

'Some Property is Theft': copyright law and illegal activity in early modern Scotland

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THE STUDY OF the history of copyright in Scotland before the statute of 1710 has been largely ignored by British and Scottish book trade historians. Recently some new foundations have been laid, but much still needs to be done to further comparative studies and to investigate the vast records of Scotland's Court of Session where, from the Restoration onwards, a range of book trade disputes was heard.¹ Relevant historiography is thin on the ground, but this does not mean that the subject of copyright and literary property was unimportant to the book traders and authors of the first two centuries of Scotland's print history. The exploitation of property rights was vital to the early modern Scot, and literary property was no different from industrial patents and territorial rights in this respect. This economic imperative, as well as the essential role of print as the conduit of nonconformist religious and political ideas, made print culture the focus for illegal activity.

Early modern copyright in Scotland developed on different lines from that of England. There were practical, philosophical and legal reasons for this divergence. The actual term 'copyright' was equally alien to both countries at this early date; it is used here to denote the right to print (or reprint) a specific text. In sixteenth- and seventeenth-century Scotland, the typical licensee was granted the right to 'print, reprint, vend, sell and import'. Meanwhile in England, between 1556 and 1695, books had to be licensed by a government representative in order to acquire official permission to be printed. Ownership of copyright was formally recorded by the process of entry in the register of the Stationers' Company (established by royal charter in 1557), the form of words being 'Then entered for his copy under the hand of Mr Warden X a book called ...'.² The owner of the right to 'copy' was almost always the printer or bookseller who entered the book for publication; the author was seldom even mentioned. In Scotland copyrights for individual books continued to spring directly from patents granted by the Crown; in England this practice

also continued throughout the early modern period, though it declined, relatively though by no means completely, once registration at Stationers' Hall offered an alternative means of protection.³ No equivalent to the Stationers' Company ever developed in Scotland. The smaller scale of the Scottish press and the tradition of burghs having equal status and rights to develop commerce independently prevented the formation of such a centralising society in Edinburgh. The right to print individual Scottish books was granted by the Crown, or its representatives, usually the Scottish Privy Council, for a limited number of years, either a specific period or the lifetime of the licence holder. In Scotland, as in France, Spain and the Low Countries, there was no notion of perpetual copyright, whereas in England the Stationers' Company English Stock and English booksellers and authors continued to claim perpetual copyright until it was quashed by the test case of 1774.

In Scotland the first royal patent was that given by James IV to Scotland's first printers Walter Chepman and Andro Myllar in 1507. This was to print a new national breviary, the *Breviarium Aberdonense* (1510), compiled by William Elphinstone, Bishop of Aberdeen, a text prescribed to replace 'Sarum use', the Salisbury breviary, though this was not strictly a patent for a single act of publication. The first such Scottish examples were the letters patent granted to Thomas Davidson in 1541 to print the acts of the Parliament of Scotland, and the eleven-title, educational book patent granted to the author William Niddrie in 1559, a bold but unrealised attempt at educational publishing in the twilight of pre-Reformation clericalism. These last two patents were for six and ten years respectively.⁴ In fact, these Scottish examples mirror the two types of prerogative printing patent that operated in England: the Chepman and Myllar variety — general, usually for life and containing generic classes of books, bibles, prognostications and so on, and the Davidson and Niddrie type — 'particular' and limited in time, in England typically to licences of seven to ten years' duration, in Scotland set at nineteen years. Thus, before the Stationers' Company began to dominate the English book trade in the reign of Queen Elizabeth, the practicalities of copyright protection in England and Scotland were not too dissimilar. Notwithstanding the continuation of English prerogative patents in the seventeenth century, it was the 1710 copyright act which brought England back on a converging path with Scottish practice.

The legal and philosophical attitudes to copyright in Scotland come together in early modern Scottish law's interpretations of the nature of intellectual property. Although both Scots law and Roman law, the basis of the former, sustain the theory of 'incorporeal' rights, for example in noble titles without necessarily a territorial basis, Scots interpretation repudiated the concept of 'incorporeal' property in inventions and creations. For such property to have a certain legal basis it had to have physical form. A manuscript or a printed book was legal property, but not the text or its ideas. It was only illegal to copy such property, industrial or intellectual, if successful application was made to the appropriate authority for a patent or copyright licence. Following the number of cases concerning literary property before the Court of Session in the 1750s and 1760s, this view of copyright ownership led Scotland's judges to reject the notion of perpetual copyright — it was seen as unreasonable and foreign to Scottish copyright conventions. Meanwhile, in England, with its uncodified and statute basis for law, the author created property when he wrote a text and would then usually transfer ownership of that property by selling it to a member of the book trade. English common law assumed perpetual copyright, subject to qualifications imposed by statute — for example, in a rather opaque manner, by the 1710 act.⁵ These contrasting approaches would become the constant backdrop to the 40 years of Anglo-Scottish legal conflict which started in the 1730s, but given the deepening commercial rivalry between England and Scotland since the advent of print it was a dispute waiting to happen.

In early modern England, both printed books and the Stationers' Company, a company of members of the book and allied trades with its own court and ordinances, had a special status. Throughout the seventeenth century the members of the Stationers' Company succeeded in accumulating rights as the Westminster Parliament and commercial interests continued to attack royal patents. The Statute of Monopolies of 1624 — which limited patents in inventions and industrial processes to twenty-one years for existing rights and fourteen for new rights, and also insisted they be tested by common law — excluded the royal printing patents and charters granted to corporations and societies.⁶ In other words all English book patents were exempted. The licence to print was differentiated from the industrial patent. During his English reign James VI and I contributed to the rise of monopolies in English printing, though the trend was well established before 1603.⁷ James has taken much of the blame for granting patents to individuals for particular book titles, he being

'less experienced, less well-respected and less politically astute' than Queen Elizabeth.⁸ Yet this description takes no account of James's background in Scottish copyright traditions and practices, where copyrights were mostly granted directly by the Crown to individuals.

Scotland was not a complete 'island' in copyright terms, however. In the reign of Charles I the Stationers' monopoly reached into Scotland's public copyright system. The 'Scotch Patent', as it was known in London, was acquired as part of Miles Flesher's Stationers' Company monopoly which he built up from 1617 to 1638. This included a share in the office of Scottish royal printer, which he obtained in 1632 with his partner Robert Young. Ironically, Flesher had his dividend suspended by the Stationers in 1634 as a punishment for importing into England psalms printed at his Edinburgh press.⁹ It would be 1670 before these English 'invaders' retreated across the border and returned the office of royal printer into Scottish hands.

But even when the patenting excesses of Charles I were swept aside in 1640 by the Long Parliament — Charles had exploited loopholes in the 1624 Act — book printing and publishing remained a special case in England. Meanwhile, although the Statute of Monopolies did not apply in Scotland before 1707, the Scottish convention of a restricted patent for an individual book title was well established before the Union of the Crowns. This did not stem from the expression of Scottish concern over monopolies during the Scottish reign of James VI. Indeed, with the encouragement of the King, the Scottish Privy Council set up a commission of grievances over monopolies in May 1623, and two months later a Standing Commission of Manufactories was established. In June of that year the commissioners of the Scottish burghs presented a petition protesting at monopolies which attacked natural trade and the interests of the people. Nearly two decades later, in 1641, the Scottish Estates halted some major monopolies 'because of the great hurt inflated on the lieges by monopolies, all patents purchased for the benefit of particular persons in prejudice of the public'.¹⁰ But books were not on the agenda in Scotland in 1623 or 1641.

The fact that the main licensing and copyright-granting authority in Scotland was the Crown, working via its executive the Privy Council, gives the impression of a highly centralised copyright regime. Local Scottish copyright did, however, exist. This Scottish, 'local' variety was not so dissimilar to the copyright protection of the Stationers' Company. As we

have seen, in England all printed matter not covered by royal grant was supposed to be passed by government licensers and then entered at Stationers' Hall in London; but there was no continuous and centralised registration regime in Edinburgh. In Scotland, although printing did not commence in Aberdeen, Glasgow and Dundee until 1622, 1638 and 1703 respectively, no centralised limitation was placed on the proliferation of presses, and local town councils were authorised, as with any other commercial activity, to license and manage their local presses.¹¹ In addition, those printing burghs with universities, Edinburgh, Aberdeen and Glasgow, built up financial, intellectual and print-licensing conventions that linked town and gown.¹² At this level local licensing and local copyright protection existed on a private basis under the authority of local magistrates. After the Restoration the 'printing burghs' took a special interest in a range of almanacs, diurnals, news-sheets and newspapers, and provided local copyright protection, as seen in Aberdeen town council's protection of the 'Aberdeen Almanack' from the 1660s, and the Edinburgh burgh licence granted to various newspapers, including that in 1709 to David Fearn to produce the 'Scots Postman'.¹³

The Crown was by no means a benevolent force as far as the liberty of Scottish copyright was concerned, especially with the range of rights and privileges it conveyed to the royal printers of Scotland, holders of the Scottish 'printing patent'. The wide supervisory and generalised copyrights granted in 1671 by Charles II and the Duke of Lauderdale to Andrew Anderson, royal printer from 1671 to 1676, and subsequently inherited by his remarkable widow Agnes Campbell, were the cause of major disputes in the book trade of Scotland in the 1670s and 1680s. James VII and II's strange appointment of James Watson, senior, to the anomalous post of 'household printer' in 1686, with a monopoly over all almanacs, created much consternation in the trade and especially for Agnes Campbell. The fact that Watson was a Catholic merely added the fuel of bigotry to the flames of the dispute. George I's absurd appointment of John Baskett, English royal printer, and Robert Freebairn as sole Printers to the King in Scotland in 1714, in spite of a valid 1711 warrant that existed in the names of Freebairn, Baskett and James Watson, the younger, led to such a level of litigation, reaching the Court of Session and eventually the House of Lords in 1718, that only the lawyers were the absolute winners. In fact the courts showed a remarkable degree of independence in the face of an irrational exercise of royal prerogative. The decision of Robert Freebairn to become

printer to the Old Pretender in the autumn of 1715, and the subsequent forfeiture of his share of the gift, added another extraordinary twist to this seven-year legal saga.¹⁴

It is clear that James VI and I was not the only monarch nor the most inclined to interfere with and restrict the liberty of Scottish copyright. There was, however, one particular trade dispute that highlights both the Crown's tendency to facilitate monopoly control and the reluctance of the executive and legislature to place book trade monopolies into too few hands. In the 1590s and 1600s Andro Hart, the most significant printer and bookseller in Scotland before the Restoration, set up various partnerships and agreements with the London bookseller John Norton.¹⁵ From about 1590 Hart and Norton began importing books directly from Germany and the Low Countries, and a decade later the partners agreed to import bibles from Dort to undermine the Bible patent in England held by the Barker family. By the time of Norton's death in 1612 Hart had become Scotland's largest book importer, and his scale of international trade was probably unsurpassed until the 1690s. Seeking to exploit his import business, in June 1614 Hart purchased from King James the exclusive right to print overseas and import into Scotland. This extraordinary right led to protests from the then royal printer Thomas Finlason, who excelled at accumulating copyrights which he shelved and left unutilised, and from the booksellers Richard Lawson and James Cathkin, ironically like Hart both staunch presbyterians and former prisoners of conscience. The subsequent case was heard before the Privy Council and the ruling delivered one of the most significant judgments in Scottish book history. Although Hart came armed with a letter from the King demanding that he must have his rights confirmed without delay, the Council rejected the privilege entirely. The words of the judgment provide a dramatic illustration of executive views about the licensing of the press, which in the 1670s and 1680s would be reflected in the opinions of Parliament:

The fredome, libertie and previledge of prenting, homebringing and selling of all suche bookis and volumis quhilkis ar allowit and nowise forbidden ... aught [to] be free to all His Majesties subjectis ... and not conferrit and gevin to ony one persone without grite hurte and prejudice of the cuntrey, because every suche privat and plane fredome, libertie and privilege is not onlie a monopolie of ane evill preparative and example, bot will gif occassioun to alter and raise hicht, and change the pryces of all bookis and volumes at the appetite and discretioun of the persone and personis in whose favouris the said previledge salhappin to be conferrit; and for

this effect the saidis Lordis ordanis the gift and previlege purchest be the said Andro Hairt [from the King] to be stayed, and on nowise to be past nor exped.¹⁶

This important case shows that as far as book regulation was concerned the inclinations of the Crown (King and senior officers of state), executive (entire Privy Council) and legislature (estates of Parliament) were not always identical. Indeed both the Privy Council, Scotland's copyright agency, and Parliament, which when it did get involved took a generally liberal line in granting limited rights to licence holders, other than its ratification of Anderson's copyrights in 1672, sought to protect the book market of Scotland from excessive monopolism. In one respect, however, all three agencies shared the same sense of priorities: censorship mattered more than copyright, while government management of book dissemination rested on four not two familiar pillars: propaganda and licence as well as copyright and censorship. The last three of these are easily confused as simultaneous grants of copyright and licence to print were very common, and the control of licensing was, of course, an arm of censorship, even though *a priori* censorship would become impractical in the second half of the seventeenth century. Actual licence to print was obtained in a variety of ways: formally by a signed licence, sometimes printed in the work, indicating that a specific printing had been checked and approved by an agent of the Crown (an individual, a special committee or the Privy Council) and in some cases the Church, and also informally by mere act of open publication, with place, date, printer and author clearly stated. Neither of these licence types indicated copyright, even though the fact of and duration of copyright were frequently included within the text of a formal printing licence. Nonetheless, copyright and licensing had this in common: just as it was impractical for the authorities to license every small piece of printing ephemera so it was unnecessary or impractical for printers and authors to seek copyright protection for every small printing.¹⁷ Doing what made sense was one of the endearing qualities of Scottish book regulation in the early modern period, with the exception of some phases when the bark of government outrage frequently failed to transform itself into the bite of effective censorship.

The Scottish authorities considered their copyright responsibilities to be two-fold: firstly to provide copyrights on application and secondly to mediate between aggrieved parties when disputes arose. Neither Parliament nor Privy Council believed that it was the responsibility of government to provide a copyright policing system: the customs searchers

located at Scottish ports were entrusted with the public task of apprehending banned books on banned subjects, not printings that infringed private copyright. Copyholders were therefore left to police the trade themselves, and the wealth and greater resources of the royal printer often gave the incumbent a clear advantage. However, as seen in the details of copyright patents, the government did provide a range of sanctions for abuses of copyright. The need for compensation by confiscation of offending stock was recognised from the outset in the Chepman and Myllar patent of 1507. This warned that forbidden trafficking of titles within the gift would result in 'escheting [forfeiture] of the buiks'.¹⁸ Such a sanction was included in almost every copyright patent for the next 200 years. In addition to confiscation, from the 1560s fines were introduced. The level of fine varied throughout the period — £200 (Scots) in the 1560s to a standard 500 merks (£333) from the late 1690s. Sometimes a reward was offered to the discoverer of copyright abuses, consisting of perhaps half the 'fine' and/or escheat value, as in the 1694 copyright given to John Binning for a range of works written by his father, the clergyman Hugh Binning.¹⁹ Imprisonment was extremely rare and clearly not seen as an appropriate sanction for copyright abuse. The only instances of imprisonment, potential or actual, concerned the rights of the King's Printer or where Crown projects required protection. An example of such a threatened sanction can be found in the terms of the 31-year licence granted to Sir William Alexander in 1627 for the 'official' edition of the Psalms of David in metre. This was an especially 'official' edition with an 'official' copyright: the edition had been translated by Alexander with the help of the pen of the late King James. Where actual imprisonment resulted there were aggravating circumstances. In 1677 the Glasgow printer Robert Sanders was imprisoned for breaching the copyright of Agnes Campbell, King's Printer. The breach, according to the charges made before the Privy Council, involved a range of volumes: 'New Testaments and psalm books ... grammars ... many thousands of catechisms ... [and numerous] books of divinity and school books', all of which were technically part of the royal gift. But, in spite of the seriousness of the copyright breach, the main reason for Sanders' imprisonment was his failure to attend the second day of the hearing and to make his oath before the council. Special patents and special circumstances could produce the sanction of imprisonment, but in very few cases. Sanders could not, however, have been incarcerated for long.

Ten months later he was employed on official printing business by the council's commission of the west during its deliberations in Ayr. Although the proclamations he printed — including one that prohibited heritors from allowing tenants to settle on their lands if they refused to take an oath to keep the peace and to refrain from attending illegal field conventicles — were technically under the gift of the royal printer, the practicalities of the convenient Glasgow press were more important to the Privy Council.²⁰

Governments also felt a responsibility to provide courts of arbitration which could step in and adjudicate on copyright matters. Breaches of trading regulations, and disputes between book traders over debts and premises, were usually resolved by the town councils and bailie courts of the Scottish printing burghs. Meanwhile, throughout the sixteenth and most of the seventeenth century, copyright disagreements came before the Privy Council. Given that the copyright system in Scotland depended directly, as we have seen, on royal or Crown prerogative, it was appropriate that all disputes concerning licences, rights and copyrights should come before the Privy Council, acting as a civil court.²¹ But in spite of the best endeavours of the Privy Council in policing book trade disputes the level of litigation was growing beyond its competence by the 1680s. Matters such as apprenticeships, general book property rights and freedom of commerce came before the Court of Session. Some of the skirmishes were minor as when in 1681 the printer John Reid, senior, was incarcerated on the initiative of Agnes Campbell for apprenticeship absenteeism resulting in unlawful printing. A few weeks later the Lords of Session heard a process raised by Reid and his fellow apprentices, and although Reid was released it was on the understanding that he returned to his apprenticeship.²² In fact there were three great book-trade cases before the Court of Session from the 1670s — the heirs of Archibald Hislop, bookseller v. Robert Currie and Agnes Campbell (1678–87); Robert Sanders, the younger, v. Bessie Corbett, his mother (1694–1705), and Watson, the younger v. Freebairn, Baskett and Campbell (1713–18), and these helped ensure that the Lords of Session developed an expanding competency over the legal basis of the business of books.²³ The background to these cases: the duties of Currie as a bookseller acting in the interests of his step-children; the nature and value of printing materials inherited by Sanders; and the legal validity of co-partnership agreements over the gift of King's Printer in the Watson case — show the new-found

importance of the Session in book-trade law. Such cases provided the accumulated case law that legitimised the role of the Court of Session as a regulator of book commerce throughout the eighteenth century. Nonetheless, as it made perfect sense to appeal to the body that granted the right to print in the first place, it was before the Privy Council that most copyright disputes were heard. The demise of the Council in 1708, therefore, made it essential to find a British solution to a Scottish copyright vacuum.

Copyright and protection from pirates was vital to Scottish authors as well as Scottish printers. The attitude of the legitimate author seeking to protect his literary property is seen in the actions of the author and clergyman James Kirkwood, who at the turn of the eighteenth century would become famous for his remarkable and successful schemes to establish 'oasis' libraries in the poorest Highland parishes. It is, however, Kirkwood's earlier history as a grammarian that echoes typical copyright concerns. The history of grammar licensing and regulation in Scotland shows that the authorities did not take a consistent line in the licensing of school grammars. Prescription under James VI and I, with a set national grammar, was followed by recommendation under Charles I and then scholastic liberty under Charles II, although protecting copyright was no less important.²⁴ Kirkwood's grammar, published in three parts from 1674 to 1676, was subject to pirating, abridgement and copyright abuse in spite of the nineteen-year licence granted to him in 1674. He was so concerned that he delivered a supplication to the Privy Council in 1677 requesting a revised copyright with more rigorous punishments for abusers. That year he was granted fresh copyrights of nineteen years for a one-volume edition of his *Grammatica Facilis* and also for his *Rhetoricae Compendium*, each with the penalty of the very large fines of 2,000 merks (or £1,300) for pirates. In 1695, as the copyright terms were due to expire, Kirkwood was granted new nineteen-year licences for revised editions of both his grammar and his vocabulary. These were clearly new editions as the standard period of licence for a reprint was now eleven years. But the fact that no subsequent copyright breaches concerning Kirkwood are mentioned in the Council records suggests that these measures were effective. Being caught pirating such works could be potentially disastrous for most printers. The penalties

protecting Kirkwood's copyrights, so severe that he may have had friends in high places, declare that contraveners 'make up whatever loss and damage [he] may sustain', as well as confiscation of the offending printed stock and the fine.²⁵ Indeed, in general there are indications that copyright protection was reasonably effective in Scotland by the seventeenth century, and not much inferior to the more formal English system, given estimates that perhaps 40% or 50% of all English printings were not registered with the Stationers' Company.²⁶

Scotland's early modern case histories of illegal printing of copyrighted material are not without interest. The battle between the illegal and legitimate was continuous and sometimes dirty. As we have seen, under the terms of the Chepman and Myllar patent of 1507 the Aberdeen breviary was prescribed and Sarum use banned. However, in early 1510 the merchants William and Francis Frost, William Sym and Andro Ross were brought before the Privy Council charged with illegally importing the Salisbury breviary the previous year. The King's Printer Walter Chepman had made a complaint to the council and the council responded by making a general threat to the offending merchants to desist immediately or suffer confiscation of their stock, in a tone that suggested more serious sanctions were possible, perhaps a spell in prison.²⁷

Liturgical litigiousness continued into the next century. In 1618 and 1619 Gilbert Dick, an episcopalian Edinburgh bookseller who was well connected, was granted copyrights on two catechisms and the Book of Common Prayer.²⁸ These copyrights coincided with a raft of liturgical reforms instigated by James VI and I and carried forward by three episcopalian-dominated general assemblies which met in 1616, 1617, the year James returned and presided over a Scottish Parliament, and 1618. In fact John Spottiswoode, Archbishop of St Andrews, and the new ecclesiastical High Commission, and not the Assembly, were responsible for instigating the copyrights obtained by Dick. The combination of these copyrights and the liturgical and ceremonial reforms, including the Five Articles of Perth that contained the 'papist' practice of kneeling, placed Dick in direct conflict with the strongly presbyterian book trade community of Edinburgh. In 1618 the printer Andro Hart and booksellers Richard Lawson and James Cathkin were brought before the Privy Council, following a direct instruction from King James, for breaching Dick's right to print catechisms.²⁹ The background of the defendants was clear enough. Hart and Cathkin were involved in Edinburgh presbyterian

riots of 1596 and were imprisoned for their presbyterian views. In 1619 Hart, Lawson and Cathkin were all arrested and their booths searched and ransacked as the government sought to discover the distributors, printers and authorship of David Calderwood's anonymously published *Perth Assembly*, a tract which railed against the Five Articles.³⁰ Here we see the Crown enthusiastically using copyright law to support a loyal episcopalian, while cracking down on the presbyterian book trade 'activists', including the wealthy Andro Hart, a former 'Puritan' secret agent for Queen Elizabeth. This harassment helped split the book traders of Edinburgh into two religious factions, and such religious factionalism would emerge again in the Edinburgh trade of the 1680s.

The most prestigious and lucrative rights for religious publishing were of course those connected to the 'bible patent'. But in early modern Scotland this was not a strictly defined right as it was in England. While it was regarded as one of the duties of the royal printer to deliver printed bibles to the nation, both the government and the Church were more concerned with issues of supply and textual quality than the preservation of restrictive copyrights. The reasons may be put simply: the early modern Scottish book trade, and certainly no single royal printer, was never able to meet the demand for scripture from the population at large. This would remain the case in the modern period. Therefore, as seen in various Privy Council rulings in the 1670s and 1680s, the bible rights of the royal printer only extended to those editions and formats that he or she could keep in print. When in 1576 Thomas Bassandyne and Arbuthnot were given the licence to print Scotland's first bible, which appeared in 1579, it was for only ten years, in part due to Robert Lekpreuik's failure to produce an edition during the early years of the twenty-year bible licence granted to him in 1568, though admittedly during a time of civil war.³¹ Supply was ever the key issue.

Printing the bible was not an automatic prerogative of the King's Printer. Such rights were excluded from Chepman and Myllar (1507), Robert Waldegrave (1590) and Robert Charteris (1603).³² Thomas Finlason's gift of 1612 provided for non-exclusive rights to bibles, and these conditions were repeated in the Robert Young and Evan Tyler gift of 1641, with an emphasis that any printer must be allowed to print or import folio bibles, a format rarely printed in Scotland because of the high production costs. Andro Hart, who no doubt on account of his presbyterianism never became King's Printer, appears to have received no copyright protection

for his outstanding folio Geneva bible of 1610, though it was subject to a subscription drive organised by the Church and would be much copied on the Continent.³³ Subsequently the patents granted to Andrew Anderson (1671) and Robert Freebairn (1711) do, however, allow for an exclusive right to all bibles, although no printing or import restriction was valid without the existence of a matching edition from the royal press.³⁴

The regulatory framework and copyright law was put into something of a crisis in the 1670s, and bibles became a focus for this contentiousness. After developing a tradition of book trade liberalisation, book and press controls in Scotland suddenly took a lurch into new territory. The critical cause of disquiet was the extensive 41-year patent granted to the new King's Printer Andrew Anderson in May 1671. This provided unprecedented general rights and supervisory powers over the press. Anderson, his partners and assignees were not only 'his Majesties ... onlie sole and principall printer', with rights to print all bibles, liturgy and school books, but they were also 'Masters, Directors and Regulators of his Majesties office of Printing', with powers to police imports, prevent printers setting up presses who had not served apprenticeships, and they could, subject to the Privy Council, 'seclude and debarr all others [of the] freedoms and immunities' of trade.³⁵ Why such restrictions and why in 1671? While economic policies in Scotland tended to take on more mercantilist and Continental qualities after the Restoration, book-trade controls took on a more English flavour. Charles II was happy to strengthen the regulation in Scotland in the absence of a trade and registration vehicle such as the Stationers' Company and an official censor such as Roger L'Estrange, who had been appointed 'Surveyor of the Imprimery and Printing Press' in England in 1663. Charles's man in Scotland, the Secretary, John Maitland, Earl and Duke of Lauderdale, was happy to oblige given that Anderson paid for the gift and that Lauderdale chose to rule Scotland with a more centralising and controlling authority than any other chief minister since 1603. The existing Scottish system of regulation and copyright, where the Privy Council handled complaints on a title by title basis, was therefore at risk from an alien hybrid of regulatory powers within the Anderson gift. The liberties asserted by the Privy Council in 1614 were forgotten. However, by the time L'Estrange was dispatched to Holyrood in 1686, with the task of running James VII's press office and a futile campaign to win hearts and minds over to Catholic toleration and the repeal of the Test

Acts, the Privy Council had reasserted control in the terms of the Hart judgment of 1614.³⁶

The disputes of the 1670s and 1680s proceeded with venom, violence and venality. Initially Anderson policed his rights with excessive zeal. In autumn 1671 the Glasgow workshop of the printer Robert Sanders, the elder, was raided and ransacked by Anderson and his henchmen. Sanders' tradesmen were beaten up, driven off and temporarily imprisoned for, Anderson claimed, printing without due authority. The Privy Council freed Sanders and his men and insisted the case was heard before the Lords of Council, but both the Glasgow and Edinburgh book trade were outraged. Realising that he was somewhat isolated in the trade, Anderson began to take on partners in an attempt to build up a new printers' 'society'. Over the next few years these would include the Edinburgh printers and booksellers George Swintoun, James Glen, Thomas Brown and David Trench, but there was still considerable resistance from elsewhere. In late 1671 a petition was delivered by the printers Robert Brown, James Miller, John Cairnes, John Masone, Gideon Shaw and Sanders, protesting at the Glasgow riot and demanding both compensation and an end to the Anderson monopoly. Yet in December 1671 the Privy Council had no choice but to rule in favour of Anderson, even though Sanders and other printers were to be allowed to import bibles until the King's Printer delivered up matching editions.³⁷ It is clear that the majority of the Privy Council believed the Anderson patent was too monopolistic.

Only a few weeks later Anderson turned his attention to Aberdeen and the burgh printer John Forbes, the younger, accusing him of the same crimes as Sanders. We shall see below that Anderson had additional darker motives for attacking Forbes, but when he did so he found himself opposed by the city of Aberdeen as well as by Forbes. In February 1672 Anderson was forced to concede that Forbes had the right to print under authority of the Aberdeen colleges, burgh magistrates and bishop. Anderson was, however, forced to make some concessions to secure the ratification of his patent by act of Parliament: in September 1672, the very month that the estates passed the act, Anderson conceded the right of all printers to produce editions of a range of Latin texts and seems to have realised that the Privy Council would not support his patent beyond reason.³⁸

The subsequent events in the late 1670s and early 1680s left Sanders dreaming of the burgh protection enjoyed by Forbes, although Sanders'

refusal to accept the terms of the Anderson gift show him to have been a strong-willed and determined opponent. After Anderson's death in 1676 his widow Agnes Campbell, who would become the most wealthy Scottish printer of the early modern period, outshone her husband in litigiousness.³⁹ In 1677 and 1680 she prosecuted Sanders before the Privy Council for printing texts that infringed her rights. Confiscation, a £2,000 fine and a short spell in prison was his fate in 1677, although in 1680 a more lenient sentence of confiscation indicated that the government was showing more exasperation with Campbell and her monopoly rights. The case brought by Campbell in June 1678, over the setting up of presses in Edinburgh by Gideon Shaw and other book traders without her permission, reveals the lengths she was prepared to go to protect her position and her strength in the Edinburgh market. Shaw may never have recovered from the case, having gone to the expense of importing skilled workers, and died in 1687 with extensive debts.⁴⁰ Matters came to a head in 1681. In July of that year Shaw and the other book traders of Edinburgh protested again over the Campbell monopoly. Two factors encouraged them to revisit the issue again: firstly, Lauderdale's political influence had waned the previous year and also the Privy Council had established a new committee of trade, the nineteen-year exemption from duties for new manufactories in the 1661 Act for Erecting Manufactories being due to expire, and this carried out a detailed economic survey of Scotland between January and April 1681. The printers had a chance to press their case anew. Meanwhile, that autumn Campbell printed an edition of the acts of Parliament, not unreasonably given her royal patent. But that November she was challenged before the Privy Council by the printer David Lindsay who, with his partners George Wedderburn and John Cairnes, had acquired the right to print parliamentary acts by licence and authority of the Clerk Register, a traditional procedure for statute printing. The case and final judgment was a great setback for Campbell. The Privy Council confirmed Lindsay's right, and ordered the burning of Campbell's printed acts. Her policing prerogatives were no longer to extend to imports from England, unless specifically in competition with her own existing bible printings. Most important of all, her general rights were to be reduced to the terms of the patent given in 1641 to Evan Tyler, then royal printer. Any general responsibility for policing the trade was a dead letter. Campbell's appeal to the Lords of Session in the winter of 1682-3 failed and her weak argument for the status quo, that 'one press [was] sufficient' for official documents,

was seen by the investigating committee as acting, like her old patent, 'to restrain the liberty of printing too much'.⁴¹

Campbell and the Anderson patent may now have been cut down to size but the question of bibles remained. Illegal bible imports were a particular problem in the Restoration period, especially those from England and Holland. Dutch-printed English-language bibles arrived in Scotland from the 1640s, the presses of Amsterdam and Leiden, so important to the Covenanters from a political and propagandist point of view, providing a bountiful harvest of scripture. From the Restoration the great Amsterdam bible presses of Stam, Schippers and Athias were especially productive in bibles for England and Scotland: for the Scottish market these were always without the 'papist' Apocrypha, and, from the 1660s, mostly the King James and not the Geneva version so popular in Scotland before the Cromwellian period.

In fact Glasgow became the centre for the illicit trade in Dutch bibles and it proved very difficult for Agnes Campbell to police the west. Nevertheless, in March 1680 she successfully prosecuted Sanders before the Privy Council for importing bibles from Holland. He was forced to pay damages and to destroy his imported stock.⁴² By then, however, the trade in illegal Dutch imports was well established in Glasgow. Sanders, the elder, had already set up trade contacts with Anna Marie Stam, widow of the great Amsterdam bible printer Fredericksz Stam. Sanders was contracted by widow Stam, with 'full power, authority and command in her stead', to recover the debt of 890 guilders due to her for supplying bibles to the Glasgow merchant Thomas Davidson.⁴³ The Stam family, it seems, became one of the many catalysts for conflict between the royal printer and the Glasgow book trade. In 1678 Campbell took Sanders to the Court of the Dean of Guild in Edinburgh and then to the Court of Session for poaching her bible printer, a certain Jacob Stam.⁴⁴ It is hard to believe, in spite of some sporadic victories, that Campbell could have won, in commercial terms, this particular war of the widows. Policing the Glasgow trade was very difficult given the quantity of scripture and liturgy that came and went, much of it in transit to Ulster, New England and Virginia.

Bible imports from England were also a threat to the royal bible patent. Campbell regularly complained to the Privy Council over these incursions but only had one major legal success. Bible printers such as Andro Hart were more concerned with exporting bibles to England than excluding them from Scotland. But according to her bitter rival James

Watson, the younger, in 1688 Campbell 'fell tooth and nail upon the booksellers [of Edinburgh seizing] a good quantity of bibles brought from London'. In May of that year agents of Campbell seized octavo bibles at Leith which had been imported from London by the Edinburgh bookseller Alexander Ogston. Ogston was well connected to the legal profession, having received his burgess ticket free in 1680 on the recommendation of the Lord Advocate, Sir George Mackenzie of Rosehaugh, and the College of Justice. However, 'the black widow' won the day, and our source, the lawyer Sir John Lauder, was left to reflect on the meanness of her octavo, which was shown to the court to justify her entirely legal actions.⁴⁵ It is clear from such cases that illegal importing and printing were carried out by many respectable book traders and were even seen as an aspect of legitimate commerce.

If the Scottish bible trade was confused with regard to legal and illegal activity that for almanacs was chaotic. Indeed the copyright history of the seventeenth-century Scottish almanac provides an exemplar for copyright law and deliberate skulduggery. From a commercial point of view these small octavo booklets, merely sixteen pages long and typically sold for only 4*d.*, were nonetheless the most valuable literary properties in the late seventeenth century. By the 1690s these almanacs carried advertising, a reflection of their mass circulation and their character as stepping-stones to the Scottish periodical and newspaper revolution that began at the turn of the century.⁴⁶

The earliest-known almanacs emanating from the presses of Scotland's three printing burghs were those of Aberdeen (1623), Edinburgh (1632) and Glasgow (1661).⁴⁷ These developed very much as town or burgh almanacs, both licensed and protected by the respective town councils and magistrates and able to expand circulation within their burgh markets and beyond. There are many examples of burgh protectionism, particularly in Edinburgh and Aberdeen. In October 1667 the magistrates of Aberdeen responded to a petition from the burgh printer and bookseller John Forbes, the elder (fl.1650–75), protesting at the activities of a chapman and street trader Alexander Gray, who had brought into Aberdeen 1,000 copies of an 'alien' almanac. This breached the market monopoly of Forbes's own edition. The council upheld Forbes's complaint and agreed to ban all such 'alien' almanacs within Aberdeen, provided that Forbes continued to sell his own at a reasonable price.⁴⁸

The 'Aberdeen almanac' was not merely the earliest but also the most successful, appearing in large print-runs of 50,000 or more, which compares favourably with the larger print-runs of English editions. It was the printer Edward Raban (c.1585–1658), an Englishman of German descent and Aberdeen's first printer, who, commissioned by the Aberdeen bookseller David Melville, introduced the 'Aberdeen almanac' in the 1620s. Raban was no doubt inspired by continental models which he encountered during his travels as a soldier and during his training as a printer in Amsterdam and Leiden.⁴⁹ However, it was John Forbes, the younger (fl.1662–1704) who, in the 1660s and 1670s, developed the reputation of the 'Aberdeen almanac' as the most prestigious edition in Scotland. The jealousy from Edinburgh was considerable. It seems likely that Andrew Anderson, having acquired that wide-ranging royal licence in 1671, deliberately attacked the printing rights of Forbes in early 1672 with a view to strangling Forbes's most valuable asset, the 'Aberdeen almanac'. The threat of legal action by Anderson and his Edinburgh cartel had to be taken seriously by Forbes, who knew that only a few weeks before Sanders' press in Glasgow had been ransacked. Anderson argued the same case, that Forbes had printed without permission, but he failed to take account of the strong views of Aberdeen town council who were outraged at this attack on their independence and right to license within their own environs. The magistrates were prepared to contemplate a book-trade war with Edinburgh, but before Aberdeen took their case to the Privy Council, Anderson realised he had pressed matters too far, and in February 1672 wrote to the magistrates of Aberdeen conceding Forbes's right to print under licence of the town, universities and bishop of Aberdeen.⁵⁰

Such was the success of the 'Aberdeen almanac', however, that various pirated editions were produced in Glasgow and Edinburgh. Counterfeit problems had also dogged almanac printing in England, so why not in Scotland?⁵¹ For Scotland, deception came before illegality and in the 1660s and 1670s Robert Sanders in Glasgow printed various almanacs feigning calculation by Aberdeen mathematicians; Edinburgh editions also falsely claimed Aberdeen authority. In his almanac of 1674 Forbes declared in doggerel rhyme: 'No almanacks are from Aberdeen but where there Armes are to be seen', and it was the habit of burgh printers to add the city coat of arms as a badge of authenticity. The most infamous legal case over such counterfeiting arose in 1684, the year in which Forbes exclaimed threateningly in his latest edition: 'If Counterfit, then Hang for

it'.⁵² In 1682 and 1683 Robert Sanders in Glasgow and Agnes Campbell in Edinburgh each produced counterfeit Aberdeen editions. In February 1684 Forbes, with the support of Aberdeen town council, prosecuted Sanders and Campbell, old enemies now become co-defendants, and after the case was referred to a committee the Lords ruled in favour of Forbes. He won his case in law because he was 'in use and possession of printing yeirly ane almanack as printer of the toun and coledge of Aberdein', and therefore his copyright was sustained. Indeed Aberdeen's copyright had also been breached. Sanders, while openly printing his name and Glasgow on his 1684 edition, had attempted to forge the city arms of Aberdeen which, as we have seen, always adorned the almanac and therefore his offence was viewed as especially reprehensible (see figures 1 and 2). Sanders and Campbell were warned as to their future conduct and that their counterfeits should cease, but counterfeit Aberdeen editions continued to slip into the market-place. Even the likes of John Reid who, as we have seen, like Sanders was constantly battered by Agnes Campbell's lawyers, produced his own Aberdeen edition in 1690.⁵³ Sanders, nevertheless, also printed a legitimate Glasgow almanac. This first appeared in 1661/2 and was compiled by the mathematician James Corse, who was paid for dedicating his almanac to Glasgow town council. No records exist of a major court case concerning copyright breaches related to the Glasgow edition, but by 1664 Corse almanacs were coming from the presses of Edinburgh as well as Glasgow.⁵⁴ The copyright position was completely chaotic: it was a classic case of every man for his or her self.

The first Edinburgh almanac, printed in 1632, came from the press of John Wreittoun and was based on an English edition written by the mathematician John Whyte.⁵⁵ Regular Edinburgh printings did not occur, surprisingly, until after the Restoration. The most successful Edinburgh almanac of the 1680s and 1690s was that compiled by the mathematician James Paterson. Paterson was prickly and disputatious and he and the mathematicians of the Aberdeen colleges conducted a bitter feud via their respective almanacs over the correct calculation of Easter, and other questions relating to the calendar and Old and New Style dating.⁵⁶ Paterson, however, was no more successful than Forbes in avoiding pirating. In late 1684 Paterson obtained a one-year licence to print his Edinburgh almanac unopposed. Confusingly, a week later burgh protection arrived as the Edinburgh magistrates gave him 'warrant to publish yearly almanacs', in effect a monopoly outlawing other Edinburgh editions as long as he



Fig. 1. The titlepage of John Forbes's almanac *Aberdeen's True Almanack* of 1685 with the cracked printing block which was used for five decades. (Reproduced courtesy of the Trustees of the National Library of Scotland)

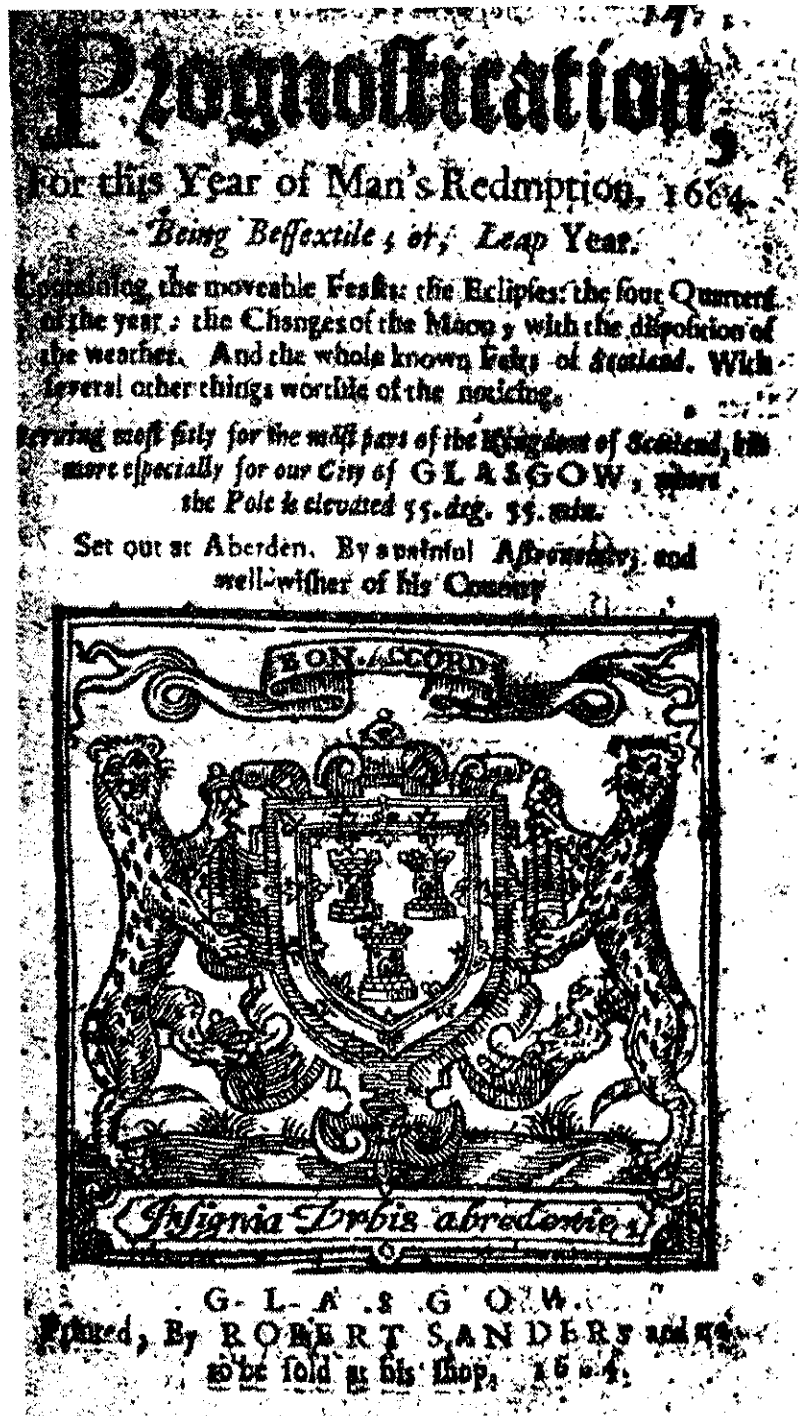


Fig.2. Robert Sanders' 'counterfeit' almanac *A New Prognostication* of 1684, with the fake, undamaged coat of arms. (Reproduced from *Bibliographia Aberdonensis*, Spalding Club, ii (Aberdeen, 1929), p. 485)

published his own.⁵⁷ None of this checked the activities of Campbell, who proceeded each year to print her own pirated editions of Paterson's text from at least 1685 to 1690.

The last and most farcical element in the shambolic copyright history of Scottish almanacs arose when James VII and II came to power. In 1685 James agreed to appoint the Catholic printer James Watson, the elder, to the unprecedented post of 'printer to his family and household', a position that existed in parallel with the position of King's Printer. Watson died in 1687 and was replaced in this anomalous post by the Catholic and German engineer Peter Bruce (Breusch). Both men were given not only a monopoly to print all Scottish almanacs and prognostications, but also the right to those almanac editions already in print.⁵⁸ These were ludicrously unworkable rights and made little difference to the output of other presses. Even the Privy Council tended to play down the rights of the 'household printer' by ignoring a petition from Watson in 1687 asking for fines to be imposed against those breaching his almanac monopoly.⁵⁹ While Paterson played safe and used the presses of Watson and Bruce, Forbes and Sanders continued to print their editions and Agnes Campbell proceeded with her regular Edinburgh pirates. Even in the relatively small print market of Scotland, there were too many of these small books circulating for any effective control of copyright or licensing.

Counterfeiting and duplicity also occurred at imprint level. It is frequently difficult for modern bibliographers to establish the correct source of early printings and it was as hard for contemporaries. If a book could masquerade as a legitimate domestic printing then any breach of copyright could pass undetected. After the Restoration such tactics became common with regard to the general bible trade. In England the King's Printers Thomas Guy and Henry Hills were found in 1684 to have altered the titlepages of officially seized Dutch bibles that had been illegally imported. The printers sold these on at reduced prices when their own stock was low, with the objective, as they admitted to the House of Lords committee, of crippling the university presses.⁶⁰ In Holland counterfeit bible printing was an essential part of commercial activity. When the Oxford student William Nicolson visited the Amsterdam press of Jan Schippers' widow in 1678 he described a remarkable scene: 'They print many English Bibles of all sizes; upon the title pages they sett — London printed by R. Barker and the Assigns of John Bill...'. Bibles with counterfeit imprints for Cologne, Leipzig and Mainz were also being printed.⁶¹

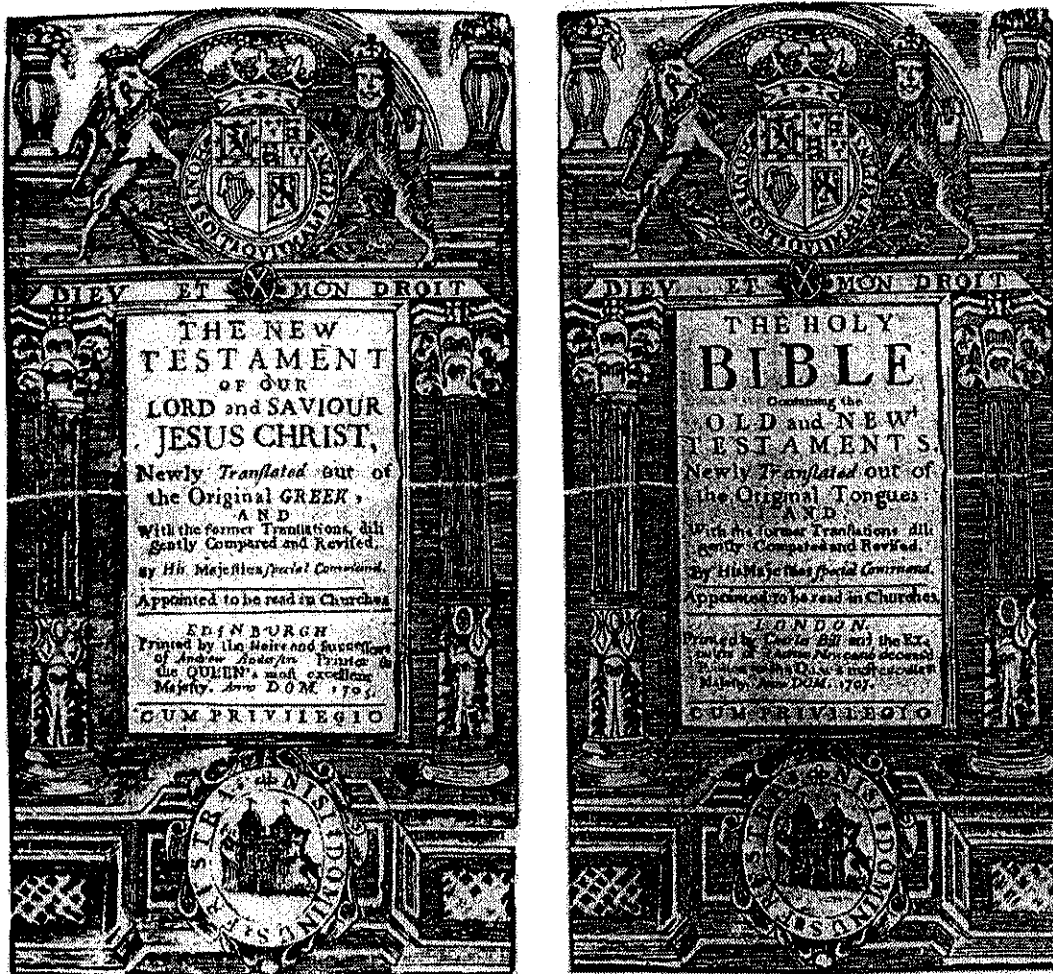


Fig. 3. The titlepages of two Bibles printed by Agnes Campbell in 1707, the version on the right being a counterfeit London Bible. Reproduced from Dr John Lee's *Memorial for the Bible Societies in Scotland* (Edinburgh, 1824)

It is in this context that we must view Agnes Campbell's controversial counterfeit English bible of 1707.

After many years of protesting to the Privy Council about the damage caused to her business by illegal imports of English bibles, in 1707 Agnes Campbell printed her own 'English bible' in Edinburgh with the imprint 'London, printed by Charles Bill' (see figure 3). If Scottish book-buyers preferred bibles printed in England, she now provided them.⁶² This dishonesty has caused a historiographical dispute between Campbell's biographer James Fairley, writing in the 1920s, and Dr John Lee, the nineteenth-century authority on Scottish bible printing. The printing is now lost, but Fairley claimed that Lee fabricated the whole episode to attack Campbell. In fact Lee remained neutral about 'the black widow' and had no reason to invent the story.⁶³ When everyone else was busy with pirates and false imprints, why should Scotland's royal printer be any different? The attraction of such a printing in the year 1707 is fairly obvious. The case does, nonetheless, capture that quality of commercial deceit and greed which characterised Scottish copyright in the early modern period.

The demise of the Scottish Privy Council came in 1708, the last copyright granted by it being Thomas Watt's nineteen-year licence for his grammar and vocabulary, granted in the same year.⁶⁴ The long history of the Council as copyright agency and book-trade court came to an end and this made it urgent that a solution was found to Scottish copyright procedures. There has been much confusion over the relationship between the trades of England and Scotland. Typical are William Jackson's comments, in his paper 'Counterfeit Printing in Jacobean Times', where he labelled Andro Hart's legitimate 1614 edition of Bacon's *Essaies* as an 'Edinburgh piracy', as though at the time Edinburgh was subject to laws from London (see figure 4).⁶⁵ Before 1707 Scottish copyright was as independent as that of France in relation to England. In a similar way, the timing of the 1710 'Statute of Anne' has also been subjected to largely English interpretations: traditionally the act is seen to have followed on from pressure exerted by the English book trade after years of confusion over copyright. However, the free market created by the Act of Union and the disappearance of the Privy Council in 1708 show that Scottish factors were very important to the timing of the 1710 act.⁶⁶ When the act came into being, for the first time neither the Scottish nor the English book trade had the legal right to print solely for their own domestic markets or to duplicate each other's publications. The Scottish book trade in

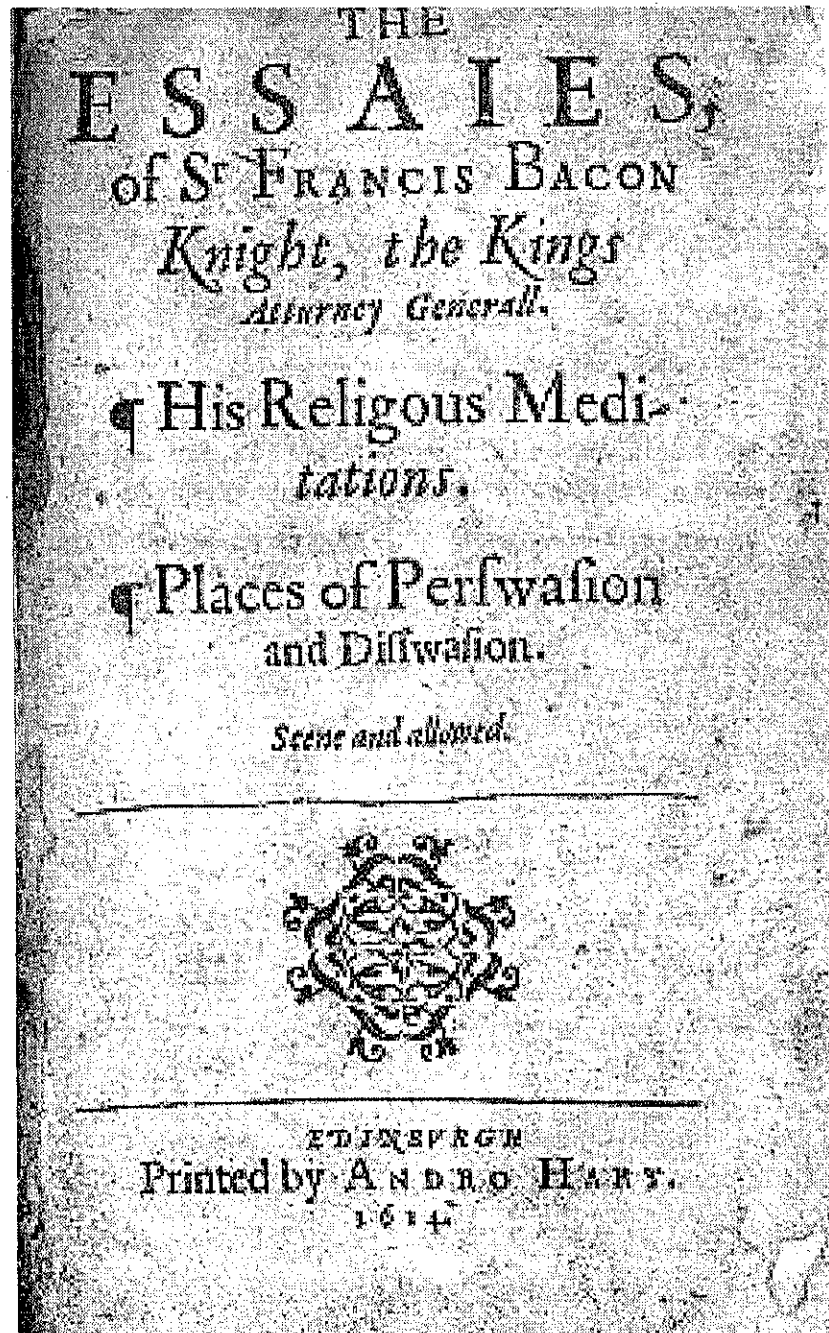


Fig. 4. Titlepage of Andro Hart's so-called 'pirate' edition of Francis Bacon's *Essaies* (1614), an entirely legal publication for the Scottish market

particular found this arrangement unsustainable, and the journey from reprint wars to the infamous Donaldson case and House of Lords ruling in 1774 was begun. In 1710 Scottish book traders wished their own copyrights protected, but also access to those in England. Put simply, the Scottish trade 'wanted to have their cake and eat it.'

While the act of 1710 did not by any means end piracy and illegal activity, 1708 did mark something of a watershed. It brought to an end 200 years of independent copyright history, during which licences for individual books were sought after and generally respected by much of the trade and maintained by a willing, though sometimes overwhelmed, Privy Council. However, copyrights on the most popular printings, such as almanacs, simply proved unworkable. For the conscientious author protecting his literary property, such as the grammarian James Kirkwood, the system worked fairly well, but for the many printers of almanacs and importers of illegal bibles copyright crime certainly paid.

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 33. Finlason: NAS. PS1/ 82, 55v–45v and RPC, i, 9, pp. 451–2; Lee, *Memorial*, pp. 160–3. Lee's is still the best analysis of bible printing in the period.

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43. Gemeentearchief Amsterdam, Notarial Archive [GAA NA] 4779. 101–2. Mann, 'Agnes Campbell', pp. 149–50.
44. NAS, Hay of Haystoun papers GD34/665 (1678).
45. James Watson, *The History of the Art of Printing* (1713), preface, p. 16; *EBR*, x, p. 392; Lauder, *Decisions*, i, p. 496 and Lauder, *Historical Notices*, ii, p. 866.
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47. For a comprehensive listing see McDonald, 'Scottish Almanacs', pp. 297–322.
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58. Lee, *Memorial*, p. 146; *RPC*, iii, 12, pp. 460–1; Lauder, *Decisions*, i, p. 424; NAS, PS3/4,248 and *RPC*, iii, 13, p. xx.
59. *RPC*, iii, 13, pp. 120–2.
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