



# Irregular Marriage in Scotland as Reflected in Kirk Session Records

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An irregular or clandestine marriage in Scotland was a union contracted by declaration before witnesses, celebrated by someone other than the parish minister, and without proclamation of banns. The celebrator did not have to be a minister, since the essence of the marriage was simply a promise made before witnesses. No record of such a marriage was made, apart from the certificate which might be (but was not always) obtained from the celebrator. Nevertheless an irregular marriage was legal and binding when it could be proved. But it ought to be noticed that to refer to marriage as a contract is not accurate, as F. P. Walton remarked:

“The difficulty in calling marriage a mere contract is this—Two people may agree to marry each other, but they cannot agree what sort of marriage it shall be. If they take each other it is ‘for better, for worse’. They must accept all the consequences and incidents of marriage as it is fixed and determined by law. They could not, for example, agree to be married for ten years, or that the wife should be head of the house, or that the children should not have any rights of succession. All that they can do is to agree to marry.”<sup>1</sup>

Marriage is an agreement, then, and the position in Scotland in regard to proving marriage is thus described by the same writer:

“If two people have agreed in Scotland to take each other, then and there, for husband and wife, an acknowledgment that they had done so will be sufficient proof of marriage, though the acknowledgment be made in England or elsewhere out of Scotland.”<sup>2</sup>

A clandestine marriage might remain secret for years, only to be revealed on the death of the husband, and the widow's claim for relief from the kirk session; but it was more usual for the marriage to be confessed on the birth of the first child, and the parents' request that it should be baptised. And yet it was not unusual for the celebrator of the irregular marriage to make himself available for the baptism of children, on request.

The kirk session records of South Leith first refer to irregular marriages towards the close of the seventeenth century. Scanty at

<sup>1</sup> F. P. Walton: *Scotch Marriages*, 44.

<sup>2</sup> Walton: *ibid.*, 129.

first, the entries soon appear regularly, including all the details obtainable. These Leith records are notable in this respect. Among all the parish records preserved in the Scottish Record Office, only a few include any reference to irregular marriage, and none are comparable with the Leith records either in the number of entries or in the details included. The Forth ports from Kirkcaldy to Eyemouth, and inland towns as far west as Falkirk all had their notes of irregular marriages, but almost without exception these unions were celebrated in Edinburgh or Leith by the same men whose activities are so zealously reported in the Leith records. Any examination of irregular marriage in Scotland in the eighteenth century must therefore centre on what was done at Leith.

Clandestine marriage has a long history and has been practised in various forms. In 1564 the St Andrews kirk session minuted the summoning by the Superintendent of Sir John Morison for conducting both marriages and baptisms 'efter the Papisticall fasson';<sup>3</sup> and five years later Andrew Kirkcaldy and Sir John Bowyse were ordered to appear in the kirk of Wemyss in sackcloth for similar offences; and Mr Kirkcaldy was further directed to the church at Kilconquhar, there to beg on his knees for God's and the congregation's pardon for his solemnising the marriage of John Wemyss and the woman who had been the Lady of Kilconquhar.<sup>4</sup> Following the Reformation, in remoter parts of the country where the services of priest or minister were sometimes hard to come by, the old practice of handfasting became the most popular form of irregular marriage.<sup>5</sup> This was a kind of trial marriage, in which a man and girl could live together for a year, at the end of which time the "marriage" could be annulled on "due and proper" complaint from either party. Failing such complaint the union was indissoluble as from the first anniversary of their coming together. If a complaint was substantiated, the complainer had to take charge of the child, if child there was.

This primitive and barbarous system never obtained in more populous parts where there was no shortage of ministers, but irregular marriage was by no means uncommon in the port of Leith long before the earliest reference to the subject in the kirk session records. It was stated in an order of the Privy Council of 2nd March 1682 that

"... diverse disaffected persons in the toun of Edinburgh, Leith and suburbs thereof have, since His Majesties late

<sup>3</sup> *St Andrews Kirk Session Register* (Scot. Hist. Soc. 1889-90), i, 226f.

<sup>4</sup> *Ibid.*, i, 319.

<sup>5</sup> Warren Henry: *Gretna Green Romances*, 3ff. But see A. E. Anton, "Handfasting in Scotland" in *Scottish Historical Review*, xxxvii, 89-102, for a fuller treatment of this practice.

act of Indemnity, procured themselves to be maryed in a clandestine way, had their children baptised in the like way by outed ministers not authorised by Law or have delayed to have their children baptised and cannot produce a certificate under the hand of the minister of the paroch bearing that their children were baptised within the said space of thirty days, doe therefore hereby give and grant full power and commission to Robert Johnstoun, toun majour of Edinburgh, to discover, pursue before the Councill & furnish probation against the persons guilty of disorderly mareages and baptismes within the city of Edinburgh, suburbs and liberties, and doe declare that they will according to his diligence allow him ane reward out of the fynes of the delinquents. . . .”<sup>6</sup>

The “outed” ministers, of course, were then Presbyterian, and there is no doubt that the religious troubles of the seventeenth century were the cause of a substantial number of irregular marriages. Edinburgh, Leith and suburbs thereof were presumably known to be the main trouble spot in this connection, since the Privy Council’s order is specifically directed there. As early as 1661 the problem had reached such proportions that an Act of the Scottish Parliament was deemed necessary:

“Whatsoever persone or persones shall heirafter marie or procure themselfs to be married in a clandestine & in orderly way or by Jesuits priests or any others not authorised by this Kirk, That they shall be imprissoned for three moneths.”<sup>7</sup>

A range of fines was also imposed, extending from £1,000 Scots levied on an offending nobleman, down to 100 merks from an ordinary person, and all the guilty to remain in prison beyond the three months until the appropriate fine was paid. Money collected from fines was to be “applied to pious uses within the severall paroches wher the saids persones duells”. All celebrators of clandestine marriages were to be banished for life.

This measure was quite ineffective. Parties to these unions came forward and confessed, and cheerfully paid their fines, when they sought some benefit from the kirk session. If the elders did not think fit to report the matter to the magistrates there would be no prison sentence, and with larger issues filling men’s minds celebrators of irregular marriages were not actively pursued. The Privy Council concern over the situation in Edinburgh 20 years later is sufficient indication of the failure of the 1661 Act.

Matters were not mended by the Privy Council’s order to the

<sup>6</sup> *Register of the Privy Council* (3rd series), vii, 347f.

<sup>7</sup> “Act Against Clandestine and Unlawfull Marriages”: *Acta Parl. Scot.*, vii, 231.



Edinburgh town major,<sup>8</sup> and in 1698 a second Act was passed. This time Parliament

“Statutes and Ordains that the parties clandestinely and irregularly married contrare to the said Act 1661 Declare when required the names and designations of the Minister or person who Celebrate the said clandestine or irregular Marriages, and of such as were Witnesses to the said Marriages with Certification that if they refuse when required the foresaid parties married shall pay each nobleman £2,000 . . . &c. . . . And furdre be Imprisoned ay and while they do declare who were Celebrators of and Witnesses to the said Marriages and also to make payment of the respective penalties above mentioned. . . .”<sup>9</sup>

Celebrators were not only liable to perpetual banishment but also to such “pecuniall or corporall pains as the said Lords of Privy Council shall think fit to inflict”, and witnesses were to be fined £100 Scots.

This 1698 Act would appear to have been the signal for the kirk session of South Leith to take action. The first entries, indeed, were made in 1697, but these were bare notes of the parties concerned; but soon the fullest details of all irregular marriages in the parish were being zealously sought, and much time and thought devoted to the matter, as the fines were a welcome source of revenue for the poor. In North Leith, a much smaller community, the record of irregular marriages only begins in 1704 — by which time over 60 cases had been dealt with in the more populous parish on the south side of the Water of Leith.

At this time both parishes together amounted to little more than 5,000 souls. In such a small population it may be presumed that not much escaped the notice of the elders; and until Leith began to grow rapidly, after the middle of the eighteenth century, we probably have a full record of all the clandestine marriages in the area.

Elsewhere in Scotland very few irregular marriages were recorded before 1705, and after that date the seaports of Leith and Port Glasgow appear to have been the main centres of this trade. Dysart, in fact, recorded more irregular marriages than Port Glasgow, but these were almost all the work of the celebrators domiciled in Edinburgh. At the same time, although it was not necessary for the celebrator to be a minister, the irregular marriages recorded were with few exceptions the work of ministers — of one kind or another. There seems little doubt that in the public mind marriage, whether irregular or not, was not really marriage unless a minister was involved. This comes

<sup>8</sup> See above, p. 12.

<sup>9</sup> *Acta Parl. Scot.*, x, 149f.

out in a minute of Falkland kirk session, when they heard evidence from a local girl anent her marriage to a drummer belonging to a troop quartered in the village. The marriage was conducted by another drummer, Robert Dorcas by name. The girl said that Dorcas

“took out a book and spake to Georg Red and her while their hands were joyned, that they should live peaceably and quietly, and nourish each other, with some other words to that purpose which she could not remember. She declared that before that time Georg Red came to her and told her he had provided a Minister to marry them, namely, Robert Dorcas; whereupon she made scruple in that Robert Dorcas was not a Minister; but Georg Red told her the marriage would notwithstanding be sufficient and that this was the ordinary way other souldiers in the troop were married, on which she consented thereto.”<sup>10</sup>

Men in the armed forces had difficulty getting themselves married in a regular way, for the authorities disapproved of them marrying. Providing for the needs of the men themselves was a heavy enough drain on the country's resources without the added encumbrance of dependent wives and children. As late as 1780 Dysart kirk session notes the case of a soldier apparently married to a girl in the parish, when in fact there had never been any marriage ceremony at all. According to a note received from the man's commanding officer, the pair had been cohabiting for a year, and the soldier explained that his officer had refused to give him a certificate of bachelorhood, without which no minister would agree to proclaim the banns. The session accepted this as an irregular marriage and allowed baptism to the child the couple presented.<sup>11</sup>

Janet McAulay of North Leith married a soldier — a grenadier. The marriage ceremony was performed by another grenadier called Smith, who had himself married a Leith girl. The account of the ceremony as given to the kirk session is interesting. Smith came into the house

“having on a black coat, and asked the parties if they were free persons, who answering in the affirmative, the said Smith made a fashion of marrying them: Upon which the said Janet McAulay gave the said Celebrator Smith three shillings sterling; after which they had a Supper.”<sup>12</sup>

The opportunities for fraud, misrepresentation and seduction in

<sup>10</sup> Falkland kirk session records: Scottish Record Office (S.R.O.) CH2/428/4.

<sup>11</sup> Dysart kirk session records, 2nd April 1780: S.R.O. CH2/390/7.

<sup>12</sup> North Leith kirk session records, 31st January 1749: S.R.O. CH2/621/9.

such a so-called marriage are only too obvious, but these were simple people, and most irregular marriages seem to have turned out as well as the more respectable unions. The wearing of a black coat seems to have been almost *de rigueur* with these amateur ministers. South Leith noted a similar case in 1716, when a certain Corporal Dowart donned a black coat and performed the ceremony to oblige a friend of his in the regiment who wished to marry a Leith girl.<sup>13</sup>

Leith was then the first port in Scotland, with a large and constantly moving seafaring population to be added to the settled inhabitants. It was also a garrison town, with troops constantly quartered in private houses. Under such circumstances it was hardly surprising that irregular marriage was more prevalent in Leith than elsewhere. On the other hand nearly all the celebrators of these marriages lived in Edinburgh, yet the Edinburgh elders did not pursue the guilty parties with anything like the zeal to be seen in Leith. Perhaps the population in the capital was too large, but the reason may rather be found in a statement made by the kirk session of Bo'ness, when on 31st August 1708 William Stark of Dillator compeared to answer the charge of being irregularly married:

“The Session considering that there was no rule laid down by the Church whereby they might proceed against him, were of the mind that he should be rebuked and admonished of Marriage dutys, that he should have a regular walk in time coming. He was called in and rebuked and admonished accordingly.”<sup>14</sup>

Again, at Dumfries in 1732 — 24 years after the case just quoted — the elders were still in the same embarrassing perplexity over such delinquents. The kirk session therefore appointed a committee

“to wait upon the presbytery or any committee of their number that shall be appointed to consult and advise with them about a Regular and Uniform Method of Censuring such Delinquents.”<sup>15</sup>

The elders in Leith never expressed any such hesitation. Cases with abnormal features were sometimes referred to the presbytery, but generally the only problem was to elicit the details of time and place and the various people involved in an irregular marriage. After all, irregular marriage was legal, and all that the kirk session could do was to have the marriage “judicially acknow-

<sup>13</sup> South Leith kirk session records, 12th and 16th August 1716: S.R.O. CH2/716/16.

<sup>14</sup> Bo'ness kirk session records: S.R.O. CH2/540/1.

<sup>15</sup> Dumfries kirk session records, 30th March 1732: S.R.O. CH2/537/1.



ledged", and so publicised and recorded. Then the couple were "rebuked, admonished, and ordered to pay the charges". It was not uncommon for South Leith session to deal with four or five cases at a single sitting.

The worst aspect of the clandestine union was that, being neither proclaimed nor recorded, there was no documentary proof that the marriage had ever taken place. Many of the parties involved were illiterate, for even when they could sign their names it did not follow that they had any facility in reading. Not realising the importance of a certificate, they did not always ask for one, and even when they did it was not uncommon for the all-important paper to be lost or destroyed. Witnesses were not to be relied upon, for they could be called in from the street — strangers who disappeared as soon as the ceremony was over. If one party were later to deny the marriage it was then very difficult for the other to prove it. A young and illiterate woman abandoned by her husband after a clandestine marriage and left with children to bring up was in a sad sase indeed, and the kirk session did not welcome her on to their already over-long poor list. Again, if a soldier or sailor were killed on active service, and the marriage had been irregular, his wife was not informed: she had to rely on hearsay for news of his death—and hearsay was not evidence. Unable to prove her widowhood, the kirk session would not recognise her claim for a pension.

At the same time these clandestine unions were by no means confined to the poor and underprivileged. There were certainly plenty such — cases where the elders forebore to impose a fine because of the obvious destitution of the young couple — cases again where the matter was departed from, since the parties were not too bright. But many of those brought before the session were from well-doing and well-to-do families of merchants, professional people and the like. It has been suggested that among such better-off folk irregular marriage was often nothing more than a youthful assertion of independence — cocking a snook at authority. Once the adventure was over the family quickly sought to have the marriage "judicially owned", and so properly recorded.<sup>16</sup>

This youthful tendency to kick over the traces was no doubt a factor to be taken into account among the more comfortable families, but the motives behind the drive towards irregular marriage were much more complex. These marriages grew to such proportions as the eighteenth century advanced that kirk sessions

<sup>16</sup> "In order to escape the expense of a wedding, or the fuss of it, perhaps in order to escape the jocularly of one's too playful friends, love of romance — for any or all of these reasons it was thought well done quietly to slip away and get married before a friendly minister without any other intervention." (Barbara Balfour-Melville: *The Balfours of Pilrig*, 164.)



were seriously perturbed. In 1719 the presbytery of Edinburgh proposed to send information to the procurator anent all irregular marriages within the bounds. But significantly the minute adds:

“And as to such as refuse to produce evidence of their Marriage, It is referred to the Committee for Difficult Cases to bring in some Overture as to what is proper for Church Judicatories to do in such cases.”<sup>17</sup>

There was the rub. It was by no means easy to extract information from parties determined not to give it. The scandal was increasing and the ecclesiastical courts had no effective answer. Eighteen months later, towards the end of 1720, the magistrates of Edinburgh gave the Church their backing, and summarised the situation in the city:

“Irregular marriages are become very common: Persons under age are clandestinely married, without the Knowledge or Consent of Parents, often very unequally; as also, some who have fallen into fornication do procure antedated false Certificates of Marriage; & Ministers deposed for Scandals, yea, Persons under Censure of the greater Excommunication, are employed in marrying of Persons contrary to Law. . . .”<sup>18</sup>

The magistrates and Justices of the Peace urged the procurator-fiscal to prosecute all such transgressors.

Passing resolutions and urging others to take action was completely ineffective, and in 1730 North Leith kirk session felt constrained to minute:

“The session considering that all the marriages which have happened in this parish since the current Year commenced are Clandestine, and that none have been duely proclaimed in the Church, were of opinion that the best way to put a stop to such abounding Irregularities will be, by making application to the Baillies of the Canongate or Justices of the Peace, for executing the Law against such delinquents. . . .”<sup>19</sup>

This looks like a despairing repetition of a proposed remedy which had already been tried without success by both presbytery and magistrates, but there was an aspect of the situation in Leith which was not likely to trouble larger communities. The fact seems to have been that in Leith, despite the threats made in kirk session minutes, the elders were reluctant to report such cases

<sup>17</sup> Quoted in South Leith kirk session records, 12th February 1719. S.R.O. CH2/716/17.

<sup>18</sup> Act of the Magistrates of Edinburgh, 23rd December 1720. In custody of Edinburgh City Archivist.

<sup>19</sup> North Leith kirk session records, 12th May 1730. S.R.O. CH2/621/8.

as came under their notice to the magistrates. Prosecution by the civil courts meant imprisonment until such time as a fine was paid, and the elders were reluctant to send their neighbours to prison. Very few cases from Leith were ever passed to the magistrates. Yet the North Leith session returned to the matter only 15 months after their previous resolution:

“The session seriously considering the many abuses & bad Consequences of Irregular Marriages, particularly in this Parish, where a Very few of a long time have been married in that Decent, regular and public manner, as the Laws of the Nation, both Church and State, do allow. . . .”<sup>20</sup>

they resolved once again to report the guilty parties to the civil authorities. The following year the South Leith elders followed suit:

“The session taking into Consideration the unaccountable frequency of Irregular Marriages notwithstanding the strict laws against them, and that so few of those that are married take the Legall and Regular Course. . . .”<sup>21</sup>

they resolved in similar terms to North Leith session. There is no record to show whether any real effort was made to carry out these threats, but clandestine marriages continued on the same large and disturbing scale until well past the middle of the century. In 1754, for example, there was one regular marriage in North Leith, and nine irregular unions. That was a bad year, but throughout the following decade there was in the parish an annual average of 8.5 regular, as against 11.8 irregular marriages.<sup>22</sup> Yet, notwithstanding the opposition of both Church and State, these marriages were perfectly legal. Parties might be fined and imprisoned, but they were still married.

Further statistics from South Leith are of interest. From the beginning of the century until 1713, an annual average of six irregular marriages were recorded: from 1714 to 1728 this rate more than doubled; and between 1729 and 1736 the level rose to 22 irregular marriages *per annum*. This by no means reflects any change in the population, which grew very slowly in those years. Clandestine unions were becoming much more numerous as the century advanced, and reasons for this are not difficult to find.

The establishment of Presbyterianism was not received with universal acclaim.<sup>23</sup> To be married by an “outed” minister was a

<sup>20</sup> North Leith kirk session records, 28th September 1731. S.R.O. CH2/621/8.

<sup>21</sup> South Leith kirk session records, 11th May 1732. S.R.O. CH2/716/22.

<sup>22</sup> North Leith kirk session records, 29th December 1801. Statistics compiled by the session clerk in connection with the census in that year. S.R.O. CH2/621/11.

<sup>23</sup> See the Rev. Dr. T. Maxwell: “Presbyterian and Episcopalian in 1688”. (*Records of the Scottish Church History Society*: xiii, 25ff.)

gesture of sympathy to a man in trouble, as well as a defiance of the establishment. The reintroduction of patronage in 1712 strengthened rebellious tendencies and brought a sharp rise in irregular marriages. Within the membership of the Church the movement towards secession gave added impetus to the inclination to flout the authority of the parish minister. In 1736 John Reid, doctor (that is, assistant master) at the Grammar School of Leith, confessed his irregular marriage to the kirk session; and four years later this was the man who led a body of seceders away from the parish kirk.

From this time onwards the situation became more complicated. Seceders celebrated their marriages without any reference to the parish minister. It followed that all marriages of seceders were, strictly speaking, irregular. But while an average of 25 irregular marriages were recorded annually by the South Leith kirk session between 1736 and 1766, none of these concerned any Leith seceders. During that period John Reid and his followers worshipped under the Rev. Adam Gib at Bristo, but Mr Gib's name is not once mentioned as the celebrator of an irregular marriage. By the 1760s there were upwards of 200 men and women adhering to the secession in Leith, so it must have been deliberate policy for the kirk session to ignore seceding marriages. The same attitude was adopted in regard to Episcopalian marriages celebrated by "qualified" ministers. This was just and sensible, for these other denominations kept their own records and largely accepted responsibility for their own poor.<sup>24</sup>

On 9th August 1750 the South Leith session recorded the marriage of Alexander Crawford of North Leith, and Margaret Ewen of South Leith. Their union had been celebrated the previous year by James Jenkine, "minister in the Fleet, London". This is the only reference in the Leith records to the situation in London at that period, where the "Fleet marriages" had become a national scandal. Warren Henry's description of the London scene in the mid-eighteenth century should be noticed here:

"A controversy had begun to rage around the infamous marryings that took place at the Fleet prison, at the Mint, the Savoy Chapel, and Mayfair. Here debtors and scallywags of all descriptions . . . were busy marrying, without ceremony or notice, all the young ladies of fortune whom by fair means or foul they could beguile, entangle or, if necessary, compromise or seduce. . . . There were as many as sixty marriage-houses near the Fleet prison. They were as common, almost, as public-houses, and only distinguishable from them by the hanging signs outside —

<sup>24</sup> See *Registers of the Episcopal Congregation in Leith, 1733-1775*: ed. Angus Macintyre. (Scot. Record Soc. 1949.)



the symbol of two crossed hands. Touts stood in the doorways, inviting the passers-by to enter, and the strangest unions were formed.”<sup>25</sup>

As Scotland has been saddled with the reputation of being the country where the marriage laws were lightly held, this account of London is worth attention.

There was no parallel to this in Scotland, even when clandestine marriage was at its most popular. At first, in the early years of the eighteenth century, the celebrators were almost exclusively “outed” Episcopalian ministers, but this designation is not very informative. After the troubles of the seventeenth century there were many ministers without parish or congregation living in and around Edinburgh. They had gravitated there from all over the country. Some were men of strong principle who had found it impossible to change their beliefs and loyalties to suit the party in power. Men who insisted on still praying for King James, even after William was on the throne, got short shrift from the Privy Council and were deprived of their charges. For such men the city offered more opportunities of earning a living than did the country.

Among those “outed” men were several undoubted eccentrics. William Adams was schoolmaster of Prestonpans at the beginning of the eighteenth century, and on being called to Humbie in 1701 he refused to subscribe the Formula, saying he had already done so as a schoolmaster and saw no need to go on repeating himself. He earned a rebuke from the Synod, who warned the Presbytery to “keep a watchful eye over him”. He continued as a minister till 1714, having several jousts with authority over what he called “these tyrannical impositions”, and finally demitted office to become a printer in Edinburgh. As a printer he still conducted an occasional marriage, caring nothing for the affront given to the Establishment.<sup>26</sup>

Gilbert Ramsay demitted his charge at Cummertrees in 1700 to join the army as a private in a dragoon regiment. He was deposed for this, but this didn’t matter in the army, where Mr Ramsay began celebrating irregular marriages. After the ’15 Rebellion Ramsay settled in Edinburgh, where he was available for similar services for more than a decade.<sup>27</sup>

There was also the defiant type. Not content with omitting to pray for William and Mary, Thomas Strachan, minister of Meginch and Cambusmichael, prayed for King James and his happy restoration, and confusion to his enemies!<sup>28</sup> As this was

<sup>25</sup> Warren Henry: *Gretna Green Romances*, 6ff.

<sup>26</sup> *Fasti Ecclesiae Scoticae*, ed. Hew Scott: i, 376.

<sup>27</sup> *Fasti Eccles. Scot.*, ii, 243.

<sup>28</sup> *Fasti Eccles. Scot.*, iv, 248.



in addition to other acts of defiance, Mr Strachan was very quickly unemployed, and spent the next 33 years, until he died, "in distressed circumstances".

An irregular marriage was no cheaper than the regular kind and, ultimately, if the parties were brought before the kirk session, it was much dearer, since all the normal charges were levied before baptism was allowed, or a widow's pension granted. North Leith in 1758 decided to raise their charges for the proclamation of banns to the level obtaining in South Leith — a total of 6s. 2d. sterling. This represented half a crown to the poor, half a crown to the session clerk, and 1s. 2d. to the beadle.<sup>29</sup> Mention has been made of Janet McAulay of North Leith<sup>30</sup> who paid a soldier three shillings sterling to marry her to another soldier. That was in 1749, and perhaps a soldier acting as celebrator would not rate as high as a minister doing the same service. A Leith man, John Morgan, in 1730 paid a crown to the minister who conducted his irregular marriage — and he also gave two shillings to "a man he called his beadle", and afterwards he "spent fourteen or sixteen pence sterling in drink with the Minister and Company, after which they parted".<sup>31</sup> And going further back, John Mathers at the beginning of the century got £4 Scots (6s. 8d. sterling) from a Falkland man for an irregular marriage; and on that occasion the agent was paid nineteen shillings Scots (1s. 7d. sterling).<sup>32</sup> Agents were not always paid, but some appear to have been touts with their own scale of charges.

"Qualified" Episcopalian ministers were allowed to conduct marriages among their own people, but the non-jurors had no such favour. Yet there was much sympathy for them, and many from their old congregations, now Presbyterian, still resorted to the former incumbents for marriage, although as time passed this element in the situation faded away.

Having recognised the stubborn, the eccentric and the unfortunate among the celebrators of clandestine marriages, it must also be admitted that a fair proportion of them were rogues — men who for their past sins were reduced to living on their wits. There were erstwhile ministers deposed for drunkenness, theft, adultery and other offences. They lodged in and around Edinburgh — a number of them from time to time in the Abbey sanctuary.

Altogether about 150 celebrators of irregular marriages are mentioned in the South Leith records, extending throughout the eighteenth century, but out of these there are very few whose

<sup>29</sup> North Leith kirk session records, 24th October 1758. S.R.O. CH2/621/10.

<sup>30</sup> See p. 14.

<sup>31</sup> North Leith kirk session records, 19th May 1730. S.R.O. CH2/621/8.

<sup>32</sup> Falkland kirk session records, 17th January 1703. S.R.O. CH2/428/4.

names appear frequently. Three men in particular — David Strange (or Strang), David Paterson and William Jamieson — were each responsible for more than 120 clandestine marriages involving Leith people; and another half-dozen each celebrated more than 50 such unions. The same small group were responsible for irregular marriages much further afield, and it is plain that this activity was an important source of income for these men, and probably their principal livelihood.

It is quite in character that any information about the celebrators of irregular marriages is hard to come by. David Strange, minister of Cabrach and Strathdeveron, was deposed for neglecting his duty and retired to Edinburgh where he was excommunicated for persistently offending in this matter. He was imprisoned and sentenced to banishment by the Lords of Justiciary but managed to continue his illicit business even while in prison. He died in 1744, still behind bars, at the age of 70.<sup>33</sup>

In the year of David Strange's death, William Jamieson made his first appearance and during the next 12 years he married 120 couples in South Leith alone. Mr Jamieson was a very elusive man. Perhaps warned by the fate of David Strange, Jamieson gave away as little information as possible about himself or his whereabouts. When he gave a certificate he generally omitted any reference to the place of the marriage, or else simply said "at Edinburgh". When parties were questioned by the kirk session, as often as not they claimed they could not say exactly where they had been married, although one couple indebted to Mr Jamieson admitted that their marriage had taken place "in the house of Mr Forbes, change-keeper in the Horse Wynd, Edinburgh, and that the said Mr Forbes and his wife were witnesses".<sup>34</sup> From time to time the elders tried to lay hands on William Jamieson, but the rogue was alert, as may be seen from the following example:

"The . . . parties said they knew not the said William Jamieson, nor where he lived, nor in whose house they were married, only James Boyd, barber in Leith, got him to them. Therefore appoints to cite the said James to next dyet. . . ."

"James Boyd being cited and called, compeared, and being interrogated with regard to William Jamieson, the celebrator of so many irregular marriages, said he knows not where he dwells, but upon enquiry he got him at one Gordon's, in the head of the Canongate. . . . That he has no acquaintance with the said Jamieson, nor does he

<sup>33</sup> *Fasti Eccles. Scot.*, vi, 122.

<sup>34</sup> South Leith kirk session records, 26th March 1747. S.R.O. CH2/716/25.

think he would know him again if he saw him. . . .”<sup>35</sup>

No doubt the elders found this hard to believe, but they could think of nothing further to say, and dismissed the witness.

Jamieson’s methods were common to all those who sought to make a living in this way. Another practitioner deeply involved was William Milne, who remained as mysterious a character as Jamieson. On being questioned on one occasion,

“The parties said they knew nothing about the minister, but Thomas Lighton living near the foot of the Cowgate, Edinburgh, got him to them, and they were married in said Lighton’s house.”<sup>36</sup>

Mr Jamieson’s irregular business was so well established that he had his own clerk, who busied himself writing marriage certificates and no doubt made arrangements with the various agents and go-betweens, paying them their fees.<sup>37</sup> Again and again parties declared to the elders they had no idea who it was that married them, and this was probably true. Celebrators faced excommunication if they persisted in their way of life, and fining and imprisonment by the Justices, if they were caught; so they were at pains to cover their tracks. The great majority of those mentioned in the records as celebrators seem to have officiated only on a few occasions, and would not be running much risk; but the few who lived by irregular marriage were living dangerously. Their certificates gave little information, and even that little was sometimes false. Thus John Dickson, a golf clubmaker in Leith and a well-known local personality, produced the certificate of his irregular marriage which had been performed by David Strange:

“These certify that John Dickson and Janet Watson were this day married, after they had solemnly both declared upon oath that their Bans were duely proclaimed.”

When asked whether they had in fact made any such declaration, both husband wife denied it and maintained they had not been asked any questions.<sup>38</sup> As the couple were almost certainly unable to read, the contents of their “marriage lines” no doubt surprised them.

Another practitioner, George Bennet, responsible for about 20 irregular marriages in Leith, issued a certificate to one couple in these terms:

<sup>35</sup> South Leith kirk session records, 7th and 21st May 1747. S.R.O. CH2/716/25.

<sup>36</sup> South Leith kirk session records, 5th January 1749. S.R.O. CH2/716/25.

<sup>37</sup> South Leith kirk session records, 10th August 1749. S.R.O. CH2/716/25.

<sup>38</sup> South Leith kirk session records, 25th May 1733. S.R.O. CH2/716/22.



“These are Testifying to all concerned That the bearers hereof, James Miller and Marrian Lockheart being single persons not within the forbidden Degrees, and having their friends’ (i.e. relatives’) Consent (as they deponed upon oath) were Lawfully Married at Canongate upon the 16th Day of August 1726 before these witnesses, James Baxter, Cook, indweller in Edinburgh, and William Osler, Wright in Canongate by me Mr George Bennet, Minister and Chaplain to one of his Majesties men of war.”

This verbose document in fact gives little away. There is no record of George Bennet as a minister, and he omits to mention the name of the ship in which he claims to be chaplain. Another celebrator, Alexander Lyon, on at least one occasion presented himself to the parties as Mr Craighead and so managed to confuse the issue that the kirk session referred the matter to the presbytery to sort out.<sup>39</sup>

Forged certificates were not unknown, but were generally such amateurish jobs that they were easily detected. The case was different when a husband denied his marriage, alleging that the certificate was a forgery. If the wife could produce the witnesses, all might be well; but witnesses were sometimes unknown to the parties. Celebrators who did much business generally had two or three persons not averse to earning a small fee in this way from time to time — friends or neighbours. Failing any of the “regulars”, passers-by were called in — and a few months later the girl might have the greatest difficulty proving her marriage if the husband denied it.

In 1737 the North Leith elders decided that the usual sessional rebuke of guilty parties was not having the desired effect, so they introduced a public censure before the congregation, for irregular marriage. This greater severity still having no apparent effect, the session then resorted to increased fines. Still nothing seemed able to stem the flood, and in 1754 there was but a single regular marriage in the entire year — and that was a peculiar case. The couple in question had previously been married irregularly by David Paterson. When the matter came before the kirk session the elders decided they had had enough. David Paterson was lying under the Greater Excommunication, and the session refused to acknowledge the legality of this so-called marriage. In years past they had accepted many marriages performed by David Strange, when he also was an excommunicated man, but since all else had failed to put a stop to these clandestine unions they now simply denied the fact of the marriage — and the couple meekly acquiesced, and

“They were upon a remorse regularly proclaimed and

<sup>39</sup> South Leith kirk session records, 25th May and 28th September 1749. S.R.O. CH2/716/25.



Married this day before the session, after being rebuked for their former irregularity.”<sup>40</sup>

This case of regularisation appears to be unique. Kirk sessions confronted with the fact of irregular marriage never denied the marriage, although deploring the irregularity.

Both the Church and the civil authorities were defeated. Fines, rebukes and exhortations did nothing to prevent these marriages, since once the knot had been tied it could not be untied by such methods. So the famous “Ru’glen Marriages”, like the later ongoings at Gretna, became a kind of bye-word in the land. In Rutherglen, when an irregular marriage took place, it was customary for a friend of the parties to call on the procurator-fiscal and lodge information that a marriage had taken place without proclamation of banns. The fiscal then summoned the delinquents before the sheriff, who imposed a fine of five shillings. The fiscal received the fine and handed the parties a printed form of receipt which, by discharging the fine, certified the marriage.<sup>41</sup> It was a smooth, workable, sensible compromise at a time when there was no official registration system. It scandalised the Church, but it did something to protect the woman, whether as wife, mother or widow. She could at least prove her marriage.

Two acts were published in 1753 and 1781, covering “England, Wales and Berwick”, providing that marriages celebrated in churches other than parish churches, and by ministers other than parish ministers, should be deemed regular, and in 1784 these provisions were extended to Scotland. This had an immediate effect. Now the inducement to resort to ministers of doubtful standing and character was much weakened, and the number of irregular marriages reported in kirk session records fell off rapidly. At the same time the swift increase in the population of towns in the latter years of the eighteenth century made the attempt to trace and deal with every clandestine marriage extremely difficult, and all attempt at keeping any account of these affairs was abandoned early in the nineteenth century.

<sup>40</sup> North Leith kirk session records, 29th January 1754. S.R.O. CH2/621/9.

<sup>41</sup> Charles Rogers, *Scotland Social and Domestic*, 117f.

