

BROOKE'S TREATISE  
ON  
THE OFFICE AND PRACTICE  
OF  
A NOTARY OF ENGLAND  
WITH  
A COLLECTION OF PRECEDENTS

NINTH EDITION

BY  
J. CHARLESWORTH, LL.D.  
OF LINCOLN'S INN, BARRISTER-AT-LAW

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## PREFACE

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IN preparing this new edition for the press I wish to acknowledge my great indebtedness to Mr. W. F. Murly, Notary Public. Mr. Murly has not only revised Chapters X and XI and the supplementary information set out in the Appendix, but has also written a new chapter on Drawings of Foreign Bonds and Debenture Stock, which, with the precedents annexed to it, it is hoped will be of considerable assistance to the practising notary.

The remainder of the work has been brought up to date. After considerable hesitation the chapter on charterparties has been retained, although it is doubtful whether the amount of work now done by notaries in connection with charterparties justifies the retention. In the Appendix, the Carriage of Goods by Sea Act, 1924, has been omitted as having little or no bearing on notarial practice, and, for a similar reason, the statutes relating to evidence have also been omitted. To compensate to some extent for these omissions, the Bills of Exchange (Crossed Cheques) Act, 1906, and the Bills of Exchange Act (1882) Amendment Act, 1932, have been inserted so as to complete the statute law relating to bills of exchange.

J. CHARLESWORTH.

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A  
TREATISE  
ON THE  
OFFICE AND PRACTICE  
OF  
A NOTARY OF ENGLAND  
IN CONNEXION WITH MERCANTILE INSTRUMENTS

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CHAPTER I

ORIGIN AND DEVELOPMENT OF THE OFFICE

THERE is good reason to believe that the office of a notary public had its origin in the civil institutions of ancient Rome.

From an early period of Roman history there existed among the Roman people a number of public officials who were known generally as *scribæ*, or scribes. Originally mere copiers and transcribers, they rose eventually to the rank of a learned profession, and, by reason of their technical knowledge and skill took a prominent part in the conduct of public and private affairs. Their occupations varied. Some were permanent officials attached to the senate and courts of law, whose duties were to record public proceedings, transcribe state papers, supply the Roman magistrates with legal forms, and register their judgments and decrees; others were engaged principally in matters of private concern, such as drafting deeds, wills, conveyances, and the like.

Associated with the scribes, and in their service, were freedmen, or slaves, who were employed in copying documents, taking short notes of instructions, and performing other subordinate duties.

In the last century of the Republic, and probably in the days of Cicero (*a*), a new system of shorthand was invented, and instead of abbreviations, called *sigla* (*b*), certain arbitrary marks or signs, called *notæ*, were substituted for words in common use. A writer who adopted the new method was called *notarius*. Originally, therefore, a notary was one who took down statements in shorthand and wrote them out in the form of memoranda or minutes. In course of time, however, a shorthand writer ceased to be known as *notarius*, and in the later stages of Roman Law, the title was applied almost exclusively to registrars attached to the courts of provincial governors, to the secretaries of emperors, and to the highest class of officials in the imperial chancery, or privy council (*c*).

(*a*) The Roman shorthand, called *Notæ Tironianæ*, took its name from Cicero's secretary, M. Tullius Tiro, by whom it is said to have been invented for the purpose of taking down his master's speeches. Cicero was the first to adopt this form of reporting, for Plutarch, in his *Life of Cato the Younger*, states that during his consulship Cicero selected a number of expert writers whom he had taught the art of abbreviating by characters, and placed them in different parts of the senate-house, and he adds that before this there were no shorthand writers in Rome. Ennius, the grammarian of the Augustan period, and others, made considerable additions and improvements. Shorthand was also used in drafting legal documents, such as wills.

(*b*) This method (*per sigla*, as it was described by Roman writers) consisted either in abbreviating words, *e.g.*, App. for *Appius*; Coss. for *consules*, etc., or in writing one letter, usually the initial letter, for a whole word, *e.g.*, PC for *patres conscripti*; SC for *senatus-consultum*, etc.

(*c*) "*Notarii* was the name given to shorthand writers who in the early days of the Church reported the examinations and trials of martyrs and confessors. They were employed to take down in writing the whole process of the Roman judges against the martyrs, and to write out the circumstances of their examination and passion: the questions that were put to them, the answers they gave, and everything that passed during their trials and sufferings. These reports were called the Acts of the Martyrs, and were the original records preserved by the Church. By this means accounts of the martyrdom of St. Andrew, St. Polycarp, and many others were preserved, and the earliest collection of the lives of the saints was derived from the same source. The first institution of these *notarii* at Rome was under Fabian in the time of the Decian persecutions. In after ages notaries were employed in writing the acts of the councils, and in taking speeches and discussions that passed in the synod. Notaries were also



Besides recording judicial proceedings and assisting in the administration of justice, Roman notaries were officially connected with what was known as the voluntary or non-contentious jurisdiction of the courts. In this capacity they drew up deeds and other private documents, which were afterwards sealed in the presence of the presiding magistrate with the official seal of the court and thereby rendered public and authentic *acts*. Private documents, however, were usually prepared and attested by *tabelliones* (*d*), who were simply professional scribes and held no public office. They took their stations, *stationes*, in the forum (*e*) or market place, where the public applied to them for professional advice and assistance. Their duties were regulated by law, and included the preparation of wills, deeds, transfers of property, and the like. From these professional scribes Continental notaries derive their principal functions. They had in their service clerks, described as *notarii*, who took shorthand notes of the client's instructions, and wrote them out in the form of minutes. From these minutes a formal document was afterwards drawn up which was signed by the parties, attested by witnesses, and authenticated by the *tabellio* (*f*). When all the necessary formalities had been complied with, the instrument or act was complete and binding on the parties (*g*).

The acts of a *tabellio* were styled *instrumenta publice confecta*, and commanded a degree of credit and authenticity that was not accorded to *instrumenta privata*, or documents executed by private individuals without the intervention of a *tabellio*. They were not, however, in Roman Law accorded the full credit and authenticity

employed in taking down the discourses of eloquent preachers. By this means many of St. Chrysostom's sermons were preserved. Bishops also had their private notaries." Bingham's Works, vol. i. 363.

(*d*) This title, first used in the fourth century, was derived from *tabellæ*, thin tablets covered with wax, on which letters, etc., were written. *Tabellæ* was also used in a general sense to denote documents written on paper or parchment.

(*e*) Hence the phrase *instrumenta forensia*.

(*f*) Nov. 73, c. 7, describes the mode of authenticating instruments, and points out the functions of the *tabellio* in this respect.

(*g*) In the Civil Law the document was called an instrument; in other systems of law, an act.