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Recovering Hidden Histories of Early America and the British Atlantic World with the Scottish Court of Session Digital Archive Project

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This article explores the Scottish Court of Session Records Digital Archive Project at the University of Virginia Law Library (UVA Law Library). The Library owns 58 linear feet of Session Papers printed between 1757 and 1834, a period of dramatic change in the British Atlantic world. Traditional indexing by case name and subject has limited scholars' ability to assess the utility of these manuscripts for non-legal scholarship. Creating a digital archive and research platform centred on these documents has the potential to generate new knowledge about Scotland, Great Britain and its empire. The project moves beyond traditional legal categorisation to emphasise the ways in which the documents in the UVA Law Library's collection reveal hidden histories of commerce, migration and society in the years surrounding the American Revolution. Despite its seat in Edinburgh, the Court entertained legal disputes spanning vast distances. This digitisation project reintegrates the spaces of the British Empire – Great Britain, North America, the Caribbean, western Africa and India – as they would have been understood and experienced in the eighteenth and nineteenth centuries.

In May 1835, the Edinburgh auctioneer Charles B. Tait placed an advertisement in *The Scotsman* for the upcoming estate sale of Andrew Skene's personal library.[2] Skene, who briefly served as Solicitor General for Scotland during Lord Melbourne's premiership, had died a month earlier from a 'brain fever' following 'a very short illness'.[3] Unmarried and without heirs, the 51-year-old advocate left behind a considerable library that reflected both his taste

[1] The authors wish to thank Kate Boudouris, Susanna Klosko, Mary Draper, Kelly Fleming, and the two anonymous reviewers for their assistance in improving this article. Readers may view the digital project (described below) at http://scos.law.virginia.edu.

[2] *The Scotsman*, 16 May 1835. All newspapers cited in this essay are sourced from *The British Newspaper Archive*, http://www.britishnewspaperarchive.co.uk.

[3] *Aberdeen Journal*, 8 April 1835; *West Kent Guardian*, 11 April 1835. For Skene's life see W. Anderson, *The Scottish Nation; or the Surnames, Families, Literature, Honours, and Biographical History of the People of Scotland*, III (Edinburgh, 1867), 474; A. Johnston, *A Short Memoir of James Young, Merchant Burgess of Aberdeen, and Rachel Cruickshank, His Spouse, and of Their Descendants* (Aberdeen, 1860), 38.

for Scottish literary culture and his long career representing clients before the Court of Session. Skene's shelves held the complete printed works of Sir Walter Scott's Bannatyne Club – of which he was an early member – and those of the Maitland Club.[4] Both clubs published and disseminated rare works of Scottish literature. And beyond the 'Standard Works' on English and Scots Law, his library also contained 'a Collection of Session Papers, with numerous M.S. notes by Mr. Skene'.[5] These papers represented his life's work. Composed of printed case documents from his own legal career and those of at least one other jurist, Skene used this collection to study and practise his trade. The Duke of Bedford purchased Skene's Bannatyne Club collection at the estate sale for just over £162.[6] The buyer of Skene's Session Papers remains unknown.

Skene's library of Session Papers now lives at the University of Virginia Law Library (UVA Law Library), where it is the focus of the Library's new digital archive project aimed at opening these legal documents to new scholarly inquiries. The Scottish Court of Session Project (SCOS) at the UVA Law Library broadens the intellectual geography of these unique legal materials by making them more widely available to scholars of the British Atlantic world.[7] Session Papers, the formal name for the case documents presented to the Court of Session, detail much more than legal controversies: they contain heretofore hidden histories of women and men, both ordinary and powerful, who navigated the contested spaces of the British Empire in the eighteenth and nineteenth centuries. Skene's collection covers the years 1757 to 1834 and captures stories of people living on the margins as well as at the centre of the British Empire. Traditional indexes or legal digests categorise Session Papers only by case name or legal subject, and these limited taxonomies obscure more than they reveal. By preference of the court, Court of Session papers from this period were most often printed, unlike other Anglo-American courts in the eighteenth century. Their printed form, along with the Court's diverse jurisdiction as Scotland's

4 *The Bannatyne Club, Lists of Members and the Rules, with a Catalogue of the Books printed for The Bannatyne Club since its institution in 1823* (Edinburgh, 1867), 8; *Catalogue of the Works Printed for The Maitland Club, Instituted March, M.DCCC.XXVIII. With Lists of the Members and Rules of the Club* (Edinburgh, 1828), 4.

5 *The Scotsman*, 16 May 1835.

6 *Notices Relative to The Bannatyne Club, instituted in February, M.DCCC.XXIII. Including Critiques on Some of Its Publications* (Edinburgh, 1836), 277.

7 Limited non-legal scholarly use of Session Papers is in part a reflection of accessibility issues. Good examples of scholarship using Session Papers include T. M. Devine, *The Tobacco Lords: A Study of the Tobacco Merchants of Glasgow and their Trading Activities c.1740–90* (Edinburgh, 1975); H. L. MacQueen, 'Ae Fond Kiss: A Private Matter?', in (ed.) A. Burrows, D. Johnston and R. Zimmerman, *Judge and Jurist: Essays in Memory of Lord Rodger of Earlsferry* (Oxford, 2013), 473–88; T. J. Shannon. 'A "wicked commerce": Consent, Coercion, and Kidnapping in Aberdeen's Servant Trade', *The William and Mary Quarterly*, 74, no. 3 (2017), 437–66. Daniel Livesay makes use of published law reports in his important book, *Children of Uncertain Fortune: Mixed-Race Jamaicans in Britain and the Atlantic Family, 1733–1833* (Chapel Hill, NC, 2018).

supreme civil court, make this collection a particularly productive candidate for digitisation two centuries later. The UVA Law Library's digital initiative uncovers the rich historical narratives contained in case documents and enables new insights into the politics, culture and economy of the British Atlantic in the years surrounding the American Revolution. Digital archiving reconstructs the Court of Session's imperial reach and emphasises Session Papers as important sources for non-legal scholarship.

The Skene Collection at the UVA Law Library represents only a small portion of the corpus of extant Session Papers for this period. The documents date between 1757 and 1834, a period that includes the Seven Years' War and the expansion of British America to the Reform Acts of 1832 and the reformation of the British electoral system. The collection occupies 58 linear feet of space and includes approximately 3,200 cases composed of approximately 10,000 individual bibliographic records. By contrast, the Faculty of Advocates Library, the Signet Library and the Centre for Research Collections at the University of Edinburgh hold more than 5,000 volumes of papers. One estimate suggests this may amount to over 250,000 individual bibliographic records.[8]

Nevertheless, we believe the scholarly intervention (or variants of it) we detail in the paragraphs that follow can serve as a model for similar Session Papers projects specifically and legal archives in general. Session Papers captured the voices of women, men and their legal representatives as they navigated the court system in this era. They represent the cultural, political and imperial complexity in and through which Scots, Americans, enslaved Africans, Englishmen, Indians, traitors, war heroes, authors, merchants and tenant farmers lived.

Recent scholarship and emerging scholarship calls for a reconsideration of the Court's place within the British Atlantic world.[9] Scotland's Court was one

[8] Conversation with Dr Joseph Marshall, Centre for Research Collections (CRC), University of Edinburgh, 8 November 2017. Since presenting a version of this article at the Scottish Records Association conference in November 2017 and preparing the manuscript for publication, the UVA Law Library has developed a partnership with the CRC at the University of Edinburgh to pursue a joint initiative that will expand public and scholarly access to Session Papers residing in the USA and UK. In addition to the UVA Law Library's holdings, major Session Papers collections in the USA include the Library of Congress's seven volumes dating between 1777 and 1838, and Princeton University's Department of Rare Books and Special Collections' three volumes dating between 1734 and 1765. Additional material from other repositories may be found in the *Eighteenth Century Collections Online* database, which requires a subscription. See Scotland, Court of Session, Session papers, July 24, 1777–June 15, 1838, [Edinburgh], n.d., Library of Congress, Washington, DC, http://lccn.loc.gov/48034346; Scottish Legal Tracts: From the Library of Ferguson of Raith, 1734–1765, (EX) KDC840.S362q, Princeton University Department of Rare Books and Special Collections, Princeton, NJ.

[9] The literature on the Atlantic world is vast. For an introduction to the field, see B. Bailyn, *Atlantic History: Concept and Contours* (Cambridge, MA, 2005); (ed.) J. P. Greene and P. D. Morgan, *Atlantic History: A Critical Appraisal* (Oxford, 2008). For examples of recent British Atlantic scholarship see S. J. Hornsby, *British Atlantic, American Frontier: Spaces of Power in Early*

of many supreme judicial bodies in Great Britain and its overseas colonies, including Massachusetts Bay's Superior Court of Judicature, Virginia's General Court and the Supreme Court of Judicature at Fort William in Calcutta. The Privy Council in London functioned as a final appellant court for the colonies while the House of Lords heard appeals from Scotland and England's high courts. Historians of British America, however, have emphasised the reception of English common law in the colonies, the role of local courts in the formation of civil society and the development of the imperial and national constitutions. In recent years, they have paid greater attention to the ways in which social and cultural values structured legal relationships.[10] Early American scholars in general have described Scotland as both a 'province' and 'nation' within the British Empire, a reflection of Scotland's minority status in the British Union beginning in 1707 and the Scots' aggressive pursuit of opportunities in the colonies. These scholars, along with historians of Scotland and empire, have noted the connections between Scotland, North America and the West Indies through studies of trade, emigration, religion and intellectual exchange.[11] And Court-specific studies, such as John Finlay's important history of the Court and the Edinburgh legal community, have stressed the Court's role in the development of Scottish Law and its social impact on the Scottish capital.[12] By thinking about the Court of Session and its work in a broader Atlantic context,

Modern British America (Lebanon, NH, 2005); C. G. Pestana, *Protestant Empire: Religion and the Making of the British Atlantic World* (Philadelphia, PA, 2009); J. L. Anderson, *Mahogany: The Costs of Luxury in Early America* (Cambridge, MA, 2012); Z. Anishanslin, *Portrait of a Woman in Silk: Hidden Histories of the British Atlantic World* (New Haven, CT, 2017).

10 While by no means exhaustive see, for example, (ed.) D. H. Flaherty, *Essays in the History of Early American Law* (Chapel Hill, NC, 1969); M. H. Smith, *The Writs of Assistance Case* (Los Angeles, CA, 1978); J. Horn, *Adapting to a New World: English Society in the Seventeenth-Century Chesapeake* (Chapel Hill, NC, 1996); (ed.) C. L. Tomlins and B. H. Mann, *The Many Legalities of Early America* (Chapel Hill, NC, 2002); M. S. Bilder, *The Transatlantic Constitution: Colonial Legal Culture and the Empire* (Cambridge, MA, 2008); J. P. Greene, *The Constitutional Origins of the American Revolution* (Cambridge, 2011); G. Edward White, *Law in American History*, I: *From the Colonial Years Through the Civil War* (Oxford, 2012); J. K. Lowe, *Murder in the Shenandoah: Making Law Sovereign in Revolutionary Virginia* (Cambridge, 2019).

11 On the concept of provinciality as well as the links between Scotland and America, see J. Clive and B. Bailyn, 'England's Cultural Provinces: Scotland and America', *The William and Mary Quarterly*, 11, no. 2 (1954), 200–13; Devine, *The Tobacco Lords*; J. M. Bumsted, *The People's Clearance: Highland Emigration to British North America, 1770–1815* (Edinburgh, 1982); (ed.) R. B. Sher and J. R. Smitten, *Scotland and America in the Age of the Enlightenment* (Princeton, 1990); D. Dobson, *Scottish Emigration to Colonial America, 1607–1785* (Athens, GA, 1994); (ed.) N. C. Landsman, *Nation and Province in the First British Empire: Scotland and the Americas, 1600–1800* (Lewisburg, PA, 2001); M. P. Dziennik, *The Fatal Land: War, Empire, and the Highland Soldier in British America* (New Haven, CT, 2015); (ed.) J. M. MacKenzie and T. M. Devine, *Scotland and the British Empire: Oxford History of the British Empire Companion Series* (Oxford, 2016).

12 J. Finlay, *The Community of the College of Justice: Edinburgh and the Court of Session, 1687–1808* (Edinburgh, 2012). See also Finlay's *Legal Practice in Eighteenth-Century Scotland* (Leiden,

we can begin to ask new questions that complicate our understanding of these major themes.

Although the Court's jurisdiction stopped at Scotland's borders, its reach extended into the King's American dominions and across national boundaries. In many ways, the 1707 Treaty of Union remade the Court into an imperial institution.[13] Article XIX of the Union Treaty preserved Scotland's legal system by granting criminal and civil courts 'the same Authority and Privileges as before the Union, subject nevertheless to such Regulations for the better Administration of Justice, as shall be made by the Parliament of Great Britain'.[14] Crucially, the Treaty transformed Scottish society by granting Scots unrestricted access to England's American colonies. Historians have shown how the Scots, English and Welsh forged a British identity over the course of the century through shared Protestant, imperial and Francophobic values.[15] Provincial Scots became, as Ned C. Landsman has argued, 'entrenched' in the commercial and administrative structures of empire. They held a number of colonial governorships, formed a significant portion of the British Army during the Seven Years' War, dominated the Chesapeake tobacco trade and emigrated in substantial numbers to colonies such as New York, North Carolina, and Jamaica.[16] Greater Scottish engagement with the Union and Empire over the course of the eighteenth century almost certainly increased the number of disputes the Court heard involving litigants from various corners of the British Atlantic.[17]

2015). For court reform, see N. Phillipson, *The Scottish Whigs and the Reform of the Court of Session, 1785–1830* (Edinburgh, 1990).

13 By characterising the Court of Session as an imperial institution we do not mean to imply that it was held in the same standing as the Privy Council in London or that it mattered more to British Americans than their own provincial courts. Far from it. It is to suggest, however, that the Court of Session and its work has an under-explored imperial past, one complicated by limited access to Session Papers and historiographical frameworks which privilege an Anglocentric source base.

14 Article XIX, *The Articles of UNION as they passed with Amendments in the Parliament of Scotland, and ratified by the Touch of the Royal Scepter at Edinburgh, January 16, 1707, by James Duke of Queensbury, her Majesty's High Commissioner for that Kingdom*, Parliament of the United Kingdom of Great Britain and Northern Ireland, http://www.parliament.uk/documents/heritage/articlesofunion.pdf.

15 L. Colley, *Britons: Forging the Nation, 1707–1837* (New Haven, CT, 1992); K. Wilson, *The Island Race: Englishness, Empire and Gender in the Eighteenth Century* (New York, NY, 2002); J. P. Greene, *Evaluating Empire and Confronting Colonialism in Eighteenth-Century Britain* (Cambridge, 2013); J. Brewer, *The Sinews of Power: War, Money and the English State, 1688–1783* (Cambridge, MA, 1990).

16 N. C. Landsman, 'The Provinces and the Empire: Scotland, the American Colonies and the Development of British Provincial Identity', in (ed.) L. Stone, *An Imperial State at War: Britain from 1689 to 1815* (London, 1994), 258–87, 259.

17 A fuller study of the Court as an imperial institution is needed to test this assumption, although it seems reasonable given the increasingly important role Scots played in the empire after 1707. Besides Session Papers, two other sources germane to the Court will

We can see evidence of British subjects and American citizens wrestling with these transatlantic developments in cases argued before the Court. In 1771, for example, Alexander, fourth Duke of Gordon, sued the Commissioners for Managing the Forfeited Estates annexed to the Crown over family lands attained under the Clan Act following the 1745 Jacobite uprising. The Credit Crisis of 1772 brought financial ruin to Alexander Cunningham and Company, a Glaswegian merchant firm with tobacco stores in Maryland, which later embroiled Cunningham's daughters and his former partners in a dispute over what remained of the defunct partnership. In 1805, a mutiny aboard a ship intended to transport African slaves to the British West Indies resulted in an insurance liability contest between the underwriters and the ship's owners. And in 1813, Jean Miller, a Scottish native then living with her husband in Albany, New York, struggled to retain an inherited lease for land in Stirlingshire against charges she had violated its terms by failing to occupy and cultivate the property within a specified period of time. These brief examples make plain that the Court and the Session Papers it produced have much to tell us about the transformation of the British Atlantic and the people who experienced it.[18]

Placing the Court of Session within a post-1707 British Atlantic context reveals the utility of Session Papers for producing expansive new scholarship. Session Papers collections, like all archives, are historically constructed things. The traditional ways in which they have been catalogued reflects their intended, and limited, use for jurisprudential research. The legal historian Paul Halliday has argued that the practice of law is at its heart an 'archival one' structured to serve the process of making and interpreting law. In his analysis of eighteenth-century Court of King's Bench records, Halliday showed how the work to assemble case materials into coherent records was as important to law-making as were the court's actual decisions. Clerks, librarians and archivists created systems of organised knowledge, including indices to locate and cross-reference cases in the court's library, which allowed the court and the legal community to carry out their duties. In doing so they inscribed historical meaning and purpose onto these records.[19]

be useful here. First, law reports such as those described below are an important resource. They offer brief synopses about a reported case, often providing some biographical and geographical information about the litigants involved in a dispute. Second, the Court's Minute Books in the National Records of Scotland (NRS) (record groups CS 16 and CS 17) describe each step of a case's journey through the litigation process. Our thanks to Tessa Spencer at the NRS for granting us permission to explore two of these volumes.

18 *Alexander, Duke of Gordon, v. The Commissioners for Managing the Forfeited Estates annexed to the Crown* (1771), Box 2; *Cunninghames v. Dougal* (*c.*1776), Box 3; *Brown, Huson, MacGauley and Company v. Smith and Others* (1805), Box 19; *Stirling v. Miller* (1813), Box 28. All in MSS-2015-01, Scottish Court of Session Records, University of Virginia Law Library (hereafter 'MSS-2015-01, SCSR, UVA Law Library').

19 P. D. Halliday, 'Authority in the Archives', *Critical Analysis of Law*, 1, no. 1 (2014), 110–42, 111.

The Court of Session's form and the legal process shaped the production of Session Papers.[20] A body of fifteen judges known collectively as the Senators of the College of Justice dispensed civil justice in Scotland's capital. The Court was divided into two parts. In the Outer House, individual judges sitting as a 'Lord Ordinary' handled initial pleadings and dealt with certain procedural matters. If a pursuer or a defender disagreed with a Lord Ordinary's decision, or interlocutor, they could appeal to the court's Inner House. There, a quorum of at least nine judges heard further proceedings. Outer House judges also referred particularly complex cases directly to the Inner House, along with cases deemed extraordinary in nature. The Inner House generated the vast majority of the Session Papers that now survive in the USA and the UK. From the Court's inception in the sixteenth century until the first decade of the eighteenth century, advocates, writers to the signet and other legal professionals produced handwritten case documents for the Court's benefit, although some did print their material. Beginning in 1710, the Court mandated print as the preferred form 'for the speedier Dispatch of Processes' that came before it.[21] Printers like David Willison of Craig's Close on High Street could produce multiple copies more rapidly, and likely with fewer errors, than a clerk might by hand.[22]

Printing documents enabled these case materials to circulate widely within Edinburgh's legal community. The Lords of Session, court officials and legal counsel all received copies, as did the Keeper of the Faculty of Advocates Library and law professors at the University of Edinburgh. Inner House proceedings created a great deal of printed content. As Angus Stewart, former Keeper of the Advocates Library, has noted, 'the six session months of 1789 [produced]

[20] Our understanding of the Court's structure, production of Session Papers and their curation in the Faculty of Advocates Library in the following two paragraphs relies heavily on the work of Angus Stewart, former Keeper of the Faculty of Advocates Library. Angus Stewart, 'The Session Papers in the Advocates Library', in (ed.) H. L. MacQueen, *Miscellany Four by Various Authors*, Stair Society 49 (Edinburgh, 2002), 199–224.

[21] Finlay, *The Community of the College of Justice*, 11–12. See also D. M. Walker, *The Scottish Legal System: An Introduction to the Study of Scots Law*, 8th edn (Edinburgh, 2001), 133–58, 291–3, and Walker's *A Legal History of Scotland*, V: *The Eighteenth Century* (Edinburgh, 1988). For the order to print Session Papers, see Act of Sederunt anent subscriving Informations, Petitions and Answers, 19 December 1710, in *The Acts of Sederunt of the Lords of Council and Session, From the 1628 to 1740, copied from the Books of Sederunt* (Edinburgh, 1740), 214.

[22] George Joseph Bell, 'Information for The Incorporation of Bakers of Dundee, Pursuers, against The Magistrates and Town-Council of Dundee, Defenders', 21 January 1803, Box 4, MSS-2015-01, SCSR, UVA Law Library; 'David Willison', in Scottish Book Trade Index, National Library of Scotland, http://www.nls.uk/catalogues/scottish-book-trade-index. Our thanks to Susanna Klosko for alerting us to this particular case document. Session Papers often feature the name of the individual(s) who printed them, making them ripe for a study of the Court's relationship with the Edinburgh printing industry.

24,930 quarto pages' in Inner House alone.[23] A single case might include dozens of documents filed over the course of several years. *Earl of Galloway v. Earl of Morton* (1759), for example, consists of fifteen documents totalling nearly 700 printed pages.[24] This represents the high end in the UVA Law Library's Skene collection while other cases, such as *Jamieson v. Kyle* (1778), included only a few documents. The UVA Law Library does not own all the materials associated with its cases. SCOS's design allows for collaborating institutions to link their data with the UVA Law Library's to reconstruct complete cases in a digital space.

Advocates such as James Boswell recognised the centrality of Session Papers to the Court's life. Two days after 'drinking strong rum punch' into the wee hours of the morning, Boswell watched fellow advocate James Dickson plead a case concerning day labourer wages in the Inner House. Dickson and the opposing counsel delivered oral arguments, but Boswell acknowledged that these oratory performances mattered less to the Court than the substance of their written arguments. 'So little attention is paid to pleading in the Court of Session', he noted, 'that I was the only lawyer who attended today from beginning to end, and for long intervals there was an absolute void in the benches'. Boswell made his point clearer by comparing the respective weapons of an enlightened Edinburgh advocate and a supposedly savage Highland soldier who fought in the last Jacobite uprising. 'Ours is a court of *papers*', he told his journal. 'We are never seriously engaged but when we write.' He likened oral argument to rebel Highlanders 'firing their musketry, which did little execution' in battle against government forces: 'We do not fall heartily to work till we take to our pens, as they to their broadswords.' The pen delivered legal facts and ferocity in ways that oral pleading could not.[25]

Advocates, court officials and law professors typically retained their personal Session Papers copies or consulted collections in the Advocates or Signet Libraries. They often had their material collated into leather-bound volumes for their private libraries. These volumes proved useful when preparing for future cases, general legal reference or a young advocate's education. Case documents often feature extensive marginalia, a reflection of their original owner's engagement with the arguments in the texts, the means by which he organised his collection, or both. The collection of Henry Homes, Lord Kames, rests among nearly 4,000 volumes of Session Papers in the Faculty of Advocates Library, as does that of Sir Ilay Campbell.[26] In some instances, like Boswell's Session Papers in the Advocates Library and Signet Library, materials from a personal collection

[23] Stewart, 'The Session Papers in the Advocates Library', 202. The NRS holds manuscript drafts of Session Papers as well. See, in particular, record group CS 96, Court of Session: Productions in Process.

[24] *Earl of Galloway v. Earl of Morton* (1759), Box 1, MSS-2015-01, SCSR, UVA Law Library.

[25] 2 February 1776, in (ed.) H. M. Milne, *Boswell's Edinburgh Journals, 1767–1786* (Edinburgh, 2001), 238. Evidence of Boswell's love of drink and the consequences of that affection is ubiquitous in his journals.

[26] 'Session Papers Collections', Faculty of Advocates Library, http://www.advocates.org.uk/faculty-of-advocates/the-advocates-library/session-papers-collections.

are now scattered across multiple collections and repositories.[27] In other cases, an individual absorbed through purchase or gift the private holdings of other advocates into their own, which remain intact.

We believe that the collection that became Andrew Skene's began as that of William Craig, Lord Craig, over 20 years before Skene's birth. A native of Glasgow, the son of a Presbyterian minister and a contemporary of Boswell, Craig was admitted as an advocate in 1768 and went on to enjoy a successful legal career that included his 1792 elevation to the Court of Session as Lord Craig.[28] Like Boswell and later Skene, Craig participated in Edinburgh's literary world. He was close friends with Henry Mackenzie, author of *The Man of Feeling*, and contributed a number of essays to Mackenzie's two periodicals, *The Mirror* and *The Lounger*.[29] Craig retained copies of the cases in which he was involved, along with other disputes for their legal precedent. He wrote his surname on a number of pages in addition to scribbling copious marginalia.[30] Evidence of Craig's ownership of these Session Papers disappears from the documents shortly before he fell ill and died in the summer of 1813.

We are uncertain when or how Skene acquired Craig's collection. Called to the bar in 1806, the Aberdonian native developed a successful legal practice in his own right and held a number of civic and royal appointments.[31] Henry Cockburn, his predecessor as Scotland's Solicitor General, later eulogised him as a decent and honest man. Cockburn lamented his friend's early death, imagining

[27] (ed.) G. H. Ballantyne, *The Session Papers of James Boswell: A Catalogue of those Papers Contained in The Signet Library and the Advocates' Library* (Edinburgh, 1969–80).

[28] 27 February 1768, in (ed.) A. Stewart, *The Stair Society: The Minute Book of The Faculty of Advocates*, III (Edinburgh, 1999), 184; W. Harvey, *Chronicles of Saint Mungo: Or, Antiquities and Traditions of Glasgow* (Glasgow, 1843), 347–8.

[29] For William Craig's essays, see *The Mirror; A Periodical Paper, Published at Edinburgh in the Years 1779 and 1780* (London, 1825); *The Lounger. A Periodical Paper, Published at Edinburgh in the Years 1785 and 1786. By the Authors of the Mirror*, 2 vols (London, 1794). For a selection of Henry Mackenzie's correspondence with Craig, see (ed.) H. W. Drescher, *Literature and Literati: The Literary Correspondence and Notebooks of Henry Mackenzie*, I: *Letters 1766–1827* (Frankfurt, 1989).

[30] For example, Robert Blair, of Avontoun, Lord Avontoun, 'Memorial for Richard Dick clothier in Jedburgh, Mary Dick spouse to Robert Thomson of Fodderly, and the said Robert Thomson for his interest, Pursuers; against Dr Robert Lindsay, and others, Defenders', 12 October 1776, Box 3, MSS-2015-01, SCSR, UVA Law Library. We confirmed Craig's handwriting by comparing it to correspondence in the Folger Shakespeare Library. See William Craig to Henry Mackenzie, April 1779, Folger MS W.b.72 (33), Folger Shakespeare Library, Washington, DC. Our thanks to Abbie Weinberg at the Folger Library for supplying us with this document.

[31] In June 1832, Skene was appointed to a committee to organise celebrations in honour of the Reform Bill's passage. The following year he was appointed to the Law Commission for Scotland, and William IV named him to the Commission for Inquiring as to the Existing State of Municipal Corporations in Scotland. *Edinburgh Evening Courant*, 9 June 1832; *London Courier and Evening Gazette*, 19 June 1833; *Caledonian Mercury*, 28 July 1833.

that Skene might have served as Solicitor General once again or even joined the Court of Session had he lived.[32]

The amount of material produced by Court proceedings, particularly after the transition to print, compelled recipients to organise their collections in ways that made them intelligible, intuitive, and accessible for their own and their colleagues' use. As Skene added to Craig's collection, retaining copies of cases from his own practice along with those he deemed significant, he or a clerk made several efforts to organise the papers. They developed a system to link cases across and within volumes by making simple marginal notations to indicate the location of another document set. It allowed them to cross-reference material, making Skene's searching and reading of the documents more efficient as he practised his trade. Conducting similar investigations into how other owners organised and established connections between cases in their personal collections would lead to a better understanding of how legal professionals structured legal knowledge in this period.

Much about what happened to the papers between 1835 and 1987 remains shrouded in mystery. The volumes were disbound at an undetermined point between Skene's death in the mid-1830s and the UVA Law Library's acquisition of the collection in the late 20th century. Sometime after their purchase at the 1835 estate sale, the Society of Advocates Library in Aberdeen acquired the papers.[33] Evidently, that Library sold the papers in the second half of the 20th century.[34] The UVA Law Library later bought them from a San Francisco rare book dealer. Only four volumes in the collection survive reasonably intact. The majority of the case documents remain grouped by case, held together by remnant bindings in chronological order. A lesser number are aggregated by particular themes. One of the surviving volumes bears the label 'Papers in Political Cases 1790–1'. It holds 21 cases spanning well over 1,000 pages.[35]

Further, Skene connected his personal collection to external sources and repositories. He wrote extensive bibliographic citations on the documents to link them with an often bewildering number of printed law reports, digests and dictionaries at his disposal. In the late seventeenth century, editors began compiling and publishing reported decisions found among Sir Alexander Gibson, Lord Durie's Session Papers and those of other prominent members of the legal community. Cases earned inclusion in published digests according

[32] 4 April 1835, in H. Cockburn, *Journal of Henry Cockburn: Being a Continuation of the Memorials of His Time, 1831–1854* (Edinburgh, 1874), 87–9.

[33] The stamp of the Library for the Society of Advocates in Aberdeen appears on a number of the documents, including Hugh Lumsden, 'Unto the Right Honourable, The Lords of Council and Session, The Petition of James Calder, Merchant in Aberdeen', 9 June 1810, Box 59, MSS-2015-01, SCSR, UVA Law Library. The Session Papers are not listed among the Society's 1938 Law Library catalogue, even though it seems to list published texts only: *Catalogue of the Law Library of the Society of Advocates in Aberdeen* (Peterhead, 1938).

[34] Conversation with Maria Robertson, Society of Advocates for Aberdeen Executive Secretary and Law Librarian, 8 September 2017.

[35] Box 22, MSS-2015-01, SCSR, UVA Law Library.

to their perceived importance to legal theory and case law.[36] These texts were essential tools for judges and other legal professionals to interpret and apply the law. Ironically, the judges did not issue written opinions. They delivered judgments orally, leaving it to clerks, advocates and other court officials to record their decisions. Sometimes advocates copied down on their Session Papers what the judges pronounced from the bench.[37]

Lord Kames stressed the exclusivity of law reports and their importance to law-making in the introduction to his own 1728 compilation, *Remarkable Decisions of the Court of Session, From 1718, to 1728*. '[T]his collection being made up with a particular View', he wrote, 'no Decision is taken Notice of, but wherein some new Point is established'.[38] Kames followed older models by supplying readers with the pursuers and defenders, decision date, the established precedent and the case's central arguments. He listed his 'remarkable' cases in chronological order. In 1741, Kames took a different path when he arranged a new compilation in dictionary form. Sourced from both manuscript and print collections, Kames listed cases under a nested alphabetical hierarchy by area of law. Grouping together cases related to bankruptcy law, for example, and further subdividing that general term into its constituent legal parts allowed for faster identification of the relevant case law.[39] Eleven years later, the Faculty of Advocates in Edinburgh authorised members to compile and publish volumes 'of the most remarkable cases decided in the Court of Session'.[40] The first volume appeared in 1760. It covered the years 1752 to 1756 and followed the structure of Kames's first work.[41] These volumes joined a number of other similar texts circulating in late-eighteenth- and early-nineteenth-century Scotland.

[36] For a general overview of published case law, see J. S. Leadbetter, 'The Printed Law Reports, 1540–1935', in *The Stair Society: An Introductory Survey of the Sources and Literature of Scots Law by Various Authors* (Edinburgh, 1936), 42–58.

[37] See, for example, William Craig, Lord Craig, 'Answers for Agnes Watson, only surviving Child of the deceased James Watson, Merchant in Greenock, and James Taylor, her Husband, for his Interest; to the Petition of Agnes Mathie, only surviving Child of the deceased Gabriel Mathie, Merchant in Greenock', 4 July 1776, Box 3, MSS-2015-01, SCSR, UVA Law Library. The Faculty of Advocates charged one of their members to collect these decisions for inclusion in its library: Stewart, *The Stair Society: The Minute Book of The Faculty of Advocates*, III, xliii–xliv.

[38] Henry Home, Lord Kames, *Remarkable Decisions of the Court of Session, From 1718, to 1728* (Edinburgh, 1728), iii.

[39] Lord Kames, *The Decisions of The Court of Session, From Its first Institution to the present Time. Abridged, and Digested under proper Heads, In Form of a Dictionary* (Edinburgh, 1741). Kames published volumes I and II in 1741. Alexander Fraser Tytler, Lord Woodhouselee, produced two additional volumes in 1797 while Advocate Thomas McGrugar issued a fifth volume in 1804. See Leadbetter, 'The Printed Law Reports, 1540–1935', 52.

[40] 28 January 1758, in (ed.) Stewart, *The Stair Society: The Minute Book of The Faculty of Advocates*, 12.

[41] Great Britain, Court of Session, *Decisions of the Court of Session, from the beginning of February 1752, to the end of the year 1756. Collected by Mr Thomas Miller, Mr Robert Bruce, Mr John Swinton*

In the early nineteenth century, advocate William Maxwell Morison and solicitor Peter Halkerston drew inspiration from Kames's later work with their respective publications, *The Decisions of the Court of Session, From its Institution until the Separation of the Court into Two Divisions in the Year 1808* (1811), and *A Compendium, or General Abridgement, of the Faculty Collection of Decisions of the Lords of Council and Session, From February 4, 1752 to the Session of 1817* (1819). Along with Kames's 1741 volume, the latter two dictionaries illuminate the iterative course taken over the long eighteenth century to create more comprehensive digests that captured in total the information that law students, advocates, professors and judges needed in daily legal practice. While the *Compendium* served as a reference work for the Faculty of Advocates volumes, Morison sought to publish 'a COMPLETE AND UNIFORM EDITION, of the whole cases, which have been reported, as well those printed, as those which remain in manuscript'.[42] The herculean effort drew on as many published and manuscript sources as Morison could find. In the modern era, the British and Irish Legal Information Institute (BAILII) consolidates much of this information into one freely accessible web-based resource, relying heavily on Morison for its Court of Session data.[43] Skene cited the work of Morison, Halkerston and other editors on his documents when his cases appeared in their reference works. If they did not, he wrote 'Not Reported'.

Yoking his Session Papers to these published volumes made it possible for men like Skene to enhance the authority and usefulness of their personal collections. In his older material, he often sandwiched a bibliographic reference between marginalia in Craig's hand. For example, in the case of *Richard Dick & Others v. Robert Lindsay and Others* (1776), Skene wrote 'Reported in Fac: Coll: 20 Decr. 1776. No. 269. under the following title. Provision to Heirs and Children'. This meant that the decision appeared as the 269th entry in the published Faculty Collections volume encompassing the year 1776.[44] He transcribed verbatim the title, or area of law, and the brief case abstract onto the first document in the case file, making sure to note the court's decision. He also criticised the published entry as 'a very inaccurate report of this case' before listing the reasons for his conclusions. He would have consulted the volume during or after its 1810 publication, perhaps in the Advocates Library's reading room, where the information would have allowed him to quickly access pertinent information

junior, Sir David Dalrymple, Mr John Dalrymple, Mr Walter Steuart, Advocates. By Appointment of the Faculty of Advocates (Edinburgh, 1760), Eighteenth Century Collections Online, Gale, University of Virginia Library, Gale Document Number CW125499356.

42 W. M. Morison, *The Decisions of the Court of Session, From its Institution until the Separation of the Court into Two Divisions in the Year 1808*, I (Edinburgh, 1811), vi. Morison included his advertisement for the 1801 edition in this volume. The quotation comes from that included text.

43 British and Irish Legal Information Institute, http://www.bailii.org.

44 (ed.) W. Wallace, D. Cathcart, J. Wylde and W. M. Morison, *Decisions of the Court of Session, From January 1775 to December 1777* (Edinburgh, 1810), 342.

about the case. The act of writing the citation and summary on his document, however, meant that Skene could access the library's wealth of information from the comfort of his own reading room.

Without direct access to Session Papers, the published digests in their print and digital forms remain the most common means of accessing basic information about many cases. Kames, Morison, Halkerston and other men arranged and published their reference works to disseminate very specific forms of legal knowledge. Consequently, they include very limited detail about the people and narratives of each case. By organising and indexing reported cases by legal principle and by pursuer and defender, scholars working in other fields remain beholden to taxonomic structures designed for legal scholarship. These frameworks inhibit discovery and new scholarly inquiry. Meanwhile, unreported cases, including the rich biographical and historical information they contain, effectively remain undiscoverable.

We can forge new scholarly pathways into British Atlantic history using Session Papers by rethinking the centuries-old taxonomic schemes and adopting a more granular historical approach which accounts more completely for the people who appear in the documents. The UVA Law Library's SCOS project strives to achieve this objective through the construction of a relational database and rich metadata framework created by an interdisciplinary research team.[45]

SCOS's digital infrastructure privileges the individual people, organisations and geographic locations within the documents. We approach the architectural design task in two interrelated ways. First, the team adopted Drupal, an open-source content management platform, to create the database and website. We then incorporated data on reported cases and place names using existing datasets. Working with BAILII, we imported information about reported cases covering the years 1757 to 1809. BAILII's data allowed us to identify and create catalogue records for the reported cases in Skene's Collection, which included a case name, decision date, abstract and legal subject. We then append additional information

[45] The UVA Law Library's project team includes historians, lawyers, archivists and graduate students in law and history. Our thinking on metadata, digital history and historical argument is informed by W. G. Thomas III, 'Computing and the Historical Imagination', in (ed.) S. Schreibman, R. Siemens, J. Unsworth, *A Companion to Digital Humanities* (Oxford, 2004), 56–68; J. Mussell, 'Doing and Making: History as Digital Practice', in (ed.) T. Weller, *History in the Digital Age* (Abingdon, 2013), 79–94; S. Robertson, 'The Differences Between Digital Humanities and Digital History', in (ed.) M. K. Gold and L. F. Klein, *Debates in the Digital Humanities* (2016), http://dhdebates.gc.cuny.edu/debates/text/76; L. Putnam, 'The Transnational and the Text-Searchable: Digitized Sources and the Shadows They Cast', *American Historical Review*, 121, no. 2 (April 2016), 377–402; J. Eiseman, W. Bagnall, C. Kellett and C. Lam, 'Litchfield Unbound: Unlocking Legal History with Metadata, Digitization, and Digital Tools', *Law and History Review*, 34, no. 4 (November 2016), 831–55; Arguing with Digital History Working Group, 'Digital History and Argument', white paper, Roy Rosenzweig Center for History and New Media (November 13, 2017).

about a case to these 'case shells'.[46] For unreported cases, we manually create a case record based on a close reading of the individual case documents. Similarly, we worked with *Gazetteer for Scotland* to ingest historical location data and related geographic co-ordinates down to the parish level. That data permits us to create geographic entity records for places mentioned in the Skene Collection and tie the cases, people or organisations within them to precise geographic spaces.[47]

Touring SCOS's case page is the best way to describe the archive's second main architectural feature. The 'case page' presents the user with curated data extracted from the case documents or compiled from other sources. It retains some aspects of the old digests and dictionaries, thus making the archive useful for studying law, even as it enables historical studies. Skene might have even found it vaguely comforting. The user first sees a case name. Additional fields follow for 'Date of Decision', 'Abstract', 'Subjects' and 'Published Reports'. Again, we use BAILII-derived information to populate these fields for reported cases. We rely on the print volumes (or digitised versions of them) to cover current gaps in BAILII's data. A hyperlink will take the user to the published report on the appropriate BAILII webpage or digitised digest, continuing in a hypertextual fashion Skene's efforts to link his collection with published reference works. For unreported cases, we craft abstracts and supply legal subjects based on interpretative research into the case and an analysis of any extant marginalia.

Skene would find the case page far different from his published reference works in several critical respects. Through a combination of machine and human interpretation, the case page provides users with a comprehensive list of the pursuers and defenders involved in the litigation, the legal counsel for each side and a selected list of people named in the case documents. We determine the composition of the selected list by assessing a person's relationship to the litigation and the litigants. Nearly all people are included in the database, save for those individuals mentioned in passing who have no apparent connection to the proceedings. The case page also highlights the documents as historical objects serving as archives in their own right. In their appendices, Session Papers contain primary source material submitted as evidence that may represent the only extant copies available of correspondence, voter rolls, merchants' accounts, maps, architectural renderings, poetry or land charters. We alert users when these materials are present in individual case documents.

The agent record for each person entered into the SCOS Drupal database contains biographical information and, when possible, uses the imported *Gazetteer* data to establish a relationship between the person and a place.[48] SCOS consolidates these agent records into a People Index. Here, users can select an

[46] These 'case shells' also include a digital object identifier (doi) link to the case summary on BAILII's website.

[47] For BAILII records, see http://www.bailii.org. For the *Gazetteer for Scotland* data, see http://www.scottish-places.info.

[48] SCOS follows traditional Scottish naming conventions by incorporating place as part of a person's name to disambiguate them from other individuals. For example, Patrick Fea

individual, review available biographical data, and view associated cases and locations. These latter two items are actionable data: selecting them will take users to a specific case page or to the Locations Index, which offers geographic details about a place along with a list of the people and cases tied to it. On the case page itself, users will find digital maps showing the locations of both people mentioned in the case and those places important to the litigation. This is also actionable data: selecting a noted location pulls up a list of people and cases associated with that place.

The case page also provides direct access to digitised copies of the Session Papers at the heart of each case. The case pages display document titles in chronological order, indicates the presence of marginalia and allows users to download fully text-searchable PDF files. The UVA Law Library research team processes the PDF files through optical character recognition (OCR) software and then subjects them to a diplomatic cleaning to correct for machine errors. We preserve a text's historical integrity, including any print mistakes or misspellings. Users will be able to conduct 'fuzzy' searches to account for word variations. Over time, this OCR software learns to account for antiquated fonts and distinctive ligatures. Users will also find information about a document's length, its location within the physical collection and the UVA Law Library's preferred citation.

Offering SCOS users multimodal access points will allow them to explore documents on their own even as the site itself, through its metadata, makes an argument for seeing case documents in particular ways. In addition to the rich descriptive metadata encompassing people, geographic places and organisations, SCOS will feature additional interpretive layers. Scholarly essays will help orient the user in the site's argument and content, while human- and machine-generated subject tags will offer visitors the ability to choose a more curated thematic experience. For example, a scholar interested in the Glaswegian tobacco trade with Virginia and Maryland could select 'Scottish Virginia' in the curated index to explore the relevant cases. Similarly, cases involving lands confiscated after the 1745 Jacobite Uprising are nested under 'Legacies of the Jacobite Rebellion'. Much like Lord Kames, who sought to identify the more 'remarkable' cases in the eighteenth century, SCOS will leverage existing historiography and recent scholarly debates to imbue the Session Papers with new historical meaning and purpose.

The unassuming case of *Duncan v. Maclintock and Smith* (*c.*1778) exemplifies SCOS's goal of using Session Papers to reconstruct once obscure British Atlantic histories. While on its surface the unreported case is a dispute over a wheat shipment, it opens up questions about transatlantic migration, commerce, loyalty and slavery in British North America and the new United States. In 1774, Glasgow merchant Robert Maclintock the Younger convinced Robert Maclintock, Sr. and baker David Smith to sponsor jointly a shipment of goods

of Airy and Patrick Fea of Kirbuster were two of the pursuers in *Earl of Galloway v. Earl of Morton*.

to Virginia in exchange for a return cargo of wheat. Maclintock the Younger arranged for two merchants in Chesterfield County, Virginia, Charles Duncan and John Brown, to receive the goods and load the vessel with wheat for its return voyage. In a letter to the two colonists, the three Scotsmen agreed that Maclintock the Younger would receive the wheat upon its landing in Glasgow, and bear responsibility for making proper payment.

It seems that Maclintock the Younger engaged in a bit of double-dealing. He sent a second letter to his Virginia correspondents, this time requesting another wheat shipment consigned to him only. In 1775, the initial load of wheat arrived in Glasgow. Smith and the elder Maclintock assumed that it was the wheat for which they had originally contracted. Not so, the younger Maclintock informed them. It was his shipment and his alone.

Maclintock the Younger compounded matters when he failed to pay Duncan and Brown for the wheat shipment. The Virginia merchants, in turn, argued that Smith and Maclintock, Sr. were responsible for the balance due. Duncan hired two Glasgow attorneys to represent his interests and sued Smith and Maclintock, Sr. in a lower Glaswegian court. The case's legal question turned on whether Smith and the two Maclintocks operated as a partnership or as a joint venture. If the former, then the three men were considered as a single firm, thus putting Smith and Maclintock, Sr. on the hook for their colleague's non-payment. In 1778, the case made its way to the Court of Session. William Craig represented Smith and Maclintock, Sr. He argued on their behalf that their former colleague manipulated evidence to make it seem as if the three men operated as a firm, which would require them to pay Duncan for the wheat. Naturally, they claimed they did business as a joint venture only.[49]

Unfortunately, the two documents in the Skene Collection do not reveal the case's outcome. Neither Craig nor Skene left any clues in marginalia, suggesting that it is an incomplete case record. It is a fine example of how ongoing collaborations with the Centre for Research Collections at the University of Edinburgh and other institutions holding Session Papers may yield a more complete case file.[50] What *Duncan v. Maclintock and Smith* does reveal are the business and personal relationships that enabled commerce and framed life in the British Atlantic world. The documents show that Maclintock the Younger had long standing ties to Duncan and Brown, that the Maclintocks and Smith had dealings with Bristol merchants involved in the grain trade and that American colonists appealed to the Scottish legal system to defend their economic interests.

[49] *Duncan v. Maclintock and Smith* (*c.*1778), Box 4, MSS-2015-01, SCSR, UVA Law Library. Elements of this story appear in J. P. Ambuske, 'Looking for Early America in the Scottish Court of Session Collection at the UVA Law Library', *Thoughts from the Lawn*, University of Virginia Alumni Association, 27 October 2017, http://alumni.virginia.edu/learn/2017/10/27/looking-early-america-scottish-court-session-collection-uva-law-library/.

[50] The Minute Books in the NRS may yield clues about this case as well.

But *Duncan v. Maclintock and Smith*'s real value lies in what it can tell us about Duncan and the enslaved men and women he held in bondage. The Session Papers along with surviving evidence in Virginia archives paints a portrait of a provincial Scot who used the empire to his advantage. Duncan was born in the Parish of Strathblane around 1739. He likely immigrated to Virginia in the 1750s or early 1760s, a time when Glaswegian merchant firms aggressively expanded into the Chesapeake colonies in the years during and after the Seven Years' War. Duncan eventually became a tobacco merchant near Petersburg in Chesterfield County, not far from modern-day Richmond, where he owned a slave plantation called 'Roslin'. He remained in the USA at the conclusion of the American War for Independence but died during a visit to London in 1808. A year before his death, Duncan composed a will that offered testimony to his wealth in both physical and human property. He valued his farmlands, slaves and horses at £4,000. His will inventories his enslaved labourers, listing seventeen enslaved people by name, including eight children. He freed one mixed-race woman, Shatlee, along with her daughter, Jean. Duncan, born a Scottish subject of the British King, and one who had a chance encounter with the Court of Session, died a wealthy man with dominion over land and slaves in republican Virginia.[51]

The story of Charles Duncan and his enslaved people demonstrates how the subversion of traditional knowledge forms can uncover people hidden in the historical record. Seemingly opaque Scottish legal documents become gateways to new insights into the history of the British Atlantic world in the eighteenth and nineteenth centuries. Taken at face value, the case of *Duncan v. Maclintock and Smith* is a dispute over contracts and corporate forms, but like all Session Papers in the UVA Law Library's possession and in other archives, the documents take on greater meaning when read against their original purpose and the reference works that organised them. The UVA Law Library's SCOS project continues the iterative descriptive process by privileging the historical figures both ordinary and powerful who appear in the documents. Placing the Court of Session and the production of Session Papers in an Atlantic context reintegrates the spaces of the British Empire – Great Britain, North America, the Caribbean, western Africa and India – and the lived experience of people who came into contact with the Scottish legal system. Recasting Session Papers as reservoirs of non-legal historical knowledge through digital and interdisciplinary approaches gives them new scholarly value in the 21st century.

[51] Monument of Charles Duncan, Find A Grave Memorial #94798188, https://www.findagrave.com/cgi-bin/fg.cgi?page=gr&GRid=94798188; D. L. Holmes, 'Devereux Jarratt: A Letter and a Reevaluation', *Historical Magazine of the Protestant Episcopal Church*, 47, no. 1 (1978), 37–49 (48, n. 43); Will of Charles Duncan of Chesterfield County, VA, 27 January 1807, proved 13 June 1808, Chesterfield County Will Book, VII 45–48, Library of Virginia, https://www.ancestry.com/mediaui-viewer/tree/50409290/person/26079141039/media/f4507069-366e-4289-82cc-bbe3d4edc567 (paywall).