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The Standardisation of Diplomatic in Scottish Royal Acts down to 1249. I – Brieves.

My ultimate goal for the Models of Authority project is to judge how far non-royal acts show their authors' awareness of royal acts, either in the way they imitate particular features or studiously avoid others. For this reason I am analysing the diplomatic of royal acts first and attempting to show how they developed and what made them distinctive.

A king needed to be able to enjoin and authorise various types of action or transaction, and to forbid others, in a way that could be authentically communicated over distance and time. The means by which he was able to communicate his authoritative wishes so that they could possess legal force was by writing them down in a more or less regular format and form; in other words, by recording them on sheets of parchment in a recognisable pattern of phrases.

The pattern of phrases – the diplomatic – is what I am concerned with. I shall argue that there are three principal categories of royal act in our period: the Brieve, the Letter of Notification, and the Charter. (There are also diplomas, proclamations, treaties, letters of correspondence, and so on, but these were not produced (or at least not preserved) in large enough quantities to be significant in this context.) I shall begin by looking at the simplest of these categories, the Brieve.

The royal name and title

Like all royal acts – outside treaties, letters of correspondence or acts in the strict diploma form – brieves begin with a protocol, made up of (a) the king's name and title, (b) address, (c) salutation. Parts (a) and (c) quickly became standardised across all brieves, letters of notification and charters.

The earliest extant royal act of a king of Scots is a diploma of King Duncan, and so does not conform to the usual pattern.¹ The four extant original acts of Duncan's successor, King Edgar (1097–1107), all survive in the archive of Durham cathedral and are types of notification. In Edgar's acts the title is more-or-less uniform: *Eadgarus rex Scottorum*. Representation of the the king's name, however, is not consistent.

Eadǵ	(DCM, Misc. Ch. 555, 556)
Edgarus	(DCM, Misc. Ch. 557)
Eadgar ⁹	(DCM, Misc. Ch. 558)

(556 & 558 appear to be written by one scribe, 555 & 557 by different scribes.)

One act, probably the latest (DCM, Misc. Ch. 558) includes *Dei gratia* ('by the grace of God'). It may be that *Dei gratia* was adopted at the end of Edgar's reign, since the three surviving original acts of Alexander I (1107–1124) are consistent in the royal style, giving *A. dei gratia rex scottorum* (DCM, Misc. Ch. 561, 562, 563).

From this point onwards, until the reign of Alexander II (1214–1249), the royal name (as in English chancery practice) was represented by the initial letter alone. As in England, one may be suspicious of any purported original that does not conform to this practice.

Dei gratia remained in the title during the first half of the reign of David (1124–1153), but was dropped about 1140. *Dei gratia* then reappeared during the reign of William the Lion (1165–1214), becoming standard from 1173×1174, apparently in imitation of English chancery practice, continuing through all subsequent reigns.²

¹ Ego Dunecanus filius regis Malcolumb constans hereditarię rex scotię ('I, Duncan, son of King Malcolm, by inheritance undoubted king of Scotland'. Durham, University Library, Archives and Special Collections, Dean and Chapter Muniments [DCM], Miscellaneous Charters [Misc. Ch.] 554 [13 November 1093×12 November 1094]).

² *Dei gratia* was introduced into the royal style in the protocol of English chancery documents around May 1172; Pierre Chaplais, *English Royal Documents: John to Henry VI, 1199–1461* (Oxford 1971), 13.

Whereas the king's name was uniformly abbreviated to its initial letter from the reign of Alexander I onwards, Alexander II's name, by contrast, is not consistently abbreviated in the originals and can be found spelled out in full, shortened to *Alex'*, or simply given as an initial . A . By far the most common form is *Alex'* .

The final part of the protocol, (c) the salutation or greeting, is always the same, *salutem*.

Distinctive features of the Brieve

The brieve can be distinguished from the charter both in form and content. The term is derived from Latin *breue*, what in England was called a Writ. In its simplest form the brieve was an instrument by which the king directed or enjoined the person or persons to whom it was addressed to do or refrain from doing a specified act. A brieve always had a special address, in other words, it was addressed to a specific person or group of persons – a sheriff or sheriffs, burgh officers, earls or ecclesiastics – and would have been deliverable.

In a brieve, an instruction follows directly after the address. There is no notification clause: it was written with the purpose of issuing a specific command. The verb of instruction in the first person is directed in the second person, *mando/mandamus tibi/uobis* ('I/we command thee/you'); the causal adverb *quatinus* (followed by a subjunctive + infinitive construction) is used more or less consistently from the reign of David onwards, with only a few instances of *ut* being found.

The simplest form of brieve was addressed to a specific person or persons, with a personal instruction directed *tibi* or *uobis* ('to thee', 'to you'). The earliest surviving contemporary original brieve is from the reign of King Alexander I (Durham, DCM, Misc. Ch. 563 [8 January 1107×23 April 1124]).

A(lexander) Dei gratia rex Scottorum, priori A(lgaro) et totius conuentui ecclesie sancti Cuthberti salutem. Mando et precipio uobis ut nullo modo intretis placitum neque in aliquam diratiocinatione de terra de Suintune ante quam ueniat ante me. Tibi etiam domine prior notum

facio quia de multis rebus multa uobis habeo secrete loqui, quam citius fieri poterit. Valete.

Alexander, by the grace of God King of the Scots, sends greeting to Prior Ælgar and the whole religious community of the church of St Cuthbert. I command and enjoin you that you by no means enter a plea neither enter into any vindication of rights concerning the land of Swinton before you come before me. I make known to you also, lord Prior, that I have many things to tell you secretly as soon as possible about many matters. Farewell.

The next contemporary original brief is from the reign of David I, and might be thought of as a classic 'writ', addressed to a sheriff (DCM, Misc. Ch. 575 [22 August 1138×1139]).³

<D. rex> Scot' G. Ridell, vic(ecomiti) de Rokesburg, salutem. <Tibi> precipio <ut> terra monachorum Dunelm' quam Gospatric de Dunbar dedit ... decessu, ponatur in respectum donec in illam uenero prouinciam<. Nemo> de monacis ne de Gospatrigo aliquam operationem, nec seruit<ium capiet sed> monac<i> teneant illam terram bene et in pace et quiete <infra suum> terminum. Et non permittas quod aliquis eis inde iniuriam <faciat sed fac inde si>cut meam dominiam faceres. T(este) Hug(one) de M<oruill>

D(avid), King of the Scots, sends greeting to G(ervase) Ridel, sheriff of Roxburgh. I enjoin you that the land of the monks of Durham which Cospatric of Dunbar gave ... on the death ... be put in respite until I shall have come to to that province. No-one should demand any labour or service from the monks or from Cospatric, but the monks should hold that land well and in peace and quietly within its boundary; and you should not permit that anyone cause them injury thereupon but treat it just as you would treat my demesne. With Hugh de Morville as witness.

The essential difference is that the epistolary farewell, *valet*, has been lost, and that a witness clause has been added. We should note, however, that Alexander's brief, although containing a formal

³ Cf. G. W. S. Barrow (ed.), *The Charters of King David I* (Woodbridge 1999), no. 75.

injunction, was nevertheless epistolary in character, concluding with a personal note. Nevertheless, there are no surviving examples of Alexander's acts which have either a witness clause or a place of date.

Most of the texts of David's brieves conclude with a date of place (*apud N.*, 'at such and such a place'). Such a clause occurs in one act for an English beneficiary while David was earl, in a notification issued at Yardley Hastings around 1114 (Barrow, *Charters of King David*, no. 4). The place of date then occurs in most of David's acts as king, from the very first, the gift of Annandale to Robert de Bruce, issued at Scone (BL, Cotton Charter xviii, 45; Barrow, *Charters of King David*, no. 16) and becomes a standard feature in royal acts thereafter.

By the end of our period, the form of the simple brieve remained essentially the same, as the following example from the second half of the reign of Alexander II shows (DCM, Misc. Ch. 619. Edinburgh, 12 April a.r. 24 [1238]).

A. Dei gratia rex Scott(orum) R. de Bernham' maiori et prepositis suis de Berwic' salutem. Mandamus uobis et precipimus, quatinus extraneos mercatores qui uenient usque prioratum de Coldingham' ad lanam et alias mercaturas prioris et conuentus de Coldingham emendas, nullo modo inpediatis; quin dictas mercaturas emere et abducere possint, saluis nobis antiquis consuetudinibus nostris. Test(ibus) P. Comite de Dunbar', Walter(o) Olif(ard) Iustic' Laodon(ie). Apud Edinburc, x^oii die Aprilis, anno regni domini regis vicesimo quarto.

A(lexander), by the grace of God King of the Scots, sends greeting to R(alph) de Bernham, the mayor, and his provosts of Berwick. We command and enjoin you that you by no means impede foreign merchants who come to Coldingham Priory to buy wool and other merchandise from the prior and convent of Coldingham, but that they be able to buy and take away the said merchandise, reserving to ourselves our ancient customs. As witnesses, P(atrick), earl of Dunbar; Walter Oliphant, justiciar of Lothian. At Edinburgh on the 12th day of April, in the twenty-fourth year of the reign of the lord King.

As we have seen, from the reign of David onwards, it was normal for briefes to have a witness clause, usually of between two and four persons. Of Alexander II's briefes, only four have more than two witnesses.

During the reign of Alexander II, there was a novel development in a small number of briefes. After the specific instruction has been related, four of the acts are provided with a corroboration clause in which the document is described as *litterae patentes* ('letters patent').⁴ The earliest example is from 1227.⁵ It is a practice that continues into the reign of Alexander III (1249–1286).⁶ The concept of *litterae patentes* had been known in the English royal chancery since at least 1166, and at this time simply signified letters that were sealed open.⁷ In the English context, writs with this clause are known as Writs Patent. From the beginning of John's reign the kind of corroboration clause that we find in the briefes of Alexander II was often inserted in the texts of royal letters. Below is an example from the chancery of King John, 4 June (1207) (London, TNA, Duchy of Lancaster: Royal Charters, DL 10/67).⁸

I Dei gratia rex Anglie, dominus Hib(ernie), dux Norm(annie) et Aquit(annie), comes And(egauie), dilecto et fideli suo Hug(oni) de Neuill' salutem. Mandamus uobis quod cum uicecomes Eborac' uobis mandauerit quod securitatem ceperit de Roaldo filio Alani de fine quem nobiscum fecit pro habendo castro de Richem(un)d' unde dissaisitus est per preceptum nostrum pro tredecimo suo; tunc eidem Roaldo saisinam habere faciatis de castro illo. Et in huius rei testimonium; has litteras nostras patentes inde uobis mittimus. Teste me ipso apud Wudest' iiii die Iunii.

⁴ In Stringer's forthcoming edition of *The Acts of Alexander II* (Regesta Regum Scottorum III), these are nos 134, 244, 282, 341.

⁵ Brieve to the the sheriff of Fife to pay the abbot of Dunfermline the eighth part of the king's profits of justice from the sheriff's jurisdiction. Clackmannan, 17 August (1227). *Dunfermline Reg.*, no. 78; Stringer, *Acts of Alexander II*, no. 134.

⁶ Cynthia J. Neville & Grant G. Simpson, *The Acts of Alexander III King of Scots 1249–1286*, Regesta Regum Scottorum IV Pt 1 (Edinburgh 2012), nos 15, 46, 82.

⁷ Chaplais, *English Royal Documents*, 7.

⁸ Printed with facsimile, Chaplais, *English Royal Documents*, 54 + plate 1.

J(ohn) by the grace of God King of England, Lord of Ireland, Duke of Normandy and Aquitaine, Count of Anjou, sends greeting to Hugh de Neville, his esteemed and sworn man. We command you that when the sheriff of York shall have commanded you that he has taken the security from Roald fitz Alan for the fine that he has made with us in return for having the castle of Richmond, from where he has been put out of possession by our precept for his tax of one-thirteenth, then you cause the same Roald to be put in possession of that castle. And in testimony of this matter we have sent our letters patent thereupon to you. Witnessed myself at Woodstock on the 4th day of June.

A comparable type of brieve of King Alexander II, with a very similar corroboration clause to King John's writ patent, and surviving in the original, follows (DCM, Misc. Ch. 625; Edinburgh, 29 May a.r. 22 [1236]).

A Dei gratia rex Scott(orum), Th(ome) priori Dunelm(ensi), dilecto amico suo, salutem. Mandamus uobis, precantes quatinus quadraginta libras quas per monachos de Coldingham' anno preterito misimus usque Dunelm(um), Hugolin(o) nuntio et famulo domini Reiner(i) cardinalis, habere faciatis. In cuius rei testimonium, has litteras nostras patentes uobis transmittimus. Test(ibus), E abbate de sancta Cruce, W Olif(ard) iust' Laod(onie). Apud Castrum Puellarum xxix die Maii, anno regni domini regis uicesimo secundo.

Alexander, by the grace of God King of the Scots, sends greeting to his esteemed friend Thomas, Prior of Durham. We command you, entreating that you would see to it that Hugolin, the messenger and servant of the lord Cardinal Reiner, has the forty pounds which I sent to Durham last year via the monks of Coldingham. In testimony of this matter we dispatch these our open letters to you, with E(lias), abbot of Holyrood, and W(alter) Oliphant, justiciar of Lothian, as witnesses. At Maidens' Castle [Edinburgh], on the 29th day of May, in the twenty-second year of the reign of the lord King.

In the Scottish context, at least, this type of brieve appears to be used when the subject of the brieve is the disposal of cash or property. In England, *scripti patentes*, writings sealed open, had to be free from

erasures.⁹ There is no evidence that this was the import in Scotland, but it may be borne in mind.

By the end of the period, then, we can observe four certain differences that had developed since David I's *briefes*. First, a date of time, by day of the month, was regularly introduced in the last two decades of William's reign, corresponding with the same development in the chancery of Richard I.¹⁰

Secondly, the year was introduced in the seventh year of Alexander II, the year of grace at first being employed; but then the regnal year, with day of the month, took over. Although the regnal year had been introduced in charters of Richard I from the commencement of his reign, the regnal year did not appear in writs until about a decade into the reign of Henry III. Again, we can observe a correspondence with English practice.¹¹

Thirdly, early in the reign of Alexander II, from around 1218, the plural of majesty was introduced: that is to say, personal pronouns and verbs changed from first person singular (*me, mando*) to first person plural (*nos, mandamus*). This had been happening in England since the reign of Henry II.

Finally, in apparent imitation of the English Writ Patent, a form of *Brieve Patent* was introduced, but rarely used.

Of those features which change over time, we have taken account of the royal style, the different forms of date, the use of the plural pronouns and verbs in relation to the king, and the corroboration clause. Apart from the testimonial clause for *litterae patentes*, each of these forms was a part of the standard protocol and eschatocol found at the beginning and end of all the types of royal act I shall be considering – *briefe*, letter of notification, charter – and were not distinctive features of the *briefe*. What is noticeable therefore is that the core of the *briefe* remains essentially the same throughout the period, depending on what the purpose of the act was.

⁹ Chaplais, 8.

¹⁰ Chaplais, 13.

¹¹ See Chaplais' examples of writs, 54–5.

Protocol: (a) the king's name and title, (b) special address, (c) salutation.

Injunction with personal object.

Witnesses [David I onwards]

Dating Clause [Place: David I onwards. Day of Month: William I onwards. Year: Alexander II onwards].

Other forms of Brieve

Two variations on the simple form of brieve were also produced. Their principal difference was in the more general character of their mandate, instruction or prohibition. The formula would be, for instance, *Mando et firmiter precipio quatinus* ('I command and firmly enjoin that ...'). The personal object is lost.

An example from the reign of David I survives in the cartulary of Dunfermline abbey (1150×1153).¹² Here the provincial court of Fife is addressed.

Dauid rex Scott(orum), episcopo Sancti Andree et Comiti et omnibus probis hominibus suis tocius Fif, salutem. Prohibeo quod homines abbatis de Dunf' de Nithbren alicui non respondeant de placitis et calumpniis unde calumpniati fuerint nisi in curia Sancte Trinitatis et abbatis de Dunf'. Et precipio quod iudex meus illius prouincie cum hominibus qui illuc placitari uenerint intersit ut placita et iusticie tractentur. T(estibus), Gregorio episcopo Dunkeldensi et Edwardo constabulario. Apud Sconam.

David, King of the Scots, sends greeting to the bishop of St Andrews and the Earl and all his worthy men of the whole of Fife. I forbid that the abbot of Dunfermline's men at Newburn should answer to anyone in respect of pleas and complaints whereon they have been charged unless in the court of the Holy Trinity and abbot of Dunfermline. And I instruct that my judex of that province shall attend with the men who shall come there to be impleaded, so that pleas and judgements may be dealt with. As witnesses, Gregory, bishop of Dunkeld, and Edward the Constable. At Scone.

¹² Barrow, *Charters of King David*, no. 190.

This is essentially the notification of a course of action decided upon by the king. In a similar fashion, we also find instances of what might be classified as general brieves: that is, brieves which would not have been deliverable, but contained a general mandate, injunction or prohibition intended to be read out in a court.

This type of brieve could also be addressed collectively to regional or local officers corresponding to types of court – justiciars, sheriffs, provosts, burgesses, and officials, throughout the kingdom. In such a case, the brieve would have a collective address.

This type of brieve survives from later in our period, first from the reign of William and subsequently reissued in the same terms by Alexander II, although each only survives in a cartulary copy from Scone.¹³ The text of King Alexander's brieve follows.

Alexander Dei gracia rex Scottorum iusticiariis, vicecomitibus, prepositis, burgensibus et omnibus ministris tocius terre sue salutem. Mando et firmiter precipio quatinus quicumque aliquid de decima mea uel de elemosina Deo et abbati de Scona annuatim soluere debuerit illud ad terminos michi statutos de firma mea michi reddenda eis plenarie persoluat. Et prohibeo ne quis ecclesie de Scon siue eiusdem loci canonicis aliquid de predicta decima siue elemosina vltra predictos terminos detineat, super meam plenariam forisfacturam. Si quis vero super hoc eis aliquid detinere presumpserit, precipio ut vicecomes siue balliuus meus in cuius potestate debitor fuerit eum distringat donec eis debitum suum plenarie persoluerit. Testibus.

¹³Barrow, *Acts of William I*, no. 259; Keith J. Stringer, *The Acts of Alexander II*, *Regesta Regum Scottorum III* (forthcoming), no. 333.

Alexander, by the grace of God King of the Scots, sends greeting to justiciars, sheriffs, provosts, burgesses, and all officials of the whole of his land. I command and strictly enjoin that whosoever ought to make any annual payment in respect of my teind, or in respect of alms, to God and the abbot of Scone, he should pay them fully at the terms appointed by me for the payment to me of my ferme. And I forbid that anyone keep back anything of the aforesaid teind or alms from the church of Scone or the canons of the same place beyond the aforesaid terms, on pain of my full forfeiture. And if anyone attempt to withhold anything from them in respect of this, I instruct that my sheriffs or baillies in whose jurisdiction the debtor might be distrain him until he settle his debt to them in full. Witnesses.

The foregoing brieve is intended for all those sheriffs and baillies in whose jurisdiction (*potestas*) there might be persons who owe annual payments to the abbey of Scone. Compare it with the following writ of Henry I of 11 November 1100, addressed to all sheriffs in whose shrievalties and bailliwicks the abbey of Abbingdon has lands.¹⁴

Henricus rex Angl(orum) omnibus uicecomitibus suis in quorum uicecomitatibus et ministeriis abbatia Abbendone terras habet salutem. Precipio ut tota terra abbatie de Abbendona ita bene et pleniter habeat sacram suam et socam et omnes consuetudines suas in burgo et extra burgum sicut melius habuit et plenius tempore regis Eadwardi et patris mei, et latronem similiter sicuti tunc temporis habuit. Et defendo ne aliquis ei inde iniuriam faciat. T(este) Eud(one) dap(ifero). Apud Westm(onasterium) in nuptiis meis. Et etiam sicuti frater meus per breuem suum precepit. T(este) eodem.

Henry king of the English to all his sheriffs in whose shrievalties and bailliwicks the abbey of Abingdon has lands greeting. I command that all the land of the abbey of Abingdon shall have its sake and soke and all its customs within borough and without as and fully as it well and fully had them in King Edward's time and my father's, and infangthief likewise as it had in that time. And I forbid that anyone shall cause it injury in this matter. Witness Eudo

¹⁴ Edited and translated by Richard Sharpe *et al.*, *The Charters of William II and Henry I – Henry I – Abbingdon Abbey*, p. 29, online at <https://actswilliam2henry1.files.wordpress.com/2013/09/h1-abingdon-2013-1.pdf> (accessed 18 Dec. 2015).

Dapifer. At Westminster at the time of my wedding. And also as my brother commanded by his writ. Witness the same.

One further formal class of *briefe* is addressed generally to all (law-worthy) men throughout the land – *omnibus (probis) hominibus totius terre* – as well as collectively to regional or local officers corresponding to types of court – *justiciar, shrieval, or burghal*. Again the verbs of instruction lack a personal object – ‘I command that’, rather than ‘I command *you* that’; and again, they are in practice forms of notification, designed to be read out in the appropriate court.

An example from the reign of David I survives in the cartulary of Reading Abbey and the charter roll of Edward I (1147 × 1153).¹⁵

D. rex Scot’, vicecomitibus, prepositis, ministris et omnibus hominibus totius terre sue, salutem. Precipio ubicumque prior de Mai aut aliquis suorum fratrum aut clientum domus de Mai venerint cum rebus domus de Mai quatinus sint quieti de cano et tolneio per totam terram meam, et ut licenciam habeant vendendi proprias res suas et emendi necessaria domus. Preterea defendo ne ullus eis aut rebus eorum super meum forisfactum forisfaciat. T(estibus), Herberto episcopo de Clascu et Andrea episcopo de Cateneis et Ernaldo abbate de Chegho. Apud Strivelin.

D(avid), King of the Scots, sends greeting to sheriffs, provosts, officials, and all men of the whole of his land. I enjoin that, wherever the prior of May or any of his brethren or dependents of the house of May may come with property of the house of May, they be quit of cain and toll throughout the whole of my land, and that they have permission to sell their own property and buy things necessary for the monastic house. In addition, I forbid that anyone do wrong to them or their property, on pain of my forfeiture. As witnesses, Herbert bishop of Glasgow, Andrew bishop of Caithness, Arnold abbot of Kelso. At Stirling.

¹⁵ Barrow, *Charters of David I*, no. 186.

From the end of our period we have the following example of a general brieve, issued in favour of the monks of Melrose abbey (Edinburgh, 2 April [1215]. Original, BL, Cotton Charters xviii, 1).

Alex', Dei gratia rex Scott', iustic', uicecomitibus, prepositis, et omnibus probis hominibus tocius terre sue salutem. Precipio quod fratres nostri de Melros et omnes fratres eiusdem ordinis sint quieti de teloneo et omnibus aliis consuetudinibus et rectitudinibus de omnibus mercatis que ad suos proprios usus fecerint ubicumque in tota terra mea uenerint; sicut carta domini regis patris mei Willelmi testatur et confirmat. Testibus, Will(elmo) de Boscho cancellario meo, Comite Malc(olmo) de Fif, Will(elmo) de Valon(iis), Iohanne de Maccuswel'. Apud Edenb', secundo die Aprilis.

Alex(ander), by the grace of God King of the Scots, sends greeting to justiciars, sheriffs, provosts, and all worthy men of the whole of his land. I enjoin that our brethren at Melrose and all the brethren of the same order be quit of toll and all other customs and rights in respect of all transactions which make for their own benefit wherever they may come in the whole of my land, just as the charter of the lord king, my father William, bears witness and affirms. As witnesses, William del Bois my chancellor, Earl Malcolm of Fife, William de Valognes, John of Maxwell. At Edinburgh, on the second day of April.

Throughout the development of the simple royal brieve in Scotland, from the reign of Alexander I to Alexander II, developments tended to reflect or follow the practice of the English royal chancery. In such a simple form, there was not much room for variation. Once a change in diplomatic practice had been made, however, it was fairly consistently applied.

In my next Feature of the Month, I shall go on to examine the standardisation of diplomatic forms in letters of notification.