

CONTEMPORARY OFFICIAL REPORTS OF THE PROCEEDINGS AT ELECTIONS OF MEMBERS OF PARLIAMENT FOR THE SHIRES OF ROXBURGH, EDINBURGH, AND ORKNEY, IN 1628. By JOSEPH ROBERTSON, Esq., F.S.A. Scot.

The first of the three papers which I lay before you came under my notice when recently arranging some original records of the Privy Council of Scotland in Her Majesty's General Register House. It is the report made by William Douglas of Cavers, the Hereditary Sheriff of Teviotdale, to the Lords of Council, in obedience to orders issued by them, upon the 30th of October 1628, charging the Sheriffs of the several shires to appear in person before their Lordships, "and to exhibite ane trew and perfyte report in writt conteaning ane accompt of thair proceedings and diligence in executioun of the charge givin vnto thame [to conveene the small barouns and freeholders within the bounds of thair office and to propone vnto thame His Majesteis directioun and to deale with thame to conforme thamselffes thairunto and accordinglie to confirme the electioun maid by thame of thair Commissioners [to Parliament] for the yeere bygane to stand for the yeere to come] and of the obedience of the small barouns and freeholders givin in the said mater."¹

"The Schrefffe of Roxburght his diligence for choose of the Commissioners for the Parliament to haue beinc begun the 15. day of September 1628. and now prorogate to the [15.] of Apryle 1629.

Pleise your Lordships according to His Maiesties command deliuered to me about the last of Julij I acquainted the small barrons and frie holders within the schyre of His Maiesties will and appointed the xij of August for there meiting

¹ Registrum Secreti Concilii, (Acta) 1628-9, foll. 53, 54.

at Jedburgh as vpon the vij day of August I receiued your Lordschips lettres together with the double of ane other missiue sent be His Maiestie to your Lordschips all of them tending to on purpose ather for choose of new Comissioners or approueing the old that had beine the former yeir.

“ At Jedburgh the xij of August 1628. conueined

Sir William Magduell of Mackerstoune	Thomas Ker of Cauers
Sir James Ker of Craillinghall	George Langlands of that Ilk
Jhone Rutherford of Hunthill	Robert Elliot of Fallinesch
Jhone Riddell fear of that Ilk	Gilbert Elliot of Stobs
Thomas Trumble of Minto	Jhone Mow of that Ilk
William Douglas of Boon Jedburgh	Robert Ker of Newtoun
lait Justice conueiner	

The quhilk day in presence of the persons premitid I produced His Maies- ties missiue together with your Lordschips lettres quhilks all being rede and the contents of both considered it was found that there was no Commissioners appointed for the former yeir quhairfor necessare it was to proceed to ane new election But before any farder progres it was obiected be William Douglas of Boon Jedburgh that he was wronged in being conueined to that assemblie he neither being ane barron nor holding fourtie schilling land of the King such onlie haueing voyce in the election of Commissioners be vertue of the Act made be King James 6. parliament 11. cap. 113. quhilk being tryed according to his alleadgance the said William Douglas Thomas Ker of Cauers Gilbert Elliot of Stobs were remoued The rest finding themselues too few in number did ap- point for there next session the second of September and willed me of new to acquaint the absents quhilk was dewlie and diligentlie performed.

“ At Jedburgh the second of September 1628. conueined

Sir James Ker of Craillinghall	Thomas Ker of Cauers
Andro Riddell of that Ilk	Jhone Riddell fear of that Ilk
Jhone Rutherford of Hunthill	Robert Ker of Newtoun

The quhilk day compeired Thomas Ker of Cauers and produced ane packet from the Lord Aduocat and desyred it might be opened and published in presence of the whole number The contents quharof imported that notwithstanding of the doubt moued in the former session be William Douglas of Boon Jedburgh there neided no exception to be taken of Thomas Ker of Cauers to stay his election for ane of the Commissioners of the schyre according to the desyre of His Maies- ties letter Because be the surrander made be the Lords of the Erections all the

vassalls to those Lordschips belonging were become tennents to His Maiestie For warrand of quhilk this his Lordschips opinion there was enclosed ane extract of ane reference be your Lordschips of Seereit Counsell together with ane proclamacioune in fauouris of the fewars of Abbacies¹ quhilk all being seine and considered it was thought fit be the number there present that ane new day of meiting sould be appointed in regard it was certainlie knowne that the Parliament was prorogate and that the whole gentlemen within this schyre that were knowne to hold any land of these erected Abbacies sould be informed of the Lord Advocats declaratioune and willed to be present together with the barrons and frie holders then absent quhairin they willed me to take paines appointing the nynt day of September for there next session.

“ At Jedburgh the nynt of September 1628. conueined

Sir William Magduell of Makerstoune	Robert Ellot of Fallinesch
Sir James Ker of Craillinghall	William Douglas of Boon Jedburgh
Andro Riddell of that Ilk	Jhone Haliburtoune of Murrisslaw
Jhone Rutherford of Hunthill	Thomas Ker of Cauers
Thomas Trumble of Minto	Gilbert Ellot of Stobs
Jhone Riddell fear of that Ilk	James Pringle of Buckholme
Jhone Mow of that Ilk	Ragwell Bennet of Chesters
George Langlands of that Ilk	Mr Jhone Rutherford in Jedburgh
Robert Ker of Neutoune	George Douglas of Freirschaw

The quhilk day after repetition made of the whole former proceeding and reiding of His Maiesties letter together with your Lordschips directions I of new

¹ It appears, from the Register of the Privy Council, that on the 28th of August 1628, “ Sir Thomas Hoip of Craighall knight baronet advocat to Our Souerane Lord represented to the Lords of His Maiesties Priue Counsell that he wes certified from some of the Shireffs of the seuerall schyres of this kingdome that at the lait election of the Commissioners for the small barons and freeholders of the saids schirefdomes to Parliaments for this yeere thair wes some doubt moved if these who formerlie wer vassalls to the Lords of Erectiouns be now vassalls to His Maiestie and if they might be chosin Commissioners to Parliaments and Generall Counsell for the saids small barons and freeholders And seing be the lait surrenders and resignatiouns made in His Maiesties hands be the Lords of Erectiouns of thair superioriteis of the saids erectiouns His Maiestie is now become immediat superiour to all the vassalls and freeholders of the saids erectiouns Thairfor the said Lord Advocat humble craved of the saids Lords that they would wryte to the Shireffs to cleere thame of this thair doubt and to certifie thame that these who wer formerlie vassalls to the Lords of Erectiouns ar now his Maiesties vassalls and so may be laughfullie chosin Commissioners The Lords having heard the Advocats propositioun they thinke that it properlie belonges to himselfe to answeere and cleere the doubt foresaid and advises him to send to the Shireffs a copie of the proclamatioun made to that purpose.”—*Registrum Secreti Concilii, (Acta)* 1628-9, fol. 47.

read ouer againe to the number then present the Lord Aduocats declaracioune willing these our new conueined associats to declaire there owne opinions in this our long wished for incorporacioune It was answered be James Pringill of Buckholme to quhom I addressed my speich that he reuerenced my Lord Aduocats opinion and sould be glad the consequence proued according to his Lordships information withhall affirmeing that although his father were his superior yet he would prefer His Maiestie in his owne optione if be law he might But seing that as yet he had receiued no new infestment of His Maiestie neither was he fred from the seruitude dew to his ancient Lord quhairto he was oblisched be his standing infestment he wold be sorrie to giue any cause of distast to those he was so much oblisched Protesting vpon assurance of securitie he sould giue all readie obedience to any of the lyke seruices The whole number of the same nature being particularlie posed approued his opinion and of there owne accord remoued except Thomas Ker of Cauers who adhered to the Lord Aduocat his declaracioune It was thereafter thought fit be the remanent gentry there present that the election sould be delayed till the Tuesday after Michaelmes quhilk was the cheife court day and then to make our election according to the custome.

“ At Jedburgh the thrid of October 1628. being on of the heid courts conueined

Sir James Ker of Craillinghall	}	Gilbert Ker of Lochtour
Jhone Rutherford of Hunthill		George Langlands of that Ilk
Thomas Trumble of Minto		Robert Elliot of Fallinesch
Jhone Riddell fear of that Ilk		Jhone Mow of that Ilk

The quhilk day after we had remembered our former meitings and reuised our papers it was moued whether the number there present would approue the nominatioune made be His Maiestie in his missiue or if according to the law and customeable practicke of the kingdome they would proceid to ane new election It was after some oppositione made be some few of the number concluded be manyest voyces that ane new election was safest Quharfor there was leited Sir James Ker of Craillinghall Jhone Riddell fear of that Ilk and Gilbert Ker of Lochtour who all of them being desyred to remoue that tuo of them might be chosen they and euerie ane of them not onlie refused to remoue but did frielie declare in presence of the court that nane of them would accept of the commission quharupon I tooke instruments protesting that I would acquaint your Lordships with there contumacie Quhilk before this tyme if my health had serued me I sould haue performed Quharby as yet there is no Commis-

sioners chosen for the ensuing Parliament humbly requyering your Lordships herein to proude remeid In wites that the premissis are of veritie I haue subscryued thir presents with my hand at Cauers the xv day of November j^m vj^c and twentie aucht yeirs.

“ W DOWGLAS ”

I have not observed anything farther as to this election of Commissioners for Roxburghshire. In the first Parliament which met after these proceedings—that of 1633—the county was represented by the Sheriff of Teviotdale himself, and Sir Walter Riddell of that ilk. The Commissioners to the Parliament of 1621 were the same Sheriff of Teviotdale and the Laird of Riddell.

The second paper relates to the election of Commissioners for Mid-Lothian. It is an act passed by the Privy Council upon the 28th of August 1628.

“ *Charge aganis some barounis of Lotheane.* ”

“ Forsameekill as at the lait dyet keepped be some of the small barons and freeholders of the shirefdome of Edinburgh for confirming the former electioun made be thame of Commissioners for the said schirefdome to attend His Maiestis Parliaments and Generall Counsellis for the yeere to come the persouns vnderwrittin thay ar to say Sir Robert Fairlie of Braid Sir Williame Nisbit of the Deane Prestoun of Quhythill Mr Williame Adamesoun of Graycruik Johne Cowper of Gogar and James Duncane of Rathow compeered and consented to the continewing of the saids Commissioners for the yeere to come And being desired to subscryue the act anent continewing the saids Commissioners to the intent the same might be autentick and accordinglie ressaued in Parliament They refused to subscryue the said act Sua that the same act wanting the subscriptionis could be of no force and the Commissioners nominat thairin will not be ressaued nor admitted to haue vote in Parliament¹ To the disappointing of His Maiestis service without remeid be provydit Thairfoir the Lords of Secreit Counsell ordanis lettres to be direct charging the persouns particularlie abouewrittin to compeir personallie befor the saids Lords vpoun the xxiiij day of September nixt to ansuer vpoun thair refusall to subscryue the act whairby they consented to the continewing of the Commissioners of the said schirefdome for the yeere to come And to heare and see thame decerned to subscryue the said act Or elles to shaw a reasonable caus why the same sould

¹ It was required by statute that Commissioners for Shires should bring with them to Parliament commissions sealed and subscribed by at least six of the barons and freeholders whom they represented.—*Acts of the Parliaments of Scotland*, vol. iii., p. 510; vol. iv., p. 141.

not be done And that they compeir personallie to the effect foresaid vnder the pane of rebelloun etc."¹

No farther trace of this affair is to be found in the record of the Privy Council. The Commissioners for the shire of Edinburgh, to the Parliament of 1621, were the Laird of Haltoun, and the Laird of Lugtoun; to the Parliament of 1633, Sir George Forrester of Corstorphine, and Mr Patrick Hamilton of Little Preston.

I transcribe the third paper, which I bring before you, from the Register of the Sheriffdom of Orkney, in Her Majesty's General Register House.

Act anent Commissionaris for Parliament.

" Kirkwall septimo Februarij 1628.

" The quhilk day in ane head court haldin at Kirkwall and continewit to this day Compeirit Robert Monteith of Egilschay schirefdeput of Orknay and Zetland and conforme to the custome obseruit within schirefdomes desyrit Commissionaris to be chosin for Parliament and Conventiounis for that yeir The haill gentilmen and sutteris of court for the maist pairt being personalie present Efter gud advyse and mature deliberacioun haid be thame thairanent declairit that they wer not sick personis as sould compeir in Parliament or Conventioun Seing thair was nather barroun nor burges within the said schirefdome nor men of that qualitie to chuse or mak choise of for comperance in Parliament or Conventioun And that in respect of thair estait and inhabilitie being bot meane gentilmen and firmoraris Quhairvpoun the said Robert Monteith of Egilschay askit actis of court and instrumentis."²

No Commissioners for Orkney and Shetland appear in the rolls of the Parliaments of 1621 or 1633. Orkney sent two representatives to the Parliament of 1617.

The documents which I have read show the reluctance with which elections were made. But even where members were duly chosen, there would appear to have been difficulty in prevailing upon them to take their seats, as we seem never to have had in Scotland the usage so well known in England of compelling the

¹ Registrum Secreti Concilii, (Acta) 1628-9, fol. 48.

² Court Book of Orkney and Shetland, 1612-1630, fol. 217.

newly chosen Knight of the Shire to find sureties for his due attendance at Westminster. I copy the following protest from the original in Her Majesty's General Register House :—

“ Apud Lewchouris quinto die mensis Octobris anno Domini millesimo sexcentesimo duodecimo.

“ The quhilk day in presens off me notar public and witnessis vnderwrittin Personalie constitute George Brodie burges of Elgin schireff deput of the schireffdom of Elgin and Forres quha past to the personall presens of the Richt Honorabill Robert Innes of that Ilk commissioner vnderwrittin Quha haiffing in his handis ane commissioun maid and subseryuit be certan of the barones and friehalderis of the schireffdom of Elgin and Forres direct to him as Commissioner electit and chosin be thame to be direct to His Maiesteis Parliament to be haldin at Edinburghe and begin on Muninday the tuelff day of October instant conforme to our Souerane Lordis breiff direct to Johnne Dunbar of Westfeld schireff principall of Elgin and Forres and his deputis tharanent as the said commissioun of the dait at Elgin the aughtene day of September the yeir of God forsaid beris And haiffing in his handis ane precept direct be the said schiref chargeing all and sindrie barones and friehalderis of the said schireffdome to content and paye to the said Robert Innes of that Ilk the sowme of thretteine schillingis four pennes money furtht and fra euerie pound land of the said schireffdome stentit be the saidis barones and frehalderis consent for suppliment of the said Commissioners expenss as the said precept beris And haiffing lykwayes His Maiesteis breiff direct to the said Commissioner for compering to the said Parliament vnder His Maiesteis great seall at Edinburgh the xxiiij day of August and of His Maiesteis regnes the fourtie sext and ten yeiris 1612 Quhilkis the said George Brodie schaireff deput fairsaid presentit and offerit to the said Robert Innes of that Ilk commissioner abon writtin requer and him to resave the samyn and pas fordwardis to the said Parliament conforme to the commissioun and breiff abonewrittin. Quhilk the said Robert Innes of that Ilk refusit to accept and declarit that he wes nocht abill to accept the samyn in respect of his disease being bedfast at the pleasour of God be infirmitie off seiknes And the said George Brodie in respect of the refusall fairsaid protestit that the schireff suld be frie off the penaltie contenit in His Maiesteis breiffis in respect of his diligence abonewrettin Quhairvpone the said George Brodie requerit instruments at me notar public vnderwrittin day yeir moneth and place fairsaidis Befoir thir witnesses Johnne Innes of Cromie Johnne Innes of Lewcheris James Rutherford provest of Elgin George Annand James Thomesone bailyeis tharof witnessis requerit heirto.

“ Ita est Georgius Sutherland notarius publicus per Dominos Consilij admissus testis presens in premissis requisitus ad hec manu propria subscribo

“ G SUTHERLAND notarius subscribo”

The first Parliament which met after these proceedings was in 1617, when the shire of Elgin and Forres was unrepresented.

Allusion is made in the protest of the Sheriff of Murray to a tax upon the electors for payment of the expenses of their member. Provision for this purpose is coeval with the first appearance of county representation in Scotland.¹ The statute of 1427, which relieved the petty barons and freeholders from attendance on Parliament, on condition of their sending two commissioners from every county, enacted that these commissioners “sal have thare costage of thaim of ilk schire at aw compearance in the Parliament or Consal and of thare rentis ilk punde sal be vtheris fallowe to the contribucioun of the said costis.”² The statute of 1587, which renewed the act of 1427, and first really established

¹ At a still earlier date, in the year 1304, when King Edward I. was taking order for the representation of Scotland in a Parliament to be held at London, his Scottish counsellors (Robert Wishart, bishop of Glasgow, Robert Bruce, earl of Carrick, and John of Moubray) prayed that the Scottish representatives (two bishops, two abbots, two earls, two barons, and two commoners) might have their costs and expenses from the community by whom they were chosen. The king agreed to their request: “Ita responsum est per Regem: Rex vult quod illi decem qui eligentur ad veniendum ad Parliamentum Regis pro tota communitate terre Scocie, habeant expensas suas de tota communitate Scocie; et quod duo legales homines citra mare Scocie et duo legales homines ultra mare eligantur ad hujusmodi expensas assidendas et levandas per visum et auxilium Custodis regni Scocie et Camerarii.”—*Rotuli Parliamentorum*, vol. i., p. 160.

² Acts of the Parliaments of Scotland, vol. ii., p. 15. The statute says nothing as to the recovery of the costs. It may have been intended that that should be provided for, as in England, by a writ from Chancery put into the hands of the knight of the shire before he left Westminster, showing the number of days which he had served, and commanding the sheriff or bailiff to levy the amount. It is set forth, among other articles of charge against William le Gentil, sheriff of Derbyshire, in 1323-4: “Et quod cum quoddam breve Regis venisset eidem Willelmo pro duobus militibus eligendis ad eundem ad Parliamentum Regis qui eligi debuissent per totam communitatem comitatus idem Willelmus elegit Gilbertum de Haydok et Thomam de Thorntoun sine assensu communitatis qui cum reddisset de Parlamento tulerunt breve pro expensis suis levandis per quod preceptum fuit Ricardo et Willelmo de Wynwyk ballivis quod levarent xx libras pro expensis predictorum militum ubi communitas istius comitatus habuisse possent de electione sua propria duos sufficientes homines ad eundem ad Parliamentum pro x marcis vel x libris. Et preterea iidem ballivi tantum levaverunt ad opus suum proprium quantum ad opus predictorum militum.”—*Sir F. Palgrave's Parliamentary Writs*, vol. ii., div. ii. p. 315.

the representation of counties, took care to provide "that all freholders be taxt for the expensis of the Commissioners of the schires passing to Parliamentis or Generall Counsellis, and lettrez of pointing or horning to be direct for payment of the sowmes taxt to that effect vpoun ane simple charge of sex dayes warning allanerlie."¹ In 1641, the sum to be allowed to each commissioner was fixed at five pounds Scots a day,² and new order was taken for its payment: "The which daylie allowance efter rying of the saidis Parliamentes or Generall Counsellis shall be callulat and put in a soume by the Clerke of Parliament vnder his hand to be devydit and imposed proportionally vpoun the whole free holderes heritoures and lyferenteres holding of the Kingis Majestie and the Prince according to the proportione of ther landes and rentes lying within the shyre Excepting allwayes forth of this act all the landis belonging to the noblemen or there immediat vasselles."³ On the same day with this statute an act was passed to except Sutherland from its operation, "becaus there is only tuo⁴ inhabitantes within the said shyre holding landis of the Kingis Majestie the whole remanent heritoures being ather vasselles to the Erle of Sutherland or holding ther landis of some other superiour." It was therefore enacted, that "the allowance of the Commissioneres of the sherefdom of Sutherland be extendit devydit and imposed proportionally wpoun all and sindrie heritoures fewares lyfrenters and frieholderes within the said shyre whither they be vasselles to His Majestie or holding their lands of any other superiour whatsoever according to the extent of the landis lying within the said shyre."⁵ In 1649, there was an attempt to extend the provisions of the act in favour of the Commissioners for Sutherland, to the Commissioner for Caithness. That gentleman petitioned Par-

¹ Acts of the Parliaments of Scotland, vol. iii., p. 510.

² The Knight of the Shire in England had four shillings sterling a day; the citizen or burgess, half as much.

³ Acts of the Parliaments of Scotland, 11th Nov. 1641. MS. Register House, Edinburgh. So, in England, the lands of Peers of the realm and their vassals, and of the clergy, whether regular or secular, were exempt from contribution to the wages of the knight of the shire, because both the noble and the churchman served in Parliament at his own expense.

⁴ It appears that, in 1673, there were no more than six or seven landowners in Linlithgowshire who, as holding of the Crown, could be called on to pay the expenses of their Commissioners in Parliament.—*Fountainhall's Historical Notices of Scottish Affairs*, vol. i., pp. 81, 82. In the case here noticed by Sir John Lauder, the Court of Session decided that the Commissioners of Shires were not to have payment of their expenses on such days as they were not in Edinburgh or its suburbs, nor during recesses of Parliament of such length that they might conveniently go home, unless the Lords of the Articles were sitting, when it was the duty of all the Commissioners to be in attendance.—*Stair's Decisions of the Lords of Session*, part ii., p. 271.

⁵ Acts of the Parliaments of Scotland, 11th Nov. 1641. MS. Register House, Edinburgh.

liament "to grant and pas ane act for the shirefdome of Caithnes authorizing the heretours and landit gentlemen thairof being qualified for their affectioun to the caus [that is, the Covenant] to have power and voyce in choyseing Commissioneris to Parliament and vtherwayes in tyme cumeing bot not to be capable [of] being Commissioneris thameselffis They not being the Kingis vasellis . . . And als that the chairges of Commissioneris to be choysen in all tyme cumeing may de divydit and imposed vpon all proportionallie according to their estaites."¹ To the rate of payment fixed in 1641, there was added in 1661, an allowance for the prices of "foot mantles for the Riding of the Parliament," on condition of "the Commissioners always at the rising of each Parliament makeing the foot mantles furthecumand to the shire to be disposed of as they shall think fitt."² Two years afterwards it was enacted that Commissioners, whether for shires or burghs, who failed to be present at the Riding on the last day of the Parliament, should "forfeit and losse the allowances due to them for their attendance."³ In 1681, "the whole heretors liferenters and wodsetters" were required to contribute to the charges of the Commissioners for the shire, and the cost of their foot mantles, "according to their valuation, except only those who hold of noblemen or bishops, or lands belonging to burghs royal in burgage."⁴ In 1690, it was enacted "that the Clerke of Register give certificates to the Commissioners for Shyres and Burrowes of their attendance in Parliament who require the same for exacting of their fees from the Shyres and Burrowes which they doe represent."⁵

I am unable to say, at this moment, how long after the Union the members sent from Scotland to the British Parliament continued to claim or receive payment of the charges of their attendance at Westminster. In May 1708, when the Linlithgow district of burghs chose its first member, the act of election takes care to record that he "engaged and promised to serve *gratis*." But on the other hand, the member for the Aberdeen district of burghs, chosen in

¹ Acts of the Parliaments of Scotland, 16th March 1649. MS. Register House, Edinburgh.

² Acts of the Parliaments of Scotland, vol. vii., p. 235. Id., p. 474. Id., vol. viii., p. 354.

³ Acts of the Parliaments of Scotland, vol. ix., p. 237. Sir John Lauder notes that "my Lord Lauderdale was so huff'd at this session of Parliament in 1673, that they say he discharged the [Clerk of] Register to give out any letters of horning to the Commissioners that served at that Parliament, for their fees, and let them that pleased pershue it by way of action."—*Fountainhall's Historical Notices of Scottish Affairs*, vol. i., p. 82.

⁴ Return of the Election of the Honourable Colonel George Douglas to be Member of Parliament for the district of Linlithgow, Selkirk, Lanark, and Peebles, 26th May 1708. MS. Register House, Edinburgh.

⁵ Kennedy's Annals of Aberdeen, vol. i., p. 236.

the same year, had £425 sterling for his expenses in attending two Parliaments; and the members for the Glasgow district of burghs continued to get payment of their costs until the year 1715.¹ I should add that the unpaid member for Linlithgow was a brother of the Earl of Morton, while the paid members for Aberdeen and Glasgow were burgesses of the cities which they represented.