Magna Charta, 5.  
 Manufactures in Edinburgh, 107.  
 Markets on Streets, 74, 75.  
 Marriage a condition of burghess-ship, 43, 44.  
 Mary, Queen, 31, 50, 71, 88, 90.  
 Mary of Guise, 82, 89.  
 May Games, 19.  
 Merchant Company, 191.  
 Merchants, 63.  
 Minstrels, 49.  
 Miller, Professor, 255.  
 Militia Lists, 193, 243-245.  
 Minute Books, 150, 252.  
 Moderator, meaning of term, 117.  
*Modus procedendi in itinere camerarii infra regnum Scocie*, 42, 43, 76.  
 Monks (*see* Papists).  
 Morton, Regent, 39, 88.  
 Municipality Extension Act, 1856, 262, 300.  
 Murray, Regent, 20, 51.
- New Year's Morning, rioting on, 187.  
 Night walking, Acts against, after ten o'clock p.m., 24, 26, 33, 97, 153, 163.  
 Nuns (*see* Papists).
- Officers of Constables, 161, xl-xli.  
 Office-bearers of Constables, list of, 152, 183, 185, 192, 193, 232, 255, 258, 271, ii-xiii, lxxxi.  
 Old Walls, inspection of, 123.  
 Orange Colours, 117.  
 Orders and Injunctions for Constables, 30, 100, 124, 148-151, 163, 175, 176, 182, 184, 228, xvi-xviii, xliii-xlv, lvi-lix, lxx, lxxi.  
 Orders for internal government of Constables, 150, 184, 185, 229-231, 272, xxxiv, xlv-lvi, lix-lxix, lxxi-lxxiii.
- Papists, laws against, 66-73, 164; policy of, same as that of the Reformers, 69-70.  
 Laws against, enforced, 73, 164.  
 Paris, 77.  
 Parochial arrangements, 32.  
 Paul's Work, 107, 108.  
 Peace, duties of Constables in preserving, 41.

- Pestilence in 1514, 30; 1568, 51; 1574, 52; 1585, 31, 57, 58; 1587, 31, 59; 1604, 32; 1645, 112, 115.  
 Philanthropic Services of Constables, 246, 287-289.  
 Pinkie, battle of, 48.  
 Poindings, 150, 178.  
 Police Acts, local, 216-218.  
 Poor, Acts relative to, 33-39.  
 Press Gangs, 184, 239, 240.  
 Priests, Seminary (*see* Papists).  
 Privy Council, Acts of, 14, 21, 24, 25, 26, 27, 29, 30, 34, 35, 38, 40, 41, 85.  
 Privies, 79, 80, 81, 141.  
 Profaneness, 153-160.  
 Provosts of Edinburgh, 64, 193, 289.  
 Publicans, 182.  
 Quarters, division of city into, 30, 50; boundaries, *ib.*; subdivision of, 31; recognised in parochial arrangements, 32.  
 Quartermasters, appointment of, 31-32, 60.  
 Quartering of soldiers, 123, 129.  
 Rakers, 116.  
 Ramsay, Allan, 165.  
 Rebellion of 1745, services of Constables during, 168-173.  
 Reform, Parliamentary and Burgh, 190, 253-255, 275, 277; petitions by the Society to the legislature regarding, 254.  
 Returns, of aliens and foreigners, 193; of horses and carts, 193, 243; of persons between seventeen and forty-five years of age, 243.  
 Riots:—bread, 182, 194, 235, 236; new year's morning, 187; general, 235, 239, 279-281; reform, 190, 275-277.  
 Rioters to be apprehended, 41.  
 Robert I., 85, [4], [5].  
 Robert II., 33.  
 Robin Hood, 19.  
 Roman towns, privies in, 80; drainage of, 82.  
 Royalty extended, 188.  
 Rules (*see* Orders and Injunctions).  
 Scavengers in London, 116.  
 Scot and Lot bearing, a condition of burgess-ship, 43, 44, 45.  
 Sergeants, 32.  
 Session, Lords of, 24, 25.  
 Sheriffs of Counties sometimes also Constables, 7.  
 Southern Districts of Edinburgh, 209.  
 Spittal, Sir James, 175.  
 St Anthony, monks of, 77.  
 Stage plays, 159.  
 Stark, battle of, 46.  
 Stentmasters, 117.  
 Stob and Staik, 43, 44, 45.  
 Strangers names to be reported nightly, 26; lists of to be made up, 122, 145.  
 Streets, description of, 74.  
 Sunday, acts and proceedings against profaning, 146, 150, 152, 153-160, 164, 176, 185, 186, 187, xxi-xxxiii.  
 Surgeon of Constables, 193.  
 Suspected persons, Acts against, 33, 56, 163, 187, 188.  
 Swearing, profane, Acts against, 93-96, 152, 158, 164, 165, 167, 187.  
 Swine, Acts anent, 75-77, 206.  
 Taverns to be shut at ten o'clock p.m., 26, 153, 154, 155.  
 Town Council, corrupt state of, about 1737, 165.  
 Town Guard, 113, 194-198.  
 Trained bands, 105, 111, 124, 128, 132, 196; captains and officers of, 111, 117; society of, 124, 191, 233.  
 Trotter, William, 215.  
 Tumults, 18, 20-28, 30, 41.  
 Unfreemen, Constables to apprehend, 163.  
 Unlaws, compt of, xiv-xv.  
 Vagabonds, Acts against, 33, 39, 163, 164, 187, 188.  
 Vagrancy, 106.  
 Vice (*see* Immorality).  
 Vintners, 182.  
 Visitors of quarters, appointment of, 31; regulation for, 122, xv.  
 Volunteers, Rifle, 235, 239.  
 Walls, Old, Constables to report on, 123.  
 Walls of City, 45, 46, 47.  
 Waste lands in Edinburgh, inspection of, 145.

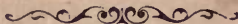
Watch—Magistrates authorised to raise, 25.  
 —Charged to appoint, 27, 28.  
 Arrangements for watching, 20, 22, 23,  
 24, 27, 31, 41–66, 103, 110–113, 118–  
 119, 124, 126, 127–133, 194–198.  
 Division of neighbours into fifties, 55, 65.  
 Do. into thirties, 56, 65; into  
 twenty-six watches, 103.  
 Assessment for supporting, 66, 129, 131,  
 132.  
 Exemptions from assessment for, 66.

Exemptions of Constables from, 150.  
 Watch and Ward, all burgesses bound to  
 perform, 27, 41–45.  
 Weaponshawing, Acts, &c., relative to, 86,  
 87, 88–93; music at, 89, 91.  
 Westminster, statute of, 5.  
 William the Conqueror, laws of, 41.  
 Winton or Winchester, statute of, 11, 13,  
 14, 86.  
 Woollen Manufactures in Edinburgh, 107.

#### ERRATA.

Page 117. Delete the words “it has been seen,” and “*ex-officio*,” in Note 4; and insert the words “usually elected” before the words “the moderator-captain,” in the last line of that note.

Appendix, page xxiv. Substitute July for June on the last line of Note 1: and read 22d November instead of 22d October on that line.




---

EDINBURGH :

PRINTED BY JOHN GREIG AND SON,  
 OLD PHYSIC GARDENS.



UNIVERSITY OF CALIFORNIA LIBRARY  
Los Angeles

This book is DUE on the last date stamped below.

Form L9-100m-9,'52(A3105)444

Marwick -  
Sketch of the  
36 history of the  
High Constables

UC SOUTHERN REGIONAL LIBRARY FACILITY



A 000 998 292 7

DA  
890  
E2M36

