

This article has been accepted for publication in the Journal of Irish and Scottish Studies, and is scheduled to appear in 2018.

Legal practice and legal institutions in seventeenth century Aberdeen, as witnessed in the lives of Thomas Nicolson of Cockburnspath and his associates

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Thomas Nicolson of Cockburnspath was an advocate central to Aberdonian legal life and practice in the early seventeenth century. Initially an advocate in the Court of Session in Edinburgh, he came to Aberdeen to serve as judge in the local ecclesiastic ('commissary') court. He was later named on a royal commission which reintroduced law teaching to Aberdeen, and was named as the first master of civil law ('civilist') thereafter. Framed principally around an examination of the career of Nicolson and some of his colleagues, this article aims to enrich our knowledge of local legal history with a particular focus on Old Aberdeen. It examines the local legal community, the personnel and activity of the commissary court, and the post-Reformation abolition and 1619 re-establishment of law teaching at King's College. It develops or challenges existing historiography on some of these points and provides a first detailed examination of others. In doing so, it offers a new local perspective on a critical period in the development of Scotland's legal profession by placing a range of record categories – Old Aberdeen's civic registers as well as local, national and institutional sources – into dialogue with each other.

Introduction

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

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

¹ See also the Aberdeen Burgh Records Project and the projects developed from this initiative, <https://www.abdn.ac.uk/riiss/about/aberdeen-burgh-records-project-97.php>.

² John Alexander Henderson (ed.), *History of the Society of Advocates in Aberdeen* (Aberdeen, 1912), especially xix-xx.

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both burghs.³ John Finlay has discussed Aberdeen in the context of wider studies on the lower branches of the Scottish legal profession.⁴

Comparatively little is known of the practice of law in Old Aberdeen. This older burgh was significantly smaller in size and may have been unimportant except that it was the seat of a bishop and the local ecclesiastic court as well as home to a university, King's College. A challenge to the legal-historical study of Old Aberdeen is presented by the comparative incompleteness of the records of these institutions. The records of the ecclesiastic or 'commissary' court situated in Old Aberdeen were destroyed in a fire in the office of its clerk in 1721.⁵ Only fragments of records have since emerged from that court: a copy of court regulations from 1650,⁶ an eighteenth century style book,⁷ and a manuscript containing notes

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

⁴ See especially John Finlay, 'The Lower Branch of the Legal Profession in Early Modern Scotland', *Edinburgh Law Review*, 11 (2007), 31-61, 39-40, 46 n.72, 49-50, 60; Idem, 'Pettyfoggers, Regulation, and Local Courts in Early Modern Scotland', *Scottish Historical Review*, 87 (2008), 42-67, 42-3, 44-5, 50, 51 n.32, 53, 55-6, 62-4; Idem, 'Lawyers and the Early Modern State: Regulation, Exclusion, and Numerus Clausus', *Canadian Journal of History*, 44 (2009), 383-410, 407-8.

⁵ 8 Geo I (1721), c.28.

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

⁷ For a transcript and analysis of the style book, see M. C. Meston and A. D. M. Forte (eds), *The Aberdeen Stylebook 1722* (Stair Society 47, Edinburgh, 2000). See also A. D. M. Forte and M. C. Meston, 'Legal Life in

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on cases heard in the court in 1617-45 recorded by an Aberdonian advocate, Alexander Spalding.⁸ Meanwhile the records relating to early modern law teaching at King's College are scant, and the burgh council register survives only from 1603 and suffers a lacuna from 1619-34.⁹ This paper within this special issue will nonetheless highlight the research potential of the records of Old Aberdeen. In doing so, it will supplement this issue's articles by Jackson Armstrong and Andrew Simpson, but take a different approach.

Scope, structure, contribution and method

This article will examine an important period in the history of Old Aberdeen's institutions of legal practice and education. It will reflect on aspects of the careers of several lawyers

Aberdeen in the Late Seventeenth and Early Eighteenth Century – the Aberdeen Stylebook of 1722', *Aberdeen University Review*, 59 (2002), 197-208.

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

⁹ Aberdeen City and Aberdeenshire Archives (hereafter ACA), Old Aberdeen Burgh: Council Minute Book (hereafter OA) 1/1/1. The register contains material from 1603-19 in chronological order, apparently largely recorded contemporaneously although with sections likely copied from other sources [*Ibidem*, 83, 132-133, 137, 148, 158; on distinguishing original registers from copies, see Adelyn L. M. Wilson, 'The Elchies Manuscript and the Method of Sir Richard Maitland of Lethington', *Manuscripta: A Journal for Manuscript Research*, 62 (2018), (forthcoming)]. The last twenty-five pages of the volume comprise a miscellany of records from 1603-20 out of chronological order, added by several hands.

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working in these institutions and in local legal practice more generally. It will frame this investigation principally around a reconstruction of the career of one of Old Aberdeen's most important seventeenth century lawyers, Thomas Nicolson of Cockburnspath.¹⁰ Nicolson will be shown to have been an Edinburgh advocate who relocated to Aberdeen at the beginning of the century, probably to take up an appointment as the judge in the commissary court. He will be shown to have subsequently been a member of the royal commission to reform the local universities in 1619. He was as a result appointed as one of two men who were to reintroduce the teaching of law at King's College. In light of these appointments, Nicolson would have been central to local legal life during the period in which he practised. In constructing this biography of Nicolson, this article will challenge previous biographical works of him, which are inconsistent and cursory.

This article will, first, examine Nicolson's lineage and early life. It will then reconstruct the detail of his career for the first time. It will include in this survey: his admission to practice in Edinburgh, his relocation to Aberdeen, his appointment as the judge in the commissary court, then his appointment as the master of civil law ('civilist') at King's College.

¹⁰ Previous biographical sketches of Nicolson include: Peter John Anderson (ed.), *Officers and Graduates of University and King's College, Aberdeen, MVD-MDCCCLX* (New Spalding Club, Aberdeen, 1893), 31; Francis J. Grant (ed.), *The Faculty of Advocates in Scotland, 1532-1943, with Genealogical Notes* (Scottish Record Society, Edinburgh, 1944), 165. Meston's biography drew only from Anderson and Grant [M. C. Meston, 'The Civilists of Aberdeen: 1495-1995', *Juridical Review*, (1995), 153-65, 157]. Another biographical sketch confused Nicolson with one of his sons [Neil J. D. Kennedy, 'The Faculty of Law' in P. J. Anderson (ed.), *Studies in the History and Development of the University of Aberdeen* (Aberdeen, 1906) 201, 241-2].

This article will additionally use Nicolson's career as a lens through which to view some aspects of the contemporary legal profession of Aberdeen. It will also in this same manner examine the history of two important local institutions for periods during which their histories are otherwise obscure, namely the commissary court during a period for which the records are lost, and King's College during the abolition and subsequent reintroduction of law teaching. This study of Nicolson thus extends beyond individual biography by affording new insight into the institutional legal history of Old Aberdeen, much of which has been lost to historiography. This article will address this lack by drawing on diverse collections of local and national records, some recently discovered or newly discovered during the course of this research. It will thereby advance upon or challenge existing historiography and engage the legal history of Old Aberdeen with that of the wider North East and Scotland more generally.

Nicolson's early life

No records have been found documenting Nicolson's birth and early life. Genealogists have drawn contradictory conclusions on Nicolson's lineage, but perhaps the most reliable account is found in *Burke's Peerage* (even if this stands to be corrected in places).¹¹

The Nicolson family were established in Aberdeen by the fifteenth century. They had largely been burgesses,¹² but the grandfather of Thomas Nicolson of Cockburnspath, David Nicolson, was a central figure in Aberdeen's governmental and legal administration. He was clerk of the baillie court by 1519, of the diocese by 1522, of the sheriff court from 1535, and

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

¹² *Burke's Peerage*, 701.

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of the town by 1541.¹³ David shared the sheriff clerkship with his son, Robert, from 1540.¹⁴ Local litigation records reveal that David died between 8 February 1543 and 12 March 1543.¹⁵ After this, Robert held that clerkship alone until his removal by George Gordon, 4th Earl of Huntly in ca.1558.¹⁶ The office of sheriff clerk was symbolically restored to the family through its re-granting in ca.1563 to James Nicolson, brother of Robert and father to Thomas Nicolson of Cockburnspath. However it seems likely that James Nicolson held this

¹³ See Littlejohn (ed.), *Sheriff Court*, I, 464-5; *Illustrations of the Topography and Antiquities of the Shires of Aberdeen and Banff* (4 vols, Spalding Club, Aberdeen, 1847-62), IV, 468-9. Cf. *Burke's Peerage*, 701.

Anderson suggested that David Nicolson was the town clerk depute in 1530 [Peter John Anderson (ed.), *Charters and Other Writs Illustrating the History of the Royal Burgh of Aberdeen, MCLXXI-MDCCCIV* (Aberdeen, 1890), 410]. However Littlejohn observed that the evidence suggests that he was the clerk of the town's baillie court rather than of the town itself [Littlejohn (ed.), *Sheriff Court*, I 464]. David Nicolson also became a 'vicar' (a deputy or substitute) at the Aberdonian parish of Maryculter in 1520 [Littlejohn (ed.), *Sheriff Court*, I, 464; cf. *Burke's Peerage*, 701].

¹⁴ David Hay Fleming (ed.), *Registrum secreti sigilli regum Scotorum: The Register of the Privy Seal of Scotland*, II: 1529-1542 (Edinburgh, 1921), 3434. Robert was born illegitimate but was legitimated a few days prior to this grant: *Ibidem*, 3379.

¹⁵ Littlejohn (ed.), *Sheriff Court*, I, 465.

¹⁶ Littlejohn (ed.), *Sheriff Court*, I, 466. On the Earl of Huntly, see Allan White, 'Gordon, George, fourth earl of Huntly (1513-1562)', *Oxford Dictionary of National Biography* (Oxford, 2004, as revised in the online edition), <http://www.oxforddnb.com> (hereafter *Oxford DNB*).

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office as a sinecure,¹⁷ as he had already established himself in Edinburgh by the 1560s as a notary public, writer (solicitor),¹⁸ burgess, and clerk to the signet.

James Nicolson likely had income sufficient to provide a life of relative affluence but insufficient to allow him to acquire lands outwith the city, as is suggested by the apparent lack of a retour (document of service) for landed inheritance by his sons.¹⁹ James Nicolson had three sons. His oldest son, also called James, seemingly died in infancy. His second son, John, followed his father into the law. He became a commissary of Edinburgh in 1585 and entered as an advocate in the Court of Session in ca.1586; he adopted the territorial designation of Lasswade after acquiring those lands in 1590.²⁰ The youngest of James's three

¹⁷ The clerk appointed after Robert Nicolson's removal (Andrew Leslie) apparently continued to exercise the office during the brief period of James Nicolson's tenure [Littlejohn (ed.), *Sheriff Court*, I, 464-70].

¹⁸ But not a writer to the signet [Patrick W. Campbell et al (eds), *A History of the Society of Writers to Her Majesty's Signet, with a List of the Members of the Society from 1594 to 1890 and an Abstract of the Minutes* (Edinburgh, 1890), 156].

¹⁹ Cf. *Inquisitionum ad capellam domini regis retornatarum, quae in publicis archivis Scotiae adhuc servantur, abbreviatio* (London, 1811-16), III, 'Inquisitiones generales', 570.

²⁰ He also acquired property in Edinburgh before 1592. *Burke's Peerage*, 701; K.M. Brown et al. (eds), *The Records of the Parliaments of Scotland to 1707*, <http://www.rps.ac.uk> (hereafter RPS), 1592/4/158.

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sons was the Thomas Nicolson who is the subject of this article,²¹ and who adopted the territorial designation of Cockburnspath after acquiring those lands in 1621.²²

After childhood education, the general practice among Scotland's wealthier and professional classes was to progress to a university to study the arts.²³ The records of the University of Glasgow preserve a note of the graduation as a master of the arts one Thomas Nicolson in 1585.²⁴ It is plausible that this was Thomas Nicolson, later of Cockburnspath: records of his adult life title him as 'Mr', which was used widely to denote a man with university learning;

²¹ A retour from 1690 describes John and Thomas Nicolson as brothers: *Inquisitionum*, II, 'Inquisitiones generales', 7018. See also Grant (ed.), *Faculty of Advocates*, 165. Cf. Grant's earlier description of Thomas as John's son: Francis J. Grant, *The County Families of the Shetland Islands* (Berwick, 1893), 'Nicolson of the Ilk, Lasswade and Lochend', II.

²² The feudal superior, the Earl of Angus, confirmed the alienation by charter in August 1625. RPS, 1633/6/159. See also Eric Rankin, *Cockburnspath: A Documentary Social History of a Border Parish*, ed. by James Bulloch (Edinburgh, 1981), 10.

²³ On early education in Protestant Scotland, see e.g. J. K. Cameron: *The First Book of Discipline with Introduction and Commentary* (Edinburgh, 1972); R. Anderson, 'In Search of the "Lad of Parts": The Mythical History of Scottish Education', *History Workshop Journal*, (1985) 19, 82-104; R. Anderson, 'The History of Scottish Education, pre-1980' in T. G. K. Bryce & W. M. Humes (eds): *Scottish Education: Post-Devolution* (2nd edition, Edinburgh, 2003 rept. 2006) 219.

²⁴ *Munimenta Alme Universitatis Glasguensis: Records from the University of Glasgow from its Foundation till 1727* (Glasgow, 1854), III, 5.

no other men called Thomas Nicolson have been found at any of the other Scottish universities at this time.²⁵

Nicolson's career in Edinburgh

The next record found of Thomas Nicolson is some nine years later: his admission as an advocate in Edinburgh on 9 July 1594.²⁶ If the graduation record mentioned above is indeed for the same man, it is likely that he spent the intervening years preparing for his admission to the bar of the Court of Session, Scotland's highest civil court at the time.

There were two routes into that profession. It is unclear which route was undertaken by Nicolson, and there is weak evidence which would suggest either possibility. John Cairns has shown that:

Those petitioning the court for admission fell into two groups: those claiming an academic training and experience of 'practick'; and those claiming long experience of

²⁵ *A Catalogue of the Graduates in the Faculties of Arts, Divinity, and Law, of the University of Edinburgh, since its Foundation* (Edinburgh, 1858); Anderson (ed.), *Officers and Graduates*; James Maitland Anderson (ed.), *Early Records of the University of St. Andrews, The Graduation Roll 1413-1579 and the Matriculation Roll, 1478-1579* (Edinburgh, 1926). Nicolson would likely have graduated later than the printed St Andrews lists extend, but a comprehensive study of St Andrews's students is outstanding. See, however, the general analysis in Steven J. Reid, *Humanism and Calvinism: Andrew Melville and the Universities of Scotland, 1560-1625* (Farnham, 2011) 273-90.

²⁶ Grant (ed.), *Faculty of Advocates*, 165; NRS, CS1/4/1.

‘practicke’. ... Between 1575 and 1608, two-thirds of those admitted founded their petition on their academic learning.²⁷

The ‘academic training’ mentioned by Cairns was normally the study of law at a continental university; this formal legal study was undertaken after completing a degree in the arts in Scotland. Two inferences can be made from the evidence to suggest that Nicolson may have formally studied law. First, it would not be uncommon during the period for an expectant to have spent seven or eight years in continental study before admission as an Edinburgh advocate,²⁸ and this approximately equates to the gap in the records of Nicolson’s life between his possible graduation in the arts and his admission to the bar. Secondly, a subsequent mid-seventeenth century civilist at Aberdeen was criticised for lacking a continental legal education;²⁹ this might indicate that previous such masters (which would include Nicolson) did have that educational experience.

²⁷ John W. Cairns, ‘Historical Introduction’ in Kenneth Reid and Reinhard Zimmermann (ed.), *A History of Private Law in Scotland* (2 vols, Oxford, 2000) 14, 87. See also John W. Cairns, ‘Lawyers, Law Professors, and Localities: The Universities of Aberdeen, 1680-1750’, *Northern Ireland Legal Quarterly*, 46 (1995), 304-31, 305-6.

²⁸ John W. Cairns, ‘Advocates’ Hats, Roman Law and Admission to the Scots Bar, 1580–1812’, *Journal of Legal History*, 20 (1999), 24-61, 35-6.

²⁹ John Spalding, *The History of the Troubles and Memorable Transactions in Scotland and England from MDCXXIV to MDCXLV* (2 vols, Bannatyne Club, Edinburgh, 1828–9), I, 179; Idem, *Memorials of the Trubles in Scotland and in England. A.D. 1624 – A.D. 1645* (2 vols, Spalding Club, Aberdeen, 1850–1), I, 241.

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The alternative route for admission as a Court of Session advocate was to complete a period apprenticed to an established practitioner.³⁰ In 1610 this was regulated to be seven years, which might have formalised earlier custom.³¹ This length of time is again broadly consistent with the span of years between Nicolson's probable date of graduation in 1585 and his admission in 1594; it is perhaps as likely that this was his route into the profession. A period of apprenticeship could have been spent with his brother, John, who had newly been appointed to the ecclesiastic bench in 1585. John is at least known to have taken on as an apprentice in ca. 1600 his cousin, later Sir Thomas Hope of Craighall, King's Advocate,³² who was unable to afford a continental legal education.³³

The wider bonds established through the master-apprentice relationship were often reciprocal and could benefit the wider families of the parties involved. Hope later nominated Thomas Nicolson's son (also called Thomas) as his successor as King's Advocate "in respect of the

³⁰ For further examination of legal apprenticeship and sponsorship into offices in Aberdeen, see Adelyn L. M. Wilson, 'Men of Law and Legal Networks in Aberdeen, principally in 1600-1650' in Michael Lobban and Ian Williams (eds), *Networks and Connections: Papers of the British Legal History Conference* (Cambridge, forthcoming 2019).

³¹ Cairns, 'Advocates' Hats', 36. See also in 1610 the same requirement for expectant writers: Campbell et al (eds), *History of the Society of Writers*, 245; Finlay, 'Lower Branch', 46ff.

³² Ann Hope, 'Sir Thomas Hope, Lord Advocate to Charles I' in Hector L. MacQueen (ed.), *Miscellany Four* (Stair Society 49, Edinburgh, 2002) 145, 151.

³³ David Stevenson, 'Hope, Sir Thomas, of Craighall, first baronet (1573-1646)', *Oxford DNB*.

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band of blood betuix him and me and of the memorie of his worthie father and befor him of his thryis [thrice] worthie uncle my maister””.³⁴

Such sponsorship into office was another way in which the family network was important to early modern legal practice. Established practitioners might additionally share or gift offices, which could be traded as commodities.³⁵ An example of this has already been seen in previous generations of Thomas Nicolson’s family, with the sharing of the office of sheriff clerk between his grandfather and uncle. Similarly, Thomas Nicolson may have acquired his first office—clerk of the General Assembly of the Church of Scotland, acquired in March 1596³⁶—partially owing to his brother’s position as commissary of Edinburgh. This position may have in turn aided Nicolson’s later appointment as Aberdeen’s commissary a few years later.

Aberdeen’s legal community

Nicolson relocated to Aberdeen within a few years of his admission as an Edinburgh advocate. The North East’s legal community was smaller than that of Edinburgh. Its core

³⁴ Hope, ‘Hope’, 151. That office went first in 1646 to Archibald Johnston of Wariston (who was favoured by the General Assembly); the younger Thomas Nicolson was appointed as King’s Advocate in 1649 by parliament, by which time he had been the procurator for the estates for eight years. See George W. T. Omond, *The Lord Advocates of Scotland, from the Close of the Fifteenth Century to the Passing of the Reform Bill* (2 vols, Edinburgh, 1883), I, 121-5, 154-6.

³⁵ Wilson, ‘Men of Law’.

³⁶ *Acts and Proceedings of the General Assemblies of the King of Scotland, from the Year MDLX* (Maitland Club, Edinburgh, 1845), III, 889, 1102].

would have comprised the local ‘advocates’. In Edinburgh the term ‘advocate’ specifically denoted a professional pleader with the right of audience in the Court of Session. In Aberdeen, however, this term was used to denote a lesser branch of the profession with a right of audience in the local sheriff court. Its members could also plead in the region’s other inferior courts but not the superior Court of Session in Edinburgh. They additionally undertook work which in Edinburgh would be associated with the distinct profession of writers. There would have been perhaps only around ten advocates in practice in the area for much of this period: only around fifty men entered as local advocates throughout the sixteenth century, and fewer than seventy were admitted throughout the seventeenth.³⁷ Most advocates would have resided in New Aberdeen, which had a population roughly ten times larger than Old Aberdeen.³⁸ Indeed the Old Aberdeen census of local residents from 1636³⁹

³⁷ Wilson, ‘Spalding’, 177-9; Henderson (ed.), *History of the Society*, passim.

³⁸ Gordon DesBrisay, ‘“The civill wars did overrun all”: Aberdeen, 1630–1690’ in E. Patricia Dennison, David Ditchburn and Michael Lynch (eds), *Aberdeen Before 1800, A New History* (East Linton, 2002) 238–66, 239; Kennedy suggested that the population was around 7,800 in 1615 [William Kennedy, *Annals of Aberdeen, from the Reign of King William the Lion, to the End of the Year 1818; with an Account of the City, Cathedral, and University of Old Aberdeen* (2 vols, London, 1818), I, 186–7]; Macniven suggested a population of 6,000–12,000, ‘though the outer limits of that range are implausible’ [Duncan Macniven, ‘Merchants and Traders in Early Seventeenth Century Aberdeen’ in David Stevenson (ed.), *From Lairds to Louns: Country and Burgh Life in Aberdeen, 1600–1800* (Aberdeen, 1986) 57–69, 69 n.2].

³⁹ Alexander MacDonalld Munro (ed.), *Records of Old Aberdeen* (2 vols, Aberdeen, 1899-1909), I, 347–55. On which, see Grant G. Simpson, *Old Aberdeen in the Early Seventeenth Century: A Community Study* (Friends of St Machar’s Cathedral Occasional Papers ser.1 vol.3, Aberdeen, 1975 rept 1995).

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(which lists around 800 people, but seems to exclude most of the university population⁴⁰) mentions only one advocate: Alexander Garden,⁴¹ who was variously a baillie for the bishopric, procurator fiscal and sheriff depute.⁴²

Other men might have practised as lawyers or held legal offices locally but not found it necessary to be admitted to the sheriff court and join Aberdeen's society of advocates. Some of these men might have restricted their professional activities such as to avoid the test for admission to the sheriff court. Others who had already been admitted to the superior Court of Session bar would not have required separate admission to practice in the North East inferior courts. This latter group would have included Nicolson, who did not enter the local professional society. This also included another Edinburgh advocate, who will be shown to have been a close associate of Nicolson, called James Sandilands of Craibstone. The latter

⁴⁰ Cf. the record of the sub-principal at Munro (ed.), *Records of Old Aberdeen*, I, 349.

⁴¹ Munro (ed.), *Records of Old Aberdeen*, I, 353.

⁴² ACA, OA/1/1/1, e.g. pages 119, 128, 139, 149; Henderson (ed.), *History of the Society*, 198; Littlejohn (ed.), *Sheriff Court*, II, 183, 334, 343-4, 350. Littlejohn says little about Garden's period as a sheriff depute [Ibidem, II, 535]. However he sat as sheriff depute in a case pursued by the sheriff principal in 1634 [Ibidem, II, 395]. His book of poetry was printed in 1609. The only known copy at that time formerly belonged to Aberdeen Doctor, William Guild [Joseph Walter King Eyton (ed.),] *A Garden of Grave and Godlie Flowers by Alexander Gardyne ...* (Abbotsford Club, Edinburgh, 1845), ix-x], which may indicate both a relationship between the two men and also a limited circulation. Little is known about Garden, although the remark that he 'has perished in oblivion' [Ibidem, ix] is overstated.

man held the office of commissary in succession to Nicolson, and is shown by the census to have resided in Old Aberdeen as the head of a substantial household.⁴³

The legal community would also have included a small number of notaries and law-clerks.

The Old Aberdeen census lists only one notary, William Wat,⁴⁴ who might have been the burgh's notary.⁴⁵

This legal community would have been supported by the work of the large number of courts in the two burghs: the sheriff court, ecclesiastic court, guild court, burgh courts, criminal courts, heritable jurisdictions, and others. A study of the jurisdictional boundaries of these local courts and any conflicts between them is lacking but outwith the scope of this paper. Here it is merely necessary to note that many local men of law would hold offices in one or more of these courts, such as that of judge or clerk. Some would hold permanent appointments to advise a particular client, such as the assessor or legal counsel to the burgh.⁴⁶

Nicolson's professional network was based in Edinburgh, so he would have had to establish new connections in Aberdeenshire. He does not appear to have been able to rely on family connections in doing so. The local society of advocates seems to have had no members with his surname when Nicolson arrived in Aberdeen. As mentioned above, David Nicolson,

⁴³ Munro (ed.), *Records of Old Aberdeen*, I, 354.

⁴⁴ *Ibidem*, I, 354.

⁴⁵ See the entries made by him in the burgh register: ACA, OA/1/1/1, 161ff.

⁴⁶ On men of law in lower courts generally, see Finlay, 'Lower Branch'. On men of law in Aberdeen, see Wilson, 'Men of Law'.

Thomas's grandfather, had entered the law. However the loss of the sheriff clerkship by Robert Nicolson and the relocation of James Nicolson to Edinburgh had apparently ended the family's participation in Aberdonian legal practice until Thomas Nicolson's relocation.

Nicolson and Old Aberdeen's commissary court

Nicolson probably relocated to Aberdeen to take up the appointment as the judge in the commissary court. A precise date for his relocation to Aberdeen cannot be identified because the court's records are lost and there is no mention of him in the contemporary burgh registers, which are incomplete for this period.⁴⁷ There has thus been confusion about the date of Nicolson's appointment. Francis Grant suggested the late date of 1610,⁴⁸ but the records of the General Assembly name him as being in that post already by July 1604.⁴⁹ This earlier dating of his appointment is supported by a miscellany of references to him in connection to this office in other records.⁵⁰ For example, in July 1606 he litigated in the

⁴⁷ ACA, OA/1/1/1. On which, see above n.9.

⁴⁸ Grant (ed.), *Faculty of Advocates*, 165.

⁴⁹ *Acts and Proceedings of the General Assemblies*, III, 1009.

⁵⁰ Nicolson was absent from the meeting of the General Assembly in Aberdeen in July 1605, but that meeting had been prohibited beforehand. The records are printed in *Acts and Proceedings of the General Assemblies*, III, 1013-9; David Calderwood, *The History of the Kirk of Scotland VI* (Edinburgh, 1845) 279-88. On which, see e.g. Alan R. MacDonald, *The Jacobean Kirk, 1567-1625: Sovereignty, Polity and Liturgy* (Aldershot, 1998) ch. 5.

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Aberdeen sheriff court and was identified as the judge of the commissary court in the records;⁵¹ in 1609 he gave a decree in favour of King's College in that capacity.⁵²

The commissary courts had been introduced in 1563 and had inherited the jurisdiction of the pre-Reformation consistorial courts.⁵³ They were inferior courts, and after 1610 they were subject to appeal to the Edinburgh commissary court. The commissary courts had limited jurisdiction in formerly ecclesiastical matters, including testaments, inheritance, oaths and certain marital causes.⁵⁴ The task of hearing cases was undertaken by a judge known simply as the 'commissary' and the court was administered by the commissary clerk. The seat of the Aberdeen commissary court at this time was St Machar's Cathedral in Old Aberdeen, but the court had jurisdiction over a large area, including parts of what would now be recognised as Aberdeenshire, Banffshire, Kincardineshire and Moray.

As was mentioned in the introduction, the records of the Aberdeen commissary court have been burned. This loss prevents a comprehensive insight into the personnel and activity of the

⁵¹ Littlejohn (ed.), *Sheriff Court*, I, 89.

⁵² Cosmo Innes (ed.), *Fasti Aberdonenses: Selections from the Records of the University and King's College of Aberdeen, 1494-1854* (Spalding Club, Aberdeen, 1854), 139.

⁵³ For a contemporary account, see Peter G. B. McNeill (ed.), *The Practicks of Sir James Balfour of Pittendreich* (Stair Society Publications Series vol.22, Edinburgh, 1963), II, 655-662.

⁵⁴ On the courts' competency, appeal and their reform in 1609-10, see RPS, 1609/4/20; Gordon Donaldson, 'The Church Courts' in *Introduction to Scottish Legal History* (Stair Society 20, Edinburgh, 1958) 363-73, 369; Meston and Forte (eds), *Aberdeen Stylebook*, 12-18; Thomas M. Green (ed.), *The Consistorial Decisions of the Commissaries of Edinburgh, 1564 to 1576/7* (Stair Society 61, Edinburgh, 2014), xvii-xxii.

court. However the recently-rediscovered ‘practique bookes’ of Aberdonian advocate Alexander Spalding allow considerable new insight to be had as to the court’s work. Spalding collected case notes and practical observations from 1617 until 1645, most of which relate to the Aberdeen commissary court. His notes are the only known surviving record of the court’s activity, so are of significant importance to the legal-historical study of the North East in that period.⁵⁵

Nicolson had held his judicial appointment for at least twelve years when Spalding began recording these case notes. Spalding did not always record the name of the judge who heard a particular commissary case but did so with sufficient frequency to allow insight into Nicolson’s judicial persona. Nicolson’s approach on the bench appears to have been pragmatic but conservative with respect to matters of jurisdiction, as can be seen with reference to two particular examples. The earliest case explicitly said by Spalding to have been heard by Nicolson was *Harvie v Leask of that ilk and Black* (1617). The case was one of judicial competence. Goods were arrested on a precept (a judicial order or warrant) issued previously by the commissary of Aberdeen. The defenders argued that this subsequent action could not be heard by the commissary because it was ‘civil and prophane [non-ecclesiastical]’. It was argued in response by the pursuers that the commissary was competent because ‘the actione resulted upon the Commissars owne precept following upon ane bond registrat in his owne books’. Nicolson is said to have decided ‘that he was not judge competent to cognose [decide] ane causs of such nature Because the obligatione was regi[st]rat brevi manu [at ‘short hand’] upon ane pro[curato]rs comperiance [appearance], and not be virtue of ane summondes wherby all pairties sould have beine lauffullie summoned

⁵⁵ On this collection of case notes, see Wilson, ‘Spalding’.

qlk [which] if so hade beine he would have beine judge competent'.⁵⁶ A second case worthy of note in this regard is that of *Drum v Merser* (1620). Patrick Drum had received a decree for payment from the commissary against Elspeth Merser. However the lady's subsequent marriage to a Gilbert Leslie threatened to frustrate this on the grounds that 'his name was not within the decret'. Nicolson simply 'caused the clerk insert his name for his entres [interest] within the compulsitor [decree]'. This preserved the decree and allowed the subsequent pointing or seizure of Leslie's goods for the debt.⁵⁷

Nicolson may have initially held the office of commissary alone. Latterly, however, he held it jointly with other men. The first was John Leith of Blairton, a graduate in the arts, a notary public, and an Aberdonian advocate who had been admitted in 1595.⁵⁸ Leith was made joint sheriff clerk in that same year but the appointment was controversial. The office's previous holder, Alexander Fraser, complained to the privy council about the joint appointment of Leith and one William Reid.⁵⁹ Leith and Reid were denounced as rebels in August and had to find caution (financial security) in October 1595; the letters against them were suspended only in January 1596.⁶⁰ Thus Littlejohn suggested both that 'No trace has been found of Mr.

⁵⁶ AUL, MS 558, cap.48, fol.125r/207r.

⁵⁷ AUL, MS 558, cap.70, fol.132r/214r.

⁵⁸ Henderson (ed.), *History of the Society*, 241.

⁵⁹ Littlejohn (ed.), *Sheriff Court*, I, 327-8.

⁶⁰ David Masson (ed.) *The Register of the Privy Council of Scotland*, V: 1592-1599 (Edinburgh, 1882). 229-30, 262, 666; Littlejohn (ed.), *Sheriff Court*, I, 471-2.

Leith acting' and that he may have withdrawn because of Fraser's opposition.⁶¹ The local burgh register shows that Leith thereafter held office as a baillie of Old Aberdeen in 1604 and 1606, of King's College in 1605 and of the bishopric by 1608.⁶² He judged cases in each of these three offices, either alone or on a panel, the latest seemingly in 1611.⁶³ He therefore already had some experience in hearing cases before his appointment to the commissary court around this time.

Nicolson initially appointed Leith to the commissary court as his 'substitute', to hear cases when the former man was unavailable. The earliest mention found of Leith's appointment as substitute is in the sheriff court records for 4 October 1609.⁶⁴ It is unclear whether he was later formally received as a joint holder of the office, as the distinction in roles was not always explicitly maintained in the records: he was referred to still in this subsidiary role in January 1615,⁶⁵ but was mentioned as the commissary (rather than as the substitute) in litigation and other records in 1610 and 1614.⁶⁶ Whatever the later nature of his appointment,

⁶¹ Littlejohn (ed.), *Sheriff Court*, I, 473, 474; cf. Henderson (ed.), *History of the Society*, 418.

⁶² ACA, OA/1/1/1, 21, 47, 36, 58.

⁶³ ACA, OA/1/1/1, 37, 49-51, 58, 60-61, 67, 69, 72, 82, 85, 88, 96, 100-102, 105, 187.

⁶⁴ Littlejohn (ed.), *Sheriff Court*, II, 151.

⁶⁵ John Maitland Thomson (ed.), *Registrum magni sigilli regum Scottorum: The Register of the Great Seal of Scotland* (Edinburgh, 1892), VII, 1154.

⁶⁶ Littlejohn (ed.), *Sheriff Court*, II, 156; Charles, XI Marquis of Huntly, *The Records of Aboyne, MCCXXX-MDCLXXXI* (New Spalding Club, Aberdeen, 1894), 225.

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Leith's work within the commissary court was important in respect of his personal as well as his professional life. He married Katherine Garden, the daughter of Thomas Garden of Blairton, who had held the office of commissary clerk since 1584; on Garden's death in 1610, it was bequeathed to his son, Robert.⁶⁷ It was the estate of his father-in-law and brother-in-law which Leith eventually received (but via his nephew rather than more directly) and used as his territorial designation.⁶⁸

There is evidence of Leith's activity as a judge within the commissary court. A fragment identified among the miscellaneous burgh records of Old Aberdeen by this research preserves three days of his judicial activity in 1618-19.⁶⁹ This find is important in that it may indicate that further fragments of the commissary court's records might yet survive, but for present purposes it reveals little of Leith's judicial persona. Spalding mentioned Leith judging six cases, heard in 1617-20.⁷⁰ The case of *Bradbury[?] v Garden of Banchory* (1620) is perhaps the most enlightening as to his approach. The pursuer had sued for the payment of two debts, which he offered to prove by witness. The defender argued that the court's procedure

⁶⁷ Henderson (ed.), *History of the Society*, 198; Thomson (ed.), *Registrum magni sigilli*, VII, 1250. The wording on Thomas's grave in St Machar's Cathedral is transcribed in Munro (ed.), *Records of Old Aberdeen*, II, 221.

⁶⁸ See the passage of these lands through the family: *Inquisitionum*, I, Aberdeen, 125, 136; Thomson (ed.), *Registrum magni sigilli*, VII, 1250. Leith was soon involved in litigation regarding these lands, pursuing an unpaid degree of damages against a George Gardyne in Wastburne in 1617: Littlejohn (ed.), *Sheriff Court*, II, 213.

⁶⁹ ACA, OA/1/6/3/2.

⁷⁰ AUL, MS 558, caps 49, 50, 59, 60, 79, 82, fols 125r-126r/207r-208r, 126r-v/208r-v, 129v-130r/211v-212r, 130r/212r, 133r/215r, 134r/216r.

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precluded witnesses because the action was ‘founded upon writ’. Spalding commented ‘Mr John Leith Comissr admitted payment to be proven be witness [...] notwithstanding that ane exceptione sould be provin per eque forte [according to the strongest receipts]’.⁷¹ Leith’s judicial reasoning in disregarding what Spalding describes as normal procedure is not recorded, as is typical of this type of source. The case does, however, indicate that Leith was willing to exercise perhaps more extensive judicial discretion as to procedural matters than Nicolson. This was one of Leith’s last decisions: he died in 1620 and was interred in St Machar’s Cathedral.⁷² Henderson noted that ‘Leith’s death in early manhood terminated a career of much promise’.⁷³

The second man who can be identified as sharing the office of commissary with Nicolson was James Sandilands of Craibstone.⁷⁴ He is recorded in several places as having been a Doctor of Laws,⁷⁵ although it is not clear whether he had studied both Roman and Canon law.⁷⁶ He passed as an advocate in Edinburgh in 1604.⁷⁷ It has previously been suggested that

⁷¹ AUL, MS 558, cap.82, fol.134r/216r.

⁷² Henderson (ed.), *History of the Society*, 241. The text on his grave is transcribed (erroneously giving the date of death as 1670) in Munro (ed.), *Records of Old Aberdeen*, II, 225.

⁷³ Henderson (ed.), *History of the Society*, 241 n.5.

⁷⁴ On Sandilands, see Wilson, ‘Spalding’, 212 n.180.

⁷⁵ Littlejohn (ed.), *Sheriff Court*, II, 311, 349, 378, 428.

⁷⁶ Leask (ed.), *Musa Latina Aberdonensis*, III, 336. One of Sandilands’s poems is found on the next page.

⁷⁷ Grant (ed.), *Faculty of Advocates*, 186.

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he settled in Aberdeen around 1606.⁷⁸ However it is not clear on what basis that claim is made, and subsequent events may suggest a somewhat later date. Indeed it is submitted that Sandilands remained in Edinburgh after 1606, and also that the offices which Sandilands held in Edinburgh and his relocation to Aberdeen both owe something to Nicolson. In 1618 Nicolson demitted to Sandilands the position of clerk of the General Assembly, which the former man still held as a sinecure.⁷⁹ The Assembly's agreement to confer of this post on Sandilands suggests its expectation that he would be available in Edinburgh, so it seems likely that he had not already relocated to Aberdeen. This appointment further shows that a relationship was established between these Sandilands and Nicolson by at least this time.

Sandilands was appointed to the bench of the commissary court after Leith's death in 1620.⁸⁰ This appointment was almost certainly made with Nicolson's support and perhaps by his direct invitation. It is plausible that (unlike that Leith) Sandilands was initially appointed as joint commissary rather than as Nicolson's substitute: Spalding records them deciding cases

⁷⁸ See e.g. Alexander M. Munro, *Memorials of the Aldermen, Provosts, and Lord Provosts of Aberdeen, 1272-1895* (Aberdeen, 1897), 187; A. J. Mitchell Gill, *The Families of Moir and Byres* (Edinburgh, 1885), 180.

⁷⁹ *Acts and Proceedings of the General Assemblies*, III, 1144. The record of the meeting suggests that Nicolson believed that he had demitted the office to Sandilands previously, and that the Assembly was reminded of this and asked for their final approval on that occasion. Sandilands was present at that meeting, although removed himself from the room during the discussion of his appointment.

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

together in September 1621 and February 1622.⁸¹ Sandilands also received Leith's position as rector of King's College, which may also have been influenced by Nicolson in his capacity therein, which will be discussed below.

Sandilands, like Leith, took a broader interpretation of his jurisdiction and procedural formality than Nicolson. Sandilands plausibly heard in 1623 a case on the same point of law as Nicolson's decision in *Harvie v Leask of that ilk and Black*, namely that of judicial competence where a bond is registered *brevi manu* in the commissary court books. Spalding noted that the decision in this later case was in favour of the court's competence, and therefore in direct contrast to Nicolson's decision in *Harvie*.⁸²

A case heard by Sandilands and Nicolson together on 8 February 1622 was the latest for which Spalding explicitly mentions Nicolson. However the absence of subsequent reference to Nicolson in Spalding's collection of case notes does not mean that he did not continue to act. It seems he at least continued to hold the title of commissary: he is said to have been described in a charter dated 26 October 1624 as 'de Cockburnspath Advocatus Commissarius

⁸¹ AUL, MS 558, caps 200, 201, fols 159r-v/241r-v, 159v-160r/241v-242r.

⁸² AUL, MS 558, cap.255, fol.179r/261r. Cf. the court's exceeding its jurisdiction in the eighteenth century, and the complaints of this behaviour among the inferior commissaries generally, discussed in Meston and Forte (eds), *Aberdeen Stylebook*, 14-16.

Aberdonensis'.⁸³ Sandilands at some point nonetheless formally succeeded Nicolson in the office. He later shared it then demitted it to one of his sons, Thomas Sandilands.⁸⁴

Nicolson has thus been shown to have held the office of commissary for approximately twenty years. His term in office was during an important period, one which almost exactly corresponded to the period after the Union of the Crowns until the death of James VI. It is submitted that he was a pragmatic judge, one unwilling to extend his jurisdiction beyond what he may have felt was its natural competence but also unwilling to allow procedural technicality to undermine wider justice.

Leith's initial appointment being as his substitute might suggest that it was Nicolson's quantity of business which required a division of his responsibilities. However it is clear that he made these appointments to promote the careers of his colleagues as well as in his own interests. Both John Leith of Blairton and James Sandilands of Craibstone went on to prove themselves to be highly competent in the role, even if it seems that both also took a more generous interpretation to their judicial discretion than Nicolson himself appears to have done.

Nicolson and the reintroduction of law teaching

⁸³ As quoted (but not identified further) in: AUL, MSK 34, fol.33r; Anderson (ed.), *Officers and Graduates*, 31.

⁸⁴ The earliest mention of Thomas Sandilands in Spalding's collection is of him hearing a case with his father in January 1640: AUL, MS 558, cap.373 fol.278r-v[238r-v]/330r-v. On Thomas's later involvement in the relocation of the commissary court, see Stevenson, 'The Commissary Court of Aberdeen in 1650'.

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

a) The abolition of law teaching

The foundation of King's College in Old Aberdeen in 1495 marks the beginning of the history of formal law teaching in Northern Scotland. The foundation bull and charters survive among the records of its successor institution, the University of Aberdeen.⁸⁵ These prescribe the appointment of a 'Pontificii Juris Doctor [master of canon law]' and 'Juris Civilis Doctor [master of civil law]';⁸⁶ these offices as well as their positions and privileges were confirmed in the early sixteenth century.⁸⁷ However, by the end of the sixteenth century law teaching

⁸⁵ Access is restricted. See instead: the seventeenth century copy in the 'Foundation Book', AUL, MSK 1; the notarial copy, AUL, MSK 88, 6-26; the copy associated with the aforementioned Thomas Sandilands (son of James Sandilands of Craibstone), AUL, MSK 89, 113-23; and the copy associated with the sixteenth century rector, Alexander Galloway, AUL, MSK 90, fols 8r-12v.

⁸⁶ AUL, MSK 1, 20; MSK 88, 9; MSK 89, 114; MSK 90, fol.8v. Emphasis in the original. See also this intention expressed in other contemporary documents, e.g. MSK 89, 1-3, dated 1494.

⁸⁷ AUL, MSK 1, 35-72, 42, 47-8, MSK 88, 32-79, 35, 42-3; MSK 90, fols 13v-25v, 14v, 17r. On the foundation of the institution and law teaching at King's College, see e.g. Walter Thom, *The History of Aberdeen; Containing an Account of the Rise, Progress, and Extension of the City, from a Remote Period to the Present Day* (2 vols, Aberdeen, 1811), II, Appendix 1, 2-20; Robert Sangster Rait, *The Universities of Aberdeen, A*

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was abolished, a decision which can be shown to have been made at the national and local levels as part of wider post-Reformation educational reforms.

King's College remained largely unaffected by the Reformation during the personal rule of Queen Mary. However a visitation from the nation's regent, the Earl of Moray, in 1569 ensured that some of the staff who were sympathetic to Catholicism were replaced with Protestant men. At that time, the civilist and the master of canon law ('canonist') remained in post. However there was an on-going desire to re-found King's College with a revised curriculum more consistent with Protestant ideals. This process of reform occurred in the context of similar changes at Glasgow and St Andrews as part of what Steven Reid has called 'the Protestant mission'.⁸⁸ At King's College, however, concrete proposals for change only materialised twenty years after the Reformation.

History (Aberdeen, 1895), chs 2-4; *House of Commons Papers XII, Reports from Commissions in four volumes*, IV ([s.n.], 1831), 'Report Relative to the University and King's College of Aberdeen', 305, §1, 305-7; Kennedy, 'The Faculty of Law', 239-40; T. B. Smith, 'The Influence of the "Auld Alliance" with France on the Law of Scotland' in Idem (ed.), *Studies Critical and Comparative* (Edinburgh, 1962) 28-45, 37-40; Leslie J. MacFarlane, *William Elphinstone and the Kingdom of Scotland, 1431-1514: The Struggle for Order* (Aberdeen, 1985 rept. 1995), 377-82; Lord Hope, 'The Universities of Aberdeen and the Court of Session in Edinburgh', *Judicial Review*, (1995), 5-19, 5-7; Meston, 'Civilists', 153-5; Hector L. MacQueen, 'The Foundation of Law Teaching at the University of Aberdeen' in David L. Carey Miller and Reinhard Zimmermann (eds), *The Civilian Tradition and Scots Law: Aberdeen Quincentenary Essays* (Berlin, 1997) 53-71, 53-60; John W. Cairns, 'The Law, the Advocates and the Universities in Late Sixteenth-Century Scotland', *Scottish Historical Review*, 73 (1994), 171-90, especially 174-5.

⁸⁸ On which, see Reid, *Humanism and Calvinism*, 28-31; David Stevenson, *King's College, Aberdeen, 1560-1641: From Protestant Reformation to Covenanting Revolution* (Aberdeen, 1990), 1-30. This latter source

Although various records touch upon this new foundation, there is insufficient material to allow a comprehensive understanding of what was a controversial process.⁸⁹ It is submitted that three proposals for reform were made in the 1580s and 1590s; the first two proposals are lost but are witnessed in other records.

An act of parliament in 1578 created commissions to reform the universities.⁹⁰ St Andrews reported to parliament in 1579;⁹¹ King's College did so in 1581. Parliament did not at that time consider the proposal for the 'reformation of the college of Aberdeen' because of the

should be used cautiously [see James Kirk's review in *Scottish Economic and Social History*, 12 (1992), 103-4].

On the wider context of the period, see MacDonald, *The Jacobean Kirk*, especially ch. 1.

⁸⁹ Anderson (ed.), *Officers and Graduates*, 324; Rait, *Universities of Aberdeen*, 108. This period is not discussed in Kennedy, 'The Faculty of Law' and is dismissed as an 'interregnum' by Meston ['The Civilists of Aberdeen', 157]. Smith noted only that the 1619 visitation discussed below 'f[ound] no Canonist or Civilist teaching' [T. B. Smith, 'A Meditation on Scottish Universities and the Civil Law' in Idem (ed.), *Studies Critical and Comparative* (Edinburgh, 1962) 62-71, 66-7].

⁹⁰ RPS, 1578/7/5; Anderson (ed.), *Officers and Graduates*, 324-5.

⁹¹ RPS, 1579/10/80. On the early history of law teaching at St Andrews, see Cairns, 'The Law, the Advocates and the Universities in Late Sixteenth-Century Scotland', 173-90; John W. Cairns, 'Academic Feud, Bloodfeud, and William Welwood: Legal Education in St Andrews, 1560-1611', *Edinburgh Law Review*, 2 (1998), 158-179 (part one), 255-87 (part two).

This article has been accepted for publication in the Journal of Irish and Scottish Studies, and is scheduled to appear in 2018.

press of other business, but it was remitted to the lords of the articles.⁹² It plausibly progressed little further, given the General Assembly authorised a new commission in 1582.⁹³

This new commission reported in April 1583 that it had drafted ‘ane order set doune which is in the Principalls hands’.⁹⁴ John Kerr observed that subsequently ‘the attempts made to have the *Nova Fundatio* formally established were either opposed or evaded’.⁹⁵ Indeed some of the opponents of the new foundation petitioned James VI. In his letter of reply to the faculty, dated May 1583, he acknowledged ‘[the reformers] intend to pervert the ordour of the foundation established be our progenitors and estaites of our realme. Quhairfore we will and command you to observe and keipe the heides of your fundatione, and in no wayes to hurt the funds, ay [always] an’d quhill [while] the estaites be convenit to ane parliament’.⁹⁶

⁹² RPS, 1581/10/28.

⁹³ Anderson (ed.), *Officers and Graduates*, 325. Stevenson suggested that an additional royal commission appointed in 1582 was said to have ‘merely audited the college accounts’ but may have contributed to the discussions [Idem, *King’s College*, 30].

⁹⁴ Anderson (ed.), *Officers and Graduates*, 326.

⁹⁵ John Kerr, *Scottish Education: School and University* (Cambridge, 1910 rept. 2014), 129.

⁹⁶ Anderson (ed.), *Officers and Graduates*, 327. Stevenson, *King’s College*, 32-4.

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Thus in 1584 a new parliamentary commission was approved.⁹⁷ This commission seemingly drafted acceptable proposals, and may have reported in 1592.⁹⁸ Five years later, the new foundation was ratified by parliament.⁹⁹ The University of Aberdeen holds three copies of what appears to be the 1584 commission's proposal;¹⁰⁰ it is unclear to what extent this proposal differed from the previous two attempts.

⁹⁷ RPS, 1584/5/92.

⁹⁸ AUL, MSK 35, 213 (modern pagination); MSK 102, fol.2r. See also Thom, *History of Aberdeen*, II, Appendix 1, 20. However the manuscript associated with William Knight (on whom, see below n.100) identifies the text as being of 1582 [MSM 113, 1785]. Cf. Stevenson, *King's College*, 35.

⁹⁹ RPS, 1597/11/70. This was an unprinted private act, which might explain the contrary understanding in Kerr, *Scottish Education*, 130-1. Cf. Stevenson, *King's College*, 35, 37-8.

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

The surviving proposal provides a new structure for teaching at King's College and a list of positions and offices to be retained.¹⁰¹ This does not include either of the masters of law, whose posts were thus abolished by implication. Stevenson has suggested that the proposal 'was never fully introduced'.¹⁰² However at least the provision of law teaching ceased around this time. No new canonist was appointed on the death of Alexander Cheyne in 1587. The civilist, Nicholas Hay, probably stopped teaching twenty years before his death in the 1590s;¹⁰³ no reappointment was made of his position.¹⁰⁴ This abolition of law teaching at Aberdeen had important consequences for legal education in Scotland more generally: it

¹⁰¹ On which, Stevenson, *King's College*, 44-6. The masters were expected to reside within the college, on which see John M. Fletcher, 'The College-University: Its Development in Aberdeen and Beyond' in Jennifer J. Carter and Donald J. Withrington (eds), *Scottish Universities: Distinctiveness and Diversity* (Edinburgh, 1992) 16-25, 21-2.

¹⁰² Stevenson, *King's College*, 2, although see *Ibidem*, 47-51.

¹⁰³ Stevenson, *King's College*, 49; Cairns, 'The Law, the Advocates and the Universities in Late Sixteenth-Century Scotland', 178. Cf. MacQueen, 'The Foundation of Law Teaching at Aberdeen', 61. Poems were written by the aforementioned local advocate Alexander Garden on the deaths of both Cheyne and Hay, which indicate that he knew them personally [Eyton (ed.), *Garden of Grave and Godlie Flowers*, 'Upon the Reverend and Godly M. N. H. Commissar of Aber.', 'Upon the Death of the Worshipfull M. Alex. Cheyn Commissar of Aber.'].]

¹⁰⁴ AUL, MSK 34, fol.33r; MSK 35, 233; Anderson (ed.), *Officers and Graduates*, 30-31; Meston, 'Civillists', 157.

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coincided with the failure of the chair of law at St Andrews, meaning legal education in Scotland was in reality defunct by the end of the century.¹⁰⁵

b) The reintroduction of law teaching

It was approximately thirty years before law teaching was re-established at King's College. This reintroduction was a part of a wider reinvigoration of a then dilapidated institution. In 1618 Patrick Forbes of Corse was appointed to the See of Aberdeen and thus became chancellor of King's College.¹⁰⁶ He was remembered by contemporaries as a good bishop

¹⁰⁵ Cairns, 'Academic Feud, Blood Feud and William Welwood'. Glasgow had abolished law teaching previously, on which see: Reid, *Humanism and Calvinism*, 80-1; J. Durkan and J. Kirk, *The University of Glasgow, 1451-1577* (Glasgow, 1977), 328, 330-1. On the scope of the post-Reformation universities and their failure to teach law, see Cairns, 'Academic Feud, Blood Feud and William Welwood', 164; M. Lynch, 'The Origins of Edinburgh's "Toun College": A Revision Article', *Innes Review*, 33 (1982), 3-14; Idem, 'The Creation of a College' in R. D. Anderson, Michael Lynch and N. Phillipson (eds), *The University of Edinburgh: An Illustrated History* (Edinburgh, 2003) 1-49, 9-18; S. J. Reid, 'Aberdeen's "Toun College": Marischal College', 1593-1623', *Innes Review*, 58 (2007), 173-195; David Henderson, *The Founding of Marischal College* (Aberdeen, 1947), 17-8; Alexander Morgan and R. K. Hannay, *University of Edinburgh: Charters, Statutes, and Acts of the Town Council and the Senatus, 1583-1858* (Edinburgh, 1937), 15; John W. Cairns, 'The Law, the Advocates and the Universities in Late Sixteenth-Century Scotland', *Scottish Historical Review*, 83 (1994), 171-90; W. C. Dickinson, 'The Advocates' Protest against the Institution of a Chair of Law in the University of Edinburgh', *Scottish Historical Review*, 2 (1926), 205-12; J. Kirk, 'Melvillian Reform in the Scottish Universities' in A. A. MacDonald, Michael Lynch, and Ian B. Cowan (eds), *The Renaissance in Scotland: Studies in Literature, Religion, History and Culture Offered to John Durkan* (Leiden, 1994) 276-300.

¹⁰⁶ David George Mullan, 'Forbes, Patrick, of Corse (1564-1635)', *Oxford DNB*.

who exercised his office ‘to the applause of all men’.¹⁰⁷ David George Mullan has observed that: ‘Among the tasks he took up with diligence was that of chancellor of the Aberdeen colleges. In particular he instituted major reforms of the finances and instruction at King’s’.¹⁰⁸ These reforms were initiated through an extraordinary royal commission of visitation in 1619. The warrant of commission and record of the commissioners’ activities are held by the University.¹⁰⁹ The commission was authorised to investigate whether the current state of the institution was consistent with its foundation documents and to remedy any problems identified. Thomas Nicolson, identified as Aberdeen’s commissary, is named in the commission;¹¹⁰ he is also identified in the report of its proceedings which shows that he did act in this capacity.¹¹¹ The commissioners were highly condemnatory of the state of the institution. One of their criticisms was that the ‘grytest pairt of the foundit [foundation’s] memberis wer quyte abolischit’.¹¹² They therefore appointed men to the defunct posts with a view to filling the vacancies immediately, but stated that elections should then be held in the

¹⁰⁷ Robert Keith, *An Historical Catalogue of the Scottish Bishops down to the year 1688* (ed. M. Russel, Edinburgh, 1824), 132.

¹⁰⁸ Mullan, ‘Forbes, Patrick, of Corse (1564–1635)’.

¹⁰⁹ AUL, MSK 256/23/3-4. Transcripts are provided in Innes (ed.), *Fasti Aberdonenses*, 273-80; extracts are found in Anderson (ed.), *Officers and Graduates*, 328-9.

¹¹⁰ AUL, MSK 256/23/3.

¹¹¹ AUL, MSK 256/23/4.

¹¹² AUL, MSK 256/23/4; for a fuller discussion, see Stevenson, *King’s College*, 64-5.

future. The aforementioned John Leith of Blairton received the rectorship.¹¹³ Nicolson was appointed civilist. The position of canonist was filled by the sheriff clerk, William Anderson.¹¹⁴

Anderson was a local advocate and had been the sheriff clerk since 1597, continuing in this post ‘until his death in 1630[-31]’.¹¹⁵ Anderson was related to other important legal families though the marriage of his daughters to the sheriff depute Alexander Paip (1625-30) and Patrick Chalmer, the son of George Chalmer, the sheriff clerk of Banffshire.¹¹⁶ Anderson’s appointment seemingly owed much to wider bonds of loyalty: Littlejohn observed that he was a supporter of the Huntlys and suggested that his appointment as canonist should be viewed in the context of ‘the secret favour of King James VI. for the family’.¹¹⁷

Contemporaries certainly recognised the importance of the association: a charge against

¹¹³ AUL, MSK 256/23/4. Nicolson’s title is incorrectly omitted from the printed transcripts [Innes (ed.), *Fasti Aberdonenses*, 278; Anderson (ed.), *Officers and Graduates*, 329].

¹¹⁴ On Anderson’s appointment, see AUL, MSK 34, fol.31r; Anderson (ed.), *Officers and Graduates*, 30.

¹¹⁵ Littlejohn (ed.), *Sheriff Court*, II, 537. Weak evidence suggests that Anderson might have had a judicial role: local poet Arthur Johnston wrote on Anderson’s death ‘Adspice causidici partes et iudicis aequi: Ius amat et leges servat uterque fori [Look at the parts of the advocate and of the equitable judge: he loves justice and preserves the laws of the court]’: William Duguid Geddes (ed.), *Musa Latina Aberdonensis* (3 vols, Aberdeen, 1892-1910), II, 208.

¹¹⁶ Patrick Chalmer succeeded Anderson as sheriff clerk and in turn passed the office to his brother, John. Henderson (ed.), *History of the Society*, 85-86, 116, 289; Littlejohn (ed.), *Sheriff Court*, II, 279, 534, 537-8; Wilson, ‘Men of Law’.

¹¹⁷ Littlejohn (ed.), *Sheriff Court*, I, 475.

This article has been accepted for publication in the Journal of Irish and Scottish Studies, and is scheduled to appear in 2018.

George Gordon, 1st Marquess of Huntly in 1628 included the complaint that he ‘hes promoted [promoted] and advanced Mr. Williame Anderson, ane profest and avowed Papist and under processe of the Kirk for Poprie, to be shireff-clerk of the shirefdome of Aberdein, whairof he is principall shireff’.¹¹⁸

The 1619 commission’s proposals were confirmed by an act of parliament in 1633.¹¹⁹ It has been said that the reforms ‘consisted of little more than a restoration of the system prescribed by Bishop Elphinston’s [sic] Foundation, except in so far as the introduction of the Reformed Religion had rendered some of the offices unnecessary.’¹²⁰ However such criticism does not properly appreciate the importance of these most recent reforms, which are significant for local and national legal history. The reinstatement of the offices of civilist and canonist meant that King’s College became in 1619 the only Scottish university positioned to teach law.¹²¹

¹¹⁸ P. Hume Brown (ed.), *Register of the Privy Council of Scotland*, II: 1627-1628 (Edinburgh, 1900), 506-7. On the Marquess, see J. R. M. Sizer, ‘Gordon, George, first marquess of Huntly (1561/2–1636)’, *Oxford DNB*.

¹¹⁹ RPS, 1633/6/88.

¹²⁰ ‘Report Relative to the University and King’s College of Aberdeen’, 307.

¹²¹ Cairns, ‘Academic Feud, Blood Feud and William Welwood’, 285-7; Cairns, ‘Lawyers, Law Professors, and Localities’, 306. Contemporaries appear to have viewed the changes as significant. After its duties at King’s College were completed on 16 September, the commission proceeded to Marischal College in New Aberdeen. However the illegitimate son of the founder and his associates had absconded with the porter’s keys after locking the gates to prevent the commissioners’ entry. The commission’s summoning of the principal to give reassurances that ‘he wer readie and glaid that ye visita[tion] sall proceed’ was followed by a request that the commissioners warrant against retaliation from the Earl Marischal, ‘wha had inhibite him after to compeer or ans[we]r or onywayis to acknowledge ye said commission’ [AUL, MSK 256/23/4].

c) Nicolson's classes and students

It is unclear whether law classes were actually held after 1619. There is some evidence that neither Nicolson nor Anderson taught, or at least that neither taught for long. Neither participated in Patrick Forbes's subsequent commission to King's College in November 1623. James Sandilands participated therein as commissary and rector.¹²² He was made canonist by at least the end of the following year in succession to Anderson,¹²³ and it is plausible that his participation in this commission was a factor in that appointment.

Stevenson has suggested that the lack of resources to pay salaries to the new masters would have meant that they would not have taught.¹²⁴ However it does not necessarily follow that a lack of salary would have led to their inactivity. It is plausible that the fees paid by the students were sufficient to make teaching financially worthwhile but were merely a supplement to the masters' other incomes. The Register of the Privy Seal records the gift in 1573 of a chaplaincy with an annual value of thirty pounds to the then canonist, Alexander Cheyne. This was to supplement the 'small valew' he received from the parsonage of Snow, which he would have held as canonist but which did not apparently allow him to 'be ressonable sustenit to discharge his office in teching of the lawis'.¹²⁵ However he was to

¹²² Innes (ed.), *Fasti Aberdonenses*, 280

¹²³ Anderson (ed.), *Officers and Graduates*, 30.

¹²⁴ Stevenson, *King's College*, 68.

¹²⁵ Gordon Donaldson (ed.), *Registrum secreti sigilli regum Scotorum: The Register of the Privy Seal of Scotland*, VI: 1567-74 (Edinburgh, 1963), 2032; Stevenson, *King's College*, 28.

receive these additional monies only for as long as he continued to reside and teach at the college. Similar incentives might have been used in the seventeenth century: the civilist's house was, for example, recovered for Nicolson in 1624.¹²⁶ The new masters might also have been able to organise classes around the timings of local court proceedings, as they had been in St Andrews previously when that locality's commissary, William Skene, was canonist there.¹²⁷ Some suggestion that this was possible is found in the continuation of Nicolson and Anderson in their court offices beyond 1619, presumably receiving appropriate funds accordingly. This arrangement would also have allowed the students to learn local practice, and would be broadly consistent with Finlay's observation that admission to practice in Aberdeen was often associated with a period in practice in the Old Aberdeen commissary court.¹²⁸

An additional challenge to identifying whether classes were held is posed in the incompleteness of the university's records, which do not explicitly note whether any students matriculated to study law. Cairns suggested of a later period that 'If the regular curriculum in arts did not include attendance at the class of the Civilist, some of those following it may nonetheless have taken his course on the *Institutes* when it was offered.'¹²⁹ However the extent to which this can be extended to the period relevant to this present examination is unclear. There is little correlation between those dozen-or-so men matriculating to study the

¹²⁶ Innes (ed.), *Fasti Aberdonenses*, 142-3.

¹²⁷ Cairns, 'Academic Feud, Blood Feud and William Welwood', 168-9.

¹²⁸ Finlay, 'Pettyfoggers', 44-5.

¹²⁹ Cairns, 'Lawyers, Law Professors, and Localities', 313.

arts at King's College during the years of Nicolson's tenure and those entering the local society of advocates shortly thereafter.¹³⁰ Therefore it seems that at this time students of the arts did not normally proceed to enter the local legal profession,¹³¹ and so perhaps did not routinely wish to study the law during their time at the college. Rather, 'The obvious candidates for attendance at the Civilist's classes ... are the apprentices of the Society of Advocates. This suggestion might seem to be supported by the tendency to link the chair with

¹³⁰ Only a partial list of students survives for the period after 1619: 'Album A' records both the matriculating and graduating arts students in each year [AUL, MSK 9. See also the transcript in Anderson (ed.), *Officers and Graduates*, 177ff]. The class which matriculated in 1619 comprised seventeen men, eleven of whom graduated in 1623 [AUL, MSK 9, fols 53r, 6r-v]. The next year's matriculating class consisted of sixteen men, eight of whom graduated in 1624 [AUL, MSK 9, fol.53v]. Only one of these thirty-three names can be found in the list of local advocates and apprentices. A John Chalmer graduated in 1623. A John Chalmer was also mentioned above (n.116) as sheriff clerk from 1630; he was admitted as a local advocate in 1649 [Henderson (ed.), *History of the Society*, 116; Littlejohn (ed.), *Sheriff Court*, II, 538]. However, even if these records refer to the same man, it remains unclear whether his studies would have been taken in contemplation of entering legal practice. Meanwhile, of the seven men who entered the local professional society in the 1620s and 1630s, one was identified by Henderson as having studied the arts at King's College: Alexander Reid entered in 1624 having graduated in 1615 [Henderson (ed.), *History of the Society*, 301; Anderson (ed.), *Officers and Graduates*, 180]. Another three entrants have names which also appear in the graduation lists, but it is not clear whether these are the same individuals: Alexander Anderson entered in 1628, having perhaps graduated in 1620; William Lumsden, entered in 1624 and is recorded as having studied the arts, having perhaps graduated in 1605; Robert Reid entered in 1633 also having been recorded as having studied the arts, having perhaps graduated in 1600 or 1619 [Henderson (ed.), *History of the Society*, 82, 178, 303; Anderson (ed.), *Officers and Graduates*, 182, 255, 177, 182].

¹³¹ On which admission, see Wilson, 'Spalding', 177-80.

the office of commissary'.¹³² If Nicolson did hold classes, his students might have formed a discrete group of aspiring lawyers, perhaps coinciding with the apprentices to the profession but distinct from the arts student cohort. However, as with the later period considered by Cairns, these would have been very small numbers,¹³³ as is indicated by the few admissions to the local professional society.¹³⁴

Nicolson's learning and academic interests are revealed in the personal library he assembled.¹³⁵ His library provides an insight into what he might have been concerned to teach, and also is an indication of the scholarly collecting which was pursued by at least some of Aberdeen's legal society more generally. The inventory of Nicolson's property on his death records that he had a library worth 2000 merks, but not the specific volumes nor who received them; presumably the library was passed to his son and heir.¹³⁶ However some volumes which belonged to Nicolson have been identified by the British Armorial Bindings Project as well as the keepers of various libraries. This is possible because Nicolson 'not only habitually had his arms added to his books, but also signed them, and used an ownership motto, several rather large book labels, and on occasion had his arms added in ink. He is

¹³² Cairns, 'Lawyers, Law Professors, and Localities', 313.

¹³³ Cairns, 'Lawyers, Law Professors, and Localities', 313-4.

¹³⁴ Wilson, 'Spalding', 177-9.

¹³⁵ Cf. for a later period Cairns, 'Lawyers, Law Professors, and Localities', 309-11.

¹³⁶ NRS, CC8/8/54, 91-3.

perhaps the first Scot to use a regular book label.’¹³⁷ The books which he collected and kept reflect his interests and mind-set as a practitioner, and perhaps teacher, of the law.

An examination of these volumes shows that Nicolson did not frequently annotate his works, so the titles alone reveal his view of legal scholarship. Most of his law books comprise the works of jurists associated with the Italian commentators, including some of the most important jurists of the school as well as some more obscure figures.¹³⁸ Nicolson’s apparent preference for such law books, it is submitted, suggests that he would have provided the forensic, practical legal education of the so-called *mos italicus*, which was used in legal

¹³⁷ ‘Nicolson, Thomas -1625’, British Armorial Bindings Project, <https://armorial.library.utoronto.ca/stamp-owners/NIC002>; see also William Smith Mitchell, *A History of Scottish Bookbinding, 1432-1650* (Aberdeen, 1955), 88.

¹³⁸ (1) Baldus Ubaldus, *Repertorium consiliorum* (2 vols, Lyon, 1548), Edinburgh University Library (hereafter EUL), *E.16.24-25, <https://armorial.library.utoronto.ca/node/37363>. (2) Filippo Decio, *Commentaria & repertorium* (Lyon, 1541), EUL, E*.15.29, <https://armorial.library.utoronto.ca/node/37356>. (3) Alessandro Tartagni, *In primam et secundam digesti veteris partem* (Lyon, 1552), Advocates Library, A.77.1, <https://armorial.library.utoronto.ca/node/37361>. (4) Paulus de Castro, *In primam Digesti veteris partem Patauinae praelectiones* (Lyon, 1550), Advocates Library, A.77.2. (5) Jason de Maynus, *In primam digesti veteris partem commentaria* (London, 1557), Advocates Library, A.77.1, <https://armorial.library.utoronto.ca/node/37359>. (6) Jason de Maynus, *Infortiati partem Commentarium* (Lyon, 1542), Advocates Library, A.77.1. (7) Dinus de Mugello, *Commentarius in regulas iuris pontificii* (Lyon, 1545), EUL, *E.32.52, <https://armorial.library.utoronto.ca/node/37370>. Annotations (now partially cut off) are found only against Regula 10: ‘Ratihabitionem retrotrahi, & mandatum non est dubium comparari’ [Ibidem, 74-81, 77, 79, 80]. (8) Jacobus Concenatius, *Quaestionum iuris singularium* (Lyon, 1556), Advocates Library, A.78.4. (9) Albertus Trotus, *De ecclesiarum visitatione* (Ferrara, 1476), Advocates Library, A.77.1, <https://armorial.library.utoronto.ca/content/de-ecclesiarum-visitacione>.

practice throughout Europe.¹³⁹ This would be in keeping with what would seem to be the style of legal education provided by the aforementioned master of law at St Andrews, William Skene, and with what seems to have been provided at King's College by law masters later in the century.¹⁴⁰

Skene's library, however, nonetheless included the works of several writers associated with the more scholarly school of legal humanism.¹⁴¹ In comparison, only a couple of texts associated with this school have been identified as belonging to Nicolson.¹⁴² This rival school of legal scholarship – if indeed it can be considered as such – sought to recover the original texts of Roman law with a focus on classical history and philology.¹⁴³ It was an elegant intellectual movement which did not displace the *mos italicus* as the principal method of legal

¹³⁹ On the commentators, see e.g. O. F. Robinson, T. D. Fergus and William M. Gordon, *European Legal History: Sources and Institutions* (Oxford, 2000), especially chs 4, 7; Peter Stein, *Roman Law in European History* (Cambridge, 1999), especially 71-4, 85-6.

¹⁴⁰ Cairns, 'The Law, the Advocates and the Universities in Late Sixteenth-Century Scotland', 181-2; Cairns, 'Lawyers, Law Professors, and Localities', 309-13.

¹⁴¹ Cairns, 'The Law, the Advocates and the Universities in Late Sixteenth-Century Scotland', 182.

¹⁴² (1) Andre Tiraqueau, *De legibus connubialibus, et iure maritali* (Lyon, 1560), Clements Collection National Art Library, CLE Drawer 7, <https://armorial.library.utoronto.ca/node/37362>. (2) Guillaume Budé, *Annotationes ... in quatuor & viginti Pandectarum* (Paris, 1536), Cambridge University Library, J.3.34, <https://armorial.library.utoronto.ca/node/37367>. (3) Ulrich Zasius, *Opera* (Lyon, 1550), Advocates Library, A.79.2.

¹⁴³ Douglas J. Osler, 'Images of Legal Humanism', *Surfaces*, 9 (2001), 101.6.

practice, although its methodological approach influenced later schools of thought which did do so.¹⁴⁴

Nicolson also collected books on philosophy, history and religion; this would be in keeping with the kind of wider humanist education which might be expected of the period. Among the volumes owned by him were fourteen books by writers of classical antiquity, most of which were written in Greek. This includes works of leading classical writers,¹⁴⁵ as well as lesser

¹⁴⁴ On legal humanism, see e.g. Robinson, Fergus and Gordon, *European Legal History: Sources and Institutions* (Oxford, 2000), ch. 10; Peter Stein, *Roman Law in European History* (Cambridge, 1999), especially 75-85.

¹⁴⁵ (1) Aristotle, *Opera* (Venice, 1551), EUL, JA.1030.3, <https://armorial.library.utoronto.ca/node/37365>. (2) Plato, *Phaedo* (Paris, 1553), National Library of Scotland (hereafter NLS), K.28.c.1(1). The text is annotated in places to aid structure or highlight passages, e.g. the title page of ‘ΓΝΩΜΟΛΟΓΙΑΙ’, the first part of the text ‘ΓΝΩΜΑΙ’. (3) Demosthenes, *Orationes* (Basel, 1547), Oxford Worcester College Library, SS.w.14-15, <https://armorial.library.utoronto.ca/node/37369>. (4) Dionysius of Halikarnassos, *Rhōmaikēs archaiologias biblia deka* (Paris, 1546-7), NLS, K.21.c.2. Note that Nicolson’s bookplate and signature appears on the title page, but there is also there the signature of a different Thomas Nicolson, perhaps the same hand as signed the copy of Seneca, mentioned below. The text is frequently annotated with quick Latin references to the Greek text, corrections and highlighting—several have legal relevance [e.g. 429, 503]. (5) Homer, *Illiad and Odyssey* (Greek edn, Basil, 1535), NLS, K.4.a.[2]. Nicolson may also have owned a copy of the 1542 edition of this text: John Durkan and Anthony Ross, *Early Scottish Libraries* (Glasgow, 1861), 49-60, item 64. (6) Sophocles, *Tragedies* (Greek edn, Paris, 1553), NLS, Bdg.m.108(1)). The front flyleaf records that the book was received from his brother, John Nicolson of Lasswade; the signatures of both men appear on the title page, and Thomas’s bookplate is pasted onto the following page and his signature is on the penultimate back flyleaf. Occasional annotations [especially on ‘Antigone’: Ibidem, 179-228] seem to be aids to reading; the reflection is made at the end of the text of ‘Antigone’: ‘universale exiphonema totus tragedia finctum et usum narrationis contuniens’ [Ibidem, 228]. (7) Seneca, *Opera* (Heidelberg, 1592), NLS, Jolly.1430. Note that Nicolson’s stamp is on both

known classical and Byzantine authors.¹⁴⁶ He also collected works by more recent writers, reflecting particular interests in religion and history.¹⁴⁷ It is noteworthy that several of these

covers, his signature appears on the first and second flyleaves and on the title page, and his bookplate is also on the title and subsequent page. However three signatures of a different Thomas Nicolson are found on the back cover and flyleaf, one of which is dated 1669. Seneca's *epistolae* are annotated extensively by more than one hand with comments, corrections and highlighting of passages [56, 57, 90, 93, 111, 219]; annotation elsewhere is infrequent. (8) On a volume of Plutarch possibly owned by him, see Durkan and Ross, *Early Scottish Libraries*, 49-60, item 39.

¹⁴⁶ (1) The Greek-speaking philosopher Plotinus, *Operum philosophicorum omnium* (Basel, 1580), EUL, N*.17.26, <https://armorial.library.utoronto.ca/node/37360>. (2) The Greco-Roman historian Appianus of Alexandria, *Romanarum historiarum* (Paris, 1551), EUL, *W.16.3, <https://armorial.library.utoronto.ca/node/37364>. (3) The Roman freedman Flavius Josephus, *Opera* (Geneva, 1611), NLS, RB.I.119, <https://armorial.library.utoronto.ca/node/37358>. (4) The Greek botanist Theophrastus, *Historia de plantis* (Venice, 1552), EUL, JA.1034, <https://armorial.library.utoronto.ca/node/37372>. (5) The Byzantine chronicler Joannes Zonaras, *Historia rerum in Oriente gestarum* (Frankfurt, 1587), University of St Andrews Library, TypGF.B87FZ, <https://armorial.library.utoronto.ca/node/37373>; Christine Gascoigne, 'Book Transmission in Sixteenth and Seventeenth-Century North East Scotland: the Evidence of William Guild's Books', *Journal of Edinburgh Bibliographical Society*, 4 (2009), 32, 37; see Gascoigne's catalogue of books from the library of William Guild, entry 175, <http://www.edinburghbibliographicalsociety.org.uk/publications/journal-of-the-edinburgh-bibliographical-society-no-4-2009/>. (6) The obscure orthodox ecclesiastic Michael Syngelus, on which see Durkan and Ross, *Early Scottish Libraries*, 49-60, item 73.

¹⁴⁷ (1) The Greek bishop Eustathios, on which see Durkan and Ross, *Early Scottish Libraries*, 49-60, item 63. (2) The Italian biographer Paolo Giovio, *Historiarum sui temporis* (Paris, 1553), EUL, B*.17.7, <https://armorial.library.utoronto.ca/node/37357>. (3) The German historian Elias Reusner, *Basilikon opus genealogicum catholicum* (Frankfurt, 1592), NLS, E.93.b.11, <https://armorial.library.utoronto.ca/node/37371>. (4) Perhaps the German theologian Martin Chemnitz, *Examinis Concili Tridentini* (Frankfurt, 1606), NLS,

This article has been accepted for publication in the Journal of Irish and Scottish Studies, and is scheduled to appear in 2018.

books were previously owned by Henry Sinclair,¹⁴⁸ a lord of session whose ‘quite outstanding library show the width of his scholarly interests’.¹⁴⁹ The careers of the two men would not have overlapped in the court, but there seems to have been some indirect connection between them.¹⁵⁰

Saltoun Collection, <https://armorial.library.utoronto.ca/node/37368>. [Not found by this research]. (5) The French Protestant reformer Philippe de Mornay, *De veritate religionis Christianae liber* (Leiden, 1587), NLS, AB.1.85.46(1). The text is annotated only once: Ibidem, 493. (6) The French Protestant reformer Theodore Beza, *Epistolarum theologiarum* (Geneva, 1572), AUL, pi 204 Bez 1, <http://www.abdn.ac.uk/special-collections/provenance/1347/>. The text is lightly annotated and highlighted [Ibidem, 24, 26, 48, 317], with handwritten indices on the front flyleaf and after the printed index [Ibidem, 2, 418-9]. (7) By the Italian politician Niccolo Machiavelli, *Lasino doro ... con tutte laltre sue operette* (London 1588), NLS, Ae.8/2.28. (8) Also by Machiavelli, *Historie fiorentine* (Florence, 1551), NLS, Tyn.72(1).

¹⁴⁸ Aristotle, *Opera*, 1, 438; Plato, *Phaedo*, 3, 88 (4th series of pagination); Homer, *Illiad and Odyssey*, 1, [288]; Sophocles, *Tragedies*, 4, 52 (3rd series of pagination). See also Durkan and Ross, *Early Scottish Libraries*, 49-60 items 39, 63, 64, and 73.

¹⁴⁹ Mark Dilworth, ‘Sinclair, Henry (1507/8–1565)’, *Oxford DNB*. For a catalogue of Sinclair’s library, see Durkan and Ross, *Early Scottish Libraries*, 49-60, 171. Those books also owned by Nicolson are entries 40, 82 and 86 on Durkan’s list of Sinclair’s books. The aforementioned volumes of Plato and Sophocles do not appear on that list, or the revisions to it by T. A. F. Cherry, ‘The Library of Henry Sinclair, Bishop of Ross, 1560-1565’, *The Bibliothek*, (1963) 4, 13-24. The impact on understanding of Sinclair’s library of these additional volumes has not been explored.

¹⁵⁰ Although perhaps not the cause of the receipt of these books by Nicolson, it is worth noting that Lasswade, the estate owned by Thomas’s brother, John, was near that of Roslin (which had been owned by Henry Sinclair’s father) and Dryden (which was owned by a branch of the Sinclair family, from which John had acquired Lasswade). The author is grateful to John Ford for this point.

This examination of the learning and scholarly interests of Aberdeen's legal professionals may be taken further by looking at the library of one of Nicolson's colleagues, the canonist and sheriff clerk William Anderson.¹⁵¹ Like Nicolson, it was not Anderson's normal practice to annotate his texts extensively, but the titles themselves are informative. Few books on the law have been identified as having been owned by Anderson, although he may have owned others which have not yet been found. The most important of the law books identified as belonging to him was the central canon law text, Gratian's *Decretum* (Paris, 1538), which he received as a gift from the aforementioned canonist and commissary Nicholas Hay.¹⁵² Rather than books on the law, it seems that Anderson's main collective efforts extended to books that can, broadly construed, be regarded as religious in nature. Several of these were Catholic

¹⁵¹ <https://www.abdn.ac.uk/special-collections/provenance/owner/33/>.

¹⁵² AUL, pi 34817C, <http://www.abdn.ac.uk/special-collections/provenance/35/>. Hay's signature is present on the recto of the first flyleaf, supplemented in a different ink to record the gift in 1591; an inscription on the verso gives the date as 1595. The volume is lightly annotated with notes, cross-references, pen trials and underlining [e.g. fols 106r, 126v, 192v, 199r]. This edition preceded both the Scottish Reformation and the authorised, corrected editio Romana of 1582. On the writing and editions of the *Decretum*, see e.g. Anders Winroth, *The Making of Gratian's Decretum* (Cambridge, 2004), ch. 1. A new critical edition of the *Decretum* is in progress under Winroth's supervision [<https://sites.google.com/a/yale.edu/decretumgratiani/home>]. The other two law books identified as belonging to Anderson are: (1) Martial d'Auvergne, *Aresta amorum* (Paris, 1555), NLS, H.24.g.8. (2) Johannis Althusius, *Jurisprudentiae Romanae methodice digestae* (Herborn, 1592), AUL, pi 34504 Alt, <http://www.abdn.ac.uk/special-collections/provenance/140/>. On which, see Alain de Benoist, 'The First Federalist: Johannes Althusius', *Telos*, 118 (2000), 25-58, 27, 29 n.16; Peter Stein, *Roman Law in European History* (Cambridge, 1999), 82; Dieter Wyduckel, 'Althusius, Johannes (1563-1638)' in Hans J. Hillerbrand (ed.), *The Encyclopedia of Protestantism* (4 vols, London, 2004) I 51-53.

books.¹⁵³ His collection of these is particularly interesting given the controversy surrounding his own religious beliefs and his loss of office as a result of claims of hereticism associated with his Catholicism. However Anderson's interest in religious works appears to have extended beyond Christian teachings: he acquired the second edition of 'one of the most significant texts on Islam published in the Latin West in the Early Modern era' and the first

¹⁵³ (1) *Index Expurgatorius librorum*, AUL, pi 09822 IE 1, <http://www.abdn.ac.uk/special-collections/provenance/78/>. (2) Alfonsi a Castro Zamorensis, *Aduersis omnes haereses* (Antwerp, 1556), AUL, pi f273 Cas, <http://www.abdn.ac.uk/special-collections/provenance/127/>. The text is frequently annotated with marginal numbers [sometimes noting 'causa', e.g. fol.27r], highlighting important passages [e.g. fols 5r, 9v, 11r, 26v, 27v, 33r, 35r, 35v, 37v, 39r, 47v, 75r, 84v], picking out authorities in the text [e.g. 4r, 5r] improving citations [fol.59r], or adding comments [e.g. fols 1v, 47v, 65v]. The titles on 'fides', 'fiducia', 'gratia' 'opera' are particularly heavily annotated [fols 202v-219v, 219v-222v, 224r-243v, 69v-81v]. (3) Petrus Canisius, *Opus catechisticum* (Paris, 1579), AUL, pi f2382 Can 2, <http://www.abdn.ac.uk/special-collections/provenance/136/>. As well as Anderson's signature on the title page, the stamp of William Hay, 'canonius abirdonensis', has been applied to the front cover; it is unclear whether this person might have a connection to Nicholas Hay. The text is annotated only occasionally [e.g. corrections, cols 497-8] but has frequent highlighting of passages [e.g. cols 891-3, 1756]. (4) Bede's *De natura rerum et temporum ratione* (Basel, 1529), AUL, pi f52241 Fin, <http://www.abdn.ac.uk/special-collections/provenance/120/>. This copy has been rebound with other texts. (5) St Jerome, *Epistolae* (Basel, 1492), AUL, Inc 177, <http://www.abdn.ac.uk/special-collections/provenance/4394/>. The date and place of publication are omitted from the title page but added in an annotation [fol.271v]. Some annotations with corrections, comments and highlights [e.g. fols 20r, 21v, 37r, 59v, 64r, 70r, 82r-88r, 91v, 96v].

This article has been accepted for publication in the Journal of Irish and Scottish Studies, and is scheduled to appear in 2018.

translation of the Qur'an,¹⁵⁴ and the post-Classical Jewish history known as pseudo-Hegesippus.¹⁵⁵

The books collected by Nicolson and Anderson reveal quite different collecting preferences and distinct interests. These discrete interests might additionally explain a curiosity of their appointments at King's College in 1619, namely that the secular court's clerk was appointed as the master of ecclesiastic law whereas the ecclesiastic court's judge was appointed as the master of secular law.¹⁵⁶

Conclusion

Thomas Nicolson of Cockburnspath was one of Aberdeen's most important seventeenth century lawyers. His career and those of some of his colleagues can act as a lens through which several aspects of the legal and institutional history of the North East can be viewed.

¹⁵⁴ Gregory J. Miller, 'Theodor Bibliander's *Machumetis saracenorum principis eiusque successorum vitae, doctrina ac ipse alcoran* (1543) as the Sixteenth-Century "Encyclopedia" of Islam', *Islam and Christian-Muslim Relations*, 24 (2013), 241-54, 241. Bibliander, *Machumetis saracenorum principis eiusque successorum vitae, doctrina ac ipse alcoran* (Zurich, 1550), AUL, pi f297 Kor M, <http://www.abdn.ac.uk/special-collections/provenance/52/>.

¹⁵⁵ AUL, pi f9(33) Heg, <http://www.abdn.ac.uk/special-collections/provenance/68/>. On which see e.g. Albert A. Bell Jr, 'Josephus and Pseudo-Hegesippus' in Louis H. Feldman and Gohei Hata (eds), *Josephus, Judaism, and Christianity* (Detroit, 1987) 349.

¹⁵⁶ Further comparison might be had with the library of Thomas Sandilands, who left twenty-eight law books to King's College, on which see Iain Beavan, Peter Davidson and Jane Stevenson (eds), *Library and Archive Collections of the University of Aberdeen* (Aberdeen, 2011), 20.

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This article has constructed a detailed biography of Nicolson for the first time. It has suggested that he first established himself as an advocate in Edinburgh and clerk to the General Assembly, then relocated to Aberdeen around 1604 to take up the appointment of judge of the commissary court.

His clerkship and the judicial office which he held (and shared) are reflective of the extent to which kinship and professional networks were an inherent aspect of legal practice nationally. The reciprocity of favour and the movability of offices within the legal community was made possible through such connections. This has been shown here in the examples of some of the men connected to Nicolson; the impact of such networks within the legal community of Aberdeen will be explored further elsewhere.¹⁵⁷

Additionally this article has examined Nicolson's period of tenure as a judge in the commissary court, and his activities therein. It has provided the first detailed reconstruction of the personnel and some of the activities of the commissary court during this period. This investigation, which also demonstrated Spalding's practicks as being a credible source for such study, is particularly important given that the court's own records are lost.

Nicolson's holding of his commissary court office was probably the reason for his inclusion as a commissioner on the visitation of 1619, which ordered that law teaching be reintroduced at King's College and which appointed Nicolson as civilist. It seems likely that this was an appointment of convenience for the commission, a reflection of its desire to have someone appointed before the three days of its hearing at King's College were spent. Although it is unclear whether Nicolson held classes, it has been submitted that any education which he

¹⁵⁷ See also Wilson, 'Men of Law'.

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might have offered would have been practical rather than philosophical in nature and akin to that provided somewhat earlier at St Andrews.

The re-establishment of the offices of canonist and civilist did not result in continuous law teaching over the following centuries. The canonist's office was abolished around the end of the seventeenth century. Some civilists held the position as a sinecure while maintaining their practice at the bar in Edinburgh. One of the factors which contributed to this practice was the difference in earnings of lawyers in Aberdeen in comparison to those in Edinburgh at that time.¹⁵⁸

Indeed, there is evidence that even Nicolson continued to practice in Edinburgh after relocating to Aberdeen. First, the collected legal decisions of Nicolson's nephew, Thomas Nicolson of Carnock, include a case heard in the Court of Session in 1611 pleaded by 'Nicolson'.¹⁵⁹ This case was too early to have been pleaded by the collector, Carnock, who

¹⁵⁸ Cairns, 'Lawyers, Law Professors, and Localities', 312. See also Smith, 'A Meditation on Scottish Universities and the Civil Law', 67-68; MacQueen, 'The Foundation of Law Teaching at Aberdeen', 62-3. For other factors in the decision, see Hope, 'The Universities of Aberdeen and the Court of Session in Edinburgh', 18. For other studies on the later history of law teaching, see e.g. Stephen D. Girvin, 'Professor John Dove Wilson of Aberdeen', *Juridical Review*, (1992), 60-73; Hope, 'The Universities of Aberdeen and the Court of Session in Edinburgh', 9-11, 18; A. Allan Maclaren 'Privilege, Patronage and the Professions: Aberdeen and its Universities, 1760-1860' in Jennifer J. Carter and Donald J. Withrington (eds), *Scottish Universities: Distinctiveness and Diversity* (Edinburgh, 1992) 96-104; Cairns, 'Lawyers, Law Professors, and Localities'; Meston, 'Civilists', 157-65.

¹⁵⁹ William Maxwell Morison (ed.), *The Decisions of the Court of Session from its Institution to the Present Time, Digested under Proper Heads, in the Form of a Dictionary* (Edinburgh, 1801-7) [or alternatively Idem (ed), *The Decisions of the Court of Session from its Institution until the Separation of the Court into Two*

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was presumably observing the court in anticipation of his admission in the following year; it was too late for Carnock's father, John Nicolson of Lasswade, who had died in 1605.¹⁶⁰ Indeed it would appear that Thomas Nicolson of Cockburnspath was the only Nicolson who was admitted to a right of audience in the Session at that time.¹⁶¹ Secondly, three years later, a 'Mr Thomas Nicolson' and two other advocates defended the Earl of Orkney in his trial for treason in Edinburgh. Given the importance of the charge, the identity of the defender, and the contemporary description of his counsel as 'Lawyers, all of good esteem', it is plausible that it was Thomas Nicolson of Cockburnspath who pleaded the case rather than his less experienced nephew.¹⁶² Thirdly, another collector of decisions, Sir Alexander Gibson of Durie, noted a case having been pleaded in the Edinburgh commissary court on some unspecified date by 'Nicholson' and thereafter in March 1624 by 'Nicolson Younger and Elder'.¹⁶³ The only three men who could plead in the Session with that surname at that time were Thomas Nicolson of Cockburnspath, his nephew (Carnock), and Robert Nicolson, later

Divisions in the Year 1808, Digested under Proper Heads, in the Form of a Dictionary (Edinburgh, 1811)], *Baillie v Torphichen* [1611] Mor. 4797.

¹⁶⁰ Grant (ed.), *Faculty of Advocates*, 164.

¹⁶¹ Grant (ed.), *Faculty of Advocates*, 164-5.

¹⁶² John Spotswood, *The History of the Church of Scotland, Beginning the Year of our Lord 203, and continued to the end of the Reign of King James the VI* (3rd edn, London, 1663), 520. On the Earl, see Peter D. Anderson, 'Stewart, Patrick, second earl of Orkney (c.1566/7–1615)', *Oxford DNB*.

¹⁶³ *Cochran v Gechin* [1623] Mor. 12099; Sir Alexander Gibson of Durie, *The Decisions of the Lords of Council and Session in Most Cases of Importance, Debated, and Brought Before Them; from July 1621, to July 1642* (Edinburgh, 1690), 67, 117.

an Edinburgh commissary but not obviously a close relation.¹⁶⁴ There is therefore some suggestion that Thomas Nicolson of Cockburnspath continued to practice in the Session and perhaps may have mentored his nephew in the profession while doing so. Some further evidence of Nicolson's continued presence in Edinburgh is suggested in that it was in this area, broadly construed, in which Nicolson acquired the lands of Cockburnspath in 1621.¹⁶⁵

Nicolson thus provides an example of the extent to which Scottish lawyers of the early seventeenth century might pursue their careers in multiple towns. It seems that his family may have followed him as he moved between Aberdeen and the Edinburgh area. The births of two of his daughters, Katherine and Agnes, and his oldest son, James, were recorded in the Aberdeen parish records in 1605, 1607 and 1608 respectively.¹⁶⁶ This seems to indicate that the family was based in Aberdeen shortly after his relocation. However the births of his two younger sons, the aforementioned Thomas and a younger son, Alexander, were registered in

¹⁶⁴ Grant's confused history of the family suggests that Robert Nicolson, commissary, was the grandson of John Nicolson of Lasswade [*County Families of the Shetland Islands*, 'Nicolson of the Ilk, Lasswade and Lochend'], but he later suggested (correctly) that these were two different men [Grant (ed.), *Faculty of Advocates*, 164-5; *Burke's Peerage*, 701].

¹⁶⁵ RPS, 1633/6/159.

¹⁶⁶ NRS, OPR Births, Aberdeen parish registers: 168/A 20 51, 11 December 1605; 168/A 20 68, 3 January 1607; 168/A 20 93, 25 July 1608; available on Scotland's People, <https://www.scotlandspeople.gov.uk>. The record of Agnes's birth does not list a profession for the father, so this might be a different Thomas Nicolson with a daughter Agnes living in Aberdeen; his profession is recorded as the commissary in the other two records.

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1609 and 1612 in the Edinburgh parish records.¹⁶⁷ This suggests that he established his family in the Lothians after only a short time in the North East. Hence his three sons all established their careers in Edinburgh: James as a burgess, and Alexander and Thomas as advocates.¹⁶⁸

Thomas Nicolson of Cockburnspath had died by October 1625: a retour of service in Cockburnspath is issued in that month to his eldest son, James.¹⁶⁹ However the Nicolson family did retain some kind of association with Old Aberdeen and with the Sandilands family. A dispute between an Aberdonian merchant burgess, James Cruikshank, and several

¹⁶⁷ NRS, OPR Births, Edinburgh parish registers, 685/1 10 383, 19 September 1609; 685/1 20 54, Edinburgh parish registers, 30 August 1612; available on Scotland's People, <https://www.scotlandspeople.gov.uk>.

¹⁶⁸ On James, see Rankin, *Cockburnspath*, 10-12; G.E. Cockayne, *Complete Baronetage* (4 vols, Exeter, 1900-4) II, 304. On Thomas, see Grant (ed.), *Faculty of Advocates*, 165; Omond, *The Lord Advocates of Scotland*, I, 154-6. On Alexander, see Grant (ed.), *Faculty of Advocates*, 164.

¹⁶⁹ *Inquisitionum*, I, Berwick, 145. See also parliament's ratification, RPS, 1633/6/159. Cockburnspath was subject to a tailzie or restriction confirming the inheritance of the property on a particular line of descendants. This resulted in competition over the subsequent right to inherit, initially between James's daughter and her uncle, Sir Thomas. Further controversy over the right to inherit the lands followed between the members of the subsequent generation. *Nicolson v Nicolson* (1677) Mor. 8944; Sir James Dalrymple, Viscount Stair, *The Decisions of the Lords of the Council & Session* (Edinburgh, 1683-87), II, 582-5; *Inquisitionum*, I, Berwick, 429; *Burke's Peerage*, I, 1303; Dowager Lady Eliot of Stobs and Sir Arthur Elliott, Bart. of Stobs, *The Elliots: The Story of a Border Clan: A Genealogical History* ([London], 1974), 350. The descendants of this branch of the Nicolson family was inaccurately reconstructed in 'The Family of Nicolson', *Scottish Notes and Queries*, 3 (1889), 51-6, 145-8.

members of the burgh was heard in Edinburgh in 1634.¹⁷⁰ Cruikshank was represented by two experienced Edinburgh advocates, Sir Lewis Stewart and Laurence McGill.¹⁷¹ The other townsmen were represented by a Thomas Nicolson and Thomas Sandilands. This case is an interesting collaboration between the next generation of the dynastic legal families of Thomas Nicolson of Cockburnspath and James Sandilands of Craibstone. The Thomas Nicolson who acted in this case must have been either Cockburnspath's son or his nephew. His son (as has been mentioned) rose to become King's Advocate, in light of the Nicolson family's connections with the previous holder of the office, Sir Thomas Hope of Craighall. The nephew, who it has been submitted was mentored by Cockburnspath as a new advocate, was the aforementioned Thomas Nicolson of Carnock who later compiled a collection of the decisions of the Court of Session. Meanwhile Thomas Sandilands, son of James Sandilands, had been mentored by his father. He had first jointly shared with his father the office of commissary of Aberdeen and subsequently succeeded his father in that post. He, too, built a reputation in Edinburgh and was admitted to the Court of Session bar.¹⁷²

This study has drawn on a variety of local and national records to establish aspects of the legal history of the North East of Scotland, with a particular focus on Old Aberdeen's men of law and the institutions within the burgh in which they worked. Yet these men and

¹⁷⁰ ACA, OA/1/6/3/16. No sederunt record appears for 22 March 1634 and no mention appears to be made of this hearing in P. Hume Brown (ed.), *Register of the Privy Council of Scotland*, V: 1633-1635 (Edinburgh, 1904) or Durie, *Decisions*.

¹⁷¹ Grant (ed.), *Faculty of Advocates*, 132, 201.

¹⁷² On Thomas Sandilands, see above n.84; Wilson, 'Men of Law'.

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institutions were also of national significance, as has been shown. Comparison between Aberdeen and other local legal communities beyond Edinburgh may be fruitful, revealing, for example, further information about the nature of Scots law and its practice in the inferior courts. Such a comparison would, however, depend on significant work being undertaken on other collections of local legal records as few such focused studies have as yet been undertaken. This paper has, however, in the shorter term, contributed to this special issue's overall aim of highlighting the research potential of the local records, particularly those of the burgh of Old Aberdeen.