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Whatever Happened to the Scottish Burgh Records?

Athol Murray

An Archivist's Perspective

My interest in burgh records is that of an archivist rather than a historian, less in the information they contain than in why they were created and why they take their particular forms, both important for understanding their contents. To this one may add how and why they have survived, with particular reference to the role of the Scottish Record Office (SRO); since 2011 National Records of Scotland (NRS).¹

Every archivist is conscious of the traditional enemies of records: fire, flood and infestation by vermin and insects. Infestation is almost always attributable to negligence on the part of custodians; fire and flood may have external causes, sometimes attributable to human agency. While it might be tempting to blame loss of records on the English, Edinburgh and Haddington, in the path of destructive English incursions up to 1560, still preserved their charters from Robert the Bruce and other early documents. Over the last century some European towns have suffered major losses of archives, mainly in the Second World War. Cologne's historic archives survived the war only to suffer a major disaster in 2009 when the city's main archive building collapsed into workings for its new metro system.² Scotland burgh records have suffered no such single disaster, but cumulative losses

¹ Unlike in England, Scotland's national archives have been under a single authority since the thirteenth century, until 1879 the lord clerk register (clerk of the rolls and register), then the deputy clerk register, replaced by the keeper of the registers and records in 1928, and from 1949 the keeper of the records of Scotland (office combined with registrar-general 2011). Since 1788 the main record repository has been H. M. General Register House (Register House), also the departmental name until 1949, after which Scottish Record Office (SRO) was used for the department and its repositories. *The Laws of Scotland: Stair Memorial Encyclopaedia*, Reissue 13 (Edinburgh, 2006), paras 1-31; original version in *Laws of Scotland*, 19 (1990), paras. 801-82.

² 'Der Einsturz des Historischen Archivs', <http://www.stadt-koeln.de/leben-in-koeln/kultur/historisches-archiv/der-einsturz-des-historischen-archivs> [accessed 15 December 2015]. Legal responsibility has yet to be determined.

have been great. To understand why some have survived, others not, we must look at them in their historical context.³

Burghs and their Records before the Union

Charters and titles to land have survived because they might be needed to defend a burgh's rights and privileges as a legal community and its 'common good' (property and revenues). Some go back to its foundation, the earliest mid-twelfth century, but not all are originals. Burghs might ensure against loss by having the text of one king's charter embodied in a successor's confirmation or a transumpt by a notary public.⁴ Perth's 'Golden Charter' of 1600 recites twenty four earlier royal charters and documents, the earliest William the Lion's, the latest 1582.⁵ Occasionally those who had not taken such precautions resorted to creative thinking. Despite its charters having been 'cruelly consumed by fire by barbarous rebel subjects of Ireland', Tain claimed to have been founded by Malcolm Canmore in 1057. Prestwick's 1600 charter from James VI asserted that his predecessors had erected the town into a free burgh of barony 617 years earlier.⁶ Local plans for celebrations in 1957 and 1983 had to be modified when it was pointed out that there were no burghs or royal charters before the twelfth century.

Where charters have survived other burgh records have not. In 1400 there were perhaps seventy burghs, more or less equally divided between royal and non-royal. Of these only Aberdeen retains any fourteenth-century court records. By 1560 there were some fifty royal burghs from the largest, Edinburgh, to the smallest, like Falkland, and up to 120 non-royal burghs of barony and regality, from the largest, Dunfermline, Glasgow and St Andrews, down to glorified hamlets.⁷ Most small non-royal burghs have left no records,

³ D. M. Palliser and others (eds.), *The Cambridge Urban History of Britain*, 3 vols (Cambridge, 2000), has not replaced W. M. Mackenzie, *The Scottish Burghs* (Edinburgh, 1949), for some aspects of burgh history up to 1834. W. C. Dickinson's introduction to *Early Records of Aberdeen, 1317, 1398–1407* (Edinburgh, 1957) provides more detailed treatment of medieval burghs; G. S. Pryde, *Court Book of Kirkintilloch* (Edinburgh, 1963) does the same for non-royal burghs. See also M. Lynch et al (eds.), *The Scottish Medieval Town* (Edinburgh, 1988).

⁴ G. W. S. Barrow and others (eds), *Regesta Regum Scottorum*, 1–2, 4–6 (Edinburgh, 1960–2013), identifies sources of texts.

⁵ J. B. Paul and others (eds), *Registrum Magni Sigilli Regum Scotorum*, 11 vols (Edinburgh, 1882–1914, reprint 1984), 6, no. 1098. The 1600 charter is in Perth and Kinross Council Archive, Perth burgh records (PKA/B59/23/23), along with several that it confirms.

⁶ *Registrum Magni Sigilli*, 5, no. 1432, 6, no. 1042.

⁷ G. S. Pryde, *The Burghs of Scotland* (London, 1965) lists pre-1830 burghs by category in

while nearly all former royal burghs have some from the seventeenth century or earlier, mainly court and council registers, notaries' protocol books, and accounts. Other records may include those of their guildry (gildry) and incorporated trades.⁸

Aberdeen's records, by far the best preserved, start with the only surviving parchment burgh court roll (1317), followed by the first of an almost unbroken series of court and council registers beginning in 1398, all in paper books.⁹ Greater availability of imported paper may be a factor for increasing survival of burgh records after 1400. While survival might appear more likely in cities and larger burghs with, sooner or later, full-time town clerks, rather than burghs where they remained part-time until 1975, this is far from the case. Edinburgh and Glasgow have no surviving fifteenth-century court books. Burghs that do include Ayr (1428), Montrose (1455), Lanark and Dunfermline (both 1488), important places then and later; Peebles (1456) less so. But who would expect Newburgh (Fife) to have the fourth oldest (1459–79), still less Prestwick which was village-sized until the late nineteenth century. Yet it has material spanning 1470–1616, being the first burgh record to be printed in full,¹⁰ ten years before the Spalding Club's extracts from Aberdeen burgh registers were released. However, Newburgh's first court book is followed by a gap of 220 years before the next (1700). Why did it survive when later ones perished? Its town clerks did take care of documents, which survive from 1457 onwards.¹¹ Elsewhere there is evidence of records now lost having survived for lengthy periods. Pre-1528 Edinburgh records were there to be copied in 1579–80,¹² Dunfermline's earliest court book dates from 1488, but in 1917 there was 'some tradition that an earlier volume was lost within the last century'.¹³ Though nearly all those now or formerly in NRS were deposited

order of foundation, but if a burgh's status changed it appears more than once. See maps in *Cambridge Urban History*, 1, 726, and P. G. B. McNeill and H. L. MacQueen (eds), *An Atlas of Scottish History to 1707* (Edinburgh 1996), 231–3.

⁸ D. Robertson and M. Wood, 'Burgh Court Records 1319–1834' in *An Introductory Survey of the Sources and Literature of Scots Law* (Edinburgh, 1936), 98–110, lists records of over fifty burghs. A. Ritchie, 'Finding Scottish Burgh Records', *Scottish Archives*, 12 (2006), 2–27, provides guidance on tracing current locations.

⁹ S. Convery and others, 'Aberdeen City Archives: A Celebration of 600 years of Council Registers', *Scottish Archives*, 4 (1998), 104–10

¹⁰ J. Fullarton (ed.), *Records of the Burgh of Prestwick* (Maitland Club, Glasgow, 1834).

¹¹ St Andrews University Library, Newburgh burgh records (B54), 13/1–2, 10/31.

¹² J. D. Marwick (ed.), *Extracts from the Records of the Burgh of Edinburgh 1403–1528* (Edinburgh, 1869), xxx–xxxii.

¹³ E. Beveridge (ed.), *The Burgh Court Book of Dunfermline* (Edinburgh, 1917), vii.

after 1920, Wigtown's court book (1512–35) and rental book (1592–9), were in the 'outmost room' of the Laigh Parliament House by 1700, along with stray sixteenth-century records from Perth,¹⁴ all perhaps produced as evidence in court of session cases and not returned afterwards.¹⁵

By 1600 all-purpose court books were splitting into separate records for proceedings of town council and burgh court. By then, too, instead of parties to a deed appearing in person to seek the court's authority to enforce it, registration in the court book could be given the effect of a decree. Burgh registers of deeds separated from court books at different date. Edinburgh's for example did so in 1561, soon after the court of session's register and just before the new Edinburgh commissary court's (1564). Deeds could only be registered for execution (legal enforcement) until the Registration Act 1698 (c 4), allowed registration for preservation.¹⁶

Burgh records were kept by town clerks, most being notaries public with private practices. After breakfast on 1 August 1425 Perth's town clerk, William Kinnaird, started work on his '*Liber Omne Gaderum*', a collection of legal texts, framing its preface as a notarial instrument, with his dog and cat as witnesses.¹⁷ Generally notarial instruments were drawn up for private clients requiring an authenticated copy of a document or a record of events or transactions. These might include delivery of sasine of lands to heirs or purchasers and other matters relating to real property within burghs or elsewhere.¹⁸ Notarial instruments were expanded from notes or protocols made on the spot, recorded in the notary's protocol book.¹⁹ Protocol books, surviving from the

¹⁴ National Records of Scotland (NRS), Wigtown burgh records, NRS/B75/5/1, B75/6/1; Scottish Record Office archive, Inventory of records c.1700 (NRS/SRO1/44). The Laigh Parliament House housed the national archives 1662–1789. Two Perth court books (1563-5 and 1581-7) have been returned to the burgh records (PKA/B59/12).

¹⁵ An Aberdeen 'bailie court' register', also listed in NRS/SRO1/44, was recently identified as extracts made in connection with a dispute between council and craftsmen and put with court of session productions (NRS/CS96/4918).

¹⁶ Scottish Record Office, *Guide to the National Archives of Scotland* (Edinburgh, 1996), 206–8. Pre-Union acts are identified by their numbers in T. Thomson and C. Innes (eds), *Acts of the Parliaments of Scotland*, 12 vols (Edinburgh, 1814–75).

¹⁷ A. Murray, 'The Town Clerk of Perth's *Liber omne gaderum* 1425', *Scottish Archives*, 5 (1999), 63–6.

¹⁸ J. Durkan, 'The Early Scottish Notary' in I. B. Cowan and D. Shaw (eds), *The Renaissance and Reformation in Scotland* (Edinburgh, 1983), 22–40; 'Legal Profession', *Laws of Scotland*, 3 (Edinburgh, 1992), paras. 1212–14, 1221.

¹⁹ Those of William McGowan, town clerk of Wigtown from 1553 to 1605 are preserved among papers of his client, Sir Patrick Vaus of Barnbarroch, having survived a fire

later fifteenth century onwards, thus complement the burgh court books as records of the urban community. The earliest were those kept by town clerks. Aberdeen's begin in 1484, just after Peebles (1483), both several years behind Stirling (1469).²⁰ Fourteen of seventeen compiled between 1485 and 1522 by James Young, notary in the Canongate, survived when it was absorbed into the city of Edinburgh in 1859; the last (1521–2), went missing sometime thereafter.²¹ The city's own earliest protocol books are four kept by John Foular (1501–34), his first being lost.²² However, though town clerks drew up most instruments relating to burgage property, they did not have exclusive rights to do so. Until 1567 any notary could be employed.

The long-standing problem of regulating notaries was finally solved by an act of 1563 (c 17), made necessary by repudiation of papal authority under which most had operated. Henceforward all were to be created by royal letters and admitted by the lords of session.²³ In 1567 the first (c 34) of two acts required sasines within royal burghs to be given by a bailie and the common clerk; the second (c29) ensured the delivery of protocol books of deceased burgh notaries to the provosts and bailies. This first statutory provision for preservation of local records might still be invoked to recover any burgh protocol book that has fallen into private hands.²⁴ Though town clerks continued to record all types of legal business, instruments of sasine came to predominate. So much so that when statutory registration of burgh sasines was established in 1681 most clerks continued to use their current protocol book, while many treated earlier ones as part of the new register.²⁵

that destroyed Barnbarroch House in 1941. NRS, Gifts and Deposits, Vans Agnew of Barnbarroch muniments (NRS/GD99), boxes 69–70.

²⁰ Stirling Council Archives, Stirling burgh records, SCA/B66/1/1 James Darow's protocol book, 1469–84, summarised in 'Abstract of Protocol Book of the Burgh of Stirling', *The Scottish Antiquary*, 10-11 (1896–7), 156–71.

²¹ G. Donaldson (ed.), *The Protocol Book of James Young 1485–1515* (Edinburgh, 1952), xii, originals in NRS, Edinburgh burgh records, NRS/B22/22/2–16.

²² J. Durkan (ed.), *Protocol Book of John Foular, 1528–1534* (Scottish Record Society, 1985), vii, originals NRS/ B22/1/1–4. Other protocol books in print are listed in D. Stevenson and W. Stevenson, *Scottish Texts and Calendars* (London and Edinburgh, 1987), 15, 32, 46, 125–33. Glasgow's begin 1547, printed up to 1600 in R. Renwick, *Abstracts of Protocols of the Town Clerks of Glasgow*, 10 vols (Glasgow, 1894–1900).

²³ *Public Registers and Records*, paras. 33–5.

²⁴ *Ibid.*, para. 46.

²⁵ *Guide to National Archives of Scotland*, 199–205, where dates for burgh registers follow the present division between protocol books and registers. Lists supplied by burghs in 1808, Reports and Inventories of Records of Royal Burghs (NRS/SRO12/8), show some counting protocol books as sasine registers, whereas Edinburgh's

As the first burgh court books were all-purpose records, it is not surprising that the earliest surviving burgh account is in Aberdeen's oldest court book, recording the provost's expenses in 1399.²⁶ Separate accounting records were emerging by 1500. Haddington's accounts of the 'fermoraris' of the burgh's mills and common good (lands and revenue), beginning in 1494 merely listed auditors and sums due by or to the tacksmen (farmers) up to 1500. Sometime thereafter the volume, containing some 150 blank folios, was removed from the burgh records. Between 1550 and 1574 it was being used by Sir Richard Maitland of Lethington (now Lennoxlove, two kilometres south of Haddington). By 1714 it was in the library at Castle Grant (Moray), where in 1740 it was given to a judge, Patrick Grant, Lord Elchies, after whose death it was acquired by the Advocate's Library.²⁷ Accounts still with burgh records include a particularly good series for Ayr, beginning 1534.²⁸

Surviving burgh accounts are complemented by two series of exchequer records. The exchequer rolls (NRS/B38)²⁹ include the burgh rolls, accounts rendered by the provosts (later bailies) of royal burghs from 1328 onwards. In most earlier accounts they are charged with a fixed sum, the ferme (farm) or 'burgh maills', negotiated with the chamberlain, but occasionally the account shows actual sources of revenue. In 1342 the provosts of Perth were charged with money from the burgh's fishery, sale of salmon, the small (petty) customs and the multures of their mill.³⁰ From 1319 onwards burghs obtained new charters giving them 'feu-ferme' (fee-farm) tenure for payment of fixed annual sum, but under James II a few were still paying variable amounts.³¹ Berwick, among the first to get feu-ferme status (1320), did not regain it during a brief return to Scottish hands under James III. In 1477 his commissioners set the burgh maills to the community for a fixed sum, with additional payments for lands and fishings, the ferry and small customs.³² Having rendered their

protocol books continue to 1767, where the register starts.

²⁶ Dickinson, *Early Records of Aberdeen*, 80–2.

²⁷ National Library of Scotland, Elchies MS, Adv.MS.31.2.2, contains Maitland's 'Practicks', recording court of session decisions, and other historical and genealogical writings by him.

²⁸ G. S. Pryde (ed.), *Ayr Burgh Accounts 1534–1624* (Edinburgh, 1937).

²⁹ Printed to 1600 in G. Burnett and others (eds), *The Exchequer Rolls of Scotland*, 23 vols (Edinburgh, 1878–1916). Up to 1618 the burgh rolls also contain accounts of the 'great customs' collected by royal officials.

³⁰ *Exchequer Rolls*, 1 (1878), lxxix–xcv, 484–6.

³¹ *Exchequer Rolls*, 5 (1880), 194, 400, 563; W. Chambers (ed.), *Charters and Documents relating to the Burgh of Peebles* (Edinburgh, 1872), 16–19.

³² *Exchequer Rolls*, 8 (1885), 551, 9 (1886), 81, 157.

account the bailies would receive their *eque*, a certified copy of the entry in the burgh roll. These can be found in burgh records from the sixteenth century onwards. In 1595, instead of an eque, Inverness' Edinburgh agent sent them the actual membrane of the burgh roll that he had 'borrowed', with a request for its immediate return. That did not happen until 1997.³³

The exchequer rolls provide few clues to management of burgh finances, which was supervised by the chamberlain.³⁴ As his control weakened, supervision passed to the lords of council. In 1498 they held an inquisition into Elgin's common rents, lands, possessions and other common goods for 'the public gude and commone wele' of the town.³⁵ An act of 1535 (c 35) required burgh magistrates to bring their 'compt bukis of thare common gudis' to the exchequer for the lords auditors to consider 'gif the samin be spendit for the common wele of the burcht or nocht'. Anyone who wished might 'argue and impugn' them, 'sua that all murmour mai ceiss in that behalf'. Its wording suggests that the Act was designed to defuse real grievances, rather than to promote accountability and it was later held not to give a right of action to individual burgesses.³⁶ Its immediate effect can be seen in the magistrates of Perth being charged to produce their rentals and accounts to show the value of the common good and how it was spent, so that the lords of exchequer might provide for the common works of the burgh.³⁷ By 1557 the exchequer was retaining copies of the accounts. Though many are now missing, some predate those surviving in the burgh's own records. They contain details of revenue and expenditure, including repair of the haven at Dunbar in 1574–5 and construction of a new tolbooth at Stirling in 1576. Later accounts point to continued or renewed enforcement of the law in the 1670s and 1680s but their absence after 1684, suggests that this had ceased.³⁸

Until the nineteenth century two other bodies played a part in burgh administration. The oldest was the merchant guild, established under the

³³ A. Murray, 'Dirty Work at the Exchequer', *Scottish Archives*, 4 (1998), 85–90.

³⁴ T. Keith, 'Note on the Connection of the Chamberlain with the Burghs', *Scottish Historical Review*, 10 (1913), 397–402.

³⁵ G. Neilson (ed.), *Acts of the Lords of Council in Civil Causes 1496–1501* (Edinburgh, 1918), 118.

³⁶ Mackenzie, *Scottish Burghs*, 171–2, but Mackenzie was surely wrong to dismiss the act as a dead letter.

³⁷ R. K. Hannay (ed.), *Acts of the Lords of Council in Public Affairs* (Edinburgh, 1932), 444–5.

³⁸ *Guide to National Archives of Scotland*, 63–4.

burgh's charter.³⁹ The dean of guild might sit on the council by virtue of his office. His court dealt with such matters as infringement of members' trading privileges, disputes between merchants and the regulation of weights and measures. The Edinburgh court's powers, confirmed by act of parliament in 1593 (c 38), were recommended as a model for other burghs.⁴⁰ Glasgow's guildry, set up in 1605 was modelled on that of Edinburgh.⁴¹ In both cities the dean of guild court developed a jurisdiction over boundary disputes and the construction, use and demolition of buildings. Despite the recommendation, no two guildries developed in the same way and their records differ. At Aberdeen guild proceedings were entered along with those of the bailie and head courts until 1441, when a separate record was started, only to be discontinued after 1467.⁴² This was thought to be the earliest surviving guild court book until Dunfermline's, which covers 1433 to 1597, came to light in 1976. Perth's guild court book dates from 1452.⁴³ It seems probable that before that, as in Aberdeen, guild proceedings were recorded in the burgh court book.

Trade incorporations, bodies of craftsmen, were established by 'seals of cause' granted by their burghs from the fifteenth century onwards. Here again their powers and organisation varied from burgh to burgh, but they came together as the incorporated trades, whose deacon convener was a member of the town council. Like the guilds they have survived as private bodies since the burgh reforms of the 1830s, their records largely remain private,⁴⁴ though as early as 1864 James Marwick urged that older ones be made accessible for research.⁴⁵ Like those of the guilds some have remained with burgh records,

³⁹ Dickinson, *Early Records of Aberdeen*, xc–cxvi, discusses the guild's relationship to the burgh court.

⁴⁰ Sir James Marwick, *Edinburgh Guilds and Crafts* (Edinburgh, 1909), quotes extensively from the burgh records. Mainly written while he was town clerk of Edinburgh, it was left unfinished after he moved to Glasgow and not published until after his death.

⁴¹ A. M. Jackson, *Glasgow's Dean of Guild Court: A History* (Glasgow, 1983), 12–19.

⁴² E. Gemmill (ed.), *Aberdeen Guild Court Records 1437–1468* (Edinburgh, 2005), 1–2.

⁴³ M. L. Stavert (ed.), *The Perth Guildry Book 1452–1601* (Edinburgh, 1993); E. L. Torrie (ed.), *The Guild Court Book of Dunfermline 1433–1597* (Edinburgh, 1986), the introduction includes a general discussion of medieval Scottish guilds and their records.

⁴⁴ The few in print include H. S. Fotheringham and J. Munro (eds), *Edinburgh Goldsmiths Minutes 1525–1700* (Edinburgh, 2006) and *Act Book of the Conventry of Deacons of the Trades of Edinburgh 1577–1755* (Edinburgh, 2011).

⁴⁵ J. D. Marwick (ed.), *Extracts from Records of the Burgh of Edinburgh 1403–1528* (Edinburgh, 1869), xxxiii–xxxiv. 'The Guildry and Trade Incorporations in Scottish Towns', formed the subject of William Cunningham's 1913 presidential address to the Royal Historical Society, *Transactions*, 3rd series, 7 (1913), 1–24.

others have been deposited in local archives or libraries; a few are in the NRS.

Every burgh received a burghess ticket as a record of his admission. Many survive in private papers deposited in archives, libraries and museums.⁴⁶ Some burghs recorded admissions in their court or council registers, others, like Edinburgh and Glasgow, kept separate burghess rolls.⁴⁷ A few, Edinburgh among them, also kept apprentice registers.⁴⁸ Other burgh records may relate to local and national taxation.⁴⁹ Some burghs administered mortifications, charitable trusts for poor relief and other purposes.⁵⁰ Heriot's Hospital, the wealthiest, used the fortune left by George Heriot to purchase the barony of Broughton, now part of Edinburgh's New Town and northern suburbs. The magistrates and council were its governing body and the town's treasurer its treasurer, but its records were kept separate from those of the city. In 1885 they passed to the new Heriot's Trust, which deposited them in the SRO in 1985.⁵¹

Burghs and their Records 1707–1975

As this essay is concerned with record types created before 1707, post-Union developments require only summary treatment. Article 21 of the Treaty provided for the rights and privileges of the royal burghs to 'remain entire'. Partly through promotion of former ecclesiastical burghs, such as Dunfermline, Glasgow and St Andrews, their number had increased to sixty six, where it remained.⁵² Robert Chambers gives an unflattering description of their general state in 1830: 'Situated in immediate contiguity with other prosperous towns ... divested of the same peculiarities of internal government, they have been left far behind in the race of common improvements, and have apparently

⁴⁶ NRS Special collections include burghess tickets, 1586–1810 (NRS/RH10), put together from court of session records and other sources. Others will be found among NRS Gifts and Deposits (GD).

⁴⁷ Rolls or lists for Edinburgh, Glasgow, Dumbarton and Canongate have been printed by the Scottish Record Society, as in Stevenson, *Scottish Texts and Calendars*, 128–30. The society also published E. A. Beaton and S. W. Macintyre (eds), *The Burghesses of Innerary 1665–1963* (Edinburgh, 1990).

⁴⁸ Edinburgh's apprentice register, 1583–1800, was also printed by the Scottish Record Society (as in note 47).

⁴⁹ M. Wood (ed.), *Edinburgh Poll Tax Returns for 1694* (Edinburgh, 1951); A. Allen and C. Spence (eds), *Edinburgh Households Taxation Book 1634–1636* (Edinburgh, 2014).

⁵⁰ R. E. Tyson, 'Poverty and Poor Relief in Aberdeen, 1680–1705', *Scottish Archives*, 8 (2002), 33–42.

⁵¹ Heriot's Trust Records, NRS/GD421.

⁵² For royal burghs up to 1846, see Mackenzie, *Scottish Burghs*, 162–3, 177–85. In 1930 Dysart was joined to Kirkcaldy and three other Fife burghs, Kilrenny and Easter and Wester Anstruther, were united.

settled down in a hopeless state of decay'.⁵³ The 'peculiarities' were the 'setts' under which they were governed, here contrasted with 'local establishments of police', set up under Acts of parliament in Aberdeen, Edinburgh and Glasgow and some other burghs to run a police force and other services such as fire, lighting and street cleaning. These burghs had in effect two governing bodies: an old inefficient magistracy and council answerable to nobody and a new board of police answerable to its electorate, though Chambers warned that 'in the admixture of old and new authorities, public comfort is too frequently forgotten'.⁵⁴

Perhaps surprisingly this dichotomy was preserved by the burgh reforms of 1833.⁵⁵ For the next sixty years royal burghs had two governing bodies, a reformed magistracy and council, with a separate body of police commissioners undertaking statutory functions and levying rates.⁵⁶ Two constituent parts of the old council dropped out. Though the guildry retained the right to elect their dean, he ceased to share in the burgh's administration, except for Aberdeen, Dundee, Edinburgh, Glasgow and Perth. In those five his court continued to control buildings within the burgh; elsewhere the council elected the head of the court.⁵⁷ Dean of Guild courts continued until 1975.

Chambers had criticised the incorporated trades 'from whose constitution there emanates the most noxious influence' because of their trading privileges.⁵⁸ They too lost their representation on the council in 1833, but their privileges, already eroded by outside competition, were not finally abolished until 1846.⁵⁹ Continuing to exist as private non-statutory bodies, with a diminishing presence in their trades, they still provided mutual support to members in old age and aid to orphans and widows. Some, less charitably disposed, restricted membership and benefits to their own families. Thus, when the Aberdeen

⁵³ R. Chambers, *The Book of Scotland* (Edinburgh, 1830), 63–81. Chambers provides valuable insights into other Scottish institutions, as well as Scots law and customs.

⁵⁴ G. S. Pryde, *Scotland from 1603 to the Present Day* (London, 1962), 189; Chambers, *Book of Scotland*, 84–6.

⁵⁵ Royal Burghs (S) Act 1833 c 76, Burghs (S) Act 1833, c 77. Burghs and Police (S) Act 1833 c 46.

⁵⁶ Pryde, *Scotland from 1603*, 195–6. R. M. Urquhart, *The Burghs of Scotland and the Burgh Police (Scotland) Act 1833* (Motherwell, 1989), shows how the Act's provisions were adopted in individual burghs; Urquhart's *The Burghs of Scotland ... An Introductory Note* (Motherwell, 1991), provides more detailed treatment of burghs before 1833.

⁵⁷ 'Dean of Guild', J. Chisholm (ed.), *Green's Encyclopaedia of the Laws of Scotland*, 12 vols (Edinburgh, 1909–14), IV (1910), 225–30.

⁵⁸ Chambers, *Book of Scotland*, 66–7.

⁵⁹ Mackenzie, *Scottish Burghs*, 159, 185.

Dyers and the Ayr Fleshers and Weavers ended with no living members, their property fell to the crown as *ultimus haeres* (last heir). The proceeds of its sale went to the treasury and their records, retained by the Exchequer Office, were transmitted to the SRO in 1958.⁶⁰

Burghs of barony and regality were affected indirectly by article 20 of the Treaty of Union, which reserved the rights of owners of heritable jurisdictions, later more directly by Heritable Jurisdictions (Scotland) Act (1746 c 43). This effectively removed the old distinction between burghs of barony and regality but introduced a new one. If independent of a lord or dependent on a royal burgh, they retained their existing jurisdiction; if not it was restricted to that of a baron court. In the absence of a clear dividing line the court of session was left to decide on which side a burgh fell.⁶¹ Creation of new burghs continued but, as before, a charter did not guarantee a viable burgh. While some non-royal burghs ceased to function as such, others, like Paisley, obtained police powers by an act of parliament.

The Burghs and Police Act 1833 (c 46) allowed householders in burghs of barony and regality to adopt a 'police system' for providing public services and levying rates. As with royal burghs commissioners of police carrying out statutory functions were placed alongside the old town council. Of perhaps 100 non-royal burghs actually functioning in 1830, Paisley and ten others became parliamentary burghs.⁶² After Ardrossan (1846) no more burghs of barony were created. Thenceforward their number gradually declined, partly through Edinburgh and Glasgow absorbing surrounding suburbs, and as from 1850 any 'populous place' could become a police burgh. The Burgh Police (Scotland) Act (1892 c 55) and the Town Councils (Scotland) Act (1900 c 49) ended dual administration, as any burgh to which they applied would cease to be a burgh of barony.⁶³ Of a diminishing core that had not sought police powers, Kilmaurs survived until 1952 'in an attenuated condition', with two bailies and a town clerk whose office was 'virtually hereditary'; Tarbolton, probably the very last, was still electing bailies and councillors and

⁶⁰ NRS, Exchequer, *Ultimus haeres* (UH) miscellanea, E870/4, 5, 6; UH reports, E853/12, 358, 648; UH papers, E859/222.

⁶¹ For non-royal burghs after the Union see G. S. Pryde, *The Scottish Burgh of Barony in Decline 1707–1908* (Glasgow, 1949, reprint from *Proceedings of the Royal Philosophical Society of Glasgow*, 3rd series, 29).

⁶² Parliamentary Burghs (Scotland) Act, 1833 c 77. They had been enfranchised by the 1832 Reform Act.

⁶³ Pryde, *Scottish Burgh of Barony*, 62–3.

paying its town clerk five shillings a year well into the 1950s.⁶⁴

Throughout the long decline and extinction of burghs of barony there is no sign of official concern for preservation of their records. Indeed there was little interest in records of royal burghs until 1808, when Thomas Thomson, deputy clerk register, sent forms to each of them, for listing covering dates of records with comments. Not all replied, but responses survive for fifty two royal burghs,⁶⁵ ranging from short letters to Glasgow's 109-page inventory. These variations suggest that town clerks were unsure what information was required, some noting only registers of sasines and deeds, others detailing other series of volumes, a few mentioning court processes and deeds warrants. Glasgow, Ayr and Dundee described their record storage. George Willis was town clerk of four small East Fife burghs. Of these Anstruther Easter and Kilrenny had no registers, but Willis believed he had a right 'to open a record if I should think proper'. His predecessor at Anstruther Wester had been also town clerk of Pittenweem, whose 'affairs having gone into confusion' as the sasine register for 1727–95 'never could be found'. When Robert Romanes became town clerk of Lauder in 1797 he found 'two small bundles of bonds, tacks etc. that had been given into record', but 'finding no record for such, I commenced one'. The general impression is of an awareness of the importance of records and the need for proper care. One exception was Fortrose where in 1835 'The books and other papers were in so much confusion that nothing accurate or certain could be learned, either from examining the documents themselves or from explanations orally given'.⁶⁶

The Public Records (Scotland) Act 1809 (c 42) subjected burgh registers of sasines and deeds to the same controls as their national counterparts. Record volumes were to be issued by the lord clerk register and entries were to be in a prescribed format. Thus there are two series of burgh sasine registers, one ending, and the other beginning at 1809. Dornoch's register, discontinued in 1820, was replaced in 1860 by Paisley's 'register of bookings', the only one kept in a non-royal burgh.⁶⁷ The 1809 Act allowed registration of deeds to

⁶⁴ Pryde, *Court Book of Kirkintilloch*, lxxxvii; J. Strawhorn and W. Boyd, *Ayrshire: Third Statistical Account of Scotland* (Edinburgh, 1951), 463–4, 483–4.

⁶⁵ Reports and inventories of records of royal burghs, 1808, NRS/SRO12/8. Returns are in alphabetical order.

⁶⁶ Municipal Corporations (Scotland), *Local Reports*, 2 (London, 1835), 455.

⁶⁷ Titles to Land (S) Act 1860 c 143 s 23 equated Paisley's 'peculiar tenure of Booking' with burgage. See 'Booking, tenure of', *Green's Encyclopaedia of the Law of Scotland*, 2 (1909), 261–4. NRS holds the register and its non-statutory predecessor, 1833–60 (NRS/B57/1–2).

continue in royal burghs, subject to new restrictions. In others it was to cease immediately and all existing registers and warrants were to be delivered to the local sheriff court. Thus when Canongate was absorbed by Edinburgh in 1856, its records passed to the city archive, except for its register of deeds, already held by Edinburgh sheriff court.⁶⁸

Burgh registers of sasines were phased out under the Burgh Registers (Scotland) Act (1926 c 50), which gave burghs the option of discontinuing immediately or on the retirement of the then town clerk. Those whose part-time clerks relied on registration fees continued longest, with Dingwall last to go in 1963. The Act required burghs to transmit to the keeper of the records and registers all register volumes from 1870 onwards, but allowed them a choice between permanent deposit and retransmission after set periods.

The 1926 Act marked a changed relationship between central government and local authorities, as burghs retained ownership of their registers but shared custody with the keeper. This shared responsibility was extended by the Public Records (Scotland) Act, 1937 c 43, which allowed local authorities to deposit records with the keeper. By the 1960s his department (SRO from 1949) had changed from a passive recipient of burgh records to an active player in their preservation. This changed role was to prove crucial in preparation for and implementation of the Local Government (Scotland) Act 1973 c 45 which brought to an end 800 years of Scottish burgh history. In 1975 the old structure of cities, large and small burghs, counties and districts was replaced by two tiers of regions and districts for mainland Scotland and unitary authorities for Orkney, Shetland and the Western Isles. The implications of the 1926, 1937 and 1973 Acts for burgh records will be examined in the final section of this paper.

What Happened to the Records

Records are at risk when the organisation holding them is uninterested in their preservation, ceases to exist or loses functions to another body. Surviving records belong predominantly to those burghs that still existed in 1975 or, with exceptions, had merged with another burgh. What does survive varies considerably between burghs. Until the mid-twentieth century preservation of a burgh's records depended largely upon its council, often in practice their town clerk. Although charters were first to be preserved, some fell into private hands. In 1909 Dumbarton reclaimed its royal charter, given to Edinburgh University Library in an extensive collection of documents amassed by David

⁶⁸ Edinburgh sheriff court records, NRS/SC39/114 Canongate register of deeds 1681–1736, NRS/SC39/115, Canongate deeds warrants 1610–1809.

Laing, an Edinburgh bookseller.⁶⁹ In 1997 a charter of James II to Inverness was returned from the Scottish Record Office, where it had been deposited as part of the collection of a local antiquary.⁷⁰

If charters were worth preserving, why not court rolls? Aberdeen provides a clue. In 1591 its town clerk, Thomas Mollison, listing registers and court books then extant ‘or hes bene’ within living memory (sixty years), found nothing earlier than 1380 except ‘scrowis on parchment’ written in Latin and ‘euil to be red be resoun of the antiquitie of the wreit and the forme of the letter or charecter, which is not now usit’ and ‘skairslie gif ony man can reid the samyn’. His successors, no doubt agreeing that they contained ‘na mater of importance or weycht’, made no effort to preserve them. Unknown when the burgh records were first printed, the last survivor was found in the 1850s among ‘masses of useless papers which were decaying in a garret of the Town House’.⁷¹

Even when preservation of court and council records was becoming routine, survival of a particular volume might depend on its physical state. About 1580 Edinburgh’s town clerk transcribed entries in the earliest volumes, describing one as an ‘auld revin buik’ with lowse leiffis’.⁷² It has not survived; nor has Inverurie’s earliest, dismissed by the town clerk in 1808 as ‘a very old Minute Book, not intelligible’.⁷³ Other record volumes strayed into private hands. In 1905 Sir William Fraser’s trustees deposited in Register House two court books of Inverkeithing (1605–88), part of his extensive collection of documents.⁷⁴ Others could have been removed for a legitimate reason. According to the town clerk (in 1808) Fortrose’s ‘ancient and intermediate records’ had been sent to Edinburgh ‘to support some question regarding the burgh and it is presumed they are deposited in the Register House’.⁷⁵

Some records were not lost but never existed. In 1695 Edinburgh, seeking

⁶⁹ *Public Registers and Records*, para. 46, citing *Dumbarton Magistrates v. University of Edinburgh* (1890).

⁷⁰ *Annual Report of the Keeper of the Records of Scotland for 1997–8*, 4.

⁷¹ *Miscellany of the Spalding Club*, 5 (Aberdeen, 1852), 9.

⁷² M. Wood, ‘Records of the Burgh of Edinburgh: An Error in Dating’, *Scottish Historical Review*, 26 (1947), 190–1. Three leaves, dating from 1500–13, are in NRS/B22/23/1.

⁷³ NRS/SRO12/8. Inverurie’s earliest surviving court book, 1605–20 (NRS/B36/6/1) is perfectly legible.

⁷⁴ *Report by the Keeper of Registers and Records* (1935), 21; Inverkeithing burgh court books, NRS/B34/9/1–2. Under Scots law court books are among public records that can be recovered however long they have been outside the control of their legal custodian (*Public Registers and Records*, para. 46).

⁷⁵ NRS/SRO12/8, Fortrose. There is no evidence that they were in Register House before deposit in the SRO in 1957 (NRS/B28).

to dismiss their town clerk, Aeneas Macleod, listed registers he had failed to maintain.⁷⁶ Elsewhere clerks were issuing extracts of decrees and registering deeds without ‘booking’ them in a court book or register volume. In 1808 Dundee’s town clerk noted that ‘the practice of engrossing the Decrees in volumes has been given up for many years.’⁷⁷ This required systematic preservation of the original documents that formed the ‘warrants’ of registers of deeds and the court ‘processes’ (case papers). Deeds warrants had been retained since the sixteenth century, though withdrawal after registration was permitted until 1685.⁷⁸ Preservation of burgh court processes had come later. In Glasgow’s 1808 inventory the first bundle of processes dated from 1706; other burghs were retaining them earlier.⁷⁹ By the nineteenth century the records of any burgh would have included large quantities of deeds warrants, processes and miscellaneous documents, in bundles or lying loose. But the local and antiquarian interest that inspired the foundation of the Burgh Record Society in 1867 paid them little attention.⁸⁰ That those in the garrets of Aberdeen’s Town House could be dismissed as ‘masses of useless papers’ suggests that preservation might be a matter of inertia rather than policy.⁸¹ What happened to them when the Town House was rebuilt between 1868 and 1874? Selkirk too had ‘old papers in the attic’, left behind when a former town’s clerk firm sold the building to a bank. Identifying them as an incendiary hazard in 1939-40, its manager consigned to them a bonfire, from which two concerned neighbours rescued sixteenth-century protocol books and other early documents.⁸² Although the records did not re-emerge until 1988 when both individuals were dead, were the town clerks really unaware of what had happened? Dumfries also suffered major losses in the 1940s when sacks of documents put into supposedly safe storage in a basement were left standing on an earth floor, their contents slowly composting.⁸³ Perhaps other town clerks felt a patriotic duty to surrender documents to wartime waste paper collections. Certainly need to free storage space can be an incentive to dispose of unwanted records.

⁷⁶ *Acts of Parliament of Scotland*, 9, 412-5.

⁷⁷ NRS/SRO12/8, Dundee.

⁷⁸ Registration Act 1685 c 47.

⁷⁹ NRS/SRO12/8, Glasgow.

⁸⁰ Stevenson, *Scottish Texts and Calendars*, 83-89, lists the Society’s publications, 1868-1911, and others published independently but in the same format, 1880-1967.

⁸¹ See above, note 71.

⁸² T. Maley and W. Elliot (eds), *Selkirk Protocol Books 1511-1547* (Edinburgh, 1995), vii.

⁸³ National Register of Archives Scotland, survey 0121 (1958). Personal information.

As noted earlier the SRO's active involvement with burgh records began with the 1926 Burgh Registers Act. Most burghs opted for permanent deposit of post-1870 registers and of the rest only two actually requested retransmission.⁸⁴ By 1934 ten burghs had chosen to deposit pre-1870 registers, protocol books and registers of deeds, Linlithgow adding burgh court books.⁸⁵ In allowing voluntary deposit of records the Public Records (Scotland) Act 1937 placed them on a similar footing to the sasine registers. Though still owned by the burgh, they passed into permanent custody of the keeper of the records. Thus the act matched compulsory centralisation of sheriff court records in Edinburgh with voluntary centralisation of local authority records.

Partly owing to the 1939–45 war, partly perhaps to resistance to centralisation, the 1937 Act had little immediate effect. By 1946 only Ayr and Peebles had followed Linlithgow in depositing court and council records. Thereafter, with active SRO encouragement, more deposits followed.⁸⁶ By 1963, however, with the increasing demands of court and government records, centralisation gave way to the realisation that the SRO's resources could never provide for all local authority records.⁸⁷ While burgh records continued to be taken,⁸⁸ an alternative had to be found. In this John Imrie played a major part, as deputy keeper (1961–9) and keeper (1969–84).

Centralisation had assumed that most Scottish local authorities would be unable to provide for their archives. Although Edinburgh and Aberdeen had funded the custody and publication of their older records, Glasgow City Archives, established 1964, was the first local archive office on the English model, followed by Dundee in 1969. One solution offered by the McBoyle Committee in 1967, local custody supervised by the keeper of the records, found little support and was overtaken by local government reorganisation.⁸⁹ Between 1969 and 1972 the keeper undertook a survey of 'historic records'

⁸⁴ Glasgow took back all their registers, Forres 1867–81 only.

⁸⁵ *Report by Keeper of Registers and Records* (1935), 6–7, 22.

⁸⁶ J. Imrie, 'The Modern Scottish Record Office', *Scottish Historical Review*, 53 (1974), 204–5; W. Angus, 'Accessions to the Public Records in the Register House since 1905', *Scottish Historical Review*, 26 (1947), 26–46. Deposits between 1949 and 1964 appear in 'Accessions to the Register House', *Scottish Historical Review*, 29–44 (1950–65).

⁸⁷ See Imrie, 'Modern Scottish Record Office', 198, 204–5, 206–7, for the origins and failure of centralisation.

⁸⁸ All those held in 1967 are listed in *Annual Report of the Keeper of the Records of Scotland for 1967*, later accessions in subsequent *Annual Reports*.

⁸⁹ *Report on Local Authority Records* (Edinburgh, 1967). The report recognised that reorganisation was in prospect but thought waiting for it might put records at risk.

of local authorities.⁹⁰ Besides listing and referencing, this embraced repair of items requiring urgent treatment.

The 1973 Act required the new local authorities to make 'proper arrangements' for records transferred to them, without specifying what this meant. It allowed some flexibility in the hope that local archive offices set up by the regions would serve their constituent districts. Thus Glasgow City Archives became Strathclyde Regional Archives and Central Region's new archive office took records from Stirling and other burghs. Highland Region took some burgh records, on which their records officer imposed an idiosyncratic subject arrangement that broke up their original structure.⁹¹ Elsewhere districts preferred to go it alone. In Grampian the City of Aberdeen and Moray District maintained their own archive offices, likewise the City of Dundee and Perth and Kinross District in Tayside. Edinburgh's city archivist took little interest in most post-1850 records. In Fife, region and districts alike opted to do nothing, except that North-East Fife deposited older burgh records with the keeper of the records, for eventual transfer to St Andrews University Library along with those already held by him. Of the unitary authorities, Orkney had appointed a county archivist in 1973; Shetland's new archive office built on its county library's extensive holdings of private muniments. By 1980 there was a hybrid system of local archive offices and libraries, some staffed by professionally trained archivists. Though still far from complete, coverage was greater than had been expected in 1973. Between 1980 and 1984 the SRO carried out a new survey of records held by regions and districts still without archive offices.

Since 1973 the SRO had taken in more burgh records with a view to eventual decentralisation. This meant finding a way round section 8 of the 1937 Act, which allowed only temporary retransmission. In 1976 Scottish Ministers agreed to the Scottish Records Advisory Council's recommendation that the keeper might retransmit records requested by a successor authority if satisfied with the arrangements for their safe-keeping and preservation and for public access; such records were to be held locally under the keeper's charge and superintendence. By 1983 burgh records had been transferred to Central and Strathclyde Regional Archives, Perth and Kinross District Archives, Orkney and Shetland Archives and St Andrews University Library. In 1986 notaries'

⁹⁰ This and the following paragraphs are based on the *Annual Reports of KRS, 1968–1984*. The pre-1975 surveys and later lists will be available in NRS/SRO12, Local authority records.

⁹¹ I was asked to look at Inverness burgh records in 1995 and reported that it would be possible to recreate the original arrangement of the warrants of the register of deeds and some other series.

protocol books and pre-1809 sasine registers were returned to Dundee.⁹² Charge and superintendence created a new anomaly, in that a local authority might have both ownership and actual possession of records but the keeper remained their legal custodian. Since 1992 the office has had the power to return such records outright. It has been used, for instance, for Perth burgh records in Perth and Kinross Archive, but it is unlikely to occur unless the Keeper is satisfied with arrangements for custody and public access.⁹³

After less than twenty years the two-tier local government structure under the 1973 Act was replaced by unitary authorities under the Local Government etc. (Scotland) Act 1994 c 39. It put an end to regional archive services; Strathclyde reverting to Glasgow City Archives and Central becoming Stirling Highland Regional Archive, under a professional archivist since 1990,⁹⁴ passed to the new Highland Council. It now has a purpose-built repository at Inverness, with branches office at Fort William, Wick and Portree. The 1973 Act's vague admonition to make 'proper arrangements' for records belonging to them or in their custody was strengthened by a requirement to consult the keeper. Though falling short of complete replacement of the 1937 Act, the Public Records (Scotland) Act 2011 (asp 121) now requires public authorities to prepare, implement and keep under review a records management plan agreed with the keeper. It followed the 'Historical Abuse Systemic Review' (Shaw Report, 2007), which highlighted poor record keeping relating to child care, residential schools and children's homes, illustrating how far the role of archive services has broadened from passive preservation of historic records to active records management to meet administrative needs.⁹⁵

Because the 2011 Act's primary purpose was to improve records management it still does not oblige local authorities to set up archive offices and can only improve public access to burgh records indirectly. However demand for access to records has also been driven by the increasing popularity of family history research. The need for improved records management and

⁹² *Annual Report of KRS 1982*, appendix 3, *1986*, appendix 2. Local records transferred have also included those of justice of the peace courts, parish councils, customs and excise and, by agreement with the Church of Scotland, kirk sessions.

⁹³ Disposal of Records (Scotland) Regulations 1992, SI 1992/3247, amended by SI 2003/552. I am indebted to Dr David Brown and his colleagues at NRS for information on local authority records since 1975.

⁹⁴ R. Steward, 'Highland Regional Archive: The First Five Years', *Scottish Archives*, 2 (1996), 90–7.

⁹⁵ *Public Records (Scotland) Act 2011: Report by the Keeper of the Records of Scotland 2013* (SG/2013/210).

better public access are both offset by pressure on local authority budgets, where archives are never seen as a priority. Even so the future of Scottish burgh records seems secure, though Cologne is a reminder that even the best kept archives cannot avoid unforeseeable disasters.