Urban History (2024), 1–15
doi:10.1017/S0963926824000099

CAMBRIDGE UNIVERSITY PRESS

RESEARCH ARTICLE

Administering justice to foreigners: international merchants and mariners before the late medieval Aberdeen courts

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Abstract

This article investigates the dealings of the Aberdeen courts with foreign merchants and mariners to determine whether special policies, laws or procedures were introduced by magistrates administering justice to parties from different international backgrounds, and whether the merchants themselves developed specific strategies to negotiate crossing legal boundaries in the Scottish context. It concludes that there were few restrictions on the ability of foreigners to receive a fair process before the Aberdeen courts, a conclusion which must be considered in the context of the importance of trade for the men making the decisions at the urban courts, and for Scottish society more generally.

In 1476, a French merchant referred to as Peter Rait appeared before the Aberdeen courts. There, he was ordered to obtain a guarantor to ensure payment of a certain sum of money due to his opponent, David Menzies, 'considerand that he [Peter Rait] is a stranger'.[1] This reference to Peter Rait being a 'stranger' is one of only a handful of such references in cases involving foreigners recorded in the Aberdeen Council Registers in the later Middle Ages. Mostly, such cases were dealt with without clear indications that any legal boundaries between different groups appearing before the Aberdeen courts existed. In this article, the dealings of the Aberdeen courts with foreign merchants and mariners will be analysed to determine whether special policies and procedures were introduced by urban magistrates administering justice to parties from different international backgrounds, and whether they put up legal boundaries for foreigners using the Aberdeen courts through these policies and procedures. The article will also investigate whether the merchants themselves developed specific strategies to negotiate crossing legal boundaries.

In the literature, the status of foreigners before urban courts has not been dealt with thoroughly. Most relevant has been the discussion between Oscar Gelderblom, who claimed that town magistrates, including those of late medieval Bruges, adapted

[1] ARO-6-0425-02, see also ARO-6-0425-01 (both 8 Mar. 1476). See n. 5 for a full reference to ARO.

their legal system to the demands of a largely foreign mercantile community, and Jan Dumolyn and Bart Lambert, who rather suggested that the flexibility of the Bruges authorities only stretched far enough so as not to interfere with the interests of the city's economic elites.[2] Studies on England in the fifteenth century show a general suspicion of foreigners and a rising national sentiment, though Alwyn A. Ruddock showed through the example of Southampton that this was by no means a universal development.[3] I would like to contribute to the question of the status of foreigners before urban courts with this case-study, which will show that foreign merchants were treated much like their local counterparts, especially in places where they were considered to be business partners rather than competitors.

Following sections introducing the role of foreigners in Aberdeen and Scotland, and Aberdeen's maritime courts, the article will go on to discuss the use of special procedures and other aspects of legal practice. It will then consider the question of whether or not foreigners were treated differently in court when decisions were made, before the final part looks into the question of whether the foreigners themselves adopted special strategies to negotiate crossing legal boundaries.

Foreigners in Aberdeen and Scotland

Aberdeen was one of the main Scottish ports in the Middle Ages, functioning as a commercial hub for its large hinterland. Though the town's international trade had declined significantly from the late fourteenth century, from the mid-fifteenth century the burgh regained its position as the second busiest port after Edinburgh's port of Leith.[4] Of the larger burghs, Aberdeen is the only one with an almost complete set of council registers for the later Middle Ages. Moreover, an online edition of the Aberdeen Council Registers, which include mainly court cases, but also local ordinances, lists of elected officials and some financial materials, was recently produced (for the period from 1398 to 1511).[5] This makes Aberdeen the most suitable object for

[2]O. Gelderblom, *Cities of Commerce. The Institutional Foundations of International Trade in the Low Countries, 1250–1650* (Princeton and Oxford, 2013), 133; J. Dumolyn and B. Lambert, 'Cities of commerce, cities of constraints. International trade, government institutions and the law of commerce in later medieval Bruges and the Burgundian state', *Tijdschrift voor Sociale en Economische Geschiedenis*, 11 (2014), 89–102, at 93. See also N. Fieremans, 'Brugse schepenen, internationale handelaren en ingewikkelde conflicten: handelsconflicten voor de Brugse schepenbank in de vijftiende eeuw', *Handelingen van het Genootschap voor Geschiedenis*, 159 (2022), 71–114, at 113–14.

[3]See, for example, T. Johnson, *Law in Common: Legal Cultures in Late Medieval England* (Oxford, 2020), 86, 90; W.M. Ormrod, 'England's immigrants, 1330–1550: aliens in later medieval and early Tudor England', *Journal of British Studies*, 59 (2020), 245–63, at 246; A.A. Ruddock, 'Alien merchants in Southampton in the later Middle Ages', *English Historical Review*, 61 (1946), 1–17. Bart Lambert ('Citizenry and nationality: the participation of immigrants in urban politics in later medieval England', *History Workshop Journal*, 90 (2020), 52–73, at 67) also makes the point that 'when and where the economic and political interests of immigrant residents were complementary with those of local elites, they were given every opportunity to take part in the political life of their new homes'. See also Ormrod, 'England's immigrants', 256.

[4]E. Frankot, 'Aberdeen and the east coast of Scotland', in W. Blockmans, M. Krom and J. Wubs-Mrozewicz (eds.), *The Routledge Handbook of Maritime Trade around Europe 1300–1600. Commercial Networks and Urban Autonomy* (London, 2017), 411–27, at 413.

[5]E. Frankot, A. Havinga, C. Hawes, W. Hepburn, W. Peters, J. Armstrong, P. Astley, A. Mackillop, A. Simpson and A. Wyner (eds.), *Aberdeen Registers Online: 1398–1511* (Aberdeen, 2019) www.abdn.ac.uk/aro (ARO). The edition is searchable online at Search Aberdeen Registers (Aberdeen, 2019) https://sar.abdn.ac.uk/.

a case-study which aims to analyse legal practice in particular. Scotland's main trading partners were in the Low Countries. A Scottish staple existed in Bruges until 1477, though it had already been moved to Middelburg in Zeeland on a number of occasions before then. In 1508, Veere, also in Zeeland, became the new staple port.[6] There was trade to other areas in north-western and northern Europe too, such as England, France (from the late fifteenth century), the southern Baltic coast and Scandinavia.[7] These trading connections are confirmed by the appearance of merchants and skippers from these regions before the Aberdeen courts.

Few foreigners settled in Scotland in the later Middle Ages, and Scottish burghs and their institutions therefore did not have to cater for foreign communities within their walls. While Scottish communities existed abroad in various places, such as in Bruges, Veere, London and Dieppe, most foreign visitors to Scotland only stayed for as long as it was necessary to conduct their business.[8] This perhaps partly explains the lack of references to foreigners as a separate legal group. At times, though, some differentiation was made between groups, both in the Aberdeen Council Registers and in the acts of parliament, which were valid for the whole of Scotland. The latter mostly concerned the payment of customs.[9] More relevant within the context of this investigation are the various acts ordaining the favourable treatment of foreigners bringing in victuals in 1454, 1478 and 1482.[10] These acts evidence the importance of foreign traders in providing supplies at times of war with England or at other times when food was running out in Scotland. In December 1482, the relevant act also laid down that foreigners should have redress and justice without delay in the case of complaints 'sa that throw minstracioune of justice and favorable treting of al strangearis thai sal have occasioune to cum and repare in the land in tyme to cum to the grete utilite of the hale realme'.[11] This suggests that parliament at least appreciated that it benefited Scotland as a whole to treat foreigners well. This should not come as a surprise, seeing as the burghs formed a separate estate in parliament and, as such, were able to collectively influence decisions on matters which concerned their commerce. We find evidence of a similar sentiment in Aberdeen not long after this act. In 1483, two sergeants who had unlawfully asked for fees and duties from a skipper of Veere were told by the alderman and council in no uncertain terms that they would not stand for such 'offens and strublans' to any 'fremmyt man or alinar'. They would lose their offices if they would continue such 'displesance' to the 'alienaris'.[12]

The terminology used in the acts of parliament is mostly 'strangear', occasionally 'alienar'. In Aberdeen, we find a wider range of terms used, which includes 'fremmit man'. Usually, such terms refer to non-Scots, but it appears that they could also be

[6]A. Stevenson, 'Trade with the south, 1070–1513', in M. Lynch, M. Spearman and G. Stell (eds.), *The Scottish Medieval Town* (Edinburgh, 1988), 180–207, at 198–9, 201.

[7]Frankot, 'Aberdeen', 414–17. For trade in northern Europe, see, for example, D. Ditchburn, 'Cargoes and commodities: Aberdeen's trade with Scandinavia and the Baltic', *Northern Studies*, 27 (1990), 12–22.

[8]D. Ditchburn, *Scotland and Europe. The Medieval Kingdom and Its Contacts with Christendom* (East Linton, 2000), 203–4; Frankot, 'Aberdeen', 416–17.

[9]See, for example, K.M. Brown *et al.* (eds.), *The Records of the Parliaments of Scotland* (St Andrews, 2007–22), www.rps.ac.uk (RPS) 1450/1/7.

[10]RPS 1454/3; 1478/6/83; A1482/3/8; 1482/12/84.

[11]RPS 1482/12/84.

[12]ARO-6-0809-05 (14 Oct. 1483).

used for non-Aberdonians in certain contexts. Of course, only 'free men' from Aberdeen shared in that burgh's privileges, and, as such, there was a legal difference between free men (also referred to as 'neighbours'), other inhabitants of Aberdeen and everyone who did not live in Aberdeen, including foreigners. In 1502, for example, all 'nichtbouris, induellaris of this burgh and ale alienaris' are referred to in a statute concerning the import of salt.[13] In that case, then, the word 'alienar' referred to everyone living outside of Aberdeen, not just foreigners. So, it seems that, in a legal sense, terms like 'stranger' and 'alienar' were used to denote anyone not sharing in particular local or national privileges. In a local statute of 1467, for example, 'fremmyt men' and 'fremen' were subjected to the same payments for the measuring of certain goods.[14] This suggests that merchants could only be either one or the other, and that any merchant, foreign or Scots, who was not a 'freman' was a 'fremmit man'. On the other hand, in the context of customs on goods imported or exported referred to in the acts of parliament, 'strangers' or 'alienars' were non-Scots.[15]

Aberdeen's maritime courts

In Aberdeen, cases concerning mariners and merchants were generally dealt with in the usual civil courts. Mostly, these were presided over by the bailies, though decisions were made by an assize, a jury. This was in accordance with the *Leges Quatuor Burgorum* (Laws of the Four Burghs), which laid down that the bailies, presumably as representatives of the king who was the foreigners' protector, were to judge any cases in which foreign merchants and skippers were involved.[16] It is clear that some maritime and mercantile cases were dealt with by the guild court and by the alderman and council, but it is unclear whether the choice of court was a conscious decision or whether cases were just dealt with by whichever court happened to be sitting. In practice, it probably mattered very little, as by the fifteenth century the men seated on the various courts were all members of the merchants' guild, which was dominated by the commercial elite of Aberdeen.[17] As such, the interests of the maritime community were well taken care of in the urban administration.

There were also potentially relevant courts outside of Aberdeen. An admiralty court for the whole of Scotland existed from at least 1488, but from the mid-fifteenth century already, the provost and bailies of Aberdeen were sometimes appointed depute admirals.[18] Because of the international character of many maritime cases,

[13] ARO-8-0098-02 (15 Apr. 1502).

[14] ARO-6-0035-02 (20 Nov. 1467).

[15] A similar conclusion, though for a slightly earlier period, had already been made by Keechang Kim with regard to the terminology around 'aliens' in England: K. Kim, *Aliens in Medieval Law. The Origins of Modern Citizenship* (Cambridge, 2000), 10, 34. For the terminology in England, see also Lambert, 'Citizenry and nationality', 54, and, for early modern London, J. Selwood, *Diversity and Difference in Early Modern London* (Farnham 2010), 3. For Bruges, see P. Stabel, 'De gewenste vreemdeling. Italiaanse kooplieden en stedelijke maatschappij in het laat-middeleeuwse Brugge', *Jaarboek voor Middeleeuwse Geschiedenis*, 4 (2001), 189–221, at 191.

[16] 'Laws of the Four Burghs', in T. Thomson and C. Innes (eds.), *The Acts of the Parliaments of Scotland* (12 vols., Edinburgh 1814–75), vol. I, 333–56 (art. 25 at 337).

[17] Frankot, 'Aberdeen', 417–18.

[18] T.C. Wade (ed.), *Acta Admirallatus Scotiae 1557–61* (Edinburgh 1937), xiii. See, for example, the 'curia admirallatus': ARO-5-0127-01 (13 Sep. 1451).

and the diplomatic relations sometimes involved, some matters were also remitted to King and Council.[19] On a few occasions, maritime matters were referred to the representatives of all the Scottish burghs assembled in Edinburgh.[20] In the fifteenth century, the Court of the Four Burghs, first documented in 1292, and the meetings of the burgh estate in parliament, evolved into the Convention of the Royal Burghs. This body had a political role, representing the Scottish burghs, but also a judicial one, arbitrating in disputes between burghs or merchants and hearing appeals from burgh courts. The judicial role was adopted almost wholly by the College of Justice in the sixteenth century.[21]

Initially, the introduction of an admiralty court appears to have affected the use of the burgh courts to resolve maritime cases only very little. As J.D. Ford has suggested, analysing such cases in Aberdeen in the first half of the sixteenth century, they only begin to thin out in the later 1540s, when the Scottish admiral started to assert his exclusive maritime jurisdiction.[22] As John Finlay has shown, in the sixteenth century there were regular squabbles over jurisdiction, especially between the admiral and the Lords of Council. Foreigners officially fell under the protection of the king, and the Lords of Council, as his judicial representatives on a national level, assumed responsibility for them. However, in maritime cases, the admiral considered this as an encroachment on his jurisdiction.[23] There is little evidence of similar issues in the fifteenth century, though that may partly be because the sources are lacking.

Decisions were often made by assizes. In those cases in which it is clear who the men on these assizes were, it seems they consisted of peers. In a case from 1449 between a skipper and his freighters, the assize consisted of seven merchants and eight skippers.[24] In 1485, in a case about the reimbursement of cast goods, an assize of twelve men including a skipper and two 'steremen' (helmsmen) found that the skipper and the merchants should contribute. Remarkably, the skipper on the assize in this case decided that he himself needed to contribute.[25] At times, the assizes also included foreigners, such as 'Brand the skippar and Arne Fansowme sterman' in a case from 1477 concerning the division of costs of a toll paid in Ålesund in Norway among all parties involved in the journey.[26] As an alternative to a full-blown court

[19]In fact, the admiralty court case cited above was referred to King and Council 'because the said mater belongis in a part to oure soverane lord the king'. ARO-5-0127-01. See also E. Frankot, 'Maritime law and practice in late medieval Aberdeen', *Scottish Historical Review*, 89 (2010), 136–52, at 143.

[20]ARO-4-0497-07 (3 Nov. 1447); ARO-5-0692-03 (16 Dec. 1444). See also Frankot, 'Maritime law and practice in late medieval Aberdeen', 143.

[21]T. Pagan, *The Convention of the Royal Burghs of Scotland* (Glasgow, 1926), 2, 9–10; A.R. MacDonald, *The Burghs and Parliament in Scotland, c. 1550–1651* (Aldershot, 2007) 5–8; H.L. MacQueen and W.J. Windram, 'Laws and courts in the burghs', in Lynch, Spearman and Stell (eds.), *Scottish Medieval Town*, 208–27, at 219.

[22]J.D. Ford, 'Telling tales: maritime law in Aberdeen in the early sixteenth century', in J.W. Armstrong and E. Frankot (eds.), *Cultures of Law in Urban Northern Europe. Scotland and Its Neighbours, c. 1350 – c. 1650* (Abingdon, 2021), 23–38, at 23.

[23]J. Finlay, 'Foreign litigants before the College of Justice in the sixteenth century', in H.L. MacQueen (ed.), *Miscellany IV*, Stair Society (Edinburgh, 2002), 37–50, at 38–9.

[24]ARO-5-0068-03 (28 Nov. 1449).

[25]ARO-6-0904-03 (11 Feb. 1485).

[26]ARO-6-0478-05 (11 Apr. 1477). See M. Kowaleski, '"Alien" encounters in the maritime world of medieval England', *Medieval Encounters*, 13 (2007), 96–121, at 105–6, for the claim that maritime and burgh customs in England mandated that half of juries should consist of foreigners for cases involving foreign litigants.

case, matters were sometimes settled by a smaller group of men, through arbitration or amicable agreement. These men were sometimes appointed by the court. So decisions were generally made by men with practical knowledge of shipping and trade and who, presumably, also had some knowledge of the rules and regulations which were relevant in maritime cases.[27]

Crossing legal boundaries from the magistrates' perspective: special procedures

Within the framework of the courts, did the Aberdeen magistrates introduce special policies or procedures? In 1478, two skippers from the German Hanseatic town of Stralsund, Henrik Sellemere and Thomas Anderson, submitted themselves, through their forespeaker, Thomas Prat, to the aldermen and bailies of Aberdeen in an action against merchants of Edinburgh. Prat stated that Sellemere and Anderson would 'underly the law within three tides as sea faring men'.[28] The references to 'three tides' and the skippers as 'sea faring men' suggest a separate legal process for mariners and merchants involved in overseas trade in Scotland.

In an English context, the piepowder court is a known entity. The piepowder court is said to have offered fast and effective legal remedies to dusty-footed (in French: *pieds poudrés*) merchants who visited a town's fair.[29] A similar institution appears to have existed in Scotland, although the evidence is thin and from a later period. There are a few references to a 'pipoudrous' court and to 'pipouderous' borghs.[30] The latter was perhaps a borgh, a document used to initiate a legal action, which had to be processed and responded to more quickly than a usual 'borgh'. It may also be that a pipouderous borgh was not a document, but an oral initiation of a suit, or an initiation of a pipouderous court. On 25 June 1467, for example, Simon Crawford had been called to compear (appear) to answer to a 'borch of pypowdrous' initiated by David Hervy concerning the wrongful withholding of a sum of money. Simon did not compear 'in the first day of process of three tides'.[31] The next day, Simon did not compear again in the second of the tides ('secundo refluxu maris'). It was then decided to continue the suit to the following Tuesday (30 June) with the consent of both parties.[32] On that day, the case was continued again to 4 July, but there is no further record of the case.[33]

[27]Relevant were the Rolls of Oléron, which were translated into Scots and disseminated in a significant number of manuscripts of the main Scottish laws, though none (bar one) with an urban connection. In practice, maritime law in Aberdeen functioned mostly through customs and ad hoc verdicts. On the reception of the Rolls in Scotland, see E. Frankot, 'The Scottish translations of the Rôles d'Oléron: edition and commentary', in M. Godfrey (ed.), *Miscellany VIII*, Stair Society (Edinburgh, 2020), 13–56, at 14–16. On maritime legal practice in Aberdeen, see Frankot, 'Maritime law and practice in late medieval Aberdeen', and, for the sixteenth century, Ford, 'Telling tales'.

[28]ARO-6-0547-03 (25 Sep. 1478).

[29]Kim, *Aliens in Medieval Law*, 29. See also A. Cordes and P. Höhn, 'Konfliktlösung im Fernhandel', in D. von Mayenburg (ed.), *Konliktlösung im Mittelalter* (Berlin, 2021), 283–93, at 285–6.

[30]For borghs, see Ford, 'Telling tales', 24–5.

[31]ARO-5-0605-04.

[32]ARO-5-0605-06/07.

[33]ARO-5-0606-01. The next recorded court was on 6 July.

On a few occasions there is reference to a 'pipoudrous court'. On three occasions, in fact, the bailie court was specifically indicated to be 'pipoudrous'. In August 1438, the bailie court was recorded as being 'pro causam nautarum et ly pepoudrous'.[34] Six entries were included, but not all concerned mercantile cases, nor did all involve non-locals. The second pipouderous court took place in August 1459 and the third just before Christmas in the same year.[35] The cases in these two courts do appear to concern foreigners: an Englishman in all three entries in August and a man called Henrik Hertoeghson, likely a Dutchman, in December.

In addition to piepowder courts, there are references to the 'three tides'. These range from payments being due within three tides, people told to 'underly the law within three tides' and actual court processes of three tides.[36] Often, these references were linked to the terminology associated with the piepowder courts, such as, for example, in the case between Simon Crawford and David Hervy mentioned before, but also included mention of the party concerned as a 'see farand man', a 'dusty futit man', or 'ane farand man dusty futit'.[37] As is suggested by the evidence of the cases mentioned earlier, a process of three tides may have referred to a procedure taking place on three consecutive court days. This is confirmed by a few other cases in which the next court date was set a day or two later in accordance with the law 'for an farande man dusty futit' or because one of the parties was an 'alienar'.[38] This is different from the suggestion that 'three tides' refers to a period of 36 hours, corresponding to three actual tides, which has been made elsewhere.[39] What is clear from the evidence is that the piepowder courts were part of the system of burgh courts and that they were not a separate institution like the English fair courts apparently were. The relevant cases tended to concern freight or other issues relating to shipping.[40] Seeing that shipmasters had to make use of favourable sailing conditions, quick justice was vital for the smooth running of business.

It was generally merchants or shipmasters who were referred to as (sea) farand men, in as far as it is possible to establish this. Some of these men were, however, from Aberdeen, such as Robert Wormet and David Hervy.[41] So the special treatment that went with being a farand man was not restricted to non-Aberdonians, but was rather extended to all who lived an itinerant trading lifestyle. As such, the pipouderous process seems to have been similar for Aberdonians and others. It does not appear to have been introduced, then, to deal with any specific issues associated with the administration of justice to foreigners.

[34]ARO-4-0136-01 (9 Aug. 1438).

[35]ARO-5-0371-01 (16 Aug. 1459); ARO-5-0382-01 (22 Dec. 1459).

[36]ARO-5-0230-06 (19 Mar. 1455); ARO-6-0087-02 (2 Jun. 1469); ARO-6-0169-07 (2 Dec. 1471); ARO-6-0547-03 (25 Sep. 1478); ARO-6-0245-07 (27 Nov. 1486); ARO-8-0131-02 (1 Jul. 1502); ARO-1017-03 (6 Oct. 1509); ARO-8-1031-02 (26 Oct. 1509).

[37]ARO-6-0087-02 (2 Jun. 1469); ARO-6-0521-03 (23 Feb. 1478); ARO-6-0526-03 (13 Apr. 1478); ARO-7-0138-03 (17 Sep. 1489); ARO-8-1031-02 (26 Oct. 1509).

[38]ARO-7-0067-01 (21 Jul. 1488); ARO-7-0075-03 (10 Sep. 1488).

[39]For example, Cordes and Höhn, 'Konfliktlösung im Fernhandel', 285.

[40]See, for example, ARO-7-0677-01 (26 Jun. 1467).

[41]Robert Wormet was admitted as a burgess in 1440 (ARO-4-0191-06 (8 Feb. 1440)) and appears regularly in the sources, as does David Hervy. Concerning Robert Wormet, see E. Frankot, 'The *Nicholas* and the Wormet family', http://aberdeenregisters.org/2018/09/25/the-nicholas-and-the-wormet-family (2018), accessed 30 Mar. 2022.

Crossing legal boundaries from the magistrates' perspective: other aspects of legal practice

The lack of any special procedures having been introduced in Aberdeen to deal with cases involving foreigners is further confirmed by the fact that there is no specific reference to piepowder, three tides, or dusty-footed men in the majority of cases involving foreigners. Most cases at least appear to have been dealt with like those involving only locals. That does not mean that the magistrates did not put up other boundaries to deal with foreigners in their courts. In the following section, some other aspects of legal practice will be discussed.

The first of these aspects is legal representation. When discussing foreign litigants before the College of Justice in the sixteenth century, Finlay argued that it might have been more difficult for them to obtain the services of an advocate. This was not an issue in Aberdeen in the fifteenth century, as advocates did not play a role at all yet. Instead, litigants could be represented by procurators or forespeakers. Concerning the fifteenth-century 'men of law' in Aberdeen, Andrew Simpson has concluded that, with the exception of notaries public, these men were not required to have had any formal legal training. Instead, the men who most regularly represented others in court were those who had 'extensive experience of holding offices within the burgh administration and so of operating the burgh courts'.[42] Procurators were usually men who were formally appointed to act on a client's behalf in their absence, and clients were bound by their acts and decisions. Forespeakers, on the other hand, appear to have lacked the formal powers associated with procurators, but spoke in court on behalf of others who were present in court but had less eloquence or legal experience.[43]

Some of the foreigners appearing before the Aberdeen courts either appointed one or more procurators or they were represented by forespeakers in court. For itinerant traders, appointing a procurator to take care of affairs when they themselves were away was of course a practical solution. This was no different for Aberdonians. In the case of Magnus Wormot, for example, his wife was appointed to deal with any matters concerning him while he was away on business.[44] More often, though, procurators were hired to deal with matters in a specific case. For foreign merchants unfamiliar with the workings of the Scottish legal system, hiring a procurator or forespeaker was also attractive. In 1434, for example, the Aberdonian forespeaker of a Bruges merchant initiated a lawsuit to the next chamberlain's ayre, a higher court, that the proof offered by their opponent 'was of na value because the provarez deponit nocht in fourme of the rolment of the court'.[45] It is likely that in this case the foreign merchant benefited from the knowledge of his forespeaker in negotiating the Scottish legal system. But the procurators hired were not always Aberdonians. In 1505, for example, the executors of the late Robert Dunham, an Englishman who had acted as procurator himself the year before, appointed another Englishman to represent them, and in 1482 Cornelis Cornelissen, most likely a Dutch shipmaster, appointed a

[42] A.R.C. Simpson, 'Andrew Alanson: man of law in the Aberdeen Council Register, c. 1440 – c. 1475', in Armstrong and Frankot (eds.), *Cultures of Law in Urban Northern Europe*, 248.

[43] *Ibid.*, 247.

[44] ARO-6-0847-04 (14 May 1484).

[45] ARO-4-0003-06 (26 Jan. 1434).

shipmaster of a Veere ship as his procurator.[46] Forespeakers were also occasionally foreign, such as the English forespeaker representing his countryman in 1503.[47] It may be that in such cases people put their trust in a fellow countryman, possibly one with more experience in a certain locality, to solve a case in their best interest. This certainly seems to have been true in the case of Arnoud van Stakenborg, a Bruges citizen who had died by 1494, and whose executors appointed Anton Laris as their procurator to retrieve a large amount of debts.[48] Members of the Laris family regularly appear in the Aberdeen records, partly as facilitators of Scottish trade in Bruges, where, as hostellers, they functioned as middlemen between Scottish merchants and their customers. It is likely that the Laris family were familiar with the Scottish legal system.[49]

In many cases involving foreigners, however, there is no mention of procurators or forespeakers. Of course, it is likely that the record as presented to us in the Aberdeen Council Registers is incomplete, but we can assume nonetheless that in some of these cases, at least, the foreigners acted on their own behalf. Overall, the representation of litigants before the court appears to have been no different from that of Aberdonians, who were also regularly represented by procurators and forespeakers. There does not appear to have been any requirement in place for guests to use locals as middlemen in any financial or legal transactions. This is contrary to the situation in Stockholm, as discussed by Sofia Gustafsson elsewhere in this issue, or in Bruges, where foreigners were obliged to use brokers.[50]

Like locals, foreigners also appear to have been able to swear the great oath, such as, for example, Veere shipmaster Copin Neman in 1510.[51] It does seem to have been the case that foreigners were subjected to additional requirements for sureties: guarantors would have to be able to pay any expenses awarded against them, which was also suggested by the case with which this article opened.[52] This seems sensible, seeing that foreigners might be an unknown quantity when it came to trustworthiness and reputation. In addition, they might not immediately have been able to pay any required costs or expenses. Concerning the supplying of evidence, parties were sometimes given extra time in order to acquire this if it had to be obtained from further afield, either in Scotland or abroad. In 1491, for example, an Englishman was told to supply proof concerning the interference with a mast. His proof needed to be supplied within 15 days if it originated in Aberdeenshire, but within 40 days if it needed to be retrieved from beyond the Firth of Forth.[53] In a case from 1484, which will be discussed in more detail later, a skipper living in Norway was given a year and a day to bring proof concerning the sale of part of a ship.[54] Of course, this was mainly

[46]ARO-8-0488-02 (2 Sep. 1505); ARO-6-0720-01 (6 Feb. 1482).

[47]ARO-8-0243-01 (28 Jul. 1503).

[48]This case will be discussed in more detail below. Laris made use of Aberdeen forespeakers at least part of the time. ARO-7-0575-03 (13 Oct. 1494); ARO-7-0603-01 (16 Jan. 1495).

[49]I am grateful to Niels Fieremans for sharing some of the findings of his forthcoming Ph.D. on formal and informal litigation methods of foreign merchants in Bruges.

[50]Stabel, 'De gewenste vreemdeling', 198; A. Greve, *Hansische Kaufleute, Hosteliers und Herbergen im Brügge des 14. und 15. Jahrhunderts* (Frankfurt am Main, 2011), 171–86.

[51]ARO-8-1072-03 (8 Apr. 1510).

[52]Finlay, 'Foreign litigants', 40.

[53]ARO-7-0272-07 (10 Oct. 1491).

[54]ARO-6-0854-05 (10 Jul. 1484).

for practical reasons, and was not related specifically to outsiders being treated differently.

Crossing legal boundaries from the magistrates' perspective: judging foreigners

Apart from practical reasons for treating non-Aberdonians or non-Scots differently from locals, was there any variation in the way they were treated when decisions were made in court? Is there any evidence of discrimination or prejudice against them, for example? When it comes to maritime cases, foreigners do not appear to have been judged differently. It may be that English ships experienced trouble more regularly than others, but this was likely the result of the recurring conflicts between Scotland and England. In 1509, for example, the shipmasters of two English ships complained that their ships had been taken by two elite Aberdonians and their accomplices, when they were only seeking shelter to mend one of the ships after they had been blown off course towards the harbour by a north-easterly wind. After the shipmasters had delivered their complaint, the bailies gathered the merchants and free men of Aberdeen in the tolbooth for advice. They did not approve of the taking of these ships and asked the bailies to release the Englishmen and their ships, and to make sure that they themselves were not made responsible for any potential damages.[55] Similarly, damages to Danzig ships and goods by Aberdonians were considered to endanger the relations with this port, and amends were soon offered in 1487 and 1491.[56] So, very often it was not so much the rights of foreigners that were the concern, but rather how the business of Aberdonians might be negatively affected by arrests and similar actions. This also explains why Cornelis Bol of Veere was given special dispensation to transport goods of Aberdeen merchants to the Low Countries in 1498, when there was apparently a ban on shipping to the lands of the Burgundian dukes.[57]

But most of the cases regarding sea trade concerned money or goods, such as payments for goods, damages or freight, or the withholding of cargo. In 1483, an assize decided to acquit the skipper of a caravel from Veere and his crew from damage to the 47 barrels of onions and 8 barrels of beer of Richard Chalmers. Chalmers was told to pay the freight.[58] In 1509, David Stewart prosecuted a skipper coming from Danzig and one of the burgh's bailies accused the skipper, William Boll, of wrongful withholding of the cargo of malt. The assize decided, however, that the skipper had done nothing wrong and that Stewart needed to pay his freight before he would receive his goods.[59] In 1447, Alexander Mar was told by the assize to pay Yane Mewson a certain amount of freight 'like as use and wount was to be gevin til uthiris skipparis'.[60] This reference to customary law suggests that all skippers and merchants were subject to the same rules, without any exceptions.[61] An interesting case is that in

[55]ARO-8-0978-03 (16 Jul. 1509). Another arrest is recorded in ARO-4-0305-03 (18 Mar. 1443).
[56]ARO-7-0013-03 (28 Apr. 1487); ARO-7-0266-03 (3 Oct. 1491); see also ARO-7-0351-03 (3 Oct. 1492).
[57]ARO-7-0893-02 (19 Aug. 1498).
[58]ARO-6-0809-06 (15 Oct. 1483).
[59]ARO-8-1017-02 (6 Oct. 1509).
[60]ARO-6-0485-05 (22 May 1447).
[61]Cf. Bart Lambert's conclusion that foreigners and locals were subject to the same local customary law in Bruges in B. Lambert, 'A legal world market? The exchange of commercial law in fifteenth-century Bruges', in

which the shipmaster of the James of Veere, Peter Gelisz, challenged James of Douglas, who had acted as the ship's pilot, for sailing the vessel onto the 'craggis' (rocks).[62] One might have expected Douglas to deny that he was at fault, but he did not: he admitted that he was to blame, and not the skipper and crew, and he put himself at the skipper's and the magistrates' mercy. Apparently, there was no expectation on the pilot's part of any prejudice against the other party.

That is not to say that the courts decided in favour of foreigners as a rule. In 1478, a skipper from Stralsund prosecuted four merchants for withholding freight, but the assize decided in the merchants' favour. The skipper was judged to be in amercement, that is to say that he was subject to a fine.[63] Four years later, a Veere shipmaster was also judged in amercement for failing to deliver half a barrel to Richard Litstar.[64] Moreover, in cases where there was a contract concerning the shipping of cargo (a charter party) available, the court normally passed judgment in accordance with that, such as when four arbitrators decided David Menzies the elder should make full payment of salmon to Thomas Hobson, a merchant of Berwick, as was agreed in their indentured charter.[65] Dave De ruysscher has shown that in Antwerp, too, the magistrates normally upheld the agreements in shipping contracts.[66] It is perhaps surprising, then, that parties went to court at all when there was a charter party which regulated the issue in question. Why, for example, did eight merchants from Aberdeen deny having to provide cargo for a journey on a ship to Veere when there was a charter party establishing just that?[67] It is likely that in such cases the parties were trying to buy time; in the case of the Aberdonian merchants perhaps to find suitable merchandise to transport, rather than risk their reputation reneging on a contract. Taking the matter to court allowed both parties to keep communication channels open.[68]

In the case involving the skipper from Norway, mentioned above, who was allowed a year and a day to produce proof, the Aberdeen merchant and/or shipowner John Fichet had seized ownership of one half of the ship and the cargo which was skippered by John Rolyn on behalf of Alstane, both of whom lived in Oslo. The reason was that he claimed Alstane had claimed ownership of a third of Fichet's ship which had been laden with timber ('tymmyr and bow staiffis'). Rolyn claimed that Alstane had bought and paid for this part of the ship. The assize decided that Rolyn needed to bring certification of the sale within one year and one day. If he failed to bring it, he had to pay. If he did bring proof, Fichet would reimburse him for the damages as a result of the arrest. In a separate entry, Rolyn put a sum equivalent to the value of a third of the ship into the hands of another Aberdonian, in case he failed to bring back certification. A year and four days later, Fichet appeared in court to point out that

S. Gialdroni *et al.* (eds.), *Migrating Words, Migrating Merchants, Migrating Law: Trading Routes and the Development of Commercial Law* (Leiden, 2020), 163–75, at 171.

[62]ARO-6-0718-06 (30 Jan. 1482).

[63]ARO-6-0549-03 (3 Oct. 1478).

[64]ARO-6-0710-10 (7 Jan. 1482).

[65]ARO-7-0070-02 (12 Aug. 1488).

[66]D. De ruysscher, 'From usages of merchants to default rules: practices of trade, *ius commune* and urban law in early modern Antwerp', *Journal of Legal History*, 33 (2012), 3–29, at 7–8, 10, 17.

[67]ARO-7-0739-05 (8 Jul. 1496).

[68]Concerning the use of courts as fora of communication, see P. Höhn, *Kaufleute in Konflikt. Rechtspluralismus, Kredit und Gewalt im spätmittelalterlichen Lübeck* (Frankfurt am Main, 2021), in particular 209, 235.

Rolyn had failed in producing the required proof on time.[69] There is nothing further in the records about the matter, and Rolyn does not reappear. This case, like that of the two arrested English ships, shows that Aberdeen burgesses could not just arrest a foreign ship. The assize allowed for the skipper to produce proof, though he did need to provide securities for the payment that was potentially due.

An interesting case, finally, which provides us with some information on the treatment of foreigners as opposed to that of other Scots is that of 1471 involving Davy Moffat, a merchant from St Andrews, and John Anderson of Brielle in Holland. Moffat freighted a 'sarplar' of skins and a 'pipe' of cloth in Anderson's ship, but these goods were apparently taken from the ship by Englishmen, despite the agreement that the cargo would be protected against just that.[70] The manner in which this case unfolded begs the question of whether there was some bad blood between Moffat and the Aberdeen bailies. After the case was continued a few times because of 'weakness of the court',[71] there is a note that Moffat and his procurator would not stay to hear the court date when the case finally was considered on 20 May.[72] Then, in late May and early June, the bailies simply did not turn up to hear his case, which may be because Moffat had appeared in court a few days before he was due to appear.[73] When Moffat eventually showed up on the day he was expected in court, he was told it was a holy day.[74] Finally, when a decision was due, none was given because the assize wanted more information.[75] The case then disappears from the record. Whether there was indeed an unwillingness on the part of the bailies to cater to Moffat, or whether their absence in court was just a coincidence, is unclear. This case certainly does not suggest that fellow Scots were given preferential treatment over foreigners.

Overall, the decisions of the assize appear to have been based on the merits of the case, though it is difficult to know for sure why a case was decided in anyone's favour without access to full case files and, generally, the reasoning behind the decisions. There are certainly no indications that foreigners were at a disadvantage when appearing before Aberdeen courts. The picture of Aberdeen as a generally welcoming place for foreigners is further confirmed by a case of double shipwreck from 1444. Both the shipmasters of the two vessels, one of whom at least was foreign, declared that they were very grateful for the help that they had received in salvaging their goods and they 'thankit hartly the gude men of the toun'.[76] From the perspective of the court, which consisted of members of the elite who depended on trade for their livelihoods, it would have made sense to treat one's business partners with respect, to ensure that supplies of goods would have continued to be transported to Scotland,

[69]ARO-6-0854-05 (10 Jul. 1484); ARO-6-0860-04 (16 Aug. 1484); ARO-6-0926-09 (14 Jul. 1485).
[70]The men first appeared in court on 24 April 1471: ARO-6-0146-05.
[71]ARO-6-0147-01 (29 Apr. 1471); ARO-6-0147-03 (30 Apr. 1471); ARO-6-0147-04 (2 May 1471).
[72]ARO-6-0149-01/02.
[73]ARO-6-0150-01 (31 May 1471); ARO-6-0150-05 (1 Jun. 1471).
[74]ARO-6-0151-01 (3 Jun. 1471).
[75]ARO-6-0151-02 (6 Jun. 1471); ARO-6-0151-03 (7 Jun. 1471).
[76]ARO-5-0684-01 (9 Oct. 1444). That the situation may have changed to some extent in the sixteenth century is suggested by at least one case in which litigants went to the College of Justice (Scotland's central court from 1532) because they were unhappy with their treatment by the authorities in Aberdeen. Finlay, 'Foreign litigants', 42–3. Such sources are, unfortunately, largely lacking when it comes to the College's predecessors in the fifteenth century.

and that merchandise produced in Scotland for export would still have found a market abroad.

Crossing legal boundaries from a foreigner's perspective: special strategies

A final aspect to discuss is whether the foreigners themselves adopted special strategies to negotiate the crossing of legal boundaries. From the Aberdeen records, it is clear that they certainly did not try to avoid utilizing legal institutions, which suggests that they trusted they would be treated fairly by these institutions. First of all, there is the evidence that foreigners actually utilized the courts in Aberdeen rather than bringing their cases before a court in their home countries or to the Scottish king, whose special protection they enjoyed. There are also several examples of foreign skippers and merchants who used the court on more than one occasion. It seems likely that they would have tried to get justice elsewhere if their experience at court had been a bad one. For example, Alexander Peirpont, an Englishman, appeared in court on several occasions over the course of a long period.[77] William and John Elleot, John Scheval and John Callat, Frenchmen, appeared more than once too.[78] Of course, what this also suggests is that these merchants were regular visitors of the port, who over time built up a network among Aberdeen's merchants. Foreign merchants can also be seen using the courts to register some of their transactions. For example, in 1501, Bollekin, a skipper of Veere, granted before the court to have received payment from John Fechat, for three chandeliers, as well as the freight for half a barrel of soap.[79]

In some cases, foreign claimants even considered it worthwhile to travel to Aberdeen to make their case. In 1494 and 1495, in a string of cases, Anton Laris as procurator for the executors and heirs of Arnoud van Stakenborg, tried to retrieve some of the money due by Aberdeen merchants.[80] The case involves 19 Aberdonians, and 37 entries related to the cases have been recorded in the Aberdeen Council Registers. The majority of the cases were dealt with in April and May 1494, usually spread out over two to four court sessions. In some cases, the defendant was acquitted, whereas in others he was not, or had to pay part of the claimed sum. In a few cases, the end result is not recorded. On 14 April, for example, Anton Laris claimed 4 lb. 3 s. from Alexander Anguson. The case was continued twice, until on 2 May Anguson was acquitted of all sums on the basis of the statements of seven

[77]ARO-6-0369-01 (28 Jun. 1475); ARO-6-0376-01 (4 Aug. 1475); ARO-6-0967-01 (14 Aug. 1486); ARO-7-0451-04 (24 Jul. 1493); ARO-7-0561-02 (9 Sep. 1494); ARO-7-0562-01 (12 Sep. 1494); ARO-7-0563-02 (15 Sep. 1494). It is possible that there existed more than one Alexander Peirpont, but there is no differentiation made in the sources.

[78]William Elleot: ARO-6-0643-07 (26 Jul. 1480); ARO-6-0850-01 (26 May 1484). John Elleot: ARO-7-0762-04 (15 Oct. 1496); ARO-7-0896-02 (6 Sep. 1498). John Scheval: ARO-7-0786-02 (27 Feb. 1497); ARO-7-0828-02 (8 Sep. 1497); ARO-7-0872-07 (11 Apr. 1498); ARO-7-0896-04/05 (7 Sep. 1498); ARO-8-0138-04 (28 Jul. 1502). John Callat: ARO-7-0982-02/04 (9/10 Sep. 1499); ARO-7-1013-02 (27 Jan. 1500); ARO-7-1087-04 (10 May 1501); ARO-7-1100-01 (18 Jun. 1501); ARO-7-1102-01 (21 Jun. 1501).

[79]ARO-8-0015-02 (11 Oct. 1501).

[80]One of the executors was Van Stakenborg's widow, Barbara, and Laris also represented the tutor of Arnoud and Barbara's children. ARO-7-0526-03 (24 May 1494); ARO-7-0523-04 (21 May 1494).

witnesses.[81] Peter Futhes was in court on the same dates for a debt of 8 St Andrews 'guthlingis'. On 2 May, he granted he borrowed 4 s. and was acquitted for the rest.[82]

Some of the cases took longer to reach a conclusion. A few of the Aberdeen merchants were eventually allowed a court date after Christmas to produce proof that they had paid off their debts. None of them appears to have been able to provide this proof, some not even showing up on 12 January 1495 when these cases were dealt with. All were judged in amercement and had to pay their fines.[83] Perhaps they were given such a long time to produce this proof because the defendants claimed it needed to be retrieved from Bruges. Seeing none were actually able to provide it, it probably never existed in the first place. As such, it is more likely that the Aberdeen merchants were stalling so they would have more time to pay off their debts.

Of course, considering how Scottish trade with Bruges was organized, we can ask why these cases were not brought before a Bruges court. Scottish merchants regularly traded with Bruges, and it is likely that the debts resulted from transactions made there. On the other hand, by the latter years of the fifteenth century, particularly after the Scottish staple was removed from Bruges in 1477, Scottish merchants perhaps did not travel to Bruges quite so regularly anymore. Instead, they probably took their merchandise to Middelburg or Veere. As such, it may perhaps have been easier for Anton Laris to travel to Aberdeen where he could charge the debtors in their own courts. Arnoud van Stakenborg's executors and heirs and their procurator obviously assumed that this was a worthwhile endeavour, if only to have established before the Aberdeen courts that certain claims against the burgh's merchants existed. Whether these debts were worth the transaction costs of sending a procurator to Aberdeen for an extended visit, including the costs of the court procedures and local representation, is questionable. The point of prosecuting these merchants before their own court was therefore perhaps more symbolic than anything else. By using the court, Laris made use of the opportunity to state the claims on behalf of his clients, maintaining their reputation as the heirs of an honourable and creditworthy merchant, and displaying their capacity to act.[84]

Conclusion

In conclusion, merchants and mariners mostly appeared before the regular burgh courts, where they may at times have been subject to special processes which allowed for their cases to be dealt with more swiftly, though specific evidence for this is limited. The main legal boundaries between Aberdonians and foreigners are apparent in the legal terminology that was used to differentiate between those who shared in particular local or national privileges and those who did not, and these privileges themselves which gave particular rights to Aberdonians or Scots. These mainly concerned the buying and selling of goods outwith Aberdeen and its markets, and

[81]ARO-7-0513-05; ARO-7-0514-02 (21 Apr. 1494); ARO-7-0515-06.

[82]ARO-7-0513-05; ARO-7-0514-02; ARO-7-0515-03.

[83]Alexander Sanchar: ARO-7-0516-03 (5 May 1494); ARO-7-0520-02 (10 May 1494); ARO-7-0521-03 (13 May 1494); ARO-7-0601-04 (12 Jan. 1495). John Stevin: ARO-7-0517-04 (5 May 1494); ARO-7-0601-03 (12 Jan. 1495). John Low: ARO-7-0519-02 (10 May 1494); ARO-7-0601-01/02 (12 Jan. 1495). John Culan: ARO-7-0523-04 (21 May 1494); ARO-7-0601-05 (12 Jan. 1495).

[84]Concerning the communication of creditworthiness and honour in court, see Höhn, *Kaufleute in Konflikt*, ch. 5; Cordes and Höhn, 'Konfliktlösung im Fernhandel', 291.

the payment of customs. Otherwise, foreigners were subjected to additional requirements for sureties. But overall, there appear to have been few restrictions on the ability of foreigners to receive a fair process before the Aberdeen courts, a conclusion which must be considered in the context of the importance of trade for the men making the decisions at the urban courts, and for Scottish society more generally. The wider implication of this conclusion is that the economic role of foreigners as competitors or as business partners may be a good predictor of the legal status in the ports that they frequented. In their dealings with foreigners, urban magistrates, often members of the commercial elite, had to balance their own interests and those of the urban community more generally with those of their visitors. In particular, resident aliens who competed economically with local merchant communities could be at a disadvantage when using local courts. In Aberdeen, on the other hand, where foreign communities were absent and visitors were important business partners, the local courts made sure to treat visitors well, to ensure that they would continue to provide supplies and victuals when they were needed.

Competing interests. The author declares none.

Cite this article: Frankot, E. (2024). Administering justice to foreigners: international merchants and mariners before the late medieval Aberdeen courts. *Urban History*, 1–15, doi:10.1017/S0963926824000099