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Relations between Litigation and Judicial Process in the College of Justice in Sixteenth-Century Scotland

The early sixteenth century witnessed the establishment of a Scottish central court with supreme civil jurisdiction. This development was in turn the catalyst for a fundamental transition between contrasting medieval and early modern models of procedural law in Scotland, with implications for how judicial decisions were made in Scottish law courts as a whole.[1] At its heart was a shift of emphasis away from lay tribunals of fact producing »verdicts«, under the established procedures of the medieval Scottish common law, and towards a learned procedure which applied more extensive reasoning techniques and legal learning to judicial decision-making, paving the way for new forms of juristic elaboration of Scots law by the 1560s.[2] From the point of view of civil procedure, this prompted a re-orientation of the legal system away from procedure initiated by standard-form writs and conducted by local jury inquest, and towards a Romano-canonical form of procedure which replaced jury verdicts with decrees and sentences formulated by learned judges based on a sophisticated written process, with witness evidence heard separately and also reduced to writing. Naturally this had consequences for the role of judges themselves in the processes involved in determining lawsuits, as well as in the crafting of the substance of decisions of the court.

This new sixteenth-century supreme court took institutional shape in the form of the College of Justice. This was created under parliamentary statute by an incorporation in 1532 of the judicial branch of the King's Council known as »the Session« (which name also continued to be used after 1532). As a collegial body of fifteen judges, the reconstituted Session made its decisions collectively, requiring in consequence a certain method of private deliberation and reasoning amongst the judges, which had not been a part of medieval judicial process for ordinary remedies provided by the Scottish common law. The framework for such deliberation must ultimately have derived from the collective decision-making practices of the late-medieval King's Council, albeit fused with understandings drawn from Romano-canonical procedure when applied to its competence in judicial matters.

These sixteenth-century changes to judicial activity and decision-making were a major departure for the secular courts, though of course they took place within a wider legal culture which was already quite familiar with such procedures and deliberative practices through the parallel jurisdiction of the church courts in Scotland. These had been applying Romano-canonical procedure throughout preceding centuries in the context of litigation within the competence of the spiritual jurisdiction. Nevertheless, it was only in the sixteenth century that the role and

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1 A. M. GODFREY, Civil Justice in Renaissance Scotland: the Origins of a Central Court (Leiden, 2009), ch. 4; THOMAS M. GREEN, »Romano-canonical Procedure in Reformation Scotland: The Example of the Court of the Commissaries of Edinburgh«, 36 Journal of Legal History (2015), pp. 217-235; J. FINLAY, Men of Law in Pre-Reformation Scotland (East Linton, 2000), pp. 87-122; G. DOLEZALEK, »The Court of Session as a Ius Commune Court – Witnessed by 'Sinclair's Practicks', 1540-1549«, in: H. L. MACQUEEN (ed.), Miscellany Four, Stair Society vol. 49 (Edinburgh, 2002), pp. 51-84; H. L. MACQUEEN, Common Law and Feudal Society in Medieval Scotland (Edinburgh, 1993); H. L. MACQUEEN, »Pleadable brieves, pleading, and the development of Scots law«, Law and History Review, iv (1986), pp. 403-422.

2 ANDREW. R. C. SIMPSON, »Legislation and authority in early modern Scotland«, in: MARK GODFREY (ed.), Law and Authority in British Legal History, 1200-1900 (Cambridge, 2016), pp. 85-119, at p. 100.

activity of the learned *lay* judge became central in the adjudication of cases under such a procedure, compared to medieval judicial process in which a judge simply presided over a court whose decisions were made by its suitors collectively though the determination of verdicts reached by juries.

The implications of this change to the role of the judge in Scotland have been discussed by historians only to a limited extent. On the one hand, it can be interpreted as the result of a gradual institutional and jurisdictional evolution made possible by the untapped potential of central justice in the medieval legal order, in which it had played a relatively minor and supplementary role.[3] The development of new forms of remedy provided through central jurisdiction became the motor for such change. As Alan Harding has argued, »in Scotland, the legal right ceased to follow the remedy, substance to be dependent on form, and Scottish law anticipated English law by at least three centuries in abolishing the forms of action«.[4] On the other hand, it is possible to recognise a sharper change and imply that this involved a fundamental redefinition of the categories not only of judging but also of the very nature of a court. In terms of this latter view, there is an argument that the Session, exercising a function of the King's Council, and, from 1532, the College of Justice, deriving its jurisdiction ultimately from the King's Council as well, did not conform to the medieval Scottish idea of a »court« at all. The sixteenth-century acceptance of the superior jurisdiction of the Session and College of Justice on this view would seem to become problematic to explain, since it must have entailed a radical reconceptualisation of aspects of the legal system and the nature of jurisdiction, but for which there is little evidence in terms of contemporary perceptions. Nevertheless, providing some support for such a view, Professor A. A. M. DUNCAN argued that the medieval Scottish Council »made a »decreet«, it did not decide on a verdict. It was not a court, for it gave »*remedium*« but not »*iudicium*«.[5] Indeed, until 1532 the Session was formally no more than a meeting of the King's Council, which was not itself a body with procedural competence to administer the *ordinary* judicial remedies of the common law. These were instead directed by fixed forms of royal writ to specific locally-based lay judges to initiate judicial process in the relevant locality rather than in any central forum. Moreover, the authority of such a local court was validated in a particular way. It was considered to be vested in its suitors, bound by the feudal obligation of suit of court to make attendance, and it was the calling of the individual suits which was necessary in order to constitute the court.[6] By contrast, the King's Council in general and the Session in particular was not based on this form of constitution. Its authority was derived directly from the King, not from any collective act of constitution by its members. It was therefore a form of judicial tribunal which was not an ordinary court, and whose jurisdiction and competence was indeed contrasted with that of the »judge ordinary«, at least until the sixteenth century.[7]

But such an argument about whether or not the Session was a »court« also has to take account of underlying changes in the role of the King's Council, and the Session in the late medieval

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3 GODFREY, Civil Justice in Renaissance Scotland, pp. 444-446.

4 A. HARDING, »The Medieval Brieves of Protection and the Development of the Common Law«, 11 Juridical Review (1966), pp. 115-149 at p. 142.

5 A. A. M. DUNCAN, »The Central Courts before 1532«, in: Introduction to Scottish Legal History, ed. by G. C. H. PATON, Stair Societyvol. 20 (Edinburgh, 1958), pp. 321-340, at p. 328.

6 P. J. HAMILTON-GRIERSON, »Fencing the Court«, xxi Scottish Historical Review (1924), pp. 54-62; W. C. DICKINSON, The Sheriff Court Book of Fife 1515-1522, Scottish History Society Third Series Vol. XII (Edinburgh, 1928), pp. lxxxv, 309; I. D. WILLOCK, The Origins and Development of the Jury in Scotland, Stair Society vol. 23 (Edinburgh, 1966), pp. 75-76, 89-90; H. L. MACQUEEN, Common Law and Feudal Society in Medieval Scotland (Edinburgh, 1993), pp. 35-42.

7 GODFREY, Civil Justice in Renaissance Scotland, pp. 274-275.

period, between the mid-fifteenth and early sixteenth centuries, as well as the practical effect of formally enacted changes such as the foundation of the College of Justice in 1532. Furthermore, the supposed contrast between the traditional medieval concept of a court and that of the sixteenth-century Session as a function of the Council should not blind us to the fact that as an institution the Session nevertheless did operate, practically speaking, as a law court, because it possessed royal jurisdiction of its own which gave it this competence. And jurisdiction is a primary constitutent of the legal order, rather than a mere secondary expression of legal form providing for its application in a particular context. The »fencing« of a medieval court and the calling of the roll of suitors were in this sense merely legal forms designed to authenticate the existence of the requisite underlying jurisdiction and authority in the assembly in question. Ultimately, the question whether the Session was accepted as a »court« is about whether its legal form was based on an underlying jurisdiction derived from recognised authority, and whether it thereby functioned as a court, meaning a body with jurisdiction enabling it to adjudicate under legally-recognised procedures and to act judicially in dispensing legally-recognised remedies, rather than whether it conformed to a particular method of constitution as a »court« which reflected questions of form and the practical assumptions of the medieval legal system. Its authority was ultimately derived jurisdictionally from that of the King sitting in Council, which was at one level no different in kind from the authority of the established courts of justiciars and sheriffs, whose own authority also derived historically and jurisdictionally from the King, and whose principal form of remedy was the royal brieve issued out of the King's chancery in the name of the King as opposed to a decree issued by the King in Council. The functioning of the Session in judicial business was court-like, being based on Romano-canonical procedural norms, not merely on informal deliberative practices which rested on its political authority as an emanation of the Council. Its judicial process, remedies and constitution may therefore have differed from the normal medieval concept of a court, but they were not alien to the deeper norms of law and procedure on which the Scottish common law and ordinary judicial process were based. In these terms, by 1532 it is clear that the Session was treated as a court, and a court with a supreme civil jurisdiction.[8]

There was admittedly an important institutional change in 1532 to the extent that the foundation of the College of Justice detached the judicial Session from the wider Council, reconstituted it as a College of Justice, and grounded its authority in a special parliamentary statute. However, its records show that it had already been functioning as a form of tribunal exercising a jurisdiction like a law court for several decades prior to its reconstitution by statute as the College of Justice in 1532. In this sense its residual authority as a court can be seen to derive to a certain extent from its pre-1532 direct connection with the King sitting in Council, in parallel with its new statutory basis, and this connection also provides the reason why it had no suitors, juries or verdicts. Suitors, juries and verdicts simply reflected particular structures of procedure designed to offer a particular kind of remedy, as well as a particular structure of authority which established the basis of jurisdiction for the court in question. Professor BAKER prompts us to remember that »our present image of a »court« is the outcome of history, not the reflection of some constant truth which transcends history«.[9] It is therefore legitimate to conclude that juries, suitors and verdicts are not in fact intrinsic to the concept of a court as such,

8 GODFREY, Civil Justice in Renaissance Scotland, p. 452.

9 J. H. BAKER, »The Changing Concept of a Court«, in: J. H. BAKER, The Legal Profession and the Common Law. Historical Essays (London, 1986), pp. 153-169 at p. 153; Collected Papers on English Legal History Volume I (Cambridge, 2013), ch. 24.

though they may have seemed normal and perhaps essential to the Scottish medieval understanding of a court until the fifteenth century.

The Session could therefore function like a court, but approach the validation of the legal basis for claims brought before it, the collection of evidence, and the giving of judgment, in a different way from the traditional secular courts which had developed the particular forms of remedy of the medieval common law under the influence of the (Anglo-Norman) common law forms of procedure by brieve (writ) and inquest. But when the Session gave its decision by pronouncing sentence in the form of a decree which bound the parties, it was nevertheless still giving judgment in a particular technical form – a different but equivalent form of remedy to the verdicts and »retours« available under the ordinary processes of the Scottish medieval common law.

DUNCAN'S narrower argument contrasting *remedium* with *iudicium* therefore seems to raise a narrowly formalistic distinction which lacks clear content when examining the function and basis of authority for the different types of judicial remedy available by the sixteenth century.[10] By this time, decrees from the Session had a recognised general status in constituting a remedy which gave them just as much authority as forms of ordinary remedy as the verdict of a jury constituting a judgment following procedure by brieve and inquest. The differences between decrees embodying the sentences of the Session and the retours embodying verdicts of inquests, and associated judgments (»dooms«) of the relevant courts of sheriff and justiciar, primarily reflected different forms of procedure. It is therefore hard to identify any substantive differences between a decree and a verdict which can be structured around a supposed contrast between a remedy and a judgment.

It is therefore more persuasive to see evidence of continuity rather than radical reconceptualisation in the process whereby the Session became recognised as a court like any other, precisely as a consequence of the development of its judicial function, notwithstanding the fact that the remedy it offered was in the Romano-canonical form of a decree, hitherto unknown in ordinary medieval secular judicial process in Scotland. Form *followed* function in this respect. It may be an interesting question in its own right whether contemporaries perceived the Session as a »court« in a traditional sense or as some distinguishable form of royal tribunal, and, if so, what that distinction might have meant to them. However, the records of the Session in the late-fifteenth and early-sixteenth century do not appear to suggest that such a distinction played any active role.

Despite this continuity in the concept of jurisdiction and the nature of a judicial remedy, there were nevertheless underlying changes in the role of the judges in the Session who exercised that jurisdiction, and who dispensed its remedies. Several features concerning decision-making by judges in the Session help suggest a framework for further research into the nature of these changes.

A preliminary point is that a feature of the Session in 1532 which clearly had important implications for decision-making was its collegiate nature. This did not just affect the method of reaching a decision, but also the requisite competence for doing so. For example, there was a need to regulate the numbers of judges required to convene the court – the quorum – in order to make competent decisions. The College of Justice had an ordinary bench of fifteen judges (including the president), and after 1532 a rule was expressly adopted that there had to be a

10 GODFREY, Civil Justice in Renaissance Scotland, pp. 181-182.

quorum of at least ten judges, as well as the chancellor or president, for the giving of decrees and other sentences.[11]

In terms of the method of decision-making, it is clear that the judges of the Session in the new College of Justice made their decisions collectively by carrying out a vote amongst themselves. This contrasts in some ways with the more consultative form of collegial decision-making which operated in another contemporary example of a collegiate court, the *Rota Romana*. Cases in the *Rota* were entrusted to the decision of an individual auditor, but involved a particular form of collective procedure:

> The decision-making process was initiated when an auditor prepared a summary (*ponens*) of a process on which the other auditors expressed their opinions in a gathering. The responsible auditor then made his decision based on the opinion of the majority of his peers.[12]

In a sense the individual auditor was thus »technically speaking only the reporter to the whole court for the causes brought before it«, since its majority opinion governed the decision.[13] This procedure was first codified in the constitution of Pope John XXII in 1331 (*Ratio iuris*).[14] However, by the late fifteenth-century, the emphasis on collegiality had also come to be tempered to some extent by Innocent VIII's constitution *Finem litibus*, which »expanded the capacity of individual auditors to make decisions on their own, instead of stressing the collegiality of the decisions«.[15] The number of auditors had also formally decreased during the fifteenth century, by this time being set at only 12, reduced from 14 by Sixtus IV's constitution *Romani pontificis* in 1472.[16]

Regarding decision-making in the Session, a set of ancillary statutes (made by the members of the College of Justice at the King's command in 1532, after the main parliamentary statute had been first enacted) addressed the manner of collective decision-making which should be followed.[17] It laid down rules which sought to maintain a formal order whereby the role of individual judges was subjected to strict control and direction by the president of the court. A central feature, reflecting the need to structure the collective nature of deliberations, was the requirement for silence during those deliberations except when granted permission to speak, and limits on when an individual judge was to be permitted to speak. The need for silence applied to the public stages of the hearings as well as to the private conferral between judges in the course of the decision-making process itself.[18]

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11 GODFREY, Civil Justice in Renaissance Scotland, pp. 171-172; A.M. GODFREY, »The Constitutional Accountability of the Court of Session in Scotland, 1532-1626«, in: IGNACIO CZEGUHN, JOSÉ ANTONIO LÓPEZ NEVOT, ANTONIO SÁNCHEZ ARANDA (eds), Control of Supreme Courts in Early Modern Europe, Schriften zur Rechtsgeschichte (RG), Vol 181, Duncker und Humblot (Berlin, 2018), pp. 117-148, at pp. 139-142.

12 KIRSI SALONEN, Papal Justice in the Late Middle Ages. The Sacra Romana Rota (London, 2016), p. 34.

13 R. H. HELMHOLZ, The Oxford History of the Law of England Volume I. The Canon Law and Ecclesiastical Jurisdiction from 597 to the 1640s (Oxford, 2004), p. 210.

14 SALONEN, Papal Justice, pp. 21-24, 34.

15 SALONEN, Papal Justice, p. 30.

16 SALONEN, Papal Justice, p. 29.

17 The text is reproduced in R. K. HANNAY (ed.), Acts of the Lords of Council in Public Affairs 1501-1554. Selections from the Acta Dominorum Concilii introductory to the Register of the Privy Council of Scotland (Edinburgh, 1932) [hereafter ADCP], pp. 374-377.

18 GODFREY, Civil Justice in Renaissance Scotland, pp. 173-175.

The statutes stated that »the lordis beand sittin done and billis begune to be red, that silence be had amongis the lordis, and that na man commone nor speke of ony mater…«.[19] Sitting in silence once the parties' pleas had been heard, the president could require two of the judges to »argone [i.e. argue or discuss] or dispute ony mater«, during which time no interruptions were to be made by other judges, and after which others could also be required to »argone the mater« again. Only then, »giff thai be any uthir of the lordis that hes ony oponyone or argument to mak, at thai ask leiff [i.e. permission] fra the chancellar or president, and than to argone as thai think expedient«. After all of the arguments and disputations had been made, the statutes further provided that the lords should »haldand silence« while the chancellor or president asked for votes to be given »in the ordour be the actis and bukis of counsale…and that nane argone ane uthir in the gevin thairof« – in other words, it was not permitted to interrupt during the taking of votes in order to dissuade a judge from casting his vote in a particular way. Apart from the making of decisions, the statutes also went on to regulate the formal disclosure to the court of the witness evidence upon which the case would be ultimately decided. They made a point of requiring disclosure to take place in the presence of the whole bench of judges, stating that »all publicationis of witnes and uthir attestationis and examinatioun of proces be maid before the haill auditour«.

There was no express rule stating that the voting by the judges had to be secret. The voting procedure must have happened in private, however, since the statutes also inform us about when advocates and the parties are meant to be present, as well as indicating when they should leave. It is stated that:

> all advocatis and procuratoris sall entre in the counsalhous at the calling of all summondis and actis, and remane quhill the parteis have argonit and dispute thair materis at the bar, and than to remove quhen the parteis ar removit, and than to entre agane at the gevin and pronunciatioun of interlocutouris quhen the parteis enteris.

The decision-making stage obviously took place prior to the calling back of the parties for the pronouncement of interlocutors.

These rules in the statutes of the court are set out in what we may consider a normative statement of court practice. They are not known in any comparable earlier version (though some particular concerns about the general ordering of the court are addressed in earlier ordinances[20]), but it seems a reasonable hypothesis to suggest that they were a reflection of existing procedure in the Session. But the rules could also have been modified or added to in order to address any perceived problems in the pre-1532 Session and to tighten up aspects of procedure so as to help impose sufficient order, and reduce the risk of irregularity in judicial decision-making compared to the situation before the foundation of the College of Justice. A constant theme is the stress given to the authority of the president of the court to supervise the voting process, to determine when other members of the court were entitled to speak, to determine when individual judges had reasonable cause to be granted a license to be absent, as well as to receive in person all court documents submitted by the parties as they entered the court room.

A hint of the fact that the statutes codified existing practice arises in a protest recorded in proceedings before the Session in the same month as the inauguration of the College of Justice in May 1532, and only a calendar month before the ancillary statutes were promulgated. In this

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19 ADCP, p. 376.

20 ADCP, pp. 272-273 (undated ordinance from 1527).

protest Hew Campbell of Loudon submitted that »na lordis [i.e. judges] be admittit to geif voit in his mater except thaim alanerly quhilk war chosin of befor to the sessioun, that argunit the mater and had the samin ripe in thar hedis«.[21] This protest neatly advertises the way that a prescribed process of decision-making was in action, requiring structured, deliberative argument (to »argunit the mater«) which was understood as essential to the constitution of a valid decision. Those judges who had not properly participated in this collective process should not be considered qualified to vote according to this protest.

The nature of the court record reveals only scraps of information about the decision-making activities of the judges. One problem identified, for example, is that the apparent simplicity of voting seems to have occasionally resulted in a confusing ambiguity when a particularly complex litigation was concerned. In a hearing in 1529, for example, it was »allegit that the lordis yisterday vetit apoun the ... summondis and as he allegit gaif interlocutor that the libell was nocht relevant«. The advocate protested that the summons should no longer have process.[22] However, it is recorded later that day that the lords declare the summons in question relevant as libelled, though they also felt the need to clarify the meaning of their ruling in relation to the interest of one of the parties by stating that »be thir sentence interlocutor thai have *nocht* decidit that the erle of Erole has nocht tynt [i.e. forfeited] his ryt be the said interlocutor« (emphasis added).

Very occasionally, the controversial nature of a decision will be reflected in the record by the naming of those lords who dissented from it. For example, in 1531 there was a summons called in the King's name against Sir David Young, chaplain, for »the contempcioune done be him contrar our said sovereine lord in breking of his act of parliament in the impetratioune of vicarage of Tibbermure«. Young was found guilty despite a protest by the Archbishop of St. Andrews »for himself and all the remanent of the clergy« that nothing should prejudice the privileges of the church, and that they »apprevis nocht the act of parliament insofar as it may be any way contrar the privilege of halykirk«.[23] However, unusually, it is comprehensively stated that »all the lordes spirituale and temporale except the abbot of Kinloss and dene of Dunbar declarit that Sir David Young had brokin the acte of parliament«.[24]

The mechanics of decision-making by voting are also reflected in the record. Parties understood well the requirement in a collegiate court making collective decisions that only a bare majority of judges need be persuaded of the merits of their case. This could involve being attentive to the precise number of votes cast by the lords in making their decisions. An action to reduce (i.e. invalidate) a decree could found upon any ambiguity in this aspect of the procedure, although if the judges made their decisions in private it is not obvious how such information could become known to the parties. For example, on 9 December 1532 Andrew Seton of Parbroath brought an action for reduction of the decree against him which had been made in favour of William Scott, a burgess of Montrose. Five grounds of reduction were given in the summons, the second being that »the decreet assolzeis [i.e. absolves] the said William fra the 4th reson of the said summonds simpliciter, howbeit ane grete part of the saidis lordis admittit the said reson and *the remanent deliverit nocht simpliciter* and determlie thirupon *bot commonalie gif it wes the practik alanerlie* quhairthrow the said Andro and hes procuratores protestit for nullite of the said decret« (italics added). Presumably »ane grete part« did not amount to a majority,

21 ADCP, p. 372 (10 May 1532).
22 National Records of Scotland [hereafter NRS] CS 5/40, f. 27v.
23 NRS CS 5/42, f.169v.
24 NRS CS 5/42, f.169v.

otherwise the decision would have been the other way, but it is interesting that it was known to the parties that it was a majority decision only, not unanimous, and that the basis for the majority decision is also understood in some sense to have been expressed conditionally. Although Seton was unsuccessful in getting the decree reduced, the illustration serves to reveal how the mechanics of this form of collegiate decision-making could be exploited by the parties, at least at this early stage in the history of the College of Justice.

Voting had been seen to give rise to threats to the integrity of decision-making in the pre-1532 Session, when any member of the council could attend in order simply to influence a decision in which they had an interest. The ancillary statutes of the court of June 1532 addressed what remained of this risk after membership of the court was restricted to nominated senators of the new College of Justice. The statutes clearly forbade selective attendance of this kind, at least for ordinary senators, stating that »nane of the lordis chosin and admittit on the sessioun depart or byid away without licence askit and optenit fra the chancellar or president in presence of the haill counsale for ressonable causis«.[25] This danger was nevertheless still in evidence in the 1550s, however, when the problem was described as »that thai [i.e. the judges] cum allanerlie for particular actionis of thair awin, or concerning freindis, and to have expeditioun thairof, and than to depart as thai pleis«.[26] One response was that the exercise of the right to vote could be linked to the due performance of the obligations of a judge. The lords of session made an ordinance in 1555, for example, imposing greater controls over which members of the Council were entitled to sit as additional supernumerary lords on top of the 15 senators (including the president).[27] The ordinance defined the necessary requirements, insisting that »the saidis supernumerare Lordis remane continewalie, and mak personale residence with the President and the uther Lordis numerares ordinaris, in discussing of all causses, and administratioun of iustice to the lieges of this realme«, threatening them with the sanction that if »thai failye, thay sall nocht have voit at thair cuming, bot salbe removit as utheris unchosin«, i.e. of being removed and prevented from exercising a vote if they failed to oblige.[28]

To some extent it seems that the sixteenth century history of the College of Justice may have witnessed something of a cultural change in the court, once its formal operation was detached from the Council, and that in consequence conventions developed which guided the court in its approach to decision-making, but which had not been previously stated in formal ordinances. It is clear that in other matters such as the exercise of jurisdiction after the foundation of the College of Justice, as well as the regulation of the constitution of the court and the appointment of judges, the self-understanding of the court certainly developed over time. It seems a reasonable hypothesis to suggest that the transition from central judicial functions belonging to the King's Council to their belonging to the College of Justice also affected, and perhaps changed the judges' self-understanding of how they should reach their decisions in compliance with appropriate procedural norms.

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25 ADCP, p. 376.

26 Acts of Sederunt of the Lords of Council and Session 1532-1555 (Edinburgh, 1811), p. 55.

27 Acts of Sederunt, p. 55.

28 Acts of Sederunt, pp. 55-56: »And that the saidis supernumerare Lordis remane continewalie, and mak personale residence with the President and the uther Lordis numerares ordinaris, in discussing of all causses, and administratioun of iustice to the lieges of this realme, with certificatioun to thame, and thai failye, thay sall nocht have voit at thair cuming, bot salbe removit as utheris unchosin, be ressoun that it may be iudged gif thai do uther wyifs, that thai cum allanerlie for particular actionis of thair awain, or concerning freindis, and to have expeditioun thairof, and tha to depart as thai pleis.«