Collections Update:

Hope's Major Practicks

and the

Study of Scots Law

Item XS1 MS A075 in the archival collection of the University of Guelph is listed as “Papers of Thomas Hope of Craighall, Lord Advocate of Session, 1631. 339 leaves”. Unfortunately, closer examination of the manuscript reveals that these pages are not in fact papers which belonged to the most famous Scottish jurist of the early seventeenth century. While the catalogue’s assessment of the document contains a kernel of truth, the full story of the manuscript is much more complex and, from the standpoint of Scottish legal history, just as interesting as if the papers had matched the listing.

The source of the error in the catalogue’s description of the manuscript is also the first clue to both the identity and significance of the document. Written on the first page in a hand that appears to be roughly contemporary with the text is the inscription: –
Practiques + decisions of the Lords of Session
with several old lawes and books of Majestie
+ other books bound in the volume
with hes books + of the acts of
Parliament books of Sederunt and other
printed and manuscript books of our law
collected under several heads & titles
by Sr Thomas hope
of Carse second sone to Sir Thomas hope
his majesties advocat & ordiner
advocat admitted 27 of July 1631

The hand which wrote the above description
matches that which made some of the marginalia
found throughout the work, suggesting that it was
not that of the copyists (at least two) who wrote out the
text, but rather that of an early owner. This owner,
whose possible identity will be discussed below,
believed the text to have been compiled by Sir Thomas
Hope of Kerse, the second son of the Thomas Hope
of Craighall to whom the catalogue attributes the
manuscript. The date of 27 July 1631, is in fact the date
when Hope of Kerse was admitted to the bar to begin
a legal career that would see him raised to the College
of Justice in 1640 and created Justice-General shortly
before his death in 1643.¹

There is no surviving legal work that can be attrib-
uted to Thomas Hope of Kerse. Earlier Scottish jurists
made reference to a ‘Law Repertorie' compiled by him,
but the only surviving manuscript bearing this title
turns out to be a copy of what has come to be known as Hope's Major Practicks, a significant legal text produced by Kerse's father, Hope of Craighall.² Comparison with the version of these Practicks published by the Stair Society confirms that this is also the case with the manuscript in the Guelph archives. While the editor of Hope's Major Practicks concedes that the only surviving copies of the work appear to be the result of a transcription by Kerse, internal evidence within the Practicks leaves no doubt that the author was in fact Hope of Craighall.³ In this roundabout fashion, while the date is incorrect, the Guelph catalogue's attribution of their manuscript to Hope of Craighall is accurate: it is, in fact, a copy of his Major Practicks.

Practicks occupy an important place in Scottish legal history and in the development of Scots law itself, and Hope's Major Practicks are especially significant as a key manuscript from the little-studied period at the end of what some have, rather unfairly, termed the 'Dark Age' of Scots law.⁴ Practicks were handbooks compiled by prominent jurists and were designed to serve as guides to the various aspects of contemporary legal practice. They were copied and recopied for the use of later generations of advocates because of their convenient references to precedents and acts which were not published before the years around the turn of the eighteenth century.⁵ Hope's Major Practicks is the only surviving work of its kind between the work of the jurists Sir Thomas Craig (ca. 1600) and Viscount Stair (1681), and as such, provides unique insight into the
practice and evolution of Scots law over the course of the seventeenth century.6

Hope's Major Practicks are divided into eight sections which cover the range of Scots law in the early seventeenth century: civil and ecclesiastical law and government, personal rights, real rights, wills and succession, courts and jurisdictions, actions and diligence, process and evidence, and crimes. These 'parts' are divided into 'titles', or subsections. Under each title, reference is made to relevant precedents set by acts of Parliament, decisions of the Privy Council and Court of Session, the Laws of the Four Burghs, books of Sederunt, medieval legal texts, and decisions presided over or noted by the author himself. In the case of Hope's Major Practicks, the most interesting section is the practicae observationes, which covers the decisions and rulings in a host of cases, most of which involved the author as counsel, between the years 1608 and 1633. These decisions and observations are particularly informative in light of the venues in which Hope exercised his legal talents during these years.

During this period, Hope himself rose from a simple lawyer to become the King's Advocate and a Baronet of Nova Scotia.7 His legal career began in earnest in 1606, one year after he was called to the bar, when he defended the Presbyterian ministers accused of usurping the king's authority by calling a General Assembly without royal permission. Although the outcome of the case was a foregone conclusion and the ministers were duly convicted, Hope's brilliant defence attracted attention.
He moved on to occupy the lucrative and influential post of advocate assessor for the burgh of Edinburgh. This wide range of legal offices, coupled with the significance and influence of the posts that he held, gave Hope a unique perspective on the practice of law in early seventeenth-century Scotland. His notes of cases cover an incredibly wide cross-section of Scots law which provide the legal historian with a glimpse at the process of adjudication and the establishment of precedent, and the social historian with a view of who was pursuing what kinds of litigation in the courts during this period.

Despite the fact that it is a copy and not the lost original of a seminal work in the history of Scottish jurisprudence, the manuscript in the Guelph archives is still a valuable source for the historian. Although there is speculation that a relatively large number of copies of Hope's *Major Practicks* must have been in circulation among advocates in the latter half of the seventeenth century, the Stair Society could account for only eight surviving copies by 1937, none of which matched the description of the volume currently in the Guelph archives.\(^8\) It would appear then, that the University of Guelph is in possession of a previously unknown copy of the *Major Practicks* whose provenance must now be determined.

Initial attempts to trace the history of the manuscript proved difficult. It was purchased for the Scottish Studies Collection at the University of Guelph in 1980 from Alexander Frizell, a rare books dealer in
Peebles-shire, but no indication of its history prior to this purchase was passed on to the collections staff at Guelph. A plate on the inside of the front cover marks the manuscript as having been the property of Hew Dalrymple (1656-1735), Baronet of North Berwick, whose significance will be discussed later in this paper. There is no record of the book in any auction catalogues recording the sale of items from the Dalrymple estate, so it would seem that the best hope of determining the provenance of this copy of the *Major Practicks* lies within the manuscript itself.

While the hand of the Guelph manuscript suggests a date in the seventeenth century, internal evidence suggests a date later than 1656, the year of completion attributed to the earliest surviving copy of the *Major Practicks* that can be dated with any certainty. This copy, listed in the Advocate’s Library in Scotland as Nat.Lib.Adv.MS.24.3.10, was used as the master for the Stair Society’s edition of the *Major Practicks*, and can be dated on the basis of the clerk’s notations to 1656, some 10 years after the death of Hope of Craighall. The Right Honourable James Clyde, the editor of this publication, notes that in

the folios of the original the greater part of title 24 of part 6 were found to have been torn out, leaving only that part of the relative *practicae observationes* represented in this edition by paragraphs 102 to 130 (inclusive) of the title in question. In order to supply the consequent
defect, a collation was made of the other copies of the ‘Major Practicks’, and paragraphs 1 to 101 (inclusive) of the title ... are the result.\textsuperscript{11}

The Guelph manuscript seems unaware of the existence of the sections that were ‘torn out’ of the version used by Clyde, simply placing the title at the top of the page and beginning with the \textit{practica observatio} that forms paragraph 102 of the Stair publication. This confirms that it is a copy of Nat. Lib. Adv. MS 24.3.10 and should therefore be dated after 1656.\textsuperscript{12}

As mentioned above, the bookplate on the inside of the front cover indicates that the manuscript was once the property of Sir Hew Dalrymple, Baronet of North Berwick. Dalrymple was a jurist of no small repute, serving as Dean of the Faculty of Advocates and Lord President of the Council of Session. He was also an important figure in the political history of Scotland, sitting as a Scottish MP for eleven years and serving as a commissioner for the Union of 1707.\textsuperscript{13} The plate bears the arms of Dalrymple, and lists him as a Baronet and Lord President of Session in the inscription below the crest, which means that it was placed on the cover after 1698, the year in which he assumed both of these titles.\textsuperscript{14} It is possible however, that the manuscript had been in his possession in folio form for some time before it was bound near the turn of the eighteenth century, since Dalrymple had been admitted to the bar in 1677 and the marginalia seem to indicate that the manuscript was being used by a practising advocate.
The possibility also exists that Dalrymple inherited the manuscript from his father, the eminent Scottish jurist and legal scholar Viscount Stair, but questions over previous ownership and the identity of the writer of the marginalia will have to remain, pending the comparison of samples of handwriting from Dalrymple and Stair with the hand in the margins of this copy of the *Major Practicks*.

The most interesting irregularity in the Guelph manuscript is the chart drawn up between pages 177 and 178 of the manuscript written in what appears to be the hand of the copyist. The two page table seems to be an organizational flow chart of various charges and the legal process which follow from them. This chart is not a condensed plan of the layout of the *Major Practicks*, nor is it a direct variant of the divisions used by Stair later in the century. No mention is made by Clyde of a similar chart appearing in any of the other surviving copies of the *Major Practicks*. The chart appears to be a ‘crib sheet’ or mnemonic aid used to memorize key legal processes. Further research will be necessary to determine both its purpose and significance.

The Guelph copy of Hope’s *Major Practicks* is a legal text of considerable historical significance. On the off chance that the annotations and marginalia turn out to be the work of Viscount Stair, the University of Guelph archive is in possession of a document which would provide an invaluable glimpse into the influences that helped shape the legal thought of one of the foremost minds in Scots law. At the very least, it was the property
of a Lord President of Session and Dean of the Faculty of Advocates, and thus shows the importance of this text in contemporary legal practice. In any case, this manuscript represents a rare surviving document from the century in which the system of Scots law began to be codified and regularized. This system of law remained one of the few Scottish institutions to come through the Union of 1707 unchanged, and as such, it forms an essential component of the distinctive Scottish identity that exists today.

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Endnotes


3 Ibid. pp. xxv-xxviii.


5 Clyde, Hope's Major Practicks, p. xviii.

6 Ibid. p. xiii.
7 Scots Peerage, pp. 487-9. Hope remained a practising lawyer until his death on 1 October, 1646, but his legal work was overshadowed by his career as a statesman and trusted advisor of Charles I after 1633, see Clyde, Hope's Major Practicks, p. xi.

8 Clyde, pp. xviii-xix. The Guelph MS is bound in a leather binding whose spine bears the title HOP • COLL. On the inside of the front cover is a book plate that will be discussed below. As far as the possibility that the Guelph MS is one of those catalogued by Clyde, Nat. Lib. Adv. MS. 24. 3. 10 is ruled out because marginalia and closing inscriptions by the copyist are missing. Nat. Lib. Adv. MS. 24. 1. 6-7 and Nat. Lib. Adv. MS. 6. 2. 20 are eliminated by the latter's identification as the property of Lord Justice-Clerk Erskine of Tinwald and the fact that both are two volume sets. Nat. Lib. Neilson MS., No. 18 and University of Glasgow, BE. 8-y 14 are, unlike the Guelph MS, titled “Sir Charles Hope's Major Practicks of the Law of Scotland” and “Hope's Major Practicks” respectively. The three other copies are in the possession of the University of Edinburgh DC. 1. 56; Hg. 2. 414; Hg. 2. 415. All bear other titles or lack mention of the distinctive book plate and title of the Guelph MS.

9 At the time this paper was being written, an attempt was made to contact Mr Frizell in order to trace the origins of the MS. Tim Sauer, the head of acquisitions at the University of Guelph Library had had no contact with Mr Frizell for several years, and had reason to believe that the bookseller may have disposed of many of his records when he moved into a retirement home. Letters sent to Mr Frizell received no response.

10 Clyde, Hope's Major Practicks, p. xix.

Although how far after 1656 remains open to debate pending resolution of whether the copyist failed to notice the ‘torn out’ pages of the original or was working from a copy that was already lacking them. There is the unlikely possibility that Clyde’s copy was made from the Guelph manuscript, but this would imply misuse of the words ‘torn out’, which suggest that there is evidence of some violence done to the manuscript in the Advocate’s Library.

13 _Scots Peerage_, pp. 126-126.

14 Ibid. p. 126.

15 Examination of the other copies of Hope’s _Major Practicks_ in the National Library of Scotland and the Library at Edinburgh University confirmed that the chart was unique to the Guelph MS.