

The Transmission and Use of the Collected Legal
Decisions of Sir Richard Maitland of Lethington in
Sixteenth- and Seventeenth-Century Scotland

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This article examines the textual transmission of the collected legal decisions (or practicks) of the sixteenth-century Scottish judge, Sir Richard Maitland of Lethington. It applies the method of stemmatology to the twenty extant manuscript texts to reveal their interrelationships and the manner of the text's transmission. It also shows how the copies' owners amended the text, which in turn reveals both their interests in and use of it. Finally, it shows that the significant and deliberate amendments to a copy of the text by one owner, compounded by problems in the transmission of one branch of the text descended from his copy, entirely changed contemporary perceptions of the collection.

The Court of Session was founded in 1532 as Scotland's highest civil court.¹ The foundation of this court had a significant impact on the development of Scots law. One of the reasons for this was the

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court's use of a procedure and heavy reliance on legal rules drawn from the 'learned laws', namely Roman and Canon law. Practice in this court in the sixteenth and seventeenth centuries saw the reception of significant quantities of learned law into Scots law. This was done both through the reframing of existing Scottish legal rules in Roman and Canon law terms and the reception of new learned rules where there was an absence of clear Scottish authority. Roman and Canon law principles became one of the bases on which judges made and interpreted law in Scotland. The resulting civilian influence in modern Scots law is one of the principal characteristics which distinguishes it from English common law.²

It is thus important to understand legal practice in the Court of Session during this formative period of Scots law. Some of the most important sources for accessing the court's work are the contemporary collections of notes on its cases and decisions. There were various such collections of 'practick'. These were typically compiled by individual practitioners as a private record of one's professional business. Both 'Lords of Session' (Court of Session judges) and 'advocates' (barristers) collected decisions in this way. However these collections were also useful to other practitioners so quickly became highly sought by members of the wider legal community, who used them to enhance their understanding of the law and inform their pleadings in court.³

¹ On which, see A.M. Godfrey, *Civil Justice in Renaissance Scotland: The Origins of a Central Court* (Leiden: Brill, 2009). See also e.g. Idem, 'Scotland: The Court of Session from its Foundation to 1800', in *European Supreme Courts: A Portrait Through History*, ed. by C.H. van Rhee and Alain Wijffels (London: Third Millennium, 2013), pp.190-97; John W. Cairns, 'Revisiting the Foundation of the College of Justice', in *Miscellany Five*, ed. by Hector L. MacQueen (Edinburgh: Stair Society, 2006), pp.27-50; R.K. Hannay, *The College of Justice* (Edinburgh: Stair Society, 1990).

² This process has been discussed in many academic works. For a general account which provides access to the literature, see Andrew R.C. Simpson and Adelyn L.M. Wilson, *Scottish Legal History, I: 1000-1707* (Edinburgh: Edinburgh University Press, 2017), chs.6-10, 15. See also e.g. J.D. Ford, *Law and Opinion in Scotland during the Seventeenth Century* (Oxford: Hart, 2007), esp. chs.1, 3, 5; John W. Cairns, 'The Civil Law Tradition in Scottish Legal Thought', in *The Civilian Tradition and Scots Law*, ed. by David L. Carey Miller and Reinhard Zimmermann (Berlin: Duncker and Humblot, 1997), pp.191-223; A.M. Godfrey, 'Ius Commune, Practick and Civil Procedure in the Sixteenth-Century Court of Session', *Tijdschrift voor Rechtsgeschiedenis* 72 (2004), 283-95.

³ On these collections, see e.g. Simpson and Wilson, esp. ch.14. Another overview, which is now out of date but remains useful, is Hector McKechnie, 'Practicks, 1469-1700', in *An Introductory Survey of the Sources and Literature of Scots Law* (Edinburgh: Stair Society, 1936) 25-41.

Three early collections of the court's decisions were compiled by its judges John Sinclair, Sir Richard Maitland of Lethington, and Alexander Colville of Culross.⁴ These collections together record a selection of the cases heard between 1540 and the 1590s. There is generally understood to be a significant relationship between these three collections, not least because—as will be discussed below—they are bound together in several manuscripts. However a lack of previous research on these three collections means that relationship remains opaque. Indeed there has previously been a lack of study on the collections of decisions as a genre of legal literature generally. This is now being addressed by several legal historians who are together advancing understanding of the nature of these sources.⁵ This article contributes to this wider discussion through a detailed examination of the tradition and transmission of Maitland's collection. In doing so it reflects on the nature of that collection, the methods of the copyists and users of it, and the extent to which their practices changed the text. It also identifies and challenges significant misunderstandings about Maitland's text and addresses for the first time the interrelationship between the collections of Sinclair, Maitland and Colville.

Maitland's Collection of Decisions

Sir Richard Maitland of Lethington was a judge, politician, poet and man of learning in Reformation-era Scotland. He and his son—Queen Mary's secretary, William Maitland of Lethington⁶—are of

⁴ An edition of Sinclair is forthcoming by Athol Murray; a working text with an introduction by Gero Dolezalek is available at <http://home.uni-leipzig.de/jurarom/scotland/dat/sinclair.html>. See also on Sinclair's collection. A.L. Murray, 'Sinclair's Practicks', in *Law-Making and Law-Makers in British History: Papers Presented to the Edinburgh Legal History Conference, 1977*, ed. by Alan Harding (London: Royal Historical Society, 1980), pp.90-104; Gero Dolezalek, 'The Court of Session as a *Ius Commune* Court – Witnessed by "Sinclair's Practicks", 1540-1549', in *Miscellany Four*, ed. by Hector L. MacQueen (Edinburgh: Stair Society, 2002), pp.51-84. A study of Colville's decisions is currently being undertaken by Gero Dolezalek and its results are much anticipated.

⁵ In addition to the works already cited, see e.g. John W. Cairns, '*Ius Civile* in Scotland, ca. 1600', *Roman Legal Tradition*, 2 (2004), 136-70; Ford, *passim*; Sara Brooks, 'The Decision Practicks of Sir Thomas Hamilton, First Earl of Haddington', *Edinburgh Law Review*, 8 (2004), 206-30; Adelyn L.M. Wilson, 'The "authentick practise bookes" of Alexander Spalding', in *Continuity, Change and Pragmatism in the Law: Essays in Memory of Professor Angelo Forte*, ed. by Andrew R.C. Simpson and others (Aberdeen: Aberdeen University Press, 2016), pp.175-236; Adelyn L.M. Wilson, 'Practicks in Scotland's Interregnum', *Juridical Review*, (2012), 319-52.

⁶ On whom, see Mark Loughlin, 'Maitland, William, of Lethington (1525x30–1573)', in *Oxford Dictionary of National Biography* (Oxford: Oxford University Press, 2004; online edn, Jan 2008) <<http://www.oxforddnb.com/view/article/17838>>.

considerable historical interest. With respect to his legal career, Sir Richard Maitland studied the learned laws on the continent in ca.1514, when he was around twenty years old.⁷ However he received his seat on the Court of Session Bench in December 1550 as a political appointment. It was not unusual for political men to be appointed to the Bench, but it means that Maitland probably had little prior experience of Scottish practice. This might explain why he began to compile notes on the cases which he heard in court within a fortnight of his taking his seat.⁸ He recorded notes on ca.400 cases between that date and the last entry in collection, added in 1577.

Recent research published elsewhere has identified Maitland's method in recording these decisions. He made informal jottings or 'foul notes'⁹ during or shortly after a case was heard. These 'foul notes' probably sketched the case's central legal arguments and the intended purpose of the litigation. Maitland would then periodically review his recent 'foul notes' to identify those which included particularly important legal points. Those would then form the basis of expanded case-notes which were written into a larger collection of decisions, contained within a single manuscript which served as Maitland's 'authorial holograph'.¹⁰

It has been further suggested that a manuscript held by the Advocates Library in Edinburgh (Adv. MS 31.2.2(i), the so-called 'Elchies manuscript') was the authorial holograph from 1550 until at least March 1562/3. However a different manuscript volume appears to have been used as the authorial holograph after 1564. It is probable that the existing text of the Elchies manuscript was copied into that new authorial holograph, so that the latter contained a complete (and thereafter the primary)

⁷ Michael R. G. Spiller, 'Maitland, Sir Richard, of Lethington (1496-1586)', in *Oxford Dictionary of National Biography* (Oxford: Oxford University Press, 2004) <<http://www.oxforddnb.com/view/article/17831>>.

⁸ Adelyn L.M. Wilson, 'The Elchies Manuscript and the Method of Sir Richard Maitland of Lethington' (forthcoming).

⁹ On foul papers, see H.R. Woudhuysen, *Sir Philip Sidney and the Circulation of Manuscripts, 1558-1640* (Oxford: Clarendon Press, 1996), p. 103.

¹⁰ Wilson, 'Elchies Manuscript'.

version of the text. The Elchies manuscript was retained by Maitland's household but became a secondary copy updated infrequently. It remains, however, the earliest extant copy of the collection.¹¹

The identification of the Elchies manuscript as the authorial holograph for at least part of the text allows a detailed study of the collection's transmission. Around twenty manuscript copies survive, some nearly complete and others only fragments. The evidence of these copies shows that interest in the collection extended beyond Maitland's immediate circle and he lost control over the text.¹² Scribes of early-modern legal works were generally careful when copying out texts, sometimes to the extent of pedantry.¹³ However manuscript circulation nonetheless allowed both accidental and deliberate changes, which might then be preserved or compounded as generations of copies followed.¹⁴

It will be shown that numerous changes were made to Maitland's collection as it was transmitted. Some of these changes would have significantly affected its usefulness or change how the relevant legal principles were presented in the collection. This in turn affected how they were understood by the subsequent generations of lawyers who relied upon the texts.

An examination of these changes provides an understanding of the transmission of Maitland's text. This is made possible by a reconstruction of the stemma of the generations of texts. This shows both the relationship between the manuscript texts and also the reliability of each as a copy of the authorial holograph. This reconstruction also reveals the extent to which the copyists consciously amended the reports or, conversely, felt constrained to preserve their model's text. It also shows much of early-

¹¹ Wilson, 'Elchies Manuscript'.

¹² Authors who allowed their texts to circulate in manuscript 'had to have known they would have their own independent histories' [Arthur F. Marotti, *Manuscript, Print, and the English Renaissance Lyric* (Ithica: Cornell University Press 1995), p.159]. On what he calls 'social textuality', see *ibid*, ch.3.

¹³ See e.g. Wilson, 'Spalding', pp.187, 191, 203; Adelyn L.M. Wilson, 'The Textual Tradition of Stair's *Institutions*, with Reference to the Title "Of Liberty and Servitude"', in *Miscellany Seven*, ed. by Hector L. MacQueen (Edinburgh: Stair Society, 2015), pp.1-125, esp. p.41; Ford, pp.61-63; Harold Love, *The Culture and Commerce of Texts: Scribal Publication in Seventeenth-Century England* (Oxford: Clarendon Press, 1993 rept University of Massachusetts Press, 1998), pp.119-21. On the distinction between general scribes, legal scribes and secretaries, see Woudhuysen, pp.52-87. Cf. the short-copying of Sinclair's collection [Dolezalek, *Scotland under Jus Commune: Census of Manuscripts of Legal Literature in Scotland, mainly between 1500 and 1600* (3 vols, Edinburgh: Stair Society, 2010), I, pp.10-11].

¹⁴ On variants in manuscript and print, see Mark Bland, *A Guide to Early Printed Books and Manuscripts* (Chichester: Blackwell Publishing, 2010), esp. pp.159-77.

modern lawyers' practices when seeking copies of this text and their use of it. One owner's changes in particular were so extensive and significant that they fundamentally altered contemporary and subsequent perceptions of Maitland's collection. This finding allows important insight into the nature of Maitland's collection, its connection with other collections, and the tradition and authority of law reports in early-modern Scotland generally.

Identifying the Relationships between the Manuscripts

The method of stemmatology can be used to hypothesise the relationships between extant manuscript copies by comparing their wording and noting in detail any variations. This method recognises that variants which are found in two or more texts might have been inherited from a common ancestor. The relationships between different texts become clearer as more variants are discovered and analysed. Not all variants are useful in identifying these relationships, and there has been much debate about which types of variant might be considered 'genealogically revealing'. Essentially, the more unlikely it is that the variant could have spontaneously occurred in more than one manuscript, the more persuasive it is as evidence for stemmatology. Some types of variant are recognised as being particularly liable to spontaneous occurrence or 'parallelism'. This includes changes in tense or spelling, alterations between the plural and singular, substitutions of conjunctions, and the addition or deletion of non-substantial words such as 'said'.¹⁵

The length of Maitland's collection and the number of extant copies prevents a comprehensive comparison of the wording. However, a 10,000-word sample of thirty-three entries present in the

¹⁵ On stemmatology, its reliability and identifying parallelisms, see e.g., B.J.P. Salemans, 'Cladistics or the Resurrection of the Method of Lachmann: On Building the Stemma of Yvain', in *Studies in Stemmatology*, ed. by P. van Reenen and M. van Mulken (Amsterdam: John Benjamins Publishing Co, 1996), pp.3-70; U. Schmid, 'Genealogy by Chance! On the Significance of Accidental Variation (Parallelisms)', in *Studies in Stemmatology II*, ed. by P. van Reenen and others (Amsterdam: John Benjamins Publishing Co, 2004), pp.127-43; W.F. Smelik, 'Trouble in the Trees! Variant Selection and Tree Construction Illustrated by the Texts of Targum Judges', in *Studies in Stemmatology II*, ed. by P. van Reenen and others (Amsterdam: John Benjamins Publishing Co, 2004), pp.167-206; Bland, pp.179-82; Wilson, 'Textual Tradition', pp.46-48.

Elchies manuscript as well as five later insertions (together totalling ten percent of the entries) allowed conclusions to be drawn by this research.¹⁶

Overall ca.2,600 points of variance were identified in these sample entries. Most copies seem to have preserved the text of their parent with only minor variations typical of scribal copying slips: the rearrangement of phrases, omission or addition of words or phrases, or substitution of words. Some such slips of course had a significant impact on the sense of the text.¹⁷

This close textual study was then supplemented by a comprehensive study of the entries' order, length, headings, litigants' names, and dates to understand whether the conclusions drawn on the sample entries might be applicable more generally. What follows is still, however, only a hypothesis which could be challenged with reference to a close reading of other passages or indeed a contrary reading of the evidence. The textual changes attributed to a single inferred ancestor might actually have been introduced across more than one generation of closely-related texts. The annotations, additions and insertions discussed as having been added by a single owner of an inferred ancestor may have been made by several owners. However, for ease of reference and understanding, the inferred ancestors and their owners will be discussed as individual texts and lawyers.

¹⁶ *Frenchman v Englishman* (1550); *Tutor of Petcur v Laird of Gray* (1550); *Community of Crail v Persons of Anstruther* (1550); *Frenchman v Davidson of the ferry* (1550/1); *Liddle v Home* (1551); *Laird of East Nisbet v Laird of Innerleith* (1551); *Corsby v Home* (1551); *Drummond of Carin v Bisset* (1551-1551/2); *Home v Scot of How Paisley* (1552); *Laird of Langton v Goodman of Clowysle* (1552); *Laird of Rankeillor v Laird of Lindsay* (1552); *Johnston v Johnston* (1555); *The Queen and her donator v Aird* (1555); *Prior of St Andrews v Laird of Kinneir* (1555/6); *Laird of Craigy v Laird of Kinfauns* (1557); *Grundeston v Lowson* (1561/2); *Laird of Traquair v Home of Broomhouse* (1562/3); *Lady Polmais v Laird of Drum Castle* (1562/3); *Abbot of St Colme's Inch v Laird of Duntreth* (1563); *Laird of Crichton of Sanquhar v Maxwell* (1563); *Hamilton &c v Sheriff Depute of Perth &c* (1564); *Shaw v Herbertson* (1564); *Bisset v Bisset and Bisset* (1564); *Laird of Rossie v witnesses of Crichton of Innernyte* (1565); *Crichton v Crichton of Cranston-Riddle* (1565); *Douglas &c v Forman* (1565); *Laird of Pitsligo v his niece* (1568); *Laird of Lethington v Crichton of Cranston-Riddle* (1568); *Laird of Bass v Laird of Stainiepeath* (1569/70); *Home of Manderston v tenants of Oldhamstocks* (1570); *Laird of St John v Sinclair* (1570); *Reid of Aitkenhead v Melville* (1570); *Laird of Meldrum v Laird of Straloch* (1574); *Craig v Johnston* (1574); *Laird of Boyne v tenants* (1577); *Laird of Drum Castle v a gentlewoman* (1577).

¹⁷ For example, in the entry for *Laird of Pitsligo v his niece* (1568), Edinburgh University Library, La.III.429 (the Murray manuscript) and thus its descendants omitted the word 'not' from the phrase in which Maitland explained that 'the said pursuer was not infest (invested)' in the disputed lands [La.III.429, fol.119r; Yale University Beinecke Library, Osborn fb 246, fol.211v; Signet Library, MS 37, fol.53r; Advocates Library, Adv. MS. 24.1.4, fol.139v].

This comparison confirms previous suggestions relating to some of the manuscripts. This includes Edinburgh University Library, La.III.411, which contains a partial copy of Maitland's collection datable to ca.1566. It was made as a presentation copy, although it is not clear for whom.¹⁸ Dolezalek recorded in his unpublished notes on the Elchies manuscript his conclusion that La.III.411 was copied directly from it. This is confirmed by this stemmatological study: both these manuscripts give the same reading for ca.2,400 of the ca.2,600 variants found in the sample entries. La.III.411 has only ten variants which might be argued to be genealogically revealing in common with the text of the other manuscripts but not with the Elchies manuscript; none are clear examples and no alternative pattern of relationship is identifiable. The direct copying of the Elchies manuscript into La.III.411 means that the latter was probably written within Maitland's household: the Elchies manuscript did not (at least permanently) leave his possession at the time of its copying.¹⁹

Another copy of Maitland's collection was presented to his colleague on the Bench, David Chalmers of Ormond, in the spring of 1565/6. That copy is now lost but is witnessed in the numerous citations of it in Chalmers's legal digest, which he was compiling at the time. The text seen by Chalmers included case-notes not found in the Elchies manuscript, which suggests that it was drawn from Maitland's second authorial holograph.²⁰

That conclusion is consistent with the general pattern of transmission of Maitland's text identified by this present research. The other extant manuscripts also appear to descend ultimately from the second authorial holograph rather than directly from the Elchies manuscript.²¹ They did so through

¹⁸ On this manuscript, see Dolezalek, III, 249-51.

¹⁹ Sir Richard Maitland of Lethington, *The History of the House of Seytoun to the year MDLIX* (Glasgow: Maitland Club, 1829), p.x.

²⁰ Wilson, 'Elchies Manuscript'. Chalmers's authorial holograph remains extant: British Library, Addit. 27172.

²¹ More than 150 variants are shared by these manuscripts but not the Elchies manuscript; around fifty could be considered genealogically revealing. In the entry for *Crichton v Maxwell* (1563), the Elchies manuscript states 'that said pursuer should keep to the said defender' whereas the ancestor of the other manuscripts stated 'the [said?] defenders tacks should be kept by the said pursuer'. In the entry for *Crichton v Crichton* (1565), the Elchies manuscript gives 'Mertein should do other certaine things to him' whereas the others normally give 'Martin was obliged to do certain things to the said Mr James', thus providing three points of variance in the text. However this comparison is perhaps complicated by the entry on *Frenchman v Davidson* (January 1550/1), in which the Elchies manuscript and La.III.388a give 'proofs' whereas the other manuscripts give 'witnesses'. No

one of two intermediate ancestors, both of which are now lost but which can be called manuscripts 'α' and 'δ'. The reconstruction of the stemma for these two textual groups reveals sometimes several generations of texts. These stemma are set out in figures one and two below; Greek letters denote inferred ancestor texts; extant manuscripts are identified by their repository, shelfmark therein and a designation derived from their known provenance (for ease of reference).

α Group

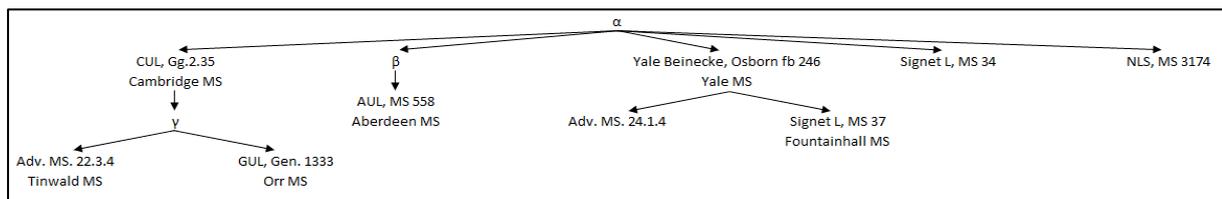


Figure one: Showing the relationships between the texts descending from manuscript α

- a) Manuscript α, a first-generation copy of the authorial holograph

Figure one above shows the relationships between nine extant texts identified as descending from the inferred ancestor, manuscript α. Much can be learned of the text of manuscript α from its descendants, which witness its text. It must have been completed shortly after Maitland made his final entry in 1577: one of its first-generation descendants (Cambridge University Library, Gg.2.35, 'the Cambridge manuscript') was copied within around ten years of that date.²² This timeframe as well as

other genealogically-revealing variants are common to the other manuscripts but not La.III.388a, so perhaps this was a spontaneous change. [Adv. MSS. 24.1.4 (fos.114v, 90r), 24.1.5 (fos.77r, 85r, 51v), 24.1.8 (fos.84r, 94r-v, 60r), 24.1.11 (§.1, fols.65r, 72r-v, 48r), 22.3.4 (pp.298-99, 319-20, 238), 25.4.11 (fos.163r, 141r); MS 37, fols.32r, 38v, 1r; La.III.388, fols.29v, 38v, 1r; La.III.429, fols.92r, 102v-3r, 64v; Cambridge University Library, Gg.2.35, fols.58v-59r, 77v-78r, 2v; Glasgow University Library, MS Gen. 1333, pp.55, 72, 2; Osborn fb 246, fols.185v, 195v, 155v].

²² The watermark found throughout the volume (a single-handled, crowned pot bearing the initials NV) is similar to many found in mid- to late-sixteenth-century English and continental manuscripts [Cf. C.-M. Briquet, *Les filigranes dictionnaire historique des marques du papier dès leur apparition vers 1282 jusqu'en 1600 avec 39 figures dans le texte et 16,112 fac-similés de filigranes* (Paris: Alphonse Picard & Fils, 1907), IV, 12701 (Auquainville 1573), 12704 (1542), 12712 (Rotterdam 1542), 12766 (Varanguebec 1596), 12770 (Luxemburg 1553), 12781 (Delft 1576), 12791 (Rouen 1558-1563); Edward Heawood, *Monumenta Chartae Papyraceae Historiam Illustrantia, or Collection of Works and Documents Illustrating the History of Paper I: Watermarks, mainly of the 17th and 18th Centuries* (Hilversum: Paper Publications Society, 1950), 3552 (London 1591), 3551 (London 1589)]. Cf. Dolezalek, III, p.44. This copy was written by more than one hand: see changes of hand at e.g. 142v, 149r-v, 149v, 151v-152r, 153r-v, 154v. See further on this manuscript, Dolezalek, III, pp.44-46.

the apparent accuracy of manuscript α suggests that it was copied directly from Maitland's authorial holograph—perhaps as another presentation copy.

The stemma also identifies manuscript α as the most recent ancestor of fragments of Maitland's text incorporated into a collection of decisions made by Alexander Spalding. His collection was predominantly concerned with cases heard in Scotland's North-Eastern courts in ca.1620-45.²³ However Spalding twice copied entries from Maitland into his collection. First, in the late 1610s he used a descendant of manuscript α to copy thirty entries on cases heard in 1568-70.²⁴ He later returned to Maitland in ca.1621, when he apparently used a different text (descended from manuscript δ) to copy around forty-five entries mostly drawn from the start of Maitland's collection.²⁵ Spalding did not select entries critically for the legal principles set out therein. Rather he seemingly wrote out the text from a fixed point until he was interrupted, perhaps by the demands of his professional practice or the loss of access to the text.²⁶ The authorial holograph of Spalding's collection does not survive, but can be referred to as 'manuscript β '. Aberdeen University Library, MS 558 ('the Aberdeen manuscript') contains a first-generation copy which appears to be highly accurate.²⁷

Only a small number of the entries in manuscript α are witnessed both in the Aberdeen and Cambridge manuscripts. Only variants found in the entries common to both manuscripts can be attributed to

²³ On which, see Wilson, 'Spalding'.

²⁴ The wording and arrangement of the text seen by Spalding is suggestive of this, e.g., *Laird of Pitsligo v his niece* (1568) normally includes the phrase 'and advocated to the Lords of Session'. However manuscript α (as witnessed in its descendants) gave instead 'which action was advocated before the Lords' [MS 558, fol.192r (modern foliation); Gg.2.35, fol.107r; Advocates Library, Adv. MS. 22.3.4, p.354; MS Gen. 1333, p.98. Cf. Adv. MS. 31.2.2(i) (fol.78v), 24.1.4 (fol.139v), 24.1.5 (fos.98v-99r), 24.1.8 (fol.108r), 24.1.11 (§.2 entry 303 (which gives 'by' rather than 'to'), §.3 fol.82r), 25.4.11 (fol.169v, which short-copied the relevant section of text so omitted the phrase); MS 37, fol.53r; La.III.388a, fol.52r; La.III.429, fol.119r; Osborn fb 246, fol.211v]. Spalding also included notes on cases heard in 1569/70 and 1570 found in the same place in manuscript α but omitted from the Elchies manuscript and originally from manuscript δ . See e.g. *Douglas in Waleston v Graham of Knockdolian* (1570), cited in MS 558, fol.200r-v (modern foliation); Gg.2.35, fols.117v-18r; Adv. MS. 22.3.4, p.367; MS Gen. 1333, pp.107-8.

²⁵ See e.g. the insertion to manuscript δ , *Sandilands v Forrester* (1569), which was provided by Spalding [MS 558, fol.225v (modern foliation); Advocates Library, Adv. MSS. 24.1.5 (fos.118v-19r), 24.1.8 (fol.122r-v), 24.1.11 (§.2 entry 376, §.3 fol.93r), 25.4.11 (fol.177v); La.III.388a, fol.66v]. On which, see below.

²⁶ Wilson, 'Spalding', pp.214-25.

²⁷ This manuscript is explicitly dated to the early 1670s. On this manuscript, see Wilson, 'Spalding', pp.185-87; Dolezalek, III, pp.17-21. References below refer to the manuscript's modern series of foliation.

manuscript α : those found elsewhere in the Cambridge manuscript could have been original to it rather than inherited. Thus this research has found around twenty genealogically-revealing variants attributable to manuscript α , some of which short-copy verbose parts of the text.²⁸

It is further suggested that manuscript α had additional entries which are not found in the Elchies manuscript and which were not initially copied into manuscript δ . It gave in the correct place chronologically within the text three notes on cases heard in March 1569/70.²⁹ It also noted four additional cases heard shortly before *Home of Manderston v tenants of Oldhamstocks* (1570) and another two thereafter.³⁰ It is plausible that these were present in Maitland's second authorial holograph, which was being used as the primary record of the collection by that time. However these notes were never added to the then-subordinate copy in the Elchies manuscript and were omitted from the intermediate ancestor of manuscript δ .

What has been identified as revised wording and additional entries in manuscript α may provide some further insight into the nature of that text. It is possible that Maitland himself undertook these changes in the authorial holograph in advance of the copying of manuscript α , but after the texts of the Elchies manuscript and the intermediate ancestor of manuscript δ were written. If that is correct, then it would follow that the text of manuscript α was one of the later copies made in Maitland's household.

- b) Cambridge University Library, Gg.2.35 ('the Cambridge manuscript') and its immediate descendant, manuscript γ

²⁸ See, e.g., *Laird of Bass v Laird of Stainpeth* (1569/70) [Gg.2.35, fols.115v-16r; MS 558, fol.198r; Adv. MS. 22.3.4, p.364; MS Gen. 1333, p.106]. Here several phrases were shortened or otherwise amended: 'it was objected by the defender' became 'the defender alleged'; 'before the intending of the summons' was relocated; 'seeing the pursuer is' was shortened to 'being'.

²⁹ Adv. MS. 22.3.4, pp.363-65; Gg.2.35, fols.114v-16v; MS Gen. 1333, pp.105-7; MS 558, fols.198r-99v. The order was amended by Spalding, as was his practice.

³⁰ Adv. MS. 22.3.4, pp.367-72; Gg.2.35, fols.117v-21v; MS Gen. 1333, pp.107-11; MS 558, fols.200r-3r. Spalding omitted the last of these cases, *Grey v Rollock* (1570/1).

The Cambridge manuscript can be identified as the ancestor of the early- to mid-seventeenth-century text, Advocates Library, Adv. MS. 22.3.4 ('the Tinwald manuscript')³¹ and the late-seventeenth-century text, Glasgow University Library, MS Gen. 1333 ('the Orr manuscript').³² Their texts are closely related: ca.200 variants are unique to these three manuscripts, ca.110 of which are genealogically revealing. Support for the conclusion that the Cambridge manuscript was the ancestor of the other two texts is found in an entry which in most manuscript copies omits the pursuer's name and calls the defender only 'Murray'. A later hand added to the Cambridge manuscript the pursuer's name and defender's forename as 'the Laird of Glaswell' and 'Alexander' respectively. That annotator also added the defender's territorial designation (as 'of Hedderwick') interlinear in nearly illegible handwriting. The Tinwald and Orr manuscripts are the only two texts to provide the pursuer as the Laird of Glaswell. Both also name the defender as 'Alexander Murray of [blank]'. This might suggest that their copyists (or that of some intermediate ancestor) were unable to read the interlinear annotation.³³ These names were written in these manuscripts contemporaneously with the surrounding text, showing that they were present in the model from which these texts were copied.

It seems that there was an intermediate ancestor, which might be called 'manuscript γ'. Around fifty variants are unique to the Orr and Tinwald manuscripts, approximately thirty-five of which could be considered genealogically revealing; these can be attributed to manuscript γ. Thus, for example, in *Hamilton & v Sheriff Depute of Perth & c* (1564), it seems that the Cambridge manuscript (and possibly

³¹ Perhaps copied in 1625-1656 by one scribe: the same scribe wrote the copy of another collection of decisions found herein, which ends with a case heard in 1625 [Dolezalek, II, p.876]. The year 1656 (which does not relate to the surrounding content) is added to p.368. A watermark bearing slender, flat-topped pillars aside a cartouche bearing the initials 'GAI' is found throughout the substantive content of the manuscript and index. This watermark is almost identical (but for the initials) to COL.021.2 (Somerset 1639) in Daniel W. Mosser and Ernest W. Sullivan II, *The Thomas L. Gravell Watermark Archive* <www.gravell.org>.

³² Text written by one scribe. The watermark on the flyleaves bears a bugle shield [cf. Heawood, 2666 (London 1675), 2667 (England ca.1683), 2682 (England? 1670)]. Another watermark of a pot is close to Heawood, 3683 (London 1669), 3679 (likely late-seventeenth century), 3686 (London 1662). See also Dolezalek, III, p.314.

³³ *Re a summons of error* (1551): Gg.2.35, fol.6r; Adv. MS. 22.3.4, p.242; MS Gen. 1333, p.5. Cf. MS 558, fol.232r, in which the defender is called John and the pursuer remains unidentified. Other changes to the parties' names or the dates throughout the Cambridge manuscript are either reflected in the other two manuscripts or are otherwise explainable, e.g., as parallelisms.

manuscript α before it) omitted the word ‘goods’ from the first occurrence of the phrase ‘their own proper goods and’; manuscript γ added ‘gear’ here to address the lack.³⁴

It is worth observing that the Orr manuscript was the basis for Sutherland’s published transcription of Maitland’s collection.³⁵ Sutherland himself acknowledged that his work was not a critical edition, but rather a transcription of a single manuscript—selected because of its current location—which was checked against other copies only where readings were uncertain.³⁶ Unfortunately this present research has found the transcription to be unreliable: it has various misreadings, skips lines of text, and provides doubtful extensions to the manuscript’s many abbreviations.³⁷ The entry for *Shaw v Herbertson* (1564) is typical. The transcription here omits one line of text comprising seventeen words and also another word found elsewhere in the entry. Two words are added to the entry by Sutherland’s transcription. More than eighty words which are abbreviated or contracted in the manuscript’s note are expanded in the transcription. The points of departure which have been identified by this present research throughout the transcription include words of substantive importance, including legal terminology.³⁸ The published transcription should therefore only be used with caution and in conjunction with the manuscript itself.

c) Yale University Beinecke Library, Osborn fb 246 (‘the Yale manuscript’)

The Yale manuscript is a mid-seventeenth-century copy.³⁹ The method of its copyist is important because therein is the only example of contamination⁴⁰ of model texts detected by this research

³⁴ Gg.2.35, fol.66r; Adv. MS. 22.3.4, p.306; MS Gen. 1333, p.61.

³⁵ *The Practiques of Sir Richard Maitland of Lethington*, ed. by Robert Sutherland (Edinburgh: Scottish Record Society, 2007).

³⁶ *Practiques*, pp.3-11.

³⁷ *Practiques* explicitly extended abbreviations by ‘his own convention’ where spelling could vary and by reference to context or comparison with other texts where the word was unclear [*Practiques*, p.17].

³⁸ For example, in *Crawford v Sheriff of Aberdeen and the Laird of Pitsligo* (1564), the transcript reads ‘heretable possession’ rather than (correctly) ‘peaceable possession’ [*Practiques*, p.151; Orr MS, p.64].

³⁹ The library catalogue dates this manuscript to ca.1650. The present research was based on a digital scan of this manuscript so an examination of the watermark evidence was not possible. However if this article’s stemmatological conclusions are correct then it would be datable to 1620-ca.1660. The text was written by many different hands.

⁴⁰ Beal’s definition of ‘contamination’ includes ‘when [a text] appears to be subject to a significant number of scribal errors, or has been sophisticated, or subject to alteration that editors might conclude to be non-authorial,

among the complete copies of Maitland's collection. The first entries within the collection seem to have been drawn from an extant manuscript, Edinburgh University Library, La.III.429 ('the Murray manuscript').⁴¹ However at least a dozen entries on cases heard between July and December 1551 appear to have been copied into the Yale manuscript from manuscript α .⁴² Thereafter the copyist of the Yale manuscript drew his text again from the Murray manuscript. It is unclear why the copyist twice changed his model. A brief comparison suggests that the points at which he did so do not coincide with the changes in quires in the Murray manuscript, so this conflation would not be explained by (for example) that manuscript having circulated disbound. Nor do these points of change coincide with the start of new quires in the Yale manuscript.⁴³ Perhaps it was simply a reflection of the availability of his original model to him.

There is ample evidence of the close relationship between the Yale manuscript, the late-seventeenth-century copy in Advocates Library, Adv. MS. 24.1.4,⁴⁴ and the mid-seventeenth-century copy in Signet

unauthorized, or lacking legitimacy. The term may also be applied to textual traditions when, for instance, one independent line of descent becomes, in a particular copy, contaminated by the introduction of readings from another independent line of descent' [Peter Beal, *A Dictionary of English Manuscript Terminology, 1450-2000* (Oxford: Oxford University Press, 2007), pp.88-89]. Here the term is used narrowly, along the lines of Beal's latter sense, to denote only those instances where a scribe copied sections of text from more than one model. See also Wilson, 'Textual Tradition', p.39.

⁴¹ Hence, e.g., *Frenchman v Davidson of the ferry* (1550/1) is the second entry (rather than the ninth) in these texts. On this group of texts, see below.

⁴² Six variants in this section of text are unique to the Yale manuscript, its two descendants and the other descendants of manuscript α . Five of these variants are genealogically revealing. For example, in *Laird of East Nisbet v Laird of Innerleith* (1551) these manuscripts: amended the phrase which normally read 'apprising and decreet' to 'decreet and apprising passed'; and amended 'offering' to 'and offered him' [Gg.2.35, fol.5v; MS 558, fol.231r; MS Gen. 1333, pp.4-5; Adv. MS. 22.3.4, p.241; Osborn fb 246, fol.161r-v; Adv. MS 24.1.4, fol.92r; MS 37, fol.3v].

⁴³ A brief examination of the entry for *Frenchman v Guthrie* (1551/2) shows that the Yale manuscript shares variants with the descendants of manuscript α rather than the Murray manuscript at both the end of the twelfth quire and at the start of the thirteenth (e.g. respectively, 'assigned' rather than 'prescribed'; the Murray manuscript gives the phrase 'and depositions of witnesses', which is not found in the Yale or Orr manuscripts) [Osborn fb 246, fols.162v-63r; MS 37, fols.5v-6r; Adv. MSS. 24.1.4 (fol.93r), 22.3.4 (p.244-45); La.III.429, fols.67v-68r; Gg.2.35, fols.7v-8r; MS Gen. 1333, pp.7-8].

⁴⁴ See the handwriting and the watermarks, e.g. grapes in a 2-3-4-3-2-1 arrangement alternating with block lettering [cf. Heawood, 2205 (Paris 1683), 2207 (Paris 1677)]. On which, see Dolezalek, II, p.159. An inscription says that the text was copied from a manuscript owned by Sir Alexander Seton of Pitmedden (ca.1639-1719) [fol.iir; Dolezalek, II, p.159. On whom, see George Stronach, 'Seton, Sir Alexander, of Pitmedden, first baronet, Lord Pitmedden (1639?-1719)', rev. by Clare Jackson, in *Oxford Dictionary of National Biography* (Oxford: Oxford University Press, 2004) <<http://www.oxforddnb.com/view/article/25115>>]. A list of charities in the manuscript gives the date 1647, but this may have been retained from an ancestor text.

Library, MS 37 (the Fountainhall manuscript).⁴⁵ Taking account of the entire sample of entries, more than sixty variants have been found to be unique to these three texts. More than forty of these unique variants are genealogically revealing. All three omitted the entry on *Abbot of Holyrood House v Hamilton and Stewart* (1564) but provided the heading for this entry as relating to the subsequent case, *Crawford of Federat v Sheriff of Aberdeen &c* (1564).⁴⁶ All three also provided some entries out of their normal order.⁴⁷

There is further evidence which suggests that the Yale manuscript was the ancestor of these other two texts. No entries appeared in Adv. MS. 24.1.4 and the Fountainhall manuscript which did not also appear in the Yale manuscript. Those variants which are present in the Yale manuscript are present (or further corrupted) in its two descendants. Particularly compelling evidence for the identification of the Yale manuscript as the ancestor is found in two annotations to its text. First, a phrase added in an annotation by a later hand in the Yale manuscript (the addition of 'a house in' to the description of the Lord Gray's burning of Dundee) was present in the both descendant texts.⁴⁸ Secondly, an annotator of the Yale manuscript also changed in the entry for *Frenchman v Davidson* (1550/1) the word 'proof' to 'promise' (or perhaps 'promise' to 'proof', which would have corrected the text according to the reading in most other manuscripts). Adv. MS. 24.1.4 gave 'proof' here, so the copyist appears to have favoured that reading of the amended text. The Fountainhall manuscript omitted the

⁴⁵ See the scribal dates elsewhere within the manuscript: fols.35v, 65r. The text was written by more than one hand. On this manuscript, see Dolezalek, III, pp.169-75, who dates it to the late-sixteenth to early-seventeenth century.

⁴⁶ Osborn fb 246, fol.190vr; Advocates Library, Adv. MS. 24.1.4, fols.119v; MS 37, fol.35v (wherein this mistake was addressed by a later annotator).

⁴⁷ They reverse the order of *Tutor of Petcur v Laird of Grey* (1550) and *Community of Crail v Persons of Anstruther* (1550), and of *Master of Leith Hospital v Town of Kinghorn and some Skippers* (1576/7) and *Earl of Eglington v Laird of Cunninghamhead* (1576/7). They relocate the entry for *Drummond v Home of North Berwick* (1575/6) and the next three case-notes to two entries later into the text. [Osborn fb 246, fols.155v, 234r-v, 232r-33r; MS 37, fols.1r, 19r-v (second foliation series), 15v-17r (second foliation series); Adv. MS. 24.1.4, fols.90r, 166v-67r, 163v-64r].

⁴⁸ *Tutor of Petcur v Lord Gray* (1550): Osborn fb 246, fol.155v; MS 37, fol.1r; Adv. MS. 24.1.4, fol.90r.

word but left a space, perhaps because the change had rendered the word less legible in the Yale manuscript.⁴⁹

Overall, the similarity of these three texts suggests that both Adv. MS. 24.1.4 and the Fountainhall manuscript were copied directly from the Yale manuscript. One piece of evidence found in a section of text taken from the Murray manuscript undermines this suggestion. The phrase 'to pursue' was omitted from the note on *Douglas &c v Forman* (1565) by the copyist of the Murray manuscript; a later annotator added the verb 'call' interlinear.⁵⁰ The word 'call' was present in the Yale manuscript, and was present as 'to call' in Adv. MS. 24.1.4.⁵¹ However the Fountainhall manuscript omitted that word.⁵² This might have been a coincidental scribal slip, the copyist having misread the text at the end of a line in the Yale manuscript, or it might mean a more complex and uncertain relationship between these four extant manuscripts.

d) Other descendants of manuscript α

Two other manuscripts can also be identified as descendants of manuscript α . Signet Library, MS 34 provides only single-sentence summaries of the entries.⁵³ Although a comparison of the variants is therefore frustrated, the order and omission of entries suggest that it was a descendant of manuscript α . A fragment of Maitland's collection is also found within National Library of Scotland, MS 3174.⁵⁴ This fragment was inserted as 'an attempt [...] to update Sinclair's Practicks by inserting pertinent parallel case reports by Maitland'.⁵⁵ Such insertion of an appendix as a method of expanding upon or perhaps updating an earlier legal work was not uncommon in Scotland.⁵⁶ The text of these entries was

⁴⁹ Osborn fb 246, fol.155v; MS 37, fol.1r; Adv. MS. 24.1.4, fol.90r.

⁵⁰ La.III.429, fol.103v.

⁵¹ Osborn fb 246, fol.196v; Adv. MS. 24.1.4, fol.124v.

⁵² MS 37, fol.39v.

⁵³ Text of Maitland written in one hand, possibly in the late-sixteenth or early-seventeenth century. On which, see Dolezalek, II, pp.149-63.

⁵⁴ Probably copied in the seventeenth century: the watermark present on fol.1 is identical to Heawood, 3601 (England, C17th). See also Dolezalek, II, p.44.

⁵⁵ Dolezalek, II, p.45.

⁵⁶ See e.g., Ford, p.66; Wilson, 'Textual Tradition', pp.44-45.

reworked by the copyist, so it is difficult to identify the precise relationship between this fragment and the other manuscript texts. However the fact that it provides the variant reading ‘tacks’ in a phrase which should read ‘to warrand from ward’ in *Laird of Crichton of Sanquhar v Maxwell* (1563) suggests that it can be identified as belonging to this group of manuscript texts.⁵⁷

δ Group

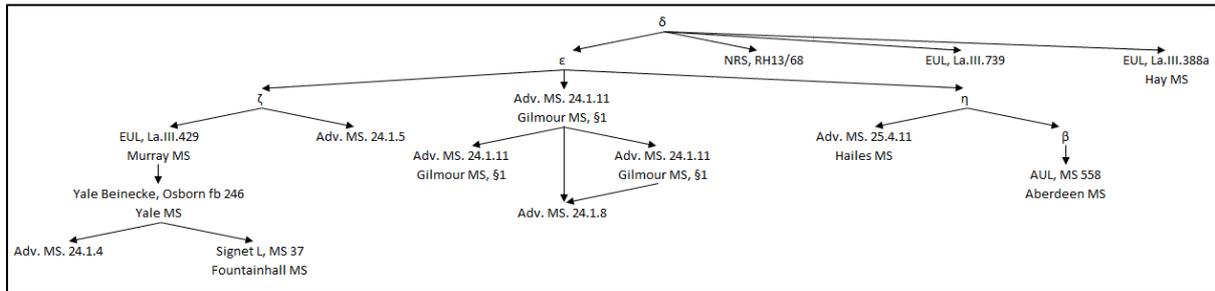


Figure two: Showing the relationships between the texts descending from manuscript δ

- a) Manuscript δ , probably a second-generation copy of the authorial holograph

Twelve of the extant texts have been found by this research to descend from the inferred ancestor, ‘manuscript δ ’, as seen in figure two above. This manuscript is lost, but again its text can be largely reconstructed from its descendants. This text must have been completed after Maitland stopped collecting decisions, since it included those entries made on cases heard in 1577. It was probably written not long thereafter, however, given sections of text in one of its third-generation descendants, the aforementioned Murray manuscript, were copied in 1610.⁵⁸

It is possible to speculate as to the identity of an early owner of manuscript δ . As will be shown, he was able to compare it to another early version of the text. If that were the case, it would indicate that manuscript δ ’s owner was a member of or close to Maitland’s social or professional circle. Additionally, the sections of text attributed below to his annotations suggest that he had sound legal knowledge

⁵⁷ N.L.S., MS 3174, fol.10r. Cf. Gg.2.35, fol.59r; MS Gen. 1333, p.55; Adv. MS. 22.3.4, p.299.

⁵⁸ Murray MS, fols.19r, 62r.

and perhaps familiarity with some of the cases noted by Maitland. He was certainly a lawyer, probably an Edinburgh-based advocate or colleague of Maitland's on the Bench.

However scores of genealogically-revealing variants can be attributed to manuscript δ , which might suggest that it was a second-generation copy.⁵⁹ Further support for this conclusion is that the stemma shows that this text of Maitland was the first to be bound into that manuscript after Sinclair's collection of decisions and before that of Colville. The incorporation of Maitland's decisions into a wider compendium meant that this manuscript would have contained cases heard from 1540 (eight years after the institution of the Court of Session) to 1592. It therefore provided access to more than a half a century of the court's 'practick'. This would have made the text of manuscript δ extremely useful. Indeed its descendants retained all three collections together.

The text of Maitland in manuscript δ will be shown to have been extensively amended by its owner. These changes are witnessed in the texts of its descendants and accordingly had a profound effect on the contemporary (and modern) understanding of Maitland's collection. The changes also allow significant insight into this particular lawyer's understanding of legal authority.

It seems that manuscript δ 's owner might have attempted to restructure the collection, but soon abandoned the idea. This can be inferred from it having the only deliberate rearrangement of the text found in any of the complete manuscript copies. The entry for *Frenchman v Davidson of the ferry* (1550/1) was normally the ninth entry in Maitland's collection.⁶⁰ However it was relocated to be the

⁵⁹ For example, in *Laird of Langton v Goodman of Clowysle* (1552), manuscript δ 's descendants give the variant readings 'space of three years' (rather than two) and 'follow' (rather than 'happen'). In *Laird of Pitsligo v his niece* (1568), they: give the parties' names as Alexander and Elizabeth Forbes and her father's name as William; omit the phrases 'By his obligation made', 'giveover', 'saised for' and 'or desire them'; and add two significant insertions ('and to be bruiked by the said Alexander pursuer while the same were redeemed [or 'reduced'] with the sum of ten thousand pounds', and 'of 17 years of age'). See Adv. MSS. 24.1.4 (fos.96r, 139v), 24.1.5 (fos.58r, 98v-99r), 24.1.8 (fos.66r, 108r), 24.1.11 (§.1 fol.52r, §.2 entry 303], §.3, fol.82r-v), 25.4.11 (fos.146r, 169v); MS 37, fols.11r, 53r; La.III.429, fols.71r, 119r-v, La.III.388a, fols.8r, 52r-v; Osborn fb 246, fols.166r-v, 211v-12r.

⁶⁰ Adv. MSS. 31.2.2(i) (fol.2r), 22.3.4 (p.238); Addit. 27172, fol.78v (in which it is cited as the eighth entry); Gg.2.35, fol.2v; La.III.411, fol.2r; MS 558, fol.228r; MS Gen. 1333, p.2.

second entry in manuscript δ .⁶¹ This relocation seems to have been an attempt to bring together two entries on the same topic: both this and the first entry, *Frenchman v Englishman* (1550), concerned procedural rules in actions with foreign litigants. It is unclear how this relocation might have been achieved. It is possible that it was done during the copying process if manuscript δ were a second-generation copy. Alternatively, perhaps the owner simply indicated in marginal annotations that the latter case logically followed on from the former, and this reordering was then implemented by those copyists who thereafter used this text as a model.

If this relocation of the entry on *Frenchman v Davidson of the ferry* (1550/1) is indicative of an initial intention to restructure the collection then it was not continued further. The simple restructuring of a collection of decisions was not an endeavour commonly undertaken by copyists. However lawyers commonly drew fragments of other collections into their own collections of decisions (as has already been seen in Spalding's collection) or into their legal digests.⁶² These latter works discussed topics of law under subject headings, often with quotations from relevant legal authorities. Chalmers's digest has already been discussed as one such work: he arranged summaries of Maitland's case-notes and other legal authorities under subject headings, which were presented in alphabetical order.⁶³

Another change suggested as having been made to manuscript δ was the rewriting of more than twenty of the entries' headings. Maitland had provided headings to almost all of his entries. These headings comprised brief summaries of the legal principles which were debated in each case. Some of these headings were in manuscript δ made more concise,⁶⁴ whereas others were lengthened with

⁶¹ Adv. MSS. 24.1.4 (fol.90r), 24.1.5 (fol.51r), 24.1.8 (fol.60r), 24.1.11 (§.1 fol.48r), 25.4.11 (fol.141r); La.III.388a, fol.1r; La.III.429, fol.64v; Osborn fb 246, fol.155v; MS 37, fol.1r.

⁶² Ford, esp. 77-82.

⁶³ For an example of restructuring of digests, see the versions of that attributed to Sir Robert Spottiswoode of Pentland [Dolezalek, I, pp.133, 136; *Practicks of the Laws of Scotland: Observed and Collected by Sir Robert Spottiswoode of Pentland* (Edinburgh: James Watson, 1706)]. On Spottiswoode's digest, see Cairns, 'Ius Civile'; Ford, esp. pp.182-215.

⁶⁴ Thus the descendants had the heading 'Of a notary giving two instruments contrary in effect to sundry parties' for the entry on *Dalgetie and Livingston v Hillo* (1575/6, II) [Adv. MSS. 24.1.5 (fol.130v), 24.1.8 (fol.141r), 24.1.11 (§.3 fol.105v); MS 37, fol.15v (second foliation series); La.III.429, fol.142v; La.III.388a, fol.84r; Osborn fb 246, fol.231v. Cf. Advocates Library, Adv. MS. 25.4.11, fol.188r, which provides a different heading, as was the copyist's practice; Adv. MS. 24.1.4, fol.163v, which omits the heading]. In the Elchies manuscript and other

extra detail.⁶⁵ Such changes must have been deliberate, presumably to increase the usefulness of the headings as tools for the owner's ease of reference. These changes might have been made as the text was copied, or perhaps these alternative headings were added by manuscript δ 's owner after it was written.

More fundamental were the numerous changes which must have been made to the text of the entries themselves, many of which appear to have been deliberate. Manuscript δ 's owner extensively supplemented his text with additional observations. These were probably originally added as annotations but were intercalated into the text in manuscript δ 's descendants. These additions sometimes added further information about the case itself. For example, after the normal end of the entry on *Ramsay v Ramsay* (1575), a postscript was added which mentioned a later judgement in favour of the pursuer.⁶⁶ After the normal end of *Hamilton of St John's Chapel v Laird of Cockburn* (1576), a note was added that 'Here the pursuer was restored by the act of pacification which made no stead'.⁶⁷ These additions would have required the owner-annotator of manuscript δ to have been familiar with the cases, suggesting that he was in practice in 1575-76.

The most important annotations were those which supplemented the text with legal learning. As mentioned above, advocates working in the Court of Session during this period would frame their pleadings according to Scottish legal authorities but also (and perhaps even principally) according to

copies the heading reads 'Of two instruments of a thing given to sundry parties by a notary contrary in effect to other' [Adv. MSS. 31.2.2(i) (fol.103v), 22.3.4 (p.405); Gg.2.35, fol.146v. Cf. MS Gen. 1333, pp.136-37, which does not supply the headings].

⁶⁵ Thus the heading for *Earl of Sutherland v Earl of Caithness* (1574) was normally 'Of the giving of *juramentum veritatis* by one party' [Adv. MSS. 31.2.2(i) (fol.93v), 22.3.4 (p.386); Gg.2.35, fol.132r. Cf. MS Gen. 1333, pp.122-23, which does not supply the headings]. However in the descendants of manuscript δ it was lengthened as 'Of *juramentum veritatis* asked of the defender after the pursuer has gotten the action to his probation and witness received and examined' [Adv. MSS. 24.1.4 (fol.156r), 24.1.5 (fol.125v), 24.1.8 (fol.135v), 24.1.11 (§.3 fol.101r); MS 37, fol.7v (second foliation series); La.III.429, fol.134v; La.III.388a, fol.78r; Osborn fb 246, fol.226r. Cf. Adv. MS. 25.4.11, fol.184v, which does not provide a heading].

⁶⁶ Adv. MSS. 24.1.4 (fol.161r), 24.1.8 (fol.139r), 24.1.11 (§.3 fol.104r), 25.4.11 (fol.187r-v); MS 37, fol.13r (second foliation series); La.III.429, fol.140r-v; La.III.388a, fol.82r-v; Osborn fb 246, fol.230r. Cf. Adv. MS. 24.1.5, fol.129r.

⁶⁷ Adv. MSS. 24.1.8 (fol.142r), 24.1.11 (§.3 fol.106v), 25.4.11 (fol.189r); MS 37, fol.16r (second foliation series); La.III.429, fol.144r-v; La.III.411, fol.85r; Osborn fb 246, fol.232r. Cf. Adv. MS. 24.1.5, fol.131v. Cf. Adv. MS. 24.1.4, fols.163v-64r, wherein there is no such postscript.

the texts of Roman and Canon law. The learned laws thus had tremendous influence on legal practice. Indeed, even until the mid-eighteenth century most Scottish advocates would study these laws (rather than Scots law) before being admitted to the Bar.⁶⁸ Most of the collections of decisions from the Court of Session during this period included references to specific texts, principles and maxims of the learned laws.⁶⁹ In doing so, these collections preserved the authorities on which the advocates had pleaded their case. This is seen, for example, in the collections of decisions compiled by Sinclair and Colville, with which the text of manuscript δ was bound.⁷⁰

However Maitland seems to have included very few explicit references to the learned laws in his collection, and indeed provided very few citations of Scottish legal authorities. One can only speculate as to why he adopted this style. It could be that his understanding of the learned laws was no longer fresh, given it had been more than thirty years since he had completed his formal study of law on the continent.⁷¹ It could also be that, having probably little if any experience of Scottish practick when he took his seat on the Bench, he was concerned to use his notes to learn the local legal system. The length of his early entries—which initially included only a few lines of text—also suggests an initial interest in recording only the barest details of each case. Perhaps noting of specific authorities did not fit this early intention, and this characteristic was retained through later developments of his personal style as a recorder of case-notes.

However manuscript δ 's owner seems to have made a sustained effort to add the learning which Maitland's collection originally lacked. This new learning was normally presented as additional arguments made by the parties. It is unclear whether these arguments were actually pleaded in court or whether they were hypothetical debates which were used to explore and extend the scope of the

⁶⁸ See e.g. Simpson and Wilson, chs.7, 9.

⁶⁹ Ford, pp.45-46.

⁷⁰ See e.g., Dolezalek, '*Ius Commune* Court'; Dolezalek's introduction to the provisional edition of Sinclair's practicks; Murray, 'Sinclair's practicks'; Gero Dolezalek, 'Sinclair and Colville', presented 3 May 2013, University of Aberdeen.

⁷¹ Spiller, 'Maitland'.

original case. This supplementation of the text brought its pattern of learned citation into line with the adjacent collections of Sinclair and Colville.

It is probable that most of this supplementary text was again added as annotations. However it was sometimes inserted into the body of the text of the descendants. Thus the entry for *Crichton v Crichton of Cranston-Riddle* (1565) has an addition towards its normal end which seems to set out further arguments between the parties. This addition includes both Roman law and a discussion of a debate between leading continental jurists.⁷² Generally however these learned annotations were intercalated as postscripts. Maitland's entry for *Laird of Pitsligo v his nieces* (1568) comprised ca.550 words and cited a medieval Scottish law-book called *Regiam Majestatem*. The entry normally concluded by stating that the court had found for the defenders on the basis of a rule set down in *Regiam Majestatem* and other laws of the realm.⁷³ However manuscript δ included thereafter a postscript which increased the entry's length by more than fifty percent.⁷⁴ That addition seems to have described at least one further hearing of the case, in which the pursuer claimed among other things that there was an exception to that rule found in another early Scottish law-book called *De Judicibus* and which was drawn originally from Roman law. The defender was then said to have argued for a different interpretation of *De Judicibus*, and further to have denied the authority of part of that text. No verdict on these points is attributed to the Lords of Session, which is contrary to the way in which Maitland normally concluded his entries.⁷⁵

⁷² Adv. MSS. 24.1.4 (fos.123v-24r), 24.1.5 (fol.85r), 24.1.8 (fol.94r-v), 24.1.11 (§.1 fol.72r-v), 25.4.11 (fol.163r); MS 37, fol.39r; La.III.429, fols.102v-3r; La.III.388a, fol.38v; Osborn fb 246, fol.195v. Cf. Adv. MSS. 31.2.2(i) (fol.62r-v), 22.3.34 (pp.319-20); La.III.411, fol.62r; Gg.2.35, fols.77v-78r; MS Gen. 1333, p.72.

⁷³ Adv. MSS. 31.2.2(i) (fos.78v-79r), 22.3.4 (pp.354-55); Gg.2.35, fols.107r-8r; MS 558, fol.192r-v; MS Gen. 1333, p.98.

⁷⁴ Adv. MSS. 24.1.4 (fos.139v-40r), 24.1.5 (fos.98v-99r), 24.1.8 (fol.108r), 24.1.11 (§.2 entry 303, §.3 fol.82r-v), 25.4.11 (fol.169v); MS 37, fol.53r-v (second foliation series); La.III.429, fol.119r-v; La.III.388a, fol.52r-v; Osborn fb 246, fol.212r-v.

⁷⁵ On medieval Scots law and its sources, see Hector L. MacQueen, *Common Law and Feudal Society in Medieval Scotland* (2nd edn, Edinburgh: Edinburgh University Press, 2016); Alice Taylor, *The Shape of the State in Medieval Scotland, 1124-1290* (Oxford: Oxford University Press, 2016).

At its most acute, this addition of learning to manuscript δ saw the original entry replaced entirely with a more learned account of the case. The entry for *Craig v Johnston* (1574) is ca.400 words in length in the Elchies manuscript.⁷⁶ That entry follows Maitland's normal structure, setting out the identity of the parties, the factual background of the case, the arguments made by the parties and the Lords' decision. However in the descendants of manuscript δ this case's entry comprises ca.500 words. It first sets out abstract propositions of law either drawn from or broadly relevant to the case. Much of this opening text is written in Latin and it slightly misinterprets the rationale of the case as it was described by Maitland. Thereafter the action between the parties and its outcome is only briefly described.⁷⁷ It is not clear why this particular entry was subject to such extensive revision.

The learning which this research suggests was added to Maitland's collection in manuscript δ changed the text's essential nature. Maitland had provided notes on cases and the broad principles of law set down therein. Manuscript δ expanded these notes to explore aspects of the learned laws which had—or could—be drawn upon in such cases. This revised version of Maitland's text would have allowed early-modern lawyers to access the rules of Roman law, Canon law and Scottish practick and understand the relationship between them. It would also have allowed them insight into which principles, texts and authorities of learned law the court might accept in future cases.

The second fundamental change that manuscript δ 's owner can be shown to have made to his text was the insertion of additional case-notes. Dolezalek has previously observed that many entries were added to the text in some of the manuscript copies of Maitland; these were identified by him as insertions because they did not appear in the Elchies manuscript.⁷⁸ The stemma constructed for this research show that these insertions can all be attributed to manuscript δ . The new entries were inserted after Maitland's entry on *Home of Manderston v tenants of Oldhamstocks* (1570). Here

⁷⁶ Adv. MS. 31.2.2(i), fols.91v-92r.

⁷⁷ Adv. MSS. 24.1.4 (fos.154v-55r), 24.1.5 (fol.124v), 24.1.8 (fol.134v), 24.1.1 (§.2 entry 440 (incomplete as copy ends mid-way through this entry), §.3 fol.100v), 24.5.11, fols.183v-84r; MS 37, fols.6v-7r (second foliation series); La.III.429, fol.133r-v; La.III.388a, fol.77r-v; Osborn fb 246, fols.224v-25r.

⁷⁸ See e.g., Dolezalek, III, e.g. pp.45-46, 315.

manuscript δ gave a note on the additional case of *Crichton of Innernyte v heirs of Charters* (1569/70) before giving a second, short-copied version of the entry on *Home of Manderston*. It then inserted entries on around ninety cases.⁷⁹

The first fifty-eight of these notes ran chronologically from March 1564/5 to January 1569. It seems likely that these comprised an entirely separate collection of decisions made by a different recorder. This need not have been manuscript δ 's owner, who might simply have been copying another lawyer's collection. Something can be discerned of both the recorder's professional practice and his method. First, he worked not only in the Court of Session but also in the Commissary court, which was the ecclesiastic court established in Edinburgh after the Reformation.⁸⁰ Several of the cases are explicitly said to have been heard in the Commissary court.⁸¹ Secondly, thirty of these notes are on cases heard in the year-long period from March 1564/5. This high number might suggest that the recorder noted cases which he observed rather than just those in which he was directly involved. He made fewer notes subsequently, which might indicate that his professional business allowed him less time to observe cases. This pattern suggests that the recorder might have started the collection before he was admitted as an advocate: such 'expectants' to the Bar often spent a year watching the court's proceedings before formal admission to practice.⁸² Finally, in contrast to Maitland, this lawyer often

⁷⁹ Adv. MSS. 24.1.4 (fos.145v-50v), 24.1.5 (fos.103v-20r), 24.1.8 (fos.113r-30v), 24.1.11 (§.2 entries 325-418, §.3 fols.86r-97v), 25.4.11 (fos.172v-82r); MS 37, fols.58r-2r (second foliation series); La.III.388a, fols.57v-73v; La.III.429, fols.124v-28v; Osborn fb 246, fols.217v-21r.

⁸⁰ On which, see *The Consistorial Decisions of the Commissaries of Edinburgh, 1564 to 1576/7*, ed. by Thomas M. Green (Edinburgh: Stair Society, 2014).

⁸¹ *Re heirs of franktenementars* (1565), although with 'consultation of the Session'; *Bonar* (no date); *The daughter of the goodwife of Balmacalarye v her son* (no date); *Haistie v Hoppingill* (no date); *Re heirship gear* (1565/6); *Borthwick v Lady Elphinstone* (1566/7) [Adv. MSS. 24.1.4 (fos.147r (twice), 147v, - (thrice)), 24.1.5 (fos.104r-v, 104v, 105r, 106v, 108v, 109v), 24.1.8 (fos.114r (twice), 114v, 116r, 118r, 119v), 24.1.11 (§.2 entries 331, 332, 335, 346, 355 (wrongly written as '335'), 362, §.3 fols.86v (twice), 87r, 88v, 90r, 91r), 25.4.11, fols.173r (thrice, although the short-copying of the first and last of these three mean they do not mention the court), 174r, 175r, 175v); MS 37, fols.59r, 59v (twice), - (thrice); La.III.388a, fols.58v (twice, the latter by correction by the copyist), 59r, 60v, 62v, 63v-64r; La.III.429, fols.125v (twice), 126r, - (thrice); Osborn fb 246, fols.218r, 218v (twice), - (thrice)].

⁸² See also the collector of 'Collection A' among the interregnum practicks: Wilson, 'Practicks in Scotland's Interregnum', pp.338-44. On contemporary admission to the Bar, see John W. Cairns, 'Advocates' Hats, Roman Law and Admission to the Scots Bar, 1580-1812', *Journal of Legal History*, 20 (1999), 24-61.

mentioned the authorities pleaded in court. He thus included in his notes citations of Roman law,⁸³ Canon law,⁸⁴ general Scottish practick, acts of parliament, and the medieval Scottish law-books.⁸⁵ He also sometimes highlighted the differences between the rules of the learned laws and those of Scots law.⁸⁶ This might suggest that he had—as was typical of entrants to the Bar at this time—formally studied the learned laws but had little prior experience of Scottish practice.⁸⁷ The frequency with which he noted such authorities is, however, somewhat obscured by the intercalation of postscripts which were later added to manuscript δ and which included extra citations.⁸⁸

The next series of cases added to manuscript δ might be attributable to Maitland but were lacking from this copy originally.⁸⁹ It seems that manuscript δ 's owner became aware that his copy of Maitland omitted certain entries. He thus compared his manuscript to what he understood to be a more complete version of the text and addressed the apparent omissions. He added, first, the three aforementioned cases from March 1569/70 found in the descendants of manuscript α . He then

⁸³ *Haistlie v Hoppingill* (no date); *Home of Wishart v Lawson of Humber and Laird of Spott* (1565/6); *Laird of Balverrie v Ramsay* (1566) [Adv. MS. 24.1.5, fols.106v, 108r-v, 110r. See Adv. MS. 24.1.8, fols.116r, 118r (in which the references are replaced with a reference to 'common, civil, municipal acts statutes command of princes king protector'), 120r; Advocates Library, Adv. MS. 24.1.11, §.2 entries 346, 354, 365, §.3 fols.88v, 90r, 91v; Adv. MS. 25.4.11, fols.174r, 175r, 175v (where the entry is short-copied such that the citation is omitted); La.III.388a, fols.60v, 62r-v, 64r-v].

⁸⁴ *Erskine v Pitcairn of Dennes* (1566); *Borthwick v Lady Elphinstone* (1566) [Adv. MSS. 24.1.5 (fos.109r, 109v), 24.1.8 (fos.118v, 119v), 24.1.11 (§.2 entries 358, 362, §.3 fols.90v, 91r), 25.4.11 (fol.175v, twice); La.III.388a, fols.63r, 63v-64r].

⁸⁵ See e.g., *Melville of Raith* (1565) and *Lord of St John v Sinclair of Roslin's brother* (1570), both citing acts of parliament; *Borthwick v Lord of St John* (1565) citing 'the law and practick of this realme'; *Re heirship gear* (1565/6) citing 'the law of Scotland'; *Laird of Drumlanrick v Laird of Cockpule* (1567/8) citing the medieval law-book, *Legibus forrestarum* [Adv. MSS. 24.1.4 (fos.147r, 149v, - (thrice)), 24.1.5 (fos.104v, 106v, 107r, 108v, 111r), 24.1.8 (fos.114r, 116r, 116v, 118r, 121r), 24.1.11 (§.2 entries 333, 345, 349, 355 (wrongly written as '335'), 369, §.3 fols.86v, 88v, 89r, 90r, 92r), 25.4.11 (fos.173r, 174r, 174v (where the text is short-copied so omits the phrase), 175r (where the text is short-copied so omits the phrase), 176v); MS 37, fols.59v, 61v, - (thrice); La.III.388a, fols.58v, 60v, 61r, 62v, 65r; La.III.429, fols.125v, 127v-28r, - (thrice); Osborn fb 246, fols.218v, 220v, - (thrice)].

⁸⁶ See e.g., *Lawfowrie, a Frenchman v Fleming* (1565/6), in which a Roman rule was rejected because it 'had not been received in this realm' [Adv. MSS. 24.1.5 (fol.107r), 24.1.8 (fol.117r), 24.1.11 (§.2 entry 350, §.3 fol.89r), 25.4.11 (fol.174v); La.III.388a, fol.61v].

⁸⁷ John W. Cairns, 'Lawyers, Law Professors, and Localities: The Universities of Aberdeen, 1680-1750', *Northern Ireland Legal Quarterly*, 46 (1995), 304-31 (pp.305-6).

⁸⁸ See e.g., *Law v Killot of Little Kinnaird* (1565), citing *Drummond* (no date); *Chisholm of Dunblane v Master of Graham* (1567/8) citing *Cumming v Cumming* (no date) [Adv. MSS. 24.1.4 (fos.148r-v, -), 24.1.5 (fos.105v, 110v), 24.1.8 (fos.115r, 120v), 24.1.11 (§.2 entries 338, 367, §.3 fols.87v, 91v), 25.4.11 (fos.173v, 176r); MS 37, fols.60v, -; La.III.388a, fols.59v, 64v; La.III.429, fols.126v, -; Osborn fb 246, fols.219v, -].

⁸⁹ Adv. MSS. 24.1.5 (fos.114v-16r), 24.1.8 (fos.124v-26r), 24.1.11 (§.2 entries 387-93, §.3 fols.94r-95r), 25.4.11 (fos.178v-79r); La.III.388a, fols.68r-69v.

inserted a second version of Maitland's note on *Laird of Hendermaith v Laird of Leys* (1551). This case was noted earlier in the text of manuscript δ , but its owner probably did not recognise it: either the text of his model had corrupted both the parties' names and the date or he misread them. The last of the omitted notes which manuscript δ 's owner added here were on three cases heard in 1564. These three notes have a complex textual history. Research published elsewhere has suggested that they were probably included in Maitland's second authorial holograph, and they are witnessed as being part of the collection in Chalmers's digest. However they are not found in the Elchies manuscript or the descendants of manuscript α .⁹⁰ If it is correct that these entries were in Maitland's second authorial holograph but were lost from the text early in its transmission, then it could follow that the comparison of manuscripts was made with a text still in Maitland's possession or a very early copy. That would in turn both provide further evidence that manuscript δ 's owner was a member of Maitland's wider social or professional circle and also allow a tentative dating for these changes.

The next insertion added to manuscript δ was a note on *Orme and Adamson* (1575/6).⁹¹ This entry concluded with a list of the judges who signed the deliverance. The format of this entry is therefore distinct from Maitland's normal style. This suggests that this note should not be attributed to him in the same way as those just discussed.

Manuscript δ 's owner then added to his copy seventeen case-notes, most of which were between fifty and 100 words in length.⁹² Most of the cases noted here were heard in the spring of 1564/5, although some were heard in 1566 and one perhaps in 1568. The normal format of the entries on the cases heard in 1564/5 was a brief summary of the relevant legal principle followed by the names of the parties and the date; the notes did not always give the outcome of the case or the judges' decision.

⁹⁰ *Earl of Atholl v Laird of Weymss* (1564); *Douglas v tenants* (1564); *Maitland of Lethington v Laird of Yester* (1564) [Chalmers MS, fols.136r, 130r, 130r]. On these cases, the second authorial holograph and the Elchies manuscript, see Wilson, 'Elchies Manuscript'.

⁹¹ Adv. MSS. 24.1.5 (fol.116r-v), 24.1.8 (fol.126r-v), 24.1.11 (§.2 entry 394, §.3 fol.95r-v), 25.4.11 (fol.179r-v); La.III.388a, fol.69v.

⁹² Adv. MSS. 24.1.5 (fos.116v-18v), 24.1.8 (fos.126v-28v), 24.1.11 (§.2 entries 395-411, §.3 fols.95v-96v), 25.4.11 (fos.179v-81r); La.III.388a, fols.69v-71r.

Two of these cases were said to have been heard in the Commissary court.⁹³ The entries for the later cases, however, tended to give the parties' names during the discussion of the case and did report the outcomes. It is unclear whether these notes were drawn from two separate collections of decisions, or whether they were made by one recorder who slightly altered his method over time.

Finally manuscript δ 's owner inserted the notes on the six aforementioned cases heard in 1570 found in manuscript α , as well as an extended version of the note on *Home of Manderston* (1570) also found therein.⁹⁴ It is plausible that these entries were identified during the comparison discussed above and were added at the same time as the other notes which manuscript δ lacked. Perhaps the seventeen cases just mentioned were written on a loose leaf which was inserted between two of the folios on which those originally-omitted entries were written. Those entries then seem to have been intercalated into the text of manuscript δ 's descendants in a manner which interrupted that group.

The practice of manuscript δ 's owner was thus to supplement his copy of Maitland both by inserting entries from different collections and by actively conflating text versions to address omissions in his copy. This led to there being more than one entry in his manuscript for a single case. The most notable example of this is the three versions of the note on *Home of Manderston* (1570). The descendants of manuscript δ and the Elchies manuscript give in the correct place chronologically an entry for this case comprising just under 200 words. It sets out the details of an unsuccessful action of removing (eviction) brought by Manderston against his tenants.⁹⁵ The descendants of manuscript α give an alternative, ca.350-word entry here.⁹⁶ This alternative version was received as an insertion into manuscript δ

⁹³ *Tulloch v Sinclair* (1564/5); *Executors of Bishop of Dunblane* (1564/5) [Adv. MSS. 24.1.5 (fos.116v, 117v-18r), 24.1.8 (fos.127r, 128r), 24.1.11 (§.2 entries 397, 406, §.3 fols.95v, 96v), 25.4.11, (fos.179v, 180v); La.III.388a, fols.70r, 70v].

⁹⁴ Adv. MSS. 24.1.4 (fol.150r-v), 24.1.5 (fos.118v-20v), 24.1.8 (fos.129r-30v), 24.1.11 (§.2 entries 412-18, §.3 fols.97r-98r), 25.4.11 (fos.181r-82r); MS 37, fol.2r (second foliation series); La.III.429, fol.128r-v; La.III.388a, fols.71v-73v.

⁹⁵ Adv. MSS. 31.2.2(i) (fol.86r), 24.1.4 (fos.145v-46r), 24.1.5 (fol.103v), 24.1.8 (fol.113r), 24.1.11 (§.2 entry 325, §.3 fol.86r), 25.4.11 (fol.172v, wherein the entry was short-copied to fewer than fifty words); MS 37, fol.58r-v; La.III.429, fol.124v; La.III.388a, fol.57v; Osborn fb 246, fol.217r-v.

⁹⁶ Gg.2.35, fols.119v-20r; Adv. MS. 22.3.4, pp.369-70; MS 558, fol.202r-v; MS Gen. 1333, p.110.

through the owner's conflation of texts.⁹⁷ This longer note gives the same details, although with different wording and the implication that the action was successful against some tenants. It then records another hearing of the case, which was pursued by Manderston unsuccessfully. The entry concludes with a reference to 'the like practick' of a case pursued by a John Leslie of Wauchton. It is unclear whether this citation was part of the original entry. A third version of this entry seems to have resulted from the extended version having been short-copied to around eighty-five words. This shortening somewhat obscures both the relationships between the relevant persons and the legal arguments. It does not provide the citation of *Leslie of Wauchton*, which might support the interpretation of that citation as a later addition. It does, however, record a further argument made by just one of the tenants, named only as 'a Fortoun'. This argument was repelled on the basis of 'a practick before used between my lord Glames and [blank]'. This short-copied version is found only in the descendants of manuscript δ .⁹⁸ It is located therein at the beginning of the inserted entries, the next-but-one note after the 200-word version of the entry. It seems likely that the 200-word version which is found in the Elchies manuscript and was included in the text of manuscript δ when it was copied was the earliest version. The others would seem to be subsequent revisions of the entry which include details of later hearings. This would lend support to the suggestion above that the intermediate ancestor of manuscript δ pre-dated manuscript α , and that some revisions were made to the authorial holograph between the copying of those two first-generation descendant texts.

Thus the text in manuscript δ seems to have been rather different from the other versions of Maitland's collection circulating at the time. This difference was a result of the changes made to the text by its owner. The three most important changes identified by this research were its expansion through around ninety inserted case-notes, the systematic annotation of the text with learned and other references, and the inclusion of the text within a wider compendium of case-notes with also

⁹⁷ Adv. MSS. 24.1.5 (fos.119v-20r), 24.1.8 (fol.130r), 24.1.11 (§.2 entry 409, §.3 fol.97v), 25.4.11 (fol.181v, wherein it was short-copied to ca.100 words); La.III.388a, fol.72v.

⁹⁸ Adv. MSS. 24.1.4 (fol.146v), 24.1.5 (fos.103v-4r), 24.1.8 (fol.113v), 24.1.11 (§.2 entry 327, §.3 fol.86r), 25.4.11, fol.172v; La.III.388a, fol.58r; La.III.429, fol.125r; Osborn fb 246, fols.217v-18r; MS 37, fols.58v-59r.

those collected by Sinclair and Colville. These characteristics are witnessed in the texts of manuscript δ 's descendants, sometimes in a somewhat corrupted form.

b) The First-Generation Descendants, Manuscript ϵ and Edinburgh University Library, La.III.388
(The Hay Manuscript)

It seems likely that manuscript δ was copied at least twice: into the early-seventeenth-century manuscript Edinburgh University Library, La.III.388 ('the Hay manuscript')⁹⁹ and into a manuscript which is now lost but can be called 'manuscript ϵ '.

The existence of manuscript ϵ is evinced by approximately twenty variants (around half of which are genealogically revealing) which are shared by all its descendants but not by the Hay or any other manuscript.¹⁰⁰ Thus, for example, in his note on *Drummond of Carin v Bisset* (1551-1551/2), Maitland noted that there had been a *spuilzie* (unlawful dispossession) of documentary evidence, 'and specially a charter and precept of sasine'. There were two variants in this phrase in manuscript ϵ which cannot have been present in the text seen by the copyist of the Hay manuscript. First, their common ancestor (manuscript δ) read either 'specially of' or 'spulzying of', thus it added the word 'of' and perhaps substituted the word 'specially'. Manuscript ϵ received the addition of 'of' but omitted the word 'specially' (or 'spulzying'), which was also thus omitted from its descendants. The Hay manuscript, however, reads 'spulzying of' meaning its parent must have included two words here so cannot have been manuscript ϵ . Secondly, manuscript ϵ omitted the words 'precept of'; this phrase was thus omitted in its descendants. However the Hay manuscript gave 'precept and'.¹⁰¹ Thus the full text, or

⁹⁹ On which, see Dolezalek, II, p.212.

¹⁰⁰ Around another thirty variants are shared by the descendants but not Adv. MS. 25.4.11, which was short-copied so did not always preserve the text. See e.g. in the entry for *Frenchman v Davidson of the ferry* (1550/1) the substitution of 'hear' for 'see' and the omission of 'desire'; and in *Laird of Langton v Goodman of Clowysle* (1552), the substitution of 'it' for 'the same' (which is in a sentence amended by the copyist in Adv. MS. 25.4.11) and 'day' for 'time' (which is shared by this manuscript). See Adv. MSS. 24.1.4 (fos.90r, 96r), 24.1.5 (fos.51r, 58r), 24.1.8 (fos.60r, 66r), 24.1.11 (§.1, fols.48r, 52r), 25.4.11 (fos.141r, 146r); MS 37, fols.1r, 11r; La.III.429, fols.64v, 71r; Osborn fb 246, fols.155v, 166r-v. Cf. La.III.388a, fols.1r, 8r.

¹⁰¹ Adv. MSS. 24.1.5 (fol.54v), 24.1.8 (fol.62v), 24.1.11 (§.1 fol.49v), 25.4.11 (fol.143r); La.III.429, fol.67r-v; La.III.388a, fol.3v.

perhaps a slightly corrupted form of it, was present in the model from which the Hay manuscript was copied (i.e. manuscript δ). These variant readings can thus be attributed to manuscript ε.

Manuscript ε was apparently the model for—or at least is now the most recent identifiable ancestor shared by—three manuscripts. One of these exists as a partial copy in the Gilmour manuscript. The other two are again lost but can be inferred as ancestor manuscripts and can be called manuscripts ‘ζ’ and ‘η’.

c) The Earliest Second-Generation Descendant, Manuscript ζ

Manuscript ζ can be identified as the most recent common ancestor of the early-seventeenth-century copy in the aforementioned Murray manuscript and the mid-seventeenth-century copy in Advocates Library, Adv. MS. 24.1.5.¹⁰² The existence of manuscript ζ is evinced by the forty-five variants (twenty-seven of which are genealogically revealing) unique to these two manuscripts and the descendants of the Murray manuscript.¹⁰³ For example, in the entry on *Prior of St Andrews v Laird of Kinnear* (1555/6), the first of the parties’ arguments was set out in a sentence beginning ‘The said matter being called’. Manuscript ζ, however, substituted ‘matter’ for ‘prior’, and thus read as though it were the pursuer rather than the case which was called before the Lords. Later it also substituted the words ‘thing’ and ‘unmoveable’ for the Latin equivalents, ‘res’ and ‘immobilis’.¹⁰⁴ In the entry on *Laird of Craigie v Laird of Kinfauns* (1557), manuscript ζ substituted within the phrase ‘the remnant of the years after his decease’ the word ‘decease’ with ‘interest’.¹⁰⁵

¹⁰² The watermark of a round shield is found under the text of Maitland’s collection, nearly identical to *Gravell*, SLD.009.1 (1649). Cf. Dolezalek, II, p.165.

¹⁰³ See also, e.g., the omission of an instance of the phrase ‘he reclaimed’ and the relocation of ‘found’ in *Johnston v Johnston* (1555). The naming of the deceased as Agnes, and the substitution of ‘husband’ for ‘defender’, in *Laird of Traquair v Home of Broomhouse* (1562/3). The omission of the lady’s territory as ‘Stanehouse’ at the second occurrence in *Hamilton &c v Sheriff Depute of Perth &c* (1564). Similarly the omission of the Earl’s territory as ‘of Huntly’ on second mention in *Laird of Boyne v tenants* (1577). Adv. MSS. 24.1.4 (fos.100v, 112r-v, 118r-v, 168r), 24.1.15 (fos.63r, 75r, 80v, 133v); MS 37, fols.19r, 30v, 34v, 20v (second foliation series); La.III.429, fols.76v, 90r, 96r, 148r; Osborn fb 246, fols.171v, 183r-v, 189r, 235v.

¹⁰⁴ Adv. MSS. 24.1.4 (fol.101r), 24.1.5 (fol.63v); MS 37, fol.19v; La.III.429, fol.77r; Osborn fb 246, fol.171v.

¹⁰⁵ Adv. MSS. 24.1.4 (fol.103r), 24.1.5 (fol.66r); MS 37, fol.23r; La.III.429, fol.79v; Osborn fb 246, fol.174r.

The existence of this ancestor text is also evinced by the omission of fifteen entries from its descendants. The most remarkable example of such an omission can probably be attributed to a folio becoming detached from manuscript ζ. When it circulated for copying it provided only the heading and opening three words of the entry for *Laird of Rossie v witnesses of Crichton* (1565). It then omitted the next five entries before providing only the last lines of the entry for *Laird of Findlater v his daughter-in-law* (1565).¹⁰⁶ Given their normal length, these notes were probably contained on a single folio leaf.¹⁰⁷

Manuscript ζ's owner evidently annotated his copy, but much less often than the owner of manuscript δ. For example, he added to the entry on *Wood in Anstruther v Melville in Carnbee* (1565) a reference to another case with which he was familiar: 'The like was practised between the prior of Pluscarden and Alexander Innes touching the fishing of Spey'.¹⁰⁸ This action was likely heard between 1558 (when the extended litigation about the fishing rights seems to have begun) and 1578 (when Alexander Innes alienated all his lands to a relative).¹⁰⁹ This means that it is unhelpful for dating manuscript ζ.

However its immediate descendant, the Murray manuscript, was written between ca.1610 and 1620.¹¹⁰ This text was a fifth-generation descendant of Maitland's authorial holograph and provides a terminal date for the circulation of the previous generations of texts.¹¹¹ After the Murray manuscript's text was written, it too was used as a model: as mentioned above, the Yale manuscript and its descendants (Adv. MS. 24.1.4 and the Fountainhall manuscript) contained sections of text drawn from the Murray manuscript. This is suggested by the fifty variants unique to those four manuscripts, about

¹⁰⁶ Both texts which were copied directly from manuscript ζ provided fragments and then explicitly noted the loss: Adv. MS. 24.1.5, fol.84v; La.III.429, fol.102r.

¹⁰⁷ See e.g. Adv. MS. 31.2.2(i), fols.60v-61v.

¹⁰⁸ Adv. MSS. 24.1.4 (fol.123r-v), 24.1.5 (fos.84v-85r); MS 37, fol.39r; La.III.429, fol.102r-v; Osborn fb 246, fol.195r-v.

¹⁰⁹ S.R. MacPhail, *History of the Religious House of Pluscardyn* (Edinburgh: Oliphant, Anderson and Ferrier, 1881), pp.125-26; *Ane Account of the Familie of Innes compiled by Duncan Forbes of Cullodem, 1698* (Aberdeen: Spalding Club, 1864), pp.29-30.

¹¹⁰ Murray MS, fols.19r, 62r, 139v.

¹¹¹ La.III.429, fols.62r, 138v.

half of which are genealogically revealing.¹¹² However the strongest evidence for the identification of the Murray manuscript as the ancestor of these later texts is again found in the omission of entries.

All three descendant texts—the Yale manuscript, the Fountainhall manuscript, and Adv. MS. 24.1.4—received from the Murray manuscript (and in turn manuscript ζ) the omission of *Laird of Rossie* and the cases immediately following it.¹¹³ It is interesting to note that the Fountainhall manuscript's owner later attempted to correct this loss of text. He compared a different version of the text to his own and annotated his copy with the missing details of the entry on *Laird of Findlater* and further provided brief summaries of the other omitted entries.¹¹⁴

Moreover, the Murray manuscript itself suffered a loss of text after its completion, 'probably due to at least one quire having fallen out'.¹¹⁵ Its text now breaks off at the bottom of folio 127v with the phrase 'that the superior can' in the entry for *Lord of St John v Sinclair of Roslin's brother* (1570). This entry was one of the collection of fifty-eight notes inserted into manuscript δ. Atop what is now folio 128r of the manuscript, the text gives the final lines of *Reid of Aitkenhead v Melville* (1570) before continuing with *Grey v Rollock* (1570/1). These were the last two notes inserted into manuscript δ by its owner. The seventy inserted notes normally found between *Lord of St John* and *Reid of Aitkenhead* in most of the descendants of manuscript δ were almost certainly written on the lost quire; this quire probably comprised ten or twelve leaves, which were the sizes used for the Murray manuscript at this time. The Murray manuscript's descendants break off at the same point in the entry for *Lord of St John*. Each then begins the entry for *Grey* on a new page, omitting the fragment of *Reid of Aitkenhead*.

¹¹² See e.g., the substitution of 'inferred' for 'mistert' in the phrase 'sasine mistert no reduction' in *Bisset v Bisset and Bisset* (1564). In *Lady Polmais v Laird of Drum Castle* (1562/3), one of the instances of the word 'lands' was amended to 'lady' in the Murray manuscript, and this variant reading appears in all three extant descendants. The word 'letters' was substituted for 'cause' in *Crichton v Crichton of Cranston-Riddle* (1565). The phrase 'of the which one was that minors might be called upon their father's debt, and the obligation forsaid was their father's debt, because their goodsire and father was obliged to fulfil the said obligation, the' was omitted from *Laird of Pitsligo v his niece* (1568). Adv. MS. 24.1.4, fols.120v, 112v-13r, 123v, 139v-40r; MS 37, fols.36v, 31r, 39r, 53r; La.III.429, fols.99r-v, 90r-v, 102v, 119r-v; Osborn fb 246, fols.192v, 183v, 195v, 212r.

¹¹³ Osborn fb 246, fol.195r; MS 37, fol.38v; Adv. MS. 24.1.4, fol.123r.

¹¹⁴ MS 37, fol.38r-v.

¹¹⁵ Dolezalek, III, p.264.

This loss of text was to have a significant impact on the subsequent understanding of Maitland's collection, as will be shown below.

- d) The Extant Second-Generation Descendant, Advocates Library, Adv. MS. 24.1.11 ('The Gilmour Manuscript'), and its descendant, Advocates Library Adv. MS. 24.1.8

The second descendant copied from manuscript ε might have been a text which now comprises part of Advocates Library, Adv. MS. 24.1.11, 'the Gilmour manuscript'. The copy of the collections of decisions by Sinclair, Maitland and Colville in the Gilmour manuscript is explicitly dated to 1631.¹¹⁶ The nature of the Gilmour manuscript is complex. The first seventy-three folios of the text of Maitland's collection were written by one scribe. A later annotator thereafter added numerous notes into the margin. It seems that in doing so the annotator made a sustained effort to provide a mechanism for his own quick reference to those cases he deemed to be important. He annotated in this same manner the copy of Sinclair's collection which is bound into the manuscript in front of Maitland.

There then follows a distinct section of text which provides a copy of the next ca.190 cases of Maitland's collection, ending part-way through the entry for *Craig v Johnston* (1574). This was written by more than one scribe, does not provide annotations, omits the first forty entry numbers, and is only partially foliated. A third distinct section of text is then bound into the manuscript. It gives a second copy of these ca.190 entries then continues to the end of the text of Maitland's collection. This last section of text may have been written by the original scribe, is foliated, and has marginal notes which were written by that same scribe.¹¹⁷ The variants in the second and third sections of text suggest that both were drawn from the same ancestor manuscript.

¹¹⁶ Adv. MS. 24.1.11, fols.125v, 138r, 141r. This date is confirmed by the book list of 1632 on first front flyleaf, and the watermark bearing the letters IP and the arms of Burgundy and Austria [cf. *Gravell*, ARMS.403.1 (1592 Utrecht), ARMS.407.1 (1593 Emden) ARMS 404.1 (1594) ARMS.405.1 (1597 Bewegen-Rheine) ARMS.402.1 (1598 Dole) ARMS.401.1 1598/9 Bremen ARMS 406.1 (1601 Brussels) ARMS.404.1 (1594), ARMS.020.1 (1600, Bagot papers), ARMS.018.1 (1603)]. Cf. *Dolezalek*, II, p.179.

¹¹⁷ A spot check of the copy of Colville following that of Maitland suggests that the annotations alongside that text were likewise added contemporaneously with the copying of the main text.

The presence in this manuscript of two texts of the latter part of Maitland's collection is important to understanding its nature. Dolezalek has suggested that the third section of text was the original text, that these leaves were temporarily misplaced, that the second section of text was made as a replacement, that the original was then found, and that both copies were then bound into the manuscript.¹¹⁸ However this does not explain why the second section of text ends midway through an entry which is in the middle of a folio in the third. Nor does it explain the marginal notes. More than 300 marginal notes are present in the manuscript. Most were added by the annotator of the first seventy-three folios, but 125 appear in the third section of text and were written by the scribe contemporaneously with the text. This raises the question as to how the scribe of that copy of the latter part of the collection was able to add the marginal notes contemporaneously with the text of the entries, but those on the first seventy-three folios were original annotations when added by a later hand.

One explanation for this is that a complete copy of Maitland's collection was drawn from manuscript ϵ , and that only part of that copy now survives: the first seventy-three folios of the Gilmour manuscript. That copy was annotated by an early owner then used as a model for copying more than once. Possibly as a result of that process, the leaves from folio seventy-four became detached and were lost. The two copies of the latter part of Maitland's collection now bound into the manuscript might both have been copied from that once-complete text. The relevant folios of these two descendant copies were bound into the parent manuscript after that loss occurred. Thus it would seem that Dolezalek's thesis to explain the loss of text is largely correct, but that the folios which were lost from the original copy may never have been found.

¹¹⁸ Dolezalek, II, p.181.

Some support for this theory is found in the late-seventeenth-century copy, Advocates Library, Adv. MS. 24.1.8.¹¹⁹ This text was also copied from the Gilmour manuscript and it received all 300 marginal notes. Thus it is evident that the Gilmour manuscript did circulate for the purposes of copying. However it seems credible that Adv. MS. 24.1.8 was not drawn from the original copy when it was still complete. Rather it was written using the first seventy-three folios and the second-bound copy of the latter part of the text. Around ten genealogically-revealing variants are found in Adv. MS. 24.1.8 and that second-bound copy but not in the first-bound copy. Some of these variants omit phrases of text. The presence of those phrases in the first-bound copy means that they must have appeared in the original text of the Gilmour manuscript. It follows that the omission must have been original to the third section of text when it was copied, and that Adv. MS. 24.1.8 was copied from it.¹²⁰ Adv. MS. 24.1.8 thus seems to be both a second- and third-generation descendant of the original text of the Gilmour manuscript, which was in turn a descendant of manuscript ε.

Adv. MS. 24.1.8 is an interesting manuscript for one further reason. It has been shown above that manuscript δ was annotated with discussions of learned law. However the copyist of Adv. MS. 24.1.8 was uninterested in these references, and often exercised his scribal discretion to omit them. He omitted the aforementioned citations of Roman law in *Laird of Pitsligo v his niece* (1568) and the citations which were found in the Gilmour manuscript in the entries for *Douglas in Waleston v Graham of Knockdolian* (1570), *Heirs of Ardrross v Dischington* (no date) and the aforementioned case of *Reid of Aitkenhead v Melville* (1570).¹²¹ He replaced citations of specific texts of Roman law in the entry for *Home of Wishart v Lawson of Humbie and the Laird of Spott* (1565/6) with a vague reference to

¹¹⁹ Dolezalek, II, pp.170-75. A watermark of a fleur-de-lis in a crowned shield might be identical to that found in Adv. MS. 24.1.5, also datable to the late-seventeenth century; at the back of the manuscript, the initials 'IHR' appear above a cross [Heawood, 2954-55, 2957].

¹²⁰ For example, in the expanded version of the note on *Home of Manderston*, both the second-bound copy and Adv. MS. 24.1.8 omit the phrase 'not nor yet their superior'; this phrase is present in the first-bound copy. In the version also apparent in the Elchies manuscript (Adv. MS. 31.2.2(i)), the phrase which normally reads 'yet terms to run' was rather 'yet are terms to run' the second-bound copy and Adv. MS. 24.1.8, but was only 'terms to run' in the first-bound copy. See Adv. MS 24.1.11, §.2 entries 416, 325, §.3 fols.97v, 86r; Adv. MS 24.1.8, fols.130r, 113r.

¹²¹ Adv. MS. 24.1.8, fols.108r, 129r, 119v-20r, 130r-v.

‘common, civil, municipal acts, statutes, command of princes, king, protector’.¹²² This pattern of editorial behaviour suggests that this copy was made by a lawyer for his own use. It was not uncommon for early-modern Scottish lawyers to copy themselves the books they desired. Both those learning the law and more established practitioners did so, probably as an exercise to enhance one’s professional understanding.¹²³

e) The Final Second-Generation Descendant, Manuscript η

The third direct descendant of manuscript ε proposed by this research might be called manuscript η. This intermediate ancestor is witnessed by the text of the early-seventeenth-century copy in Advocates Library, Adv. MS. 25.4.11 (the Hailes manuscript)¹²⁴ and by fragments in the Aberdeen manuscript. The latter has already been discussed as a copy of the lost authorial holograph of the collection of decisions of Alexander Spalding (manuscript β).¹²⁵ Unfortunately it is difficult to learn much of manuscript η. Spalding copied only around fifty of the first sixty entries of Maitland’s collection from manuscript η so there are not two independent witnesses to much of the text. A comparison is somewhat frustrated of even those entries which are witnessed in both descendants. Although the scribe of the Aberdeen manuscript was very careful,¹²⁶ Spalding himself appears to have been quite free in his copying. Moreover most of these entries in the Hailes manuscript were short-copied.¹²⁷ Two characteristics of manuscript η can, however, be inferred. First, it was a complete (or

¹²² Adv. MS. 24.1.8, fol.118r.

¹²³ On this practice, see e.g. Wilson, ‘Textual Tradition’, pp.43; Ford, p.63 n.268.

¹²⁴ The watermark at the start of Maitland’s collection is of a pot but is very faint; the watermark found on the paper latterly [e.g. fol.184] is also found at the start of the volume and can be dated to ca.1600 [See Dolezalek, II, p.303; cf. Heawood, 3551 (London, 1589), 3552 (London 1591), 3560 (c.1580), 3561 (London 1600)]. The scribe, Joseph Miller, may have been the man admitted as an advocate in 1602 [Dolezalek, II, p.303].

¹²⁵ See e.g., the entry on *Drummond of Carin v Bisset* (1551-1551/2) [MS 558, fol.233v; Adv. MS. 25.4.11, fol.143r]. Here both extant manuscripts omit the phrase ‘upon the said decreit’ from its usual place; the Aberdeen MS relocates this phrase slightly later in the text; Adv. MS. 25.4.11 inserts in that new place a short-copied version, ‘thereupon’. Later in this entry, both omit the phrase ‘in the four forms’.

¹²⁶ Wilson, ‘Spalding’, pp.187, 191, 203.

¹²⁷ Thus *Bisset v Bisset and Bisset* (1564) was normally described in ca.500 words, but in the Hailes manuscript it was summarised in around fifty words [Adv. MS. 25.4.11, fol.161v]. The entry for *Laird of Traquair v Home of Broomhouse* (1562/3) was normally ca.700 words in length, but herein it was summarised in fewer than fifty words [Ibid., fol.157v]. The entry for *Lady Polmais v Laird of Drum Castle* (1562/3) was short-copied in three places but otherwise adhered approximately to its model’s wording [Ibid., fol.157v]. Such shortening of entries

near-complete) copy. Secondly, it cannot have been short-copied along the lines of what is seen in the Hailes manuscript, because Spalding was able to draw from it the full text of the relevant entries.

f) Other manuscripts descended from manuscript δ

Other manuscripts can be identified as also having descended from manuscript δ . However the state of their texts has prevented their relationship to the other manuscripts in this group from being identified more precisely. The seventeenth-century copy in Edinburgh University Library, La.III.739 likely once contained a complete copy of Maitland's collection, but now only the very end of the text is present.¹²⁸ This text clearly belongs to the δ group of texts but there is insufficient evidence to show whether it was copied from manuscript δ itself or a descendant of it. Meanwhile the copyist of National Records of Scotland, RH13/68 selected only some of Maitland's entries for inclusion in his manuscript and also short-copied the chosen entries into single-sentence summaries.¹²⁹ However this text can be identified as a descendant of manuscript δ because it includes the insertions present therein. That it was probably not a descendant of the Murray manuscript can be surmised by its reference to the notes which were probably written on the quire which became detached from that manuscript.¹³⁰

Conclusion: Transmission and Understanding of Maitland's Collection

Research published elsewhere has shown that Maitland used as his authorial holograph of his collection of decisions first the Elchies manuscript and thereafter a second, lost volume. However it is reasonable to suggest that the other earliest witnesses to the text—that seen by David Chalmers of Ormond, the inferred ancestor manuscript α , and the intermediate ancestor of manuscript δ —were

had a significant impact on the text's overall length: Maitland's collection (plus the ninety insertions) is contained herein on fewer than fifty folios, whereas most copies are around eighty folios or more in length.

¹²⁸ On which, see Dolezalek, III, p.268. However note that the date proposed for the text's completion (post-1642) is based on the presence in that manuscript of a later collection of decisions by Sir Alexander Gibson of Durie, but this was written by a different hand on a new type of paper.

¹²⁹ Probably a seventeenth-century copy: the watermark of a bear is not entirely dissimilar to *Gravell*, BEAR.002.1 (1668), but is printed vertically. On which, Dolezalek, III, pp.130-33.

¹³⁰ RH13/68, fols.3r-v, 4r of Maitland.

also made in Maitland's household. The partial copy made in ca.1566, La.III.411, was probably made under Maitland's supervision too. The production of so many copies at Maitland's instruction might be explained by these having been presentation copies, intended as gifts for those in his circle. Hence the presentation of one of these first-generation copies to David Chalmers of Ormond in the spring of 1565/6.¹³¹ These texts seem to have been very carefully written, as would be expected of presentation copies.¹³²

The reconstruction of the stemma of Maitland's collection suggests the copies which circulated in the early-modern period—other than La.III.411 and that presented to Chalmers—descended from manuscripts α and δ . It also indicates that there were only a few intermediate ancestors which have since been lost during the intervening passage of time. It thus seems that, overall, a relatively small number of manuscript copies were made of Maitland's collection, despite its importance. This is explained by there being only a small legal community working in late-sixteenth-century Edinburgh. Between 1555 and 1590 the number of advocates recorded as practising in the Court of Session increased from fourteen to fifty.¹³³ There is evidence in Spalding's collection that the text circulated beyond Edinburgh, but the legal communities working in and around the inferior courts were probably smaller again.¹³⁴ Maitland's collection was also one of several similar works circulating during the early-modern period, so a lawyer seeking such a source might acquire or make a copy Maitland but alternatively might choose a different text. The demand for copies of Maitland's collection had an impact on the method of production of copies.

Stationers in early-modern Scotland might divide a copy of a desirable text into separate quires or pecia so that more than one scribe could work on different parts of the text at the same time. This increased the speed of production and allowed the stationer to satisfy more than one client

¹³¹ Wilson, 'Elchies Manuscript'.

¹³² On presentation copies, see Woudhuysen, pp.90-103.

¹³³ John Finlay, *Men of Law in Pre-Reformation Scotland* (East Linton: Tuckwell Press, 2000), esp. pp.4-6.

¹³⁴ Wilson, 'Spalding', pp.178-79; Adelyn L.M. Wilson, 'Legal Practice and Legal Institutions in Seventeenth-Century Aberdeen, as Witnessed in the Lives of Thomas Nicolson of Cockburnspath and his Associates' (forthcoming).

simultaneously.¹³⁵ Evidence of pecia copying has been found for an important seventeenth-century Scottish law-book.¹³⁶ However, although Dolezalek has suggested that La.III.739 was copied from pecia,¹³⁷ there is generally little evidence of pecia copying present in the manuscripts of Maitland.¹³⁸ Instead it seems likely that most of the copies were drawn from bound volumes, probably as a result of one lawyer lending his manuscript to another for that purpose.¹³⁹ Little evidence survives of the identities of the men who copied Maitland's collection. Elsewhere it has been shown that lawyers would sometimes hire scribes or employ secretaries for this work.¹⁴⁰ Perhaps the marginal dates in the Murray manuscript indicate that this copy was written by such a man. Those texts written by more than one hand—the Cambridge, Murray, Fountainhall and Yale manuscripts as well as La.III.411 and Adv. MSS. 24.1.4 and 24.1.5—may also have been copied by secretaries or professional scribes (at least in part). However, as mentioned, lawyers would also undertake the task of copying themselves, to further their education in the law.¹⁴¹ Hence the editorial behaviour of the copyist of Adv. MS. 24.1.8 discussed above. Additionally, the scribe of the heavily short-copied text in the Hailes manuscript, Joseph Miller, might have been the man admitted as an advocate in 1602.¹⁴²

This method of circulation and copying of texts means that there appears to be (from the sample entries) relatively little evidence of contamination in the texts. The copyist of the Yale manuscript

¹³⁵ This should not be confused with the more regulated 'pecia system' of medieval universities, on which see e.g. Graham Pollard, 'The Pecia System in the Medieval Universities' in *Medieval Scribes, Manuscripts and Libraries: Essays presented to N.R. Ker*, ed. by M.B. Parkes and A.G. Watson (London: Scholar Press, 1978), pp.145-61; Jean Destrez, *'La pecia' dans les manuscrits universitaires du XIIIe et du XIVe siècle* (Paris: Éditions Jacques Vautrain, 1935); M.B. Parkes, 'Book Provision and Libraries at the Medieval University of Oxford', in *Idem, Scribes, Scripts and Readers, Studies in the Communication, Presentation and Dissemination of Medieval Texts* (London: Hambledon Press, 1991), pp.299-310.

¹³⁶ Wilson, 'Textual Tradition', esp. pp.33-39. On the use of pecia in law books, see e.g. Frank Soetermeer, 'Between Codicology and Legal History: Pecia Manuscripts of Legal Texts', *Manuscripta*, 49 (2005), 247-67.

¹³⁷ Dolezalek, III, p.268.

¹³⁸ The changes in instalments of copying in the Fountainhall manuscript does sometimes correspond to changes in quire [MS 37, e.g. 2v-3r, 12v-13r] but it does not seem to be the case that the Yale manuscript was transmitted in pecia.

¹³⁹ On scribal communities, see Love, pp.177-84; Wilson, 'Textual Tradition', pp.42-43.

¹⁴⁰ Wilson, 'Textual Tradition', pp.42-43; Ford, pp.61-62; *Journals of Sir John Lauder, Lord Fountainhall, with his observations on public affairs and other memoranda, 1665-1676*, ed. by D. Crawford (Edinburgh: Scottish History Society, 1900), pp.264-65, 270.

¹⁴¹ Wilson, 'Textual Tradition', pp.43; Ford, p.63 n.268.

¹⁴² Dolezalek, II, p.303.

relied upon more than one model when writing his copy, and Spalding used more than one manuscript to copy fragments into his own collection. It is possible that there might be localised contamination in the copy of Sinclair's decisions in Adv. MS 24.1.5, although none has been found in its text of Maitland's collection.¹⁴³

The practice of lending bound manuscripts for copying also means that several of the ancestor manuscripts identified by this research survive: the Elchies, Cambridge, Yale, Gilmour and Murray manuscripts were all used as models for copying. A greater rate of loss of ancestor manuscripts might be expected where models were routinely broken up to circulate as disbound pecia.¹⁴⁴

That the model texts were often bound volumes owned by lawyers also meant that some had been annotated by their owners. These annotations and other insertions were preserved in the copies drawn from these manuscripts, as is seen particularly in the descendants of manuscripts δ , ζ and the Gilmour manuscript. However many of the manuscript volumes contained content other than the text of Maitland's decisions. Copyists often took the opportunity to write out the full content of the borrowed manuscript, drawing from it not only the copy of Maitland's collection but also other material. The most important example of this is the preserving of the collections of Sinclair, Maitland and Colville as a compendium set into the descendants of manuscript δ . Other examples include a list of charitable donations in Adv. MS. 24.1.4 which was also taken from the Yale manuscript, and a note on a gift of an alterage in Adv. MS. 24.1.8 which was also taken from the Gilmour manuscript.¹⁴⁵

The inferred ancestor manuscript δ is undoubtedly the most important of the manuscript texts regarding its impact on contemporary perceptions of Maitland's collection. Its inclusion of Maitland between copies of the decisions of Sinclair and Colville resulted in the perception of a close association of the three. This owner's annotation of manuscript δ with learned law meant that the entries

¹⁴³ See the repetition of text and change of hand at Adv. MS. 24.1.5, fols.30v-31r. This might indicate simultaneous copying from pecia.

¹⁴⁴ Cf. Wilson, 'Textual Tradition', esp. pp.64-65.

¹⁴⁵ See also Dolezalek, II, pp.164, 173.

appeared to be consistent with the style of those other two collections in terms of their use of authority, when in fact the collection by Maitland can be distinguished because of its lack of such citations. Manuscript δ 's owner also introduced around ninety case-notes drawn from other collections of decisions, which gave the impression that it was a much more voluminous collection than Maitland had actually compiled.

The incorporation of Maitland's text into a wider compendium including three collections of decisions had a significant further impact on later understanding of the text. It was not necessarily the case that every lawyer who sought a copy of Maitland's case-notes was concerned as to the identity of the original recorder.¹⁴⁶ Indeed it seems that manuscript ϵ did not acknowledge start of Maitland's decisions or Colville's decisions, as this information was lacking in all of its extant descendants. However other lawyers were keen to know which recorder had noted a particular case. Thus a later hand annotated the Gilmour manuscript to identify the start of Maitland's collection. Such retrospective identification of the separate collections within a compendium might be subject to error. One such error is seen in the Yale manuscript, the copyist of which did not identify the different collections within the text. A later owner seems to have known that this manuscript contained at least the collections of both Maitland and Colville, and recognised the start of Maitland sufficient to give a heading at the relevant point. However the aforementioned loss of a quire in its ancestor, the Murray manuscript, meant that the Yale manuscript had an obvious loss of text from the middle of the note on *Lord of St John* to the start of the note on *Grey*, the latter of which had been started by the copyist atop a new page. A later owner of the Yale manuscript evidently misidentified the break here as also being the point of change between the collections by Maitland and Colville. He thus added a heading wrongly identifying *Grey* as the start of Colville's collection. There were good grounds for him having done so: Colville's collection includes an entry for a later hearing in the on-going process of litigation between Grey and Rollock (heard in 1573),¹⁴⁷ so the annotator could reasonably have assumed that

¹⁴⁶ Ford, p.60.

¹⁴⁷ See the note in Colville's collection: Adv. MS. 22.3.4, p.426; Signet Library, MS 34, fol.6v.

the lost text included both the end of Maitland and the first entries at the start of Colville. His error was then followed by two later annotators who added to his heading. The copyists of both descendants of the Yale manuscript therefore acknowledged Maitland's note on *Grey* as being the start of Colville's decisions.¹⁴⁸

This erroneous attribution of the latter ninety-two entries of Maitland's collection to Colville did not remain confined to these three manuscripts. The owners of some of the manuscripts which also contained copies of Colville obviously became aware of the attribution of content in the Yale manuscript and its descendants. They thus annotated the relevant part of their own copy accordingly. Adv. MS. 24.1.5 has an annotation by a later hand identifying *Grey* as the start of Colville's collection.¹⁴⁹ Similarly an insert pasted to the second (detached) front flyleaf of the Tinwald manuscript queries the original copyist's (correct) attribution of the end of Maitland's collection as being on page 416; it suggests instead 'I think it should end p.371', which is the page on which *Grey* is found. Thus manuscript copies of Maitland's collection descended from other ancestor texts became contaminated with this erroneous attribution. This is an important insight into the working practices of the owners of these manuscripts at this time and highlights the fluid nature of this genre of legal literature.

There was a further consequence of the identification of *Grey* as being the start of Colville's collection. As has been shown, the note for *Lord of St John* was incomplete in the descendants of the Murray manuscript, and the text broke off before the date was given. Thus the last complete case-note prior to the loss of text—and so the last which both gave a date and was attributed to Maitland in the Yale manuscript and its descendants—was *Laird of Dunnipace v Laird of Ogilvie* (30 July 1565). This case became widely considered to have been the latest case recorded by Maitland. Indeed the description of Maitland's collection as concluding on 30 July 1565 in books and treatises was so ubiquitous that it

¹⁴⁸ MS 37, fol.2r (second foliation series); Adv. MS. 24.1.4, fol.150r.

¹⁴⁹ Adv. MS. 24.1.5, fol.120v. See also Dolezalek, II, p.166.

became in the eighteenth century the dominant (and perhaps only) view of the collection.¹⁵⁰ However *Laird of Dunnipace*—being an insertion into the descendants of manuscript δ out of chronological order—is only ever found in the copies of Maitland’s collection after entries on cases heard as late as 1570. The strength of the misperception about the collection continuing only until 1565 thus overshadowed the evidence to the contrary. A problem in the transmission of a small branch of the text, compounded by the misunderstanding of a later annotator, had come to define contemporary understanding of Maitland’s collection.

¹⁵⁰ See e.g., William Forbes, *A Journal of the Session. Containing the Decisions of the Lords of Council and Session [...] from February 1705, till November 1713* (Edinburgh: for the author, 1714) p.xxvi; George Mackenzie, *The Lives and Characters of the Most Eminent Writers of the Scots Nation; with an Abstract and Catalogue of their Works; their Various Editions; and the Judgement of the Learn’d concerning Them*, III (Edinburgh: James Watson, 1722) pp.218-19; Kames, *The decisions of the Court of Session, from Its first Institution to the present Time. Abridged, and Digested under Proper Heads, in Form of a Dictionary* (Edinburgh: Richard Watkins, 1741; and 2nd edn, Edinburgh: Bell & Bradfute, 1791), I, List of several collections of decisions.