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# Local Customs and Common Laws

*Essays on the Law Governing Maritime  
Commerce in Sixteenth-Century Scotland*

*By*

J.D. Ford



BRILL | NIJHOFF

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## Preface

This collection of essays may be viewed to some extent as a companion volume to the same author's *The Emergence of Privateering*, published by Brill in 2023, since the writing of both books arose from his editing of *Alexander King's Treatise on Maritime Law*, published by the Stair Society in 2018. The writer of that sixteenth-century treatise devoted two chapters to discussion of the law governing the raiding of enemy shipping in wartime and the taking of reprisals in peacetime, and he planned to write a further chapter on illegal seizures by pirates, all topics dealt with in the 2023 book. King devoted several other chapters to discussion of the law governing maritime commerce in Scotland, examining topics dealt with in this book. However, whereas the 2023 book was designed to address a single question – how did privateering emerge as a new category of maritime raiding, distinct from the three categories that interested King? – and looked beyond sixteenth-century Scotland, this collection is designed to explore various aspects of the commercial law applied to shipping in that period and place, with different essays addressing different questions. Apart from the final essay, which attempts to draw conclusions from the preceding ten, each essay ought to make sense if read in isolation from the others. Nevertheless, the collection as a whole does have a unifying concern. If the contrast between the wartime raiding discussed by King and the wartime raiding later known as privateering demanded an explanation, there is also a significant difference between the commercial law discussed by King and the commercial law applied in the courts of the coastal towns of Scotland, which again demands an explanation. After an introductory essay concerned with discovering which courts tended to handle disputes over maritime trade, the first part of the collection contains essays on the law applied in the courts of the coastal towns, although the third essay in that part also considers the law applied in other courts. The second part of the collection contains essays on the writing of treatises by King and two of his contemporaries, and the third part contains essays on the relationship between the law of the towns and the law in the treatises. The conclusions drawn in the final essay are also concerned with this relationship, primarily between local customs and the *ius commune* taught in the European universities, although other types of common law are also considered.

Versions of four of the essays included in this collection have been published before. The second appeared in J.W. Armstrong and E.B.I. Frankot (eds), *Cultures of Law in Urban Northern Europe: Scotland and Its Neighbours, c. 1350-c. 1650* (London, 2021), the sixth in the *Journal of Legal History* in 2013, the ninth in

P. Hellwege and G. Rossi (eds), *Maritime Risk Management: Essays on the History of Marine Insurance, General Average and Sea Loan* (Berlin, 2021), and the tenth in A.R.C. Simpson and J.Ø. Sunde (eds), *Comparative Perspectives in Scottish and Norwegian Legal History, Trade and Seafaring, 1200–1800* (Edinburgh, 2023). Most were written in response to invitations to speak on specific topics at conferences, and the author is grateful both for those invitations and for permission to reprint the essays here, as well as for comments made by other participants in the conferences and by publishers' readers. Although the sixth essay was not written for a conference, instructive comments were again made when the topic was discussed at a meeting of the Scottish Legal History Group in 2013. Other essays owe something to papers presented at a 'Workshop on Practicks' in Aberdeen (the fifth) and at the British Legal History Conference in St Andrews (the fourth and seventh), and on these occasions too helpful comments were made. A few suggestions made in the final essay received an even more tentative airing at a conference held in Edinburgh shortly before the arrival of COVID-19. The essays previously published appear in a form closer to the versions originally written, and take more account of primary sources, but no attempt has been made to take further account of secondary sources published since their first appearance. Given the origins of most essays in a *pièce d'occasion*, there is inevitably a certain amount of repetition in the collection as a whole, as well as some revision of earlier thought, though not (it is believed) contradiction.

Especially when the restrictions imposed in response to the arrival of COVID-19 started to be relaxed, great assistance was received from archivists and librarians, some of whom had gone to some trouble to make sources available even while the restrictions were in place, and many of whom had already been very helpful before the restrictions were imposed. Further assistance has been received from Alessandra Giliberto, who as well as providing invaluable advice also arranged for a draft of the book to be read by anonymous experts, who suggested several improvements. The production process has been surprisingly painless for the author, thanks to the efforts of Petra Stiglmayer and David Aberra. It goes without saying that the author is deeply grateful to all these people for the help they have provided.

# Abbreviations

Use is made of the following abbreviations in the citation of manuscript sources in footnotes to the essays, where a code is given for the archive or library holding the source, followed by a code for the source, which should be recognisable to the relevant archivists or librarians if readers request access to the source.

## AYRSHIRE ARCHIVES (AA)

B6/11	court and council records of Ayr
B6/12	burgh court books of Ayr
B6/18	council minutes of Ayr

## ABERDEEN CITY ARCHIVES (ACA)

CA1/1	council register of Aberdeen
CA2/1	register of sasines of Aberdeen
CA2/2	register of deeds of Aberdeen
CA5/1	bailie court books of Aberdeen

## ABERDEEN UNIVERSITY LIBRARY (AUL)

MS 3070	papers of the Shipmasters Society of Aberdeen
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## BRITISH LIBRARY (BL)

Add. MS 12504	<i>De officio admiralitatis Angliae</i>
Add. MS 29439	<i>De officio admiralitatis Angliae</i>
Add. MS 48050	Latin digest of the 'auld lawes' of Scotland
Harley MS 2222	<i>De officio admiralitatis Angliae</i>
Lansdowne MS 142	papers relating to the English admiralty
Sloane MS 1605	<i>De officio admiralitatis Angliae</i>

## CAMBRIDGE UNIVERSITY LIBRARY (CUL)

Ee.4.21	collection of the 'auld lawes' of Scotland
Kk.1.5(4)	collection of the 'auld lawes' of Scotland

## DUMFRIES ARCHIVES CENTRE (DAC)

WC4	court and council records of Dumfries
-----	---------------------------------------

## DUNDEE CITY ARCHIVES (DCA)

BCMB	burgh court minute books of Dundee
GBD	guildry book of Dundee
MBBC	minute books of the burgh council of Dundee
PBD	protocol books of Dundee

## DUMBARTONSHIRE HERITAGE CENTRE (DHC)

DB1/10	town clerk's records of Dumbarton (general series)
10/20/16	register of ship entries at Dumbarton

## EDINBURGH CITY ARCHIVES (ECA)

- SL1/1 council register of Edinburgh  
 SL144/1 dean of guild court books of Edinburgh  
 SL234/1 bailie court books of Edinburgh

## ELGIN LIBRARY (EL)

- BCBE burgh court books of Elgin  
 EAST LOTHIAN ARCHIVE CENTRE (ELAC)  
 B30/9 burgh court books of Haddington  
 B30/10 burgh court books of Haddington  
 B30/13 council register of Haddington

## EDINBURGH UNIVERSITY LIBRARY (EUL)

- La. III 381a Scots digest of the 'auld lawes' of Scotland  
 La. III 408 reorganisation of Balfour's practicks  
 La. III 741 King's treatise on maritime law

## FIFE COUNCIL ARCHIVES (FCA)

- B/CUL/1/1 council minutes of Culross  
 B/KDY/2/1 burgh court books of Kirkcaldy

## FOLGER SHAKESPEARE LIBRARY (FSL)

- V.a.379 King's treatise on maritime law

## GLASGOW CITY ARCHIVES (GCA)

- C1/1 council register of Glasgow

## HIGHLAND ARCHIVE CENTRE (HAC)

- B1/1 burgh court books of Inverness

## HUNTER LIBRARY (HL)

- A1/19 burgh court books of Arbroath

## HARVARD LAW SCHOOL LIBRARY (HLSL)

- MS 6026 King's treatise on maritime law

## MAGDALENE COLLEGE LIBRARY (MCL)

- PL2208 Welwod's abridgement of all sea laws

## NATIONAL ARCHIVES AT KEW (NAK)

- C66 patent rolls of the English chancery  
 SP12 letters and papers of the English secretaries of state  
 SP14 letters and papers of the English secretaries of state  
 SP16 transcripts of documents relating to the English admiralty  
 SP52 state papers (domestic) of the reign of Elizabeth

## NATIONAL LIBRARY OF SCOTLAND (NLS)

- Acc. 11218/5 collection of the 'auld lawes' of Scotland  
 Adv. MS 7.1.9 collection of the 'auld lawes' of Scotland  
 Adv. MS 7.1.10 collection of the 'auld lawes' of Scotland  
 Adv. MS 22.3.4 practicks (Colville and Haddington)

Adv. MS 24.1.5	practicks (Colville)
Adv. MS 24.2.4b	practicks (Balfour)
Adv. MS 25.2.5(1)	abridgement of the acts of sederunt of the lords of council and session
Adv. MS 25.2.7	abridgement of the acts of sederunt of the lords of council and session
Adv. MS 25.4.11	Latin digest of the 'auld lawes' of Scotland
Adv. MS 25.4.12	collection of the 'auld lawes' of Scotland
Adv. MS 25.5.6	collection of the 'auld lawes' of Scotland
Adv. MS 25.5.8	collection of the 'auld lawes' of Scotland
Adv. MS 25.5.9	collection of the 'auld lawes' of Scotland
Adv. MS 25.5.10	collection of the 'auld lawes' of Scotland
Adv. MS 25.9.7(1)	collection of the 'auld lawes' of Scotland
Adv. MS 28.4.7	King's treatise on maritime law
Adv. MS 31.4.9	notes on the council register of Edinburgh
MS 941	minute book of the society of mariners of Ayr
MS 1948	King's treatise on maritime law
MS 9931	miscellaneous correspondence
MS 16497	collection of the 'auld lawes' of Scotland
NATIONAL RECORDS OF SCOTLAND (NRS)	
B6/1	protocol books of Ayr
B9/1	protocol books of Burntisland
B9/10	court and council records of Burntisland
B9/11	burgh court books of Burntisland
B19/1	notaries' minute books of Dundee
B20/10	burgh court books of Dunfermline
B21/1	protocol books of Dysart
B21/8	burgh court books of Dysart
B22/23	burgh court book of Edinburgh
B34/1/1	protocol book of Inverkeithing
B34/11/1	guildry minutes of Inverkeithing
B37/12	council records of Irvine
B48/7	council register of Linlithgow
B48/8	burgh court books of Linlithgow
B51/1	protocol books of Montrose
B51/10	burgh court books of Montrose
B72/5	court and council records of Wigtown
CC13/7	register of deeds of the commissariot of Kirkcudbright
CC20/11	register of deeds of the commissariot of St Andrews
CH2	kirk session records

CS1	books of sederunt of the lords of council and session
CS4	warrants of the books of sederunt of the lords of council and session
CS5	register of acts and decreets of the lords of council and session
CS6	register of acts and decreets of the lords of council and session
CS7	register of acts and decreets of the lords of council and session
GD1/47/1	documents relating to Montrose
GD1/413/15	notes on the court and council records of Dunbar
GD3/9/1	grant of admiralty jurisdiction over Cunningham
GD45/26/50	King's treatise on maritime law
GD63/37	foundation of bursary in memory of Martin Balfour
GD106/135	James Brown Craven bequest
GD111/3/8	receipt granted by Robert Douglas, servant of the duke of Lennox
GD112/71/5	Scots digest of the 'auld lawes' of Scotland
GD124/1/565	summons at the instance of Thomas Nudry, witnessed by John Nudry
GD150	Morton papers
GD220/1/F/8/4/1	charter granted to the duke of Lennox as admiral of Scotland
GD220/1/G/2/2/1	ratification of the duke of Lennox's infetment as admiral
GD220/1/G/2/2/2	renunciation of admiralty rights by the duke of Lennox
NP1	protocol books of notaries public
NP2	admission register of notaries public
PA5/3	collection of the 'auld lawes' of Scotland
PC1	register of acts of the privy council
PS1	register of the privy seal
RD1	register of deeds of the lords of council and session
RH9	miscellaneous papers (foreign)
PERTH AND KINROSS COUNCIL ARCHIVES (PKCA)	
B59/12	burgh court books of Perth
B59/13	burgh court register of decreets of Perth
ST ANDREWS UNIVERSITY LIBRARY (SAUL)	
B10/8	burgh court books of Crail
B13/10	court and council records of Cupar
B65/8	burgh court books of St Andrews
msKF51.R4	collection of the 'auld lawes' of Scotland
STIRLING COUNCIL ARCHIVES (SCA)	
SBC11/1	council minutes of Stirling
SBC37/1	burgh court books of Stirling

The following abbreviations are used in references to the basic sources of the civil and canon laws, which will be found in the *Corpus iuris civilis*, 3 vols, ed. T. Mommsen, P. Krüger, R. Schoell and G. Kroll (Berlin, 1872–7), and the *Corpus iuris canonici*, 2 vols, ed. A. Friedberg (Leipzig, 1879–81). Civil law sources are cited by book, title, text and section numbers, preceded by D. for *Digest*, J. for *Institutes*, C. for *Code* and N. for *Novels*. References to the *Decretum* are by *distinctio* (D.) and *capitulum* (c.), or – in the second part – by *causa* (C.), *quaestio* (q.) and *capitulum* (c.). References to the *Liber extra* are by book, title and chapter numbers, preceded by X.

# Glossary

As some readers may struggle with quotations from sources written in early-modern Scots, the meanings of the more difficult terms are listed here, though generally a little reflection will reveal that the words quoted are variants of familiar English words, especially if it is remembered that ‘quh’ was equivalent to ‘wh’. The meanings given below are those that the words appear to have had in the passages quoted. Fuller information may be found in W. Craigie, A.J. Aitken, J.A.C. Stevenson, H.D. Watson and M.G. Dareau (eds), *A Dictionary of the Older Scottish Tongue from the Twelfth Century to the End of the Seventeenth*, 12 vols (Chicago, London and Aberdeen, 1931–2002).

**afor** before  
**alanerlie** only  
**anent** about or concerning  
**astrickit** bound  
**avail** value or validity  
**ay** always or continually  
**bludstouth** violent theft  
**boist** threat or to threaten  
**brokett** drink made of ale and honey  
**brouke** to have or enjoy something  
**by** without  
**caution** guarantee  
**childer** crew  
**conduce** to hire  
**cordell** rope  
**coy** cabin bed  
**cummer** trouble or disturbance  
**dailisman** charterer of ship  
**effer** to belong or pertain to something  
**eik** to add  
**equipage** crew  
**feilzie** failure or to fail  
**fure** to carry or transport  
**graith** equipment of ship  
**how** hull  
**ilk** each  
**kippage** crew

- lafe** rest or remainder  
**leasum** permissible or licit  
**ma** more  
**mekill** much or many  
**nor** than  
**oncost** overhead  
**or** before  
**oupset** to compensate  
**ourelap** deck above hold of ship  
**outred** to fit out or equip a ship  
**poind** to distrain goods  
**prymgilt** levy on loading or unloading of goods  
**quhilk** which  
**quhill** until  
**quhinzear** short sword  
**raiff** robbery  
**reidschip** equipment of ship  
**replege** to withdraw action to own court from another  
**ring** to prevail  
**rive** to tear, rip or rend something  
**roup** auction or to auction  
**samekle** as much or many  
**sic** such  
**skaith** harm or damage  
**sleuth** sloth or negligence  
**spil** to spoil or destroy, specifically to spill, something  
**stouth** theft  
**syn** then  
**tane** the one of two  
**thir** these  
**thole** to permit or tolerate  
**thrang** busy activity or overcrowding  
**till** to  
**tinsale** loss  
**toder** the other of two  
**tow** cable  
**tyne** to lose  
**unlaw** fine for misdemeanour  
**ward** to distrain person  
**ware** to expend money generally, to buy and sell goods particularly

**warrandyse** warranty

**wathe** hunting or fishing

**werklum** tool or implement

**wier** seaweed