

John Reuben Davies

The Standardisation of Diplomatic in Scottish Royal Acts down to 1249. Part 2: Letters with Notification

The king, at the request of a subject, would need to inform local officers or assemblies of a right newly granted to that subject in order that the right could be enforced or upheld. For this task a longer form of document than the simple *briefe* served his purpose. Rather than a straightforward command to a specific royal officer, the king began by notifying the addressee of an action which he had taken – the concession of a right or liberty to a beneficiary – providing the legal basis on which his command was to be performed.

This second major class of letters is closer in form to the charter, for it gives notice of a disposition which has given rise to the consequent instruction or injunction that the letter serves to relate. The notification of the type *Sciatis quod* or *Sciatis me/nos* is not diagnostic, but it is usually a signal that we are dealing with letters rather than a charter.

Types of Letters with Notification

(i) The first category can still be categorised as a type of *briefe*: it has a special address plus a notification with a personal instruction. One of the earliest examples was issued by David I in 1124 × 1136, and directed to the provosts of Perth.¹

David dei gratia Rex Scot', omnibus fidelibus hominibus suis tocius Scoc(ie) et prepositis de Perth, salutem. Sciatis me dedisse in elemosina ecclesie Sancte Trinitatis de Dunf' unum toftum in meo burgo de Perth quietum de omnibus rebus. Ideo mando vobis quatinus faciatis eidem ecclesie habere illud ibidem quod Swain saisivit. T(estibus), Herberto cancellario et Hugone de Morevill'. Apud Strivelin.

¹ G. W. S. Barrow, *The Charters of King David I* (Woodbridge 1999), no. 48; from NLS Adv MS. 34.1.3 (Cartulary of Dunfermline Abbey).

David, by the grace of God King of the Scots, sends greeting to all his sworn men of the whole of Scotia and to the provosts of Perth. Know me to have given in alms to the church of the Holy Trinity at Dunfermline one toft in my burgh of Perth quit of all things. For that reason I command you that you cause the same church to have it, the same that Swain possessed. As witnesses, Herbert the chancellor and Hugh de Morville. At Stirling.

Over a hundred years later, Alexander II was issuing a very similar type of instrument, directed in this case to his sheriff and baillies of Dumfries.

NRS, Dalhousie Muniments, GD45/13/259 ²

Alexander Dei gratia rex Scottorum vicecomiti suo et balliuis suis de Dumfres' salutem. Sciatis quod inspeximus cartas illustrium regum Daudid et Malcolmi antecessorum nostrorum, et domini Willelmi regis patris nostri, in quibus continetur quod abbas et conuentus de Sancta Cruce curiam liberam habere debent tam in terra de Dunrod' quam tenent in Galuuath' de dono Fergus et heredum suorum, quam in aliis terris quas habent de dono antecessorum nostrorum, scilicet in Brochtun' et Hameram. Vnde uobis mandamus et firmiter precipimus quatinus nullo modo permittatis ut aliquis heredum Galuuath', aut eorum balliui, dictos abbatem et conuentum impediunt, quin curiam suam liberam habeant in dicta terra de Dunrod' de omnibus que ad ipsos iuste debent pertinere, tantum facientes, ne pro defectu vestri oporteat dictos abbatem et conuentum ad nos super hoc amplius recurrere conquerendo. Testibus Henrico de Balliol' camerario, Iohanne de Vallibus, Nicholao de Sulis'. Apud Edinburc, xvi^o die Februarii, anno regni domini regis xxx^o secundo.

Alexander, by the grace of God King of the Scots, sends greeting to his sheriff and bailies of Dumfries. Know that we have inspected the charters of the illustrious kings David and Malcom our predecessors, and of the lord King William our father, in which it is contained that the abbot and convent of Holyrood ought to have free court as well in the land of Dunrod as they hold in Galloway of the gift of Fergus and his heirs, as they have in other lands of the

² No. 274 in the forthcoming edition by Keith J. Stringer, *The Acts of Alexander II, Regesta Regum Scottorum III*.

gift of our predecessors, that is, in Broughton and 'Hamera'. Wherefore we command and firmly enjoin you that you by no means allow that any of the heirs of Galloway, or their bailies, obstruct the said abbot and convent, but that they have their free court in the said land of Dunrod in respect of all things which ought justly to belong to them; doing so much, lest for your default it be necessary for the said abbot and convent to resort to us, complaining about this matter again. As witnesses, Henry de Balliol, chamberlain; John de Vaux; Nicholas de Soules. At Edinburgh on 16th day of February, in the 32nd year of the lord king's reign.

(ii) The king's subjects also required him to issue more general notifications, either new or supplementary to an existing charter of his predecessor, by which he could communicate and enforce or reinforce a right newly granted to or already held by one of his subjects; or, more commonly, they needed him to issue a prohibition based on the right or liberty granted. This was done in the form of a class of letter addressed generally to men of the land holding legal status, the *probi homines*, giving notice of the transfer of rights to a beneficiary and, more often than not, issuing an injunction or prohibition. Such letters were not deliverable, and were rather like charters in that they were meant to be a record of the transfer of rights.

This category of letter with a notification is a modification of the first category, away from the *briefe*, in the direction of the charter. A general address ('Alexander Dei gratia rex Scottorum omnibus probis hominibus tocius terre sue salutem') replaces the special address, but the text still lacks a confirmation clause and employs the form of notification, *Sciatis nos/quod*. The instructions and injunctions lack a personal object.

This was the form of instrument used when the king found occasion to improve the tenure of land-holders already in possession of their land, by conceding certain additional liberties or privileges such as tenure in free forest or free warren. Such grants were made with sufficient frequency that a standardised formula of wording became established during the reign of Alexander II.

The standard pattern of these acts was Address + *omnibus probis hominibus*; notification + operative verb; *quare* (or *et* or *unde*) + injunction/prohibition. Again, this act of David I forms the basic model for the letters which become standardised during the reign of Alexander II.

NRS, GD40/1/1 (Lothian muniments)³

Dauid rex Scottorum omnibus hominibus terre sue clericis et laicis salutem. Sciatis me dedisse et confirmasse ecclesie de Neubotle et monachis ibidem deo seruiantibus et sancte Marie, Neubotle per suas rectas diuisas, in omnibus in perpetuam elemosinam, libere et quiete, sicut aliqua elemosina potest teneri et concedi liberius, exceptis duabus carucatis terre quas Roberto Ferrario pro seruitio suo dedi. Quare uolo et precipio ut ipsi monachi sint in bene et mea firma pace et heredum meorum, et sint liberi et quieti et absoluti ab omnibus exactionibus et consuetudinibus secularibus per totum regnum inperpetuum. Annuente hoc et concedente Henrico filio meo et confirmante. Presentibus testibus Iohanne episcopo de Glesgu, Ricadro abbate de Mailros, Cospatric et Duncan comitibus, Hugone de Moreuill constabulario. Apud Ednesburc, kalendas Nouembris, anno Incarnacionis Domini millesimo centesimo quadragesimo.

David, King of the Scots, sends greeting to all men of his land, clerk and lay. Know me to have given and granted to the church of Newbattle and the monks serving God in that place, and to Saint Mary, Newbattle by its correct boundaries, in all things, as everlasting alms, freely and quietly, just as any alms can be held and freely granted, except for the two ploughgates of land which I have given to Robert Ferrari in return for his service. Wherefore I will and enjoin that the monks be well both in my own and also my heirs' firm peace, and be free and quit and released from all secular exactions and customs throughout the whole kingdom for ever. With Henry my son approving, allowing and affirming this. Present as witnesses, John, bishop of Glasgow; Richard, abbot of Melrose; Cospatric and Duncan, earls;

³ Barrow, *Charters of King David*, no. 96.

Hugh de Morville, constable. At Edinburgh on 1 November, in the year of the incarnation of the Lord, 1140.

Standardisation of letters in the reign of Alexander II

During the reign of Alexander II, a range of increasingly standardised acts developed, issuing injunctions or prohibitions based on the grant of rights amounting to the improvement of tenure of property already held.

In what follows, the forms are based on actual *acta*, but have been standardised to emphasise the common features. I give here, to illustrate the wider phenomenon, examples of two types of act: (i) the granting of rights of forest and warren, and (ii) the prohibition of poinding.

Letters of Alexander II granting rights of forest and warren:

Simplest form

AD 1230 (Cartulary of Scone Abbey) Grant of tenure in warren, forbidding cutting of timber or hunting without permission of the beneficiaries.⁴

Alexander Dei gratia rex Scottorum omnibus probis hominibus tocius terre sue salutem. Sciatis quod concessimus *talibus* ut terram suam de *tali* habeant in warennam. Quare prohibemus firmiter ne quis in eadem terra sine eorum licentia secet aut uenetur super nostram plenariam forisfacturam decem librarum. Testibus. Apud *talem locum, tali die talis Mensis*, anno regni domini regis *tali*.

AD 1234 (Cartulary of Balmerino Abbey). Grant of tenure in forest, forbidding cutting of timber or hunting without permission of the beneficiaries.⁵

⁴ Stringer, *Acts of Alexander II*, no. 158.

⁵ Stringer, *Acts of Alexander II*, no. 206.

Alexander Dei gratia rex Scottorum omnibus probis hominibus totius terre sue salutem. Sciatis quod concessimus *tali* ut terras suas de *tali* habeant in forestum. Quare firmiter prohibemus ne quis sine licentia eorundem in dictis terris secet aut uenetur, super nostram plenariam forisfacturam decem librarum. Testibus. Apud *talem locum, tali die talis mensis, anno regni domini regis tali.*

Letters of Alexander II granting rights of warren: Developed form

Words in **boldface** type show additional developments to the foregoing forms, and which become standard during the reign.

AD 1249 (Cartulary of Dunfermline Abbey). Grant of tenure in free warren, forbidding cutting of timber or hunting without permission of the beneficiaries.⁶

Alexander Dei gratia rex Scottorum omnibus probis hominibus totius terre sue salutem. Sciatis quod concessimus *talibus NN.* ut habeant **et teneant** feodum suum de *N.*, cum terris ad dictum feodum spectantibus **quas de nobis tenent in capite**, in **liberam** warennam. Quare firmiter prohibemus ne quis **infra** dictum feodum aut terras prenotatas sine licentia eorundem *NN.* secet aut uenetur, super nostram plenariam forisfacturam decem librarum. Testibus. Apud *talem locum, tali die talis mensis, anno regni domini regis tali.*

AD 1249 (for Matthew of Moncreiffe at the request of Roger de Mowbray). Grant, at the request of another, of tenure in free warren, forbidding cutting of timber or hunting without permission of the beneficiary.⁷

⁶ Stringer, *Acts of Alexander II*, no. 327.

⁷ Stringer, *Acts of Alexander II*, no. 328 (GD212/1/17 [modern transcript]).

Alexander Dei gratia rex Scottorum omnibus probis hominibus totius terre sue salutem. Sciatis **nos ad petitionem talis N. concessisse tali N. tenenti suo** ut ipse N. et heredes sui habeat **et teneat** terram de N. **quam tenent hereditarie de predicto N. et heredibus suis in liberam** warennam. Quare firmiter prohibemus ne quis **infra** predictam terram de N. sine licentia eiusdem N. aut heredum suorum secet aut uenetur, super nostram plenariam forisfacturam. Testibus. Apud N., tali die Mensis, anno regni domini regis tali.

AD 1249 (for Geoffrey of Farsley). Grant of tenure in free warren, forbidding cutting of timber or hunting without permission of the beneficiary.⁸

Alexander Dei gratia rex Scottorum omnibus probis hominibus totius terre sue salutem. Sciatis quod concessimus tali N. ut habeat **et teneat** terras suas **quas de nobis tenet in feodo** de Carel', in **liberam** warennam. Quare firmiter prohibemus ne quis **infra** easdem terras sine licentia eiusdem N. secet aut uenetur, super nostram plenariam forisfacturam decem librarum. Testibus. Apud N., tali die N., anno regni domini regis tali.

Letters of Alexander II against taking poinds

The following acts show how consistent in form were letters granting protection against the taking of poinds from the second half of the reign of Alexander II. Additional or differing words and phrases are denoted in **boldface** type.

AD 1230 (Cartulary of Arbroath Abbey). Grant that no one shall take poinds from the beneficiary's men except for their own debt, on pain of the king's full forfeiture.⁹

⁸ Stringer, *Acts of Alexander II*, no. 331 (Original, BL, Additional Charter 66570).

⁹ Stringer, *Acts of Alexander II*, no. 157.

Alexander Dei gratia rex Scottorum omnibus probis hominibus totius terre sue salutem. Sciatis quod concessimus *tali* ut nullus capiat namos hominum suorum **de tali loco** pro alicuius debito uel forisfacto nisi pro eorundem proprio debito uel forisfacto. Quare prohibemus firmiter ne quis eos contra **hoc** iniuste uexare presumat, super nostram plenariam forisfacturam. Testibus. Apud *tali loco, tali die talis mensis* anno regni domini regis *tali*.

AD 1235 (for Geoffrey of Farsley). Grant that no one shall take poinds from the beneficiary or his men except for their own debt, on pain of the king's full forfeiture.¹⁰

Alexander Dei gratia rex Scottorum omnibus probis hominibus totius terre sue salutem. Sciatis quod concessimus *tali* ut nullus namos suos uel hominum suorum capiat pro alicuius debito uel forisfacto nisi pro eorundem proprio debito uel forisfacto. Quare firmiter prohibemus ne quis contra hanc concessionem nostram **eos** iniuste uexare presumat, super nostram plenariam forisfacturam. Testibus. Apud *tali loco, tali die talis mensis* anno regni domini regis *tali*.

AD 1248 (for Coldingham Priory) Grant that no one shall take poinds from the beneficiary's men who live in a certain demesne, except for their own debt, on pain of the king's full forfeiture.¹¹

Alexander Dei gratia Rex Scottorum omnibus probis hominibus totius terre sue salutem. Sciatis quod concessimus *talibus* dilectis et fidelibus nostris, ut nullus capiat namos suos uel hominum suorum **quos habent in dominico in tali loco** pro alicuius debito uel forisfacto nisi pro eorundem proprio debito uel forisfacto. Quare firmiter prohibemus ne quis **dictos monachos et homines** suos contra hanc concessionem

¹⁰ Stringer, *Acts of Alexander II*, no. 217 (GD190/3/484/28 [modern transcript of original]).

¹¹ Stringer, *Acts of Alexander II*, no. 325 (Original, Durham, DCD, Misc. Ch. 629*).

nostram iniuste uexare presumat super nostram plenariam forisfacturam. Testibus.
 Apud *tali loco, talis mensis*, anno regni domini regis *tali*.

The basis for the central formula of these acts,

ut nullus capiat namos hominum suorum pro alicuius debito uel forisfacto nisi
 pro eorundem proprio debito uel forisfacto

may be found as early as the reign of David I, where in a general brieve
 of 1124×?1136 the king commanded,

ne capiatis aliquod namum super terram et super homines *talis* pro forisfacto
 alicuius nisi pro proprio forisfacto illorum.¹²

The Standardisation of Diplomatic in Royal Brieves and Letters

By the time Alexander II succeeded King William, a standardisation of the repertoire of royal instruments had occurred, resulting in a pattern that hardly varies. The cause of this standardisation and the preponderant use of letters of general notification can be linked to specific developments in Scottish law and royal policy. From 1230 a tenant was enabled to sue the lord who put him out without cause or due process by bringing an action of 'novel dissaisin' ('recent dispossession') in the king's court. And the lord whose tenant died had to put that tenant's heir in possession or else be liable to an action of 'mortancestry' and an inquiry by a jury into the title under which the possessors of a property held it.

The reign of Alexander II also saw a significant curtailment of the alienation of the royal demesne in return for knight service: there was only one new gift of land made in return for the service of a whole knight during the reign, and even then it was an exchange;¹³ a further

¹² Barrow, *Charters of King David*, no. 50 (Catulary of Dunfermline Abbey).

¹³ NRS, GD 86/1; Stringer, *Acts of Alexander II*, no. 194; Fraser, *Carlawerock*, ii, pp. 404–5 (with facsimile); Fraser, *Facsimiles*, no. 43; Fraser, *Pollok*, i, pp. 122–3, no. 3; calendared in POMS at <http://db.poms.ac.uk/record/source/2062/#>

eleven gifts were made for fractional knight service, which amounted to the service of an additional three-and-a-half knights. The previous reign had seen gifts for knight service to the value of nearly twenty-eight knights. The subsequent reign of Alexander III (1249–1286) saw one gift of land for knight service, and that for only half a knight.

The tailing-off of new gifts from the royal demesne coincided with a considerable increase in the granting of improvement of tenure with the augmentation of rights, liberties and protections. As an illustration of a wider phenomenon, King David made one grant of tenure in forest; there was one grant amounting to tenure in free forest during the reign of Malcolm IV (1153–1164); King William (1164–1214) made seven grants amounting to tenure in free forest or warren; but Alexander II (1214–1249) made at least 27 grants of tenure in free forest and free warren.¹⁴

Grants of rights, liberties and protections are the kinds of acts that would have tended to increase the perception of lordship, avoid further alienation of the royal demesne, and also increase business in the royal and regional courts. The granting of these rights and protections also produced more opportunities to bring actions in the king's court.

By the end of the reign of Alexander II there was an emerging bureaucracy and an increasingly centralising legal system. The tendency to centralise and bureaucratised was coincident with a sharp rise in the number of grants of rights and the theoretically more prominent role for royal courts in matters of property. The standardisation of formulae and the increasing use of the letter of notification as a means of granting legal privileges was happening at the very time as what Alice Taylor has characterised as a 'great leap forward' in the centralisation and bureaucratisation of Scottish royal government around 1230.

¹⁴ Barrow, *Charters of King David*, no. 210; G. W. S. Barrow, *The Acts of Malcolm IV King of Scots 1153–1165* (Edinburgh, 1960), no. 311 (text does not survive); G. W. S. Barrow (with W. W. Scott), *The Acts of William I King of Scots 1165–1214* (Edinburgh 1971), nos 314, 340, 346, 463, 565 (forest); no. 46, 335 (warren); Stringer, *Acts of Alexander II*, nos 54, 57, 89, 201, 206, 213, 214, 220, 226, 238, 242, 243, 253, 260, 269, 275, 277, 288, 289, 310, 321 (free forest); nos 158, 327, 328, 331, 337, 343 (free warren).