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Spuilzie and Shipwreck in the Burgh Records

Andrew R. C. Simpson

The aim of this essay is to examine an intriguing reference in the registers of the Aberdeen burgh council to the wreck of a ship of Danzig known as the *Jhesus*.[1] The ship seems to have run into difficulties on the evening of 8 October 1530 as a result of a 'storme of the wedder' off the coast of the Scottish city. At this stage, the skipper of the vessel[2] hoped that it could still be saved, and to this end he sought the assistance of Gilbert Menzies, Aberdeen's provost. The next morning Menzies sent his son and his son-in-law to help the skipper, but it would seem that by then the situation had deteriorated. It was apparently concluded that the ship should be brought to the shore as quickly as possible, so that its cargo could be saved. The vessel was then deliberately run aground at a place known as "haly mannis coif".[3] Exactly what happened

[1] Aberdeen City and Aberdeenshire Archives (ACA), Council, Bailie and Guild Registers (CA) 1/1/13/12, 15-23, available at J. W. Armstrong, S. Convery, E. B. I. Frankot, A. J. Macdonald, A. Mackillop, A. R. C. Simpson, and A. L. M. Wilson, *The Aberdeen Burgh Records Database* (ABRD), 2014, 13/12/12/1; 13/15/17/3; 13/17/17/1; 13/18/18/1; 13/18/19/2; 13/19/19/1; 13/20/20/2; 13/21/21/1; 13/22/22/1; 13/22/23/2, http://www.abdn.ac.uk/aberdeen-burgh-records-database [accessed 16 July 2014]; the site includes a transcript by Dr Edda Frankot, and except where otherwise indicated all references to the council registers here are to this transcript. I have included my own punctuation at times for the sake of clarity; none of the punctuation included is original. The name of the ship can be found at ACA/CA 1/1/13/134. I am grateful to Professor Ford for drawing this reference to my attention, and for allowing me to use his transcript of the relevant passage in the council registers. Those wishing to read more broadly concerning the history of Aberdeen in this period should consult the extremely useful essays found in E. P. Dennison, D. Ditchburn and M. Lynch (eds), *Aberdeen Before 1800: A New History* (East Linton, 2002). I am grateful to Professor J. D. Ford and Eddie Simpson for their comments on this article. Any errors remain my own.

[2] The skipper's name is given as 'Hanniss Johnne' in ACA/CA 1/1/13/15 – and as 'Hans Gant' at ACA/CA 1/1/13/114 and in the records of the Lords of Council – see National Records of Scotland (NRS), Acts of the Lords of Council (CS) 5/42/179^{v}-180^{r}. It is not clear which record is correct. I am grateful to Professor Ford for allowing me to use his transcription of ACA/CA/1/1/13/114.

[3] ACA/CA 1/1/13/12, 15–16.

next was disputed, as will be explained below, but it was subsequently alleged that many members of the community in Aberdeen had eagerly participated in the salvage operation.[4]

News of these events travelled fast to the Scottish monarch, James V, who seems to have been at Brechin, about forty miles away.[5] At some point between 9 October, when the ship was wrecked, and 13 October, he ordered all those who had 'intromittit' – that is to say, interfered – with the goods to bring them to the market cross of Aberdeen. If they failed to do this, they would be 'accursit as intromettoris and spulyearis of the haile gudis'.[6] To be labelled a 'spuilzier' had serious consequences. The wrong of spuilzie was closely related to that of 'robbery'; it arose where one individual seized possession of goods from another without either his consent or the approval of the law. Certainly, such an act would frequently have been violent.[7] The spuilzier was required to make restitution and might face severe punishments.

The bailie court acted to protect members of its community from these accusations, and to limit royal interference in its affairs more generally. How it sought to achieve these ends provides a hitherto unknown example of the relationship between royal and civic power in early to mid-sixteenth-century Scotland, as well as indicating the nature of burgh legal culture. The burgh convened its own tribunal, probably in anticipation of royal involvement in the matter, to establish the truth of what happened following the wreck of the ship of Danzig. Among those appointed to sit on this tribunal were the bailies of Aberdeen, some members of the burgh council and a group of individuals who were described as 'Venerabill and nobill menn'. Only some of them were named in the record, but of the six men mentioned, five were clergymen, and two were learned in canon law. Arguably this formed part of an attempt to show James V and his counsellors that sound and trustworthy procedures had been observed in the burgh's own inquiries into the matter. Furthermore, the evidence collected by the tribunal indicated that Provost

[4] ACA/CA 1/1/13/12, 17, 19, 20–3.

[5] ACA/CA 1/1/13/17; he was at Brechin on 13 October, see ACA/CA 1/1/13/22.

[6] ACA/CA 1/1/13/17. The original command must have been issued before 13 October, when James sent another letter to the sheriff, provost and bailies of Aberdeen admonishing them for failing to carry out his earlier orders in respect of the wreck.

[7] See A. M. Godfrey, *Civil Justice in Renaissance Scotland: The Origins of a Central Court* (Leiden and Boston, 2009), 239–47; see also A. R. C. Simpson, 'Procedures for dealing with Robbery in Scotland before 1400' in A. R. C. Simpson, S. C. Styles, E. West and A. L. M. Wilson (eds), *Continuity, Change and Pragmatism in the Law: Essays in Memory of Professor Angelo Forte* (Aberdeen, 2016), 95–149.

Menzies and his associates were innocent of the wrong of spuilzie as it was understood in contemporary Scots law. In order to establish this, the judges may have drawn upon the legal expertise possessed by some of the canonists amongst them. Seen in the light of these arguments, the case of the ship of Danzig constitutes a very interesting example of how the bailie court sought to utilise contemporary procedural and substantive legal standards in order to anticipate and restrict royal interference in its affairs. Put another way, the discussion will shed light on the relationship between the Scottish common law administered by the royal government, on the one hand, and, on the other, the rules observed by officials within one particular Scottish burgh when attempting to maintain law and order. Furthermore, the case also points to a broader question. Many of the merchants who had an interest in the cargo of the ship of Danzig came from continental Europe; they were not subjects of the Scottish king. So, did they act to protect their goods? Did they engage with any frameworks of legal authority in the process? If so, then what were they?

In order to discuss these points, this article will examine the accounts of the shipwreck itself contained in the burgh records. It will then consider the ways in which the authorities in Aberdeen, James V and the merchants who had an interest in the cargo sought to deal with the matter.

The Judgement of 'Venerabill and nobill menn'

On 10 October 1530, the day after the ship of Danzig was deliberately run aground at 'haly mannis coif'[8] to save its cargo, eighty-seven merchants lodged a protestation in the Aberdeen council register. They claimed that the goods on the ship had been interfered with and that they themselves had had no part in this. The merchants also sought assurance that they would suffer no loss as a result of the interference; evidently they had an interest in the goods.[9] Perhaps it was one of these merchants who informed James V and his counsellors of the situation; the royal reaction was certainly fast. As was stated above, at some point between 9 October and 13 October the king wrote to the provost and bailies of Aberdeen, and commanded them to uplift or 'intromit' with the cargo that could be salvaged from the shipwreck. They were to retain it only 'to the vtilite and profyt of thame that has iust tytill therto'.[10] It was at

[8] ACA/CA 1/1/13/20; ABRD, 13/20/20/2. The location of 'haly mannis coif' is unclear at present.

[9] See ACA/CA 1/1/13/12, and Frankot's accompanying commentary; her transcription of part of the relevant text appears at ABRD, 13/12/12/1.

[10] ACA/CA 1/1/13/17; ABRD, 13/17/17/1.

this juncture that these burgh officials were also required to make a public declaration commanding anyone else who had taken goods from the wreck to bring them to the market cross.

However, before the royal command arrived in Aberdeen, the bailie court had already taken formal action in relation to the matter. On 14 October, Provost Menzies, his son Thomas Menzies and his son-in-law, Alexander Fraser of Philorth, appeared before the court with their accomplices to give a public account of what had happened following the wreck of the ship of Danzig. The record narrated that these declarations were made before certain 'Venerabill and nobill menn' who were 'present in iugement'. They were Master Alexander Lyon, Sir James Kincragy, Master Robert Elphinstone, Master Alexander Galloway, Sir Thomas Myrton and William Leslie of Balquhain[11] The decision to assemble such individuals, most of whom were clergymen, in order to 'judge' in the dispute is significant, and exactly why they were chosen for the task will be considered shortly.[12] But before this question is examined it is helpful to explain precisely what these men did in the court that day.

These 'Venerabill and nobill menn' first heard evidence from Provost Menzies himself. He declared that on 8 October, at supper-time, he had been asked by the skipper of the ship of Danzig for help and 'compassiounn quhilkis [which] everry gude christynn man suld haue to thair nichtbour'.[13] The provost then explained that his son and son-in-law had agreed to help the skipper to run the ship aground so as to preserve the cargo, but on one condition. This was that they should receive a third of all of the goods that 'hapnit to be wone' – that is to say, recovered. The remaining two thirds of the goods were to be kept for those with just title thereto. On this basis the skipper 'of his awinn fre will' brought his ship into the 'coif'. Subsequently, the provost and his accomplices said they had done their duty to save the men, the ship and the goods.

Having advanced these claims, Provost Menzies then asked the bailies to make the skipper swear the great oath while touching the holy gospels and

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[11] ACA/CA 1/1/13/15; ABRD, 13/15/17/3.

[12] Other evidence does indicate that the bailie court would sometimes make decisions in maritime disputes by convening assizes of 'worthy men' or 'honourable sworn personis' sometimes consisting of 'merchants, skippers and, occasionally, helmsmen'. For these points, see E. Frankot, *'Of Laws of Ships and Shipmen'. Medieval Maritime Law and its Practice in Urban Northern Europe* (Edinburgh, 2012), 154–5. For possibly similar practices elsewhere in Scotland, see J. Finlay, *Men of Law in Pre-Reformation Scotland* (East Linton, 2000), 19-20, 117.

[13] See ACA/CA 1/1/13/17; ABRD, 13/15/17/3.

the crucifix, in the 'presens of the nobill and honorabill auditoris' assembled in the court, to establish whether or not he thought the provost's declaration was true. The 'auditoris' were of course the 'Venerabill and nobill menn' mentioned above. The provost and his accomplices then removed themselves from the court, and 'thaireftir thai being removit, the forsaid skippar – the great aitht suorne – deponit' that the provost's declarations were true. He also confirmed that the provost and his accomplices had been promised that they would receive a third of the goods recovered from the wreck in exchange for their help in the salvage operation.[14]

The record indicates that at this point in proceedings there arrived in the court the royal command requiring the provost and bailies to intromit with the goods in order to keep them safe for those with a just claim to the property. The orders were read out by Master Thomas Annand, procurator to David Beaton, abbot of Arbroath. At this time Beaton was the keeper of the privy seal.[15] It may be that he had some personal interest in the cargo on board the ship. In response to the king's command, Provost Menzies, together with his son and his son-in-law, and also Patrick Forbes who was a burgess of Aberdeen, swore that they had 'lelely and trewly causit' the goods to be salvaged for 'the vtilitie and profyt of thame hawand richt therto'. This was noted by Annand and witnessed by 'the haile auditour forsaid with mony vther famouss personis'. Subsequently John Keith, who declared himself to be the procurator of a 'nobill and mychty lord william Erle marschell' required Provost Menzies to declare in the presence 'of the auditour forsaid' that William Keith, third Earl Marischal,[16] a local magnate, had been summoned by the provost to protect the 'saidis gudis' from the 'violance and spulye' which he feared from the lairds in the area.[17]

Thus the 'Venerabill and nobill' auditors of the bailie court witnessed its proceedings and the oaths of the parties concerning what had actually happened to the ship of Danzig and its goods. There is no indication that they did very much more than that. Perhaps it was they who sent Provost Menzies out of the courtroom whilst the oath was sworn – although the evidence is

[14] ACA/CA 1/1/13/15-17; ABRD, 13/15/17/3.

[15] He went on to become Cardinal Beaton and is generally remembered by that title; see M. H. B. Sanderson, 'Beaton, David (1494?–1546)', *Oxford Dictionary of National Biography* (Oxford, 2004) http://www.oxforddnb.com/view/article/1823 [accessed 17 July 2014].

[16] For the third Earl Marischal, see M. Wasser, 'Keith, William, third Earl Marischal (*c.*1510–1581)', *Oxford DNB*.

[17] ACA/CA 1/1/13/18-19; ABRD, 13/18/18/1 and 13/18/19/2.

unclear on this point. It is also possible that one of the clergymen provided the gospel book and crucifix used by the skipper when swearing the great oath. The great oath was always sworn on the gospels, or upon relics or a crucifix. It could be used on particularly solemn occasions, for example in the parliament of 1373 that swore to uphold the Stewart succession from Robert II. But more commonly it was also sworn on admission to judicial office, and also by jurors.[18] Given that it was used so frequently, it cannot possibly be the case that a group of 'Venerabill and nobill menn' such as that which was assembled in the bailie court on 14 October were actually *required* to oversee its administration. So why did the bailie court appoint these individuals to hear the evidence in this case?

In order to answer this question, it may be helpful to say a little more about the auditors themselves. Perhaps their professional training, expertise or status made them useful to the bailie court. The first to be named in the record was Master Alexander Lyon, the chanter of Moray,[19] parson of Turriff and 'warder' of the minors William Hay, sixth earl of Erroll[20] and John Lyon, seventh Lord Glamis.[21] The younger brother of the sixth Lord Glamis,[22] Alexander had been the chanter of Moray since 1527, and during the following year he was styled 'Master' Alexander Lyon, indicating the acquisition of a degree, probably at Paris, and possibly in arts.[23] On 9 January 1529 he received an assignation of the ward of the earl of Erroll from the countess of the

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[18] On the great oath, see P. J. Hamilton-Grierson, *Habakkuk Bisset's Rolment of Courtis* (Scottish Text Society New Series vols 10, 13, 18, Edinburgh and London, 1919-1926), III, 161; W. C. Dickinson, *The Sheriff Court Book of Fife 1515–1522* (Edinburgh, 1928), 289, 318; C. Neville, *Land, Law and People in Medieval Scotland*, (Edinburgh, 2010), 28–9.

[19] On this see D. E. R. Watt and A. L. Murray (eds), *Fasti Ecclesiae Scoticanae Medii Aevi Ad Annum 1638* (Edinburgh, 2003), 293.

[20] See J. Cameron, *James V. The Personal Rule, 1528–1542* (Edinburgh, 2011), 40, 139, 277.

[21] See Mary Black Verschuur, 'Lyon, John, seventh Lord Glamis (*b. c.*1521, *d.* in or before 1559)', *Oxford DNB*.

[22] For the relationship between Alexander Lyon and the sixth Lord Glamis, see *RMS* III, no. 728, 158-9, read together with Verschuur, 'Lyon, John, seventh Lord Glamis (*b. c.*1521, *d.* in or before 1559)'.

[23] On Lyon's studies in Paris, see the translations, by D. F. Sutton, of the epistles that introduced Boece's *Scotorum Historiae a Primis Gentis Origine* (Paris, 1575), available at http://www.philological.bham.ac.uk/boece/fronteng.html#letter [accessed 21 July 2014]. For the suggestion that he studied arts, see D. Irving (ed.), *Thomae Dempsteri Historia Ecclesiastica Gentis Scotorum, Sive, De Scriptoribus Scotis*, 2 vols (Edinburgh, 1828-9), 438.

third earl of Huntly, Elizabeth Gray.[24] Among other things, this meant that he received the income of the lands held by the earl of Erroll for the duration of the latter's minority.[25] Many of those lands were just to the north of Aberdeen, and so Lyon had control of a powerful lordship in the environs of the city.[26] At some point between October 1528 and October 1529 he also acquired the benefice of Turriff, of which the earl of Erroll was the lay patron.[27] Thus the picture that emerges of Alexander Lyon in October 1530 is that of a younger son of a noble family who was well educated and pursuing a successful career as a clerical administrator with responsibility for a major lordship close to Aberdeen.

Several of the other named judges who sat as auditors in the bailie court on 14 October had similar backgrounds. Master Alexander Galloway had served as an administrator of Aberdeen diocese since the time of Bishop William Elphinstone, whose episcopate lasted from 1488 until 1514. Elphinstone is certainly best remembered as the founder of King's College at Aberdeen, and Galloway was one of its first students. In 1521, the first principal of the university, Hector Boece, described him as '*in canonico jure eruditus*'.[28] Subsequently Galloway served as the official or 'principal judicial officer' of Aberdeen. He was made parson of Kinkell and was responsible for numerous building projects in the diocese; the most recent of these was the Bridge of Dee, which was complete by December 1529.[29] Another experienced administrator who acted as an auditor of the bailie court in October 1530 was Master Robert Elphinstone. He was evidently a graduate, and presumably also a relative of Bishop William Elphinstone, and had served as archdeacon

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[24] *Registrum Secreti Sigilli Regum Scotorum 1488-1584* (*RSS*), 8 vols (Edinburgh, 1908–1982), I, no.4027, 584; Cameron, *James V*, 169–73.

[25] On the nature of the feudal casualty of ward, see G. L. Gretton, 'The Feudal System' in K. C. G. Reid, *The Law of Property in Scotland* (Edinburgh, 1996), paras. 42–113 at 75.

[26] See C. A. McGladdery, 'Hay Family (*per. c.*1295–*c.*1460)', *Oxford DNB*.

[27] Compare *RMS* III, no.691 (which refers to Master Alexander Hay as parson of Turriff) and ACA/CA 1/1/13/15 (which refers to Master Alexander Lyon as parson of Turriff); see also Milne, *Early History of Turriff*, 15.

[28] Boece, *Vitae*, 92. On Boece, see Macfarlane, *William Elphinstone*, 358–9.

[29] Macfarlane, *William Elphinstone*, 269; the bridge still stands today, albeit that it has been largely rebuilt and extended since Galloway's time; see also J. Stuart (ed.), *Extracts from the Council Register of the Burgh of Aberdeen, 1398–1625*, *(Abdn Counc.),* 2 vols (Edinburgh, 1844-48), I, 116, 127. I am grateful to Dr Jackson Armstrong for this last reference. On Galloway's career, see also W. Kelly, 'Alexander Galloway, Rector of Kinkell' in W. D. Simpson (ed.), *A Tribute Offered by the University of Aberdeen to the Memory of William Kelly LLD ARSA* (Aberdeen, 1949), 19–33.

of Aberdeen.[30] Subsequently he became commissar general of Aberdeen; so it is reasonable to assume that Elphinstone, like Galloway, had received some training in canon law.[31] The qualifications of the other two clerical auditors are less clear, but once again both had extensive experience of running the affairs of the diocese. The first, Sir James Kincragy, had served as dean of Aberdeen, and Myrton had served as treasurer and then archdeacon during the time of Bishop William Elphinstone and thereafter.[32] For the sake of completeness, it should also be noted here that alongside the five clergymen mentioned already (Lyon, Galloway, Elphinstone, Kincragy and Myrton) sat a sixth auditor, William Leslie of Balquhain.[33] His selection as a judge might seem a bit curious, given that only a few years earlier he had been a leader of a raid on the city in which eighty citizens of Aberdeen had been wounded or injured.[34]

It was suggested above that the auditors who served in the bailie court on 14 October 1530 might have been chosen because their professional training, expertise or status made them useful. Certainly an argument to this effect could easily be made in the cases of Galloway and Elphinstone, both of whom were trained canonists. At the time senior governmental figures believed that such learning qualified an individual to determine the outcome of a legal dispute in a manner consistent with justice and right reason. This probably explains why Archbishop Gavin Dunbar, the chancellor, was actively promoting the idea that the Session, the Scottish court that had acquired *de facto* supreme jurisdiction in civil matters by 1530, should be staffed by experienced judges learned in canon and civil law.[35] Dunbar's policy would undoubtedly have been known in Aberdeen; his uncle was the bishop there, and thus headed the diocesan administration in which Galloway, Elphinstone, Myrton and Kincragy participated.[36]

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30 Macfarlane, *William Elphinstone*, 209–10, 219-20, 241–2, 247–8, 269; Watt and Murray, *Fasti*, 27.

31 Watt and Murray, *Fasti*, xii–xiii, 32.

32 Watt and Murray, *Fasti*, 11; see also 449, 486 (Kincragy); 21, 27, 92, 454 (Myrton).

33 ACA/CA 1/1/13/12, 15.

34 C. J. Leslie, *Historical Records of the Family of Leslie*, 3 vols (Edinburgh, 1869), III, 16–17; see also J. Stuart (ed.), *Extracts from the Council Register of the Burgh of Aberdeen, 1398-1625 (Abdn Counc.)*, Spalding Club, 2 vols (Aberdeen, 1844-48), I, 115; I am grateful to Dr Jackson Armstrong for this reference.

35 See J. W. Cairns, 'Revisiting the Foundations of the College of Justice' in H. L. MacQueen (ed.), *Stair Society Miscellany Five* (Stair Society vol. 52, Edinburgh, 2006), 31-3; Godfrey, *Civil Justice*, 79–126.

36 Godfrey, *Civil Justice*, 109.

It might therefore be argued that Galloway and Elphinstone, two of the auditors appointed to sit in the bailie court on 14 October 1530, were chosen because of their learning in canon law, and because of the assumption held by some contemporaries that the inclusion of such learned individuals on the bench would help to guarantee a just outcome in any legal dispute. Admittedly in this case the auditors did not decide anything, but the expert lawyers amongst them might none the less have been expected to ensure that the procedural standards of the canon law were upheld when evidence was taken from the provost, his accomplices and the skipper. Yet this is speculative. Furthermore, it is clear that most of the auditors were not chosen for any legal learning, or indeed for any particular administrative expertise.

A more plausible explanation of why these men were selected to act as auditors in the bailie court, which leaves open the possibility that some of them were chosen for their legal expertise, can be found in the terms the bailie court used to describe them as a group. They were all 'Venerabill and nobill menn', 'nobill and honorabill auditoris' and 'famouss personis'. The most instructive of these terms may be 'famouss'; this word could be used to describe witnesses more generally as being 'of good repute'.[37] This implies that the bailie court wished to present all of the auditors as trustworthy. Consequently, it might be expected that the conclusions of any proceedings over which they presided would also be reliable. Certainly the bailie court also sought to make it clear in other ways that none of its actions had been improper. As has been explained, it stated that the evidence of the skipper was taken after the provost had removed himself from the court, and it spelled out in some detail that the provost had not compelled the skipper to take any particular course of action.

The conclusion that emerges from these points is that the bailie court wished to present all its proceedings as being trustworthy. Its selection of auditors, and the procedures it had observed in taking evidence relating to the wreck, rendered the conclusions that it had reached in the matter reliable. The presence of canonists amongst the auditors might well have reinforced the impression that the court had followed due process in this case, given the contemporary assumptions noted above about the role of expert lawyers in the effective administration of justice, and in the Session in particular. If this is all correct, then it seems likely that the bailie court was seeking to persuade the royal administration that its actions in this case had been appropriate. It is true that the bailie court only seems to have become aware of the monarch's

[37] See the entry for 'famous' in the *Dictionary of the Scots Language* at http://www.dsl.ac.uk/ [accessed 28 July 2014].

attempt to interfere in the matter after it had appointed its auditors to hear the evidence given by Provost Menzies and his accomplices. But this does not rule out the possibility that it acted in the expectation that the crown would attempt to intervene in the salvage operation. In 1526, Gilbert Menzies and other prominent burgesses of Aberdeen had appeared before the parliamentary lords of the articles to answer a summons raised against them for the 'wranguis violent and maisterfull spoliatioune, away taking, intrometting and withhalding' of certain goods pertaining to a ship known as *The Petire Hull*.[38] The goods were claimed by the king of Denmark, and the lords of the articles ordered that all of the property taken from the ship should be placed in the hands of the provost of Aberdeen – then Thomas Menzies of Pitfodels[39] – and two burgesses of the city so that they could be 'delivererit to thaim havand rycht thairto'.[40] It would therefore be unsurprising if, a few years later, Gilbert Menzies expected that royal administrators might notice the Aberdonian attempt to salvage the wreck of the ship of Danzig. That might explain why the bailie court was keen to present its procedures and its findings as reliable.

Yet if the bailie court was able to present its proceedings as trustworthy, did it also gather evidence that exonerated the provost and his accomplices from any wrongdoing? Put another way, if the court's conclusions were accepted, would they undermine any claim that the goods of the ship had been spuilzied? And what of the finding that the skipper of the ship had agreed that Provost Menzies should receive a third of the goods salvaged in exchange for his help? Would this have had any legal effect? Would it have given Menzies 'iust tytill' to any of the property?

'Intromettoris and spulyearis of the haile gudis'

These questions can only be answered by examining the information gathered by the bailie court in light of the contemporary Scottish laws concerning both spuilzie and shipwreck. But first it should be noted that the questions were highly pertinent, given what happened the day after the 'Venerabill and nobill' auditors heard evidence in the bailie court. On 15 October two royal servants turned up in the city and alleged that some of the cargo of

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38 K. M. Brown et al. (eds), *The Records of the Parliaments of Scotland to 1707* (hereafter RPS), record 1526/6/13–15, http://www.rps.ac.uk [accessed 28 July 2014].

39 RPS, record 1526/6/3 (the provost is identified in the translation given on the website; he was one of the lords of the articles).

40 RPS, record 1526/6/15.

the ship of Danzig had been spuilzied. They were the 'richt honorabill men' William Wood of Bonnington and Master James Foulis, who were referred to as 'familiar seruitoris to our souerane lord the kingis grace'.[41] At about this time, Wood 'held the position of gentleman of the inner chamber in the royal Household',[42] whilst Foulis was 'one of the leading advocates' before the lords of session during the 1520s.[43] James V seems to have sent these men north on 13 October 1530; evidently he was not certain that the orders that had been sent to Aberdeen in the hands of Thomas Annand would be followed.

Wood and Foulis 'comperit in iugement' in the bailie court and produced the royal 'lettrez. . .makand mentiounn how his grace wass informit that the gudis of this danskynn schipe brokinn at the haly mannis coif besyd abirdeinn was reft [robbed][44] stowinn [stolen] and spulyeit baitht to burgh and land'.[45] The word 'reft' was derived from the verb 'to reif', meaning 'to rob', and as was noted above robbery and spuilzie were closely linked wrongs; this will be discussed further shortly. As a result of the allegations made against the people of Aberdeen and the surrounding lands, James V ordered the provost to make a public proclamation requiring all those who had wrongfully intromitted with the goods to bring them to the market cross of Aberdeen within six days. Failing this they would be condemned as guilty of robbery or 'spulyeing' and so would suffer 'tynsall' – meaning 'loss' – 'of lyf, landis and gudis'.[46]

The whole discussion of spuilzie found in the council register tallies well with what can be gleaned about the nature of the wrong from contemporary or near-contemporary records of the Session. It will be recalled that the Session was the Scottish court that had acquired *de facto* supreme jurisdiction in civil matters at some point before 1530. For several decades prior to 1532, the Session had simply constituted a judicial sitting of the king's council. This body had long had jurisdiction over spuilzie, and indeed much of what is known about the action comes from records concerning the council. A comprehensive history of spuilzie has yet to be written,[47] but a few remarks

[41] ACA/CA 1/1/13/20; ABRD 13/20/20/2.

[42] Cameron, *James V*, 110.

[43] J. Finlay, *Men of Law in Pre-Reformation Scotland* (East Linton, 2000), 60-2; J. Finlay, 'Foulis, James (*d.* in or before 1549)', *Oxford DNB*.

[44] This is my reading of the relevant word found at ACA/CA 1/1/13/20; Dr Frankot renders it 'rest' in ABRD 13/20/20/2.

[45] ACA/CA 1/1/13/20; ABRD 13/20/20/2.

[46] ACA/CA 1/1/13/22; ABRD 13/22/22/1.

[47] For some illuminating discussions of the subject see G. Neilson and H. Paton (eds), *Acts of the Lords of Council in Civil Causes Volume II, 1496–1501* (Edinburgh, 1918) (hereafter *ADC*, ii), lxxi-lxxii; Dickinson, *Sheriff Court Book of Fife*, 325–7;

can be made here to contextualise and explain the references to the action in the case of the ship of Danzig. Note that 'spuilzie' is the term used here to refer to the wrong, whilst the phrase 'action of spuilzie' is used to refer to the procedural device used to remedy it in the courts.

It would seem that the phrase 'acciounis of spoilye' first appeared in the Scottish statutory record in 1458,[48] but long before then a very similar wrong of 'spoliation' had been recognised at Scottish common law. In 1385, a Scottish general council used the term '*expoliatus*' to describe a man called William de Fenton, who had been ejected from the possession of land in contravention of a judicial sentence which had not been adequately enforced. The remedy for the wrong was restitution.[49] The term 'spoliatioune' was also used to describe a wrong that could be committed in relation to moveable goods in 1438; in this context, it was referred to alongside the wrong of 'reyff'.[50] Arguments presented elsewhere posit that the crime of 'reyff', or robbery, was the violent theft of moveables, and it could be punished with death and forfeiture of goods.[51] The 1438 act used one procedure to redress both 'oppin and publy [public] reyff' and 'oppin and publy . . . spoliatioune' of moveables,[52] and the remedy for the victim in both cases was restitution. This confirms the well-known points that both 'reyff' and 'spoliatioune' involved the wrongful seizure of goods from another person. The act also makes it clear that sheriffs could

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H. L. MacQueen, *Common Law and Feudal Society in Medieval Scotland* (Edinburgh, 1993), 224–8; J. W. Cairns, 'Historical Introduction' in K. Reid and R. Zimmermann (eds), *A History of Private Law in Scotland*, 2 vols (Oxford, 2000), I, 73–4; Godfrey, *Civil Justice*, 239–47; J. Townsend, 'Raising Lazarus: Why Spuilzie Should be Resurrected', *Aberdeen Student Law Review*, 2 (2011), 23–31; D. L. Carey Miller, 'Spuilzie: Dead , Dormant or Manna from Heaven?: Issues concerning Protection of Possessory Interests in Scots Law' in H. Mostert and M. de Waal (eds), *Essays in Honour of C. G. van der Merwe* (Durban, 2011), 129-50.

48 RPS, record 1458/3/3.

49 MacQueen, *Common Law and Feudal Society*, 135 n.154, 233; RPS, record 1385/4/5. Dr Jackson Armstrong has also kindly drawn my attention to another early reference to a complaint of 'spoliation' in a common law court, which was discussed before Alexander Fraser of Philorth, Sheriff of Aberdeen, on 2 April 1397; see Aberdeen University Library (AUL), MS 3004/525/34.

50 RPS, record A1438/12/1; the notes to this act on the RPS website show that the original manuscript authority for this text, which was included in the nineteenth-century *Acts of the Parliaments of Scotland*, has not been traced. A well-attested later version of the same act can be found in RPS, record 1450/1/9.

51 Simpson, 'Procedures for dealing with Robbery'.

52 This procedure was indebted to the earlier law relating to robbery and extended it to be used in relation to spoliations.

inflict the same punishments for both offences.[53] But it is not clear that the two wrongs were identical in all respects. Tentatively it is suggested here that the wrong of 'spoliatioune' had a broader scope than 'reyff'. Unlike robbery, it was not limited to moveable property in its application, as is made clear from the case of William de Fenton. Furthermore, it would seem that violence was an essential element of the wrong of robbery, but not of spuilzie. Neilson and Paton pointed out that spuilzies could result from technical breaches of procedure, for example where officials failed to observe due process in taking goods from a man to satisfy his debts.[54] A good example of a spuilzie without violence may perhaps be found in the case of *Forbes of Tolquhon and Others* v. *Meldrum of Fyvie*, which was heard in various sittings of Aberdeen sheriff court from 12 May 1506 until 11 January 1508. The primary allegation against the defender seems to have been that he took two oxen 'unorderlie', even though he argued that he had received them from two of the pursuers in payment of a debt.[55] Littlejohn, editor of the records of the sheriff court, also argued on the basis of such evidence that 'the wrong done might [have been] little more than technical, or it might [have been] highly criminal'.[56] And yet, as Godfrey observes, '[r]ather often [spuilzies] must have encompassed a real degree of violence . . . in the course of the dispossession'.[57] This reality was certainly reflected in some of the earliest attempts to explain what normally had to be libelled or alleged in actions of spuilzie before the lords of session. For example, in 1546 it was noted in a decision of the lords of session that in actions of spuilzie it was sufficient to prove possession and violent ejection from that possession in order to obtain the remedy of restitution. The authority given for this claim was the commentary written by the prominent canonist Panormitanus on the *Liber Extra*,[58] and this reflects the well-known fact that

[53] With regard to the later position, see P. G. B. McNeill (ed.), *The Practicks of Sir James Balfour of Pittendriech Reproduced from the Printed Edition of 1754* (Stair Society vols 21–22, Edinburgh, 1962–1963), II, 466 (the reference is to an un-named case dated 20 July 1548). But note the qualification to this in J. A. Clyde (ed.), *Hope's Major Practicks* (Stair Society vols. 3–4, Edinburgh, 1937-1938), II.VIII.I § 21.

[54] See *ADC*, ii, lxxi; Godfrey, *Civil Justice*, 242. It should be noted that the evidence concerning this point dates from the late-fifteenth century onwards.

[55] Littlejohn (ed.), *Records of the Sheriff Court of Aberdeen*, I, 51–4.

[56] Ibid., I, 47.

[57] Godfrey, *Civil Justice*, 242.

[58] '*in actione spolii satis sit de iure probare possessionem et violentam eiectionem*'; see *Earl of Cassillis* v. *Laird of Lochinvar* (1546), found in Sinclair, *Practicks*, cn.389-392; the critical phrase is at cn.389, and Dolezalek in his notes on the case (also included in the edition of Sinclair's *Practicks* referenced here) identifies Panormitanus as the authority relied upon here.

from 1450 at the latest the Scottish action of spuilzie was conceptualised and developed in light of the canonist *actio spolii*.[59] Further reflection on the extent to which spuilzie was shaped by such canonist influences, on the one hand, and the Scottish laws relating to robbery and other wrongs recognised at common law, on the other, is beyond the scope of this article.[60]

Like the law-makers of the mid-fifteenth century, Scottish men of law who practised in the Session in the 1520s and early 1530s seem to have perceived some link between the wrongs of spuilzie and reif, or robbery. So an advocate such as James Foulis clearly thought it appropriate to appear in the bailie court on 15 October 1530 and to present the allegation that the cargo of the ship of Danzig had been 'reft stowinn [stolen] and spulyeit'.[61] Likewise, the letter that James V sent north with Foulis contained the allegation that 'diuersis our liegis rewis and spulyeis the schipe and gudis'.[62] Unfortunately the records of this case do not disclose any information about any perceived distinction between the two wrongs in the minds of men like Foulis.[63]

Having explored spuilzie as it was understood at common law, it is now possible to return to the question posed above. Did the findings of the bailie court and its 'Venerabill and nobill' auditors exonerate the provost and his accomplices from any accusation that they had committed that wrong? Of some interest in this regard is the way in which the bailie court handled the possibility that an allegation of spuilzie might be linked with an allegation of violent seizure of the goods. That this was recognised at an early stage can be discerned from the comments made on 14 October before the 'Venerabill and nobill' auditors by the Earl Marischal's procurator John Keith. Keith had declared that, at some point following the wreck, Marischal had come to preserve the goods 'fra violance and spulye' which he feared from the local

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[59] See RPS, record 1450/1/9, read in light of *ADC*, ii, lxxi, where it was shown that the canonist maxim *spoliatus ante omnia restituendus est* was incorporated into Scots law in the 1450 act. On the canonist influence on the action of spuilzie, see particularly Godfrey, *Civil Justice*, 239–47.

[60] Note that the substantive wrong of spoliation was somehow influenced by that which was addressed by the brieve of novel dissasine (and possibly vice versa); I intend to consider this elsewhere. For the relationship between spuilzie and novel dissasine, see MacQueen, *Common Law and Feudal Society*, 224–8; Cairns, 'Historical Introduction', 73-4; Godfrey, *Civil Justice*, 240–1.

[61] ACA/CA 1/1/13/20; ABRD 13/20/20/2.

[62] ACA/CA 1/1/13/22; ABRD 13/22/22/1.

[63] However, it should perhaps be noted that the allegation that the goods of the ship of Danzig had been 'reft' does not seem to have been contemplated in the bailie court until the 15 October, when Foulis and Wood came to sit there in 'iugement'.

lairds.[64] None the less, the suggestion that the seizure of the goods had been in any way 'violent' was only reiterated – indirectly – in the allegation made on 13 October that some of the cargo had been 'reft' from the ship of Danzig. There is no record of the auditors of the bailie court enquiring as to whether or not any goods had been taken by force. Perhaps this was because they recognised that the wrong of spuilzie did not necessarily involve violence.

On the basis of the evidence cited above, simply establishing that Provost Menzies and his associates had not acted forcibly would not have established either their innocence of that particular wrong – albeit that it might have defended them from an accusation of robbery. But what the auditors did was to establish that Menzies and his associates had taken goods from the ship of Danzig with the consent of the skipper of the ship. The skipper swore that the provost and his accomplices had been diligent in salvaging the goods, and he implored them 'to continew' in the same fashion so that the goods might be returned to those with title thereto.[65] If Menzies and his associates understood that a spuilzie could be committed by those who simply uplifted goods in what was, legally speaking, an 'unorderlie' fashion, then the oath of the skipper would have helped to acquit them of such wrongdoing. It is entirely plausible that Menzies and other members of the bailie court would have been aware of this aspect of the law relating to spuilzie; and they would not necessarily have had to turn to the legal expertise of a canonist like Master Alexander Galloway for their information. Those who managed the affairs of Aberdeen sheriff court would seem to have known that a spuilzie could be committed without violence, as is indicated by the near-contemporary case of *Forbes of Tolquhon and Others* v. *Meldrum of Fyvie* (1508). And amongst those who had served in that court was the provost himself, who had acted as sheriff depute of Aberdeen in 1526.[66]

Therefore, it is argued here that when Provost Menzies asked the skipper of the ship of Danzig to swear an oath in front of the 'famouss' and 'Venerabill and nobill' auditors of the bailie court, he was actually preparing his own defence against any accusation of spuilzie. His experience in the case of *The Petire Hull* a few years earlier would probably have made him keen to avoid any such allegations. And yet the oath of the skipper might still not have absolved him entirely. It will be recalled that Menzies offered his help on the condition that the skipper would make over to him a third of the goods rescued. Could

[64] ACA/CA 1/1/13/18; ABRD 13/18/19/2.
[65] ACA/CA 1/1/13/17; ABRD 13/15/17/3.
[66] RPS, record 1526/6/15.

this potentially have been treated as an 'unorderlie' attempt to seize the goods, even if it were shown to have been done with the consent of the skipper? Only by considering the contemporary law concerning what was to happen to goods taken from wrecked ships can this last question be answered.

'The promiss and conditiounn maid to the provest'

Scottish law-makers and law-enforcers had long been familiar with the idea that the theft and wrongful seizure of goods from shipwrecks more generally could potentially be classified as forms of robbery.[67] But sixteenth-century Scottish men of law had also inherited from the medieval period a fairly detailed set of rules that were designed to regulate what was supposed to happen to such goods.[68] One early Scottish legal text, which was sometimes cited as a statute of Alexander II,[69] and sometimes referred to as a chapter of the medieval *Leges Forestarum*,[70] declared that if a man, a woman, a dog, a cat or any other beast survived a shipwreck, then the goods on board that came

[67] For an early reference to the notion, see C. J. Neville and G. G. Simpson (eds), *The Acts of Alexander III, King of Scots 1249–1286* (*Regesta Regum Scottorum* vol. IV Pt.1, Edinburgh, 2013), 100-05 (charter no.61), otherwise known as the Treaty of Perth (1266). On the Treaty, see R. I. Lustig, 'The Treaty of Perth: A Re-Examination', *Scottish Historical Review*, 58 (1979), 55–6. The treaty may reflect the influence of Roman law in its classification of the seizure of shipwrecked goods as robbery; see *Digest* 49.9. I have used T. Mommsen, P. Krueger, A. Watson et. al. (eds), *The Digest of Justinian*, 4 vols (Philadelphia, 1985). I am grateful to Professor Ford for first drawing to my attention the possibility that this text of Roman law might have influenced the relevant provisions in the Treaty of Perth. Lustig suggests that the Norwegian Chancellor Askatin may have been influential in the drafting of the Treaty. On the possibility that Askatin had knowledge of Roman law, see J. Ø. Sunde, 'Daughters of God and Counsellors of the Judges of Men' in S. Brink and L. Collinson (eds), *New Approaches to Early Law in Scandinavia* (Turnhout, 2014) 160–1, where he suggests that Askatin had knowledge of 'ecclesiastical law', and notes that he was probably involved in drafting the *Code of the Norwegian Realm* in Bergen in 1274; as discussed at 168–72, this may reflect some Roman influence.

[68] I have found very helpful the detailed and informative treatment of this subject in J. D. Ford (ed.), *Alexander King's Treatise on Maritime Law* (Edinburgh, 2018), Commentary on Title 9, Sections 18–21 and 22–23. I am very grateful to Professor Ford for allowing me to read advance drafts of his edition of King's *Treatise*; the present article went to proof before it was possible to incorporate more extensive references to his work here.

[69] J. Skene, *Regiam Majestatem* (Latin edition, Edinburgh, 1609), second part, f.28^{r}–28^{v}. I took this reference from Ford, *King's Treatise*, Commentary on Title 9, Sections 22–23.

[70] Balfour, *Practicks*, II.624, c.XLV; Chalmers, *Dictionary*, f.135^{v}. For the difficulties in handling late-medieval Scottish legal textual traditions, see, for example, H. L. MacQueen, '*Regiam Majestatem*, Scots Law, and National Identity', *Scottish Historical Review*, 74 (1995), 15.

ashore were to be gathered 'in the handis of the indwellaris of the town quhair thay wer fund'.[71] The true owners of the property salvaged were then to be given a year and a day to vindicate it. Failing this, the goods would be treated as 'wrak', and forfeited to the Scottish crown.[72] Yet this position was qualified in an act of 1430, which provided that ships wrecked on the Scottish coast would only be forfeited if they were 'of tha cuntreis the quhilkis oysis [uses] and kepis the samyn law of brokyn schippis, and in thare awin lande'. But if they came from a country that did not keep that law, then they were to have the same protection in Scotland 'as thai kep to schippis of this lande brokyn with thaim'.[73]

One can see some of these rules in application in the case of *The Petire Hull*, discussed above. The skipper of that vessel survived its wreck,[74] and perhaps other crew members did too. Presumably as a result of this, the goods on board the *The Petire Hull* were not treated as 'just wrak be the lawis of this realme'. Rather, it was ordered that they should be restored to 'the awneris thairof'. It may be significant that the 'owner', the king of Denmark, had come forward to press his claim.[75] Likewise, in the case of the ship of Danzig in 1530, there is no indication that either James V or any of his counsellors thought that any right of 'wrak' came into operation in favour of the Scottish crown. This is unsurprising, given that some of the mariners evidently survived the wreck. As in the case of *The Petire Hull*, the royal command was that the goods on board the ship were to be salvaged by the magistrates and inhabitants of the local town so that they could be restored to those with just title thereto.

Consequently, in the case of the ship of Danzig the duty of the magistrates and inhabitants of Aberdeen was to salvage its cargo so that it could be returned to its true owners. Seen in this light, it might be thought that Provost Menzies' refusal to help the skipper until he had been promised a share of the goods on board the vessel would have been deemed 'unorderlie'. If so, then his subsequent intromission with the goods could conceivably have been

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[71] I have used the version of the text preserved in Balfour, *Practicks*, II.624, c.XLIV; this is not a critical edition. As is noted in Frankot, *Of Laws of Ships and Shipmen*, 28 n.4, this rule goes back to Henry III of England (r.1216–1272).

[72] The Scottish crown was able to grant the right of 'wrak' in a particular area to local landowners or dignitaries.

[73] RPS, record 1430/19. Again, I have found very useful the discussion of these rules in Ford, *King's Treatise*, Commentary on Title 9, Sections 22-23.

[74] RPS, record 1526/6/15.

[75] RPS, record 1526/6/15; Balfour, *Practicks*, II.624, c.XLV, *s.n. Alexander Kinghorne v the Burgh of Aberdeen* (5 December 1526).

treated as a form of spuilzie. And yet there is strong evidence to suggest that the Scottish courts would not have adopted this attitude. On 7 May 1540, Laurence Powrell, the skipper of a ship of St Malo, raised an action before the lords of council against Gilbert Kennedy, third earl of Cassillis.[76] Powrell alleged that after his ship had been wrecked at Dunure, he had agreed with Cassillis that the latter would help to salvage his vessel in exchange for payment of sixty crowns. Powrell complained that Cassillis had withheld some of the goods even though he had been paid, in accordance with their bargain. The lords ordered Cassillis to make restitution to Powrell, 'Laurence satifyand mesurablie for the wyning of the samin'.[77] Therefore it would seem that the Lords approved the arrangement whereby Cassillis offered to help Powrell salvage his ship in exchange for payment. And this is not the only example of such an agreement in the records. About forty years earlier, on 23 March 1501, the bailie court of Aberdeen witnessed a bargain between William Hay, master of Erroll and Albert Gerardson, 'Hollander', whose ship had been wrecked near Cruden Bay, a few miles to the north of Aberdeen. Gerardson had sold Erroll everything that could be salvaged from the vessel for 'xv Frenche crounis of golde'; it was noted that this was done 'with consent and assent' of five crew members. It would seem likely that the payment was made in order to cover some of Gerardson's losses, but no objection seems to have been raised to the bargain.[78]

In other words, the sort of deal struck between Menzies and the Danzig skipper in 1530 seems to have been treated as lawful in near-contemporary Scottish sources. Consequently, it is difficult to see how his actions could have been portrayed as an 'unorderlie' attempt to seize the goods on board. Yet it may be asked why the agreements reached between Cassillis and Powrell,

[76] On Cassillis, see M. Merriman, 'Kennedy, Gilbert, third earl of Cassillis (*c.*1517–1558)', *Oxford DNB*.

[77] R. K. Hannay (ed.), *Acts of the Lords of Council in Public Affairs* (Edinburgh, 1932), 486–7. Professor Ford noted this case in *King's Treatise*, Commentary on Title 9, Sections 22–23, and recognised its significance in relation to the law of shipwreck; I am very grateful to him for sharing the reference with me.

[78] J. Stuart (ed.), *Extracts from the Council Register of the Burgh of Aberdeen*, 2 vols (Aberdeen, 1844–8), I, 428. Professor Ford noted this case in *King's Treatise*, Commentary on Title 9, Sections 22-23, and recognised its significance in relation to the law of shipwreck; I am very grateful to him for sharing the reference with me. Professor Ford has also referred me to a similar bargain mentioned in the council registers that was struck in February 1528. There it was noted that a skipper of a ship had agreed to give one David Grayme some cargo from his vessel up to the value of fifteen pounds Scots in exchange for saving the ship when it "brak" near Aberdeen. See ACA/CA 1/1/12/1/317.

Erroll and Gerardson, and Menzies and the Danzig skipper, Hans John, were not challenged. After all, in each case the skipper effectively assumed authority to dispose of ship-board goods, which may well have belonged to merchants for whom he acted. So on what basis was he permitted to bargain with their property? The answer may lie in the rules concerning what would today be called 'general average'. As Edda Frankot puts it, '[g]eneral average is a contribution made by all parties concerned in a sea adventure towards a loss brought about by the voluntary sacrifice of the property of one or more of the parties involved, for the benefit of all'.[79] Such rules had been known since ancient times, and they applied in a wide variety of different circumstances.[80] For example, if a skipper used some of the cargo on board his vessel to ransom it from pirates, then everyone whose property had been preserved in this manner had to contribute to redress the losses of those whose goods had been sacrificed.[81] Such rules were used to determine the outcome of a case heard before the court of Lübeck in 1493. The governor of Gotland 'had saved a ship and its cargo and was rewarded with some of the goods'. This was treated as perfectly legitimate; and the 'council considered the situation to be related to jettison and other forms of general average'. Consequently, the costs of those who sustained losses were divided amongst 'the owners of the ship and the goods'.[82] Such rulings reveal that the Danzig skipper was almost certainly entitled to bargain with Provost Menzies as he did in order to secure his help in salvaging his cargo; and they also show how the resulting losses of the parties involved might have been distributed.

The Reaction of the Foreign Merchants

By Scottish standards at least, it would seem that Menzies acted lawfully when he asked the skipper of the *Jhesus* of Danzig to promise him a third of the goods salvaged from the ship in exchange for his help. Yet what of the merchants who had interests in the cargo? Did they react to this bargain, and if so, how?

The merchants in question certainly sought to protect their goods. By April 1531 all those who had an interest in the cargo, including 'the marchandis of Danskin in the Stalyart of London', had sent one William Witherlink to

[79] Frankot, *Of Laws of Ships and Shipmen*, 31.
[80] See, for example, *Digest*, 14.2.1–2, discussing the *Lex Rhodia de Iactu.*
[81] *Digest*, 14.2.3.
[82] Frankot, *Of Laws of Ships and Shipmen*, 185–6.

act as their procurator in the bailie court in Aberdeen.[83] The reference to the 'Stalyart' or 'Steelyard' is of interest because it was the headquarters of the Hanseatic League in London.[84] In other words, merchants from outwith Scotland did indeed have a claim to the cargo. Witherlink proceeded against individual Aberdonians to recover the cloths that had been on board the ship.[85] For example, he raised an action for recovery of certain 'claiths' that Provost Menzies had entrusted to one William Rolland 'to wesche, dry and dycht [clean]'. In so doing, he probably utilised a Scottish action of spuilzie; unsurprisingly, representatives of the foreign merchants were prepared to use Scottish procedures to recover their goods.[86] Witherlink stood ready to pay Rolland for his efforts in cleaning the cloths, but this was not enough for Rolland; he also wanted payment for his 'labours' during 'the first wynyng of the said claith'. Witherlink refused to make any such payment, and Rolland likewise refused to hand over the cloths.[87]

Witherlink pursued several other such claims for recovery of the cargo. But he did not raise any action against Provost Menzies. In fact, Menzies and Witherlink seem to have worked together, so much so that Witherlink eventually made Menzies and his associates his procurators for recovery of goods that individual Aberdonians still withheld.[88] But did Witherlink respect the deal struck between Menzies and the skipper of the *Jhesus*? Did Witherlink allow Menzies to retain the third of the goods salvaged from the ship that had been promised in exchange for his help? An answer may perhaps be found during the course of one of Witherlink's exchanges with William Rolland in the bailie court. Witherlink declared that he had 'agreit and componit witht Gilbert Menzies and his complices for the wyning of the haill schip and guds'.

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[83] I am very grateful to Professor Ford for drawing the subsequent proceedings involving the cargo of the *Jhesus* to my attention. In this regard he shared with me his transcriptions of relevant passages in ACA/CA1/1/13, 70, 103, 106-7, 113–17, 125, 134–9 and 141–4. References to those pages below are to Professor Ford's transcription. For the passage quoted here, see ACA/CA/1/1/13/134; cf. ACA/CA/1/1/13/70.

[84] For the Steelyard, see, for example, A. Wijffels, 'History and Law. The Case for the German Hanse against the English Merchants Adventurers (1603-4)' in I. Czeghun (ed.), *Recht im Wandel – Wandel des Rechts. Festschrift für Jürgen Weitzel zum 70. Geburtstag*, (Köln, Weimar, Wien, 2014), 428 fn.4, Wijffels cites various studies on the Steelyard. I am grateful to Professor Wijffels for referring me to this article.

[85] ACA/CA/1/1/13/103.

[86] The nature of the action is unclear, but it was probably one of spuilzie; see ACA/CA/1/1/13/103, which referenced Witherlink's other actions of spuilzie.

[87] ACA/CA/1/1/13/106-07.

[88] ACA/CA/1/1/13/134-5; see also ibid., 136–9.

In other words, he had agreed to pay Menzies and his associates for their help. Presumably he had simply endorsed the bargain made with the skipper of the *Jhesus*. Witherlink then proceeded to declare that if Rolland had made efforts to recover the goods, and if he could prove it by the testimony of four or more witnesses, then he too would be paid. This does not seem to have satisfied Rolland, who still refused to hand over the cloths – in the face of threats of fines from Menzies.[89] Yet what is significant here is that Witherlink did not attempt to dispute the legality of Menzies' bargain with the skipper. Indeed, it would seem that he honoured it. Obviously it should not be inferred from this evidence that the legality of the agreement would have been recognised by any merchant, regardless of his port of origin. The belief that rules of maritime law were applied commonly and uniformly across northern Europe has been subjected to searching criticism by Frankot.[90] All that can be said on the basis of the evidence cited is that the foreign merchants in this case were willing to accept the bargain struck. Of greater interest, perhaps, is their evident ability to deploy a procurator to use Scottish legal rules, forms of process and courts to protect their interests.

Conclusion

On 3 May 1531, Witherlink at last granted Provost Menzies a discharge for the cloths and goods that had been in the *Jhesus*.[91] The discharge was for 'all and haill ye claithis and gudis [that] was in ye said schip ye tyme of hir brakin Intrometit with be yame or ony uther manner of persoun within the realme of Scotland', excepting the 'soum of fourty punds grit flanders mony' that was to be paid by Gilbert Menzies and his associates to the Danzig merchants.[92] Perhaps the 'fourty punds grit flanders money' was compensation for cloths still withheld by individual Aberdonians such as William Rolland.

A few days later, the provost ensured that Witherlink's discharge was formally registered. He must have done so with some relief. Since October, he had made considerable efforts to demonstrate to the royal administration, and also to Witherlink and his powerful associates in the Steelyard in London, that the magistrates of Aberdeen could be trusted to deal with shipwrecks

[89] ACA/CA/1/1/13/136-139. The passage quoted is at 137.

[90] See Frankot, *Of Laws of Ships and Shipmen*, 199-201; note also the point made concerning expertise as a possible source of legal authority in maritime disputes in J. D. Ford, 'Review of Edda Frankot, "*Of Laws of Ships and Shipmen": Medieval Maritime Law and its Practice in Urban Northern Europe*', *Edinburgh Law Review*, 17 (2013), 269–71.

[91] Hannay (ed.), *Acts of the Lords of Council*, 356; see NRS/CS 5/42 f.179^{r}-180^{r}.

[92] NRS/CS 5/42 f.180^{r}.

within the vicinity of their burgh in a lawful manner. In seeking to achieve this end, he had been able to rely upon the help of senior clergymen within the diocese of Aberdeen, and local magnates and lairds such as the Earl Marischal and Leslie of Balquhain. So on 14 October, the bailie court – Provost Menzies's own tribunal – had sought to establish the truth of what had happened at 'halymannis coif' five days earlier, and in so doing it went out of its way to demonstrate that its conclusions could be trusted. It appointed reputable individuals to oversee its proceedings, and two of them – Galloway and Elphinstone – possessed expertise in canon law, and their presence may have added some authority to any determinations reached by the court, given the assumptions held by royal councillors such as Archbishop Dunbar. Additionally, the court was generally keen to emphasise that it had observed sound procedures in gathering evidence, as can be seen from the fact that Provost Menzies withdrew when the skipper was asked to swear the great oath. Significantly, if James V and his counsellors had subsequently trusted the evidence heard by the 'Venerabill' auditors of the bailie court, then it would have been exceptionally difficult for anyone to accuse either the magistrates of Aberdeen or the Earl Marischal of complicity in any attempt to spuilzie the ship of Danzig. It has been argued here that the Aberdonians knew the relevant law relating to spuilzie, and so asked the skipper the correct legal questions in order to establish their innocence of the wrong. Consequently, it would seem that these men were covering their backs against the possibility of such an allegation. Again, the memory of *The Petire Hull* may have caused them to take particular care. Arguably, they were simultaneously trying to demonstrate to James V and his servants, Annand, Wood and Foulis, that there was no need for direct royal interference in the affairs of the burgh to ensure the maintenance of law and order within its jurisdiction. The bargain Menzies struck with the skipper of the *Jhesus* was also lawful, as Witherlink seems to have accepted on behalf of the merchants in the Steelyard. Even the implementation of that agreement could not be considered a disorderly intromission with the goods of another that would be sufficient to constitute a spuilzie.

Such a concern for the reputation of the burgh of Aberdeen in the eyes of the king, and indeed in the eyes of foreign merchants, is quite unsurprising, and it is actually attested in the records considered here. On 15 October, Foulis and Wood had ordered Provost Menzies and his associates to save the goods of the ship of Danzig, and to hold them for those with just title thereto, 'for

the honour of this realme and speciale weile of merchandis of the samyn'.[93] But a day earlier, before the auditors of the bailie court, Menzies had claimed that he had acted 'for the honour of the realme, weile of marchandyce *and Specialy of this gude tounne*' when he offered help to the skipper.[94] In practically the same breath he acknowledged that he had also acted in the hope of 'wynnyng' a third of the goods recovered from the *Jhesus*. Yet surely Menzies, and perhaps others in the burgh and its environs, would indeed have been concerned to vindicate Aberdeen's reputation as a port where the rights and privileges of visiting ships and merchants would be respected. It was not in any Aberdonian's long-term interests to see the town's 'honour' called into question, whether they were directly involved in the trade of the burgh or benefited from it indirectly. Perhaps such concerns also help to explain the willingness of diocesan administrators like Kincragy, Galloway, Elphinstone and Myrton to sit as auditors of the bailie court on 14 October. Over the past few decades, the diocese had demonstrated its concern for the welfare of the neighbouring royal burgh, most recently in supporting the project to complete the Bridge of Dee.[95] By lending their own credibility as 'famouss' men to the bailie court of Aberdeen, they helped it to demonstrate the truth of its central claim. This was that the magistrates of Aberdeen could be trusted to administer justice effectively within their own jurisdiction in a manner that was consistent with the common law of Scotland.[96] Indeed, it appears that their justice was also acceptable to a representative of the Hanse.

[93] ACA/CA 1/1/13/20; ABRD, 13/20/20/2.

[94] ACA/CA 1/1/13/15; ABRD, 13/15/17/3 (emphasis added).

[95] See generally Macfarlane, *William Elphinstone*, 265–73.

[96] They were indeed, expected to uphold the king's laws that were applicable to burghs, given that the burgh courts were, fundamentally, amongst the king's courts; see W. C. Dickinson, *Early Records of the Burgh of Aberdeen* (Edinburgh, 1957), xxxii–xl, lxxvii–xc (particularly ibid., lxxxi–lxxxii).