
NORTHERN STUDIES

The Journal of the Scottish Society for Northern Studies

Volume 55

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2024

NORTHERN STUDIES

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The Baltic and North Sea Region in Scottish Burgh and Notarial Records, 1500-1700 (Part Two)

Thomas Brochard

Introduction

SCOTTISH CONTACTS with the Baltic and the North Sea in the early modern period have prompted researchers to investigate particular professional groups, such as soldiers, merchants, or government officials, as well as sub-categories, including military musicians and medics.¹ A recent study by the author (Part One of this article) has brought to the fore a much-underrepresented category within this Nordic context, namely professional writers and more especially notaries public.² In the first part of this article, we saw that notarial production presents a rich picture of the logistics and nuts and bolts of business, commercial, and financial arrangements as well as of people's daily lives in this northern maritime environment for the period under consideration. Notaries assisted in risk management through their drafting of contracts and charter parties, and these written bonds likewise strengthened trust between contracting parties.

Using notarial and burgh records, Part One focused on these daily connections, and the paperwork and procedures that underpinned and facilitated them, at a crucial point of friction and tension: death. These sources have shown that the bedrock of these exchanges was founded on the two complementary notions of trust and deputation. When these broke down, procedures were available for redress. Based on the same source material, this second part of the article explores the mechanics of deputation through procuration and the solutions available when that trust reached another point of friction and tension, namely litigation.

1 Murdoch 2006; Grosjean 2016; Murdoch 2016.

2 Part One of this article was published in Volume 54 of this journal (Brochard 2023a).

Procuration

Procuration was the action of appearing on behalf of another through a formal mandate or authorisation that constituted one as a procurator, attorney, or factor. This was a relatively commonplace, and yet essential, part of the conduct of affairs for Scots active in the Baltic and the North Sea at the time. As we shall see, the circumstances in which individuals turned to procuration were rather wide-ranging. For instance, the letter of procuratory or factory—more precisely the authority granted to a person to act as factor for another—was important in the retrieval of money and properties abroad and not just in the case of deceased relatives as studied in Part One.³ For example, in July 1626 it was reported that Robert Shearer, burgess of Aberdeen and then resident of Gdańsk, had given power of attorney to two fellow burgesses, Mr James Mortimer and Thomas Nicolson, whilst in Aberdeen in May and in Gdańsk in June earlier that year. Through them, Shearer granted various sasines to James Rolland, burgess of Aberdeen then resident in Gdańsk, of a croft and feu farms in Aberdeen, to which William Rolland, burgess of Aberdeen and James's brother, added another tenement in favour of his brother. Not being present in Aberdeen to receive these properties, James Rolland despatched Walter Cochrane, a local burgess, to do it for him. Later on, after James Rolland's death, and whilst in Elsinore in September 1639, William Rolland granted a procuration to Aberdeen advocate Alexander Davidson to serve him as James's heir in various properties and liferents in the burgh as well as the fishing and half net, meaning a half-share, of the salmon fishing of the 'Pott' of the river Dee.⁴

Indeed, a great advantage of the letter procuratory was that it was a straightforward legal document that could be written on the move or in transit between Scots running their own business errands and granting the recipient all the necessary legal power and protection. In May 1600, George Cunningham, merchant of Edinburgh, commissioned Aberdeen merchant James Seton to receive on his behalf £260, which Andrew Stewart, burgess of Stralsund, owed to Cunningham. To facilitate that process, Cunningham had given Seton Stewart's

3 DCA, Burgh Protocol Books, 1526-1528, f.16r (Andrew Just appointed three Dundee residents his procurators to defend him in a case of goods thrown overboard out of a ship off Gdańsk, 1527); *Letters of James V*, 145; ACA, CA1/1/25, p.635; CA5/1/6, 29 November 1650 (William Gray, saddler of Aberdeen, commissioned Aberdeen merchant Alexander Watson to purchase wares in Gdańsk on Gray's behalf).

4 ACA, CA2/1/36, ff.178v-81v; CA2/1/39, ff.93r-96v, 218r-219r; CA2/2/8, pp.99-103. Later on, in May 1642, William divested himself of these in favour of his own offspring, James and Katherine Rolland, but kept the liferent of some of these properties. A pot(t) denotes a pool in a river and in the present instance the Pot(t) was the name of a particular salmon fishing on the river Dee.

obligation. Later that month, Cunningham granted the receipt of these sums. But on the same day, Stewart entered into another contract with Cunningham for 515 marks Scots, which he bound himself to repay to the Edinburgh burghess over the next five years. This testifies to the confidence in these commercial transactions and is reflective of the degree of mutual trust shared by these merchants.⁵

Merchants relied heavily on procuration as a particularly useful practice to continue operating their businesses whilst away in the country or on the Continent. In September 1594, in the presence of the notary John Mason on the High Street of Ayr, John Anderson, a local merchant, agreed to the offer made to him by William Loudon, another local merchant. Anderson had previously given Loudon a 'bill of factorie' for him to sell Anderson's goods in Gdańsk. Loudon had returned home and delivered Anderson's requested goods.⁶

This legal form suited merchants setting off to do business abroad. In that particular circumstance, wives were frequently the subject of these procurations. Prior to their departure, notarially couched as 'of purpose to pas p[rese]ntlie further of yis kingdome of scotland', these merchants appointed a person they trusted, normally a relative and often their own wives, to carry out the day-to-day transactions needed for their commercial operations. This included the receipt of all debts but also, more importantly, empowered the procurator/procuratrix to sue debtors in court. In April 1633, Robert Drew, a notary in Glasgow, penned such a procuration for Archibald Galbraith, a local merchant, establishing his wife, Katherine Vallance, as his agent whilst he went away to Poland and 'vther foirrairie natiounes' for his 'affaires & bussines in my merchant trad'.⁷

As he stood at Newburgh in late June 1679 ready to embark to trade in 'the kingdome of Sweden', John Barclay, merchant burghess of Perth, had one servitor of John Whyte, a Perth notary, draft an appointment of factory for his wife Janet Haliburton to act for him during his absence.⁸ As agents for their husbands, women thus demonstrated their ability to engage in local and overseas trade in which their spouses were active and ran the families' businesses during these absences abroad.⁹

5 ACA, CA1/1/39, p.295.

6 NRS, B6/1/1/1, f.450r. Anderson's name is a tentative suggestion as the name is very faint in the record. ACA, CA2/1/6, pp.83-84 (In May 1538, Patrick Braco bound to Gdańsk gave such a letter to David Kintore, burghess of Aberdeen).

7 NRS, CC9/14/13, 6 June 1633. In August 1603, Thomas Shearer, burghess of Elsinore, subscribed a procuration for Aberdeen burghess Alexander Ross to collect a debt. Interestingly, the document was 'wretin in dens': ACA, CA1/1/41, p.354. For the involvement of women in the Scottish trade with the Baltic and North Sea, see Part One of this article (Brochard 2023a) and Talbott 2007, 108-109; see also Rorke 2005, for the broader context.

8 PKA, B59/26/8/1, bundle 1, factory John Barclay to Janet Haliburton, 26 June 1679.

9 Ewan 2000, 134; Spence 2018, especially pp.179-181; Rorke 2005.

Travellers to the Baltic and across the North Sea resorted to other types of procuration. It was convenient for them to appoint a person of trust prior to departure, notably to collect monies, whether debts or rents, back in Scotland. In August 1598, Mr John Auchinleck, having been appointed tutor-at-law to his nephew, John Auchinleck, son of the deceased Mr Andrew Auchinleck, burgess of Aberdeen, nominated two procurators to substitute him in that capacity towards his nephew. In this role, the two procurators were to manage the younger Auchinleck's lands, but also to collect a few specific debts owed to the late Mr Andrew. Mr John Auchinleck was forced to take this action as he was about to leave Scotland for 'the Pairtis of Denmark quhair he p[rese]ntlie duellis'.¹⁰ In a similar instance, in May 1649, when David Gibson, son of the late Mr Hugh Gibson of Haghill, left 'vpon my voyaage to the pairs of Polland', he established his brother-in-law Walter Macalaster, merchant burgess of Glasgow, as his procurator to uplift the rent from his tenement in the Trongate, with Macalaster keeping £96 and the interest out of these rents borrowed by Gibson to cover the outfitting of his expedition. Gibson returned to Scotland permanently in 1661 and finally discharged Macalaster of his commission in December 1661, as duly noted by Glasgow notary John Anderson.¹¹

Conversely, Scandinavian parties fully exploited the logistical flexibility that procuration enabled when trading with Scottish partners and sent their own agents to Scotland to act on their behalf and ensure the full and successful outcome of commercial deals undertaken with Scotsmen. In late April 1599 in Tønsberg ('Townisbere') in Norway, 'gart spekman' owner of the local ship, *Falcon*, entered into a charter party with Aberdeen merchant Andrew Forbes for the delivery of timber to Forbes in Aberdeen. A month later in Aberdeen, Spekman's factor, Andrew White, burgess of Tønsberg, granted the receipt of £300-worth of bere, or barley, in return for the timber on behalf of Spekman.¹²

In addition, Nordic traders used their time in Scotland to undertake the same procuratorial operation and appointed local Scots to pursue their cases in the burgh courts. In October 1568, Dutchman 'broungar hilkeis', from Westergeest ('voistergeist') in Friesland appeared before the burgh court of Crail and constituted John Morton, a local burgess, his procurator to prosecute the relevant parties for the proceeds of the recovery of a ship and its cargo, including spars, oak trees, and planks/beams ('rauturis') that broke at the Isle of May ('maiistoune/maii') in August 1568 whilst on a voyage out of Bergen.

10 ACA, CA1/1/37, pp.772-773. It is tempting to see in this Mr John Auchinleck the Elsinore schoolmaster of that name attested there earlier in that decade: SSNE, ID no. 993.

11 GCA, B10/15/91.

12 ACA, CA1/1/38, pp.530-531. The timber trade was a cornerstone of the Scottish commercial relations with Norway at the time: Smout 1999; Lillehammer 1986.

Morton was to receive the first instalment of the money thus collected and the rest was to be equally divided between Hilkeis and Morton. Hilkeis's colleague, Dutchman 'ok oksoun', likewise assigned the legal pursuit of the parties involved to Morton. In December 1568, armed with that legal right, Morton sued William Kinnear for £15 of debt owed by Kinnear for some of the cargo sold by Oksoun to Kinnear and £30-worth of the ship's equipment. In fact, the appointment of Morton as procurator was not a coincidence. The Dutchmen would have known or relied on Morton as he too carried trade in the Baltic, even if only on an occasional basis, as he certainly had been to 'norraway' earlier that year.¹³

At times, a procurator, through power of attorney, in turn appointed his own agent or representative. Parties in Scandinavia, including Scotsmen based there, thus nominated attorneys or factors who, once in Scotland, delegated their authority one step further. In September 1598, Nicholas 'Tolloffschoun', a burghess of Stavanger, appeared before Aberdeen council and through his power of attorney gave power to local burghess Robert Watson to pursue two distinct debts. The Norwegian was acting on behalf of Peter 'Tranno', foud or governor in Sunnhordland ('Soundhordlen'), to collect a 31.5-dollar debt from James Ferguson, son of the late John Ferguson elder, burghess of Aberdeen, dating back to July 1592. A further case was commissioned by Tolloffschoun's fellow burghess, Scot William Watson in Stavanger, who was trying to recover 40 dollars still owed him out of the 66 dollars contained in an obligation made by Robert Cullen, burghess of Aberdeen, to Watson in Stavanger in August 1597.¹⁴

For Scottish traders operating in the Baltic and the North Sea, procuration enabled them to run their businesses smoothly when abroad or busy attending to other tasks. It also allowed them to devolve other administrative, managerial, and financial activities not directly relevant to their trading operations, such as the collection of rents or dealing with their properties. Relatives and particularly wives were among the main recipients and beneficiaries (through empowerment and agency) of this delegation of power. Taking these notarial and burgh records as a whole, the role of women as actively engaged in trade

13 SAUL, B10/8/4, pp.419-420, 438, 486. The case relates to the legal concept of general average, that is when members of a community were required to contribute towards common burdens and, in this context, specifically losses sustained at sea being distributed among people involved in maritime ventures, for which see Ford 2021, who is very informative on this practice across the land.

14 ACA, CA1/1/38, p.7, p. 185 (Walter Bisset gave procuration at Gdańsk in August 1594 to dyer Andrew Forbes); CA2/1/36, f.3r (Patrick Donaldson senior, burghess of Aberdeen, Gdańsk 26 August 1623); CA2/1/38, ff.290r-292r (Alexander Ramsay, burghess of Aberdeen, Gdańsk 12 August 1634); CA5/1/2, 29 January 1581/2 (Robert Lawrence, burghess of Aberdeen, factor to 'Symon beir', burghess of Gdańsk). The importance of Sunnhordland for the Scottish purchase of timber is made in Pedersen 2005, 149-150, 152.

and these other activities would thus have been much more widespread across the country and more frequent than already established in the current historiography. For Scandinavians active in Scotland or dealing with Scottish parties, the same practical, commercial, and financial reasons for granting a procuration remain valid and, for them, this mandate was particularly advantageous when pursuing legal actions in Scottish burgh courts.

Litigation

In general, daily transactions tend not to appear in the record. Once established, the contract between a merchant and a client would normally be honoured and the latter would receive the goods purchased. This is the type of document that was explored in the first part of this article through notarial production. However, at times, a spanner was thrown into the works and interested parties had to come up with a solution. One such situation, albeit an extreme one, was death, and this produced its own set of remedies as studied in Part One. But the retrieving of goods or money was far from being confined to executry, and legal procedures were in place for disgruntled parties to seek redress.

Notaries played a key role in this legal process, particularly within the initial phases, as they were called upon to record any criminal activities—in essence the breaking down of that trust between the parties and, from a legal point of view, the breach of contract. In May 1564, a Hamburg trader, whose name has only come down to us as Friedrich, was arrested in Kilmuir, on the Black Isle across from Inverness, apparently on three charges. Contrary to contemporary Scottish legislation, he attempted to sail from Inverness with thirty-eight dickers of ‘nowt [i.e. cattle]’ hides and four barrels of beef. Secondly, he unlawfully disposed of his cargo of salt, soap, ‘hune’, and chests partly in Kilmuir and the rest directly across the Moray Firth in Inverness. His third charge was for illegally disposing of some of the said cargo within Inverness to Kenneth Mackenzie of Kintail who, albeit being sheriff depute of Inverness, was not a freeman of that burgh.¹⁵ The arrest was made by James Paterson, a messenger-at-arms, in the presence of two notaries who duly recorded the proceedings at Kilmuir. Such notarial testimony was useful as evidence in any subsequent court trial and was sent to courts on the Continent.¹⁶

15 NRS, NP1/25, f.16r-v. The cargo included 360 bolls of great salt, 800 ‘zopyn dalis’ [i.e. deals, planks], half a last of soap, sixty dickers of ‘red beltts’, and four tuns of wine. The term ‘hune’ could apply for the vessel part called the hound, some honey or an oven. Commercial relations between northern Scotland and the Baltic are examined in Brochard 2014.

16 DCA, Burgh and Head Court Book, 1550-1555, f.230v (a testimonial sent by Dundee to the Hanseatic city of Greifswald in north-eastern Germany, 1553).

The clerical role of notaries and writers was important in the legalization of a document. This importance can be seen with their registration of contracts and other writs in local and regional courts. For example, Heinrich Beermann in Hamburg entered into a bond with John Leslie, a resident of the Chanonry of Ross, at an unspecified date. Then, in December 1612, notary Alexander Nicholson registered that bond in the consistorial books of the commissary of Ross, as clerk of that jurisdiction.¹⁷ The registration was not a trivial act in itself. The commissary gave legal authority for its execution and the recovery of such sums as Beerman owed Leslie.

These legal avenues do not appear insignificant when considering the fact that notaries were also travellers who made their way to continental Europe. As already mentioned in Part One, the norm for Scottish contracting parties abroad was to draw the document themselves or fill in one already drafted. This does not mean though that notaries did not travel to the Continent themselves. For instance, in February 1671, notary John Christie was then in Rotterdam and drafted a contract of bottomry—which enables the borrowing of money with the ship serving as security—between two Aberdeen residents.¹⁸ In May 1587, in a case before the Aberdeen bailie court, Andrew King swore he could not prove an ‘exceptioun peremptor’ without the production of a notarial instrument. Unluckily for him, the scrivener, John Nicholson, was forth of the realm ‘in ye farrest partis of almanie’. So, the judges assigned to King until 30 November to prove the exception. Nicholson was actually none other than Aberdeen’s schoolmaster at the English school (‘to Instruct bairnis to wrett and red Inglis’) who, earlier in April 1586, was about to ‘pas to the eist countraies’, thus giving further credence to King’s statement.¹⁹

If there were any doubts left as to the validity or legal value of the registration of these contracts, the highest court of the land dispelled them. In an Act dated July 1596, the Court of Session in Edinburgh stated that extracts of contracts registered with them and subscribed by the court’s clerk of register could then be produced in foreign countries before the ordinary magistrates there. The ruling added that these extracts were then as valid as the principal contracts themselves.²⁰ This was an important point and equally applied within Scottish local courts, a customary practice of which contracted parties were keenly

17 NRS, CC19/1/1, f.36r.

18 ACA, CA2/2/11, 25 March 1671. The presence of Scottish notaries on the Continent is touched upon in Part One (Brochard 2023a).

19 ACA, CA5/1/3, 21 April 1586, 15 May 1587. Nicholson is not listed amongst the schoolmasters at the English school in *Scottish Schools and Schoolmasters*, 232. An exception peremptour is said of a legal plea made by a defendant which, if sustained, precludes further debate or question, so quashing the action (Maxwell 1958, 416).

20 NRS, CS1/4/2, ff.272v-273r.

aware. In a contract dated at Malmö in July 1560, Andrew Marr, burgess of Aberdeen, became bound to repay a 41-dollar debt to 'Jowin weyerre', burgess of Malmö, by November of that year. Marr's surety was his own cousin, 'hans willemss alias mar', burgess of Malmö. Marr also pledged to repay Willems a debt of 39 dollars 14s Danish money on that same date. By April 1563 the money still remained unpaid, and Willems appeared before the council of Aberdeen having made the journey to collect his dues. With Marr being abroad, Willems requested that these two obligations be 'registrat and transsum [make an authenticated copy] [...] in yair court buik ... In cace yat ye saidis wrytingis obligationis peris or to be tint [lost] or distroyit'.²¹

Indebtedness was one of the most common suits adjudicated before the Scottish burgh courts in relation to the Baltic and the North Sea sphere. Debts had to be settled and the contractual parties pursued various options at their disposal. One of them was relatively straightforward in terms of its conception, but not necessarily so in its full conclusion: a debtor could assign an unfulfilled bond to his creditor. This was also one way of avoiding litigation altogether and only required a notary to draft the document.²² For example, Aberdeen merchant William Davidson stood in debt to fellow local merchant Robert Williamson. To cover part of that debt, in May 1600 Davidson assigned to Williamson a bond he subscribed in Dundee in November 1599 with John Hay, son of the late Aberdeen burgess John Hay. The bond stipulated that Hay junior would pay Davidson 'within the sound' at Elsinore or Copenhagen three and a half lasts of herring or their equivalent prices. Yet, an assignation placed the onus on the assignee, in this case Williamson, to ensure the due payment of the money from that third party. In other words, Williamson still had to make sure he would collect the fish or money from Hay.²³

In terms of assignations, complications nonetheless arose. In July 1610, William Rutherford, Edinburgh merchant, in the name of Thomas Inglis, fellow Edinburgh merchant, received in Stockholm from John Weir, Inglis's servant, an obligation containing 82 Swedish dollars (£147 12s Scots) granted in Stockholm in September 1606 by Richard Paterson, a local burgess, to merchant William Flint, also Inglis's servant. Yet, Rutherford did not pay Inglis the money nor hand him the obligation. In February 1614, Inglis then constituted Edinburgh merchant Hugh Dalyell his assignee to the money and obligation. The court

21 ACA, CA1/1/24, p.650. The case typifies the wider complaints from the citizens of Malmö against Scottish traders that had marred their relations since the 1530s: Christensen 1970, 126; and Dow 1965, 34-37; Riis 1988, i, ch. 7, for additional contacts.

22 NRS, B22/1/3, f.198r (debt of 20 Danish marks owed by John Dickson, herald, to Thomas Bell in Leith which Bell assigned to John Bell, Edinburgh burgess, in 1524).

23 ACA, CA1/1/39, p.363.

ultimately intimated to Rutherford to hand over to Dalyell the money or the obligation. Being cornered, Rutherford turned against Flint for that payment or bond. This time, the court ruled in Rutherford's favour because Flint had actually borrowed the bond from Rutherford when in Stockholm in October 1612 and had to warrant Rutherford at Inglis's hands.²⁴

Creditors also availed themselves of that same legal procedure of assignation. In December 1598, James Ferguson, 'now travell[an]d in Poill', assigned 13 guilders 'spruiss [Prussian] money' to his sister Margaret which George Ker, burgess of Aberdeen, owed to Ferguson. As Ker claimed a Walter Ross in Lobsens/Łobżenica ('libgens') had paid the sum to Ferguson on his behalf, Aberdeen council directed a commission to be sent to 'the Judges in poill' to take Ferguson's oath. Just short of a year later, in October 1599, presumably informed by the findings of their Polish colleagues, the Aberdeen magistrates discerned Ker to pay Margaret £26 Scots.²⁵

Creditors and buyers additionally exploited other available avenues. An obvious one, particularly when the debtor or seller was based abroad, was to pursue the defaulter's surety. In August 1580, James Brown in Gdańsk had failed to deliver one and a half barrels and one-sixth of another barrel of salmon, which he was contracted to supply to Elgin merchant Thomas Smith. With an imminent payment out of the question, Smith prosecuted Brown's guarantor, John Innes, a fellow Elgin resident, to fulfil the obligation prior to the end of September.²⁶

When unfulfilled contracts resulted in litigation, certain procedural rules had to be adhered to in accordance with due process. With commercial activities at times running into difficulties, this called for the testimonies of witnesses in order to prove legal claims. In 1527, Niels Tøndebinder ('Tumbyndar'), citizen of Copenhagen, was cited to appear before the bailie court of Dundee by Leith merchant David Ochiltree over whether Tøndebinder's ship should be unloaded at Dundee or Leith.²⁷ In December 1636, a burgh court in Dundee ordered Janet 'kinngreis', the widow and executrix of mariner William Morgan ('morgund'), to pay William Goldman £20 received by Morgan in June that year for undisclosed commodities which Goldman ventured in Morgan's ship. These Morgan spent towards the fitting out of the ship at Stockholm. This is as much as the 'whole companie' of the ship declared and was duly verified.²⁸

24 ECA, SL234/1/8, 30 June 1614, 17 November 1614. Both Weir and Inglis were regular traders in Sweden and were engaged, among others, in the iron trade. In fact, Weir was or soon became a burgess of Nyköping: Murdoch 2006, 140-141.

25 ACA, CA1/1/38, pp.179, 910. A search to identify this Walter Ross has so far been inconclusive: Bajer 2012; Kowalski 2015; SSNE.

26 Moray Archives, ZBEL, B2/3, p.673.

27 DCA, Burgh Protocol Books, 1518-1534, f.94r, f.116v (for witnesses in Stralsund, 1528).

28 DCA, Burgh Court Book, 1633-1638, 19 December 1636.

Sometimes, these witnesses lived in the Baltic, so that it was necessary to grant enough time for their appearance before the relevant burgh courts in Scotland. As a result, unlike local witnesses who normally had to be presented within a week, courts tended to assign greater periods of time, usually sixty days, for parties to produce witnesses from abroad or for litigants living in foreign lands to swear their oaths 'according to the practict of this cunthereth'.²⁹ In April 1567, Robert Dingwall in Crail was given sixty days to enter William Annal who was then in Gdańsk as Dingwall tried to prove that John Kay in Crail had 'put away' three barrels of herring in Hull.³⁰

Nonetheless, it was not always necessary for witnesses to appear in person in Scotland, as arrangements were in place for their examination abroad before Scottish representatives. In a legal suit raised in 1597 by John King, burgess of Aberdeen, against Irving Janson/George Hanson, 'dutchma[n]' skipper of Gdańsk, for his intromission with three bars of iron, a commission was directed to 'the elderis and co[m]missionaris of the scottis nation in danskyn [Gdańsk]' for probation in the case. In April 1597, the Aberdeen bailie court ordered the dispatch of another commission to the said Scottish body in Gdańsk, for the examination of witnesses in that claim, namely William Gray, King's factor in Gdańsk, 'warting brere spruce [Prussian]' and his servants '[t]he warkmen on the briggis of danskyne'. The examination took place in Poland and proved King's version of events, so the Aberdeen court discerned that Janson's cautioner must pay King the amount due for the iron.³¹

The pursuit of legal actions in a foreign land meant that parties often needed legal representation to appear in court during a litigant's absence. Indeed, it has been shown elsewhere that foreigners could turn to a mixture of fellow countrymen and Scots, or send their own representatives as procurators, to pursue legal actions in Scotland. Moreover, in actions raised in Scottish courts, foreign litigants were instructed to find caution, in case they be found liable.³² In March 1551, Henrik/Heinrich Courtes, described as German or Danish, appointed some Edinburgh

29 SAUL, B65/8/2, 28 September 1602. In an action led by John Park against Colin Porterfield, Park alleged in March 1563 that the necessary witness was 'furtht of yis realme' and so desired no less than six months to prove his case and that a commission be sent to the burgomaster of Tønsberg: ACA, CA1/1/24, p.636.

30 SAUL, B10/8/4, pp.186, 201; and similarly ECA, Edinburgh Burgh Court Diet Book, 1599-1601, 10 January 1601 (seventy days, for witnesses in Poland).

31 ACA, CA5/1/5, 4 April and 5 September 1597. Janson was not doing particularly well before this Aberdeen judicature as within a week he was ordered to pay a local merchant eleven marks in damages for 'sum rottin hempt' being spoilt through Janson's own fault: ACA, CA5/1/5, 11 April 1597. For these international procedures, consult Murdoch 2006, 161 (a Scotsman in Sweden testified in a Stockholm court in a case involving a Scottish merchant based in Poland).

32 Finlay 2000, 34-35, 41, 163.

lawyers as his procurators to recover 400 crowns of the sun from Dumbarton merchant and skipper Robert Barrie. Barrie was alleged to have robbed Courtes of certain jars of wine and aqua vitae which belonged to George and Henry Schrever, Danes ('Dacis') and inhabitants of Hamburg.³³

Having proper documentation at hand was vital for this legal representation to operate. In a 1596 case against Patrick Smith, merchant burghess of Aberdeen, David Skene, described as a burghess of Poznań ('Poisny') in Greater Poland ('gryt Poill')³⁴, entrusted Andrew Chalmers, the son of a late burghess of Aberdeen, with a written petition against Smith for a claim of £54 as the price of seven sticks of narrow cord velvet ('belting welvolt'). This document Chalmers duly produced in front of a bailie court in Aberdeen in December 1596. Yet, the procurator for the defence argued that his client, Smith, should be absolved as Chalmers did not show any commission from Skene. In reply, Chalmers stated that the mandate was actually pending in a process before the provost and bailies of Leith. The Aberdeen court repelled Chalmers's claim until the production of the said commission.³⁵ The case demonstrated the pivotal role of legal documentation such as commissions, without which the contractual paperwork and other legal writs were rendered useless.

Bearing a proper mandate, the trader's agent could accomplish his assigned task. The Aberdeen bailie court issued an act in January 1597 whereby Alexander Forbes, a local merchant burghess, confessed a £400 debt to Paul Pálsson ('poisoun'), burghess of Flensburg ('flemisberrye') and Hans 'Ruddelyne/Rudolyne', servitor of Jacob Rostock, councillor ('ratman/Rodman') in Oldenburg ('olynberrye'), for malt, bere, and rye, which Forbes had purchased and received from them in September 1596. Armed with his authorisation 'vnder the seall' of Oldenburg dated May 1597, Pálsson appeared before the Aberdeen court in September of that year. The court found he had sufficient power and intimated to Forbes to pay Pálsson within forty-eight hours, which he did.³⁶

33 NRS, NP1/12, f.84v.

34 David Skene was the third son of Robert Skene in Belhelvie, burghess of Aberdeen. The younger Skene became a burghess of Poznań in 1586 and sojourned there until 1593 when he returned to Belhelvie. In that year, his older brother Robert Skene migrated to Poland aged forty-three very likely to continue the family business in Poland but died shortly thereafter: Grosjean 2005, 218-219; Bajer 2012, 256, 308.

35 ACA, CA5/1/5, 13 December 1596; CA1/1/40, p.484, for a payment by Smith to Skene in April 1602. The present writer is inclined to believe that either Skene left Scotland once again travelling occasionally back and forth between Poland and Scotland to take care of the family business in Poland, after his brother's death, and the family estate, the mill of Potterton in Scotland, or that his second son, David Skene junior, initially got established in Poznań prior to settling in Zamość.

36 ACA, CA5/1/5, 3 September and 10 September 1597. Earlier, in January 1596/7, Forbes had paid another £2,100 Scots of debt to the said Ruddelyne and an Otto 'klen', resident in Oldenburg, for that very same cargo of cereals, of which Pálsson was the shipmaster: ACA, CA1/1/36, p.685.

When required, the trader's agent used a power of attorney to devolve his task to a third party. This was particularly the case when Scandinavians could not prolong their stay in Scotland yet at the same time still needed to sue defaulters before a burgh court. In June 1595, William 'Owerboche/Overbock', a burghess of Lübeck, commissioned his servant Hans (alias John) 'Barrich/barmache' to try and recover a 113.5-dollar debt incurred by David Hanson (alias Thomson) then resident of Garioch beside the kirk of Insch. Due to return to Lübeck, Barrich gave commission to Robert Watson, burghess of Aberdeen, to pursue the case and delivered Watson Overbock's commission under the town seal of Lübeck as well as Hanson's obligation to Overbock.³⁷

In the probation of cases, the exchange of testimonials between Scottish and Scandinavian or North Sea burghs became part of the legal ammunition of contending parties. In October 1554 in Stirling, the case between Thomas Mitchell and Thomas Burgess led to the production of two testimonials in Latin and Danish from the Elsinore magistrates. The scrivener Robert Adamson was on duty then to make a legal copy, or transumpt, 'in Inglis' of one of them.³⁸ Notaries were often on hand to assist in making official foreign documents produced on the Continent accessible to the Scottish local courts. Notaries' linguistic talents could be wide-ranging and, beyond Latin, such writs were produced in the native tongues of the country of origin.³⁹ There is a record of a letter produced and sealed by the Dutch town of Haarlem written 'in flemisch'.

37 ACA, CA5/1/4, 19 June 1595; CA1/1/36, pp.230-31; similarly CA5/1/5, 15 October 1596, 2 June 1597 (William Duncan, merchant of Aberdeen and resident of Gdańsk, commissioned Robert Menzies, burghess of Aberdeen, to receive a debt from Aberdeen bakers and send the money to Gdańsk); 9 July 1597 (John Anderson, butcher, empowered Andrew Ewan ('evin') to collect a debt from John Clerk in Horse Crook ('horss cruik') in Belhelvie travelling to Poland 'and vtheris pairtis bezound sie').

38 Stirling Archives, B66/15/3, 19 October 1554; Riis 1988, i, 165-66; DCA, Burgh and Head Court Book, 1555-1557, f.58v (for a testimonial to be directed from Dundee to Tønsberg ('townisberie') in Norway, 1556). The production of these transumpt, or copies, was not as straightforward as it might seem. For an ordinary grant of a sasine of a meadow in Dumbarton, the original sasine was 'rekleslie tint [lost]'. Unfortunately, the protocol book where it was recorded was at the time, in May 1604, lying in Edinburgh before the Council and Session and their clerks, presumably as evidence in another legal action: Dumbarton Heritage Centre, DB1/1/0, f.80v.

39 The proficiency of notaries in Latin (touched upon in Part One) and other languages meant they played a key role in translating documents. In land transactions, the notary was frequently required to translate the precept of sasine from the Latin into the vernacular or explain its content for the benefit of the local witnesses and bailie acting as the agent of the grantor. However, the use of Scots in notarial documents is amply demonstrated through the perusal of protocol books, testifying to the notaries' more direct interaction with their clients and audiences, including the non-educated among the latter. Notaries were best suited to operate as interface between these various linguistic transactions. Indeed, Gaelic-speaking notaries also assisted as interpreters in court, notably when they acted as procurators for their clients: Brochard 2023b, 26, 56-57.

The notary Neil Ker translated the same to be used in a legal action before the Edinburgh burgh court in June 1601.⁴⁰ In September 1564, Robert Auchinleck, burgess of Dundee, approached the court in Aberdeen in his own name and on behalf of Andrew Flesher, owner of *The Tod*, against Andrew Flesher younger and William Duncan, merchants of that ship. Around August 1563, the ship had been ‘takin obefor be ye king of de[n]markis subiectis’. Auchinleck protested that, if Duncan interfered with the ship and its cargo, then the plaintiffs should receive ‘ye haill Invintor’ of their ship and cargo which they had given ‘in yair wryting [...] to ye king of de[n]mark’ as well as legal redress.⁴¹

These testimonials were not just used to assist proceedings in due process, they also offered judicial protection. Thomas Chrystal, burgess of Aberdeen, certainly made sure to adopt such a pre-emptive and protective action. In May 1562, appearing before the bailie court in Aberdeen, he told the court how he was informed that Joachim ‘Racho’, helmsman of a ship of Stralsund, and skipper Henrik ‘bodiger’ had reported to Danish royal captains and officers that Chrystal had plundered 300 dollars-worth of victual and merchandise out of a Rostock ship in the Norwegian sound ‘callit skairsound’ (Skarsfjorden near Tromsø?) about eleven years previously. With Racho and Bodiger present in Aberdeen, Chrystal wanted the court to assess the veracity of the narrative. The court used the service of Robert Jack, a resident of Stralsund ‘and int[er]pretor of ye said Joachimis langage [sic]’. Racho testified through Jack that he had never seen Chrystal before and that although he had goods stolen out of that ship, this had not been committed by Chrystal. Chrystal then requested the bailies’ testimonial which they granted him under the ‘secreit seall’.⁴²

Indeed, a burgh’s ‘privie seal’ added to a testimonial gave legal authority to that document if required. In September 1596, Peter Erikson in ‘landisburrie’ (Lundby?) in Denmark was the owner of a fly-boat then lying in Peterhead harbour (alias Keith Inch, ‘caik Insche’) loaded with victual pertaining to William Dun, merchant burgess of Aberdeen. Erikson sold his vessel to George Kinloch and William Fife, burgesses of Dundee, for £280, which they paid on that day. The Dane then delivered the boat to them and with his cautioner, the aforementioned Paul Pålsson—burgess of Flensburg (‘flemisburrie’) in Holstein himself a partner of Scottish traders—became duty-bound to guarantee the

40 ECA, Edinburgh Burgh Court Diet Book, March 1601–November 1601, 23 June 1601. Likewise, in the Aberdeen guildry accounts, there is a payment made in late May 1587 for drafting a testimonial and ‘twyss translating of ye same’ to be sent to Flanders ‘to bring hame ye flemi[n]g’: ACA, CA7/2/1, accounts 1586–1587, discharges, unpaginated.

41 ACA, CA1/1/25, pp.372–373.

42 ACA, CA1/1/24, pp.186–187.

actual sale if subsequently challenged in court. The Aberdeen bailie ordered, if need be, the issuing of a testimonial at the instance of these Dundee burghesses bearing the town's 'privie seall'.⁴³

This document, the certificate of sale, might also be delivered by foreign civic bodies. In September 1559, 'p[re]posor' Jansson, resident of Trondheim, was in Aberdeen when he sold his ship and cargo of timber to local Thomas Nicholson for 400 dollars (£400 Scots). Jansson was then duly obliged to 'impetrat [procure] ane certifica[ti]oune of ye c[oun]sell & senat' of Trondheim showing his lawful purchase of that ship from 'ane inglyisma[n]' and thereafter to send both that certificate and the Englishman's acquittance to Nicholson before the next feast of St John the Baptist in midsummer, or else to refund Nicholson.⁴⁴

The legal ramifications of the lack of paperwork or incorrect paperwork demonstrate the important role of the notary and his production. Procedurally, the absence of the relevant paperwork left the door open to a case being quashed. In 1666, in the summons of reduction of a decree of adjudication pronounced by a deputy court of admiralty held in Cromarty, the High Court of Admiralty noted, among other things, that none of the Swedish owners of the prized ship or cargo was present or heard or cited, despite the ship's appropriate passport and cocket. The presiding judge could easily have intimated to the clerk of that Cromarty judicature, notary Hugh Dallas, to request such documentation from the relevant authorities in Sweden. Yet, he failed to do so.⁴⁵

Moreover, the devil was in the details when it came to legal paperwork. When Peter Johnston in Bergen raised a legal action before the Scottish Admiralty against Gilbert Main, a white fisher in Footdee (Aberdeen), for payment for an anchor and tow (i.e. rope), Johnston then commissioned Alexander Ramsay, burghess of Edinburgh, to pursue his case as consigned on paper in Bergen in October 1594. Two and a half years later, in April 1597, Ramsay appeared before the Aberdeen bailie court and produced the said

43 ACA, CA1/1/36, p.614. See Pålsson's receipt of a ship's tackle from an Aberdeen skipper in Holmestrand ('Melstrand') in Norway in 1597: ACA, CA1/1/37, p.12.

44 ACA, CA1/1/23, pp.223-224. The currencies and exchange rate are left as written in the manuscript. The timber pertained to another citizen of Trondheim. Perhaps this is the case alluded to, or at the very least a comparable one involving Nicholson (in Murdoch 2010, 104-105).

45 Svenska Riksarkivet, Anglica, VII, vol. 542, 1660-1670, entry for the *Castle of Riga*; vol. 543, 1670-1691, entry for the *Three Kings of Amsterdam*; Steve Murdoch deserves much gratitude for providing a copy of these Swedish documents; Murdoch 2010, ch. 6. For instance, ECA, SL234/1/3, pp. 2, 6, 32 (commissions directed to the magistrates of Gdańsk); ACA, CA5/1/1, 19 May 1572 (commission to be dispatched to 'ye tou[ni]ls of danskyn spruce or pomer').

procuratory with the additional admiral's decree (dated February 1596/7) and the admiral's precept thereupon (March 1596/7). But Ramsay was left empty-handed as the judges ruled that even the admiral's decree did not give him any power to take payment for the said anchor and tow.⁴⁶

Even prior to reaching the courts and the contracting parties' endeavours towards legal settlements, the actual shipping logistics and cargo were duly regulated by this paperwork. Notaries attested documents through their instruments. In May 1561, when 'Iwer alsoun' of Tønsberg granted himself paid for the sale of a ship, its equipment, and a cargo of timber, he was only required to produce before the Aberdeen court 'ane vrying' bearing the subscription of notary Mr George Hay. This recorded the sale at Slains three days earlier between Alsoun, on the one hand, and George Hay, seventh Earl of Erroll, and Alexander Hay of Delgatie, on the other.⁴⁷ In the case of Henry Kelso in Largs before the Dumbarton burgh court in September 1634, Kelso was challenged by the local treasurer and customs officer for his payments, as an unfreeman, of the deals brought to Dumbarton 'furth of norroway' in the *Providence* of Dumbarton. Kelso objected, stating he was actually a freeman and burgess of Irvine and produced his burgess ticket dated 30 November 1632. Kelso then requested instruments and act of court, which were extracted by notary Robert Brown, town clerk. Kelso, a Largs resident, finally pledged to adhere to the decision of the Dumbarton court.⁴⁸ However, the Dumbarton magistrates did not seem to have been most impressed by the document for, a year later, in August 1635, it transpired that not only Kelso's burgess-ship of Irvine but also that of Renfrew had been 'cryit down [i.e. suppressed or disowned by proclamation]'. The court directed him to pay the customs on his cargo of salt brought to the Clyde, although still at a reduced rate, hoping that Kelso would come and settle as a resident burgess in the burgh.⁴⁹

To complicate matters, jurisdictional authority or competence remained an issue, as litigants could press to have their case transferred from one

46 ACA, CA5/1/5, 1 April 1597; Murdoch 2010, ch. 3. Meanwhile Main had been put in ward in the tolbooth of Aberdeen. NRS, NP1/9, f.53r, for a Gdańsk ship as unlawful prize, 1551. This should be set within a wider context: by 1580, the Scottish burghs made a concerted effort to recover control of the process—and around 1590 the actual jurisdiction generally—for legal disputes concerning merchants and seafarers which they had lost to the Scottish Admiralty: Ford 2021, 124, 129-137.

47 ACA, CA1/1/24, p.195.

48 Dumbarton Heritage Centre, DB1/1/1, 15 September 1634. It is crucial to note that Dumbarton did not actually object to Kelso's trading or importing as an unfreeman in the first place.

49 Dumbarton Heritage Centre, DB1/1/1, 19 August 1635. Kelso did not seem to have adhered to the injunction of settlement in the burgh: Dumbarton Heritage Centre, DB1/1/1, 7 December 1635.

jurisdiction to another. Particularly relevant for the topic under discussion was that decisions delivered in the Admiralty courts—at least for those concerning general average, or the distribution of losses among participants—tended to favour the merchants involved more than the mariners whereas in the burgh courts the opposite obtained.⁵⁰ In March 1581, Alison Anderson, widow of Henry Conqueror, indweller in Perth, and Dioneis Conqueror, in name of Henry's children, as well John Elder and his 'collegis' sued Thomas Anderson, skipper of the *Marigold*, over the payment of 'sey fair [sea fare]', the promise of goods 'in de[n]mark', damaged goods, and some of Henry's goods and debts. Skipper Anderson pressed for the case to be heard before the Perth bailie court, presumably in the expectation that he stood a better chance of getting a more congenial verdict. The pursuers instead pressed for the case to be heard before the court of Admiralty and secured a hearing for 10 April 1581 in Edinburgh. The Perth court decided to take 'to auiss [counsel/advice]' and pencilled the case to continue at the next head court on 3 April 1581, that is, before the Admiralty hearing.⁵¹

In this maritime environment, charter parties were key documents to facilitate trading between international contractors. In April 1639, Volkert Willemsoon, master of the ship the *Fortune* of Hoorn in North Holland, appeared before the burgh court of Dumbarton. His ship was lying in the Clyde beside Newark with a cargo of timber, deals and sticks ('rungis'). Willemsoon had bargained beforehand with Colin Campbell younger, a burgess of Glasgow, to freight that cargo by a charter party and load the same at Campbell's expense. This was actually paid by Thomas Cunningham, the Scottish factor in Veere and Campbell's agent. Willemsoon was able to produce, in front of the court, the charter party dated at Glasgow in September 1638. It can be surmised that to preempt any discrepancy between the contents of the charter party and his actual route, Willemsoon testified that he did not load at Trondheim ('druntoun') in Norway because there 'was no tar yr [i.e. there]' but did so at Vindafjord ('winfurd') in Norway instead. In addition, Willemsoon declared that Campbell had 'ye bill [on] how ye money was payit'. Before Willemsoon could break bulk and unload, the court required him to find caution to enter the ship and cargo in the local books to pay the relevant duties and customs, but also produce the said bill 'for instructing yt ye said laiding [cargo] is payit' by Campbell's money

50 Ford 2021, 124, 129-137.

51 PKA, B59/13/1, pp.512-513. No more is heard about the dispute subsequently, which is perhaps an indication that the Admiralty actually adjudicated it or that the contending parties had reached an out-of-court settlement.

or at least by his factor.⁵² Indeed, this was important so that the burgh could properly check that the timber was of the right size and to prevent the sale to a third party. Equally, if there was no written contract to be presented, the town was running the risk of missing out on some profits and goods, as the legislation on 'forebargain' passed by Ayr mentioned below makes clear.

Indeed, charter parties were vital documents, without which one could not ask or pursue one's dues.⁵³ The document, the charter party, was important and for its legal validity it had to be duly processed. Despite making an appearance and a declaration identifying himself as a brother and servitor to William Anderson, burgess of Stavanger, Alexander Anderson in Stavanger was left powerless in a case in Dundee in August 1629. Alexander Anderson was suing Alexander Blair, skipper of Dundee, for thirty rex dollars on behalf of his brother William, which Blair was bound to pay to William. Yet, Blair simply refused and stated he would only do so at the next meeting with William. Stavanger-based Alexander Anderson was left defenceless and could only protest before a Dundee notary that sufficient legal action be allowed for William against Blair for any damages sustained by William.⁵⁴

Some courts were of the view that charter parties were documents with an implicit time limit. In May 1630, a Dumbarton burgh court admitted the veracity of a charter party based on an oath to that effect given by Jacob 'abes', a servant of Alexander Simson in Trondheim ('druntoun'). As Abes and his partner pledged to pay the town's customs on the cargo (ca. 7,000 deals), the court allowed the sale to proceed, even though it found the sale's charter party should not stand being 'so lang since past sex q[ua]rters of zeir'.⁵⁵

More generally, burghs tried to curtail the loss of customs through 'foirbarganit', or pre-arranged, deals. A foreign seller could claim the existence of a pre-arranged agreement and so bypass the burgh's normal channel of distribution. The common bargain or bulk purchase of incoming goods meant that the burgh magistrates imposed on the seller a fixed price and the retailing of these goods through appointed distributors. There was an additional ban on anyone trying to buy these at higher prices. However, if the seller and the

52 Dumbarton Heritage Centre, DB1/1/1, 22 April 1639. It is to be remembered that the payments of these dues would be paid on top of the sums already spent on customs in the Baltic. Skipper John Cook had already disbursed 1.5 dollar (or £3 Scots) for the toll and customs at Stockholm and Elsinore on behalf of sailor Robert Murray for the latter's goods when Cook sailed in the *Lion* from Stockholm to St Andrews in June 1589: SAUL, B65/8/1, 5 August 1589, and similarly 22 and 26 August 1589; B65/16/1, p.77.

53 As claimed in the case of a freighted bark between Dundee and Stockholm in March 1604: SAUL, B65/16/1, pp.1-2.

54 DCA, Protocol Book of Thomas Kessane, 1616-1641, f.28v.

55 Dumbarton Heritage Centre, DB1/1/1, 21 May 1630.

town magistrates could not reach an agreement, then the seller might sell to any individual freeman, but not cheaper than the price first proposed by the town.⁵⁶ In July 1586, Ayr council ruled that only bargains passed by charter parties duly authenticated by the town clerk would stand in future. The same applied for transactions entered abroad, with the charter parties to be attested by the local clerk or through written testimonies substantiating the deal.⁵⁷

The power of charter parties, the terms of which are often preserved in notarial instruments, reached beyond commercial obligations and affected people's daily lives and civic duties.⁵⁸ In late June 1637, Dysart skipper James Guthrie found himself in a difficult position. At the previous meeting of the town council, Guthrie had been appointed to carry the ensign at the next muster day scheduled for 13 July 1637. However, Guthrie had undertaken 'a voyadge towards stockhollim', which his charter party bound him to leave within a week, weather permitting, or face 'ane great penaltie'. On this occasion, the council did exempt Guthrie from his military charge yet still imposed on him a ten-dollar fine and appointed a substitute to replace him.⁵⁹

Alternatives had to be found when business could not operate normally for these Scots and Baltic residents, forcing them to secure redress through due process. The role played by notaries comes as foremost in that preventive phase, through their drafting documentation and registration to avert judicial action. When that failed, litigants became bound by legal procedure that relied heavily on proper paperwork, underscoring yet again the role of notaries in facilitating that process, not just as mere clerks but also, for instance, as translators and recognised legal officials.

Conclusion

As we have seen in the first part of this article, in relation to procedures concerning death, deputation was an important feature in the relations between Scotland and the Baltic. This was organised through the means of a letter procuratory or procuration. Procuration facilitated people's daily lives and particularly suited the needs of frequent travellers such as Scottish or Baltic

56 Walker 1995, 348; Dumbarton Heritage Centre, DB1/1/3, 2 and 6 July 1657, 11 and 15 June 1658.

57 Ayr Archives, B6/11/1/3, ff.361v-362r.

58 Notarial records contain precious information concerning charter parties for commercial operations in the Baltic: DCA, B19/1/3, 30 July 1576 (for a timber cargo in Norway); and more generally Part One (Brochard 2023a). Interestingly, though a number of these documents were drafted in Scotland, they could nonetheless be written in a foreign language such as 'Dutche': ACA, CA5/1/5, 14 September 1596; CA1/1/36, p.612.

59 NRS, B21/10/1, f.29v.

traders, including for direct trading exchanges between them through the role of agents. These Scots and residents of the Baltic employed that useful and practical legal means for a large range of activities from the collection of debts to the receipt of formal possession of lands or property, as well as to run the family business. Through the latter instance, women were put at the forefront of these commercial activities during their husbands' absence.

A final circumstance under which individuals resorted to procuration was for legal representation in court. Yet again, notaries and professional writers facilitated that judicial process both in an anticipatory or preventive mode to reduce and moderate risk (through contracts and charter parties) and in a corrective mode as participants in the judicial system. As with procedures dealing with death, studied in the first part of this paper, litigation ensured that there were adequate paperwork and procedures in place to underpin and smooth these daily connections between Scotland and the Baltic at crucial points of friction and tension within these exchanges. In themselves, relevant paperwork and procedures have demonstrated that the bedrock of these exchanges is founded on the two complementary notions of trust and deputation. When these broke down, legal procedures were available for redress, with notaries as agents contributing to and underpinning that process.

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