

days when few could write, persons were appointed by the Emperor and other Princes in their respective Dominions to draw and attest deeds and writings, such as Obligations and Testaments &c. Who first took Minutes or short notes of the substance and Material part of what was done or said by the parties in it little books called orig. nota or Memoriae or *Notaria*, by some termed *Proliadellium* and by others *Basord* whence they got the Name of Notaries. Which Memory was the Notes they afterwards call their *lesure* *Exordio* and *Embulo* in the form of laws or writings called *jurisdiunctio*. Of these Instruments they kept Records termed *Protocollay* *Protocollo* of *Parade* *De Salakate* & *Simulacione*. *Stat. 134 n. 28* has some form of words which the first part, or according to a gloss from *Notaria* the first Title, a thing to the Ancient way of writing these should have long been in the first whereof they wrote their *origina*, and then use in the same *Notaria* on a parchment. These *origina* were called *Subscriptio* Notaries, because they were *Subscripta* by publick Authority and also termed *liber* from the plain *Notary* board where upon they use to write, till the invention of *Imprimis*. *Stat. 134* did the two Differ in this; that Notaries only own up and keep the Minutes of acts and judgments on paper and in notes or short hand, as bread the *liber* delivered them *Imprimis* on parchment, in full Execution. That Notaries as officers established by Authority to give the true proof to acts which are *Imprimis* in their presence, this *Imprimis* Emperor prescribed a set form to be observed by Notaries. *44 Hen. 4. Nov. 73 Cap. 5.*

Notaries made by the Royal or Imperial Authority, do perform their office in Brittain, France, Spain and other Monarchies subject to the Pope or Emperor; and their jurisdiction is not also faith in civil Contracts with us till the year 1477 when such instruments to be given there after, were directed here by law, and Notaries appointed to be made by the King upon Certificates from the Bishops of the Diocets of their good fame, Skill and Loyalty, after Examination and admittance judicially by the Sheriff, and the latter by the Bishop. Which Sheriffs and Bishops kept books containing the *Subscriptions* and Signs Manual of Notaries within their bounds. *Act 46 Parl. 6 J. 3.* At length Notaries were ordained to be created by the sovereign's Letters, and then Examined and admitted by the Lord of Session; and the Creating them in this way, overtopping the *Subscriptio* office by other Manner, was declared punishable by death and Nullity of the Instruments. *Act 79 Parl. 9 J. M.* The Reason why Notaries could be

Created only by the sovereign, unless law or Custom shall invest subjects with that privilege, is because he does give Power to give such Authority to the written testimony of these officers is contrary to the Common-law, which is other than the *Subscriptio* can Derogate from.

Notaries are now admitted by the Lords of Session, without previous Letters from the King; upon Application given in for them by the Clerk to the Notaries, with a Certificate of the Position of good fame and Education in the hands of persons of Credit, after trial of their Knowledge and qualifications by the Ordinary on the Bills, and another done appointed for that End by the University in the *Parliament* of Scotland, called *Act of 1607*, 30 July 1691. That Custom is used in the Commission of Notaries, because the Ignorance and Fraud practices of Notaries (which is termed the Harvest of Thorns) had been long a great and just ground of Complaint. The *Parliament* Notary when found qualified, is sworn to be so, and admitted. His Sign and Subscription Manual to be used by him is recorded July 9. *Act 10 J. M.* The Clerk of the Notaries writes the *Act of Session* how causes the *Parliament* Notaries for bringing into him with in fifteen days after the *Parliament* ends, under the pain of imprisonment. *Act 18 Parl. 11 J. M.* *Act 22 Parl. 2 J. 6* The *Prothocol Book* which the Notary gets from the Clerk to insert therein his *Parliament* words of *Session* and other Instruments of Importance, that is such as Concern Real Rights of Land or Annual Rents for Instruments of *Session* or Assignations, are not in use to be inserted in *Protocoll* & *January* 1681 Chiefly contrary.

In other Nations, like Ecclesiastical persons in ours cannot be a Notary, till if he falsified his trust he should escape *Consequenter* punishment and correction of his orders.

And tho we had some times in Scotland both spiritual and secular Notaries, yet now Ministers cannot accept or use the office of Notaries except in testaments. Under the pain of Excommunication. *Act 133 Parl. 5 J. 6.* But a Notarial *Act* done by a Minister in other cases, is not Null; for a Contract of Marriage signed by a Minister as Notary for one of the parties was sustained, tho the Minister was liable to the legal pain. *12 July 1631* *Act of Session* *contra* *Bartholomew*.

Some are Notaries *Veritate officij* Ministers tho they *Act* as Notaries in testaments *Act 133 Parl. 5 J. 6.* Clerks of Session are Notaries by Virtue of their office. *Act 79 Parl. 9 J. M.*

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