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The Business of the College of Justice in 1600 - how it reflects the economic and social life of Scots men and women

by

Winifred Katherine Coutts

Volume 1

Ph.D.,
University of Edinburgh
1999.
The Business of the College of Justice in 1600 - how it reflects the economic and social life of Scots men and women

The business of the Court of Session has been analysed into types of actions with detailed discussion of advocatation, declarators and arbitration. Entries in the Registers of Acts and Decreets and related Process papers which illustrate procedure have been indicated.

Advocates, their practice and interests outside the Court have been studied.

The insecurities which ministers faced over payment of stipends and possession of glebes is demonstrated.

The legal position of women has been investigated. Legal sources and the manuscript sources have been compared and the statement of the legal texts that a widow or unmarried woman was free in all her actings while a married woman required her husband’s consent in hers, is shown by the records to be accurate. Many wives brought actions in the Court of Session. Marriage contracts, tochers, debt, heritable rights, property and work outside the home have been studied in depth.

The money-lending activities of merchants and burgesses have been shown as over-ambitious and doomed in an economy which was mainly based for many on payment of rents in kind. The wide-flung nature of their trade, their partnerships and their investment in land have been examined.

A comprehensive Appendix contains transcriptions of most types of actions and of parts of records relevant to the text of the thesis.
I hereby certify that this thesis has been composed by me and that the work has been my own.

Winifred K. Coutts
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Chapter 2

Merchants and Craftsmen

Merchants and Craftsmen as creditors and debtors
Diligence - arrestment, letters of horning and poinding
Inferior courts; advocation; arbitration
Crime
Family matters
Work and industry
Land and Property
Investment in land and property
Investment, trade and commerce
Currencies and Finance
Money-lending
Conclusion

Pie-chart - Appearances on behalf of Merchants and Craftsmen
Although The Stair Society has published volumes which include commentaries on and excerpts from the legal archives of the Supreme Court, no study of a complete year's work in the College of Justice has hitherto been undertaken. The year chosen for analysis was 1600, because this came near the end of James's rule in Scotland when his confidence and assertiveness as a ruler were not yet at their height. [It was in 1601 that he reached an understanding with Sir Robert Cecil over the English succession thus allaying at least one financial fear, that of having to raise an army.] The choice of year was arbitrary; it could equally well have been 1598, 1599 or 1601. The study began in January of that year because an ordinance of the Privy Council of 17 December 1599 changed New Year's Day in Scotland from 25 March to 1 January, thus bringing Scotland into line with the Continent though not with England. It could be suggested that it would have been more appropriate to have followed the court-year, running from November to July, but a more conventional approach was adopted because the work of the court continued throughout the summer with registration of deeds.

The Historical Background ¹

Aged 30 in October 1595 when Chancellor Thirlestane died, the King became master of his realm, and it was not until January 1599 that John Graham, earl of Montrose, was appointed as Chancellor. From the time of the quelling of the tumult in Edinburgh on 17 December 1596, over the rights of Presbytery and the independence of the pulpit in Scotland, James increasingly curbed the political influence of the clergy, successfully asserting his rights as king against those who called for a limited monarchy. In 1599, the Privy

Council discharged the Presbyteries and other judicatures from further proceedings in cases of discipline and significantly, though less importantly, granted a licence to English comedians to play in Edinburgh and compelled the Kirk Session to rescind their act forbidding attendance at a performance. Even the notorious Gowrie Conspiracy of 5 August 1600, in which the two Ruthven brothers were slain after their capture of the King in Perth with the alleged purpose of murdering him, was used as an instrument for control of the clergy. The King called for universal thanksgivings for his safety and ordered the clergy to publicise his version of the event from their pulpits. The five Edinburgh clergy, Balquhanqual, Balfour, Bruce, Hall and Watson were too sceptical to comply. All were banished and more pragmatic substitutes were appointed. Eventually all retracted their dissidence although Robert Bruce only did so after banishment abroad because he was 'doubtful and nocht throuchlie resolvit of the treasunable and unnatural conspiracie'. Of ten investigations which followed only two were about the circumstances of the plot, while eight concerned ecclesiastical issues. In October 1600, though titular bishoprics had never been extinct, the restoration of Episcopacy became more likely with the nomination of Bishops to Aberdeen, Ross as well as to Caithness. Mr Peter Rollok, senator of the College of Justice, held the temporalities of Dunkeld, and was designated as 'Episcopus' in sederunts of judges in 1600.

Accession to the English throne also dominated the King’s thoughts at this time. All his actions with regard to England were conciliatory, with proclamations against hostile expeditions against their southern neighbours by Scots, the liberation of English under arrest, the rescinding of Burgh acts against the importing of English cloth, a specific act against the reset in the Fife ports of
a Dunkirk ship which had been harassing English subjects and another against the recruiting of Highlanders to fight against the English in Ireland. Nevertheless, there were signs of military preparation, should he be forced to fight in the pursuit of his undoubted right to the English throne. Sir Michael Balfour of Burleigh was authorized to import arms for 2,000 horsemen and for 8,000 foot soldiers and he was granted a monopoly of the sale of arms for three years.

Vigorous attempts were made to curb lawlessness in the Borders although Sir John Carmichael was murdered on 16 June, 1600, just six months after he had assumed office as Warden of the West March. Nevertheless, the Earl of Angus, as Lieutenant over the whole Borders, was maintaining a measure of control, although the Maxwells and Johnstons in the south-west were still feuding.

The Duke of Lennox and Marquis of Huntly, with special charge for the colonisation of Lewis, were joint Lieutenants and Justiciars in the north but James did not trust in promises of good order or bonds. He preferred to make an incursion into Kintyre and the west Highlands, although this plan was aborted after the preparations had been announced. The chief of the Macgregors of the Lochlomond area was continually summoned to give securities for his and his clan’s good behaviour. Whether his clan was more lawless than the followers of Mackenzie of Kintail or of Macleod of Dunvegan in their more inaccessible lands, is an open question but it was chief Allaster Macgregor who was imprisoned in Edinburgh on 6 March, 1600.

Acts to suppress feuds such as that between the Lindsays and Ogilvies, against convocations of armed men, against ‘tulyies’ or brawls, against the illegal bearing of firearms and against the tolerance of strong and idle beggars were the counterparts of calling to account the sheriffs, their clerks and deputes, of Berwick, Peebles, Roxburgh and Selkirk for neglect of their duties
and the tightening up of administration in that sasines had to be registered within 40 days, which, it was hoped, would render forgery of evidence more difficult.

An attempt was made to alter the long-established pattern of trade in cloth in which Scottish wool was exported and woven cloth imported. One hundred foreign cloth workers were to be allowed to settle in Scotland; they were to be given the rights of burgesses and tax exemptions for ten years and were to enjoy the privilege of a pastor who preached in their own language. In return they were to teach their skills to the Scots. Improved kilns and better venting of furnaces, invented by Eustatius Roog were encouraged by the King. Although Roog’s monopoly of salt-making was ratified, a monopoly in heraldic painting was broken. In the last months before January 1600, legislation was passed controlling the price of wine to an upper limit of five shillings per pint under penalty of confiscation of the seller’s stock and the packing of herring before 1 October was proscribed.

No account of the historical background to the study of the civil actions fought in 1600 would be complete without mention of the King’s personal life. His daughter, Margaret, had died in August and his second son, Charles, was born in November. In the last Scottish parliament held by James before his departure to England, an act was passed against the posterity of Francis Stewart, earl of Bothwell, who had been convicted of witchcraft along with a North Berwick coven. He had plagued the King by his bizarre behaviour and been exiled in 1595. James had written his manual about the duties of a king, Basilikon Doron, in 1598 and in 1600 he over-reacted to a political pasquil, instigating what seems to have been an over-zealous investigation into its source.

Nor must the King’s continued financial difficulties pass unremarked. The appointment of the Octavians, disbanded in 1597, the
taxations, the granting or selling of escheats, the founding of new
burghs and granting of monopolies and the encouragement to Robert
Pont to find new sources of mineral wealth in Orkney when the lead
mines were in difficulties, all point to this.

METHODOLOGY

All 2711 entries for the year 1 January to 31 December 1600 in the
Registers of Acts and Decreets were transcribed. A data base was
created with 14 fields, namely the specific clerk's office, the
litigants, the date of the action, the Scottish Record Office
reference number, the pursuer's advocate, the defender's advocate,
the provenance of the litigants, the type of action, the subject of
the action, the result of the action, legal, economic and social
importance of the action, and a miscellaneous information section.

294 sets of papers in the unindexed Process Papers for the same
period were summarised. These all related to entries in the
Registers. Extracts for use in the text of the thesis were selected
and full transcriptions of the originals were made of these. Entries
in the Registers or extracts of the Process Papers relevant to the
text of the thesis have either been cited or, if of particular
importance to the discussion, appear in the Appendix.

An example of each type of action has been provided in the chapter
dealing with the business of the court. Reference has been made to
all cases relevant to the subjects embraced by the economic and
social chapters. Not every case current in 1600 was appropriate to
these chapter topics.
CONVENTIONS

STYLE Contemporary documents, including names, have been quoted as far as possible in their original spelling but i/j, u/v/w and y/z have been standardized; 'yogh' is written as y and 'thorn' is written as y; contractions have been transcribed in the form in which they were written in the manuscripts. 'C' for 'contra' has been used in the Appendices, since it was used by the clerks, but has been changed in the footnotes to the now conventional 'v' for 'versus'. In the text, personal and place names have generally been modernized where possible and figures rendered in Arabic numerals. Capitalization has been standardized and abbreviations like 'viz.' and 'etc.' have been reproduced. Punctuation remains as in the original except where an occasional comma or full stop has been added for clarity.

DATES These are given in old style (Julian calendar) but with the year beginning on January 1st, as it did in 1600 for the first time.

MONEY All money is in merks or pounds Scots unless otherwise stated and 'l', 's', 'd' denote pounds, shillings and pence.

REFERENCES TO DOCUMENTS These have been given their Scottish Record Office reference numbers; CS15 refers to unindexed Process papers; the middle number refers to the boxes in which the documents were found and the last number indicates relative position within the boxes, 1 being at the front.
There were 2,711 entries in the Registers of Acts and Decrees for 1600 representing 2,221 individual litigations since the entries included interlocutors. Some litigations may have been begun before 1600; others, where decree was not pronounced, will have been carried forward into 1601.

The administrative work of the court was organized through three 'offices', each under a different clerk and all supervised by the Clerk Register. Thus a reference was made to 'Mr Johne Skene or Clerk of Registers, Mrs William Scot, Alexander Gibbsoun and Alexander Hay his deputs'. Judging by the script, each office employed several under-clerks who do not appear to have been linked to one specific office. Only one under-clerk is known by name. A fragment of a catalogue exists in which is written 'The Cattollege Buikis of the haill proces quhairin thair ar sentence gevin sen the first of Junii 1586 and endis the last Junii 1617. Writtin be me Johne Robertsone servitor to maister Johne hay of easter kennet ane of the clerkis of sessioun'. That he worked for Hay for many years is shown by another note stating 'endit be me Johne Robersone upon the 1 day of Julii 1630 and Mr Alexander Hay of easter kennet clerk and ane of the Clerkis of Sessioun'. A meticulous worker, he certainly catalogued the 'Proces unconcludit lyand in the Barrell markit thus, 01233' and 'ye depending proces qrin yr is na sentance gevin lyand in ye barrell markit 1588'.

It is not clear what governed the distribution of work. Certainly each stage of a case could be recorded by a different office. Each

---

1 CS15/79/57.
2 CS11/3
day’s cases was listed in the General Minute Book and the clerk who was to record the action was designated by a letter and the stage of development of the case was noted thus:

XII Janii 1600
G prot-on (=protestation) Heriot contra L. Collectour
S decreet Bond contra Agnew
avis. (=avizandum) ogilvie o ogilvie ('o'=ditto)
H act (=interlocutor) L. Secretar contra ballumbie
Some are marked with ‘w’, presumably because the warrants were at hand. A heavy hand, perhaps that of Skene, assigned the work by printing the clerk’s initial as shown above. Though largely accurate, there were clearly last-minute alterations.

Each office compiled, in chronological sequence, registers of the actions which were heard in the supreme court by the Lords of Council and Session. Each office kept its own Minute Books. The judges present and date were recorded thus:

Sederunt domini sessionis Joannes d montrois cancellarius ; dms fylvie pres.; guillelmus comm. douglas ; elphinstoun de barnetourn miles secretarius ; ard douglas qhittinghame ; mgr. thomas hammiltoun de drumcarne advocatus ; magr joannes skene clerics regr. ; mag. joannes prestoun de fentounbarnes, coll. gen.; edwardus Comm. de Kinloss ; andreas wemes, myrecairnie ;joannes comm. de halirudhous ; dms. joannes cokburne de ornestoun miles, iusticie clericus ; dms. richardus cokburne de ornestoun miles, dms. priviie seill ; mgr. david mcgill de cranstounriddell ; doms. thomas lyoun de auldbar miles ; dms. david lyndsay de edzell miles ; alexander de elphinstoun thesaurarius. ; marcus dms. newbottell Comm. de blantyre ; petrus eps. dunkeld.’

An arbitrary selection of sederunts from Scott’s Minute Book and the corresponding heading in the Register of Acts and Decrees3 is given at the beginning of Appendix I. When there was no change in the judges present the day’s work was headed ‘Sederunt ut in die precedente’.

The clerks recorded the cases and the decisions in their Minute Books thus:

hereot qr crystie contenwit
L. braidstane qr muir assoil.

3 CS7/193/1r;see App.,I,1.
and so on. Interspersed among the actions was recorded the other work of the clerks, the registration of obligations, discharges, arbitrations etc., thus -

toun of Innerlethin qr scrymgeor Reg dec arbit
andirsoun qr russell Reg obl.
Russell qr russell Reg disch. 4

Some work involving the Collector was dealt with in batches in the afternoons of dark January days, for instance six actions against the Collector were recorded under the heading 'Vigesimo tertio Januarii 1600 - post meridiem'.

The dates in the Registers seem to refer to the time of the hearings, some beginning 'Quhilk day in presence of the Lords ...' but the fact that 97 actions were recorded on the last day of the summer term raises the question of whether the number was swelled by the issuing of judgments which had gone to avizandum.

The number of motions, acts, decrees, and administrative deeds which passed before the Lords of Council and Session has been related to an accurate calendar for 1600, a leap year. This is shown at the end of the chapter. In 1600 the Supreme Court sat from 18 November to 20 December; from 24 December to 15 March; and from 14 May to 31 July. Only once, on 14 July, under pressure of work before the long vacation, did it sit on a Monday. Two entries for a Monday in March may have related to vacation work.

In times of court vacations the clerks were kept busy writing up lists of deeds. Term ended on 31 July; beginning in August 1600, Hay's office appear to have recorded 76 deeds in August, 13 in September, 47 in October and 116 in November. Scott's office

4 CS11/4 (Hay).
registered 224 deeds in this period.\textsuperscript{5} Gibson's office, under the heading 'Vacance, primo die mensis Augusti 1600', dealt with 99 deeds. His office also dealt with what could be termed 'the vacation court', because his was the only one to record 19 continuations in this period. These are found recorded later in the Registers of Acts and Decreets. Gaps in Gibson's Minute Book\textsuperscript{6} were explained by him as 'The rest of the dayis preceiding occupyit be the parliament'. Recording of the court work began again on 18 November. Gibson's would appear to have been the \textit{primus inter pares} of the offices.

Hay and Scott recorded acts, when interlocutors were pronounced, and decrees as they occurred, so that they are intermingled; Gibson separated the two so that acts were filed together and decrees are found in a different collection. The Minute Books are roughly accurate but by no means entirely so, doubtless because the court's work anticipated in the Minute Books did not work out in reality. That the offices were constantly busy is seen from examination of the Registers. The clerks worked on 25 and last December as well as first January. When a clerk rose, perhaps to answer a call of nature, he did not finish the sentence he was writing. It was continued by another hand for a few lines whereupon the work was taken up again by the original clerk, mid-sentence. There are some signs of supervision when changes were made in a different hand and one restless and bored clerk in Scott's office, presumably after his work had been inspected, decorated the initial 'a' of the first word 'anent' by drawing a profile, several times repeated, of a man with side-burns. This may have been a caricature of Scott.

When an action was recorded out of chronological order in the Registers, a clerk wrote in the margin 'licet hic scribitur'.

\textsuperscript{5} CS9/4 (Scott).
\textsuperscript{6} CS10/2 (Gibson).
There are limits to inference in studying the Registers of Acts and Decrees as source material for social and economic history. The choice of year was arbitrary; it does reflect the two major crises of James's reign - the treason and escheat of Frances Stewart, earl of Bothwell and the Gowrie conspiracy of 1600\(^7\) but whether it was a 'typical' year is uncertain. As pointed out, cases could have begun before 1600 and been continued until 1601 or later. Some cases are continued to a specific day but disappear from the records, presumably as settled in the interim. It has been more satisfactory, accordingly, to deal with numbers of entries rather than with numbers of cases for statistical purposes but to rely on the cases as evidence in an investigation into the legal, social and economic life of advocates, of women, of ministers and of merchants.

The Registers of Acts and Decrees do not reveal the reasoning behind the decisions made by the judges though the record does state, after giving a summary of the arguments, that the Lords, for instance, 'fund the letters of horning ... orderlie proceit ... agains ... notwithstanding the resons and causes of suspension'\(^8\) or 'the persewar failyeat in praving of his threi exceptiounis as was cleirliie understand to the Lordis thairfoir they decernit in maner above'.\(^9\) Often the clerk states that the Lords being 'ryplie advysit' decerned in a specific way, suggesting that the result of each case depended largely on how it was pled. Perhaps these cases had gone to avizandum. Only once is a previous case cited as authority in the records.\(^10\)

There is much to suggest that the Lords acted according to 'equity and reason'. Time and again the pleadings rested on this, demonstrating how Scots law is founded on principle. A pursuer

\(^8\) eg CS7/192/247v (Cunninghame v Lord Polmains).
\(^9\) CS7/192/238r (Collernie v Collector).
\(^10\) CS7/186/382v (Fforbes v Johnstoun); see AppI,2.
always won an action if a defender failed to comppear. Many interlocutors decerned the pursuer, for instance, 'to warn the defender to comppear to gif his aith and he faillyie he salbe haldin as confesst' or 'pro confesso'.

The course of some cases can be followed in the Process papers. These are unindexed and tied in bundles with some inter-mixing. Some warrant papers are palimpsests of annotations made either by the advocate or by the recording clerk. These papers are the actual documents used during the course of a case, whereas the entries in the Registers seem to have been derived from them by the clerks. The Process papers, when they exist, are fuller and thus more valuable than the Registers for illuminating procedure current in 1600.

There is little overt evidence of the King's interference in the work of the Supreme Court, though he did present himself before them in an action of triple poining over the right to the thirds of the Abbey of Arbroath for 1598 'commanding ... ane act to be maid upoun ye reposioun' of Mr Robert Bruce to his gift, apparently having been withdrawn, of part of these thirds. There was also a 'request' from him to the Lords to allow Patrick Cheyne of Essilmonth to defend in an action brought by Francis, earl of Erroll, despite Cheyne's having been denounced as a rebel for the 'imprenting and outputting of fals cunzie'; it was found in the Process papers. The King also gave a 'respett' to John Watson, portioner of Sauchtonhall, 'in the law and by the law for airt and part of ye said mutilatioun and for all actioun and cryme that micht be imputt to him yrthrow or yat onywayis myt follow yrupoun'. The respite had been given under the Privy seal and may have been yet another source of cash for the King. Despite it, the Lords decerned Watson to pay the wounded John Reid 100 merks in 'compleitt

11 CS7/190/309v (Dobie v Dick).
12 CS7/185/245v (Mr Robert Bruce v Futhie); see App., I 3a.
13 CS15/77/23 (Earl of Erroll v Patrik Cheyne); see App., I, 3b.
assythment and satisfactioun' and reduced Watson's infeftments of the lands of Smithfield in favour of Reid.\footnote{CS7/193/52r (Reid v Watsoun); see App., I, 3c}
CHAPTER 1 ; THE COURT OF SESSION¹ IN 1600

PART 2 - ADVOCATES, COURT PROCEDURE AND BUSINESS

1 ADVOCATES

The following 48 advocates, with the exception of James Gray, appeared as procurators before the Lords of Council and Session in 1600. Gray, as 'Maister of the Chapell Ryell of Stirling and als commissioner for serching and trying of ye auld foundation of ye Chapell Ryell and how and to quhom ye rentis teling[entailing] of ye samyn is disponit' worked with archives so that the King might tap finances found to be due to him. It was Rollock, however, who pursued in actions arising out of his research.

PRACTISING ADVOCATES

[See graph of their practices at end of chapter]

<table>
<thead>
<tr>
<th>Advocate</th>
<th>Date of Calling</th>
<th>Appearances</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aytoun, David, of Kinglassie</td>
<td>(1599)</td>
<td>26</td>
</tr>
<tr>
<td>Balfour, Henry</td>
<td>12 Mar. 1570</td>
<td>140</td>
</tr>
<tr>
<td>Blinsele, Umphra</td>
<td>(1587)</td>
<td>136</td>
</tr>
<tr>
<td>Borthwick, William</td>
<td>(1586)</td>
<td>2</td>
</tr>
<tr>
<td>Boyd, Archibald</td>
<td>(1592)</td>
<td>21</td>
</tr>
<tr>
<td>Broun, Isaac, (Edinburgh)</td>
<td>(1592)</td>
<td>12</td>
</tr>
<tr>
<td>Cockburn, Robert, of Butterdean</td>
<td>(1605)¹wrong</td>
<td>132</td>
</tr>
<tr>
<td>Colt, Oliver, (Perth)</td>
<td>18 Jan. 1573</td>
<td>58</td>
</tr>
<tr>
<td>Craig, Thomas, of Riccarton</td>
<td>1 Feb. 1563/4</td>
<td>204</td>
</tr>
<tr>
<td>Dawling, John</td>
<td>(1582)</td>
<td>66</td>
</tr>
<tr>
<td>Dempster, John, of Logyalton</td>
<td>20 Feb. 1581</td>
<td>133</td>
</tr>
<tr>
<td>Donaldson, James</td>
<td>17 Mar. 1584/5</td>
<td>105</td>
</tr>
<tr>
<td>Forrest, Patrick, of Archerfield[psi]</td>
<td>(1599)</td>
<td>4</td>
</tr>
<tr>
<td>Gray, James (Chapel Royal)</td>
<td>(1582)</td>
<td>0</td>
</tr>
<tr>
<td>Gray, Thomas</td>
<td>(1580)</td>
<td>72</td>
</tr>
<tr>
<td>Guthrie, David</td>
<td>16 Nov. 1588</td>
<td>29</td>
</tr>
<tr>
<td>Hallday, John, of Tullibole [WS]</td>
<td>17 Mar. 1584</td>
<td>225</td>
</tr>
<tr>
<td>Hamilton, Robert of Philipston</td>
<td>30 May 1600</td>
<td>13</td>
</tr>
<tr>
<td>Hamilton, Thomas Ld. ADV[1596-]</td>
<td>1 Nov. 1587</td>
<td>181</td>
</tr>
<tr>
<td>Hart, William Ld. ADV[1594-97]</td>
<td>8 Nov. 1574</td>
<td>2</td>
</tr>
<tr>
<td>Harvie, James of Livielands</td>
<td>(1581)</td>
<td>21</td>
</tr>
</tbody>
</table>

¹ First known ref. to 'Court of Session' occurs 25 Aug. 1527; C.S. 5/37, 218r
² Date of Calling is given where known; first appearance in any record is shown in brackets. Taken from Grant, F. J., ed., The Faculty of Advocates in Scotland, 1532-1943, (S.R.S., 1944). In the noted instances Grant gives the wrong date of first appearance in a record for Cockburn, King and Mar because they were found to be practising in 1600.
³ Appearances in Court of Session as purs. or def.
King, Alexander, of Drydane 24 Jan. 1581 418
King, James (1603)\textit{wrong} 58
Johnston, John (1592) 1
Learmonth, Robert, of St Nicholas 14 July 1595 114
Linton, Robert, of Reivarfield 22 Nov. 1577 141
Livingstone, Alexander (Edinburgh) (1588) 2
McGill, John (Archpresbyter, Dunbar) 25 Dec. 1580 1
McGill, Lawrence (1592) 81
Mar, Robert (1602)\textit{wrong} 14
Mawer, Thomas (1587) 75
Moncreiff, Sir John, of E. Moncreiff 12 Jan. 1580 37
Moscrop, John of Casselton[Dies Jan. 1600] (1554) 2
Murray, Patrick, of Broomhall (1596) 9
Nicolson, John, of Lasswade (1586) 301
Nicolson, Thomas, of Coldbrandspath 9 July 1594 81
Oliphant, Sir William, of Newton 22 Nov. 1577 363
Peebles, Alexander, of Skirling (1586) 73
Rollock, Thomas (1586) 72
Russell, John, of Granton 24 Mar. 1575 114
[or Shairp, John of Houston] 27 Dec. 1597
Spens, Richard (1586) 217
Stirling, James, of E. Feddals 27 Nov. 1588 42
Tennent, Cornelius 10 Nov. 1596 97
Thomson, Alexander, of Duddingston (1586) 10
Wauchope, George 19 July 1598 5
Wilson, Thomas (1586) 46

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Treasurer 20

Undefended appearances in court 1361

It has been assumed that all appearances by John Shairp were made by the same person. When both father and son were practising, it is likely that the son with the same name would have been designated as ‘younger’; no entries state this. Robert Paip, advocate, called on 22 February 1595, is mentioned along with Court clerks who were required to produce a marriage contract but he neither appeared as a defender nor had he any practice in the Supreme Court in 1600.\textsuperscript{4} A further 32 mentioned in the List of Advocates from 1577 onwards could have been practising, perhaps in criminal cases, but there is no mention of them in civil work in 1600. The information in the

\textsuperscript{4} CS7/185/234r (Erskyn & Advocate v Leslie).
List is too scanty to be of much use, unfortunately. Hope however, alludes to a declaration of the Lords in 1590 'that they will allow of nae advocatts heireafter but onlie 50, whereof 20 for the inner hous, and 30 for the utter hous ; and non to be admittit to the office of advocatione in tyme comeing but ye deceis of one of the 50'. The Registers of Acts and Decrees for 1600 would seem to confirm this with 47 advocates plus the Lord Advocate, the Collector and Treasurer.

All advocates except John Halliday, Robert Hamilton, James King, and James Stirling were styled 'Mr', indicating that they held University degrees. Halliday was a particularly successful advocate perhaps because he had practised as a writer to the signet before 1555.6

The Lord Advocate, almost always designated as 'Advocate', was present in actions of contravention of lawburrows, even when the action was being pursued by an advocate;7 he pursued in actions of forgery8 and was present in court when a declarator of an escheat was made and also when there was a question over the 'wilful and manifest error' of the persons serving the briefs of the King's Chancery;9 the Treasurer, (who took precedence, being always mentioned first in the records when he appeared along with the Lord Advocate) and the Lord Advocate pursued together in actions of ockery10[usury] and where the contents of a charter had to be verified.12 Only once is the advocate for the poor13 specified as

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6 see The Faculty of Advocates in Scotland.
7 eg CS7/185/272r (Cambell[sic] & Advocate v McIntosche).
8 eg CS7/185/276r (Jonstoun & Advocate v Thomson).
9 eg CS7/186/302v (Advocat [& Gordoun] v Lord Balnagowne).
10 CS7/186/168v (Crawfurd v McNeill); see App.,I, 4.
11 eg CS7/185/276v (Scheillis v Mayne & Thesaurer & Advocate).
12 eg CS7/185/338v (Lord Thornik v Murray).
being Richard Spens. He appeared as pursuer for "puir cuthbert philope". There is likely to have been another one who, by inference, may have been Blinsele or Guthrie.

All advocates would appear to have had a wide general practice, although Craig dealt with complicated cases such as one action involving escheats, assignations, relief of cautionry and a decree arbitral. His practice included assignations of tacks and questions of a widow’s terce. He represented the Kirk, the Collector, the Lord Advocate, the Arch-dean of St Andrews, the Town of Anstruther Wester in an action against Anstruther Easter.

Some advocates had a hinterland of work from their home territory, but not to the exclusion of other cases. Mar, perhaps from the north-east, dealt with actions from the Aberdeen area; Colt who came from Perth and Moncreiff, from Perthshire, litigated over actions from Perthshire and Halliday, who came from from Dumfries, litigated over Dumfriess-shire matters. Cockburn pled many cases from the Borders. Whether this was a matter of having a local accent which reassured clients or whether it was a question of employment through hearsay, is a matter for speculation.

It was Alexander King, however, who dealt with the largest number of cases. He and his son James acted in the same case on occasion.

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14 CS7/191/387v (Puir [Cuthbert] Philipe v Gracie).
15 CS7/190/208r (Young v Semple); see App.I,5.
16 CS7/186/106r (Dryburgh v his Creditors); see App. I,6.
17 CS7/191/99r (Laird of Pilrig v Lady Hattoun).
18 eg CS7/189/314r (Sempill v Parochiners of Cardross).
19 CS7/189/3v (Lord Luss v Lady Luss).
20 CS7/191/123v (Minister of Kilmarnock v Parochiners yrof).
21 CS7/185/94v (Collector v Gray).
22 CS7/185/128v (Hammilton v Tenentis of Pettinane).
23 CS7/185/161v (Young v Lord Angus).
24 CS7/191/130r (Anstruther v Anstruther).
25 eg CS7/186/306v (Lord Urie v Bishop of Aberdein) & CS7/192/52r (Youngson v Parochiners of Durris).
26 eg CS7/189/65v (Ffowlis v Arnetullie).
27 eg CS7/149/87r (Laweris v Balmerinoch).
28 eg CS7/192/219v (Toun of Dumfries v Collector).
29 eg CS7/185/287v (Lord Home v his Tenentis).
30 cs7/188/175r (Tuedy v Veitche).
but acted against each other in one case. Alexander King, called in 1581, and Tennent, called in 1596, often appeared together, probably as the equivalent of a senior with a junior. Generally advocates worked on their own. Once employed, they seem to have appeared at all stages of an action, although, when two represented a client, one sometimes stood in for both. For instance, Balfour and King initiated a case but the stages were attended to by King. Sometimes advocates missed one stage of an action. Mr James Keith of Drumtochtie complained that Sir John Wishart of Pitarro should not have put letters of horning raised against him to execution because ‘Sir Jon had na just caus to have procedit ony forder in ye executioun of his principall letters agains the persewar in absence of Mr Jon Nicolsoun his procurator quha the tyme of ye granting of ye said protestatioun was occupyit be ye saids Lords in ye Inner Hous in ye actioun and caus persewit be James Murray agains the Laird of Calder at quhat tyme ye said Mr Jon wald have producit his said principal letters and suspensioun and insistit in ye calling yrof in cais ye samyn had ony waysis cum to his knowledge’.

Sometimes the client was ‘personallie present’ with an advocate as ‘preloquitor’. This would appear to have been when, instead of ‘uther probatioun’, the matter was referred to the client’s oath of verity though this was not always the case. Mathew Hamilton was personally present with Balfour, advocate, but merely as an observer, as was James Chalmer, macer, with Craig.

31 CS7/189/316v (Elphingstoun v Mure).
32 eg CS7/191/288r (Lord Maxwell v Ladie Maxwell).
33 CS7/185/297v & CS7/185/163v (Abircrumbie v Strang).
34 CS7/189/297v (Keyt v Pittarro).
36 eg CS7/191/301r (Rowallane v Mure).
37 CS7/191/343r (Hammiltoun v Crawfurde).
38 CS7/190/306v (Chalmer v Menzeis).
There is also some evidence of 44 possible party litigants, since no advocate is named and the entry states that the pursuer or defender was personally present. Care in interpretation must be exercised, however, because the pursuer can be personally present without an advocate at one stage of an action but clearly is represented by an advocate at a later stage. This may simply reflect careless recording by the clerk or it may mean that it was possible to be a party litigant if one's advocate was occupied elsewhere.

Nevertheless some entries are more explicit. Robert Arnot 'personallie present as said is, insted of all uyr probatioun reffert ye haill points and articles contenit in ye summonds to ye defenderis ayt of veritie'. George Mak, 'wryter to his hienes signet ... pursuer, for himself and his spouse personallie present' charged tenants of a tenement of land in Edinburgh to make payment of five terms' annual rent of 20 merks. James Kay, writer, appeared on his own behalf and Thomas Hope, 'agent and solistar in all actiouns and causes concerning the kirk of this realm', nominated and appointed 'be ye general assemblie of the foirsaid kirk convenit at ye burt of Montrois in ye moneth of merche last this instant yeir 1600', personally charged Lord Lovat as heritable feuar of Beauly Priory for £45 and Sir Patrick Murray as heritable proprietor of Fearn Abbey for £55 as 'ane yeirlie fie and stipend'. These were men educated in the law but others were land owners who controlled their own actions. Thus 'John Wallace of Craigie eldar for himself and in name and behalf of Jon Wallace of Craigie his son' protested that he and his tenants should not be removed by James Stewart of

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39 eg CS7/185/69r[pllie. pnt.] & CS7/185/238r[Craig] (Young v Lord Angus).
40 CS7/185/246v (Arnot v Arnot).
41 CS7/192/191v (Mak v Abercromby).
42 CS7/186/141r (James Kay v Bellenden).
43 CS7/192/239r (Toun of Montrois v Thesaurer).
Newton; and Mr John Dalziel, heritor of the kirklands of St Cuthbert’s Kirk, litigated by himself against the provost and bailies of Edinburgh over his four acres of land drowned by ‘the bigging of ane dyke or wall at ye eist end of ye North Loche’. Some merchants, too, acted for themselves. Michael Fairbairn, merchant burgess of Edinburgh, pursued his debtors before the Lords.

Many advocates acted for clients with the same surnames as their own. Presumably they were relatives. Ayton acted for the relict of John Ayton, burgess of Edinburgh, in a debt action; Balfour for Mr Henry Balfour, minister in Collessie over payment of victual and for Mr Robert Balfour, Principal of the College and Doctor of the University of Bordeaux, over 12 crowns eight sous which he had lent to a needy student, Alexander Spens, who had died; Boyd for John Boyd of Bollingschaw for payment of mails and duties; Broun for Thomas Broun, merchant burgess of Glasgow, over the reversion of a waulkmill; Colt for Mr Adam Colt, minister at Musselburgh and Inveresk, for payment of the fruits of the parish; Craig for Margaret Craig in an action to transfer an obligation ‘in’ an heir apparent; Dempster for James Dempster in Clettoun over the arrestment of ferms, canes and duties in the hands of tenants; Gray for George Gray of Tolcors over an unfulfilled marriage contract; Guthrie for David Guthrie, burgess of Arbroath, in a double claim for ferms and duties; Lawrence McGill for Hugh McGill
who was being removed from a tenement in the Cowgate; Murray for John Murray of Cleuchadame in his action of removing; John Nicolson for Adam Nicolson and his spouse in Hoperig; Peebles for Mr Andrew Peebles, reader and schoolmaster at Dysart to whom 40 merks for reading, £10 for ‘uptaking of the psalms’ and ten merks of house mail had not been paid since 1596; Rollock for Mr Peter Rollock, bishop of Dunkeld, one of the senators of the College of Justice, over the pursuit of debts in Flanders; and Spens for Thomas Turnbull and Marion Spens, his spouse, over fulfilment of a contract.

Advocates fought their own actions too, but some like Craig adhered to the dictum that an advocate who acts for himself has a fool for a client. John Nicolson on Craig’s behalf and under his ‘personallie present’ supervision charged the brother and heir of Sir William Keith of Dalry for repayment of his debt to Craig for £1000 with £100 interest. When the brother refused to enter as heir, Dalry’s pension was successfully sought on Craig’s behalf instead.

Whether advocates represented themselves or employed another advocate, their actions reveal some of their interests outside the College of Justice. Alexander King presumably owned tenements of land in the close off the High Street in Edinburgh; it bore his name in 1600. Peebles owned a tenement of land in Perth which he alienated to John Ross of Auchterarder. Spens litigated angrily about waste land adjacent to his Edinburgh tenement of land with its ‘fyve chalmers and ane wall scheild’. It had been bought by Andrew Stevinson who had ‘purchest licence of the proveist, dene of gild

57 CS7/185/289r (McGill v Dobie).
58 CS7/192/89v (Murray v his Tenentis).
59 CS7/185/194v (Nicolsoun v Lord Vauchtoun).
60 CS7/185/256v (Feiblis v Bailleis of Dysart).
61 CS7/185/268r (Bischope of Dunkeld v Thomson).
62 CS7/193/57v (Weir v Trumbill).
63 CS7/186/ 218v (Mr Thomas Craig v Keith).
64 CS7/185/266r (Patersone v Hunter).
65 CS7/187/277r (Johnne Ross of Ochtta[r?] v Dochter).
and bailleis' of Edinburgh to take down the gavel[gable end] of Spens's tenement for inserting joists 'to the utter wrak' of the advocate's house. He complained that they were not judges competent to do this 'in respect he is ane member of the College of Justice'. Despite Spens's inhibition, building had proceeded. The Lords, however, ordered the demolishing of work undertaken subsequent to the inhibition and ordained Stevinson to pay the costs of the action, set at £10, with 40s to the Collector. By using the inhibition in their judgement they side-stepped the issue of whether only they were competent judges in the matter.\(^{66}\) John McGill, writer to the signet, also claimed that the provost and bailies of Edinburgh were not competent to deal with an action against him 'in respect that he is ane wrytter to ye signet and yairby ane member of ye College of Justice quhais full actiounis and causes ye saids Lordis uses to advocat to yame selffis and to discharge all inferior judges of all forder proceiding agains thame' but the Lords did not agree and remitted the action back to the provost and bailies.\(^{67}\)

John Nicolson as heritable proprietor of the lands of Lasswade was removing tenants in 1600\(^{68}\) and John Russell was lawfully provided to an annualrent of £22 13s 4d previously paid to the Blackfriars out of the lands and mains of St Monans.\(^{69}\) Thomas Hamilton of Drumcairnie, Lord Advocate, was heritable proprietor of the lands of Bankhead\(^{70}\) and, having set the lands of Humbie, parish of Kirkliston, to William Hamilton in tack, he claimed 500 marks as the yearly duty. He threatened to declare the tack expired if Hamilton refused to find caution for payment.\(^{71}\) Linton had lands in the parish of Livingston. He warned John Padyeane to remove from the Temple

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\(^{66}\) CS7/187/404r (Spens v Stevinson).
\(^{67}\) CS7/189/10v (Mow v McGill).
\(^{68}\) CS7/192/111v (Nicolsoun v his Tenentis).
\(^{69}\) CSS7/186160r (Lord Sanct Monans v Collectour).
\(^{70}\) CS7/189/272r (Lord Advocat v Broun).
\(^{71}\) CS7/193/56v (Advocat v Pardovane).
lands in the west end of Ffoulsheills. Halliday either purchased or was gifted the escheat and liferent of the lands of Patrick Kinnaird of that ilk. These could not have been purchased when they were depending in pley. Leirmonth claimed to have been assigned the tuck of the teind sheaves of Barnhill in the parish of Monifieth in Forfarshire. Harvie owned the lands of Blairs, in Maryculter, Aberdeenshire, but was found to have intromitted wrongly with the teind sheaves because he had ignored the minister's inhibition. Oliphant was heritably infeft in the lands of Baldounies and in half of the lands of Newton in Perthshire. He too was removing tenants.

John Shairp of Houston had several interests. He pursued Samuel Burnett, merchant burgess of Edinburgh, for 'divers annuelrents furth of that greit ludgeing', perhaps the Edinburgh Mint. Also, he was owed the 1597 and 1598 ferm and duties of Ballindoch, in the sheriffdom of Perth. He used the services of a factor in Dundee. In spring of 1600 he transferred this property to his second son John, reserving the liferent to himself. He acted for his second wife, Margaret Collace, against Mr Edward Bruce, commendator of the Abbey of Kinloss, over salmon fishing rights in the Findhorn. She had been decreed by decree arbitral to resign these rights in her superior's hands so that they could be transferred to the Commendator. Shairp used his advocacy to point out that the letters of horning raised against her for not observing the decree arbitral were 'sa general,

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72 CS7/189/206r (Lintoun v Padyeane).
73 CS7/190/65r (Halyday v Lord Kinnard).
75 CS7/189/107r (Leirmouth v Tenentis of Barnehill).
76 CS7/191/43v (Hervie v Mylne).
77 CS7/191/173r (Mr William Oliphant v his Tenentis).
78 CS7/185/333r (Burnet v Scharpe) [see discussion in Merchants chapter].
79 CS7/186/203v (Ramsay v Thesaurer).
80 Sanderson, Margaret H. B., 'John Shairp', in Mary Stewart’s People; Life in Mary Stewart’s Scotland (Mercat Press, 1987), 28.
confusit and obscure that the compleners ar not certane how to obey
the samen' and he insisted that 3600 merks were to be provided for
the redemption of the salmon 'stells' on the river over which nets
were drawn. Nevertheless the Lords, finding the letters of horning
orderly,61 ordained them to be put to execution. He also caused
Lawrence Dundas, portioner of Kinloss, to flit from the Woods of
Kinloss.62 Shairp also brought actions against tenants for payment of
the violent profits of Leyston, Fawlay and Hogston,63 in the
sheriffdom of Forfar, conform to a decree of removing.64

The land in the examples discussed above could either have been
inherited or procured by the advocates but there is also
indisputable evidence of investment by advocates in land. Thomas
Gilbert, advocate, who died in 1596, had paid Uchtred McDowell of
Garthland 600 merks in 1584 in return for an annual rent of £40 'to
be upliftit furth of the lands of Knokcowak'.65 In a conjunct fee
contract with Hugh Somerville, Russell had invested 2000 merks for
an annual rent of 200 merks yearly out of the lands of Gilmerton but
it proved difficult to terminate the contract on Hugh’s death.66 Craig
in 1587 had entered into a contract with Francis Stewart, earl of
Bothwell and Dame Margaret Douglas his spouse, with cautioners, by
which 'for the sowme of 7000 merks ... deliverit be Mr Thomas Craig
and his spouse ye langest levar of yame twa' were 'infeft in ane
annuelrent of ten chalders victual' out of the Earl’s ten-
husbandlands of Markill and 16 bolls of beir out of its meadowlands
and out of the two-husbandlands of Traprain, all in the lordship of
Hailes. In 'special warrandice of ye said annuelrent', Craig was to
be 'infeft and seasit' in the lands of Northfield, in the barony of

61 CS7/192/135v (Mr John Scharpe v Lord Kinloss).
62 CS7/189/360v (Mr Jon Scharpe v Dundas).
63 CS7/189/281r (Mr Jon Scharpe v Gardin).
64 CS7/189/175r (Mr Jon Scharpe v his Tenentis).
65 CS7/189/421v (Gilbert v Garthland).
66 CS7/186/270v (Mr Jon Russell v Somervell).
Coldingham. Craig and his spouse, Helen Heriot, undertook to deliver to the Earl 'ane sufficient letter of reversion for redemptioun of ye annuelrent'. The rights, however, fell in the King's hands through the 'sentence and dome of forfaltor led agains' Bothwell and the King granted the right of the reversion to Mr Gilbert Gordon of Sheerness. Gordon charged Craig and his spouse to deliver 'ane sufficient letter of reversion in dew and competent form for redemptioun containing 7000 merks'. Craig complied.87 This investment had failed in the same way as his investment in the financial enterprise run by Jowsie and Foullis,88 discussed later.

Some advocates lent money to supplement their income. Ayton charged Michael Ramsay of the Forth to repay the sum of 1800 merks as principal with £120 as for the yearly annualrent.89

Others held appointments. Mr Robert Murray, advocate, [probably the clerk meant Patrick, since no Robert appears in the Faculty list] was granted the office of the clerkship of the Commissariot of Stirling by the Lords of Council and Session but the Commissary sought to have the gift declared null for 'the causes in the summonds'.90 John Dawling, advocate, was procurator fiscal of the Admiral's Court. He brought an action against Patrick, earl of Orkney, Lord Shetland, and others for wrongful with-holding of 'wrak and waith' from a shipwreck. The goods properly belonged to the Duke of Lennox as Admiral.91

Others were appointed as commissioners. This meant that the court, in the course of an action, authorised a qualified person or persons to take evidence from a witness who could not attend court or, with diligence, to recover documents. In an unusual action, the Lords gave 'full power and commissioun' to Craig, Oliphant and

87 CS7/193/1v (Laird of Lochinvar v Lady Cassellis).
88 see 'Merchants chapter.
89 CS7/185/203v (Aytoun v Ramsay).
90 CS7/185/187v (Cunninghame v Murray).
91 CS7/185/241r&v (Lord Duke of Lennox v Lord Orknay).
Alexander King 'conjunctlie to sit and decyde and cognosce as provost and balleis of the burt of Edinburt' in an action by Schairp against Samuel Burnett, merchant burgess of Edinburgh, for payment of annual rents due on the great lodging 'betuix the Blakfreir wynd on the west and the wynde callit Todrigis wynde on the eist pairtis'. Having been constituted as provost and bailies they were to be given 'all and sindrie memberis and offirs of court neidfull ... to create courtis ane or ma to fix feu's'.

Oliphant requested a commission to take the oath of verity of William Gordon of Geight 'in respect that he could not repair to the south parts of this realme because of the deidlie feud standing betuix ye freindis of ye umquhile Erle of Murray and him'. The Lords accordingly granted full power and commission to John, earl of Montrose, Chancellor, and Alexander Lord Fyvie, President, with any other Lord being present with them to take Gordon's oath in the town of Perth 'gif he came and reparit thair with George, marqueis of Huntlie at ye convenioun of the estattis to be haldin in ye said toun of Perth 27th Merche nixt'. The entry is somewhat confused but it seems that Gordon did appear and swore that the reason given for suspension of letters of horning against the widow of Captain John Gordon for non-payment of 5000 merks of escheat money to him 'was naways of veritie'.

Others were primarily administrators. John Johnston, advocate, was Commendator of Holywood in Dumfries-shire, with its parish kirks of Holywood, Dunscore, Penpont, Tynron, Kirkconnell and Ewes. He had been lawfully provided to the abbey teind sheaves and fruits by 'demissioun of sir James Johnstoun of Dunskellie, last abbot yrof as ye gift under ye grit seil proports'. John McGill was Archpresbyter
of Dunbar.95 Both had a very small measure of practice. McGill defended himself in an action raised against him for non-payment of £41 13s 4d as his part of the taxation of £100,000 'imposit for his pairt of ye taxatioun of ye benefice of ye archpreisbitrie of Dunbar'.96 Alexander McGill, as Provost of Corstorphine, had no practice but was 'personallie present' in an action over teind sheaves.97

Some advocates were provided to altarages. Peebles, by letters of gift under the Privy Seal, was entitled to the fruits of the chaplainry and altarage of St Paul's within the parish kirk of Perth. Margaret Balnaves alias Piper and her sister Isobel, with consent of their spouses, granted it as patrons through the decease of their father James Balnaves, merchant burgess of Perth.98 Dawling had been lawfully provided to the chaplainry and altarage of St Ninian's within the kirk of St Giles, perhaps as remuneration for his appointment as procurator fiscal, but the tenants of the houses pertaining to the chaplainry refused to make payment for 1599.99 Thomas Hamilton of Drumcairnie, Lord Advocate, was 'infeft be his Hienes in the benefice and parsonage' of Dalmeny Kirk with rights of advocation, donation and patronage. This right was unsuccessfully disputed by Lord Home as Abbot of Jedburgh on the grounds that the parsonage of Dalmeny 'was lauchfullie disolvit and separat fra ye abbacie of Jedburt lang befoir Lord Home had the gift of the samyn'.100

Family relationships are glimpsed. Janet Strang, executrix to Mr Richard Strang, advocate, called on 13th November, 1555, was the spouse of Richard Kene, writer to the signet.101 Alexander King and

95 see The Faculty of Advocates in Scotland.
96 CS7/189/379v (Mr Jon McGill v Lord Advocat).
97 CS7/190/342r (Makgill v Ladie Corstorphin).
98 CS7/190/239r (Peiplis v Parochineris of Sanct Paull).
99 CS7/189/90v (Dawkling v Parochiners of Edinburgh).
100 CS7/189/315r (Lord Advocat v Home).
101 CS7/185/2442r (Strang v Dunbar).
Thomas Henryson acted together for Andrew Meldrum, sometime of Fyvie, and his daughter against one of Andrew’s sons for payment of 10,000 merks to him and 5,000 to his daughter. The connection, if any, is obscure but King’s father had been slaughtered in 1595 by the Tutor of Meldrum. There may have been a family connection with Aberdeen because Andrew King, advocate, [though not found in the Faculty List] was a burgess of Aberdeen but it must be remembered that lawyers of Aberdeen had been permitted by James V to call themselves ‘advocates’ which they do to this day. Ayton had a bastard brother who was given ‘ane gift of legitimatioun’.

Some successful practitioners may have helped more lowly members of their families by providing employment. Hugh McGill was servitor to the senator Mr David McGill of Cranston Riddell.

Livingston was married to the daughter of Clement Cor, merchant burgess of Edinburgh. As such he was made assignee to an action against Alexander Duff, bailie, Clement Cor, Robert Jowsie and John Gourlay, merchant burgesses and Thomas Acheson, master Coiner, for 4000 merks they had received from Henry Nisbet, merchant burgess of Edinburgh, perhaps as an investment.

It was left to the daughter of Mr John Moscrop, advocate, to pursue, as executrix, an action for a debt for 200 merks begun in 1594. Moscrop’s son had subscribed a bond in 1581 that he would uplift his father’s rents and living and in return would pay his father 3000 merks yearly, £400 of which was to go towards the upkeep

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102 CS7/185/321v (Meldrum v Meldrum).
103 CS7/192/171v (King v Harrow).
104 There is a Society of Advocates in Aberdeen. ‘Sufficient writs remain to show that by the middle of the 16th century those procurators (or advocates as they were then frequently designated) in practice in Aberdeen acted in concert for the defence of the interests and dignity of the profession’.History of the Society of Advocates in Aberdeen, New Spalding Club, 1912, Introd., ix.
105 CS7/185/328r (Aytoun v McKesone).
106 CS7/192/180v (Makgill v Dobie).
107 CS7/186/323r (Mr Alexander Levingstoun v Duff).
108 CS7/186/420r (Captain Yeosteoun v Elphinsoun).
of his father’s house and wine cellar. As soon as his father died on 17th January, 1600, the son defaulted in payment. His father had married twice and had been trying to provide for his second wife’s widowhood. Moscrop’s widow as conjunct fier was also entitled to the liferent of 200 merks annualrent from two tenements of land in the High Street but she had to enforce payment.

It is not surprising to find advocates chosen as curators. John Home, son and heir of the deceased William Home of Whitelaw, chose Alexander King as his curator ‘ad hanc litem’. In the name of his other curators King charged the boy’s tutor to give an account of what he had done with the 2800 merks he had received on behalf of his charge. Oliphant, too, was chosen as a curator ad litem.

One case of note was brought against a past Lord Advocate in 1600. William Lord Borthwick, deceased in 1600, owed Mr William Hart, Lord Advocate from 1594 to 1597, 10,000 merks by contract signed in 1581. In pursuit of the debt Hart had used all forms of diligence and had come into possession of the lands and mill of Catcune. William Sinclair of Roslin, grandson of William Lord Borthwick, claimed the ward, relief and marriage of these lands as superior. William Sinclair of Roslin sought reduction of the deed between Lord Borthwick and Hart by claiming that it must have been fraudulent, Hart and Lord Borthwick being brothers-in-law at the time and Hart being his man of business by ‘taking ye burding upoun him for umquhile William Lord Borthwick in sundrie his wechtiest effaris’. At the time Lord Borthwick had contracted ‘the deidlie seiknes quhairin he etterwart deceissit quhilk movit the pairteis to haist ye registratioun yrof’. A backband had also been signed to the effect that Hart would use the comprising of Catcune to ‘ye weill

109 CS7/192/88v (Ffowler v Moscrop).
110 CS7/192/2v (Ffowler v Syme).
111 CS7/186/289v (Home v Home).
112 CS7/186/309v (Robertsoun v Thomsoun).
and utilitie of the hous and airs of Borthvik'. He would set the lands in feu to Lord Borthwick’s heirs. In this devious way, it was claimed, Lord Borthwick ‘sould not die vest and seasit yrintil and consequentlie the ward of the said lands with the marriage of ye air suld not fall in ye just superior’s hands’. The Lords agreed that this was fraudulent collusion and reduced the obligation.113

There is little information about fees earned by advocates but Moscrop’s son-in-law pursued a debt owed to the deceased Moscrop by the deceased Dionysus Henderson for 200 merks but he ‘past fra ye persute of aucht marks pensioun’ which had been granted, perhaps as a fee, for three years. An obligation had been made ‘to pay to umquhile Mr Johne [Moscrope] the soume of 8 merks yeirlie be ye space of 3 yeiris ... and that for the said Mr Johnis procuratioun befor the Lords of Counsall or ony uther juges within the burgh of Edinburt in all and sundrie his actiounis agains quhatsumevir persoun or persounis except the persounis to quhome umquhile Mr Johne wes detbund’.114 In one action, Balfour achieved suspension of letters of horning raised against Barbara Craill, Lady Pitlochie.115 He was made cessioner and assignee to the profits of the liferent of Pitlochie for 1599, owed to him perhaps in lieu of a fee, but he had to bring an action against the defender and loser of the previous action for payment.116 Colt had to pursue Lady Rosyth for a yearly pension of one chalder of oatmeal to have been delivered within Edinburgh; it had not been paid since 1583. She was ordered to make payment at the prices as liquidated by the Lords.117 Forrest, advocate, was made assignee to the six merks yearly out of the lands of Straiton unpaid to Thomas Foullis over 17 years. This may have

113 CS7/185/215v & CS7/192/22r (Rosling v Hart); see App., I, 8.
114 CS7/192/207v (Captane Yeosteane v Elphinstoun); see App., I, 9.
115 CS7/186/118r (Lord Innerleith v Craill).
116 CS7/186/136r (Balfour v Tors).
117 CS7/191/212v (Mr Oliver Colt v Lady Rossyth).
been instead of a fee since it amounted to £68. Russell had acted for Andrew and Adam Logan on 1st January, 1600; on 17th December he brought an action against Andrew Logan for payment of 100 merks 'conforme to his obligatioun'. This could have been a fee for professional services. It is tempting to regard all pensions to advocates as fees or even as retainers for future work. Patrick, commendator of Lindores, assigned a pension of 40 merks yearly to Leirmonth, advocate, and specified who was to pay it to him. The 300 merks owed to Harvie by Thomas Lothian in Lylistoun 'by obligatioun' may well have been a straightforward loan, however.

All advocates must have possessed a copy of Skene's Laws conform to the act of Parliament which stated that 'Order was to be taken be the Lords of Sessioun how that the saids actis alreddy imprentit may be bocht be sic subiectis within this Realme as ar of that substance and habilitie to by the samyn'. An extract drawn from the sheriff books of Lanark by John Robertson, clerk, stated that on 8, 9, 10 and 11 October, 1600, Rolland Lindsay of Nisbet, David Menzeis in Culter, Mungo Carmichael of Abington, John Telfer there, John Carmichael in Weirston, John Symonton of that Ilk and Hugh Weir of Closeburn had all, as 'substantious gentilmen', been charged by David Forrest, messenger, to buy 'ilk ane of thame, ane bulk of the saids actis of Parliament fra the said clark'. On 23 October they were all denounced as rebels 'for not bying of the saids actis'. Certainly no advocate would have been without such a useful authority.

Thus a study of the Registers of Acts and Decreets reveals not only the civil practices of advocates in 1600 but also their

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118 CS7/190/245v (Forrest v Fordell).
119 CS7/186/102r (Logane v Thomson).
120 CS7/190/388v (Mr Jon Russell v Logane).
121 CS7/189/214v (Leirmonth v Lord of Forret).
122 CS7/188/178v (Hervie v Lowthiane).
123 A.P.S., IV, 1598, 165, 9.
interests in land and additional sources of financial security. All, including Craig, had a general practice, although it is clear that Craig’s expertise was called upon in intricate and complex questions of mainly land law. It would be rewarding to compare the civil and criminal practices of each advocate in order to see whether there was specialisation to any degree between civil and criminal practices.

2 COURT PROCEDURE

There is nothing to suggest that procedure in 1600 was different from procedure as outlined by Balfour in his Practicks\(^\text{125}\) or by Hope in his Major Practicks\(^\text{1608-1633}\)\(^\text{126}\).

As illustrated below, only some information can be gleaned about procedure in the Court of Session from the entries in the Registers of Acts and Decrees for 1600. The unindexed Process manuscripts for that year proved much more rewarding although only certain aspects of procedure could be discerned.

It is clear from the Registers, however, that actions were not allowed to drag on interminably. Raw young advocates like Robert Hamilton, called on 30th May 1600, were exposed to judicial criticism. He appeared in an action over an iron chimney and was told firmly that ‘the Lords declaris in respect of divers testimoniallis and excusses alreddie usit and producit be ye said Robert Hammiltoun in ye said mater that the said Robert Hammiltoun nor his saids clientis sail not be hard to use, purches or produce ony excusses testimoniallis or commissioun in ye contrair heirof bot that the saids persones salbe haldin pro confessis in cais of thair not comperance as said is and the pairteis comperand as said is ar

\(^{125}\) Found throughout Balfour’s Practicks, see Stair Soc., 21, xlviii-lx.

warnit heirof apud acta'. Also warnings were often given about final calls for witnesses and requests were made for official pronouncements about the case having ended. One entry states 'and the Lords declaris that they will grant na farder terme dyet nor diligence to ye persewar ... bot allanerlie the said terme alreddie assignit ... and will conclude the said actioun at the said day'.

The following documents can be found in the Appendix -

**Warrants, summoning and endorsing**

A warrant to John Learmonth, messenger, to charge Alison Uddart, widow, as liferenter, to maintain property on the north side of Mr Alexander King's Close was found in the Process Paprs. It is signed by Kellie, writer to the signet, and sealed by the keeper, Alexander Laing. Another warrant, to Ninian Ramsay, messenger; to charge for payment of £6 and 40s as expenses of a protestation in an action over teinds and lands within the parish of Roseneath, has been included in the appendix because the document showed his endorsations to the effect that he had duly charged and delivered a copy to Mathew McAulay before witnesses on 1 September; that he had made open proclamation at the market cross of Dumbarton on 20 September and had denounced him as rebel; and that after knocking six times at the gate and getting no entry, he had affixed a copy of the charge, presumably on the door or gate. A statement of open proclamation at the cathedral kirk of St Machar in Aberdeen was also found. The tabling of a summons on 'the syd wall of ye tolbuith of Edinburt above the counsalthous dur yrof quhair the Lords

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127 CS7/185/322r (Bauchope v Litiljon).
128 CS7/185/357v (Buchannan v Cambell); see App.,I,10.
129 CS7/185/357r (Lord Edmestoun v Tait); see App.,I,11.
130 CS7/185/367r (Ffraser v Jonstoun).
131 CS15/78/379 (Paterson v Uddart); see App.,I,12.
132 CS15/78/96 (Drummond v Sempill); see App.,I,13.
133 CS15/78/96 (Drummond V Sempill); see App.,I,14.
134 CS15/78/80 (Wallace v Parochiners of Aberdene); see App.,I,15.
of Counsall sittis for administratioun of Justice'\textsuperscript{135} showed how actions were publicised and demonstrated that such documents bore the word 'tabuletur' and the signature 'Mr Jo. Bannatyne' on the outside.

** Witnesses **

Firstly, the Lords ordained the pursuer to summon witnesses and to warn the defender to compear on an assigned date 'to hear the witnesses sworne'.\textsuperscript{136} If the witnesses did not compear, the Lords ordained the pursuer to summon the witnesses listed 'summondit of befoir and comperit nocht to be summondit again under gritter panes'.\textsuperscript{137} Thereafter, if they did not appear, the Lords ordained letters at the instance of the pursuer to be directed to command the sheriff 'within quhais boundis and iurisdictionoun the witnesses dwellis [list of witnesses given] to tak and apprehend thame quha ar decernit or soverane Lords rebellis and put yame to his hienes horn for noncompeirance befoir the Lords to have borne witnes for elyding the pointis of the summonds ... and they being apprehendit to produce thame in presens of the Lords 20 June to the effect that the Lords may do furder iustice'. Should the sheriffs fail in this they themselves would be 'put to the horn and to escheit'.\textsuperscript{138}

The pursuer had to report the letters 'execut and indorsat' to the Court on a specified day.\textsuperscript{139} The procurators were occasionally warned that if they failed to produce witnesses 'na farther terme, dyet nor diligence salbe grantit to thame'.\textsuperscript{140}

** Depositions of witnesses **

Depositions were taken by one judge who signed below a list giving names, ages and sometimes the marital status of the witnesses,

\textsuperscript{135} CS15/77/36 (Young v Peirsoun); see App., I, 16.
\textsuperscript{136} CS7/190/94r (Creichtoun v Chartours).
\textsuperscript{137} CS7/190/337r (Cuninghame v Lord Uchiltrie).
\textsuperscript{138} CS7/190/24r (Craufurd v Williamsoun); see App., I, 17.
\textsuperscript{139} CS7/185/126v (Moncur v Rait); see App., I, 18.
\textsuperscript{140} CS7/185/323r (Bruntfeild v Lummsden); see App., I, 19.
together with brief notes such as 'Bot kennis nocht' or 'kennis weill that ... [signed] Tungland'.

Commissioners could be appointed for taking evidence and the Lords sometimes passed on a problem to experts for a decision. A building dispute was thought 'to be mair easilie discussit be certane honest men, nichtbouris ... quha best knew the veritie and estait of the said nichtbour heid'. It was subsequently submitted to the decision of the Lords of Council and Session as arbiters. The granting of a commission involved the commissioners in making faith that 'they sall leillie and trewlie rest in ye said office quhairupon baith ye saids pairteis present askit instruments'.

Depositions of witnesses written by a clerk but signed by a judge; a note mentioning the repelling of depositions about prices of victual; a personal note to someone, presumably a witness, relieving him from competing in court; and a scribbled note about points upon which witnesses were to be examined were also found amongst the Process papers.

Expenses of witnesses

The entries in the Registers of Acts and Decrees seldom mention expenses to be paid to witnesses. However, occasional references were found. An allusion was made to such expenses in the following quotation. 'Be ye daylie pratik observit befoir ye said Lords thair aucht na expesses be modifeit to witnesses Bot to sic as compeiris and deponis at the first citatioun'. In another action, some who compeared and 'remanit within ye burt of Edinburt upoun thair

141 CS15/78/83 (Stewart v Aschinnane).
142 CS7/189/360v (Mr Jon Scharp v Dundas); see App., I, 20.
143 CS7/190/387r (Spens v Stevinsoun); see App., I, 21 & CS7/192/82r (Adamson v Stevinsoun) see App., I, 22.
144 CS15/78/31 (Mureheid v Kheland & Uyeris); see App., I, 23.
145 CS15/77/84 (Lindsay v Barclay) & CS/15/77/71 (Napier v Hay); see App., I, 24.
146 CS15/77/33 (Young v Meacham); see App., I, 25.
147 CS15/78/74 (Sandelandis v Edmostone); see App., I, 26.
148 CS15/79/74 (Halyburton v Fyiff); see App., I, 27.
149 CS7/187/330v (Quhytfur & Utheris v Mure); see App., I, 28.
calling and examinatioun in ye said caus and was not examinat’ were
each awarded £4 to be paid by the pursuer. Names of witnesses
sometimes had to be corrected. Thus, there was an amendment that
‘David Frand ... sould be callit David Frane in Abirdene’.

Probation

This was by writ or sworn testimony. An exception was lodged ‘in
wreitt’ but William, earl of Angus, being ‘personallie present,
maid faith that he nevir maid ony promeis as he rememberit as was
clearly understand to the saids Lords thairfoir they gave decreit
absolvitor’. In another case, William Seaton was given three days
in which to give his oath before the sheriff, presumably of
Aberdeen.

Pleading

The extant papers in the Process papers suggest that much of the
pleading was written. Answers, ‘eiks’ [supplements to a document]
were made in writing and a plea against a charge was ‘given in in
wreitt as said is’. There was, however, some place for argument.
In a few entries the clerk records that the advocates were ‘both
hard to ressoun viva voce ... in presence of the haiill Lords’.

Importance of Formality

A case could be lost if the correct procedure had not been followed.
Writs of importance had to be subscribed by two notaries and four
‘famous witnesses’. An acquittance granting receipt of 300 merks was
deemed to be of sufficient importance to John Chapman ‘being ane man
of mein rank and degrie’ as the Lords could ascertain for themselves
‘be syt of him at ye bar’ to merit this requirement. The acquittance

150 CS7/191/73r (Langschaw v Crawford); see App., I, 29.
151 CS7/189/279v (Erskene v Balhagartie); see App., I, 30.
152 CS7/186/300v (Bischope v Neisbit); see App., I, 31.
153 CS7/190/157v (Ffinlasoun v Erle of Angus); see App., I, 32.
154 CS7/190/135v (Seytoun v Seytoun); see App., I, 33.
155 CS7/186/449v (Kirklandhill v Lord Wedderburne); see App., I, 34.
156 CS7/186/300v (Bischope v Neisbit).
157 CS7/189/82v (Lady Seytoun v Hammiltoun); see App., I, 35.
had been written by one notary and witnessed by two men. One decree was reduced because the sheriff of Peebles had speeded up the hearing of an action of removing by consuming four diets of the court in one. The Lords ordained the sheriff to be punished 'in his persoun and guid's'. In another case, an advocate’s argument that a charge had been wrongly executed because the stamp did not bear the first two letters of the messenger’s name was accepted.

There are also examples of an admonition to the Lords reminding them that they 'will anser to God in ye latter day of judgement, prayand yor Lords to remember yat God makis compt of ryteous judges as of Godis and termis thame as Godis in this haly world'; of advocates reminding the Lords of procedure in an action of removing; and of procedure for making a transumpt.

**Letters of horning**

Before diligence or enforcement of a legal obligation against the moveables, person or heritable property of a debtor, a creditor had to obtain royal letters under the signet. These letters, issued ex deliberatione Dominorum Concilii, commanded the debtor to fulfil his obligation under penalty of being put to the horn as the Crown’s rebel. The letters were addressed to messengers at arms or sheriffs 'in yat pairt' telling them to charge the debtor to fulfil his obligation under warning that if he failed to do so he would be denounced rebel after three blasts of a horn at the market cross of the head burgh of the sheriffdom in which he dwelt, or, if not at

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158 CS7/189/273v (Chapman v Pitcarne); see App., I, 36.
159 CS7/18/175r (Tuedy v Veitch); see App., I, 37.
160 CS7/186/402r Vaitche v Twedy); see App., I, 38.
161 CS7/190/51v (Wauchop v Lord Thesaurer); see App., I, 39.
162 CS15/78/81 (Vaus v Vaus); see App., I, 40.
163 CS7/190/109v (McElvyne v Richartsoun); see App., I, 41.
164 CS7/186/472r (Erl of Mar v Bontyne); see App., I, 42.
the time in Scotland, at the market cross of Edinburgh and pier and shore of Leith.\textsuperscript{165}

For example, letters were ‘geven under or signet at Edr. the sext day of Junii and of or Regne ye xxxiii yeir, 1600’ by R. Young, W.S.,[the letters intertwined in an elaborate design] and sealed with a seal about one inch in diameter, by ‘A. Layng’ (Alexander Laing, writer to the signet) on ‘vii Junii’. It was endorsed on the same day by Archibald Gilpatrick.\textsuperscript{166} Others took longer. A warrant was issued by David Scott, W.S., on 13 May, sealed by Alexander Laing on 28 May, charging David Milwart in Inverness ‘to compeir 14 Junii at Edinburt to heir him decernit to flit’.\textsuperscript{167}

Many examples of such letters duly endorsed, witnessed and sealed on the back by way of proof that they had been duly executed were found in the Process papers. The letters were in four forms each representing one charge and each separated by 24 or 48 hours. Each charge could be made by a different messenger.

The warrant to John Gray, messenger, to charge Robert Hamilton according to this procedure was found in the Process papers. Clearly, several copies were made because this one was blank where the name of the messenger at arms should have been inserted but it had been endorsed by John Gray on 3, 11 and 24 October.\textsuperscript{168} The small seal, about one centimetre in diameter, after each endorsement, had been covered with a sticky piece of protective paper, one bearing a dirty fingerprint. Most warrants included the name of the messenger as well as the endorsements.

\textsuperscript{166} CS15/79/61 (Ker v Ker).
\textsuperscript{167} CS15/77/49 (Dunbar & Hay v Milwart).
\textsuperscript{168} CS15/78/64 (Hammiltoun v Douglass); see App., I, 43.
A rebel’s moveables escheated to the Crown but provision could also be made for poinding of his goods and/or of the ground if the goods proved insufficient, to the value of a debt.\textsuperscript{169}

Multiple denunciations of one person at the horn could be made. Thus the sheriff clerk of Aberdeen was denounced rebel for several reasons, including not producing registers or legal documents to the appropriate sheriff or to John Skene, Clerk of the Registers.\textsuperscript{170}

If a debtor wished to challenge and negate the effect of letters of horning he could seek letters of suspension of horning [and poinding, if appropriate]. The actions for suspension came before the Lords. Arguments for suspension were relevant to the specific action\textsuperscript{171} but often the first line taken by the advocate was that the letters were too general\textsuperscript{172} or the procedural argument of 'never being lawfullie summondit' was used to effect, if proved.\textsuperscript{173}

Letters of arrestment instructed a messenger to arrest the goods in the hands of a third party, if appropriate, but it required the Lords’ decree of forthcoming to transfer the arrested moveables to the creditor. Thus Alexander Mure, merchant burgess of Edinburgh, ‘raisit letters of arrestment be vertew of ane delyverance of the saids Lords decreit to officers of armes, syreffis in that pairt, chargeing thame to fens and arreist all and sundrie guids and geir, insicht and plenisching, debitis and yriris pertening and belonging to Andro Lyill and Patrik Dykis quhairever the samen can be apprehendit to remane under arreistment at ye persewaris instance ay and quhile he wer completelie payit’ of the sum of 1000 merks. The messenger arrested £83 in the hands of Robert Martin, who owed that sum to

\textsuperscript{169} CS7/189/208v (Pumphra v Jonstoun); see App., I, 44.
\textsuperscript{170} CS7/190/283v (Andersoun v Fraser); see App., I, 45.
\textsuperscript{171} CS15/78/16 (Edmostoun of that Ilk v Sandelands); see App., I, 46.
\textsuperscript{172} eg CS7/192/242r (Schewane v Collace); see App., I, 47.
\textsuperscript{173} CS7/191/1r (Forestar v Lockart); see App., I, 48.
Lyall. The Lords ordained Martin 'to mak the same furthcumand to or soverane Lordis officeris of armes'.

There seems to have been some symbol, perhaps the counterpart of the horn. The Process papers contain a reference to a 'wand of peax' which was given to someone who had been relaxed from an unjust horning.

Penalties for contravention of lawburrows.
The Appendix contains a statement about the limits of penalties. One accumulation of penalties amounted to 'thretty sex hundreth fyftie thrie thousand pundis, the ane half to his maisteis thesaurer and the uyr half ... to Thomas Gairdner' due by Gilbert, Lord Somerville, for twenty different contraventions of lawburrows.

Such actions in which the Lord Advocate was involved seem to have been set down for a Friday. Outside such Process papers is written 'Apud Edr. xxvi maii 1600 tabuletur erga diem veneris proxime sequen'. Such notes were signed 'Mr Th Hamiltoun'.

Expenses of an action
A protestation was brought by a defender who had been summoned to appear in court on a specific day but found when he or his procurator presented himself, that the pursuer was absent. The pursuer who had not compeared to pursue was decerned to pay £6 to the defender who had turned up in court together with either 40s to the Collector or £5.

It is not clear if all losers had to pay the 'Collector silver', which was used for paying the Judges' salaries, because not all actions mention expenses. This may have been because it was routine

174 CS7/193/51r (Alexander Mure v Mairteine).
176 CS15/78/55 (Menzeis v Wilson); see App., I, 49.
177 CS7/186/253v (Lord Lumplum v Lord Yester); see App., I, 50.
178 CS7/190/190v (Gairdiner v Lord Somervell); see App., I, 51; & R.P.S. VI, 277Apr.1598, 453-4.
179 eg CS/15/77/36 (Young v Persoun).
180 eg CS7/188/142r (Sir George Home v Thomsoun).
and not worth recording. Other expenses seem to have varied according to the Lords’ modifications.

It was not only witnesses who complained about the expense, not only of litigation, but also of living in town waiting for a cause to be heard and of the difficulties of being away from one’s work. William Rait of Halgrein and his son, as litigants, petitioned for a new date to be set for their hearing. The Lords complied with their request.\textsuperscript{181}

**Summary actions**

There were summary actions too. Deforcing a messenger was sufficiently serious to cause the Lords ‘to minister justice in ye said mater in sa far as we may of ye law, to be callit sommerlie upoun sex dayis warning but dyet table of continewatioun or uther summonds’\textsuperscript{182} and matters of an alimentary nature were also heard speedily.\textsuperscript{183}

There is some evidence in a petition that all the judges sat together in the Inner House of the tolbooth of Edinburgh but business which involved only one, such as the taking of depositions, was pursued in the Outer House.\textsuperscript{184}

When written evidence produced in court was returned to an owner the advocate scribbled a note on the warrant to that effect and the owner signed the statement. Thus ‘deliverit to George Mrheid the dec obt be him ag alex levingstoun prod be him in this proces’ [signed]George Muirheid’.\textsuperscript{185}

\textsuperscript{181} CS15/78/97 (Laird of Bonytoun v Laird of Halgrein and Robert Rait his sone); see App., I, 52.

\textsuperscript{182} CS15/79/80 (Broun v Bayne) & CS15/77/33 (Young v Mauchan); see App., I, 53 & 54.

\textsuperscript{183} CS15/78/57 (Cunninghame v Hume); see App., I, 55.

\textsuperscript{184} CS15/78/105 (Ramsay v Bruntfeild) & CS15/79/80 (Browne v Bayne); see App., I, 56, 57. [See floor plan of the House in 1629 in H.M.C., Calendar of MSS of Marquis of Lonsdale, (London, 1893), 80-82; see App., I, 57b]

\textsuperscript{185} CS15/77/26 (Mureheid v Mungall).
The business of the Court of Session has been analysed statistically according to the main reason for the appearance of an advocate in court and the subsequent entry in the Register of Acts and Decreets. Each action or procedural matter was brought for a specific purpose in the course of a case and this has determined the classification. Thus each entry in the Registers occurs under one heading only. For instance, 'suspension of letters of horning for spoliation of a horse' is classified under 'suspension of letters of horning' not under 'spuilzie' and a striking case about spoliation of a ship called 'the Angel' with 'hir haill fraught of guids' from Leith harbour appears in the statistics for advocation because it was advocated from the court of the Admiral and his deputes.  

The statistics can mislead. There are 201 actual decrees of removing but there are also related actions of violent occupation etc. which bring the number to 256. There are also interlocutors calling for production of charter, precept and instrument of sasine or other evidence, which conceal and relate indirectly to actions of removal. Since these appear under 'Production', they are not counted in the 'Removing' statistics.

The following categories have been distinguished.

<table>
<thead>
<tr>
<th>MATTERS OCCASIONING EACH ENTRY IN THE REGISTERS</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Administrative and Semi-administrative work of the Court</td>
<td>107</td>
</tr>
<tr>
<td>2 Advocations</td>
<td>72</td>
</tr>
<tr>
<td>3 Arrestment</td>
<td>37</td>
</tr>
<tr>
<td>4 Declarators</td>
<td>153</td>
</tr>
<tr>
<td>5 Decrees of forthcoming</td>
<td>6</td>
</tr>
<tr>
<td>6 Delivery/Exhibition/Production</td>
<td>390</td>
</tr>
<tr>
<td>7 Enforcing decrees of inferior court</td>
<td>18</td>
</tr>
<tr>
<td>8 Multiple claims to mails, ferms, duties, rents, teinds</td>
<td>23</td>
</tr>
</tbody>
</table>

186 CS7/193/16v (Abircrumbie v Watsoun); see App., I, 58
Multiple claims to mails, ferms, duties, rents, teinds 23
Payment 529
Procedural matters 221
Protestations 258
Proving 75
Reducing decrees of inferior court 10
Reduction 41
Removing 255
Restoration/Restitution of spuilzie goods 102
Spuilzie 112
Supplications/Petitions 75
Suspension of letters of horning 216
Warrandice 10

Bar graphs, pie charts and tables showing detailed numerical analysis of the main reason for each appearance in court can be found at the end of this chapter. Some types of actions like 'Arrestments', 'Protestations', 'Suspensions of letters of horning', and 'Supplications' are too varied to be itemised but the 'Administrative and Semi-administrative Work of the Court' bar graph shows details of the administrative work of the Court of Session in 1600. Much of the work of the court involved pronouncing interlocutors assigning dates for production of evidence, shown under 'Production' or 'Proving'. The bar graph, 'Proving', shows claims made in court which had to be substantiated. The table 'Delivery / Exhibition, Production' demonstrates the forms of evidence called for. Pie charts showing 'Enforcing the Decrees of Inferior Courts' and 'Reduction of Decrees of Inferior Courts' itemise the numbers of these actions and specify the inferior courts. The table 'Payment' shows the types of debts over which actions were fought. The 'Spuilzie' and 'Restoration/Restitution of Stolen Goods' tables clarify what the actions over spuilzie were about. The table 'Reduction' itemises the decrees etc. which were brought before the Lords for annulling.

'Procedural Matters' illustrates the numbers of actions dealing with witnesses and acts over the finding of caution. 'Removing' has been
itemised but 'Warrandice', 'Decrees of Furthcoming' and 'Multiple Claims to Mails etc.' were not analysed further.

Actions which show the dominant position of the Court of Session, additional to those enforcing or reducing a decree of an inferior court, have been examined fully under 'Advocations', 'Declarators' and 'Arbitration'. Arbitration, however, has been discussed separately after the statistical survey because arbitrations were concealed through using 'main reason for court appearance' as the criterion when categorizing for statistical purposes. Each case involving arbitration has already been counted in the statistical survey under 'Reduction' or 'Restoration of Stolen Goods', for instance.

EXAMPLES

The following examples of types of actions have been transcribed from the Process Papers or from the Registers of Acts and Decretes. They were selected to reflect virtually every kind of action which was a prelude to or which came before the Court of Session in 1600.

1 Administrative and semi-administrative work of the Court

Appointment of Commissioners

The appointments as noted were of Craig, Oliphant and Alexander King, advocates, as commissioners to sit and decide as provost and bailies in Edinburgh in an action over payment of annual rents of 'that greit ludging' in Edinburgh;\textsuperscript{187} of Gray, Borthwick[who died and was replaced by Dawling] and Haliday, advocates, to act conjunctly as sheriffs of Lanark in an action of 'molestation of nolt';\textsuperscript{188} of the Commissary of Glasgow to take an oath de calumnia of a sick and

\textsuperscript{187} CS7/185/333r (Burnet v Scharpe);see App.,I,59.
\textsuperscript{188} CS7/189/241r (Laird of Lauchop v Carphin);see App.,I,60.
impotent witness;\(^{189}\) of John, earl of Montrose, Chancellor, and Alexander, Lord Fyvie, to take an oath of verity on the points of a reason for suspension of letters of horning;\(^{190}\) and of the Commissary of Inverness to take an oath upon the quantity and prices of teind sheaves because the witness was ‘aigit and very sicklie’.\(^{191}\)

Curatory

An example of the appointment of curators, shows how they were usually chosen from both the mother’s and the father’s side.\(^ {192}\) They had to swear a promise that they ‘sal leilie and trewlie minister in the said office of curatorie’.\(^ {193}\) That they were supposed to keep accounts which could be subject to scrutiny, is indicated by an entry recording the Lords calling for examination of their accounts.\(^ {194}\)

Inhibitions

A warrant prohibiting a debtor from alienating his heritage to the prejudice of his creditor was issued as letters of inhibition. Examples of inhibitions against the alienation or wadsetting of lands\(^ {195}\) and against teinding\(^ {196}\) were found.

Living allowance for heir

The Lords of Council and Session were called upon to ‘modify’, or specify a precise sum for sustentation for an heir.\(^ {197}\)

Registration

By 1600 some deeds contained a clause of consent to registration in the Books of Council. For example ‘the obligatiouns being exhibit

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\(^{189}\) CS7/189/167r (Hammiltoun v Hammiltoun); see App., I, 61.
\(^{190}\) CS7/190/96v (Burnet v Lord Geicht); see App., I, 62.
\(^{191}\) CS7/190/271r (Monro v Irving); see App., I, 63.
\(^{192}\) CS7/186/309v (Robertson v Thomsons) & CS7/190/53v (Johe Bruce of Airth); see App., I, 64, 65.
\(^{193}\) CS7/190/115v (Lydsay v Lydsay); see App., I, 66.
\(^{194}\) CS7/187/314v (Drummond v Drummond); see App., I, 67.
\(^{195}\) CS7/190/202r (Wilsoun & Henry v Johnstoun); see App., I, 68.
\(^{196}\) CS7/191/330r (Caprington v Enterkin) & CS15/78/42 (Grahame v his Tenentis); see App., I, 69, 70.
\(^{197}\) CS7/186/267r (Skougall v Lawder); see App., I, 71.
... the defenders to have hard thame decernit to be registrat in the Buiks of Counsall ... conform to the claus of consent yrin contenit'.

Thus deeds were often registered before there was any question of an action for diligence. Several actions, however, came before the Lords requesting their authority for registration, presumably as a preliminary to litigation. Thus Lintoun craved that 'the letters obligatours be decernit be decreit of the Lords to be insert and registrat in the Buiks of Counsall ... to have the strenth of yr decreit'.

Other examples include the registration of a charter; of a contract; and of an infeftment in an annualrent of Pitlochie.

**Testing authenticity of writs**

When so much depended on hand-written evidence, it was often necessary to authenticate a document. Thus the Lords sometimes examined a document or an entry in a notary's protocol book, or heard the evidence of witnesses, before declaring, for instance, that an instrument was in 'the proper handwrit' of a notary's servant or that the sasine of a mill, written on a scroll, was in the handwriting of a specified notary.

**Transferring**

When a person died during a process, the action was transferred to his representative. An example was found of the transference of a decree of the Bailies of Edinburgh for payment for wine.
A Transcript

A transcript or 'transumpt' was made of an instrument in a notary's protocol book so that an error could be corrected.²⁰⁶

Wakening

By this administrative act, a process in which no action had been taken for a year or more, was revived. For example, an action over a precept of 1589, alleged to be false, was wakened.²⁰⁷

2 Advocations

ADVOCATIONS FROM INFERIOR COURTS TO THE COURT OF SESSION

The Theory

Advocation was a form of appeal to a higher court. A cause could come before the Lords of Council and Session from an inferior court if there was an unreconciled feud between the inferior judge and the party and his followers; if the judge could be proved to be related to the defender, thus 'suspect', and refused to appoint an 'unsuspect' depute; if an inferior judge refused to judge; if the cause involved 'ane greit soume or quantitie of silver, or uther wechtie materis of greit importance' despite the other party's opposition; if the defender in the cause failed to comppear when advocation was sought by the pursuer in the inferior court, even if the pursuer could not prove his reason for advocation. If the inferior judge pronounced a decree, afterwards reduced, against anyone, that person was deemed exempt from that inferior judge's future jurisdiction. Any action arising from a decree pronounced by the Lords also had to be tried by them and a cause deemed to be too difficult for an inferior judge to decide could be advocated. If only one party desired the advocation, the party not consenting had to be summoned but if both consented no summons was necessary.

²⁰⁶ CS7/185/349v (Boiswell v Ramsay); see App., I, 78.
²⁰⁷ CS7/192/179v (Ramsay v Stirk); see App., I, 79.
Advocation was not permitted once hearing of the cause had begun in an inferior court. When the advocation had been accepted by the Lords, 'the samien actioun or pley may not be be thairefter remittit to the inferior Judge, fra quhom it is advocat, supposis the samin be advocat for na wrang or iniquitie done be him, bot for ony uther cause and resoun, conform to law and justice; and thairfoir the samin sould be decidit, and finallie endit, be the Judge to quhom it is advocat'.

These points are condensed by Hope. Thus, 'The cause once advocat may never be remitted' could not apply to an unsuccessful application for advocation. The Lords could not be expected to deal with any matter a party sought to advocate. Hope should, it is suggested, be read with the gloss that the advocation had first to be accepted.

The Evidence of the Registers of Acts and Decreets.

<table>
<thead>
<tr>
<th>Inferior Court</th>
<th>Advocations to Lords</th>
<th>Accepted</th>
<th>Rejected</th>
</tr>
</thead>
<tbody>
<tr>
<td>Admiral's court</td>
<td>4</td>
<td>4</td>
<td>-</td>
</tr>
<tr>
<td>Commissary courts</td>
<td>24</td>
<td>17</td>
<td>7</td>
</tr>
<tr>
<td>Provost and bailies</td>
<td>21</td>
<td>14</td>
<td>7</td>
</tr>
<tr>
<td>Regality courts</td>
<td>8</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>Sheriff courts</td>
<td>9</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>Sheriff Principal</td>
<td>2</td>
<td>2</td>
<td>-</td>
</tr>
<tr>
<td>Stewart's courts</td>
<td>4</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td><strong>Total advocations</strong></td>
<td><strong>72</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Advocations from the Admiral's court sought suspension of the Admiral's letters of horning and pouding for mercantile debts; the Lords appointed auditors to investigate the sums of money involved. Matters of intromitting with shipwreck goods were also advocated to the Lords. One action sought advocation of an alleged spoliation of a ship. Thus, 'ane actioun of spuilzie and profeits' had been

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brought 'befoir the admiral and his deputs for wrangeous violent spoliatioun and intrometting with, witholding be himself, his servands, complices ... fra James rig brother germane to maister mungo rig of carberrie principall parttie and cedent to ye persewar furt of the haivin and schoir of Leith of ye schip callit ye angell with hir haill ornamentis apparells and furnitor'. The situation had arisen through a contract from which the Lords 'exonerat and freid ayer of the saids parttieis reptlie of ye foirsaid contract and of all heids.'

Causes were sought to be advocated from the Commissary Courts of Aberdeen[2], Dumfries[1], Edinburgh[4], Glasgow[4], Inverness and Ross[1], Lanark[4], Moray[1], St Andrews[6] and Stirling[1]. The Lords remitted back matters such as the transferring of obligations on bairns, delivery of gold ducats, payment of a spouse's debts but advocated to themselves actions brought by executors over spoliation of teind sheaves, legacies, payment of duties, exhibition of 14 testaments made at different times and attempts to reduce a confirmed testament.

Advocations from the burgh courts of Aberdeen[4], Berwick[1], Cupar[1], Dundee[1], Edinburgh[13] and Glasgow[1] were sought over matters such as non-payment of goods like fustian, non-payment to a tailor for uniforms for soldiers destined for Poland, spoliation of lintels, almries[cupboards of wood, usually as a separate piece of furniture], timber work as well as questions of heirship. These were remitted back to the provost and bailies. Actions over removings, Flemings not paying debts, pasturing sheep on the town common, violent occupation, undelivered wines, spoliation of cattle and unpaid nursing fees were successfully advocated to the Lords.

Some advocations from the Regality courts or Stewart's courts over removings and wounding were remitted back to the inferior

210 CS7/193/16v (Abircrumbie c Watsoun); see App., I, 80.
courts but delivery of charters, non-payment of thirled multures, actions over teinds and mails were all weighty enough to be considered by the Lords. Wrongful molestation of a Commendator and extension of a mill dam were remitted back to the Stewart’s court.211

The actions of removing by two sheriff principals [from Aberdeen and Lanark] were successfully advocated to the Lords but advocations from the sheriff deputes of Ayr[3], Berwick[1], Edinburgh[1], Haddington[2] and Perth[2] over violent occupation and serving as heir were remitted back to the sheriff. On the other hand, payment of mails, and actions of removing, kindly tenancies and spoliation were successfully advocated.

Arguments used by the procurators

Many entries provide no explanation of why the Lords made the decision to advocate the matter to themselves but the arguments used in unsuccessful advocations are usually, though not always, quoted.212 When the Lords advocated an action to themselves the clerk records ‘as at mair lenth is contenit in the principal letters of advocatioun’213 or assigned a day for some further evidence to be produced.214 Occasionally, the remitting back or successful advocation was the result of an agreement being reached with the consent of the party’s procurators,215 or, what amounted to the same thing, ‘with the consent of the parties’ themselves.216 Only one entry for a successful advocation records the details of the pleadings. These deal with family relationships and with the fact of one of the litigants being clerk of the burgh court.217

211 CS7/189/109v (Bonar v Creiche); see App., I, 81.
212 eg CS7/189/10v (Mow v McGill) & CS7/185/193v (Sprot v Stevinson); see App., I, 82 & 83.
213 eg CS7/185/186r (Lord Glencarne v Wallace).
214 eg CS7/187/128r (Philp v Crystesoun).
215 eg CS7/185/112r (Lord Westraw v Carmichell).
216 eg CS7/191/92r (Rotsoun v Malice) & CS7/190/317r (Wardlaw v Veward); see App., I, 84.
217 CS7/190/29v (Bodwyne v Cuninghame); see App., I, 85.
Where the arguments in unsuccessful advocations are recorded, most depended on trying to prove that the inferior judges were 'suspect' or 'partial' or 'not competent' because they were related in some way to the litigant.\textsuperscript{218} Relationships of great complexity were explained in protracted detail to such an extent that the pleading advocate may have blurred the issue, because in the examples recorded all the actions were remitted back to the inferior courts.

Other reasons were also found. In seeking advocation of a charge of spoliation of lintel stones and timber work, the advocate pointed out the suspect nature of Thomas Geddes, clerk depute of Edinburgh. Here the grounds for advocation depended on there being 'contraversie of nichtborheid' between the defender, George Sanderson, tailor burgess and the pursuer, Sibilla Nisbit.\textsuperscript{219} Because the arguments failed to convince the Lords, the matter was remitted back to the provost and bailies.\textsuperscript{220}

The argument that John McGill, writer to the signet, was entitled to have an action brought against him to remove him from Best's Wynd advocated to the Lords cut no ice. Despite his claim that 'in respect that he is ane wrytter to ye signet and thairby ane member of the College of Justice quhais full actiounis and causes ye saids Lordis usis to advocat to yame selffis and to discharge all inferior judges of all forder proceeding agains thame', the action was remitted back to the provost and bailies of Edinburgh.\textsuperscript{221}

Captain John Sutherland failed to have his action advocated to the Lords although he claimed that the provost and bailies of Edinburgh were 'neways competent to cognosce agains him' because he was 'nayer ludgeit nor inhabitantit in ye said burgh nor suiect to

\textsuperscript{218} eg CS7/185/294r (Seytoun v Congiltoun) & CS7/189/290r (Conynghame v Barrochane); see App., I, 86; 87.
\textsuperscript{219} CS15/78/70 (Sandersoun v Nisbit); see App., I, 88.
\textsuperscript{220} CS7/190/91r (Sanderson v Nisbit).
\textsuperscript{221} CS7/189/10v (Mow v McGill).
thair jurisdictioun bot only cum in cumpanie with Colonell Edmond for uptaking of suddartis and men of weir for supplement of the estaitis of Flanderis and not of purpos to remane within this realme’. 222

The argument that the Commissary of St Andrews was not a judge competent to a pursuer dwelling within the bounds of Dunkeld failed when the Lords ‘being ryplie advysit’ remitted it back to the Commissary of St Andrews223 because it was and is the defender’s residence which is important. Similarly, the argument that a pursuer in an action lived ‘far outwith the jurisdictioun’ of the burgh of Edinburgh failed.224

Claims of the partiality of the ‘Stewart’[sic] depute of Fife were not accepted.225 The existence of a bond of manrent was not seen as sufficient reason for advocation226 nor was the suggestion that ‘seeing the Lordis suffers na inferior judge within this realme to cognosce or decyde upoun the interpretatioun of yr decreittis bot onlie thamselews, thairfoir ye said actioun aucht to be advocat to thame as onlie judges competent yrto’.227

Balfour stated that ‘deidlie feid is a just cause of advocatioun’228 but even where there was a suggestion of ‘a deidlie feud standand unreconceillat’ and ‘ye persewaris nor nane of yame nor yair freindis may not peciablie repair within ye syrefdome of Perth’ the Lords preferred to remit the action back to the sheriff of Perth; they did so ‘of consent of bayt ye saids pairteis procuratoris’.229 The ‘notorious deidlie feud standand betuix ye Erle of Glencairne, his kin and friendis and dependants on ye ane part

222 CS7/191/336r (Dyakis v Sutherland).
223 CS7/185/296v (Creichtoun v Murray); see App., I, 89.
224 CS7/189/312r (Ffinlaysoun v Achesoun); see App., I, 90.
225 CS7/189/109v (Bonar v Creiche).
226 CS7/191/93v (Tyrie v Tyrie); see App., I, 91.
227 CS7/190/317r (Wardlaw v Udward).
229 CS7/191/93v (Tyrie v Tyrie).
and ye Erle of Eglingtoun, his kyn, freindis and dependants on ye uyr pai't' was equally unsuccessfully deployed but the result of the 'deidlie feud' arguments for advocation in another of the process papers is unknown.

In one action of molestation of tenants in Kirkcudbright, the Lords, instead of advocating the action to themselves, appointed Mr Thomas Gray and Mr Thomas Mawer, advocates, 'conjunctlie to decyde ye said mater' and in another unexplained cause, the Lords gave a commission to the Commissaries of Inverness and Ross to hear the evidence before hearing it themselves. In another action, a problem over testamentary goods was remitted, not back to the provost and bailies, but, appropriately, to the Commissary of Glasgow.

The Registers record the arguments used, mainly in unsuccessful advocations. It seems that the Lords were not convinced by the arguments put forward by the procurators when they remitted causes back to the inferior courts where they began. When the Lords of Council and Session refused to accept an advocation they must have held that there were no grounds for an advocation. It is particularly disappointing that the Registers do not record, with the exception of non-compearance of a defender, why the Lords made the decisions they did.

3 Arrestment

Arrestment involved, for example, charging officers of arms 'to arreist, appryse, compell, poind and distreinyie the reddiest guids and geir upoun the grund of Newhavin for payment to the persewar of ane yeirlie annuelrent'.
The Lords pronounced 153 declarators, 103 of which declared someone to be donator to someone's escheat; if the rebel, man or woman, had been unrelaxed for more than a year and a day, the donator was gifted the liferent as well.\textsuperscript{236} The reason for the denouncing as rebel was always quoted and the Lord Advocate was always present in such actions. An example of the King's gift of a rebel's escheat was found in the unindexed papers,\textsuperscript{237} as was the King's renunciation of his right to a debt forfeited for treason.\textsuperscript{238}

Fifty other declarators were made for reasons outlined below, for instance for not compearing in the court of the Justiciar held by the lieutenant's depute in Wigtown tolbooth.\textsuperscript{239}

\begin{table}[h]
\centering
\begin{tabular}{l|c}
\hline
DECLARATORS OF ESCHEATS &
\hline
alienating Lord's land & 2  
bastardy & 3  
communing with Jesuits & 1  
cruel slaughter & 2  
demolishing buildings & 1  
hanging herself & 1  
non-comperance before a Justice & 1  
non-comperance before the Secret Council & 2  
non-delivery of goods to executors & 2  
non-delivery of writs & 1  
non-fulfilling of contract & 9  
non-payment as cautioners & 3  
non-payment of annualrents & 1  
non-payment of debts for goods & 12  
non-payment of mails, fermes, duties & 5  
non-payment of money conform to obligation & 10  
non-payment of money conform to requisition & 1  
non-payment of taxation & 4  
non-payment of redemption money & 1  
non-payment of teinds & 4  
non-payment of stipend & 1  
\hline
\end{tabular}
\end{table}

\textsuperscript{236} eg CS7/186/324v (Graham v Lord Johnstoun) & CS7/191/392r (Gordoun of Grange v Dumbar); see App., I, 97; 98.  
\textsuperscript{237} CS15/77 (Dewar v Ross of Balnagoun) see App., I, 99.  
\textsuperscript{238} see App., I, 100.  
\textsuperscript{239} CS7/189/157v (Culter v Agnew); see App., I, 101.
not baptising 1
not infefting in land 1
not fulfiling of contract 9
not finding of lawburrows 8
not fulfiling decree arbitral 1
not paying fiars' prices 1
not removing 8
not reporting letters of slaughter 1
not restoring stolen ship 1
spoliation of writs 1
[not explained 4]

DECLARATORS OTHER THAN ESHEATS

Most actions were over contravention of lawburrows when half the penalty had to be paid to the King and the other half to the party grieved. The importance attached to the accurate dating of charters etc. gave rise to an action of declarator of the negligence of a notary in the giving of a wrong date to a document. Perhaps this was an acceptable method of rectifying a writ. The action was continued but disappears from the records.

DECLARATORS [unrelated to escheats]

confession 1
contravention of act of Parliament re residence 1
contravention of lawburrows 16
date omitted from resignation was by negligence 1
denunciation as rebel is null 2
expiry of rental 1
expiry of tack 3
freedom from act of Parliament re feu duty 1
heir 1
lands in hands of superior during non-entry 1
lawful arrestment 4
lawful entry 1
lawful redemption of land 6
letters of horning are null 3
liferent pertains to pursuer 1
losing superiority of land 1
recognition 1
submission of decree arbitral 1
superior has lost superiority 1
tenement not comprehended in gift to poor 1
terce 1
wrongful absracting from mill 1

240 eg CS7/187/415v (Lord Advocate & Campbell v Lord Murthill & Lord Geicht) & CS7/191/317v (Captane of Carrik & Laird Fulwod v Ardinacapill); see App., I, 102; 103
241 CS7/190/323v (Lord Durno v Petfoddellis); see App., I, 105.
5 Decrees of forthcoming
This was an action which the arrester of property had to bring against the arrestee in order to make the arrested property available. In one decree of forthcoming a defender was decerned 'to mak sex chalders victual ... arreistit in his hands at ye instance of ye persewar forthcoming for payment to him of the sowme of £53 6s 8d awand to him'.

6 Delivery, Exhibiting and Production
The following is a comprehensive list of all the kinds of evidence for which the Lords called in 1600. They were interlocutory acts calling, for instance, for the production of written evidence, and very occasionally for the production of articles such as jewels. If the Lords deemed it appropriate to use probation by oath rather than probation by writ, the advocate was ordained to 'exhibit' his client on a specified day for 'elyding', or annulling, a claim or to give his oath, either 'of verity', if a creditor was proving a debt for instance, or 'de calumnia', if proving that a party believed his cause was just. Sometimes probation by oath was the preferred course of action because it meant 'schortnes of proces'.

An Acquittance
An acquittance was a receipt. For example, money, either £5 or 40 shillings, destined for payment to the Collector, or else money due to a successful litigant, was consigned, in the absence of the litigant, in the hands of Mr Alexander Gibson, one of the clerks of

242 CS7/187/357r (Bennetts v Young).
243 CS7/190/315v (Law v Penstoun); see App., I, 106.
244 CS15/78/1059Ramsay v Bruntfeld); see App., I, 107.
245 CS7/191/119v (Erle of Cassillis v Blairquhan); see App., I, 108.
the Council. In one petition, the Lords were asked to ordain Gibson
to give up £40 deposited with him in connection with an arbitration.
A promise was made that Gibson would receive an acknowledgement or
receipt in writing.246

An assignation
A right or rights were often assigned to another by instrument.
There were examples of assignation of a contract for an annual rent
from a tenement of land;247 of lands, probably as an attempt to avoid
the consequences of an escheat;248 and of an action for payment for a
stolen horse.249 One 'cessioner and assignay' to lands was declared
by the Lords to have lawfully redeemed them.250

A gift of escheat
An escheat was a person’s property which was forfeited to the Queen
or King or lord of a regality on the conviction of that person for
certain crimes. The Queen, as a lord of regality, could grant an
escheat out of her lordship of Dunfermline.251 The King either kept,
granted or sold the goods and/or the land, or the liferent of the
land if the person remained a rebel for more than a year or day. An
example was the King’s gift of a woman’s possessions, after her
suicide, to the usher of his chamber.252

Letters of caption
This was a warrant for arrest, usually for debt. Examples were also
found of such letters of caption for not finding caution through
‘miserabill estait and conditioun’;253 and for not bearing witness.254

246 CS15/78/107 (Ramsay v Bruntfeild); see App., I, 109.
247 CS7/191/327r (Nicoll v Moreis); see App., I, 110.
248 CS7/191/233v (Drummond v Sempill); see App., I, 111.
249 CS15/78/49 (Hamiltoun v Levingstoun); see App., I, 112.
250 CS7/186/137v (Mr of Lindsay v Mr of Crawford); see App., I, 113.
251 CS7/187/317r (Scott v Dischingtoun); see App., I, 114.
252 CS15/77/36; see App., I, 115.
253 CS7/189/161r (Adamsoun v Cairnis); see App., I, 116.
254 CS7/189/204v (Arbuthnet v Lord Glamis); see App., I, 117.
Redemption of land

When land had been wadset as security for a debt, provision was made in letters of reversion for its redemption on repayment of the debt or payment of an agreed sum of money. Such payments were made, for example, at the high altar of the parish kirk of Haddington\(^{255}\) and within the choir of the parish kirk of Perth.\(^{256}\)

Renunciation

When an heir found that he had inherited debts which he could not pay, for instance, he could renounce the heirship. Thus, John Keith 'renuncit to be air' to Sir William Keith of Ravenscraig.\(^{257}\)

A retour

This was the return or extract of a decision sent to Chancery by a jury or inquest declaring a successor heir to his ancestor. An entry recorded that Patrick Gray 'is the narrest laul air of his umquhile father'.\(^{258}\)

Miscellaneous written evidence

Miscellaneous evidence used in the Supreme Court included a grant by the King in 1570 for a hospital for the poor in Montrose;\(^{259}\) an instrument about an assignment of an action of spuilzie;\(^{260}\) an instrument of quitclaim granting the receipt of £127\(^{261}\); a receipt of £80 principal, with £20 of expenses, from the hands of Mr Robert Stevin, one of the regents of the grammar school, on behalf of his brother, in payment of an obligation;\(^{262}\) a letter from the King

\(^{255}\) CS7/190/306v (Broun v Broun); see App., I, 118.
\(^{256}\) CS7/187/277r (Ross v his Dochter); see App., I, 119.
\(^{257}\) CS7/186/218v (Mr Thomas Craig v Keith); see App., I, 120.
\(^{258}\) CS7/186/127r (Mr of Crawford v Lord Gray); see App., I, 121.
\(^{259}\) CS7/187/170v (Toun of Montrois v Lord Collector & Panter); see App., I, 122.
\(^{260}\) CS15/78/4 (Hamiltoun v Levingstoun); see App., I, 123.
\(^{261}\) CS15/78/88 (Puill v Irving); see App., I, 124.
\(^{262}\) CS15/78/77 (Don v Stevin); see App., I, 125.
requesting the Lords to allow Patrick Cheyne to defend an action despite letters of horning against him for not attending a summons to appear before the Privy Council; a dispensation from the King in the above action;\textsuperscript{263} production of a letter of slains, or acknowledgement that satisfaction for slaughter had been received, conform to a decree arbitral;\textsuperscript{264} a recognition, or resumption of land by a superior when a vassal had alienated more than half without his superior's consent, for example, the lands of Little Aikenhead 'became in or soverane Lordis hands as undoutit superior yrof';\textsuperscript{265} and the testament of James Mitchelson of Kinghorn.\textsuperscript{266}

7 Enforcing of decree of inferior courts

This power underlined the pre-eminent position of the Court of Session. Justice. An example was the enforcing or charging of a defender 'to have payit to ye complener' certain sums of money 'as thay wer laulie commandit be vertew of the Commiseris decreit and precept of Sanct Androis'.\textsuperscript{267}

8 Multiple claims to mails, ferms, duties, rents, teinds

These arose because of the complicated nature of land ownership. An action arose over the two claims to the 'gift' of the ward and the lands and lordship of Kilmarnock.\textsuperscript{268}

9 Payment

Actions were brought over non-payment of dues, debts, multures[one also involved thirling to a mill],\textsuperscript{269} redemption money e.g.1000 merks

\textsuperscript{263}CS15/77/23 (Earl of Erroll v Patrick Cheyne); see App., I,126.
\textsuperscript{264}CS7/185/90r (Lord Luss c Cultrent); see App., I,127.
\textsuperscript{265}CS7/189/329r (Laird of Calderwod v Aikenheid); see App., I,128; See R.M.S. VI, No. 872, 13 March, 1598/99 for confirmation of charter of grant of these lands and of Hagtornhill to D. Jacobo Maxwell de Calderwode, militi, heredibus eius et assignatis(knight, his heirs and assignees).
\textsuperscript{266}CS15/78/85 (Mitchellsoun&Stewart v Ramsay & Grot); see App., I,129.
\textsuperscript{267}CS7/192/38r (Boswel v Boswel)
\textsuperscript{268}CS7/187/397v (Ffoullartoun v Tenentis of Kilmarnok); see App., I,130.
\textsuperscript{269}CS7/188/177v (Carmichael v Barroun); see App., I,131a.
paid as redemption money for the licence of fishing on the Ythan but claimed by both the widow and the heir by progress.\textsuperscript{270}

\textbf{10 Procedural matters}

It was thought important to have a section which dealt with these matters because much of the interlocutory business of the Court of Session involved such actions. They were, of course, stages in the course of a case.

\textbf{Bringing an action to a conclusion}

A motion that 'a cause be haldin as concludit' was found in the Process papers,\textsuperscript{271} while an act putting an end to delaying tactics appeared in an entry in the Register of Acts and Decrets.\textsuperscript{272} Many interlocutors ordained the citation of witnesses. They were summoned once without penalty but if they failed to comppear they were summoned a second time under pain of denouncing as rebels and being put to the horn for not appearing in order to bear 'leill and southfast witnessing'.\textsuperscript{273}

An example from the Process papers contains a statement about a messenger apprehending William Forbes of Monymusk.\textsuperscript{274} A charge to the sheriff and his deputes to seek out rebels is found in one of the registers. In it, the local sheriff was charged to 'serch, seik, taik and apprehend' dilatory witnesses.\textsuperscript{275} If none were found, a sheriff himself, after warning, was denounced as rebel.\textsuperscript{276}

The Lords were sometimes requested to ordain someone to find caution for a future deed or behaviour. Margaret Auchinleck, 'by her povertie and insolent life', had let a mill fall into ruin. The heritable proprietor complained that this tended 'to his hurt,
without sum timeous remedie be found yrto, be compelling Margaret, according to the Lordis daily practik and ordors usit in sic causes, to find sufficient cautoun and sourtie ... for making payment to him of the dewtie'.

Further procedural matters included decerning to amit superiority so that a claimant could enter to lands; and exempting from the jurisdiction of immediate superior because of oppression.

The Lords charged potential wrongdoers to find caution and lawburrows or surety that no molestation and harm would be committed against specified people. Although the advocate would sometimes remind the Court of the penalties laid down by parliament for contravention of lawburrows, the Lords could modify the penalties to be imposed for such contravention on the grounds of clients being 'meane persounis, indwellers in yair sober vocatiouns' and in another example because 'the pane of ane thowsand pundis' was 'extraordinar grantit'.

11 Protestation

This was the procedure by which the defender in a civil action in the Supreme Court compelled the pursuer either to proceed with his action or abandon it. All succeeded and in each case the pursuer was ordained to pay to the defender £6 as the expenses of his protestation, together with 40s to the Lords' Collector. Protestations were made, for example, in actions over right to land and over letters obligatours.

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277 CS7/190/254v (Lord Secretar v Auchinlek).
278 CS7/185/171v (Colquhoun v Lord Luss); see App., I, 137.
279 CS7/191/15v (Ffinlay v Laird of Craigie); see App., I, 138.
280 CS7/190/301r (Lord Kilrack v Syreff of Murray); see App., I, 139.
281 A.P.S., 1593, c13, Iv, 18.
282 CS7/191/315r (Tenentis of Prestik v Laird of Craigie); see App., I, 140.
283 CS7/192/170v (Dog v Campbell); see App., I, 141.
284 CS7/185/228r (Bruntfeild v Lady Saltoun); see App., I, 142.
285 CS7/187/221r (Mistress of Boyd v Harper); see App., I, 143.
286 CS7/187/187r (Abircrumbie v Hammiltoun); see App., I, 144.
These interlocutory acts involved the proving of types of evidence. For instance, a renunciation and grant of redemption by a minor was found to be sufficient in one proof.\(^{287}\)

### 13 Reducing decrees of inferior court

An example is the reduction of a decree of removing pronounced by the Bailie of Cunningham.\(^{288}\)

### 14 Reduction

The registers record actions to annul, by legal process, deeds, contracts, decrees, for instance. Reduction was sought of an assignation;\(^{289}\) of a bond to keep good order;\(^{290}\) of a brieve of Chancery and the persons of inquest to be punished for their 'manifest and wilful error';\(^{291}\) of a charter on the grounds of having been made on death-bed 'in hurt and prejudice of his air mail and of tailie';\(^{292}\) of a decree and letters of horning in an action over 'tynsall of ye superioritie of the lands of Cumnock';\(^{293}\) of letters of interdiction against the alienation of land;\(^{294}\) of a marriage contract on the grounds of the death of one of the parties within a year and a day;\(^{295}\) of a retour by which the persons of inquest served the oy as heir;\(^{296}\) and of a tack because it had been made in a minority.\(^{297}\)

### 15 Removing

Actions of removing were brought, for instance, when a tack had expired. They were challenged in actions of wrongful ejection. There

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\(^{287}\) CS7/189/421v (Gilbert v Garthland); see App., I, 145.

\(^{288}\) CS7/185/293r (Hall v Peiblis); see App., I, 146.

\(^{289}\) CS7/191/285v (Hammiltoun v Robertsoun); see App., I, 147.

\(^{290}\) CS7/193/61r (Dowglas v Drumlanrig); see App., I, 148.

\(^{291}\) CS7/191/164r (Capringtoun v Dreghorne); see App., I, 149.

\(^{292}\) CS7/186/194r (Cunninghame v Patoun); see App., I, 150.

\(^{293}\) CS7/191/404r (Lord Cumnok v Lord Capringtoun); see App., I, 151.

\(^{294}\) CS7/189/269v Cairstairis v Mertine); see App., I, 152.

\(^{295}\) CS7/191/156r (Laird of Garleis v Ladie Maxwell); see App., I, 153.

\(^{296}\) CS7/190/122r (Lord Advocat v Hay); see App., I, 154.

\(^{297}\) CS7/191/95r (Lord Glaneis v Wilsoun); see App., I, 155.
were also actions to enforce tenants to bring their corns to the mill to which they were astricted. The appendix has examples of a personal charge to a messenger from the Process papers in an action of removal; of a decree of removing pronounced by the Lords; of an action giving security to a tenant of a mill and of land on the grounds of being a kindly tenant; of a "midnight flitting" in which tenants removed themselves without permission; of a warrant for charging tenants to remove from the lands of Buitland, Currie, belonging to Mr John Preston of Fenton Barns; and of a reference to unsatisfactory tenants who refused to work the land.

16 Restoration/Restitution

These actions were for restoration of goods and gear which could be testamentary or stolen, such as a horse and cattle. The Lords liquidated the prices of goods such as corn which, for instance, had been wrongfully teinded in past years. They did this by referring to the Fiars’ prices.

17 Spuilzie

Hope, practising from 1608 until 1633, noted that 'Depraedationes masterfull, reiff, and spulzies, most be first civillie decyditt befoir the lords of sessione, or ever they can be criminally persewed'. Most striking was the action for demolishing and

298 CS15/78/106 (Glendonyng v Aschennane); see App., I, 156.
299 CS7/189/375r (Spens v his Tenentis); see App., I, 157.
300 CS7/190/310r (Hunter v Adamsoun); see App., I, 158.
301 CS7/190/346r (Hammiltoun v his Tenentis); see App., I, 159.
302 CS7/188/186r (Lord of Bass v his Tenentis); see App., I, 160.
303 CS15/78/101 (Prestoun v Tenentis of Buitland); see App., I, 161.
304 CS7/15/78/24 (Hepburne and Lauder v Hammiltoun); see App., I, 162.
305 eg CS7/188/197r (Fairlie v Laird of Luss); see App. I, 163.
306 eg CS7/191/174r (Lady Ross V West).
spoliation of the contents of a house in Glenshinnoch.\textsuperscript{308} Most cases involved spoliation of teinds\textsuperscript{309} of goods and gear\textsuperscript{310} or of an animal such as a horse.\textsuperscript{311} [Further actions are concealed in the actions for 'Restoration' and 'Advocation', which discusses spuilzie of a ship].

\textbf{18 Supplications/Petitions}

Preliminary applications were presented to the Court either to enable a petitioner to do some act which would otherwise be unauthorized, or asking the Court to order someone to do some act which a petitioner could not by himself require him to do. There were petitions, for example, that a senator and clerk would come to an ill man's bedside to take his oath.\textsuperscript{312} Another sought delay of probation so that exceptions could be rebutted and further, for a commission to be set up for consideration of a man's age to be taken into account as an excuse for having smitten an officer. He claimed that being past 76 years he was 'not abill to gang nor stand' without a staff 'for debilitie of persoun mekil les to have committit ony violent deforcement agains ye said officer' who had come to 'brek' his 'durris';\textsuperscript{313} for registration of a contract;\textsuperscript{314} for release from imprisonment in the tolbooth;\textsuperscript{315} for bringing an action to 'ye finall end and decision of ye samyn but intromissioun or delay';\textsuperscript{316} and for suspension of an act ordaining the payment of legal expenses.\textsuperscript{317}

\textbf{19 Suspension of letters of horning}

Parties sought suspension of letters of horning raised against them,

\textsuperscript{308} CS7/191/197v(Fergussoun v Maxwell); see App.,I,164.
\textsuperscript{309} CS7/188/164v(Murray v Hepburne)&CS7/191/194r(Capringtoun v Enterkin); see App.,I,165& 166.
\textsuperscript{310} CS7/191/197v (Fergussoun v Maxwell) ; see App.,V,8.
\textsuperscript{311} CS7/188/138v (Crawfurd v Murray); see App.,I,167.
\textsuperscript{312} CS15/79/91(Ramsay v Schewane); see App.,I,168.
\textsuperscript{313} CS15/79/80(Brownne c Bayne); see App.,I, 169.
\textsuperscript{314} CS15/79/396r (Gray v Lindsay); see App.,I,170.
\textsuperscript{315} CS7/187/150r(Bynning v Provost and Bailleis of Edinburgh) & CS7/190/101v (Drylsdaill v Kello & Uyris); see App.,I,171.
\textsuperscript{316} CS7/189/353v (Aikinheid v Calderwood); see App.,I,172.
\textsuperscript{317} unindexed papers CS15/79/93 (Ewing v Sanderson); see App.,I,173.
for instance, for non-payment of feu mails;\textsuperscript{318} for non-payment of teinds;\textsuperscript{319} of letters of horning and poinding for not observing the Admiral’s decree;\textsuperscript{320} of letters of horning for not paying for meal according to the Commissary of Aberdeen’s precept;\textsuperscript{321} for not honouring a contract matrimonial;\textsuperscript{322} of letters of horning raised by Anstruther Wester against Anstruther Easter for having held market days in competition with them as a ‘frie burgh of regalitie’;\textsuperscript{323} for contravention of lawburrows;\textsuperscript{324} and for not finding of lawburrows.\textsuperscript{325}

Related to suspensions were arguments for and against suspension;\textsuperscript{326} seeking suspension because decree fulfilled;\textsuperscript{327} a complaint about sundry suspensions;\textsuperscript{328} not fulfilling letters of horning though no suspension had been obtained;\textsuperscript{329} reasons for suspension;\textsuperscript{330} suspension of letters of horning raised by the Collector;\textsuperscript{331} and written answers to reasons of suspension.\textsuperscript{332}

\textbf{20 Warrandice}

This was a personal obligation of a granter, such as a seller or lessor, especially of heritable property, to indemnify the granter in case of eviction on grounds existing before the grant or sale. In simple warrandice, the granter undertook not to grant any future deed which would conflict with the right transferred or undertook not to have granted as well as not to grant any future deed which would conflict with the right transferred. For instance, there were

\textsuperscript{318} CS7/186/390v (Arnot v Stewart).
\textsuperscript{319} CS7/186/177r (Quean v Lord Hammiltoun).
\textsuperscript{320} CS7/189/252r (Riddell v Watsoun); see App., I, 174.
\textsuperscript{321} CS7/186/382v (Fforbes v Johnstoun); see App., I, 175.
\textsuperscript{322} CS7/189/202r (Drummond v Grahame).
\textsuperscript{323} CS7/189/96v (Anstruther v Anstruther); see App., I, 176.
\textsuperscript{324} CS7/186/180r (Bruce v Bruce).
\textsuperscript{325} CS7/192/198v (Boiswall v Abircrumbie) & CS7/187/261r (Toun of Montrois v Panter); see App., I, 177.
\textsuperscript{326} CS7/185/298v (Lord Restalrig v Jonstoun); see App., I, 178.
\textsuperscript{327} CS15/77/57 (Erskin v Forbes); see App., I, 179.
\textsuperscript{328} (Fouillartoun v Tenentis of Kilmarnok).
\textsuperscript{329} CS7/190/102v (Grahame v Murray); see App., I, 180.
\textsuperscript{330} CS7/186/158r (Erie of Rothes v Collector); see App., I, 181.
\textsuperscript{331} CS7/185/265r (Sutherland v Collectour); see App., I, 182.
\textsuperscript{332} CS7/185/315v (Keith v Knowles); see App., I, 183.
examples warranting that lands would be 'frie and saiff at all handis of Ludovik duke of Lennox and fra the decreits of redemptioun and removing obtenit be him yrannet';\(^{333}\) that a cautioner would be relieved of his cautionry;\(^{334}\) that lands\(^{335}\) or a mill would be 'peacefullie bruikit' by heirs;\(^{336}\) and that a tack or else 'as good land' would be provided\(^{337}\) as indicated by Hope when he said 'the warrender in cais of evictioun of the landis may be compelled to give the buyer als meikle good weill-lyand land, and als commodious in every thing, and als frie from inconvenienceis, e.g. inundations, etc.'\(^{338}\).

4 ARBITRATION

Arbitration, as a procedure whereby the Court could be bypassed, or aspects of a dispute be resolved extrajudicially, is a subject which is beyond the scope of this thesis. To ascertain how far the procedure worked in practice outwith the Court would involve very extensive research into such sources as are extant, but even in the year under study there would appear to be divergences between the exposition and the practice in relation to Arbitration.

The Theory

'Arbitrie is ane deid or dome of twa or ma persounis, contendand and striveand in ane civile questioun or cause'. 'Arbiters ... as Jugeis, travel to seik out and knaw the veritie of the debait'. No

\(^{333}\) CS7/185/171r (Colquhoun v Lord Luss) & CS7/189/326r (Conynghame v Blairquhan); see App., I, 184, 185.
\(^{334}\) CS7/191/228v (Watsone v Ogylvy).
\(^{335}\) CS7/191/131v (Corrie v Kelwod).
\(^{336}\) CS7/190/225r (Huntar v Adamesoun); see App., I, 186.
\(^{337}\) CS7/186/394r (Hunter v Orme); see App., I, 187.
bondman, woman, madman, deaf and dumb person or minor could be an arbiter but 'ony Baillie or Judge ordinar may be ane arbitratour or amicable compositour, and be freindlie dress and compositioun may decide and end debaitis and contraversies betuix parties'. Odd numbers under an oversman should be chosen by both parties and the office was voluntary. Temporal causes such as debt and also spiritual actions 'except in causes of matrimonie' could be set to arbitration. Arbitration came to an end on the death of one of the parties or one of the arbiters, and if no date for pronouncing of a decision had been set, the decision had to be given within a year and a day of the compromise or points at issue. A judge could compel delivery of a decision. It had to be a majority decision and should conform both to the compromise[settlement] and to the law. Arbiters could not enforce their decision nor could the decision be reduced if the parties had sworn to abide by the decision. A decision could be reduced if it was to the 'enorme hurt of aither'. Reclamation could be made if within 10 days, but not if the reclamer, or losing party, had signed the decree arbitral or an instrument about the decision, or if it had begun to be put into effect. A lawful decree arbitral marked the end of an action. If a party did not fulfil a decree he could be held in custody until he had pledged to obey the decree and had to pay a penalty, modified by the Lords, to his opponent.

Hope adds that a judge could not be an arbiter in a matter in which he was judging; that arbiters could not subdelegate; that there could be no reclamation from a decree arbitral given on a blank submission; and that a notary could not be both arbiter and notary in the same cause. He states that 'Causes matrimoniall, or criminall, may not be deyded be arbiters; but they may be arbitrators, or amicable compositors', citing Regiam Majestatem 2.6.

2., thus supplementing Balfour [who only specifies causes matrimonial]. Hope, too, appears to make a distinction between arbiters and arbitrators. 340

Cooper notes a 'descendendo of formality, the iudex, the arbiter, the arbitrator and the amicablis compositor ... [whose function was not to determine rights and duties but to help parties to effect an overhead settlement of their outstanding controversies], 341 but the function and role of an arbiter (the equivalent of a judge) as opposed to an arbitrator, and of an arbitrator as opposed to an amicable compositor (a mediator), is nowhere clarified.

The instances noted below in which an arbitral process came to the attention of the Court of Session, do not resolve the matter.

The Evidence of the Registers of Acts and Decrees

Seventeen arbitrations appear in the statistical analysis under different types of actions such as 'Production of evidence'; 342 Probation of evidence'; 343, 'Reduction of decree arbitral and submission'; 344 'Enforcing of decree arbitral' 345; 'Protestation'; 346 and 'Payment of pension'. 347 All are sufficiently important to merit discussion which is separate from the statistical survey of the work of the Court of Session.

The terms 'judges arbitrors' 348, 'juges arbitouris' (arbiters) 349 and 'juges arbitouris and amicabill compositors' 350 are used. One

341 Cooper, the Rt. Hon. Lord, Select Scottish Cases of the Thirteenth Century, (Hodge & Co., Edin., 1944), introd., XIV, xlix.
342 CS7/185/123v (Fleschour v Paterson); see App., I, 188.
343 CS7/185/167r (Bruntfeild v Ramsay).
344 CS7/187/224r (Keith v Bischof of Aberdein v Lord Straloche).
345 CS7/186/215r (Wod v Auchinleck).
346 CS7/185/159v (Cunninghame v Cunninghame); see App., I, 189.
347 CS7/189/19r (Bartane v Rossyth).
348 eg CS7/189/19r (Bartane v Rossyth).
349 eg CS7/186/233r (Dalzell v Nasmyt).
350 CS7/186/215r (Wod v Auchinleck).
example, specifies 'neutral friends and judges',\textsuperscript{351} The distinction between the terms as used is not clear. It has therefore been thought appropriate to use 'arbiter' or 'arbitrator' as found in the entry being discussed.

Some actions arise directly from decrees arbitral; others contain occasional references as part of a related action. For example, in an action for reduction of a bailie's decree, part of the evidence hinged on 'all matters debatabill betuix Alexander Stewart, James Stewart his son and ye said Gavin Carmichell' having been 'referrit and submitit to Thomas Achesoun Mr Cunyear as onlie juge chosin be consent of bayt ye saids pairteis'. Thomas Achesoun 'gave furth and subscriyvit his said decreit arbitral debito tempore, be ye quhilk all contracts, inhibitouns and obligatiouns yat ony of ye saids pairteis had to lay to others charges preceeding ye dait of ye said decreit war ordanit to be dischargit'.\textsuperscript{352}

Two types of arbitration appear to contradict Hope's statement that 'Causes matrimoniall, or criminall, may not be decyded be arbiters; bot they may be arbitrators, or amicable compositors'. Presumably one arbitration about the profits of a marriage was heard because it was concerned with the financial aspect of marriage rather than with status.\textsuperscript{353} Assythment was a corollary or consequence of the commission of a crime and presumably was therefore deemed a suitable subject for arbitration.\textsuperscript{354} Arbitration over obtaining a letter of slains for the slaughter of Donald McNeill Mcfarquhar\textsuperscript{355} must have been acceptable for the same reason. Neither arbitration was, on the face of it, over whether the crime had been committed or by whom. Presumably the arbitration followed a

\textsuperscript{351} CS7/190/5r (McKie v McKinyeane).
\textsuperscript{352} CS7/191/18r (Watsoun v Reid).
\textsuperscript{353} CS7/190/96r (Lord Barnbarroche v Murray of Brochtoun); see App., I, 190.
\textsuperscript{354} CS7/190/142r (Tirie v Curror). see App., I, 191
\textsuperscript{355} CS7/185/90r (Lord Luss v Cultreuch); see App., I, 192.
conviction. In none of these examples is anyone specified as either 'arbiter' or 'arbitrator'.

Disputes which were brought before arbitrators concerned the payment of the duties of the lands, mains and mill lands of Gogar. Arbitrators were Edward, commendator of Kinloss[a senator], Mr John Skene, Register Clerk, and Andrew Wemys of Myrecairny[another senator]. There was also arbitration about a dispute over the office of executry; about payment of £100 to a minister; about what sum of money 'frends and doars' thought appropriate for payment to John Brown, minor, for discharging a 19-year tack set to his deceased father.

Before arbitration, a preliminary submission was made to the Lords and the parties bound themselves to abide by the decision of the arbiters. They had to undertake 'to fulfill and obey and stand content' with the decision 'but reclaimatioun or agane calling'. In one example, an action for not finding lawburrows was submitted to the 'amicable decisioun and determinatioun and arbitrement of Mr William Oliphant, advocate, and Adame Lawtie, writer to or soverane Lordis signet, as judges arbitrators and amicable compositors commounlie and equallie chosin be bayt the saids pairteis and to Archibald Dowglas of Quhittinghame, ane of the senators of the College of Justice as odisman and orisman siclyk chosin be bayt the saids pairteis to the decisioun of the said mater'.

In 1605 the Lords deemed it unsuitable for judges to act as arbitrators. A statute of Session declared that 'Nae Lords of

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CS7186/439r (Kincaid v Watsoun); see App., I, 193.
CS/7/190/5r (McKie v McKinyeane).
CS7/191/242v (Duncane v Wedderburne).
CS7/186/429v (Lord Sornbeg v Broun).
CS7/191/352r (Ffrendraucht v Ffrendraucht); see App., I, 194.
CS7/185/190v (Welland v Dougall); see App., I, 195.
Sessione shall be judges arbitrators; and, if they be, it shall be ane cause of declinator'.

Despite undertakings to observe the decision following arbitration, several actions of reduction were brought. For example, there was an arbitration over the right and title of William Leslie as 'air of tailyie' to lands in the shiriffdoms of Fife, Perth and Forfar. Leslie sought reduction of the submission, decree arbitral and decree of registration on the grounds of imposed conditions which he found 'impossibill to him to do'. The decision of Mr Thomas Hamilton of Drumcairnie, Lord Advocate, Mr John Shairp of Houston, advocate, and Thomas Hamilton of Priestfield (the Lord Advocate's father) was said to have been pronounced 'maist partiallie without having respect ayer to law or guid conscience ... by[contrary to] all equitie and reasoun'; it was also ultra vires in so far as 'the saids judges and orismen' had interdicted Leslie from disposing of his right or profits of the lands which had not been mentioned in the submission and had been done without his consent. Furthermore, the decree stated that Leslie had received 300 merks from Kirkcaldy of Grange as part of the 600 merks decreed as payment to him, but Kirkcaldy had deponed that he had 'given na kynd of gold nor silver' to Leslie. Also, within 48 hours of learning about the decision, Leslie had 'reclamit yrfras'. [Balfour says that reclamation must be made within ten days].

There had been nothing about transferring mails, fermes and duties to Kirkcaldy in the submission, and finally, 600 merks was less than a just price for 40 chalders of victual. Thus the decree was to Leslie's 'enorme lesioun'. Nevertheless, the Lords assoiled the defenders because 'they fand na relevant caus contenit in ony of the saids ressonnes and eik ...


quhairby the said decreit arbitral myt in onyways be reducit or quarrellit bot fand the same laullie and weill given’. Also, Leslie was found to have translated his right and title to Kirkcaldy. 364

In another action which sought reduction of the decree arbitral. Robert Graham claimed to have been ‘persuadit and inducit to mak and subscrive’ a submission ‘in his minoritie and les aige’. The submission was not explained but the Lords ordained its production along with the decree arbitral and warned that if the writs were not forthcoming they would be reduced. 365

John Andrew, notary, against whom a decree arbitral had been given, challenged the decision of arbitrators by bringing an action against Mr John Hart in the Canongate in whose favour the decree was pronounced and also against the ‘juges arbitrators and amicable compositors chosin for the pairteis ... and Mr David Lindsay, minister at Leith, odisman and orsman elecat and chosin be the samyn pairteis in caice of variance’. Mr William Hart of Levilands[a past Lord Advocate] had been chosen as ‘juge arbitrator’ for the part of John Andrew and Mr John Moncreiff of Easter Moncreiff[advocate] for Mr John Hart. The dispute was over the teinds of four acres of land possessed by Mr John Hart but pertaining to John Andrew ‘during the yeiris of his tak to ryn’. The compromise or decision to go to arbitration had been made on 16 January 1600, and the arbitration was to follow on 16 February but there was a ‘prorogatioun’ or postponement to 18 February. Mr John Hart had been decrened to be free ‘fra all actioun intentit be John Andro agains him for spoliatioun of the teynds’ and the arbitrators had ordained the decree to be registered in the Books of Council ‘ad perpetuam rei memoriam’. The registration was enacted on 6 June 1600. Seeking reduction, Mr Thomas Craig, acting for John Andrew in the Court of

364 CS7/192/232v (Lord Grainge v Leslie); see App., I, 196.
365 CS7/189/38r (Grahame v Grahame).
Session on 19 November, was decreed by the Lords 'to warn the defenders to bring the foirsaid decreit arbitral, act of registratioun, compromit, prorogatioun, with defenses, allegaunces, replys and duplys' before them and 'gif they failyeit the foirsaid deceit arbitral salbe annullit.' Unfortunately, there is no record of the continued action.366

Sometimes the Lords were called upon to enforce a decree arbitral. For instance, when a dispute had arisen over a contract 'anent the mutuall societie and partnerschip of the voyage to the hering to the west cuntrie and to the equal waring and tynsaill according to the said stok quhilk sould be put in commoun burss' the matter had been referred to 'certane juges arbitours, amicabill compositours chosin' between Thomas Dalziel, merchant burgess, and John Nasmith, surgeon burgess, both of Edinburgh. The arbiters had decrened Nasmith to make payment of £438 2s 8d to Dalziel and letters of horning were raised when the money was not paid. These were suspended when the money was consigned in the hands of Adam Cowper, clerk of court. 367

In another action a day was assigned to James Murray, feuar of Strowan, for proving a decree arbitral pronounced by Sir John Murray of Tullibardine and James, commendator of Inchaffray. He was to summon the pronouncers and the witnesses inserted in the decree and to produce such evidence as had been led at the hearing and he was to pay 20 merks 'as for the price of improbatioun in cais he failyeie in improving yrof'.368

Sometimes the Lords assigned, for the second time, a day on which the writer of a submission, witnesses and six 'judges arbiratouris'

366 CS7/190/307r (Andro v Hairt).
367 CS7/186/233r (Dalzell v Nasmyt).
368 CS7/185/211r (McGruther v Lord Strowan).
were to be summoned again under greater pains 'for improving' of a dispute about 'wrangleous spoliatioun of guids and geir'.

The entries refer to both 'arbiters', and more frequently to judges arbitrators but it is difficult to see if the descending order of power suggested by the theorists was adhered to.

These actions which came before the Lords must have represented a small proportion of the total number of arbitrations, given that the parties had deliberately decided not to involve formal court action and had undertaken to abide by the decision of the 'arbitouris' or 'judges arbitrators and amicable compositors'.

**CONCLUSION**

It has to be accepted that by categorizing on the basis of the immediate purpose of each hearing in the Supreme Court, the analysis is not entirely satisfactory. The importance in the work of the court of cases of removing, for instance, is not fully reflected, many of the interlocutors dealing with aspects of these cases being found under 'Proving'. Payments due to ministers can be concealed in 'fruits', 'mails, fermes, duties, rents', in 'teinds', in 'multiple claims' and in 'money debts'. Similarly an action over thirling to a mill is concealed in 'Payment'. The 'Restoration' statistics could mislead in that many involved more than one type of good and many conceal spoliations. Several examples in 'Procedural Matters' echo what was discussed in section 2, under 'Procedure'. Arbitration was not completely outside the work of the Court of Session, but never features in the statistical survey of the business of the Court of Session. Nevertheless, despite these qualifications, it is submitted that the analysis has value in so far as it demonstrates reasonably fully the actual day-to-day work of the Lords of Council and Session.

---

369 CS7/185/167r (Bruntfeild v Ramsay).
Appearances Recorded by the Different Offices

- Scott - 882
- Gibson Acts - 546
- Gibson Decrees - 513
- Hay - 770

Total Entries in Register - 2711
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Matters Occasioning Each Entry in the Registers

- Payments - 529
- Reducing decrees of inferior court - 10
- Reducing decrees of inferior court - 10
- Proving - 75
- Protestations - 258
- Procedural matters - 221
- Multiple claims to males, fermes, duties, rents, teinds - 23
- Enforcing decrees of inferior court - 18
- Delivery/Exhibition/Production - 360
- Declarators - 153
- Arrestment - 37
- Arbitrations - 17
- Decreases of forthcoming - 6
- Administrative and Semi-administrative work of the Court - 107
- Advocations - 72
- Suspension of letters of horning - 216
- Supplications/Petitions - 75
- Restoration/Restitution of spuilzie goods - 102
- Spuizle - 112
- Removing - 255
- Reduction - 41
- Reducing decrees of inferior court - 10
- Proving - 75
- Protestations - 258
- Procedural matters - 221
- Warrandice - 10
- Administrative and Semi-administrative work of the Court - 107
- Advocations - 72
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Enforcing Decrees of Inferior Courts

- Commissary's Decree - 1
- Stewart's Decree - 1
- Admiral's Decree - 1
- Decree Arbitral - 2
- Bailies' Decree - 3
- Contract - 3
- Sheriff's Decree - 7

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</tr>
<tr>
<td>Wrongful Occupation</td>
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<td>Wrongful Outputting, Ejection</td>
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</tr>
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<tr>
<td>Supplications and Petitions (see p 64)</td>
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<tr>
<td>Pleas for Release from Tolbooth</td>
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<td>Supplications</td>
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<tr>
<td>Suspension of Letters of Horning (see p 64)</td>
<td>216</td>
</tr>
<tr>
<td>Warrandice (see p 65)</td>
<td>10</td>
</tr>
<tr>
<td>Reductions (see p 62)</td>
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</tr>
<tr>
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</tr>
<tr>
<td>Bailies' Decree</td>
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<tr>
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<tr>
<td>Decree of Spuizie</td>
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<tr>
<td>Determination of Persons of Inquest</td>
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<td>Infeftment</td>
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<td>Letters of Denunciation</td>
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<tr>
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<td>Lords' Decree</td>
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<td>Obligation</td>
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<tr>
<td>Retour</td>
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<tr>
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<tr>
<td>Restoration/Restitution of Stolen Goods</td>
<td>Nos of actions</td>
</tr>
<tr>
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<td>Goods and Gear</td>
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<td>Horses</td>
<td>19</td>
</tr>
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<td>Teind Sheaves</td>
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<td><strong>102</strong></td>
</tr>
<tr>
<td>Spuilzie (see p 63)</td>
<td>Nos of actions</td>
</tr>
<tr>
<td>---------------------</td>
<td>----------------</td>
</tr>
<tr>
<td>Bees</td>
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</tr>
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<td>Corn and Hay</td>
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<tr>
<td>Corncarts, Ploughs</td>
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</tr>
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<td>Geese</td>
<td>1</td>
</tr>
<tr>
<td>Goods and Gear</td>
<td>16</td>
</tr>
<tr>
<td>Horse</td>
<td>16</td>
</tr>
<tr>
<td>Insicht</td>
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</tr>
<tr>
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<td>Oxen</td>
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</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>112</strong></td>
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</table>
Of 2,711 entries in the Registers of Acts and Decrees for 1600, 645, or some 23.79 per cent of the records related to merchants and craftsmen. Of these 271, or 42 per cent involved merchants among whom 54 or 20 per cent traded abroad. The remaining 374 appearances in court, or 58 per cent, were brought by or against craftsmen.

In terms of separate cases, as opposed to entries, which included interlocutors, 172 or 7.74 per cent of the 2,221 total of individual cases involved merchants, while 265 or 11.93 per cent involved craftsmen. Thus in 1600, 437 or 19.7 per cent of cases being heard by the Lords of Council and Sesion in 1600 were brought by or against merchants and craftsmen.

**Merchants and craftsmen as creditors and debtors**

In litigation merchants and craftsmen were often indistinguishable, craftsmen behaving like merchants writ small. The term 'merchant' covers a wide range from wealthy entrepreneurs to small traders but there is no difference in law between a debt for £177 19s 4d called up by Nicholas Uddart[sometimes referred to in other entries as 'Nicol Uddart'], merchant, of Edinburgh, unpaid to him 'at the futing of the last gild comptis compt' and William Mure, skinner, of Kirkcaldy, claiming payment for cloth. Most of their actions hinged on unpaid and unspecified commercial debts. Proof depended on production of evidence in writing or by witnesses, followed by the

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1 In the records studied, a merchant is always designated as a 'merchant burgess'. When the records state that someone is a 'burgess', this has been taken in all cases to be a craftsman. Occasionally the type of craft is indicated e.g. 'cordiner burgess'. Some may have been non-guild burgesses. It is possible, in some examples, however, that the clerk meant to write 'merchant burgess' but merely recorded 'burgess'.

2 CS7/186/403v (Chesolme v Uddart).

3 CS7/190/100r (Thomesoun v Litiljohne).
defender's oath of verity. Failure to give this was tantamount to admission of liability.

Thus Thomas Wilson, merchant in Edinburgh, and Katherine Robson his spouse, were owed £103 'for certane small merchandice' by Margaret Heriot, relict of Thomas Fawside of that Ilk, 'quhilk sowme the said Margaret faythfullie promittit to haif payit at Mertinmes 1598 and divers tymes sen syne'. The points of the summons 'wer admititt to the pursewateris probatioun quha in place of uther probatioun referrit the points to ye defenderis aith of veritie and ane term was assignit to the defender to haif comperit'. She was warned 'with certificatioun' that if she failed to compear she 'wald be haldin as confess and sche being summondit be ane messinger of arms and personallie apprehendit and oftymes callit be ane measer at the bar, and terms having bene assignit to James King[her procurator]to haif exhibit her, sche failyeit to compear'. The Lords ordained her to make payment, charged her 20 merks for expenses and 40s for the Collector's fee and ordained 'execution to pas for recoverie'. The action had involved one appearance in court in February and two in December.

Michael Flaebarne, merchant of Edinburgh, spelt out the dates and amounts of the debts owed to him but the clerk subsumed them under 'merchandice furneist and deliverit be him' which the defenders 'wrantageouslie refusit' to pay. His expenses were the same as Lady Fawside's but expressed as '£13 6s 8d with 40s'.

Some actions reveal the nature of the debt through the occupation of the creditor or debtor. Patrick Cowan, tailor, of Edinburgh, was typical of many in that he pursued an unpaid account for unspecified goods. He charged for 'workmanschip furneist'. No oath was called for; the evidence of the account book signed by the defender was

4 CS7/190/387r (Wilsoun v Heriot).
5 CS7/190/402v (Wilsoun v Lady Fawsyde).
6 CS7/186/274v (Flabarne v Home).
sufficient proof. Thomas Paterson, merchant, of Edinburgh, brought an action against Nicol Young, tailor, of the said burgh 'to hear him decernit be decrete of the Lordis to pay to the persewar £320 restand awand be him for certane merchandice' presumably clothes, 'furneist and deliverit be him ... conforme to ane futit compt maid and perfectit betuix yame as for ye principal sowmes togedder with £10 as for annuelrent of ilk hundreth pundis or els to to haif allegit ane resson quhy the samen suld not haif bene payit'. Final proof of the debt depended on the defender's oath of verity.8

Not all occupations, however, reveal the nature of the debts. Eustatius Roog, mediciner, was clearly also functioning as a jeweller, though he was regarded primarily as a mining entrepreneur.9 He pursued the widow of Mr David McGill and her new spouse for production of a 'can of jasper stane'10 and in a different action he sought pearl bracelets, aquavit and pearling ribbon. These debts, extending to £223 4s 2d, were verified by two 'futit comptis'.11

The function of grain merchants who converted surplus grain into money was vital in an economy in which, for the majority, land with its produce was the main source of wealth. It is not surprising to find debts owed to these merchants. James McKane of Montrose, would appear to have been a wholesale merchant of grain. He charged John Strachan of Claypotts to deliver to him within the burgh of Montrose 'the meil restand undeliverit of 80 bolls meil sauld be him and promittit to be deliverit'.12 Many entries mention the seller's responsibility for delivery of goods.

7 CS7/190/265r (Cowane v Douglass).
8 CS7/185/276r (Patersone v Young).
10 CS7/190/407v (Eustach Roog v Cunninghame).
11 CS7/190/182v (Roog v Seytoune).
12 CS7/190/388v (McKane v Strachane).
'Sextene score' bolls of bere were sold by obligation to James Cheyne of Straloche by Thomas Lindsay, merchant, of Edinburgh, probably a wholesaler, who applied to the Court to have Cheyne denounced as rebel for non-payment.\(^{13}\) David Vaus and Mungo McCall, merchant burgesses in Edinburgh, perhaps retailers, pursued two masons in Leith as cautioners in an unpaid debt of £70 16s for peas and rye.\(^{14}\)

Most spectacular of all was the debt owed by the King to his master flesher. From the record it is not clear if he acted for himself as an unincorporated trader or if he acted on behalf of all the flesher creditors. The size of the debt suggests the latter. What is not open to question is the King's inability to pay his bills and the protracted nature of the litigation. In 1600 four interlocutors were pronounced in the action pursued by John Robertson, master flesher against Mr Gilbert Gordon of Sheerness, Jean Gordon, relict of George Gordon, chamberlain of Galloway, and James Millikin of Blackmyre now her spouse, as intromitters with the goods and gear of the deceased George. Andrew Wood of Largo, as Comptroller, had been in debt to the master flesher to the tune of £1,100 'for furneissing of flesche to his Majesteis hous of sundrie yeris bygaine and for better and sure payment to the persewar of ane pairt of the said sowme, ye said Andro, 1 October 1595, made and constitut the persewar his verie lauchful and undoutit actor and factor for him and in his name and upoun his behuif to call and persew' the defenders as executors 'sa far as thay ar responsall for ye few males and dewteis of the lands and lordschip of Galloway pertening to his Majestie'. The deceased George Gordon had made no 'compt and rekning' for the terms of Martinmas 1586 and Whitsunday 1587; these amounted to the specified £1,100. A letter of factory

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13 CS7/187/302r (Lord Advocat v Lord Straloche).
14 CS7/185/195v (Smyt v Borthvik).
[a deed empowering another to act for the granter in business transactions] gave John Robertson, the pursuer, the right and title to all the feu-mails of the said lands for these two specified years. The executors were decerned to make payment because the points were sufficiently proved by the master flesher.\(^\text{15}\) It would be interesting to know why the debt was assigned to the Chamberlain of Galloway in the first place. This may have been the price he had to pay for office but it is more likely that the creditors were told to collect directly from the duties that the chamberlain, as a revenue-receiving official, was routinely obliged to pay to the comptroller. If so, they might have been told to do this because the chamberlain, unlike the comptroller, had available cash, or as a way of avoiding the debt because the chamberlain had none and the creditors would thus be frustrated, or even as a way of forcing the chamberlain to hand over cash due to the king.

In a complicated action Thomas Finlayson, merchant in Edinburgh, pursued the Earl of Angus who 'band himself to warrand and releve' Mr Robert Douglas of Glenbervie of his debt to that merchant for 27 bolls of victual, half bere and half wheat, 'with ane peck to ilk boll yrof yeirlie', for 1597, 1598 and 1599, promising that the merchant should 'incur na skaith thereby'. True to his word, the Earl delivered to the merchant a precept directed to Alexander Douglas, Captain of Tantallon 'for ansering of 54 bolls victual' for delivery within Edinburgh. The Captain died so the Earl promised the merchant, 'beand present and acceptand the samen' that he would pay 81 bolls 'of the meit and measor of Edinburt'. Nevertheless he 'deferrit to do the samen'. Under oath the Earl 'declarit he culd not deny he was oblist in 54 bolls victual ... and denyit the remanent points'. Therefore the Lords assoiled the Earl except for 54 bolls and set his expenses at £10 to be paid to the merchant and

\(^{15}\) CS7/190/222r (Robertsoun v Gordon).
40s for the Lords’ Collector. Perhaps the Captain had settled one year’s debt. This example shows firstly how an oath was accepted as evidence, doubtless because a lie, if proven, was perjury, and if unproven, was a sin against God, and secondly that a merchant was not afraid to challenge a ‘michtie lord’.

**Diligence - arrestment, letters of horning and poinding**

Both merchants and craftsmen were pursued as cautioners for debtors. It is surprising to find a laird choosing a tailor as a cautioner but David Smith, tailor, of Edinburgh, became cautioner and full debtor for the Laird of Straloche in an obligation in which they granted them conjunctly to have borrowed from Robert McAulay, pensioner of Cambuskenneth, the sum of 100 merks with £10 of ‘liquidat’ expenses estimated in case of breach of contract. This meant that the sum of £10, fixed in advance, was recoverable without having to prove loss. When Straloche did not pay, the pensioner ‘menit him to the Lords and be ane supplicationoun obtenit yr deliverance direct to ane messinger to seis’ the tailor’s goods, gear and insicht. They were ‘to remane under arrestment ay and quhile’ payment was made. At the same time all sums of money owed by John, Lord Glamis, to the tailor were also arrested, presumably because the tailor’s possessions did not cover Straloche’s debt. This suggests that this tailor’s goods were worth less than 100 merks.

In a typical action in which arrestments were made, David Fullerton, merchant, of Montrose, pursued John Raven in Benholme for payment of 24 bolls bere conform to his obligation, at £10 per boll with £4 of liquidat expenses and £10 ‘for everie monitor or charge to be givin for payment’. The obligation was inserted and registered

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16 CS7/186/193v (Finlasoun v Erle Angus).
17 CS7/186/332v (McAulay v Lord Glamis).
in the Commissariat Books of Brechin and decreed to have the strength of the Commissary’s decree. When the debt remained unpaid, the merchant raised letters of arrestment ‘be deliverance of the Lordis of Counsal and Sessioun at the command quhairof Thomas Miller, messinger syreff in yat pairt upoun 28 July 1597 past, seasit and arrestit in the hands of the persounis efterspecifeit, the guids, gear, nolt, scheip, insicht and plenisching’. These comprised in the hands of Barbara Allan, widow, a cow, a stot, a meat almery[or cubboard]of fir wood with locks and bands, a meat board, a bench, a hanging cooking vessel, a hook for a fire, 11 vessels, a pair of sheets, six fir kists ; in John Jamie’s hands at the kirk of Benholme, four pairs of blankets, three pairs of harden sheets and a sack ; in the hands of Andrew Reid, who was clearly a carpenter in Bervie, 11 standing bolls of fir, four deals [planks], a double roof span[?], six doors of fir, a dozen cabers[probably beams]and 30 sheep ; in the hands of John Throw there a pair of coloured plaids, a pair of ‘kadden’ nails [large nails or iron pins], a foot-spade and grape ; in Archibald Chope’s hands, four pairs of blankets, three pairs of linen sheets and a sack ; and in the hands of John Gibson, a kist and girmall [storage chest for grain] and a standing bed of fir. All except John Jamie lived in Bervie. These goods all the defenders ‘grantit thame to be restand awand and pertening to John Raven’ and all ‘refusit to mak the goods furthcumand without they be compellit’. Because the defenders did not compear the Lords ordained that the debtor’s goods should be delivered to the merchant. This example shows how a creditor could prevent the alienation of goods before a debt to him by obligation was met. He did this by asking the Court to issue letters of arrestment instructing a messenger to arrest moveables which were in the hands of a third party. The arrested moveables could be

18 CS7/186/276r (Ffullertoun v Ravin); see App., II, 1.
transferred to the first creditor by obtaining a decree of 'furthcumand'.

This type of action was echoed by many others. It demonstrates the difficulties faced by a merchant selling victual to a local man, apparently of substance, who proved unable to make payment. It also shows how some members of society seem to have owned virtually nothing, everything they possessed either being owed to or provided by someone who was perhaps owner or tacksman of the home they occupied, although it does raise questions of whether these dwellers in Bervie were in fact merely providing safe storage for a superior's goods which might be poinded. It shows how a country craftsman without capital had to work on the equivalent of the franchise system. One wonders whether John Raven needed so much grain because, for instance, he took the carpenter's profit and paid him in grain. Lastly it shows how resolute a merchant could be in the pursuit of debts owed to him.

It was much more common for a creditor to obtain royal letters under the signet commanding the debtor to meet his obligations under pain of being 'put to the horn' and being denounced as a rebel. 'Letters of four forms' were delivered to the debtor, each more strongly worded and each being issued after a specified interval, usually 24 or 48 hours. As a rebel all the debtor's goods escheated to the crown and if the rebel remained 'unrelaxed' for more than a year and a day, his or her liferent was forfeited too.

Such a procedure was spelled out in an unusual action in which letters and a charge were directed by his Majesty and the Lords of Privy Council, as opposed to the customary directing of such letters by the Lords of Council and Session. The Privy Council letters had charged 'messingers of arms to pas and in his hienes name and

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20 see 1st chapter for extant examples of each stage.
authority to command and charge the said umquhile James Wauchop son to George Wauchop, of Edinburt, [to comppear] at Halirudhous 22 Februar 1596 to haif anserit to sic thingis as suld halfe bene inquyrit of him at his cuming tuiching his tresonall resset, supply and intercommouning and alledgit furneissing with money and otherwayis of umquhile Archibald Wauchop sumtyme appeirand of Nudrie than his Majesteis declarit trator at divers tymes sen the proces and dome of forfaltor led agains him and to haif undertyne sic ordour as suld halfe bene takin yranent under pane of rebellion and putting to ye horne with certification and he failyie, letters sould be direct to put him yrto'. This charge was dated 6 Februar 1596; the actual charge was made by John Simpson, messinger, on 20 February, when the summons and charge was made 'at the dwelling hous of George Wauchop, his father, in Edinburt and a copie affixt upoun ye yet of ye hous efter sex knoks and the said umquile James had na uther dwelling place'. On 22 February, 'he was denouced rebel, put to the horne and to escheit and all his guids for his hienes use'. On 25 February, John Simsoun 'denunct umquhile James at the mercat croce of Edinburt'.21 The 'umquhile' is ominous. Had he been put to death? His brother as his heir and his three sisters sought reduction of the letters of horning 'because he was nawyys lauchfullie chargit nor summondit to comppear befoir his Majestie becaus the pretendit charge was nether subscrybit nor stampit be umquhile John Simsoun, messinger, as is regyrit be act of Parliament, speciallie the same being nawyys stampit be ye stamp of ye said messinger bering the first twa letters of his name and surname, lyk as ye said pretendit charge is not yet stampit nor subscryvit be ye offir executor yrof nor na appearance of ony stamp to haif bene upoun the bak of ye saids letters or at the end of his

21 CS7/190/21r (Wauchop v Lord Treasurer and Lord Advocate); see App., II, 2.
executioun'. The Treasurer and Lord Advocate absented themselves from the action. Mr Alexander Hay, principal clerk, and James Primrose, clerk depute to the Privy Council, produced the letters of denunciation of 20 February and the Lords annulled the denunciation.\textsuperscript{22}

Merchants frequently benefited through being awarded escheats by gift of the King or by purchasing such escheats from him. In one of the few references to contemporary events, Archibald Johnston, merchant, of Edinburgh, was declared to be donator to the sovereign's gift to him, his heirs and assignees, of the escheat of Robert Johnston, indweller in Edinburgh, which had fallen in his majesty's hands through Robert having been 'orderlie denuncit rebel and put to the horn for not-comperance befoir or soverane Lord and or Lordis Secret Counsall at day bygane to haif anserit to sik thingis as sould haif bene inquyrat of him or laid to his charge anent the uproir and tumult that fell out within the burt of Edinburt upoun 17 December 1596 as the letters of gift under the privie seill 30 Merche 1600 proportis'.\textsuperscript{23} The King would appear to have used escheats as a form of currency. They seem to have been gifted as a reward, used as payment of royal debts or sold for cash. Interpretation of individual 'gifts' is a matter for speculation.

Sometimes it was more effective to poind goods to the value of the debt. This involved the actual transfer of moveable assets from the debtor to the creditor.\textsuperscript{24} Should there be 'no goods moveabill ... the grund and propertie' were appraised to the value of the debt.\textsuperscript{25} If the messenger could not obtain access to poind the debtor's goods

\textsuperscript{22} CS7/190/51v (Wauchoip v Lord Thesaurer).
\textsuperscript{25} eg CS7/190/275v (Forrest v Lord Fordell).
it was necessary to obtain signet 'letters of open doors' authorising the messinger to 'use the King's keyes', that is to break in through the doors in order to point the goods.\(^{26}\) This procedure was used against George Henrison and John Clogy, cordiners, of Edinburgh, when the provost and bailies gave them warning to remove, pronounced a decree of removing 'fra certane lymhoills' against them and finally made 'ane act of oppin dures ... ordaning the dures of ye saids houses and lymhoills to be patent to ye said Thomas Diksoun, burges of ye said burt ... in quhais favor ye said decreit was given ... and inventar of ye guids and geir maid yrof'. Henrison and Clogy, his tenant, successfully sought reduction of 'ye haill proces' because neither the provost and bailies nor their legal representative had appeared to defend after having been warned that if they failed to compear their decree would be reduced.\(^{27}\) It was unusual to proceed to that stage. Most merchants and craftsmen sought suspension of letters of horning\(^{28}\) or of 'the proces of horne and poining contenit yrintil'.\(^{29}\)

The final penalty was imprisonment. Henry Stenton, 'burges of the Canongate', was in ward in the tolbooth of Edinburgh for non-payment of debts for malt, bere, grass, beef and barrels of salt to nine persons. He petitioned the provost and bailies of Edinburgh for his release. He had been in ward 'be ye space of tuentie dayis bygane, haifand na charge to leve upoun bot lyk to tyne[his life]throw famine and hunger and hes puir wyf and bairns in lyk maner for want of sustentatiloun, albeit of veritie that the complener was ever content lyk as he is yet for his releve furt of ye said waird and satisfactioun of his dettis to mak ye saids persouns cessioneris and assignayis in and to quhatsumever his guids and geir present and to

\(^{26}\) eg CS7/190/51v (Wauchoip v Lord Thesaurer).
\(^{27}\) CS7/192/226r (Henrysoun v Burgh of Edinburgh).
\(^{28}\) eg CS7/185/352v (Reid v Hunter).
\(^{29}\) CS7/190/169v (Bursie v Jak).
cum ay and quhile they be payit of ye saids sowmes ... notheles ye saids persouns onneways will effect to ye persewaris releif upoun ye said assignatioun nather will ye proveist and bailleis put him to libertie furt of ye said ward without remede be provydit'. The Lords made a Solomonic judgement. He was to remain in ward 'ay and quhile he haif made payment to William Naper', as creditor who was owed most, 'of £61'. In the meantime Napier was to contribute 'the sowme of 2s 6d money daily and ilk day efter the dait heirof sa lang as he sall remane in the said ward at the instance of the said William ... and in sa far as the said Henry is put in waird at the instance of ye remant persouns defenders not compearing, the Lords ordanit letters to be direct upoun a simple charge of 24 hors chargeing the proveist and bailleis to put ye said complener to libertie that he may pas and repass as or soverane Lordis liege'.

Emboldened by this judgement, Stenton raised letters against Napier and charged him to make payment upon penalty of rebellion and putting of him to the horn. Napier sought suspension on the grounds that the decree had been obtained for null defence, he never having been summoned. Furthermore 'the daylie sustentationis is maist extraordinarie modifieit agains him in sa far as Henry is not allanerlie wairdit at the compleneris instance bot also at the instance of uyris his creditors for girit derdis nor the compleneris'. They 'sould have been decernit to pay his expenses at ye leist ye maist pairt'.

Lastly, Cockburn, his advocate, made the point, familiar today, that 'gif the complener war compellit to ressave 2s 6d for daylie sustentatioun, the said Henry be all appearances wald never desyre to be freid and relevit furth of waird nather yit wald he mak ony money quhairby he micht satisfie his creditors'. The Lords found the letters purchased against him orderly ay and while he made payment

30 CS7/186/123r (Stentoun v his Creditouris).
to Stenton.\textsuperscript{31} They may have regarded Napier as a vexatious litigant. Certainly he appeared before them as a pursuer in several actions.

A creditor could also proceed against a debtor’s heritable property. By directing letters of inhibition under the signet to messengers at arms and publishing them at the mercat cross, for instance, the creditor could prevent the debtor from alienating his property thereby frustrating the creditor’s design. Alternatively, (as shown by the following example which may not have related to a debt), a debtor could have executed a letter of interdiction undertaking not to alienate his property without having obtained specified consents.\textsuperscript{32}

William Carstairs, merchant and ‘sumtime citiner’ of St Andrews, executed such letters of interdiction and had them recorded in the Register of the Commissary of St Andrews by an act of 1587. He had registered a bond of interdiction subscribed by James Carstairs, his son, to the effect that ‘the said James Carstairs, affirming him to be tuentie ane yeiris of his aige compleit and na ways abill to rewle, gyd nor governe his bodie, guidis nor geir and haifand dew consideratioun with himself, his awin weillfair, utilitie and profeit beand foirsene, and being myndit with ye advyse and consent of his maist narrest and tender freindis to ye preservatioun of his lands and heritage undisponit Bot yat ye samen may be preservit saif and furthcumand to ye weill, utilitie and profeit of ye said James posteritie, interdytit and suspendit himself fra all maner of alienatioun, selling or disponing of ony of his guidis, geir, lands, heritage quhatsumever or ony pairt yrof or annuelrentis to be taine furth of ye samen at ony tyme yrefter without ye advyse, counsall, expres consent and assent’ of five named citizens of St Andrews ‘had and obtenit yrto, together with pretendit publicatioun and

\textsuperscript{31} CS7/186/197r (Ffentoun v his Creditors); see App.,II.,3.
\textsuperscript{32} Gouldesbrough, P., Stair Soc., 36,112.
denunciatioun gif ony be maid upoun ye said pretendit interdictiou
at ye mercat croce of ye citie of St Andrews, ye burt of Cowper or
ony uyr places quhatsumever proceeding upoun ye said interdictiou.
After his father's death, James Carstairs requested the court that
the inhibition and regisration act in the Commissary Books of St
Andrews might be 'decerned be ye Lords to be retreitit, at ye leist
expyrit and ineffectuall in all tyme cuming and the persewar reponit
in his awin place'. The Lords ordained the production of the
relevant evidence, stating that failure to produce it would result
in the reinstatement of James Carstairs 'with full power, libertie
and licence to sett, use and dispone upoun all and sundrie his lands
heritage and possessiounis at his pleasor without ye advyse and
consent of ye saids persones requyrit and obtenit yrto to
quhatsumevir persone or persones as he sal think expedient as gif ye
pretendit interdict and publicatioun had nevir bene maid'.

**Inferior courts ; advocation ; arbitration**

Commercial cases between merchant and merchant were generally tried
before the dean of guild and his council; other actions between a
merchant and a craftsman could be heard in the burgh court. All
entries in the Registers are terse and some are convoluted. Nicol
Uddart, merchant in Edinburgh, had obtained a decree in July 1588
before the provost and bailies of the burgh against Maister Mathew
Chisholm, dean of guild, for payment of £177 19s 4d owed by him 'in
name of the guid toun' according to 'the futing of the last gild
compites'. This was to have been paid within ten days under pane of
horning. Chisholm claimed to have paid Uddart and to have his
acquittance. In December 1588, Chisholm had been ordained by the
provost and bailies to pay £40 to John Robertson, one of the

33 CS7/189/269v (Cairstairs v Mertine).
34 Pryde, George, 'The Burgh Courts and Allied Jurisdictions',
bailies, ‘for the said Nicol his pairt of the last taxatioun’. He had clearly failed to do so and been put to the horn because in 1600 Chisholm sought and gained suspension of the 1588 letters of horning ‘of consent of ather of the saids pairteis except for £40 payit to the toun of Edinburt for quhilk sowme the Lordis fund the letters orderlie procedit’.\(^\text{35}\) There may have been some deliberate blurring of the record here.

Occasionally an opportunist tried to bring the same action in both the burgh and supreme courts. William Ramsay, cook, of Edinburgh, pursued David Gray for ‘deferring to pay 26 marks as he guha was speciallie directit be Dame Helenor Seytoune, Lady Somervell, to ressave the samyn conforme to hir obligatioun, precept and hir aquittance direct yrupoun’. Cockburn, advocate for Gray, alleged that ‘the defender aucht naways to be callit befoir the Lords for payment becaus the same actioun is intentit and depending befoir the proveist and bailleis of Edinburt inter easdem personas super eadem re et eidem modo agendi’.\(^\text{36}\)

It was possible to seek suspension of precepts and letters of poinding, apprising and horning directed conform to a decree of the Admiral who held his court to settle disputes over foreign trade. George Govan in Leith obtained a decree of the Admiral and his deputes ordaining James Arnot, merchant, of Edinburgh, to pay him 48s sterling for each of 90 tuns[casks] of salt, 100 crowns and 20 marks for expenses. Arnot sought suspension of the letters of poinding on the grounds that Govan owed him ‘mony gritter sowmes nor will extend to ye sowmes in ye pretendit decree’; for instance Arnot had a decree in foro contradictorio before the provost and bailies of Edinburgh against Govan for payment of £60 and had an action against Govan ‘intented and depending befoir the Admiral and his

\(^{\text{35}}\) CS7/186/403v (Chesholme v Uddart).
\(^{\text{36}}\) CS7/190/224v (Ramsay v Gray).
deputes’ for payment to him of 706 ducats. Arnot succeeded in obtaining suspension of the letters because James Forman became cautioner for him.\textsuperscript{37}

An action from an inferior court could be advocated to the Lords of Council and Session, however, usually on the grounds of partiality of the judges rendering them suspect.\textsuperscript{38} A claim pursued before the provost and bailies of Edinburgh by Nicol Penston, tailor, of Edinburgh, against Archibald Law, goldsmith, also of Edinburgh, was advocated to the Lords of Council and Session. (The action must have been initiated before 1600 because no explanation for the successful advocacy is given). Penston’s brother, to whom Nicol was executor dative with licence of the Commissary of Edinburgh to pursue his debts, had deposited nine crowns of the sun, a queen’s crown and 20 pistolets[foreign gold coins] in safe keeping with the goldsmith. The brother, who had died seven years previously, had never been repaid. The goldsmith stoutly denied this, claiming that he had ‘made satisfactioun to Frances Penstoun at ye leist to uyris in his name haveand his power to ressave the foirsaid sowmes’. He was ordained to comppear personally to give his oath de calumnia that the points of the exception were true.\textsuperscript{39} The action continued throughout 1600 with Law charging witnesses to comppear and give evidence; when they failed to do so, Law charged the sheriffs of Aberdeen, Forfar, Fife and Lanark and their deputes ‘within quhais bounds and jurisdictiouns the saids witnesses[named] dwells ... to apprehend them ... to put them to the horn for non-compearance and to exhibit thame before the Lords’. Pressure was put on the sheriffs because they were to produce the named witnesses ‘under pane of rebellion and putting of the saids syreffs to the horn’ and the messinger at arms was to ‘inbring thar moveabill

\textsuperscript{37} CS7/189/105v (Arnot v Forman).
\textsuperscript{38} Balf., Prac., Stair Soc., 22, 340-42.
\textsuperscript{39} CS7/187/219v (Penstoun v Law).
guids to his Majesteis use'. The action had escalated and after six interlocutors the Lords declared on 31 December that 'na forder terme nor diligence salbe grantit to him[Cornelius Tennent, advocate for Law] if he failed in production of the witnesses for proving the points of the exceptioun'.

John Cunningham, goldsmith, of Edinburgh, 'allegit him to haif certane jowellis pertening to him, wes in his possessioun within his duelling hous and that thay wer abstractit fra him furt yrof be quhat moyene he knaws not and that he hes apprehendit the samen jowellis' in the possession of Adrian Bodwin, knockmaker [clockmaker]. He therefore called Bodwin before the provost and bailies of Edinburgh 'to hear the same decernit to be deliverit to him'. Bodwin advocated the matter to the Lords on the grounds that 'the provost and bailleis intends maist partiallie to proceid agains him ... and ar naways competent to him ... and not to be sufferit'. His arguments hinged on partiality of the judges through relationship with one of the parties and on the assertion that the clerk controlled the business of the court. Cunningham's wife 'is dochter to Katharine Stewart, quha is sister germane to William Stewart clerk of ye said court and the hail effaris and proces of the samen burt is handlit and gydit be the said clerk' therefore the provost and bailies are suspect judges. 'This devyse and persuit ... is intendit be William Stewart to draw him[Bodwin] before the clerks and baileis quhair he is clerk himself and roulis and gydis the haill proces at his plesor'. He further complained that 'he being bot ane stranger ... he sufferit lang delay ... the said William Stewart doand and showand all the hinder he could' until at last he managed to obtain a decree of comprising of the jewels. This new action of advocation had been brought to compel him to

40 CS7/190/215r (Law v Penstoun).
41 CS7/190/409r (Law v Penstoun).
tyne the saids jowels and the sum of silver quhilk he gavie for them ... he being a stranger and craftsman'. Furthermore the jewels were 'laid in pledge be Margaret MacKraiche spous to Symoun Thornetoun ane of the officers of the burt for ane certane soume of money and for not-payment to him of the samen conform to the ordour of ye burt' he 'causit lauchfullie compryse and touk the jowels'. Any action should be against her and her spouse 'quha ar responsall indwellars within ye burt and naways agains' him 'in respect he is ane stranger that he sould be callit ... speciallie befoir the provost and bailleis quha ar makers of the said officers'. His claims of xenophobia and 'restrictive practices' may have been justified but it must have been the partiality of the judges which convinced the Lords to discharge the provost and bailies and advocate the cause to themselves.42

Certainly there may have been more than a hint of xenophobia in Robert Johnston, merchant, of Edinburgh, denouncing Elias Littelier[?Le Tellier43], Frenchman, goldsmith to the Queen, for not obeying a decree of removal from a tenement of land in the Canongate. The Frenchman capitulated by surrendering 'the keys of the foirsaid tenement of land to be kepit and usit be Robert Johnestoun at his plesor' so the letters of horning raised against him were suspended.44

One advocation tested the relative powers of the burgh and the Court of Session. John Lothian, merchant, of Edinburgh, brought an action before its provost and bailies against William Smith, one of its tailors. Smith was heritably infeft in a laich hall and stair with an inner chamber and cellar in a tenement of land on the north side of the High Street. Andrew Douglas, messenger, had previously been infeft in the property but Michael Flabarne, merchant, had

42 CS7/190/29v (Bodwyne v Cunninghame).
43 Surname as in Chancellor Le Tellier, 1603-1685.
44 CS7/190/12v (Litillier v Johnestoun).
obtained his liferent of the house 'for sowmes awand to him' by virtue of the provost and bailies' 'decree of comprysing' of 1597. A dispute arose over Smith's payment of mails and duties and Flabarne, in a contract of alienation, made John Lothian, the pursuer of the action, cessioner and assignee to 'the decree of comprysing ... and all action and execution that may follow'. Accordingly, Lothian presented a supplication to the provost and bailies to compel Smith to make payment and the matter was advocated to the Lords. The Lords, however, assoiled Smith from the points in the supplication because the Lords 'effer inspectioun had be thame of ye said comprysing fund that the same culd not be ane sufficient richt nor titil to ye persewar to persew quhile the same war dewlie and lauchfullie authorisit be thame and thair deliverance conforme to ye ordour usit yrant'.

Actions were also advocated from the Commissary Courts. John Udward [probably the same name as 'Uddart], merchant, of Edinburgh, as brother, heir and nearest of kin to Alexander Udward, craftsman of the same burgh, in an action against Thomas, William, Isaac, Alexander and Agnes Paterson as executors dative, sought reduction of his brother's confirmed testament before the Commissary of Edinburgh. Henry Wardlaw, craftsman of the said burgh, made a contract with Thomas and Isaac who undertook to act together for the brothers and sisters, entering themselves as executors to Alexander, in order to pursue his debts. They guaranteed to pay Wardlaw 'the fourt part of the half of the haill guids and geir pertening to them ... leillie, trewlie, simplie and honestlie, all gyle, doubill dealing to be secludit as thai sould anser to God and under pane of tinsell[loss]of thar honestie'. However they, in defraud of Wardlaw and in defiance of a decree of the Lords 'gevin in foro

45 CS7186/355v (Lowthiane v Douglas); see App.,II,4.
contradictorio against them' ordaining them to pay Wardlaw the fourth part of the half of all the goods and gear contained in the testament extending to £1098 17s 4d 'gevin up be thame as desperat debt' colluded with John Udward in seeking reduction of the testament so that being reduced, Wardlaw would transfer his right 'for sic ane small sowme of money as is agreit upoun' and 'Thomas and Isaac sal bruik the hail sowmes of money'. Guthrie, advocate, pled, 'seeing the Lords suffers na inferior judge within this realme to cognosce or decyde upoun the interpretatioun of thair decreittis bot only thamsevles thairfoir the said actioun aucht to be advocat to thame as onlie judges competent'. Furthermore, of the four ordinary Commissaries 'appointit to sit and decyde in all sic caisses intentit and depending befoir thame ... Mrs John Nicolsoun and Thomas Henrisoun, tua of the saids Commissers, for causses moving thame notour to the saids Lords, declyns thamsevles in the foirsaid actioun of reductioun and nather advyses nor voicis yrintil quhairthrow thair is na perfyte judgement establist'. Guthrie went on to suggest that the Lords should 'at ye leist appoint tua of thair nowmner unsuspect in place of the tua Commissers'. However, notwithstanding these reasons, the Lords remitted the causs before the Commissaries where 'the same tuk first beginning'.46

Some merchants chose to settle disputes by arbitration. Isobel Rae, relict of Patrick Anderson, alias Gardner, merchant, of Perth, claimed that by a decree arbitral Diones Conqueror was to pay her 200 merks but had failed to do so. She had therefore denounced him as rebel. Nevertheless he had obtained her acquittance 'granting the decreit arbitral fulfillit in all points' so the Lords suspended her letters of horning.47

46 CS7/190/317r (Wardlaw v Udward).
47 CS7/187/138v (Schoir v Conqueror).
Sometimes it was necessary to obtain the Lords' decree in order to enforce the arbiters' decision. Thomas Dalziel, merchant, of Edinburgh, claimed that by a decree arbitral pronounced by 'certane juges arbitouris and amicabill compositouris chosin betwix' John Nasmyth, surgeon, of Edinburgh, and himself, 'the said John for the causes thairin mentionat' was ordained to pay to the said Thomas Dalziel, £438 6s 8d. The decision having been acted and registered in the Books of Council, Dalziel charged Nasmyth to make payment under pain of rebellion and putting of him to the horn. Nasmyth sought suspension of these letters. He was 'ever reddie to have fulfillit the decreit arbitral gif the said sowme had not bene arrestit to remane in the compleneris hands ... at the instance of Aulay McAulay' as part of a debt owed to him. Thus Nasmyth was 'in danger of double poinding, but 'for obedience ... he hes fund cautiouen that he will mak payment to ony ane of the pairteis fund be the Lords to have best ryt'. This was decreed to be Thomas Dalziel, 'conform to the decreit arbitral' and letters of 'lowsing of arrestment' were issued and the Lords 'dischargit Aulay McAulay of all furder trubling or molesting of the complener as pairtie havand na ryt'.

It was possible to present a supplication to the Lords for replacement of arbiters. Hugh Watson entered into bitter litigation with his brother-in-law Thomas Paterson. Both merchants in Edinburgh, their disputes 'quhairin the said Thomas was altogidder in the wait[blame]and wrang' were initially brought before the ministers and session of the kirk with the council of the town. Both bodies, recognizing the unlikelihood of settlement referred the matter to 'twa honest men ... chosin on ather syde.' A submission was duly made; it was signed by both parties, Paterson choosing Mr John Nicolson and Mr Thomas Nicolson, advocates, and Watson

48 CS7/186/163r (Dalzell v Nasmyt).
nominating Henry Nisbet and John Fairlie, merchants. Thomas Fisher, bailie, of Edinburgh, was appointed as ‘odman and orisman’. Watson subscribed the submission but Paterson did not, using ‘na thing bot craft and politie’ and ‘hes bene his uter wrak and now he schiftis and delayis the said mater’. Furthermore the Nicolson, advocates, refused to become embroiled. Accordingly Watson asked the Lords of Council to decern the advocates either to subscribe the submission or ‘to nominat and chuse uyr twa honest men’ Alternatively, he petitioned that the Lords themselves would choose two others to be ‘juges arbitouris’ in their place by their ‘awin discretioun’. Dempster, advocate, offered to prove that Paterson promised to prevail upon the advocates to accept the nomination or else cause two others to accept in their stead, but on oath Paterson declared that he had made no such promise. The Lords therefore refused the petition.49 Many actions, however, were raised directly in the Court of Session without having been heard in an inferior court.

Crime

Although the actions heard by the Lords of Council and Session were civil, much can be learned about crime. Declarators of escheats were pronounced by the Lords and an explanation of why the goods were forfeited to the King was always given. Incidental information can also be gleaned from evidence emerging in the course of what was fundamentally a civil action.

Merchants and craftsmen were often the victims or perpetrators of spuilzie. An action for spuilzie gave damages for wrongful interference with possession or property. If proved, the Lords ordained restoration of the stolen property or payment of its value according to the ‘liquidation of the prices’ as ‘modifeit’ by the Lords. They used the fiars’ prices for grain for the appropriate

49 CS7/192/32r (Patersoun v Watsoun); see App., II, 5.
year and sheriffdom or followed the advice of informed witnesses. Payment was exculpatory. These actions were heard in the civil court ‘through failure of the Crown to establish a system of criminal prosecution adequate to meet the lawless state of the country in the 16th and 17th centuries’.  

The Lord Advocate was never present in an action of spulzie presumably because it was a crime against a person, not against the crown.

William Ross, merchant in Tain, pursued John Vaus of Loch Fyne and his son for spoliation of his corn, insicht and goods and gear and for ‘detening and inhalding of his bestial’.  

Torquil Macleod of ‘the Lewis’ was accused of having stolen horses, mares and foals from Donald McKenneth McDonald, merchant in Kenny, Earldom of Ross. The Lords called for witnesses before issuing a declarator that Macleod had done wrong. George Monro of Meikle Tarrell was made cessioner and assignee to the action but the continuation date was left blank in the register.

Travelling merchants were particularly vulnerable to having their goods stolen. ‘Twelve score ten bolls of beir’ were alleged to have been stolen from a crear [small trading vessel] by William Craig, indweller in Leith.

Alexander Hering, servitor to Patrick Nimmo, tailor, of Edinburgh, was set upon by John Nasmyth of Beath and his servant ‘in ye hie way besyd the ferrie bot of Hammiltoun’ and was divested of merchandise, money, abuliaments and gold and silver.

One action may have been retaliatory. Abraham Thomson, ‘burges of Kirkcaldie’, charged Andrew Logan and his son of Easter Granton,

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51 CS7/187/219r (Ross v Lord Lochfyne).
52 CS7/187/360r (Monro v McClayd).
53 CS7/190/336r (Monro v McClayd).
54 CS7/190/304v (Simsone v Craig).
55 CS7/185/105r (Nemok v Ramsay).
with 'the spoliation, resetting and withholding fra the persewar furth of ye schip callit Ye David of Sanct Androis and cellar of sundrie merchandice and victual'.\(^{56}\) This action was raised in response to a decree obtained in the Admiral's court by the Logans against Thomson ordaining him to pay them half the value of a cargo amounting to 1800 merks. When Thomson, now styled 'citiner of Kirkcaldie', refused to obey he was put to the horn; he sought suspension of the letters of horning before the Lords but they found them 'ordorlie proceidit ay and quhile he mak payment'.\(^{57}\)

Andrew Rickart, baxter, in Pittenweem, and Christian Barclay his spouse, sought reduction of 'twa decreits and determinatiouns maist partiallie and unjustlie pronuncit' by 21 bailies and 'persouns of inqueist chosin be the thrie bailleis of the said burgh'. In a burgh court Rickert had been decreed 'to have done wrang in the contravening and transgressing of certane thair statutes and ordinances and speciallie in certane allegit points of pykrie[petty theft]and thift, namely stealing of certane levenet bread furth of John Barclayis baikhous'. He and his spouse had been ordained 'to remove and devoid thamselfs furth of the said burgh under pane of £40'. He had further been convicted of 'having done wrang and disseit to the nichtboris of Pittinwyim in the taking of yair bread be theiffing and convoying of thair meill flour and daiche[dough] and continuing of pykrie, resetting in his hous of stolline yeist, tallone and uyr guids'. For these second charges he and his family had been decreed 'to remove furth of the burgh under pane of £100 as lykways dischargeing ye said Andro of all baiking and brewing within the burgh under pane of deith'. The bailies clearly feeling that the action had become too serious for them, ordained the matter 'to be put to the knowledge of ane assise'. Russell, Rickart's

\(^{56}\) CS7/187/237v (Thomesoun v Logain).
\(^{57}\) CS7/186/102v (Logane v Thomsoun).
advocate, petitioned the Lords to reduce the decrees 'and the same being reducit, to heir and sie the said Andro Rickert and his spous, compleners, to be in sic estait and condition tuiching yr frie libertie of indwelling within ye said burgh as gif the said pretendit decreit had never bene given ... and the says bailleis to be punist in yr persouns and guids with all rigor in examplil of uyris'.

Beatrix Bishop, relict of Alexander Lowrie, baxter, of Edinburgh, and her three bairns were made donators to the escheat goods of her deceased husband. She and her three bairns charged James Nisbet, javelor[jailer] of Edinburgh with spoliation in 1597 from her husband 'under silence and cloude of nyt' of 1200 merks in five pound pieces of gold and of £95 in gold and silver. The money had been brought into the tolbooth in two purses. However Mr Alexander King, procurator for the jailer, gave in an exception to the Lords 'in wreitt'. King began, 'First it will pleis the Lords of Counsall to be rememberit of the aince that umquhile James Lawrie annaliet ane tenement of land to umquhile Edward Galbrayt, for the quhilk contract of alienatioun the said Edward was restand awand to umquhile James the sowme of 1200 merks and becaus the said umquhile James Lawrie wes in presoun in ye tolbuith for uyr debts, he maid Alexander Lawrie assignay to ye said sowme quhile umquhile Alexander recoverit the same be ye law fra ye said umquhile Edward Galbrayt and obtenit payment'. Alexander promised by a back-band that 'quhensoever he recoverit the said sowme he sould within sex houris thairefter redilver the sam to umquhile James'. Alexander, in fact, delivered only 630 merks as part of the 1200 and received James's acquittance. The balance had been 'debursit in the said umquhile James his effairis'. This exception was proved to the satisfaction of the Lords. They therefore ordained James Nisbet, jailer, to make

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58 CS7/187/393r (Rickart v Pittinwyim).
payment of 570 merks 'wrangeouslie spoilyeit' by him to the widow
and her children, donators to umquhile Alexander Lawrie's escheat.\footnote{CS7/186/300v (Bischope v Neisbit).}

Abraham Barker, baxter, of Edinburgh, and Eufemia Quhippe his
spouse brought an action against William Nicholson, tailor, there,
and Sara Andrew, his spouse, for spoliation from their house 'efer\footnote{CS7/185/89v (Nicolsone v Barcar); see AppII., 6.}
the doun-setting of the sone' of two fir and oak kists containing
clothes and documents. Sara had obtained a decree before the provost
and bailies against Barker for payment to him of £84 12s 6d.
Accompanied by a bailie, her husband went to Barker's house and
because Barker was 'absent furth of the toun', Euphame, his spouse,
surrendered the two kists, lockfast, to the bailie who had come to
poind their goods. She 'thane kepit and retenit in hir awin hand and
custodie the keyis of the twa kistis efter that she had lokit the
samen'. The case was continued for further evidence from witnesses
but it must have been settled because Barker and his spouse declared
that they were 'reddy to mak redeliverance ... the persewar payand
him the sowme content in ye decreit'.\footnote{CS7/185/276r (Jonstoun v Thomsonsone).}

Inevitably when evidence of debt relied so heavily on written
evidence confirmed by a debtor's oath of verity, allegations of
forgery were made. The Lord Advocate was always present in these
actions. Alexander Thomson, merchant, of Edinburgh, claimed that by
a signed obligation 300 merks were owed to him by Robert Johnston;
Johnston disputed its existence so the Lords set a day when the
obligation, allegedly signed by Johnston, was to be produced in
court by the merchant for 'consideration' by them; witnesses who
could help prove that it was 'fals and feinzeit' were to be called
by Johnston, upon whom the onus of proof lay. If the merchant failed
to produce the document it would be decerned 'to mak na fayt'.\footnote{CS7/185/89v (Nicolsone v Barcar); see AppII., 6.}

Unfortunately this action disappears from the records.
More unusual was an allegation of the false antedating of an obligation made by a mother, widow of a merchant, to a son, also a merchant, and the forging of grants by her to him. The obligation stated that the mother had borrowed £1000 from her son. The date was significant because if written after her remarriage, she was defrauding her new husband because he would be liable for repayment. The allegations were to be proved by the witnesses inserted in the documents 'and the same being improved' the son 'as forgear, feinzear, inventar and divisar yrof' was to 'hear and sie him decernit to be punist in his persoun and guids in example to uyris'.

The forgery ceased to be an issue because the Lords simply reduced the bond 'as given be hir without consent of hir spous' and the son was ordained to pay £10 of expenses with 40s to the Collector within six days. He refused, was put to the horn 'of very malice' and 'only to draw him in truble' and was forced to consign the money in the hands of Adam Cowper, 'deliverar of the bills', for delivery to his mother and her husband for his interest so that the process of horning should cease.

Walter Murray, craftsman, of Dunfermline, was charged with 'forgery' or counterfeiting, and was 'callit befoir his hienes justice and his deputs for ye forgeing and outputting of fals and adulterat money in ye cuntrey' and was 'upoun 24 November 1599 convict be ane assyis befoir or said soverane Lord Justice and his deputs as ye act of convictrie proports ; for ye quhilk tressonabill moynie ye said umquhile Walter wes justifeit to the deid'. The matter was particularly serious because he was acting as a money lender; debts called in by the Treasurer were in round sums, mainly of '100 merks with £10 of liquidat expenses in cais of failyie'.

62 CS7/187/336r (Crystie v Hereot).
63 CS7/192/218r (Cristie v Hereot).
64 CS7/190/277v (Lord Thesaurer v Drummond of Mylnenab).
The Lord Advocate was always present in a case involving ockery[usury]. Goodare's study of the Treasurer's accounts and other sources indicates that an anti-usury campaign was specific to 1600. One Glasgow maltman was accused along with others of having contravened the tenor of the act of Parliament in 'under cullor of contracts' having 'upliftit profit and annuelrent far exceding ye ordiner and lauchful annuelrent of 10 markis for everie hundreth'. The penalty for such usury was 'to heir and sie the said obligatioun decernit and declarit null and the foirsaid sowme of money contenit yrintil justlie to appertene to or soverane and in his hienes name to his Thesaurer'.

Michael Main, craftsman of Glasgow, had borrowed 200 merks by obligation from Margaret Shields at 25 merks annual rent. Letters were raised by the Treasurer, Lord Advocate and a craftsman against her and her spouse for his interest for production of the obligation 'because Margaret Scheillis hes upliftit and ressavit ... mair nor ten marks for ilk hundreth'. Gray, advocate, produced a copy of the summons raised at the instance of the Treasurer, the Advocate and the craftsman for his interest 'touching' production of the obligation for consideration by the Lords. A date was fixed for production but none compeared to pursue the action. Gray protested that his clients 'sould not be holden to anser unto the tyme they wer of new summondit and yr expensses refoundit'. The Lords admitted the protestation, charged Main the customary £6 together with 40s to the Collector and ordained letters to be directed to charge him for payment within six days. This action may have been raised maliciously. It disappears from the records.

66 CS7/190/146r (Lord Thesaurer v Ockerroris).
67 CS7/185/276v (Scheillis v Mayne); see App. II, 7.
Arthur Henry and the Lord Advocate brought an action against Robert and David Flesher, merchants of Dundee, for deforcement of Robert Balloch, messenger at arms, in the execution of letters and of his office. He had 'apprehendit' five tuns of Spanish wine in a cellar belonging to a Brechin merchant. Henry and the Advocate raised a summons against the merchants in the expectation that the Lords would decern them 'to be punischit in thair persouns and guids conform to the laws and pratie and thar moveabill guids to be escheit, half to or soverane Lordis use, and the uyr half to Arthur Henry, and thair persouns to be wairdit for year and day and langer during his hienes will'. The summons 'lyis yit depending befoir the Lords undiscussit or desydit albeit the day of compearance yrof be lang tyme bygane' and 'the compleners hes continuellie awaitit upoun the calling of the said summonds ... upoun thair greit and large expenses'. They insisted that 'the Lords aucht to haif tryit thair innocence in ye said mater and insistit to have gottin the same ressavit befoir thame and to have hard the same put to ane final point'. Their final accusation was that Henry and the Advocate 'menis nathing bot to stell ane quiet dait ... in thair absence and abyde convenient tyme to troubill thame of new'. Here merchants who were perhaps about to voyage abroad to Spain were finding the law's delays intolerable. The Lords, perhaps sympathetic, assoiled them because the Advocate and Henry had failed to compear bringing the summons and proces of deforcement.68

Xenophobia and professional jealousy instilled fear of crime. James Crawford, goldsmith, of Edinburgh, alleged in a personal action that Elias Littelier, goldsmith, of the Canongate, Harie, his son and Samsoun de la Grange 'be thamselfis, thair servands and complices daylie boistis[threatens] menacis and unbands[?]the said James for his bodilie hurt and slauchter swa that for terror of his

68 CS7/186/234r (Fflescheor v Henry).
lyf he can naways hant nor resort to the kirk, mercat nor na uyr public place'. He therefore purchased letters by deliverance of the Lords and caused the three to find sufficient caution acted in the Books of Council 'that his men, tenants and servants suld be harmles and skaytles in thair bodie, lands, heretages, roumes, takkis, steddingis, possessiounis, guids and gear and in nowys to be molestit, ilk ane of thame under pane of 500 merks'. For stronger protection Crawford raised other letters 'be deliverance of the Lords of secret counsall' charging the three 'to find lawsourtie, ilk ane under pane of 1000 merks'. The three sought and were granted suspension of the letters of the Lords of Council and Session and of the letters of horning 'contenit yrin' because 'an act of secret counsall' was produced in presence of the Lords 'berand William Schaw, chalmerlane of Dunfermline to have becum actit and oblist for the compleneris that James Crawfurd and uyris sould be harmles'.

James Newall, smith, of Dumfries, was one of five who were charged by David Ferguson, dead by 1600, with the 'violent and maisterful distruction, demolishing and downe casting be thameselffis, yair servands, complices and uyris in yair names of yair causing, command, assistance and ratihabitoun in ye moneth of July 1585 of ye dwelling hous bigit and situat upoun ye grund of ye saids lands of Glenschynoche' in the shiriffdom of Kirkcudbright. The damage, estimated at 500 merks, may have been an incident in a feud. In 1600 the legal documents in the action were 'transferred in' Thomas Ferguson as brother and heir. By this procedure the action was legally transferred by the Lords of Council and Session to his representative because David Ferguson had died during the process. The perpetrators of the damage, all alive, were decreed to restore the goods to the heir, to pay him the 500 merks and the profits from the time of the spoliation 1585 to the time of the

69 CS7/186/120v (Littelyear v Crawford).
principal summons in 1587.  

Whether the action had dragged on for all these years or had been wakened is not clarified.

Similarly, John Gray, craftsman, of Perth, was accused by the widow of Robert Livingston of 'the wrangeous, violent and masterfull ruging doun, distructioun, awaytaking, detening and withalding ... furth of ane tenement of land pertening to umquhile Robert Levingstoun lyand within ye burt of Perth of divers and sundrie tymer, irne work, loks, bands and uyris guids of small avail, quantiteis and prices'. At the same time David Jackson, another craftsman, of Perth, was accused by the same widow of 'the wrangous cutting doun, distructioun and awaytaking of fyftie peis of erschin[Irish]trees'.

Family matters

Many a merchant or craftsman as 'haifer in his hands or quha fraudfullie has put away the evidents' was called on to produce 'the haiill evidents' as part of an action. For example, there was litigation over marriage contracts which had not been honoured. Thomas Millikin, merchant, of Edinburgh, was ordained to produce the marriage contract between himself and Archibald Inglis 'taking the full burding in and upoun him for Issobell Millikine his dochter now spouse to Archibald' and as a preliminary to an action for an unpaid tocher of 352 merks with the liferent of a merchant booth, a marriage contract of 1585 was registered in 1600. The contract had been between Katherine Macgregor, grand-daughter of George Macgregor, alias Johnston, bailie of Perth, and daughter of John Macgregor his eldest son, and Walter Boig, eldest son of John Boig, merchant, of the said burgh. Walter Boig, as spouse, active

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70 CS7/191/197v & CS7/193/43r (Ffergussoun v Maxwell); see App.,II,8.
71 CS7/185/278r (Colt v Gray).
72 CS7/185/278v (Colt v Jaksone).
73 eg CS7/190/292r (Menzeis v Lindsay).
74 CS7/187/270r (Millikin v Inglis).
asked that the contract be transferred 'on' George as son and heir of John passive.\textsuperscript{75}

Several actions related to testamentary problems. John Martin as heir to the deceased Stephen Martin, craftsman, of Pittenweem, charged Isobel Auchinleck, his father’s last spouse, to produce all ‘evidents ... that he may know whether his said umquhile fatheris landis, heretages, goods and gear will satisfie and pay his creditors or not’. She refused ‘in defraude of the persewar’ but was compelled to comply.\textsuperscript{76}

Archibald Scheills, merchant in Glasgow, and his wife sought delivery of a velvet gown, perhaps as paraphernalia\textsuperscript{77} and Nicol Steven, decerned as executor dative ad omissa by the Commissary of Edinburgh to Alexander, his brother, craftsman, of Dunfermline, pursued his father’s relict and her new spouse for goods and gear pertaining to her dead husband but omitted by her from the confirmed testament.\textsuperscript{78}

William Dingwall, servitor to Sir James Elphinston of Barnton, Secretary, as confirmed executor to his dead brother Donald Murdoesoun, alias Dingwall, having licence of the Commissary of Edinburgh, charged a craftsman and a litster in Inverness ‘to restoir the guids and geir of his umquhile brother’.\textsuperscript{79}

Problems arose over contracts made on death bed. It was possible to reduce them because ‘of the municipal law and pratik irevocablie observit ... it is not lesum to ony persoun quha is infeft in land or haveand securitie maid to them for infeftment of land or annuelrents furth of land to be given unto them ... to annalie or dispone in leto aegritudino’ as being in prejudice of the heirs.

\textsuperscript{75} CS7/192/132r (Boig v McGregeor).
\textsuperscript{76} CS7/187/297r (Martene v Auchinleik).
\textsuperscript{77} CS7/190/311v (Darroche v Scheilis).
\textsuperscript{78} CS7/190/74v (Stevin v Sibbald).
\textsuperscript{79} CS7/190/213r (Dingwell v Cuthbert).
Robert Danielston, tailor, of Edinburgh, made such a contract in 1594, allegedly on his death bed, but since it was satisfactorily proved that 'he contractit ye seiknes quhairof he deceist tuentie at ye leist ten yeirs befoir ... and dailie he shapit claithes ... nather remanit bedfast' and that ten months had elapsed between its making and Danielston's death, the contract was allowed to stand.\textsuperscript{80}

The contract in question was an 'innovation and discharge' or modification of what may have been a marriage contract of 1587. In the 1594 contract Mr Alexander King, his spouse and cautioners obliged themselves and their heirs and executors to make payment of 2000 merks or, failing of payment, an annual rent of 200 merks to Danielston and Isobel King, his spouse and the longest liver of them, and their heirs gotten or to be gotten, whom failing to Isobel and her heirs. Danielston 'consentit that the securitie and infeftment of the annuelrent of 200 merks suld be grantit to the said Robert and to the said Issobell his spouse the longest levar of them and the airs gottin or to be gottin quhilks fainyeing to the said Issobell his spous, hir airs quhatsumever'.

Danielston happened to be a bastard without heirs so the contract was seen to be a disposition 'in his hienes prejudice'. As stated by Balfour,\textsuperscript{81} the King obtained and gifted Danielston's escheat to Sir Richard Cockburn, fiar of Clerkington, Lord Privy Seal, 'throw being of the said umquhile Robert being born bastard and sua deceissand without lauchful airs given of his awin bodie or disposition made be him of his lands, guids and geir, in his bodie lyftyme'. The unsuccessful action for reduction of the so-called 'deid-bed' contract 'in favore of the airs of the said Issobell' was brought

\textsuperscript{80} CS7/187/402r (Hammiltoun v King).
\textsuperscript{81} Balf., Prac., Stair Soc.,21, 237.
against the widow (who had remarried) by John Ogilvy as the
donator's assignee.82

As business men of the world, a merchant or craftsman was an
appropriate choice as a curator or cautioner. Humphrey Galbraith,
tailor, of Edinburgh, became cautioner in presence of the Lords for
George Wright in Elie, who had been appointed tutor dative by the
procurator fiscal to William Wright, natural son of the deceased
William Wright in Gowburn[?]. As cautioner he undertook that 'he
sall trewlie use and exercise the said office, and sall do and fulfill
all thingis to the said William Wryt pupill qhilks ane cautioner
dative be the laws and consuetude of this realm is haldin to do and
performe and als that the said George Wryt sal mak compt and rekning
to the said William and his narrest frend of all his intromissioun
with his lands, rents, guids and gear at his perfyt aige'.83

Not all, however, were honest. William Graham, son and heir of a
deceased craftsman of Auchterarder, charged the heir of his
erstwhile tutor to return to him 'his airship guids and geir
togidder with the sowmes upliftit' by him. The defender 'askit for
inspection of the writs' whereupon the Lords 'halds the proces
concludit and declairs yai will advyse the same and constitut a
final sentence and decreit yrintil secunda allegata et probata'. In
this way the action was taken to avizandum.84

One craftsman had to be served as lawful heir before pursuing an
action for payment of two annual rents. John Simpson, craftsman, of
Aberdeen, 'raisit and causit proclame brevis of inqueist of his
hienes chapell to have bene servit as neirest air to umquhile James
Simsoune, burges of ye said burt, his guidser, of certane lands
quhairin he deit last vest and seasit as of fie'. His procurators in

82 CS7/187/198v (Hamiltoun v Danielstoun); see App., II, 9.
83 CS7/193/29v (Cautioun; Umphra Galbrayt for George Wryt tutor
dative to William Wryt).
84 CS7/190/219r (Grahame v Murray).
his name proved 'befoir the provost and bailleis his breves dewlie verifeit ... togidder with his clame desyrand to be servit air, in special to ane annuelrent of 36s 8d and ane uyr annuelrent of 30s quhairin umquhile James, father to the persewar, deit vest and seasil'. Simpson produced the instruments of sasine which had belonged to his grandfather. He must have been taken aback when Robert Menzies, defender and possessor of the tenements, produced a decree of the Lords declaring the instruments of sasine to be forged. The advocate for Simpson acknowledged defeat. He 'past simpliciter fra the actioun of improbatioun and renuncit the same iure lite et causa'.85

Work and industry

Evidence of industry, mainly within Edinburgh, can be found in some of the actions. Merchants and craftsmen who were involved in litigation lived in tenements of land in the High Street or in tenements in the closes off that street. Edward Johnston, merchant, of Edinburgh, for instance, bought property in Bell's Wynd from the son of another merchant.86 Some like Henry Stenton, craftsman,87 and Le Tellier [Littelyear] goldsmith, favoured the Canongate.88 An inventory of goods stolen from Richard Moffat, baxter, of the Canongate,89 was found in the Process papers; it can be compared with the arrested goods of a writer in Edinburgh.90

The 'loukin buiths' [covered stalls] which were the subject of much litigation were on the south side of the High Street91, and one group of merchant booths stood at the head of Fishmarket Close.92

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85 CS7/187/279r (Simson v Meinzeis).
86 CS7/186/366v (Jonstoun v Battie).
87 CS7/186/123r (Stentoun v his Creditouris).
88 CS7/186/120v (Littelyear v Crawfurd).
89 CS15/77/83 (Richart Moffet); see App., II, 10.
90 CS7/192/205v (Barbour v Johnstoun); see App., II, 11.
91 CS7/191/51r & CS7/191/276r (Williamsoun v Wastoun).
92 CS7/190/22r (Lord Advocate v Bawtie).
A tannery in the Cowgate is inferred from the action over two tenements of land in the Cowgate, Edinburgh, one of which housed as tenants a blacksmith, a flesher and two cordiners. The other tenement there was set in waste land within which were barkholes [pits for tanning], lime holes [for steeping skins] and an inner close. The tenants petitioned the Lords to decide which of two parties had right to charge them for payment of mails and duties, Richard Dobie, craftsman, or Mr David McGill of Cranstoun Riddell, one of the senators of the College of Justice. The Lords called for documentary evidence together with the depositions of witnesses but the decision is not recorded. Clearly a judge and a craftsman had business interests in common. A different action was raised over removing two cordiners, one the heritable owner, the other the tenant, from 'certane lymhoillis lyand within ye toun of Edinburt foranten the buriall place yrof'.

There must have been a dyeing works in the Cowgate as well. William Liddell, smith, brought an action before the provost and bailies against James Glen, litster, charging him to flit from a 'workhous' on the south side thereof. The action 'of consent of the pairteis and procurators' was advocated to the Lords but the entries end there. In some unexplained way the action involved Nicol Uddart, merchant, 'for his entres'. The property belonged to the smith.

A malt barn, a kiln, a coble [brewing vat] and 'steipstane' [hollowed stone trough for steeping], a bere loft with houses underneath, a barnyard and a wall 'merchand to the overgavill [gable] of the same, an auld bak hall and waist peice of land yrabout and thair pertinents within this tenement' were situated on the south side of the High Street between the tenement

93 CS7/185/289r (McGill v Dobie).
94 CS7/192/226r (Henrysoun v Burgh of Edinburgh).
95 CS7/185/228v (Liddell v Uddart).
of the Laird of Inverleith on the west and that of the deceased David Whitehead on the east. This building backed onto the lands of High Rigs on the south and faced 'the commoun hie streit' on the north. Gavin Hereot, maltman, as assignee to a contract, charged John Garden to remove from the brewery.

Further evidence of a brewing industry lies in the debts owed to Henry Stenton, who was imprisoned for debts of £61 for bere and grass; £20 for malt; £10 for beir; £96 6s 8d for malt; 7s for malt and several unspecified debts.\(^96\)

Flemings were working salt pans at Newhaven. This came to light through an action by Elizabeth, daughter of Patrick Park, craftsman, of Edinburgh, and William Napier of Wrichthouses her spouse for his interest, against Peter Scheves[?], Fleming, and Jaques Deburtyene[?], alias Fleming, to 'mak furthcumand 300 bolls arrested of gret quhyt salt' arrested for their yearly annualrent of £20, unpayit be ye space of 20 yeiris bygane' [29 years in fact].\(^97\) This was 'commoun land of the burgh of Edinburt callit the new havin sumtyme occupeit be the inglismen makaris of the salt and biggit be thame lyand on the south part of the same new port ... betuix the filling of the sea mark on the north, the commoun passage contening sax elnes of breid [breadth] on the south, ane grate stane affixt in the erth on the eist and the fischearis houses on the west partis'.\(^98\) For some reason Eustatius Roog paid half of the annualrent due.

Mineral mines - a reference to the Leadhills lead mine - being worked in Glengonner, occasioned an action for payment of 500 merks for each of six terms unpaid duties from 1597 due to Agnes Douglas.\(^99\) Counsel for the defender claimed that all payments had been made, and the case was continued for proof to be provided. Unfortunately it

\(^{96}\) CS7/186/123r (Stentoun v his Creditouris).
\(^{97}\) CS7/185/271v (Park v Eustatius Roog).
\(^{98}\) CS7/186/424r(Naper v Toun of Edinburgh).
\(^{99}\) CS7/185/303v (Douglas v Ffoullis); see App.,II,12.
disappears from the Registers. Thomas Foulis, the Edinburgh goldsmith, began large-scale operations at the 'leidhoillis' in south Lanarkshire in the 1590s. Smout points out that 'by the later 17th century, lead from Leadhills was a major Scottish export'.

**Land and Property**

Property was sometimes assigned to offspring. John Batie, merchant of Edinburgh, made his daughter Euphemia assignee to his liferent of four booths at the Fishmarket Close head. In a different example, a smith fulfilled the terms of a marriage contract. In 1571 William Blair had been infeft and given sasine by resignation of John Smith, smith burgess, in the hands of the bailies of Perth of his tenement of a backland in Perth, as in the hands of a superior. He had reserved the liferent to himself and his wife but when both had died, the provost and bailies of Perth entered craftsmen to the property. The Lords ordained the craftsmen to remove so that the son-in law could claim the property.

Interlocutors were frequently pronounced for the production of evidence in disputes over land and property or contracts. This usually took the form of supplications for presentation either to the pursuer or to the court of charters, precepts and instruments of sasine or of any form of documentary evidence. Balfour, advocate, craved the production of a contract on behalf of Agnes Finlayson, relict of James Forrester, craftsman, of Dundee, so that 'authentik copeis and doublis yrof' should be 'decernit to be deliverit' to her. Occasionally transumpts from a register or protocol book were called for and it was sometimes necessary in the course of an

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100 Whyte, Ian & Kathleen, *Exploring Scotland's Historic Landscapes*, (John Donald), 44.
101 CS7/190/22r (Lord Advocate v Bawtie).
102 CS7/191/368r (Blair v Grantis).
103 eg CS7/185/205r (Leslie v Barroun).
104 CS7/185/178v (Finlasone v Forrester).
105 eg CS7/193/47r (Merser v Mudie).
action to have the Lords’ permission to transfer a previous act or decree on heirs. The transumpt, or transferred document, paid for by the seeker ‘upoun his ressonal expenses’ was always quoted in the Registers of Acts and Decreets.

Much of the litigation was over non-payment of dues. Cuthbert Cunningham, craftsman, of Dumfries, came into possession on his father’s death of three tenements of land, a kiln and yard and land at the ‘yairdis heid’ in Dumfries. His tenants, who included the Commissary of Dumfries, a maltman, the heir of a merchant, a merchant, a tailor, the son of a craftsman, a messenger and an Edinburgh merchant, refused payment of the annualrents conform to his infeftments but the Lords ordained officers of arms to poind their readiest goods. Doubtless such tenants settled for payment. This extract also shows trading contacts between Dumfries and Edinburgh, a connection also inferred from the ownership of a tenement of land in Edinburgh by Dumfries merchant, Andrew Greir.

It could be a merchant or craftsman who refused to pay dues, of course. John Morrison, merchant in Edinburgh, and his spouse had not paid the annualrent due on the mill of Sauchton since 1582 and William Simson, merchant, of Edinburgh, his spouse and three others refused to pay mails and duties of a tenement of land in Leith which had burnt down but had been rebuilt. They were suffering it to decay and Robert Wilson, tailor, who was heritably infeft in ‘all that pece of the foirland with the half of the entrance above the nether port of the said tenement’ complained that ‘it will cum altogidder ruinous and unprofitabil’ to his personal damage. The tenants were to find responsible caution acted in the Books of Council ‘for thankful payment’. When they failed to compear to do

106 eg CS7/192/189r (Maistertion v Mowbray).
107 eg CS7/190/238v (Ramsay v Lord Airdrie).
108 CS7/186/124r (Cunynghame v his Tenentis).
109 CS7/185/225r (Greir v Speir).
110 CS7/190/51r (Moresoun v Dalzell).
this, the Lords ordained them to flit.\textsuperscript{111} This action is representative in that it shows that many merchants and craftsmen invested in tenements of land in towns; it also demonstrates the problems of letting property, one of which was of upkeep. Patrick Whitelaw, merchant, of Edinburgh, had been ‘infeft and saisit’ in a tenement of land in Haddington but the widow liferenter had ‘naways beltit nor reparit the same quhenas necessitie reqyrit’.\textsuperscript{112}

Country tenants of land could be equally dilatory over payments. Gilbert Masterton and Edward Meiklejohn, merchants, of Edinburgh, sought unpaid mails, fermes and duties from the tenants and occupiers of Munchill and Drummanie, unpaid despite a decree of 1598. Here the decree was quoted in full and transferred on the now dead pursuer’s daughters\textsuperscript{113} and John Fairlie, merchant, of Edinburgh, showed no reluctance to do battle with Mr John Nicholson, advocate, for an annuallrent of 70 merks ‘furth of Leswade be alienatioun and dispositioun to him ... be Mungo Tennent’. He was determined to poind Nicholson’s goods\textsuperscript{114} but it is unlikely that the action went as far as that over 70 merks. The record ends at this point.

Land in the centre of Edinburgh was much sought after. Andrew Stevenson, craftsman, of Edinburgh, his heirs and assignees, were infeft through a contract with Mr William Adamson of Graycruik in ‘all his foir waist land lyand within the burgh of Edinburt on the nort syd of the Hie Streit foranent the meill mercat in the clois callit Lleyis Clois.’ The land was so valuable that the contract included a clause to the effect that Adamson was ‘oblist to warrand the same to thame frie fra all intromettors’. He failed to do this. An anticipated problem obviously had arisen because the craftsman raised letters of horning against Adamson when he failed to pay the

\textsuperscript{111} CS7/187/324v (Wilson v his Tenentis).  
\textsuperscript{112} CS7/186/311r (Quhitlaw v Hammilitoun).  
\textsuperscript{113} CS7/192/189r (Maistertoun v Mowbray).  
\textsuperscript{114} CS7/186/419v (Mr Jon Nicolsoun v Pfairlie).
penalty of 100 marks as set down in the contract. The letters were suspended on Adamson’s finding of caution for payment.115

Waste land and tofalls[buildings whose roofs rests on the wall of the principal building] in Bell’s Wynd were sold by Archibald Dewar, caftsman, for 2000 marks to Edward Johnston, merchant, of Edinburgh. This was done by ‘resignation in ane of the bailleis hands of the charter and saising’ and subsequent infeftment of Johnston by a bailie. Despite warranding the waste land ‘frie fra all inconvenients’, Patrick Morrice, merchant, obtained a decree before the provost and bailies decerning Johnston to remove. John Batie as cautioner for the warrand was then charged to find ‘als meikle als guid land lyand as commodiouslie and haveing als meikle avail and profeit be yeir as ye said peice of waist land’ or to pay its value. He was decerned to make payment of 4000 merks, perhaps an error on the part of the clerk.116

Masons imposed building standards. In April 1600, George Sanderson, craftsman, of Edinburgh, had given in a supplication to the bailies, dean of guild and council, complaining about the state of a wall belonging to Thomas Geddes, bailie of Edinburgh. Because it had been declared to be ‘altogidder rottin, ruinous and nocht abill to stand’ after a report ‘by honest craftsmen and ocular inspectioun’ the bailies, dean of guild and council had ordered Thomas to ‘tak aff the ruiff of his said hous and tak sa meikle aff the sidwall doun as suld be fundin falteis.’ In July, in retaliation, Geddes declared that he had obtained a ‘decret of nighbourheid’ before the bailies, dean of guild and council of Edinburgh against Sanderson, finding the ‘fewal of ane tenement of land lyand at the heid of Libertounis Wynd’ pertaining to Sanderson to be unsatisfactory. The deacon of the masons, with certain of his

115 CS7/186/418v (Adamson v Stevinson).
116 CS7/186/366v (Jonstoun v Battie).
brethren, had declared the building 'not to be sufficient work in respect it is biggit with clay and stane and ridlingis[pieces of wood placed horizontally to keep the load in place] and yrby not abill to beir the rouff, resave the hail guter and stand and keip the said Thomas skathles quhen he sall big and tak doun the sidwall of his tenement of land adjacent yrto'. Sanderson had been decerned 'ather to tak doun the waster sidwall to the ground and big the sam up sufficientlie of solid workwith stane and lyme or els to find the said Thomas cautiouen that he and his said waster land salbe harmles and skaithles of the said compleneris waster sidwall'. In the meantime, work was to cease. Sanderson complained that his craftsmen had been 'laid ydill'. A settlement was reached and the letters of horning raised against Sanderson were suspended on the basis of Sanderson's being allowed to continue building 'but ony stop, troubill or impediment' because he undertook to keep Geddes 'harmles and skaithles of the said George his hous and bigging'.

Many actions of removing were brought by or against a merchant or craftsman. The relict of Alexander Ramsay, merchant, of Edinburgh, her son, also a merchant, and his wife removed Patrik Nemok, tailor, and his servants from a high fore-booth within the burgh and John Robertson, cutler, of Edinburgh, was removed from a booth 'on the foir-gait of Grayis Clois'.

Despite a promise not to remove, Andro Greir, merchant, of Dumfries, heritable proprietor of a tenement of land in Edinburgh, removed William Speir, a writer to the signet, from 'ane heich hall with ane chalmer' and Nicol Hynd, a slater, from 'a loft above the samen lyand in the same tenement ... in the wynd callit 'Libbertounis Wynd' ... and fra ane eistmest laich seller of ye said tenement'. Greir offered to prove this assertion so the Lords called

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117 CS7/CS7/192/96r (Sandersoun v Geddes); see App.,II,13.
118 CS7/185/105r (Nemok v Ramsay).
119 CS7/191/349r (Scot v Robesone).
for witnesses to the promise.\textsuperscript{120} It is possible that the tenement was linked to the trade in skins from Dumfries to Leith.

Tenants were also removed from the lands and property outside Edinburgh. Patrick Edgar, craftsman, of Edinburgh, charged James Ker to remove from the lands and mill of Peffermill[‘Pepermylne’ in 1600], barony of Craigmillar.\textsuperscript{121}

\textbf{Investment in land and property}

One Glasgow merchant invested in an inn with the help of his spouse but encountered both the problem of unpaid bills and the dangers of advancing credit to someone in a position of power, already noted in the meat account unpaid to the King. James Stewart and his spouse were owed £1,819 'as for expensses maid be the persewaris upoun intertinement of Angus McConnell\textsuperscript{122} and his companie in ludgeing, meit and drink and bedding be ye space of nyne scoir and ten dayis conforme to the promeis and missive letteris direct by Walter, commendator of Blantyre'.\textsuperscript{123} Walter Stewart, commendator of Blantyre, had preceded Elphinston as Treasurer.\textsuperscript{124} He was probably acting in this capacity but it is not clear why he should have done this.

Investment in land was widespread. In this way merchants and craftsmen accelerated the circulation of money. Although land rents were still largely paid in kind, rents of tenements of land in burghs were paid in money as annual rents. Feuars of kirklands had stimulated the process of change to a money economy by paying a 'grassum' on entry and a fixed sum in perpetuity, both of which were money payments. It was the profits of enterprise and of trade and

\begin{footnotes}
\item CS7/185/257r (Greir v Speir).
\item CS7/191/71v (Edger v Ker).
\item probably the Angus McConеill of Dunvæg and Glens who was tried in 1590/91 for high treason along with Lauchlane McLane of Dowart and who was accused in 1595 of joining rebels in Ireland.[Pitcaiůn, I, 1590–91, 224–228 and I, 1595, 348–9; see also A.P.S. III, 466b; 561, c. 40].
\item CS7/187/250r (Stewart v Blantyre).
\item see App., I, 1a, 1b, 1c.
\end{footnotes}
financial dealings, however, which fuelled the transition to a money economy. This is discussed below.

Many merchants and craftsmen were tacksmen. George Todrig, merchant in Edinburgh, and Mr Robert Cockburn, advocate, presumably as partners in the tack, charged 22 tenants in Carnwath to make payment of their mails, fermes, canes, customs, casualties and profits of the lands they occupied. At the same time George Todrig was himself one of several being removed from ‘the Mains of Craigmiller with the castell, tor, fortalice, maner place, houses and biggings’ by the curators of George Preston of Craigmillar, heritable proprietor of the lands. Did the merchant’s ambition know no bounds?

Though actions over a tack of teinds were not frequent, George Knowles, craftsman of Aberdeen, as son and heir of the assignee to the teinds of Essintillie Regis, successfully charged the reluctant tenants for payment.

Though less usual, it could be the merchant or craftsman who was the tacker. James Adamson, craftsman, of Perth, had set tack of the mill of Cluthymore to John Hunter and Henry Nisbet, merchant, of Edinburgh, set tack of three tenements of land with five acres to John Brown, craftsman, of Anstruther, his spouse and son.

In a possible example of backward integration, John Hagie, maltman, took a tack of the teind sheaves of the ‘crofts and wairds about and within the citie of Sanct Androis’. Similarly, Thomas Brown, younger, merchant, of Glasgow, may have had a commercial interest in controlling an early stage of the wool industry when he

125 CS7/190/408v (Cokburne v Tenants of Carnwath).
126 CS7/191/160v (Craigmillar v his Tennentis).
127 CS7/186/149r (Knowis v his Tennentis).
128 CS7/190/225r (Huntar v Adamesoun).
129 CS7/186/459r (Nisbit v Broun).
130 CS7/185/164r (Ramsay v Hagie).
tried to reduce the resignation in the hands of a superior of a waulkmill in Greenholm, parish of Galston.131

It was the quasi-ownership of lands, either as a wadset for a debt or as a return on invested capital, as well as the actual ownership which signalled the successful merchant or craftsman, however. Adam Thomson, apothecary, had lands in Dalmeny132 and James Dalgleish, merchant, of Edinburgh, had the lands of Curriehill pertaining to him heritable 'as his infeftment and sasine beris'. He successfully charged William Wardlaw of Riccarton to pay the mails, fermes and duties for 1598 of these lands occupied by him and his servants.133 In another example, the lands of Priorletham, 'the abbay croft and doucat of Ballone, waird and medow yrof' were sold to Clement Cox, merchant, of Edinburgh, 'or to his son-in-law and his daughter'134 and it was either as owner, wadsetter or tacksman, that Robert Alexander, craftsman, of Stirling, raised a summons of 'violent profaits' against two tenants of land at the Brigend.135

Thomas Foulis, goldsmith, of Edinburgh, had been heritably infeft and given sasine by his father in 1571 of an annualrent of six merks out of the lands of mains of Straiton 'pertening in heritage to James Hendersoun of Fordell'. It had been uplifted since 1583 'the yeir of his'[Henderson's] 'deceis', but payment had ceased in 1587. This may have been a gift to his child akin to a gift to a new baby because the sum was small. Thomas made Mr Patrick Forrest, advocate, assignee and procurator in rem suam and he won the action for payment in 1600.136

It was the two sons as executors of James Nicol, merchant, of Edinburgh, confirmed as such by the Commissary, who in the pursuit

131 CS7/185/213r (Broun v Nisbet).
132 CS7/185/238v (Thomsone v Bathcat).
133 CS7/186/166v (Dalgleische c Curriehill).
134 CS7/190/232v (Ramsay v Lord Airdrie).
135 CS7/190/151v (Alexander v Erskin).
136 CS7/190/275v (Forrest v Lord Fordell).
of their father's debts, sought payment of byrun annual rents of Polkenneth, to which he had 'undoutit heritabill ryt'.

Merchants and craftsmen became 'wadsetters' of lands when a debtor was unable to meet his commitments. In his detailed study of the merchant elite of Edinburgh between 1600 and 1638, Brown demonstrates just how many merchants, by accepting the rural property which was offered to them in security for or in satisfaction of a debt, not only in effect were money-lenders, but also were 'able to diversify their income into rural holdings', which provided 'both a long-term security and an assured income'.

The action between Gavin Heriot, maltman, of Edinburgh, against John Garden, litster, of Edinburgh, shows how a wadsetter could convey his rights under a security deed to another. Heriot was assignee constituted by Mr John McGill, advocate, and his spouse to their part of a contract made between them and Gavin Heriot on the one hand and John Thomson on the other. John Garden, craftsman, was assignee constituted to the now dead John Thomson. Gavin Heriot, in an effort to consolidate his holding, pursued Garden for not removing from his half of a brewery within his tenement of land in the High Street, sold to the now deceased Thomson and Heriot under reversion of £356 6s 8d to be delivered within the parish church of St Giles. He succeeded in his aim because the Lords ordained Garden 'to resign, renunce, and oergive to Gavin Hereot the equal half of the malt barne' etc. 'together with all ryt of propertie and possessioun quhilk he had ... and to deliver to the said Gavin all contracts, charters, precepts, instruments of sasine and evidents grantit to him, to be consolidat with the propertie of the said land als frielie as Mr John and his spous had befoir the actioun and wadsetting yrof'.

137 CS7/187/226v (Nicoll v Lord Sornebeg).
It was necessary in the procedure of redemption to 'premonish' the creditor to appear at a certain place at a set date to receive payment, otherwise the sum would be placed in the hands of a third party. An instrument of premonition recorded this. If the creditor failed to appear the redemption money was assigned to some responsible person and this act was recorded in an instrument of consignation. By bringing these two instruments before the Lords the debtor obtained a declarator of redemption which cleared the burden from the land used as security.\(^{139}\)

Heriot had followed this procedure. He had 'injoint' Garden to compear within the parish church of St Giles, in order to receive from Heriot or his procurators the equal half of the money amounting to £178 3s 4d. Heriot brought all the relevant documents, including the premonition and 'producit, numerat and tauld upoun ane seat of ye saids daskis[pews] the sowme ... and efter the numeratioun of the same the said Gavin advertit in ye same kirk upoun the resept yrof'. When no one appeared, Heriot 'passed furth of the kirk to the personall presence of John Howiesoun, thesaurer of the said burgh, and consignit in his hands' the money 'to be furthcumand to the utilitie and profeit of John Gairdin, his airs and assignays to the effect that in all tyme cuming the ane equal half of all the malt barne etc., may be consolidat with the uyr equal half pertening to the said Gavin and reput laullie redemit and the said Gavin yrwith to have full ryt, frie regres and ingres again yrto as gif the same had never bene annalieth.'\(^{140}\)

**Investment, trade and commerce**

Not all investment was in land as described above. Money was sometimes made over to a recipient in return for annual interest. In

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\(^{140}\) CS7/186/257r (Hereot v Gairdin); see App.II,14.
William Bisset, surgeon, of Edinburgh, had 'payit and deliverit to William Learmonth of Hill, his mother and his spouse the sowme of ane thowsand pundis guid and usual money of Scotland for an annualrent of 100 marks'. In 1600 the contract was transferred to Bisset's daughters.\footnote{CS7/191/174v (Elphinstoun v Leirmonth).}

There is disappointingly little information about the industrial enterprise of merchants which would foreshadow that of the merchant princes in Brown's study\footnote{Brown, James J., 'Merchant Princes and Mercantile Investment in Early Seventeenth-Century Scotland' in Lynch, M., ed., The Early Modern Town in Scotland (Croom Helm, 1987), 125-146.} although William Stanhope, servitor to Thomas Foulis, goldsmith, of Edinburgh, 'labourat, bruikit and possest ye mynis and minerallis of the lands of Glengonner pertaining to George Douglas'. Stanhope 'upliftit, intromittit with and ressavit the profeits and commoditeis of the cropes and yeiris of God 1597, 1598 and 1599. He acted as 'manager' for Thomas Foulis, goldsmith, of Edinburgh, Mr David Foulis his brother, and William Millburn, indweller in Leith 'in yair names and to yair behuiff'. The yearly duty of the mines, challenged as unpaid since 1597, was set at 500 merks.

Trade was facilitated by trade fairs. At the Lanark Fair, John Findlay, merchant, of Glasgow, sold to John Rowat, another merchant, 'seven pecis of lynning claith' pertaining to him 'pakit up with him and his pak ... to have bene transportit be him in England and their disponit upoun be ye said Jon Rowat'. Findlay's widow claimed £47 10s for the linen. The points of the summons were referred to the pursuer's probation and she 'referrit simpliciter to Johne Rowat his aith of veritie, quha be his aith declarit that the points wer naways of veritie'. She lost her case and had to pay £10 expenses with 40s to the Collector.\footnote{CS7/192/227v (Rowat v Millar).}
Trading privileges were fiercely guarded. The bailies, council and community of Anstruther 'be eist ye burn' brought an action against their counterparts in Anstruther 'be west ye burn' over the holding of weekly markets. They claimed that Anstruther Easter 'hes bene in peciable possessioun of keiping and haulding of twa ouklie mercatis viz. Twsday and Setterday, speciallie Setterday, be vertew of their infeftment'. Anstruther Wester, however, 'hes bene of auld erectit in ane frie burt regall with all ye privileges pertening to ane frie burt, and with libertie and power to have hauld within ye said burt and libertie yrof, twa mercat dayis ouklie, ane upoun Monday and ane upoun Setterday with twa frie fairis yeirlie and that notwithstanding of quhatsumever uther privileges grantit to onie uther burrowis'. The bailies and council of Anstruther Easter were insisting on holding Saturday markets 'and trubillis and molestis' them. Accordingly, Anstruther Wester 'menit thame to the Lordis of Counsall and obtenit generall letters be yair deliverance' charging the bailies, council and community of Anstruther Easter 'to decist and ceis fra all stopping, trubling or making impediment to yame to use and exerce yair libertie, privileges and friedome ... and fra all halding of ony mercats ... upoun Setterday'. The action dragged on without resolution throughout 1600.144

The erection of a free burgh of barony helped to provide the King with much-needed finance. It is possible that the King was provided with money in the erection of Stranraer into a burgh of barony in 1595145 since 'ye infeftments yrof purchast be ye said niniane adair efter or soverane lords perfyt aige' were 'upoun his gritt

144 CS7/189/96v & (Anstruther v Anstruther).
145 'Rex confirmavit NINIANO ADAIR de Kinhilt...terras et baroniam de Kinhilt cum porto et burgo baronie de Stranrawer ... erexit villam lie Clauchane de Stranrawer in liberum burgum baronie cum libro portu, BURGUM ET PORTUM DE STRANRAWER...’ R.M.S., vi, 424, 30 Mar. 1596. This is a revised confirmation of the charter to Kinhilt and his heirs male granted at Linlithgow in 1595. R.M.S. vi, 366, 12 Nov. 1595.
expenses'. Such a grant would have been anathema to a royal burgh. The provost, bailies, council and community of the royal burgh of Wigtown claimed that 'as statut be or soverane Lord and his hienes predecessors, be vertew of sundrie acts of Parliament, ... all merchantis of yis realm and burrowis sall bruik and have the auld privelegis and friedomes grantit to yame be his Majesteis progenitors and ... na persons dwelland outwith burrowis [sall]use ony merchandice'. They purchased letters in all four forms by deliverance of the Lords and charged Thomas Adair of Kinhilt, and 'merchants, burgesses and indwellers in the burgh of Stranraven'[Stranraer], all named, 'to observe, and keip the laws and acts of Parliament and to that effect decist and ceis fra all using of ony merchandice, tapping[?]or selling of ony wyne, waie[?]and silk, spiceyeis, wald[wood], stapill guids and fra all packing and peiling[separating into smaller packages for retailing]and fra houssing of woll, hydis and skins within the burt of Stranraven or ony uther pairt outwith ye friedome of ye burt of Wigtown within bounds limitat in ane pretendit infeftment of confirmation grantit to yame'.

Kinhilt and the indwellers of Stranraer sought suspension of Wigtown's letters of horning raised 'of malice' because the letters were 'sinisterlie purchast ... upoun wrangeous informatioun ... and frivole narratioun'. Stranraer had been erected 'in ane frie burt of baronie with ane frie port and heavin' under the great seal in 1595. Furthermore, in 1596, another infeftment was granted to Kinhilt, 'with advyse and consent of the Lords of Chekker' for an annual sum paid to his Majesty and 'for guid ensurement and ludging to or soverane Lordis liedges and strangeris resortand to the wast part of this realm'. In this way Stranraer was to be created as a centre of trade, being '24 mylis distant fra ony burt within this realm'. It would become 'popular .... verie commodious ... tending grittumlie
to ye common weill of yis realm'. Within a radius of four miles there was to be free trade. The burgh had 'guid harborie' and the said burgh of Wigtown 'hes na just caus to complene' because 'ye port of Stranraven teynds to north and northwast parts and the sey port of Wigtoun teynds to the south and southeist parts'. Despite Craig and Oliphant's arguments for the defenders, the eloquence of Russell and Alexander King won suspension of Wigtown's letters of horning. Perhaps there were matters of principle and royal finance to be considered.  

Many commercial debt actions resulting from trade were for relatively small amounts. For example, executors sought payment of seven debts for malt due to the deceased Hugh Dunlop in Irvine and in another action a Wigtown merchant's executors pursued 26 debts for a countryman's needs; these included cloth, thread, iron and soap.

Some debt actions involve such large sums that one suspects wholesaling as opposed to retailing activity. Andrew Lawson, merchant, in Edinburgh, pursued John Williamson in Leith for payment of five tuns of wine extending to £1100, 400 merks still due out of £960, 200 crowns extending to 400 merks and 1600 worth of plumdames[prunes], amounting to £192. This action continued into 1601. Williamson may have been a wholesale grocer.

The relict of a Glasgow merchant successfully sought payment of debts for linen cloth due to her dead spouse itemised as £87 from a tailor in Dumbarton, £43 from a merchant in Ayr, £10 from the cautioner for a merchant in Hamilton, £22 6s 8d 'restand unpayit of a gritter sowme' together with £20 of liquidat expenses, £17 6s 8d

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136 CS7/189/41r (Kinhilt v Towne of Wigtoun); see App.,II,15.
137 CS7/188/185r (Dunlope v Gibsoun).
138 CS7192/138v (Lyndsay v Leyis).
139 CS7/187/401r (Lausoun v Williamsoune).
with £5 of liquidat expenses from a craftsman in Ayr dwelling in Dalmellington, and £49 from a merchant in Glasgow.¹⁵⁰

James Home, another merchant, in Edinburgh, may also have been wholesaling because he was owed 'eleven scoir ten pundis seventeen schillingis tua pence' for undisclosed goods by William Craig in Leith.¹⁵¹ This action was continued until June but disappears, presumably because the debt was settled.

There is evidence of internal trade in salmon. Mr Hector Munro of Foullis, and Clement Cor, merchant, of Edinburgh, were called upon to produce a contract made between them and Hutcheon Munro of Assynt, as a preliminary to their action against Hutcheon for delivery of seven casks and 11 barrels of salmon or £25 for each barrel undelivered.¹⁵² Findhorn salmon in 'bind of Leyth barrellis' sold at 40 merks the barrel.¹⁵³ There was litigation over Tay salmon too. Alexander Smith, of Dundee, charged the donator to the escheat of Thomas Urquhart of Rumrose[?] to pay for four barrels of salmon at £30 the barrel.¹⁵⁴ Salmon from Galloway seems to have been less valued. William Forbes of Monymusk was pursued as intromitter with the goods and gear of the deceased Mr Duncan Forbes of Monymusk to make payment to John, marquis of Hamilton, of eight barrels of salmon from 'the salmon fischeing upoun ye water of die callit poldoun largat' at £10 for 'ilk barrell'.¹⁵⁵

Most litigation, however, was over external trade and shipping. Merchants owned crears [small trading vessels] capable of carrying 250 bolls of victual¹⁵⁶ and invested in parts of ships. James Cairny, for 300 merks, sold to Henry Carfrae, merchant, indweller in Prestonpans

¹⁵⁰ CS7/190/109r (Normond v Thomsoun).
¹⁵¹ CS7/190/53v (Home v Craig).
¹⁵² CS7/187/314r (Lord Fowllis v Munro).
¹⁵³ CS15/78/77 (Stewart and Dunbar v Dunbar).
¹⁵⁴ CS7/185/195v (Smyt v Falconer).
¹⁵⁵ CS7/185/202v (Lord Hammiltoun v Fforbes).
¹⁵⁶ CS7/190/304v (Simsone v Craig).
'all the just half of ane schip callit 'The Margaret' of Leith with pertinents and necessaris belonging to the said half'. Cairny had to warrand the half 'to be frie and saiff of all detts' and he 'oblist him and his airs and assignays to get ane sufficient discharge of ye said schip fra William Tailyeor, burges and indwellar in Tolberie[?] in Pomerania'[south Baltic], 'sumtyme owner of ye said schip, that he nor na uyris in his name sall in na tyme cuming truble, persew and occupie ye said just half nor yit clam any ryt or title to ye said schip'. Carfrae could ill afford the outlay, managing to provide only 208 merks. Cairny 'craftilie maid and constitut William Liddel his cessiounar and assignay to the sowme ... restand awand'. However, since Cairny had made no attempt to procure Taylor's discharge, 'the assignay can haif na better ryt to the said sowme ... nor the cedent himself'. A merchant in Dysart became cautioner for Carfrae so the Lords suspended the letters of horning raised against him by Liddell.157

Andrew Bursie, merchant, of Dundee, had to borrow £100 from Thomas Jack, another merchant, for 'outreding and furtherance of him to his voyage towards Flanders and Ingland in the schip callit 'The Blew Lyoun'.158

Some mercantile partnerships159 gave rise to conflict. On 27 July 1598 a 'contract and appointment' was made 'between John Nasmyt, chirurgeane burges of Edinburgh, Thomas Dalziel, merchand burges of Edinburgh, and Mr John Dalziel, anent the mutuall societie and pertinership of the voyage to the hering to the west cuntrie'. Orchestrated by Aulay McAulay, a decision was made over how much each should contribute to 'the stok quhilk sould be put in commoun

157 CS7/190/409v (Liddell v Carfra).
158 CS7/190/169v (Bursie v Jak).
burss‘ and Thomas Dalziel was nominated as ‘resseavear and pursar of the hail stokis to be employit to yair use, as souls be astrictit to wait upoun the salting of the said hering, and oersie the same and mak just compt and rekning to the hail pertiners of his intromissioun be charge and discharge’. He was given full responsibility for ‘employment of their hail money according to their commissiounis’. McAulay ‘deborsit’ to Dalziel 500 merks ‘to be imploiyit to his use and profeif’ and Dalziel ‘careit and transportit the said Aulay McAulay his pairt of the said hering extending to aucht last hering or yrby to the realme of France’. There he sold the hering for ‘36 crowns frie money ilk last’. Nevertheless, Dalziel refused ‘to mak compt, rekning and payment of the waring of the said stok and proffets yrof’ to McAulay who thereupon obtained letters by deliverance of the Lords, arrested the profit in Nasmyth’s hands and summoned Dalziel to appear before the Lords to hear himself decerned to make payment to McAulay of the 500 merks. Dalziel and Nasmyth fell out, took the matter to arbitration and Nasmyth was decerned to pay £438 2s 6d to Dalziel. Dalziel raised letters of horning against Nasmyth but they were suspended when Nasmyth consigned the money in the Lords’ clerk’s hands to be made ‘furthcumand to ony of the saids pairteis havand just ryt yrto.’

This action is important because it shows the making and breaking of a partnership and the mutual responsibilities of the members of its members.

Partnerships were one way of affording the venture capital needed for overseas trade and the hazardous carrying trade; they had the advantage of risk-spreading. In 1596 Harry Hope, merchant, of Edinburgh, William Turnbull and Robert Galbraith, son of an Edinburgh craftsman, ‘had appertening to thame as yair awin propre guid and geir thrie quarters of the guid schip callit ‘The Gift of

160 CS7/186/233r (Dalzell v Nasmyt); see App., II, 16.
God’. They furnished her with new sails, eight pieces of munition, three tables, new ropes, and anchors and estimated the value of ‘the said schip to the sowme of £4,500 Scots’. They ‘input’ David Strang in Anstruther as master and owner. The ship sailed from Burntisland to Bordeaux, where it was loaded by ‘Monser Boytour or his factouris’ with 88 tuns of wine. This was then conveyed to the port of the Somme in France at six crowns freight for each tun. He repeated this trip. Out of this exercise the partners gained five tuns and three puncheons of Bordeaux wine. Strang managed to sell this ‘for the darrest prices that he could obtene’ and at 50 crowns the tun he made 287 and 1/2 crowns. The profits of the freight of the two voyages together with the ‘frie money’ of their own Bordeaux wine extended to 1147 crowns. Strang then sailed for La Rochelle to spend the gains on ‘Rochell salt’ (much valued in Speyside, being bought from Archibald Addison, merchant burgess of Edinburgh, at £10 the boll162). There he ‘laidnit hir yrwith for Scotland to the west sea yrof’. The entrepreneurs had meantime arranged for John Smollet to meet them in Dumbarton. He bought the salt, presumably for the herring trade mentioned above, at £6 the boll of her cargo of 400 bolls of great salt.

Strang neither paid the partners their due profits nor surrendered the ship to them. The partners obtained a decree of the Admiral and his deputes against Strang but had to bring an action before the Lords against John Strang of Balcaskie who had ‘of befoir becum cautiouner for ye said David Strang’. Spens, advocate for the Strangs, did his best but ‘efter the proponing of divers allegaunces quhilks as irrelevant war repellit be ye Lords’, was unable to show any reasonable cause why letters of horning should not be directed against his clients.162 What was carried from Burntisland to Spain is

161 CS7/186/140r (Adesoun v Mawer).
162 CS7/192/78r (Hoip v Strang); see App., II, 17.
not revealed but in a different action it was clear that Mark Dougal, merchant, of Edinburgh, used the services of William Hunter, indweller in Bristol, to sell his linen cloth in Spain. It was duly sold for 125 ducats at £3 Scots per ducat but Hunter omitted to pay Dougal.163

Clearly treachery of one of the partners, like Strang’s, was one of the risks in such ventures. There was some protection against this in insisting on a cautioner being found but there was no way of controlling the behaviour of the crew while in foreign parts. When Andrew Bursie, merchant, of Dundee, arrived at a Spanish port, two of his mariners were ‘takin in be ye Spainyeartis and committit in ward quhair they waderit be ye space of aucht ouks’. Bursie was forced to ‘mak up saill and run bakuart to Flanders for saiftie of himselff, ye said schip and its guids’. His remit had been to buy goods with £100 lent to him by Thomas Jack, another merchant of Dundee, ‘for incres ... the said Thomas bearand the aeventor of the same, as in the band’. Having fled in haste, Bursie ‘tint the mercat at Spaine’, and was challenged in Flanders by the owners of the ship ‘for the damnage sustenit be thame be ye awaycuming of the said schip’. He was compelled to pay ‘the sowme of 2,200 guidlingis[guelders] be special deliverance of the bursses of Middelburt in Flanders’. This had to be met out of the £100 provided by Thomas Jack, who was ‘bundin to abyd the aeventor yrof’. This, Bursie claimed, was ‘bot ane small sowme in respect of the rest quhilk he payit of his awin geir’. Thomas Jack brought an action against him but Bursie had refused to make payment so Jack raised letters of horning against him. In an effort to have these suspended, Bursie pled that ‘gif he had remanit in Spaine, ye said schip and her haill laiding micht have bene confiscat and he committit in ward’. Further more he was uncertain whether he was

163 CS7/190/66r (Dougall v Huntar).
charged to pay in Spanish reals or crowns of the sun or whether 'he suld pay ... be exchange in England or be aryvell in Flanders'. Despite his instant finding of caution, the Lords found the letters of horning orderly and awarded expenses against him.\(^{164}\)

This action is informative in that it shows a partnership with one merchant providing capital to another who was given sanction to trade on the provider of capital's behalf; it shows a network of trade reaching from Scotland to Spain and Flanders under the control of 'owners' and it highlights banking arrangements in the Middleburg money exchange.

Wine was brought from France, as discussed above,\(^ {165}\) and 'polkis'[sacks] of wool were transported from Scotland to men like Mungo Scott, factor in Dieppe.\(^ {166}\) Wine came from Spain to retailers like Peter Wedderburn, of Dundee, who was owed £82 6s 8d for 'furneising Pantoun in meit and drink at command of Ser Walter Ogilvie of Findlater'\(^ {167}\) and Robert Gourlay, of Dysart, who owed Cornelius Inglis, merchant, of Edinburgh, £220 for wine.\(^ {168}\) Eventually the wine reached a destination like the 'laiche' cellar belonging to Mr John Moscrop, advocate\(^ {169}\) or the cellar of the King.

Mr Henry Anderson, merchant, of Perth, was purveyor to the King's sommelier of 'fourette pec of Burdeaux wine to his hienes use and provisioun'. John Nasmyth, surgeon, his Majesty's Customar, was directed by the Comptroller to make payment at the rates paid by other customers. John, earl of Montrose, Chancellor, for instance, paid 200 merks the tun. Somewhat boldly, Anderson raised letters of the Lords and arrested the sums owed to him in the Customar's hands.

\(^{164}\) CS7/190/169v (Bursie v Jak)
\(^{165}\) CS7/192/78r (Hoip v Strang).
\(^{166}\) CS7/190/9r (Ainslie v Bukcleuch).
\(^{167}\) CS7/185/355v (Wedderburne v Lord Finlater).
\(^{168}\) CS7/185/261r (Inglis v Quyte).
\(^{169}\) CS7/192/88v (Fowler v Moscrop).
until caution was found for payment of 700 merks as the price of the claret. The Lords ordered him to make payment.170

In March, Paul Veit, Frenchman, indweller in Bordeaux, sold to James Dalziel, younger, and James Heriot, of Edinburgh, 10 tuns of claret wine, 'guid, loyall and merchetable' to be delivered at Leith harbour. It was to be 'of the same qualitie and conditioun as the wynes that was sauld be him specifeit in ane contract with James Foreman'. In June, Mathias Nicola, Veit's servant and factor, duly arrived in Veit's own ship fully laden with wine to be delivered to Dalziel and Heriot and the remaining merchants to whom he had sold wine. However, instead of delivering the ordered wine to Dalziel and Heriot, the factor 'delyverit to the said James Foirman and his collegis ye choiss of his haill wynes extending to foirscoir fvytenne tunnis or yrby and ye residew left in his hands ar ye outwaillis[rejects]and spilt wynes and not of sic qualitie of guidnes and sufficiencie as ye wynes delyverit to James Foirman'. Gilbert Dick, another merchant of Edinburgh, brought a parallel action against the factor for five tuns of claret and five tuns of white wine 'amangis the quhilk thair suld be twa puncheonnes[large cask] of hie colleart wynes'. Although the ship had arrived in time, the defrauded merchants insisted that the factor should pay them 'the hiest pricys of wyne as presentlie sauld' in compensation, 'as in the contract quhilk beris yat ye samyne suld have bene delyverit betuix the dait and 6 July yrefter or ells yat ye said principall suld pay ye hiest pricys yat wyne suld give'. This they set at £124 for each tun being 'ye hiest pryce that wynes is presentlie sauld for in ye cuntry ... at leist as thay wald haif gottin ... in cais ye samyn had bene delyverit to yame of ye lyk qualitiie and sufficiencie'. The case was advocated from the provost and bailies to the Lords who, 'having consideratioun of ye merits', modified the

170 CS7/191/222v (Andersoun v Nasmyt).
price of each of the 20 tuns to £112 6s 8d, rather less than the sum sought. They allowed £90 for each tun to Veit and £7 10s for the King’s customs, 30s ‘for the schor silver’ and carriage of every tun. They also awarded compensation of £13 6s 8d per tun ‘for ye damage and skayt sustenit be ye persewars’. If the factor paid before December the damage would be assessed at £10 instead. James Foreman as surety for the factor was ordained to make payment along with expenses of £10, doubtless to the other merchants’ satisfaction.

William Melville, sometime skipper of the ‘Robert of Dundie’, was summoned by John Trail, merchant, of Dundee, to appear before the Admiral and his deputes and decreed to pay £41 ‘as for the fraucht with the sowme of 6s 8d as for the coverage[?custom] of ilk tune and ane half tune of Spanis wyne’. He sought to advocate the action to the Lords but it is unknown how the case proceeded.

There would appear to have been middlemen at the port of entry. Andrew Lawson, merchant, of Edinburgh, brought an action against John Williamson, indweller in Leith, for payment of five tuns of wine extending to £1100. A bailie’s decree of 1596 against Robert Gray, merchant, of Edinburgh, for payment to Joseph Marjoribanks of £255 ‘for wyne coist and ressavit be the said Robert fra him’ was transferred ‘on’ John Gray, his son.

Dornick[linen made in Tournai] was imported from the Low Countries to Kirkcaldy. William Mure, skinner, of Kirkcaldy, obtained a decree of the bailies of that town against Abraham Thomson, for delivery of dornick priced at ‘14s for ilk deliverie of 104 elnes Dutche mesor brod dornik and 7s for ilk elne of 64 elnes Dutche mesor narrow dornik’. For this Mure had had to pay £9

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171 CS7/191/360r (Dalzell v Nicola, Frenchman).
172 CS7/185/62v (Melvill v Traill).
173 CS7/187/401r (Lausoun v Williamsoune).
174 CS7/186/343r (Marjoribanks v Gray).
175 CS7/185/150r (Mure v Thomson).
‘in name of custom’. Mure’s letters of horning against Thomson were suspended on the grounds of non-compearance before the Lords of the defender and bailies but this decision may have had something to do with Thomson’s contribution of £4 1ls to the pure’. 176

There is evidence of the presence of Flemings in Scotland in 1600. Flemings were living in Newhaven, 177 having supplanted English workers there as middlemen in the salt trade. When their annual rents were unpaid 300 bolls of ‘gret quhyt salt’ were arrested. 178 James Wilson and his spouse in Edinburgh owed money to Lues Teniervail, Fleming, 179 and the ubiquitous man of all parts, Eustatius Roog, was a Fleming. They were present in Dundee, too. Jaqueis Segait, Fleming, was pursued before the provost and bailies of the town for payment of 80 merks for a horse. Thomas Clayhills, merchant, of Dundee, also referred to as Thomas Fleming, was his cautioner. 180

It was another Clayhills, Peter, craftsman, of Dundee, who was charged by Peter Pollie, Fleming, for payment of £49 6s ‘gret Flemis money .. for merchandice cost and ressavit be him’. He had promised to make payment either to Pollie or to ‘ye bringer of the obligatioun ... at £6 usual money of yis realm for ilk pund Flemis monet and schillingis pro rata’. 181

Debts in Flanders were pursued by widows like Christian Cant, relict of Colonel Harry Balfour, who gave commission to Walter Cant ‘for intrometting with and ingetting of certane comptis and debtis in Flanderis’. 182

Mr Robert Birnie, craftsman, of Perth, had connections with the Scottish Staple at Veere. He had received from John Wallace, ‘factor

176 CS7/190/100r (Thomesoun v Litiljohne).
177 CS7/185/104v (Naper v Burgh of Edinburgh).
178 CS7/185/271v (Park v Eustatius Roog).
179 CS7/185/220r (Barron v Murray).
180 CS7/185/347r (Grahame v Segait).
181 CS7/189/156v (Pollie v Clayhills).
182 CS7/185/2688r (Bischope of Dunkeld v Thomeson).
in Campfell' ten pounds of gold 'in reddy new mintit money to his contentment' in name and behalf of John Leys, merchant, of Edinburgh'. Instead of making payment to Leys, Birnie 'warit it upoun waris sic as steikis of velvet, grosgrane, silk, cullors of taffetie, camrig[cambric]and lain[wool],cullors of silk, cullors of pasements and spyces'. Birnie was called upon to explain why he had not 'maid samekil profeit with the said sowme ... as gif he haid sufferit ye said money to remane in ye said persewaris said factoris hands'. He should therefore make payment to Leys of '£7 scots or everie pund greit of ye said sowme of four scoir ten pund greit'. There were further debts for dyes to account for. It seems to have been normal practice to sanction a merchant to buy goods as freight for the homeward journey or carrying trade while abroad\textsuperscript{183} so the treatment of Birnie may have been vindictive and more to do with his having prevailed on Leys to prepare and give him 'ane fair dwelling ... contening ane hall, four chalmers, ane kitchine and ane sellar lyand in ... John Leyis clois' in contemplation of marriage with Ley's daughter, 'quhilk promeis of mareage the said Robert completit not'.\textsuperscript{184}

Abraham Thomson, 'citiner' of Kirkcaldy, had formed a business relationship with Adam and Andrew Logan, of Easter Granton, in a trading venture to the Baltic. It is likely to have been a partnership because Adam, with his father as administrator to him 'for his entres', obtained a decree before the Admiral and his deputes ordaining Thomson to pay him half of the value of freight of a ship returned from Prussia in 1595. The cargo included 'ane gryt hundreth and ane half' knappels[small split oak boards] at £22 scots, 31 barrels of ash at £11 each, 26 stones of lint, 66 pieces of 'cabbill'[yarn for making cables] extending to 1400 stones in

\textsuperscript{183} CS7/190/169v (Bursie v Jak).
\textsuperscript{184} CS7/187/273v (Leyis v Burnie)
weight, which had been transported from 'Queinsburt' [?Konigsberg] in Prussia to Burntisland. Thomson sought suspension of letters of horning raised against him for non-obedience of the Admiral’s decree and non-payment of the expenses which amounted to 300 merks. Thomson complained that no account had been taken of his 'necessar expenses ... as particularlie sett down'. These included 41 dollars worth of stolen goods, rent of a factor's loft in Queensburgh for 26 weeks costing 52 Hungarian ducats, that is £260, costs of looking after the stored goods, £90, and of transporting Adam's cloth, leather and fox skins from Queensburgh to Danzig, £60, custom dues at Queensburgh, £90, toll at Elsinore, £90, hire of a steersman for 12 weeks, £180, freight charges paid to a Dutchman, £525, dues including customs payments and porters' fees in Burntisland, £100, and money paid in Boston, England, £4 sterling, 'deinde', £40. He had delivered to Adam in Queensburgh 15 lasts of rye sold by Adam subsequently in Newhaven, France, at 80 crowns the last extending in Scots money to 6000 merks and he had handed over 95 Polish 'guiddlingis' extending to 400 merks scots. It was claimed that such 'debursings ar debursit be all merchands'. Mr John Preston of Fenton Barnes and Mr David McGill of Cranston Riddell were appointed as auditors to check the accounts. The Lords considered their report and found Andrew Logan’s letters of horning upon Thomson orderly. The Admiral’s decree for payment by him of 1800 merks was ordained to stand.185

A colony of Scots in Bergen can be inferred from the records. James, son of William Logan indweller in Bergen, charged John Rowan, craftsman of Edinburgh, for delivery of a coffer containing writs and evidence so that he could 'obtene himself servit as narrest lauchful air to umquhile Abrahame Dewar' his 'guidser'. He wanted to

185 CS7/186/102r (Logane v Thomsoun); see App., II, 18.
recover all rents and the lands 'quhairin his umquhile guidser deit last vest and seasit'.

Andrew Riddell, 'burges of Birren'[Bergen, Norway], obtained a decree before the Admiral and his deputies against Harry Watson also in Bergen, charging him to restore three kettles of copper weighing 294 pounds and worth £139 13s 4d. Watson's goods were about to be poinded when he was on the point of setting forth for Norway so he sought reduction of the decree on the grounds of the Admiral's not being competent to judge in a matter 'beyond sey in Norroway'. Furthermore, he had already been exonerated by the burgh masters of Bergen. He had not been granted enough time to procure proof of this because 'the Admiral's depute refusit to gif ony longer delay nor 40 days quhilk importit ane impossibilitie to him to do as to saill to Norroway and return in yat space'. Also, Andrew Riddell's debts to him outweighed his to Riddell, and debt should be set against debt 'de liquide in liquidum'. He consigned the money, however, and so gained suspension of the letters of horning.

It was the same Harry Watson of Bergen who advocated to the Lords another action before the Admiral and his deputies. He had been charged by Abraham Abercrombie, sadler, of Edinburgh, as assignee constituted by James Rig, with the 'spoliation fra ye said James of ane schip callit 'Ye Angell' with hir haill ornamentis and appeirating togedder with certane guids and geir allegit being within ye samen'. The ship, valued at £3000, and containing its cargo of wood from Bergen, had been stolen from the haven and shore of Leith. It transpired in court that in September 1599 the ship had been sold to Watson by Rig by a contract 'beirand that it sould be leasum to the said Harie to mell at his awin hand with the said

186 CS7/191/306r (Logane v Rowane).
187 CS15/77/17 (Watsoun v Riddell; see App.,19a.
188 CS7/189/252r (Riddell v Watsoun); see App.,II,19b.
189 CS7/189/192r (Watsoun v Abircrumble).
ship in cais he ressavit not the pryce yrof'. The Lords achieved a settlement and 'exonerat ayer of the saids pairteis contracteris'.

Two craftsmen and an accomplice, indwellers in Tain, were put to the horn at the instance of Abraham Edward, of Bergen, who owned 'The Jonas' for spuilzie, wrongful intromission and not restoring the ship conform to the Admiral's decree. Whether the ship had foundered or traded with the inhabitants of Tain is not clear.

There were many connections with England. Walter Reid in Preston Pans sold salt, salt fish, ling and killing [cod] to England since debts to him were expressed in sterling. Ships seem to have called in at Boston in East Anglia for English cloth and Abraham Thomson claimed to have been imprisoned there for a month for debt.

William Strang, craftsman, of Anstruther, sailed with 'certane uyeris awneris of ye schip callit ye 'Marie Katheren' to London' and thence to Yarmouth to transact business with George Corner, brewer there. When Turnbull was not repaid the initial 200 crowns they had borrowed from him, he was forced to obtain the Lords' decree to comprise their lands to the value of the debt because 'Robert Elder, messinger ... culd find nane strenyeable [guids] outwith lokfast lumes'. William Strang sought to frustrate the pursuer 'of all payment' by not entering as heir to his dead father but the Lords decreed Turnbull to have good right 'to appryse the foirsaids aiker lands as gif William Strang had bene speciallie infeft yrintil'.

Inevitably litigation arose between Scots and English. Robert Home of Eyemouth granted that he owed Lionel Thomson, craftsman, of Berwick in England, £120 money of England 'be his band and obligatioun made and seillit and subscryvit with his hand after the

190 CS7/193/16v (Abircrumbie v Watsoun); see App., II, 20.
191 CS7/191/105v (Smyt v Ross).
192 CS7/191/231v (Reid v Hall).
193 eg CS7/186/102r (Logane v Thomsoun).
194 CS7/186/102r (Logane v Thomsoun).
195 CS7/188/202r (Trumbill v Strang); see App., II, 21.
forme of the realme of England'. James Lawrie, merchant, of Edinburgh, was made assignee to Thomson's action against Home, but the outcome is unknown.196

William Hunter, tried to exploit his status as an indweller in England. Mark Dougal, merchant, of Edinburgh, had obtained a decree before the provost and bailies of Edinburgh against him for non-payment to him of £375 scots for linen sold in Spain. He, his 'wyffe'[the word was probably used advisedly]and family made 'yr actual dwelling and residence in the toun of Bristo within the realm of England'. He claimed that though born 'Scottisman' he had 'the persone of a stranger' and was thus entitled to have his case heard by the Lords or by the Dean of Guild and his council 'speciallie appointit to cognosce and desyd in all comptis and reknings of guids to be maid be ane factor and commisiouner' and his case hinged on a 'merchand blok'. The Lords, however, did not hesitate to remit the action back to the provost and bailies.197

Trading connections between Dundee and London gave rise to litigation too. John Ogilvy, merchant, of Dundee, owed a debt of £9 sterling by obligation to Henry Sevedale, a London draper, along with other debts for merchant wares. He was ordained to make payment 'efter the forme and tenors of the ... letters of attornay'.198

Problems arose over the jurisdiction of various courts. The Commissary of St Andrews, by a decree of his court, charged Adam Malice, merchant, of Perth, to pay English money estimated to 150 Scottish merks to William Robertson, of Dundee, as assignee to Mr Carpenter, merchant in London. Malice advocated the matter either to the Dean of Guild of Perth and his brethren or to the Lords, on the grounds of its being an action on behalf of an Englishman over a debt for English money contracted in London between merchant and

196 CS7/186/249v (Lawrie v Home); see App.,II,22.
197 CS7/190/66r (Dougall v Hunter).
198 CS7/186/35ir (Cromwall v Ogilvy); see App.,II,23.
merchant ‘and sua is civill and profane for merchandice compts’. The Lords remitted it back to the Commissary ‘in respect ye said William Robertson, personallie present, was content to refer befoir ye said Commisser of Sanct Androis his said clame’.  

Currencies and Finance

Foreign currency and exchange rates were an important aspect of trade and travel in foreign parts. Currency deals gave rise to litigation, though it is sometimes difficult to distinguish between commercial debts in a foreign currency and foreign exchange transactions. There is no way of knowing how often credit in the form of bills of exchange or bonds was used.

John Crichton of Innernytie, a Scotsman abroad, owed several straightforward debts. He owed Cowstaine Durie ‘merchand of clayth at Pareis’ 200 crowns of the sun for ‘clayth guid and loyall quhilk he did ressave for ane nise price’ and for ‘lent money to help him in his necessitie’. Captain Pentland was cautioner for that unpaid debt and for his unpaid account for 47 crowns of the sun owed to Marie Lameir, widow of the distiller burgess of Calais, for a month spent in her lodging. A further 20 crowns were borrowed from the Captain in St Omer. This information came from Pentland’s will written ‘be ane famous noter at his command at the Reid Chalmer ane leig frome Calais’.

The business interests of merchants and craftsmen, however, involved financial arrangements. John Anderson, tailor, of Edinburgh, made an obligation containing 1000 francs usual money of France which were to be paid to Robert Johnston, ‘burges of Edinburt ... within the toun of Pareis ... and failyeing yrof to pay 25s usual money of this realm for ilk franc and £40 of expenses’.

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199 CS7/191/92r (Rotsoun v Malice).
200 CS7/187/413v (Eufame Littiljohnne v Lord Innernytie).
201 CS7/187/355v (Littlejohn v Seytoun).
202 CS7/190/368v (Henrie v Johnestoun).
Visitors like Robert Montgomery of Skelmorlie who owed Edward Donaldson, merchant, £369 by obligation 'he being in Paris in Franse the tyme of the making of the saids letters obligatours', must have needed francs too.  

It is clear that someone was dealing in French currency. It may have been Thomas Wilson and James Shaw, both merchants of Edinburgh, because they were pursued by William Fullerton of Ardoch for non-payment to him of '24s for ilk frank of the sowme of 1000 franks money'.  

James Lord Ogilvy was denounced rebel in 1597 by Mr James Balfour, dean of Glasgow, and Mr William Bannantyne, advocate in the Parliament of Paris, for non-payment to them as procurators constituted by James, archbishop of Glasgow, of '333 frankis 6s 8d'[perhaps a mistake on the part of the clerk] 'for the yeirly profit and interest of 4000 frankis' so one cannot tell if allowance was made for fluctuations in exchange rates.

In a different action the same Mr William Ballenden[an alternative rendering of his name], advocate in the Parliament of Paris, along with George Hamilton, merchant, was decerned by decree arbitral in 1588 'to have full ryt in and to ye sowme of £90' addebted to that merchant's father by Henry Christie, merchant, conform to an obligation made at Danskine[Gdansk, Poland]. This was to have been paid on Christie's return to Scotland. The Lords decerned him to make payment within 6 days conform to the decree arbitral.

Merchants acted as the currency dealers. Some involved in trading may simply have had a store of currency. Alexander Smith, craftsman, of Dundee, obtained a bailies' decree against Walter Rankin, skipper, of Dundee, and John Fullerton, merchant, of that town, for

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203 CS7/187/142r (Robert Donaldsoun v Lord Skelmurlie).
204 CS7/185/185r (Foullartoun v Wilsone).
205 CS7/190/2v (Lord Ogilvey v Lord Thesaurer).
206 CS7/189/265r (Ballenden v Crystie).
payment to him of 49 crowns, 6 sous and 4 deniers as well as £18 sterling 'for divers causes'. Another Dundee merchant, Andrew Bursie, was instructed by Thomas Jack, of Dundee, to repay his loan of £100 in Spanish reals.

Others like John Arnot, merchant, of Edinburgh, perforce dealt in currencies as ancillary to their trading activities. He owed 48s sterling for 'ilk tun of 90 tuns of salt'; 100 crowns at 10s scots for each shilling sterling and 50s for each crown; 706 ducats at £3 6s 8d the piece. His trade, patently to England, involved on one occasion, '203 scoir pair of schankis, 25 dussone of calf skynnis, 24 peces of cowgraine[grosgrain], 2 barrellis of herring, 18 dussone of parchement skynnis and 10 weyis[a local measure of weight]of salt, price of ilk wey £7 10s sterling'.

Others like Andrew Lyall, who seems to have been a dealer in sterling, had transactions with Scotsmen like Patrick Cochrane 'havand power of William Barnet, Inglisman' or with John Becket, Englishman, 'as haifand power of his maister'. Lyall’s son-in law, Patrick Dykes, 'being his servand ... was band with him in sundrie obligatiounis' so when Lyall failed to honour his obligations he fled 'out of this cuntie' and his creditors warded Patrick in Edinburgh tolbooth.

John Leys, younger, merchant, of Edinburgh, owed Michael van Merbek, merchant in Middleburg, '247 punds 16s greit Flemys money ... at £6 money of this realme for everie pund greit of the Flemis money' within eight months of making the obligation in 1598. Leys 'was content to pay the profeit and entres for the samen' according 'to the prices of the burs'. By the time of the action in 1600 Leyis was owing interest, converted into £138 money of this realm. There

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207 CS7/186/399v (Smyt v Rankyne).
208 CS7/190/169v (Bursie v Jak).
209 CS7/189/105v (Arnot v Forman).
210 CS7186/235v (Beckat v Dyikis); see App.II., 24.
must have been financiers with whom Leys dealt in Middleburgh and merchants must have been using obligations as bills of exchange.  

**Money-lending**

As discussed above there is much evidence to show that merchants and craftsmen were accustomed to making use of land in their financial transactions through becoming wadsetters of a debtor’s land pledged in security and perfected by sasine; thereby they enjoyed the fruits in lieu of interest on the debt. More convenient from the financial point of view were similar arrangements for money annual rents. Wadsets could be assigned so some merchants and craftsmen became financially involved in land in this way. These transactions were temporary, terminating on the reversion of the land to its owner. Alternatively they rented land as tacksmen for set periods of time. The most ambitious invested in land by feuing it, perhaps by buying it, or sought to acquire it through litigation, for instance seeking reduction of a contract on the grounds of its having been made on death-bed, or by purchasing or being gifted an escheat by the King or by the Duke of Lennox. Whether in permanent or temporary possession, they could become tackers themselves and lease out land for a return.

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211 CS7/190/55v (Michael Merbek v John Leyis younger).
212 eg Henry Adamson, burgess of Perth; CS7/190/308r (Huntar v Adamesoun).
213 eg Thomas Ross, merchant burgess of Edinburgh; CS7/186/145v (Ross v Bailleie).
214 eg Edward Loch, merchant burgess of Edinburgh; CS7/190/228v (Loche v Johnestoun).
215 eg Robert Jowisie, feuar of Whitehouse; CS7/186/333v (Somervell v Lord Balcleuch).
216 eg Robert Mowbray, burgess of Edinburgh (CS7/186/425r (Naper v Gourlay).
217 eg John Cunningham, goldsmith burgess; CS7/186/194r (Patoun v Cunningham).
218 eg George Foullis, goldsmith burgess of Edinburgh; CS7/190/22r (Lord Advocat v Bawtie).
219 eg John Cunningham, goldsmith burgess of Edinburgh; CS7/192/72v (Conynghame v Home).
220 eg Henry Nisbet, merchant burgess of Edinburgh; CS7/186/459r (Nisbit v Broun).
Equally, there is abundant evidence to indicate that both merchants and craftsmen were lending money in Scotland in 1600. Such activities arose out of allowing credit for unpaid debts for goods. A country merchant like John Slewman in Wigtown was owed £993 8s 4d, a substantial sum, and a further £80 by John Leys, the Edinburgh merchant, for skins. Slewman also traded locally selling merchandise such as cards and tar, soap, iron, thread, silk, linen, candles, salt and dye to sheep-farmers. An inventory of debts owed to him reveals amounts due for specific articles but there are also debts which are for 'claith and borrowit money'. Others are unequivocally for '£12 lent money' and '£68 6s borrowit money'. In another example Patrick Lindsay, craftsman, of Dunbar, charged for the repayment of '£100 money with 4 crowns of the sone lent ... at the special request and direction ... of David Lindsay of Vane.

The 2000 merks principal with 300 merks 'for expenses expresslie liquidat' owed by Robert Bruce younger of Petlochy to James Matheson, maltman, in Leith, is probably too round a sum to be interpreted as an unpaid bill for malt; it is likely to have been borrowed money. Archibald Geddes, younger, merchant, of Edinburgh, lent 315 merks by registered obligation. The obligation for £280 borrowed by John Brown in Eyemouth from William Napier, merchant, of Edinburgh, is typical. These were small sums, however, compared with the £1,341 13s 4d owed to David Jackson, a local merchant of Perth, by Dame Agnes Sinclair, countess of Erroll, and Alexander Gordon of Straloch, her spouse. Clearly merchants who were willing to allow customers to run up credit accounts or lend money were not entirely confined to Edinburgh.

221 CS7/192/138v (Lyndsay v Leys); see App., II, 25.
222 CS7/185/123r (Lindesay v L. Vane).
223 CS7/190/138r (Lord Thesaurer v Bruce of Petlochy).
224 CS7/185/73v (Leirmont v Geddes).
225 CS7/186/265r Naper v Dowglas); see App., II, 26.
226 CS7/189/119v (Jaksoun v Lady Arroll).
It was not only men of merchant or craftsman status, however, who sold goods or lent money. Simon Loutfoot, sometime in Pittenweem, was owed money by different people, £404 10s for seed oats, horses, corn and beir; £86 16s for beir and salt meat; £56 for oats and beir; £126 for a black horse; but 200 merks and a further 110 merks had been 'borrowit be obligatioun' by Mr George Lundy, his spouse and son. Loutfoot's writs and evidence had been stolen from him and he had an action of spuilzie and ejection against Thomas Dunning in Wester Creiffauchter and his colleagues depending before the Lords so it is possible that his trading activities were resented. Mr David Ayton, advocate lent 'auchtene hundreth merks as principal togedder with sexescoir pundis as for ye yeirlie annuelrent yrof'. Robert McAulay, pensioner of Cambuskenneth, lent John, Lord Glamis '100 merks guid and usual fyne gold and money'.

The existence of a cautioner in a debt which does not allude to merchandise is strongly suggestive of money-lending merchants, most of whom worked in Edinburgh. Dame Mary Campbell, countess of Menteith, her husband and her cautioner, were ordained to repay to Robert Scott, merchant, of Edinburgh, £140 'mentionat in ane obligatioun', and Alexander Hunter, merchant, of Edinburgh, was pursued as cautioner in an obligation in which Margaret Reid and Andrew Liddell now her spouse obliged themselves to James Boyne in Leith for £122. John Dobie, merchant, of Edinburgh, had contacts outside Edinburgh because £52 6s 8d had been 'borrowit and ressavit' by William Dick in Newton of Auchindrain.

If merchants and craftsmen were lending, they were also borrowing. Mungo Fairlie, merchant, and David Heriot, goldsmith, of Edinburgh, granted that they had 'borrowit and ressavit fra umquhile

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227 CS7/186/153v (Loutfute v Lundy).
228 CS7/185/203v (Aytoun v Ramsay).
229 CS7/189/143r (Scott v Lady Menteith).
230 CS7//185/352v (Reid v Hunter).
231 CS7/190/309v (Dobie v Dick).
Peter Dischingtoun, sumtyme chalmerlane of the abbay of Coldinghame the sowme of £1000'. As often happened, arrangements were made for repayment by instalments.232

Rents were expressed in and seem to have been paid in kind. This suggests a non-monetary, stagnant economy with general lack of liquidity. Nevertheless, there is abundant evidence to show that some were able to produce large amounts of specie when required to do so. Debtors tried to redeem lands with purses filled with actual money. Occasionally, sums of money destined for redemptions of land were deposited with merchants. Thus reversion money of '1150 merks money' was 'consignit, deponit and put in the hands, custodie and keiping' of John Shewane, craftsman, of Dundee, as Treasurer of Dundee.233 Some redemptions involved payment of a single coin such as 'ane roiss nobill of gold'234. This must have been a token payment because it had been issued in James's fifth coinage of 1588, at a current value of £7 6s 8d and had continued to be struck until 1590.235 Although its value was £6 13s 4d in 1591,236 its value in 1600 is unknown. It was portable so not a security risk. Most redemptions implied the actual production in the appointed place of greater sums such as 500 merks,237 or £356 6s 8d,238 or '1000 marks money of yis realme current for ye tyme, offerit, numerat and deliverit to him for the lauchful redemptioun, lowsing and outquhying fra him, his airs and assignayis of the lands of Incheok and Bogsyde'.239 The instruments recording the offering of redemption

232 CS7/187/211v (Edingtoun v Cowper).
233 CS7/190/257v (Ramsay v Schewane).
234 CS7/187/277r (Johnne Ross of Ochttargavin v his Dochter).
236 Cochran-Patrick, R. W. of Woodside, Records of the Coinage of Scotland from the Earliest Period to the Union, Edin., 1876, xciv.
237 CS7/190/137v (James Usheant v Provost and Bailleis of Dunfermline).
238 CS7/186/257r (Hereot v Gairdin).
239 CS7/186/137v (Mr of Lidsay v Mr of Ogilvy).
money to a creditor who refused to accept payment make it sound as if actual cash, however great in amount, was offered.\textsuperscript{240} For instance, procurators in the name of Mr Gilbert Gordon of Sheerness ‘causit compt, nombir and offir opinlie the said sowme of seven thousand merkis money foirsaid togedder with the sowme of seven hundreth merkis as for ye prices of ye haill annuelrent’.\textsuperscript{241} Also lump sums like 1050 merks were often ‘consigned in the hands of Adame Cowper, clerk’, or 1100 merks ‘in the hands of the deceased Mr Alexander Gibsoun ane of the ordiner clarkis’ surely among the most trusted members of Edinburgh society. In one action, Gibson’s son would ‘in no ways deliver it to ye persewar’, before the Lords would suspend letters of horning.\textsuperscript{242} 630 merks were even carried into the tolbooth of Edinburgh for delivery to a prisoner.\textsuperscript{243}

It is possible that small sums of money could have been hoarded but merchants supplied the large amounts. Merchants of Edinburgh were clearly functioning as money-lenders. Thomas Finlayson lent Mr Robert Douglas of Glenbervie 1300 marks ‘in fyne gold of the conyie and price of fyve pund peces now current ... haifand passage within this realme’ and £200 ‘for liquidat expenses in cais the persewar wer compellit to registrat the saids letters obligatours’.\textsuperscript{245} Andrew Richardson lent 1000 merks money,\textsuperscript{246} rather less than the ‘four thousand and fyve hundreth merks principal togedder with ten merks as for the annuelrent and profeit of everie hundreth merkis yrof ... with ane hundreth pund of liquidat expenses’ lent by George Cumming to James Crichton of Carco.\textsuperscript{247} One reference makes it clear that the money lent was expressed in a bond. Edward Johnston lent the master

\textsuperscript{240} see CS7/186/257r (Hereot v Gairdin); see App., II, 14.
\textsuperscript{241} CS7/193/1v (Laird of Lochinvar v Lady Cassellis).
\textsuperscript{242} CS7/186/140v (Hamiltoun v Hamiltoun).
\textsuperscript{243} CS7/186/145v (Ross v Baillie).
\textsuperscript{244} CS7/185/77v (Bischop v Nesbit); see App., II, 27.
\textsuperscript{245} CS190/81v & CS7/190/157v ((Ffinlastoun v Erl Angus).
\textsuperscript{246} CS7/185/75v (Richartsone v Richartsone).
\textsuperscript{247} CS7/185/172r (Cunninghame v Lord Sanquhair).
of Gray 'four thousand tua hundredth and fiftie merkis contenit in ane band'.

Such sums were lent to landowners - since they were designated as 'of' - because ultimately recourse could be made against the land.

A refinement of money-lending was cross book-keeping. Robert Jowsie used a debt owed to him by Lord Sanquhar to cancel a debt owed by him to Isobel King as relict of Robert Danielston, tailor, of Edinburgh.

There is some evidence of partnerships among money-lending merchants analogous to the partnerships in overseas trade. Like them, these may have been temporary arrangements. Clement Cor, merchant, of Edinburgh, was charged as cautioner to an obligation in which Alexander Duff, James Nicol, bailie, Clement Cor, Robert Jowsie and John Gourlay, merchants, and Thomas Acheson, Master Coiner had borrowed 'four thousand merks in fyne gold and silver without ony layit money'[alloyed metal] from Henry Nisbet, merchant, of Edinburgh.

The King was notoriously short of money; he was unable to pay his master flesher. The Octavians had been appointed in 1596 to manage his finances. They revised customs rates and introduced import duties in 1597 but by the end of that year the Octavian period had come to a close. The King became more than ever dependent on credit and regular taxation. Legal penalties provided some income. He used escheats to reward or simply pay his servants but he also used escheats and remissions to provide income. In 1598 James Stewart 'obtenit the gift of escheat of James Cheyne of

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248 CS7/185/298v (Lord Restalrig v Johnstoun).
249 CS7/190/285r (King v Lord Sanquhair).
250 CS7/186/323r (Mr Alexander Levingstoun v Duff).
251 CS7/190/222r (Robertsoun v Gordon).
253 and Lynch, Michael, Scotland ; A New History (Century, 1991), 235.
254 eg Mr Patrick Galloway ; CS7/190/378v (Mr Patrick Galloway v Tenants of Scone).
Straloche disponit to him be his majestie and his hienes thesaurer for 250 merkis of compositioum'. In the same year 'there was a remissioun purchast and obtenit be and to ... John Keithe for certane crymes contenit yintill quhilk was past annand subscryvit be his Majestie and Walter Stewart, Prior of Blantyre, his Majestie Thesaurer for ye tyme for ye sowme of 1000 merkis of compositioun'. Contraventions of lawburrows were also a satisfactory source of income. Thomas Lyall, principal, and William Gordon of Geight, his cauterer, incurred the penalty of 2000 merks because they had 'contravenit the obligatioun and act of cautiounrie and lawburrows'. Half had to be paid to the King and half 'to the pairtie grevit'. Those who transgressed against the act of October 1581 'anent ye abuse of sum landit gentilmen and uyeris forbeiring to keip hous at yair awin dwelling places' had to pay a fine. Robert Fairlie of that Ilk was decreed to 'have incurrit the pane of 300 merkis' for having 'burdit himself in the place of Kerasland' thereby failing in 'making his ordinar dwelling at his awin dwelling places of Ffairlie or Drumsoy'.

Several measures were taken by a convention of estates in 1598. In June 'his majestis outward and Inward cutumes as the impostis of the wynis' were to be 'set in tak' for five years by Sir George Home of Wedderburn, comptroller 'to sic personis as will geve maist' and the Comptroller was to take surety for payment of the duties contained in the tack. The right of coinage, previously let to the Corporation of Edinburgh at 1000 merks a week, was let to a craftsman, Thomas Foullis [sinker or engraver at the Mint from 1588

254 CS7/187/197r (Erle Merschell v Lord Thesaurer).
255 Ibid.
256 CS7/187/236r (Campbell v Lord Murthill).
257 A.P.S., III, 1598, par. 21, 222.
258 CS7/190/286v (Lord Thesaurer v Burdeonris) ; see App.,II,28.
259 CS7/190/288r (Lord Thesaurer v Lord Ffairley).
260 A.P.S., IV, 1598, 165.
to 1598\textsuperscript{262} and to a merchant, Robert Jowsie, at a rent of £5,000 a year.

At the time Foullis and Jowsie were being pursued for £145,700 and 'annual of the samyn' and the King who was their debtor was thereby attempting to reimburse them because they 'haif not onlie deburst the maist pairt of thar awin moyane and guidis in his hienes service bot also hes contractit mony grit debtis for furnesing of his majestie at divers tymes in Jowellis, cleything, reddy mony and uther necesseris. He wanted 'to sie sum ordour takin for ... the payment of the creditouris to quhome the saidis Thomas and Robert ar addettit conforme to ye roll producit.' Money-lending had veered out of control, perhaps because the King could not meet his debts. It looks as if the King was both shoring up a failing money-lending partnership and revitalising the Royal Mint. The Royal Mint, called 'Thomas Aitchisounes Ludging' was in such a ruinous state in 1597 that no coins had been minted.\textsuperscript{263} Foullis and Jowsie were to intromit with £30,000 for 6 years, £25,000 of which was to come from the Comptroller and be provided out of 'the rents of his offices' and £5,000 from the Treasurer 'for the dewartie of the tak of ye cunziehous set to them'. The £30,000 was to be divided amongst their creditors 'for payment of thair debtis proportionallie'. None of the creditors was to take legal action against Foullis or Jowsie.\textsuperscript{264}

The dual purpose scheme did not work. By 1600, Thomas Foullis and Robert Jowsie had assigned their tack to James Foullis elder, of Colinton, and Mr James his son. Samuel Burnett had obtained a decree of the Lords against Sir George Home of Wedderburn as Collector, Alexander Hunter, a merchant, and Thomas Acheson, as master of the Mint, ordaining them 'to remove from the two tenements of land

\begin{itemize}
  \item \textsuperscript{262} Cochran-Patrick, R. W., \textit{Records of the Coinage of Scotland}, (Edin., 1876), List of Officials.
  \item \textsuperscript{263} see Cochran-Patrick.
  \item \textsuperscript{264} A.P.S., IV, 1598, 166-168.
\end{itemize}
pertaining to Thomas Achesoun'. They sought suspension of letters of horning for various reasons, not the least of which was that 'gif the saids persouns, assignayes yrto be interruptit be ye said decreit of removing in bruiking of ye said hous with[in] the yeirs of the said tak the same may interes his hienes and hinder his hienes profiteit'. One tenement was 'callit of auld the cardinalis ludgeing, now pertening to the said thomas achesoun as the maist meit and commodious hous for that purpois in edinburt'[that is, for the mint] and the other tenement, which was in Blackfriars’ Wynd, had been 'set to the societie, quhairof the said Samuel is ane, conforme to ane tak'.  

Is this a reference to a consortium of money-lending entrepreneurs? Robert Jowsie and Thomas Foullis had clearly been successful to begin with. Evidence of Thomas Foullis, goldsmith, of Edinburgh, having lent large sums of money is not hard to find. Sir William Keith of Delny 'grantit him to have borrowit and ressavit fra Thomas Foullis sax thowsand twa hundreth fortie ane pundis money and band and oblist him, his airs and assignayes at ane certane day bygane specifeit yrintil and failyeing yrof to infeft him and his foirsaidis in ane yeirlie annuellement of sax hundreth xxv lib. money'. This unpaid obligation was transferred 'in' James Foullis elder of Colinton and Mr James, his son before bringing an action against Sir William’s successor titulo lucratino.  

Equally, one finds Robert Jowsie assigning to William Napier, ‘thrie thowsand merkis contenit in ane contract[taking the burden of four sisters as his heirs]and appointment betwix William Schaw Mr of Work to his Majestie and Patrick Moscrop of Castiltoun’.  

Whether Foullis’s loan to Delny or Jowsie’s to Napier were individual contracts or transactions by one acting in the name of

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265 CS7/186/160v (Mr Conyeor v Burnet); see App., II, 29.  
266 CS7/185/232r (Lord Colingtoun v Keith); see App., II, 30.  
267 CS7/185/399v (Moscrop v Jousie).
partners is not clear. However, between 1594 and 1596 Foullis and Jowsie jointly as principals, with John Gourlay, customer, and Thomas Acheson, master coiner, and Alexander Hunter as cautioners, in registered obligations 'band thame to refund and pay' 2500 merks with £100 of liquidat expenses to William Wood in Leith and his spouse; 2000 merks to Henry Fairbairn and his spouse with 200 merks of liquidat expenses; 7000 merks to John Tors of Inverleith with 700 merks annualrent; 3000 merks with £100 liquidat expenses to David Bryson, messenger and his spouse; to 'repay' to Abrahaame Crichton 1000 merks with annualrent of 100 merks 'together with uyr sowmes to divers creditors'. Hunter as cautioner was 'trueblit be the saids persouns for payment ... and oft requyrit the pricipal pairteis to mak payment to him' but 'in manifest defraude of ye complener and uyris yr creditouris hes absentit thamselffis and ar fugitives furt of this realm'. Thus no redress of horning or poinding was open to him. Also 'as is notourlie knowin ... in respect of the said Robert and Thomas yr estait and inhabilitie' the complener 'is and will be alluterlie frustrat and defraudit of the sowmes of money respectivlie foirsaid and of his said cautioum ... except the tak and assedatioun ... of the cunziehous'. He went on to argue that he should be 'surrogat in ye full place and ryt yrof' in their place. These obligations savour of receipts for ventured capital. Even more convincing is the printed 'roll' of their creditors. Investors of venture capital include ladies like Lady Eglinton and Lady Cassillis, lairds like the Laird of Inverleith and the Laird of Innerwick, writers to the signet like Mr John Laing, who sealed warrants, advocates like Mr James Harvie and Mr Thomas Craig, possible merchants like Edward Johnston, military gentlemen like Captain Waddell, 'the bailie in the water of leith', perhaps as representing some group since un-named, institutions like
'the cumpny of tailyeors'. Money was also invested on behalf of children in the hope of providing future security and setting their inheritance to profit.\textsuperscript{268}

Craig, advocate, was involved as an investor; he may even have been a partner in the consortium, perhaps as a legal adviser. He certainly lent money. Craig as principal, with Robert Jowsie and Archibald Johnston, merchant, of Edinburgh, had lent £1000 to Sir William Keith of Delny.\textsuperscript{269} Whether involved in a business sense or not, Craig 'comperit personallie for himself and as procurator for George Foullis, goldsmith, and Johne Buchannan, writer', all of whom had ventured capital, to defend in Hunter's action. Hunter was decreed to be surrogated in their place with the exception of firstly, Thomas Foullis's right and assignation to James Foullis, elder of Colinton, and Mr James his son who had become cautioner for Thomas and secondly, the 4000 merks due to the Secretary by Jowsie and thirdly, the £3000 and 300 merks owed to George Foullis and fourthly, the 3000 merks owed to John Buchanan, writer. These debts were to be paid out of the 'reddiest profeit'.\textsuperscript{270}

Neither Craig nor Jowsie were strangers to investment in land nor to the peripeteia of fortune. In 1587 Craig and his spouse had delivered 7000 merks to Francis, earl of Bothwell, in return for an annual rent of ten chalders of victual from lands in the lordship of Hailes and others in the barony of Coldingham but Bothwell's escheat on his forfeiture for treason was gifted to Mr Gilbert Gordon of Sheerness.\textsuperscript{271} Jowsie had feued the lands of Whitehouse but later, perhaps due to financial straits, accepted 6000 merks for infefting Bartholomew Somerville, merchant, of Edinburgh, in an annual rent of 600 merks 'to be upliftit furth' of these lands.\textsuperscript{272}

\textsuperscript{268} A.P.S., IV, 1598, 168.
\textsuperscript{269} CS7/186/218v (Mr Thomas Craig v Keith).
\textsuperscript{270} CS7/186/330r (Huntar v Ffowlis); see App., II, 31.
\textsuperscript{271} CS7/193/1v (Laird of Lochinvar v Lady Cassillis).
\textsuperscript{272} CS7/186/333v (Somervell v Lord Balcleuch).
It was the lands of Whitehouse which had contributed to the
downfall of both Jowsie and Thomas Foullis. On 15 August 1597,
Foullis had been denounced rebel at the instance of Janet Gavillock,
relict of Walter Cullen, baxter, of Edinburgh, and David Liberton,
also a baxter, for non-payment to them of 4000 merks 'conform to the
requisitioun maid to him for that effect and failyeing yrof for not
infefting lauchfullie and sufficientlie be charter and seasing the
foirsaid personis in ane annuelrent of 80 bolls beir ... and for
not fulfilling of ye remanent heids of the contract and appointiment
15 Junii 1596, registrat in ye buiks of Counsall 6 August 1597'. On
1 March the esceat of Foullis's goods and liferent were declared to
have been gifted to Mr Thomas Henderson, one of the commissaries of
Edinburgh.273 On 23 May, Mr Thomas Henryson[sic], in a virtual
repeat of the Foullis entry, was declared to be donator to the
esceat and liferent of Robert Jowsie who had been denounced rebel
and put to the horn 'for non-payment to Janet Gavillock of 4000
marks conform to the requisitioun made to him' and 'for not
infefting hir in ane annuelrent of 80 bolls beir ... fra the lands
of Quhythous'.274 This is confirmation of their partnership.

In what may be but one of many such actions, Mistress Margaret
Hamilton, as assignee constituted by the executor testamentar to the
Countess of Eglinton, claimed that Robert Jowsie and Thomas Foullis
as principals and John Gourlay, merchant, and George Heriot,
goldsmith, as cautioners, 'band them conjunctlie and severallie to
have payit to umquhile Jeane Hammiltounn, Countess of Eglintoun, the
sowme of thrie thowsand merkis ... and fortie punds of liquidat
expenses in cais of registratioun'. Craig and John Nicholson for
Heriot argued that 'Robert Jowsie and Thomas Fowlis and thair haill
cautiouners and sureteis' were 'under his hienes special protectioun

273 CS7/186/288r (Advocat v Ffowlis).
274 CS7/190/36v (Lord Advocat v Jonssie[sic]).
and mentionence to be unhurt, untrublit, chargeit or molestit for payment of quhatsumever sowmes of money or dettis quhill the 25 August nixt to cum dischargeing all juges quhatsumever of proceeding agains thame in the meantyme'. Nevertheless, the Lords found the letters of horning 'ordourlie proceidit'.

Thus 'enterprises of great pith and moment' lost 'the name of action' The time was not ripe for investment in a money-lending institution. Rumour of its impending collapse could have fuelled it, but this is speculation.

Conclusion

Litigation reveals the land-owning pretensions of ambitious merchants and craftsmen, either through using wadsetted land as security for debt or, like Robert Jowsie, merchant, of Edinburgh, who became feuar of the lands of Whitehouse, as a straightforward purchase of land for a perpetual payment. They either purchased or were rewarded with escheats and they set tacks or became tackers. Capital was invested for an annual rent of grain, or for money interest.

Litigation also discloses internal and external networks of trade and hints at what must have been underlying financial arrangements, bills of exchange, bonds or specie. The picture is far from complete however. There is no litigation over coal, one of the expanding sectors, nor does Aberdeen, whose trade had dropped by a third by 1600, figure in the records, though by the 1590s Aberdeen merchants spent much of the year based in Leith or Dundee so the

275 CS7/186/354r (Maistress Margaret Hammiltoun v Heriot); see App.,II,32.
276 Hamlet',III,1.
277 CS7/186/333v (Somervell v Lord Balcleuch).
278 eg CS7/186/459r (Nisbit v Broun).
part they played may be concealed. The dominant position held by Edinburgh merchants\textsuperscript{281} is confirmed, followed by that of Dundee and the port of Burntisland.

 Particularly striking is the dynamic entrepreneurship of merchants and of the craftsmen who strove to emulate them. Their trading tentacles spread to the Baltic and Norway, mainly for capital goods, to France and Spain for wine and to France for salt and luxuries. Their ships, funded through partnerships, took salt to England and to the west of Scotland and hides, skins and furs to all countries. Skins were purchased by merchants like John Leyes who owed a merchant in Wigtown £1000 for ‘skynnis cost and ressavit be him’ and a further £80 for unspecified goods.\textsuperscript{282} Such ventures ran the risks of shipwreck, even the danger of a ship with sails aloft being stolen from a harbour by a skilled mariner. None of this information is particularly new.\textsuperscript{283} What is emphasised by an interpretation of the records, however, is the trust, sometimes misplaced, which was so essential in the partnerships. One of the partners was commissioned to use his initiative in buying and selling at the best prices that the market would bear but his entrepreneurial skills did not end there. His was a carrying trade and he probably had to make decisions about that too. Problems of communication perhaps put too great a strain on some partnerships but it must be remembered that only a failed partnership ended in the courts. Many must have succeeded, especially where members of a family by blood or through marriage were involved. A further difficulty in interpretation arises from the fact that the records of the Court of Session reveal only some of the litigation; some of


\textsuperscript{282} CS7/192/138v (Lyndsay v Leyis).

the cases over foreign trade would have been heard in the court of the Admiral and his deputes and the records for this period are missing. Litigation between local merchants, however, can be found in burgh records.

Merchants and craftsmen lent money, and may well have functioned as 'bankers' with creditors depositing venture capital. This was far more sophisticated than a simple pledge of a gold chain to a goldsmith, though lending as a business proposition may indeed have been started by goldsmiths, gold being readily converted into money. A scheme, supported by the King, linked a partnership between Robert Jowsie and Thomas Foullis with the Royal Mint but it was doomed. Price inflation and an inequitable and inefficient taxation structure contributed to the King's financial difficulties but perhaps more conducive of failure was the fact that the economy was not securely built on money. Rents were still paid in kind so many landlords will have had to set their lands in tack if they wanted a money income which could be used as capital for investment in a financial enterprise. Those who feu'd their lands were on fixed incomes which were eroded by inflation. Brown has calculated that between 1590 and 1609, judging by their testaments, the incomes of peers fell by some 53 per cent in real terms and their debts grew by 59 per cent. The records suggest that money was in the hands of some merchants, some members of the craft aristocracies like goldsmiths and some lawyers. Land owners wadset their lands to money-lending merchants as security for debt.

284 CS7/192/235v (Cunninghame v Lord Conilands); see App.,II,33.
285 see Gibson, A. J. S., & Smout, T.C., Prices, Food and Wages in Scotland 1550-1780 (C.U.P., 1995); also see discussion under 'Ministers and the Law'.
Max Weber postulated that it was the 'Protestant ethic' which determined the 'spirit of capitalism', by providing common principles of conduct among believers—diligence in work, asceticism with regard to the use of material goods, and systematic use of one's time. Through work one could prove oneself before God and before one's fellow sectarians, thus ensuring salvation. Critics of Weber refuted his theory on the grounds that Scotland showed ascetic Protestantism together with an undeveloped economy. Marshall, however, points out that the growth of capitalism in Scotland required a Protestant ethic, tools of business, freedom in markets, calculable law and administration, free labour, a business orientation that valued the rational accumulation of capital as an end in itself, and commercial instruments to represent share rights in enterprise and in property ownership. Records of the Supreme Court show that in 1600 all Marshall's prerequisites were there. A capitalist economy was struggling but not undeveloped.

It was unusual to light upon information like the daily costs of stabling a horse in Edinburgh. 'Intertenement of ane hors in corne, stray, gres and watter' was set at '8s money daylie' and a boat was valued at £50. It was used by a Glasgow merchant and was set at a daily profit of 13s 4d. Since the widow was calling for restoration or its price from a craftsman who had 'borrowit' the boat, she may have given an over-estimation of its value. With a fine brush such details are painted on an otherwise broad canvas.

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289 CS7/185/249v (Cokburne v Leslie).
290 CS7/190/361v (Miller v Dougall).
Appearances on behalf of Merchants and Craftsmen in the Register

- Craftsmen - 374
- Merchants (external trade) - 54
- Merchants (internal trade) - 217
- Others - 2066

Total Entries in Register - 2711
CHAPTER 3
MINISTERS AND THE LAW

Of 2,711 entries in the Registers of Acts and Decrees for 1600, no fewer than 200 or 7.4 per cent refer to appearances in court for or against ministers or churchmen. This reflected 126 separate cases, in some of which several ministers acted together, 33 parties being represented in one action. Thus 5.7 per cent of the total number of separate cases heard in the Court of Session in 1600 involved churchmen. These statistics, while accurate for 1600, may mislead in so far as some cases will have begun before 1600 while others will have continued into the following year or years. Nevertheless the numbers give a general impression of how many actions are likely to have been pursued by or against ministers in any one year towards the end of the sixteenth century. In addition, other ministers were indirectly involved in litigation. Thus Mr James Rait, minister in Forfar, had had Gilbert Ogilvy put to the horn for non-payment of part of his stipend in 1588. This emerged in a declarator of Ogilvy's escheat in 1600. Their widows; their executors; and a son or a daughter also brought actions. More telling is the fact that 184 churchmen, mainly ministers, out of just over 1000 parishes in Scotland in 1600 had court business on hand in that year. All are listed with sources and Fasti references at the end of this chapter. Thus, if all parishes were served by a minister, some 18 per cent of the profession were litigating in one year.

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1 eg CS7/192/149v (Lord Hammiltoun v the Ministeris of Aberbrothok).
2 CS7/190/347v (Ogilvy v Ogilvy).
3 eg CS7/190/171v (Robertson v Abbot Lindoris).
4 eg CS7/186/382v (Fforbes v Johnstoun).
5 eg CS7/190/111v (James Bennet v Auchmowtie).
6 eg CS7/190/267v (Quitheid v Craig).
7 see end of chapter ; 21 are not mentioned in Fasti.
30 different advocates appeared on behalf of ministers, some appearing in pairs. Normally a minister was represented by one advocate as his procurator but in several actions two appeared on behalf of one client, perhaps the equivalent of a senior and junior working together. Thus Thomas Nicolson, called to the Bar in 1594, and William Oliphant, called in 1577, worked together on behalf of Mr William Glass, minister at Dunkeld, in an action between him and the Countess of Errol and her spouse. John Nicolson, called in 1586, and Thomas Nicolson, probably his brother since both were sons of a James Nicolson, writer, Edinburgh, captured the lion's share of practice in ecclesiastical matters with 35 and 31 appearances respectively. Certainly Thomas Nicolson was an appropriate counsel to choose since in one entry the clerk records 'under the subscriptioun manuel of Thomas Nicolsoun, clerk keipar and extractor furth of the registers of assignatiouns of ministers and stipends'. The appointment may even have carried responsibilities to represent ministers.

There were nine possible party litigants. Thus, in a protestation, where one would expect to read the name of the representing advocate, the clerk records 'the quhilk day in presence of the Lords comperit personallie William Balfour, minister at Kelso'. Such party litigants may have welcomed the opportunity as men of learning versed in the art of public speaking to represent themselves.

In 25 actions the ministers defending failed to compear. There were several possible reasons for their absence. The actions raised

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9 see App.III, 1.
10 The Faculty of Advocates in Scotland, 1532-1943, ed., F.J. Grant, S.R.S., 1944,165.
11 ibid., 164.
12 CS7/190/160v (Mr William Glass v Lady Erroll).
13 S. R. S., 164.
14 CS7/186/177r (Quean v L. Hammiltoun).
15 CS7/191/10r (McKerstoun v Balfor).
against them may have been spurious; the original defender may have been seeking suspension of letters of horning raised by the minister and the minister may have seen this move as a delaying tactic unlikely to succeed in the long run, for example when a minister was entitled to remove someone from land designated to him in glebe;\(^\text{16}\) or there may have been no answer to the charge against the minister, for instance when a minister and others were charged with usury, he may have deemed it politic to absent himself and be unrepresented.\(^\text{17}\)

**Appointment to benefices**

Ecclesiastical benefices were constituted from both teinds as the 'spirituality' and lands, or 'temporality', which changed hands by death, deprivation, demission or exchange but not, as in the secular world, by inheritance. There were three stages of appointment; first, presentation or nomination by the patron; second, collation, the equivalent of a precept of sasine, authorising the conferring of the benefice on the nominee and instructing institution to be made; third, a notarial instrument of institution stating that the presentee had been instituted and inducted by symbolic delivery of appropriate goods, the equivalent of the instrument of sasine.\(^\text{18}\)

William Laing, notary public, recorded in an instrument the procedure involved in Mr Robert Eckling's nomination to a cure within the diocese of Orkney. On 16 August 1596, Mr Robert Eckling presented himself before Mr Robert Pont, 'commissioner' of Orkney, in his dwelling house at St Cuthbert's Kirk beside Edinburgh. There Eckling gave him a letter from Patrick, earl of Orkney, Lord Zetland, as patron of all benefices within the diocese of Orkney, in which he was nominated to the parsonage of Orphir and vicarage of

\(^{16}\) eg CS7/189/61r (Kirktoun v Abirnathie).

\(^{17}\) CS7/190/146r (Lord Treasurer v Ockerroris).

Stonehouse and Friethe[=Firth]in Orkney. Pont was to examine the young man's qualifications, talk with him and, if found suitable after this interview, he was to hear his confession of faith and sworn oath acknowledging the King's authority. Pont was given a month to declare if he found him an unsuitable candidate so that another 'mair qualifieit' would be found. Pont in the Earl's name accepted Eckling as a replacement for the deceased previous incumbent and remitted him for a further season to his studies, assuring him that his appointment was secure and that no other should prejudice him provided he presented himself when required. Eckling's acceptance of the post was recorded in the instrument which remains extant among the process papers.\(^\text{19}\) (A convention of estates in 1597 had re-enforced an act that ministers were not to receive their stipends until they had subscribed a confession acknowledging the King's authority in all matters civil and criminal.)\(^\text{20}\)

There is no extant example of a collation in the Process papers but an instrument of institution relating to Mr John Muirhead relates that procedure. The entrant presented himself before the Moderator and Presbytery of Hamilton and produced his letters of presentation by James, earl of Arran with consent of his brother as tutor, to the vicarage and pensionary of the College Kirk of Hamilton, then vacant through the decease of Gavin Hamilton, last provost. The letters required the Moderator and Presbytery to admit him and grant him collation and institution. Each member was given full commission to give actual and real possession, though no specific symbols were outlined. The ceremony was held in Hamilton on 5 December and in Brodick on Arran on 18 December, 1597. The entrant apparently made a formal request to be instituted by one of their

\(^{19}\) CS15/77/77 (Earl of Orknay v Morrisoun); see App. III, 2.
\(^{20}\) A.P.S., III, 72, c. 3, 1573; IV, 106b, 107a, 1597.
number as commissioner. In token of his formal appointment, the entrant asked for an extract from the presbytery books to be made by the scribe to the presbytery. This was granted.\textsuperscript{21}

It was possible for the 'kirk' to refuse someone who was presented by a lay patron. Thus 'ther was a sufficient person dewlie and lauchfullie presented to the parsonage and vicarage kirk of Kirkgunzeone, being of laik patronage et debito tempore and that persone presentit was refusit be the kirk'.\textsuperscript{22}

There is ample evidence that a minister was appointed for life; Mr William Wallace, minister at Symonton, was 'lawfully provydit to the vicarage of the paroche kirk of Symontoun during all the days of his lyftyme',\textsuperscript{23} but whether ministers continued to 'serve the cure' when they were old or incapacitated is not clear from the Court of Session records for 1600. There is only one example of 'dimissioun'. Mr Adam Colt was provided to 'all and haill the vicarage of the paroche kirk and paroche of Mussilburt and Inneresk. ... vacand be dimissioun of Edward Lyne, last lauchfull vicar'.\textsuperscript{24} A minister could be deprived, however. Five ministers were deprived for non-residence at their cure; this carried loss of their benefice.\textsuperscript{25}

Mr Alexander Spittell, minister at Liberton, Clydeside, claimed to have been provided to the kirk of Nesting in Shetland and he and Peter Simpson, actually serving there, both charged Hugh Sinclair of Burgh for the fruits of the cure. Simpson claimed that Spittell was 'not onlie actuall minister at ye kirk of Liberton ... sua that he nather serves nor can serve at ye kirk of Nesting' but he had also been 'lauchfullie depryvit be ye Commissioners of ye General Assemblie fra ye said cure and vicarage of Nesting being ever ane benefice and cuir, and in ye synodell assemblie of Orknay and

\textsuperscript{21} CS15/77/82 (Mureheid v Hammiltoun); see App. III, 3.
\textsuperscript{22} CS7/186/431v (Lord Hereis v Collector).
\textsuperscript{23} CS7/189/92r (Wallace v Parochiners of Symontoun).
\textsuperscript{24} CS7/192/8r (Colt v Parochiners of Mussilburt).
\textsuperscript{25} A.P.S., III,293,c.5, 1584, and III,542,c.9, 1592.
Zetland in August 1593, for non-residence at ye said kirk of Nestvik[sic] he yan being minister at ye said kirk of Libertoun ... as ye decreit of deprevatioun beirs ... He aucht not to bruik the vicarage of Nestvik in respect he is parsoun and vicar of Libertoun, distand twa hundreth myles from the kirk of Nestvik, and preichis at ye kirk of Libertoun, and of ye law ane minister may not bruik twa benefices of cuir'. However, he had been provided to the cure before the King's coronation, which apparently rendered him exempt from deprivation.26

Robert Stewart and Mr Robert Eckling, each claiming to have been presented to the charge of Orphir in Orkney, charged William Stewart of Lyking as tacksman of the teind sheaves for payment of the yearly duty. William Stewart explained his 'dowbill distres that he aucht not to be astrictit in payment making to tua parteis in unam rem.' The Lords decided that Robert Stewart had 'best right' though the Earl of Orkney had presented Mr Robert Eckling in 1596, that is two years before he presented Robert Stewart. At that time Stewart was not 'abill to serve the cuir of the said kirk and was within the aige of 21 yeirs'. Eckling had 'bene deprevit by the ministrie of Orknay for non-residence fra his functioun in ye said kirk'.27

Two deprivations were not explained. Thomas Moffat at the kirk of Bassendean was deposed28 and Mr William Galbraith minister at Bedrule was 'lauchfullie deprevit sen his functioun and office of ministrie yrat be ye presbitrie of Jedburt as ye act of deprevatioun and ratefeit be ye Commisers of the General Assemblie beirs ... and consequentlie Mr William culd have na ryt to ye fruits nor to ye dewtie'.29

26 CS7/189/317v (Sincklair v Spittell).
27 CS7/191/190r (Stewart v Lyking).
28 CS7/190/77v (Mr Allane Lundy v Tenetis Bassenden).
29 CS7/191/338r (Galbrayt v Traquhair).
William McQueen was deemed by the Lords of Council and Session to have been 'orderly deprived' not only for non-residence and non-performance of ministerial duties at Tain and Eddertain but also for scandalous adultery and committing of murder. His appointment had not followed recognised procedure because he had not been received by the then Bishop of Ross. As a dependant and friend, he had been 'intruded' by the chief of the Clan Chattan. He was unworthy and deprived 'upoun guid tryell'. He thereby lost all rights and was certainly unable to set tacks and assedations.30

Mr George Inglis satisfied Alexander Hamilton of Innerwick, patron of the parsonage and vicarage of Bathgate, as to his 'qualificatioun, literature, guid conversatioun and ... ernist effectioun to travill in the charge of the ministrie within the kirk of God'; his opportunity had arisen through the 'dimissioun or lauchful depravatioun of Gilbert Taylor, last parson'.31

Not all provisions were made in the name of the King. Some were made by gift of the Queen, for instance Mr Adam Colt was provided to Inveresk and Musselburgh, part of her dower lands of the lordship of Dunfermline, 'under his hienes darrest spous seall 26 December, 1599, with consent, assent and auctortie of his Majestie hir darrest housband for his hienes entres and with special advyse and consent and counsall of his trustie and ordiner counsellors'.32

Ministers before the Lords

Ministers were highly respected as men of integrity and education, the style 'Maister' indicating that they had University degrees. Perhaps more importantly, there would be religious sanction to their administering an oath. They were therefore an appropriate choice for appointment as commissioners in a task which did not necessarily

30 CS7/187/405v (Mr Johne Monro v the Takismen of Ross); see App.III,4.
31 CS7/189/173r (Inglis v Parochiners of Bathgait).
32 CS7/192/8r (Colt v Parochiners of Mussilburt).
demand the service of a professional lawyer. Thus Mr Patrick Shaw, minister at Selkirk, was appointed as one of two commissioners to take the evidence of James Wilkie, burgess of Selkirk. They were given from 25 until last August 1600 to interview the burgess; they were to write down his deposition after they had administered an oath to the effect that he would speak the unbiased truth; then they were to report back to the Court on 5 November, the gap in time being explained by the intervening long vacation.33

Similarly in Elgin, 'becaus sundrie of the witnesses ... ar aigit and diseasit persones and sua ar not abil to travel and to compier personallie befoir the Lordis to depone yrintil, the Lordis hes given and grantit full power and commissioun to Mr Alexander Dowglas minister at Elgin and Mark Mawer of Styme commisser of Murray conjunctlie with ane clerk to be chosin be thaire to examinat sic persones as the compleiners will use for proving of the eik ... and assigns to thaire ony day betuix this[4th January] and the ferd day of Februar nixt ... and ordanes the depositiouns to be writtin and subscryvit be ye saids juges and thairefter to be dewlie closit and reportit in presence of the Lords the 7 Februar'.34

In a dispute over a date, a minister’s evidence could be vital. A mandate for registration of a contract was alleged to have been given in October by someone who had died in July ‘as ane testimoniall of ye minister and elderis of ye paroche quhair he dwelt presentit at his buriall beirs’.35

A minister was also trusted to look after redemption money offered conform to letters of reversion but not accepted. Thus 500 merks with 50 merks of annualrent proferred but not received in the parish church of Lethintie were consigned in the hands of Mr William

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33 CS7/191/223v (Scott v Bryding); see App.III,5.
34 CS7/185/67v (Toun of Elgin v Collector); see App.III,6.
35 CS7/191/367r (Lyoun v Fentoun).
Edmonstoun, minister at the kirk of Lethintie; all was recorded in an instrument.\(^\text{36}\)

One churchman, John Anstruther vicar of Kilrynnie, acted as a party litigant. He had been made cessioner and assignee to 515 merks for the alienation of a tenement of land in St Andrews. As ‘donatour and procuratour veluti in rem suam in and to the 515 marks’, he pursued James Hay as cautioner to the debtor but when the matter was referred to Hay’s oath of verity ‘the Lords fund that the aith na ways previt the points of the summonds and that yrby the complener had faiyleit in proving yrof’.

**Payment of dues owed to churchmen**

Most actions by ministers or other churchmen were for payment of dues. Some 62 appearances on behalf of ministers or readers were claims for unpaid stipends or parts thereof. For example David Barclay, minister at the Kirk of Maybole, or his advocate, chose his words with care when he charged the Earl of Cassillis for payment of his stipend, saying, ‘who, for the luif and favor quhilk he beirs to ye complener and sundrie causes moving him, be his letters obligatours 6 November 1598 band him to pay to ye complener 200 merks yeirlie during his remaning as minister at ye Kirk of Mayboll, beginning Mertimes 1598 and that of the reddiest feirs of teynds of the Erle his pairt of the Kirk of Mayboll 1597’. By 1599 the Earl was refusing to make payment. Despite the battery of counsel, John Sharp, Alexander King and Alexander Thomson all appearing on the Earl’s behalf, the Lords decerned him to make payment and ‘his procurators schew na ressonall caus quhy the decreit suld not be given in maner foirsaid’.\(^\text{37}\) A change of cure was sensible. Barclay was translated from Dailly in 1599 and moved to Dumfries in 1601.\(^\text{38}\)

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\(^{36}\) CS7/191/63v (Abercrumbie v Gray).

\(^{37}\) CS7/186/277v (Barclay v Erle Cassillis).

\(^{38}\) Fasti 3, 52.
Six claimed unpaid stipends specified as being out of thirds. These were generally fixed in grain. 39 Mr James Robertson, minister at Dundee, claimed to be lawfully provided out of the third of the Abbey of Lindores to ten bolls of wheat, 13 bolls of meal and 13 bolls of oats; finding this unpaid in 1599, he raised letters and charged Patrick, commendator of Lindores, to make payment to him under pain of rebellion and putting of him to the horn. The Commendator sought suspension of the letters of horning partly on the grounds of there being 'na liqidatioun' of the prices of the victual. These prices were already available in Mr Robert Learmonth's hand and had been sworn to by 'divers famous witnesses ressavit, sworne and examinat for proving the points of the liquidatioun' so the Commendator was ordained to make payment. 40

Similarly, Mr Henry Forrester, minister of Larbert, raised letters of horning against the Commendator of Cambuskenneth for payment to him out of 'the thrid of the abbay ... 40 marks money, ane chalder heir and ane chalder meill' assigned to him in stipend in 1598. It would appear that from the time of his appointment he had never been remunerated. 41

Sixty-three appearances on behalf of ministers specifically mentioned non-payment or spuilzie of teinds. In some cases the teinds when specified were substantial and suggest a reasonably comfortable income if paid. Mr William Glass was owed for the 1598 teinds of Little Dunkeld, six lambs, 12 fleeces, six stones of cheese, a stirk, a goose, ten sucking pigs and six salmon, with lint, hemp, eggs and other small teinds. 42 If paid, he could have consumed some and sold the surplus.

39 see the apportioning of ministers' stipends in CS7/192/149v (L.Hammilton c the Ministeriis of Abirbrothok); see App., III, 12.
40 CS7/190/171v (Robertsoun v Abbot Lindoris).
41 CS7/189/103r (Forrester v Cambuskenneth).
42 CS7/190/160v (Mr William Glass v Lady Erroll); see App.III,7.
Mr William Wallace charged all the parishioners of Symonton to make payment of 'the teynd shevis and uyr teynds, fruits, rents, emoluments and dewteis yrof' for 1598 and 1599. The cure had fallen vacant by the death of sir John Miller, last vicar and possessor thereof, and patronage was thus in the King's hands. The new incumbent had been 'admittit yrto be the kirk as his letters of gift and presentatioun to him under the privie seill' of 27 May 1598, 'institutioun, collatioun and admissioun grantit to him' bore. Nevertheless, though his letters of gift and presentation had been 'subscryvit be the moderator and brethring of the presbitrie of Kyill and Carrik' on 27 July 1598 and though he had an instrument recording this written by William Rankin, notary public, he had never been paid. The Lords ordained them to make payment for 1598, 1599 and in time coming.43

Mr Thomas Powtie, minister, who claimed to have been lawfully provided to the vicarage teinds of Leslie, faced a similar problem but the parishioners may have been justified in non-payment to him of the vicarage teinds because the Commendator of St Colme's Inch declared that 'the vicarage of Leslie is ane pairt and pertinent of ye vicarage of the Abbacie of Sanct Colmis Inche and swa the King had na power to dispone the samyn'. This was disputed but the record got no further.44 The case may have been abandoned or settled.

Many like Mr James Fotheringham, parson of Ballumbie, specifically complained, not about unpaid dues but about the 'wrangous spoliatioun furth of the arabil lands and mains' of teinds.45 In anticipation of this, inhibitions were sometimes served against parishioners. For example, Mr Alexander Youngson, minister at Durris inhibited 'the parochiners that they nor nane of thame tak

43 CS7/189/92r (Wallace v Parochiners of Symontoun).
44 CS7/191/32v (Powtie v Parochiners).
45 CS7/187/236r (Fothringhame v Lord Ballumbie).
upoun hand to ... intromet with the teind scheves'. Other inhibitions were directed against the tacksmen of the teinds. Thus sir James Newton, prebendar of the prebendary within the college kirk of Crichton, served an inhibition against George Thorbrand, burgess in Edinburgh, probably as tackman, and several tenants in Catcune ‘for the wrangous awaytaking of the teynd scheves’ from 1596, ‘he being in possessioun yrof be vertew of inhibitiouns lawfullie usit and execut and servit at his instance yeirlie that they nor nane of thame suld tak upoun hand to collect and intromet or awaytak the saids teynd scheves without tak, licence or tolerance of ye said sir James, prebendar foirsaid had and obtenit yrto’.

The situation became complicated if a minister set a tack of his own teinds. Mr Robert Glendenning, parson of Parton, set tack and assedation to John Glendenning of Drumrath, his heirs and assignees, of ‘the haill parsonage and vicarage teinds of Partoune with gleib, mans, kirklands and teind scheves, fruits and rents yrof, diocese of Galloway, stewartrie of Kirkcudbryt, for ye space of thrie yeiris and efter ye ische of the thrie yeiris for uyr thrie yeiris and sua furth all the days of Robertis lyftyme’ but the parishioners had to be compelled by the Lords to pay the teinds and the ‘paiche fynnis’[Easter fines]to the tacksman. The parson set this tack in direct defiance of the act which forbade the setting in feu or tack of manses or glebes ‘in prejudice of their successors’ but that part of the contract which assigned teinds was enforced, despite other parts of the transaction being unenforceable, because the Lords certainly commanded the parishioners to make payment of the teinds to the tacksman.

46 CS7/192/52r (Youngson v Parochiners of Durris); see App.III,8.
47 CS7/190/133v (Newtoun v Thorbrand).
48 CS7/190/177r (Glendinning v Parochiners of Partoune).
49 A.P.S, III, 73 c.5, 1572.
It became more complex if the tacksman assigned the tack to someone else. Mr Thomas Archibald, parson and vicar of Cardross, with consent of the dean and chapter of Glasgow, set tack and assedation of the parsonage and vicarage teind sheaves 'of wool, lamb, cheis, lint, hemp, hay, stirk, guiss, gryce[sucking pig] and uyr dewteis and emoluments' for the space of 19 years to John Wood who then assigned the tack to Robert Semple, laird of Fulwood whose daughter was 'given in marriage to the said John Wod and he and she ar intertenit with the said Laird of Fulwod in his hous and companie'. Robert Semple in turn assigned it to James Semple, his cousin. John Wood was denounced rebel and put to the horn for not finding caution, surety and lawburrows and the escheat of his goods was gifted by the King under the privy seal to Robert Drummond of Doyle. Both Semple and Doyle claimed the teinds from the parishioners. It was suggested that the assignation to Semple had been made inter coniunctas personas retenta possessione but 'the procurators being hard to reason yrupoun viva voce' the Lords decided that the disputed assignation had been made before the denunciation and the parishioners must make payment to Semple. Whether it had been made in anticipation of the denunciation was not seen as an issue.

'Ane reverend father in God, George, Bischope of Murray', set tack and assedation of the teind sheaves of various lands round Elgin to George, marquis of Huntly, who as 'principal tacksman' set the same to Alexander, Lord Spynie who charged 29 men with 'wrangaeous spoliation of the teind scheves' from 1591 to 1599.

Not all tacks were set by churchmen. It was the lay Commendator of Lindores who 'for divers greit sums debursit be ye said James

50 CS7/189/314r (Sempill v Parochiners of Cardross).
51 CS7/189/319v (Sempill v Drummond).
52 CS7/189/321r (Lord of Spynie v Hay of Mayne and Utheris).
Guthrie convertit to the utilitie of the said abbay, sett, and for silver dewtie lattit to ye said James and to James Guthrie his eldest sone and to ilk ane of thame successivlie efter utheris for all the days of ye langer levar of thame twa and yrefter to ane air succedand to ye longest levar for ye space of 19 yeirs efter ye deceis of ye longest levar, all ye teind shevis, dry mutlers and small teinds of Kynnaird with all pairs, pendicles, pertinents, outsettis and cottages[sic] yrof ... for yeirlie payment of £26 13s 4d at the ruid day callit Beltane'[probably 1st or 3rd May]. James Guthrie, burgess of Edinburgh, then assigned the tack and assedation of the teind sheaves of Kinaird to George Barron of Kinaird. The assignee complained that he 'is monthlie distressit be his hienes Collectoris and certane persones of the ministrie allegand the teynds to be assignit to thame in stipend, as assignit in the thrids of ye said abbacie, quha daylie molestis the persewar in the peacabill bruiking of ye saids teinds'. George Barron successfully sought warrandice of the teind sheaves specially against the Collector and the minister at Duns.53

Thirty appearances involved unpaid 'males, fermes, dewteis and fruits'. Feuars of the kirklands54 rather than parishioners were regarded as being largely to blame. For example, Alexander Lindsay, provided to the prebendary of Inchkeillor, put the parishioners of Monikie and in particular Alexander Guthrie of Kincaldrum to the horn for non-payment of the fruits, rents and emoluments for 1598 and 1599. Guthrie failed in his action for suspension of the letters of horn.55

Mr Andrew Cunningham, vicar of Stobo, Mr John Tweedy of Wilkiston, James Tweedy of Drumelzear and Richard Thomsoun, minister

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53 CS7186/397v (Barroun v Abbot Lindoris).
55 CS7/192/18v (Lindesay v L. Kincaldrum).
at Ratho all claimed the feu mails of Broughton Scheills from Magdalen Lawson, relict of John Tweedy, tutor of Drumelzear, and Mr William Brown now her spouse for his interest. Richard Thomson, despite his lack of a degree signified by the absence of 'Mr', was found to have best right because he produced three letters concerning the assignation to him of the feu mails of Broughton.56

Patrick Cockburn, vicar of Langton, had been lawfully provided to the vicarage thereof and the mails, fermes and duties belonged to him 'of auld', indeed from the time of his provision in 1565. The Lords ordained William Cockburn and his spouse as feuars of the church lands to make payment to the vicar.57

Others claimed unpaid pensions. Mr Archibald Moncreiff, minister at Abernethy, alleged that he had a lifetime gift from the King of a yearly pension of 200 merks 'furth of propertie or casualtie' and that 'for suir payment yrof' he had had assigned to him the feu mails, cains, customs, teinds and emoluments and other duties of the Abbey of Elcho together with other duties from specific lands in Fife and Lothian. He had obtained the Lords' decree against the feuars, farmers, tacksmen and occupiers of these lands addebted to him in payment of the feu duties but Mr Robert Swinton of that Ilk claimed that he had already paid the feu duty for 1598 to George Wardlaw, his Majesty's chamberlain and had his acquittance. Counsel for the minister declared that he charged only for the mail of one place, Standret. Presumably no charge was brought for the pension because in 1597 an act of Parliament ratifying earlier acts of 1587 and 1594 stated that, apart from heritable infeftments, all pensions granted out of the thirds of benefices were to be declared null.58

56 CS7/190/311v (Lawsoun et Broun v Cunninghame et Tuedie).
57 CS7/186/469v (Cokburne v Lord Wedderburne).
58 A.P.S., IV, 66,c.17, 1597.
Accordingly, Swinton was commanded to pay just 11 merks to the minister as mail of Standret.\(^{59}\)

There were exceptions to the 1597 act, however. Marion Marjoribanks, relict of John Durie, minister at Murroes, and Mr John Durie their eldest son brought an action against George, earl Marischal, Lord Keith. In 1590 a yearly pension of 'sevenscore' pounds out of the mails of the lands and lordship of Altrie had been given by the King to the longest liver of Marion, her spouse and their son. The pension was also to be enjoyed by the survivor of Marion and her son.\(^{60}\) That gift had been ratified by parliament in 1592 'as for the greit, lang and ernest travellis and labore sustenit be his lovit oratour Johnne Dury, minister of Goddis word at Montrois in the trew preaching of Goddis word besyd the greit charges and expenses maid be him thir mony yeiris bygane in avanceing the publict effayres of the kirk'.\(^{61}\) Despite the King's 'commanding the said Lord Altrie, his airs and successoures to mak thankfull payment' in 1590, the commitment to the widow and son had to be and was enforced by the Court of Session in 1600.

John Bennet, son of Mr Andrew Bennet, minister at Monymail, also successfully pursued a lifetime pension of £26 gifted to him at an unspecified date while his father the minister was 'administrator, tutor, guider and governour to him for his entres'. The gift had been made by Florence Auchmowtie of Halhill, who owed teind sheaves to William, commendator of Tungland, parson of Monymail, and it was done with the consent of Robert Melville of Murdocarny, knight, described in the record as patron of the parsonage; presumably he was infeft in the heritable right thereto.\(^{62}\)

\(^{59}\) CS7/186/363r (Moncreiff v L. Swyntoun)
\(^{60}\) CS7/186/444v (Durie v Erle Merschell).
\(^{61}\) see A.P.S., III, 551, c.24, 1592.
\(^{62}\) CS7/190/11v (James Bennet v Auchmowtie).
There was another type of exception which related to locality. Mr David Barclay of Cullerny tried to take advantage of an act of 1587 which revoked an earlier act of 1584 annulling all pensions out of the archbishopric of St Andrews. He was seeking production of evidence of his claim for 'ane yearly pensioun of £500 to be upliftit furth of the fourths of the bischropic of Sanct Androis quhairin the teynds of the lands of Cordistoun ar speciallie assignit in pairt of payment yrof'. It is unknown if he succeeded in being awarded his pension. Mr William Murray, parson of Dysart, Fife, however, won an action against the Collector for a pension to which he claimed 'undoutit ryt as ane pairt of the patrimonie and propertie of the said parsonage and vicarage'.

Two chaplains and a minister brought actions over unpaid annual rents. Mr William Murray, minister at Crail, brought an action against the parishioners, the provost and bailies of Crail for their interest, and the heritable feuars, all adebted in payment to him of the annual rents of the prebendaries, chaplainries and commons of the college kirk of Crail. The provost and bailies had been gifted the annual rents of these by the King under his great seal 'and for sustentatioun of the said college kirk, understanding Mr William Murrayis literatour and zeall to travell in the ministrie at ye said kirk lyk as he presentlie travels and hes travellit these divers yeirs, they disponit the forenamit prebendaries, chaplainries and commouns of the said college kirk of Craill for all the days that he travells in the ministrie'. On 27 June, 1599, the minister was made 'undoutit and irrevocabill donatour to the annuelrents qhilks suld have bene payit to thame ... but ar not yit payit'.

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63 A.P.S., III, 486,c.34,1587.
64 CS7/187/243r (Barclay v Haliburton).
65 CS7/186/192v (Murray v Lord Collector).
66 CS7/186/452v (Murray v Parochiners of Craill); see App.III,9.
The distinction between claims for teinds and for parts of stipends is blurred because stipends were usually paid from teinds. Thus the teind sheaves of William Balfour, minister at Kelso, from the lands of McCarstoun, were assigned to him ‘in part of stipend, 1599’. What is significant is that 169 ministers were not paid part if not all of the dues owed to them.

Some of the complainers appear to have served two parishes, only one of which was defaulting. For instance, Mr Henry Duncan, minister at Murroes, had also the parish of Ballumbie in his charge; Mr William Rait, minister at Mains, also served Strathmartine and Mr Adam Colt served Musselburgh and Inveresk. However the two parishes may have been united into one entity and so may not be examples of plurality, which was illegal. If for these isolated examples non-payment of dues was less crucial, for the majority the problems must have been serious.

Actions were also fought by relicts. Helen Adair, relict of Mr James Hamilton, parson and minister of Dalry, and Mr Robert Douglas provost of Lincluden, as Collector General to his Majesty, were each charged by the parishioners of Dalry to produce the rights and titles whereby they claimed the fruits of Dalry in 1594. This action disappears as does Anna Vince’s claim as relict of William Christison, minister of Dundee, to his stipend in the year of his death ‘according to the act of Parliament and General Assemblie maid in favor of the relict spouses of ministeris’.

James and Gilbert Johnston as executors to the deceased Mr William Johnston, minister at Kinkell, pursued a debt owed by obligation to the minister for £5 per boll of 500 bolls of oatmeal.

67 CS7/191/10r (McKerstoun v Balfour).
68 Fasti, 5, 367.
69 ibid., 5, 358.
70 CS7/192/8r (Colt v Parochiners of Mussilburt).
71 A.P.S., III, 294, c.5,1584.
72 CS7/185/119r (Collector v Adair).
73 CS7/190/171v (Robertsoun v Abbot Lindores).
They obtained the precept of the Commissary of Aberdeen and raised letters of horning against the debtors. The debtors pointed out that 'quhatsoever the words of the obligatioun ar sett doun, yit it is mair nor manifest ... that the principal soumes borrowit ... was 500 merkis allanerlie ... and failyeing yrof the soume of 5 merkis ilk boll ar bot intolerabill penalteis far exceding the enteres of pairtie and thairfoir neways aggreing with law, resson, conscience nor pratik of this realtime seeing that the Lordis of Counsall are in use to reduce illicitas usuras be pactioun of pairteis and licitas usuras be yr decreit'. It is unusual to find a specific precedent cited in the pleadings, but here Mr John Nicolson, advocate, went on to say, 'as wes decyydit between Henry Wardlaw indwelllar in Edinburt and William Fiddes baxter, quhair the Lordis reducit the failyie of 100 merks in caice the uyer sowme of 100 merks had not been payit at ane day to the sowme of 10 merks for the hundreth allanerlie', 74. By the time of the minister's death, the debtors had the money ready 'with ane lawful interes thairof, but wer uncertane to quhome they should have payit'. Accordingly in April they handed over to the executors 600 merkis 'quhilk sould be interpretit to be in satisfactioun of the hail letters obligatours'. On production of the letters of aquittance, the letters of horning were reduced. 75

At times the claimants were both ministers. Mr James Young, 'minister at his Majesty's awin hous', charged David Ramsay in Cairnton, and Henry Smith in Brunton, to make payment of victual owed in stipend. The King, however, had assigned them to Mr Robert Bruce, minister at the kirk of Edinburgh nomine stipendi and had obtained 'sundrie decreits befoir the Lordis in foro contradictorio'. Bruce had been paid bona fide by Ramsay and Smith but when they found caution for payment to Mr Young, the letters of

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74 not found in Balf., Prac.
75 CS7/186/382v (Fforbes v Johnstoun).
horning which he had raised against them were suspended.\footnote{CS7/192/65r (Ramsay v Young).} At the same time, Mr Alexander Futhie, minister at Kinneil, charged David Ramsay, and Mr Archibald Moncreiff, minister at Abernethie, charged Henry Smith, for teind victuals but these teinds had been gifted by the King to Mr Robert Bruce and had already been paid to Bruce’s factor in Edinburgh.\footnote{CS7/192/64v (Ramsay v Moncreiff).}

Churchmen occasionally used \textit{Arbitration} to settle disputes. In 1596 a decree arbitral was pronounced in an action brought by James Wood, vicar of Largo, against Mr John Auchinleck, minister at the kirk of Largo. Andrew Wood of Largo and Mr John Nicolson, advocate, as ‘juges arbitouris and amicabill compositors equalie and commounlie chosin’ by both ‘anent the richt and titil of ye said vicarage and dimissioun yrof’ to be made by James Wood and ‘quhat satisfactioun and payment the said Mr Johne sould mak to him yfor’. The decree arbitral ordained payment of a fixed sum of £40 to be made to the vicar, his heirs and executors. Mr John was also decerned to ‘purches and obtene to himself with all diligence, presentatioun, collatioun, institutioun of vicarage and to mak, seil, subscryve and deliver to the complener aene letter of pensioun of 50 merks yeirlie during his lyftyme at Witsunday and Mertinmes be equall portiouns and to mak him particular assignatioun of sufficient and responsall tenentis within the paroche of Largo for payment of the yeirlie dewtie and to warrand ye said yeirlie pensioun all the days of his lyftyme ... and siclyk is ordanit to purches and procure to ye complener aene ratificatioun of ye yeirlie pensioun be ye Presbytrie of Sanct Androis and General Assemblie of the kirk’. The vicar required to ask the Lords to direct letters against the minister to obey the decree arbitral. Presumably the
minister was a bad loser and was refusing to implement the decree arbitral.78

The heart of the problem

In 1561 it was ‘statut and ordanit that ye hale rentalis of all benefices within this realme be producit ... to considdre qwhat necessar support is requirit to be takin yeirlie of ye frutis of ye saids benefices ... to interteny and sett forwart ye comone effaris of ye cuntrie’.79 In February 1562, by an act of Council, the share of the fruits of benefices required to meet the needs of the crown and reformed ministry was set at one third and old possessors were to keep the remaining two thirds of the fruits of their benefices; the annualrents and other duties of chaplainnries, prebends and friaries were to be used to fund schools and hospitals and the friars’ buildings were to be maintained by town councils as schools.80 Accordingly benefices were surveyed and rentals of their revenues were produced for registration by the clerk to the Collectory.81 This was repeated in 159282 and inventories of stipends were called for in 1597.83 By 1600 the financial situation of many ministers was far more insecure than the formulators of the first optimistic act could have anticipated.

There were several reasons for this. Ecclesiastical property had been largely secularized by 1600 and many laymen held church property by tack[or lease] or in feu ferme[in which land was held in perpetuity by a vassal from a superior for a fixed money rent in the form of cattle, grain or money following an initial payment, or

78 CS7/106/215r (Wod v Auchinleck).
79 A.P.S., II,607a,1561.
80 R P.C. I, 1561/2, ult. Feb.,204.
81 see Kirk, James, ed., The Books of Assumption of the Thirds of Benefices, Records of Social and Economic History, new series, 21, xiv.
82 A.P.S., III, 556a.,1592.
83 A.P.S., IV, 133,c.15, 1597.
The King and Estates had acknowledged the importance of tacksmen in 1592. A commission had been appointed to charge all tacksmen of the teinds and lands of inferior benefices to compear before them, bringing their tacks and rights for inspection. They were to come to some agreement with the commissioners over the contribution out of the yearly profit of their teinds that each could make towards the funding of a minister in each kirk and also 'that thair be ane locall stipend designit and appointit to ilk minister to be taken up yeirlie of the thriddis, teyndis and utheris dewarties lyand within ilk parochin quharout the Ministeris stipends wer in use to be takin and payit of befoir'. The commissioners recognized that 'the grytest pairt of the same thriddis, teyndis and utheris rents assignit yeirlie of befoir in the saidis Ministeris stipends ar now exhaustit by the annexations, erections and dispositions'. Their report having been read was put to execution.84

In 1593 an altered group of commissioners including Mr Robert Douglas, provost of Lincluden, as Collector General, was appointed and given a remit similar to that of the 1592 commission 'to treat and confer how and in quhat maner thair may be ane minister provydit at ilk paroche kirk within this realme and anent thair provisioun to locall sufficient stipendis and augmentatioun of yair present stipendis and assignatioun furth of the thriddis be ye takkismen of teyndis and landis quhatsumever placis or utheris benefices within yis realme conforme to the commissioun gevin thairanent of befoir in the last parliament.85

The teinding system was unsatisfactory and this affected ministers indirectly. From the parishioners' point of view, the procedure for teinding presented difficulties. Cormack points out that there were some advantages in the teinding system; it was a simple way of

84 A.P.S., III, 553, c. 27, 1592.
85 A.P.S., IV, 33c. 45, 1593.
providing remuneration or reward for a minister serving a parish and, being a percentage tax, it varied with the harvest yield. On the other hand, no allowance was made for infertile ground and it was hard on those who laboured to bring waste land under cultivation; although it was relatively easy to cheat under cloud of night the teind holder or tacksman of the teinds could inhibit the parishioners from teinding. There was a recognised procedure for the leading of teinds. The teind holder had to be warned to come and take his teind but he or his factor could be absent at the critical time when he was summoned, weather could be unsuitable, the crop could be past its prime, and until the teind sheaves were removed, no animals could pasture on the stubble. 86

A further problem was that there was often uncertainty about the true creditor. It was by no means always simply a question of determination not to pay, since there were often several claimants. Thus, the teinds of Pettinain were claimed by Thomas Hamilton of Priestfield, as tacksman on the first part; he had obtained a decree of the Lords for payment against ten tenants of Westraw and Pettinain and since they had not paid he had raised letters of horning against them. David, commendator of Dryburgh, claimed that they 'pertenit to him and his abbacie', on the second part; he had set them in tack to John Carmichael of Meadowflat for 12 years but they were 'as yit unpayit.' Furthermore, 'John be plane collusioun betuix him and Thomas Hammiltoun, his assignay, intending to convert the haill profeit and qualitie of ye said decreit to ye behuiff of John as tackisman and cedent', hoped 'yrby to frustrat and prejudge the said Commendator of ye yeirlie dewtie of ye said tack restand awand mony yeiris' so he also charged the parishioners and arrested the teinds. On the third part, John, commendator of Holyroodhouse,

had also arrested their 'dewteis'; he stated that a back-band had been made in his favour by John Carmichael who owed him 'certane grit sowmes'. Finally, on the fourth part, Mr William Lowrie, minister at the kirk of Pettinane, claimed that John Carmichael 'becum oblist to pay to him as minister in part of his stipend and als that ye said John as tacksman of ye kirk of Pettinane is oblist to the bigging and repairing of ye same'; this minister also purchased 'letters of horning and sequestratioun for arreisting ye teind dewteis, payment of his stipend and repairing of the kirk'. Thomas Hamilton, represented by Mr Thomas Craig, was found to have best right as assignee and holder of the decree against the parishioners.87

The confusion could also arise higher in the chain. 'Certane money and victual' out of the Priory of St Andrews had been assigned in stipend in 1588 to Mr Adam Johnston, minister at Crichton, and the following year Thomas Myrton of Cambo had become cautioner for the tenants that they would make payment of their teinds to Ludovick, duke of Lennox as Commendator of the Priory and tacksman of the third part thereof, or to the then Comptroller, or to Patrick Home of Polwart, and Patrick Murray, or to Mr James Pitcairn, minister at Leuchars, or to Mr James Carmichael, minister at Haddington, or to Mr James Yule, minister at Dairsy, or to John Burnett, minister at Inverkeithing, or to Mr Adam Johnston, minister at Crichton, who by 1600 had been found to have the best right thereto. He had died so his widow, Elizabeth Borthwick, pursued the cautioner for payment. Having found caution in case he were ordained to make payment, Myrton was able to prove that he had made already made payment to the dead minister's brother in his name.88

87 CS7/186/408r (Hammiltoun v Tenentis of Pittenane).
88 CS7/192/19v (Myrtoun v Borthvik).
By 1600 several officers were responsible for the ingathering of finance; the Treasurer, the Comptroller and the Collector General, as well as a 'collector' for each individual tax\(^89\) who, in turn, appointed ad hoc sub-collectors or 'under ressavers'.\(^90\) Alexander master of Elphinstone, who succeeded Walter Stewart of Blantyre as Treasurer, was responsible for all the King's 'casualty', that is, chance or casual revenue from feudal casualties of ward and relief, from judicial amercements and escheats and from various payments to the crown. The Comptroller dealt with the whole revenue of the King's property, mainly the rents of crown lands and burgh fermes\(^91\) and the Collector General, appearing in 1581 with the Treasurer and Comptroller as a member of a commission with the aim of finding means of providing parishes with 'a pastoure with a sufficient and Reissonable stipend',\(^92\) was responsible for collecting the thirds of benefices. The treasurer 'of the new augmentations' was responsible for collecting the superiorities of benefices arising from the act of annexation of the temporalities of benefices [kirklands] of 1587.\(^93\) In 1592 the Treasurer, Comptroller, Collector and Secretary had to agree among themselves as to 'quhat dewlie and properlie appertenis to everie ane of thair offices'.\(^94\) In 1600, Mr John Prestoun fulfilled both the role of Collector General and Treasurer of the new augmentations. Sir George Home of Wedderburn was occasionally cited as Comptroller.\(^95\)

\(^90\) e.g. Mr John Durham to Mr Robert Douglas, Collector General in 1590, CS7/190/174r (L.Privie Seill v Ramsay).
\(^91\) Dickinson, William Croft, Scotland from the earliest times to 1603 (Nelson, 1961), 210-11.
\(^92\) A.P.S., III, 211b, 229, c.2., 1581.
\(^93\) A.P.S., III, 431-37, 1587.
\(^94\) A.P.S., III, 563a. 1592.
\(^95\) CS7/190/174r (Lord Privie Seill v Ramsay).
In causes brought by or against him, the Collector was seeking payment of thirds of benefices for stipends or a payment for the vacant prelacies,96 whereas the Comptroller was seeking payment for augmentation of his Majesty’s rents97 such as the payment to ‘andro moreson collector deput of or soverane Lordis rents be north the water of forth’.98 In another action dating from 1595, both Mr George Ramsay, minister at Lasswade, and Sir George Home of Wedderburn, knight, then Comptroller of his Majesty’s late augmentations, claimed feu mails from feuars such as Sir Robert Cockburn, feuar of Clerkington, the Comptroller claiming on the grounds that the lands of Kirkhill, sheriffdom of Linlithgow, belonged to the King, and the minister basing his claim on the grounds that he was lawfully provided to the deanry of Restalrig of which Kirkhill was a part.99 Other collectors were responsible for specific taxations such as the raising of 200,000 merks to pay the expenses of ambassadors, half of which was to be paid by the spiritual estate,100 or for ‘ingaddering of ye taxatioun taxt for beilting and repairing of ye kirk’ such as ‘the non-payment making to gawing dunbar of baldone collector appointit for ingaddering of ye taxatioun taxt for beilting and repairing of ye kirk of kirkynnir of the sowmme of 6s 8d money as taxatioun of everie merkland of ye four merkland of creochis conforme to ye taxt roll maid yranent’.101

Mr John McGill was charged by an un-named collector in the name of the Treasurer to provide £16 6s 8d remaining due of a total of £41 13s 4d ‘for his part of the taxatioun of 100,000 pounds quhilk was imposit upoun ye said Mr Jon for his part of ye said taxatioun

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96 A.P.S., IV, 143a., 1597.
97 A.P.S. 1587, III.456-57 c54.
98 eg CS7/186/122v (Mr William Russell v Collector).
99 CS7/190/174r (Lord Privie Seill v Ramsay).
100 A.P.S., IV, 142-146, c.48, 1597.
101 eg CS7/191/392r (Gordoun of Grange v Dumbar).
of ye benefice of ye archipriestrie of Dumbar'.

This taxation was voted 'by convention' for the Prince's baptism in January 1594.

It was the Collector General in the King's name, however, who was the main single counter-claimant to the ministers. As a result of the Collector claiming dues, 70 actions involving 79 appearances arose. Most were straightforward actions by the Collector against single hereditary owners of land or Commendators or feuars of kirklands which for instance pertained 'of auld to the chaplanrie of Sanct Phillane besyd the castel of Dun in Menteyt'. In several actions, however, both a minister and the Collector charged hereditary owners. Mr John Callendar, minister at Dundrennan, and the Collector both charged Sir John Gordon of Lochinvar to make payment because both claimed right to the third of the kirk of Kirkmabreck. In another action the Collector successfully claimed £16 6s 8d 'with 6s 8d of augmentation as for the few maills of the mylnes of Fyirburne and Cauldstreme' from Sir John Ker of Hirsel despite the claim of John Clapperton, minister at Lennel[Coldstream].

Churchmen themselves were not immune to actions brought against them by the Collector. Some charges even referred to the 1580s. Gavin Hamilton, vicar of Kilbarchan, had been charged by Mr Robert Douglas, provost of Lincluden, Collector General for the time, to make payment of £26 13s 4d for the vicarage of Kilbarchan for 1585. He was put to the horn for non-payment in 1600 by Mr John Preston, Collector.

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102 CS7/189/379v (Mr Jon McGill v Lord Advocat).
104 eg CS7/185/106r (Collector v Langlands).
105 eg CS7/186/182r (Monymusk v Collector).
106 eg CS7/186/181r (Cowsland v Lord Collector).
107 eg CS7/185/118r (Collector v Lochinvar).
108 CS7/185/223r (Collector v Litildeine).
109 CS7/186/371r (Hammiltoun v Collector).
In one case George Wardlaw, Chamberlain of his Majesty's rents 'betuix the waters of Die and Forth', Alexander, master of Elphinstone, Treasurer to 'or soverane Lord', Mr Thomas Hamilton, his Highness's advocate and Mr John Preston, Collector General and Treasurer to his Highness's 'lait augmentatiounis' were all involved in an action for suspension of letters of horning raised by the Chamberlain against Mr John Davidson, minister at Muthill, for non-payment of 44s 5d 'as for the thrid of the sub-deanerie of Dunblane, 1596 and 1597 yeiris'. The Lords ordained production of the letters and fixed a day for continuation on which the minister claimed that 'the letters ar generall, not contenand the compleneris name nor sowme chargit for ... and the tiquet proports not be quhat reasson he is chargit for the said thrid ... and swa he can not be astrictit in obedience of the samen'. The wool and lamb had been set to Henry Stirling of Ardoch for ten merks yearly but had then been assigned as part of his stipend to the minister 'ever sen fourscoir ten yeiris and thairfoir he suld not pay ony thrid bot is frie of all thrids'. He had purchased a submission but there had been no 'calling of a suspensioun or giving of protestatioun agains him upoun the samen quhairfoir the said pretendit proces of horning was wrangeouslie usit agains the complener'. The argument on procedural points was accepted and the minister obtained suspension of the letters raised against him.

Mr William Russell obtained suspension of the Collector's letters of horning raised against him for his non-payment of £20 yearly on the grounds that he had agreed at the time of his provision that the chaplainry of Dunira and Drumgowie should be annnexed to St Leonard's College in St Andrews for ever although he would enjoy the fruits during his lifetime.

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110 CS7/185/199v (Davidson v Thesaurer).
111 CS7/186/417r (Davidson v Collectour).
112 CS7/186/122v (Mr William Russell v Collectour).
by the Collector for non-payment of the fruits of the Provostry of Upsetlington in 1587 and in 1588 was sequestrated through his non-residence.113

Many of the Collector's claims were based on there being a vacancy in the parish kirk. Archibald Douglas of Pittendreich was charged 'be vertew of general letters direct at the instance of Mr Robert Douglas as Collector General of the superplus of the haill thrids of all benefices within this realm undisponit or assignit to ministers or reddaris in stipend and of all freiris land quhatsumever omittit and ungiven up in rental, and of all commoun kirks, commoun lands, rents, places and yairds quhilks pertenit to quhatsumever ordour or hew of the freirs' to make payment of the customs of Birss.114

In such an event, it was decreed that the 'twa pairt of the beneficis vacant sall appertene to the king'.115 Thomas McClellan of Balma was charged to make payment to the Collector's chamberlain of 'the tua pairt of the vicarage of Dunrod'.116 Sometimes the cure was not in fact vacant and a minister had been lawfully provided. The problem may have been simply one of inadequate means of communication. Mr Robert Douglas, Collector General for the time 'be vertew of general letters direct at his instance for obeying to him or his under-ressaver of the thrids of benefices within this realm of unplacit ministeris and reideris stipendis unassignat, omittit and ungiven up in rentall, hes causit charge the complener [Mr William Murray, vicar of Dysart]in special to mak payment to him of 40 merkis as for the vicarage pensionarie of Dysart 1597 allegit vacand be ye deid of umquhile Ser George Strachan last vicar yrof'.117

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113 CS7/185/101r (Collector v Ogilvie).
114 CS7/186/225v (Lord Pittendrey v Collector).
115 A.P.S., 1597, c. 13, IV, 132 & 143a.
116 CS7/185/217v (Collector v McClellan).
117 CS7/186/192v (Murray v Lord Collector).
On another occasion the Collector’s claim depended on the act of 1597 which annulled pensions.118 Certainly Mr Thomas Nicolson in a claim against James Hay of Fingask cited that act when he offered to prove that the feu duties of Fingask ‘ar assumit in or soverane Lordis thrid and be ye act of Februar quhik is ratifeit and confermit in Parliament and daylie observit, all gifts of pensiounis given furt of assumit thrids ar declarit and decernit null ... quhairthrow the foirsaid gift of pensioun of the few dewteis ... ar null and consequentlie the haill decreits gevin yrupoun ar tane away and fallis ... and thairfoir the Collector aut to be anserit’. However, Dempster, advocate, in foro contradictorio argued that his client was a heritable possessor, had already made payment to the pensioner and, furthermore, had been in possession since 1594 and had obtained four decrees against the Collector and against two ministers. He pointed out that in 1592 an act declared that ‘persons in possession of pensions out of benefices were not to be prejudiced by the annexation of the temporalities to the crown provided they be fortified by decree or possession prior to the act’.119 The Lords therefore discharged Sir George Home, late Collector and Mr John Preston, now present Collector, of all charging of James Hay until 1598 but found Mr John Preston to be the party ‘with best ryt’ for 1599 and in time coming.120

Even the officials of burghs could be charged by the Collector. Thus, ‘John Johnstoun in Lyncluden, Roger Kirkpatrik, John Merschell, Robert Richardsoun for themselffs and in name and behalf of the rest of the inhabitants of the toune of Drumfreis addettit in the freiris annuells and utheris becaus they ar ane multitude’ were charged by Mr John Preston, Collector General and Treasurer to his

118 A.P.S., 1597, c.17, IV, 66.
119 A.P.S., III, 571, c. 55, 1592.
120 CS7/189/292r (Strang v Collector).
highness' new augmentations, to make payment to him as 'underressaver of the mailles, profites and dewteis of ye freiris lands, fischeings and customs'. They were further charged by Cuthbert Cunningham, John Marshall and James Newall as bailies in name of the provost, bailies and council of Dumfries to make payment to them of 'the tenements, fischeings and annuelrents occupite be thame within the territorie of ye said burghe with the half of the customs of the burghe quhilks sumtyme pertenit to the gray cordelier freiris[Franciscan friars]... be vertew of ye letters of gift grantit to thame yrof for keiping of ane hospitall to ye pure within ye said burghe and uphauling of the brig yrof according to thair use and possessioune be ye space of 30 yeiris bypast'. The complainers were decerned to make payment to the provost, bailies and council of Dumfries conform to their infeftment of 1569 in the King's minority, confirmed in 1591 in his majority. Cuthbert Graham became cautioner for the provost, bailies, council and town of Dumfries that 'they suld big ane hospital for intertenement of the pure to quhais intertenement the dewteis abovementionat ar appointit to be bestowit and employit and that within ye space of yeir and day immedietelie following the day and dait of thir presentis'.

Similarly, Sir George Home as Comptroller and his deputes 'burdingis and chargis' the provost, bailies, council and community of the burgh of Edinburgh by virtue of an extract 'furth of the Books of Responde' for £5 7s 6d for the 'few ferme of the ruinous and wast tenement of land ... being in his hienes hands be ye space of twa yeiris and ane terme ... for not taking of seasing and for £4 6s 8d for ye doubling of ye few mailis of ye said tenement quhilk was held of befoir of ye bishop of Glasgow and or soverane Lord be

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121 CS7/192/219v (Toun of Dumfreis v Collector).
122 a book kept by the Directors of Chancery in which are entered all non-entry and relief duties payable by heirs who take precepts from Chancery [Bell's Dict. Law Scot.].
resson of ye act of annexatioun be geving of seasing to Mr Robert Boyd ... and for £71 for ane tenement of land being in his majesteis hands be ye space of twa yeir ... and with ye sowme of ane hundreth tuentie fortie tua pursds[sic] for doubling of ye few mails'. The town council successfully sought suspension of letters of horning raised against them on the grounds of having been granted the dues in 1566 'by the King's darrest mother of guid memorie ... for sustentatioun of ye ministrie, intertenement of scholles, collegis, hospitalls, infants, pure and miserabill persons'. The Lords accepted the argument that the infeftments of these lands 'quhilk pertenit to quhatsumever bishop, abbot, pryor, parsone, provost, prebendar and chaplane lyand within ye said burt ... ar exceptit per expressum in the 1587 act of annexatioun'.

It was Andrew Morrison as Collector-depute 'be north Forth' who charged Alexander Fyvie, President of the College of Justice and provost of the burgh of Elgin, and the bailies, council and community 'to mak payment of 11 chalders 4 bolls bere for the fermes of the land of the hospitall callit the Messindew'[Maison Dieu]. Their claim that this had been granted for 'sustening of officiars in the kirk under the minister with ane qualifeit persoun for instructing the yowth in letters and guid airt' and that they had power 'to give and grant the said preceptorie to qualifeit persones apt and abill to teich musick and uyr liberall airts within ye said burgh in tyme cuming and to input, plaice and sustene sa mony pure in the hospitall foirsaid as wer specifeit in the foundation yrof' was accepted.

Though the bailies of the burgh of Kirkcudbright had to be compelled by the Lords to hand over the Friars' mails for 1589 to

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123 CS7/185/318r (Provost and Bailleis v Ser George Home, Comptroller) ; see App.III,10.
124 CS7/186/365r (Toun of Elgin v Collector) ; see App.III,11.
the Collector or to Mr Thomas Hope, 'agent and solister in the said office of collectorie' the provost and bailies of Montrose were exonerated from payment to the Collector of the few mails of lands sometime pertaining to the Friars Carmelite because they had already won an action against a Collector in 1587 and 'the present Collector can be in na better estait nor haiff na mair power nor his predecessors ... agains quhom and his chalmerlane the said decreit was given'. Instead Patrick Panter of Newmanswalls was decerned to make payment of the feu mails to the provost and Master of the hospital.

The provost and bailies of Ayr were charged, too, by the Collector who sought payment of the third of the chaplainry of rood's altar in the kirk of Ayr. They successfully claimed exemption on the grounds of having used the proceeds for 'the sustentation, simple maintenance and intertenement of the ministrie, hospitalitie and pure et ad alios pios usus' conform to Mary Queen of Scotland's gift under the great seal, 14 April, 1567. The Lords suspended the Collector's letters of horning raised against them provided they 'big up and repair thair said hospital betuix the dait[26 June]and the 20 day June 1601'.

Actions raised by the Collector against benefices under lay patronage, however, could have failed because, as argued by Craig, being under lay patronage they were excepted from the act of annexation of temporalities of benefices to the crown. The Collector raised two letters of horning against Lord Herries, as lawful administrator to his son Robert Maxwell as alleged Abbot of Newabbey, for the non-payment in 1595 of part of the crop due firstly for the parsonage and vicarage of Kirkgunzeon and secondly

125 CS7/185/118v (Collector v Bailieis of Kirkcudbright).
126 CS7/187/170v (Toun of Montrois v Lord Collector and Panter).
127 CS7/186/434v (Burgh of Air v Comptroller).
128 A.P.S., 1587, c.8, III, 433.
for the parsonage of Kirkpatrick Irongray. Lord Herries declared that neither he 'nor his son Robert ar nawayis titulars of the said abbay or abbatis yairof ... nor anything ado yrwith'. He further stated that 'or soverane Lord hes na richt nor entres yrto nor can the same pertene to his hienes it being of veritie that the complener is undoutit heritabil patron of ye said kirk and the parsoun and vicar yrof halfand laitlie deceist the fruits and rents of the twa pairt of the kirk being ane laik patronage sa far as it is unassignit, pertenis to the complener and he hes just caus of retentioun and uptaking yrof quhile ane persoun or vicare be laulie provydit to the said kirk be the complener, patroun yairof, conforme to the laws of this realme'. Suspension of the letters of horning, however, depended on the fact that 'ther was ane sufficient persoun dewlie and laulie presentit to the personage of Kirkpatrik Irngray being ane laik patronage et debito tempore wes refusit be ye kirk'.

The overwhelming problem in the Church, however, was lack of finance; the thirds were not sufficient for the remuneration of the ministry, especially if a minister served the cure in almost every parish. Their difficulties were compounded by the actions of predatory patrons insistent on their rights.

The action between John, marquis of Hamilton, commendator of Arbroath, against 32 ministers and a reader reveals the financial straits of the Abbey from the early 1590s. The Commendator sought a declarator by the Lords that the ministers and a reader had 'wzanguslie upliftit be vertew of thair assignatiouns'[amounts assigned to them in stipend] 'sax or sevin yeirs preceding the crope 1596' certain specified quantities of victual, which were patently more than the Abbey could provide out of the thirds. He wished it to
be stated that he was 'not astrictit in payment ... ony forder nor the just thrid of the said abbay' and that 'the Lordis commissioners of Parliament present and to cum' were to be 'dischagirt of all giving of assignatiouns and thair clarks present and to cum dischagirt of all buiking and extracting yrof to ony ministers or reidars 1596 or yrefter'. The just third had been computed 'at verie greit lenth' in 1597. However, 'thare restit ... how the saids assignatiouns sould be reducit to the said just thrid'. The problem 'could not be gottin to ane poyn ... not in default of the said complener bot throw the contentiou arrysing betuix the saids ministers'. The Lords of Council studied the records, calculated the 'super-expenditure'[imbalance between the thirds of the abbey and payments due to the ministers] and declared the calculated deductions which would have to be paid by each minister for 1597 in order to bring the thirds and payments to ministers into balance. They had all been summoned and had failed to compear, either through defiance or as a gesture signifying that they knew what the result would be. The Lords 'for their better informatioun gave command to the said Mr Thomas Nicolsoun to extract furth and present befoir thame the just deductioun of the foirsaid haill superexpenses of the thrid of the said abbacie'. The anger felt by the ministers is silently expressed in their refusal to compear.\textsuperscript{131}

That John, marquis of Hamilton, commendator of Arbroath, was in financial straits at the time is evident from his current actions against the feuars and parishioners of St Vigeans,\textsuperscript{132} of Dunnichen\textsuperscript{133}, Garthe\textsuperscript{134} and Panbryde\textsuperscript{135} for payment to him of teinds. In each action, however, the minister was found by the Lords to be 'the

\textsuperscript{131} CS7/192/149v (Lord Hammiltoun v the Ministeris of Abirbrothok); see App.III,12.
\textsuperscript{132} CS7/186/174v (Lindesay v Lord Hammiltoun).
\textsuperscript{133} CS7/186/178r (Mr Jon Rig v Lord Hammiltoun).
\textsuperscript{134} CS7/186/175v (Lundy v Lord Hammiltoun).
\textsuperscript{135} CS7/ 186/173v (Drummond v Lord Hammiltoun).
pairtie with best right'. Sir Thomas Lyon of Auldbar, knight and senator of the College of Justice, raised letters of horning against the Commendator who refused to make payment to him of the monks’ portions. Auldbar’s claim rested on a gift from the King to him during his lifetime of all and sundrie the monkis portiouns of the Abbey of Aberbrothok and ilk ane of thame respectivlie of all monkis deceissit in ony tyme bygane sen ye yeir of 1560 or yat sal happin heirefter to deceis in ony time cuming’.

Dame Christian Douglas, Lady Home, who had been made factrice of her husband’s benefice and Priory of Coldingham while he was abroad, was put to the horn by 11 ministers for non-payment of their 1599 stipends. They further sought sequestration of the fruits, rents and emoluments of the Priory. She sought suspension of their letters of horning ‘becaus the tyme of the upgiving of the rental of the hail benefices within this realm and assuming of the thridds yrof, the rental of the Priorie of Coldinghame was gevin up extending to £22 4s 4d, lyk as the samen hes continuin in ye said rental without alteratioun and hes bene assignit to ministeris serving the cure at the kirks yrof from tyme of first upgiving yrof to ye tyme of ye nobil lordis[Alexander Home]provisioun to ye said benefice in August 1592 as be the auld assumptioun, yeirlie assignatiouns and allowance of the yeirlie compts of the Collectors yrupoun in chhekker is manifest’. The stipends, however, ‘ar gevin out above the quantitie of the said auld assumit thrid and the saids assignatiouns ar verie wrangouslie maid in respect the auld assumit thrid as yit stands unalterit be ony laufull tryell or cognitioun taine of ye estait of ye said benefice ... lyk as ye said benefice and rents thairof is naways abil to pay the said auld assumit thrid, mekleles ane gryttter thrid in respect not onlie the haill temporall lands yrof, quhilk as the grytter pairt of the said patrimonie of the samen is

136 CS7/191/142v (Auldbar v Commendator of Arbroth[sic]).
annext to the croun bot also thair is ane gryt number of monks
cortiouners evictit furth of the spiritualitie yrof quhairunto the
nobil lord is provydit besyd sundrie pensiouns of 30 chalders
victual disposit furth of the saman to Sir Alexander Home of
Manderstoun and yat be vertew of his hienes decreit arbitral
ratifeit in Parliament and declarit to be frie of all thrids,
taxatiouns, ministeris stipends and uyris burdingis quhatsumever
quhairthrow the spiritualitie of ye said benefice is all uterlie
exhawstit'. The Lords 'superceidit and superceids quhilk follows and
may follow' at the instance of any of the ministers against Lady
Home for any claim greater than the just third contained in a Rental
subscibed by the Register Clerk until a new Rental 'be lauchfullie
establissit'.

In a 'test case' Mr David Spens, minister at Kirkcaldy, raised
letters of horning against Ludovic, duke of Lennox, commendator of
the Priory of St Andrews and John Wemys of Tuthilhill, his
chamberlain, for non-payment to him of two chalders eight bolls oats
assigned to him from the third of the priory for 1599. As a
preliminary to seeking suspension of these letters, the Commendator
charged 74 'pensioners' who included some ministers, to exhibit
their assignations and gifts of pensions. The action was continued
until November but there is no entry in the register for 1600 at
that date. It seems likely that these ministers too were about to
find their stipends out of the thirds reduced.

Patrick, commendator of Lindores, had 'obtenit the gift of the
abbacie of Lindores to be halden in few ferme of his Majestie in
temporalitie for certane great sowmes of money to be payit yeirly
to his Majestie his comptrollars and chamerlanes'. The 'superplus of
the said abbacie' was gifted to him for his lifetime 'he payand the

137 CS7/186/335r (Lady Home v Ministeris of Coldinghame); see
App.,III,13a.
138 CS7/185/ 254r & 255r (Lord Duke v Spens); see App.III,13b.
ministeris serving ye cure at ye says kirkis of Lindoris yair stipends'. Nevertheless, for some reason he assigned the feu ferme to George Barroun of Kinnaird, who was put to the horn by John Philp and Mr Henry Philp, ministers at Creiche, and Mr Henry Balfour, minister at Collessie, for non-payment of their teind sheaves from the lands of Kinnaird; they denied that they had accepted the assignation.\footnote{139} In a different action the Commendator, clearly being vigilant over his finances, pointed out that Mr James Robertson, minister at Dundee, was claiming victual assigned to him in stipend out of the thirds of the Abbey of Lindores but 'the kirk of Dundie is not ane of the abbay kirks but the parsonage yrof is given be his Majestie to Ser James Scrymgeour, Constable of Dundie', therefore Mr James should 'crave and uplift payment fra the hands of Ser James'. He stated that he should be 'na farder astrictit for payment to na ministers of na allegit thirds bot onlie to the ordiner ministers of the paroche kirks within his jurisdictioun'. Nevertheless he was ordained to pay the liquidated value of the victual to the Dundee minister.\footnote{140}

Besides those ministers who faced difficulties through non-payment of victual or of money, 22 others had to litigate about their glebes. In 1581 the act of 1572 explaining 'the act anent manses and gleibis' of 1563 had been ratified. The 'mans maist ewest to the kirk and maist commodious for dwelling' was to belong to the minister or reader 'together with foure aikeris of land of the gleib at leist liand contigue or maist ewest to the said mans gif thair be samekill and failzeing thairof samekill as is to be merkit ... be the advise of ony tua of the maist honest of the parochinaris'.\footnote{141} This was used as the main argument put forward by six parishioners against Mr John Sangster, minister at Blantyre. The moderator of the

\footnote{139} CS7/191/63r (Barroun v Lindoris).
\footnote{140} CS7/190/171v & 173v (Robertsoun v Lindores).
\footnote{141} A.P.S., III, 73 c.5, 1572, & III, 211a, c.1,1581.
presbytery of Hamilton with several parishioners had designated a
house and a glebe of 'four aikers of yair lands merchit, meitit and
pujitit' or marked out with stones. The act was quoted and it was
declared that it was 'trew that ye mans of sic quha war parsoun and
vicars of ye said paroche kirk of Blantyre viz. ye priors of
Blantyre titulars of yat benefice was not at ye said kirk of
Blantyre nor ye paint foirsaid now designit to Mr Jon for his mans
as said is bot be ye contrair ye said parsoun or vicaris mans war at
ye craig of Blantyre quhilk is distant fra ye kirk ye space of half
ane myle or yrby ; lykas thair gleib land extendit to 20 aikers of
arabill land and 10 aikers of gers and medow land or yrby furt of ye
quhilk ye said ministeris gleib aucht to have bene designit' and 'ye
samyn craig of Blantyre quhilk hes bene sua bruikit as mans and
gleib ... past memorie of man ... aucht now to have bene alsua
designit to ye said Mr Jon according to ye expres wordis and meaning
of ye said act of Parliament'. Although Spens, advocate, argued that
the designation 'not being conforme bot all uterlie disconforme and
contrair ye act is null in ye self and na executeion can follow',
Craig and Haliday, preloquitors for the minister, proved that 'the
kirk of Blantyre was reput and hauldin ane paroche kirk yeirs befoir
ye alteratioun of ye religioun and yat yair was ane vicar resident
at ye said kirk quha dwelt upoun ye lands now designit for ye mans
and servit ye cure of ye said kirk be saying of mess and
ministrationoun of ye sacraments, lyk as sen ye alteratioun of ye
religioun the samyn has bene estemit ane paroche kirk and ye haill
parochiners hes resortit to ye samyn to preiching and prayeris and
ministrationoun of ye sacraments and als yair hes bene ministers and
reiders ... sen ye said alteratioun'. This was persuasion enough and
the parishioners were ordained to flit.142

142 CS7/189/394r (Sangister v Jaksoun); see App.III,14.
It was not unnatural for evicted tenants to retaliate when they could, presumably through the advocate who was acting for the poor at the time. Robert Bruntfield complained almost in line with the act that his land had been designated by ‘tua base and mene men’ not by ‘tua of the maist substantious yomen men of the paroche’. He indicated that George Ker’s lands were more appropriate because they were ‘past memorie of man ye vicaris landis’. Furthermore these lands were ‘mair ewest and nerrer to the manss presentlie designit to ye minister’. The outcome of this action is unknown.\textsuperscript{143} John Cockburn of Clerkington, however, father of Mr Robert Cockburn who represented him, was in a different financial position as Lord Privy Seal, but equally understandably outraged when lands designated as glebe to Mr James Carmichael, minister at Haddington, happened to be four acres of his lands of Clerkington. He refused to give them up and when the minister raised letters of horning against him he may have had good reason in inveighing that ‘the letters ar evill execut agains the persewar only upoun plane malice to draw him to truble and expens and under sum inconvenints’. Wisely, however, the Lord Privy Seal found caution in case he were found by the Lords to have to flit. He may have won his point because he suggested alternative kirklands which, in accordance with the act, were ‘neirest adiacent to the mans’. He proposed a croft of land ‘lyand contigue to the said kirkyaird dyke’ belonging to the parson of the kirk of Haddington or, perhaps maliciously himself, eight acres of land occupied by Thomas Cockburn, provost of Haddington. This action too, fades from the records.\textsuperscript{144}

When there was dispute over the choice of glebe, different land was indeed selected from any kirklands.\textsuperscript{145} Thus Mr Peter Blackburn, moderator of the presbytery of Aberdeen, designated lands in

\textsuperscript{143} CS7/185/144v (Bruntfeild v Lumsden); see App.III,15.
\textsuperscript{144} CS7/190/124v (Lord Privie Seill v Carmichael); see App.III,16.
\textsuperscript{145} A.P.S., 1593, c. 8, IV, 17.
Banchory-Devenick belonging to David Menzies, burgess of Aberdeen, held by him of the Bishop of Aberdeen, to Mr Robert Mercer, minister at Banchory-Devenick.¹⁴⁶

Several ministers were dissatisfied with their glebes. Thus Mr Andrew Blackhall, minister at Inveresk, complained that three of his four acres belonged to the Abbey of Dunfermline 'and nather being parsoun nor vicaris gleib the samen culd naways have bene designit' ... and is 'altogidder repugnant'. The 'gleib of auld' was more conveniently placed, though occupied. This action was continued until December but as no further entry was found in the register it must have been settled.¹⁴⁷

The relationship between the minister and some of his parishioners must have been soured from the beginning by the commandeering of land as glebe and in this sense it was politic to involve local parishioners in the selection of land. Nevertheless it was hard for the evicted, whether they were widows or men as heads of households, as was more usual. Mr Henry Balfour, minister at Collessie, raised letters against Andrew Scott charging him to flit from lands designated to him as glebe. It had been 'aggreit betuix yame that for ye renunciatioun in ye said ministeris favor of all ryt and titil of ryt yat ye persewar had or myt have to ye nort yaird of ye vicarage of Collessie with houses yron' that the minister would 'band him nather be law to troubil ye persewar nor be act of Parliament or act of kirk tuiching ony land possesst be ye persewar'. Nevertheless the minister 'bruiks ye said yaird and houses... quhairupoun he had grit polacie and planting floris'. Scott was called on to provide proof but as the case evaporates from the records it was probably settled.¹⁴⁸

¹⁴⁶ CS7/186/159r (Menzeis v Merser); see App.III,17.
¹⁴⁷ CS7/185/333v (Richardsone v Blakhall); see App.III,18.
¹⁴⁸ CS7/189/347r (Scott v Balfor).
It was not only tenants who were ordained to flit. Mr David McGill of Cranstoun Riddell, one of the senators of the College of Justice, obtained a decree against Mr John Spottiswood, minister of Nisbet, charging him to flit from lands of Nisbetsheills belonging to him heritably, and from Raeburn belonging to him as superior, and in his hands by reason of ward and non-entres. The minister was prepared to obtemper and obey the decree but took exception to having to pay £10 of expenses together with £5 paid to the Collector because he was not the only one involved; he was one of three people charged to flit. Nevertheless, John Redpath became cautioner for 300 merks that he would flit so the Lords suspended the letters of horning raised against him.149

Parishioners must have resented having to pay a tax for building and repairing the parish church, seen as a problem in 1563150 and discussed in The First Book of Discipline.151 Thus Mungo Murray was denounced as rebel by Mr William Stirling, minister at Aberfoyle, by the 'lait commissioner and visitor within the parishes of Dunblane and Stirling’, and by Mr John Davidson, minister at Muthill, for non-payment of the 'sowme quhairunto he was stentit and taxt be ye kirkenirs and collectors ... for beilting and reparing of ye paroche kirk’.152 John McGhie in Barquhill [the use of 'in' suggesting that he was not a hereditary land-owner] was denounced rebel for non-payment to the Collector of 6s 8d for every merkland of the fourmerkland of Creochis for the repairing of the kirk of Kirkinner’.153

Little is learnt from the records about actual manses but it is significant that tenants were evicted to provide a manse. John Ray,

149 CS7/190/164r (Spottiswod v Lord Cranstoun Riddell).
150 A.P.S., II, c. 12, 539.
152 CS7/185/148v (Murray v Barclay); see App.III,19.
153 CS7/191/392r (Goedoun of Grange v Dumbar).
a naturalist, described farm servants’ houses in 1601 as ‘pitiful Cots, built of stone, and covered with Turves, having in them but one Room, many of them with no Chimneys, the Windows very small Holes, and not glazed’. It is to be hoped that ministers fared rather better; certainly the foundations of what is reputed to be a manse within a walled glebe beside the medieval church of St Blane in Bute is more substantial than that description would suggest.

The state of kirkyards is glimpsed in the action raised by the ministers, elders and deacons of the parish kirk and parish of Kilmarnock against 13, mainly merchants but including a notary. Mr Thomas Craig, advocate for the ministry stated that in ‘ane visitation un maid be ye moderator and certane of ye brethrene of ye presbitrie of Conynghame upoun 15 Merche 1598 of ye kirkyaird of ye said kirk of Kilmernok be ye advyse of ye parochiners yrof they causit foure of ye maist agit men of ye said paroche pas, use, meith and merche ye said kirkyaird according to ye auld bounds yrof ... and fand ye houses and buiths efterspecifieit to be bigit within ye said kirkyaird and compas yrof’. There were five merchant booths and several dwellings housing seven people and some unnamed cottars ‘quhilks houses and buiths ye said moderator and brethrene of ye presbitrie with advyse of the parochiners ... ordanit to be demolischt and appeyntit and designat ye said kirkyaird within ye haill bounds foirsaid to be ane place of buriall in all tyme cuming’. Understandably the occupiers were recalcitrant but were ordained by the Lords to cast down the said buildings and booths.

The kirkyard of the cathedral kirk of Ross must have resembled a market place with a girnell belonging to an Edinburgh merchant and booths occupied by a cordiner, a wright, a bailie, a tailor, a

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155 Ord. Surv. NS094534.
156 CS7/191/123v (Minister of Kilmernok v Parochiners yrof).
merchant from Perth and undesignated others.\textsuperscript{157} Use was even made of the kirk steeple of Easter Bavelaw, parish of St Katherine's in the sheriffdom of Edinburgh; it was occupied by Isobel Allan who may have performed some service like cleaning in the church.\textsuperscript{158}

There is no evidence of a minister as a borrower of money and only two examples as lenders (though evidence that such transactions occurred frequently between 1637 and 1651 has been found).\textsuperscript{159} Mr John Scrimgeor, minister without charge at Dundee, raised letters of horning against Thomas Forrester of Strathurie for not paying him 1600 merks principal with 200 merks of expenses conform to a registered obligation.\textsuperscript{160} Clearly he for one was not in financial difficulties. Mr James Seaton, parson of 'Quhitsum' [Whitton], denounced John Arbuthnot of Cairnshaw as rebel and put him to the horn for non-payment of 500 merks with 100 merks of 'liquidat' expenses conform to an obligation.\textsuperscript{161} These were damages provided for in a contract as the parties' estimate of the loss which would result from breach of the contract; they were recoverable in the event of breach, without requiring proof of actual loss.

There is one example of a minister being charged with usury. Mr Alexander Rowat, minister at Glasgow, along with three other men was ordained to produce contracts in which they 'be vertew and under cullor yrof upliftit profit and annuelrent far exceding ye ordiner and lauchful annuelrent of ten merks for everie hundreth merks and yrby contravenit ye tenor of ye act of Parliament'.\textsuperscript{162} Unfortunately the outcome is unknown though the penalty was spelt out as hearing 'the saids obligatiouns declarit null and the sowme of money

\textsuperscript{157} CS7/186/456r (Robertsoun v Leslie).
\textsuperscript{158} CS7/189/80v (Dundas v his Tennents).
\textsuperscript{159} Makey, Walter, The Church of the Covenant : 1637-1651, (John Donald, Edinburgh, 1979),106, 116.
\textsuperscript{160} CS7/189/25r (Strymgeor v Forrestar).
\textsuperscript{161} CS7/186/371v (Advocat v Arbuthnot).
\textsuperscript{162} A.P.S., III, 451 c. 35, 1587 & IV, 119-121,1597.
contentit yrintil justlie to appertene to or soverane Lord and in his hienes name to his Thesaurer'.

Only occasionally was it found that the stipend and teinds due to ministers in 1600 were unchanged from those declared in 1560/61. The stipend of the vicar of Kilbarchan in 1560 was £26 13s 4d; in 1600, the Collector claimed £26 13s 4d as a vacant parish. In 1560 the stipend for the kirk of Dunnichen was worth £10 yearly; in 1600 Mr John Rig, minister claimed £10 assigned to him in stipend. The fruits paid to the vicar of Inverkeilor in 1560 amounted to £40; in 1600 the executors of John Fullerton, minister there, were claiming £40 with manse, glebe and teinds. These repeated values may be coincidental however, because when the stipends and teinds of 1560 and 1599 due to the 11 ministers of Coldingham and the 35 ministers of Arbroath are collated, no relationship between the statistics can be found apart from the stipend of Inverkeilor.

**Conclusion**

Ministers found themselves enmeshed in an economic problem over which no one had control. Some annual stipends had been calculated since 1562 out of a third of the total yearly income of the parent house; others had been arranged locally. When the Collector was bringing or defending a case it was fought mainly over thirds; if a tacksman or patron was involved, the case was likely to have been over an individually agreed matter.

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163 CS7/190/146r (Lord Thesaurer v Ockerroris).
165 CS7/186/371r (Hammiltoun v Collector).
166 see Kirk, 399.
167 CS7/186/178r (Mr John Rig v Lord Hammiltoun).
168 see Kirk, 82.
169 CS7/187/128r (Ffyffis & Stiven v Chalmerlane Arbrothe).
170 CS7/186/335r (Lady Home v Ministeris of Coldingham).
171 CS7/192/149v (Lord Hammiltoun v the Ministeris of Abirbrothok); see App.III,12.
The value of money had altered over the years. Inflation is indicated in that in 1582 a pound of silver produced 640s but 960s in 1601; the exchange rate fell from £6 scots in 1565 to £12 in 1601 per pound sterling. In 1594 James had recalled old money in order to substitute new coins for the very varied ones current at the time. Reissued at values in excess of the intrinsic worth, the result had been inflationary. A detailed study of specific prices of grain, animals and meat confirms this inflation while demonstrating regional variations. There was a sixfold increase in grain prices between 1550 and 1600; a fivefold increase for cattle but less for sheep and the last two decades of the century showed a particularly serious increase in prices. Kirklands had been feued to occupiers, to merchants, to lawyers, and the feuars were paying a fixed annual sum for the land. In a period of inflation those feuars paying a fixed amount found themselves paying less and less in real value terms; feuars became correspondingly wealthier.

Tenants, however, had to pay dues which were usually in kind. Even if they were expressed in monetary terms, they were fixed, regardless of fluctuations in the value of money. Where a tenant paid in victual, he could face a loss when there was a bad harvest; where he paid in money terms there was a correcting mechanism in that fiars' prices reflected the state of the current harvests. Ministers were entangled in this; if there was a bad harvest and they were paid in kind, parishioners were reluctant to surrender

their teinds and ministers had to compel payment. If they were paid in money, as was not usual, their real incomes would fall in times of bad harvest, because the monetary equivalent of grain would have been higher and grain would have been sold at a higher price.

One element in the parishioners’ reluctance to surrender their teinds may have been population pressure which would have been catastrophic in times of bad harvest.

Confusion arose from the complicated changes in land ownership through assignations of tacks so that it was not always clear whose responsibility payment of stipends had become. Furthermore, the majority of feuars were rentallers (residents) or tacksmen (living elsewhere) who did not belong to the traditional land-holding classes. To some, the responsibilities of a superior towards a vassal may have been alien concepts. Superiors included lawyers or merchants whose business ethos may have dictated that a bargain had been struck which did not encompass humanitarian attitudes towards tenants or churchmen.176

Even the King’s arrangements for the remuneration of his own minister, Mr Patrick Galloway, would have foundered without a decree of the Lords. The tenants of Balgay refused to pay him the two-part of the spirituality of the Abbey of Scone, perhaps out of sympathy for the Earl of Gowrie. The minister was given a pension because the King, ‘considering the greit travellis sustenit be him in his continuall remayning and abyding with his Majestie, awating on his office of ministrie alsweill the tyme of his Majestie jurnaying throw the cuntreis as in pairtis and in places of his hienes residence’, considered that ‘the pretendit stipend assignit to him for his said service is not abill to sustene the saids expenses without sum help be provydit for that effect’. Sir David Murray of Gospertie, comptroller, ‘hes given, grantit and disponit to the

176 Sanderson, M. D. B., Scottish Rural Society, 77-80.
complener (but prejudice of his said stipend) yeirlie during his lyftyme ane yeirlie pensioun of ten chalders of victual... furth of the tua part of the spiritualitie of the Abbay of Scone, lands, kirks, teinds, teynd scheves, fruits, rents, emoluments and uyr dewteis belonging yrto' because 'the haill abbacie of Scone now vaikes in his Majesteis hands and ar at his hienes gift throw the proces and doome of forfaltor ordorlie declarit agains John, sumtyme Erle of Gowrie, commendator of the abbay, for certane crymes of treasoun and leismajestie laitlie committit be him for the quhilk he was convict in Parliament'.

The financial position of ministers was made worse by the demands of the tax collector in the King's name. When benefice holders responded to taxation demands they 'possibly preferred to seek relief from feuars rather than teind tacksmen' but when either feuars or tacksmen of kirklands were charged to pay taxation under pain of horning, it is likely that ministers suffered indirectly. Certainly the King was determined to milk as much in taxation as he could. Mr James Gray, advocate, was appointed as Master of the Chapel Royal of Stirling and 'als as commissionier for serching and trying of ye auld fundatioun of ye Chapell Ryell and how and to quhom ye rentis and leting of of ye samyn is disponit and quha ar addetit in payment yrof'.

It may have caused a wry smile when ministers heard that Sir George Home, Collector, was himself clamouring for payment of part of his salary 'tyme of his office of collectorie and controllarie'. He raised letters of horning against Colonel David Boyd of Burgill as feuar of the Channel Lands of Largs for non-payment of £26 13s 4d yearly from 1585 to 1598 assigned to him 'conform to ane act and

177 CS7/190/378v (Mr Patrick Galloway v Tenants of Scone); see App.III,20.
179 CS7189/380r (Gray v Merser); see App.21.
ordinance of secret counsel for releiff of dewtie contraictit be him tyme of his office of collectorie and comptrollarie'. Boyd had not been infeft until 1598 and Mr John Prestoun had been already been paid as Collector from 1599 'to dait 1601' so the former Collector was found only entitled to payment for 1598 and thus would appear to have been considerably out of pocket.\textsuperscript{180}

Only one minister tried to insure for his wife's widowhood. William Christison, sometime minister at Dundee, assigned to John Philp, a merchant in Newburgh, ten bolls of wheat, 13 bolls of oatmeal and 13 bolls of oats as part of his stipend out of Lindores Abbey. It was to be paid to his relict Anna Vince. It appears not to have been paid because Philp sought suspension of letters of horning. Whether it was eventually paid is not revealed\textsuperscript{181} but this action may have stimulated the vigilance over Mr Robertson's claim to a stipend for serving the kirk of Dundee out of the Abbey of Lindores, a claim vehemently rebutted by the Commendator.\textsuperscript{182}

Whether 1598 and 1599 had been particularly difficult years for churchmen is an open question. If the problems which appear in the litigation in 1600 are echoed in other years, the position of ministers and other churchmen was decidedly insecure, despite having been appointed for life. Patrons or tacksmen, on whom they depended for an appointment which could be challenged by the kirk, and who were responsible for the payment of stipends, often defaulted. As has been demonstrated, the thirds of Arbroath and of Coldingham were no longer sufficient to fund their stipends, so these were adjusted downwards. Similar litigations may well be found in other years. Inflation had even eroded the stipends to which they were entitled. Such litigation would have proved costly to an impoverished minister. This may explain why there were actions

\begin{flushend}
\textsuperscript{180} CS7/186/435v (Collonell Boyd v Collector).
\textsuperscript{181} CS7/189/285r (Philp v Winter)
\textsuperscript{182} CS7/190/171v & 173v (Robertsoun v Lindores).
involving multiple parties. Teinds, rendered in kind, often went unpaid, and in times of dearth it would have been humanitarian to modify pressure put on hungry parishioners with families to feed. The entitlement to a manse and glebe was not always trouble-free. Too many glebes were occupied by sitting tenants who had to be removed and resentment could be expressed through damage to the designated glebe.\textsuperscript{183} Unbowed in the face of worldly trials, however, it appears that ministers did not hesitate to invoke the secular Lords to claim or defend their rights.

\textsuperscript{183} CS7/185/146v (Werd cv Greg and Uyris); see App.III,22.
Appearances on behalf of Ministers and Churchmen

- Churchmen - 200
- Others - 2511

Total Appearances in Register 2711
CHURCHMEN INVOLVED IN ACTIONS BEFORE THE LORDS OF COUNCIL AND SESSION IN 1600

The following fought actions before the Lords of Council and Session in 1600:

- Mr John Abernethy, Jedburgh
- Andrew Anderson, Clyne
- Andrew Arbuthnot, Swinton
- Mr Thomas Archibald, Cardross
- William Arde, St Cuthbert, Edinburgh
- Mr John Auchinleck, Largo
- Mr William Auchmoutie, Trinity College
- Mr Walter Balcanquell, Edinburgh
- George Balfour, provost, Charterhouse, Perth
- Mr Henry Balfour, Collessie
- James Balfour, chaplain St James Chapel beside Newhaven
- William Balfour, Kelso
- Mr Thomas Archibald, Cardross
- William Arde, St Cuthbert, Edinburgh
- Mr John Auchinleck, Largo
- Mr William Auchmoutie, Trinity College
- James Balfour, chaplain St James Chapel beside Newhaven
- William Balfour, Kelso
- Mr Thomas Baxter, Dunbog
- Mr Adam Bellenden, Falkirk
- Mr Robert Bellenden, Carnwath
- James Bennet, son of Mr Andrew Bennet, Monymail
- Mr James Bennet, Liberton
- Mr Henry Beveridge, reader Kirkcaldy
- Mr David Black, Abirlot
- Mr Andrew Blackhall, Inveresk
- Mr Robert Boyd, Newtyle
- William Broadfoot, Ballingry
- Mr Robert Bruce, Edinburgh
- Mr Robert Buchanan, Forgan, Ceres
- John Burnett, Inverkeithing
- Mr John Callendar, Dunfermline
- Mr James Carmichael, Haddington
- Mr Alexander Clayhills, Monyfirth
- Mr Adam Colt, Inveresk and Musselburgh
- relict of William Christison, St Mary's Dundee
- John Clapperton, Connell
- Patrick Cockburn, vicar, Langton
- Mr Robert Cowslane, chaplain, St Fillans
- Mr John Craig, min. in sov's house, Canongate
- daughter of Mr John Craig, Lesmahagow
- Mr William Cranston, Lathrisk
- Mr Andrew Cunningham, vicar, Stobo
- Mr Cuthbert Cunningham, provost college kirk Dunbarton
- Mr John Davidson, Aberfald(Aberfoyle), Muthill
- George Dowglas, Dores
- Mr Thomas Dowglas, Balmerino
- William Douglas, vicar of Elgin
- Mr Henry Duncan, Murroes
- Mr Andrew Drummond, Panbride
- Mr George Dunbar, parson Cumnock (minister, 1599)
- Mr James Dunbar, chantor of Moray
- Mr Henry Duncan, Murroes
- Mr John Ducansson, min. in sov’s house, East Stirling
- Mr John Durham, Monikie
- Mr John Durie, Montrose
- Mr Joshua Durie, Forfar and Restenneth
- Mr Robert Ecklin, Orphir (Orkney)
- Mr William Edmonston, Cargill
- Mr William Erskine, parson, Campsie
- Mr Henry Forrester, Larbert
- Mr Arthur Fithie, Kinnell, Innerkeillor
- Thomas Fleming, subdeanery, cathedral kirk, Orkney
- Mr James Fotheringham, parson, Ballumbie
- Mr Andrew Forbes,
Kirkcolm(?) 2ZG; Mr William Forbes, Kinbatloch 63; relict of Alexander Forrester, Kippen 64; Mr James French, Penicuik 65; Mr Hew Fullarton, Dumfries 66; John Fullerton, Inverkeilor 67; Mr Patrick Galloway, min. to sov., Chapel Royal, Perth 68; Mr Thomas Garden, Tarves 69; Mr Patrick Gaits, Duns 70; Mr William Galbraith, Bedrule 71; Mr John Garden, Barrie 72; Mr William Glass, Little Dunkeld 73; Mr Robert Glendenning, parson, Parton 74; John Guthrie, Gamry 75; Mr John Guthrie, Inverboun, Kinnell 76; Mr Alexander Hamilton, Glasford 77; Gavin Hamilton, vicar Kilbarchan 78; relict of Mr James Hamilton, Dalry 79; Mr Robert Hamilton, Cathcart 80; Mr Patrick Gaites, Duns 81; Mr William Galbraith, Bedrule 82; Mr James Hering, provost, Methven 83; Mr Phillip Hislop, Musselburgh 84; Robert Hislop, Hilton & Whitsome 85; Mr William Hogg, Lindean (Galashiels) 86; Mr Thomas Howieson, Inverness 87; Mr Robert Hunter, Sanquhar 88; Alexander Inglis, Lunan 89; Mr George Inglis, Bathgate 90; Mr John James, Fyvie 91; relict of Mr Adam Johnston, Crichton 92; Mr John Johnston, Nisbet 93; Mr William Johnston, Kinkell 94; relict of Robert Johnston, Lochmaben 95; Mr Andrew Kinninmonth, Kenmore(?) 96; Mr John Knox, Melrose 97; Mr Andrew Lamb, Arbrough 98; Mr James Law, parson, Kirkliston 99; Mr William Lawrie, Pettinain 100; Walter Leslie, vicar and reader, Kenethmont 101; Mr John Leverance (Lawrence), Roberton 102; David(? Alexander) Lindsay, provost, college kirk, Guthrie 103; Mr Patrick Lindsay, St Vigeans 104; Robert Lindsay, Coull 105; Robert Lindsay, Dunsyre 106; Mr Thomas Livingston, parson, Carnwath 107; Mr Thomas (? George) Livingston, vicar, Kincardine O'Neil 108; Mr Alexander Lumsden, Huton 109; Mr Charles Lumsden, Duddingston 110; Mr Allan Lundie, Bussendean 111; Mr John Mackenzie, Dingwall 112; George McCleish, Roseneath 113; William McQueen, Tain and Morinns 114; Steven Mason, Belhelvie 115; Robert Maule, reader, Panbride 116; Mr Robert Mercer, Banchory Devenick 117; Mr David Milne, Corsbie 118; Mr James Milne, Inverurie and Monkery 119; John Milne, reader and vicar, Maryculter 120; Thomas Marshall, reader, Dunkeld 121; Mr Archibald Moncreiff, Abernethy 122; Mr Walter Morison, Garvock 123; Mr John Muirhead, Hamilton 124; Mr George Munro, chancellor, Ross 125; Mr John Murray, Gamrie 126; Mr William Murray, parson Dysart 127; Craul 128; William Murray, reader, Longley (=old Inverugie) 129; James Newton, prebendar, college kirk, Crichton, callit Arnieston 130; Mr David Ogill, Baro 131; Mr Thomas Ogilvie,
Provestry, Upsetlington132; Mr William Oswald, reader, Trinity Gask (Pres. Auchterarder)133; Mr William Pape, Dornoch134; Mr Andrew Peebles, schoolmaster and reader, Dysart135; Mr James Pitcairn, Lathrisk136; Mr John Philip, Forgue137; Mr Thomas Powtie, Leslie138; Mr James Rait, Forfar139; Mr William Rait, Mains and Strathmartine140; Mr George Ramsay, Lasswade141; Mr John Ramsay, dean, Restalrig142; Samuel Ramsay, Glamis143; James Read, Banchory-Ternan144; Mr John Rig, Dunnichen145; Mr John Ritchie, Nig146; Robert Ritchie, Prior of Whitehouse147; Mr James Robertson, Dundee148; John Roche, Nig149; relict of Robert Rollok, Old Greyfriars, Edinburgh150; Mr John Ross, min. and parson, Dunbarton151; Mr Alexander Rowatt, Glasgow152; Mr William Russell, Drumgowie153; Mr William Ruthven, reader, Trinity Gask and Kinkell154; Mr John Sangster, Blantyre155; James Schewane, chancellor, Brechin156; Mr John Scrimgeor, without charge Dundee157; Mr Patrick Shaw, minister Selkirk158; Peter Simpson, Nesting (Shetland)159; Mr George Slowan, Lenzie160; Mr David Spens, Kirkcaldy161; Mr Alexander Spittal, Libberton162; Mr Alexander Spittal, Nesting163; Mr John Spottiswood, Cadder164; Mr John Spottiswood, Nisbet'scheills and Raeburn165; John Stewart, reader, subdeanery, cathedral kirk, Orkney166; Robert Stewart, Orphir167 (Orkney); Mr Henry Stirling, Aberlemno and Aldbar168; Mr William Stirling, parson Aberfeldy (Aberfoyle)169; Mr John Symonton, Carmichael170; Richard Thompson, Ratho171; Mr William Traill, Edinburgh172; Mr Walter Tullie, Dalmeny173; James Tweedy, Drumelzier174; Mr John Tweedy, Wilkieston175; Mr Adam Walker, Fordoun176; Mr William Wallace, Symington177; Mr Alexander Watson, Coldingham178; James Wood, vicar, Largo179; Mr Richard Wright, Clackmannan180; Mr George Young, archdeacon, St Andrews181; Mr John Young, Methven182; Mr William Young, Clunie183; Mr Alexander Youngson, Durris184; Mr James Yule, Dairsie185.

2 S 123 & F2, 125.CS7/189/61r
3 H27 & F7, 79.CS7/187/157v
4 GA 90, GD 138 & F2, 59.CS7/185/111r & CS7/186/266r
5 S 354 & F3, 335. CS7189/319v
6 S 461 & F CS7/191/10v
7 GD 95 & F5, 217.CS7/186/215r
8 GA 34 & CS7/185/82v
9 GD 433 & F1, 52, 125.CS7/192/149v
10. H 709 & no ref. CS7/190/354r
CS7/189/347r; 189/416v; 191/60v; 191/63r; 191/179r; 191/179r
12. GA 6 & F1, 53. CS7/185/65v
13. S 460 & F2, 70. CS7/191/10r
14. GD 147, H 114 & F2, 264, F3, 51. CS7/186/277v & CS7/190/326r
15. GD 233, H 680 & F6, 158. CS7/186/380v & CS7/190/326r
16. GD 433 & F . CS7/192/149v
17. GA 384, GD 29 & F1, 205. CS7/185/269v & CS7/186/141r
18. GA 225 & F3, 289. CS7/185/188r
19. H 292 & F5, 164. CS7/190/11v
20. GD 244 & F1, 170. CS7/186/393r
21. GA 533 & no ref. CS7/185/358r
22. GD 433 & F5, 420. CS7/192/149v
23. GA 481 & F1, 324. CS7/185/333v
24. GD 433 & F5, 271. CS7/192/149v
25. GD 88 & F5, 58. CS7/186/202v
26. GA 340, GD 335, 349, 380, 433, H 550 & F1, 52. CS7/185/245v &
CS7/192/24v & CS7/192/40v & CS7/192/86v & CS7/192/149v & CS7/190/214r
27. GA 386, 535, S 429 & F5, 203. CS7/185/270v & CS7/185/359v &
CS7/189/416v
28. GD 331 & F5, 42. CS7/192/19v
29. GA 102 & F . CS7/185/118r
30. H 449, 586 & F1, 369. CS7/192/19v & CS7/190/124v &
CS7/190/244r
31. H 474 & F5, 361. CS7/190/143v
32. GD 305, 323 & F1, 301, 325. CS7/186/461v & CS7/192/8r
33. H 512, S 321 & F5, 315. CS7/190/171v & CS7/189/285r
34. GA 414 . CS7/185/223r
35. GD 312 & F2, 21. CS7/186/469v
36. GD 67 & no ref. CS7/186/181r
37. GD 433, S 291 & F1, 23, 52. CS7/192/149v & CS7/189/259r
38. H 611 & no ref. CS7/190/267v
39. H 676 & F5, 158. CS7/190/322r
40. H 659 & no ref. CS7/190/3111v
41. GA 393, 394 & no ref. CS7/185/275r
42. GA 248, GD 213, 266 & F4, 263. CS7/185/1999v & CS7/186/360v &
CS7/186/417r
43. GD 183 & F6, 450. CS7/186/322r
44. GD 349 & F5, 128. CS7/192/40v
45. GA 438 & no ref. CS7/185/304r
46. GD 59, 63, 433, S 651 & F5, 367. CS7/186/173r & CS7/186/177r &
CS7/192/149v & CS7/191/242v
47. GD 60, 433 & F5 447. CS7/186/173v & CS7/192/149v
49. GD 388 & F6, 478. CS7/192/97r
50. S 651 & F5, 367. CS7/191/242v
51. GD 433 & F4, 373. CS7/192/149v
52. GD 62, 433 & F5, 358. CS7/186/175v & CS7/192/149v
53. GD 289 & F1, 52, F5, 409. CS7/186/444v
54. GA 329 & F5, 285. CS7/185/240v
55. S 322 & no ref. CS7/189/286r
56. S 343 & F4, 149. CS7/189/202r
57. GD 673 & F3, 375. CS7/190/320r
58. S 158 & F4, 310. CS7/189/103r
59. GA 340, 405, GD 349, 365, 433, & F5, 439. CS7/185/245v &
CS7/185/337r & CS7/192/40v & CS7/192/64v & CS7/192/149v
60. GD 242 & F7, 243. CS7/186/390v
H 103, 175, 239 & F5, 369.CS7/187/236r & CS7/187/299v & CS7/187/368r
62 GD 433 & no ref.CS7/192/149v
63 GD 249 & F6, 141.CS7/186/399r
64 GD 316 & F4, 350.CS7/192/1r
65 GA 480 & F1, 343.CS7/185/333r
66 GA 288 & F2, 264.CS7/185/220v
68 H 683, 731 & F4, 229, 332.CS7/190/330v & CS7/190/378v
69 GD 433 & F6, 204.CS7/192/149v
70 GD 248, 410 & F2, 8.CS7/186/397v & CS7/192/122r
71 S 670 & F2, 102.CS7/191/268r
72 GA 423, 529 & F5, 429.CS7/185/292v & CS7/185/356v
73 H 393, 499 & F4, 158.CS7/190/84r & CS7/190/160v
74 H 518 & F2, 420.CS7/190/177r
75 H 108 & F6, 275.CS7/187/238r
76 GD 349, 433, & F6, 278, F7, 351.CS7/192/40v & CS7/192/149v
77 S 283 & F3, 252.CS7/189/251r
78 GD 223 & F3, 148.CS7/186/371r
79 GA 104 & no ref.CS7/185/119r
80 S 94 & F3, 391.CS7/189/353v
81 S 323 & F3, 25.CS7/189/288r
82 S 6 & F3, 128.CS7/188/142r
83 GD 511 & F4, 221.CS7/192/245r
84 GD 305 & F1, 325.CS7/186/461v
85 GD 231, 425, 490 & F2 63.CS7/186/379r & CS7/192/141r & CS7/192/222v
86 S 315 & F2, 177.CS7/189/278r
87 GD 433 & F6, 455.CS7/192/149v
88 GA 97 & F2, 324.CS7/185/114r
89 GD 140, 433 & F5, 442.CS7/186/267r & CS7/192/149v
90 S 214 & F1, 192.CS7/189/173r
91 GD 433 & no ref.CS7/192/149v
92 GD 331 & F1, 311.CS7/192/19v
93 S 256 & F2, 109.CS7/189/216r
94 GD 235 & F4, 286.CS7/186/382v
95 S 139 & F2, 213.CS7/189/77v
96 GD 433 & no ref.CS7/192/149v
97 GD 298, S 315 & F2, 227.CS7/186/454v
98 GD 349, 433 & F4, 332.CS7/192/40v & CS7/192/149v
99 H29 & F1, 212.CS7/187/159v
100 GD 258 & F3, 318.CS7/186/408r
101 H 680 & F6, 130.CS7/190/326r
102 GD 310, S 59 & F3 313.CS7/186/468r
103 GD 330 & F5, 436.CS7/192/18v
104 GD, 61, 433 & F CS7/186/174v & CS7/192/149v
105 GD 433 & F6, 89.CS7/192/149v
106 S 382 & no ref.CS7/189/354r
107 GA 225 & F3, 289.CS7/185/188r
108 GD 450 & F6, 100. CS7/192/182r
110 GA 178 & F1, 17.CS7/185/161r
111 H 380 & no ref.CS7/190/77v
112 S 241 & F7, 33.CS7/189/200r
113 GD 466 & F3, 362.CS7/192/197v
114 H 272 & F7, 70.CS7/187/405v
115 GD 433 & no ref.CS7/192/149v
173 S 351 & F1, 200.CS7/189/315r
174 H 659 & no ref.CS7/190/311v
175 H 659 & no ref.CS7/190/311v
176 S 103 & F5, 467.CS7/189/39r
177 S 149 & F3, 73.CS7/189/92r
178 GD 367 & F2, 36.CS7/192/66v
179 GD 95 & no ref.CS7/106/215r
180 GA 210 & F4, 301.CS7/185/180v
181 GA 323 & F5, 473.CS7/185/238r
182 GA 340, GD 511 & F4, 221.CS7/185/245v & CS7/192/245r
183 GD 265 & F4, 151.CS7/186/416v
184 GD 357 & F6, 52.CS7/192/52r
185 GD 331 & F5, 148.CS7/192/19v
CHAPTER 4

WOMEN AND THE LAW

PART 1 - INTRODUCTION AND BACKGROUND

The pre-Reformation position involving the status of women was founded in the canon law. William Hay lectured in theology at Aberdeen for some thirty years. Extant manuscripts of these lectures are dated between 1533 and 1535. It was thus as a theologian, not as a lawyer, that Hay addressed priests and those aspiring to the priesthood on the sacramental system of the Catholic Church which included matrimony. Hay’s was not a legal system of matrimonial law but a discussion of the theology of marriage. Nevertheless the lectures contained the essence of the canon law.1 Concerned with betrothal, the constitution of and impediments to marriage, canon law was founded in the writings and decisions of secular lawyers or in statutes. After the Reformation canon law continued to influence the consistorial decisions of the Edinburgh Commissary Court which was created in 1563/4, and other local commissary courts which followed in matters excluding divorce.

It is possible to glean information about the legal position of women between the Reformation and about 1630 from sources which were extant at the time in copyists’ manuscript form but are now available in print. Principal among these is Balfour’s Practicks.2 Its date is generally accepted to have been 1579 but copies which survive contain some additions up to the date of Balfour’s death in 1583 and therefore they were probably written by Balfour himself, with some further additions possibly made by Habbakuk Bisset and John Skene. It is a vernacular digest of the laws of the time being

based on the experience of a lawyer who, though he never practised at the Bar, had been an Official before the Reformation and a Senator of the College of Justice, Chief Commissary of Edinburgh, and Lord President after the 'alteration in the religioun'. The digest is compiled from the Auld Laws (mainly 'Regiam Maiestatem' and 'Quoniam Attachamentieta'), Statutes (drawn from the 'Black Acts', [so-called because they were printed in black ink] printed in 1566, which he had helped to prepare) and decisions which are assumed to have been taken from a register which is now lost.

Craig's *Ius Feudale* is a jurist's philosophical study of law. Written in Latin in the later years of the sixteenth and and early seventeenth centuries but now available in translation, it is 'the earliest reasoned examination of the laws of Scotland'. As a practising advocate, Craig's discussion of 'coniunct infeftment, bare liferent, terce and courtesy' and his analysis of the origins of specific features of Scottish law are lucid and persuasive.

Hope's *Major Practicks* covers the entire range of contemporary practice in Scotland between 1608 and 1633. Now in print, it is the personal notebook in Scots of a busy practitioner at the Bar. While relying heavily on Balfour, his 'Practicae Observationes' draw attention to cases considered of importance at the time.

In 1598 it was enacted by Parliament that the Lords of Session were to consider how the *Laws and Acts of Parliament* imprinted by Mr John Skene in the previous year 'may be bocht be sic subjectis within this Realme as ar of that substance and habilitie to by the samyn'. These are now included in the fuller and more readily accessible edition of Thomson, *The Acts of the Parliaments of*

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4 ibid., xix.
6 A.P.S.IV, 165, 9.
Scotland of 1814. Attached to Skene’s Laws and Acts was a dictionary of legal terms De Verborum Significatione. It can be found at the end of Skene’s 1609 edition of Regiam Maiestatem. Purporting to explain difficult legal terms it frequently offers explanations of relevant law.

Though much later, Stair’s The Institutions of the Law of Scotland, published in 1681, and Baron Hume’s Lectures, 1786-1822, are helpful in elucidating difficult points. Morison’s dictionary, Decisions of the Court of Session, published in 1811, and Pitcairn’s Criminal Trials in Scotland, 1488-1624, published in pamphlet form from 1829 to 1833 as collections of cases selected and compiled in the nineteenth century, both provide specific cases.

Ius Relictae and legitim as well as terce and courtesy are authoritatively treated by Gardner. Their Anglo-Norman origins are traced by W. D. H. Sellar.

Most important however, are the manuscript sources in the Scottish Record Office. The seventeenth century Registers of Testaments for Edinburgh and Dumfries and the Registers of Acts and

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7 The Acts of the Parliaments of Scotland, ed. T. Thomson, and C. Innes, (Edinburgh, 1814-75),II-IV.
8 available in Adv. MS(NLS), C.3.1.(1681).
9 Skene John, Regiam Majestatem and Quoniam Attachamenta, ed. Lord Cooper, (Stair Soc.,11, 1947).
16 MS SRO, CS 5.8 ff. and CS 5.6 ff.
Decrees of the Lords of Council and Session for 1600 have been studied in detail along with the unindexed processes, Warrants and Decreets. A Legal Notebook of 1636, which seems to have been a course of lectures in Law, was useful in that it echoed and discussed, albeit superficially, earlier sources.

The text-book legal position of women

Females could marry at 12; males at 14. In marriage, although the children took the surname of their father, the wife as she appears in the legal records retained her maiden surname, for example, 'Issobell Kincaid relict of umquhile John Mayne and George Farnie now her spous for his interes...'. Since marriage was taken to be a link between families this custom may reflect a deep-rooted individual sense of kinship with one's own forebears.

There were several forms of lawful marriage. A marriage of habit and repute was held to be legal. Thus 'quhar ye matrimonie was not accusit in yr lyvetymes yat ye woman askand this terce beand reput and haldin as his lauchful wyfe in his lyve tyme salbe tercit and brouke hir terce bot ony impediment ... ay and quhill it be clerly decernit and sentence gevin that scho was not his lauchfull wyfe and yat scho suld not have ane lauchfull terce therfor'. It was usually a method of proof used mainly in bastardy cases, not a statement of constitution of marriage, but the implication is clear. Post-Reformation irregular marriages based on consent (declaration de praesenti and promise subsecuente copula), acceptable in canon law, were still permitted although in 1567 the canon law's forbidden

17 MS SRO, CS 7. Regs., 185-193.
18 MS SRO, CS 15. boxes 77-79.
19 John Brown; Legal Notebook, 1636., Adv. MS(NLS), 25.5.12.
20 CS7/192/223r
22 A. P. S., II, 252, c.22.
23 Ireland, R., 'Husband and Wife', Stair Soc., 20, 89.
degrees of marriage were altered. Thus, 'secundis in degrees of consanguinitie and affinitie and all degreis outwith the samin ... mycht and may lauchfullie marie at all tymes'.

A conventional, valid post-Reformation marriage, however, followed the proclamation of banns and was performed by a minister in a church before an assembled congregation. The format is familiar today but the words used have altered. The minister asked the bridegroom whether he took the bride 'for his lawful wife and spouse, promising to keep her, to love her and treat her in all things according to the duty of a faithful husband, forsaking all other during her life and briefly, to live in holy conversation with her, keeping faith and truth in all points ...'. The minister then asked the bride whether she took the man to be her husband 'promising to him subjection and obedience, forsaking all other during his life'. Thus every woman married by a minister must have made at least an outward show of accepting this role of subjection and obedience to her husband. Nevertheless, in terms of mutual moral obligations, the expected standards of behaviour were virtually the same for both husband and wife. Non-fulfilment, adherence and divorce law bore equally on each. In non-fulfilment of marriage either party could be compelled to compensate 'the partie quha is willing and reddie to obey and fulfill the said contract and appointment'. The rules of adherence applied to each sex without favour. Neither could be compelled to adhere if either 'apprevis the committing of the said adulterie'.

Before the Reformation, questions of agreements ratified by oath, perjury, marriage, adultery, fornication, moveable succession (the

26 Walker, 668.
28 A. P. S., III, 82, 1.
confirmation of testaments and the administration of intestate moveables) and heresy came before the ecclesiastical courts and decisions were based on canon law. Questions over heritable property always came before the civil courts. After the Reformation, some consistorial jurisdiction was in the hands of the kirk session. The kirk session and the superintendent, in effect, formed a regional court. Matters relating to matrimonial relations like adherence, fornication and adultery came before these kirk sessions and then before presbyteries after their foundation in 1581; questions of a more serious nature came before synods. Kirk sessions imposed penalties, regardless of gender. In the main these were based on the public humiliation of Sunday penance or the payment of fines which provided for the poor. More serious offences or disobedience of the kirk session's punishment merited excommunication, endorsed by a civil penalty before the lords of session or privy council who, if the accused failed to appear, 'sall gif out lrez to put the said persone or personis to the horne within ten dayes nixt after the charge.'

It was the Commissary Court in Edinburgh, however, which, after its establishment, dealt with divorce. Before the Reformation, divorce 'a mensa et thoro' was possible on the grounds of adultery. In effect this meant separation, since remarriage was not permitted. After the Reformation, however, marriage was no longer classed as a sacrament; it was understood to be a voluntary agreement between two people. Divorce a vinculo, previously pronounced on grounds of nullity or for having been undertaken by a couple within forbidden

31 Walker, 287.
33 Walker, 299-300.
34 A. P. S., IV, 16, 7.
35 Ireland, R., Stair Soc., 20, 90.
36 Ibid., 97.
degrees, was now the penalty for adultery or desertion by either man or wife. Remarriage was allowed.\textsuperscript{37} Not till 1600 was it enacted that marriage with the adulterous paramour of either sex rendered the marriage null and children born of such a union were unable to succeed as heirs.\textsuperscript{38} Neither sex was free to remarry if undivorced.\textsuperscript{39}

It was in her position before the law that a woman was inferior to a man. No woman could serve on an assize or be a witness. The bald statements, 'Ane woman may not pass upon assise, or be witness'\textsuperscript{40} does not seem to have applied to cases of witchcraft. Larner refers to an Act of 1591 which made special allowance for the evidence of women and \textit{socii criminis} in the case of witchcraft. The defence's argument that 'infamous witnesses cannot be allowed to prejudge the panel, \textit{lege infamia}', could be successfully countered by the prosecution's reply that such evidence was acceptable in \textit{criminis atrocibus}. Confession by the alleged witch, however, was best evidence.\textsuperscript{41} A mother's word was accepted in questions of a child's age.\textsuperscript{42} It is possible that a woman could bear witness to having heard a child cry at childbirth, though best evidence may have been that of a man listening outside the lying-in chamber as the law required.\textsuperscript{43} In her general non-acceptability as a witness, a woman was esteemed virtually the equal of a man who 'is haldin in prisoun or bandis, for suspitioun of ony crime ; he that is ane out-law, or at the Kingis horne ; he that is out of his wit, as a lunatique or natural fule or idiot ; ... he that is convict of perjurie ... he that is a theif, or adulterer'.\textsuperscript{44}

\textsuperscript{37} see 24, 679.
\textsuperscript{38} A. P. S., IV, 233, 29.
\textsuperscript{39} Balf. Prac., 97.
\textsuperscript{40} Ibid., 378, Lady Culluthie v Schir Robert Carnegie(1558).
\textsuperscript{42} Balf. Prac., 378-379.
\textsuperscript{44} Balf. Prac., 378.
Widows and single women out of their minority at twelve and free of their curators 'at 21 yeirs compleit' were in a stronger position than their married sisters in that they, unlike married women, could be cautioners\(^{45}\) and make testaments without anyone's consent being required.\(^{46}\) Married women, on the other hand, required a husband's consent before becoming a cautioner\(^{47}\) and before writing a testament, though allowing her to write a testament 'of that part of the gudiis and geir qhilk sould have pertenit to hir, gif scho had happinit to live efter him' was commendable.\(^{48}\)

The offices of tutory and curatory were open to women and a mother had the custody of a child until it was seven years old.\(^{49}\) A woman could be appointed tutrix testamentar by a husband in his will or by instrument; or she could be appointed tutrix dative by the king until a male pupil was 14 or a female, 12. However, a woman could only be tutrix testamentar 'sa lang as scho remains wedow'.\(^{50}\) A minor of either sex could choose a curator until perfect age of 21 years complete\(^{51}\) although the office of curatory expired if the girl married because her husband became her curator.\(^{52}\) A woman could be 'given be a Judge, curatrix to hir awin bairn, speciallie ad negotia and not ad lites'.\(^{53}\)

On marriage a woman ceased to have a legal persona.\(^{54}\) Therein lay the kernel of her disabilities. In no way could she act in law without her husband's consent.\(^{55}\) All actions involving a wife use the words 'and A her spouse for his interest'.\(^{56}\) A wife could not

\(^{45}\) Ibid., 93.
\(^{46}\) Ibid., 216.
\(^{47}\) Balf., Prac., 93.
\(^{48}\) Balf., Prac., 216.
\(^{49}\) Ibid., 227.
\(^{50}\) Ibid., 116, James Sandilands of Calder v the Tenentis of N.(1569).
\(^{51}\) Ibid., 121.
\(^{52}\) Ibid., 129, Edward Sinclair v William Sinclair(1564).
\(^{53}\) Ibid., 122, Euphame Balfour and hir Dochteris(1559).
\(^{54}\) Paton, G. C., Stair Soc., 20, 99.
\(^{55}\) Balf., Prac., 93.
\(^{56}\) eg CS/7/186/143r
contract personal obligations. Thus, 'The wife cannot oblige herself without consent of her husband stante matrimonio, and there will no executione follow therupon after his deceis'.\(^57\) Later this was relaxed to take account of women who ran businesses with a husband's consent.\(^58\) Although not marriage law, in her domestic role as the person in charge of her master's establishment, she was said to be praepositura negotiis domesticis; this allowed her to pledge her husband's credit for household necessities suitable to his station. This freedom did not extend to loans unless for family purposes.\(^59\)

All a wife's legal disabilities, however, could be altered by provisions laid down in a marriage contract. The purpose of a marriage contract was to protect property from creditors, spouses or children by counteracting legal rights.\(^60\)

On marriage a wife surrendered to her husband control of her moveable property, including the rents of her heritable property, the produce of annuities and interest on money loaned on personal bond\(^61\) and her husband could 'annalzie his wife's moveabill gudis without hir consent'\(^62\) because he was dominus omnium bonorum liberam diaponendi habebat facultatem durante matrimonio.\(^63\) When alive, she was able to dispose of her paraphernalia - though not of heirlooms - with her husband's approval.\(^64\) On death it passed to her next of kin or to her legatees\(^65\) if she had had her husband's consent to her making of a will.\(^66\) Although on the one hand a husband could sell his wife's goods without her consent (but not her paraphernalia, which

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\(^57\) Hope, Maj. Prac., II, 17,10.
\(^58\) Paton, G.C., Stair Soc., 20, 105.
\(^59\) Paton, G. C., Stair Soc., 20, 106.
\(^60\) Ibid., 114.
\(^61\) Ibid., 100.
\(^62\) Balf., Prac., 93.
\(^63\) Mor., 5764, Pennycook against Cockburn (1582).
\(^64\) Balf., Prac., 93.
\(^65\) Paton, G. C., Stair Soc., 20, 103.
\(^66\) Balf., Prac., 216.
did require her consent), a wife, on the other hand 'could not give, sell or dispone ony of hir husbandis geir'. Because the husband was dominus, his right to his wife's moveable goods, his ius mariti, was absolute so he could sell them, allow them to be attached by creditors and enter into obligations over them.

The situation was not quite the same for a wife's heritable estate. A heretrix retained her separate estate on marriage but though she could dispose of it 'inter vivos or mortis causa she could not sell her right, title or claim without expres consent and assent of hir husband'.

The husband was in a similar position in that in order to sell his wife's land, he required the consent of her heir. With regard to her heritable property, his right was the right of administration - ius administratione - because her heritable estate passed to her heirs and was never her husband's. However, until he died or remarried, he could enjoy the courtesy, or legal right to the liferent of the heritable estate in which his wife had been infeft if she died and had given birth to a living child, whether that child survived or not.

That there were some advantages in marriage for a woman is indisputable. Marriage contracts speak of the future husband 'takand the burdene upoun him' for his future spouse. Her husband was responsible for her misdemeanors - 'Vir est caput uxoris et censetur dominus omnium bonorum quae possidet uxor de iure nostro and

68 Balf., Prac., 93.
69 Paton, G. C., Stair Soc., 20, 100.
70 Balf., Prac., 95(Christiane Stewart v Williame Stewart of Rossyth(1505).
71 Ibid., 163.
72 Paton, Stair Soc., 20, 104.
73 Craig, Ius Feudale, 881-882.
74 eg CS/186/131v.
thairfoir may be denounced to the horne for her caus'.\(^{75}\) He was responsible for her debts, even for those which were pre-nuptial.\(^{76}\) She was entitled to be supported by her husband, until death or divorce.\(^{77}\) A husband could provide for his widow's support by assigning to her debts which were owed to him.\(^{78}\) Assignations of lands, goods or tacks had to be genuine, however,\(^{79}\) and all were revocable.\(^{80}\)

A major source of security for a widow lay in her immunity from actions against her husband for spuilzie\(^{81}\) or ejection.\(^{82}\) Nor was there any obligation on a wife to accuse her husband or reveal any felony committed by him although she was held responsible if she kept the keys of the place where stolen goods were hidden.\(^{83}\)

Further security came from the provision for his widow that a husband was compelled by law to make. Even if no will existed, a widow was entitled, after all debts had been paid, to a third of her husband's moveables on his death if there were children, a half if there were none.\(^{84}\)

Equally, a husband had no option about his widow's life entitlement to terce. This was his contribution to the marriage and was the counterpart to the wife's tocher. It could amount to no more than a liferent of 'the thrid part of all the lands and heritage quhilk the husband hes the time of the mariag'.\(^{85}\) Land acquired by him later could not be claimed as part of terce.\(^{86}\) Although terce was specifically meant to provide for widowhood, the husband could

\(^{75}\) Hope, Maj. Prac., II, 17, 13 and 17,32.

\(^{76}\) Paton, G. C., Stair Soc., 20,101.

\(^{77}\) Balf. Prac., 95, Dame Jean Hamiltoun v Hew Erle of Eglintoun(1561) and Barbara Logane v Roger Wod(1561).

\(^{78}\) Ibid., 93, Isobell Lauder v Johne Myretoun(1496).

\(^{79}\) Ibid., 94, Robert Callendar v Elizabeth Levingstoun(1508).

\(^{80}\) see above, Christiane Levingstoun v Henrie Murray(1576).

\(^{81}\) see above, Mr James Creychtoun v Martine Creychtoun(1565).

\(^{82}\) Ibid., 95, Andro Wardlaw v The Laird of Torreis(1561).

\(^{83}\) Ibid., 96.

\(^{84}\) Ibid., 217.

\(^{85}\) Ibid., 105.

\(^{86}\) Ibid., 107.
dispose of terce lands with her consent but the wife could not.\textsuperscript{87} Such alienations could be revoked only after his death on the grounds that the wife had given her consent through fear.\textsuperscript{88} Similarly any contract made by a husband and wife could be revoked on the grounds that the wife had given her consent through fear.\textsuperscript{89} Although her genuine consent could be ascertained by having to affirm it in front of a judge ordinary out of the presence of her husband, Craig was unhappy about this. He felt that there must be evidence more compelling than a mere statement that consent had been given under duress.\textsuperscript{90}

Terce land did not belong to her; it belonged to the heir.\textsuperscript{91} This gave rise to the possibility of two widows claiming terce of the same land in which case the first widow had prior claim.\textsuperscript{92} The widow’s right to terce was so fundamental that even if the husband’s lands were wadset lands, having been given to him in lieu of payment of a debt and were subsequently redeemed by the debtor from her husband’s heir, the widow was entitled to the monetary equivalent of her terce and this was extracted from the redemption silver. Alternatively, she could be given ‘als mekle land lyand in als gude and competent a place as the thrid of the saidis redbmit lands’.\textsuperscript{93}

The right of terce became difficult to enforce in practice as disputes arose over scattered lands and bargains increasingly came to be made between a wife’s parents and her husband for setting apart some of the his estate in ‘coniunct fie’. Meant to be in lieu of terce, it was a provision, not a legal requirement, and could be arranged before or during the marriage. Unless terce was

\textsuperscript{87} Ibid., 111.  
\textsuperscript{88} Craig, \textit{Ius Feudale}, 863-866.  
\textsuperscript{89} Balf., \textit{Prac.}, 94., Patrik Johnsoun v William Stewart and Issobell Bar(1552).  
\textsuperscript{90} Craig, \textit{Ius Feudale}, 865.  
\textsuperscript{91} Stair, \textit{Institutions}, III, IV, XXIV, 458.  
\textsuperscript{92} Balf. \textit{Prac.}, 110.  
\textsuperscript{93} Ibid., 107.
specifically renounced, however, the widow could still claim it.\footnote{Craig, Ius Feudale, II, 859.} By conjunct fee the husband and wife received investiture in a feu at one and the same time. On the death of the first partner, the survivor enjoyed the life-rent of the lands; on the death of the longer liver, the feu reverted to the heir.\footnote{Ibid., 855.} Ownership was for life, subject to the proviso that the possessor was forbidden to let the land deteriorate.\footnote{Ibid., 861.} Only if his wife gave her consent could the husband set these lands in tack or sell them.\footnote{Balf. Prac., 104, Marjorie Lindesay v Williame Wallace(1505).} Craig explains this trend towards replacing terce with conjunct fee arrangements. ‘Parents who gave large tochers with their daughters thought themselves entitled to stipulate for something more in the way of marriage provision than the rights which the law gives to widows. Their aim was not only to obtain the best possible settlement for daughters, but also to prevent by anticipation those difficulties which might be expected to arise on the death of the husband.’\footnote{Craig, Ius Feudale, 858.} The value of the conjunct fee lands could extend to half the husband’s property or even to the whole.\footnote{Ibid., 859.} The wife, however, was unable to use the fruits of these lands while her husband was alive because ‘the samin pertenis to the husband, that he may thairby sustene [his] wife and family’.\footnote{Balf. Prac., 101.} A woman forfeited her legal rights on divorce,\footnote{Ibid., 112.} or if the husband died within a year and a day after the completing of the marriage, ‘na bairns beand gottin nor born betuix thame’.\footnote{Ibid. 95, Margaret Windizettis v James Logane(1506); 112-13, The Schireff of Perthis Decreit v The Lady Athole(1546); 104, Thomas Cuke v Elizabeth Mattiesone(1533).}
The wife too had obligations. Before marriage her parents or relations contributed tocher in the form of land or money to the husband-to-be; this was the counter-part to donatio propter nuptias, which was given either before or after marriage. Tocher had to be returned to the donor 'gif it happen the woman to deceis within zeir and day efter the completing of the said mariage'.

On marriage, the wife’s financial obligations ended. Unlike a husband who had to leave one third of his moveable goods to his wife and another third to his children, or one half to his wife if there were none, as mentioned above, a wife was not responsible for her children in this way, even when she made a will with her husband’s consent. Balfour implies (when referring to a burgess) that a woman had equal responsibilities. Thus, ‘gif ony burges beget bairnis with his lauchful wife, and thairefter he or scho happinis to deceis, the thrid of all the gudis and geir pertenis to the bairnis’. Stair, however, said in the seventeenth century, ‘the natural obligement for provision of children ... is extended only to the immediate children, and not to the grandchildren, neither does it restrict the mother, but only the father’. Hume, in the eighteenth, said, ‘In regard again to a woman proprietor of moveables, her situation is different. Whether she be married or single, she can always by testament dispose of her whole personal property; though she be married, and have children these have no sort of claim upon her for legitim or in any other shape; and are liable, all of them, to be disappointed, by her will, in favour of a stranger, if she please.’

103 Ibid., 100-101 (William Gyle v Henrie Cant(1517)).
104 Balf., Prac., 217.
105 Ibid., 217.
107 Hume, V, 190.
In the law of succession, based on the principle of male primogeniture, though a male always excluded females of equal degree, a woman could succeed in default of a male. In such an eventuality the heritage was divided equally among the daughters. However, the preference for a male was over-ridden by the rule that descendants were represented by their descendants. Thus a granddaughter by a dead eldest son excluded a younger son.108

In such ways was the married woman held in legal subjection to her husband. Her marriage vows were projected into the legal sphere. Marriage law was canon law founded on Scriptural ideas but Scots law, as Craig knew and practised it, was a system the principles of which preserved the spirit of feudal, canon and civil law operating under principles of natural equity and good sense.109 Thus he saw the legal relationship between man and wife as akin to the feudal relationship between superior and vassal with all its implied mutual obligations and services.

The practical application of these theories will be seen from the cases which came before the Lords of Council and Session in 1600.

109 Craig, Ius Feudale, Translator's Note, xxi-xxii.
CHAPTER 4
WOMEN AND THE LAW

PART 2 - MARRIAGE, MONEY AND DEBT

The legal position of women from the manuscript evidence

Of 2711 entries in the Registers of Acts and Decrees for 1600, 803 refer to actions brought before the Lords of Council and Session by advocates appearing on behalf of women who either litigated on their own, with a man, or in a group of men and women. The statistics and their analysis are shown at the end of this chapter. This represented 478 out of 2221 individual cases or 21.52 per cent of the processes being fought by them in the Supreme Court in 1600.

Appearances in court overstate the number of cases because many entries merely record interlocutors. Some actions may have been started before 1600 and many will have continued into 1601 or beyond. Others which may well have involved women cannot be taken into account because they are concealed and subsumed under ‘... and remanent tenants’.

Nevertheless, despite these difficulties, the statistics reveal that some 30 per cent of all entries recorded refer to actions by or against women, often as part of a group. Of these entries 22.2 per cent relate to single women; 29.6 per cent to widows; 28.6 per cent to married women and just over 17 per cent to widows who had remarried. In terms of individual cases, 14 per cent involved single women; 36.2 per cent, widows; 13.6 per cent, a widow acting with a subsequent husband; 0.2 per cent, a divorcee; 10.5 per cent, a daughter; 0.8 per cent, a mother and son; and 11.9 per cent, a husband acting with his wife.

Given all the inaccuracies implicit in studying statistics constrained by falling within one calendar year, it can only be suggested that certainly no more than one third of the 2711
appearances in court related to women and of the 478 individual cases, 245 or 51.3 per cent were pursued or defended by single or widowed women who were legally entitled to act on their own;\(^1\) the remainder of these were joint actions by a wife and husband; the wording reveals when the action was truly the wife’s but was fought with the husband’s consent. Thus, ‘anent ... lrs purchast at the instance of Issobell Kincaid, relict of umquhile Johne Mayne merchant burges of Edinburgh and George Fairnie now her spouse for his interest’; also the entry in the Register is nearly always in the woman’s name, here Kincaid v. Levingstoun.\(^2\) When an action was fought jointly by man and wife, however, the entry states ‘... at the instance of William Young ... and Mareoun Burne his spouse’.

Some single women made a man assignee to their action,\(^3\) and Lady Corswall as a mother made her son assignee to an action about a contract so that he pursued ‘for her entres,’\(^4\) such women perhaps gaining confidence from a man’s shouldering of the responsibility. The percentage of widows who did act on their own, however, suggests that this was not a universal feeling.

It is evident from a study of the Registers of Acts and Decreets for 1600, that Balfour’s compendium of the laws states principles which were applied in the Supreme Court. There would appear to have been some flexibility, however, in their application in lesser courts or legal documents.

No women appeared as witnesses in a civil action before the Lords of Council and Session. Lists of depositions are found in the uncatalogued papers; all are by men.\(^6\) A woman, however, as a litigating party, could be called upon to swear to the truth of a

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\(^1\) Balf., Prac., Stair Soc., 21, 93.
\(^2\) CS7/192/223r (Kincaid v Levingstoun).
\(^3\) CS7/191/75r (Young v Smyt).
\(^4\) CS7/189/305r (Mr Jon Layng v Cowstoun).
\(^5\) CS7/191/201r (Ladie Corswall v Garthland).
\(^6\) eg CS15/79/33 (Forbes v Forbes); uncat., see App.IV, 1.
claim as an alternative to proof by writ or by witnesses. Thus Margaret Heriot had to come to court to give her oath of verity that she owed £103 to an Edinburgh merchant and Janet Carruthers was ordained 'to compeir personallie to give her ayt de calumnia upoun the points of the summonds'. An oath was deemed to have greater weight than a written statement. Thus a procurator felt able to argue that a Commissary of Glasgow's decree was 'wrang, speciallie in respect that ... the libell tuiching his intromissioun sould have bene provin be witnesses and the spoilzie being provin the said Dame Issobell Hammiltounis aith suld have bene tane and sche solemnly sworn to that effect and deponand in presence of procurators, quhilk was nevir done, bot onlie be ane forme of depostioun subscryvit be hir upoun ye quantitie not absolutlie givin but as sche was informit be uyris persones allanerlie ; quhilk depositioun culd nevir work agains the complener [William Cunningham of Caprington] seing it was nather formed nor aggreabill to the laws of this realme'.

Of 466 Dumfries testaments written between 1600 and 1665, 340 were by men, and 126 by women, of whom 31 were relicts, eight were unmarried and 87 were wives, and only one has a female witness, the Lady Lochinvar. Her name appears in a list of men 'with divers utheris' so this single exception may simply reflect the minister's willingness to humour her ladyship in this way. Thus Balfour's statement that a woman may not be a witness 'in ony

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7 eg CS7/190/387r. (Wilsoun v Heriot).
8 CS7/191/145v (Drumlanrig v Carutheris).
9 CS7/192/80r (Lady Seytoun v Lord Capringtoun).
11 CC8/8/40; 8 June 1605).
testament is supported by overwhelming evidence, although they do appear as witnesses to instruments of a testamentary nature.

However, in the uncatalogued papers one woman appeared in a list of men bearing witness to the procedural matter of nailing a summons to a gate. Women also appear occasionally as witnesses to a non-testamentary instrument, despite Balfour's statement, and in criminal actions in the burgh courts, which he does not specifically mention. Evidence that they could appear as witnesses in any criminal action depends on later sources. Hope, a practitioner, confirms Balfour's statement that women could not be witnesses. Stair repeats this, saying, 'Women are rejected from being witnesses in causes merely civil, except they be necessary witnesses, as in the probation of a child born of that ripeness, as that it did cry or weep'. By the mid-eighteenth century Bankton felt it accurate to say, 'Of old with us Women were rejected from being witnesses in most cases, but now they are for the most part admitted ...' and 'But in crimes they are always receivable, these generally being founded upon palpable facts'. Thus when Balfour stated that women could not be witnesses he was probably propounding a principle and referring to civil cases, especially to those heard in the Supreme Court.

Abundant evidence, however, exists in the Registers of Acts and Decrees to show that single women and relicts acted on their own as litigants and that married women acted with the consent of their

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12 Balf. Prac., 378.
14 ibid., no. 9,3.
15 see 8.
18 Stair, Insits., pub. 1681, reprint. 1759,719.
20 eg CS7/192/217r (Dowglas v Wilsoun); see App.IV,2.
21 eg CS7/186/131v (Newall v Fergusson); see App.IV,3.
husbands, implied by the words 'and A her spous for his interest'.

Many entries specify consent. Thus Christian Forrester, Lady Kilkerran 'with advyse and consent of Gilbert Ross hir spous for his entres befoir witsunday last 1599 causit warne Patrik Bannatyne and Arthur Ffergusson to have left the [20schilling] land of Mekil Brokloche void'.

Indeed an advocate could plead successfully that 'na proces aucht to be led against Elspeth Hervie upoun ye said letters of removing because ... she was mareit and cled with ane husband callit Hew Hepburne ... and thairfoir na proces agains hir becaus hir husband was not summondit'.

The offices of tutory and curatory were allegedly open to women, though only examples of tutory were found, but there were many instances of a woman acting either as executrix dative in place of the procurator fiscal or as executrix testamentar, having been appointed to the office by a testator. Bessie Blair as mother and administrator to her daughter acted 'for her interes' while Margaret Drummond, relict, with the consent of his curators, negotiated a marriage contract for her son. No woman was appointed as overseer but a woman could be made a wardatrix. Thus 'Walter Prior of Blantyre'[Walter Stewart commendator of Blantyre], donator to the ward of the lordship of Ross, by his special letters of assignation constituted Dame Jean Hamilton 'assignay thereto and surrogat her in his full right yrto'.

A husband could appoint his wife as his factrix while he was abroad on business and a woman

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22 eg CS7/186/191r (Campbell v McColincosche).
23 CS7/189/177v (Ross v His Tennentis).
24 CS7/191/219v (Laird of Wauchtoun v Hervie).
26 Ibid., 122.
27 eg CS7/192/243r (Graham v Striveling).
28 CS15/78/85 (Mitchelsoun v Stewart & Ramsay & Grot); see App.IV,4a,4b.
29 CS7/191/124v (Stewart v Lady Ross); see App.IV,5.
30 CS7/186/199r (Fauli v his Tenentis).
31 CS7/189/202r (Drummond v Grahame).
32 CS7/191/267r (Ladie Ross v West).
33 CS7/191/376r (Dunlope v Dyikis); see App.IV,6.
could be donatrix to an escheat but one action makes it clear that, as Balfour stated, a married woman needed her husband’s consent before she could become a cautioner.

There are examples which prove the legal freedom of a single woman or relict to write a testament but there is also evidence of married women having written them. Consent of her husband is implied in the words ‘umquhile Margaret (Dentone) spous to Angus Murray citiner in Dornoche ... in hir latter will and testament maid and given up be hirself ... gaiue up the guids and geir underwrittin pertening to hir and hir said spous’. In a much later example, Janet Welsh actually states in her testament ‘in presence of the said Charles Herries and with his consent’.

A relict, unlike a married woman, could be denounced rebel and be put to the horn, for instance for not passing on a third of her dead husband’s goods and geir to his son; she could also be charged with spuilzie.

In default of a direct male heir, direct daughters inherited but as Balfour stated, the lands and heritage were equally divided among them. Similarly the stated laws governing payment of marriage avails to a superior were regarded as binding.

Thus the legal position of women between 1579 and 1583 as revealed by Balfour is shown to be an accurate account of the law as it was applied in the Supreme Court in 1600. A single woman or a
relict had freedom to act independently in law but a married woman required her husband’s consent in all her actings.

Circumvention and exploitation of the law

Many women sought to circumvent the law, with varying motives and degrees of success. Elizabeth Drummond, her status unrecorded, used a contract to prevent some members of her family from inheriting her goods. For £300 she sold to Robert Drummond, her brother german, his heirs and assignees ‘the hail guids and geir, abuliament, insicht and plenishing in hir possession in ye place of Elphinstoun according to the particular inventar efter following reservand to hir the use yrof during all the days of hir lyftyme’. He was to intromit with her goods if she died without heirs. She died childless and without having made a testament. She had acquired further goods since making the transaction and the intromittors with these goods refused to hand them over to her brother german. The Lords of Council, however, found that Robert ‘had guid ryt to the guids and geir pertening to umquhile Elizabeth Drummond’.46 No reason is given for this decision.

Margaret Wyntoun sought to help a daughter and her husband who were deeply in debt by passing on to her goods and geir in anticipation of her widow’s portion. As relict of Andrew Meldrum and ‘haveand just caus of retentioun of the samen being fre within the quantitie and worth of sa mekil of the defunctis guids and geir as wald justlie befall and pertene to hir as relict and haveand the samen within the defunctis place of Forret tyme of his decels sche schortlie yrefter gave and disponit the samen ... to Cristiane Meldrum ... as hir lauchful dochter to be intromittit with as hir awin proper guids’. David Meldrum, a son of her dead husband, as executor dative, successfully prevented this transaction because

46 CS7/186/369v (Drummond v Mr Elphinstoun); see App.IV,13.
being presentlie distressit as executor confermit for thrie thowsand pundis ... quhilk will exhaust the haill geir ... and seeing thair is na frie geir quhile the dett be first payit, it cannot be ... knawn quhat hir thrid part may extend to ... Bot quhan he sall be persewit for ye relictis thrid be way of actioun upoun his office of exerie it sal be anserit suo loco'. It seems likely that here the widow had some idea of the debts owed by her dead husband but did her best to salvage something for her daughter.

Margaret Dalgleish assigned her half of a liferent of a tenement in Todrig's Wynd off the High Street in Edinburgh to her son by a previous marriage after banns for her next marriage had been called in St Giles'. She took the precaution of getting her son to write a backband to the effect that should her new husband die, her son would restore her liferent to her. One can understand her motive; the liferent must have come to her through her son's father's death and she may well have felt that it ought to belong to her son and that, by remarrying, she was defrauding him of what she deemed to be his rather than her new husband's; equally, she may have been trying to preserve for her own future use what she deemed to be hers by right if not by law. Her betrothed was somewhat less than sympathetic and adopted the reasonable view that it was he who was being cheated of his right, stating 'In cais sic kynd of blokes(agreeements) and dispositiouns be sustenit, the samen sall be ane grit defraude to all men quha maries wedows or heretrices or other frie wemen quha onlie contractis themeselffis in mareage without onie concernis or assistance of ony responsall persone quha binds for thame'. The Lords annulled the disposition 'as being given contra bonos mores without the consent of her husband quhomto sche was oblist and contractit in matrimony' and 'they restorit the said

47 CS7/186/221r (Meldrum v L. Forret); see App.IV,14.
Margaret to hir awin ryt; thus her future husband was able to benefit from her liferent. 48

One wife, perhaps in good faith, tried to become a cautioner along with several men to an obligation to James Aikman for £520 but '... Issobell Quhytt the persewaris spouse [William Lamb] being thirty yeiris mareit with him could na wayis of ye law mak ony sic obligatioun of cautiouirie or contract ony maner of dettis in ye said persewaris absence furth of the realme without his consent and siclyk albeit sche had bene ane frie persoun unmareit yit of the law na woman is hauldin to contract dett be cautiouirie and mekil les to mak ony sic obligatioun without the consent of hir husband except sche had his speciall commisioun to yat effect as sche had not indeid and sua the said lrs obligators maid be ye said persewaris said spous in his absence and by[without] his consent is null of the law and can mereit na executioun agains hir or the said persewar hir husband'.49 This reason 'was fund relevant be the lords'.

It is likely that a married woman was trying to take advantage of her legal position when Walter Cranstoun alleged that Dame Margaret Livingston, countess of Orkney, 'be hir lrs obligatour subscryvit with hir hand at Halyrudhous 14 December 1599 grantit hir to be restand awand to him £500 for fies, waiges and uther proper comptis quhilk sche fund justlie adettit to Walter and band hir to have payit betuix the dait of the obligatioun and ane day lang past'. She sought unsuccessfully to suspend the letters of horning which he raised against her by claiming that 'the tyme of contracting of the allegit dett Dame Margaret Levingstoun was than cled with Patrick Erl of Orkney hir spous without quhais advyse and knowalde Dame Margaret had nayer powar to contract ony dettis nor yit to gif ony band or obligatioun for payment of the samen be hirself ... and it

48 CS7/187/344r (Hereot v Crystie); see App.IV,15.
49 CS7/189/14v (Lamb v Aikman); see App.IV, 8.
is only subscyvit be Dame Margaret self and trew it is that hir spous is not chargit (as he can not be), he being dominus and hir heid'.

The most usual way of evading the provisions of the law however, was through a marriage contract, as discussed in the following section.

**Women and marriage**

A widow had a right to terce, 'a just thrid of the landis quhilkis he [her husband] had the tyme of the mairiage'.

Some widows fought actions as tercers when this right was ignored by tenants. Thus it was decreed by the Lords of Council and Session that Lady Skirling must be refunded for the crops on her terce lands 'intromittit with be Johne Twedy of Drumelzear'

and in another action Lady Spott, 'dewlie kennis to hir said sonnie terce and thrid of ye saids landis for hir lyftyme as the instrument of kenning beirs', also had to charge tenants to make payment to her of their dues.

Dame Margaret Lyon, countess of Cassillis and John, marquis of Hamilton now her spouse for his interest, in her capacity as relict of Gilbert, earl of Cassillis, Lord Kennedy, 'being lauchfull spous to him the tyme of his deceis and sua hes ryt to be kend and enterit to ane terce and thrid pairt of lands ... pertening to him heritable quhairin he deit vestit and seasit' brought an action against John, now Earl of Cassilis, for transumption of her husband's instruments of sasine recorded in a protocol book, as a preliminary to claiming her terce from him as son and apparent heir of her dead spouse. Margaret Scott, relict of Patrick Drummond, successfully apparently because

50 CS7/190/112v (Cranstoun v Lady Orknay); also CS15/78/62 (Cranstoun v Lady Orknay); see App.IV,16.
51 Balf. Prac., 107.
52 CS7/192/13v (Lady Skirling v Drumelzear); see App.IV,17.
53 CS15/79/21 (Lady Spott v hir Tenentis) uncat.
54 CS7/186/404v (Lady Hammiltoun v Lord Cassillis); see App.IV,18.
the defenders 'compeirit nocht', charged three of her late husband's relatives for their 'wrangeous intromissioun with ye males, fERMes, caynes, customs and dewteis ... quhairof she is servit to ane terce or the avails yrof ... efter the forme and tenor of her saids ryts and titils'. On the other hand, Alexander Colquhoun of Luss, as brother and 'air of tailzie to umquhile Ser Umphra Colquhoun of Luss', brought an action 'to have hard sene it fund and declarit be decrete of the Lords of Counsall and Sessioun that ... Dame Jeane Hammiltoun Lady Luss tercer and Jone Campbell of Arkinglass now hir spous' were to be decerned 'to releiff and keip skaytles the said Alexander Colquhoun of Luss, air of tailzie, his airs and successors, anent the payment of the thrid of all and sundrie the annuelrents' of specified lands in which the named possessors were 'heritable infeft and seasit'. The matter was submitted to sir James Edmestoun of Duncraith for arbitration but his decree was still in his hands. Lady Luss protested for incident diligence to enforce recovery of the evidence and a date was assigned for its production in court.

Balfour stated that a widow's terce lands could amount to no more than a third of the lands 'quhilkis he had the time of the mariagie ... gif ... na mentiou[n nor special provisioun was maid anent the tierce of landis thatould happen to be conquest efterwart'. The marriage contract of David Graham and Isobel Mowat did specifically mention conquest lands not available at the time of the marriage. The husband acquired a tack of lands and successfully sought a transumpt 'for the better commoditie weill and utilitie of Issobell Mowat ... in caice of deceis of the said David hir spous befoir hir and ... swa that the saids airs be not defraudit of thair successioun to the saids tacks, lands, milne and rowmes'. It was the

55 CS7/189/76v (Scott v Drummond).
56 CS7/189/3v (Lord Luss V Ladie Luss).
57 Balf. Prac., 107.
undertaking 'I the said Mr Robert Dowglas binds me, my airs alsweill of tailyie as of lyne, my executors and assignayis to warrand, acquet and defend the said David Graham and Issobell Mowat his spouse and airs maill in and to all the premisses for all days and yeirs lyverent and terms above writtin' that was significant.58

Thus if no specific provision had been made for the possible acquiring of lands during the course of the marriage, terce lands were limited in size. They were often very scattered. Margaret Scott, relict of Patrick Drummond of Carnock was 'servit and retorit to ane terce of the males, fernes, kaynes, customs and dewteis of all and hailx sex sevin pairts with the twa pairt of ane sevin pairt of Carnock and uther sevin pairt of the lands of Collowill and ye maling lands, barnes, mylns, multers, coillis, coilheuchis, pairtis and pendicles'; she also seems to have had lands after her husband's death in Quhythill, Burnesklaittis, Dryfeild, Halbank, Saucheis and Brumehill.59

It was possible to renounce terce. Dame Jean Johnston's renunciation of terce was made after she had become a widow, not in her marriage contract. Thus George, Lord Saltoun, 'on the ane pairt and Dame Jeane Johnstoun relict of umquhile Alexander Lord Saltoun on ye uyer pairt ... for ye renunciatioun of the said Dame Jeane Jonstounis thrid and terce of all and sundrie lands, lordschippis, barroneis and possessionis quhilks pertenit to hir said umquhile spous and to the leving of Saltoun, band and oblist him, his airs, executors and assignayis to content and pay to the said Dame Jeane Johnstoun yeirlie during his lyftyme ten chalders chereteit victuall quhairof sex chalders beir and for chalders aitmeill and in cais of not payment yrof, the sowme of ten merkis for ilk boll yrof as the contract contening uyr heids beirs'.60

58 CS7/192/116v (Mowat v Graham); see App.IV,19.
59 CS7/189/76v (Scott v Drummond).
60 CS7/185/285r (Ker c Lord Saltoun); see App.IV,20.
If the primary aim of parents was to provide more for a daughter than the law allowed, should she become a widow, the simplest stratagem was to write a marriage contract because although married women lost their legal persona on marriage, an ante-nuptial contract counteracted the influence of the common law.

Similarly, the most usual way of superseding or enlarging the legal right of a widow to terce was to write a contract of conjunct infeftment, although if not specifically renounced in the contract, a widow could claim terce as well.\textsuperscript{61} If terce was the liferent of a third part of his land that a husband had to provide on his death as a counterpart to the tocher which his wife had provided on marriage, a conjunct agreement set no limits on the land to which the widow would be entitled. When the first of the joint possessors, husband or wife, died, the living spouse enjoyed the liferent but was unable to alienate the lands which passed on the survivor’s death to the heir or heirs.\textsuperscript{62}

The contract in 1598 for the marriage between Mark Kerr, son of Sir John Kerr of Hirsell, knight, and Jean Hamilton, second daughter of Alexander Hamilton of Innerwick, was one such marriage contract of conjunct infeftment. Sir John promised to ‘infeft and sease ye saidis Mark Ker and Jeane Hammiltoun his future spouse in hir pure virginitie, ye langer levar of yame twa in conjunct sie and ye airis lauchfullie to be gottin betuix thame ... in ye landis of Spylaw and mylne thairof ... and landis of Littildeane and Maxtoun’. Other lands and properties were mentioned. Financial details of their worth and yields followed and a further promise of 1000 merks was made. A house was to be built within three years; projected plans were outlined. Complicated renunciations of specific lands and-reserving of the liferents of others were set down. The draftsman of

\textsuperscript{61} Craig, \textit{Ius Feudale}, II, 859.
\textsuperscript{62} Ibid., 854-869.
the contract tried to foresee every eventuality. 'Gif it sall happen yair be na airis maill (as God forbid) bot airis femell procreat betuix ye saidis Mark and his future spous ... gif there be bot ane air femell ... gif yr be twa airis femell ... gif yr be ma airis femell...' then the male heirs succeeding to the lands, in default of a direct male heir, were to pay to the daughters specified amounts of money 'for providing of thame to honorabill pairteis in mareage agreabill to yr estaitis and conditionis'. Such sums were not to be paid until the daughter or daughters were past the age of sixteen years complete 'as gif thai war of perfyt aige'. In return they were to over-give all documents relating to the lands. Alexander Hamilton of Innerwick, for his part, obliged himself to pay to Sir John Kerr, his heirs and executors in two instalments, 11,000 marks in tocher for his daughter.63 In this marriage contract one subsidiary aim was to prevent the equal division of the lands as the law required,64 by compensating daughters with money to be used as tochers, should only heiresses succeed. No reference is made to an entail to a male heir though this may have existed.

Sometimes in such conjunct infeftments there was an exchange of land for money which was not specified as 'tocher'. Thus Henry Rattray, 'takand ye burding upon him for Jonet Gardner, his spous', made a pre-nuptial agreement with Andro Gardner heritable fiar of Barclayhills. 'For 1400 merkis ressavit be him fra Henrie Rattray, Andro Gairdner sauld, annaliet and disponit to Henrie and his spous ye langest levar in coniunct fie the landis of Barclayhillis'65; in a post-nuptial example, which is not strictly a marriage contract at all but a contract with a married couple, William Bissett and Katherine Dick his spouse paid to James Adamson elder, his spouse and son '2000 merkis to infeft and saise ye saids William Bissett

63 CS15/78/2(Hammiltoun v Ker); see App.IV,21.
64 Balf. Prac., 223.
65 CS15/79/89 (Rattray v Blair) uncat.
and Kathren Dick his spous ye longest levar of yame twa in conjunct fie ... in ane annuirlent of 200 merkis ... furth of the landis of Cowthrophill in frie blenche under reversioun of 2000 merkis'.

Nearly all titled women such as Lady Erroll; Dame Jean Fleming, Lady Cassillis; Margaret Chalmer, Lady Trochrig; Dame Margaret Lyon, countess of Hamilton; Dame Mary Graham and Dame Katherine Oliphant were conjunct fiars but many of lower standing sought advantage in similar contracts. John Robson, a son by a previous marriage, was successful in an action against his father's current wife. She tried to debar him from entry 'to a laich foirbooth and stabil in quhilk he was heritablie infeft and seasit' through the death of his mother, a relict liferenter by virtue of a conjunct infeftment with George Robson, baxter burgess in Glasgow.

Conjunct fee arrangements stimulated more litigation than was raised over terce entitlement. Actions were brought by relicts and new husbands who had been defrauded of the wife's contribution to the marriage. For example, 'Jonet Moncreiff, relict of umquhile William Ramsay of Murie, conjunct fear at ye leist lyfrentar of ... ye sonny half lands of Murie .. and Johnne Ogilvy in Newtoun hir spous for his entres' charged William Ramsay of Murie to hear him decreed 'to halff done wrang in ye wrangeous deferring to have payit ... all and haill ye fermes, canes and dewteis of ye crop 1599'. The result is unknown since the Lords continued the action into 1601.

Many widows on their own sought, as liferenters, unpaid dues. Agnes Baillie, 'relict of umquhile Jon Rotsoun, indwellar in ye burt

66 CS7/191/126v (Elphinstoun v Adamsoun); see App.IV, 22.
67 CS7/188/172r (Lady Erroll v Jaksoun).
68 CS7/189/141r (Lady Cassillis v Gordoun).
69 CS7/189/218v (Lady Trochrig v Kennedy).
70 CS7/191/38r (Ladie Hammiltoun v Kennedy).
71 CS7/191/79v (Lady Buchannan v hir Tenentis).
72 CS7/191/262r (Dundas v his Tenentis).
73 CS7/191/169v (Andersoun v Robesoun).
74 CS7/193/22r (Ogilvy v Ramsay).
of Linlytgow, conjunct fear at ye leist lyfrentar of ye land and tenement lyand on ye nort syd of ye streit’, pursued four tenants for the mails and duties of 1596 and 1597. She claimed to have a decree of July 1596 ordaining payment. One defender asserted that the decree had been given for null defence, he ‘never being callit to the geving yrof’; furthermore her husband was alive at that time and ‘swa Agnes as allegit conjunct fear be na law nor resson can have recourse to the maillis and dewteis the saids yeiris’. When these claims were put to her oath she declared that ‘the samyn wes neways of veritie’ so she won her action.75

Others as liferenters brought actions of removing against tenants. These actions followed a pattern. The tenants would ‘in na ways remove’; they failed to comppear in court therefore the Lords ordained the defenders to remove. The reason for their removal is not explained. Tacks may have expired, a new husband may have wished to instal his own tenants or the action may have been a preliminary to raising the rents. Thus Dame Elizabeth Forbes, Lady Sinclair ‘lyfrentar of the lands, Maistress Jean Sinclair heritabill proprietar of ye saids lands and Mr Henry Lord Sinclair spous to Dame Elizabeth for his entres ... causit warn’ 12 tenants to ‘have flittit fra all and haill the lands of Kerskiue, Garinoche, Mathie mylne callit the Cerschill, Langland and Stane, of auld Wast quarter of Garinoche, baronie of Innes ... quilk the persewar hes as had the tyme of the warning ... pertening to the compleners in lyfrent and fie as the infeftments and seasings purports’.76

Patrick Gray, burgess of Aberdeen, had brought an action of cognition before the provost and baillies of that burgh against Sara Keith, relict of Robert Menzies younger and John Keith now her spous. Gray’s purpose was to have his right and title to burgage

75 CS7/191/350v (Bailzie v Hammyltoun).
76 CS7/186/107r (Lady Sinclair v hir Tenentis).
property investigated. She, having claimed that he had not been heritably infeft by her deceased spouse in an inland (the inner part of a tenement) with pertinents in the common gate of Aberdeen, alleged that ‘she had ane privat seasing of conjunct lyvrent of ye said inland quhilk seasing sche gylettlie keipit clois, unreveillit and schawin during hir umquhile husband’s lyftyme’. In refutation of this claim it was said that she and her present spouse ‘hes never biggit nor repairit ye samen landis but suffers yame to decay becum ruinous and unprofitabil’. The pursuer took this as evidence that she could not be a conjunct liferenter since this was ‘contrair the act of Parliament’. He was referring to an act of 1491 which stated that ‘thai sall not waist nor distroy ther bigging’.77 Craig also points out that ‘if the widow [liferenter] is accused of despoiling the property ... she must find caution against any deterioration ... and for the restoration of the property at her decease in as good a condition as it was in when she received it’.78 The provost and baillies of Aberdeen, following the decision of an assize that the inland was ‘failyeit and becum ruinous’, had ordained her and her husband to find caution for its ‘reparrell’ within 15 days on pain of loss of all rights and title. Since they had failed to do so the pursuer successfully brought an action in the Supreme Court to enforce the decree of the inferior court.79

Several actions were brought against liferenter widows for allowing their property to become dilapidated to the loss and injury of the heritor or heir. Alison Uddart, relict of William Paterson, merchant burgess of Edinburgh, and James Hunter, ‘glassin wright’ now her spouse for his interest, were pursued by Thomas Paterson, her father-in-law as heritor, for having ‘bruikit ... certane lands and ane tenement in Edinburt on the nort syd yروف في Mr Alexander

77 A.P.S.,II, c.6, 224-225.
78 Craig, Ius Feudale, II, 860-861.
79 CS7/190/355r (Patrik Gray v Sara Keyth); see App.IV,23.
Kings clos ... and takin up the males and dewteis' as liferenter but she had not maintained them 'albeit be ane act of Parliament lyfrentars ar haldin to uphald and intertene[maintain?] ye housses, biggings and policie'.

She and her spouse were ordained to find caution that 'thai sall bilt, mend and repair and uphald certane tenements of land and housses ... in windeis, durris, lokis, sklaittis, loftring, ruiff, fixt work and all uyr necessities and leve the samen in als guid estait at ye deceis of ye said Alesoune as thay war the tyme of the deceis of ye said umquhile William Patersoun hir first spous'. If she failed to find the said caution she would 'tyne and amit hir lyvrent'.

Patrick Whitelaw, merchant burgess of Edinburgh, was 'infeft and seasit as air of tailyie to umquhile Patrick Whitelaw son to umquhile John Whitelaw, burgess of Haddingtoun in all and haill twa tenements of land on ye nort pairt of ye tolbuith streit pertening to umquhile Patrik'. His widow, Isobel Hamilton, 'being lyfrentar' had 'naways beiltit nor reparit the samen quhenas necessitie requyrit quhairthrow the twa tenements hes becum ruinous and utterlie decayit in ye haill stane wark, yron wark and timmer wark and will schortlie fall doun and be unprofitabill to ye complener becaus he is heritor, without remeid be provydeit'. She may have seen no reason to pay for the upkeep of property if an heir of tailyie were to benefit.

As with terce, it was always possible to renounce a liferent. Dame Alice, spouse to Sir John Melville of Carnbie, 'hes given hir consent to ye foirsaid alienatioun be subscryving of the foirsaid contract quhairby sche hes renuncit hir lyvrent ryt of the saids lands and mains of Nether Carnbie and swa sche having subscryvit the foirsaid contract of alienatioun and thirby renuncit hir ryt yrof in

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80 CS15/78/36 (Patersoun v Uddart or Hunter).
81 CS7/185/266r (Patersone v Hunter).
82 CS7/186/311r (Quhitlaw v Hammiltoun).
favors of the said William Moncreiff, the samen is and may be interpreit to be ane sufficient warrandice to him for annulling of ony ryt of lyvrent sche hes to ye foirsaid lands and mains'.

It was also possible to reduce a marriage contract on the grounds of one of the parties contractor dying within a year and a day. Thus, Alexander Stewart, laird of Garleis called for production of the contract of marriage between his dead father and Dame Elizabeth Douglas, Lady Maxwell, as a preliminary to its being retreated and declared null. Masters William Oliphant, Thomas Craig, Alexander King and Cornelius Tennent were all procurators for the young laird and his curators; they put forward the argument that 'umquhile Sir Alexander immediatelie efter the said mariage(July 1596) viz. upoun ye - day of October, yeir foirsaid, within yeir and day, depairtit yis lyffe and yat without ony bairnes procreat betuix yame, quhairby of ye law and pratigs of yis realme the said Dame Elizabeth hir ryt and titil maid to hir introitu matrimonii as said is, is becum ineffectual and ceises and ye said Dame Elizabeth can pretend na ryt nor tytil yrof na mair nor gif ye said mariage had never followit'. The Lords found the points of the Laird's summons relevant despite the defences propounded by John Sharp, John Nicholson and John Haliday, preloquitors for Dame Elizabeth and her new spouse, John Wallace of Craigie. These defences were not recorded by the clerk. Balfour pointed out that a wife 'sall have na part of hir said husbandis moveabill gudis or geir be resson of the said marriage' if it happened that the husband died within a year and a day of the marriage. Clearly the principle was carried over to land law. Craig, having acted in the case, refers to it saying, 'In a recent action between Lady Maxwell and Stewart of Garleis it was held that, her husband having died within seven or eight months of his

83 CS7/185/234v (Lord Carnbie v Moncreiff).
84 CS7/191/156r (Laird of Garleis v Ladie Maxwell).
85 Balf. Prac., 95.
marriage, Lady Maxwell had no right to any part of the lands settled on her by her marriage contract, and took no benefit under her conjunct infeftment'.

It was possible to buy one's way out of a marriage contract. Thus 'Jon Fairlie payit ye sowme of 300 merkis to Jon Chapman in Barwodheid befoir his deceis and ye said Jon Chapman dischargit umquhile Jon Fairlie of ye hai1l tenor of ye contract of mariage maid betuix Jon Chapman and ye said Jon Fairlie and Agnes Fairlie his dochter'. It was also possible simply to return the marriage contract. Robert Burns 'fulfillit not and compleitit not the said mariage at Whitsonday 1598 nor at na tyme sensyne but gait over the blok and past fra ye said mariage'.

Contracts were made in testamentary affairs too. Perhaps on the view that it would be more binding than a testament, Sir John Edmeston made a contract that his son, Andrew, should pay Christian Kerr, his widow, and failing of her by decease, their daughter Isobel, the sum of 2000 marks. The sum was not paid to her, the son claiming that it was meant to be 'impoyit upoun land or annuelrent as maist commodiouslie may be had for infeftments to be given to Cristiane Ker in lyvrent and to Issobell Edmestoun hir dochter and airs in fie heritable'. Andrew protested that he was content to do so. It was the other stipulation which caused outrage. 'As to that pairt of the said charge quhairby he is chargit to ressave the said Cristiane and hir dochter in houshald with himself and to interteine thame during the tyme of hir wedowheid, it is trew that the said Cristiane hes removit hirself furth of the said Androis hous and is relaps in fornicatioun and hes borne twa bairns, ane of thame to Ninian Chirnsyd and the uyr to [blank in text] Muir, and swa hes defylit hirself in respect quhairof the said Andro can not be haldin

86 Craig, Ius Feudale, II, 869.  
87 CS7/189/273v (Chapman v Pitcarne).  
88 CS7/187/273v (Leyis v Burnis).
to interteine ane fornacatrix in his hous and he hes ever sen the deceis of his said umquhile father intertenit the said Issobell hir dochter in houishald with himself, lyk as he intends to interteine hir in tyme cuming.' He protested that if he were compelled to give her the whole sum of 2000 merks 'sche will not fail schortlie to consume the samen, being ane woman, as is knaevin to the lords, quha dois not behaive hirself honestlie'. He was ordered to make payment to Christian but she had 'to find sufficient cautiouq actit in the buiks of council that the said sum salbe furthcumand to the said Issobell efter hir deceis'.

Much can be learned from the records about tochers and marriage. Most marriage contracts specifically mention tocher but it is not clear if tochers were an essential feature or simply a usual feature of marriage. Janet Glover declared that 'for the love and respect I have to my husband Thomas Kirkpatrik who ressavit no patrimony with me, I appoint him to be my executor and legator unto the whole guids and geir pertening to me secluding all uyris nearest of kin quhatsumever.' Perhaps she had been a widow when she married him. A widow could have brought a liferent instead. Certainly an advocate implied that a widow did not necessarily bring a tocher when he pled 'the said Dame Elizabeth being wedow befoir hir mareage ... thair is na tocher guid payit nor delyverit to him ye tyme of ye solemnizatioun of ye said mareage of befoir nor yrefter nather be vertew of ye said contract of mareage nor uyrwayis'.

Tochers were usually given by the father of the bride but a brother travelling abroad could be equally responsible for his sister. In an unusual example, 'the tenentis of ye paroche of Strathardill ... promittit yat at quhat tyme it sould happin

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89 CS7/192/20v & CS7/192/133v (Ker v Edmestoun); see App.IV,24.
90 CC5/6/3/439.
91 CS7/191/156r (Laird of Garleis v Ladie Maxwell).
92 eg CS7/186/131v (Newall v Fergusone).
93 CS7/186/252r (Campbell v Betoun); see App.IV,25.
Issobell Ogilvy sister to the said persewar to be mareit that yai sould content ye persewar ye sowme of 500 merkis in compleit payment of ye haill sowme' they owed for the teind sheaves.94

Forty eight actions relate directly to marriage contracts or tochers. Most concern unfulfilled commitments. These range from an unpaid tocher of 600 merks95 to 7000 merks still due out of 14,000 promised to James Hamilton, heir apparent to James Hamilton of Liberton, by the Earl of Glencairn in name of tocher with his daughter Mistress Margaret Cunningham. The husband made his sister Jean Hamilton assignee to the 7000 merks, presumably in order to provide her with a tocher, and she as a minor with her father as administrator purchased letters against the Earl for 2000 of these. He must have been ordained to pay after an action had been brought against him because in January he sought suspension of her denouncing him as rebel and putting him to the horn for non-obedience. The letters of horning were suspended because 'that the lords may understand the said Erle means na fraude he hes instantlie consignit the said sowme ... to be deliverit to the said Jeane'. He had to pay a further 3000 merks in December on the condition that 'the acquittance gevin and producit be ye said James Hammiltoun of Libbertoun upoun the payment and ressait of the 3000 merkis suld be ane sufficient discharge and exoneratioun to the said James Erle of Glencairne to warrand and releif yrof at the hands of Jeane Hammiltoun in all tyme cuming'.96

It seems as if a contract had to be registered before litigation. Most actions record the date of registration in the Books of Council but sometimes a party had to be compelled to do this. Thus 'the contract was nather fulfillit be Johne Ramsay to the complener nor

94 CS7/191/159r (Ogilvy v Ratray).
95 CS7/192/243v (Miln v Gairdin).
96 CS7/187/160v & CS7/190/391v (Hammiltoun v Erle of Glencairn).
yit registrat in or buiks of counsall according to ye claus. Some women either judiciously or genuinely denied ever having had their marriage contract thereby preventing its registration as a preliminary to an action.

There are references to marriages by habit and repute. Isobel Burrell, in an effort to avoid paying goods to the donator, offered to prove that Nicol Spens, whose goods and gear had fallen into the King’s hands were at his disposition by reason of escheat because ‘umquhile Nicoll was born bastard and sua deceissit without ony airis lauchfullie gottin of his bodie’. She stated that ‘Jon Spens and Kathrein Cowper, alias Melveill, father and mother to the said Nicol Spens war mareit folkis at ye leist war reput and hauldin as mareit folkis be dwelling and cohabitationu togidder and using of thamselfis as mareit folkis be ye space of tua or thrie yeiris togidder immediateli preceiding yair deceis and thairfoir ye said umquhile Nicoll Spens yair son can nawyis be estemit bastard.’ The outcome of this action is unknown.

One action to regularize an informal marriage came before the Lords. Janet Craig, daughter of Mr John Craig, minister, obtained a decree before the Commissary of Edinburgh against George Whitehead ordaining him ‘to solemnizat and compleit the band of matrimonie with hir in face of haly kirk and to treat and interteine hir at bed and buird as his lauchfull spous’. She charged him to fulfil this ‘under divers panes and last under pane of rebellioun and putting of him to the home’. He complained that the decree against him was ‘maist inordorlie, in respect of ane alledged promeis of mariage maid be him to her and carnal copulatioun betuix thame’. This was ‘agains all pratiq and consuetude of the realme’ because the decree

97 eg CS15/78/30 (Mureheid v Creichtoun); uncate; see App.IV,26.
98 eg CS7/189/205v (Stewart v Maxwell)
99 CS7/189/89v & CS15/78/44 (Spens v Burrell); uncate.; see App.IV,27a & 27b.
had been given for his non-compearance and he had never been lawfully summoned 'being resident for ye tyme at the abbay of Lesmahagow'. 'Gif it salbe fund that the persewar aut to compleit the band of matrimonie he salbe content to do the same', Mr Thomas Nicholson, his procurator, informed the court. The lords suspended her letters of horning, accepting an oath to the effect that 'albeit he had carnall copulatioun with the said Jonet, yit nevirtheles he never maid ony promeis of mairiag to hir as he sould anser to God'. The pursuer's contention that this was an irregular marriage constituted by promise subsequente copula was rejected. She was seeking decree that she was irregularly married, for adherence.

In an action of breach of promise, Elizabeth Forsyth, relict of the deceased Mr David Lachmabonie fiar of that Ilk, raised an action against John Reid for the return of 'divers and sundrie rings, jowellis, hors, nolt, scheip, insyt and plenishing, corns, cattel and uyr guidis and geir ressavit be him fra ye complener upoun promeis and hoip of mariag'. This case was continued until 1601.

In a divorce, Alexander Hamilton of Innerwick tried to claim the right, during the life of Margaret Whitelaw, to all the lands pertaining to her as 'ane of thrie airs portiouneris, be the courtesie of Scotland and also be vertew of ane decreit and declarator in favor of Alexander proceeding upon ane decreit of divorcement given and pronuncit betuix him and the said Margaret in hir default befor the Comisser of Edinburt'. In another case in 1600, John Ker had obtained a decree before the King and his Privy Council ordaining the presbytery of Melrose to reduce a decree of adherence brought by the same Margaret Whitelaw. The ministers refused to oblige so he charged them to relax the connected

100 CS7/190/267v (Quhitheid v Craig); see App.IV,28.
102 CS7/185/355r (Fforsyt v Reid).
103 CS7/190/380r (L. Innerweik v L. Carmichaell); see App.IV,27.
excommunication and denounced them rebels for not obeying the command of the King and Privy Council, whereupon they sought suspension of the letters of horning raised against them. The Lords of Council and Session, however, in the exercise of a wise discretion, decided it was an ecclesiastical matter ‘thairfoir the saids lords will na wayis decyde the foirsaid letter of suspentioun’.

The records reveal an occasional glimpse of what could be termed the emotional aspect of marriage. James Stewart of Shillinglaw had the King’s gift of the ward, non-entres and marriage of any heirs, male or female, of the deceased John Cockburn of Glen ‘ay and quhile the lauchful entrie of ye ryteous airs yrto being of lauchful aige’. He presented each of three of five daughters ‘as apparent airs portioners of umquhile John Cokburn of Glen and thair tutors and curators for yair entres’ in the place of Dryhope with ‘pairteis agreabill in mariagé’. Balfour stated that ‘Gif the mariage of ane air or heretrix be fallin in the superior’s handis, and the air being lauchfullie requirit be the superior, or his donatour, or be ony uther cled with his richt, to marie ony partie agreabill offerit to him, refusis to do the samin, and maryis ony uther persoun, without licence or consent of the superior, or his donatour, he aucht and sould not onlie pay the single avail of his mariagé, bot alsua the doubill thairof, that is, als mekle agane as the single, to be modifyit and taxt be the Judge, efter the zeirlie rental, avail and quantitie of the landis and living pertening to the air’. Here the donator, James Stewart, claimed ‘3000 merkis for ye singill availl of ilk ane of yr saids thrie mariages be resson umquhile John Cokburn of Glen held all and haill his pairt and portioun of land immediatelier of or soverane lord be service of

104 CS7/189/278r (Sir John Ker v Ministeris); see App.IV,30.
105 CS7/190/285v (Stewart v Cokburne); see App.IV,31.
106 Balf. Prac., 246.
ward and relief and siclyk the doubill availl of ye mariages of ilk ane of yair saids mariages' because the daughters refused 'to perfyt and accomplishe mariage with the saids persounes bot intends to mairie uyr persounes'. The Lords modified the sum claimed to 'the sowme of £1000 for the singill and just availl as als for the doubill availl of ilk ane of yr saids mariages'. Thus the Lords, as far as was possible within the constraints of the law, betrayed a sympathetic view about the right of a daughter to have a view about the acceptability of a proposed spouse.

The leading case of 1567 to which Balfour referred had fallen asleep but was wakened in 1600 in the presence of Mr Thomas Hamilton, Lord Advocate, by Sir James Douglas of Drumlanrig, 'oy and air of Sir James Dowglas of Drumenrig his guidser'. His grandfather had obtained from Queen Mary the gift of the ward of all lands belonging to Simon Carruthers of Mouswald with the marriage of his heirs and all profits thereof. He had brought an action against Marion Carruthers, one of his daughters and heirs, for the single avail of her marriage. In 1594 Sir James Douglas, the grandson, had obtained a decree of translation transferring the summons in him active against Janet Carruthers, sister and heir of the said Marion passive. By 1600 'it was necessar that the foirsaid principal summonds and actioun of ye avail of ye said mariage be of new walknit quhilk hes sleipit yeirs lang tyme bypast'. The outcome if any must lie in the years beyond 1600.

Sons could be equally determined to reject proposed spouses. David Renton was pursued by a donator for 10,000 merks for the single avail of his marriage and 20,000 merks for the double

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107 Ibid., 247 (The Laird of Drumlanrig contra Marion Carutheris).
108 CS7/191/27r;CS7/191/145v;CS7/191/406v (Drumlanrig v Carutheris); see App.IV,32.
avail.\textsuperscript{109} George Home of Gemmilscheill was to pay 5000 merks for the single avail and another 5000 for the double avail of his.\textsuperscript{110}

It was possible to sell such a gift of ward, relief, non-entres and marriage as well as to assign it. By contract, William Lord Herries, 'for himself and takand the burding upoun him for James Geddes of Barbathill donator to the ward, non-entres releif and mariage and haill profeits yrof ... sauld and disponit to Dorathie Stewart hir airs and assignayis the ward and non-entrie of ye twentie-pund land of Over Pollok with pertinents quhilk pertenit to umquhile Jon Pollok of yat Ilk, hauldin be him and his predecessors of Jon, Lord Maxwell superior yrof of all yeirs bypast that ye samyn was in ward and non-entres be ye deceis of umquhile Jon Pollok of yat Ilk or ony his predecessors and of yeirs to cum, ay and quhile ye lauchfull entrie of ye ryteous air and airs yrto being of lauchful aig with ye releif yrof quhen it sal happin togidder with ye mariage of ye said Robert Pollok eldest lauchful son and apparend heir of umquhile Jon and failzeing of him be deceis unmareit, the mariage of ony uther air or airs mail or femaill that sail happin to succed to him in the saids lands with all profeits of ye said mariage of ye dait viii Julii, 1598'. Dorothy Stewart was unable to pay the second instalment of the 2000 merks demanded, and because there was 'special provisioun in ye said contract that gif Dorathie failzeit in payment ... in yat cais ye said contract and dispositioun of ward etc. sould be null to Dorathie and ye ryt and titil yrof sould consist and returne in ye persoun of James Geddes donator', he in turn became free to assign the gift to John Hamilton, assignee.\textsuperscript{111}

If women, married or widowed had to litigate over their rights as tercers or conjunct fee liferenters as discussed above, they were

\begin{flushright}
\textsuperscript{109} CS7/185/102r (Nisbit v Laird of Billie).

\textsuperscript{110} CS7/191/30v (Adamsoun v Home).

\textsuperscript{111} CS7/189/197v (Geddes v Stewart).
\end{flushright}
equally likely to become embroiled in actions over their deceased husbands' moveable estates. Questions of heritable property came before the civil courts but jurisdiction relating to moveable succession, namely the confirmation of testaments and the administration of intestate moveables, lay primarily in the Commissary courts.  

Although no dispute over a widow's legal right to a third of her deceased husband's moveables came before the Lords of Council and Session in 1600, some actions of a testamentary nature were brought by or against women before the Supreme Court, either to enforce or quarrel the decree of a Commissary.

Elizabeth Scott as daughter and executrix of her dead mother, being pursued along with her husband for her mother's debts, sought to arrest the poinding of their readiest goods and gear following an unimplemented decree of the Commissary of St Andrews. She claimed that they 'wer in housshald with hir the tyme of hir deceis as burderaris allanerlie and had onlie intromissioun with the insyt and plenishing of ye said hous, quhilk was neccessar intromissioun and culd not be eschewit ... and quhilk extendit onlie to foir scoir pundis or yrby as umquhile Jonettis confermit testament schawin to ye Lords hes testifeit'. When the case was brought before the Lords, however, she and her spouse declared that were prepared to deliver 'sa mekil of hir housshald geir as will satisfie ye said decrete, Pryce always being set yrupoun'.

Occasionally George Abernethy, the procurator fiscal of the Commissariat of Edinburgh, had to raise letters of horning against relatives who proved dilatory over giving up an inventory of the deceased's goods thus delaying confirmation of a testament and payment of quot.

113 CS7/193/10r (Lumsden v Scott).
114 CS7/185/330r (Procurator fischall v McGarmorie).
One action pursued by two merchants and their wives was advocated from the court of the provost and bailies of Edinburgh to the Supreme Court. The pursuers had been left 300 and 80 merks respectively in legacy by a widow but her son and executor were refusing to make payment. The Lords called for evidence to be produced in January 1601 but it is likely that the executor was compelled to honour his mother’s wishes.\(^\text{115}\) Presumably the matter had been heard by the provost and bailies rather than by the Commissary because it was a merchant’s privilege to use the burgh court.

Several actions concerned the delivery of goods and gear to the rightful owners. When Nicol Steven was constituted assignee by the brother and heir of line to Alexander Steven, he was clearly litigating against a resentful widow in Janet Sibbald and her new husband when she had to be compelled to give up the heirship goods ‘als guid as they war ye tyme of his deceis’.\(^\text{116}\) Such actions by the heir against the widow and her new spouse were common.\(^\text{117}\) In other actions it was the father who had to be forced to render goods and gear to a dead wife’s daughter.\(^\text{118}\) These problems arose, particularly when there were children of a previous marriage.

One Glasgow merchant’s wife tried as executrix to lay claim to a pack of linen which had been ‘pakit up ... in the fair of Lanerk’ for transportation to England by a fellow merchant. She lost her claim because the defender ‘be his aith declarit that the points of the summonds was naways of veritie’.\(^\text{119}\)

Many executrices had to pursue debts owed to their dead husbands or to pay debts owed by them. For example, Janet Lindsay, relict of John Slamannan, burgess of Wigtown, her five children and Anthony McCrachan her spouse for his interest pursued 28 persons, including

\(^\text{115}\) CS7/185/363r (Craig v McCalzean).
\(^\text{116}\) CS7/190/266r (Stevin v Sibbald).
\(^\text{117}\) CS7/190/378r (Lord Ardross v Sandelands).
\(^\text{118}\) CS7/190/298r (Rynd v Pitcairne).
\(^\text{119}\) CS7/192/227v (Rowat v Millar).
John Leys merchant in Edinburgh, for an unspecified sum arising from 'divers dettis'.\textsuperscript{120} Helen Chatto claimed £100 owed to her deceased husband by obligation,\textsuperscript{121} a somewhat smaller sum than the £795 of unpaid duties of the lands of Newtoun of Glamis which Elizabeth Brown as executrix to John Brown, apparent of Fordell, sought from Patrick, Lord Glamis. These lands came to her through her mother as heretrix.\textsuperscript{122} Neither action was resolved in 1600.

One daughter, Nikie Dehurter, as heir to her deceased father, Peter Dehurter, merchant in Middleburg, brought an action against James Milne, skinner burgess of Dundee for 'thriescoir punds auchtene schillings and sevin great Flemes money for merchandice coft fra him with his merche and merking'. James Milne had promised in an obligation to have paid to her father the foresaid principal sum with interest 'efer the bourses of Middilburt' but he had failed to do so before his death. She, as daughter and heir 'havand only ryt to intromet with his guids and geir and dettis according to ye lawis and pratik of ye cuntrey of Flanders' claimed payment which the Lords ordained to be delivered either to her or to Robert Dawling 'bringer and havear of the saids letters obligatours' at the rate of £6 money of this realm for 'ilk pund great of the samyn Flemis money'.\textsuperscript{123}

In several actions debts owed by a husband were officially transferred on a widow, as a preliminary to pursuing her. Thus Thomas Paterson, merchant burgess of Edinburgh, raised an action against Dame Janet Douglas, Lady Cessford 'to heir and sie ye letters obligator subscryvit be him and umquhile William Ker of Cessfurde hir spous upoun the sowme of £1110 7s with ane hundreth punds of liquidat expenses be transferrit be decrete of the Lords

\textsuperscript{120} CS7/185/223v (Lindesay v Leyis).
\textsuperscript{121} CS7/185/73r (Chatto v Ker).
\textsuperscript{122} CS7/ 185/177v (Broun v Lord Glamis).
\textsuperscript{123} CS7/191/135r (McGiedehurter[sic] v Mylne).
of Counsall in Dame Jonet Dowglas for hirself and as relict executrice and intromessrix with hir umquhile guids and geir passive with siclyk letters and executorials to be be direct yrupoun agaums hir as myt or suld have bene direct agaums umquhile William Ker hir spous'.

Margaret, Agnes and Janet Wauchopes, sisters to the deceased James Wauchope, brought an action to reduce letters of horning against him to effect that they might 'be confermit executrices to him and that Mr George Wauchope onlie broder as apparent air may be servit air to umquhile James'. James had been summoned but had failed to appear before his Majesty and the Lords of Secret Council in 1596 'touching his tressonall resset supplie intercommuning and allegit forneissing with money and otherways of umquhile Archibald Wauchope sumtyme apparent of Nidrie than his Majesteis declarit trator at divers tymes sen the proces of dome and forfaltor'. All relevant evidence was to be produced and on the grounds of the charge to appear having been neither 'subscryvit nor stampit be umquhile Jon Simsoun, messinger of arms, as is requyrit be act of Parliament', the charge was annulled and the daughters presumably pronounced executrices.

Eufame Littlejohn called for delivery of two obligations in the hands of Thomas Seaton who, having fraudulently put them away, refused to give them to her. They were mentioned in what must have been a testamentary instrument. 'Umquhile Captain Pentland be his special letters subscryvit be ane famous noter at his command at the reid chalmer ane leig frome Caleis in the realme of Frank 12 Merche 1588 resignit to Eufame Littlejohn all kynd of debts in Scotland pertening to him or Agnes Grahame his spous or ony uther thing pertening to hir'. A note in the margin of the Register states

124 CS7/185/209v (Patersone v Lord Cessfurd); see App.IV,33.
125 CS7/190/51v (Wauchop v Lord Thesaurer).
'tua several obligatiounis producit be the defender as said is'. It is signed 'Mr J. Hay'.

Occasionally clothes were not handed over. Agnes Edmeston spouse to George Horne for his interest brought a successful action for a cloak 'to be kepit and usit be hir as hir proper clothing' and Helen Darroch had to bring an action for a velvet gown or 6 crowns. These may have been paraphernalia bequeathed in a married woman’s testament.

Thus the records show that women, even when protected by common law or by contract, required to bring actions to enforce their rights. Married women were disadvantaged compared with widows and other single women in their ability to control their heritage or to litigate on their own but clearly many new husbands were more than willing to enter into court on a wife’s behalf. A prospective action may even have been seen as an economic contribution to a marriage.

Women and debt

Many of the actions involved debts which were distinct from the dues unpaid to a widow as tercer, as conjunct fee liferenter, or the debts inherited from a deceased husband or father as discussed above. These are discussed fully under Women and heritable property. In all cases of debt, widows and single women litigated in their own right, winning or losing the action and facing the consequences. On the other hand, if a married woman became embroiled in debt, it was her husband’s responsibility; conversely, he benefited if she was a creditor.

Women as debtors

Thomas Wilson, merchant burgess of Edinburgh and Katherine Robson his spouse were owed £103, 'restand awand for certane small

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126 CS7/187/355v (Littlejohn v Seytoun).
127 CS7/187/168v (Horne v Lindsay).
128 CS7/190/311v (Darroche v Scheillis).
merchandise' by Margaret Heriot, relict of Thomas Fawside of that Ilk. Initially she did not appear in court so the Lords referred the points of the summons 'simpliciter to the defenderis aith of veritie'. She was warned that if she did not compear she would be 'haldin as confess'. Despite having been 'summondit be ane messinger, personallie apprehendid and oftymes callit be ane measer at the bar and tymes having bene assignit to James King [her procurator] to haif exhibit hir, sche failyeit to compeir'. She was ordained to make payment along with the expenses of the action, standing at 20 merks for the action and 40s to the Lords' Collector and 'executioun was to pas for recoverie'.

Isobel Scott, Lady Pitlochie, single, owed Charles Fortray lackey to the Prince, 18 bolls of barley, 3 bolls of oatmeal together with £46 borrowed and received by her from him. Once again, 'insted of uyr probatioun' the matter was referred to her oath of verity and she was warned to appear in court for that purpose on an appointed day in January 1601.

Jean Douglas, Lady Saltcoats, single, was denounced rebel and put to the horn by letters raised and executed against her by William Richardson, mealmaker, indweller in Leith. She had failed to honour an obligation for £40 with 20 merks of liquidat expenses; the escheat of all her moveable goods was divided between James Warkman, one of the 'ordiner gunners within the castell of Edinburt and Abraham Hammiltoun, his Majesteis Master Smyt, equallie betuix yame'.

When a woman was married, however, the husband was held responsible for his wife's debts. It was Alexander Gordon of Strathdon, who was caused to compear personally before the Lords of Council and Session 'to gif his ayt of veritie upoun ye points of ye

129 CS7/187/293v & CS7/190/402v (Wilsoun v Lady Fawsyde).
130 CS7/190/409r (Fortray v Lady Pitlochy).
131 CS7/190/78v (Lord Advocat v Douglass).
summonds persewit be David Heriot, goldsmyt burges of Edinburt, anent ye payment of 600 merkis borrowit be Dame Agnes Sinklair, Countess of Arroll, with consent of ye said Alexander hir spous for his entres to ye effect yat yairefter the saids Lords may proced and do forder justice upoun ye summonds persewit be ye said David Heriot agains yame, with certificatioun to him and he failyeat yrin he salbe haldin pro confesso and ane decrete given agains him'.

She and her husband were also charged by David Jackson, merchant burgess in Perth to pay £1341 13s 10d 'restand awand be thame and contenit in ane futtit compt'. Perhaps these merchants were functioning as money-lenders. It is not clear why she as opposed to her husband entered into these transactions. Even if they had been pre-nuptial debts her husband would still have been liable for them as an effect of *Ius Mariti*.

Peter Sanderson, Master Tailor to the Queen’s Majesty and burgess of Edinburgh, brought an action against Libra Hamilton, Lady Ayton and William Home of Ayton her spouse for £54 as for the pryce of certane merchandice and workmanschipe furneist and wrot be him to ye said Libra Hammiltoun, hir dochteris and servandis in hir name and at hir command'. Although called on to give their oaths of verity in November, the action disappeared from the records. Presumably it was settled out of court.

It would appear that some titled women took advantage of their rank in their exploitation of the credit facilities granted, perhaps reluctantly, by merchants but others had equally pressing though smaller debts to pay. Margaret Home relict and her son owed £33 6s

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122 CS7/191/35v (Heriot v Stradoun).
123 CS7/189/119v (Jaksoun v Lady Arroll).
125 CS7/185/266v (Sandersone v Lady Aytoun).
8d yearly over several years to James Hepburn as assignee for the teind sheaves of Makerston.\textsuperscript{136}

Others did not pay for purchased goods. Elizabeth Nicholson and John Hepburn her spouse for his interest charged Mistress Margaret Rollock relict of Mungo Tennant in Lasswade to content them to the sum of £66 10s for six and a half bolls of malt received by her 'twa yeirs syne'. She was decerned to pay because she 'comperit nocht to gif her ayt of veritie'.\textsuperscript{137}

Some debts were seen to be so overwhelming that a daughter chose to renounce being heir as a device for avoiding payment. David Johnston had 'infeft and seasit Thomas Barbour in ane annuelrent of £24 furth of his lands of Bogy' in return for £200 borrowed and received by him. After he died his daughter Marion renounced being heir 'be quhilk renunciatioun ye said Thomas Barbour is simplie secludit fra all proces agains the said Marioun and hir tutors and curators and is haillilie frustrat of all payment ... thair being na pairoth now onlyfe that may have actioun for implement and fulfilling of ye said obligatioun to him'. Nevertheless Barbour was able to bring a successful action for poinding of her heirship goods which were 'daylie rottand and spoiland in prejudice of ye said complener' to the value of the debt owed to him.\textsuperscript{138}

Marjory Edmonston, Lady Urchill, was charged along with several others by William Stirling, parson of Aberfeldy and commissioner within the presbyteries of Dunblane, for payment of 'ane taxatioun to the reparatioun of the kirk of Murthill'. They had failed to pay Maister Morrice Drummond, kirkmaster, and Mr John Davidson, minister there 'collector appointit to yat effect'. They achieved suspension of letters denouncing them as rebels for non-obedience on a technical point. The letters of horning were raised in 1599 but

\textsuperscript{136} CS7/185/103r (Hepburn v Lady McCairstoun).
\textsuperscript{137} CS7/186/143r (Hepburn v Rollok).
\textsuperscript{138} CS7/192/205v (Barbour v Johnstoun).
executed against the complainers in 1596, 'that is execut thrie or four yeiris befoir they wer raisit'.

Women as creditors

Women also pursued debts, though it was sometimes necessary to involve further parties. Elizabeth Ramsay, Lady Saint Monans, obtained a decree against Thomas Lothian for an unfulfilled obligation. She gave him a discharge provided he 'mak furthcumband sa mekil of 6 chalders aits and 2 chalders beir, pryce boll aits £5, pryce boll beir 10 merkis, as wald extend to the sowme of 410 merkis principal and expenses contenit in ane obligatioun made to Dame Jene Jonstoun, Lady Saltoun be ye said Elizabeth Ramsay in borrowit money'. He failed to do this. James Harvie, advocate thereupon paid the debt 'at hir desyre and command'. Thomas Or owed Thomas Lothian 300 merks for beir bought from him so James Harvie caused Thomas Or's readiest goods to be distrained to the extent of these 300 merks.

Margaret Craig, relict of James Johnston and John Arnot now her spouse, clearly as a preliminary to an action for recovery, raised a summons against Henry Sinclair for the transferring of an obligation for £150 due to her or to her former husband in him as heir to his father, maker of the bond.

Margaret Porterfield and William Mercer her spouse for his interest pursued Alexander Balfour of Brighall who had failed to honour an obligation 'granting him to have borrowit and ressavit fra Margaret the sowme of fourscoir saxtene merkis and band him his airs, executors and assignayes to pay to Margaret hir airs etc betuix the dait of ye obligatioun and Mertinmes nixt but langer delay togidder with thirty punds as for coists aggreit as in the obligatioun registrat in the buiks of the stewartrie of Menteith and

139 CS7/186/360v (Lady Uchill v Stirling).
140 CS7/189/69r (Harvie v Or).
ane decrete of the stewart yrof interponit yrto'. He was ordained to pay within six days.\footnote{CS7/186/346r (Portarfeild v Balfour).}

Christian, Dorothy and Janet Forbes, daughters to John Forbes fiar of Rires, and their spouses raised a summons against John Wemyss for keeping to the terms of an indenture made by Sir William Forbes of Rires, knight, and Thomas Wemyss of Pittencreif, both deceased.\footnote{CS7/190/88r (Lord Pittincreif v Forbes).}

Unfortunately no details are given but an indenture was an early form of contract in which a space was left in the middle of a document and the two copies started on opposite sides of the space, running in opposite directions. The copies were separated by a wavy line across the space. Each party sealed or signed the copy to be kept by the other. Authenticity could be proved by fitting the copies against each other.\footnote{Gouldesborough, Peter (compiled by), Formulary of Old Scots Documents, Stair Soc., vol. 36, 1985, 11.}

Diligence against debtors

Diligence, enforcement of a legal obligation against the moveables, person or heritable property of debtors for any kind of debt followed a decree of court. Diligence against moveables or person of a debtor involved the creditor in obtaining royal letters sealed by a Writer to the Signet. The Process papers show that, in 1600, Alexander Laing\footnote{eg CS15/78/8 (Sandelands v Sandelands).} and Richard Keen performed this duty.\footnote{eg CS15/78/5 (Ker v Edgar).}

The letters instructed messengers or 'syrefs in that pairt' to charge the debtor to honour his obligation. These took the form of letters of four forms in which the debtor was charged four times within specified intervals of time between each charge. This was done as a preliminary to denunciation of the debtor as rebel with three blasts of a horn at the market cross of the head burgh where the rebel dwelt. The debtor's moveables were escheated to the Crown. George
Mitchell raised such letters of horn ‘quhairwith he causit charge
Elizabeth Thomson relict of James Mitchelson younger and Robert
Stewart now her spouse for his interest’ for non-payment to him of
100 marks ‘as in ane act in the court books of the King’.146

Sometimes goods were poinded to the value of the debt. No
examples of poinding of the ground (a form of diligence available to
heritable creditors whereby moveables on the land over which the
debt was secured, were impounded as a preliminary to their sale in
satisfaction of the creditor’s decree) directed against single women
or widows were found.

Helen Heriot, relict, charged her tenants an annual rent of £10
‘quhilk hir umquhile spous and sche had, to have been upliftit furth
of the ground of the houses, biggings, yairds and croftis of the
arabill lands lyand on the west pairt of the towne of Dirletoun’.147

Failure to make payment of these dues stimulated as diligence an
action for poinding and apprising of the ‘reddiest guids and and
geir upoun the ground for payment to hir of ye annuelrent of £10
sundrie yeirs’.148

Similarly, Margaret Bellenden relict and Patrick Murray of Fala
Hill won an action against tenants for payment of victual or their
prices so ‘the Lords ordanit letters to be direct to or soverane
lordis officiaris of armes, syreffs in yat pairt, chargeing yame to
pas, arreist, appryse, compell, poyn and distreinzie the reddest
guids and geir beand or yat sal happin to be fundin upoun ye grund
of ye saids lands of Dalhousie with pertinents and failyeand of
moveabill guids yrupoun, decernit and ordanit ye grund ryt and
propertie yrof to be apprysit at ye persewaris instance for payment
to yame of ye pryces of ye said victual’.149

146 CS7/185/113v (Michelsone v Thomson).
147 CS7/191/71r (Heriot v Haliburtoun).
148 CS7/189/228v (Home v Haliburtoun).
149 CS7/189/336r (Dalhousie v Dalhousie).
Margaret Williamson, relict of William Boist baxter burgess of Kirkcaldy, and Alexander Auchmowtie now her spouse for his interest, obtained a decree before the bailies of the burgh ordaining Alexander Williamson, mariner, to pay to the pursuer and her spouse £20 yearly in annualrent from 1593 to 1599 for a tenement 'ay and quhile the lauchful redemptioun yrof'. Because the defender 'would in nowayis obtemper without he be compellit', the Lords ordained officers of arms to pass and seize goods to the avail of the £140 still owed.150

The debtor could gain time by raising letters of suspension of the letters of horning or of poinding. Dame Margaret Livingston, countess of Orkney and Patrick, earl of Orknay now her spouse for his interest sought suspension of letters of horning raised by William Cranston against by her for payment of £500 owed to him by obligation.151

Letters of arrestment were sometimes issued in order to prevent the alienation of moveables before an obligation was fulfilled. Messengers were authorized to arrest the moveables in the hands of a third party. An example is found in the Process papers of a warrant obtained by Elizabeth Park, relict, and William Napier her spouse for his interest, which was given to James Hairstanes and Robert Napier, messengers, for the arrestment of goods in the hands of the provost and bailies of Edinburgh and two Flemings in Newhaven because £20 annualrent was not paid by the occupiers, English saltmakers.152

As a last resort some women debtors were imprisoned for debt. Letters of caption which rehearsed the horning instructed the messenger to charge sheriffs and magistrates to imprison the debtor. No example in 1600 against women was found but Mr David Guthrie,

150 CS7/192/48v (Auchmowtie v Williamsoun).
151 CS7/190/112v (Cranstoun v Lady Orknay).
152 CS15/77/45 (Napier v Toun of Edinburt).
presumably as advocate for the poor, pled for the release of Isobel Dryburgh as 'dettour in waird within ye tolbuith of Canongait at the instance of [a list of 16 people and the bailies of Canongate for their interest] for allegit not payment to thame [of debts ranging from £1 to £7] ... in quhilk waird ye persewar will not fail to perische in extreme famine haifing na thing quhairupoun to interteine hirself farles to satisfie hir saids dettis. Thairfoir for eschewing danger of hir lyff be famine in ye said waird (albeit ye said persones hes nather act nor decreit agains hir) sche is content to mak the saids persones assignays of hir haill guids and geir and dettis present and to cum ay and quhile thay be satisffeit at ye leist of all that sche salbe fundin justlie addetit be ye law, quhilk assigatiouns ye persones and bailleis refusis to ressave and put the complener to libertie'. She may have been seen as a liability, since neither she nor her creditors may have been able to pay her expenses, because the Lords charged the bailies 'to put the complener to libertie and friedome furt of waird' within 24 hours 'that sche may pas and repas within yis cuntrie as or soverane Lordis frie liege for doing of hir necessar effaris'.

Securing a debt

Securing a debt on heritable property could be achieved either by a contract of wadset or by a grant of right to an annualrent. In a contract of wadset the debtor conveyed lands in security and the creditor, the wadsetter, in a clause of reversion undertook to reconvey the lands when the debt was paid; the debtor was said to redeem the lands. In a 'proper' wadset the wadsetter enjoyed the rents instead of interest on the debt but ran the risk of the rents amounting either to more or to less than the annual interest. In an

154 CS7/186/106r (Dryburgh v hir Creditors).
'improper' wadset the exact interest was paid.155 These are not distinguished in the records.

Janet Gavillock, relict of Walter Cullen, and David Liberton her spouse for his interest, successfully denounced as rebel Robert Jowsie, merchant in Edinburgh, for his non-payment to them of 4000 merks and for non-infefting of them in an annualrent of 80 bolls here furth of the lands of Whitehouse 'and for not fulfilling of the condiitounis in ane contract and appointment past between them 15 June 1596'. The action is a declarator of Jowsie's escheat and therefore no explanation that Jowsie was not honouring a wadset is given, though that is a possibility. 156

No example of single women or relicts specified as wadsetters was found, although John McCure, tailor burgess of Edinburgh, and his spouse denounced Margaret Mowbray our sovereign Lord's rebel and put her to the horn for 'allegit not payment of £2000 and byrun annuels allegit contenit in ane obligatioun be Frances Naper spous to the complener and hir [[Margaret Mowbray] ... registrat in the buiks of Counsall to John McCure and his spous for redemption of the lands of Gogar'. The denunciation was found to be null because John McCure failed to compear.157 This may in fact be another example of a wadset as may be the declarator of redemption that 'all and hail that tenement of land lyand within the burt of Aberdein in the Chuber Row allegit sauld and annaliet be umquhile Gilbert Chrystie burges of Aberdein to umquhile James Schewane in Perskow contenand the sowme of 100 merks to be laichfullie redemit, redemit, lousit and quhitout conforme to the reversioun fra Issobel Barker relict of umquhile Gilbert as sche quha was infeft yerin be resignatioun of umquhile James Schewane'.158

156 CS7/190/36v (Lord Advocat v Jowsie).  
157 CS7/186/261v (Mowbray v McCure).  
158 CS7/190/357r (Barker v Chrystie).
The other method of ensuring payment on a debt was for the debtor to undertake to pay an annual rent. This rent was a form of interest on land which dated from pre-Reformation prohibitions on lending interest.\textsuperscript{159} These arrangements seem to have related to both land and land in the form of buildings in 1600 and are thus the equivalent of mortgage payments. Some of the many examples of unpaid annual rents could represent such a repayment of debt.

CHAPTER 4

WOMEN AND THE LAW

PART 3 - PROPERTY, BUSINESS, HERITABLE RIGHTS AND SUCCESSION

Women and property

Although no examples of women specified as holding land in feu ferme were found, apart from Elizabeth Baillie, 160 most debts to and by women related to property in the form of land, mills and tenements of land in burghs. Single women, relicts and their new spouses, and widows acting on their own were all involved in these actions. For instance, Alison and Beatrice Home, daughters and heirs of deceased Gilbert Home and their tutors for their interest, charged three indwellers in Leith to make payment of the fermes and duties of the acres of land occupied by them in Restalrig. 161

Relicts and their new spouses, too, had to pursue unpaid dues. Thus Helen Innes, ‘relict of umquhile Patrik Leslie burges of Aberdeen and Patrick Lisk now hir spouse for his entres’ sought payment by Walter Innes of eight bolls of meal yearly from 1595 to 1599. 162

Mary Currie as relict of Robert Futhie of Fuddie Mill and liferenter thereof and Andrew Turnbull in Wester Gellitis now her spouse for his interest, brought an action against Robert Futhie son and heir of her former husband for an unpaid annualrent of the mill from 1581 to 1599. This took the form of 16 bolls victual, half heir and half oatmeal, ‘with the charitie’ [heaped bolls]. The prices were

160 CS7/189/117v (Sillertounhill v his Tenentis)
161 CS7/185/150v (Home v Aikinheid).
162 CS7/185/158r (Inneis v Inneis).
'liquidat at the avails according to the fearis of the syrefdome of Fife' and letters were directed to messengers of arms, sheriffs in that part to 'poind the reddiest of the cattel, guids and geir for the pryces of the annuelrent and failzeing of moveabill guids upoun the ground, the ground and propertie to be apprysit'. This was probably a payment to his mother as liferenter of the mill through a conjunct infeftment contract.

Isobel Kincaid, relict of John Main, and George Fairnie now her spouse for his interest, charged the heritable possessor of the lands of Locheid and the tenants, claiming an annuelrent of £112, unpaid since 1598, 'furth of the Maynes of Abercorn, mylne and mylneland's' in which she had been infeft. This is a possible feu ferme payment whereas the annuelrent pursued by Katherine Fowlar relict of John Moscrobe, advocate, as liferenter, of 200 merks yearly from the heritor and six tenants of a tenement on the south side of the High Street in Edinburgh is likely to have been a straightforward rent paid on burgh property. When the heritor, Mr Alexander Syme, another advocate, refused to make payment the Lords ordained the poinding of the readiest goods.

It could be women, of course, who failed to pay rents in one form or another. Agnes Charters, relict, was summoned to prove the points of a summons against her for payment to David Crichton of Lugton, as assignee to the males, profits and duties of Carco, as in the act of litescontestation which admitted the case to proof. She was warned to give her oath de calumnia that the facts were true and Margaret Home as assignee to the teind sheaves of Makerston owed £33 66s 8d yearly over several years.

163 CS192/12v (Currie v Ffuthie).
164 CS7/192/223r (Kincaid v Levingstoun).
165 CS7/192/2v (Ffowler v Syme).
166 CS7/190/150r (Lord Lugtoun v Charteris).
167 CS7/185/103r (Hepburn V Lady McCairstoun).
Tacks

Any of the unpaid dues mentioned above could have been rents to a tacksman or tackswoman. Women as tackers could set tacks or assedations. These were really leases or contracts between a proprietor and a tacksman or tackswoman or tenant by which the tenant could use the land for a specific number of years, usually for 19 years or cycles of 19 years. [The choice of 19 was related to the Metonic Cycle\(^{168}\); the same phase of the moon occurs on the same day of the year 19 years later. The so called 'golden numbers' can be found in calendars of Books of Hours\(^{169}\). He or she paid a fixed rent in money or kind and there was an 'ische' or fixed term of expiry.\(^{170}\)

Dame Marie Ruthven, countess of Athol, as donatrix to the lands and earldom of Moray, set tack of these lands with consent of John, earl of Atholl, to Robert Dunbar of Burgie,\(^{171}\) son-in-law of John Sharp, advocate.\(^{172}\) James Tweedey claimed that Dame Jean Herries, Lady Skirling had set the third part of the lands of Lochen in the Constabulary of Haddington to him in tack and he brought an action for production of the letters of tack and assedation 'uncancellat and unvitiat' as a preliminary to answering her terce claims.\(^{173}\)

Lessees or tackswomen of teind sheaves often found these unrendered. Margaret Home, relict of Robert Mitchelson of Blackhaugh, had to pursue Nicol Carnetors to hear him decreed 'to have done wrang in ye wrangeous intromissioun and withalding ... furt of the arabil and cornland of Apertrelleis[?] and Langhauch,

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\(^{169}\) eg Les Grandes Heures de Jean Duc de Berry, Thames and Hudson,1971), Plate 11,October.


\(^{171}\) CS7/187/326r (Dunbar v Torrie).

\(^{172}\) Mary Ruthven, d.of E of Gowrie, RPC, V, 440,448; Scots Peerage i,446-7; Sanderson, M., Mary Stewart's People, 30. for R. Dunbar.

\(^{173}\) CS7/190/38r (Lord Drumalzear v Lady Skirling).
regalitie of Melros, ilk yeir 1594 to 1599 of the teind shevis’.\textsuperscript{173}

On the other hand, women too, could be pursued for spoliation of teind sheaves. Dame Dorothy Stewart was accused of ‘the wrangeous and violent intromission and withholding be hirself, hir factors, chamberlanes and uyris in hir name of hir causing, command, assistance and ratihabiitoun fra Maister William Leslie of Civildie ... of the fermes and dewteis of the teind shevis addettit to the pursewar be vertew of ye said tak of divers yeirs’.\textsuperscript{174}

Redress was sought by a tackswoman through serving an inhibition against all the parishioners to prevent them from teinding. Dame Isobel Hamilton, Lady Seton, inhibited 169 parishioners of Dundonald, Paisley and Kilpatrick, all named, in this way by raising letters at her instance and in her name ‘quhairby thai war expresslie inhibitit commandit and chargit that nane of yame sould consume nor tak upoun hand to intromet with or awaytak ony cornes 1598 but licence of ye persewar and that thay sould mak lauchful premonitioun to hir to teynd with thame thair saids corns and that thay sould not remove the samyn of the ground quhair thay grew unteyndit be hir, hir factor and servitors in hir name with certificatioun to thame and thay did in contrair thay salbe callit, contenit and persewit as violent spulyearis of ye saids teynd shevis and compellit to mak restitutionoun, payment and deliverance yrof with all rigor conforme to ye laws of yis realme’.\textsuperscript{175} Understandably determined, she and her son Sir William Seton of Kylismure assigned the action to James, Master of Paisley. The action thereafter disappeared.\textsuperscript{176}

\begin{itemize}
\item CS7/190/316r (Home v Carnetors).
\item CS7/191/370r (Leslie v Lady Gowrie).
\item CS7/189/221r (Lady Seytoun v Parochineris of Dundonald).
\item CS7/189/227r (Lady Seytoun v Parochineris of Dundonald).
\end{itemize}
Removings

Women both removed tenants when their tacks had expired and, more frequently, as tenants or tackswomen whose tacks had expired, were removed. Most removals of women were straightforward actions in which the remover had a legal right to compel a tenant to relinquish possession of heritable property to which he or she had no title. All followed the prescribed procedure of giving warning 40 days before the Whitsunday when the tack was due to expire, to remove, conform to the act of Parliament. If necessary, the landlord obtained a decree of removing before the Lords of Council and Session but sometimes it became mandatory for the remover to obtain letters of ejection under the signet or a precept of ejection from an inferior court if the woman refused to obey the decree of removing.

Relicts with new spouses occasionally tried to remove sons by a previous marriage. Nicolas Murray, relict of William Bonar of Keltie, tried to remove Ninian his son, though perhaps not by her, from the sunny half lands of Keltie mill; she lost the action of advocation from the Stewart of Menteith’s court and the action disappears.

Landowners like Dame Margaret Stewart removed George Finlayson from a half-husbandland in Over Saltoun and Agnes Moscrope as heritable proprietor of a tenement of land in Leith and Captain Austin[?]her spouse for his interest removed tenants successfully and Jean Erskine, relict, in common with many others whose specific right to remove is not stated or depended on 'infeftment and

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177 A.P.S., 1555, c.12, II., 494.
179 CS7/191/104v (Keltie v Murray).
180 CS7/185/228r (Bruntfeild v Lady Saltoun).
181 CS7/186/374r (Captane Yeaunseane v Andersoun).
sasine', equally successfully removed nine tenants from her lands in Kippen.\textsuperscript{182}

Tackswomen too, removed tenants. Isobel Hopringle, relict of David Edmeston of Barnhouse, as tackswoman of the east half of the twenty-pound land of Whelplaw, Lauderdale, tried to remove tenants who were rendering the land unprofitable. This proved difficult, some claiming that they and their predecessors were kindly tenants and therefore could not be removed; one, having married a tackswoman 'befoir the outrunning of her fyve yeir tak' claimed that he therefore also 'obtenit ye said tak'. The answer to these arguments was to suggest that this tack must have been forged. Witnesses were summoned but the case was not concluded in 1600.\textsuperscript{183} Her problem was that a tacksman or tackswoman could not be removed if the tack had not expired, provided the terms of the contract were observed by the tenant.\textsuperscript{184} An argument that there were 'yeirs to rin', as above, if proved, would have been accepted.

Other means of removal of a legitimate tackswoman had to be sought. Sir James Elphinston of Barnton as heritor brought an action against Margaret Auchinleck, relict of Alexander Boak, as tackswoman of the mill and mill lands of Ballumbie in the sheriffdom of Forfar. She had tack and assedation set to her for a yearly payment of 24 bolls of victual. However, 'sche being fallin in povertie and be hir debotchit lyfe and unhonest conversatioun hes not onlie sustenit ye mylne housses and biggings to cum to ruyin, fall and decay sua that yrby the astrictit thirle is withdrawin fra ya said mylne and mylne lands in effect lyand waist bot also sche is addettit to ye persewar in ye fermes and dewteis and be hir povertie and insolent lyf sche

\textsuperscript{182} CS7/192/1r (Erskine v hir Tenents).
\textsuperscript{183} CS185/121r;CS7/185/152v;CS7/185/233r (Hoppringill v Tennents of Quhelplaw).
\textsuperscript{184} Gouldesbrough, P., \textit{Formulare of Old Scots Documents, Stair Soc.}, 142.
is not abill to pay ye yeirlie dewtie to him nor yit to performe and
do service requisite at ye mylne quhilk tends to ye persewaris hurt
without sum timeous remedie yrto be compelling of Margaret according
to the Lordis daily pratik and ordors usit in sic causes to find
sufficient cautioun and sourtie befoir thame for making payment to
him of the dewtie 1600; and gif sche fallyie to find sufficient
cautioun that the Lords will declair that it salbe lesoum to ye
persewar efter this present crope to enter to the milne and
milnelands and bruik and occupy thame bot ony actioun of executioum,
vviolent intrusioun or spuilzie to be incurrit notwithstanding the
tak and assedatioun set to hir’. She failed to find caution so the
Lords were justified in their decision to declare ‘that it salbe
lesoum to ye persewar efter this present crope be separat fra ye
ground to enter, occupy, use and dispone bot ony actioun’.\textsuperscript{185}

A similar action was open to Patrick, Lord Glamis, against
Elizabeth Thomson, relict, occupier of four oxengates of land in
Mureburn, for non-payment along with others of the ‘maills, fermes,
caynes and dewties of the 1599 crope’. He successfully asked the
Court to enforce the ‘finding of cautioun and sourtie in ye buiks
of Counsall’ for payment of that year’s duties ‘and in tyme to cum,
during all the yeirs to ryn contenit in yair takis and assedatiounis
of ye saids lands and mylne’.\textsuperscript{186}

The records show that widows were frequently removed. Conjunct
infeftment arrangements were crucially important for the security of
a widow. All actions to remove widows would have failed against
liferenters or conjunct fiars although Christine Lyall, relict,
failed in an action for suspension of letters of horning raised by
the heir by progress against her and her son for not obeying a
decree of removing from lands in Lammermuir. The main thrust of her

\textsuperscript{185} CS7/190/254v (Lord Secretar v Auchinlek).
\textsuperscript{186} CS7/193/34r (Lord Glamis v his Tenentis).
argument to be ‘reponit in integrum’ rested on her claim to a different estate ‘disponit to his dochter’ [presumably her] by her father. These grounds were ‘querrelled’ or disputed. Whether they would have proved sufficient is not clear because her action was lost through her refusing to find caution ‘in case they were found violent profaits’.  

Probably sympathy for a widow’s plight dictated that no action was taken against Janet Smith, relict, and her son after they were warned to have flitted from land in Gilmerton; she ‘wrangeouslie occupeit and witheld sevin coitlands’ until her death a short time later whereupon Adam Tait ‘enterit himself ... having succeidit to hir vice and wrangeous occupatioun, sche having na richt yrto’. It was he who was ordained to remove.  

Relicts with new husbands were especially vulnerable. Thus Katherine Hannay, relict of John Dunbar, and John Dunbar now her spouse for his interest, was decreed to flit from Orchardton despite a promise given by the pursuer ‘never to remove the said Katherine and her spous’.  

If a tenant did not obey a decree of removing the landlord obtained letters of ejection under the signet or else a precept of ejection from an inferior court. Isobel Congilton, relict, was summoned by precept of the sheriff depute of Haddington at the instance of David Seaton of Wodderlie to hear and see herself decreed to have done wrong in the violent occupation of a croft of land in West Fenton and in withholding of the profits. She advocated the action to the Lords and sought the discharge of the sheriff depute on the grounds of the suspect nature of this inferior judge

187 CS7/189/46r (Lyll v Stanipeth).  
188 CS7/186/246v (Lord Edmostoun v Tait).  
189 CS7/191/221r (Dunbar v Ahanay).
through nearness of kin to the pursuer. The Lords remitted the action back to the sheriff despite her arguments.\textsuperscript{190}

When decrees of removal were challenged, the pursuer sought restoration on the grounds of ‘wrangeous removing’ or of having been ‘wrangouslie ejected’. Marion Ross, relict of Angus Leith and Hutcheon Munro now her spouse complained of wrongful ejection from the lands of Riddoull Downie, sheriffdom of Inverness ‘thai being in possessioun yrof and the samen lands pertening to thame be vertew of ane tak and assedatioun set to umquhile Angus Leith for all the days of his lyfetyme be George Ross of Ballingowrie fewar yrof and Mareoun his relict continewand in possessioun yrof per conaretam relocationem’.\textsuperscript{191} This case too, disappears from the records so perhaps alternative land was found.

John Forbes, portioner of Fintray and executor to ‘umquhile Patrick Forbes and umquhile Margaret Chalmer his mother’ brought an action against William Craig ‘to hear him decerned to have done wrang in ye violent ejectioun be himself of umquhile Margaret Chalmer and Patrik Forbes hir spous, servands and guids furth of the towne and lands of Cauldwalls ... and to restore to Jon Forbes ye possessioun of ye foirsails lands, to bruik thame ay and quhile he be lauchfullie callit and ordorlie put yrfra be ye law’. William Craig was called to comppear to give his oath de calumnia but it was revealed that he had been denounced as a rebel so Mr Thomas Craig could not act on his behalf, nor was he able to comppear so he must have been held as pro confesso.\textsuperscript{192} The action certainly disappears. Alternatively, if letters of horning were raised against the tenant for not obeying the decree, a tenant like Christine Lyall could seek suspension of the letters.\textsuperscript{193}

\textsuperscript{190} CS7/185/294r (Seytoun v Congiltoun).
\textsuperscript{191} CS7/189/366v (Ross v Ross).
\textsuperscript{192} CS7/189/276r (Fforbes v Craig).
\textsuperscript{193} CS189/46r (Lyll v Stanipeth).
A summons of removal might be raised in the hope that it might pass as undefended. Cockburn, procurator for Margaret Lightbody and Marjory Newton, tenants of land in Lauder, produced a copy of a summons of removing at the instance of John Lightbody. They had been called to court but no one had represented the pursuer. The action was delayed until they were summoned again and their expenses refunded. The action seems to have ended with this protestation.

Some widows were resolute and not open to threats. Mary Mackenzie relict refused to obey a decree of the sheriff of Inverness to flit from ‘ane quarter of ye towne and lands of Knokfyne, gersaigés [grazings] and schelings lyand in Straglass Barony’. The Lords of Council sought to enforce the sheriff’s decree by ordaining letters in all four forms to be sent, each within 48 hours of the other and in case of disobedience she was to be warded in Dumbarton Castle. It is not known if the sanction of the Supreme Court weakened her resolve.

Kindly tenants

There was protection against removal for some tenants, however. Kindly tenants as shown in an argument propounded by a procurator above but also in an action in court, were shown by the records to be exempt from removal. Helen Orme, relict, tried to remove John Hunter in the Newmill of Cluthymoir ‘under pretence of ane liferent titil maid be hir umquhile husband Henry Adamson’ who had obtained a wadset to him, his heirs and assignees of the mill from ‘umquhile Laurens Lord Oliphant in his tyme and efter his deceis Laurens Mr Lord Oliphant his oy had guid favor to John Hunter as yr auld kyndlie tenent of the said Newmylne’. Henry Adamson ‘acknowledging John Hunter and his predecessors successive efter uyris to haif bene kyndlie rentallers and tenants of the Newmylne and lands past

194 CS7/190/145v (Lichtbodie v Lightbody).
195 CS7/191/168r (Chisholme v McKeinzie).
memorie of man ... in corroboration of his rentall grantit him to have ressavit ... the sowme of £20 and that for his new entres be him yrto as wadset haifar of the Newmylne sa lang as he had richt yrto, the samen standard unredemit'. John Hunter brought an action that Gilbert Hunter as Henry's heir should warrand him and his heirs during the non-redemption of the Newmylne and lands 'to be frie and saif at all hands haifar and entres'. Gilbert refused but he was ordained by the Lords 'to warrand, acquit and defend to the persewar his airs and assignayis during all the tyme of non-lauchful redemptioun of all and haill the milne and lands set and rentallit to ye persewar and his airs be umquhile Henry Adamsoun frie quiet and saif at all hands haifar or pretendand to half entres, speciallie at the hands of Helen Orme pretendit lyfrentar and urytitil and actioun of removing and warning persewit be hir agains the said persewar and of all consequences and perrills and of the samen males profits multures suckin knaiffschip and dewties yrof to be usit be ye persewar and hisfoirsaid as auld kyndlie tenant and rentaller yrof during all the tyme of the non-redemptioun conform to his rentall and band of warrandice or els als mekil of guid land milne milnlands and pertinents als weill lyand and haldin and of als greit availl and profeiit be yeir and als commodious in all respects as is the said Newmylne, lands and houses'.

Here 'kyndly tenant' and 'rentaller' seem to be synonymous.

Widows of Saint Mungo's Rentall in Glasgow were protected against removal. Balfour stated that 'Gif ony man be rentallit him alane in St Mungo's rental, in ony landis and possessiounis, and deceissis thairefter, his wife sall bruik and joise the samin for all the dayiis of hir lifetime, be privilege of St Mungo's widow'.

Elizabeth Baillie, heritable feuar of the lands of Provand, Barony

196 CS7/190/308r (Hunter v Adamsoun).
of Glasgow, and Sir Robert Hamilton of Goslington, knight, her spouse, brought actions of removing against several tenants. Mr Alexander King pled that some 'sould naways be decernit to flit because yair fatheris was rentallit, everie ane of yame for yair awin pairtis be ye bischope of Glasgow and ye prebendar of Provand ye samen being ane pairt of ye baronie of Glasgow and given furth be ye bischope of auld to ye prebendar of Provand be vertew of quhilk rentallis yair saids fatheris war in possioun of ye saids lands and in custome of ye baronie of Glasgow that quha ever is rentallit in Sanct Mungo Rentall yai and yair successoris bruiks ye lands quhairin yai ar rentallit for ever' - clearly a form of customary rental. In another action, 'Nanss and Mareoun Pettigrewis ... suld be simpliciter assoilyeit fra ye warning becaus yair umquhile husbands war rentallit in ye saids lands occupeit be yame be ye said umquhile Mr William Bailyie, Lord Provand, and it is ye custome of ye baronie of Provand that gif ye husbands be rentallit for yair lyftymes in ye lands occupeit be yame, thair wyffis ar not removable during thair lyftymes the samyn being of the natur of Sanct Mungo Rentall'. The Lords found his argument relevant and persuasive and ordained them to find caution in case they were found to be violent possessors. If they failed to do so the Lords would decern them to flit. Mr Alexander King refused to find caution either because he was convinced that he was correct or because his clients were unable to find surety. They were therefore decerned to flit and to pay expenses.199

Tenants of Sanquhar had a measure of security in that they seem to have had the special privilege of being regarded as rentallers or kindly tenants. James Somerville of Cambusnethane tried to remove several from Prestwickshaws but 'it is the custome of the baronie of

199 CS7/189/117v (Sillertounhill v his Tenants). They were tenants for life despite there being no defined lease thereof.
Sanquhair ... that the tenents quha ar anes rentallit in ony lands of the said baronie bruiks the samyn lands during yair lyftymes albeit thai be indefinitlie rentallit yrintil'. Furthermore it was alleged for Christian Simpson, relict of John Martin that she ought to be assoiled from the action of removing 'because her husband had been rentallit be umquhile William Hammiltoun of Sanquhair or umquhile William Hammiltoun his father for all the days of umquhile Johne's lyftyme and the said Christiane his relict aut not to be removed because he ye customs of ye baronie of Sanquhair, Sorne and Prestickschawis and uyr rentallit lands qhilk pertenit to umquhile William, the wedowis bruiks the half of yair husbandis rentallit lands during yair lyftymes swa lang as they remane wedows and trew that ye said Cristiane Simpsoun is yit wedow and that Johne Mairtein was rentallit during his lyftyme'. These claims had to be proven per scripta vel iuramentum. They were declared to be true and 'all was provin that witnesses may preif' so the procurators for the defenders asked for instruments.  

Violent possessors

These were tenants of lands under reversion, whose tacks had expired. They were so called if they refused on lawful warning to 'flit and remove' before any Whitsunday term after the redemption. Relicts were also violent occupiers if they remained in property after a decree of removing had been pronounced against a dead husband. Letters in four forms were directed against Mary Borthwick for having succeeded in 'ye vice ... of occupatioun of the lands of Arress after a decree of removing had been issued against Thomas Heriot her dead husband'.  

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199 CS7/191/265r & CS7/191/345v (Cambusnethane v his Tenentis of Prestick).
200 A.P.S., 1555, c.3, II., 492.
201 CS7/191/105r (Borthwick v Trabroun).
Marion McDougal, relict of Walter Agnew, and Patrick McDougal in Freuche, [the relationship was not specified] were summoned 'to heir and sie it be fundin and declarit be decrete of the Lords of Counsal that umquhile Walter Agnew was befoir Witsunday 1596 lauchfullie warnit to have flittit fra ye mylne of Kirkchryst and that he wrangeouslie witheld the samen fra the persewar to his deceis in Aprile or yrby 1597 and that Mareoun McDowall wrangeouslie be hirself, hir servands immediatelie efter the tyme foirsaid of hir said umquhile husbandis deceis intrusit hirself, hir servands and guids in ye said mylne and possessioun yrof and succedit yan yeirlie in ye vice and violence of ye said umquhile Walter Agnew and swa sche wrangeouslie occupite and witheld the samyn mylne, multer and suckin and intromettit with the profeits yrof continuellie fra ye tyme of entres 15 August 1597 and efter 15 August ye said Patrik intrusit himself ... and upliftit the profits ... and succedit in ye vice and violence of umquhile Walter Agnew'.202 Marion seems to have died during the year because, after several acts, Patrick McDougal was given a reprieve until Whitsunday 1601 when the Earl of Cassillis would be free 'to enter the houses and grass of the saids lands ... to the quhilk haill premisses baith the saids pairteis consentit'.203

It could equally be a woman who charged men with violent occupation. Thus Mistress Jean Campbell, relict of Angus Macintosh, and Mr Donald Campbell now hir spouse for his interest, summoned five men for 'having done wrang in the masterful violent occupatioun of the lands of Drumdelchark. They were to pay the profits to the pursuer. This action must have been brought in the widow's right.204

Many women who were removed must have been represented by the advocate for the poor but in no record is the procurator designated

202 CS7/191/42v (Erle Cassiliis v McDowall).
203 CS7/191/355r (Erle Cassillis v Makdowgall).
204 CS7/185/111r (Cambell v McIntosche).
as such. However, Janet Young was found by a sheriff depute of Renfrew to have done wrong ‘in the the vice and violent occupatioun’ of the ten shilling lands of Nether Hairshaw and in the ejection of John Hamilton. She brought an action before the Lords for reduction of the decree but the Lords assailed the defenders and ‘of consent of the saids defenders, having consideration of the said Jonet Youngis povertie, they modifieit to hir the sowme of £20 for quhilk she than renuncit all acts of ejectioun and succeeding in the vice and violent profits that myt be competent to hir agains the defenders’. She was represented by Craig and Blinsele, so that the latter was perhaps functioning as advocate for the poor in this case. Nevertheless it would have required spirit to litigate and one suspects that many widows who were not protected by conjunct infeftment contracts would have elected or been forced by circumstances to stay with a member of family.

**Heritable rights**

Heritable rights in property were constituted by a charter either from the Crown or from a subject superior. The vassal’s ownership was permanent and it could pass to heirs or to others provided the reddendo was rendered in the form which had been agreed, or, if the tenure was feu-ferme, provided the feu-duty had been paid. The vassal completed his title by taking sasine from bailies; this action was recorded by a notary in an instrument of sasine.

It was thus essential to possess these documents or authentic copies of them. Isobel Boswell, one of two daughters and ‘apparent airs of umquhile Robert Boiswell quha was lauchful sone to umquhile David Boiswell portioner of Kinglassie and thairthrow haveand sufficient entres to crave ye instrument to be authentikliie

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205 CS7/190/208r (Young v Semple).
transumit' sought 'ye error contenit in ye instrument to be correctit and mendit'. It was the date which was wrong. She brought her action against the other of the two daughters and Robert Ramsay her spouse, her mother as liferenter and Patrick Wilson in Dunfermline 'havear of the prothogall buik ... of David Kinse, noter'. It contained 'yrintil ane instrument of sasing with precept of sasing quhairupoun ye samen sasing proceidit, quhail sasing was given to umquhile David Boiswell in lyvrent and to umquhile Robert Boiswell and his airs'. The protocol book was produced but counsel for the defenders objected to a transumption being made on the grounds that 'be ocular inspectioun of ye said buik and instrument inserted yrintil it is evident yat ye samen instrument is the hand writ of ane bairne newlie writtin and not ye said noteris awin hand writ, quhilk instrument also is neways authentik in ye self in sa far as ye samen wants divers substantiall heids and clauses, quilks ar requisit to ye sufficiencie of ane authentik seasine ... lyk as also yr is divers leiffis sewit in in sundrie pairtis in ye said buik'. The pursuer's answer to this was founded on the quality of the notary 'quha wes not onlie ane simple noter bot also clerk of ye regalitie of Dumfermling' so 'the saids haill obiectiounes contenit in the allegaunces aucht to be repellit'. In reply, the defenders pointed out that 'ane noter is not permittit to mend his awin error bot be consent of pairtie, far les can ony pairtie or persoun efter sa lang tyme efter ye makeris deceis and efter ye deid itself be hard to crave correction of ye said error speciallie in respect of ye manifest contraritie betuix ye dait of ye said saising and ye dait of ye precept insert yrintil, quhilk presumes ane manifest argument of ye falset of ye said

207 CS7/185/142v (Boiswell v Ramsay).
Witnesses and further writs were to be produced in 1601.

Janet Doig, as sister's daughter and heir of the deceased James Oswald, craved production of the protocol book of the dead notary, Robert Ramsay, for transumption of a 1578 instrument of sasine of two tenements of land in Stirling. It 'cum never in the said persewaris handis, she being minor'. Because 'the said Robert Ramsey being laitlie execute as is notorlie knawin, his prothogoll buik in the quhilk the said instrument of seasing is buikit and insert is come in the hands of umquhile Alexander Hay his hienes maist honorabill clerk of register for ye tyme and the samen is now in the hands of Mr Alexander Hay his sone' who 'will not exhibit the samen befoir the Lordis'. On instruction he produced it in court in the presence of the Lord Advocate for his interest and 'the persewaris ressons, together with the depositiouns of divers famous witnesses being sworne and examinat' the instrument was transumed and recorded in the Register of Acts and Decreets. It was decerned to 'have as grit fayt force and effect in judgement and outwith as gif the samen war the original instrument extractit and subscryvit be ye said umquhile noter in his awin tyme'. Witnesses had proved that 'the instrument was the handwrit of James Ramsay sone to umquhile Robert Ramsey or of sum uyr servand and at the tyme of the geving of the said instrument the said umquhile Robert was accompltit ane honest and famous noter and that commoun recourse was had to him be all sic of or soverane lordis leigis as had to do with the office of notarie ... and immediatelie befoir ye instrument and efter the samen upoun the samen sydis and leiffis of paper ... hes writtin other instruments with his awin hand'.

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208 CS7/185/351r (Boiswell v Ramsay).
209 CS7/187/239v (Doyg v Mr Alexander Hay).
Most pursuers used the power of the law to compel the production of charters, instruments of sasine or other relevant written evidence, usually as a preliminary to an action over heritage. Margaret Bonar, relict, of Holand, and Mr Robert Henderson her son and apparent heir charged Thomas Bellenden, apparent of Evie, to exhibit a charter made to her and her heirs and assignees of Holand and North Ronaldsway.²¹⁰ Such actions were always successful, the Lords charging the pursuer 'to have letters to charge the defender to exhibit the foirsaid charter and he failzie letters salbe direct charging him to yat effect'.

Examples are found of heritable rights being resigned or renounced. A procurator in the name of a vassal could appear before a notary and witnesses and resign his property in the hands of the superior. Elizabeth Hamilton had resigned in the hands of James, duke of Chatelherault, earl of Arran, Lord Hamilton 'all and haill ane tenement of land lyand in the burt of Hammiltoun commonlie callit Camrounis Land lyand at the heid and tail yrof with 6 aikers of land lyand contigue yrto with pertinents'. As 'oy and air of umquhile Elizabeth Hammiltoun', John Hamilton of Uddiston sought production of her infeftment, instrument of sasine with the instrument of resignation in the Duke's hands 'as superior yrof' so that they could be reduced to the effect he 'may be retorit and infeft' in the saids lands 'as he quha is neirest and lauchful air to ye said Elizabeth Hammiltoun his guiddam for ye ressons in ye summonds'. The defenders who claimed to be heritable possessors were ordained to produce the evidence 'with certificatioun to yame and they failzeit the samen salbe reducit'.²¹¹

It was as a daughter, however, that Isobel Hepburn, with consent of Adam Nicholson her spouse, 'renuncit the lands of Kingistoun

²¹⁰ CS7/185/146r (Bonar v Ballenden).
²¹¹ CS7/191/363r (Hammiltoun v Hammiltoun).
callit Duns qhairunto ye said Issobell hes ryt as air to Patrik Hepburne' in the hands of the said Patrick Hepburn her father.\textsuperscript{212} There are also examples of heritable rights being transmitted to daughters. The provost and bailies were involved if the action involved transmission of burgage property such as 'all and haill yat tenement of land with pertinents lyand within the burt in the Chuber Row' in Aberdeen.\textsuperscript{213}

Some women were involved in cases over the redemption of lands. Such redemption procedure is outlined in the records. As discussed above, it arose in the following way. When a debtor was unable to meet his debts he could convey his lands in security to the creditor by a contract of wadset. The creditor, or wadsetter, in a clause of reversion, undertook to reconvey them for a set sum of money when the debt had been paid. The lands were cleared of the burden when the debts were paid whereupon the creditor granted a letter of renunciation. Sometimes the creditor was well-satisfied with the arrangement and refused to accept payment. When this happened the debtor went through the procedure of redemption; he warned the creditor to appear at a specified place on a specified date to receive payment; if the creditor did not appear the money was consigned in the hands of a responsible person. The whole proceeding was narrated by a notary in an instrument of premonition and another of consignation. There are several examples in the records.

Elizabeth Oliver as daughter and heir to the deceased Andrew Oliver of Gagy had a right to a reversion 'and yrby guid and sufficient actioun and entres to persew the actioun of redemptioun' against Henry Maulder, portioner of Skryne. Claiming to be heritable possessor, he refused to resign and renounce the lands of Easter Gagy in the sheriffdom of Forfar which he claimed had been

\textsuperscript{212} CS7/189/91v (Hepburne v Nicolsoun).

\textsuperscript{213} CS7/190/357r (Barker v Chrystie).
sold by Elizabeth's father to him, his spouse and heirs under 'twa several reversionis, bands and promises of reversionis ... for redempitioun within the paroche kirk of Dundie, betuix the sone rysing and doun going yrof'. One contained '400 merkis of silver cunzie of this realme having cours and passage yrin for ye tyme ... the other contenand 300 merkis'. Accordingly 'Elizabeth Oliver, dochter and air, be hir lauchful procurator in hir name on 19 Merche 1598 lauchfullie warnit and requrit the said Henrie Maulder, heritabill possessor of the foirsaid lands of Eister Gagy to have comperit within ye paroche kirk of Dundie 19 Mai quhilk wes aucth dayis preceiding Whitsunday last 1599, and yair to have ressavit the 400 merkis and 300 merkis togedder with the byrin annuelrents for redempitioun and outquhyting fra him of the lands abovewrittin and to have hard the samen lauchfullie redemit be ye said Elizabeth Oliver, conform to the reversionis, bands, promises of reversionis mentionat in the contract of alienatioun ; at quhilk day 19 Mai last Elizabeth be hir lauchful procurator in hir name comperit within ye paroche kirk of Dundie and thair producit and causit reid the premonitioun and warning maid to Henrie Maulder pretendit heritabill possessor of Eister Gagy to compear in the paroche kirk of Dundie 19 Mai thar to ressave the sowme above mentionat for redempitioun of the land conforme to ye saids reversionis, and producit and causit publiclie reid the foirsaid contract of alienatioun berand the foirsaid reversionis, bands and promises of reversionis ; and efter reiding the foirsaid premonitioun and contract, the procurator causit number and tell the saids principall sowmes of 400 and 300 merkis with the sowme of 200 merkis in contentatioun of all byrouns yeirs gif ony wer awand ; quhilks sowmes wer reallie numberit and tauld in ye said kirk and yrefter ye said procurator callit upoun ye said Henrie to ressave the said principall sowme and byrouns or ony uyris in his name that had power to ressave the samen and grant the
said redemption and offerit the samen reallie to yame; and lykways offerit him reddie to fulfill all uyer heids and points of ye said reversionis for the pairt of Elizabeth Oliver and because Henrie Maulder nor na uyr is in his name having power of him to ressave ye saids sowmes ye lauchfull tyme of day being bidden, thairfoir ye procurator offerit the saids sowmes, principall and byrouns, to William Duncane, ane of ye bailleis of ye said burt to remane consignit in his hands to ye behuif of Henrie Maulder or ony uyr is; in respect quhairof ye said procurator protestit that the saids lands were lauchfullie redemit be Elizabeth Oliver, dochter and air, conforme to ye saids reversionis fulfillit be hir to Henrie Maulder, as authentik instruments takin proports'. The Lords therefore declared 'the lands of Eister Gagy to be lauchfullie redemit'.

When the boundaries of land were in dispute, a brief of perambulation was sought. The 1583 action wakened by Barbara and Anna Forbes, daughters to the deceased William, Lord Forbes and their spouses must have been initiated in an opportunist spirit. In 1600 they charged Patrick Cheyne, then apparent and now of Essilmont and 'Maisters John Nicolson and Alexander King, advocates befoir ye Lords of Sessioun, justice deputes now onlyffe allegit speciallie constitute be umquhile Colene Erle of Argyll, Justice General of yis realme for ye tyme, be commissioun gevin to yame to peramble and caus be perambulat ye ryts, meithis and merches betuix ye lands and barzonie of Abirdor with thair allegit pertinents viz. Mekill Arquhry, Gallie and Medillhill with thair pertinents allegit pertening heritagblie to Patrik Chene of Essilmont on ye ane pairt and ye lands of Allachen, Cairnehill, Littelbie and that pairt of ye lands callit Tullimauld with pertinents pertening to William Lord Forbes and certane uyr lands pertening to uyr persouns on ye uyr pairts ... be vertew of ane breiff of perambulation direct furth of

214 CS7/186/258v (Oliver v Lord Ballumbie).
or soverane lord's Chapel Royall to yame to yat effect'. The action was also brought against all of the original members of the fourteen named persons of inquest 'passand upoun ye said perambulatioun' who were still alive in 1600. The process of perambulation, commission thereof and all the evidence was to be produced for reduction and the persons of inquest 'punischit conforme to ye laws of yis realme as at mair lengt is contenit in ye letters of walkning'. Counsel passed from the summons 'sa far as ye samyn interfert or concludit onie penaltie agains ye foirsaid Justice deputes and persones of inqueist ... as gif ye saids judges and persones of inqueist had never bene summond yrto'. As for Patrick Cheyne, by an act of Privy Council, he had been denounced rebel at the market cross of Aberdeen 'for forgeing, having and exchangeing of fals money'. Mr John Sharp, advocate, 'declarit yat he usit ye said letters of horning to repell and debar ye said Patrik Chene of Essilmont from all comperance and defence in ye said caus'. Therefore through non-compearance the Lords 'retreits, rescinds, cassis and annuls ye foirsaid proces of perambulatioun, interloquitors and determinatioun given be ye said persons of inqueist upoun 9 September, yeir foirsaid and decreit pronuncit be ye saids judges following yrupoun'.

It was always possible to seek arbitration as an alternative to an action in court. Margaret Collace of Mureton and Mr John Scharpe of Houston, advocate, now her spouse for his interest, brought a dispute over her lands of the Mains of Kinloss, the lands of Mureton with the mansion of the same, and the 'toun' and lands of Findhorn with her right and title to the fishing upon the water of Findhorn 'alsweill the Stells[deep pool where salmon lie] viz. the Outwater Stell, Mukstell, Owstell, Durestell and Caldstell as the Yairis'[traps]. The decree arbitral was pronounced by Sir John

216 mentioned briefly in Sanderson, Margaret, 'John Shairp' in Mary Stewart's People, (Edin., 1987), 27.
Cockburn of Ormiston, knight, a senator of the College of Justice, as 'odman and orisman commounlie chosin be compromit and submissioun betuix ye said Margaret, Mr James Dundas, chantor of Murray and Elizabeth Reid his spouse for thameselffis and taking the burding upoun thame for certane persones specifeit yrin on the ane pairt and Mr Edward Bruce, Commendator at ye abbay Kinloss, and taking the burding upoun him for certane uyeris persones specifeit in ye said submissioun on ye uyr pairt.' By virtue of the decree arbitral, Mr Edward Bruce was 'oblist and bundin to keip and fulfill certane heids yrin for his pairt and speciallie to ressefe and approve hir haill ryt and securiteis mentionat yrintil maid to hir' of all her lands and fishings pertaining to the abbey with woods, acres and parks thereof which were set in feu to Anthony Bruce, burgess of Stirling under reversion as in the contract. Above all, Mr Edward Bruce was to 'craiff the ryt yrof to hir' and also to cause the right of the infeftments of feu ferme which he had made to Robert Bruce son and heir of the deceased Robert Bruce in Kinloss ... 'to be transferrit by him in and to ye said Margaret Collaice and hir airs and to fortifie, maintein and assist ye said Margaret in the possessioun of the saids lands, maynes and fischings'. Furthermore he was to 'mak resignatioun of ye saids fischings callit ye Yairis in his hienes hands for new infetment to be givin to hir and hir foirsaidys yrof'. The decree arbitral was registered in The Books of Council but Mr Edward Bruce and the cautioners appointed for his fulfilling of his part of the decree refused obedience. Accordingly, Margaret Collaice and her spouse brought an action before the Lords and raised letters in the four forms charging him and his cautioners 'conjunctlie and severallie to fulfil to hir and hir spous for his entres ye points and clauses of ye decrete arbitral under divers panes and last under pane of rebellioun' and intended 'putting thame to ye horne'.
Mr Edward Bruce failed in an action to suspend these letters of horning despite his statements that he had ratified and approved her rights; that Robert Bruce was minor and without tutors or curators to authorize his consent to the transferring of the lands and fishings in Margaret Collace, 'swa that his renunciation now in his minoritie can naways be effectual, lyk as it is provydit be ye said decreet arbitral that his said renunciation salbe maid at his perfyt aige'; and that by the order set down in the decree she must first resign the salmon fishing called the Stells in his hands before he made resignation in the King's hands. Nevertheless he saw fit to consign in her hands a sufficient procuratory of resignation.²¹⁷

On the same day, in a separate action, Margaret Collace and John Sharp her spouse for his interest and three others sought suspension of letters of horning raised by Mr Edward Bruce against them because she had not transferred her right of the fishing on the Findhorn to him, either by alienation with the superior's confirmation or by resignation in the superior's hands as a preliminary to his making resignation in the King's hands conform to the decree arbitral. The Lords, however, found the letters of horning 'orderlie procedit' despite Sharp's arguments that 'the letters are sa general, confusit and obscure that the compleiners ar not certane how to obey the samen'; that 'Margaret and her spous can not be chargit to transfer hir richt ... quhile Mr Edward first fulfil heids of ye decreet arbitral to Margaret and her spous for his intres'; that Mr Edward was ordained to assist Margaret in the redemption of the salmon fishings from Anthony Bruce of Stirling 'sa that be the same and the said Margaregis letters of regres, sche and hir airs mitt be dewlie infefft yrintil'; that Mr Edward was 'decernit to pay to Margaret the sowme of 3600 merkis befoir the said infefftment of ye Stells';

²¹⁷ CS7/192/129v (Mr Edward Bruce v Mr John Scharp).
that if he contravened the point of transferring Robert Bruce's right of feu ferme in Margaret then Margaret and her heirs were to have free regress and ingress to the Stells without paying any sums of money. Mr John Sharp, 'personallie present quha comperit also as procuratour for the compleners' concluded by asserting that Mr Edward Bruce had fulfilled none of the heads of the decree arbitral and therefore the letters he had raised against them should be suspended. The Lords thought otherwise. Unfortunately, at this stage the action disappears, each having denounced the others as rebels.

Assignations and provision for the future

An assignation was the transmission of a right to a third party. It was a potential source of security deriving from the original grantee. A woman could be made assignee to debts for rents in various forms. Thus Bessie Ochiltree, servitrice to Andrew Wemyss of Maircairnie, one of the senators of the College of Justice, and daughter of the deceased John Ochiltree younger in Leith, was lawfully constituted cessioner and assignee to the mails, fermes and duties of the Easter half of the lands of Millflat and tenements pertaining thereto. She brought an action, unfinished during 1600, against George Ochiltree, son and heir of the said John Ochiltree younger, for payment of these dues.

Margaret Baillie, relict of Edward Maxwell, fiar of Lamington, was constituted assignee by William Baillie of Lamington to the tack of the teind sheaves of lands in the parish of Rerrick in the stewartry of Kirkcudbright. She and Mr William Livingston, her spouse for his interest, charged farmers for spoliation of the teind sheaves of the 1599 crop.
Women were made assignees to contracts. Thus, Elizabeth Robertson, married to John Lister, baxter in London, was made an assignee by Mr John Robertson, sometime Treasurer of Ross, to ‘yat pairt of ye securitie of ane contract anent ye annuelrent of 200 merkis yeirlie furth of lands pertening to Lord Levingstoun’. The Treasurer of Ross, however, also assigned the same contract to John Robertson, (revealed as his bastard in another entry\(^{221}\)) and his sister. Elizabeth and her sisters Jean, Agnes and Margaret as brother’s daughters and heirs to the Treasurer, sought reduction of the assignation to John Robertson and his sister on the grounds of its having been made by a dying man and as such invalid. Through their procurator they claimed that ‘Mr Jon Robertsoun ... in his deid bed haveing conceavit ane deidlie seiknes than and mony days of befor lyand bedfast at yat tyme and divers oukis[weeks]of befor lyk as of ye said deidlie seiknes contractit he departit and deceist furth of lyfe quhairby he maid dispositioun of ye said annuelrent heritabill to ye saids persones in prejudice of ye saids brother dochteris and airs quhilk he could not nor myt not do in his deidbed, ye said contract and annuelrent contenit yrintil being heritabill, to ye hurt and prejudice of his said brother dochteris, ye said assignatioun at yair instances sould be reducit’.

Nevertheless counsel pled that the defenders ‘aucht to be assoilyeit’ and offered to prove that ‘umquhile Mr John Robertson was mony days and oukes efter ye making of ye said assignatioun in guid helth and abil to travel to kirk and mercat and gois dyvers days eftir ye making of ye said assignatioun up and downe his awin hous and dwelling place in Linlytgow and daylie dynit and soupit at his awin buird amang his housshald fouls, playit at cartis and dyce, oftymes invitit and callit his freindis to denner and supper and kepit trystis with sundrie of his freindis within his dwelling hous

\(^{221}\) CS7/186/456r (Robertsoune v Leslie & Uyris).
in ye said towne of Linlytgow divers dayis aftir ye dait of ye assignatioun and thairfoir he being hail in mind and abill to travell notwithstanding ony diseissis contractit be him in his bodie divers days aftir ye making of ye said assignatioun, he myt have maid ye samyn to have bene effectuall to ye saids defenders'.

Women like Jean Forbes were made assignees to obligations. Thus William Lord Forbes put 2000 merks 'deponit and put in ye custodie of ye said James Forbes of Lethintie be umquhile Lord Forbes hir guidser quha maid and constitute hir his verie lauchfull and undoutit donatrice cessioner and assignay yrto' but before the action could proceed against him for payment she and her spouse had to denounce several men rebels for non compearance as witnesses. 'The said Jene or ony uyr in hir name sufficientlie instructit passand fut for fut with ye said syreff or his deputes and schaw and declar quhair the saids rebels dwells and being apprehendit ordanes the said syreff and his deputes to exhibit thame befoir the Lords 24 Julii to ye effect they may depone and beir witnes under pane of rebelloun and putting of ye said syreff and his deputes to ye horne'.

Actions could be assigned by women. One assignation of fermes, profits and duties was made by Isobel Simmer, widow, to her son as a preliminary to his pursuing David Dewar of that Ilk and Sir David Lindsay of Edzell, knight, for victual, cane fowls, fermes and duties of lands in Forfar. She may have felt more confidence in her son acting on her behalf or she may simply have been too ill to litigate. Certainly by the time of the court action she was dead.

On 7 July 1599, Janet Mure, daughter to John Mure in Wolls was lawfully constituted assignee by John Andrew in the Hill of Polruskane to an action of ejection and 'haill profeits and

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222 CS7/189/200v (Hammiltoun v Balyie).
223 CS7/191/29v & CS7/189/334v (Fforbes v Fforbes).
224 CS7/185/335v (Ffentoun v Dewar).
commoditie yrof and ye said John Mure as lauchful administrator to
his dochter for his entres and als at the instance of ye said Jon
Andro as cedent for his entres'. She as assignee brought an action
against John Boyll for the wrongful ejection of John Andrew cedent.
She sought restoration to the lands and payment of the violent
profits. This assignation may have been made in order to safeguard
the lands because at the time of the assignation John Andrew was
allegendly denounced rebel for non-payment of 200 merks principal
and 30s of expenses contained in the Glasgow Commissary's decree.225

Katherine Dean was lawfully constituted assignee by Robert
Drummond to an action of spulzie against Elizabeth Chisholm, relict
of Alexander Drummond and her three sons and eighteen followers for
'ye wrangeous spoliatioun fra umquhile William Drummond in Culingis,
sheriffdom of Perth, of all and sundrie guids and geir extending to
divers grit avails'.226

The profits of industry could be assigned to a woman. Agnes
Douglas, lawful daughter to George Douglas of Parkhead, was assignee
constituted by him to byrun duties of mines. She brought an action
against Thomas Foullis, goldsmith burgess of Edinburgh, William
Stanhope his servitor, Mr David Foullis his brother and William
Millburn in Leith, to hear it declared that William Stanhope 'in
thair names and to thair behuiff hes labourat, bruikit and possest
ye mynis and minerallis within the said George Douglas cedent his
lands of Glengonar and hes upliftit, intromettit with and ressavit
the profeits and commoditis of the crope and yeir of God 1597, 1598
and 1599 and continuellie sensyne and yat yrthrow ye saids persouns
defenders or ony of thame ar subiect in payment' to Agnes Douglas as
assignee of 'the sowme of 500 merkis money yeirlie dewtie be ye
space of sax terms and extending to the sowme of ane thowsand pundis

225 CS7/189/342r (Mure v Kelburne).
226 CS7/191/17v (Drummond v Chisholme).
money'. The claim was rejected on the grounds of 'the money and
dewteis libellit ar satisfite and compleitlie payit to ye persewar
and uyris in hir name haifand hir power to ressave ye samen' and a
date was set for proving this allegation.\textsuperscript{227} The case, however,
disappears from the records.

A pension could also be assigned. John Auchinleck was granted a
pension by David, bishop of Aberdeen, with the consent of the Dean
and chapter of the cathedral kirk, of £100 yearly to be uplifted
from the readiest fruits of the bishoprick. John 'for certane sowmes
of money payit unto him be Katherine Wallace and David, bishop of
Aberdeen her spouse in hir name, sauld, assignit and disponit to
Katherine hir airs and assignays the pensioun abovewrittin; and for
the said Katherine Wallace, her better securitie yrof, resignit,
renuncit and deliverit the samen in the hands of David, bishop of
Aberdene in favore of ye said Katherine Wallace to ye effect that ye
said David as bishop of Aberdene foirsaid, with consent of ye said
chaptor of the kathedral kirk myt confer and dispone the same to ye
said Katherine during hir lyftyme, lyk as conform yrto the said
David, bishop of Aberdene with consent of ye chaptor and kathedral
kirk be thair letters of pensioun subscryvit with thair hands
grantit and disponit to Katherine during all the days of hir lyftyme
the foirsaid pensioun with power to Katherine, hir factors in hir
name to intromet yeirlie and to dispone yrupoun at thair pleasur as
the letters of pensioun proportis'. The letters of pension were
'ratifeit, approvit and perpetuallie confermit by his hienes letters
of gift under the privie seill at Halyrudhous' suggesting that the
pension may have been part of an escheat. Despite her right to the
pension the feuars, farmers and tenants refused to make payment but
letters were directed against them in all the four forms etc.\textsuperscript{228} The

\textsuperscript{227} CS7/185/303v (Douglas v Ffoullis).
\textsuperscript{228} CS7/186/437r (Wallace v Parochiners of Aberdein).
warrant charges the messenger 'to charge the occupiers personallie
at thair dwelling place or be opin proclamatioun at ye paroche
kirkis of Sanct Machar upoun Sundayis befor noone in tyme of
preiching or prayeris in generall or be thair names in speciall and
also David, bischop, dene and chaptor to compeir befor us and or
counsall at Edinburt or quhair it sall happin us to be for ye tyme
the 18 Junii'. Presumably they then made payment.

Liferents were assigned. Thus John Batie, burgess of Edinburgh,
assigned in favour of his daughter Euphemia Batie his liferent of
four booths lying within Edinburgh at the Fishmarket-close Head but
she and Archibald Wilson her husband had been denounced as rebels
and put to the horn by James Winraham, writer and burgess, for not
fulfilling a contract to him so her liferent was escheated to George
Foullis, goldsmith burgess of Edinburgh 'throw the said Euphame and
hir spous thair contemptuous lying and remaning under proces of
horse attour yeir and day'. She was compelled to hand over her
letters of assignation.

Less frequently women were cedents. Christian Wedder, relict of
William Laing, minister, as liferenter, made Mr John Laing, Keeper
of the Signet, assignee to 'the males, fermes and dewteis of a
tenement of land on the south side of the Kirkgate in Dundee' and
Margaret Campbell, relict of William Brown, as liferenter of
Hartrie, and Mungo Campbell now her spouse for his interest
constituted Patrick Somerville assignee and procurator in rem suam
to a decree for payment of fermes. They had obtained this against
Janet Fleming, relict, and a deceased couple, Helen Brown and
Patrick Govan her spouse. As assignee, Patrick Somerville obtained a
decree of transferring before the bailie depute of Dalkeith in John
Govan of Cardrono as intromettor with the goods and gear of the dead

229 CS15/78/81 (Wallace v Parochiners of Aberdein).
230 CS7/190/22r (Lord Advocat v Bawtie).
231 CS7/189/305r (Mr Jon Layng v Cowstoun).
couple. Execution was ‘to pas agoenis thame as suld haif passit at the instance of Margaret Campbell and her spous agoenis umquhile Helene Broun and hir spous gif they wer onlyf’ but neither Janet Fleming nor John Govan would make payment. Accordingly, the Lords ordained letters to be direct in all the four forms etc.  

Some women could be both tackswoman and cedent. Thus, in 1593, James, commendator of Holywood, with consent of the convent thereof set in tack and assedation to Dorothy Johnston, Lady Auchingassell, and her two sons and ‘to the largest levar of yame in lyfrent succeeding efter uyris and to ye airs ane or ma of ye largest levar of yame thrie induring all the dayis of 19 yeiris efter yair deceisses and to ye assignayes of ye said Dorathie during ye said space all the teind shevis’ of specified lands in the parishes of Penpont and Tynron. In 1598 ‘be way of contract past betuixt yame’, Dorothy Johnston, ‘takiswoman of ye teind shevis with consent of hir said spous for his entres maid and constitute Robert Lockart of Penpont and Elizabeth Dowglas his spous and the largest levar of thame twa and the airs lauchfullie gottin or to be gottin, quhils failzeing Robertis airs quhatsumever, cessionars and assignayes in and to ye tak and assedatioun of ye teind shevis beginning entrie Whitsonday 1599’. The assignees ‘had guid ryt’ to the teind sheaves crop 1599 and ‘during the days of the tak to rin’ but had to bring an action to compel James, commendator of Holywood, and the heritors, farmers and feuars to make payment. When they failed to compear the Lords directed letters at the instance of the pursuers ‘in all ye four formes ilk forme to be execute efter uyris within 3 days and the warding place to be the castell of Dunbartane in cais of disobedience’ because they had been warned ‘with certificatioun and they failzie the Lords wald decerne in maner foirsaid’.

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232 CS7/191/167r (Somervell v Fflemyng).
233 CS7/191/252v (Lockart v Parochiners of Halywod).
Many assignations were made in order to provide greater future security for dependants than was provided by legal rights, or to recompense a debtor, but it was also possible to provide a pension to be enjoyed in the present by one's own family or to obtain one by gift.

Janet Strang relict of Mr John Keen, writer, as executrix and presumably a near relative, pursued William Dunbar of Enterkin for payment of two yearly pensions, one by 'umquhile Jon Dunbar of Blantyre to umquhile Richard Strang, advocate, of fyve punds and ye uyer pensioun grantit be William Dunbar of Enterkin to umquhile Mr Richard Strang of uyr fyve punds, unpayit and extending to ye sowme of twa hundreth punds'.

Marion Marjoribanks, relict of John Durie, minister at Murroes and their eldest son brought an action for a pension of 'sevinsscoir punds yeirlie to be payit of the few mails of the lands and lordschip of Altrie, sheriffdom of Aberdein, to be bruikit be thame and the langest levar of thame twa now onlyff as ane pensioun during ather of thair lyftymes as in the gift grantit to the compleiners under his hienes privie seill 7 August 1590, quhilk gift is also ratifeit be or soverane Lord and his hienes thrie estaits of Parlement haldin at Edinburst 5 Junii 1592'. George, Earl Marischal, Lord Keith, was compelled to make payment for the year 1600 despite his reluctance.

Janet Douglas, daughter to 'umquhile Archibald Dowglas brother to Robert Dowglas of Coschogill' brought an action for non-payment to her of 'ane yeirlie pensioun of tua chalders victual, half meil, half beir, to be upliftitt furth of ye lands of Reidsyde within the constabularie of Haddingtoun, disponit be umquhile William Erle of Angus to ye persewar and restand awand unpayit divers yeirs or els

234 CS7/185/242r (Strang v Dunbar).
235 see p. 190.
236 CS7/186/444v (Durie v Merschell).
to pay to hir ye pryces and avails'. The original gift had been to her father 'induring his lyftyme' and to her mother Barbara Napier 'induring her wedowheid efter him'. However, her mother's goods, moveable and unmoveable, with her actions and decrees and her liferent fell in the King's hands 'for certane causes and crimes quhairof she was convict'. Her escheat was gifted by the King to Mr Robert Leirmonth, advocate, who assigned it to the Earl of Morton and his spouse who in turn 'maid and constitute the complener and hir airs thair undoutit cessionar, assignay and procurator in rem suam'. After this circuitous route she had the right of the pension as possessor of the letters of gift, assignations and translations in her person and the Earl of Angus was ordained to make payment to her from 1590 to 1599 and in time coming.

Women like Rachael McGill, Lady Rosyth, could grant a pension. On 7 March 1584, for causes tantalisingly uninformative as being simply 'for causes yrin specifeit', she 'grantit and disponit to Mr Oliver Colt, advocat, and his assignays during all the days of Rachaellis lyftyme ane yeirlie pensioun of ane chalder aitmeil to have bene deliverit to ye persewar and his foirsaidis within the burt of Edinburt betuix Yuill and Candilmes of the best and reddiest of the said Ladeis fermes and dewteis of ye maynis of Rossyth, syrefdome Fyf, beginnand 1583'. By July 1597 the advocate 'obtenit ye saids letters obligatours registrat in the buiks of Council and decernit to have the strenth of ane decrete of ye Lords yrof with executorialis of horning, poining and warning to pas yrupoun and

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237 CS7/185/224r (Douglas v Lord Angus).

238 This is likely to be the Barbara Napier who was accused of being one of the North Berwick Kirk witches. She was apprehended for 'bewitching to death Archibald, Earl of Angus' and of communing with witches and necromancers but sentence to be burnt at the stake was delayed through her pregnancy claim. She was acquitted when the assise was tried for ignorant error. Pitcairn, Criminal Trials, 1590, 216; 1591, 242-247. It is not clear what conviction led to the above escheat.

239 CS7/192/201v (Dowglas v Erle Angus).
the horning to be upoun ane simple charge of 10 days alanerlie'. The following July he 'obtenit the saids Lordis uther decreit of liquidatioun dewlie liquidating the pryces of ye said victual 1583 to 1598, as yet restand awand'. In July 1600 he was seeking liquidation of the prices for 1599 in order 'to get full executioun of the saids letters obligatours and decreit'. The case must have been settled at the very last moment because an entry in the Register of Acts and Decreets on 26th November repeats some of the information but is heavily scored out and the clerk has left no possibility for doubt by printing 'Deletur'.

Dame Isobel Hamiltoun, Lady Seton, with consent of Alexander, Lord Fyvie, President of the College of Justice, heritable proprietor thereof and of Dame Lilias Drummond his spouse, gave a yearly pension to Alexander Inglis her servitor and his wife, the longer liver, of the vicarage teinds of the parish and parish kirk of Hailes 'quhilk pertenit of befoir to the preceptorie of Sanct Anthonie within Leyth ... as grantit to thame at Niddrie 6 August 1588'. 'The heritors, fewars, fermorars, tenents, tackismen and parochiners of Hailles, intromettors with the fruits, rents, teynds, emoluments and dewteis pertening to the vicarage of the paroche kirk', however, had to be compelled to make payment of the 1599 crop.

Most provision for the future, however, took the form of annual rents. Thus Christian Henryson, relict of Mr Thomas Gilbert, advocate, and Michael Gilbert their son and heir fought an action over a contract between Marion Campbell, Lady Corswall and Uchtred McDowell her son-in-law, of Garthland, on the one part and the advocate and his wife on the other. For 600 merks paid by the advocate in 1584, Lady Corswall, her daughter-in-law, and her spouse

240 CS7/191/212v&CS7/191/345v (Mr Oliver Colt v Lady Rossyth).
241 CS7/186/119v (Inglis v Parochiners of Haills).
'band them conjunctlie and severallie to infeft and saise umquhile
Mr Thomas Gilbert and his spouse, his airs, executors and assignys
heritable in all and haill ane annuelrent of £40 to be upliftit
furth of the lands of Knokcowat with houses, biggings, orchards,
mylnes, dowcatis and pertinents'. By the time of Gilbert's death in
1596,242 four parties were claiming the annuelrent but a merchant was
able to prove that the right had been transferred 'in' him and he
redeemed the contract. Nevertheless, the advocate had been investing
in land for the future.243

Most investment in land took the form of a contract in which one
party agreed to provide an annuelrent in victual or money out of
specified land in return for payment of a sum of money. The
annuelrent could be redeemed. Occasionally such contracts were
registered in the books of Council before being transferred 'in' a
relict, such as, for example, the contract between Patrick Kininmont
of Calleidge, Helen Wood his spouse and Mr Walter Kininmont their
son and apparent heir on the one part and John Boswell of Balglillie
and Henry Miller, burgess of Kirkcaldy, on the other. For 3000 merks
paid by the latter, Patrick Kininmont, with consent of his wife and
son, was to provide four chalders 11 bolls, half beir and half meal,
annuelrent to be uplifted from Patrick's lands of Kincaple and to
infeft them in his sixpart land of Kincaple 'in frie blenche for
payment of ane pennie upoun the ground ... frie, saif and sure fra
all wards, releves, non-entreses, ladyis terces, conjunct fies,
infeftments, lyfrents, annuelrents, few mails, ejectiouns,
reconsciouns, reductiouns, interdictiouns, inhibitiouns,
apprysings, privat and public seasings, lang or schort taks,
contracts, actiouns, obligatiouns, assignatiouns, or ony uyr kynd of
exactioun or burdein quhatsumeever that may impede the uplifting of

242 The Faculty of Advocates in Scotland, 1532-1943, ed. F.J. Grant,
S.R.S., 1944, 80.
243 CS7/191/421v (Gilbert v Garthland).
the exactiouns'. The contract could be terminated by letters of reversion for redemption of the annual rent. The Lords found the request for registration 'ressonall' and the contract was transferred on Agnes Niving as relict of Henry Miller and her new spouse, John Dobie, for his interest and in her son active and in Mr Walter Kininmont, son and heir to Patrick passive. The action then proceeded between Agnes Niving and her new spouse and Mr Walter Kininmont 'for compelling of him to fulfill the foirsaid contract'.

Christian Ruthven and Mr William Lundie of that Ilk, her spouse for his interest, had to bring an action for the honouring of an obligation made to her by Sir William Ruthven of Ballinden. He had band himself 'to infeft Cristiane in ane yeirlie annuelrent of ane hundreth pundis to be upliftit furth of the lands of Ballinden.'

Sir John Johnston of that Ilk had made an obligation to pay Nicolas Dowglas, Lady Johnston, her heirs, executors and assignees the sum of £200 yearly during the space of nine years. He had failed to do this so the cautioner had been pursued and letters of horning had been raised against him. The Commendator of Soulseat as cautioner for the obligation was able to persuade the Lords to grant the suspension on the grounds that he 'was wrangeouslie chargit to mak payment yrof in respect that Nicolas ... be hir special letter and writting deliverit yrupoun had for certane guid services exonerat the Commendator, his airs, executors and assignays for hir, hir airs, executors and assignays of his said act of cautiounrie and of all panes and charges that micht cum upoun him, his airs and assinayes yrfoir'.

244 CS7/192/155r (Boiswell v Kynnynmonth).
245 CS7/185/335r (Ruthven v Ballindene).
246 CS7/186/368v ([Abbot][sic] of Salset v Lord Advocat).
It was even possible to arrange for victual to be provided free to one’s family on a yearly basis. In an obligation Nicol Gilbert ‘oblist him to freyt, relieve and keip ye said Mr Thomas Gilbert, advocat, his airs and assignayes harmles and skateles of ye payment of 40 bulls victual at the hands of Issobell Young, relict of umquhile Michaell Gilbert, goldsmith burgess of Edinburgh.’ Isobel Young, perhaps sceptical about its existence, sought production of that obligation.247

These arrangements show an awareness and acceptance of responsibility for a wife and family but whereas there was some provision for a boy’s education there was no evidence for a girl’s. Thus, James Drummond of Deanston alias Sauchinthorn, tried to suspend letters of horning raised against him by Sir George Home of Wedderburn, sometime Collector General, and George Wardlaw his chamberlain between the waters of Dee and Forth for non-payment of £21 8s yearly of feu mails from 1595 conform to an act made by the King and Lords of Privy Council. He claimed that the feu duty ‘being payit of auld to ye chaplains of the quier’248 of Dunblane, ‘they being in possessioun of the same ten yeirs preceding the tyme of the Reformatioun, the complener was lauchfullie provydit yrto be or soverane Lord quha be proviison of the act of Parliament micht have disponit the same for ye space of sevin yeiris to ony youth for his sustentatioun at the scholes and sa or soverane Lord disponit the same to the complener for ye said space ... and efter ye expyring and outryding yrof his hienes was willing that ye said complener suld persever and continue in learning of letters and knowledge, thairfoir his hienes disponit to ye complener the few mails be ye space of 20 yeiris or yrby for all the dayis of his lyftyme’. In the event, his claim was found to have elapsed in 1599 and in time

247 CS7/189/261r (Young v Gilbert).
248 = choir, chancel, pre-Reformation cruciform church, Concise Scots Dictionary.
John Drummond, as one of the scholars, had to charge Patrick, Lord Drummond as undoubted patron of the chaplainry within the cathedral kirk of Dunblane for payment of the dues granted to him in 1599 'during the haille tyme of his remaining of the schole of ye chaplainrie'. It comprised eight annualrents, including a contribution from Kinausns Lodging, and a 'chalmer nixt the Ladie Richartsounis stabill'. The Lords ordained payment to be made to his father as administrator to him.250

Fathers showed particular concern over providing income for daughters, especially when they were minors. For example, Agnes Thomson, lawful daughter of George Thomson, smith burgess of Edinburgh and Agnes Baxter her mother, both deceased, was 'infeft and seasit at the special command and desyre of hir umquhile father in all and haille ane annuelrent of 20 merkis to be tak up yeirlie at twa termis, Witsonday and Mertinmes, furth of ye tenement of land pertening to Jon Blinsele and Issabell Lillie his spous, ... lyand in the Kowgait on the north syd of the gait yrof at the fute of the wynd callit Johnstainis clois'. Her father had resigned this with the consent of his son and heir in the hands of one of the bailies of Edinburgh in name and behalf of the remaining bailies and Agnes had been duly infeft by them. Nevertheless, her father's best laid schemes went agley because the tenants refused to pay her and her tutors for 1599. The Lords decerned the readiest goods to be poind and failing moveable goods, the ground right and property to be apprised to the value of the annualrent because John Purves, burgess of Edinburgh, being personally present, became cautioner that the tutor would make the money forthcoming to Agnes at her perfect age.251 Katherine Chisholm, however, must have been an adult for whom

249 CS7/186/247v (Drummond v Collectour).
250 CS7/186/227r (Drummond v Fears of Dunblane).
251 CS7/186/184v (Diksoun v Blinsele).
a father made provision. She 'bruikit' the lands of Langhauche 'be
tolerance of hir father'.

Occasionally a brother appears to have attempted to take
advantage of a young sister. John Hamilton in Corsscallane and
Margaret Hamilton his sister german obtained a decree of the
Commissary of Hamilton ordaining Mr Alexander Hamilton in Glasford
and his cautioners to make payment to the said John of £200
borrowed from him by obligation by Mr Alexander. He confessed
however that 'it was the said Margaret his sisteris money ...
althocht he had the using of it and debursing yrof throw hir
minoritie, sche being bot ane young woman not yit past the aige of
24 yeirs'. Mr Alexander Hamilton was ordained to make payment to
Margaret because John Hamilton, 'personallie present declarit that
he had na ryt to the said obligatioun but was content that the samen
be intromettit with be Margaret'.

It was the tutor who exploited Jean Chartors. George Chartors of
Kelwood, her tutor, failed to make payment to Florence McGhie,
relict of James Chartors, and Roger Gordon her spouse for his
interest of £200 yearly from 1595 to 1598 'for ye fostering and
upbringing of ye said Jene Chartors and ye sustening of hir in meit
and clayt and ane woman to keip and await upoun hir yeirlie during
ye same space'. One father's provision, however, must have been
regretted. John Ross of Ochtergavin had to bring an action against
Christian Ross, his daughter, to compel her to resign a tenement of
land in Perth 'quhilk for the special love and favor he had for his
lauchful dochter he overgave in the hands of Oliver Young, ane of
the bailleis of Perth for ye tyme and in favouris and for heritable
seasing to be given yrof to ye said Christian, hir airs and
assignays' reserving the liferent to himself and 'redemable also be

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252 CS7/190/153v (Lord Smeytfeld v his Tenentis).
253 CS7/192/193v (Hammiltoun v Hammiltoun).
254 CS7/191/34v (McGhie v Chartors).
him in his awin lyftyme fra ye said Christian be payment to him of ane rois nobil of gold'. Despite his premonition to his daughter and his appearance within the choir of the parish kirk of Perth bearing the gold coin, his daughter failed to conpear. He accordingly assigned the rose noble in the hands of James Adamson, treasurer of the burgh 'in his sure keiping to be furthcumand to ye utilitie and profeit of the said Cristiane and swa he fulfillit his pairt as authentik instruments under the signe of Alexander Robertsoun, noter, heirs'. The Lords declared the tenement to be 'redemit and outquhit'.

Grandfathers clearly felt responsibilities towards granddaughters. Thus Margaret Forrest, oy to her deceased grandfather, Mathew Forrest, portioner of Saint Anthony, was to be paid 112 merks yearly by John Lockart, burgess of Ayr. He did not pay it so she brought a successful action against George Lockart, burgess of Ayr as cautioner. Euphemia McCalzeane, one of the two oys and heirs of the deceased Mr Thomas McCalzeane of Cliftonhall, and her spouse together with Euphemia and Jean Ogilvie, two other grand-daughters, raised letters for production of evidence before an action for payment of £20 annualrent 'furth of ye tenement of land lyand within ye burt of Edinburt upoun ye nort syd of ye Kingis streit forananet ye mercat croce'.

All these provisions were specific and voluntary and founded in concern for the future. They were made in addition to legal rights, which differed from those current in England. An English husband could make a will which left nothing to his wife or to his children if he so chose. Such an English widow's only recourse was to challenge the fairness of the will in a Court of Equity. It was only when an English husband died intestate that a widow was decerned by

255 CS7/187/277r (John Ross of Ochtergavin v his Dochttar).
256 CS7/190/70r (Lockart v Forest).
257 CS7/185/214v (Jonstoun v Pumphray).
the Ecclesiastical Courts to be entitled to one third of his
moveables, while the remaining two thirds were divided equally among
his children. Scots law sought to protect widows and bairns
through the provision of a third of the free moveables to the wife,
another third to the children, or a half to the wife if there were
none. A Scotsman, by legacy, could dispose of only the remaining
third or half.

Women as patrons

Some women acted as patrons when they succeeded as heirs. Thus
Margaret and Isobel Balnaves, alias Piper, as daughters and heirs of
the deceased James Balnaves, burgess of Perth, 'undoutit patronis of
the chaplainrie and alterage of Sanct Paull foundit and situat
within ye paroche kirk of ye said burt, vacand in yr hands be deceis
of umquhile ser Jon Pyper last possessor yrof, with expres consent
of James Moncreif spous to Margaret and John Pyper spouse to
Issobell for yair entreses, be yair letters of gift under ye privie
seil at ye said burt 26 Apryle 1571 grantit to ye persewar, Mr
Alexander Peiblis, advocat, for all the days of his lyftyme the
alterage and chaplainrie of Sanct Paull and pertinents yrof'.
Nevertheless 'the sundrie heritors, fewars, tacksmen, fermorars and
tenents' had refused to pay since 1572. It is not clear why he
waited until 1600 before bringing his action but letters were
decerned to be directed against them at his instance for payment.

Women as producers of income

Some women managed to do more than look after their families. Some
acted as midwives or wet nurses at a time when death in childbirth
was prevalent. Janet Killoch, who was decerned to have done wrong in
not paying 'the insicht, plenishing, corna, dettis, annualrents and

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258 Erickson, Amy Louise, Women and Property in Early Modern England,
259 CS7/190/239r (Peiplis v Parochiners of Sanct Paul).
sowmes of money' due to Margaret and Katherine Blackadder as daughters to the deceased James Blackadder of Tullieallan, was a 'medwyf'. A woman who 'fostered' or looked after children, fulfilled a necessary role when there were motherless children. Doubtless they also looked after children of many who could afford to employ them. George Balfour, prior of Charterhouse, had been ordained by 'yerovills' land bailies to pay to Thomas Ross and Bessie Robertson his spouse the [unspecified] fee 'promittit to Bessie Ross as for nurasche fie and lykwys for burding of Patrik Balfour ... and furneising of certane necessaris to him qhilk was be ye space of 18 yeirs syn or yrby'. The Prior was given until 9 December to answer the claim but the action disappears. Similarly, Katherine Hannay, relict of John Dunbar, in Orchardton, and John Dunbar now her spouse for his interest together with her son and six daughters used the argument against a decree of removing that she and her spouse 'sould not be decernit to flit becaus Gawin Dunbar of Bandone, tacksman of the lands of Littlehills, parish of Kirkinner, promeist to yame that sa lang as thai sould interteyn Jon Dunbar, son to Jon Dunbar of Orchardtoun that he sould not remove thame from Lytillhills and trew that tyme of warning they interteynit Jon Dunbar son foirsaid'. The Lords ordained that the promise must be proved per scripta vel iuramentum and Katherine and her spouse were instructed to find caution early in 1601 in case they were found to be violent possessors.

A widow like Alison Blyth, tried to supplement her living by providing a home for William Ruthven, wright, who was either her late husband's apprentice or a fellow craftsman.

260 CS7/191/336v (Blacatare v Tullieallane).
261 = the rural division of a regality as opposed to burgh [D. Sc T.]
262 CS7/190/354r (Ross v Prior of Charterhous).
263 CS7/191/260r&CS7/191/347r (Dumbar v Ahannay).
264 CS7/189/323v (Schoir v Blyt).
Illiteracy was probably widespread, as the following documents testify. Marion Steven consented to the registration of a contract in the following terms: 'sic subscribitur Alexander Cubie with my hand and Mareoun Steavin with my hand at ye pen led be ye noter underwrittin because I can nocht wryt myself in signe and taikin of my consent and consent' and 'I Helene Wod with my hand at ye pen led be ye noter underwrittin at my special command because I can not write myself'. Nevertheless women used enterprise to put such skills as they had to productive use.

Janet Wilson took in boarders. She entertained Isobel Gilbert and her bairns 'in fostering with her.' Lawrence Ditton paid her £10 in name and behalf of Thomas Robson, Englishman, merchant in London, for their sustenance, and he received Janet Wilson's discharge. Before accepting Isobel and her children in household with her, however, Janet had taken the precaution of asking Katherine Douglas to stand surety for Lawrence Ditton, either as her usual business practice or, perhaps, because he was an Englishman. He must have defaulted because Janet Wilson obtained a decree before the bailies of Edinburgh ordaining Katherine Douglas to pay £6 10s as surety for Lawrence Ditton and 50s as surety for Isobel Gilbert along with 10s for expenses. Katherine balked at this so Janet brought her action before the bailies of the Canongate who pronounced in the same vein. Katherine sought suspension of their decrees firstly because 'it is ane great novaltie that ye baileis of ye Cannongait suld interpone thair auctoritie and give ane new decret upon ye decret of the provost and baileis of Edinburt for ane debt and ane sowme seeing in *rem iudacitorum nemo possit iudicare*; and secondly because hir housband was nevir callit for ony sic deett nor yit is his name contenit in ony of the saids decretes without quhom

265 CS15/78/22 (Bald v Cubie).
266 CS7/192/155r (Boiswell v Kynnynmonth).
the complener[Katherine Douglas]could not stand in judgement, he being dominus rerum and sa the saids decretes mereitts na executioun'. Notwithstanding these reasons the Lords found the letters purchased by Janet Wilson against Katherine Fowler 'orderlie procedit'.

James Stewart and Elizabeth Fleming his wife clearly ran a far larger establishment in Glasgow. He brought an action against Walter, commendator of Blantyre, for payment of £1,819 6s 8d 'as for expenses maid be ye said persewars upoun intreitement of Angus McConnell and his company in ludgeing, meit, drink and bedding be ye space of nynescoir and ten days conforme to ye said Commendatoris promeis and missive letters direct be him to ye persewar'.

Agnes Addison, relict of Alexander Ramsay, her son and his spouse ran a booth with 'divers guids and geir,merchandise, sowmes of money and abuliaments'. They did not own the booth and were removed by Patrick Nimmo, tailor burgess of Edinburgh, who may have let it to them as an early form of franchise.

Euphemia Batie, daughter of the deceased liferenter, and Archibald Wilson her spouse for his interest, let out four booths, two higher and two lower, in the tenement of land belonging to John Winrahame, writer, 'foranent the mercat croce in Edinburgh.' The three tailor burgesses to whom they were let found themselves beleaguered for payment by the writer, by Euphemia's spouse as assignee and by the donator to her escheat.

Janet Johnston clearly controlled booths in Perth. She and Robert Monipenny her spouse for his interest as a result of a decree in an

**Notes:**

267 CS7192/217r (Dowglas v Wilsoun).
268 CS7/187/(Stewart v Blantyre).
269 see Sanderson, M., Patrick Nimmo, tailor' in Mary Stewart's People' (Mercat Press, Edinburgh, 1987), 75-90.
270 CS7/185/177v (Nemok v Ramsay).
271 CS7/186/468v (Ker, Thomsoun & Johnstoun v Batie, Foulis & Winrahame).
arbitration raised letters of horning against James Monipenny ordaining him to 'sklaitt, Theik[thatch]and mak sufficientlie watterticht certane his owirhousses within Pert and to uphald the same in tyme cuming to the effect that the said umquhille Jonet and hir spouse 6 buiths lyand beneith and under the said James owirhousses may be watterticht'.

Agnes Beattie, relict of John Robertson, son natural of the Treasurer of Ross, was liferenter of a barn ginnall[for storage of grain] and booths in the kirkyard of the cathedral kirk of Ross. She let them out to a cordiner, a wright, a tailor, a bailie, and a merchant from Perth and the portion of the kirkyard which pertained heritably to her spouse was let out to a weaver. Nevertheless, she brought a successful action of removing against them, either as a preliminary to re-letting to those of her choice or perhaps as a device to re-let to the previous occupants at a higher rent.

Margaret Wilson was a cramer, selling unspecified goods from a stall. She and Thomas Robertson, her spouse for his interest, charged William Strachan, messenger, to 'make payment under pane of rebellion' of £22 4s as principal and £10 of expenses conform to an obligation. William Strachan 'upoun good ressons' obtained suspension of her letters of horning. The principal is relatively small in relation to the expenses which imply several different types of actions in court so it is likely that the cramer was represented by the advocate for the poor, here Mr Thomas Wilson.

Some business ability in Dame Christian Douglas, Lady Home, was probably recognized by her husband, Alexander, Lord Home, when he constituted her factrice of his benefice and priory of Coldingham while he was 'furth of the realm'. In this role she omitted to pay the stipends of eleven ministers who wasted no time in charging her

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272 CS7/190/35r (Monipenny v Monipenny).
273 CS15/77/65&CS7/186/456r (Robertsoune v Leslie & Uyris).
274 CS7/186/273v (Wilsoun v Strathauchin).
to make payment and in sequestrating the fruits, rents and
emoluments of the said priory 'swa to debar hir fra all
intromissioun thairwith'. Her claim that the 'spiritualitie of the
said benefice is alluterlie exhaustit' was accepted by the Lords.²⁷⁵

Katherine Gordon, relict of Thomas McCulloch of Cardonness, and
David Pringle now her spouse, were running a mill which she must
have inherited from her late husband. The changeover in ownership
was perhaps being exploited by William Maxwell who clearly resented
being thrilled to that mill. He was found 'to have done wrang in the
abstracting of his corns quhils grew upoun the lands of Newtown and
Laggane, baronie of Cardines, stewartrie of Kirkcudbryt fra ye
persewaris mylne of Kirkcudbryt Skyreburne sen 1594, he being
astrictit to have brocht his cornes to ye said mylne to have bene
ground yrat and to have payit the thirle multer yrof togedder with
the water yokkingis ... the penalties of querneis using and
knaiffschip'.²⁷⁶ The warrant in the Process papers is more explicit
stating 'Katherine is infeft in ye lyferent of the lands of
Bardarroche , mylne of Skyreburne, suckin, astrictit multeris etc
... and she and her predecessors hes bruikit speciallie ye said
mylne.' All the threshing corn had to be brought to the mill
'exceptand seid corn according to accustomit use and everie pleuche
ane water yokking and everie cottar to pay ane boll meil to the
owner of the miln'.²⁷⁷

Relicts continued to farm their dead husband's land. This is seen
from lists of tenants charged for spoliation of teind sheaves for
instance. For example, Katherine Hunter had to pay sixteen thraves
of beir growing on her maling in Smithston.²⁷⁸ Relicts who owned
large tracts of land, however, found it simpler to sell their

²⁷⁵ CS7/186/335r (Lord Home v Ministeris of Coldinghame); see
Ministers, 209-10.
²⁷⁶ CS7/193/46r (Gordoun v Maxwell).
²⁷⁷ CS15/79/66 (Gordoun v Maxwell).
²⁷⁸ CS7/191/330r (Capringtoun v Enterkin).
assets. Barbara Traill, Lady Pitlochie, relict of John Beaton of Pitlochie, 'with the consent of freindis hes sauld and disponit to John Tors of Inverleith and his servands al and haiill 8 chalders 10 bollis aits than sawin upoun the grund be hirself, 22 bolls beir sawin on the saids lands, 18 drawing oxin, 10 ky with followers, ane bull, 4 copendachs [=colpindachs or young cows or oxen], 6 twa-yeir auld stirks togedder with 48 yewis with yair lambes, 50 twa-yeir auld scheip and uyr 10 yewis and 20 hoggis'. Clement Kincaid and John Matheson 'takand the burding upoun thame for the said John Tors oblist thame to content, pay and deliver to Barbara Traill, her airs and assignays the sowme of 2,600 marks'. These were to be paid in instalments. Lady Pitlochie seems to have used David Beaton, presumably a close relative, and James Hamilton to set up the deal by contract with the said Clement Kincaid of Coittis and John Matheson, portioner of Broughton. They, on her behalf, by the time of the action, had already accepted 1000 merks of the 2,600. The rest was consigned in the hands of Adam Cowper, passer of the bills, who was ordained to 'gif up the samen to Barbara Traill, principal pairtie defender'.

Wives and relicts sold grain either as a business enterprise or perhaps they were simply divesting themselves of assets. One wife sold beir and bran. Thus Elizabeth Nymbellie and Patrick Rannald her spouse for his interest obtained a decree before the bailies of the Canongate against Francis de la Planche, Fleming, for not honouring a promise to pay 'bot ony delay, fraud or gyle' for '20 bolls quheit with twa pecks guid and sufficient stuff and mercat wair.' He owed '£7 15s the boll togidder with 30 bolls bran for 40s the boll, lyk as the said quheit and bran wer sauld be hir'. The bailies' decree was enforced by the Lords.

279 CS7/186/118r (Lord Innerleyt v Traill).
280 CS7/190/209v (Rannald v De La Planche).
Mavis Kirkco, relict of Thomas Baillie of Saint John’s Kirk, sold and delivered beir and oats by obligations to eight men in Pettinane, none of whom were paying up ‘at the prices set down be hir with ye advyse of John Kirkco hir eldest broder’. Because ‘she previt sufficientlie and that the victual extendit to the particular quantiteis and pryces’ the Lords ordained the defenders to make payment to the pursuer.\(^{281}\)

Other widows sold assets other than grain. Thus Janet Cockburn, relict of Thomas Vaus of Petercraig, brought actions against Thomas Baxter, sevitor to the Master of Work, for ‘ane ring of gold of valour 50 crowns’; against Richard Henderson, burgess of Edinburgh, for ‘ane signet of gold wantand the heid with four greit pecis of gold of ye valor of £30’; against John Heriot, also burgess, for ‘ane uyr ring of gold of valour £24’; and against Robert Danielston, another burgess of Edinburgh for ‘the heid of the said signet haveand the said compleneris armis ingravit’. All had reasons for not giving them up. Thomas Baxter coft\(\text{[bought]}\) the ring from Andrew Cockburn for £30 and had sold it to James Kerr; Richard Henderson claimed rightful ownership through his wife’s business deals, namely that Andrew Cockburn had bought from Marion Thomson, his wife, ‘ane steik of burret\(\text{[coarse woollen cloth]}\) with certane pasments, points, lyning clayt and uyr merchandice and furneissing sauld and furneist be Marioun to Andro conforme to the particular compt producit and the said Andro for payment and price … delyverit the said gold acclaimit fra Richart Henrysone to Marioun Thomson his spous’. John Heriot denied the charges and the advocates ‘past fra the actioun intentit aganis Robert Danielson’.\(^{282}\) This case then disappears from the records.

\(^{281}\) CS7/192/224r (Kirkco v Lamingtontoun).
\(^{282}\) CS7/185/209v (Cokburne & Wod v Baxter & Uyris).
Sums of money owed in round sums by obligation with an added sum for liquidat expenses and the naming of cautioners suggests money-lending. Malie Montgomery, relict of Robert Laing pursued debts owed to her dead husband by nineteen debtors for sums like £110 with £5; £46 with '3 bolls seid aits'; £50 with £5; £100 with £5; 400 merks with £10 etc. There is no suggestion that she was doing anything other than claiming as relict and confirmed executrix to her dead husband who had probably lent money. Agnes Howieson, however, relict of John Moffat, burgess of Edinburgh, was clearly acting as a money-lender when when she registered an obligation for 700 merks. Margaret Erskine, Lady Ruthven and her son, 'grantit thame with ane consent to have borrowit and ressavit in numerat money fra the said Agnes the soume of 700 merkis'. The relict raised letters of horning against them for payment. Repayment by instalments was arranged with £20 expenses at every term. They claimed that they had asked for an extension which was granted 'they being willing to pay the profeit aggreit.' However, on oath they confessed that this was 'neways of veritie' and therefore the Lords found the letters purchased against Lady Ruthven and her son orderly proceeded.

Jean Hamilton, countess of Eglinton, on the other hand, was probably investing money when she lent it to Robert Jowsie, merchant, and Thomas Fowlis, goldsmith, as principals and John Gourlay, merchant, and George Heriot, goldsmith burgess of Edinburgh, as cautioners. They 'band them conjointlie and severallie to have payit' to her '3,000 merkis with the sowme of £240 of liquidat expenses in cais of registratioun in the buiks of Counsall.' The money had been 'borrowit be thame and employit be

283 CS15/77/58 (Fleming or Montgomerie v Creditors[sic]).
284 CS7/192/134v (Howesoun v Lady Ruthvens).
thame to his hienes proper use and to the furneising of his hienes awin houses as is notour to his maiestie'. 285

**Succession**

Females could be charged to enter as heirs as a preliminary to an action being brought against them. Thus, at Peter Hay's instance, the King's letters were directed under his highness' signet to charge Dorothy, Mary, Jean and Anna Stewart, daughters of the deceased John, earl of Atholl to enter heirs within 40 days conform to the act of Parliament.286 They were warned that if they failed to do so, the 40 days being bypass, 'the said Peter Hay suld have siclyk actioun, proces and executorialls agains thame as gif they were enterit'.287 He, as assignee to a contract between Thomas Otterburn and the Earl of Atholl, was pursuing an unpaid obligation for 2000 merks.

As discussed above, Marion Johnston, however, 'onlie bairn and apparend heir of umquhile David Johnstoun, in July 1596 with consent of umquhile Mr James Johnstoun, writer, hir tutour, renuncit to be air' to her father in order to protect her heirship goods from being appraised in order to pay his debt.288

It was possible to 'quarrel' the serving of an heir. Christian Tyrie was served as heir to the deceased Sir James Tyrie of Busleis by means of 'ane breiff direct to ye syreff of Perth and his deputes purchast at the instance of the said Christian ... to ye quhilk service and all profeits resulting yrupoun the said Christian with consent of Jon Smyt hir spous hes maid Ser Walter Bruce of Clakmannane hir assignay and surrogat him in hir place'. William Tyrie, however, had 'special entres to object agains ye said service as heritabill fewar of the saids lands of Busbeis hauldin

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285 CS7/186/354r (Mres Margrat Hammiltoun v Heriot); see App.,II,32.
286 A.P.S., 1540, C. 24,II. 375.
287 CS7//190/281v (Pettir Hay v Erle of Athoill).
288 CS7/192/205v (Barbour v Johnstoun).
immediatlie of or soverane Lord'. He brought an action against the service on the grounds 'yat ye syreff and his deputes can neways be sufferit to proceid in ye said service for divers causes' among which were the accusation that the judges were suspect. Nevertheless, his action failed and the matter was remitted back to the sheriff and his deputes.289

The right of the donator to the gift of ward, non-entres and marriage of heirs has been discussed above290 as has the equal division of lands among all daughters as heirs in the absence of a son.291 Katherine Bisset exemplifies both the equal sharing of daughters as heiresses and the use of a clare constat precept of sasine. Occasionally a superior granted in favour of the heir a special precept of sasine in which he declared that it was clear to him that the grantee was the heir of the deceased vassal. The heir or heiress could then enter to the lands of his or her predecessor. She was 'infeft as ane of twa airs portioners of umquhile William Bisset hir father in ye just equal half of ane annuelrent of 200 merks to be upliftit yeirlie furth of the lands of Cowthropill be vertew of ane precept of clare constat direct be James Adamsoun elder, burgess of Edinburgh, and James Adamsoun his son younger, superiors of ye said annuelrent'.292

In a dispute between Christian Murray as apparent heir to her dead grandfather, William Bolt in Shetland, and to his dead brother, she and her spouse for his interest sought production by Adam Sinclair as apparent heir by progress to Anna Sinclair in Shetland, of infeftments, rights and securities, granted to her grandfather

289 CS7/191/93v (Tyrie v Tyrie).
290 Balf., Prac., 246.
291 CS15/70/2 (Hammiltoun v Ker).
292 CS7/191/176r (Elphinsoun v Leirmonth).
and his brother of the lands of Gerth and Collofetter and of bands of alienation of these lands made by them to Anna.293

When there was a dispute over heirship, the Lord Advocate was present in court. Janet McNeill, lawful daughter of Margaret Crawford and Hector McNeill in Argyll, and Ewen McPhaill in Ardchatton, her spouse, brought an action against George Crawford, father’s brother’s son to the deceased Margaret Crawford, indweller in Stirling, and twelve others, of whom four were Crawfords, as ‘persons being upon the serving of the brevis of or soverane Lordis chancellarie, impenetrat at the instance of George Crawford’. They were to produce in presence of the Lords the retour whereby they recorded that Margaret Crawford, father’s brother’s daughter of the said George Crawford, raiser of the brieve, ‘deit at the faith and peax of or soverane Lord and that the said George was narrest and lauchfull air to umquhile Margaret’, daughter to his father’s brother. Janet and her husband asked that the retour with all sentences and decrees, if any were obtained by George Crawford, be ‘retreitit, annullit, and ... everie ane of thame for thair manifest and wilful error in the serving of the said breif to have incurrit the paine of rasche conveinars in an assyse and to have been punischit yrfor in thair bodies and guids’. The point was made that Janet McNeill was a bastard daughter of Margaret Crawford ‘and swa can nocht be hard be ony richt is in hir persone to reduce the foirsaid retour’. This was remitted to the Commissary of Edinburgh ‘as inqueist competent yrto’ but George failed in proving the bastardy because the fact that Janet McNeill’s parents ‘were mareit togedder in face of halie kirk be ye space of 37 yeirs and levit as mareit folkis was sufficientlie verifeit befoir the Commissary’ and was therefore accepted.294

293 CS7/190/80v (Murray v Halaois).
294 CS7/186/169v (Crawfurd v McNeill).
Although the actions before the Lords of Council and Session were civil in nature, criminal matters were bound to impinge from time to time. When someone was denounced as a rebel and put to the horn, his or her goods, moveable and unmoveable, escheated to the crown and were at the King’s gift under the privy seal to a donator. If the rebel remained unrelaxed at the horn for more than a year and a day the donator was entitled to the liferents of the lands as well. Before the donator could pursue the goods to which he or she had become entitled, it was necessary to have a preliminary act of declarator pronounced by the Lords of Council and Session. In each declarator there is a brief explanation of the crime which gave rise to the gift of escheat.

It was possible to be a donatrix to the escheat goods of a husband who had been convicted of slaughter and sentenced to death. Isobel Weddell, relict of the deceased Robert Auchinmowtie, ‘chirurgian’ [surgeon] burgess of Edinburgh, sought a declarator that she was a donatrix to him before bringing an action against his two daughters and their tutors ‘gif ony’ for the goods which had pertained to their father. As reported in Pitcairn’s Criminal Trials,295 he had been convicted of manslaughter in a duel. Mr Patrick Murray, her procurator, pled as follows - ‘or soverane Lord be his hienes signator subscryvit with his hand upoun 13 Junii last with consent of the Thesaurer gave, grantit and disponit to ye said Issobell Weddell, hir airs and assignays, ane or ma, the escheit of all guids movabil and unmovabil, dettis, taks, stedings, rowmes, possessiouns, cornes, cattel, insyt, plenisching, acts, contracts, actionus, reversionus, decreits, sentences, sowmes of money,

jowellis, gold, silver, cunzeit and uncunzeit and all uyr guids and
ger escheitabill quhatsumever quhilk pertenit of befoir to
umquhile Robert Auchinmowtie chyrrurgiane burgess of Edinburt and
now pertene to or soverane Lord, fallin and becum in his hienes
hands and at his disposeroun be ye form of escheit throw being of
umquhile Robert convict be ane assyse and execut to ye death for ye
slaughter of umquhile James Wauchope lauchfull son to George
Wauchope as in ye proces and deid of convictiou led and deducit in
ane justice court haldin in ye tolbuith of Edinburt 10 Junii last
agains ye said umquhile Robert yranent'. The widow produced in court
'ye said signator subscrivit be or soverane Lord and dewlie past or
soverane Thesaureris register in favore of ye said Issobell Weddell ...
be vertew quhairof all and sundrie ye escheit guids ... now
pertene to Issobell weddell donatrix'. The Lords repeated the
pleadings in their declarator and ordained the defenders to make
payment conform to the gift made three days after the conviction,
because an act extracted from the Books of Adjournal of 10 June
1600, subscribed by the Justice Clerk, bearing the deed of
conviction to have been pronounced against him by the dempster of a
lawful assise, proved him to have been culpable of the said crime.296
Significantly, on 15 November an act was passed by the Estates
'anent singular combattis'.297

Isobel Ogilvie was declared 'to have guid ryt to the escheit
guids quhilk pertenit to [Gilbert Ogilvie of yat Ilk] ... and to
uptak the males, fermes, kaynes, customs, casualteis and dewteis
yrof throw Gilbert abyding at ye proces of horne attour yeir and day
unrelaxt unto ye tyme of his deceis Merche 1600'. He had been
denounced as rebel for non-payment of the minister's stipend, for

296 CS7/191/143r (Lord Advocate v Auchinmowtie).
297 A.P.S., IV, c21, 230.
non-payment of annual rent on 1000 merks to Archibald, earl of Argyll, and for other unspecified reasons.  

Occasionally women were guilty of spuilzie or 'spoliatioun', which was the usual term in 1600. Spuilzies had to be proved in a civil court before they could be pursued in a criminal court. Only relicts or single women could be charged because the husband 'is principal and held over his wife' and thus responsible for her actions. Elizabeth Mure, Lady Adamton, had appeared before the sheriff of Ayr and his deputies 'tuiching the spoliatioun be hirself, hir complices and servants in hir name of hir causing and command, in October 1597 furth of the lands of Peirstoun of 11 brod geis and ane gander quhilkis than pertenit to William as his awin proper geis and were in his possessioun be ye space of ane month, at ye leist 20 days'. The sheriff's precept was advocated to the Lords by William Barclay on 3 December. They called for witnesses and proof. Within four days Elizabeth Mure, relict of William Crichton of Lybbeere, brought a counter action against William Barclay for spoliation of '12 brod geis and ane gander togedder with ane lymestane and stail[the foundation of a rick or stack]skep of beis all pertening to ye persewar and for withholding of the profeits'. The action, predictably confusing to the Lords, was continued until January.  

Several women - relicts, married and single - raised actions as victims of spuilzie. Janet Moncreiff, relict of William Ramsay, and John Newton her spouse for his interest, brought charges against a relative, William Ramsay of Murie, to hear him decreed to have done wrong in the spoliation of her harvest crops 'furth of the arabill and cornefeild lands of ye sonny half of the lands of Murie in

298 CS7/189/350v (Lord Advocat v Ogilvy).
300 Balf., Prac., 94.
301 CS7/191/362r (Barclay v Lady Adametoun).
302 CS7/190/354v (Mure v Barclay).
Similarly, James Kerr and his curators were blamed for the spoliation of the crops in Middlemostwalls belonging to a widow, Marion Cunningham. Other women, as tackswomen, suffered from spoliation of teind sheaves. For example, Margaret Baillie, relict of Edward Maxwell of Lamington, and Mr William Livingston of Culter now her spouse for his interest, was assignee to the tack of the teind sheaves of Rerrick but four farmers appropriated them in 1599.

Horses were readily stolen. Jeillis Reid, grand-daughter of the deceased John Reid in Papeithill, and Alexander Ord in Leischaw in Kyllismure her spouse for his interest, pursued George Schaw of Glenmure for the spoliation 'furth of the stedding of ane broun hors'. She called for the Lords to ordain him 'to restoir the hors or the avails and to mak payment of the profits, extending to grit avails'. The Lords heard that sort of complaint often and 'declarit that they will haif consideratioun of the daylie profteis of the said hors the tyme of the avysing of the said proces'. Dame Jean Hamilton sought the profits which she might have had of three horses, three ky and an ox which were stolen by James Johnston of Westraw. She was entitled to such loss as she could prove.

Sibylla Nisbet and Captain Thomas Ewing her spouse for his interest, were the victims of a more resolute spoliation in town. They brought their cause against George Sanderson, tailor burgess of Edinburgh, before the provost and bailies of Edinburgh for 'away-taking fra hir and hir spouse of certane lintell stanes affixt, almrieis pentit, cleis, pictors, certane brods[tables]and timmer wark extending to grit valor'. Sanderson advocated the action to the Court of Session on the grounds of the provost and bailies being...
suspect judges. Furthermore, he feared for the justice of their decision because there was current an action for 'contraversie of nychtborheid' over a tenement of land between a bailie and him. The pursuer had built in waste ground but his 'iniquitie and oppressioun' had been 'stayit' by the bailie. Nevertheless, the Lords remitted the spoliation action back to the provost and bailies.308

Two fir and oak kists containing goods and gear, clothes and writs and 'evidents' were allegedly stolen from Abraham Barker, baxter burgess of Edinburgh, and Euphemia Quhippe his spouse, by William Nicholson, tailor burgess, and Sarah Andrew his spouse 'efter the doun-setting of the sone, furth of yair dwelling hous for ye tyme in ye tenement of land ... in ye wynd callit Libbertounis Wynd'. Abraham was in debt to the said William Nicholson to the sum of £84 12s 6d. It was Sarah who obtained a decree before the provost and bailies of Edinburgh but it was her husband William who 'come to the said persewaris[Abraham's]dwelling hous accompaneit with William Hammiltoun, ane of the bailleis of ye burt to have poindit the reddiest guids and geir. Finding Euphame Quhippe 'within the dwelling hous, and ye said William Hammiltoun, bailie, having declarit to hir that he wes to poind the reddiest guids and geir within the samen for ye said sowme, sche than delyverit to William Nicholsoun the saids twa kists', Abraham Barker, her husband, 'himself being thane absent furth of the toun, to have bene keipit be him ay annd quhile he had bene completlie satisfeit and payit of the said sowme'. The kists were delivered lockfast but Euphemia, with considerable presence of mind, 'kepit and retenit in hir awin hand and custodie the keyis of ye saids twa kists efter that sche

308 CS7/190/91r (Sandersone v Nisbit).
had lokit the same'. They were prepared 'to mak delyverie yrof to the persewar, he payand the sowme contenit in the decrete'.

Jean Graham pursued a Stirling bailie, William Edmond, for a kist containing a gown worth £20 with other gear amounting to £100 in value. Perhaps he had taken it into his possession while making an inventory of goods after a death.

Isobel Cunningham, relict of Mr David McGill of Cranstoun Riddell and Mr James Wardlaw now her spouse for his interest, were charged by Eustatius Roog, mediciner, indweller in Edinburgh, to return a can of jasper stone. This may have had some pseudo-therapeutic significance or may have related to Roog's mining interests.

Gold rings were sometimes stolen. Agnes Colville, relict of William Cunningham, burgess of Ayr, and George Kesson, now her spouse for his interest, raised letters against John Cunningham, merchant burgess of Ayr as possessor of a ring which she claimed as her own. She, 'haveing ane ring of gold of the price and valor of £40 as hir awin proper ring and being in hir custodie and keiping the said ring was conveyit and takin away fra Agnes twa yeir syne or yrby by hir knowledge and now laitlie Agnes haveing apprehendit the said ring in the hands of John Cunninghame sche hes requyrit and desyrit the said John to deliver the same to hir and hir spous'. He refused to exhibit the ring 'unalterit, brokin or destroyit' but because he did not compear, he was discerned to deliver the ring to the pursuer. Similarly Mary Craig in Gelt and John Miller her spouse for his interest pursued Marion Dawson for a chain of gold 'weyand ane unce and ane half and threi drop wecht ingadgit' to her by her father 'upoun the sowme of £8'.

309 CS7/185/89v (Nicolsone v Barcar).
310 CS7/185/364r (Grahame v Edmond).
311 CS7/190/407v (Eustach Roog v Cunninghame).
312 CS7/192/191r (Colville v Cunninghame).
313 CS7/185/197v (Millar v Dawson).
Elizabeth Gibb, sometime servitrice to the dead Countess of Orkney, Dame Jean Kennedy, was intending to bring an action before the Commissary of Edinburgh against the Countess’ son, John Stewart, master of Orkney, as executor, for two sums of 500 merks which she alleged were owed to her. She also, as servant, claimed the ‘haill houshald geir and abuliament belonging to his umquhile mother’. He asserted that ‘he hes sufficientlie purgit his intromissioun quhilk was allanerlie with the guids and geir being within his motheris dwelling hous in ye Cannongait’. An inventory had been made by the bailies and clerk of the Canongate and ‘ye saids guids contenit in ye inventar togedder with ane golden cheinzie than being in ye said hous’ he ‘transportit it furth yrof in respect of ye said hous being than nocht inhabite it wer ane reddy pray to thevis and malefactors quha mich tak occasioun to brek ye said hous for ye saids guids being yrin and to steil ye same away’. He had removed the goods ‘for preservatioun yrof’. The Commissary was unimpressed and ‘partiallie repellit the exceptioun’. Accordingly, he sought advocation of his cause to the Lords.314

Beatrice Bishop, relict of Alexander Lawrie, baxter burgess of Edinburgh, and her three bairns as donators to the escheat of her husband’s goods, pursued James Nisbet for spoliation ‘fra umquhile Alexander Lawrie 23 July or yrby 1597 under silence and cloude of nyt within ye tolbuith of Edinburgh of the sowme of 1200 merkis of money in fynve pund pecis of gold quhilk sumtyme pertenit to ye said umquhile Alexander Lawrie as his awin propertie and silver and than was in his possessioun and inbrocht be him in tua purses within ye said tolbuith’. The money had been provided by Edward Galbraith as the price of a tenement sold by James Lawrie, now deceased but as James Lawrie was in prison for debt at the time, he made Alexander Lawrie assignee to the 1200 merks. Alexander had already delivered
630 merks to James Lawrie and had his acquittance. Therefore the Lords ordained James Nisbet to pay 570 merks to the donators.\textsuperscript{315}

Stealing and cutting of a widow’s timber was a crime. Janet Colt, relict and executrix of Robert Livingston in Glookburn, blamed John Gray, burgess of Perth, for ‘the wrangous, violent and masterful ruging doun, destruction, awaytaking, detening and withalding fra the persewar furth of ane tenement of land pertening to umquhile Robert Levingstoun lyand within ye burt of Perth and of divers, sundrie tymer, irne works, loks and uyris guids’. Witnesses were summoned but the case disappears.\textsuperscript{316} She also charged David Jackson, burgess of Perth, with the ‘wrangous cutting doun, destruction, awaytaking and spoliatioun ... of 50 peis of erschin[Highland or Irish]treis pertening to ye persewar and hir umquhile spous’.\textsuperscript{317} Witnesses were called for in both cases; thereafter the records remain silent.

The spoliation by both Gabriel Semple, Laird of Cathcart and his eldest son and apparent heir, of the corns allegedly pertaining to Dame Jean Campbell, duchess of Lennox, relict of Robert, master of Eglinton and Ludovick, duke of Lennox, now her spouse for his interest, was symptomatic of rough justice. She charged them for ‘the wrangous outputting ... furth of the foirsaids lands and rowme and steding, in the wrangous uplifting of the profeits sche micht have had and in the wrangous demolisching of ye houses and biggings, away-taking of the tymmer wark, stanes, joint wark and uyr materials’ and\textsuperscript{318} ‘bands, lokkis, keyis and uther necessaris’. The Lords decreed the defenders to ‘pay to hir the pryces and yeirlie profeits and enter the persewar ay and quhile thai be laulie callit and orderlie put yhra be ye law’.\textsuperscript{319}

\textsuperscript{315} CS7/186/300v (Bischope v Neisbit).
\textsuperscript{316} CS7/185/278r (Colt v Gray).
\textsuperscript{317} CS7/185/278v (Colt v Jakstone).
\textsuperscript{318} CS7/187/371r (Lady Dutchis v L. Cathcart).
\textsuperscript{319} CS7/190/219v (Lady Dutches v Laird of Cathcart).
Feuding, discussed fully by Brown,\textsuperscript{320} was still a problem in 1600. Acts were passed by a convention of the Estates in 1598, and two in 1600 'anent removeing and extinguischeing of deidlie feud'.\textsuperscript{321} Some actions of spuilzie savour of feuds, while others are explicit. There may have been a personal vendetta or something of wider import when cattle were stolen from Elizabeth Gordon, relict of Alexander Knowis of Aschintullois. She charged John Bruce in Wester Durris and James and Thomas Burnett of Cluny, for 'the masterful spoliation fra Aschintullois Regis in the parish of Durris, sheriffdom of Kincardine, of all the meiris, oxin, ky and uyr guids and geir ... pertening to hir as hir awin proper guids and sche being in possessioun yrof be keiping, working, seiding, faulding and using of the saids guids as sche thocht expedient'.\textsuperscript{322} Helen Orme, relict of Henry Adamson, burgess of Perth, and Gilbert Adamson, her son, his curators and the bailies of Perth, had imprisoned John Hunter, rentailer of the new mill at Clochmoir. John Hunter sought his release on the grounds of having been warded immediately after he had raised a summons against Helen Orme as liferenter of the mill for 'warrandice to him of his tack, rentall and obligatioun of warrandice yairin contenit maid to him be umquhile Hendrie or ells alsmekil, als guid land, mylne and mylneland with pertinents alsweill lyand and haldin of als greit profeit be yeir and als commodious in all respects as ye said new mylne, mylnelands with pertinents'. His procurator asserted to the Lords that 'na persone dar be cautiouner for the persewar to anser ather to the syreff court or burrow court ... agains ye syreff and provost and thair deputes and freinds quha trublis the said persewar be resson of the dedlie feud standing of auld unconciliat between the horsmen, kyne, freinds

\textsuperscript{320} Brown, Keith M., Bloodfeud in Scotland 1573-1625 (Edinburgh 1986).

\textsuperscript{321} A.P.S., IV, 1598, 158ff. & 1600, 232 & 233.

\textsuperscript{322} CS7/185/90v (Knowis v Burnet).
and tenents of Gowrie and the nobil lordis hous, kyne, freinds, men and tenentis'. The entry in the Register is unfinished.323

Women did well to abstract themselves from direct involvment in a feud. William Tyrie, as heritable possessor of the lands of Busbeis, regality of Methven and sheriffdom of Perth, objected to the serving of Christian Tyrie as heir to the deceased Sir James Tyrie son of the deceased Robert Tyrie, and more particularly to her surrogating Sir Walter Bruce of Clackmannan in her place because he feared that it was 'adventit[?] to cut away' his heritable infeftment of Easter and Wester Busbeis 'being ane mater of gritt wecht and consequence and thair is deidlie feud standand unreconceillit betuix Frances, Erle of Erroll, ye saids persewars[Tyries]and yair freinds of yat hous on ye ane pairt and Jon, Erle of Gowrie, syreff of Perth and his freinds on ye uther pairt throw ye crowell hurting and wounding of George Hay of Seyfeild, ye said Erle of Erroll father brother and ye said persewaris mother brother sone, committit be George Ruthven father brother to ye said syreff principal quhairthrow ye saids persewars nor nane of yame nor yair freinds may not peciablie repair within ye said syreff jurisdictioun and syref court of Perth ... without convocation of yair special freinds hidden, as ye persewars wilbe servit, quhilk wald not faill to ingender gritt inconvenients'. The situation seemed all the more dangerous because the Laird of Clackmannan 'is vassal and servand' to the Earl of Gowrie 'lyk as his umquhile father and he hes given his band of manrent to ye said syreff and his predecessors and hes bene actuall dependars on yame'.324Such bonds of manrent have been studied by Wormald.325

323 CS7/186/394r (Hunter v Orme).
324 CS7/191/93v (Tyrie v Tyrie).
There is evidence of women making use of the law after some violent incident. Thus, Grissell Pinkerton in Rutherglen, as sister to the murdered James and daughter to Allan Pinkerton, brought an action ‘in the name of the nearest of kin’ against Arthur Colquhoun for non-finding of soueright to have underlyn the law for the crowell slaughter’ of her brother ‘committit be ye said Arthur and his complices’.326

A court action involving forgery always demanded the presence of Mr Thomas Hamilton, Lord Advocate. Margaret Gardener, as heir to John and Elizabeth Gardener and Euphemia Shaw, knockmaker[clockmaker] and burgess of Edinburgh her spouse for his interest, raised an action against Robert Smith, bookbinder and printer burgess of Edinburgh for payment of an annualrent of 20 merks from a tenement of land owned by her deceased parents. He claimed to have a discharge which she challenged as ‘falslie forgit, feinzit, counterfeitit and devysit’ along with ‘sundrie pretendit discharges, instruments of redemptioun and renunciatiouns of the foirsaid annuelrent’. The discharge had been made in the presence of James Tarbert and John McGill, notaries. Margaret and her husband ‘offerit’ to prove the forgery ‘civilie and lauchfullie per testes insertos et omni alio modo qua de iure’. Witnesses were received, sworn and examined. They convinced the Lords of the authenticity of the instrument of renunciation of the annualrent and Robert was acquitted of the charge.327

It was the same James Tarbert, writer, however, who was ‘convict be ane assyse ... and execute to the death for the forgeing, falsifeing and devysing of ane pretendit charter allegit maid and subscryvit be [blank] Ferne sone to[blank] Ferne of his lands lyand within the syreffdome of Innernes quhairof the tenor is laitlie

326 CS7/191/183v (Blantyre v Colquhoun).
327 CS7/192/231r (Smith v Gairdiner).
improvin befoir the Lords of Sessioun'. The donator to his escheat brought a successful action against his widow, Janet Rynd, for his goods and gear.\(^{328}\) James Tarbert was condemned 'to be tane to ane Gibbett, besyde the mercat-croce of Edinburgh, and thair to be hangit quhill he be deid; and all his movabill guidis to eschete etc.'\(^{329}\) His escheat was bought for 500 merks.\(^{330}\)

Several actions were founded on the forging of dates, this being relatively simple, particularly when it was written in Roman numerals. Dame Isobel Hamilton, Lady Seton, claimed that Gavin Hamilton of Raploche had 'fasifeit, forgot, fenzeit, inventit, fabricat and devysit ... ane pretendit tack and assedatioun allegit maid be Claud now Lord of Pasley and than Commendator yrof with allegit consent of the covent of the same' to him, his heirs and assignees of the teind sheaves of lands in the parish of Kilpatrick, for the space of 19 years after his entry on 1st September 1587 ... 'and being improven ... the forgers aut to be punischit'. However, after 'the saids pairteis and yair procurators wer hard to ressoun viva voce in presence of ye saids haill Lords ... anent the antedaiting of the said tak ... Gavin Hammiltoun, personallie present confessit that ye foirsaid tak was deliverit to him be ye said Claud, Lord of Pasley in 1577 blank in ye day, month and yeir, and being delyverit to him he fillit ye samyn blank be ye advyse of sic lawers as he socht counsall of in 1599 and daitit ye samyn as ye samyn is now producit viz 1 September 1587'. The Lords found the tack to 'mak na fayt' and 'assoilyeit simpliciter ye said Gavin Hammiltoun from the forgeing and all pane and penaltie'.\(^{331}\)

An action for usury was brought in the names of the Treasurer and Lord Advocate. Margaret Scheillis and Thomas Hill in Mekle Govan her

\(^{328}\) CS7/186/314r (Chalmeris v Rynd).
\(^{329}\) Pitcairn, Criminal Trials, 104-105.
\(^{331}\) CS7/189/82v (Lady Seytoun v Hammiltoun).
spouse for his interest were charged by these officials and by Michael Main, burgess of Glasgow, for having lent 2000 merks at an annuallrent of 25 merks per 100, thus contravening the laws and acts of Parliament which stipulated an interest rate of 10 per cent. The annuallrent was therefore deemed to belong to the King.

Women could raise letters of horning against someone for not finding lawburrows. Christian Robertson, relict of John Anderson, and John Dougal now her spouse, had denounced David Welland, merchant burgess of Edinburgh, for not finding caution and lawburrows that she should be harmless of him. As a preliminary to an action, the matter had been referred to 'the amicable decision and determination and arbitrement of Mr William Oliphant, advocat, and Adame Lawtie, wryter to or soverane Lordis signet, as judges arbitrators and amicable compositors commounlie and equallie chosin be bayt the saids pairteis and to Archibald Dowglas of Qhittinghame, ane of the senators of the College of Justice as odisman and orisman'. Both parties had to bind themselves 'to ratifie and appreve this present submissioun and to keip and fulfill quhatsumever thing the saids judges and orisman concludes and decerns ... bot ony revocatioun or agane-calling, quhairupon ayer of the saids pairteis and thair procurators foirsaides askit instruments'.

One widow, Janet Wallace, relict of James Cunningham of Horscragis, brought an action against James, earl of Glencairn, and William Glen of Bar, as his cautioner, for payment of penalty of 12,000 merks for his contraventions of the tenor of lawburrows 'at ye several tymes lybellit'. She claimed half as party grieved but she had denounced the said Earl for not finding sufficient caution in 1591 and William Glen was not pursued further. Craig, as the

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333 CS7/185/276v (Scheillis v Mayne).
334 CS7185/190v (Welland v Dougall).
Earl’s procurator, asked for instruments that the Earl, as rebel, was repelled ‘a defendo’.\textsuperscript{335}

Equally, a single woman could be the denounced. Margaret Gordon, Lady Netherdule, was orderly denounced rebel ‘be vertew of letters past be deliverance of his Majesteis Secret Counsall at ye instance of Walter Curror of Inchedror for not finding of sufficient cautiou actit in the buiks of Secret Counsall’ that he, his tenants and servants should be harmless and scatheless in their lands, tacks, possessions, goods and gear and was ‘naways to be molestit’. She was summoned to defend herself but because she failed to compear messengers of arms were directed to uptake her escheat goods.\textsuperscript{336}

A widow could denounce someone as rebel and put him to the horn for the murder of her husband. Thus Janet Robb, spouse to the deceased John Ross in Wester Kincarne denounced John Birss there ‘for the cruel slauchter of the said John Ross committit be him 8 July last 1599’.\textsuperscript{337}

Compensation could be sought by a slaughtered victim’s family. Thus one action was brought by John Forbes on behalf of Alexander, John, Marion and Isobel Forbes against William Craig of Craigneston and Patrick Lord Glamis for assythment of 10,000 merks ‘conform to an act of the Acts of Adjournal and act of Parliament and the said daylie ordour observit in sic causes’.\textsuperscript{338} The case was continued until June, a month later, but it disappears from the records. He also pursued another action for the wrongful ejection from Cauldwalls of the now dead parents of Patrick Forbes.\textsuperscript{339}

Suicide was a crime. Katherine Lathanzie spouse to David Periston, mealmaker in Leven, killed herself by ‘hanging and devouring of hirself to the daith upoun 11 Apryle 1600’ and so her

\textsuperscript{335} CS7/190/86r (Wallace v Erle of Glencarn).
\textsuperscript{336} CS7/190/123r (Curror v Gordoune).
\textsuperscript{337} CS7/190/8r (Lord Advocat v Birss).
\textsuperscript{338} CS7/189/275v (Fforbes v Craig).
\textsuperscript{339} CS7//189/276r (Fforbes v Craig).
goods and gear fell in the hands of Ludovick, duke of Lennox and were at his gift 'be the privilege of the regalitie and archepiscoprik of Sanct Androis' and were given on 27 June to Henry Mackeson, donator, to the loss and injury of her husband. The Duke's right conflicted with the King's. On 26th May her escheat had been gifted by the King to Alexander Young of Eastfield, 'ischear[usher] of or soverane Lordis chalmer'. A scrap attached to this warrant noted - 'exceptand always the guids and geir fallin in the hands of the Duik of Lennox haveing rycht to the regalitie of the archbishoprik of Sanct Androis and pertening to Henry Mackesoun his donator thereto be vertew of his gift'. It is unclear whose right took precedence.

CHAPTER 4 ; WOMEN AND THE LAW

PART 5 CONCLUSION

Thus the statement in the legal texts that a widow or an unmarried woman was free in all her actings in law, while a married woman required her husband's consent in hers, has been shown by a study of the records of the Court of Session for 1600 to be entirely accurate. The records demonstrate that many wives, though lacking legal independence, were certainly involved, along with their husbands, in litigation on their own behalf.

Even the clerks, when giving a title to each entry, were sometimes unclear about whether the action should be recorded as primarily the wife's or technically the husband's. When husbands acted jointly with wives, presumably in litigations arising out of conjunct infeftment agreements, the summons was raised by both but the entry in the register was in the husband's name. When wives brought actions of their own, however, they did so with their husband's

340 CS7/186/447v (Makesoun v Paristoun).
341 CS15/77/36 (Young v Persoun).
consent, indicated by the use of the words ‘raised by A ...’, a woman, ‘and B her spouse for his interest’. Such cases were sometimes entered under the husband’s name, sometimes under the wife’s, although the action was clearly the wife’s. A widow with a new husband, however, indicated by the words ‘raised by A, relict of B, and C, now her spouse, for his interest’, similarly acted with the consent of her new husband, but the action was undoubtedly hers. The recording clerk acknowledged this by virtually always using her name, not that of her husband, when he gave the entry its title.

Craig, when discussing conjunct infeftment agreements, states that these ‘conventional provisions came to prevail over legal rights’ [or terces] and could provide a daughter with the liferent of more than a third of the land her husband had owned at the outset of the marriage. He implies that conjunct infeftment agreements were common by the beginning of the seventeenth century. However, unless specifically renounced, terce was still as much a widow’s legal right as her right to a third of her dead husband’s moveable goods so it is perhaps not surprising that actions were fought over them in 1600. Actions over a widow’s rights to moveable goods would have come before the Commissary Court and would only have been heard by the Lords of Council and Session if they had had grounds to accept an advocation and none were heard in 1600.

Some litigation over terces may have arisen over a desire to prevent the fragmentation of land through scattered holdings. The main difficulty with terces was that, should a married heir die when his widowed mother was still alive, two widows would be claiming terces, the mother a third, and the heir’s widow, a third of the dead heir’s two thirds.

It was prevention of fragmentation of lands which also lay behind marriage contracts in which parents sought to circumvent the equal

Craig, t., Ius feudale, 2.22.8., vol., II, 858.
division of land among heiress daughters in default of an heir. Indeed, marriage contracts were used to over-rule the provisions made by the law; but both marriage contracts, entered into with such careful foresight, and tochers, promised so optimistically, clearly proved fertile seeds of grievance in a marriage.

Women became involved in debts, but, if married, these were the responsibility of the husband. Widows, however, as executrices, often had to pursue debts owed to a dead husband; actions for unpaid rents were frequent. Women, as tackers of teinds, sometimes found it necessary to inhibit tenants from teinding. As tackswomen, they were frequently removed when their tack had expired. There was security in the customary tenure for all so-called 'kindly tenants', male and female, however. If they held the special privilege of being on the roll of Saint Mungo's Rental in Glasgow, or were 'rentallers' in Sanquhar, they were apparently secure. This version of kindly tenancy enjoyed by the rentallers of Sanquhar seems to have derived from William Hamilton of Sanquhar. An argument that a widow in Hamilton's barony had the right to enjoy half of her dead husband's lands because he had been a rentaller there, was accepted by the Lords.

Many women brought actions over claims involving heritage; they sought the Lords' interlocutors ordaining the production of evidence of their claim, usually a charter or an instrument of sasine, or exhibition of a notary's protocol book so that a transumpt of such an instrument could be made.

Provision, additional to legal rights, was often made for widows or daughters in the form of assignations of debts owed to the husband or father, of contracts, pensions, liferents, annualrents or of legal actions. Many women, however, provided for themselves as best they could, by fostering, nursing, taking in boarders or running a hostelry, even farming and selling grain, but most
frequently by selling in a merchant booth. There was no evidence of a merchant’s wife like Janet FockartFootnote343 lending money, but a wealthy woman could invest by lending money to merchants who used their capital to act as money-lenders. Some women exploited their legal position when it suited them and others took advantage of their status to build up huge debts with merchants.

A husband was responsible for his wife’s crime if he was in her presence when it was committed, because the presumption was that he had authorised it but single women were responsible for their own misdeeds. There is no direct evidence of women having taken part in feuds, but doubtless they played a supportive role and women could always seek compensation if a husband was slaughtered.

Women, demonstrably, were involved in litigation. Almost every type of action by or against men is mirrored in actions by or against women. It is unsurprising to find widows and single women fighting actions but what has been revealed by the records is that many actions were brought by or against married women acting under the aegis of their husbands. What may have been thought to be a privilege of unmarried women has been shown to be widely available to married women in practice as well as in theory, although some may have been prevented by a difficult spouse from pursuing or defending. There was an advocate for the poor so only an unsympathetic husband could prevent an action and there is no means of finding out how many of these there were. It is likely, however, as pointed out above, that husbands saw potential actions as a form of tocher, not to be despised or ignored but to be entered into seriously and advisedly. It was ‘widowis, pupillis and sic-like uther puir and miserabill persounis’Footnote344 who were disadvantaged. Without a man they were more vulnerable than their married sisters.

Footnotes:
344 Balf., Prac., 658.
Appearances on behalf of Women (by categories of women)

- Widows acting on own: 238
- Widows acting with new husband: 137
- Married women acting with husband: 250
- Single women: 178
- Other litigants (non-female): 1908

Total Entries in Register: 2711
CONCLUSION TO CHAPTERS 2 TO 4

The dramatic Gowrie 'conspiracy' which could have altered history and which rivetted the attention of contemporaries, possibly even inspiring Shakespeare's *Macbeth*,¹ (probably written in 1605 or 1606), and the effects of the bizarre behaviour of Francis, earl of Bothwell, exiled in 1595, are merely glimpsed. Thus the King’s minister, Mr Patrick Galloway, was paid a pension out of the fruits of Scone Abbey, forfeited by the Earl of Gowrie for treason,² and when the Earl of Bothwell’s escheat on his forfeiture for treason was gifted to Mr Gilbert Gordon of Sheerness, a contract made in 1587 between the Earl and Craig, advocate, foundered.³

Much of the historical background, however, is reflected in the legal archives. The gradual submission of the clergy to the King in the later 1590s found its counterpart in financial oppression as their stipends were reduced. Many ministers must have harboured worldly envy of prosperous advocates and merchants who could afford to invest in land. The curbs on these two groups were different. The number of practising advocates was limited to 50, so in a sense, their rise as a class was constrained by a law. The dynamism of merchants was restrained, not, judging by the evidence of the Court of Session records and acts of Parliament, by the King, who strove to encourage their money-lending enterprises, doubtless for reasons of his own, but by economic circumstances. Rents were paid in kind and liquidity was in the hands of the merchants. Landed gentlemen wadset their lands in return for loans and this began the changeover to a monetary economy. The fledgling banking activities of the money-lending merchants were hampered in such an unstable situation

² CS7/190/378v (Mr Patrick Galloway v Tenants of Scone).
³ CS7/193/1v (Laird of Lochinvar v Lady Cassillis).
but they also foundered because money was lent in return for a straightforward annual rent. Banking is successful and profitable when there is both confidence and an edifice of credit-creation in which multiple loans are made in excess of deposits, in the expectation that a large proportion of the loans will be redeposited by someone other than the person to whom the money was lent by the bank, and in the belief that, given confidence, not all deposits will be called for at one time. Such confidence flourishes in a context of lively trade, preferably based on successful industry. Trade in Scotland in 1600 was in primary goods, not in either capital goods or secondary goods. No evidence of a sophisticated credit-creation process was found [although this would be unlikely to show up in the records] and there was certainly no reason for confidence. The financial hardships endured by the King are demonstrated by the assiduous searching of the archives in the Chapel Royal for rents due to him, by the founding of the new burgh of Stranraer, by the resolute pursuit of unpaid rents and taxations by the financial officers, by the selling and gifting of escheats instead of paying meat or wine bills or wages, by the 'granting' or selling of respites.

A study of the Court of Session records for 1600 confirms that the theory and practice of law coincided. The legal position of women was restrictive in that the Warrants and Decreets indicate that they could not be witnesses in a civil action or to a legal document. A wife had no legal persona. She could only write a testament or fight a legal action with her husband's consent. Many wives did litigate with the consent of a husband and several were protected by farseeing marriage contracts. What is not revealed, of course, is the number of women who did not benefit from such consent or contracts, but even they were entitled to a terce of a husband's lands and to a third of his moveables.
Sanderson, writing about the years between 1549 and 1577, found ‘surprisingly few’ actions of eviction. In 1600, nearly ten percent of appearances in court related directly to removings; several of these actions involved groups of tenants. Whether judicial acts of removing were brought against these tenants because their tacks had expired, or whether they were removed because a new investor in the land they occupied wished to replace them with families of his own choice, or whether they were being ‘removed’ as a preliminary to raising rent, is not clear. What is suggested by the evidence is the existence of a mobile homeless group.

Both the Process papers and the Registers of Acts and Decrees reveal information about buildings and furnishings; about the prices of food; about rents and which crops were grown in specific areas; about animal husbandry; about measurements of land; about clothes; about demography, and names; about crime; about the holding of hereditary office; about fear of Highlanders; and about where litigants came from.

Actions provided information about projected plans for a mansion as outlined in a marriage contract. Details were given about the building of tenements and the maintenance of buildings. There were acrimonious disputes about the demolishing of a tailor’s building at command of the provost and bailies of Edinburgh and about building in stone with slate roofing in the land of the Friars Predicators in Edinburgh, as well as about ‘four aikers of land drownit ... be ye bigging of ane dyke or wall at ye eist end of ye northloche of ye

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5 CS7/15/78/2 (Hammiltoun v Ker); see App., V, 1.
6 CS7/190/387r&Cs7/187/404r (Spens v Stevinson); see App., V, 2&3.
7 CS7/185/266r (Patersone v Hunter); see App., V, 4.
8 CS7/190/358v (Sanderson v Proveist & Bailieis, Edinburgh); see App., V, 5.
9 CS15/78/96 (Pomphray v Johnestoun); see App., V, 6.
said burgh'. The contents of houses are sometimes listed in actions over 'masterfull demolishing'.

Prices of victual were frequently liquidated by the Lords when payment of past rents or annual rents were sought. They are likely to have been drawn from Fiars' prices; sometimes a judge specifically mentioned these Fiars' prices but some information was contributed by witnesses. A torn scrap of paper in the Process papers mentions the name of a baxter who swore to the price of grain in 1600. The statistics drawn from the entries are too sporadic to be of more than general interest but they do indicate the trend of harvests in specific areas and the linked inflation. In one action over the lands of Tyrie[probably Aberdeenshire] the annual prices of grain are given from 1569 to 1596. These have been shown in a graph at the end of this section.

It would be possible to build up a picture of the crops grown in specific areas from the disputes over rents paid in kind. No unusual grains were grown, just oats, sometimes referred to as 'corn', bere and, less frequently, wheat and peas. Animal husbandry included sheep, cattle and horses, geese and occasionally bees. Some animals like sheep-dogs must have existed but find no place in the records; hens appear in cases for payment of duties of 'kane fowls'. Manure was valuable and straw and hay were sometimes stolen. There was no indication of liming of the ground. Since rents were paid in kind, it would be possible to draw a distribution map which would indicate animal and arable husbandry. The use of oxen in Inverness-shire and

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10 CS7/185/198v (Dalziell v Toun of Edinburt); see App., V, 7.
11 CS7/191/197v (Ferguson v Maxwell); see App., V, 8.
12 used as the basis of their study by Gibson, A. J. S., and Smout, T. S., Prices, Food and Wages in Scotland 1550-1780 (Cambridge Univ. Press, 1995), chpt. 3, 'The system of county fiars', 66-129.
13 CS7/187/143r (Adamesoun v Ker); see graph.
Ross is attested but horses seem to have been more widely used in farming.

Measurements of land can be related to specific areas and can be compared with the maps of davachs, ouncelands, pennylands and ploughgates in The Scottish Historical Atlas. Davachs were used in the Highlands. David Monro had 'the half davoche lands of Nig with ane peggaitt of land'. His charter was in terms of oxengates of land. Although not mutually exclusive there was a general use of acres in the Edinburgh area, in Fife, in Peebles-shire and in Stirlingshire. Husbandlands were used in the Borders. Pennylands were found in Kylestewart and 'saxschilling thripenny' lands in the Glasgow area. Some land in the West was expressed in merklands of auld extent. Whether there is any significance in this other than to show the wide variety current in 1600 is not known, though davachs were certainly Highland.

Though we learn nothing about what the majority of people wore, gorgeous clothes were stolen or not handed over when left in legacy. 'Certane vagabunds calling and confessing thameselfis egyptianis ... passing over to the cuntrie of Angus' stole a kist containing 'ane blak clok of serge of Florence, lynit and bound in the foirlappis with blak velvet with ane brod band of the samen velvett round about within, and ane gowne of blak velvett contening 14 elnes of velvett, the slevis yrof beand bak upoun satine cuttit on blew taffitie and
begaret[trimmed] with pasmentis of blak jett, ane crammesie[crimson] satine vasken[petticoat] pasmentit with gold'.

Some demographic information can be gleaned from the entries. The tenants of Nisbet are named; 17 out of 44 are Rutherfords. 31 households in Selkirk parish are mentioned and there were 26 households in Pettinane. A list of households in the parish of Dundonald may be comprehensive. Out of 43 households in Clackmannan there are two bailies, two fleshers, two weavers, two maltmen, two baxters, a skinner, a merchant, a widow with a new spouse and a widow; and among 65 households in Cumnock there were three relicts, one with a new spouse, two notaries, three merchants, one messenger, one bastard, one smith and two fleshers. The holdings of the tenants in the lands of Dirleton are itemised. Action had to be taken against 154 tenants in the lordship of Maxwell. The prices of the rents due by 168 tenants in the lands of Kilmarnock had to be liquidated by the Lords and 22 men were denounced rebels in Carnwath for not compearing to bear witness. There are lists of what was owed by tenants, for example to Lord Somerville. These statistics are to be treated with caution, however, because they may simply refer to those who were dilatory about payment of dues or over coming forward to bear witness.

The names of the provost and bailies of Montrose emerge as do those of the provost, bailies and the majority of the council of

25 CS7/190/402r (Edineistoun v Guthrie).
26 CS7/185/229r (Lord Mar v his Tenentis); see App., V, 10.
27 CS7/189/284r (Schaw v Parochiners of Selkirk); see App., V, 11.
28 CS7/186/319r (Hamiltoun v Tenants of Pettenane).
29 CS7/189/369r (Lord of Pasley v Parochiners of Dundonald); see App., V, 12.
30 CS7/186/294r (Erie Mar v Lord Clakmannan).
31 CS7/193/29v (Dunbar v Cumnok).
32 CS7/192/146r (Lady Gowrie v hir Tenentis); see App., V, 13.
33 CS7/191/284r (Lady Maxwell v Lord Maxwell).
34 CS7/187/349r (Fcuullartoun v Tenentis of Kilmarnok).
35 CS7/190/408v (Cokburne v Tenants of Carnwath).
36 CS7/190/186v (Lord Ley & son v Lord Somerville); see App., V, 14.
37 CS7/187/261r (Toun of Montrois v Panter); see App., V, 15.
Dumfries. Some names, particularly those of foreigners like Bostatius Roog or Roche, a Fleming who was wrongly designated on one occasion as Italian, and those of Highlanders, caused the clerks difficulties, partly because they had extended patronymics indicating lineage like 'Duncane McKeane Vicalester Vicbrayne'. As was their wont, clerks usually spelled phonetically; Campbell was frequently rendered as 'Cambell'.

There is information about the Admiral's court which was held on one occasion at least in the tolbooth of Dysart, and there was an example of the sort of dispute which arose over foreign trade. Also, an extract from the Registers of Honoming from the sheriff court of Inverness, provides a mine of information about the contents of a ship wrecked off the Moray coast. It contained salt fish, dried fish, salmon, grain, the personal effects of the mariners, tools, mill stones, swords and muskets.

The actual instrument appointing an executrix dative was found in the Process papers and a tutor dative fulfilling his duties in court is recorded in the Register by a clerk. There was also an action over a young girl's possible refusal to accept a tutor.

Although a court dealing with civil matters, the Registers of Acts and Decretts reveal surprisingly much about criminal matters, some of which has already been mentioned in the main text. For instance, there was counterfeiting by Patrick Cheyne; feuding in Perthshire, in Kirkcudbright and in the Borders; wounding of

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38 CS15/78/88 (Puill v Irving); see App., V, 16.
39 CS15/78/86v (McKeane v McCleriche).
40 CS7/185/111v (Cambell v Mcintosh); see App., V, 17.
41 CS15/78/89 (Wallace v Small); see App., V, 18 & 19.
42 CS15/77 (Dewar v Ross et al.); see App., V, 20.
43 CS15/78/84 (Mitchelsoun & Stewart v Ramsay & Grot); see App., V, 21.
44 CS7/190/305v (Warner v Warner); see App., V, 22.
45 CS7/190/218v (Lyndsay v Levy); see App., V, 23.
46 CS7/190/216v (Lawlie v Lord Findlater & Uyris); see App., V, 24.
47 CS7/191/93v (Tyrie v Tyrie); see App., V, 25.
48 CS7/189/423v (Cokpuill v Lochinvar).
49 CS7/192/56v (Rutherfurde v Ker); see App., V, 26.
John Cowan in the breast with a new lance 'to ye gritt effusioun of blood';\(^{50}\) wounding of John Reid by striking him in the left arm with a sword through 'hatreid and malice agains him';\(^{51}\) shooting of John Greenhill with a hagbut through a window 'under cover of night' by Patrick Boyle, servitor to the Captain of Carrick, and 'Johne mcilvornok mcilcallumgar mcilvane and sundrie uyris'.\(^{52}\) Usury;\(^{53}\) conviction for forgery;\(^{54}\) the alleged antedating of a charter of confirmation;\(^{55}\) and an alleged fraudulent obligation made so that the Laird of Roslin would lose ward and marriage rights\(^{56}\) were discussed fully in the main text. Deforcing of Robert Balloch, messenger, was serious. Claiming to have been molested in the execution of his duty, he required witnesses that Thomas Brown 'maist violentlie and maisterfullie put hands on me and dang me violentlie fra ye said yet'. This was a wise precaution because there had clearly been a fight. An endorsation, found in the Process Papers, states 'I brak my wand upoun the said Thomas'.\(^{57}\)

One action illustrates the responsibility a lord felt for his men and the factional fighting of the time.\(^{58}\) John Livingstone was promised £100 for 'intercessioun usit be him at the hands of Lord Levingstoun for defence of Robert Bartilmo in the actioun and caus criminallie persewit and intentit agains him for airt and pairt of the slauchter of umquhile Patrick Bartilmo'.\(^{59}\) The action arose because Bartholomew refused to make payment.

\(^{50}\) CS7/189/367r (Cowan v Reid); see App., V, 27.
\(^{51}\) CS7/191/18r (Watsoun v Reid); see App., V, 28.
\(^{52}\) CS7/191/317v (Captane of Carrik and Laird Fulwod v Ardincapill); see App., V, 29.
\(^{53}\) CS7/185/276v (Scheillis v Mayne) & CS7/190/146r (Lord Advocat v Ockerorris); see App., V, 30, 31.
\(^{54}\) CS7/187/363v (Lord Thesaurer v Drummond of Mylnenab); see App., V, 32.
\(^{55}\) CS7/190/373r (Walter Ross of Morinsche v Lord Advocat, Collector and Ser Patrick Murray); see App., V, 33.
\(^{56}\) CS7/185/215v (Lord Rosling v Mr Wm Hart); see App., V, 34.
\(^{57}\) CS15/79/80 (Browne v Bayne); see App., V, 35.
\(^{58}\) CS7/192/121v (Bartilmo v Levingstoun); see App., V, 36.
\(^{59}\) CS7/185/165r (Levingstoun v Bartilmo); see App., V, 37.
If some actions for spoliation of crops suggest that tenants were helping themselves to grain which they had cultivated, others were probably straightforward forays for destruction. Horses, one as valuable as £100, were easily and frequently stolen.

It was men from Fail, in Ayrshire, who transgressed against the Act of Parliament by 'passand to burrowis, clachanis and ailhouses with yr houshald' and others with Colonel David Boyd who 'failzeit in making yr ordinar dwelling and residence at yr awin dwelling houses', thereby incurring fines.

Highlanders caused problems. Raiders swooped into Perthshire and drove off 130 cattle and oxen. George Ross of Balnagown, Inverness, with his servants and accomplices, drove off 96 oxen, four horses and eight mares, 240 ewes, 100 sheep, six geese and destroyed ten thousand fir trees in Ross-shire belonging to John Vaus of Lochslin. Cautioners were found for Lauchlan McIntosh that he 'sould neways truble nor molest ony of his hienes subjicts'. Such was the distrust of Highlanders that a messenger charged Donald Neilson by open proclamation at the market cross of Inverness because he was afraid to go to Assynt to summon him personally 'because he is ane hieland man, indweller in or Iyllis and nane dar repair thair to summond him'. In Aberdeenshire David alias Andrew Moncur, fier of Slains, was charged with the spuilzie of horses, ky, oxen and sheep. He had enlisted the help of 'a convocatioun of auchtten scoir heiland men or yrby, all servands and brokin men'. Other marauders in

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60 eg CS7/189/227r (Lady Seytoun v Parochiners of Dundonald).
61 CS7/185/150v (Peirsone v Dik).
62 A.P.S., III, 1581, 222.
63 CS7/190/286v (Lord Thesaurer v Burdeonris); see App., V, 38.
64 CS7/190/121r (Lord Thesaurer v Clachaneris); see App., V, 39.
65 CS7/191/57v (Fergussoun v Soirlie Moir); see App., V, 40.
66 CS7/191/136r (Laird of Ballagowne v Vauss).
67 CS7/185/224v (Cambell v McIntosche); see App., V, 17.
68 CS15/77/78 (Leslie v Douglas); see App., V, 41.
69 CS7/189/240v (Wod v Moncur).
Aberdeenshire had to be inhibited from destroying trees and 'casting doun of the dykes' of Pitfichie.\(^70\)

There was unruly behaviour in Edinburgh also. The Provost of the collegiate church of Corstorphine, claimed to have been forced to subscribe a letter, 'not knawin quhat was or is yrin'. James Lauder, brother of the Laird of Halton, 'drew furth his dagger and pointed the samen to the said Mr Alexander[McGill] his faice and be gryt aith wollit to stik him throw the bodie with the samen gif incontinent he subscrivit not the said wrytine'.\(^71\)

Not all crime was violent, however. The sheriff clerk of Aberdeen was denounced rebel for not delivering the registers and scrolls of the court to John Leslie of Balquhan, sheriff of Aberdeen, and by George, earl of Huntly, sheriff principal of Aberdeen, for not making payment of the casualties and duties since 1581.\(^72\)

Machinations for the demission of the office as Treasurer of the realm are revealed in the entry recording that Walter Stewart, commendator of Blantyre had given over the office to the Earl of Cassillis, under pressure of horning and on the promised receipt of £8,000. Cassillis was assoiled of the payment of this sum because, in the event, 'his hienes provydit Alexander, Mr of Elphinstoun to ye said office'.\(^73\)

Schemes were initiated for achieving and passing on of an office. Mr Edward Marshall, commissary clerk of Edinburgh, for the sum of £6,000 had promised in 1597 to assume the clerkship of the Commissariat until a son of Mr James Ritchie was old enough and qualified to take over from him.\(^74\) An obligation was signed in favour of James, William and John Ritchie 'anent ye dimissioun of the said office'.

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\(^{70}\) CS7/190/184v (Cheyne v Clerhew); see App., V, 42.

\(^{71}\) CS7/187/346v (McGill v Lauder); see App., V, 43.

\(^{72}\) CS7/190/283v (Andersoun v Fraser); see App., V, 44.

\(^{73}\) CS7/189/131r (Erie of Cassillis v Lord Blantyre); see App., V, 45.

\(^{74}\) CS7/192/158r (Mr Edward Merschell v Guthrie); see App., V, 46.
office of ye clerkschip of ye commissariot of edinburt in favor of thame survivand successive efter yr perfyte age of 24 yeirs compleit upoun ye payment of money specifeit yrintil'. He had given 1000 merks to Mr Alexander Guthrie for sustentation of the other children over 10 years and he had promised to provide for the upkeep and education of one of the boys and failing of him by decease, another of the brothers successively. By 1600 Marshall was reluctant to fulfill the obligation to demit office and was supported in his contention that this was not a true obligation. The Lords agreed because no transaction could be made over an office. Only the Lords 'to quhome the gift and presentatioun properlie apperteins' could consent to appointments.

There were military families; one of Colonel Harry Balfour's sons was Captain John Balfour while another was 'archer of the corps of the King of France his guard'. There are other human touches too. Friends administered the affairs of a senile couple and John Shaw gave Edmond Pitscottie money and clothing because he had been 'brocht to grit povertie and misery'. When Sir Andrew Kerr of Ferniehurst sought sanctuary from the bailies of Edinburgh in the house of Andrew Napier, a merchant and friend, the Lords agreed that it was 'agains all law and resson that ony gentilman salbe tane furth of his awin hous for ony civill crime' and ordered the guards of the lodging to be removed. In another action it was clear that William Symonton had craftily disposed of all his goods so that he was so 'depauperat' that he could neither pay his duties nor would he remove from the lands of

75 CS7/185/233v (Merschell v Ritchie); see App., V, 47.
76 CS7/192/158r (Mr Edward Merschell v Guthrie); see App., V, 46.
77 CS7/185/232v (Richie v Merschell); see App., V, 48.
78 see App., V, 46.
79 CS7/185/355v (Balfour v Balfour).
80 CS7/192/178r (Dalgleische v Creichtoun); see App., V, 49.
81 CS15/78/17 (Schaw v Stevin); see App., V, 50.
82 CS7/191/397v (Naper v Toun of Edinburt); see App., V, 51.
Ryflat until his tack had run out.\textsuperscript{83} One father brought an action against a wastrel son\textsuperscript{84} but another, in a private letter, referred sadly to ‘twa ingratt and unfrynd sonis’ and called upon God to be judge between ‘thame and me and gyff me patience’. The letter, repeating an earlier one, seems to have been ignored, though it was signed emotively ‘yor auld fader, Wam Lord Forbes’.\textsuperscript{85}

A distribution map and analysis of the provenance of litigants is appended to this chapter. Though it was and is still the defender’s provenance which dictates where a case is tried by an inferior judge, this is irrelevant in an action in the Court of Session.

Although the choice of year was arbitrary, it is unlikely that the business of the Court of Session would be markedly different in any other year. Further research should perhaps concentrate on themes. The Registers of Acts and Decrees can be scanned for actions involving advocates, or ministers, or merchants. A study of arbitration would be particularly difficult because these actions are referred to within other actions.

The unindexed accumulated Process papers, however, are a more immediate and fruitful source of information than the entries in the Registers. Notes giving the date of a continuation were signed by a judge, often in a flamboyant script, with an embellished first letter. As in the following example, some notes used a mixture of Scots and Latin.

‘apud edr xxiii aprilis anno Mvic
fiat summonitio[?] ut petitur to ye xxiv day of maii nixttocum with continewatioun of dayis and to advocat & discharge ut infra qll ye

\textsuperscript{83} CS7/190/353r (Hammiltoun v Symontoun); see App., V, 52.
\textsuperscript{84} CS7/185/285v (Lord Lie v his Son); see App., V, 53.
\textsuperscript{85} CS15/79/33 (Forbes v Forbes); see App., V, 54.
last day of ye samyne moneth for ye causses wtin writtin

[signed]Cranstounriddell [with superimposed initials]

Chancellor Montrose is shown to have had a decidedly shaky hand but Adam Cowper wrote in a neat and legible script, for example, 'I have ressavit yis cautiou and consignatioun', [signed]A. Cowper Mr'.

The Process papers are particularly valuable because they also reveal evidence such as complete marriage contracts referred to in a case but not recorded in the relevant entry in the Register, or lists of named tenants summarised in the entries as 'and remenant tenentis'.

Any systematic study, even indexation, of the Process papers, however, would be a daunting task. Many are in poor condition and some are illegible. Nonetheless a study of the Process papers would be rewarding if the course of a particular case were being followed, because the documents have been annotated along the margins of a warrant, for instance, with scribbled dates and synopses of what happened in court. Presumably these were the notes of a clerk, who later used them to compile entries in the Registers. The whole picture of the work of the Court of Session, albeit for only one year, in dealing with cases and litigants, is thus completed.

The study of the complete extant records of the work of the Court of Session, albeit for only one year, complements other sources for the understanding of the impact of authority, and the assertion of authority, on the life of the people of the Scottish nation. It ranges further than a study of testaments. Those who would not appear as testators do figure as litigants, and the written sources in the Court records provide corroboration or correction of assumptions made about the law and its practice, the position of advocates, merchants, ministers and women. Further study of a year, before or after 1600, might provide further insights into the lives
of ordinary people and show whether the practice of the law ever deviated from its theory.
PROVENANCE IN PERCENTAGE TERMS OF PARTIES LITIGATING IN 1600

(SO FAR AS TRACEABLE)

Orkney 0.72.
Shetland 0.24.

England 0.24.
Continent 0.31.

Arran and Bute 0.07.

Aberdeen 5.58.
Kincardine (Mearns) 1.51.
Ayr 2.44.
Dumfries 2.64.
Kirkcudbright 1.76.

Wigtown 1.66.

Selkirk 0.12.

Roxburgh 3.39.

Roxburgh 2.64.

Newark 0.12.

Forfar 0.17.

Renfrew 0.17.

Kirkcudbright 1.76.

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Kincardine (Mearns) 1.51.

Ayr 2.44.
Dumfries 2.64.
Kirkcudbright 1.76.

Wigtown 1.66.

Selkirk 0.12.

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Wigtown 1.66.

Selkirk 0.12.

Roxburgh 3.39.

Roxburgh 2.64.

Newark 0.12.

Forfar 0.17.

Renfrew 0.17.
PROVENANCE OF LITIGATING PARTIES

Very occasionally a pursuer or defender was stated to have belonged to a specific sheriffdom but with the help of The Statistical Account of Scotland, 1791-1799 and The New Statistical Account of Scotland, 1845, it was possible to assign 4159 pursuers and defenders to the sheriffdom or area of their provenance. Collective litigants such as tenants from one locality have been counted as one party having one provenance.

Out of 2711 entries, there were 2221 processes, some inter-related. The balance comprised interlocutors such as continuations calling for the production of witnesses or further evidence. To have included those would have meant double-counting of provenances.

Where one would have hoped to find two provenances for each process, one for each pursuer and defender, fewer than that were found for the following reasons. Some actions were fought by or against an official figure such as the Treasurer or Collector. No provenance was allotted to such officials for the purpose of these statistics. Some places like 'Newbigging' and 'Waterhead', of purely local significance, occur several times and could not be used, while other names give no helpful indication of where the litigant hailed from. It was possible to trace 4159 pursuers and defenders. With 4159 being taken as 100%, the percentage coming from each sheriffdom or area has been calculated as follows and is shown in the distribution map overleaf.

The map conveys the relative weight of litigation originating in different parts of Scotland.

<table>
<thead>
<tr>
<th>Sheriffdom or area</th>
<th>no. of litigants</th>
<th>%age of total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aberdeen</td>
<td>232</td>
<td>5.58%</td>
</tr>
<tr>
<td>Argyll</td>
<td>34</td>
<td>0.82%</td>
</tr>
<tr>
<td>Arran</td>
<td>2</td>
<td>0.04%</td>
</tr>
<tr>
<td>Ayr</td>
<td>278</td>
<td>6.68%</td>
</tr>
<tr>
<td>Banff</td>
<td>36</td>
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<tr>
<td>Berwick</td>
<td>141</td>
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</tr>
<tr>
<td>Bute</td>
<td>1</td>
<td>0.02%</td>
</tr>
<tr>
<td>Location</td>
<td>Litigants</td>
<td>Percentage</td>
</tr>
<tr>
<td>------------------</td>
<td>-----------</td>
<td>------------</td>
</tr>
<tr>
<td>Caithness</td>
<td>6</td>
<td>0.14%</td>
</tr>
<tr>
<td>Clackmannan</td>
<td>18</td>
<td>0.43%</td>
</tr>
<tr>
<td>Dumbarton</td>
<td>33</td>
<td>0.79%</td>
</tr>
<tr>
<td>Dumfries</td>
<td>110</td>
<td>0.79%</td>
</tr>
<tr>
<td>Edinburgh</td>
<td>980</td>
<td>23.56%</td>
</tr>
<tr>
<td>Elgin</td>
<td>55</td>
<td>1.32%</td>
</tr>
<tr>
<td>Fife</td>
<td>394</td>
<td>9.47%</td>
</tr>
<tr>
<td>Forfar</td>
<td>279</td>
<td>6.71%</td>
</tr>
<tr>
<td>Haddington</td>
<td>167</td>
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<tr>
<td>Inverness</td>
<td>84</td>
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</tr>
<tr>
<td>Kincardine</td>
<td>63</td>
<td>1.51%</td>
</tr>
<tr>
<td>Kirkcudbright</td>
<td>73</td>
<td>1.76%</td>
</tr>
<tr>
<td>Lanark</td>
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<td>8.08%</td>
</tr>
<tr>
<td>Lewis</td>
<td>1</td>
<td>0.02%</td>
</tr>
<tr>
<td>Linlithgow</td>
<td>68</td>
<td>1.64%</td>
</tr>
<tr>
<td>Orkney</td>
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<td>0.72%</td>
</tr>
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<td>56</td>
<td>1.35%</td>
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<tr>
<td>Perth</td>
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<td>6.56%</td>
</tr>
<tr>
<td>Renfrew</td>
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<td>1.13%</td>
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<tr>
<td>Ross</td>
<td>52</td>
<td>1.27%</td>
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<tr>
<td>Roxburgh</td>
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<td>2.09%</td>
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<td>Selkirk</td>
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<tr>
<td>Stirling</td>
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<td>2.60%</td>
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<tr>
<td>Sutherland</td>
<td>8</td>
<td>0.19%</td>
</tr>
<tr>
<td>Shetland</td>
<td>10</td>
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</tr>
<tr>
<td>Wigton</td>
<td>69</td>
<td>1.66%</td>
</tr>
</tbody>
</table>

N.B. When Edinburgh and the Constabulary of Haddington (which was always used in a designation of origin) are linked, as they should be, under the sheriffdom of Edinburgh, the number of litigants for Edinburgh becomes 1147 and the percentage of the total becomes 27.58%. Similarly, when Arran and Bute are linked the number of litigants becomes 3 and the percentage of the total becomes 0.07%. Lewis is part of Ross but is shown in the statistics and map as an individual entry.

**Outside Scotland**

<table>
<thead>
<tr>
<th>Location</th>
<th>Litigants</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>England</td>
<td>10</td>
<td>0.24%</td>
</tr>
<tr>
<td>Continent</td>
<td></td>
<td></td>
</tr>
<tr>
<td>France (Paris, Bordeaux)</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Denmark</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Flanders</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Middleburgh</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>Norway</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>13</td>
<td>0.31%</td>
</tr>
</tbody>
</table>

**Total provenances**

<p>| | | |</p>
<table>
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<tr>
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</thead>
<tbody>
<tr>
<td></td>
<td>4159</td>
<td>100%</td>
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</tbody>
</table>
ABBREVIATIONS

Agric. Hist. Rev. - Agricultural History Review
C.U.P. - Cambridge University Press
Eccles. Printers - Ecclesiastical Printers
Eng. Hist. Rev. - English Historical Review
E.U.P. - Edinburgh University Press
Jour. Mod. Hist. - Journal of Modern History
Jur. Rev. - Juridical Review
O.U.P. - Oxford University Press
Rec. of Soc. and Econ. Hist., - Records of Social and Economic History
R.P.C. - Register of Privy Council of Scotland, First series, 1545-1625.
Scot. Acad. Press. - Scottish Academic Press
Scot. Econ. and Soc. Hist. - Scottish Social and Economic History
Scot. Hist. Rev. - Scottish Historical Review
Scot. Lit. Jour. - Scottish Literary Journal
Scot. Rec. Soc. - Scottish Record Society
Scot. Studies - Scottish Studies
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CS7/189 Feb. 12 1600 – June 27 1600 ; Scott, Acts and Decrees
CS7/190 March 14 1600 – Jan. 1 1601 ; Hay, Acts and Decrees
CS7/191 June 28 1600 – Dec. 13 1600 ; Scott, Acts and Decrees
CS7/192 July 4 1600 – March 7 1601 ; Gibson, Decrees
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( NOTE CS7/188 was damaged)

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Minute Book of Decrees
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Minute Books containing Deeds

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CS10/2 Jan. 20 1594 – April 29 1603 ; Gibson
CS11/1 Jan. 2 1586 – July 28 1617 ; Hay, Decrees
CS11/2 June 1 1586 – March 1639 ; Hay, Processes
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( NOTE CS11/2 and CS11/3 are differently arranged)

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