

TYOLOGY OF SCOTTISH ACTS, c. 1230-c. 1350

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1. Basic Classification

The conventional north-west European classification of the epistolary type of written and sealed act issued in the name, and bearing the authority, of the ruler, viz. Charter, Letters patent and Letters close, had been fully adopted in the Scottish kingdom by the middle of the thirteenth century, probably in fact before the death of William I in 1214. Nevertheless, Scottish royal documentation shows little of the elaboration and formalization characteristic of the English court under the Angevin kings, especially from the last years of the twelfth century. There were certainly rolls on which charters were copied to constitute an official record,¹ but although these rolls have been lost it is most unlikely that they were arranged, as the English ones were from 1201, into separate enrolments for charters, letters patent and letters close. It is doubtful whether the Scottish royal writing-office, the *capella regis* as it was always known, ever attempted systematically to preserve record of ephemeral precepts or mandates before the later fifteenth century when the Register of the Privy Seal begins (1488).²

It is generally held that each of the Scottish kings used only one seal —predecessor of the «great seal»— until the reign of Alexander III, who undoubtedly possessed a privy seal (*Sigillum secretum*,

¹ J. M. Thomson, *The Public Records of Scotland* (Glasgow, 1922), 5-6, 55; *The Acts of the Parliaments of Scotland*, i (1844), 112, 114.

² For chance survivals of letters close from Robert I's reign (1306-29) see Thomson, *op. cit.*, 56.

Sigillum privatum).³ There is in the British Library an eighteenth-century transcript of an original charter of David I (1124-53), now lost, which ends with a reproduction of a seal quite unlike King David's known seal, being smaller and bearing an equestrian figure with heater-shaped shield and sword held aloft and a fragmentary legend which begins SIGILL' DAVID and ends SCOCIE.⁴ The copyist, perhaps the scholarly Thomas Astle, remarks «This Seal is not in Anderson [i.e. *Diplomata Scotiae*, 1739]. Query: Is not the King's Privy Seal?»⁵ I suppose it is not impossible that David I used an additional or «private» seal, but the point must be treated as unproven in the absence of reliable corroboration.

If royal letters were issued close in the first half of the thirteenth century—and we have no explicit proof that they were—then they are likely to have been sealed by a portion of the great seal, presumably applied across the tie. But no actual examples survive, and what we do have are charters⁶—i.e. perpetuities, gifts and confirmations of lands, offices etc. etc.,—letters patent⁷ and briefes⁸—i.e. precepts or mandates—which were evidently sent patent, with the seal either on a tongue or on a tag or silk cords.

2. Charters

The form of the royal charter, as it was to remain until the eighteenth century at least, was almost fully developed by the end of William I's reign⁹. The date of time had been added regularly (though

3 Thomson, *op. cit.*, 62.

4 B[ritish] L[ibrary] MS. Stowe 551, f. 9.

5 *Ibid.*

⁶ *RfegestaJ RfegumJ SfcottorumJ*, i (ed. G. W. S. Barrow, Edinburgh, 1960), 59-68; *RRS*, ii (ed. G. W. S. Barrow with W. W. Scott, Edinburgh, 1971), 69-75; *RRS*, v (ed. A. M. Duncan, Edinburgh, 1988), 17-86, *passim*.

i RRS, v, 88-93; *RRS*, vi (ed. A. B. Webster, Edinburgh, 1982), 24-26; *RRS, Handlist of the Acts of Alexander III, the Guardians and John, 1249-1296* (ed. G. G. Simpson, Edinburgh, 1960), nos. 15, 43, 46, 48, 56 etc.

⁸ *RRS*, i, 62-68; ii, 71-75; *RRS, Handlist of the Acts of Alexander III*, nos. 3, 8, 10, 20, 21 etc.

⁹ *RRS*, ii, nos. 376-524 *passim*.

not quite invariably) from April 1195,¹⁰ but only consisting of the day of the month — rather as ephemeral English privy seal letters seem to have been dated from as early as John's reign.¹¹ The fuller time-date, consisting of the day of the month and regnal year (introduced by the words *anno regni domini regis*) was supplied from 1222 onwards, after a brief experiment with year of Incarnation dating.¹² The charter did not carry a clause of corroboration before the brief reign of John (Balliol), 1292-6 (when it was used sporadically); it became regular, indeed invariable, for Robert I (1306-29), in the form *In cuius ret testimonium presenti carte nostre sigillum nostrum precepimus (fecimus) apponi*.¹³ The seal referred to was of course the great seal, sometimes referred to as *sigillum regni, commune sigillum regni*, rather infrequently as *magnum sigillum*. Charters were invariably witnessed, and it has been shown for Robert I's reign that the longer the charter the longer was the witness list, while a charter running to over 500 words (in this period charters of over 1000 words are rare) may have ten or eleven witnesses.¹⁴ The very long witness lists familiar in solemn charters of the twelfth century have fallen out of fashion by the time of Alexander III, Robert I and David II (1329-71); e.g. Alexander III's solemn confirmation for Dunfermline Abbey (1277), even though it was constructed like an old-fashioned diploma, had only nine witnesses, in contrast with David I's diploma of 1128 which has twenty three.¹⁵ The average charter issued by the chancery of Robert I and David II had anything from five to ten witnesses.¹⁶ The witnesses were of course graded hierarchically and seem to have been chosen from a pool of «approved» or qualified persons who were either actually at court or were at least deemed to be present. Commonly there were bishops,

¹⁰ Ibid., no. 376 and pp. 81-2.

¹¹ P. Chaplais, *English Royal Documents, King John-Henry VI, 1199-1461* (Oxford, 1971), 15.

¹² *RRS, Handlist of the Acts of Alexander II, 1214-1249* (ed. J. Scoular, Edinburgh, 1959), nos. 55-58, compared with nos. 54, 59, 60 etc.

¹³ *RRS*, v, 87-89.

¹⁴ *RRS*, v, 115-118.

¹⁵ *Registrum de Dunfermelyn*, Bannatyne Club, Edinburgh, 1842, nos. 1, 81.

¹⁶ *RRS*, v, *passim*; *RRS*, vi, *passim*.

an abbot or two, earls (of whom there were few in regular attendance), the Chancellor (himself an abbot under Robert I), the Steward, the Chamberlain, and Knights of the royal household, some of whom held dignified offices such as Constable or Marischal. Occasionally —e.g. when the king was in a remote or unaccustomed locality— an unusual individual might act as witness; but the preferred practice was to authenticate a charter only with the great seal, and normally that seal did not travel with the king. There are a few examples of genuine charters issued under the privy seal, but usually when the court was *in partibus remotioribus* a letter was issued under the privy seal as a warrant for a charter to be prepared and produced under the great seal at some subsequent date.¹⁷

At what period charters were regularly copied on to rolls for permanent preservation in the *capella regis* we do not know. There was evidently some enrolment under Alexander III, and the practice was resumed under Robert I. From the reign of James I (1406-37) the chancery clerks entered the copies of outgoing charters into a book — the Great Seal Register, still a living archive.

3. Letter-patent

In Scotland there was very much more flexibility and informality in chancery practice than was the case in England. This reflected the fact that the Scots kings were served by a substantially smaller clerical bureaucracy than were their English contemporaries. There was nothing in Scotland to compare with the English vice-chancellor, protonotary or twelve clerks in chancery, for example; only a chancellor who seems to have been very much a working officer, and a clerk of the rolls (predecessor of the Lord Clerk Register) and a small handful of junior clerks and scribes, some of whom may not even have been permanent royal servants. Consequently, although enough wax was bought by the exchequer to provide for an annual output of almost 800 seal impressions it is exceedingly doubtful whether the chancery can really have

¹⁷ *RRS*, v, 119, 122-125.

produced anything like so many items¹⁸. A relatively modest output offers no incentive to classify documents rigidly or identify them by means of unchanging features which be recognised at a glance. Letters-patent normally carried no witness list, and normally contained some form of the word *presentes* either in the protocol or the eschatocol (or both), but some letters-patent survive with witness-lists while there are others which do not have either *littere* or *presentes*.¹⁹ As a general rule letters-patent of Robert I were sealed on a tag (*sur double queue*), either with the great seal or the privy seal, while precisely the opposite is true for David II, most of whose surviving patents are sealed on a tongue, usually with the great seal.²⁰ Since the charter remained in active use in Scotland until the nineteenth century, there developed no tendency (as in England) to replace it with the letter patent, and the Scottish chancery made no attempt to enrol or register patents separately from charters, although this had been done in England since the beginning of the thirteenth century. Where originals have not survived the enrolled or registered text may provide the sole indication that we are dealing letters patent if it ends with the clause *in cuius rei testimonium has litteras nostras fieri fecimus patentes*. The commonest uses of letters patent in fourteenth-century Scotland, to judge from what survives, were diplomatic communications, protections, pardons, presentations to church livings and warrants for payments out of the exchequer.²¹

4. Letter-close

The study of royal letters sent enclosed by their application across tongue or tie of the whole or part of a wax seal impression is hampered by the severe shortage of surviving examples. Dr Bruce Webster, who has edited the acts of David II for *Regesta Regum Scottorum*, writes

¹⁸ Ibid., 197.

¹⁹ Ibid., 88-92.

²⁰ *RRS*, v, 190-193 compared with *RRS*, vi, 16, 26.

²¹ *RRS*, v, 90-103.

of that king's privy seal letters, normally identifiable by their simple eschatocol *dat(um) apud* with place and time, «there is no reason to believe that any of the Scottish examples were sent close», although as he points out, they were used for purposes for which the contemporary English chancery would have employed letters close.²² The only class of document issued in David II 's name for which Dr Webster believes that the closed letter was normal consisted of informal diplomatic letters, often in French not Latin, sent close under the privy seal or occasionally the newly-introduced signet.²³

We have rather better information in the case of Robert I's chancery. Two original letters of briefes sent close under the great seal have survived, in both instances commands sent to royal officers in the north of Scotland who (presumably after carrying out the king's orders) filed the briefes in their archives.²⁴ It seems probable that they (and the very numerous analogous documents which have perished) were sealed with only a portion of the great seal, either top or bottom. Two further original letters, sent to Edward III by Robert I shortly before his death, bore impressions of the gold privy seal specially made for King Robert in 1328.²⁵ Although the wax does not survive, there are clear enough images on the tongue and panel of parchment as originally folded to prove that the seal was applied *plaque*. All these documents were in Latin, and indeed very few of Robert I's acts of any kind were composed in French, the exceptions being mainly truces, treaties of peace and ancillary documents. Of King Robert's clerks and scribes only Mr Walter of Twynholm, appointed chancellor in 1328, seems to have enjoyed perfect competence in the French language,²⁶ a surprising circumstance when one thinks of the large number of Scots in the period who studied at Paris and Orleans. A higher proportion of David H's acts were written in French, perhaps less because of the king's childhood exile at Chateau Gaillard than because of his lengthy sojourn as a prisoner in England. In the thirteenth century, the use of French was extremely rare in the

22 *RRS*, Vi, 28.

23 *Ibid.*, 28-29.

24 *RRS*, v, 193-194.

25 *ibid.*, 187-188.

26 *ibid.*, 203-206.

written output of Alexander III (1249-86) and (I believe) entirely unknown in the reign of his father Alexander II (1214-49). Incidentally, the rule in Scotland was to employ Latin when communicating with the French (or for that matter any other continental country), and to use French only when communicating with the English — though the practice was far from invariable. English —in its Scottish form— did not come into use for royal letters before the fifteenth century, and in any case was never employed in charters or other solemn documents.

5. Conclusion

In order to assess the quantity and quality of the output of written acts in the sovereign's name we need to ask for what purposes a king was required to authenticate and increasingly to produce documents of any kind. First of all, the ruler wished to provide a permanent record of his own piety, charitable generosity or merely of his property dispositions. Hence charters, of which in principle a comparative study ought to allow a distinction to be made clearly and permanently between the property of different corporations and persons. Secondly the ruler might find it convenient to communicate with his own officers in writing and absolutely necessary to communicate in writing with his fellow rulers. As literacy gradually spread —and there can be no doubt that it did spread between the late twelfth and the early fifteenth century— the ruler, or to be precise the ruler's principal officials, especially on the financial side, would make increasing use of written documents for purely internal administrative purposes. Thirdly, but by no means finally, the ruler's subjects would demand written proof of the justice (especially in property matters) which was meted out in courts convened in the ruler's name and exercising his authority. The surviving record of Scottish royal written acts, c. 1230-c. 1350, reflects all the needs and purposes, with a pronounced bias in favour of permanent gifts and grants and of financial administrative documents such as the exchequer rolls, and the annual accounts of sheriffs, bailies, customs etc. Much has been lost, but from what remains it is possible to construct a remarkably detailed picture of Scottish royal government in the relatively peaceful thirteenth century and in the conspicuously war-torn fourteenth century