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Bell's Dictionary and Digest of the Law of Scotland

OLD STUDIES IN SCOTS LAW

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OLD STUDIES IN SCOTS LAW

VOLUME 2

**Bell's Dictionary and Digest
of the
Law of Scotland**

GEORGE WATSON

With an introduction by
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INTRODUCTION

*“For those engaged in the practice of the law there is no more valuable book than a good law dictionary or lexicon. It is indeed an indispensable part of the equipment of every lawyer’s library.”*¹

Words, words, words

Lawyers: the language priests

All legal concepts must be formulated in words. The link between law and language is thus intimate and rightfully the subject of study in its own right. But beyond ordinary language there is also legal jargon.² The law is full of jargon: so full, indeed, that the layman can be so bamboozled by the language of the law as to find it practically unintelligible. Lawyers, it seems, don’t mean what they say, a point some lawyers admit: it would be “positively dangerous”, a leading writer on statutory interpretation has written, for lay people to attempt to read the law without expert assistance.³ That the law appears to be couched in a foreign language, a language only the initiated can decipher, may be one of the reasons for the general dislike of lawyers.

Access to the Word

The popular vilification of lawyers, it is interesting to observe, perhaps predominates in countries whose laws are uncodified and whose histories are tied to the reformed Christian tradition. Unlike access to the word of God, access to the law, particularly the

¹ H Goudy, “Review of *Wharton’s Law-Lexicon*, 8th edn” (1889) 1 JR 320.

² George Orwell’s classic essay, “Politics and the English language” (see e.g. B Crick (ed), *George Orwell: Essays* (1994) 348) gains rather than loses force with age. Orwell’s enduring themes have been regularly discussed in the journalism of Robert Fisk: see R Fisk, *The Age of the Warrior: Selected Writings* (2008) ch 3: “Words, Words, Words”.

³ F A R Bennion, “Don’t put the law into public hands” *The Times*, 24 Jan 1995. Bennion is the author of the standard work, *Bennion on Statutory Interpretation: a Code* (5th edn, 2007).

law in a non-codified legal system, requires the intervention of an intermediary, the lawyer: the inability of the layman to access unaccompanied the content of the law he is expected to obey is rather at odds with the tide of social, political and ecclesiastical history of the Reformation. The law of Rome, as developed in the learned laws of the *ius commune*, could be seen as a weapon of the ruling classes, who alone had access to out-of-the-way literature written in foreign languages.⁴

In uncodified systems, particularly in a small system like Scotland, accessibility is a major problem. Just as many rules are found in legal doctrine as in an Act of Parliament or a decided case. To find a concise statement of what the law actually is may require considerable expertise, time, and a good library. And even with all of these, the professional lawyer (to say nothing of the non-lawyer) may never find a statement of the law, for the simple reason that there is no authoritative statement. All too often, decided cases – a standard source in a non-codified system – deal with unusual situations. The basics are thus often neglected. “It is said this point has never been decided,” one of the more enigmatic characters on the Scottish bench in the eighteenth century, James Burnet, Lord Monboddo, once observed, adding the important insight that: “Points never decided are the strongest and most certain in our law”.⁵ The “law as self-understood” point has been picked up by English judges,⁶ and is one that can be traced throughout legal history.⁷

Accessibility

⁴ T M Lindsay, *A History of the Reformation, vol I: In Germany* (2nd edn, 1909) 107-08. Lindsay makes this point for much of Northern Europe, not just for Scotland; and more concisely and more accurately than, for example, A Wightman’s interesting, though polemical, *The Poor had no Lawyers: Who Owns Scotland?* (2010).

⁵ *M’Donnells v Carmichael* (1773) Mor 4974, Hailes 513 at 514. Cf *Johnston v O’Neill* [1911] AC 552 at 592-3 *per* Lord Dunedin.

⁶ For similar statements by English judges, see *Butt v Conant* (1820) 1 Broderip and Bingham 548 at 566, 129 ER 834 at 842 *per* Dallas CJ; *Panama and South Pacific Telegraph Company v India Rubber, Gutta Percha, and Telegraph Works Company* (1875) 10 Ch App 515 at 526 *per* James LJ. James LJ was a Glasgow graduate.

⁷ D Daube, “The self-understood in legal history” (1973) JR 126; in German at (1973) 90 ZSS (RA) 1, and republished in the United States at (1999) 2 Green Bag (2d) 413. Daube’s article had a clear, if unattributed, influence on the speech of his doctoral student, Lord Rodger of Earlsferry, in *A v Secretary of State for the Home Department* [2005] UKHL 71, [2006] 2 AC 221 at para 129.

“It has been asserted, that for the law to be *known*,” Samuel Johnson wrote in the preface to his own *Dictionary*, “is of more importance than to be *right*.”⁸ Johnson may here be referring to Kames who wrote that “it is of great importance, that there be a fixed rule publicly known, but of very little importance what that rule be”.⁹ Codification of the unwritten law in the vernacular, it might be suggested, offers at least the perception of certainty and accessibility.¹⁰ But while certainty is a virtue it is, for law, not the only virtue; and, in this case as in others, injustice is rarely ameliorated by inexorability. Codes, in practice, may be no more likely to ensure legal certainty than the unsystematic assortment of legislation, cases and general principles found in Scotland.¹¹

But a code does provide a much greater degree of accessibility – a basic starting-point – for lawyers and laypeople alike. The Roman Twelve Tables, Lord Halsbury recalled, were originally drawn up because the Plebeians did not know the unwritten law.¹² A similar movement is seen in the statements of customary law written between the sixteenth and seventeenth centuries in France, and in the moves to codification throughout Europe from the second half of the eighteenth. A major advantage of a code is its systematic structure. This provides what a dictionary cannot, although, even in a codified system, a law dictionary for the jargon of the law is still desirable.¹³

Assuming, however, that one can access the law, the next difficulty is to understand it. Latin and French have both been languages of Scots law,¹⁴ though neither would have been much spoken, while Gaelic has been much spoken, although less used for legal purposes if the meagre surviving documentary evidence is anything to go by.¹⁵ Latin,

⁸ S Johnson, *A Dictionary of the English Language* (1755), preface. Johnson’s *Dictionary* was reviewed by Adam Smith in the original *Edinburgh Review*: (1755) 1 *Edinburgh Review* 61 (reproduced in Adam Smith, *Essays on Philosophical Subjects*, ed W P D Wightman and J C Bryce (Glasgow Edition of the Works and Correspondence of Adam Smith vol III, 1982)).

⁹ H Home, Lord Kames, *The Decisions of the Court of Session from Its first Institution to the present Time. Abridged, and Digested under proper Heads, in Form of a Dictionary* vol 1 (1741) ii.

¹⁰ Cf M D Chalmers, “Wanted – a law dictionary” (1892) 8 *LQR* 283 at 285-6.

¹¹ Cf B Levi, *Freedom and the Law* (3rd edn, 1991).

¹² See the 1st edition of *Halsbury’s Laws of England* (1907-17), undated preface.

¹³ See the German examples in nn 215-20 below.

¹⁴ H L MacQueen’s illuminating paper, “Laws and languages: some historical notes from Scotland” (2002) 6.2 *Electronic Journal of Comparative Law* (Ius Commune Lectures on Private Law 5), gives the example of the *Leges inter Brettos et Scotos* (APS I, 663) drafted in Latin, French and Scots. The oldest version is the French, found in the Berne MS – the oldest Scots law manuscript – which has been dated to c 1270. The Latin version makes it into *Regiam Majestatem*.

¹⁵ See MacQueen (n 14) 12; R Black, “A Gaelic contract of lease, c 1603 x 1616”, in W D H Sellar (ed), *Miscellany II* (Stair Society vol 35, 1982) 132.

Scots and English have been the main languages of Scots law and all continue to be used, whether in oft-repeated maxims or in the daily language of our courts: the “growing use in practice of the common tongue,” Hector MacQueen has written, “never amounted to a monopoly; Latin maintained a place in the law alongside, first, Scots, and then standard English, into the twentieth century; and even now, in the twenty-first, like Scots, it has not wholly disappeared from the lexicon and vocabulary of the lawyer.”¹⁶

Scots law has produced one of the best¹⁷ collections for understanding Latin maxims as well as one reputed to be among the worst.¹⁸ But there are many terms of jargon which are perhaps more likely to be misunderstood because, being Scots, they are not in a foreign language. And here the book reproduced in these pages, Bell’s *Dictionary and Digest of the Law of Scotland*, performs a valuable role. Many words of Scottish legal vocabulary are no longer in daily use,¹⁹ though the underlying concepts may be similar to those in other European civil law systems which also developed, in their native vernacular, colourful ways of expressing ideas.²⁰ Armed with the wherewithal to understand the terms of art, however, native terminology no longer intimidates: indeed, it often crisply expresses a legal idea better than any soulless modern regulatory formulation ever could. And, once understood, native vocabulary is not easily forgotten. This introduction seeks to trace the evolution of *Bell’s Dictionary* for the reader who might be opening it for the first time. An attempt will be made to place the work in context, and to consider its utility for the present. No doubt an attempt could be made to compile a dictionary of law dictionaries, but this is not it. The following is not comprehensive. A readable, entertaining and thoroughly learned account has been given of some of the more out-of-the-way literature by David Murray, in a volume that ought to be much more widely read, and which this introduction cannot hope to emulate.²¹

¹⁶ MacQueen (n 14) 16.

¹⁷ Lord Trayner, *Latin Maxims and Phrases* (4th edn, 1894).

¹⁸ P Halkerston, *A Collection of Latin Maxims & Rules, in Law and Equity* (1823), discussed below.

¹⁹ One useful online resource is the *Dictionary of the Scots Language* (www.dsl.ac.uk), which encompasses a number of prior collections. Although *DSL* contains many legal terms, the coverage is not exhaustive.

²⁰ E Graf and M Dietherr, *Deutsche Rechtssprichwörter* (2nd edn by J C Bluntschli and K Maurer, 1869 repr 1975) contains a wonderful, often colourful, selection of Germanic maxims. Another famous example is the maxims of equity collected in J McGhee (ed), *Snell’s Equity* (32nd edn, 2010). For a hostile critique, however, on the utility of a book like Snell for modern English law, see W Swadling (2011) 127 LQR 638.

²¹ D Murray, *Lawyers’ Merriments* (1912). There is no modern biography of Murray, one of the founding partners of Maclay Murray & Spens LLP; but see S W Murray, *David Murray: A Bibliographical Memoir*

Scots legal language

A difficulty for any legal dictionary is that the language of law may evolve more rapidly than the law itself. Dr Johnson wrote in the preface to his *Dictionary* that:²²

When we see men grow old and die at a certain time one after another, from century to century, we laugh at the elixir that promises to prolong life to a thousand years; and with equal justice may the lexicographer be derided, who being able to produce no example of a nation that has preserved their words and phrases from mutability, shall imagine that his dictionary can embalm his language, and secure it from corruption and decay, that it is in his power to change sublunary nature, or clear the world at once from folly, vanity, and affectation.

The point seems particularly true of Scots law. For those who speak that law as a mother tongue it is easy to forget how impenetrable its language may appear to the uninitiated. All Scots lawyers once spoke, at least to an attenuated degree, the language of feudalism because the entire system of Scottish land law was feudal. Since 28 November 2004, however, when feudal tenure was finally put to rest,²³ knowledge of feudalism has ceased to be necessary and feudal concepts are no longer taught at the Scottish universities. A consequence of this merciful omission in the legal curriculum is that the entire vocabulary of feudalism is becoming a foreign language. That may not be thought a major difficulty – until one tries to read a case about heritable property, decided prior to 2004, ignoring every word of feudal vocabulary. The result may render the case incomprehensible. Feudal abolition was perhaps the most important development in Scots law for centuries; but, like codification, it has given rise to a break with the past; it has, at a stroke, rendered modern lawyers partly illiterate.

(1933); M S Moss, “Murray, David (1842-1928)”, *Oxford DNB* (2004). A formidable scholar, and not only in law, Murray left his library of some 23,000 items to Glasgow University, together with a number of other bequests to support scholarly activity.

²² Johnson, *Dictionary* (n 8), preface.

²³ By the coming into force of the Abolition of Feudal Tenure etc (Scotland) Act 2000.

The same is true of the law of diligence. Despite modern legislation, the principles of the law of diligence are in the common law. Yet the time has already arrived where, for the younger lawyer, the terms “pounding” and “warrant sale” look anachronistic. It is here that *Bell’s Dictionary* becomes so useful: it provides a key for today’s lawyers to unlock the impenetrable vocabulary of yesteryear in their search for the answers to the legal problems of tomorrow. In this sense, therefore, the *Dictionary* is a necessary tool. But it is also more than that. As was eloquently pointed out in the debates surrounding the abolition of poundings and warrant sales, in “modernising” technical legal terminology, we risk impoverishing our native language.²⁴ Attempts to extirpate the national legal vernacular may be compared to the approach of the English courts to remove all references to Latin in their civil procedure: a step the late Lord Rodger of Earlsferry dismissed as “not only patronising but simplistic”.²⁵

Before Bell’s *Dictionary*

Maps and place names

A law dictionary, in Scots law at least, is for particular words rather than concepts. It is neither a map nor a compass. The major navigational aid to Scots law is the institutional structure of the student textbook arranged by Gaius and given fame by Justinian:²⁶ *Omne autem ius quo utimur vel ad personas pertinet vel ad res vel ad actiones* (all our law is about persons, things and actions),²⁷ and the sub-division of obligations into those arising *ex contractu*, *ex delicto*, *quasi ex contractu* and *quasi ex delicto*.²⁸ Despite the shortcomings of the institutional scheme – and there are many – it is a foundational structure and one which has had the same abiding influence on Scots law as it has in

²⁴ See the learned article by R A Macpherson, Messenger-at-Arms: “The snash we maun thole” 2000 SLT (News) 49.

²⁵ A F Rodger, “A time for everything under the law: reflections on retrospectivity” (2005) 121 LQR 57 at 66 n 46.

²⁶ N Whitty, “The *Stair Memorial Encyclopaedia* and the institutional tradition”, in S Hetherington (ed), *Halsbury’s Laws of England: Centenary Essays* (2007) 203.

²⁷ Gaius, *Inst* 1.8.

²⁸ Gaius, *Inst* 3.88-91.

Continental Europe:²⁹ the structure is, no less, the longitude and latitude for private lawyers the world over.

A dictionary like this, in contrast, is no more than a list of place names. And while such a list, compiled by “that most basic of all systems of classification, alphabetical order”,³⁰ may provide further references, it offers little by way of principles and nothing in the nature of a conceptual structure. The useful and interesting *Place Names of Arran*,³¹ for instance, is hardly a guide for the day-tripper hoping to traverse the island’s craggy ridges. *Bell’s Dictionary and Digest* is similarly interesting and useful; but, alone, it contains nothing of the fundamentals of Scots law: the reader will search in vain for entries on such general concepts as “patrimonial right” or “ownership” or “unjustified enrichment”. Indeed it may be precisely because of the institutional inheritance and its familiar and universal concepts that the law dictionary has never been so necessary or important in civil law systems as in those of the Anglo-American tradition.

So although it is right and proper that mature legal systems should have modern tools such as legal dictionaries, such dictionaries are of secondary importance to fundamentals. The first-year student who studies Roman law will obtain a better appreciation of the structure of Scots law than the student who merely buys this book. The good student of Scots law will, of course, do both.

Digest practicks and Dirleton’s *Doubts*

In Scotland the history of compiling legal material into alphabetical order is a long one. There are a number of examples in collections of “digest” practicks.³² One of those collections, about which until recently little was known, is a collection compiled probably by one David Chalmers around 1566. Since at least the nineteenth century, it has been known under the title of a *Dictionary of Scotch Law*.³³ Then there is Sir John Skene’s

²⁹ Scotland Act 1998 s 126(4).

³⁰ P Birks, “The foundation of legal rationality in Scotland”, in R Evans-Jones (ed), *The Civil Law Tradition in Scotland* (1995) 81 at 83.

³¹ I A Fraser, *The Place Names of Arran* (1999).

³² See generally H McKechnie, “Practicks”, in *An Introductory Survey of the Sources and Literature of Scots Law* (Stair Society vol 1, 1936) 25, distinguishing between “digest” and “decision” practicks.

³³ There is a single extant MS, held at the British Library. I am grateful to Andrew Simpson of Aberdeen University for this information. Dr Simpson is working to bring an edition of Chalmers’ *Practicks* to publication.

famous *De Verborum Significatione* published in 1597,³⁴ the first real dictionary of Scots law terms and with references drawn mainly from the civil law tradition. Skene's work has been widely referred to in legal writing but appears never to have been acknowledged as a source in any modern Scottish case.³⁵ One reason for this, as we will see, is that much of Skene's work was incorporated into *Bell's Dictionary*. In any event, by the eighteenth century, Walter Ross felt need to lament of Scottish legal literature that "we have no glossary, but Mr Skene's little tract".³⁶ Ross further refers to Spotiswoode's *Notes to Hope's Minor Practicks* where there is mention of a *Scots Law Lexicon*; but, as Ross observes, it was never published.³⁷

In the seventeenth century there were various unpublished collections of digest practicks, arranged alphabetically, that may be considered as prototype legal dictionaries: as, for example, the collections compiled by George Achinleck of Balmanno (c 1635)³⁸ and Alexander Gibson, Lord Durie (c 1642),³⁹ as well as that compiled by Sir Thomas Wallace of Craigie (c 1663) and catalogued either as *A Digest of Scots Law*⁴⁰ or *A Repertory of Scots Law*.⁴¹ Each is arranged in alphabetical order and, for some entries at least, contains further references in the mould of Skene's *De Verborum Significatione*.

After Skene, the best-known example of the presentation of Scots law by alphabetical arrangement is *Some Doubts & Questions in the Law, Especially of Scotland* by Sir John Nisbet of Dirleton, published posthumously in 1698.⁴² The "doubts & questions" proved sufficiently important to provoke Sir James Steuart of Goodtrees, then Lord Advocate, to

³⁴ For Skene, see J W Cairns, T D Fergus and H L MacQueen, "Legal humanism in Renaissance Scotland" (1990) 11 *JLH* 40 at 44-8; A L Murray, "Sir John Skene and the exchequer", in *Miscellany One* (Stair Society vol 26, 1971) 125; A L Murray, "Skene, Sir John, of Curriehill c1540-1617", *Oxford DNB* (2004). Skene's *De Verborum Significatione* was republished in the United States in 2006. As we have seen, Skene's entries are largely incorporated in all editions of *Bell's Dictionary and Digest* from 1838 onwards.

³⁵ Interestingly, the only instance in which Skene is cited in court that I have traced is in an English case just over a decade after its initial publication: *Earl of Shrewsbury v Earl of Rutland* (1609) 1 Bulstrode 4, 80 ER 710 at 713, referring to the entry for "pannagium porcorum".

³⁶ W Ross, *To the Members of the College of Justice* (1782) 15.

³⁷ Cf R Spotiswoode, *Practicks of the Laws of Scotland* (1706), for which see J D Ford, *Law and Opinion in Seventeenth Century Scotland* (2007) 182 ff.

³⁸ GUL Gen 1260: see G Dolezalek, *Scotland under Jus Commune: Census of manuscripts of legal literature in Scotland, mainly between 1500 and 1660* vol III (Stair Society vol 57, 2010) 313. I refer here only to Glasgow University Library MSS but, as can be seen from Dolezalek's pioneering survey, copies of the same works are in other Scottish libraries.

³⁹ GUL Murray 585: see Dolezalek, *Scotland under the Jus Commune* (n 38) 336.

⁴⁰ GUL Murray 518: see Dolezalek, *Scotland under the Jus Commune* (n 38) 320.

⁴¹ GUL Murray 631: see Dolezalek, *Scotland under the Jus Commune* (n 38) 337.

⁴² See generally, Ford, *Law and Opinion* (n 37) 348 ff.

write a gloss which was also published posthumously: *Dirleton's Doubts and Questions in the Law of Scotland, Resolved and Answered* (1715). Due more to its critical analysis than its alphabetical arrangement, *Dirleton's Doubts and Stewart's Answers* was a considerable success: as was reputedly said of Lord Eldon, the "doubts were ... more valuable than other men's certainties".⁴³ The House of Lords, at least, has paid Dirleton the compliment of centennial citation: once in each of twentieth,⁴⁴ nineteenth,⁴⁵ and eighteenth centuries,⁴⁶ while, in Scotland, it has been presented to the Second Division as an "institutional" authority.⁴⁷ It was an important source for Erskine and other writers of the eighteenth century.

Eighteenth-century examples

1710 saw the publication by John Dundas of *A Summary view of the Feudal Law, with the differences of the Scots law from it; together with a Dictionary of the select terms of the Scots and English law*. Of the 156 pages of this work, 45 are dedicated to the dictionary. The dictionary is in plain and simple terms and aimed at the Scottish apprentice. It was followed in mid-century by Bankton's commentary, in book IV of his *Institute*, on a selection of rules found in the final book of the Justinian's *Digest*, to which the legal dictionary owes so much, *de diversis regulis iuris*:⁴⁸

The Emperor Justinian concludes his Digests with a large collection of rules of the old civil law. And since, as was observed in the entry to this work, the civil law is the principal source of the law of Scotland, it cannot be doubted but many of these are adopted into it; and therefore this performance might justly be thought defective, if they were wholly omitted.

⁴³ *Russell v Beecham* [1924] 1 KB 525 at 536 *per* Scrutton LJ, who adds in a footnote: "Sir John Nisbet of Dirleton, King's Advocate in the time of Charles II, was the author of a law book known as *Dirleton's Doubts*. Sir James Steuart of Goodtrees, Lord Advocate in the reigns of William and Mary and Queen Anne, was the author of another known as *Dirleton's Doubts Resolved*. The *Doubts* hold a higher place than the *Resolutions*."

⁴⁴ *Lord Advocate v Earl of Zetland* 1920 SC (HL) 1 at 30 *per* Lord Shaw of Dunfermline.

⁴⁵ *Lauderdale Peerage Case* (1884-85) LR 10 App Cas 692 at 754 *per* Lord Watson.

⁴⁶ *Bruce v Bruce* (1790) 6 Bro PC 566, 2 ER 1271 at 1272.

⁴⁷ *Mackie v Mackie* 1917 SC 276 at 279.

⁴⁸ Andrew McDouall, Lord Bankton, *An Institute of the Laws of Scotland in Civil Rights* (1751-3, repr by the Stair Society, vols 41-3, 1993-5) 4.45.

During the tenure of John Inglis as Dean of the Faculty of Advocates, intrants were privately examined on Justinian's Institutes, together with the title *de diversis regulis iuris* – with Bankton's commentary the assigned reading.⁴⁹

The dictionary tradition in the civil law

In an early nineteenth-century case, *Mordaunt v Innes*,⁵⁰ the question was whether the grant of a lease breached a provision of a deed of investiture against “disponere, impignorare, vendere seu dilapidare”. What did *dilapidare* mean in this context? *Bell's Dictionary* was of no use, since its entries were mainly in English not Latin. Counsel therefore turned to the *Lexicon juridicum Calvinii*⁵¹ by Johannes Calvinus, Professor at Heidelberg, and to many other sources, foreign and native, besides; in the face of this “most minute research”, however, the Lord Justice Clerk concluded only that, “To be sure, a question of law is not to be decided by lexicographical authorities... nor does it appear to me proper to look to the law of England... the only question is, has [the draftsman] used the language of the Chancery of Scotland?”.⁵²

Advocates of the nineteenth century, still literate in Latin, do appear to have had some familiarity with other European works of legal lexicography. Even at the end of the century one – no doubt maverick and academically-minded – advocate was prepared to say that the collections *De Verborum Significatione* by Brisson,⁵³ Bronchurst⁵⁴ and Cramer,⁵⁵ together with the commentary on title *de diversis regulis iuris* by Godefrois,⁵⁶

⁴⁹ Faculty of Advocates, *Regulations as to Intrants* (1854), Art 4(2) and “list of books”. See further P Stein, *Regulae Iuris: from juristic rules to legal maxims* (1966).

⁵⁰ 9 March 1819 FC.

⁵¹ The National Library of Scotland has four editions, each published at Geneva, dating respectively from 1653, 1665, 1670 and 1689.

⁵² 9 March 1819 FC at 690 and 695 *per* Lord Justice Clerk Boyle.

⁵³ Bernabé Brisson, *De Verborum quae ad jus pertinent significatione libri XIX* (1559), often cited in the edition by J G Heineccius (1743). Brisson accompanied the Duke of Anjou, as potential suitor to Queen Elizabeth I, on Anjou's visit to England in 1580, in order to draft the marriage contract that might have resulted: see O Descamps, “Brisson, Barnabé”, in P Arabeyre, J L Halpérin and J Krynen (eds), *Dictionnaire historique des juristes français (XIIIe-XXe siècle)* (2007) 137-8; see too E Holthöfer, “Brissonius (Brisson), Barnabas (Barnabé)”, in M Stolleis (ed), *Juristen: Ein biographisches Lexikon* (2001) 102-04.

⁵⁴ E Bronchurst, *De regulis iuris* (1624). Bronchurst was Professor at Leiden and his collection *De regulis iuris* ran to some 18 editions: see R Feenstra and C J D Waal, *Seventeenth Century Leyden Law Professors* (1975) 18-24, 47-52.

⁵⁵ A W Cramer (ed), *De verborum significatione tituli Pandectarum et Codicis cum variae lectionis apparatu* (1811); or his Supplement to Brisson: *Supplementi ad Barnabae Brissonii opus de verborum quae*

“still retain high authority”.⁵⁷ What is curious about this assertion is both the works included as “high authorities”, some of which were not readily available in Scotland, and also those that are excluded, such as the commentaries by Donnellus⁵⁸ and Cujas,⁵⁹ both of which remain available in Scotland even today. But however that may be, the point is that in the civil law there is a strong legal dictionary tradition, centred around the *Digest* title *de diversis regulis iuris*.⁶⁰

One final point is worth highlighting. With the growth of legal nationalism at the beginning of the eighteenth century, and as the European-wide use of Latin gave way to the vernacular, Scots law lost sight of European benchmarks for legal dictionaries such as those, for example, that were beginning to appear in Germany⁶¹ and Italy,⁶² as well as the encyclopaedias that appeared in France.⁶³ Nevertheless, at the end of the nineteenth century occasional references, such as to a German encyclopaedia, are encountered.⁶⁴

The nineteenth century: Halkerston’s *Maxims*

ad ius civile pertinent significatione (1813). See further H Ratjen (ed), *Andreas Wilhelm Cramers Kleine Schriften*, vol 1 (1837) xiv-xv.

⁵⁶ A reference to Denys Godefroy (1549-1622) (Dionysius Gothofredus) whose commentary on the *Corpus Iuris Civilis*, continued by his son Jacques, became the standard edition of the *usus modernus*, running through some 50 editions over 2 centuries, including one by Simon van Leeuwen. They continue to be used today. Denys Godefroy was a Calvinist French jurist who was one of the figureheads of the Geneva school of legal humanism, and later became professor of law at Heidelberg: see E Holthöfer, “Godefroy (Gothofredus), Denis (1549-1622)” and “Godefroy (Gothofredus), Jacques”, in M Stolleis, *Juristen* (n 53) 248-50; A Dufour, “Godefroy (Gothofredus) Denys”, in Arabeyre et al, *Dictionnaire historique* (n 53) 376-7.

⁵⁷ N[eil] J[ohn] D[ownie] K[ennedy], “Review of Trayner’s *Latin Maxims and Phrases*” (1895) 7 JR 81 at 82.

⁵⁸ H Donnellus, *Commentarii ad tit De Verborum obligationis* (1577). See P Stein, *Roman Law in European History* (1999) 80-2.

⁵⁹ J Cujas, *De Verborum significatione* (1595). For Cujas and his influence on Scots law, see J W Cairns, “Craig, Cujas and the definition of *feudum*: is a fea a usufruct?”, in P Birks (ed), *New Perspectives in the Roman Law of Property: Essays for Barry Nicholas* (1988) 75.

⁶⁰ For the canon law, see R Naz (ed), *Dictionnaire de droit canonique*, 7 vols (1935-65).

⁶¹ See e.g. J C Nehrings, *Historisch-politisch-juristisches Lexikon* (1710); T Haymes, *Teutsch-juristisches Lexikon* (1738); C G Haltaus, *Glossarium Germanicum medii aevi* (1758).

⁶² For further references see P Fiorelli, “Vocabulari giuridici fatti e da fare” (1947) *Revista italiana per le scienze giuridiche* (NS) 293. I am grateful to my Glasgow colleague, Dr Matteo Solinas, for obtaining for me a copy of this article.

⁶³ *Répertoire méthodique et alphabétique de législation de doctrine et de jurisprudence en matière de droit civil, commercial, criminel, administratif de droit des gens et de droit public*, 44 vols plus 19 supplementary volumes (1845-97).

⁶⁴ In particular, F von Holtzendorff, *Encyklopädie der Rechtswissenschaft* (1870); there was a series of later editions with different editors: see for example C S, “Review of *Encyclopaedia of the Laws of England*” (1897) 9 JR 224 at 227, referring to the 4th edition. The 6th edition of 1904 attracted a *Who’s Who* of contributors from German legal science, such as Otto Lenel, Heinrich Brunner, and Otto von Gierke.

The beginning of the nineteenth century is marked not only by the arrival of *Bell's Dictionary* but also by a number of slim volumes by one Peter Halkerston. Little is known of Halkerston's life.⁶⁵ Born, perhaps, in the first half of 1761,⁶⁶ he was a member of the Society of Solicitors to the Supreme Courts, having been admitted to the Society in 1791. He was the Society's honorary librarian from 1808 to 1821⁶⁷ as well as bailie of Holyrood House.⁶⁸ Halkerston always styled himself with the post-nominal designations "LLD SSC"⁶⁹ and sometimes also with "AM". There is no entry of Halkerston having matriculated or graduated from the universities of Glasgow, Edinburgh, or Aberdeen, but the Halkerston name, which by the eighteenth century had become less common in Edinburgh,⁷⁰ hails from Fife and there is a record of a "Robert Halkerston" matriculating at St Andrews in 1776.⁷¹ This may be the same Robert Halkerston who was born on 20 and baptised on 24 October 1762 in the Parish of Abbotshall. Although tantalisingly close to Peter's likely birth date, the birth date does not corroborate Peter's age at death and, together with the disparities between the given names, it is not possible, without further evidence, to be sure whether this is, in fact, the same person. *Peter Halkerston*, at any rate, died on 27 July 1833.⁷²

Instrumental, like Robert Bell, in early law reporting, Halkerston also produced a *Compendium* of decisions reported in the Faculty Collection.⁷³ But Halkerston's first foray into the literature of legal dictionaries and glossaries was a slim student's volume,

⁶⁵ F Watt, revised E Baigent, "Halkerston, Peter (*d. c.* 1833)", *Oxford DNB* (2004). This brief entry appears largely to be based on material in J B Barclay, *The SSC Story, 1784-1984* (1984).

⁶⁶ Because he was registered at his death, on 27 July 1833, as being aged 72: Old Parish Register, Deaths 685/01 1000 0283 Edinburgh.

⁶⁷ Barclay, *The SSC Story* (n 65) 109, 245, 316.

⁶⁸ P Halkerston, *A Treatise on the History, Law, and Privileges of the Palace and Sanctuary of Holyrood House* (1831). Cf *Register of Burials in the Chapel Royal or Abbey of Holyroodhouse: 1706-1900* (1900); J S Richardson, *The Abbey and Palace of Holyroodhouse* (3rd edn, 1950).

⁶⁹ The entry for his death contains the LLD SSC designations; while the inventory on which confirmation to his estate was obtained (see Edinburgh Sheriff Court Inventory, 31 Dec 1834, SC70/1/51) designs him as "Doctor Peter Halkerston".

⁷⁰ Cf G F Black, *The Surnames of Scotland: their origin, meaning, and history* (1946, repr 1971) 338 which records that, in the 15th and 16th centuries, the name was common in Edinburgh. Searches of births and deaths in the late 18th century indicate that the name, by then, was mainly prevalent in Fife.

⁷¹ J M Anderson, *The matriculation roll of the University of St. Andrews, 1747-1897* (1905) 26. R N Smart, *Biographical Register of the University of St Andrews 1747-1897* (2004) 365, however, indicates that this Robert Halkerston probably went on to Edinburgh to study medicine.

⁷² Old Parish Register, Deaths, Edinburgh 685/01 1000 0283.

⁷³ P Halkerston, *A Compendium, or General Abridgement, of the Faculty Collection of Decisions of the Lords of Council and Session, from February 4, 1752 to the Session of 1817* (1819).

today largely forgotten,⁷⁴ under the title *A Translation and Explanation of the Principal Technical Terms and Phrases used in Mr Erskine's Institute of the Law of Scotland*, published in 1820 and which appeared in a second edition in 1829.⁷⁵ Halkerston's reputation, however, is based almost entirely on a related volume of maxims: *A Collection of Latin Maxims & Rules, in Law and Equity: selected from the most eminent authors, on the civil, canon, feudal, English and Scots law; with an English translation, and an appendix of reference to the authorities from which the maxims are selected*, published in Edinburgh in 1823.⁷⁶ The father of modern legal lexicography, Brian Garner, together with no less a figure than Sir Robert Megarry, dedicate the majority of a chapter on "Maxima", in Megarry's final instalment of legal miscellanea, to Halkerston's 1823 work.⁷⁷ In Scotland, however, it has long been recognised that "Latinity was not, however, the worthy bailie's strong point".⁷⁸ Nonetheless, for all its faults, Halkerston's *Collection of Latin Maxims* continues to be cited by standard Anglo-American legal dictionaries to this day.⁷⁹

Later Halkerston produced one of the first titles in Scots law to appear under the heading "*Digest*", a slim volume dedicated to the law of marriage.⁸⁰ Another work, on the law surrounding the right of debtors to sanctuary at Holyroodhouse,⁸¹ covers a topic which has been little touched upon by modern scholarship.⁸² But if the reader is

⁷⁴ But it is planned to reproduce it as part of the forthcoming reprint, in this series, of the first edition of John Erskine's *An Institute of the Law of Scotland*.

⁷⁵ P Halkerston, *A Translation and Explanation of the Principal Technical Terms and Phrases used in Mr Erskine's Institute of the Law of Scotland* (2nd edn, 1829).

⁷⁶ P Halkerston, *A Collection of Latin Maxims & Rules, in Law and Equity: selected from the most eminent authors, on the civil, canon, feudal, English and Scots law; with an English translation, and an appendix of reference to the authorities from which the maxims are selected* (1823).

⁷⁷ R Megarry, *A New Miscellany at Law*, ed B Garner (2005) 211-21. It may be that Professor D M Walker is responsible for Halkerston's infamy, since Garner refers, in his Editor's Note (ix), to a number of Walker's "touching notes from Glasgow".

⁷⁸ D Murray, *Lawyers' Merriments* (1912) 57 n. Murray, at 275, also observes that Lord Cockburn, in Cockburn's own copy of Halkerston's maxims, had noted "a curious MS commentary".

⁷⁹ See, for example, *Jowitt's Dictionary of English Law* (3rd edn by D Greenberg, 2010) sv "assignatus utitur jure auctoris"; *Stroud's Judicial Dictionary of Words and Phrases* (3rd edn by D Greenberg, 2006) sv "assignatus utitur jure auctoris".

⁸⁰ P Halkerston, *A Digest of the Law of Scotland, relating to Marriage* (1827).

⁸¹ Halkerston, *Sanctuary of Holyrood House* (n 68). Curiously, Halkerston's work is not referred to by later monographs such as H Courtoy, *Historical guide to the abbey and palace of Holyrood, including annals of the Chapel-Royal, the natural history of the environs, and the law and privileges of the sanctuary* (2nd edn, 1838) where the chapter on the "law" of sanctuary was contributed by James Marshall SSC.

⁸² But the casual reader will be better served by turning to the entries in *Bell's Dictionary and Digest* for "Abbey" and "Sanctuary".

somewhat suspicious of an author who, in the preface, boasts that, *inter alios*, the entire bench of the Court of Session was individually supplied with the manuscript of his first foray into the area, Halkerston's honesty, at least, is humbling:⁸³

That some errors and mistakes may have crept into a first work of this description, will not appear surprising, when for a moment it is considered, that, the many sources of information were obscure, and difficult to be traced, and when it is known that some writers had formed different opinions on these same interesting points treated of.

Halkerston's service and publications earned him an LLD, although the awarding institution remains anonymous.⁸⁴ But even the receipt of an LLD may be no great compliment since, as Henry Goudy memorably pointed out, some of the most egregious plagiarism, on occasion, has been admonished only with the conferral of an LLD degree – or two.⁸⁵

Bell's Dictionary (and Digest): the seven editions

In his "Historical Introduction" to the *Oxford English Dictionary* in 1933, the editor wrote that:

If there is any truth in the old Greek maxim that a large book is a great evil, English dictionaries have been steadily growing worse ever since their inception more than three

⁸³ P Halkerston, *Sanctuary of Holyrood House* (n 68) vi.

⁸⁴ As is pointed out by W Innes Addison, *A Roll of the Graduates of the University of Glasgow, from 31st December, 1727 to 31st December, 1897: with short biographical notes* (1898) vi, records of honorary graduates at Glasgow were not kept until the second half of the 19th century.

⁸⁵ H Goudy, "Plagiarism – a fine art" (1908) 20 JR 302, reviewing Hannis Taylor's *Science of Jurisprudence* (1908). Goudy, editor of the 2nd edition of James Muirhead's *Historical Introduction to the Law of Rome*, noticed that whole passages of Taylor's work had been plagiarised from Muirhead (and other works too). At 314-315 Goudy observed that "the author is an Honorary Doctor of Laws of two British universities [Edinburgh and Dublin]. This is perhaps not surprising, as honorary degrees are not always conferred by universities with discrimination..."

centuries ago. To set Cawdry's slim small volume of 1604⁸⁶ beside the completed *Oxford Dictionary* of 1933 is like placing the original acorn beside the oak that has grown out of it.

The same is true of *Bell's Dictionary and Digest*. Only the first three editions bear to be the work of the original author, Robert Bell. Robert's son, William, took over the editorship in 1826 and, by 1838, William's input was such that he no longer felt justified in attributing any of the content to his father: henceforth, the "Bell" in the expanded title of *Dictionary and Digest* is a reference to William, not Robert. The genesis of the *Dictionary*, however, is not always easy to follow and it is worth setting out its various incarnations:

A Dictionary of the Law of Scotland intended for the use of the public at large, as well as of the profession by Robert Bell, WS, Lecturer on Conveyancing, appointed by the Society of Writers to the Signet, 2 vols (1807-1808)

A Dictionary of the Law of Scotland intended for the use of the public at large, as well as of the profession by Robert Bell, Esq, Advocate, Lecturer on Conveyancing, second edition, 2 vols (1815)

A Dictionary of the Law of Scotland by Robert Bell, Esq, Advocate, Lecturer on Conveyancing appointed by the Society of Writers to the Signet, third edition revised and greatly enlarged by William Bell, Esq, Advocate (1826)

A Dictionary and Digest of the Law of Scotland, with short explanations of the most ordinary English law terms by William Bell, Esq, Advocate (1838)

A Dictionary and Digest of the Law of Scotland with short explanations of the most ordinary English law terms by the late William Bell, Esq, Advocate. Revised and corrected, with numerous additions, by George Ross, Esq, Advocate (1861)

Bell's Dictionary and Digest of the Law of Scotland, adapted to the present state of the law and in great part re-written by George Watson, MA Advocate (1882)

Bell's Dictionary and Digest of the Law of Scotland, seventh edition by George Watson, MA Advocate, and of the Inner Temple, Barrister-at-Law (1890)

⁸⁶ R Cawdry, *A Table Alphabeticall: conteyning and teaching the true writing, and vnderstanding of hard vsuall English wordes, borrowed from the Hebrew, Greeke, Latine, or French, &c* (1604).

To trace the development of Robert Bell's *Dictionary* is, in a modest way, to follow the development of Scots law at some of the most formative periods of its history; and the history of the *Dictionary* also introduces a number of the characters of these periods, some well-known, others less so.

Robert Bell

Early life and background

Robert Bell was probably born in 1758,⁸⁷ the eldest son of an impoverished Episcopal minister, Rev William Bell (1704-1779)⁸⁸ and his second wife, Margaret Morrice (sometimes Morice), also an Episcopalian. The family was William's second: not only did his first wife, Lilius Grahame, predecease William in 1750, all the children predeceased Lilius.⁸⁹ Undeterred by the inevitable unhappiness that he must have endured losing his wife and all of his children, William again sought solace in family life and, at the age of 56, started a family for the second time. By the time he fathered his youngest and most famous son, Charles (1774-1842), he was 70 years of age. Between Robert and Charles were two other brothers, John (1763-1820) and George Joseph (1770-1843), as well as two other siblings, probably sisters, of whom little is known other than that they appear to have survived infancy.⁹⁰ The persecution of the Episcopalians following the '45 rebellion may have been the primary cause of the Rev William's privations; but so too might the fact that he had no family support: his own father, a Presbyterian minister,⁹¹ had died while he was four years old; and, while at university, William had renounced his Presbyterianism in favour of "the one catholic and Apostolic Church in Scotland... by

⁸⁷ The register of his death, which occurred on 1 November 1816, records that he was then 58 years of age: Old Parish Register, Deaths 685/03 0310 0107 Canongate. The *Oxford DNB* indicates only that Robert was born "around 1760".

⁸⁸ D M Bertie, *Scottish Episcopal Clergy, 1689-2000* (2000) 12.

⁸⁹ *Letters of Sir Charles Bell, selected from his Correspondence with his brother, George Joseph Bell* (1870) 7.

⁹⁰ Charles, the youngest son, writes of his father's death, in 1779, leaving his mother to care for a family of six children: *Ibid* 10.

⁹¹ H Scott (ed), *Fasti Ecclesiae Scoticae: the Succession of Ministers in the Church of Scotland from the Reformation, vol 1: Synod of Lothian and Tweeddale* (1915) 366, "Bell, John", latterly minister of Gladsmuir, near Haddington. The *FES* attributes to him authorship of the anonymously published tract, *An Ingenious and Scientific Discourse on Witchcraft* (1705).

this change, tho' I lost the countenance of my relations (my br Joseph excepted), yet was never destitute of friends".⁹²

It is a curious feature of the published correspondence between Charles and George that Robert is scarcely mentioned. At one point Charles writes that, while the affections of his childhood centred on his mother and brother George, "Robert was most kind to me. I was his play fellow and pet",⁹³ and there are a couple of other passing mentions.⁹⁴ But we do know from the editor that Robert was a regular subject of correspondence between Charles and George, particularly as a result of Robert's death. The "anxieties and sorrows" connected with the death of Robert were, according to the editor, "the principal subjects of correspondence between George and Charles in 1816 and 1817."⁹⁵ That correspondence, however, does not seem to have survived.

Part of Robert's obscurity is relative: his reputation as a jurist was largely eclipsed, even in his own life, by that of his younger brother, George Joseph: Advocate, Professor of Scots Law in the University of Edinburgh, and Principal Clerk of Session.⁹⁶ George Joseph would become the last jurist in Scots law sufficiently revered to earn "institutional" status. But both Robert and George were in turn eclipsed by the brothers who chose medicine rather than law for their profession: John Bell was "the premier surgeon of Edinburgh for nearly twenty years" until he left the city, for Italy, in 1817,⁹⁷ while Charles, later Sir Charles, was described three decades after his death as "a truly great man": the "founder of scientific neurology", no less.⁹⁸

Admitted as Writer to the Signet on 22 June 1784,⁹⁹ Robert's contributions to Scots law have four distinct strands – as a law reporter, law teacher, legal writer, and advocate – and each merits consideration.

⁹² *Letters of Sir Charles Bell* (n 89) 4.

⁹³ *Ibid* 11.

⁹⁴ *Ibid* 46, 74, 123

⁹⁵ *Ibid* 260 n.

⁹⁶ For George Joseph, see generally, K G C Reid, "From text-book to book of authority: the *Principles* of George Joseph Bell" (2011) 15 *Edin LR* 6.

⁹⁷ K Grudzien Baston, "Bell, John (1763-1820)" *Oxford DNB* (2004).

⁹⁸ F Arnold, "Sir Charles Bell" (1875) 91 *Fraser's Magazine* 88. A more balanced appraisal is L C Jacyna, "Bell, Sir Charles (1774-1842)" *Oxford DNB* (2004).

⁹⁹ F J Grant, *A History of the Society of Writers to Her Majesty's Signet* (1890) 16. On admission as a WS, Robert Bell *ipso facto* ceased to be a member of the Juridical Society of Edinburgh: *History of the Juridical Society of Edinburgh* (1875) 8, 13-15, 118. This explains the numerous entries for "resignation" on the roll of the Society, Robert Bell included.

Law reporter

Robert Bell, it is no exaggeration to say, is the father of modern Scottish law reporting. Although, by the end of the eighteenth century, there were many collections of decisions of the Court of Session, these were of limited utility: they recited the facts, the arguments of counsel, and the court's decision but without giving the legal basis of that decision. They lacked, in other words, the core information which offers the main incentive for reading modern law reports.

A system where judges do not provide detailed reasons is not one where precedent plays a major role. But one can look at matters from the other way around too: without any records of grounds for decision, a system of precedent must develop slowly. Only with a "constant tract of decisions" could decisions of the Session establish a point of law.¹⁰⁰ By Robert Bell's time, it was clear that Mackenzie's view of Scots law – to some extent held also by Bankton – that the underlying law of Scotland was the civil law, no longer held sway. "The civil law... is now reduced to that place which it always ought to have had," Robert would write in the preface to his first volume of decisions. "It serves only to enrich the pleading of the lawyer, or by its wisdom to aid the decision of the judge." "The law of this country", he added, "consists principally of the decisions of the Court of Session".¹⁰¹

There were other reasons too why a young lawyer might have ventured to make his own attempt at law reporting. In the first place, the lack of any record of the reasons for a decision rendered justice wholly lacking in transparency; for all the public knew, the arguments may have had no bearing whatsoever on their Lordships' decisions; without law reports, said Stair, judges were like arbiters deciding *ex aequo et bono*: there was no way of establishing whether "like cases have like events".¹⁰² Secondly, and more prosaically, the members of the Faculty of Advocates who were tasked with the responsibility of compiling the Faculty's own reports, the *Faculty Collection*, were often

¹⁰⁰ See generally J W Cairns, "Attitudes to codification and the Scottish science of legislation, 1600-1830" (2007) 22 *Tulane European and Civil Law Forum* 1 at 14-25. The quote is from Mackenzie.

¹⁰¹ R Bell, *Cases decided in the Court of Session, from November 1790 to July 1792* (1794) vi-vii.

¹⁰² J Dalrymple, *Decisions of the Lords of Council and Session, in the Most Important Cases Debate before Them* (1683) I, vi. Cf Dr Johnson's comments on the power of the Lord President's casting vote in cases of deadlock: J Boswell, *Life of Johnson* (ed R W Chapman, 1998) 523.

decades behind in their work. As Lord Stewart, who has done so much to illuminate this episode of our history, remarks: “the Faculty’s record of publication to the lieges was one of high promise and low achievement.”¹⁰³

The unsatisfactory state of affairs would have presented an opportunity to a young man like Robert Bell. Like many revolutionary steps, Robert’s approach was simplicity itself: he sat in the court and noted down what the judges said was the rationale for a decision. The results – *Bell’s Octavo Cases*¹⁰⁴ and *Bell’s Folio Cases*¹⁰⁵ – were the first Scottish law reports of the modern age. But Bell received little thanks for his labours. Quite the contrary: the combined force of the Edinburgh legal establishment was set up against him and he received, says T B Smith, only “threats and obstruction”.¹⁰⁶ In pioneering his approach Robert had encroached upon the twin privileges of, first, the Faculty of Advocates – a body modern scholarship has demonstrated was then concerned as much with vested self-interest as anything else¹⁰⁷ – to promulgate court decisions,¹⁰⁸ and, secondly, the judges to say what they liked without fear of attribution. Both the Faculty and at least some of the Lords of Session took umbrage. Cockburn records that some considered Robert’s actions verging on contempt: an offence, Lord Cockburn wryly observed, “aggravated by its accuracy”. “The fellow taks doon ma’ very words”, was Lord Eskgrove’s incriminating reaction to Robert’s presence in the Court.¹⁰⁹ The Lords were sufficiently affronted to set up a commission to consider the issue.¹¹⁰ Eventually, Robert wrote personally to the Lord President to explain his position. A committee of the

¹⁰³ A Stewart, “Introduction”, in A Stewart and D Parrett (eds), *The Minute Book of the Faculty of Advocates: Volume 4, 1783-1798* (Stair Society vol 53, 2008) xxix-xxx.

¹⁰⁴ R Bell, *Cases decided in the Court of Session, from November 1790 to July 1792* (1794).

¹⁰⁵ R Bell, *Cases decided in the Court of Session, during summer session 1794, -winter session 1794-5, and summer session 1795: Collected by appointment of the Society of Clerks to the Signet* (1796).

¹⁰⁶ T B Smith, *The Doctrine of Judicial Precedent in Scots Law* (1957) 11-12.

¹⁰⁷ The text is a crude simplification of a complicated history. Two chapters of it are elegantly told in J W Cairns, “Alfenus Varus and the Faculty of Advocates: Roman visions and the manners that were fit for admission to the bar in the eighteenth century” (2001) 28 *Ius Commune: Zeitschrift für Europäische Rechtsgeschichte* 203; J W Cairns, “The face that did not fit: race, appearance and exclusion from the bar in eighteenth century Scotland” (2003) 9 *Fundamina: A Journal of Legal History* 11.

¹⁰⁸ Twenty-five years later, however, one writer suggested, looking at the English model, that the Faculty’s privilege, if privilege it was, could not be exclusive, for the right to promulgate decisions of the Court was part of the Royal prerogative: Anon, *Address to the Right Honourable Lord President Hope and to the Members of the College of Justice on the Method of Collecting and Reporting Decisions* (1821) 9 ff.

¹⁰⁹ Lord Cockburn, *Memorials of His Time* (1856) 165, to which Cockburn adds: “a great injury to his Lordship, certainly”. For Cockburn’s observations on David Rae, Lord “Esky” Eskgrove, see *Memorials* 118-25.

¹¹⁰ AS 12 November 1796, *Committee as to Mr Robert Bell’s Decisions*.

WS Society also met with all the judges of the Court to discuss the matter. The result was a classic compromise. Lord President Campbell, on behalf of the Court, apparently indicated that he “highly approved of the institution of a course of lectures on conveyancing as a desideratum hitherto in the legal education of the country” and, in return for Robert agreeing to give up reporting, offered to support the creation of a full professorship in conveyancing at Edinburgh University. With that in view, it was suggested that a memorial be presented to the Court.¹¹¹ Quite what role the Court was to have in supporting the creation of a chair is unclear; but, be that as it may, Robert thus agreed to give up reporting what fell from the judges’ lips.¹¹²

In the event, the suggestion to submit a memorial was to cause Bell more problems than it solved, for it gave the Faculty of Advocates the opportunity to formulate a number of “strong and solid objections” to the establishment of a chair, primarily on the ground that it would infringe on the existing privileges of the holder of the Chair of Scots Law and that it was undesirable to create a situation where there were “two rival Professors of the same Science, mutually jealous of each other, and each anticipating the other’s emoluments”.¹¹³ It may be, however, that one cause of the Faculty’s objections was found in Bell’s outline of classes which, among other things, proposed that students’ ability to draft deeds should be assessed in the language of practice – English. This may have been seen as an implied criticism of the Faculty’s own laborious system of trials on Digest titles assigned in strict chronological order, and in Latin.¹¹⁴

History, however, has judged Robert Bell’s pioneering reports well and considerably better than those of the one man whose privileged access to the *Session Papers*, the Professor of Scots Law, David Hume, was supposed to guarantee accuracy:¹¹⁵

¹¹¹ Grant, *Writers to Her Majesty’s Signet* (n 99) 424; Stewart and Parratt, *Minute Book* (n 103) 228-9 n 358.

¹¹² But Robert did continue to report other processes of interest: as, for example, the learned arguments of the respective counsel, Thomas Thomson and Francis Jeffrey, in a marriage case that was settled after argument but before decision. Perhaps as a result of his experiences to date, he made no attempt to publish them during his lifetime: see R Bell, *Report of a case of legitimacy under a putative marriage: tried before the Second Division of the Court of Session in February 1811* (1825).

¹¹³ Stewart and Parratt, *Minute Book* (n 103) 237.

¹¹⁴ *Ibid* 235-42.

¹¹⁵ *Wilson’s Trs v Wilson* (1856) 18 D 1096 at 1103 *per* Lord Justice Clerk Hope. Stewart and Parrett, *Minute Book* (n 103) 145 n 237 indicate that Robert Bell, in contrast, spent five to eight hours a day on the work of noting and arranging his notes of proceedings, “invariably writing out the opinions for the judges from his notes the same day”.

This is not the only instance in which the inaccuracy of these reports has been ascertained. They were drawn up in most disadvantaged circumstances after the elapse of a great many years. The Session Papers show that Baron Hume had often taken but few notes, and relied on the Session Papers alone. In this case he had only made a short jotting. In this, as in various other instances, the note-books of Lord President Hope show that he had entirely mistaken the case.

Competition from Bell's *Octavo* and *Folio Cases*, however, appears not to have galvanised the Faculty of Advocates into doing better. Notwithstanding the splitting of the Court of Session into two divisions in 1808, law reporting reached an all-time low in 1818 with only 47 cases being reported – a number, one anonymous writer reflected, which was “not half the numbers reported yearly by Lord Durie and Lord Stair almost two centuries ago.”¹¹⁶ The same writer, however, was in doubt as to whether it was either “delicate or judicious” for a reporter to attempt to make a verbatim note of a judge's stated reasons for decision.¹¹⁷ And even the *Session Cases*, which began in 1821, did not provide many detailed verbatim reports of opinions until the 1830s. As a law reporter, it seems, Robert Bell was indeed a visionary.

Law teacher

As a teacher of law too, Robert Bell was a pioneer. But in law teaching, as in law reporting, he was faced with constant obstacles and discouragements. By the 1790s there were already three public chairs of law at the University of Edinburgh – the Regius Chair of Public Law and the Law of Nature and Nations (1707)¹¹⁸ and the Chairs of Civil Law (1709) and of Scots Law (1722). In Glasgow, meanwhile, the Regius Chair of Civil Law had been inaugurated in 1713. But the holders of these chairs, as university professors,

¹¹⁶ Anon, *Address to the Right Honourable Lord President Hope and to the Members of the College of Justice on the Method of Collecting and Reporting Decisions* (1821) 3. J S Leadbetter, “The printed law reports, 1540-1935”, in *Sources and Literature* (n 32) 46, records that this pamphlet is “known to be by Robert Hannay, Advocate”.

¹¹⁷ *Ibid* 46-9. Curiously, the author laments – despite 2 editions of Robert Bell's *Dictionary* – that, for the assistance of inexperienced reporters, “we have no dictionary of law terms” (54).

¹¹⁸ The Regius Chair of Public Law and the Law of Nature and Nations having been inaugurated in 1707: see J W Cairns, “The origins of the Edinburgh Law School: the Union of 1707 and the Regius Chair” (2007) 11 *Edin LR* 300.

focussed on what may loosely be described as “academic law”.¹¹⁹ No one, at that time, was teaching the type of law that many lawyers actually practised. So the need for a course of instruction that sought to blend matters of deep principle with the more prosaic ingenuity of daily practice had, by the last quarter of the eighteenth century, become evident. Walter Ross WS had been invited by the WS Society to give a series of private lectures on conveyancing in 1783 and 1784, which formed the basis for the two volumes which appeared, posthumously, in 1792¹²⁰ following Ross’s sudden death – reputedly in a fit of laughter – in 1789.¹²¹ Ross’s lectures had demonstrated that there was a demand, and his death left a vacancy.

In 1793 Bell, supported by the writer to whom he had been apprenticed, William Macdonald, proposed to the WS Society a series of lectures on conveyancing. After asking for and considering the proposed course,¹²² the Society appointed Bell as lecturer in conveyancing in November 1793. Perhaps due to his work on the *Octavo Cases*,¹²³ however, it was not until December 1794 that he was able to deliver an inaugural “short course” of lectures. From the outset, Bell was faced with the same sort of problems that face new lecturers today. Room bookings, for instance, posed a particular difficulty: as late as the end of November 1794 Bell is seen politely reminding the Society of his need for a room in which to deliver his lectures. Disappointingly, perhaps, the Society’s response, even for this apparently simple administrative task, was classic institutional inertia: formation of a committee. More disappointingly still, the committee then directed all of its efforts to finding Robert a room anywhere but within the Society’s own premises. Representations were made to the Lord Provost, for use of a University room,

¹¹⁹ Cf K Reid, “Property”, in K Reid and R Zimmermann (eds), *A History of Private Law in Scotland* (2000) vol 1, 206.

¹²⁰ W Ross, *Lectures on the Practice of the Law of Scotland* (1792). A second edition was published in 1822 under the title *Lectures on the History and Practice of the Law of Scotland relative to Conveyancing and Legal Diligence*.

¹²¹ K J Campbell, “Ross, Walter (1738-1789)” *Oxford DNB* (2004); Grant, *Writers to Her Majesty’s Signet* (n 99) cviii. Ross’s motivations – at least those suitable for public airing – are in his *To the members of the College of Justice* (1782). The WS Society was here ahead of its counterpart in Glasgow, the Faculty of Procurators, whose first lecturer in Conveyancing, James Galloway, was appointed in 1816. His lectures were published 20 years later: J Galloway, *Lectures on Conveyancing: embracing commentaries on the authentication or testing, and on the general requisites of the deeds* (1838). The written style, at least, displays a palpable enthusiasm for the subject.

¹²² R Bell, *Outlines of the course of lectures on conveyancing, established by the Society of Clerks to the Signet. With a concentrated view of the clauses of deeds* (1800).

¹²³ Stewart and Parrett, *Minute Book* (n 103) 145 n 237.

as well as to the Dean of Faculty. Only when these representations produced no offers of support did the committee reluctantly accept, on 14 January 1795, that “the lectures having been advertised for the following Thursday, it was agreed to grant their own lecturer the use of the signet hall for the purpose”. This arrangement was continued until at least early 1796.¹²⁴

As it happens, it was only in 1795-1796 that Robert Bell was able to deliver the lectures on the first part of his course, and it was 1797 before he began to deliver the second part.¹²⁵ Somewhere along the way, however, there must have been difficulties since, almost fifteen years later, on 4 February 1811, the Society librarian – who would, in time, succeed Robert as the lecturer in conveyancing – one Macvey Napier, moved a resolution at a meeting of the Society that “Mr Bell be permitted to lecture in the hall at such hour as the society should deem most convenient”; the society’s lecturer, recorded Napier, had in the meantime been forced to deliver his lectures in a Masonic hall.¹²⁶ In the course of his teaching, Bell appears to have encountered other challenges familiar to the professional academic: insufficient library provision,¹²⁷ and bad student feedback arising from his plan to divide his material into two discrete courses, leading to complaints of expense and inconvenience.¹²⁸

Although his lectures appear to have proved popular and well-regarded, Robert Bell’s position as a lecturer found little material encouragement. As has been seen, just when it looked like his agreement to give up law reporting would win him the security of a chair of conveyancing at Edinburgh University, the Faculty of Advocates intervened, on behalf of the holder of the Chair of Scots Law, David Hume, effectively blocking the chair. This may have played some part in Bell’s decision, over a decade later, to seek admission to the Faculty of Advocates. With Hume’s resignation from the Chair of Scots Law in 1822, on his elevation to the Exchequer Court, Robert Bell’s brother, George Joseph, was appointed as Professor of Scots Law and, with his support, a Chair of Conveyancing was

¹²⁴ Grant, *Writers to Her Majesty’s Signet* (n 99) 422-3.

¹²⁵ For all this see *Ibid* cx-cxi and cxv.

¹²⁶ *Ibid* cxi.

¹²⁷ R Bell, *Memorial relative to the library of the Writers to the Signet etc, humbly submitted to the consideration of the members* (1800).

¹²⁸ Grant, *Writers to Her Majesty’s Signet* (n 99) cxvi.

instituted in 1824. But by then Robert Bell had been dead for eight years and the first holder of the Chair was Macvey Napier.

Legal writer

Being actively engaged in teaching, Robert Bell would have felt acutely the need for appropriate books. And, like many in his position, finding nothing to hand, he set about writing the types of book he would wish his students to have. As he remarked in his *Forms of Deeds*:¹²⁹

I find it necessary, in order to leave room for other matters in my Lectures, that I should have a Collection arranged in the same order, and accompanied with such hints of the history of the deed, as may render it in many cases unnecessary to consume time on that part of my subject, and so allow me to give the whole course to practical views, and to that information which the Conveyancer will require when he enters into business.

The *Dictionary*, therefore, is only one of Bell's works. In fact his output was prolific.¹³⁰ In addition to his *System of the Forms of Deeds used in Scotland* – which, by the third edition of 1811-1817, extended to seven volumes plus an abridgement – there was a monograph derived from his lectures on the subject of execution of deeds¹³¹ – later described by Lord Deas as an “authoritative treatise”¹³² – as well as works on leases¹³³ and conveyancing¹³⁴ and a less well-known treatise on the law of elections¹³⁵ (which,

¹²⁹ R Bell, *A System of the Forms of Deeds used in Scotland* (1797) vol I, 3.

¹³⁰ It is unexpected that the *Oxford DNB* entry for George Joseph Bell, by Professor W M Gordon, should contain a more generous and accurate description of Robert Bell than Robert Bell's own entry; Gordon justly describes Robert as “a lawyer of some distinction”.

¹³¹ R Bell, *Lectures on the Solemnities used in Scotland, in the Testing of Deeds* (1795). This book remains of value in the 21st century. In 1796 it was presented by Bell, together with his Octavo and Folio Cases, as the first donations to the library of the Juridical Society of Edinburgh: see *History of the Juridical Society of Edinburgh* (1875) 17.

¹³² *Smith v Chambers' Trs* (1877) 5 R 97 at 114.

¹³³ R Bell, *A Treatise on Leases: explaining the nature and effect of the contract of lease, and pointing out the legal rights enjoyed by the parties* (1803; 2nd edn 1805; 3rd edn by W Bell, 1820; 4th edn by W Bell, 1825-6).

¹³⁴ R Bell, *A Treatise on the Conveyance of Land to a Purchaser, and on the manner of completing his title* (1815; 2nd edn by W Bell, 1828; 3rd edn by W Bell, 1830).

¹³⁵ R Bell, *A Treatise on the Election Laws, as they relate to the representation of Scotland, in the Parliament of the United Kingdom of Great Britain and Ireland* (1812). It was cited to the court in *Gray v Mags of Anstruther Wester* 29 June 1819 FC.

prior to the Reform Act of 1832, gave rise to all sorts of land law questions). All remain of value today and it is worthy of observation that no one since has sought to write a monograph on deeds, though execution of deeds is no less important today than it was in Bell's time.¹³⁶ "The subject which I have chosen" wrote Bell in his introduction to that book, "does not admit of much ornament, nor of deep investigation, but it has this advantage at least, that, while it is in some degree insulated, it is also of much practical importance".¹³⁷ The same could be written today. Bell's foundational part in modern law-reporting, his role in legal education, as well as his major contributions to the legal literature, justifiably secure his place in the annals of Scottish legal history.

The Dictionary

The first edition of the *Dictionary* was published in 1807 and the second in 1815, shortly before Robert Bell's death in 1816. Much later these editions were to be characterised by George Watson, a subsequent editor, as little more than a manual for the merchant and the country gentleman: the scope was "comparatively limited, and they contained little more than a short and popular explanation of Scottish law terms, with hardly any reference to authorities".¹³⁸ But that judgement does not accord with Bell's own words; for although thinking that the *Dictionary* "cannot be entirely unimportant to the merchant or the country gentleman", he saw his main audience as "those young men who mean to make the law their profession." He continued:¹³⁹

The student of the law does not (I may be allowed to say) enjoy the advantage of any proper introductory book; for although Mr Erskine's small Treatise,¹⁴⁰ which he entitled "Principles of the Law of Scotland" be very accurate ... yet it may be justly doubted whether it be well adapted for the perusal of a young man entirely unacquainted with the subject.¹⁴¹ The brevity and conciseness which, joined to its accuracy, forms its great merit, in one point of view is

¹³⁶ Cf R Rennie and D J Cusine, *The Requirements of Writing* (1995).

¹³⁷ R Bell, *Testing of Deeds* (n 131) iv.

¹³⁸ G Watson, *Bell's Dictionary and Digest* (6th edn, 1882) v.

¹³⁹ R Bell, *Dictionary* (1807) vi-vii. Cf 2nd edn (1815) ix-x.

¹⁴⁰ In the second edition of 1815, Robert Bell refers to Erskine's *Principles* as "Mr Erskine's smaller Institute".

¹⁴¹ In the 2nd edition, the following sentence is here inserted into the preface: "The work was designed as a textbook for the author's lectures; and professes rather to point out the great principles than to dwell on the more minute points which require explanation."

little calculated to satisfy those doubts, which arise in the course of a systematical course of reading, and which, while unsatisfied, distract and interrupt the student; and, without the aid of lectures, it is always felt as a forbidding and dry book, little calculated to facilitate his progress, or to draw him on to the study of his profession.

Of particular interest is the reference to the “those doubts which arise in the course of a systematic course of reading”.

There is little indication of why Bell decided to put the dictionary together. But there are traces, in his earlier works, of a concern to convey the meaning of technical words, an interest which goes beyond what is required for the reader to understand the passage in question. So, for instance, in his work on *Leases*, Bell explains “horning” with a footnote which is a prototype *Dictionary* entry:¹⁴²

Blowing a man to the horn was the ancient form of seeking for an offender from county to county, and where he was not to be found, it was followed by outlawry. This was introduced into civil business; and, when a debtor refused to obey the King’s letters, he was blown to the horn as an offender, and declared guilty of rebellion. It was on this ground, that imprisonment proceeded, and that the debtor was imprisoned as a rebel of the King. Part of the punishment which the weakness of government rendered necessary, was, the falling of the debtor’s escheat, [which, in a manner, armed one part of the kingdom against the other in favour of the laws]; and when a man remained for a year under denunciation for rebellion, or, in technical language, at the horn, his liferent escheat fell and was gifted at the pleasure of the Crown. It was by that most fortunate statute, 20 Geo II, c 50 that civil rebellion, as well as ward holding, were abolished.

This description would be illuminating for both layman and lawyer alike, primarily because it is so readable. There is a danger of mistaking accessibility for lack of depth. When the first and second editions of the *Dictionary* were published, they were bound with a reprint of Skene’s *De Verborum Significatione*, Bell professing that his *Dictionary* “goes little into the history, and in no shape into the antiquities of the law: Therefore, in some measure to supply the defect, there has been added, as an appendix, Skene’s

¹⁴² Bell, *Treatise on Leases* (2nd edn) (n 133) 27 n. The bracketed words were, in later editions, edited out by Robert’s son, William.

Treatise, *De Verborum Significatione*, which the reader prefer in its original shape...”.¹⁴³ Again, although Bell’s *Dictionary* was considerably more concise than the later editions, it is going too far to suggest that it was designed for laymen. Bell’s suggestion that the *Dictionary* would be useful for gentlemen may have been no more than an attempt to persuade as many people as possible to buy it.

It is certainly evident from some of the definitions that Robert Bell was endowed with the skill of concise and perceptive formulation. One example will have to suffice. The entry for “Acceptance – 1. *Acceptance of a Deed*” reads:¹⁴⁴

As delivery is a necessary solemnity, indicating on the part of the grantor of the deed his intention to render the deed completely binding on himself, so, on the other hand, the acceptance of the deed by the person in whose favour it is granted, is necessary to render it binding on him. The receiver cannot, from the mere circumstance of the deed’s being in his possession, be held to have accepted it. On the contrary, the presumption is, that he received it for the purpose of considering the nature and effect of it, before he should decide whether he ought or ought not to accept of it. There must, therefore, be some positive act of acceptance, indicating, clearly and decidedly, his intention to accept of the deed. Thus, a verbal acceptance of the deed, – acting under it, – deriving a benefit from it, – taking infeftment on it, – or even putting it on record, will be held as acts of acceptance, and these acts may be proved either by writing or by witnesses. Ersk. B. 3. Tit.2. § 45.

That entry has not survived in the later editions which, understandably, focus instead on elaborating the principles of delivery of deeds by reference to the case law.¹⁴⁵ But those later editions, as a result, lose something of the fundamentals and, in particular, one crucial point highlighted by Bell, that delivery is a bilateral act. It is of interest too that many of Bell’s entries go deep into principle rather than detail, with any further references focussing on the opinions of other legal writers rather than cases.¹⁴⁶ And although the success of the *Dictionary* has been largely attributed to William Bell’s later

¹⁴³ R Bell, *Dictionary* (1807) viii.

¹⁴⁴ R Bell, *Dictionary* (1807) 5-6.

¹⁴⁵ See e.g. G Watson, *Bell’s Dictionary and Digest* (7th edn, 1890) sv “deeds”; “deeds, delivery of”.

¹⁴⁶ R Bell, *Dictionary* (1807) sv “diligence”, discussing Stair’s analysis; “disposition”, criticising Kames’ view that ownership of land passed on delivery of the disposition.

work, it is worth recording that there is at least one instance of Robert Bell's *Dictionary* being cited to the Court before William came to be involved.¹⁴⁷

Whatever its reputation, then or now, it is worth emphasising that, in Robert's own opinion, his *Dictionary* was a work for which he had a special affinity, and a volume he considered worthy of attention. In the last edition of *Forms of Deeds* for which he was responsible, Robert, in dedicating his work to the WS Society he had so long served, allowed himself a brief retrospective:¹⁴⁸

I shall say nothing of the decisions I have collected, because these must have come more immediately under your notice, and were indeed the means by which I gained your confidence, and was judged fit for the task I was anxious to undertake. Neither shall I take notice of other treatises which I have been induced to publish, because these will probably be sufficiently known to the members of the Society. But I beg leave to call your attention to a merely elementary book, less likely to fall into your hands, being intended for the use of the student, – I refer to the Law Dictionary. I had felt, in my own case, that however excellent Mr Erskine's Institutes of the law may be, and however well fitted the smaller Institute may appear for the use of the student, some more elementary book was required, which might give a more direct and fuller explanation of law terms than an Institute can give; and the form of a Dictionary, while it requires this fuller explanation, admits also of short treatises, easily comprehended, and which do not require that continuity of attention which must be given to an Institute. It was the explanations it affords – the shortness of the dissertations, – the ease with which such views may be followed and fully comprehended, – the facility with which the explanation it contains may be applied to the case for which the book is turned up, – and the power of laying it aside and resuming it at all times, without distracting the attention of the reader, or breaking in on the chain of connexion in his subject, that renders the form of a dictionary so useful and commodious a means of acquiring that general and floating knowledge which a young man has occasion for, before he sits down to a more regular and systematical study of his profession. It was with these considerations that induced me to offer this elementary book to the student; and if it serves, as I trust it does, to introduce him to his more elaborate and more useful studies, it will have performed a duty of no mean importance.

¹⁴⁷ *Hamilton v Bogle* 23 Feb 1819 FC.

¹⁴⁸ R Bell, *A System of the Forms of Deeds used in Scotland*, vol 1 (3rd edn, 1811) v-vii.

Admission as an advocate

Perhaps as a result of the obstacles placed in his way by the Faculty of Advocates, Robert Bell took the unusual step, in his fifties, of petitioning for admission as an advocate. He was admitted on 7 July 1812 and appears to have practised for the last four-and-a-half years of his life.¹⁴⁹ Lord Stewart ventures that Robert may have been the last inrant to deliver to the Lords, from a corner of the bench, his syllogistic thesis on a title of the *Digest*, in the form of the Latin “harangue”.¹⁵⁰ Ironically, had Robert sought to join the Faculty twenty years earlier, not long after George Joseph was admitted, he might have been assigned the *Digest* title to which the history of all legal dictionaries owes so much: *De diversis regulis iuris*. For, in the 1790s, the Faculty’s rather unenlightened approach to assigning titles – proceeding in strict chronological order – was coming to its inevitable conclusion, and on 25 June 1796 one Robert Semple was publicly examined on D.50.17 *de diversis regulis iuris*. The next inrant, examined the same day (John Peter Grant of Rothiemurcus), began the whole cycle afresh with title 1, book 1.¹⁵¹

What of Robert Bell’s four years of practice at the bar? If the reported cases of the period may be taken as a rough guide, Bell’s practice was not insignificant, although assessment is made more difficult by an intermittent failure by the Faculty Collection reporters to indicate which “Bell” was counsel.¹⁵² In at least one case, *Strachan v Knox & Co’s Tr*,¹⁵³ Robert appeared for one side with George Joseph instructed on the other –

¹⁴⁹ F J Grant, *The Faculty of Advocates in Scotland, 1532-1943* (1944) 13. See too K J Campbell, “Bell, Robert (c. 1760-1816)”, *Oxford DNB* (2004).

¹⁵⁰ A Stewart, “Introduction”, in Stewart and Parrett, *Minute Book* (n 103) xxxiv. The wonderful description of the proceeding as a “harangue” comes from the first holder of the Regius Chair of Civil Law at Glasgow, William Forbes: W Forbes, *A Journal of the Session, Containing the Decisions of the Lords and Council and Session in the Most Important Cases Determin’d from February 1705, until November 1713: and the Acts of Sederunt made in that Time* (1714) viii. For an overview of the Faculty of Advocates’ entrance procedure, see generally J W Cairns, “Historical Introduction”, in Reid and Zimmermann (eds), *History of Private Law* (n 119) vol 1, 125-9, 155-6.

¹⁵¹ Stewart and Parratt, *Minute Book* (n 103) 224.

¹⁵² There are many cases in which one Bell was instructed with [John] Clerk: “Bell et Clerk”. This could have been either John Clerk, later Lord Eldin (1757-1830), or John’s brother, William Clerk. Robert Bell dedicated his *Treatise on the Conveyance of Land to a Purchaser, and on the manner of completing his title* (1815) to John Clerk, so it may be that the “Bell et Clerk” references are to Robert Bell and John Clerk. Another clue is that George Joseph Bell was normally distinguished with the initials of his two given names. If so, then Robert’s practice, at least on the basis of reported decisions (an unsure guide, given the defects in contemporary law reporting), was not inconsiderable. John Clerk’s practice, at any rate, was so extensive that, at one time, he reputedly “had nearly half the business of the court in his hands”: G F R Barker revised A M Godfrey, “Clerk, John Lord Eldin (1757-1832)”, *Oxford DNB* (2004).

¹⁵³ 21 Jan 1817 FC.

with both citing to the court the third edition of George's *Commentaries*.¹⁵⁴ By the time opinions had been advised, however, Robert was dead.¹⁵⁵

Robert Bell's first professional society, in its *History*, summarised his career in this way:¹⁵⁶

Mr Bell does not appear to have been discouraged by either the smallness of the emoluments which he had hitherto derived from the lectureship or the failure to have his salary placed on a more satisfactory footing. He continued to discharge the duties of lecturing to a gradually increasing number of students with great ability and success until his death in 1816... it cannot be doubted that it is to his ability and zeal in discharging his duties through many discouragements that we owe the success of the foundation.

But it is fitting, perhaps, that it is Robert Bell's own words that should provide the epitaph to his contributions – as a law reporter, teacher, writer and practitioner – to Scots law. In his brief retrospective, Bell reflected:¹⁵⁷

During the whole of this long period, then, my labours have had but one object. In these elementary works, and in my Lectures, I have been desirous of assisting the student in acquiring a knowledge of his profession – of that profession formerly so little regarded, but at all times so important to your Body, and to the public. To the change which, I flatter myself, has taken place in the means afforded to the student of following out the study of his profession, I shall ever hold it most honourable to have been in any shape instrumental; nor shall I regret the time I have spent in the attempt, nor the sacrifices I have made; and, believe me, they are greater than you are aware of, or than it can be at all necessary for me to state.

Death and aftermath

¹⁵⁴ Two additional examples where George Joseph Bell cited his own work to the court are *Bryce v Monteith, Bogle & Co* 20 Feb 1818 FC, and *Brown v Thin* 23 Feb 1819 FC.

¹⁵⁵ The last case I have traced in which Robert Bell is reported to have represented one of the parties is *Laurie v Mags of Edinburgh* 6 June 1818 FC. This was a mammoth litigation, spanning several years; Robert was just 1 of 7 counsel instructed for the pursuer.

¹⁵⁶ Grant, *Writers to Her Majesty's Signet* (n 99) cxvi.

¹⁵⁷ R Bell, *A System of the Forms of Deeds used in Scotland*, vol 1 (3rd edn, 1811) vii, "Dedication to the Society of Writers to His Majesty's Signet".

Robert died, probably before the age of 60, on 1 November 1816. Immediately following his death, the WS Society availed itself of the offer of his brother, George Joseph, to read Robert's lectures until a successor was appointed.¹⁵⁸ Just over two weeks later, on 16 November, Macvey Napier defeated two other candidates, both, curiously, of the name of Bell, in the election to succeed Robert.¹⁵⁹ But it appears that George Joseph continued reading his late brother's lectures until 1818, the suggestion being that he passed on the fees to Robert's widow.¹⁶⁰ It was on conveyancing, therefore, that George Joseph obtained his first experience of teaching.

The three editors

William Bell

The next edition of the *Dictionary*, the third, was prepared for publication by Robert Bell's son, William.¹⁶¹ His early life is shrouded in obscurity, and some later writers do not even allow that William was Robert's son, perhaps because William himself refers always to his father as "Mr Bell". Indeed the only reference to their blood relationship, and an indirect one at that, is when William writes in the preface to the 1838 edition that: "the truth is, that he [William] has been almost unconsciously involved in the undertaking, by his accidental connection with the work in which the present originated".¹⁶² It remains unclear when William was born and, if he was baptised, the records appear not to have survived. We do know, however, that he passed advocate in 1824.

¹⁵⁸ Ibid cvii.

¹⁵⁹ William Bell WS and John Bell WS: see Grant, *Writers to Her Majesty's Signet* (n 99) 432. It seems likely that the William Bell was the Writer to the Signet and not Robert's son, also William, who would be admitted to the Faculty of Advocates in 1824. Napier polled 147 votes, Wm Bell 131, and J Bell 31. Macvey Napier's son – also Macvey – gives no indication of any delay in his father commencing lecturing and records simply that his father succeeded Robert in 1816: M Napier (ed), *Selections from the Correspondence of the late Macvey Napier* (1877) 9 n.

¹⁶⁰ W M Gordon, "Bell, George Joseph", *Oxford DNB* (2004). This is consistent with *Letters of Sir Charles Bell* (n 89) 260 n.

¹⁶¹ Grant, *Faculty of Advocates* (n 149) sub nomine "Bell, William" discloses that Robert was William's father. To the same effect is S P Walker and E Walker, *The Faculty of Advocates 1800-1986* (1987) 11. These sources may be taken to be reliable since the requirement for intrants to the Faculty to name their father and his profession continues to this day.

¹⁶² W Bell, *A Dictionary and Digest of the Law of Scotland* (4th edn, 1838) vol I, vii.

William Bell is characterised by one reviewer as having been “a man of extensive legal acquirements and of unwearied industry”.¹⁶³ Much of his early professional life appears to have been taken up with carrying on his father’s work: William was responsible not only for two editions of the *Dictionary*, but also for later editions of the works on leases¹⁶⁴ and conveyancing.¹⁶⁵

It is in its third edition, of 1827, that we have a picture of the *Dictionary* in adolescence. William Bell had begun to experiment on expanding the entries. Proceeding from the assumption that his reader was likely to be a practising lawyer, he sought to provide the references to authority expected by a professional audience. He described his approach thus:¹⁶⁶

The Editor undertook some years ago to revise for the press a new edition of this work. His intention at first was to have confined himself as nearly as possible to the limits of the former edition; but he very soon found that, partly from the original plan of the work not having been sufficiently comprehensive, and partly from legislative changes¹⁶⁷ within the last few years, very considerable corrections and additions were indispensable – that many of the articles of the former edition required to be re-written – and that it was necessary to add many new ones. With the exception, therefore of most of the articles under the letter A, the editor re-composed the whole of the first volume; adding upwards of three hundred new articles under the first five letters of the alphabet.

But the great increase of the size of the book occasioned by these additions, and the consequent difficulty of confining himself within the limits of the former work, rendered it necessary for the editor to deviate in some degree, in the second volume, from the plan which had been adopted in the first. In that volume, accordingly, the terms have been defined more concisely; but, at the same time, a very great number of articles entirely new will also be found in the second volume. The present edition has been in this way enlarged to double the size of the former...

In the former editions few or no authorities were cited. That defect has now been remedied; and, with a few exceptions in the beginning of the first volume, almost every article contains

¹⁶³ (1861) 5 *Journal of Jurisprudence* 136.

¹⁶⁴ Bell, *Treatise on Leases* (n 133).

¹⁶⁵ R Bell, *Treatise on the Conveyance of Land* (n 134).

¹⁶⁶ R Bell, *A Dictionary of the Law of Scotland* (3rd edn by W Bell, 1826) vol I, i-ii.

¹⁶⁷ Later in the preface William Bell mentions measures such as the Court of Session Act 1825 (“the new Judicature Act”) and the Jury (Scotland) Act 1815.

references to the institutional writers, or to other books of authority, or to other articles in which the subject is more fully treated. It has also been deemed proper, in this edition, to give short definitions of the most ordinary English law terms. These definitions have been abridged from the last edition of Sir Thomas Tomlin's Law Dictionary.

We later learn in the preface to the fourth edition, of 1838, that the reason for the piecemeal approach in the third edition was that William Bell's extended plan of arrangement was "incompatible with the views of the Publishers",¹⁶⁸ hence the abridgment of the third edition's second volume. Bell's experiment, however, convinced him that his proposed scheme was justified. The result was a comprehensive revision of his father's dictionary. As he himself stressed, "the present publication is the result; but, as it is not, in any sense, a new edition of the former Dictionary, it has not been so described in the title page, and it is now offered to the profession on the individual responsibility of the Compiler himself".¹⁶⁹ Bell's major aim was to re-focus the *Dictionary and Digest* – a new title – for the legal profession by way of a general expansion of the content and, in particular, the addition of authorities and further references. Moreover, it is with the 1838 edition that the addition of a reprint of Skene's *De Verborum Significatione* – "a cumbersome and expensive appendage" – comes to an end. But this deletion is compensated by the fact that, recognising the usefulness of Skene's work, Bell sought to ensure that "all [Skene's] definitions, as nearly as possible in his own words, have been incorporated alphabetically and briefly, in the course of this work... with a reference to Skene's own work for a fuller explanation."¹⁷⁰ Few users of *Bell's Dictionary and Digest*, perhaps, have realised that it incorporates so much of Skene's work.¹⁷¹

Bell's Dictionary, like its later editor, may have been Robert Bell's child, but the *Dictionary* as we know it today was brought up by William. A later editor, George Watson, described William's advances as follows:¹⁷²

¹⁶⁸ W Bell, *Dictionary and Digest* (n 162) vol I, v.

¹⁶⁹ *Ibid* v.

¹⁷⁰ *Ibid* vi.

¹⁷¹ See e.g. G Watson, *Bell's Dictionary and Digest of the Law of Scotland* (7th edn, 1890) sv "Dyvoor".

¹⁷² G Watson, *Bell's Dictionary and Digest of the Law of Scotland* (6th edn, 1882) v.

Its design is, besides explaining law terms and phrases, to digest and embody in alphabetical order, according to the subject matter, all that is practically valuable in the works of the Institutional Writers. The law is frequently expressed in the very terms used by these writers themselves; and every statement is supported by reference to authority, whether of statutes, or of adjudged cases, or of the text writers.

There is at least one modern instance of a high authority – a Lord Chancellor of the United Kingdom – preferring William Bell’s 1838 edition over the later editions,¹⁷³ while T B Smith was one of the few legal writers to have traced the 1890 edition back to William Bell’s work.¹⁷⁴ It was, moreover, Bell’s 1838 edition which was used by the compilers of the *Oxford English Dictionary*, led by the legendary James Murray, as a source of Scots law terms: a modern online search shows that it is referred to in the *OED* on some 266 occasions.¹⁷⁵

Few, if any, of Robert Bell’s entries survived his son’s editorship. The *Dictionary and Digest*, as reproduced here, is thus largely the work of William Bell.

George Ross

Born in 1814, just before the publication of the second edition of the *Dictionary*, George Ross was admitted to the Faculty of Advocates in 1835. According to Lord President Inglis’ biographer, Ross was “known as a stiff counsel and a bad pleader, with a profound knowledge of case law”.¹⁷⁶ Ross held the Chair of Scots Law in the University of Edinburgh for a short period between 1861 and his sudden death, from diphtheria, in 1863.¹⁷⁷ In the “hotly-contested” competition for the Chair, Ross beat off considerable competition from the likes of Montgomerie Bell.¹⁷⁸ Like Robert Bell, Ross is perhaps best-known as a law reporter. His three-volume collection of reports, drawing on many

¹⁷³ Lord Mackay of Clashfern, “The Advocate: should he speak or write?” (1992) 60 *Fordham Law Review* 953 at 963 n.

¹⁷⁴ Smith, *Judicial Precedent* (n 106) 33-4 (“decisions”) and 76 (“*ratio decidendi*”).

¹⁷⁵ *Oxford English Dictionary* (2nd edn, online, 1989).

¹⁷⁶ J Crabb Watt, *John Inglis, Lord Justice-General of Scotland: A Memoir* (1893) 45 n.

¹⁷⁷ Anon, “The Late Professor George Ross” (1863) 7 *Journal of Jurisprudence* 593.

¹⁷⁸ *Ibid*; J W Cairns, “Ross, George (1814-1863)”, *Oxford DNB* (2004). Montgomerie Bell, a partner in Dundas & Wilson CS, had held the Chair of Conveyancing at Edinburgh University since 1858. Crabb Watt, *Inglis* (n 176) 277 n lists Hamilton Pyper, George Munro, George Skene, Frederick Hallard, Norman Macpherson and Campbell Smith as the other candidates.

otherwise difficult-to-obtain manuscript collections of the judges themselves, *Leading Cases in the Law of Scotland* (1851-53), are particularly well-known and often invaluable. They were extensively referred to in the House of Lords as recently as 2004.¹⁷⁹ Ross also compiled a series of reports of English as well as Scottish commercial cases.¹⁸⁰

Ross's edition of Bell's *Dictionary* – the fifth, published in 1861 – departed considerably from the earlier work of Robert and William Bell and appears not to have been universally favoured by the profession, his editorship being described as “perfunctory and superficial”.¹⁸¹ George Watson, in compiling the next edition, ignored Ross's edition entirely.

George Watson

It is the seventh and last edition of the *Dictionary and Digest* that is reproduced here. George Watson took over the editorship for the sixth edition of 1882 and the seventh of 1890, and it was under his charge that the *Dictionary and Digest* cemented its reputation as a work of reference for the practising lawyer.

Watson was born in 1846, admitted to the Faculty of Advocates in 1871, and called to the English bar in 1884 for reasons which were “chiefly ornamental”.¹⁸² He was later sheriff-substitute at Wigtown.¹⁸³ As reviewers noted, Watson's input to the *Dictionary and Digest* was considerable. “A great part of the contents has had indeed to be entirely re-written” and “the whole book, indeed, may be looked upon as practically a new

¹⁷⁹ *Burnett's Tr v Grainger* 2004 SC (HL) 19: many of the cases to which Lord Rodger refers are taken from Ross's reports.

¹⁸⁰ G Ross, *Leading Cases in the Commercial Law of England and Scotland: selected and arranged in systematic order*, 3 vols (1853-7).

¹⁸¹ Anon, “Review of *A Dictionary of English Law*” (1882) 26 *Journal of Jurisprudence* 370 at 372.

¹⁸² “Notes from Edinburgh” (1900) 16 *Scottish Law Review* 239. The anonymous writer adds that: “In one respect he is a political monstrosity, for he combines Unionism with Disestablishment”. For a photograph and brief biographical details, see (1896) 3 *SLT (News)* 179.

¹⁸³ (1891) 35 *Journal of Jurisprudence* 32. This is noted in Grant, *Faculty of Advocates* (n 149) 215. The notice at (1891) 35 *Journal of Jurisprudence* 450 indicates that Watson was also appointed sheriff-substitute at Newton Stewart, which is where Watson died in 1927.

work”.¹⁸⁴ The result was an “unrivalled book of reference for the Scots practitioner”¹⁸⁵ the credit for which was due “almost entirely” to Watson.¹⁸⁶

the credit... of having made the Dictionary an indispensable weapon in the armoury of the professional man; and in this new edition it will be found that the weapon is tempered to the highest state of efficiency. Mr Watson has read in a very thorough and appreciative manner all the case law since his previous edition of 1882, and the effects of that reading are to be found on every page.

Such was Watson’s input that Henry Goudy considered *Bell’s Dictionary and Digest*, under Watson’s editorship, to be in the nature of a “cyclopaedia”,¹⁸⁷ while a later scholar, Niall Whitty, has remarked that “this useful work was not a mere dictionary but also a digest of the branches of Scots law and half-way to becoming an encyclopaedia”.¹⁸⁸ Although, however, the credit for the final form of the *Dictionary and Digest* goes to Watson, it is worth recording that, under Watson’s editorship, special expertise in matters of insolvency and commercial law was enlisted from Andrew Mitchell, advocate (bankruptcy, insolvency and sequestration) and W D Thorburn, advocate (joint stock companies and shipping law). Mitchell’s contributions, in particular, were commended as having been treated with “great ability”.¹⁸⁹ Importantly, Watson’s approach, mirroring William Guthrie’s editing of George Joseph Bell’s *Principles*,¹⁹⁰ was to leave William Bell’s text of the 1838 edition largely untouched, with subsequent material distinguished by enclosure in square brackets.

It is Watson who records, in his preface to the sixth edition, that the *Dictionary and Digest* “is said to have been originally projected by Professor George Joseph Bell”, although he also acknowledges (without mentioning the fraternity) the orthodox position

¹⁸⁴ (1883) 27 *Journal of Jurisprudence* 27.

¹⁸⁵ J F M’Lennan (1890) 2 *JR* 180 at 182.

¹⁸⁶ *Ibid* 181.

¹⁸⁷ H Goudy, “Review of Wharton’s Law-Lexicon” (1889) 1 *JR* 320 at 321: an allusion, perhaps, to Ephraim Chambers’ *Cyclopaedia or an Universal Dictionary of Arts and Sciences* (1728).

¹⁸⁸ Whitty (n 26) 209.

¹⁸⁹ (1883) 27 *Journal of Jurisprudence* 27.

¹⁹⁰ Guthrie took over the editorship of Bell’s *Principles* with the 6th edition in 1872, assisted by David Murray. Guthrie alone was responsible for the later editions and his editing was not always reliable: see, for instance, T B Smith, “Letter to the Editor” 1986 *SLT* (News) 275.

that the first two editions, of 1807 and 1815, were “compiled by Mr Robert Bell WS”. Watson’s reference to George Joseph Bell has given rise to the an unfortunate misapprehension that the “Bell” behind the *Dictionary and Digest* was the institutional writer rather than Robert and William: even the *Annotated Rules of the Court of Session* – that handy, if unsystematic, single-volume guide to Scots law for advocates – manages, mistakenly, to give for George Joseph Bell’s *Commentaries* the publication details of Watson’s final edition of the *Dictionary and Digest*.¹⁹¹ But nowhere else has further trace of this tantalising link with Scotland’s most modern institutional writer been found.

After Bell’s *Dictionary*

Law dictionaries and judicial dictionaries

The nineteenth century saw a number of other law dictionaries,¹⁹² although only one, John Trayner’s *Latin Maxims and Phrases*,¹⁹³ made a lasting impression. Trayner’s work was not entirely well-received on its first appearance,¹⁹⁴ with one reviewer expressly avowing a preference for *Bell’s Dictionary* and Barclay’s *Digest*.¹⁹⁵ But Trayner’s *Maxims and Phrases*, and perhaps also its readers, matured with its author. Its reputation is now considerable and not only within Scotland: one South African lawyer has criticised a South African legal dictionary for its failure to refer to Trayner’s “superb”

¹⁹¹ N Morrison et al (eds), *Green’s Annotated Rules of the Court of Session 2011-2012 reprinted from the Parliament House Book* (2011) ix. First published in 1980, this work had, for the 2011 reprint, gone through 112 releases (to April 2011). It cites the entry in *Bell’s Dictionary* on “Issues” (for a jury) at paras 22.3.10, 37.1.5, and 37.1.8. These entries can be attributed to William Bell: see the preface to the 1826 and 1838 editions.

¹⁹² W Forsyth, *The Entire Body of the Statute Law of Scotland ... in the form of a dictionary; with an appendix*, 2 vols (1839); J Paterson, *A Compendium of English and Scotch law stating their differences: with a dictionary of parallel terms and phrases* (2nd edn, 1865).

¹⁹³ But in the 1st edition, the words came the other way round: see J Trayner, *Latin Phrases and Maxims: collected from the institutional and other writers on Scotch law with translations and illustrations* (1861).

¹⁹⁴ Anon (1862) 6 *Journal of Jurisprudence* 31-2: “there are merits in Mr Trayner’s book... but its defects are so numerous, both in regard to execution and conception, that we cannot consent to deal with it on the footing of a work written during intervals of leisure, by a very young member of the bar.”

¹⁹⁵ *Ibid* 33. The reference to Barclay’s *Digest* is to H Barclay, *A Digest of the Law of Scotland, with special reference to the office and duties of a justice of the peace* (1853) which records (vii) that “the plan adopted is that of a *Dictionary*...”.

book.¹⁹⁶ No one, in Scotland at least, has sought to supersede Trayner's work,¹⁹⁷ a point highlighted by the fact that the fourth and last edition, of 1894, was reprinted in 1986 and again in 1993.¹⁹⁸

Later works have sought to distinguish a law dictionary from a judicial dictionary. The twentieth century has seen a number of judicial dictionaries, such as A W Dalrymple and A D Gibb's *Dictionary of Words and Phrases judicially defined and commented on by the Scottish Supreme Courts* (1946) and W J Stewart's *Scottish Contemporary Judicial Dictionary* (1995). Remarkably, however, each of them assiduously points out that it is not attempting to compete with, far less supersede, *Bell's Dictionary and Digest*.¹⁹⁹

This is not a Scottish legal dictionary: it is not a rival of the excellent Bell. A legal dictionary aims at an explanation or definition of the *voces signatae* of the law and should be exhaustive of them. All technical terms should find a place in it. This work, however, belongs to the class of judicial dictionaries. It does not purport to include anything but the judges' explanations or definitions of the words which have happened to come under their notice. Further, it is to a very large extent concerned with lay words and expressions.

Unlike the law dictionary, "the judicial dictionary is aimed at the legal practitioner who wants to know what use has been made of ordinary legal words in various contexts".²⁰⁰ But if that is its modest aim, it must face considerable competition from the case digests, such as *Shaw's Digest* or *The Scots Digest* or the *Faculty Digests*, in which there will be found sections dedicated to "words judicially defined". Perhaps the only work of similar ambition to *Bell's Dictionary and Digest* is Professor D M Walker's *Oxford Companion to Law*. But even Walker's classic volume does not replace *Bell's Dictionary and Digest*, for the *Oxford Companion* is, as Lord Rodger has said of it, a "mini-encyclopaedia of

¹⁹⁶ J D van der Vyver, "Review of V G Heemstra and H L Gonin, *Dreitalige Regswoordeboek*" (1982) 99 SALJ 160 at 165.

¹⁹⁷ T J D Connelly and J C Brown, *Select Scots Law Maxims* (1934), largely a *précis* of Trayner, was published to remedy the difficulty students encountered in obtaining copies of the Trayner, then out of print.

¹⁹⁸ This was the 4th edition of 1894.

¹⁹⁹ A W Dalrymple and A D Gibb, *Dictionary of Words and Phrases judicially defined and commented on by the Scottish Supreme Courts* (1946), preface. The genesis of this work is curious: each author had separately submitted overlapping proposals to the same publisher, which suggested the two authors collaborate. See too W J Stewart, *Scottish Contemporary Judicial Dictionary* (1995), preface.

²⁰⁰ Stewart, *Scottish Contemporary Judicial Dictionary* xciii.

law, dealing not merely with English law, but Scots, Roman, Irish, American, German, French, Swiss, South African and many other systems besides”.²⁰¹

Encyclopaedias

One of the reasons that *Bell's Dictionary and Digest* did not progress beyond 1890 is because it was, to some extent, overtaken: the first edition of *Green's Encyclopaedia of the Law of Scotland* appeared in 1896 with a second edition in 1909. It may be, indeed, that the 1896 edition of *Green's Encyclopaedia*, given its style and titles, was no more than a new version of *Bell's Dictionary and Digest* by a different publisher.²⁰² The *Green's Encyclopaedias* were themselves replaced by the *Encyclopaedia of the Laws of Scotland* which began to appear in 1926, to be replaced in turn from 1987 onwards by the multi-volume standard reference work, *The Laws of Scotland: Stair Memorial Encyclopaedia*. It may again be observed that all of these important repositories of Scots law follow, for practical reasons, the alphabetical rather than the institutional order. Their story has been told elsewhere.²⁰³

Anglo-American law dictionaries

Early English dictionaries

A history of Anglo-American legal dictionaries needs a PhD of its own. Suffice to say, however, that it is of considerable interest that dictionaries of English law terms precede dictionaries of the English language,²⁰⁴ and that the earliest English legal dictionaries are

²⁰¹ A F Rodger, “Good companion?” (1981) 1 OJLS 257. For my own appraisal of the *Oxford Companion*, see (2009) 13 Edin LR 340.

²⁰² I am grateful to George Gretton for this insight.

²⁰³ Whitty (n 26).

²⁰⁴ J Rastell, *Expositiones Terminorum Legum Anglorum* (1527) later published under the title *Termes de la Ley: or, Certaine difficult and obscure Words and Termes of the Common Lawes of this Realme expounded* (1641), compiled by John Rastell with the help of his son, William: see H J Graham, “The Rastells and the printed English law books of the Renaissance” (1954) 47 Law Library Journal 6; T Blount, *A world of errors discovered in the New world of words, or general English dictionary; and in Nomothetes, or the interpreter of law-words and terms* (1673); T Blount, *Nomo-lexikon = A law-dictionary; interpreting such difficult and obscure words and terms, as are found either in our common or statute, ancient or modern lawes* (2nd edn, 1670); T Blount, *Glossographia, or, A dictionary interpreting the hard words of whatsoever language now used in our refined English tongue* (1670).

of Law-French²⁰⁵ or Latin as well as of English legal terms. At the end of the nineteenth century, one American writer counted the law dictionaries, concluding that, “since 1607, there have been published in England at least twenty-nine, and in America, thirteen; twenty-one since 1839.”²⁰⁶ Most, however, were little to his liking.

Of the Anglo-American law dictionaries, however, all have been eclipsed by one: *Black’s Law Dictionary* (about which more later). The position of the law dictionary in the USA is special because of the love affair that US courts appear to have with dictionaries. For whereas, in Europe, a legal dictionary is normally something used by law students, in the USA many questions of law referred to the justices of the Supreme Court result in an earnest sifting of the law dictionaries. Only in the courts of the USA, it seems, does one encounter the “dictionary shopping” phenomenon.²⁰⁷ The phenomenon, perhaps, is related to the death of doctrinal legal scholarship in the USA. Where a German lawyer looking for further references on a particular question may leaf through an entire *Habilitationsschrift* on the subject, the US Supreme Court justice, it seems, may be quite satisfied with a law dictionary entry.

The Anglophone benchmark: *Black’s Law Dictionary*

A considerable body of literature has grown up around law dictionaries in the English-speaking world, largely, although not entirely, as a result of the success of *Black’s Law Dictionary* under the editorship of Bryan Garner.²⁰⁸ *Black’s Dictionary* is an interesting comparison for *Bell’s Dictionary and Digest*. *Black’s*, first published by Henry Campbell Black in 1891, one year after the last edition of *Bell’s Dictionary*, has now endured for a similar period. From the outset, *Black’s* attempted to cover Scots law – and Black expressly acknowledged his use of *Bell’s Dictionary*, along with works by John Erskine

²⁰⁵ Anon, *The Law-French Dictionary alphabetically digested; very useful for all young students in the common laws of England* (2nd edn, 1718); Anon, *The Law-Latin Dictionary; being an alphabetical collection of such law-Latin words as are found in several authentic manuscripts and printed books of precedents* (2nd edn, 1718). For a discussion, see J H Baker, *Manual of Law French* (2nd edn, 1990).

²⁰⁶ W C Anderson, “Law dictionaries” (1894) 28 *American Law Review* 531.

²⁰⁷ See S A Thumma and J L Kirchmeier, “Lexicon has become a fortress: The United States Supreme Court’s use of dictionaries” (1999) 47 *Buffalo Law Review* 227; *idem*, “The lexicon remains a fortress: an update” (2001) 5 *Green Bag* (2d) 51; *idem*, “Scaling the lexicon fortress: the United States Supreme Court’s use of dictionaries in the twenty-first century” (2010) 94 *Marquette Law Review* 77.

²⁰⁸ B Garner (ed), *Black’s Law Dictionary* (9th edn, 2009), for which see L J Taylor, “The evolution of Black’s Law Dictionary” (2011) 36 *Canadian Law Library Review* 106; S Yates, “Black’s Law Dictionary: the making of an American standard” (2011) 103 *Law Library Journal* 175.

and George Joseph Bell, for Scots law.²⁰⁹ The edition founded upon by Black, however, though attributed to William Bell, was the little-used fifth edition by George Ross.²¹⁰

Since *Black's* rejuvenation under Garner's editorship, it has recognised the importance of Roman law principles which "under-lie many modern civil and common law concepts". As Garner himself explains, however, as an American lawyer, he did not himself feel competent to review the Roman law entries:²¹¹

So I went straight to the top of the field. I hired Professor Tony Honoré of Oxford and Professor David Walker of Glasgow to review every entry in the book. Not only did they correct a lot of the Roman law material – from misrecorded Latin headwords to incomplete and inaccurate definitions; they also improved treatment of English law and Scots law. There isn't a single page of *Black's Seventh* that wasn't improved by their erudition and industry.

Walker, Regius Professor Emeritus of Civil Law at Glasgow, is, says Garner, "perhaps the most prolific legal writer in the British Isles and the author of the renowned *Oxford Companion to Law*."²¹² Not only does *Black's* thus have important Scottish input – on both Roman law and Scots law Olivia Robinson and Ernst Metzger were enlisted for the eighth edition in 2004 – but editor-in-chief Garner, at Walker's invitation, spent part of the summer of 1996 doing research in Glasgow for the first edition to appear under Garner's editorship: *Black's Seventh*.²¹³ The result, as Garner ironically observed, is that the foremost American law dictionary, at the end of the twentieth century, was better in covering Scots law than the law of Louisiana.²¹⁴

Lessons from Germany?

²⁰⁹ H C Black, *A Dictionary of Law containing definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern* (1891) iv. No UK library appears to hold a copy of the 1st edition of Black's, although the University of Aberdeen has a 2nd edition. The 2nd edition is now easily accessible in the Legal Classics Library of HeinOnline.

²¹⁰ Ibid vii ("Bibliographical List of the Principal Law Dictionaries in English and Foreign Languages"). Peter Halkerston's *Collection of Latin Maxims* (1823) is included (viii) as is Skene's *De Verborum Significatione* (ix) and the second edition of Trayner's *Latin Maxims* (1876) (x).

²¹¹ B Garner, "Legal lexicography: a view from the front lines" (2003) 6 *Green Bag* (2d) 151 at 157. Walker, then retired from the Regius Chair, would no longer have been involved in ordering books for the Glasgow University Library which, perhaps for this reason, does not hold the 7th edition of *Black's*.

²¹² B Garner (ed), *Black's Law Dictionary* (9th edn, 2009) xx (preface to 7th edn).

²¹³ Ibid.

²¹⁴ Garner (n 211) 158.

The Germans are, in this area as in others, better served than most.²¹⁵ There are essentially three types of German legal dictionary. There is the historical language dictionary, of which the best example is the *Deutsches Rechtswörterbuch*, spanning a century in the writing and not yet finished: despite its title, it is not limited to German law.²¹⁶ In a similar vein, Heumann's classic *Handlexikon* is the first port of call for tracing Latin words in the *Corpus Iuris Civilis*.²¹⁷ The second type of dictionary is the law dictionary in the Anglophone sense: the dictionary of legal words and concepts likely to be used by law students. The standard example is the *Deutsches Rechts-Lexikon*.²¹⁸ Finally, there is the legal encyclopaedia. The peerless *Handwörterbuch zur Deutschen Rechtsgeschichte (HRG)*, for example, now in its second edition,²¹⁹ is the standard international reference work for legal history, while the *Handwörterbuch des Europäischen Privatrechts*, recently made available in English as the *Max Planck Encyclopedia of European Private Law*, is the standard reference work for European Private Law.²²⁰ All bear the indelible intellectual rigour of German legal scholarship.

The later reputation of *Bell's Dictionary and Digest*

In Scotland

As a repository of language, *Bell's Dictionary and Digest* has received that basic accolade of being occasionally cited by the *Oxford English Dictionary* as a source in which obscure words are used.²²¹ But the primary focus here is on the *Dictionary's* reputation among lawyers and judges. One of its perceived advantages is that judges have

²¹⁵ Cf O Gönnenwein, "Geschichte des juristischen Vokabulars: Geschichte und vergleichende Untersuchung der Rechtssprache, Festlegung von Methoden", in E Wolff (ed), *Beiträge zur Rechtsforschung* (1950) 36.

²¹⁶ *Deutsches Rechtswörterbuch: Wörterbuch der älteren deutschen Rechtssprache* (1914- , available at <http://drw-www.adw.uni-heidelberg.de/drw/>). A useful French-language resource of mediaeval legal terms is J Balon (ed), *Grand dictionnaire de droit du moyen âge*, 9 vols (1972-4).

²¹⁷ H G Heumann, *Handlexikon zu den Quellen des römischen Rechts* (10th edn by E Seckel, 1958).

²¹⁸ H Tilch and A Arloth (eds), *Deutsches Rechts-Lexikon*, 3 vols (3rd edn, 2001, with supplement, 2003).

²¹⁹ W Erlar and E Kaufmann (eds), *Handwörterbuch zur Deutschen Rechtsgeschichte*, 5 vols (1964-98); 2nd edn, vol 1 (2008).

²²⁰ J Basedow, K J Hopt, R Zimmermann, and A Stier (eds), *Max Planck Encyclopedia of European Private Law* (2012).

²²¹ See n 174 above.

felt able to rely on it for a statement of practice.²²² Even in 1910, however, when the last edition of the *Dictionary and Digest* was only 20 years' old, the editor of the *Juridical Review*, although admitting its "great and abiding" authority, thought a reference to the *Dictionary* alone on a point to be somewhat "quaint".²²³

Quaint or not, however, practitioners make use of *Bell's Dictionary* whenever they consider it may assist their case. Even today, it is frequently, if not regularly, referred to, particularly in appeals: the majority of recent references to the *Dictionary* are in argument before the Inner House²²⁴ although there are also examples of it being referred to in the Outer House²²⁵ and in the sheriff court.²²⁶ On occasion it is the court which introduces the reference: this is generally in private law cases and the examples tend to involve words which are in the nature of jargon²²⁷ or subjects of an antiquarian nature (such as the nature of a "barony"²²⁸ or the meaning of "desuetude"²²⁹). The utility of the *Dictionary* is not, however, limited to abstruse points: one well-known South African counsel turned to the sixth edition of the *Dictionary* when assisting the House of Lords in

²²² *Aberdein v Stratton's Trs* (1867) 39 Sc Jur 362 at 365 *per* Lord Justice Clerk Patton citing Ross's edition of the *Dictionary*, together with Robert Bell's work on *Deeds*, as the place where "we see the practice stated".

²²³ (1910-11) 22 JR 355.

²²⁴ *Emms Ptr* 2011 SC 433 at para 21 ("procurator fiscal"); *Sovereign Dimensional Survey Ltd v Cooper* 2009 SC 382 at para 27 ("commission and diligence"); *Peart v Legge* 2008 SC 93 at para 15 ("*res merae facultatis*"); *Sommerville v Scottish Ministers* 2007 SC 140 at para 94 ("*mora*") (the *Session Cases* reporter mistakenly attributes the 1890 edition to Robert Bell); *Little Cumbrae Estate Ltd v Island of Little Cumbrae Ltd* 2007 SC 525 at para 14 ("*damnum fatale*") (the *Session Cases* reporter mistakenly attributes the *Dictionary and Digest* to George Joseph Bell); *William Grant & Sons Limited v Glen Catrine Bonded Warehouse Limited* 2001 SC 901 at para 29 ("personal bar"); *Clark v Lindale Homes Ltd* 1994 SC 210 at 216 ("warrandice").

²²⁵ *Melfort Pier Holidays Ltd v The Melfort Club* 2007 SC 243 at para 15 ("road, public"); *Royal and Sun Alliance Insurance plc v Wyman-Gordon Ltd* 2001 SLT 1305 at para 13 ("bounding charter"); *Smithy's Place Ltd v Blackadder & McMonagle* 1991 SLT 791 at 793 ("distress"); *Lord Advocate v Shipbreaking Industries Ltd* 1991 SLT 838 at 840.

²²⁶ *Peart v Legge* 2007 SCLR 86 at para 8 (rev 2008 SC 93) ("*res merae facultatis*"); *Stanley Howard (Construction) Ltd v Davis* 1988 SLT (Sh Ct) 30 ("*in limine*").

²²⁷ *Somerville v Scottish Ministers* 2007 SC 140 ("*mora*"); *William Grant & Sons Ltd v Glen Catrine Bonded Warehouse Ltd* 2001 SC 901 ("personal bar", although Lord Rodger preferred to go to Bell's *Principles* to explain *rei interventus*); *Grosvenor Developments (Scotland) plc v Argyll Stores Ltd* 1987 SLT 738 at 742 ("*interdict*").

²²⁸ *Spencer-Thomas of Buquhollie v Newell* 1992 SLT 973 at 974. The entry for "barony" has been cited also to the House of Lords in an English appeal: *The Berkley Peerage Case* (1861) 11 ER 333 at 352.

²²⁹ *McSkimming v Royal Bank of Scotland plc* 1997 SLT 515 at 517, in the context of the Breach of Arrestment Act 1581. That entry is also much cited in US academic writing. M P Henriques, "Desuetude and declaratory judgment: a new challenge to obsolete laws" (1990) 76 Virginia Law Review 1057 at 1069 is just one example.

an English appeal on an important point of intellectual property law,²³⁰ while the definition of “interest” has been approved in the House of Lords in an English tax appeal.²³¹

Elsewhere

The *Dictionary and Digest* has been much cited by foreign lawyers. To some extent it provides, in a single volume, a *Rough Guide* to the entire law of Scotland: in no other book, indeed, one contemporary reviewer of the 1882 edition observed, “have we an epitome of the Law of Scotland at once so complete and so handy”.²³² For the lawyer, at least, the *Dictionary* can be more user-friendly than, say, a single-volume introduction to the whole law, such as Gloag and Henderson’s *Introduction to the Law of Scotland*,²³³ since the reader needs to bring to the former only knowledge of the alphabet and a query about a particular term.

Many foreign lawyers, therefore, have reached for *Bell’s Dictionary* when looking for a Scottish view: it has been referred to in England,²³⁴ South Africa,²³⁵ Canada²³⁶ and the United States,²³⁷ including the US Supreme Court.²³⁸ Typical instances are in matters of

²³⁰ Sydney Kentridge QC: see *CBS Songs Ltd v Amstrad Consumer Electronics plc* [1988] AC 1013 at 1044. It is not clear to which entry counsel was actually referring.

²³¹ *Riches v Westminster Bank Limited* [1947] AC 390 at 413. The Court of Session has also approved: *Lees Trustees v Inland Revenue Commissioners* 1916 SC 188.

²³² Anon (1883) 27 *Journal of Jurisprudence* 27.

²³³ W M Gloag and R C Henderson, *Introduction to the Law of Scotland* (1927), a single volume whose life-span to date (85 years) rather mirrors *Bell’s Dictionary and Digest* (also 85 years). The most recent edition is H L MacQueen and Lord Eassie (eds), *The Law of Scotland* (13th edn, 2012).

²³⁴ See, for example, *Dutton v Hally* (1862) 2 Best and Smith 748, 121 ER 1249 at 1252, *arguendo* (“meditatio fugae”); G Williams, “Partial performance of entire contracts I” (1941) 57 LQR 373 at 392 n 97; *Racecourse Betting Control Board v Secretary for Air* [1944] Ch 114 at 123 (“arbitration”); *Inland Revenue Commissioners v Littlewoods Mail Order Stores Ltd* [1963] AC 135 at 139, *arguendo* (“excambion”).

²³⁵ The following articles refer to the entry on “vesting”: Anon, “Vesting of an interest not yet ascertainable” (1911) 28 SALJ 452 at 453; Anon, “Notes on some controverted points of law” (1919) 36 SALJ 35.

²³⁶ *Hus v Charland* (1884) 12 *Revue Légale* 608 at 609 (“protection against personal diligence”). It is not clear which edition the *Cour supérieure de Montreal* was using, but the passage quoted is found in the 6th edition of 1882. I Wotherspoon, “Constitutionality of acts of the local legislature in matters of insolvency” (1871) 1 *Revue Critique de Legislation et de Jurisprudence du Canada* 117 at 119 cites *Bell’s Dictionary* in the same breath as the *Coutume de Paris*.

²³⁷ E S Mack, “Bankruptcy legislation” (1894) 28 *American Law Review* 1 at 2 n (“dyvour”, in comparison to the French position). See too R W Millar, “Civil pleading in Scotland” (1932) 30 *Michigan Law Review* 545 at 556.

²³⁸ *Keck v United States* 172 US 434 at 461 (1899) (“smuggling”); *Joseph Burstyn Inc v Wilson* 343 US 495 at 539 (1952) (“blasphemy” and “sacrilege”).

insolvency, debt and diligence, and Scots law is often juxtaposed with French law.²³⁹ Perhaps because of the deep civilian influence on Scots law, its terminology appears to the common lawyer so “delightfully abstruse” as to have him reaching for *Bell’s Dictionary*.²⁴⁰ The utility of the *Dictionary* resulted in its final edition attaining the apotheosis of the benchmark. So not only have foreign law dictionaries been criticised in Scotland for attempting to define Scots law terms without reference to *Bell’s Dictionary*,²⁴¹ such dictionaries have been found wanting, even as dictionaries of a foreign system, against Bell’s benchmark.²⁴²

Modern relevance

The seventh edition of Bell’s *Dictionary and Digest*, reproduced here, is not a dictionary of the modern law. The point is worth emphasising. The entries contained in this book are, potentially, more than 120 years out of date. Some will no longer represent the law at all. But, as one English judge has perceptively reminded us, “the truly insightful textbook remains valuable for years without update”²⁴³ and the value of *Bell’s Dictionary* is that, despite the passing centuries, it remains “full of still valuable information”.²⁴⁴ It is still included in the list of standard works that any UK library purporting to hold Scottish legal material should have: it is, indeed, a “key material”.²⁴⁵

Of course, some entries represent the law as accurately as they did in 1890; others, however, are now only partly accurate. So *Bell’s Dictionary* will prove most useful to those who know, at least, what they don’t know; the reader who has not yet reached that level of intellectual enlightenment ought, probably, to start somewhere else. *Bell’s Dictionary and Digest* will continue to be a useful tool for the interested reader intent on

²³⁹ See the examples in nn 236 and 237 above, as well as Anon, “The presumption of life” (1891) 35 *Journal of Jurisprudence* 634 at 636; T K Nuttal, “A question of legitimacy” (1897) 22 *Law Magazine and Law Review* (5th Ser) 171 at 174 (“legitimation”); N Wilson, “The Scottish bar: the evolution of the Faculty of Advocates in its historical social setting” (1968) 28 *Louisiana Law Review* 235 at 241 n.

²⁴⁰ M Radin, “Guarantee and suretyship” (1929) 17 *California Law Review* 605 at 617.

²⁴¹ H Goudy, “Review of *Wharton’s Law-Lexicon*, 9th edn” (1892) 4 *JR* 369.

²⁴² *Ibid.*

²⁴³ G Vos, “The centenary of the publication of *The Laws of England* by Lord Halsbury”, in S Hetherington (ed), *Halsbury’s Laws of England, Centenary Essays* (2007).

²⁴⁴ D M Walker, *The Scottish Jurists* (1985) 385.

²⁴⁵ “A library for the modern law school: a statement of standards for university library provision in the UK – 2009 revision prepared by the libraries sub-committee of the Society of Legal Scholars” (2010) 30 *Legal Studies* 442 at 469.

interrogating Scotland's rich, and often untilled, primary legal sources from the nineteenth century and earlier which, for lawyers, are not just historical records but repositories of the present law. For the law student, trying to master the basic vocabulary of a subject darkened by impenetrable legal jargon, the *Dictionary and Digest* will often illuminate the way. For the practising lawyer, working under the pressure of people, circumstance, time and money, finding answers can be a lonely and frustrating experience. Help is always welcome. And this book offers more help than many.

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