

‘A Mongrel of Early Modern Copyright’: Scotland in European Perspective

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The copyright history of Scotland is generally seen to be a post 1710 phenomenon.<sup>1</sup> English and European commentators, but also Scottish, have been guilty of this somewhat lazy approach. Scottish historians of copyright, such as they are, have however lauded the role of Scottish judges in the evolution of British copyright law in the eighteenth century. The significance of Scottish legal traditions and theory over the interpretation of copyright, helped lead, it is asserted, to the final judgment of the House of Lords in 1774. Certainly this interest in the ‘battle of the booksellers’ has encouraged an output focusing on the eighteenth century.<sup>2</sup> Not all though are convinced of the significance of copyright liberalisation. Recently in Richard Sher’s excellent volume *The Enlightenment and the Book* (2006), a study of Scottish authors and publishing in the Enlightenment, he states that the ‘Impact of Lords copyright decision [of 1774] should not be exaggerated’ and that trade expanded regardless of copyright.<sup>3</sup> However, this takes

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<sup>1</sup> For a general survey of Scotland see Alastair J. Mann, *The Scottish Book Trade 1500 to 1720: Print Commerce and Print Control in Early Modern Scotland* (Edinburgh: Tuckwell Press, 2000), chapter 4; and ‘Scottish Copyright Before the Statute of 1710’, *Juridical Review*, (2000) 11-25. The only previous survey is W.J. Couper, ‘Copyright in Scotland before 1709’, *Records of the Glasgow Bibliographical Society*, 9 (1931), 42-57; but see also Dr. John Lee, *Memorial for the Bible Societies in Scotland* (Edinburgh: Edinburgh Bible Society, 1824), *passim*. John Feather’s comprehensive, *Publishing, Piracy and Politics: An Historical Study of Copyright in Britain* (London: Mansell, 1994) does not consider Scotland before the eighteenth century.

<sup>2</sup> For Scottish accounts of the ‘bookseller war’ of 1746 to 1774 see Warren McDougall, ‘Copyright Litigation in the Court of Session, 1738-1749 and the Rise of the Scottish Book Trade’, *Edinburgh Bibliographical Society*, 5 (1987), 2-31; Richard B. Sher, ‘Corporatism and consensus in the late eighteenth-century book trade: the Edinburgh Booksellers’ Society in Comparative perspective’, *Book History*, 1 (1998), 32-93; Richard S. Thompson, ‘Scottish Judges and the Birth of British Copyright’, *Juridical Review*, (1992), 18-42; Hector L. MacQueen, *Copyright, Competition and Industrial Design*, 2nd edn, Hume Papers on Public Policy, III, 2, (Edinburgh: Edinburgh University Press, 1995), pp. 1-6. For English accounts see John Feather, ‘The Publishers and the Pirates: British Copyright Law in Theory and Practise, 1710-1775’, *Publishing History*, 22 (1987), 5-32; John Feather, *A History of British Book Publishing* (London: Croom Helm, 1988), pp. 76-83; and Feather, *Publishing, Piracy and Politics*, pp. 64-96. Also of use is A.W. Pollard, ‘Some Notes on the History of English Copyright’, *Library*, 4, 3, (1922), 97-114.

<sup>3</sup> Richard B. Sher, *The Enlightenment and the Book: Scottish Authors & Their Publishers in Eighteenth-Century*

no allowance of an early modern and perhaps ‘mongrel’ tradition of copyright in Scotland which profoundly influenced attitudes to intellectual property, encouraged freedom of commercial exploitation and was a precursor to a surprisingly robust Scottish Enlightenment.

Since the medieval conflict the Scottish Wars of Independence, Scots students went to Europe not England to learn law and so became conversant with the law of Rome, in tandem with Scotland’s own legal codes as confirmed in *Regium Majestatum*, a Glanville-based Scottish legal manual in wide-spread use by the late medieval period. Even when law became a subject for study in Scotland, firstly at King’s College, Aberdeen in the sixteenth century, the tradition remained that students were educated abroad, especially in Holland, and notably in Leiden or Utrecht. By the time Edinburgh introduced its first chair of law in 1707, rather obvious timing, a traditional Scottish approach to the law was well-established. Scots Law, before and after the Union, had developed along typical Continental lines: owing more to Roman and civic law and natural justice and not so much to precedent and custom. Scots Law, in theory at least, was grounded on social law and the test of evident utility. Furthermore, it showed some passion for codification, from James Dalrymple, 1st Viscount Stair’s *Institutions of the Law of Scotland* of 1681 to George Joseph Bell’s *Principles of the Law of Scotland* of 1829.<sup>4</sup> How did this impact upon attitudes to intellectual property? In short, a balance was struck between public interest and private right which limited the duration and scope of copyright.

Typically in sixteenth and seventeenth-century Scotland licensees obtained the right to ‘print, reprint, vend, sell and import’ but not specifically ‘to copy’. In Scotland copyright for individual books originated directly from patents granted by the Crown there being no Stationers’ Company to whom the registration and assertion of individual copyrights could be

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*Britain, Ireland & America* (Chicago: University of Chicago Press, 2006), pp. 25-8.

<sup>4</sup> See Mann, *Scottish Book Trade*, pp. 96-7.

devolved. Scottish book licences were granted by the Crown's representatives for a limited number of years, either a specific period or the lifetime of the licence holder, and after the 1590s this was extended to include heirs and successors. The first Scottish licence for an individual title sustaining the rights of heirs was John Gibson's licence to import a Psalms edition from Middelburg in 1599.<sup>5</sup> Therefore, like France, Spain and the Low Countries but unlike England, Scottish practice rejected the notion of perpetual copyright as simply 'unreasonable'.

'Reasonableness' was an important test for legal interpretation of book law in Scotland. For example, when in June 1614 the printer/publisher Andrew Hart purchased from King James VI and I exclusive rights to commission printing overseas for import into Scotland, the Scottish Privy Council then delivered one of the most significant judgments in Scottish book history. Although Hart came armed with a letter from the King demanding confirmation of his rights, the Council rejected the privilege entirely. The words of the judgment provide a dramatic illustration of executive views about the licensing of the press, which would, in the 1670s and 1680s, be reflected in the opinions of the Scottish Parliament:

The freedom, liberty and privilege of printing, importing and selling of all such books and volumes which are allowed and not forbidden ought to be free to all His Majesty's subjects and not conferred and given to any one person without great hurt and prejudice to the country, because every such private freedom, liberty and privilege is not only a monopoly of evil consequence and example, but will give occasion to alter and raise, heighten and change the prices of all books and volumes at the appetite and discretion of the person and persons in whose favour the privilege shall happen to be conferred, and

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<sup>5</sup> *Registrum Secreti Sigilli*, [PS], National Archives of Scotland [NAS], PS.1 .71, 47r printed in Lee, *Memorials* appendix xii; Mann, 'Scottish Copyright', p. 12.

for this reason the said Lords ordain the gift and privilege purchased by the said Andrew Hart from the king to be halted, and in no way to be passed or expedited.<sup>6</sup>

The concept of ‘reasonableness’ is illustrated in other cases. After Agnes Campbell, Scotland’s wealthiest early modern printer, inherited from her husband Andrew Anderson the royal patent of King’s Printer in 1676, she strived to protect her privileges. However, when in autumn 1681 she printed an edition of the acts of Parliament, not unreasonably given the royal patent, she was challenged before the Privy Council by the printer David Lindsay and partners who had acquired the right to print parliamentary acts by licence of the Clerk Register, the chief government administrator with responsibility for statute printing. The Privy Council confirmed Lindsay’s right, and ordered the burning of Campbell’s stock. Her appeal to the Court of Session in the winter of 1682-83 failed and her argument, that ‘one press [was] sufficient’ for official documents, was seen by the investigating committee as acting, like her old patent, ‘to restrain the liberty of printing too much’. The case was, nonetheless, a temporary setback for Campbell who proved one of the most successful litigants in early book history.<sup>7</sup>

After the 1603 Union of the Crowns notions of copyright in Scotland and England continued to develop along different lines. In early modern England two forms of copyright co-existed – firstly, the ‘printing patent’ granted by the sovereign, and secondly, after 1557, the

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<sup>6</sup> *Register of the Privy Council of Scotland [RPCS]*, i, 10, pp. 827-8. Text modernised by the author.

<sup>7</sup> John Lauder of Fountainhall, *Historical Notices of Scottish Affairs*, 2 vols, (Edinburgh: Constable, 1848), I, p. 311; *RPC*, 3, 7, 257; NAS. Registrum magni sigilli [RMS] Register of the Great Seal of Scotland manuscript registers, C3/10. no.343; for the appeal, which was concluded in January 1683, see John Lauder of Fountainhall, *The Decisions of the Lords of Council and Session from June 6th 1678 to July 30th 1712*, 2 vols, (Edinburgh: Hamilton and Balfour, 1759-61), I, p. 205 and Lauder, *Historical Notices*, I, p. 393. For a summary see Alastair J. Mann, ‘“Some Property is Theft”: Copyright law and illegal activity in early modern Scotland’, in *Against the Law: Crime, Sharp Practice and the Control of Print*, ed. by Robin Myers, Michael Harris and Giles Mandelbrote (London: British Library, 2004), pp. 44-6.

Stationers' copyright, in essence the former public and latter private.<sup>8</sup> But the transfer and purchase of private copyrights between Stationers' guild members from the 1580s encouraged the monopoly grip on copyrights by a small group of copyholders. This trend intensified when in 1603 James VI and I gifted to the Stationers' Company the valuable patents granted to John and Richard Day, for primers and psalters, and to James Roberts and Richard Watkins, for almanacs and prognostications. These transfers, with unintended consequences, became the legal basis for the 'English Stock', and thereafter began the frantic buying and selling of copyholding within the Stationers' Company, and the accumulation of patents into even fewer hands. King James's intentions were to free-up privileges in response to general fears over monopoly trading. But when subsequently the English Statute of Monopolies (1624) limited to fixed periods patents in inventions and industrial processes, books were exempted.<sup>9</sup> In Scotland, meanwhile, the duration of copyright deliberately shadowed that of manufacturing patents. Although the Statute of Monopolies did not apply in Scotland, James VI encouraged the Scottish Privy Council to set up a commission of grievances over monopolies in May 1623, and in 1641 the Scottish Parliament reviewed some major monopolies 'because of the great hurt' suffered by all, and 'patents purchased for the benefit of particular persons in prejudice of the public' were ended. However, books were not on the agenda in Scotland in 1623 or 1641 as they were already subject to limitations, and yet the judgment of 1614 appears to be linked to some monopoly concerns.<sup>10</sup> In

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<sup>8</sup> Mark Rose, *Authors and Owners: The Invention of Copyright* (London: Harvard University Press, 1993), pp. 11-12; Lyman Ray Patterson, *Copyright in Historical Perspective* (Nashville: Vanderbilt University Press, 1968), pp. 78-113. For general summaries see Pollard, 'Notes on the History of Copyright in England'; Feather, *History of British Publishing*, and Cyprian Blagden, *The Stationers Company, 1403-1959* (London: Allen and Unwin, 1960), *passim*.

<sup>9</sup> 21 James I c.3. For an account of the general monopoly controversy see Christine MacLeod, *Inventing the Industrial Revolution: The English Patent System, 1660-1800* (Cambridge: Cambridge University Press, 1988), pp. 10-19; Rose, *Authors and Owners*, pp. 45-7; Paterson, *Copyright*, pp. 86-7; Mann, 'Copyright and illegal activity', pp. 33-4.

<sup>10</sup> *RPCS*, 1, 13, pp. 219-22, 299-302 and 240; K.M. Brown *et al*, *The Records of the Parliaments of Scotland [RPS]*,

due course limited copyright in Scotland helped in 1710 to ease British statutory copyright back into line with that for industrial patents north and south of the Border.

It is important, however, not to exaggerate the difference between England and Scotland over copyright. Licences granted by the English Crown, or the ‘printing patent’, which initially pre-date the Stationers’ copyright, continued throughout the early modern period. The first of these, granted in 1512 by Henry VIII to John Rastell, was to print *Progymnasmata* by Thomas Linacre. In Scotland the first royal patent was that general gift, for statutes, histories, chronicles and the like, given by James IV to Scotland’s first printers Walter Chepman and Andro Myllar in 1507, and although this was directed mainly at printing Bishop William Elphinstone’s breviary the *Breviarium Aberdonense* (1510), it was clearly not a patent for a single act of publication. The first such Scottish example was the patent granted to Thomas Davidson in 1541 to print for six years the acts of the Scottish Parliament. These Scottish examples correspond to the two types of prerogative patent operating in England, the Chepman and Myllar licence – ‘general’, for life and containing generic classes of books, and the Davidson variety – ‘particular’ and limited in time, in England typically to licences of seven to ten years.<sup>11</sup> It is clear then that before the Stationers’ Company the practicalities of copyright in England and Scotland were pretty similar. Nonetheless, while it muddied the waters that the Stationers’ Company made the impractical acquisition in 1632 of the Scottish King’s Printer patent, before they withdrew back to London in 1670, Anglo-Scottish divergence became the common trend.<sup>12</sup>

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<<http://www.rps.ac.uk>>, (St Andrews: University of St Andrews, 2007), *RPS*, 1641/8/192 [accessed 30 October 2008]; Mann, ‘Copyright and Illegal Activity’, p. 34. The monopolies abolished in Scotland in 1641 included those for tobacco, leather, pearling and armoury.

<sup>11</sup> Patterson, *Copyright*, pp. 86-7; *Registrum Secreti Sigilli regum Scotorum: Register of the Privy Seal of Scotland* (printed series) [RSS], 1, p. 223 no. 1546; and R. Dickson and J.P. Edmond, *Annals of Scottish Printing: from the introduction of the art in 1507 to the beginning of the seventeenth century*, (1890, reprinted Amsterdam: Gerard Th. Van Heusden, 1975), pp. 7-8; NAS, PS.1.3, 129; RSS, 2, p. 653, no. 4335.

<sup>12</sup> Blagden, *Stationers’ Company*, pp. 138-45; Mann, *Scottish Book Trade*, p.117. A wide historiography exists on

Before 1710 Scottish copyright depended on government patents sustained by royal prerogative. The Privy Council was the main licensing authority in this period, although until around 1610 copyright licences for particular titles were confirmed via patents that passed the Scottish Privy Seal, in which royal gifts of appointments, pensions and private monopolies were confirmed, and occasionally thereafter where the King had a specific personal interest. This is seen, for example, in the 1616 privilege granted to James Primrose to print the ‘catechism’ *God and the King*, a liturgical work composed for, and probably in consultation with, King James himself. Subsequently, the surviving registers of the Privy Council reveal that almost all book licences were enacted and recorded in decreta registers (private business) from the 1670s, with only national publishing concerns, such as David Wedderburne’s twenty-one year licence for a new national grammar in 1632, the winner of a national ‘battle of the grammars’ competition, being considered public business for recording in the Council’s acta registers.<sup>13</sup>

Copyright was not merely conveyed by central government, however, and some patents had local origins. Unlike London, Edinburgh never reached a condition of regulatory supremacy, in spite of brief attempts by the royal printer Andrew Anderson to establish an Edinburgh society in the early 1670s.<sup>14</sup> So, although printing did not commence in Aberdeen, Glasgow and Dundee until 1622, 1638 and 1703 respectively, no centralised limitation was placed on the proliferation of presses, and royal burghs were by their medieval charters authorised to license all commercial activity, including presses. After the Restoration the ‘printing burghs’ gave local copyright protection for a variety of burgh almanacs, diurnals, newssheets and newspapers, such as

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the Stationers’ Company but see especially Robin Myers and Michael Harris (eds.), *The Stationers’ Company and the Book Trade, 1550-1990* (Winchester: St Pauls, 1997); and Robin Myers, *The Stationers’ Company Archive: an account of the records, 1554-1984* (Winchester: St Pauls, 1990).

<sup>13</sup> NAS, PS.1.85, 245r-247v and RPCS, 1, 10, pp. 534-8; RPC, 2, 4, pp. 168-9 and 500-1; NAS. Manuscript Privy Council Registers, PC. 2.24. 319 v; Mann, ‘Scottish Copyright’, p. 15.

<sup>14</sup> Mann, *Scottish Book Trade*, pp.17-18, 115, and 120; Mann, ‘Copyright and illegal activity’, p. 44.

Aberdeen Town Council's licensing and protection of the *Aberdeen Almanac* from the 1660s.<sup>15</sup>

The Scottish Parliament itself sometimes licensed prestigious or national publishing activity. As with the government, it mostly acted over censorship, but it also ratified the general gifts to king's printers, and authorised national texts, such as the *Directory of Public Worship* introduced by the Covenanters in 1645. Worthy law texts could also be granted copyrights by Parliament. In 1633, in the presence of Charles I, Parliament agreed that Robert, son to Thomas Craig, should be licensed for twenty-one years to print in three volumes his father's great treatise on Scottish land law *Jus Feudale*. A committee appointed to oversee the printing was headed by Charles I's Lord Advocate, Thomas Hope of Craighall, himself a significant published jurist. This publishing venture was of long duration. Since Craig's death in 1608 the Privy Council and Parliament had recommended publication of Craig's writings to King James but to no avail. Hope and his committee also failed to make progress and, while manuscript versions of *Jus Feudale* circulated, the first printing did not appear until the Edinburgh edition of 1655.<sup>16</sup>

Copyright term is crucial to the potential for commercial exploitation of literary property. The extent and width of the right granted and the sanctions or compensation for breach are also vital. One of the clear indicators that Scottish early modern copyright was significant is seen in the standardised terms and conditions that developed during the seventeenth century. As we have seen, English copyright tended to extend for seven to ten years under the 'printing patent', and in perpetuity where registered with the Stationers' Company. Although short-term renewals were generally available, contemporary German, French and Italian publishers were often granted

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<sup>15</sup> *Extracts from the Records of the Burgh of Aberdeen*, ed. John Stuart, 2 vols, (Edinburgh: Scottish Burgh Record Society, 1871-2), 1, pp. 245-6; Aberdeen Council Records, lv, f. 66-7; and J.P. Edmond, *The Aberdeen Printers, 1620 to 1736*, 4 vols, (Aberdeen: J & J.P. Edmond & Spark, 1884) 4, p. xiv; Mann, *Scottish Book Trade*, pp. 102-3.

<sup>16</sup> *RPS*, 1645/1/65 (6 February, 1645); *RPS*, 1633/6/65 (28 June, 1633) [accessed 30 October 2008]; Mann, *Scottish Book Trade*, p. 50; *States papers and miscellaneous correspondence of Thomas Earl of Melrose* ed. by James Maidment, 2 vols, (Edinburgh: Abbotsford Club, 1837), 1, pp. 43-4 and 84-5.



short licences of less than five years duration. Conventionally, Dutch copyright was for longer periods of fifteen to twenty-five years.<sup>17</sup> Comparisons with Scotland are of interest. By 1670, whether the licence holder was an author, printer or licensee, the standard term of copyright for particular works in Scotland had become nineteen years. The origin of this term is obscure, though it was a common Scottish period for leases, appointments and commercial monopolies. Generally, therefore, copyright terms in Scotland approximated to those of the Dutch and not the English or French. Scotland's copyright terms could, however, extend from as little as six years to the thirty-one years in the case of James VI's grant to Sir William Alexander for the Psalms in metre in 1627. Nevertheless, the logic for long or short licences was fairly consistent. Reprints, without the novelty of 'newness' and so seen as inferior intellectual property, were granted shorter copyright durations. The standard term for reprints was eleven years from the 1670s. Thus in 1671 the Edinburgh printers George Swintoun and James Glen were granted eleven year licences to reprint 37 sermons by the minister Andrew Gray. Fully revised editions received a full term copyright, as with James Kirkwood's new editions of his grammar and vocabulary published in the 1690s.<sup>18</sup>

Essentially, the breadth of right conveyed changed very little throughout this period. Rights of assignees were recognised in the earliest individual copyright patents, and heirs were first mentioned in those granted to the king's bookbinder John Gibson in 1599, and were ever-present in copyrights granted from the 1630s. The first private copyright given to an author, that

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<sup>17</sup> Lucien Febvre and Henri-Jean Martin, *The Coming of the Book: the Impact of Printing, 1450-1800*, translated from the French by David Gerard, ed. Geoffrey Nowell-Smith and David Wootton (London: N.L.B, 1976), p. 241; Elizabeth Armstrong, *Before Copyright, The French book-privilege system, 1498-1526*, (Cambridge: Cambridge University Press, 1990), pp. 16-17; P.G.Hoftijzer, *Engelse boekverkopers bij de beurs: De geschiedenis van de Amsterdamse boekhandels Bruyning en Swart*, (Amsterdam: APA-Holland University Press, 1987), p. 108. By 1700 the typical French licence had extended to ten years.

<sup>18</sup> NAS, PS. 1, 100, 305; RPCS, 3, 3, p. 306; RPCS, 3, 4, p. 292 and 5, 268; NAS, PC, 2, 26, 47 v. Mann, *Scottish Book Trade*, pp. 104-14.

given to William Niddrie in 1559 to produce a range of education books, granted to him ‘his factouris and assignais, to have onlie the prenting of the saidis volumes’ and that no subjects, printers and booksellers could ‘tak upoun hand to prent, sell, caus be prentit or sald [them] within this realm’. There is no evidence of book patents that granted export rights. Alexander Arbuthnet and Thomas Bassandyne’s licence of 1576, for Scotland’s first domestic Bible printing, was the first to forbid other book traders to import competing editions, and by the middle of the seventeenth century this was a conventional stipulation regardless of the likelihood of foreign imports. Indeed, odd and sometimes contradictory exclusions appeared in certain copyrights. In the valuable copyright for the works of George Buchanan awarded to George Mosman in 1699, exemptions were made for editions ‘already printing and imported’. This sensible qualification contrasts with the 1686 generic monopoly for prognostications awarded to James VII and II’s ‘household printer’ James Watson, the elder, who, somewhat absurdly, was given rights over and above almanacs already in print.<sup>19</sup> The most comprehensive protections were given to copyright on official business.

Meanwhile, the policing of copyright was at the behest of the copy holder. Customs officials had an important role in censorship but not over copyright. This generally placed the advantage with the wealthier, royal printers. With the great forty-one year monopoly granted to Andrew Anderson in 1671, on his appointment as King’s Printer, these powers developed a controversial nature within the trade and the courts, and especially after his widow Agnes Campbell succeeded in 1676.<sup>20</sup> James Watson, the younger, records in his *History of the Art of*

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<sup>19</sup> NAS, PS, 1.75, 127; RSS, 5, 1, pp. 143-4, no. 658; RSS, 7, p. 94, no. 642; NAS, PC, 2, 27, 252 v; Lee, *Memorials*, p. 146; RPCS, 3, 12, pp. 460-1; Fountainhall, *Decisions*, 1, p. 424. For a listing of the multi-title patents obtained by Gibson and Niddrie see Mann, *Scottish Book Trade*, pp. 236-9.

<sup>20</sup> RPS, 1672/6/158 (11 September, 1672) [accessed 30 October, 2008]. This relates to the ratification by Parliament of the Anderson patent. It was granted under the Scottish Great Seal in May 1671 but was not recorded in the

*Printing* (1713), the first history of printing in the British Isles, though based on Jean de la Caille's *Historie de L'imprimerie*, that in 1688 Campbell fell 'tooth and nail' upon the Edinburgh bookseller Alexander Ogston for importing London bibles into Scotland. In fact, the multi-title patent granted a century before to the Edinburgh printer Robert Smyth in 1599 was the first to grant searching powers to a licensee.<sup>21</sup>

The relative effectiveness of copyright regulation in Scotland before 1710 can be seen by the details of specific publishing histories. Sir George Mackenzie of Rosehaugh, the great Scottish jurist and Lord Advocate, saw his *Institutions of the Laws of Scotland* published in 1684 followed by two 'new editions' printed in 1688 and 1699, but not sufficiently new or revised to require a re-registration of copyright. The original patent was granted to John Reid, the elder, in 1684, and declared that no other was to print 'without license from the said author'. It seems Reid and Mackenzie agreed a contract before Mackenzie's death in 1691. The edition of 1688 was also printed by Reid, but acting for the Edinburgh bookseller and burgh magistrate Thomas Brown to whom the rights had been assigned by Mackenzie. Brown then published the 'third edition' in 1699. In October 1702, with the copyright due to expire the following year, the now elderly Brown transferred the rights to his son-in-law, and specialist law bookseller John Vallange of Edinburgh. Vallange petitioned the Privy Council and obtained a short extension to the licence for reprint purposes.<sup>22</sup> Details surrounding the valuable grammar copyrights are also revealing. Copyrights in James Kirkwood's grammar *Grammatica Facilis* and vocabulary

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register. For a detailed account of the subsequent disputes see Alastair Mann, 'Book Commerce, Litigation and the art of Monopoly: The Case of Agnes Campbell, Royal Printer, 1676-1712', *Scottish Economic and Social History*, (1998), 18, 2, pp. 136-9.

<sup>21</sup> James Watson, *A History of the Art of Printing* (Edinburgh: Watson, 1713), p. 16; Fountainhall, *Historical Notices*, 2, p. 866; Fountainhall, *Decisions*, 1, p. 494; NAS, PS, 1, 71, 86. For a list of the titles in Smyth's patents see Mann, *Scottish Book Trade*, pp. 239-40.

<sup>22</sup> *RPCS*, 3, 8, p. 410; NAS, PC.2.28, 235v-36r. The 1699 edition was the 1694 London edition with a cancelled title page.

*Rhetoricae Compendium*, originally granted in 1677, were due to expire in 1696 after nineteen years, and at the end of 1695 the author submitted his new editions for copyright to be re-established.<sup>23</sup> These examples confirm that authors and printers understood the valuable property represented by book copyright, and maintained a close watch on expiry dates. In Scotland, nearly half of private copyrights were granted directly to authors, and those like the lawyer Sir George Mackenzie were keen to protect their intellectual property.

The most desirable monopolies available to Scottish early modern book traders were those associated with royal appointments. These provided extensive generic copyrights. Early royal appointments, unlike particular copyrights, were for life, but it was only with the appointment of Walter Finlason as King's Printer in 1628 that heirs and assignees were recognised. However, for this and subsequent appointments all royal printer gifts were for a set period of years. Co-partnerships, hereditary rights and the involvement of assignees were only possible after such positions were limited to a fixed period.<sup>24</sup> But the attitudes of royal printers best illustrates the proprietorial view of copyright before 1710, as it increasingly became the concern of courts and of lawyers. Even 200 years before, courts took action to protect privileges and copyrights, as did the Scottish Privy Council in the winter of 1509/10. Following a complaint by Walter Chepman that booksellers had been illegally importing England's Salisbury 'use', the standard liturgy of England, the Council issued a warning to a group of merchants to immediately halt such trade and make way for the new Aberdeen Breviary which appeared during 1510. The legal complexities increased from the Restoration. Following the extensive monopoly powers granted to Anderson in 1671, the Privy Council and Lords of Session became

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<sup>23</sup> *RPCS*, 3, 4, p. 292 and 5, p. 268; *NAS*, PC, 2, 26, 47v; Mann, 'Copyright and illegal activity', pp. 40-1.

<sup>24</sup> *NAS*, PS, 1, 101, 120. For a summary of the history of the privileges of Scottish royal printers see Mann, *Scottish Book Trade*, pp. 114-22.

bogged down in over a decade of litigation between the Anderson press and its competitors. For example, in 1677 and 1680 Anderson's widow Agnes Campbell prosecuted the Glasgow printer Robert Sanders, the elder, before the Privy Council for infringing her rights. Confiscation, a huge £2000 fine and a short spell in prison were Sanders's fate in 1677, although in 1680 a more lenient judgment induced only confiscation of offending stock.<sup>25</sup> Some government exasperation with Campbell and her excessive monopoly was building towards the Lindsay judgment of 1681.

The Privy Council took on the role of an appeal court in cases between the book trades of competing burghs. In 1682 and 1683 Robert Sanders and Agnes Campbell each produced separate counterfeit editions of the highly successful 'Aberdeen Almanac'. This Aberdeen edition, with the help of the mathematicians at King's College, had become the market leader since the 1660s following its introduction by the Anglo-German printer Edward Raban in 1623. Deception came before illegality and in the 1660s and 1670s Robert Sanders in Glasgow printed various almanacs suggesting calculation by Aberdeen mathematicians, and Edinburgh editions also falsely claimed Aberdeen authority. To fight against this the Aberdeen printer John Forbes, the younger, stated in doggerel in his 1674 edition: 'No almanacks are from Aberdeen but where there Armes are to be seen', it being the habit of burgh printers to add the copyright symbol of the burgh coat-of-arms. The most infamous case then arose in 1684 in which year Forbes fumed in print: 'If Counterfit, then Hang for it!'. Forbes, with the support of the magistrates of Aberdeen, prosecuted Sanders and Campbell before the Privy Council in February that year. After the case was referred to a committee it ruled in favour of Forbes and Aberdeen. He won his

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<sup>25</sup> For the text of Council ruling on the Salisbury case see Dickson and Edmond, *Annals of Scottish Printing*, pp. 84-5; Mann, *Scottish Book Trade*, pp. 129-30. For Anderson/Campbell disputes see Mann, 'The Case of Agnes Campbell', pp. 136-43.

case in law because he was ‘in use and possession of printing yeirly ane almanack as printer of the toun and coledge of Aberdein’, and therefore his copyright was sustained. Aberdeen’s right to signify copyright had also been breached. Sanders had attempted to forge the city arms of Aberdeen which always adorned the almanac, and therefore his offence was viewed as especially reprehensible. Unfortunately for Forbes the drip, drip of counterfeit editions continued over this highly profitable genre.<sup>26</sup>

The Court of Session also became more involved in book trade matters as by the 1680s the level of litigation grew beyond the competence of the Privy Council. Cases concerning indebtedness tended to appear before the burgh bailie courts, especially Edinburgh, but various matters such as apprenticeship regulation and freedom of commerce came before the Session. The main three cases from the 1670s were: *the heirs of Archibald Hislop, bookseller v. Robert Currie and Agnes Campbell* (1678-1687), concerning the capacity of Currie as a bookseller in the interests of his step-children; *Robert Sanders, the younger, v. Bessie Corbett, his mother*, (1694-1705), about the character and value of book printing materials inherited by Sanders; and, *Watson, the younger v. Freebairn, Baskett and Campbell* (1713-18), over the validity of co-partnership agreements over the gift of King’s Printer.<sup>27</sup> Although only the last of these specifically concerned copyright, these cases helped ensure that the Lords of Session developed an expanding competency over the legal basis of the business of books, and points to the vast manuscript Session records as a vital and relatively untouched resource for researchers.

The copyright historiography of early modern Scotland is but a callow youth, and while

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<sup>26</sup> Mann, ‘Copyright and illegal activity’, pp. 47-52. The only comprehensive account of almanac printing is William R. McDonald, ‘Scottish Seventeenth-Century Almanacs’, *The Bibliothek*, 4, 1, 8, (1966), pp. 257-322.

<sup>27</sup> NAS, Court of Session Papers, Productions and Processes (CS) 157–66/2 (1687) and CS96/ 3-6 for inventory books for Hislop; CS138/5219 (November 1699); CS158/445 (April, 1705); and W.J. Couper, ‘Robert Sanders The Elder’, *Records of Glasgow Bibliographical Society*, 3 (1915), pp. 46-9 for Sanders; CS29, box 436.1 (papers from 1713, 1715-16 before House of Lords appeal 1718) for Watson. For details of the Watson case see Mann, ‘The Case of Agnes Campbell’, pp. 140-3.

the AHRC Primary Sources on Copyright History is a wonderful resource for historians of intellectual property, as yet it has no Scottish material before the Statute of Anne (1710). But there is much scope in the future for researchers of intellectual property. Acts of the Scottish Parliament, beginning with the first licensing act of 1552, the registers of the Privy Seal which record early copyrights, and Court of Session rulings all exist and require exhumation and analysis. Also contracts exist in estate papers and amongst the volumes of deeds in the National Archives of Scotland in Edinburgh. One such agreement was that struck between Sir James Dalrymple, President of the Court of Session, and Agnes Campbell, King's Printer, in 1684 for printing Dalrymple's *Institutions of the Law of Scotland*. The contract was made just before the author made his application for copyright. The author was to deliver up his manuscript, not give it to any other printer and allow Campbell exclusive reprint rights. The printer agreed to a specific type face, as per a type specimen sheet signed by both parties, to print at the rate of six sheets per hour, and to deliver out no copies without approval. Written copies and printed copies were to be kept locked away under financial penalties if they were released. Binding and advance copy delivery instructions are indicated. Finally the printer was forced to agree that she must use the privilege, must not print the book abroad and must not sub-contract the press work to another printer. This may be an agreement between an exceptional author and the royal printer, but it reveals much of the life beneath the surface of the commercial exploitation of literary property.<sup>28</sup>

Lastly and most crucially we have the Scottish Privy Council records comprising both copyright grants and case law. The position of this body is a unique one. While the excuse for its demise was the Council's apparent failure to deal with a threatened Jacobite invasion, it died in

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<sup>28</sup> RPS, A1552/2/26 (1 February, 1551/2) [accessed 30 October, 2008]. For 1681 agreement between Sir James Dalrymple of Stair and Agnes Campbell over the printing of Stair's *Institutions of the Law of Scotland*, see NAS, PS.3.3.336-7 and NAS, Earl of Stair Papers, GD.135, 2762, 2.

1708 for Scottish party-political reasons more than from English post-Union attitudes. Yet the timing of this demise, between the Union of 1707 and the 1710 Statute of Anne, is fundamental. 1710 is traditionally seen as legislation following pressure from the English book trade after decades of confusion over copyright. However, both the economic and trading consequences arising from the Union, with the free interchange of trade including books, and the end of the copyright agency in Scotland, confirm that Scottish factors were vital to the precise timing of this British legislation. What greeted English lawyers thereafter was an alternative copyright tradition that would first fuel and then help resolve Anglo-Scottish conflicts from the 1730s and 1770s. But while Scotland's copyright law before 1710 contrasted with that of its southern neighbour and exhibited Continental features, some commonalities were also evident, especially in the early years. Indeed, through the Stationers' Company, perhaps it was England not Scotland which was 'the mongrel of copyright' before the clumsy book trade engagement and marriage that was 1707 and 1710. Copyright certainly mattered to early modern Scottish printers, authors and regulators, and every bit as much as those of England. The Scottish system was sometimes idiosyncratic, but for the most part it operated well and with a liberal touch that was a foundation-stone of the Enlightenment within Scotland and beyond.