by the Instrumentary witnesses, unless the Matter be very Plain Stair lib 4 Tit. 42 § 9. If a Notary in whose hand an Instrument was lodged, by the fault and refuse to extend an Instrument upon, he is guilty of forgeing, and liable to the party for Damage and Interest, and may be compelled to Exhibit his Protocol for Vouching thereof. Parties contracting are allowed to Stipulate, Quod Stipulatio, Tit. 18 § 1. Quest. 154 n. 1. 8 Feb. 1. However by Agreement of parties Instruments are appointed to be taken out, it is understood to be by Notaries, the those be not mentioned Stair ibid. For the Civil law, all obligations pass under the Name of Instruments, we understand by Instruments only the Notaries.

A notary who keeps in his custody anything which was not done, is also guilty of prevarication. Tit. 18 § 1.

When the Protocal Delivered to a Notary at his entry is filled up, he gets a Print from the Clerk of the Book of Notaries acts filled up. Protocals, and Calibites in the Liegers, for extending and transumming Instruments in all Occasions. Which Protocals so soon as they come to hand he ought to peruse and verify, the Lords of Session finding not the Clerk to be formal, that the Notaries who wrote them may be Deprived of their offices, and get no More Books.

If a principal Instrument of Seisin or Reversion or any concerning Real rights of land or Annualrent duly Registered is wanting, the Notary who gave it of Alloo may renew it out of his Protocal, and the Register of the Register Bill Stair to have been Recorded the same day the former Seisin was Made and Recorded 2 January, 1678 Sir Andrew Ramsay Lyon Pl. If the Notary who gave the seisin be dead, a transumpt thereof taken off his Protocal and the Register after Bill Stair of the Author of the seisin, or his heirs, or other interested parties sufficiently implace of the principal seisin Stair lib 2 Tit. 3 § 25. But a town Clerk Successor in office to him who gave seisin Stair in Burgh cannot renew it off the Town books, which are his predecessors protocals, but it must be Orderly transumed out of these books produced, or by persons Commissioned to Speel and Compare. Which transumpt or Report of the Commission bearing the same to be Conform to the Books, is Equivalent to the principal Instrument 11 feb. 1681 Grain contra Corsan. Where both the principal seisin and Protocal Wanting, the Tenor of the seisin May, upon Relation of Persons having interest, be proved by Sufficient Adminicles in Writ, as the Extract out of the Register, and by witnesses who saw the seisin Stair ibid.

Protocals

Protocals of Deceased Notaries, are to be brought into the Clerk within 15 days after the Notaries death under the pain of 100 pounds. When the Clerk or Children bring in these protocals, the Clerks is to Make a Note of their Names, the End they may be called, when transumpts are purchased, and satisfied for the Protocals by the parties Craving the transumpts as the Lords of Session shall Modify Act 45 Parl. 11 James. Act 22 Parl. 22 § 6. A Clerk of the Notaries was Deprived of his office for not Calling in the Protocals of Deceased Notaries for the space of Many Years: tho it was alledged for the Clerk that he was obliged only to receive these books when brought in and not to call for them; his Commission not Ordaining but only Empowering him to call them in and it being impossible for him to know the time when Notaries dee. Because the bonds of Cautionry to bring in the Protocals, being intrusted to the Clerk only, the clause Empowering him to call them in is not a More Discretionary Faculty, but a Commission or Mandate Lymiting Diligence. And if the Clerks were not bound to Diligence, some else could do it, whereby the law which Requires so carefully to bring in Protocals, would be Illusory 19 Nov. 1680 Clerk Register contra Primrose. But Protocals of Clerks of Burghs Royal Deceased are to be Delivered up to the Magistrates Act 22 Parl. 22 § 6 of the respective burghs to be keeped in their Registers, and to be made forthcoming to the persons Commissioned to Transumpt, as Records.

Notaries having so great trust Committed to them by law, ought to acquit themselves of it Diligently and Faithfully and to Avoid in the Discharge of their functions everything that may be Contrary to Justice and to truth. Formerly Bishops were Empowered to turn out Insufficient or Culpable Notaries Act 64 Parl. 6 J. 4 but now Notaries are Exonerated and Deprived only by the Lords of Session. Jno Notaries having Subscribed a blank paper in the Name of a Dying Woman, whose hand was lifted up by another to touch the pen, while she was Insensible and Unable to speak and filled up the Woman's Testament in that blank after her death: The Testament was Burnutted, and the Notaries deposed and set upon the cockstool with papers on their Brows Declaring their faults 20 November 1680 Stuart contra Smith 2

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(1) The Book of Act contains an Instrument may be Engrossed by the Instrument-Maker, without Proceeding Tabellio, Fraikl. 2 § 1. Tabellio to witnesses, Supposing the Instrument from the Notaries who contained it. Spottiswoode Parl. 1633. n. 193 of Sess.