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## Lawyers' letters as an historical source

What can lawyers' letter books, a generally overlooked source of information, tell us about the culture of the legal profession in early nineteenth-century Scotland? As they contain the daily grind of legal business, and the law itself is sometimes regarded as a dry subject, they appear not to have been regarded by historians as fertile ground for investigation. Letter books, however, reflect the breadth of engagement lawyers had with the world around them. Comprising copies of letters sent by lawyers to clients, fellow lawyers, and other parties, these sources formed an essential aide-mémoire for their compilers but, for modern readers, can provide in one place a snapshot of contemporary culture. Local and social historians; genealogists; anyone interested in the development of Scotland's infrastructure and built heritage can benefit from examining their pages. Individual volumes often include copies of letters written by clients and others, and sometimes preserve other kinds of document within them that allows glimpses into commerce and social life.

While a drawback of letter books is that they often provide only one side of a story, particularly where litigation is concerned, their contents may be amplified and corroborated by other surviving evidence. They offer the possibility of identifying a narrative and building a picture of a particular client or phenomenon, either through ongoing discussion with that client or via related correspondence with others. This might include, for example, information about the application of the poor law; emigration and local commercial activity. For anyone interested in the history of law agents, there can be few better resources for investigating relationships between lawyers and customary behaviour within their profession.

This article aims to discuss in outline four such letter books; to use sampling to analyse some of the data that may be drawn from them; and to offer some general conclusions about the lawyers involved, the nature of their practice and the broader value of letter books as an historical source. The chronological range spreads from the 1810s to the 1850s and the letter books discussed here reflect practice in different forms (partnerships and sole practitioners) and across different areas of Scotland from Selkirk to Inverness.

### *The lawyers*

This study focuses on the activities of four lawyers with supplementary evidence, drawn from what is known of the practice of other lawyers, being used to provide additional context. The first of the four, James Russel (c.1788-1858), was an apprentice to the Falkirk writer and district tax collector James Aitken (c.1768-1818) and took over his business when Aitken died.<sup>1</sup> He was licensed as a writer, notary public and conveyancer in the sheriff court of Stirlingshire from 30 January 1818.<sup>2</sup> Russel was the trustee for the creditors in the sequestration of the Falkirk Union Bank, a process which began in 1816 (Aitken, his apprentice-master, had been one of the bank's partners).<sup>3</sup> The name of the firm, Russel & Aitken, survives to this day, although Russel, at the time of his surviving letter books, was in practice on his own account.

Thomas Falconer (1803-1874) was the son of James Falconer of the parish of Aberlour in Banffshire. He was admitted as a notary in 1829 and, later that year, as a procurator in the

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<sup>1</sup> J. Finlay, ed., *Admissions Register of Notaries Public in Scotland, 1700-1799* (2 vols, Edinburgh, 2012) [henceforth *ARNP 1700-1799*], II, no. 2653. Aitken died, aged 50, on 11 Feb. 1818.

<sup>2</sup> National Records of Scotland [NRS], SC67/26/1, unpaginated, 30 Jan. 1818.

<sup>3</sup> E.g. NRS CS271/1400; C.W. Munn, *The Scottish Provincial Banking Companies 1747-1864* (Edinburgh, 1981), esp. 60, 69, 71; S.G. Checkland, *Scottish Banking: A History, 1695-1973* (Glasgow, 1975), 312, 314.

sheriff court of Inverness-shire.<sup>4</sup> He was the law agent of Alexander Mackintosh (1787-1861) of that ilk, who was from 1833 the 26<sup>th</sup> chief of Clan Mackintosh (and referred to as ‘The Mackintosh’).<sup>5</sup> Mackintosh owned Moy Hall, ‘a good house and convenient summer seat’ at the west end of Loch Moy, south of Inverness, but lived at Daviot House near the River Nairn.<sup>6</sup> He, along with his factor, Alexander Colvin at Balvenie, were regular correspondents of Falconer in relation to estate business.

Thomas Dykes (1792-1876) was the son of John Dykes (d. 1804) of Woodside House, Hamilton, and the brother of the naval surgeon, Dr John Dykes (1786-1863) whom he mentions in his correspondence.<sup>7</sup> His father had served in the Royal Navy and his mother, Isabel Millar (1756-1821), was sister of the advocate James Millar of Halhill (d. 1824) who also features as one of his correspondents.<sup>8</sup> He corresponded with another uncle, John Millar, who was in America in the 1820s.<sup>9</sup> Dykes was enrolled as a procurator in the sheriff court of Lanarkshire at Hamilton (in the Middle Ward of Lanarkshire) in 1814 and admitted as a notary in 1816.<sup>10</sup> He was associated in business with his brother, James Millar Dykes (b. 1787), another Hamilton writer, but broke that connection at Martinmas 1819 having formally intimated his resolve to ‘carry on business entirely on my own account’.<sup>11</sup>

Dykes was a relatively common name in Lanarkshire and, while Thomas had a brother called William (1791-1866) this was not the same person as the writer William Dykes, who can be found working in Edinburgh, Hamilton and later Strathaven, with whom he professionally corresponded.<sup>12</sup> Shortly before the death of this William Dykes, who was also baron bailie of Strathaven (appointed by the duke of Hamilton), Thomas wrote to his clerk.<sup>13</sup> Having heard that his ‘friend’ William was very unwell, he offered to assist during his recovery ‘should any particular business occur which I can execute’.<sup>14</sup> Co-operation between lawyers of this kind was by no means unusual, albeit there was an element of self-interest involved in this case.

Thomas Dykes was locally well connected, eventually becoming procurator fiscal in the sheriff court and clerk to the lieutenancy of Lanarkshire.<sup>15</sup> He also operated as a bank agent for the Paisley Union Bank, the type of position which was not unusual for a writer of his standing.<sup>16</sup> With his wife, Isabella Alston (1799-1860), whom he married in 1822, he had

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<sup>4</sup> J. Finlay, ed., *Admissions Register of Notaries Public in Scotland, 1800-1899* (2 vols, Edinburgh, 2018) [henceforth *ARNP 1800-1899*], I, no. 1645.

<sup>5</sup> NRS, Papers of the family of Mackintosh of Mackintosh, GD176.

<sup>6</sup> L. Shaw, *The History of the Province of Moray* (Elgin, 1827), 139.

<sup>7</sup> Glasgow City Archives [GCA], Letter books of Thomas Dykes, writer, Hamilton, T-DY1/1/4, Dykes/James Millar, advocate, 25 Oct. 1821. As these volumes are unpaginated, only the dates can be given.

<sup>8</sup> Millar was one of Dykes’ referees when he became a notary. Another referee was Archibald Millar W.S. (1767-1823), the fourth son of Professor John Millar and Dykes was agent for Archibald’s brother, Professor James Millar (1762-1831).

<sup>9</sup> E.g. GCA, Letter books of Thomas Dykes, writer, Hamilton, T-DY1/1/6, Dykes/Mr John Millar, Brighton, County of Monro[e], State of New York, 4 Oct. 1824; T-DY1/1/4, Dykes/Mr Wilson of Woodend, near Carnwath, 22 Jan. 1822. This was almost certainly John Millar who was born in 1750 in the parish of Cambuslang, making him the brother of Isabel and James.

<sup>10</sup> Finlay, ed, *ARNP 1800-1899*, I, no. 794.

<sup>11</sup> GCA, Letter books of Thomas Dykes, writer, Hamilton, T-DY1/3, Dykes/James Millar Dykes, 2 Jul. 1819. James apparently died around Sep. 1820: Dykes/William Thomson & son, writers, Dumfries, 5 Nov. 1821; NRS, Stewart of Urrard papers, GD1/394/58/18, Ann Torrance/Major William Charles Alston, 18 Sep. 1820.

<sup>12</sup> His brother William was also a doctor.

<sup>13</sup> William Dykes died on 26 Sep. 1826: Old Parish Registers (Deaths), Avondale, 631, p. 333.

<sup>14</sup> GCA, T-DY1/1/8, Dykes/James Thomson at Mr Dykes’s Office, Straven [sic], 20 Sep. 1826.

<sup>15</sup> *Brown’s Hamilton Directory for 1855-6* (James Brown: Hamilton, 1855), p. 13.

<sup>16</sup> GCA, Letter books of Thomas Dykes, writer, Hamilton, T-DY1/1/5, Dykes/Allan Fullarton, 19 Nov. 1823. He was no longer the agent by 1825: *Pigot’s New Commercial Directory of Scotland for 1825-26* (London, n.d.), 541.

eight sons, including John Dykes (1823-1869), sometime fiscal and a banker, and William Alston Dykes (b. 1828), writer and banker, both of whom joined him in business (and as agents for the Royal Bank of Scotland), the firm still surviving today as T.G. & W.A. Dykes.<sup>17</sup> Another son, James Alston Dykes (1833-1889), also became procurator fiscal.

The final lawyers are the Selkirk writers and partners, George Rodger (c. 1760-1834) and John Paterson. Rodger, probably the son of the Selkirk merchant James Rodger (1724-1773), began work in the office of Cornelius Elliot W.S. in Edinburgh during which time, in 1782, he became a notary public.<sup>18</sup> He married Isabel Cunninghame ('Bell Chininhame') in Selkirk in September 1786.<sup>19</sup> By the early 1790s, Rodger was procurator fiscal of the county of Selkirkshire.<sup>20</sup> Acting variously as treasurer and bailie of the burgh of Selkirk, he then gained appointment for life as burgh clerk in 1803.<sup>21</sup> By 1809 he was also clerk to the lieutenancy of the county and held the role of county collector of assessed taxes from at least 1816.<sup>22</sup> Less is known about John Paterson's background, although he was long active as a writer and messenger in Selkirk, working in partnership with Rodger from at least 1803.<sup>23</sup> Paterson's correspondence with the Lyon clerk, in which he confirms that his cautioners as a messenger were alive and solvent, is preserved in the firm's letter book.<sup>24</sup> The longevity of their business relationship was unusual, since it continued for well over a decade at a time when most lawyers' partnerships were short-lived. The longer-term survival of firms such as Russel & Aitken is the exception rather than the rule.

### *The letter books*

Unlike notarial protocol books, which were of a standard size and formally issued by the clerk to the admissions of notaries public, letter books vary considerably in dimension.<sup>25</sup> As private documents, they required none of the security precautions applicable to protocol books each of which, prior to issue, was signed on the first and tenth page by the issuing clerk. Letter books were typically not signed at all and often lack a title page. This made them susceptible to loss and, while no survey has been attempted here, few examples appear to survive in archives. Even notarial protocol books, which were supposed to be preserved as a public record, have by no means all survived. On the other hand, letter books do sometimes contain an index which would subsequently have added significantly to their practical utility.

Surviving letter books generally arise from and reflect provincial practice. The letter book of the crown agent John Davidson W.S. (d. 1797) is a rare survival for a Court of Session

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<sup>17</sup> The firm was under the name of T. J. & W.A. Dykes in 1855-6 (Thomas, John and William Alston Dykes): *Brown's Hamilton Directory for 1855-6*, p. 13. William Alston Dykes (b. 1828) was Thomas's third son. There was a fourth son, Thomas (b. 1831). There was a strong relationship between the Dykes and Alston families and this is also evident from the letter books. Dykes assisted Col. William Charles Alston in researching his family history: e.g. NRS, Stewart of Urrard papers, GD1/394/58/4, 23.

<sup>18</sup> Finlay, ed., *ARNP 1700-1799*, II no. 2282.

<sup>19</sup> Isabel Cunningham died in 1792. In 13 Dec. 1798 Rodger married Christina Robertson (d. 1822): Old Parish Registers (Marriages), Kelso, 793, p. 305.

<sup>20</sup> Scottish Border Archives [SBA], Hawick, D/47/75/1.

<sup>21</sup> SBA, Selkirk town council minutes, BS/1/1/9 (unpaginated), 31 Mar. 1803.

<sup>22</sup> SBA, D/47/80/3, Alexander Pringle to George Rodger clerk to the Lieutenancy County of Selkirk, Selkirk, 2 Aug. 1809; SBA, D/42/14/7, George Scott, tax office in Jedburgh, to Rodger, county surveyor of taxes, 26 Nov. 1816; Pigot, *Commercial Directory*, 659.

<sup>23</sup> SBA, Walter Mason papers, D/47/77/9, Joseph Gillon to Rodger & Paterson 29 Dec. 1802; D/48/54/1, George Craig to Messrs Rodger & Paterson, 30 May 1803.

<sup>24</sup> SBA, Rodger & Paterson Letter book, D/45/35/2, fo. 515 (9 May 1820).

<sup>25</sup> Finlay ed., *ARNP 1700-1799*, pp. 12-13.

practitioner.<sup>26</sup> The larger examples appear to survive in Aberdeen and Glasgow. The letter books of the firm of advocates in Aberdeen, Davidson & Garden, for instance, survive in 206 volumes for the period 1808 to 1912.<sup>27</sup> In Glasgow, there are letter books connected with firms such as Hill & Hoggan and A.J. & A. Graham.<sup>28</sup> Those of Mitchells, Johnston & Company of West George Street in Glasgow begin in 1800 and run, in 77 volumes, to 1851.<sup>29</sup> These are on a much bigger scale than the letter books being discussed here. For example, in the six months from 1 April to 30 September 1816, the firm of Mitchells Johnston (comprising three partners and one clerk) wrote 886 letters to 371 correspondents. This was at the rate of 5.68 letters per day which, as Tables 2 and 3 in the Appendix show, is significantly higher than that of the lawyers who are the primary focus here.<sup>30</sup> The sample is unusual in having a high proportion of letters (10 per cent) addressed to correspondents outside Scotland; it also had a higher percentage of letters (33.9 per cent) addressed to Edinburgh correspondents than the provincial practitioners studied here (see Tables 4-7).

It is not surprising to find a larger firm in a growing commercial centre like Glasgow operating differently to practitioners in smaller towns. Larger businesses, for example, would have the resources and the need to instruct litigation in the Court of Session on a fairly regular basis. Further research, however, is required to provide a nuanced analysis of the differences in patterns of communication; types of business undertaken; and numbers and categories of correspondent between practitioners of different types. Thomas Dykes, for example, was one provincial lawyer who was no stranger to Court of Session litigation.

As the nineteenth century progressed, firms began to use wet transfer letter books. These, employing a process patented by James Watt (1736-1819), made use of very thin moistened sheets of paper and a copy press to make an impression of each original letter, with some of the ink of the original being transferred to the thin paper of the copy book.<sup>31</sup> The impression was a mirror image of the original but the text in such volumes is sometimes blurred. The letter books of Mitchells, Johnston & Co., by the early 1820s, are in the form of wet transfer books and some of the letters are illegible.<sup>32</sup> Another, later, example is the wet letter book of the Perth firm R. Macgregor Mitchell & Company which commences in 1897 and runs to 892 folios.<sup>33</sup> This is a more legible text, suggestive of technical improvements in the copying process. Thomas Dykes adopted wet letter books in 1843, and his firm continued to use them after his death, but only one of these volumes is deposited in the archives.<sup>34</sup>

Turning to the correspondence considered in the present study, James Russel's letter books survive in two folio volumes. The first volume commences on 16 February 1818, within a month of the death of Russel's apprentice master. It ends on 31 August 1818 and contains 515 numbered pages.<sup>35</sup> The second volume commences on 1 September 1818 and

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<sup>26</sup> NLS, Letter book of John Davidson of Stewartfield WS, MS10787. This covers the period 10 May 1774–13 Jan. 1777; R. Scott-Moncrieff, *The Scottish Bar Fifty Years Ago* (Edinburgh, 1871), XXXIII.

<sup>27</sup> Aberdeen University Library, Special Collections [AULSC], Papers of the Grant Family, Alford, MS 2769/II/7.

<sup>28</sup> GCA, Hill & Hoggan papers, T-HH/8/5/1-7 (1821-1832); A.J. & A. Graham, T-AG/12, letter books 1824-1858 (20 vols). Edmonds and McQueen (later Ledingham Chalmers) was founded in 1850.

<sup>29</sup> *Ibid.*, T-MJ/1-77.

<sup>30</sup> GCA, Graham & Mitchell papers, T-MJ/58.

<sup>31</sup> The process is explained in detail by Dr Brian H. Davies, 'Before the Photocopier', a blog published by Ceredigion Archives: <https://archifdyceredigionarchives.wordpress.com/2015/04/21/before-the-photocopier/> (accessed 23 Mar. 2022).

<sup>32</sup> E.g. GCA, Graham & Mitchell papers, T-MJ/61.

<sup>33</sup> Perth and Kinross Council Archives, MS68/9/1.

<sup>34</sup> GCA, Letter books of Thomas Dykes, writer, Hamilton, T-DY1/23. This covers Apr.-May 1898.

<sup>35</sup> Falkirk Archives [FA], Callendar House, Falkirk, Russel & Aitken papers, A1887.002. Pagination appears to be contemporary.

ends on 24 April 1819, containing 721 numbered pages.<sup>36</sup> Both volumes are indexed. A third letter book, that of James Aitken, also survives. This is a quarto volume, unpaginated, which covers the period 7 March 1798 to 16 May 1799.<sup>37</sup> Its contents, however, will not be considered here.

Twenty-two paper letter books from the office of Thomas Dykes survive running from 1817 to 1843 when, as noted, he began to use wet transfer letter books. This survey will examine five in this series.<sup>38</sup> These are unpaginated and not indexed and their coverage is set out in Table 1:

Reference	Period	Folios
GCA, T-DY1/1/2	18 Mar. 1818-22 Jun. 1819	462
GCA, T-DY1/1/3	22 Jun. 1819-3 Jul. 1821	474
GCA, T-DY1/1/4	6 Jul. 1821-5 May 1823	453
GCA, T-DY1/1/5	5 May 1823-28 Jul. 1824	458
GCA, T-DY1/1/6	29 Jul. 1824-14 Oct. 1825	458

Table 1

Four folio volumes of letter books survive from the office of Thomas Falconer. They cover the following dates: (i) 16 November 1833 to 14 March 1835 (191 pages)<sup>39</sup>; (ii) 19 March 1835 to 15 April 1836 (138 pages)<sup>40</sup>; (iii) 15 April 1836 to 9 March 1840 (272 pages)<sup>41</sup>; (iv) 3 June 1843 to 3 December 1850 (337 pages).<sup>42</sup> The first two volumes are continuously paginated but it is impossible to confirm when this was done. None of the volumes contains an index. The fly leaf of one volume bears the description ‘Mackintosh of Mackintosh’s letter book’. The contents generally relate to Mackintosh estate business. There is a reference, however, to a ‘General Letter Book’ which suggests that Falconer was not exclusively concerned with the affairs of that estate.<sup>43</sup>

What survives of Rodger & Paterson’s letter books is a single folio volume which covers the period 27 February 1818 to 22 November 1820.<sup>44</sup> It contains 567 pages but is unindexed. A wealth of ancillary material relating to the business of the firm survives in the Borders Archive. Rodger & Paterson individually also feature heavily in the letter books of the Galashiels writer George Craig (1783-1843) which are the subject of a separate study but will occasionally be mentioned below.<sup>45</sup>

A general feature of letter books is the obvious fact that clients living at a distance were more regular correspondents than those who resided nearby, where face-to-face communication was more readily used, and the greater number of letters often results in a more coherent picture of their affairs. This therefore may skew the bias in surviving correspondence not only towards absent landlords but also towards Edinburgh lawyers who always provided their services at a distance except on those occasions when the agent paid them a visit.

A second feature of letter books generally is the fact that while some agents had more clients than others, this does not inevitably mean a greater diversity in the subject matter of the business discussed in their correspondence. The estate affairs reflected in the

<sup>36</sup> Ibid., A1887.003.

<sup>37</sup> Ibid., A1887.001.

<sup>38</sup> The first volume, GCA, Graham & Mitchell papers, T-DY1/1/1, is sadly missing.

<sup>39</sup> AULSC, Thomas Falconer, letter books, MS 844.

<sup>40</sup> Ibid., MS 845.

<sup>41</sup> Ibid., MS 846.

<sup>42</sup> Ibid., MS 847.

<sup>43</sup> Ibid., MS 845, Falconer to Messrs McDonald & Adam, writers, Fort William, 20 Jul. 1835.

<sup>44</sup> SBA, D/45/35/2.

<sup>45</sup> On Craig, see J. Finlay, *George Craig of Galashiels* (Edinburgh University Press, forthcoming, 2023).

correspondence of Thomas Falconer and Alexander Mackintosh, for example, illustrate the operation of a range of legal processes.

Perhaps the most important feature is the fact that only a small proportion of the originals of the letters recorded in letter books appear to survive. They were written for an immediate purpose and were not the kind of documents deemed important enough by recipients to preserve. There are only a few surviving examples of the thousands of letters which Thomas Dykes wrote out on the 'thin wove letter paper' that he preferred to use.<sup>46</sup> Without his letter books, little more than the bare details of his career would be discernible from other sources.

### *Networks*

The major aspect of legal practice that only letter books can fully capture is the web of professional contacts within the legal community occasioned both by the nature of legal practice and local commerce. Scotland had no shortage of lawyers. As one of John Paterson's clients bemoaned in 1811, when a creditors' meeting was planned at Stow, he would lose out in a sequestration because 'the lawyers will take all the money that is arested [sic] as there is so many [sic] wrippers imployed about it'.<sup>47</sup> Letter books, however, demonstrate the full spectrum of an agent's professional engagement.

Rodger & Paterson's letter books illustrate this. They corresponded with writers in Galashiels (George Craig, Daniel Ferguson, John Paterson<sup>48</sup>); Kelso (Charles Wilson); Haddington (James Macnab); Duns (James Watson); Hawick (John Oliver and, later, Oliver & Elliot; Gilbert Amos; Robert Scott, James Inglis); Dumfries (Francis Shortt; Edward Dawson); Jedburgh (Robert Rutherford, George Reid, William Reid); Peebles (Alexander Rattray); Coldstream (William Reid); Langholm (Archibald Scott); Melrose (David Spence, Erskine & Curle); Moffat (Richard Johnston) and their own native Selkirk (Andrew and Robert Henderson, Andrew Lang). Occasionally they had contact further afield, such as with the attorney Samuel Edge in Manchester.<sup>49</sup>

The geographical span of Thomas Dykes' correspondence included Glasgow, Edinburgh, Strathaven, Irvine and Dumfries. For Russel, the writers he communicated with were primarily in Stirling, Linlithgow, Lanark, his native Falkirk and in Glasgow and Edinburgh (where we must distinguish between local practitioners and those practising in the Court of Session, such as writers to the signet and members of the Society of Solicitors in the Supreme Courts of Scotland). Falconer's business was more restricted but his contacts were generally clustered around Kingussie, Fort William and Elgin.

The balance in each case is slightly different. All agents dealt with debt, generally to quite a high degree. Chasing after individuals with poindings, hornings and the like was a regular part of business. James Russel in Falkirk was extensively involved in conveyancing and executry work as well as litigation. Much of his correspondence therefore concerned establishing the validity of titles; instructing searches for incumbrances, and dealing with services of heirs.<sup>50</sup> With all agents, however, local social and economic circumstances had an influence on workload.

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<sup>46</sup> GCA, TD-Y1/1/4, Dykes/William Turnbull, bookseller, Glasgow, undated [21 or 24 Jul. 1821]; *ibid.*, 10 Aug. 1821.

<sup>47</sup> SBA, Walter Mason papers, D/47/81/5, James Tait/John Paterson, 9 Feb. 1811.

<sup>48</sup> This was not Rodger's partner but another John Paterson (d. 1823).

<sup>49</sup> E.g., SBA, Rodger & Paterson Letter book, D/45/35/2, fos. 307, 350.

<sup>50</sup> E.g. FA, Russel & Aitken papers, A1887.003, fo. 152, Russel/Will Vary, writer, Lanark, 4 Nov. 1818; *ibid.*, fo. 480, Russel/Fleming & Strang, writers, Glasgow, 26 Feb. 1819; *ibid.*, fo. 156, Russel/James Renny, Barrwood, Kilsyth, 6 Nov. 1818.

### *Local variations*

It was natural for regional differences to affect the pattern of business and for this to be reflected in correspondence. In Falkirk, Russel was employed as agent for the Forth & Clyde Canal Company and pursued rents and debts on their behalf, pointing out to one debtor in justification that ‘employers orders must be obeyed’.<sup>51</sup> One of his regular correspondents was Walter Logan, superintendent of the Forth and Clyde Canal Navigation at the Canal Office in Glasgow.<sup>52</sup> Proximity to Grangemouth saw Russel involved in mercantile matters such as the sale of a merchant vessel in 1819.<sup>53</sup> Another local aspect was the Falkirk Tryst which was a major cattle market. In one instance Russel wrote to John Hoser, who operated the Broomrigg Toll, demanding redress and an apology because he had forced his client John Stirling, from Castlecary, to pay the toll before he could take his cattle to the market even though, he told him, ‘it must be well known to you the direct Barony road from Castlecary to the Falkirk Tryst does not ly by your toll bar’.<sup>54</sup>

In Lanarkshire, Dykes, as well as the usual range of sequestrations, leases, protested bills and rent disputes, dealt with repairing damage to land which resulted from coal mining.<sup>55</sup> It was also geography that dictated that Dykes was caught up in the Radical Rising in April 1820. He records spending 24 hours in the barracks in place of the regular troops assigned to maintain order.<sup>56</sup>

Falconer in Inverness suffered from a problem that cannot have been found only in the Highlands. This was the difficulty in matching the more modern Lochaber place names in Mackintosh’s rental book to the corresponding areas in the older title deeds where the heritable rights to ‘the lands grazings and sheilings’ were recorded.<sup>57</sup> While rent arrears were commonplace, he dealt with them in relation to crofters rather than farm tenants.<sup>58</sup> In any rural part of Scotland, poaching was likewise a common enough concern, and often the subject of correspondence between lawyers and fiscals or sheriff clerks. Falconer, however, found himself in the unusual position of writing to the sheriff depute of Inverness, William Fraser Tytler (1777-1853), about an alleged trespass Tytler himself had made on Mackintosh’s property where he was caught shooting game. Tytler claimed to have been given permission, but Mackintosh replied in strong terms, noting that the verbal permission he had given had related to the previous season and chastising the sheriff for falsely claiming otherwise to his gamekeepers. Despite the evidence, and having prepared a petition against Tytler, Falconer advised that he had ‘much doubt whether we can succeed in getting a Bench of Justices in Inverness who will convict him’.<sup>59</sup>

In Selkirk, poaching was also a regular occurrence and actions were sometimes brought by the Tweed commissioners, another reminder of local geography.<sup>60</sup> George Rodger, paymaster of the Selkirk yeomanry, described to Alexander Pringle of Yair (a captain in the yeomanry) how the ballot process under the 1802 militia legislation operated locally. This was prompted by Robert Robson who had appeared bearing a letter from Pringle which he hoped would

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<sup>51</sup> *Ibid.*, fo. 396, Russel/Lachlan & McIntosh, 26 Jan. 1819.

<sup>52</sup> E.g., *ibid.*, fo. 146, Russel/Logan, 4 Nov. 1818.

<sup>53</sup> *Ibid.*, fo. 701, Russel/Messrs Honeyman & Graham, Grangemouth, 20 Apr. 1819.

<sup>54</sup> *Ibid.*, fo. 144, Russel/Hoser, 30 Oct. 1818.

<sup>55</sup> GCA, Letter books of Thomas Dykes, writer, Hamilton, T-DY1/1/5, Dykes/Alexander Stirling, farmer, 23 Oct. 1823.

<sup>56</sup> *Ibid.*, T-DY1/1/3, Dykes/John Dykes Edinburgh, 5 Apr. 1820.

<sup>57</sup> AULSC, Thomas Falconer, letter books, MS 845, Falconer/John Anderson, 5 Jun. 1835.

<sup>58</sup> E.g. *Ibid.*, MS 844, fo. 200, Falconer/Thomas Macdonald, writer, Fort William, 14 Jul. 1834.

<sup>59</sup> *Ibid.*, MS 844, fo. 207, Falconer to Mackintosh, 20 May 1834.

<sup>60</sup> E.g. SBA, Rodger & Paterson Letter book, D/45/35/2, fos. 267, 494.



exempt him based upon his 'infirm state'.<sup>61</sup> Robson, like everyone else, would be inspected by the surgeon if selected in the ballot. It was possible to nominate and pay for a substitute (a high proportion of recruits were substitutes) or to become exempt altogether by paying £10.<sup>62</sup> Rodger noted, however, that 'Ballotted men are procuring substitutes and paying as high as £10 for them, which to me appears ridiculous but they are the best judges'.<sup>63</sup>

### *Edinburgh agents*

All local lawyers had at least one Edinburgh correspondent, usually a writer to the signet, to whom they wrote on diverse topics. This kind of relationship was essential for a number of purposes. These may be summarised under the heads of obtaining specialist advice (e.g. about points of conveyancing or the management of Court of Session litigation); obtaining documents not available elsewhere (e.g. documents under the royal signet, such as letters of horning or caption); and obtaining funds for investment. James Bruce, factor in Orkney for the landowner Lord Dundas but not himself a law agent, was unusual in copying his regular letters to his Edinburgh agents, John Ker W.S. and later Henry Dickson W.S., separately at the back of his letter books. This was to differentiate them from his more workaday correspondents who were usually local but included occasionally other writers to the signet, such as Tod & Hill W.S.<sup>64</sup>

Another reason for corresponding with a writer to the signet might be the preference of the client, since wealthier clients sometimes chose to rely mainly on their Edinburgh agents to oversee their local business. The latter might in turn instruct local lawyers to carry out essential tasks when necessary. An example of this is Lord Napier whose agent, Alexander Hunter W.S., instructed George Rodger in Selkirk to arrange with the presbytery the presentation of a new minister to the church at Ettrick. In the absence of Napier, and his son Captain Napier who normally resided at Thirlestane, Rodger stated that he would be 'highly gratified' to introduce the new minister, Mr Bennet, to the parishioners since he knew that that 'remarkable fine young man' was a complete stranger to them.<sup>65</sup>

While one or two of them would typically predominate, most local lawyers corresponded with a range of Edinburgh practitioners. Looking at six-month sample periods, for example, as set out in the Appendix, Roger & Paterson corresponded with 8 writers to the signet and Falconer with only 2. Dykes and Russel, however, the most active litigators, corresponded more often with writers to the signet. In Russel's case, the figure was 31 involving 102 letters amounting to 15.6 per cent of his entire correspondence. In regard to Dykes, whose correspondence contained a higher proportion (49.1%) of letters to lawyers and sheriff officers generally than anyone else surveyed, more than one in five of his letters in the survey period went to writers to the signet.

Russel's main Edinburgh contacts, for example, were William Renny W.S. and Nicol Robertson S.S.C. and these were the men tended to rely on for advice and to get things done. Renny, who was solicitor of legacy duties in the Stamp Office, he described as a 'friend' and he was clearly someone whose needs he was willing to accommodate.<sup>66</sup> In one case, for instance, he paid Renny's account because Renny needed the funds even though, as he noted,

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<sup>61</sup> 42 Geo. III, c. 98. Pringle of Yair was an officer in the Midlothian yeomanry and later MP for Selkirkshire: G.W.T. Omond, *The Arniston Memoirs 1571-1838* (Edinburgh, 1887), 311-12.

<sup>62</sup> On the procedure, see R.W. Weir, *A History of the Scottish Borderers Militia* (Dumfries, 1877), 2, 12-13, 15.

<sup>63</sup> SBA, Rodger & Paterson Letter book, D/45/35/2, fo. 423, Rodger/Pringle, 17 Nov. 1819.

<sup>64</sup> E.g., Orkney Library and Archive, Shepherd & Wedderburn (Drever & Heddle) Solicitors, miscellaneous volumes, letter books (outgoing), D7/9/20.

<sup>65</sup> SBA, Rodger & Paterson Letter book, D/45/35/2, fo. 44.

<sup>66</sup> GCA, Letter books of Thomas Dykes, writer, Hamilton, T-DY1/1/2, Dykes/Renny, 20 Feb. 1819.

he himself had as yet ‘not fingered a farthing’ in the matter’.<sup>67</sup> In another case, he sent Renny as an intermediary to Archibald Campbell W.S., having previously asked Campbell to draft a charter of confirmation which Russel then sought to alter. When Campbell declined to adopt the amendments, Russel asked Renny to call on him in the hope that they might find some clause that would ‘obviate the difficulty’.<sup>68</sup>

Specialisation in conveyancing or litigation was by no means an inevitable feature of the practice of a writer to the signet, although resort was often had to their advice. In Inverness, Falconer employed John Anderson W.S. for general matters affecting the Mackintosh estates as well as specific conveyancing transactions. Having infefted Mackintosh in the lands of Lochlagganside, in December 1833, for example, he forwarded to Edinburgh the precept of *clare constat* he had obtained from the curator of the Earl of Seafield (the superior) together with the instrument of sasine thereon.<sup>69</sup> Anderson also dealt with requests for letters of horning and other more routine matters. Falconer advised Mackintosh to obtain Anderson’s opinion before attempting to litigate with the possessor, Lady Mackintosh, in the sheriff court to recover a sword—a family relic presented by the wealthy merchant Sir William Innes to Sir Aeneas Mackintosh (d. 1820)—under Sir Aeneas’ deed of entail.<sup>70</sup>

The type of documents which Edinburgh practitioners were called upon to provide, aside from family papers in their possession or extracts of registered deeds, were usually connected to the recovery of debt. In Selkirk, John Paterson routinely served letters of horning, such as the two sets which he returned executed in August 1818 to Alexander Douglas W.S. subjoining thereto ‘a note of my fees which are placed at your debit’.<sup>71</sup> Since debt was such a prevalent theme of legal practice, writers generally maintained an account with local messengers-at-arms who executed hornings on behalf of their clients. A good illustration of this occurred by chance when John Riddle Stoddart W.S. wrote to Thomas Dykes in the mistaken belief that he was a writer in Lanark, asking him to arrange for letters of horning to be executed against a debtor near Biggar. Dykes informed Stoddart of his error but also sent the horning to the Lanark messenger, James Young, for immediate execution, telling Young of the mistake. He also instructed Young to send Stoddart his note of expenses ‘including 2/1 for postage to me for which you may give me credit’.<sup>72</sup> Dykes and Young would have had an ongoing financial relationship, balancing and clearing accounts periodically.

When the debtor was foreign, letters of arrestment *ad fundandam jurisdictionem* would be sought. In 1800 Robert Graham in Glasgow applied to William Patrick W.S. for such letters because executing them was a necessary prelude to having a summons executed at the ‘Market Cross, peer and shore’ in an action by a Glasgow merchant against merchants in Port Royal, Virginia.<sup>73</sup> Sometimes such a step necessitated specialist advice. Russel, for example, followed a similar process when his client’s vessel the *Prince George* (Captain Duncanson) was damaged at sea by the *Twins of Sunderland*. He wrote to Nicol Robertson S.S.C., noting that the *Twins* was an English vessel with an English captain. As it was ‘cleared and ready for sea’ he wanted it arrested *jurisdictionis fundandae causae* in the admiralty court as soon as possible.<sup>74</sup> Unfortunately, it had sailed for London (the captain having ‘taken leg bail’ as Russel called it) before the admiralty precept arrived.<sup>75</sup> Russel, despite the ‘great expense’ of

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<sup>67</sup> SBA, Rodger & Paterson Letter Book, fo. 121, 22 Oct. 1818.

<sup>68</sup> FA, A.1887/003, fo. 70, Russel/Campbell, 25 Sep. 1818. See also fo. 59.

<sup>69</sup> AULSC, Thomas Falconer, letter books, MS 844, fo. 110.

<sup>70</sup> *Ibid.*, fo. 179 (12 May 1834). On Sir Aeneas, see C. Lodge, ‘Mackintosh, Sir Aeneas [Angus]’ *Oxford Dictionary of National Biography* (2004).

<sup>71</sup> SBA, Rodger & Paterson Letter book, D/45/35/2, fo. 102.

<sup>72</sup> GCA, Letter books of Thomas Dykes, writer, Hamilton, T-DY1/1/2, Dykes/Young, 18 Jul. 1818.

<sup>73</sup> GCA, Graham & Mitchell papers, T-MJ/47, fos 84-5.

<sup>74</sup> FA, Russel & Aitken papers, A1887.003., fo. 175, Russel/N.W. Robertson S.S.C, 13 Nov. 1818.

<sup>75</sup> *Ibid.*, fo. 181, 16 Nov. 1818.

pursuing the owners in England, was asked by Captain Duncanson to obtain Robertson's opinion of the steps he ought to take in the circumstances to recover damages.<sup>76</sup> Further action followed when, a couple of months later, Russel discovered that the brig was in London and he lost no time in sending down the appropriate papers.<sup>77</sup>

The relationship between local writers and writers to the signet was necessarily a close one, since they shared confidential papers and information about their clients. Just as Thomas Dykes had financial relationships with messengers, the same was true of the Edinburgh agents with whom he regularly did business. While this was normally done at a distance, in 1818 Dykes, having been authorised by Gavin Alston WS to obtain payment from a mutual client on his behalf, he informed the client that Alston was 'at present in this part of the country; and wishes it paid before he returns to Edinburgh'.<sup>78</sup>

Various aspects of the writer/writer to the signet relationship is revealed in correspondence quite by chance. One example relates to Alexander Mackintosh's Edinburgh agent, John Anderson W.S., who decided to emigrate in 1835, presumably to the West Indies since that is where he died in 1839.<sup>79</sup> This led to a 'bustle of preparation to leave Scotland' which saw his client's papers handed over to Thomas Falconer to be transmitted to a new Edinburgh agent, Alexander Duff W.S.<sup>80</sup> By replacing Anderson, the son of a former Inverness writer, with Duff who was the son of the former sheriff clerk of Elginshire, Mackintosh ensured that he continued to employ an agent in Edinburgh who had local knowledge. Anderson travelled to Inverness in September 1835 with his accounts which Falconer examined and agreed the balance.<sup>81</sup> Later that month Falconer accompanied him to Liverpool from where he took ship across the Atlantic. This is reflected in a three-week gap in Falconer's correspondence, although he took advantage of the trip to head to Edinburgh on his return 'on the Business of the chief'.<sup>82</sup> Part of this, it transpired, involved adding Mackintosh's name as a subscriber to Donald Gregory's *History of the Western Highlands and Isles of Scotland* which was published by the Edinburgh bookseller William Tait the following year. He subsequently asked Duff to collect a copy from Tait's and send it north.<sup>83</sup>

Writers to the signet often managed considerable sums on behalf of clients who sought investment opportunities and local lawyers, in the role of land agents and factors, often provide appropriate outlets for those funds. On the other hand, estates could also be entangled in debt. In 1821 Thomas Dykes sent a note of particulars to Gibson, Christie & Wardlaw W.S. in relation to lands owned by the late John Boyes jr (1750-1812) which he had factored for a number of years. Every lawyer's letter book contains intractable clients and long-drawn out disputes and, in Dykes' case, it was the affairs of Boyes' trustees.<sup>84</sup>

### *Boyes' trustees*

The affairs of Boyes trustees provide a good example of how lawyers' correspondence can unearth and explain relationships. John Boyes jr of Wellhall (1750-1812) was a writer who

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<sup>76</sup> Ibid., fo. 187, 18 Nov. 1818.

<sup>77</sup> Ibid., fo. 348, 15 Jan. 1819.

<sup>78</sup> GCA, Letter books of Thomas Dykes, writer, Hamilton, T-DY1/1/2, Dykes/John Scott of Blacklaw, 20 Mar. 1818.

<sup>79</sup> *The Society of Writers to his Majesty's Signet* (Edinburgh, 1936), 62.

<sup>80</sup> AULSC, Thomas Falconer, letter books, MS 845, Falconer/J.&W. Jollie W.S., Edinburgh, 15 Aug. 1835.

<sup>81</sup> Ibid., Falconer/The Mackintosh, 2 Sep. 1835.

<sup>82</sup> Ibid., Falconer/Alexander Colvin, 2 Sep. 1835.

<sup>83</sup> Ibid., MS 846, fo. 13, Falconer to Alexander Duff W.S., 11 Jun. 1836.

<sup>84</sup> GCA, Letter books of Thomas Dykes, writer, Hamilton, T-DY1/1/4, Dykes/James Millar, advocate, 25 Oct. 1821.

was factor for the duke of Hamilton and paymaster of the Lanark militia.<sup>85</sup> Like his father John, who was also a writer, Boyes was known to Professor John Millar of the University of Glasgow.<sup>86</sup> In 1790 Millar had asked him the favour of supporting his son, Archie (1767-1823), then still an apprentice WS, by directing business his way.<sup>87</sup> When Boyes died in 1812 he left two sons, John *tertius* (1783-1819) and Robert who went to India.<sup>88</sup> In 1813 John *tertius* had married Thomas Dykes' elder sister Elisabeth (b. 1790) and set up the trust to dispose of his estate.<sup>89</sup> By 1823, as well as Elisabeth, Dykes and his brother John were the surviving trustees but, due to debts on the trust estate, some issues proved intractable and led eventually to Court of Session litigation in 1830.<sup>90</sup>

The case was managed by Roderick Mackenzie W.S. who had long been familiar with the administration of the trust. In 1824, Dykes wrote to him in relation to a separate action that had been raised relative to the trust estate, which had fallen asleep due to inactivity, mandating him to take it up again. The process was in the possession of James Ivory (1792-1866) who had, two years before, been instructed to answer some objections. Dykes directed that

the action must be wakene'd without loss of time and I think the counsel should be changed, for in the first place, there is no getting on with Mr Ivory, and in the second place he has taken it into his head that we have a bad case, and assigns that as the cause of his delay, so that I suspect we may not get much good of him he is so much damped in the case.<sup>91</sup>

He left it up to Mackenzie, however, to examine a memorial Dykes had prepared for Ivory in 1822 and judge whether to retain him as counsel 'or immediately to employ another'.

An interesting feature of the trust was Dykes' use of his uncle, James Millar, in Edinburgh to carry out tasks on his behalf, such as delivering money to legatees.<sup>92</sup> Another is the fact that when the lands of Hairmyres, part of the trust estate, were sold off the University of Glasgow had an interest. Dykes wrote to Laurence Hill W.S., 'factor to the College of Glasgow', because the transaction had triggered a division of teinds which affected the teind duty payable to the university thereafter.<sup>93</sup> The Dykes-Boyes-Millar relationship is an interesting one and it would appear that in the 1820s Dykes had benefited from it by inheriting the local legal business of the duchy of Hamilton from the Boyes family, acting for

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<sup>85</sup> GCA, Letter books of Thomas Dykes, writer, Hamilton, T-DY1/1/5, Dykes/Laurence Sullivan, 26 Jun. 1823. Cf. George Rodger, also paymaster of the local militia in Selkirk, e.g. SBA, Rodger & Paterson Letter book, fo. 41.

<sup>86</sup> John W. Cairns, 'The Letters' 45 (2019) *History of European Ideas*, 237, 267-8 (letters 29-30). John Boyes jr was the son of John Boyes (b. 1727), writer and sheriff clerk depute in Hamilton: NRS, Papers of the Boyes family, GD1/507/4.

<sup>87</sup> Cairns, 'The Letters', 237, 288 (letter 47).

<sup>88</sup> GCA, Letter books of Thomas Dykes, writer, Hamilton, T-DY1/1/5, Dykes/Laurence Sullivan, War Office, London, 26 Jun. 1823

<sup>89</sup> Elizabeth Dykes was divorced from General Baillie, on the basis of her adultery: *Mrs Baillie v General Baillie*, 23 May 1821, Sh. App. 27. She married John Mackenzie in Hamilton in 1823. This may have been John Mackenzie at Wellhall, formerly paymaster of the Rifle Brigade: GCA, Letter books of Thomas Dykes, writer, Hamilton, T-DY1/1/5, Dykes/James Marshall, Bellshill, 26 Apr. 1824.

<sup>90</sup> GCA, Letter books of Thomas Dykes, writer, Hamilton, T-DY1/1/5, Dykes/McGrigor, Murray & McGrigor, writers, Glasgow, 16 Dec. 1823; *Dykes &c. v Boyes* (1803) 8 S. 439.

<sup>91</sup> GCA, Letter books of Thomas Dykes, writer, Hamilton, T-DY1/1/5, Dykes/Mackenzie, 7 May 1824.

<sup>92</sup> E.g. *ibid.*, T-DY1/1/4, Dykes/Millar, 24 Nov. 1821.

<sup>93</sup> *Ibid.*, T-DY1/1/5, Dykes/Hill, 8 May 1824.

the duke in the sheriff court and elsewhere and dealing with other matters.<sup>94</sup> He also acted as the agent of Archibald Millar W.S. whose career he had supported throughout. When Millar died in 1823, Dykes disputed an alleged account claimed by another local writer, Thomas Paterson, for having represented Millar in court claiming that “I do not think that Mr Millar ever since I came to Hamilton, employed any other Agent than myself”.<sup>95</sup>

### *Litigation*

Correspondence often reveals the details of local court litigation and private opinions about it. In particular, local lawyers instructed by other agents could be candid in discussing whether to appeal to the sheriff depute from the judgment of the sheriff substitute in the time allowed to do so before the latter became final. Craving the sheriff depute’s opinion, Thomas Dykes informed one client, could be done ‘at a very trifling expense’ although ‘he almost uniformly adheres’.<sup>96</sup> This was a reference to William Rose Robinson, sheriff depute of Glasgow. Dykes had not been shy in threatening Robinson’s substitute, William Aiton, with an appeal if he did not withdraw an interlocutor which delayed the execution of letters of caption.<sup>97</sup> The sheriff clerk had already informed him of the interlocutor, but the delay prejudiced Dykes’ client—the duke of Hamilton—and Dykes thought it had been obtained illegitimately. For Dykes, the primary question was whether the duke

is entitled to have his case carried thro in terms of the Regulations of Court, and from the instructions I received as to this case, it is impossible for me, consistently with my duty, to allow the opposite agent’s irregular proceedings to have the effect of delaying the case, if it is in my power to prevent it....<sup>98</sup>

Aiton was a local writer and notary public in Strathaven with at least 30 years’ experience.<sup>99</sup> Even so, Dykes directly complained about him to the sheriff depute in another case, evidently successfully because he expressed satisfaction that there was ‘no chance of any farther irregularities occurring on the part of the Substitute in that action’.<sup>100</sup>

Aiton was replaced in 1823 by Walter Moir, although Dykes did not regard him as an improvement during his brief tenure of the office.<sup>101</sup> He described some of Moir’s judgments variously as ‘quite wrong’, ‘decidedly wrong’ and ‘wrong both in law and justice’.<sup>102</sup> When Moir moved to Glasgow as substitute, Dykes literally underlined the fact that he had been ‘promoted’, implying surprise and contempt.<sup>103</sup>

Once a local decision was final, the case might be advocated or transferred to the Court of Session, although it was sometimes necessary for a local lawyer to send the papers in a process to Edinburgh to obtain advice on whether and how best to transfer the matter. An

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<sup>94</sup> E.g., *ibid.*, T-DY1/1/4, circular re rent arrears, 15 Oct. 1821; T-DY1/15, Dykes/Mr McHardie, sheriff clerk, Glasgow, 21 May 1823.

<sup>95</sup> *Ibid.*, T-DY1/1/5, Dykes/William Anderson, 27 Jan. 1824. Paterson acted for Millar’s tenant but used Millar had denied ‘that he had given any countenance’ to this.

<sup>96</sup> *Ibid.*, T-DY1/1/5, Dykes/Campbell Naismith, 11 Nov. 1823; Dykes/Allan Fullarton, 19 Nov. 1823.

<sup>97</sup> Aiton was appointed by Robinson who had, soon after his appointment as sheriff depute in 1822, dismissed the three then acting as Lanarkshire substitutes: A. Peterkin, *Review of the First Report from His Majesty’s Law Commission at The Constitution of the Sheriff Courts in Scotland* (Edinburgh, 1835), 7.

<sup>98</sup> GCA, Letter books of Thomas Dykes, writer, Hamilton, T-DY1/1/4, Dykes/Aiton, 5 Jan. 1822.

<sup>99</sup> Finlay, ed., *ARNP 1700-1799*, vol. II, no. 2516.

<sup>100</sup> GCA, Letter books of Thomas Dykes, writer, Hamilton, T-DY1/1/4, Dykes/Roger Ayton W.S., 8 Jan. 1822.

<sup>101</sup> NRS, Melville papers, GD51/6/2189.

<sup>102</sup> GCA, Letter books of Thomas Dykes, writer, Hamilton, T-DY1/1/4, Dykes/Campbell Naismith, 25 Feb. 1823; T-DY1/1/5, Dykes/Allan Fullarton, 21 Nov. 1823; Dykes/Campbell Naismith, 11 Nov. 1823.

<sup>103</sup> *Ibid.*, T-DY1/1/5, Dykes/Duncan Stewart, writer, Edinburgh, 27 Jan. 1824.

example of this appears in a letter from Dykes to William Waddell W.S., an agent he knew very well and upon whose advice he normally relied. Waddell was to determine whether the process 'was in proper shape' to be presented in the higher court.<sup>104</sup> As Dykes was personally interested in the case, his preference was to find a technical means of bringing it forward while keeping his own name out of it as a principal party. On another occasion, Dykes sent a process, consisting of 14 separate documents and an inventory, to John Meik W.S. so that he might give his opinion on the wisdom of transferring the case to Edinburgh.<sup>105</sup> The same month, on his client's instruction, he sent a concluded case to Andrew Millar W.S. to draw up a bill of advocacy to have the matter transferred to the Court of Session. The process, which he described as 'rather complex', contained at least 38 documents and in terms of the detail he left it to Millar to do 'as you think proper', noting that the preoccupation was to ensure that expenses were, at least, shared between the parties.<sup>106</sup>

Clients sometimes demanded that their case be taken before the Court of Session. Thus Falconer informed the procurator Alexander McTavish that their client, Mackintosh, the clan chief, intended to abandon a case in the sheriff court and raise it in the Court of Session.<sup>107</sup> He then wrote to Mackintosh's Edinburgh agent, John Anderson, sending him the relevant deeds along with the sheriff court summons and the defences.<sup>108</sup> The case was important, concerning a lease granted by Mackintosh's uncle which was thought to be in contravention of a deed of entail. Given the subject matter, Falconer had urged his client to obtain the opinion of counsel, something he said was 'almost always done in cases involving so important an Interest'.<sup>109</sup> Falconer continued to be the conduit between Mackintosh and Anderson, discussing the terms of the entail at great length as the matter progressed.<sup>110</sup> Anderson was evidently well acquainted with Mackintosh's title deeds some of which he possessed (the rest were in Daviot House, superintended by Mackintosh's factor, Alexander Colvin).<sup>111</sup> This particular action, ending in victory out of court for Mackintosh, lumbered on until favourably terminated in May 1836, by which time it had been taken over by Alexander Duff W.S.<sup>112</sup>

Direct engagement with counsel was rare but did occur. Another Lanarkshire resident (albeit born in Roxburghshire) for whom Dykes had a predilection, the advocate George Cranstoun, features in his correspondence. Notably, Dykes addressed a memorial to him directly at his estate at Corehouse, near Lanark, enclosing the fee of five guineas, without going through Cranstoun's clerk.<sup>113</sup> Dykes also sent a memorial directly to another advocate, George Joseph Bell and received an opinion within a week.<sup>114</sup> In Inverness, Falconer established a relationship with John Hope, then dean of the Faculty of Advocates. In the question of whether a right of shooting over an entailed estate could be granted for a period beyond the lifetime of the heir, he recommended to his Edinburgh agent in 1834 that the matter be submitted 'to some eminent counsel' and Hope appears to have been selected.<sup>115</sup>

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<sup>104</sup> Ibid., T-DY1/1/4, Dykes/Waddell, 5 Apr. 1823.

<sup>105</sup> Ibid., T-DY1/1/3, Dykes/John Meik W.S., 19 Jul. 1819.

<sup>106</sup> Ibid., T-DY1/1/2, Dykes/Archibald Millar W.S., 9 Jul. 1818.

<sup>107</sup> AULSC, Thomas Falconer, letter books, MS 844, fo. 255, Falconer/McTavish, 16 Dec. 1834.

<sup>108</sup> Ibid., fo. 256, Falconer/John Anderson W.S., 20 Dec. 1834.

<sup>109</sup> Ibid., fo. 254, Falconer/Alexander Mackintosh, 15 Dec. 1834.

<sup>110</sup> E.g., *ibid.*, fos. 273-5, Falconer/Anderson, 2 Mar. 1835.

<sup>111</sup> Ibid., MS 845, fo 289, Falconer/Anderson, 15 May 1835.

<sup>112</sup> Ibid., MS 846, fo. 11, Falconer/Alexander Duff W.S., 28 May 1836. He took the case over in October 1835: *ibid.*, MS 845, Falconer to Duff, 22 Oct. 1835 (no pagination).

<sup>113</sup> GCA, Letter books of Thomas Dykes, writer, Hamilton, T-DY1/1/4, Dykes/Cranstoun, 8 Aug. 1821; also T-DY1/1/7, *idem*, 29 Sep. 1826.

<sup>114</sup> Ibid., T-DY1/1/2, Dykes/Bell, 5 Aug. 1818; Dykes/Captain Millar, 11 Aug. 1818.

<sup>115</sup> AULSC, Thomas Falconer, letter books, MS 844, Falconer/The Mackintosh, 5 Apr. 1834; MS 845, Falconer/Adam Duff W.S., 22 Oct. 1835.

On his trip north from Liverpool in 1835, he stopped at Edinburgh and, on a Saturday morning, went to see Hope who had not yet written out his opinion but did so in time for Falconer to receive it before he left town.<sup>116</sup> Once Mackintosh decided to litigate Falconer, less familiar with practice in Edinburgh than Dykes or Russell, wrote to the agent, Adam Duff, to make certain of Hope's services:

If you consider that the Dean is not retained by the fee given him with the Memorial, you can have the goodness to order a retaining fee to be sent him as early as possible.<sup>117</sup>

The norm, of course, was instruction of counsel through writers to the signet in this way. James Russel and David Thomson W.S. took great pains in adjusting a memorial before presenting it to counsel, probably because Thomson's opinion differed from that of Russel on the point of law concerned.<sup>118</sup> In the event, counsel's opinion was 'completely' against Russel's client and continued to be so even after the memorial was further amended.<sup>119</sup>

### *Office practice*

Letter books can provide information about employees and office practice. Dykes occasionally mentions his clerk, James Scoular, but rarely by name.<sup>120</sup> Occasionally, Scoular sent out letters on behalf of his employer.<sup>121</sup> When Scoular is named this tends to coincide with Dykes having been absent on business elsewhere. Thus, for example, Scoular borrowed up a process in the justice of the peace court when Dykes was in Edinburgh.<sup>122</sup> On another occasion, Dykes expressed his disappointment to the sheriff clerk when his clerk informed him that no interlocutor had been pronounced in an action of damages in which he had, for some months, been seeking the opinion of the sheriff depute.<sup>123</sup> There are later references to other clerks, acting in Dykes's absence, but only by means of their initials.<sup>124</sup>

Thomas Russel also mentions a clerk but not by name. He mentions to John Mackenzie W.S. the discharge of a debt and that 'my young *Man* is engaged in extending it', a reference to his clerk preparing a final copy of the document for signature.<sup>125</sup> In another letter he notes that 'one of my young men' had been instructed to prepare drafts of deeds to be sent to the client for revisal before they were extended.<sup>126</sup>

### *Criminal Justice*

For those holding office as procurator fiscal, their letters can provide incidental detail about the investigation and prosecution of crimes. This periodically includes searches for suspects,

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<sup>116</sup> Ibid., MS 845, Falconer/The Mackintosh, 28 Sep. 1835.

<sup>117</sup> Ibid., Falconer/Duff, 22 Oct. 1835.

<sup>118</sup> FA, Russel & Aitken papers, A1887.003, fos. 2-4, Russel/Thomson, 2 Sep. 1818; also fos. 19, 64-5. Counsel was 'Mr Bell' which narrows it down to 4 members of Faculty.

<sup>119</sup> Ibid., fo. 64, Russel/Thomson, 24 Sep. 1818 (see also fo. 82); idem, fo. 128, 24 Oct. 1818.

<sup>120</sup> E.g. GCA, Letter books of Thomas Dykes, writer, Hamilton, T-DY1/1/3, Dykes/Archibald Millar W.S., 31 Jul. 1819.

<sup>121</sup> E.g. ibid., J.S./John Russell, sheriff officer, Straven [Strathaven], 2 Aug. 1819; J.S./Charles Peebles, writer, Glasgow, 4 Oct. 1819.

<sup>122</sup> Ibid., T-DY1/1/4, Dykes/James Young, messenger at arms, Lanark, 22 Jan. 1822.

<sup>123</sup> Ibid., T-DY1/1/6, Dykes/James Thomson, sheriff clerk, Hamilton, 3 Nov 1824.

<sup>124</sup> E.g. ibid., T-DY1/1/7, 'A.C./Messrs Taylor & Gardner, writers, Glasgow, 4 Mar. 1826; ibid., 'W.B./James Peden, messenger, Straven [Strathaven], 26 Aug. 1824.

<sup>125</sup> FA, Russel & Aitken papers, A1887.002, fo. 290, Russel/G.L. Finlay WS, Edinburgh, 26/12/1818.

<sup>126</sup> Ibid., A1887.003, fo. 658, Russel/Andrew Russell, Stirling, 14 Apr. 1819.

such as John Little who was ‘lurking’ in the shire of Peebles in 1819.<sup>127</sup> George Rodger, erstwhile procurator fiscal for the county of Selkirkshire, provides a good example. His letters cover instances of violence and the threat of violence (leading in one case to ‘the dread of bodily harm’ justifying the taking out of letters of lawburrows).<sup>128</sup> In 1820 he wrote to Adam Rolland W.S., the crown agent, in connection with a child found exposed at Torwoodlee. Interestingly, the mother had not yet been located because she was thought to be ‘shearing in Berwickshire’, but Rodger wanted an opinion, from crown counsel if necessary, on precognitions taken by the sheriff substitute.<sup>129</sup> Fiscals also had to settle accounts with the Lord Treasurer’s Remembrancer in the Exchequer Chamber in Edinburgh and correspondence about their expenses can shed particular light on their activities.<sup>130</sup> Letter books can also offer insights into processes not often discussed in any contemporary trial record.

During the period of his letter book the most significant crime which George Rodger dealt with was the killing of a man at a village north-west of Selkirk in what was described as ‘an affray amongst tinkers’. This was a reference to the *Romani* community which was well-known to contemporaries, particularly to lawyers and estate managers such as William Smith of Kelso.<sup>131</sup> On 23 June 1818 ‘two tinkers had a battle at Yarrowford’ resulting in wounds which proved fatal to William Irvine.<sup>132</sup> Irvine died on 3 July, and, as Rodger informed the fiscal for the county of Dumfries-shire, the surgeons, at the behest of the sheriff substitute, ‘who opened and examined his body are clearly of opinion that his death has been occasioned by the maltreatment he received from William Kennedy’.<sup>133</sup> The story of what happened next is contained within the subsequent correspondence which can be cross-referenced with the circuit court records. It is worth setting out in some detail because it demonstrates the singular value of this kind of source in providing an account of the investigatory and administrative steps undertaken in the wake of the killing.

Rodger had Irvine supervised by the attending surgeon, Thomas Anderson, in Selkirk. He asked Charles Erskine, sheriff substitute, to attend on the morning of Saturday 27 June after Anderson advised him that Irvine was dying and that he intended to have his body inspected after death.<sup>134</sup> Anderson’s assistant, Mr Buckham, joined two other surgeons (including Ebenzer Clarkson) at the post-mortem examination. Once the body had been interred, Rodger informed Erskine that Clarkson would make himself available should Erskine incline to speak to him. He was asked to report on the cause of death when Erskine was again to be in Selkirk on Wednesday 8 July. Rodger had meantime prevented Irvine’s widow from leaving so that she might also be interviewed.

Kennedy was believed to have served in the militia in Dumfriesshire where he was reported to be well-known, having ‘volunteered into the Royals’ (the Royal Scots, an infantry regiment).<sup>135</sup> Rodger sent a copy of the sheriff’s warrant to the Dumfries-shire fiscal. Two

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<sup>127</sup> SBA, Rodger & Paterson Letter book, D45/35/2, fo. 318, Rodger/procurator fiscal, Peeblesshire, 1 Apr. 1819. This is perhaps the John Little who confessed to theft at the circuit court in Dumfries in Sept. 1819: NRS, JC26/1819/106.

<sup>128</sup> SBA, Rodger & Paterson Letter book, D45/35/2, fo. 457, Rodger/William Anderson, 27 Jan. 1820.

<sup>129</sup> Ibid., fo. 550, Rodger/Rolland, 28 Aug. 1820.

<sup>130</sup> E.g. ibid., fo. 565, Rodger/George Robson, L.T.R., Edinburgh, 9 Nov. 1820.

<sup>131</sup> SBA, Smith & Robson WS papers, SBA/183, John A. Fairley, ‘Baillie Smith’s Account of the Gypsies of Kirk Yetholm in 1815’ (Hawick, 1907); A.V. Tokely, ‘The Kirk Yetholm Gypsies’ (1996) *Borders Family History Society Magazine*. The phrase ‘Scottish Border Gypsy’ was used by contemporaries.

<sup>132</sup> SBA, Rodger & Paterson Letter book, D/45/35/2, fo. 66, George Rodger to Ebenezer Clarkson, surgeon, Selkirk, 25 Jun. 1818.

<sup>133</sup> Ibid., fo. 74, Rodger to the fiscal of Dumfriesshire, 4 Jul. 1818.

<sup>134</sup> On Erskine, who was Sir Walter Scott’s local man of business, see Finlay, *George Craig of Galashiels*, 4, 131.

<sup>135</sup> SBA, Rodger & Paterson Letter book, D45/35/2, fo. 71, Rodger to the fiscal of Dumfriesshire, 29 Jun. 1818.



weeks later, Rodger sent a copy of a precognition at his instance to the crown agent, Hugh Warrender W.S., to be laid before crown counsel.<sup>136</sup> On the same day (14 July) he informed Charles Erskine that the Yarrowford constables had been summoned before the justices of the peace and reprimanded for not apprehending Kennedy before he left the area.<sup>137</sup> He suggested advertising a reward for information based on the descriptions of Kennedy Erskine had obtained from witnesses. In the meantime, Rodger wrote to the Yarrowford innkeeper seeking a better description, including of the clothes Kennedy was wearing when last seen. At the end of that month, he received the opinion of the king's counsel on the case and transmitted that to the sheriff substitute.<sup>138</sup>

Kennedy remained at large, failing to appear before the circuit judges at Jedburgh in September.<sup>139</sup> He was however later captured and on 23 November Rodger informed the Crown agent that Kennedy had been transported from Ayr, lodged in Selkirk tolbooth, and then examined by the sheriff substitute. As Roger told the sheriff substitute, the constable reported that the prisoner had behaved 'exceedingly well' on the journey.<sup>140</sup> Kennedy was anxious to go to trial and Rodger suggested a trial in Edinburgh rather than maintaining him locally until the circuit court arrived in April.<sup>141</sup> He argued that it was only about 16 miles further to Edinburgh from Yarrowford than it was to Jedburgh, therefore the cost of an Edinburgh trial would not be much greater. Evidently, however, Irvine was remanded in Selkirk and the decision was made to try him at the next circuit court.

On 6 April next Rodger wrote to Robert Shortreed, the sheriff substitute at Jedburgh, informing him that Erskine had a justiciary warrant authorising the magistrates to send Irvine to Jedburgh for trial before the circuit judges. Erskine wanted a Jedburgh officer to come to Selkirk to escort the prisoner, with the county of Selkirk 'willing to pay such proportion of the expense as shall fall upon them'.<sup>142</sup> The trial took place shortly thereafter, with Kennedy, upon conviction for culpable homicide, sentenced to 14 years' transportation.<sup>143</sup>

### *Pugnacity*

Law agents could be as equally determined as their clients to see their rights vindicated. In 1819 Thomas Dykes sent a copy of a decret of the Lanarkshire justices of the peace to an Irish attorney named Wright.<sup>144</sup> The decret was from a case brought at the instance of the Blantyre weaver John Robertson against Lieutenant Thomas Garth of the Royal Dragoons, then stationed in Dublin. In dispute was a terrier dog which Garth had vindicated as belonging to him before the divisional JP court at Lanark. He had asserted that Robertson had stolen the dog from him. The decision was later reversed when Robertson successfully sought restitution of the dog in an appeal to the General Quarter Sessions of the JP court for the entire county held at Hamilton. Dykes asked Wright to recover expenses, plus interest, and to seek delivery of the dog or, alternatively, damages if delivery proved impossible. Garth, however, failed to respond. In May 1820, and again a year later, Dykes wrote to the duke of York, as Commander in Chief of the Army, seeking restitution of the dog from Garth who

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<sup>136</sup> This appears to have been recorded by Andrew Lang, sheriff clerk: *ibid.*, fo. 93.

<sup>137</sup> SBA, Rodger & Paterson Letter book, D/45/35/2, fo. 80

<sup>138</sup> *Ibid.*, fo. 91.

<sup>139</sup> NRS, JC26/1818/116; JC12/31/72r-73v.

<sup>140</sup> SBA, Rodger & Paterson Letter book, D/45/35/2, fo. 144, Rodger/Erskine, 19 Nov. 1818.

<sup>141</sup> *Ibid.*, fo. 147, Rodger/Warrander, 23 Nov. 1818.

<sup>142</sup> *Ibid.*, fo. 321, Rodger/Shortreed.

<sup>143</sup> NRS, JC26/1819/100; JC12/31/19r-22v.

<sup>144</sup> GCA, Letter books of Thomas Dykes, writer, Hamilton T-DY1/1/3, Dykes/Mr Wright, attorney, Dublin, 7 Dec. 1819.

had by then been promoted to captain in the Hussars.<sup>145</sup> The matter was referred by the duke to Garth's father, General George Garth (1733-1819), and Dykes was advised to write to him which he then did. The general was invited by Dykes to induce his son to return the dog and pay his expenses.<sup>146</sup> Apparently having doubted the propriety of the appeal judgment, which his son's law agent had attended, the general was assured by Dykes that the proceedings were 'perfectly regular' and that it 'was highly creditable for a legal practitioner to take up the poor man's [sic] Robertson's case in defence of his character and his property'.<sup>147</sup> The outcome, unfortunately, is not known but, of all the lawyers featured in this discussion, Dykes was by far the most aggressive; going direct to the commander-in-chief was in keeping with his character.

Other writers, however, did not shirk from expressing themselves strongly. In writing to Tait, Young & Lawrie W.S. in 1818, after attending the sale of the effects of Thomas Kincaid, an indebted tenant, James Russel claimed never to have seen 'a more complete instance of depravity'.<sup>148</sup> Only low value goods were sold, the implication being that Kincaid had defrauded his creditors by hiding or disposing of most of his property. Russel thought 'some example' should be made of him, since his 'is a very bad lesson to the other tenants if allowed to pass unpunished'.

### *Conclusion*

Lawyers' letter books reveal much detail about the personal and working lives of legal practitioners while also providing information on a wide range of social and institutional practices. They underline the importance of shared understandings and expectations within Scotland's legal culture while demonstrating how inter-connected that culture was. The letters contain a mixture of law, fact and legal procedure and while knowledge of contemporary legal terminology is helpful in interpreting some of the content, there is a great deal of incidental information that may be of value to those with no interest in law whatsoever. For those studying lawyers, the letter books of clients can also be very useful. An example, in Orkney Archives, are the letter books of James Bruce, factor to Lord Dundas, who maintained a regular correspondence over many years with his employer's Edinburgh agent John Ker WS.<sup>149</sup> These not only reveal a great deal about the Orkney economy but also demonstrate aspects of the role of the Edinburgh agent.

While typically more than a third of lawyers' letters are written to other lawyers or court administrators, most are addressed to clients or other private parties. These run across a wide spectrum of occupations and social classes, from farmers and accountants to wrights, colliers, and crofters. These represent a cross-section of the working and professional population, which, of course, meant that the majority were male. Women, despite featuring less often as clients, do still sometimes appear as the subjects of correspondence. For example, Russel records in a series of letters the difficulties he faced in securing variously a war pension and title deeds for the elderly widow of Lieutenant Reeve of the 82<sup>nd</sup> Regiment of Foot.<sup>150</sup> Parish disputes over unwed mothers and property or executry cases provide interesting discussion of the legal and social position of women, although they are sadly quite often mentioned only in

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<sup>145</sup> Ibid., T-DY1/1/3, Dykes/Frederick, duke of York, 8 May 1820; *ibid.*, 1 May 1821.

<sup>146</sup> Ibid., T-DY1/1/4, Dykes/General Garth, Ilsington House, near Dorchester, 6 Jul. 1821.

<sup>147</sup> Ibid., Dykes/General Garth, 3 Aug. 1821.

<sup>148</sup> FA, Russel & Aitken papers, A1887.003, fo. 17, Russel/Tait, Young & Lawrie, 7 Sep. 1818.

<sup>149</sup> OLA, Shepherd & Wedderburn (Drever & Heddle) Solicitors, miscellaneous volumes, letter books (outgoing), D7/9/17 to D/7/9/38.

<sup>150</sup> E.g. GCA, Letter books of Thomas Dykes, writer, Hamilton, T-DY1/1/5, Dykes/William Waddell W.S., 17 May 1824; Dykes/Secretary of War, War Office, London 20 Feb. 1824; Dykes/Mr Bow, session clerk, Royal Exchange, Edinburgh, 20 Mar. 1824.

passing. Russel, for instance, signed receipts ‘as a consenter’ for his former apprentice master James Aitken’s widow, Janet Walker (d. 1841), in respect of taxes Aitken had collected before he died.<sup>151</sup> In another case, there is an interesting detail that Jean King had twice journeyed 18 miles to seek financial support in person from the father of her child, but ‘instead of receiving payment, she was only loaded with abuse by the Defender & his Wife in consequence of which she was obliged to have recourse to law.’<sup>152</sup>

Local lawyers’ correspondence naturally sheds light on litigation both conducted locally and also before the Court of Session. In general, it shows the breadth of interaction between country and Edinburgh agents. It also shows how institutions operated locally, such as the Stamp Office with its network of local distributors, and keepers of local records such as registers of sasines. Elections, be they burgh elections or parliamentary elections, also tend to receive discussion, particularly when electoral registration courts were being held.

Despite some limitations, and a natural bias towards procedural and technical areas of law, lawyers’ letter books are an untapped yet illuminating source of detail which provide an excellent basis for quantitative analysis. While they may profitably be used to enhance our understanding of the developing role of the legal professional within society, they have much to offer besides.

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<sup>151</sup> FA, Russel & Aitken papers, A1887.003, Russel/Robert Henderson, writer, Stirling, 31 Oct. 1818. Aitken and his wife were buried in Falkirk parish churchyard: G.B. Bailey, *Falkirk Parish Churchyard* (Falkirk Local History Society, n.d.), no. 374.

<sup>152</sup> GCA, Letter books of Thomas Dykes, writer, Hamilton, T-DY1/1/2, Dykes/William Vary, writer, Lanark, 22 Jun. 1818.

## Appendix

### Letter books: summary

Table 2: Sample

Writer(s)	Sample period	Correspondents	Letters	Daily rate <sup>153</sup>
Russel	1/7/1818– 31/12/1818	336	653	4.16
Rodger & Paterson	1/7/1818– 31/12/1818	132	207	1.32
Dykes (sample 1)	1/7/1819-31/12/1819	96	183	1.16
Falconer (sample 1)	1/7/1834-31/12/1834	23	96	0.61

Table 3: comparators

Writer(s)	Sample period	Correspondents	Letters	Daily rate
Mitchells & Johnston	1/4/1816-30/9/1816	379	886	5.68
George Craig	1/1/1827-30/6/1827	141	320	2.1
Dykes (sample 2)	1/8/1821-31/1/1822	135	252	1.6
Falconer (sample 2)	1/12/1833-31/5/1834	28	106	0.68

### Lawyers and court officers as correspondents

Table 4: James Russel

Designation	Correspondents (tot. 336)	Letters (tot. 653)
Writer to the signet	31 (9.2%)	102 (15.6%)
SSC	3 (0.9%)	14 (2.14%)
Writer	52 (15.5%)	161 (24.6%)
Sheriff clerk (Alloa)	1 (0.3%)	11 (1.7%)
<b>Total</b>	<b>87 (25.9%)</b>	<b>288 (44.1%)</b>

Table 5: Rodger & Paterson

Designation	Correspondents (tot. 132)	Letters (tot. 207)
Writer to the signet	8 (6%)	23 (11.1%)
Writer/solicitor	20 (15.15%)	37 (17.9%)
Procurator fiscal (Jedburgh)	2 (1.5%)	3 (1.4%)
Sheriff clerk (Jedburgh)	3 (2.3%)	3 (1.4%)
Sheriff sub. (Selkirk)	1 (0.75%)	8 (4.8%)
Sheriff dep. (Selkirk)	1 (0.75%)	1 (0.5%)
<b>Total</b>	<b>35 (26.5%)</b>	<b>75 (36.2%)</b>

Table 6: Thomas Dykes

Designation	Correspondents (tot. 96)	Letters (tot. 183)
Writer to the signet	10 (10.4%)	38 (20.7%)
Writer/solicitor	23 (24.0%)	42 (23.0%)
Sheriff officer/messenger	5 (5.2%)	9 (4.9%)
Attorney (Dublin)	1 (1.0%)	1 (0.5%)
<b>Total</b>	<b>39 (40.6%)</b>	<b>90 (49.1%)</b>

Table 7: Thomas Falconer

Designation	Correspondents (tot. 23)	Letters (tot. 96)
Writer to the signet	2 (8.7%)	5 (5.2%)

<sup>153</sup> The daily rate in Tables 2 & 3 reflects the fact that letters were not written on Sundays.

Writer/solicitor	6 (26.1%)	23 (24.0%)
Sheriff officer	1 (4.3%)	4 (4.2%)
Sheriff depute	1 (4.3%)	2 (2.1%)
<b>Total</b>	<b>10 (43.5%)</b>	<b>34 (35.4%)</b>