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Scottish urban archives and histories:
context and a legal historical perspective

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In Memoriam

Athol Murray, 1930 – 2018



Editorial Dedication

Athol Murray was a scholar of extraordinary calibre. He combined an unequalled authority on Scottish archives with an instinct to raise new questions about the traces of the past and to share his deep understanding with others. He wrote more than twenty-six scholarly articles, several edited texts for the Scottish History Society, the Scottish Record Society, and he produced numerous articles and other contributions on Scottish history and archives over some sixty-five years. Of particular significance is the revised edition of *Fasti Ecclesiae Scoticae Medii Aevi* (Scottish Record Society, 2003), the fruit of a collaborative project to identify the post-holders of the Scottish church in the middle ages which he co-edited. Born in Northumberland, Athol graduated with a degree in History from Cambridge in 1952 at the age of twenty-one. He secured a permanent appointment as an archivist (Assistant Keeper) at the then Scottish Record Office in 1953. There he met his wife, Joyce, who was also an Assistant Keeper. He earned a further degree in Law (LLB 1957) and a doctorate in History (PhD 1961) from the University of Edinburgh. His dissertation for the latter, on *The Exchequer and Crown Revenue of Scotland 1437–1542* (1961), emerged directly from his work with these records in the SRO (now the National Records of Scotland) and has proved a mainstay for the study of late medieval Scottish government. Promoted to Deputy Keeper in 1984, Athol became Keeper of the Records of Scotland in 1985, holding the post until his retirement in 1990 after thirty-seven years of service. One of his major achievements in that role was to secure government funding for the construction of Thomas Thomson House, a dedicated archive building in Edinburgh, which opened in 1994.

Following retirement Athol continued to serve in a number of professional capacities, including as the leader of a team to report on the Hong Kong government archives just before the handover to China in 1997. He remained an active volunteer in the NRS right up to his death in 2018, and an area of continued inquiry for him remained the Exchequer records. Athol was also a dedicated servant to the field of historical research and its cognate disciplines. He was a Fellow of the Royal Historical Society, a Fellow and vice-president of the Society of Antiquaries of Scotland and a founder member of the annual

Conference of Scottish Medievalists, which first met in 1958.

In his personal interactions with other scholars Athol was always warm and encouraging in his gentle and thoughtful way. This was true both intellectually in terms of generously sharing from his own unpublished and ongoing research and corresponding about topics of shared interest, and more generally as a firm supporter of young researchers in the field. He set a tremendous example as one who remained fully active in the academic world long past the point at which others might have ceased to be so engaged. Athol was a scholar of great authority, learning and experience, but on top of all this he conveyed a deep warmth and sparkle that we shall always fondly remember. We are grateful to Athol's family for their kind permission to publish his essay posthumously and to dedicate this issue of the *Journal of Irish and Scottish Studies* to his memory.

Jackson W. Armstrong, *University of Aberdeen*
Andrew Mackillop, *University of Glasgow*

Introduction

Scottish Urban Archives and Histories

Jackson W. Armstrong and Andrew Mackillop

This special issue of the *Journal of Irish and Scottish Studies* examines Scottish urban archives and Scottish urban histories. It does so with the aim of taking stock of the field of scholarship and archival collections relating to Scottish burghs, exploring potential new fields of research and, in particular, developing one such perspective by way of example. In this task it holds a broad chronological interest joining the medieval and the modern periods, albeit with a primary focus on the fifteenth, sixteenth, and seventeenth centuries. The latter emphasis concentrates attention on what has proven to be a historiographically dynamic period in the field, and is one into which we seek to make a useful interjection while also highlighting the commonalities and discontinuities that stretch back from the early-modern era into the medieval period and forward into the modern. The wider goal, with particular relevance to Scotland's history, is to consider how urban records can be put to use to address a range of topics and questions with relevance beyond that which may be considered distinctly or naturally urban. The particular viewpoint to be advanced in this collaborative exercise comes from a legal historical perspective.

This collection of essays arises from the Aberdeen Burgh Records Project, which is a shared endeavour between the Research Institute of Irish and Scottish Studies and the Aberdeen City & Aberdeenshire Archives to examine themes of continuity and transition, languages and geographies, and more generally the use of urban records for the study beyond 'urban history' itself.¹ Given Scotland's relatively low levels of urbanisation and its societal

¹ We wish to thank Professor Michael P. Brown, editor of the *Journal of Irish and Scottish Studies*, and an anonymous reviewer for their comments on this collection. We are grateful to all of the authors for their contributions and patience, and wish to acknowledge the contributions of all the participants in 'The Burgh in the North' symposium of November 2013, hosted by the Research Institute of Irish and Scottish Studies and funded by the Margaret Jones Bequest. We wish also to register our thanks to Mr Phil Astley, City Archivist, Aberdeen City and Aberdeenshire Archives, and his team, and Dr Edda Frankot, for their long-standing commitment to the Aberdeen Burgh Records Project.

concentration on agricultural production prior to the industrial revolution, it is unremarkable that the volume of surviving town records from the realm in the later middle ages is relatively small and fragmentary.² That said, it is Aberdeen's civic archive which proves the exception to the general rule, and which offers a series of surviving burgh records which are impressive in both a Scottish and northern European context for their continuity and for their richness. With extant council registers from 1398 onwards (excepting a gap in the series from c.1414-c.1434), Aberdeen's records are the most continuous of their kind in Scotland. For the fifteenth century alone, more survives for Aberdeen than for all other Scottish towns combined. The international significance of this archive resonates in that it provides a nearly unbroken record for a major regional nucleus of political and judicial power within the Scottish kingdom. Aberdeen (itself consisting of two neighbouring burghs; what came to be known as New Aberdeen on the River Dee and Old Aberdeen on the River Don – the latter with its own civic registers surviving from the seventeenth century) was also a major episcopal seat, the site of one of Europe's most northern seats of learning (King's College founded 1495 and Marischal College founded 1593), and a commercial entrepot with extensive hinter-lands and hinter-seas.³ The point of origin for most of the essays assembled here is a symposium held in 2013. They were subsequently prepared for publication in 2015; thus they reflect the state of the field at that time.⁴

Given the ambition to examine how urban records may be put to use for more than urban history alone, it is important to offer two different types of overview: archival and historiographical. This is the purpose of the contributions by Athol Murray and Alan R. MacDonald. In 1988 an appraisal and survey of the surviving source materials for study of medieval Scottish

For the Aberdeen Burgh Records Project, see <http://www.abdn.ac.uk/riiss/about/aberdeen-burgh-records-project-97.php> [accessed 3 July 2016]. For information on the Leverhulme Trust Research Project Grant which emerges from this collaboration, Law in the Aberdeen Council Registers, 1398–1511: Concepts, Practices, Geographies, see <http://aberdeenregisters.org> [accessed 1 December 2016].

² D. Ditchburn and A. J. Macdonald, 'Medieval Scotland, 1100-1560' in R. A. Houston and W. W. J. Knox (eds), *The Penguin History of Scotland: From the Earliest Times to the Present Day* (London, 2001), 145–6; I. D. Whyte, *Scotland's Society and Economy in Transition, c.1500–c.1760* (Basingstoke, 1997), 115.

³ D. Ditchburn and M. Harper, 'Aberdeen and the Outside World' in E. P. Dennison, D. Ditchburn and M. Lynch (eds), *Aberdeen before 1800: A New History* (East Linton, 2002), 377–407.

⁴ All excepting that by Wilson which was prepared in 2017.

towns offered the view that, although scattered and fragmentary, the range of relevant evidence in the form of burgh records themselves, as well as records from royal government, the church, and foreign sources, had ‘yet to be taken to its cultivation limits’.⁵ Considering the later middle ages in particular, and despite important contributions to the study of urban experience, that statement still holds true today.⁶ Murray’s contribution to the present collection advances significantly upon that older appraisal with an overview of the nature, creation and preservation of Scotland’s urban archives. In viewing urban record survival as essentially an issue of bureaucratic and archival culture, Murray shows how burgh records must be approached primarily as legal documents. Yet a striking feature of the origins, nature and content of these documents is the sheer inconsistency of record production, bureaucratic form, content, and modes of preservation. If the Scottish burghs existed as a coherent, constitutional and incorporated ‘estate’, then the wildly diverse methods for recording their proceedings point to the ongoing vigour of local customs and practice. Equally, the number of examples of individual record volumes that were sent to Edinburgh for legal reasons, never to reappear, underscores the extent to which Scottish towns did indeed function within a recognisably ‘national’ legal system from the mid-sixteenth century onwards. Again and again, the fate of town records reveals the extent to which Edinburgh functioned as the seat of national justice in the early-modern period.

Moreover, as Andrew Simpson’s article demonstrates, the personnel who sat on the burgh courts were usually imbued with the latest in legal thinking and, in the case of the Aberdeen canonists who framed the town’s response to a politically sensitive shipwreck in the 1530s, were kinsmen of the newly emerging judges responsible for the advancement of the king’s justice through the session. Given these trends, it might be tempting to view law as an innately homogenising force. But the extent to which each burgh kept its records in its own way while using different personnel and non-standardised bureaucratic assumptions warns against any hasty leap to this conclusion. In turn, Murray’s detailed survey of the growing legal requirements by the Scottish parliament to record property exchange and tax liabilities, especially after the 1560s, underscores how changes in the formal legal framework prompted

⁵ I. Flett and J. Cripps, ‘Documentary Sources’ in M. Lynch, M. Spearman and G. Stell, (eds), *The Scottish Medieval Town* (Edinburgh, 1988), 19.

⁶ For example, E. Ewan, *Townlife in Fourteenth-Century Scotland* (Edinburgh, 1990) and, more recently, M. Cowan, *Death, Life, and Religious Change in Scottish Towns c. 1350–1560* (Manchester, 2013); E. Patricia Dennison, *The Evolution of Scotland’s Towns: Creation, Growth and Fragmentation* (Edinburgh, 2017).

administrative change. This can be seen clearly not simply in the growth of surviving material but in the separating out of town records from generic volumes recording all manner of business into dedicated and separate streams of records.

The nature of the resultant material has shaped the trajectory of Scottish urban historiography. MacDonald's survey, taking as its starting place Michael Lynch's retrospect and prospect offered on Scottish urban history in 1987, traces how the subject has developed in some areas and has experienced relative neglect elsewhere in the time that has passed since Lynch's commentary.⁷ MacDonald ponders in highly suggestive ways how urban archives can be used to cast revealing light upon a variety of political, socio-economic and cultural themes.⁸ In doing so he sets an agenda for the further development of the field, part of which is to harness the prodigious potential of combining for study burgh court records with other legal sources – such as the records of the sheriff courts whose jurisdiction covered a head burgh's hinterland – in order to unlock new vantage points onto the interactions between rural and urban contexts. It is the dynamic and sustained nature of the Aberdeen records which make the focus on this burgh so tremendously valuable for seeking new points of view. The depth of Aberdeen's archival collections – whether those cared for by the City Council, by Aberdeen University or by private organisations such as the Incorporated Trades – readily enables the locality to speak to a Scotland-wide context.⁹ Indeed, it is of sufficient richness to enable meaningful avenues of European comparison to be pursued from the late medieval period onwards.¹⁰

A Legal Historical Perspective

The purpose of the three essays by Jackson Armstrong, Andrew Simpson and Adelyn Wilson is to move the focus of this collection on from the overviews presented by Murray and MacDonald, and to prompt new work by offering a

⁷ M. Lynch, 'Introduction: Scottish Towns, 1500–1700' in Lynch (ed.), *The Early-Modern Town in Scotland* (London, 1986), 1–35.

⁸ An aspect of which he has explored in a full-length study: A. R. MacDonald, *The Burghs and Parliament in Scotland, c. 1550–1651* (Aldershot, 2007).

⁹ On the archives of the Incorporated Trades see A. Mackillop, 'Riots and Reform: Burgh Authority, the Languages of Civic Reform and the Aberdeen Riot of 1785', *Urban History*, 44 (2017), 402–23.

¹⁰ E. Frankot, *"Of Laws of Ships and Shipmen": Medieval Maritime Law and its Practice in Urban Northern Europe* (Edinburgh, 2012).

legal historical perspective on urban records. This is not a social or economic or administrative history of the urban experience. Rather, the very nature of the records, often being tools for litigants to register legal claims and legal process through the jurisdictions which pertained to the burgh, invites a legal approach. Equally, the sustained nature of the records just described allows us to see law not just as a set of static statements of intent, but to observe the law in action. While each paper contributes a novel analysis in its own right, together they serve as an experimental demonstration-piece of what may yet be done with urban archives in hand. The topics which are pursued are each grounded in Aberdonian records in some way, but at the same time each piece presents its analysis and discussion within wider local and national frameworks. These contributions might well be described as examples of ‘external’ legal history, or in other words the study of law in action in society. This is especially so with Armstrong’s approach to the social frameworks of arbitration, and to Wilson’s examination of a group within the legal profession. Simpson’s contribution is also concerned in this way with the role of law and its practitioners, and law courts and their officials in a wider social context, but in addition he has much to say about the wrong of ‘spuilzie’ in particular (in which possession of goods was seized without consent or the approval of the law) and thus on the ‘internal’ legal history of the law. Certainly the boundaries between ‘external’ and ‘internal’ legal history are imprecise, a point signalled by David Ibbetson’s important observation that the legal historian concerned with an ‘internal’ history of law ‘has to take into account not simply the rules but also the ideas lying behind the rules, and the doctrinal or conceptual framework joining the rules together.’¹¹ It is with regard to the ideas behind the law and its practice that all three papers engage in different ways.

In some regards it is nothing new to highlight the importance of law to the concept of the Scottish burgh, which is a point made in this issue’s sister collection, being a recent special section of *Urban History* on ‘Communities, Courts and Scottish Towns’.¹² It was long ago observed that the ‘commercial intention’ behind the establishment of the earliest burghs was framed in legal terms by charters of foundation and the *Leges Burgorum*, a text of early town laws.¹³ Furthermore the first substantial study of Scottish burghs, the

¹¹ D. Ibbetson, ‘What is Legal History a History of?’ in A. Lewis and M. Lobban (eds), *Law and History, Current Legal Issues 2003*, vol. 6 (Oxford, 2004), 35.

¹² See J. W. Armstrong and A. Mackillop (eds), ‘Communities, Courts and Scottish Towns’, Special Section of *Urban History*, 44 (2017), 358-423.

¹³ A. Ballard, ‘The Theory of the Scottish Burgh’, *Scottish Historical Review*, 13 (1916), 16. On the *Leges Burgorum* see A. R. C. Simpson and A. L. M. Wilson, *Scottish Legal*

1949 publication of W. M. Mackenzie's Rhind Lectures for the Society of Antiquaries of Scotland, devoted significant attention to these matters.¹⁴ Scottish burghs were, in a sense, made real by their legal foundational charters and their court records. If the reason for which early-modern landowners placed high value 'on accurate genealogical trees in family archives was the practical necessity of determining nobility and clarifying lines of succession',¹⁵ then one might ask how far urban archives provided a comparable legal genealogy – a burgh's corporate pedigree expressed in legal idiom, preserved for future use and reference chiefly by its burgesses and officers, and held up as an attestation of authority and jurisdiction, and of rights and privileges.¹⁶ All the same, the main thrust of work on medieval and early-modern Scottish urban history to date has prioritised investigation neither of the significance of the law in town life, nor of the importance of urban archives as legal records and sources valuable for questions of legal historical consequence.¹⁷ A recent commentator, J. R. D. Falconer, has remarked upon scholarly trends towards the study of urban social history in Scotland, and 'the interconnections between town and country and between individual towns, the nature of Scottish urbanisation, and the relationship between the state and the burghs'.¹⁸ In all these fields, questions of law, society and the mechanisms of royal and communal government seem to be essential components. Investigation of how law courts were used in early-modern Scottish towns to negotiate power and manage conflict has at least begun, and for the medieval period the shape and practice of international maritime law has also been the subject of a major study which places Scotland in comparative context.¹⁹ Other recent work reminds historians of what they stand to gain from the perspectives offered by other disciplines on the sources with which they are familiar. The use of legal language in burghs as a particular tool for pursuing questions of

History. Volume 1: 1000–1707 (Edinburgh, 2017), 61–2.

¹⁴ W. M. MacKenzie, *The Scottish Burghs* (Edinburgh, 1949), chapter two: 'On Charters and Burgh Laws'.

¹⁵ K. M. Brown, *Noble Society in Scotland: Wealth, Family and Culture from Reformation to Revolution* (Edinburgh, 2004), 33.

¹⁶ A point also suggested by Alan R. Macdonald's essay (see below at p. 42).

¹⁷ The chief exception to this general statement is H. L. MacQueen and W. J. Windram, 'Laws and Courts in the Burghs' in M. Lynch, M. Spearman and G. Stell (eds), *The Scottish Medieval Town* (Edinburgh, 1988), 208–27.

¹⁸ J. R. D. Falconer, 'Surveying Scotland's Urban Past: The Pre-Modern Burgh', *History Compass*, 9 (2011), 41.

¹⁹ J. R. D. Falconer, *Crime and Community in Reformation Scotland: Negotiating Power in a Burgh Society* (London, 2013); Frankot, "Of Laws of Ships and Shipmen".

linguistic development offers a window onto the conceptual framework of legal ideas, as much as onto wider lived experience in towns; it is also a telling reminder of the vital legal character of urban records.²⁰

These essays devote considerable space to investigating the use of the law, and of law courts, both in urban and non-urban contexts, and on local and national levels. Armstrong's consideration of late medieval arbitrations brings this forward most explicitly. 'Use' here relates not only to the instrumental deployment of law, as a party might do in raising a specific claim in a particular court, but also to the use of concepts shaped by law – such as privilege, kinship, neighbourhood or community – within the argumentation of claims, or within the framework of the remedy applied. In the selection of arbiters, burgh elites tended to use substitutes over kinsmen (as was usual among the rural nobility), an alternative focus falling on the worthies of the burgh, and on 'neighbours'. Thus arbitration, a practice common to the legal-political culture of both town and countryside, took on a particular inflection in its urban manifestation. In this essay, the focus of which is the problem of *who* conducted arbitrations, it is suggested that the late medieval courts of Aberdeen made some effort to distinguish between composition by neighbours and determination by bailies or councillors. The precise nature of this conceptual distinction is a matter raised for further investigation, a matter all the more pertinent given the emphasis observed in a 'rural' context on ties of kinship in the selection of arbiters, who were frequently of lower social status than the principal disputants. In this way Armstrong places urban sources (Aberdeen's local records) into a national (and largely non-urban) interpretative and historiographical context. In doing so the differences and similarities detected stimulate new questions about the significance of kinship, and the role of magnates as peacemakers, in the current understanding of Scottish concepts of justice.

Simpson's case study of the wreck and salvage of the *Jhesus* of Gdansk in 1530 demonstrates the potential of urban records to illuminate the history of law concerning a particular type of wrong ('spuilzie', as noted above) and a type of ruinous event (shipwreck), all of which highlights the relationships of authority and jurisdiction between the town, the crown, and Aberdeen's hinter-land and hinter-sea. This study is concerned with legal process, the use of law, and the use of particular language and legal concepts, across multiple and often overlapping jurisdictions. The case of the *Jhesus* is at once a story of a local urban legal-political culture that was *au fait* with international

²⁰ J. Kopaczyk, *The Legal Language of Scottish Burghs: Standardization and Lexical Bundles (1380–1560)* (Oxford, 2013).

and national law, and of a Scottish burgh preserving its independence and autonomy from the interventionist hand of the crown.

The final essay, by Wilson on Nicolson of Cockburnspath and his associates in the early seventeenth century, presents a social-legal history – primarily through a short study of a network of men of law – in order to enrich and add to our understanding of burgh society. Wilson does this in part by placing Old Aberdeen’s burgh registers into dialogue with wider categories of records, including those of King’s College and Marischal College. There is much of importance noted here about a ‘provincial’ professional grouping, as much as about the urban links between Aberdeen and Edinburgh, and the importance for the nation as a whole of the demise and re-establishment of law teaching at King’s. Wilson examines the role of legal learning and expertise in urban society, and in this regard her piece bears some similarity to that of Simpson. Social networks, especially those defined by kinship, are vital for understanding this professional and scholarly world. In this regard there is common thematic attention to those networks treated by Armstrong concerning arbitrations. In highlighting the enduring role of kinship in the professionalising milieu of early seventeenth-century Aberdeen’s legal circles, Wilson points to the need for ongoing reassessment of the compatibility of these two forms of social phenomena.²¹ But in reconstructing the world of a lawyer-academic this paper takes a reverse approach from that of Armstrong and Simpson. The latter focus on using burgh records as provender for legal history whereas Wilson primarily builds upon a rich array of source materials in order to tell us something new about legal society and about urban society’s legal flavour.

It is hoped that this collection will prompt fresh work and new questions. If it advances an understanding of urban archives as essentially legal in nature, and places these historical records in dialogue with other legal sources, then it will in some measure have succeeded. More generally, in such a way we hope this special issue will advance Scottish history as well as other comparative contexts.²² The clear focus here on the interaction of ‘legal’ and ‘urban’ history

²¹ It may be possible to draw comparisons with eighteenth-century Edinburgh’s legal elites: N. T. Phillipson, ‘The Social Structure of the Faculty of Advocates in Scotland 1661–1840’ in A. Harding, (ed.), *Law-Making and Law-Makers in British History* (London, 1980), 146–56; idem, ‘Lawyers, Landowners and the Civic Leadership of post-Union Scotland’, *Juridical Review*, ns, 21 (1976), 97–120.

²² To point to just three (late medieval) examples of urban archives used in wider political histories, see: P. Lantschner, *The Logic of Political Conflict in Medieval Cities: Italy and the Southern Low Countries, 1370–1440* (Oxford, 2015); B. Smith, *Crisis and Survival in Late Medieval Ireland: The English of Louth and their Neighbours, 1330–1450* (Oxford,

is one which, particularly in the Scottish historical context, will hopefully provoke critical thought as to what sources and topics of study might usefully and legitimately be considered 'legal'. Similarly, it is hoped that the category of 'urban' might be made more openly problematic, considering the conceptual boundaries between towns and other types of locality, the records they generated, and the interaction of this level with others, chiefly that of the 'national'. These essays offer what we consider to be an important new appreciation of the legal world in the urban world and, for these purposes, Aberdeen offers an exemplary starting place.

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2013), 159–82; E. Hartrich, 'Rebellion and the Law in Fifteenth-Century English Towns' in J. Firnhaber-Baker and D. Schoenaers (eds), *The Routledge History Handbook of Medieval Revolt* (London, 2017), 189–207.

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 burgh 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 Convener 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 burgess received a burgess 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 burgess 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 burgess 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, Dumbaron 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 Burgesses of Inveraray 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 c45 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 'eul 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.

Urban Archives: Endless Possibilities

Alan R. MacDonald

The defining fact of the medieval and early-modern burgh was its legal status and the right of its governing council to exercise authority over its inhabitants, delegated from its superior, the monarch in the case of the royal burghs, or a nobleman or prelate in the case of the baronial and ecclesiastical burghs. The royal burghs of Scotland had exclusive rights to parliamentary representation and international trade and, from their establishment in the twelfth century, were subject to a uniform legal code that was unique in Europe, the *leges burgorum*. Parliamentary statutes added to those foundational rules, overseen by a court under the king's chamberlain and, from the early sixteenth century if not before, that role was taken on by the convention of burghs, comprising delegates from every royal burgh meeting to cement, promote and defend their collective interests. The *leges burgorum*, subsequent statute law and the regulations agreed by the convention gave burgh councils jurisdiction within a defined space and over the lives of the people who occupied that space, including the right to buy and sell goods, to engage in manufactures and to participate in local government. They monitored the quality and price of staple foods and controlled hours of work, leisure and commerce. They were responsible for aspects of religious life, maintaining the church and paying the clergy's stipends, providing education for the town's children and relief for its poor. They provided mechanisms for social control, exercising justice on behalf of the crown and meting out punishments, both corporal and pecuniary, to offenders.

The administrative, financial and judicial records that were created by urban authorities therefore contain a wealth of data for the multi-faceted sub-discipline that is urban history. Research on Scotland's towns has flourished in recent decades, with historians using interdisciplinary approaches to open up areas of study for which the sources had previously been considered inadequate or which had not even been regarded as worthy of investigation. The genesis of much of that work can be traced to the 1980s, and is epitomised by *The Early-Modern Town in Scotland* (1987), a collection of essays edited by Michael Lynch, its nine chapters encompassing social, economic, religious and

political history.¹ In the ‘Introduction’, as well as providing an overview of the volume, its editor considered the wider state of Scottish urban historiography, reflecting upon the range of approaches and offering possible directions for future research. His agenda encompassed urban history in broad terms and he acknowledged the interrelatedness of what are necessarily artificial subject categories and the need for historians to have a vision that was not limited to any one of them. The purpose of this contribution is to reflect upon how early-modern Scottish urban history has developed since the late 1980s by returning to Lynch’s agenda, and considering what has been achieved, and how the subject has developed, both in ways suggested by Lynch and in ways that he did not anticipate. At the same time, it considers the possibilities for new approaches and research agendas that might be taken up by Scottish urban historians during the decades to come.

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Trade was the *raison d’être* of burghs. It underpinned their status and the political domination of the merchants. The interaction between the political and economic history of towns is therefore unavoidable and is given prominence by Lynch, with a particular focus on the turmoil in the middle of the seventeenth century.² The work of David Stevenson and subsequent research by others means that we know much more about how the covenanting revolution affected the burghs in general, and Edinburgh in particular, both politically and economically.³ Yet, outside the capital, much remains to be done to establish the nature of the relationship between economic and political crises. It is already well-known, for example, that the 1640s were a time of dearth but there was also a massive outflow of specie to purchase arms at the beginning of the decade. There is considerable scope to investigate the local impacts of and responses to the troubles of the 1640s, with the potential to transform how the effects of that revolutionary decade are understood. Dundee provides a useful example. Local tradition gives prominence to the

¹ M. Lynch (ed.), *The Early-Modern Town in Scotland* (London, 1987).

² M. Lynch, ‘Introduction: Scottish Towns, 1500–1700’ in *ibid.*, 1–35.

³ D. Stevenson, ‘The Burghs and the Scottish Revolution’ in Lynch (ed.), *The Early-Modern Town*, 167–91; L. Stewart, *Urban Politics and the British Civil Wars: Edinburgh 1617–53* (Leiden, 2006); G. DesBrisay, ‘“The civill warrs did overrun all”: Aberdeen 1630–1690’ in E. P. Dennison, D. Ditchburn and M. Lynch (eds), *Aberdeen Before 1800: A New History* (East Linton, 2002), 238–67; A. R. MacDonald, *The Burghs and Parliament in Scotland, c.1550–1651* (Aldershot, 2007).

siege and sack of the burgh by the English under General Monck in 1651 as a decisive moment in its decline.⁴ Yet Dundee had suffered a devastating attack by the royalist army of the marquis of Montrose six years previously, after which its council lamented that their burgh was ‘readie to ... perish from the comoune wealth’ without substantial relief.⁵ The legend contains an element of truth but the dogged endurance of the myth epitomises the huge potential for detailed local studies of the social and economic impact of war to alter our understanding.

Both in this context and with regard to longer term fluctuations in the fortunes of the burghs over the course of the first half of the seventeenth century, Lynch noted that the greatest barrier to advancing our understanding was the burghs’ apparent failure to revise their tax roll between 1612 and 1649.⁶ The taxation of the burghs was unusual in European terms in that a proportion of every parliamentary tax voted (one sixth) was allotted to the burghs *en bloc*, rather than each burgh being directly assessed by the crown. The proportion that each paid was negotiated and agreed amongst the burghs themselves in their convention and recorded as a proportion of £100. This was also used for dividing up sums that the burghs might periodically choose to collect for other purposes, notably in providing support to a burgh that had been hit by a man-made or natural disaster, such as a fire or storm damage to its harbour. The tax roll thus provides an impression of the changing relative fortunes of each burgh, but the gap between 1612 and 1649 makes it impossible to make any judgements about the timing of these fluctuations. However, recent research has revealed that the tax roll was revised in 1635 and 1646, and possibly also in 1643.⁷ Although those revised rolls do not appear to have survived, careful research in local sources might permit their substantial reconstruction, allowing shifts in the burghs’ relative prosperity to be mapped onto the national upheavals of the period.⁸ Lynch and others have guessed that the beginnings of Glasgow’s rise to prominence and of the decline of Dundee and other east-coast ports (with the exception of Edinburgh) may predate the

⁴ See J. Robertson, ‘The Storming of Dundee, 1651’, *History Scotland*, May/June 2003, 23–7 which argued that the story of the sack of Dundee in 1651 has been exaggerated in local legend.

⁵ *Records of the Parliaments of Scotland to 1707*, 1645/7/8/17, 1645/11/121.

⁶ Lynch, ‘Introduction’, 6.

⁷ A. R. MacDonald and M. Verschuur, *Records of the Convention of Royal Burghs 1555; 1631–1648* (Woodbridge, 2013), 23–5.

⁸ See, for example, Dundee City Archives, Dundee Council Book, Volume 4, 1613–1653, fo.195v, which records Dundee’s revised total in 1646.

1640s and the gradual westward reorientation of trade in the second half of the century.⁹ It may be possible to pin down the chronology of this process, providing sounder foundations for explaining later economic realignments.

It hardly seems rash to suppose that the mid-century wars had significant effects on manufactures, both demographically and economically – production must have shifted to the war effort and demand for and supply of luxuries, both imported and domestic, must have been suppressed significantly. Yet detailed knowledge of these processes remains elusive, largely because our knowledge of the craftspeople of Scotland's burghs is limited. Lynch observed that, at the time of writing, 'There has been only one recent study of a craft occupation' (an unpublished PhD thesis on the origins and development of the hand-knitting industry), and thus there was not a single modern study of one of the core urban crafts of the medieval and early-modern period. Nothing could therefore be said with confidence about their role and significance. Much was written in the nineteenth and early twentieth centuries on single craft guilds in individual burghs, but this work tends to be locally-focused and antiquarian in its approach.¹⁰ Recent historians have barely scratched the surface of organised craft labour, in spite of the survival of extensive written records created by the craft guilds themselves and the rich data available in burgh council minutes and court books. With the exception of Aaron Allen's work on the Edinburgh locksmiths (a sub-group within the hammermen's guild) and Helen Dingwall's study of the capital's barber surgeons, little further progress has been made.¹¹ There is therefore considerable scope for studies of the spectrum of crafts in a larger burgh such as Edinburgh, Dundee, Perth, Aberdeen or Glasgow, or of a single craft across a number of burghs of different sizes and types. What might be learnt, for example, from studying those Edinburgh crafts that serviced the royal court on either side of 1603? Historians' discussions of 'the impact of the regal union' tend to concentrate on its effects on government,

⁹ Lynch, 'Introduction', 6–7; T. M. Devine, 'Scotland' in P. Clark (ed.), *The Cambridge Urban History of Britain, Volume II 1540–1840* (Cambridge, 2000), 155–6.

¹⁰ See, for example, J. Colston, *The Incorporated Trades of Edinburgh* (Edinburgh, 1891); J. Smith, *The Hammermen of Edinburgh and their Altar in St Giles' Church* (Edinburgh, 1906); E. Bain, *Merchant and Craft Guilds: A History of the Aberdeen Incorporated Trades* (Aberdeen, 1887); H. Lumsden and P. H. Henderson, *History of the Hammermen of Glasgow* (Paisley, 1912).

¹¹ A. Allen, *The Locksmith Craft in Early-Modern Edinburgh* (Edinburgh, 2007); H. M. Dingwall, *A Famous and Flourishing Society: The History of the Royal College of Surgeons of Edinburgh 1505–2005* (Edinburgh, 2005); H. M. Dingwall, *Physicians, Surgeons and Apothecaries: Medical Practice in Seventeenth-Century Edinburgh* (East Linton, 1994).

politics and high culture. Yet the royal treasurer's accounts show that there is another story to be told, one of a sudden collapse of crown expenditure (of hundreds of pounds every month) especially on food and clothing for the court.¹² The short-term effects on the internal economic balance of the capital are easy to imagine, as is the possibility that there were deeper, longer-term repercussions. This might be traced through the rates of admissions of new craftsmen, shifts in the specific occupations operating within individual craft guilds, changes over time in which crafts supplied the eight craftsmen (six deacons and two others) who served on the merchant-dominated burgh council, and which crafts supplied Edinburgh's unique craft commissioner to parliament.

Considering the crafts as a group raises the contentious issue of merchant-craft tension. Lynch took the view that outbreaks of conflict should not be understood as a 'general craft revolt' or as 'wholesale friction between merchants and craftsmen', although such tensions were to be found throughout early-modern Europe.¹³ He argued instead that their locally sporadic nature (Perth from the 1530s to the 1550s, Edinburgh in the 1580s, Aberdeen in the 1590s and Dundee at the beginning of the seventeenth century) indicated that local explanations should be preferred. While it would be foolish to deny that each had its local context, their recurrence across a number of burghs over a lengthy period of time surely indicates underlying commonalities that might repay further investigation. There was also trouble in Aberdeen in the 1540s and 1550s and in Dundee in the 1560s, while the government of Mary of Guise legislated nationally to deal with merchant-craft conflict in the 1550s.¹⁴ So while there were undoubtedly complex reasons behind each outbreak, the seventy years between c.1540 and c.1610 might reasonably be characterised

¹² This can be seen in National Records of Scotland [NRS], Treasurer's Accounts, E21/76-8 (1601-1606). The collapse dates from June 1603 and the departure for England of Queen Anna, Prince Henry and Princess Elizabeth, leaving only Prince Charles, who followed in the summer of 1604.

¹³ Lynch, 'Introduction', 9-16, 26; C. R. Friedrichs, *Urban Politics in Early-Modern Europe* (London, 2000), 27-9.

¹⁴ Aberdeen City Archives [ACA], Council Records, CR1/20, 32-3; J. D. Marwick (ed.), *Records of the Convention of Royal Burghs of Scotland 1295-1597* (Edinburgh, 1866), 460; J. R. D. Falconer, *Crime and Community in Reformation Scotland: Negotiating Power in a Burgh Society* (London, 2013), 88, 127-9, 141; M. Verschuur, *Politics or Religion? The Reformation in Perth 1540-1570* (Edinburgh, 2008), 58-60; Dundee City Archives, Council Minute Book, vol. 1, 76-7; A. Maxwell, *The History of Old Dundee* (Dundee, 1884), 184-5; A. R. MacDonald, 'Dundee and the Crown, c.1550-1650' in C. McKean, B. Harris and C. A. Whatley, *Dundee: Renaissance to Enlightenment* (Dundee, 2009), 37.

as a period of recurrent merchant-craft conflict in the larger burghs. Related to this issue, within a longer chronological framework, is the question of why such tensions were not a feature of the seventeenth century in the way that they had been in the sixteenth.

It has long been recognised that the uncertainties created by inflationary pressures affected the nobility, so it is not too far-fetched to suppose that they affected urban elites too. From the later fifteenth century onwards, craftsmen all over Scotland were seeking formal incorporation through obtaining ‘seals of cause’ from the merchant-dominated councils and the crown.¹⁵ This seems to have been part of a shift in urban power-structures between the medieval and early-modern periods, epitomised by the statute of 1469 by which burgh councils elected their own successors, to the exclusion of the burgh community as a whole. One motivating factor in the emergence of formally-constituted craft guilds may have been a perceived threat from merchant oligarchies, although the converse may also be true, given the degree of control that councils exercised over crafts.¹⁶ A geographically broad analysis of this phenomenon might provide a clearer picture of how the transition from a more open medieval system of government, perhaps dating back to the foundation of the burghs in the twelfth century, to the narrower early-modern form took place. It might also show that merchant-craft tensions were less marked in the intimate context of smaller burghs and more evident where larger populations allowed clearer group differentiation, development of self-identification and rivalries which could lead to tension (because of political, religious or economic uncertainty) and local conflict. The status and power of the crafts can also provide a means of tracing the nature and chronology of another key transition in social and economic power. In Scotland, as elsewhere, industrialisation effectively destroyed the crafts’ exclusive rights to manufacturing but it may have been the culmination of a longer-term process, akin to and parallel with that by which the royal burghs’ international trading monopoly disappeared.

No discussion of early-modern Scottish urban history can ignore religion and the craft guilds might also provide a lens through which the impact of the

¹⁵ A ‘seal of cause’ was issued by the burgh council (sometimes confirmed by the crown), granting privileges to a craft guild, and setting out its rules. See, for example, the Dundee Bonnetmakers’ seal of cause from 1496: <http://www.ninetradesofdundee.co.uk/files/bonnet/Seals%20of%20Cause/1496%20Seal%20of%20Cause.pdf> [accessed 25 February 2018].

¹⁶ E. Ewan, ‘Townlife and Trade’ in B. Harris and A. R. MacDonald (eds), *Scotland: The Making and Unmaking of the Nation, c.1100–1707. Vol. I The Scottish Nation: Origins to c.1500* (Dundee, 2006), 129–30.

Reformation can be explored. Before 1560, one of their principal functions was religious, for most maintained an altar and a priest in the parish church, so that masses could be said for the souls of craftsmen and their families, both living and dead. They also played a prominent role in the annual calendar of religious events, notably Corpus Christi. How did they adjust after 1560 and were there common patterns of reallocation of those resources that had previously been devoted to the church? The Reformation had economic ramifications, thus the disappearance of what must have been a significant corporate client-base for a number of guilds in many burghs is also worth considering. Before 1560, there were numerous craft-sponsored chaplains serving altars in urban parish churches and chapels, most larger burghs had between two and four mendicant houses on their fringes, and there were other houses of regular clergy close by a number of towns, such as the Augustinian houses at Cambuskenneth near Stirling, Scone near Perth and Holyrood by Edinburgh. The Reformation suddenly reduced the number of clergy in Scotland's towns: for decades after 1560, only the capital had more than two ministers and most burghs had only one. As well as the absolute numbers of clergy falling, the purchasing habits and therefore the economic role of Reformed clergy will have been very different from those of their predecessors.

Lynch's observation on studies of urban religion is that these works tend to focus on the Reformation, leaving the 1640s and the Restoration period somewhat neglected.¹⁷ With few exceptions, the intervening years have seen the history of religion in Scotland's early-modern towns continue to concentrate its focus on the Reformation period.¹⁸ While some work has been done that touches on the religious politics of Scotland's towns in the Covenanting and the Restoration periods, given the religious turmoil that is known to have engulfed Scotland throughout the period between 1660 and 1690 (and beyond), that era remains the most remarkably unexplored.¹⁹ It

¹⁷ M. Lynch, *Edinburgh and the Reformation* (Edinburgh, 1981). A range of similar local studies followed, both urban and rural, although not all were published except in summary, article or chapter form. See for example, Allan White, 'The Impact of the Reformation on a Burgh Community: The Case of Aberdeen' in Lynch (ed.), *The Early-Modern Town*, 81–101; this was based on a PhD thesis.

¹⁸ Verschuur, *Politics or Religion?*; M. Sanderson, *Ayrshire and the Reformation: People and Change 1490–1600* (East Linton, 1997), which pays significant attention to the urban setting, particularly Ayr itself.

¹⁹ Stewart, *Urban Politics*; S. Gillanders, 'The Scottish Burghs during the Cromwellian Occupation, 1651–60', PhD dissertation (Edinburgh, 1999); S. Spurlock, *Cromwell and Scotland: Conquest and Religion 1650–1660* (Edinburgh, 2007); DesBrisay, "'The civill warrs did overrun all'".

might be assumed that religious dissent in Restoration Scotland, the era of the persecuted Covenanters and the 'killing times', has been done to death, but has it? While recent research has taken a new direction by investigating the ideological frameworks in both the religious and political spheres, there have been no recent detailed studies of religious affiliations and networks either nationally or for individual towns or regions.²⁰ In essence, historians continue to rely on the essentially top-down accounts by Ian Cowan and Julia Buckroyd, based largely on printed narrative sources and central government records.²¹ During this period, urban magistrates and sheriffs were enlisted by the privy council to investigate conventicling and enforce the law against those that were found to be attending illegal religious meetings. These records, which have the potential to transform what we know of who the Covenanters were, both as individuals and social groups, have yet to be explored properly. Without such work, historians trying to say anything meaningful about the nature of Covenanting dissent in the Restoration era are groping in the dark.

To move to the opposite end of the period, perhaps surprisingly Lynch said nothing of the strange neglect of *pre*-Reformation urban religion that might have been observed during the 1980s. To be sure, local studies of the Reformation have paid considerable attention to the decades preceding 1560, but this approach is always susceptible to a teleological tendency, with the pre-Reformation church discussed largely to provide the context for the change that was to come. Yet people's behaviour is not governed by what is going to happen but by their own pasts, by immediate personal concerns and, if what is yet to come is in their minds at all, by the complex interplay of possible futures. This view, which Lynch himself strongly supports, led to a range of studies of the late medieval church in its own right, many of which began in doctoral research projects that he supervised, although only Janet Foggie's work on the Dominican order has been published.²² One of

²⁰ Recent major works on Restoration Scotland have focused on religious and political thought, and on parliament: C. Jackson, *Restoration Scotland, 1660–1690. Royalist Politics, Religion and Ideas* (Woodbridge, 2003); A. Raffe, *The Culture of Controversy: Religious Arguments in Scotland, 1660–1714* (Woodbridge, 2012); G. MacIntosh, *The Scottish Parliament Under Charles I, 1660–1685* (Edinburgh, 2007).

²¹ I. B. Cowan, *The Scottish Covenanters 1660–1688* (London, 1976); J. Buckroyd, *Church and State in Scotland 1660–1681* (Edinburgh, 1980).

²² J. P. Foggie, *Renaissance Religion in Urban Scotland: The Dominican Order 1450–1560* (Leiden, 2003); H. S. Brown, 'Lay Piety in Medieval Lothian, c.1306–1513', PhD dissertation (Edinburgh, 2006); C. Strauch, 'Apostolic Poverty at the Ends of the Earth: The Observant Franciscans in Scotland, c.1457–1560', PhD dissertation

the most significant and refreshing features of these works has been their tendency to eschew the distorting lens of 1560. Granted, the sources for pre-Reformation religion are not as rich as we might want them to be or as rich as those that survive in other countries but these works have laid to rest the once widespread idea that it was not possible to study pre-Reformation religion in Scotland because of a lack of sources. This has been richly and clearly demonstrated in the recently-published work of Mairi Cowan. Her study of the religious life of urban Scotland between the middle of the fourteenth century and the Reformation demonstrates just how much can be discovered, although it is by no means the last word on the subject.²³

Work on the core post-Reformation period (1560–c.1640) remains vibrant and has taken new and interesting directions. The substantial existing body of scholarship has been built upon, both in the local studies referred to above and in the work of Michael Graham, Margo Todd and John McCallum, all of whom have included a significant element of urban history in their work while encompassing both town and countryside.²⁴ Their research has shown just how much can be discovered about the impact of the Reformation on society, the speed and effectiveness with which the new religion was adopted and its remarkable adaptability, in spite of long-standing views of an unbending Calvinist doctrine that has traditionally been regarded as having no time for that sort of thing.

But there is always room for further exploration: while the traditional focus on the centrality of the relationship between church and state was dismissed by Allan Macinnes in the early 1990s as ‘pushing against the frontiers of dead history’, the need to understand properly the exercise of power in society remains.²⁵ It is widely understood that authority was wielded by a range of agencies in early-modern Scotland and yet we still know little of how those different bodies interacted, and to what degree there was cooperation or conflict. In Edinburgh, Lynch identified a significant overlap (for a time at

(Edinburgh, 2006); I. Fraser, ‘The Later Medieval Burgh Kirk of St Nicholas, Aberdeen’, PhD dissertation (Edinburgh, 1989).

²³ M. Cowan, *Death, Life and Religious Change in Scottish Towns c.1350–1560* (Manchester, 2013).

²⁴ M. Graham, *The Uses of Reform: Godly Discipline in Scotland and Beyond, 1560–1610* (Leiden, 1996); M. Todd, *The Culture of Protestantism in Early Modern Scotland* (New Haven, 2002); J. McCallum, *Reforming the Scottish Parish: The Reformation in Fife 1560–640* (Farnham, 2010).

²⁵ A. I. Macinnes, ‘Early Modern Scotland: The Current State of Play’, *Scottish Historical Review*, 73 (1994), 31–2.

least) in the personnel of the kirk session and the burgh council and the same has been observed for Aberdeen in the decades after 1560.²⁶ A recent detailed examination of crime in sixteenth-century Aberdeen has demonstrated how the kirk session and burgh court had a common set of attitudes and approaches, and that the two co-operated in the imposition of order.²⁷ Yet it is not clear to what extent that was normal or whether it endured into the seventeenth century, nor has any attention been devoted to how the bodies actually interacted, whether their personnel overlapped or not.²⁸ How common was it for someone to be passed from kirk session to burgh court (or vice versa) for the same offence? Did individuals choose to take disputes to the kirk session to avoid the secular magistrate or to the burgh court to avoid the public shame of the penitent's stool?

While Scottish towns did not sit at the centre of autonomous city states like some of their continental counterparts, the question of relationships between courts takes us beyond burghs and into their hinterlands, for burghs lay within a series of overlapping jurisdictions, including that of county sheriffs and the presbyteries and synods of the church.²⁹ Lynch noted that they 'were set apart from the surrounding countryside by their charters but were part of it too, through ties of kinship [and] trade', as well as jurisdiction.³⁰ This encapsulates the fact that, in the medieval and early-modern periods, there was no clear differentiation between urban and rural space, or between urban and rural people for that matter. It was the accelerated urbanisation of the later eighteenth century that created that clear division, the emergence of which was key to the transition into the modern period. As well as delineating burghs' boundaries, their charters secured their links with their hinterlands, through allocation of common land, in which burgesses reached into the countryside to pasture animals, gather peat, turf and firewood, and even grow food.

Most significantly of all, a royal burgh's charter designated its territorial 'liberties', a commercial hinterland which, in some cases, might encapsulate huge swathes of the surrounding countryside – it was a common European

²⁶ Lynch, *Edinburgh and the Reformation*, 38–42; Falconer, *Crime and Community*, 45–66.

²⁷ Falconer, *Crime and Community*, 45–66.

²⁸ In Edinburgh, the overlap did not endure into the seventeenth century: see Stewart, *Urban Politics*, 61–4.

²⁹ For a general discussion of this relationship, see D. Nicholas, *Urban Europe 1100–1700* (London, 2003), ch. 2.

³⁰ Lynch, 'Introduction', 19.

concept and, in the case of Aberdeen, this comprised the whole county.³¹ At least in theory, everyone who wished to buy imported goods or sell their produce for export had to do so through the burgh within whose liberties they lived. Although undoubtedly the rights of royal burghs were often breached, the concept of their liberties provided a legal underpinning to the interaction between town and country, and created another way in which rural people might look upon a burgh as their own, as would their role in supplying the town with food, an issue which has yet to be explored systematically for pre-industrial Scotland.³² Some of those rural people would also have been tenants of a leading burgh family for, as was the case throughout Europe, prominent burgesses owned landed estates and ‘suburban villas’: the Menzies family of Aberdeen and the Wedderburns of Dundee embodied the absence of a clear division between urban and rural elite society. So too did the town houses and honorary burgess status granted to neighbouring magnates, such as the earls of Gowrie in Perth or the earls of Crawford in Dundee.³³

A glance through any sheriff court book provides further evidence of the inextricable link between town and country. Burgesses are frequently to be found there, as pursuers, defenders and witnesses in legal cases, registering contracts and undertaking a whole range of other legal and administrative business. Indeed, sheriff court books must be one of the most under-utilised sources for all sorts of aspects of the history of early-modern Scotland. Deeper exploration of the relationship between towns and their hinterlands in regional case-studies that combine sheriff and burgh court records could reveal a great deal about the how the two worlds interacted.³⁴

Sheriff courts met in the head burgh of each shire, and the role of those towns as regional hubs would repay closer investigation. It is widely

³¹ I. Blanchard, E. Gemmill, N. Mayhew and I. D. Whyte, ‘The Economy: Town and Country’ in Dennison, Ditchburn and Lynch (eds), *Aberdeen Before 1800*, 141; Nicholas, *Urban Europe*, 94.

³² Nicholas, *Urban Europe*, 33–4, 38.

³³ A. White, ‘The Menzies Era: Sixteenth-Century Politics’ in E. P. Dennison, D. Ditchburn and M. Lynch (eds), *Aberdeen Before 1800: A New History* (East Linton, 2002), 224–37; C. A. McKean, ‘What Kind of Renaissance Town was Dundee?’ in C. A. McKean, B. Harris and C. A. Whatley (eds), *Dundee: Renaissance to Enlightenment* (Dundee, 2009), 1–31; C. A. McKean, *The Scottish Chateau* (Stroud, 2001), 125–6, 193–4; MacDonald, *Burghs and Parliament*, 36–9.

³⁴ A key reason for the neglect of sheriff court records lies in the fact that few have been printed: see D. Littlejohn (ed.), *Records of the Sheriff Court of Aberdeenshire*, 3 vols (Aberdeen, 1904–7); W. C. Dickinson, *The Sheriff Court Book of Fife, 1515–1522* (Edinburgh, 1928).

appreciated that, as leading market centres, these towns drew people from their hinterlands, yet their significance as administrative and political centres was equally important. Their mercat crosses were the sites of royal proclamations, and summonses for parliaments and conventions of estates, as well as for those residents of the shire involved in cases before the central courts. They therefore provided a key locus for communication and the affirmation of the authority of central, as well as local, government. Not only did head burghs host their own internal administrative and judicial bodies, the sheriff courts sat there two or three times each month and drew people from far and wide, making every head burgh a legal centre of some significance. Moreover, after the Reformation, the head burghs (among others) hosted the presbyteries of the Reformed church, bringing in ministers and elders from the surrounding rural parishes weekly or fortnightly throughout the year, and in some burghs, the church's regional synods also sat, drawing clergy and laity from a whole diocese twice every year. Together, those overlapping roles would have enhanced the economic, political and cultural significance of the head burghs, for they acted as gathering places for regional elites, where people met to transact legal and commercial business and to exchange ideas. It is a familiar, albeit contested, concept south of the border but we know little of the 'county community' in early-modern Scotland: perhaps the focal role of the head burghs can provide a way to unlock this issue.³⁵

Another prominent aspect of a burgh's relationship with its hinterland lay in what Lynch described as the need to 'chart...the shifting boundaries between provincial or regional centres and the...smaller market towns around them', another prominent issue in European urban history.³⁶ Those relationships certainly involved conflict and confrontation, as is shown in the convention of burghs' constant efforts to halt unfree traders operating outside royal burghs.³⁷ Yet, while baronial burghs might make problems for neighbouring royal burghs, they were part of the regional economy and their activities must have integrated positively, as well as negatively, with those of their more privileged neighbours. The growth in baronial burghs and other local market centres during the later seventeenth century has long been recognised, often being cited as an indication of general economic expansion

³⁵ P. Withington and A. Shepard, 'Introduction: Communities in Early-Modern England' in P. Withington and A. Shepard (eds), *Communities in Early Modern England: Networks, Place, Rhetoric* (Manchester, 2000), 1–15.

³⁶ Lynch, 'Introduction', 5; Nicholas, *Urban Europe*, ch.2.

³⁷ See, for example, MacDonald and Verschuur (eds), *Records of the Convention of Royal Burghs*, 83.

and of the waning power of the royal burghs.³⁸ Yet the phenomenon is still not clearly understood, perhaps because of the poor survival of the records of baronial burghs and their less formal status under the jurisdiction of individual landed proprietors.

Most baronial burghs belonged to peers or lairds and the latter, more than any other group, epitomise the links between burghs and their hinterlands, for many lairds were burgesses and many prominent burgesses were lairds. In the case of some members of the nobility, both peers and lairds, their relationship with the burghs was a largely honorific one which entailed the reciprocal links of client and patron. With others, the relationship was more practical and the categorisation of the individuals concerned is harder as a result, which raises a number of issues. One is the extent to which merchants sought to become lairds to cement their economic status in that most permanent of commodities, land. While it is well known that this was done through marriage, wadsetting and outright purchase, was this an enduring process or was it limited to a particular period? Related to this is the extent to which an individual and his heirs maintained their status as merchants by continuing to trade once they had become landed proprietors. Another issue is the mirror image of that process, the extent to which lairds sought to become burgesses (for a range of reasons) and, once they had done so, the degree to which they were involved in the day-to-day activities of the burgh and the degree to which they saw themselves and were perceived by others as urban people. These are complex problems with no easy answers: some landed families maintained only nominal relationships with neighbouring towns, while others were active magistrates and even served as commissioners to parliament and the convention of burghs. In this regard, Robert Rait wrote in the 1910s of a landed takeover of urban representation in parliament by 1600, implying an erosion of urban independence under an assertion of landed power.³⁹ Yet almost all of these lairds were active members of the communities that they represented, not carpet-baggers on the English model, a phenomenon virtually unknown in Scotland until after the Restoration and rare even then.⁴⁰

There were, however, burghs with noble patrons, the most prominent and oft-cited examples being the earls of Huntly in Aberdeen and the Lords Ruthven (latterly the earls of Gowrie) in Perth. In both cases, as Lynch noted,

³⁸ Devine, 'Scotland', 157–8.

³⁹ R. S. Rait, 'Parliamentary Representation in Scotland', *Scottish Historical Review*, 12 (1914), 123–4.

⁴⁰ For discussion of this, see MacDonald, *The Burghs and Parliament*, 43–7.

'burghs could make demanding clients', and should not be understood as being in the nobles' pockets.⁴¹ In the 1540s, so wary of noble encroachment on urban privilege were the magistrates and councillors of Perth that, before they would admit him as provost, they insisted that Lord Ruthven must swear never to enter Perth's muniment room.⁴² Unfortunately, there are few detailed studies of these relationships and, where they are mentioned, discussion tends to be predicated on the assumption that the balance of power was essentially tipped in the nobles' favour. Yet how strong is the evidence that magnates were literally lording it over implicitly subservient burghs? After all, in the early seventeenth century some prominent burghs doggedly fought to retain close relationships with noble patrons in the face of the crown's efforts to put a stop to them: Perth continued to elect noble provosts after it was outlawed in 1609 and it took nearly twenty years of determined action by the privy council and the convention of burghs to put an end to the practice. Burntisland's story shows that a burgh could shop around, in this case going beyond its hinterland to procure a courtier provost to fend off the encroachments of the local lairds (also courtiers), the Melvilles of Murdocairnie. Resentful of their demands on the burgh, Burntisland enlisted Sir George Hume of Spott, a rival of the Melvilles at court, who would become the most powerful man in government after 1603 as the earl of Dunbar.⁴³

Another option was to dispense with having provosts at all, an approach adopted by a number of Fife burghs in this period.⁴⁴ Indeed, this epitomises the diversity of responses that a burgh might have to the perceived threat or advantage of a close relationship with a local landowner, yet we still do not have a terribly clear picture of these relationships. Lynch wrote that 'The bigger the town the less absolute was the lord's voice in it', but Glasgow, the fifth largest burgh in 1600, climbing to second after Edinburgh later in the century, remained under the jurisdiction of a local noble or its archbishops until well into the seventeenth century, as they retained the right to appoint its magistrates. At the other end of the spectrum, to what extent have the relationships of smaller burghs with neighbouring nobles actually been examined in any detail? The case of Burntisland shows that a burgh might act quite independently in acquiring a noble patron. One related unanswered

⁴¹ Lynch, 'Introduction', 20.

⁴² Perth and Kinross Council Archive, Perth Court and Council Minute Book, B59/12/2, fo.8v.

⁴³ NRS, Burntisland Burgh Court Book, 1596–1602, B9/10/1, fos 104v, 123v; Burntisland Burgh Court Book, 1602–1612, B9/10/2, fo.7v.

⁴⁴ For details, see MacDonald, *The Burghs and Parliament*, 37–41.

question in this regard relates to royal burgh status itself: under James VI, more new royal burghs were created than at any time since the reign of David I, and all of these had been baronial burghs beforehand. Why did their feudal superiors set them free and how was the relationship between the two affected by the change?

The nature of the relationships between towns, nobles and the crown is an issue that is encompassed under the broad heading of urban politics. This field has seen significant developments in recent years, not least as a result of the resurgent interest in parliamentary history, with sustained work on the burghs' role in parliament and on the convention of burghs.⁴⁵ The convention would certainly repay further investigation and is still the poor relation of parliament and the general assembly in terms of the attention it receives as a national representative assembly. The parliamentary activities of the burghs after the Restoration also merit examination in their own right and for the potential they have to provide a more rounded picture of national politics. Moving further forward in time, the parliamentary union of 1707 is often seen as a watershed but what might we learn from studies of the convention of burghs and of the towns themselves that pivoted on that date rather than saw it as an end or a beginning? The regal union of 1603 has long been straddled by historians keen to understand the nature of the transition and a similar approach to 1707 that avoids the controversy of the process of union itself would be welcome.

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As well as providing an overview of the state of scholarship in the later 1980s, Lynch pointed to a number of areas that, while research on them might be desirable, did not seem feasible at the time. Yet much has changed in the intervening years, not only in terms of what has been achieved but also with regard to improved archival cataloguing and electronic search facilities, the latter being largely a consequence of the boom in genealogical research. While historians might lament the effects of the market-driven nature of these developments on the function and focus of some archives, the digitisation and indexing of a range of records, including wills and testaments, and records of baptisms and marriages provide a huge and still largely untapped resource for demographic historians. Thus immigration into burghs from the countryside

⁴⁵ MacDonald, *The Burghs and Parliament*; J. Toller, "Now of little significance"? The Convention of the Royal Burghs of Scotland, 1651–1688', PhD dissertation (Dundee, 2009).

and from other burghs is one area in which progress might now be made;⁴⁶ and is it not time that the huge interest in the Scots overseas was matched by some more systematic work on people coming *into* Scotland, through investigation of the sources mentioned above and the records of admissions of burgesses? Recent decades have seen a huge interest in the Scots abroad, with particular concentrations of study at Aberdeen, Edinburgh and St Andrews. Yet there has been remarkably little study of immigration. Anyone who has used the records of Scotland's towns has encountered outsiders, but they have largely evaded the sustained attention of historians. Personal family history is all very well, but social, cultural and economic historians could gain much from these records. Lynch also lamented the difficulty of producing detailed studies of occupational structure within burghs, although the painstaking work of Helen Dingwall, Aaron Allen and Cathryn Spence has shown that, for Edinburgh at least, this can be achieved from the second quarter of the seventeenth century, using sasine and taxation records to reconstruct the social and economic demography of that town.⁴⁷ Perhaps similar work in the other larger burghs might also yield significant results.

Every discipline moves on, both in ways that are anticipated and in ways that are not. It is striking how many themes that now seem familiar were barely considered in the late 1980s. Perhaps most remarkably, neither gender nor the family were covered by the contributors to *The Early-Modern Town in Scotland*. Yet considerable work in these areas was being carried out at the time of its publication and much has been added since, so that much recent work is infused with consideration of these issues, demonstrating that they have entered the mainstream, at least in social history, and no longer require the separate treatment that they once received.

Perhaps the most interesting area of research that was barely even considered thirty years ago, at least in Scotland, was what is now familiar to us under the heading of 'everyday life'.⁴⁸ This is now a vibrant field, with

⁴⁶ Nicholas, *Urban Europe*, 43–5 illustrates the sorts of questions that might be addressed.

⁴⁷ H. M. Dingwall, *Late Seventeenth-Century Edinburgh: A Demographic Study* (Leicester, 1994); A. Allen, 'Occupational Mapping of 1635 Edinburgh: An Introduction', *Proceedings of the Society of Antiquaries of Scotland*, 136 (2006), 259–96; A. Allen and C. Spence (eds), *Edinburgh Housemails Taxation Book 1634–1636* (Woodbridge, 2014).

⁴⁸ For an overview of recent work, see E. A. Cowan and L. Henderson (eds), *A History of Everyday Life in Medieval Scotland, 1000–1600* (Edinburgh, 2010); and E. A. Foyster and C. A. Whatley (eds), *A History of Everyday Life in Scotland, 1600–1800* (Edinburgh, 2010).

historians investigating how much can be revealed about the background noise of life (both literally and metaphorically), things taken for granted that can shed light on changing outlooks and perceptions across the centuries, captured inadvertently in throwaway references. Other approaches were also in their relative infancy thirty years ago, but are now integral to the study of the urban past, such as environmental history, including investigation into waste, disease and changing attitudes to natural (including bodily) processes. One of the most interesting related developments, sensory history, has sought to reclaim the smells, tastes, sights, sounds, and even the *feel* of life in the early-modern town and, moreover, to explore how people's understandings of those were shaped and altered over time.⁴⁹ Elizabeth Ewan and Elizabeth Foyster provided foundational overviews of the subject in the first and second volumes of the *History of Everyday Life in Scotland*, but their footnotes reveal that considerable scope remains for sustained exploration of the Scottish sensory world of the pre-industrial era.⁵⁰

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These recent developments demonstrate that there are always new things to be asked of familiar evidence, and tremendous scope for research in Scotland's urban archives. To demonstrate this, the final section of this article is devoted to a micro case study of a single paragraph from the burgh records of Aberdeen, to show, through one incident, how rich urban records can be. In sixteenth-century Aberdeen, one Robert Howeson, 'walcar' (a waulker or fuller, a finisher of cloth) was convicted of, among other things, 'spilling'⁵¹ the tolbooth clock, and 'making of insurryktioun with certane craftismen aganis the burgessis of the said tounn'. As well as being ordered to pay for the repair of the clock, his punishment consisted of appearing in the church on the following Sunday in just his shirt, barefoot and bare-legged, on his knees, to ask the provost and bailies to forgive him on behalf of the community. He was warned that, if he were to reoffend, he would be 'brint one the cheik and

⁴⁹ For a summary of the topic, see J. Stewart and A. Cowan, 'Introduction' in J. Stewart and A. Cowan (eds), *The City and the Senses: Urban Culture Since 1500* (Aldershot, 2007), 1–22.

⁵⁰ E. Ewan, "'Hamperit in ane hony came": Sights, Sounds and Smells in the Medieval Town' in Cowan and Henderson (eds), *A History of Everyday Life in Medieval Scotland, 109–44*; E. A. Foyster, 'Sensory Experiences: Smells, Sounds and Touch' in Foster and Whatley (eds), *A History of Everyday Life in Scotland, 1600–1800*, 217–33.

⁵¹ i.e. literally spoiling or breaking, possibly related to the legal term 'spuilzie/spuilyie'.

bannest the tounn during the tounis will'. To ensure compliance, he was to lodge a monetary pledge before he was released.⁵²

To start with, it is the record of a dispute between merchants and craftsmen—the case is explicitly recorded in the language of sectional divisions between those two groups. Howeson was designated by the craft of which he was a member and he was committing offences with other craftsmen against 'the burgesses', which must mean, implicitly, the merchant burgesses who dominated the burgh council, sat in judgement over their social inferiors and meted out the punishment. The council clearly also saw itself in particular and the merchant guild more broadly as embodying the 'community' of the burgh, the very town itself. This was an exclusive identity, defined by and restricted to those at the top of the urban hierarchy, based on power and privilege, which was unlikely to have been shared by the less privileged craft burgesses, let alone the mass of unfree indwellers.⁵³

Beneath that most prominent level of interpretation this single paragraph reveals a good deal more. While it probably comes as no surprise that Aberdeen had a town clock, which was present from at least the middle of the fifteenth century but probably considerably earlier, the fact that it was targeted by dissident craftsmen makes it more interesting.⁵⁴ What does that tell us about the clock, its purpose and how it was perceived by different groups within the burgh? It speaks to the significance of the machine as an object through which authority was projected and exercised, in its regulation of people's working lives and even their leisure time. It was a visible and audible symbol of power, with chimes and a gilded face. Clocks were expensive – to buy and to maintain – with one of the handful of the burgh's salaried staff being the 'ruler and keeper' of the clock. It needed daily attention, in the form of literally winding up the weights that drove its escapement mechanism, and frequent minor repairs. It also required lubrication, for which oil had to be bought. Animal fat was too heavy, so in an era before mineral oils were available, expensive olive oil, which probably came from or at least through France was required, for it

⁵² Aberdeen City Archives [ACA], Aberdeen Council Records, CR1/20, 32–3.

⁵³ E. P. Dennison, 'Power to the People? The Myth of the Medieval Burgh Community' in S. Foster, A. MacInnes and R. MacInnes (eds), *Scottish Power Centres: From the Early Middle Ages to the Twentieth Century* (Glasgow, 1998), 100–31. This issue is addressed in Claire Hawes, 'The Urban Community in Fifteenth-Century Scotland: Language, Law and Political Practice', *Urban History*, 44 (2017), 365–80.

⁵⁴ J. Stuart (ed.), *Extracts from the Council Register of the Burgh of Aberdeen* (Aberdeen, 1844), 20.

was always referred to as 'oyldolive'.⁵⁵ But the oil was not the only import, for the clock itself had been bought in Flanders. This evidence alone indicates the possibilities for the study of measured time in Scotland, its role, significance, uses, as well as human attitudes to punctuality and the power that controlling time can confer. Perhaps the Scottish evidence will not permit as in-depth a treatment as Paul Glennie and Nigel Thrift have achieved for England and Wales but combining a range of sources certainly has considerable potential.⁵⁶

The paragraph is also suggestive of an aspect of pre-Reformation religion which, because so few of the church's own records have survived, is so much more difficult to recover than the religion of the post-Reformation period. It might have been tempting to assume that doing penance on one's knees in the face of the kirk in only one's shirt was characteristically Calvinist, but Howeson was also ordered to carry out his sentence after entering the church at the head of 'the procession' and carrying a beeswax candle weighing one pound. It was May 1548: public penance, with its accompanying physical and psychological discomfort, and the ritualised nature of punishment for sin, were no innovations of the post-Reformation system.

Crime and punishment of the civil as well as the religious variety are mentioned too. If Howeson were to reoffend, he would be branded on his cheek and banished from the burgh. This was a standard sentence in early-modern courts, in an era when incarceration was exceedingly rare. The reference to branding brings us back into the realm of sensory history. Apart from the fact that it involved pain, or in this case the threat of it, what better way was there of distinguishing someone as a miscreant than a disfiguring mark on that most public part of his person, that he would carry for the rest of his life? The branding was also linked to the fact that, in almost every early-modern Scottish community, urban or rural, everyone knew everyone else. Branding went hand-in-hand with banishment because it ensured that those who did not know the offender, the people he would encounter once he was banished, would know why he had been forced to leave his own community. The paragraph even contains references to gender-related issues, both in terms of social constructs and in relation to language. It exemplifies an approach to dispute (a violent, confrontational, destructive response to conflict); it reveals the male-dominated institutional power-structures that governed the interaction and behaviour of people in early-modern towns. The

⁵⁵ ACA, Dean of Guild Accounts, DGA1, 1594/5.

⁵⁶ P. Glennie and N. Thrift, *Shaping the Day: A History of Timekeeping in England and Wales, 1300–1800* (Oxford, 2009).

female gender is also strikingly present in the clock itself, for a clock, like a ship, was always referred to as 'she' rather than 'it': Howeson was ordered to pay for the clock to be mended 'sa far as he hes skaythit *her* in ony sort'.

Others reading the same paragraph would doubtless be prompted to consider many more issues than these. Scottish urban records are excellent, at least from the sixteenth century onwards, in the form of council minutes, court books, registers of sasines and deeds, financial accounts, correspondence, and a range of other miscellaneous manuscripts. The only obstacle to progress is that which besets much of Scottish historical research, the lack of a critical mass of scholars. This is a small country and individual historians often find themselves ploughing a lone furrow, arguing with decades-old works or long-dead historians, and struggling to engage with current scholarly debates outside Scotland because so much foundational work that is taken for granted elsewhere is yet to be done here. The historiographical base for the study of the early-modern town in Scotland remains narrow. This is illustrated most clearly by the synthetic works on the big four cities. Aberdeen's *New History* from 2002 is excellent in the scope of its coverage both chronologically and thematically and in the way that it draws upon material culture as well written sources.⁵⁷ More recently, a good deal of similar work has been produced on Dundee, with one of the three volumes on that city's history covering the period from around 1500 to the end of eighteenth century. While its coverage is not as comprehensive as the Aberdeen volume, partially because the local records are nothing like as rich, it contains a great deal that is of value.⁵⁸ Glasgow and Edinburgh, the big two of the present day, if not of the early-modern period, are less well served. The first of Glasgow's three-volume history reaches all the way to 1830, but tragically the entire period before 1660 flashes past in the first chapter.⁵⁹ For a city with a history stretching back to the early post-Roman period, the seat of Scotland's second most senior clerics (its bishops and latterly archbishops), the location of Scotland's second oldest university, and the wealthiest burgh on the west coast, rising to become the second wealthiest in Scotland, that was a missed opportunity. For Edinburgh, staggeringly, nothing comparable to the publication projects on the other three has even been attempted. It is one of the greatest scandals of contemporary Scottish culture that the capital appears to suffer from a profound lack of

⁵⁷ Dennison, Ditchburn and Lynch (eds), *Aberdeen Before 1800*.

⁵⁸ McKean, Harris and Whatley (eds), *Dundee: Renaissance to Enlightenment*.

⁵⁹ T. M. Devine and G. Jackson (eds), *Glasgow. Volume I: Beginnings to 1830* (Manchester, 1995).

interest in and care for its own history in every possible area, be it archives, museums, or support for academic research into its own history.

It would be wrong, however, to end on a negative note, for that would be unrepresentative of the whole picture. The changes in the approaches and methodologies of Scottish urban historiography over the last thirty years, both predicted and unanticipated, have shown an adaptability to broader trends in the discipline and a creative use of existing sources. Material culture, archaeological evidence and cartographic sources have been fruitfully brought to bear, exemplified in the new generation of the Scottish Burgh Survey project, funded by Historic Scotland.⁶⁰ These have shown the degree to which textual sources can be augmented, which has been especially useful in providing insights into the histories of those towns for which written records are less voluminous. John McGavin and Eila Williamson have shown how civic pageantry and ceremony can be pieced together from a range of local records, both civil and ecclesiastical, in a way that none would have thought possible before.⁶¹ There remains tremendous scope for continuing the trend of drawing upon different approaches and disciplines while maintaining the principal focus on the written record, because the richness of the source material for urban history means that there are endless possibilities for exploring new avenues of research with the potential for exciting, stimulating and unexpected results.

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⁶⁰ See, for example, E. P. D. Torrie and R. Coleman, *Historic Kirkcaldy: The Archaeological Implications of Development* (Edinburgh, 1995).

⁶¹ E. Williamson and J. McGavin, 'Crossing the Border: The Provincial Records of South-East Scotland' in A. Douglas and S. B. Maclean, *REED in Review: Essays in Celebration of the First Twenty-Five Years* (Toronto, 2006), 157–77.

Arbitration in Late Medieval Scotland: ‘bon accord’ in Urban and Rural Contexts

Jackson W. Armstrong

‘...it is gude thing and meritory to make frenschippe vnite and gude concorde betwix partyes discordand’: With these words in 1416 the fourth earl of Douglas rehearsed a normative framework for peacemaking which sought to replace discord with concord.¹ He did so as he gave his interim award in a property dispute between the monks of Melrose Abbey and a local landowner, John Haig of Bemersyde, over territory near to the border with England. Similar sentiments can be observed elsewhere in Scotland in the fifteenth century, as in the burgh of Aberdeen in 1458, when ‘concorde’ and ‘cordance’ were made between two clergymen in relation to a dispute over an altar within the main parish kirk of St Nicholas.² Such words which derive from Latin *cor, cordis* – the heart, the seat of emotion and wisdom – were part of a constellation of words intimately linked with conflict and dispute. In another case heard before the town’s bailies in 1493, record was made of the ritual submission one clergyman would undertake in order to ask the man whom he had offended for ‘forgivnes’ and to ‘remit the rancour of his hert’.³ Indeed the pervasiveness of such ‘-cor’ words is also captured in the name of Aberdeen’s annually elected lord of misrule, the so-called abbot of *Bon Accord*, which was also the civic motto on the town’s seal matrices of 1430.⁴

This essay is about arbitration in Scotland in the fifteenth century, and it

¹ C. Innes (ed.), *Liber Sancte Marie de Melros: Munimenta Vetustiora Monasterii Cisterciensis de Melros*, Bannatyne Club, 2 vols (Edinburgh, 1837), II, no. 540, 539. I am grateful to my co-editor of this special issue Dr Andrew Mackillop, Professor Michael P. Brown, editor of *JISS*, Professor J. D. Ford, and an anonymous reviewer for their comments on this article. I wish to thank the audiences who allowed me to present earlier drafts in Mainz, Giessen and Aberdeen. Any errors remain my own.

² In the 1416 award Haig appears as ‘an honorable Sqwhiar John the Hage lorde of Bemerside’. For 1458 see Aberdeen City & Aberdeenshire Archives (ACA), Council, Bailie and Guild Registers (CA) 1/1/5/2/810; E. Gemmill (ed.), *Aberdeen Guild Court Records, 1437–1468* (Edinburgh, 2005), 170.

³ ACA/CA 1/1/7/417; J. Stuart (ed.), *Extracts from the Council Register of the Burgh of Aberdeen, 1398–1625 (Abdn Counc.)* 2 vols (Aberdeen, 1844–48), I, 419. A similar submission appears at ACA/CA 1/1/7/783; *Abdn Counc.*, I, 59.

⁴ *Abdn Counc.*, I, 418.

addresses the subject through sources arising from two geographical contexts: the rural far South of the realm (known as ‘the marches’ towards England, more often simply called ‘the borders’), and the burgh of Aberdeen in the North East. In the context of this special issue the purpose is to offer a preliminary examination of how urban records may be put into thematic comparison with evidence from outside towns, and to raise questions for further study. Although distant from each other, in both the rural marches and urban Aberdeen a Scots-speaking cultural heritage predominated (described in the period as ‘Inglis’, part of a continuum of West Germanic vernaculars) which was distinct from the Gaelic cultural and linguistic patterns typically associated with the Scottish Highlands and the western seaboard orientated towards the Hebrides. The present article aims to challenge a framework of analysis that separates the rural from the urban, and to bring urban records into the wider discussion of conflict in late medieval Scotland. A considerable amount of work has been done to inform our understanding of conflict and law in late medieval and early-modern Europe.⁵ Some of this scholarship is informed by an interest in the complex and problematic concept of ‘feud’, which is now well-understood to have existed in many parts of Europe as a legal (as opposed to extra-legal) phenomenon.⁶ In Scottish historiography, the topic of ‘feud’ has been of some importance; however, it has not been investigated with urban records to the fore.⁷ By contrast, various aspects of social conflict in towns elsewhere

⁵ Important surveys include: W. C. Brown and P. Górecki, ‘What Conflict Means’ in W. C. Brown and P. Górecki (eds), *Conflict in Medieval Europe* (Aldershot, 2003), 1–36; S. Carroll, ‘Introduction’ in S. Carroll (ed.), *Cultures of Violence: Interpersonal Violence in Historical Perspective* (Basingstoke, 2007), 1–43.

⁶ J. B. Netterström, ‘Introduction: The Study of Feud in Medieval and Early Modern History’ in J. B. Netterström and B. Poulsen (eds), *Feud in Medieval and Early Modern Europe* (Aarhus, 2007), 9–67; S. Carroll, *Blood and Violence in Early-Modern France* (Oxford, 2006); S. A. Throop and P. R. Hyams (eds), *Vengeance in the Middle Ages: Emotion, Religion and Feud* (Farnham, 2010); Robert Bartlett, ‘“Mortal Enmities”: The Legal Aspect of Hostility in the Middle Ages’ in B. S. Tuten and T. L. Billado, *Feud, Violence and Practice: Essays in Medieval Studies in Honor of Stephen D. White* (Farnham, 2010), 197–212.

⁷ J. M. Wormald, ‘Bloodfeud, Kindred and Government in Early-Modern Scotland’, *Past and Present*, 87 (1980), 54–97; K. M. Brown, *Bloodfeud in Scotland 1573–1625* (Glasgow, 1986); see K. M. Brown, ‘Burghs, Lords and Feuds in Jacobean Scotland’ in M. Lynch (ed.), *The Early-Modern Town in Scotland* (London, 1986), 102–24. More recent statements include essays collected in S. Boardman and J. Goodare, (eds), *Kings, Lords and Men in Scotland and Britain, 1300–1625: Essays in Honour of Jenny Wormald* (Edinburgh, 2014); J. W. Armstrong, ‘The Justice Ayre in the Border Sheriffdoms, 1493–1498’, *Scottish Historical Review*, 92 (2013), 1–37. An important but unpublished study is S. I. Boardman, ‘Politics and the Feud in Late Medieval Scotland’, PhD

in Europe have not been ignored.⁸ The present focus is on arbitration as a process of disputing, and of conflict management more generally. Evidence for a variety of processes of ‘dispute resolution’ between parties is brought under consideration here – all of which share the common feature that they were not decisions handed down by in-court judgement. This evidence is not confined only to those records which explicitly identify ‘arbitration’ in formal terms. Late medieval Scottish society was generally comfortable with a certain amount of plasticity in legal terminology, itself telling of a culture of law and conflict which emphasised pragmatic flexibility over rigid formality.⁹ More particularly, attention in this essay is especially on the matter of *quo* did the arbitrating – a focus on the ‘institutional’ rather than ‘intellectual’ structures of legal culture.¹⁰ This can be approached both through the language used to describe normative frameworks and expectations, and the evidence for the mechanics of arbitration itself.

The study of early arbitration in Scotland has focused on the sixteenth-century evidence, whereas there is a comparatively well-developed literature on arbitration in late medieval England.¹¹ For Scotland arbitration has been

dissertation (University of St Andrews, 1989). Indirectly related work on towns can be found in E. Ewan, ‘Disorderly Damsels? Women and Interpersonal Violence in pre-Reformation Scotland’, *Scottish Historical Review*, 89 (2010), 153–71; J. R. D. Falconer, *Crime and Community in Reformation Scotland: Negotiating Power in a Burgh Society* (London, 2013).

⁸ For recent examples see: C. Hess, ‘*Nigra crux mala crux*: A Comparative Perspective on Urban Conflict in Gdansk in 1411 and 1416’, *Urban History*, 41 (2014), 1–16; M. Phillips, ‘Urban Conflict and Legal Strategy in Medieval England: The Case of Bishop’s Lynn, 1346–1350’, *Urban History*, 42 (2015), 365–380; J. Dumolyn and J. Haemers, ‘“A bad chicken was brooding”: Subversive Speech in Late Medieval Flanders’, *Past and Present*, 214 (2012), 45–86; D. L. Smail, *The Consumption of Justice: Emotions, Publicity, and Legal Culture in Marseille, 1264–1423* (Ithaca, 2003); Trevor Dean, ‘Marriage and Mutilation: Vendetta in Late Medieval Italy’, *Past and Present*, 157 (1997), 3–36.

⁹ See, for example: J. M. Wormald, ‘An Early-Modern Postscript: The Sandlaw Dispute, 1546’ in W. Davies and P. Fouracre (eds), *The Settlement of Disputes in Early Medieval Europe* (Cambridge, 1986), 203.

¹⁰ J. Ø. Sunde, ‘Daughters of God and Counsellors of the Judges of Men: Changes in the Legal Culture of the Norwegian Realm in the High Middle Ages’ in S. Brink and L. Collinson (eds), *New Approaches to Early Law in Scandinavia* (Turnhout, 2014), 175.

¹¹ For some examples see: E. Powell, ‘Arbitration and the Law in England in the Late Middle Ages’, *Transaction of the Royal Historical Society*, 5th series, 33 (1983), 49–68; idem, ‘Settlement of Disputes by Arbitration in Fifteenth-Century England’, *Law and History Review*, 2 (1984), 21–43; C. Rawcliffe, ‘The Great Lord as Peacekeeper: Arbitration by English Noblemen and their Councils in the Later Middle Ages’ in J. A. Guy and H. G. Beale (eds), *Law and Social Change in British Society* (London, 1984),

foregrounded as a form of ‘private settlement’, and an integral part of the harmony achieved ‘between public and private justice’.¹² This theme has been reinforced in Mark Godfrey’s work on arbitrations in the 1520s and 1530s, and his wider study of the development of ‘central’ justice, and a ‘culture of vindication of rights’.¹³ In particular Godfrey has argued for the increasing role of judges known as the lords of the session (the superior royal court for ‘civil’ matters) themselves acting as arbiters, displacing an older practice whereby cases before the session and its antecedents were handled by the parties’ own choice of private arbiters.¹⁴ Other studies (concerned with the later sixteenth century) have found an array of possible peacemakers, encompassing single lords acting as mediators as well as panels of laymen serving as arbiters for their peers.¹⁵ Godfrey also observes that, despite a complex classical and medieval legal heritage behind the terms ‘arbiter’, ‘arbitrator’, and ‘amicable compositor’, early-modern Scots tended to apply all three terms to those who acted on arbitration panels, the purpose of which was to give an award known as a ‘decree arbitral’.¹⁶ We know very little about arbitrations in medieval urban Scotland, although it is evident that the term

34–54; J. Biancalana, ‘The Legal Framework of Arbitration in Fifteenth-Century England’, *American Journal of Legal History*, 47 (2005), 347–82. On arbitration in English towns, see for example: C. Rawcliffe, “‘That kindness should be cherished more, and discord driven out’: The Settlement of Commercial Disputes by Arbitration in Later Medieval England” in J. I. Kermode (ed.), *Enterprise and Individuals in Fifteenth-Century England* (Gloucester, 1991), 99–117; L. C. Attreed, ‘Arbitration and the Growth of Urban Liberties in Late Medieval England’, *Journal of British Studies*, 31 (1992), 205–35; B. R. McRee, ‘Peacemaking and its Limits in Late Medieval Norwich’, *English Historical Review*, 109 (1994), 831–66; M. D. Myers, ‘The Failure of Conflict Resolution and the Limits of Arbitration in King’s Lynn, 1405–1416’ in D. Biggs, S. D. Michalove and A. Compton Reeves (eds), *Traditions and Transformations in Late Medieval England* (Leiden, 2002), 81–107; Phillips, ‘Urban Conflict’.

¹² Wormald, ‘Bloodfeud, Kindred and Government’, 86–7; Wormald, ‘The Sandlaw Dispute’, 204. See also Brown, *Bloodfeud*, 48; Boardman, ‘Politics and the Feud’, 55; W. D. H. Sellar, ‘Assistance in Conflict Resolution in Scotland’, *Recueils de la Société Jean Bodin pour l’Histoire Comparative des Institutions*, 64 (1997), 267–75; J. Goodare, *State and Society in Early Modern Scotland* (Oxford, 1999), 57, 267–8, 270–1.

¹³ A. M. Godfrey, ‘Jurisdiction over Rights in Land in Later Medieval Scotland’, *Juridical Review* (2000), 242–63; A. M. Godfrey, ‘Arbitration and Dispute Resolution in Sixteenth-Century Scotland’, *Tijdschrift voor Rechtsgeschiedenis/Revue d’histoire du droit/Legal History Review*, 70 (2002), 109–35; A. M. Godfrey, ‘Arbitration in the *ius commune* and Scots Law’, *Roman Legal Tradition*, 2 (2004), 122–35; A. M. Godfrey, *Civil Justice in Renaissance Scotland: The Origins of a Central Court* (Leiden, 2009), 448.

¹⁴ Godfrey, *Civil Justice*, 355–440.

¹⁵ Brown, *Bloodfeud*, 48–51.

¹⁶ Godfrey ‘Arbitration and dispute resolution’, 114, 116, 118–20.

‘auditors’ was sometimes applied to arbitration panels in Aberdeen.¹⁷ In his introduction to the edition of the earliest Aberdeen council register volume W. Croft Dickinson comments on the procedure of arbitration, noting that ‘it would almost appear, indeed, as though the court welcomed a reference to ‘compositours’ [whereby] it was itself relieved of the burden of making a decision’.¹⁸ The implication in this analysis, that arbitration was a sign of urban courts flagging under the weight of their judicial responsibility, reflects a dated historiographical framework and a reinterpretation of the evidence is long overdue.

Sources for arbitration in Scotland before c.1450 are not many. All the same it is clear that the procedure was commonly deployed in both secular and ecclesiastical contexts. Matters relating to arbitration take up a considerable part of the treatise *Regiam majestatem*, Scotland’s fourteenth-century law book which was heavily shaped by canonist sources.¹⁹ Furthermore Scotland’s legal culture drew upon a heritage of compromise processes which included those of pre-Christian origin, drawn in part from Scandinavia.²⁰ In the latter case it is worth observing the argument, recently advanced, that the arbitration panel was the ancestor of the trial jury in medieval Norway.²¹ In Scotland arbitration was subject to parliamentary attention in 1427, when legislation was enacted stipulating that panels of arbiters should be uneven in number. This law approved methods for choosing the odd arbiter or ‘*dispar persona*’ (known usually as ‘overman’ in Scots), in disputes relating to burgesses, to

¹⁷ E. Frankot, *Of Laws of Ships and Shipmen: Medieval Maritime Law and its Practice in Urban Northern Europe* (Edinburgh, 2012), 155, citing a case of 1453 from ACA/CA 1/1/5/1/188 (the original giving ‘auditouris’). See another case (of 1460) at CA 1/5/1/399. For comment on a later period see Brown, ‘Burghs, Lords and Feuds’, 117–20.

¹⁸ W. C. Dickinson (ed.), *Early Records of the Burgh of Aberdeen, 1317, 1398–1407*, (Edinburgh, 1957), cxxx.

¹⁹ J. J. Robertson, ‘The Development of the Law’ in J. M. Brown (ed.), *Scottish Society in the Fifteenth Century* (London, 1977), 145; H. L. MacQueen, ‘*Regiam majestatem*, Scots Law and National Identity’, *Scottish Historical Review*, 74 (1995), 1–25; Godfrey, ‘Arbitration and Dispute Resolution’, 113–18. For example, the official of Glasgow selected arbiters in an inheritance dispute in April 1433: National Records of Scotland (NRS), Gifts and Deposits (GD), 124/6/2.

²⁰ W. C. Dickinson, ‘Some Scandinavian Influences in Scottish Legal Procedure?’, *Ann*, 15 (1960), 155–9; A. D. M. Forte, “‘A strange archaic provision of mercy’: The Procedural Rules for the *duellum* under the Law of *Clann Duib*”, *The Edinburgh Law Review*, 14 (2010), 418–50.

²¹ Sunde, ‘Daughters of God’, 143–8.

clerics, and to laymen.²² Certain arbitrations have been identified from the 1440s in which the corporate burgh of Perth featured as a disputing party itself, and another in which an Aberdeen burgess (Gilbert Menzies) served among a group of arbiters in a dispute between rural landowners.²³ Of the sources presently under examination – ‘rural’ and ‘urban’ – certain general points can be noted. The urban examples considered here all arise from a judicial context; our sources are the Aberdeen council registers which are predominantly court records. Thus, by reason of their survival in this material, the Aberdeen arbitrations arise from court proceedings. Similarly, there are also records of arbitrations relating to the rural context which are preserved by the court of session and its antecedents and which survive from the second half of the fifteenth century.²⁴ However, in the rural context this pattern varies. A significant number of ‘rural’ arbitrations arose not out of court records (and thus not *obviously* from legal process in court), but rather appear as documents preserved among the collections of private families or religious houses, usually in the form of an indenture or contract or receipt for compensation. However, it does not follow that a rural context was more likely to be the backdrop for out-of-court disputes; and it should be clear that arbitration was not extra-legal in nature, but heavily informed by a legal procedural framework.²⁵ Nor does it follow that the sole survival of a private indenture between parties means that a dispute would not also have come before a court at some point – indeed some documents suggest quite the opposite.²⁶ The point here is purely contextual. Our concern is not with the involvement of courts *per se*, but, as far as possible, with the identity of the arbiters themselves, for what this reveals about the social expectations of

²² K. M. Brown et al. (eds), *The Records of the Parliaments of Scotland to 1707* (hereafter RPS), 1427/7/7, <http://www.rps.ac.uk> [accessed 1 July 2014]. Equivalent terms in England were ‘umpire’ or ‘nonpar’. Powell, ‘Settlement of Disputes’, 29.

²³ Perth & Kinross Council Archive: B59/26/1/2 (19 June 1442); RPS, record 1444/2 (6 February 1444), both of which references I owe to Professor Michael H. Brown. For Menzies see J. Robertson and G. Grub (eds), *Illustrations of the Topography and Antiquities of the Shires of Aberdeen and Banff*, 4 vols (Aberdeen, 1847–69), III, 404–5; S. Boardman, ‘The Burgh and the Realm: Medieval Politics, c.1100–1500’ in E. P. Dennison, D. Ditchburn and M. Lynch (eds), *Aberdeen Before 1800: A New History* (East Linton, 2002), 217.

²⁴ As per *Carruthers v. Maxwell* (1472): RPS, record 1472/45.

²⁵ See, for instance, M. T. Clanchy, ‘Law and Love in the Middle Ages’ in J. Bossy (ed.), *Disputes and Settlements: Law and Human Relations in the West* (Cambridge and Oxford, 1980), 47–67.

²⁶ See the assurances taken in the Maxwell-Murray affair in 1485: HUA/DDEV/80/nos 45, 46.

those members of local society called upon to advance a dispute to a point of resolution.

The 'Rural' Context

Work on the exercise of political power by the late medieval Scottish nobility has made much of the role of the magnate as peacemaker. A great lord's prominence over his social inferiors was indeed one of the qualities which made him attractive to his landholding tenants, followers, and kinsmen, as a powerful third party in disputes.²⁷ This is perhaps as much to be expected in towns as in the countryside, for Aberdeen developed its own close relationships with its regional noblemen. This was so with Alexander Stewart, earl of Mar (d. 1435) in the first four decades of the fifteenth century.²⁸ In 1440 the burgh appointed Sir Alexander Irvine of Drum as its 'captain and governor'.²⁹ In the 1450s and 1460s it was Alexander Gordon, earl of Huntly, who came to serve as the burgh's patron. In 1463 the provost, bailies, council and community gave Huntly letters by which they pledged him their loyalty (saving allegiance to the king) in return for his protection of Aberdeen's freedoms.³⁰ These letters were similar in form to a bond, a type of document which, from the 1440s onwards, featured regularly in the landscape of relations between lords and men. Such bonds (of 'manrent', 'maintenance', and 'friendship') are an important source for what nobles themselves had to say about their socio-political role. In the language of these bonds lords promised to 'maintain' the interests of the man who gave his 'manrent' (a concept of service similar to homage) to the lord.

²⁷ Wormald, 'Bloodfeud, Kindred and Government', 74–6; A. Grant, *Independence and Nationhood: Scotland 1306–1469* (Edinburgh, 1984), 140–3, 157; J. Wormald, 'Lords and Lairds in Fifteenth-Century Scotland: Nobles and Gentry?' in M. C. E. Jones (ed.), *Gentry and Lesser Nobility in Late Medieval Europe* (Gloucester, 1986), 192–3; Brown, *Bloodfeud in Scotland*, 48–9, 72–3; M. Brown, *The Black Douglases: War and Lordship in Late Medieval Scotland 1300–1455* (East Linton, 1998), 161–2, 172, 179; S. Boardman, 'The Campbells and Charter Lordship in Medieval Argyll' in S. Boardman and A. Ross (eds), *The Exercise of Power in Medieval Scotland c.1200–1500* (Dublin, 2003), 105; J. W. Armstrong, 'The "Fyre of Ire Kyndild" in the Fifteenth-Century Scottish Marches' in S. Throop and P. Hyams (eds), *Vengeance in the Middle Ages: Emotion, Religion and Feud* (Farnham, 2010), 72.

²⁸ M. H. Brown, 'Regional Lordship in the North-East: The Badenoch Stewarts II: Alexander Stewart, Earl of Mar', *Northern Scotland*, 16 (1996), 31–53; D. Ditchburn, 'The Pirate, the Policeman and the Pantomime Star: Aberdeen's Alternative Economy in the Early Fifteenth Century', *Northern Scotland*, 12 (1992), 19–34.

²⁹ ACA/CA1/1/4/211; *Abdn Counc.*, i, 6.

³⁰ ACA/CA 1/1/5/1/467; *Abdn Counc.*, i, 22–3. See Boardman, 'The Burgh and the Realm', 213–19.

Underpinning this was the idea of ‘gude lordship’, one aspect of which was the lord’s assistance in disputes, including processes of compromise. Indeed, one interpretation of these bonds is that they were primarily ‘a force for pacification’, although other work by contrast has explored the use of bonds in securing assistance for disputing parties.³¹ A further category of bond was that of ‘friendship’, made between social equals. An early and prominent example is the indenture of ‘full frendschip and kindnes’ entered between the earl of Douglas and duke of Albany in 1409. This was a cooperative arrangement which set out detailed provisions (including the use of a panel of seven men, arbiters in all but name) to resolve ‘ony discorde’ between the two men or their followers which might arise, and to do so ‘in lufely manere’.³² Similar sentiments can be found lower down the social hierarchy, as in a bond of friendship between the Roxburghshire lairds (meaning lesser noblemen) Andrew Kerr and Sir Robert Colville. In 1453 they agreed that, if any of their men should happen to ‘debat or discord’, then:

nouthir of thaim sal tak part with thaire awyn men bot be euyndly reddaris and stancheiris of euill and debates quyll efter it may be brouch befor thaim [.] and thare thai sal refourme ony debates gyf sie happyns efter as it is sene spedfull to thaim ... Alsua it is acordyt that [.] gyf ony of thaim happyns to inryn fedis or maugreis athir for vthir of ony partyse [.] that nouthir of thaim sal mak frendschip na concorde without avice and assent of the tothir party.³³

This cooperative agreement was based on the expectation that the cycle of conflict would turn up violent discord in the future. So these lairds set out, in practical terms, the means by which they would seek to build friendship and concord between themselves and their followers, in a written expression of what was normally expected of the nobility (lesser and greater) throughout Scotland.³⁴

³¹ J. Wormald, *Lords and Men in Scotland: Bonds of Manrent, 1442–1603* (Edinburgh, 1985), especially 115–36, quote at 136. For bonds used in the recruitment of support and assistance in specific disputes see Boardman, ‘Politics and the Feud’, 104–57.

³² NRS, Register House Charters (RH), 6/223. For comment see Wormald, *Lords and Men*, 39–40; Grant, *Independence*, 157.

³³ HMC, *14th Report*, app., part III, p. 9, abstracted in Fraser, *Douglas*, III, no. 426, 431. DSL, s.vv. ‘reddar’, ‘ridder’ (‘one who acts to separate combatants or intervene in a dispute or affray’), ‘inrin’ (‘to incur, to fall into’).

³⁴ The expectation for even minor landlords to arbitrate is evident in I. B. Cowan,

All the same, in contrast to the accepted line of analysis and much of the rhetoric of lords themselves, it is very rare to find great magnates acting alone as peacemakers. The example with which this paper began, that of the earl of Douglas' award in a dispute between Melrose Abbey and Haig of Bemersyde, is one such case.³⁵ Indeed the precise capacity in which Douglas acted is ambiguous; unstated is whether he considered himself to be acting as arbiter. At any rate he was ineffective in bringing matters to an end, for the dispute rumbled on for years and escalated to the point of the Haigs' excommunication.³⁶ In 1444 the earl of Angus was more successful in such a role. Early that year Sir Alexander Hume of that Ilk's opponent recorded that he had duly received compensation in the form of livestock and silver from Hume of that Ilk, as had been 'ordanyt' and 'jugit' by 'a decret giffin be a mychti Lord and his consail, James, Erl of Angouss'.³⁷ The term 'decret' (for decree arbitral) here suggests that Angus and his comital council indeed acted together as arbiters to deliver an award. If earls arbitrated in this way as frequently as has been presumed, it is striking that more such documentation (even indirect) does not survive. The pattern seems similar in the North. The Aberdonian context offers no clear evidence for members of the nobility, even a figure like the earl of Huntly, acting as arbiter in town. Rather, examples emerge of rural landowners appearing as parties themselves in disputes heard before the burgh courts, sometimes involving violence done to or by their adherents.³⁸

In fact, a number of examples can be given of great magnates submitting to awards handed down by lesser men. For example, in 1432, the panel of arbiters who acted between the earls of March and Angus in a dispute over land in the borders included Sir Patrick Dunbar of Biel, Patrick Hepburn of Waughton, and George Graham. These men were apparently the arbiters chosen by March (George Dunbar, the tenth earl), for two were relations:

P.H.R. Mackay and A. Macquarrie (eds), *Knights of St John of Jerusalem in Scotland* (Scottish History Society, 4th ser., 19, 1983), no. 26, 90–1.

³⁵ Another example is an arbitration of 1479 over which the earl of Huntly 'presided', although directing a panel of arbiters: Boardman, 'Politics and the Feud', 58.

³⁶ *Melrose Liber*, II, no. 544, 542–4; NRS/GD 150/93.

³⁷ *Report on the Manuscripts of Colonel David Milne Home*, Historical Manuscripts Commission (London, 1902), no. 8, 21. The opponent was Sir David Hume of Wedderburn. For context see Armstrong, 'The "Fyre of Ire Kyndild"', 73.

³⁸ For example, see Walter Lindsay and Alexander Forbes in 1407: ACA/CA 1/1/1/322; Dickinson, *Early Records*, 236; James Douglas [of Balvenie], earl of Avondale, and Irvine [of Drum] in 1440: ACA/CA 1/1/4/201; *Abdn Conn.*, I, 394–5; and Irvine of Drum in 1447: ACA/CA 1/1/5/2/720; Gemmill, *Aberdeen Guild Court*, 110.

Dunbar of Biel was his uncle and Graham his son-in-law.³⁹ In February 1440, the same earl of Angus just mentioned agreed to arbitration in a property dispute with Hume of that Ilk (the very man for whom the earl would arbitrate some four years later). This award was given at Jedburgh by Sir Archibald Douglas of Cavers and Nicholas Rutherford of Grubbit who pronounced in favour of the earl. It may be tempting to speculate that Cavers, who was sheriff of Roxburghshire (the sheriffdom for which Jedburgh was the seat at this time), acted here in his shrieval capacity; yet the fact that the lands in question (Preston and Lintlaw) were situated in the neighbouring sheriffdom of Berwick suggests otherwise.⁴⁰ Some decades later, in 1477, a matter between the earl of Morton and Henry Livingston of Mannerston, the earl's tenant of the lands of Blyth (in the sheriffdom of Peebles), was put to arbitration by three members of the Gifford family (a laird and two clerics), to whom Morton was related.⁴¹ The examples set out in this paragraph so far all pertain to non-violent property disputes; however, a similar process is apparent in a lethal conflict between the Maxwells and Murrays in Dumfriesshire in 1480s. In the expansive reconciliation reached between these parties in September 1486, two of seventeen points of agreement provided for arbitrations to be conducted. On the first matter of the *spuilzie*⁴² and 'away takin of al guds' between the disputants, Robert, Lord Maxwell and Cuthbert Murray of Cockpool, a panel of five was named. For Lord Maxwell's side the arbiters were to be Herbert Maxwell, son and apparent heir of Edward Maxwell of Tinwald, and Nichol McBrar, the alderman of Dumfries. For Cockpool's side they were to be [James] Lindsay of Fairgirth and John Cairns of Orchardton. The overman was to be George Herries of Terraughtie. In the second, related, matter between Cockpool and John, Lord Carlyle, the arbiters were to be Thomas McClellan of Bombie, George Herries of Terraughtie, Robert Charteris of Amisfield, and John (a man whose surname is obscured), with Lord Maxwell to serve as overman. In both these instances, provision was made for prominent noblemen (Lord Maxwell and Lord Carlyle) to abide by the arbitration of men of lesser

³⁹ NRS/GD 12/29. For the identification see M. Brown, *James I* (East Linton, 1994), 151n 32.

⁴⁰ Fraser, *Douglas*, III, no. 76, 69. Preston and Lintlaw were within the barony of Bunkle.

⁴¹ NRS/GD 150/171, 172. These '*jugis arbituris and amicable composuris*' were James Gifford of Sheriffhall, Master Alexander Gifford (parson of Newlands), and Master Thomas Gifford, son of William Gifford 'indweller' in Dalketh.

⁴² For 'spuilzie' see Andrew Simpson's essay in this collection.

social status.⁴³ Similar evidence can be detected in arbitrations ordered by the antecedents of the court of session in the later fifteenth century, in which social superiors did not arbitrate for men of lower standing, but rather the other way around.⁴⁴

The pattern which appears to explain the choice of arbiters in many such cases from our ‘rural’ context concerns kinship. When arbiters are specifically named in a surviving record of arbitration, they can frequently be identified as having had familial links with one of the disputants. Indeed, when social inferiors arbitrated for noblemen of higher standing, such as lords of parliament or earls, a vital consideration was the kinship nexus.⁴⁵ By accepting representatives of their wider network of family relations into such a crucial role, noblemen could be understood not to have been relinquishing social authority, but rather demonstrating and reinforcing their role as leading members of a kindred group. This was appropriate given that the language of kinship and friendship was linked intimately to that of peacemaking. In the words of a compromise agreement of 1449, it was ‘accordit that fathful frendschipe, kyndnes, and lawte salbe keptit’ between the parties for all the days of their lives. It was the ‘speciale frendis’ – friends here referring to a wider category of cousinage – of both sides who were to set amends for injuries suffered, and contingency plans were laid that any future strife should be resolved through the ‘ordenance and consale of four or sex of thair nerrest frendis’.⁴⁶ To whom did the nobility, even earls, turn for arbitration? Not to bishops, abbots, other magnates, or even the king, but to their kin and friends. The great lord was seldom peacemaker. The implications of this assessment deserve fuller analysis than may be offered in the space available here, but it is clear that there was some distance between the rhetoric and the reality

⁴³ Hull University Archives (HUA), Papers of the Constable Maxwell Family of Everingham, Caerlaverock and Terregles (DDEV) 80/Maxwell Muniments no. 54; Fraser, *Carlaverock*, II, no. 57, 446–8. Lord Maxwell and Lord Carlyle were both of an equivalent social status as ‘lords of parliament’.

⁴⁴ For example: *Lord Somerville v. Somerville of Greenhalton* (1478), *ADC*, I, 14; *MacDowell of Makerstoun v. Ormiston* (1493), *ADC*, I, 312–313; *Hume of Ayton v. Hume of Polwarth* (1497), *ADC*, II, 56. The case of *Carruthers v. Maxwell* (1472): RPS, record 1472/45, has already been cited.

⁴⁵ In 1441 one landowner was sought out to arbitrate between two related disputants because he was the ‘most worthy of thayre kyn’: Armstrong, ‘The “Fyre of Ire Kyndild”’, 77.

⁴⁶ *Hume v. Hepburn* (1449): W. Fraser (ed.), *The Scotts of Buccleuch*, 2 vols (Edinburgh, 1878), II, 39–41, no. 44. The meaning of friends and friendship in late medieval Scotland I intend to explore elsewhere. For mention of ‘propinquieribus amicis siue consanguineis’ see Dickinson, *Early Records*, 154.

of good lordship.⁴⁷ In the exercise of power through the legal-procedural framework of arbitration lords acted by mobilising kinship ties. While on the one hand this accords with the current understanding of the importance of territory and ‘kinship ties at the heart of lordship’ in Stewart Scotland,⁴⁸ for the highly status-conscious nobility of the fifteenth century what is remarkable is the extent to which substantial landowners called family ties into action for arbitration even if in some cases that meant accepting the determination of men of lower social rank.⁴⁹

The ‘Urban’ Context

Are similar patterns which emphasise kinship and the kin nexus in arbitration to be found in the ‘urban’ context? In short, they do not appear in such an overt fashion. From the surviving Aberdeen council registers, a survey of all entries appearing in the first volume and dating between 2 October 1398 and 25 September 1400 reveals forty-nine mentions of arbitration (see Table 1, p.68). Given the scarcity of records of arbitration already noted, this result is itself indicative of the value of these registers as a source significant for all of late medieval Scotland. This run of court cases heard before the bailies of the burgh spans some 140 pages within the first volume.⁵⁰ The preponderance of cases in which these arbitrations appeared would all be what we would now consider ‘civil litigation’, that is to say they dealt with claims between parties rather than prosecution initiated on behalf of the burgh or the crown. They also tended not to involve the explicit mention of interpersonal violence although this was a feature in some instances.⁵¹ As might be expected, some of the disputing parties involved in these cases may be detected appearing with their claims before the burgh officials prior to the move to arbitration. For instance, the affair between William Dicson and Duncan de Mernys,

⁴⁷ On lordship, bonds and arbitration see, for example, K. Stevenson, *Power and Propaganda: Scotland 1306–1488* (Edinburgh, 2014), 93.

⁴⁸ K. M. Brown, *Noble Power in Scotland from the Reformation to the Revolution* (Edinburgh, 2013), 57, see also *ibid.*, 44–5, 48, 50, 53–5, 65–6. On kinship and territory see Boardman, ‘The Campbells and Charter Lordship’, 96, 105, 114, 117.

⁴⁹ For a summary of changes in noble social structure see A. Grant, *Independence and Nationhood: Scotland 1306–1469* (Edinburgh, 1984), esp. 120–7.

⁵⁰ ACA/CA 1/1/1/ 1–140 is the run of material printed in Dickinson, *Early Records*, 21–162. The original volume contains a total of 328 pages.

⁵¹ An example of a case in which the bailies appear to have prosecuted an offender, Michael de Camera, for the ‘perturbacione’ of another man of can be found at: ACA/CA 1/1/1/134. A case brought by one party against another involving the beating of a boy to the effusion of blood can be found at: ACA/CA 1/1/1/92.

concerning the withholding of a sum of money, was first heard by the bailies in mid-June, and then on six further occasions before being submitted to arbitration on 25 August 1399.⁵²

The particular court in which these arbitrations appeared most often was the '*curia legalis tenta per balliuos*' (thirty-two occurrences), followed by the '*curia tenta per balliuos*' (twenty occurrences), and finally the head court or '*curia capitali tenta per balliuos*' under which there is a single occurrence. This is unsurprising given the relative frequency with which these different types of court met.⁵³ The typical formulation of such a case entry was to note that the 'action moved between' the parties was 'submitted to amicable composition' and, failing this, it was to be 'brought again before the bailies'. In the vast majority of these occurrences the names of arbiters go unspecified. Rather, it is simply noted that the matter will be subject to the award of 'worthy men to be chosen by the consent of both parties'.⁵⁴ In only a few occurrences are these men specifically described as '*arbitros*'.⁵⁵ The technical term most regularly deployed was for a dispute to be put to '*amicabilem compositionem*', although variations occur, for example by reference instead to '*visionem et ordinacionem*', '*declaracionem et determinacionem*', or to '*concordandum*'.⁵⁶ The impression given is of a preference for the typical formulation given above, but with no strict conformity demanded in the record itself.

Some enticing glimpses of further detail are offered in the Aberdeen records. Seven occurrences register the names of the arbiters themselves. These panels comprised as few as two men, and as many as seven, but in six occurrences the number was balanced for both sides, suggesting – as far as this small sample goes – that the legislation of 1427 specifying odd numbers with an overman would indeed have dictated an innovation from typical practice in this burgh. In these examples the men named as arbiters were frequently town officials, such as bailies or members of the burgh's common council. For instance, the entry of 29 October 1398 gives the case of Simon

⁵² ACA/CA 1/1/1/23 (16 June), 25 (23 June, twice), 28 (14 July), 30 (21 July), 32 (11 August), 33 (11 August), and to arbitration on ACA/CA 1/1/1/36 (25 August).

⁵³ For comment on these various courts see Dickinson, *Early Records*, cxxi–cxxiv; Frankot, *Of Laws of Ships and Shipmen*, 56.

⁵⁴ For example: ACA/CA 1/1/1/90; Dickinson, *Early Records*, 113: 'accio mota inter' [names of parties] 'submittitur ad amicabilem compositionem proborum hominum ad hoc electorum ex consensu utriusque partis et ubi defectus reperitur presentabitur balliuus'.

⁵⁵ Dickinson, *Early Records*, 28, 141, 144.

⁵⁶ *Ibid.*, 28, 31, 37.

Lamb against John Crab *filius*. Lamb chose for his arbiters John Scherar (a bailie), John Ruthirford (a councillor) and William Scherol. Crab chose for his part William Andree (a councillor), Adam de Benyn, and John Andree (a councillor). Both parties agreed to elect '*pro superiori*' (viz. as overman) William de Camera *pater*, the provost.⁵⁷ Details also emerge from examples where arbiters were not named individually. In four such occurrences it was specified that the burgh's common council would arbitrate. When this happened in a case of 5 July 1400 between William de Camera (by then the former provost), and his opponent, the dispute was submitted '*ad amicabilem compositionem et determinacionem communis consilii*', with the word amicable scored out, presumably indicating that composition and amicable composition were understood to be different and, perhaps, that the council as a body did not provide the latter. It also shows a degree of care taken with the precise wording of the record, in contrast to the overall impression of pragmatic flexibility with terminology.⁵⁸

In two of the occurrences naming the common council as arbitrators, provision was made for the alternative scenario of arbitration by 'neighbours'. So reads the entry for a case heard on 7 January 1400 in which a dispute between parties was put to the 'amicable composition of their neighbours or the determination of the common council' (which further suggests that the council as a body did not render amicable composition – unlike 'neighbours' or 'worthy men').⁵⁹ In another case mentioning arbitration by neighbours it was specified that they should be four in number. This dispute was not over real estate or tenements in which neighbouring property boundaries might be significant, but the purchase of wine.⁶⁰ The language of *vicinitas* or 'good neighbourhood' elsewhere in the early Aberdeen registers has been observed, notably in that it marked out 'a jurisdiction in civil causes between burgess and burgess'.⁶¹ It is not clear who might be identified as a 'neighbour' and called

⁵⁷ ACA/CA 1/1/1/7; Dickinson, *Early Records*, 28. A list of the common council dated 27 August (presumably for the administrative year Michaelmas 1398 – Michaelmas 1399), appears at ACA/CA 1/1/1/70; Dickinson, *Early Records*, 99–100.

⁵⁸ ACA/CA 1/1/1/123; Dickinson, *Early Records*, 145. For other mentions of the common council see *ibid.*, 37, 120, 149.

⁵⁹ ACA/CA 1/1/1/98; Dickinson, *Early Records*, 120: '*ad amicabilem compositionem vicinorum suorum vel communis concilii determinacionem*'.

⁶⁰ Dickinson, *Early Records*, 149, 150: both occurrences relate to Thomas Ysac *v.* John Wormot.

⁶¹ Dickinson, *Early Records*, lxxix. It is notable that the term 'neighbours' in this late medieval urban usage occurs with more specificity than the wider range of senses, noted by Neville, in earlier centuries: C. J. Neville, 'Neighbours, the Neighbourhood and the Visnet in Scotland, 1125–1300' in M. Hammond (ed.), *New Perspectives on*

to perform arbitration in this role, although we might speculate that, at the widest, this included all members of the guild of burgesses.⁶² Nevertheless, a similarity with the role of prominent peasants serving as so-called ‘birleymen’ in the maintenance of ‘good neighbourhood’ in the barony courts of rural Scotland is apparent, and merits further investigation.⁶³

Conclusions

In summary, an institutional focus on who did the arbitrating in late medieval Scotland points to different frameworks for this manner of reconciliation, both in ideas and in process. There are four points on which to conclude. First, considering that arbitration has been an important aspect of the study of ‘feud’ in Scotland, what is suggested here is a more complicated picture of conflict management generally, and arbitration specifically, than has been addressed in scholarship to date. On the one hand, in the ‘rural’ context, the great magnate was hardly ever the single peacemaker.⁶⁴ Rather, arbitration was usually conducted by a panel, often consisting of men of lesser social status than the principal disputants. Kinship was not only part of the language of reconciliation, but also a vital mechanism of choice for identifying these arbiters. On the other hand, in the ‘urban’ context it was predominantly the worthies of the burgh, especially civic officeholders, who were chosen to act as arbiters. A superficial parallel with Godfrey’s findings for the lords of session acting as arbiters in the 1520s and 1530s is notable, but development of such a comparison is beyond the scope of this essay. This pattern was supplemented at times with a general reference to the common council, or to neighbours, who might be asked to perform this duty. Certainly, kinship ties were evident among the ‘urban’ elite as much as among their ‘rural’ counterparts. Adam Benyn and William Andree, the arbiters chosen on behalf of a shipmaster in

Medieval Scotland, 1093–1286 (Woodbridge, 2013), 161–73. See also R. Davies, ‘Kinsmen, Neighbours and Communities in Wales and the Western British Isles, c.1100–1400’ in P. Stafford, J. L. Nelson and J. Martingale (eds), *Law, Laity and Solidarities: Essays in Honour of Susan Reynolds* (Manchester, 2001), 172–87.

⁶² Outside of the present sample, on 20 June 1401, a dispute was put ‘ad determinacionem vicinorum unsusceptorum ad hoc ex utraque parte electorum’ ACA/CA 1/1/1/185; Dickinson, *Early Records*, 206.

⁶³ On this subject see W. D. H. Sellar, ‘Birlaw Courts and Birleymen’ in P. Brand, K. Costello, and W. N. Osborough (eds), *Adventures of the Law: Proceedings of the Sixteenth British Legal History Conference, Dublin* (Dublin, 2005), 70–87.

⁶⁴ For an example of the countless of Lennox acting as peacemaker without any specific evidence of arbitration see M. H. Brown, ‘Earldom and Kindred: the Lennox and its earls, 1200–1458’, in Boardman and Ross (eds), *The Exercise of Power*, 222.

an entry from 5 December 1398, were in all probability relations of Simon de Benyn who served as bailie that year, and John Andree, a councillor.⁶⁵ However, kinship links between arbiters and disputants are not obvious, nor is the concept of kinship and kindness foregrounded in the language of urban peacemaking, as is so observable in the 'rural' context.

Secondly, this essay has sought to demonstrate and encourage a perspective which draws urban and rural source materials together for a single analytical purpose. While important differences have been found in these two contexts, this contributes to a more nuanced set of questions about arbitration in late medieval Scotland than would be obtainable by considering one category of evidence alone. To that end, too, the fuller testing and development of the implications of this picture for a wider understanding of disputing in Scotland is a task best left another occasion. It seems clear, however, that reconciliation by arbitration in town and country activated webs of relationships – kin-based or civic – which were socially constructive in the making of peace. It is hoped that further analysis prompted by this discussion might examine the ways in which the experience of office holding, regularity of contact (as through attendance at courts or in the interactions of local networks), and possibly even legal expertise (as might perhaps be expected of procurators or notaries), in both town and country might have shaped these social webs, and might serve to identify similarities rather than differences between these contexts.

Thirdly, and following on from the point just made, there is the matter of authority. It is notable that no textual authorities are cited in the material considered, from either of the learned laws, Roman or canon. That is perhaps only to be expected given that the source materials here do not turn upon legal argumentation over substantive law. In examples from the 'rural' context, the nobility of greater and lesser status made implicit claims to the authority of lordship to support the expectation that they should act as peacemakers for their social inferiors. In reality, these claims appear to be overstatements, for most arbitrations show the nobility asserting their power through their kin relations, even to the extent of bringing lesser men to arbitrate on their behalf. The authority of the church and its leading prelates might be expected to fit into this picture somewhere, but it is hardly visible. Of all the evidence considered here only once is a bishop mentioned in a peacemaking role, and even then it is in a step removed from arbitration itself: in March 1401 Bishop Gilbert Greenlaw of Aberdeen and the common council of the burgh together chose

⁶⁵ ACA/CA 1/1/1/12; Dickinson, *Early Records*, 33. William Andree was a councillor himself (ACA/CA 1/1/1/70).

sixteen named men to ‘unravel and make known all discords which are among the neighbours of the burgh, and to mitigate and end them’.⁶⁶ It is remarkable, too, that the authority of the crown was generally kept in the background. This has been observed for sixteenth-century Scotland and the explanation offered by one writer is that the king only became involved (through the process of pardon) in violent conflicts.⁶⁷ It is true that most of the present evidence is for non-violent disputes. However, the involvement of the crown in some very violent affairs can be shown to be distant indeed, and it seems that further work is needed to appraise the role of royal authority in local conflict in the fifteenth century.⁶⁸ Aberdeen itself was a royal burgh, ultimately answerable to the crown. To that extent the crown cannot be ignored in the framework of authority behind the burgh courts, even if that authority appears to be more latent than manifest. More obviously urban arbitrations invoked the corporate, communitarian authority of the burgh, chiefly in the form of the ‘worthy men’, ‘neighbours’ and the common council who were called to this role. That point can be taken a step further. Civic arbitrations were not a consequence of burgh courts flagging in the effort to fulfil their judicial role. Rather, it was a normal and useful part of what these courts offered to litigants. Indeed there is every indication that it was to the burgh courts that parties looked for a means to register a dispute in an open forum, with the aim of initiating process that might result in constructive, amicable agreement. Doubtless in not all cases was arbitration an end and closure; parties also challenged awards or denied an opponent’s offer to submit to arbiters.⁶⁹ Still, in all cases a personal dispute which came before the courts was transformed into a matter of shared, open record: a claim was registered and formally acknowledged. With the completion of the digital edition of the Aberdeen council registers from 1398 to 1511 in due course the preliminary findings offered here may be tested at scale, across the entire fifteenth century.⁷⁰

⁶⁶ This comes from outside of the sample considered above: ‘ad discooperiendum et narrandum omnes discordias quas sciunt inter vicinos ville, similiter et easdem discordias pro suo posse mitigandas et cessandas’ ACA/CA 1/1/1/152; Dickinson, *Early Records*, 178–9. Elsewhere in Scotland, in 1478, John Drummond of Cargill and Stobhall came to Abbot David Bayn at Coupar Angus where they agreed by indenture to resolve ‘certane debattis of land’ between them. No third party was mentioned: Aberdeen University Library (AUL), Scottish Catholic Archives, Historic Archives (SCA), Blairs Charters (BC), 23/8 *verso*.

⁶⁷ On the invocation of public authority see Wormald, ‘Sandlaw Dispute’, 202–3.

⁶⁸ Armstrong, ‘The “Fyre of Ire Kyndild”’, 80.

⁶⁹ ACA/CA 1/1/1/83, 93; Dickinson, *Early Records*, 107, 115.

⁷⁰ For information on the Leverhulme Trust Research Project Grant, *Law in the*

Fourthly and finally, despite differences in emphasis, ‘rural’ and ‘urban’, what permeates the language of peacemaking in both contexts is the concept of *bon accord*. Indeed the burgh’s ability to direct disputes towards concord was one way in which Aberdeen projected its authority externally, into the countryside. Illustrative of this vein is a copy or draft of a missive from Aberdeen’s officials sent about November 1401. Through this letter the burgh acted as an intermediary in its hinterland. It wrote to an unidentified recipient (addressed as ‘reuerence and honour’) in the matter of a dispute involving Sir William Keith, marischal of Scotland, and the seizure of livestock. In this message the townsmen of the burgh proclaimed their desire to act as peacemakers, a role surely built upon the regular facilitation of compromise and concord within their own courts. In making such a claim they were not overstating their influence. It is as well to allow them the last word: ‘for we ar thai at wald at gud acord war betwex yhu and hym and wil do our besynes to bring it thar to at our power’.⁷¹

Aberdeen Council Registers, 1398–1511: Concepts, Practices, Geographies, see <https://aberdeenregisters.org> [accessed 1 December 2016].

⁷¹ ACA/CA 1/1/1/216; Dickinson, *Early Records*, 210. The letter refers to ‘the lord of Keth’.

Table 1:

References to arbitration in Aberdeen Council Register volume one, pp. 1–140

| Details of arbitrators in the case entry | Date | Reference |
|---|-------------|------------------|
| None specified; <i>in amicabilem compositionem</i> | 2 Oct 1398 | ACA/CA 1/1/1/2 |
| None specified; <i>in amicabilem compositionem</i> | 8 Oct 1398 | ACA/CA 1/1/1/2 |
| <i>ad visum et ordinacionem proborum hominum</i> | 21 Oct 1398 | ACA/CA 1/1/1/4 |
| Seven men named | 29 Oct 1398 | ACA/CA 1/1/1/7 |
| Four men named | 18 Nov 1398 | ACA/CA 1/1/1/10 |
| Two men named; two more to be elected | 18 Nov 1398 | ACA/CA 1/1/1/10 |
| Two men named | 26 Nov 1398 | ACA/CA 1/1/1/11 |
| Four men named | 5 Dec 1398 | ACA/CA 1/1/1/12 |
| Four men named | 3 Feb 1399 | ACA/CA 1/1/1/14 |
| <i>ad ... determinacionem communis consilij</i> | 27 Feb 1399 | ACA/CA 1/1/1/15 |
| <i>ad amicabilem compositionem proborum hominum</i> | 2 Aug 1399 | ACA/CA 1/1/1/31 |
| None specified; <i>in amicabilem compositionem</i> | 25 Aug 1399 | ACA/CA 1/1/1/36 |
| <i>in amicabilem compositionem proborum hominum</i> | 20 Oct 1399 | ACA/CA 1/1/1/46* |
| <i>in amicabilem compositionem proborum hominum</i> | 20 Oct 1399 | ACA/CA 1/1/1/46† |
| <i>probi homines electi ad componendum</i> | 20 Oct 1399 | ACA/CA 1/1/1/47* |
| None specified; <i>in amicabilem compositionem</i> | 20 Oct 1399 | ACA/CA 1/1/1/47‡ |
| None specified; <i>in amicabilem compositionem</i> | 20 Oct 1399 | ACA/CA 1/1/1/48§ |
| <i>ad amicabilem compositionem proborum hominum</i> | 17 Nov 1399 | ACA/CA 1/1/1/90 |
| <i>ad amicabilem compositionem proborum hominum</i> | 17 Nov 1399 | ACA/CA 1/1/1/90 |
| None specified; <i>ad amicabilem compositionem</i> | 19 Nov 1399 | ACA/CA 1/1/1/92 |
| <i>ad amicabilem compositionem proborum hominum</i> | 1 Dec 1399 | ACA/CA 1/1/1/93 |
| <i>ad amicabilem compositionem proborum hominum</i> | 1 Dec 1399 | ACA/CA 1/1/1/93 |
| <i>ad compositionem et determinacionem vicinorum suorum</i> | 1 Dec 1399 | ACA/CA 1/1/1/93 |
| <i>ad amicabilem compositionem vicinorum suorum</i> <i>vel communis consilij</i> | 7 Jan 1400 | ACA/CA 1/1/1/98 |
| <i>ad amicabilem compositionem proborum hominum</i> | 26 Jan 1400 | ACA/CA 1/1/1/100 |
| <i>ad amicabilem compositionem proborum hominum</i> | 23 Feb 1400 | ACA/CA 1/1/1/106 |
| <i>ad amicabilem compositionem proborum hominum</i> | 23 Feb 1400 | ACA/CA 1/1/1/106 |
| <i>ad amicabilem compositionem proborum hominum</i> | 23 Feb 1400 | ACA/CA 1/1/1/107 |
| Four men named, plus two alternative men | 22 Mar 1400 | ACA/CA 1/1/1/114 |
| <i>ad amicabilem compositionem proborum hominum</i> | 26 Apr 1400 | ACA/CA 1/1/1/116 |
| <i>per arbitros</i> | 31 May 1400 | ACA/CA 1/1/1/121 |

Table 1 (Cont.)

| Details of arbitrators in the case entry | Date | Reference |
|---|-------------|------------------|
| <i>per arbitros</i> | 29 Jun 1400 | ACA/CA 1/1/1/123 |
| <i>ad amicabilem compositionem proborum hominum</i> | 5 Jul 1400 | ACA/CA 1/1/1/123 |
| <i>ad amicabilem compositionem et determinationem communis consilij</i> | 5 Jul 1400 | ACA/CA 1/1/1/123 |
| None specified; <i>ad amicabilem compositionem</i> | 19 Jul 1400 | ACA/CA 1/1/1/125 |
| None specified; <i>licenciam a balliis ad componendum inter se</i> | 19 Jul 1400 | ACA/CA 1/1/1/126 |
| None specified; <i>ad amicabilem compositionem determinanda</i> | 19 Jul 1400 | ACA/CA 1/1/1/126 |
| None specified; <i>ad amicabilem compositionem ad determinationem communis consilij vel quatuor vicinorum</i> | 26 Jul 1400 | ACA/CA 1/1/1/127 |
| <i>ad determinationem quatuor vicinorum vel superiorum</i> | 2 Aug 1400 | ACA/CA 1/1/1/128 |
| <i>ad amicabilem compositionem proborum hominum</i> | 30 Aug 1400 | ACA/CA 1/1/1/135 |
| <i>ad amicabilem compositionem proborum hominum</i> | 2 Sep 1400 | ACA/CA 1/1/1/137 |
| <i>ad amicabilem compositionem proborum hominum</i> | 13 Sep 1400 | ACA/CA 1/1/1/138 |
| <i>ad amicabilem compositionem proborum hominum</i> | 13 Sep 1400 | ACA/CA 1/1/1/138 |
| <i>ad amicabilem compositionem proborum hominum</i> | 13 Sep 1400 | ACA/CA 1/1/1/138 |
| <i>ad amicabilem compositionem proborum hominum</i> | 13 Sep 1400 | ACA/CA 1/1/1/139 |
| <i>ad amicabilem compositionem proborum hominum</i> | 18 Sep 1400 | ACA/CA 1/1/1/140 |
| <i>ad amicabilem compositionem proborum hominum</i> | 25 Sep 1400 | ACA/CA 1/1/1/140 |

* These entries relate to the same case. The entry at ACA/CA 1/1/1/47 is duplicated at ACA/CA 1/1/1/83 (*probi homines electi ad componendum et determinandum ...*).

† Duplicated at ACA/CA 1/1/1/82 (*ad amicabilem compositionem proborum hominum ad hoc electorum cum consensu partium et vbi defectus reperitur presentabitur pro balliis ...*).

‡ Duplicated at ACA/CA 1/1/1/83 (*ad amicabilem compositionem ...*).

§ Duplicated at ACA/CA 1/1/1/83 (*ad amicabilem compositionem ...*).

Spuilzie and Shipwreck in the Burgh Records

Andrew R. C. Simpson

The aim of this essay is to examine an intriguing reference in the registers of the Aberdeen burgh council to the wreck of a ship of Danzig known as the *Jbesus*.¹ The ship seems to have run into difficulties on the evening of 8 October 1530 as a result of a ‘storme of the wedder’ off the coast of the Scottish city. At this stage, the skipper of the vessel² hoped that it could still be saved, and to this end he sought the assistance of Gilbert Menzies, Aberdeen’s provost. The next morning Menzies sent his son and his son-in-law to help the skipper, but it would seem that by then the situation had deteriorated. It was apparently concluded that the ship should be brought to the shore as quickly as possible, so that its cargo could be saved. The vessel was then deliberately run aground at a place known as “haly mannis coif”.³ Exactly what happened

¹ Aberdeen City and Aberdeenshire Archives (ACA), Council, Bailie and Guild Registers (CA) 1/1/13/12, 15-23, available at J. W. Armstrong, S. Convery, E. B. I. Frankot, A. J. Macdonald, A. Mackillop, A. R. C. Simpson, and A. L. M. Wilson, *The Aberdeen Burgh Records Database (ABRD)*, 2014, 13/12/12/1; 13/15/17/3; 13/17/17/1; 13/18/18/1; 13/18/19/2; 13/19/19/1; 13/20/20/2; 13/21/21/1; 13/22/22/1; 13/22/23/2, <http://www.abdn.ac.uk/aberdeen-burgh-records-database> [accessed 16 July 2014]; the site includes a transcript by Dr Edda Frankot, and except where otherwise indicated all references to the council registers here are to this transcript. I have included my own punctuation at times for the sake of clarity; none of the punctuation included is original. The name of the ship can be found at ACA/CA 1/1/13/134. I am grateful to Professor Ford for drawing this reference to my attention, and for allowing me to use his transcript of the relevant passage in the council registers. Those wishing to read more broadly concerning the history of Aberdeen in this period should consult the extremely useful essays found in E. P. Dennison, D. Ditchburn and M. Lynch (eds), *Aberdeen Before 1800: A New History* (East Linton, 2002). I am grateful to Professor J. D. Ford and Eddie Simpson for their comments on this article. Any errors remain my own.

² The skipper’s name is given as ‘Hanniss Johnne’ in ACA/CA 1/1/13/15 – and as ‘Hans Gant’ at ACA/CA 1/1/13/114 and in the records of the Lords of Council – see National Records of Scotland (NRS), Acts of the Lords of Council (CS) 5/42/179^v-180^f. It is not clear which record is correct. I am grateful to Professor Ford for allowing me to use his transcription of ACA/CA/1/1/13/114.

³ ACA/CA 1/1/13/12, 15–16.

next was disputed, as will be explained below, but it was subsequently alleged that many members of the community in Aberdeen had eagerly participated in the salvage operation.⁴

News of these events travelled fast to the Scottish monarch, James V, who seems to have been at Brechin, about forty miles away.⁵ At some point between 9 October, when the ship was wrecked, and 13 October, he ordered all those who had ‘introumitit’ – that is to say, interfered – with the goods to bring them to the market cross of Aberdeen. If they failed to do this, they would be ‘accursit as introumittoris and spulyearis of the haile gudis’.⁶ To be labelled a ‘spuilzier’ had serious consequences. The wrong of spuilzie was closely related to that of ‘robbery’; it arose where one individual seized possession of goods from another without either his consent or the approval of the law. Certainly, such an act would frequently have been violent.⁷ The spuilzier was required to make restitution and might face severe punishments.

The bailie court acted to protect members of its community from these accusations, and to limit royal interference in its affairs more generally. How it sought to achieve these ends provides a hitherto unknown example of the relationship between royal and civic power in early to mid-sixteenth-century Scotland, as well as indicating the nature of burgh legal culture. The burgh convened its own tribunal, probably in anticipation of royal involvement in the matter, to establish the truth of what happened following the wreck of the ship of Danzig. Among those appointed to sit on this tribunal were the bailies of Aberdeen, some members of the burgh council and a group of individuals who were described as ‘Venerabill and nobill menn’. Only some of them were named in the record, but of the six men mentioned, five were clergymen, and two were learned in canon law. Arguably this formed part of an attempt to show James V and his counsellors that sound and trustworthy procedures had been observed in the burgh’s own inquiries into the matter. Furthermore, the evidence collected by the tribunal indicated that Provost

⁴ ACA/CA 1/1/13/12, 17, 19, 20–3.

⁵ ACA/CA 1/1/13/17; he was at Brechin on 13 October, see ACA/CA 1/1/13/22.

⁶ ACA/CA 1/1/13/17. The original command must have been issued before 13 October, when James sent another letter to the sheriff, provost and bailies of Aberdeen admonishing them for failing to carry out his earlier orders in respect of the wreck.

⁷ See A. M. Godfrey, *Civil Justice in Renaissance Scotland: The Origins of a Central Court* (Leiden and Boston, 2009), 239–47; see also A. R. C. Simpson, ‘Procedures for dealing with Robbery in Scotland before 1400’ in A. R. C. Simpson, S. C. Styles, E. West and A. L. M. Wilson (eds), *Continuity, Change and Pragmatism in the Law: Essays in Memory of Professor Angelo Forte* (Aberdeen, 2016), 95–149.

Menzies and his associates were innocent of the wrong of *spuilzie* as it was understood in contemporary Scots law. In order to establish this, the judges may have drawn upon the legal expertise possessed by some of the canonists amongst them. Seen in the light of these arguments, the case of the ship of Danzig constitutes a very interesting example of how the bailie court sought to utilise contemporary procedural and substantive legal standards in order to anticipate and restrict royal interference in its affairs. Put another way, the discussion will shed light on the relationship between the Scottish common law administered by the royal government, on the one hand, and, on the other, the rules observed by officials within one particular Scottish burgh when attempting to maintain law and order. Furthermore, the case also points to a broader question. Many of the merchants who had an interest in the cargo of the ship of Danzig came from continental Europe; they were not subjects of the Scottish king. So, did they act to protect their goods? Did they engage with any frameworks of legal authority in the process? If so, then what were they?

In order to discuss these points, this article will examine the accounts of the shipwreck itself contained in the burgh records. It will then consider the ways in which the authorities in Aberdeen, James V and the merchants who had an interest in the cargo sought to deal with the matter.

The Judgement of ‘Venerabill and nobill menn’

On 10 October 1530, the day after the ship of Danzig was deliberately run aground at ‘haly mannis coif’⁸ to save its cargo, eighty-seven merchants lodged a protestation in the Aberdeen council register. They claimed that the goods on the ship had been interfered with and that they themselves had had no part in this. The merchants also sought assurance that they would suffer no loss as a result of the interference; evidently they had an interest in the goods.⁹ Perhaps it was one of these merchants who informed James V and his counsellors of the situation; the royal reaction was certainly fast. As was stated above, at some point between 9 October and 13 October the king wrote to the provost and bailies of Aberdeen, and commanded them to uplift or ‘intromit’ with the cargo that could be salvaged from the shipwreck. They were to retain it only ‘to the vtilite and profyt of thame that has iust tytill therto’.¹⁰ It was at

⁸ ACA/CA 1/1/13/20; ABRD, 13/20/20/2. The location of ‘haly mannis coif’ is unclear at present.

⁹ See ACA/CA 1/1/13/12, and Frankot’s accompanying commentary; her transcription of part of the relevant text appears at ABRD, 13/12/12/1.

¹⁰ ACA/CA 1/1/13/17; ABRD, 13/17/17/1.

this juncture that these burgh officials were also required to make a public declaration commanding anyone else who had taken goods from the wreck to bring them to the market cross.

However, before the royal command arrived in Aberdeen, the bailie court had already taken formal action in relation to the matter. On 14 October, Provost Menzies, his son Thomas Menzies and his son-in-law, Alexander Fraser of Philorth, appeared before the court with their accomplices to give a public account of what had happened following the wreck of the ship of Danzig. The record narrated that these declarations were made before certain ‘Venerabill and nobill menn’ who were ‘present in iugement’. They were Master Alexander Lyon, Sir James Kinncragy, Master Robert Elphinstone, Master Alexander Galloway, Sir Thomas Myrton and William Leslie of Balquhain¹¹ The decision to assemble such individuals, most of whom were clergymen, in order to ‘judge’ in the dispute is significant, and exactly why they were chosen for the task will be considered shortly.¹² But before this question is examined it is helpful to explain precisely what these men did in the court that day.

These ‘Venerabill and nobill menn’ first heard evidence from Provost Menzies himself. He declared that on 8 October, at supper-time, he had been asked by the skipper of the ship of Danzig for help and ‘compassiounn quhilkis [which] every gude christynn man suld haue to thair nichtbour’.¹³ The provost then explained that his son and son-in-law had agreed to help the skipper to run the ship aground so as to preserve the cargo, but on one condition. This was that they should receive a third of all of the goods that ‘hapnit to be wone’ – that is to say, recovered. The remaining two thirds of the goods were to be kept for those with just title thereto. On this basis the skipper ‘of his awinn fre will’ brought his ship into the ‘coif’. Subsequently, the provost and his accomplices said they had done their duty to save the men, the ship and the goods.

Having advanced these claims, Provost Menzies then asked the bailies to make the skipper swear the great oath while touching the holy gospels and

¹¹ ACA/CA 1/1/13/15; ABRD, 13/15/17/3.

¹² Other evidence does indicate that the bailie court would sometimes make decisions in maritime disputes by convening assizes of ‘worthy men’ or ‘honourable sworn personis’ sometimes consisting of ‘merchants, skippers and, occasionally, helmsmen’. For these points, see E. Frankot, ‘Of Laws of Ships and Shipmen’. *Medieval Maritime Law and its Practice in Urban Northern Europe* (Edinburgh, 2012), 154–5. For possibly similar practices elsewhere in Scotland, see J. Finlay, *Men of Law in Pre-Reformation Scotland* (East Linton, 2000), 19–20, 117.

¹³ See ACA/CA 1/1/13/17; ABRD, 13/15/17/3.

the crucifix, in the ‘presens of the nobill and honorabill auditoris’ assembled in the court, to establish whether or not he thought the provost’s declaration was true. The ‘auditoris’ were of course the ‘Venerabill and nobill menn’ mentioned above. The provost and his accomplices then removed themselves from the court, and ‘thaireftir thai being removit, the forsaid skippar – the great aitht suorne – deponit’ that the provost’s declarations were true. He also confirmed that the provost and his accomplices had been promised that they would receive a third of the goods recovered from the wreck in exchange for their help in the salvage operation.¹⁴

The record indicates that at this point in proceedings there arrived in the court the royal command requiring the provost and bailies to intromit with the goods in order to keep them safe for those with a just claim to the property. The orders were read out by Master Thomas Annand, procurator to David Beaton, abbot of Arbroath. At this time Beaton was the keeper of the privy seal.¹⁵ It may be that he had some personal interest in the cargo on board the ship. In response to the king’s command, Provost Menzies, together with his son and his son-in-law, and also Patrick Forbes who was a burges of Aberdeen, swore that they had ‘lelely and trewly causit’ the goods to be salvaged for ‘the vtilitie and profyt of thame hawand richt therto’. This was noted by Annand and witnessed by ‘the haile auditour forsaid with mony vther famouss personis’. Subsequently John Keith, who declared himself to be the procurator of a ‘nobill and mychty lord william Erle marschell’ required Provost Menzies to declare in the presence ‘of the auditour forsaid’ that William Keith, third Earl Marischal,¹⁶ a local magnate, had been summoned by the provost to protect the ‘saidis gudis’ from the ‘violance and spulye’ which he feared from the lairds in the area.¹⁷

Thus the ‘Venerabill and nobill’ auditors of the bailie court witnessed its proceedings and the oaths of the parties concerning what had actually happened to the ship of Danzig and its goods. There is no indication that they did very much more than that. Perhaps it was they who sent Provost Menzies out of the courtroom whilst the oath was sworn – although the evidence is

¹⁴ ACA/CA 1/1/13/15-17; ABRD, 13/15/17/3.

¹⁵ He went on to become Cardinal Beaton and is generally remembered by that title; see M. H. B. Sanderson, ‘Beaton, David (1494?–1546)’, *Oxford Dictionary of National Biography* (Oxford, 2004) <http://www.oxforddnb.com/view/article/1823> [accessed 17 July 2014].

¹⁶ For the third Earl Marischal, see M. Wasser, ‘Keith, William, third Earl Marischal (c.1510–1581)’, *Oxford DNB*.

¹⁷ ACA/CA 1/1/13/18-19; ABRD, 13/18/18/1 and 13/18/19/2.

unclear on this point. It is also possible that one of the clergymen provided the gospel book and crucifix used by the skipper when swearing the great oath. The great oath was always sworn on the gospels, or upon relics or a crucifix. It could be used on particularly solemn occasions, for example in the parliament of 1373 that swore to uphold the Stewart succession from Robert II. But more commonly it was also sworn on admission to judicial office, and also by jurors.¹⁸ Given that it was used so frequently, it cannot possibly be the case that a group of ‘Venerabill and nobill menn’ such as that which was assembled in the bailie court on 14 October were actually *required* to oversee its administration. So why did the bailie court appoint these individuals to hear the evidence in this case?

In order to answer this question, it may be helpful to say a little more about the auditors themselves. Perhaps their professional training, expertise or status made them useful to the bailie court. The first to be named in the record was Master Alexander Lyon, the chanter of Moray,¹⁹ parson of Turriff and ‘warder’ of the minors William Hay, sixth earl of Erroll²⁰ and John Lyon, seventh Lord Glamis.²¹ The younger brother of the sixth Lord Glamis,²² Alexander had been the chanter of Moray since 1527, and during the following year he was styled ‘Master’ Alexander Lyon, indicating the acquisition of a degree, probably at Paris, and possibly in arts.²³ On 9 January 1529 he received an assignation of the ward of the earl of Erroll from the countess of the

¹⁸ On the great oath, see P. J. Hamilton-Grierson, *Habakkuk Bisset's Rolment of Courtis* (Scottish Text Society New Series vols 10, 13, 18, Edinburgh and London, 1919-1926), III, 161; W. C. Dickinson, *The Sheriff Court Book of Fife 1515-1522* (Edinburgh, 1928), 289, 318; C. Neville, *Land, Law and People in Medieval Scotland*, (Edinburgh, 2010), 28-9.

¹⁹ On this see D. E. R. Watt and A. L. Murray (eds), *Fasti Ecclesiae Scotticanae Medii Aevi Ad Annum 1638* (Edinburgh, 2003), 293.

²⁰ See J. Cameron, *James V. The Personal Rule, 1528-1542* (Edinburgh, 2011), 40, 139, 277.

²¹ See Mary Black Verschuur, ‘Lyon, John, seventh Lord Glamis (*b. c.1521, d. in or before 1559*)’, *Oxford DNB*.

²² For the relationship between Alexander Lyon and the sixth Lord Glamis, see RMS III, no. 728, 158-9, read together with Verschuur, ‘Lyon, John, seventh Lord Glamis (*b. c.1521, d. in or before 1559*)’.

²³ On Lyon’s studies in Paris, see the translations, by D. F. Sutton, of the epistles that introduced Boece’s *Scotorum Historiae a Primis Gentis Origine* (Paris, 1575), available at <http://www.philological.bham.ac.uk/boece/fronteng.html#letter> [accessed 21 July 2014]. For the suggestion that he studied arts, see D. Irving (ed.), *Thomae Dempsteri Historia Ecclesiastica Gentis Scotorum, Sive, De Scriptoribus Scotis*, 2 vols (Edinburgh, 1828-9), 438.

third earl of Huntly, Elizabeth Gray.²⁴ Among other things, this meant that he received the income of the lands held by the earl of Erroll for the duration of the latter's minority.²⁵ Many of those lands were just to the north of Aberdeen, and so Lyon had control of a powerful lordship in the environs of the city.²⁶ At some point between October 1528 and October 1529 he also acquired the benefice of Turriff, of which the earl of Erroll was the lay patron.²⁷ Thus the picture that emerges of Alexander Lyon in October 1530 is that of a younger son of a noble family who was well educated and pursuing a successful career as a clerical administrator with responsibility for a major lordship close to Aberdeen.

Several of the other named judges who sat as auditors in the bailie court on 14 October had similar backgrounds. Master Alexander Galloway had served as an administrator of Aberdeen diocese since the time of Bishop William Elphinstone, whose episcopate lasted from 1488 until 1514. Elphinstone is certainly best remembered as the founder of King's College at Aberdeen, and Galloway was one of its first students. In 1521, the first principal of the university, Hector Boece, described him as '*in canonico jure eruditus*'.²⁸ Subsequently Galloway served as the official or 'principal judicial officer' of Aberdeen. He was made parson of Kinkell and was responsible for numerous building projects in the diocese; the most recent of these was the Bridge of Dee, which was complete by December 1529.²⁹ Another experienced administrator who acted as an auditor of the bailie court in October 1530 was Master Robert Elphinstone. He was evidently a graduate, and presumably also a relative of Bishop William Elphinstone, and had served as archdeacon

²⁴ *Registrum Secreti Sigilli Regum Scotorum 1488-1584 (R.S.)*, 8 vols (Edinburgh, 1908–1982), I, no.4027, 584; Cameron, *James V*, 169–73.

²⁵ On the nature of the feudal casualty of ward, see G. L. Gretton, 'The Feudal System' in K. C. G. Reid, *The Law of Property in Scotland* (Edinburgh, 1996), paras. 42–113 at 75.

²⁶ See C. A. McGladdery, 'Hay Family (*per. c.1295–c.1460*)', *Oxford DNB*.

²⁷ Compare *RMS* III, no.691 (which refers to Master Alexander Hay as parson of Turriff) and *ACA/CA* 1/1/13/15 (which refers to Master Alexander Lyon as parson of Turriff); see also Milne, *Early History of Turriff*, 15.

²⁸ Boece, *Vitae*, 92. On Boece, see Macfarlane, *William Elphinstone*, 358–9.

²⁹ Macfarlane, *William Elphinstone*, 269; the bridge still stands today, albeit that it has been largely rebuilt and extended since Galloway's time; see also J. Stuart (ed.), *Extracts from the Council Register of the Burgh of Aberdeen, 1398–1625, (Abdn Counc.)*, 2 vols (Edinburgh, 1844–48), I, 116, 127. I am grateful to Dr Jackson Armstrong for this last reference. On Galloway's career, see also W. Kelly, 'Alexander Galloway, Rector of Kinkell' in W. D. Simpson (ed.), *A Tribute Offered by the University of Aberdeen to the Memory of William Kelly LL.D. ARSA* (Aberdeen, 1949), 19–33.

of Aberdeen.³⁰ Subsequently he became commissar general of Aberdeen; so it is reasonable to assume that Elphinstone, like Galloway, had received some training in canon law.³¹ The qualifications of the other two clerical auditors are less clear, but once again both had extensive experience of running the affairs of the diocese. The first, Sir James Kincragy, had served as dean of Aberdeen, and Myrton had served as treasurer and then archdeacon during the time of Bishop William Elphinstone and thereafter.³² For the sake of completeness, it should also be noted here that alongside the five clergymen mentioned already (Lyon, Galloway, Elphinstone, Kincragy and Myrton) sat a sixth auditor, William Leslie of Balquhain.³³ His selection as a judge might seem a bit curious, given that only a few years earlier he had been a leader of a raid on the city in which eighty citizens of Aberdeen had been wounded or injured.³⁴

It was suggested above that the auditors who served in the bailie court on 14 October 1530 might have been chosen because their professional training, expertise or status made them useful. Certainly an argument to this effect could easily be made in the cases of Galloway and Elphinstone, both of whom were trained canonists. At the time senior governmental figures believed that such learning qualified an individual to determine the outcome of a legal dispute in a manner consistent with justice and right reason. This probably explains why Archbishop Gavin Dunbar, the chancellor, was actively promoting the idea that the Session, the Scottish court that had acquired *de facto* supreme jurisdiction in civil matters by 1530, should be staffed by experienced judges learned in canon and civil law.³⁵ Dunbar's policy would undoubtedly have been known in Aberdeen; his uncle was the bishop there, and thus headed the diocesan administration in which Galloway, Elphinstone, Myrton and Kincragy participated.³⁶

³⁰ Macfarlane, *William Elphinstone*, 209–10, 219–20, 241–2, 247–8, 269; Watt and Murray, *Fasti*, 27.

³¹ Watt and Murray, *Fasti*, xii–xiii, 32.

³² Watt and Murray, *Fasti*, 11; see also 449, 486 (Kincragy); 21, 27, 92, 454 (Myrton).

³³ ACA/CA 1/1/13/12, 15.

³⁴ C. J. Leslie, *Historical Records of the Family of Leslie*, 3 vols (Edinburgh, 1869), III, 16–17; see also J. Stuart (ed.), *Extracts from the Council Register of the Burgh of Aberdeen, 1398–1625 (Abdn Counc.)*, Spalding Club, 2 vols (Aberdeen, 1844–48), I, 115; I am grateful to Dr Jackson Armstrong for this reference.

³⁵ See J. W. Cairns, 'Revisiting the Foundations of the College of Justice' in H. L. MacQueen (ed.), *Stair Society Miscellany Five* (Stair Society vol. 52, Edinburgh, 2006), 31–3; Godfrey, *Civil Justice*, 79–126.

³⁶ Godfrey, *Civil Justice*, 109.

It might therefore be argued that Galloway and Elphinstone, two of the auditors appointed to sit in the bailie court on 14 October 1530, were chosen because of their learning in canon law, and because of the assumption held by some contemporaries that the inclusion of such learned individuals on the bench would help to guarantee a just outcome in any legal dispute. Admittedly in this case the auditors did not decide anything, but the expert lawyers amongst them might none the less have been expected to ensure that the procedural standards of the canon law were upheld when evidence was taken from the provost, his accomplices and the skipper. Yet this is speculative. Furthermore, it is clear that most of the auditors were not chosen for any legal learning, or indeed for any particular administrative expertise.

A more plausible explanation of why these men were selected to act as auditors in the bailie court, which leaves open the possibility that some of them were chosen for their legal expertise, can be found in the terms the bailie court used to describe them as a group. They were all ‘Venerabill and nobill menn’, ‘nobill and honorabill auditoris’ and ‘famouss personis’. The most instructive of these terms may be ‘famouss’; this word could be used to describe witnesses more generally as being ‘of good repute’.³⁷ This implies that the bailie court wished to present all of the auditors as trustworthy. Consequently, it might be expected that the conclusions of any proceedings over which they presided would also be reliable. Certainly the bailie court also sought to make it clear in other ways that none of its actions had been improper. As has been explained, it stated that the evidence of the skipper was taken after the provost had removed himself from the court, and it spelled out in some detail that the provost had not compelled the skipper to take any particular course of action.

The conclusion that emerges from these points is that the bailie court wished to present all its proceedings as being trustworthy. Its selection of auditors, and the procedures it had observed in taking evidence relating to the wreck, rendered the conclusions that it had reached in the matter reliable. The presence of canonists amongst the auditors might well have reinforced the impression that the court had followed due process in this case, given the contemporary assumptions noted above about the role of expert lawyers in the effective administration of justice, and in the Session in particular. If this is all correct, then it seems likely that the bailie court was seeking to persuade the royal administration that its actions in this case had been appropriate. It is true that the bailie court only seems to have become aware of the monarch’s

³⁷ See the entry for ‘famous’ in the *Dictionary of the Scots Language* at <http://www.dsl.ac.uk/> [accessed 28 July 2014].

attempt to interfere in the matter after it had appointed its auditors to hear the evidence given by Provost Menzies and his accomplices. But this does not rule out the possibility that it acted in the expectation that the crown would attempt to intervene in the salvage operation. In 1526, Gilbert Menzies and other prominent burgesses of Aberdeen had appeared before the parliamentary lords of the articles to answer a summons raised against them for the ‘wranquis violent and maisterfull spoliatioune, away taking, intrometting and withhalding’ of certain goods pertaining to a ship known as *The Petire Hull*.³⁸ The goods were claimed by the king of Denmark, and the lords of the articles ordered that all of the property taken from the ship should be placed in the hands of the provost of Aberdeen – then Thomas Menzies of Pitfodels³⁹ – and two burgesses of the city so that they could be ‘delivererit to thaim havand rycht thairto’.⁴⁰ It would therefore be unsurprising if, a few years later, Gilbert Menzies expected that royal administrators might notice the Aberdonian attempt to salvage the wreck of the ship of Danzig. That might explain why the bailie court was keen to present its procedures and its findings as reliable.

Yet if the bailie court was able to present its proceedings as trustworthy, did it also gather evidence that exonerated the provost and his accomplices from any wrongdoing? Put another way, if the court’s conclusions were accepted, would they undermine any claim that the goods of the ship had been spuilzied? And what of the finding that the skipper of the ship had agreed that Provost Menzies should receive a third of the goods salvaged in exchange for his help? Would this have had any legal effect? Would it have given Menzies ‘iust tyill’ to any of the property?

‘Intromettoris and spulyearis of the haile gudis’

These questions can only be answered by examining the information gathered by the bailie court in light of the contemporary Scottish laws concerning both spuilzie and shipwreck. But first it should be noted that the questions were highly pertinent, given what happened the day after the ‘Venerabill and nobill’ auditors heard evidence in the bailie court. On 15 October two royal servants turned up in the city and alleged that some of the cargo of

³⁸ K. M. Brown et al. (eds), *The Records of the Parliaments of Scotland to 1707* (hereafter RPS), record 1526/6/13–15, <http://www.rps.ac.uk> [accessed 28 July 2014].

³⁹ RPS, record 1526/6/3 (the provost is identified in the translation given on the website; he was one of the lords of the articles).

⁴⁰ RPS, record 1526/6/15.

the ship of Danzig had been spuilzied. They were the ‘richt honorabill men’ William Wood of Bonnington and Master James Foulis, who were referred to as ‘familiar seruatoris to our souerane lord the kingis grace’.⁴¹ At about this time, Wood ‘held the position of gentleman of the inner chamber in the royal Household’,⁴² whilst Foulis was ‘one of the leading advocates’ before the lords of session during the 1520s.⁴³ James V seems to have sent these men north on 13 October 1530; evidently he was not certain that the orders that had been sent to Aberdeen in the hands of Thomas Annand would be followed.

Wood and Foulis ‘comperit in iugement’ in the bailie court and produced the royal ‘lettrez. . . makand mentiounn how his grace wass informit that the gudis of this danskynn schipe brokinn at the haly mannis coif besyd abirdeinn was reft [robbed]⁴⁴ stowinn [stolen] and spulyeit baitht to burgh and land’.⁴⁵ The word ‘reft’ was derived from the verb ‘to reif’, meaning ‘to rob’, and as was noted above robbery and spuilzie were closely linked wrongs; this will be discussed further shortly. As a result of the allegations made against the people of Aberdeen and the surrounding lands, James V ordered the provost to make a public proclamation requiring all those who had wrongfully intronned with the goods to bring them to the market cross of Aberdeen within six days. Failing this they would be condemned as guilty of robbery or ‘spulyeing’ and so would suffer ‘tynsall’ – meaning ‘loss’ – ‘of lyf, landis and gudis’.⁴⁶

The whole discussion of spuilzie found in the council register tallies well with what can be gleaned about the nature of the wrong from contemporary or near-contemporary records of the Session. It will be recalled that the Session was the Scottish court that had acquired *de facto* supreme jurisdiction in civil matters at some point before 1530. For several decades prior to 1532, the Session had simply constituted a judicial sitting of the king’s council. This body had long had jurisdiction over spuilzie, and indeed much of what is known about the action comes from records concerning the council. A comprehensive history of spuilzie has yet to be written,⁴⁷ but a few remarks

⁴¹ ACA/CA 1/1/13/20; ABRD 13/20/20/2.

⁴² Cameron, *James V*, 110.

⁴³ J. Finlay, *Men of Law in Pre-Reformation Scotland* (East Linton, 2000), 60-2; J. Finlay, ‘Foulis, James (*d.* in or before 1549)’, *Oxford DNB*.

⁴⁴ This is my reading of the relevant word found at ACA/CA 1/1/13/20; Dr Frankot renders it ‘rest’ in ABRD 13/20/20/2.

⁴⁵ ACA/CA 1/1/13/20; ABRD 13/20/20/2.

⁴⁶ ACA/CA 1/1/13/22; ABRD 13/22/22/1.

⁴⁷ For some illuminating discussions of the subject see G. Neilson and H. Paton (eds), *Acts of the Lords of Council in Civil Causes Volume II, 1496–1501* (Edinburgh, 1918) (hereafter *ADC*, ii), lxxi-lxxii; Dickinson, *Sheriff Court Book of Fife*, 325–7;

can be made here to contextualise and explain the references to the action in the case of the ship of Danzig. Note that ‘spuilzie’ is the term used here to refer to the wrong, whilst the phrase ‘action of spuilzie’ is used to refer to the procedural device used to remedy it in the courts.

It would seem that the phrase ‘accionis of spoilye’ first appeared in the Scottish statutory record in 1458,⁴⁸ but long before then a very similar wrong of ‘spoliation’ had been recognised at Scottish common law. In 1385, a Scottish general council used the term ‘*expoliatius*’ to describe a man called William de Fenton, who had been ejected from the possession of land in contravention of a judicial sentence which had not been adequately enforced. The remedy for the wrong was restitution.⁴⁹ The term ‘spoliatioune’ was also used to describe a wrong that could be committed in relation to moveable goods in 1438; in this context, it was referred to alongside the wrong of ‘reyff’.⁵⁰ Arguments presented elsewhere posit that the crime of ‘reyff’, or robbery, was the violent theft of moveables, and it could be punished with death and forfeiture of goods.⁵¹ The 1438 act used one procedure to redress both ‘oppin and publy [public] reyff’ and ‘oppin and publy . . . spoliatioune’ of moveables,⁵² and the remedy for the victim in both cases was restitution. This confirms the well-known points that both ‘reyff’ and ‘spoliatioune’ involved the wrongful seizure of goods from another person. The act also makes it clear that sheriffs could

H. L. MacQueen, *Common Law and Feudal Society in Medieval Scotland* (Edinburgh, 1993), 224–8; J. W. Cairns, ‘Historical Introduction’ in K. Reid and R. Zimmermann (eds), *A History of Private Law in Scotland*, 2 vols (Oxford, 2000), I, 73–4; Godfrey, *Civil Justice*, 239–47; J. Townsend, ‘Raising Lazarus: Why Spuilzie Should be Resurrected’, *Aberdeen Student Law Review*, 2 (2011), 23–31; D. L. Carey Miller, ‘Spuilzie: Dead, Dormant or Manna from Heaven?: Issues concerning Protection of Possessory Interests in Scots Law’ in H. Mostert and M. de Waal (eds), *Essays in Honour of C. G. van der Merwe* (Durban, 2011), 129–50.

⁴⁸ RPS, record 1458/3/3.

⁴⁹ MacQueen, *Common Law and Feudal Society*, 135 n.154, 233; RPS, record 1385/4/5. Dr Jackson Armstrong has also kindly drawn my attention to another early reference to a complaint of ‘spoliation’ in a common law court, which was discussed before Alexander Fraser of Philorth, Sheriff of Aberdeen, on 2 April 1397; see Aberdeen University Library (AUL), MS 3004/525/34.

⁵⁰ RPS, record A1438/12/1; the notes to this act on the RPS website show that the original manuscript authority for this text, which was included in the nineteenth-century *Acts of the Parliaments of Scotland*, has not been traced. A well-attested later version of the same act can be found in RPS, record 1450/1/9.

⁵¹ Simpson, ‘Procedures for dealing with Robbery’.

⁵² This procedure was indebted to the earlier law relating to robbery and extended it to be used in relation to spoliations.

inflict the same punishments for both offences.⁵³ But it is not clear that the two wrongs were identical in all respects. Tentatively it is suggested here that the wrong of ‘spoliatioune’ had a broader scope than ‘reyff’. Unlike robbery, it was not limited to moveable property in its application, as is made clear from the case of William de Fenton. Furthermore, it would seem that violence was an essential element of the wrong of robbery, but not of spuilzie. Neilson and Paton pointed out that spuilzies could result from technical breaches of procedure, for example where officials failed to observe due process in taking goods from a man to satisfy his debts.⁵⁴ A good example of a spuilzie without violence may perhaps be found in the case of *Forbes of Tolquhon and Others v. Meldrum of Fynvie*, which was heard in various sittings of Aberdeen sheriff court from 12 May 1506 until 11 January 1508. The primary allegation against the defender seems to have been that he took two oxen ‘unorderlie’, even though he argued that he had received them from two of the pursuers in payment of a debt.⁵⁵ Littlejohn, editor of the records of the sheriff court, also argued on the basis of such evidence that ‘the wrong done might [have been] little more than technical, or it might [have been] highly criminal’.⁵⁶ And yet, as Godfrey observes, ‘[r]ather often [spuilzies] must have encompassed a real degree of violence . . . in the course of the dispossession’.⁵⁷ This reality was certainly reflected in some of the earliest attempts to explain what normally had to be libelled or alleged in actions of spuilzie before the lords of session. For example, in 1546 it was noted in a decision of the lords of session that in actions of spuilzie it was sufficient to prove possession and violent ejection from that possession in order to obtain the remedy of restitution. The authority given for this claim was the commentary written by the prominent canonist Panormitanus on the *Liber Extra*,⁵⁸ and this reflects the well-known fact that

⁵³ With regard to the later position, see P. G. B. McNeill (ed.), *The Practicks of Sir James Balfour of Pittendriech Reproduced from the Printed Edition of 1754* (Stair Society vols 21–22, Edinburgh, 1962–1963), II, 466 (the reference is to an un-named case dated 20 July 1548). But note the qualification to this in J. A. Clyde (ed.), *Hope’s Major Practicks* (Stair Society vols. 3–4, Edinburgh, 1937–1938), II.VIII.I § 21.

⁵⁴ See *ADC*, ii, lxxi; Godfrey, *Civil Justice*, 242. It should be noted that the evidence concerning this point dates from the late-fifteenth century onwards.

⁵⁵ Littlejohn (ed.), *Records of the Sheriff Court of Aberdeen*, I, 51–4.

⁵⁶ *Ibid.*, I, 47.

⁵⁷ Godfrey, *Civil Justice*, 242.

⁵⁸ ‘*in actione spoliatis sit de iure probare possessionem et violentam eiectionem*’; see *Earl of Cassillis v. Laird of Lochinvar* (1546), found in Sinclair, *Practicks*, cn.389–392; the critical phrase is at cn.389, and Dolezalek in his notes on the case (also included in the edition of Sinclair’s *Practicks* referenced here) identifies Panormitanus as the authority relied upon here.

from 1450 at the latest the Scottish action of spuilzie was conceptualised and developed in light of the canonist *actio spoli*.⁵⁹ Further reflection on the extent to which spuilzie was shaped by such canonist influences, on the one hand, and the Scottish laws relating to robbery and other wrongs recognised at common law, on the other, is beyond the scope of this article.⁶⁰

Like the law-makers of the mid-fifteenth century, Scottish men of law who practised in the Session in the 1520s and early 1530s seem to have perceived some link between the wrongs of spuilzie and reif, or robbery. So an advocate such as James Foulis clearly thought it appropriate to appear in the bailie court on 15 October 1530 and to present the allegation that the cargo of the ship of Danzig had been ‘reft stowinn [stolen] and spulyeit’.⁶¹ Likewise, the letter that James V sent north with Foulis contained the allegation that ‘diuersis our liegis rewis and spulyeis the schipe and gudis’.⁶² Unfortunately the records of this case do not disclose any information about any perceived distinction between the two wrongs in the minds of men like Foulis.⁶³

Having explored spuilzie as it was understood at common law, it is now possible to return to the question posed above. Did the findings of the bailie court and its ‘Venerabill and nobill’ auditors exonerate the provost and his accomplices from any accusation that they had committed that wrong? Of some interest in this regard is the way in which the bailie court handled the possibility that an allegation of spuilzie might be linked with an allegation of violent seizure of the goods. That this was recognised at an early stage can be discerned from the comments made on 14 October before the ‘Venerabill and nobill’ auditors by the Earl Marischal’s procurator John Keith. Keith had declared that, at some point following the wreck, Marischal had come to preserve the goods ‘fra violance and spulye’ which he feared from the local

⁵⁹ See RPS, record 1450/1/9, read in light of *ADC*, ii, lxxi, where it was shown that the canonist maxim *spoliatus ante omnia restituendus est* was incorporated into Scots law in the 1450 act. On the canonist influence on the action of spuilzie, see particularly Godfrey, *Civil Justice*, 239–47.

⁶⁰ Note that the substantive wrong of spoliation was somehow influenced by that which was addressed by the brieve of novel dissasine (and possibly vice versa); I intend to consider this elsewhere. For the relationship between spuilzie and novel dissasine, see MacQueen, *Common Law and Feudal Society*, 224–8; Cairns, ‘Historical Introduction’, 73–4; Godfrey, *Civil Justice*, 240–1.

⁶¹ ACA/CA 1/1/13/20; ABRD 13/20/20/2.

⁶² ACA/CA 1/1/13/22; ABRD 13/22/22/1.

⁶³ However, it should perhaps be noted that the allegation that the goods of the ship of Danzig had been ‘reft’ does not seem to have been contemplated in the bailie court until the 15 October, when Foulis and Wood came to sit there in ‘iugement’.

lairds.⁶⁴ None the less, the suggestion that the seizure of the goods had been in any way ‘violent’ was only reiterated – indirectly – in the allegation made on 13 October that some of the cargo had been ‘reft’ from the ship of Danzig. There is no record of the auditors of the bailie court enquiring as to whether or not any goods had been taken by force. Perhaps this was because they recognised that the wrong of spuilzie did not necessarily involve violence.

On the basis of the evidence cited above, simply establishing that Provost Menzies and his associates had not acted forcibly would not have established either their innocence of that particular wrong – albeit that it might have defended them from an accusation of robbery. But what the auditors did was to establish that Menzies and his associates had taken goods from the ship of Danzig with the consent of the skipper of the ship. The skipper swore that the provost and his accomplices had been diligent in salvaging the goods, and he implored them ‘to continew’ in the same fashion so that the goods might be returned to those with title thereto.⁶⁵ If Menzies and his associates understood that a spuilzie could be committed by those who simply uplifted goods in what was, legally speaking, an ‘unorderlie’ fashion, then the oath of the skipper would have helped to acquit them of such wrongdoing. It is entirely plausible that Menzies and other members of the bailie court would have been aware of this aspect of the law relating to spuilzie; and they would not necessarily have had to turn to the legal expertise of a canonist like Master Alexander Galloway for their information. Those who managed the affairs of Aberdeen sheriff court would seem to have known that a spuilzie could be committed without violence, as is indicated by the near-contemporary case of *Forbes of Tolquhon and Others v. Meldrum of Fyvie* (1508). And amongst those who had served in that court was the provost himself, who had acted as sheriff depute of Aberdeen in 1526.⁶⁶

Therefore, it is argued here that when Provost Menzies asked the skipper of the ship of Danzig to swear an oath in front of the ‘famouss’ and ‘Venerabill and nobill’ auditors of the bailie court, he was actually preparing his own defence against any accusation of spuilzie. His experience in the case of *The Petire Hull* a few years earlier would probably have made him keen to avoid any such allegations. And yet the oath of the skipper might still not have absolved him entirely. It will be recalled that Menzies offered his help on the condition that the skipper would make over to him a third of the goods rescued. Could

⁶⁴ ACA/CA 1/1/13/18; ABRD 13/18/19/2.

⁶⁵ ACA/CA 1/1/13/17; ABRD 13/15/17/3.

⁶⁶ RPS, record 1526/6/15.

this potentially have been treated as an ‘unorderlie’ attempt to seize the goods, even if it were shown to have been done with the consent of the skipper? Only by considering the contemporary law concerning what was to happen to goods taken from wrecked ships can this last question be answered.

‘The promiss and conditiounn maid to the provest’

Scottish law-makers and law-enforcers had long been familiar with the idea that the theft and wrongful seizure of goods from shipwrecks more generally could potentially be classified as forms of robbery.⁶⁷ But sixteenth-century Scottish men of law had also inherited from the medieval period a fairly detailed set of rules that were designed to regulate what was supposed to happen to such goods.⁶⁸ One early Scottish legal text, which was sometimes cited as a statute of Alexander II,⁶⁹ and sometimes referred to as a chapter of the medieval *Leges Forestarum*,⁷⁰ declared that if a man, a woman, a dog, a cat or any other beast survived a shipwreck, then the goods on board that came

⁶⁷ For an early reference to the notion, see C. J. Neville and G. G. Simpson (eds), *The Acts of Alexander III, King of Scots 1249–1286 (Regesta Regum Scottorum vol. IV Pt.1, Edinburgh, 2013)*, 100-05 (charter no.61), otherwise known as the Treaty of Perth (1266). On the Treaty, see R. I. Lustig, ‘The Treaty of Perth: A Re-Examination’, *Scottish Historical Review*, 58 (1979), 55–6. The treaty may reflect the influence of Roman law in its classification of the seizure of shipwrecked goods as robbery; see *Digest* 49.9. I have used T. Mommsen, P. Krueger, A. Watson et. al. (eds), *The Digest of Justinian*, 4 vols (Philadelphia, 1985). I am grateful to Professor Ford for first drawing to my attention the possibility that this text of Roman law might have influenced the relevant provisions in the Treaty of Perth. Lustig suggests that the Norwegian Chancellor Askatin may have been influential in the drafting of the Treaty. On the possibility that Askatin had knowledge of Roman law, see J. Ø. Sunde, ‘Daughters of God and Counsellors of the Judges of Men’ in S. Brink and L. Collinson (eds), *New Approaches to Early Law in Scandinavia* (Turnhout, 2014) 160–1, where he suggests that Askatin had knowledge of ‘ecclesiastical law’, and notes that he was probably involved in drafting the *Code of the Norwegian Realm* in Bergen in 1274; as discussed at 168–72, this may reflect some Roman influence.

⁶⁸ I have found very helpful the detailed and informative treatment of this subject in J. D. Ford (ed.), *Alexander King’s Treatise on Maritime Law* (Edinburgh, 2018), Commentary on Title 9, Sections 18–21 and 22–23. I am very grateful to Professor Ford for allowing me to read advance drafts of his edition of King’s *Treatise*; the present article went to proof before it was possible to incorporate more extensive references to his work here.

⁶⁹ J. Skene, *Regiam Majestatem* (Latin edition, Edinburgh, 1609), second part, f.28^v–28^r. I took this reference from Ford, *King’s Treatise*, Commentary on Title 9, Sections 22–23.

⁷⁰ Balfour, *Practicks*, II.624, c.XLV; Chalmers, *Dictionary*, f.135^v. For the difficulties in handling late-medieval Scottish legal textual traditions, see, for example, H.L. MacQueen, ‘*Regiam Majestatem*, Scots Law, and National Identity’, *Scottish Historical Review*, 74 (1995), 15.

ashore were to be gathered ‘in the handis of the indwellaris of the town quhair thay wer fund’.⁷¹ The true owners of the property salvaged were then to be given a year and a day to vindicate it. Failing this, the goods would be treated as ‘wraik’, and forfeited to the Scottish crown.⁷² Yet this position was qualified in an act of 1430, which provided that ships wrecked on the Scottish coast would only be forfeited if they were ‘of tha cuntreis the quhilkis oysis [uses] and kepis the samyn law of brokyn schippis, and in thare awin lande’. But if they came from a country that did not keep that law, then they were to have the same protection in Scotland ‘as thai kep to schippis of this lande brokyn with thaim’.⁷³

One can see some of these rules in application in the case of *The Petire Hull*, discussed above. The skipper of that vessel survived its wreck,⁷⁴ and perhaps other crew members did too. Presumably as a result of this, the goods on board the *The Petire Hull* were not treated as ‘just wraik be the lawis of this realme’. Rather, it was ordered that they should be restored to ‘the awneris thairof’. It may be significant that the ‘owner’, the king of Denmark, had come forward to press his claim.⁷⁵ Likewise, in the case of the ship of Danzig in 1530, there is no indication that either James V or any of his counsellors thought that any right of ‘wraik’ came into operation in favour of the Scottish crown. This is unsurprising, given that some of the mariners evidently survived the wreck. As in the case of *The Petire Hull*, the royal command was that the goods on board the ship were to be salvaged by the magistrates and inhabitants of the local town so that they could be restored to those with just title thereto.

Consequently, in the case of the ship of Danzig the duty of the magistrates and inhabitants of Aberdeen was to salvage its cargo so that it could be returned to its true owners. Seen in this light, it might be thought that Provost Menzies’ refusal to help the skipper until he had been promised a share of the goods on board the vessel would have been deemed ‘unorderlie’. If so, then his subsequent intromission with the goods could conceivably have been

⁷¹ I have used the version of the text preserved in Balfour, *Practicks*, II.624, c.XLIV; this is not a critical edition. As is noted in Frankot, *Of Laws of Ships and Shipmen*, 28 n.4, this rule goes back to Henry III of England (r.1216–1272).

⁷² The Scottish crown was able to grant the right of ‘wraik’ in a particular area to local landowners or dignitaries.

⁷³ RPS, record 1430/19. Again, I have found very useful the discussion of these rules in Ford, *King’s Treatise*, Commentary on Title 9, Sections 22–23.

⁷⁴ RPS, record 1526/6/15.

⁷⁵ RPS, record 1526/6/15; Balfour, *Practicks*, II.624, c.XLV, *s.n. Alexander Kinghorne v the Burgh of Aberdeen* (5 December 1526).

treated as a form of spuilzie. And yet there is strong evidence to suggest that the Scottish courts would not have adopted this attitude. On 7 May 1540, Laurence Powrell, the skipper of a ship of St Malo, raised an action before the lords of council against Gilbert Kennedy, third earl of Cassillis.⁷⁶ Powrell alleged that after his ship had been wrecked at Dunure, he had agreed with Cassillis that the latter would help to salvage his vessel in exchange for payment of sixty crowns. Powrell complained that Cassillis had withheld some of the goods even though he had been paid, in accordance with their bargain. The lords ordered Cassillis to make restitution to Powrell, 'Laurence satisfyand mesurable for the wyning of the samin'.⁷⁷ Therefore it would seem that the Lords approved the arrangement whereby Cassillis offered to help Powrell salvage his ship in exchange for payment. And this is not the only example of such an agreement in the records. About forty years earlier, on 23 March 1501, the bailie court of Aberdeen witnessed a bargain between William Hay, master of Erroll and Albert Gerardson, 'Hollander', whose ship had been wrecked near Cruden Bay, a few miles to the north of Aberdeen. Gerardson had sold Erroll everything that could be salvaged from the vessel for 'xv Frenche crounis of golde'; it was noted that this was done 'with consent and assent' of five crew members. It would seem likely that the payment was made in order to cover some of Gerardson's losses, but no objection seems to have been raised to the bargain.⁷⁸

In other words, the sort of deal struck between Menzies and the Danzig skipper in 1530 seems to have been treated as lawful in near-contemporary Scottish sources. Consequently, it is difficult to see how his actions could have been portrayed as an 'unorderlie' attempt to seize the goods on board. Yet it may be asked why the agreements reached between Cassillis and Powrell,

⁷⁶ On Cassillis, see M. Merriman, 'Kennedy, Gilbert, third earl of Cassillis (c.1517–1558)', *Oxford DNB*.

⁷⁷ R. K. Hannay (ed.), *Acts of the Lords of Council in Public Affairs* (Edinburgh, 1932), 486–7. Professor Ford noted this case in *King's Treatise*, Commentary on Title 9, Sections 22–23, and recognised its significance in relation to the law of shipwreck; I am very grateful to him for sharing the reference with me.

⁷⁸ J. Stuart (ed.), *Extracts from the Council Register of the Burgh of Aberdeen*, 2 vols (Aberdeen, 1844–8), I, 428. Professor Ford noted this case in *King's Treatise*, Commentary on Title 9, Sections 22–23, and recognised its significance in relation to the law of shipwreck; I am very grateful to him for sharing the reference with me. Professor Ford has also referred me to a similar bargain mentioned in the council registers that was struck in February 1528. There it was noted that a skipper of a ship had agreed to give one David Grayme some cargo from his vessel up to the value of fifteen pounds Scots in exchange for saving the ship when it "brak" near Aberdeen. See ACA/CA 1/1/12/1/317.

Erroll and Gerardson, and Menzies and the Danzig skipper, Hans John, were not challenged. After all, in each case the skipper effectively assumed authority to dispose of ship-board goods, which may well have belonged to merchants for whom he acted. So on what basis was he permitted to bargain with their property? The answer may lie in the rules concerning what would today be called ‘general average’. As Edda Frankot puts it, ‘[g]eneral average is a contribution made by all parties concerned in a sea adventure towards a loss brought about by the voluntary sacrifice of the property of one or more of the parties involved, for the benefit of all’.⁷⁹ Such rules had been known since ancient times, and they applied in a wide variety of different circumstances.⁸⁰ For example, if a skipper used some of the cargo on board his vessel to ransom it from pirates, then everyone whose property had been preserved in this manner had to contribute to redress the losses of those whose goods had been sacrificed.⁸¹ Such rules were used to determine the outcome of a case heard before the court of Lübeck in 1493. The governor of Gotland ‘had saved a ship and its cargo and was rewarded with some of the goods’. This was treated as perfectly legitimate; and the ‘council considered the situation to be related to jettison and other forms of general average’. Consequently, the costs of those who sustained losses were divided amongst ‘the owners of the ship and the goods’.⁸² Such rulings reveal that the Danzig skipper was almost certainly entitled to bargain with Provost Menzies as he did in order to secure his help in salvaging his cargo; and they also show how the resulting losses of the parties involved might have been distributed.

The Reaction of the Foreign Merchants

By Scottish standards at least, it would seem that Menzies acted lawfully when he asked the skipper of the *Jhesus* of Danzig to promise him a third of the goods salvaged from the ship in exchange for his help. Yet what of the merchants who had interests in the cargo? Did they react to this bargain, and if so, how?

The merchants in question certainly sought to protect their goods. By April 1531 all those who had an interest in the cargo, including ‘the marchandis of Danskin in the Stalyart of London’, had sent one William Witherlink to

⁷⁹ Frankot, *Of Laws of Ships and Shipmen*, 31.

⁸⁰ See, for example, *Digest*, 14.2.1–2, discussing the *Lex Rhodia de Iactu*.

⁸¹ *Digest*, 14.2.3.

⁸² Frankot, *Of Laws of Ships and Shipmen*, 185–6.

act as their procurator in the bailie court in Aberdeen.⁸³ The reference to the ‘Stalyart’ or ‘Steelyard’ is of interest because it was the headquarters of the Hanseatic League in London.⁸⁴ In other words, merchants from outwith Scotland did indeed have a claim to the cargo. Witherlink proceeded against individual Aberdonians to recover the cloths that had been on board the ship.⁸⁵ For example, he raised an action for recovery of certain ‘claiths’ that Provost Menzies had entrusted to one William Rolland ‘to wesche, dry and dycht [clean]’. In so doing, he probably utilised a Scottish action of spuilzie; unsurprisingly, representatives of the foreign merchants were prepared to use Scottish procedures to recover their goods.⁸⁶ Witherlink stood ready to pay Rolland for his efforts in cleaning the cloths, but this was not enough for Rolland; he also wanted payment for his ‘labours’ during ‘the first wyning of the said claith’. Witherlink refused to make any such payment, and Rolland likewise refused to hand over the cloths.⁸⁷

Witherlink pursued several other such claims for recovery of the cargo. But he did not raise any action against Provost Menzies. In fact, Menzies and Witherlink seem to have worked together, so much so that Witherlink eventually made Menzies and his associates his procurators for recovery of goods that individual Aberdonians still withheld.⁸⁸ But did Witherlink respect the deal struck between Menzies and the skipper of the *Jhesus*? Did Witherlink allow Menzies to retain the third of the goods salvaged from the ship that had been promised in exchange for his help? An answer may perhaps be found during the course of one of Witherlink’s exchanges with William Rolland in the bailie court. Witherlink declared that he had ‘agreit and componit witht Gilbert Menzies and his complices for the wyning of the hail schip and guds’.

⁸³ I am very grateful to Professor Ford for drawing the subsequent proceedings involving the cargo of the *Jhesus* to my attention. In this regard he shared with me his transcriptions of relevant passages in ACA/CA1/1/13, 70, 103, 106-7, 113-17, 125, 134-9 and 141-4. References to those pages below are to Professor Ford’s transcription. For the passage quoted here, see ACA/CA/1/1/13/134; cf. ACA/CA/1/1/13/70.

⁸⁴ For the Steelyard, see, for example, A. Wijffels, ‘History and Law. The Case for the German Hanse against the English Merchants Adventurers (1603-4)’ in I. Czeghun (ed.), *Recht im Wandel – Wandel des Rechts. Festschrift für Jürgen Weitzel zum 70. Geburtstag*, (Köln, Weimar, Wien, 2014), 428 fn.4, Wijffels cites various studies on the Steelyard. I am grateful to Professor Wijffels for referring me to this article.

⁸⁵ ACA/CA/1/1/13/103.

⁸⁶ The nature of the action is unclear, but it was probably one of spuilzie; see ACA/CA/1/1/13/103, which referenced Witherlink’s other actions of spuilzie.

⁸⁷ ACA/CA/1/1/13/106-07.

⁸⁸ ACA/CA/1/1/13/134-5; see also *ibid.*, 136-9.

In other words, he had agreed to pay Menzies and his associates for their help. Presumably he had simply endorsed the bargain made with the skipper of the *Jhesus*. Witherlink then proceeded to declare that if Rolland had made efforts to recover the goods, and if he could prove it by the testimony of four or more witnesses, then he too would be paid. This does not seem to have satisfied Rolland, who still refused to hand over the cloths – in the face of threats of fines from Menzies.⁸⁹ Yet what is significant here is that Witherlink did not attempt to dispute the legality of Menzies' bargain with the skipper. Indeed, it would seem that he honoured it. Obviously it should not be inferred from this evidence that the legality of the agreement would have been recognised by any merchant, regardless of his port of origin. The belief that rules of maritime law were applied commonly and uniformly across northern Europe has been subjected to searching criticism by Frankot.⁹⁰ All that can be said on the basis of the evidence cited is that the foreign merchants in this case were willing to accept the bargain struck. Of greater interest, perhaps, is their evident ability to deploy a procurator to use Scottish legal rules, forms of process and courts to protect their interests.

Conclusion

On 3 May 1531, Witherlink at last granted Provost Menzies a discharge for the cloths and goods that had been in the *Jhesus*.⁹¹ The discharge was for 'all and haill ye claithis and gudis [that] was in ye said schip ye tyme of hir brakin Intrometit with be yame or ony uther manner of persoun within the realme of Scotland', excepting the 'souw of fourty pundis grit flanders mony' that was to be paid by Gilbert Menzies and his associates to the Danzig merchants.⁹² Perhaps the 'fourty pundis grit flanders money' was compensation for cloths still withheld by individual Aberdonians such as William Rolland.

A few days later, the provost ensured that Witherlink's discharge was formally registered. He must have done so with some relief. Since October, he had made considerable efforts to demonstrate to the royal administration, and also to Witherlink and his powerful associates in the Steelyard in London, that the magistrates of Aberdeen could be trusted to deal with shipwrecks

⁸⁹ ACA/CA/1/1/13/136-139. The passage quoted is at 137.

⁹⁰ See Frankot, *Of Laws of Ships and Shipmen*, 199-201; note also the point made concerning expertise as a possible source of legal authority in maritime disputes in J. D. Ford, 'Review of Edda Frankot, "*Of Laws of Ships and Shipmen*": *Medieval Maritime Law and its Practice in Urban Northern Europe*', *Edinburgh Law Review*, 17 (2013), 269-71.

⁹¹ Hannay (ed.), *Acts of the Lords of Council*, 356; see NRS/CS 5/42 f.179^v-180^r.

⁹² NRS/CS 5/42 f.180^r.

within the vicinity of their burgh in a lawful manner. In seeking to achieve this end, he had been able to rely upon the help of senior clergymen within the diocese of Aberdeen, and local magnates and lairds such as the Earl Marischal and Leslie of Balquhain. So on 14 October, the bailie court – Provost Menzies’s own tribunal – had sought to establish the truth of what had happened at ‘halymannis coif’ five days earlier, and in so doing it went out of its way to demonstrate that its conclusions could be trusted. It appointed reputable individuals to oversee its proceedings, and two of them – Galloway and Elphinstone – possessed expertise in canon law, and their presence may have added some authority to any determinations reached by the court, given the assumptions held by royal councillors such as Archbishop Dunbar. Additionally, the court was generally keen to emphasise that it had observed sound procedures in gathering evidence, as can be seen from the fact that Provost Menzies withdrew when the skipper was asked to swear the great oath. Significantly, if James V and his counsellors had subsequently trusted the evidence heard by the ‘Venerabill’ auditors of the bailie court, then it would have been exceptionally difficult for anyone to accuse either the magistrates of Aberdeen or the Earl Marischal of complicity in any attempt to spuilzie the ship of Danzig. It has been argued here that the Aberdonians knew the relevant law relating to spuilzie, and so asked the skipper the correct legal questions in order to establish their innocence of the wrong. Consequently, it would seem that these men were covering their backs against the possibility of such an allegation. Again, the memory of *The Petire Hull* may have caused them to take particular care. Arguably, they were simultaneously trying to demonstrate to James V and his servants, Annand, Wood and Foulis, that there was no need for direct royal interference in the affairs of the burgh to ensure the maintenance of law and order within its jurisdiction. The bargain Menzies struck with the skipper of the *Jhesus* was also lawful, as Witherlink seems to have accepted on behalf of the merchants in the Steelyard. Even the implementation of that agreement could not be considered a disorderly intromission with the goods of another that would be sufficient to constitute a spuilzie.

Such a concern for the reputation of the burgh of Aberdeen in the eyes of the king, and indeed in the eyes of foreign merchants, is quite unsurprising, and it is actually attested in the records considered here. On 15 October, Foulis and Wood had ordered Provost Menzies and his associates to save the goods of the ship of Danzig, and to hold them for those with just title thereto, ‘for

the honour of this realme and speciale weile of merchandis of the samyn'.⁹³ But a day earlier, before the auditors of the bailie court, Menzies had claimed that he had acted 'for the honour of the realme, weile of marchandyce *and Specialy of this gude toune*' when he offered help to the skipper.⁹⁴ In practically the same breath he acknowledged that he had also acted in the hope of 'wynnyng' a third of the goods recovered from the *Jhesus*. Yet surely Menzies, and perhaps others in the burgh and its environs, would indeed have been concerned to vindicate Aberdeen's reputation as a port where the rights and privileges of visiting ships and merchants would be respected. It was not in any Aberdonian's long-term interests to see the town's 'honour' called into question, whether they were directly involved in the trade of the burgh or benefited from it indirectly. Perhaps such concerns also help to explain the willingness of diocesan administrators like Kincragy, Galloway, Elphinstone and Myrton to sit as auditors of the bailie court on 14 October. Over the past few decades, the diocese had demonstrated its concern for the welfare of the neighbouring royal burgh, most recently in supporting the project to complete the Bridge of Dee.⁹⁵ By lending their own credibility as 'famouss' men to the bailie court of Aberdeen, they helped it to demonstrate the truth of its central claim. This was that the magistrates of Aberdeen could be trusted to administer justice effectively within their own jurisdiction in a manner that was consistent with the common law of Scotland.⁹⁶ Indeed, it appears that their justice was also acceptable to a representative of the Hanse.

⁹³ ACA/CA 1/1/13/20; ABRD, 13/20/20/2.

⁹⁴ ACA/CA 1/1/13/15; ABRD, 13/15/17/3 (emphasis added).

⁹⁵ See generally Macfarlane, *William Elphinstone*, 265–73.

⁹⁶ They were indeed, expected to uphold the king's laws that were applicable to burghs, given that the burgh courts were, fundamentally, amongst the king's courts; see W. C. Dickinson, *Early Records of the Burgh of Aberdeen* (Edinburgh, 1957), xxxii–xl, lxxvii–xc (particularly *ibid.*, lxxxi–lxxxii).

Legal Practice and Legal Institutions in Seventeenth-Century Aberdeen, as Witnessed in the Lives of Thomas Nicolson of Cockburnspath and his Associates

Adelyn L. M. Wilson

The royal burgh of New Aberdeen on the River Dee and the neighbouring barony burgh of Old Aberdeen on the River Don together formed the regional centre for the North East of Scotland during the early-modern period. The burghs together supported and demanded the expertise of a community of legal specialists. Much can be learned about the burghs' legal community from the various collections of records which were maintained locally.

The legal history of New Aberdeen is better known than that of the neighbouring burgh. The burgh's council register is exceptional as one of Europe's oldest and most complete series of urban records. It reveals much about the activities of the burgh's council and court, as the other papers in this special issue demonstrate.¹ Earlier studies have also examined the history of the local sheriff court, which met in New Aberdeen, and the legal community which practiced therein. David Littlejohn edited abstracts from Aberdeen's sheriff court records and compiled short biographies for its court officers.² John Alexander Henderson constructed a biographical list of the members of the local society of 'advocates', the men who had been admitted to audience in the sheriff court.³ John Finlay has discussed Aberdeen in the context of wider

¹ See also the Aberdeen Burgh Records Project and the projects developed from this initiative, <https://www.abdn.ac.uk/riiss/about/aberdeen-burgh-records-project-97.php> [accessed 7 November 2018] The author thanks: the Aberdeen Humanities Fund for its support of a previous project on Alexander Spalding, on which this research builds; the Keepers of the Special Collections Centres of the Universities of Aberdeen and Edinburgh, the Aberdeen City and Aberdeenshire Archives, the National Library of Scotland and the Advocates Library for allowing her access to their holdings; Jackson W. Armstrong and Andrew Mackillop for the opportunity to contribute to this special issue, and to them and J. D. Ford for their comments on previous drafts of this article.

² D. Littlejohn (ed.), *Records of the Sheriff Court of Aberdeenshire*, 3 vols (Aberdeen, 1904–7), I, xxxiii–xlvi, 393–476, II, 521–39, III, 83–133.

³ J. A. Henderson (ed.), *History of the Society of Advocates in Aberdeen* (Aberdeen, 1912), especially xix–xx.

studies on the lower branches of the Scottish legal profession.⁴

Comparatively little is known of the practice of law in Old Aberdeen. This older burgh was significantly smaller in size and may have been unimportant except that it was the seat of a bishop and the local ecclesiastic court as well as home to a university, King's College. A challenge to the legal-historical study of Old Aberdeen is presented by the comparative dearth in the records of these institutions. The records of the ecclesiastic or 'commissary' court situated in Old Aberdeen were destroyed in a fire in the office of its clerk in 1721.⁵ Only fragments of records have since emerged from that court: a copy of court regulations from 1650,⁶ an eighteenth-century style book,⁷ and a manuscript containing notes on cases heard in the court in 1617–45 recorded by an Aberdonian advocate, Alexander Spalding.⁸ Meanwhile the records relating to early-modern law teaching at King's College are scant, and the burgh council register survives only from 1603 and suffers a lacuna from 1619–34.⁹ This article within this special issue will none the less highlight

⁴ See especially J. Finlay, 'The Lower Branch of the Legal Profession in Early-Modern Scotland', *Edinburgh Law Review*, 11 (2007), 39–40, 46 n.72, 49–50, 60; idem, 'Pettyfoggers, Regulation, and Local Courts in Early-Modern Scotland', *Scottish Historical Review*, 87 (2008), 42–3, 44–5, 50, 51 n.32, 53, 55–6, 62–4; idem, 'Lawyers and the Early-Modern State: Regulation, Exclusion, and Numerus Clausus', *Canadian Journal of History*, 44 (2009), 407–8.

⁵ 8 Geo I (1721), c.28.

⁶ National Records of Scotland (hereafter NRS), RH15/15/12. For a transcript and analysis of the regulations, see D. Stevenson, 'The Commissary Court of Aberdeen in 1650' in D. Sellar (ed.), *Miscellany Two* (Stair Society 35, Edinburgh, 1984) 144–7.

⁷ For a transcript and analysis, see M. C. Meston and A. D. M. Forte (eds), *The Aberdeen Stylebook 1722* (Stair Society 47, Edinburgh, 2000). See also A. D. M. Forte and M. C. Meston, 'Legal Life in Aberdeen in the Late Seventeenth and Early Eighteenth Century – the Aberdeen Stylebook of 1722', *Aberdeen University Review*, 59 (2002), 197–208.

⁸ Aberdeen University Library (hereafter AUL), MS 558. On this see A. L. M. Wilson, 'The "authentick pratique bookes" of Alexander Spalding' in A. R. C. Simpson et al (eds), *Continuity, Change and Pragmatism in the Law: Essays in Memory of Professor Angelo Forte* (Aberdeen, 2016), 175–236. The folios of this manuscript will be cited using the convention 'contemporary/modern foliation'. On this manuscript's foliation, see *ibid.*, 187.

⁹ Aberdeen City and Aberdeenshire Archives (hereafter ACA), Old Aberdeen Burgh: Council Minute Book (hereafter OA) 1/1/1. The register contains material from 1603 to 1619 in chronological order, apparently largely recorded contemporaneously although with sections likely copied from other sources. *Ibid.*, 83, 132–3, 137, 148, 158. On distinguishing original registers from copies, see A. L. M. Wilson, 'The Elchies Manuscript and the Method of Sir Richard Maitland of Lethington',

the research potential of the records of Old Aberdeen. In doing so, it will supplement the examinations by Jackson Armstrong and Andrew Simpson but take a different approach.

This article will examine an important period in the history of Old Aberdeen's institutions of legal practice and education. It will reflect on aspects of the careers of several lawyers working in these institutions and in local legal practice more generally. It will frame this investigation principally around a reconstruction of the career of one of Old Aberdeen's most important seventeenth century lawyers, Thomas Nicolson of Cockburnspath. Nicolson will be shown to have been an Edinburgh advocate who relocated to Aberdeen at the beginning of the century, probably to take up an appointment as the judge commissary in the commissary court. He will be shown to have subsequently been a member of the royal commission to reform the local universities in 1619. He was as a result appointed as one of two men who were to reintroduce the teaching of law at King's College. In light of these appointments, Nicolson would have been central to local legal life during the period in which he practised. In constructing this biography of Nicolson, this article will challenge previous biographical works of him, which are inconsistent and cursory.¹⁰ It will, first, examine Nicolson's lineage and early life. It will then reconstruct the detail of his career for the first time, from his admission to practice in Edinburgh to his appointment as the master of civil law ('civilist') at King's College.

This article will additionally use Nicolson's career as a lens through which to view some aspects of the contemporary legal profession of Aberdeen. It will also in this same manner examine the history of two important local institutions for periods during which their histories are otherwise obscure, namely the commissary court during a period for which the records are lost, and King's College during the abolition and subsequent reintroduction of law teaching. This study of Nicolson thus extends beyond individual biography

Manuscripta: A Journal for Manuscript Research, 62 (2018), 95–145. The last twenty-five pages of the volume comprise a miscellany of records from 1603 to 1620 out of chronological order, added by several hands.

¹⁰ Previous biographical sketches of Nicolson include: P. J. Anderson (ed.), *Officers and Graduates of University and King's College, Aberdeen, MVD–MDCCCLX* (Aberdeen, 1893), 31; F. J. Grant (ed.), *The Faculty of Advocates in Scotland, 1532–1943, with Genealogical Notes* (Edinburgh, 1944), 165. Meston's biography drew only from Anderson and Grant. M. C. Meston, 'The Civilists of Aberdeen: 1495–1995', *Juridical Review*, (1995), 157. Another biographical sketch confused him with one of his sons: N. J. D. Kennedy, 'The Faculty of Law' in P. J. Anderson (ed.), *Studies in the History and Development of the University of Aberdeen* (Aberdeen, 1906), 201, 241–2.

by affording new insight into the institutional legal history of Old Aberdeen, much of which has been lost to historiography. This article will address this lack by drawing on diverse collections of local and national records, some recently discovered or newly discovered during the course of this research. It will thereby advance upon or challenge existing historiography and engage the legal history of Old Aberdeen with that of the wider North East and Scotland more generally.

Nicolson's Early Life

No records have been found documenting Nicolson's birth and early life. Genealogists have drawn contradictory conclusions on Nicolson's lineage, but perhaps the most reliable account is found in *Burke's Peerage*.¹¹ The Nicolson family were established in Aberdeen by the fifteenth century. They had largely been burgesses, and our subject's grandfather, David Nicolson, was a central figure in Aberdeen's governmental and legal administration. He was clerk of the bailie court by 1519; of the diocese by 1522; of the sheriff court from 1535; and of the town by 1541.¹² David shared the sheriff clerkship with his son, Robert, from 1540.¹³ Local litigation records reveal that David died between 8 February 1543 and 12 March 1543.¹⁴ After this, Robert held that clerkship alone until his removal by George Gordon, fourth earl of Huntly in *ca.* 1558.¹⁵ The office of sheriff clerk was symbolically restored to the family through its re-granting in *ca.* 1563 to James Nicolson, brother of Robert and father of Thomas Nicolson of Cockburnspath. However it seems likely that

¹¹ *Burke's Peerage, Baronetage and Knightage, Clan Chiefs, Scottish Feudal Barons* (107th edition, Stokesley, 2003), 701.

¹² See Littlejohn (ed.), *Sheriff Court*, I, 464-5; J. Robertson and G. Grub (eds), *Illustrations of the Topography and Antiquities of the Shires of Aberdeen and Banff* (Spalding Club, 4 vols, Aberdeen, 1847-69), IV, 468-9. Anderson suggested that Nicolson was the town clerk depute in 1530. P. J. Anderson (ed.), *Charters and Other Writs Illustrating the History of the Royal Burgh of Aberdeen, MCLXXI-MDCCCIV* (Aberdeen, 1890), 410. However, Littlejohn observed that the evidence suggests that he was the clerk of the town's bailie court rather than of the town itself. See Littlejohn (ed.), *Sheriff Court*, I, 464. David Nicolson also became a 'vicar' (a deputy or substitute) at the Aberdonian parish of Maryculter in 1520. Littlejohn (ed.), *Sheriff Court*, I, 464.

¹³ D. Hay Fleming (ed.), *Registrum secreti sigilli regum Scotorum: The Register of the Privy Seal of Scotland*, II: 1529-1542 (Edinburgh, 1921), 3434. Robert was born illegitimate but was legitimated a few days prior to this grant: *Ibid.*, 3379.

¹⁴ Littlejohn (ed.), *Sheriff Court*, I, 465.

¹⁵ *Ibid.*, I, 466. On the earl of Huntly, see A. White, 'Gordon, George, fourth earl of Huntly (1513-1562)', *Oxford Dictionary of National Biography* (Oxford, 2004, as revised in the online edition), <http://www.oxforddnb.com> [accessed 1 May 2018].

James Nicolson held this office as a sinecure,¹⁶ as he had already established himself in Edinburgh by the 1560s as a notary public, writer (solicitor),¹⁷ burgess, and clerk to the signet.

James Nicolson likely had income sufficient to enjoy a life of relative affluence but insufficient to allow him to acquire lands outwith the city, as is suggested by the apparent lack of a *retour* (document of service) for landed inheritance by his sons.¹⁸ James Nicolson had three sons. His oldest son, also called James, seemingly died in infancy. His second son, John, followed his father into the law. He became a commissary of Edinburgh in 1585 and entered as an advocate in the court of session in *ca.* 1586; he adopted the territorial designation of Lasswade after acquiring those lands in 1590.¹⁹ The youngest of James' three sons was the Thomas Nicolson who is the subject of this article,²⁰ and who adopted the territorial designation of Cockburnspath after acquiring those lands in 1621.²¹

After childhood education, the general practice among Scotland's wealthier and professional classes was to progress to a university to study the arts.²² The records of the University of Glasgow preserve a mention of the graduation as a master of the arts one Thomas Nicolson in 1585.²³ It is plausible that this

¹⁶ The clerk appointed after Robert Nicolson's removal (Andrew Leslie) apparently continued to exercise the office during the brief period of James Nicolson's tenure. Littlejohn (ed.), *Sheriff Court*, I, 464–70.

¹⁷ But not a writer to the signet: P. W. Campbell et al (eds), *A History of the Society of Writers to Her Majesty's Signet, with a List of the Members of the Society from 1594 to 1890 and an Abstract of the Minutes* (Edinburgh, 1890), 156.

¹⁸ Cf. *Inquisitionum ad capellam domini regis retornatarum, quae in publicis archivis Scotiae adhuc servantur, abbreviatio* (London, 1811–16), III, 'Inquisitiones generales', 570.

¹⁹ He also acquired property in Edinburgh before 1592. *Burke's Peerage*, 701; K. M. Brown et al. (eds), *The Records of the Parliaments of Scotland to 1707* (hereafter RPS), record 1592/4/158, <http://www.rps.ac.uk> [accessed 1 December 2018].

²⁰ A *retour* from 1690 describes John and Thomas Nicolson as brothers: *Inquisitionum*, II, 'Inquisitiones generales', 7018. See also Grant (ed.), *Faculty of Advocates*, 165. Cf. Grant's earlier description of Thomas as John's son: F. J. Grant, *The County Families of the Shetland Islands* (Berwick, 1893), 'Nicolson of the Ilk, Lasswade and Lochend', II.

²¹ The feudal superior, the earl of Angus, confirmed the alienation by charter in August 1625. RPS, record 1633/6/159. See also E. Rankin, *Cockburnspath: A Documentary Social History of a Border Parish*, J. Bulloch (ed.) (Edinburgh, 1981), 10.

²² On early education in Protestant Scotland, see for instance J. K. Cameron, *The First Book of Discipline with Introduction and Commentary* (Edinburgh, 1972); R. Anderson, 'In Search of the "Lad of Parts": The Mythical History of Scottish Education', *History Workshop Journal*, 19 (1985), 82–104; R. Anderson, 'The History of Scottish Education, pre-1980' in T. G. K. Bryce and W. M. Humes (eds), *Scottish Education: Post-Devolution* (2nd edition, Edinburgh, 2003 rept. Edinburgh, 2006), 219.

²³ *Munimenta Alme Universitatis Glasguensis: Records from the University of Glasgow from its*

was Thomas Nicolson, later of Cockburnspath: records of his adult life title him as ‘Mr’, which was widely used to denote a man with university learning; no other men called Thomas Nicolson have been found at any of the other Scottish universities at this time.²⁴

Nicolson’s Career in Edinburgh

The next record found of Thomas Nicolson is some nine years later: his admission as an advocate in the court of session in Edinburgh on 9 July 1594.²⁵ If the graduation record mentioned above is indeed for the same man, it is likely that he spent the intervening years preparing for his admission to the bar of the court of session, Scotland’s highest civil court at the time. There were two routes into the profession, and it is unclear which route was undertaken by Nicolson. John Cairns has shown that:

Those petitioning the court for admission fell into two groups: those claiming an academic training and experience of ‘practick’; and those claiming long experience of ‘practick’... Between 1575 and 1608, two-thirds of those admitted founded their petition on their academic learning.²⁶

The ‘academic training’ mentioned by Cairns was normally the study of law at a continental university; this formal legal study was undertaken after completing a degree in the arts in Scotland. Two inferences can be made from the evidence to suggest that Nicolson may have formally studied law. First, it would not be uncommon during the period for an expectant to have spent seven or eight years in continental study before admission as an Edinburgh advocate,²⁷ and

Foundation till 1727 (Glasgow, 1854), III, 5.

²⁴ *A Catalogue of the Graduates in the Faculties of Arts, Divinity, and Law, of the University of Edinburgh, since its Foundation* (Edinburgh, 1858); Anderson (ed.), *Officers and Graduates*; J. Maitland Anderson (ed.), *Early Records of the University of St Andrews, The Graduation Roll 1413-1579 and the Matriculation Roll, 1478-1579* (Edinburgh, 1926). Nicolson would likely have graduated later than the printed St Andrews lists extend, but a comprehensive study of St Andrews’s students is outstanding. See, however, the general analysis in S. J. Reid, *Humanism and Calvinism: Andrew Melville and the Universities of Scotland, 1560-1625* (Farnham, 2011), 273–90.

²⁵ Grant (ed.), *Faculty of Advocates*, 165; NRS, CS1/4/1.

²⁶ J. W. Cairns, ‘Historical Introduction’ in K. Reid and R. Zimmermann (eds), *A History of Private Law in Scotland*, 2 vols (Oxford, 2000), I, 87. See also J. W. Cairns, ‘Lawyers, Law Professors, and Localities: The Universities of Aberdeen, 1680–1750’, *Northern Ireland Legal Quarterly*, 46 (1995), 305–6.

²⁷ J. W. Cairns, ‘Advocates’ Hats, Roman Law and Admission to the Scots Bar, 1580–

this approximately equates to the gap in the records of Nicolson's life between his possible graduation in the arts and his admission to the bar. Secondly, a subsequent mid-seventeenth-century civilist at Aberdeen was criticised for lacking a continental legal education;²⁸ this might indicate that previous such masters (which would include Nicolson) did have that educational experience.

The alternative route for admission as a court of session advocate was to complete a period apprenticed to an established practitioner.²⁹ In 1610 this was regulated to be seven years, but this might have formalised earlier custom.³⁰ This length of time is again broadly consistent with the span of years between Nicolson's probable date of graduation in 1585 and his admission in 1594; it is perhaps as likely that this was his route into the profession. A period of apprenticeship could have been spent with his brother, John, who had newly been appointed to the ecclesiastic bench in 1585. John is at least known to have taken on as an apprentice in *ca.* 1600 his cousin, later Sir Thomas Hope of Craighall, king's advocate,³¹ who was unable to afford a continental legal education.³² The wider bonds established through the master-apprentice relationship were often reciprocal. Hope later nominated Nicolson's son (also called Thomas) as his successor as king's advocate 'in respect of the band of blood betuix him and me and of the memorie of his worthie father and befor him of his thryis worthie uncle my maister' (in respect of the bond of blood between him and me and of the memory of his worthy father and before him of his thrice worthy uncle, my master).³³ Such sponsorship into office was

1812', *Journal of Legal History*, 20 (1999), 35–6.

²⁸ J. Spalding, *The History of the Troubles and Memorable Transactions in Scotland and England from MDCXXIV to MDCXLV*, 2 vols (Edinburgh, 1828–9), I, 179; idem, *Memorialls of the Trubles in Scotland and in England, A.D. 1624–A.D. 1645*, 2 vols (Aberdeen, 1850–1), I, 241.

²⁹ For further examination of legal apprenticeship and sponsorship into offices in Aberdeen, see A. L. M. Wilson, 'Men of Law and Legal Networks in Aberdeen, principally in 1600–1650' in M. Lobban and I. Williams (eds), *Networks and Connections: Papers of the British Legal History Conference* (Cambridge, forthcoming 2019).

³⁰ Cairns, 'Advocates' Hats', 36. See also in 1610 the same requirement for expectant writers: Campbell et al (eds), *History of the Society of Writers*, 245; Finlay, 'Lower Branch', 46ff.

³¹ A. Hope, 'Sir Thomas Hope, Lord Advocate to Charles I' in H. L. MacQueen (ed.), *Miscellany Four, Stair Society*, 49, Edinburgh, 2002), 145, 151.

³² D. Stevenson, 'Hope, Sir Thomas, of Craighall, first baronet (1573–1646)', *Oxford DNB*.

³³ Hope, 'Hope', 151. That office went first in 1646 to Archibald Johnston of Wariston (who was favoured by the General Assembly); the younger Thomas Nicolson was appointed as king's advocate in 1649, having already been procurator for the estates for eight years. See G. W. T. Omond, *The Lord Advocates of Scotland, from the Close of*

another way in which the family network was important to early-modern legal practice. Established practitioners might additionally share or gift offices, which could be traded as commodities.³⁴ An example of this has already been seen in previous generations of Thomas Nicolson's family, with the sharing of the office of sheriff clerk between his grandfather and uncle. Similarly, Thomas Nicolson may have acquired his first office—clerk of the General Assembly of the Church of Scotland, acquired in March 1596³⁵—partially owing to his brother's position as commissary of Edinburgh. This position may have in turn aided Nicolson's later appointment as Aberdeen's commissary a few years later.

Aberdeen's Legal Community

Nicolson relocated to Aberdeen within a few years of his admission as an Edinburgh advocate. The North East's legal community was smaller than that of Edinburgh. Its core would have comprised the local 'advocates'. In Edinburgh the term 'advocate' specifically denoted a professional pleader with the right of audience in the court of session. In Aberdeen, however, this term was used to denote a lesser branch of the profession with a right of audience in the local sheriff court. Aberdonian advocates could also plead in the region's other inferior courts but not the superior court of session in Edinburgh. They additionally undertook work which in Edinburgh would be associated with the distinct profession of writers (akin to modern solicitors). There would have been perhaps only around ten advocates in practice in the area for much of this period: only around fifty men entered as local advocates throughout the sixteenth century, and fewer than seventy were admitted throughout the seventeenth.³⁶ Most advocates would have resided in New Aberdeen, which had a population roughly ten times larger than Old Aberdeen.³⁷ Indeed the

the Fifteenth Century to the Passing of the Reform Bill, 2 vols (Edinburgh, 1883), I, 121–5, 154–6.

³⁴ Wilson, 'Men of Law'.

³⁵ *Acts and Proceedings of the General Assemblies of the King of Scotland, from the Year MDLX* (Edinburgh, 1845), III, 889, 1102.

³⁶ Wilson, 'Spalding', 177–9; Henderson (ed.), *History of the Society*, passim.

³⁷ G. DesBrisay, "'The civill wars did overrun all': Aberdeen, 1630–1690" in E.P. Dennison, D. Ditchburn and M. Lynch (eds), *Aberdeen Before 1800, A New History* (East Linton, 2002), 239. Kennedy suggested that the population was around 7,800 in 1615: W. Kennedy, *Annals of Aberdeen, from the Reign of King William the Lion, to the End of the Year 1818; with an Account of the City, Cathedral, and University of Old Aberdeen*, 2 vols (London, 1818), I, 186–7; Macniven suggested a population of 6,000–12,000, 'though the outer limits of that range are implausible': D. Macniven, 'Merchants and Traders in Early Seventeenth-Century Aberdeen' in D. Stevenson (ed.), *From Lairds to Louns: Country and Burgh Life in Aberdeen, 1600–1800* (Aberdeen, 1986), 69 n. 2.

Old Aberdeen census of local residents from 1636³⁸ (which lists around 800 people, but seems to exclude most of the university population³⁹) mentions only one advocate: Alexander Garden,⁴⁰ who was variously a baillie for the bishopric, procurator fiscal and sheriff depute.⁴¹ Other men might have practised as lawyers or held legal offices locally but not found it necessary to be admitted to the sheriff court and join Aberdeen's community of advocates. Some of these men might have restricted their professional activities such as to avoid the test for admission to the sheriff court. Others who had already been admitted to the superior court of session bar would not have required separate admission to practice in the North East inferior courts. This latter group would have included Nicolson, who did not enter the local professional bar. This also included another Edinburgh advocate, who will be shown to have been a close associate of Nicolson, called James Sandilands of Craibstone. The latter man held the office of commissary in succession to Nicolson, and is shown by the census to have resided in Old Aberdeen as the head of a substantial household.⁴² The legal community would also have included a small number of notaries and law-clerks. The Old Aberdeen census lists only one notary, William Wat,⁴³ who might have been the burgh's notary.⁴⁴

This legal community would have been supported by the work of the large number of courts in the two burghs: the sheriff court, ecclesiastic court, guild court, burgh courts, criminal courts, heritable jurisdictions, and others. A study of the jurisdictional boundaries of these local courts and any conflicts between them is lacking but outwith the scope of this paper. Here it is merely necessary

³⁸ A. MacDonald Munro (ed.), *Records of Old Aberdeen*, 2 vols (Aberdeen, 1899-1909), I, 347-55. On which, see G. G. Simpson, *Old Aberdeen in the Early Seventeenth Century: A Community Study* (Friends of St Machar's Cathedral Occasional Papers series 1 volume 3, Aberdeen, 1975 rept 1995).

³⁹ Cf. the record of the sub-principal at Munro (ed.), *Records of Old Aberdeen*, I, 349.

⁴⁰ Munro (ed.), *Records of Old Aberdeen*, I, 353.

⁴¹ ACA, OA/1/1/1, e.g. 119, 128, 139, 149; Henderson (ed.), *History of the Society*, 198; Littlejohn (ed.), *Sheriff Court*, II, 183, 334, 343-4, 350. Littlejohn says little about Garden's period as a sheriff depute. *Ibid.*, II, 535. However, he sat as sheriff depute in a case pursued by the sheriff principal in 1634. *Ibid.*, II, 395. His book of poetry was printed in 1609. The only known copy at that time formerly belonged to Aberdeen Doctor, William Guild: J. W. K. Eyton (ed.), *A Garden of Grave and Godlie Flowers by Alexander Gardyne...* (Edinburgh, 1845), ix-x, which may indicate both a relationship between the two men and also a limited circulation. Little is known about Garden, although the remark that he 'has perished in oblivion' is overstated. *Ibid.*, ix.

⁴² Munro (ed.), *Records of Old Aberdeen*, I, 354.

⁴³ *Ibid.*, I, 354.

⁴⁴ See the entries made by him in the burgh register: ACA, OA/1/1/1, 161ff.

to note that many local men of law would hold offices in one or more of these courts, such as that of judge or clerk. Meanwhile some would hold permanent appointments to advise a particular client, such as the assessor or legal counsel to the burgh.⁴⁵

Nicolson's professional network was based in Edinburgh, so he would have had to establish new connections in Aberdeenshire. He does not appear to have been able to rely on family connections in doing so. The local community of advocates seems to have had no members with his surname when Nicolson arrived in Aberdeen. As mentioned above, David Nicolson, Thomas's grandfather, had entered the law. However the loss of the sheriff clerkship by Robert Nicolson and the relocation of James Nicolson to Edinburgh had apparently ended the family's participation in Aberdonian legal practice until Thomas Nicolson's relocation.

Nicolson and Old Aberdeen's Commissary Court

Nicolson probably relocated to Aberdeen to take up the appointment as the judge in the commissary court. A precise date for his relocation to Aberdeen cannot be identified because the court's records are lost and there is no mention of him in the contemporary burgh registers, which are incomplete for this period.⁴⁶ There has thus been confusion about the date of Nicolson's appointment. Francis Grant suggested the late date of 1610,⁴⁷ but the records of the General Assembly name him as being in that post already by July 1604.⁴⁸ This earlier dating of his appointment is supported by a miscellany of references to him in connection to this office in other records.⁴⁹ For example, in July 1606 he litigated in the Aberdeen sheriff court and was identified as the judge of the commissary court in the records;⁵⁰ in 1609 he gave a decree in favour of King's College in that capacity.⁵¹

⁴⁵ On men of law in lower courts generally, see Finlay, 'Lower Branch'. On men of law in Aberdeen, see Wilson, 'Men of Law'.

⁴⁶ ACA, OA/1/1/1.

⁴⁷ Grant (ed.), *Faculty of Advocates*, 165.

⁴⁸ *Acts and Proceedings of the General Assemblies*, III, 1009.

⁴⁹ Nicolson was absent from the meeting of the General Assembly in Aberdeen in July 1605, but that meeting had been prohibited beforehand. The records are printed in *Acts and Proceedings of the General Assemblies*, III, 1013–19; D. Calderwood, *The History of the Kirk of Scotland VI* (Edinburgh, 1845), 279–88. On which, see for example, A. R. MacDonald, *The Jacobean Kirk, 1567–1625: Sovereignty, Polity and Liturgy* (Aldershot, 1998), chapter 5.

⁵⁰ Littlejohn (ed.), *Sheriff Court*, I, 89.

⁵¹ C. Innes (ed.), *Fasti Aberdonenses: Selections from the Records of the University and King's*

The commissary courts had been introduced in 1563 and had inherited the jurisdiction of the pre-Reformation consistorial courts.⁵² They were inferior courts, and after 1610 they were subject to appeal to the Edinburgh commissary court. The commissary courts had limited jurisdiction in formerly ecclesiastical matters, including testaments, inheritance, oaths and certain marital causes.⁵³ The task of hearing cases was undertaken by a judge known simply as the ‘commissary’ and the court was administered by the commissary clerk. The seat of the Aberdeen commissary court at this time was St Machar’s Cathedral in Old Aberdeen, but the court had jurisdiction over a large area, including parts of what would now be recognised as Aberdeenshire, Banffshire, Kincardineshire and Moray.

As was mentioned in the introduction, the records of the Aberdeen commissary court have been burned. This loss prevents a comprehensive insight into the personnel and activity of the court. However the recently-rediscovered ‘practique bookes’ of Aberdonian advocate Alexander Spalding allow considerable new insight to be had as to the court’s work. Spalding collected case notes and practical observations from 1617 until 1645, most of which relate to the Aberdeen commissary court. His notes are the only known surviving record of the court’s activity during this period, so are of significant importance to the legal-historical study of the North East.⁵⁴

Nicolson had held his judicial appointment for at least twelve years when Spalding began recording these case notes. Spalding did not always record the name of the judge who heard a particular commissary case but did so with sufficient frequency to allow insight into Nicolson’s judicial persona. Nicolson’s approach on the bench appears to have been pragmatic but conservative with respect to matters of jurisdiction, as can be seen with reference to two particular examples. The earliest case explicitly said by Spalding to have been heard by Nicolson was *Harvie v Leask of that ilk and Black* (1617). The case was one of judicial competence. Goods were arrested on a precept (a judicial order or warrant) issued previously by the commissary of Aberdeen. The defenders argued

College of Aberdeen, 1494–1854 (Aberdeen, 1854), 139.

⁵² For a contemporary account, see P. G. B. McNeill (ed.), *The Practicks of Sir James Balfour of Pittendreich* (Edinburgh, 1963), II, 655–62.

⁵³ On the courts’ competency, appeal and their reform in 1609–10, see RPS, record 1609/4/20; G. Donaldson, ‘The Church Courts’ in *Introduction to Scottish Legal History* (Edinburgh, 1958), 369; Meston and Forte (eds), *Aberdeen Stylebook*, 12–18; T. M. Green (ed.), *The Consistorial Decisions of the Commissaries of Edinburgh, 1564 to 1576/7* (Edinburgh, 2014), xvii–xxii.

⁵⁴ On this collection of case notes, see Wilson, ‘Spalding’.

that this subsequent action could not be heard by the commissary because it was ‘civil and prophane [non-ecclesiastical]’. It was argued in response by the pursuers that the commissary was competent because ‘the actione resulted upon the Commissars owne precept following upon ane bond registrat in his owne books’. Nicolson is said to have decided ‘that he was not judge competent to cognose [decide] ane causs of such nature Because the obligatione was regi[st]rat brevi manu [at ‘short hand’] upon ane pro[curato]rs comperiance [appearance], and not be virtue of ane summondes wherby all pairties sould have beine lauffullie summonedd qlk [which] if so hade beine he would have beine judge competent’.⁵⁵ A second case worthy of note in this regard is that of *Drum v Merser* (1620). Patrick Drum had received a decree for payment from the commissary against Elspeth Merser. However, the lady’s subsequent marriage to a Gilbert Leslie threatened to frustrate this on the grounds that ‘his name was not within the decreet’. Nicolson simply ‘caused the clerk insert his name for his entres [interest] within the compulsitor [decree]’. This preserved the decree and allowed the subsequent pointing or seizure of Leslie’s goods for the debt.⁵⁶

Nicolson may have initially held the office of commissary alone. Latterly, however, he held it jointly with other men. The first was John Leith of Blairton, a graduate in the arts, a notary public, and an Aberdonian advocate who had been admitted in 1595.⁵⁷ Leith was made joint sheriff clerk in that same year but the appointment was controversial. The office’s previous holder, Alexander Fraser, complained to the privy council about the joint appointment of Leith and one William Reid.⁵⁸ Leith and Reid were denounced as rebels in August and had to find caution (financial security) in October 1595; the letters against them were suspended only in January 1596.⁵⁹ Thus Littlejohn suggested both that ‘No trace has been found of Mr Leith acting’ and that he may have withdrawn because of Fraser’s opposition.⁶⁰ The local burgh register shows that Leith thereafter held office as a bailie of the burgh in 1604 and 1606, of King’s College in 1605 and of the bishopric by 1608.⁶¹ He judged cases in each of these three offices, either alone or on a panel, the latest seemingly in

⁵⁵ AUL, MS 558, cap.48, fol.125r/207r.

⁵⁶ AUL, MS 558, cap.70, fol.132r/214r.

⁵⁷ Henderson (ed.), *History of the Society*, 241.

⁵⁸ Littlejohn (ed.), *Sheriff Court*, I, 327-8.

⁵⁹ D.Masson (ed.) *The Register of the Privy Council of Scotland V: A.D. 1592–1599* (Edinburgh, 1882), 229–30, 262, 666; Littlejohn (ed.), *Sheriff Court*, I, 471–2.

⁶⁰ Littlejohn (ed.), *Sheriff Court*, I, 473, 474; cf. Henderson (ed.), *History of the Society*, 418.

⁶¹ ACA, OA/1/1/1, 21, 47, 36, 58.

1611.⁶² He therefore already had some experience in hearing cases before his appointment to the commissary court around this time.

Nicolson initially appointed Leith to the commissary court as his ‘substitute’, to hear cases when Nicolson was unavailable. The earliest mention found of his appointment as substitute is in the sheriff court records for 4 October 1609.⁶³ It is unclear whether he was later formally received as a joint holder of the office, as the distinction in roles was not always explicitly maintained in the records: he was referred to still in this subsidiary role in January 1615,⁶⁴ but was mentioned as the commissary (rather than as the substitute) in litigation and other records in 1610 and 1614.⁶⁵ Whatever the later nature of his appointment, Leith’s work within the commissary court was important in respect of his personal as well as his professional life. He married Katherine Garden, the daughter of Thomas Garden of Blairton, who had held the office of commissary clerk since 1584; on Garden’s death in 1610, it was bequeathed to his son, Robert.⁶⁶ It was the estate of his father-in-law and brother-in-law which Leith eventually received (but via his nephew rather than more directly) and used as his territorial designation.⁶⁷

There is evidence of Leith’s activity as a judge within the commissary court. A fragment identified among the miscellaneous burgh records of Old Aberdeen by this research preserves three days of his judicial activity in 1618-19.⁶⁸ This find is important in that it may indicate that further fragments of the commissary court’s records might yet survive, but for present purposes it reveals little of Leith’s judicial persona. Spalding mentioned Leith judging six cases, heard in 1617-20.⁶⁹ The case of *Bradbury[?] v Garden of Banchory* (1620) is perhaps the most enlightening as to his approach. The pursuer had sued for

⁶² ACA, OA/1/1/1, 37, 49–51, 58, 60-1, 67, 69, 72, 82, 85, 88, 96, 100–2, 105, 187.

⁶³ Littlejohn (ed.), *Sheriff Court*, II, 151.

⁶⁴ J. M. Thomson (ed.), *Registrum magni sigilli regum Scottorum: The Register of the Great Seal of Scotland* (Edinburgh, 1892), VII, 1154.

⁶⁵ Littlejohn (ed.), *Sheriff Court*, II, 156; Charles, XI Marquis of Huntly, *The Records of Aboyne, MCCXXX–MDCLXXXI* (Aberdeen, 1894), 225.

⁶⁶ Henderson (ed.), *History of the Society*, 198; Thomson (ed.), *Registrum magni sigilli*, VII, 1250. The wording on Thomas’ grave in St Machar’s Cathedral is transcribed in Munro (ed.), *Records of Old Aberdeen*, II, 221.

⁶⁷ See the passage of these lands through the family: *Inquisitionum*, I, Aberdeen, 125, 136; Thomson (ed.), *Registrum magni sigilli*, VII, 1250. Leith was soon involved in litigation regarding these lands, pursuing damages against a George Gardyne in Wastburne in 1617: Littlejohn (ed.), *Sheriff Court*, II, 213.

⁶⁸ ACA, OA/1/6/3/2.

⁶⁹ AUL, MS 558, caps 49, 50, 59, 60, 79, 82, fols 125r-126r/207r-208r, 126r-v/208r-v, 129v-130r/211v-212r, 130r/212r, 133r/215r, 134r/216r.

the payment of two debts, which he offered to prove by witness. The defender argued that the court's procedure precluded witnesses because the action was 'founded upon writ'. Spalding commented 'Mr John Leith Comissr admitted payment to be proven be witness . . . notwithstanding that ane exceptione sould be provin per eque forte (according to the strongest receipts)'.⁷⁰ Leith's judicial reasoning in disregarding what Spalding describes as normal procedure is not recorded, as is typical of this type of source. The case does, however, indicate that Leith was willing to exercise perhaps more extensive judicial discretion as to procedural matters than Nicolson. This was one of Leith's last decisions: he died in 1620 and was interred in St Machar's Cathedral.⁷¹ Henderson notes that 'Leith's death in early manhood terminated a career of much promise'.⁷²

The second man who can be identified as sharing the office of commissary with Nicolson was James Sandilands of Craibstone.⁷³ He is recorded in several places as having been a Doctor of Laws,⁷⁴ although it is not clear whether he had studied both Roman and canon law.⁷⁵ He passed as an advocate in Edinburgh in 1604.⁷⁶ It has been suggested that he settled in Aberdeen around 1606.⁷⁷ However it is not clear on what basis that claim is made, and subsequent events may suggest a somewhat later date. Indeed it is submitted that Sandilands remained in Edinburgh after 1606, and also that the offices which Sandilands held in Edinburgh and his relocation to Aberdeen both owe something to Nicolson. In 1618 Nicolson demitted to Sandilands the position of clerk of the General Assembly, which the former man still held as a sinecure.⁷⁸ The Assembly's agreement to confer of this post on Sandilands

⁷⁰ AUL, MS 558, cap.82, fol.134r/216r.

⁷¹ Henderson (ed.), *History of the Society*, 241. The text on his grave is transcribed (erroneously giving the date of death as 1670) in Munro (ed.), *Records of Old Aberdeen*, II, 225.

⁷² Henderson (ed.), *History of the Society*, 241, n.5.

⁷³ On Sandilands, see Wilson, 'Spalding', 212 n. 180: Wilson 'Men of Law'.

⁷⁴ Littlejohn (ed.), *Sheriff Court*, II, 311, 349, 378, 428.

⁷⁵ Leask (ed.), *Musa Latina Aberdonensis*, III, 336. One of Sandilands's poems is found on the next page of this volume.

⁷⁶ Grant (ed.), *Faculty of Advocates*, 186.

⁷⁷ See for example, A. M. Munro, *Memorials of the Aldermen, Provosts, and Lord Provosts of Aberdeen, 1272–1895* (Aberdeen, 1897), 187; A. J. Mitchell Gill, *The Families of Moir and Byres* (Edinburgh, 1885), 180.

⁷⁸ *Acts and Proceedings of the General Assemblies*, III, 1144. The record of the meeting suggests that Nicolson believed that he had demitted the office to Sandilands previously, and that the Assembly was reminded of this and asked for their final approval on that occasion; Sandilands was present at that meeting, although removed himself from the room during the discussion of his appointment.

suggests its expectation that he would be available in Edinburgh, so it seems likely that he had not already relocated to Aberdeen. This appointment further shows that a relationship was established between these Sandilands and Nicolson by at least this time. Sandilands was appointed to the bench of the commissary court after Leith's death in 1620.⁷⁹ This appointment was almost certainly made with Nicolson's support and perhaps by his direct invitation. It is plausible that (unlike that Leith) Sandilands was initially appointed as joint commissary rather than as Nicolson's substitute: Spalding records them deciding cases together in September 1621 and February 1622.⁸⁰ Sandilands also received Leith's position as rector of King's College, which may also have been influenced by Nicolson in his capacity therein, which will be discussed below. Sandilands, like Leith, took a broader interpretation of his jurisdiction and procedural formality than Nicolson. Sandilands plausibly heard in 1623 a case on the same point of law as Nicolson's decision in *Harvie v Leask of that ilk and Black*, namely that of judicial competence where a bond is registered *brevi manu* in the commissary court books. Spalding noted that the decision in this later case was in favour of the court's competence, and therefore in direct contrast to Nicolson's decision in *Harvie*.⁸¹

A case heard by Sandilands and Nicolson together on 8 February 1622 was the latest for which Spalding explicitly mentions Nicolson. However the absence of subsequent reference to Nicolson in Spalding's collection of case notes does not mean that he did not continue to act. It seems he at least continued to hold the title of commissary: he is said to have been described in a charter dated 26 October 1624 as 'de Cockburnspath Advocatus Commissarius Aberdonensis'.⁸² Sandilands at some point none the less formally succeeded Nicolson in the office. He later shared it then demitted it to one of his sons, Thomas Sandilands.⁸³

⁷⁹ On Sandilands' career at King's College, see Anderson (ed.), *Officers and Graduates*, 8, 30; Littlejohn (ed.), *Sheriff Court*, II, 349; Wilson, 'Men of Law'. Spalding records Sandilands hearing cases by November 1620: AUL, MS 558, cap.80, fol.133r-v/215r-v.

⁸⁰ AUL, MS 558, caps 200, 201, fols 159r-v/241r-v, 159v-160r/241v-242r.

⁸¹ AUL, MS 558, cap.255, fol.179r/261r. Cf. the court's exceeding its jurisdiction in the eighteenth century, and the complaints of this behaviour among the inferior commissaries generally, discussed in Meston and Forte (eds), *Aberdeen Stylebook*, 14–16.

⁸² As quoted (but not identified further) in: AUL, MSK 34, fol.33r. See also Anderson (ed.), *Officers and Graduates*, 31.

⁸³ The earliest instance of Thomas Sandilands in Spalding's practicks has him hearing a case with his father in January 1640: AUL, MS 558, cap 373 fol. 278r-v[238r-v]/330r-v. On Thomas' later involvement in the relocation of the commissary court,

Nicolson has thus been shown to have held the office of commissary for approximately twenty years. His term in office was during an important period, one which almost exactly corresponded to the period after the Union of the Crowns until the death of James VI. It is submitted that he was a pragmatic judge, one unwilling to extend his jurisdiction beyond what he may have felt was its natural competence but also unwilling to allow procedural technicality to undermine wider justice. Leith's initial appointment being as his substitute might suggest that it was Nicolson's quantity of business which required a division of his responsibilities. However, it is clear that he made these appointments to promote the careers of his colleagues as well as in his own interests. Both John Leith of Blairton and James Sandilands of Craibstone went on to prove themselves to be highly competent in the role, even if it seems that both also took a more generous interpretation to their judicial discretion than Nicolson himself appears to have done.

Nicolson and the Reintroduction of Law Teaching

Nicolson was also a commissioner for the reintroduction of legal education to King's College in 1619. This was an important development for the educational history of the area, and (at least in principle) for the legal educational history of Scotland more generally. However, before it is possible to examine that process of reintroduction, it is necessary first to understand as far as possible the circumstances through which law teaching had been abolished at King's College previously.

a) The abolition of law teaching

The foundation of King's College in Old Aberdeen in 1495 marks the beginning of the history of formal law teaching in Northern Scotland. The foundation bull and charters survive among the records of its successor institution, the University of Aberdeen.⁸⁴ These prescribe the appointment of a 'Pontificii Juris Doctor (master of canon law)' and 'Juris Civilis Doctor (master of civil law)';⁸⁵ these offices as well as their positions and privileges were confirmed in

see Stevenson, 'The Commissary Court of Aberdeen in 1650'.

⁸⁴ Access is restricted. See instead the seventeenth-century copy in the 'Foundation Book', AUL, MSK 1; the notarial copy, AUL, MSK 88, 6-26; the copy associated with Thomas Sandilands (son of James Sandilands of Craibstone), AUL, MSK 89, 113-23; and the copy associated with the sixteenth-century rector, Alexander Galloway, AUL, MSK 90, fols 8r-12v.

⁸⁵ AUL, MSK 1, 20; MSK 88, 9; MSK 89, 114; MSK 90, fol.8v. Emphasis in the original. See also this intention expressed in other contemporary documents, e.g. MSK 89,

the early-sixteenth century.⁸⁶ However, by the end of the sixteenth century law teaching was abolished; a decision made at the national and local levels as part of wider post-Reformation educational reforms.

King's College remained largely unaffected by the Reformation during the personal rule of Queen Mary. However a visitation from the nation's regent, the earl of Moray, in 1569 ensured that some of the staff who were sympathetic to Catholicism were replaced with Protestant men. At that time, the civilist and the master of canon law ('canonist') remained in post. However, there was an on-going desire to re-found King's College with a revised curriculum more consistent with Protestant ideals. This process of reform occurred in the context of similar changes at Glasgow and St Andrews as part of what Steven Reid has called 'the Protestant mission'.⁸⁷ At King's College, however, concrete proposals for change only materialised twenty years after the Reformation.

Although various records touch upon this new foundation, there is insufficient material to allow a comprehensive understanding of what was a controversial process.⁸⁸ It is submitted that three proposals for reform were

1–3, dated 1494.

⁸⁶ AUL, MSK 1, 35-72, 42, 47-8, MSK 88, 32-79, 35, 42-3; MSK 90, fols 13v-25v, 14v, 17r. On the foundation of the institution and law teaching at King's College, see W. Thom, *The History of Aberdeen; Containing an Account of the Rise, Progress, and Extension of the City, from a Remote Period to the Present Day*, 2 vols (Aberdeen, 1811), II, Appendix 1, 2–20; R. S. Rait, *The Universities of Aberdeen, A History* (Aberdeen, 1895), chapters 2-4; *House of Commons Papers XII, Reports from Commissions in four volumes*, IV (1831), 'Report Relative to the University and King's College of Aberdeen', 305, §1, 305–7; Kennedy, 'The Faculty of Law', 239-40; T. B. Smith, 'The Influence of the "Auld Alliance" with France on the Law of Scotland' in idem (ed.), *Studies Critical and Comparative* (Edinburgh, 1962), 37-40; L. J. MacFarlane, *William Elphinstone and the Kingdom of Scotland, 1431–1514: The Struggle for Order* (Aberdeen, 1985; rept. 1995), 377-82; Lord Hope, 'The Universities of Aberdeen and the Court of Session in Edinburgh' (1995), 5–7; Meston, 'Civilists', 153–5; H. L. MacQueen, 'The Foundation of Law Teaching at the University of Aberdeen' in D. L. Carey Miller and R. Zimmermann (eds), *The Civilian Tradition and Scots Law: Aberdeen Quincentenary Essays* (Berlin, 1997), 53–60; J. W. Cairns, 'The Law, the Advocates and the Universities in Late Sixteenth-Century Scotland', *Scottish Historical Review*, 73 (1994), 171–90, especially 174–5.

⁸⁷ Reid, *Humanism and Calvinism*, 28–31. See also D. Stevenson, *King's College, Aberdeen, 1560–1641: From Protestant Reformation to Covenanting Revolution* (Aberdeen, 1990), 1–30. This latter source should be used cautiously. See J. Kirk's review in *Scottish Economic and Social History*, 12 (1992), 103–4. On the wider context of the period, see MacDonald, *The Jacobean Kirk*, 6–29.

⁸⁸ Anderson (ed.), *Officers and Graduates*, 324; Rait, *Universities of Aberdeen*, 108. This period is not discussed in Kennedy, 'The Faculty of Law', and is dismissed as an 'interregnum' in Meston, 'Civilists', 157. Smith noted only that the 1619 visitation discussed below found 'no canonist or civilist teaching'. T. B. Smith, 'A Meditation on Scottish Universities and the Civil Law' in idem (ed.), *Studies Critical and Comparative*

made in the 1580s and 1590s; the first two proposals are lost but are witnessed in other records. An act of parliament in 1578 created commissions to reform the universities.⁸⁹ St Andrews reported to parliament in 1579;⁹⁰ King's College did so in 1581. Parliament did not at that time consider the proposal for the 'reformation of the college of Aberdeen' because of the press of other business, but it was remitted to the lords of the articles.⁹¹ It plausibly progressed little further, given the General Assembly authorised a new commission in 1582.⁹² This new commission reported in April 1583 that it had drafted 'ane order set doune which is in the Principalls hands' (an order set down, which is in the principal's hands).⁹³ John Kerr observed that subsequently 'the attempts made to have the *Nova Fundatio* formally established were either opposed or evaded'.⁹⁴ Indeed some of the opponents of the new foundation petitioned James VI. In his letter of reply to the faculty, dated May 1583, he acknowledged '[the reformers] intend to pervert the ordour of the foundation established be our progenitors and estaites of our realme. Quhairfore we will and command you to observe and keipe the heides of your fundatione, and in no ways to hurt the funds, ay an'd quhill the estaites be convenit to ane parliament'. (The reformers intend to pervert the order of the foundation established by our ancestors and estates of our realm, whereby we will and command you to observe and keep the heads of your foundation and in no ways to hurt the funds always and while the estates be convened to a parliament).⁹⁵ Thus in 1584 a new parliamentary commission was approved.⁹⁶ This commission seemingly drafted acceptable proposals, and may have reported in 1592.⁹⁷ Five years later, the new foundation

(Edinburgh, 1962), 66–7.

⁸⁹ RPS, record 1578/7/5; Anderson (ed.), *Officers and Graduates*, 324–5.

⁹⁰ RPS, record 1579/10/80. On the early history of law teaching at St Andrews, see Cairns, 'The Law, the Advocates and the Universities'; J. W. Cairns, 'Academic Feud, Bloodfeud, and William Welwood: Legal Education in St Andrews, 1560-1611', 2 (1998), *Edinburgh Law Review*, 158–79 (part one), 255–87 (part two).

⁹¹ RPS, record 1581/10/28.

⁹² Anderson (ed.), *Officers and Graduates*, 325. Stevenson suggested that an additional royal commission appointed in 1582 was said to have 'merely audited the college accounts' but may have contributed to the discussions. Stevenson, *King's College*, 30.

⁹³ Anderson (ed.), *Officers and Graduates*, 326.

⁹⁴ J. Kerr, *Scottish Education: School and University* (Cambridge, 1910; rept. 2014), 129.

⁹⁵ Anderson (ed.), *Officers and Graduates*, 327. Stevenson, *King's College*, 32–4.

⁹⁶ RPS, record 1584/5/92.

⁹⁷ AUL, MSK 35, 213 (modern pagination); MSK 102, fol.2r. See also Thom, *History of Aberdeen*, II, Appendix 1, 20. However, the manuscript associated with William Knight (on whom, see below n.99) identifies the text as being of 1582 [AUL, MSM 113 (now AUL, MARISCHAL/9/1/4/2/7), 1785]. Cf. Stevenson, *King's College*, 35.

was ratified by parliament.⁹⁸ The University of Aberdeen holds three copies of what appears to be the 1584 commission's proposal;⁹⁹ it is unclear to what extent this proposal differed from the previous two attempts.

The surviving proposal provides a new structure for teaching at King's College and a list of positions and offices to be retained.¹⁰⁰ This does not include either of the masters of law, whose posts were abolished by implication. Stevenson has suggested that the proposal 'was never fully introduced'.¹⁰¹ However, at least the provision of law teaching ceased around this time. No new canonist was appointed on the death of Alexander Cheyne in 1587. The civilist, Nicholas Hay, probably stopped teaching twenty years before his death in the 1590s;¹⁰² no reappointment was made of his position.¹⁰³ This abolition

⁹⁸ RPS, record 1597/11/70. This was an unprinted private act, which might explain the contrary understanding in Kerr, *Scottish Education*, 130-1. Cf. Stevenson, *King's College*, 35, 37-8.

⁹⁹ (1) AUL, MSK 35, 181-213 (modern pagination), which is associated with the eighteenth-century master of humanities at King's College, Thomas Gordon; (2) AUL, MSM 113 (MARISCHAL/9/1/4/2/7), 1787-1832, transcribed by the nineteenth-century master of natural philosophy at neighbouring Marischal College, William Knight; (3) AUL, MSK 102, written by an unidentified nineteenth-century transcriber; it has been suggested that this copy was made 'from Knight's text for the use of P. J. Anderson'. Stevenson, *King's College*, 149. Yet it is not clear on what basis this identification was made. A printed version of the text—drawn from the copies by Knight and Gordon—was included in Anderson's edition of university records: Anderson (ed.), *Officers and Graduates*, 335-47. On this see *ibid.*, 324, 347-8. A translation is found in Stevenson, *King's College*, appendix 2. All copies mention the 'Collegii Edinensis' (College of Edinburgh). AUL, MSK 102, fol.13r; MSK 35, 191 (modern foliation); AUL, MSM 113 (MARISCHAL/9/1/4/2/7), 1799; Anderson (ed.), *Officers and Graduates*, 338; Stevenson, *King's College*, 154. This institution was founded in 1584 (as is also observed in Rait, *Universities of Aberdeen*, 114) so provides an earliest possible date for this document. Stevenson, however, suggested that the copies were of a post-1587 version of the 1582-4 proposals and that the 1584 commission did not report. Stevenson, *King's College*, 32, 34.

¹⁰⁰ On which see Stevenson, *King's College*, 44-6. The masters were expected to reside within the college, on which see J. M. Fletcher, 'The College-University: Its Development in Aberdeen and Beyond' in J. J. Carter and D. J. Withrington (eds), *Scottish Universities: Distinctiveness and Diversity* (Edinburgh, 1992), 21-2.

¹⁰¹ Stevenson, *King's College*, 2, although see *ibid.*, 47-51.

¹⁰² Stevenson, *King's College*, 49; Cairns, 'The Law, the Advocates and the Universities', 178. Cf. MacQueen, 'The Foundation of Law Teaching at Aberdeen', 61. Poems were written by local advocate Alexander Garden on the deaths of both Cheyne and Hay, which indicate that he knew them personally. Eyton (ed.), *Garden of Grave and Godlie Flowers*, 'Upon the Reverend and Godly M. N. H. Commissar of Aber.', 'Upon the Death of the Worshipfull M. Alex. Cheyn Commissar of Aber.'

¹⁰³ AUL, MSK 34, fol.33r; MSK 35, 233; Anderson (ed.), *Officers and Graduates*, 30-1; Meston, 'Civilists', 157.

of law teaching at Aberdeen had important consequences for legal education in Scotland more generally. It coincided with the failure of the chair of law at St Andrews, meaning university legal education in Scotland was in reality defunct by the end of the century.¹⁰⁴

b) *The reintroduction of law teaching*

It was approximately thirty years before law teaching was re-established at King's College. This reintroduction was a part of a wider reinvigoration of a then dilapidated institution. In 1618 Patrick Forbes of Corse was appointed to the See of Aberdeen and thus became chancellor of King's College.¹⁰⁵ He was remembered by contemporaries as a good bishop who exercised his office 'to the applause of all men'.¹⁰⁶ As chancellor he instituted major financial and teaching reforms at King's College. These were initiated through an extraordinary royal commission of visitation in 1619. The warrant of commission and record of the commissioner's activities are held by the university.¹⁰⁷ The commission was authorised to investigate whether the current state of the institution was consistent with its foundation documents and to remedy any problems identified. Thomas Nicolson, identified as Aberdeen's commissary, is named in the commission;¹⁰⁸ he is also identified

¹⁰⁴ Cairns, 'Academic Feud, Blood Feud and William Welwood'. Glasgow had abolished law teaching previously, on which see Reid, *Humanism and Calvinism*, 80-1; J. Durkan and J. Kirk, *The University of Glasgow, 1451-1577* (Glasgow, 1977), 328, 330-1. On the scope of the post-Reformation universities and their failure to teach law, see Cairns, 'Academic Feud, Blood Feud and William Welwood', 164; M. Lynch, 'The Origins of Edinburgh's "Toun College": A Revision Article', *Innes Review*, 33 (1982), 3-14; idem, 'The Creation of a College' in R. D. Anderson, M. Lynch and N. Phillipson (eds), *The University of Edinburgh: An Illustrated History* (Edinburgh, 2003), 9-18; S. J. Reid, 'Aberdeen's "Toun College": Marischal College', 1593-1623', *Innes Review*, 58 (2007), 173-95; D. Henderson, *The Founding of Marischal College* (Aberdeen, 1947), 17-18; A. Morgan and R. K. Hannay, *University of Edinburgh: Charters, Statutes, and Acts of the Town Council and the Senatus, 1583-1858* (Edinburgh, 1937), 15; Cairns, 'The Law, the Advocates and the Universities'; W. C. Dickinson, 'The Advocates' Protest against the Institution of a Chair of Law in the University of Edinburgh', *Scottish Historical Review*, 2 (1926), 205-12; J. Kirk, 'Melvillian Reform in the Scottish Universities' in A. A. MacDonald, M. Lynch, and I. B. Cowan (eds), *The Renaissance in Scotland: Studies in Literature, Religion, History and Culture Offered to John Durkan* (Leiden, 1994), 276-300.

¹⁰⁵ D. G. Mullan, 'Forbes, Patrick, of Corse (1564-1635)', *Oxford DNB*.

¹⁰⁶ R. Keith, *An Historical Catalogue of the Scottish Bishops down to the year 1688*, M. Russel (ed.) (Edinburgh, 1824), 132.

¹⁰⁷ Mullan, 'Forbes, Patrick, of Corse (1564-1635)'; AUL, MSK 256/23/3-4. Transcripts are provided in Innes (ed.), *Fasti Aberdonenses*, 273-80; extracts are found in Anderson (ed.), *Officers and Graduates*, 328-9.

¹⁰⁸ AUL, MSK 256/23/3.

in this capacity in the report of its proceedings.¹⁰⁹ The commissioners were highly condemnatory of the state of the institution, one of their criticisms being that the ‘grytest pairt of the foundit memberis wer quyte abolisshit’ (greatest part of the foundation’s members were quite abolished).¹¹⁰ They therefore appointed men to the defunct posts with a view to filling the vacancies immediately, but stated that elections should then be held in the future. The aforementioned John Leith of Blairton received the rectorship and Nicolson was appointed civilist.¹¹¹ The position of canonist was filled by the sheriff clerk, William Anderson.¹¹²

Anderson was a local advocate and had been the sheriff clerk since 1597, continuing in this post ‘until his death in 1630[–31]’.¹¹³ Anderson was related to other important legal families though the marriage of his daughters to the sheriff depute Alexander Paip (1625–30) and Patrick Chalmer, the son of George Chalmer, the sheriff clerk of Banffshire.¹¹⁴ Anderson’s appointment seemingly owed much to wider bonds of loyalty: Littlejohn observed that he was a supporter of the Huntlys and suggested that his appointment as canonist should be viewed in the context of James VI’s favour for the family.¹¹⁵ Contemporaries certainly recognised the importance of the association: a charge against George Gordon, first marquess of Huntly in 1628 ‘hes promoted and advanced Mr Williame Anderson, ane profest and avowed Papist and under processe of the Kirk for Poprie, to be shireff-clerk of the shirefdome of Aberdein, whairof he is principall shireff’ (has promoted and advanced Mr William Anderson, a confessed and avowed Catholic and under process of the kirk for Catholicism, to be sheriff clerk of the sheriffdom of

¹⁰⁹ AUL, MSK 256/23/4.

¹¹⁰ AUL, MSK 256/23/4; for a fuller discussion, see Stevenson, *King’s College*, 64–5.

¹¹¹ AUL, MSK 256/23/4. Nicolson’s title is incorrectly omitted from the printed transcripts. Innes (ed.), *Fasti Aberdonenses*, 278; Anderson (ed.), *Officers and Graduates*, 329.

¹¹² On Anderson’s appointment, see AUL, MSK 34, fol.31r; Anderson (ed.), *Officers and Graduates*, 30.

¹¹³ Littlejohn (ed.), *Sheriff Court*, II, 537. Weak evidence suggests that Anderson might have had a judicial role: local poet Arthur Johnston wrote on Anderson’s death ‘Adspice causidici partes et iudicis aequi: Ius amat et leges servat uterque fori [Look at the parts of the advocate and of the equitable judge: he loves justice and preserves the laws of the court]’: W. D. Geddes (ed.), *Musa Latina Aberdonensis*, 3 vols (Aberdeen, 1892–1910), II, 208.

¹¹⁴ Patrick Chalmer succeeded Anderson as sheriff clerk and in turn passed the office to his brother, John. See Henderson (ed.), *History of the Society*, 85–6, 116, 289; Littlejohn (ed.), *Sheriff Court*, II, 279, 534, 537–8; Wilson, ‘Men of Law’.

¹¹⁵ Littlejohn (ed.), *Sheriff Court*, I, 475.

Aberdeen where Huntly is principal sheriff).¹¹⁶

The 1619 commission's proposals were confirmed by an act of parliament in 1633.¹¹⁷ It has been said that the bishop's reforms 'consisted of little more than a restoration of the system prescribed by Bishop Elphinston's [sic] Foundation, except in so far as the introduction of the Reformed Religion had rendered some of the offices unnecessary'.¹¹⁸ However such criticism does not properly appreciate the importance of these most recent reforms, which are significant for local and national legal history. The reinstatement of the offices of civilist and canonist meant that King's College became in 1619 the only Scottish university positioned to teach law.¹¹⁹

Nicolson's students and classes

It is unclear whether law classes were actually held after 1619. There is some evidence that neither Nicolson nor Anderson taught, or at least that neither taught for long. Neither participated in Patrick Forbes' subsequent commission to King's College in November 1623. James Sandilands participated therein as commissary and rector.¹²⁰ He was made canonist by at least the end of the following year in succession to Anderson,¹²¹ and it is plausible that his participation in this commission was a factor in that appointment. Stevenson has suggested that the lack of resources to pay salaries to the new masters would have meant that they would not have taught.¹²² However it does not necessarily follow that a lack of salary would have led to their inactivity. The Register of the Privy Seal records the gift in 1573 of a chaplaincy with an annual

¹¹⁶ P. Hume Brown (ed.), *Register of the Privy Council II: 1627–1628*, 506–7. On the marquess, see J. R. M. Sizer, 'Gordon, George, first marquess of Huntly (1561/2–1636)', *Oxford DNB*.

¹¹⁷ RPS, record 1633/6/88.

¹¹⁸ 'Report Relative to the University and King's College of Aberdeen', 307.

¹¹⁹ Cairns, 'Academic Feud, Blood Feud and William Welwood', 285–7; Cairns, 'Lawyers, Law Professors, and Localities', 306. Contemporaries appear to have viewed the changes as significant. After its duties at King's College were completed on 16 September, the commission proceeded to Marischal College in New Aberdeen. However the illegitimate son of the founder and others had absconded with the porter's keys after locking the gates to prevent the commissioners' entry. The commission's summoning of the principal to give reassurances that 'he wer readie and glaid that ye visita[t] on sall proceed' was followed by a request that the commissioners warrant against retaliation from the Earl Marischal, 'wha had inhibite him after to compeer or ansr or onyways to acknowledge ye said commission'. AUL, MSK 256/23/4.

¹²⁰ Innes (ed.), *Fasti Aberdonenses*, 280.

¹²¹ Anderson (ed.), *Officers and Graduates*, 30.

¹²² Stevenson, *King's College*, 68.

value of thirty pounds to the then canonist, Alexander Cheyne. This was to supplement the ‘small vawew’ (small value) he received from the parsonage of Snow, which he would have held as canonist but which did not apparently allow him to ‘be ressonable sustenit to discharge his office in teching of the lawis’ (be reasonably sustained to discharge his office in teaching of the laws).¹²³ However he was to receive these additional monies only for as long as he continued to reside and teach at the college. Similar incentives might have been used in the seventeenth century: the civilist’s house, for example, was recovered for Nicolson in 1624.¹²⁴ The new masters might also have been able to organise classes around the timings of local court proceedings, as they had been in St Andrews previously when that locality’s commissary, William Skene, was canonist there.¹²⁵ Some suggestion that this was possible is found in the continuation of Nicolson and Anderson in their court offices beyond 1619, presumably receiving appropriate funds accordingly. This arrangement would also have allowed the students to learn local practice, and would be broadly consistent with Finlay’s observation that admission to practice in Aberdeen was often associated with a period in practice in the Old Aberdeen commissary court.¹²⁶

An additional challenge to identifying whether classes were held is posed in the incompleteness of the university’s records, which do not explicitly note whether any students matriculated to study law. Cairns suggested of a later period that ‘If the regular curriculum in arts did not include attendance at the class of the civilist, some of those following it may none the less have taken his course on the *Institutes* when it was offered’.¹²⁷ However the extent to which this can be applied to the period relevant to this present examination is unclear. There is little correlation between those dozen-or-so men matriculating to study the arts at King’s College during the years of Nicolson’s tenure and those entering the local society of advocates shortly thereafter.¹²⁸ Therefore

¹²³ G. Donaldson (ed.), *Registrum secreti sigilli regum Scotorum: The Register of the Privy Seal of Scotland*, VI: 1567–74 (Edinburgh, 1963), 2032; Stevenson, *King’s College*, 28.

¹²⁴ Innes (ed.), *Fasti Aberdonenses*, 142–3.

¹²⁵ Cairns, ‘Academic Feud, Blood Feud and William Welwood’, 168–9.

¹²⁶ Finlay, ‘Pettyfoggers’, 44–5.

¹²⁷ Cairns, ‘Lawyers, Law Professors, and Localities’, 313.

¹²⁸ Only a partial list of students survives for the period after 1619: ‘Album A’ records both the matriculating and graduating arts students in each year. AUL, MSK 9. See also the transcript in Anderson (ed.), *Officers and Graduates*, 177ff. The class which matriculated in 1619 comprised seventeen men, eleven of whom graduated in 1623. AUL, MSK 9, fols 53r, 6r-v. The next year’s matriculating class consisted of sixteen men, eight of whom graduated in 1624. AUL, MSK 9, fol.53v. Only one of these

it seems that at this time students of the arts did not normally proceed to enter the local legal profession,¹²⁹ and so perhaps did not routinely wish to study the law during their time at the college. Rather, ‘The obvious candidates for attendance at the civilist’s classes ... are the apprentices of the Society of Advocates. This suggestion might seem to be supported by the tendency to link the chair with the office of commissary’.¹³⁰ If Nicolson did hold classes, his students might have formed a discrete group of aspiring lawyers, perhaps coinciding with the apprentices to the profession but distinct from the arts student cohort. However, as with the later period considered by Cairns, these would have been very small numbers,¹³¹ as is indicated by the few admissions to the local professional bar.¹³²

Nicolson’s learning and academic interests are revealed in the personal library he assembled.¹³³ His library provides an insight into what he might have been concerned to teach, and also is an indication of the scholarly collecting which was pursued by at least some of Aberdeen’s legal society more generally. The inventory of Nicolson’s property on his death records that he had a library worth 2,000 merks, but not the specific volumes nor who received them; presumably the library was passed to his son and heir.¹³⁴ However some volumes which belonged to Nicolson have been identified by the British Armorial Bindings Project as well as the keepers of various libraries. This is possible because Nicolson ‘not only habitually had his arms added to his books, but also signed them, and used an ownership motto, several rather large book labels, and on

thirty-three names can be found in the list of local advocates and apprentices. A John Chalmer graduated in 1623. A John Chalmer was also mentioned above as sheriff clerk from 1630; he was admitted as a local advocate in 1649. See Henderson (ed.), *History of the Society*, 116; Littlejohn (ed.), *Sheriff Court*, II, 538. Meanwhile, of the seven men who entered the local professional bar in the 1620s and 1630s, one was identified by Henderson as having studied the arts at King’s College: Alexander Reid entered in 1624 having graduated in 1615. Henderson (ed.), *History of the Society*, 301; Anderson (ed.), *Officers and Graduates*, 180. Another three have names which also appear in the graduation lists, but it is not clear that these are the same men: Alexander Anderson entered in 1628, perhaps graduating in 1620; William Lumsden entered in 1624 and studied the arts, perhaps graduating in 1605; Robert Reid entered in 1633 also to study the arts, perhaps graduating in 1600 or 1619. Henderson (ed.), *History of the Society*, 82, 178, 303; Anderson (ed.), *Officers and Graduates*, 182, 255, 177, 182.

¹²⁹ On which, see Wilson, ‘Spalding’, 177–80.

¹³⁰ Cairns, ‘Lawyers, Law Professors, and Localities’, 313.

¹³¹ *Ibid.*, 313–14.

¹³² Wilson, ‘Spalding’, 177–9.

¹³³ Cf. for a later period Cairns, ‘Lawyers, Law Professors, and Localities’, 309–11.

¹³⁴ NRS, CC8/8/54, 91–3.

occasion had his arms added in ink. He is perhaps the first Scot to use a regular book label.¹³⁵ This allows his library to be reconstructed: the volumes identified as having belonged to him are set out in Table 1 of the appendix to this article. The books which he collected and kept reflect his interests and mind-set as a practitioner, and perhaps teacher, of the law.

An examination of these volumes shows that Nicolson did not frequently annotate his works, so the titles alone reveal his view of legal scholarship. Most of his law books comprise the works of jurists associated with the Italian commentators, including some of the most important jurists of the school as well as some more obscure figures.¹³⁶ Nicolson's apparent preference for such law books, it is submitted, suggests that he would have provided the forensic, practical legal education of the so-called *mos italicus*, which was used in legal practice throughout Europe.¹³⁷ This would be in keeping with what would seem to be the style of legal education provided by the aforementioned master of law at St Andrews, William Skene, and with what seems to have been provided at King's College by law masters later in the century.¹³⁸

Skene's library, however, also included the works of several writers associated with the more scholarly school of legal humanism.¹³⁹ In comparison, only a couple of texts associated with this school have been identified as belonging to Nicolson.¹⁴⁰ This rival school of legal scholarship – if indeed it can be considered as such – sought to recover the original texts of Roman law with a focus on classical history and philology.¹⁴¹ It was an elegant intellectual movement which did not displace the *mos italicus* as the principal method of legal practice, although its methodological approach influenced later schools of thought which did.¹⁴²

Nicolson also collected books on philosophy, history and religion; this

¹³⁵ 'Nicolson, Thomas – 1625', British Armorial Bindings Project, <https://armorial.library.utoronto.ca/stamp-owners/NIC002> [accessed 7 October 2016]; see also W. S. Mitchell, *A History of Scottish Bookbinding, 1432–1650* (Aberdeen, 1955), 88.

¹³⁶ See Table 1, items 1–9.

¹³⁷ On the commentators, see for example, O. F. Robinson, T. D. Fergus, W. M. Gordon, *European Legal History: Sources and Institutions* (Oxford, 2000), esp. chapters 4 and 7; P. Stein, *Roman Law in European History* (Cambridge, 1999), especially 71–4, 85–6.

¹³⁸ Cairns, 'The Law, the Advocates and the Universities in Late Sixteenth-Century Scotland', 181–2; Cairns, 'Lawyers, Law Professors, and Localities', 309–13.

¹³⁹ Cairns, 'The Law, the Advocates and the Universities in Late Sixteenth-Century Scotland', 182.

¹⁴⁰ See Table 1, items 10–12.

¹⁴¹ D. J. Osler, 'Images of Legal Humanism', *Surfaces*, 9 (2001), 101.6.

¹⁴² On legal humanism, see for example, Robinson, Fergus and Gordon, *European Legal History*, chapter 10; Stein, *Roman Law in European History*, 75–85.

would be in keeping with the kind of wider humanist education which might be expected of the period. Among his volumes were fourteen books by writers of classical antiquity, most of which were written in Greek. This includes works of prominent writers,¹⁴³ as well as lesser known classical and Byzantine authors.¹⁴⁴ He also collected works by more recent writers, reflecting particular interests in religion and history.¹⁴⁵ It is noteworthy that several of these books were previously owned by Henry Sinclair,¹⁴⁶ a lord of session whose ‘quite outstanding library [shows] the width of his scholarly interests’.¹⁴⁷ The careers of the two men would not have overlapped in the court, but there seems to have been some indirect connection between them.¹⁴⁸

This examination of the learning and scholarly interests of Aberdeen’s legal professionals may be taken further by looking at the library of one of Nicolson’s colleagues, the canonist and sheriff clerk William Anderson. Like Nicolson, it was not Anderson’s normal practice to annotate his texts extensively, but the titles themselves are informative. Few books on the law

¹⁴³ See Table 1, items 13–20.

¹⁴⁴ See Table 1, items 21 (the Greek-speaking philosopher Plotinus), 22 (the Greco-Roman historian Appianus of Alexandria), 23 (The Roman freedman Flavius Josephus), 24 (the Greek botanist Theophrastus), 25 (the Byzantine chronicler Joannes Zonaras), 26 (the obscure orthodox ecclesiastic Michael Syngelus).

¹⁴⁵ See Table 1, items 27 (the Greek bishop Eustathios), 28 (the Italian biographer Paolo Giovio), 29 (the German historian Elias Reusner), 30 (perhaps the German theologian Martin Chemnitz), 31 (the French Protestant reformer Philippe de Mornay), 32 (the French Protestant reformer Theodore Beza), 33, 34 (the Italian politician Niccolo Machiavelli).

¹⁴⁶ Aristotle, 1, 438; Plato, 3, 88 (4th series of pagination); Homer, 1, [288]; Sophocles, covers, 4, 52 (3rd series of pagination); Theophrastes, 3, 652. See also Durkan and Ross, *Early Scottish Libraries*, 49–60 items 39 (Plutarch), 63 Eustathios), 64 (Homer), and 73 (Syngelus).

¹⁴⁷ M. Dilworth, ‘Sinclair, Henry (1507/8–1565)’, *Oxford DNB*. For a catalogue of Sinclair’s library, see Durkan and Ross, *Early Scottish Libraries*, 49–60, 171. Those books also owned by Nicolson are entries 40, 82 and 86 on Durkan’s list of Sinclair’s books. The volumes of Plato and Sophocles listed in n146 as having belonged to Henry Sinclair do not appear on Durkan’s list, or the revisions to it by T. A. F. Cherry, ‘The Library of Henry Sinclair, Bishop of Ross, 1560–1565’, *The Bibliotheca*, (1963), 4, 13–24. The impact on understanding of Sinclair’s library of these additional volumes has not been explored.

¹⁴⁸ Although perhaps not the cause of the receipt of these books by Nicolson, it is worth noting that Lasswade, the estate owned by Thomas’ brother, John, was near that of Roslin (which had been owned by Henry Sinclair’s father) and Dryden (which was owned by a branch of the Sinclair family, from which John had acquired Lasswade). The author is grateful to John Ford for this point.

have been identified as having been owned by Anderson, although he may have owned others which have not yet been found. Those identified as having belonged to him are listed in Table 2 in the appendix to this article.¹⁴⁹ The most important of the law books identified as belonging to him was the central canon law text, Gratian's *Decretum* (Paris, 1538), which he received as a gift from the aforementioned canonist and commissary Nicholas Hay.¹⁵⁰ Rather than books on the law, it seems that Anderson's main collecting efforts extended to books that can, broadly construed, be regarded as religious in nature. Several of these were Catholic books.¹⁵¹ His collection of these is particularly notable given the controversy surrounding his own religious beliefs and his loss of office as a result of claims of hereticism associated with his Catholicism. However Anderson's interest in religious works appears to have extended beyond Christian teachings: he acquired the second edition of 'one of the most significant texts on Islam published in the Latin West in the Early Modern era' and the first translation of the Qur'an,¹⁵² and the post-classical Jewish history known as pseudo-Hegesippus.¹⁵³

The books collected by Nicolson and Anderson reveal quite different collecting preferences and distinct interests. These discrete interests might additionally explain a curiosity of their appointments at King's College in 1619, namely that the secular court's clerk was appointed as the master of ecclesiastic law whereas the ecclesiastic court's judge was appointed as the master of secular law.¹⁵⁴

Conclusion

Thomas Nicolson of Cockburnspath was one of Aberdeen's most important

¹⁴⁹ Especially with reference to AUL Provenance Database, <http://www.abdn.ac.uk/library/provenance/owner/33/> [accessed 7 October 2018].

¹⁵⁰ See Table 2, item 1 (Gratian). Items 2 and 3 are the other two law books identified as belonging to Anderson.

¹⁵¹ See Table 2, items 4–8.

¹⁵² See Table 2, item 9. G. J. Miller, 'Theodor Bibliander's *Machumetis saracenorum principis eiusque successorum vitae, doctrina ac ipse alcoran* (1543) as the Sixteenth-Century "Encyclopedia" of Islam', *Islam and Christian-Muslim Relations*, 24 (2013), 241.

¹⁵³ See Table 2, item 10. On which see A. A. Bell Jr, 'Josephus and Pseudo-Hegesippus' in L. H. Feldman and G. Hata (eds), *Josephus, Judaism, and Christianity* (Detroit, 1987), 349.

¹⁵⁴ Further comparison might be had with the library of Thomas Sandilands, who left twenty-eight law books to King's College, on which see I. Beavan, P. Davidson and J. Stevenson (eds), *Library and Archive Collections of the University of Aberdeen* (Aberdeen, 2011), 20.

seventeenth-century lawyers. His career and those of some of his colleagues can act as a lens through which several aspects of the legal and institutional history of Scotland and the North East in particular can be viewed. This article has constructed a detailed biography of Nicolson for the first time. Having first established himself as an advocate in Edinburgh and clerk to the General Assembly, he then relocated to Aberdeen to take up the appointment of judge of the commissary court. His clerkship and judicial office are reflective of the extent to which kinship and professional networks were an inherent aspect of legal practice nationally. The reciprocity of favour and the mobility of offices within the legal community was made possible through such connections. The impact of such networks within the legal community of Aberdeen will be explored further elsewhere.¹⁵⁵

Additionally, this article has examined Nicolson's tenure as a judge in the commissary court. In so doing it has provided the first detailed reconstruction of the personnel and some of the activities of the commissary court during this period. This investigation, which also demonstrated Spalding's practicks as being a credible source for such study, is particularly important given that the court's own records are lost. Nicolson's holding of his commissary court office was probably the reason for his inclusion as a commissioner on the visitation of 1619, which ordered that law teaching be reintroduced at King's College and which appointed Nicolson as civilist. It seems likely that this was an appointment of convenience for the commission, a reflection of its desire to have someone appointed swiftly during its three-day hearing at King's College. Whether Nicolson held classes remains unclear, but any education which he might have offered would have been practical rather than philosophical, and akin to that provided somewhat earlier at St Andrews.

The re-establishment of the offices of canonist and civilist did not result in continuous law teaching over the following centuries. The canonist's office was abolished around the end of the seventeenth century. Some civilists held the position as a sinecure while maintaining their practice at the bar in Edinburgh. One of the factors which contributed to this practice was the difference in earnings of lawyers in Aberdeen in comparison to those in Edinburgh at that time.¹⁵⁶ Indeed, there is evidence that even Nicolson

¹⁵⁵ See also Wilson, 'Men of Law'.

¹⁵⁶ Cairns, 'Lawyers, Law Professors, and Localities', 312. See also Smith, 'A Meditation on Scottish Universities and the Civil Law', 67–8; MacQueen, 'The Foundation of Law Teaching at Aberdeen', 62–3. For other factors in the decision, see Hope, 'The Universities of Aberdeen and the Court of Session in Edinburgh', 18. For

continued to practice in Edinburgh after relocating to Aberdeen. First, the collected legal decisions of Nicolson's nephew, Thomas Nicolson of Carnock, include a case heard in the court of session in 1611 pleaded by 'Nicolson'.¹⁵⁷ This case was too early to have been pleaded by the collector, Carnock, who was presumably observing the court in anticipation of his admission in the following year; it was too late for Carnock's father, John Nicolson of Lasswade, who had died in 1605.¹⁵⁸ Indeed it would appear that Thomas Nicolson of Cockburnspath was the only Nicolson with a right of audience in the court of session at that time.¹⁵⁹ Secondly, three years later, a 'Mr Thomas Nicolson' and two other advocates defended the earl of Orkney in his trial for treason in Edinburgh. Given the importance of the charge, the identity of the defender, and the contemporary description of his counsel as 'Lawyers, all of good esteem', it is plausible that it was our subject who pleaded the case rather than his less experienced nephew.¹⁶⁰ Thirdly, another collector of decisions, Sir Alexander Gibson of Durie, noted a case pleaded in the Edinburgh commissary court on some unspecified date by 'Nicholson' and thereafter in March 1624 by 'Nicolson Younger and Elder'.¹⁶¹ The only three men who could plead in the session with that surname at that time were Thomas Nicolson of Cockburnspath, his nephew (Carnock), and one Robert Nicolson, later an Edinburgh commissary but not obviously a close relation.¹⁶² Therefore it may be suggested that Nicolson continued to practice

other studies on the later history of law teaching, see for example S. D. Girvin, 'Professor John Dove Wilson of Aberdeen', *Juridical Review*, (1992), 60–73; Hope, 'The Universities of Aberdeen and the Court of Session in Edinburgh', 9–11, 18; A. A. Maclaren 'Privilege, Patronage and the Professions: Aberdeen and its Universities, 1760–1860' in Carter and Withrington (eds), *Scottish Universities*, 96–104; Meston, 'Civilists', 157–65.

¹⁵⁷ W. M. Morison (ed.), *The Decisions of the Court of Session from its Institution to the Present Time, Digested under Proper Heads, in the Form of a Dictionary* (Edinburgh, 1801–7); or alternatively see idem (ed.), *The Decisions of the Court of Session from its Institution until the Separation of the Court into Two Divisions in the Year 1808, Digested under Proper Heads, in the Form of a Dictionary* (Edinburgh, 1811); *Baillie v Torphichen* (1611) Mor. 4797.

¹⁵⁸ Grant (ed.), *Faculty of Advocates*, 164.

¹⁵⁹ *Ibid.*, 164–5.

¹⁶⁰ J. Spotswood, *The History of the Church of Scotland, Beginning the Year of our Lord 203, and continued to the End of the Reign of King James the VI* (3rd edition, London, 1663), 520. On the earl, see P. D. Anderson, 'Stewart, Patrick, second earl of Orkney (c.1566/7–1615)', *Oxford DNB*.

¹⁶¹ *Cochran v Gechin* (1623) Mor. 12099; Sir Alexander Gibson of Durie, *The Decisions of the Lords of Council and Session in Most Cases of Importance, Debated, and Brought Before Them; from July 1621, to July 1642* (Edinburgh, 1690), 67, 117.

¹⁶² Grant's confused history of the family suggests that Robert was the grandson of John

in the court of session, perhaps mentoring his nephew while doing so. A further indication of his continued presence in Edinburgh is his acquisition of Cockburnspath in 1621.¹⁶³

Nicolson thus provides an example of the extent to which Scottish lawyers of the early seventeenth century might pursue their careers in multiple towns, on a national stage. It seems that his family may have followed him as he moved between Aberdeen and Edinburgh. The births of two of his daughters, Katherine and Agnes, and his eldest son, James, were recorded in the Aberdeen parish records in 1605, 1607 and 1608 respectively.¹⁶⁴ This seems to indicate that the family resided in Aberdeen shortly after his relocation. However, the births of his two younger sons, the aforementioned Thomas and a younger son, Alexander, were registered in 1609 and 1612 in Edinburgh.¹⁶⁵ This suggests that he settled his family in the Lothians after only a short time in the North East. Hence his three sons all established their careers in Edinburgh: James as a burgher, and Alexander and Thomas as advocates.¹⁶⁶

Thomas Nicolson of Cockburnspath had died by October 1625: a retour of service was issued in that month to his eldest son, James.¹⁶⁷ However the

Nicolson of Lasswade, but later suggested (correctly) that these were two different men. Grant, *County Families of the Shetland Islands*, 'Nicolson of the Ilk, Lasswade and Lochend'; cf. Grant (ed.), *Faculty of Advocates*, 164-5; *Burke's Peerage*, 701.

¹⁶³ RPS, record 1633/6/159.

¹⁶⁴ NRS, OPR Births, Aberdeen parish registers: 168/A 20 51, 11 December 1605; 168/A 20 68, 3 January 1607; 168/A 20 93, 25 July 1608; available on Scotland's People, <https://www.scotlandspeople.gov.uk> [accessed 25 February 2018]. The record of Agnes's birth does not list a profession for the father, so this might be a different Thomas Nicolson; his profession is recorded as the commissary in the other two records.

¹⁶⁵ NRS, OPR Births, Edinburgh parish registers, 685/1 10 383, 19 September 1609; 685/1 20 54, Edinburgh parish registers, 30 August 1612; available on Scotland's People, <https://www.scotlandspeople.gov.uk> [accessed 25 February 2018].

¹⁶⁶ On James, see Rankin, *Cockburnspath*, 10-12; G. E. Cokayne, *Complete Baronetage*, 4 vols (Exeter, 1900-4), II, 304. On Alexander, see Grant (ed.), *Faculty of Advocates*, 164. On Thomas, see *ibid.*, 165; Omond, *The Lord Advocates of Scotland*, I, 154-6.

¹⁶⁷ *Inquisitionum*, I, Berwick, 145. See also parliament's ratification, RPS, record 1633/6/159. Cockburnspath was subject to a tailzie or restriction confirming the inheritance of the property on a particular line of descendants. This resulted in subsequent controversy over the right to inherit the lands. *Nicolson v Nicolson* (1677) Mor. 8944; Sir James Dalrymple, Viscount Stair, *The Decisions of the Lords of the Council & Session* (Edinburgh, 1683-87), II, 582-5; *Inquisitionum*, I, Berwick, 429; *Burke's Peerage*, I, 1303; Dowager Lady Eliot of Stobs and Sir Arthur Eliott, Bart. of Stobs, *The Elliots: The Story of a Border Clan: A Genealogical History* ([London], 1974), 350. The descent of this branch of the Nicolson family was inaccurately reconstructed in 'The Family of Nicolson', *Scottish Notes and Queries*, 3 (1889), 51-6, 145-8.

Nicolson family did retain some kind of association with Old Aberdeen and with the Sandilands family. A dispute between an Aberdonian merchant burghess and several members of the burgh was heard in Edinburgh in 1634.¹⁶⁸ The burghess, James Cruikshank, was represented by two experienced Edinburgh advocates.¹⁶⁹ The other townsmen were represented by a Thomas Nicolson and Thomas Sandilands. This case reveals a collaboration between the next generation of the dynastic legal families of Thomas Nicolson of Cockburnspath and James Sandilands of Craibstone. The Thomas who acted in this case must have been either Cockburnspath's son or nephew. His son (as has been mentioned) rose to become king's advocate in light of the Nicolson family's connections with the previous holder of the office, Sir Thomas Hope of Craighall. His nephew, who it has been submitted was mentored by Cockburnspath as a new advocate, was the aforementioned Thomas Nicolson of Carnock who later compiled a collection of the decisions of the court of session. Meanwhile Thomas Sandilands, son of James Sandilands, had been mentored by his father. He had first jointly shared with his father the office of commissary of Aberdeen and subsequently succeeded his father in that post. He, too, built a reputation in Edinburgh and was admitted to the court of session bar.¹⁷⁰

This study has drawn on a variety of local and national records to establish aspects of the legal history of early-modern Scotland, with a particular focus on Old Aberdeen's men of law and the institutions within the burgh in which they worked. Yet these men and institutions must be appreciated in a national context. Future comparison between Aberdeen and other local legal communities beyond Edinburgh may be fruitful, revealing, for example, further information about the nature of Scots law and its practice in the inferior courts. Such a comparison would depend on significant work being undertaken on other local collections; few such studies have been undertaken to date. This paper has, however, in the shorter term, contributed to this special issue's overall aim of highlighting the research potential of urban archives and related local records of law, particularly those of the burgh of Old Aberdeen and the institutions therein.

¹⁶⁸ ACA, OA/1/6/3/16. No sederunt record appears for 22 March 1634 and no mention appears to be made of this hearing in P. Hume Brown (ed.), *Register of the Privy Council V: 1633-1635* (Edinburgh, 1904) or Durie, *Decisions*.

¹⁶⁹ The advocates were Sir Lewis Stewart and Laurence McGill. On whom, see Grant (ed.), *Faculty of Advocates*, 132, 201.

¹⁷⁰ On Thomas Sandilands, see above n.83; Wilson, 'Men of Law'.

Appendix

Table 1: Items in the Library of Thomas Nicolson of Cockburnspath

| Item No. | Title | Details |
|----------|---|--|
| 1 | Baldus Ubaldus, Repertorium consiliorum (2 vols, Lyon, 1548) | Edinburgh University Library (hereafter EUL), *E.16.24-25, https://armorial.library.utoronto.ca/node/37363 . |
| 2 | Filippo Decio, Commentaria & repertorium (Lyon, 1541) | EUL, E*.15.29, https://armorial.library.utoronto.ca/node/37356 . |
| 3 | Alessandro Tartagni, In primam et secundam digesti veteris partem (Lyon, 1552) | Advocates Library, A.77.1, https://armorial.library.utoronto.ca/node/37361 . |
| 4 | Paulus de Castro, In primam Digesti veteris partem Patauinae praelectiones (Lyon, 1550) | Advocates Library, A.77.2 |
| 5 | Jason de Maynus, In primam digesti veteris partem commentaria (London, 1557) | Advocates Library, A.77.1, https://armorial.library.utoronto.ca/node/37359 . |
| 6 | Jason de Maynus, Infortiati partem commentarium (Lyon, 1542) | Advocates Library, A.77.1 |
| 7 | Dinus de Mugello, Commentarius in regulas iuris pontificii (Lyon, 1545) | EUL, *E.32.52, https://armorial.library.utoronto.ca/node/37370 . Annotations (now partially cut off) are found only against Regula 10: 'Ratihabitionem retrotrahi, & mandatum non est dubium comparari': <i>ibid.</i> , 74-81, 77, 79, 80. |
| 8 | Jacobus Concenatius, Quaestionum iuris singularium (Lyon, 1556) | Advocates Library, A.78.4 |
| 9 | Albertus Trotus, De ecclesiarum visitatione (Ferrara, 1476) | Advocates Library, A.77.1, https://armorial.library.utoronto.ca/content/de-ecclesiarum-visitacione/ . |
| 10 | Andre Tiraqueau, De legibus connubialibus, et iure maritali (Lyon, 1560) | Clements Collection National Art Library, CLE Drawer 7, https://armorial.library.utoronto.ca/node/37362 . |
| 11 | Guillaume Budé, Annotationes ... in quatuor & viginti Pandectarum (Paris, 1536) | Cambridge University Library, J.3.34, https://armorial.library.utoronto.ca/node/37367 . |
| 12 | Ulrich Zasius, Opera (Lyon, 1550) | Advocates Library, A.79.2 |

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| 13 | Aristotle, <i>Opera</i> (Venice, 1551) | EUL, JA.1030.3, https://armorial.library.utoronto.ca/node/37365 . |
| 14 | Plato, <i>Phaedo</i> (Paris, 1553) | National Library of Scotland (hereafter NLS), K.28.c.1(1). The text is annotated in places to aid structure or highlight passages, e.g. the title page of ἸΝΩΜΟΛΟΓΙΑΙ, the first part of the text ἸΝΩΜΑΙ. |
| 15 | Demosthenes, <i>Orationes</i> (Basel, 1547) | Oxford Worcester College Library, SS.w.14-15, https://armorial.library.utoronto.ca/node/37369 . |
| 16 | Dionysius of Halikarnassos, <i>Rhōmaikēs archaiologias biblia deka</i> (Paris, 1546-7) | NLS, K.21.c.2. Note that Nicolson's bookplate and signature appears on the title page, but there is also there the signature of a different Thomas Nicolson, perhaps the same hand as signed the copy of Seneca, mentioned below. The text is frequently annotated with quick Latin references to the Greek text, corrections and highlighting—several have legal relevance (e.g. 429, 503). |
| 17 | Homer, <i>Illiad and Odyssey</i> (Greek edn, Basil, 1535) | NLS, K.4.a.[2]. Nicolson may also have owned a copy of the 1542 edition of this text: J. Durkan and A. Ross, <i>Early Scottish Libraries</i> (Glasgow, 1961), 49–60, item 64. |
| 18 | Sophocles, <i>Tragedies</i> (Greek edn, Paris, 1553) | NLS, Bdg.m.108(1)). The front flyleaf records that the book was received from his brother, John Nicolson of Lasswade; the signatures of both men appear on the title page, and Thomas's bookplate is pasted onto the following page and his signature is on the penultimate back flyleaf. Occasional annotations (especially on 'Antigone': <i>ibid.</i> , 179-228) seem to be aids to reading; the reflection is made at the end of the text of 'Antigone': 'universale exiphonema totus tragedia finctum et usum narrationis contuniens' (<i>ibid.</i> , 228). |
| 19 | Seneca, <i>Opera</i> (Heidelberg, 1592) | NLS, Jolly.1430. Note that Nicolson's stamp is on both covers, his signature appears on the first and second flyleaves and on the title page, and his bookplate is also on the title and subsequent page. However three signatures of a different Thomas Nicolson are found on the back cover and flyleaf, one of which is dated 1669. Seneca's <i>epistolae</i> are annotated extensively by more than one hand with comments, corrections and highlighting of passages (56, 57, 90, 93, 111, 219); annotation elsewhere is infrequent. |

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| 20 | A volume of Plutarch? | Durkan and Ross, <i>Early Scottish Libraries</i> , 49–60, item 39. |
| 21 | Plotinus, <i>Operum philosophicorum omnium</i> (Basel, 1580) | EUL, N*.17.26, https://armorial.library.utoronto.ca/node/37360 . |
| 22 | Appianus of Alexandria, <i>Romanarum historiarum</i> (Paris, 1551) | EUL, *W.16.3, https://armorial.library.utoronto.ca/node/37364 . |
| 23 | Flavius Josephus, <i>Opera</i> (Geneva, 1611) | NLS, R.B.I.119, https://armorial.library.utoronto.ca/node/37358 . |
| 24 | Theophrastus, <i>Historia de plantis</i> (Venice, 1552) | EUL, JA.1034, https://armorial.library.utoronto.ca/node/37372 . |
| 25 | Joannes Zonaras, <i>Historia rerum in Oriente gestarum</i> (Frankfurt, 1587) | University of St Andrews Library, TypGF.B87FZ, https://armorial.library.utoronto.ca/node/37373 . See C. Gascoigne, 'Book Transmission in Sixteenth and Seventeenth-Century North East Scotland: the Evidence of William Guild's Books', <i>Journal of Edinburgh Bibliographical Society</i> , 4 (2009), 32, 37; see also Gascoigne's catalogue of books from the library of William Guild, entry 175 http://www.edinburghbibliographicalsociety.org.uk/publications/journal-of-the-edinburgh-bibliographical-society-no-4-2009 |
| 26 | ? A volume of Michael Syngelus | Durkan and Ross, <i>Early Scottish Libraries</i> , 49–60, item 73. |
| 27 | ? A volume of Eustathios | Durkan and Ross, <i>Early Scottish Libraries</i> , 49–60, item 63. |
| 28 | Paolo Giovio, <i>Historiarum sui temporis</i> (Paris, 1553) | EUL, B*.17.7, https://armorial.library.utoronto.ca/node/37357 . |
| 29 | Elias Reusner, <i>Basilikon opus genealogicum catholicum</i> (Frankfurt, 1592) | NLS, E.93.b.11, https://armorial.library.utoronto.ca/node/37371 . |
| 30 | ? Martin Chemnitz, <i>Examinis Concili Tridentini</i> (Frankfurt, 1606) | NLS, Saltoun Collection, https://armorial.library.utoronto.ca/node/37368 . (Not found by this research.) |
| 31 | Philippe de Mornay, <i>De veritate religionis Christianae liber</i> (Leiden, 1587) | NLS, AB.1.85.46(1). The text is annotated only once (<i>ibid.</i> , 493). |

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| 32 | Theodore Beza, <i>Epistolarum theologiarum</i> (Geneva, 1572) | AUL, pi 204 Bez 1, http://www.abdn.ac.uk/special-collections/provenance/1347/ . The text is lightly annotated and highlighted (<i>ibid.</i> , 24, 26, 48, 317), with handwritten indices on the front flyleaf and after the printed index (<i>Ibid.</i> , 2, 418-419). |
| 33 | Niccolo Machiavelli, <i>Lasino doro ... con tutte laltre sue operette</i> (London, 1588) | NLS, Ae.8/2.28. |
| 34 | Niccolo Machiavelli, <i>Historie fiorentine</i> (Florence, 1551) | NLS, Tyn.72(1). |

Table 2 Items in the Library of William Anderson

| Item No. | Title | Details |
|----------|---|---|
| 1 | Gratian, <i>Decretum</i> (Paris, 1538) | AUL, pi 34817C, http://www.abdn.ac.uk/special-collections/provenance/35/ . Former canonist and commissary Nicholas Hay's signature is present on the recto of the first flyleaf, supplemented in a different ink to record the gift in 1591; an inscription on the verso gives the date as 1595. The volume is lightly annotated with notes, cross-references, pen trials and underlining [e.g. fols 106r, 126v, 192v, 199r]. This edition preceded both the Scottish Reformation and the authorised, corrected editio Romana of 1582. |
| 2 | Martial d'Auvergne, <i>Aresta amorum</i> (Paris, 1555) | NLS, H.24.g8. |
| 3 | Johannis Althusius, <i>Jurisprudentiae Romanae methodice digestae</i> (Herborn, 1592) | AUL, pi 34504 Alt, http://www.abdn.ac.uk/special-collections/provenance/140/ . |
| 4 | Index Expurgatorius librorum (Lyon, 1586) | AUL, pi 09822 IE 1, http://www.abdn.ac.uk/special-collections/provenance/78/ . |

- 5 Alfonsi a Castro Zamorensis, *Aduersis omnes haereses* (Antwerp, 1556) AUL, pi f273 Cas, <http://www.abdn.ac.uk/special-collections/provenance/127/>. The text is frequently annotated with marginal numbers (sometimes noting 'causa', e.g. fol.27r), highlighting important passages (e.g. fols 5r, 9v, 11r, 26v, 27v, 33r, 35r, 35v, 37v, 39r, 47v, 75r, 84v), picking out authorities in the text (e.g. 4r, 5r) improving citations (fol.59r), or adding comments (e.g. fols 1v, 47v, 65v). The titles on 'fides', 'fiducia', 'gratia' 'opera' are particularly heavily annotated (fols 202v-219v, 219v-222v, 224r-243v, 69v-81v).
- 6 Petrus Canisius, *Opus catechisticum* (Paris, 1579) AUL, pi f2382 Can 2, <http://www.abdn.ac.uk/special-collections/provenance/136/>. As well as Anderson's signature on the title page, the stamp of William Hay, 'canonius abirdonensis', has been applied to the front cover; it is unclear whether this person might have a connection to Nicholas Hay. The text is annotated only occasionally (e.g. corrections, cols 497-8) but has frequent highlighting of passages (e.g. cols 891-3, 1756).
- 7 Bede, *De natura rerum et temporum ratione* (Basel, 1529) AUL, pi f52241 Fin, <http://www.abdn.ac.uk/special-collections/provenance/120/>. This copy has been rebound with other texts.
- 8 St Jerome, *Epistolae* (Basel, 1492) AUL, Inc 177, <http://www.abdn.ac.uk/special-collections/provenance/4394/>. The date and place of publication are omitted from the title page but added in an annotation (fol. 271v). Some annotations with corrections, comments and highlights (e.g. fols 20r, 21v, 37r, 59v, 64r, 70r, 82r-88r, 91v, 96v).
- 9 Bibliander, *Machumetis saracenorum principis eiusque successorum vitae, doctrina ac ipse alcoran* (Zurich, 1550) AUL, pi f297 Kor M, <http://www.abdn.ac.uk/special-collections/provenance/52/>.
- 10 Pseudo-Hegesippus, *Hegesippi historia de bello Iudaico* (Paris, 1524) AUL, pi f 9(33) Heg, <http://www.abdn.ac.uk/special-collections/provenance/68/>.

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Athol Murray† (1930–2018) was the Keeper of the Records of Scotland between 1985 and 1990, when he retired after thirty-seven years of service in the then Scottish Record Office (SRO), now the National Records of Scotland (NRS). He is the author of more than twenty-six scholarly articles, and several edited texts.

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